

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Petition seeking waiver of per day Penalty imposed by the Commission vide order dated January 22, 2014 for non-compliance of directions issued vide Order dated September 11, 2013.

AND

In the matter of:

Managing Director, Uttarakhand Power Corporation Limited (UPCL) ... Petitioner

CORAM

Shri C.S. Sharma Member-Chairman

Shri K.P. Singh Member

Date of Order: July 11, 2014

This Order relates to the review Application dated 16.05.2014 filed by Managing Director, Uttarakhand Power Corporation Limited (hereinafter referred to as "Petitioner" or "UPCL") seeking review/reconsideration of the orders of imposition of penalty of Rs. 2,000/- per day as additional penalty vide Commission's 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 vide Order dated 22.01.2014 held that the non-compliance of its orders by UPCL was a wilful contravention and decided to impose a penalty of Rs

20,000/- on MD, UPCL. The Commission further ordered that procurement of RECs ordered vide Order dated September 11, 2013, be done expeditiously on or before March 31, 2014 and that failure to do so would attract an additional penalty of Rs. 2,000/- per day thereafter.

- 1.2. The Petitioner vide its Application dated 18.02.2014 requested the Commission for reconsideration/review of the Order dated 22.01.2014. However, the same was rejected by the Commission vide Order dated 23.04.2014 wherein the Commission had directed as follows:

“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.”

- 1.3. MD, UPCL vide letter dated 30.04.2014 deposited the penalty of Rs. 20,000/- as required by the above mentioned Orders dated 22.01.2014 & 23.04.2014. It was also informed that UPCL had procured 59120 non-Solar RECs in respect of FY 2011-12. Thereafter, Petitioner vide its instant Petition dated 16.05.2014 requested the Commission for waiver of per day penalty of Rs 2,000/- imposed on it by the above referred Orders.

- 1.4. The Commission held a motion-hearing on 27.05.2014. MD, UPCL did not present himself on the scheduled date of hearing. Since the matter was related to personal penalty imposed on the Petitioner, the Commission vide its Order dated 27.05.2014

decided to afford one more opportunity to the Petitioner and adjourned the hearing to 06.06.2014.

1.5. The Petitioner again vide letter dated 03.06.2014 informed that owing to Cabinet Meeting to be held on 05.06.2014 at Almora and Assembly Session scheduled on 09.06.2014 to 11.06.2014 he would not be able to attend the hearing. Accordingly, the Commission rescheduled the motion-hearing to 13.06.2014.

1.6. During the hearing held on 13.06.2014, MD, UPCL submitted that in accordance with the Commission's directions non-Solar RECs for FY 2011-12 has already been purchased, however, UPCL is planning to issue tender for procurement of unmet RPO of 135 MUs & 250 MUs respectively for FY 2012-13 & 2013-14. MD, UPCL submitted that as he is in the process of compliance of the Commission's aforesaid Orders, hence, daily penalty imposed on UPCL may be waived off. In this regard, the Commission clarified that the daily penalty was imposed on MD, UPCL, and not on UPCL for non-compliance of the directions within the specified timeline. Accordingly, the Commission vide its Order dated June 16, 2014, directed the Petitioner to submit an action plan including the schedule for procurement of RECs equivalent to unmet RPO compliances for FY 2012-13 & FY 2013-14 and earlier years, if any, within a week from the date of the Order.

1.7. During the hearing, the Commission also pointed out that annual Statement of RPO compliance for the previous year, i.e. FY 2013-14 is yet to be submitted by UPCL to the State Agency, which according to the Regulations should have been submitted by 30.04.2014. In this regard, MD, UPCL submitted that same shall be submitted by 16.06.2014.

2. Commission's views and Decisions

2.1. The Commission observes that instant Petition reiterates submissions earlier made in the matter which have already been dealt with vide Orders dated 11.09.2013, 22.01.2014 & 23.04.2014. 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 MD, UPCL for waiver of daily penalty of Rs. 2,000/- per day imposed vide Order dated 22.01.2014 does not qualify under any of the above referred grounds as neither any new facts have been advanced by UPCL nor any error apparent in the order was mentioned in the Petition. Accordingly, review Petition is not maintainable and is hereby rejected.

- 2.2. UPCL vide its letter dated July 01, 2014 has submitted an Action Plan for procurement of RE power or REC's for unmet RPO. UPCL has submitted therein that the quantum of unmet non-solar RPO for FY 2012-13 and FY 2013-14 was 135.08 MU and 387.68 MU respectively and the financial burden for procuring the RECs for FY 2012-13 and FY 2013-14 was estimated to be Rs. 20.262 Crore and Rs. 58.15 Crore respectively. UPCL has further submitted that the unmet non-solar RPO for FY 2012-13 would be met by procurement of RE power or REC's equivalent to 65 MU in June, 2014 and 70.08 MU in July, 2014. UPCL has also informed that it has already purchased 65,000 RECs amounting to Rs. 9.90 Crore, equivalent to that submitted in the above Action Plan, on June 25, 2014. For unmet RPO for FY 2013-14, UPCL has submitted that the same shall be procured during the current Financial Year.
- 2.3. UPCL is directed to submit the status of compliance as per the aforesaid Action Plan latest by 16.08.2014. For the present recovery of the daily penalty of Rs. 2,000/- per day imposed by the Commission vide its Order dated January 22, 2014 is being put on hold. The Petitioner should ensure procurement of required RECs for unmet RPO

of FY 2012-13 in accordance with the action plan submitted by it, failing which this daily penalty would be liable to be restored in accordance with the Order dated 23.04.2014.

2.4. Further, reference is drawn to Commission's Order dated 11.09.2013, wherein the Commission had held that:

"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."

Accordingly, UPCL was required to meet the un-met RPO of FY 2012-13 for both solar as well as non-solar sources alongwith the RPO for FY 2013-14 through purchase of energy from RE sources or through purchase of RECs equivalent by 31.03.2014. However, UPCL has not complied with the said Order and has carried forward the unmet RPO for FY 2012-13 & FY 2013-14 to FY 2014-15 on its own without seeking any approval of the Commission as required under Regulation 7.2 of the RPO Regulations, the relevant extract of which is reproduced hereunder:

"...Provided that in case of genuine difficulty in complying with the renewable purchase obligation because of non-availability of certificates, the Obligated Entity can approach the Commission for carry forward of compliance requirement to the next year:..."

UPCL has filed a separate application seeking approval of the Commission for carrying forward the unmet RPO for FY 2012-13 & FY 2013-14 to FY 2014-15. The said application is being examined separately by the Commission. However, UPCL has not submitted the time frame in which the compliance of unmet solar and non-solar sources for FY 2013-14 would be met by it in FY 2014-15.

2.5. Moreover, Regulation 5 of RPO Regulations specifies as under:

“Obligated Entities

5.1 Every Obligated Agency (i.e. distribution licensee, Captive User and Open Access Customer) shall, on a yearly basis on or before 15th March, submit to the State Agency with a copy to the Commission, the details of the estimated quantum of purchase from renewable energy sources for the ensuing year...

5.2 All the Obligated Agencies shall submit quarterly status report to the State Agency in respect of compliance of renewable purchase obligation in accordance with the procedure as framed by State Agency.

5.3 All the obligated Agencies shall also submit a detailed statement to the State Agency under intimation to the Commission within one month of close of each year in respect of compliance of renewable purchase obligation in that year.”

The Commission in its Order dated 11.09.2013 had held as under:

“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.”

UPCL has still not complying with the said provisions of the Regulations despite a show-cause notice already issued to it vide Commission’s Order dated 11.09.2013. In this regard, MD, UPCL vide its letter dated 27.09.2013 had also committed under affidavit that in future all the information would be submitted in accordance with the prescribed procedure. However, despite the commitment made by MD, UPCL, default in this regard still continues. MD, UPCL is directed to ensure submission of the information in the manner and within the time frame specified in the Regulations and formats prescribed in the Procedure and annexed with this Order to the State Agency within 15 days of this order failing which he shall render himself liable for appropriate action under Section 142 of the Electricity Act, 2003.

3. The Commission, therefore, orders:

- (a) UPCL is directed to submit the status of compliance as per the Action Plan latest by 16.08.2014. For the present, recovery of the daily penalty of Rs. 2,000/- per day imposed by the Commission vide its Order dated January 22, 2014 is being put on hold. The Petitioner should ensure procurement of required RECs for unmet RPO of FY 2012-13 in accordance with the Action Plan submitted by it, failing which this daily penalty would be liable to be restored in accordance with the Order dated 23.04.2014.
- (b) MD, UPCL is directed to ensure submission of the information in the manner and within the time frame specified in the Regulations and formats prescribed in the detailed Procedure and also annexed with this Order, to the State Agency in accordance with Para 2.5 of this Order, within 15 days failing which he shall render himself liable for appropriate action under Section 142 of the Electricity Act, 2003.
4. The Review Petition filed by the Petitioner being not maintainable is hereby dismissed.
5. Ordered accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member-Chairman

RPO Non Solar Statement												
FY 2011-12			FY 2012-13			FY 2013-14			FY 2011-14 (Total)			
Gross Energy Consumption	RPO as stipulated by UERC (@4.5%)	Purchase of RECs during the FY 2011-12	Gross Energy Consumption	RPO as stipulated by UERC (@5.0 %)	Purchase of RECs during the FY 2012-13	Gross Energy Consumption (GEC)	RPO as stipulated by UERC (@6.0 %)	Purchase of RECs during the FY 2013-14	Total Gross Energy Consumption (GEC)	Total RPO as stipulated by UERC	Total Purchase of RECs	Shortfall/ (Excess)
(In MWh)	(In MWh)	(In Nos.)	(In MWh)	(In MWh)	(In Nos.)	(In MWh)	(In MWh)	(In Nos.)	(In MWh)	(In MWh)	(In Nos.)	(In MWh/ RECs)
1	2	3	4	5	6	7	8	9	10 (1+4+7)	11 (2+5+8)	12 (3+6+9)	13 (11-12)

RPO Solar Statement												
FY 2011-12			FY 2012-13			FY 2013-14			FY 2011-14 (Total)			
Gross Energy Consumption	RPO as stipulated by UERC (@0.025%)	Purchase of RECs during the FY 2011-12	Gross Energy Consumption	RPO as stipulated by UERC (@0.05 %)	Purchase of RECs during the FY 2012-13	Gross Energy Consumption (GEC)	RPO as stipulated by UERC (@0.05 %)	Purchase of RECs during the FY 2013-14	Total Gross Energy Consumption (GEC)	Total RPO as stipulated by UERC	Total Purchase of RECs	Shortfall/ (Excess)
(In MWh)	(In MWh)	(In Nos.)	(In MWh)	(In MWh)	(In Nos.)	(In MWh)	(In MWh)	(In Nos.)	(In MWh)	(In MWh)	(In Nos.)	(In MWh/ RECs)
1	2	3	4	5	6	7	8	9	10 (1+4+7)	11 (2+5+8)	12 (3+6+9)	13 (11-12)

Note:

- Submit the copy of all RECs purchased.