

**KERALA STATE ELECTRICITY REGULATORY COMMISSION**  
**THIRUVANANTHAPURAM**

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

**OP No 25/2021**

In the matter of Petition seeking for intimating the status of compliance of the Order dated 28-4-2020 in Petition OP 8/2020 in the matter for approval of Power Sale Agreement for 100MW wind power with Solar Energy Corporation of India Limited on long term basis.

Petitioner : Kerala State Electricity Board Ltd (KSEB Ltd)  
KSEB Ltd represented by : Sri K G P Nampoothiri, EE

Respondent : Solar Energy Corporation of India Ltd (SECI)  
Respondent represented by: Sri. M.G. Ramachandran, Senior Advocate  
Smt. Tanya Sareen, Advocate

Hearing on : 27.05.2021

**Order dated 02.06.2021**

1. Kerala State Electricity Board Ltd (hereinafter referred as KSEB Ltd, or the Petitioner) on 09.03.2021 filed a petition before the Commission with the following prayers:

*Issue appropriate directions in the matter for approval of Power Sale Agreement for 100MW wind power with Solar Energy Corporation of India Limited on long term basis filed by KSEBL under Petition OP 8/2020 after obtaining the views of SECI on the modifications as ordered by Commission on the draft PSA.*

2. The summary of the petition filed by KSEB Ltd is given below.
  - (i) The Commission vide Order dated 28.04.2020 in OP 08/2020 filed by KSEB Ltd has ordered that  
*"11. As detailed above and based on the documents submitted by the licensee, the Commission is unable to appraise the various Articles of the PPA to be signed between the Buyer SECI and WPD and its financial and other consequences on KSEB Ltd and its consumers. This is a prerequisite for the Commission before it can consider the approval of the initialled PSA.*

*Hence it is directed that, KSEB Ltd shall,*

- (1) *If it considers expedient, sign a Letter of Intent (LOI) with SECI indicating the quantity, rate and the date of commencement of the supply along with the period of 25 years supply.*

- (2) *File a proper petition for approval of the PSA after incorporating the remarks of the Commission on the PSA.*
              - (3) *Make available in the petition a copy of the PPA signed between SECI and WPD*
- (ii) In compliance of the Order issued by the Commission, KSEB Ltd vide its letter dated 14-07-2020 had forwarded to the SECI the modifications in the PSA to be signed with SECI.
- (iii) SECI vide letter dated 08-11-2020 communicated that, SECI does not agree to reduce the trading margin of Rs.0.07/kwh and also the modifications on certain other issues. SECI submitted their detailed comments on the modifications in the PSA approved by the Commission, and also submitted a copy of the PPA signed by the SECI with the Wind Power Developer M/s Sprng Wind Energy Private Limited.
3. The Commission admitted the petition as OP25/2021 and scheduled for hearing on 27.05.2021. M/s SECI vide letter dated 26.05.2021 requested to adjourn the hearing sine die, citing the following.
- (i) The petition filed by KSEB Ltd is for approval of power procurement of 100 MW from SECI under the PSA dated 06.09.2019 and back-to-back PPA dated 16.03.2020 between SECI and Power Developer, M/s.Sprng Wind Energy Private Limited ('Sprng').
  - (ii) M/s Sprng on 24.05.2021 sent a notice of termination of PPA on grounds of force majeure and other reasons including that the implementation of the PSA has been pending before the Hon'ble Commission. Pursuance to the notice of termination of PPA, on 24.05.2021, Sprng has filed a Petition before the Central Commission for termination of PPA, the return of Performance Bank Guarantee and restraining SECI from taking any coercive steps.
  - (iii) Admission hearing on the matter was held on 25.05.2021, and during the proceedings SECI has urged the Central Commission to implead KSEB Ltd as a Party. Accordingly, Central Commission has directed Sprng to implead KSEB Ltd also in to the petition.
  - (iv) In view of the above developments, SECI submitted that it will not be in a position to pursue with the implementation of the PPA and PSA at this stage pending the resolution of the issues with the Sprng and proceedings filed by Sprng before the Central Commission in relation to the termination of PPA.
  - (v) SECI further submitted that, PPA and PSA documents are finalized as the part of bid documents and competitive bidding for selection of the Wind Power Developers was held based thereon. It may therefore not be possible to deviate on material terms from the tendered PPA and PSA documents and in any event any such deviation has to be with consent of all parties. SECI has already submitted the comments vide its letter dated 18.11.2020, whereby SECI has provided detailed submissions with respect to Order dated 28.04.2020 passed by the Hon'ble Commission and the letter dated 14.07.2020 of KSEB Ltd containing comments for modification of certain provisions of the PSA dated 06.09.2019.

(vi) In view of the above, SECI requested the Commission that the hearing scheduled on 27.05.2021 in OP No.25 of 2021 may be adjourned sine die.

4. Since this request was received the previous day and considering the fact that such last minute request should not be allowed, especially when the Commission was holding the hearing during a triple lockdown in Thiruvananthapuram, the Commission conducted the hearing as scheduled on 27.05.2021 through video conference. Sri K G P Nampoothiri, Executive Engineer, presented the matter on behalf of the petitioner KSEB Ltd. Sri. M.G. Ramachandran, Senior Advocate, and Ms. Tanya Sareen, Advocate presented the comments of the Respondent SECI. Summary of the deliberations during the hearing is given below.

(1) SECI presented the Record of Proceedings (RoP) dated 25.05.2021 of the hearing conducted on 25.05.2021 by the Central Electricity Regulatory Commission (CERC) in 'Diary (Petition) No. 136/2021 and Diary (IA) No. 137/2021. Summary of the RoP is given below.

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- (i) *M/s Sprng Wind Energy Private Ltd has filed the instant Petition inter alia seeking declaration that the delay in execution of the Project and the eventual termination of the PPA has been on account of various force majeure events i.e. delay in identification of the final buying entity, delay in approval of PSA, imposition of impossible conditions relating to the construction of the dedicated transmission line (DTL) and the restrictions on account of the ongoing Covid-19 pandemic. As per the Article 13.5 of the PPA, the parties are entitled to terminate the PPA without any liability if any Force Majeure events lasts for more than nine months. In the alternative, the petitioner is seeking a declaration that the PPA stands validly discharged from 24.05.2021. The Petitioner further submitted that, one of the key uncontrollable issues being that the Power Sale Agreement entered into between SECI and KSEB Ltd has not been approved by KSEB even after a lapse of 23 months from the date of the PPA.*
  - (ii) *The counsel for the Respondent, SECI accepted the notice and submitted before the Central Commission that the buying utility, KSEB Ltd should be impleaded as a party to the petition since SECI has executed the PSA with KSEB Ltd for sale of power generated by the petitioner under the PPA.*
  - (iii) *Based on the deliberations during the hearing held on 25.05.2021, the Central Commission ordered as under:*
    - (a) *The Petitioner to array KSEB Ltd as a party and file revised memo of parties.*
    - (b) *Issue notice to KSEB Ltd.*
    - (c) *The Petitioner to serve copy of the Petition and IA on the Respondent including KSEB Ltd, if not already served and the Respondent, including KSEB Ltd to file its reply by 17.06.2021, after serving a copy to the Petitioner, who may file its rejoinder, if any, by 30.06.2021.*
    - (d) *Parties to comply with the above time line and no extension of time shall be granted.*
  - (iv) *The petitioner WPD also submitted before the Central Commission to restrain the Respondent SECI from taking any coercive steps against the Petitioner including invocation of Performance Bank Guarantee. The Respondent SECI*

*assured that SECI shall not encash the Performance Bank Guarantee furnished by the WPD till the next date of hearing.”*

(2) This Commission noted with displeasure the false pleading by the learned counsel of the Wind Power Developer (WPD), M/s Sprng Wind Energy Private Limited before the Central Commission that even after a gap of 23 months from effective date of the PPA, the PSA between SECI and KSEB Ltd was not been approved by the KSERC. This is totally false pleading and without appraising the facts of the matter. The entire facts of the case before this Commission is stated below for the information of all parties concerned.

(a) KSEB Ltd on 12.11.2019, filed a petition before this Commission for the approval of the PSA for the procurement of 100MW Wind Power with SECI. The Commission vide Order dated 28.04.2020, disposed the petition with following directions to the parties concerned.

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11. *As detailed above and based on the documents submitted by the licensee, the Commission is unable to appraise the various Articles of the PPA to be signed between the Buyer SECI and WPD and its financial and other consequences on KSEB Ltd and its consumers. This is a prerequisite for the Commission before it can consider the approval of the initialed PSA.*

*Hence it is directed that, KSEB Ltd shall,*

(1) **If it considers expedient, sign a Letter of Intent (LOI) with SECI indicating the quantity, rate and the date of commencement of the supply along with the period of 25 years supply.**

(2) *File a proper petition for approval of the PSA after incorporating the remarks of the Commission on the PSA.*

(3) *Make available in the petition a copy of the PPA signed between SECI and WPD.*

*The petition is disposed off with the above observations and directions.*

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As highlighted above, the Commission has vide its order dated 28.04.2020 while disposing the petition had given approval to KSEB Ltd to proceed with the procurement of 100 MW Wind Power through SECI for a period of 25 years. This Commission had also approved the rate of power as adopted by the Central Commission under Section 63 of the Electricity Act, 2003. The Commission also directed KSEB Ltd to issue an Lol if required, showing the quantum, rate and the duration of supply. Though Lol is not a formal agreement, being a procurer to a formal agreement, it is an assurance and commitment from the part of the distribution licensee to accept the offer including the quantum, rate and duration of the power purchase. Once the Lol is issued, signing the formal agreement can be done subsequently.

As per the Section 86(1)(b) of the EA-2003, only this Commission is authorised to approve the Power Sale Agreement proposed to be signed by the licensee, KSEB Ltd with any other party for power procurement. This Commission had on detailed examination of the

draft initialled PSA signed between SECI and KSEB Ltd for procurement of 100MW power noted that the initialled PSA need modifications to avoid unnecessary litigations in future, especially for a power purchase contract lasting for 25 years. Considering these matters in detail, the Commission vide Order dated 28.04.2020, proposed certain modifications in the draft initialled PSA between SECI and KSEB Ltd, which are explained under Paragraph 10(1) to 10(18) of the order.

With the above directions and observations, the Commission vide Order date 28.04.2020, had disposed off the original petition dated 12.11.2019. Hence, since 28.04.2020, no petition is pending before this Commission for approval of the PSA between SECI and KSEB Ltd for procurement of 100MW Wind Power from the Wind Power Developer M/s Sprng Wind Energy Private Limited.

- (b) Thereafter, the licensee KSEB Ltd vide the petition dated 05.03.2021 (date of receipt at the registry of the Commission on 09.03.2021) intimated the “status of compliance of the Order of the Commission dated 28.04.2020” and informed that SECI was not willing to incorporate certain modifications proposed by the Commission. The present petition dated 05.03.2021 filed by KSEB Ltd deals only with the status of compliance of the said Order dated 28.04.2020. KSEB Ltd has till date not submitted the revised PSA as directed before the Commission for approval, after incorporating the suggestions of the Commission.
  - (c) As the matter stands now as stated above, no petition is pending before this Commission for the approval of PSA for procurement of 100MW Wind Power through SECI. The fact being so, the Commission raises serious objections to the false submission of the Learned counsel of the Wind Power Developer M/s Sprng Wind Energy Private Limited before the Central Commission that, the matter of PSA entered into between SECI and KSEB Ltd has not been approved by KSERC even after a lapse of 23 months from the effective date of PPA.
- (3) Sri. M.G. Ramachnadrán, Senior Advocate of SECI submitted that, the entire facts of the case including the pleadings before this Commission shall be brought to the attention of the Central Commission during the next hearing. The Learned Senior Counsel further submitted that, the draft PPA and PSA documents were published along with the competitive bidding documents. Hence, material change, if any, on the terms of the PSA and PPA can be made only with the consent of all the parties. In order to avoid such issues, SECI may get the approval of the bidding documents PPA and PSA from the State Commissions before issuing NiT. Otherwise, the Central Government may publish the Standard Bidding documents as per Section 63 of the EA-2003 for procuring Renewable power through competitive bidding documents as in the case of conventional power.

The Commission noted that, the Ministry of Power, Government of India vide the Resolution No. 23/54/2017 – R&R dated 8<sup>th</sup> December 2017 notified the ‘guidelines for Tariff based competitive bidding process for procurement of power from Grid connected wind power projects’. However during the examination of the PSA submitted before this Commission for approval, the Commission noted that, there were significant deviations from the Standard Bidding Guidelines notified by the MoP, GoI. It was only after the perusal of the Standard Bidding Guidelines that the Commission directed to modify the PSA as proposed under paragraph 10(1) to 10(18) of the order dated 28.04.2020. As per the paragraph 22 of the Standard Bidding Guidelines (SBG), any deviation to from the SBG by SECI has to be done only with the prior approval of the Appropriate Commission. However the Commission was presented with sat-accompli at the stage of approval of PSA. Since this is contrary to the MoP guidelines regarding approval of deviations, and no prior approval of the Commission was obtained before floating the tender, the Commission had issued directions to modify the PSA as per its order dated 28.04.2020.

- (4) KSEB Ltd submitted that, hearing on the petition may be adjourned as requested by the SECI considering the fact that petition filed by the Wind Power Developer M/s Sprng Wind Energy Private Limited before the Central Commission for the termination of the back-to-back PPA related to the case. KSEB Ltd also submitted that, it shall also submit the facts of the case before the Central Commission through affidavit and also appear before the Central Commission in person and present the matter during the next hearing.
5. Based on the deliberations during the hearing, the Commission hereby orders the following.
- (1) Adjourn the hearing and further proceedings on the Petition OP No. 25/2021 as sine die, till the final disposal of the Diary (Petition) No. 136/2021 and Diary (IA) No. 137/2021 filed by M/s Sprng Wind Energy Private Limited before the Central Commission.
  - (2) KSEB Ltd shall, within 30 days after the final disposal of the pending petition before the CERC, file a fresh petition before this Commission for further course of action, if any, on the matter with all supporting documents. The petition fee for this fresh petition shall be adjusted against the fee paid in OP No. 08/2020.

Petition disposed off. Ordered accordingly.

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

**Sd/-**  
**Preman Dinaraj**  
**Chairman**

Approved for issue

C R Satheeshchandran  
Secretary (i/c)