

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

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

**OP No 69/2022**

In the matter of : Petition under Regulation 17(2)(i) of the KSERC (Terms and Conditions for Determination of Tariff) Regulations 2021 and in compliance of the directions of the Hon'ble Commission in the Order dated 14.06.2022 in OA No. 13/2020, Order dated 21.06.2022 in OP No. 22/2022, and Order dated 24.06.2022 in OP No. 23/2022, seeking approval for the PPA with National Thermal Power Corporation Limited for procuring power from Kudgi Super Thermal Power Plant and PPA with Neyveli Lignite Corporation Limited for procuring power from Neyveli New Thermal Power Station (2 x 500MW).

Petitioner : Kerala State Electricity Board Ltd (KSEB Ltd).

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

Date of hearing : 11.01.2023, 11:00 AM

Venue : e-hearing through video conferencing

**Order dated 22.02.2023**

1. M/s Kerala State Electricity Board Ltd (hereinafter referred as petitioner) on 11.11.2022 has filed a petition before the Commission with the prayer to approve the PPA *with National Thermal Power Corporation Limited for procuring power from Kudgi Super Thermal Power Plant and PPA with Neyveli Lignite Corporation Limited for procuring power from Neyveli New Thermal Power Station (2 x 500MW).*
2. The summary of the petition is given below;
  - (1) The Commission had notified the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff Regulations, 2021 on 16<sup>th</sup> November 2021. Regulation 17(2)(i) of the Tariff Regulations stipulate that, as on the 1<sup>st</sup> day of April, 2022, or thereafter, all modifications/ extension of the existing PPAs and all the

PPAs of the units which have declared their COD on or after 1<sup>st</sup> April 2018 shall have to be approved by the Commission.

- (2) The Commission vide the Truing up orders dated 14.06.2022 in OA No 13/2020 in the matter of TU 2018-19, Order dated 21.06.2022 in OA No 22/2022 in the matter of TU 2019-20 and Order dated 24.06.2022 in OP No 23/2022 in the matter of TU 2020-21, directed that, KSEB Ltd shall file petition for obtaining fresh approval for the Power Purchase Agreement from CGS whose COD was delayed even though the PPA of such projects are signed earlier before the notification of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021.
- (3) KSEB Ltd further submitted that, the following Central Generating Stations (CGS) from which KSEB Ltd has allocation as per the policies of the Central Government, had commissioned after April 2018.

Sl.No.	Project	MoP allocated Quantum (MW)	Date of signing PPA	Date of Commercial Operation
1	Kudgi Super Thermal Power Plant Stage-I (2400MW) owned by NTPC	111.72	3/11/2010	Sept 2018
2	Neyveli New Thermal Power Station (1000MW)	32.4	10/12/2010	Feb 2021

The summary of the above PPAs are given below.

- (4) **PPA with NTPC Ltd for power from Kudgi project.**  
KSEB Ltd had signed PPA with NTPC Ltd for the purchase of power from Kudgi Super Thermal Power Station on 03.11.2010. Presently, KSEB Ltd has an allocation of 111.72 MW from the project. The power station was commissioned on 15.09.2018. Since then, KSEB Ltd has been purchasing power from the project.

The salient features of the PPA signed with National Thermal Power Corporation Limited for the purchase of power from Kudgi Super Thermal Power Plant is given below

- (i) KSEBL entered into the PPA with NTPC for procuring power from the Kudgi Super Thermal Power Station on 3-11-2010.
- (ii) Kudgi Super Thermal Power Station Stage-I (3X800 MW) is located in the State of Karnataka.
- (iii) The power from the project is allocated to each State by the Ministry of Power (MoP), Government of India (GoI).
- (iv) As per Section 79(1)(a) of the EA-2003, the tariff of the Station is determined by Central Electricity Regulatory Commission as per the CERC (Terms and Conditions for determination of tariff) Regulations as amended from time to time.

- (v) As per the PPA, the allocation of capacity from the Station to the State of Kerala shall be as decided by GOI based on the existing GOI policy.
- (vi) The station was commissioned on 15-9-2018.
- (vii) KSEBL has an allocation of 111.72MW form the project.

**(5) PPA with NLC Ltd for procuring power Neyveli New Thermal Power Station (2 x 500 MW) at Neyveli.**

Neyveli New Thermal Power Station (2 x 500 MW), is owned by NLC Ltd, located in Tamilnadu. Power from the project is allocated to each State by MoP, Gol. At present KSEB Ltd has an allocation of 32.4 MW from the project. The tariff for electricity generated from the project is being determined by CERC. KSEB Ltd has entered into PPA with NLC on 10.12.2010 for procuring power from the Neyveli New Thermal Power Station. The plant was commissioned in February 2021. Since then, KSEB Ltd has been purchasing power from the project.

The salient features of the PPA with Neyveli Lignite Corporation Limited for power from Neyveli New Thermal Power Station (2 x 500MW) at Neyveli.

- (i) KSEBL entered PPA with Neyveli Lignite Corporation Ltd. for procuring power from the Station on 10-12-2010.
- (ii) Neyveli New Thermal Power Station (2 x 500MW) owned by NLC is located in the State of Tamilnadu.
- (iii) The tariff of the Station is determined by CERC.
- (iv) The allocation of capacity from the Station to the State of Kerala shall be as decided by GOI based on the existing GOI policy. At present KSEB Ltd has an allocation of 32.4MW power from the project.
- (v) The station was commissioned in February 2021

3. The Commission admitted the petition as OP 69/2022. Sri. Jayaraj, Chief Engineer and Smt Latha, Asst: Executive Engineer, presented the matter on behalf of the Petitioner. The summary of the deliberations during the hearing is given below.

- (1) As per Regulation 17(2) (i) of KSERC Tariff Regulations, 2021, as on the 1<sup>st</sup> day of April, 2022, or thereafter, all modifications/ extension of the existing PPAs and, all the PPAs of the units which have declared their COD on or after 1st April 2018 shall have to be approved by the Commission.

Moreover, the Commission vide Truing Up orders for the FY 2018-19, 2019-20 and 2020-21, had stated that KSEB Ltd shall obtain fresh approvals for power purchase from all Central Generating Stations (CGS) whose CoD was delayed even though the PPA of such projects are signed earlier. If KSEB Ltd fail to get fresh approval for such PPAs,

the Commission shall dis-allow cost of such power purchase at the time of Truing up and treat such purchase as unauthorised.

For Kudgi Super Thermal Power Plant Stage-I (2400MW) owned by NTPC Ltd, though the date of signing of PPA was on 03.11.2010, the project could achieve CoD only on 15.09.2018. Similarly, in the case of Neyveli New Thermal Power Station (1000MW), the date of signing of PPA was on 10.12.2010, however the project declared CoD only in February 2021.

KSEB Ltd further clarified that, as per the Provisions in KSERC (Terms and conditions for determination of Tariff) Regulations, 2014 and 2018, in the case of purchase of power based on allocation by MoP, GoI to the State, separate approval of the Commission for the power purchase was not required till the expiry of the period of the such agreement or arrangement. Hence, KSEB Ltd has not sought for approval of the Commission at the time of signing of PPA. The Commission also allowed the power purchase and its cost while approving the ARR and Truing up of accounts.

- (2) The Commission noted with concern that, the tariff for the electricity generated from both the projects are comparatively higher. In the case of KUDGI power station, the tariff including fixed cost is more than Rs 6.00/units in the recent months. KSEB Ltd could not properly explain with supporting documents the reason for such high cost, though the tariff is regulated by the Central Commission as per the Section 79(1) of the EA-2003. However, if the generators NTPC Ltd and NLC Ltd are impleaded as respondents to the petition, they could have explained the reasons for such high cost.

KSEB Ltd submitted that, this is only a petition for getting formal approval of the already concluded PPA. Further, the Commission has already included the purchase of power from these as part of the orders on ARR and Truing Up of accounts. Hence KSEB Ltd has not impleaded the M/s NTPC Ltd and M/s NLC Ltd as respondents to the petition.

**Commission noted the submission of KSEB Ltd. The Commission hereby direct that, henceforth, in all petitions seeking approval of the Power Purchase Agreements/ Power Supply Agreements with CGS/IPPS/ other sources, the generators/traders, as the case may be, shall be impleaded as respondents to the petitions.**

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

4. The Commission having examined in detail the petition filed by M/s KSEB Ltd as per the provisions of the Electricity Act-2003 and KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021, and decides as follows:

5. The present petition is filed for the formal approval of the Power Purchase Agreements (PPAs) entered into by KSEB Ltd with the following Central Generating Stations.

- (1) PPA dated 03.11.2010 with M/s NTPC Ltd for the purchase of 111.72MW power from its Kudgi Super Thermal Power Station at Karnataka State. The plant achieved commercial operation on 15.09.2018.
- (2) PPA dated 10.12.2010 with M/s NLC Ltd for the purchase of 32.4 MW from its Neyveli New Thermal Power Station, established in Tamilnadu. The plant declared commercial operation in February 2021.

The tariff of the electricity generated from the above power stations are determined by CERC as per Section 79(1) of the EA-2003.

Though KSEB Ltd had signed PPAs with the above stations in the year 2010, the commissioning of these projects was considerably delayed. The Kudgi Station of NTPC Ltd was commissioned only on 15.09.2018, whereas the Neyveli New Thermal Power Station was commissioned in February 2021.

6. The Commission has examined the prayer of KSEB Ltd with the provisions of the EA-2003 and the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021, and noted the following;

- (1) As per the Section 86(1)(b) of the EA-2003, 'regulating the power purchase' is one of the statutory functions of the SERCs. The relevant Section is extracted below.

*"86. (1) The State Commission shall discharge the following functions, namely: -*

*.....*

*(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;*

- (2) The Regulation 17 (2) of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021 (herein after referred to as Tariff Regulations, 2018, provide as follows.

*"17. Determination of generation tariff. –*

*(2) Existing generating stations, -*

*(i) where the Commission has, at any time prior to 1st day of April, 2022, approved a power purchase agreement between a generating business/ company or a licensee and a distribution business/ licensee the tariff for supply of electricity by the generating business/ company*

to the distribution business/ licensee shall be in accordance with such agreement and for such period as approved by the Commission:

**Provided that as on the 1st day of April, 2022, or thereafter, all modifications/ extension of the existing PPAs and all the PPAs of the units which have declared their COD on or after 1st April 2018 shall have to be approved by the Commission:**

*Provided further that prior to 6 months of the expiry of the validity of the PPA, the distribution licensee, if it so desires to extend the PPA, shall submit a petition with the revised mutually initialed PPA for consideration of the Commission.*

*(ii) a petition for approval of any power purchase agreement shall be made by the distribution business/ licensee to the Commission within a period of three months from the date of notification of these Regulations;*

- (3) Regarding the approval of the already signed PPA with CGS whose CoD was delayed, the Commission vide the Order dated 24.06.2022 in Petition OP No. 23/2022 in the matter of Truing Up of accounts for the year 2020-21, has issued the following directions to KSEB Ltd for immediate compliance.

*“5.20 The Commission noted that, except the power purchase from New Neyveli Thermal Power Station (NNTPS), all other sources are approved in the MYT Order dated 08.07.2019. KSEB Ltd submitted that, they had signed PPA for power purchase from NNTPS in 10.10.2010. However, the Commercial Operation of the 1st unit (500MW) was started on 28.12.2019 and the 2nd unit (500MW) was started in February 2021. Since there was uncertainty in the commercial operation of the plant, the licensee has not included the NNTPS as sources of power purchase in the MYT petition. KSEB Ltd scheduled 99.65 MU from the NNTPS in the year 2020-21 and the total cost of power purchase was Rs 43.02 crore at an average rate of Rs 4.32 per unit.*

*KSEB Ltd further submitted that, Tariff Regulations 2014, and Tariff Regulations 2018, which stipulate that all the PPAs entered into after the notifications of these Tariff Regulations shall be only be done with the prior approval of this Commission. Since the PPA of the NNTPS was signed on 10.10.2010, much before the notifications of the Tariff Regulations, 2014 and Tariff Regulations, 2018, KSEB Ltd was not sought separate approval for scheduling power from this station after its CoD. KSEB Ltd further submitted, all the PPAs signed after notifications of the Tariff Regulations 2018 shall be done only with the prior approval of the Hon’ble Commission.*

*The Commission has examined the submission of KSEB Ltd regarding the power purchase from NNTPS since December 2019. The Commission also noted that, though the PPA was signed on 10.10.2010, the COD of the 1st unit was only on 28.12.2019, i.e after 9 years and 58 days from the date of signing PPA. It is also a fact that, the power situation in the country and the overall power situation in the State has also considerably changed since then. The maturity of the short-term power market including power*

*exchanges and also the electricity generation RE sources such as solar and wind has resulted in overall reduction in cost of power purchase. Hence, KSEB Ltd is required to exercise the choice of whether to continue or not to continue with the PPA at the time of CoD of such delayed projects. The Commission specifically points out that such large time overruns completely alter the economic viability of power generated from such plants due to cost overrun. Hence, a project which is viable at the time of sanctioning of the project may not be so after such larger time gaps. The Commission also states that, any contract entered into between 166 the generator and KSEB Ltd is mutually binding and time is the essence of any contract. Hence, if CoD and provisional tariff mentioned in the PPA is substantially altered, there is no obligation on the part of KSEB Ltd to purchase such power due to non-honouring of the generator's commitments.*

*The Commission further directs KSEB Ltd that mere allocation of power by the Ministry of Power does not make it obligatory to purchase such power. In fact, all power purchase has to be done only after it is approved by the Appropriate Commission as mandated in Section 86(1)(b) of the EA-2003.*

**Hence the Commission hereby direct that, KSEB Ltd shall obtain the fresh approvals for power purchase from CGS whose CoD was delayed even though the PPA of such projects are signed earlier. If KSEB Ltd fail to get the fresh approval for such PPAs, the Commission shall disallow cost of such power purchase at the time of Truing up and treat such purchase as unauthorised.**

7. As per the above provisions of the EA-2003, Tariff Regulations, 2021, and the Order of the Commission dated 24.06.2022, the fresh approval of the Commission is mandatory for the purchase of power from the CGS having concluded PPA with KSEB Ltd whose COD was on or after 1<sup>st</sup> April 2018.
8. In the instant case, the PPA with NTPC Ltd for purchase of power from Kudgi Super Thermal Power Station was signed on 30.11.2010, however the commissioning of the project was delayed and COD was declared only on 15.09.2018. As per the allocation of the Ministry of Power (MoP), Government of India, 111.72 MW is allocated to the State of Kerala. KSEB Ltd has been purchasing power from the project since its COD at the tariff determined by Central Electricity Regulatory Commission (CERC) from time to time.

The Commission also noted that, it has been approving the power purchase from Kudgi Super Thermal Power Station of NTPC Ltd vide the Order dated 08.07.2019 in the Orders on ARR for the MYT period 2018-19 to 2021-22, and also vide the Order dated 25.06.2022 in the matter of approval of ARR , ERC and Tariff for the MYT period 2022-23 to 2026-27. The Commission while issuing the Orders on Truing Up for the year 2018-19 to 2020-21 also granted approval for the actual cost of power purchase from the Kudgi Super Thermal Power Station of NTPC Ltd.

Considering these reasons, the Commission decided to grant formal approval of the PPA entered into with NTPC Ltd on 03.11.2010, for the purchase of Power from Kudgi Super Thermal Power Station of NTPC Ltd.

9. Similarly, KSEB Ltd had entered into PPA with M/s NLC Ltd for the purchase of 32.40 MW power from its Neyveli New Thermal Power Station on 10.12.2010. The commissioning of the plant was delayed and it could be commissioned only in February 2021. MoP, Gol had allocated 32.40 MW from the project to the State of Kerala. Since the date of CoD, KSEB Ltd has been purchasing power from the project, at the tariff determined by Central Electricity Regulatory Commission (CERC) from time to time.

The Commission vide the Order dated 25.06.2022 in the matter of approval of ARR, ERC and Tariff for the MYT period 2022-23 to 2026-27 has approved the power purchase of 32.40 MW from Neyveli New Thermal Power Station of NLC Ltd.

Being a Central Generating Station and its tariff is determined by CERC, the Commission has decided to grant formal approval of the PPA entered by KSEB Ltd with NLC Ltd dated 10.12.2010, for the purchase of 32.40 MW from Neyveli New Thermal Power Station of NLC Ltd.

**Order of the Commission.**

10. The Commission after examining the petition filed by M/s KSEB Ltd seeking approval for the PPA with National Thermal Power Corporation Limited for procuring power from Kudgi Super Thermal Power Plant Stage-I (2400MW) and PPA with Neyveli Lignite Corporation Limited for procuring power from Neyveli New Thermal Power Station (2 x 500MW) as per the provisions of the Electricity Act,2003 and KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021, hereby orders the following;
- (1) Grant formal approval of the PPA dated 03.11.2010 entered by KSEB Ltd with NTPC Ltd for the purchase of 111.72 MW from its Kudgi Super Thermal Power Plant located at Karnataka.
  - (2) Grant formal approval of the PPA dated 10.12.2010 entered by KSEB Ltd with M/s NLC Ltd for the purchase of 32.40MW from its Neyveli New Thermal Power Station located in Tamilnadu.

The petition disposed of and 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