

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

O.P. 32/ 2021

In the matter of : **Approval of PPA between M/s. Malabar Waste Management Pvt Ltd (MWMPL) Njialianparambu, Kozhikode and Kerala State Electricity Board Limited (KSEBLtd) for purchase of 6 MW ISWM power by KSEB Ltd**

Petitioner : **M/s Malabar Waste Management Pvt Ltd**

Respondent: **M/s KSEB Ltd., Thiruvananthapuram**

Date of Hearing : **04.08.2021**

Order dated 11.08.2021

1. The Chief Executive Officer, M/s Malabar Waste Management Pvt Ltd filed a Petition before the Commission on 08.07.2021 for approval of Power Purchase Agreement in terms of the direction issued by the Commission dated 10.02.2021 in OA No. 06/2020 to be entered into with KSEB Limited for purchase of 6 MW power by KSEB Ltd from the proposed ISWM with WtE project of M/s Malabar Waste Management Pvt Ltd, Njialianparambu, Kozhikode for 25 years from the date of signing of the Agreement.

Background

2. The State Government had taken a policy decision to setup Waste to Energy (WtE) Plants at 7 sites in the State, one each at Thiruvananthapuram, Kollam, Thrissur, Palakkad, Malappuram, Kozhikode and Kannur Districts, on Design, Build, Finance, Operate and Transfer (DBFOT) basis in Public Private Partnership (PPP) mode. Government has appointed, M/s Kerala State Industrial Development Corporation (KSIDC) as the nodal agency for the setting up of WtE plants in collaboration with the Local Bodies. KSIDC invited bid from bidders to undertake development of an ISWM project with WtE plant of minimum 300 TPD processing capacity for Kozhikode Cluster under DBFOT basis for a period of 27 years. The bidding process initiated on 22.11.2018. M/s. Zonta Infratech Private Limited (ZIPL) as the lead member has been awarded with the contract. In accordance with tender condition, a Special Purpose Vehicle (SPV), Malabar Waste Management Private Limited (MWMPL) has been incorporated as the Concessionaire for undertaking the

project. Kozhikode Cluster comprises of seven Local Self Government Institutions (LSGIS) of Kozhikode District in the State of Kerala and referred as the participating Local Bodies.

3. The State Government vide its Order No G.O.(Ms)No.50/2019/LSGD, dated 14.5.2019, approved the tipping fee of Rs 3500/tonne, offered by M/s Zonta Infratech Pvt Ltd, the concessionaire for setting up of Waste to-Energy plant at Kozhikode. Government also ordered that, the proposal for Viability Gap Fund/ Grant support as admissible for the project under Swatch Bharath Mission (Urban) shall be recommended to Ministry of Housing and Urban Affairs, Government of India, on submission of Detailed Project Report by the Concessionaire. Further, as per the above Government Order dated 14.05.2019, the maximum VGF expected is Rs 58 cr., consisting of Rs 20.3 Cr central share, Rs 13.5 Cr State share and Rs 24.18 cr. Urban Local Body's share. The petitioner, as the 'Concessionaire' entered into Concession Agreement between the Concessionaire, GoK, KSIDC and the Participating Local Bodies (PLBs) on 04.09.2019. As per the Concession Agreement, the petitioner is entrusted with the 'design, engineering, finance, procure, construct, install, commission, operate and maintain the project for a period of 27 years. Further, as per the clause 2.6.3(j) of the Article-2 of the Concession Agreement, the concessionaire has to file a petition before the KSERC for fixing the tariff for the electricity generated from the WtE plant to be supplied to KSEB Ltd.
4. Accordingly, the concessionaire M/s. Malabar Waste Management Pvt Ltd (hereinafter referred as M/s. MWMPPL or the petitioner) filed a petition before the Commission on 29.01.2020 with the following prayers:
 - (1) Take the accompanying Tariff petition of Malabar Waste Management Private Limited on record and treat it as complete.
 - (2) The Levelized Tariff of Rs 8.13 or any other as determined by the Commission be approved for the 6MW gross power output produced for 25 years from the Commercial Operation Date (CoD) of the project being life of the project.
 - (3) Any electricity generated by MWMPPL from the project in excess of the levels mentioned in the Power Purchase Agreement be bought by Kerala State Electricity Board (KSEB Limited) at the same Levelized Tariff approved by the Commission.
 - (4) The electricity generated from the project of MWMPPL be ordered to be treated as a MUST-RUN project by KSEB.
 - (5) The project be ordered to be exempted from Merit Order Dispatch of the KSEB and SLDC of the State.
 - (6) Condone any inadvertent omissions/errors/shortcomings and permit the petitioner to add/change/modify/alter portion(s) of this filing and make further submissions as may be required at a later stage; and
 - (7) Pass such an order as the Hon'ble Commission deems fit and proper as per the facts and circumstances of the case.

5. The Commission, after the detailed examination of the petition filed by M/s Malabar Waste Management Private Limited, the comments received from the general public and the stakeholders as well as the comments of the respondent KSEB Ltd in detail as per the provisions of the Electricity Act-2003, Tariff Policy 2016, KSERC (Renewable Energy & Net Metering) Regulations, 2020 and issued the following orders:

- (1) The levelized tariff for the electricity generated from the 6MW MSW plant of the petitioner at Kozhikode is provisionally approved @ Rs 6.81/unit without the benefit of accelerated depreciation and Rs 6.31/unit with the benefit of accelerated depreciation in case the petitioner so desires for the electricity generated up to the normative PLFs specified under paragraph 31 of this Order.
- (2) The tariff for the excess generation over the normative PLF specified under paragraph 31 of this Order shall be @75% of the approved levelized tariff.
- (3) KSEB Ltd shall purchase the entire electricity generated from the project at the tariff as ordered under paragraphs (1) and (2) above.
- (4) As per Regulation 38(1) of the KSERC (Renewable Energy & Net Metering) Regulations, 2020, the project of the petitioner shall be treated as 'MUSTRUN' and shall not be subjected to Merit Order Principles.
- (5) KSEB Ltd shall reimburse, any tax paid on the RoE, limited to the amount of equity specified in this order, after getting separate invoice from the petitioner with necessary documentary evidence on payment of such tax to the authorities.
- (6) The provisional tariff is now determined considering the VGF available for all MSW plants. Any other incentive or subsidy offered by the Central and State Government shall also be necessarily availed by the developer and an appropriate reduction in the provisional tariff now determined will be effected. The Commission would like to emphasize that it is the responsibility of the petitioner to take all appropriate steps to avail these benefits.
- (7) The petitioner, if they so desire, may file a fresh petition for tariff determination after declaring CoD with full details as per Regulation 36 of the RE Regulations, 2020.

However, if the petitioner does not file any fresh petition for tariff determination within 180 days from the date of declaration of the CoD, the provisional tariff determined in this Order shall be treated as the final tariff.

6. Accordingly, the Commission provisionally approved the tariff for the electricity generated from the proposed MSW project at Kozhikode @ Rs 6.81/unit without considering the benefit of accelerated depreciation and Rs 6.31/unit in case the developer desires to avail the benefit of accelerated depreciation. As proposed by the petitioner, the Commission adopted the useful life of the plant as 25 years from the date of commercial operation of the project.

7. M/s. Malabar Waste Management Pvt Ltd (the Petitioner) filed this Petition on 08.07.2021 before this Commission for approval of Power Purchase Agreement for sale of power to the KSEB Ltd (Distribution licensee) from Integrated Solid Waste Management (ISWM) with Waste to Energy (WtE) facility at Njalianparambu, Kozhikode having waste processing capacity of 450 Tons per day and power output 6 MW for a period of 25 years. The Petitioner has submitted the initialled PPA by both parties along with his letter dated 07.07.2021 with Annexures and has requested before the Commission to consider the amendments as enclosed under Annexure-2. Further, the Petitioner has brought the attention of this Commission at Clause 25 of the Order dated 10.02.21 of the Commission that “...***in order to achieve the financial closure of the project, the Commission has decided to approve a provisional tariff. However, the petitioner as the generator can enter into a PPA with KSEB Ltd only after the final tariff and the PPA is approved by this Commission***” and Clause 48, point (7), that “*the petitioner, if they so desire, may file a fresh petition for tariff determination after declaring CoD with full details as per Regulation 36 of the RE Regulations, 2020.if the petitioner does not file any fresh petition for tariff determination within 180 days from the date of declaration of the CoD, the provisional tariff determined in this Order shall be treated as the final tariff.*”
8. The Petitioner has produced the modifications suggested along with initialled draft as Annexure 2.
9. The Commission had admitted the Petition as OP No. 32 of 2021 and conducted the hearing through Video Conferencing on 04.08.2021 at 11 AM.
10. Sri.Raj Kumar, the Managing Director of M/s Malabar Waste Management, Sri. SreejuNair, the Company Secretary, Mr. Deshpande, Technical Expert, Pushpanathan, the Chief Technical Engineer and Sri. Antony Clement Raj, Vice President were attended the hearing representing M/s Malabar Waste Management Pvt Ltd. Smt. Latha. S.V, Asst Executive Engineer and one Shri. Shibu attended hearing representing KSEB Ltd. Sri.Raj Kumar made a presentation highlighting certain points contained in the draft initialled PPA and explained the peculiarities of the proposed WtE project. This is a Waste Energy Management Project having power output of 6MW for a period of 25 years. The Company has established similar Waste Energy Plant Management projects at Jabalpur having 9.50 MW and 15MW project at Andhra Pradesh. M/s Malabar Waste Management Pvt Ltd (Concessionaire) has entered into a Concession Agreement with Governor of Kerala represented by Government of Kerala, KSIDC and seven local bodies of the Kozhikode District. The project is funded by IFC of World Bank and SBI. The Petitioner has suggested to modify certain clauses contained in the draft initialled PPA.
11. The petitioner has further submitted that the Project is funded by International Financial institutions and Global investors and execution of Power Purchase Agreement (PPA) is a gating factor for the disbursement of funds for the project implementation. Hence the Petitioner has requested to approve the initialled draft PPA and accord the approval to enter in to Power Purchase

Agreement with KSEB Ltd to commence the project construction activities. It is also submitted that they shall file a fresh petition if required after declaration of CoD within the stipulated time as per Clause 48 (7) under the Orders of the Commission.

Analysis and Decision of the Commission::

12. The Commission has examined and scrutinized the draft Agreement initialed by both parties along with the modifications suggested by the petitioner under Annexure 2 in detail. Based on the deliberations during the hearing, the Commission has examined the observations and comments of both the parties, their views and suggestions. The Commission has also identified the following issues, based on the petition as well as deliberations made by both parties;

- (1) **Whether the modifications suggested by the Petitioner in Clause No.1.12 regarding the definition of “Concession Agreement” can be accepted or modified?**

As per the existing Clause in the PPA,
“Concession Agreement: Means **the binding** agreement entered in between the “Concessionaire / SPV” and thefor delivery and processing of municipal solid waste as part of the bid documents”.

The modification suggested is,
“Concession Agreement: Means **the binding** agreement entered in between the “Concessionaire / SPV” and the “Government of Kerala, KSIDC and participating local bodies” for delivery and processing of municipal solid waste as part of the bid documents”.

The Commission noted that the word “binding agreement” used in the definition may have un-intended legal implications. Further, KSEB Ltd also pointed out that they are not a party to the “Concession Agreement”. In response, the petitioner clarified that the “Concession Agreement” is executed by the “Governor of Kerala, represented by Government of Kerala, between M/s Malabar Waste Management Ltd and the participating local bodies”. The Commission has duly considered the views expressed and objections raised by the petitioner and the respondent in this petition with reference to the “Concession Agreement” produced by the petitioner in detail.

The Commission notes that the “Concession Agreement” is executed between the Governor of Kerala represented by the Govt of Kerala, KSIDC, and the Participating Local Bodies (PLBs) and M/s Malabar Waste Management Pvt Ltd on 4th day of September, 2019.” As pointed out by KSEB Ltd, they are not a party to the “Agreement”. Further, the Commission considered whether any un-intended implications would result from the usage of the term “binding agreement”. In order to establish a “binding agreement”, it is essential that both the parties are signatories to this

“agreement”. However, in this case KSEB Ltd is not a party to the “concession agreement”. Further, in the case of a dispute, the question regarding the binding nature of any agreement has to be examined by the Commission separately, as per the circumstances and based the provisions of Indian Contract Act, 1872.

As mentioned in the preceding paragraphs, adding the adjective “binding” in the definition of the word “binding agreement” may create unintended legal implications. Further, since one of the signatories to this PPA, KSEB it is not a signatory to the “concession agreement”, the Commission is of the firm view that the word “binding agreement” is unwarranted in the definition clause and can be avoided. Hence, the Commission hereby directs that the Amendment proposed be modified as follows:

“Concession Agreement” means the “Agreement executed between Governor of Kerala represented by the Govt of Kerala, KSIDC, Participating Local Bodies (PLBs) and M/s Malabar Waste Management PvtLtd on 4th day of September, 2019”.

(2) Whether the request of the Petitioner to delete the provision for reactive compensation Clause 5.9 in the PPA can be agreed to?

During the hearing, Mr. Desh Pandey, Technical Expert representing M/s Malabar Waste Management Pvt Ltd suggested that the word “Reactive Compensation” may be deleted from Clause 5.9 of the initialed PPA. In this connection, the existing clause is extracted hereunder:

*“The Concessionaire/SPV has to provide day ahead generation schedule to SLDC. Real time SCADA visibility, **reactive compensation** is also to be provided as and when introduced by KSERC”.*

The Commission has also noted the proposed amendment which is as follows:

“The Concessionaire/SPV has to provide day ahead generation schedule to SLDC. Real time SCADA visibility, is also to be provided as and when introduced by KSERC”.

The Commission has examined the proposed amendment by the Petitioner in detail. Shri Desh Pandey, Technical Expert and representative of the Petitioner submitted that they being the power generator will be consuming active power but will also inject reactive power into the grid. He further requested the Commission not to insist upon installation of capacitors or similar equipment since they would be adding to the project cost and thereby impact the tariff which has already fixed by the Commission. He further requested the Commission to consider deleting the word “reactive compensation” from Clause 5.9 of the initialed PPA.

To the request made by the petitioner, the Commission during the hearing mentioned that, the Regulation relating to Intra State Deviation Mechanism is

in the draft stage. However, this Regulation is yet to be finalised because in the Kerala scenario, the addition of renewable energy to the grid is not significant. Further, the prime generator in Kerala happens to be KSEB Ltd, who is also the main distribution licensee of the State. The Commission also stated that the aggregate generation within the state by renewable energy generators is less than 200 MW. The Commission further mentioned that they would be considering notifying the Regulation at an appropriate time and once the Regulation is notified, it would become obligatory on the part of every generator inducing reactive power into the system to provide the necessary compensation as per the Regulations.

Further, the reactive power compensatory mechanism can be achieved by the introduction of capacitors, which would ensure that in any given point of time, the power factor would be as close to unity as possible. The Commission further mentioned that by asking for deletion of these provisions, the petitioner may deny themselves the benefit what they would otherwise be eligible as per the interstate DSM Regulations. The Commission also noted that it is the primary responsibility of all system utilising participants to ensure that the power factor is maintained as close to unity as possible.

To this, the petitioner admitted that in addition to the active energy that they would be sending to the grid, they would also be adding reactive power and sending in to the grid. They further submitted that a part of their active energy would serve to compensate for the reactive energy that a may induce in the system and for which they do not get any compensation from KSEB Ltd. They further submitted that during shutdowns, when they are not generating any power, they would have to rely upon energy from the grid for their start-up operations. During such times, the amount of reactive energy that they would be inducing into the grid would be very minimal.

In order to understand the issue better, the Commission asked the petitioner to clarify whether they have installed any mechanism for monitoring and measuring the reactive power which they would either be inducing or drawing from the system. To this, the petitioner mentioned that while there is a provision in the meter to record the reactive power pumped in to the grid by the generator.

The Commission further pointed out that since the PPA is being executed for a period of 25 years, it is the Commission's intent to avoid maximum interpretational difficulties as possible by trying to bring in clarity and by identifying and avoiding possible dispute areas. The Commission further pointed out that bi-directional meters are capable of measuring and recording the energy flow at any given point of time. Hence, there should not be any difficulty in providing data as and when demanded from SLDC or the SCADA operator. To this, the petitioner mention that their system would have data backup for two months/three months. The Commission also suggested that to ensure availability of data for longer periods, the petitioner could consider the option of transferring these data regularly to an external hard disk or any other suitable storage device. At the same time, the Commission is fully conscious of not recommending any equipment which would have an adverse

impact on the tariff already finalized.

After having duly considered this issue in great detail, the Commission mentioned that it would not be correct to predict changes that may occur in the Regulations at a later point of time. However, the Commission is of the firm view that while the generator would be required to provide the day ahead generation schedule to SLDC, it would not be possible at this point of time to exclude or delete this clause as suggested by the petitioner. Any reactive power compensation mechanism if and when introduced by the Commission would have to be looked at, in that context and therefore any exclusion at this point of time may not be possible or even advisable.

The Commission also drew the attention of both the parties to the fact that all Regulations notified by the Commission is classified as subordinate legislation and is the law of the land pertaining to the sector to which it applies. Any PPA which does not comply to these statutory Regulations is not legally sustainable and would be struck down on appeal. Further, the Commission cannot exclude any generator from the statutory requirements as per the law and that too for a future point of time. **Hence, the Commission is of the firm view that there is no requirement to bring about any changes in the existing clause in the PPA and it may be retained as such.**

(3) Whether the request of the Petitioner to delete the existing Clause 5.10 in the PPA agreeable?

Clause 5.10. of the PPA is extracted hereunder:

“The Concessionaire/SPV shall ensure reactive power generation/ absorption as per the terms laid out in KSEGC. In the event of any conditions not specified in KSEGC, the relevant clauses of Indian Electricity Grid Code shall be applicable. Reactive power transaction shall be billed as per KSERC regulations. Reactive power at lagging power factor up to 10% of next active energy generated shall be charged at 25ps/KVARh. For drawal of more than 10% of the next active energy 50ps/KVARh shall be charged for the total drawal.

The petitioner requested before the Commission to delete Clause 5.10 of the PPA.

The Commission examined the request in detail and noted the following.

The need for providing reactive power compensation is very well explained by the Commission while addressing the proposal of the petitioner to modify the clause 5.9 of the draft initialed PPA for deleting the word ‘reactive power compensation’ under paragraph 12 (2) above.

The Commission has further noted that, the Regulation 24 of the Kerala State Electricity Grid Code, 2005, provides for System Security Management, and further, the sub-Regulation (10) of Regulation 24 deals with the System Security Management by generating units. The relevant Regulations from

Kerala State Electricity Grid Code, 2005 is extracted below.

“24. System Security Management- (1) All users shall co-operate with the STU so that the respective sections of the power system operate in synchronism with Kerala State Power Grid.

.....

(10) All generating units shall have automatic voltage regulators in operation, with appropriate settings. All power factor corrections at substations of STU's/Licensees' shall have automatic and/or proper PF correction controls. If for any reason it has to be operated without the same, the SLDC shall be intimated immediately with reasons and duration of such operation and its concurrence obtained.

(a) All generators are to be loaded to the rated MVAR to keep the bus voltage at the rated voltage or the MVAR has to be suitably regulated to maintain the rated Bus Voltage. Power system Stabilisers (PSS) in the AVR of the generating units (wherever provided), shall be got properly tuned by the respective generating unit owner, as per plan prepared for the purpose by the STU, from time to time. STU will be allowed to carry out checking of PSS and further tuning it, wherever considered necessary.

(b) Reactive power compensation should ideally be provided locally by generating reactive power, as close to the reactive power compensation as possible. The beneficiaries are therefore expected to provide local Var compensation/generation such that they do not draw Var from the grid, particularly under low voltage condition. To discourage Var drawl by beneficiaries, Var exchanges with the grid shall be priced at a nominal rate, as may be specified by KSERC from time to time.

(c) Notwithstanding the above, the SLDC may direct a beneficiary to curtail its Var drawl/injection in case the security or safety of any equipment is endangered.”

As per the provisions of the KEGC 2005 as extracted above, the petitioner shall avoid Var drawal from the grid, by installing adequate capacitors, static var compensators etc. The petitioner shall also ensure that, the reactive power drawl from the grid shall be limited to 5% of the active energy. Further, considering the social importance of Waste to Energy project and this Project of the petitioner being the first of its kind, the Commission decided to exempt the petitioner from the payment of reactive power compensation, provided the reactive power drawal from the grid is upto 5% of the net active energy generated. However, if the reactive power drawal from the grid is more than 5% of the active energy, the petitioner is bound to pay for the reactive power drawal at the rate to be approved by the Commission. Hence, during the implementation of this PPA, if the reactive power drawal by the petitioner from the grid is more than 5% of the active energy generated, KSEB Ltd is at its liberty can approach the Commission with necessary details for fixing the rate for reactive power drawal by the Petitioner from the grid.

Considering these aspects in detail, the Commission here by the direct the petitioner and respondent to modify the Clause 5.10 of the draft initialed PPA duly considering the above observations of the Commission.

(4) Whether the request of the Petitioner to modify Clause 5.11 inserting the words “after adjusting the infirm power” can be agreed to?

The Clause 5.11 of the draft initialed PPA is extracted below.

“5.11 The charges for power drawn by the Concessionaire / SPV from KSEBL grid during construction period, testing and pre-commissioning period and maintenance/ shut down period of the power plant shall be billed by KSEBL on monthly basis at the appropriate tariff as per the prevailing tariff order issued by KSERC.”

The petitioner requested to modify the Clause 5.11 of the draft PPA as follows.

“5.11 The charges for power drawn by the Concessionaire / SPV from KSEBL grid during construction period, testing and pre-commissioning period and maintenance/ shut down period of the power plant after adjusting the infirm power shall be billed by KSEBL on monthly basis at the appropriate tariff as per the prevailing tariff order issued by KSERC.”

The Commission examined the request of the Petitioner in detail, as per the provisions of the prevailing KSERC (Renewable Energy & Net Metering) Regulations, 2020, and also with the prevailing tariff applicable for the electricity used for construction purposes by the project developers.

As per the prevailing Tariff Order dated 08.07.2019, the electricity availed for construction works shall be billed at LT VI General (F) tariff at LT, and HT-II(B) tariff at HT. The petitioner has to pay the electricity charges for the power drawn during the construction period at the appropriate tariff as per the prevailing Tariff Order.

Further as per the Regulation 2(1)(bi) of the KSERC (Renewable Energy and Net Metering) Regulations, 2020, defines the Renewable Source of Energy as follows.

“(bi) ‘Renewable Source of Energy’ means the source for the generation of electricity from renewable sources such as small hydro, large hydro with capacity above 25 MW commissioned after 08.03.2019, wind, solar including its integration with combined cycle, biomass, bio fuel cogeneration, urban or municipal solid waste and such other sources approved by the MNRE as renewable source;

Further, the term ‘infirm power’ is defined under Regulation 2(1) (af) of the KSERC (Renewable Energy and Net Metering) Regulations, 2020 as follows.

*“(af) ‘Infirm Power’ means the power injected by a generation project into the grid before the Date of Commercial Operation (COD), for testing, trial run & commissioning of the project. Since power from renewable energy sources is **non-firm in nature**, the tariff fixed by the Commission post COD shall also be applicable for the power injected into the licensee system prior to CoD, subject to the condition*

that the RE generator enters into an agreement with the licensee to supply power from the RE plant at the tariff determined by the Commission.

Provided that, if energy injected into the system by the RE generator prior to CoD without identifying a buyer or if there is no agreement with the licensee regarding the sale of power, SLDC shall settle the transactions at the Deviation Settlement Rates.”

As per the Regulation 2(1) (af) read along with the Regulation 2(1) (bi) of the KSERC (Renewable Energy and Net Metering) Regulations, 2020, the energy injected into the grid during the testing and commissioning is defined as ‘infirm power’. However, the tariff fixed by the Commission post CoD shall also be applicable to the infirm power injected into the grid pre-CoD, considering the non-firm nature of the renewable energy including the MSW based power projects. Hence, the infirm power shall be treated at par with the energy injected into the grid post COD period separately.

Considering the above reasons, the Commission is of the considered view that there is no need to modify the Clause 5.11 of the draft PPA. Hence the request of the petitioner is rejected.

(5) Whether the petitioner’s request to waive Clause 5.12 is legally admissible?

The Clause 5.12 of the draft initialed PPA is extracted below.

“5.12. 1. Benefits, if any offered for the renewable power project, benefits accruing on account of carbon credit etc shall be shared between the Concessionaire/ SPV and KSEBL in the following manner.

- a) 100% of the gross proceeds on account of CDM benefit to be retained by the project developer in the first year after the date of commercial operation of the generating station;*
- b) In the second year, 10% of the CDM benefit shall be shared with the beneficiaries and the balance 90% of the benefit shall be retained by the project developer.*
- c) In the third year onwards, the share of the beneficiaries shall be progressively increased by 10% every year till it reaches 50%, thereafter the proceeds shall be shared in equal proportion, by the generating company and the beneficiaries.*

5.122 . The Commission through provisional Tariff Order dated 10.02.2021, has directed that the project developer shall avail the CFA for this project and this benefit shall be passed on to the ultimate consumers of the state through a reduction in the cost of electricity produced from the project.”

The petitioner requested to waive the clause 5.12.1 and 5.12.2, however KSEBL objected to the same.

The Commission examined the request of the petitioner in detail.

The Regulation 49 of the KSERC (Renewable Energy & Net metering) Regulations, 2020 deals with sharing of Clean Development Mechanism (CDM) Benefits, which is extracted below.

“49. Sharing of Clean Development Mechanism (CDM) Benefits.-

(1) The proceeds of carbon credit from approved CDM project shall be shared between generating company and concerned beneficiaries in the following manner, namely:

a) 100% of the gross proceeds on account of CDM benefit to be retained by the project developer in the first year after the date of commercial operation of the generating station;

b) In the second year, 10% of the CDM benefit shall be shared with the beneficiaries and the balance 90% of the benefit shall be retained by the project developer.

c) In the third year onwards, the share of the beneficiaries shall be progressively increased by 10% every year till it reaches 50%, thereafter the proceeds shall be shared in equal proportion, by the generating company and the beneficiaries.”

The Commission noted that, the clause 5.12.1 of the draft initialed PPA regarding the sharing of CDM benefits is in line with Regulation 49 of the KSERC (Renewable Energy and Net Metering) Regulation, 2020. The petitioner is mandated to share the CDM benefits with KSEBL as per the Regulation 49 of the KSERC (Renewable Energy and Net Metering) Regulation, 2020 and the Commission cannot waive the developer from sharing the same with KSEB Ltd. Hence the Commission ordered to retain the Clause 5.12.1 of the draft initialed PPA as it is.

Regulation 50 of the KSERC (Renewable Energy & Net Metering) Regulations, 2020 deals with the “Subsidy or Incentive by the Central/ State Government.” The relevant Regulations is extracted below:

“50. Subsidy or Incentive by the Central / State Government. -

(1) The Commission shall take into consideration any incentive or subsidy offered by the Central or State Government, including accelerated depreciation benefit if availed by the generating company, for the renewable energy power plants while determining the tariff under these Regulations.”

The Commission has noted that, Central Government has been offering Central Financial Assistance @Rs 5.00 crore/MW subject to a maximum of Rs 50.00 crore per project. Duly considering the CFA provided by the Central Government to the MSW based power projects, the Commission vide the Order dated 10.02.2021 in the matter of fixing the tariff of 6MW MSW project of the petitioner, ordered as follows.

“42.the petitioner is yet to obtain this subsidy/incentives/central financial assistance available to the Municipal Solid Waste projects. As per the Order of the MNRE, Central Government dated 28.02.2020 and 17.06.2020 in File No. 20/222/2016-17, the Central Finance Assistance up to Rs 5.00 crore/MW is available to MSW projects. The Commission hereby direct that, the project developer shall avail the CFA for this project and this benefit shall be passed on to the ultimate electricity consumers of the state through a reduction in the cost of electricity produced from this project.”

As per the provisions of KSERC (Renewable Energy & Net Metering) Regulations, 2020 and Order of the Commission dated 10.02.2021 in the matter of ‘Fixing tariff for proposed 6 MW ISWM Waste to Energy (WtE) Project, Njalianparambu, Kozhikode’, the Commission cannot waive the petitioner from passing on the benefit of CFA available on this project to the ultimate electricity consumers of the State through a reduction in the cost of electricity produced from this project..

Considering the above, the Commission reject the request of the petitioner to waive Clause 5.12 of the initialed PPA.

(6) Whether the proposed termination of clause 10 dealing with termination of the PPA and the amendment and proposed is to be approved?

The Clause 10 of the existing initialed PPA is extracted below.

‘10.Termination:

In the event of a continuing default by way of violations of the terms and conditions of the agreement by either party lasting for more than 60 days, except in force majeure conditions, the other party shall issue a termination notice to the defaulting party. If the defaulting party does not cure the default within 30 days from the date of termination notice, the other party shall have the right to seek termination of the agreement on a date which shall not be less than 60 days from the date of termination notice.”

The petitioner requested to modify the Clause-10 of the PPA as follows.

“Termination:

10.1 In the event of a continuing default by way of violations of the terms and conditions of the agreement by either party lasting for more than 60 days, except in force majeure conditions, the other party shall issue a termination notice to the defaulting party. If the defaulting party does not cure the default within 30 days from the date of termination notice the other party shall have the right to seek termination of the agreement on a date, which shall not be less than 60 days from the date of termination notice.

10.2 Except for the event of defaults mentioned in 10.1, this PPA shall not be terminated by either party during the Term of the Agreement till the time the said Concessionaire Agreement is valid.”

The petitioner further submitted that, the Project Financiers are requesting to clearly state in the termination clause that this PPA shall not be terminated till the time Concession Agreement is active unless due to the event of defaults mentioned in the PPA. Hence the petitioner proposed to add the additional clause 10.2 under Termination.

The Commission examined in detail the Clause-10 ‘Termination’ as per the draft initialed PPA and the modifications proposed by the petitioner. The project of the Petitioner is a Waste to Energy project and KSEB Ltd as the incumbent distribution licensee is bound to purchase the entire electricity generated from the project at the tariff approved by the Commission till the entire term of this Agreement. As a must run project, the electricity generated from the project is exempted from merit order dispatch. Further, the cost of power purchase by KSEB Ltd from the sources approved by the Commission is pass through in tariff. Hence, KSEB Ltd cannot default in making payments to the developer for the energy generated and supplied to KSEB Ltd. Accordingly, under normal circumstances KSEB Ltd cannot issue termination notice to the petitioner, without getting prior permission of this Commission.

Similarly, the petitioner also cannot issue termination notice and sell the electricity generated from this project to other parties including third parties by availing open access without the approval of the State Government and this Commission. ***Hence, the Commission is of the considered opinion that, under normal circumstance, parties to this Agreement cannot initiate termination notice, except during Force Majeure conditions. The Commission hereby direct that Clause 10 of the PPA be modified as under:***

10. Termination

This Agreement can be terminated only as a Consequence of Force Majeure Event, specified under Clause-8 of this Agreement and subject to the final approval of the KSERC and formal approval from the State Government. Upon such a termination due to a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination).

- 13.** On scrutiny of the draft initialed PPA, the Commission approve the following modifications for avoiding unnecessary disputes during the course of implementation of this PPA.

SL No	Existing Clause in the initialed PPA	Modification suggested by the Commission
1	At first para in the agreement, the sentence "For the purpose of establishing such a WtE project at Njeliyanparambu, Kozhikode.	AND Whereas, for the purpose of establishing such a WtE project at Njeliyanparambu, Kozhikode,
1	Clause 1.2. Agreement Means this Agreement including all appendices, exhibits and schedules together with any amendments thereto as may be made by mutual consent of both the parties in writing, herein after referred to as PPA	1.2. Agreement or PPA Means this Power Purchase Agreement including all appendices, exhibits and schedules together with any amendments thereto as may be made by mutual consent of both the parties in writing.
2	Clause 1.3 Billing Month Means the period commencing from first day of the calendar month and ending the last day of the same month.	1.3 Billing Month Means the period commencing from on the 0.00 midnight of the first day of the calendar month and ending on 12th 00.00 am at midnight the last day of the same month.
3	Clause 1.12 Concession Agreement means the binding agreement entered in between the "Concessionaire/SPV"for delivery and processing of Municipal Solid Waste as part of the bid documents.	1.12 Concession Agreement means the "Agreement executed between Governor of Kerala represented by the Govt of Kerala, KSIDC, Participating Local Bodies (PLBs) and M/s Malabar Waste Management PvtLtd on 4 th day of September, 2019".
4	Clause 5.8. Tariff for power generated from the plant shall be at the provisional tariff determined by KSERC in its order dated 10.02.2021 @ Rs.6.81/unit without the benefit of accelerated depreciation.....	5.8. Tariff for power generated from the plant shall be at the provisional tariff determined by KSERC in its order in OA.No.06/2020 dated 10.02.2021 @ Rs.6.81/unit without the benefit of accelerated depreciation
5	Clause 5.9 The Concessionaire/SPV	In para 5.9 the repeated word "The" may be omitted

6	Clause 5.12.2. The Commission through provisional Tariff Order dated 10.02.2021, has directed that the project developer shall avail the CFA for this project and this benefit shall be passed on the ultimate electricity consumers of state through a reduction in the cost of electricity produced from this project.	5.12.2. The project developer shall avail the CFA for this project and this benefit shall be passed on the ultimate electricity consumers of state through a reduction in the cost of electricity produced from this project as directed by the Commission in Order dated 10.02.2021.
7	Clause 8.0 Force Majeure Neither party shall be liable.....act of god, change in law or any other such reason.....	In the clause 8.0 "Force Majeure", the word " change in law " may be deleted.

Order of the Commission:

14. The Commission after detailed examination of the petition filed by M/s Malabar Waste Management Pvt Ltd (MWPPL) for the approval of the draft intialled PPA, proposals submitted by the petitioner for amending certain clauses in the draft PPA, the comments of KSEB Ltd, and other relevant rules and Regulations, hereby orders the following:
- (1) Approve the draft intialled PPA subject to the modifications approved under paragraphs 12 and 13 of this order.
 - (2) A copy of the final PPA shall be submitted before the Commission within one month from the date of signing of Agreement for information and record.

The petition disposed off.

sd/-
Adv. A.J.Wilson
Member

sd/-
Preman Dinaraj
Chairman

Approved for issue

C.R.Satheesh Chandran
Secretary i/c