

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

PRESENT: Sri. K.J.Mathew, Chairman
Sri.C.Abdulla,Member
Sri.M.P.Aiyappan, Member

July 27, 2010

In the matter of approval of PPA for purchase of power by Kinesco Power and Utilities Pvt Ltd from Kerala State Electricity Board.

Petition No.DP-82 of 2010	Kinesco Power and Utilities Pvt Ltd Vs Kerala State Electricity Board	Petitioner Respondent
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Representative of petitioner: Sri. Joseph Kurien,CEO,Kinesco
Representative of respondent: Sri. Ramesh Babu, Chief Engineer

ORDER

M/s Kinesco Power and Utilities Private Ltd (hereinafter called KPUPL) is the distribution Licensee authorized to distribute electricity in the areas owned by Kinfra Export Promotion Industrial Parks (hereinafter called KEPIP) at Kakkanad, Kochi and KINFRA Parks at Kalamassery and Palakkad.

M/s KEPIP was the Licensee authorized to distribute power in the area owned by KEPIP and KINFRA till the transfer of Licence to KPUPL was ordered by Kerala State

Electricity Regulatory Commission (hereinafter called the Commission) vide order No.1/2009 dated 30-11-2009.

M/s KEPIP was receiving power from the Kerala State Electricity Board (hereinafter called KSEB) and had executed a Power Purchase Agreement (hereinafter called PPA) vide agreement No 72/03-04 dated 24th February 2006.

While issuing the order transferring the Licence for distribution of electricity, the Commission had instructed KPUPL vide letter dated 9th December 2009 that a fresh PPA may be got executed for purchase of power.

KPUPL had approached KSEB to transfer/enter a new PPA. But KSEB vide letter dated 3rd March 2010 forwarded a draft PPA to KPUPL in which a lot of deviations from the PPA signed with KEPIP have been incorporated. KPUPL has approached the Commission for removal of difficulties and for approval of a draft PPA almost in line with the PPA already executed by KEPIP.

Background

As stated above M/s KPUPL is the licensee authorized to distribute electricity in the same area where M/s KEPIP was distributing electricity. As per the order issued by the Commission, the transfer is effective from 1st February 2010.

In the petition filed by KPUPL, the following are highlighted.

- a. As per the PPA signed by KEPIP input voltage at Kakkanad is 110 kV. KSEB has in the draft PPA changed the input voltage at Kakkanad as 33 kV. It is also noted that the area is mentioned as the expansion of the existing area at Kakkanad. Also it is noted that the other areas at Kalamassery and Palakkad have also been included in the draft PPA submitted by KSEB. KPUPL would like to have only Kakkanad mentioned in the PPA.
- b. The validity of the PPA executed by KSEB with KEPIP was 20 years and the same has been changed by KSEB as 5 years. KPUPL would like to have an agreement for 25 years.

- c. In the PPA signed by KSEB with KEPIP, the rate for supply has been mentioned in the Schedule and is given as Demand charge of Rs 225 per kVA per month plus energy charge of Rs 2.6 per unit. In the draft proposed by KSEB demand charge is given as Rs 300 per kVA of Billing Demand plus energy charge at weighted average rate of energy drawn by KSEB during the month multiplied by energy from liquid fuel stations plus proportionate share of any other charges as claimed by CGS and CTUs. KPUPL would like to have demand charge of Rs 245 per kVA per month and energy charge of Rs 2.75 per unit.
- d. Penalty for exceeding contract demand is given as 200% by KSEB whereas the corresponding figure in the executed PPA is 150%.
- e. Security is given as one month's average billing in cash plus one month's average billing as BG. This is the same as that given in the executed PPA but KPUPL would like to change it to two month's average billing as LC.
- f. Penal interest for delay in payment is given as 12% for delay up to 30 days and 18% for delay beyond 30 days. KPUPL would like to have it changed as twice the bank rate.
- g. For power factor below 0.9 KSEB insists on 1% energy charges for every reduction of 0.01 power factor and for power factor below 0.75 penalty at 3% of energy charges for every reduction of 0.01 p.f. No incentive for p.f. KPUPL would like to have both incentive and penalty. Incentive at 0.15% of energy charges for p.f above 0.9 and penalty at 1% of energy charges for every reduction of 0.01 p.f below 0.9
- h. KSEB has taken a stand that availability of supply shall be continuous when there is spare energy at the disposal of KSEB. KPUPL would like to have continuous supply except under force major conditions which is the agreed term in the executed PPA.
- i. Regarding applicability of Laws/Obligations KSEB insists on including orders issued by Board also in addition to provisions of Act 2003 and orders issued by the Commission. KPUPL would like to remove the condition of including Board orders.

- j. On liabilities, KSEB insists on including heirs, successors or predecessors and legal assignees whereas KPUPL would like to remove predecessors. Predecessors are not included in the executed PPA.

KPUPL have further stated that power is availed at 110 kV now. Also this is merely a transfer of Licence and there is no additional burden on KSEB. Any revision in tariff at this stage will cause tariff shock to consumers.

In the counter reply submitted by KSEB, the only argument put forward is that Licensee should purchase power through open bidding process. This is as per clause 22(3) of the Licensing Regulations. As a deemed Licensee KSEB is bound to sell energy to anybody other than own consumers at the most economic and transparent manner. The price commitment through the present PPA format need not be the best price as envisaged in the Regulations. Therefore KSEB will land upon loss and hence its own consumers will be made liable to compensate for the loss unless bidding system is adopted for sale of power to other licensees. KINESCO being a state level utility, for an interim period not more than six months, KSEB propose to supply power to them charging them at Marginal cost along with transmission loss and trading margin so as not to cause any loss to KSEB consumers subject to approval of the Commission.

No comment has been by KSEB on the issues like supply voltage, penalty for power factor, period of agreement etc. which were mentioned by the petitioner in the original petition.

Hearing

The petition was heard on 23rd June 2010. Petitioner argued that prior to the transfer of Licence to KPUPL, KEPIP had entered in to a Bulk Power Supply Agreement (BPSA) with KSEB. The term of the agreement was for 20 years.

KPUPL had in fact succeeded to the rights of KEPIP and the nature and status of BPSA and the relationship between KSEB and KEPIP ought to be continued. KSEB cannot be allowed to revisit the principles of BPSA when the transfer of licence from KEPIP to the petitioner is given effect in the larger public interest and as per the

decision of the State Government. There can be no loss or injury or any prejudice caused to the respondent by way of such a transfer. KSEB should supply electricity in bulk at the pooled bulk input cost considering own generation and purchase. Petitioner stated that supply of electricity to consumers can never be on marginal cost basis or any particular electricity can be identified to a particular group of consumers. Petitioner had made a reference to APTEL order dated 2-6-2006. In case there is an increase in the power purchase cost of KSEB, the same will be adjusted in the pooled cost and the petitioner will be paying such adjusted cost of power purchase. The existing consumers who were being serviced by KEPIP within the contract demand as agreed to in the BPSA are continuing to be served by the petitioner. In such circumstances, there can be no justification for the sudden change in the terms and conditions for the supply of the same electricity as was being earlier supplied by the respondent to KEPIP. Also upon the transfer of distribution licence from KEPIP to the petitioner under the orders of the Commission, and KEPIP ceasing to undertake the distribution activities with effect from 01-02-2010, the BPSA executed between the respondent and KEPIP ought to logically be transferred to the petitioner on the same terms and conditions as contained therein.

Petitioner further stated that the question of bid process for procurement of electricity can only arise for any additional power to be purchased by the petitioner over and above the contracted electricity under the BPSA earlier entered in to with KEPIP. Since the consumers to whom electricity was supplied by KEPIP with the said contract demand has been transferred to the petitioner under the orders of the Commission, the existing arrangement to supply electricity by the respondent ought to continue.

Respondent was sticking on to the condition stipulated in the Licensing Regulations that Licensee should purchase power through bidding process. No new point was added.

Analysis

Though there were many points of dispute such as supply voltage, incentive for high power factor, period of contract, penalty for exceeding the contract demand, penal interest rate and payment security, it is noted that the dispute has converged to the

issue of tariff only by the time the matter was heard as is noted from the counter filed by KSEB and the stand taken by the petitioner during the process of hearing.

The stand taken by KSEB is that as a deemed licensee, they are bound to sell energy to anybody at the most economic and transparent manner. Another point put forward by KSEB is that they propose to charge KPUPL at marginal cost along with transmission loss and trading margin so as not to cause any loss to KSEB consumers subject to approval by the Commission. KSEB has stressed that Kinesco should adopt the bidding route to meet their requirements.

The above explanation given by KSEB is regarding the price of power to be supplied to KPUPL.

KSEB should have given the reasons for making deviations from the agreement already executed with specific reference to any regulation issued by the Commission and the same should be pointed out with reference to a provision in the executed PPA. The reference to the Licensing Regulations on purchase of power by Licensees is not the concern of a Generating Company. KSEB has not pointed out to violation of any other regulation or to the PPA.

The licence given to KPUPL is a transfer from KEPIP. KEPIP has executed an agreement with KSEB. In order to carry on the business of supplying power to the consumers earlier serviced by KEPIP, KPUPL wants the PPA to be retained as such. Of course, changes in the regulations notified by the Commission can be incorporated. But otherwise the structure of the PPA cannot be changed as there is no situation warranting a change. KSEB has not pointed out any clause in the executed agreement allowing for such a revision when ownership of licence is changed. No regulation issued by the Commission allowing such revision has been pointed out by KSEB except on the provision on purchase of power given in the Licensing Regulations.

KSEB as a generating company supplying power to other licensees need not bother about the method adopted by the licensees in procuring power. This is a concern of the Commission. All other small licensees are sourcing their requirement of power from KSEB. KPUPL cannot be treated in a different manner.

As regards the tariff, Commission has approved a bulk supply tariff for Licensees. KSEB cannot insist on a different tariff without the prior approval of the Commission. Judgment by APTEL on appeal No.125 of 2005 by Kashi Vishwanath Steel Ltd seems applicable in this case also. Here, APTEL has considered the stand on cost of additional power and has finally concluded that the tariff shall be based on pooled average cost of power purchased from all sources to all categories of consumers and also that there should not be any tariff shock caused to any category of consumers. In order dated 27-01-09 issued by APTEL (cited by the petitioner) the principles of arriving at tariff have been discussed and the conclusion is the same as that given in order dated 02-06-06. The argument of the petitioner is reasonable.

Also KSEB cannot insist on a tariff not approved by the Commission. Commission finds that the stand taken by KSEB to impose a tariff that has no approval from the Commission is not correct and hence legally invalid.

Commission is in the process of revising the bulk supply rates applicable to licensees. KSEB has to wait till the same is issued as an order by the Commission.

Order

The bulk supply rate to be included in the PPA to be executed by Kinesco Power and Utilities Pvt Ltd and KSEB shall be the rates now in force. The same will continue till a revision of rates is ordered by the Commission.

KPUPL shall forward a copy of the executed PPA in due course.

Sd/-
M.P.Aiyappan
Member

Sd/-
Sri.C.Abdulla
Member

Sd/-
K.J.Mathew
Chairman

Approved for issue

Secretary

