

**Before**

# **UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**Petition No. 18 of 2021**

**In the matter of:**

Petition for seeking carry forward of estimated surplus of 320.62 MU (Non-Solar) and estimated deficit of 110.28 MU (Solar) Renewable Purchase Obligation of FY 2020-21 as per the provisions of UERC (Compliance of Renewable Purchase Obligation) Regulation, 2010.

**In the matter of:**

Uttarakhand Power Corporation Ltd. (UPCL) ... Petitioner

**AND**

**In the matter of:**

Uttarakhand Renewable Energy Development Agency ... Respondent

**CORAM**

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

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

**Date of Hearing: March 09, 2021**

**Date of Order: March 17, 2021**

This Order relates to the Petition dated 25.02.2021 filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "Petitioner") seeking carry forward of expected surplus Renewable Purchase Obligation (RPO) of 320.62.00 MUs (Non-Solar) and expected deficit of 110.28 MUs (Solar) in FY 2020-21 to FY 2021-22 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 09.10.2019 on standalone basis had allowed carry forward of surplus RPO of Non-Solar for FY 2018-19 to FY 2019-20 as per the provisions of RPO

Compliance Regulations, 2010 and had also advised UPCL 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.

- 1.2. Subsequently, the Petitioner vide its letter dated 24.12.2019 requested the Commission to either allow carry forward of the surplus of Non-Solar RPO for FY 2019-20 to FY 2020-21 or pass on the actual cost incurred on the purchase of Non-Solar power over & above the RPO targets or, to sell Non-Solar RECs for the surplus Non-Solar renewable energy procured over and above its Non-Solar RPO targets for FY 2019-20.

The Commission vide its letter dated 21.01.2020 considering the situation at that time and financial impact of the cost of excess Non-Solar renewable power procured on the consumer of the State, invoked the provisions of Regulation 18 of RPO Compliance Regulations, 2010 and allowed UPCL to sell RECs for the surplus Non-Solar renewable energy procured over and above the Non-Solar targets for FY 2019-20 in accordance with provisions of RPO Compliance Regulations, 2010.

- 1.3. Accordingly, UPCL vide its letter dated 03.09.2020 requested the Commission to provide duly signed format as required in accordance with the provisions of Central Commission for the issuance of RE certificates which was issued by the Commission on 10.09.2020 to UPCL.
- 1.4. Subsequently, the Petitioner vide its letter dated 04.06.2020, in compliance to Regulation 5.1 of RPO Compliance Regulations, 2010 submitted the details of the estimated quantum of purchase from renewable energy sources for FY 2020-21.

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

- 2.1. In the present Petition, the Petitioner submitted that it has already fulfilled its renewable purchase obligation upto FY 2019-20 and the Commission has already allowed UPCL to sell the excess Non-Solar power through REC mode for FY 2019-20.
- 2.2. The Petitioner submitted that UPCL in the past had projected the demand for FY 2020-21 and, accordingly, had planned for complying with the renewable purchase obligation as per RPO Compliance Regulations, 2010 and RE Regulations, 2018. However, due to COVID-19 pandemic the demand during the year got drastically reduced and the commissioning of the upcoming

solar plants also got delayed. With revised situation and considering actual data upto December 2020, UPCL submitted its estimated demand and the RPO requirement for FY 2020-21 which is as follows:

**Status of Renewable Purchase Obligation**

Particulars	Units in MUs
Total Electricity Purchase	13265.70
Total Hydro Energy purchase	7636.43
Energy Excluding Hydro Energy (A)	5629.27
Obligation Non-Solar (B) = (10.25% of (A))	577.00
Obligation Solar (C) = (8.75 % of (A))	492.56
RE Purchase (Non-Solar) at Preferential Tariff for FY 2020-21 (i)	743.13
RE Purchase (Non-Solar) through Tender (ii)	154.49
<b>Total RE Purchase (Non-Solar) for FY 2020-21 (i+ii)</b>	<b>897.62</b>
RE Purchase (Solar) at Preferential Tariff for FY 2020-21 (a)	382.28
<b>Total RE Purchase (Solar) for FY 2020-21 (a)</b>	<b>382.28</b>
Surplus (-)/Deficit (+) (Non-Solar) (B)-(i+ii)	-320.62
Surplus (-)/Deficit (+) (Solar) (C)-(a)	110.28

- 2.3. The Petitioner submitted that as per the revised projections and subsequent calculations of RPO, Non-Solar and Solar RPO requirement for FY 2020-21 would be 577.00 MUs and 492.56 MUs respectively against which it would be able to achieve Non-Solar RPO to the tune of 897.62 MUs and Solar RPO to the extent of 382.28 MUs in FY 2020-21. Hence, the Petitioner submitted that there will be a surplus in Non-Solar RPO to the tune of approximately 320.62 MUs and deficit of 110.28 MUs in case of Solar RPO.
- 2.4. The Petitioner submitted that the second proviso of Regulation 9(1) of RE Regulations, 2018 provides 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. The Petitioner also submitted that as per the estimation for FY 2020-21, UPCL is expected to achieve approximately 78% of solar RPO target and various PPAs to the tune of 200 MW have recently been signed by UPCL and the same were scheduled to be commissioned by March, 2021. However, many plants are yet to be commissioned causing shortfall in generation of solar energy which eventually lead to shortfall in Solar RPO for FY 2020-21. The Petitioner also submitted that it is in process of signing PPAs to the tune of 250 MW against recently launched Mukhyamantri Swarozgar Yojna Scheme and the same are expected to be commissioned by March, 2022.
- 2.5. The Petitioner submitted that inspite of proper planning and tying up of appropriate capacity

for fulfilling the Solar RPO, UPCL is falling short in achieving Solar RPO. The unprecedented COVID-19 pandemic and consequent nation-wide lockdown had caused serious delays in the upcoming solar projects.

- 2.6. In view of the force majeure situation occurred due to COVID-19 pandemic, the Petitioner requested the Commission to relax the condition that only 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 and allow it to compensate the total Solar RPO shortfall from the surplus of Non-Solar RPO. The said allowance will also safeguard consumers of the State from any additional burden, especially when the said pandemic has already stressed the economic comfort of common people, that could be imposed on them in case Solar RE certificates are purchased to fulfil the Solar RPO shortfall.
- 2.7. The Petitioner further requested the Commission to allow the carry forward of surplus Non-Solar RPO, i.e. 210 MUs after adjustment of shortfall in solar RPO, for the next financial year. The Petitioner submitted that the said request is important considering that UPCL has purchased Non-Solar RE power to the tune of 154.49 MU in FY 2020-21 just to fulfil its Non-Solar RPO requirement.

### **3. Respondent's replies**

- 3.1. The Commission forwarded the copy of the Petition to the Respondent, i.e. UREDA, for its comments, if any, in the matter. UREDA vide its letter dated 08.03.2021 submitted its reply to the Commission which has been dealt in the subsequent paragraphs of this Order.
- 3.2. The Respondent submitted that UPCL as an obligated entity is required to submit its final yearly RPO statement to UREDA within one month of close of that year. Further, UPCL has not submitted its RPO statement to UREDA for FY 2020-21 and shall be required to submit the same by April, 2021.
- 3.3. The Respondent submitted that the Petitioner vide its Petition has requested the Commission to allow for the adjustment of shortfall in Solar RPO from the surplus Non-Solar RPO for FY 2020-21 and then allow to carry forward the net surplus of Non-Solar RPO of FY 2020-21 to FY 2021-22.
- 3.4. The Respondent submitted that the Petitioner could be allowed to meet the 15 % shortfall from

excess non-solar energy purchased by UPCL beyond the specified non-solar RPO target. The remaining deficit/shortfall of Solar RPO, i.e. difference between allowed 85 % and actual achieved, could be carry forwarded to next FY 2021-22. Accordingly, the Petitioner may be allowed to take benefits of Renewable Energy Certificates on the net surplus Non-Solar RE.

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

- 4.1. The present Petition has been filed by UPCL under provisions of Regulation 7.1, 7.2 & 17 of RPO Compliance Regulations, 2010 and Regulation 9 & 52 of RE Regulations, 2018 seeking adjustment of shortfall in Solar RPO, i.e. 110.28 MUs, from the surplus Non-Solar RPO, i.e. 320.62 MUs for FY 2020-21 and also allow the carry forward of expected net surplus of Non-Solar RPO of 110 MUs for FY 2020-21 to next financial year, i.e. FY 2021-22, to meet the deficit of Non-Solar RPO for FY 2021-22, if any.
- 4.2. The Commission conducted a hearing on the merits of the Petition on 09.03.2021. Both the parties reiterated their submissions before the Commission. The Commission heard both the parties and carefully considered their written submissions. After examining the relevant material available on records, issues raised by the Petitioner have been dealt in the subsequent paragraphs of this Order.
- 4.3. The Commission observed that to meet the Non-Solar RPO for FY 2020-21, the Petitioner had floated a tender for procurement of non-solar RE power on short term basis through DEEP portal for FY 2020-21 wherein technical bids were opened on 24.02.2020 and after Initial Price Opening (IPO) and conducting e-Reverse Auction on 25.02.2020, M/s Bhilangana Hydro Power Ltd. was selected as successful bidder. Thereafter, the Petitioner filed a Petition on 01.06.2020 before the Commission seeking prior approval of the Commission on the draft Power Purchase Agreement for procuring Non-Solar RE Energy on short term basis.
- 4.4. Subsequently, the Petitioner vide its letter dated 04.06.2020, in compliance to Regulation 5.1 of RPO Compliance Regulations, 2010 submitted the details of the estimated quantum of purchase from renewable energy sources for FY 2020-21 wherein the Petitioner had considered the non-solar energy procurement of 600 MUs from firm sources (preferential tariff) and 154.49 MUs non-solar RE power procurement through Open tender. Further, in case of Solar RPO, the Petitioner had projected procurement of solar energy of 522.46 MUs from firm sources (preferential tariff) and 136.11 from RECs for FY 2020-21.

4.5. In the matter, the Commission observed that the Petitioner had projected non-solar RE purchase under preferential tariff of 600 MUs for FY 2020-21 which was substantially lower than Non-Solar RE purchased through preferential tariff for FY 2019-20, i.e. 707.88 MUs. Accordingly, the Commission directed the Petitioner to submit the reasons for estimating sudden downfall in the Non-Solar RPO for FY 2020-21. In reply, the Petitioner vide letter dated 06.08.2020 submitted the revised details of expected RPO for FY 2020-21. Details of the expected RPO status submitted by the Petitioner vide different letters and through present Petition for FY 2020-21 is as follows:

Particulars	Projection-1 submitted vide letter dated 09.06.2020	Projection-2 submitted vide letter dated 06.08.2020	Projection-3 submitted in the Present Petition
Renewable Purchase Obligation - Non-solar	10.25%	10.25%	10.25%
Renewable Purchase Obligation - Solar	8.75%	8.75%	8.75%
Total Energy (In MUs)	14808.00	14808.00	13265.70
Total Hydro Energy	7281.54	7281.54	7636.43
Total Energy Excluding Hydro (MUs)	7526.46	7526.46	5629.27
<b>RPO Target (Non-Solar) (A)</b>	<b>771</b>	<b>771</b>	<b>577</b>
<b>RPO Target (Solar) (B)</b>	<b>659</b>	<b>659</b>	<b>493</b>
<b>RE Energy Purchased (Non-Solar)</b>			
Through Preferential	600.00	710.00	743.13
Open Tender	154.49	154.49	154.49
Through REC's	16.97	0.00	0.00
Carry forward	0.00	0.00	0.00
<b>Total RE Energy purchased (C)</b>	<b>771.46</b>	<b>864.49</b>	<b>897.62</b>
<b>RPO compliance met for Non- Solar in %</b>	<b>100.00%</b>	<b>112.06%</b>	<b>155.57%</b>
<b>RE Energy Purchased (Solar)</b>			
Through Preferential	522.46	371.77	382.28
Through REC's	136.11	286.80	0.00
<b>Total RE Energy purchased (D)</b>	<b>658.57</b>	<b>658.57</b>	<b>382.28</b>
<b>RPO compliance met for Solar in %</b>	<b>100.00%</b>	<b>100.00%</b>	<b>77.61%</b>
<b>(Deficit)/Surplus</b>			
<b>Energy (deficit)/surplus for achieving RPO (Solar) (B)-(D)</b>	<b>0.00</b>	<b>0.00</b>	<b>(110.28)</b>
<b>Energy (deficit)/surplus for achieving RPO (Non-solar) (A)-(C)</b>	<b>0.00</b>	<b>93.03</b>	<b>320.62</b>

4.6. The Commission observed that during the month of June, 2020 the Petitioner had projected the total energy requirement of 14808 MUs which had drastically reduced to 13265 MUs due to COVID pandemic and countrywide lockdown.

4.7. As mentioned under Paragraph 4.1 of this Order, in the present Petition, one of the requests of the Petitioner regarding allowance of adjustment of shortfall in solar RPO from the surplus non-solar RPO for FY 2020-21. In this regard, Regulation 9 of RE Regulations 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 2020-21, Solar RPO compliance would be 77.61% only. Further, it can also not be denied that due to COVID-19 pandemic and nation-wise lockdown the commissioning of solar projects has delayed which were proposed to be commissioned during FY 2020-21 resulting in shortfall in Solar RPO. Furthermore, Government of India vide its Office Memorandum dated 09.03.2021 stated that the State Commissions should not levy any penalty on distribution licensees for such shortfall in RE power procurement due to extension deferment of schedule commissioning of RE capacity already tied up by distribution licensees.

The Commission also noticed that UPCL had floated tender for purchase of non-solar RPO to meet its obligations towards renewable purchase, however, due to decline in demand because of COVID pandemic, it is in surplus of non-solar RPO.

4.8. Accordingly, based on the above discussion, considering the extra-ordinary situation which arose due to Covid Pandemic, the Commission decides to invoke Regulation 18 of the RPO Compliance Regulations, 2010, which 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 relevant provision of the said regulation is 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.”*

**Accordingly, in view of the force majeure situation which has occurred due to COVID pandemic resulting into delay in commissioning of solar power plants, the Commission allows the Petitioner to adjust the shortfall in solar RPO from the surplus non-solar RPO for FY 2020-21 irrespective of actual percentage of achievement of solar RPO and the net non-solar RPO surplus available after said adjustment shall be traded in the form of REC’s.**

- 4.9. Further, as far as carry forward of net surplus of Non-Solar renewable energy procured during FY 2020-21 to FY 2021-22 is concerned, it is worth mentioning that the Commission vide its Order dated 09.10.2019 had advised the Petitioner 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. In the matter, the Commission observed that initially on 09.06.2020, the Petitioner projected the non-solar renewable energy procurement of 600 MUs for FY 2020-21 from the firm sources (preferential tariff) against the actuals of 707.88 MUs for FY 2019-20 resulting into floating of tender for procurement of Non-Solar renewable energy of 154.49 MUs on short term basis. However, in actual Non-Solar energy procured from firm sources (preferential tariff) was 743.13 MUs which is 143.13 MUs more than what the Petitioner had projected initially for FY 2020-21. Procurement of Non-Solar renewable energy by floating tender on short term basis would not be required for aforesaid quantum if the concerned officers of the Petitioner would have projected the renewable energy procurement judiciously based on the past data.
- 4.10. Moreover, the Commission, on the request of UPCL to sell RECs for surplus RPO, had vide its letter dated 21.01.2020, already decided that UPCL shall get Non-Solar RECs issued and sell thereof for the surplus Non-Solar renewable energy procured over and above the Non-Solar RPO target in accordance with the provisions of RPO Compliance Regulations, 2010. Further, UPCL did not submit any justification for not complying with the aforesaid decision. Moreover, the function of the Commission is to promote development of RE energy for which RPO Regulations have also been specified. Therefore, based on the above discussion, the

Commission decides to reject the request of the Petitioner for allowing carry forward of net surplus of Non-Solar renewable energy procured during FY 2020-21 to FY 2021-22 and setting it off against the RPO requirement of that year and directs UPCL to get RECs issued and sell thereof in power exchange for the net surplus Non-Solar renewable energy after adjustment against the shortfall of Solar RPO of FY 2020-21. Further, the Commission directs the Petitioner to properly plan as to how it would meet its Solar and Non-Solar RPO judiciously well in advance taking cognizance of procurement of renewable energy from existing & upcoming firm sources through preferential tariff as well as through tendering process so that such situation does not arise again in future.

4.11. Furthermore, it is pertinent to mention that during the hearing in the matter, the Commission sought the progress in issuance of RE certificates from NLDC and selling of the same in power exchange. In reply, the Petitioner submitted that UPCL is under process of procuring RE certificates. In the matter, the Commission observed that on the request of the Petitioner it had allowed UPCL to sell Non-Solar RECs for the surplus Non-Solar renewable energy procured over and above the Non-Solar RPO targets in accordance with the provisions of RPO Compliance Regulations, 2010. It is pertinent to mention here that the Petitioner vide letter dated 03.09.2020, i.e. almost after 7 months, approached the Commission requesting for certification of information in the prescribed format, in response to which the Commission issued the same on 10.09.2020. However, UPCL once again, after almost 4 months of the Commission's letter dated 10.09.2020, vide its letter dated 08.01.2021 requested the Commission to certify the information pertaining to procurement of renewable energy under RPO for the last four year in the prescribed format.

In the matter, the Commission is of the view that since the Petitioner was not able to get the RECs issued from NLDC for FY 2019-20 and which is unlikely to materialise during FY 2020-21, the Commission will take appropriate view on the cost of surplus non-solar RPO during the subsequent true up proceedings for FY 2020-21 as the inefficiency of the Petitioner company in invoking the provisions of the CERC Regulations cannot be passed on to the consumers of the State. The Commission also cautions the Petitioner to expedite the procedure for issuance of RECs from NDLC for FY 2019-20 and FY 2020-21 and selling of the same in power exchange failing which action may be taken against the delinquent officers of the Petitioner company. The Petitioner is also directed to submit the monthly status of efforts taken to sell the REC's equivalent to the

surplus non-solar RPO for FY 2019-20 and FY 2020-21 latest by first fortnight of every ensuing month.

4.12. Ordered accordingly.

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

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