

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

PRESENT

Shri. T.M.Manoharan, Chairman
Shri. P. Parameswaran, Member
Shri. Mathew George, Member

OP No. 19/2013

**In the matter of: Granting Provisional COD by KSEB for the Iruttukanam Small
Hydro Electric Project Stage 1.**

10th OCTOBER 2013

Petitioner : M/s. Viyyat Power Pvt. Ltd, Tvpm
Respondents :1. The Secretary, KSEB, Tvpm.
:2. The Principal Secretary, Power, Govt. of Kerala
:3. The Director, Energy Management Centre, Tvpm.

ORDER

Background:

Iruttukanam Small Hydel Project Stage 1 (1.5 MW x 2) in Idukki District, is an Independent Power Project, allotted to M/s. Viyyat Power Pvt. Ltd, Thiruvananthapuram (*hereinafter referred to as Petitioner*), by Govt. of Kerala for implementation under BOOT basis. The allottee was selected through competitive bidding route based on the lowest sale rate offered by them. The Petitioner has quoted the lowest levelised tariff for the project. The allotment order was issued by the Govt. of Kerala vide G.O. (MS) No. 16/04/PD dated 21.06.2004. The Petitioner has entered into an Implementation Agreement with Govt. of Kerala on 10.12.2004. The draft Power Purchase Agreement (PPA) was approved by the Commission on 15.12.2006 and the PPA was executed with the Kerala State Electricity Board

(*hereinafter referred to as 1st Respondent or KSEB*) on 7.6.2007. The Tariff applicable for the power generated from the project was included in the Article 8 of the PPA.

2. The Unit #1 was synchronised on 18.9.2010 and the Unit #2 on 19.9.2010. The Petitioner, vide letter on 25.10.2010, has communicated to the 1st Respondent that they are ready for carrying out the performance tests. Accordingly, the co-ordination Committee headed by the Deputy Chief Engineer, System Operation Circle, KSEB, Kalamassery, conducted the tests on 4.11.2010 and the Committee recommended for the COD from 4.11.2010.

3. On 28.9.10, the Petitioner filed petition No.TP 88/10 for approving the rate of energy injected into the KSEB grid the prior to the date of commencement of Commercial Operation (*hereinafter referred to as COD*) @ Rs. 2.70 per Unit instead of Rs.0.25 per Unit, approved in Art. 8.3 of PPA. While disposing of the petition, it was observed that the Commission has no objection in applying Tariff as per Article 8.2 of PPA, based on a provisional certificate of commercial operation issued by the 1st Respondent, if they are convinced of the capacity demonstrated after synchronisation. The Petitioner has submitted that the capacity declared by the 1st Respondent based on the performance tests after synchronisation is 3.42817MW against rated capacity of 3 MW. Whereas the 1st Respondent, vide letter on 19.2.2013, has informed the Petitioner that their request for provisional COD from the date of synchronisation cannot be granted. Based on the representation from the Petitioner and in compliance with the directions of the Commission, the 1st Respondent has decided to issue provisional COD with effect from 25.10.2010, the date on which the Petitioner informed their readiness to conduct performance tests.

4. Aggrieved with this, the Petitioner filed this petition under Section 86 (1) (f) of Electricity Act 2003 read with Regulation 22 of KSERC (Conduct of Business) Regulations 2003. The petitioner has remitted Rs.10000/- as fee and the provisions under Section 24 and 25 of KSERC (Conduct of Business) Regulations 2003, are complied with. The prayers of the petitioner are:

i) To resolve the dispute by issuing directions to the 1st Respondent to issue provisional certificate valid from the date of synchronisation for Iruttukanam Stage1.

ii) To allow interest for belated payments as provided in Article 9.7 of PPA, and

iii) To impose penalty on the 1st Respondent for the sufferings the Petitioner has gone through the last 2½ years and to disburse it to the Petitioner. The petition was admitted as OP 19/2013 and the Commission heard both the Petitioner and the 1st Respondent on 11.9.2013.

Arguments of the Petitioner :

5. The Petitioner submitted that as is the prudent practice, all the necessary tests such as Insulation Resistance test, Open Circuit Characteristics test, Short Circuit Characteristics test, High Voltage test, Phase Sequence test etc were carried out and only after ensuring that the turbine and generator were fit for synchronisation, the Unit # 1 of the project was synchronised to the grid on 18.9.2010 and Unit #2 on 19.9.2010. The Petitioner submitted that, hence the entire necessary tests stand carried out from the day one itself. The Petitioner highlighted the observations of the Commission in the petition no.TP 88/10 that, " *the Respondent is agreeable to apply tariff as stated in Art. 8.2 of the PPA, even before the declaration of commercial operation. Provisional certificate valid from the date of synchronisation has to be issued by the Respondent, if the Respondent is convinced of the capacity demonstrated after synchronisation*". The Commission has attached only one condition for issue of the provisional COD, that is the Respondent should be convinced of the capacity demonstrated after synchronisation. The Petitioner further submitted that the capacity declared by KSEB based on the performance tests conducted after synchronisation was 3.42817 MW as against the rated capacity of 3 MW. Even after fulfilling this only condition, the Respondent has not issued the provisional COD from 18.9.2010.

6. During the arguments, the Commission asked the Petitioner to submit copy of the log book relating to generation of power to substantiate their claim that the capacity of the plant was established from the date of synchronisation itself. Accordingly, the Petitioner has submitted records pertaining to the operation of the plant from 18.9.2010 to 4.11.2010. On analysis of the details furnished by the Petitioner, it was seen that the daily average MW output of the station is maintained between 3.411 and 3.586 during the period from 23.9.2010 onwards.

Arguments of the Respondent :

7. The Respondent submitted that as per Article 8.1 of the PPA signed between the Petitioner and the 1st Respondent; the tariff period shall be reckoned from COD of the 1st generating Unit and thereafter shall be continued till the end of BOOT period. All the Articles and Schedule of the signed PPA were duly agreed by both the parties and any deviation can be possible only with the mutual consensus of both the parties and with the concurrence of the Commission. The Tariff as per Article 8.2 of PPA can be claimed by the Petitioner only from COD. Further, declaration of the COD is a mandatory provision as per the PPA. Article 1.1(aag) of the PPA defines the "*Synchronisation Date*" as the date on which electrical energy is generated and delivered in the Board's system for commissioning, testing and initial start up. The synchronisation is being permitted to the generator to connect the plant to the State grid to perform the 'on load' tests. As per PPA, the Commercial service can be reckoned only from the COD. As per Article 4.2 of PPA, the 1st Respondent shall issue the certificate of COD on successful completion of the performance tests after the date of synchronisation. Further, as per Article 4.1 of PPA, the Company shall, at least 7 days prior to the date of completion, invite the 1st Respondent to attend the performance tests. That is, the developer has to communicate the readiness for performance tests even before the date of completion of the project.

8. The Petitioner has communicated to the KSEB vide letter on 25.10.2010 only, that they are ready for carrying out the performance tests and to declare COD. It is submitted that prior to this, KSEB has not received any communication from the

Petitioner regarding their readiness for these tests. The co-ordination committee conducted the performance tests on 4.11.2010 and the developer demonstrated the capacity. The Committee has recommended for declaring the COD from 4.11.2010. The Petitioner has intimated their willingness for performance tests only on 25.10.2010. The Petitioner has not taken appropriate action for obtaining the provisional certificate immediately after the date of synchronisation of the machines to the grid. The delay, on the part of the petitioner, in offering the machines for performance tests cannot be attributed to the 1st Respondent. Further since the Petitioner has communicated the readiness for the performance tests of both the machines only on 25.10.2010, the 1st Respondent could not presume that these machines are ready for these tests prior to this date. Under these circumstances, the KSEB has clarified to the Petitioner that the provisional certificate cannot be issued prior to 25.10.2010.

9 It is further submitted that the 1st Respondent has never deviated/ violated any of the provisions of PPA signed with the Petitioner and hence there is no rationale for raising such a dispute. KSEB has never denied any claims made towards power purchase from the Petitioner and hence the Petitioner is not entitled to any claim for interest for late payment under Article 9.7 of PPA. The 1st Respondent has not made any non-compliance on the directions issued by the Hon. Commission and hence there is no question of penalty under Section 142 of the Electricity Act, 2003 arises.

Analysis and Decision of the Commission

10. At the outset the Commission would examine the contention of the Petitioner that penalty under section 142 of the Electricity Act 2003 has to be imposed upon KSEB for not complying the directives in the order dated 18.1.2011 on issuing provisional certificate of COD from the date of synchronization. The orders of the Commission on TP 88/2010 cited was that: 'the Commission has no objection in applying the tariff as per clause 8.2 of the PPA based on a provisional certificate of commercial operation'. A plain reading of this order makes it clear that the

Commission has not made any mandatory directives to KSEB, the non-compliance of which would attract the penal provisions of the statutes. Even the other observations in the order do not amount to directives to KSEB on the matter. As such the question of any non-compliance of the order does not arise at all.

11. But the Commission wishes to examine the matter as a whole afresh to address the grievances raised by the Petitioner. The order cited was issued with special reference to the communication dated 27-10-2010 from KSEB. Even though the Article 8.3 of the PPA provides for tariff for infirm energy injected prior to the date of COD @ 25 paise per unit, KSEB in their letter cited had explicitly stated that *'However before the completion of the performance test the developer can carry out the tests immediately and get a provisional certificate valid from the date of synchronisation and thereby payment for the energy generated can be considered as per the article 8.2 of signed PPA'*. Accordingly the Commission in the order cited had observed that *'provisional certificate valid from the date of synchronisation has to be issued by the respondent, if the respondent is convinced of the capacity demonstrated after synchronization'*.

12. Now the single issue to be decided is whether the plant had demonstrated capacity after synchronization, before the COD? KSEB themselves had approved 25.10.2010 as the date of COD even though the capacity was 'demonstrated' only during testing on 4.11.2010. Commission examined the actual units sent out from the plant from the date of synchronisation to the above date of performance tests and computed the capacity of the plant. It was seen that the individual generators as well as the plant as a whole had demonstrated capacity almost steadily from the date of synchronisation. Hence the Commission concludes that *'provisional certificate valid from the date of synchronisation'* can be issued to the Petitioner as suggested by the Respondent itself.

13. The issue can be viewed in another angle also. It is well known that the demonstration of capacity becomes critical only in cases where declaration of capacity entails payment of capacity charges. This is relevant and crucial in the

cases of larger power plants where two part tariff is applicable and where recovery of capital investments are made through capacity charges. In small power plants where single part tariff is applied, capacity demonstration has little relevance on the tariff applicable to the energy generated. Keeping these facts in mind, the Commission had observed that *'infirm tariff has no relevance in the case of single part tariff'* in an order dated 18.3.2010 on RP 8/2009.

14. In the instant case, the PPA provides for infirm tariff before COD. Once the generator becomes eligible for a *'provisional certificate valid from the date of synchronisation'*, all the energy injected from the date of synchronisation has to be treated as firm energy and eligible for tariff under article 8.2 as noted by the Respondent.

15. The Commission has no hesitation in taking a facilitating approach to a small hydro generator of 3 MW capacity, who had established the plant under tiring circumstances. Hence the Commission concludes that the Petitioner shall be deemed to have obtained provisional certificate of COD from the date of synchronization, as suggested by KSEB themselves and all the units of electricity injected from the date of synchronisation shall be eligible for tariff as per article 8.2 of the PPA.

16. The payments as per this order cannot be conceived as 'late payments' under article 9.7 of the PPA and hence the petitioner shall not be eligible for any interest as pleaded.

Orders of the Commission

17. After carefully examining all the documents and arguments submitted by both the parties, the Commission orders as follows:

- i) The Petitioner is deemed to have obtained provisional certificate of COD from the date of synchronisation, and all the units of electricity injected from the date of synchronisation shall be eligible for tariff as per article 8.2 of the PPA.
- ii) The Petitioner may prefer a claim for balance payment and the Respondent shall make the payment in view of the above order within a period of one

month. The Petitioner shall not be eligible for any interest for the payments to be received as per this order, if payment is made within the time stipulated above.

iii) The plea of the Petitioner to impose penalty on the Respondent based on alleged non-compliance is rejected.

18. The matter is ordered and disposed accordingly.

Sd/-

Mathew George
Member (F)

Sd/-

P. Parameswaran
Member (E)

Sd/-

T.M. Manoharan
Chairman

Approved for issue

Sd/-
SECRETARY