COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 318 OF 2025 & IA No. 1410 OF 2025

Dated: 27th January, 2026

Present: Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Mr. Ajay Talegaonkar, Technical Member (Electricity)

In the matter of:

Uttar Haryana Bijli Vitran Nigam Ltd.	....	Appellant(s)
Versus		
Haryana Electricity Regulatory Commission & Ors.	....	Respondent(s)

Counsel on record for the Appellant(s)	:	Raghujeet Singh Madan Sonia Madan Lovepreet Singh Aditya Singh Ayushi Garg for App. 1
Counsel on record for the Respondent(s)	:	Shlok Chandra for Res. 1 Swapna Seshadri Amal Nair Anand K. Ganesan Devyani Prasad Shivani Verma for Res. 2

ORDER

Both Mr. Aditya Singh, Learned Counsel for the Appellant, and Mr. Amal Nair, Learned Counsel for the 2nd Respondent, would fairly state that, while the submissions made by them were, no doubt, at the interlocutory stage, the submissions which could be put-forth, when the main appeal is finally heard, would be the same; and this Tribunal may, therefore, consider disposing of the main appeal itself at the interlocutory stage.

The Uttar Haryana Bijli Vitran Nigam Limited is in the Appeal against the order passed by the Haryana Electricity Regulatory Commission ("HERC") in HERC/ Petition No. 10 of 2025 dated 05.08.2025. The 2nd Respondent herein filed HERC/ Petition No. 10 of 2025 before the HERC under Section 86 of the Electricity read with Regulation 7(1), 10 and 13 of the HERC (Green Energy Open Access) Regulations, 2023, and Regulation 65 to 67 of the HERC (Conduct of Business) Regulations, 2019, seeking refund of the balance banked units as on 30.04.2024.

It is not in dispute that the Appellant had banked 5,83,308.07 units during the month of April 2023; in terms of Regulation 66(2) of the HERC (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 (the "2021 Regulations" for short), which came into force on 30.04.2021, they were entitled to carry forward the banked energy from month to month and utilize the banked power within the same financial year; the HERC (Green Energy Open Access) Regulations, 2023 (the "2023 Regulations" for short) came into force on its publication in the Haryana Gazette on 02.05.2023; and, in terms of Regulation 7(1) thereof, the energy banked could not be carried forward to the next billing cycle, and was required to be utilized within the same billing cycle which is for a period of one month.

The Appellant herein had contended before the Commission that, as the 2023 Regulations came into force on 02.05.2023, the 2nd Respondent ought to have been permitted to utilize the energy banked in April, 2023 only in the month of May, 2023, and not beyond; and consequently the banked energy, which remained unutilized after 31.05.2023, must be held to have lapsed. In other words, the submission urged on behalf of the Appellant before the Commission was that the new Regulations which came into force on 02.05.2023 would

apply thereafter and, since the billing cycle was for a period of one month alone, any unutilized banked energy, beyond one month from 02.05.2023, would, in terms of Regulations 7(1) of the 2023 Regulations, automatically lapse.

This submission urged on behalf of the Appellant was rejected by the Commission in its order in HERC/ Petition No. 10 of 2025 dated 05.08.2025 wherein the Commission held that, in terms of the units banked till 30.04.2023, the provisions of the Regulations existing on that date i.e. clause 66 of the 2021 Regulations would prevail; this meant that the units banked till 30.04.2023 should be allowed to be adjusted till 31.03.2024 as per the 2021 Regulations; the 2nd Respondent was not allowed to claim what has not been provided in the 2021 Regulations; their claim for refund of Rs.38,78,998.66, towards equivalent costs of banked units on the presumption that the carried forward banked units would have been allowed at the relevant time, and they would have consumed the same, did not stand validated on its being tested on the anvil on the said Regulations; and the relief sought for refund of banking charges at Rs.1.50 per unit, levied in line with Regulation 66 of the 2021 Regulations, was not sustainable. The Commission concluded by directing the Appellant to allow adjustment of 5,83,308 units banked till 30.04.2023 in the subsequent months of FY 2023-24, and grant refund to the 2nd Respondent on account of the excess billed amount charged, without adjusting the banked units, within 30 days from the date of the order.

Applying the principles of restitution, the Commission also directed payment of interest at 9.58% per annum i.e. the rate of interest on working capital allowed to the Appellant in the ARR order dated 28.03.2025; and held that this amount was payable from the date the refund was due (which was the end of the month in which banked units

shall be adjusted) till the date of actual payment. Aggrieved thereby the present Appeal.

While reiterating the submissions urged by them before the Commission, Shri Aditya Singh, Learned Counsel for the Appellant, would submit that it is not in dispute that the 2023 Regulations came into force on 02.05.2023; on and from that date, it is the 2023 Regulations which would apply; while the energy was, no doubt, banked in April 2023 when the 2021 Regulations were applicable, the moment the 2023 Regulations came into force on 02.05.2023, it is the new Regulations which would apply; and, consequently, the energy banked in April, 2023 must, in view of Regulation 7(1) of the 2023 Regulations, be utilized within one month of the 2023 Regulations coming into force ie before the end of May, 2023, and not beyond.

On the other hand, Mr. Amal Nair, Learned Counsel for the 2nd Respondent, would submit that, since the banked energy related to the period April 2023, it is the 2021 Regulations which would alone apply; and accepting the contention, urged on behalf of the Appellant, would, in effect, result in the 2023 Regulations being applied retrospectively which is impermissible in law.

Before examining the rival contentions, it is useful to extract both Regulations 66(2) of the 2021 Regulations and Regulation 7(1) of the 2023 Regulations.

Regulation 66(2) of the 2021 Regulations reads thus:

"66 Banking of RE Power. –

> *2. The Energy Banked shall be permitted to be carried forwarded from month to month. The banked power shall be utilized within the same financial year failing which the unutilized energy at the end of the financial year shall lapse, and no compensation whatsoever shall be claimed/ paid for such lapsed*

banked energy, provided the solar energy banked during the last quarter of the financial year shall be carried forward to the next financial year."

Regulation 7(1) of the 2023 Regulations reads thus:

"7. Banking:

(1) The Energy Banked shall not be permitted to be carried forwarded to the next billing cycle. The banked power shall be utilized within the same billing cycle failing which the unutilized energy at the end of the billing cycle shall lapse, and no compensation whatsoever shall be claimed/ paid for such lapsed banked energy and the renewable energy generating station shall be entitled to get renewable energy certificates to the extent of the lapsed banked energy."

While Regulation 66(2) of the 2021 Regulations permits utilization of the banked energy till the end of the Financial Year in which it was banked, Regulation 7(1) of the 2023 Regulations restricts utilization of the banked energy only during the billing cycle i.e. for a period of one month. The question which would arise for consideration is whether it is the 2021 or the 2023 Regulations which would apply to the energy banked by the 2nd Respondent in April, 2023.

The energy banked by the 2nd Respondent, in April, 2023, was, admittedly, during the period when the 2021 Regulations was in force. The 2023 Regulations came into effect on its publication in the Haryana Gazette on 02.05.2023. It is well settled that, unless the parent statute so provides, Rules/ Regulations, made in exercise of the powers conferred by the statute, would only apply prospectively and would not have retrospective application. There is no provision in the Electricity Act conferring power on the rules/ regulations making authority to make rules/regulations retrospectively. The 2023 Regulations do not also

make the Regulations retrospectively applicable, since Regulation 1(2) thereof makes it clear that the 2023 Regulations shall come into force on the date of their publication in the Haryana Government Gazette which is 02.05.2023. In any event, it is not even contended before us, on behalf of the Appellant, that the 2023 Regulations have retrospective application.

Since it is not in dispute that, for the period when the energy was banked in April 2023, it is the 2021 Regulations which would alone apply, utilization of such energy banked in April, 2023 would also be governed only by the 2021 Regulations, and it is only for the energy banked on or after 02.05.2023 would the 2023 Regulations apply. In terms of Regulation 66(2) of the 2021 Regulations, the energy banked in April, 2023 could be utilized during the financial year 2023-24 ie at any time before 31.03.2024. We, therefore, find no error in the order passed by the HERC directing the Appellant herein to refund the amount to the extent the energy banked in April, 2023 was utilized by the 2nd Respondent during the Financial Year 01.04.2023 till 31.03.2024. We find no merit in the Appeal, and the same is accordingly dismissed. All the IAs therein also stand dismissed.

Ajay Talegaonkar
Technical Member (Electricity)

Justice Ramesh Ranganathan
Chairperson

tpd/kns