

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Petition under provision of the Regulation 68 read with Regulation 74 of UERC (Conduct of Business) Regulations, 2004 to reconsider/review the order dated 22.01.2014 passed by UERC in the matter of Suo-moto proceedings initiated by the Commission for non-compliance by UPCL of 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 non-compliance of directions issued vide the Commission's Order dated 11.09.2013.

AND

In the matter of:

Uttarakhand Power Corporation Limited (UPCL) ...Petitioner

AND

In the matter of:

Uttarakhand Renewable Energy Development Agency ...Respondent

CORAM

Shri C.S. Sharma Member-Chairman

Shri K.P. Singh Member

Date of Hearing: April 23, 2014

Date of Order: April 23, 2014

This Order relates to the review Application filed by Managing Director, Uttarakhand Power Corporation Limited (hereinafter referred to as "Petitioner") seeking review/reconsideration of the directives given by the Commission to it vide Order dated 22.01.2014 for non-compliance of 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") and non-compliance of directions issued vide the Commission's Order dated

11.09.2013. Background of matter and the Commission's views & decision on the same are given in the following paragraphs:

1. Background

- 1.1. The Commission had initiated suo-moto proceedings due to continued non-compliance by UPCL of RE Regulations, 2010 & RPO Regulations, 2010 for FY 2011-12 and FY 2012-13 and issued an Order dated 11.09.2013 vide which UPCL was directed to procure non-solar RECs for unmet RPO of 59.12 MUs for FY 2011-12 within 2 months, i.e. by 15.11.2013 failing which UPCL would be liable for appropriate action u/s 142 of Electricity Act, 2003. UPCL was also allowed to carry forward unmet non-solar as well as solar RPO of FY 2012-13 to FY 2013-14 to be met by 31.03.2014. Detailed background of the matter is given in the aforesaid Order dated 11.09.2013.
- 1.2. The Licensee vide its letter dated 13.11.2013 requested the Commission for allowing it procurement of RECs for unmet RPO of 59.12 MUs for FY 2011-12 by 31.03.2014 which were required to be procured by 15.11.2013 as per Order dated 11.09.2013.
- 1.3. The Commission held a hearing in the matter on 08.01.2014 and vide Order dated 22.01.2014 held that the non-compliance on part of UPCL was wilful contravention of the directions of the Commission and decided to impose a penalty of Rs 20,000/- on MD, UPCL. The Commission further ordered that:
 - a. The aforesaid penalty be deposited within 30 days of the Order.
 - b. The pending procurement of RECs ordered vide Order dated September 11, 2013 be done expeditiously but before March 31, 2014. Non-compliance would attract an additional penalty of Rs. 2,000/- per day thereafter.
- 1.4. The Petitioner vide its present Application dated 18.02.2014 requested the Commission for reconsideration/review of the Order dated 22.01.2014 wherein, a penalty was imposed for non-compliance of RE Regulations, 2010 & RPO Regulations, 2010 and non-compliance of directions issued vide the Commission's Order dated 11.09.2013. In the instant application also it has reiterated the reasons as submitted earlier and also submitted that it was under bonafide belief that the reason for not meeting the RPO had already been submitted before the Commission earlier and the Commission had already permitted the carry forward of the unmet RPO of FY 2012-13 (including unmet RPO of

FY 2011-12) to FY 2013-14. UPCL requested the Commission not to impose penalty, as its mistake in understanding the correct import of the Order was bonafide and under an impression that as the carry forward of the unmet RPO had already been permitted by the Commission, no fresh explanation was required to be advanced. It submitted that it was under the belief that, if the time period for complying the Order was extended, as prayed by it, then as the Order itself gets modified to that extent seeking review of the Order or filing appeal against the same would not be required. It was not aware that the Order dated 11.09.2013 would be required to be reviewed, and that granting of extension of time by the Commission would save it from filing review petition. UPCL also requested to allow it to procure the un-met RPO of FY 2011-12 & FY 2012-13 upto July, 2014.

- 1.5. The Commission held a motion-hearing on the Petition filed by the Petitioner on 23.04.2014. During the hearing, Petitioner's representative could not justify the ground/s for reviewing of the Order as requested by it under the aforesaid Petition. However, it informed that it would make compliance of unmet RPO in four equal monthly installments by July, 2014.

2. Commission's views and decision

- 2.1. Section 94(1)(f) of the Act empowers the Commission to undertake review, which can be exercised in the same manner as a Civil Court would exercise such powers under section 114 and Order XLVII of the Code of Civil Procedure, 1908 (CPC). Under the said provisions, review of the Order is permitted on the following specific grounds only, namely:

- i. Discovery of new and important matter or evidence, which after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time of passing of the Order.*
- ii. Mistake or error apparent on the face of the record;*
- iii. If there exist other sufficient reasons.*

The Review Petition filed by UPCL against Commission's Order dated 22.01.2014 does not qualify under any of the above referred grounds as neither any new facts were advanced nor any error apparent was mentioned. This was also admitted by representative of the Petitioner during the hearing.

The Commission has already dealt with the submissions raised in the review Petition in detail in its Order dated 11.09.2013 and 22.01.2014 and is not reiterating the same. As the Petitioner failed to substantiate any ground for review in its Petition or during hearing as required by CPC, the Commission holds that the Petition is not maintainable and therefore decides to dismiss the Petition.

- 2.2. It is observed that the Petitioner has so far not complied with the Order relating to payment of penalty of Rs. 20,000/- within 30 days, i.e. by 21.02.2014. The Commission decides to allow another opportunity to the Petitioner to deposit the said penalty of Rs. 20,000/- within one week from date of this Order to avoid initiation of proceedings u/s 170 of the Electricity Act, 2003 for recovery. Based on submissions made by Petitioner's representative during hearing, it emerges that the part of the Order relating to procurement of RECs for FY 2011-12 & FY 2012-13 is yet to be complied and that the Petitioner proposes to achieve this in four monthly installments. Be that as may be, till such time Petitioner continues to be in default in ensuring compliance of pending unmet RPO for FY 2011-12 & FY 2012-13 penalty of Rs. 2,000/- per day as imposed by the Order dated 22.01.2014 would continue and the remittance of this penalty shall be made on monthly basis by the 5th of every ensuing month.
- 2.3. Ordered accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member-Chairman