

KSEBL/CE/TRAC/37/2024-AE2-Part(2)

/3749/2024



KERALA STATE ELECTRICITY BOARD Ltd

(Incorporated under the Companies Act, 1956)

Registered Office: Vidyuthi Bhavanam, Pattom, Thiruvananthapuram – 695 004

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ABSTRACT

Pathamkayam SHEP (8MW) by M/s MINAR Energy Projects Pvt. Ltd.- Exit clause
-Further decisions - Sanctioned - Orders issued.

Corporate Office(Commercial & Tariff)

B.O. (FTD) No. 125 /2024 (No.CML-EE-2-AEE-
2/CE(C&T)/Pathamkayam /2023-24) Thiruvananthapuram.

Dated:30-03-2024

Read:

- (1) Order in OP No: 53/2022 dated 08.02.2024 of Kerala State Electricity Regulatory Commission.
- (2) Note No: KSEBL/TRAC/CG/SHEP-Minar/2023-24/1012 dated 23.02.2024 of the Deputy Chief Engineer, TRAC.
- (3) Note No: DFA/ 32522 dated 03.02.2024 of the Chief Engineer (Commercial & Tariff) submitted to Full Time Directors.
- (4) Email dated 07.03.2024 from TRAC on Kerala State Electricity Regulatory Commission Daily Order dated 07.03.2024 in OP No: 05/2024
- (5) Letter No: CML-EE-2-AEE-2/2023 CE(C&T)/PTKYAM/513/2023-24 dated 12.03.2024 to M/s Minar Renewable Energy Projects Pvt Ltd.
- (6) Letter No: MREPL/2024/03/KSEB/PPA/01 dated 14.03.2024 addressed to Chief Engineer Commercial & Tariff.
- (7) Note No: DFA/ 35232 dated 15.03.2024 of the chief Engineer (Commercial & Tariff) submitted to Full Time Directors (Agenda No. 37 -03/2024).

ORDER

Pathamkayam Small Hydro Electric Project was allotted to M/s Minar Renewable Energy Projects Pvt Ltd (M/s Minar) by Government of Kerala as a Captive Power Plant (CPP) through competitive bidding process on BOOT basis for 30 years, vide G.O (Ms) No. 30/2014/PD dated 21.07.2014. Subsequently Government allotted change in category from CPP to Independent Power Projects (IPP) and the capacity of Pathamkayam project was revised from 4MW to 8MW and category conversion from CPP to IPP was ratified. The project was commissioned on 14/08/2017 and draft Power Purchase Agreement was approved by the Board and forwarded to the generator on 22.01.2018 for initialing and submitting before KSERC for approval.

Later an interim tariff of Rs 3.49/ unit was approved by Board vide order dated 08.01.2018 as per the request of M/s Minar citing financial crisis , for the power purchased from Pathamkayam SHEP from the date of CoD ie. 14.08.2017 till KSERC approves the tariff and PPA in respect of the project. Subsequently ,KSERC vide order dated 06.09.2019 had fixed the project specific tariff of

KSEBL/CE/TRAC/37/2024-AE2-Part(2)

31/09/2024

the project @Rs.3.94/unit with the benefit of accelerated depreciation. Aggrieved by KSERC order, M/s Minar had filed a petition before the APTEL on project specific tariff which is pending before APTEL.

In the meeting convened by the then Chairman and Managing Director, KSEBL with M/s Minar on 21.08.2020, it was decided that KSERC approved tariff of Rs 3.94/unit will be admitted on signing the PPA.

M/s Minar vide letter dated 18.09.2020 had requested modifications to the Power Purchase Agreement (PPA) and KSEBL had forwarded the modified draft PPA to M/s Minar on 12.01.2021.

However M/s Minar returned the duly initialled PPA only by 02.08.2021 reserving their right to raise the contentions for modifications in PPA before KSERC during the proceedings for the approval of PPA.

Later vide letter dated 06.02.2024 the developer, M/s Minar has requested for releasing the difference amount of the approved tariff (Rs 3.94/unit) and the billing tariff (Rs 3.49/unit) from 2016-17. Since the PPA was not approved, Chairman and Managing Director, KSEBL had directed that difference amount cannot be paid.

Later it was informed as per note read as 2nd above that KSERC vide order dated 08.02.2024 has approved the draft Power purchase agreement duly initialed by KSEBL and M/s Minar with the inclusions/modifications as approved by KSERC and directed both parties to sign the PPA within one month.

As per clause 5.4 in the PPA approved by KSERC "*Tariff for power generated from the project shall be Rs. 3.94 per unit as determined by the KSERC vide order dated 06.09.2019 in OA 8/2018 and corrigendum dated 14.11.2019, and its amendments, if any.*" which is a deviation from already initialed PPA. According to the initialed PPA clause 5.4 "*Tariff for the power generated from the project shall be project specific tariff as determined by the commission or generic tariff notified by the commission which ever is lower.*"

As per this approved clause with the inclusion of terms "and its amendments, if any", KSEBL shall be liable to accept the revised tariff in future due to the outcome of APTEL order /competent courts. Also there is no option to exit from the contract in the event of tariff hike, if any due to the outcome of APTEL order. Meanwhile, M/s Minar had approached KSERC in the matter of the difference in amount of the KSERC approved tariff (Rs 3.94/unit) and the KSEBL approved interim tariff (Rs 3.49/unit) and has demanded difference in tariff amount in its petition before KSERC.

Hence as suggested as per note read as 2nd above, the matter of Exit Clause and releasing difference in amount was placed before the Full Time Directors as per note read as 3rd above. In the mean time as per letter read as 4th above, it was intimated that KSERC has directed the respondent KSEBL to finalise and sign the PPA with the petitioner M/s Minar Renewable Projects Pvt Ltd, latest by 18.03.2024 and also intimated that if KSEBL fails to comply with the directions, the Commission may be constrained to initiate action against KSEBL as per the provisions of the Electricity Act, 2003 and Regulations made thereunder.

In the mean time, as per note read as 3rd above, Full Time Directors has decided on 11.03.2024 to include Exit clause in KSERC approved PPA of Pathamkayam SHEP with mutual consent of M/s Minar Renewable Energy Projects Pvt Ltd.

Based on the decision of Full Time Directors, intimation was sent to M/s Minar as per letter read as

/S1749/2024

5th above requesting their consent for "Exit Clause" proposed by KSEBL. Due to the time limit, a reminder was sent on 13.03.2024 to M/s Minar to expedite their decision on the matter. Now, M/s Minar has intimated as per letter reas as 6th above that it would not be legal or possible for them to agree to any amendment to the PPA at this stage. They have also forwarded to KSEBL the duly signed PPA as approved by the Hon'ble KSERC for execution by KSEBL and requested KSEBL to send the signed PPA latest by 18.03.2024 in terms of the timelines as directed by the Hon'ble KSERC. M/s Minar also pointed that the clause now sought to be inserted by KSEBL was not even part of the initial draft nor was it subject matter of any discussion before the Hon'ble KSERC.

Since M/s Minar has refused to accept the Exit Clause proposal at this stage by mentioning that it would not be legal and also the time line for PPA signing as directed by KSERC is 18.03.2024, the matter was placed before Full Time Directors as per note read as 7th above for a decision.

Having considered the matter in detail, the Full Time Directors, resolved to authorize the Chief Engineer(Commercial & Tariff) for filing a review petition against KSERC order in OP:53/2022 dated 08.02.2024 before KSERC for including Exit Clause in the approved PPA.

Orders are issued accordingly.

By Order of the Full Time Directors

Sd/-

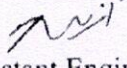
LEKHA G
COMPANY SECRETARY

To
The Chief Engineer (Commercial & Tariff)
The Deputy Chief Engineer (TRAC)

Copy to

The Company Secretary / Chief Engineer (IT,CR&CAPS) / Financial Advisor / LA&DEO / Chief Internal Auditor / Chief Vigilance Officer
The TA to the Chairman & Managing Director / Director (Generation-Civil) / Director (Distribution, Safety, SCM & IT) / Director (Transmission, SO & Planning) / Director (Generation - Electrical, REES, SOURA, Sports & Welfare)
The PA to the Director (Finance & HRM)
The Sr.CA to the Secretary (Administration)
The RCAO/ RAO
Stock File

Forwarded/ By Order


Assistant Engineer