

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

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

**OP No 11/2021 (Part-I)**

In the matter of : Petition for formal approval for the initialed Power Purchase agreements (PPAs) with M/s NTPC Ltd and M/s. Tata Power Company Limited for procurement of 90 MW of Solar power from M/s. NTPC Ltd. and 110 MW of Solar power from M/s. Tata Power Company Ltd. at the adopted tariff of ₹ 2.97 per unit and to permit execution of PPA with M/s. T P Saurya Ltd., a wholly owned subsidiary of the successful bidder M/s Tata Power Company Ltd.

Petitioner : Kerala State Electricity Board Ltd.

KSEB Ltd represented by : Sri. K.G.P. Nampoothiri,EE,TRAC  
Sri Edward P Boniface, AEE, TRAC  
Sri. Manu Senan, AEE TRAC

Respondents : 1. M/s. NTPC Ltd.  
2. M/s. The TATA Power Company Ltd,  
3. M/s. T P Saurya Ltd.,

NTPC represented by : Sri. Ohmesh Kumar, Manager (Commercial)

Tata Power represented by : Sri. Rakesh Singh, Head, Business Development  
Sri. Gaurav Soni, Specialist, Business Development  
Sri. Rahul Ranade, Regulatory Department  
Sri Amey Naik, CFO, Tata Power Renewable Energy Limited

First Hearing on : 10.03.2021  
Second hearing on : 08.06.2021

**Order (Part-I) dated 21.06.2021**

1. M/s KSEB Ltd filed a petition on 08.02.2021, before the Commission with the following payers.

- (1) To grant formal approval for the initialed Power Purchase agreements (PPAs) with M/s NTPC Ltd and M/s. Tata Power Company Limited under Section 86(1)(b) of the Electricity Act, 2003, for the procurement of 90MW of Solar power from M/s. NTPC Ltd. and 110 MW of Solar power from M/s. Tata Power Company Ltd. at the adopted tariff of ₹ 2.97 per unit.
  - (2) Permit the execution of PPA with M/s.T P Saurya Ltd., a wholly owned subsidiary of the successful bidder M/s Tata Power Company Ltd.
2. The petition filed by KSEB Ltd is for approval of two separate Power Purchase Agreements (PPAs) with two different entities; (1) first one for procurement of 90MW Solar Power from NTPC Ltd @Rs 2.97/unit, and (2) second one for procurement of 110MW Solar Power from M/s Tata Power Company Limited @Rs 2.97/unit and to sign PPA with its subsidiary M/s T P Saurya Ltd.

Since the bidder M/s Tata Power Company Limited want to sign the PPA through its subsidiary M/s TP Saurya Ltd for supply of the 110MW Solar Power, the Commission decided to appraise the initialed PPA with M/s M/s Tata Power Company Limited separately through a separate proceeding.

The detailed appraisal of the draft initialed PPA between KSEB Ltd and M/s NTPC Limited for the procurement of 90MW Solar Power is discussed and deliberated in the following paragraphs of this Order.

### **3. Background of the subject matter.**

- (1) The Commission vide Order dated 25.08.2020 on Petition No. OP 09/2020, granted approval to KSEB Ltd for inviting bids on reverse e-bidding for procuring 200 MW solar power from solar PV plants through competitive bidding route on all India basis.
- (2) KSEB Ltd floated an e-tender on 18.09.2020, through 'National e-bidding portal for long term solar power procurement under DEEP portal of MSTC.
- (3) M/s NTPC Ltd and M/s TATA Power Company Ltd are the successful bidders. After completing all the procedure formalities including L1 matching as per the tender documents, 90MW was allotted to M/s NTPC Ltd @Rs 2.97/unit and 110MW allotted to M/s TATA Power Company Ltd @Rs 2.97/unit.
- (4) The Commission, vide Order dated 18.12.2020 in petition OP No. 39/2020, adopted the tariff as per the Section 63 of the Electricity Act, 2003. The relevant portion of the Order is extracted below.
  - (i) *The Tariff of ₹. 2.97 per unit (kWh) for the procurement of 90 MW of solar power from M/s NTPC Ltd. and 110 MW of solar power from M/s Tata Power Company Ltd.; discovered by KSEB Ltd. through the competitive bidding process as per the bidding guidelines notified by the Central Government is adopted under Section 63 of the Electricity Act, 2003.*
  - (ii) *KSEB Ltd shall finalize and initial the PPAs with the two successful bidders for their respective quantum of power and file them before*

*this Commission for its formal approval under Section 86 (1) (b) of the Electricity Act, 2003. The formal approval of the PPAs by this Commission is a condition precedent and the PPAs shall come into effect only after this.*

- (5) KSEB Ltd, issued LOA on 06.01.2021, to M/s NTPC Ltd for procurement of 90 MW of Solar power and to M/s The Tata Power Company Ltd for procurement of 110 MW of Solar power @ ₹ 2.97 per unit. Both the parties accepted the LOA.
  - (6) KSEB Ltd, initialed draft PPA with M/s NTPC Ltd and M/s Tata Power Company Ltd for submitting before the Commission for formal approval.
4. The Commission admitted the petition as OP11/2021. Hearing on the petition was held on 10.03.2021 through video conference. Sri. K.G.P Nampoothiri, presented the petition on behalf of the petitioner KSEB Ltd. Sri. Mahesh Kumar Maliya presented the matter on behalf of the NTPC Ltd. Summary of the deliberations during the hearing with respect to the purchase of 90MW power from NTPC Ltd is given below.
- (1) KSEB Ltd submitted that, the Commission vide Order dated 18.12.2020 in Petition OP No. 39/2020 adopted the tariff of Rs 2.97/unit, for the procurement of 90MW Solar Power from M/s NTPC Ltd and 110 MW from M/s TATA Power Company Ltd. Commission in the said Order has directed M/s KSEB Ltd to finalise and initial the draft PPA with the two successful bidders and file the initialed PPA before the Commission for approval as per Section 86(1)(b) of the Electricity Act, 2002.  
  
In compliance of the direction of the Commission, KSEB Ltd initialed the draft PPA and submitted for the approval of the Commission. The articles and clauses of the initialed PPA is as per the bidding documents including the model PPA approved by the Commission vide Order dated 25.08.2020.
  - (2) Sri. Mahesh Kumar Maliya, on behalf of the NTPC Ltd submitted that, the clauses of the initialed PPA are strictly as per the model PPA issued along with the approved bidding documents.
5. Second hearing on the petition was held on 08.06.2021. During the hearing, the Commission clarified that, there is no issue with the draft PPA initialed between KSEB Ltd and NTPC Ltd for the procurement of 90MW Solar Power. Both KSEB Ltd and NTPC Ltd requested before the Commission to grant approval of the initialed PPA at the earliest so as to apply for Long Term Access.

### **Analysis and Decision of the Commission**

6. The Commission examined in detail, the petition filed by KSEB Ltd for the approval of the draft initialed PPA between KSEB Ltd and NTPC Ltd, as per the provisions of the Electricity Act, 2003 and KSERC (Terms and Conditions) of the Tariff Regulations, 2018.

7. Section 63 of the Electricity Act 2003 permits the Distribution licensees to procure power through the transparent process of bidding in accordance with the guidelines issued by the Central Government and the Commission has to adopt such tariff determined through transparent process of bidding. The Section 63 of the Electricity Act 2003 is extracted below for ready reference.

“63. Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

As per the Section 86(1)(b) of the Electricity Act, 2003, the Distribution licensee can procure power from the generating companies or licensees only with the approval of the State Commissions. The relevant Section is extracted below.

86. Functions of State Commission (1) The State Commission shall discharge the following functions, namely: -

.....

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

8. Further, as per the Regulation 76 of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, prior approval of the Commission is mandatory for procurement of power by the distribution licensees, and agreement entered into for power purchase shall be come into force only with the approval of this Commission. The relevant Regulation is extracted below.

*“76. Approval of power purchase agreement. –(1) Every agreement for procurement of power by the distribution business/licensee from the generating business/company or licensee or from other sources of supply entered into after the date of commencement of these Regulations shall come into effect only with the approval of the Commission:*

*Provided that the approval of the Commission shall also be required in accordance with this Regulation for any change to an existing agreement for power procurement, whether or not such existing agreement was approved by the Commission.*

*(2) The Commission shall examine a petition for approval of Power Purchase Agreement having regard to the approved Power Procurement Plan of the distribution business/licensee and the following factors:-*

- (a) requirement of power under the approved Power Procurement Plan;*
- (b) adherence to a transparent process of bidding in accordance with guidelines issued by the Central Government under Section 63 of the Act;*
- (c) adherence to the terms and conditions for determination of tariff specified under Chapter VI of these Regulations where the process specified in clause (b) above has not been adopted;*
- (d) availability (or expected availability) of capacity in the intra-State transmission system for evacuation and supply of power procured under the agreement; and*

(e) need to promote co-generation and generation of electricity from renewable sources of energy.

(3) Where the terms and conditions specified under chapter VI of these Regulations are proposed to be adopted, the approval of the power purchase agreement between the generating business/company and the distribution business/licensee for supply of electricity from a new generating station may comprise of the following two steps, at the discretion of the applicant:-

(a) approval of a provisional tariff, on the basis of a petition made to the Commission at any time prior to the petition made under clause (b) below; and

(b) approval of the final tariff, on the basis of a petition made not later than three months from the cut-off date.

9. The Commission vide Order dated 25.08.2020 in Petition OP No. 09/2020, granted approval to KSEB Ltd for inviting bids on reverse e-bidding for procuring 200MW Solar Power through competitive bidding route on all India basis, and also approved the bidding documents RfS and draft PPA for inviting bids..

After getting the approval from the Commission, KSEB Ltd floated an e-tender on 18.09.2020, through 'National e-bidding portal for long term solar power procurement under DEEP portal of MSTC. M/s NTPC Ltd and M/s TATA Power Company Ltd are the successful bidders. After completing all the procedure formalities including L1 matching as per the tender documents, 90MW was allotted to M/s NTPC Ltd @Rs 2.97/unit and 110MW allotted to M/s TATA Power Company Ltd @Rs 2.97/unit.

The Commission, vide Order dated 18.12.2020 in petition OP No. 39/2020, adopted the tariff of Rs 2.97/unit for the procurement of 90MW of Solar power from M/s NTPC Ltd and 110MW of Solar power from M/s Tata Power Company Ltd, discovered by KSEB Ltd through the competitive bidding process under Section 63 of the Electricity Act, 2003.

In the said Order, the Commission also directed KSEB Ltd to finalise and initial the PPA with the two successful bidders and file petition before the Commission for formal approval of the PPA under Section 86(1)(b) of the Electricity Act, 2003. The relevant portion of the Order is extracted below.

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- (i) *The Tariff of ₹. 2.97 per unit (kWh) for the procurement of 90 MW of solar power from M/s NTPC Ltd. and 110 MW of solar power from M/s Tata Power Company Ltd.; discovered by KSEB Ltd. through the competitive bidding process as per the bidding guidelines notified by the Central Government is adopted under Section 63 of the Electricity Act, 2003.*
- (ii) *KSEB Ltd shall finalize and initial the PPAs with the two successful bidders for their respective quantum of power and file them before this Commission for its formal approval under Section 86 (1) (b) of the Electricity Act, 2003. The formal approval of the PPAs by this Commission is a condition precedent and the PPAs shall come into effect only after this.”*

10. In compliance of the direction of the Commission, KSEB Ltd initialed the draft PPA with NTPC Ltd on 5<sup>th</sup> February 2021 for procurement of 90MW Solar Power @Rs 2.97/unit. KSEB Ltd vide the petition dated 08.02.2021 submitted the copy

of the initialed PPA before Commission to grant formal approval for the initialed PPA with NTPC Ltd.

The Commission examined in detail the initialed PPA with NTPC Ltd with the model PPA approved the along with bidding documents vide Order dated 25.08.2020, in petition OP No. 09/2020, and noted that, the articles, clauses and other conditions in the initialed between KSEB Ltd and NTPC Ltd is as per the model PPA approved by the Commission along with the bidding documents dated 25.08.2020 in petition OP No. 09/2020. Hence the Commission decided to grant approval for the initialed Power Purchase Agreement (PPA) dated 05.02.2021 with NTPC Ltd.

### **Order of the Commission**

11. The Commission after examining the petition for the approval of the initialed Power Purchase Agreement (PPA) with NTPC as per the provisions of the Electricity Act, 2003 and KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2018, hereby orders the following.
  - (1) Approve the initialed Power Purchase Agreement (PPA) between KSEB Ltd and NTPC Ltd for the procurement of 90 MW Solar Power at the rate of Rs.2.97/unit.
  - (2) KSEB Ltd shall submit a copy final PPA signed with NTPC Ltd before the Commission for information and record.

The petition filed by KSEB Ltd for approval of the initialled Power Purchase Agreement with NTPC Ltd for procurement of 90MW Solar Power @Rs 2.97/unit is approved.

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)