

**Before**

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**Petition No. 29 of 2019**

**In the matter of:**

Petition seeking carry forward of surplus Renewable Purchase Obligation of 139.00 MU (Non-Solar) in FY 2018-19 as per the provisions of UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010.

**In the matter of:**

Uttarakhand Power Corporation Ltd.

... Petitioner

**AND**

**In the matter of:**

Uttarakhand Renewable Energy Development Agency (UREDA)

... Respondent

**CORAM**

**Shri D.P. Gairola      Member (Law)**

**Shri M.K.Jain         Member (Technical)**

**Date of Hearing : September 03, 2019**

**Date of Order : October 09, 2019**

This Order relates to the Petition dated 12.07.2019 filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "Petitioner" or "Licensee") seeking carry forward of surplus Renewable Purchase Obligation of 139.00 MUs (Non-Solar) in FY 2018-19 to FY 2019-20 in accordance with the provisions of UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 (hereinafter referred as to "RPO Compliance Regulations, 2010).

**1. Background**

- 1.1. The Commission vide Order dated 15.09.2017 in the matter of allowing carry forward of deficit RPO for FY 2016-17 amounting to 787.68 MU (Non-Solar) and 161.32 MU (Solar) as per the provisions of RPO Compliance Regulations, 2010 had directed the Petitioner to meet the overall RPO either through purchase of renewable energy or through purchase of RECs by

31.03.2018.

- 1.2. In compliance to Regulation 5.3 of RPO Compliance Regulations, 2010, the Petitioner vide letter dated 09.05.2018 had furnished its provisional RPO statement for FY 2017-18 stating shortfall of 89.33 MUs (Non-Solar) and 108.44 MUs (Solar) RPO. In the matter, the Commission had observed that the Petitioner had apparently ignored the categorical directions of the Commission for meeting overall RPO either through purchase of energy from RE sources or through purchase of RECs by March, 2018. Therefore, the Commission issued a Show-Cause Notice dated 21.03.2018 to the Petitioner asking why appropriate action should not be taken in accordance with provisions of Section 142 of the Electricity Act, 2003 for non-compliance of the Commission's directions and Regulations in the matter.
- 1.3. In reply to the show-cause Notice, UPCL submitted that it had floated a tender for procurement of Solar and Non-Solar energy in the month of February, 2018 through DEEP Portal. However, Solar & Non Solar Power could not be secured as bidder had quoted higher rates than the limit of 4.75/kWh as specified by the Commission. Subsequently, in the month of April, 2018 once again tender was floated for purchase of Non-Solar and Solar RE power which was successfully procured during FY 2018-19. The Commission vide suo-moto Order dated 06.08.2018 directed the Petitioner to purchase Solar and Non-Solar RECs equivalent to the deficit of RPO upto March, 2018. In compliance to the Commission's direction, the Petitioner purchased Solar and Non Solar RECs equivalent to 60.50 MU and 103.56 MU respectively as per final RPO statement for FY 2017-18.

## **2. Petitioner's submissions**

- 2.1. In the present Petition, the Petitioner submitted that UPCL had purchased the pending RECs pertaining to FY 2017-18 and thereby fulfilled RPO upto FY 2017-18 in compliance to the directions of the Commission regarding purchase of RECs to meet the deficit of Solar and Non-Solar RPO till March, 2018.
- 2.2. The Petitioner submitted that due to the purchase of REC equivalent to 103.56 MUs as directed by the Commission, UPCL became surplus in case of Non-Solar RECs because UPCL had already planned to meet the same by purchasing Non-Solar Renewable Energy instead of RECs for which UPCL had issued Letter of Intent in the Month of April, 2018.
- 2.3. The Petitioner submitted that UPCL after adjusting the surplus Non-Solar Renewable Energy

to meet out Solar RPO deficit as per RE Regulations, 2018 is having a surplus of 139 MU which it requested the Commission to allow carry forward to the next financial year, i.e. FY 2019-20 so that the RPO for ensuing year can be met out.

### **3. Respondent's replies and Petitioner's rejoinders**

3.1. The Commission had forwarded the copy of the Petition to UREDA for its comments, if any, in the matter. UREDA vide its letter dated 08.08.2019 submitted its reply to the Commission which was forwarded to the Petitioner for counter reply. The Petitioner vide its letter dated 02.09.2019 and 25.09.2019 submitted its rejoinders. The Commission has dealt with the reply and rejoinder of the parties in the subsequent paragraphs of this Order.

3.2. The Respondent, i.e. UREDA, submitted that the Non-Solar and Solar RPO statements submitted by the Petitioner to UREDA do not reconcile with the details submitted by the Petitioner in the present Petition.

In reply, the Petitioner vide rejoinder submitted that UPCL has always clearly mentioned in the RPO Statement sheet that quarterly RPO is prepared on the basis of Commercial Data comprising of provisional Regional Energy Account (REA), Energy bills as submitted by RE Generating companies etc. In case there is change in finalized REA, the energy bills, accordingly, change and the parameters in Commercial Data also change which is beyond the control of UPCL.

3.3. The Respondent submitted that the Petitioner under the present Petition has proposed to meet Solar PRO shortfall by excess Non-Solar Energy Purchase beyond the specified Non-Solar RPO for FY 2018-19. However, the Petitioner has not submitted any such proposal to UREDA while providing RPO Statement.

The Petitioner vide its rejoinder submitted that it has informed the yearly status of RPO wherein it categorically intimated UREDA that UPCL had surplus in Non-Solar PRO and deficit in Solar RPO. Further, as per RE Regulations, 2018, 15% of Solar RPO can be met out from Non-Solar RE Power and thereby after adjusting the deficit Solar RPO from excess Non-Solar Power, UPCL achieved the Non Solar & Solar RPO for FY 2018-19.

3.4. UREDA submitted that all the obligated entities are required to submit a copy of RECs purchased to State Nodal Agency, i.e. UREDA. However, UPCL did not submit the details of RECs to UREDA.

The Petitioner vide its rejoinder submitted that it will provide the copies of RECs purchased in FY 2018-19 shortly.

- 3.5. UREDA submitted that UPCL had filed the present Petition under provisions of Regulation 7.2 of RPO Compliance Regulations, 2010 and had requested the Commission to carry forward its surplus Non-Solar RPO of 139.00 MU in FY 2018-19 to FY 2019-20. However, Regulation 7.2 of the RPO Compliance Regulations, 2010 provides for carry forwarding the deficit compliance requirement due to non-availability of certificates whereas UPCL has proposed to carry forward its surplus Non-Solar RPO in ensuing year which is contrary to the RPO Compliance Regulations, 2010.

The Petitioner vide rejoinder submitted that it has filed the carry forward in the sense that this additional Non-Solar RPO be allowed to be added in the RPO of FY 2019-20. UPCL has not quoted any specific provisions for filing the instant Petition, however, it submitted that the same may be considered to be filed under Regulation 17.1 and 18 of RPO Compliance Regulations, 2010 and the Commission may grant any other relief in the matter as it deems fit.

- 3.6. The Respondent submitted that the RPO as stipulated by the Commission is the minimum quantum of electricity to be purchased by obligated entities from renewable energy sources. Obligated Entities can purchase the electricity over and above the RPO stipulated by the Commission in order to increase the share of green energy and thus in reduction of Green House Gases emission into the atmosphere. Thus, the request of UPCL for carry forwarding its surplus Non-Solar RPO to FY 2019-20 should not be permitted.

The Petitioner vide its rejoinder submitted that due to pre planning of purchase of Non-Solar Power and simultaneous purchase of RECs as per the directions given by the Commission vide Order dated 06.08.2018, UPCL has become surplus in Non-Solar RPO. Further, this has a huge cost implication of around Rs. 68.00 Crore (considering rate of power as Rs. 4.74/kWh) and accordingly, the surplus Non-Solar power should be allowed to be carry forwarded.

#### **4. Commission's Analysis and view**

- 4.1. The Commission conducted a hearing on the merits of the Petition on 03.09.2019. Both the parties reiterated their submissions before the Commission. The Commission heard both the parties and carefully considered their written submissions. Further, the Commission vide

Order dated 03.09.2019 directed the Petitioner to submit the RPO compliance for FY 2018-19 and the projection of RPO compliance for FY 2019-20. In compliance to the directions issued by the Commission, the Petitioner vide letter dated 11.09.2019 submitted the details of RPO and sought time for submission of additional information which was submitted vide letter dated 25.09.2016. After examining the relevant material available on records, issues raised by the Petitioner have been dealt in the subsequent paragraphs of this Order.

- 4.2. The Petitioner has approached the Commission seeking carry forward of surplus of 139 MUs (Non-Solar) RPO for FY 2018-19 to next financial year, i.e. FY 2019-20 in accordance with the Regulation 17.1 and Regulation 18 of RPO Compliance Regulations, 2010.
- 4.3. The Commission vide its Order dated 03.09.2019 directed the Petitioner to submit the RPO compliance for FY 2018-19 and the projection of RPO compliance for FY 2019-20. The Petitioner vide letter dated 11.09.2019 submitted the RPO statement for FY 2018-19 and FY 2019-20 in compliance to the Commission's direction which is as follows:

S. No.	Particulars	FY 2018-19	FY 2019-20
1	Renewable Purchase Obligation - Non-Solar	10.25%	10.25%
2	Renewable Purchase Obligation - Solar	6.75%	7.25%
3	Total Energy (in MU)	13831.33	14663.31
4	Total Hydro Energy	7342.78	7342.78
5	Energy Excluding Hydro	6488.55	7320.53
6	<b>RPO Target (Non-Solar)</b>	<b>665.08</b>	<b>750.35</b>
7	<b>RPO Target (Solar)</b>	<b>437.98</b>	<b>530.74</b>
	<b>RE Energy Purchased (Non-Solar)</b>		
	At Preferential tariff	660.75	660.75
	Open Tender	192.92	153.24
	Carry Forward	0.00	139.00
	<b>Total RE Energy purchased</b>	<b>853.67</b>	<b>952.99</b>
	<b>RE Energy Purchased (Solar)</b>		
	At Preferential tariff	368.38	368.38
	Through carry forward/RECs	20.00	0.00
	<b>Total RE Energy purchased</b>	<b>388.38</b>	<b>368.38</b>
10	Energy deficit for achieving RPO (Non-solar)	-188.59	-202.64
11	Energy deficit for achieving RPO (Solar)	49.60	162.36
12	15% of Solar RPO to be met by Non-Solar RPO	65.70	79.61
13	<b>Net Non-Solar RPO after adjusting 15% Solar RPO</b>	<b>-139.00</b>	<b>-123.02</b>
14	<b>Net Solar RPO after adjusting 15% Solar RPO</b>	<b>0.00</b>	<b>82.75</b>

From the aforesaid table, the Commission observed that the Petitioner has considered 15% of the surplus Non-Solar RPO to meet the deficit of Solar RPO. With regard to setting off the surplus Non-Solar RPO with deficit of Solar RPO or vis-à-vis, Regulation 9 of RE Regulations, 2018 specifies as follows:

*“9. Minimum Quantum of electricity to be purchased by distribution licensee from ‘non-fossil fuel based co-generation and generation of electricity from renewable energy sources’*

(1) Xxx

...

*Provided that on achievement of Solar RPO compliance to the extent of 85% and above, remaining shortfall if any, can be met by excess Non-Solar energy purchased beyond specified Non-Solar RPO for that particular year;*

*Provided further that on achievement of Non-Solar RPO compliance to the extent of 85% and above, remaining shortfall if an, can be met by excess Solar energy purchased beyond specified Non-Solar RPO for that particular year.”*

**From the above-mentioned Regulation, it is explicitly clear that shortfall in Solar RPO compliance can be met by excess Non-Solar RPO only on the achievement of Solar RPO compliance to the extent of 85% and above, whereas as per projections submitted by the Petitioner for FY 2019-20, Solar RPO compliance would be 69.41% only. Hence, the Petitioner shall not be allowed to meet the deficit of Solar RPO with the surplus Non-Solar RPO since the projection of achievement of Solar RPO compliance is below 85%. The Commission advises the Petitioner to procure the power from solar energy sources or Solar RECs atleast upto 85% of the total energy consumption excluding hydro and only after meeting the same adjust the surplus Non-Solar RPO with the deficit of Solar RPO.**

- 4.4. Further, as discussed under the head of ‘Background’, regarding procurement of surplus Non-Solar RPO due to the direction of the Commission vide Order dated 06.08.2018 to meet the shortfall of Solar and Non-Solar RPO by purchasing RECs, the Petitioner vide its submission dated 25.09.2019 stated that there was a RPO deficit till FY 2018-19 including the deficit of FY 2017-18 which was planned to be met through purchase of renewable energy instead of RECs and accordingly, it had floated a tender for procurement of Non-Solar Renewable Energy in the month of April, 2018 to meet its deficit of FY 2017-18. Further, UPCL was in the process of approaching the Commission for seeking carrying forward of unmet RPO but it cannot file the same because in order to file the Petition, seeking carrying forward, exact quantity of unmet RPO for FY 2017-18 was required for which actual annual electricity consumption and actual renewable energy purchased through preferential tariff were required for FY 2017-18 and both information could not be calculated at the end of March, 2018 as after the receipt of bills from generators, in the following consumption month, it takes 45 to 60 days time period to process

and record the details. Meanwhile the Commission initiated suo-moto proceedings for non-compliance of meeting RPO for FY 2017-18.

In the matter of carry forward of Solar RPO and Non-Solar RPO, Regulation 7.2 of RPO Compliance Regulations, 2010 specifies as follows:

***“7.0 Effect of Default***

7.1 XXX

7.2 *Where any obligated entity fails to comply with the obligation to purchase the required percentage of power from renewable energy sources or the renewable energy certificates, it shall also be liable for penalty as may be decided by the Commission under section 142 of the Act notwithstanding its liability for any other action under prevailing laws:*

***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:***

*Provided that where the Commission has consented to the carry forward of compliance requirement, the provision of Regulation 7.1 above or the provision of Section 142 of the Act shall not be invoked.”*

***(Emphasis Added)***

Here, it is worth mentioning that the renewable purchase obligation of a financial year should be met by the end of that financial year. In case of any difficulty in complying with the renewable purchase obligation, the obligated entity can approach the Commission for carry forward of compliance requirement to the next year. However, in the present case, the Commission observed that without any prior approval of the Commission, the Petitioner had planned to procure the renewable energy to meet its RPO deficit for FY 2017-18 in FY 2018-19. The Commission agrees that the actual quantum of energy consumption and actual renewable energy purchased through preferential tariff was required, however, it also cannot be denied that the Petitioner never raised such issue during the suo-moto proceedings initiated by the Commission for non-compliance in meeting RPO for FY 2017-18. Besides, during the proceedings, UPCL also could not argue its case properly before the Commission that it would be having surplus non-solar RPO compliances if RECs are purchased by it. It would have approached the Commission by way of review Petition seeking amendment in the Order of the Commission by bringing the aforesaid fact before the Commission. However, it did not

take any such action. Further, it is to be noted that it was amply clear to the Petitioner that it had failed in complying with the RPO Compliance Regulations, 2010 and the Petitioner should have intimated the Commission by April, 2018 regarding expected non-compliance of renewable purchase obligation. In the matter, the Commission expresses its displeasure in the casual approach adopted by the Petitioner as discussed above and cautions licensee to follow the laid down principles and procedures and timelines while dealing such matters in future.

Further, with regard to non-compliance of Solar and Non-Solar RPO because of delay in ascertaining the actual consumption based on the invoices is concerned, the Commission vide Para 1.11.4 of Statement of Reasons to RE Regulations, 2018 has dealt with such issues. As per SOR the distribution licensee shall estimate the RPO shortfall for solar as well as non-solar for the month of March and deposit the amount to be utilized for the purchase of RECs in the month of March in a separate RPO Fund in accordance with the Regulation 7.1 of RPO Compliance Regulations, 2010. The relevant extract of the Para 1.11.4 of the Statement of Reasons to RE Regulations, 2018 is as follows:

*“It is observed from the aforesaid Regulation that in case of any shortfall in RPO, the Obligated Entity may be directed to deposit into a separate RPO Fund such amount as the Commission may determine on the basis of shortfall in the units of RPO and such fund shall be utilised for purchase of the RECs or as directed by the Commission. Accordingly, the Commission is of the view that the distribution licensee shall estimate the RPO shortfall for both solar and non-solar for the month of March of the financial year based on the estimated consumption for the month of March and also the compliance made by it for both solar as well as non-solar RPO till February for a particular financial year. Based on such estimates for March, distribution licensee shall deposit the amount to be utilised for the purchase of RECs in the month of March in a separate RPO Fund in accordance with the aforesaid Regulation and intimate the Commission within seven days from the deposit of such amount into a separate RPO Fund which shall be utilised for meeting the shortfall in solar as well as non-solar RPO through purchase of RECs only. This is necessitated so that the distribution licensee is able to meet its RPO compliances for the financial year and does not land in a situation wherein due to incorrect estimates it purchases RECs more than what is warranted for which no benefit is available to it. However, it has to be ensured by the distribution licensee that all the RPO compliances till the end of February are met by it by way of purchase of RE power as well as RECs before the end of March of that financial year. Further, the Commission is of the view that the distribution licensee should finalise the energy accounts for a financial year by the end of subsequent month. Accordingly, the distribution licensee shall utilise the money lying in RPO Fund for the purchase of RECs only to meet its renewable purchase obligation by the end of May*



*of the ensuing financial year. Further, in case any amount remains unutilised in the RPO Fund after purchasing the said RECs, such amount shall be utilised for the purchase of RECs for the subsequent year to meet its RPO."*

Accordingly, the Petitioner is directed to estimate the RPO shortfall of both solar and non-solar for the month of March and deposit the amount to be utilized for the purchase of RECs in the month of March in a separate RPO Fund. By this way the Petitioner shall be able to meet its RPO compliance for the financial year and does not land in a situation wherein due to incorrect estimates it purchases RECs more than what is warranted for which no benefit is available to it. Further, the time taken of 45 to 60 days to process and record the details from the receipt of bills from generators should not be a recurring excuse and steps should be taken to ensure that all the correct data is collected and recorded within one month from the close of each financial year.

- 4.5. During the hearing, the Respondent (UREDA) has raised the issue that the Petitioner does not submit quarterly as well as annual RPO statement alongwith the RECs, if any, within the specified time period. In the matter, the Commission in its previous Orders had expressed its concerns in the matter and had directed UPCL to ensure compliance of the Regulations in this regard. The Commission once again directs the Petitioner to submit the quarterly and yearly RPO statement alongwith the RECs to the Respondent and a copy to the Commission within time bound manner failing which action may be initiated against the errant officials.
- 4.6. As far as carry forward of surplus Non-Solar RPO is concerned, first proviso of Regulation 7.2 of RPO Compliance Regulations, 2010 provides carry forward only for the deficit of RPO. It is worth mentioning that the Petitioner had floated tenders for procurement of renewable energy in the month of February, 2018 in compliance to the Commission's directions and RPO Compliance Regulations, 2010 to meet the deficit of RPO till FY 2017-18. However, renewable energy could not be procured because the rates quoted by the bidders were Rs. 4.99/kWh which were higher than the limit of Rs. 4.75/kWh fixed by the Commission. Subsequently, the Petitioner once again floated tender for purchase of renewable energy in the month of April, 2018 and executed PPA with the successful bidders to meet the deficit of Non-Solar RPO for FY 2017-18 and RPO for FY 2018-19.

Further, as discussed under Para 3.6 of this Order, the Respondent (UREDA) has requested the Commission not to allow carry forward of surplus RPO because RPO as

stipulated by the Commission is the minimum quantum of electricity to be purchased by Obligated Entities from renewable energy sources. This matter was also raised by the Respondent during the hearing as well. In reply, the Petitioner reiterated its submission that surplus RPO has a huge cost implication of around Rs. 68.00 Crore and requested the Commission to allow one time carry forward of Surplus RPO to which the Respondent also agreed.

In the matter, as discussed above, Regulation 7.2 of RPO Compliance Regulations, 2010 specifies only for the approval of carry forward of deficit RPO. However, Regulation 18 of the RPO Compliance Regulations, 2010, specifies that nothing in the regulations bars the Commission from adopting a procedure in conformity with the provisions of the Act, for special circumstances. The Regulation 18 of the RPO Compliance Regulations specifies as follows:

*“18.0 Miscellaneous:*

*18.1 XXX*

*18.2 Nothing in these regulations shall bar the Commission from adopting a procedure in conformity with the provisions of the Act, which is at variance with any of the provisions of these regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient to deal with such matter or class of matters.”*

Based on the above discussion and taking cognizance of the fact that the Petitioner had floated tenders for the procurement of renewable energy to comply with the RPO Compliance Regulations, 2010 in order to meet the deficit of Solar and Non-Solar RPO upto March, 2018 and subsequently, it had to purchase RECs to meet out the deficit of Solar and Non-Solar RPO upto March, 2018 in compliance to the Commission’s Order dated 06.08.2018 resulting in surplus of Non-Solar RPO, the Commission, considering the present situation as exceptional circumstances and therefore, invoking the provisions of Regulation 18 of the RPO Compliance Regulations, 2010 allows the Petitioner to carry forward of the surplus Non-Solar RPO of FY 2018-19 to FY 2019-20 to meet the deficit of Non-Solar and Solar RPO, as the case may be, in accordance with the provisions of Regulation 9 of RE Regulations, 2018 as a standalone case and such allowance will not be permitted in future. The Commission feels that not allowing the same will have substantial financial implications not only on the Petitioner (UPCL) but in

consumer tariffs as well. However, UPCL is advised to properly plan as to how it would meet its solar and non-solar RPO judiciously well in advance so that such situation can be averted and in future no such carry forward will be allowed and the additional cost incident upon UPCL due to its such inactions will also not be allowed as pass through in tariffs.

4.7. Ordered accordingly.

**(M.K. Jain)**  
**Member (Technical)**

**(D.P. Gairola)**  
**Member (Law)**