



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this provision stipulates that the withdrawal of banked energy is allowed in peak hours (1700 Hrs to 2300 Hrs) can be withdrawn in this period only and Energy banked in off-peak hours for the remaining hours of day (2300 Hrs to 1700 Hrs) can be withdrawn in the same period only.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:

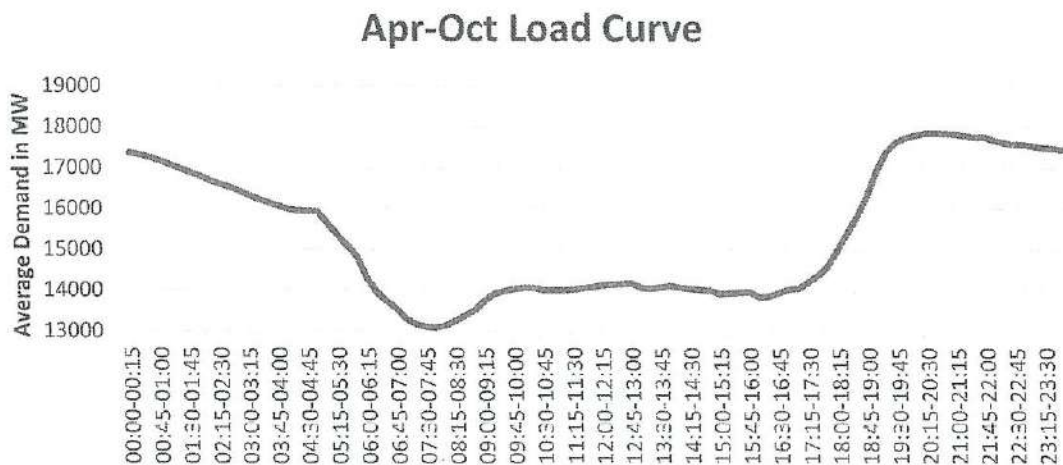
Winter Peak	05:00 – 07:00, 18:00 – 22:00
Summer Peak	19:00 – 01:00

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





- 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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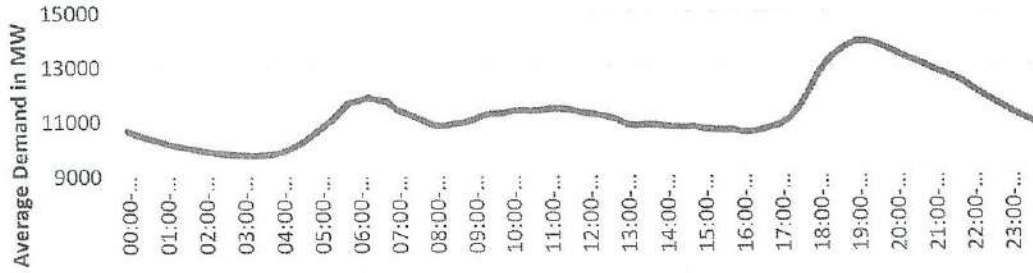


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Nov-Mar Load Curve



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***

