

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Suo-moto proceedings initiated by the Commission for non-compliance by UPCL of UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2010 & UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 and non-compliance of directions issued vide the Commission's Order dated September 11, 2013.

AND

In the matter of:

Uttarakhand Power Corporation Ltd. ... Respondent

AND

Uttarakhand Renewable Energy Development Agency ... Respondent

CORAM

Shri Jag Mohan Lal Chairman

Shri C.S. Sharma Member

Shri K.P. Singh Member

Date of Hearing: January 08, 2014

Date of Order: January 22, 2014

This Order relates to the suo-moto proceedings initiated by the Commission for non-compliance by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "Respondent" or "licensee") of UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations,

2010 (hereinafter referred to as "RE Regulations, 2010") and UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 (hereinafter referred to as "RPO Regulations, 2010") and non-compliance of directions issued vide the Commission's Order dated September 11, 2013.

1. Background

- 1.1. The Commission had issued an Order dated December 19, 2012 wherein, UPCL was directed to carry forward the unmet RPO for FY 2011-12 for both solar as well non-solar sources to 2012-13 which were to be met alongwith the RPO for FY 2012-13.
- 1.2. UPCL vide its representation dated March 28, 2013 submitted that due to less development of RE generators in the State, power to be procured from these sources during FY 2012-13 would be less than the targets fixed by the Commission. UPCL again vide its letter dated May 03, 2013 submitted that due to its poor financial condition it was not in a position to buy RECs. Further, UPCL submitted the details of RPO for FY 2012-13 including carry forward RPO of FY 2011-12 and requested the Commission to reduce the RPO of UPCL to the level of actual obligation met from non-solar & solar sources or to allow it carry forward of unmet RPO of FY 2012-13 to ensuing year.
- 1.3. The Commission initiated suo-moto proceedings and issued an Order dated September 11, 2013 vide which UPCL was directed to procure RECs for unmet RPO of 59.12 MUs of non-solar sources for FY 2011-12 within 2 months, i.e. by November 15, 2013 failing which UPCL would be liable for appropriate action u/s 142 of Electricity Act, 2003. The financial implication of the same was estimated to be around Rs 8.87 Crore which was to be met by UPCL out of the surplus of Rs 13.94 Crore allowed to it over and above its ARR for FY 2013-14 in the Tariff Order dated May 06, 2013. In the Order dated September 11, 2013, UPCL was also allowed to carry forward the unmet RPO of FY 2012-13 for both solar as well as non-solar sources to FY 2013-14 which was to be met with its obligation for FY 2013-14 by March 31, 2014 failure of which may attract action against it under Section 142 of the Electricity Act, 2003.

- 1.4. Through the said Order, the Commission also expressed its displeasure on the conflicting information filed by UPCL before the Commission and with the State Agency and also for not submitting the Statement in the prescribed formats to UREDA within the stipulated time frames. UPCL was also 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. In response to this, UPCL vide letter dated September 27, 2013, submitted its reply in the matter. It was observed that the reply submitted by UPCL had no correlation with the directions issued by the Commission vide its said Order dated September 11, 2013. Since the reply submitted by UPCL was not in order with the directions issued by the Commission, a hearing was held on January 08, 2014 which was attended by the State Agency and the Director (F), UPCL on behalf of UPCL.
- 1.6. During the hearing the Commission asked UPCL to explain reasons for not complying with directions of the Commission issued vide Order dated September 11, 2013. In this regard, Director (F), UPCL submitted that owing to its poor financial health it could not procure non-solar RECs as directed by the Commission. Director (F), UPCL was asked to submit whether the action of UPCL be construed as non-compliance to which he admitted. UPCL was also asked whether it had sought any review of the Commission's Order dated September 11, 2013. In response to this, UPCL submitted that the Company vide its letter dated November 13, 2013 had requested the Commission to allow purchase of the requisite RECs by March 31, 2014. The Commission clarified that review of the Order cannot be allowed on a request received in the form of a letter. It is also noted that the procurement of RECs was ordered to be completed by November 15, 2013 and two days before that a simple communication requesting further time was made by the Respondent Company.

1.7. UREDA, the State Agency during hearing informed that requisite information in the prescribed formats has now been received from UPCL subsequent to the issue of the Order dated September 11, 2013.

2. Commission's views and decision

2.1. The Commission vide its Order dated September 11, 2013 had issued the following directions to UPCL:

- a. To procure RECs for unmet RPO of 59.12 MUs of non-solar sources for FY 2011-12 within 2 months, i.e. by November 15, 2013.
- b. To carry forward the unmet RPO of FY 2012-13 for both solar as well as non-solar sources to FY 2013-14 which was to be met with its obligation for FY 2013-14 by March 31, 2014.
- c. 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.

2.2. UPCL in its reply submitted that the Commission vide its Order dated September 11, 2013 had allowed it the carry forward of unmet RPO of FY 2012-13 (including the unmet RPO of FY 2011-12) for both solar as well as non-solar sources in FY 2013-14, hence, no action under Section 142 of the Act should be initiated against it. UPCL also submitted that the failure in submitting the information in the manner and within time frame specified in the Regulations & Formats prescribed in the Procedure to the State Agency was due to the unawareness of its staff entrusted with the work. UPCL also informed that the staff has now been directed to work strictly as per the provisions of the law and prescribed procedures.

2.3. The Commission observes that UPCL has been time and again making repeated non-compliance of the directions issued to it under the Act & Regulations inspite of the fact that numerous opportunities has been provided to it to mend its affairs. The Commission vide its Order dated December 19, 2012 had allowed UPCL the carry

forward of the unmet RPO of FY 2011-12 to FY 2012-13 which was to be met alongwith the RPO for FY 2012-13 by March 31, 2013.

- 2.4. UPCL vide its letter dated March 28, 2013 again requested the Commission to review the RPO targets specified in RE Regulations, 2010 on the grounds of non-development of renewable energy resources in the State and weak financial position of UPCL and allow it the carry forward of unmet RPO of FY 2012-13 to the ensuing year. The issue of review of the RPO targets specified in RE Regulations, 2010 had already been discussed in detail by the Commission in its Order dated December 19, 2012. Infact the Commission in its Order dated September 11, 2013 had held as under:

"...However, the Commission would like to mention again that financial conditions of the Company can in no way be the ground for not meeting the obligations cast upon it under the Act and Regulations. The Commission in its Order dated 19.12.2012 had held that any financial implication of purchase of RE certificate and RE energy, if prudently incurred, would be allowed as pass through in the ARR, despite this UPCL still did not comply with the Regulations/Orders of the Commission."

- 2.5. UPCL was required to submit the reasons for non-compliance of the RE Regulations, 2010 and RPO Regulations in meeting the RPO for FY 2011-12 and FY 2012-13. However, UPCL submitted that the Commission vide its Order dated September 11, 2013 had allowed it the carry forward of unmet RPO of FY 2012-13 (including the unmet RPO of FY 2011-12) for both solar as well as non-solar sources in FY 2013-14, hence, no action under Section 142 of the Act should be initiated against it. This reply of UPCL was not in order. UPCL was required to submit why it did not meet the RPO of FY 2011-12 and FY 2012-13 by March 31, 2013 as directed in the Commission's Order dated December 19, 2012 and required under the RE Regulations, 2010 and RPO Regulations, 2010.
- 2.6. Further, UPCL in its reply submitted that the failure in submitting the information in the manner and within time frame specified in the Regulations & Formats prescribed in the Procedure to the State Agency was due to the unawareness of its staff entrusted with the work. The REC framework is not a new concept. The RPO targets of UPCL were specified in RE Regulations, 2010 and compliance mechanism for the same has

been specified in RPO Regulation, 2010 which are in vogue since 2010. Besides, the Commission had already issued an Order dated December 19, 2012 wherein UPCL was required to ensure compliance of the Regulations made there under. Further, ignorance of law is no excuse. UPCL being a commercial organization and a licensee under the Electricity Act, 2003 has to ensure compliances of the Act, Rules and Regulations made there under.

- 2.7. Further, the Commission in its Order dated September 11, 2013 gave another opportunity to UPCL to procure the RECs equivalent to 59.12 MUs of unmet non-solar RPO of FY 2011-12 by November 15, 2013. UPCL instead of complying with the directions preferred to make a belated request for extension of time for procurement of RECs on grounds of poor financial health which had already been held untenable by the Commission. In this regard, the Commission, had in its Order dated September 11, 2013 had already held that the cost of purchasing the RECs for meeting the RPO shortfall for FY 2011-12 could be met by UPCL out of the surplus of Rs. 13.94 Crore allowed to it over and above its ARR in the Tariff Order dated May 06, 2013 for FY 2013-14. Further, the Commission in its Order dated December 19, 2012 and September 11, 2013 had held that any financial implication on purchase of RE certificate and RE energy, if prudently incurred, would be allowed as pass through in the ARR. However, despite this UPCL still did not comply with the Regulations/Orders of the Commission.
- 2.8. UREDA during the hearing submitted that UPCL has started submitting the information in the formats and within the time frame stipulated in the Regulations and Procedures framed there under. The Commission is not taking any action against UPCL for its default in the past in this regard. However, UPCL is cautioned to submit the complete information as required under the Regulations and in the formats and within the timelines stipulated.
- 2.9. Now as the position emerges, the respondent Company did neither comply with the order dated September 11, 2013 for procurement of RECs nor sought a review or filed an appeal. The representative of the respondent Company during hearing agreed that this is an act of non-compliance. The Electricity Act, 2003, as per provision in Section

86(1)(e), assigns the Commission a 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 of respondent Company to comply with the directions of the Commission. In the last instance failure to comply, as informed by the Company, was for reasons which were already held untenable by the Commission. The Commission, therefore, holds that non-compliance is wilful contravention of the directions of the Commission. Besides, it also obstructs discharge of functions of promoting renewable sources of energy assigned to this Commission by the Electricity Act, 2003. Now therefore, the Commission decides to impose a penalty of Rs. 20,000/- on Managing Director of the respondent Company.

2.10. It is further ordered:

- a. The aforesaid penalty be deposited within 30 days of this Order.
- b. The pending procurement of RECs ordered vide order dated September 11, 2013 be done expeditiously but before March 31, 2014. Non-compliance will attract an additional penalty of Rs. 2,000/- per day thereafter.

2.11. Ordered accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member

(Jag Mohan Lal)
Chairman