

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

PRESENT: Sri.T.M. Manoharan, Chairman
Sri. K.Vikraman Nair, Member
Sri. S. Venugopal, Member

OP No. 13 of 2014

(File No. No. 2033/C.Engg./Kallar /2013)

**In the matter of approval of PPA to be signed with KSEB for drawal of power
from the 50 kW Kallar Micro Hydel Project of Idukki District
Panchayat**

Petitioner : The Secretary,
Idukki District Panchayat, Idukki District.

Respondent : K.S.E.B.Ltd.
Vydyuthi Bhavanam
Pattom, Thiruvananthapuram.

Order dated 07.12.2015

T.M. Manoharan, Chairman

Introduction

The Secretary, Idukki District Panchayat had filed a petition before the Commission on 10-10-2013, seeking approval of the draft Power Purchase Agreement (PPA) to be executed with K.S.E.B.Ltd in respect of their 50 kW micro hydel project at Kallar in Idukki District. The project was conceived by the District Panchayat during the year 2001 to harness the hydel potential of Kallar stream. The commissioning of the project was delayed due to various reasons. This was intended to be a model and forerunner for many more micro hydel projects in the district.

2. As per the petition of the Idukki District Panchayat, a small weir was constructed across Kallar stream and water is fed through steel penstock to drive a cross flow turbine located in the power house. The project operates with a net head of 40M and discharge of 210 litres per second. The cross flow turbine was supplied by M/s. Willot JLA, Belgium, with a capacity of 55 kW at 800 rpm and is coupled through a pulley and v-belt drive to a Kirloskar made induction generator of 55 kVA capacity. It is submitted that the project has water availability throughout the year and is capable of generating more than 1200 units per day. The machine has remained idle for the past 10 years. Subsequently, the revamping and grid interfacing works were carried out under the consultancy and supervision of Energy Management Centre, which is the nodal institution authorized by Government of Kerala for

promotion of small hydro projects (SHP). The renovation work included the general maintenance of plant and machinery, replacement of damaged penstock pipes, modification of electrical panels and replacement of generator to suit grid interfacing.

3. After preliminary scrutiny of the petition, the Commission as per letter no. 2033/C.Engg/2013/KSERC/1239 dated 18-11-2013 has informed the petitioner to rectify the defects observed in the petition.
4. After curing the procedural defects in the petition dated 10-10-2013 the Secretary, Idukki District Panchayat had filed a revised petition on 22-01-2014 as per Regulation 24 of the K.S.E.R.C. (Conduct of Business) Regulations, 2003. The prayers of the petitioner are (i) to approve the power purchase agreement (PPA) to be entered into with KSEB, and (ii) to fix the tariff for the Micro Hydro Power scheme @ Rs. 4.88 per unit as detailed in the Order No. 442/CT/2012/KSERC dated 01.01.2013.
5. The Secretary, Idukki District Panchayat as per their letter no. B5-4580/99 dated 08-01-2014 requested the Commission to reduce the application fee. The Commission, in its meeting on 06-02-2014 decided to reduce, as a special case, the petition fee to Rs. 20,000/- from the regular fee of Rs. 2 lakhs, as the project is a micro hydel project developed and owned by the District Panchayat.
6. The draft PPA was forwarded on 12.02.2014 to K.S.E.B.Ltd. for scrutiny and resubmission after getting initialed by both the parties. Since there was no response from K.S.E.B.Ltd., the Commission reminded KSEB Ltd on 25.06.2014. KSEB Ltd submitted the draft PPA on 12-08-2014.

Hearing on 25-09-14

7. Hearing was conducted in the court room of the Commission on 25-09-2014 The Secretary, Idukki District Panchayat while presenting the details of the project has requested the Commission to allow the tariff of Rs. 4.88 per unit, which is applicable to small hydel projects with installed capacity below 5 MW, commissioned after 01-01-2013 to 31-03-2015. The respondent, K.S.E.B.Ltd. intimated that some more works are to be completed for commissioning of the project. Both the parties were directed to complete the works, commission the project and to declare commercial operation so that tariff can be determined with respect to the date of commercial operation.
8. In the letter No. IDP/A4-4702/2014, dated 28.11.14 the Secretary, IDP informed the Commission that the defects pointed out by KSEB Ltd were rectified. In a letter dated 17-11-2014, IDP had intimated Deputy Chief Engineer, Office of the Director (RE & Plg) Vydyuthi Bhavanam, Pattom as follows:
 - (i) Since the road to the power house was damaged in a land slide, a temporary steel bridge has been constructed to provide easy access of the power house.
 - (ii) Fire extinguisher has been installed.
 - (iii) CT operated bidirectional meter has been installed.
 - (iv) Approval from Chief Electrical Inspector has been obtained as per his letter No. B4-17489/CEI dated 06-08-2014.

(v) Process to insure the project is in progress.

9. As per the letter No. No. 2033/C.Engg./Kallar/2013/KSERC dated 03-12-2014, the Commission directed KSEB Ltd to furnish report on the declaration of commercial operation and status of the project.
10. As per the letter dated 16-12-2014, the Commission again reminded KSEB Ltd, to furnish report on declaration of commercial operation, since the testing of the functioning of the project might not be possible once summer season started.
11. K.S.E.B.Ltd. vide letter dated 26-12-2014 had intimated that the following deficiencies should be rectified before proceeding with the performance tests of the machine for declaring the commercial operation;
 - (i) *There was no proper access to the project site, which is very crucial on the safety point of view.*
 - (ii) *No safety equipment is installed including fire-fighting equipment*
 - (iii) *The energisation approval from the Electrical Inspectorate is not yet made available.*
 - (iv) *Metering system required replacement.*

K.S.E.B.Ltd. further submitted that the District Panchayat authorities had produced only scheme approval from the Electrical Inspectorate and they had been advised to obtain the energisation approval. It was also informed that performance test would be conducted as soon as the energisation approval from the Chief Electrical Inspector was obtained.

12. As per decision in the meeting of the Commission on 24-12-2014, the Commission intimated Idukki District Panchayat to obtain the energisation certificate from Chief Electrical Inspector. Copy of letter dated 26-12-2014 of KSEB was also forwarded to the Idukki District Panchayat.
13. In the letter dated 26-05-2015, the Commission informed KSEB Ltd that the project under construction was only a micro hydel project, taken up by Idukki District Panchayat. It would be in the interest of KSEB Ltd also, to commission the project at the earliest. The Commission requested KSEB Ltd to submit report on the issue on or before 03-06-2015, so that the petition could be disposed of without any further delay.
14. In the letter dated 20-06-2015 the Commission addressed Chief Electrical Inspector, requesting him to expedite the issuance of energisation approval for the project.
15. In the letter dated 27-05-2015, the Commission addressed the Director, EMC, which is the nodal agency for development of SHPs in the state, requesting him to take necessary steps for the commissioning of the project.
16. K.S.E.B.Ltd. vide letter dated 03-06-2015, submitted that the 50 kW machine was synchronised with the grid on 31-03-2015 on completion of all the works related to the project. The Full Time Directors of K.S.E.B.Ltd. vide B.O. (FTD) No. 1310/2015(DREP/Plg. III/Kallar) dated 27-05-2015 have accorded sanction to declare the Commercial Operation of 50 kW Kallar micro hydro project developed by Idukki District Panchayat with effect from 31-03-2015.

17. EMC, as per its letter No. EMC/SHP/Kallar/KSERC/15/1 dated 03-06-2015, informed that KSEB Ltd had declared commercial operation of Kallar SHP with effect from 31-03-2015, as per BO(FTD)1310/2015 (DREP)/PIg/III/Kallar) dated 27.05.2015 of KSEB Ltd.
18. Idukki District Panchayat, as per its letter No. B4-4580/99 dated 01-06-2015, informed that, Electrical Inspector, Idukki had given the energisation approval as per his order No. B1-3690/2014/E11 dated 10-03-2015. In their letter No. IDP/B4/4580/99 dated 12-06-2015, IDP informed that CoD has been declared with effect from 31-03-2015 and requested to fix the rate of energy at Rs. 4.88 per unit corresponding to the date of commercial operation.
19. The Commission as per its letter dated 09-06-2015 requested KSEB Ltd to explain the following,-
 - (i) The reason for declaring the commercial operation of the project with effect from 31-03-2015.
 - (ii) Details of tests conducted.
 - (iii) Date of completion of tests.
20. As per letter No. B4-13655/15/CEI dated 03-06-2015, the Chief Electrical Inspector also informed that energisation approval was already given.
21. K.S.E.B.Ltd., vide their letter dated 15.07.2015 submitted that 31.03.2015 is the date on which the machine was synchronized to the grid after preliminary inspection, the energy meters were sealed and initial reading taken. The machines were under commercial service in every sense since such date and hence CoD was declared with effect from 31.03.2015. It was also submitted that the following tests/ inspections were conducted by K.S.E.B.Ltd at Kallar micro project :
 1. Correctness of relay settings.
 2. Free movement of disc.
 3. Continuity of current transformer and auxiliary coil circuit.
 4. Correctness of tripping circuits.
 5. General Cleanliness.
 6. Electrical accuracy of Relays.
 7. In-service checks of relays through current injection.Of these, first five tests were performed on 27-08-2014. After putting the machine for a week from 31-03-2015, the other tests were completed on 07-04-2015.
22. After examining the draft PPA, the Commission wanted to know the views of Idukki District Panchayat and KSEB Ltd on the following points.

(1) *As per the fourth clause in the preamble to the proposed PPA, it is seen stated as follows*

“And whereas the developer has provided an undertaking to dismantle the project to facilitate the progression of KSEBL’s 5 MW project, proposed in the same location of the project, as and when KSEBL directs for such dismantling.”

In this regard Commission wishes to point out that Idukki District Panchayat is a Local Self Government Institution which is constituted under the provisions in Chapter IX of the Constitution of India and it is

functioning under the provisions of the Panchayat Raj Act. The duties and functions of the District Panchayat are governed by the provisions of the said Act. KSEB Ltd is a limited company incorporated under the provisions of Companies Act 1956. The water resources of Kerala are the properties of Government in Water Resources Department. The Idukki District Panchayat has spent public money for the construction of this micro hydel project and such investment of public money cannot be wasted by dismantling the project. The Commission would like to know the circumstances and grounds for obtaining such an undertaking, if any, by KSEB Ltd. The Commission would also like to know the rights and privileges of KSEB Ltd, if any, with regard to the water resources in Kallar stream and with regard to the powers of KSEB Ltd to give direction to Idukki District Panchayat to dismantle a public property. In this regard it is to be noted that the term of agreement as per clause 2 of the draft PPA is 25 years from the date of date of commercial operation, which can be extended further.

- (2) In view of the fact that project has been completed and synchronized to grid the relevance of clause 4.3 may be examined.*
- (3) In view of the fact that project has been completed and synchronized to grid the relevance of clause 4.6 may be examined.*
- (4) Commercial operation of the project has to be declared by the Project Developer in accordance with the provision in regulation 8 of KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2014. The date of commercial operation of generation unit / station has to be declared by the generation company, the date of commercial operation of transmission project has to be declared by the transmission licensee and the date of commercial operation of a distribution project has to be declared by the distribution licensee. In view of such statutory provisions and the practices followed in power sector, the Commission would like to know about the special rights of KSEB Ltd, if any, to declare the date of commercial operation of a project developed by Idukki District Panchayat. In this regard the definition of date of commercial operation in clause 1 (h) and the definition of date of synchronization in clause 1 (ad) of the draft PPA may also please be seen. In view of the above facts relevance of clause 4.7 may please be examined.*
- (5) After clause 4.8 the next number is clause 6. The numbering needs correction.*
- (6) Since KSEB Ltd has already agreed to purchase the entire power from Kallar Micro Hydel Project the relevance of clause 6.4 may be examined.*
- (7) In view of the decision already taken by the Commission with regard to the rate applicable to infirm power from renewable energy sources, the relevance of clause 6.6 may be examined.*
- (8) The rate of purchase of energy is the preferential tariff fixed by the Commission. Therefore the relevance of clause 6.9 may be examined.*

(9) *With regard to clause 9, it is brought to the notice of KSEB Ltd and Idukki District Panchayat, that as per clause (f) of sub-section (1) of Section 86 of the Electricity Act, 2003, adjudication upon the disputes between the licensees and generating companies and referring such disputes for arbitration are the functions of the State Electricity Regulatory Commission.*

A further hearing was also scheduled on 19-08-2015.

23. In the letter dated 18-08-2015, the KSEB Ltd informed that the clarification sought for by the Commission, involved policy decisions and review of earlier decision taken by it. KSEB Ltd requested to grant enlargement of time by 3 weeks more to submit the details.

Hearing on 19.08.2015

24. Hearing was conducted in the court room of the Commission at 11 am on 19.08.15. Shri. Sajin Joseph, Junior Superintendent., Idukki District Panchayat represented the petitioner. He had submitted that arrangements might be made to take readings of the meter by K.S.E.B.Ltd. and to finalise tariff of the energy sent to the grid of K.S.E.B.Ltd. He had also submitted that even though enough water was available for continuous generation, it was not possible for evacuation of power due to the interruptions of the lines which are passing through cardamom plantations, for which also a solution might be worked out. Shri. N. Venugopal, Chief Engineer (Commercial & Tariff), representing K.S.E.B.Ltd had requested for extension of time for at least 3 weeks for furnishing clarifications sought for by the Commission on the draft PPA. The Commission mentioned that K.S.E.B.Ltd., should encourage and promote such attempts of the District Panchayat. The Idukki District Panchayat should initiate steps to raise invoices for the energy generated and sold to K.S.E.B.Ltd., so that payment could be obtained from K.S.E.B.Ltd. It was also directed that K.S.E.B.Ltd. should make arrangements to take readings of the meter and make payment taking the prevailing tariff applicable for small hydro projects (SHP) below 5 MW till the determination of the tariff of the project by the Commission.

25. In the letter No. KSEB/TRAC/Kallar Micro-hydel/R2-104/12/2015 dated 14-09-2015, KSEB Ltd submitted the following clarifications.

Para (1) : *As a power project developer, KSEB Ltd. has recognised the site of the present Kallar micro hydel project as a potential site which can generate hydro-electric power of 5MW capacity. It is humbly submitted that the DPR Approval Committee of KSEB Ltd. had approved the report on 5MW project in the same location of 50kW project owned by Idukki District Panchayat. In the meanwhile, Panchayat authorities approached KSEB Ltd. for connectivity and sought willingness to procure power generated in their 50kW project. At that point of time, KSEB Ltd. felt that it would be inappropriate to deny connectivity to a project nearing completion in view of*

the 5MW project identified in the same location, which is at proposal stage and likely to commission in future. Hence, Board decided to provide connectivity to the 50kW Micro Hydel Project with an undertaking ensuring that the public money spent by the Panchayat on the project shall not be wasted on any account and at the same time the project shall not be a hindrance to a future project in the same bed with higher capacity. Also, clauses were included in the undertaking for ensuring maximum utilization of the micro hydel project such as,

- (1) project will not be dismantled within the first 5 years of its commissioning.*
- (2) KSEB Ltd. shall request for dismantling only when it is impossible to progress further with the 5MW project.*
- (3) KSEB Ltd. shall schedule the 5MW project ensuring maximum life and electricity generation from the 50kW project of Panchayat.*
- (4) District Panchayat shall be compensated by KSEB Ltd. as and when the 50kW project is dismantled, and amount of such compensation shall be assessed through a third party evaluator, and KSEB Ltd. shall bear all costs of such evaluation.*

From the above it is clear from the undertaking that the mention of dismantling the 50 kW micro hydel project is to facilitate the progress of 5 MW project which is absolutely essential to safeguard the true spirit of section 8(2) (a) of Electricity Act, 2003 which mandates that the proposed river-works shall not prejudice the prospects for the best ultimate development of the river or its tributaries for power generation. It may kindly be noted that KSEB Ltd. has taken adequate measures to preventing loss of public money spent by the Panchayat for the project in the case of dismantling the same by providing adequate compensation.

Para (2): *Clause 4.3 refers to the expenses of connectivity to be borne by Panchayat. As connectivity has already been effected, clause 4.3 has no relevance at present, as observed by the Hon'ble Commission and hence may kindly be deleted.*

Para (3): *Clause 4.6 refers to the procedures to be carried out for synchronising the project with grid. As the project has already been connected to grid, presently clause 4.6 has no relevance as observed by the Hon'ble Commission and may kindly be deleted.*

Para (4): *As per KSERC (Terms & Conditions of Determination of Tariff) Regulation 2014, CoD of the project has to be declared by the Project Developer.*

Regulation 8.2(b) of the said document reads that:

“Where the beneficiaries have entered into an agreement for purchase of power from a generating station, the scheduling process for a generating unit of the generating station or the demonstration of peaking capability corresponding to installed capacity of the generating station through a

successful trial run shall commence after a notice of seven days by the generating company to the beneficiaries and scheduling shall commence from 00:00 hour after completion of trial run.”

The above regulation shows light to the joint responsibility of the beneficiary and the developer/generating company in the matter of CoD. Hence, though it is for the developer to declare the CoD, it can only be self declaration of the fitness of the plant until such a declaration is convinced by the beneficiary during the joint inspection.

It may kindly be noted that regulation 8.2(c) of KSERC (Terms & Conditions of Determination of Tariff) Regulation 2014, stipulates that the developer shall give a declaration to the effect that the generating plant meets the related provisions in the IEGC and State Grid Code. However it appears that provisions in the IEGC or that of State Grid Code (even with appropriate changes) cannot be made applicable to a decentralized generation plant as in the subject case.

Kind attention is invited to the daily order of the Hon'ble Commission dated 29-09-2014 that 'directed both the parties to complete the works, commission the project and to declare commercial operation.' It is respectfully submitted that District Panchayat as the owner of the generation project do not possess the technical expertise or access to the required infrastructure to conduct the tests and checks required to be performed before the declaration of CoD, on its own. KSEB Ltd. had been offering and assisting with necessary services to the Panchayat for early commissioning of the project without realising any fee/cost. In the matter of declaration of CoD of the project, KSEB Ltd. was acting in a bonafide manner in line with the orders of the Hon'ble Commission. It may kindly be noted that Clauses 1(h), 1(ad) and 4.7 of the draft PPA provide for the procedures to be followed in synchronising the project.

It is humbly prayed that considering the facts and circumstances cited above, Hon'ble Commission may take a lenient view in the matter of declaration of CoD by the Board - an act in good faith and may provide appropriate advice/direction for the modification of clause 4.7 of the PPA.

Para (5): *Shall be modified as directed by the Hon'ble Commission.*

Para (6): *Clause 6.4 may be retained for enabling the Developer to sell the energy to any third party in situations where KSEB Ltd. cannot absorb the energy due to technical or other reasons.*

Para (7): *Clause 6.6 may be deleted.*

Para (8): *Clause 6.9 establishes the right of KSEB Ltd. over any benefits that the Developer acquires, as the latter is paid at preferential tariff. Hence, it is recommended to retain the clause.*

Para (9): *It is humbly requested to modify the clause 9 as follows :*

'All differences or disputes between the parties arising out of or in connection with this Agreement shall be mutually discussed and amicably resolved within 90 days. In the event that the parties are unable to resolve any dispute, controversy or claim relating to or arising under this Agreement, as stated above, the same shall be referred to KSERC, and the decision of KSERC shall be binding on both parties. The place of dispute resolution shall be at Thiruvananthapuram.'

Analysis and decision

26. The Commission has considered the replies given by KSEB Ltd as quoted in Para 25, to the points raised by the Commission in para 22.
27. With regard to Point No. 1, the Commission is constrained to point out that the reply given by KSEB Ltd in this regard indicates either ignorance of law or scant respect for law on its part for the following reasons,-
- a) As early as in 1992 Government of Kerala had issued guidelines for development of Small Hydro Projects (SHPs) with a view to promoting captive power projects in private sector. Government of Kerala has also issued Small Hydro Policy in 2012 for promoting small hydro projects.
 - b) Electricity Act, 2003, has stipulated that generation of electricity can be undertaken by any person, without any license under the Act. In Section 86 of the said Act it has also been stipulated that it is the duty of the Commission to promote renewable energy and co-generation.
 - c) It may be true that KSEB Ltd might have prepared a detailed project report (DPR) for a SHP at the same site of Kallar micro hydel project of Idukki District Panchayat. As pointed out by the Commission, Idukki District Panchayat is a Local Self Government Institution, which is constituted under the provisions in Chapter IX of the Constitution of India and is functioning as per the provisions in the Kerala Panchayath Raj Act, 1994. As per the records before the Commission, Idukki District Panchayat had constructed the project as early as in 2001. Thereafter in 2004, a LT supply line was extended to the power house to synchronize the project with KSEB Ltd grid. But this was not successful due to technical problems such as voltage fluctuations and disturbances in the LT line. Later KSEB Ltd extended 11 kV line to the project site and installed a 11 kV / 415 V transformer. However the machine could not be synchronized with the grid as it was noticed that the generating equipment were not compatible with KSEB Ltd grid supply. In 2005, the Idukki District Panchayat decided to renovate the project and to modify the control mechanism. But the Idukki District Panchayat could not carry out the work due to lack of fund. In 2012, Idukki District Panchayat entrusted the work of renovation to Energy Management Centre (EMC). After inviting tenders, the EMC awarded the work of renovation of the project to M/s Hydro Power, Kothamangalam. In 2013, the project was

ready for synchronization with the grid. KSEB Ltd had conducted the survey for 5 MW Kallar SHP only in 2011.

d) In the reply KSEB Ltd has stated as follows:

“In the meanwhile, Panchayat authorities approached KSEB Ltd. for connectivity and sought willingness to procure power generated in their 50kW project. At that point of time, KSEB Ltd. felt that it would be inappropriate to deny connectivity to a project nearing completion in view of the 5MW project identified in the same location, which is at proposal stage and likely to commission in future. Hence, Board decided to provide connectivity to the 50kW Micro Hydel Project with an undertaking ensuring that the public money spent by the Panchayat on the project shall not be wasted on any account and at the same time the project shall not be a hindrance to a future project in the same bed with higher capacity. Also, clauses were included in the undertaking for ensuring maximum utilization of the micro hydel project such as,

- (1) project will not be dismantled within the first 5 years of its commissioning.*
- (2) KSEB Ltd. shall request for dismantling only when it is impossible to progress further with the 5MW project.*
- (3) KSEB Ltd. shall schedule the 5MW project ensuring maximum life and electricity generation from the 50kW project of Panchayat.*
- (4) District Panchayat shall be compensated by KSEB Ltd. as and when the 50kW project is dismantled, and amount of such compensation shall be assessed through a third party evaluator, and KSEB Ltd. shall bear all costs of such evaluation.*

From the above it is clear from the undertaking that the mention of dismantling the 50 kW micro hydel project is to facilitate the progress of 5 MW project which is absolutely essential to safeguard the true spirit of section 8(2) (a) of Electricity Act, 2003 which mandates that the proposed river-works shall not prejudice the prospects for the best ultimate development of the river or its tributaries for power generation. It may kindly be noted that KSEB Ltd. has taken adequate measures to preventing loss of public money spent by the Panchayat for the project in the case of dismantling the same by providing adequate compensation.

From the above statement, it appears that KSEB Ltd is either ignorant of the provisions in Electricity Act, 2003 relating to open access, or has scant respect for such legal provisions.

28. Sub-section (2) of Section 39 which deals with the duty of the State Transmission Utility to provide open access to consumers, generators and licensees, is quoted hereunder:

- (2) The functions of the State Transmission Utility shall be -*

(a) to undertake transmission of electricity through intra-State transmission system;

(b) to discharge all functions of planning and co-ordination relating to intra-state transmission system with -

(i) Central Transmission Utility; (ii) State Governments;

(iii) generating companies;

(iv) Regional Power Committees; (v) Authority;

(vi) licensees;

(vii) any other person notified by the State Government in this behalf;

(c) to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres;

(d) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges ; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the State Commission:

Provided also that such surcharge may be levied till such time the cross subsidies are not eliminated:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the State Commission.

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

29. Clause (c) of Section 40 of the Act which deals with the duty of the transmission licensee to provide non-discriminatory open access is quoted hereunder:

(c) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the Appropriate Commission:

Provided also that such surcharge may be levied till such time the cross subsidies are not eliminated:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Appropriate Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

30. Section 42 of the Act deals with duties of Distribution Licensee and open access. Sub-section (2) of Section 42 is quoted hereunder:

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that such open access may be allowed before the cross subsidies are eliminated on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

31. As per clause (e) of sub-section (1) of Section 86 of the Electricity Act, 2003, it is the duty of the Commission to promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person and also specify for purchase of electricity from such sources a percentage of the total consumption of electricity in the area of a distribution licensee. Accordingly the Commission has issued KSERC (Connectivity and Intra-State Open Access) Regulations, 2013 and KSERC (Power Procurement from Renewable Sources by Distribution Licensees) Regulations, 2013.

32. From the statutory provisions in Electricity Act, 2003, and the provisions of the above regulations issued by the Commission, it can easily be seen that any person who generates electricity is entitled to get non-discriminating open access. It is not a charity or favour done by KSEB Ltd towards Idukki District Panchayat. If KSEB Ltd had studied such statutory provisions, or if it has respect for such statutory provisions relating to open access, KSEB Ltd should not have taken such a stand as expressed above.
33. It should also be noted that Section 8 of the Act deals with Hydro electric generation. Subsection (1) of the said Section stipulates that the concurrence of Central Electricity Authority shall be obtained for Hydel projects, with capital expenditure exceeding such sum as may be fixed by the Central Government. According to the information to the Commission the Central Government has fixed such sum at Rs.1000 Crore. Subsection (2) of the said Section stipulates the guidelines for granting concurrence under Subsection (1). The impugned Kallar micro hydel project will not come under the category of projects mentioned in Subsection (1) for which approval of Central Electricity Authority is required.
34. In the order No. BO (FTD)No. 1310/2015 (DREP/PIg III/Kallar) dated 27.05.2015 it is stated as follows;

“The Full Time Directors as per note read first paper above decided to permit grid connectivity to the 50 KW micro hydro project at Kallar developed by Idukki District Panchayat subject to the condition that the Panchayat should dismantle their project as and when KSEB Ltd demands for the same to proceed with 5 MW Western Kallar Project. On 07.05.2014, Panchayat submitted an undertaking to the above.”

In view of the above statutory provisions and the facts discussed in earlier paragraphs, it is found that the undertaking obtained by KSEB Ltd from Idukki District Panchayat compelling it for the dismantling of Kallar micro hydel project is not legal and hence not sustainable. Further, such an undertaking cannot be a part of PPA.

35. There are several projects for which KSEB Ltd has prepared detailed project report, but not proceeded further towards detailed field survey, preparation of designs and tender drawings, preparation of estimates, tendering and award of work which are inevitable steps for the implementation of any project. When KSEB Ltd does the planning and budgeting required for implementation of the proposed 5 MW small hydro project at Kallar it can consider various alternative options with regard to the micro hydel project of Idukki District Panchayat. There can be techno-economic options for co-existence of both the projects. KSEB Ltd can take over the Kallar micro hydel project paying the value of the project as assessed based on its revenue earning potential. The machinery and equipment can be dismantled and used elsewhere or can be disposed of. The cost benefit analysis of various options can be evaluated and best option can be worked out. Both the Idukki District Panchayat and KSB E Ltd may discuss such issues and take appropriate decisions with regard to dismantling or continued operation of the impugned micro hydel project, with the approval of Government.

36. In view of the reply of KSEB Ltd to Point No. 2, the clause 4.3 in the draft PPA is deleted.
37. In view of the reply of KSEB Ltd to Point No. 3, the clause 4.6 in the draft PPA is deleted.
38. Regarding point No. 4, the following facts and legal provisions have to be examined. As per the statutory provisions and the practice in power sector, declaration of commercial operation has to be made only by the Project Developer. Clauses (a) & (b) of sub-regulation (2) of Regulation (8) of KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2014 are quoted hereunder:

(a) Date of commercial operation, in relation to a generating unit of hydro-electric generating station shall be the date declared by the generating company from 00:00 hour in accordance with the scheduling process specified in the State Grid Code and in relation to the generating station as a whole, the date declared by the generating company after demonstrating peaking capability corresponding to installed capacity of the generating station through a successful trial run;

(b) Where the beneficiaries have entered into an agreement for purchase of power from a generating station, the scheduling process for a generating unit of the generating station or the demonstration of peaking capability corresponding to installed capacity of the generating station through a successful trial run shall commence after a notice of seven days by the generating company to the beneficiaries and scheduling shall commence from 00:00 hour after completion of trial run;

39. KSEB Ltd purchases electricity from Central Generating stations and Independent Power Producers (IPP) after entering into PPA with them. KSEB Ltd utilizes the transmission lines of Central Transmission Utility namely PGCIL after entering into Power Transmission Agreement with it. Neither KSEB Ltd nor any of the beneficiaries is the authority to declare the commercial operation of any of the projects of NTPC or Neyveli Lignite Corporation (NLC) or PGCIL or any IPP. In the order No. BO(FTD)1310/2015(DREP/Plg III/Kallar) dated 27-05-2015, it is stated as follows,-

“Based on the report of the Committee, Chief Engineer, Corporate Planning as per note read as 4th paper above has recommended that commercial operation date (CoD) can be declared with effect from 31.03.2015.

Having considered the matter, the Full Time Directors have accorded sanction to declare the commercial operation date of 50 KW Kallar micro hydro project developed by Idukki District Panchayat with effect from 31.03.2015.”

In view of the facts and statutory provisions stated above, it is found that such order issued by KSEB Ltd is contrary to the relevant provisions in the Tariff Regulations, 2014 and to the practices in power sector. Therefore the above order of KSEB Ltd is found to be invalid.

40. In this regard it should also be noted that, as per letter dated 17-07-2015 of KSEB Ltd, the following 7 tests were conducted by it.
1. Correctness of relay settings.
 2. Free movement of disc.
 3. Continuity of current transformer and auxiliary coil circuit.
 4. Correctness of tripping circuits.
 5. General Cleanliness.
 6. Electrical accuracy of Relays.
 7. In-service checks of relays through current injection.

The first five tests were conducted on 27-08-2014 and the 6th and 7th tests were done on 07-04-2015. It is also reported that after preliminary inspection, energy meters were sealed on 31-03-2015. Hence CoD was declared with effect from 31.03.2015. After completing first 5 tests on 27-08-2014, it took more than 7 months for KSEB Ltd to do the 6th and 7th tests. KSEB Ltd, being the largest utility in the power sector in Kerala, should be very well aware of the fact that the tariff of energy from a small hydro project is determined with respect to the date of declaration of commercial operation of the project. Therefore an earlier declaration of commercial operation would have enabled KSEB Ltd to avail power at a lower tariff. Here in this case, the commercial operation of the Kallar micro hydel project can be declared only with effect from 07.04.2015, the date of satisfactory completion of all required tests as mentioned above. Therefore Idukki District Panchayat is directed to issue an order declaring the commercial operation of the Kallar micro hydel project with effect from 07.04.2015.

41. KSEB Ltd., in its letter dated, 14.09.2015 has stated that Idukki District Panchayat does not possess the technical expertise or infrastructure to conduct the tests and checks required to be performed before the declaration of CoD. As per the version of KSEB Ltd, it has been offering and assisting with necessary sources to the Idukki District Panchayat for easy commissioning of the project, without realizing any fee or cost. Such an approach is always welcome. It would have been more commendable if such approach were adopted much earlier so that the project could have been commissioned earlier.
42. As per the decision taken by the Commission in its order dated 18.03.2010 in RP No. 8/2009, there is no relevance for a separate tariff for infirm power in the case of single part tariff of renewable energy projects. Therefore the tariff determined by the Commission shall be applicable to the entire energy injected into the system of KSEB Ltd from Kallar micro hydel project.
43. The Commission has issued KSERC (Power Procurement from Renewable Sources by Distribution Licensee) Regulations, 2013 detailing the terms and conditions for the procurement of electricity from renewable energy sources. As per clause 5(2) of this Regulation, the tariff applicable to small hydro electric projects with installed capacity less than 5 MW is Rs.4.88 per unit with effect from 01.01.2013. The Commission has issued the Regulations determining the tariff applicable to the projects which are commissioned on or after 01.04.2014 and

01.04.2015 The Secretary, Idukki District Panchayat vide his letter no. IDP B4-4580/99 dated 12.06.2015 has submitted that in view of the direction of the Board approving the commercial operation date as 31.03.2015, sanction to the draft power purchase agreement may be accorded incorporating the tariff as Rs.4.88 per unit. As stated by KSEB Ltd it appears that the Idukki District Panchayat authorities are not aware of the relevant statutory provisions relating to generation of renewable energy, declaration of commercial operation and the tariff applicable to the electricity generated from renewable energy projects. That is why they have given undertaking to dismantle their projects on demand from KSEB Ltd and conceded to the terms and conditions of the Board Order dated 27.05.2015, which the Commission has found to be unsustainable.

44. Point No. 5 is only relating to proper numbering of the clauses which has been accepted by KSEB Ltd.
45. Regarding point No.6, the suggestion of KSEB Ltd to retain clause 6.4 for enabling the developer to sell the energy to any third party in situations where KSEB Ltd. cannot absorb the energy due to technical or other reasons, is approved.
46. Regarding point No.8, the suggestion of KSEB Ltd to retain clause 6.9 is approved to enable it to share with Idukki District Panchayat, any benefits such as concessions in taxes and duties, capital subsidy, soft loan, tax holiday, accelerated depreciation, which have not been factored into tariff while determining the preferential tariff.
47. Regarding point No.9, the suggestion of KSEB Ltd to amend clause 9 on the Dispute Resolution to the effect that the Commission is the authority for Dispute Resolution is approved.

Order of the Commission

48. In view of the above statutory provisions and the facts discussed in earlier paragraphs, the Commission hereby gives the following orders -
 - (1) The undertaking obtained by KSEB Ltd from Idukki District Panchayat compelling it for the dismantling of Kallar micro hydel project is not legal and hence not sustainable and such an undertaking cannot be a part of PPA.
 - (2) The order issued by KSEB Ltd as per the Board Order dated 27.05.2015 declaring the commercial operation of the Kallar micro hydel project of the Idukki District Panchayat, with effect from 31.03.2015 is contrary to the relevant provisions in the Tariff Regulations, 2014 and to the practices in power sector and therefore the above order of KSEB Ltd is invalid.
 - (3) Idukki District Panchayat is directed to issue an order declaring the commercial operation of the Kallar micro hydel project with effect from 07.04.2015, the date of satisfactory completion of all required tests.
 - (4) The tariff applicable to the electricity injected into grid of KSEB Ltd shall be Rs. 5.47/kWh, which is the tariff applicable to the small hydro projects with capacity below 5MW and commissioned on or after 01.04.2015, as per the provisions of KSERC (Renewable Energy) Regulations, 2015 and it shall be valid for 25 years from the date of commercial operation, as declared in accordance with the directions contained in clause (3) above.

- (5) The above rate shall be applicable to the infirm power also.
- (6) The period of PPA shall be 25 (Twenty five) years.
- (7) The draft PPA in respect of Kallar micro hydel project initiated by Idukki District Panchayat and KSEB Ltd. and submitted for approval by the Commission may be modified in accordance with the decisions of the Commission as explained earlier. A draft model PPA is enclosed for reference.
- (8) A copy of the PPA entered between Idukki District Panchayat and KSEB Ltd. shall be submitted to the Commission.

Petition is disposed of accordingly.

Sd/-
K. Vikraman Nair
Member

Sd/-
S.Venugopal
Member

Sd/-
T.M.Manoharan
Chairman

Approved for issue

K. B. Santhosh Kumar
Secretary