

Summary of UPERC Order dated March 11, 2024
In Petition No. 1994 of 2023

ORDER SUMMARY

Case No.	Petition No. 1994 of 2023 - INOX Air Products Private Limited versus Uttar Pradesh Power Corporation Limited
Court Name	Hon'ble Uttar Pradesh Electricity Regulatory Commission
Order dated	March 11, 2024
Brief Conspectus:	Principal issue involved was the restriction imposed on INOX Air Products Private Limited's utilization of the banking facility to 25% of the energy generated and the prohibition on drawl of such banked energy for the Petitioner's captive energy consumption.
Key Regulations	UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2019
Key words	Banking of power, Captive Generation, Solar Power
Advocates for Petitioner	Eternity Legal

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A. BRIEF FACTS AND BACKGROUND

1. INOX Air Products Private Limited's ("**Petitioner**") has set up its liquid medical oxygen manufacturing unit located at Modinagar, Dist. Ghaziabad, Uttar Pradesh ("**Facility**") and is a consumer of electricity (bearing connection No. HP034340P0293) of Paschimanchal Vidyt Vitran Nigam Limited ("**Respondent No. 4**" / "**PVVNL**"), which is subsidiary of Uttar Pradesh Power Corporation Limited ("**Respondent No. 1**" / "**UPPCL**").
2. The Petitioner has set up a captive generating ground mounted solar power plant at Latifpur and Newal Bangramau for its own use having capacity of 14.96 MW ("**Project**") for consuming solar power at Petitioner's Facility.
3. The Petitioner requested UPPCL to sign banking agreement for banking of 100% of energy for power being supplied from Project through open access to the Petitioner's Facility under provisions of Uttar Pradesh Electricity Regulatory Commission (Captive and Renewable Energy Generating Plants) Regulations, 2019 ("**CRE Regulations, 2019**"). However, UPPCL proposed to sign the banking agreement for banking of 25% of the generated energy.
4. Thereafter, a Petition was filed before the Hon'ble Uttar Pradesh Electricity Regulatory Commission ("**UPERC**") under the Provisions of the Electricity Act, 2003 ("**EA, 2003**") and more particularly Section 86(1)(f) of the EA, 2003 read with Regulation 2 (viii) and Regulation 7 of CRE Regulations, 2019 for seeking appropriate relief pursuant to adjudication of disputes between the Petitioner and UPPCL for allowing banking of 100% of the energy generated as well as utilising the banking facility in terms of drawl of such banked energy in accordance with provisions of CRE Regulations, 2019 particularly Regulation 31 thereof.
5. Order deals with legal position in respect of interpretation of Regulation 31 of CRE Regulations, 2019 and methodology for allowing banking of 100% of the energy generated as well as utilising the banking facility in terms of drawl of such banked energy mandated under law.

B. APPLICABLE PROVISIONS OF LAW AND ORDERS

6. Regulation 31(a)(ii) of the CRE Regulations, 2019 allows banking of power up to 100% of the generators' capacity:

"31. 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 subject to the following conditions:

...

ii. Banking of energy up to 100%, as agreed between the Renewable Energy Generating Power Plants (except for SHP and MSW plants) and

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***the Distribution Licensee, shall be allowed subject to technical feasibility regarding evacuation.
..."***

7. CRE Regulations, 2019 provides that the technical feasibility can only be constraint and economic constraints cannot form basis of denial of banking facility.
8. An Order dated June 23, 2023, passed by the Hon'ble UPERC in in Petition No. 1832 of 2022 pursuant to Order of Hon'ble Appellate Tribunal For Electricity in Appeal No. 91 of 2023 held that new banking agreement will be considered on case to case basis which is within the four corners of CRE Regulations, 2019.
9. Hon'ble UPERC has framed the following issue and given its finding on the same. This summary discusses the issue and the analysis of the ruling.

C. ISSUES BEFORE HON'BLE UPERC AND ANALYSIS OF ORDER

HEADS	PARTICULARS AND ANALYSIS
Issue	Applicability of Regulation 31(a)(ii) of the CRE Regulations, 2019 for availing banking of energy facility up to 100% of power generated by the Project
Analysis of Order	<p>The concept of banking, clarification of Rule 31 of CRE Regulations and overall procedure for banking and withdrawal of energy for renewable energy-based captive generating plants is summarized and approved by Hon'ble UPERC. The key points and interpretations are as follows:</p> <ol style="list-style-type: none"> a. Clause 31(a)(ii) permits up to 100% banking to renewable energy plants, and it should be understood in the context of the measuring block of 15 minutes mentioned in clause 31(a)(i) of CRE Regulations, 2019. b. Two important legal maxims were discussed are referenced to emphasize the importance of interpreting the regulations in conjunction with preceding and following clauses. <ul style="list-style-type: none"> • "CONTEMPORANEA EXPOSITO EST OPTIMA ET FORTISSIMA IN LEGE" (The best and strongest way of interpreting a statute is to construe it with reference to the circumstances of the time when it was made): - Context: Importance of understanding clause 31(a)(ii) in the context of the basic measuring block of 15 minutes (mentioned in clause 31(a)(i)) and the circumstances surrounding the drafting of the regulations. • "EX ANTECEDENTIBUS ET CONSEQUENTIBUS FIT OPTIMA INTERPRETATIO" (The best interpretation is made from things preceding and following): -

HEADS	PARTICULARS AND ANALYSIS																		
	<p>Context: Term "permitting of 100% banking" in clause 31(a)(ii) was used for each 15-minute time block, as reflected in the preceding clause 31(a)(i).</p> <p>c. Clarification given for definition of peak and off-peak hours for the purpose of banking and withdrawal of energy, specifying peak hours as 18:00 to 00:00 and off-peak hours as 00:00 to 18:00.</p> <p>d. The concept of 100% banking is applied to each 15-minute time block, but the computation of banked energy is done for the complete peak/off-peak period of the day.</p> <p>e. Banking charges apply regardless of the timeframe, and they are payable even if the banked energy is utilized within the same day.</p> <p>f. The total energy banked in a quarter cannot exceed 49% of the total energy generated to maintain the status of a captive generating plant.</p> <p>g. The Order interprets "banking" in the context of captive generating plants ("CGPs"), hence restricting it to 49% of the energy generated. This ensures CGPs consume 51% (in accordance with captive conditions under central Electricity Rules, 2005) and prevents excessive costs for the distribution licensee. Quarterly checks maintain CGP status and avoid additional liabilities.</p> <p>h. Excess banked energy beyond 49% lapses at the end of the quarter, preventing a burden on the licensee and ensuring periodic checks on captive generating status. The rationale provided for the same is under applicable Electricity Rules, 2005 a captive generator has to consume minimum of 51% of energy.</p> <p>i. The following illustration has been provided for further clarity on banking and restrictions:</p> <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="background-color: #cccccc;">Illustration</th> <th style="background-color: #cccccc;">Energy Generation</th> <th style="background-color: #cccccc;">Energy Available for Banking</th> <th style="background-color: #cccccc;">Energy Banked (49%)</th> <th style="background-color: #cccccc;">Lapsed Energy</th> <th style="background-color: #cccccc;">Withdrawal Period</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>1000 units</td> <td>400 units</td> <td>400 units</td> <td>None</td> <td>(Q+2)th quarter</td> </tr> <tr> <td>2.</td> <td>1000 units</td> <td>600 units</td> <td>490 units</td> <td>110 units</td> <td>(Q+2)th quarter</td> </tr> </tbody> </table> <p>Hon'ble UPERC has given a more detailed illustration at Page No. 12 of the Order.</p> <p>j. The treatment of unutilized banked energy after (Q+2)th quarter is covered under regulation 31(a)(v) of the CRE Regulations 2019.</p> <p>k. The judgment applies prospectively to cases where the licensee has already signed a banking agreement for less than 49%, allowing banking up to the limit of 49% on a quarterly basis if the captive generating plant demonstrates the need for it. The arrangement does not reopen energy treatment prior to this Order.</p> <p>l. Hon'ble UPERC awarded compensation to the Petitioner by way of financial settlement of lapsed energy from May 26, 2023 i.e., from the date of filing of the Petition to the date of signing of the banking agreement calculated at Rs. 2 per unit.</p>	Illustration	Energy Generation	Energy Available for Banking	Energy Banked (49%)	Lapsed Energy	Withdrawal Period	1.	1000 units	400 units	400 units	None	(Q+2)th quarter	2.	1000 units	600 units	490 units	110 units	(Q+2)th quarter
Illustration	Energy Generation	Energy Available for Banking	Energy Banked (49%)	Lapsed Energy	Withdrawal Period														
1.	1000 units	400 units	400 units	None	(Q+2)th quarter														
2.	1000 units	600 units	490 units	110 units	(Q+2)th quarter														

D. RELEVANT PORTION OF THE ORDER

<p>Relevant portions of Order</p>	<p>Paragraphs 22 to 25 and 26 discuss the issue and gives its finding. The relevant portions are reproduced below for ready reference:</p> <p><i>“22. The import of clause 31(a) (ii) of CRE Regulations 2019, which permits upto 100% banking to renewable energy plants need to be examined in juxtaposition of maxim mentioned in point no. (21) "CONTEMPORANEA EXPOSITO EST OPTIMA ET FORTISSIMA IN LEGE" thereby clarifying that while drawing and finalizing these regulations the term "permitting of 100% banking" was used for each time block of 15 minutes, which is the basic measuring block of the energy and which gets reflected in clause 31(a)(i) of CRE Regulations 2019, which is just the preceding clause of 31(a)(ii), which permits 100% banking to renewable energy plants. The legal maxim "EX ANTECEDENTIBUS ET CONSEQUENTIBUS FIT OPTIMA INTERPRETATIO" viz A passage is best interpreted by reference to what precedes and what follows it, makes it abundantly clear that the surest way of interpreting 31(a)(ii) of UPERC CRE Regulations has to be derived In context of clause 31(a)(1) of the same Regulations, Otherwise also, for renewable generating source, with intermittent generation depending on various geographical and climatic conditions, unless 100% banking is allowed in a time frame of 15 minutes, the very raison d'entre of banking is lost. Accordingly, it is clear that 100% banking will be allowed on a 15 minutes time block and this right of renewable energy generating stations cannot be unilaterally taken away by UPPCL on any pretext barring technical considerations.</i></p> <p><i>23. Commission in its detailed Order dated 16.11.2021 in Petition No. 1761 of 2021 and in petitions in the same/similar matter has already clarified that for the purposes (Regulation 31(a)(iii)) of CRE Regulations, 2019 there has to be only two TOD slots le peak and off-peak hours. The Commission has also clarified that for the purposes of banking and withdrawal of energy, peak period will be taken as 18:00 to 00:00 hours (midnight) and off peak hours as 00:00 to 018:00 hours.</i></p>
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24. Thus, while the concept of 100% banking of the energy generated would have to be applied to each time block of 15 minutes, the computation of banked energy would have to be made for the complete peak / off-peak period of the day. Thus, net energy banked during say the off-peak period of a day will be total energy generated during the off- peak period minus the total energy consumed during the off-peak period of that day. A similar prescription will apply to peak period of the day also. However, Banking charges would have to be paid, as per GRE Regulations, 2019 even if the energy banked during a time block of 15 minutes in an off-peak/ peak period is utilised within another time block of 15 minutes during the off-peak/ peak period in the same day. Accordingly, the banking charges shall be applicable on withdrawal of banked energy irrespective of the timeframe whether on 15 minute time block, daily or quarterly basis.

25. After analysing the basic time measuring block i.e., 15 minutes time block and the daily transaction, the next periodic assessment has to be done at the quarterly level under the ambit of UPERC CRE Regulations. At this point of assessment, the concept of banking has to pave a way or has to be harmoniously integrated with the definition of captive generating plant as general words have to be curtailed in accordance with the concept in which these are being used. Thus, the general word "banking" will have to be curtailed and restricted within the meaning of captive generating plant, wherein it is expected to consume 51% of the energy Venerated by it therefore, leaving a cushion of only 19% of energy for the purposes of banking Accordingly, in order to upheld the status of captive generating plant and to abide by the sanctimony of definition of captive generating plant, energy upto 49% of the energy generated shall remain banked but any banked energy in excess of 49% will lapse, which will balance the interest of renewable energy generating plants as well as the licensee otherwise, licensee will always be saddled with excessive cost of arranging costly power to feed these generating stations during night hours as well as during off-peak seasons of these generating plants. Further, this will also have a periodic check on the captive generating status of these plants on a quarterly basis so that a precarious position does not emerge at the time of annual assessment, wherein the generating plant loses its captive status and

thereby gets fastened with the payment liability of cross subsidy surcharge and other associated charges.

26. Further, the quantum of banked energy that remain unutilised after (Q+2)th quarter shall be treated and settled as per regulations no. 31(a)(v) of the CRE Regulations 2019. Thus, in accordance with the Principles of Interpretation, the treatment at 15 minutes time block & daily basis as well as the treatment that has to be done with respect to banked energy on (Q+2)th quarter has been done in accordance with the literal interpretation of the CRE Regulations 2019 wherein the provisions are expressly clear. However, as far as the treatment after each quarter is concerned, since the Regulations are silent on it, a purposive interpretation has been made so as to make the regulation workable and to achieve the desired result in its earnestness without fastening the burden in a lop-sided manner and hence, achieving a broader and general good.

....

27. Accordingly, the procedure for banking and withdrawal of energy, in terms of the UPERC CRE Regulations, 2019, may be clarified as below:

- (a) The banking of energy will be allowed for upto 100% of the energy generated in each 15 minute time block. The total energy so banked in a day shall be adjusted against the consumption of electricity from the distribution licensee during the same day on TOD basis. The balance energy, if any, at the end of the day, shall remain banked with the distribution licensee.
- (b) Banking charges will have to be paid, as per CRE Regulations, 2019 even if the energy banked during a time block of 15 minutes in an off-peak/ peak period is utilised within another time block of 15 minutes during the off-peak/peak period in the same day. Accordingly, the banking charges shall be applicable on withdrawal of banked energy irrespective of the timeframe i.e., whether on 15 minute time block, daily or quarterly basis.
- (c) The total of such energy banked in a quarter shall not exceed 49% of the energy generated. Banked energy in excess of 49% of the energy generated shall stand lapsed at the end of the quarter.
- (d) The captive users shall be allowed to withdraw this energy that has been banked with distribution licensee by the end of

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	<p><i>(Q+2)th quarter as per regulation 31(a)(iii) of the CRE Regulations 2019.</i></p> <p><i>(e) The quantum of banked energy that remain unutilised after (Q+2)th quarter shall be treated and settled as per regulations no. 31(a)(v) of the CRE Regulations 2019.</i></p> <p><i>28. The Commission approves the above dispensation, in regard to banking and withdrawal of energy, for all renewable energy based captive generating plants, under Regulation 31(a) of CRE Regulations, 2019.</i></p> <p><i>29. In cases where the licensee has already signed banking agreement for less than 49%, if the captive generating plant approaches the licensee and demonstrates its requirement for banking beyond the agreed quantum, it shall be allowed banking upto the limit of 49% on quarterly basis, as indicated in para 27 of the Order. However, this prescription shall be applied prospectively and energy treatment prior to this Order shall not be opened up under this arrangement.”</i></p>
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Eternity Legal

Date: March 19, 2024

Place: Mumbai

Note: This summary is prepared only for private circulation and intended addressees only. In any event, no person shall be entitled to rely upon the views expressed herein without our prior written consent, and any reliance upon the same shall be restricted to the situation specifically referred to above.