

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 application filed by M/s BSES Kerala Power Limited (BKPL) for the approval required for implementing the interim order dated 04.04.2017 of the Hon'ble High Court of Kerala in Writ Petition WP(C) No. 540/2017.

Petitioner - BSES Kerala Power Ltd
Udyogamandal P.O,
Kochi 683 501

Respondent - Kerala State Electricity Board Limited
VydyuthiBhavanam, Pattom

Order dated 27.04.2017 in File No. 590/DD(T)/BKPL-naphtha /2017/KSERC

1. M/s BSES Kerala Power Limited (herein after referred as BKPL)has, vide application No. BKPL/KSERC/PPA Extension/2015-16/17dated18.04.2017, requested for granting necessary approval in connection with the implementation of the interim order of the Hon'ble High Court dated 04.04.2017 in Writ Petition WP(C) No. 540/2017. The issues raised by the BKPL are extracted below for ready reference.

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1. *The Hon'ble High Court of Kerala has, in its order dated 04.04.2017 in WPC No.540/2017 directed BSES Kerala Power Limited (BKPL) to generate electricity to use up, in the interest of public safety, the 6879 MT Naphtha stored in our premises and the 6000 KL of Naphtha stored in the premises of Indian Oil Corporation Limited (IOCL). The said order has been issued by the Hon'ble Court considering the fact that the*

generating unit of BKPL is a Major Accident Hazard (MAH) unit and the explosive license granted to BKPL will expire on 31.12.2017.

- 2. The Hon'ble High Court also observed that the possibility of human error, leading to a major disaster cannot be totally excluded in spite of the satisfactory safety and security arrangements made by us.*
- 3. The Hon'ble High Court has directed that the stock of naphtha has to be exhausted on or before 01.07.2017. Since exhausting naphtha can be prudently done only by way of generation of electricity, the Hon'ble High Court has directed that power can be generated in co-ordination with the load dispatch centre of KSEBL, subject to the approval of KSERC and also subject to further orders to be passed by the Hon'ble High Court in the Writ Petition.*
- 4. It has also been clarified by the Hon'ble High Court that the entire Naphtha available at the premises of BKPL and at the premises of IOCL should be disposed off before 01.07.2017. It has further been clarified by the Hon'ble High Court that all issues raised by all parties are left open for consideration in the writ petition.*
- 5. The only feasible and prudent option to dispose naphtha is to generate electricity. For purchase of power by any licensee approval of KSERC is inevitable. Since the approval of KSERC is mandated under the interim order dated 04.04.2017 of the Hon'ble High Court, it is respectfully requested that the Hon'ble KSERC may be pleased to Issue directions to KSEBL and State Load Dispatch Centre (SLDC) to schedule power from BKPL, to use up the Naphtha available with BKPL and at the premises of IOCL as per the terms of the referred PPA in accordance with law.*
- 6. All the other issues, including the rate, being sub judice, and as directed by the Hon'ble High Court, are left open, the above prayer is without prejudice to our rights under the PPA, and only intended for the purpose of implementation of the orders passed by the Hon'ble High Court. We specifically reserve our rights under the PPA to proceed against the licensee, subject to our rights under the PPA."*

2. The Commission has, in view of the serious concerns expressed by the Hon'ble High Court in the interest of public safety and the consequent urgency of the matter, forwarded a copy of the application filed by M/s BKPL to the KSEB Ltd for their urgent remarks. KSEB Ltd, in its letter No. KSEB/TRAC/ KSERC/BSES/ 2017-18/3871 dated 25.04.2017 submitted as follows.

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1. *The writ petition no.540/2017 was filed by BKPL before the Hon'ble High Court of Kerala challenging an order of the District Collector, Ernakulam*

dated 29-12-2016 and also order dated 26-10-2016 of Hon'ble KSERC in OP No.34/2015, declining approval for extension of the PPA, the petitioner had with KSEBL.

2. *BKPL challenged the order of District Collector, Ernakulam citing that the impugned order was passed by District Collector without hearing the serious apprehensions raised by the petitioner on the safety of the storage of 6879.37 MT of naphtha at BKPL premises.*
3. *On this writ petition, the Hon'ble Court had issued an interim order, directing District Collector to submit a report after carrying out inspection of the premises jointly with the petitioner, officials from KSEBL, IOCL, Senior Joint Director of Factories and Boilers, Ernakulam and after conducting hearing of the above officials. The District Collector after carrying out inspection and hearing all concerned submitted a detailed report before Hon'ble High Court of Kerala.*
4. *In the said report, there was no safety issue as raised by BKPL in their premises due to storage of naphtha. It was also observed that there has been storage of naphtha in the premises of BKPL since the inception of the plant in the year 1997.*
5. *KSEBL had submitted before Hon'ble High Court that the PPA with BKPL had expired on 31-10-2015 and extension claimed by BKPL is not right. It was also submitted that Board had decided not to go ahead with the PPA with BKPL as a mutual agreement could not be reached on tariff and other terms of extension of PPA. Hence it was submitted before Hon'ble High Court by KSEBL that the claim of BKPL for using the stored naphtha by relying on the defunct PPA is illegal.*
6. *However, the Senior Joint Director of Factories and Boilers had reported that the naphtha storage tanks have valid explosive license only upto 31-12-2017 and there is no possibility of the stored naphtha in the premises of BKPL being transmitted back to IOCL. Further, it is also stated that IOCL is also storing 6000 KL of naphtha, which also does not have any other market than disposal by power generation.*
7. *Even though there exist no PPA between KSEBL and BKPL, considering the observation made by Hon'ble High Court and in public interest, KSEBL had submitted before District Collector, Ernakulam, various options for disposal of naphtha at BKPL storage tank, which in turn was submitted before Hon'ble High Court. Various options proposed by KSEBL and submitted by District Collector, Ernakulam before Hon'ble High Court for disposal of naphtha were:*

1. *Generating power on Unscheduled Interchange basis in co-ordination with the Load Despatch Centre of KSEBL subject to the approval from KSERC thereby consuming the naphtha stock.*
 2. *BKPL could explore possibilities on generation of power and sale to any one by utilizing the grid of KSEBL as open access is being permitted now.*
 3. *Any other feasible option including transfer to other naphtha consuming industries like nearby FACT availing the service of oil marketers like IOCL.*
8. *Hon'ble High Court, considering the facts and submissions made, issued following orders vide the interim order dated 4-4-2017:*
"9. The petitioner could definitely explore possibilities at option numbers 2 and 3 , but however the same would have to be finalised, within a period of one month from today and the disposal of the naphtha as per either of the options started within the said period and concluded within the time herein after stipulated. If the petitioner does not intend to carry out the said options, then they shall generate power on Unscheduled Interchange (UI) basis in co-ordination with the Load Despatch Centre of KSEBL ; subject to approval of KSERC and also subject to further orders to be passed in the writ petition. The petitioner could definitely approach the KSEB immediately for such generation of power on UI basis. It is made clear that the entire naphtha available at the petitioner Companies premises and that available at IOCL would be disposed of before 01.07.2017. If the same is not disposed of, then definitely, the Chairman of the Disaster Management Authority, the District Collector would be entitled to take such steps to disposal of the naphtha without even reference to this court. All issues raised by all parties are left open for consideration in the writ petition. The petitioner Company shall file periodic reports before the District Collector, ie: every three weeks as to the stage of disposal of naphtha as directed herein. "
9. *As per the order of Hon'ble High Court, BKPL has to explore the options 2 and 3 of the report of DC, Ernakulam i.e. generation of power and sale to any one by utilizing the grid of KSEBL through open access or any other feasible option including transfer to other naphtha consuming industries like nearby FACT availing the service of oil marketers like IOCL as a first alternative within one month from 4-4-2017.*
10. *This option as the first alternative was ordered by Hon'ble Court considering the fact and reality that the PPA of KSEBL with BKPL has*

already expired and KSEBL cannot be enforced the purchase of power as per the terms of the defunct PPA.

11. *Hon'ble Court has further ordered that if the petitioner does not intend to carry out the said options, then they shall generate power on Unscheduled Interchange (UI) basis in co-ordination with the Load Despatch Centre of KSEBL; subject to approval of KSERC and also subject to further orders to be passed in the writ petition.*

12. *Now, without exercising the first alternative ordered by Hon'ble High Court, BKPL has approached KSEBL on 17-4-2017 to schedule the generation of electricity using about 6879 MT of naptha available at BKPL plant and about 6000 KL naptha lying at IOCL in stock so as to dispose the same before 1-7-2017 as per the second alternative ordered by Hon'ble High Court and has now filed the instant application before Hon'ble Commission praying:*

“to issue directions to KSEBL and State Load Dispatch Centre(SLDC) to schedule power from BKPL, to use up the naptha available with BKPL and the premises of IOCL as per the terms of the referred PPA in accordance with law.”

13. *BKPL has further stated in the petition that “all other issues, including the rate, being sub-judice, and as directed by Hon'ble High Court, are left open, the above prayer is without prejudice to our rights under the PPA, and only intended for the purpose of implementation of the orders passed by the Hon'ble High Court. We specifically reserve our right under the PPA to proceed against the licensee, subject to right under the PPA”.*

14. *KSEBL strongly disagree with BKPL in the claims made in the instant application by referring to the already expired and defunct PPA. The Claim of BKPL is totally illegal and against the orders of Hon'ble High Court in letter and spirit as submitted below:*
 - (i) *As already submitted, there exist no PPA between KSEBL and BKPL. Hence there is no obligation cast upon KSEBL to purchase power from BKPL plant on whatever crisis emerging.*

 - (ii) *The original PPA between BKPL and KSEBL had expired on 31-10-2015, almost one and a half year back and the order of Hon'ble KSERC rejecting the petition of BKPL for extending the PPA for 2 more years was made on 26-10-2016, six months back. Relying still on the PPA that expired long back, by BKPL is only an effort to hide*

the inaction of BKPL in not having taken timely steps for utilizing the stored fuel optimally for generation and supply to utilities or consumers other than KSEBL by availing open access.

- (iii) Hon'ble High Court has also acknowledged the fact that the claim of BKPL on the extinct PPA for disposal of naphtha is illegal as is evident from paragraph 9 of the order issued on 4-4-2017, wherein it was clearly mentioned that BKPL shall dispose naphtha by exercising sale to any one by availing open access or transfer stored naphtha to other naphtha consuming industries or back to IOCL(options 2 and 3 in the report of the District Collector).*
- (iv) It is further submitted that Hon'ble High Court had directed BKPL to explore the possibilities of the above options and the same would have to be finalised within a period of one month from the date of the order (i.e, before 3rd May 2017). However, it is observed that that BKPL has not complied with the orders of the Hon'ble High Court to explore options 2 and 3 of the report of District Collector. Instead they have approached Hon'ble Commission on 18th April, 2017 itself requesting to issue directions to KSEBL to purchase power, the said action being non compliance of the direction of Hon'ble High Court. It is also pertinent to mention that no approval from Hon'ble Commission is required for BKPL to sell power under open access.*
- (v) As per the orders of Hon'ble High Court, the option for sale to KSEBL was only to be exercised if the sale as per the option 2 and 3 of the report of the District Collector does not work out and in view of the fact that disposal of naphtha is required in public interest.*
- (vi) Considering and acknowledging the fact that BKPL has no PPA with KSEBL, Hon'ble High Court has further ordered that such sale to KSEBL shall be on Unscheduled Interchange (UI) basis in co-ordination with the Load Despatch Centre of KSEBL; subject to approval of KSERC and also subject to further orders to be passed in the writ petition. Hon'ble High Court has further ordered that BKPL could definitely approach KSEBL immediately for such generation of power on UI basis.*
- (vii) Hon'ble High Court has specifically ordered that sale to KSEBL if required due to non materialization of the other options shall be only on UI rates only. Thus the claim of BKPL in the instant*

application for the sale by referring to the PPA expired long back is illegal and against the spirit of the orders of Hon'ble High Court. KSEBL is not bound to and not willing to purchase power at rates and terms of an invalid agreement.

- (viii) It is further submitted that BKPL vide paragraph 6 of the application has mentioned that as per the order of Hon'ble High Court, all other issues, including the rate is sub-judice and are left open and BKPL reserve their right under the PPA to proceed against the licensee. This statement of BKPL is not correct and is illegal. But the Hon'ble Court has already decided on the rates which is the UI rates and therefore not "Subjudice", but Resjudicata". Hon'ble High Court while issuing the interim order dated 4-4-2017 has clearly specified that sale if any to KSEBL shall be on UI basis, which mean the rate shall be as per the UI (Unscheduled Interchange) rates. KSEBL cannot and will not purchase the power at a higher rate than UI rate.*
- (ix) BKPL has mentioned in paragraph 3 of their letter to Hon'ble Commission that the stock of naphtha is to be exhausted on or before 1-7-2017. As per clause 9 of the order of Hon'ble High Court, the entire naphtha available at the companies' premises and that available at IOCL would be disposed of before 1-7-2017. This comes to 6879.37MT at BKPL premises and 6000KL at IOCL premises, which corresponds to around 39MU of electricity generation from the storage at their premises and about 24MU from the storage at IOCL premises.*
- (x) It is submitted that KSEBL does not have a requirement of 65MU of BKPL power at this stage i.e. before 1-7-2017, as KSEBL has already tied up its requirement of power in advance for the said period under long term and medium term contracts.*
- (xi) The maximum generation possible from BKPL is 157MW. Even if the plant is run on full load for 24 hours, the generation possible is about 3.75MU/day, which means BKPL will require at least 18 days of continuous generation to dispose the fuel. The injection of power may not be uniform throughout the day, which could increase the number of days required to dispose the full quantum of fuel further. Injection of power on UI basis is also constrained by the minimum load conditions of the state especially with the onset of monsoon and may result in surrender of CGS or LTA availed by KSEBL.*
- (xii) It is further submitted that as already submitted in the preceding paragraphs, there no obligation on the part of KSEBL to absorb*

power from BKPL. As per the order of Hon'ble High Court, if the fuel is not disposed off before 1-7-2017, the Chairman of the Disaster Management Authority, the District Collector would be entitled to take such steps to disposal of the naphtha without even reference to this court.

15. *KSEBL humbly request Hon'ble Commission to kindly consider the facts and submissions made in the preceding paragraphs while issuing orders on the application filed by BKPL.*
16. *Thus it is pleaded that*
 1. *KSEBL may not be enforced to purchase power from BKPL at a rate higher than UI rate ordered by Hon'ble High Court.*
 2. *KSEBL may not be enforced to schedule and absorb power that would result in surrender of already tied up power.*
 3. *KSEBL may not be enforced to purchase more power than that could be generated from reported and existing stock of BKPL.*
 4. *BKPL may be directed to exercise other options ordered by Hon'ble High Court viz*
 - (a) *Selling of power through open access and exchanges to any other party.*
 - (b) *Selling back to any party or transfer to other naphtha consuming industries, the excess naphtha fuel stock with them, and*
 - (c) *KSEBL may be enforced to buy power as last resort only."*

Analysis and Decision of the Commission

3. The Power Purchase Agreement (PPA) dated 03.05.1999 entered into between BKPL and erstwhile KSEB (predecessor in interest of KSEB Ltd) expired on 31.10.2015. As per the clause 15.1 of the PPA, the PPA can be extended further, on a mutually agreed tariff as per clause 7.4 of the PPA taking into account the fuel charges, O&M cost, and a nominal net value of the project. However, BKPL and KSEB Ltd could not arrive a mutually agreed tariff for the extension of the PPA beyond 31.10.2015. BKPL had filed a petition under Section 86(1)(b) of the Electricity Act, 2003, before the Commission on 03.10.2015, for approval of agreement for extension of PPA dated 03.05.1999. After conducting several public hearings, oral and written submissions filed by the stake holders, the Commission vide its order dated 26.10.2016 had dismissed the petition filed by BKPL, on the reason that the petition is not maintainable as per the provisions of the Electricity Act, 2003, the Tariff

Regulations, 2014 notified by the Commission and other relevant regulations and statutes in force.

4. BKPL has filed the Writ Petition W.P. (C) Nos 40257 of 2016-F and 540 of 2017- Nagainst the order of the Commission dated 26.10.2016 and also against the order of the District Collector, Ernakulam (No. D1/97603/2016 dated 29.12.2016). The District Collector, as the Chairman of the District Disaster Management Authority, has expressed serious apprehensions on safety of the storage of about 6500 MT of naphtha, which the petitioner BKPL had procured and stored in their premises for the purpose of generating power.
5. Hon'ble High Court vide the interim order dated 04.04.2017 in Writ Petition W.P.(C) 540/2017, stated that it is more concerned about the stock of naphtha at the premises of the BKPL power plant and about the fuel purchased and kept in the premises of the supplier namely Indian Oil Corporation Limited (IOCL) exclusively for generation of power at BKPL. The directions issued by the Hon'ble High Court in this regard are extracted below.

“

5. This court however is disturbed with the report of the Senior Joint Director of Factories and Boilers that the naphtha storage tanks have valid explosive licence only upto 31.12.2017. There after the storage tanks have to be emptied, cleaned and maintenance if any, has to be carried out, before submitting the storage tanks for inspection. Normally the stock of naphtha available in the premises of the petitioner would be around 6500MT, which is about 58% of the total capacity of the plant. The petitioner cannot, hence continue the storage of naphtha beyond the period as indicated herein, when the explosive licence expires. The maintenance and cleaning of the storage tanks also would require the naphtha to be removed. It is also indicated from the report of the Officers of IOCL that there is no possibility of the stored naphtha in the premises of the petitioner being transmitted back to the IOCL. The IOCL is also storing 6000 KL of naphtha, procured for the purpose of the petitioner's power generation, which is also stored in the premises of the IOCL; which also does not have any other market than disposal by power generation.

6. Considering the fact that the explosive licence of the petitioner will expire on 31.12.2017; despite the opinion of the IOCL as also the KSEB as to the safety of the naphtha stored in the petitioner's premises, one cannot completely ignore the human error, which could lead to a major

disaster. The classification of the petitioner's unit as a MAH Unit and the DCS as also the parameters being available in the PCR all would depend upon human efficiency, which could be compromised by a slight error, causing a disaster as is apprehended by the Disaster Management Authority. For the present, this Court is of the opinion that it is expedient that the naphtha in the petitioner's premises and the premises of the IOCL be used up, in the interest of public safety. This would necessarily require consideration of the larger issue projected of the feasibility of extension of PPA and the sustainability of Ext.P18."

6. Further, regarding the disposal of the naphtha available at the premises of the BKPL and at the IOCL, Hon'ble High Court endorsed the suggestions of KSEB Ltd in this regard. The relevant portion of the judgment of the Hon'ble High Court is extracted below.

"8. The compelling concern of this Court, at present, is the apprehended disaster and this Court is of the opinion that the option submitted by the KSEB has to be put into effect, subject however to further orders passed in the writ petition. The option for disposal of naphtha, as suggested by the KSEB, has been placed on record in the report of the District Collector, which are as follows:

- 1. Generating power on Unscheduled Interchange (UI) basis in co-ordination with the Load Dispatch Centre of KSEBL subject to the approval from KSERC thereby consuming the naphtha stock.*
- 2. M/s BKPL could explore possibilities on generation of power and sale to any one by utilizing the grid of KSEBL as open access is being permitted now.*
- 3. Any other feasible option including transfer to other naphtha consuming industries like nearby FACT availing the service of oil marketers like IOCL.*

9. The petitioner could definitely explore possibilities at option numbers 2 and 3, but however the same would have to be finalised, within a period of one month from today and the disposal of the naphtha as per either of the options started within the said period and concluded within the time herein after stipulated. If the petitioner does not intend to carry out the said options, then they shall generate power on Unscheduled Interchange (UI) basis in co-ordination with the Load Dispatch Centre of KSEBL; subject to approval of KSERC and also subject to further orders to be passed in the writ petition. The

petitioner could definitely approach the KSEB immediately for such generation of power on UI basis. It is made clear that the entire naphtha available at the petitioner Companies premises and that available at IOCL would be disposed of before 01.07.2017. If the same is not so disposed of, then definitely, the Chairman of the Disaster Management Authority, the District Collector would be entitled to take such steps for disposal of the naphtha without even reference to this Court. All issues raised by all parties are left open for consideration in the writ petition. The petitioner Company shall file periodic reports before the District Collector, i.e.; every three weeks as to the stage of disposal of naphtha as directed herein.

7. As per the above judgment of the Hon'ble High Court dated 04.04.2017, the petitioner BKPL has to take the following steps for the disposal of naphtha available at the premises of the BKPL and that available at IOCL, before 01.07.2017.

- (i) The petitioner BKPL could explore the possibilities of disposal of naphtha as suggested by KSEB Ltd as option-2 and Option-3, and the same would be finalized within a period of one month from 04.04.2017. The disposal of naphtha as per the either of the options-2 and 3 started within the said period and concluded within 01.07.2017.

The option-2 and option-3 are extracted below for ready reference.

Option-2. M/s BKPL could explore the possibilities of generation of power and sale to any one by utilizing the grid of KSEB Ltd as open access is being permitted now.

Option-3. Any other feasible option including transfer to other naphtha consuming industries like nearby FACT availing the service of oil marketers like IOCL.

- (ii) If the petitioner BKPL does not intend to carry out the said options, then BKPL shall generate power on Unscheduled Interchange (UI) basis in co-ordination with the Load Despatch Centre of KSEB Ltd; subject to the approval of the KSERC and also subject to further orders to be passed in the writ petition. The petitioner BKPL shall approach the KSEB Ltd immediately for such generation of power on UI basis.

- (iii) The entire naphtha available at the premises of the BKPL and that available at IOCL would be disposed of before 01.07.2017.
 - (iv) If the petitioner BKPL could not dispose the naphtha within the time limit specified by the Hon'ble Court, the Chairman of the Disaster Management Authority, the District Collector should take necessary steps for disposal of naphtha without even reference to the Court.
 - (v) Hon'ble High Court also stated in this regard that, all issues raised by all parties are left open for consideration in the writ petition. BKPL, the petitioner shall file periodic reports before the District Collector, ie: every three weeks to as to the stage of disposal of naphtha as directed herein.
8. The Commission has examined in detail, the application filed by BKPL for the implementation of the interim order of the Hon'ble High Court dated 04.04.2017, in Writ Petition W.P. (C)No. 540/2017, the submissions of KSEB Ltd regarding the disposal of naphtha available at the premise of BKPL and with IOCL. From the facts and records submitted before the Commission, it is noticed that,-
- (i) The total stock of naphtha available premises of the petitioner BKPL is about 6500 MT, and the stock of naphtha available with IOCL for power generation at BKPL is 6000 KL (4450 MT) . The fuel required for generating 1 unit of electricity at BKPL is about 176 gram. Thus, the total electricity can be generated with the fuel stored at the premise of BKPL and at the storage facility at IOCL is about 62 Million Units (MU) of electricity. The installed capacity of the BKPL plant is 157 MW. After accounting the auxiliary consumption etc, the maximum generation possible from BKPL plant is about 3.00 MU/day. Thus, even the plant is operated continuously for 24 hrs per day, about 21 days will take to dispose the entire naphtha stored at the premise of the BKPL and at the storage facility at IOCL.
 - (ii) Hon'ble High Court has directed the petitioner BKPL to explore the possibilities to dispose the naphtha as option-2 and option-3, as stated in the interim order dated 04.04.2017, i.e., (1) the possibilities of generation of power and sale to any one by availing open access facility and, (2) the possibilities of transferring the naphtha to the FACT or other similar naphtha consuming industries. However, BKPL has not submitted any details on the efforts taken for disposal of the naphtha, by exploring the possibilities at the options 2 and 3. Hence it is reasonably concluded that,

the petitioner has not so far explored the possibilities at the options 2 and 3, for the disposal of naphtha as per the interim direction of the Hon'ble High Court.

- (iii) Hon'ble High Court, in its interim order dated 04.04.2017 in Writ Petition W.P (C) 540/2017 had made it clear that, if BKPL does not adopt the options-2 and 3 for the disposal of the naphtha, the BKPL shall generate power on UI basis, subject to the approval of the KSERC .

9. The Commission had, in para 10.3 of the tariff order dated 30.04.2013 for the financial year 2013-14, given the following directive to KSEB Ltd in view of the prohibitive cost of naphtha and of the electricity generated therefrom,-

“10.3 On expiry of the prevailing PPA with liquid fuel based IPPs and such as BSES, KPCL etc., power should not be drawn from these stations under any circumstances, unless the developers convert the stations to LNG or pool sufficient quantum of cheaper power from other sources, so that the pooled tariff is well within the merit order for dispatch. Appropriate advance notice may be issued to such developers within 3 months from the date of issue of this order.”

Accordingly no approval was given for scheduling power from BKPL, though provision was approved for payment of fixed charges as per the PPA. Similarly in the tariff order dated 14.08.2014 for the financial year 2014-15 also no approval was given by the Commission for scheduling power from BKPL. The validity of the said order dated 14.08.2014 has been extended till 16.04.2017. As per the tariff order dated 17.04.2017 for the financial year 2017-18 also, no approval has been granted by the Commission for scheduling power from BKPL. The Commission had also dismissed the application filed by BKPL for granting permission to extend the PPA beyond 31.10.2015, the date of expiry of the original PPA. Therefore after 31.10.2015, there is no approval for scheduling power from BKPL or for payment of fixed charges.

10. Clause (b) of sub-section (1) of Section 86 of the Electricity Act, 2003, states as follows,-

“86. Functions of the State Commission.- (1) The State Commission shall discharge the following functions, namely:-

(b) 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.”

Therefore, approval of the Commission is necessary for scheduling power. The Hon'ble High Court has also, in para 9 of its order dated 04.04.2017, stated that if BKPL does not intend to carry out options 2 and 3, then they shall generate power on unscheduled interchange basis in coordination with load dispatch centre of KSEB Ltd: subject to approval of KSERC and also subject to further orders to be passed in the Writ Petition. The Hon'ble High Court has also given directions to the effect that the entire naphtha available at the petitioners company premises and that available at IOCL should be disposed of before 01.07.2017. It has been further clarified by the Hon'ble High Court that, all the issues raised by all the parties are left open for consideration in the Writ Petition. Therefore, the Commission has to issue only the approval under clause (b) of sub-section (1) of Section 86 of Electricity Act, 2003, in accordance with the directions of the Hon'ble High Court.

11. The Commission has also noted the following facts. The 157 MW power plant of BKPL is an intra-state generating station within the State. KSEB/ KSEB Ltd has been scheduling power from the plant as and when required from the project, on merit order, duly considering the energy and peak demand, energy availability from its on hydel and thermal sources, CGS, traders, generators etc. The validity of the PPA entered into between KSEB and BKPL on 03.05.1999 expired on 31.10.2015. The present direction of the Hon'ble High Court is only to schedule power from plant for the sole purpose of disposal of the naphtha available at the premises of BSES and IOCL through power generation, in view of the probable major accident hazard of storing such huge quantity of inflammable fuel, as expressed by the Hon'ble High Court in public interest.
12. The variable cost of generation of electricity from naphtha is much higher than the energy available from other sources including traders, energy exchanges etc. Any amount incurred by KSEB Ltd for purchase of power from BKPL at an additional cost shall have to be ultimately borne by the 120 lakh consumers of the State. In the tariff order dated 17.04.2017, the Commission has, in table 9.15 in para 9.38, approved the purchase of 1946.98 MU of power by way of short term purchase at a rate of Rs.4.00 per unit. Hence, the Commission here by directs KSEB Ltd to purchase power from BKPL to the extent of 62 MU that can be generated by BKPL from the naphtha available at its premises and at the premises of IOCL, on unscheduled interchange basis as directed by the Hon'ble High Court in its order dated 04/04/2017.

Order of the Commission

In view of the facts, circumstances and statutory provisions explained above, approval under clause (b) of sub-section (1) of Section 86 of the Electricity Act, 2003, is granted in accordance with the directions of the Hon'ble High Court in its order dated 04.04.2017, to the SLDC of KSEB Ltd for scheduling power and to Strategic Business Unit-Distribution of KSEB Ltd for purchasing the power generated on unscheduled interchange basis, from the 6500 MT of naphtha purchased and stored in the premises of BKPL and the 6000 kilo litre of naphtha purchased and stored by BKPL in the premises of IOCL.

This order is being issued only for the purpose of implementing the interim order dated 04.04.2017 of Hon'ble High Court in Writ Petition No.540/2017.

Sd/-
K.Vikraman Nair
Member

Sd/-
S.Venugopal
Member

Sd/-
T.M.Manoharan
Chairman

Approved for issue,

Santhosh Kumar.K.B
Secretary