

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

**Present : Shri T K Jose, Chairman**  
**Shri B Pradeep, Member**  
**Adv. A.J Wilson, Member**

**OP No:24/2023**

In the matter of : Petition seeking appropriate directions, in light of the Order dated 10.05.2023 in OP No.05/2021.

Petitioner : Kerala State Electricity Board Ltd (KSEB Ltd)

KSEB Ltd represented by

1. Shri. Biju, Director Finance
2. Sri. Sajeev, Chief Engineer
3. Shri M.P.Rajan, Deputy Chief Engineer
4. Sri. Rajesh,D.S, Deputy Chief Engineer,
5. Smt. Latha S.V., Asst: Executive Engineer

Respondents :

1. Jhabua Power Limited
2. Jindal India Thermal Power Ltd(JITPL)
3. Jindal Power Ltd
4. The Additional Chief Secretary to Government, Power (B) Department, Government of Kerala

Respondents represented by :

1. Adv. Swapna Seshadri, Counsel for the Jhabua Power Ltd
2. Adv. Buddy Ranganathan, Counsel for the JITPL
3. Adv Biju Mattam, Counsel for the Jindal Power Ltd
4. Smt Preethy.C.S, Joint Secretary Power Department,GoK

Date of hearing : 06.06.2023, 11:00 AM

Venue : Court Hall of the Commission

**Order dated 07.06.2023**

1. KSEB Ltd on 02.06.2023 had filed a petition before the Commission with the following prayers;  
“
  - (a) *Pass orders for extension / continuation of the interim arrangement (drawal of power as per the unapproved PSAs at the L-1 rate of Bids), as directed by the Hon'ble Supreme Court vide its order dt. 10.02.2023 in Civil Appeal No. 41 / 2021, till the Petitioner (KSEBL) is able to make alternate arrangements for procurement of power at a tariff equal to or lower than the 4 PSAs in question, or till the decision in the Application for Interim Relief filed by KSEBL before Hon'ble APTEL, alongwith its Appeal [ being I.A. No. 1183 / 2023 in DFR No. 325 / 2023 ]– whichever is earlier or, in the alternate,*”

- (b) *Pass orders granting permission to the Petitioner (KSEBL) to procure/generate power from alternate sources, at the tariff becoming available through such sources, as mentioned in paragraph 8 of the application hereinabove, for meeting the power deficit in the State of Kerala;*
- (c) *If interim arrangement is allowed, KSEBL may be allowed to continue the payment to these generators presently made as per the Hon'ble APTEL judgment (By the interim orders dated 21-10-2022, 10-2-2023, 16-12-2022 and 17-4-2023, the Hon'ble APTEL had directed continuation of the supply of power by restricting the payment of tariff under the PSAs in question @ L-1 Tariff in Bid-2).*
- (d) *Request that an urgent hearing and orders on the instant petition may kindly be issued.*
- (e) *Pass such other and further orders, as deemed fit and proper in the facts and circumstances of the present case and in the interest of justice."*

2. The summary of the petition filed by KSEB Ltd is given below.

- (1) The Commission vide Order dated 10.05.2023 in petition OP No. 05/2021 had rejected the approval of the Power Supply Agreements entered into between KSEB Ltd and the respective generators;
  - (i) PSA for 115 MW capacity (under Bid-1) with Jhabua Power Ltd.
  - (ii) PSA for 150 MW capacity (under Bid-2) with Jindal Power Ltd.
  - (iii) PSA for 100 MW capacity (under Bid-2) with Jhabua Power Ltd.  
PSA for 100 MW capacity (under Bid-2) with Jindal India Thermal Power Ltd.

As above, the drawal of power from 465 MW DBFOO contracts shall have to be discontinued by KSEB Ltd.
- (2) KSEB Ltd is the deemed distribution licensee in the State, is mandated to provide 24x7 power to the consumers of the State. Kerala State is facing considerable power shortage even while availing power from the unapproved DBFOO contracts. For meeting the peak demand, KSEB Ltd has been procuring 400MW to 600 MW from the day ahead/ real time market. Further, up to 400MW power is being met in the summer months through SWAP arrangements, which has to be returned during monsoon months.
- (3) By discontinuing the drawal of 465MW power from these four unapproved contract, the deficit of power will increase drastically upto 1000MW, and the shortage will persist throughout the year. KSEB Ltd has submitted the Load Generation Balance (LGB) from June-2023 to May-2024 along with the petition. It is difficult to source this huge

quantum from alternate sources to meet the anticipated power shortages.

- (4) KSEB Ltd, in compliance of the directions given in the MYT Order dated 25.06.2022, has floated tender for procuring 500MW on medium term basis for the commencement of supply from April 2023 onwards. However, the bids was received only for 250MW. KSEB Ltd, cancelled the bids, as there were no eligible bidders.
- (5) KSEB Ltd is in the process of re-tendering for procuring 500 MW in lieu of the unapproved DBFOO contracts. However, it may take another six months. However, based on the present market trends, it appears that the chances of getting power at rates cheaper than the DBFOO generators is very little. KSEB Ltd submitted the following in support of the argument.
  - (i) Currently the market prices are in the range of Rs 10.00/unit (the rate not exceeded only due to the ceiling imposed by CERC) during peak hours from 19:00 hrs to 24:00 hrs. Even at high price, the availability of such huge power on 24x7 basis is very less. There are also chances of scarcity of power as the demand picks up in the country.
  - (ii) Though KSEB Ltd has invited bids for procuring 200MW peak power in the months of May-2023, KSEB Ltd could get 50 MW power only, that too at the rate @Rs 9.26/unit.
  - (iii) In the bids invited by M/s PFC Consulting Ltd on 20.11.2022 for medium-term procurement (5 years) of power under para B(V) of Shakti Policy, 2017 for aggregate power of 3910 MW for the States of Gujarat, Maharashtra, Madhya Pradesh, New Delhi and Tamil Nadu. The L-1 rate for bids with IB Valley as fuel source was Rs. 5.13 / unit and from Talcher as fuel source was Rs.4.49 / unit. Subsequently, the Ministry of Power (MoP) cancelled this tender. PFC Consulting Ltd. has now invited a revised tender on 15<sup>th</sup> May 2023 for 5 years for aggregate power of 4500 MW.
  - (iv) Haryana DISCOM had invited medium term tender for 1000MW on 27.02.2023 for supply from May 2023 to May 2028. They received bids for 800 MW only, and the tariff discovered was Rs 5.79/unit.
  - (v) The average tariff of power from DBFOO contracts is Rs 4.50 per unit only. The financial implication of KSEB Ltd and the ultimate consumers of the State for replacing the DBFOO power shall be excessive.
- (6) If KSEB Ltd could not arrange the alternate power from market on daily basis for meeting the immediate requirement, it may results in power

restrictions and also load shedding, affecting all consumers in the State including the industrial consumers.

- (7) KSEB Ltd has filed an Appeal Petition DFR No. 325/2023 before the Hon'ble APTEL against the Order of the Commission dated 10.05.2023, with the application of stay. The matter was listed on 01.06.2023. KSEB Ltd during the hearing submitted the grave consequences on KSEB Ltd and its consumers on account of, inter alia, power deficit in the Kerala. However, the representative appeared on behalf of the Commission vehemently opposed the apprehension of KSEB Ltd regarding the shortage of power and submitted that power from the alternate sources are available at a tariff less than Rs 4.00 per unit. Accordingly, Hon'ble APTEL was reluctant to issue stay against the Order of the Commission dated 10.05.2023. The matter is posted for next hearing on 03.07.2023.
- (8) The alternate sources available for meeting the immediate power requirement other than continuing to draw power from the 465MW unapproved DBFOO contracts are the following.
- (i) Power procurement through power exchanges. However, based on the tariff of power derived in the power exchanges during the year 2022-23, the estimated tariff for procuring power from the exchanges from June-2023 to May-2024 is as follows.

Period	Average RTC rate (Rs/unit) (2022 rate)	Average Peak rate (Rs/unit) (2022 rate)
June (01/06-15/06) 2023	6.49	8.31
June (16/06-30/06) 2023	6.49	8.31
July (01/07-15/07) 2023	5.41	8.44
July (16/07-31/07) 2023	5.41	8.44
Aug-23	5.17	7.93
Sep-23	5.63	8.62
Oct-23	3.83	5.79
Nov-23	4.60	5.86
Dec-23	5.24	6.34
Jan-24	6.18	7.77
Feb-24	6.68	8.05
Mar-24	5.43	6.73
Apr-24	5.65	7.15
May-24	4.69	6.30

- (ii) Procurement of power from the Rajiv Gandhi Combined Cycle Project (RGCCPP) (359.58 MW), Naphtha based station owned by NTPC inside the State is another alternative. However, notice

of minimum 45 days shall be given by KSEBL in case station is required to generate, considering the time for fuel procurement, technical start up from preservation and additional mobilization of manpower. As per the mutually agreed settlement between NTPC and KSEBL, in case KSEB schedules power from RGCCPP on a regular basis (continuously for more than one month), CERC determined Annual Fixed Charges shall be applicable on pro-rata basis, for the period power is scheduled by KSEB instead of the present mutually settled Annual Fixed Charges of Rs.100Cr. The CERC determined Annual Fixed Charges for the Station is around Rs.300Cr. The fuel charges corresponding to the present rate of naphtha is about Rs.13/unit. The total monthly charge payable if RGCCPP is scheduled round the clock to replace 360MW DBFOO power comes to around Rs. 311 Cr at the rate of Rs.14/unit.

- (iii) Scheduling Kozhikode Diesel Project (80MW) of KSEBL (Light Diesel Oil) for which the variable charge comes to about Rs. 6/unit.

KSEB Ltd submitted that, the procurement of power from alternate sources as above may result in huge additional burden of about 60 Crore to 70 Crore per month on the consumers of the State of Kerala. The only alternative to avoid the huge burden is to impose power restrictions in the State with immediate effect.

- (9) KSEB Ltd further submitted that, the State Government vide its letter dated 01.06.2023 has directed KSEB Ltd under Article 55 to file an application before the Commission with a request to continue the present interim arrangement, which already permitted by the Hon'ble Supreme Court for a period of two weeks from the date of disposal of OA, till an alternate interim arrangement is made or till the decision taken by Hon'ble APTEL in the appeal filed by KSEB Ltd is received, whichever is earlier.
- (10) Aggravating the situation further, a leak is observed at the penstock drain pipe of number 2 machine of Kakkayam hydro electric project (25 x 3 + 50 x 1 = 125MW) and 4 numbers of machines coming under this pen stock are under forced shut down and this has resulted in shortage of 125MW. The machines are expected to be put back into service only by 10<sup>th</sup> of June. Hence continuing the interim arrangement is highly indispensable.
- (11) Considering the above reasons, KSEB Ltd in the instant petition has requested for the extension/continuation of the interim arrangement (drawal of power as per the unapproved PSAs at the L-1 rate of Bids), as directed by the Hon'ble Supreme Court vide its order dt. 10.02.2023 in Civil Appeal No. 41 / 2021, till the Petitioner (KSEBL) is able to make alternate arrangements for procurement of power at a tariff equal to or

lower than the 4 PSAs in question, or till the decision in the Application for Interim Relief filed by KSEBL before Hon'ble APTEL, along with its Appeal [ being I.A. No. 1183 / 2023 in DFR No. 325 / 2023 ] – whichever is earlier. It is submitted that KSEBL will abide by the decisions of the legal forums.

KSEB Ltd further submitted that, the present petition is Bonafide, and orders by this Commission allowing the present petition shall meet the ends of justice and shall be in the interest of the consumers in the State of Kerala. It is also submitted that the present petition has been prepared in grave urgency. The petitioner will add / alter / modify the contents of the present Application, if so required or as directed by this Hon'ble Commission.

### **Hearing on the petition**

3. The Commission admitted the petition as OP No.24/2023. Considering the urgency of the matter, the petition was scheduled for hearing on 06.06.2023 at the Court Hall of the Commission through hybrid mode. Notice for the hearing was issued to the petitioner and to all respondents.

Since the KSEB Ltd has filed the instant petition in compliance of the direction of the State Government vide its letter dated 01.06.2023 by invoking the powers under Section 55 of the Articles of Association of KSEB Ltd, the Commission has decided to implead the Power Department, Government of Kerala also as a respondent and seek the specific views of the Government on the subject matter. Accordingly, the Commission has issued notice to the Additional Chief Secretary, Power Department, Government of Kerala and directed to attend the hearing scheduled on 06.06.2023.

4. Hearing on the petition was held on 06.06.2023. Shri Biju, Director (Finance) and a team of officials, appeared on behalf of the petitioner KSEB Ltd and presented the matter before the Commission. Summary of the deliberations during the hearing is given below.

- (1) Shri Biju, Director (Finance), KSEB Ltd, briefly presented the precarious power situation of the State as of now. He submitted that all the generators in the unapproved DBFOO contracts stopped supplying power from 06.03.2023(today) onwards. KSEB Ltd has been meeting the power crisis by purchasing power from the Day Ahead Market (DAM), Real Time Market (RTM) and Term Ahead Market (TAM) at higher rates up to ₹8- ₹10/unit.

Further KSEB Ltd also has been generating excess power from its hydel power plants. With the present availability of reservoir storage KSEB Ltd could generate up to 18.6 MU/ day. However, in order to meet the present crisis, KSEB Ltd is constrained to enhance the generation to 23.4 MU/ day. One unit of Talcher-II (100 MW) was shutdown from 06.06.2023 onwards. One unit of Kudamkulam Nuclear Power Plant

(133 MW) is taken out for planned shut down from June 2023 onwards, the maintenance may be continued for 45 days.

Aggravating the situation further the monsoon in the State is also getting delayed.

Director (Finance) KSEB Ltd also submitted that, KSEB Ltd has floated bid for procuring 500 MW power in November 2022 on Medium Term basis for a period up to 5 years through competitive building route as per the Guidelines issued by the MoP, GoI. The bid was cancelled, due to technical reasons. KSEB Ltd has already taken necessary steps to invite fresh bid for procuring 500 MW power on Medium Term basis in lieu of the unapproved 465 MW DBFOO contracts. It may take minimum 60 plus days to complete the bid process from the date of "Notice Inviting Tender (NIT)".

Director (Finance) KSEB Ltd also submitted that, though KSEB Ltd has filed an appeal against the Order of the Commission dated 10.05.2023 in petition OP No.05/2021 before Hon'ble APTEL with an Interlocutory Application (IA) for permission to continue to schedule the power from the unapproved DBFOO contracts, Hon'ble APTEL was not inclined to grant ex-parte ad-interim relief, however, Hon'ble APTEL posted the hearing of the IA on 03.07.2023 and directed to issue notices to the respondents.

KSEB Ltd also submitted that scheduling of power from the Naphtha based RGCCPP Power plant of NTPC Kayamkulam is also very costly and its variable cost alone is Rs 13/ unit. In addition to the variable cost, KSEB Ltd has to pay an additional Fixed Charge of ₹200 Crore/ annum to NTPC. Moreover, 45 days of clear notice is required for scheduling power from RGCCPP Kayamkulam, as the fuel is fully depleted to reduce fixed charges.

Considering the above reasons, KSEB Ltd prayed before the Commission to permit them to allow to schedule power from the 465MW unapproved DBFOO contracts for a further period, till alternate arrangement for procurement of power on Medium Term basis under Section 63 of Electricity Act,2003 could materialize or Hon'ble APTEL issue orders on the IA application filed by KSEB Ltd before the Hon'ble APTEL against the Order of the Commission dated 10.05.2023 in petition OP No.05/2021, whichever is earlier.

Dy Chief Engineer Shri. M.P.Rajan, TRAC presented the Load Generation Balance(LGB) for the period from June 2023 to May 2024, with the power available from DBFOO contracts and without the availability from DBFOO contracts. As per the details submitted, KSEB Ltd estimates a shortage of more than 500 MW in the monsoon months July 2023 and August 2023 and the shortage may increase up to 1495 MW in the coming summer months. The summary of the load generation

balance (LGB) during peak hours without the power availability from the unapproved DBFOO contracts is given below.

	Month wise Load Generation Balance in MW (with out unapproved DBFOO contracts)											
	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
Demand	4600	3842	3943	4002	4068	4102	4125	4187	4378	4800	5371	5281
Hydro	1593	1550	1550	1550	1550	1559	1547	1587	1580	1616	1610	1626
CGS	1140	1200	1300	1248	1259	1300	1262	1298	1300	1300	1400	1400
LTA	571	571	571	571	571	571	571	571	571	571	571	571
MTOA	260	-	-	-	-	-	-	260	260	260	260	260
SWAP												
Return	-81	-50	-50	-50	-	-	-	-	-	-	-	-
Wind/												
SHEP	50	50	50	40	40	40	40	30	30	20	35	50
Total Avail.	3533	3321	3421	3359	3420	3470	3420	3746	3741	3767	3876	3907
Sur(+)/ Def(-)	-	1067	-521	-522	-643	-648	-632	-705	-441	-637	1033	1495
												1374

- (2) Smt Preethy.C.S, Joint Secretary Power Department, Government of Kerala appeared before the Commission on behalf of the Government of Kerala. The representative of State Government submitted that, the Government, in exercise of the powers vested under Section 55 of the Article of Association, directed KSEB Ltd to move before the Commission with the request to continue the present interim arrangement of procuring power from 465 MW unapproved DBFOO contracts till an alternate arrangement is made or decision of Appeal Petition filed before the Hon'ble APTEL is received, whichever is earlier.

The Commission directed the State Government, as the 100% equity owner of KSEB Ltd, to review the progress of the implementation of various hydel projects of KSEB Ltd such as Pallivasal HEP- 60MW, Thottiyar HEP-40 MW and Bhoothathankettu SHEP- 24 MW on a monthly basis. If these projects could commission in time, the present power crisis would ease out to some extent. Hence the Commission directed the State Government to review the progress of implementation of various Generation projects in every month and publish the progress in the public domain through the website of KSEB Ltd for the information of stakeholders.

The Commission further directed the representative of the State Government to communicated its considered views on the subject matter before the Commission tomorrow itself.

- (3) Adv. Swapna Seshadri, Counsel for the Jhabua Power Ltd submitted that in case the Commission permits to schedule power from the station as an interim arrangement they require to receive the full payments as

per the PPA tariff. The learned counsel also submitted that, they could get firm commitment from KSEB Ltd for getting schedule from the Generator.

- (4) Adv. Buddy Ranganathan, Counsel for the Jindal India Thermal Power Ltd(JITPL) submitted that, in case the Commission permit to schedule power from their plant, they shall receive the full payment as per the provisions of the PPA. He further requested the Commission to specify definite time period of the interim arrangement. The counsel also submitted that, since the PPA is not existing as of now, getting domestic coal linkage may be difficult. Hence the Commission may direct the KSEB Ltd to write to the Coal India Ltd and its subsidiaries to allocate domestic coal for scheduling power during the interim period.
  - (5) Adv Biju Mattam, Counsel for the Jindal Power Ltd submitted that KSEB Ltd has to clear the dues with the generator Jindal Power Ltd and adequate Payment security mechanism is to be provided by the KSEB Ltd since there is no PPA existing. Further they submitted that they are required to receive the full payment as per the provisions of the PPA.
  - (6) In response to the submission of the respondent generators, KSEB Ltd clarified that, they shall write to the Coal India Ltd and to its subsidiaries to get sufficient coal allocation for scheduling power from the project. KSEB Ltd has been making payments to the four unapproved DBFOO contracts at L1 rate of Bid-1 strictly as per the interim directions of the Hon'ble APTEL. KSEB Ltd may look in to the legality of providing payments at the PPA tariff, since the entire matter is now pending before the Hon'ble APTEL.
5. The State Government vide the letter dated 07.06.2023 informed the Commission that, "the Government have already directed CMD, KSEBL to move before KSERC with a request to extend the interim arrangement already ordered for two weeks till an alternate arrangement is made or the decision of APTEL is received.

The stand of the Government on this issue is that KSERC may consider the request of KSEBL for the extension of interim arrangement positively, granting reasonable time so as to avert an imminent adverse power situation.

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

6. The Commission having examined in detail the petition filed by KSEB Ltd dated 02.06.2023 seeking appropriate directions from this Commission in light of Order dated 10.05.2023 in petition OP No. 05/2021, the provisions of the Electricity Act, 2003, KSERC (Terms and Conditions of Determination of Tariff)

Regulations, 2021, deliberations during the hearing held on 06.06.2023, other relevant documents and record, hereby decided as follows.

7. The Commission vide its Order dated 10.05.2023 in petition OP No. 05/2021 had rejected the prayer of the KSEB Ltd to approve the Power Supply Agreement entered into between the following generators through DBFOO basis.
  - (i) PSA for 115 MW capacity (under Bid-1) with Jhabua Power Ltd.
  - (ii) PSA for 150 MW capacity (under Bid-2) with Jindal Power Ltd.
  - (iii) PSA for 100 MW capacity (under Bid-2) with Jhabua Power Ltd.
  - (iv) PSA for 100 MW capacity (under Bid-2) with Jindal India Thermal Power Ltd.

The total quantum of power from the unapproved contracts is 465 MW.

8. The Commission had rejected the final approval of the unapproved DBFOO contracts vide the Order dated 10.05.2023 in OP No.05/2021, after appraising the deviations made by KSEB Ltd in the bidding process from the bidding guidelines and documents notified by the Ministry of Power, Government of India, under Section 63 of the Electricity Act, 2003. During the deliberations of the subject petitions, KSEB Ltd had not appraised the load generation balance, shortage in power availability, the cost of power from the alternate sources and its cost, adverse consequent financial impacts on KSEB Ltd and its consumers in the event the power from these unapproved contracts is not scheduled as per the Order of the Commission dated 10.05.2023.
9. Though the Commission vide the Order dated 10.05.2023 had rejected the approval of the four unapproved DBFOO contracts, Hon'ble Supreme Court in its judgment dated 10.02.2023 in Civil Appeal No. 41/2021 has directed that, the interim arrangement of scheduling power from the unapproved DBFOO contracts shall be continue up to two weeks after final disposal of the petition OP No.05/2021 by this Commission.
10. Subsequent to the Order of the Commission dated 10.05.2023, M/s Jhabua Power Ltd (JPL)- JV of NTPC Ltd, having PSA for 115 MW in Bid-1 and 100 MW in Bid -2 (total 215MW), vide its letter dated 02.06.2023 intimated their inability to schedule power from the unapproved contracts from 03.06.2023 citing that there is no clarity on the payment terms in view of the PPA was rejected by the KSERC.

Similarly, citing the uncertainty in the payment terms and other conditions, M/s Jindal India Thermal Power Ltd, another generator having 100MW of unapproved DBFOO contracts also communicated that, they are constrained to discontinue scheduling of power from the contract from 0:00 hours (mid night) from 03.06.2023 till any further orders from the appropriate authorities.

Jindal Power Limited vide its letter dated 02.06.2023 intimated KSEB Ltd that, they shall discontinue the supply from 0:00 hrs of 06.06.2023.

11. KSEB Ltd submitted during the proceedings of the subject matter before the Commission that, the average cost of power purchase from the unapproved DBFOO contracts is less than Rs 4.50/unit. However, in the absence of 465 MW from 06.06.2023 onwards, KSEB Ltd has been meeting the power deficit by aggressive power procurement upto 700MW from Day Ahead Market (DAM), Term Ahead Market (TAM) and Real Time Market (RTM) and excess generation from its hydel plants.

In the DAM and RTM of the power exchanges, more often the cleared volume is upto 25% to 40% of the quantum required by KSEB Ltd. Further, as a non firm source and uncertainty in the cleared volume, KSEB Ltd could not fully depend on the power exchanges to meet the entire power deficit.

KSEB Ltd also could not schedule excess generation from its hydel plants. It will completely deplete the reservoir storage and it may affect availability of water for peak support and summer generation from the hydel plant.

Moreover, KSEB Ltd had entered into swap arrangement during the summer months of March 2023 to May 2023 with the condition to return the power from 16<sup>th</sup> June 2023 onwards. KSEB Ltd has to return upto 400 MW during day time and upto 50 MW during peak hours as part of SWAP return.

12. The Commission has examined the precarious power situation of the State, due to the discontinuance of the power supply by the four PSAs of the unapproved DBFOO contracts with a total capacity of 465MW from 06.06.2023 onwards. With the target availability of 90% and transmission loss of 4%, the net shortfall in power availability at Kerala periphery is about 402 MW RTC basis and daily shortfall in energy availability is 9.64 MU/day.

The Commission has also examined the directions issued by the State Government to KSEB Ltd in exercise of the powers vested under Section 55 of Article of Association to KSEB Ltd to tide over the emerging power shortages in the State, wherein the State Government directed KSEB Ltd to seek the permission of this Commission to continue the interim arrangement of scheduling power from the four unapproved DBFOO which was in force for a period of two weeks from 10.05.2023 as per the direction of the Hon'ble Supreme Court, till an alternate interim arrangement is made or till the decision of the appeal petition filed before the Hon'ble APTEL is received which ever is earlier. The State Government vide the letter dated 07.06.2023 has intimated to the Commission as follows;

*“ KSEBL has presented the precarious situation on cancellation of PSAs of four GENCOs in detail during the hearing before the Hon'ble Commission.*

*Government have already directed CMD, KSEBL to move before KSERC with a request to extend the interim arrangement already ordered for two weeks till an alternate arrangement is made or the decision of APTEL is received.*

*The stand of the Government on this issue is that KSERC may consider the request of KSEBL for the extension of interim arrangement positively, granting reasonable time so as to avert an imminent adverse power situation.”*

13. The Commission is convinced of the critical power situation of the State due to various factors including the discontinuance of the schedule of power from the four unapproved DBFOO contracts with a total capacity of 465 MW, the reduction in availability of power from Talcher-II by about 100MW due to forced outages, reduction in availability of power from Kudamkulam Nuclear Power Station. Aggravating the situation further, the South West monsoon also getting delayed in the State.
14. *Regarding the schedule of Power from the four unapproved DBFOO contracts, the Commission vide the MYT Order dated 25.06.2022 has directed KSEB Ltd to make necessary arrangements to procure equivalent RTC power of 465MW through competitive bidding route as per Section 63 of the EA-2003, or alternatively to make arrangements for procuring 465MW from power plants through competitive bidding route who have assigned coal linkage as per the SHAKTI policy of the Central Government.*

Though KSEB Ltd had floated bids for procurement of 500 MW RTC power on Medium Term Basis on 04.11.2022, with period of commencement of supply from April 2023 onwards, the same was cancelled in view of technical reasons.

15. However, the Commission vide the Order dated 07.06.2023 in petition OP No.25/2023 has granted approval for procuring 500MW RTC power on Medium Term basis, and directed KSEB Ltd to finalise the bids and issue LOA within 75 days of the Order. The Commission is of the considered view that, in order to tide over the critical power situation, the Management of KSEB Ltd shall take sincere and dedicated efforts to finalise the bidding and issue LoA within the stipulated time of 75 days from 07.06.2023.
16. As above, KSEB Ltd may take upto 75 days from 07.06.2023 to make alternate arrangements of procuring power on Medium Term Basis for a period of five years. Hence, KSEB Ltd has to take an immediate action to meet estimated power shortage in the next 75 days without causing much additional financial liability on the consumers of the State.
17. The Commission, in exercise of the powers conferred on it under Section 61 read with Section 181 of the Electricity Act, 2003 notified the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021 (herein after referred as Tariff Regulations 2021). The Regulation 78 of the Tariff Regulations 2021, deals with 'Short-term power procurement'. The relevant Regulation is extracted below.

*"78. Short-term power procurement.–*

*(1) The distribution business/ licensee may, if it considers necessary undertake additional short-term power procurement to overcome any short term deficiency in power requirement during the financial year, as per the short term power procurement plan approved by the Commission, in accordance with this Regulation.*

*(2) Where there has been an anticipated shortfall or failure in the supply of electricity from any approved source of supply during the financial year, the distribution business/ licensee may enter into an agreement for additional short-term procurement of power: Provided that, if the total power purchase cost for any quarter including such shortterm power procurement exceeds*

by five percent the power purchase cost approved by the Commission for the respective quarter, the distribution business/ licensee shall have to obtain approval of the Commission by filing a petition.

(3) The distribution business/ licensee may enter into a short-term power procurement agreement or arrangement under the following circumstances subject to the ceiling tariff approved by the Commission for this purpose: -

- (i) where the distribution business/ licensee is able to source new short-term source of supply from which power can be procured at a tariff that reduces its approved total power procurement cost;
- (ii) when faced with emergency conditions that threaten the stability of the distribution system or when formally directed to do so by the State Load Despatch Centre to prevent grid failure;
- (iii) where the tariff for power procured under such agreement or arrangement is in accordance with the guidelines for short-term procurement of power by distribution licensees through tariff-based bidding process issued by the Central Government;
- (iv) when there is a contingency situation and power purchase price is within the ceiling price as prescribed by the Commission in the distribution licensee's ARR&ERC;
- (v) procurement of short-term power through power-exchange; and
- (vi) Procurement by way of exchange of energy under 'banking' transactions:

*Provided that prior approval of the Commission and the ceiling rate; shall not be applicable to the short term purchases under clause (ii).*

*Provided further that prior approval of the Commission is not required for short term purchases under clause (v) above, so long as the average rate is within the ceiling rate.*

(4) The Commission may stipulate the ceiling quantum and ceiling rate for purchase of power from short-term sources.

(5) As far as practicable, approval for all power purchases must be sought in advance. Where it is not practicable due to any contingency situation, the distribution licensee shall within fifteen days from the date of entering into an agreement or arrangement for short-term power procurement shall file a petition for approval of the Commission by filing full details of such agreement or arrangement, including quantum, tariff calculations, duration, supplier details, method for supplier selection, circumstances necessitating such a purchase and such other details as the Commission may require to assess that the conditions specified in this Regulation have been complied with:

*Provided that where the Commission has reasonable grounds to believe that the agreement or arrangement entered into by the distribution business/ licensee does not meet the criteria specified in this Regulation, the Commission may disallow all such transactions from the annual revenue requirements, the net increase in the cost of power on account of such procurement apart from any other action that the Commission may initiate as per law against the distribution licensee."*

18. As above, the Regulation 78 (1) of the Tariff Regulations, 2021 permits KSEB Ltd to procure additional power on short term basis as per the short-term power procurement plan approved by the Commission. The Commission vide the Order dated 25.06.2022 in petition OP No. 11/2022 for the MYT period from 2022-23 to 2026-27 has estimated the annual energy availability from the 465 MW unapproved DBFOO contract at Kerala periphery as 3363.29 MUs. For estimating the cost of power purchase of the 3363.29 MU during the MYT period from the FY 2022-23 to 2026-27, the Commission has adopted the base rate @Rs 4.00/unit for the year 2022-23 , with an annual escalation of 2% per annum. As above, the Commission has included the 465 MW in lieu of the

unapproved DBFOO contracts also in the power procurement plan from the FY 2022-23 to 2026-27

As already stated in the preceding paragraphs, the Commission vide the Order dated 25.06.2022 had directed KSEB Ltd to make necessary arrangements to procure equivalent RTC power of 465MW through competitive bidding route as per Section 63 of the EA-2003 on medium term basis, or alternatively to make arrangements for procuring 465MW from power plants through competitive bidding route who have assigned coal linkage as per the SHAKTI policy of the Central Government.

Though KSEB Ltd had floated bids for procurement of 500 MW RTC power on Medium Term Basis on 04.11.2022, with period of commencement from April 2023 onwards, the same was cancelled in view of the lack of participation. The present crisis due to the discontinuance of the power supply from the four unapproved DBFOO contracts could have been avoided if the bidding for 500MW of RTC power on Medium Term Basis with start date April 2023 is materialised as per the bid floated by KSEB Ltd.

19. In order to tide over the present power crisis, KSEB Ltd has requested the permission from this Commission to continue to schedule 465MW power from the unapproved DBFOO contracts as an interim arrangement till KSEB Ltd could make alternate arrangement for procure equivalent power at a tariff lower than the unapproved DBFOO contracts or till the decision in the application for interim relief filed by KSEB Ltd before the Hon'ble APTEL along with its appeal (being IA No. 1183/2023 in DFR No 325/2023). If the interim arrangements are allowed, KSEB Ltd may be allowed to make payment of these generators as per the interim Orders of the Hon'ble APTEL dated 21.10.2022, 16.12.2022, 10.02.2023 and 17.04.2023, as was done till date.
20. The Commission has examined the proposal of KSEB Ltd in detail to tide over the critical power situation of the State. The Commission is convinced that, there is power shortages in the State due to various reasons as explained in para 13 above. Further, considering the demand and supply availability in the DAM, TAM and RTM of the power exchanges, KSEB Ltd is not expected to get the required quantum of power from the Exchanges and the rate of power in the exchanges also high.
21. Further, the State Government also concerned about the emerging power crisis and directed KSEB Ltd to move before this Commission to get its permission to continue the interim arrangement of scheduling power from the four unapproved DBFOO which was in force for a period of two weeks from 10.05.2023 as per the direction of the Hon'ble Supreme Court, till an alternate interim arrangement is made or till the decision of the appeal petition filed before the Hon'ble APTEL is received which ever is earlier. The State Government vide the letter dated 07.06.2023 has intimated to the Commission as follows;  
*“ KSEBL has presented the precarious situation on cancellation of PSAs of four GENCOs in detail during the hearing before the Hon'ble Commission.*

*Government have already directed CMD, KSEBL to move before KSERC with a request to extend the interim arrangement already ordered for two weeks till an alternate arrangement is made or the decision of APTEL is received.*

*The stand of the Government on this issue is that KSERC may consider the request of KSEBL for the extension of interim arrangement positively, granting reasonable time so as to avert an imminent adverse power situation."*

22. Meanwhile KSEBL is directed to expedite the commissioning of the 3 delayed ongoing hydel projects totalling an installed capacity of 124MW. The Power Department is advised to make regular monthly monitoring of these projects for the earliest commissioning of them and caused to publish monthly progress reports in the public domain viz the website of KSEBL till commissioning.
23. Considering the critical power situation of the State, and the mandate of the incumbent licensee KSEB Ltd to provide uninterrupted 24x7 power to the consumers of the State at reasonable cost and as the KSEBL do not have any other viable options for arranging power, the Commission is inclined to accept the request of KSEB Ltd to continue the interim arrangement of scheduling power from the four unapproved DBFOO which was in force for a period of two weeks from 10.05.2023 as per the direction of the Hon'ble Supreme Court, for a further period of 75 days from the date of this Order, or till the alternate arrangements of procuring 500MW RTC power on medium term basis, which ever earlier. However, this interim arrangement of scheduling power from the unapproved DBFOO contract is subject to final decision of the Hon'ble APTEL in IA 1183/2023 in DFR No. 325/2023 filed by KSEB Ltd against the Order of the Commission dated 10.05.2023 in petition OP No. 05/2021.

KSEB Ltd is also take necessary steps to get coal allocation to the generators of the four unapproved DBFOO contracts to get continuance supply of power during the interim period.

### **Orders of the Commission**

24. The Commission, after examining the petition filed by KSEB Ltd dated 02.06.2023, the deliberations of the subject matter during the hearing scheduled on 06.06.2023, the provisions of the Electricity Act, 2003, KSERC (Terms and Conditions of Determination of Tariff) Regulations, 2021, Tariff Policy 2016, and other documents and records, hereby Orders the following.
  - (1) KSEB Ltd is permitted to make arrangements for power procurement by continuing the interim arrangement of scheduling power from the four unapproved DBFOO which was in force for a period of two weeks from 10.05.2023 as per the direction of the Hon'ble Supreme Court, for a further period of 75 days from the date of this Order, or till the alternate

arrangements of procuring 500MW RTC power on medium term basis, which ever earlier.

- (2) The payment for the power supply during the interim arrangement shall be as per the interim Orders of the Hon'ble APTEL dated 21.10.2022, 16.12.2022, 10.02.2023 and 17.04.2023, make payment at L1 rate of Bid-2 subject to the final disposals of the pending appeal petitions before the Hon'ble APTEL.
- (3) The interim arrangement as above, shall be subject to the final decision of the Hon'ble APTEL in IA 1183/2023 filed by KSEB Ltd in DFR No. 325/2023, against the Order of the Commission dated 10.05.2023 in petition OP No. 05/2021.

The petition disposed off. Ordered accordingly.

Sd/-  
**Adv. A J Wilson**  
Member

Sd/-  
**B Pradeep**  
Member

Sd/-  
**T K Jose**  
Chairman

Approved for issue

Sd/-  
C R Satheeshchandran  
Secretary