

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

Petition: OP No. 48/2023

In the matter of : Petition under Section 86(1)(b) of the EA-2003, seeking approval of the draft power purchase agreement dated 23.05.2023 entered into between the Petitioner CIAL Infrastructures Limited (CIAL Infra) and KSEB Ltd.

Petitioner : CIAL Infrastructures Limited

Petitioner represented by : Adv Anand.K.Ganesan, Counsel for the petitioner
Smt Mary Pauly Aricatt, CFO, CIAL Infra,
Shri Mohammed Safeer.M.A, Asst: Manager

Respondent : Kerala State Electricity Board Ltd (KSEB Ltd)

KSEB Ltd represented by : Shri. Ajith Kumar.K.N, EE, TRAC
Shri. Sujit.T.R, AEE, TRAC
Smt Biji Christudas, AE, TRAC

Hearing scheduled on : 26.07.2023, 02:30 PM

Venue : Court Hall of the Commission

Order dated 11.02.2025

1. M/s CIAL Infrastructures Ltd (hereinafter referred as CIAL INFRA or petitioner) filed a petition on 09.06.2023 before the Commission with the following prayers;

“(a) Kindly approve the Draft PPA dated 23.05.2023 to be executed between the Petitioner and Respondent- KSEB Ltd with the Article 5.4 to be modified as detailed in the Petition in Paras 26 to 29;

(b) Pass such other Order(s) and this Hon’ble Commission may deem just and proper.”

2. Summary of the Petition filed by the Petitioner is given below.

- (1) CIAL Infrastructures Ltd (‘CIAL INFRA’) is a company registered under the Companies Act, 2013, and is a wholly owned subsidiary of Cochin International Airport Ltd. (CIAL). The parent company, CIAL was promoted by the Government of Kerala in 1994.

- (2) The State Government vide the Order GO (Ms) No.23/2014/PD dated 21.07.2014 has allotted the 3MW Arippara SHP to M/s CIAL under CPP category.
- (3) Subsequently, as requested by CIAL, Government vide the Order GO(Rt) No.266/2014/PD dated 24.10.2014, accorded sanction to change the name of the implementing agency to M/s CIAL Infrastructure Ltd, and also change the category of the project from Captive Power Plant (CPP) category to Independent Power Plant (IPP) category.
- (4) The petitioner M/s CIAL Infra and the State Government signed an implementation agreement (IA) on 24.10.2014. The IA provides for the terms and conditions on which the project has to be implemented by the petitioner.
- (5) As per the detailed Techno Economic Feasibility Report (TEFR), and also as recommended by the Technical Committee constituted by the State Government, the capacity of the project was enhanced from 3 MW to 4.5 MW.
- (6) On 17.01.2019, KSEBL and the petitioner had signed a draft PPA. The Article 5.4 of the draft initialled PPA deals with the tariff applicable to the electricity generated from the project, which provide as follows;

"Tariff for power generated from the project shall be Project Specific Tariff as determined by the Commission or Generic Tariff notified by Commission whichever is lower".
- (7) On 04.08.2021, the petitioner and KSEBL signed the connection agreement. The project was synchronised with the grid on 05.08.2021. Since then, the electricity is being generated and supplied to the KSEBL.
- (8) The Project achieved the Commercial Operation Date (CoD) on 13.10.2021.
- (9) In the meanwhile, the petitioner had filed a petition dated 07.10.2021 before the Commission for approving the generic tariff notified by the Commission as tariff for the electricity generated from the project, and also to approve the draft power purchase agreement (PPA) with necessary modifications of Clause 5.4 of the draft PPA.
- (10) The Commission vide the Order dated 08.03.2023 in petition OP No. 65/2021 had determined the project specific tariff for the Project as against the generic tariff proposed by the petitioner. The Commission also directed the parties to file separate petition for approval of PPA with initialled PPA through mutual consensus.
- (11) Aggrieved by the Order of the Commission dated 08.03.2023 in petition OP No. 65/2021, the Petitioner has filed an appeal petition before the Hon'ble APTEL vide appeal petition No.467 of 2023. The said appeal petition is pending before the Hon'ble APTEL.

- (12) Thereafter, in terms of the directions of the Commission, the petitioner and the respondent signed the draft PPA on 23.05.2023. In the above background, the petitioner has approached the Commission under Section 86(1)(b) of the EA-2003, seeking approval of the draft initialled PPA dated 23.05.2023 between the petitioner M/s CIAL Infra and the respondent KSEBL.

The petitioner further submitted that, there has been a *consensus ad idem* on most of the provisions of the draft PPA except Clause 5.4 of the draft initialled PPA, which is extracted below.

“5.4 Tariff for power generated from the project is at a Levelised tariff of Rs 4.30/unit approved by the Commission in OP:65/2021 dated 08.03.2023, from the date of synchronisation duly considering the benefit of accelerated depreciation.

The petitioner further submitted that, as per the Clause 5.4 of the draft initialled PPA, KSEBL is bound to pay Rs 4.30/unit only for the electricity generated and supplied from the project. The petitioner already had filed an appeal petition before the Hon'ble APTEL seeking generic tariff for the electricity generated and supplied from the project, the tariff to be paid by KSEBL is sub judice before the Hon'ble APTEL. Hence, the petitioner craves leave to amend Article 5.4 of the PPA subject to the outcome of the appellate proceedings.

3. KSEB Ltd vide submission dated 26.07.2023 had submitted the following;

- (1) As per the initialed draft PPA signed between KSEBL and CIAL on 17.01.2019, KSEBL is desirous of purchasing all the energy generated from declared capacity of the project and the developer is willing to sell the same to KSEBL on mutually agreed terms and condition. The terms and conditions of the PPA are as per prevailing KSERC regulations.

The clause 5.4 of PPA states that, tariff for power generated from the project shall be project specific tariff as determined by the commission or generic tariff notified by the commission, whichever is lower.

- (2) The Regulation 35(1) of KSERC Renewable Energy and Net Metering Regulation 2020, stipulates that the distribution licensee/purchaser of electricity from RE sources shall pay only lower of the generic tariff of the year of CoD or project specific tariff as determined by the Commission.
- (3) The KSERC Renewable Energy and Net Metering Regulation 2020, specifies the generic tariff for the financial year 2019-20 only. The Arippara SHEP CoD achieved during the financial year 2021-22, for which generic tariff has not been determined by the Commission.

- (4) As per the Order of the Commission M/s CIAL has approached KSEBL for initialing the PPA and modified Clause 5.4 of the PPA incorporating the tariff of Rs 4.30/unit. The petitioner vide the e-mail dated 23.05.2023, forwarded the draft PPA to KSEBL.

Thereafter, the petitioner filed an appeal petition before Hon'ble APTEL challenging the KSERC Order dated 08.03.2023 in petition OP No. 65/2021. The matter is pending before Hon'ble APTEL.

- (5) As per the Clause 5.4 of the mutually agreed and initialed PPA submitted before the Hon'ble Commission for approval by the petitioner states that;

'Tariff for power generated from the project is at a levelized tariff of Rs. 4.30/unit, approved by the commission in OP 65/2021 dated 08.03.2023, from the date of synchronization duly considering the benefit of accelerated depreciation'.

KSEB Ltd submitted that, the petitioner has now approached the Commission for approval of the draft PPA initialed by both the petitioner and KSEBL with modification on the agreed Clause 5.4.

- (6) KSEBL further submitted that, Arippara SHEP (2x2.25 MW) is a run-of-the river project located in Iruvanjipuzha of Chaliyar basin. The power from the project is completely infirm in nature and is generating power mainly during monsoon season. Procuring power at higher rates during low demand monsoon seasons with surrendering power from other long term PPAs will create financial burden on KSEBL and its consumers.

KSEBL further submitted that, the tariff determined by the Commission for the project is still on the higher side compared with other intrastate PPA for power purchase executed by KSEBL. However, KSEBL decided to enter into PPA for the entire generation with the petitioner based on the Order dated 08.02.2023 of KSERC.

- (7) KSEBL cannot accept any kind of deviation from the mutually agreed and initialed PPA, hence the Commission may approve the initialled PPA as such.
- (8) Regarding the outcome of the appeal petition filed before the Hon'ble APTEL, KSEBL submitted that it is responsible to procure power at lowest rate for the benefit to the consumers of the state. Hence, KSEBL will enter into power purchase agreement with the petitioner only if the order from Hon'ble APTEL is acceptable to KSEBL. Hence, KSEB Ltd submitted that no modification in the initialed draft PPA may be permitted and the draft PPA may be approved as such.

4. The Commission admitted the petition as OP No. 48/2023. Hearing on the petition was held on 26.07.2023 at the Court Hall of the Commission. Adv Anand.K.Ganesan, Counsel for the petitioner, appeared on behalf of the

Petitioner. Executive Engineer, TRAC presented the comments on behalf of the Respondent KSEBL. The deliberations during the hearing are summarized below.

- (1) The petitioner submitted the following during the hearing;
 - (i) The petitioner and respondent reached consensus on almost all the clauses of the PPA except the Clause 5.4 of the PPA.
 - (ii) The tariff of the project had been determined by the Commission vide the Order dated 08.03.2023 in petition OP No. 65/2021. Aggrieved by the Order of the Commission, M/s CIAL Infra had filed an appeal petition before the Hon'ble APTEL, and the decision of the Hon'ble APTEL is binding on all the parties. The Clause-5.4 of the PPA regarding the tariff of the electricity generated from the project is subject to the outcome of the Judgment of the Hon'ble APTEL.
 - (iii) Smt Mary Pauly Aricatt, CFO, submitted that, they had supplied more than 18MU from the project to KSEBL, however no payment is received for the electricity supplied, citing the reason that the PPA is not signed yet.
- (2) KSEBL submitted the following during the hearing;
 - (i) The Commission vide the Order dated 08.03.2023 in petition OP No. 65/2021 had determined the tariff of the project. As per the Order, the petitioner vide the email dated 22.03.2023 had approached the KSEBL for initialling the PPA. The PPA approved by KSEBL is forwarded to CIAL Infra on 19.05.2023.
 - (ii) The petitioner after agreeing the modifications in the Clause- 5.4, and initialled the PPA, had approached the Hon'ble APTEL with the prayer for generic tariff instead of the project specific tariff.
 - (iii) KSEBL is bound to procure power at lowest rate for the benefit of the Consumers of the State of Kerala. KSEBL continue with the PPA only if the outcome of the decision of the Appeal petition is acceptable to KSEBL. The project was allotted to the petitioner as per the provisions of the SHP policy 2012 notified by the Government of Kerala. As per the Clause 12.2 of the SHP policy, if KSEBL or its successor entities are not intending to purchase of power from the project, KSERC will permit non-discriminatory open access for the sale of power from the project to other parties.
- (3) The Commission noted the arguments of both the parties during the hearing and clarified the following;

- (i) As per the provisions of the EA-2003, the petitioner M/s CIAL Infra has the right to file appeal petition before the Hon'ble APTEL against the Order of the Commission dated 08.03.2023 regarding the project specific tariff @Rs 4.30/unit approved by the Commission. Hence the Clause-5.4 of the draft initialled PPA regarding the tariff is subject to the final judgment of the Hon'ble APTEL in this matter.
- (ii) The Commission clarified during the hearing that, it cannot compel KSEBL to purchase power from the project of the petitioner. Hence both the parties may reach a consensus on the provisions of the PPA especially the Clause 5.4 of the PPA.
- (iii) The Commission further clarify that, KSEBL is bound to make payments to the petitioner at the tariff approved by the Commission vide the Order dated 08.03.2023. Hence, M/s CIAL Infra shall raise the invoices at the tariff approved by the Commission.

Based on the deliberations during the hearing, the Commission has directed the petitioner and the respondent to comply the following.

- (1) CIAL Infra and KSEB Ltd shall mutually discuss and arrive at a mutual consensus on the Clause 5.4 of the draft initialled PPA to be signed between the parties.
 - (2) After reaching on mutual consensus, either of the parties may approach the Commission for the final approval of the PPA.
5. Subsequently, KSEB Ltd vide the submission dated 04.12.2024 submitted the following regarding the issues under dispute.
- (1) A meeting was held on 31.07.2023 between M/s CIAL and KSEBL to finalize the draft 'exit clause', which is to be incorporated in PPA, and M/s CIAL Infrastructures Ltd proposed a draft 'exit clause' to which KSEBL suggested certain modifications. Further, KSEBL & M/s CIAL Infrastructures Ltd conducted various correspondences regarding the same.
 - (2) M/s CIAL Infrastructures vide letter dated 03.06.2024 has proposed the following exit clause to be included in the mutually agreed PPA.

"In case the tariff determined by KSERC as per order in OP No.65/2021 is revised in appellate proceedings by APTEL or any other competent court/authority and if the same is not acceptable to either party, such party may exit from the PPA by giving notice of 120 days to the other party. Such option of exit can be exercised only within a period of 60 days from the date of revision of tariff in such appellate proceedings".

KSEBL has accepted the modified exist clause proposed by 'M/s CIAL Infra' as above.

- (3) Hence, KSEBL requested before the Commission to include the Exit Clause in the mutually agreed PPA, while approving the PPA.

Analysis and Decision of the Commission:

6. The Commission having examined in detail, the petition filed by CIAL Infrastructures Limited dated 09.06.2023 for the approval of the draft initialled power purchase agreement to be entered into between the KSEBL and CIAL Infrastructures Limited, the provisions of the Electricity Act, 2003 and other Rules, Regulations, decided on the matter as follows;
7. The Commission vide the Order dated 08.03.2023 in the petition OP No. 65/2021, ordered as follows;

“

Order of the Commission

38. After the detailed examination of the petition filed by M/s CIAL Infrastructures Ltd, and comments of the respondent KSEB Ltd and also duly considering the provisions of the Electricity Act-2003, Tariff Policy 2016, and the Regulations notified by the CERC and KSERC, and other relevant documents wherever necessary, the Commission hereby orders the following:

- (1) The levelised tariff for the electricity generated from the 4.5 MW SHEP installed by M/s CIAL Infrastructures Ltd at Arippara, Kozhikode is approved @ Rs 4.30/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.”*

The Commission further directed KSEBL vide the 1st provision to paragraph-37 of the Order that, it shall enter into PPA with the petitioner M/s CIAL Infra @ Rs 4.30/unit for the purchase of the entire electricity generated from the project.

8. M/s CIAL Infra filed the petition dated 09.06.2023, for the approval of the draft initialled power purchase agreement for the supply of electricity generated and supplied to KSEBL from the 4.5MW Arippara SHP established by the petitioner. The petitioner had also submitted the draft initialled PPA along with the petition for approval.

The petitioner submitted that, except the Clause 5.4 of the draft initialled PPA, all other clauses of the PPA is mutually agreed by the parties to the PPA. The Clause-5.4 of the draft initialled PPA is extracted below.

'Tariff for power generated from the project is at a levelized tariff of Rs. 4.30/unit, approved by the commission in OP 65/2021 dated 08.03.2023, from the date of synchronization duly considering the benefit of accelerated depreciation'.

9. The petitioner during the deliberations of the subject matter submitted that, aggrieved by the Order of the Commission dated 08.03.2023, the petitioner filed an appeal petition before the Hon'ble APTEL with the prayer to approve the generic tariff for the project instead of project specific tariff determined by the Commission. Once the Hon'ble APTEL decided on the appeal petition filed by M/s CIAL Infra, the decision of the Hon'ble APTEL is binding on all the parties.

The Clause-5.4 of the PPA regarding the tariff of the electricity generated from the project is subject to the outcome of the Judgment of the Hon'ble APTEL. Hence the petitioner want to modify the Clause 5.4 of the PPA to the effect that, once the Hon'ble APTEL decides on the appeal petition, the Clause 5.4 of the PPA has to be modified based on the decision of the Hon'ble APTEL, and the same shall be binding on the petitioner and respondent.

10. However, KSEBL opposed the proposal of the petitioner to modify the Clause 5.4 of the PPA. Regarding the outcome of the appeal petition pending before Hon'ble APTEL, KSEBL submitted that, in case the tariff is enhanced based on the decisions of Hon'ble APTEL, if any, KSEBL may continue with the PPA with the revised tariff, only if the same is affordable to it.
11. The Commission during the hearing held on 26.07.2023 clarified that, the terms and conditions of the PPA to be signed between the M/s CIAL Infra and KSEBL should be mutually agreed by both parties. The Commission cannot compel either party to sign the PPA without consensus on the terms and conditions of the PPA.

Hence the Commission has directed the parties to mutually discuss and arrive at a consensus on the issue and approach the Commission for the final approval of the PPA to be signed between them.

12. In compliance of the directions of the Commission, KSEBL vide the submission dated 04.12.2024 submitted that, both the parties agreed to incorporate an exit clause in the PPA, in the event the tariff determined by the Commission as per the Order dated 08.03.2023 is revised by Hon'ble APTEL or any other competent Court/ authority and the same is not acceptable to the either party. The exit clause agreed to incorporate in the PPA by both the parties is extracted below.

"In case the tariff determined by KSERC as per order in OP No.65/2021 is revised in appellate proceedings by APTEL or any other competent court/authority and if the same is not acceptable to either party, such party may exit from the PPA by giving notice of 120 days to the other party. Such option of exit can be exercised only within a period of 60 days from the date of revision of tariff in such appellate proceedings".

13. The Commission has examined the exit clause proposed and agreed by both the petitioner M/s CIAL Infra and the respondent KSEBL, for the incorporation in the

power purchase agreement to be signed between them. The Commission after careful considerations of the proposals, hereby agrees to accept the exit clause proposed by the parties through mutual consensus.

14. The Commission has noted that, all other clauses of the draft PPA was mutually agreed by the petitioner M/s CIAL Infra and the respondent KSEBL.

The Commission further noted that, the petitioner has been generating and supplying power from the 4.5 MW Arippara SHP of the petitioner since 05.08.2021, and KSEBL has been now making payments to the petitioner at Rs 4.30/unit.

Considering the entire aspects in detail, the Commission has decided to approve the draft initialled PPA with the proposed exit Clause as detailed in Paragraph 12 above, by invoking the powers conferred to the Commission under Section 86(1)(b) of the Electricity Act, 2003 and also as per Regulation 77 of the KSERC (Terms and Conditions of Tariff) Regulations, 2021 and its subsequent amendments.

Order of the Commission

15. The Commission, after detailed examination of the petition filed by M/s CIAL Infrastructures Limited, the comments of the respondent KSEBL, the provisions of the Electricity Act, 2003, KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021 and its amendments, and other Rules, Regulations in force, hereby orders the following;

- (1) Approve the draft Power Purchase Agreement (PPA) duly initialed by the petitioner M/s CIAL Infrastructures Limited and the Respondent KSEB Ltd with the exit clause as discussed in paragraph-12 above.
- (2) The petitioner M/s CIAL Infrastructures Limited and respondent KSEBL shall sign the PPA within one month from the date of this Order.
- (3) A copy of the signed PPA shall be submitted before the Commission for information and record.

The petition is disposed of. Ordered accordingly.

Sd/-
T K Jose
Chairman

Sd/-
Adv. A J Wilson
Member

Sd/-
B Pradeep
Member

Approved for issue

Sd/-
C R Satheesh Chandran
Secretary