

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

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

August 16, 2010

In the matter of

Application of bulk supply tariff for the supply of power to
Vallarpadom & Puthuvypeen SEZs

Petition No. DP 83 of 2010	M/s. Cochin Port Trust	Petitioner
	Kerala State Electricity Board	Respondent

Representative of petitioner: Sri. Abdul Rahim, Executive Engineer
Representative of respondent: Sri. Ramesh Babu, Chief Engineer.

ORDER

M/s Cochin Port Trust (hereinafter called CPT) is a distribution Licensee authorized for distributing electricity in Willingdon Island, Kochi and Vallarpadom and Puthuvypeen SEZs, Kochi. The Licensee has signed an agreement with the Kerala State Electricity Board (hereinafter called KSEB) for purchase of power at 110 kV through the new substation set up by them on 17th November 2008.

CPT filed a petition in the month of September 2009 before the Kerala State Electricity Regulatory Commission (hereinafter called the Commission) for approval of the PPA which was disposed of by the Commission vide order dated 30th March 2010.

CPT has now filed a petition dated 5th April 2010 stating that it is necessary to execute another agreement with KSEB for availing power to Vallarpadom and Puthuvypeen SEZs. CPT has stated that M/s D.P.World the operator of ICTT a consumer in Vallarpadom SEZ has confirmed that their activities shall commence by 20th April 2010. Hence it is an obligation of CPT to provide power at Vallarpadom area latest by 20th April 2010. But KSEB is insisting on consumer tariff. The PPA has not yet

been signed. Hence an interim order permitting CPT to draw supply at Licensee Tariff approved by the Commission until the final disposal of the PPA petition may be issued.

Background

CPT has signed a PPA with KSEB on 17th November 2008. CPT has pointed out that the PPA is having the following discrepancies and hence is not as per the guidelines approved by the Commission.

The petition was heard and Commission has disposed of the petition with the following directions.

The agreement dated 17th November 2008 signed by CPT and KSEB has to be revised incorporating the following changes.

1. Reference to Electricity Act 1910 and supply Act 1948 should be removed and replaced by corresponding Sections of Electricity Act 2003 if available.
2. The authority to sign the agreement on behalf of KSEB need not be Chief Engineer (Transmission).
3. Change in billing method cannot be done without the approval of Commission. Penal interest should be as approved by the Commission. Instead of specifying rates a reference to applicability of rates specified from time to time should be made. Penalty for exceeding the contract demand should be as approved by the Commission. PPA clauses are to be modified suitably.
4. Penalty for low power factor should be enforced if power factor goes below 0.9 as that approved in the case of Thrissur Corporation. No incentive for power factor increase will be given.
5. Reference to Terms and Conditions of Supply should be removed and substituted with Supply Code.
6. The PPA should be revised and revised PPA submitted to the Commission for approval.

The order was issued vide letter dated 5th April 2005. The present petition is dated 5th April 2010. The grievance of CPT is that KSEB is insisting on consumer tariff for the requirement at Vallarpadom.

Hearing

Copy of the petition was forwarded to KSEB on 26th April 2010. KSEB had vide letter dated 4th May 2010 requested for time extension for another 30 days. A reminder was forwarded to KSEB on 14th July 2010. But KSEB has not furnished any reply so far.

The petition was posted for hearing on 12th August 2010.

Petitioner at the outset stated that they are availing power at 110 kV at Willingdon Island from November 2008. They have executed a PPA with KSEB in November 2008 and had approached the Commission for the approval of the PPA. Order on the petition seeking approval of PPA was issued by the Commission in the month of April 2010. Commission had issued approval for including the Vallarpadom and Puthuvypeen SEZs in the license for distribution of electricity vide order dated 18-01-2010. CPT stated that KSEB had issued power allocation at 11 kV for Vallarpadom. KSEB insists on consumer tariff for the power allocated.

Petitioner further stated that they had submitted the draft PPA to KSEB on 12th May 2010. But no communication on the same has been received from KSEB. Pending approval of PPA they are availing power at consumer tariff. KSEB has denied Bulk supply Tariff. Petitioner requested that the consumer tariff now applied should be changed to Bulk Supply Tariff.

Respondent stated that the draft PPA was received only recently. KSEB has invested heavily in the development of infrastructure in the area. Respondent stated that the petitioner has taken a non cooperating approach. There are numerous issues to be settled. Petitioner is not making any attempt to arrive at a consensus. Respondent stated that the petitioner approached KSEB as a consumer.

Respondent stated that CPT is trying to extend the area of distribution. In the extended area of licence CPT is a second Licensee and hence KSEB and CPT are competitors and hence KSEB is not bound to supply power to CPT.

Respondent made a reference to the order issued by APTEL which was cited by the Commission in the order issued on the petition filed by Kinesco. The order of APTEL is on the dispute between a consumer and Licensee and in the present case it is a Licensee requesting power from a generating company. Hence pooled cost principles cannot be applied. Respondent made a reference to the Regulation on Licensing Conditions issued by the Commission which specifies that Licensee should have a business plan which should be got approved from the Commission. The tariff applicable should be mutually agreed. As the existing agreement does not cover the new area a new agreement has to be executed. Respondent stated that they are already supplying power to 1820 consumers in Vallarpadom area.

CPT replied that the area covered by the Licence is a reclaimed area where there is no investment by KSEB. No consumer availing power from KSEB is present in the SEZ area and argued that the statement made by CPT was correct.

In reply the respondent stated that he was referring to Vallarpadom area and not to the SEZ area.

Analysis

The case of the petitioner is that they have approached KSEB for discussion on a PPA and till a consensus is arrived at, the tariff applicable for Vallarpadom should be the tariff applicable to the Licensees.

As per the exhibits submitted by the petitioner it is noted that they had submitted a draft PPA to KSEB vide letter dated 12th May 2010. Thus they have initiated action for arriving at a PPA on consensus.

As regards the other objections raised by KSEB, the first is with reference to the order on extension of area of Licence issued by the Commission in January 2010. KSEB took a stand that the order issued in January is a second licence in the area of the licence of the KSEB. It is to be noted that the approval was not given as a second Licensee. KSEB's claim is that they are the default licensee in the area. In the order allowing extension of area of licence issued in January 2010, it has never been mentioned that KSEB is the default Licensee and CPT will be a second Licensee. KSEB though at first stated that in Vallarpadom they have made investments, subsequent to the clarification by CPT that the area in the SEZs are virgin and reclaimed, KSEB admitted that they are not sure of the investment in the SEZ area. As stated in the notification declaring Vallarpadom and Puthuvypeen SEZs, issued by Govt. of India, it is CPT alone who is authorized to set up the SEZ. As stated in para 6 of the SEZ Policy issued by Govt. of Kerala in June 2003, the SEZ developer would be entitled to get the exclusive licence for retail distribution of power within the SEZ. Also KSEB did not arise this point at the time of public hearing. Thus the claim by KSEB that CPT is a second licensee has no strength. Commission would like to stress that as long as it is not stated in the order issued by the Commission in January 2010 that CPT or KSEB is a second Licensee only CPT is the licensee authorized to distribute electricity in the area covered by the order. As the area was developed by CPT and is owned by CPT (as per notification dated 21st June 2006 of Ministry of Shipping Road Transport and Highways Govt. of India), KSEB cannot enter the area without the consent of CPT.

Coming to the application of pooled tariff, KSEB made it clear that the relationship between KSEB and CPT is that of a Generator and a Licensee. KSEB made a reference to purchase of power from NTPC and NLC. As stated by KSEB the tariff applied for purchase of power from these generating companies is not the pooled tariff. But KSEB was cleverly hiding the fact that whenever NTPC and NLC go in for expansion they get an undertaking from the beneficiary Licensees that they want a share of power from the expansion at the rate to be determined by CERC which will be applicable for the expansion alone. This is a long term contract and will not be applicable for any further additions of capacity by the generating companies. Also generation from such expansion plants of CGS plants are metered separately and divided between the beneficiaries. In the present case of sale of power by KSEB, a commitment is not sought for by KSEB so that they can make an investment to supply the required power. Further there is no guarantee that such power allocated will not be subjected to any restrictions such as power cut and load shedding. KSEB pools self generation and enters in to agreements with consumers and licensees without

reference to any generating plant. KSEB cannot make such a commitment because if sufficient rainfall is available then they will be going by the long term contracts only and KSEB will resort to short term contracts only when there is a short fall. Also KSEB will impose power cut and load shedding on all licensees also. Further some consumers availing power from KSEB will be surrendering their requirements and hence such power is always available with KSEB. KSEB cannot set up a plant to meet the requirements of a particular consumer or licensee. The comparison with procurement of power from CGS is not at all correct. Hence the APTEL order referred to by KSEB in the order issued by the Commission on the petition filed by Kinesco, the conclusion by APTEL that pooled tariff alone can be applied and met marginal cost of purchase cannot be applied is applicable in the present case also. Also KSEB cannot insist on a tariff not approved by the Commission.

Thus it is clear that the objections raised by KSEB are not acceptable. KSEB cannot apply any tariff other than that approved by the Commission. In the case of CPT it is the approved bulk supply tariff. The bulk tariff already ordered by KSERC is in the process of revision may be to the advantage of KSEB and is as requested by KSEB.

Order

For the power supplied to CPT for their requirements at Vallarpadom & Puthuvypeen, only bulk supply tariff can be applied. The draft PPA should be initiated by both KSEB and CPT and submitted to the Commission for approval before 30th September 2010. CPT has to initiate the preparation of draft PPA mentioning the quantity, the voltage and location of their power requirement.

Sd/-
M.P.Aiyappan
Member

Sd/-
C.Abdulla
Member

Sd/-
K.J.Mathew
Chairman.

Approved for issue

Secretary