

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present : Shri. Preman Dinaraj, Chairman
Adv. A.J Wilson, Member (Law)

OP No 24/2021

In the matter of : Petition for Approval of Tariff for ANERT 2MW
Kuzhalmannam Solar PV project.

Petitioner : Agency for New and Renewable Energy Research
and Technology (ANERT)

.ANERT represented by : Sri. Ajith Gopi, Joint Chief Technical Manager
Sri. Valsaraj P, Scientist F

Respondent : Kerala State Electricity Board Ltd.

KSEB Ltd represented by : Sri. KGP Nampoothiri, Executive Engineer
Smt. Latha S.V, Asst. Executive Engineer

First hearing : 15.06.2021
Second hearing : 24.08.2021

DailyOrder dated 28.08.2021

1. ANERT filed a petition before the Commission on 23.03.2021, with the request to approve the generic tariff rate of Rs 7.04/unit for the electricity generated from its 2 MW Solar PV projects established at Kuzhalmannam, Palakkad District, before the Commission with the following payers.
 - (a) *Determine the tariff for generation and sale of electricity by the petitioner ANERT to the KSEB Ltd taking into account Government direction as per the letter No. 8198/PS2/ 2015/PD dated 07.12.2015, in the generic tariff vide KSERC Notification No. 442/CT/2015/KSERC dated 11.11.2015.*
 - (b) *Pass such further Order to orders as the Commission may deem just and proper in the circumstance of the case.*
2. The Commission admitted the petition as OP 24/2021. First hearing of the petition was held on 15.06.2021 through video conference. The first hearing was mainly dealt with the determination of tariff and related matters. However, on examining the draft initialed PPA, it is observed that, many of the clauses of the initialed PPA is not inline with the bidding guidelines notified by MoP/MNRE Gol for the procurement of Solar Power through competitive bidding route as per the Section 63 of the Electricity Act, 2003. Hence the Commission decided to conduct the second hearing on 24.08.2021 with emphasis on the approval of PPA.

3. Second hearing was conducted, as scheduled on 24.08.2021. Sri. Ajith Gopi, appeared before the Commission on behalf of the petitioner and Sri. K.G.P Nampoothiri, appeared on behalf of the respondent KSEBLtd. Summary of the deliberations during the hearing is given below.

(1) At the outset, the Commission invited the attention of the parties to the initialled PPA that, the various articles and clauses of the initialled PPA was not in line with the bidding guidelines notified by MoP/MNRE GoI for the procurement of Solar Power through competitive bidding route as per the Section 63 of the Electricity Act, 2003. The Commission also noted that, proper legal scrutiny and vetting was also not done on the initialled PPA submitted before the Commission.

(2) The Commission also discussed the following major observations on some of the articles of the initialled PPA.

(i) **Definition 1(xxvii) Force Majeure.**

The Commission suggested to modify the definition of Force Majeure as defined in the bidding guidelines notified by MNRE GoI for the procurement of Solar Power through competitive bidding route as per the Section 63 of the Electricity Act, 2003.

(ii) **Clause 2.0: effective date and term of the agreement :**

Since the plant already declared COD, the Commission suggested to specify the date of CoD for specifying the terms of the agreement explicitly to avoid ambiguity in future.

(iii) **Clause 3.3 Capacity Utilisation Factor.**

Clause 3.3 the PPA, linked the compensation payable by ANERT in the event of shortfall in CUF with the compensation payable by KSEBLtd towards non-fulfilment of RPO as ordered by this Commission. The relevant clause is extracted below.

“.... In case the delivered energy is less than the energy corresponding to the minimum CUF specified, i.e, 14%, the ANERT shall pay KSEBLtd for the actual shortfall in terms of units on pro-rata basis, if KSERC imposes such penalty on KSEBLtd for shortfall in RPO compliance for the concerned period for the contracted capacity.”

The Commission is of the considered view that, specifying the compensation to the shortfall in CUF linked to the compensation payable by KSEB Ltd towards non-meeting of RPOs will definitely lead to unnecessary disputes between the parties. Hence the Commission suggested to modify this clause suitably through mutual discussion between the parties.

(iv) **Clause 6.1 provides the following regarding scheduling.**

“....The power from the plant will be scheduled as per KSERC Regulations. In the absence of KSERC Regulations, CERC Regulations regarding forecast and scheduling shall be followed”.

In this matter, attention is invited to the Regulation 38 of the KSERC (Renewable Energy & Net Metering) Regulations, 2020, which is extracted below.

“38. “Principles for the dispatch for Electricity Generated from Renewable Energy Sources.-

(1) All the renewable energy power plants, unless and otherwise exempted, shall be treated as ‘MUST RUN’ power plants and shall not be subjected to ‘Merit order Dispatch’ principles.

(2) Scheduling of Renewable Energy plants shall be governed by KSERC (Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulations, 2019 and its amendments from time to time.”

The parties are directed to modify the Clause 6.1 of the draft initialled PSA duly incorporating the above provisions of the KSERC (Renewable Energy & Net Metering) Regulations, 2020.

- (v) **Clause 7.7 interest for delay in payment:** the interest rate for belated payment is linked to MCLR/FBIL. The MCLR is no more relevant now, hence the term ‘MCLR’ is to be deleted to avoid disputes in future. Instead FBIL is to be included.
- (vi) Clause 9.0 settlement of disputes: As per the Section 86 (1)(f) of the Electricity Act, 2003, KSERC is the Appropriate Commission empowered for dispute resolution between the Generating Companies and distribution licensees located within the State of Kerala. **Hence, the words “the same shall be dealt as per Electricity Act, 2003” shall be replaced with “the parties shall approach Kerala State Electricity Regulatory Commission for resolving the same”.**
- (vii) Clause 12.1 Termination on account of reasons other than Force Majeure conditions.

This clause provides freedom to the parties for gaming. The Commission is of the considered view that, approval of the Commission is required for termination of the PPA prior to completion of the term of the Agreement. Hence, in the case of termination, the affected party shall file a proper petition before this Commission seeking termination of the PPA with reasons thereof for effecting the termination. This clause is to be suitably modified accordingly.

- (viii) Clause 14.8 modification of PPA:
The Clause gives freedom to the parties to the Agreement to modify the clauses of this Agreement through mutual discussions and without the consent of intervention of KSERC. As per Section 86(1)(b) of the Electricity Act, 2003, the State Commission shall “regulate electricity purchase and procurement process of the distribution licensees including the price at which electricity shall be procured from the generating companies.....”.

Since this PPA is being approved by this Commission, any modifications in the Agreement shall also be done only with the prior approval of this Commission and shall come into effect only from the date of approval for such modifications by this Commission.

This clause is to be modified accordingly.

- (ix) The Commission, also directs that the parties to the Agreement to re-examine and modify the other clauses of the PPA duly considering the Competitive Bidding guidelines and its amendments notified by the Central Government for the procurement of Solar Power through competitive bidding route as per the Section 63 of the Electricity Act, 2003.
- (3) KSEB Ltd agreed to modify the initialled PPA through discussion with ANERT, duly considering the observation of the Commission and incorporating the various provisions in the Competitive Bidding guidelines and its amendments notified by the Central Government for the procurement of Solar Power through competitive bidding route as per the Section 63 of the Electricity Act, 2003. After legal vetting, KSEBLtd shall forward the copy to ANERT for initialling the PPA. ANERT also agreed for the same.

The parties requested for three weeks time to finalise the process.

5. Based on the deliberations during the hearing, the Commission hereby directs the petitioner ANERT and respondent KSEB Ltd the following.
- (1) M/s ANERT and KSEB Ltd, may modify the various clauses of the initialled PPA duly considering the following.
- (i) Observation of the Commission as detailed under paragraph 3(2) above.
- (ii) Duly incorporating the provisions in the competitive Bidding guidelines and its amendments notified by the Central Government for the procurement of Solar Power through competitive bidding route as per the Section 63 of the Electricity Act, 2003.
- (2) ANERT shall submit the initialled PPA on or before 24.09.2021.

Sd/-
Adv A J Wilson
Member (Law)

Sd/-
Preman Dinaraj
Chairman

Approved for issue

C R Satheeshchandran
Secretary (i/c)