



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 In terms of the provisions of the CRE Regulations 2019, the energy banked in "Peak Hours" and "Off-Peak Hours" can be withdrawn in "Peak Hours" and "Off-Peak Hours" respectively.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*

