



25.07.2019. However, the Regulations were made applicable retrospectively from 01.04.2019. Therefore, the instant Petition is filed by the Petitioner seeking clarification from the Commission that unutilized banked energy from FY. 2018-19 to FY 2019-20 and banked energy from 01.04.2019 onwards till November 2019 is to be settled as per UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2014 (CRE Regulations, 2014).

3. The Commission asked that the Petitioner has already challenged the CRE Regulations, 2019 before the Hon'ble High Court in a writ petition on the similar issue that the Regulations were made applicable retrospectively. Therefore, the prayers of the present Petition seem to be on the similar issue and hence, the Petition is not maintainable before the Commission as the issue is sub-judice before the Hon'ble High Court. However, the petitioner clarified that he is not seeking to reagitate the issue of retrospective application of regulations or seeking any concession in the provisions of CRE Regulations, 2019 from the Commission. By way of this petition, the Petitioner has approached the Commission simply to invoke statutory power of the Commission to remove difficulty in giving effect to the Regulations.

4. Sh. D.D. Copra learned Counsel of the Petitioner further argued that the Petitioner has not challenged the issue related to banking before the Hon'ble High Court and the Petitioner has, therefore, approached the Commission as the provision with regard to settlement of banking of power has undergone



changes in CRE Regulations, 2019 vis-a-vis CRE Regulations, 2014. The major changes are as follows: -

- a. Deviation Settlement Mechanism has been introduced on RE based generation and co-generation in CRE Regulations, 2019.
- b. CRE Regulations, 2019 provides withdrawal of banked power only as per TOD system i.e. withdrawal of power in peak/off-peak hours shall not be more than the power banked in the respective TOD slot. However, as per CRE Regulations, 2014, withdrawal of banked power was only during the period other than peak hours viz. 17:00hrs to 22:00hrs.
- c. CRE Regulations, 2019 provides that Generating Company can withdraw banked power during a particular quarter within 2 subsequent quarters. Unutilized remaining power, on expiry of period would be treated as sale and the financial settlement shall be made at the rate of Rs. 2/unit or PPA rate, whichever is lower after deducting the banking charges @12%. However, CRE, Regulations, 2014 provided that Generating Company can withdraw banked power during a particular F.Y. in the same year or during the following F.Y. and power remaining unutilized on the expiry of the following F.Y. would be treated as sale at scheduled tariff.



5. The Commission asked the petitioner about the relevance of seeking clarification from the Commission, since the provisions of CRE Regulation, 2019 are very clear and there is already a sunset clause in the CRE Regulations, 2014 which is not superseded by CRE Regulations, 2019. Therefore, the provisions of CRE Regulations, 2014 shall continue to be applicable for the energy injected by the Petitioner which is banked till 31.03.2019 and will have same treatment as prescribed under CRE Regulations, 2014. Further, the provisions as stipulated under CRE Regulations, 2019 shall become applicable for energy injected by the Petitioner, which is banked after 31.03.2019. The Commission further asked the Petitioner whether the prayers of the Petitioner are in nature of clarification or in nature of grant of relief.

6. Sh. D.D. Copra learned Counsel of the Petitioner submitted that the Petitioner has sought clarification on other issues also from the Commission in terms of Regulations 59 (Power to Remove Difficulty) of UERC (Conduct of Business) Regulations, 2019. The Commission in exercise of its power to remove difficulty may also clarify on the issues, which were beyond the control of the Petitioner. He submitted that the petitioner in its Petition has made following prayers before the Commission:

(i) the Hon'ble Commission may graciously be pleased to clarify that: