

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 14 of 2016 (Suo-Moto)

In the matter of:

Suo-Moto proceedings on non-compliance of Renewable Purchase Obligation (RPO) by UPCL in accordance with UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 & UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2013.

In the matter of:

1. Sh. S.K. Tamta,
Chief Engineer Level-1 (Comml.),
Uttarakhand Power Corporation Ltd.,
Dehradun.
2. Sh. A.K. Singh,
Chief Engineer (Pro. & Comml.),
Uttarakhand Power Corporation Ltd.,
Dehradun.
3. Sh. Sunil Vaid,
Suprerintending Engineer (Comml.),
Uttarakhand Power Corporation Ltd.,
Dehradun.
4. Sh. Pravesh Kumar,
Executive Engineer (Comml.),
Uttarakhand Power Corporation Ltd.,
Dehradun.
5. Sh. Munish Chandra,
Executive Engineer (Attached to MD),
Uttarakhand Power Corporation Ltd.,
Dehradun.
6. Ms. Sandhya Ojha,
Assistant Engineer (Comml.),
Uttarakhand Power Corporation Ltd.,
Dehradun.

...Respondents

CORAM

Shri Subhash Kumar **Chairman**

Shri K.P. Singh **Member**

Date of Hearing: December 8, 2015

Date of Order: June 8, 2016

The Order relates to the Suo-Moto proceedings on non-compliance of provisions of the UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 & UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2013 and the Commission's directions issued to UPCL and its officers from time to time.

1. Background

1.1 UPCL, being the obligated entity is required to comply with the Regulations and Commission's directions issued from time to time and fulfil its Renewable Purchase Obligation as specified by the Commission. The non-compliance of the provisions of the UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 (hereinafter referred to as "UERC RPO Regulations, 2010") and UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2013 (hereinafter referred to as "UERC RE Regulations, 2013") and the Commission's directions issued from time to time to UPCL attracts penal provisions of the Act.

1.2 Regulation 5 of UERC RPO Regulations, 2010 specifies as under:

"5. Obligated Entities

5.1 Every Obligated Entity 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. The estimated quantum of such purchase shall be in accordance with UERC (Tariff and Other Terms of Supply of Electricity from Co-generation and Renewable Energy Sources) Regulations 2013. In case of actual requirement of the Obligated Entity for purchase of renewable energy being different at the end of financial year than that

submitted by it, the obligation towards renewable purchase quantum shall stand modified to that extent.

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."

UPCL failed to submit the estimated quantum of purchase from RE sources for FY 2015-16 in accordance with the Regulations. The RPO statements submitted by UPCL vide its letter dated 14.05.2015 depicted shortfall towards compliances of Solar as well as non-Solar RPO for the period upto FY 2014-15. However, UPCL did not file any Petition seeking carry forward of the unmet RPO obligations for FY 2014-15 as well as FY 2015-16.

1.3 In an earlier proceeding for non-compliances of RPO by UPCL, the Commission had vide its Order dated 19.12.2012 held that:

"...The Commission has an impression that UPCL has not been pro-active in procurement of renewable energy. A definite improvement in approach and attitude towards procurement of renewable energy is necessary. The Commission would like to caution that if such improvement is not seen in the immediate future, the Commission would be constrained to proceed against UPCL appropriately."

1.4 Further, in a similar proceeding of non-compliances of RPO by UPCL, the Commission vide Order dated 11.09.2013 had held that:

"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."

1.5 The Commission had vide its Order dated January 22, 2014 also imposed a penalty of Rs. 20,000.00 for non-compliances of RPO stipulated to be complied by the licensee under the Regulations. The Commission on observing non-compliances of RPO Regulations, 2010 & RE Regulations, 2010 vide Order dated 11.07.2014 had directed UPCL as hereunder:

“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.”

1.6 Moreover, the Commission vide its Order dated September 12, 2014 had held as under:

“Accordingly, considering the efforts initiated by the Petitioner for compliance of unmet RPO for the past years, and also assurance given by the Petitioner for making compliances of pending unmet RPO of FY 2013-14 alongwith the RPO of FY 2014-15, the Commission allows the carrying forward of unmet RPO of past years namely 2012-13 and 2013-14, as requested by the Petitioner, to be met alongwith the RPO for FY 2014-15.”

1.7 However, it was again noted that UPCL again failed to comply with the Commission’s directions issued in earlier proceedings in the similar matter in meeting the RPO of solar as well as non-solar and also in submission of timely information regarding compliance of previous year and estimates of ensuing year as required under the Regulations.

1.8 The Commission vide its letter no. UERC/6/TF-139(A)/15-16/2015/147 dated 01.05.2015 directed MD, UPCL to submit a comprehensive report on the status of RPO compliances upto and including FY 2014-15 along with the comprehensive plan to fulfil the accumulated shortfall of non-solar and solar RPO and also the comprehensive plan for meeting non-solar and solar RPO for FY 2015-16 latest by 08.05.2015. However, UPCL failed to submit any reply/information even after a period of more than 2.5 months from the time line stipulated by the Commission’s letter dated 01.05.2015.

1.9 Further, the staff of the Commission held the meeting on 26.06.2015 in the matter with UPCL’s officers, wherein, the shortfall in RPO compliances by UPCL was pointed out. During the meeting, UPCL informed that it shall submit a Petition before the Commission seeking approval for carrying forward of unmet RPO for previous year. However, UPCL submitted the petition dated 21.09.2015 for the same.

1.10 The Commission issued a show-cause notice dated 03.09.2015 vide which UPCL was required to show cause as to why appropriate action should not be taken against it in accordance with the provision of Section 142 of the Electricity Act, 2003 for non-compliance of the Commission’s directions and Regulations in the matter. The complete

reply to the show-cause notice was required to be submitted under affidavit latest by 11.09.2015. UPCL vide its reply dated 21.09.2015 submitted the shortfall and reasons thereof. The relevant part of the reply is reproduced hereunder:

“UPCL in pursuit for complying the same has achieved the RE obligation for FY 2012-13 and FY 2013-14, but could not manage to complete the obligation for FY 2014-15. After fulfilling the obligations of past years UPCL has managed 488.60 MU of RE power against the total obligation 823.70 MU for 2014-15.”

1.11 The Commission heard the licensee in the matter on 08.12.2015. The Commission directed UPCL to submit the details of the names of officers responsible for monitoring compliance of RPO process and action taken by the Managing Director and such officers in the financial year up to the receipt of the show cause notice dated 03.09.2015 issued by the Commission and thereafter. Further, the Commission directed the Licensee to submit a report including the chronological order giving the summary of the actions taken by the Managing Director and the concerned officers responsible for compliance of the RPO Regulations within three (03) weeks, i.e. latest by 29.12.2015.

1.12 UPCL in compliance of the Order dated 08.12.2015 submitted the reply dated 29.12.2015 in the matter where the names of the officers responsible for monitoring compliance of RPO process was furnished. The officers so named were:

- (i) Er. S.K. Tamta, Chief Engineer Level-I(Commercial.), UPCL (1 April 2015 to 17 June 2015).
- (ii) Er. A.K. Singh Chief Engineer (Projects and Commercial), UPCL (17 June, 2015 onwards).
- (iii) Er. Sunil Vaid, Superintending Engineer (Commercial), UPCL.
- (iv) Er. Pravesh Kumar, Executive Engineer (Commercial), UPCL (17 June, 2015 onwards).
- (v) Er. Munish Chandra, Executive Engineer (Attached to M.D.), UPCL.
- (vi) Er. Sandhya Ojha, Assistant Engineer (Commercial), UPCL.

1.13 UPCL also submitted the chronological order of actions taken by the Managing Director and concerned officers for compliance of the RPO. The relevant extract of the response is

reproduced hereunder:

“UPCL vide letter no. 4064/UPCL/Comm/RMC-Misc/D(F) dated 03-08-2015 in the matter of Comments on Draft UERC RE Regulations 2013 (4th Amendment) has already requested Hon’ble Commission to re-fixed the Non-Solar targets as UPCL is facing difficulties in achieving Non-Solar RPO. The same has been accepted by the Hon’ble Commission and fixed the RPO at 8% from 9% & 11% for FY 2016-17 and 2017-18 respectively.”

- 1.14 UPCL vide its Petition dated 21.09.2015 filed a Petition before the Commission seeking carry forward of Renewable Purchase Obligation of FY 2014-15 amounting to 526.8 MU (Non-solar) and 2.5 MU (Solar) as per the provisions of UERC RPO Regulations 2010. Moreover, the Respondent submitted the status of RPO to UREDA and the same was submitted to the Commission for reference.
- 1.15 Further, it was submitted that UPCL had floated two tenders for 100 MW RTC Non-Solar power and 148 RTC Non Solar Power from 01.04.2015 to 30.09.2015 and 01.10.2015 to 20.09.2016 respectively. However, only two firms had sent proposals in the first tender. After analysing the rates offered, UPCL issued a Letter of Intent to Tata Power Trading Company Limited to purchase 24 MW per month non solar energy from hydro plant from April 2015 to September 2015 from which 110 MU would be received by UPCL and further 24 MW per month non solar energy from hydro plant from October 2015 to September 2016 from which 200 MU would be received. Moreover, RE Power is not readily available in open market as against the tender for 100 MW RTC only 30.5 MW power was available and against 148 MW RTC only 40 MW power was available and more so the availability, defined/approved rate of Rs. 4.75/kWh was lower.
- 1.16 Further, UPCL also submitted that for meeting the RE obligation, UPCL heavily relies on SHP Generation, however, such generation depends on weather related parameters and predictions of generation from SHP is always not accurate. Moreover, UPCL has resorted to all the options available in the market for fulfilling the obligation and was left with the only option of purchasing the RE certificates, but the utility was under severe financial constraint and was not in a position to purchase it. Further due to genuine difficulty it could not meet its obligation.
- 1.17 The Commission held a hearing on 26.02.2016 in which all the individual officers

responsible for non-compliance of the Regulations and the Commission's directions were asked to show cause why they should not be penalised. The Respondents agreeing to the non-compliance reiterated the same facts submitted in their replies.

2. Commission's View

- 2.1 The Respondent's during the hearing agreed that they had not-complied with the provisions of the Regulations as well as the directions issued by the Commission from time to time. The Electricity Act, 2003, as per the provision in Section 86(1)(e), has conferred upon the Commission function of promoting renewable sources of energy as also of prescribing a certain percentage of total consumption to be procured from such sources. In the instant case, there have been repeated failures on the part of UPCL in complying with the provisions of the Regulations and the directions of the Commission.
- 2.2 Now as the position emerges and is clear from the facts of the case as discussed above, UPCL in non-compliance of the RPO Regulations neither submitted the information/status as specified in the Regulations nor complied with the directions of the Commission issued from time to time. Such non compliance attracts Section 142 of the Act and accordingly, the officers responsible for the same were given a fair chance of submission of reasons for such non compliance and also to show- cause as to why penalty should not be levied upon them in accordance with the provisions of the Act.
- 2.3 The Commission is of the opinion that the act of non-compliance by the Respondents in submission of the information required under the Regulations and also the directions of the Commission issued from time to time, is a wilful contravention on their part. As officers of the licensee they are responsible for ensuring compliance of the Regulations and also directions of the Commission which requires them to furnish promptly the information/details within the timelines so stipulated in Orders/Regulations of the Commission and not wait for any notice. This lackadaisical approach of the officers of the licensee in a way obstructs the discharge of functions of the Commission under the Electricity Act, 2003. However, the Commission is taking a lenient view on the same this time and cautions UPCL and the Respondents to ensure compliance of all Regulations and directions of the Commission and any future acts of non-compliance will not be pardoned.

- 2.4 It is accordingly ordered that henceforth, any non-compliance by the Respondent(s) will attract a personal penalty in accordance with the provisions of the Act on the person responsible for such act.
- 2.5 With this, Petition no. 14 of 2016 stands disposed.
- 2.6 Ordered accordingly.

(K.P. Singh)
Member

(Subhash Kumar)
Chairman