

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present : Shri. Preman Dinaraj, Chairman
Adv. A.J Wilson, Member (Law)

OP No 24/2021

In the matter of : Petition for Approval of Tariff for ANERT 2MW
Kuzhalmannam Solar PV project.

Petitioner : Agency for New and Renewable Energy Research
and Technology (ANERT)

.ANERT represented by : Sri. Ajith Gopi, Joint Chief Technical Manager
Sri. Valsaraj P, Scientist F

Respondent : Kerala State Electricity Board Ltd.
KSEB Ltd represented by : Smt. Latha S.V, Asst. Executive Engineer

First hearing : 15.06.2021
Second hearing : 24.08.2021
Third hearing : 05.10.2021
Fourth hearing on : 08.02.2022

Order dated 25.03.2022

Background

1. Agency for New and Renewable Energy Research and Technology (hereinafter referred to as the petitioner or ANERT) filed a petition on 23.03.2021, before the Commission with the following payers.
 - (a) *Determine the tariff for generation and sale of electricity by the petitioner ANERT to the KSEB Ltd taking into account Government direction as per the letter No. 8198/PS2/ 2015/PD dated 07.12.2015, in the generic tariff vide the KSERC Notification No. 442/CT/2015/KSERC dated 11.11.2015.*
 - (b) *Pass such further Order to orders as the Commission may deem just and proper in the circumstance of the case.*
2. Summary of the petition filed by M/s ANERT is given below.
 - (1) Agency for New and Renewable Energy Research and Technology (ANERT) is an organisation established by State Government during 1986 under Societies Act, functioning under Power Department, GoK.
 - (2) ANERT has installed and commissioned a 2MW Solar PV project at Kuzhalmannam in Palakkad District. The project was commissioned on 09.12.2016 and CoD declared on 19.12.2016. The project has already

generated and fed more than 1.1 MU of power since its commissioning. The minimum CUF is 14% and maximum CUF is 19%.

- (3) The Secretary to Government vide the letter dated 07.12.2015 requested **KSEB Ltd to sign the PPA with the ANERT at the rate fixed by KSERC in respect of the 2MW Kuzhalmannam project, as an IPP.** In anticipation of signing the PPA with KSEB Ltd, ANERT awarded the work to M/s Bosch Ltd on 28.11.2015 at the tendered cost of Rs 14.58 crore. As per the KSERC notification No. 442/CT/2015/KSERC dated 11.11.2015, the generic tariff prevailing at the time of awarding the work was Rs 7.04/unit.
- (4) In the meeting held on 13.01.2020 in the chamber of the Secretary, Power Department, GoK, it is decided that until the PPA is signed between KSEB Ltd and ANERT, as an interim measure, KSEB Ltd shall release payment to ANERT at the Average Pooled Purchase Cost (APPC) rate to ANERT.
- (5) KSEB Ltd vide Order dated 16.12.2020 decided to initial the PPA and requested ANERT to file petition before KSERC for the approval of the initialled PPA and tariff.
- (6) KSEB Ltd and ANERT initialled the draft PPA on 04.12.2020. Clause 6.3 of the initialled PPA deals with tariff, which is extracted below.

“6.3 Tarif.

Tariff for power generated from the project shall be APPC for the FY 2016-17 subject to the approval of KSERC.

- (7) ANERT further submitted that, the present petition of 2MW ANERT-Kuzhalmannam Solar PV power plant is filed for approving the PPA and fixing the tariff of Rs 7.04 per unit.

3. KSEB Ltd, vide letter dated 14.06.2021 submitted its counter argument on the petition and its summary is given below.

- (1) M/s ANERT proposed a 2MWp Solar photo voltaic power plant at Kuzhalmannam, Palakkad and on 11.03.2014, requested KSEB Ltd for power evacuation arrangement through the nearest Substation. KSEB Ltd., on 28.06.2014, communicated to ANERT the feasibility to evacuate power from the plant at 11 kV to KSEB Ltd substation.
- (2) ANERT vide letter dated 25.09.2015, conveyed its intention to enter into a Power Purchase Agreement (PPA) with KSEB Ltd at the prevailing rate of KSERC. In response to ANERT, KSEB Ltd vide letter dated 13.10.2015 communicated its willingness to purchase the electricity generated from the 2MW Kuzhalmannam Solar plant.
- (3) Government of Kerala, vide letter dated 07.12.2015, directed KSEB Ltd to sign PPA with ANERT at the rate fixed by KSERC for purchasing power from the 2MW

Kuzhalmannam Solar Plant. KSEB Ltd, forwarded the draft PPA to ANERT on 22.07.2016.

A meeting was convened between KSEB Ltd and ANERT to discuss and finalise the PPA, wherein KSEB Ltd intimated to ANERT that, “*neither the generic tariff of Rs 5.68 per unit applicable for the FY 2016-17, the year in which the plant achieved CoD nor the project specific tariff (due to non-availability of financial details of the project) could be fixed and the maximum tariff that can be paid to ANERT shall be the current Average Pooled Purchase Cost (APPC)*”.

- (4) Subsequently, ANERT vide letter dated 26.09.2018 gave their consent on the following major PPA clauses:
 - (i) Commercial Operation Date (CoD) of the 2MW Kuzhalmannam Solar Power plant is 19-12-2016.
 - (ii) Agreed to the tariff for 2MW Kuzhalmannam Solar Power Plant project as the Average Pooled Power Purchase Cost (APPC) for FY 2016-17 for 25 years.
 - (iii) ANERT accepted the minimum CUF as 14% and maximum limit as 19%.
- (5) Thereafter, a meeting was convened by the Secretary, Power Department on 13.01.2020 with Director, ANERT and KSEB Ltd officials wherein it was decided that, until the PPA is signed with ANERT, KSEB Ltd can release payment at the Average Pooled Purchase Cost (APPC) rate to ANERT.
- (6) On 16-09-2020, the Director, ANERT requested KSEB Ltd for interim payment for the electricity exported to the KSEB Ltd grid from the ANERT 2 MW Kuzhalmannam Solar PV plant since its Commercial Date of Operation i.e 19.12.2016.
- (7) Thereafter, on 04-12-2020 KSEB Ltd initialled the draft PPA with ANERT for procurement of power from the project. Clause 6.3 of the PPA deals with tariff, which is extracted below.

“6.3 Tariff
Tariff for power generated from the project shall be the Average Pooled Purchase Cost (APPC) for the FY 2016-17 subject to approval of KSERC”
- (8) The Average Pooled Power Purchase Cost (APPC) for the FY 2016-17 (Year of Commissioning) computed with the approved power purchase cost of KSEB Ltd for the year 2015-16 is Rs 2.69 per unit.
- (9) The petitioner has not furnished any details of the cost of the project and the financing details in the instant petition. KSEB Ltd, submitted that the tariff of the project may be fixed duly considering the above submissions.

Hearing of the Petition

4. The Commission admitted the petition as OP 24/2021. Hearing of the petition was held on 15.06.2021 through video conference. Sri. Ajith Gopi, Joint Chief Technical Manager presented the petition on behalf of the petitioner M/s ANERT.

Sri. K.G.P Nampoothiri, Executive Engineer presented the counter arguments on behalf of the respondent KSEB Ltd.

5. The second hearing was conducted on 25.08.2021. Sri. Ajith Gopi, appeared before the Commission on behalf of the petitioner and Sri. K.G.P Nampoothiri, appeared on behalf of the respondent KSEB Ltd. Based on the deliberations during the hearing, the Commission vide the daily order dated 28.08.2021 had issued the following directions to the petitioner ANERT and the respondent KSEB Ltd.

- (1) *M/s ANERT and KSEB Ltd, may modify the various clauses of the initialled PPA duly considering the following.*
 - (i) *Observation of the Commission in the daily order dated 28.08.2021..*
 - (ii) *Duly incorporating the provisions in the competitive Bidding guidelines and its amendments notified by the Central Government for the procurement of Solar Power through competitive bidding route as per the Section 63 of the Electricity Act, 2003.*
- (2) *ANERT shall submit the initialled PPA on or before 24.09.2021.*

However, the parties has not complied with the directions of the Commission

6. The third hearing on the petition was conducted on 05.10.2021. The Commission vide daily Order dated 08.10.2021, issued the following directions to the petitioner ANERT and the respondent KSEB Ltd for immediate compliance.
- (1) *ANERT shall file the initialled PPA as per the Daily Order dated 28.08.2021, on or before 30th November 2021, failing which the petition filed by ANERT shall be dismissed without further notice.*
 - (2) *If ANERT fails to comply with the direction (1) as above, KSEB Ltd shall stop scheduling power from the 2 MW project of ANERT with effect from 1st of December 2021 onwards. Any payments made to ANERT by KSEB Ltd from 1st December 2021 shall be completely disallowed by the Commission*
7. In compliance of the daily Order dated 28.08.2021, M/s ANERT, vide letter dated 02.12.2021, submitted the initialled PPA between KSEB Ltd and ANERT for supplying power from the 2 MW Solar plant.
8. The fourth hearing on the petition was conducted on 08.02.2022. Sri. Ajith Gopi, appeared on behalf of the petitioner and Smt. Latha S.V, appeared on behalf of the respondent KSEB Ltd. The summary of the deliberations during the hearing is given below.

“(1) The Commission noted that, Article 6.3 of the initialled PPA dated 30.11.2021 provide as follows.

“Clause 6.3: Tariff

Tariff for power generated from the project shall be ceiling rate of Rs 2.69 per unit as Average Pooled Power Purchase Cost (APPC) for the FY 2016-17 as assessed by KSEB Ltd or KSERC determined tariff whichever is lower.”

The Commission instructed KSEB Ltd to clarify the Section of the Electricity Act, 2003 which authorised them to fix a ceiling tariff @Rs 2.67 /unit as stipulated in the PPA.

(2) The Commission further clarified that, as per the Section 62, 63 and Section 86 of the Electricity Act, 2003, the tariff determination is one of the statutory functions of the State Electricity Regulatory Commissions. The relevant Sections are extracted below.

(i) *Section 62. (Determination of tariff): --- (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –*

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

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

(b) transmission of electricity;

(c) wheeling of electricity;

(d) retail sale of electricity:

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

.....”

(ii) **Section 63. (Determination of tariff by bidding process):**

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.

(iii) **Section 86. Functions of State Commissions ,-. (1) The State Commission shall discharge the following functions, namely:-**

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be within the State.

(3) The Commission also noted that, the CoD of the project was on 19.12.2016, and accordingly, the relevant year of CoD is the FY 2016-17. The tariff of the RE projects commissioned during the year 2016-17 is governed by the provisions of the KSERC (Renewable Energy) Regulations, 2015 (herein after referred as RE Regulations, 2015. The RE Regulations, 2015 do not provide for fixing of ceiling tariff for electricity generated from RE projects in the State.

(4) Considering these aspects in detail, the Commission decided to

determine the project specific tariff for the electricity generated from the 2MW Kuzhalmannam Solar PV project. In order to determine the project specific tariff, the petitioner ANERT shall furnish the following details.

- (i) *DPR of the project.*
- (ii) *Cost of completion of the project with full supporting details including tax invoices.*
- (iii) *Source of fund of the project. The grant and other support received from the State Government, and the internal fund used shall be furnished with documentary evidence.*
- (iv) *The subsidy if any received from the MNRE or other Central/State Government shall also be furnished separately.*

9. Based on the deliberations during the hearing, the Commission vide Daily Order dated 09.02.2022, issued the following directions to the petitioner ANERT and the respondent KSEB Ltd.

- (1) *The Commission shall determine the project specific tariff of the 2MW Solar PV project at Kuzhalmannam.*
- (2) *In order determine the project specific tariff, M/s ANERT shall submit the details as per paragraph 6(4) of this order, within 45 days from the date of this order, with a copy to KSEB Ltd.*
- (3) *KSEB Ltd shall submit its comments, within 15 days after receipt of the details from ANERT.*

10. In compliance of the directions of the Commission, the petitioner M/s ANERT vide the letter dated 23.03.2022, submitted the following documents before the Commission.

- (1) DPR of the project.
- (2) Work order for the Supply Installation, commissioning and 5 years Operation and Maintenance of a 2 MW PV power plant and 10W Off-grid PV plant at Kuzhalmannam for a total cost of Rs 14,57,87,430/-.
- (3) The Administrative Sanction for the project issued by the State Government vide the GO (Rt) No. 74/2015/PD dated 24.03.2015. The State Government also ordered to met the fund for the project from the unspent plan fund amounting to Rs 36,61,90,000/- with the ANERT.

The petitioner requested to fix the tariff of the project at the earliest.

Analysis and Decision of the Commission

11. The Commission, had examined the petition filed by ANERT on 23.03.2021 and the counter argument of the respondent KSEB Ltd with the provisions of the Electricity Act, 2003, KSERC (Renewable Energy) Regulations, 2015 and also other relevant documents and records placed during the deliberations of the subject petition, decided as follows.

12. M/s ANERT filed the original petition dated 23.03.2021 with the following prayers.

- (1) *Determine the tariff for generation and sale of electricity by the petitioner ANERT to the KSEB Ltd taking into account Government direction as per the letter No. 8198/PS2/ 2015/PD dated 07.12.2015, in the generic tariff vide the KSERC Notification No. 442/CT/2015/KSERC dated 11.11.2015.*
- (2) *Pass such further Order to orders as the Commission may deem just and proper in the circumstance of the case.*

The petitioner M/s ANERT along the petition had also submitted the draft initialled PPA dated 4th December 2020 before the Commission for approval. The Commission noted that Article 6.3 of the initialled PPA dealt with the tariff, which read as follows.

“ Tariff for the power generated from the project shall be the Average Pooled Purchase Cost (APPC) for the year 2016-17 subject to the approval of KSERC”.

As above, there is inconsistency in the prayer of the petitioner in the petition and the provisions in the draft initialled PPA regarding the tariff.

13. During the deliberations of the original petition, the Commission had pointed out a number of discrepancies in the draft initialled PPA and the same was recorded in the Daily Order of the Commission dated 28.08.2021. The Commission directed the petitioner and the respondent to incorporate the observations of the Commission in the draft initialled PPA and resubmit the same before the Commission for the approval.
14. After repeated directions, M/s ANERT on 02.12.2021 filed the modified initialled PPA dated 30th November 2021. However, the Commission noted that, the petitioner ANERT and the respondent KSEB Ltd had again modified the Article 6.3 of the draft initialled PPA without the approval of the Commission as follows.

“Clause 6.3: Tariff

Tariff for power generated from the project shall be ceiling rate of Rs 2.69 perunit as Average Pooled Power Purchase Cost (APPC) for the FY 2016-17 as assessed by KSEB Ltd or KSERC determined tariff whichever is lower.”

From the above clause it is clear that both the parties have unilaterally fixed the tariff @ Rs 2.69/unit as the ceiling tariff for the project without the approval of the Commission. This is contrary to Section 62 of the Electricity Act, 2003.

15. The Commission, examined the action of the petitioner ANERT and the respondent KSEB Ltd as per the provisions of the Electricity Act 2003 and noted the following.
 - (1) As per the Section 86 of the EA-2003 read along with the Sections 61,62 and 64 of the EA-2003, the authority for determination of Tariff of a generator supplying electricity to a distribution licensee is vested with the State Electricity Regulatory Commission. In the case of Section 63, the tariff determined through competitive bidding route, also has to be adopted by SERCs. The generator and licensee cannot finalise a tariff through negotiation. The relevant Sections of the EA-2003 are extracted

below.

- a. *Section 62. (Determination of tariff): --- (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –*

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

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

(b) transmission of electricity;

(c) wheeling of electricity;

(d) retail sale of electricity:

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

.....”

- b. **Section 63. (Determination of tariff by bidding process):** *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.*

- c. *Section 86. Functions of State Commissions ,-. (1) The State Commission shall discharge the following functions, namely:-*

1. determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be within the State.....

- (2) The Commission also noted that, the CoD of the project was on 19.12.2016, and accordingly the relevant year of commissioning of the project is the FY 2016-17. The tariff of the RE projects commissioned during the year 2016-17 is governed by the provisions of the KSERC (Renewable Energy) Regulations, 2015 (herein after referred as RE Regulations, 2015. The RE Regulations 2015 do not provide for fixing of ceiling tariff for electricity generated from RE projects in the State.

16. Considering these aspects in detail, the Commission vide the Daily Order dated

09.02.2022, decided to determine the project specific tariff for the electricity generated from the 2MW Kuzhalmannam Solar PV project. In order to determine the projectspecific tariff, the petitioner ANERT shall furnish the following details.

- (i) *DPR of the project.*
- (ii) *Cost of completion of the project with full supporting details including tax invoices.*
- (iii) *Source of fund of the project. The grant and other support received from the State Government, and the internal fund used shall be furnished with documentary evidence.*
- (iv) *The subsidy if any received from the MNRE or other Central/State Government shall also be furnished separately.*

17. In compliance of the directions of the Commission, the petitioner M/s ANERT submitted certain details on 21.03.2022. The Commission has examined the details submitted by the petitioner and noted the following.

- (1) The details submitted by the petitioner is for the determination of the project specific tariff of the electricity generated from the 2MW Solar plant of the petitioner at Kuzhalmannam **afresh**. The Commission also examined the present prayer of the petitioner with the original prayer in the petition dated 23.03.2021, wherein the petitioner prayed for the adoption of the generic tariff as per the KSERC Notification No. 442/CT/2015/ KSERC dated 11.11.2015.

Since the prayers of the petitioner in the petition dated 23.03.2021 and the present prayer are entirely different, the Commission can determine the tariff of the electricity generated from the 2MW Solar Plant of the petitioner as a fresh petition only through a separate proceedings.

Since the prayer of the original petition is changed, the Commission decided to close the original petition as withdrawn and decide to determine the tariff of the 2MW Solar Plant at Kuzhalmannam of the petitioner afresh based on the document and other details submitted by the petitioner through a separate petition.

- (2) The Commission also noted that, M/s ANERT submitted the details for the determination of the project specific tariff through the letter dated 21.03.2022. As per the Section 95 of the Electricity Act-2003, all the proceedings before this Commission is deemed to be Judicial Proceedings and the State Commission deemed to be a Civil Court for the purposes of the EA-2003. Hence, it is mandatory that all the documents and other records submitted by the petitioner and respondent(s) shall be through an affidavit duly signed by the Advocate & Notary.

Hence it is directed that, the petitioner shall file the details for determination of the project specific tariff as a fresh petition, through an affidavit duly signed by an Advocate & Notary before this Commission.

With the above observation, the Commission decided to dismiss the original petition OP No. 24/2021 dated 23.03.2021 as withdrawn with liberty to file fresh petition for the determination of the project specific tariff for the electricity generated from the 2MW Solar Plant at Kuzhalmannam of the petitioner.

Orders of the Commission

- 18.** The Commission, after examining the petition filed by M/s ANERT on 23.03.2021, the counter affidavit of the respondent M/s KSEB Ltd, deliberations during the hearings conducted on the subject petition, the relevant provisions of Electricity Act, 2003, KSERC (Renewable Energy) Regulations, 2015, and other rules and regulations in force, hereby orders the following:
- (1) Since the prayer in the petition dated 23.03.2021 has been changed by the petitioner during the course of the hearing and the Commission has decided to determine the project specific tariff of the electricity generated from the 2MW Solar plant at Kuzhalmannam of the petitioner based on a fresh petition filed by the petitioner M/s ANERT the original petition filed by M/s ANERT dated 23.03.2021 is dismissed as withdrawn.
 - (2) M/s ANERT shall file a fresh petition with complete expenditure details and vouchers/receipts for the determination of the project specific tariff of the electricity generated from the 2MW Solar Plant at Kuzhalmannam of the petitioner as per the provisions of the KSERC (Conduct of Business) Regulations 2003 and its amendments.

The petition disposed off. Ordered accordingly.

Sd/-
Adv. A J Wilson
Member (Law)

Sd/-
Preman Dinaraj
Chairman

Approved for issue

C R Satheeshchandran
Secretary