

KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

Petition No: OP 23/ 2021

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

In the matter of : Petition filed by KSEB Ltd. under Section 17 of the Electricity Act, 2003, seeking approval for the Capital Investment of (SBU –T), for taking over the reusable terminal equipments, removed from the two numbers 220 kV Bays of PGCIL at Edamon substation, at the depreciated cost.

Petitioner : KSEB Ltd., Thiruvananthapuram.

Petitioner represented by : Shri. K.G.P. Nampoothiri, EE, TRAC.

Respondent : Power Grid Corporation of India Ltd., Gurgaon -122 001

Respondent represented by: Adv. Swapna Seshadri, Gurgaon.

Date of E- Hearings : **06.05.2021, 11.00 AM**

10.06.2021, 11.00 AM

Order dated 23.06.2021 in OP No: 23/ 2021

1. Kerala State Electricity Board Limited (KSEB Ltd) filed the petition dated 16.03.2021 before the Commission, under section 17 of the Electricity Act, 2003, seeking approval for the capital investment of (SBU–T), for taking over the reusable terminal equipments removed from the two numbers 220 kV Bays of Power Grid Corporation of India Limited (PGCIL) at Edamon substation in respect of 220 kV Kayamkulam - Edamon Double Circuit (DC) line, at the depreciated cost.
2. The Commission admitted the petition as OP No. 23/ 2021 and Form 3A notice was issued to the respondent. The details provided in the petition are as follows:-
3. Power Grid Corporation of India Limited (PGCIL) commissioned during 1998, the 220 kV DC Kayamkulam - Edamon line (78 kms) with 2 bays at Edamon

substation and 220 kV DC Kayamkulam-Pallom line (47 kms) with 2 bays at Pallom substation, for evacuation of power from RGCCPP of NTPC at Kayamkulam. The 220 kV substations at Edamon and Pallom are owned by KSEB Ltd. Later, one feeder of Kayamkulam - Edamon line was connected to Kundara Substation and the other feeder was connected to Edappon Substation. Hence, these bays at Edamon were renamed as Kundara & Edappon 220 kV Bays respectively, at Edamon substation.

4. KSEB Ltd has been executing the O & M of the terminal equipments of the above 220 kV bays at Edamon & Pallom substations from 1998 onwards, based on the MOU dated 01-11-1998, executed between KSEB Ltd and PGCIL for a period of 10 years. This was later renewed for a further period of 10 years i.e. upto 01.11.2018, after which the agreement was renewed only for the O&M of the terminal equipments of the 220 kV Kayamkulam bays at Pallom substation.
5. In 2018, the terminal equipments of the two bays (Kundara & Edappon) at Edamon substation were upgraded with Hybrid switchgear equipments under the PSDF scheme. The work was carried out by KSEB Ltd with the technical concurrence of PGCIL.
6. In the 34th Southern Regional Power Committee (SRPC) meeting held at Coimbatore, PGCIL requested KSEB Ltd to take over the removed terminal equipments of the two bays at Edamon substation at the depreciated cost. KSEB Ltd agreed to take over the useful assets on depreciated cost. In view of this, PGCIL has not renewed the O & M agreement of the assets beyond 01-11-2018.
7. The petitioner has submitted that the assets to be taken over can be used in the substations of KSEB Ltd for replacing faulty equipments or can be kept as spare for use in case of emergencies and replacements.
8. The depreciated value of the terminal equipments was calculated based on the original cost of assets, after deducting the cost of non-reusable equipment as well as the cost of civil works involved. The capital cost of the assets as per the MOU for O&M was Rs.3,18,92,682/- as per the petitioner.
9. The petitioner has submitted in the petition, the details of the items proposed to be taken over by KSEB Ltd and its original capital cost are as shown below:

Sl. No.	Description	Amount (Rs)
1	245KV Current Transformer (1 No.)	1208080.00
2	245KV Capacitive Voltage Transformer (1No.)	366660.00
3	215KV GAPLESS Surge Arrestor (1 No.)	326002.00
4	245KV Wave Trap (1No)	164000.00
5	PLCC panels (1 set)	394680.00
6	Hardware items, Mech. Auxiliaries, Cables, Earthing eqpt.etc.	82,60,734.00
7	Inland transportation charges for item 6	11,39,772.00
8	Contingency charges for KSEB purchases	10,73,895.00
9	Overhead charges @ 21%	3940941.00
	Total	1,68,74,764.00

10. The petitioner further submitted that the tariff of the instant assets was determined by the Central Electricity Regulatory Commission as per the tariff orders issued from time to time. Hence, the depreciated value of these assets were computed based on the depreciation rates approved by CERC for these assets since COD, as per the tariff orders issued from time to time.
11. As per the Tariff orders issued by CERC for the asset: Kayamkulam — Edamon Transmission line and its associated bays, the depreciation rate for substation bays for the period from COD to 2008-09 was 3.60% and for the period from 2009-10 to 2011-12 was 5.2609%. For the remaining years from 2012-13 onwards, since the asset had completed 12 years of useful life, the depreciation was at a reduced rate of around 0.66%. PGCIL had claimed Advance Against Depreciation (AAD) during the years 2001-02, 2002-03, 2003-04, 2005-06, 2006-07 and 2007-08.
12. Accordingly the balance capital cost as on 22-6-2018, of the instant asset as per the depreciation rates comes to Rs.47,57,553/- (Rupees Forty Seven Lakhs Fifty Seven Thousand Five Hundred and Fifty Three only), as indicated below:

Description	Amount in Rs.
Capital cost of items taken over by KSEB Ltd	168,74,764
Total depreciation claimed upto 31.03.2018	100,39,267
AAD claimed upto 31.03.2018	20,77,945
Total depreciation claimed	121,17,211
Balance capital cost	47,57,553

Hearing on the petition:

13. The first E- Hearing on the petition was held at 11.00 AM on 06.05.2021. The hearing was attended by the representatives of the petitioner and the respondent. The advocate representing PGCIL raised the issue of jurisdictional authority of the Commission to hear the petition. It was stated that since the asset proposed to be transferred belonged to an Inter State Transmission System of the CTU, the matter is to be decided by the Central Commission. The representative of KSEB Ltd stated that they being the STU of the State, require prior approval of the Commission under Section 17 (1) (a) of the Electricity Act, to acquire the asset from a utility licensee. Both the parties requested for more time to file additional details in this regard. Accordingly, the Commission adjourned the hearing to 10.06.2021 and ordered that both the parties to file their additional submissions before the Commission within three weeks.
14. The Commission conducted the Second E- Hearing on 10.06.2021. PGCIL through e-mail had submitted their reply based on the direction of the Commission. PGCIL objected to the jurisdiction of the State Commission in the matter as the 220 kV D/C Kayamkulam- Edamon transmission line with associated bays under Kayakulam Transmission in Southern Region constructed, owned and commissioned by POWER GRID, is an inter-state transmission system and can be regulated only by the Central Electricity Regulatory Commission and stated that the petition has to be dismissed for want of jurisdiction.
15. PGCIL highlighted that as per the Electricity Act, 2003, jurisdiction of the State Commission is limited to regulating intra-state Transmission only, whereas the Inter State Transmission falls within the exclusive jurisdiction of the Central Electricity Regulatory Commission. Since the 220 kV D/C Kayamkulam- Edamon transmission line with associated bays under Kayamkulam Transmission is built by POWER GRID as part of an interstate transmission system, jurisdiction is with the Central Commission.
16. It is also submitted that the assets which KSEB Ltd is proposing to take over is part of interstate transmission network and as such the cost of the said assets has been determined by the Central Commission since its commissioning. Thus, the approval under Section 17 in the present case can only be granted by the Central Commission. Further, KSEB Ltd cannot claim that it is seeking a simple

approval since it has raised certain disputes on the capital cost / depreciated cost of the bays etc. PGCIL submitted that this cost stands determined only by the Central Commission in its various tariff orders which are passed in accordance with Central Commission's Regulations. Since any dispute on the cost can only be adjudicated by the Central Commission under Section 79 (1) (f) of the Electricity Act, 2003, the term 'Appropriate Commission' has to be read to mean the Central Commission in the present case.

17. PGCIL in their submission has also quoted the relevant portions of the judgement of ***Hon'ble Supreme Court dated 11.04.2017 in Civil Appeals titled Energy Watchdog v CERC & Ors (2017 14 SCC 655)*** and judgment passed by ***Hon'ble Appellate Tribunal for Electricity dated 09.05.2018 in Appeal No. 233 of 2013 & IA NO.318 of 2013 titled as Power Grid Corporation of India vs. Chhattisgarh State Electricity Regulatory Commission and others***, respectively to highlight on the point of jurisdiction.
18. KSEB Ltd vide letter dated 09-06-2021 furnished their additional submission on the matter and stated that since the acquisition is done by KSEB Ltd and any transaction by KSEB Ltd to acquire by purchase or takeover or otherwise, has to be approved by the State Commission, the Appropriate Commission in this case is the State Commission. It was further stated that the instant petition is therefore filed under section 17 of the Electricity Act,2003 seeking prior approval for the capital investment for taking over of reusable equipment removed from Edamon Substation in respect of Kayamkulam-Edamon DC line at depreciated cost for use in KSEB Ltd substations for replacing faulty equipment or for keeping as spare for use in case of emergencies and replacements.

Analysis and observations of the Commission

19. KSEB Ltd. has approached the Commission for the approval of the above capital investment, as per section 17 of the Electricity Act, 2003. Section 17 of the Electricity Act, 2003 is extracted below:

Section 17. (Licensee not to do certain things) : - (1) No licensee shall, without prior approval of the Appropriate Commission, -

(a) undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other licensee; or

(b) merge his utility with the utility of any other licensee:

Provided that nothing contained in this sub-section shall apply if the utility of the licensee is situate in a State other than the State in which the utility referred to in clause (a) or clause (b) is situate.

(2) Every licensee shall, before obtaining the approval under sub-section (1), give not less than one month's notice to every other licensee who transmits or distributes electricity in the area of such licensee who applies for such approval.

(3) No licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission.

(4) Any agreement, relating to any transaction specified in sub-section (1) or sub-section (3), unless made with the prior approval of the Appropriate Commission, shall be void.

20. As per section 17(1) of the Electricity Act, 2003, no licensee shall, without prior approval of the Appropriate Commission undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other licensee or merge his utility with the utility of any other licensee. In this case, approval to purchase the assets as part of the capital investment of the State Transmission Utility of KSEB Ltd is vested with the State Commission. The State Commission is bound as per law, to pass on only prudent expenditure of KSEB Ltd to be recovered through tariff. Accordingly, the power to approve the purchase or takeover the said assets as part of the capital expenditure is with the State Commission.
21. Hence KSEB Ltd shall evaluate the proposal of PGCIL for the terminal equipments proposed to be taken over and decide the utility and feasibility along with the offered price for the assets to be taken over. If KSEB Ltd decides to take over the said assets, a proper petition under section 17(1) of the Electricity Act, 2003 may be filed before the State Commission. Once the petition is filed along with the necessary details, the Commission shall decide on the matter after completing the due procedures and after considering the worthiness/benefit of the asset addition to the State Transmission Utility (STU).
22. The Commission after due scrutiny of the petition filed by M/s Kerala State Electricity Board Limited, clarifications provided during the hearing, additional submissions by M/s Power Grid Corporation of India Limited (PGCIL) views that

the assets which KSEB Ltd is proposing to take over is part of interstate transmission network.

23. As per section 17(3) of the Electricity Act, 2003, no licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission. In this context, the Commission examined the definition of “utility” as per section 2 of the Electricity Act quoted below.

(75) "utility" means the electric lines or electrical plant, and includes all lands, buildings, works and materials attached thereto belonging to any person acting as a generating company or licensee under the provisions of this Act;

24. As per the above definition, the proposed take over of the terminal equipment of the bays at Edamon substation is “material attached thereto belonging to PGCIL”. Hence, the Commission is of the considered opinion that under Section 17(3), the Appropriate Commission having the jurisdiction to decide on the sale/ residual cost of the said assets primarily is vested with the Central Commission, which is the appropriate Commission. Accordingly, Commission is of the view that M/s Power Grid Corporation of India Limited (PGCIL), if considered necessary approach the Central Commission as per section 17(3) of the Electricity Act, 2003 for further action as deemed appropriate.

25. Accordingly, this Commission hereby directs as follows:

Orders of the Commission

26. The Commission after due scrutiny of the petition filed by M/s Kerala State Electricity Board Limited, clarifications provided during the hearing, additional submissions by M/s Power Grid Corporation of India Limited (PGCIL) and provisions of the Electricity Act, 2003 orders that.

- 1) M/s Kerala State Electricity Board Limited shall if considered necessary file a petition before the State Commission as per section 17(1) of the Electricity Act, 2003 for approval of the capital expenditure for the acquisition of the reusable terminal equipments belonging to PGCIL removed from the two bays at Edamon substation based on the order

issued by the Central Electricity Regulatory Commission (CERC) on the sale price of the assets

- 2) M/s Power Grid Corporation of India Limited (PGCIL), if they so desire, may file petition before the Central Commission as per 17(3) of the Electricity Act, 2003.

The Petition is disposed off as ordered above.

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

Sd/-
Preman Dinaraj
Chairman

Approved for Issue

Sd/-
Secretary