

**IN THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION AT
RANCHI
Case No. 10 of 2022**

M/s Usha Martin Ltd.Petitioner

Versus

Jharkhand Urja Vikas Nigam Limited (JUVNL) & Ors..... Respondents

**CORAM: HON'BLE JUSTICE MR. AMITAV KUMAR GUPTA, CHAIRPERSON
HON'BLE MR. MAHENDRA PRASAD, MEMBER (LAW)
HON'BLE MR. ATUL KUMAR, MEMBER (TECH)**

For the Petitioner : Mr. M. S. Mittal, Sr. Advocate
For the Respondent : Mr. Mrinal Kanti Roy, Advocate

Date – 12th June, 2023

1. The petitioner-Usha Martin Ltd. has filed the instant petition under Regulation A10 (Dispute Resolution) and A11 (Power to Remove difficulties) of the Jharkhand State Electricity Regulatory Commission (Utilization of Surplus Capacity of Captive Power Plants based on Conventional Fuel) Regulations, 2010, inter-alia for declaration that captive power plants such as that of the petitioner is fully entitled to bank power during any 10 months of a financial year and for setting aside the bills dated 25.02.2022 and 04.05.2022 for the years 2019-20 and 2020-21 wherein bills have been raised considering March and April to be the non-banking months.
2. On the basis of the agreement, the petitioner- M/s Usha Martin Ltd. has prayed for and sought following reliefs: -
 - (a) To hold and declare that as per Regulation 9.2 of the Jharkhand State Electricity Regulatory Commission (Utilization of Surplus Capacity of Captive Power Plants based on conventional fuel) Regulation, 2010 ("Regulations"), a captive power plant such as that of the petitioner is fully entitled to bank power during any 10 months in a financial year;
 - (b) In an alternative to hold and declare that in the event that banking of surplus power can only be done for 10 consecutive months starting from May of every Financial Year, then such a stipulation cannot be given a retrospective effect;
 - (c) To hold and declare that Clause 9.4 of the 2010 Regulation with regard to unutilized banked energy, as on 31st March, can be utilized in the next financial year upto March.
 - (d) To hold and declare that the applicant is bound to follow the directions issued by the State Load Dispatch Centre in light of clause 2.1.2 of the agreement dated 18.07.2019;
 - (e) To set aside the bills dated 25.2.22, 4.5.22 and 11.6.22 for the years 2019-20, 2020-21 and 2021-22 respectively whereby the bills have been

raised considering March and April to be the non-banking months; and/or;

- (f) To grant any other relief that this Hon'ble Commission deems fit and proper as per the facts and circumstances of this case.

Submissions of the Petitioner

3. Learned Senior Counsel for the petitioner has submitted that the applicant is a registered public limited company registered under the Indian Companies Act, 1956 primarily engaged in manufacturing of wire, wire ropes, wire rods, wire drawing and allied machines, steel bars and billets, pig iron, bright bars, house wire, conveyor card, rolled products, jelly filled telephone cables, trading, etc.
4. It was submitted that the petitioner (consumer number - R-2095) has commissioned 2 (Two) captive power plants in Tatisilwai, Ranchi of 10 MW capacity each in the year 2014 and pursuant to the commissioning of these plants, the petitioner entered into an agreement under JSERC (Utilization of Surplus Capacity of Captive Power Plants based on conventional fuel) Regulations, 2010, with Respondent No. 1 on 14.03.2014 titled '*Agreement for Utilization / Supply of surplus capacity of captive power plants and for connectivity / synchronization for that purpose with the grid system of Jharkhand Urja Sancharan Nigam Limited*'.
5. It was submitted that the Jharkhand State Electricity Regulatory Commission (Utilization of Surplus Capacity of Captive Power Plants based on conventional fuel) Regulations, 2010 (**Annexure -1**) was notified by this Commission to harness the surplus generation capacity of captive power units and to reduce peak time shortages in the system and as per clause 3.1, these Regulations are applicable to all Captive Power Plants ("CPP") having installed capacity of 1 MW and above, agreeing to supply surplus power to the Licensee (Respondent No. 1 hereinabove) within the State of Jharkhand.
6. It was pointed out that the agreement dated 14.03.2014 (**Annexure -2**), mirrors the 2010 Regulations and is in *parimateria* with 2010 Regulations except for slight changes that are particular to the petitioner vis a vis amount of security deposit, details of notices, etc. and clauses 16.3 and 16.5 of the 2014 agreement mirrors clauses 9.2 and 9.4 of the 2010 Regulations. It is contended that clause 2.1.2 of the 2014 agreement stipulates that the petitioner shall comply with the directions issued by State Load Dispatch Centre for exercising supervision and control as may be necessary for ensuring integrated grid operations, for achieving safety, economy and efficiency in the operation of power system in the State.
7. It was argued that clause A9 of the said 2010 Regulation provides for the facility of banking of surplus power generated by the CPP to the licensee with the intention of exercising its eligibility to draw back this power from the grid in the future as defined in the Regulation, i.e. 'Banking' of energy is a process whereby the Captive Power Plant exports power to the grid,

not to sell it, but to draw back power in future for its own use. It was stated that clause 9.2 inter alia stipulates that the period of banking shall be 10 months starting from 1st May every year, however the Regulation does not specifically provide for the months in which banking is not to be done and neither does the Regulation provide that the period of banking shall be for 10 consecutive months.

8. Learned Senior Counsel has submitted that on 17.5.2016, a letter was issued by the office of the Chief Engineer, SLDC/ULDC, Computer System and Telecom, JUSNL, to all the CPPs in the State of Jharkhand (including the Petitioner), being Letter No. 126/SLDC/ULDC (**Annexure - 3**), Ranchi stating therein that during the rainy season, the respondent Department already had surplus power available and therefore with a view to manage surplus power and to avoid huge losses on account of the prevailing Regulation, a meeting was held on 25.5.2016 wherein it was decided that the petitioner would plan its shutdown during the months of July and August 2016 for maintenance purpose, i.e., this period would be the non-banking period where surplus power would not be banked with the grid. The minutes of the meeting were forwarded vide letter dated 30.5.2016 (**Annexure 4**) issued by the office of the SLDC.
9. It was submitted that prior to raising the first bill for the period March 2014 to June 2017, the then Electrical Superintending Engineer, supply circle, Ranchi, discussed the issue of non-banking months in great detail with the Chief Engineer (Commercial & Revenue), as well as the Superintending Engineer (Commercial & Revenue) and Executive Engineer (Commercial & Revenue) in which the petitioner was also called upon and after continuous discussions for about 4-5 days, it was decided that March and August of every year would be the non-banking months (**Annexure - 5**). Thereafter, bill for the period March 2014 to June 2017 were received by the Petitioner vide letter dated 5.8.2017 (**Annexure - 6**) issued by the ESE, Supply Circle, Ranchi. The calculation detail enclosed with the said bill reflects in the "Remarks" column for the month of March and August that "*No banking for Aug/March month*".
10. It was further submitted that the bills for the subsequent period of July 2017 to March 2019 was raised on 18.6.2019 (**Annexure - 7**), wherein again March and August have been treated as non-banking months, in consonance with the understanding between the parties.
11. Learned Counsel for the Petitioner has submitted that both the petitioner and the respondent no. 1 were *ad idem* as regards the interpretation of clause 9.4 i.e. the surplus banked energy during a year can be availed till 31st March of the next financial year and from the perusal of the bills, it is clear that the unutilized banked energy during the year was carried forward as the opening balance of the next financial year which are as under:
 - i. At the end of financial year 2015-16, the applicant had unutilized banked energy of 873350 units. These 873350 units were allowed to be carried forward as the opening balance of banked power as on 1.04.2016.

- ii. At the end of financial year 2016-17, the applicant had unutilized banked energy of 2320175 units. These 2320175 units were allowed to be carried forward as the opening balance of banked power as on 1.04.2017.
 - iii. At the end of financial year 2017-18, the applicant had unutilized banked energy of 40350 units. These 40350 units were allowed to be carried forward as the opening balance of banked power as on 1.04.2018.
 - iv. Notably, all these charts have been counter signed by the Electrical Executive Engineer (Commercial & Revenue) and by the Electrical Superintending Engineer, Electric Supply Circle, Ranchi of respondent No. 1.
12. It was also submitted that the closing balance of unutilized banked power during a financial year was allowed to be carried forward as the opening balance of the subsequent year and was being utilized / imported by the petitioner in the first two-three months of the subsequent year itself which is evident from the following:
 - i. At the end of financial year 2015-16, the applicant had 873350 units of unutilized banked power available with it, which was allowed to be carried forward in the subsequent year, in the first three months itself, i.e., April, May and June 2016 and the applicant had withdrawn 338750, 341000 and 558000 units respectively. Thereby fully utilizing the unutilized banked power of 873350 units.
 - ii. At the end of financial year 2016-17, the applicant had 2320175 units of unutilized banked power available with it, which was allowed to be carried forward in the subsequent year, in the first four months itself, i.e., April, May, June and July 2017 and the applicant had withdrawn 1463250, 670500, 69250 and 1115000 units respectively. Thereby fully utilizing the unutilized banked power of 2320175 units.
 - iii. At the end of financial year 2017-18, the applicant had 40350 units of unutilized banked power available with it, which was allowed to be carried forward in the subsequent year, in the first month itself, i.e., April 2018 and the applicant had withdrawn 1247250 units thereby fully utilizing the unutilized banked power of 40350 units.
13. It was submitted that agreement dated 14.03.2014 was extended till 18.07.2019 and another agreement dated 19.07.2019 (**Annexure - 8**) on similar terms of the agreement dated 14.03.2014 as well as the 2010 Regulations, was entered into between the parties, again for a period of three years, with the contract demand being 10 MVA in which clause 16.7 again mirrored clause 9.4 of 2010 Regulations. However, the 2019 agreement contained a material difference in as much as clause 16.5 of the 2019 agreement which states that the period of non-banking can also be mutually agreed upon between the parties. This captured the understanding of the parties that existed on the date of the 2019

agreement in as much as JBVNL was already following the practice of treating March and August as non-banking months and further this was also in compliance with the specific directions given by SLDC.

14. It was also submitted that the respondent JBVNL was also *ad idem* regarding the period of non-banking being March and August of every year and it is also evident from the bills raised on 10.7.2020 (**Annexure - 9**) for the period April 2019 to March 2020. In the calculation detail enclosed with the bill, against the months of March and August, it has been remarked "*Non-Banking for Aug/March Month*". *Actual export during the Month of August/March was 391000/ 57500 KWH which has not been accounted in terms of Agreement and as such in the export shown is zero (0).*" However, as far as bringing forward of unutilized banked energy is concerned, it was evident that 90,625 units of surplus energy as on 31st March 2019, was not allowed to be carried forward on 1st April 2020.
15. Learned Counsel has submitted that while this arrangement was existing between the parties, the petitioner received a letter dated 29.01.2021 (**Annexure - 10**) addressed by the General Manger (Coml.) to the ESE, Supply Circle, Ranchi wherein it was *inter alia* stated that as per clause 9.2 of the said Regulations the period of banking shall be for 10 months starting from May of any base year to February of the subsequent year. It was further pointed out that unutilized banked energy by the CPP would be settled on 31st March of each year referring to certain office order dated 15.03.2018 as well as a letter dated 06.06.2018 issued by the respondent Department. It was also pointed out that the Petitioner was never privy to the order dated 15.03.2018 and the letter dated 06.06.2018.
16. It was submitted that on perusal of the minutes of meeting held pursuant to order dated 15.3.2018 (**Annexure - 11**), it was evident that the committee had come to a conclusion, albeit erroneously, that the Regulations do not provide any flexibility in choosing the non-banking months and it is only March and April of every year that can be considered as non-banking months. It was further decided in the said meeting that CPPs may be informed by a notice that going forward, the respondent Department would treat the months of 1stMay to last February of subsequent year as banking months. It was also categorically submitted that no such notice was ever received by the petitioner. Learned Counsel has further pointed out that as far as Regulation 9.4 is concerned, it was deliberated that 9.2 and 9.4 of the Regulations should be read together and the word 'subsequent year' would mean "*the year next to the year in which the month of May falls*".
17. It was also submitted in the above said context that a letter dated 06.06.18 (**Annexure - 12**) addressed by the Chief Engineer (Coml. & Rev.) to all the GMs-cum-CEs, and the ESEs of all electric supply circles *inter alia* reiterating the findings of the abovementioned committee meeting and stating that adjustments are to be made to pending bills and in respect of Regulation 9.4 it was stated that CPPs should be informed through a notice that settlement of all banked power would be done on 31st March of that financial year. It was categorically pointed

out that no such notice was received by the petitioner.

18. It was submitted that the petitioner while replying to the letter dated 29.01.21 of the respondent-JBVNL (as detailed in Para-15 herein above) vide its letter dated 18.2.2021 (**Annexure - 13**) has stated that the decision to keep March and August as non-banking months was in consonance with the directions given by the SLDC. Further, the petitioner had planned its operation in such a way that its CPP are shut down during these months. It was also pointed out that in spite of the shutdown, the petitioner had provided free power/electricity to the Respondent-JBVNL during these months to the tune of Rs. 308.29 Lacs. It was also requested by the respondent-JBVNL that if any changes are to be made in the existing understanding, advance information must be given so that the plants can be operationalized.
19. Learned Counsel has submitted that in response to the letter dated 18.02.2021 of the petitioner, the General Manager (Coml.) vide its letter dated 1.3.2021 (**Annexure - 14**) made certain observations regarding clause 9.4 of the 2010 Regulations to the effect that unutilized banked power as on 31st March of each year shall be settled and treated as sold to the Licensee and no observations were made regarding the August and March being non-banking months, meaning thereby that the respondent-JBVNL had also (once again) attained clarity regarding the existing understanding between the parties as far as the issue of non-banking months were concerned.
20. Learned Counsel for the petitioner has submitted that after a lapse of nearly one year, the respondent-JBVNL once again raised the issue vide its letter dated 06.01.2022 (**Annexure - 15**) wherein the petitioner was questioned for the reason as to why August and March were selected for non-banking purposes as well as availability of any agreement under which such selection of non-banking months was done?
21. It was submitted that the petitioner, thereafter issued letters dated 03.02.22 and 02.03.22 (**Annexures 16**) wherein again the entire facts were restated and it was reiterated that it had been mutually agreed to between the parties that March and August of every year would be the non-banking months which was also evident from the bills issued by the respondent-JBVNL itself. The petitioner requested the respondent that if any change is required in the existing understanding, the same could be done prospectively, so that the petitioner can manage its operations accordingly.
22. Learned Counsel has submitted that despite the above stated correspondences, the petitioner received revised energy bill for the period 2019-2020 dated 25.2.22 on 16.3.22 (**Annexure - 17**), treating March and April as non-banking months, contrary to the understanding between the parties.
23. It was submitted that the petitioner after receiving the above said revised bill, issued a letter dated 22.3.22 (**Annexure - 18**) to the ESE, Electric Supply Circle, Ranchi with a copy to the General Manager (Comml.), stating that the revision of bills already issued earlier was bad in law and that any change in the existing understanding between the parties could

only be made with prospective effect. It was reemphasized that March and August were selected as non-banking months only pursuant to the directions given by the SLDC and as per the understanding with the respondent-JBVNL itself and hence, the bill dated 25.02.22 was sent back for reconsideration and revision.

24. It was submitted that the General Manager (Coml.) vide letter dated 20.04.22 (**Annexure - 19**) responded to the letter dated 22.03.22 of the petitioner, stating therein that the Regulations did not provide for any flexibility in choosing the non-banking months which has to be March and April of every year and it was also stated that the term “*or as mutually agreed*” was inserted in the 2019 agreement for future agreements only. Till such time that there was any agreement, the regulations had to be followed and it was also asserted that acceptance by the respondent-JBVNL of the non-banking months as March and August could not be continued or considered as a policy/ rule.
25. Learned Counsel has submitted that the petitioner vide letter dated 26.04.22 (**Annexure - 20**) responded to letter dated 20.04.22 of the General Manager (Coml.) stating that it was too late in the day for the Respondent-JBVNL to say that it had committed a mistake and hence the bills ought to be revised, as both the parties were *ad idem* regarding March and August being non-banking months which was evident from the conduct of the respondent-JBVNL in issuing the bills, wherein March and August were treated as non-banking months in terms of the agreement between the parties.
26. Learned Counsel for the petitioner has further submitted that despite the above clarification given by the petitioner, the energy bill for the period 2020-2021 vide letter dated 4.5.22 (**Annexure - 21**) was sent by the respondent wherein again instead of treating March and August as non-banking months, March and April were treated as non-banking months. The bill was protested to by the petitioner vide letter dated 23.5.22 (**Annexure - 22**) stating that the change in the agreement/understanding between the parties from a retrospective date was unreasonable and accordingly the bill was returned for cancellation.
27. It was submitted that EEE (C&R), Electric Supply Circle, Ranchi vide letter dated 02.06.22 (**Annexure - 23**) informed the petitioner that clarification regarding the period of non-banking and banking was already made clear to the petitioner by the General Manager (Coml.) vide letter dated 20.4.2022 and hence requested the petitioner to pay the bills.
28. Learned Counsel has submitted that in response to the letter dated 02.06.22, the petitioner wrote the letter dated 10.6.22 (**Annexure - 24**) reiterating that the respondent-JBVNL could not have unilaterally changed the existing understanding between the parties and the petitioner is ready to consider March and April as non-banking months but from a prospective date and thus stated that from F.Y. 2022-23 onwards, the petitioner would consider March and April as non-banking months by planning maintenance shutdown of its two CPPs for the aforesaid non-banking months.

29. It was submitted that the respondents have issued the provisional bill for the period 2021-2022 dated 11.6.22 along with a summary of power exported/ imported by the petitioner, vide emails dated 9.7.22 and 11.7.22 (**Annexure – 25**) and it is evident that the same is also based on an incorrect understanding of clause 9.2 and 9.4 of the 2010 Regulations.
30. Learned Counsel for the petitioner has submitted that being aggrieved by the actions of the respondent Department and to settle the dispute that has arisen regarding the non-banking months and its retrospective operation, the petitioner has been constrained to approach this Commission for redressal of grievances.

Submission of the Respondent

31. Learned Counsel for the Respondent has submitted that the respondent No. 1 is the Holding Company in the State of Jharkhand having three subsidiary companies ie, (i) Jharkhand Bijli Vitran Nigam Limited (ii) Jharkhand Urja Sancharan Nigam Limited & (iii) Jharkhand Urja Utpadan Nigam Limited while respondent No. 2 is the distribution licensee in the State of Jharkhand and is a State owned entity. The remaining respondents are officers working under respondent No. 2.
32. Learned Counsel has submitted that clause 9.2 of JSERC (utilization of surplus capacity of captive power plants based on conventional fuel) Regulations, 2010 inter alia states that the period of Banking shall be 10 months starting from 1st May every year. The Clause 9.2 of the Regulation reads as under:

“9.2 The banking charges shall be 10% of the energy banked for the firm power and 20% of the energy banked for the infirm power by the CPP with the Licensee and the period of banking shall be of ten months starting from 1st of May every year.”

It was pointed out that the term, *period of banking shall be of ten months starting from 1st of May every year*, itself transpires that the availing of banking facility by CPP user shall be for the 10 months starting from 1st May of every year and will be regulated till the last date of February of the subsequent year.

It was further stated that Clause 9.4 reads as under:

“The unutilized banked energy during the year as on the 31st March of the subsequent year shall be treated as sold to the licensee at 65% of the applicable purchase rate of CPP generation. Provided that for the rates determined as per clause 5.6 of the regulations, the rate at which such unutilized banked energy is sold to the Licensee shall be separately defined for peak and off peak hours of generation”

It was further pointed out that clause 9.4 read with clause 9.2 states that the banking period starts from 1st May and hence the used term **‘subsequent year’** means the year next to the year in which the banking period has commenced i.e. 1st of May.

33. It was submitted that in CPP, Regulations, 2010 no where is it prescribed that non-banking months would be any of the two months of every year. The clause 9.2 of the CPP Regulations, 2010 "...and the period of banking shall be of ten months starting from 1st of May every year" means consecutive 10 months starting from 1st May of a year i.e. May, June, July, Aug, Sep, Oct, Nov, Dec of the current year and then Jan & Feb of the subsequent year. It is very clear from clause 9.4 which states that "the unutilized banked energy during the year as on the 31st March of the subsequent year shall be treated as sold to the licensee... ." and from this clause, Hon'ble Commission's intention with respect to CPP user having banking facility is to provide sufficient time by considering non-banking months of Feb & march to both the parties for calculating unutilized banked energy as on 31st March for settlement purpose.
34. It was submitted that Clause 2.1.2 of the 2014 agreement states that the petitioner shall comply with the directions issued by State Load Dispatch Centre ("SLDC") for exercising supervision and control as may be necessary for ensuring integrated grid operations, for achieving the safety, economy and efficiency in the operation of power system in the State. It was pointed out that this clause falls under the "Technical" heading for the purpose of Grid interconnection and parallel operation of CPP synchronized with Transmission system for the purpose of maintaining technically sound, safety and security of Grid, networks & other associated electric equipments and it does not fall under the commercial/ banking arrangements heading as is mentioned specially in clause 16 of the agreement and the petitioner has failed to segregate the technical and banking clauses of the noted agreement.
35. It was submitted with regards to meeting called by CE (SLDC) that the meeting was called by CE (SLDC) vide letter No- 126 Dated 17.05.2016 among the Generating Companies of the State and without any prior consent/intimation of the JBVNL and in the said meeting, JBVNL was not called and neither was JBVNL's view/opinion taken into agenda. It was pointed out that even MoM of the said meeting was also not forwarded to JBVNL while other members of the meeting got the MoM vide Letter No- 145 dated- 30.05.2016 by CE (SLDC) and JBVNL was surprised when the MoM was made available from the petitioner's end. However, as far as planned shutdown of the petitioner is concerned, MoM dated- 25.05.2016 signed on dated- 27.05.2016 states that

"Usha Martin has planned shutdown from July'16- August'16 for maintenance purpose and further during the month of mid-October'16 to mid-November '16 for banking adjustment of power. During the shutdown period Usha Martin will require 3 MW power from Namkum GSS. **It has been agreed.**"

Learned Counsel for the respondent has further pointed out from the said MoM that the petitioner had planned shutdown from July'16 - August'16 for maintenance purpose and during that period 3 MW power from Namkum GSS was allowed as standby power. It was also submitted

that permission for planned shutdown of the CPP from July'16 - August'16 would have been given on condition whenever SLDC had the knowledge of having surplus power of apx. 400 MW to 500 MW in the State. During that period such permission issued by SLDC was against the banking clause of JSERC, CPP Regulations, 2010. However, after that year or in present time, demand and power availability scenario of the State has changed and different Rule & Regulations i.e. Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 and its amendment thereof related to safety of power network has been applicable which is strictly binding for DISCOM and GENCOM.

36. It was submitted that the petitioner submitted a letter No. NIL dated- NIL to the then Electrical Superintending Engineer, Transmission Circle, Ranchi (**Annexure-5** of the Respondent's affidavit) which had never been copied to the JBVNL and even the petitioner had not specified the date on which this letter has been submitted and in the aforementioned annexed letter, petitioner has also referred to the earlier letter dated- 05.05.2014 (prior to meeting dated-25.05.2016) for a request that CPP will not bank any power in the Transmission System in the month of August and March beyond the CPP Regulations, 2010 and agreement dated- 14.03.2014.
37. It was submitted that the practice of choosing non-banking month by CPP user and acceptance of it by JBVNL beyond the agreement as well as 2010 Regulations was a part of the mistake in energy bank assessment and it could not be continued or considered as a policy/rule and the respondent-JBVNL has full right to correct/revise its mistake in accordance to the agreement whenever it comes to their knowledge and such mistake cannot be repeated by both the parties of the agreement or contract and it should not be treated as Policy / Rule.
38. It was submitted that there was a mistake on the part of the respondent-JBVNL in preparing and serving the bill to petitioner. The respondent had not to pass on the unutilized bank energy of the current FY to the next FY and it had been treated as sold to the licensee as per the clause 16.5 of the agreement & clause 9.4 of the CPP Regulations, 2010.
39. Learned Counsel for the respondent has submitted that the respondent had mistakenly allowed the petitioner to carry forward unutilized banked power as on 31st March to the next financial year while the respondent had to make 'settled' or 'treated as sold' to the respondent-licensee as per clause 16.5 of the agreement & clause 9.4 of the CPP Regulations, 2010. Thus, the revision to the above extent has already been made in the Energy Bills raised for the period of April-2019 onwards and revision of bills prior to the period is due to be executed and the same will be processed at the earliest.
40. Learned Counsel for the respondent, in its conclusion has submitted that the respondent-JBVNL has never accepted that March and August of every year would be non-banking months against the Hon'ble JSERC CPP 2010 Regulation and signed agreement and pointed out that it was partly a mistake in preparation of bills/chart /energy bank statement

and it could not be continued or considered as a policy/rule and the respondent-JBVNL has full right to correct/revise its mistake in accordance to the agreement whenever it comes to their knowledge and such mistake cannot be repeated by both the parties of the agreement or contract and it should not be treated as Policy Rule in future. The respondent-JBVNL can revise the bill as per the agreement and Regulations and it has the right to rectify the bill and discontinue their mistakes. However, on request of the petitioner, both the parties have agreed on the term ".....or mutually agreed by both the parties" in clause 16.5 of agreement dated- 19th July 2019 but neither the supplementary agreement or mutually agreed in paper for selecting non-banking months of March and August have been made till date nor the Captive user/petitioner has approached the respondent since the agreement dated 19th July 2019.

Commission’s observation and findings

41. The Commission has considered the submissions made by the parties and perused the materials available on records.

42. Under Section 86 (1)(f) of the Electricity Act, 2003, the State Commission has the responsibility to adjudicate upon the disputes between the licensees, and discharge such other functions as may be assigned to it under the Act. The relevant Sections of the Electricity Act, 2003 reads as under: -

“Section 86 Function of State Commission: -

(1) The state Commission shall discharge the following functions, namely: -

.....

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

.....

(k) discharge such other functions as may be assigned to it under this Act.

43. Clause 9.2 of the JSERC (Utilization of Surplus Capacity of Captive Power Plants based on conventional fuel) Regulations, 2010 reads as under:

“The banking charges shall be 10% of the energy banked for the firm power and 20% of the energy banked for the infirm power by the CPP with the Licensee and the period of banking shall be of ten months starting from 1st of May every year.”

In this regard it is clarified that as per the Regulation, the period of banking shall be of ten months starting from 1st May of every year till the end of February of the same financial year considering non-banking months as March and April of every ‘calendar’ year so that unutilized banked energy as on 31st March of the financial year may be settled in the month of April of the next financial year and again banking to be started from the 1st of May. But it was not kept binding for the parties so that both the parties may decide the non-banking months on mutual consent as per their convenience for maintaining integrated grid operations along with economy and efficiency in the operation of power system in the State.

44. It is observed from the bills issued by the respondent – JBVNL that both

the respondent and petitioner had mutually agreed for March and August as the non-banking months. Accordingly the bills were issued by the respondent-JBVNL itself and were cleared by the petitioner.

45. It is also observed from the Minutes of the Meeting of Committee on 'Issues related to CPP in terms of office order no – 428' dated 15.3.2018 (**Annexure-11**), wherein the DGM (F&A) & EEE (Coml.) of JBVNL were present and deliberated on issue of banking facility as under:

“Issue 3 – Banking Facility

.....

The Committee deliberated that the JSERC CPP regulations do not provide flexibility of choosing non-banking months to the consumers. Therefore, the CPP consumers with banking facility, availing any months apart from March and April as non-banking months, may be informed through a notice that going forward, JBVNL would consider power supplied during the months from May to Feb only for banking purposes. Further the consumers shall also be informed that as per clause 9.3 of the JSERC CPP Regulations 2010, the withdrawal of banked energy can only be done during the 10 months banking period.”

However, even post such deliberation in the meeting dated 15.3.2018, the respondent had raised bills treating the Months of August and March as non-banking months as observed from the 'Summary of Power Imported/ exported by M/s. Usha Martin Ltd synchronized on 07.04.2014 for the period from 01.04.2018 to 31.03.2019' (**Annexure - 7**) and 'Summary of Power Imported/ exported by M/s. Usha Martin Ltd synchronized on 07.04.2014 for the period from 01.04.2019 to 01.10.2019' (**Annexure - 9**).

Hence, it is inferred that the treatment of the months of August and March as non-banking months by the Respondent even after the said meeting was an act of negligence on the part of the Respondent, for which appropriate action should have been taken against the responsible Officers.

46. In case both the respondent and petitioner mutually agree to revise the period of banking, then such agreement must be done in a prospective manner.

47. Further, clause 9.4 of the JSERC (Utilization of Surplus Capacity of Captive Power Plants based on conventional fuel) Regulations, 2010 reads as under:

“The unutilized banked energy during the year as on the 31st March of the subsequent year shall be treated as sold to the licensee at 65% of the applicable purchase rate of CPP generation.

Provided that for the rates determined as per clause 5.6 of the regulations, the rate at which such unutilized banked energy is sold to the Licensee shall be separately defined for peak and off peak hours of generation.”

In this regard it is hereby clarified that the words 'subsequent year' means '**subsequent calendar year**' in the same '**financial year**', as such the banked energy at the end of the '**financial**' year, i.e. as on the 31st March be treated as sold to the licensee as per the Regulations.

Here, the '**calender**' year is to begin from 1st of January and ends on 31st December whereas the '**financial**' year shall begin from 1st of April, and ends on 31st of March

48. The above said Clause 9.4 of the Regulation specifically states that any energy banked with the licensee as on 31st March of the financial year shall be treated as sold to the licensee at 65% of the applicable purchase rate and if the petitioner was allowed to carry forward its unutilized banked energy during a financial year, to the next financial year, even upon mutual agreement, this is against the provision of the Regulations.
49. Clause 9.4 of the said Regulation was notified with a view that as per clause 9.2, the period of banking will be of ten 'consecutive' months starting from 1st of May every financial year till the end of February of the same financial year and the non-banking months shall be the months of March and April meaning thereby that the petitioner have to utilize its banked power during the banking months and in the month of April settlement of banked/unutilized power till 31st March has to be settled.
50. In the present case, it is observed that the petitioner was allowed by the licensee to carry forward its unutilized banked energy from one financial year to another financial year and it was an act of negligence on the part of both the petitioner and the respondent and the energy accounting settled previously cannot be allowed to continue prospectively against the provisions of the Regulations.

In the result, it is ordered as;

ORDER

51. Considering the facts and circumstances of the case as well as in view of the discussion made hereinabove, the prayers of the petitioner are partly allowed in the manner detailed below:
 - i. The petitioner may bank power during any 10 months in a financial year on mutual consent/agreement with the respondent, prospectively.
 - ii. With regard to unutilized banked energy, the banked energy at the end of the financial year, i.e. as on the 31st March shall be treated as sold to the licensee.
 - iii. The bills dated 25.2.22, 4.5.22 and 11.6.22 for the years 2019-20, 2020-21 and 2021-22 respectively where under the bills have been raised considering March and April to be the non-banking months are set aside. The respondent is directed to revise the said bill/settle the power treating March and August as the non-banking months.
52. The petition stands disposed off with the aforesaid observations and directions.

Sd/-
Member (T)

Sd/-
Member (L)

Sd/-
Chairperson