

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present : Adv. A.J Wilson, Member (Law)

OP No 45/2022

In the matter of : Petition seeking approval for entering into Power Purchase Agreement with Neyveli Lignite Corporation Ltd (M/s NLCIL) for procurement of 400 MW power from NLCIL coal based Talabira (3 × 800 MW) power plant for a period of 25 years

Petitioner : Kerala State Electricity Board Ltd

Respondent : Neyveli Lignite Corporation of India Limited

Petitioner represented by : Shri M.P.Rajan, Dy CE, TRAC, KSEB Ltd

Respondent represented by : Shri Shaji John, Director (Power), NLCIL
Shri S.Ravi, GM (Commercial), NLCIL

Date of hearing : 25.08.2022, 11.00 AM (e-hearing through Video Conference)

Order dated 31.08.2022

1. M/s Kerala State Electricity Board Ltd (hereinafter referred to as M/s KSEB Ltd or the petitioner) filed a petition before the Commission on 29.07.2022 with the prayer to “*grant approval for procuring 400MW power from the NLCIL Talabira project at the tariff determined by CERC and approve the PPA and the amendments thereto.*”
2. The summary of the petition filed by M/s KSEB Ltd is given below.
 - (1) KSEB Ltd had executed PPA with Neyveli Lignite Corporation Ltd (M/s NLCIL) on 03.01.2011 for procuring power from its coal based Sirkali Power Project phase -I (3x660 MW) for 25 years from the date of CoD. The power plant is proposed at Nagapattanam district of Tamil Nadu. But this power station could not be materialized due to delay in land acquisition.
 - (2) Subsequently, NLCIL intimated KSEB Ltd on 01.02.2017 that the Government of India had allotted coal blocks at Talabira II & III coal blocks in Sambalpur District of Odisha. This coal blocks were allotted for

meeting the coal requirements of its already operational NTPL TPS (2x500 MW) and also to meet the coal requirements of the proposed Sirkali project.

- (3) Considering the transportation cost involved for transportation of coal from Talabira to Sirkali over a distance of 1650 KM through Road/Rail/Sea, NLCIL decided to develop a pit head power station at Talabira (3x800 MW) to substitute Sirkali Power project. KSEB Ltd vide its letter dated 01.04.2017 has communicated its willingness to purchase power up to 400 MW from the pit head station at Talabira in Odisha State. NLCIL requested KSEB Ltd to execute a supplementary PPA for purchase of power from the Talabira pit head station due to its change in location.
- (4) The particulars of Talabira pit head station as on 03.11.2020 is as given below;

Estimated Project Cost	₹19422 Cr.
Levelized Tariff	₹3.06/kWh (Fixed Charge – 2.08/kWh & Variable Charge – 0.98/kWh)
	1 st year Tariff- ₹3.29/kWh (Fixed Charge-2.31/kWh & Variable Charge-0.98/kWh)
Coal Linkage	Talabira coal block II & III of 20 MTPA allocated to NLCIL
Coal price	₹1404/-per Tonne
GCV of coal	3700kCal/kg
Final tariff will be determined by CERC	

- (5) KSEB Ltd further submitted that, the tariff of the Talabira power plant shall be determined by CERC as per the Tariff Regulations notified by CERC from time to time. As per the prevailing CERC Tariff Regulations, the tariff of the Talabira station consist of two components, viz. fixed cost and variable cost. Since the power station is a pit head station the transmission cost for transportation of coal is negligible and hence the variable cost for the generation of power from the project is expected to be low.
- (6) KSEB Ltd further submitted that Clause 2.1 of the CERC Tariff Regulation 2019 provide as follows.

“As per Clause 2(1) of CERC Tariff Regulations dated 07.03.2019, “fresh consent of the beneficiaries are to be obtained for any generating station with tariff determination under section 62 of the Act and for which agreement(s) have been executed for supply of electricity to the beneficiaries on or before 5.1.2011 and the financial closure for the said generating station has not been achieved by 31.3.2019, such projects

shall not be eligible for determination of tariff under these regulations unless fresh consent of the beneficiaries is obtained and furnished"

- (7) Based on the above provisions of the CERC Tariff Regulation 2019, NLCIL requested vide its letter dated 22.09.2020 for a fresh consent for availing the already consented quantum of 400 MW power from Talabira project. Since the tariff is attractive and the allocation of the power from the project is by Ministry of Power (MoP), GoI, KSEB Ltd has given consent to NLCIL for the procurement of 400 MW power from Talabira project subject to the following;

- (i) KSEB Ltd agreed to purchase 400 MW from the proposed Talabira project at the levelized tariff of ₹ 3.06/unit and first year tariff of ₹ 3.29/unit.
- (ii) The project has to be completed within the time schedule of 52 months for the first unit and subsequent units in 6 months thereafter.
- (iii) KSEB Ltd will not honor with any escalation in tariff due to time and cost overrun.
- (iv) NLCIL shall provide quarterly progress report of the mine and project development to KSEB Ltd.

- (8) Ministry of Power (MoP), Government of India (GoI) vide letter dated 19.11.2020 has allocated 400 MW power from Talabira power plant to State of Kerala. The MoP in the said allocation letter has directed as follows;

"The above allocation is subject to amendments in Power Purchase Agreements (PPAs) by these States/UTs with NLCIL, for their already concluded PPAs of this quantum of capacities, signed on 05.01.2011. The PPAs need to be amended to reflect the location of the plant, and any other concomitant change that may happen because of the change in location."

As per the above direction of the MoP, GoI, the PPA needs to be amended to reflect the location of the plant and any other concomitant change that may happen because of the change in location. Based on the above NLCIL had forwarded a draft PPA amendment to KSEB Ltd.

- (9) KSEB Ltd decided to purchase 400 MW power from Talabira pit head station considering the following:
- (i) NLC Talabira is the last of such power project whose tariff is determined by CERC (Regulated Tariff) since the Tariff Policy 2016 specify that, henceforth power purchase by the DISCOMS shall be through tariff based competitive bidding only.

- (ii) The indicated tariff for the project (levelized tariff of ₹ 3.06/unit, at 2021 price level) is very attractive. The energy charge of the plant is expected to be in the range of ₹ 1.40/unit only.
 - (iii) The anticipated power demand of the State is about 5391 MW by the year 2027-28. Tying up 400 MW from Talabira power station will help the State to meet the anticipated power demand to some extent.
 - (iv) Since the levelized tariff of the project is expected to be low, KSEB Ltd has the option to exit from the costlier PPAs already executed.
 - (v) Some of the Northern and North Eastern States are trying to get allocation from Talabira power station, since no new thermal power projects are under consideration of MoP.
- (10) Considering the above aspects in detail, KSEB Ltd decided to execute the '2nd Deed of Amendment' of PPA with NLCIL for procuring 400 MW power from Talabira project for 25 years. To protect the interest of KSEB Ltd a new clause is added in the 2nd deed of Amendment as follows;
- "The PPA shall be implemented subject to the adoption by KSERC as stipulated in the Regulation 77.2 of KSERC (Terms and Conditions for Determination of Tariff) Regulation 2021".*
- (11) KSEB Ltd also submitted that the Regulation 74.5.IV of the KSERC Tariff Regulation 2021 provides as follows;
- "Mere allocation of power from the Ministry of Power cannot be the basis for drawing power or entering into a PPA. All such allocations have to be formally filed before the Commission as a petition and shall include the quantum of power, its rate, other terms and conditions etc. Only after formal approval of the Commission is obtained, shall the distribution licensee draw new power from any new source"*
- (12) Further, the Regulation 77 of the KSERC Tariff Regulation 2021 provides as follows;
- (i) *"The distribution licensee shall not enter into any long term or medium-term power purchase without the formal approval of the Commission based on a petition filed by the distribution licensee.*
 - (ii) *Every agreement for procurement of power by the distribution business/licensee from the generating business/ company or licensee or from other sources of supply entered into after the date of commencement of these Regulations shall come into effect only with the approval of the Commission"*

Duly considering the above aspects, KSEB Ltd requested before the Commission to kindly grant approval for procuring 400 MW power from NLCIL Talabira power project at the tariff determined by CERC and to approve the PPA and amendments thereto.

3. KSEB Ltd vide its affidavit dated 04-08-2022 has submitted the additional submission on the subject matter, mainly on the modifications proposed on the PPA signed on 03-01-2011, and in the 2nd deed of amendment dated 20-7-2022. Its summary is given below:

1) Clause 11.0 of the PPA signed on 3-1-2011:

Original clause:

"11.0 DISPUTES AND REDRESSAL MECHANISM

In disputed cases, Bulk Power Customer(s) shall file a written objection with NLC and NLC will endeavor to resolve such objection. However, if the disputes cannot be settled mutually and still persist, the same shall be settled by referring to the Central Electricity Regulatory Commission or Appellate Tribunal for Electricity or any other dispute redressal mechanism specified from time to time.

Modified Clause:

"11.0 DISPUTES AND REDRESSAL MECHANISM

In disputed cases, Bulk Power Customer(s) shall file a written objection with NLC and NLC will endeavor to resolve such objection. **Since the PPA approving Appropriate Commission is KSERC, as per section 86(1)(f) of EA,2003, power of dispute resolution except in tariff matters rest with the State Commission."**

2) Clause 15.0 of the PPA signed on 3-1-2011:

Original clause:

"15.0 EFFECTIVE DATE AND DURATION OF AGREEMENT

15.1 The Agreement shall come into force from the date of signing of this Agreement for all purposes and intents and shall remain operative upto completion of twenty-five (25) years from the date of commercial operation of STPP (3 X 660MW), Provided that this Agreement may be mutually extended, renewed or replaced by another Agreement on such terms and for such period of time as the parties may mutually agree. In case the Bulk Power Customer(s) continues to get power from STPP even after expiry of this Agreement without further renewal or formal extension thereof, then all the provisions of this Agreement shall continue to operate till this agreement is formally renewed, extended or replaced."

Modified Clause:

"15.0 EFFECTIVE DATE AND DURATION OF AGREEMENT

15.1 The Agreement shall come into force from the date of signing of this Agreement for all purposes and intents and shall remain operative upto completion of twenty-five (25) years from the date of commercial operation of STPP (3 X 660MW).

Provided that this Agreement may be mutually extended, renewed or replaced by another Agreement on such terms and for such period of time as the parties may mutually agree. In case the Bulk Power Customer(s) **continues to schedule and draw power** from STPP even after expiry of this Agreement without further renewal or formal extension thereof: then all the provisions of this Agreement shall continue to operate till this agreement is formally renewed, extended or replaced. **In the case of termination of the contract before its expiry, an amount equal to the fixed charge that would have been due and payable for Normative Availability for a period of six months as if the power station had operated for such six months from the date of termination."**

3) Definitions in 2nd deed of amendment dated 20-7-2022
Original Clause:

V. Charges for supply of Electricity: Include all charges (the tariff + transmission charges + transmission loss) including the Tariff to be paid by the Procurer/Beneficiaries in respect of supply of electricity to them from the Station in accordance with the provisions of this Agreement and as approved by CERC from time to time as per applicable regulations.

Modified clause:

V.Charges for supply of Electricity: Include all charges (~~the tariff + transmission charges + transmission loss~~) including the Tariff to be paid by the Procurer/Beneficiaries in respect of supply of electricity to them from the Station in accordance with the provisions of this Agreement and as approved by CERC from time to time ~~as per applicable regulations~~.

4) Clause 7.4 in 2nd deed of amendment dated 20-7-2022
Original clause:

7.4 INCOME TAX

7.4.1 The Income Tax liability shall be as per the prevailing tariff regulations of CERC on commissioning of the plant.

Modified clause:

7.4 INCOME TAX

7.4.1 The Income Tax liability shall be as per the prevailing tariff regulations of CERC **post declaration of CoD** of the plant.

5) Clause 15 in 2nd deed of amendment dated 20-7-2022
Original clause:

15.2 The PPA shall be implemented as per section 86(1)(b) of the Electricity Act,2003 and as stipulated in Regulation 77.2 of KSERC (Terms and Conditions for Determination of Tariff) Regulations,2021.

Modified clause:

15.2 The PPA shall be implemented as per section 86(1)(b) **and 86(1)(f)** of the Electricity Act,2003 and as stipulated in Regulation 77.2 of KSERC (Terms and Conditions for Determination of Tariff) Regulations,2021.

KSEB Ltd also requested to grant approval for procuring 400 MW power from NLCIL at the tariff determined by CERC and also to approve the PPA and amendments thereto.

4. NLCIL vide letter dated 12-8-2022 has informed that the draft 2nd Deed of Amendment dated 20.07.2022 is a document mutually agreed and approved by both KSEB Ltd and NLCIL Management and hence the modifications suggested by KSEB Ltd in the said deed of amendment vide Clause No. (Definitions) 7.4,11, 15 and 15.2, as submitted to the KSERC vide additional submissions dated 04.08.2022 are not acceptable to NLCIL.

It was further submitted that the said modifications were never discussed or formally placed before NLCIL and NLCIL came to know about the additional submissions dated 04.08.2022 only on 11.08.2022 while browsing through the KSERC website. It was also stated that till date no copy of the additional submissions has been received by NLCIL.

It is stated that the modifications suggested by KSEB Ltd is not acceptable to NLCIL and NLCIL will not be bound by the same as it is at variance with the agreed terms of the draft 2nd amendment dated 20.07.2022. In view of the above, NLCIL has requested KSEB Ltd to withdraw the additional submissions dated 04.08.2022 and adhere to the original petition filed before KSERC, OP No. 45/2022 dated 29.07.2022.

NLCIL has also submitted that, MoP had allocated 1500MW power from the project to Tamilnadu and 100MW to Puducherry. The PPA with Tamilnadu was signed on 16.03.2022 and Puducherry was signed on 09.05.2022. The PPA signed with Tamilnadu and Puducherry was on the same terms and conditions as the final draft PPA amendment given to KSEB Ltd. Hence the deviations in the terms and conditions made by KSEB Ltd is not acceptable to NLCIL.

5. In the meanwhile, on 22.08.2022, KSEB Ltd submitted an additional submission with the proposal to further modify the Clause 15 of the PPA and in the deed amendment as follows.

1. Clause 15.0 of the PPA signed on 3-1-2011:

Original clause:

"15.0 EFFECTIVE DATE AND DURATION OF AGREEMENT

15.1 The Agreement shall come into force from the date of signing of this Agreement for all purposes and intent and shall remain operative upto completion of twenty five (25) years from the date of commercial operation of STPP (3 X 660MW). Provided that this Agreement may be mutually extended, renewed or replaced by another Agreement on such terms and for such period of time as the parties may mutually agree. In case the Bulk Power Customer(s) continues to get power from STPP even after expiry of this Agreement without further renewal or formal extension thereof: then all the provisions of this Agreement shall continue to operate till this agreement is formally renewed, extended or replaced."

Modification suggested vide additional submission dated 4-8-2022:

"15.0 EFFECTIVE DATE AND DURATION OF AGREEMENT

15.1 The Agreement shall come into force from the date of signing of this Agreement for all purposes and intent sand shall remain operative upto completion of twenty five (25) years from the date of commercial operation of STPP (3 X 660MW).

Provided that this Agreement may be mutually extended, renewed or replaced by another Agreement on such terms and for such period of time as the parties may mutually agree. In case the Bulk Power Customer(s) **continues to schedule and draw power** from STPP even after expiry of this Agreement without further renewal or formal extension thereof: then all the provisions of this Agreement shall continue to operate till this agreement is formally renewed, extended or replaced. **In the case of termination of the contract before its expiry, an amount equal to the fixed charge that would have been due and payable for Normative Availability for a period of six months as if the power station had operated for such six months from the date of termination."**

Modification suggested vide the instant additional submission:

"15.0 EFFECTIVE DATE AND DURATION OF AGREEMENT

15.1 The Agreement shall come into force from the date of signing of this Agreement for all purposes and intent and shall remain operative upto completion of twenty five(25) years from the date of commercial operation of STPP (3 X 660MW). **The agreement expires upon completion of twenty five (25) years from the date of commercial operation of STPP (3 x 660 MW)**

Provided that this Agreement may be mutually extended, renewed or replaced by another Agreement on such terms and for such period of time as the parties may mutually agree. **Provided that the first right of refusal lies with the beneficiary.** In case the Bulk Power Customer(s) continues to schedule and draw power from STPP even after expiry of this Agreement without further renewal or formal extension thereof: then all the provisions of this Agreement shall continue to operate till this agreement is formally renewed, extended or