

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

OP No: 44 /2023

In the matter of : Petition seeking modifications of the Order dated 07.06.2023 in OP No.24/2023 with respect to the time limit fixed for the interim arrangement of scheduling of power from the four unapproved DBFOO contracts 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 M.P. Rajan, Deputy Chief Engineer
2. Smt. Latha S.V., Asst: Executive Engineer

Respondents : 1. Jhabua Power Limited
2. Jindal India Thermal Power Ltd (JITPL)
3. Jindal Power Ltd

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

Date of hearing : 06.07.2023, 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 Hon'ble Commission may kindly exercise the power to remove difficulties and modify the order dated 7-6-2023 in OP 24/2023 by removing the time limit fixed for the interim arrangement.”
2. The summary of the petition filed by KSEB Ltd is given below;
 - (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, along with 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.*

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 Commission vide the Order dated 07.06.2023 in petition OP No. 24/2023 had disposed the matter with the following directions.

“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.”

- (3) In compliance of the Order of the Commission dated 07.06.2023, out of the three DBFOO generators, M/s Jhabua Power Ltd (Bid-1 and Bid-2 DBFOO contracts) and M/s Jindal Power Ltd has been scheduling power from 21.06.2023 onwards. However, M/s Jindal India Thermal Ltd is reluctant to schedule power as per the Order of the Commission. The scheduling of power by M/s Jhabua Power Ltd and M/s Jindal Power Ltd is on temporary basis since they are insisting for PPA tariff and also insisting to release all the withheld payments as per the Orders of Hon'ble APTEL and KSERC.
- (4) It is inferred that, the Commission has permitted to schedule power from the above unapproved DBFOO contracts for a maximum period of 75 days from the 07.06.2023, considering the timelines fixed for the procurement of 500MW RTC power on medium term basis, which was approved vide the Order dated 07.06.2023 in petition OP No. 25/2023. However, the timelines cannot be adhered due to the following reasons;
- (i) KSEBL floated the bid in compliance with the order of Hon'ble Commission dated 07.06.2023 in petition OP 25/2023.
 - (ii) However, 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 Finance, Own and Operate Basis issued by Ministry of Power, Gol on 19th December 2022 and further amended on 12th May 2023. The revised Model APP is not seen published in the websites of Ministry of Power and e-bidding portal, DEEP, till date.
 - (iii) 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 by MoP. This was duly requested to MOP by KSEBL and MOP has clarified that it would modify the RFQ and RFP, but the modifications of the same may take some time. Therefore, the time limit up to which the interim arrangement is permitted for drawing power from the unapproved DBFOO contracts vide the Order of the Commission dated 07.06.2023 in OP No. 24/2023 may be removed.

Hearing on the petition

3. The Commission admitted the petition as OP No.44/2023 and conducted the hearing on 06.07.2023 at the Court Hall of the Commission through hybrid mode. Notice for the hearing was issued to the petitioner and to all respondents. The 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. As per the Order of the Commission dated 07.06.2023, out of the three DBFOO generators, M/s Jhabua Power Ltd (Bid-1 and Bid-2 DBFOO contracts) and M/s Jindal Power Ltd has been scheduling power from 21.06.2023 onwards. However, M/s Jindal India Thermal Ltd is reluctant to schedule power as per the Order of the Commission.

It is inferred that, the time period of 75 days is fixed by the Commission considering the time limit of 75 days fixed for making arrangements for procuring 500MW RTC power on medium term basis as per the FOO guidelines issued by the MoP, Gol.

As per the Order of the Commission dated 07th June,2023 in petition OP No. 25/2023, KSEB Ltd floated the bids on 07.06.2023 itself. The bid documents for the medium term procurement were prepared based on the guidelines issued by the MoP vide the notification dated 30.01.2019. However, after publishing the notice inviting tender for the power procurement, KSEB Ltd came to notice that, the MoP, Gol had subsequently revised the model Agreement for Procurement of Power on medium term basis on 19.12.2022 and subsequently amended on 12.05.2023. However, the RfP and RfQ documents which are forming the part of bid documents are not yet revised by MoP in line with the revised APP dated 19.12.2022.

KSEB Ltd further submitted that, as per the information from MoP, Gol, it may take some more time to revise the RfP and RfQ documents for procurement of power on medium term basis in line with the revised APP dated 19.12.2022. Considering these reasons, KSEB Ltd vide the petition dated 27.06.2023 in petition OP No. 45/2023 had intimated to the Commission that, the licensee can float the tender for procurement of 500MW power on medium term basis only after the MoP, Gol notify the revised RfP and RfQ documents. KSEB Ltd also requested to delete the time limit specified in the Order dated 07.06.2023 in petition OP No. 25/2023 for finalising the tender and issuing LoA for procurement of 500MW RTC power on medium term basis.

Considering the above, KSEB Ltd requested before the Commission to modify the Order of the Commission dated 07.06.2023 in petition OP No. 24/2023 by removing the time limit specified for continuing the interim arrangement for procuring power from the four unapproved DBFOO contracts.

- (2) Adv. Biju Mattam, on behalf of the generator M/s Jindal Power Ltd submitted that, an appeal petition was filed by M/s Jindal India Thermal

Power Ltd (JITPL) against the Order of the Commission dated 07.06.2023 in petition OP No 24/2023 by JIPTL. The present petition filed by the KSEB Ltd is to modify the said Order of the Commission. Hence, the representative of M/s JPL submitted that the Commission is Functus officio with respect to indulge in that said Order again, in which is already in appeal in the Hon'ble APTEL.

- (3) Adv. Matrugupta Mishra, JIPTL, submitted that they had filed an appeal petition before the Hon'ble APTEL against the Order of the Commission dated 07.06.2023 in petition OP No 24/2023 and the Hon'ble APTEL already listed the petition for hearing on 04.07.2023. After hearing the parties, Hon'ble APTEL has issued notices and everybody accepted the notice and sought time for the reply. The representative of M/s JITPL submitted that the Order of the Commission dated 07.06.2023 is an illegality and any effort to modify it will perpetuate the illegality further.

M/s Buddy Ranganathan, on behalf of the JITPL submitted that, whether the Commission can modify the Order dated 07.06.2023 in petition OP No.24/2023 in view of the appeal petition filed against the Order before the Hon'ble APTEL. The learned Council for the Commission itself submitted before the Hon'ble APTEL is that, the Order of the Commission dated 07.06.2023 in petition OP No.24/2023 is not binding on the generators in the unapproved DBFOO contracts. He further submitted that, since the Commission do not have any jurisdiction to issue the Order dated 07.06.2023 permitting KSEB Ltd to schedule power from the four unapproved DBFOO contracts, the Commission cannot extend the validity of such illegal Order of the Commission.

- (4) Smt. Swapna Sheshadri submitted that the entire proceedings before the Commission in petition OP No. 24/2023 is illegal. If KSEB Ltd want the support of the generators during the interim period, they should be paid the PPA tariff. However, the Commission had compelled them to supply the power for 75 days at a truncated tariff. Aggrieved by the Order of the Commission, they had filed an appeal petition before the Hon'ble APTEL. In these circumstances, there is no question of KSEB Ltd to file a petition for extending the time limit for continuing the interim arrangement. Hence the representative of M/s Jhabua Power Ltd pleaded before the Commission to not to extend the Order of the Commission dated 07.06.2023 in petition OP No. 24/2023.

Analysis and Decision of the Commission

4. The Commission having examined in detail the petition filed by KSEB Ltd dated 27.06.2023 with the prayer to modify the Order dated 07.06.2023 in OP No.24/2023 with respect to the time limit fixed for the interim arrangement of scheduling of power from the four unapproved DBFOO contracts, the provisions of the Electricity Act, 2003, KSERC (Terms and Conditions of Determination of

Tariff) Regulations, 2021, deliberations during the hearing held on 06.07.2023, other relevant documents and record, hereby decided as follows.

5. The only prayer of KSEB Ltd in the instant petition OP No. 44/2023 is to remove the maximum time limit of 75 days allowed for continuing the interim arrangement for scheduling power from the four unapproved DBFOO contracts from 07.06.2023 or till the alternate arrangements of procuring 500 MW RTC power on medium term basis, which ever is earlier.

The reasons cited for removing the time limit is that, KSEB Ltd could not make the alternate arrangement of procuring 500MW RTC power in lieu of the 465MW unapproved DBFOO contracts, with in the time schedule of 75 days specified for tendering and issuing LoA vide the Order dated 07.06.2023 in petition OP No. 25/2023.

6. KSEB Ltd had on 27.06.2023 filed another petition OP No. 45/2023, for deleting the time limit fixed for finalising the tender and issuing LoA vide the Order dated 07.06.2023 in petition OP No. 25/2023 for procuring 500MW RTC power on medium term basis. The reasons for denying the time limit for finalising the tender and to issue LoA was explained in detail in the petition OP No.45/2023.

KSEB Ltd vide the additional affidavit dated 14.07.2023 of the same petition had submitted the following documents for approval/

- (i) Modified model Agreement for Power Procurement (APP) for procurement of power on medium term basis as per the model APP notified by the MoP, GoI dated 19.12.2022 and its amendment dated 12.05.2023.
- (ii) Draft corrigendum to be floated along with the bidding documents, for clarifying the methodology to convert the RFP quoted tariff to PSA tariff of the bids for procuring 500 MW RTC power.

7. The Commission after detailed examination of the petition and its deliberations during the hearing on 06.07.2023, vide the Order dated 14.07.2023 in petition OP No. 45/2023 had Ordered as follows.

“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.”

8. In view of the Order of the Commission dated 14.07.2023 in petition OP No. 45/2023, the prayer of the instant petition OP No. 44/2023 become infructuous and hence liable to be rejected.
9. Considering the reasons explained in the previous paragraphs, the Commission is of the considered view that, it is not necessary to modify the Order of the Commission dated 07.06.2023 in petition OP No. 24/2023 for removing the time limit fixed for the interim arrangement of scheduling power from the four unapproved DBFOO contracts as prayed by KSEB Ltd in the instant petition OP No. 44/2023. The Commission has not gone into merits of the other issues raised by the petitioner and respondents during the deliberations of the subject petition OP No. 44/2023.

Hence, the commission, hereby orders to reject the prayer of the petition OP No. 44/2023.

The petition disposed off. Ordered accordingly.

Sd/-
Adv. A J Wilson
Member

Sd/-
B Pradeep
Member

Sd/-
T K Jose
Chairman

Approved for issue

C R Satheeshchandran
Secretary