

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

OP No: 45/2023

In the matter of : Petition seeking modifications of the Order dated 07.06.2023 in OP No.25/2023 with respect to the time limit fixed for finalizing the tender and issuing Letter of Award for Procuring 500MW RTC power on medium term basis for five years under FOO (Finance, Own and Operate) basis.

Petitioner : Kerala State Electricity Board Ltd (KSEB Ltd)

KSEB Ltd represented by 1. Shri M.P. Rajan, Deputy Chief Engineer
2. Smt. Latha S.V., Asst: Executive Engineer

Date of hearing : 06.06.2023, 02:30 PM

Venue : Court Hall of the Commission

Order dated 14.07.2023

1. KSEB Ltd on 27.06.2023 had filed a petition before the Commission with the following prayers;

“Considering the submissions made above, KSEBL humbly request that the time limit fixed by Hon’ble Commission in its order dated 7-6-2023 in OP 25/2023 for finalizing the tender and issuing LoA for medium term power procurement may kindly be deleted in exercise of the powers to remove difficulties.”

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

- (1) The Commission vide the Order dated 07.06.2023 in petition OP No. 25/2023, had issued the following directions to the KSEB Ltd.

“Order of the Commission.

12. The Commission after examining the petition filed by KSEB Ltd for seeking approval for the deviations proposed in the Bidding Documents for procuring 500 MW RTC power on medium term basis from the model bidding documents notified by the Ministry of Power, Government of India as per the provisions of the Electricity Act, 2003, hereby Orders the following;

- (1) *Approve the Draft Bidding Documents submitted before the Commission for procuring 500MW RTC power on medium term basis*

for five years under Finance, Own and Operate (FOO) basis with the observations and directions in the paragraphs 9,10 and Annexure-1 of this Order.

- (2) *KSEB Ltd shall immediately proceed with the floating of tender to procure 500MW RTC Power and, shall finalise the tender and issue LoA within 75 days of this Order.*
 - (3) *After concluding the bidding process, KSEB Ltd shall file a separate petition under Section 63 read along with the Section 86(1) (b) of the EA-2003 for the adoption of the tariff derived through the bidding process.”*
- (2) In compliance of the Order of the Commission dated 07.06.2023 in petition OP No.25/2023, KSEB Ltd incorporated the modifications in the tender documents and the tender was floated in DEEP portal on 07.06.2023.
- (3) On seeing the bid documents in the DEEP portal, one of the prospective bidders have intimated that the bid documents floated by KSEBL is not in line with the latest revised Model Agreement for procurement of Power under Medium Term on FOO Basis issued by MoP, Gol on 19th December 2022 and its amendment dated 12th May 2023.
- KSEB Ltd submitted that, the revised Model APP is not seen published in the websites of Ministry of Power and e-bidding portal, DEEP, till date.
- (4) KSEB Ltd further submitted that, in the bidding documents of medium-term tenders floated by other utilities such as Maharashtra Industrial Township Limited (MITL) (on April 2023), Rajasthan Urja Vikas Nigam Limited (on 12.04.2023), Uttarakhand Power Corporation Limited (on 20.04.2023) are based on Model Bidding Documents issued by MoP on January 2019. Later, Rajasthan Urja Vikas Nigam Limited has issued revised APP by Issuing corrigendum.
 - (5) The matter was taken up with the MoP by KSEB Ltd and obtained the revised model Agreement for Procurement of Power (APP) from MoP.
 - (6) The Model APP issued by Ministry of Power (MoP), Gol on December 2022, has many major changes from the previous one, which was published in January 2019. Even though Model APP is revised by MoP, the revision in RfP and RfQ forming part of model bidding documents in line with the revised APP were not made. MoP has clarified that it may take time to modify the RfP and RFQ in line with the model APP already revised.
 - (7) In view of the above reasons, KSEB Ltd submitted that it will not be possible to comply with the time limit fixed by the Commission for finalizing the tender and issuing LoA vide the Order dated 7-6-2023 in OP 25/2023.

- (8) Hence KSEB Ltd requested that the time limit fixed by the Commission in its order dated 7-6-2023 in OP 25/2023 for finalizing the tender and issuing LoA for medium term power procurement may kindly be deleted in exercise of the power to remove difficulties. It is submitted that KSEBL will approach Commission with modified Standard Bid Documents, once they are notified by Ministry of Power and will immediately go forward for the medium-term power procurement, with the approval of the Commission.

Hearing on the petition

3. The Commission admitted the petition as OP No.45/2023 and conducted hearing on 06.07.2023 at Thiruvananthapuram. Shri M.P. Rajan, Deputy Chief Engineer, Smt. Latha S.V., Asst: Executive Engineer, 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) KSEB Ltd submitted that they are forced to file the instant petition consequent to some developments that happened, which are beyond the control of KSEB Ltd.

The Commission vide the Order dated 07.06.2023 in petition OP No.24/2023 had permitted KSEB Ltd to make arrangements for power procurement by continuing the interim arrangement of scheduling power from the four un approved DBFOO contracts for a further period of 75 days from the date of the Order. It is inferred that the time period of 75 days specified by the Commission considering the time schedule for finalizing the medium-term tender approved on 07.06.2023 in Petition OP No. 25/2023.

- (2) In compliance of the Order of the Commission dated 07.06.2023 in Petition OP No. 25/2023, KSEB Ltd floated the bid on 07th June,2023 itself. On seeing the bid documents floated by the KSEB Ltd in the deep portal, one of the prospective bidders intimated KSEB Ltd that the documents that they have floated particularly the model agreement for power procurement have been revised by the MoP December 2022, and subsequently amended in May 2023.

KSEB Ltd further submitted that these details are not available in the public domain, either in the MoP website or DEEP portal. On getting the information from the bidders, KSEB Ltd enquired with the MoP office and also with the DEEP portal officers. In return they confirmed that the Agreement is changed, but the RfP and RfQ documents which are forming the part of bid documents are not revised. Moreover, there are many changes in the revised APP compared to the model APP published in January 2019. The summary of the deviations in the revised APP and the APP notified in January 2019 is given below.

Sl No	As per Old Model APP	As per New Model APP
1	<p>Delivery Point Definition-<i>“means any point in the <u>intra-state Grid</u> where the electricity supplied under this Agreement is <u>received by the Utility</u>.”</i></p> <p>Here, power can be availed at Kerala periphery.</p>	<p>Delivery Point Definition- <i>“means <u>any point in the Inter-State Transmission System</u> where the Power Station of the <u>Supplier is delivering power either through ISTS connectivity, or through a dedicated transmission line or through the Intra state transmission system of the state in which it is located</u>.”</i></p> <p>Here, power can only avail at Generator's interconnection point on CTU unless the generator and Utility are on the same state.</p>
2	Contract Period- 1 to 5 years.	Contract Period- 1 to 7 years.
3	Obligations relating to transmission charges- <i>“The <u>Supplier shall be liable</u> for payment of all charges, due and payable under Applicable Laws, for inter-state and intra-state transmission of electricity from the Point of Grid Connection to the Delivery Point.”</i>	Obligations relating to transmission charges- <i>“The inter-state transmission of electricity shall be undertaken <u>solely at the risk and cost of the Utility</u> and all liabilities arising out of any failure of inter-state transmission shall be borne by the Utility.”</i>
4	Obligations relating to transmission losses- <i>“The <u>Supplier shall be liable</u> for the transmission losses in all inter-state and intrastate transmission of electricity from the Point of Grid Connection to the Delivery Point.”</i>	Obligations relating to transmission losses- <i>“The <u>Utility shall be liable</u> for inter-state transmission losses under Applicable Laws.”</i>
5	Base Variable Charge- Base variable charge consists of cost of Fuel/generating, cost of transportation, <u>cost of transmission charges and the cost of transmission loss.</u>	Base Variable Charge- Base variable charge consists of cost of Fuel/generating & cost of transportation.
6	Incentive- <i>“The obligations of the Utility to pay Fixed Charges in any Accounting Year shall in no case exceed an amount equal to the Fixed Charge due and payable for and in respect of the Normative Availability of 85% (eighty-five per cent) [during Peak Hours]20 computed with reference to the Contracted Capacity (the “Capacity Charge”). Provided, however, that <u>in the event of Despatch of the Power Station beyond such 85% (eighty-five per cent) [during Peak Hours], Incentive shall be payable in accordance with the provisions of Clause 11.6.1.</u>”</i>	Incentive- No provision for incentive.
7	Annual reconciliation of Fixed Charge- No provision	Annual reconciliation of Fixed Charge- <i>“Provided that the Availability to be considered for calculation of Fixed Charges shall be reconciled annually on cumulative basis.”</i>
8	Annual reconciliation of Incentive and Damage - <i>“The Parties expressly agree that within 30 (thirty) days of the close of every Accounting Year, the cumulative monthly Availability for such year shall be determined and <u>the Incentive or Damages, as the case may be, shall be computed with reference to the Normative Availability for that year</u>”</i>	Annual reconciliation of Damage – <i>“The Parties expressly agree that within 30 (thirty) days of the close of every Accounting Year, the cumulative monthly Availability for such year shall be determined and <u>the Damages, if any, shall be computed with reference to the Normative Availability for that year.</u>”</i>
9	Daily Limiting the availability for calculation of Fixed Charge- <i>“Pursuant to the provisions of Clause 11.4.4, the Supplier shall not, <u>for and in respect of any day</u>, be entitled to receive payment of Fixed Charge for Availability exceeding 85% (eighty five per cent) thereof [during Peak Hours], and in the event it supplies electricity to the Utility in excess of such 85% (eighty five per cent), such excess supply shall be eligible only for payment of Variable Charge, save and except the payment</i>	Daily Limiting the availability for calculation of Fixed Charge- No such clause is present.

	<p>of Incentive due under the provisions of Clause 11.4.2.”</p> <p>This clause is disputed by many of the DBFOO generators and raised concerns by many of the prospective bidders in the first medium term tender.</p>	
10	<p>Calculation of FC- <u>“In the event that any shortfall in supply of electricity to the Utility occurs on account of deficiency in transmission between the Point of Grid Connection and Delivery Point, Availability……. Provided, however, that the Supplier may, in its sole discretion, Despatch the Power Station to the extent of full or part Non-Availability hereunder for supply to other Buyers, and to the extent of full or part Non-Availability hereunder for supply to other Buyers,…….The Parties further agree that any and all revenues received from Buyers shall be applied first towards reduction of Fixed Charge payable by the Utility hereunder and only the balance remaining shall be appropriated by the Supplier.”</u></p>	<p>Calculation of FC- <u>“In the event that any shortfall in supply of electricity to the Utility occurs on account of deficiency in intra state transmission system……. Provided, however, that the Supplier may, in its sole discretion, Despatch the Power Station to the extent of full or part Non-Availability hereunder for supply to other Utilities or Buyers, as the case may be, and to the extent of full or part Non-Availability hereunder for supply to other Buyers, …………… Provided further that sharing of gain from sale of such power shall be in the same manner as provided for sale of unrequisioned power in applicable rules issued by the Ministry of Power, as amended from time to time.”</u></p>
11	<p>Discount for early payment- <u>in the event the Utility pays the Tariff within 5 (five) days of the date of submission of the invoice thereof, it shall be entitled to deduct 1% (one per cent) of the amount comprising the Tariff by way of discount for early payment.</u></p>	<p>Discount for early payment- <u>in the event the Utility pays the billed amount within the periods as specified below, it shall be entitled to deduct specified percentage of the amount by way of discount for early payment</u></p> <p>(i) <u>Upto 5 days from the date of submission of the invoice – 1.5%</u></p> <p>(ii) <u>Upto 10 days from the date of submission of the invoice-1.4%</u></p> <p>(iii) <u>Upto 15 days from the date of submission of the invoice-1.3%</u></p> <p>(iv) <u>Upto 20 days from the date of submission of the invoice-1.2%</u></p> <p>(v) <u>Upto 25 days from the date of submission of the invoice – 1.1%</u></p> <p>(vi) <u>Upto 30 days from the date of submission of the invoice– 1.0%</u></p>
12	<p>Performance Security-Utility- Not provided</p>	<p>Performance Security-Utility- <u>“The Utility shall, for the performance of its obligations hereunder, provide to the Supplier no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. ***** crore (Rupees ***** crore) in the form set forth in Schedule-B (the “Performance Security-Utility”) valid for a period ending 6 (six) months after date of commencement of supply.”</u></p>
13	<p>Methodology for Calculation of Variable Charge- Fuel price component taken as lower of, (i) the indicative price of Fuel which shall be computed from the Variable Charge, as specified in the Bid; and (ii) 101% (one hundred and one per cent) of the price payable by the Supplier to CIL/SCCL. & revised only in proportion to the revision in price notified by CIL/SCCL. Transportation component of VC- The total cost of transportation of domestic Fuel shall be the lower of, (a) [110% (one hundred and ten per cent)] of the freight payable to the Indian Railways</p>	<p>Methodology for Calculation of Variable Charge- Fuel price component of VC shall be as specified by the Supplier in its Bid & varied in proportion to the revision in price notified by CIL/SCCL. Transportation component varied revised in subsequent years in proportion to the revision in the notified freight rate of Indian Railways.</p>

	for transportation by rail, and (b) the actual cost of transportation and shall be revised only in proportion to the revision in rail freight.	
14	Imported Coal Blending – No provision.	Imported Coal Blending – “ <i>Provided further that compliance of any order issued by the central government in respect of blending of imported fuel shall be binding on the parties.</i> ”
15	Shortage of Linkage coal – No provision.	Shortage of Linkage coal – <i>Provided also that in case of shortage of linkage coal and the Supplier arranges coal from alternate sources, the Energy Charge shall be calculated as per methodology specified in Schedule F.”</i>
16	Termination Payment – “ <i>Upon Termination on account of a Utility Default, the Utility shall pay to the Supplier, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for a period of [3 (three) months] as if the Contracted Capacity was Available for such [3 (three) months] from the date of Termination.</i> ”	Termination Payment – “ <i>Apart from the other payments to be made by the Utility-on-Utility Default, upon Termination on account of a Utility Default, the Utility shall pay to the Supplier, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for a period of [6(six) months] as if the Contracted Capacity was Available for such [6(six) months] from the date of Termination.</i> ”
17	Dispute Resolution- There is provision for <u>Conciliation</u> (Managing Director of Utility & Chairman of the Board of Directors of the Supplier) & <u>Arbitration</u> (by Commission).	Dispute Resolution- Under the <u>Conciliation Committee of Independent Experts (CCIE)</u> constituted by the Appropriate Government.
19	Force Majeure- Classification as Political and non- Political Event.	Force Majeure- No Classification as Political and non- Political Event.
20	SHR of Coal based Power Station- “ <i>The Station Heat Rate of the Power station shall be [2,300 (two thousand three hundred and fifty)] kCal per kWh at 100% (hundred per cent) maximum continuous rating (MCR) or such lower Station Heat Rate as may be specified in the Capacity Certificate.</i> ”	SHR of Coal based Power Station- SHR is to be provided by the supplier.

(3) Based on the deliberations, the Commission has directed KSEB Ltd to submit the modifications proposed in the bidding documents RfP and RfQ documents in line with the model APP notified by the MoP in December 2022.

4. In compliance of the directions of the Commission, KSEB Ltd on 15.07.2023 had submitted an additional affidavit and its summary is given below.

(1) Based on the deliberations in the hearing, KSEB Ltd submitted the new model PSA, based on the revised model Agreement for Procurement of Power notified by the MoP, GoI on 19.12.2022, for the approval of the Commission.

- (2) KSEB Ltd further submitted that since, RFQ and RFP provides for supply at Kerala periphery and revised PSA provides for supply at ISTS connectivity point of the generator, a corrigendum notice containing clarifications has to be published showing the methodology to convert the RFP quoted tariff to PSA tariff which is also submitted for approval.
- (3) The details of the draft corrigendum submitted for approval to publish the same along with the bidding documents is extracted below.

“

Annexure-II

Date ...07.2023

“Sub: *Illustration for quoting the tariff in Price Bid as per the RFQ and RFP and part of tariff, which is applicable for the payment of charges, as per revised APP (Annexure I) in the tender floated by KSEBL in DEEP portal for Procurement of 500 MW RTC power from linkage coal for Medium Term through Tariff based competitive bidding process-Reg.*

Ref: *DEEP portal e-Tender No. KSEBL/Medium/Coal from Linkage Coal/23-24/ET/58 and e-reverse auction No. KSEBL/Medium/Coal from Linkage Coal/23-24/RA/56 dated 07.06.2023.*

The APP uploaded in the DEEP portal on 07.06.23 is replaced by the updated APP in line with the Model APP notified by MoP Dated 19.12.2022 and its amendment dated 12.05.2023, which is uploaded herewith as Annexure I.

Considering the updated APP, the following modifications are being made in the bid document:

1. *With reference to Clause 1.1.1 of the RFQ, the table for particulars of the project is amended as below:*

Requisition	Capacity Required (in MW)	Period when supply must commence	Delivery Point
RTC	500	1 st October 2023	ISTS Interconnection Point

2. *In case of any inconsistency between updated APP and RFP & RFQ, APP will prevail.*
3. *For the purpose of bid evaluation, bidders are required to quote the tariff at Kerala Periphery. Accordingly, the quoted tariff shall include applicable interstate transmission charges and losses. Bidder shall quote transmission charge Rs.0.57/unit (Fifty-seven paise per unit) as interstate transmission charge and 4.23 % as interstate losses.
If bidder quotes interstate transmission charge or losses other than as specified above, such a bid will be invalid.*
4. *The payment shall be made as per the tariff applicable at the Delivery Point defined in the APP, i.e. ISTS Interconnection Point.*

5. The methodology for bid evaluation and payment through an illustration below:

Illustration for bid evaluation and payment

I. Illustration for tariff to be quoted by the bidder

Sl.	Parameter	Tariff	Unit
A	Tariff at ISTS Interconnection Point (considered for illustration)	3.00	Rs. /kWh
B	ISTS Transmission charges	0.57	Rs. /kWh
C	ISTS Transmission loss	4.23	%
D	Tariff at Kerala Periphery (i.e., the tariff to be quoted in the bid)	3.73	Rs. /kWh
	$D = (A+B)/(1-C)$		

- II. Tariff at ISTS Interconnection Point (A) as discovered in the bid will be used for payment as per APP.

If bidder quotes transmission charge or losses other than as specified, such a bid will be invalid.”

- (4) KSEB Ltd vide the additional submission dated 14.07.2023, requested before the Commission to approve the revised PSA and the corrigendum notice and sample calculation for floating as a corrigendum to the tender already invited by KSEBL on 7-6-2023.

Analysis and Decision of the Commission

5. The Commission having examined in detail the petition filed by KSEB Ltd dated 27.06.2023, the deliberations during the hearing held on 06.07.2023 and the additional submission dated 14.07.2023, as per the provisions of the Electricity Act, 2003, the model bidding documents notified by the Ministry of Power, Government of India for procurement of power on medium term basis, other relevant documents and records, hereby decided as follows;
6. The Commission vide the Order dated 07.06.2023 in petition OP No. 25/2023, had issued the following directions to the KSEB Ltd.

“Order of the Commission.

12. The Commission after examining the petition filed by KSEB Ltd for seeking approval for the deviations proposed in the Bidding Documents for procuring 500 MW RTC power on medium term basis from the model bidding documents notified by the Ministry of Power, Government of India as per the provisions of the Electricity Act, 2003, hereby Orders the following;

- (1) *Approve the Draft Bidding Documents submitted before the Commission for procuring 500MW RTC power on medium term basis for five years under Finance, Own and Operate (FOO) basis with the observations and directions in the paragraphs 9,10 and Annexure-1 of this Order.*

- (2) *KSEB Ltd shall immediately proceed with the floating of tender to procure 500MW RTC Power and, shall finalise the tender and issue LoA within 75 days of this Order.*
- (3) *After concluding the bidding process, KSEB Ltd shall file a separate petition under Section 63 read along with the Section 86(1) (b) of the EA-2003 for the adoption of the tariff derived through the bidding process.”*

In compliance of the Order of the Commission dated 07.06.2023 in petition OP No.25/2023, KSEB Ltd incorporated the modifications in the tender documents and the tender was floated in DEEP portal on 07.06.2023.

7. KSEB Ltd had prepared the bidding documents including RFP, RFQ and Agreement for Power Procurement (APP) of the tender, based on the model bidding documents notified by the Ministry of Power (MoP), Government of India on 29.01.2019.

Subsequently, after floating the bidding documents in the DEEP portal on 07.06.2023, KSEB Ltd noticed that, the MoP vide the notification dated 19.12.2022 had revised the model APP and subsequently the same was again amended on 12th May 2023. Since the revised APP was not published in the website of the MoP and e-bidding DEEP portal, KSEB Ltd was not noticed the revised APP dated 19.12.2022 and its amendment dated 12.05.2023 while preparing the bidding documents. Hence KSEB Ltd was prepared the bidding documents based on the model bidding documents of MoP dated 29.01.2019.

8. KSEB Ltd further submitted that, there are many changes in the revised APP dated 19.12.2022 when compared to the APP as per the model bidding documents dated 29.01.2019. Its summary is given under **paragraph 3(2)** of this Order.

However, the important changes in the revised APP dated 19.12.2022, which may impact the tariff to be quoted by the suppliers and also may affect the financials of the buying utilities are the following;

- (i) Delivery point:
As per the model APP dated 29.01.2019, the delivery point of supply is **intra-state grid** where the electricity is received by the utility under the Agreement.

However, as per the revised APP dated 19.12.2022, the delivery point is the point in the **inter-State Transmission System (ISTS)** where the supplier is delivering power either through ISTS connectivity or through a dedicated transmission line or through the intra State transmission system of the State in which the plant is located.

As above, as per the revised APP dated 19.12.2022, the electricity can be availed only at Generators inter connection point on CTU unless the generator and the utility are on the same State.

- (ii) Transmission charges and losses.

As per the model APP dated 29.01.2019, all the transmission charges and transmission losses, for the inter-state and intra-state transmission of electricity from the point of Grid Connection to the Delivery point shall be borne by the supplier.

However, as per the revised APP dated 19.12.2022, the obligations related to the intra-state and inter state transmission charges and losses shall be at the risk of the buying utility.

(iii) Incentives.

As per the model APP dated 29.01.2019, the generators are eligible for incentive for the despatch of electricity beyond 85% of the normative availability during peak hours in accordance with the provisions of the APP.

However, as per the revised bidding documents dated 19.12.2022, there is no provision for incentive.

The other important changes in the revised APP dated 19.12.2022 is given in Table under paragraph 3(2) of this Order.

9. In the original petition dated 27.06.2023, KSEB Ltd submitted that, since the Ministry of Power, Government of India may take some more time to revise the model RFQ and RFP, in line with the revised APP dated 19.12.2022, KSEB could not meet the time limit of 75 days for finalising the tender for procuring 500MW RTC power on medium term basis for five years. Hence KSEB Ltd prayed before the Commission to delete the time limit specified in the Order dated 07.06.2023 in petition OP No. 25/2023 for finalising the tender and to issue LoA.
10. The Commission had conducted the hearing on the petition on 06.07.2023. During hearing the Commission clarified to the utility that, instead of waiting for the revised RFP and RFP by the Central Government, KSEB Ltd may be proceed with adopting the revised APP dated 19.12.2022 and its amendment dated 12.05.2023 for floating the tender for procuring 500MW RTC power on medium term basis through DEEP portal. The Commission further clarified that, it may by invoking its statutory powers conferred on it under the Electricity Act, 2003, read along with the provisions in the model bidding guidelines dated 30.01.2019 for procurement of power under medium term basis, grant approval for the deviations, if any in the bidding documents to suit the specific requirements of this State.
11. In compliance of the directions given by the Commission during the deliberations of the hearing held on 06.07.2023, KSEB Ltd vide the additional affidavit dated 15.07.2023 submitted the following documents before the Commission for approval.

- (1) Revised Model Agreement for Procurement of Power on Finance, Own and Operate basis, (model APP) as per the revised model APP dated 19.12.2022 notified by the MoP, Gol.
- (2) Corrigendum notice containing clarifications has to be published showing the methodology to convert the RFP quoted tariff to PSA tariff.
- (3) Further, KSEB Ltd has also submitted the proposed modifications in the revised APP dated 19.12.2022, based on the following.
 - (i) As per the MoP guidelines, trading licensee is not eligible for bidding in case the source of fuel is linkage coal.
 - (ii) KSEB Ltd is a prompt payer of electricity charges and KSEB Ltd also providing LC as payment security. So far KSEB Ltd has not extended default escrow agreement to other generators from whom KSEB Ltd has been purchasing power.

KSEB Ltd has, further requested to approve the Revised Model Agreement for Procurement of Power on Finance, Own and Operate basis and also the corrigendum notice to be floated along with the bidding documents for procuring 500 MW RTC power on medium term basis for five years.

12. The Commission examined in detail the revised Model Agreement for Procurement of 500MW RTC power on medium term basis and also the corrigendum notice containing clarifications to be published showing the methodology to convert the RFP quoted tariff to PSA tariff submitted before the Commission for approval. The Commission also examined the deviations proposed by KSEB Ltd in the model APP before the Commission.
13. The Commission vide the Order dated 07.06.2023 approved the deviations proposed in the bidding documents to incorporate the provision that *'the trading licensee is not eligible to participate in the bid, in case the source of fuel is linkage coal'*. Further, the Commission vide the Order dated 07.06.2023 has also approved the modification suggested by KSEB Ltd to *'delete the clauses related to 'default escrow agreement' in the model APP'*. The Commission hereby approve to retain these modifications in the revised APP submitted before the Commission for approval based on the bidding documents dated 19.12.2022.

The Commission also examined the corrigendum notice submitted for approval, which contain the methodology to convert the RFP quoted tariff to PSA tariff.

14. With the above observations, the Commission has decided to approve the revised model Agreement for Procurement of 500MW RTC Power on medium term basis for five years under Finance, Own and Operate (FOO) basis.

The Commission further direct that, considering the precarious power situation and the emerging power crisis of the State, KSEB Ltd shall complete the bid process and issue LoA on a war footing basis within the minimum possible time permitted in the Model Bidding Documents notified by the Ministry of Power, Government of India. Hence, the Commission decided to reject the prayer of

the KSEB Ltd in the original petition dated 27.06.2023 to delete the clauses specifying the time limit fixed in the Order dated 27.06.2023 in OP No. 25/2023 to finalise the tender and to issue LoA for procuring 500 MW RTC power on medium term basis.

Orders of the Commission

15. The Commission, after examining the petition filed by KSEB Ltd dated 27.06.2023, the deliberations during the hearing held on 06.07.2023 and the additional submission dated 14.07.2023, as per the provisions of the Electricity Act, 2003, the model bidding documents notified by the Ministry of Power, Government of India for procurement of power on medium term basis, other relevant documents and records, hereby orders the following;
- (1) Approve draft model Agreement for Procurement of Power, submitted vide the additional affidavit dated 14.07.2023 for the procurement of 500MW RTC power on medium term basis for five years under Finance, Own and Operate (FOO) basis.
 - (2) Approve the corrigendum notice submitted on 14.07.2023, containing clarifications regarding the methodology to convert the RFP quoted tariff to PSA tariff, to be published along with the bidding documents.
 - (3) Reject the request of KSEB Ltd in the original petition dated 27.06.2023, to delete the clause specifying the time limit fixed in the Order dated 27.06.2023 in OP No. 25/2023 to finalise the tender and to issue LoA for procuring 500 MW RTC power on medium term basis for five years under Finance, Own and Operate (FOO) basis.
 - (4) KSEB Ltd shall immediately proceed with the floating the revised APP and corrigendum approved above, and shall finalise the tender and issue LoA within the time limit specified in the Order dated 07.06.2023 in petition OP No. 25/2023.
 - (5) After concluding the bidding process, KSEB Ltd shall file a separate petition under Section 63 read along with the Section 86(1) (b) of the EA-2003 for the adoption of the tariff derived through the bidding process.

Petition disposed of. 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