

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: Shri. Preman Dinaraj, Chairman
Adv. A.J Wilson, Member (Law)

Date of Hearing: 29.04.2021

OP No 19/2021

In the matter of

: Petition seeking approval of draft Tripartite Power Purchase Agreement (TPPA) duly initialled by the petitioner and co-petitioner along with the respondent in terms of the Commission's common Order dated 24.04.2020 in OP 58 of 2019 & OP 58A of 2019

Petitioner : M/s INOX Renewables Ltd

Petitioner represented by : Sri. Ravi Singh, INOX
Sri. Mayank Bugani, Advocate INOX
Sri.Bupesh Juneja, INOX Wind
Sri. Suku Nair INOX

Co-petitioner : M/s Damodar Jagannath Malpani

Co-petitioner represented by : Sri. Prabhulla Khinvasara Malpani, Malpani Group
Sri.Kailas. B, Malpani Group

Respondents : Kerala State Electricity Board Ltd (KSEB Ltd)

KSEB Ltd represented by : Sri. KGP Nampoothiri, Executive Engineer
Smt. Latha S.V, Asst: Executive Engineer

Interim Order dated 26.05.2021

1. M/s. INOX Renewable Limited (M/s INOX) (petitioner) and M/s D J Malapni (Co-petitioner) on 12.03.2021, filed a petition before the Commission with the following prayers.
 - a) *Grant approval of the duly initialed TPPA draft enclosed and allow to the petitioners to execute the formal PPA with the respondent, KSEB Ltd.*
 - b) *Pass such other Order or orders as this Hon'ble Commission may wish to pass for doing substantial justice in the matter and to uphold the provisions of the Act of 2003.*

2. The petitioners submitted that the petition is filed in compliance of the Order of the Commission dated 24.04.2020 in Petition No. OP 58 of 2019 & OP No. 58A of 2019 with respect to the 16MW (2x 8MW) wind power projects commissioned by the petitioners in the land allocated by KINFRA at Textile park, Kanjikode, Palakkad District Kerala.

Background

3. The Commission vide Order dated 03.10.2018, determined the tariff of the 16 MW wind project of INOX at KINFRA park Kanjikode @Rs 4.09/unit, duly considering the benefit of accelerated depreciation. The relevant portion of the Order is extracted below.

“(1) The levelised tariff for the electricity generated from the 16 MW WEG installed by M/s INOX at the KINFRA land at Kanjikode, Palakkad is approved @Rs 4.09/unit, duly considering the benefit of accelerated depreciation.

(2) The levelised tariff approved by the Commission is applicable for the entire electricity injected into the grid from the date of synchronization.

(3) KSEB Ltd shall reimburse, any tax paid on the RoE, limited to the amount of equity specified in this Order. For claiming the tax, developer shall furnish the proof of payment of such tax to KSEB Ltd.”
4. Subsequently, the Commission vide Order dated 02.12.2019 in RP 01/2019 has modified the Order dated 03.10.2018 as follows.

“(1) In the Order dated 03.10.2018 in OP No. 08/2018, at the end of the paragraph 53(1), the following words shall be added ‘and the leveled tariff without the benefit of accelerated depreciation is approved @Rs 4.54/unit’. All other terms in the Order dated 03.10.2018 remains unchanged.”
5. Meanwhile, M/s D J Malpani, the strategic investor, on 05.04.2019 filed petition before the Commission for approval of the draft initialed PPA with KSEB Ltd. Since M/s Inox Renewables Ltd (IRL) was the developer and had filed the original petition for the determination of tariff, the Commission directed M/s INOX to file the formal petition for the approval of the PPA, and accordingly, M/s INOX filed a petition on 10.07.2019 for the approval of the PPA. After appraising the petition in detail including conduct of hearings, the Commission vide Order dated 24.4.2020 in OP No 58/2019 & 58A /2019 ordered as follows:

“

 - (1) *The Power of Attorney dated 7th March 2019, given by M/s INOX Renewables Ltd to M/s Damodar Jagannath Malpani, shall be registered as per the Registration Act. 1908.*
 - (2) *M/s INOX Renewables Ltd, M/s Damodar Jagannath Malpani and KSEB Ltd, shall enter into a Tripartite Power Purchase Agreement, specifying the role and responsibilities of each entity, as discussed (but not limited to) under paragraph-17 of this Order, for the purchase of the electricity generated from the 16 MW WEG at Kanjikode, Palakkad.*
 - (3) *The Tripartite Power Purchase Agreement shall be signed for a period of 25 years from the date of Commercial Operation Date (COD) of the project.*

- (4) *The initialed Tripartite Power Purchase Agreement shall be submitted before the Commission for approval, as per the provisions of the KSERC (Conduct of Business) Regulations,2003 and KSERC (Terms and Conditions of Determination of Tariff) Regulations, 2018.*
 - (5) *The petition filed by M/s D.J Malpani dated 05.04.2019 in OP No. 58A/2019, and the petition filed by M/s INOX dated 10.07.2019 in OP No.58/2019 stand disposed off as above.*
6. Thereafter, as requested by M/s INOX, the Commission vide letter dated 17.07.2020 clarified that, in view of the decision to execute a tripartite agreement among KSEB Ltd, M/s INOX Renewables Ltd and M/s DJ Malani, the power of attorney is not mandatory between M/s INOX Renewables Ltd and M/s DJ Malpani as per the order of the Commission dated 24.04.2020.
7. M/s Inox Wind Energy Ltd on 09.04.2021 filed an IA for seeking approval to substitute M/s Inox Renewables Ltd (IRL) with M/s Inox Wind Energy Ltd. The petitioner submitted that, the Board of Directors of erstwhile INOX Renewables Ltd (IRL) as part of Business Restructuring, had approved a Composite Scheme of Arrangement whereby the said IRL was amalgamated into Gujarat Fluorochemicals Limited (GFL) w.e.f 01.04.2020. Further, as approved by Shareholders, SEBI, Stock exchanges and Hon'ble National Company Law Tribunal (NCLT), Ahmedabad Bench, approved the demerger of the Renewable Energy Business of GFL Limited into its wholly-owned subsidiary Inox Wind Energy Limited (IWEL) effective from 09.02.2021.

Consequently, post implementation of the said scheme w.e.f 09.02.2021, the petitioner M/s Inox Renewables Ltd (IRL) has ceased to exist as it stood merged with GFL. Further, the applicant M/s Inox Wind Energy Ltd has acquired all the Renewable Energy Business of GFL Ltd, the applicant is the proper and necessary party which now stands in the shoes of the erstwhile IRL. Hence M/s Inox Wind Energy Ltd requested to substitute the name of the applicant i.e., Inox Wind Energy Ltd in place of the erstwhile Inox Renewables Ltd in the Petition OP No. 19/2021.

Hearing

8. The Commission admitted the petition as OP 19/2021 and hearing conducted through video conference on 29.04.2021. Sri. Mayank Bugani, Advocate, presented the matter on behalf of the petitioner and Smt. Latha S.V, represented KSEB Ltd. Summary of the deliberations during the hearing is given below.

- (1) M/s INOX submitted that, as directed by the Commission vide Order dated 24th April 2020, KSEB Ltd, M/s INOX and M/s DJ Malpani, has initialled the draft Tripartite Power Purchase Agreement (TPPA), through mutual discussions. It is further submitted that the petition was filed by M/s INOX Renewables Ltd (IRL) and due to demerger M/s IRL ceased to exist and all rights and obligations which would accrue to the IRL now stand vested solely and exclusively with M/s INOX Wind

Energy Ltd (IWEL). The Order of the National Company Law Tribunal (NCLT) dated 25.1.2021 approving the demerger and formation of IWEL is submitted along with the IA filed on this behalf.

- (2) The Agreement contains the roles and responsibilities of the three parties, KSEB Ltd, M/s INOX and M/s DJ Malpani. The KSEB Ltd will purchase the entire energy generated, M/s INOX is the developer and the EPC contractor who is carrying out the O&M for the entire life of project. M/s D J Malpani will be the strategic investor of the project.
- (3) As per the Article 6.9 of the draft initialled TPPA, the tariff for power generated from the plant shall be the leveled project specific tariff of Rs 4.09/unit with accelerated depreciation benefit, as per the KSERC order dated 03.10.2018, which shall form integral part of the agreement. During the last three years from the CoD, the investor has been raising invoices and KSEB Ltd has been remitting the electricity charges at this rate. The investor M/s DJ Malpani submitted during the hearing that, they would like to raise the invoice @Rs 4.54/unit, the leveled tariff approved by the Commission without the benefit of accelerated depreciation. In reply, KSEB Ltd clarified that, all the parties to the agreement had mutually consented to raise the bill at the tariff of Rs 4.09/unit with the benefit of accelerated depreciation and the investor agreed to avail the accelerated depreciation.

Based on the deliberations, the Commission clarified that since for the last three years the investor has been raising the invoice and KSEB Ltd remitting the electricity charges @ Rs 4.09/unit, and this is the rate mentioned in the initialled TPPA, it is not appropriate to change the tariff at this stage. Hence, the Commission also suggested to the investor DJ Malpani to avail the benefit of accelerated depreciation.

- 9. During the hearing, the Commission after detailed examination of the draft initialled TPPA, suggested the following modifications/changes in the draft initialled TPPA to give more clarity and to avoid litigations in future.

- (1) The petitioner has not submitted any of the Schedules referred to in the draft initialled TPPA along with the petition filed before the Commission. Hence the petitioner shall within 10 days from the date of this order, submit the same before the Commission. **Consideration of clause 1(n) can be done only after the appraisal of Schedule 4 referred therein.**
- (2) Clause 1(r) and 1 (s): The Commission directed the parties concerned to provide the details of the minimum Cut-in wind speed referred under Clause 1(r) and maximum Cut-out wind speed referred under Clause 1(s) of the initialled TPPA. The petitioner and respondent clarified during the hearing that, the details regarding the Cut-in wind speed and Cut-out wind speed are available in the Schedule 2 to the initialled TPPA. **The Commission has noticed that these Clauses can only**

be examined after submission of the Schedules to the initialled draft TPPA before the Commission.

- (3) Clause 2.0: effective date and term of the agreement: The second sentence may be modified as "*The term of the agreement may be extended for a further period by mutual agreement with modifications as considered necessary, only with the prior approval of KSERC*".

The Commission further noted that "Time is the essence of any contract" and a contract cannot be indefinitely extended. The contract cannot operate without mutual consent prior to termination of agreement. Hence the last sentence in Clause 2.0 starting with "In case KSEBL" need to be modified as follows.

"*In case KSEB Ltd desires and the generator is willing to supply power beyond the Agreement period of 25 years, the licensee shall file a formal petition before KSERC at least 12 months before the Agreement expires seeking formal approval with complete documents including detailed justification, tariff and its justification, PPA etc* ".

This is essential considering the fact that the Commission has already determined the project specific tariff of this project considering 25 years as the life of the plant. Hence, at this time, this plant will be a fully depreciated one and hence the need for fresh determination of tariff.

- (4) Clause 6.4:
The Commission noted that the periodicity of the calibration and maintenance of meters is not specified under Clause 6.6 of the draft initialled TPPA. This has to be specified explicitly.
- (5) Clause 6.6
It is stipulated under Clause 6.6 of the draft TPPA that, in case both the check meter and the main meter fail, at least one of the meters shall be replaced **immediately** by a correct meter. The word immediate does not provide any specific time period. **Hence the Commission hereby direct that, a definite number of days for replacing one of the meters shall be specified under this clause.**
- (6) Clause 6.8:
The clause 6.8 gives freedom to KSEB Ltd not to purchase electricity from this plant even without any reasonable grounds. Similarly, if the price of electricity goes up, the generator can also refuse to supply power to KSEB Ltd and other wise, if price goes down, KSEB Ltd may refuse to avail power from the plant. Such possibilities are required to be avoided in contracts of such nature and duration. Hence suitable modification is required in the Clause 6.8 to safeguard the interest of both petitioners and respondent.

Hence it is directed that, the parties to the TPPA may suitably modify the Clause 6.8 of the TPPA.

(7) Clause 6.11:

Clause 6.11 of the initialled TPPA provides the rates for reactive energy drawal by the plant from the grid. KSEB Ltd, clarified during the hearing that the rate of reactive energy provided in the draft TPPA is at the same rate, approved by the Commission for the reactive energy drawal by CIAL from the State Grid, in the year 2017. **Since nearly 4 years have elapsed, the Commission hereby direct that, KSEB Ltd and the petitioners may mutually decide and include the rate, considering the increase in electricity tariff since the year 2017.**

(8) Clause 6.12:

It is clarified that the tariff for electricity availed from KSEB Ltd, during shutdown of the generator or for any construction/maintenance work during the term of TPPA, shall be at the prevailing tariff, as per the orders issued by the Commission from time to time. The Clause may be modified accordingly.

(9) Clause 6.14:

Commission noted that, there is ambiguity in the wording of the Clause 6.14. The generator is required to provide SCADA visibility of the plant to the SLDC.

However, the Clause 6.14 has to make it clear that the generator has to provide the generation data to SLDC, even during the time when the SCADA visibility is not recorded. **Clarifications are required as to what are the instances when the data is to be transmitted by means other than automatic transmission. It is suggested that the first sentence is to be modified as “if there is no SCADA visibility....”**

(10) Clause 6.15:

As per the prevailing Grid Codes notified by CERC and KSERC, and also as per prudent practices followed, 15 minute block wise scheduling is followed. Hence, the first sentence of the Clause- 6.15 shall be suitably modified. In case this scheduling is changed, then such amended schedule shall be binding on this Agreement. This is especially relevant since there is a proposal to reduce the scheduling time block from 15 minutes to 5 minute time block.

(11) Clause 6.16:

More clarity is to be provided on the rate for excess energy, during the billing period when the energy drawn from the grid happens to be more than the energy injected by the generator to the grid. **Hence it is**

directed that, the rate for raising the bills for excess energy if it is drawn from the grid during the billing period shall be explicitly specified under Clause 6.6 so as to give more clarity and to avoid disputes.

- (12) Clause 8.0.
Based on the modifications agreed for Clause 6.11, the Clause 8.0 also shall be suitably modified.

- (13) Clause 10.0 Force majeure:

The Force Majeure clause shall be modified duly considering the Force Majeure clause as per the paragraph 7.5 of the Bidding guidelines dated 08.12.2017, the Guidelines for Tariff Based Competitive Bidding Process for procurement of Power from Grid connected Wind Power Projects.

- (14) Clause 11.0.
The numbering system used in the Clause may be corrected.

Further, proviso (i) to this clause may be modified by adding “after” between “coming into effect” and “the date of signing”

- (15) Clause 12.0 Dispute resolution: As per the Section 86 (1)(f) of the Electricity Act, 2003, KSERC is the Appropriate Commission empowered for dispute resolution between the Generating Companies and distribution licensees located within the State of Kerala. Hence, the words “the same shall be dealt as per Electricity Act, 2003” shall be replaced with “the parties shall approach Kerala State Electricity Regulatory Commission for resolving the same”.

- (16) Clause 14.0 Termination:

There is ambiguity in the terms of this clause. For instance, if one of the parties purposefully defaults the terms and conditions of the Agreement for more than 60 days, then the termination clause can be evoked.

Hence the termination clauses 14.0 shall be suitably modified duly considering the provisions under Paragraph 7.7 of the **Bidding guidelines dated 08.12.2017, the Guidelines for Tariff Based Competitive Bidding Process for procurement of Power from Grid connected Wind Power Projects.**

This will safeguard against such an eventuality and consequent avoidable litigations during the duration of the TPPA.

(17) Clause 15.7:

The Clause 15.7 of the draft initialled TPPA gives freedom to the parties to the Agreement to modify the clauses of this Agreement through mutual discussions. As per Section 86(1)(b) of the Electricity Act, 2003, the State Commission shall “regulate electricity purchase and procurement process of the distribution licensees including the price at which electricity shall be procured from the generating companies.....”. Hence any modifications in the Agreement shall also be done only with the formal approval of this Commission and shall come into effect from the date of approval for such modifications by this Commission.

Hence it is directed that, the words “*with prior approval of the Commission and shall come into effect from the date of approval of any such modification by this Commission*” shall be added at the end of the sentence.

Orders of the Commission

10. Based on the deliberations during the hearing, the Commission hereby directs the petitioners M/s Inox Wind Energy Limited and M/s D J Malpani and the respondent M/s KSEB Ltd to comply the following, latest by 20.06.2021 and submit the same to this Commission for consideration.
 - (1) Modify the Clauses of the draft initialled Tripartite Agreement signed between the parties as per the directions contained under paragraph 9 of this order.
 - (2) Submit all the schedules referred in the draft TPPA along with the modified draft TPPA before the Commission.
 - (3) A copy of the Annexure G referred in the NCLT order dated 25.01.2021 shall also be submitted before the Commission.

Sd/-
Adv. A.J. Wilson
Member (Law)

Sd/-
Preman Dinaraj
Chairman

Approved for issue,

Sd/-
Secretary