

Before

UTTARAKHAND ELECTRICITY REGULATORY 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.

... Respondent

CORAM

Shri Subhash Kumar Chairman

Shri K.P. Singh Member

Date of Hearing: October 4, 2016

Date of Order: October 5, 2016

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 the directions issued vide the Commission's Order dated June, 20, 2016 and 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").

1. Background

- 1.1. UPCL had vide its Petition dated 21.09.2015 and 27.04.2016 requested the Commission to allow the carrying 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 in accordance with the provisions of the Electricity Act, 2003 and the the Regulations, in its Order dated 20.06.2016 had held as under:

"While appreciating the fact that the adequate RE based projects have not been added during the past years in the State of Uttarakhand as was envisaged at the time of fixing RPO targets

for obligated entities, the Commission also cannot ignore representations received from RE based project developers contending loss of generation and revenue from their projects on account of inadequate evacuation system and frequent breakdown of UPCL's distribution system in separate proceedings. Few generators have also claimed deemed generation on account of frequent trippings and other evacuation bottlenecks in the system of UPCL. For instance as contended by one of the generator (M/s UBHP), Sarju-III SHP is generating at about half of the installed capacity and Sarju-II SHP's commissioning was delayed due to inefficiency of UPCL. UREDA, the State Agency has also submitted that shortfall in RPO compliances is also on account of loss of generation from existing RE based/small hydro projects due to enormous breakdowns in evacuation lines/sub-stations of the Petitioner. Payment of deemed generation under the RE Regulations is somehow ensuring the recovery of revenue to the generators for the energy which could not be generated due to licensee's fault. Hence, in effect UPCL does not only compensate the generators by way of deemed generation charges (which is not allowed to UPCL as pass through) but also has to resort to purchasing power from other sources to meet the demand. Thus, for a unit of electricity which is lost/could not be generated due to UPCL's fault, UPCL has to incur additional payment for procuring the electricity besides compensating the generator. Therefore, the licensee is required to work proactively for planning and strengthening of its evacuation system in advance not only to achieve RPO compliances but to obviate demand supply gap and contribute towards better utilisation of the available natural resources in the State. UPCL cannot be allowed to continue carrying forward of all the unmet non-solar RPO since, as discussed above, it has failed to tap the available power due to its own dilapidated distribution system for evacuation of power. 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 letter dated 16.08.2016 asked UPCL to furnish the requisite compliance latest by 22.08.2016.

- 1.4. UPCL vide its letter dated 19.08.2016 referred to the GoI Order dated 22.07.2016 vide which it had notified the trajectory of RPO for solar as well as non-solar uniformly for all the States for three years from FY 2016-17 to FY 2018-19 and submitted that in pursuance of the same it was in the process of filing the Petition before the Commission for revision in its RPO for FY 2016-17 and FY 2017-18. UPCL also submitted that it would meet its RPO for FY 2015-16 for which carry forward was allowed by the Commission. Hence, there would be no remaining RPO pertaining to the Order dated June 20, 2016, i.e. 699.6 MU (Non-Solar) & 8.1 MU (Solar).
- 1.5. Since, UPCL had apparently ignored the categorical directions of the Commission issued vide 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 latest by 31.07.2016. Furthermore, the Commission had already specified the RPO for non-solar as 8% of total consumption of the obligated entity in its Regulations & the same would continue to be applicable for FY 2016-17, unless the Commission decided to amend the Regulations. Accordingly, the Commission taking note of the deliberate non-compliance of Commission's Order dated 20.06.2016 by UPCL, issued a show cause notice dated 05.09.2016 to MD, UPCL, asking him to show cause as to why appropriate action not be taken under the provisions of the Electricity Act, 2003 for non-compliance of the Commission's Regulations and specific directions in the matter.
- 1.6. Despite personal notice issued to MD, UPCL, Director (Finance), UPCL submitted the reply in the matter wherein GoI Order dated 22.07.2016 was again referred and it was further submitted that UPCL had filed a Petition before the Commission for revision of the RPO in line with the Order issued by the MoP, GoI and it was requested to stay the operation of the Order dated 20.06.2016 till finalization of the Petition filed by UPCL for revision of RPO targets.

It was also submitted that it was under the belief that decrease in RPO target had become effective and the Commission would revise the RPO target of the Respondent and, accordingly, it was waiting for the Orders of the Commission regarding revision in the RPO target. UPCL also referred to the substantial financial burden that would devolve on it on procurement of RECs. UPCL also submitted that it be permitted to purchase RE power rather than to make investment on procurement of

RECs which would not be beneficial to it.

- 1.7. A hearing was held in the matter on 04.10.2016 wherein the Respondent reiterated its submissions made in its reply.

2. Commission's Views

- 2.1. The Commission vide its Order dated 20.06.2016 had categorically directed UPCL as under:

- a) *The licensee is directed to procure non-solar RECs equivalent to 7.50% of unmet non-solar RPO up to FY 2015-16 latest by 31.07.2016 and submit compliance of the same immediately.*
- b) *With regard to the balance unmet non-solar and solar RPO up to FY 2015-16, the Commission allows UPCL to fulfill the same along with its obligation for FY 2016-17.*
- c) *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.*

- 2.2. Section 86 (1)(e) of the Electricity Act, 2003 provides the following as one of the function of the State Electricity Regulatory Commission:

“promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licence;”

- 2.3. Accordingly, the Commission in its RE Regulations, 2013 had specified the Renewable Purchase Obligation (RPO) to be met by the Obligated Entities. However, in case the obligated entity or the distribution licensee (UPCL in this case) fails to meet its RPO obligation through procurement of generation from renewable energy sources for meeting its electricity requirement then the Regulations provides for supplementing the RPO through purchase of RECs, which is a valid instrument for discharge of the mandatory obligation of the obligated entity. The relevant provision in this regard specified under Regulation 4(1) of RPO Regulations, 2010 is reproduced below:

“Subject to the terms and conditions contained in these regulations the Certificates issued under the CERC (Terms and Conditions for recognition and issue of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, shall be the valid instruments for the discharge of the mandatory obligations set out in these regulations for the

obligated entities to purchase electricity from renewable energy sources.

Provided that in the event of the obligated entity fulfilling the renewable purchase obligation by purchase of certificates, the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only, and the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non- solar certificates”.

Thus, from the above reading of the Regulations, it is amply clear that UPCL has to purchase a minimum percentage (RPO) of its total electricity requirement (in kWh) from renewable energy sources during each financial year as specified by the Commission and the REC shall be the valid instruments for the discharge of the mandatory obligations set out in the Regulations for the obligated entities to purchase electricity from renewable energy sources in case of shortfall in meeting the RPO requirement.

- 2.4. The Commission, in its Order dated 19.12.2012, 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, despite this UPCL did not comply with the Regulations/Orders of the Commission and again submitted position of its financial health and the burden that procurement of REC will have on it. In this regard, Regulation 7(1) of RPO Regulations, 2010 specifies as under:

“7.1 If the Obligated Entity does not fulfil its commitment towards Renewable Purchase Obligation during any year as provided under UERC (Tariff and Other Terms of Supply of Electricity from Co-generation and Renewable Energy Sources) Regulations 2010, and also does not purchase adequate certificate for meeting the shortfalls, the Commission may direct the Obligated Entity to deposit into a separate RPO Fund such amount as the Commission may determine on the basis of the shortfall in units of RPO, Preferential Tariffs applicable in the State and forbearance price as decided by Central Commission:

Provided that the responsibility of intimating such shortfall within one month of close of that year shall be that of State Agency;

Provided further that the fund so created shall be utilised only after approval of the Commission for purchase of certificates or as may be directed by the Commission:

Provided further that the Commission may empower an officer of the State Agency to procure from the Power Exchange the required number of certificates to the extent of the shortfall in the fulfilment of the obligations, out of the amount in the fund:

Provided, also that the Obligated Entities shall be in breach of provisions of these regulations if it fails to deposit the amount directed by the Commission within 15 days of the communication of the direction."

Further, Regulation 7(2) of the RPO Regulations, 2010 specifies as under:

"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:..."

2.5. The intent of the RPO Regulations, 2010 was to enable the obligated entity to ensure that its RPO targets are met either by way of purchase of energy from RE sources or through purchase of REC's by the obligated entity itself or by any officer of the State Agency so authorised by the Commission. There was no bar on UPCL to procure RE energy as has been contended by it. Infact, throughout the proceedings the Commission had been directing it to meet its RPO either by procuring RE energy or through purchase of RECs. Procurement of REC as per the Regulations is only necessitated in case there is a shortfall in the RPO of the obligated entity.

2.6. Infact, the Commission in its Order dated 20.06.2016 had held as under:

"While appreciating the fact that the adequate RE based projects have not been added during the past years in the State of Uttarakhand as was envisaged at the time of fixing RPO targets for obligated entities, the Commission also cannot ignore representations received from RE based project developers contending loss of generation and revenue from their projects on account of inadequate evacuation system and frequent breakdown of UPCL's distribution system in separate proceedings. Few generators have also claimed deemed generation on account of frequent trippings and other evacuation bottlenecks in the system of UPCL. For instance as contended by one of the generator (M/s UBHP), Sarju-III SHP is generating at about half of the installed capacity and Sarju-II SHP's commissioning was delayed due to inefficiency of UPCL. UREDA, the State Agency has also submitted that shortfall in RPO compliances is also on account of loss of generation from existing RE based/small hydro projects due to enormous breakdowns in evacuation lines/sub-stations of the Petitioner... UPCL cannot be allowed to continue carrying forward of all the unmet non-solar RPO since, as discussed above, it has failed to tap the available power due to its own dilapidated distribution system for evacuation of power."

The position has not changed so far. Despite being aware of the fact that it would be having a substantial shortfall in meeting in non-solar RPO, UPCL did not plan for meeting the same. Infact, it was also surprising to hear Mr. Pravesh Kumar, Executive Engineer (Commercial), UPCL submit during the hearing that it was planning to issue a short term tender during the month of October, 2016 for procurement of RE power for the period October to March, 2017, however, no concrete action appears to have been taken by the licensee for ensuring compliance of the Order dated 20.06.2016 till date. This reflects to the casual approach of UPCL and its officers in ensuring compliances of the directions and Regulations of the Commission. UPCL should have planned to procure power from RE generators well in advance. Infact during the hearing the Commission brought out the fact that there were RE generators who were offering to sell power to UPCL on long term basis but UPCL for reasons best known to it chose to ignore them.

- 2.7. The Commission vide its Order dated 20.06.2016 had directed UPCL to procure REC equivalent 7.5% of the unmet RPO for non solar of about 700 MU by 31.07.2016 and report compliance to the Commission immediately. However, UPCL did not inform the Commission about the status of compliance until a letter was issued by the Commission. UPCL placing reliance on the GoI Order dated 22.07.2016 submitted that it had already requested the Commission for revision of its RPO and, accordingly, its deficit would reduce. However, the Commission took cognizance of the estimated deficit of 400 MUs projected by UPCL even after the RPO is revised based on GoI Order.
- 2.8. Moreover, the categorical direction to UPCL was to procure the non-solar RECs equivalent to 7.50% of the unmet non-solar RPO upto FY 2015-16 latest by 31.07.2016 and submit compliance of the same immediately. Hence, the issue of revision of RPO based on the GoI Order and merging of the hitherto shortfall with the RPO of the current FY 2016-17 has no relevance in the matter of compliance of Commission's order dated 20.06.2016, moresoever, knowing that there would still be a deficit in meeting the RPO target based on the proposed revision of RPO for current year. This action of UPCL is a clear case of circumventing the directions of the Commission and the Regulations. There have been numerous Judgments of Hon'ble ATE and Hon'ble

Supreme Court in the matter clearly stipulating that compliances of RPOs should be strictly ensured. Moreover, UPCL is a beneficiary of several Central Government assisted Schemes, like UDAY, IPDS, DDUGVY, etc. wherein one of the conditions is to comply with its RPO failing which UPCL might be stifled of these grants/reliefs under these schemes. The Commission cannot be a party wherein the licensee flouts the directions of the Commission, Regulations and the Judgments pronounced by Hon'ble ATE and Hon'ble Supreme Court in the matter.

2.9. The Commission based on the inaction of UPCL holds that the non-compliance on the part of UPCL was deliberate and accordingly, has decided to impose a penalty under Section 142 of the Electricity Act, 2003 on the errant officials of UPCL as they have failed in ensuring timely compliances of the directions of the Commission despite repeated warnings in the previous proceedings.

2.10. Thus, admittedly the Respondent Company neither complied with the Order dated June 20, 2016 for procurement of RECs nor submitted any status till it was asked to do so. Section 86(1)(e) of the Electricity Act, 2003, assigns the Commission the 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 relaxations from the Commission's side and repeated failures of respondent Company to comply with the directions of the Commission. In the last instance failure to comply, as informed by the licensee, was for reasons which were already held untenable by the Commission. The Commission, therefore, holds that the non-compliance is a willful contravention of the directions of the Commission. Besides, it also obstructs the discharge of functions of promoting renewable sources of energy assigned to this Commission by the Electricity Act, 2003. The Commission holds the Commercial department of UPCL responsible for ensuring timely compliances of the Regulations and directions of the Commission in this regard alongwith the MD of the Company. Therefore, the Commission decides to impose the personal penalty on the following persons under Section 142 of the Electricity Act, 2003:

- (a) Shri S.S. Yadav, Managing Director, UPCL - Rs. 50,000/-
- (b) Shri M.A. Khan, Director (Finance), UPCL - Rs. 30,000/-
- (c) Shri A.K. Singh, Chief Engineer (Commercial), UPCL - Rs. 20,000/-

(d) Shri Sunil Vaid, Superintendent Engineer (Commercial), UPCL - Rs. 10,000/-

(e) Shri Pravesh Kumar, Executive Engineer (Commercial), UPCL - Rs. 10,000/-

2.11. It is ordered that:

- a) The aforesaid penalty be deducted from the salary of the above named persons and deposited within 30 days of this Order.
- b) The pending procurement of RECs ordered vide order dated June 20, 2016 be done expeditiously but before 31.10.2016, non-compliance of which will attract an additional penalty of Rs. 2,000/- per day thereafter on all the above named persons.
- c) UPCL would meet the remaining RPO for FY 2015-16 either through purchase of energy from RE sources or through purchase of RECs equivalent by March, 2017 alongwith RPO for 2016-17.

2.12. Ordered accordingly.

(K.P. Singh)
Member

(Subhash Kumar)
Chairman