

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

RP No. 02/2022

In the matter of : Review Petition filed by M/s KSEB Ltd., against the Order of the Commission dated 29.10.2021 in OP 33/2021.

Petitioner : Kerala State Electricity Board Ltd.

Respondent : M/s THDCIL India Ltd.,
Bhagirathi Bhavan Top Terrace
Bhagirathi Puram Tehri Garhwal- 249001

THDCIL represented by ; Adv Asok Kumar B, Counsel of petitioner
Smt. Sunita Tamta,
Manager (RE) Sri.
Sanjay Singhal, AGM

SECI represented by : Sri. Sandeep Reddy
RPCKL represented by : Sri Augustine Thomas, CEO
KSEB Ltd represented by : Smt Latha S V, AEE, TRAC

Hearing held on : 01.06.2022

OP No 27/2022

In the matter of : Petition filed by M/s THDCIL India Ltd., for seeking implementation of the Order dated 29.10.2021 in OP No:33/2021.

Petitioner : THDCIL India Ltd.,
Bhagirathi Bhavan, Top
Terrace, Bhagirathipuram
Tehri Garhwal-249001

Respondents : 1. Kerala State Electricity Board Ltd.,
2. Renewable Power Corporation of Kerala Ltd. (RPCKL)
3. Solar Energy Corporation of India Ltd., New Delhi, (SECI)

Common Order dated 14.07.2022

Review Petition RP No.02/02 filed by KSEB Ltd

1. KSEB Ltd on 19.04..2022 filed a review petition seeking review of the Commission's Order dated 29.10.2021 in OP 33/2021 on approval of Power Sale Agreement with THDCIL for purchase of power from the THDC India Ltd.'s Solar PV Project of 50 MW capacity established at Kasargod District, with the following prayer:

“to review the order dated 29-10-2021 in OP 33/2021 with respect to on the limited ground of modifications in Clause 5.3.4 of the initialed PSA between M/s THDCIL and KSEB Ltd.”

2. The summary of the Review petition filed by KSEB Ltd is given below.

- (1) The Commission vide Order dated 17.03.2021 in OP No. 26/2020 had approved the tariff of the electricity generated from the 50 MW Solar Plant of M/s THDCIL at Kasargod District, Kerala State. The relevant order of the commission is as extracted below:
 - (i) *The levelized tariff for the electricity generated from the 50 MW Solar Project of M/s THDCIL is approved@ Rs 3.10/unit, inclusive of all taxes and duties including tax on RoE.*
 - (ii) *The levelized tariff approved as above is applicable for the entire electricity injected into the grid from the date of synchronization up to 25years.*
 - (iii) *Since the tariff of this petition is already determined as per Section 86(1)(b) by the State Commission, the Commission hereby directs THDCIL not to pursue for tariff determination under Section 79(1)(a) of the Electricity Act before the Central Commission.*
 - (iv) *Since the tariff approved for the project is the upper ceiling tariff mutually agreed by the petitioner M/s THDCIL and the respondent KSEB Ltd, the petitioner is not eligible to reimburse the tax on RoE from KSEB Ltd, and also not eligible to pass through the taxes and duties to KSEB Ltd, as detailed under paragraph 42 and 43 of this Order.*
 - (v) *As mentioned under Paragraph 18 of this Order, the present proceedings are limited to determination of tariff for the project as per Section 62 of the Electricity Act, 2003. The petitioner M/s THDCIL and the respondent KSEB Ltd is required to modify the initialled PSA with the approved tariff as above, and shall file a separate petition for approval of the PSA as per the provisions of the Electricity Act, 2003 and the Regulations notified by this Commission."*
- (2) Power Sale Agreement was initialed between THDCIL and KSEB Ltd., on 16/01/2019. Subsequently, in terms of the directions of the

Commission, THDCIL and KSEB Ltd initialed an Amendment to the PSA on 12.07.2021, by modifying the tariff clause as the Commission approved the tariff @ Rs 3.10 per unit for the project. The Solar Power Project of 50MW capacity of THDCIL was fully commissioned and CoD declared on 31.12.2020. Since then, power is being supplied by THDCIL to KSEB Ltd.

- (3) The Commission, vide Order dated 29-10-2021 in OP 33/2021, has approved the PPA, to be signed between KSEB Ltd and M/s THDC and ordered the following.

“(1) Approve the Power Sale Agreement dated 16.01.2019 read with the Amendment dated 12.07.2021 with KSEB Ltd for the procurement of power from the 50MW Power Plant of THDCIL at Kasargod District, subject to the following.

- (i) *Clause-5.1 and Clause- 9.2 of the PSA shall be modified as agreed to and consented by the parties as per paragraph-15 of this Order.*
- (ii) *In view of the Commission’s observations at Paras 17 of this Order, Clause 5.3.4 of the draft initialed PSA dated 16.01.2019 and its amendment dated 12.07.2021 shall be retained as it is and the modified clause proposed by KSEB Ltd is not agreed to.*

(2) *THDCIL and KSEB Ltd shall sign the PSA within one month from the date of this Order.*

(3) *A copy of the signed PSA shall be submitted before the Commission within two months of its signature for information and record.”*

- (4) The paragraph 17 of the Order of the Commission dated 29.10.2021 dealt with the Clause-5.3.4 of the PPA in detail, which is extracted below for ready reference.

“17. Regarding the Clause-5.3.4, KSEB Ltd proposed to modify the Clause as follows.

Clause 5.3.4

“Original clause

KSEBL may identify the energy procured from the Project to meet its Renewable Purchase Obligations (as mandated by the Appropriate Commission). Entire energy generated from the contracted capacity of the Project shall be sold by THDCIL to KSEBL and KSEBL agrees to buy the entire energy at a tariff as per clause 7.0. Any shortfall in annual generation below annual CUF of 19% (ie, 1.667 MU / Megawatt per annum) shall make THDCIL liable to pay compensation. The shortfall in generation shall be adjusted considering non-availability of grid for power evacuation which is beyond the control of the SPD, if the measured Global Horizontal Irradiance (GHI) per year is less than 1865 / kWh/m², Force Majeure conditions and annual degradation of 0.8%. The amount of compensation shall be equal to the compensation payable by the KSEBL towards non-meeting of RPOs on pro rata basis, if such compensation is ordered by the State Regulatory Commission. Any compensation shall be levied after completion of first Accounting Year.

Modified clause by KSEBL.

KSEBL may identify the energy procured from the Project to meet its Renewable Purchase Obligations (as mandated by the Appropriate Commission). Entire energy generated from the contracted capacity of the Project shall be sold by THDCIL to KSEBL and KSEBL agrees to buy the entire energy at a tariff as per Clause 7.0. Any shortfall in annual generation below annual CUF of 19% (ie, 1.66 MU / Megawatt per annum) shall make THDCIL liable to pay compensation. 'In case the project generates and supplies energy less than the energy corresponding to the minimum CUF, the solar power generator will be liable to pay to KSEBL, penalty for such shortfall below such contracted CUF level. SPG shall offset KSEBL for all potential costs (opportunity cost associated with shortfall in supply of contracted power, penalty for noncompliance of RPO obligation and other associated costs if any) associated with low generation and supply of power under the PPA, subject to a minimum of 25% (twenty five percent) of the cost of this shortfall in energy terms calculated at PPA tariff. In case the availability is more than the maximum specified CUF, KSEBL purchases the excess generation, at 75% (seventy-five per cent) of the PPA tariff.

However, the petitioner THDCIL suggested to retain the original clause of 5.3.4 as in the initialed PSA signed on 16.01.2019, and subsequently in its amendment dated 12.07.2021. THDCIL submitted that, the PSA signed earlier as on 16.01.2019 was not based on "Tariff Based Competitive Bidding Process 11 for Procurement of Power from Grid Connected Solar PV Power Project".

The Commission noted the submission of the THDCIL. The Commission noted that the Original Clause 5.3.4 has included a penalty for shortfall in annual generation below CUF of 19% calculated as 1.667 MUs/Megawatt per annum. Further " the amount of compensation shall be equal to the compensation payable by KSEB Ltd towards non-meeting of RPOs on pro rata basis, if such compensation is ordered by the State Regulatory Commission. Any compensation shall be levied after completion of first Accounting year".

The above Clause clearly lays down the basis and methodology for penalty for shortfall in generation. One of the fundamental principles to be ensured in any contract is to ensure that there is parity between the contracting parties. A contract between two parties cannot have unequal penalty or reward and definitely cannot be to the obvious disadvantage of one party and corresponding advantage of the other.

The Commission also noted that while Clause 5.3.4 does contain the penal provision, there is however no corresponding reward provision in case of excess generation. On the other hand, KSEB Ltd proposal is to limit the tariff of any excess generation over and above the CUF of 19% (1.667MU/year) to 75% of the PPA tariff. Acceptance of such a proposal would result in a double whammy of the generator loosing if there is either shortfall in generation or generation exceeds the CUF MUs. Such a proposal is inherently unacceptable and cannot be justified. Further in a state like Kerala having limited renewable energy resources, such Projects must be encouraged.

The Commission further noted that since the Clause 5.3.4 of the initialed PSA dated 16.01.2019 and its amendment dated 12.07.2021 were agreed and consented by the petitioner THDCIL and the respondent KSEB Ltd, there is no justification whatsoever to alter this Clause. Hence the Commission has

decided to retain the Clause 5.3.4 of the PSA as it is.”

- (5) Based on the Order of the Commission dated 29.10.2021, the review petitioner KSEB Ltd has raised the following issues.

Issue No.1. Whether there is no reward provision in the PSA for excess generation.

Issue 2: Clause 5.3.4 of the initial PSA dated 16.01.2019 and its amendment dated 12.07.2021 were agreed and consented by the petitioner THDCIL and the respondent KSEB Ltd, there is no justification whatsoever to alter this, Clause.

- (6) Regarding the issue No.1, KSEB Ltd further submitted that, the project developer is assured of his cost recovery and a reasonable return at the CUF adopted for the tariff determination of the project, which in the instant case is 23%. Therefore, KSEB Ltd has requested to include a provision in the PSA so that any excess generation over and above the CUF adopted for fixing the tariff (23%) shall be at 75% of the PPA tariff, which is in fact an additional benefit to or regard to the generator.

KSEB Ltd also submitted that, similar provisions for payment for excess generation at 75% of the PPA tariff was also specified in the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 and also in the competitive bidding guidelines notified by the MNRE, for procurement of solar power under competitive bidding route.

- (7) Regarding the issue No.2, KSEB Ltd submitted that, the reasoning cited by the Commission that clause 5.3.4 of the initial PSA dated 16-1-2019 and amendment 12-7-2021 are consented by both the parties and therefore there is no justification to alter this clause is an error as the Commission failed to consider the fact that the other clauses 5.1 and Clause 9.2 were modified subsequently, even though these clauses were also already agreed and consented to in the initial PSA dated 16-1-2019 and amendment dated 12-7- 2021.

KSEB Ltd has submitted that no objection was raised by THDCIL during hearing regarding modifying the clauses in line with bidding guidelines.

Petition OP No. 27/2022

3. M/s THDC India Limited filed a petition before the Commission on 21.04.2022 on the same subject matter, with the following prayers:

- (a) *Direct the 1st respondent to implement the Order in OP No.33 of 2021 dated 29/10/2021 of this Hon'ble Commission to Approve the Power Sale Agreement dated 16.01.2019 read with the amendment dated 12.07.2021*

with KSEB Ltd for the procurement of power from 50 MW Power Plant of THDCIL at Kasargod District.

(b) Pass any such order or orders as this Honourable Commission may deem just and proper in the circumstances of the case.

4. The summary of the issues raised by the M/s THDC in the petition OP No. 27/2022 is given below.

- (i) In pursuance of the Order of the Commission dated 29.10.2021 in Petition OP No.33/2021, THDCIL signed the PSA and submitted to KSEBL on 09.11.2021. However even after lapse of more than '05' months, M/s KSEB Ltd had not signed the PSA, despite repeated reminders.
- (ii) Hence M/s THDCIL requested before the Commission issue necessary directions to KSEB Ltd to implement the order.

5. Since the issues in both the petitions are related to the provisions of the PSA to be signed between the distribution licensee KSEB Ltd and the generator M/s THDCIL, the Commission conducted hearing of both the petitions were held on 01.6.2022 through video conference. Smt. Latha S.V, AEE, presented the matter on behalf of KSEB Ltd. Adv. Asok Kumar presented the matter on behalf of M/s THDCIL. The summary of the deliberations during the hearing are given below.

- (1) KSEB Ltd submitted that, PSA was initialed between THDCIL and KSEB Ltd on 16/1/2019. The CoD of the project was declared on 31.12.2020. M/s THDCIL Ltd filed a petition for approval of PSA on 23.7.2021 as Petition OP 33/2021. The Commission noticed discrepancies in the initialed PSA, mainly in Clause 5.1, Clause 5.3.4 and Clause-9 of the PSA. The Commission, also directed to modify the other clauses of the PSA duly considering the Competitive Bidding guidelines and its amendments notified by the Central Government.

KSEB Ltd had modified the Clause 5.1, Clause 5.3.4 and Clause-9 of the PSA accordingly and THDCIL agreed to the modification of Clause 5.1 and 9.2 but disagreed for the modification of Clause 5.3.4.

KSEB Ltd further submitted that vide order dated 29.10.2021 in OP No 33/2021, the Commission has ordered that ***"In view of the Commission's observations at Paras 17 of this Order, Clause 5.3.4 of the draft initialed PSA dated 16.01.2019 and its amendment dated 12.07.2021 shall be retained as it is and the modified clause proposed by KSEB Ltd is not agreed to"***

KSEB Ltd further submitted that, the tariff of the project is determined by adopting a CUF of 23% and the project developer is assured of his cost recovery and a reasonable return at this CUF. Any revenue earned by the project developer through excess generation above this CUF, paid at any rate is a reward for the project developer. Moreover, as the benefit

of excess generation needs to be shared between the generating company and the beneficiary, any excess generation over and above the CUF adopted for fixing the tariff (23%) may be at 75% of the PPA tariff.

KSEB Ltd also submitted that as per Clause 5.2.1(b) of the MoP guidelines provide as under,

“In case the availability is more than the maximum CUF specified, the Solar Power Generator will be free to sell it to any other entity provided first right of refusal will vest with the Procurer(s). In case the Procurer purchases the excess generation, the same may be done at 75% (seventy-five per cent) of the PPA tariff.”

KSEB Ltd, further stated that, after initialing the PSA dated 16-1-2019 and its amendment on 12-7-2021, the Commission vide Daily Order dated 18.08.2021, directed THDCIL and KSEB Ltd to *modify the various clauses of the draft initialled PSA dated 12th July 2021 in line with the provisions in the competitive Bidding guidelines and its amendments notified by the Central Government for the procurement of Solar Power through competitive bidding route as per the Section 63 of the Electricity Act, 2003. But the Commission has failed to consider the fact that these clauses were also already agreed and consented to in the initialled PSA dated 16-1-2019 and amendment dated 12-7-2021.*

Hence, KSEB Ltd requested the commission to review the Order dated 29-10-2021 in OP 33/2021 with respect to on the limited ground of modifications in Clause 5.3.4 of the initialled PSA between M/s THDCIL and KSEB Ltd.

- (2) M/s THDCIL submitted that, The tripartite agreement for the project was signed between KSEB Ltd, SECI and THDCIL on 31st March 2015 and due to non-availability of land the project got postponed. It was pointed out that after many closed-door deliberations between KSEB Ltd and THDCIL, the tariff was arrived at on 15th January 2019 based on mutually agreed terms and conditions and not on basis of competitive bidding. Later, on 16th January 2019 itself, the draft PSA was signed between the concerned parties.

THDCIL further submitted that the competitive bidding guidelines on solar procurement came into existence on 2017 and the draft PSA initialled on 2019 on mutually agreed terms and conditions and the Guidelines were not applicable to this PSA. Changing the mutually agreed terms and conditions of the PSA one year after CoD declaration was totally unethical and unacceptable as the investment on the project were made based on these. THDCIL has further submitted that has been clearly intended in the order of the Commission that parity needs to be maintained between contracting party and one party cannot take advantage of the other.

THDCIL also pointed out that as there has been no apparent error on the face of law, the review petition shall be rejected.

Analysis and Decision of the Commission

6. The Commission has examined in detail the review petition filed by KSEB Ltd against the order of the Commission dated 29.10.2021 in petition OP No. 33/2021 in the matter of the approval of the PSA to be signed between the distribution licensee and the generator M/s THDCIL.
7. The Review petition filed by KSEB Ltd for modifying the Clause 5.3.4 of the PSA as they originally proposed during the deliberations of the petition OP No. 33/2022, mainly for the limiting the tariff for excess generation over the specified CUF @75% of the PPA tariff.
8. The issue raised by the KSEB Ltd in the review petition is deliberated in detail by the Commission in the order dated 29.10.2021 in Petition OP No. 33/2021, which is extracted below for ready reference.

“17. Regarding the Clause-5.3.4, KSEB Ltd proposed to modify the Clause as follows.

Clause 5.3.4

“Original clause

KSEBL may identify the energy procured from the Project to meet its Renewable Purchase Obligations (as mandated by the Appropriate Commission). Entire energy generated from the contracted capacity of the Project shall be sold by THDCIL to KSEBL and KSEBL agrees to buy the entire energy at a tariff as per clause 7.0. Any shortfall in annual generation below annual CUF of 19% (ie, 1.667 MU / Megawatt per annum) shall make THDCIL liable to pay compensation. The shortfall in generation shall be adjusted considering non-availability of grid for power evacuation which is beyond the control of the SPD, if the measured Global Horizontal Irradiance (GHI) per year is less than 1865 / kWh/m², Force Majeure conditions and annual degradation of 0.8%. The amount of compensation shall be equal to the compensation payable by the KSEBL towards non-meeting of RPOs on pro rata basis, if such compensation is ordered by the State Regulatory Commission. Any compensation shall be levied after completion of first Accounting Year.

Modified clause by KSEBL.

KSEBL may identify the energy procured from the Project to meet its Renewable Purchase Obligations (as mandated by the Appropriate Commission). Entire energy generated from the contracted capacity of the Project shall be sold by THDCIL to KSEBL and KSEBL agrees to buy the entire energy at a tariff as per Clause 7.0. Any shortfall in annual generation below annual CUF of 19% (ie, 1.66 MU / Megawatt per annum) shall make THDCIL liable to pay compensation. 'In case the project generates and supplies energy less than the energy corresponding to the minimum CUF, the solar power generator will be liable to pay to KSEBL, penalty for such shortfall below such contracted CUF level. SPG shall offset KSEBL for all potential

costs (opportunity cost associated with shortfall in supply of contracted power, penalty for noncompliance of RPO obligation and other associated costs if any) associated with low generation and supply of power under the PPA, subject to a minimum of 25% (twenty five percent) of the cost of this shortfall in energy terms calculated at PPA tariff. In case the availability is more than the maximum specified CUF, KSEBL purchases the excess generation, at 75% (seventy-five per cent) of the PPA tariff.

However, the petitioner THDCIL suggested to retain the original clause of 5.3.4 as in the initialed PSA signed on 16.01.2019, and subsequently in its amendment dated 12.07.2021. THDCIL submitted that, the PSA signed earlier as on 16.01.2019 was not based on "Tariff Based Competitive Bidding Process 11 for Procurement of Power from Grid Connected Solar PV Power Project".

The Commission noted the submission of the THDCIL. The Commission noted that the Original Clause 5.3.4 has included a penalty for shortfall in annual generation below CUF of 19% calculated as 1.667 MUs/Megawatt per annum. Further " the amount of compensation shall be equal to the compensation payable by KSEB Ltd towards non-meeting of RPOs on pro rata basis, if such compensation is ordered by the State Regulatory Commission. Any compensation shall be levied after completion of first Accounting year".

The above Clause clearly lays down the basis and methodology for penalty for shortfall in generation. One of the fundamental principles to be ensured in any contract is to ensure that there is parity between the contracting parties. A contract between two parties cannot have unequal penalty or reward and definitely cannot be to the obvious disadvantage of one party and corresponding advantage of the other.

The Commission also noted that while Clause 5.3.4 does contain the penal provision, there is however no corresponding reward provision in case of excess generation. On the other hand, KSEB Ltd proposal is to limit the tariff of any excess generation over and above the CUF of 19% (1.667MU/year) to 75% of the PPA tariff. Acceptance of such a proposal would result in a double whammy of the generator loosing if there is either shortfall in generation or generation exceeds the CUF MUs. Such a proposal is inherently unacceptable and cannot be justified. Further in a state like Kerala having limited renewable energy resources, such Projects must be encouraged.

The Commission further noted that since the Clause 5.3.4 of the initialed PSA dated 16.01.2019 and its amendment dated 12.07.2021 were agreed and consented by the petitioner THDCIL and the respondent KSEB Ltd, there is no justification whatsoever to alter this Clause. Hence the Commission has decided to retain the Clause 5.3.4 of the PSA as it is."

9. The Commission has examined the review jurisdiction provided in the Electricity Act, 2003, for reviewing its order and decisions.

10. As per the Section 94 of the EA-2003, the review jurisdiction of the Commission is very limited in reviewing its orders and directions. The relevant Sections is extracted below:

“ Section 94. (Powers of Appropriate Commission): --- (1) *The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -*

- (a) *summoning and enforcing the attendance of any person and examining him on oath;*
- (b) *discovery and production of any document or other material object producible as evidence;*
- (c) *receiving evidence on affidavits;*
- (d) *requisitioning of any public record;*
- (e) *issuing commission for the examination of witnesses;*
- (f) *reviewing its decisions, directions and orders;*
- (g) *any other matter which may be prescribed. “*

11. Order 47 Rule 1 of the Code of Civil Procedure dealing with review of the orders and decisions of a Civil court, which is s quoted below:

“ Application for review of judgment.-(1) Any person considering himself aggrieved,—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation: The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.”

12. As extracted above, as per the provisions of the Electricity Act - 2003 and Order 47 Rule 1 of the Code of Civil Procedure, the review jurisdiction of the

Commission is very limited. For reviewing its decisions, discovery of new and important matter or evidence, which was not within the knowledge of the petitioner or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on face of record, or for any other sufficient reason.

13. The Regulations 67 of the KSERC (Conduct of Business) Regulations, 2010 and its amendments specified as follows.

“67. Powers of review, - (1) Any person or party affected by a decision, direction or order of the Commission may, within forty-five days from the date of making such decision, direction or order apply for the review of the same. (2) An application for such review shall be filed in the same manner as a petition under Chapter III of these regulations. (3) The Commission may after scrutiny of the application, review such decisions, directions or orders and pass such appropriate orders as the Commission deems fit within forty-five days from the date of filing of such application:

Provided that the Commission may, at its discretion, afford the person or party who filed the application for review, an opportunity of being heard and in such cases the Commission may pass appropriate orders as the Commission deems fit within thirty days from the date of final hearing: Provided further that where the application for review cannot be disposed of within the periods as stipulated, the Commission shall record the reasons for the additional time taken for disposal of the same”.

14. The Commission examined in detail the entire issues raised by KSEB Ltd and noted that, the entire issues raised in the Review petition was dealt by the Commission in detail in the Order of the Commission dated 29.10.2021. The Commission also specified therein the reason for granting the entire electricity generated at PPA tariff, except for imposing penalty for less generation below the agreed CUF of 19%. As mentioned earlier, a penal clause has to have a corresponding reward provision to put the agreement on an even keel. However the Commission has noted that in the agreement while there is a penal provision, no such reward provision exists. Hence, the question of limiting the excess generation beyond the agreed CUF of 19% to 75% of the PPA tariff could results in the penal/reward provision being one sided and in favour of KSEB Ltd. The Commission is therefore of the opinion that while it is advisable to introduce a reward provision at this stage, KSEB Ltd shall purchase the entire energy produced by THDCIL from this project at PPA tariff.
15. The Commission also noted that, KSEB Ltd could not produce any additional details or legal documents in support to their claim other than what was produced during the deliberations of the subject petition OP No. 33/2021. Under such circumstances, the Commission is left with no option but to reject the Review Petition RP No. 02/2022 filed by KSEB Ltd.
16. The petition filed by the THDCiL also included the prayer to issue direction to KSEB Ltd to implement the order of the Commission dated 29.10.2021 in Petition OP No. 33/2021. The Commission however noticed that, KSEB Ltd

has been prolonging the signing of the PSA with THDCIL for want of the order of the Commission in their Review Petition RP No. 02/2022. Since the Commission has hereby rejected the Review Petition, the Commission directs KSEB Ltd to sign the PSA with M/s THDCIL as per the order of the Commission dated 29.10.2021 in petition OP No.33/2021, within 30 days from the date of this order.

Order of the Commission

17. The Commission after examining the Review Petition filed by KSEB Ltd as per the provisions of the Electricity Act, 2003, Code of Civil Procedure Code 1908, KSEB (Conduct of Business) Regulations, 2003 and its amendments, hereby orders the following.
- (i) The review petition filed by KSEB Ltd is not maintainable and hence dismissed.
 - (ii) KSEB Ltd and THDCIL shall, within 30 days from the date of this Order, sign the PPA.
 - (iii) A copy of the signed PPA shall be submitted before the Commission for records within two months from the date of this Order.

The petitions RP No. 02/22 and OP No. 22/222 is hereby disposed off. Ordered accordingly.

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

Sd/-
Preman Dinaraj
Chairman

Approved for issue

Sd/-
C R Satheeshchandran
Secretary