

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

PRESENT: Shri.T.M. Manoharan, Chairman
Shri. P. Parameswaran, Member
Shri. Mathew George, Member

2nd April 2013

Petition No. OP 11/2013

In the matter of: *approval of PPA between KSEB and
INFOPARK for supply of 750 kva power at INFOPARK, Cherthala*

M/s Infoparks Kerala (INFOPARK) : Petitioner

Kerala State Electricity Board (KSEB) : Respondent

ORDER

1.BACKGROUND

1.1 Kerala State Electricity Regulatory Commission (KSEB) granted license to Infoparks Kerala (INFOPARK) vide notification dt. 10-5-2010 for the Special Economic Zone (SEZ) area at Cherthala and included Infoparks Phase II area at Kunnathunadu and Puthencruz villages later. Infoparks Kerala has availed 250 KVA power at 11 KV as a temporary connection from KSEB at the SEZ area, Cherthala. Now, INFOPARK vide letter dt. 10-1-2013 has submitted petition before the Commission for the approval of Power Purchase Agreement (PPA) for 750 KVA power at the Infopark Cherthala.

2. HEARING OF THE MATTER

2.1 The petition was admitted as OP No. 11/13 and hearing held on 21-3-13. Shri. P.C. Rajan Babu, Consultant represented the petitioner, INFOPARK and Shri.B.

Pradeep, Executive Engineer, TRAC, KSEB represented the respondent, KSEB. Prayer of the Petitioner before the Commission is to approve the PPA between KSEB and INFOPARK as forwarded by M/s INFOPARK. The draft PPA submitted to the Commission is initialled by both KSEB and INFOPARK and is for a period of one year for 750 KVA power at Infopark Cherthala. Both the parties provided clarifications sought by the Commission. The only request of M/s INFOPARK was that the PPA may be approved by the Commission at the earliest.

2.2 Arguments presented by M/s INFOPARK

On behalf of M/s Infoparks Kerala , the following points were raised.

- 1) Kerala State Electricity Regulatory Commission (KSERC) granted license to Infoparks Kerala (INFOPARK) vide notification dt. 10-5-2010 for the Special Economic Zone (SEZ) area at Cherthala and included Infoparks Phase II area at Kunnathunadu and Puthencruz villages vide order dt. 18-10-2011 & review order 25-7-2012.
- 2) Infoparks Kerala has availed 250 KVA power at 11 KV as a temporary connection from KSEB at the SEZ area, Cherthala.
- 3) The draft PPA submitted to the Commission is initialled by both KSEB and INFOPARK and is for a period of one year for 750 KVA power at Infopark Cherthala.
- 4) For retail sale of power, INFOPARK is following the Commission's tariff order dt. 25-7-2012.
- 5) The draft PPA as submitted by the petitioner may be approved.

2.3 Arguments presented by the Kerala State Electricity Board.

On behalf of KSEB, the following points were presented.

- 1) The PPA submitted by the petitioner is initialled by both the petitioner and the respondent, KSEB
- 2) The Petitioner, INFOPARK has not so far filed ARR & ERC petition before the Commission & Hon. Commission has not so far fixed the Bulk Supply Tariff (BST) applicable to the petitioner. Hon. Commission may fix a provisional tariff applicable to the petitioner for supply of power under the PPA.

- 3) Both the parties arrived at a consensus with respect to the applicable tariff and jointly decided to apply, provisionally, the tariff applicable to a similar licensee, M/s Technopark, catering to similar consumer base.
- 4) To approve the PPA as submitted by the petitioner.

3. ANALYSIS AND DECISION OF THE COMMISSION.

3.1 The prayer of the petitioner is to approve the Power Purchase Agreement which was filed as a petition before the Commission by M/s Infoparks Kerala and admitted as OP 11/13. The preliminary question that has come for consideration is whether the petition is maintainable and the Commission has the jurisdiction to approve the PPA submitted by the parties. As per Section 86 (1) (b) of the Electricity Act 2003, the State Commission shall “ *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 through other sources through agreements for purchase of power for distribution and supply within the state*”. Thus, the State Commission has the required jurisdiction and therefore, the petition is maintainable.

3.2 As per the draft PPA, there was a meeting held at Govt. level on 5-7-2012, and it was suggested to evolve proposals so that power allocation on a “no profit no loss” basis may be considered for the licensees by KSEB. Accordingly, there was a meeting between KSEB and INFOPARK on 11-7-2012. The minutes of the meeting dated 5-7-2012 and 11-7-2012 shall form an integral part of the PPA.

3.3 The tariff for supply of power under the agreement shall be the Bulk Supply Tariff applicable to INFOPARK as determined by the Commission. One of the objectives of the GOK in establishing the Industrial Parks is to ensure a better quality and reliable supply through establishment of appropriate infrastructure and investments in the licensed area. In order to consider these aspects, INFOPARK has to file the ARR for the year 2013-14 and every year subsequently. Based on the facts available before the Commission only, an appropriate Tariff can be determined by the Commission for M/s INFOPARK. It was stated that both the parties arrived at a consensus with respect to the applicable tariff and jointly decided to apply, provisionally, the tariff applicable to a similar licensee, M/s Technopark, catering to similar consumer base.

This can be accepted and made applicable on a provisional basis. The prevailing Tariff of M/s Technopark is as follows.

(i) Demand Charge Rs. 300/- KVA. (ii) Energy charge Rs.4.00 per Unit. Commission is of the view that the above rate can be accepted provisionally and the rate of Bulk Supply Tariff for INFOPARK will be reviewed , once the ARR & ERC for 2013-14 of INFOPARK is finalised.

3.4 On behalf of M/s. INFOPARK it was submitted that, there is urgent need for the PPA since there is no power purchase agreement entered in to by INFOPARK so far . INFOPARK has a temporary connection availed from KSEB for 250 KVA and the infrastructure is ready to draw power from KSEB to extent of 750 KVA. Now, that M/s. INFOPARK and KSEB have initialled the PPA with terms and conditions as agreed between the parties, Commission pointed out that the period of one year as agreed between the licensees is too short. KSEB, the respondent agreed to consider this aspect while signing the PPAs in future. KSEB and M/s INFOPARK have indicated that more comprehensive PPA would be drafted and submitted soon, after taking into consideration the various issues involved in the matter and the future requirement of INFOPARK. In view of the above facts, Commission decided to approve the draft PPA initialled as submitted by M/s. INFOPARK and KSEB subject to the following observations.

3.5 The Commission observed that the following minor correction / modification would be required to put the issues in proper perspective.

1) In the preamble to the agreement, the first party to the agreement has been shown as 'the Chief Engineer (Commercial and Tariff) on behalf of KSEB, a body constituted under the Electricity Supply Act 1948 and continuing as per the transfer scheme notified by GOK vide G.O(Ms) No. 37/2008/PD dated 25.9.2008 as per Section 131 of Electricity Act 2003. KSEB was an entity under the repealed law (The Electricity Supply Act 1948) and hence it is no more in existence. If the proposal for re-vesting the assets in the new Company formed for the purpose is approved by Government, then the successor would be M/s. Kerala State Electricity Board Ltd. Therefore the party to agreement may be appropriately modified depending upon the legal status of entity at the time of execution of the agreement.

2) In clause 2.1 of Article 2, the period of agreement has been shown as one year. The Commission has a view that the period of one year is too short for such a PPA between two licensees and that they should go in for medium term or long term PPAs. However, the period of agreement has to be agreed upon by the parties to the agreement. If parties to the agreement agree for a longer period, the period of agreement shown in draft PPA may be appropriately modified.

3) A plain reading of clause 2.2 of Article 2 would indicate that the term of agreement can be extended or amended as mutually agreed by the parties, only after a notification of applicable regulation is issued by the Commission. Since notification of applicable regulation by KSERC is not a pre-requisite for extension or amendment of the agreement, the term "after notification of applicable regulation by KSERC" may be deleted.

4) In clause 3.4 in Article 3 it has been stated that KSEB may consider the request provided sufficient surplus power is available with KSEB. The word 'surplus' may be deleted.

5) In clause 3.6 in Article 3 the term 'supply to M/s INFOPARK is liable to be discontinued' may be modified as 'supply to M/s. INFOPARK is liable to be discontinued after giving notice and opportunity of being heard and subject to the approval of the Commission'.

6) Article 9 reads as follows. 'Restrictions in power supply introduced in the State by the State Commission would be followed in the licensed areas of KINESCO in the same pattern as followed by KSEB as ordered by the Commission and the amount of penalty due to such restriction shall be passed on to KSEB as per the invoices duly raised by KSEB.' The clause may imply that certain penalty would be leviable due to the power restrictions. What is intended is that the additional income if any received by M/s. INFOPARK by way of penalty, fine or surcharge consequent to implementation of such power restriction shall be passed on to KSEB. A modification of the above clause would be desirable to reflect the correct intention.

3.6 The Commission after careful consideration of the submissions made by the parties and the facts of the case finds that the approval of PPA falls within the purview and competence of KSERC, in view of Clause (b) in subsection (1) of

Section 86 of Electricity Act 2003. The Commission also finds that the modification / correction as suggested in para 3.5 of this order would improve the clarity of the PPA.

3.7 The Commission also directs to make the amendment / modification to clause 3.6 of Article 3 and to Article 9 as observed above. The prevailing Bulk Supply Tariff of M/s Technopark , ie, (i) Demand Charge Rs. 300/- KVA. and (ii) Energy Charge Rs.4.00 per Unit can be accepted provisionally for INFOPARK and the Bulk Supply Tariff for INFOPARK will be reviewed, once the ARR & ERC for 2013-14 of INFOPARK is finalised. Subject to the above observation and orders, the Commission decides to approve the PPA.

4. ORDERS OF THE COMMISSION.

After detailed examination of the submissions of the petitioner, respondent and after hearing the parties, the Commission issues the following orders on the petition under consideration.

- (i) Tariff applicable to M/s Technopark, Trivandrum shall be applicable to the Petitioner also, until this Commission fix BST to the Petitioner, based on approved ARR & ERC.
- (ii) The PPA as initialled by the Petitioner and KSEB is approved subject to the observation made in Para 3.5 above.

Petition is disposed of as above and ordered accordingly.

Sd/-

P.Parameswaran
Member

Sd/-

Mathew George
Member

Sd/-

T.M.Manoharan
Chairman

Approved for issue

Sd/-

Secretary