

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
Thiruvananthapuram**

OP No.34/2015

(File No.1935/DD/BKPL/2015/KSERC)

In the matter of petition under Section 86 (1) (b) of the Electricity Act, 2003, for approval of agreement for extension of power purchase agreement dated 03.05.1999 between KSEB Ltd and BSES Kerala Power Ltd.

Petitioner : BSES Kerala Power Ltd
Udyogamandal P.O
Kochi 683 501.

Represented by Adv. P. G. Jayashankar
Sri. Robin Sebastian, Director, BKPL
Sri. Suresh Gehani, Consultant, BKPL
Sri. Harikumar Pillai, Head, OEM, BKPL

Respondent : Kerala State Electricity Board Ltd,
Vydyuthi Bhavanam,
Pattom, Thiruvananthapuram-695 004.

Represented by Sri. N.S. Pillai, Director, Finance, KSEBL
Sri. N. Venugopal, Chief Engineer, KSEBL
Sri. B. Pradeep, DY.CE-II, TRAC, KSEBL
Sri. Bipin Sankar P., Dy.CE, TRAC, KSEBL
Sri. Anil. J, EE, TRAC, KSEBL
Smt. Latha S.V., AEE, KSEBL
Smt. Sudha V.P., AEE, KSEBL

Order dated 26.10.2016

1. M/s BSES Kerala Power Ltd (hereinafter referred to as the petitioner or BKPL) has filed a petition dated 03.10.2015 with the following prayers to,-

(i) Admit the petition

- (ii) Approve the agreement for extension of PPA between KSEB Ltd and BKPL including tariff for two years as prayed with effect from the first November 2015 pending finalization of the proposal submitted to KSEB Ltd for gas conversion of the plant and extension of PPA term.
 - (iii) Grant interim approval for continuing purchase of power from BKPL by KSEB Ltd during the intervening period beyond 31.10.2015 till the time extension of PPA is approved and signed, at the tariff proposed in the draft agreement for extension of PPA, subject to adjustment with respect to tariff approved by the Hon'ble Commission.
 - (iv) Condone any inadvertent omissions / errors / rounding of differences / short comings in the petition.
 - (v) Allow additions / alterations / changes / modifications / amendments to the petition at a future date.
 - (vi) Dispose of the petition expeditiously.
 - (vii) Pass any such orders as deemed fit.”
2. After preliminary scrutiny of the petition, the Commission issued notice to the petitioner and the respondent directing them to appear for the hearing on 27.10.2015. The Commission had, as per letter dated 14.10.2015 directed the petitioner to submit the following information and clarification on the petition.
- (1) The capital cost adopted for computing the fixed charges as per prevailing PPA.
 - (2) Technical and financial parameters adopted for computing tariff as per prevailing PPA.
 - (3) Actual O&M cost for last 5 years based on audited accounts with documentary evidence.
 - (4) Tariff computation for operating the plant under open cycle mode.
 - (5) Steps taken to convert the fuel to LNG / RLNG
 - (6) The petition is for extension of PPA and as per the PPA heat rate adopted is 2000kCal/kWhr. The reason for claiming higher heat rate to be substantiated with documentary evidence.
 - (7) The methodology adopted and computation of O&M charges proposed in the tariff.”
3. The Commission had, as per letter dated 14.10.2015, directed the respondent to submit the following information and clarification
- (1) Whether the generation from M/s BKPL is required for meeting the power requirement of the State during the next two years especially considering

the power already tied up through DBFOO (865MW), Maithon (300MW) and DVC (100MW).

- (2) The year wise details of the energy schedule from M/s BKPL since its COD till date, separately for KSEB's own use as well as the power scheduled for sale to outside the state on cost plus basis.
 - (3) The year wise details of the fixed and variable charges paid to M/s BKPL till date (Fixed and variable charges may be shown separately)
 - (4) Whether there is any obligation from the part of KSEBL / State to extend the PPA beyond October 2015.
 - (5) The Commission vide order dated 30th April 2013 in petition OP No. 2/2013 in the matter of ARR & ERC for KSEBL for 2013-14 has directed that "On expiry of prevailing PPA with liquid fuel based IPPs such as BSES, KPCL etc. power should not be drawn from these stations under any circumstances, unless the developers convert the stations to LNG or pool sufficient quantum of cheaper power from other sources, so that the pooled tariff is well within the merit order dispatch. Appropriate advance notice may be issued to such developers within 3 months from the date of this order". KSEBL may report the action taken on the matter and steps if any taken for conversion of the plant.
 - (6) KSEBL's separate proposal if any on the fixed and variable charge commitment for next two years including lease charges, taxes other charges et., in the event of extension of PPA.
 - (7) KSEBL's proposal, if any on operating the plant on open cycle mode including its financial commitment.
 - (8) The estimated price of naphtha and variable charges for the next two years.
 - (9) The expected power availability, including rate of power purchase through short term market including that from energy exchanges.
 - (10) Detailed comments on the proposal of M/s BKPL with related documents to substantiate the proposal."
4. Accordingly the Respondent submitted available details as per its letter No.KSEB/TRAC/ KSERC/BSES/2015-16/ 2233 dated 26.10.2015 and requested for further time for submitting detailed comments from the petitioner. It was also submitted that the preliminary views of KSEB Ltd would be presented during the hearing on 27.10.2015.
 5. The first hearing on the petition was conducted on 27.10.2015. In the hearing, the authorized representative of the petitioner namely Shri. Suresh Gehani, presented the case of the petitioner in brief and submitted the prayers as quoted

in para 1 of this order. Shri. B. Pradeep, Deputy Chief Engineer, TRAC, KSEB Ltd, Shri. Venugopal, Chief Engineer, TRAC, KSEB Ltd and Shri. Sivasankara Pillai, Director (Finance) KSEB Ltd presented the case of the Respondent.

6. On behalf of the Respondent it was submitted that it has, as per letter No.CP/BSES/ 2015-16/164 dated 13.07.2015 accorded 'in principle' sanction to allow the BKPL plant (157 MW) to run on naphtha fuel for a period of two more years from the date of expiry of existing PPA subject to the following conditions, -
- (i) Terms of existing PPA have to be suitably modified.
 - (ii) Re-ascertain the fixed charges applicable for the extended period, as the existing plant is a fully depreciated one.
 - (iii) Obtaining approval from KSERC for the above.

It was also submitted by KSEB Ltd that the above decision was taken by the Board of Directors after duly examining the probable availability of power and transmission corridors. However no consensus had been arrived at with BKPL in respect of the fixed cost, heat rate, variable cost and such other conditions of the draft PPA proposed by the petitioner. It was also submitted that the proposal to convert the existing plant to LNG based plant would be highly risky if there is a 'take or pay' condition in respect of the purchase of LNG for the plant and therefore KSEB Ltd has not taken a final decision on this issue.

7. M/s BKPL informed that a copy of the letter No. KSEB/TRAC/ KSERC/BSES/2015-16/ 2233 dated 26.10.2015 in which KSEB Ltd has stated their responses in detail, has not been received by them. The Commission served a copy of the said letter on M/s BKPL during the course of hearing.
8. The following parties submitted petitions for impleading themselves in this petition.
- (1) The Kerala High Tension and Extra High Tension Industrial Electricity Consumers Association, Productivity House, Jawaharlal Nehru Road, Kalamassery.
 - (2) Kerala State Productivity Council, Productivity House, Jawaharlal Nehru Road, Kalamassery.

Copies of the petitions submitted by them were served on M/s BKPL and KSEB Ltd for their remarks. Shri. Dejo Kappan, Managing Trustee, Centre for Consumer Education had also submitted a representation expressing his views on the issues involved in the extension of the impugned PPA dated 03.05.1999.

Representing the consumers he expressed the concerns with regard to the adverse impact of extending the impugned PPA, on the tariff applicable to consumers.

9. The Commission vide the daily order dated 28-10-2015 had issued the following directions to the petitioner and respondent that,
- (i) *KSEB Ltd shall submit a detailed appraisal on the demand and supply position of power during 2016 and 2017 duly considering the availability of power from its hydel stations, Central Generating Stations, power purchase agreements with traders / generators, KSEBL's own diesel stations, other liquid fuel stations including RGCCPP-Kayamkulam and from short-term market, the average cost of power purchase for a period of two years from November 2015, availability of corridor and such other details to substantiate the necessity for extending the PPA with BKPL for a further period of two years from November 2015 for which in principle sanction has been accorded by the Board of Directors of KSEB Ltd.*
 - (ii) *KSEB Ltd may, if found necessary, file petition under clause (b) of sub-section (1) of Section 86 of the Electricity Act, 2003, for the extension of the original PPA dated 03.05.1999 as per the Article 15.1 and Article 7.4 therein, with mutually agreed tariff and terms and conditions incorporated in the draft PPA initialled by both the parties to the agreement.*
 - (iii) *Time up to 27.11.2015 is granted to the petitioner BKPL and the respondent KSEB Ltd for complying with the directives (i) & (ii) above.*
 - (iv) *KSEB Ltd and BKPL may, till 30.11.2015, extend the PPA dated 03.05.1999 as per the Article 15.1 and Article 7.4 therein subject to the condition that the payment for the period of one month from 01.11.2015 to 30.11.2015 shall be as decided by the Commission in the final order.*
10. In compliance of the direction of the Commission, the respondent KSEB Ltd vide letter dated 25.4.2016 has submitted that:
- (i) Since a mutually agreed tariff and terms and conditions could not be arrived at in spite of discussions with M/s. BKPL, KSEB Ltd informed M/s BKPL that KSEB Ltd will not be liable for payment of fixed charges or any other charges with effect from 1.12.2015.
 - (ii) Government of Kerala vide the order dated 24-2-2016 accorded 'in principle sanction' for extending the PPA between KSEB Ltd. and M/s. BKPL for the combined cycle power plant at Kochi for two more years from the date of expiry of the existing PPA, subject to the condition that no Government Guarantee would be allowed for any payment obligations of

KSEB Ltd. and the final tariff should be decided by KSERC and it should be brought back to Government and approval of Government obtained. It was also ordered that KSEB Ltd. was permitted to study and firm up its decision on the option of fuel conversion of the plant from naphtha to LNG in consultation with KSERC and obtain Government approval at the appropriate stage.

(iii) It was submitted before the Commission that, KSEB Ltd. and M/s. BKPL could not arrive at a consensus on the tariff for the extended period. The differences between the two parties were mainly on the following tariff parameters.

- (1) Return on Equity.
- (2) O&M Charges.
- (3) Cost of spares included in the computation of Interest on Working Capital.
- (4) Calculation of fuel stock for the computation of Interest on Working capital.
- (5) Reimbursement of Tax on Returns.
- (6) Reimbursement of Land Lease charges payable by BKPL to TCCL.
- (7) Effective date of application of the extended PPA for the purpose of payment of fixed charge.

(iv) The power position of the state was positively impacted due to a combination of factors(which were remaining uncertain till recently) like commissioning of Mysore-Areecode 400KV line, commissioning of Narendra-Kolhapur 765KV line at 400KV level and resolution of disputes with CTU through orders of Hon'ble CERC. This has resulted in substantial improvement in quantum of imported power by full operationalization of 397MW MTOA from Chattisgarh, operationalization of 300MW STOA/MTOA from Simhapuri Energy Pvt Ltd., operationalization of LTA for 235.25 MW from Maithon (140.5MW) and DVC (94.75MW). It was also submitted that, on the basis of petition filed by KSEB Ltd. before CERC for operationalization of LTA as per power contracted under DBFOO bid guidelines from December 2016 and October 2017, it is reasonably expected that power flow will further improve during the time frame.

- (v) The costliest source of power purchase of KSEB Ltd.(except for liquid fuel stations) was IGSTPS(Jhajjar) and the rate at KSEB bus was Rs.5.671/unit. The power allocation from Jhajjar has been discontinued from March 2016. The next in the bottom of merit order is the short term contract with PTC-Simhapuri and the rate at KSEB end is Rs.5.477/unit which is also expiring in May-16. The costliest source of power on expiry of these contracts is from NLC-II Expansion and the rate at KSEB end is Rs.5.516/unit. The delivered rate of power from other sources (except for liquid fuel stations) is below Rs.5 per unit

11. The petitioner M/s BKPL in its letter dated 8.6.2016 submitted that,

- (i) As per the CERC / KSERC regulations, the residual value is to be 10 % of capital cost and that the depreciation will be charged up to 90%.
- (ii) Useful life of liquid based generation station as per schedule to KSERC regulation is 25 years.
- (iii) O& M expenses is to be escalated in line with KSREC regulations.
- (iv) Spares are to be considered based on historical cost.
- (v) For working out Interest on Working Capital, naphtha stock may be considered based on the storage capacity of BKPL.
- (vi) Income Tax and land lease are reimbursable

12. M/s BKPL made additional submission dated June 14, 2016 on conversion of fuel to gas, based on Clause 7.6 of the PPA. BKPL has provided the tentative cost of generation using gas as Rs. 4.42/ KWH based on an LNG price of USD 6.31/ MMBtu (USD 7.99 delivered price).

13. In the mean time, the following individuals / organizations showed interest to participate in the further proceedings of the petition.

- (i) KSEB Officers Association, TC 25/2969, Mallor Road, Vanchiyoor, Thiruvananthapuram.
- (ii) Sri. A. N. Rajan, Ambattumelil House, Kolazhi P.O, Thrissur.
- (iii) BSES employee unions.

14. The Commission conducted the second hearing on the petition at the court room of the Commission on 22-6-2016. Sri. P G Jayashankar, advocate representing M/s BKPL presented the petition. Smt. Latha. S. V representing K S E B Ltd. presented the statements filed by K S E B Ltd. Sri A R Satheesh, made a presentation on the views of the Kerala HT & EHT Industrial Electricity Consumers' Association. Adv P G Jayashankar responded to the queries of the Commission. Advocate Smt. Surya Binoy filed vakalath on behalf of Sri A N Rajan, AITUC and expressed the views on the petition. Sri M G Suresh Kumar representing K S E B Officers Association and Sri Dijo Kappen representing domestic consumers of the State also presented their views. Advocate Sri V Surendran filed vakalath on behalf of the four labour unions of BKPL and requested for an opportunity to present the views of the trade unions. The Commission scheduled final hearing on the petition on 19-7-2016. Subsequently, based on the request of the employee trade unions of the BKPL, the Commission rescheduled the final hearing on 10-8-2016.
15. Meanwhile, M/s BKPL, vide letter dated 27th July 2016 submitted a request for certain amendments in the petition, explaining the power of the Commission to adjudicate upon the issues w.r.t the PPA. The additional request made by the petitioner is to “ *adjudicate and take a decision on the points of differences raised by the respondent in relation to the initialled draft PPA submitted before this Hon'ble Commission by the respondent*”
16. The Commission conducted the final hearing on 10.8.2016 as scheduled. Adv. V Suresh represented the labour unions of M/s BKPL and presented their views. Adv Jayashankar made submissions for the amendment to petition explaining the legal positions of the case quoting the relevant provisions of the Electricity Act, 2003 and decided case laws. Representatives of KSEB Ltd submitted that no consensus could be reached even after several rounds of discussion. The Commission expressed its view that a PPA cannot be imposed on KSEB Ltd. The agreement to purchase power would be a valid agreement only if it is characterized by consensus - ad - idem, arrived out of free will of the parties to contract. So far what has been made clear is that M/s BKPL is willing to sell the power. KSEB Ltd, as per its order No. CP/BSES/2015-16 /164 dated 14.7.2015 has only shown its willingness to extend the contract subject to the terms and conditions to be finalised. Government order No. GO (MS) No. 03/2016/PD dated 24.02.2016 does only show an ‘in principle’ sanction for extending the PPA. Commission clarified that only when KSEB Ltd submits the application for approval of PPA, can the Commission take a view. This has been made clear by the Commission in the daily order dated 28-10-2015. Therefore

KSEB Ltd has to state in unequivocal terms whether or not it requires the power from M/s BKPL and if so on what terms and conditions including the rate. KSEB Ltd submitted that one month time is required to submit their final version. The Commission vide the daily order dated 16-8-2016 allowed time upto 8-9-2016 to KSEB Ltd to submit the details as directed by the Commission.

17. Subsequently, the KSEB Ltd vide letter dated 31-8-2016 requested for time extension till first week of October-2016 to submit the details. As requested by the KSEB Ltd, the Commission allowed time extension upto 7-10-2016 to file the written submission in compliance of the daily order dated 16-8-2016. KSEB Ltd has not filed the written submission within the time limit. However, the KSEB Ltd vide the letter dated 18-10-2016 has again requested for time extension for submitting the details till last week of November-2016.

Analysis and Decision

18. As per the details submitted by the petitioner BKPL, the respondent KSEB Ltd and other stake holders who participated in the proceedings of the subject petition, the Commission finds that,-

- (i) The original PPA dated 03.05.1999 was entered into between the petitioner and the respondent in view of the following Government orders:
- (a) G.O (MS) No.18/1997/PD dated 29.04.1997
 - (b) G.O (MS) No.17/1997/PD dated 25.04.1997
 - (c) G.O (MS) No.30/1996/PD dated 16.12.1996

As per the GO dated 16.12.1996 the Government had approved the PPA to be signed by KSEB for setting up small power project by M/s BSES Ltd which is the predecessor-in-interest of M/s BKPL and KSEB was permitted to sign the PPA with M/s BSES Ltd who had quoted for power project as per the tender floated by KSIDC, Thiruvananthapuram. As per the GO dated 25.04.1997, the Government had accorded sanction to shift the 40 MW power project originally proposed to be set up at Technopark, Thiruvananthapuram to Kochi along with the 40 MW project proposed in the Travancore Cochin Chemicals site subject to the condition that KSEB should negotiate and bring about corresponding reduction in power tariff. As per GO(Ms) No.18/97/PD dated 29.04.1997, the Government had accorded sanction to extend the PPA approved by the Government as per

G.O (MS) No. 30/1996/PD dated 16.12.1996, to the BSES Kerala Power Project Ltd to be established at the premises of Travancore Cochin Chemicals Ltd, Eloor, Ernakulam with the modification that the benefit arising out of Rs.10 crore grant should also be discussed and incorporated by KSEB in the tariff. KSEB was also allowed to sign the PPA with BKPL who was a strategic partner of KSIDC for this project.

- (ii) The term of the original PPA dated 03.05.1999 expired on 31.10.2015.
- (iii) Clause 15.1 of the PPA dated 03.05.1999 provides for extension of the term of PPA as stipulated hereunder,-

“The agreement can further be extended for a period of 10 tariff periods beyond the 15th tariff period on a mutually agreed tariff as per clause 7.4 taking into account the fuel charges, operation and maintenance charges and a nominal net residual value of the project which the company would have normally expected on dismantling and selling the same at its cost”

In view of the above condition, the term of PPA dated 03.05.1999 can be extended only after the parties to the agreement arrives at a mutually agreed tariff taking into account the fuel charges, O&M charges and the nominal net residual value of the project. The intention of such clause is to enable KSEB Ltd to avail power with a comparatively low fixed charge and affordable variable charge.

- (iv) The petition has been filed by the generator namely BKPL, under clause (b) of sub-section (1) of Section 86 of the Electricity Act, 2003. As per the said provision in the Act, the Commission can approve only the purchase of electricity of a distribution licensee including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

In this case the distribution licensee namely, KSEB Ltd has not submitted any application for approval of the purchase of electricity by it.

- (v) KSEB Ltd vide its letter No. KSEB/TRAC/ KSERC/BSES/2015-16/ 2233 dated 26.10.2015 and the oral submission made during the hearing on 27.10.2015 submitted that the parties to the PPA dated 03.05.1999 have not agreed on the rate of fixed charges or variable charges of electricity,

especially in view of the differences in assessment of O&M cost, return on equity, interest on working capital.

- (vi) The conversion of the naphtha based plant of BKPL to a LNG based plant or to a dual fuel (naphtha and LNG) based plant would involve an additional investment of about Rs.170 crore as indicated by M/s BKPL and KSEB Ltd. This will definitely increase the fixed cost of the plant considerably. Further, the 'take or pay' condition, if any, in the fuel supply agreement is likely to increase the variable cost. The price of LNG in the international market is highly volatile. If the price of LNG increases to such prohibitive level that the electricity generated using LNG will not come in the merit order dispatch, the risk will be extremely high. KSEB Ltd has to consider such risk factors while taking a decision on this issue.

19. The Commission vide the daily order dated 28-10-2015 had issued the following directions to the petitioner BKPL and respondent KSEB Ltd that,

- (i) KSEB Ltd shall submit a detailed appraisal on the demand and supply position of power during 2016 and 2017 duly considering the availability of power from its hydel stations, Central Generating Stations, power purchase agreements with traders / generators, KSEBL's own diesel stations, other liquid fuel stations including RGCCPP-Kayamkulam and from short-term market, the average cost of power purchase for a period of two years from November 2015, availability of corridor and such other details to substantiate the necessity for extending the PPA with BKPL for a further period of two years from November 2015 for which in principle sanction has been accorded by the Board of Directors of KSEB Ltd.
- (ii) KSEB Ltd may, if found necessary, file petition under clause (b) of sub-section (1) of Section 86 of the Electricity Act, 2003, for the extension of the original PPA dated 03.05.1999 as per the Article 15.1 and Article 7.4 therein, with mutually agreed tariff and terms and conditions incorporated in the draft PPA initialled by both the parties to the agreement.
- (iii) Time up to 27.11.2015 is granted to the petitioner BKPL and the respondent KSEB Ltd for complying with the directives (i) & (ii) above.
- (iv) KSEB Ltd and BKPL may, extend the PPA dated 03.05.1999 till 30.11.2015 as per the Article 15.1 and Article 7.4 therein subject to the

condition that the payment for the period of one month from 01.11.2015 to 30.11.2015 shall be as decided by the Commission in the final order.

20. The Commission has examined the report submitted by the respondent KSEB Ltd and the petitioner BKPL in compliance of the directions issued by the Commission vide the daily order dated 28-10-2015. KSEB Ltd has submitted that, it had contracted sufficient quantum of power from outside the State through competitive tenders on long term and medium term terms to meet the power requirement of the State. With the commissioning of the Mysore-Areekode 400 kV line, commissioning of Narendra-Kolhapur 765 kV line and the resolution of disputes with CTU with the intervention of the CERC, the power contracted from **various** sources is expected to flow in to the State as scheduled. The month wise details of the demand and supply position submitted by the KSEB Ltd also reveals that, there is hardly any power shortages within next few years.
21. Both the respondent KSEB Ltd and the petitioner BKPL submitted that, they could not arrive at a consensus on the tariff for the extension of PPA. KSEB Ltd has produced a copy of the Government order G.O (Ms) No. 03/2016/PD dated 24-03-2016 regarding the extension of PPA between KSEB Ltd and M/s BKPL. The relevant portion of the Government order is extracted below.

'6) Government have examined the matter in detail in the light of the Board Order read as 4th paper and the order of KSERC read as 5th paper above, are pleased to accord in-principal sanction for extending the PPA between KSEB Ltd and M/s BKPL for the combined cycle power plant at Kochi for two more years from the date of expiry of the existing PPA subject to the condition that no Government guarantee will be allowed for any payment obligations of KSEB Ltd and the final tariff shall be decided by KSERC shall be brought back to the Government and approval of Government obtained. The KSEB Ltd is also permitted to study and firm up its decision on the option of fuel conversion of the plant from Naphtha to LNG in consultation with KSERC and obtain Government approval at the appropriate stage'.

Hence above Government order is only an in principle sanction for extending the PPA .

22. Regulation-78 of the KSERC (Terms and Conditions for determination of Tariff) Regulation, 2014 (hereafter referred as Tariff Regulation, 2014) deals with the procedures for approval of the power purchase agreement/ arrangement between the distribution licensee from the generating company/ from other

sources. The relevant provisions in the Tariff Regulation, 2014 is extracted below.

78. Approval of power purchase agreement/arrangement. – (1) *Every agreement or arrangement for procurement of power by the distribution business/licensee from the generating business/company or licensee or from other source of supply entered into after the date of coming into effect of these Regulations shall come into effect only with the approval of the Commission:*

Provided that the approval of the Commission shall be required in accordance with this regulation in respect of any agreement or arrangement for power procurement by the distribution business/licensee from the generating business/company or licensee or from any other source of supply on a standby basis:

Provided further that the approval of the Commission shall also be required in accordance with this regulation for any change to an existing agreement or arrangement for power procurement, whether or not such existing agreement or arrangement was approved by the Commission.

(2) The Commission shall examine an application for approval of power purchase agreement/arrangement having regard to the approved power procurement plan of the distribution business/licensee and the following factors:-

(a) requirement of power under the approved power procurement plan;
(b) adherence to a transparent process of bidding in accordance with guidelines issued by the Central Government under Section 63 of the Act;
(c) adherence to the terms and conditions for determination of tariff specified under chapter VI of these Regulations where the process specified in clause (b) above has not been adopted;
(d) availability (or expected availability) of capacity in the intra-State transmission system for evacuation and supply of power procured under the agreement/arrangement; and

(e) need to promote co-generation and generation of electricity from renewable sources of energy.

(3) Where the terms and conditions specified under chapter VI of these Regulations are proposed to be adopted, the approval of the power purchase agreement/arrangement between the generating business/company and the distribution business/licensee for supply of electricity from a new generating

station may comprise of the following two steps, at the discretion of the applicant:-

(a) approval of a provisional tariff, on the basis of an application made to the Commission at any time prior to the application made under clause (b) below; and

(b) approval of the final tariff, on the basis of an application made not later than three months from the cut-off date.

However, the distribution licensee KSEB Ltd has not filed proper application for approval of PPA as per Regulation 78 of the Tariff Regulation, 2014 and also as per clause (b) of subsection (1) of Section 86 of the Electricity Act-2003.

23. The Commission vide the daily order dated 16-08-2016 has expressed that, 'a PPA cannot be imposed on KSEB Ltd. The agreement to purchase power would be a valid agreement only if it is characterized by consensus - ad – idem, arrived out of free will of the parties to contract. So far what has been made clear is that M/s BKPL is willing to sell the power. KSEB Ltd, as per its order No. CP/BSES/2015-16 /164 dated 14.7.2015 has only shown its willingness to extend the contract subject to the terms and conditions to be finalised. Government order No. GO (MS) No. 03/2016/PD dated 24.02.2016 does only show an in principle sanction for extending the PPA. The Commission can take a view' only when KSEB Ltd submits a proposal for approval.
24. The Commission further directed the KSEB Ltd to state in unequivocal terms whether or not it requires the power from M/s BKPL and if so on what terms and conditions including the rate. The Commission has granted time up to 8-09-2016 to submit the same and further granted time extension upto 07-10-2016 to submit the details. KSEB Ltd has not submitted the required details till date. KSEB Ltd vide the letter dated 18-10-2016 has again requested for time extension for submitting the details till last week of November-2016.
25. M/s BKPL has filed the petition under clause (b) of subsection (1) of section 86 of the Electricity Act-2003 for approval of agreement for extension of power purchase agreement dated 03-05-1999 between KSEB and BKPL. For the purpose of power procurement, the tariff is either determined under section 62 of the Electricity Act-2003 or adopted under section 63 of the Electricity Act-2003. The relevant sections of the Electricity Act-2003 extracted below.

"62. (1) The Appropriate Commission shall determine the tariff in accordance with provisions of this Act for –

(a) supply of electricity by a generating company to a distribution licensee:

....”

“63. Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

26. The Commission is empowered by the clause (b) of subsection (1) of section 86 of the Electricity Act-2003 to regulate the power procurement of the Distribution licensee. The relevant section of the Electricity Act-2003 is extracted below.

“86. (1) The State Commission shall discharge the following functions, namely:

.....

- (b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;”

From the above provision of the Electricity Act-2003, it is evident that it is the statutory responsibility of the Commission to regulate the power procurement of the distribution licensee including the price of power. The distribution licensee has to file the application with necessary and sufficient details for the approval of the PPA. Despite repeated directions issued by the Commission vide the daily orders dated 28-10-2015 and 16-08-2016, KSEB Ltd has failed to file the application with sufficient details.

27. Considering all these factors, the Commission is of the considered view that, the petition filed by M/s BKPL under section 86(1)(b) of the Electricity Act-2003 for approval of the extension of power purchase agreement (PPA) dated 03-05-1999 between KSEB and M/s BKPL is not maintainable. However, as and when KSEB Ltd submits application with a proper PPA initialed by both KSEBL and BKPL as per Regulation 78 of the Tariff Regulation, 2014 read with clause (b) of subsection (1) of section 86 of the Electricity Act-2003, with mutually agreed tariff as stipulated under clause 15.1 of the PPA dated 03-05-1999, the Commission would take a decision on merits as per the provisions of the Electricity Act-2003 and relevant regulations.

Order of the Commission

Considering the oral and written submissions of the petitioner M/s BKPL, the respondent KSEB Ltd and other stakeholders, the Commission is of the considered view that, the petition filed by M/s BKPL purporting to be a draft PPA

under section 86(1)(b) of the Electricity Act-2003 for approval of agreement for extension of power purchase agreement dated 03-05-1999 between KSEB and M/s BKPL is an inchoate document and is not maintainable under the relevant provisions of the Act and the relevant regulations. Hence the petition is dismissed.

Ordered accordingly.

Sd/-

K.Vikraman Nair
Member

Sd/-

S Venugopal
Member

Sd/-

T M Manoharan
Chairman

Approved for issue

Santhosh Kumar K.B
Secretary