

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: Shri. Preman Dinaraj, Chairman

OP No 28/2020

In the matter of : Petition seeking interim order for approval for procurement of 200 MW Solar Power from Inter State Transmission System Grid Connected Solar Photo Voltaic projects through NHPC Ltd. on long term basis

Petitioner : Kerala State Electricity Board Ltd (KSEB Ltd)

Respondent : Managing Director, NHPC Ltd

KSEB Ltd represented by : Smt. Latha S.V, AEE

Order dated 22.10.2020

1. Kerala State Electricity Board Ltd (hereinafter referred as KSEB Ltd, or the Petitioner) on 29.09.2020 filed a petition before the Commission with the following prayers:

“to grant an Interim Order for approving the procurement of 200 MW solar power from Inter State Transmission System grid connected solar photo voltaic projects selected by NHPC through tariff based competitive bidding process of Ministry of Power notified by Resolution No. 23/27/2017-R&R dated 03.08.2017 and its amendments, subject to final approval on the terms and conditions of the PSA”.

2. The summary of the issues raised in the subject petition by KSEB Ltd is given below:
 - (1) By the year 2021-22, as per the RPO targets fixed by the Commission, KSEB Ltd has to meet 6.75% of a total energy consumption from solar power. This target is likely to be increased in the subsequent years. In order to meet this solar RPO, KSEB Ltd has to generate / procure around 734 MW solar power. However,
 - (2) the existing solar capacity of the State is 188.19 MW only.

KSEB Ltd further submitted that though the solar RPO specified by the Commission is only 6.75%, the target fixed by the Central Government is 10.5% of the total consumption and if the Commission insist to meet this target KSEB Ltd has to generate / purchase 1141 MW solar power.

- (3) As per the draft Electricity Amendment bill notified by MoP, GoI dated 17.04.2020, the penalties proposed for not achieving the Solar RPO is @ fifty paise per unit for the first year of default, @ one rupees per unit for the second successive year of default, and @ Rs. 2/unit for the shortfall in purchase continuing after the second year.

Though KSEB Ltd has been taking various initiatives for procuring the solar RPO, it could not meet the target till date.

- (4) National Hydro Power Corporation Ltd (NHPC), a Government of India undertaking, initiated the process of facilitating the development of solar power projects in the country and for sale of solar power to the State Distribution Licensees to meet their solar RPO. Accordingly, NHPC as an intermediary procurer, floated tender for 2000 MW solar power from Solar Power Developers through tariff based competitive bidding process. The e-reverse auction was conducted on 16.04.2020 and the L-1 rate discovered was Rs. 2.55/unit for the first 1680MW and L2 rate discovered was Rs. 2.56/unit for the balance 320MW. NHPC as an intermediary agency will execute Power Purchase Agreement (PPA) with the Solar Power Developers and Power Sale Agreements with the Distribution Licenses. As per the MNRE guidelines trading margin applicable to NHPC is Rs. 0.07/unit (7 paise/unit).
- (5) NHPC vide its letter dated 18.04.2020 requested KSEB Ltd to confirm its requirement for solar power, if any, at the quoted rate of Rs. 2.56/unit plus trading margin of Rs. 0.07/unit.

KSEB Ltd submitted that the rate offered by NHPC is much less than the rate discovered by SECI at Rs. 2.92/unit for 200MW solar power offered to them. Hence, KSEB Ltd intimated their willingness to procure 200 MW solar power subject to the approval of the Commission.

NHPC vide letter dated 14.08.2020 intimated to KSEB Ltd that NHPC already finalized 1700 MW with DISCOM(s) / State Utilities (1680MW @Rs. 2.55/unit & 20MW @ 2.56/unit) and for the sale of balance 300 MW @ Rs. 2.56/unit, discussion with DISCOM(s) are in progress.

NHPC further intimated that three DISCOMs including KSEB Ltd have shown interest for the purchase of the balance 300 MW power and NHPC desires to execute PSA with DISCOM which finalize first, as NHPC as the CPSU has to file petition before CERC at the earliest for adoption of tariff.

- (6) KSEB Ltd enclosed the draft PSA to be signed between NHPC & KSEB Ltd and the draft PPA to be signed by NHPC with Solar Power Developers. Though KSEB Ltd proposed certain changes in the PSA vide

letter dated 07.09.2020, NHPC refused to change the provision in the draft PSA citing that the draft PSA & PPA were part of tender document. NHPC further remarked that it has already signed 1300 MW power with DISCOMs and Solar Power Developers based on the same terms and conditions as per the model PSA / PPA.

KSEB Ltd further submitted that, they had proposed initialing the PSA first and once the initialed PSA was approved by the Commission, formal signing of the PSA could be done. But NHPC did not agree to this proposal but insisted on execution of the PSA, instead of initialing it first.

- (7) KSEB Ltd further remarked that the rate of NHPC's solar power @ Rs. 2.56/unit plus Rs. 0.07 unit (total Rs. 2.63/unit) is seemed to be very attractive and many DISCOMs has shown interest in purchasing balance 300 MW power out of 2000MW bid quoted by NHPC. Further the Central Government vide Order dated 05.08.2020 has waived inter-state transmission charges and losses for the solar power for solar plants commissioned till 30.06.2023.
 - (8) As per the Regulation 76 of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2018, the KSEB Ltd has to get prior approval of the Commission for entering into Power Supply Agreement with the trader / generator.
 - (9) KSEB Ltd requested before the Commission to grant an Interim Order for procuring 200 MW solar power from NHPC, subject to the final approval of the Terms and Conditions of the PSA. KSEB Ltd further submitted that, it will be approaching the Commission for the approval of PSA after executing the PSA. The Commission however noted that as per the clause 3 of the draft PSA, approval of the Hon'ble Commission is a precedent for the enforcement of the obligation under the PSA.
 - (10) KSEB Ltd also submitted the draft PSA to be signed between NHPC and KSEB Ltd and the draft PPA to be signed by NHPC with the Solar Power Developers and also various correspondence between KSEB Ltd and NHPC.
3. The Commission admitted the petition as OP 28/2020 and conducted hearing of the petition on 13.10.2020 at 11 AM through video conference. Smt. Latha S.V, AEE, presented the petition on behalf of KSEB Ltd.

During the hearing, KSEB Ltd submitted that, M/s NHPC Ltd vide letter dated 09.10.2020 had informed as follows:

“One of the states has finalised the PSA for the 300 MW which was available and as such the bucket is full for the said Scheme of 2000 MW Solar Power. NHPC would not be able to proceed with the PSA with KSEB Ltd at present.”

KSEB Ltd further submitted that, since the 200 MW solar power offered by M/s NHPC Ltd to KSEB Ltd was no more available, there is no point in proceeding

with the petition. Hence, KSEB Ltd desires to withdraw the petition, with permission to file fresh petition for the approval for the procurement of 200MW solar power from other sources including SECI. KSEB Ltd further requested to adjust the petition fee remitted in this petition against the petition to be filed for procuring 200 MW solar power from other sources.

4. Commission noted the submission of KSEB Ltd. The withdrawal of NHPC Ltd from the offer to supply 200 MW solar power after initialling the PSA with KSEB Ltd. is an action not befitting a CPSU like NHPC Ltd. NHPC Ltd did not even bother to inform this Hon'ble Commission of its inability to proceed with this offer with KSEB Ltd. in spite of being a respondent in this petition, thereby wasting the valuable time of a quasi-judicial Commission. This callous attitude on the part of the respondent's officers shall be brought to the notice of CMD, NHPC so that it is not repeated in future.
5. However, considering the request of the KSEB Ltd, the Commission hereby permit KSEB Ltd to withdraw the petition with the permission to file a fresh petition for procuring 200 MW solar power from other sources including SECI, as per the provisions of the Electricity Ac, 2003. The Commission also agrees to KSEB Ltd's request to adjust the petition fee paid for this petition against any future petition seeking approval for procuring solar Power.

Order of the Commission

6. The Commission after carefully examining the petition dated 29.09.2020 and the deliberations during the hearing held on 20.10.2020, hereby orders the following.
 - (1) As requested by KSEB Ltd, permits them to withdraw the petition OP No. 28/2020 dated 29.09.2020.
 - (2) Permit KSEB Ltd. to file fresh petition seeking approval for purchase of solar power from other sources as per the provisions of the Electricity Act, 2003 and adjust the petition fees paid for this petition against this future petition when filed.
 - (3) The callous attitude of NHPC officials shall be specifically brought to the notice of CMD, NHPC.
The petition is disposed off as withdrawn.

**Sd/-
Preman Dinaraj
Chairman**

Approved for Issue,

C. R. Satheesh Chandran
Secretary (i/c)