Petition No 1565 of 2020

Before

UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

Lucknow

Quorum

Sh. Raj Pratap Singh, Chairman

Sh. Kaushal Kishore Sharma, Member

Sh. Vinod Kumar Srivastava, Member (Law)

In the matter of: Petition under Regulation 18 of Uttar Pradesh Electricity Regulatory Commission (Promotion of Green Energy through Renewable Purchase Obligation) Regulations, 2010 read with Regulation 57 of UPERC (Conduct of Business) Regulations, 2019 seeking relaxation of Regulation 7 regarding implementation of the RPO Regulatory Fund as mandated by UPERC in its Order dated 30.12.2019, in the matter pertaining to Suo-Moto proceedings regarding meeting of RPO targets by the obligated entities.

1. Uttar Pradesh Power Corporation Ltd. Through its Chief Engineer, PPA (Renewable), 14th Floor, Shakti Bhawan, 14, Ashok Marg, Lucknow- 226001.
2. Paschimanchal Vidyut Vitran Nigam Limited, through its Managing Director, Victoria Park, Meerut.
3. Madhyanchal Vidyut Vitran Nigam Limited, through its Managing Director, 4-A Gokhale Marg, Lucknow- 226001.
4. Purvanchal Vidyut Vitran Nigam Limited, through its Managing Director, Purvanchal Vidyut Bhawan DLW Varanasi.
5. Dakshinanchal Vidyut Vitran Nigam Limited, through its Managing Director Urja Bhawan,220 Kv Up Sansthan Bypass Road Agra 282007.
6. Kanpur Electricity Supply Company Limited, through its Managing Director, Civil Lines KESA House, Kanpur.

.....................**Petitioners**

Versus

1. Noida Power Company Limited through its Managing Director, Commercial Complex H- Block, Alpha Sector II, Greater Noida – 201308.
2. Uttar Pradesh New and Renewable Energy Development Agency through its Director, Vibhuti Khand, Gomti Nagar, Lucknow.

.... Respondents

The following were present:

1. MD, KESCo
2. Sh. Deepak Raizada, PPA Renewable, UPPCL
3. Sh. Arvind Bangari
4. Sh. Sanket Srivastava, Advocate
5. Sh. Sitesh Mukharjee, Advocate, UPPCL
6. Sh. Abhishek Kumar, Advocate, UPPCL
7. Sh. Shailendra
8. Sh. Gaurav Sehgal
9. Sh. Alok Sharma
10. Representative from UPNEDA

ORDER
(Date of Hearing 29.10.2020)

1. The instant Petition is filed by UPPCL for relaxation of creating RPO Regulatory fund of Rs. 737.11 Crore. The Commission vide Order dated 30.12.2019 in suo moto proceeding had directed UPPCL to create a separate account at the earliest and deposit the amount equivalent to the product of respective shortfall in units of solar and non-solar purchase obligation till FY-2019-20, as per the roadmap submitted and corresponding rate @ INR 1/- per unit. The Commission also directed UPPCL to deposit INR 737.11 crores in four equal instalments (i.e. ¼ of the total fund amount to be transferred in each

month of December 2019, January 2020, February 2020 and March 2020 respectively).

2. During hearing, Sh. Sitesh Mukharjee, Counsel of the UPPCL submitted as follows:-

   (i) The Petitioners have taken all possible efforts to meet the RPO targets but have failed to do so on account of reasons beyond their control. The direction of the Commission of depositing INR 737.11 crores in the RPO Regulatory Fund will push the Petitioners into further, financial distress. Therefore, given the present facts and circumstances and Uday Scheme MOU the Petitioners herein request the Commission to exercise its Power to Relax as provided under the RPO Regulation and dispense away at present with the directions of creation of RPO Regulatory Fund of INR 737.11 crores as given vide its order dated 30.12.2019 in the Suo-Moto proceedings.

   (ii) Since the Commission's Order dated 31.12.2019, the situation has been significantly changed and therefore, UPPCL would now be able to comply with RPO in accordance with Regulations of the Commission and therefore Commission may take a view that RPO Regulatory Fund is not required to be created. Further, the Clause 6.4(1) of the National Tariff Policy states that the Solar RPO has to be reached at 8% by 2022. The relevant extract of the same is as below:-

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Renewable sources of energy generation including Co-generation from renewable energy sources:

Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from *renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall be taken into account while determining tariff by SERCs. Long term growth trajectory of Renewable Purchase Obligations (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.*

Provided that cogeneration from sources other than renewable sources shall not be excluded from the applicability of RPOs.

(i) Within the percentage so made applicable, to start with, the SERCs shall also reserve a minimum percentage for purchase of solar energy from the date of notification of this policy which shall be such that it reaches 8% of total consumption of energy, excluding Hydro Power, by March 2022 or as notified by the Central Government from time to time.

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(iii) Ministry of Power (Govt. of India) vide its Office Memorandum dated 20.11.2015 came out with Ujjwal Discom Assurance Yojana Scheme (Uday Scheme). The Uday Scheme document provides that the Distribution Companies opting for the scheme will comply with RPO outstanding since 01.04.2012 within a period to be decided in consultation with MoP. The MoP, GoI provided for such condition knowing fully well that the participating states have many large power consuming states, and several of those states have huge RPO backlog on account of scarce availability of renewable sources and non-development of REC's market. Therefore, it is relevant to highlight that as part of the MOU it was agreed that the distribution companies of Uttar Pradesh will endeavor to meet the RPO outstanding since 01.04.2012 till 31.03.2015, three years after the distribution companies reach break-even. The break- even year for the distribution companies has been defined to be FY 2019-20. Accordingly, the MOU contemplated that the RPO shortfall should be met by the distribution companies by FY 2022-23 i.e. 3 years after FY 2019-20.

(iv) Regulation 7 of the UPERC RPO provides that creation of RPO Fund is at the discretion of the Commission. The relevant extract of the same is reproduced as below:-

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> *If the obligated entity does not fulfill its commitment towards minimum purchase from renewable energy sources during any year as provided in these regulations, the Commission may direct the obligated entity to deposit into a separate fund such amount as the Commission may determine on the basis of the shortfall in units of renewable purchase obligation, RPO Regulatory Charges and the forbearance price. For this purpose, a fund shall be created and maintained by such obligated entity in accordance with the procedure as referred to in clause 8.2:*
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> *Provided that RPO Regulatory Charges shall be equivalent to the applicable floor prices of Solar and Non-Solar RECs or any other rate as may be stipulated by the Commission:*
>
> *Provided further that the RPO Regulatory Fund so created shall be utilized, as may be directed by the Commission, for purchase of the certificates or may be provided to UPNEDA and/or any other Govt agency notified by the Government of Uttar Pradesh, for development of transmission and distribution infrastructure in the State related to generating stations based on renewable energy sources or in any other manner as may be provided by the Commission:"*
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> ...."

(v) During FY 2019-20, the Petitioner has already met Solar Obligation of 2% by achieving 2.4% of RPO. However, Non-solar Obligation could not be meet as there was significant drop in PLF of contracted capacity of Co-generation power Plants which had led to noncompliance of non-solar RPO. Further, if it would have been the case that the PLF of these plants was achieved as per the contracted capacity, the Petitioner would have complied with the non-solar RPO.

(vi) UPPCL including the Discoms are already under severe financial distress and are working tirelessly towards achieving a better financial and operational parameter, in terms of their commitment under the Uday Scheme MOU. UPPCL is finding extremely difficult to comply with the direction of the Commission for the creation of the RPO Regulatory Fund. Further, even assuming that UPPCL arranges fund towards the RPO Regulatory Fund the same will have to be arranged by taking fresh working capital debt/loans from the financial institutions. However, RPO Regulatory Fund would not earn any interest and the funds would just incur interest cost. Any debt/loan of such magnitude will further distress the already distressed distribution companies towards the obligation of principal and interest repayment.

(vii) The Commission is well empowered to relax any of the provision of the RPO Regulation in terms of the Regulation 18 of the RPO Regulations. Though, the relaxation is entirely a discretionary power of the Commission, but it is settled law that the discretionary power needs to be applied while considering justice and equity without discrimination to any party. The situation which is at hand necessitates the Commission to exercise the Power to Relax in order to meets the ends of justice on account of hardships which has arisen on account of directions of Suo-Moto order dated 30.12.2019. The relevant extract of the RPO Regulation is excerpted herein below:

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The Commission may by general or special order, for reasons to be recorded in writing, relax any of the provisions of these regulations on its own motion or on application made before it by an interested person.

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3. The Commission after hearing the Petitioner at length was of the view that considering the facts and circumstances of the case that the Petitioner has not complied with the RPO, therefore any relaxation can only be considered if the Petitioner first demonstrates its intention to comply with the Commission's Order dated 31.12.2019 in Suo-Moto proceedings. Thus, the Commission directs the Petitioner to first create a separate account and deposit an amount equivalent to first instalment in accordance with the Commission's Order dated 31.12.2029. The Petitioner shall comply with the directions within four (4) weeks and accordingly shall make a provision by creating a line item in profit and loss account in its Annual balance sheet which depicts that the account has been created and first instalment has been deposited.

4. **The matter will be listed in last week of January 2020.**

(Vinod Kumar Srivastava)	**(Kaushal Kishore Sharma)**	**(Raj Pratap Singh)**
Member (Law)	**Member**	**Chairman**

Place: Lucknow

Dated: 18.12.2020