

**Before**

# **UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**Petition No. 01 of 2023**

**In the matter of:**

Petition for relaxation in balance quantum of Renewable Purchase Obligation of FY 2021-22 not met to the tune of 25.61 MUs (Non-Solar) and 350.49 MUs (Solar) as per the provisions of UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 and application seeking amendment in the said Regulation in the light of new order of Ministry of Power, GoI issued on dated 22.07.2022 read alongwith its Corrigendum dated 19.09.2022.

**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)- Chairman (I/c)**

**Date of Hearing: January 17, 2023**

**Date of Order: February 13, 2023**

This Order relates to the Petition dated 23.12.2023 filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "Petitioner" or "Licensee" or "UPCL") seeking relaxation of its unmet Renewable Purchase Obligation (RPO) of 25.61 MUs (Non-Solar) and 350.49 MUs (Solar) pertaining to FY 2021-22 in accordance with of UERC (Compliance of Renewable Purchase Obligation) Regulations, 2010 (hereinafter referred as to "RPO Compliance Regulations, 2010) and request for carrying out suitable amendment in the provisions of RPO Compliance Regulations, 2010 in accordance with the MoP Order dated 22.07.2022 read alongwith the Corrigendum dated 19.09.2022.

## **1. Background and Petitioner's submission**

- 1.1. In line with the provisions of the Electricity Act, 2003, Commission's Regulations and various notifications of MoP w.r.t. promotion of development of renewable and non-conventional source of energy, Obligated Entities, i.e. distribution licensee, captive users and open access customers, are required to procure minimum percentage of its total electricity requirement for own consumption from eligible renewable energy sources as defined under Regulation 4 of UERC(Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2018 (hereinafter referred to as "RE Regulations, 2018").
- 1.2. In accordance with the provision of Regulation 9 of RE Regulations, 2018, UPCL was required to procure 10.50% of total power consumption excluding hydro each from solar energy and other renewable energy to meet its renewable purchase obligation.
- 1.3. In the present Petition, the Petitioner submitted that UPCL throughout the year was tracking for Non-Solar RE purchase for complying to the RPO norms but in the last quatre of FY 2021-22 at one hand the demand increased by more than 33 MUs and on the other hand the availability became stiff due to the non-availability from gas based sources as well as unexpected higher electricity prices in the market.
- 1.4. The Petitioner submitted that for RPO calculations, the overall energy and the RE component out of it are considered up to 31<sup>st</sup> March itself and any last-minute variations may cause deficits/surplus of RE Component against the given targets. The actual purchase figures comes to the knowledge after finalization of regional energy accounts that are issued after 2-3 months for the concerned months, hence, exact matching is also difficult to achieve. However, UPCL has almost reached the given targets and was just short by 25.61 MUs that is 3.3% of the overall target for Non-Solar RPO.
- 1.5. The Petitioner submitted that it has also signed PPAs for power from State based pirul plants that will also count against the non-solar RE generation but due to various issues of pirul, UPCL has not received sufficient power against such PPAs.
- 1.6. With regard to Solar RPO, the Petitioner submitted that it has tied up 200 MW from solar plants commissioned/ to be commissioned within the State of Uttarakhand and UPCL has also allowed

rooftop solar facilities of 15 MW for the esteemed consumers of the State and has also signed a 100 MW Vanilla Solar PPA and 100 MW RTC (30% Solar+70% wind) PPA with Solar Energy Corporation of India (SECI). However, due to delay in commissioning of State based 200 MW solar PV plants, UPCL managed to arrange only 416 MUs against the target of 766.88 MUs during FY 2021-22. Further, the SECI plants were expected to be commissioned in FY 2022-23 but the indications are that they might get delayed from their expected date of commissioning. The summary of Non-Solar and Solar RPO for FY 2021-22 is as follows:

Particular	MUs
Total Electricity Purchased	14911.63
Obligation Non-Solar (10.50% of total electricity purchased excluding hydro purchase)	766.88
Obligation Solar (10.50% of total electricity purchased excluding hydro purchase)	766.88
RE Purchase (Non-Solar) at Preferential Tariff for FY 2021-22	741.27
RE Purchase (Solar) for FY 2021-22	416.39
<b>Unmet RPO (Non-Solar)</b>	<b>25.61</b>
<b>Unmet RPO (Solar)</b>	<b>350.49</b>

- 1.7. The Petitioner submitted that UPCL explored the availability of Solar RE power from power exchanges through GDAM but due to continuous increase in prices in GDAM and in order to avert the burden over the consumers, the same had not been considered.
- 1.8. The Petitioner has submitted the details of estimated RPO based on the trajectory specified for FY 2022-23 under Regulation 9 of RE Regulations, 2018 as follows:

Particulars	MUs
Total Electricity Purchased	16256.44
Obligation Non-Solar (11% of total electricity purchased excluding hydro purchase)	878.66
Obligation Solar (11% of total electricity purchased excluding hydro purchase)	878.66
Backlog of FY 2021-22 (Non-Solar)	25.61
Backlog of FY 2021-22 (Solar)	350.49
Total RPO obligation for Non-Solar (including backlog)	904.27
Total RPO obligation for Solar (including backlog)	1229.15
RE Purchase (Non-Solar) at Preferential Tariff	773.81
RE Purchase (Solar) at Preferential Tariff	563.05
<b>Estimated deficit (Non-Solar)</b>	<b>130.46</b>
<b>Estimated deficit (Solar)</b>	<b>666.10</b>

- 1.9. The Petitioner submitted that the RPO is increasing on yearly basis as the consumption of the

State is going up and due to delay in commissioning of various SHPs with whom UPCL has signed the PPA, the gap in achieving RPO is getting wider. Further, the present financial burden on the Petitioner for purchasing the unmet RPOs of FY 2021-22 amounts to Rs. 38 Crore and UPCL could not purchase RE certificates due to acute financial constraints.

- 1.10. With regard to RPO trajectory for FY 2022-23, the Petitioner submitted that MoP, GoI vide letter dated 22.07.2022 read with Corrigendum dated 19.07.2022 issued an Order regarding RPO and Energy Storage Obligation trajectory till FY 2029-30 which is as follows:

FY	RPO Targets (%)			
	Wind	HPO	Other RPO	Total RPO
2022-23	0.81%	0.35%	23.44%	24.60%
2023-24	1.60%	0.66%	24.81%	27.07%
2024-25	2.46%	1.08%	26.37%	29.91%
2025-26	3.36%	1.48%	28.17%	33.01%
2026-27	4.29%	1.80%	29.86%	35.95%
2027-28	5.23%	2.15%	31.43%	38.81%
2028-29	6.16%	2.51%	32.69%	41.36%
2029-30	6.94%	2.82%	33.57%	43.33%

- 1.11. The Petitioner submitted that UPCL will have the following likely scenario based on RPO trajectory issued by MoP, GoI:

FY	Total Consumption (MU)	RPO Targets (MU)			Achievement (MU)			Deficit (-)/ Surplus (+) (MU)		
		Wind	HPO	Other RPO	Wind	HPO	Other RPO	Wind	HPO	Other RPO
2022-23	16256	132	57	3811	0	389	8409	-132	333	4598
2023-24	17085	273	113	4239	0	614	8925	-273	501	4686
2024-25	17940	441	194	4731	0	746	9302	-441	552	4572
2025-26	18837	633	279	5306	0	992	9302	-633	714	3996
2026-27	19778	848	356	5906	0	1093	9302	-848	737	3397
2027-28	20767	1086	446	6527	0	1868	9302	-1086	1422	2775
2028-29	21806	1343	547	7128	0	2409	9302	-1343	1862	2174
2029-30	22896	1589	646	7686	0	4019	9302	-1589	3373	1616

- 1.12. The Petitioner submitted that from the above, it is apparent that UPCL will have no deficit in other RPO. Moreover, Clause 14 of the Order dated 22.07.2022 of MoP is reproduced herein below:

*“Any shortfall remaining in achievement of ‘Other RPO’ category in a particular year*

*can be met with either the excess energy consumed from WPPs, commissioned after 31<sup>st</sup> March 2022 beyond 'Wind RPO' for that year or with, excess energy consumed from eligible LHPs (including PSPs), commissioned after 8<sup>th</sup> March 2019 beyond 'HPO' for that year or partly from both. Further, any shortfall in achievement of 'Wind RPO' in a particular year can be met with excess energy consumed from Hydro Power Plants which is in excess of 'HPO' for that year and vice versa."*

1.13. The Petitioner requested the Commission to consider the trajectory and guidelines issued by MoP vide its Order dated 22.07.2022 read with Corrigendum dated 19.09.2022 and requested to consider the relaxation in unmet obligation of 25.61 MUs in Non-Solar RPO. Further, keeping in view of continuous projected surplus in other RPO section as enumerated in above table, the Commission may also like to consider relaxation in 350.49 MU unmet Solar obligation that may be merged and fulfilled through other RPO categories in FY 2022-23.

## **2. Respondent's replies and Petitioner's rejoinders**

- 2.1. The Commission had forwarded the copy of the Petition to UREDA for its comments in the matter. UREDA vide its letter dated 11.01.2023 submitted its reply to the Commission which was forwarded to the Petitioner for its counter reply. The Petitioner vide its letter dated 16.01.2023 submitted its rejoinder. The Commission has dealt with the reply and rejoinder of the parties in the subsequent paragraphs of this Order.
- 2.2. UREDA submitted that in line with the Government of India commitment towards Renewable Energy in the global platform, the State Government is coming up with Solar Policy "Uttarakhand State Solar Power Policy 2023" through which the State envisions championing the clean energy transition by bringing solar energy from the margins to the mainstream.
- 2.3. UREDA submitted that the State has achieved installed capacity of 575 MW from solar till December, 2022 and there is a further potential for solar plants. In order to fill the gap and to reach the potential, solar policy of the State aims to achieve a target of 2500 MW till December 2027 in various categories out of which 1100 MW is targeted to be achieved in Utility scale solar projects.

UPCL vide its rejoinder dated 16.01.2023 submitted that UPCL has always been in deficit in achieving Solar RPO, that is mainly due to uncertainly in commissioning of the Solar Projects

within the specified time frame. Hence, Solar targets should be kept as rational and practically achievable so that the same can be achieved.

- 2.4. UREDA submitted that total 96.2 MW of solar power plants have been commissioned till date and rest are expected to be commissioned by 31.03.2023 against the cumulative capacity of 200 MW solar power projects. UREDA also submitted that the delay in commissioning of these plants is due to the impact of COVID pandemic and increase in GST alongwith the imposition of custom duty.

UPCL submitted that only plants having cumulative capacity of 96.20 MW have been installed/commissioned against the cumulative capacity of 202 MW till date which itself shows that even 50% of the allotted capacity has not yet been commissioned so far even after a lapse of 3 years of issuance of letter of award.

- 2.5. UREDA submitted that in present scenario resident/developers of Uttarakhand are readily keen to commission more projects related to solar power plant which is a source of self-employment in the hilly state of Uttarakhand. UREDA requested the Commission to maintain target for solar RPO in the same category, i.e. solar RPO itself which is being achieved and achievable in future also and unmet RPOs of FY 2021-22 may be allotted to UREDA for bidding and the targets shall be achieved by UREDA within next two years.
- 2.6. UREDA submitted that in order to match with and contribute to the national target of 500 GW solar by 2030, Solar RPO needs to be kept separately and should not be merged in any other category. Further, upcoming Solar Policy of Uttarakhand also have a provision for separate Solar Purchase Obligation which needs to be addressed too.
- 2.7. UPCL submitted that variability and uncertainty aspect associated with Solar Generation adversely impacts the day to day power availability situation of UPCL that results in undue DSM penalties and solar targets should be kept as rational and practically achievable taking cognizance of the fact that solar plants allotted by UREDA to the developers have never been commissioned within the specified time frame. Therefore, solar RPO should be kept under the head of other RPO category as mandated in MoP Order dated 22.07.2022 read alongwith corrigendum dated 19.09.2022.

### 3. Commission's Analysis, view and decision

- 3.1. The present Petition has been filed by UPCL under provisions of Regulation 7.2 of RPO Compliance Regulations, 2010 read with Regulation 59 of Conduct of Business Regulations, 2014 seeking relaxation in balance quantum of Renewable Purchase Obligation of FY 2021-22 not met to the tune of 25.61 MUs (Non-Solar) and 350.49 MUs (Solar) as per the provisions of UERC RPO Compliance Regulations, 2010. UPCL has also sought amendments in the said Regulation in light of MoP Order dated 22.07.2022 read with its Corrigendum dated 19.09.2022.
- 3.2. The Commission conducted a hearing on the merits of the Petition on 17.01.2023. 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 in the Petition and in the rejoinder, reply of the Respondent, the analysis of the Commission are dealt in the subsequent paragraphs of this Order.
- 3.3. The Commission observed that the Petitioner was required to procure 10.50% of total consumption/purchase of electricity excluding hydro power each from Solar power plants and other renewable power plants to meet its renewable purchase obligation for FY 2021-22. The Petitioner in the Petition submitted that the total consumption of energy excluding hydro purchase is 7303.62 MUs. Accordingly, UPCL was required to purchase Solar energy and non-solar energy of 766.88 MUs each. However, it could procure only 416.39 MUs against obligation of 766.88 MUs for Solar energy and 741.27 MUs against 766.88 MUs for Non-Solar purchase obligation resulting into deficit of 350.49 MUs (Solar RPO) and 25.61 MUs (Non-Solar RPO).
- 3.4. With regard to non-compliance of RPO, Regulation 7.1 of RPO Compliance Regulations, 2010 specifies as follows:

***“Effect of Default:***

*7.1 If the Obligated Entity does not fulfill 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 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 utilized 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.*

7.2 Where any obligation 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:

***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:***

*Provided that where the Commission has consented to the carry forward to compliance requirement, the provision of Regulation 7.1 above or the provision of Section 142 of the Act shall not be invoked."*

**(... Emphasis Added)**

It is explicitly clear from the first proviso of the above mentioned regulation that in case of any deficit in procurement of energy from renewable energy to meet its obligation towards RPO, the Nodal Agency is responsible for intimating such shortfall to the Commission within one month of close of that financial year. However, neither of the parties approached



the Commission within the timeframe specified under the Regulations for intimation of shortfall of RPO.

In the matter, during the hearing, the Petitioner requested the Commission to condone the delay for approaching the Commission regarding shortfall in meeting the required renewable energy to meet its RPO. The Commission cautions both the parties that such non-compliance of Regulations should be strictly avoided and should not be repeated in future.

- 3.5. Further, the Commission observed that the Petitioner, citing the financial constraint, has requested the Commission to allow carry forward of deficit RPO of FY 2021-22 to FY 2022-23. However, with regard to carry forward of any short fall in compliance of RPO, first proviso of Regulation 7.2 of RPO Regulations, 2010 specifies that the carry forward shall be allowed to the Obligated Entity where it is unable to procure Renewable Energy Certificates due to non-availability of the same. Accordingly, if an Obligated Entity fails to procure renewable energy to meet its obligation towards RPO, it shall purchase Renewable Energy Certificate from Power Exchange for compliance and carry forward of shortfall shall only be allowed if the Obligated Entity fails to purchase Renewable Energy Certificates due to non-availability of certificates. Further, with regard to shortfall in achieving the solar purchase obligation, UREDA vide its submission requested that unmet RPOs targets of FY 2021-22 may be allotted to it for bidding and the targets shall be achieved by UREDA within two years. UREDA also requested to allot solar RPO till FY 2024-25 to UREDA in advance, so that the preparatory activities, RFPs and allotments may be executed well within time.

In the matter, the Commission observed that at the one hand UREDA submitted that the balance capacity will be commissioned by the end of March 2023 and on the other hand it is submitting that it will install the solar power plants by the end of two years if the unmet Solar RPO is allotted to UREDA. Further, from the submission of the Petitioner, it appears that the major portion of unmet Solar RPO was due to delay in commissioning of solar power plants allotted under 200 MW Solar PV plants scheme. It is pertinent to mention that UPCL vide its letter dated 02.06.2018 requested UREDA for arrangement of 200 MW solar power to achieve the Renewable Purchase obligation for FY 2018-19 as per the provisions of Uttarakhand Energy Policy-2013. Thereafter, the Commission vide its Order dated 01.02.2019 extended the control period of the benchmark capital cost & generic tariff as declared by the Commission vide its order

dated 06.09.2018, upto June, 2020 for upcoming Solar PV Power Plants (cumulative capacity of 200 MW) which was further extended by the Commission vide various Orders. However, as per the submission of UREDA plants having cumulative capacity of 96.20 MW have been commissioned out of total capacity of 200 MW till date which works out to 48% only. Even after lapse of three years only 48% of total allotted capacity have been installed. In the matter, the Commission directs UREDA to submit the status report of the balance capacity that is yet to be commissioned within 15 days of issuance of this Order.

- 3.6. Accordingly, based on the above discussion and taking cognizance of the fact of the financial constraints and delay in commissioning of solar plants, 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 above, the Commission allows the Petitioner to carry forward the deficit Solar RPO and Non-Solar RPO for FY 2021-22 to FY 2022-23 and the Petitioner is directed to plan the renewable power procurement accordingly to meet its obligations towards renewable energy. Further, UPCL may request UREDA for arrangement of additional capacity of solar energy, if required, in accordance with the provisions of Solar Energy Policy, 2013 to achieve the Renewable Purchase Obligation as specified by the Commission from time to time.

- 3.7. UPCL vide its Petition also requested the Commission to carry out the amendment in RE Regulations, 2018 in consonance to the provision of Order dated 22.07.2022 read with corrigendum dated 19.09.2022 of MoP, GoI in respect of RPO obligation trajectory till FY 2029-30.

In the matter, the Commission is of the view that the amendment of Regulations requires

a separate procedure given under Section 181 of the Electricity Act, 2003 and cannot be carried out through an Order. The Commission, accordingly, directs its staff through its Secretary to examine the claims made by the Petitioner and also the replies put forth by UREDA in this regard and put up the proposal for amendment of the Regulations before the Commission, if so required.

3.8. Ordered accordingly.

**(D.P. Gairola)**  
**Member (Law)- Chairman (I/c)**