

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present : Shri. Preman Dinaraj, Chairman
Shri. K. Vikraman Nair, Member

OP No 35/2019

In the matter of : Approval of the Power Purchase Agreement (PPA) to be signed between KSEB Ltd and M/s GJ Eco Power Pvt Ltd from 10 MW MSW based Waste to Energy (WtE) Plant located at Brahmapuram, Kochi.

Petitioner : M/s G.J Eco Power Pvt Ltd

Respondent : KSEB Ltd

Petitioner represented by : Shri James Adai, Director
Shri. Abhilash Abel, Business Head
Shri. Sanooj K S, Co- Ordinator
Shri. Amith Viswanath, Head (Cor. affrs)
Shri. Rino Rajan
Shri. Shaji Sebastian,
Smt. Neenu Skaria

Respondent represented by : Shri. Bipin Sankar, Dy. CE, KSEB Ltd
Shri. K G P Nampoothiri, EE, KSEB Ltd
Smt. Supriya Jasmine, EE, KSEB Ltd
Smt. Anitha K, AEE, KSEB Ltd

Order dated 28.05.2019

1. M/s. GJ Eco Power Private Limited, (herein after referred to as the petitioner) on 20.12.2018 filed a petition before the Commission for the approval of the Power Purchase Agreement (PPA) to be signed with KSEB td L for supplying electricity from 10MW Waste to Energy Plant to be established at Brahmapuram, Kochi. The background of the petition is as follows:
 - (i) Kochi Municipal Corporation (herein after referred as KMC) proposed to establish a Waste to Energy Power plant at Brahmapuram for

disposing the waste in the Kochi Municipal Corporation and surrounding area.

- (ii) The Commission vide order dated 06.03.2018 in OP No 10/2017 had approved the tariff for the electricity generated from 9.76 MW Waste to Energy Plant at Brahmapuram, Kochi at Rs. 6.17/unit for a period of 20 years from the Commercial Operation Date (COD). The Commission has also ordered that the incumbent distribution licensee KSEBL shall purchase the electricity generated from 10MW Waste to Energy Plant at tariff approved by the Commission.
 - (iii) M/s. GJ Eco Power Private Limited is the concessionaire to M/s Kochi Municipal Corporation (KMC) for the 10MW Waste to Energy Project proposed by Kochi Municipal Corporation for the Waste Disposal of Kochi Municipal Corporation and surrounding area. M/s. KMC had entered into a concession agreement with M/s. GJ Eco Power Private Limited on 17.02.2016 for 'design, build, finance, operate and transfer' the Waste to Energy Plant at Brahmapuram, Kochi. The period of concession agreement was for 20 years from the date of award of concession. During the period of concession agreement, the electricity generation and supply to KSEB Ltd was the responsibility of M/s. GJ Eco Power Private Limited.
 - (iv) The Council of Kochi Municipal Corporation, granted approval to the concessionaire M/s. GJ Eco Power Private Limited for entering into Power Purchase Agreement with KSEBL for supply of power from the Project.
2. The Commission admitted the petition as OP No. 35/2019 and conducted hearing on 07.03.2019 at the Court Hall of the Commission. Sri James Adai, Director representing the petitioner, submitted that signed power purchase agreement is a prerequisite for achieving financial closure of the project. The draft PPA submitted before the Commission was mutually discussed and initialed by the petitioner and the respondent KSEB Ltd. Considering the importance of the waste disposal of the Kochi Municipal Corporation and its surrounding area, the petitioner has been taking earnest effort to start the construction of the project at the earliest.
3. Shri. Bipin Sankar, Deputy Chief Engineer, KSEB Ltd submitted that the articles of the draft PPA was mutually discussed and agreed, and as such no further comments to offer.

During the hearing, the Commission, has discussed the various articles of the draft PPA and made its observations. The Commission has noted that, as per the Article-3 of the draft PPA, the contracted capacity at the interconnection point is 9.76 MW. The Commission vide daily order dated 08.03.2019 clarified that, the discrepancies have to be corrected before issuing final order on approval of the PPA to be signed between the G.J Eco Power Pvt Ltd and KSEB Ltd. The Commission has allowed 10 days time to the petitioner and respondent to submit additional details.

4. In compliance of the directions in the daily order dated 08.03.2019, M/s GJ Eco Power (P) Ltd submitted the comments on 19.03.2019 and KSEB Ltd submitted the comments on 21.03.2019. Both the petitioner M/s G.J Eco Power Pvt Ltd and the respondent KSEB Ltd consented to change the Article 3 of the draft PPA as follows.

Existing provisions

'3. Contracted Capacity:

The contracted capacity is 9.76MW of power at the interconnection point for the Waste to Energy Project that the concessionaire has agreed to deliver to KSEBL under this agreement.'

' KSEB Ltd proposed to modify the article as:

Contracted Capacity: The installed capacity of the project is 9.76MW and the same shall be the contracted capacity under this agreement'.

" The petitioner proposed as

Contracted capacity: The contracted capacity is 9.76 MW of Power generated from turbine generator contracted with KSEBL for sale of such power under this agreement"

Analysis and Decision

5. The Commission has examined the petition filed by M/s G.J. Eco Power Pvt Ltd for the approval of the PPA to be signed with KSEB Ltd for supplying the electricity generated from the proposed Waste to Energy Plant at Brahmapuram at the tariff approved by the Commission vide the tariff order dated 06.03.2018, as per the provisions of the Electricity Act, 2003 and the Regulations notified by the Commission.
6. As per the Section 86(1) (b) of the Electricity Act, 2003, approval from the Commission is mandatory for entering into PPA by the respondent KSEB Ltd with the petitioner M/s G.J Eco power Ltd for purchasing electricity from the proposed Waste to Energy Plant at Brahmapuram.

7. The Commission, vide the order dated 06.03.2018 in OP No. 10/2017 ordered the following regarding the tariff for the electricity generated from the project and for the purchase of power from the project by KSEB Ltd.

“(4) The levelised tariff for the entire electricity generated from the proposed 9.76MW MSW project at Brahmapuram is approved at Rs 6.17/unit, with accelerated depreciation, for a period of '20' years from the date of commercial operation of the project.

(5) KSEB Ltd shall purchase the entire electricity generated from the proposed 9.76MW MSW project at Brahmapuram @Rs 6.17/unit, irrespective of the merit order dispatch.

(6) KSEB Ltd shall reimburse, any tax paid on the RoE, limited to the amount of equity specified in this order, after getting separate invoice from the petitioner with necessary documentary evidence on payment of such tax to the authorities.

(7) The developer shall avail the incentive and subsidy offered by Central and State Government available to MSW projects and shall pass on such benefit to the electricity consumers through reduction in tariff.”

8. The draft PPA submitted by the petitioner M/s G.J Eco Power Pvt Ltd for the approval was initialed by the petitioner and the respondent KSEB Ltd, and accordingly all the clauses of the draft PPA was mutually agreed and consented by both the parties. The Commission has examined the various articles of the PPA, and approved the following changes to give more clarity on the various articles of the PPA and to avoid disputes between the parties in future to the possible extent.

- (1) Definition 46 of the draft PPA”

As per the clause 46 of the definition clause of the PPA, the ‘tariff period ‘is defined as ‘Tariff Period: means 20 years from the COD of the project’,

The Commission approves this clause as follows.

“Tariff Period: Means 20 years from the COD of the project or the date of expiry of the concession agreement between Kochi Municipal Corporation and its concessionaire M/s G.J Eco Power Pvt Ltd, whichever is earlier”

- (2) The Article-2 of the draft PPA is read as follows.

‘Article 2: effective date and term of agreement

This Agreement shall come into force from the date of signing of the Agreement for all purpose and remain operative for a period of 20 years from

the date of commercial operation or the expiry of Concession Agreement between KMC and the SPV, whichever is earlier. The terms of the Agreement may be extended for further period by mutual agreement with modification as considered necessary mutually agreed and as consented by KSERC. In case KSEBL continue to get power from the station, even after expiry of this agreement without further renewal or formal extension thereof, then the provisions of this agreement shall continue to operate till this agreement is formally renewed, extended or replaced. Annexures and schedule thereto form an integral part of this agreement.”

The Commission approves the Article 2 of the PPA as follows.

‘Article 2: effective date and term of agreement

This Agreement shall come into force from the date of signing of the Agreement for all purpose and remain operative for a period of 20 years from the date of commercial operation or the expiry of Concession Agreement between KMC and the SPV, whichever is earlier. The terms of the Agreement may be extended for further period by mutual agreement with modification as considered necessary mutually agreed and as approved by KSERC. Annexures and schedule thereto form an integral part of this agreement.”

(3) Article 3 of the draft PPA

As per the draft PPA submitted before the Commission, the Article 3 of the draft PPA read as follows.

‘3. Contracted Capacity:

The contracted capacity is 9.76MW of power at the interconnection point for the Waste to Energy Project that the concessionaire has agreed to deliver to KSEBL under this agreement.

The Commission approves the Article -3 of the PPA as follows.

“3. Contracted capacity:

The installed capacity of the project is 9.76 MW and the same shall be the contracted capacity under this agreement”

(4) Article 5.8 of the draft PPA

The Article 5.8 of the draft PPA read as follows.

“5.8. Tariff for power generated from the plant shall be Rs.6.17/unit (rate fixed by KSERC as per the order dt 6/3/2018 in OP 10/2017) for a period of 20 years from the Date of Commercial Operation. KSEB Ltd shall reimburse any

tax paid on the RoE, limited to the amount of equity specified in the order, after getting separate invoice from the Concessionaire/ SPV with necessary documentary evident on payment of such tax to the authorities.”

The Commission approves the Article 5.8 as follows.

“5.8. Tariff for power generated from the plant shall be Rs.6.17/unit (rate fixed by KSERC as per the order dt 6/3/2018 in OP 10/2017) for a period of 20 years from the Date of Commercial Operation or the expiry of concession agreement, whichever is earlier. KSEB Ltd shall reimburse any tax paid on the RoE, limited to the amount of equity specified in the order, after getting separate invoice from the Concessionaire/ SPV with necessary documentary evident on payment of such tax to the authorities.”

- (5) Article 9 of the draft PPA deals with dispute resolution which is extracted below.

“9.0 All differences or disputes between the parties arising out of or in connection with this agreement shall be mutually discussed and amicably resolved within 90 days. In the event that the parties are unable to resolve any dispute, controversy or claim relating to or arising under this agreement as stated above, the same shall be referred to KSERC and the decision of KSERC shall be final.”

The Section 86(1) (f) of the Electricity Act, 2003, empowers the Commission to “adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration”.

Hence the last sentence under Article 9, “In the event that the parties are unable to resolve any dispute, controversy or claim relating to or arising under this agreement as stated above, the same shall be referred to KSERC and the decision of KSERC shall be final.” shall be replaced as “In the event that the parties are unable to resolve any dispute, controversy or claim relating to or arising under the agreement stated above, the same shall be referred to KSERC for adjudicating the dispute as per the provision of Electricity Act,2003 and the decision of the Commission shall be final.”

- (6) Schedule 4 of the draft PPA
The existing provision in the draft PPA
‘Tariff order
(Kerala State Electricity Regulatory Commission (Power Procurement from Renewable Sources by Distribution Licensee) Regulations dated)

is approved to modify as

“Tariff order:

*Kerala State Electricity Regulatory Commission order dated 06.03.2018 in
Petition OP 10/2017.”*

- (7) Other articles and subclauses in the draft PPA submitted is approved as such.

Order of the Commission

9. The Commission, after examining the draft PPA submitted for approval as per the provisions of the Electricity Act, 2003, and the Regulations notified in consistent with the Electricity Act, 2003, hereby orders as follows.
- (1) Approve the PPA to be signed between M/s G.J Power Pvt Ltd and KSEB Ltd for the supply of power from the Waste to Energy Powerplant with modification, as detailed under paragraph 8(1) to 8(7) above.
- (2) A copy of the PPA entered between KSEB Ltd and M/s GJ Eco Power Pvt Limited shall be submitted to the Commission for records.

The petition disposed of and ordered accordingly.

Sd/-

K. Vikraman Nair
Member

Sd/-

Preman Dinaraj
Chairman

Approved for issue

Sd/-

G. Jyothichudan
Secretary