

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

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

**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. Mayank Bugani, Advocate INOX  
Sri. Sonti Venkatesh, INOX  
Sri. Suku Nair, Consultant 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

First Hearing on : 29.04.2021

Second hearing on : 22.06.2021

Third hearing on : 13.07.2021 (adjourned as requested by the petitioner)

Fourth hearing on : 25.08.2021

**Daily Order dated 03.09.2021**

1. M/s. INOX Renewable Limited (M/s INOX) (petitioner) and M/s D J Malpani (Co-petitioner) on 12.03.2021, filed a petition before the Commission with the following prayers.
  - a) *Grant approval of the duly initialled 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 Commission admitted the petition as OP 19/2021. First hearing on the petition conducted through video conference on 29.04.2021. Based on the deliberations during the hearing, the Commission vide interim Order dated 26.05.2021 directed the petitioner's M/s Inox Wind Energy Limited and M/s D J Malpani and the respondent M/s KSEB Ltd to comply the following.
- (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.
3. In compliance of the direction of the Commission, M/s INOX, vide letter dated 01.06.2021 submitted the following details before the Commission.
- (i) Schedules and Annexures to the petition
  - (ii) Copy of Annexure G referred in NCLT Order
- However, the petitioner M/s INOX Wind Energy Limited, not submitted the modified draft initialled Tripartite Power Purchase Agreement after incorporating the suggestions of the Commission issued vide interim Order dated 26.05.2021.
4. Second hearing on the petition was conducted on 22.06.2021 through video conference. Based on the request of the petitioners during the hearing, the Commission adjourned the matter and directed the parties to submit the modified TPPA latest by 02.07.2021. However, the parties failed to comply with the directions of the Commission.
5. Third hearing on the petition held on 13.07.2021 through video conference. Sri. Mayank Bugani, Advocate appeared on behalf of the petitioners and Sri. KGP Nampoothiri, Executive Engineer appeared on behalf of the respondent KSEB Ltd. Based on the deliberations during the hearing the Commission directed the petitioners and respondent to comply the following.
- (1) *The petitioners shall finalise and initial the draft TPPA latest by 26<sup>th</sup> July 2021 and forward the same to KSEB Ltd.*
  - (2) *KSEB Ltd shall submit the initialled TPPA latest by 10<sup>th</sup> August 2021 to the Commission for the approval.*
  - (3) *The final hearing on the petition shall be conducted on 25<sup>th</sup> August 2021. The Commission hereby clarify that no further adjournment shall be given on the subject petition.*

However, the parties could not comply with the directions of the Commission.

6. The fourth hearing on the petition was held on 25.08.2021, through video conference. Sri. Mayank Bugani, Advocate, presented the matter on behalf of the petitioner M/s INOX Wind Energy Ltd and Sri. KGP Nampoothiri, Executive Engineer appeared on behalf of the respondent KSEB Ltd. The summary of the deliberations during the hearing is given below.

- (1) At the outset the Commission expressed its displeasure in prolonging the finalization of the TPPA between M/s. INOX Renewable Limited (M/s INOX) (petitioner), M/s D J Malpani (Co-petitioner) and the respondent KSEB Ltd.
- (2) M/s INOX Wind Energy Ltd on behalf of the petitioners submitted that, the petitioners forwarded the initialled TPPA to KSEB Ltd on 5<sup>th</sup> August, however KSEB Ltd vide its letter dated 6<sup>th</sup> August 2021 informed the petitioner that the respondent require another six week time to finalise the TPPA.
- (3) KSEB Ltd, during the hearing submitted the following additional issues for incorporating the TPPA to be signed between the parties.
  - (i) Land lease agreement.  
KSEB Ltd submitted that the land lease agreement was signed between the KINFRA and INOX Renewables Ltd (IRL) for allotting the land at KINFRA park at Palakkad for developing the wind farm. However, M/s INOX Renewables Ltd (IRL) ceased to exist and all functions handled by the IRL is assigned to the new company INOX Wind Energy Ltd by the parent company Gujarat Fluorochemicals Ltd. However, the land lease agreement is yet to be assigned to the new assignee INOX Wind Energy Ltd.

M/s INOX Wind Energy Ltd (IWL), submitted during the hearing that, for assigning the land lease agreement to the new entity may take at least three months. Hence IWL suggested to incorporate a condition precedent in the TPPA to be fulfilled by the IWL that, within three months from the date of signing the TPPA, IWL shall get assigned the land lease agreement to the new assignee M/s IWL.

- (ii) Capacity Utilisation Factor (CUF).  
KSEB Ltd raised the issue that, the Commission determined the tariff of the 16MW wind project by adopting the CUF of 22%. However, the actual annual CUF since the date commissioning in the year 2017 is more than 27%. As per the first proviso to Regulation 52(2) of the KSERC (Renewable Energy & Net Metering) Regulations, 2020, if the actual CUF is varies by (+) or (-) 5%, then the annual mean wind power density shall be measured at 100m hub height and the tariff shall be re-determined for the CUF corresponding to the measured wind power density.

The Commission during the hearing clarified that, the tariff of the 16MW wind plant of the petitioners was determined vide Order of the Commission dated 03.10.2018. The petitioners has been

supplying power to the approved tariff since the FY 2017-18 onwards. However, due to various reasons the signing of the TPPA got delayed. The Commission further pointed out, the tariff determined based on the repealed regulations cannot be re-opened by the Commission as and when the Commission issues amendments/ modify or issue new Regulations on Renewable Energy and related issues.

However, since the tariff determined by the Commission is the ceiling tariff, the petitioners and KSEB Ltd can agree for a lower tariff than the tariff approved by the Commission.

- (iii) Reduced tariff for the generation in excess of the normative CUF adopted for tariff determination.

KSEB Ltd pointed out that, as per the present tariff Order, the excess generation over the normative CUF of 22% also charged at the levelized tariff determined by the Commission with the normative CUF of 22%. However, as per the guidelines notified by the GoI dated 8<sup>th</sup> December 2017 for procurement of wind power through competitive bidding route, the excess generation may be charged at 75% of the PPA tariff. In this regard, KSEB Ltd requested to incorporate a provision in the TPPA.

- (4) The Commission noted the new issues raised by KSEB Ltd and their request to incorporate the same in the TPPA. The Commission hereby clarify that, the tariff determined by the Commission vide Order dated 03.10.2018 is the ceiling tariff. The petitioners and respondent are free to negotiate between them and agree for a consensus on the new issues raised by KSEB Ltd.

7. Based on the deliberations during the hearing, the Commission hereby directs the parties to discuss and arrive a consensus on the new issues raised by the KSEB Ltd during the hearing as discussed under paragraph 6(3) above, and incorporate the same in the draft TPPA to be submitted before the Commission for approval. The parties shall finalise and submit the draft initialled TPPA, latest by 01.10.2021.

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

**Sd/-**  
**Preman Dinaraj**  
**Chairman**

Approved for issue

C R Satheeshchandran  
Secretary (i/c)