

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

OP No 23/2020

In the matter of : Petition for inclusion of KINFRA Petrochemical Park as additional license area to KINESCO Power and Utilities Pvt. Ltd (KPUPL) under Section 18 of the Electricity Act, 2003 – amendment of license area and under Section 19 of Kerala State Electricity (Licensing) Regulations, 2006.

Petitioner : KINESCO Power and Utilities Pvt. Ltd (KPUPL)

Date of hearing : 01.02.2021

Order dated 26.05.2021

1. KINESCO Power and Utilities Pvt Ltd (hereinafter referred to as the petitioner of KPUPL), filed a petition on 27.07.2020, for inclusion of KINFRA Petrochemical Park as an additional license area to KINESCO Power and Utilities Pvt Ltd (KPUPL) under Section 18 of the Electricity Act, 2003 and under Section 19 of Kerala State Electricity (Licensing) Regulations, 2006.
2. Summary of the petition filed by KPUPL is given below.
 - (i) KPUPL is a subsidiary of the Kerala Industrial Infrastructure Corporation Ltd (KINFRA). KPUPL is a distribution licensee of this Commission and hold license for electricity distribution in the following parks developed by KINFRA.
 - (1) KINFRA Export Promotion Industrial Park, Kakkanad (180.126 Acres). Total electricity load- 18 MVA from KSEB Ltd.
 - (2) KINFRA Hi-Tech Park, Kalamassery (240 Acres). 1 MVA load met from KSEB Ltd.
 - (3) KINFRA Integrated Industrial and Textile Park, Palakkad (350 Acres) 1 MVA load from KSEB Ltd.
 - (4) KINFRA Mega Food Park, Palakkad. 0.3 MVA power from KSEB Ltd.In other parks of KINFRA, KSEB Ltd has been directly providing electricity to the park.

- (ii) KINFRA intend to develop a Petrochemical park of international standards at Ambalamugal, in Ernakulam District. The park is proposed to be established in approximately 311.79 acres of land at Ambalamugal in Kochi, which is transferred to KINFRA from FACT. The Park is sharing boundaries with BPCL, Kochi Refinery.
 - (iii) KPUPL prayed before the Commission for inclusion of KINFRA Petrochemical Park as an additional license area to KINESCO Power and Utilities Pvt. Ltd (KPUPL) under Section 18 of the Electricity Act, 2003 and under Section 19 of Kerala State Electricity (Licensing) Regulations, 2006.
3. The Commission admitted the petition as OP 23/2020 and directed the petitioner to comply with the following.
- (1) KPUPL is required to publish the public notice in compliance to Regulation 8 of KSERC (Licensing) Regulations, 2006 in two dailies each having wide circulation, in English and Malayalam. A copy of the notice published in the dailies is to be forwarded to the Commission.
 - (2) KPUPL is required to serve notice and copy of the petition to the State Government, local authority, KSEB Ltd as envisaged in the Regulation.
 - (3) The Commission also directed the petitioner to submit the following before the Commission, on or before 05.10.2020:
 - (i) Government notification/order for establishing a petrochemical park in the State of Kerala.
 - (ii) Administrative sanction/orders of the State Government for establishing the proposed petrochemical park through KINFRA.
 - (iii) Documents to prove the eligibility for including the additional license area to the distribution license of KPUPL, such as order from the State Government under (2)(f) and 5 of the Kerala Industrial Single Window Clearance Board and Industrial Township Area Development Act, 1999.
 - (iv) Details of the distribution infrastructure proposed to be developed within the park by KINFRA.
 - (v) Authorization of KINFRA to KPUPL to seek the distribution license in the proposed petrochemical park.
4. In compliance of the direction of the Commission, KPUPL submitted the following details vide their letter dated 30.10.2020.
- (1) KPUPL has published a notice for inclusion of additional licensee area in compliance to Regulation 8 of KSERC (Licensing) Regulations, 2006 in two Malayalam dailies viz Deshabimani and Kerala Kaumudi and in two English dailies viz The Time of India and The New Indian Express on 17.09.2020.

- (2) Government Order GO (Rt) No. 1697/2017/ID dated 20.12.2017, authorizing the Additional Chief Secretary to execute MOU on behalf of GoK with FACT.
- (3) Government Order G.O (Ms) No.119/2016/ID dated 17.10.2016, according "in principle approval" for setting up a Petrochemical park in 600 acres of land to be procured from FACT at Ambalamugal. The said GO also accorded sanction for procuring the 600 acres of land from FACT through negotiation and for meeting the cost of land amounting to Rs 1864.00 crore from KIIFB. It is also ordered in the said GO that, the project shall be implemented through KINFRA.
- (4) Government Order G.O (Ms) No. 48/2006/ID dated 28.04.2006, orders to notify 442 hectares (1092.18 Acres) of land included in Resurvey No. 205, Block No.37 of Vadavucode, Puthencruz village, Kunnathunadu Taluk at Ernakulam District owned by FACT as Industrial Area.
- (5) The relevant pages of the Detailed Project Report of the proposed Petrochemical Park at Ambalamugal, Kochi (pages 227 to 238) dealing with the electrical power distribution system proposed to be developed in the proposed Petrochemical Park at Kochi.
- (6) Letter No. KIN/FIN/2020-21/743 dated 27.10.2020 from the Managing Director, KINFRA authorizing KPUPL to seek distribution license from KSERC in the proposed Petrochemical Park, as an additional license area to KPUPL.

However, the petitioner KPUPL has not submitted the documents to prove eligibility for including the additional license area to the distribution license of KPUPL, such as order from the State Government under Section (2)(f) and 5 of the Kerala Industrial Single Window Clearance Board and Industrial Township Area Development Act, 1999.

Hence the Commission vide letter dated 07.01.2021, directed the petitioner KPUPL to produce the Government Notification declaring the area of 311.79 acres of land at Ambalamugal, proposed for the Petrochemical park as an Industrial area as per Section 2(f) and Section 5 of the Kerala Industrial Single Window Clearance Board and Industrial Township Area Development Act 1999."

5. KSEB Ltd, vide their letter dated 29.01.2021 submitted the following:

- (1) KSEB Ltd is the deemed distribution licensee for the entire State of Kerala and the area specified in the KINFRA Petrochemical Park also falls in the license area of KSEB Ltd. As per Section 14 and 131 of the EA-2003, KSEB Ltd being the successor entity of the State Electricity Board formed as per Section 5 of the Electricity Act, 2003, inherits the deemed license for the entire State of Kerala as statutorily available under the provisions of the Electricity Act, 2003. Therefore the application of M/s KINESCO for the license in the area of KINFRA Petrochemical Park can be treated only as an application for second

license in accordance with Proviso 6 to Section 14 of EA, 2003 in the area, where KSEB is already a deemed licensee.

- (2) Government of India vide Notification dated 23.03.2005 notified the 'Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005, wherein the following are prescribed:
 - a. The Commission shall decide the requirement of capital investment in the area.
 - b. The applicant shall be required to satisfy that 30% of the cost of investment is available.
 - c. In case of second licensee, the minimum area of supply shall be a municipality, corporation or a revenue district.
 - d. The applicant has not been found guilty under provisions of Companies Act, IT Act, SEBI Act, Excise and Customs Act.
- (3) Government of India also issued the Special Economic Zone Act, to the effect that a Developer or authority of a Special Economic Zone shall be deemed to be a licensee for distribution of electricity for the purpose of Section 14 of the Electricity Act, 2003. Special Economic Zones are exempted from the minimum area condition as well as other conditions prescribed for grant of License. However, the above relaxation is presently not applicable to the petitioner for grant of license for distribution of electricity to KINFRA Petrochemical Park, as the area under the park is yet to be notified as Special Economic Zone.
- (4) The Commission has limited the license to SEZ area alone while granting license to M/s Infopark vide the Order dated 18th October 2011 and subsequently amended it vide the Order dated 25th July 2012. In case of Cyber Park, Kozhikode, the Commission vide Order dated 7th August 2014 had limited the granting of license to the SEZ area alone.
- (5) Sub-section 2(a) of Section 3 of the KSERC (Licensing) Regulations, 2006, specifies the "Eligibility Conditions of Persons requiring a License" which read as under.

"(2) Distribution Licensee (a) The Area of Supply for distribution licensee shall not be less than a Panchayat, Municipality or Corporation. Exemption may be granted by the Commission in the case of service providers such as Technoparks, Industrial Parks, Special Economic Zones etc".
- (6) As per the provisions of the EA-2003, only the Central Government can prescribe additional requirements for grant of second distribution licensee in any area. Also, it does not confer any powers to a State Commission to relax or exempt any provisions related to grant of License as contained in the Act or Rules prescribed by the Government. Therefore, the above provisions in the Licensing Regulation can only be

interpreted in harmony with the provisions of EA-2003 and Gol notification. Also, the Regulation notified by the Commission is not related to grant of second or subsequent license in an area.

- (7) KSEB Ltd therefore submitted that,
- (a) The license applicant can only be treated as an application for second license for distribution of power in KINFRA Petrochemical Park area, since KSEB Ltd already possess license for distribution of electricity in that area.
 - (b) The said area alone does not satisfy the minimum area prescribed in Gol Notification.
 - (c) The said area presently does not come under SEZ and KINFRA has not produced any document to establish the area as SEZ.
 - (d) As per the existing status and notifications, the petitioner is presently not eligible to get a second distribution license in the KINFRA Petrochemical Park in Ambalamugal, Kochi.

KSEB Ltd further submitted that, in view of the above, the petition for inclusion of KINFRA Petrochemical park to KPUPL distribution license area may please be disposed, directing KPUPL to obtain SEZ status for the area, in case the applicant desires to function as a distribution licensee in the area. Until then, the petitioner, if it so desires can avail single point supply and distribute power to beneficiaries as per Regulation 56 of Supply Code, 2014.

5. The State Government vide the letter dated 30.01.2021, submitted the following comments on the petition filed by M/s KPUPL.

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- (1) *The license applicant can only be treated as application for second license for distribution of power in KINFRA Petrochemical park area since KSEBL already possess license for distribution of electricity in that area.*
- (2) *The said area alone does not satisfy the minimum area prescribed in the Gol notification dated 23.03.2005.*
- (3) *The said area presently does not come under SEZ and KINFRA has not produced any document to establish the area as SEZ.*
- (4) *As per the existing status and notifications the petitioner, KPUPL is presently not eligible to get second distribution license in the KINFRA Petrochemical Park in Ambalamugal, Kochi.*

The State Government opined that, the petition for inclusion of KINFRA Petrochemical park in Ambalamugal, Kochi to KPUPL may please be disposed directing to obtain SEZ status for the area in case the applicant desires to function as a distribution licensee in the area. Until then the petitioner, if desires so, can avail single point supply and distribute power to beneficiaries as per Regulation 56 of Supply Code, 2014.

6. The Commission conducted public hearing on the petition on 01.02.2021 at Collectorate Conference Hall, Ernakulam. Summary of the deliberations during the hearing is given is below:

(1) Sri. Sajeev M.S, presented the petition on behalf of the petitioner KPUPL. The issues raised during the hearing is summarised below.

- KPUPL is an existing distribution licensee in the State, supplying power in the parks at Kakkanad (280.126 Acres), Kalamassery (240 Acres), Kanjikode- KINFRA Industrial & Textile Park (350 Acres) and Kanjikode- Mega Food Park (79.42 Acres). As on date, the licensee is supplying 428 consumers across the State.
- KINFRA has proposed to set up KINFRA Petrochemical Park, at Ambalamugal, Kochi, from the 600 acres of unutilised surplus land belonging to FACT, in a total area of 311.79 Acres of land. Earlier, the land was in possession of FACT, Kochi. The major products expected are Plasticisers, Paint & Resin formulation, Dyes, Textile finishing, Solvents and Acrylate esters, Paper printing chemicals, Pharmaceuticals, Power coating products etc.
- Total power demand expected for the park is 32.07MVA and the power is proposed to be sourced in bulk from KSEB Ltd. from its 220 kV substation at Brahmapuram. For the phase-1 power requirement up to 3 MVA load, an 11kV line/ABC is proposed from KSEB Ltd's 220 kV Brahmapuram substation. In the Phase-2, for meeting the power requirement above 3 MVA and up to 12 MVA, a 33 kV line/ UG cable is proposed from KSEB Ltd's 220 kV Brahmapuram substation. In the Phase-3, for meeting the power demand above 12 MVA, a double circuit 110 kV line is proposed from the nearby KSEB line.
- Total power demand expected by the year 2023-24 is 4 MW.
- Approximate cost for creating the distribution system is Rs 55.73 crore with split details as shown below.

(a) Electrical Infrastructure for Phase-1 = Rs 32.42 crore

(b) Electrical Infrastructure for Phase-2 = Rs 17.66 crore

Sub total = Rs 50.08 crore

(c) External illumination and Telecommunication

= Rs 5.65 crore

Grand Total = Rs 55.73 crore

- Source of funding for the infrastructure development is from Kerala Government / KINFRA.
- KPUPL further submitted the following benefits to the consumers:

- (i) Since the HT power supply distribution is at 33kV & 11kV levels, it will ensure low system losses.
 - (ii) Since the distribution system is using UG cable and in a limited area, reliable and uninterrupted power supply can be ensured.
 - (iii) Maintenance staff will be available round the clock to ensure uninterrupted power supply to consumers.
 - (iv) KINESCO is following pre-paid energy meter billing system.
 - (v) Minimum initial investment for electrical works.
 - (vi) Maximum power quality.
- (2) Sri. K.N. Biju, Village Officer, Puthencruz, and Sri. Manikantan, Secretary, Puthencruz attended the hearing, but did not offer any comments on the proposal.
- (3) Sri. Manoj. G, Asst. Executive Engineer, on behalf of the KSEB Ltd submitted the following.
- KSEB Ltd is the deemed licensee in the area proposed for the KINFRA Petrochemical Park. Hence, the petition filed by M/s KPUPL is to be considered as a petition for seeking a second license as per the Section 14 of the Electricity Act, 2003.
 - As per the Distribution Licensee Rules, 2005 notified by the Central Government on 23.03.2005, in the case of a second license, the minimum area of supply shall be a municipality, corporation or a revenue district. Further, the petitioner is also required to satisfy the condition that 30% of the cost of investment is available as equity.
 - If the proposed area is notified by the Central Government as a Special Economic Zone (SEZ), then such zones are deemed distribution licensee areas and exempted from the conditions specified in the Distribution Licensee Rules, 2005. However, the area of the proposed KINFRA Petrochemical Park is yet to be notified as a SEZ by the Central Government.
 - KSEB Ltd is presently supplying power to various parks of KINFRA directly. In this Park also, KSEB Ltd can directly supply power to the various beneficiaries, within the Park.
 - If the Petitioner, KPUPL desires to distribute electricity in the area proposed for the KINFRA Petrochemical Park, they have to obtain SEZ status for the area and till then, KPUPL can avail single point supply from KSEB Ltd. and distribute power to the beneficiaries as per Regulation 56 of the Kerala Electricity Supply Code, 2014.
- (4) Smt. Ambili T.B, Manager, KINFRA submitted the following during the hearing.
- The entire investment for the park is proposed to be sourced from KIIFB. The investment for land acquisition for the project from FACT is already released by KIIFB.

- The approximate cost of investment for the entire park is about Rs 280.00 crore, and KINFRA Management has already approached KIIFB for getting the funds for creating the infrastructure.
 - The interest rate and other terms and conditions for the loan from KIIFB is yet to be finalised.
 - The State Government vide Order dated 28.04.2006, has notified the 442 hectares (1092.18 Acres) of land in Resurvey No. 205, Block No.37 of Vadavukode, Puthencruz village owned by FACT as Industrial Area. The proposed land for the KINFRA Petrochemical Park falls within this Area. However, about 40 Acres of land is additionally acquired and the same is also required to be notified as Industrial area. KINFRA has already taken up with the Government to notify the newly acquired area also as Industrial Area.
7. Based on the deliberations during the hearings, the Commission vide Daily Order dated 03.02.2021, directed the petitioner KPUPL and the respondent KSEB Ltd to comply the following, latest by 17.02.2021.
- (1) KSEB Ltd shall immediately forward a copy of their comments dated 29.01.2021 to M/s KPUPL and M/s KINFRA for their comments.
 - (2) M/s KPUPL and M/s KINFRA shall submit to the Commission the following latest by 17.02.2021, with a copy to KSEB Ltd.
 - (i) Detailed comments on the issues raised by KSEB Ltd in their letter dated 29.01.2021.
 - (ii) Government notification declaring the area of 311.79 Acres of land at Ambalamugal, Kochi proposed for the KINFRA Petrochemical park as an Industrial area as per Section 2(f) and Section 5 of the Kerala Industrial Single Window Clearance Board and Industrial Township Area Development Act 1999.”
8. M/s KINFRA, vide letter dated 20.02.2021 submitted the following for consideration of the Commission.
- (1) State Government vide GO (Ms) No. 48/2006/ID dated 28.04.2006, notified 442 Hectares (1092.18 Acres) of land located in Resurvey No. 205. Block No.37 of Vadavukode, Puthencruz village, Kunnathunadu Taluk, Ernakulam District owned by FACT as Industrial Area. The major part of the proposed KINFRA Petrochemical park falls within this area.
 - (2) As per the sale deed with FACT, a total of 194.9812 Ha (481.79 Acres) of land has been transferred to KINFRA of which 164.6298 Ha (406.80 Acres) come under Resurvey No. 205. Block No.37 of Vadavukode, Puthencruz village, which is already a notified Industrial area vide GO dated 28.04.2006.

- (3) Out of the 164.6298 Ha (406.80 Acres) transferred to KINFRA, 56.8125 Ha (140.40 Acres) of land is leased to BPCL by KINFRA and the balance 107.8123 Ha (266.42 Acres) of land is presently owned by KINFRA.
 - (4) The total license area of the proposed Petrochemical Park is 311.79 Acres of which 266.42 Acres fall in Resurvey No. 205, Block No.37 of Vadavukode, Puthencruz village, which is already a notified Industrial area vide GO dated 28.04.2006.
 - (5) KINFRA already taken initiatives with the Government of Kerala to notify the remaining 45.37 Acres of land as Industrial Area.
 - (6) Formation of a Single Window Clearance Board for KINFRA Petrochemical Park is also under process from the Government of Kerala and the same will be forwarded to the Commission as soon as it received from Government.
 - (7) KINFRA requested to consider the petition for inclusion of KINFRA Petrochemical park as an additional area to M/s KPUPL under Section 18 of the Electricity Act 2003, for the 107.8173 Ha (266.42 Acres) of land in Resurvey No. 205. Block No.37, which is already notified as an Industrial Area by the Government vide GO dated 28.04.2006.
9. M/s KPUPL vide letter dated 04.03.2021, submitted the following comments on the counter affidavit filed by KSEB Ltd.
- (1) The proposed Petrochemical Park at Ambalamugal, Kochi is owned by KINFRA. KPUPL is a 100% subsidiary of KINFRA, established for conducting the business of electricity distribution within the industrial parks and special economic zones developed by KINFRA. One of the Directors of KSEB Ltd is also a Director of KPUPL as well.
 - (2) Under Chapter II, Clause 3, Subsection (2), Eligibility Conditions of persons requiring a License under KSERC (Licensing) Regulations, 2006, it is given that, 'The area of supply for a distribution licensee shall not be less than a Panchayat, Municipality or Corporations. Exemption may be granted by the Commission, in the case of service providers such as Technopark, Industrial parks, SEZs, Export Zones, etc.
 - (3) As per the GoI, Notification dated 23.03.2005, an area under Municipal Council or Municipal Corporation or a Revenue District is also eligible for grant of license for distribution of electricity. Moreover, exemption has also been given by the Commission in the case of Industrial parks, SEZs, Export Zones as per Chapter II, Clause 3, Subsection (2), of KSERC (Licensing) Regulations, 2006.
 - (4) In response to KSEB Ltd's submission that the proposed license area does not come under SEZ and KINFRA has not produced any document to establish the area as a SEZ, the petitioner submitted the following.

- The State Government vide GO (Ms) No. 48/2006/ID dated 28.04.2006, has notified 442 Ha (1092.18 Acres) of land comprised in Resurvey No. 205, Block No.37 of Puthencruz Village, Kunnathunadu Taluk at Ernakulam District owned by FACT as Industrial area. Out of the proposed license area of 311.79 Acres of KINFRA Petrochemical Park, 266.42 acres falls under the industrial area notified by the State Government vide GO dated 28.04.2006.
 - KINFRA has taken the necessary initiative with the Government of Kerala to notify the remaining 45.37 acres of land as Industrial Area. Moreover, the formation of Single Window Clearance Board for KINFRA Petrochemical park is under process with the Government of Kerala. The same will be forwarded to the Commission as soon as it received from the Government of Kerala.
- (5) Under these circumstances, KPUPL requested the Commission to issue favourable orders for the inclusion of KINFRA Petrochemical Park as an additional area to M/s KPUPL under Section 18 of the EA-2003 and to amend the license area under Section 19 of the KSERC (Licensing) Regulations, 2006 for 107.8173 Ha (266.42 Acres) of land in Resurvey No.205, Block No.37, which is already a notified Industrial Area vide GO (Ms) No. 48/2006/ID dated 28.04.2006 by Government of Kerala.

Analysis and Decision of the Commission

10. The Commission has examined in detail the petition filed by M/s KPUPL, the counter affidavit of KSEB Ltd, other details, documents and oral submissions made during the hearings of the subject petition, as per the provisions of the Electricity Act, 2003 and Rules and Regulations in force and has decided the following:
 11. The subject petition filed by M/s KPUPL is for inclusion of KINFRA Petrochemical Park as an additional license area to KPUPL, under Section 18 of the Electricity Act 2003 and under Regulation 19 of the KSERC (Licensing) Regulations 2006.
 12. Kerala Industrial Infrastructure Development Corporation (KINFRA) is a statutory body formed by the Kerala Government to develop, promote and maintain industrial infrastructure in the State of Kerala as per the provisions of the Kerala Industrial Infrastructure Development Act, 1993. Among others, the Chairman and Managing Director of KSEB Ltd is also one of the Director of KINFRA.
- KSEB Ltd as the successor to the erstwhile Kerala State Electricity Board (KSEB), is the incumbent distribution licensee of the State. KSEB Ltd is also the State Transmission Utility (STU) and owns generation assets as well.
13. KPUPL is a subsidiary company of KINFRA, established for conducting the electricity distribution business within the industrial parks and special economic

zones developed by KINFRA. One of the Director of KSEB Ltd, is the Director of the KPUPL as well. At present, KPUPL, has license for distributing electricity in the following industrial parks of KINFRA.

- (a) Kinfra Export Promotion Industrial Park, Kakkanad (180.126 acres)
The electricity distribution at Kakkanadu is in fully operational.
- (b) Land of Kinfra for KEPIP expansion, Kakkanad (100 acres)
The electricity distribution in this area is yet to be operationalised.
- (c) Kinfra Hi-Tech Park, Kalamassery (240 acres)
(Not yet fully operational.)
- (d) Kinfra Integrated Textile Park, Palakkad. (350 acres)

In the other parks of KINFRA such as 'Apparels and Textile Parks at Thumba & Thaliparambu, Film & Video Park, Kazhakoottam, Food Processing Zone, Malappuram, Kinfra Defence Park, Ottappalam and other industrial parks across the State, KSEB Ltd is supplying electricity directly to the parks.

14. KINFRA is developing a Petrochemical Park in the 311.79 Acres of land, out of the 600 Acres of land procured from FACT through negotiation, at Ambalamugal Kochi. The sale deed between the FACT and KINFRA was signed on 18.12.2019.

KINFRA is proposing to distribute electricity within the park through its subsidiary M/s KPUPL. The total power requirement of the park is estimated at 32.07MVA. KPUPL proposes to source the power in bulk from the nearest 220 kV substation of KSEB Ltd at Brahmapuram. The total cost of creating the necessary distribution infrastructure within the park is estimated at Rs 55.73 crore with the funds being provided by KILFB.

KINFRA submitted that, out of the 311.79 Acres of land of the proposed Petrochemical Park, 266.42 Acres of land falls in Resurvey No. 205, Block No.37 of Vaduvakode, Puthencruze Village, Kunnathunadu Taluk. This land earlier owned by FACT, is declared as an Industrial area by the State Government vide the GO (Ms) No. 48/2006/ID dated 28.04.2006.

15. KSEB Ltd, the incumbent distribution licensee has objected to KPUPL's petition to include the area of the proposed Petrochemical park as an additional license area. The objections raised by KSEB Ltd is summarised under paragraph 4 of this Order. KSEB Ltd further submitted that, as in the case of most of the industrial parks owned by KINFRA, KSEB Ltd can directly supply power to the various beneficiaries within the KINFRA Petrochemical Park.
16. The Commission also noted that the State Power Department has also submitted that as per the existing statutes and notifications, KPUPL is not eligible to get a second distribution license in the KINFRA Petrochemical Park in Ambalamugal, Kochi. They further opined that,

'the petition for inclusion of KINFRA Petrochemical park in Ambaamugal, Kochi to KPUGL may please be disposed directing to obtain SEZ status for the area in case the applicant desires to function as a distribution licensee in the area. Until then the petitioner, if desires so, can avail single point supply and distribute power to beneficiaries as per Regulation 56 of Supply Code, 2014.'

The details of the comments of the Power Department in State Government is given under paragraph 5 of this order.

17. The Commission after careful examination of the details submitted by KPUGL, KINFRA, KSEB Ltd and the State Power Department on the subject matter noted the following:

(1) The sixth proviso to Section 14 of the Electricity Act, 2003 authorise the Commission to grant license to two or more persons to distribute electricity within the same area subject to the conditions prescribed therein. The relevant Section is extracted below.

"Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements (including the capital adequacy, credit-worthiness, or code of conduct) as may be prescribed by the Central Government, and no such applicant who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose:

(2) The Central Government vide the notification GSR No. 188(E) dated 23.03.2005 notified the Distribution of Electricity Licence (additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005. The relevant provisions in the said Rules is extracted below.

3. Requirements of capital adequacy and creditworthiness.- (1) The Appropriate Commission shall, upon receipt of an application for grant of licence for distribution of electricity under sub-section (1) of section 15 of the Electricity Act, 2003, decide the requirement of capital investment for distribution network after hearing the applicant and keeping in view the size of the area of supply and the service obligation within that area in terms of section 43.

(2) The applicant for grant of licence shall be required to satisfy the Appropriate Commission that on a norm of 30% equity on cost of investment as determined under sub-rule (1), he including the promoters, in case the applicant is a company, would be in a position to make available resources for such equity of the project on the basis of networth and generation of internal resources of his

business including of promoters in the preceding three years after excluding his other committed investments.

Explanation :- For the grant of a licence for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the area falling within a Municipal Council or a Municipal Corporation as defined in the article 243(Q) of the Constitution of India or a revenue district shall be the minimum area of supply.

4. Requirement of Code of Conduct.- The applicant for grant of licence shall satisfy the Appropriate Commission that he has not been found guilty or has not been disqualified under any of the following provisions within the last three years from the date of the application for the grant of licence:

(a) section 203, section 274, section 388B or section 397 of the Companies Act, 1956;

(b) section 276, section 276B, section 276BB, section 276C, section 277 or section 278 of the Income tax Act, 1961;

(c) section 15C, section 15G, section 15H or section 15HA of the Securities and Exchange Board of India Act 1992;

(d) clause (b), (bb), (bbb), (bbbb), (c) or (d) of sub-section (1) of section 9 of the Excise Act 1944;

(e) section 132 or section 135 of the Customs Act 1962,

and that the applicant is not a person in whose case licence was suspended under section 24 or revoked under section 19 of the Act, within the last three years from the date of application:

Provided that where the applicant is a company, it shall satisfy the Appropriate Commission in addition to provisions of this rule that no petition for winding up of the company or any other company of the same promoter has been admitted under section 443 (e) of the Companies Act, 1956 on the ground of its being unable to pay its debts.

(3) Regulation 3 of the Kerala State Electricity Regulatory Commission (Licensing) Regulations, 2006, stipulate as follows:

3. Eligibility Conditions of persons requiring a Licence.-

(1) Any person requiring licence shall meet the respective qualifying requirements mentioned hereunder and shall be required to submit necessary evidence in support of its claim of meeting the qualifying requirements

(2) Distribution Licence (a) The Area of Supply for distribution licence shall not be less than a Panchayath, Municipality or Corporation. Exemption may be granted by the Commission in the case of service providers such as Technoparks, Industrial Parks, Special Economic Zones, Export Zones, etc.

- (4) The State Government vide the Gazette Ex. No. 770 dated 27.04.2000 notified the Kerala Industrial Single Window Clearance Board & Industrial Townships Area Development Act, 1999. Section 2(f) of the said Act defines an 'industrial area' as follows.

*(f) "Industrial Area" means any area in the State declared to be an industrial area by the Government **by notification in the Gazette** from time to time and includes industrial estates; development area, development plots, mini industrial estates, industrial parks and growth centres;*

Section 5 of the Kerala Industrial Single Window Clearance Board & Industrial Townships Area Development Act, 1999 is extracted below:.

Section 5 - Industrial Area Boards

(1) For the purpose of speedy issue of various licenses, clearances or certificates required under the various State enactments for setting up of small scale industrial undertakings or industrial undertakings in the Various Industrial areas of the State, the Government may, by notification constitute Single Window Clearance Boards for every industrial areas in the State to be called Industrial Area Single Window Clearance Board.

(2) Every Industrial area Single Window Clearance Board shall be a body corporate by name of the Industrial Area for which it is constituted, having perpetual succession and a common seal.

(3) Every Industrial Area Single Window Clearance Board shall consist of the following members, namely:-

(a) Principal Secretary to Government, Industries Department or his nominee;

(b) Collector of the District;

(c) Chief Executive of the Agency owning or managing the industrial area;

(d) Designated Authority of industrial area concerned;

(e) District Officer of the State Pollution Control Board;

(f) District Officer of the Electrical Inspectorate;

(g) District Officer of the Town Planning Department;

(h) District Medical Officer;

(i) Executive Engineer of the Kerala State Electricity Board;

(j) District Officer, Factories and Boilers Inspectorate;

(k) Divisional Fire Force Officer;

(l) Divisional Forest Officer;

(m) District Labor Officer;

(n) Deputy Commissioner, Sales Tax and Agricultural Income Tax; (o) Executive Engineer, Kerala Water Authority;

(4) The Government may appoint one of the members of an Industrial Area Board not below the rank of District Collector to be its chairman and the

Designated Authority of the Industrial Area shall be the Convener of the Industrial Area Board.

(5) The Industrial Area Board shall meet at such time and place to be fixed by the chairman of the industrial Area Board and shall observe such procedure in regard to its trisection of business as may be made in the bye-laws.

(6) The Industrial Area Board may associate itself, in such manner and for such purposes as may be prescribed, with any person whose assistance or advice it may desire to have in the performance of any of its functions under the Act, and the person so associated shall have the right to take part in the meetings of the Industrial Area Board relating to that purpose as a special invitee and shall not be considered as a member of the Industrial Area Board.

The Commission noted that on earlier occasions, while granting license to KPUPL for distributing electricity within the KINFRA Mega Food Park at Kanjikode, Palakkad District, the State Government had vide Gazette Notification dated 10th July 2018 declared the 79.42 Acres of land possessed by KINFRA for setting up of the Mega Food Park as an Industrial Area under the Kerala Industrial Single Window clearance Board and Industrial Township Area Development Act ,1999.

The Commission however noticed that in the present case, the petitioner has not produced any such Notification for establishing the proposed Petrochemical Park as Industrial Area at the 311.79 Acres of land where KINFRA is proposing to set up the Park. Further, the Kerala Industrial Single Window Clearance Board and Industrial Township Area Development Act, 1999 requires each Industrial Parks to be notified by the State Government and such area to be declared as an Industrial Area under Section 2(f) and Section 5 of the said Act. Hence, the Commission, had directed the petitioner to make available this Notification for further consideration of KPUPL's application for the electricity distribution license.

- (5) The petitioner during the hearing submitted that the State Government vide GO (Ms) No. 48/2006/ID dated 28.04.2006, had notified the 442 Acres of land comprised in Resurvey No. 205, Block No.37 of Vadavukode, Puthencruze Village, Kunnathunadu Taluk owned by FACT as Industrial Area. KPUPL also submitted that, out of the total area of 311.79 Acres earmarked for establishing the Petrochemical Park, 266.42 Acres is already a notified Industrial Area from 2006. Hence, the petitioner requested the Commission to consider the inclusion of the 266.42 Acres of land out of 311.79 Acres of land earmarked for the Petrochemical Park as an additional license area of KPUPL.

The Commission examined the petitioner's contention in detail. The relevant portion of the GO (Ms) No. 48/2006/ID dated 28.04.2006 declaring the 442 Ha (1092.18 Acres) of land in Resurvey No. 205, Block No.37 of Vadavukode, Puthencruze Village, Kunnathunadu Taluk as Industrial Area is extracted below:

“Director of Industries and Commerce as per letter read as first paper above has requested Government to notify 442 Acres (1092.18 Acres) of land comprised in Resurvey No. 205, Block No.37 of Vadavukode, Puthencruze Village, Kunnathunadu Taluk, Ernakulam District owned by FACT as Industrial Area with the following existing utilisation.

- 1) Land earmarked for common TSDF.*
- 2) Existing plant area of FACT with provision for future expansion.*
- 3) Gypsum stock yard.*

Kerala State Industrial Development Corporation reported that according to the guidelines of Ministry of Environment and Forests (MoEF) and Central Pollution Control Board (CPCB), if the TSDF is not in a declared industrial area, 250 meter radius around the TSDF has to be earmarked as ‘no activity area’. Hence, KSIDC recommended to declare the 442 Ha proposed by Director of Industries and Commerce as Industrial Area.

Government have examined the matter in detail and are pleased to issue orders to notify 442 Ha (1092.18 Acres) of land comprised in Resurvey No. 205, Block No.37 of Vadavukode, Puthencruze Village, Kunnathunadu Taluk, Ernakulam District owned by FACT as Industrial Area.”

- (6) The Commission notes that at the time of declaring this land as Industrial Area, it was being utilised for the existing FACT plant and also earmarked for its future expansion, a gypsum stock yard was located there and some of the land was also earmarked for common TSDF. The Commission also noted that as per MoEF and CPCB guidelines, if the TSDF is not in a declared industrial area, then an area of 250 meter radius around the TSDF has to be earmarked as ‘no activity area’. It was probably with this concern that FACT had got the area declared as an Industrial Area. However, the fact remains that this area of 442Ha (1092.18 Acres) had already been declared an industrial area as early as in 2006 by the State Government.

The Commission further noted that as per the sale deed dated 18.12.2019, about 600 Acres of unutilised the land owned by FACT was purchased by KINFRA for developing the Petrochemical park. This land included the portion of land already declared as Industrial Area. This land has been taken possession of by KINFRA in December 2019 for establishing the Petrochemical park.

The Commission also noted that till date KSEB Ltd is the deemed license to distribute electricity within this land. Hence, the request of the KPUPL for seeking license for distributing electricity within the KINFRA Petrochemical park has to be treated as the petition for seeking additional license within the distribution license area of KSEB Ltd.

Hence, if the petitioner KPUPL requires license for distributing electricity within the KINFRA Petrochemical park as additional licensee area, the petitioner shall get an appropriate notification issued by the State Government declaring the 311.79 Acres of land at Ambalamugal, Kochi,

earmarked for setting up of the Proposed Petrochemical park as 'Industrial Area' under Section 2(f) and Section 5 of the Kerala Industrial Single Window clearance Board and Industrial Township Area Development Act 1999.

- (7) However, as per the provisions of the Electricity Act, 2003, and the Regulations in force, KSEB Ltd as the incumbent distribution licensee is duty bound to provide electricity to the KINFRA Petrochemical Park area till the Commission takes an appropriate decision in KPUPL's petition for grant of a distribution license within the KINFRA Petrochemical Park either as a new license area or as an extension to the already existing license area of KPUPL.
- (8) In view of the foregoing, the Commission is of the considered view that, if KPUPL desires to get a license for distributing electricity within the KINFRA Petrochemical Park, the petitioner shall obtain from the State Government a Notification declaring the 311.79 Acres of land at Ambalamugal, Kochi, earmarked for setting up of the Proposed Petrochemical Park as 'Industrial Area' under Section 2(f) and Section 5 of the Kerala Industrial Single Window Clearance Board and Industrial Township Area Development Act 1999. Thereafter, the petitioner may file a separate petition with complete details for inclusion of the KINFRA Petrochemical park either as an additional license area or new license area to KPUPL.
- (9) The Commission clarifies that in such an instance, the petitioner is exempted from remitting the petition fee of Rs 1,00,000/-. Till then, KSEB Ltd as the incumbent distribution licensee of that area shall provide electricity to the KINFRA Petrochemical Park and its beneficiaries on demand.

Orders of the Commission

18. The Commission, after duly examining the petition filed by M/s KPUPL for inclusion of KINFRA Petrochemical Park as an additional license area, the counter arguments of KSEB Ltd, other details and documents submitted during and after the deliberations of the subject petition, the relevant provisions of the Electricity Act, 2003 and the Rules and Regulations in force, order the following:
 - (1) If KPUPL desires to obtain the electricity distribution license within the KINFRA Petrochemical Park, they shall get the 311.79 Acres of land at Ambalamugal, Kochi, notified as 'Industrial Area' under Section 2(f) and Section 5 of the Kerala Industrial Single Window Clearance Board and Industrial Township Area Development Act 1999 by the State Government.

- (2) Once the State Government Notification is issued, KPUPL, if it so desires can file a separate petition with all relevant details for inclusion of the KINFRA Petrochemical Park either as an additional license area to KPUPL license area or as a fresh license area.
- (3) The petitioner KPUPL is exempted from remitting the petition fee of Rs 1,00,000/- along with such petition, if any.
- (4) KSEB Ltd as the incumbent licensee shall provide electricity to the KINFRA Petrochemical Park and its beneficiaries as per the provisions of the Electricity Act, 2003 and Rules and Regulations in force, till alternate arrangement, if any, is ordered in this regard by this Commission

With the above observation and directions, the petition disposed off.

Sd/-
Adv. A J Wilson
Member (Law)

Sd/-
Preman Dinaraj
Chairman

Approved for issue

C R Satheeshchandran
Secretary (i/c)