

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

OP No 19/2021

In the matter of : Petition seeking approval of draft Tripartite Power Purchase Agreement (TPPA) duly initialled by the petitioner and co-petitioner along with the respondent in terms of the Commission's common Order dated 24.04.2020 in OP 58 of 2019 & OP 58A of 2019

Petitioner : M/s INOX Renewables Ltd

Petitioner represented by : Sri. Mayank Bugani, Advocate INOX
Sri. Sonti Venkatesh, INOX
Sri. Suku Nair, Consultant INOX

Co-petitioner : M/s Damodar Jagannath Malpani
Co-petitioner represented by : Sri.Prabhulla Khinvasara Malpani, Malpani Group
Sri. Kailas. B, Malpani Group

Respondents : Kerala State Electricity Board Ltd (KSEB Ltd)
KSEB Ltd represented by : Smt. Latha. S.V, AEE

First Hearing : 29.04.2021
Second hearing : 22.06.2021
Third hearing on : 13.07.2021 (adjourned as requested by the petitioner)
Fourth hearing on : 25.08.2021
Fifth hearing on : 07.10.2021

Daily Order dated 25.10.2021

1. M/s. INOX Renewable Limited (M/s INOX) (petitioner) and M/s D J Malapni (Co-petitioner) on 12.03.2021, filed a petition before the Commission with the following prayers.
 - a) *Grant approval of the duly initialed TPPA draft enclosed and allow to the petitioners to execute the formal PPA with the respondent, KSEB Ltd.*
 - b) *Pass such other Order or orders as this Hon'ble Commission may wish to pass for doing substantial justice in the matter and to uphold the provisions of the Act of 2003.*
2. The Commission admitted the petition as OP 19/2021. First hearing conducted through video conference on 29.04.2021. Based on the deliberations during the

hearing, the Commission vide interim Order dated 26.05.2021 directed the petitioners M/s Inox Wind Energy Limited and M/s D J Malpani and the respondent M/s KSEB Ltd to comply the following, latest by 20.06.2021.

- (1) Modify the Clauses of the draft initialed Tripartite Agreement signed between the parties as per the directions contained under paragraph 9 of this Order.
 - (2) Submit all the schedules referred in the draft TPPA along with the modified draft TPPA before the Commission.
 - (3) A copy of the Annexure G referred in the NCLT Order dated 25.01.2021 shall also be submitted before the Commission.
3. In compliance of the direction of the Commission, M/s INOX, vide letter dated 01.06.2021 submitted the following details before the Commission.
- (i) Schedules and Annexures to the petition
 - (ii) Copy of Annexure G referred in NCLT Order

However, the draft initialed Tripartite Agreement signed between the parties after incorporating the suggestions of the Commission was not submitted.

4. The second hearing on the petition was conducted on 22.06.2021 and third hearing on 13.07.2021 through video conference., wherein further time was requested by the parties to finalize the TPPA and the Commission allowed the same.
5. The fourth hearing of the petition was conducted through a video conference on 25.08.2021. During the hearing, KSEB Ltd raised the following issues for incorporating in the TPPA to be signed between the parties.

- (1) Land lease agreement. KSEB Ltd submitted that the land lease agreement was signed between the KINFRA and INOX Renewables Ltd (IRL) for allotting the land at KINFRA park at Palakkad for developing the developing. However, M/s INOX Renewables Ltd (IRL) is ceased to exist and all functions handled by the IRL is assigned to the new company INOX Wind Energy Ltd by the parent company Gujarat Flurochemicals Ltd. However, the land lease agreement is yet to be assigned to the new assignee INOX Wind Energy Ltd.

M/s INOX Wind Energy Ltd (IWL), during the hearing submitted that, for assigning the land lease agreement to the new entity may take at least three months. Hence IWL suggested to incorporate a condition precedent in the TPPA to be fulfilled by the IWL that, within three months from the date of signing the TPPA, IWL shall get assigned the land lease agreement to the new assignee M/s IWL.

- (2) Capacity Utilisation Factor (CUF).
KSEB Ltd raised the issue that, the Commission determined the tariff of the 16MW wind project by adopting the CUF of 22%. However, the actual annual CUF since the date commissioning in the year 2017 is

more than 27%. As per the first proviso to Regulation 52(2) of the KSERC (Renewable Energy & Net Metering) Regulations, 2020, if the actual CUF varies by (+) or (-) 5%, then the annual mean wind power density shall be measured at 100m hub height and the tariff shall be re-determined for the CUF corresponding to the measured wind power density.

The Commission during the hearing clarified that, the tariff of the 16MW wind plant of the petitioners was determined vide the Order of the Commission dated 03.10.2018. The petitioners have been supplying power to KSEB Ltd at the approved tariff since the FY 2017-18 onwards/ However, due to various reasons the signing of the PPA got delayed. The Commission further pointed out that the tariff determined based on the repealed regulations cannot be re-opened by the Commission as and when the Commission issues amendments/ modify or issue new Regulations on Renewable Energy and related issues. However, since the tariff determined by the Commission is the ceiling tariff, the petitioner and KSEB Ltd can agree for a lower tariff than the tariff approved by the Commission.

- (3) Reduced tariff for the generation in excess of the normative CUF adopted for tariff determination.

KSEB Ltd pointed out that, as per the present tariff order, the excess generation over the normative CUF of 22% also charged at the levelized tariff determined by the Commission with the normative CUF of 22%. However, as per the guidelines notified by the Gol dated 8th December 2017 for procurement of wind power through competitive bidding route, the excess generation may be charged at 75% of the PPA tariff. In this regard, KSEB Ltd requested to incorporate a provision in the TPPA.

Based on the deliberations, the Commission vide Daily Order dated 03.09.2021 directed the parties to discuss and arrive a consensus on the new issues raised by the KSEB Ltd during the hearing and incorporate the same in the draft TPPA to be submitted before the Commission for approval. The parties shall finalise and submit the draft initialed TPPA, latest by 01.10.2021.

However, the parties have not complied with the direction of the Commission.

6. Fifth hearing of the petition was held on 07.10.2021 through video conference. Adv. Mayank Bugani, presented the issues on behalf of the petitioners and Smt. Latha.S.V, presented the comments of KSEB Ltd. Summary of the deliberations during the hearing is given below.

- (1) M/s INOX submitted that, the draft TPPA, which submitted before the Commission was finalized through mutual discussion with KSEB Ltd and the same was also initialed by the KSEB Ltd. The issues raised by the KSEB Ltd during the hearing on 25.08.2021, regarding the revision of CUF and reduced tariff for generation in excess of normative CUF

was not discussed or deliberated earlier, even while determining the tariff vide Order dated 03.10.2018 in Petition OP No. 08/2017.

Moreover, the Commission vide the Order dated 03.10.2018 in Petition OP No. 08/2017 determined the tariff based on the provisions of the CERC (Terms and Conditions for determination of Tariff) Regulations, 2017. There is no provisions in the CERC Regulations to re-determine the tariff of the project based on the revised CUF.

The representative of the co-petitioner M/s DJ Malpani submitted that, when they take the decision to invest in the project, the generic tariff for electricity generated from wind power plants was about Rs 6.00 per unit, and however the tariff determined by this Hon'ble Commission was Rs 4.09/unit. It is not appropriate at this stage to incorporate new clauses in the TPPA which was not discussed or deliberated earlier, which results financial consequences to the investor.

- (2) KSEB Ltd during the hearing submitted that, the actual CUF of the project during the last three years since its CoD in the year 2017 was 27% as against the normative CUF of 22% adopted by the Commission for tariff determination, i.e., the actual CUF is about 22% higher than the normative CUF of 22%. KSEB Ltd further requested that, since the actual CUF is much higher than the normative CUF, a part of the benefit shall be passed on to the consumers of the State through reduction in the tariff.

KSEB Ltd further submitted that, the Commission has determined the tariff of the 16MW Wind plant of M/s INOX as per the provisions of the KSERC (Renewable Energy) Regulations, 2015 and adopted the CERC norms also strictly as per the enabling provisions in Regulation 17(4) of the said Regulations. KSEB Ltd also submitted that, the Regulation 22(3) of the KSERC (Renewable Energy) Regulations, 15 provide as follows.

“(3) The Commission may, on application from the generator or the purchaser of electricity from a renewable energy project, for which a project specific tariff has been determined under sub-regulation (1) above, revise such project specific tariff applicable to the said project and issue appropriate orders, in case the actual average capacity utilization factor for three consecutive years immediately following the date of commissioning of the said project varies due to site specific reasons, by more than ten percent of the capacity utilization factor adopted earlier for the determination of the project specific tariff applicable to that project.”

KSEB Ltd requested before the Commission to approve to include a provision in the TPPA that permit either of the parties of the TPPA to approach this Commission for re-determination of the tariff if the CUF of the project varies as provided KSERC (Renewable Energy) Regulations, 2015.

However, the petitioner INOX Wind Energy Limited and the co-petitioner M/s DJ Malpani, strongly objected the proposal of KSEB Ltd.

7. Since the petitioners and the respondent could not reach a consensus on factoring the variations in the CUF over the normative CUF adopted for determining the tariff of 16MW Wind project vide the order dated 03.10.2018 in Petition OP 8/2017, the Commission hereby direct the following to the petitioners and the respondent.

- (1) The petitioners and the respondent shall submit a detailed argument note on the issue of factoring the variations in the CUF over the normative CUF adopted for tariff determination in the draft TPPA, before the Commission, latest by 15.11.2021.
- (2) Any other supporting documents in support of the argument.

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

Sd/-
Preman Dinaraj
Chairman

Approved for issue

C R Satheeshchandran
Secretary (i/c)