

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

OP No 03/2022

In the matter of : Petition for adoption of tariff due to change in law, for the procurement of 110 MW of Solar power from M/s. T P Saurya Ltd., and submission of Power Purchase agreement (PPA) executed with M/s. TP Saurya Ltd., as per the Order dated 23.06.2021 (Part-II) in OP No 11/2021 filed by KSEB Ltd.

Petitioner : Kerala State Electricity Board Ltd.

Respondents : M/s. T P Saurya Ltd.,
Registered office: C/o the TATA Power Co. Ltd.
Corporate Centre, 34, Sant Tukaram Road,
Carnac Bunder, Mumbai, Maharashtra, India-
400009

Order dated 28.01.2022

1. M/s KSEB Ltd filed a petition on 06.01.2022, before the Commission with following prayers.

“KSEBL humbly pray that this Hon Commission may kindly adopt a reduced tariff @ Rs. 2.44 per unit for the procurement of 110 MW of solar power from M/s. T P Saurya Ltd., (100% subsidiary of M/s The Tata Power Company Ltd.) and to ratify the action in executing agreement with M/s. T P Saurya Ltd for a reduced tariff of Rs.2.44 for waiver of transmission charges and losses”.

2. Summary of the petition filed by KSEB Ltd is given below.

(1) KSEB Ltd had filed a petition 08.02.2021, before this Hon'ble Commission on, with the following payers.

(a) to grant formal approval for the initialed Power Purchase agreements (PPAs) with M/s NTPC Ltd and M/s. Tata Power Company Limited under Section 86(1)(b) of the Electricity Act, 2003, for the procurement of 90MW of Solar power from M/s.

NTPC Ltd. and 110 MW of Solar power from M/s. Tata Power Company Ltd. at the adopted tariff of ₹ 2.97 per unit.

- (b) Permit the execution of PPA with M/s.T P Saurya Ltd., a wholly owned subsidiary of the successful bidder M/s Tata Power Company Ltd.
- (2) Hon'ble Commission has admitted the petition as OP No 11/2021 (Part-II). After detailed deliberations, the Hon'ble Commission vide the Order dated 23.06.2021, granted approval for the signing the PPA with M/s TP Saurya Ltd. The relevant order is extracted below.

"18. Order of the Commission

The Commission after examining in detail the petition filed by KSEB Ltd for the approval of the draft initialled PPA between KSEB Ltd and M/s Tata Power Company Ltd and also its prayer to permit execution of PPA with M/s TP Saurya Ltd a wholly owned subsidiary of M/s Tata Power Company Limited, as per the provisions of the Electricity Act, 2003, and other relevant documents and records, here by orders the following.

- (1) *Approve the initialed Power Purchase Agreement (PPA) between KSEB Ltd and M/s Tata Power Company Limited for the procurement of 110 MW Solar Power at the rate of Rs.2.97/unit.*
- (2) *Grant permission to KSEB Ltd to sign the PPA with M/s TP Saurya Limited, the 100% subsidiary of the successful bidder M/s Tata Power Company Limited. The agreement dated 23.03.2021 and its amendment dated 09.06.2021 signed between M/s TPCL and its 100% subsidiary TP Saurya Ltd shall form integral part of the PPA to be signed between KSEB Ltd and TP Saurya Ltd.*
- (3) *KSEB Ltd shall submit a copy of the PPA signed with M/s TP Saurya Ltd to the Commission for information and record"*
- (3) KSEB Ltd, while appraising the matter of granting approval for executing the PPA with M/s TP Saurya Ltd as per the Order of the Hon'ble Commission, had noted the following.
- (i) The rate discovered through bidding route for the procurement of 200 MW solar power @ Rs 2.97/unit is relatively high in comparison with various offers of SECI, and hence issued direction to reconsider the power procurement process.
- (ii) The rate offered by SECI from Tranche IX ISTS tender is Rs 2.44 per unit (including trading margin @ 7ps per unit).
- (iii) The difference between the rate discovered in the KSEB Ltd bid and the latest offer of SECI from Tranche IX bid (at KSEB Ltd periphery @Rs 2.53/unit with a loss of 3.5%) is Rs 0.44/unit. Thus the additional liability on account of the KSEB Ltd bid is Rs 1.64 crore per month @CUF of 25%.

- (iv) Considering the financial liability as above, KSEB Ltd informally requested TP Saurya and NTPC Ltd, whether there would be any reconsideration of rates. M/s TP Saurya Ltd, vide the letter dated 27.09.2021 offered to reduce the rate to Rs 2.44/unit in place of Rs 2.97/unit, whereas NTPC Ltd is firm on their rate as per bid. Hence, KSEB Ltd decided not to execute the Power Purchase Agreement with the firms at the adopted the tariff of Rs.2.97 /unit and to analyse the impact of Basic Customs Duty (BCD) on various offers before KSEB Ltd.
- (v) As per MNRE order dated 09.03.2021, Basic Customs Duty (BCD) will be imposed on Solar cells and modules as given below.

Items	Upto 31.03.2022	W.e.f 01.04.2022
Solar Module	0%	40%
Solar Cell	0%	25%

As above, if the import of panels and cells are concluded on or before 31-03-2022, the present rate of M/s. Tata Power will also enjoy the benefit of exemption of BCD.

- (4) KSEB Ltd further submitted that, M/s. NTPC vide letter dated 30.09.2021 has intimated that with the imposition of BCD on solar power producing equipments, the Solar tariffs for the projects to be bid henceforth have the potential of increasing at least 25% as modules constitute 60% of the total project cost. Hence in case KSEB Ltd signs the PPA with NTPC by first week of October 2021, the time line for supply of modules falls before BCD start date ie. 01-04-2022. However, they are not willing to reduce the offered rate (Rs 2.97 per unit) at all.
- (5) The Clause 5.7.1 of the Solar guidelines and Article 12 **Change in Law** of the initialled PPA, provide as follows.

*'In the event a change in Law results in any adverse financial loss/gain to the Solar Power Generator then, in order to ensure that the Solar Power generator is placed in the same financial position as it would have been had it not been for the occurrence of the **Change in Law**, the Solar Power Generator/Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the KSERC'.*

Hence the impact of BCD on the tariff and date of effect is to be finally determined by the Hon'ble Commission with reference to the guidelines and tender specifications.

- (6) Considering the above, KSEB Ltd, has decided to procure 110 MW Solar power from M/s TP Saurya Limited (100% subsidiary of M/s The Tata Power Company Ltd) @ Rs 2.44 per unit as per their proposal dated 27.09.2021, subject to the condition that the rate change due to change

in law (including BCD) shall be as per clause 5.7.1 of the Central guidelines and Article 12 of Change in Law of the initialled PPA to be decided by the Hon'ble Commission. Accordingly KSEB Ltd. has executed Power Purchase Agreement with M/s TP Saurya Ltd on 08.12.2021 for procurement of 110 MW Solar power in conformity with the initialled PPA as per Hon'ble Commission's Order dated 23.06.2021 except in the matter of change in tariff, in anticipation of a favourable approval from the Hon'ble Commission.

- (7) As per the MNRE Order dated 12.11.2021, the order extant at the time of the bidding will apply for waiver of transmission charges and losses. The MNRE order extant at the time of bidding is the Order dated 05.08.2020 and as per this order, no inter-state transmission charges and losses will be levied on the transmission of electricity for a period of 25 years for projects commissioned till 30th June 2023. For achieving the Scheduled Commissioning Date (SCD) by June 2023, the Agreement has to be executed before Dec 2021 (SCD is 18 months from the date of execution of PPA) so that transmission charges and losses waiver will be applicable for this project. Hence KSEB Ltd has forced to execute the Agreement on 08.12.2021.
- (8) Hon'ble Commission vide order 18.12.2020 in O.P. No. 39/2020 filed by KSEB Ltd. has adopted a tariff of Rs. 2.97 per unit (kWh) for the procurement of 90 MW of solar power from M/s NTPC Ltd. and 110 MW of solar power from M/s Tata Power Company Ltd.; discovered by KSEB Ltd. through the competitive bidding process as per the bidding guidelines notified by the Central Government and under Section 63 of the Electricity Act, 2003.
- (9) Now, KSEB Ltd has decided to procure 110 MW Solar power from M/s TP Saurya Limited (100% subsidiary of M/s The Tata Power Company Ltd) @ Rs 2.44 per unit as per their proposal dated 27.09.2021. As there is reduction and change in the tariff over the approved adopted tariff, it is requested before this Hon'ble Commission to adopt the reduced tariff of Rs. 2.44/unit (due to change in law) to procure 110 MW Solar power from M/s TP Saurya Limited (100% subsidiary of M/s The Tata Power Company Ltd) and to ratify the action of KSEB Ltd. in executing the power purchase agreement with M/s TP Saurya Limited for the procurement process. A copy of the power purchase agreement is also submitted herewith before the Hon'ble Commission for information and record as per Order dated 23.06.2021 in O.P. No. 39/2020 (Part-II) filed by KSEB Ltd.

3. The Commission admitted the petition as OP No. 03/2022.

Analysis and Decision of the Commission

4. The Commission has examined in detail the petition filed by KSEB Ltd to adopt the reduced tariff @ Rs 2.44/unit for the procurement of 110MW Solar Power from M/s TP Saurya Ltd (100% subsidiary of M/s TATA Power Company Ltd, and to ratify the action of executing the PPA with them, as per the provisions of the Electricity Act, 2003, and the Regulations in force notified by the Commission.
5. The Commission, vide Order dated 18.12.2020 in petition OP No. 39/2020, adopted the tariff of Rs 2.97/unit for the procurement of 90MW of Solar power from M/s NTPC Ltd and 110MW of Solar power from M/s Tata Power Company Ltd, discovered by KSEB Ltd through the competitive bidding process under Section 63 of the Electricity Act, 2003. In the said Order, the Commission also directed KSEB Ltd to finalise and initial the PPA with the two successful bidders and file petition before the Commission for formal approval of the PPA under Section 86(1)(b) of the Electricity Act, 2003. The relevant portion of the Order is extracted below.
- “
- (i) *The Tariff of ₹. 2.97 per unit (kWh) for the procurement of 90 MW of solar power from M/s NTPC Ltd. and 110 MW of solar power from M/s Tata Power Company Ltd.; discovered by KSEB Ltd. through the competitive bidding process as per the bidding guidelines notified by the Central Government is adopted under Section 63 of the Electricity Act, 2003.*
- (ii) *KSEB Ltd shall finalize and initial the PPAs with the two successful bidders for their respective quantum of power and file them before this Commission for its formal approval under Section 86 (1) (b) of the Electricity Act, 2003. The formal approval of the PPAs by this Commission is a condition precedent and the PPAs shall come into effect only after this.”*
6. In compliance of the direction of the Commission, KSEB Ltd initialed the draft PPA with M/s Tata Power Company Limited on 5th February 2021 for procurement of 110MW Solar Power @Rs 2.97/unit. KSEB Ltd vide the petition dated 08.02.2021 submitted the copy of the initialed PPA before Commission to grant formal approval for the initialed PPA with M/s Tata Power Company Ltd. The Commission, after detailed deliberations, vide Order dated 23.06.2021, granted approval for the signing the PPA with M/s TP Saurya Ltd. The relevant order is extracted below.

“18. Order of the Commission

The Commission after examining in detail the petition filed by KSEB Ltd for the approval of the draft initialled PPA between KSEB Ltd and M/s Tata Power Company Ltd and also its prayer to permit execution of PPA with M/s TP Saurya Ltd a wholly owned subsidiary of M/s Tata Power Company Limited, as per the provisions of the Electricity Act, 2003, and other relevant documents and records, here by orders the following.

- (1) *Approve the initialled Power Purchase Agreement (PPA) between KSEB Ltd and M/s Tata Power Company Limited for the procurement of 110 MW Solar Power at the rate of Rs.2.97/unit.*

(2) *Grant permission to KSEB Ltd to sign the PPA with M/s TP Saurya Limited, the 100% subsidiary of the successful bidder M/s Tata Power Company Limited. The agreement dated 23.03.2021 and its amendment dated 09.06.2021 signed between M/s TPCL and its 100% subsidiary TP Saurya Ltd shall form integral part of the PPA to be signed between KSEB Ltd and TP Saurya Ltd.*

(3) *KSEB Ltd shall submit a copy of the PPA signed with M/s TP Saurya Ltd to the Commission for information and record”*

7. As above, the Commission vide the Order dated 18.12.2020 in Petition OP No. 39/2020 had adopted the tariff @Rs 2.97/unit for the procurement of 110 MW Solar Power from M/s TP Saurya Ltd. Further, the Commission vide the Order dated 23.06.2021 in Petition OP No. 11/2021 (Part-II) had approved the initialled PPA between KSEB Ltd and M/s TP Saurya Ltd for the procurement of 110 MW Solar Power.

However, when the Order of the Commission was put up before the KSEB Board of Directors (FTD), they observed that the rate discovered i.e. ₹2.97/kWh is very much on the higher side when comparing with the rate @ Rs 2.44/unit derived in SECI Tranche-IX bid and offered to KSEB Ltd. When comparing with the SECI rate, KSEB Ltd would have an additional liability of Rs 1.64 crore per month.

KSEB FTD also noted that there was a difference of ₹0.44/kWh when compared to the latest SECI offer. Considering the financial impact, KSEB Ltd informally enquired with M/s TP Saurya Ltd as to whether they would reconsider the rates to reduce it. Considering the above request of KSEB Ltd, the Solar Generator M/s TP Saurya Ltd, vide its letter dated 27.09.2021 offered to reduce the rate to Rs 2.44/unit in place of Rs 2.97/unit. Accordingly, KSEB Ltd decided to procure 110MW Solar Power from M/s TP Saurya Ltd @Rs 2.44/unit, as proposed by the Solar Power Generator vide its letter dated 27.09.2021, subject to the condition that the rate change due to change in law (including BCD) shall be as per clause 5.7.1 of the Central guidelines and Article 12 of Change in Law of the initialled PPA to be decided by the Commission. KSEB Ltd, has also executed Power Purchase Agreement with M/s TP Saurya Ltd on 08.12.2021 for procurement of 110 MW Solar power in conformity with the initialed PPA as per the Commission's Order dated 23.06.2021 except in the matter of change in tariff, in anticipation of a favourable approval from the Commission.

8. The Commission examined the submission of KSEB Ltd in detail. Though the Commission, had earlier adopted the tariff @Rs 2.97/unit for procuring 110MW of Solar Power from M/s TP Saurya Ltd, and also approved the initialed PPA between the parties, the Commission noted the fact that the Solar Power Generator M/s TP Saurya Ltd had agreed to KSEB Ltd.'s request to reduce the adopted tariff @Rs 2.97/unit to Rs 2.44/unit for the entire term of the PPA of 25 years and the procurer M/s KSEB Ltd accepted the offer of reduced rate. The reduced tariff @Rs 2.44/unit offered by the SPG and the same accepted by KSEB Ltd is beneficial to the ultimate consumers of the State, the Commission

also approve the action of KSEB Ltd to accept the reduced tariff @Rs 2.44 per unit instead of Rs 2.97/unit adopted earlier.

9. The Commission vide Order dated 23.06.2021 in Petition OP No. 11/2021 (Part-II) had approved the initialed PPA between M/s TP Saurya Ltd and KSEB Ltd for procuring 110 MW Solar Power. KSEB Ltd submitted that, they had executed the agreement with M/s TP Saurya Ltd on 08.12.2021 for procurement of 110 MW Solar power at the reduced tariff @Rs 2.44/unit, in conformity with the initialed PPA, which was approved by the Commission vide the Order dated 23.06.2021 except in the matter of change in tariff. The Commission examined the various articles of the PPA dated 08.12.2021 with the approved initialed PPA dated 5th February 2021, and noted that signed PPA dated 08.12.2021 is in conformity with the approved PPA dated 05.02.2021. Hence, the Commission hereby ratify the action of KSEB Ltd in signing the PPA dated 08.12.2021 with M/s TP Saurya for procuring 110 MW Solar Power @Rs 2.44/unit for the entire term of the PPA of 25 years from the Scheduled Commissioning date.

Orders of the Commission

10. The Commission, after examining the petition filed by KSEB Ltd to adopt the reduced tariff @ Rs 2.44/unit for the procurement of 110MW Solar Power from M/s TP Saurya Ltd (100% subsidiary of M/s TATA Power Company Ltd), and to ratify the action of executing the PPA with them, as per the provisions of the Electricity Act, 2003, and other Rules and Regulations in force, hereby orders the following.
- (1) Approve the reduced tariff @Rs 2.44/unit for the procurement of 110MW of Solar Power for 25 years from the Scheduled Commissioning Date from M/s TP Saurya Ltd (100% subsidiary of M/s TATA Power Company Ltd).
 - (2) Ratify the action of KSEB Ltd in executing the agreement with M/s TP Saurya Ltd, strictly in conformity with the approved initialled PPA vide the order dated 23.06.2021 except the change in tariff.

The petition disposed off. Ordered accordingly.

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

Sd/-
Preman Dinaraj
Chairman

Approved for issue

Sd/-
C R Satheeshchandran
Secretary