



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:



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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:

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“31. Banking of Power

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

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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:

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“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.”

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- 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



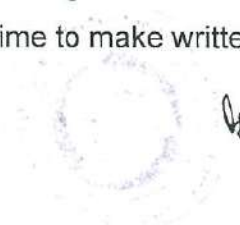


*Renewable Energy Source based Generation and Co-Generation
Plants/Captive RE:*

.....
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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