

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

Petition No. OA 30/2019

In the matter of : Petition filed by M/s Viyyat Power Pvt Ltd, in the matter of determination of Compensatory Tariff for rehabilitation of Iruttukanam Small Hydro Power Project Stage I (2 X 1.5) MW and Stage II (1 X 1.5) MW destroyed in the Maha Pralayam on the 9th August and 14th August 2018.

Petitioner : M/s. Viyyat Power Pvt Limited.

Respondent : (1) K S E B Ltd represented by Secretary
(2) Govt of Kerala represented by Chief Secretary
(3) Principal Secretary, Power Department
(4) The Director, Energy Management Centre

Daily order dated 28.02.2020

1. M/s. Viyyat Power Pvt Limited, on 17.09.2019, filed a petition before the Commission with the following prayers.

“Considering the fact that the Petitioner has rehabilitated the power project Stage I & II against heavy odds in a record time of 322 days after the disaster with almost all new equipments including new generators by spending an additional investment of Rs. 9,69,34,511.80 over and above the insurance cover benefit of Rs. 8.00 Crore, the petitioner humbly prays for the following.

- (i) *The Hon’ble Commission may be pleased to pass an order granting an additional “Compensatory Tariff” for Stage I and Stage II, commensurate with the new investment made by the petitioner as done by the Hon’ble CERC in Order dated 21.02.2014 in the case of Petition No. 155/MP/2012*

of Adani Power Limited Vs. Uttar Haryana Bijli Vidyut Nigam Limited and Others.

- (ii) *Any other Order the Hon'ble Commission may be pleased and deem fit considering the fact that the tariff of Iruttukanam Stage I and Stage II of the Petitioner as existing before the disaster, are much below the APPC of KSEBL and if the Petitioner had abandoned the project after the disaster, KSEBL has to purchase the same measure of power from elsewhere at the rate above APPC'.*

2. M/s. Viyyat Power Pvt Limited established two Small Hydro Project, Iruttukanam Stage I (2x 1.5 MW) and Iruttukanam Stage II (1 x 1.5 MW) at Iruttukanam, Idukki District. These two projects are at the same location using the same weir and water conductor system, but having separate power houses. The Iruttukkanam Stage I project was commissioned on 18.09.2010 and Stage II was commissioned on 10.04.2012. The power generated from these projects is being supplied to KSEB Ltd, at the Tariff approved by the Commission. The petitioner signed PPA with KSEB Ltd for Iruttukkanam Stage-1 project; however the PPA with the Iruttukkanam Stage-II is yet to be signed with KSEB Ltd, waiting for the decision of the Hon'ble Supreme Court in the matter of dispute filed by the petitioner against the tariff determined by the Commission for the Stage-II project.
3. In this petition dated 17.09.2019, the Petitioner submitted that during the land slide disaster of 2018, the units of the petitioner i.e, Stage-I and Stage-II of Iruttukkanam project was totally damaged, including the office room, control room, switch gear room and battery room, generating units etc. The generator hall was covered with mud, rock and debris, of 28 to 30 feet height. It is reported that petitioner replaced all the three generators with new generators and the Stage I project commissioned on 28.6.2019 and Stage II on 8.7.2019.
4. The petitioner submitted the amount spent for reconstruction of the project as follows;

Sl No	Particulars	Amount (Rs. Cr)
1	Expenditure incurred for replacing generators repairing power house mechanical equipment	11.91
2	Additional expenses claimed (Additional protection works, loss in revenue etc)	5.78
	Total	17.69

5. The petitioner further submitted that as against insured value of Rs. 23.12 Cr, the payable amount was worked out by the Insurance Surveyor is about Rs. 8 Cr. Accordingly after accounting the expected share of the Insurance Company the

loss to the petitioner including loss in revenue generation additional protective works etc is $(17.69-8.00) = \text{Rs. } 9.69 \text{ Cr.}$ Subsequently, the petitioner vide its affidavit dated 04.11.2019 submitted that the amount payable by the insurance company as per the valuation done by the insurance surveyor was Rs 7.09 crore.

6. The petitioner further requested for an additional compensatory tariff for Stage I & Stage II, considering the additional investment (including loss in revenue) of Rs. 10.59Cr due to the Force Majeure events.
7. The petitioner further submitted that the total catchment area of the Iruttukkanam Project is 75 sq.km. At present KSEB Ltd is constructing Sengulam Augmentation Scheme with a catchment area of 53.5 sq. km. Once this project is commissioned, the catchment area of Iruttukkanam project will get reduced to 21.45 sq.km and consequently power generation will also get reduced to 28.6 % of the present generation. As per the PPA, the tariff applicable for the electricity generated from the Stage-1 project from 03.09.2022 is Rs 2.07/unit only. Without compensatory tariff the petitioner will not be able to full fill its obligation in loan, RoE Income Tax etc. The petitioner is supplying power to KSEBL at a tariff much below its APPC.
8. KSEB Ltd, the respondent submitted its comments on the petition vide the letter dated 13.2.2020. The summary of the comments of KSEB Ltd is given below.
 - (i) The petition filed by M/s Viyyat Power (Pvt) Ltd is not maintainable, in view of the fact that the tariff of Iruttukkanam Stage-II is subjudice before Hon'ble Supreme Court. The petitioner has filed a civil appeal before the Hon'ble Supreme Court against the tariff fixed by the Commission for Iruttukkanam Stage-II and the petitioner has also not signed PPA with KSEB Ltd for Iruttukkanam Stage-II.
 - (ii) Without prejudice to the maintainability of the petition, KSEB Ltd submitted detailed objections to the petitioner's claim. The gist of the same is as follows;
 - (a) Though the petitioner has five insurance policies, the insurance has been claimed only from the SBI General's "Standard Fire & Special Perils Insurance" Policy. Further, even though the amount insured under the above policy is Rs 23.12 Cr, the petitioner proposes to accept Rs.8 Cr admitted by the insurance company. The petitioner proposes to recover the balance amount as compensatory tariff from KSEB Ltd through PPA.
 - (b) KSEB Ltd submitted that, as per the provisions of the IA and PPA, the petitioner is not entitled to claim any loss, damage, cost, expense, claim, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure event. Further the petitioner shall at its cost and expense, purchase and maintain by

re-instatement or otherwise, during the Operations period insurance against Loss, damage or destruction of the project facilities, at replacement value. Therefore, the petitioner was entitled to take insurance coverage at replacement value and replacing the plant and machinery and other facilities destroyed by flood has to be through insurance.

- (c) KSEB Ltd further submitted that the investment made by the petitioner was unilateral without consulting the beneficiary respondent, and also not after getting approval of the Commission. The original capital cost of the project was Rs.24.88 crore only, where as the capital investment now claimed by the Petitioner as rehabilitation expense is Rs.17.69 Cr which is almost 71% of the original capital cost of the power plant.

(iii) KSEB Ltd further submitted that,

- (a) As per the provisions of the Implementation Agreement and PPA, the petitioner is not entitled to claim the loss due to force majeure event from the respondent, KSEBL.
- (b) The petitioner is bound to meet the expense from the insurance policy for the project, which the petitioner was bound to take for replacement value.
- (c) Balance portion of the expense, if any may be met from the 'Dhurithaswasam' fund of GoK.
- (d) Extension of 'BOOT' period of the project may be decided by the GoK as the Implementation Agreement has been executed by the Petitioner with the GoK.

9. The Commission admitted the petition as OA No. 30/2019 and conducted hearing on 20.02.2020 at 2.30PM. Adv. C.K. Vidyasagar, Senior Advocate presented the petition on behalf of the petitioner and submitted the following.

- (i) Viyyat is the only project established in the State, out of the 13 SHPs allotted by the State Government based on public tender under IPP category.
- (ii) The electricity generated from the project was being supplied to KSEBL since its CoD in the year 2010. However, the project was totally destroyed in the Mahapralayam of August 2018. With the blessings of all concerned, the petitioner M/s Viyyat Power Ltd could re-commission the project within one year. Unless a helping hand is extended by way of compensatory tariff, the petitioner will not be able to operate with minimum profit. The petitioner further submitted that, the Central Commission in the order dated 21.02.2014 in Petition No.155/MP/2012 introduced the concept of Compensatory tariff, in the matter of the Adani Power Ltd vs Uttar Haryana Bijli Vidyut Nigam Limited and Others.

- (iii) The Advocate on behalf of the petitioner submitted that the argument note will be submitted within two days.

Sri P D Nair and Adv Vidyasagar responded to the queries of the Commission.

- 10. Sri K.G.P Nampoothiri, Executive Engineer, presented the counter arguments on behalf of the respondent. KSEB Ltd further submitted that, the order of the CERC referred by the petitioner is entirely different and the ratio cannot be applied to this matter.

The Commission directed the respondent to clarify whether they are agreeable for extending the BOOT period of the Iruttukkanam Stage-I & Stage-II project.

- 11. During the hearing, the Commission directed the petitioner to clarify whether, as per the provisions of the Implementation Agreement dated 10.12.2014 signed between the State Government and the petitioner, and also as per the PPA dated 7th June 2007 signed between the petitioner and KSEB Ltd, whether there is any provision to determine the compensatory tariff for loss sustained due to Force Majeure events. The Commission further directed the petitioner to clarify, whether the losses if any due to the Force Majeure events can be passed on to the respondent KSEB Ltd and to the electricity consumers of the State.

The petitioner clarified that; they communicated the extent of damages to all concerned including the State Government and the KSEB Ltd. The rehabilitation and replacement works was done as recommended by a committee constituted by the State Government, and the committee include the officials of KSEB Ltd and Energy Management Centre also.

The Commission directed the petitioner to submit a copy of all correspondence with the State Government and KSEB Ltd including the orders and/or directions issued the State Government and communications from KSEB Ltd in this regard.

- 12. Based on the deliberations on the subject petition, the Commission hereby direct the petitioner and respondent the following.
 - (i) The petitioner shall submit copies of all correspondence with the State Government and KSEB Ltd including the orders and/or directions issued by the State Government and communications from KSEB Ltd in this regard.
 - (ii) The petitioner shall also submit the details of book value of assets of the Iruttukkanm Project (Stage-I & II) as on 01.04.2018, i.e, at the beginning of the year in which the disaster happened, attested by its statutory auditors
 - (iii) The respondent KSEB Ltd shall submit its views on extending the BOOT period of the project.

- (iv) Since the original implementation Agreement was signed between the petitioner and the State Government, views of the State Government may also be obtained regarding extension of the BOOT period beyond the current Implementation Agreement, i.e, 30 years from the date of allotment

The above details shall be submitted by 09.03.2020.

Sd/-
S. Venugopal
Member

Sd/-
Preman Dinaraj
Chairman

Approved for issue,

C.R Sathish Chandran
Administrative Officer In Charge
Of Secretary