



## KERALA STATE ELECTRICITY BOARD LIMITED

(Incorporated under the Companies Act, 1956) CIN:U40100KL2011SGC027424  
Reg. Office :Vidyuthi Bhavanam, Pattom, Thiruvananthapuram – 695 004, Kerala  
Phone: +91 471 2514473, 9446008581 E-mail: dce.cp@kseb.in  
Web site www.kseb.in

### Abstract

Long term procurement of power on DBFOO basis – Deduction in monthly tariff payments due to non approval of fuel surcharge by KSERC in respect of 350 MW DBFOO contracts under Bid-2–legal opinion on APTEL order dated 20-11-2020 on the appeal filed by JITPL- Legal opinions received – further course of action- Orders issued-

### Corporate Office (Planning)

BO(FTD) No. 756/2020 (No. CE(C&T)/DBFOO/JITPL/2020-21/  
Thiruvananthapuram Dtd 21-12-2020

- Ref:
1. G.O. (Ms) No.45/2014/PD dated Thiruvananthapuram 20-12-2014
  2. G.O.(Ms)No.22/2017/POWER dated Thiruvananthapuram 21-10-2017
  3. Lr.No. 1420/DD(T)/DBFOO 450MW/2017/KSERC/1103 dated 22-12-2017
  4. KSERC Orders dated 04-02-2020, 27-04-2020 and 14-08-2020
  5. APTEL order dated 6-11-2020 and 20-11-2020
  6. Email dtd 01-12-2020 of Adv. Prabhas Bajaj, Counsel for KSEBL at APTEL
  7. Note LA&DEO/R/152/2020 dated 02-12-2020 of the LA & DEO, KSEBL
  8. Note No. CE(C&T)/DBFOO-JITPL/2020-21/807/07-12-2020 of the Dy.Chief Engineer (Comml & Plg) with full powers of Chief Engineer submitted to the Full Time Directors (Agenda No.40/12/20)

### 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 of Kerala (GoK), as per the order read as 1 above. Thereafter as envisaged in the PSAs, approval of PSAs was pursued with KSERC. The Hon'ble Commission 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 provisional approval of the PSA of the L2 bidder under Bid1 ie.115 MW from Jhabua Power Ltd was obtained from GoK, followed by the provisional approval of KSERC also. Thus, DBFOO PSAs of 415 MW were approved and the 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 350MW PSAs under Bid2 to be approved by KSERC are Jindal India Thermal Power Ltd (100MW), Jindal Power Ltd (150 MW) and Jhabua Power Ltd ( 100 MW). Subsequently, Government of Kerala as per order read as 2 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. In view of this Government order, the Commission as per the letter read as 3 above allowed KSEB Ltd to schedule the contracted power under DBFOO.

Meantime KSEBL had filed petitions seeking recovery of the additional cost incurred during the period April 2019 to June 2019(first quarter of 2019-20) and July 2019 to September 2019(Second quarter of 2019-20). KSERC vide orders dated 14-2-2020 and 27-4-2020 respectively while approving the fuel surcharge for these quarters did not approve the

actual amount incurred for procuring power from 350MW DBFOO PSAs under Bid 2, citing that PSAs are yet to be finally approved. Hence KSEB Ltd filed review petitions seeking review of these orders and to allow passing on of additional fuel cost incurred against these PSAs under Bid 2. During this period, the monthly tariff payments were made to the Suppliers as per the terms and conditions of the PSA.

The KSERC as per common order dated 14-8-2020 rejected the prayers of KSEBL. While rejecting the prayers in the Review petition, KSERC ordered that the prayer of KSEBL to issue appropriate directions on the drawal of power contracted against these PSAs, if KSERC is not inclined to pass on the liabilities of 350MW PSAs executed on DBFOO basis under Bid 2 is a new issue raised by KSEB Ltd, which was neither included nor deliberated in the original fuel surcharge petitions and therefore this prayer cannot be decided through Review Petitions filed by KSEB Ltd.

Thereafter the monthly tariff payments by KSEBL to 350MW generators under Bid 2, for the units delivered by them at Kerala periphery was limited to that of the tariff rate of BALCO at Kerala periphery, from the month of August 2020 onwards. Also another petition was filed before KSERC by KSEBL, seeking a final order on the approval or otherwise, in respect of the aforementioned 350 MW PSAs.

Subsequently, aggrieved by deduction in monthly tariff payments as per KSERC order dated 14-08-2020, Jindal India Thermal Power Ltd filed an appeal petition before the Appellate Tribunal for Electricity (APTEL) requesting to set aside the Orders passed by KSERC on 14-02-2020 and 27-04-2020 and to approve the tariff as per the executed PSA. The matter was heard by APTEL on 06-11-2020 and on 20-11-2020.

On 20-11-2020 APTEL ordered stay on the KSERC orders dated 14-02-2020 and 27-04-2020 and directed to maintain the status quo prior to the date of 14-02-2020. KSERC was also instructed to conclude the proceedings on the petition filed by KSEBL (which was placed before APTEL) expeditiously and render its decision as early as possible.

In the above scenario, based on the legal opinions obtained, the Dy. Chief Engineer (Commercial & Planning) with full powers of Chief Engineer as per the note read as 8<sup>th</sup> above pointed out that before complying to the orders of APTEL obtaining a specific permission from KSERC will safeguard the interest of KSEBL, in the event that KSERC refuses to grant approval of 350 MW PSAs under Bid2 while disposing the petition filed by KSEBL.

It was also suggested that KSEBL may immediately file an additional written submission before KSERC on the Petition No. OA-20/2020 (fuel surcharge petition for 2<sup>nd</sup> quarter of 2020-21) in light of the APTEL order dated 20-11-2020, to issue appropriate orders on approval of fuel surcharge corresponding to power purchase from 350MW of contracted power under DBFOO Bid-2, as per Regulation 86 of KSERC(Terms and Conditions for determination of Tariff)Regulations,2018 so as to enable KSEBL to recover the payments to be made to these generators and comply with the direction of Hon'ble APTEL.

It was also pointed out that till an order on the submission is received from KSERC, the monthly tariff payment for the 350MW power procured under Bid2 for the units delivered at Kerala periphery may be limited to that of the tariff rate of BALCO at Kerala periphery, as ordered vide KSERC orders dated 04-02-2020 and 27-04-2020.

Having considered the matter in detail, Full Time Directors in its meeting held on 16-12-2020,

1. Resolved to accord sanction to KSEBL shall immediately file the additional written submission on Petition No. OA-20/2020 (fuel surcharge petition for 2<sup>nd</sup> quarter of 2020-21) before KSERC, placing on record the APTEL order dated 20-11-2020, seeking appropriate orders on approval of fuel surcharge corresponding to power purchase from 350MW of contracted power under DBFOO Bid-2 (Jindal Power Ltd-150MW, Jhabua Power Ltd-100MW and Jindal India Thermal Power Ltd – 100MW) as per Regulation 86 of KSERC (Terms and Conditions for determination of Tariff) Regulations,2018.
2. Further resolved to limit the monthly tariff payments for the 350MW power procured at Kerala periphery under Bid-2 from Jindal Power Ltd-150MW, Jhabua Power Ltd.-100MW and Jindal India Thermal Power Ltd – 100MW to that of the tariff rate of BALCO at Kerala periphery, from November 2020 onwards, till orders in OA-20/2020 are obtained from KSERC.

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