

**Before**

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**In the matter of:**

Suo-moto proceedings initiated by the Commission for non-compliance by UPCL under UERC (Tariff and Other Terms for Supply of Electricity from non- conventional and Renewable Energy Sources) Regulations, 2010 and UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010.

**And**

**In the matter of:**

Uttarakhand Power Corporation Limited

**...Respondent**

**Coram**

<b>Shri Jag Mohan Lal</b>	<b>Chairman</b>
<b>Shri C.S. Sharma</b>	<b>Member</b>
<b>Shri K.P. Singh</b>	<b>Member</b>

**Dated: September 11, 2013**

**ORDER**

This Order relates to the suo-moto proceedings initiated by the Commission for non-compliance by Uttarakhand Power Corporation Limited (hereinafter referred to as "UPCL" or "Respondent" or "licensee") of the UERC (Tariff and Other Terms for Supply of Electricity from non- conventional and Renewable Energy Sources) Regulations, 2010 (hereinafter referred to as "RE Regulations, 2010") and UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 (hereinafter referred to as "RPO Regulations, 2010").

## 1. Background

- 1.1. UPCL vide its letter dated 28.03.2013 had submitted that though it entered into PPA's with all the eligible Renewable Energy generators in the State who offered to sell their power to it, so as to meet its RPO targets, yet due to the inadequate development of the renewable resources in the State, power procured from renewable sources during FY 2012-13 would be less than the target fixed by the Commission. It has also submitted that due to heavy losses and excess expenses over revenues during FY 2012-13, it would not be in a position to buy Renewable Energy Certificate as it is facing difficulty even to pay the regular power purchase bills and its day to day expenses. UPCL estimated that it would meet its RPO for solar during FY 2012-13, however, it would meet only 3.66% of its RPO from non-solar sources against 5% specified for FY 2012-13. Accordingly, it requested the Commission either to reduce the RPO of UPCL to the level of actual non-solar energy available to it from these sources or to allow the carry forward of the RPO that could not be fulfilled during FY 2012-13 to the ensuing years considering the actual development of renewable energy in the State.
- 1.2. UPCL vide its letter dated 10.07.2012 revised its estimate submitted earlier for power procured from solar and non-solar sources to 0.006% and 4.10% respectively which was based on the actual data. It also submitted that Renewable Energy Certificates (RECs) for solar energy were not available in the exchange during the month of March, 2012 and that the demand of non-solar RECs was also more than the availability of the same implying that non-solar RECs were also not available during the month of March, 2012. Hence, in accordance with Regulation 7(2) of RPO Regulations, 2010, UPCL requested the Commission to allow it the carry forward of the RPO that could not be fulfilled by it during FY 2011-12.
- 1.3. The Commission vide its letter dated April 15, 2013 referred to its Order dated 19.12.2012, wherein, the Commission had directed UPCL to carry forward the unmet RPO of FY 2011-12 for both solar as well as non-solar sources to FY 2012-13. However, the submission made by UPCL did not include the unmet RPO of FY 2011-12 in its obligation for FY 2012-13. Accordingly, UPCL was asked to make correct submissions within a week.

1.4. In response, UPCL vide its letter dated May 03, 2013 made another submission in which it submitted its position of RPO for FY 2011-12 and 2012-13 which is given in the Table below and again requested the Commission either to reduce the RPO of UPCL to the level of actual non-solar energy available to it from these sources or to allow the carry forward of the RPO that could not be fulfilled during FY 2012-13 to the ensuing years considering the actual development of renewable energy in the State:

**Table 1: RPO Status Submitted by UPCL**

S. No.	Particulars	FY 2011-12 (MU)	FY 2012-13 (MU)
1.	Estimated Gross Energy for State consumption	10,310.64	10654.02
2.	RPO for non-solar energy including unmet RPO	463.98	580.38
3.	RPO for solar including unmet RPO	2.58	7.27
4.	Non-solar procured	416.30	412.96
5.	Solar procured	0.63	6.40
6.	RPO unfulfilled for non-solar	47.68	167.42
7.	RPO unfulfilled for solar	1.95	0.87

Thus, as is evident from the submission of UPCL, there has been a shortfall of 167.42 MUs and 0.87 MUs respectively for non-solar and solar sources.

1.5. The Commission taking cognizance of the non-compliance by UPCL of RE Regulations, 2010 and RPO Regulations, 2010 and also of its Order dated December 19, 2012 decided to initiate a suo-moto proceedings in accordance with the Act and its Regulations.

## 2. Commission's Views

2.1. Section 86 (1)(e) of the Electricity Act, 2003 provides the following as one of the function of the State Electricity Regulatory Commission:

*"promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licence;"*

2.2. Accordingly, the Commission in its RE Regulations, 2010 had specified the following:

*“9. Minimum Quantum of electricity to be purchased by distribution licensees from ‘non-fossil fuel based co-generation and generation of electricity from renewable energy sources’*

*(1) In line with the provisions of the Act, National Electricity Policy and the Tariff Policy, to promote development of renewable and non-conventional sources of energy, all existing and future distribution licensees, captive users and open access customers, hereinafter referred to as “Obligated Entity”, in the State shall be obliged to procure minimum percentage of their total electricity requirement for own consumption, as indicated below, from eligible renewable energy sources as defined under Regulation 4. The same shall be called the Renewable Purchase Obligation (RPO) of the Obligated Entities.*

<b>Year</b>	<b>Renewable Purchase Obligation -Non-Solar</b>	<b>Renewable Purchase Obligation - Solar</b>
2010-11	4.00%	0.000%
2011-12	4.50%	0.025%
2012-13	5.00%	0.050%

*\* Percentage RPO as stipulated above denotes Minimum Quantum of purchase from non-fossil fuel based co-generation and generation of electricity from renewable energy sources” as a percentage of total energy purchased from all sources/generated by the Obligated Entity during the year for own consumption*

*(2) The Commission may, however, review the quantum of Renewable Purchase Obligation (RPO) by obligated entities from time to time based on actual development of these sources within the applicability period of these regulations.”*

2.3. UPCL in its letters has placed its reliance on Regulation 9(2) of the RE Regulations, 2010 reproduced above and has sought review of the quantum of RPO applicable to it. Here it would be relevant to mention that the Commission after specifying the RPO target in its RE Regulations, 2010, had subsequently notified the RPO Regulations, 2010 on 03.11.2010. Regulation 3(1) of the RPO Regulations, 2010 specifies as under:

*“Every obligated entity shall purchase a minimum percentage of its total electricity requirement (in kWh) from renewable energy sources under the renewable purchase*

*obligation during each financial year as specified by the Commission under UERC (Tariff and Other Terms of Supply of Electricity from Co-generation and Renewable Energy Sources) Regulations, 2010...*"

- 2.4. In case the obligated entity or the distribution licensee (UPCL in this case) fails to meet its RPO obligation through procurement of generation from renewable energy sources for meeting its electricity requirement then the Regulations provides for supplementing the RPO through purchase of RECs, which is a valid instrument for discharge of the mandatory obligation of the obligated entity. The relevant provision in this regard specified under Regulation 4(1) of RPO Regulations, 2010 is reproduced below:

*"Subject to the terms and conditions contained in these regulations the Certificates issued under the CERC (Terms and Conditions for recognition and issue of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, shall be the valid instruments for the discharge of the mandatory obligations set out in these regulations for the obligated entities to purchase electricity from renewable energy sources.*

*Provided that in the event of the obligated entity fulfilling the renewable purchase obligation by purchase of certificates, the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only, and the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non- solar certificates".*

Thus, from the above reading of the Regulation it is amply clear that UPCL has to purchase a minimum percentage of its total electricity requirement (in kWh) from renewable energy sources under the RPO during each financial year as specified by the Commission and the REC shall be the valid instruments for the discharge of the mandatory obligations set out in the regulations for the obligated entities to purchase electricity from renewable energy sources. Hence, in the event of not meeting the RPO by purchase of renewable energy the obligated entity can fulfill its RPO by purchase of RECs.

- 2.5. The issue of review of the RPO targets specified in RE Regulations, 2010 on the grounds of non-development of renewable energy resources in the State and weak financial position of UPCL has been discussed in detail by the Commission

in its Order dated December 19, 2012 and, the Commission is not reiterating the same again. However, the Commission would like to mention again that financial conditions of the Company can in no way be the ground for not meeting the obligations cast upon it under the Act and Regulations. The Commission in its Order dated 19.12.2012 had held that any financial implication of purchase of RE certificate and RE energy, if prudently incurred, would be allowed as pass through in the ARR, despite this UPCL still did not comply with the Regulations/Orders of the Commission .

2.6. The Commission in its Order dated 19.12.2012 had taken a lenient view in the matter considering that it was the first instance of non-compliance of RPO Regulations, 2010 by UPCL and had refrained from taking any penal action under the Act against the company or the officers responsible and had allowed UPCL to carry forward the unmet RPO for FY 2011-12 for both solar as well non-solar sources to 2012-13 which was to be met alongwith the RPO for FY 2012-13.

2.7. As per the details submitted by UREDA, the State Agency, the shortfall in RPO for FY 2012-13 including unmet RPO for solar and non-solar are 1.058195 MU and 194.1995 MUs respectively. The details are given in the Table as under:

**Table 2: RPO Status of UPCL Submitted by UREDA**

S. No.	Particulars	FY 2011-12 (MU)	FY 2012-13 (MU)
1.	Estimated Gross Energy for State consumption	10,695.50	11116.39
2.	RPO for non-solar energy including unmet RPO	481.30	614.94
3.	RPO for solar including unmet RPO	2.67	7.58
4.	Non-solar procured	422.18	420.74
5.	Solar procured	0.65	6.52
6.	RPO unmet for non-solar	59.12	194.20
7.	RPO unmet for solar	2.02	1.06

2.8. Thus, as is evident from the Table above, UPCL has again failed to ensure compliance of not only the RE Regulations, 2010 and RPO Regulations, 2010 but also the Commission's Order dated December 19, 2012 on the same grounds. The Commission holds that this instance of default cannot be condoned and has decided to initiate action against UPCL under the provisions of the Act and the Regulations.

2.9. In this regard Regulation 7(1) of RPO Regulations, 2010 specifies as under:

*“7.1 If the Obligated Entity does not fulfill its commitment towards Renewable Purchase Obligation during any year as provided under UERC (Tariff and Other Terms of Supply of Electricity from Co-generation and Renewable Energy Sources) Regulations 2010, and also does not purchase adequate certificate for meeting the shortfalls, the Commission may direct the Obligated Entity to deposit into a separate RPO Fund such amount as the Commission may determine on the basis of the shortfall in units of RPO, Preferential Tariffs applicable in the State and forbearance price as decided by Central Commission:*

*Provided that the responsibility of intimating such shortfall within one month of close of that year shall be that of State Agency*

*Provided further that the fund so created shall be utilised only after approval of the Commission for purchase of certificates or as may be directed by the Commission:*

*Provided further that the Commission may empower an officer of the State Agency to procure from the Power Exchange the required number of certificates to the extent of the shortfall in the fulfilment of the obligations, out of the amount in the fund:*

*Provided also that the Obligated Entities shall be in breach of provisions of these regulations if it fails to deposit the amount directed by the Commission within 15 days of the communication of the direction. “*

2.10. Further, Regulation 7(2) RPO Regulations, 2010 specifies as under:

*“Where any obligated entity fails to comply with the obligation to purchase the required percentage of power from renewable energy sources or the renewable energy certificates, it shall also be liable for penalty as may be decided by the Commission under section 142 of the Act notwithstanding its liability for any other action under prevailing laws:...”*

2.11. The Commission observed that procurement of solar power by UPCL has increased from 0.65 MUs in FY 2011-12 to 6.52 MUs in FY 2012-13. In 2012-13 UPCL has not only met the prescribed solar RPO for FY 2012-13 but was also able to meet part of unmet solar RPO of 2011-12. However, with regard to non-solar procurement of RE power, the Commission observed that apparently no efforts were made by UPCL for fulfillment of its RPO from non-solar power and it has not been able to meet the prescribed RPO of this category for 2012-13 let alone the unmet RPO of 2011-12. As a matter of fact, the procurement in this

category during FY 2012-13 was marginally lower than the procurement in FY 2011-12, clearly demonstrating failure of UPCL to tap any new source of this power.

- 2.12. Considering that efforts were made to augment procurement of solar power and substantial improvement in quantum of power procured is seen vis-a-vis FY 2011-12, the Commission, allows UPCL to carry forward the unmet RPO for solar of 1.06 MUs for FY 2012-13 and FY 2011-12 to be met in FY 2013-14 alongwith the RPO of FY 2013-14. So far as non-solar power is concerned, as UPCL failed to demonstrate any improvement in procurement and failed to put forward any valid grounds, the Commission directs UPCL to procure REC's for unmet RPO of 59.12 MUs of FY-2011-12 within 2 months, i.e. by 15.11.2013. For the period April to July 2013, it was observed that the price of non-solar REC's traded in the exchange was Rs. 1500/MWh. The cost of purchasing the RECs for meeting the RPO shortfall for FY 2011-12 would be around Rs. 8.87 Crore which could be met by UPCL out of the surplus of Rs. 13.94 Crore allowed to it over and above its ARR in the Tariff Order dated May 06, 2013 for FY 2013-14.
- 2.13. The RPO Regulations, 2010 stipulates that the obligated entity is to deposit into a separate RPO Fund such amount as the Commission may determine on the basis of the shortfall in units of RPO based on either Preferential Tariffs applicable in the State or forbearance price as decided by Central Commission. The financial implication on preferential tariffs would be Rs. 19.21 Crore and on forbearance price the implication would be Rs. 19.51 Crore. However, as mentioned above, the price of non-solar REC's are trading in the exchange at Rs. 1500/MWh for the period April to July 2013. Hence, it would be unfair on UPCL to ask it to deposit the aforesaid amount immediately into the Fund so as to enable State Agency to procure RECs on licensee's behalf as provided in the Regulation considering the fact that for the past many months price of these certificates is equivalent to the floor price resulting in the cost impact of around 9 Crore to UPCL. Further, the intent of the Regulation is to enable the obligated entity to ensure that its RPO targets are met either by way of purchase of energy from RE sources or through purchase of REC's by the obligated entity itself or by any officer of the State Agency so authorised by the Commission.



Accordingly, the Commission has directed UPCL to procure certificate on its own by the stipulated date, i.e. 15.11.2013 failing which the licensee would be liable for appropriate action under Section 142 of the Electricity Act, 2003.

- 2.14. With regard to unmet balance of FY 2012-13 for both solar as well as non-solar sources the Commission allows UPCL to carry forward the same and include in its obligation for FY 2013-14. The Commission directs UPCL to meet the overall RPO as arrived above either through purchase of energy from RE sources or through purchase of RECs equivalent by 31.03.2014 failure of which may attract action against it under Section 142 of the Electricity Act, 2003.
- 2.15. The Commission also conveys its displeasure on the conflicting information filed by UPCL before the Commission and with the State Agency as is evident from Table 1 and Table 2 above. Besides, UREDA has also submitted that UPCL is neither submitting the requisite information required within the time frame specified under RPO Regulations, 2010 and Procedure for Accreditation of Renewable Energy Generation Project for Renewable Energy Certificate by State Agency (hereinafter referred to as "Procedure") nor it is submitting the information in the formats specified in the Procedure framed under the Regulations.
- 2.16. Accordingly, UPCL is directed to show cause within 15 days of the date of the Order as to why penalty may not be imposed upon it under Section 142 of the Electricity Act, 2003 for its default in complying with the RE Regulations, 2010, RPO Regulations and also for its failure in submitting the information in the manner and within the time frame specified in the Regulations and formats prescribed in the Procedure to the State Agency.
- 2.17. Ordered accordingly.

**(K.P. Singh)**  
Member

**(C.S. Sharma)**  
Member

**(Jag Mohan Lal)**  
Chairman