

Kerala State Electricity Regulatory Commission
Thiruvananthapuram

Present : Shri Preman Dinaraj, Chairman
Shri K.Vikraman Nair, Member
Shri S.Venugopal, Member

OP 2/ 2018

In the matter of : Petition filed by M/s Anakkampoil Power Private Limited under Section 86 (1) (e) of Electricity Act 2003 read with Kerala State Electricity Regulatory Commission (Power Procurement from Renewable Sources by Distribution Licensee) Regulations, 2013

Petitioner: M/s Anakkampoil Power Private Limited

Respondent: 1. KSEB Ltd, Thiruvananthapuram
2. Energy Management Centre, Trivandrum.

Petitioner represented by: Smt. Rhea Luthra, Advocate
Sri. Tanmay Das, Director
Sri Santhosh Kumar, Manager
Sri Anand Sankar, Engineer

Respondent represented by: Sri. Bipin Sankar, Dy CE, KSEB Ltd
Sri. K G P Nampoothiri, EE, KSEB Ltd
Smt.Latha S V, AEE. KSEB Ltd

Order dated 20.07.2018

1. M/s Anakampoil Power Private Ltd (herein after referred to as the petitioner or M/s APPL) has filed a petition before the Commission on 09.11.2017 with the following prayers:
 - (a) *Direct the KSEBL to forthwith execute the PPA with the Petitioner in terms of the RFP and the bidding documents;*
 - (b) *Direct KSEBL to construct and ensure completion of the evacuation facilities from the project switchyard of the Petitioner by April, 2018 to ensure that the Petitioner is in a position to generate and supply electricity from the SHP without any delay.*
 - (c) *Determine the generic tariff for the projects to be commissioned in the financial years 2017-18 and 2018-19; and*
 - (d) *Pass such further order(s) as deemed appropriate on the facts and circumstances of the case.*

2. The summary of the issues raised by the petitioner is extracted below.
 - (i) The petitioner is a generating company is in the process of construction of an 8 MW small hydro generating station in Kozhikode (Chaliyar basin).
 - (ii) The State Government in the year 2013 had invited proposal for development of 62 small hydro projects (SHP) on Build, Own, Operate and Transfer (BOOT) basis for 30 years from the date of allotment of the project. The RFP and the model power purchase agreement to be signed with KSEB Ltd was also circulated.
 - (iii) The petitioner was successful in the bid and the State Government allotted the 6.75 MW Anakampoil small hydro project to them under the IPP category on BOOT basis, vide the allotment letter dated 29.07.2014.
 - (iv) Subsequently on 16.01.2015, the implementation agreement was signed between the petitioner and GoK as envisaged in the bidding documents.
 - (v) Further, the State Government vide the G.O dated 25.03.2015 approved the Techno Economic Feasibility Report submitted by the Petitioner and enhanced the capacity of the Project to 8 MW.
 - (vi) The petitioner paid Rs.187.2 lakh (@ Rs.23.4 lakh per MW) to the State Government as premium for allotting the project.
 - (vii) The petitioner completed the financial closure for the project, wherein the lender Power Finance Corporation (PFC) sanctioned Rs 44.10 crore as term loan to part finance the estimated project cost of Rs.63 crore.
 - (viii) The project is expected to be completed and commissioned by 31st July 2018. The petitioner has been regularly following up with KSEBL for execution of the PPA but no action is taken in this regard till date.
 - (ix) The tariff applicable for the sale of electricity by the petitioner to KSEBL is the generic tariff as determined by the Commission, which does not take into account the capital cost of the evacuation facilities. Furthermore, the aspect of cost of evacuation infrastructure up to interconnection point is to be included in the capital cost of the project. Therefore, the construction of the evacuation arrangements from the project site to the grid is the responsibility of KSEBL. The petitioner further submitted that the entire evacuation infrastructure has to be in place by April 2018 and further disbursement of fund is subject to the evacuation arrangement and the execution of PPA.
3. The Commission admitted the petition as OP 2/2018 and forwarded a copy of the petition to KSEB Ltd for their comments.
4. KSEBL vide letter dated 09.02.2018 submitted the following.

- (i) Anankampoil SHP (8 MW) in Kozhikode district was allotted to the petitioner on 29.07.2014 on BOOT basis by GoK in pursuance of the Kerala Small Hydro Policy 2012, for a period of 30 years from the date of the execution of the implementation agreement with the State government. The implementation agreement was signed with the State Government on 16.01.2015.
 - (ii) As per the decision of the State Government in the meeting convened by Hon'ble Chief Minister on 01.07.2017, KSEB Ltd decided to enter into PPA for purchasing power from the project at the project specific tariff fixed by KSERC or generic tariff, whichever is lower.
 - (iii) Existing Regulations do not provide for generic tariff for SHPs having capacity above 5MW, the petitioner will have to apply for project specific tariff with all details.
 - (iv) As per the paragraph 15 of the Kerala Small Hydro Policy 2012, it is the responsibility of the petitioner to construct the transmission facilities upto the inter-connection point through STU/KSEB as deposit work. Any modification/ upgradation of the substation of the KSEB and line strengthening beyond inter connection point shall be carried out by KSEB at the cost of the developer and can be considered towards the project cost.
 - (v) As per the clause 5.4(b) of the implementation agreement signed by the petitioner with the GoK, the transmission facilities upto the interconnection point shall be constructed by the developer as its own or through Board as deposit work at the cost and responsibility of the developer. Any modification/ upgradation of substation of the Board, which draws power from the project, shall be carried out solely by Board as deposit work at the cost of the company.
 - (vi) As per the Regulation 6(6) of the KSERC (Connectivity and Intrastate Open Access) Regulations, 2013 also, the cost of construction/installation of dedicated line or augmentation of the transmission or distribution system and associated facilities shall be borne by the petitioner. KSEB Ltd has not signed any PPA or agreement with the petitioner. The developer has the responsibility of constructing the dedicated line to the grid of KSEB Ltd at their own cost and KSEB Ltd as the STU is mandated only to provide connectivity as per the eligibility criteria specified in KSERC (Connectivity and Open Access) Regulations, 2013.
5. The Commission conducted the hearing on 12.2.2018 at the Court Hall of the Commission. When the matter came before the Commission for hearing, the advocate, appearing on behalf of the petitioner could not produce the 'vakalathnama'. As per the Regulation 30 of the KSERC (Conduct of Business) Regulation, 2003, 'an advocate (legal practitioner) appearing and acting in the proceedings on behalf of any person before the Commission

shall file a 'vakalathnama' duly executed by the person for whom he/she appears. Hence the Commission decided to adjourn the matter.

6. The petitioner vide the letter dated 26.02.2018 has filed the rejoinder to the remarks of the KSEB Ltd. The summary of the issues raised by the developer in the rejoinder is given below.
 - (i) There is no restriction in the KSERC (Renewable Energy) Regulations, 2015 for providing generic tariff for hydro projects having installed capacity above 5MW.
 - (ii) The draft PPA circulated in the bidding process was the PPA entered by the respondent KSEB Ltd with another SHP developer M/s Viyyat Power Private Ltd. It is not open to the respondent to discriminate between different small hydro project developers on the terms of the PPA.
 - (iii) The construction of the transmission line or the evacuation arrangement from the Petitioner's project site to the grid/sub-station is the responsibility of the Respondent.
 - (iv) The cost of the construction of the line is in any event to be a capital expenditure. If generator constructs the evacuation facilities, even for thermal generators the cost is covered as part of generation tariff. In case where the licensee builds the line, the servicing of the capital cost is allowed in the revenue requirements.
7. The petitioner vide the letter dated 09.03.2018 requested before the Commission for the urgent listing of the petition for hearing and the Commission scheduled the hearing at the court hall of the Commission on 10.04.2018. Adv. Rhea Luthra presented the petition on behalf of the petitioner.
8. The summary of the issues raised by the petitioner during the hearing is extracted below.
 - (i) The State Government had allotted the project to the petitioner as an IPP and as per the RFP documents the petitioner has to sign PPA with the KSEB Ltd. The project is expected to be commissioned by July 2018, however there was no initiative from KSEB Ltd to sign the PPA. However, now KSEB Ltd agreed to execute the PPA with the condition that, the tariff will be the project specific tariff to be determined by the Commission. It is the prerogative of the Commission to determine generic tariff or project specific tariff, and the petitioner has no difficulty in submitting the details, as required for determination of project specific tariff if necessary.
 - (ii) The argument of the KSEB Ltd that the cost of transmission line is to be borne by the developer is not correct. The evacuation facility

beyond delivery point, which is at gantry of the project, is to be developed by KSEB Ltd.

- (iii) The generic tariff determined by the Commission does not include cost of evacuation facilities. As per CERC regulations also, the cost of evacuation facilities upto interconnection only is included in the capital cost and concerned licensees are responsible for evacuation beyond interconnection point.
 - (iv) Sri. Tanmay Das, Director, M/s Anakampoil Power (P) Limited submitted that KSEB Ltd has demanded about Rs 6.00 crore as the proportionate cost of evacuation for the project and this will be added to project cost and ultimately reflected in the tariff. Also, the cost of evacuation varies from project to project across the State. The loan for the project is taken from PFC @ 12% interest and the petitioner has achieved financial closure.
9. Sri Bipin Sankar, Dy. Chief Engineer, on behalf KSEB Ltd submitted the following.
- (i) KSEB Ltd decided to purchase power from the Anakampoil SHP with the approval of the Commission.
 - (ii) As per the Small Hydro Power Policy, 2012 and also as per the Implementation Agreement signed by the petitioner with the State Government, the cost of evacuation facilities are to be borne by the developer.
 - (iii) KSEB Ltd has taken steps to construct evacuation facilities for the various SHPs developing at Chaliar basin and decided to share the cost among the developers on proportional basis. If there is any delay in completion of the evacuation facilities, the petitioner may be allowed connectivity and power can be injected to the grid through temporary arrangement.
 - (iv) KSEB Ltd has not appraised the draft PPA circulated along with the bid documents to the petitioner.
10. There was no representation from the second respondent, Energy Management Centre, Thiruvananthapuram.
11. The petitioner vide the submission dated 20.04.2018, has submitted the following additional points before the Commission for consideration.
- (i) The respondent KSEB Ltd demanded Rs 5.1393 crore from the petitioner, as proportionate cost of the evacuation facilities for the SHPs developing in the Chaliar basin.

- (ii) The petitioner vide the letter dated 13.04.2018, informed KSEB Ltd that, it shall bear only the cost of construction of evacuation for 7.5 km, 33 kV transmission line from the power house to the 33kV substation at Thaliparamba, since the cost of the above evacuation scheme only is included in the project cost as per the TEFRR approved by the Government of Kerala and in the detailed estimate of the project, based on which bid premium offered by the petitioner to the State Government.

Analysis and Decision of the Commission

12. The Commission has examined in detail the petition filed by M/s Anakampoil Power Private Ltd, the remarks of the respondent KSEB Ltd and other documents and details placed before it. The petitioner had placed copies of the Kerala Small Hydro Policy 2012, and the Implementation Agreement signed by the petitioner with the State Government, along with the petition.
13. The State Government, in pursuance of the provisions of the Kerala Small Hydro Policy 2012 had awarded the Anakampoil Small Hydro Project to the petitioner under IPP category to Build, Own, Operate and Transfer (BOOT) for thirty years from the date of allotment on 29.07.2014. Subsequently the petitioner had entered into the implementation agreement with the State Government on 16.01.2015.
14. The project is now under development and is expected to be commissioned by July 2018. As per the provisions of the Kerala Small Hydro Policy, 2012, the first right of purchase of power from the project is vested with KSEB Ltd at the tariff and other terms and conditions set forth by the Kerala State Electricity Regulatory Commission.
15. In the above background, the Commission has examined the prayers of the petitioner one by one.
16. The first prayer of the petitioner is to direct the KSEB Ltd to execute the PPA with the petitioner in terms of the RFP and the bidding documents.
Analysis
KSEB Ltd, vide the letter dated 09.02.2018 and also during the hearing held on 10.04.2018 submitted that, they had decided to purchase the entire electricity generated from the project and to enter into PPA with the petitioner. Hence the first prayer of the petitioner become infructuous now.
17. The second prayer of the petitioner is to direct KSEB Ltd to construct and ensure completion of the evacuation facilities from the project switchyard of the petitioner by April 2018 at the cost of KSEB Ltd.

Analysis

The Commission has examined the prayer of the petitioner with reference to the provisions of the Kerala Small Hydro Policy 2012 and Implementation Agreement signed by the petitioner with State Government, the provisions of

the KSERC (Connectivity and Open Access Regulations), 2013 and other rules and regulations. The observation of the Commission in this issue is discussed below.

- (i) The paragraph 15 of the Kerala Small Hydro Policy 2012, specify as follows regarding evacuation arrangement.

“15. Evacuation Arrangement

15.1 The transmission facilities upto the inter-connection point shall be constructed by the developer through STU/KSEB as a deposit work at the cost and responsibility of the developer.

15.2 Interfacing including transformers, panels, protection, metering, as well as maintenance shall be undertaken by developer as per the specification and requirement of KSEB for which the developer shall bear the entire cost.

15.3 Any modification / up-gradation of the substation of the KSEB, which draws power from the project and line strengthening beyond inter – connection point, shall be carried out by the KSEB at the cost of the developer and can be considered towards the project cost.

15.4 The line constructed by the developer up to sub-station shall be vested with KSEB to transmit power through this transmission line.

- (ii) The clause 5.4 (b) of the implementation agreement deals with ‘construction of Transmission facilities for evacuation of power’, which is extracted below.

5.4 (b) Construction of Transmission facilities for evacuation of power

The transmission facilities upto the interconnection point shall be constructed by the developer either on its own or through Board as deposit work at the cost and responsibility of the developer. Any modification/upgradation of Substation of the Board, which draws power from the Project, shall be carried out solely by Board as deposit work at the cost of the Company. Carrying out transmission lines by the Company does not entitle the Company transmission license for that line and the Board shall have the right to transmit excess power through this transmission line. On completion of the interconnection facilities the developer has to get it validated and certified by Board/ any other agency authorised by the Government.

- (iii) As above, the Kerala Small Hydro Policy 20102, notified by the State Government, and also the Implementation agreement executed by the petitioner with the State Government specify the following.

- (a) The transmission facilities upto the inter connection point shall be constructed by the developer either on its own or through KSEB Ltd as deposit work at the cost and responsibility of the developer.

- (b) Any modification/ up gradation of the substation of the KSEB Ltd, shall be carried out by KSEB Ltd as deposit work at the cost of the Company.
- (iv) During the hearing, it was clarified before the Commission that, KSEB Ltd has already taken steps to construct the evacuation for the various SHPs in the Chaliyar basin having a total capacity of 48.5 MW, with a total cost of Rs 2300.98 lakh. This cost will be recovered from the developers on proportionate basis of the installed capacity developed by each one of them. Accordingly, KSEB Ltd has demanded Rs 513.93 lakh as share of the cost of evacuation facilities of the 8 MW Anakampoil SHP. A copy of the demand raised by KSEB Ltd is placed before the Commission for information. The demand raised by the KSEB Ltd includes the following.
 - (a) Proportionate cost of construction of the substation proposed by the KSEB Ltd for evacuating the SHPs developing at the Chaliar basin.
 - (b) The cost of construction of the 3.5 km 33 kV lines from the generator switchyard of the petitioner to the substation proposed by KSEB Ltd.
- (v) Subsequently, the petitioner on 20.04.2018 submitted that, they shall bear only the cost of construction of evacuation for 7.5 km, 33 kV transmission line from the power house to the 33kV substation at Thampalamanna on the reason that, the petitioner had estimated the project cost and offered the premium to the State Government, only to the extent of the evacuation scheme as above as part of the cost of the project.
- (vi) In this matter, as per Section 39 of the Electricity Act 2003, KSEB Ltd as the STU is empowered to plan and construct the evacuation scheme for the entire SHPs being developed in the Chaliar basin at the cost effective manner for the benefit of all the beneficiaries and stakeholders.
- (vii) The Regulations 4 to 9 of the KSERC (Connectivity and intra-State Open Access) Regulations, 2013 specify the procedures for getting connectivity to a generating station with the transmission and distribution system of KSEB Ltd. In the said Regulations, it is clearly specified that, the cost of construction of the dedicated line required for granting connectivity and also the cost of augmentation of the substations etc shall be borne by the generator. Further the provisions in the Kerala Small Hydro Policy 2012 and the Implementation Agreement signed by the petitioner with the State Government also envisages that the cost of the dedicated transmission system for evacuating power from the project and also the cost of modification and up gradation of the substation of the KSEB Ltd shall be borne by the petitioner.

- (viii) Vide the affidavit dated 20.04.2018, the petitioner has admitted that, the cost of construction of evacuation facility for 7.5 km, 33 kV transmission line from the power house to the 33kV substation at Thampalamanna was included in the project cost as per the TEFR approved by the Government of Kerala and in the detailed estimate of the project cost based on which bid premium was offered by the petitioner to the State Government. However, the transmission scheme now finalized by KSEB Ltd for evacuating the SHPs developing in the Chaliyar basin is different from the evacuation scheme originally envisaged at the time of awarding the project to the petitioner.
- (ix) The Commission has examined the entire issue. The transmission facilities from generator switchyard upto the nearest substation of KSEB Ltd shall be constructed by the developer either on its own or through KSEB Ltd as deposit work at the cost and responsibility of the developer. The petitioner shall also bear the cost for augmenting the distribution system of KSEB Ltd, if any, as per the Regulation 8 of the KSERC(Connectivity and Intra-State Open Access) Regulations, 2013. The petitioner can claim such cost as part of the capital cost of the project and the Commission may consider such costs while determining the tariff, after appraising the prudence of such claim.
- (x) It is also important to note that in a meeting held on 01.07.2017 and chaired by the Hon'ble Chief Minister, it was decided that, tariff for the RE projects henceforth shall be the project specific tariff as approved by this Commission. Further, the KSERC (Renewable Energy) Regulations, 2015 provides for generic tariff of Small Hydro up to 5 MW only.
- (xi) Considering all these aspects, the Commission has taken a considered decision to determine the project specific tariff for the Anakampoil SHP once the petitioner complete the project and achieve COD. The petitioner shall file proper application for determining the project specific tariff with all details and parameters including the total capital cost of the project as on COD with all supporting documents. The petitioner is at liberty to submit the details of the additional cost, if any, incurred on evacuation facilities borne by them as per the demand of KSEB Ltd over and above the evacuation cost of the original evacuation scheme as per the TEFR.
- (xii) Since the planned evacuation facility may take some time, the petitioner is advised to apply to KSEB Ltd for getting connectivity for their generating station with necessary details including the fees as per the KSERC (Connectivity and Open Access) Regulations, 2013. The petitioner has to construct the transmission facilities from generator switchyard upto the nearest substation of KSEB Ltd, either on its own or through KSEB Ltd as deposit work at the cost and responsibility of the developer. If the petitioner decides to construct the transmission facilities through KSEB Ltd as deposit work, the developer has to remit the cost of the evacuation facilities as specified under paragraph (ix) above. Once the petitioner remits the cost of the evacuation system

above, Respondent KSEB Ltd shall complete the evacuation system as per the timeline specified in the KSERC (Connectivity and Open Access) Regulations, 2013. In the event of any delay in completion of the evacuation system as per the open access regulations, KSEB Ltd shall be liable to pay penalty as per the provisions of the Electricity Act, 2003 and appropriate Regulations notified by the Commission.

- (xiii) If any difficulty is faced by the petitioner in getting connectivity after remitting the cost of evacuation facilities as above, the petitioner is at liberty to approach this Commission with relevant details.

- 18. The third prayer of the petitioner is to determine the generic tariff of the SHPs commissioned in the financial years 2017-18 and 2018-19.

Analysis

As discussed under paragraph 17(xi)& (xii) above, the Commission has taken a considered decision to dispense with the system of determining generic tariff. Henceforth, project specific tariff shall be determined once the project is commissioned and COD achieved. For determining the project specific tariff, the petitioner has to file an appropriate petition for determination of the project specific tariff with all details and parameters including the total capital cost of the project as on COD with supporting documents.

Order of the Commission

- 19. The Commission after duly examining the petition filed by M/s Anakampoil Power Private Ltd, the counter argument of the respondent KSEB Ltd, and other documents placed before it, here by orders that,

- (i) The respondent KSEB Ltd has confirmed their willingness to purchase power from the 8 MW SHP developed by the petitioner at the tariff and terms and conditions as decided by this Commission, the first prayer of the petitioner is answered in the affirmative.

- (ii) Regarding the second prayer of the petitioner, the Commission hereby direct the petitioner and respondent that,

- (1) The petitioner has to construct the transmission facilities from generator switchyard upto the nearest substation of KSEB Ltd, either on its own or through KSEB Ltd as deposit work at the cost and responsibility of the developer. If the petitioner decides to construct the transmission facilities through KSEB Ltd as deposit work, the developer has to remit the cost of the evacuation facilities as specified under paragraph 17 (ix) above.

- (2) The petitioner shall apply for connectivity for the generating stations with the grid of the KSEB Ltd as per the provisions of the KSERC (Connectivity and Open Access) Regulations, 2013 and KSEB Ltd shall grant connectivity as per the provisions of the said Regulations , and the petitioner shall also bear the cost for augmenting the distribution system of KSEB Ltd, if any, as

per the Regulation 8 of the KSERC(Connectivity and Intra-State Open Access) Regulations, 2013..

- (3) KSEB Ltd shall construct the substation and other evacuation facilities for the SHPs developing in the Chaliyar basin as per the time lines specified in the KSERC (Connectivity and Open Access) Regulations, 2013.
 - (4) In the event of any delay in completion of the evacuation system as per the open access regulations, KSEB Ltd shall be liable to pay penalty as per the provisions of the Electricity Act, 2003 and appropriate Regulations notified by the Commission.
- (iii) The petitioner shall file proper application before the Commission with necessary and sufficient details with supporting documents for determination of the project specific tariff, after declaration of date of commercial operation.

The petition disposed off.

Sd/-
K.Vikraman Nair
Member

Sd/-
S.Venugopal
Member

Sd/-
Preman Dinaraj
Chairman

Approved for Issue

Sd/-
Santhosh Kumar. K.B
Secretary