

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Application seeking clarification/elucidation of Order dated 07.01.2016 passed by the Commission directing UREDA to grant accreditation to M/s Him Urja Pvt. Ltd. on their application dated 22.06.2012.

In the matter of:

Uttarakhand Power Corporation Ltd. ... Petitioner

AND

In the matter of:

Him Urja Pvt. Ltd. ... Respondent

CORAM

Shri Subhash Kumar Chairman

Shri K.P. Singh Member

Date of Hearing: March 15, 2016

Date of Order: March 17, 2016

The Order relates to the Petition dated 23.02.2016 filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "Petitioner" or "UPCL" or "Licensee") seeking clarification/elucidation of the Commission's Order dated 07.01.2016 directing UREDA to grant accreditation to M/s Him Urja Pvt. Ltd. (hereinafter referred to as "Respondent" or "HUPL" or "Generator") on their application dated 22.06.2012.

1. Background and Petitioner's Submissions

- 1.1 The Petitioner submitted that the Respondent vide their Application dated 22.6.2012 had applied for Accreditation and issuance of RECs before UREDA, State Agency and the same was rejected by UREDA vide its Order dated 12.11.2012.

- 1.2 Aggrieved by the above order, the Respondent filed a Petition before the Commission and the same was rejected vide the Commission's Order dated 28.05.2014.
- 1.3 The Respondent had filed an Appeal no. 193 in 2014 before Hon'ble APTEL. Hon'ble APTEL vide its Judgment dated 20.11.2015 had set-aside the above mentioned order of the Commission and had held that the Appellant/Respondent was fully eligible for accreditation as per Regulation 8 of RPO Regulations, 2010 and issuance of RE certificate under REC mechanism. Hon'ble APTEL further directed the Commission to grant accreditation to the M/s Him Urja for REC within 2 months from the date of Order.
- 1.4 In compliance of the order of Hon'ble APTEL, the Commission issued a draft order in the matter, and thereafter a final order dated 07.01.2016 was issued by the Commission whereby UREDA was directed to grant Accreditation to M/s Him Urja Pvt. Ltd. based on their Application dated 22.06.2012 in accordance with the UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 and procedure issued therein.
- 1.5 The Petitioner submitted that subsequent to the above mentioned Order dated 07.01.2016 of the Commission, M/s HUPL vide their letter dated 08.01.2016 expressed willingness to forego the issuance of RE Certificate if UPCL agreed to pay it the Floor price of REC over and above the Rate of Rs. 2.50/unit as the energy charge w.e.f. 22.06.2012 and had assured to make a declaration before any authority as desired by UPCL, if such an arrangement was finalized for entire life of the project.
- 1.6 The Petitioner submitted that considering the facts that M/s HUPL was a RE Generator and the power procured from the generating station contributes in fulfilling the RPO of UPCL and after Accreditation of the said Generator the power procured in future would not count towards RP Obligation. Further, due to non availability of Non Solar RE Power within the range of approved price fixed by the Commission, UPCL was unable to fulfil its Non-Solar RPO in the past even after the repeated genuine efforts.
- 1.7 UPCL submitted that while analyzing the effects of the Commission's Order dated 07.01.2016 it could not ascertain that once the Accreditation be given to the Generator then whether or not the RE content of power already supplied to UPCL will be counted towards its RPO. In addition, UPCL submitted that in case the rights of RE content of the power already received by UPCL, be transferred to the generator then in order to keep

intact the already claimed RPO compliance, UPCL would have to pay an additional amount of Rs. 9.31 Crore approximately.

1.8 UPCL further submitted that the Generator vide its letter dated 09.02.2016 represented that the Commission had allowed Accreditation w.e.f. the date of original application and that the supply of electricity which was entitled to REC shall not be accounted for RPO and thus the power which was supplied from 22.06.2012 till date would not be counted towards RPO and UPCL would be in further deficit in fulfilling its RE Obligation. The Generator further expressed its willingness to forego the likely upside of the REC market and offer RE power @ Rs. 2.50/unit as per the existing PPA plus Rs. 1.45/unit for RE component for the period from 22.6.2012 till 31.01.2016 and after which to supply electricity @ Rs. 2.50 as per existing PPA plus floor rate of REC as determined by the CERC.

1.9 UPCL has vide its Petition requested the Commission as follows:

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(i) *Clarification be given clarifying/elucidating the applicability of the order dated 7.1.2016 passed by the Hon'ble Commission in the matter as to whether the said order directs accreditation from retrospective date as has been represented by M/s Him Urja Pot. Ltd. and whether consequently the generator would be entitled to claim benefits of RE component from 22.6.2012 till date which have already been availed by UPCL”.*

(ii) *Clarifying the procedure as per law for, retrospective i.e from 22-06-2012 till date and prospectively i.e. thereafter, the order dated 7-01-2016 of the Hon'ble Commission or the manner for considering and executing the proposal given by M/s Him Urja Pot. Ltd. by their letter dated 08-01-2016 and 09-02-2016 in case the clarification given for relief (ii) above in affirmative.”*

1.10 During the hearing held on 15.03.2016, UPCL reiterated its submissions already made in the Petition.

2. Respondent's Submissions

2.1 M/s HUPL vide its reply dated 10.03.2016 submitted that there was no ambiguity in the Order. The Order of the Hon'ble Appellate Tribunal for Electricity read with the Order of the Commission makes it abundantly clear that the Respondent was entitled for RE component from 30 days after the date of complete application. M/s HUPL submitted that UPCL cannot claim RPO for power supplied by the Respondent from such date

unless the Respondent transfers its right to them and the Respondent was willing to transfer such right at the terms specified and also affirmed that once compensated its right to RE shall vest in UPCL.

- 2.2 M/s HUPL submitted that consequent to the Order of the Commission dated 07.01.2016 read with order of the Hon'ble Appellate Tribunal for Electricity, it had become entitled to issuance of REC with effect from 5.10.2012 (date of complete application 05.09.2012 plus thirty days as provided in the Regulation). M/s HUPL submitted that as a consequence of above, the power supplied by Respondent from 05.09.2012 onwards shall not be accounted for RPO.
- 2.3 M/s HUPL submitted that UPCL had reported such shortfall in RPO as equivalent to 1296 MU as against the available REC of the Respondent which is equivalent to about 60 MUs. The Electricity Act, National Electricity Policy 2005 and the Tariff Policy of 2006 which are framed by the Union of India, provides for RPO and such obligation has been confirmed and reiterated by the Hon'ble Supreme Court of India in Hindustan Zinc Ltd. Vs. RERC.
- 2.4 M/s HUPL submitted that UPCL has opted for UDAY scheme of Government of India which inter-alia imposes a condition of fulfillment of RP Obligations with effect from 01.04.2012 to avail benefits under the scheme. The Respondent submitted that considering the importance of RPO, the Commission in the ARR of UPCL for the year 2015-16 has already permitted UPCL to procure 284 MU (equivalent to Rs. 128 Crore) either through REC or RE Power to meet the RPO target at a rate of upto Rs. 4.75 per unit on best effort basis (Para 4.47 & 4.4.9.5 of the Order).
- 2.5 The Respondent vide its submission made an offer to the Petitioner as follows:
- “
- i. *The petitioner and respondent shall enter into supplementary power purchase agreement within 3 days of the order of this Hon'ble Commission. (Draft copy of the agreement enclosed)*
 - ii. *The right to issuance of REC accrued to responded from 5-10-2012 (date of complete application 5-9-2012 plus thirty days as provided in the regulation) till effective date (Say Feb. 29, 2016) shall be surrendered in favour of the petitioner in consideration of payment of Rs.1.45 per unit generated which will be approx 60 MU and this payment shall be made within 7 days of the agreement.*
 - iii. *The right to issuance REC accruing to the Respondent after the effective date shall be surrendered in*

favour of the petitioner in consideration of payment of the floor price of REC as fixed by CERC from time to time.

- iv. The payment of such consideration shall be made within 7 days of submission of bills for the project.*
- v. No discount shall be allowed on the payment of consideration of surrender of right to issuance of REC as above.*
- vi. The agreement shall be valid and operational for a period of 5 years from the effective date of agreement. Thereafter first right of refusal shall be with UPCL.*
- vii. The respondent shall give any declaration as desired by UPCL to surrender its' right of issuance of REC.*

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2.6 The Respondent submitted that the prayer made by the Petitioner was very clear and it has submitted to the plenary powers of the Commission to decide on issues relating to Renewable Purchase Obligation, procurement of REC and regulation of purchase of power. In prayer (iii) the Petitioner has sought regulatory approval as required under law for the offer made by the Respondent. The Commission has powers to decide the issues regarding procurement of power and REC suo moto also. The Respondent submitted that the Commission's powers under Regulations are all encompassing including direction to purchase, rate thereof and terms and conditions of purchase.

2.7 M/s HUPL submitted that both the Petitioner and the Respondent shall be benefitted by such arrangement as enumerated below;

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- (i) UPCL has to procure REC and the base rate of REC cannot be less than Rs.1.50 per unit whereas the petitioner is giving discount of 5 paise therefore the UPCL shall be benefitted by about Rs. 32 lakhs. In addition UPCL shall also save commission of 1% on purchase of REC.*
- (ii) As on today the rate of REC is Rs.1.50 per unit but the sale may be spread over a period of time therefore the petitioner shall be getting discounted price of the prevailing rate. The benefit accruing to the Respondent has been partly passed on to UPCL.*
- (iii) The off take of REC is likely to improve substantially on account of UDAY Scheme of Government of India which stipulate precondition that renewable purchase obligation from 1-4-2012 till date shall be complied with by DISCOMS.*
- (iv) The Respondent is willing to forgo the upside, if any, on the sale of RECs in future after implementation of UDAY.*

- (v) *The UPCL shall be protected against any upside of the rate of REC in open market in future.*
- (vi) *As on today the penalty on default in obligation of all DISCOMS is about Rs. 4300 crores (As per CAG Report) whereas the total value of the carryover of REC is about Rs. 2000 crores (As per REC Registry). Therefore the market of REC is likely to improve substantially in coming months.*
- (vii) *The petitioner is already supplying power to UPCL therefore least disturbance to the arrangement and duplication of processes of issuance and/or sale of REC.*

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2.8 The Respondent submitted that it is under severe financial strain on account of disaster of Uttarakhand 2013, since massive protection programme has been under implementation. Therefore, it is requested that the petition may be admitted and decided simultaneously and UPCL may be directed to make payment as early as possible. The Respondent has also submitted draft supplementary agreement to the existing PPA alongwith its reply for approval.

2.9 However, the Petitioner did not submit its reply on the written submission made by the Respondent.

3. The Commission's Views and Decision

3.1 Hon'ble ATE vide its Order dated 20.11.2015 had set-aside the Commission's Order dated 28.05.2014, and allowed Accreditation to the Respondent. The Commission in compliance to the Hon'ble ATE's directions, vide its Order dated 07.01.2016 held that:

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2.3 *It has been argued by the Petitioner that since the order of the Commission rejecting their application for issuance of REC (actually accreditation) has been set aside by the Hon'ble ATE, they are entitled for issuance of REC (actually accreditation) from the date of application. Their argument is accepted in light of observations made by Hon'ble APTEL in judgment dated 20.11.2015.*

2.4 *Therefore, the Commission in compliance of the Order issued by Hon'ble ATE directs Respondent No. 2 to grant accreditation to the Petitioner based on their application dated 22.06.2012 in accordance with the UERC (Compliance of Renewable Purchase Obligation) Regulation, 2010 and procedures issued therein.”*

(Emphasis added)

3.2 Since the Hon'ble ATE vide its Order dated 20.11.2015 had set-aside the Commission's Order dated 28.05.2014, annulling the applicability of the Commission's decision, hence, the Respondent's application for Accreditation should be seen under the circumstances of non-existence of the above mentioned impugned Order dated 28.05.2014 of the Commission. The above mentioned decision of the Commission explicitly provides that Respondent has been allowed for Accreditation based on its application filed before UREDA, State Agency and the same fact should also have been recognised by the Petitioner. Infact, Hon'ble ATE in its Judgment has also held the same and the relevant extracts are reproduced hereunder:

"9.11 In view of the above discussions, we find and clearly hold that all the conditions in order to become eligible to apply for accreditation as per Regulation 8 of the State RPO Regulations, 2010 are fully satisfied/fulfilled by the Appellant/petitioner and the Appellant/petitioner is fully entitled for accreditation and subsequent registration and issuance of RECs under REC mechanism. Consequently, the issue is decided in favour of the Appellant and the application seeking accreditation filed by the Appellant/petitioner before the State Commission is liable to be allowed."

(Emphasis added)

Thus, as can be seen from the above extracts, Hon'ble ATE has also held that the M/s HUPL is fully entitled for accreditation and subsequent registration and issuance of RECs under REC mechanism. Hence, there is no ambiguity in holding that power generated subsequent to accreditation would not be eligible to be treated under the RPO of UPCL if the generator so opts to be covered under the REC Scheme and thereupon UPCL's RPO would be reduced to the extent energy received from the generator's plant.

3.3 UPCL ought to have taken steps appreciating the intent of the judgment of the Hon'ble ATE and subsequent Order of the Commission and should have complied with the same. Further, the Commission has also taken note of the Respondent's submission that the date of filing of complete application was 05.09.2012, hence, considering the same and in accordance with the Regulations and the Procedures issued thereunder, the Respondent's SHP shall be considered as Accredited 30 days after the date of application, i.e. from 05.10.2012 which has also been claimed by the Respondent in its reply to the Petition.

3.4 Having established that Accreditation be considered from 05.10.2012, any power received from Respondent's SHP would be eligible for issuance of REC to the generator, however, UPCL is considering the same for compliances of its non-solar RPO. The Regulations clearly provides that compliances of RPO by an obligated entity (Petitioner in this case) cannot be made by procuring of RE power from a generator/SHP which is rightfully eligible for issuance of RE Certificates. The Commission in its Statement of Reasons appended to the UERC (Compliance of Renewable Purchase Obligation) (First Amendment) Regulations, 2013 at Para 2(e) has already held as under:

"The Commission in its SOR accompanying the Draft Amendment REC Regulation had clarified that electricity supplied to an obligated entity for compliance of its RPO shall not be eligible for REC, since allowing it eligible for RECs would amount to double counting of the green attributes. The intent of this provision is that only one entity derives the benefit of REC/RPO. If the RE based generator intends to be eligible for REC accreditation, in that case sale by it to an obligated entity will not be counted in meeting the RPO of that obligated entity..."

(Emphasis added)

Thus, as the generator has already expressed its intention to be eligible for REC accreditation and as also held by the Hon'ble ATE in its above referred Judgment that the generator is satisfying all the conditions in order to become eligible to apply for accreditation as per the Regulations and it is fully entitled for accreditation and subsequent registration and issuance of RECs under REC mechanism. Hence, there is no doubt that the power supplied by it to UPCL can in no way be considered to be meeting the RPO of UPCL.

3.5 In the present case, the Respondent has made an offer to the obligated entity (Petitioner) that the right to issuance of REC accrued to Respondent from 05.10.2012 shall be surrendered in favour of the Petitioner in consideration of payment of Rs. 1.45 per unit of energy received by utility so that UPCL shall be able to consider that quantum of RE power for compliance of its non-solar RPO. In this regard, the Commission is of the view that since UPCL has already considered the RE power received from Respondent's SHP for meeting its non-solar RPO compliance. In the absence of generation from this SHP not accounted for in the RPO compliance of the Petitioner, it would result in an additional

cost implication of Rs. 1.50/kWh @ Floor price of non-solar REC on the Petitioner for purchasing RECs for ensuring RPO compliance. Moreover, the Commission is well aware of the fact that UPCL is still struggling to meet RPO compliances to the tune of more than 1200 MUs. The Commission is of the view that by accepting Respondent's offer, UPCL would be able to fulfil a part of non-solar RPO at a price even lower than the Floor price of RECs failing which the shortfall of non-solar RPO would be increased from the existing level.

- 3.6 The Commission has observed shortfall in non-solar RPO and has also initiated suo-moto proceedings so as to ensure compliances of RPO by the Licensee. The Petitioner has persistently been held in default of RPO compliances. The Respondent in its written submission had proposed to surrender its right to issuance of RECs accrued to it from 05.10.2012 till 29.02.2016 in favour of UPCL in consideration of the payment @ Rs.1.45 per unit generated. In this regard, the Commission is of the opinion that since the first fortnight of the month of March, 2016 is already over, hence, the date proposed by the Respondent as 29.02.2016 should be considered as 31.03.2016.
- 3.7 Keeping in view, all the facts and circumstances, the Commission, hereby, directs UPCL to make payments in lieu of the rights of RECs surrendered by the Respondent, due to it, from the date of Accreditation, i.e. 05.10.2012 and upto 31.03.2016 @ Rs. 1.45 per unit of energy received by the utility during the period. UPCL should ensure payment of the aforesaid cost accrued upto 29.02.2016 in three equal instalments. Payment of first instalments shall be made within 5 days of the date of this Order. Remaining two instalments shall be paid within first week of the month of April, 2016 & May, 2016 respectively. Further, payment for energy received for the period 01.03.2016 to 31.03.2016 shall be made alongwith monthly generation bill raised by the Respondent for the month of March, 2016.
- 3.8 The Respondent has also made an offer to the Petitioner that its right to issuance of RECs accruing to the Respondent after the effective date shall be surrendered in favour of the Petitioner in consideration of payment of the floor price of REC as fixed by CERC from time to time. The Respondent has also offered to execute a supplementary PPA for vesting its right to issuance of RECs to the Petitioner. In this regard, the Commission is of the view that subsequent to 31.03.2016 it would be the Petitioner's discretion to accept or

forego the Respondent's offer having regard to its RPO compliances and the manner in which it opts to ensure compliance of the same. However, the Petitioner is directed to decide upon the option given by the Respondent to it and inform the Respondent of its decision within a week from the date of this Order. If it desires to accept the option of the Respondent it is directed to enter into any Supplementary PPA with the Respondent within 15 days of the date of this Order.

3.9 Ordered accordingly.

(K.P. Singh)
Member

(Subhash Kumar)
Chairman