

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

Present : Adv. A.J Wilson, Member (Law)

OP No 60/2022

In the matter of : Petition seeking approval for the deviations made in the Standard Bidding Documents issued by Ministry of Power vide notification dated 30.01.2019 for procuring 500 MW RTC power on medium term basis for five years under FOO(Finance Own and Operate) basis

Petitioner : Kerala State Electricity Board Limited (KSEB Ltd)

Petitioner represented by Sri. Jayaraj V, Chief Engineer
Sri. M.P. Rajan, Deputy Chief Engineer
Smt. Latha S.V, Asst: Executive Engineer

Date of hearing : 28.10.2022, 11:00 AM
Venue : e-hearing through video conferencing

Order dated 02.11.2022

1. M/s KSEB Ltd on 20.10.2022, had filed a petition before the Commission for seeking approval for the deviations made in the Standard Bidding Documents issued by the Ministry of Power (MoP) vide notification dated 30.01.2019 for the Medium-Term procurement of electricity on DEEP portal.
2. The summary of the petition filed by M/s KSEB Ltd is given below;
 - (1) The Commission vide the Order dated 25.06.2022 in OP No:11/2022 had not permitted KSEB Ltd to continue purchasing power from the following four provisionally approved/ unapproved contracts, (i) purchase of 115MW of power from Jhabua power Ltd of L2 of Bid-1, (ii) 150MW from Jindal Power Ltd of Bid-2, (iii) 100MW from Jindal India Power Ltd and (iv) 100MW of power from Jhabua Power Ltd of Bid-2. The total schedule not permitted from the above DBFOO contract is 465MW.

The Commission further directed vide the said Order dated 25.06.2022 that, *“KSEB Ltd shall make necessary arrangements for procuring 465MW of power on medium term basis through competitive bidding as per Section 63 of the EA-2003. Alternatively, KSEB Ltd may make necessary arrangements for procuring 465MW from power plants through competitive bidding route who have assigned coal linkage as per the SHAKTI policy of the Central Government”*

- (2) In compliance of the direction of the Commission M/s KSEB Ltd has initiated action for procuring 500MW RTC Power on medium term basis through competitive bidding route.
- (3) Ministry of Coal vide letter No.23011/15/2016-CPD/CLD dated 22nd May, 2017, has introduced the policy guidelines for allocation of Coal linkages to Power Sector- new more transparent Coal allocation policy for Power sector, 2017- SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India). Under the SHAKTI scheme, use of coal linkage has also been allowed in medium term power procurement.
- (4) The Central Government vide letter No:23/17/2013- R&R-Vol-VI (Part 2) dated 29th January 2019 has issued the revised “Standard Bidding Document” comprising; (a) Model Request for Qualification (MRFQ), (b) Model Request for Proposal (MRFP), (C) Model Agreement for Power (MAPP) for Medium Term Procurement of Electricity on DEEP Portal from power station setup on ‘Finance, Own and Operate (FOO)’ basis. These bidding documents has to be adopted by the Distribution licensees for procuring of electricity from Power Producers, Traders, Licensees on medium term basis through a process of open and transparent competitive bidding conducted by the Distribution licensees through electronic platform (DEEP e- Bidding Portal).

The application of these Guidelines is restricted to projects from which power is procured in accordance with an agreement for procurement of power for a period between one to five years, with a provision to extend the period upto 25% of the initial contract or 1 year, whichever is lower, with mutual consent.

- (5) The bidding guidelines stipulate that any deviation from the Model Bidding Documents shall be made by the Distribution licensees only with the prior approval of the appropriate Commission. However, it is also provided that any project specific modification expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents.
 - (6) M/s KSEB Ltd has made certain deviations in the Model Bidding Documents to suit the requirement of M/s KSEB Ltd while procuring the 500 MW RTC Power on Medium Term basis under Section 63 of the EA-2003.
3. The deviations proposed by KSEB Ltd from the Standard Model Bidding Documents notified by the Ministry of Power, Government of India is given in the following paragraphs.

- (1) Clause 1.1.1 of the RFQ

Provisions in the Model Bid Document

"The [*****Distribution Company**] (the "Utility") is engaged in the distribution of electricity and as part of this endeavour, the Utility has decided to procure electricity from a power generating station that would dedicate a contracted capacity of ***** MW** for production of electricity and supply thereof for a period of **[5 (five)] years [during peak hours of the day comprising 2 (two) hours upto or before 10:00 (ten hundred) hours in the morning and 4 (four) hours from or after 17:00 (seventeen hundred) hours in the evening]** (the "Project") through Public Private Partnership (the "PPP") on Finance, Own and Operate (the "FOO") basis **[by sourcing coal from the Allocated Coal Linkage in terms of the Letter of Assurance issued/to be issued in the name of the Supplier and the Fuel Supply Agreement to be executed between the Supplier and the Coal Supplier in accordance with the draft APP] , and has, therefore, decided to carry out the bidding process through [PFC Consulting Ltd as its Authorised Representative]** for selection of a corporate entity (ies) as the Bidder to whom the contract may be awarded for production of electricity and supply thereof as per the terms and conditions specified in the Bidding Documents. **Brief particulars of the Project are as follows:**"
Requisition , Capacity Required, Period when supply must commence, Delivery Point

KSEB Ltd's Proposal for modifications

"The [**Kerala State Electricity Board Limited**] (the "Utility") is engaged in the distribution of electricity and as part of this endeavour, the Utility has decided to procure electricity from a power generating station that would dedicate a contracted capacity of **500 MW** for production of electricity and supply thereof for a period of **5 years** (the "Project") through Public Private Partnership (the "PPP") on Finance, Own and Operate (the "FOO") basis **by sourcing coal from linkage coal** and has, therefore, decided to carry out the bidding process for selection of a corporate entity (ies) as the Bidder to whom the contract may be awarded for production of electricity and supply thereof as per the terms and conditions specified in the Bidding Documents." **Brief particulars of the Project are as follows:** Requisition-RTC , Capacity Required-500 MW, Period when supply must commence-April 2023, Delivery Point-Kerala Periphery

KSEB Ltd submitted that, considering the time required for bid processing and getting approval from the KSERC, the period of commencement is fixed as April-2023.

- (2) Clause 1.1.5 of the RFQ

Provisions in the Model Bid Document

"All Bidders shall indicate the particulars of the relevant Power Station in the form specified at Annex-V of Appendix-I and at National e-Bidding Portal ("DEEP Portal") developed by PFC Consulting Ltd. Bidders may bid for the capacity specified in Clause 1.1.1, or a part thereof, **not being**

less than [50% (fifty per cent)] of such capacity or 100 (one hundred) MW, whichever is lower. The remaining capacity, if any, may be procured from other Bidders who are willing to match the lowest Bid."

KSEB Ltd's Proposal for modifications

"All Bidders shall indicate the particulars of the relevant Power Station in the form specified at Annex-V of Appendix-I and at National e-Bidding Portal ("DEEP Portal") developed by PFC Consulting Ltd. Bidders may bid for the capacity specified in Clause 1.1.1, or a part thereof, not being less than 100 (one hundred) MW. The remaining capacity, if any, may be procured from other Bidders who are willing to match the lowest Bid. Maximum capacity that can be offered from a single unit in a power plant is limited to 100 MW"

KSEB Ltd submitted that, the minimum capacity is fixed as 100MW as per the guidelines. Further to avoid the risk of outages of the units, the maximum capacity that can be offered from a single unit is limited to 100MW.

- (3) Clause 1.2.1 of the RFQ

Provisions in the Model Bid Document

Bidding Fee to Utility- *"The Utility has adopted a two-stage bidding process (collectively referred to as the "Bidding Process") for selection of the bidder for award of the Project. The first stage (the "e-Tender Stage") of the process involves qualification (the "Qualification") of interested parties who submit Application and Bids in accordance with the provisions of this Bidding Document, comprising of RFQ and RFP (the "Bidder"). Prior to submission of the Application, the Bidder shall pay to the Utility a sum of [Rs 60, 000 (Rupees sixty thousand only)] plus applicable taxes as indicated above, as the cost of the Bidding Process . At the end of eTender stage, system will send an email to all Qualified Bidders who are eligible to participate in the second stage of the Bidding Process (the "e-Reverse Auction Stage")."*

KSEB Ltd's Proposal for modifications

"The Utility has adopted a two-stage bidding process (collectively referred to as the "Bidding Process") for selection of the bidder for award of the Project. The first stage (the "e-Tender Stage") of the process involves qualification (the "Qualification") of interested parties who submit Application and Bids in accordance with the provisions of this Bidding Document, comprising of RFQ and RFP (the "Bidder"). Prior to submission of the Application, the Bidder shall pay to the Utility a sum of Rs 3,00,000 (Rupees three lakhs only) plus applicable taxes as indicated above, as the cost of the Bidding Process . At the end of eTender stage, system will send an email to all Qualified Bidders who are eligible to participate in the second stage of the Bidding Process (the "e-Reverse Auction Stage")."

KSEB Ltd submitted that, as per the instructions to utility in the guidelines, the cost of Bidding Process may be determined at the rate of Rs. 60,000 for every 100 MW of capacity to be procured. The Utility can at its discretion increase this amount by upto 50% thereof. However, for increasing the participation of bidders, the bidding fee is kept as Rs 3 Lakhs plus applicable taxes (i.e, Rs. 60,000 per 100 MW) in the draft bidding document.

- (4) Clause 1.2.8 of the RFQ

Provisions in the Model Bid Document

Bid Security - *"In terms of the RFP, a Bidder will be required to deposit, along with its Bid, a bid security of [Rs 5,00,000 (Rupees five lakh) per MW of capacity offered by the Bidder](the "Bid Security"), refundable not later than [60 (sixty) days] from the Bid Due Date, except in the case of the selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the APP. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Utility or may be submitted as e-bank guarantee or deposited online through NEFT/IMPS/RTGS payment. The demand draft shall be kept valid for a period not less than 180 (one hundred and eighty) days from the Bid Due Date, by submitting another demand draft before expiry of the existing demand draft and may be further extended as may be mutually agreed between the Utility and the Bidder from time to time. In case a bank guarantee is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Utility and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security."*

KSEB Ltd's Proposal for modifications

"In terms of the RFP, a Bidder will be required to deposit, along with its Bid, a bid security of [Rs 5,00,000 (Rupees five lakh) per MW of capacity offered by the Bidder](the "Bid Security"), refundable not later than [60 (sixty) days] from the Bid Due Date, except in the case of the selected Bidder whose Bid Security shall be retained till it has provided a performance Security under the APP. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Utility or may be submitted as e-bank guarantee or deposited online through NEFT/IMPS/RTGS payment. The demand draft shall be kept valid for a period not less than 180 (one hundred and eighty) days from the Bid Due Date, by submitting another demand draft before expiry of the existing demand draft and may be further extended as may be mutually agreed between the Utility and the Bidder from time to time. In case a bank guarantee is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Utility and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security."

KSEB Ltd submitted that, as per the instructions to utility in the guidelines provides that, the *Utility may prescribe a bid security not exceeding Rs. 5 lakh per MW. It further provides that, in its discretion the utility can reduce the bid security, but not less than Rs 2 lakh per MW, in any case.*" In order to ensure maximum security, KSEB Ltd kept the bid security at Rs 5 Lakhs per MW in the draft bidding document.

- (5) Clause 1.2.13 of the RFQ

Provisions in the Model Bid Document

Source of Fuel- b. Coal from Linkage Coal *"Since the Bidder is expected to source fuel [from Coal India Limited ("CIL") / Singareni Collieries Company Limited ("SCCL") or a subsidiary thereof] from the Allocated Coal Linkage as per SHAKTI Policy [arranged by the Utility], the cost of Fuel which shall be included in the Variable Charge shall be a „pass through“ in accordance with the terms of the APP. However, the element of coal transportation and transit losses may vary from case to case and shall affect the Variable Charge offered by each Bidder. The Bid for the Project shall, therefore, comprise the Fixed Charge and Variable Charge, which shall be specified separately, and the Bidder seeking the lowest Tariff shall be the Selected Bidder."*

KSEB Ltd's Proposal for modifications

"Since the Bidder is expected to source fuel from Coal India Limited ("CIL") / Singareni Collieries Company Limited ("SCCL") or a subsidiary thereof, from the Coal Linkage as per SHAKTI Policy the cost of Fuel which shall be included in the Variable Charge shall be a "pass through" in accordance with the terms of the APP. However, the element of coal transportation and transit losses may vary from case to case and shall affect the Variable Charge offered by each Bidder. The Bid for the Project shall, therefore, comprise the Fixed Charge and Variable Charge, which shall be specified separately, and the Bidder seeking the lowest Tariff shall be the Selected Bidder."

KSEB Ltd submitted that, the option corresponds to linkage coal is retained and the rest is deleted. KSEB Ltd did not have coal linkage and hence, the corresponding portions also omitted.

- (6) Clause 2.19.1 of RFP

Provisions in the Model Bid Document

"The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.7 and 2.1.8 hereinabove in the form of a bank guarantee or e-bank guarantee issued by a nationalized bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crores (Rs. one thousand crore), in favour of the Utility in the format at Appendix-II (the "Bank Guarantee") and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as

may be mutually agreed between the Utility and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalized bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.”

KSEB Ltd’s Proposal for modifications

“The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.7 and 2.1.8 hereinabove in the form of a bank guarantee or e-bank guarantee issued by a nationalized bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crores (Rs. one thousand crore), in favour of the Utility in the format at Appendix–II (the “Bank Guarantee”) and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Utility and the Bidder from time to time. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.”

KSEB Ltd submitted that, as per its policy, bank guarantee / e-bank guarantee from Nationalised banks/ scheduled banks in India is only acceptable. Hence, the provisions related to foreign bank outside India is deleted.

- (7) Clause 2.19.2 of the RFP

Provisions in the Model Bid Document

" Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the Utility and payable at [Delhi] (the “Demand Draft”) or may be payable online to Utility though NEFT/IMPS/RTGS payment. The Utility shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free."

KSEB Ltd’s Proposal for modifications

" Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the Utility and payable at [Thiruvananthapuram] (the “Demand Draft”) or may be payable online to Utility though NEFT/IMPS/RTGS payment. The Utility shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free."

KSEB Ltd submitted that, since its corporate office is at Thiruvananthapuram, the demand draft issued shall be payable at Thiruvananthapuram.

- (8) Clause 5.8.2 of RFP

Provisions in the Model Bid Document

Source of Fuel- b. Coal from Linkage Coal

"Since the Bidder is expected to source fuel [from Coal India Limited ("CIL")/ Singareni Collieries Company Limited ("SCCL") or a subsidiary thereof/ from Allocated Coal Linkage through Letter of Assurance / FSA arranged by the Utility], the cost of Fuel which shall be included in the Variable Charge shall be a „pass through“ in accordance with the terms of the APP. However, the element of coal transportation and transit losses may vary from case to case and shall affect the Variable Charge offered by each Bidder. The Bid for the Project shall, therefore, comprise the Fixed Charge and Variable Charge, which shall be specified separately, and the Bidder seeking the lowest Tariff shall be the Selected Bidder."

KSEB Ltd's Proposal for modifications

"Since the Bidder is expected to source fuel from Coal India Limited ("CIL")/ Singareni Collieries Company Limited ("SCCL") or a subsidiary thereof, from Linkage coal through Letter of Assurance, the cost of Fuel which shall be included in the Variable Charge shall be a "pass through" in accordance with the terms of the APP. However, the element of coal transportation and transit losses may vary from case to case and shall affect the Variable Charge offered by each Bidder. The Bid for the Project shall, therefore, comprise the Fixed Charge and Variable Charge, which shall be specified separately, and the Bidder seeking the lowest Tariff shall be the Selected Bidder."

KSEB Ltd submitted that, the option corresponding to linkage coal only retained in the bid. Since KSEB Ltd did not have coal linkage, the corresponding portion is omitted from the bid documents.

- (9) Agreement – Part (A) of the Agreement for Procurement of Power (APP)

Provisions in the Model Bid Document

*"The Utility had resolved to procure electricity from a power generating station that would dedicate a contracted capacity of *** MW for production of electricity and supply thereof to the Utility on finance, own and operate (the "FOO") basis, [by sourcing coal from the Allocated Coal Linkage in terms of the Letter of Assurance issued/to be issued in the name of the Supplier and the Fuel Supply Agreement to be executed between the Supplier and the Coal Supplier,] in accordance with the terms and conditions to be set forth in an agreement for procurement of power to be entered into under and in accordance with the provisions of the Electricity Act, 2003."*

KSEB Ltd's Proposal for modifications

"The Utility had resolved to procure electricity from a power generating station that would dedicate a contracted capacity ofMW for production of electricity and supply thereof to the Utility on finance, own and operate (the "FOO") basis, [by sourcing coal from the Linkage coal in terms of the Letter of Assurance issued and the Fuel Supply Agreement to be executed between the Supplier and the Coal Supplier,] in accordance with the terms and conditions to be set forth in an agreement for

procurement of power to be entered into under and in accordance with the provisions of the Electricity Act, 2003."

KSEB Ltd submitted that, since it did not have coal linkage, corresponding portion is omitted.

(10) *Clause 1.2.1(k) of the APP*

Provisions in the Model Bid Document

*"reference to a **“business day”** shall be construed as reference to a day (other than a Sunday) on which banks in the State banks in the State where the Power Station is situate are generally open for business;"*

KSEB Ltd's Proposal for modifications

*"reference to a **“business day”** shall be construed as reference to a day (other than a Sunday) on which banks in the State of Kerala are generally open for business;"*

KSEB Ltd submitted that, above changes were proposed for business convenience of KSEB Ltd.

(11) *Clause 4.1.2(a) of APP*

Provisions in the Model Bid Document

"executed and procured execution of the Default Escrow Agreement in accordance with the provisions of Clause 13.1;"

KSEB Ltd's Proposal for modifications

"Omitted;"

KSEB Ltd proposed to omit the clause citing the reason that it is a prompt payer of electricity charges. Further LC is provided as payment security mechanism.

(12) *Clause 4.1.2(b) of APP*

Provisions in the Model Bid Document

"executed the Deed of Hypothecation in accordance with the provisions of Clause 13.1.2;"

KSEB Ltd's Proposal for modifications

"Omitted;"

KSEB Ltd proposed to omit the clause citing the reason that it is a prompt payer of electricity charges. Further LC is provided as payment security mechanism.

- (13) 4.1.2 (d)&(e) of the APP

Provisions in the Model Bid Document

*(d) "Obtained the letter of assurance, dated [**] issued by [**] ("Coal Supplier") in the name of the Supplier for the supply on a linkage basis, [**] tonnes per annum of [**] grade coal for the entire Term of this Agreement ("Letter of Assurance" appended herein as Annexure 1) for the purposes of the Project."*

(e) "Surrender the proportionate quantity of any existing Letter of Assurance /Fuel Supply Agreement, not being the Letter of Assurance/ Fuel Supply Agreement arranged by the Utility, corresponding to the tenure of the Letter of Assurance /Fuel Supply Agreement arranged by the Utility."

KSEB Ltd's Proposal for modifications

"Omitted;"

KSEB Ltd submitted that, the above clauses are applicable only when the coal is being arranged by the supplier.

- (14) Clause 5.1.5(a) of the APP

Provisions in the Model Bid Document

"make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws; Non-grant of long term open access shall be mutually decided by the Utility and Supplier;"

KSEB Ltd's Proposal for modifications

"make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws; Non-grant of open access or any substitutes thereof, shall be mutually decided by the Utility and Supplier;"

KSEB Ltd submitted that, the above changes are made for incorporating the General Network Access Regime and its amendments etc.

- (15) Clause 5.6.1 of the APP

Provisions in the Model Bid Document

“The Supplier shall be liable for the transmission losses in all inter-state and intrastate transmission of electricity from the Point of Grid Connection to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any transmission losses on inter-state and intra-state transmission lines shall be borne by the Supplier. The Parties further agree that the obligation of the Supplier to bear the transmission losses shall be restricted to the level of losses determined by the Central Commission as on the Bid Date for this Project and any differential (higher or lower) arising from revision in the level of losses thereafter by the Central Commission shall be borne by the Utility.”

KSEB Ltd’s Proposal for modifications

“The Supplier shall be liable for the transmission losses in all inter-state and intra- state transmission of electricity from the Point of Grid Connection to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any transmission losses on inter-state and intra-state transmission lines shall be borne by the Supplier. The Parties further agree that the obligation of the Supplier to bear the transmission losses shall be restricted to the level of losses determined by the Central Commission /NLDC as on the Bid Date for this Project and any differential (higher or lower) arising from revision in the level of losses thereafter by the Central Commission shall be borne by the Utility.”

KSEB Ltd submitted that, the NLDC is publishing the losses on weekly basis. Hence, KSEB Ltd proposes to add NLDC also in addition to the Central Commission.

(16) Clause 6.1.2(a) of the APP

Provisions in the Model Bid Document

“upon written request from the Supplier, and subject to the Supplier complying with Applicable Laws, provide reasonable support and assistance to the Supplier in procuring the Applicable Permits required from any Government Instrumentality for operation of the Project; Non grant of long term open access shall be mutually decided by the Utility and Supplier;”

KSEB Ltd’s Proposal for modifications

“upon written request from the Supplier, and subject to the Supplier complying with Applicable Laws, provide reasonable support and assistance to the Supplier in procuring the Applicable Permits required from any Government Instrumentality for operation of the Project; Non-grant of open access or any substitutes thereof, shall be mutually decided by the Utility and Supplier;”

KSEB Ltd submitted that, the above changes are made for incorporating the General Network Access Regime and its amendments etc.

(17) Clause 6.1.3 of APP

Provisions in the Model Bid Document

“The Utility shall provide and facilitate non-discriminatory open access to its network for enabling the Supplier to supply electricity to Buyers in the licence area of the Utility in accordance with the provisions of sections 42 and 49 of the Act.”

KSEB Ltd’s Proposal for modifications

“Omitted;”

KSEB Ltd submitted that, since KSEB Ltd is the incumbent licensee in the State of Kerala, the above provision has no relevance.

(18) Clause 9.1.1 of the APP

Provisions in the Model Bid Document

Performance Security- *“The Supplier shall, for the performance of its obligations hereunder, provide to the Utility no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. ***** crore (Rupees ***** crore) in the form set forth in Schedule-B (the “Performance Security”) for a period of 6 (six) months.”*

KSEB Ltd’s Proposal for modifications

“The Supplier shall, for the performance of its obligations hereunder, provide to the Utility no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs.(Rupees) Rs.(Rupees) [Rs. 10 Lakh/MW for 500 MW & Rs.15 Lakh/MW if Contracted Capacity is less than 500 MW] in the form set forth in Schedule-B (the “Performance Security”) for a period of 6 (six) months.”

KSEB Ltd submitted that, the bidding guidelines specifies that, the performance security has to be calculated @Rs10 lakh/MW for 500MW and, @Rs 15 lakh/MW if the contracted capacity is less than 500MW.

(19) Clause 9.3 of the APP

Provisions in the Model Bid Document

Release of Performance Security- *“The Performance Security shall remain in force and effect until expiry of 6 (six) months after the Appointed Date, and shall be released upon the Deemed Performance Security taking effect in accordance with the provisions of Clause 9.4.”*

KSEB Ltd's Proposal for modifications

Release of Performance Security- *“The Performance Security shall remain in force and effect until the end of contract period and shall be released upon expiry of contract period.”*

KSEB Ltd proposed to retain the performance security till the end of the contract period instead of releasing the same after six months from the 'appointed date', i.e., the date of commencement of the contract period, duly considering the past experiences of the similar contracts.

(20) Clause 9.4 of the APP

Provisions in the Model Bid Document

Deemed Performance Security -*“ The Parties expressly agree that upon release of Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security for a like amount shall be deemed to be created under this clause 9.4, as if it is a Performance Security under clause 9.1 for and in respect of the entire Contract Period (the “Deemed Performance Security”). The Deemed Performance Security shall be unconditional and irrevocable, and shall constitute the first and exclusive charge on all amounts due and payable by the Utility to the Supplier, and the Utility shall be entitled to enforce the Deemed Performance Security by making a deduction from the amounts due and payable by it to the Supplier in accordance with the provisions of Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Supplier upon occurrence of Supplier Default shall be liable to appropriation hereunder.”*

KSEB Ltd's Proposal for modifications

Deemed Performance Security - *“The Parties expressly agree that an additional Performance Security for amount equal to Performance Security as per clause 9.1 shall be deemed to be created under this clause 9.4, for and in respect of the entire Contract Period (the “Deemed Performance Security”). The Deemed Performance Security shall be unconditional and irrevocable, and shall constitute the first and exclusive charge on all amounts due and payable by the Utility to the Supplier, and the Utility shall be entitled to enforce the Deemed Performance Security by making a deduction from the amounts due and payable by it to the Supplier in accordance with the provisions of Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Supplier upon occurrence of Supplier Default shall be liable to appropriation hereunder.”*

KSEB Ltd submitted that, they propose to have 'Deemed performance security' as additional performance security along with the performance security in clause 9.2.

(21) Clause 9.5 of the APP

Provisions in the Model Bid Document

Appropriation of Deemed Performance Security -"Upon occurrence of a Supplier Default, the Utility shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Deemed Performance Security as Damages for such Supplier Default. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation."

KSEB Ltd's Proposal for modifications

Appropriation of Deemed Performance Security -"Upon occurrence of a Supplier Default, the Utility shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Deemed Performance Security as Damages for such Supplier Default. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation." "In the event, appropriation of deemed performance security is not sufficient enough to recover the damages, the Utility shall invoke Clause 9.2."

KSEB Ltd submitted that, it had provided additional provision to invoke performance security in case deemed performance security is not sufficient to recover the damages.

(22) Clause 9.6 of the APP

Provisions in the Model Bid Document

References to Performance Security- "References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Supplier to the Utility, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Supplier, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Security, as the case may be."

KSEB Ltd's Proposal for modifications

"Omitted"

KSEB Ltd omitted the clause citing that, there is no relevance to retain this clause after incorporating the deviations proposed as items 19, 20 and 21 above.

(23) Clause 10.3 of the APP

Provisions in the Model Bid Document

Substitute Supply-*"In the event the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance, shortage of Fuel or Force Majeure, the Supplier may, with prior consent of the Utility, which consent the Utility may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply electricity from any alternative source, and such supply shall, for payment of Fixed Charge and Variable Charge, be deemed to be supply under and in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties agree that in the event the Utility rejects any supply of electricity offered hereunder from an alternative source, the Supplier shall be deemed to be in compliance with this Agreement for the purpose of determination of Availability and payment of Fixed Charge."*

KSEB Ltd's Proposal for modifications

Substitute Supply-*"In the event the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance, shortage of Fuel or Force Majeure, the Supplier shall, with prior consent of the Utility, which consent the Utility may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply electricity from any alternative source, and such supply shall, for payment of Fixed Charge and Variable Charge, be deemed to be supply under and in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties agree that in the event the Utility rejects any supply of electricity offered hereunder from an alternative source, the Supplier shall be deemed to be in compliance with this Agreement for the purpose of determination of Availability and payment of Fixed Charge."*

KSEB Ltd insists that prior consent from the KSEB Ltd is mandatory for making arrangements for substitute supply.

(24) Clause 11.4.5 of APP

Provisions in the Model Bid Document

"In the event that any shortfall in supply of electricity to the Utility occurs on account of shortage of Fuel, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.3. Provided, however, that the Non-Availability arising as a consequence of shortage of Fuel caused by any event of Force Majure shall, for the purpose of

payment of Fixed Charge, be deemed to be availability to the extent of 30% (thirty per cent) of the Non Availability hereunder".

KSEB Ltd's Proposal for modifications

"In the event that any shortfall in supply of electricity to the Utility occurs on account of shortage of Fuel, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.3. "

KSEB Ltd submitted that there is no relevance for this clause since as per the Clause 10.3 of the APP, even during force majeure situation too, the supplier is obliged to schedule full contracted quantum.

- (25) Clause 11.9.4 of the APP

Provisions in the Model Bid Document

"All Damages and any other amounts due and payable by the Supplier in accordance with the provisions of this Agreement may be deducted from the Tariff due and payable to the Supplier and in the event the deductions hereunder exceed the Tariff in that month, the balance remaining shall be deducted from the Tariff due and payable to the Supplier for the immediately following month."

KSEB Ltd's Proposal for modifications

"All Damages and any other amounts due and payable by the Supplier in accordance with the provisions of this Agreement may be deducted from the Tariff due and payable to the Supplier and in the event the deductions hereunder exceed the Tariff in that month, the balance remaining shall be deducted from the Tariff due and payable to the Supplier for the immediately following month. If the Tariff due for the supplier, for the immediately following month is not sufficient to adjust the remaining balance amount, the supplier shall transfer the balance amount to the account of the utility, failing which utility may invoke Clause 9.2 of this agreement."

KSEB Ltd submit that, in order to ensure prompt supply of electricity to the utility without any default as per the agreement, KSEB Ltd proposed to include additional provision for recovering the damages.

- (26) Clause 12.3.1 & 12.3.2 of the APP

Provisions in the Model Bid Document

12.3.1. For the Fuel supplied by CIL/SCCL [through Letter of Assurance/ FSA arranged by the Utility], the price of Fuel shall be deemed to be the lower of, (i) the indicative price of Fuel which shall be computed from the Variable Charge, as specified in the Bid; and (ii) 101% (one hundred and one per cent) of the price payable by the Supplier to CIL/SCCL, For the avoidance of doubt, the Parties agree that if the indicative price as computed hereunder from the Variable

Charge specified in the Bid shall be lower than 101% (one hundred and one per cent) of the price payable by the Supplier to CIL/SCCL, the proportion by which the amount computed from the Bid is lower than the aforesaid 101% (one hundred and one per cent) of CIL/SCCL price shall apply at all times for determining the price of Fuel.] The Parties further agree that the amount specified in Bid is equivalent to or less than the aforesaid 101% (one hundred and one per cent) of the amount payable to CIL. The Supplier accordingly represents and warrants that the aforesaid amount has been derived from CIL/SCCL's notified price of Rs. (Rupees) .per tonne and GCV of ... kCal/kg as on the Bid Date and the cost of Fuel shall be revised only in proportion to the revision in CIL/SCCL price as compared to the rate specified hereinabove.

12.3.2 The total cost of transportation of domestic Fuel shall be the lower of, (a) [110% (one hundred and ten per cent) of the freight payable to the Indian Railways for transportation by rail, and (b) the actual cost of transportation. For the avoidance of doubt, the Parties agree that the amount specified in Clause 12.2 is equivalent to or less than the aforesaid 110% (one hundred and ten per cent) of the amount payable to the Indian Railways. The Supplier represents and warrants that the aforesaid amount has been derived from the railway freight rate of Rs..... (Rupees) per tonne as on the Bid Date and the transportation charge specified in Clause 12.2 shall be revised only in proportion to the revision in rail freight as compared to the rate specified hereinabove.]

KSEB Ltd's Proposal for modifications

12.3.1. "For the Fuel supplied by CIL/SCCL through Letter of Assurance, the price of Fuel shall be deemed to be the lower of, (i) the indicative price of Fuel which shall be computed from the Variable Charge, as specified in the Bid; and (ii) 101% (one hundred and one per cent) of the price payable by the Supplier to CIL/SCCL, For the avoidance of doubt, the Parties agree that if the indicative price as computed hereunder from the Variable Charge specified in the Bid shall be lower than 101% (one hundred and one per cent) of the price payable by the Supplier to CIL/SCCL, the proportion by which the amount computed from the Bid is lower than the aforesaid 101% (one hundred and one per cent) of CIL/SCCL price shall apply at all times for determining the price of Fuel.] The Parties further agree that the amount specified in Bid is equivalent to or less than the aforesaid 101% (one hundred and one per cent) of the amount payable to CIL. The Supplier accordingly represents and warrants that the aforesaid amount has been derived from CIL/SCCL's notified price of Rs. (Rupees) .per tonne and GCV of ... kCal/kg as on the Bid Date and the cost of Fuel shall be revised only in proportion to the revision in CIL/SCCL price as compared to the rate specified hereinabove."

12.3.2." *The total cost of transportation of domestic Fuel shall be the lower of, (a) [110% (one hundred and ten per cent)] of the freight payable to the Indian Railways for transportation by rail, and (b) the actual cost of transportation. For the avoidance of doubt, the Parties agree that the amount specified in Clause 12.2 is equivalent to or less than the aforesaid 110% (one hundred and ten per cent) of the amount payable to the Indian Railways. The Supplier represents and warrants that the aforesaid amount has been derived from the railway freight rate of Rs..... (Rupees) per tonne as on the Bid Date and the transportation charge specified in Clause 12.2 shall be revised only in proportion to the revision in rail "*

KSEB Ltd submitted that, the tariff structure specified in the DBFOO frame work is maintained by retaining similar clauses in the guidelines, which were applicable for linkage coal.

(27) Clause 12.6 of APP

Provisions in the Model Bid Document

Take or Pay supply of Fuel "*The Parties expressly acknowledge and agree that the [Supplier if supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee] shall produce electricity for supply thereof under this Agreement by utilising gas procured under a fixed supply contract which shall require the Supplier to pay for supply of gas even if it is not utilised, and in the event such electricity is not Dispatched by the Utility or sold to a Buyer in accordance with the provisions of this Agreement, the Utility shall pay to the Supplier the cost incurred by it for the gas that has remained unutilised."*

KSEB Ltd's Proposal for modifications

"Omitted,"

KSEB Ltd submitted that, the above clause is meant for Gas power stations, hence deleted.

(28) Clause 13.1 and its subclauses

Provisions in the Model Bid Document

13.1 Default Escrow Account 13.1.1 The Utility and the Supplier shall, prior to the Appointed Date, execute a default escrow agreement with the Utility's bank substantially in the form specified in Schedule-C (the "Default Escrow Agreement") for the establishment and operation of the default escrow account (the "Default Escrow Account") in favour of the Supplier. The Parties agree and acknowledge that the Default Escrow Account shall be established and maintained at a bank where at least 30% (thirty per cent) of the Utility's total monthly Revenues are normally deposited (the "Default Escrow Bank"). The Utility

expressly agrees and undertakes that throughout the term of the Contract Period, no less than 30% (thirty per cent) of its total Revenues shall continue to be deposited at that bank or any substitute thereof that the Parties may by mutual agreement determine and Revenues equivalent to 30% (thirty per cent) of the annual Capacity Charge (the "Maximum Monthly Payment") shall be routed every month through the Default Escrow Account in accordance with the provisions of this Clause 13.1 and the Default Escrow Agreement.

13.1.2 The Utility and the Supplier shall, prior to the Appointed Date, execute a deed of hypothecation substantially in the form specified at of Schedule-D (the "Deed of Hypothecation"), whereby the Utility shall hypothecate to the Supplier an amount equal to Maximum Monthly Payment, to be deposited every month in the Default Escrow Account for discharging the liabilities arising out of and in relation to the Secured Obligations.

13.1.3 The Parties acknowledge and agree that during the period commencing from the 25th (twenty fifth) day of every month and until discharge of any Monthly Invoice due and payable on or prior to that day, an amount equal to 20% (twenty per cent) of the annual Capacity Charge (the "Minimum Monthly Payment") shall be withheld in the Default Escrow Account for payment to the Supplier against such Monthly Invoice and the balance remaining shall be available to the Utility for withdrawal or transfer in accordance with the provisions of the Default Escrow Agreement.

13.1.4 The Utility shall procure that the Supplier has the first priority charge on the Revenues deposited into the Default Escrow Account, in accordance with the terms of the Default Escrow Agreement and the Deed of Hypothecation, but not exceeding the Maximum Monthly Payment for and in respect of any month.

KSEB Ltd's Proposal for modifications

"Omitted,"

KSEB Ltd proposes not to include the clauses of Default Escrow Amount citing the reason that KSEB Ltd is a prompt payer of electricity charges and further LC is provided.

(29) Clause 13.2.1 of the APP

Provisions in the Model Bid Document

"The Utility shall, no later than 30 (thirty) days prior to the likely date of the Appointed Date, provide to the Supplier, an unconditional, revolving and irrevocable letter of credit for an amount equivalent to the Minimum Monthly Payment (the "Letter of Credit"), which may be drawn upon by the Supplier for recovery of payment due against the Monthly Invoice in

accordance with the provisions of this Agreement. The Letter of Credit shall be substantially in the form specified in Schedule-E and shall come into effect on the Appointed Date, and shall be modified once every year to reflect the revision in Minimum Monthly Payment in accordance with the provisions of this Agreement."

KSEB Ltd's Proposal for modifications

"The Utility shall, no later than 30 (thirty) days prior to the likely date of the Appointed Date, provide to the Supplier, an unconditional, revolving and irrevocable letter of credit for an amount equivalent to the Minimum Monthly Payment (i.e., an amount equal to 20% (twenty per cent) of the annual Capacity Charge) (the "Letter of Credit"), which may be drawn upon by the Supplier for recovery of payment due against the Monthly Invoice in accordance with the provisions of this Agreement. The Letter of Credit shall be substantially in the form specified in Schedule-E and shall come into effect on the Appointed Date, and shall be modified once every year to reflect the revision in Minimum Monthly Payment in accordance with the provisions of this Agreement."

KSEB Ltd submitted that, the definition of the 'minimum monthly payment' was added since this term was defined in the 'Default Escrow Account' which was proposed to delete as item No. 28.

- (30) Clause 13.2.2 of the APP

Provisions in the Model Bid Document

"The Letter of Credit shall be procured by the Utility from a bank where at least 30% (thirty per cent) of the Utility's total monthly Revenues are normally deposited, and which shall have been appointed as the Default Escrow Bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Utility."

KSEB Ltd's Proposal for modifications

"The Letter of Credit shall be procured by the Utility from any scheduled bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Utility."

KSEB Ltd submitted that, since the provision of the Default Escrow Account was deleted, this clause is modified accordingly to incorporate such changes.

- (31) Clause 13.2.3 of APP

Provisions in the Model Bid Document

"In the event of Utility's failure to pay the Monthly Invoice before the 27th (twenty seventh) day of the month in which the relevant Payment Due Date occurs, the Supplier may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the Default Escrow Bank shall, without any reference to the Utility, pay the amount due upon

the Supplier presenting the following documents, namely: (a) a copy of the Monthly Invoice which has remained unpaid; and (b) a certificate from the Supplier to the effect that the Monthly Invoice is in accordance with this Agreement and that the amount due and payable has remained unpaid."

KSEB Ltd's Proposal for modifications

"In the event of Utility's failure to pay the Monthly Invoice before the 27th (twenty seventh) day of the month in which the relevant Payment Due Date occurs, the Supplier may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the Bank shall, without any reference to the Utility, pay the amount due upon the Supplier presenting the following documents, namely: (a) a copy of the Monthly Invoice which has remained unpaid; and (b) a certificate from the Supplier to the effect that the Monthly Invoice is in accordance with this Agreement and that the amount due and payable has remained unpaid."

KSEB Ltd submitted that, since the provision of the Default Escrow Account was deleted, this clause is modified accordingly to incorporate such changes.

(32) Clause 13.3.1 of the APP

Provisions in the Model Bid Document

"In the event the Supplier is unable to recover its Tariff through the Default Escrow Account and the Letter of Credit, as the case may be, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date, then notwithstanding anything to the contrary contained in this Agreement, the Supplier shall have the right to sell the whole or part of the Contracted Capacity to any Buyer for recovery of its dues from the Utility. For the avoidance of doubt, the Parties expressly agree that the Supplier shall be entitled to appropriate the revenues from sale hereunder for recovering the Tariff due and payable to it for sale of such Contracted Capacity to the Utility and the surplus remaining, if any, shall be appropriated for recovery of its dues from the Utility."

KSEB Ltd's Proposal for modification

"In the event the Supplier is unable to recover its Tariff through the Letter of Credit, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date, then notwithstanding anything to the contrary contained in this Agreement, the Supplier shall have the right to sell the whole or part of the Contracted Capacity to any Buyer for recovery of its dues from the Utility. For the avoidance of doubt, the Parties expressly agree that the Supplier shall be entitled to appropriate the revenues from sale hereunder for recovering the Tariff due and payable to it for sale of such Contracted Capacity to the Utility and the surplus remaining, if any, shall be appropriated for recovery of its dues from the Utility."

KSEB Ltd submitted that, since the provision of the Default Escrow Account was deleted, this clause is modified accordingly to incorporate such changes.

- (33) Clause 13.3.3 of the APP

Provisions in the Model Bid Document

"Supply of electricity to the Utility in accordance with the provisions of this Agreement shall be restored no later than 7 (seven) days from the day on which the Utility pays, or is deemed to have paid, the arrears due to the Supplier in accordance with the provisions of this Agreement, restores the Default Escrow Account and renews the Letter of Credit."

KSEB Ltd's Proposal for modification

"Supply of electricity to the Utility in accordance with the provisions of this Agreement shall be restored no later than 7 (seven) days from the day on which the Utility pays, or is deemed to have paid, the arrears due to the Supplier in accordance with the provisions of this Agreement and renews the Letter of Credit."

KSEB Ltd submitted that, since the provision of the Default Escrow Account was deleted, this clause is modified accordingly to incorporate such changes.

- (34) Clause 13.4 of the APP

Provisions in the Model Bid Document

Payment security for Termination- *The Parties agree and acknowledge that upon Termination and on failure of the Utility to make the Termination Payment within 30 (thirty) days of demand by the Supplier, Revenues equal to the Maximum Monthly Payment, deposited into the Default Escrow Account in accordance with the provisions of this Agreement and the Default Escrow Agreement, shall be appropriated every month and paid to the Supplier until discharge of the Termination Payment and any interest thereon. For the avoidance of doubt, the Utility expressly agrees and undertakes that 30% (thirty per cent) of its total monthly Revenues shall continue to be deposited into its account with the Default Escrow Bank until its liability for an in respect of the Termination Payment is fully discharged."*

KSEB Ltd's Proposal for modification

"Omitted".

KSEB Ltd submitted that in the absence of Default Escrow Account, this clause is irrelevant.

- (35) Clause 14.2 and its subclauses in the APP

Provisions in the Model Bid Document

14.2 Settlement of UI charges

14.2.1 All payments due to or from the Supplier on account of any unscheduled interchange in terms of the UI Regulations (the "Unscheduled Interchange" or "UI") shall be solely to the account of and borne by the Supplier, save and except as provided in Clause 14.2.2 and 14.2.3.

14.2.2 Subject to the provisions of the Applicable Laws, the Utility shall have the first right to despatch, in the form of UI, any surplus electricity generated from the contracted Capacity, and 90% (ninety per cent) of the revenues accruing from such UI charges, after deducting an amount equal to the Tariff payable for such electricity, shall be paid by the Supplier to the credit of the Utility and the balance remaining may be appropriated by the Supplier.

14.2.3 Subject to the provisions of Clause 14.2.2, the Supplier may, in addition to the scheduling under Clause 14.1, supply electricity produced from the unutilised Contracted Capacity, and in such an event the Fixed Charge due and payable by the Utility to the Supplier for and in respect of the Contracted Capacity utilised hereunder shall be deemed to be waived and shall not be payable by the Utility.

Provided, that the Parties may with mutual agreement reduce the Fixed Charge to be waived hereunder to such extent as they may determine.

KSEB Ltd's Proposal for modification

Settlement of DSM charges- 14.2.1 " *All payments due to or from the Supplier on account of any deviation in terms of the DSM Regulations (the "Deviation Settlement Mechanism" or "DSM") shall be solely to the account of and borne by the Supplier.*"

KSEB Ltd submitted that since the UI charges are replaced by DSM charges, KSEB Ltd proposes to modify the Clause 14.2.1 of the APP as above.

(36) Clause 14.4 of the APP

Provisions in the Model Bid Document

Ramp up of Despatch- " *In the event the Utility Despatches less than 2% (two per cent) of Contracted Capacity at any time and requires ramping up of generation thereafter, it shall allow a period of 4 (four) hours to the Supplier for reaching Availability equal to the Contracted Capacity. For the avoidance of doubt, the Parties agree that in the event the Supplier fails to reach such Availability within [4 (four)] hours, the shortfall thereof shall be deemed to be Mis-declaration under the provisions of Clause 11.5.5. The Parties further agree that the liability of*

the Utility hereunder shall at all times be reckoned with reference to the Contracted Capacity."

KSEB Ltd's Proposal for modification

Ramp up of Despatch- *"In the event the Utility Despatches less than 2% (two per cent) of Contracted Capacity at any time and requires ramping up of generation thereafter, it shall allow a period upto 4 (four) hours to the Supplier for reaching Availability equal to the Contracted Capacity. For the avoidance of doubt, the Parties agree that in the event the Supplier fails to reach such Availability within [4 (four)] hours, the shortfall thereof shall be deemed to be Mis-declaration under the provisions of Clause 11.5.5. The Parties further agree that the liability of the Utility hereunder shall at all times be reckoned with reference to the Contracted Capacity."*

KSEB Ltd submitted that, to accommodate the ramp up time for various sources of power, the word 'of' replaced by 'upto' has been made.

- (37) Clause 19.2.1(b) of the APP

Provisions in the Model Bid Document

"the Utility has failed to make any payment to the Supplier, and the Supplier is unable to recover any unpaid amounts through the Default Escrow Account and the Letter of Credit, within the period specified in this Agreement; "

KSEB Ltd's Proposal for modification

"the Utility has failed to make any payment to the Supplier, and the Supplier is unable to recover any unpaid amounts through the Letter of Credit, within the period specified in this Agreement; "

KSEB Ltd submitted that, since the provision of the Default Escrow Account was deleted, this clause is modified accordingly to incorporate such changes.

- (38) Clause 21.1 of the APP

Provisions in the Model Bid Document

Increase in costs- *"If as a result of Change in Law, the Supplier suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 0.1% (zero point one per cent) of the Capacity Charge in any Accounting Year, the Supplier may so notify the Utility and propose amendments to this Agreement so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid....."*

KSEB Ltd's Proposal for modification

Increase in costs-"If as a result of Change in Law, the Supplier suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. (Rupees)[Rs.1 Lakh/MW of contracted capacity] and 0.1% (zero point one per cent) of the Capacity Charge in any Accounting Year, the Supplier may so notify the Utility and propose amendments to this Agreement so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid....."

KSEB Ltd submitted that, as per the model bidding document specified that, the utility can fix the amount @Rs 1 lakh for every MW of contracted capacity.

- (39) Clause 21.2 of the APP

Provisions in the Model Bid Document

Reduction in costs-"If as a result of Change in Law, the Supplier benefits from a reduction in costs or increase in net after-tax return or other financial gains the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 0.1% (zero point one per cent) of the Capacity Charge in any Accounting Year, the Utility may so notify the Supplier and propose amendments to this Agreement so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid....."

KSEB Ltd's Proposal for modification

Reduction in costs-"If as a result of Change in Law, the Supplier benefits from a reduction in costs or increase in net after-tax return or other financial gains the aggregate financial effect of which exceeds the higher of Rs. (Rupees)[Rs.1 Lakh/MW of contracted capacity] and 0.1% (zero point one per cent) of the Capacity Charge in any Accounting Year, the Utility may so notify the Supplier and propose amendments to this Agreement so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid."

KSEB Ltd submitted that, as per the guidelines in the model bidding document, the deviation has been made so as to accommodate part capacity offered by the supplier.

- (40) Clause 25.3 of the APP

Provisions in the Model Bid Document

Interest- " *Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis o quarterly rests.*"

KSEB Ltd's Proposal for modification

Interest- " *Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis.*"

KSEB Ltd submitted that only simple interest is applicable in this agreement.

(41) Clause 25.13 & its subclauses of APP

Provisions in the Model Bid Document

25.13 Notices Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

(a) in the case of the Supplier, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Supplier may from time to time designate by notice to the Utility; provided that notices or other communications to be given to an address outside the city specified in Sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, or by courier, be sent by facsimile or e-mail to the number as the Supplier may from time to time designate by notice to the Utility.

{Attention:
Designation:
Address:
Fax No: Email:}

(b) in the case of the Utility, be given by facsimile or e-mail and by letter delivered by hand at the address given and marked to the attention of the person set out below with a copy delivered to the Utility Representative or such other person as the Utility may from time to time designate by notice to the Supplier; provided that if the Supplier does not have an office in the same city as the Utility, it may send such notice by facsimile or e-mail and by registered acknowledgement due, or by courier.

{Name:
Designation:
Address:
Fax No:
Email:}; and

(c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

KSEB Ltd's Proposal for modification

Deleted

KSEB Ltd submitted that the provision for facsimile is no longer in use.

- (42) Clause 26.1 of the APP – Definition of Allocated Coal Linkage

Provisions in the Model Bid Document

"Allocated Coal Linkage" shall mean [Insert coal linkage arranged by Utility

KSEB Ltd's Proposal for modification

Deleted

KSEB Ltd submitted that the definition is not applicable as the utility does not have coal linkage.

- (43) Clause 26.1 of the APP – Definition of Bank rate

Provisions in the Model Bid Document

"Bank Rate" means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;"

KSEB Ltd's Proposal for modification

"Bank Rate" means the Marginal Cost of Funds Based on Lending Rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, or any replacement of such Rate for the time being in effect;"

KSEB Ltd submitted that the deviation is as per the latest RBI notification.

- (44) Clause 26.1 of the APP – Definition of 'Coal Mine/ Blocks'

Provisions in the Model Bid Document

"Coal Mine/Blocks" shall mean Coal Mine/Blocks allocated through auction by Governmental Instrumentality as per provisions of Applicable Laws;

KSEB Ltd's Proposal for modification

Deleted

KSEB Ltd submitted that it is not applicable for linkage coal.

- (45) Clause 26.1 of the APP – Definition of 'Deed of Hypothecation'

Provisions in the Model Bid Document

"Deed of Hypothecation" shall have the meaning as set forth in Clause 13.1.2; "Default Escrow Account" shall have the meaning as set forth in Clause 13.1.1; "Default Escrow Agreement" shall have the meaning as set forth in Clause 13.1.1; "Default Escrow Bank" shall have the meaning as set forth in Clause 13.1.1;

KSEB Ltd's Proposal for modification

Deleted

KSEB Ltd submitted that since these terms are not present in this modified agreement, the same has been deleted.

- (46) Clause 26.1 of the APP – Definition of 'Delivery point'

Provisions in the Model Bid Document

"Delivery Point" means any point in the intra-state Grid where the electricity supplied under this Agreement is received by the Utility

KSEB Ltd's Proposal for modification

"Delivery Point" means Kerala periphery;

KSEB Ltd submitted that, to get more clarity the definition is modified as above.

- (47) Clause 26.1 of the APP – Introduce definition of 'DSM Regulation'.

Provisions in the Model Bid Document

Nil

KSEB Ltd's Proposal

DSM Regulations" means the CERC Deviation Settlement Mechanism 2014 or any substitute thereof,

KSEB Ltd submitted that, since the 'UI Regulations' are replaced by 'DSM Regulations', KSEB Ltd introduced the definition of DSM Regulations.

- (48) Clause 26.1 of the APP – Definition of 'Fuel'

Provisions in the Model Bid Document

“Fuel” means the [coal/gas] which is fit for use in generation of electricity at the Power Station;]

KSEB Ltd’s Proposal for modification

“Fuel” means the coal which is fit for use in generation of electricity at the Power Station;]

KSEB Ltd submitted that, since the coal is chosen as the fuel, the modification proposed accordingly.

- (49) Clause 26.1 of the APP – Definition of ‘Maximum Monthly Payment’.

Provisions in the Model Bid Document

“Maximum Monthly Payment” shall have the meaning as set forth in Clause 13.1.1;

KSEB Ltd’s Proposal for modification

Deleted

KSEB Ltd submitted that since these terms are not present in this modified agreement, the same has been deleted.

- (50) Clause 26.1 of the APP – Definition of ‘peak hours’.

Provisions in the Model Bid Document

Peak hours” shall have the meaning as set forth in Clause 10.4;

KSEB Ltd’s Proposal for modification

Deleted

KSEB Ltd submitted that since these terms are not present in this modified agreement, the same has been deleted.

- (51) Clause 26.1 of the APP – Definition of ‘Secured Obligations’

Provisions in the Model Bid Document

“Secured Obligations” means: (a) the amounts due to the Default Escrow Bank from the Utility in relation to the Letter of Credit; (b) obligations of the Utility for payment of Tariff and Incentives under and in accordance with this Agreement; and (c) obligation of the Utility to make Termination Payment under and in accordance with this Agreement upon termination thereof;

KSEB Ltd’s Proposal for modification

“Secured Obligations” means: (a) Omitted; (b) obligations of the Utility for payment of Tariff and Incentives under and in accordance with this

Agreement; and (c) obligation of the Utility to make Termination Payment under and in accordance with this Agreement upon termination thereof;

KSEB Ltd submitted that, since the provision of escrow account is deleted, the said definition has been modified accordingly.

- (52) Clause 26.1 of the APP – Definition of ‘UI Regulations’

Provisions in the Model Bid Document

“UI Regulations” means the CERC Unscheduled Interchange Regulations 2009 or any substitute thereof;

KSEB Ltd’s Proposal for modification

Deleted

KSEB Ltd submitted that since these terms are not present in this modified agreement, the same has been deleted.

- (53) Schedule-C- Default Escrow Agreement

The Schedule-C of the Model bidding documents completely omitted by KSEB Ltd citing that ‘since the provision of escrow account is deleted, the Schedule-C is no more relevant in this tender and hence deleted.

- (54) Schedule-D. Deed of Hypothecation

KSEB Ltd omitted this clause from this bidding document citing the reason that since the provision for Deed of Hypothecation is no more relevant in this tender.

- (55) Clause-8 of Schedule-E

Provisions in the Model Bid Document

"The Expiry Date of this Letter of Credit shall be deemed to be automatically extended, 2 (two) months prior to its Expiry Date, without any act or deed, for an additional period of 1 (one) financial year from the respective Expiry Date, unless at least 180 (one hundred and eighty) days prior to any Expiry Date, the Bank gives notice in writing to the Supplier and the Utility that the Bank elects not to renew this Letter of Credit for any such additional period, in which case immediately after the Expiry Date of this Letter of Credit, the Bank shall cease to be the Default Escrow Bank under and in accordance with the provisions of the Default Escrow Agreement dated, entered into between the Bank, the Utility and the Supplier."

KSEB Ltd’s Proposal for modification

"The letter of Credit shall be renewed for an additional period of 1 (one) financial year from the respective Expiry Date, before the expiry of the Letter of Credit."

KSEB Ltd submitted that, to avoid automatic extension, the clause is modified.

4. The Commission admitted the petition as OP No. 60/22. Hearing on the petition was conducted on 28.10.2022. Sri. Jayaraj, Chief Engineer (Commercial & Tariff), Sri. Rajan, Deputy Chief Engineer and Smt. Latha SV, Asst: Executive Engineer presented the matter on behalf of the petitioner, KSEB Ltd. The summary of the deliberations during the hearing is given below.

- (1) The Commission vide the Order dated 25.06.2022 in the matter of approval of the ARR, ERC and Tariff for the MYT period from 2022-23 to 2026-27 has not approved the power purchase of 465MW from the unapproved DBFOO contracts. In lieu of the unapproved power purchase, the Commission has directed KSEB Ltd to purchase equivalent power on medium term basis through competitive bidding as per Section 63 of the EA-2003 from the power plants who have assigned coal linkage as per SHAKTI policy of the Central Government.
- (2) The Ministry of Power (MoP), Government of India (GoI), vide the notification dated 29th January 2019, had notified the guidelines for the procurement of the power on medium term basis from the power stations set up on 'Finance Own and Operate (FOO)' basis. KSEB Ltd decided to float tender for procurement of 500MW RTC power on medium terms as guidelines notified by MoP, GoI.. KSEB Ltd has made certain minor deviations from the guidelines notified by the MoP, GoI.
- (3) The project specific requirement specified in the bid document are detailed below.
 - Quantity. 500MW RTC power for 5 years
 - Delivery: Kerala periphery
 - Commencement of supply : From April 2023
 - Source of fuel : Linkage coal
 - Minimum Bid capacity : 100MW
 - Bid security: Rs.5 Lakhs/MW
 - Performance security : Rs.10 Lakh/MW for 500MW & Rs.15 Lakh/MW for < 500MW
- (4) The main deviations proposed in the model documents are given below.
 - (i) Release of Performance Security- After end of contract period instead of 6 (six) months after the Appointed Date.
 - (ii) Substitute Supply- Made a compulsory provision. Hence no payment of FC, in case of non-availability due to fuel shortage.
 - (iii) Default Escrow Account- Deleted
 - (iv) Deed of Hypothecation- Deleted
 - (v) Additional condition : Maximum capacity from a single unit : 100MW

KSEB Ltd has also briefly explained on the deviations proposed as given in paragraph- 3 of this Order.

- (5) The Commission during the hearing clarified that, KSEB Ltd shall ensure maximum participation to ensure competitive rates in the bid process. The proposed deviations shall not hinder the bidding process.

Analysis and Decision of the Commission

5. The Commission has examined in detail the petition filed by KSEB Ltd for seeking approval for the deviations made in the bidding documents for procuring 500 MW RTC power on medium term basis from the model bidding documents notified by the Ministry of Power, Government of India as per the provisions of the Electricity Act, 2003, and decide as follows.
6. The Commission vide the Order dated 25.06.2022 in petition OP No. 11/2022 had approved the ARR, ERC and Tariff of KSEB Ltd for the MYT period from 2022-23 to 2026-27. The Commission vide the paragraph 8.2 of the Order has issued following directions to KSEB Ltd for immediate compliance.

“8.2 Purchase of 465MW power through long term contracts under DBFOO Since the Ministry of Power, Government of India has declined to approve the deviations made by KSEB Ltd in the purchase of 465MW power from the provisionally approved/unapproved DBFOO contracts due to the facts and circumstances explained in paragraphs 6.93 to 6.111 of this Order, the Commission has not approved KSEB Ltd’s proposal to purchase 3363.29 MUs yearly from these PSAs. **Instead, KSEB Ltd is hereby permitted to procure 465 MW of equivalent power or as required on medium term basis through competitive bidding as per Section 63 of the Electricity Act, 2003. Alternatively, KSEB Ltd may make necessary arrangements for procuring 465 MW or as required, from power plants through competitive bidding route who have assigned coal linkage as per the SHAKTI policy of the Central Government.**”

As above, the Commission vide the Order dated 25.06.2022 has directed KSEB Ltd to procure 465 MW power in lieu of the 465MW unapproved DBFOO contracts on medium term basis through competitive bidding documents from power plants having coal linkage as per the SHAKTI policy of the Central Government.

7. KSEB Ltd submitted that, in compliance of the direction of the Commission, it has decided to procure 500MW RTC power on medium term basis from power plants having coal linkage as per the SHAKTI policy of the Central Government through competitive bidding route as per the bidding guidelines notified by the Central Government as per Section 63 of the Electricity Act-2003.
8. In this matter, the Commission noted that the following;
 - (1) Ministry of Coal vide letter No.23011/15/2016-CPD/CLD dated 22nd May, 2017, has notified the policy guidelines for allocation of Coal linkages to

- Power Sector- new more transparent Coal allocation policy for Power sector, 2017- SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India). Under the SHAKTI scheme, use of coal linkage has also been allowed in medium term power procurement.
- (2) Duly incorporating the provisions of coal linkages as per the SHAKTI policy to the power plants, the Central Government vide letter No:23/17/2013- R&R-Vol-VI (Part 2) dated 29th January 2019 has issued the revised “Standard Bidding Document” comprising; (a) Model Request for Qualification (MRFQ), (b) Model Request for Proposal (MRFP), (C) Model Agreement for Power (MAPP) for Medium Term Procurement of Electricity on DEEP Portal from power station setup on ‘Finance, Own and Operate (FOO)’ basis.
- (3) Subsequently, Ministry of Power, Government of India vide the resolution No. 23/17/2013-R&R- vol-VI (Part-2) dated 30.01.2019 has notified the revised Guidelines for Procurement of Electricity for Medium Term from Power Stations set up on Finance, Own and Operate (FOO) basis. These guidelines specified that, the distribution licensees shall adopt the Model Bidding Documents issued on 29.01.2019 for Procurement of Electricity from the Power Producers/Traders/Distribution Licensees through a process of open and transparent competitive bidding conducted by Distribution Licensees through an electronic platform (DEEP e-Bidding Portal) based on offer of the lowest tariff from power generating stations constructed and/or operated on FOO basis. These guidelines dated 30.01.2019 specify the following terms and conditions.
- (i) The terms and conditions specified in the Model Bidding Documents referred to hereinabove shall, by reference, form part of these Guidelines and shall be treated as such.
- (ii) The application of these Guidelines shall be restricted to projects from which power is procured in accordance with an Agreement for Procurement of Power for a period between one and five years, with a provision for extension of this period upto 25% of the initial contract period or one year whichever is lower, with mutual consent.
- (iii) The tariff determined through the DEEP e-Bidding process using e-reverse Auction based on these Guidelines comprising the Model Bidding Documents shall be adopted by the Appropriate Commission in pursuance of the provisions of section 63 of the Act.
- (iv) **Any deviation from the Model Bidding Documents shall be made by the Distribution Licensees only with the prior approval of the Appropriate Commission.** Provided, however, that any project specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents.

- (v) The amendments made in the Guidelines for Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis vide Ministry of Power Resolution No. 23/9/2015-R&R dated 16th April, 2015 in view of new coal block auction policy issued by Ministry of Coal, shall also apply, mutatis mutandis, for procurement of electricity for Medium Term from Power Stations set up on Finance, Own and Operate (FOO) basis.
- (4) As above, the bidding guidelines dated 30.01.2019 specifies that, any deviations on the Model Bidding Documents issued on 29.01.2019 shall be made by the distribution licensees only with the prior approval of the Appropriate Commission.
- 9. KSEB Ltd submitted that, the licensee had proposed certain deviations in the Model Bidding Documents to suit the requirements of KSEB Ltd for procuring 500MW RTC power on medium term basis following the bidding guidelines dated 30.01.2019. The details of the deviations proposed by KSEB Ltd are given in paragraph-3 of this Order.
- 10. The Commission has examined the deviations proposed by KSEB Ltd in the bidding documents as detailed in paragraph-3 of this Order and noted the following.
 - (1) As per the Clause 1.1.5 of the RFQ (**item No.2 of the Deviations proposed by KSEB Ltd**), the maximum capacity that can be offered from a single unit in a power plant is limited to 100MW. KSEB Ltd submitted that, this is to avoid the risk of outages of the units and consequent nonavailability of power during outages.

The Commission noted the proposal of KSEB Ltd. The unit capacity of the most of the coal based power plants in India are in the range of 200MW to 500 MW. The unit capacity of the recently commissioned plants is even more than 500MW. Furthermore, the technical minimum of coal-based power plants is 55%. Considering these aspects in detail, the Commission hereby advise KSEB Ltd to look into these factors in detail and make appropriate changes in the bidding documents after the pre-bid meeting with the bidders as scheduled in the bidding documents.

- (2) Omission of various clauses in the bid documents related to 'Default Escrow Agreement', 'Deed of Hypothecation'

The model bidding documents notified by the MoP, GoI, provide for the execution of 'Default Escrow Agreement' and 'Deed of Hypothecation' as provide in the APP by the buying utility.

However, KSEB Ltd had proposed to omit all the clauses related to execution of 'Default Escrow Agreement', 'Deed of Hypothecation'

citing the reason that, the licensee is a prompt payer electricity charges, and also considering the Letter of Credit offered as payment security mechanism. KSEB Ltd also submitted that, the licensee is yet to execute the 'Default Escrow Agreement and Deed of Hypothecation' on behalf of any of the generators including CGS, IPPs' as payment security for purchase of power.

Commission noted the proposal of KSEB Ltd in detail. The Commission is also aware that KSEB Ltd is a prompt payer of electricity charges to the generators and traders from where the licensee purchase power for meeting the electricity demand of the State. KSEB Ltd is yet to provide payment security for power purchases other than Letter of Credit. In this background, the Commission also agrees with the proposal of KSEB Ltd, however this may be finalise through mutual consensus with the prospective bidders.

- (3) Release of Performance Security (item No. 19 of the deviations as per the petition- Clause 9.3 of the APP)

As per the Model Bidding Documents, the Performance Security has to be released after six months from the 'Appointed Date' upon the Deemed Performance Security for like amount taking effect.

However, KSEB Ltd proposed to retain the Performance Security till the end of the contract period and it shall be released upon the expiry of the contract period. KSEB Ltd submitted that, the proposal is based on their past experiences with some of the suppliers who defaulted in supply of power as per the agreement and violating the provisions of the PPA/PSA.

The Commission noted the proposal of KSEB Ltd and agrees with the proposal of the licensee based on their past experiences.

- (4) Deemed Performance Security (item No.20 of the Deviations as per the petition, Clause 9.4 of the APP)

The Model Bidding Documents provides for Deemed Performance Security till the end of the contract period, as a substitute for Performance Security which is to be released after six months from the Appointed Date and upon execution of the Deemed Performance Security.

KSEB Ltd proposes to continue the Performance Security till the end of the contract period, and this Commission also agrees with the proposal of KSEB Ltd. In addition to the Performance Security, KSEB Ltd also proposes to have Deemed Performance Security. As discussed earlier, in the Model Bidding Documents, the 'Deemed Performance Security' is envisaged as a substitute for Performance Security. In other words, in the bidding documents, KSEB Ltd

proposes to have two types of security to ensure the performance obligations of the supplier as per the Agreement instead of one type of security provided in the Model Bidding Documents notified by the Central Government. KSEB Ltd may have to convince the prospective bidders regarding the two types of Performance Securities to ensure the contractual obligations of the supplier as per the APP.

- (5) The Commission has also examined the other deviations proposed by KSEB Ltd in the bidding documents RFQ, RFP and APP as detailed under paragraph 3 of this Order above. It is noticed that, the other deviations are for meeting the specific requirements of KSEB Ltd and also for giving more clarity for avoiding ambiguity in the Bidding Documents.

Considering all these aspects in detail, the Commission decided to approve the deviations proposed in the bidding documents with the observations as detailed in the paragraph-10 above.

Order of the Commission

11. The Commission after examining the petition filed by KSEB Ltd for seeking approval for the deviations proposed in the Bidding Documents for procuring 500 MW RTC power on medium term basis, from the model bidding documents notified by the Ministry of Power, Government of India as per the provisions of the Electricity Act, 2003, hereby Orders the following;
 - (1) Approve the deviations proposed in the Bidding Documents with the observations as discussed under paragraph-10 above, for procuring 500 MW RTC power on medium term basis through competitive bidding route, from the power plants having coal linkage as per the SHAKTI policy of the Central Government.
 - (2) KSEB Ltd shall proceed with the floating of tender to procure 500MW RTC Power as per the time schedule specified in the tender documents.

Petition disposed of. Ordered accordingly.

Sd/-
Adv. A J Wilson
Member (Law)

Approved for issue

Sd/-
C R Satheeshchandran
Secretary