

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: Shri. Preman Dinaraj, Chairman
Shri. S. Venugopal, Member

In the matter of : Petition filed by KSEB Ltd seeking review of Suo-motu proceedings dated 11.11.2019 in the matter of Generation Based Incentive (GBI) for Off Grid Captive Solar Power Plant

Petitioner : Kerala State Electricity Board Ltd (KSEB Ltd)

KSEB Ltd represented by : Sri. K G P Nampoothiri, EE
Sri. Sangeetha. S, EE
Smt. Latha S.V, AEE
Smt. Meena AEE

Order dated 24.04.2020

1. Kerala State Electricity Board Ltd (hereinafter referred as **KSEB Ltd**, or the **Petitioner**) on 26.12.2019 filed a review petition against the order of the Commission dated 11.11.2019 on 'extending the validity of the order of the Commission dated 30.09.2014' for a further period of 2 years from 01.10.2019.
2. The summary of the issues raised by the KSEB Ltd., is given below:
 - (i) The Commission vide order dated 30.09.2014 in the matter of "Suo-motu proceedings in the matter of Generation Based Incentive (GBI) for Off Grid Captive Solar Power Plants", ordered the following.
 - "(1) *All licensees shall provide generation based incentive (GBI) at the rate of Rs. 1.00/unit for a period of five years from 30.09.2014 OR till KSEB Ltd meet its solar RPO for any year by purchasing solar energy or producing solar energy by its initiatives whichever is earlier.*
 - (2) *The energy for which incentive paid by the licensee to the consumer shall be accounted towards the solar renewable power purchase obligation of each licensee."*

The said order was issued on suo-motu basis after completing all the procedures and formalities as per the regulation 23 of KSERC Conduct of Business Regulations, 2003.

- (ii) KSEB Ltd had complied with order of the Commission, and had been granting GBI from the year 2015-16 onwards. As per the order of the Commission, GBI had to be granted for a period of 5 years from 30.09.2014 or till KSEB Ltd., meets its solar RPO for any year, whichever is earlier. The period of 5 years from date of order has expired on 30.09.2019. The Commission vide order dated 11.11.2019 has extended the validity of the previous order dated 30.09.2014 for a further period of 2 years from 01.10.2019, on suo-motu basis.
- (iii) KSEB Ltd further submitted that, the order dated 11.11.2019 was issued without the consultation of the stakeholders and without following due process as per KSERC Conduct of Business Regulations, 2003. When the Commission initiated suo-motu proceedings, it shall be as per the Regulation 23 of the KSERC (Conduct of Business) Regulations, 2003, which is extracted below.

“23. Suo motu proceedings.-

(1) When the Commission initiates the proceedings suo motu, it shall be by a notice of inquiry (hereinafter referred to as the "Notice of Inquiry") issued by the Office of the Commission.

(2) While issuing the Notice of Inquiry, the Commission may pass such orders and directions as may be deemed necessary for service of notices to the affected or interested parties and for the filing of replies and rejoinders in support or in opposition of the case in such form as the Commission may direct.

(3) The Commission may, if it considers appropriate, issue orders for publication of the Notice of Inquiry inviting comments from the public or any class of persons on the issue involved in the proceedings in such form as the Commission may direct in such order. (4) While issuing the Notice of Inquiry, the Commission may, in suo motu proceedings and other appropriate cases, designate an officer of the Commission or any other person whom the commission considers appropriate to present the matter in the capacity of a petitioner in the case.”

In the instant case, while extending the GBI scheme for a further period of 2 years from 01.10.2019 vide the order dated 11.11.2019, the Commission had not followed the procedures stipulated under Regulation 23 of KSERC Conduct of Business Regulations, 2003.

Hence KSEB submitted that order dated 11.11.2019 is bad in law on the face of records and therefore the instant petition is filed for review of the said order.

- 3. The Commission conducted admissibility hearing of the petition on 28.02.2019 at the Court Hall of the Commission, Thiruvananthapuram. Smt. Latha S.V, presented the petition on behalf of the petitioner KSEB Ltd. During the hearing, KSEB Ltd., clarified that it could not achieve the solar RPO target fixed by the

Commission. However, the petitioner has been taking many initiatives for meeting the solar RPO target fixed by the Commission in the upcoming years.

KSEB Ltd, on a query of Commission submitted that, they are aware of the present Solar REC clearing price at the power exchanges, which is about Rs.2/kWh.

Analysis and Decision

4. The Commission examined in detail the petition filed by KSEB Ltd on 26.12.2019, as per the provisions of the Electricity Act, 2003, KSERC (Renewable Energy and Net metering) Regulations, 2020, and as per other relevant Regulations and rules in force.
5. The basic issue raised by the petitioner KSEB Ltd in the instant review petition dated 26.12.2019 is that, the Commission issued the order dated 11.11.2019, on extending the validity of the original order dated 30.09.2014 in the matter of 'Suo-motu proceedings in the matter of Generation Based Incentive (GBI) for Off Grid Captive Solar Plants', without consultation with the stakeholders and without following the due process as per the KSERC (Conduct of Business) Regulations, 2003.
6. The Commission examined the issue raised by the KSEB Ltd in detail and noted the following.
 - (1) The Commission in exercise of the powers conferred on it as per the Section 86 (1) (e) of the Electricity Act, 2003, and for promoting solar generation from Off Grid Captive Solar Power Plant, ordered the following vide the order dated 30.09.2014.

“(1) All licensees shall provide generation based incentive (GBI) at the rate of Rs. 1.00/unit for a period of five years from 30.09.2014 OR till KSEB Ltd meet its solar RPO for any year by purchasing solar energy or producing solar energy by its initiatives whichever is earlier.

(2) The energy for which incentive paid by the licensee to the consumer shall be accounted towards the solar renewable power purchase obligation of each licensee.”
 - (2) The validity of the said Order was expired on 30.11.2019. Since M/s KSEB Ltd could not meet its Solar RPO as per the said order, and to promote 'off grid solar power plants', the Commission vide Order dated 11.11.2019, ordered to extend the validity of the Commission's Order dated 30.09.2014, 'Suo-motu proceedings in the matter of Generation Based Incentive (GBI) for Off Grid Captive Solar Power Plants' for a further

period of two years from 01.10.2019.’ The Commission in the said Order has clearly explained the reasons for extending the original Order dated 30.09.2014, which is extracted below for ready reference.

“1. As per the order of the Commission dated 30.09.2014, the GBI is applicable only for five years from 30.09.2014 Or till KSEB Ltd meet its solar RPO either by purchase or by producing solar energy by its initiatives. As per the records available, KSEB Ltd is yet to meet its ‘Solar RPO’. The present GBI scheme expired on 30.09.2019.

2. As per the details available before the Commission, KSEB Ltd has been taking following initiatives for meeting its Solar RPO;

- (i) 500 MW through its SOURA scheme.*
- (ii) 200 MW solar power through competitive bidding route*
- (iii) 92 MW floating solar power from NTPC.*

However, it may take another two years for solar energy from the above projects to flow into the grid as planned by KSEB Ltd.

3. Considering the shortfall in meeting the solar RPO by KSEB Ltd, Commission feels that, the off grid solar generation also has to be promoted by providing suitable incentives.

4. The Commission, therefore extends the validity of the order of the Commission dated 30.9.2019 in the matter of ‘Suo motu proceedings in the Matter of Generation Based Incentive (GBI) for Off Grid Captive Solar Power Plants’ for a further period of 2 years form 1.10.2019.”

While extending the Order, the Commission has also appraised the fact that, providing GBI@ Rs 1.00 per unit and accounting such energy towards the Solar RPO is more beneficial than purchasing Solar REC from the power exchanges, the average price of solar REC traded in the exchange during the year 2019 is @Rs 2.07/unit.

The Commission further noticed that, a distribution licensee may purchase REC only as a last resort to fulfil the RPO, when all other options are exhausted. Providing incentive to off grid solar plants will encourage the increase in solar production benefitting the State as well as KSEB Ltd.

- (3) The Commission’s Order dated 11.11.2019 is only for extending the validity of the original Order dated 30.09.2014. The circumstances necessitated for extending the original Order 30.09.2014 is also explained in detail in the said Order of extension.

However, KSEB Ltd has misconstrued that the order of the extension dated 11.11.2019, as a separate suo-motu proceedings and mentioned in the petition that said Order is issued without stake holders consultation

and without following the due process as per as per the KSERC (Conduct of Business) Regulations, 2003.

7. Further, Regulation 73 of the KSERC (Conduct of Business) Regulations, 2003 provides that ,

“73. Extension of abridgement of time prescribed.-

Subject to the provisions of the Act, the time prescribed by these Regulations or by order of the Commission for doing any act may be extended (whether it has already expired or not) or abridged, for sufficient reason, by order of the Commission.”

As such, the Commission has ample powers to extend the validity of an order issued by this Commission.

8. However, in view of the issues raised by KSEB Ltd, the Commission has decided to admit the petition filed by KSEB Ltd dated 26.12.2019, and re-examine in to the matter of providing ‘Generation Based Incentive (GBI) for Off-Grid Captive Solar Power Plants w.e.f 01.10.2019 by invoking the review jurisdiction conferred on it under Section 94 of the Electricity Act, 2003.
9. In order to take an appropriate decision on the issues raised by KSEB Ltd, it shall within two months from the date of this order, submit a detailed proposal on providing Generation Based Incentive (GBI) for Off Grid Captive Solar Power Plants with effect from 01.10.2019. The proposal of KSEB Ltd shall invariably contain the following particulars, since the year 2014-15.
- (1) Year wise details of the Solar RPO target in (%) and in Million Units (MUs) specified by the Commission.
 - (2) Year wise details of the Solar RPO target met by KSEB Ltd.
 - (3) Year wise details of the GBI paid to the Off Grid Captive Solar Power Plants, and units accounted towards Solar RPO.
 - (4) Specific proposals for meeting the Solar RPO for the years 2020-21 and 2021-22, and thereafter.

The Commission may take an appropriate decision on providing Generation Based Incentive (GBI) to Off Grid Captive Solar Power Plants with effect from 01.10.2019, thereafter. Till the Commission take a decision on the subject matter, it is decided to defer the implementation of the Commission’s Order dated 11.11.2019, extending the validity of the Commission’s Order dated 30.09.2014 in the matter of ‘Suo-motu proceedings in the matter of Generation Based Incentive (GBI) for Off Grid Captive Solar Power Plants’ for a further period of two years from 01.10.2019.’

Order of the Commission

10. The Commission after examining the maintainability of the review petition dated 26.12.2019 filed by KSEB Ltd, as per the provisions of the Electricity Act, 2003 and KSERC (Conduct of Business) Regulations, 2003, hereby orders the following.
- (1) Admit the petition filed by KSEB Ltd.
 - (2) KSEB Ltd shall, within two months from the date of this order, submit detailed proposal on providing Generation Based Incentive (GBI) for Off Grid Captive Solar Power Plants with effect from 01.10.2019, as per the paragraph 9 above.
 - (3) Till the Commission take a decision on the review petition filed by KSEB Ltd, the Commission ordered to defer the implementation of the order of the Commission dated 11.11.2019.

Sd/-

**S.Venugopal
Member**

Sd/-

**Preman Dinaraj
Chairman**

Approved for issue

C.R Satheesh Chandran

Administrative Officer

(In Charge of Secretary)