



KERALA STATE ELECTRICITY BOARD LIMITED

(Incorporated under the Indian Companies Act, 1956)

CIN: U40100KL2011SGC027424

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ABSTRACT

Annual Fixed charges of RGCCPP, Kayamkulam for 2019-24 - Sanctioned - Orders issued.

Corporate Office (Commercial & Tariff)

Board order (FTD)No. 723 /2020(KSEB/TRAC/CG/RGCCPP/2020-21/

dtd. 30 .11.2020

Read: 1. PPA dated 6-1-1995 signed with M/s. NTPC.

2. Supplementary PPA dated 15-2-2013 signed with M/s.NTPC.

3. D.O.No.185/B1/2017 dated 16-11-2017 of Additional Chief Secretary to Government to the Secretary, Ministry of Power.

4. Minutes of the meeting held on 13-12-2017 by the Secretary, Ministry of Power, GoI.

5. Letter No.185/B1/17/PD dated 10-5-2018 of the Principal Secretary to Government, Power Department, Government of Kerala.

6. Tariff Petition filed by NTPC before CERC for 2019-24.

7. KSERC MYT order dated 8-7-2019.

8. Regulation Notice dated 22.02.2020 issued by ED (Commercial) NTPC delivered on 25.02.2020.

9. Minutes of the meeting held on 7-3-2020 by the Secretary, Power Department, GoK

10.Minutes of Meeting dated 13-10-2020 conducted by Joint Secretary(Thermal)

11.Minutes of Meeting held on 12-11-2020 between NTPC and KSEBL

12. Note No.KSEB/TRAC/CG/RGCCPP/2020-21 dtd. 16-11-2020 of the Deputy Chief Engineer (Commercial & Planning) with full powers of Chief Engineer (Agenda 69/11/20).

ORDER

KSEBL has executed Power Purchase Agreement (PPA) read as 1st above with NTPC for purchase of power from Rajiv Gandhi Combined Cycle Power Project of capacity 359.58 MW on 6-1-1995 , which uses naphtha as fuel. The original PPA which expired in 2013 was extended on 15-02-2013 for 12 more years i.e. upto 2025 as per Supplementary PPA read 2 above with a review option stating that after 5 years from 1-3-2013, KSEBL Ltd. shall have the discretion not to schedule power from the Kayamkulam station based on its cost economics, mutually discussed and agreed upon. The extension for a long period of 12 years was based on the request of NTPC to facilitate conversion of the plant for using LNG as fuel.

Thereafter, the plant is very rarely scheduled because of high cost of naphtha and corresponding high variable cost of energy. Since January 2015, there has been no schedule from the plant. However, KSEBL is bound to pay fixed charges as determined by the CERC, even while not availing energy from the plant.

The tariff of RGCCPP is determined as per the norms issued by the Central Electricity Regulatory Commission (CERC) which are issued for 5 year tariff periods. Since the said norms are fixed for continuously operating plants, the Annual Fixed Cost of RGCCPP, fixed based on these norms became very high for the control period 2014-19. This amounted to Rs.284.74 Cr for 2014-15 and Rs.301.17 Cr for 2018-19. This high AFC was objected by Kerala State Electricity Regulatory Commission (KSERC) and disallowed in the ARR of KSEBL and directed to approach CERC for applying relaxed norms for fixing the AFC of the plant.

In compliance, KSEBL approached CERC and CERC has directed both parties to negotiate and arrive at a mutually agreed tariff. Since negotiations between KSEBL Ltd. and NTPC could not achieve the desired results, several discussions between NTPC Ltd. and KSEBL with the intervention of GoK was held. Finally, the CMD, NTPC

agreed to settle for a lower AFC of Rs.200 Cr per annum for the plant for the control period 2014-19. To finalize the AFC for the control period 2019-24, the Government consented for a further review during 2018-19.

Subsequently, considering the suggestions evolved in the meeting held at Government of India level, CERC during the framing of Tariff Regulations for the new control period (2019-24) incorporated a new provision (Regulation 66 of the CERC Tariff Regulations, 2019) which provides for the Generating Company or the Transmission Licensee to opt for a lower AFC on mutually agreed basis, with the approval of the Commission.

Invoking the above provision and considering the liberty for review, KSEBL and NTPC Ltd. held 2 rounds of discussions, however, no mutually agreed AFC for the control period 2019-24 could be arrived at.

NTPC Ltd. was not agreeable for reducing the AFC of the plant below Rs.200Cr per annum for the control period 2019-24. KSEBL had intimated NTPC Ltd., that it was willing to reimburse the entire actual expenses of the plant honouring the PPA and had requested NTPC to furnish the actual expenses being incurred at the plant. However, NTPC Ltd. did not furnish the same.

Since NTPC Ltd. Neither provided the details requested by KSEBL nor concurred to the proposal of KSEBL, KSEBL was provisionally approving only Rs.62.35Cr as AFC for the period from April 2019 onwards (based on available data as actual expenses of the plant), even though NTPC continued to claim AFC of Rs.200Cr/year.

Kerala State Electricity Regulatory Commission in the Multi Year Tariff order read as 7 above did not approve the AFC of RGCCPP in the ARR of KSEBL from 2019-20 onwards and had directed KSEBL to negotiate for bringing down the AFC.

In the meanwhile, KSEBL had also explored the possibility of using LNG as fuel at RGCCPP and reduce its cost, and as part of this, a high level meeting between NTPC, Petronet and KSEBL attended by the CMDs of these organizations were held on 17-10-2019 at New Delhi. However, on analysis of the offer for gas conversion, it is found that gas conversion will only lead to huge increase in the yearly payouts and a huge financial burden for KSEBL.

While being so, NTPC unilaterally, in total disregard to the settlement at GoK level, raised monthly invoices from the month of December 2019 onwards at an AFC of Rs.297.65 Cr. Further, in the unilateral tariff petition before CERC for the control period 2019-24, NTPC has claimed higher fixed charges (an average of Rs.250Cr/year).

Further, NTPC issued a 'Regulation notice' under CERC(Regulation of Power Supply)Regulations, 2010 to KSEBL, which was delivered to KSEBL on 26-2-2020 intimating that power from all NTPC Stations totalling to 1109.92MW would be stopped with effect from 10-3-2020 claiming that an amount of Rs.235.49 Cr remains unpaid beyond due dates. The said amount is the difference between AFC being released against Kayamkulam plant as against the enhanced claim for AFC by NTPC Ltd. In reply, KSEBL intimated NTPC that the notice is illegal and KSEBL would be constrained to take further steps. It was also intimated that all the options are still open for mutual discussion and resolving the issue in a cordial manner.

Based on the above developments, the Secretary, Power Department, GoK conducted a meeting on 7-3-2020 with NTPC and KSEBL. In the meeting KSEBL intimated its willingness to pay Rs.78.44 Cr(actual expenses of the plant as per the true-up petition of NTPC excluding depreciation, RoE etc) as AFC of the plant. However, NTPC did not concur to the same. Therefore, the Secretary, Power Department suggested that the regulation notice may not be pursued and NTPC may offer the AFC that they are seeking immediately so that the same can be put upto higher levels for consideration. It was also suggested that if the proposals are not found viable, KSEBL may be permitted to exit from the PPA as per extant agreements.

Legal advice was sought on the possibility of termination of PPA with the review option provided in the supplementary agreement, but the opinion rendered by the LA&DEO of KSEBL as well as Sr.Adv.Ramesh Babu, who is dealing with the writ petition filed by KSEBL before Hon'ble High Court of Kerala, was that the review clause in the PPA cannot be exercised for termination of PPA. The legal view was that such an action could result in payment of compensation to NTPC through due process.

Since the regulation notice was still pursued by NTPC, KSEBL filed a writ petition (WP (C) 8123) before Hon'ble High Court of Kerala challenging the regulation notice. While the matter came up before Hon'ble High Court, NTPC communicated that the said regulation notice was deferred in view of the Covid-19 situation.

In the meeting on 13-10-2020 under the chairmanship of the Joint Secretary(Thermal), Ministry of Power to discuss the Regulation notice issued and Annual Fixed charges of RGCCPP. In the meeting, NTPC had offered Rs.110 Cr as AFC provided the fuel stock is exhausted immediately. KSEBL was not ready to pay any amount more than Rs.100Cr for the plant considering that the plant is not scheduled and the actual expenses of the plant as per accounts plus a reasonable return will come to only around Rs.100Cr.

In this meeting Joint Secretary, MoP directed that the settlement amount of NTPC and KSEBL differ only slightly and both parties should resolve the issue amicably at the earliest and communicate to Ministry of Power for their final settlement.

In compliance with the above, another meeting was held between NTPC and KSEBL on 12-11-2020, wherein both NTPC and KSEBL agreed on Rs. 100 crores per annum as annual fixed charges of RGCCPP, Kayamkulam for the period starting from 01.04.2019 to the end of station life as per PPA i.e upto 28.02.2025. Further, the following was also agreed as per the paper read 11 above—

- I. As KSEB is not likely to give schedule on Naphtha, the amount of Rs 100 Cr per annum towards reduced AFC during the period of preservation, is agreed as a special condition with a pre-requisite that existing Stock of Naphtha will be consumed latest by March 2021, for which KSEB shall give necessary schedule to RGCCPP Kayamkulam. This is essential to bring down AFC from CERC determined levels to reduced levels of Rs 100 Cr.
- II. Losses due to scheduling (for consuming the existing stock of Naphtha) of RGCCPP by KSEBL over and above the Average ECR of NTPC Kudgi station for the FY 20-21, will be shared equally by KSEB and NTPC. (No post-facto revision of Average ECR of Kudgi beyond April 2021 is envisaged for this purpose)
- III. The station shall be deemed to be available (DC) during such period of preservation. Notice of minimum 45 days shall be given by KSEBL in case station is required to generate, considering the time required for fuel procurement, technical start up from preservation and additional mobilization of manpower.
- IV. There will be no reduction in agreed lumpsum AFC of Rs 100 Cr for the remaining period of PPA i.e. up to 28th February, 2025. In case KSEB schedules power from RGCCPP on a regular basis (continuously for more than one month), CERC determined AFC shall be applicable on pro-rata basis, for the period power is scheduled by KSEB. This is excluding the period power is scheduled to consume existing stock of Naphtha (to be consumed by March'21)
- V. In case another customer needs power from Kayamkulam, KSEB shall permit the same without levy of STU charges. However, if the other customer is availing power on regular basis (continuously for more than one month), then STU charges shall be payable. Further, in case

power is availed by any alternate customer on regular basis (continuously for more than one month), the fixed charges of Rs 100 Crs payable by KSEBL shall be reduced proportionate to the period power is supplied to such alternate customer.

- VI. All litigations filed in various courts including Writ Petition (c) no. 8135 of 2020 filed by KSEBL in the High Court of Kerala, shall be withdrawn. NTPC shall withdraw the Regulation of Power supply notice dt. 22.02.2020 issued to KSEBL.

The Deputy Chief Engineer(Commercial & Planning) with full powers of Chief Engineer placed the matter before Full Time Directors as per note read 12 above and suggested that KSEBL may inform the above matter before GoK and seek approval for the settlement. Also suggested that GoK may also be requested to communicate the matter to MoP and KSERC on the settlement reached. It was also suggested that KSERC may be informed about the above settlement and request KSERC to consider the negotiated AFC in the power purchase cost of KSEBL for the years from 2019-20 onwards till the end of PPA period. KSEBL may also request KSERC to approve the cost for disposal of naphtha in the power purchase cost of KSEBL. He also suggested that in view of the settlement reached, KSEBL may withdraw all litigations filed in various courts including Writ Petition (c) no. 8135 of 2020 filed by KSEBL in the High Court of Kerala.

Having considered the matter in detail, the Full Time Directors in its meeting held on 17-11-2020 :

1. Resolved to approve the MoM dated 12-11-2020 with NTPC with respect to RGCCPP, Kayamkulam.
2. Further resolved to inform the above matter before Government of Kerala and seek approval for the settlement and request to communicate the matter to Ministry of Power and KSERC on the settlement reached.
3. Further resolved to approve the draft letter to GoK and KSERC .
4. Further resolved to inform KSERC about the above settlement and request KSERC to consider the negotiated AFC and the cost of disposing fuel stock in the power purchase cost of KSEBL for the years from 2019-20 onwards till the end of PPA period.
5. Further resolved to accord sanction to withdraw the Writ Petition (c) no. 8135 of 2020 filed by KSEBL in the High Court of Kerala on receiving confirmation by NTPC on withdrawal of Regulation notice.

Orders are issued accordingly.

By order of Full Time Directors,
Sd/
Lekha G.
Company Secretary

To

The Deputy Chief Engineer (Commercial & Planning) with full powers of Chief Engineer
Copy to: DCE(TRAC), PA to Director (Finance) FCA to Secretary (Administration), Stock file, Library

Forwarded by order


Asst: Exe.Engineer