

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: **Shri. Preman Dinaraj, Chairman**

Petition No. OP 17 /2020

In the matter of : Petition filed by M/s. Kosamattam Finance Limited for the approval of Power Purchase Agreement with KSEBL for 1 MW Wind Energy Generating Unit at Ramakkalmedu, Idukki District.

Petitioner : M/s Kosamattam Finance Limited (KFL)

Respondent : Kerala State Electricity Board Limited.

Petitioner represented by : Shri. George Thomas.

K S E B Ltd. represented by: Shri. K.G.P. Nampoothiri, EE, TRAC.

Daily Order dated 23 .09.2020

1. M/s. Kosamattam Finance Limited (hereinafter referred to as M/s KFL or the petitioner) on 02.06.2020, filed a petition before the Commission for the approval of draft Power Purchase Agreement (PPA) signed with KSEB Ltd for the sale of electricity generated from its 1MW Wind Energy Generating Unit at Ramakkalmedu, Idukki District to KSEB Ltd.

2. The background of the petition is as follows:

(i) M/s Kosamattam Finance Ltd. (hereinafter referred to as the petitioner or M/s KFL), a generating company, has filed a petition before the Commission on 22.05.2018 with following prayers:

(ii) Approve the proposed project specific tariff @ of Rs.6.33 per unit without accelerated depreciation benefits (as worked out and detailed in Annexure III) for the entire duration of the PPA going to be executed in due course for the power to be fed into the grid;

(iii) Approve and allow all power generated from the proposed 1 MWp system to be fed into the grid and pay for by the distribution licensee such as KSEB Ltd operating in the State of Kerala at the approved project specific tariff rate as per point (a) above under the Wind RPO obligations.

(iv) To issue appropriate instructions to the State Transmission Utility (STU) to continue with the running of the plant without break till the PPA is executed. It is also requested that, subsequently, the rate as per PPA may be given with retrospective effect from the date of filing of this petition. In the meanwhile, till the time the project specific tariff is fixed, the Hon'ble Commission may consider paying us Rs.3.90, which is the accepted APPC.

(v) To condone any inadvertent omissions, errors, shortcomings and permit the petitioner to add/change/modify/alter this filing and make further submissions as may be required at a future date; and

(vi) To pass such other and further orders as may be deemed fit and proper according to the facts and circumstances of the case.

(vii) To direct distribution companies in the State to take appropriate steps to facilitate feed-in tariff.

3. The petition was admitted as petition OP No. 11/2018 and after the detailed examination of the petition filed by M/s Kosamattom Finance Limited, and comments of the respondent KSEB Ltd and also duly considering the provisions of the Electricity Act-2003, Tariff Policy 2016, and the Regulations notified by the KSERC and Central Commission, and other relevant documents wherever necessary, the **Commission vide the Order dated 04/12/2019 ordered** the following:

(i) The levelized tariff for the electricity generated from the 1 MW WEG installed by M/s Kosamattom Finance Limited (KFL) at Ramakkalmedu is approved at Rs 4.23 per unit without the benefit of accelerated depreciation and Rs 3.93 per unit, if the benefit of accelerated depreciation is to be availed of.

(ii) The petitioner may enter into PPA with the respondent KSEB Ltd at the tariff of Rs 3.93 per unit. If the petitioner does not intend to avail the benefit of accelerated depreciation, the respondent KSEB Ltd may enter into PPA with the petitioner at Rs 4.23 per unit. The petitioner has to provide an affidavit along with the PPA to the effect that if and when the petitioner avails the benefit of accelerated depreciation, from that year onwards the applicable tariff shall be Rs 3.93/- per unit. The petitioner shall also submit copies of the Income Tax Returns every year to the respondent KSEB Ltd as documentary evidence if they do not claim accelerated depreciation.

(iii) The levelized tariff approved by the Commission is applicable for the entire electricity injected into the grid from the effective date of the PPA mutually agreed by the parties, since there was no understanding between the petitioner and KSEB Ltd to purchase of the power injected during the testing period or afterwards until PPA is executed with KSEB Ltd.

(iv) KSEB Ltd shall reimburse, any tax paid on the RoE, limited to the amount of equity specified in this Order. For claiming the tax, developer shall furnish the proof of payment of such tax to KSEB Ltd.

(v) KSEB Ltd shall make payment for the energy injected into the grid during the testing period at the APPC approved by the Commission for the relevant financial year concerned.

4. In compliance of the direction of the Commission dated 04.12.2019, M/s KFL filed this petition and Commission admitted the same as OP No 17/2020. The petition was heard through video conferencing on 26.06.2020. Shri George Thomas presented the petition on behalf of M/s KFL and Sri. K.G.P. Nampoothiri, Executive Engineer presented the counter arguments on behalf of the respondent KSEB Ltd.

5. The Commission has examined the draft PPA in detail and issued a Daily Order dated 29-06-2020 with directions to amend certain clauses as shown below in the draft PPA:

6. In reply to the said directions, the KSEB Ltd forwarded a letter dated 05-08-2020 containing certain clarifications that out of the suggestions issued by the Commission as per order dated 29-06-20, Clauses 6.8, 6.14 and 10.0 may be retained and Clause No.5 may be amended.

7. The Commission examined the draft PPA and the clarification submitted by the KSEB Ltd in detail and posted the petition for the final hearing on 07-08-2020. During the hearing the following decisions were taken:

1. **Article 5:-** During the hearing, M/s Kosamattam Finance Ltd has agreed to accept the alternative clause proposed by the KSEB Ltd in the draft PPA. Hence the Commission agreed to amend the existing clause as proposed by the KSEB Ltd as shown below:

“All charges incurred in respect of the evacuation of power from the generating unit up to STU’s substation shall be borne by the Developer. The STU shall provide transmission/ wheeling facilities for evacuation of power from the nearest STU substation.”

2. **Article 6.8:-** The Commission explained the difficulties in retaining the Original Clause. The Commission cannot agree to divert the electricity to a third party which is against the contractual term. To avoid such a possibility the Commission suggested framing an alternative clause. The KSEB Ltd and M/S Kosamattam FL

agreed with the suggestion. Hence the said clause is hereby modified as shown below:

“Article 6.8:- KSEB Ltd shall absorb the entire quantum of power generated from the project of the Developer as per the terms and conditions of this PPA. However, if KSEB Ltd is not in a position to absorb the entire quantum of power generated from the project of the Developer due to reasons beyond their control viz., force majeure events under Article-9 or instructions of State Load Despatch Centre, KSEB Ltd shall inform the same to the Developer in writing and during such time KSEB Ltd shall provide open access facility to the Developer to transmit the power through its network, subject to the Regulations issued by KSERC / CERC in the case of out of State Sale as the case may be, as amended from time to time”.

3. **Article 6.14:-**The Commission agreed to retain the existing clause in Article 6.14 contained in the draft PPA as suggested by KSEB Ltd.

4. **Article 10.00:-** The Commission opposed the suggestion to retain the existing Clause in Article 10 since the proposed Electricity (Amendment) Act, 2003 is yet to be passed by Parliament. Moreover, change in law would affect all existing agreements in accordance with the amended provisions unless suitable saving clause is included in the amended act. Hence the modification suggested by the Commission is hereby confirmed. KSEB Ltd agreed to the said direction.

8. But before issuing final Orders, M/S KFL has forwarded a letter dated, 17-08-2020 submitting that the KFL required 200 KVA power for their Office at Kottayam and that they are willing to obtain necessary documentations and other approvals from the respective Offices in this regard. It was requested to the Commission to direct KSEB Ltd to include the above subject as a clause in the PPA before its finalization.

9. The Commission as per letter dated 21-08-2020 has forwarded a copy of the letter dated 17-08-2020 to KSEB Ltd to offer their comments therein before 07-09-2020. But due to delay in getting the response from KSEB Ltd, the Commission again posted the case for hearing on 23-09-2020.

10. KSEB Ltd as per letter dated 22-09-2020 has submitted the following before the Commission for consideration:

1. ANERT is the nodal agency of the Government of Kerala for granting IPP/CPP category for wind projects in the State of Kerala. As per the proceedings of ANERT dated 04-12-2013, technical approval has been accorded for the project on IPP mode. To consider any change in status views of the GoK has to

be obtained. Further, while executing connection agreement with KSEBLtd on 26-12-2017, the petitioner had specified the project as IPP.

2. Further, in case the petitioner wishes to operate the plant on captive basis it has to meet the requirements as per Electricity Rules, 2005, which interalia specifies the equity holding and minimum level of self consumption (51%).
3. The petitioner had agreed mutually on the terms and conditions of the PPA and KSEB Ltd has initialed the draft PPA with the petitioner, M/s KFL for procurement of 1 MW wind power, i.e. entire energy generated from the project considering it as an Independent Power Producer. As per clause 3 of the PPA, the contracted power is 1 MW for sale to KSEB Ltd. In case the petitioner requires any change in the already agreed terms of the contract, the petitioner has to approach KSEB Ltd first.

11. During the e-hearing on 23-09-2020, the Commission has sought the comments of M/s KFL and clarification from KSEB Ltd in the matter of reduction of contracted power from 1 MW to 800 KWA and explained the situation leading to the present hearing and sought to know whether there any enabling provision in the Act or Rules whereby ANERT can grant technical approval in IPP mode. This may please be clarified by KSEB Ltd. The Commission observed that the issues raised by the KSEB Ltd have to be examined in the light of the verdicts of the Hon'ble Courts and keeping in view of the legal provisions contained in the Act and Rules. The Commission agreed with the point raised by the KSEB Ltd that in case the petitioner requires any changes in the terms of the initialed PPA, the petitioner has to approach KSEB Ltd first. KFL agreed to the suggestion and expressed their willingness to approach KSEB Ltd with their plea so as to arrive at a decision in the matter through mutual discussion or through video conference.

Under the above mentioned circumstances, the Commission hereby direct the petitioner and the respondent to inform the Commission the result of the proposed discussion and the decision taken therein with clarification on the point raised by the Commission not later than 09-10-2020 itself so as to enable the Commission to take a final decision.

Sd/-

**Preman Dinaraj
Chairman**

Approved for Issue,

Secretary