

**KERALA STATE ELECTRICITY REGULATORY COMMISSION  
THIRUVANANTHAPURAM**

Present: Shri.T.M.Manoharan, Chairman  
Shri. K.Vikraman Nair, Member  
Shri. S. Venugopal, Member

In the matter of : Procuring 210 MW RTC power during the months of August & September 2015 under 'Scheme for Utilisation of Gas Based Power Generating Capacity notified by Ministry of Power (MoP)' from 1108 MW LANCO Kondopalli Power Ltd.(LKPL)

Petitioner : Kerala State Electricity Board Limited,  
Pattom, Thiruvananthapuram - 4

**Order No. OP No. 31/2015 dated 22 -06-2016**

**Background**

1. KSEB Ltd has filed this petition before the Commission on 28.7.2015. The petition filed by KSEB Ltd is for ratifying the action of the KSEB Ltd in entering into PPA with M/s LANCO Kondapalli Power Ltd.(LKPL) on 12-06-2015 for procuring 210 MW RTC power during August and September-2015 under the 'Scheme for Utilisation of Gas Based Power Generating Capacity' notified by Ministry of Power (MoP) at Rs. 4.70 per kWh and also to ratify the action of K S E B Ltd. in exempting M/s PTC Ltd from supplying 150 MW from Simhapuri Energy Ltd. (SEL) till 31-08-2015, without liability for compensation on either party.

2. Vide the petition, KSEB Ltd has submitted that,

*(1) The Ministry of Power, Government of India, vide office memorandum No.4/2/2015-Th-I dated 27th March 2015 has introduced the 'Scheme for Utilisation of Gas Based Power Generating Capacity for the financial years 2015-16 and 2016-17'.*

- (2) *According to the Office Memorandum, the present gas based capacity commissioned as well as ready for commissioning in the country is 27,123 MW. Out of this, during the financial year 2014-15, the gas grid connected plants with the capacity of 9845MW which received some limited available domestic gas are classified as 'Plants receiving domestic gas'. Further, the gas grid connected plants with 14,305 MW capacity which had no supply of domestic gas was classified as 'Stranded gas based plants'.*
- (3) *The Scheme envisages supply of "e-bid RLNG" to the stranded gas based plants and the plants receiving domestic gas, up to the Target PLF selected through a reverse e-bidding process. The Scheme also envisaged sacrifices to be made collectively by all stakeholders of the gas based power plants and support from the Power System Development Fund (PSDF).*
- (4) *The salient features of the scheme are:*
- (i) *GAIL will be the only agency for the procurement and supply of e-bid RLNG.*
  - (ii) *The e-bid RLNG was allocated strictly for the purposes of generation of power by the Eligible Gas Based Plants of the Successful Bidders in accordance with the Office Memorandum. The e-bid RLNG shall not be used for any other purpose.*
  - (iii) *In order to ensure that the price per Unit of Incremental Electricity produced by the Successful Bidder from e-bid RLNG received pursuant to this auction under this Tender Document, does not exceed the Target Price, the following interventions/sacrifices have been approved to be made by the Central Government, State Governments, the Successful Bidders, lenders of the Successful Bidders and gas transporters collectively:-*
    - (a) *Customs duty waiver on imported LNG by Government of India (GOI).*
    - (b) *Waiver of Service Tax on re-gasification and transportation of the e-bid RLNG.*
    - (c) *GAIL / other transporters (RGTIL and GSPCL) shall reduce the pipeline tariff by 50% on e-bid RLNG.*
    - (d) *The re-gasification agencies shall reduce the re-gasification charges by 50% on the e-bid RLNG.*
    - (e) *GAIL / GSPCL shall reduce marketing margin by 75% on sale of e-bid RLNG.*
    - (f) *The procedure for co-mingling and swapping of gas shall be as per the relevant notification of the Department of Revenue, Ministry of Finance.*

- (g) *Transmission charges and transmission losses of the CTU and/or STU as the case may be, for the total Incremental Electricity so produced by the e-bid RLNG are waived off, on the lines of solar power.*
- (h) *Support from Power System Development Fund to the DISCOMS through a transparent reverse e-bidding process.*
- (i) *Waiver of Value Added Tax (VAT) on the e-bid RLNG by the concerned State Governments.*
- (j) *Waiver of Central Sales Tax (CST), Octroi and Entry Tax on the e-bid RLNG by the concerned State Governments.*
- (k) *The benefits under the Scheme will be available to only those Successful Bidders where the host State governments agree to the waiver of VAT, CST, Entry Tax and Octroi as proposed above.*
- (l) *In addition to above, the Eligible Gas Based Plants may also require financial relief from Banks/Financial Institutions so that they are able to meet their debt service obligations.*
- (m) *Capping of fixed cost to be recovered by the Eligible Gas Based Plants limiting to meet only the obligation towards debt servicing and Operation & Maintenance (O&M) cost.*
- (n) *PSDF Support will be released monthly to the Discoms purchasing the e-bid RLNG based on total Incremental Electricity monthly, as per the mechanism set out in the PSDF Support Agreement upon receiving the certificates as set out in Clause 2.3 of the PSDF Support Agreement.*
- (o) *EPMC is authorized to lay down further guidelines in this regard, including appropriate modification in the requirement of above documentation, in the interest of ease of operation, subject to the overall condition that PSDF support will be available only for the Total Incremental Electricity during the Relevant Period.*
- (p) *The Lead Bank of the Successful Bidder will certify to the EPMC on a monthly basis that the receipts of money have been utilized solely for the intended purposes.*

(5) *M/s MSTC Ltd, a PSU appointed by GAIL is the agent for the bid process management. On 12<sup>th</sup> May 2015, MSTC Ltd, had completed the reverse auction bidding for Stranded Gas based Power Producers (SGP) and on 13<sup>th</sup> May, 2015, the same for Domestic Gas based Power Producers (DGP). Of the total capacity 10.2 GW under SGP, 10 bidders comprising of 6.8 GW have been technically and subsequently financially qualified under SGP scheme and 5 bidders consisting of nearly 3.4 GW under DGP scheme.*

(6) The list of selected bidders for stranded gas based producers (SGP) is detailed below.

No	Power IPPs	State	Capacity (MW)
1	Torrent Energy(DGEN Mega CCPP)	Gujarat	1200
2	Torrent Power (UNOSUGEN CCPP)	Gujarat	382.5
3	Gujarat State Electricity Corp(UTRAN)	Gujarat	374
4	Lanco-Kondapalli (KondapalliExtn CCPP (366 MW) &Kondappalli Ext. St-III (742 MW)	AP	1108
5	RVK Energy	AP	28
6	GMR Rajahmundry Energy (GMR Vemagiri Ext)	AP	768
7	GVK Industries(JEGURUPADU CCP)	AP	220.5
8	GMR Vemagiri Power(Vemagiri CCPP)	AP	370
9	Sravanthi Energy (KahipurSravanthi ST-I & II)	Uttarakhand	450
10	Ratnagiri Gas and Power(DHABHOL)	Maharashtra	1967
	<b>Total</b>		<b>6868</b>

(7) The list of selected bidders for under DGP is submitted below.

No.	Power IPPs	State	Capacity (MW)
1	Torrent Power (SUGEN CCPP)	Gujarat	1147.5
2	Gujarat State Electricity Corp (DHUVARAN CCPP)	Gujarat	106.4
3	CLP India(PEGUTHAN CCPP)	Gujarat	655
4	NTPC Auraiya CCPP	AP	663.4
5	NTPC Dadri CCPP	AP	829.8
	<b>Total</b>		<b>3402.1</b>

(8) The target price fixed by the Ministry of power in the tender document was Rs 5.50/5.30/5.10/4.90/4.70 per kWh against the target PLF of 25.0%/27.5%/30.0%/32.5%/35.0% respectively, which was the maximum net purchase price payable by the DISCOMS who purchase the power under the scheme.

(9) 5.05 BU of electricity was expected to be supplied under this scheme during the period from June to September, 2015. The scheme involves Government support of Rs 723.99 Cr from Power System Development Fund (PSDF).

- (10) M/s LANCO Kondappalli, was one of the successful bidder under the category of SGP. M/s LANCO vide letter LKPL: KSEB: 9574:2015 dated 26.05.2015 informed that LANCO has been awarded 1.81 mmscmd gas for generation under the scheme; that they have already tied up with Telungana State Transco for 325 MW power from 1<sup>st</sup> June to 30<sup>th</sup> September, 2015 at Rs.4.70 per kWh which is the Target Price decided by Ministry of Power through e-Bidding process. LANCO offered 325 MW under the scheme for 31 days in July 2015 @ Rs. 4.70/kWh to KSEB Ltd.
- (11) KSEB Ltd further submitted that, rate of Rs 4.70/kWh offered by M/s LANCO is at Kerala Periphery, inclusive of the transmission charges and losses. The rate offered was very much attractive compared to rate of power derived from Short Term Contracts (Rs 5.416 at Kerala Periphery) as well as power from IGSTPS, Jhajjar (Rs 6.11/kWh at Kerala Periphery).
- (12) KSEB Ltd also submitted that, with the approval of the Hon'ble Commission, KSEB Ltd has entered in to PPA with M/s. PTC India Ltd for supplying 300 MW RTC power from M/s. Simhapuri Energy Ltd (SEL) for the period from 1<sup>st</sup> June 2015 to 31<sup>st</sup> May 2016 @Rs 5.18 per unit at generator periphery. Approximate rate of power after accounting transmission charges and losses was about Rs 5.416 per unit. Considering the limited chance of getting open access for transmitting the power due to S1-S2 transmission constraints and consequent losses to the generator on account of the capacity remaining stranded, M/s.PTC Ltd has requested KSEB Ltd to exempt M/s Simhapuri Energy Ltd from supplying 150 MW out of 300 MW contracted till December-2015.
- (13) Since the offer of LANCO at the rate Rs 4.70 per unit is at the periphery of KSEB Ltd, it considered the possibility of replacing a part of the power tied up from Simhapuri Energy Ltd (SEL) (at least 150 MW) through M/s PTC with the power offered by M/s. LANCO Kondappally as per the MoP Scheme.
- (14) After negotiation, M/s LANCO Kondappalli Power Ltd (LKPL) offered to supply 210 MW RTC Power during August & September 2015 from their 1108 MW LANCO Kondpalli Power Ltd, under 'Scheme for Utilisation of Gas Based Power Generating Capacity' notified by MoP at Rs 4.70 per kWh which is the target price decided by the Ministry of Power, Gol through e-Bidding process.
- (15) Considering the offer of M/s. Lanco, for supplying 210 MW RTC power during August and September 2015, KSEBL exempted M/s. PTC from supplying 150 MW from M/s.Simhapuri Energy Limited from 01-08-2015 to 31-08-2015, without compensation on either party.

- (16) *As per the PSDF support agreement executed between M/s.LANCO and Ministry of Power, Gol, the letters of conformation and PPA has to reach MoP latest by 15.06.2015. Due to the time constraint, KSEBL had entered in to PPA with M/s. LANCO Kondappilly for procuring 210 MW RTC Power August & September 2015 under 'Scheme for Utilisation of Gas Based Power Generating Capacity' notified by MoP at Rs 4.70 per kWh on 12.06.2015 in anticipation of permission from the Hon'ble Commission.*
- (17) *Considering the best interest of the State, it was better to procure 210 MW RTC power, during August & September 2015 under 'Scheme for Utilisation of Gas Based Power Generating Capacity' notified by MoP' at Rs 4.70 per kWh by exempting M/s PTC Ltd from supplying 150 MW from Simhapuri Energy Ltd.till 31-08-2015, without compensation on either party and also to avoid dependence on costly power from short-term market or power exchanges.*
3. The commission admitted the petition as OP No 31/2015 and the hearing on the petition was conducted on 19/8/2015. During the hearing, KSEB Ltd has submitted that, the supply of 210MW from M/s LANCO had not materialized yet. Due to shortage of rainfall and increased consumption, KSEB Ltd had to resort to avail costly power from RGCCPP Kayamkulam. The Commission observed that, ultimately KSEB Ltd lost both the 150MW power from M/s PTC Ltd, which was contracted at the rate of Rs 5.416 per unit and 210 MW power from M/s LANCO, which was contracted at the rate of Rs 4.70 per unit. The Commission vide the daily order dated 03.09.2015 directed KSEB Ltd to submit detailed statement with reasons and justifications for reducing the power from M/s PTC Ltd and for entering into contract with M/s LANCO without necessary clauses for enforcing the supply of electricity and for claiming compensation for the losses or for the additional expenditure sustained by KSEB Ltd due to failure on part of M/s LANCO for supply electricity.
4. KSEB Limited submitted the clarification vide the letter No. KSEB /TRAC/Stranded Gas Power /2015-16 /2303 dated 17.11.2015. The details are given below.
- (1) *PTC power was reduced due to the following reasons:*
- i. *Swapping costlier power from PTC with cheaper one considering the anticipated availability of power from M/s LKPL under MoP Scheme and the availability of power on operationalisation of LTA/MTOA after a prolonged litigation before CERC.*

- ii. *Low demand during the monsoon period.*
- iii. *Availability of cheaper power from Power Exchanges.*
- iv. *Availability of cheaper power by way of URS.*
- v. *To avoid the possible contractual liability of paying compensation to PTC in case of down scheduling the power to comply with Merit Order Dispatch.*
- vi. *Additional availability of 316 MW from Jhajjar from October 2015.*

(2) *As per clause 5-2 of the PSDF support agreement executed between LANCO and MoP, the nodal authority is entitled to encash and appropriate the relevant amounts from the PSDF performance Security submitted from the generator as damages upon production and supply of incremental electricity to Discoms falls below 70% of the total committed quantum due to any reason.*

(3) *KSEB Limited vide letter dated 7.9.2015 has requested the MoP to compensate the damages caused to KSEB Limited due to the non-supply of gas power by M/s. LKPL by encashing the PSDF performance security furnished by M/s. LKPL by invoking the appropriate clause in the PSDF support agreement. KSEB Limited vide letter dated 30.09.2015 has reminded the matter and sought urgent intervention of MoP to settle the issue. Also KSEB Limited is in the process of initiating the legal action against M/s. LKPL to realizing the commercial losses sustained by the Board due to non-supply of power by M/s. LKPL.*

(4) **K S E B Ltd.** has further submitted that the main intention in availing power from LKPL was to utilize the opportunity of getting cheaper power.

5. The Commission after detailed scrutiny of the petition, had directed KSEB Ltd. to forward the following details for further processing of the application

- (i) Quantity of power surrendered from PTC – SEL during June to November, 2015 date wise.

- (ii) The details of corridor availability for short term transaction in S1 –S2 during the period from June to November, 2015
  - (iii) Provision in the PPA with PTC –SEL indicating the contractual liability of PTC and KSEB Ltd in the event of non scheduling of power
  - (iv) KSEBL has submitted that, low demand is one of the reason for reducing the quantum from PTC- SEL. If it were so, there is no need to purchase additional power. Also if cheaper power is available, how loss can occur as claimed by KSEBL in their letter to MoP. KSEB Ltd was asked to clarify above points.
  - (v) Statement showing quantity and rate of power purchased from Jhajjar from 1.6.2015 to 31.12.2015.
  - (vi) Details of short term purchase, purchase from RGCCPP and BKPL and generation from KDPP and BDPP during the above period.
  - (vii) Copy of PPA of KSEBL with LANCO and PTC-SEL and PSDF agreement of LANCO with MoP.
  - (viii) Detailed calculation of the loss sustained by KSEBL on arranging alternate quantum by availing costlier power on account of non scheduling of power from LANCO.
6. KSEB Ltd. vide their letter No. KSEB /TRAC/Stranded Gas Power /2015-16 /2614 dated 24.2.2016 has submitted a detailed report on the queries raised by the Commission. The relevant portions of the submission of KSEB Ltd are extracted below.

(1) Calculation of loss sustained by KSEBL on arranging alternate power on account of non-scheduling of LANCO power:

- i) *KSEBL had entered into Power Purchase Agreement (PPA) with M/s LANCO Kondappilly for procuring 210 MW RTC Power during August & September 2015 under ‘Scheme for Utilization of Gas Based Power Generating Capacity’ notified by Ministry of Power( MoP), Government of India(GoI) at Rs. 4.70 per kWh.*



- ii) *As per the PSDF support agreement, compensation clause is applicable only when the supply is less than 70% of the contracted quantum. Hence the reduction in energy availability on account of non scheduling contracted power is estimated as 215.21 MU. It is estimated that an extra amount of Rs. 52,31,40,619/- ( Rupees Fifty two crore, Thirty one lakh Forty thousand Six hundred and Nineteen only ) had been incurred by KSEB Limited by way of scheduling energy from costly liquid fuel stations such as Rajiv Gandhi Combined Cycle Project (RGCCP)-Kayamkulam, Kozhikode Diesel Power Plant (KDPP), Brahmapuram Diesel Power Plant (BDPP) and Power Exchanges at rates higher than Rs.4.70/ kWh during the months of August and September 2015 to meet the power demand due to the failure of LANCO Kondappally to supply contracted power as per the PPA.*

*(2) Provision in the PPA with PTC –SEL indicating the contractual liability of PTC and KSEB Limited in the event of non-scheduling of power:*

*Clause 11 of the power purchase agreement executed between KSEB Limited and PTC Limited deals with the compensation applicable to both parties which is extracted below:*

*Quote*

*11. Compensation Clause:*

*Both the parties would ensure that actual scheduling does not deviate more than 15% of the contracted power as per the open access on monthly basis.*

*Without prejudice to the provisions of force majeure, if KSEB fails to schedule at least to the extent of 85% of the contracted quantum for total contracted period, KSEB shall pay compensation for the difference (shortage) quantity at the rate of 20% of tariff /per unit while continuing to pay open access charges as per the contract. Similarly, if the power scheduled by M/s.PTC Ltd. Is less than 85% of the contracted quantum of the total contracted period, M/s. PTC India Limited shall pay compensation to KSEB for the difference (shortage ) quantity at the rate of 20% of tariff /per unit and also pay for the open access charges to the extent not availed by KSEB.*

Any request from M/s. PTC Ltd. for reduction of supply quantity citing the machine breakdowns or unforeseen conditions of generating companies (except force majeure condition) will not be accepted.

In case M/s. PTC Ltd. fails to apply open access in stipulated time as per RLDC's guidelines in force, then compensation shall be levied at the rate mentioned in compensation clause and the contracted quantum shall be considered as deemed scheduled. Open access once approved cannot be cancelled or revised without mutual consent. However in case of revision /cancellation of approved open access corridor on MTOA/STOA, the party seeking revision /cancellation of open access corridor shall bear all open access charges applicable under CERC Regulation for MTOA/STOA from the injection point till the point of drawl applicable due to such surrender/cancellation.

(3) Clarification on lower demand leading to reduction of quantum of M/s.PTC and the need for additional power on failure of supply by M/s.LANCO.

During June 2015, monsoon got strengthened and cheaper power was available from Power exchange and also from the unrequited surplus (URS) of Central Generating Stations. The demand in Kerala was lower than the anticipated demand during the early phase of South – West monsoon. The energy demand anticipated and actual are tabled below:

Sl.No	Period	Energy Demand			
		Projected in ARR 2015-16 (in MU)		Actual (in MU)	
		Month	Daily average	For the Month	Daily average (MU/day)
1	Jun-2015	1809.99	60.33	1737.	57.93
2	July-2015	1818.63	58.66	1821.	58.77
3	Aug-2015	1789.27	57.71	1871.	60.37
4	Sep-2015	1818.93	60.61	1848.	61.62
5	Oct-2015	1895.98	61.16	1900.	61.30
6	Nov-2015	1863.25	62.10	1787.	59.57
7	Dec-2015	1919.82	61.93	1877.	60.57

*From the above, it is evident that the actual energy demand was lower by about 2MU/day from the expected demand during the month of June-2015 and thereafter the actual demand surpassed the anticipated demand until North-East monsoon picked up by the second half of October -2015. The decision on the reduction in quantum of power from M/s.PTC was taken during early phase of South –West monsoon in view of availability from LANCO.*

*As things stood during early June -2015, the cheaper LANCO power could not be absorbed by KSEB Limited without reducing the contracted power from M/s.PTC. However when the demand in August and September 2015 surpassed the anticipated demand and M/s. LANCO failed to supply original quantum of power, KSEB Limited had to avail costly power from different sources to overcome deficit. The rate of power in Power exchanges, is highly volatile and has been low during the low demand period of first half of monsoon, but as soon as the second half of monsoon become deficit, the rate of power in the power exchange also increased substantially resulting in financial loss to KSEB Limited.*

*(4) KSEB Ltd had submitted that, it had purchased 1069.65 MU from Jhajjar Power plant during the period from 01-06-2015 to 31-12-2015. The details are given below.*

SI No	Month	Schedule at generator bus (MU)	Rate at Generator periphery (Rs/ kWh)
1	Jun-15	70.58	7.15
2	Jul-15	111.96	5.97
3	Aug-15	121.77	5.82
4	Sep-15	117.09	5.66
5	Oct-15	221.76	5.32
6	Nov-15	211.19	5.26
7	Dec-15	215.28	5.39
	Total	1069.63	5.61

*(5) The details of the energy procurement from RGCCPP Kayamakulam, BDPP, KDPP and also from power exchanges are detailed below.*

Sl No	Month	Power Purchase (MU)				
		RGCCPP	BDPP	KDPP	IEX&PXIL	Total
1	Jun-15	4.11	0.22	15.14	110.05	129.52
2	Jul-15	0.00	1.00	8.86	58.05	67.91
3	Aug-15	19.13	0.33	9.54	111.50	140.49
4	Sep-15	103.33	0.08	32.98	89.34	225.73
5	Oct-15	15.63	1.48	9.54	142.44	169.10
6	Nov-15	0.00	1.05	4.62	117.68	123.35
7	Dec-15	0.00	0.35	2.30	33.55	36.19
	Total	142.19	4.51	82.98	662.60	892.28

(6) As directed by the Commission KSEB Ltd has also submitted the copy of the Power Purchase Agreement executed between KSEB Ltd and M/s LANCO Kondapalli Power Limited on 12.06.2015 and copy of the PPA executed with PTC India Ltd on 20.06.2014. The copy of the PSDF agreement executed between Ministry of Power, Government of India and M/s LANCO Kondapalli Power Limited on 01.06.2015 also submitted before the Commission.

### **Analysis and Decisions of the Commission**

7. The Commission had appraised the entire facts and circumstances of the case. The petition filed by KSEB Ltd is for ratifying the action of the KSEB Ltd in entering into PPA with M/s LANCO Kondapalli on 12-06-2015 for procuring 210 MW RTC power during August and September-2015 under the 'Scheme for Utilisation of Gas Based Power Generating Capacity' notified by MoP at Rs. 4.70 per kWh and also to ratify the action of KSEBL in exempting M/s PTC Ltd from supplying 150 MW from Simhapuri Energy Ltd. till 31-08-2015, without compensation on either party.
8. Section 86 1 (b) empowers the commission to

*regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;*

Also, section 63 of the Act states that;

*Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.*

9. The Commission had approved the purchase of 300 MW RTC power from 01.06.2015 to 31.05.2016 from M/s PTC and adopted the tariff, vide its order No.2023/C.Engg/POP/2014/1296 dated 5.12.2014 after assessing the requirement and verification of the bid process.
  
10. As per the details submitted by KSEB Ltd, the intention for entering into the PPA was for availing the relatively cheaper 210 MW RTC power @ Rs 4.70/unit with delivery at Kerala periphery from M/s LANCO Kondapalli during August-2015 and September-2015 under the 'Scheme for Utilisation of Gas Based Power Generating Capacity' notified by MoP by reducing the 150 MW contracted power @ Rs 5.18/unit with delivery at generator interconnection with CTU in SR through M/s PTC. Therefore, K S E B Ltd. had entered into PPA on 12.6.2015 with M/s LANCO, Kondappally for purchase 210MW RTC power in anticipation of permission from Kerala State Electricity Regulatory Commission as the last date of receipt of confirmation letter on PPA at MoP was 15.6.2015. From the details submitted by K S E B Ltd., it is also seen that K S E B Ltd. has surrendered 27 MU and 19.52 MU of power contracted from PTC during the months of June 2015 and July 2015 respectively due to reduced demand. In the circumstances explained above, the intention of K S E B Ltd. of reducing the 150 MW contracted power from M/s PTC upto 31<sup>st</sup> August 2015 to avail the cheaper power under Gol scheme, is considered prudent.

11. K S E B Ltd. submitted that M/s LANCO failed to supply the agreed quantum of energy as per the above agreement. KSEB Ltd has also reported that, an extra amount of Rs 52.31 crore was incurred by KSEB Ltd by way of scheduling costly energy from liquid fuel stations including RGCCPP Kayamkulam, BDPP and KDPP and, scheduling power from energy exchanges at rates higher than Rs 4.70 per unit, on account of non supply of power by M/s LANCO Kondapally Power Ltd. KSEB Ltd has also submitted that K S E B Ltd. has already taken up with the Ministry of Power the issue of failure to supply of power by LANCO, However the Central Government is yet to take action on the issue raised by KSEB Ltd.
12. Though the PPA with M/s LANCO was executed by Kerala State Electricity Board Ltd on 12.06.2015, the supplier failed to supply even a single unit of energy during the contract period. However, KSEB Ltd has reduced 150 MW power contracted through PTC. Thus ultimately KSEB Ltd lost both the 150MW power from M/s PTC Ltd, which was contracted at the rate of Rs 5.18 at generator periphery ( i.e, Rs 5.416 at Kerala periphery) per unit and 210 MW power from M/s LANCO, which was contracted at the rate of Rs 4.70 per unit at Kerala periphery.
13. It is noted that, Ministry of Power, under the scheme for utilization of gas based power generating capacity, allotted 1.81 MMSCMD RLNG to M/s LANCO for the production of 1095.74 MU of incremental electricity for the period from 1<sup>st</sup> June to 30<sup>th</sup> September 2015. This indicates daily average generation of 8.98 MU which is equivalent to 535 MW RTC power at 70% PLF. As per the Gol scheme, reduction in PSDF support is applicable only if production and supply of the incremental Electricity to the Discom is less than 70% of the total incremental electricity due to any reason. M/s LANCO had tied up 325 MW power with M/s Telungana Transco for the period from 1<sup>st</sup> June to 30<sup>th</sup> September 2015 under the scheme. M/s LANCO has informed KSEB Ltd that, they have surplus gas for supplying 325 MW during the month of July 2015 under the scheme at the target price of Rs 4.70 per unit. After negotiation, M/s

LANCO had offered to supply 210 MW RTC power from 1<sup>st</sup> August 2015 to 30<sup>th</sup> September-2015 at the target price of Rs 4.70 per unit and K S E B Ltd. had entered in to PPA with M/s LANCO for the same. Thus the total power tied up by M/s LANCO with K S E B Ltd. and Telungana comes to 535MW. Open access in the interstate transmission network for carrying the power to Kerala was also granted by Regional Load Despatch Center for the said period. However, M/s LANCO has not supplied single unit of electricity to KSEB Ltd citing the reason of inadequate supply of e-bid RLNG by GAIL. It was noticed that, M/s LANCO was supplying power to Telangana utilizing the gas provided by GAIL under the scheme. While analyzing the facts, the Commission is of the view that, the KSEB Ltd failed in appraising the entire facts and did not take necessary steps in time to get the power scheduled, at least proportionately to the quantities agreed to Telungana and to Kerala.

14. As per the agreement entered into by KSEB Ltd and M/s LANCO for supplying 325 MW power, KSEB Ltd failed to incorporate necessary and sufficient compensatory clauses in the PPA, except the clause -6 of the PPA, which is extracted below.

*6) Compensation clause:*

*Must Run supply of power by both generator and off taker. No penalty shall be levied up to the supply of 70% contracted energy. As per the Gol scheme, if the supplies are less than 70%, of the committed energy, 15% of Rs 1.42 of PSDF units support will be deducted by the Ministry of Power, Government of India for the short fall of units.*

15. As detailed above, the clause-6 of the PPA refers to the PSDF performance security provided under clause-5.2 of the general agreement entered into between M/s LANCO and Ministry of power.

*5.2 Appropriation of PSDF Performance Security*

*5.2.1 Without prejudice to its other rights and remedies hereunder or in law, the Nodal Authority shall be entitled to encash and appropriate the*

relevant amounts from the PSDF Performance Security as damages upon occurrence of any of the following events (the “Appropriation Events”), to be determined by the Nodal Authority in its sole discretion:

No.	Appropriation Events	Amount of the PSDF Performance Security to be appropriated
(a)	Production and supply of the Incremental Electricity to the Discom less than 70% of the Total Incremental Electricity due to any reason;	An amount equal 15% of the aggregate of the Per Unit PSDF Support Amount (x) (multiplied by) number of Units being deficit in 70% of the Total Incremental Electricity subject a maximum of entire PSDF performance security
(b)	Failure of the Successful Bidder to procure the signing and issuance of the Discom’s letter of confirmations by the Discom and submit one counterpart of the Discom’s Letter of Confirmations to the Nodal Authority within the time stipulated under this Agreement;	Entire PSDF Performance Security
(c)	Any change in Control or transfer of right title or interest in the specified End Use Plant or the Successful Bidder which is not in conformity with Clause 6; and	Entire PSDF Performance Security
(d)	Any utilization of e-bid RLNG for purposes other than for generation of the Incremental Electricity	Entire PSDF Performance Security

5.2.2 The amounts of the PSDF Performance Security to be encashed and appropriated by the GOI are in nature of the liquidated damages payable by the Successful Bidder as genuine pre-estimated loss and damage to be suffered and incurred by the GOI under this Agreement and are not by way of penalty.

16. As extracted above, the compensation clause under PPA entered into between KSEB Ltd and LANCO only address the liquidated damages payable by the Successful Bidder as genuine pre-estimated loss and damage to be suffered and incurred by the GOI under the scheme. It is further specifically mentioned



that, this was not a penalty and it cannot be considered as a penalty clause for breach of contract under this agreement.

17. Commission has further noted that, if M/s PTC had not been exempted, KSEB Ltd could have invoked the Clause-11 of the agreement dated 20<sup>th</sup> June 2014, entered into between KSEB Ltd and PTC, regarding the compensation clause on the non-scheduling the contracted power, which is extracted below.

*Quote*

*11. Compensation Clause:*

*Both the parties would ensure that actual scheduling does not deviate more than 15% of the contracted power as per the open access on monthly basis.*

*Without prejudice to the provisions of force majeure, if KSEB fails to schedule at least to the extent of 85% of the contracted quantum for total contracted period, KSEB shall pay compensation for the difference (shortage) quantity at the rate of 20% of tariff /per unit while continuing to pay open access charges as per the contract. Similarly, if the power scheduled by M/s.PTC Ltd. Is less than 85% of the contracted quantum of the total contracted period, M/s. PTC India Limited shall pay compensation to KSEB for the difference (shortage ) quantity at the rate of 20% of tariff /per unit and also pay for the open access charges to the extent not availed by KSEB.*

*Any request from M/s. PTC Ltd. for reduction of supply quantity citing the machine breakdowns or unforeseen conditions of generating companies (except force majeure condition) will not be accepted.*

*In case M/s. PTC Ltd. fails to apply open access in stipulated time as per RLDC's guidelines in force, then compensation shall be levied at the rate mentioned in compensation clause and the contracted quantum shall be considered as deemed scheduled. Open access once approved cannot be cancelled or revised without mutual consent. However in case of revision /cancellation of approved open access corridor on MTOA/STOA, the party seeking revision /cancellation of open access corridor shall bear all open access charges applicable under CERC Regulation for MTOA/STOA from the injection point till the point of drawl applicable due to such surrender/cancellation.*

18. As per the details submitted by KSEB Ltd, the intention for entering into the PPA by the KSEB Ltd is for availing the relatively cheaper power of 210 MW RTC power @ Rs 4.70/unit with delivery at Kerala periphery from M/s LANCO Kondapalli Power Ltd. during August-2015 and September-2015 under the 'Scheme for Utilisation of Gas Based Power Generating Capacity' notified by MoP by reducing the 150 MW contracted power @ Rs 5.18 /unit with delivery at generator interconnection with CTU in SR through M/s PTC. K S E B Ltd. had entered into PPA on 12.6.2015 with M/s LANCO, Kondappally for purchase 210MW RTC power in anticipation of permission from Kerala State Electricity Regulatory Commission as the last date of receipt of confirmation letter on PPA at MoP was 15.6.2015. Considering the intention of K S E B Ltd. of availing cheaper power under Gol scheme and the reduced demand during June and July 2015, Commission is of the view that reducing the 150 MW contracted power from M/s PTC upto 31<sup>st</sup> August 2015 can be justified provided KSEB Ltd could schedule comparatively cheaper power from M/s LANCO. However, the additional liability if any, on account of reduction of 150 MW power from PTC anticipating supply of power by M/s LANCO cannot be passed on to consumers.

#### **19. Orders of the Commission**

Considering the facts and circumstance of the case as detailed in the preceding paragraphs, the Commission hereby approves the action of KSEB Ltd in entering into PPA with M/s LANCO Kondappalli on 12-06-2015 for procuring 210 MW RTC power during August and September-2015 under the 'Scheme for Utilisation of Gas Based Power Generating Capacity' notified by MoP at Rs. 4.70 per kWh and the action in exempting M/s PTC Ltd from supplying 150 MW from Simhapuri Energy Ltd till 31.8.2015 without compensation on either party. The Commission, has found that was failure on the part of KSEB Ltd in properly appraise the entire facts and in not taking necessary steps on time to get the power scheduled, at least proportionately to

the quantities agreed to by the M/s LANCO with Telangana and with Kerala. Hence, the additional liability if any, on account of reduction of 150MW power from M/s PTC in anticipation of supply of power by M/s LANCO cannot be passed on to consumers.

Petition disposed of. Orders accordingly.

Sd/-

**S. Venugopal**  
Member

Sd/-

**K.Vikraman Nair**  
Member

Sd/-

**T.M.Manoharan**  
Chairman

Approved for issue

Santhosh Kumar.K.B  
**Secretary**