

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: **Shri. Preman Dinaraj, Chairman**
 Shri. S. Venugopal, Member

Petition No. OP 53/19

In the matter of : Petition filed by KSEB Ltd seeking approval of Power Sale Agreement (PSA) for 200MW wind power with the Solar Energy Corporation of India Limited on long-term Basis

Petitioner : M/s Kerala State Electricity Board Limited.

Petitioner represented by : Shri. Sasankan Nair, Dy.CE
 Sri. K.G.P. Nampoothiri, Executive Engineer,
 Smt. Supyiya Jasmine G, Executive Engineer
 Smt. Latha S.V, Asst: Executive Engineer
 Smt. Vijayalakshmi V, Asst: Executive Engineer

Respondent : M/s Solar Energy Corporation of India Limited (SECI)

Respondent represented by : Shri. Tarun Mubhija, Deputy Manager, SECI

Order dated 19.02.2020

1. KSEB Ltd (herein after referred to as the petitioner or KSEB Ltd) on 01.07.2019, has filed a petition before the Commission for the approval of Power Sale Agreement (herein after referred to as PSA) for 200MW Wind power with Solar Energy Corporation of India Limited (hereinafter referred to as the respondent or SECI) on long term basis in accordance with Section 86(1)(b) of the Electricity Act, 2003 read along with Section 63 of the Electricity Act, 2003 and Regulation 76 of the KSERC (Terms and Conditions for determination of Tariff) Regulation, 2018 to meet the Renewable Purchase Obligation (RPO) of KSEB Ltd.
2. The summary of the issue raised in the petition is given below.
 - (1) As per the estimated electricity demand and the RPO targets, KSEB Ltd has to meet 925 MW from Non-Solar Renewable Energy (RE) sources by the year 2021-2022. However, the existing non-Solar capacity in the State is only about 273 MW.

- (2) The Central Government has evolved a scheme for setting up 2500MW Wind Power Projects in the Country to meet the Non-Solar RPO of “non-windy” States. The Central Government identified SECI, a CPSU under the administrative control of the Ministry of New and Renewable Energy (MNRE), as the nodal agency for implementation of this scheme. SECI shall act as an intermediary procurer under the guidelines for tariff based competitive bidding process for procurement of power from grid connected wind power projects issued by the Ministry of Power, Government of India vide the gazette resolution dated 08.12.2017.
 - (3) Based on the requirement of KSEB Ltd, SECI has allotted 200MW wind power to KSEB Ltd with applicable tariff of Rs. 2.83 per unit + a trading margin of Rs.0.07 per unit, which they have derived through competitive bidding. The PSA was signed by both the parties on 14.06.2019.
 - (4) KSEB Ltd further submitted that, as per the Section 86(1)(b) of the Electricity Act, 2003, and Regulation 76 of the KSERC (Terms and conditions for the determination of Tariff) Regulation, 2018, every agreement for procurement of power by KSEB Ltd from generating station /companies entered into, after the date of commencement of KSERC(Terms and conditions for the determination of tariff) Regulations, 2018 will come into effect only with the approval of the Commission.
 - (5) KSEB Ltd, therefore prayed before the Commission to approve the initialed PSA for procuring 200MW wind power through SECI on long term basis.
3. The Commission admitted the petition as OP No 53/2019. The hearing on the petition was conducted on 16.9.2019. Sri. K G P Nampoothiri presented the petition on behalf of KSEB Ltd Sri. Tarun Mubhija on behalf of the respondent SECI.
 4. The Commission, during hearing has observed that Article 3.3 of the initialed PPA between M/s SECI and KSEB Ltd provide as under,

“Buying Entity shall be liable to bear all the transmission losses as determined by appropriate commission from time to time in respect of the power evacuated from the delivery points to its receiving substation(s)”

As above, as per the Article 3.3 of the PSA, the buying entity KSEB shall liable to bear the transmission loss from the delivery point to the receiving substation of the buying entity. Further, as per the PSA, the “Delivery Point” shall mean the point at 220kV or above where the power from the wind power project(s) will be injected into the ISTS. Metering shall be done at this interconnection point where the power will be injected into the ISTS, i.e, the Delivery point.

However, the Ministry of Power, Government of India vide notification dated 13.2.2018, has waived the interstate transmission charges and losses for a period of 25 years from CoD for Wind and Solar Projects commissioned till 31.3.2022, having PPA with Distribution Companies and other obligated entities for the sale of power from solar and wind projects for compliance of their RPO, and provided that the solar and wind projects are awarded through competitive bidding process in accordance with the guidelines issued by the Central Government.

In line with the order of the Central Government dated 13.2.2018, the Central Electricity Regulatory Commission (CERC), has amended the CERC (Sharing of

Interstate Transmission Charges and Losses) Regulations, 2010, vide notification No. L-1/44/2010- CERC dated 27th March 2019, as follows;

“(aa) No transmission charges and losses for the use of ISTS network shall be payable for the generation based on solar and wind power resources for a period of 25 years from the date of commercial operation of such generation projects if they fulfill the following conditions:

(i) Such generation capacity has been awarded through competitive bidding process in accordance with the guidelines issued by the Central Government;

(ii) Such generation capacity has been declared under commercial operation between 13.2.2018 till 31.3.2022;

(iii) Power Purchase Agreement(s) have been executed for sale of such generation capacity to all entities including Distribution Companies for compliance of their renewable purchase obligations.”

Since the KSEB Ltd’s proposal is to procure 200 MW wind power through the intermediary procurer SECI is for meeting its RPO and also since the SECI has selected the wind developers as per the bidding guidelines notified by the Central Government, KSEB Ltd also not liable to pay any transmission charges or losses from the delivery point to the receiving substations in the State of Kerala.

Hence, the Commission, vide the daily order dated 28.10.2019, has directed the petitioner KSEB Ltd and the respondent M/s SECI to modify the Article 3.3 of the PSA, incorporating the provision to the effect that, for the entire period of the PSA, the buying entity KSEB Ltd shall not be liable to pay interstate transmission charges and shall also not be liable to bear any transmission losses for entire term of the PSA.

5. KSEB Ltd, vide affidavit dated 18.12.2019, submitted the amendment to the power sale agreement dated 14.06.2019, amending the Article 3.3.1 of the PSA, as given below.

Article	Existing Article	Amended Article
3.3.1	Buying entity shall be liable to bear all the transmission losses as determined by Appropriate Commission from time to time in respect of the power evacuated from the delivery points to its receiving substation(s).	Buying entity shall be liable to bear all the transmission losses as determined by Appropriate Commission from time to time in respect of the power evacuated from the delivery points to its receiving substation(s). However, as per notification of Ministry of Power dated 13.02.2018 & Hon'ble CERC notification dated 27.03.2019 and/or any amendment thereof, no interstate transmission charges and losses will be levied on transmission of electricity through the interstate transmission system for sale of power by such projects commissioned till 31st March 2022 for the entire term of the PSA

6. KSEB Ltd further submitted that, the CERC vide its order dated 20.11.2019 in Petition No. 215/AT/2019, adopted the tariff for the 1200 MW (Tranche-VI) Wind projects selected through competitive bidding process as per the Standard Bidding Guidelines dated 8.12.2017. However, regarding the adoption of the trading margin of Rs 0.07/ kWh, the CERC specified that *‘the Trading Margin Regulations do not provide for any Trading Margin for long term transactions and, therefore, it is upto the contracting parties to mutually agree on Trading Margin, if any, in such cases. The spirit of the Act and read with the Trading Margin Regulations gives freedom and choice to the contracting parties to mutually agree on Trading Margin for any kind of trading transaction, subject to the ceiling Trading Margin, whenever applicable. Accordingly, the Commission cannot fix or adopt any Trading Margin for long-term transactions under the provisions of the present Trading Margin Regulations’.*

Analysis and Decision

7. The Commission examined the petition filed by KSEB Ltd for the approval of the PSA for 200 MW wind power with M/s Solar Energy Corporation of India (SECI) on long term basis, as per the provisions of the Electricity Act, 2003 and Regulations notified by the Commission.
8. As per the KSERC (Renewable Energy) Amendment Regulations, 2017, the minimum Non-Solar RPO target to be met by the obligated entities by the year 2018-19 shall be 7% of the total consumption (excluding hydro power). As per the draft KSERC (Renewable Energy) Regulations, 2019, the Commission proposed to increase the Non-solar RPO target to 10.25% by the year 2021-22.
9. As per the order dated 08.07.2019 in OA No. 15/2018 in the matter of ARR, ERC and Tariff petition for the MYT period from 2018-19 to 2021-22, the Commission has estimated the Non Solar RPO targets to be met through bidding process as ‘787.71 MU’ by the year 2021-22. If this capacity is being met from wind sources with a CUF of 28%, KSEB Ltd has to procure about 325 MW additionally by the year 2021-22.
10. The Ministry of Power, Government of India, vide the resolution No. 23/54/2017-R&R dated 8th December-2017 has notified the ‘guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects. The clause (c) under paragraph 3 of the bidding guidelines permits the DISCOMS to procure the wind power through ‘intermediary procurer’. The relevant portions of the guidelines are extracted below for ready reference.

“c) Intermediary Procurer

- (i) *In some cases, an intermediary, between the distribution licensee(s) and the Wind Power Generator(s) (WPG) may be required either to aggregate the wind power to be purchased from different generators and sell it to the distribution licensee(s) or to enhance the credit profile. In such cases, the ‘Intermediary Procurer’ is essentially a trader, buying power from the WPG(s) and selling the same to one or more distribution licensees and shall carry out the bidding as per the provisions of these guidelines.*
- (ii) *The Intermediary Procurer shall enter into a Power Purchase Agreement (PSA) with the distribution licensee(s). The PSA shall contain the relevant provisions of the PPA on a back to back basis. The intermediary Procurer*

may charge trading margin as notified by the Appropriate Commission or in the absence of such notification as mutually agreed with distribution licensee(s).

(iii) As long as the Intermediary Procurer has followed these guidelines for procurement of wind power, the distribution licensee(s) shall be deemed to have followed these Guidelines for procurement of wind power.

11. As extracted above, the bidding guidelines notified by the Central Government dated 8th December 2017 specified the role of the 'Intermediary Procurer'. Further as per the sub clause (c) (iii) under paragraph 3 of the bidding guidelines, it is also specified that 'as long as the Intermediary Procurer has followed the bidding guidelines for procuring wind power, the distribution licensee(s) shall be deemed to have followed the bidding guidelines'.
12. In the present case, the Solar Energy Corporation of India (SECI), a CPSU is nodal agency for the implementation of the MNRE scheme for setting up of 2500 MW ISTS connected Wind Power Projects in the country and the intermediary procurer under the bidding guidelines notified by the Central Government on 8th December 2017. The SECI has concluded the Tranche VI E-RA on 15.02.2019 and selected 1200 MW wind power, and allotted 200 MW out of it to KSEB Ltd.
13. The Central Commission vide the order dated 20th November 2019 in petition No. 215/AT/2019 has adopted the tariff for the 1200MW (Tranche-VI) wind power projects connected to the Inter-State Transmission System(ISTS) and selected through competitive bidding process as per the Standard Bidding Guidelines dated 08.12.2017. The relevant portion of the order of the CERC is extracted below.

" 27. In the light of the discussions as above, it emerges that selection of the successful bidders and the tariff of the Project has been carried out by SECI through a transparent process of competitive bidding in accordance with Guidelines issued by Ministry of Power, Government of India under Section 63 of the Act. The Petitioner vide its letter dated 18.9.2019 has certified that the process is in conformity with the Ministry of Power Guidelines and no deviation was taken from the Guidelines in the RfS documents. Accordingly, in terms of Section 63 of the Act, the Commission adopts the following tariff for the Projects as agreed to by the successful bidders subject to signing of the PPAs with the WPDs, which shall remain valid throughout the period covered in the PSAs and PPAs:

Successful Bidders	Bidders' Quantity MW	Tariff (INR/kWh)
Adani Renewable Energy Park (Gujarat) Limited	250	2.82
Ostro Energy Private Limited	300	2.82
Srijan Energy Systems Private Limited	150	2.82
Powerica Limited	50.6	2.82
Zenataris Renewable Energy Private Limited	125	2.83
SBESS Services Projectco Two Private Limited	324.4	2.83

14. As requested by KSEB Ltd, M/s SECI has allotted 200 MW power from the 1200 MW (Tranche-VI) wind projects selected through competitive bidding process as per the Standard Bidding Guidelines dated 08.12.2017. M/s SECI and KSEB Ltd signed the Power Sale Agreement on 14th June 2019.

The Article-5.1.1 and 5.1.2 of the signed PSA dated 14th June 2019 deals with the 'Applicable Tariff', which is extracted below for ready reference.

"5.1.1 From the Scheduled Commissioning Date (SCD) and subject to the provisions of the Article 6.7, the Buying Entity shall pay the fixed tariff of Rs 2.83/ kWh plus trading margin of Rs 0.07/kWh fixed up to commissioning of the cumulative awarded capacity/ accepted cumulative capacity by the SECI under the RfS.

5.1.2 Until the commissioning of the cumulative awarded capacity/ cumulative capacity commissioned as accepted by SECI under the RfS, the applicable tariff payable by Buying Entity shall be the Tariff as per Article 5.1.1. Plus the trading margin of Rs 0.07/ kWh.

Subsequently, the applicable tariff payable by Buying Entity shall be the pooled tariff arrived as per Schedule-1 of this Agreement of the commissioned Project Capacity of all the Projects accepted by SECI but not higher than Rs 2.83/kWh, till the end of the Term of the Agreement. The Buying Entity shall make the Tariff Payments to Buyer as per the provisions of this Agreement. Trading Margin of Rs 0.07/kWh will be applicable over and above discovered tariff."

Further, as per the Schedule-1 of the signed PSA, the weighted average tariff (pooled tariff) is Rs 2.8237/kWh. Thus till the commissioning of the cumulative awarded capacity of the Trache-VI bid of 1200 MW, the tariff payable by KSEB Ltd for the 200 MW wind power is Rs 2.83/unit plus the trading margin of Rs 0.07/kWh. Subsequently, after the commissioning of the cumulative awarded capacity, the tariff payable by KSEB Ltd is Rs 2.8237/kWh.

15. The present petition is filed by KSEB Ltd for the approval of the Power Sale Agreement (PSA) dated 14th June 2019, for procuring 200 MW wind power, with SECI on long term basis for 25 years.

The Article 2.1.2 of the PSA provides for modifications in the signed PSA as directed by the SERC while approving the contracted capacity, which is extracted below for ready reference.

"2.1.2 The parties agree that any modifications in this Agreement, as directed by the State Electricity Regulatory Commission or Discom (s) as applicable, as a result of adoption of the Tariff and approving the procurement of the contracted capacity, shall be binding on both parties to this Agreement."

16. As detailed under paragraph 4 and 5 above, the Commission vide the daily order dated 28.10.2019 directed the petitioner KSEB Ltd and the respondent SECI to modify the Article 3.3 of the PSA, to the effect that for the entire period of the PSA, the buying entity KSEB Ltd shall not be liable to pay interstate transmission charges and shall also not be liable to bear any transmission loss. In compliance of the direction, KSEB Ltd submitted the signed amendment dated 12th December 2019 to the original PSA dated 14th June 2019, as below.

Article	Existing Article	Amended Article
3.3.1	Buying entity shall be liable to bear all the transmission losses as determined by Appropriate Commission from time to time in respect of the power evacuated from the delivery points to its receiving substation(s).	Buying entity shall be liable to bear all the transmission losses as determined by Appropriate Commission from time to time in respect of the power evacuated from the delivery points to its receiving substation(s). However, as per notification of Ministry of Power dated 13.02.2018 & Hon'ble CERC notification dated 27.03.2019 and/or any amendment thereof, no interstate transmission charges and losses will be levied on transmission of electricity through the interstate transmission system for sale of power by such projects commissioned till 31st March 2022 for the entire term of the PSA

The Commission noted the amendment on the Article 3.3.1 of the PSA submitted by KSEB Ltd, and approve the same with modification as follows.

Article	Existing Article	As per the Amendment dated 12.12.2019 submitted by KSEB L	Approved by the Commission
3.3.1	Buying entity shall be liable to bear all the transmission losses as determined by Appropriate Commission from time to time in respect of the power evacuated from the delivery points to its receiving substation(s).	Buying entity shall be liable to bear all the transmission losses as determined by Appropriate Commission from time to time in respect of the power evacuated from the delivery points to its receiving substation(s). However, as per notification of Ministry of Power dated 13.02.2018 & Hon'ble CERC notification dated 27.03.2019 and/or any amendment thereof, no interstate transmission charges and losses will be levied on transmission of electricity through the interstate transmission system for sale of power by such projects commissioned till 31st March 2022 for the entire term of the PSA	As per notification of Ministry of Power dated 13.02.2018 & Hon'ble CERC notification dated 27.03.2019 and/or any amendment thereof, no interstate transmission charges and losses will be levied on transmission of electricity through the interstate transmission system for sale of power by such projects commissioned till 31st March 2022 for the entire term of the PSA

- The Commission also examined the other Articles of the PSA dated 14th June 2019, signed between SECI and KSEB Ltd, and noted that the other Articles of the PSA are the standard provisions in the power supply agreement between the DISCOM as buying entities and SECI as intermediary procurer. Hence the Commission decided to approve the Power Sale Agreement dated 14.06.2019 and its amendment dated 12.12.2019.

18. As per the signed PSA, the trading margin payable to the intermediary procurer SECI is Rs 0.07/unit. As detailed under paragraph-10 above, per the clause (c) of under paragraph-3 of the bidding guidelines dated 08.12.2017, the intermediary procurer is entitled to levy trading margin 'as notified by the appropriate Commission or in the absence of such notification as mutually agreed with distribution licensee(s).

As discussed under paragraph 6 above, CERC vide the order dated 20.11.2019 in petition No. 215/AT/2019, has clarified that, 'the Trading Margin Regulations do not provide for any Trading Margin for long term transactions and therefore, it is upto the contracting parties to mutually agree on Trading Margin, if any, in such cases'. The relevant paragraph of the CERC order is extracted below.

"29. The Petitioner has prayed to adopt the Trading Margin of Rs. 0.07/kWh. It is observed that Section 79(1)(j) of the Act requires the Commission "to fix the Trading Margin in the inter-State trading of electricity, if considered, necessary". Accordingly, the Commission, being of the opinion that it was necessary to fix Trading Margin for inter State trading in electricity, exercised the powers conferred under Section 178 of the Act and conceived Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010 (hereinafter referred to as „Trading Margin Regulations“) applicable to the short-term-buy-short-term sell contracts for the inter-State trading in electricity undertaken by a licensee. Trading Margin Regulations provide for the ceiling of the Trading Margin in short-term-buy-short-term-sell contracts for the inter-State trading. Trading Margin Regulations do not provide for any Trading Margin for long term transactions and, therefore, it is upto the contracting parties to mutually agree on Trading Margin, if any, in such cases. In any case, the Commission does not fix Trading Margin on case to case basis. The spirit of the Act read with the Trading Margin Regulations gives freedom and choice to the contracting parties to mutually agree on Trading Margin for any kind of trading transaction, subject to the ceiling Trading Margin, whenever applicable. Accordingly, the Commission cannot fix or adopt any Trading Margin for long-term transactions under the provisions of the present Trading Margin Regulations. In view of the above, the prayer of the Petitioner to adopt the Trading Margin is decided accordingly."

The present transactions, i.e., procuring 200MW power through SECI from the Wind Power Developers (WPD) from different part of the Country by KSEB Ltd is an inter-state trading transactions. As per the Section 79(j) of the Electricity Act, 2003, CERC is empowered 'to fix the trading margin in the inter-State trading of electricity, if considered necessary'. However, CERC vide the order dated 20.11.2019 has observed that, 'Trading Margin Regulations do not provide for any Trading Margin for long term transactions and, therefore, it is upto the contracting parties to mutually agree on Trading Margin, if any, in such cases'.

Further the bidding guidelines notified by the MoP, Gol dated 8th December 2017 also provides that, in the absence of the notification of the trading margin by the Appropriate Commission, the intermediary procurer can charge the trading margin mutually agreed with the distribution licensee(s).

As per the details submitted before the Commission, the intermediary Procurer, SECI offered the trading margin of Rs 0.07/unit. However, neither the petitioner KSEB Ltd nor the respondent SECI had submitted the details of the negotiation, if any, on trading margin done between them.

The Commission has also examined the provisions in the CERC (Procedure, Terms and Conditions for grant of trading licensee and other related matters) Regulations, 2020. As per the Regulation 8(1)(c) of the said Regulations, the upper ceiling on the trading margin for short term contract is fixed at Rs 0.07/unit. The relevant Regulation is extracted below for ready reference.

“8(1)(c) For transactions under short term contracts and contracts through power exchanges upto one year, the Trading Licensee shall charge a trading margin of not less than zero (0.0) paise/kWh and not exceeding seven (7.0) paise/kWh.”

As above, Rs 0.07/kWh (ps 7/kWh) is the maximum ceiling on trading margin for short term transaction. However in the present case, the PSA between the KSEB Ltd and SECI is long term contract for 25 years. The risks of scheduling and payment of long term contracts are generally less when compared to short-term contracts. Further, as per the Article 6.4 of the PSA between the SECI and KSEB Ltd, there is enough payment security mechanism including 'Unconditional, revolving and irrevocable letter of credit, 'State Government Guarantee' and also 'Payment security fund to support three months payments'. Accordingly, the payment risk of the present transaction is minimum. Considering these reasons, there is no rationale in claiming trading margin @Rs 0.07/kWh by the intermediary procurer M/s SECI, which is the upper ceiling on trading margin provided for short-term contracts. Hence the Commission hereby directs KSEBL to negotiate with M/s SECI for reduction of the trading margin and to get the approval of this Commission. The trading margin so arrived at and as approved by this Commission can be claimed over and above the fixed tariff as per the Article 5.1.1 and 5.1.2 of the PSA dated 14th June 2019.

Order of the Commission

19. The Commission after examining the petition filed by KSEB Ltd for the approval of the Power Sale Agreement (PSA) for 200 MW wind power with SECI, as per the provisions of the Electricity 2003, and 'the guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects notified by the Ministry of Power, Government of India dated 08.12.2017, and other documents submitted on this behalf, hereby,

(i) Approve the Power Supply Agreement dated 14.06.2019 and its amendment dated 12.12.2019, for a period of 25 years from the Scheduled Commissioning Date (SCD) or from the date of full commissioning of the projects, whichever is earlier, subject to the observations made in the preceding paragraphs, and at the tariff as below.

(a) @Rs 2.83/ kWh from the Scheduled Commissioning Date (SCD) until the commissioning of the cumulative awarded capacity/ cumulative capacity as accepted by the SECI under the RfS

(b) At the pooled tariff arrived @Rs 2.8237/ kWh as per the Schedule-1 of the PSA dated 14th June 2019 from the commissioning of the cumulative awarded capacity/ cumulative capacity commissioned as

accepted by the SECI under the RfS till the end of the Term of the Agreement.

- (c) In addition to the above, the intermediary procurer can charge trading margin, which shall be fixed through mutual negotiation between SECI & KSEB Ltd and got approved by of this Commission. After arriving the trading margin through mutual negotiation, KSEB Ltd file a separate petition before the Commission for its approval.
- ..
- (ii) The Power Supply Agreement dated 14.06.2019 shall be modified to incorporate changes approved in the Article 3.3.1 of the PSA, and also to modify Articles 5.1.1. and 5.1.2 of the PSA incorporating the trading margin arrived through negotiation and after getting approval of the Commission.

The petition is disposed off as above.

Sd/-
S. Venugopal
Member

Sd/-
Preman Dinaraj
Chairman

Approved for issue

C R Satheesh Chandran,
Administrative Officer
(in charge of the Secretary)