



KERALA STATE ELECTRICITY BOARD LIMITED

(Incorporated under the Companies Act, 1956) CIN:U40100KL2011SGC027424

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Abstract

Long term procurement of power on DBFOO basis - Non approval of fuel surcharge in respect of 350 MW DBFOO contracts under Bid-2- filing of review petition- ratification - Orders issued-

Corporate Office (Planning)

BO(FTD) No. 222 /2020 (No. CE(C&T)/DBFOO/LT/2014-15/
Thiruvananthapuram Dtd 20-03-2020

- Ref: 1.G.O. (Ms) No.45/2014/PD dated Thiruvananthapuram 20-12-2014
2.KSERC order dated 22-12-2016 on KSEBL Petition No. 1893/DD (T)/Jhabua/2016/ KSERC in OP No. 13/2015
3.G.O.(Ms)No.22/2017/POWER dated Thiruvananthapuram 21-10-2017
4.Lr.No. 1420/DD(T)/DBFOO 450MW/2017/KSERC/1103 dated 22-2-2017
5.FTD Note No. CE(C&T)/DBFOO/LT/2014-15/1139/06-03-2020
6.Note No. CE(C&T)/DBFOO/LT/2014-15/1161/11-03-2020 of the Dy.Chief Engineer (Comml & Plg) with full powers of Chief Engineer submitted to Full Time Directors (Agenda No.33/3/20)

ORDER

KSEBL had entered into 865MW long-term Power Sale Agreements on DBFOO basis with the successful bidders of Bid1 and Bid2, after obtaining approval from Government, as per the order read as 1 above. Thereafter as envisaged in the PSAs, approval of PSAs was pursued with KSERC. The Hon'ble KSERC had already approved the PSAs and adopted the tariff of L1 bidders under Bid 1 and Bid 2 namely 200MW from Jindal Power Ltd (Bid1) and 100MW from BALCO (Bid2). Thereafter KSERC as per order read as 2 above gave provisional approval of the PSA of the L2 bidder under Bid1 ie.115 MW from Jhabua Power Ltd also. Thus, DBFOO PSAs of 415 MW were approved and balance 450 MW PSAs under Bid2 were not approved in which 100MW PSA executed with East Coast Energy Pvt Ltd ceased to exist, since the plant did not achieve CoD. The balance PSAs (Bid2) to be approved by KSERC, as on date is 350MW, namely Jindal India Thermal Power Ltd (100MW), Jindal Power Ltd (150 MW), Jhabua Power Ltd (100 MW). Subsequently, Government of Kerala as per order read as 3 above had permitted KSEBL to draw power from the entire DBFOO contracts, pending detailed consideration of the matter. It was also stated that final orders in the matter shall be issued in due course. Thereafter the Commission, as per the letter read as 4 above allowed KSEB Ltd to schedule the contracted power under DBFOO, in view of the Government order read 3 above.

Based on the authorization to draw power as per DBFOO contracts, KSEBL commenced scheduling power from these suppliers from 01-10-2017 onwards. On commencement of supply KSEBL is making monthly tariff payments as per the terms and conditions specified in the PSAs. The computation of Fixed Charge and Variable Charge are as per the terms and conditions of the executed PSAs. Even though L1 matching was made for Bid2 contracts, as

on bid date, the rates are not designed to remain same during the period of PSA and it keeps on changing based on different external parameters, effect of which is different for different generators.

While approving the ARR, ERC and Tariff for the MYT period 2018-19 to 2021-22 on 08-07-2019, the Commission has considered scheduling entire power from PSAs of Bid-2. However citing that the required approvals from Government of India and State Government was awaited, for estimating the ARR&ERC for the control period, the rate of power from Balco, which is the L1 of Bid 2, was considered by KSERC in respect of other generators in Bid 2 (350 MW).

On 27.09.2019, as per fuel surcharge regulations, KSEBL filed petition no. OA 29/2019 for the approval of the fuel surcharge, for the period from April 2019 to June 2019. The Commission in its order dated 14-02-2020, while approving the fuel surcharge petition had not approved the excess amount incurred for procuring power from 350MW non approved DBFOO PSAs under Bid 2. Thus, in addition to denying additional fuel cost in respect of these stations for the first quarter of 2019-20, the Hon'ble Commission went ahead to order that the additional amount incurred over and above the rates of L1 bidder in Bid 2 will not be allowed during the true up stage as well, unless Government approvals are in place.

The Dy. Chief Engineer (Commercial & Planning) with full powers of Chief Engineer as per note read as 5 above has placed this matter before the Full Time Directors and has pointed out that KSEBL has executed DBFOO PSAs as per the standard bidding documents issued by Ministry of Power. While procuring power as authorized by Government of Kerala and KSERC, KSEBL is bound to comply with the terms and conditions specified in the executed PSAs and make monthly payments as envisaged in the PSAs. While applying the eligible escalation factors provided in the PSA, the variation of FC and VC would be different. Similarly, the landed cost at Kerala periphery is dependent on the transmission charges and losses during each month, which is further dependent upon the region in which the suppliers power station is located.

Under the above circumstances, the Dy. Chief Engineer (Commercial & Planning) with full powers of Chief Engineer as per note read as 5th paper above has pointed out that there is apparent error in the KSERC order, since different contracts cannot be equated and administered. If KSEBL follows order of KSERC and administer the payments to other three generators based on the rate of BALCO, it will lead to breach of contract and consequential legal complexities. Moreover, such an action by KSEBL may not be legally sustainable, since procurement of power from these suppliers is governed as per the terms and conditions of respective PSAs executed with each supplier. Since the power is drawn based on the orders of KSERC, subsequently denying pass over of liabilities in accordance with the provisions of the PSA (which is strictly in accordance with the Standard Bidding Documents notified by the Ministry of Power, GoI as per Section 63 of EA 2003) is an apparent error on face of records.

In case Commission is not inclined to pass over the liabilities under PSA, it amounts to rejection of respective PSAs. In such a case, it would be inappropriate to draw power contracted against these PSAs. Hence the stalemate in administering these PSAs, may be

brought to the notice of the Commission and appropriate directions may be sought. As per Regulation 57 of KSERC Conduct of Business Regulation 2003, any person or party affected by decision, direction or order of the Commission may within 45 days from the date of making such decision, direction or order apply for the review of the same. Since the direction to draw the contracted power as per executed PSAs and the decision to disallow the power purchase expenses to be incurred as per terms and conditions of PSAs are contradictory in nature, it is suggested that KSEBL may file a Review Petition before KSERC requesting that if the Hon'ble Commission is not inclined to pass over the liabilities of 350MW PSAs executed on DBOO basis under Bid 2, then it would be inappropriate to draw power from these PSAs and hence may be requested to issue appropriate directions in this regard.

Accordingly, the matter was placed before the Full Time Directors for decision since the due date of payment of monthly bills of February 2020 for availing the rebate of 1%, in respect of the aforementioned 350MW PSAs was 10-03-2020. Considering the urgency, the Chairman & Managing Director as per note read as 5 above, approved the matter with direction to place before the Full Time Directors for ratification. Thus the payment against the monthly bills as per the PSAs has been made by due date and the process of filing Review petition had also been initiated.

Accordingly, the Dy. Chief Engineer (Commercial & Planning) with full powers of Chief Engineer as per note read as 6 above had placed the matter before the Full Time Directors for ratification.

Having considered the matter in detail, Full Time Directors in its meeting held on 12-03-2020, resolved to ratify the decision to file Petition before the KSERC seeking review of order dated 14-02-2020 in Petition No.OA 29/2019 and to allow passing on of additional fuel cost incurred against PSAs with Jindal India Thermal Power Ltd, Jindal Power Ltd and Jhabua Power Ltd under Bid 2.

Orders are issued accordingly.

By Order of the Full Time Directors

Sd/-
LEKHA G.
Company Secretary in Charge

To

The Chief Engineer (Commercial & Planning),
The Chief Engineer (Trans & SO)
The Financial Advisor
The Deputy Chief Engineer(TRAC)

Copy to:

TA to the Chairman and Managing Director/PA to the Director (Finance)/TA to the Director (T-SO)/ TA to the Director (Dist. & IT)/ TA to the Director (CP,G-E, SCM & Safety)/ TA to the Director (G-C&HRM)/Secretary (Administration)/ The Legal Advisor & Disciplinary Enquiry Officer/The Financial Adviser/The Chief Internal Auditor/The Fair Copy Superintendent, Office of the Secretary (Administration)/Library/Stock file/General Stock file.

Forwarded / By Order

Assistant Executive Engineer