

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

PRESENT

Shri. T.M.Manoharan, Chairman

Shri. P. Parameswaran, Member

Shri. Mathew George, Member

OP No. 24/2013

In the matter of : Changing the date of application of tariff of the Wind Energy Generators at Agali, Palakkad , from the date of signing PPA to the date of interconnection

10th OCTOBER 2013

Petitioner : M/s. KITEX Ltd., Aluva
Respondent : Kerala State Electricity Board, Tvpm

ORDER

BACKGROUND

M/s. KITEX Ltd (*hereinafter referred to as Petitioner*) has installed 2 Wind Electricity Generators (*hereinafter referred to as WEGs*) of Capacity 0.6 MW each at location Nos KER 444 and KER445 at Agali, Palakkad. Those mills were purchased from M/s. SUZLON Gujarat Wind Parks Ltd, formerly known as SUZLON infrastructure Services Ltd. The location was initially allocated to M/s. Surgeon Realistic Ltd on 22.9.2008 by ANERT and later transferred to M/s. Anna Aluminium Co. on 7.5.2010. It was further transferred in the name of the Petitioner. The works were completed in September 2010 and connected to KSEB's grid with date of interconnection as 29.9.2010.

2. The Petitioner submitted that the execution of PPA was delayed in respect of the above two WEGs for the reason that technical clearance from ANERT was not obtained due to a dispute on the ownership of land, based on alleged involvement of forest /tribal

land about the site. Thereby the Govt. of Kerala insisted for clearance from District Collector to the effect that the proposed site is not a forest/ tribal land. As there was delay on the part of the Government in granting permission, M/s. SUZLON infrastructure Services Ltd. approached the Hon. High Court of Kerala and obtained interim order in IA No 7069/2011 in WP(C) No 29124/2010. Accordingly, Govt, vide G.O.(Rt) No. 135/2013/PD dt. 9.5.2013, has issued sanction to KSEB to execute PPA for KER 444 and KER 445, without waiting for the transfer of technical approval by ANERT.

3. For the purpose of entering into the PPA with KSEB, the Petitioner had approached the Commission for approval of tariff for these WEGs. The Commission in OP 25/11 and OP 26/11 on 13.12.2011 ordered that the Preferential Tariff approved by the Commission for Wind Power Plants {vide *KSERC (Power Procurement from Renewable Sources by Distribution Licensee) (Second Amendment) Regulations, 2008 dt. 22.11.2010 (viz. Rs.3.64 per unit), for 20 years from the date of signing PPA*} shall be applicable for the WEP at locations KER 444 and 445. Based on this, Board has accorded sanction to execute the PPA in respect of the above two WEGs, using the same draft PPAs used for the other projects in the group earlier with the tariff @ Rs.3.64 per unit for a period of 20 years from the date of signing the PPA.

4. Aggrieved by the fixation of the date of effecting the payment of energy, this petition was filed 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:

(a) To direct the Respondent KSEB to change the date of application of tariff from the date of PPA to date of interconnection viz. 29.9.2010. In the Rejoinder, the Petitioner has submitted that they are entitled to get the tariff @ Rs.3.64 per unit at least from the date of Order of the Commission, 22.11.2010.

(b) To direct KSEB to execute PPA as above at the earliest.

(c) To direct KSEB to pay interest @ 12% p.a. for the amount due.

5. Hearing was held on 18.7.2013. The Petitioner requested the Commission to direct the Respondent, KSEB to execute the PPA and to make payment for the energy pumped

into the KSEB system from the WEGs KER 444 & KER 445 @ Rs. 3.64 per unit as determined by the Commission in its order on 22.11.2010 along with the above prayers. The Petitioner argued that the WEGs were provided connectivity on 29.9.2010 and has been injecting power to the grid from that day onwards. The power produced by the WEGs of the Petitioner is utilised by the KSEB for the past 2¹/₂ years without paying any amount to them. It was submitted that there was no fault on the part of them in executing the PPA earlier. The delay occurred was due to the pendency of a case and as such the Petitioner shall not be made liable. The electricity generated from the WEGs of the Petitioner has been used by the Respondent and has to pay the charges at the rates fixed by the Commission from the date of interconnection.

Arguments of KSEB

6. On behalf of KSEB, it was submitted that there was no dispute relating to the date of interconnection to KSEB grid and relating to quantum of energy supplied to KSEB from the WEGs at KER 444 & 445. The dispute was relating to the tariff rates and its date of application. KSEB contended that the admissible rate was only @ Rs. 3.14 per unit. The rate of @ Rs. 3.64 per unit is applicable only to those WEGs commissioned on or after 22.11.2010. In the case of WEGs KER 444 & 445 owned by KITEX, the date of commissioning was much before 22.11.2010. Therefore, the Board is liable to pay charges for electricity to KITEX only @ Rs. 3.14 per unit.

7. As per the *KSERC (Power Procurement from Renewable Sources by Distribution Licensee) (Second Amendment) Regulations , 2008* and its 2nd amendment dt. 22.11.2010, the ceiling tariff applicable for the wind projects commissioned upto 21.11.10 is Rs. 3.14 per unit and to those projects commissioned on or after 22.11.2010 is Rs. 3.64 per unit. These WEGs of the Petitioner at locations KER 444 & 445 were interconnected to the system on 29.9.2010. Hence the maximum ceiling tariff applicable to these would be Rs. 3.14 per unit only. It is submitted that the Commission, vide order dt. 13.12.2011, had approved the tariff for the WEGs KER 444 & 445 @ Rs. 3.64 per unit on the presumption that the WEGs were synchronised to the grid after the date of publication of the Regulations dt. 22.11.2010, whereas the project was interconnected on 29.9.2010. The relevant portion in the Order is:

“ The Preferential Tariff approved by the Commission for Wind Power Plants vide KERALA STATE ELECTRICITY REGULATORY COMMISSION (POWER PROCUREMENT FROM RENEWABLE SOURCES BY DISTRIBUTION LICENSEE) (SECOND AMENDMENT) REGULATIONS, 2008 dated 22-11-2010 viz. Rs 3.64 per unit for 20 years, shall be applicable for the WEP at locations KER 444 and 445. The rates approved are without considering subsidy / incentive offered by Central/ State Government including accelerated depreciation availed by generating companies. Details of subsidies/incentives if any availed by the Wind Power Generators shall be disclosed to the Commission and the rate Rs 3.64 per unit shall be adjusted appropriately.”

8. The Tariff petition was filed on 20.8.2011, eleven months after the date of interconnection. The Petitioner has hidden the facts from the notice of the Commission, such as the date of interconnection and the details of energy injected to the system, till the date of filing the tariff petition. The prayer was cast in such a way as to get the benefit of higher Tariff of Rs.3.64 per unit, applicable to the projects developed after 22.11.2010. The prayer in the petition was “to approve the Tariff Rs. 3.64 per unit for 20 years from the date of signing the PPA.” There are six other wind projects at Agali, interconnected to the grid during the same period. The declaration of the Commercial Operation (COD) of all these were declared on 23.10.2010 and the applicable Tariff to all these WEGs is Rs. 3.14 per unit only from the date of COD. Hence the tariff applicable to these WEGs shall be Rs. 3.64 per unit only.

9. It is admitted that the Board has to pay charges for the energy injected into the grid from the date of C.O.D or from the date of interconnexion at the appropriate Tariff as approved by the Commission. KSEB has been making provisional payments to the other projects like, Ullunkal, Philips Carbon Black Ltd etc without insisting on signing of the PPA. In this case, the Petitioner has not raised invoices till date and KSEB, being the public sector utility cannot make any payment without raising invoices for the amount due to them. As the Petitioner has not raised invoices and hence KSEB could not effect provisional payments to them and till the date of signing of PPA, the Petitioner is not entitled to get interest from the Respondent. It is a fact that that the PPA between the

developer and the Respondent is yet to be executed. The statement of the Petitioner that they have submitted a duly signed PPA much earlier in 2010 is not correct. The Petitioner has submitted the same only on 23.12.2011.

10. After hearing both sides, the Commission gave the following interim directions on 18.7.2013.

(i) The Petitioner may prefer the claim and raise the bill for the energy supplied by them to KSEB at the rates already fixed by the Commission.

(ii) KSEB may effect a provisional payment for the energy received @ Rs. 3.14 per unit, as agreed to by them, within two weeks from the date of submission of the invoice.

(iii) M/s. KITEX may file, within two weeks, their rejoinder to the reply dated 17.7.2013 submitted by KSEB.

Rejoinder by the Petitioner

11. The Rejoinder petition was filed on 31.7.2013. It is submitted that the objections raised by the Respondent is not maintainable. The first objection raised by the Respondent is that the Commission in the earlier order has specifically stated the tariff of Rs.3.64 per unit for 20 years from the date of signing the PPA and thereby cannot be modified. The Order portion does not specify so and hence not maintainable. It was further submitted that even if the order was intended from the date of signing the PPA, the delay in signing the PPA has occurred only due to the fault of the Respondent. Therefore the Petitioner is entitled to get the tariff of Rs. 3.64 per unit at least from the date of order of the Commission.

12. The Petitioner has raised the invoices and submitted on the basis of interim order of the Commission. It is also submitted by the Petitioner that the objection of the Respondent, that the WEGs were interconnected to the grid earlier than the 2nd amendment order dated 22.11.2010 and the earlier tariff alone is applicable, is also not maintainable, because the order of the Commission on 13.12.2011 in the tariff petition OP 25/11 and 26/11 has become final and KSEB has so far not challenged the same.

13. The Petitioner intimated In the additional submission on 31.8.2013 that in compliance of the interim order of the Commission, they have raised invoices amounting

to Rs. 3,32,44,604/- for the energy supplied from 29.9.2010 to 30.6.2010 in respect of KER 444 & KER 445 @ Rs. 3.64 per unit and submitted to the Respondent. KSEB has effected a provisional payment of Rs. 2, 80, 63,663/- calculated @ Rs. 3.14 per unit on 7.8.2013. KSEB also has confirmed the same vide letter on 12.9.2013.

Analysis and Decision of the Commission:

14. The Commission has considered the tariff admissible for the energy generated from the wind energy generators of the Petitioner at sites KER 444 & KER 445 in Agali Village of Palakkad District and the date from which such tariff is applicable. As per KSERC (Power Procurement from Renewable Sources by Distribution Licensees) Regulations, 2006 and KSERC (Power Procurement from Renewable Sources by Distribution Licensees) Second Amendment Regulations 2010, the tariff has to be determined in accordance with the clause (12) of Annexure II as amended with effect from 22.11.2010. The said amended clause (12) is quoted hereunder.

“Based on the norms approved above, the levelised tariff at 12% discount rate for 20 years shall be Rs.3.64/unit. The tariff arrived at above shall be applicable only for the project proposals submitted after the publication of this amendment regulations. The rates approved are without considering subsidy/incentive offered by Central/State Government including accelerated depreciation availed by generating companies. Generating companies shall disclose to the Commission details of such subsidy/incentive if availed along with application for fixation of tariff and get the rate adjusted appropriately.”

14. After considering the relevant documents and the relevant regulations, the Commission had issued orders on 13.12.2011 in OP No. 25/11 and OP 26/11, determining the tariff of energy from the wind mill projects of the Petitioner with the capacity 0.6 MW, located at KER 444 & KER 445 at Agali village. In the said order dated 13.12.2011, the Commission has stated as follows:

“ The preferential tariff approved by the Commission for Wind Power Plants vide KERALA STATE ELECTRICITY REGULATORY COMMISSION (POWER PROCUREMENT FROM RENEWABLE SOURCES BY DISTRIBUTION LICENSEE) (SECOND AMENDMENT) REGULATIONS, 2008 dated 22.11.2010 is Rs. 3.64/unit for 20 years. Hence the tariff applicable for all Wind Energy Projects commissioned after 22.11.2010 shall be Rs. 3.64/unit.

Preferential tariff are a commonly used policy instrument for the promotion of renewable electricity production. The term feed-in tariff can be used in the context of a minimum guaranteed price per unit of produced electricity as approved by the Regulator, to be paid to the producer. Regulatory measures are usually applied to impose an obligation on electricity utilities to pay the (independent) renewable energy power producer a price as specified by the Regulator. The level of the tariff is commonly set for a number of years to give investors security on income for a substantial part of the project lifetime. Many different adaptations of the instrument are applied. However, the level of the tariff need not have any direct relation with either cost or price, but can be chosen at a level to motivate investors for green power production. Considering various factors including front loading, Commission has fixed a preferential tariff of Rs. 3.64/Unit for a period of 20 years for all Wind Energy Projects which are commissioned after 22.11.2010. Hence Commission cannot consider any tariff higher than this, through the Petitioner has presented a calculation sheet indicating a higher rate based on capital cost.”

15. **As per the relevant regulations, the rate of Rs. 3.64 per unit can be claimed only for the wind energy projects of which the project proposal was submitted after 22.11.2010. But in the case of M/s. KITEX, they had already commissioned the project on 29.09.2010 and have submitted tariff petition only after 22.11.2010.** It is obvious that the Commission had allowed the tariff of Rs. 3.64 per unit on the bonafide belief that the WEGs of the Petitioner at KER 444 & KER 445 in Agali village were commissioned after 22.11.2010. But in its written submission dated 17.7.2013, KSEB has pointed out that the project was commissioned on 29.9.2010 and therefore the preferential tariff of Rs. 3.64 per unit is not admissible to the Petitioner. This fact had not been brought to the notice of the Commission while considering the tariff petition dated 20.8.2011 filed by the Petitioner. Therefore the Commission had in good faith allowed Rs. 3.64 per unit as tariff applicable to the energy from wind energy generators at KER 444 & KER 445. In view of the actual uncontroverted facts, now revealed during hearing and from the records, the Commission finds that the Petitioner is eligible only for the tariff @ Rs. 3.14 per unit for his wind energy project located at KER 444 & 445 which were actually commissioned on 29.9.2010.

16. **Six other wind mills synchronised to KSEB grid during the same period (July 2010 to Sept 2010) in locations KER 415,416,429,440,448 and 449 who had executed PPA on**

30.09.2010 have been allowed tariff @ Rs. 3.14 per unit. So it is not just & proper to allow higher Tariff of Rs. 3.64 for the Petitioner by any standards. This rate of Rs. 3.14 per unit is applicable for the entire energy supplied by the Petitioner right from the date of synchronisation i.e. 29.9.2010 and will continue for 20 years till 28.9.2030. The KSEB has to make payment @ Rs. 3.14 per unit to the Petitioner for entire energy received by them right from 29.9.2010 from the wind energy generators at KER 444 & KER 44

Order of the Commission

17. The Commission orders that the Petitioner is eligible for the tariff @ Rs. 3.14 per unit for his wind energy project located at KER 444 & 445. This rate of Rs. 3.14 per unit is applicable for the entire energy supplied by the Petitioner right from the date of synchronization i.e. 29.9.2010 and will continue for 20 years till 28.9.2030. The KSEB has to make payment @ Rs. 3.14 per unit to the Petitioner for entire energy received by them right from 29.9.2010 from the wind energy generators at KER 444 & KER 445.

18. The order of the Commission dated 13.12.2011 in OP 25/11 stands modified to this extent. The Petitioner and the Respondent, KSEB shall execute PPA adopting rate of Rs. 3.14 per unit now approved by the Commission in this order.

19. Petition is disposed off accordingly.

Sd/-

P.Parameswaran
Member

Sd/-

Mathew George
Member

Sd/-

T.M.Manoharan
Chairman

Approved for issue

Sd/-
SECRETARY