

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

OP No 33/2021

In the matter of : Petition filed by M/s THDC for approval of Power Sale Agreement between M/s THDC and KSEBL.

Petitioner THDC 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)

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

SECI represented by Sri. Sandeep Reddy

RPCKL represented by Sri Augustine Thomas, CEO

KSEB Ltd represented by : Sri. KGP Nampoothiri, Executive Engineer

First Hearing on : 17.08.2021

Daily Order dated 18.08.2021

1. M/s THDC, on 23.07.2021 filed a petition before the Commission with the following Prayers.
 - (a) *Approve the Power Sale Agreement dated 16.01.2019 read with amendment dated 12.07.2021 by Kerala State Electricity Board Limited from THDC India Limited's Solar PV Power Project of 50 MW capacity established in the 105 MW Solar Park in Kasargod District in the State of Kerala at the tariff and terms of the PSA dated 16.01.2019 read amendment dated 12.07.2021 effective 31.12.2020;*

(b) *Pass any such further Order or Orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.*

2. The Commission vide Order dated 17.03.2021 in OP No. 26/2020 approved the tariff of the electricity generated from the 50 MW Solar Plant of M/s THDC and its summary is extracted below.

"44. The Commission after detailed examination of the petition filed by M/s THDC India Ltd, the counter affidavit filed by the respondent KSEB Ltd and M/s RPCKL, other documents submitted during the deliberations of the subject petition, as per the provisions of the Electricity Act, 2003, KSERC (Renewable Energy & Net Metering) Regulations, 2020 and other relevant documents wherever necessary, hereby issue the following Orders.

- (1) *The levelized tariff for the electricity generated from the 50 MW Solar Project of M/s THDC India Ltd is approved @ Rs 3.10/unit, inclusive of all taxes and duties including tax on RoE.*
- (2) *The levelized tariff approved as above is applicable for the entire electricity injected into the grid from the date of synchronization upto 25 years.*
- (3) *Since the tariff of this petition is already determined as per Section 86(1)(b) by the State Commission, the Commission hereby directs THDC India Ltd not to pursue for tariff determination under Section 79(1)(a) of the Electricity Act before the Central Commission.*
- (4) *Since the tariff approved for the project is the upper ceiling tariff mutually agreed by the petitioner M/s THDC India Ltd 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.*
- (5) *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 THDC India Limited 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.***

3. The Commission admitted the petition as OP 33/2021. The first hearing on the petition conducted on 17.08.2020, through video conference. Summary of the deliberations during the hearing is given below.

- (1) Smt Sunita Tamta made a brief presentation on the background of the petition. The petition was filed in compliance of the Order of the Commission dated 17.08.2020. The project was already commissioned

and achieved CoD on 31.12.2020. They have already initialled PSA dated 16.01.2019 is suitably amended incorporating the tariff and other related provisions as per the Order of the Commission dated 17.08.2020.

To a query raised by the Commission, the petitioner clarified that, the project was originally scheduled to achieve CoD on 7th May 2020, but due to Covid-19 Pandemic and also due to the delay in completion of the transmission facilities, the CoD of the project got delayed. The Commission directed KSEB Ltd to provide a report on the delay in commissioning of the transmission facilities at Solar Park at Kasargode, if any.

- (2) The Commission, further instructed KSEB Ltd that, hence forth the PPA/PSA to be signed by KSEB Ltd with the Solar Power generators and intermediary traders shall be in line with the model bidding guidelines notified by MoP/MNRE GoI for the procurement of Solar Power through competitive bidding route as per the Section 63 of the Electricity Act, 2003. The Commission also directed the petitioner THDC and KSEB Ltd to modify the PSA by incorporating the provisions of the bidding guidelines.
4. The Commission noted the following discrepancies in the initialled PSA submitted before the Commission for approval.

(1) **Clause 5.1 of the draft PSA.**

The last two sentences of the Clause 5.1 of the draft initialled PSA provide as follows.

“...The power from the plant will be scheduled as per KSERC Regulations. In the absence of KSERC Regulations, CERC Regulations regarding forecast and scheduling shall be followed”.

In this matter, attention of THDC and KSEB Ltd is invited to the Regulation 38 of the KSERC (Renewable Energy & Net Metering) Regulations, 2020, which is extracted below.

“38. “Principles for the dispatch for Electricity Generated from Renewable Energy Sources.-

(1) All the renewable energy power plants, unless and otherwise exempted, shall be treated as ‘MUST RUN’ power plants and shall not be subjected to ‘Merit order Dispatch’ principles.

(2) Scheduling of Renewable Energy plants shall be governed by KSERC (Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulations, 2019 and its amendments from time to time.”

The parties shall modify the Clause 5.1 of the draft initialled PSA duly incorporating the above provisions of the KSERC (Renewable Energy & Net Metering) Regulations, 2020.

- (2) Clause 5.3.4 of the draft initialled PSA.

Last part of the Clause 5.3.4 of the PSA read as follows.

“.... 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”

The Commission noted that, in the bidding guidelines notified by Central Government for procurement of Solar Power through competitive bidding route, and also in any of the draft/final PSA signed between SECI and KSEB Ltd for procurement of solar does not include a provision for adjustment in shortfall in generation based on the Global Horizontal Irradiance (GHI). Hence the Commission instructed the parties to delete this portion.

The Commission is of the considered view that, specifying the compensation payable by the SPD due to the shortfall in CUF linked to the compensation payable by KSEB Ltd towards non-meeting of RPOs will definitely lead to unnecessary disputes between the parties.

Considering these aspects in detail, Commission hereby directs the parties to suitably modify the clause 5.3.4 of the PSA duly considering the above observations of the Commission.

- (3) Clause 9.0 settlement of disputes: As per the Section 86 (1)(f) of the Electricity Act, 2003, KSERC is the Appropriate Commission empowered for dispute resolution between the Generating Companies and distribution licensees located within the State of Kerala. **Hence, the words “the same shall be dealt as per Electricity Act, 2003” shall be replaced with “the parties shall approach Kerala State Electricity Regulatory Commission for resolving the same”.**
- (4) The Commission, also direct the petitioner to modify the other clauses of the PSA duly considering 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.

5. Based on the deliberations during the hearing, the Commission hereby directs the petitioner THDC and respondent KSEB Ltd the following.

- (1) Ms THDC and KSEB Ltd, shall 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.

- (2) Discrepancies pointed out in para 4 of this Daily Order shall be rectified as per instructions
- (3) THDC shall submit the modified draft initialled PSA with KSEB Ltd before the Commission on or before 10th September 2021.

The Commission may communicate the schedule of next hearing to the parties separately.

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

Sd/-
Preman Dinaraj
Chairman

Approved for issue

C R Satheeshchandran
Secretary (i/c)