

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

OP No: 50 /2023

In the matter of : Petition under Regulation 77 of the KSERC(Terms and Conditions for determination of Tariff)Regulations, 2021 seeking approval for to allow power drawal from the unapproved PPA GENCOs at PPA rate till finalization of medium term power procurement and commencing the supply of power through the identified GENCO considering the severe financial crisis faced by KSEBL due to power shortage in the State caused by weak monsoon.

Petitioner : Kerala State Electricity Board Ltd (KSEB Ltd)

Petitioner represented by : 1. Adv. Ajit Joy, Counsel for the petitioner
2. Shri Biju, Director Finance, KSEB Ltd
3. Shri Saji Paulose, Director (Transmission and System Operation)
4. Shri Sajeev.G, CE (Commercial and Tariff), TRAC, KSEB Ltd
5. Shri. M.P.Rajan, Dy CE, TRAC, KSEB Ltd.

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

Respondents represented by : 1. Adv Matrugupta Mishra, Counsel for JIPTL
2. Adv Biju Mattam, Counsel for Jindal Power Ltd

Date of hearing : 21.08.2023, 11:00 AM
Venue : Court Hall of the Commission (Hybrid Mode)

Order dated 21.08.2023

1. M/s Kerala State Electricity Board Limited (hereinafter referred as M/s KSEB Ltd or petitioner) on 17.08.2023 had filed a petition before the Commission with the following prayers;

- (1) *KSEBL may be permitted to allow power drawal from the unapproved PPA GENCOs at PPA rate till finalization of medium term power procurement and commencing the supply of power through the identified GENCO.*
- (2) *Request extension of time to complete the bidding process of medium term power purchase till the commencement of supply of power through identified GENCO in medium term power purchase bid.*
- (3) *Hon'ble Commission may give a letter to coal suppliers to continue supply of linkage coal to unapproved PPA GENCOs till commencement of power supply through GENCOs identified through medium term power procurement.*

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, 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 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, whichever 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, the generators M/s Jhabua Power Ltd and M/s Jindal Power Ltd has been supplying power to KSEB Ltd, however M/s Jindal India Thermal Power Ltd not scheduled power during the interim period.

The period of the interim arrangement is expiring on 21st of August 2023.

- (4) In compliance of the direction of the Commission, KSEBL had floated the tender documents in DEEP portal on 07.06.2023.

However, on seeing that the model PPA was revised by MoP on December 2022, KSEBL again approached the Commission for revising the bid documents and to upload the corrigendum notice regarding the variations in the RFQ and RfP in line with the revised Model Agreement for Purchase of Power (MAPP).

The Commission vide its order dated 14.07.2023 approved the revised MAPP and corrigendum. The revised APP and Corrigendum notice was published by KSEBL on 20.07.2023. As per the revised time schedule and as per the provisions of the Agreement for Procurement of Power, the power flow as per the proposed medium term contracts can start only from 1st January 2024.

- (5) KSEB Ltd further submitted that, the State is experiencing very week monsoon in the State so far. Due to the week monsoon, the storage position in the reservoirs also critically affected, as detailed below.

Reservoir	08-08-2023
Idukki	32.47%
Sabarigiri	35.47%
Idamalayar	42.18%
Sholayar	58.21%
Kuttiyadi	49.44%
Overall	37.74%

Even with the continuance of the schedule of power from the unapproved DBFOO contracts, there has been severe power shortages due to the failure of monsoon. For meeting the power shortage, the Commission vide the Order dated 31.07.2023 in petition OP No. 49/2023 had permitted KSEB Ltd to procure upto 250MW RTC power from August 2023 to May 2024. Even with the above contracts, there is power and energy shortage.

- (6) The anticipated load generation balance from August 2023 to May-2024 without scheduling power from unapproved DBFOO contracts, but duly considering the internal generation and power purchase from all other contracts including short-term contracts, KSEB Ltd expected to have a power shortage of around 500MW to 1500 MW during the period from August 2023 to May-2024. The details are given below.

Anticipated power shortage in MW form August 2023 to May-2024

Month	00:00 to 05:00	05:00 to 08:00	08:00 to 14:00	14:00 to 18:00	18:00 to 22:00	22:00 to 24:00
Aug-23	-719	-1118	-1065	-1075	-594	-749
Sep-23	-661	-1090	-1037	-997	-526	-781
Oct-23	-680	-860	-850	-730	-465	-820
Nov-23	-453	-683	-673	-653	-388	-768
Dec-23	-642	-822	-762	-892	-527	-932
Jan-24	-521	-626	-586	-641	-366	-721
Feb-24	-437	-697	-532	-612	-355	-632
Mar-24	-870	-863	-828	-780	-709	-899
Apr-24	-1325	-966	-958	-913	-1205	-1403
May-24	-1255	-1093	-1069	-945	-1250	-1404

- (7) The anticipated energy shortage assessed by KSEB Ltd from August 2023 to May-2024 is given below.

Anticipated energy shortage in MU from August 2023 to May-2023

Month	Anticipated demand	Availability (MU)				Total Availability	Surplus (+) / Deficit (-)
		Hydro	CGS + LTA + Wind + Solar + REMC + MTOA existing	SWAP	DEEP	Month wise in MU	Monthwise in MU
Aug	81.27	11.44	45.30	-4.20	5.28	57.82	-23.45
Sep	84.11	11.51	43.70	-4.20	6.00	57.01	-27.10
Oct	84.63	10.26	43.20		3.60	57.06	-27.58
Nov	82.43	10.11	46.40		6.00	62.51	-19.92
Dec	80.75	9.50	43.50		6.00	59.00	-21.75
Jan'24	79.25	9.70	50.60		4.20	64.50	-14.75
Feb	82.01	10.58	51.50		6.00	68.08	-13.93
Mar	93.23	13.50	55.70		5.40	74.60	-18.63
Apr	98.02	16.05	56.60		6.00	78.65	-19.37
May	97.82	16.05	54.90		6.00	76.95	-20.87

- (8) In view of the anticipated energy and power shortage, also considering the fact that the power flow from the proposed medium contracts can start only from 1st January 2024 onwards, KSEB Ltd requested to allow the drawal of power from the unapproved DBFOO contracts at PPA rate till finalisation of the medium term power procurement to enable KSEBL to maintain uninterrupted power supply to the consumers of the State.
- (9) KSEB Ltd further submitted that, the availability of power from CGS have drastically reduced due to coal shortages, forced outages. The availability of power from wind also come down. The availability of power from power exchanges also very difficult. Out of the 1000MW power quoted from exchanges, the actual availability is 100 MW only.
- (10) Considering the above reasons, KSEB Ltd has requested to permit them to draw power from the unapproved DBFOO contracts till finalisation of the medium term power procurement.
- (11) KSEB Ltd further submitted that, the generators of the unapproved DBFOO contracts are demanding PPA rate for continuing supply. The PPA rate of these generators are lower than the present market rates and lower than the short-term rates discovered in the recent tender. The details are given below.

Contract	Month	Tariff (Rs/unit)
Jhabua – I – 115MW	Sep-23	3.99
Jhabua – II – 100MW		4.53
Jindal – II – 150MW		4.68
Short term contract rates	Sep-23	5.38 to 5.42
	Oct-23	5.12 to 5.14
	Nov-23	5.38 to 5.46
	Dec-23	5.48 to 5.50

- (12) KSEB Ltd also submitted that, in the case of exchange transactions, advance payment has to be made for power procurement. Further, in the case of short term transactions, weekly payment are to be effected. However, in the case of payment to DBFOO generators, payment due date is within 30 days from the submission of invoice. The power purchase from power exchanges and short-term contracts has led to huge cash deficit scenario for KSEBL.

Considering the above, KSEB Ltd requested to allow them to pay at tariff signed with the generators for the power drawn from unapproved DBFOO contracts.

KSEB Ltd also requested that, the Commission may issue letters to the coal suppliers, M/s.Mahanadi Coal Limited and M/s. SECL to supply coal to these generators to ensure power supply by these generators.

3. The Commission admitted the petition as OP 50/2023. The Hearing on the petition was held on 21.08.2023 through Hybrid Mode. The list of participants appeared during the hearing is enclosed as Annexure- 1.

4. The summary of the deliberations during the hearing is given below.

(1) M/s KSEB Ltd submitted the following;

Adv Ajit Joy learned counsel for the petitioner along with Director (Finance), Director (Transmission and System Operation), Chief Engineer (Commercial and tariff), Deputy Chief Engineer, TRAC along with other officials of KSEB Ltd presented the current power situation and the circumstances necessitated for continuing the present interim arrangement for procuring power from the unapproved DBFOO Contracts.

Due to the failure of monsoon, the overall storage position in the reservoirs of KSEB Ltd as on 08.08.2023 is about 34.74% of the total storage position, as against 79% during the same day on last year. It is further submitted that the reservoir storage position in its major reservoir Idukki is only 32.47% as against 77.79% during the last year. Similarly, the storage of all major reservoirs is in the range of 35% to 40% only, as against 75% to 80% during last year.

Further due to the failure of monsoon, and the humid and hot climate prevailing in state, the average energy demand during the month of August is 83MU as against the expected demand of about 70 MU during the same month.

KSEB Ltd further submitted that due to the failure of monsoon, the wind generation in southern states, especially Tamil Nadu, Karnataka are much below the anticipated generation. Further the electricity demand in all other southern states also increased considerably than the expected demand. All the southern states including Kerala is heavily depend on power exchanges to meet the short fall in electricity demand. However, the availability in exchanges is much less than the requirement of the southern states and this has resulted in excessive increase in electricity prices in the exchanges.

KSEB Ltd further submitted that the PPA rates of the unapproved DBFOO contracts are much less than the prices in the energy exchanges and also the recently concluded short term power purchase contracts approved by the Commission vide the Order dated 31.07.2023.

KSEB Ltd also submitted that it may take up to December 2023 to finalize the proposed medium term procurement of 500 MW RTC power on medium term basis. Hence to tide over at least a part of the power crises, KSEB Ltd requested before the Commission to extend the

interim arrangement approved by the Commission vide its Order dated 07.06.2023 till December 2023 at the PPA tariff till the power flow from the proposed medium term power procurement start flowing.

- (2) The Commission noted with displeasure the failure from the part of the KSEB Ltd to convincingly appraise the critical power situation of the State due to failure of monsoon. KSEB Ltd also failed to appraise the gravity of the situation with proper details. KSEB Ltd also failed to appraise the additional financial liability sofar incurred from 1st July 2023 onwards till date to tide over the critical power situation. KSEB Ltd also not submitted the additional liability likely to be incurred without and with the schedule of power from the unapproved DBFOO contracts.

The Commission also noted that, the present crisis is not due to the rejection of the approval of the PSAs of the unapproved DBFOO contracts. But the main reason is the failure of monsoon clubbed with reduction in internal hydel generation, increase in electricity demand due to the hot and humid climate in the State, the reduction in availability of wind power in the southern States etc.

The Commission is also aware that the electricity prices in the exchange is also excessively high due to the overdependence of the southern States to meet their shortfall in electricity demand. But, KSEB Ltd has miserably failed to appraise before the Commission the electricity shortages anticipated due to failure of monsoon, the additional liability to be incurred for tide over the crisis without scheduling power from the unapproved DBFOO contracts and with scheduling power from the unapproved the DBFOO contracts.

Hence the Commission has directed KSEB Ltd to submit the additional liability incurred by the KSEB Ltd for purchase of power to meet the power crisis due to failure of monsoon latest by 5:00pm today (21.08.2023)

- (3) Smt Preethy C.S, Joint Secretary, Power Department, Government has requested before the Commission to permit KSEB Ltd to schedule power from the unapproved DBFOO contracts on interim basis as approved by the Commission vide Order dated 07.06.2023 for a further period till KSEB Ltd may make alternate arrangement for procurement of power to overcome the present power crisis.
- (4) Adv Matrugupta Mishra, Counsel for JITPL submitted that they could schedule power only if KSEB Ltd could make payment at PPA tariff for the power to be scheduled from their plant and also after clearing the arrears as on date. They also submitted that, KSEB Ltd shall takeup the coal companies to get the allocation of coal.

- (5) Adv Biju Mattam, Counsel for Jindal Power Ltd also submitted before the Commission that they can schedule power only if the KSEB Ltd could make payment at PPA tariff. He further submitted that, KSEB Ltd shall make all arrangements to get the linkage coal from coal companies.
- (6) Shri Dejo Kappan submitted that the Commission shall not reinstate the unapproved DBFOO contacts since the entire agreement was rejected by the Commission vide its Order dated 10.05.2023. He requested the Commission to issue orders to benefit the consumers in the State. He criticized the laxity from the part of the KSEB Ltd to complete the ongoing hydel projects implemented by KSEB Ltd.
- (7) Shri Prabhakaran. K.V, on behalf of HT and EHT Association submitted that the Commission shall not reinstate the un approved DBFOOO contracts, which was rejected vide the Order dated 10.05.2023. He further submitted before the Commission to approve alternate arrangements for procure additional power without causing additional liability to the Consumers of the State.
- (8) Shri Saji Mathew MRF Ltd also endorsed the views of the HT and EHT Association and requested to not reinstate the unapproved DBFOO Contracts.
- (9) Shri Sambasivan also submitted that the Commission may not approve the unapproved DBFOO contracts. He further submitted that KSEB Ltd shall encourage the procurement of solar power to meet the power shortage in the State.
5. The Commission directed KSEB Ltd to submit the details of the power purchase from all sources (other than that generated by KSEBL) for the 31 days in July 2023 and 20 days (up to 20.08.2023) of August 2023. In spite of the repeated instructions, KSEBL could not provide details up to 20.08.2023.

The Commission is constrained to express dissatisfaction on the way in which KSEBL is handling the data in the digital age. And hence direct KSEBL to ensure accuracy, consistency and precision in data and better information systems befitting to the current times.

The details of the power purchase in the month of July 2023 and Auust 2023 (upto 18.08.2023) is given below.

Table-A				
Power Purchase cost for July and August 2023 till 18th August				
Particulars	July		August	
	Quantum	Cost	Quantum	Cost
	MU	Rs Cr	MU	Rs Cr
Central Generating stations	824.89	422.26	475.47	251.29

LTA contracts other than DBFOO	278.23	139.27	134.44	67.37
DBFOO approved contracts	161.01	67.06	90.79	37.98
DBFOO un approved contracts	150.54	61.60	82.49	33.97
RE Purchase	42.49	11.26	42.49	11.26
Short term Purchase	0.00	0	78.24	40.92
Exchanges	368.09	169.61	309.85	171.70
DSM	43.09	25.90	24.82	14.92
IPPs inside the State	62.59	21.05	46.05	15.65
Total Power Purchase Cost	1930.92	918.01	1284.64	645.07

Table-B				
Split up of Power purchase cost incurred towards DBFOO deficit , monsoon deficit and reduction in availability from approved LTAs				
	July		August	
	Quantum	Cost	Quantum	Cost
	MU	Rs Cr	MU	Rs Cr
Exchange Purchase to meet the Deficit due to DBFOO (100 MW JITPL not scheduled; reduction in availability of other unapproved contracts)	157.62	72.61	98.95	53.90
Additional exchange purchase due to monsoon deficit and reduction in availability from CGS and approved LTA (other than DBFOO)	210.47	96.99	210.91	117.80
Short term power purchase	0.00	0.00	78.24	40.92
Total Exchange Purchase	368.09	169.61	388.10	212.63

KSEB Ltd has also submitted the additional cost incurred during the month of July 2023 and August 2023 till date due to the failure of monsoon and unapproved DBFOO contracts.

Excess over approved Power Purchase cost		
Particulars	Jul-23	Aug-23
Demand(MU) approved in MYT order dated 25.06.2022	2172.42	2138.27
Generation(MU)approved in MYT order dated 25.06.2022	586.92	611.97
Power purchase(MU)approved in MYT order dated 25.06.2022	1846.33	1817.75
Approved rate in MYT order dated 25.06.2022(Rs/kWh)	4.66	4.66
Total Power Purchase cost approved by Commission (Rs Cr)	859.83	846.52
	Jul-23	Aug till 18.08.2023
Power Purchase cost approved by Commission (Rs Cr) (X)	859.83	491.53
Actual Power Purchase Cost (Rs Cr) (Y)	918.01	645.07

Increase in power purchase cost over approved cost due to monsoon deficit and reduction in availability from CGS and approved LTA and unapproved DBFOO contracts (Rs Cr) (Y-X)	58.18	153.54
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The actual power purchase in July-2023 and August-023 compared to the previous years is given below.

Particulars	July			August (up to 18th)		
	2022	2023	Increase over 2022	2022	2023	Increase over 2022
Total power purchase (MU)	1498.5	1930.9	432.4	852.8	1284.6	431.9
Cost of power purchase	716.0	918.0	202.0	404.8	645.1	240.3

As detailed above, the increase in cost of power purchase due to the failure of monsoon and reduction availability from CGS and unapproved contracts is Rs 58.18 crore in the month of July 2023 and 153.54 crore in the month of August 2023 till 20.08.2023, when compared to ARR figures; where the increase is Rs 202.00 crore and Rs 240.30 crore respectively when compared to last year figures.

Analysis and Decision of the Commission

6. The Commission having examined in detail the petition filed by KSEB Ltd dated 17.08.2023 with the prayer to allow power drawal from the unapproved DBFOO contracts at PPA rate till the finalisation of the medium term power procurement due to the severe financial crisis faced by KSEBL due to the critical power shortage in the State caused by failure of monsoon severity in the history of KSEBL, the provisions of the Electricity Act, 2003, KSERC (Terms and Conditions of Determination of Tariff) Regulations, 2021, hereby decided as follows.
7. In order to tide over the critical power situation of the State emerged due to the rejection of the final approval of the unapproved DBFOO contracts, the Commission vide the Order dated 07.06.2023 in Petition OP No. 24/2023 had permitted KSEB Ltd to make arrangements for procurement of power from the unapproved DBFOO contracts, for a further period of 75 days from the date of 07.06.2023 or till the arrangements of procuring 500MW RTC power on medium term basis, which ever is earlier. The relevant portion of the Order is extracted below.

“ 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, whichever 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."

8. Further, the Commission, vide the Order dated 07.06.2023 in petition OP No. 25/2023 had approved the Draft Bidding documents for procuring 500MW RTC power on medium term basis for five years under Finance, Own and Operate (FOO) basis. The Commission also directed KSEB Ltd to immediately proceed with the floating of tender and to finalise the same and issue LoA within 75 days from 07.06.2023. The relevant portion of the Order is extracted below.

"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."*

9. Subsequently, as requested by KSEB Ltd, the Commission vide the Order dated 14.07.2023 in petition OP No. 45/2023 had approved the draft model Agreement for Procurement of Power (model APP) for procurement of 500MW RTC power on medium term basis for five years under FOO basis. The Commission has also directed KSEB Ltd to finalise the tender and issue LoA

within the time limit specified in the Order dated 07.06.2023 in petition OP No. 25/2023. The relevant portion of the Order is extracted below.

“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 off. Ordered accordingly.”

10. However, KSEB Ltd in the instant petition submitted that, as per the revised time schedule and as per the provisions of the draft model APP, the power flow from the proposed medium-term contracts can start only from 1st January 2024 onwards. It means that, KSEB Ltd may take another 136 days from the date of instant petition dated 17.08.2023 to start power flow from the 500MW RTC power procurement on medium term basis initiated by KSEB Ltd in lieu of the unapproved DBFOO contracts.
11. The Commission has also noted the time schedule of the bidding process of the procurement of 500MW RTC power on medium term basis as per the ‘Corrigendum IV’ dated 20.07.2023 published by KSEB Ltd. The details are given below.

Time schedule of Bidding process of medium term power procurement-500 MW

	Event Description	Date and time
2	Last date and time for receiving queries on RFQ and RFP	31.07.2023 , 4:30PM

3	Pre- Bid meeting	04.08.2023, 11:00 PM
4	Utilities response to queries latest by	09.08.2023
5	Last date and time of submission of Application and Bids (including Section A and Section B)- Bid due date	19.08.2023, 01:30PM
6	Opening of Application	19.08.2023. 2:30PM
7	Intimation to Qualified Bidders for opening of their Bids	26.08.2023
8	Opening Bids of those qualified Bidders	04.09.2023, 11:30AM
9	Start e-Reverse auction	04.09.2023, 01:30PM
10	Close of e-Reverse Auction	(120 minutes from the start of e-Reverse Auction subject to Auto extension of 10 minutes)
11	L1- matching	If needed at the close of the e-Reverse Auction stage, there will be an L-1 mtaching round for 30 minutes
12	Letter of Award (LoA)	After approval of KSERC
13	Validity of Bids	120 days of Bid due date
14	Signing of APP	Within 10 days of award of LoA

As detailed above, as per the revised time schedule, KSEB Ltd can finalise the tender and issue LoA, at the earliest by 11.09.2023.

12. The Commission is aware of the critical power situation of the State due to the failure of monsoon. The present crisis is not due to the rejection of the approval of the PSAs of the unapproved DBFOO contracts. But the main reason is the failure of monsoon clubbed with reduction in internal hydel generation, increase in electricity demand due to the hot and humid climate in the State due to failure of monsoon, reduction in availability of power from Central Generating Stations, the reduction in availability of wind power in the southern States due to the reduction in wind on account of failure of monsoon etc.

The other southern states also facing power shortages due to various reasons including failure of monsoon. The electricity prices in the exchange is also relatively high due to the overdependence of the southern States to meet their shortfall in electricity demand. But vide the petition and also during the hearing, KSEB Ltd has miserably failed to appraise before the Commission the electricity shortages anticipated due to failure of monsoon, the additional liability to be incurred to tide over the crisis without scheduling power from the unapproved DBFOO contracts and with scheduling power from the unapproved DBFOO contracts. The Commission has also noted that, sufficient power is not available in the exchanges.

KSEB Ltd vide its submission dated 18.08.2023 has submitted that the increase in cost of power purchase due to the failure of monsoon and reduction availability from CGS and unapproved contracts is Rs 58.18 crore in the month of July 2023 and 153.54 crore in the month of August 2023 till 20.08.2023.

The Commission also noted that, KSEB Ltd may at least take few more weeks to finalise the medium term tender for procuring 500MW RTC power in lieu of the unapproved DBFOO contracts. KSEB Ltd in this petition has submitted that, the power flow from the proposed medium term contracts can start only

by 1st of January 2024, since the generators has to enter into Fuel Supply Agreement with coal suppliers based on the APP to be executed.

13. The Commission has noted the submission of KSEB Ltd regarding the critical power situation of the State and time limit specified to start power flow from the proposed medium term contracts. As discussed in the paragraph-11 above, as per the revised time schedule KSEB Ltd can finalise the tender and issue LoA of the proposed medium term contract by 15.09.2023. KSEB Ltd shall take sincere and dedicated efforts to finalise the tender as per the time schedule specified in the corrigendum notice dated 20.07.2023.

Considering the critical power situation of the State and to avoid load shedding and power restrictions in the State, KSEB Ltd shall finalise the proposed medium term contract on war footing basis and take sincere efforts to start flowing the power from the proposed medium term contracts as early as possible. The Top Management of KSEB Ltd shall also take coordinated efforts in quicker decision making in a crisis situated due to failure of monsoon and review the progress of the finalisation of the tender in every week to avoid delay in tender finalisation.

14. Considering the entire aspects in detail, the Commission decided to extend the validity of the Order of the Commission dated 07.06.2023 in petition OP No. 24/2025 upto 31.12.2023, or till the power flow from the proposed medium term contracts materialise, whichever is earlier, with the same terms conditions specified in that Order. In the mean time, KSEB Ltd shall finalise the tender for procuring 500MW RTC power through medium term basis in lieu of the unapproved DBFOO contracts.
15. The Commission hereby direct that, KSEB Ltd shall file the status of the medium term procurement latest by 11.09.2023 through an affidavit with all supporting documents.
16. The Commission has also examined the request of KSEB Ltd to permit them to pay electricity charges of the unapproved DBFOO contracts as per the PSA rates. The matter on the tariff payable to the unapproved DBFOO contracts is already decided matter and cannot be reopened now moreover the aggrieved parties filed appeal before the Hon'ble APTEL.
17. The Commission has also noted the request of KSEB Ltd to issue a letter to the coal suppliers to continue supply of linkage coal to unapproved DBFOO generators during the extended period which is agreed to by the Commission.

Orders of the Commission

18. The Commission, after examining the petition filed by KSEB Ltd dated 17.08.2023 with the prayer to allow power drawal from the unapproved DBFOO contracts at PPA rate till the finalisation of the medium term power procurement due to the severe financial crisis faced by KSEBL due to the critical power shortage in the State caused by failure of monsoon, the provisions of the

Electricity Act, 2003, KSERC (Terms and Conditions of Determination of Tariff) Regulations, 2021, hereby Orders the following;

- (1) The Commission hereby orders to extend the interim arrangement for procurement of power from the unapproved DBFOO contracts as per the Order dated 07.06,2023 in petition OP No. 24/2023 for the period **upto 31.12.2023** or till KSEB Ltd make alternate arrangements of procuring 500MW RTC power on medium term basis, which ever earlier.
- (2) KSEB Ltd shall take appropriate decision on the outcome of the bid and submit the petition before the Commission accordingly, latest by 11.09.2023 through an affidavit with all supporting documents.
- (3) The interim arrangement as above, shall be subject to the final decision of the Hon'ble APTEL in DFR No. 325/2023, against the Order of the Commission dated 10.05.2023 in petition OP No. 05/2021.
- (4) All other terms and conditions as per the Order of the Commission dated 07.06.2023 in petition OP No. 24/2023 is applicable for the extended period also.

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

List of participants during the hearing

1. Adv. Ajit Joy, Counsel for the petitioner
2. Shri Biju, Director Finance, KSEB Ltd
3. Shri Saji Paulose, Director- Transmission and System Operation
4. Shri Sajeev.G, CE (Commercial and Tariff), TRAC, KSEB Ltd
5. Shri. M.P.Rajan, DY CE, TRAC, KSEB Ltd.
6. Shri. Suresh A, EE, TRAC
7. Shri Manu Senan.V, AEE, TRAC
8. Smt Latha S.V, AEE TRAC
9. Smt Seema.P.Nair, AEE,TRAC
10. Smt Preethy C.S, Jt Secretary Power Dept
11. Adv Biju Mattam, Counsel for Jindal Power Ltd
12. Shri Vijayabhaskar Redy, CEO, JITPL
13. Shri Rajesh Maurya, DGM, Jindal Power Ltd
14. Shri Sanjay Mittal, Director Power sales, JITPL
15. Shri Pulak Srivastava, JITPL
16. Adv Matrugupta Mishra, Counsel for JITPL
17. Adv Ritika Singhal, JITPL
18. Shri Sambasivan, Convenor, Urjamithra Kerala
19. Shri Saji Mathew, MRF
20. Shri Prabhakaran K.V, Office Manager, HT & EHT Association
21. Shri. Dejo Kappen, Chairman, Democratic Human Rights and environment protection forum