

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

**Petition No. 50 of 2015
And
Petition No. 21 of 2016**

In the matter of:

Petition seeking carry forward of Renewable Purchase Obligation for FY 2014-15 amounting to 526.8 MU (Non-Solar) and 2.5 MU (Solar).

And

In the matter of:

Petition seeking carry forward of Renewable Purchase Obligation for FY 2015-16 amounting to 699.6 MU (Non-Solar) and 8.1 MU (Solar), 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

...Respondent

CORAM

Shri Subhash Kumar Chairman

Shri K.P. Singh Member

Date of Hearing: June 7, 2016

Date of Order: June 20, 2016

This Order relates to the Petitions filed by Uttarakhand Power Corporation Limited (hereinafter referred to as "UPCL" or "Petitioner" or "licensee") seeking carry forward of Renewable Purchase Obligation for FY 2014-15 amounting to 526.8 MU (Non-Solar) and 2.5 MU (Solar) and also carry forward of Renewable Purchase Obligation for FY 2015-16 amounting to 699.6 MU (Non-Solar) and 8.1 MU (Solar) as per the provisions of UERC (Compliance of Renewable Purchase Obligation) Regulations, (hereinafter referred to as "RPO Regulations, 2010").

1. Background

- 1.1. The Commission had vide its letter dated 01.05.2015 asked UPCL for submission of a comprehensive report on status of RPO compliances up to FY 2014-15 along with action plan to fulfil shortfall in RPO. UPCL was required to submit its reply by 01.08.2015. A meeting was then held with UPCL in the matter of shortfall in RPO. UPCL informed that a petition for carrying forward of RPO would be filed by it. UPCL vide its reply dated 21.09.2015 submitted that it has achieved RPO of FY 2012-13 & FY 2013-14 but it could not manage to achieve the RPO of FY 2014-15.
- 1.2. The Petitioner had in its Petition dated 21.09.2015 submitted that the Commission vide its Order dated 12.09.2014 allowed carrying forward of unmet RPO of FY 2012-13 & FY 2013-14 to be complied along with the RPO for FY 2014-15. Further, it was submitted that the Petitioner has fulfilled its RPO up to 2013-14. The status of unmet RPO of FY 2014-15 as submitted for carry forward is reproduced below:

Year	Unmet RPO (In MUs)	
	Solar	Non-Solar
2014-15	2.5	526.8

The Petitioner had submitted that the financial burden for purchasing the RECs equivalent to unmet RPOs of 2014-15 was around Rs. 79.89 Crore and UPCL could not purchase the RE Certificates due to financial constraints.

- 1.3. UPCL 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. 2014-2015 and 2015- 2016.
- 1.4. UPCL submitted that it relies upon State RE Generation and has executed PPAs with many projects, however, these projects have not come up even after a delay of many years. Moreover, the Petitioner submitted the status of RPO to UREDA and the same was submitted to the Commission for reference.
- 1.5. Subsequently, in its Petition dated 27.04.2016 for carry forward of RPO for 2015-16, UPCL submitted that RPO for 2014-15 has already been met. The Petitioner also submitted the status of unmet Renewable Purchase Obligation for FY 2015-16 as under:-

Year	Unmet RPO (In MUs)	
	Solar	Non-Solar
2015-16	8.15	699.60

- 1.6. Further, the Petitioner also submitted the projected Renewable Purchase Obligation for FY 2016-17 as under:-

FY 2016-17 (Expected)	
Total Electricity Purchased	13526.0 MU
Obligation Non-Solar (8% of total electricity purchased)	1082.1 MU
Obligation Solar (1.50 % of total electricity purchased)	202.9 MU
Total RPO obligation for Non-Solar upto FY 2016-17 (including unmet non solar RPO of FY 2015-16)	1781.7 MU
Total RPO obligation for Solar upto FY 2016-17 (including unmet solar RPO for FY 2015-16)	211.00 MU
RE Purchase (Non-Solar) at Preferential Tariff for FY 2016-17	624.00 MU
RE Purchase (Solar) for FY 2016-17	229.8 MU
Expected RE Purchase through new plants commissioned during FY 2016-17 (Sarju-II (12.5 MW), Tanga (5 MW), Kakoragad (5 MW), Jalandhrigad (5 MW), Siyangard (5 MW))	113.8 MU
Estimated deficit till FY 2016-17 (Non-Solar)	1043.90 MU
Estimated deficit till FY 2016-17 (Solar)	-18.8 MU

UPCL again submitted that the financial burden on the Petitioner for purchasing the RECs equivalent to unmet RPOs of 2015-16 was around Rs. 104 Crore and it could not purchase the RE Certificates due to financial constraints.

- 1.7. It was submitted that during FY 2015-16, UPCL had already started efforts for achieving the unmet Non-Solar RPO for the remaining period of FY 2015-16 and also the Non-Solar RPO target for FY 2016-17. A tender has been floated on dated 14-09-2015 for purchasing 148 MW of Non-Solar power. The rates quoted by the firms are as follows:

Name of Bidder	Rate (Rs./kwh)
TPTCL	4.293
PTC (S-1)	5.984
PTC (S-2)	6.393
PTC (S-3)	6.905

Subsequently, UPCL had issued the LoI to M/s Tata Power Trading Company Ltd. for purchasing the 24 MW non-solar power from 01-October 2015 to 20-Sep-2016, from which approximately 200 MU will be received by UPCL.

- 1.8. The Petitioner submitted that it is making continuous efforts to achieve the Renewable Purchase Obligation and in pursuance of the same UPCL has again floated a tender on dated 26-02-2016 for 120 MW (1051 MU approx.) short term purchase of Non-Solar energy. The rates quoted by the firms are as follows:

Name of Bidder	Rate (Rs./kwh)
TPTCL	4.293
MPL	6.066
Greenko (S-1)	6.076

It was also submitted that the Petitioner issued the LoI to M/s Tata Power Trading Company Ltd. for purchasing the 24 MW per month non-solar energy from 21-Septmeber 2016 to 31-March-2017, from which approximately 150 MU will be received by UPCL. After including 150 MU, UPCL will have a deficit of around 900 MU (approx.) at the end of FY 2016-17.

- 1.9. Further, it was also submitted that as per the Tariff Order for FY 2014-15 as well as for FY 2015-16, the Commission had approved the power purchase cost from Renewable Energy as Rs. 4.75/kWh.
- 1.10. The Petitioner requested the Commission to consider all the efforts being made by it for compliance of RPO. The Petitioner is purchasing deficit of RE power from RE sources to fulfil its RPO. It was also submitted that RE power is not readily available in open market and more so the availability at the rate of Rs. 4.75/kWh as approved by the Commission is even lower and hence, there was a genuine difficulty in complying with its Renewable Purchase Obligation.
- 1.11. UREDA vide its letter dated 30.10.2015 submitted that it is in the process to increase the installed capacity of non-solar by installation of co-generation and MSW power projects in the coming years by which UPCL will fulfil their Non-solar RPO compliance under the Regulations.
- 1.12. In response to UPCL's Petition dated 27.04.2016, UREDA vide its letter dated 20.05.2016 submitted that being a Nodal Agency under Uttarakhand Solar Power Policy, 2013 it has done all its efforts in development of Solar PV Power Projects in the state of Uttarakhand. During FY 2015-16, 27 Solar PV power projects (SPP) of cumulative capacity 34.463 MW have been installed in the State. The installation of 34.463 MW of SPP was enough to meet the Solar RPO of 12.32 MUs as stipulated by the Commission for FY 2015-16. However, there was a cumulative shortfall of 8.15 MUs in FY 2015-16 which may be due to regular shutdown of substations during the day time.
- 1.13. After hearing all the stakeholders the Commission admitted the Petitions filed by UPCL.

Since these two Petitions are similar in nature, the Commission decided to club the same.

2. Commission's Views

- 2.1. 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;”

- 2.2. 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 PRO requirement.

- 2.3. Further, it is also to be noted that on the request of the licensee, the Commission had reviewed the RPO targets specified in RE Regulations, 2013. Accordingly, the Commission vide amendment dated 09.09.2015 revised the RPO targets on the grounds of less than envisaged development of renewable energy resources in the State and the same has already been deliberated by the Commission in the Statement of Reasons for the UERC (RE) (Fourth Amendment) Regulations, 2015. The relevant extract of Para 5.1 of the SOR is reproduced hereunder:

“However, as far as UPCL’s submissions to revise the RPO of non-solar technology is concerned, the Commission observes that the same has basis as the development of non-solar power generation in the State has not taken place as was envisaged as a result of which UPCL is not able to meet its RPO requirement for non-solar sources from generators within the State and there is a substantial gap in the unmet RPO. Moreover, in the near future no substantial development in the non-solar sources is foreseen as a result of which the gap in unmet RPO of non-solar sources is bound to increase with the increase in RPO and also the increase in demand of UPCL. Commission therefore decides to change the RPO of non-solar sources for FY 2016-17 and FY 2017-18 and keep it at the same level as that specified for FY 2015-16, i.e. at 8%.”

- 2.4. UPCL submitted that the development of non-solar power generation in the State has not taken place as was envisaged as a result of which UPCL is not able to meet its RPO requirement for non-solar sources from generators within the State and there is a substantial gap in the unmet RPO and because of the weak financial position of UPCL, it could not purchase RECs to fulfil the obligation. It has already been discussed in detail by the Commission in its Order dated December 19, 2012 that the financial condition of the company is not an acceptable reason to exempt it from fulfilling the duties and obligations cast upon it under the Act and the Regulations. 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.
- 2.5. 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:..."

- 2.6. The RPO Regulations, 2010 stipulates that the obligated entity is required to deposit into a separate RPO Fund such amount as the Commission may determine on the basis of the shortfall in units of RPO based on either "Preferential Tariffs applicable in the State" or "forbearance price" as decided by Central Commission. The financial implication on preferential tariffs on UPCL would be Rs. 338 Crore and on forbearance price the implication would be Rs. 235 Crore. However, the price of non-solar REC's are trading in the exchange at Rs. 1500/MWh for the period upto May, 2016. Hence, it is again noted that it would be unfair on UPCL to ask it to deposit the aforesaid amount immediately into the Fund so as to enable State Agency to procure RECs on licensee's behalf as provided in the Regulation considering the fact that for the past many months price of these certificates is

equivalent to the floor price which translates into the cost impact of around Rs. 108 Crore to UPCL.

- 2.7. Further, the intent of the Regulation is 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. With regard to delay in achievement of RPO compliances by the Licensee for FY 2014-15, the Commission is of the view that since the solar and non solar RPO have already been complied with by the Petitioner, the Commission approves the delayed fulfilment of RPO for FY 2014-15 by the distribution licensee (UPCL).
- 2.8. 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.

2.9. Ordered accordingly.

(K.P. Singh)
Member

(Subhash Kumar)
Chairman