

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 36 of 2018 (Suo-Moto)

In the matter of:

Suo-Moto proceedings initiated by the Commission against non-compliance by UPCL of the provisions of UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 and directions issued by the Commission vide Order dated 15.09.2017 regarding procurement of unmet Solar and Non-Solar RPO for FY 2016-17 alongwith the RPO for FY 2017-18 latest by March, 2018.

In the matter of:

Sh. B. C. K. Mishra
Managing Director,
Uttarakhand Power Corporation Ltd.,
Dehradun.

...Respondent

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: July 17, 2018

Date of Order: August 6, 2018

The Order relates to the Suo-Moto proceedings on non-compliance of the provisions of the UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 and the Commission's directions issued to UPCL vide its Order dated 15.09.2017 regarding procurement of unmet Non-solar and Solar RPO for FY 2016-17 alongwith FY 2017-18 latest by March, 2018.

1 Background

- 1.1 UPCL, being the obligated entity is required to comply with the Regulations and Commission's directions issued from time to time and fulfil its Renewable Purchase Obligation as specified by the Commission. The non-compliance of the provisions of the UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 (hereinafter referred to as "RPO Regulations, 2010 and the Commission's directions issued from

time to time to UPCL, attracts penal action under the provisions of the Act.

- 1.2 In the earlier proceedings, the Commission on observing non-compliance of RPO Regulations, 2010 and prevailing RE Regulations vide its Order dated 12.09.2014 had directed UPCL to procure the unmet RPO for FY 2012-13 & FY 2013-14 alongwith the RPO of FY 2014-15. The relevant extract of the Order is as follows:

“Accordingly, considering the efforts initiated by the Petitioner for compliance of unmet RPO for the past years, and also assurance given by the Petitioner for making compliance of pending unmet RPO of FY 2013-14 alongwith the RPO of FY 2014-15, the Commission allows the carrying forward of unmet RPO of past years namely 2012-13 and 2013-14, as requested by the Petitioner, to met alongwith the RPO for FY 2014-15.”

- 1.3 Subsequently, the Respondent approached the Commission seeking carrying forward of its unmet RPO for two financial years, i.e. FY 2014-15 and FY 2015-16 to FY 2016-17. In the matter, the Commission vide its Order dated 20.06.2016 directed UPCL as under:

“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.”

- 1.4 The Commission had vide its Order dated 05.10.2016 on non-compliance of RPO Regulations, 2010 and directions given vide Order dated 20.06.2016, had imposed a personal penalty ranging from Rupees Rs. 10,000/- to Rs. 50,000/- on the concerned officers responsible for ensuring compliance of the RPO Regulations, 2010. However, the Commission vide its Order dated 12.01.2017 waived-off the penalty imposed on the officials of UPCL considering the efforts made by the Petitioner. Moreover, the Commission vide the same Order directed UPCL to meet the remaining RPO for FY 2015-16 either through purchase of energy from RE sources or through purchase of RECs equivalent by 31st March, 2017 alongwith ensuring compliances of RPO specified

for FY 2016-17. The relevant extract of the Order is as follows:

“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 31st 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.”

1.5 UPCL had vide its Petition dated 08.05.2017 requested the Commission to allow the carry forward of its unmet Renewable Purchase Obligation for FY 2016-17. The Commission taking cognizance of the facts presented by UPCL, in Order dated 15.09.2017 had held as under:

*“...As discussed in Order dated 03.08.2017 of Review Petition, UPCL has been allowed additional Rs. 51.24 Crore to purchase renewable energy and to meet its RPO obligation. Accordingly, with regard to unmet non-solar and solar RPO upto 31.03.2017, the Commission allows UPCL the carry forward of the unmet solar as well as non-solar RPO of FY 2016-17 to fulfil the same alongwith its obligation for FY 2017-18. The carry forward of the unmet RPO of previous year is being allowed for the last time after which no carry forward of the RPO will be allowed. **The Commission directs the Petitioner to meet the overall RPO as per action plan either through purchase of energy from RE sources or through purchase of RECs by March 2018 in a transparent manner failing which appropriate action may be initiated against the concerned officers of the licensee under appropriate provisions of the Electricity Act, 2003.**”*

1.6 In compliance to the Commission’s Order, UPCL vide its letter dated 08.11.2017 submitted that due to the reduction in actual consumption of electricity the Renewable Purchase Obligation was most likely to go downwards during the year from earlier projections. Accordingly, UPCL decided not to purchase REC in the month of September and October 2017 and planned to purchase 50 MUs of REC in the month of November, 2017 only till the end of 3rd quarter. UPCL submitted revised RPO requirement for FY 2017-18 which was as follows:

Total Electricity Purchase	13000 MU
Total Hydro Energy Purchase	7569.44 MU
Energy Excluding Hydro Energy (A)	5430.56 MU
Obligation Non-Solar(9.50% of (A))	515.90 MU
Obligation Solar(4.75% of (A))	257.95 MU
Deficit for FY 2016-17 (Non-Solar)	787.68 MU
Deficit for FY 2016-17 (Solar)	161.32 MU
Total RPO Obligation for Non-Solar up to FY 2017-18	1303.58 MU
Total RPO Obligation for Solar up to FY 2017-18	419.27 MU
RE Purchase (Non-Solar) at Preferential Tariff for FY 2017-18 (i)	685.72 MU
Total RE Purchase (Non-Solar) through Tender (ii)	442.00 MU
Total RE Purchase (Non) for FY 2017-18(i+ii)	1127.72
RE Purchase (Solar) for FY 2017-18	404.77 MU
Estimated deficit till 2017-18 (Non-Solar)	175.86 MU
Estimated deficit till 2017-18 (Solar)	14.50 MU

- 1.7 Subsequently, UPCL vide letter dated 05.12.2017 confirmed that it has purchased Non-Solar REC equivalent to 50 MUs in the month of November, 2017. Further, UPCL in its RPO statement for last quarter of FY 2017-18 submitted that the quarterly RPO is prepared on the basis of Commercial Data comprising of provisional Regional Energy account, Energy Bills as submitted by RE Generating Companies etc. The RPO Statement submitted by UPCL for the said quarter depicted a surplus of 32.86 MUs for Non-Solar and shortfall of 124.21 MUs for Solar RPO. Thereafter, UPCL vide its letter dated 09.05.2018 submitted its RPO statement for the entire FY 2017-18 according to which there was a shortfall of 89.33 MUs and 108.44 MUs for Non-Solar and Solar RPO respectively.
- 1.8 UPCL had apparently ignored the specific direction given by the Commission in its Order dated 15.09.2017 for meeting the overall RPO either through purchase of energy from RE sources or through purchase of RECs by March, 2018 while allowing the carry forward of unmet-RPO for Solar as well as Non-Solar upto FY 2016-17 with the RPO for FY 2017-18 latest by March, 2018. Here, it is pertinent to mention that the Commission vide its Order dated 03.08.2017 in the Review Petition filed by UPCL on the Commission's Order dated 29.03.2017 on True up for FY 2015-16, APR for FY 2016-17 and ARR for FY 2017-18 had allowed adequate costs for procurement of RECs/energy to meet its Renewable Purchase Obligation even after that UPCL failed to procure required renewable energy or RECs to meet its Renewable Purchase Obligation.
- 1.9 Accordingly, the Commission in accordance with Regulation 7.2 of the RPO

Regulations, 2010 issued a show cause notice to Managing Director, UPCL asking why appropriate action should not be taken against him in accordance with the provision of Section 142 of the Electricity Act, 2003 for non-compliance of the Commission's directions and Regulations in the matter. Managing Director, UPCL was also directed to furnish the name of the officers responsible for ensuring compliances of the RPO Regulations, 2010 so that appropriate action may also be initiated against them for non-compliance.

2 Respondent's submission

- 2.1 In reply to the show-cause notice issued by the Commission, UPCL vide letter dated 05.06.2018 reiterated that due to considerable decrease in the consumption of electricity during the first and second quarter of FY 2017-18, Renewable Purchase Obligation was expected to go downwards during the year from earlier projections and, accordingly, it prepared the revised action plan based on which the deficit of Non-Solar RE was expected to reduce to 175 MUs instead of earlier estimate of 350 MUs. Therefore, due to these changes UPCL decided to wait for the clear picture regarding the exact deficiency and the required REC quantum to meet the revised RPO targets. Further, in the third quarter, based on the revised estimates of energy consumption, the deficit of Non-solar RPO and Solar RPO worked out to 128.78 MUs and 123.34 MUs respectively for FY 2017-18.
- 2.2 UPCL also submitted that the deficit in both Solar and Non-Solar were varying widely w.r.t. earlier projections done in the month of November, 2017. Therefore, in lieu of purchasing RECs in 3rd Quarter of FY 2017-18, it was decided to wait for the clear picture of demand and RPO requirement. Moreover, UPCL while taking a pro-active step also calculated the expected RPO target for FY 2018-19 and it was estimated that the total RPO deficit till FY 2018-19 for Non-Solar and Solar would be 161.23 MUs and 314.34 MUs respectively.
- 2.3 UPCL submitted that considering the deficit, it floated a tender for procurement of Non-Solar RE Power in the month of February 2018 through DEEP Portal and secured a quantum of 104.25 MUs. However, 75 MW Non-Solar RE Power planned to be purchased in the month of March 2018 could not be scheduled as the rate quoted after initial Price Offer (IPO) and conducting e-Reverse Auction (eRA) by bidder for the

month of March, 2018 were Rs. 4.99/kWh which were higher than the limit of Rs. 4.75/kWh as specified by the Commission. Accordingly, in the month of April, 2018 once again tender was floated for purchase of Non-Solar RE power and it successfully secured quantum of 86.64 MUs from June, 2018 to March, 2019.

- 2.4 With regard to deficit in Solar RPO, UPCL submitted that it had floated a tender for procurement of Solar RE Power in the month of February, 2018 through DEEP Portal. However, Solar power could not be secured as bidders quoted higher rates than the limit of Rs. 4.75/kWh as specified by the Commission. Accordingly, the tender for solar power was scrapped. Moreover, the same could not be met through purchase of REC because of stay on bidding of Solar REC in the power exchange by Hon'ble Supreme Court of India. Further, CERC vide letter dated 23.04.2018 resumed the trading of Solar REC and accordingly, UPCL purchased 50 MUs REC for Solar power in the month of May, 2018.
- 2.5 UPCL submitted that for remaining Solar RPO of FY 2017-18 alongwith the Solar RPO of FY 2018-19, UPCL had requested UREDA to take necessary action for arrangement of 200 MW Solar Power vis-a-vis achieving solar PRO for FY 2018-19 in view of provisions of Uttarakhand Solar Policy 2013.
- 2.6 A hearing was held in the matter on 17.07.2018 wherein the Respondent submitted that the final deficit for Non-Solar RPO and Solar RPO for FY 2017-18 is 93.68 MUs and 58.00 MUs (i.e. after considering Solar REC purchased in May, 2018 equivalent to 50 MUs) respectively and reiterated the same facts submitted in its reply.

3 Commission's Views

- 3.1 UPCL during the hearing agreed that they had not complied with the provisions of the Regulations as well as the directions issued by the Commission from time to time in respect of compliance of Renewable Purchase Obligation. As per the Section 86(1)(e) of the Electricity Act, 2003, one of the functions of the Commission is to promote renewable sources of energy as also of laying down certain percentage of total consumption to be procured from such sources. In the instant case, there has been a failure on the part of UPCL in complying with the provisions of the UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 and directions of the Commission

issued from time to time.

3.2 The Commission has gone through the submissions of UPCL and observed that there was a deficit of 175.86 MUs and 14.50 MUs for Non-Solar RPO and Solar RPO respectively as per the revised RPO statement prepared on the basis of data of first and second quarter of FY 2017-18. Subsequently, after the end of third quarter, UPCL once again calculated the required RPO and worked out the estimated deficit for FY 2017-18 as 128.78 MUs and 123.34 MUs for Non-Solar and Solar respectively. Accordingly, UPCL floated a tender in February, 2018 for procurement of Non-Solar RE power through DEEP Portal. However, 75 MW of Non-Solar RE power planned to be purchased in the month of March, 2018 could not be scheduled as the rate quoted after Initial Price Offer (IPO) and conducting e-Reverse Auction (eRA) by bidder for the month of March, 2018 were Rs. 4.99/kWh which were higher than the limit of Rs. 4.75/kWh fixed by the Commission. Detail of the tendered RE power is as follows:

Month	Quantum floated (In MW)	Quantum floated (In MU)	Quantum secured (In MW)	Quantum secured (In MU)
17 th Mar-31 st Mar 18	75	27.00	0	0
Apr-18	30	21.60	28	20.16
May-18	30	22.32	30	22.32
Oct-18	30	22.32	30	22.32
Nov-18	30	21.60	30	21.60
Dec-18	62	46.13	24	17.85
Total		161.00		104.25

Further, with regard to procurement of Solar energy, UPCL floated a tender in the month of February, 2018. However, necessary renewable energy could not be scheduled/procured as the rate quoted were higher than the limit of Rs. 4.75/kWh specified by the Commission.

3.3 In this regard, it is to be noted that UPCL was not sure about the quantum of deficit for meeting Solar and Non-Solar RPO for FY 2017-18, however, it was well aware about the fact that there will be deficit in FY 2017-18. As per the earlier RPO estimates there was a deficit of 175.86 MUs against which UPCL purchased REC equivalent to 50 MUs only. UPCL, instead of waiting till the end of the financial year, should have initiated the tendering procedure for procurement of renewable energy upto certain percentage of estimates worked out based on first and second quarter of FY 2017-18 or should have

procured more quantum of RECs. It is all the more surprising that UPCL chose to issue the tender in the fag end of FY 2017-18, i.e. in the month of February, 2018 which could not have helped it in meeting its RPO. The approach adopted by UPCL to carry forward the unmet RPO to the ensuing financial year is not in accordance with the Regulations and past Orders issued by the Commission in this regard. The Regulations explicitly provides that the RPO will be met by purchase of RE power and deficit, if any, in the RPO will be met by way of purchase of RECs. This reflects towards its casual approach in ensuring compliances of not only the Regulations, but also of the various agreements to which it was a signatory with GoI, like UDAY scheme which mandates UPCL to fulfil its RPO every year.

Moreover, the Commission in its Orders had specifically directed UPCL to meet the overall RPO as per action plan either through purchase of energy from RE sources or through purchase of RECs by March, 2018. Accordingly, on the failure of the tender floated for Non-Solar energy procurement because bidders had quoted higher rates above the limit of Rs. 4.75/kWh as specified by the Commission, UPCL should have procured the required quantum of REC from power exchange latest by March, 2018. As per Regulation 5.2 of RPO Regulations, 2010, distribution licensee is required to submit quarterly status report to the State Agency in respect of compliance of renewable purchase obligation. The intent of the said regulation was not mere submission of quarterly data but also to provide an information tool to the distribution licensee to determine and procure renewable energy or REC in compliance to the regulations. However, following the past erroneous practice and ignoring the direction of the Commission, UPCL once again floated a tender in the month of April, 2018 for purchase of Non-Solar RE power to meet its requirement for FY 2018-19 along with the unmet RPO for FY 2017-18 assuming the carry forward of unmet RPO to the next financial year on its own which is inconsistent with the RPO Regulations, 2010.

In this regard, first proviso to Regulation 7.2 of UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 specifies as under:

"...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:"

Thus, the above reading of the provisions of the Regulations makes it amply clear that carry forward of unmet RPO will only be allowed in case of non-availability of certificates and even for carry forward UPCL was required to approach the Commission. However, UPCL on its own decided to carry forward the unmet RPO for FY 2017-18 to FY 2018-19 which is a clear violation of the Regulations. In this regard, the Commission in its Order dated January 12, 2017 had held as under:

“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.”

Thus, despite the categorical directions in this regard by the Commission, UPCL again chose to non-compliant and assumed that the shortfall in its RPO would again be carried forward by the Commission to next year.

- 3.4 Further, in case of failure of Solar energy procurement tender, UPCL submitted that the required quantum of REC could not be procured due to the stay on the bidding of Solar REC in the power exchange by Hon'ble Supreme Court of India and REC trading resumed after the CERC letter dated 23.04.2018. Subsequently, UPCL purchased REC equivalent to only 50 MUs in May, 2018 whereas the shortfall till 31.03.2018 was 108 MUs as per the RPO statement submitted during hearing held on 17.07.2018. Further, instead of purchasing balance RECs on the resumption of trading of Solar REC in the power exchange, it requested UREDA to take necessary action for arrangement of Solar power for achieving the solar RPO for FY 2018-19.
- 3.5 As mentioned earlier, the Commission vide its Order dated 03.08.2017 in the Review Petition filed by UPCL on the Commission's Tariff Order dated 29.03.2017 had allowed adequate costs for procurement of RECs/energy to meet its Renewable Purchase Obligation even after that UPCL instead of procuring renewable energy or RECs to meet its RPO, has carried forward the unmet RPO in FY 2018-19.
- 3.6 The Commission, in the past, taking a lenient view had allowed UPCL to procure the required unmet RPO through renewable energy or REC in subsequent financial year.

The Commission observes that UPCL has made a tendency of non-compliance of RPO Regulations, 2010 and the Commission's directions in the matter. It is worth mentioning that UPCL has not even sought permission of the Commission for carrying forward of unmet RPO for FY 2017-18 in FY 2018-19 and floated tenders at its own for procuring unmet RPO of FY 2017-18 along with the estimated RPO for FY 2018-19.

- 3.7 Regulation 7.2 of UERC (Compliance of Renewable Purchase Obligation) 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."

The Commission had issued notice to MD, UPCL to show cause under an affidavit as to why appropriate action should not be taken against him in accordance with the provisions of the Electricity Act, 2003 for non-compliance of the Commission's directions and Regulations. Further, the Commission vide its letter dated 20.06.2018 and 28.06.2018 informed MD, UPCL about the hearing in the matter and he was also required to ensure his presence during the hearing. However, MD, UPCL neither filed any reply on the notice nor attended the hearing. Infact, he also did not seek any waiver in this regard. The reply to the show cause notice was submitted by Director, Finance, UPCL.

This act of MD, UPCL is unacceptable and was also pointed out by the Commission during the hearing. Accordingly, Managing Director of the Petitioner Company, who is responsible for every action of the corporation, was given a fair chance for submission of reasons for such non-compliance and also to show-cause as to why penalty should not be levied upon him in accordance with the provisions of the Act.

- 3.8 The Commission is of the opinion that the act of non-compliance in meeting the RPO within the stipulated time as per the directions of the Commission issued from time to time, is a wilful contravention on the part of UPCL. The Managing Director of UPCL is responsible for ensuring compliance of the Regulations and also directions of the Commission which required him to take effective steps for procurement of renewable

energy or REC's to meet RPO compliance.

There have been numerous Judgement of Hon'ble ATE and Hon'ble Supreme Court in the matter clearly stipulating that compliance of RPO should be strictly ensured. Moreover, MNRE vide its letter dated 10.10.2017 and 05.12.2017 has sought from the State Commission's to align the RPOs with national trajectory and further to ensure compliance of the same and has also requested the Commissions to use the penal provisions under the law in case of non-compliance of RPO provisions. Further, during the meeting dated 23.05.2018 of Hon'ble Minister of State (I/C) for Power and New & Renewable Energy with SERCs in the matter of Renewable energy, SERCs were requested to take measure to disallow any carry forward of yearly RPO targets and also consider taking appropriate measures to penalise Discoms in case of non-adherence to the RPO targets.

3.9 The Commission based on the above discussions and inaction of UPCL holds that the 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 under Section 142 of the Electricity Act, 2003.

3.10 It is further ordered:

- (a) The aforesaid penalty be deducted from the salary of MD, UPCL and deposited within 30 days of this Order.
- (b) The pending procurement of RECs both solar as well as non-solar for FY 2017-18 be done expeditiously before the end of August, 2018. Non-compliance of the same will attract an additional personal penalty of Rs. 2,000/- per day on MD, UPCL thereafter.

3.11 Ordered accordingly.

(Subhash Kumar)
Chairman