

**Before**

## **UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**In the matter of:**

Petition filed by UPCL to review/reconsider the personal penalty imposed vide Order dated 05<sup>th</sup> October, 2016 issued by the Commission in the matter of suo-moto proceedings initiated by the Commission against non-compliance by UPCL of the Commission's Order dated 20.06.2016 for procurement of non-solar RECs equivalent to 7.50% of unmet non-solar RPO up to FY 2015-16.

**In the matter of:**

Uttarakhand Power Corporation Ltd.

... Petitioner

**CORAM**

**Shri Subhash Kumar      Chairman**

**Date of Hearing: December 9, 2016**

**Date of Order: January 12, 2017**

This Order relates to the Petition dated 26.11.2016 filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "Petitioner" or "licensee") seeking review/reconsideration of the personal penalty imposed by the Commission vide its Order dated 05.10.2016 in the matter of non-compliance of the Commission's Order dated 20.06.2016 for procurement of non-solar RECs equivalent to 7.50% of unmet non-solar RPO up to FY 2015-16.

### **1. Background and Petitioner's Submissions**

- 1.1. UPCL had vide its Petition dated 21.09.2015 and 27.04.2016 requested the Commission to allow the carry forward of its unmet renewable purchase obligation for the two financial years, i.e. FY 2014-15 and FY 2015-16.
- 1.2. The Commission while considering UPCL's prayer had vide its Order dated 20.06.2016 directed the Petitioner as follows:

*"Accordingly, the licensee is directed to procure non-solar RECs equivalent to 7.50% of unmet non-solar RPO upto FY 2015-16 latest by 31.07.2016 and submit compliance of the same immediately. Further, with regard to the balance unmet non-solar and solar RPO upto FY 2015-16, the Commission allows UPCL to fulfil the same alongwith its obligation for FY 2016-17. 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 March, 2017, non-compliance of which may attract action against the*

*officers responsible for compliances of regulations under Section 142 of the Electricity Act, 2003. Further, UPCL is also directed to comply with the Regulations, Commission's orders and directions in letter and spirit."*

- 1.3. On non-receipt of any compliance from UPCL in the matter, the Commission vide its letter dated 16.08.2016 asked UPCL to furnish the requisite compliance latest by 22.08.2016. Since UPCL did not submit its reply to the satisfaction of the Commission, the Commission vide its Order dated 05.10.2016 imposed a personal penalty on the officers of the Petitioner and also directed to procure REC equivalent to 52.50 MUs latest by 31.10.2016.
- 1.4. UPCL vide its letter dated 27.10.2016 submitted compliance of procurement of non-solar REC equivalent to 52.50 MUs.
- 1.5. UPCL vide its instant Petition dated 26.11.2016 submitted that subsequent to the Commission's Order dated 20.06.2016 Ministry of Power, GoI vide Order no. 23/3/2016-R&R dated 22.07.2016 notified the long term growth trajectory of RPO for Non-Solar as well Solar, uniformly for all States/Union Territories, initially for three years from FY 2016-17 to FY 2018-19 as under:

<b>Long Term Trajectory</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>
<i>Non-Solar</i>	8.75%	9.50%	10.25%
<i>Solar</i>	2.75%	4.75%	6.75%
<i>Total</i>	11.50%	14.25%	17.00%

*The Obligation will be on total consumption of electricity by an obligated entity, excluding consumption met from hydro sources of power.*

- 1.6. The Petitioner submitted that it believed that the Commission would revise the RPO targets in light of the Order dated 22.07.2016 of MoP, GoI as has been done before in the matter of increasing the Solar RPO. While anticipating the revision in RPO targets it felt appropriate, both in the interest of the Petitioner and the general public of the State that UPCL should wait for the clear picture regarding the exact deficiency and the required REC quantum to meet the revised RPO target. UPCL further submitted that consequent to revision in RPO targets the Order dated 20.06.2016 of the Commission would have been modified. UPCL also submitted that considering the huge financial implications on it, UPCL without any malafide intention waited for further directions of the Commission before purchasing the RECs.
- 1.7. UPCL submitted that it had no intention for non-compliance of the Order dated 20.06. 2016 but due to above said reasons the omission occurred inadvertently. Further, in response to the Commission's show-cause notice dated 05.09.2016, UPCL vide its reply dated 20.09.2016 submitted that it was under the belief that the Commission would suo-moto take up the

matter, as was previously done in the matter of increasing Solar RPO and subsequently revise the RPO targets in light of the Order dated 22.07.2016 of MoP, GoI.

- 1.8. The Petitioner submitted that during the hearing in the matter of Show Cause notice, it realised that the Commission did not propose any amendment in the RE Regulations for revision of RPO targets.
- 1.9. UPCL submitted that in compliance of the Order dated 05.10.2016 it has purchased the Non-Solar RE certificates equivalent to 52.50 MUs and the same was intimated to the Commission vide its letter no. 3726/UPCL/Com/RPO/D(F) dated 27.10.2016.
- 1.10. The Petitioner submitted that the Commission had issued the draft amendment to the RE Regulations, 2013 for revision in RPO targets in line with the Order of MoP. UPCL has also prepared a plan for fulfilling the Renewable Purchase Obligation as per the proposed draft amendment Regulations from which it is apparent that the total RPO for FY 2016-17 along with the unmet RPO for FY 2015-16 would decrease from 1400 MUs to 900 MUs approx. Further, as per the plan UPCL would meet out its RPO in a couple of ensuing Financial Years without purchasing the REC's.
- 1.11. UPCL further submitted that in comparison to previous years, more and more Non-Solar RE generators were participating in the tender within the specified rate at the State periphery. The total offer at specified rate was 63 MW approx. in FY 2016-17 whereas in FY 2015-16 it was only 24 MW. Hence, it would substantially benefit in fulfilling the RPO target in the ensuing years. Further, UPCL has also been offered wind power at competitive rates without payment of ISTS charges and losses to fulfill its non-solar RPO.
- 1.12. UPCL submitted that it was making sincere efforts to comply with the Order dated 20.06.2016 of the Commission for procurement of remaining REC's as early as possible and that there was no deliberate non-compliance rather the same was under a mistaken and bonafide belief having concern for financial impact on the consumer of the State.
- 1.13. The Petitioner vide its petition assured the Commission to comply with the order and perform its obligations and till such time the Petitioner requested the Commission to waive the personal penalty on the officials of UPCL imposed vide the Commission's Order dated 5.10.2016.

## **2. Commission's Views**

- 2.1. The instant petition has been filed seeking review/reconsideration of the Commission's Order dated 05.10.2016 vide which personal penalty was imposed on the officers of the Petitioner for

non-compliance of RPO and the directions issued to the Petitioner vide the Commission's Order dated 20.06.2016. 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.*

2.2. The Commission has observed that vide this petition the Petitioner has again reiterated causes/submissions made by it earlier in the matter which have already been dealt in Commission's Orders dated 20.06.2016 & 05.10.2016 including previous Orders issued by the Commission in similar cases. UPCL has submitted that it was under bonafide belief that the Commission shall revise the RPO targets in accordance with the GoI Order dated 22.07.2016. Accordingly, UPCL on its own initiated planning for procurement of non-Solar RE power for compliances of revised RPO as per the aforesaid Order of the Central Govt. despite the fact that no revision in the RPO targets were approved by the Commission through an amendment in the relevant provision of the RE Regulations, 2013. Apparently, UPCL's above referred action is illegitimate and hence cannot be accepted since targets for compliances of RPO can be revised only by way of amendment in the existing provisions of the Regulations following due regulatory proceedings. Any amendment has to be notified by the Commission and in absence of the amendment the existing provisions specified under the current Regulations would prevail.

2.3. The petition filed by UPCL 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. The submissions made by UPCL are similar to those made by it in its replies in the past proceedings which have already been dealt with by the Commission in its earlier Order dated October 05, 2016.

2.4. The Order dated 05.10.2016 cannot be reviewed as prayed by the Petitioner. However, the Commission has taken cognizance of the fact that the Petitioner has procured non-Solar RECs in compliance to the directives issued to it vide the Order dated 20.06.2016 and 05.10.2016. The

Commission also appreciates the fact that the Petitioner is endeavoring to increase the proportion of RE power in its overall power purchases. The Petitioner's efforts are also being appreciated that it has been able to increase procurement of RE power as compared to previous financial years within the tariff specified by the Commission. Further, the Petitioner has 3 months time to set-off the pending RPO compliances including compliance for FY 2016-17 by 31.03.2017. Considering the efforts made by the Petitioner and taking a lenient view in the matter, the Commission while exercising the inherent power provided under Regulation 59 of UERC (Conduct of Business) Regulations, 2014 decides to waive-off the personal penalty imposed on the Officers of the Petitioner. However, the Commission would like to caution all the officers of the licensee that any non-compliance in the future of any directions/Orders/Regulations of the Commission by them would be dealt with strict action against the licensee's officer(s) responsible for it in accordance with the Act/Regulations and no further leniency would be shown towards the errant officials. Besides this, UPCL is also cautioned not to assume in a presumptuous manner that any shortfall in its RPO would necessarily be carried forward by the Commission by default. The Regulations require UPCL to meet its RPO either through purchase of RE power or to meet the deficit by procurement of RECs. The carry forward would be allowed by the Commission only when it is established, based on the Petition filed by the obligated entity, that such a situation has arisen due to extraordinary circumstances beyond the control of such obligated entity.

2.5. Apparently, with the existing targets of RPO specified in the Regulations, UPCL's shortfall for compliance of non-Solar RPO would accumulate to about 1000 MUs by the end of current financial year. Therefore, in order to alleviate the impact of compliance of RPO in future, UPCL is directed to meet the remaining RPO for FY 2015-16 either through purchase of energy from RE sources or through purchase of RECs equivalent by 31<sup>st</sup> March, 2017 alongwith ensuring compliances of RPO specified for FY 2016-17. In this regard, UPCL is also directed to submit the action plan for meeting the unmet RPO for the period upto FY 2016-17 and also for the ensuing FY 2017-18 & FY 2018-19 within 15 days from the date of Order.

2.6. Ordered accordingly.

**(Subhash Kumar)**  
**Chairman**