KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

OP.No.02/2021

In the matter of : Petition for approval of the settlement reached in compliance with the direction of the Commission contained in the Order dated 08-07-2019, between KSEB Ltd and NTPC Ltd and approved by Government of Kerala in respect of the PPA of Rajiv Gandhi Combined Cycle Power Project (RGCCPP), Kayamkulam,for the years from 2019-20 till the end of the current PPA period (i.e. till 28-2-2025) under Section 86 of the Electricity Act 2003

Petitioner : M/s Kerala State Electricity Board Ltd (KSEB Ltd)
(Represented by Shri. Prem Kumar, Dy.CE, Smt. Latha, AEE & Shri. Manu Senan, AEE, TRAC, KSEB Ltd)

Respondent : 1. M/s National Thermal Power Corporation (NTPC Ltd)
(Represented by Shri.V.V Kurian, NTPC,Kayamkulam, Smt.Kalyani, DGM, Commercial, NTPC Ltd)

2. List of Other respondents are given in Annexure

Date of Public Hearing: 09-02-2021

Venue : Conference Hall, PWD Rest House, Pathadipalam, Ernakulam

Order dated: 15/03/2021

1. The Kerala State Electricity Board Ltd (KSEB Ltd.) has filed the instant petition for the approval of the settlement reached between KSEB Ltd and NTPC Ltd and as approved by Govt. of Kerala in respect of PPA of RGCCPP, Kayamkulam for the

years from 2019-20 till end of the PPA period ie., 28-2-2025 under Section 86 of the Electricity Act. KSEB Ltd submitted that the Agreement was in compliance with the direction of the Commission in the Order dated 08-07-2019.

2. The background and gist of the petition filed by KSEB Ltd is given below:

   a) KSEB executed Power Purchase Agreement (PPA) with the NTPC Ltd for purchase of power from Rajeev Gandhi Combined Cycle Power Project (RGCCPP) of capacity 359.58 MW on 06.01.1995, which uses Naphtha as fuel. As per clause 11 of the original PPA, validity of the PPA was upto 5 years from date of commercial operation of the last unit of the Plant. The original PPA which expired on 28-2-2005 was further extended for a period of two years upto 28-2-2007, and subsequently for a further periods of 3 years upto 28-2-2007, upto 28-2-2010 and upto 28-2-2013. Based on the supplementary PPA entered into on 15.02.2013, validity of PPA was extended for a period of 12 more years i.e upto February 28, 2025 with a review option stating that after 5 years from 1-3-2013 KSEB shall have the discretion not to schedule power from the Kayamkulam station based on its cost economics, mutually discussed and agreed upon.

   b) The extension for a long period of 12 years was based on the request of NTPC Ltd to facilitate conversion of the plant for using LNG as fuel. So far no commercially viable gas sale agreement as well as gas transportation agreement for ensuing operation of RGCCPP on gas, as envisaged in the supplementary PPA has taken place.

   c) Since January 2015, there has been no schedule from the plant because of high cost of naphtha. However, as per the agreement AFC is payable.

   d) The tariff of RGCCPP is determined as per the norms issued by Central Electricity Regulatory Commission (CERC) and Annual Fixed Cost (AFC) based on these norms became very high during the control period 2014-19. The AFC as approved was Rs.284.74 Crore for 2014-15 and Rs. 301.17 Crore for 2018-19. This high AFC was objected to by the Commission and disallowed in the ARR of the Petitioner.

   e) The petitioner thereafter approached CERC and the CERC directed both parties to negotiate and arrive at a mutually agreed tariff. Accordingly, after several discussions between the KSEB Ltd and the NTPC Ltd and also with the intervention of Govt. of India and Govt. of Kerala, the AFC of RGCCPP for 2014 -19 was settled at Rs.200 Crore for the control period 2014-19

   f) In the CERC Tariff Regulation 2019, a new provision in the form of Regulation 66 was incorporated which provides that the generating company or the transmission licensee to opt for a lower AFC on mutually agreed basis, with the approval of CERC.

g) The Commission in the Multi Year Tariff Order dated 08-07-2019 did not approve the AFC of RGCCPP in the ARR of KSEB Ltd from 2019-20 onwards and directed KSEB Ltd to negotiate and reduce the AFC.

h) In the interim, the KSEB Ltd was releasing the AFC based on the actual cashflow observed in the accounts of the respondent in relation to the plant at Rs.62.35 crore per annum. However, the respondent, NTPC Ltd started raising monthly invoices from the month of December 2019 at an AFC of Rs.297.65 Crore as per the new Regulations. Further, in the Tariff petition for the period 2019-24 filed before CERC, the Respondent has claimed a fixed charge at an average of Rs.250 Crore/ year.

i) Further, on 22-02-2020, NTPC Ltd issued a 'Regulation Notice' under CERC (Regulation of Power Supply) Regulations, 2010 to KSEB Ltd, intimating that power from all the Respondent's Stations totaling 1109.92 MW would be stopped with effect from 10-03-2020 on account of the difference between AFC billed and AFC released for RGCCPP amounting to Rs.235.49 Crore remaining unpaid beyond the due dates. KSEB Ltd vide letter dated 27-11-2020 had submitted the entire issues before the Commission.

j) KSEB Ltd filed a writ petition (WP(C) 8123) before Hon'ble High Court of Kerala challenging the Regulation notice. While the matter came up before Hon'ble High Court, NTPC Ltd communicated that the said regulation notice was deferred in view of the Covid-19 situation.

k) Pursuant to this, several meetings were held on 07-03-2020, 29-07-2020 and 11-08-2020 between KSEB Ltd, NTPC Ltd and Ministry of Power. These meetings were followed by another meeting on 13-10-2020 under the Chairmanship of Joint Secretary (Thermal), Ministry of Power to discuss the Regulation Notice. Joint Secretary directed that since the settlement amount offered by NTPC Ltd and KSEB Ltd differs only slightly, the parties may arrive at an amicable final settlement.

l) Finally in the meeting was held on 12-11-2020 between the KSEB Ltd and NTPC Ltd, it was agreed that Rs.100 crore per annum be paid as AFC of RGCCP, Kayamkulam for the period starting from 01.04.2019 to the end of station life as per PPA i.e. up to 28.02.2025..

m) The conditions in the Agreement are given below:

i. The AFC of Rs. 100 crore is agreed with a pre-requisite that the existing stock of Naphtha will be consumed latest by March 2021, for which KSEB shall give necessary schedule to RGCCP Kayamkulam. This is necessary to bring down the AFC from the CERC determined levels.

ii. Losses due to scheduling (for consuming the existing stock of Naphtha) of RGCCP by KSEB Ltd over and above of average Energy Charge Rate of NTPC Kudgi station for the FY 2020-21 will be shared equally by KSEB Ltd and NTPC Ltd. No post facto revision of Average ECR Kudgi beyond April 2021 is envisaged for this purpose.

iii. The station shall be deemed to be available (DC) during such period of preservation. Notice of minimum 45 days shall be given by KSEB Ltd in case station is required to start up from preservation and for additional mobilization of manpower.

iv. There will be no reduction in the agreed lump sum AFC of Rs. 100 Crore for the remaining period of PPA .i.e. up to 28th February 2025. In case KSEB Ltd schedules power from RGCCPP on a regular basis (continuously for more than one month) CERC determined AFC shall be applicable on pro-rata basis, for the period power is scheduled by KSEB Ltd.

v. If any other customer desires to avail power from Kayamkulam, KSEB Ltd shall permit the same without levy of State Transmission Utility charges. However if the said consumer is availing power on regular basis (continuously for more than one month), the STU charges shall be payable. Further, in case power is availed by any alternate customer on regular basis (continuously for more than one month), the fixed charges of Rs. 100 Crore payable by KSEB Ltd shall be reduced proportionate to the period power is supplied to such alternate customer.

vi. All litigations filed in various courts including Writ Petition (C) No. 8135 of 2020 filed by KSEB Ltd in High Court of Kerala, shall be withdrawn. NTPC Ltd shall withdraw the Regulation notice dated 22.02.2020 issued to KSEB Ltd.

4. KSEB Ltd further pointed out that they are receiving 180MW of power from Talcher for pooling with RGCCPP. The pooled cost of 180MW including the now settled AFC of Rs.100 crore will be about Rs.3.97/kWh which is reasonable. The settlement was intimated to Govt of Kerala vide letter dated 18-11-2020 and vide order No. G.O (Ms) No.1/2021/PD dated: 01.01.2021, Government of Kerala concurred with the settlement arrived at between the petitioner KSEB Ltd and respondent NTPC Limited.

Public Hearing on the petition:

5. Public hearing on the matter was held at the Conference Hall, PWD Rest House, Pathadipalam, Ernakulam on 09-02-2021. KSEB Ltd represented by Smt. Latha, AEE, presented the background of the petition and stated that the Supplementary PPA was entered into by KSEB Ltd and NTPC Ltd for facilitating the conversion of the Plant to LNG. However, the same could not materialise till date and future prospects are also bleak considering the high cost of LNG. The Commission in the *suo motu* Tariff Order dated 17-04-2017 had disallowed the fixed cost of RGCCPP and approved only Rs.200 crore in the MYT Tariff Order dated 07-08-2019 for 2018-19 only. The Commission directed KSEB Ltd to take up the matter with NTPC Ltd, considering the provision in the PPA that KSEB Ltd has the discretion not to schedule power from the plant after 5 years from 1-3-2013. After several rounds of discussions were held between NTPC Ltd and KSEB Ltd in the presence of Government of India and Government of Kerala and the settlement was reached in the Meeting held on 12-11-2020 whereby the AFC was reduced and fixed at Rs.100 crore per year till the expiry of PPA ie., 28-02-2025. KSEB Ltd. informed the Commission vide letter dated 27-11-2020 and the Commission directed to file petition in this regard. Accordingly, the present petition is filed for approval of the said settlement and PPA under Section 86 of the Electricity Act.

6. The stakeholders and consumers present in the hearing responded to the claims in the petition. Shri. P.K Santhosh, Hindalco, objected to the proposal and mentioned that under the present circumstances Hindalco is struggling to survive and any increase in electricity charges would seriously affect the very existence of the plant. He submitted that the Agreement should not be approved by the Commission. Also maintaining a high cost NTPC plant from which KSEB Ltd. does not propose to schedule power should not be at the cost of Kerala consumers. However, in case, the fixed cost is to be allowed, then this amount should be realised from the Government of Kerala.

7. Sri.George, INTUC leader and Vice President of Joint Council of Trade Unions cited the examples of closing down of INDALCO and Binani Zinc and stated that only few industries are surviving in the industrial belt of Kerala and these industries are struggling against all odds for survival. Hence, KSEB Ltd. should also be considerate to such conditions while taking decisions on increasing the

cost which have to be paid by its consumers. Hence, the Commission is the only hope for the consumers and must step in and effectively regulate the KSEB Ltd costs by taking a strong stand in the matter.

8. Shri. Ramdas, Carborandum Universal, Kalamassery also put forth similar arguments. According to him, RGCCPP was established when Kerala was in dire need of power. However, the situation has since changed due to competition where the cost of electricity is falling. Hence, KSEB Ltd should be dissuaded from any action which bypasses the Commission's guidelines. Such actions contribute to increasing KSEB Ltd.'s revenue gaps which in turn results in tariff increase. He also requested the Commission to take a well considered and reasonable decision in the matter.

9. Shri. Bijukumar, FACT Udyogmandal, stated that KSEB Ltd has filed the petition before the Commission for the transfer of the burden to its consumers. If such a burden was required to be borne from KSEB Ltd.'s own finances, then such decisions will not be taken by KSEB Ltd and they would be more cautious. Shri. Job Sebastain, Hindalco, stated that the PPA has been arbitrarily extended by KSEB Ltd. for 12 years without much concern for the cost. Hence, the cost should not be passed on to the consumers. He further submitted that Tamil Nadu has cancelled the allocation from RGCCPP considering the high cost and KSEB Ltd too should also have done the same, instead extending the PPA. Hence, the plea should not be allowed.

10. Shri, Satheesh Kumar, Apollo Tyres, stated that since KSEB Ltd is not intending to source power from the plant, there is no reason whatsoever for not scrapping the PPA. Shri, Sarath, FACT stated that the Commission must enquire into the circumstances under which KSEB Ltd took the decision to continue with PPA, especially since Tamil Nadu had withdrawn from the Agreement. FACT is dependent on Government support for its survival and the Government will extends support only if the costs are within reasonable limits. He requested that the Commission should decide a rate lower than the petitioned Rs.100 crore and the balance, if any payable should be borne by KSEB Ltd. Shri. Sujo Paulose, GTN Textiles, also expressed similar sentiments comparing the Tamil Nadu case. Shri. Joy, Carborandum, Koratti stated that any increase in power cost will adversely affect the industries. The fixed cost of NTPC Ltd is unjustifiably high and low cost solar power sources are available and should be used. He also submitted to disallow the petitioned fixed costs of RGCCPP.

11. Shri, Saji Mathew, MRF Kottayam stated that Regulatory Commission should ensure justice in the matter. He sought to know as to whether the extension for 12 years is fair and just on the part of KSEB Ltd. According to him, the present Agreement would cost each consumer an additional burden of at least Rs.385/. Already, FC amounting to Rs.3000 crore has been paid for a plant whose investment cost was a mere Rs.1500 crore. He stated that the consumers attend the hearing of the Commission in anticipation of a fair and just decision from the Commission. Shri. Harish, Hindustan Organic Chemicals stated that the settlement arrived at by KSEB Ltd is not at all useful for the consumers and definitely not in the interest of its consumers. Non-scheduling of the plant by KSEB Ltd. by itself proved that the plant is uneconomical and extension of PPA by KSEB Ltd is in fact wrong. The extension of Agreement may be legally right, but is not fair for the electricity consumers of the State. Shri Rajesh Kuruvila, CUMI stated that KSEB Ltd has to clarify two aspect viz. whether the PPA of the plant was extended considering it as a base load or peak load station and if the plant is not used for meeting the base load or peak load requirements, why such a plant is to be maintained in the first instance.

12. Shri. Saji Thomas, BPCL, Kochi enquired whether the extension of PPA and payment of FC is a contractual obligation or for NTPC Ltd's profit. Shri. Jijo Mathew, Patspin India Limited stated that industrial units are closing down and KSEB Ltd is also adding fuel to it by extending such contracts. Shri. Rinu, Apollo Tyres stated that already a large sum has been paid to NTPC Ltd and it is not necessary to continue any further payment and the example of Tamil Nadu should be followed. Shri. Aneesh, Apollo Tyres also stated the same arguments.

13. Smt. Prini Peter, representing HT-EHT Association made a detailed presentation. She mentioned that KSEB Ltd has already paid Rs.3,589 Crore to NTPC Ltd in 21 years, which is three times the investment cost of the plant. The plant has generated only 8,735MU since 2002-03 and just 12 MU in the last 5 years. The variable cost of the Plant is more than Rs.14/kWh and hence it is completely unviable. The Government of India has since taken a decision to scrap the plants more than 25 years on environmental considerations. Further, as per the Report of the Standing Committee on Energy (2018-19) on Stressed Assets in Gas based Power Plants, 57% of the gas capacity is stranded due to shortage of domestic gas. The funding agencies have concluded that there is no future for gas based power plants in the country and banks may have to write off its investments in such plants. Considering all these factors, the Association made a strong plea to disallow payment of any further FC to the plant. Instead,

KSEB Ltd should explore the feasibility of installing solar PV Plant in RGCCPP at rates on par with national standards.

14. KSEB Ltd during the hearing replied that the continuation of RGCCPP is warranted for the continuation of the compensatory allocation of 180MW cheaper power from Talcher, thereby reducing the cost of RGCCPP. If the fixed cost of RGCCPP is also considered, cost will increase by 75 paise per unit only, still the power will be cheaper. NTPC Ltd submitted that due to Covid situation, the Regulation Notice is suspended at present. The Supplementary Agreement was entered into considering the severe power shortage and to keep the plant as a supplementary source if and when the need arises.

15. After the hearing, the Commission vide Daily Order dated 23.02.2020 instructed KSEB Ltd to furnish written submissions on the specific cases mentioned in the hearing and also to furnish the following details by 03.09.2021 for speedy disposal of the matter.

a) Copy of the Agreement reached between NTPC Ltd and KSEB Ltd.
b) The components and share of FC cost considered to arrive at Rs.100 crore per year including its detailed calculations.
c) The rationale for keeping the plant and continuing the PPA till the end February 2025, if there is no plan to schedule power from the plant.
d) Reason for allowing the full fuel cost for the power being generated using naphtha stock at RGCCPP, whereas in the similar case of BSES only UI rate was allowed by the Commission.
e) Reason as to why PPAs including legacy PPAs are not being subject for approval of this Commission?

17. KSEB Ltd has not furnished the details as directed by the Commission. However, KSEB Ltd vide letter dated 20.02.2021 furnished the additional submissions on the petition in the light of the concerns expressed by various stakeholders during the public hearing, for allowing the Day Ahead Market (DAM) rate adopted for disposing off naphtha at BSES Kerala Power Limited (BKPL) vide order dated 5-10-2018 in OP 34/2015. In this regard, KSEB Ltd has stated that the said matter is entirely different and cannot be made applicable in the case of RGCCPP in view of the following reasons:

a. In the case of BKPL, PPA had expired prior to the generation of power. The Naphtha stored by BKPL was disposed of taking into consideration safety issues as per the orders of Hon. High Court of Kerala.

b. In the case of RGCCPP, PPA is valid till 2025 and the Tariff is governed by CERC as per Section 79 of Electricity Act. One of the component of fixed cost is stock of naphtha and reducing the stock of naphtha is necessary for reducing fixed cost.
c. The rate of energy from naphtha is regulated as per Regulation 43 of CERC Tariff Regulations 2019
d. Further, as per Rule 8 of Electricity Rules 2005, tariff determined by Central Commission under clause (a) or (b) of Subsection (1) of Section 79 of the Act shall not be subject to determination by State Commission in exercise of functions under clause (a) or (b) of subsection (1) of Section 86 of the Act.
e. The tariff arrived at by CERC is a ceiling tariff and as per Regulation 66 of CERC Tariff Regulation 2019, generating company and beneficiary to arrive at a mutually agreed lower tariff. Based on this, for scheduling the plant to bring down the stock of naphtha at mutually agreed fuel charge, equally sharing the extra expenses by both parties.

Analysis and decision of the Commission

18. The Commission has examined the details in the petition and the comments and objections of the stakeholders and public. The petition has been filed by KSEB Ltd as per the directions contained in the Order dated 08-07-2019 of the Commission. In the said Order the Commission has allowed the fixed charges for RGCCPP for 2018-19 only and no amount was approved for the further period of 2019-20 to 2021-22 since there is a provision for review available in the PPA after 5 years from 2013. Accordingly the Commission directed KSEB Ltd to renegotiate the agreement and submit the results before the Commission for consideration. As mentioned in the petition, after several rounds of discussions and also with the intervention of Govt. of Kerala and Govt.of India an agreement has been reached and the AFC was fixed at Rs.100 crore per year. As per the submissions of KSEB Ltd the AFC as per the CERC Regulations would be more than Rs.200 crore per year. As part of the agreement, there is a need to dispose of the Naphtha stock to reduce the fixed charge element. Accordingly, KSEB Ltd has to agree for scheduling of power from the plant to exhaust the stock of Naphtha. The fuel cost for the naphtha is benchmarked at the average energy charge rate of Kudgi Plant of NTPC Ltd for the year 2020-21 and any higher cost above the average energy charge of Kudgi is to be equally shared between NTPC Ltd and KSEB Ltd.

19. During the hearing, Shri. Kurian, representative of NTPC Ltd stated that at present the stock of naphtha with NTPC Ltd is about 15000MT valued at about

Rs.62 crore and about 3000 MT with BPCL. The Price Stock Ledger (PSL) value of the stock of naphtha is about Rs.40800/MT. The total value of naphtha including the 3000MT with BPCL is about Rs.69 crore. The estimated generation from the stock of naphtha is about 80 to 85MU, leaving a deadstock of 3000MT. According to NTPC Ltd, the average cost per unit is estimated to be Rs.6.74 per unit for the fuel used for generation. As mentioned by KSEB Ltd, the variable cost of Kudgi for 2020-21 is about Rs.3.37 per unit. In such a situation, the average variable cost to KSEB Ltd for the generation from RGCCP on account of exhausting naphtha is estimated to be about Rs.5.05/kWh (3.37+(50% of 6.74-3.37) and for the energy generated the cost would be about Rs.40.40 crore to Rs.42.90 crore.

20. The Commission noted the concerns raised by the stakeholders who participated in the hearing, especially the rationale for keeping the PPA alive till 2025 and also paying Rs.100 crore per year for no corresponding benefits. The stakeholders have vehemently opposed the continuation of the PPA and suggested to take over the plant. Most of the concerns are addressed towards the unnecessary cost incurred for a plant whose power is costly and hence not likely to be scheduled. The Commission has examined the arguments of the stakeholders and the replies presented by KSEB Ltd. At the outset, the tariff for the RGCCP is to be determined by the CERC as per Section 79(1)(a) of the Electricity Act 2003. CERC has notified CERC(Terms and conditions for determination of tariff) Regulations 2019 for determination of the tariff for the generating companies and transmission licensees under its jurisdiction. The said Regulation provides for opting a lower tariff on mutually agreed basis. The relevant portions are quoted below:

> *"**66. Deviation from ceiling tariff**: (1) The tariff determined in these regulations shall be a ceiling tariff. The generating company or the transmission licensee and the beneficiaries or the long-term customer, as the case may be, may mutually agree to charge a lower tariff.*
> *(2) The generating company or the transmission licensee, may opt to charge a lower tariff for a period not exceeding the validity of these regulations on agreeing to deviation from operational parameters, reduction in operation and maintenance expenses, reduced return on equity and incentive specified in these regulations.*
> *(3) If the generating company or the transmission licensee opts to charge a lower tariff for a period not exceeding the validity of these regulations on account of lower depreciation based on the requirement of repayment in such case the unrecovered depreciation on account of reduction of depreciation by the generating company or the transmission licensee during useful life shall be allowed to be recovered after the useful life in these regulations.*

(4) The deviation from the ceiling tariff specified by the Commission, shall come into effect from the date agreed to by the generating company or the transmission licensee and the beneficiaries or the long-term customer, as the case may be.
(5) The generating company and the beneficiaries of a generating station or the transmission licensee and the long term customer of transmission system shall be required to approach the Commission for charging lower tariff in accordance with clauses (1) to (3) above. The details of the accounts and the tariff actually charged under clauses (1) to (3) shall be submitted at the time of true up."

21. The parties to the Agreement have invoked the above provision for agreeing to a lower tariff. As per Regulation 66(1) parties can agree to a lower tariff. The tariff includes fixed charges and energy charge rate. Accordingly, a reduction in tariff on mutually agreed terms can be for fixed charges and energy charge rate.

22. The role of this Commission is to approve the PPA under Section 86(1)(b). While doing so, the Commission has to examine the reasonableness of continuation of PPA and the conditions attached to it. The Commission is concerned as to the circumstances under which KSEB Ltd decided to extend the PPA with NTPC for a further period of 12 years i.e till 2025. The Commission would like to request the State Government to review the extension and the circumstances which warranted it. As per the present Agreement, the fixed cost of the plant has been reduced to Rs.100 crore per annum. However , as has been pointed out by the stakeholders, it is a fact that there is no corresponding benefits to the consumers by continuing the PPA till 2025. However, the Commission has also taken into consideration the fact that in order to continue the allocation of 180 MW cheaper power from the Talcher, the PPA should be in force. As has been pointed out by KSEB Ltd, the additional cost Rs.100 crore can be considered as a cost increase for power from Talcher, and this increase is of Rs.0.75 per kWh only. As per the Tariff Order dated 08-07-2019, the approved average cost of power (exbus) of Talcher is Rs.2.45 per unit for 2020-21. Based on this, the effective cost of power from Talcher would be (for the compensatory allocation of 180MW) about Rs.3.20/kWh, which is reasonable. Further, if the per unit increase in power purchase cost from the entire CGS is considered, it would be about 8.5 paise only for 2020-21. Considering these factors, the Commission is of the view that the additional cost of Rs.100 crore per year is essential so as to maintain the overall power supply to the state and its cost of supply. Considering the above, the Commission agrees that the PPA state and its can be extended for the period till February 28, 2025 at a fixed charges of Rs.100 crore per annum, on the condition of continuation of the compensatory allocation of 180MW from Talcher.

23. The stakeholders have also commented on disallowing the variable charges as agreed to by KSEB Ltd. Some of the stakeholders have stated that energy charges for disposing of the naphtha stock shall be equal to Day Ahead Market Rate as approved in the case of BKPL. However, KSEB Ltd objected to the said contentions and pointed out that the case of BKPL is different and not comparable with the present matter. In the case of BKPL, there is no valid PPA and the PPA had expired and the stock of naphtha was disposed of, taking into consideration the safety issues as per the directions of the Hon. High Court of Kerala. In the present case, the PPA is subsisting and CERC is the appropriate Commission for determination of tariff. Further, as per Rule 8 of Electricity Rules, 2005 tariff determined by CERC under clause (a) or (b) of Section 79(1) shall not be subject to redetermination by the State Commission. The Commission has examined the contentions of KSEB Ltd.

24. As pointed out above, in the present matter, the role of the Commission is to consider whether to approve or otherwise the PPA containing the agreed terms between the parties. The Commission is also duty bound to examine the cost of power in this regard. NTPC Ltd has pointed out that based on the cost of Naphtha, the cost of power is about Rs.6.74/kWh, which is very high. However, the Commission noted that in the Agreement both the parties have agreed to reduce the cost, by benchmarking the cost with this energy cost of Kudgi plant for 2020-21 and also to share equally the additional commitments if any due to scheduling losses. Also, no post facto revision of average ERC of Kudgi beyond April 2021 is envisaged for this purpose.This in time will reduce the energy charge rate to levels lower than the cost of fuel at present. Considering the quantum of fuel stock and the necessity to exhaust the fuel so as to effect reduction in fixed charges, the Commission approves the present arrangement for recovery of fuel cost. However, further scheduling of the plant during the currency of PPA shall be only with the prior approval of the Commission.

Orders of the Commission

25. After considering the matter in details along with the submissions of the parties and the stakeholders, the Commission hereby orders as follows:
    a. The extension of PPA with RGCCPP for a period up to 28-02-2025 is approved under Section 86 of the Electricity Act 2003, based on the settlement reached between M/s KSEB Ltd and M/s NTPC Limited as per minutes of the meeting held on 12-11-2020, on the condition that the continuation of the compensatory allocation of 180MW of cheaper

power from Talcher is providedby NTPC Limited for the entire period of PPA. KSEB Ltd has to ensure the compliance to this condition.

b. The annual fixed charge of Rs.100 crore per annum as agreed to by the parties is also approved for the PPA period

c. The rate of energy charges as agreed to by the parties is also approved considering the fact that the stock of Naphtha is to be exhausted for reducing the Fixed charges. KSEB Ltd shall seek prior approval from the Commission for further scheduling of the Plant.

d. KSEB Ltd shall provide necessary schedule to RGCCPP, Kayamkulam for exhausting the stock of Naphtha available with RGCCPP/ BPCL as per the terms of Agreement.

e. KSEB Ltd shall ensure that all litigations pending in various Courts and other judicial forum, if any are withdrawn before releasing any AFC as per this Order.

26. Petition disposed of, ordered accordingly

Sd/-	**Sd/-**
A. J. Wilson	**Preman Dinaraj**
Member (Law)	**Chairman**

Approved for issue

Sd/-

Secretary (i/c)

Annexure

List of persons participated in the Public Hearing held on 09-02-2021

1. P.K. Sudarshan, Hindalco
2. Prabhakaran K.V, HT & EHT Association
3. Satheesh A.R., HT & EHT Association
4. Renjith Jacob, Apollo Tyres
5. Rajesh T Kuruvila, CUMI
6. Prini Peter, CUMI
7. Satheesh Kumar M.S, Apollo Tyres
8. Nandakumar P Nair, CUMI
9. Saji Mathew, MRF Limited
10. Aneesh R. MRF Limited
11. Premkumar, Dy CE, KSEB

12. Latha, AEE, KSEB
13. Mani Senan, AEE, KSEB
14. P.I Joy, CUMI Koratty
15. Saji Thomas, BPCL, Kochi Refinery
16. Job Setastain, Hindalco Industries Limited
17. Fahad Hameed, Hycount
18. Jiju R. Patspin India Limited
19. Rajumon P.C, CIAL
20. V.M. Aboobacker, GTN textiles
21. Aswin, CUMI
22. Kalyani Kimidi, NTPC Ltd
23. Ranjith Jacon, Apollo Tyres, Perambra
24. Tony Paul, GTN Textiles
25. M.R Rajeev, GTN Textiles
26. Sijo Poulose, GTN Textiles
27. Sathar M N GTN Textiles
28. Bijukumar, K.S FACT
29. Nithin. C.S FACT
30. Harish Madhav, HOCL
31. Sarath, FACT
32. Vineeth Kumar, E.V, GTN textiles
33. Arun. C. PTC India limited
34. M. Ramdas, CUMI
35. Nandakumar
36. V.V Kurian, NTPC, Kayamkulam