

**KERALA STATE ELECTRICITY REGULATORY COMMISSION**  
**THIRUVANANTHAPURAM**

**Present: Shri. Preman Dinaraj, Chairman**  
**Shri. A.J Wilson, Member (Law)**

**OP No 33/2021**

In the matter of : Petition filed by M/s THDCIL for approval of Power Sale Agreement between M/s THDCIL and KSEBL.

Petitioner : THDCIL India Ltd., Bhagirathi  
Bhavan, Top Terrace,  
Bhagirathipuram  
Tehri Garhwal-249001

Respondents : 1. Kerala State Electricity Board Ltd.,  
2. Renewable Power Corporation of Kerala Ltd.  
(RPCKL)  
3. Solar Energy Corporation of India Ltd., New  
Delhi, (SECI)

THDCIL represented by ; Adv Asok Kumar B, Counsel of petitioner  
Smt. Sunita Tamta, Manager (RE)  
Sri. Sanjay Singhal, AGM  
Sri. P Sudhakar

SECI represented by : Sri. Sandeep Reddy

RPCKL represented by : Sri Augustine Thomas, CEO

KSEB Ltd represented by : Sri. KGP Nampoothiri, Executive Engineer

Hearing held on : 17.08.2021

**Order dated 29.10.2021**

1. M/s THDC India Limited (hereinafter referred to as THDCIL or the petitioner), on 23.07.2021 filed a petition before the Commission with the following Prayers.
  - (a) *Approve the Power Sale Agreement dated 16.01.2019 read with amendment dated 12.07.2021 by Kerala State Electricity Board Limited from THDC India Limited's Solar PV Power Project of 50 MW capacity established in the 105 MW Solar Park in Kasargod District in the State of Kerala at the tariff and terms of the PSA dated 16.01.2019 read amendment dated 12.07.2021 effective 31.12.2020;*

- (b) *Pass any such further Order or Orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.*

2. Summary of the petition filed by the petitioner M/s THDCIL is given below.

- (1) The Commission vide Order dated 17.03.2021 in OP No. 26/2020 had approved the tariff of the electricity generated from the 50 MW Solar Plant of M/s THDCIL at Kasargod District, Kerala State. The relevant Order of the Commission is extracted below.

*"44. The Commission after detailed examination of the petition filed by M/s THDCIL, the counter affidavit filed by the respondent KSEB Ltd and M/s RPCKL, other documents submitted during the deliberations of the subject petition, as per the provisions of the Electricity Act, 2003, KSERC (Renewable Energy & Net Metering) Regulations, 2020 and other relevant documents wherever necessary, hereby issue the following Orders.*

- (1) *The levelized tariff for the electricity generated from the 50 MW Solar Project of M/s THDCIL is approved @ Rs 3.10/unit, inclusive of all taxes and duties including tax on RoE.*
  - (2) *The levelized tariff approved as above is applicable for the entire electricity injected into the grid from the date of synchronization upto 25years.*
  - (3) *Since the tariff of this petition is already determined as per Section 86(1)(b) by the State Commission, the Commission hereby directs THDCIL not to pursue for tariff determination under Section 79(1)(a) of the Electricity Act before the Central Commission.*
  - (4) *Since the tariff approved for the project is the upper ceiling tariff mutually agreed by the petitioner M/s THDCIL and the respondent KSEB Ltd, the petitioner is not eligible to reimburse the tax on RoE from KSEB Ltd, and also not eligible to pass through the taxes and duties to KSEB Ltd, as detailed under paragraph 42 and 43 of this Order.*
  - (5) *As mentioned under Paragraph 18 of this Order, the present proceedings are limited to determination of tariff for the project as per Section 62 of the Electricity Act, 2003. The petitioner M/s THDCIL and the respondent KSEB Ltd is required to modify the initialled PSA with the approved tariff as above, and shall file a separate petition for approval of the PSA as per the provisions of the Electricity Act, 2003 and the Regulations notified by this Commission."*
- (2) In terms of the directions of the Commission, THDCIL and KSEB Ltd have signed an Amendment dated 12.07.2021 to the PSA. In pursuance of the directions of the Commission in the Order dated 17.03.2021, the present petition has been filed to seek the approval of the Commission for procurement of power by KSEB Ltd from the 50MW Solar Power

Project of THDCIL in terms of Section 86(1) of the Electricity Act 2003.

- (3) The Solar Power Project of 50MW capacity of THDCIL was fully commissioned and CoD declared on 31.12.2020. Since then, power is being supplied by THDCIL to KSEB Ltd.
3. The Commission admitted the petition as OP 33/2021. Hearing on the petition was conducted on 17.08.2021, through video conference. Summary of the deliberations during the hearing is given below.
  - (1) Smt Sunita Tamta, on behalf of the petitioner M/s THDCIL, made a brief presentation on the background of the petition. The petition was filed in compliance of the Order of the Commission dated 17.03.2021. The project was already commissioned and achieved CoD on 31.12.2020. They have already initialled PSA on 16.01.2019 and suitably amended it incorporating the tariff and other related provisions as per the Order of the Commission dated 17.03.2021.
  - (2) The Commission, further instructed KSEB Ltd that, henceforth the PPA/PSA to be signed by KSEB Ltd with the Solar Power generators and intermediary traders shall be in line with the model bidding guidelines notified by MoP/MNRE, Gol for the procurement of Solar Power through competitive bidding route as per the Section 63 of the Electricity Act, 2003. The Commission also directed the petitioner THDCIL and KSEB Ltd to modify the PSA by incorporating the provisions of the bidding guidelines.
4. During the hearing, the Commission noted the following discrepancies in the initialed PSA submitted before the Commission for approval.
  - (1) **Clause 5.1 of the draft PSA.**

The last two sentences of the Clause 5.1 of the draft initialed PSA provide as follows.  
“...The power from the plant will be scheduled as per KSERC Regulations. In the absence of KSERC Regulations, CERC Regulations regarding forecast and scheduling shall be followed”.

In this matter, Regulation 38 of the KSERC (Renewable Energy & Net Metering) Regulations, 2020 (hereinafter referred to as KSERC RE Regulations, 2020) is to be considered before finalizing PSA.

Regulation 38 is extracted below.  
“38. **Principles for the dispatch for Electricity Generated from Renewable Energy Sources.-**  
(1) *All the renewable energy power plants, unless and otherwise exempted, shall be treated as “MUST RUN” power plants and shall not be subjected to “Merit order Dispatch” principles.*”

Therefore, the Commission directed the parties to modify the Clause 5.1 of the draft initialed PSA duly incorporating provisions of the KSERC (Renewable Energy & Net Metering) Regulations, 2020.

(2) **Clause 5.3.4 of the draft initialed PSA.**

Last part of the Clause 5.3.4 of the PSA read as follows.

*“.... The shortfall in generation shall be adjusted considering non-availability of grid for power evacuation which is beyond the control of the SPD, if the measured Global Horizontal Irradiance (GHI) per year is less than 1865/ kWh/m<sup>2</sup>, Force Majeure conditions and annual degradation of 0.8%. The amount of compensation shall be equal to the compensation payable by the KSEBL towards non-meeting of RPOs on pro-rata basis, if such compensation is ordered by the State Regulatory Commission”*

The Commission noted that, in the bidding guidelines notified by Central Government for procurement of Solar Power through competitive bidding route, and also in the draft/final PSA signed between SECI and KSEB Ltd for procurement of solar does not include a provision for adjustment in shortfall in generation based on the Global Horizontal Irradiance (GHI).

The Commission also expressed the view that, specifying the compensation payable by the SPD due to the shortfall in CUF linked to the compensation payable by KSEB Ltd towards non-meeting of RPOs will definitely lead to unnecessary disputes between the parties.

Considering these aspects in detail, Commission directed the parties to suitably modify the clause 5.3.4 of the PSA.

(3) **Clause 9.0 settlement of disputes:** As per the Section 86 (1)(f) of the Electricity Act, 2003, KSERC is the Appropriate Commission empowered for dispute resolution between the Generating Companies and distribution licensees located within the State of Kerala. **Hence, the Commission directed that the words “the same shall be dealt as per Electricity Act, 2003” shall be replaced with “the parties shall approach Kerala State Electricity Regulatory Commission for resolving the same”.**

(4) The Commission, also directed the petitioner to modify the other clauses of the PSA duly considering the Competitive Bidding guidelines and its amendments notified by the Central Government for the procurement of Solar Power through competitive bidding route as per the Section 63 of the Electricity Act, 2003.

5. Based on the deliberations during the hearing, the Commission, vide daily Order dated 18.08.2021, directed the petitioner THDCIL and respondent KSEB Ltd the following.

(1) *M/s THDCIL and KSEB Ltd, shall modify the various clauses of the draft initialled PSA dated 12<sup>th</sup> July 2021 in line with the provisions in the competitive Bidding guidelines and its amendments notified by the Central Government for the procurement of Solar Power through competitive bidding route as per the Section 63 of the Electricity Act, 2003.*

- (2) *Discrepancies pointed out in para 4 of this Daily Order shall be rectified as per instructions*
- (3) *THDCIL shall submit the modified draft initialled PSA with KSEB Ltd before the Commission on or before 10<sup>th</sup> September 2021.*

6. In compliance of the direction of the Commission, M/s THDCIL vide letter dated 10.09.2021 submitted the following.

- (1) KSEB Ltd, vide its letter dated 02.09.2021 has forwarded some modification in the initialed PSA dated 12.07.2021 in clauses 5.1, 5.3.4 and 9.2, the details are given below.

(i) **Clause 5.1**

**Original clause**

*It is understood and agreed by and between the parties that THDCIL shall operate the Project as per applicable grid operating standards and relevant statutory provisions / guidelines and codes, as applicable from time to time. It is agreed between the Parties that the Project shall be treated as 'MUST RUN' and shall not be subject to merit order scheduling. THDCIL shall engage necessary field staff to facilitate proper forecasting and scheduling of power. The power from the plant will be scheduled as per KSERC Regulation. In the absence of KSERC Regulations, CERC regulations regarding forecast and scheduling shall be followed.*

**Modified clause**

*It is understood and agreed by and between the parties that THDCIL shall operate the Project as per applicable grid operating standards and relevant statutory provisions / guidelines and codes, as applicable from time to time. 'The project, shall be treated as 'MUST RUN' power plant and shall not be subjected to 'Merit order Dispatch' principles. Scheduling of Renewable Energy plants shall be governed by KSERC (Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulations, 2019 and its amendments from time to time'. THDCIL shall engage necessary field staff to facilitate proper forecasting and scheduling of power'.*

**Clause 5.3.4**

**Original clause**

*KSEBL may identify the energy procured from the Project to meet its Renewable Purchase Obligations (as mandated by the Appropriate Commission). Entire energy generated from the contracted capacity of the Project shall be sold by THDCIL to KSEBL and KSEBL agrees to buy the entire energy at a tariff as per clause 7.0. Any shortfall in annual generation below annual CUF of 19% (ie, 1.667 MU / Megawatt per annum) shall make THDCIL liable to pay compensation. The shortfall in generation shall be adjusted considering non-availability of grid for power evacuation which is beyond the control of the SPD, if the measured Global Horizontal Irradiance (GHI) per year is less than 1865 / kWh/m<sup>2</sup>, Force Majeure conditions and annual degradation of 0.8%.*

*The amount of compensation shall be equal to the compensation payable by the KSEBL towards non-meeting of RPOs on pro rata basis, if such compensation is ordered by the State Regulatory Commission. Any compensation shall be levied after completion of first Accounting Year.*

**Modified clause**

*KSEBL may identify the energy procured from the Project to meet its Renewable Purchase Obligations (as mandated by the Appropriate Commission). Entire energy generated from the contracted capacity of the Project shall be sold by THDCIL to KSEBL and KSEBL agrees to buy the entire energy at a tariff as per Clause 7.0. Any shortfall in annual generation below annual CUF of 19% (ie, 1.66 MU / Megawatt per annum) shall make THDCIL liable to pay compensation. 'In case the project generates and supplies energy less than the energy corresponding to the minimum CUF, the solar power generator will be liable to pay to KSEBL, penalty for such shortfall below such contracted CUF level. SPG shall offset KSEBL for all potential costs (opportunity cost associated with shortfall in supply of contracted power, penalty for non-compliance of RPO obligation and other associated costs if any) associated with low generation and supply of power under the PPA, subject to a minimum of 25% (twenty five percent) of the cost of this shortfall in energy terms calculated at PPA tariff. In case the availability is more than the maximum specified CUF, KSEBL purchases the excess generation, at 75% (seventy-five per cent) of the PPA tariff.'*

**Clause 9.2**

**Original clause**

*In the event that the parties are unable to resolve any dispute, controversy or claim relating to or arising under this Agreement, the same shall be dealt with as per the provisions of the Electricity Act, 2003.*

**Modified clause**

*In the event that the parties are unable to resolve any dispute, controversy or claim relating to or arising under this Agreement the parties shall approach Kerala State Electricity Regulatory Commission for resolving the same.*

- (2) In reply to the proposed modifications of KSEB Ltd as above, THDCIL vide e-mail dated 03.09.2021 replied to KSEB Ltd that, the modified clauses No. 5.1 and 9.2 are agreeable except modifications in clause 5.3.4 which remain intact without any change.
  - (3) KSEB Ltd vide e-mail dated 08.09.2021 informed THDCIL that, as there is disagreement in modifications of clause 5.3.4, KSEB Ltd is not able to initial the modified PSA.
7. KSEB Ltd vide letter dated 17.09.2021 submitted the following before the Commission for consideration.

- (1) In compliance of the directions of the Commission vide daily Order dated 18.08.2021, KSEB Ltd has modified the Clause 5.1, Clause 5.3.4 and Clause 9.2 of the draft initialed PSA and forwarded the same to THDCIL on 02.09.2021.
- (2) THDCIL vide email dated 06.09.2021 has suggested to keep Clause No. 5.3.4 intact as in the PSA without any change. KSEB Ltd is not agreeable to the suggestion of THDCIL.
- (3) As there is disagreement from the part of the THDCIL in modification of Clause 5.3.4, KSEB Ltd was not able to initial the modified PSA within the timeline specified by KSERC.

### **Analysis and Decision of the Commission**

8. The Commission has examined in detail the petition filed by M/s THDCIL for the approval of the Power Sale Agreement dated 16.01.2019 read with the amendment dated 12.07.2021 with KSEB Ltd, as per the provisions of the Electricity Act, 2003, Rules and Regulations in force, decided the following.
9. The Commission vide Order dated 17.03.2021 in Petition No. OP No. 26/2020 approved the tariff for electricity generated and supplied to KSEB Ltd from the 50MW Solar Plant of THDCIL developed at Kasargod district. The relevant portion of the Order is extracted below.

*“44. The Commission after detailed examination of the petition filed by M/s THDCIL India Ltd, the counter affidavit filed by the respondent KSEB Ltd and M/s RPCKL, other documents submitted during the deliberations of the subject petition, as per the provisions of the Electricity Act, 2003, KSERC (Renewable Energy & Net Metering) Regulations, 2020 and other relevant documents wherever necessary, hereby issue the following Orders.*

- (1) *The levelized tariff for the electricity generated from the 50 MW Solar Project of M/s THDCIL India Ltd is approved @ Rs 3.10/unit, inclusive of all taxes and duties including tax on RoE.*
- (2) *The levelized tariff approved as above is applicable for the entire electricity injected into the grid from the date of synchronization upto 25 years.*
- (3) *Since the tariff of this petition is already determined as per Section 86(1)(b) by the State Commission, the Commission hereby directs THDCIL India Ltd not to pursue for tariff determination under Section 79(1)(a) of the Electricity Act before the Central Commission.*
- (4) *Since the tariff approved for the project is the upper ceiling tariff mutually*

*agreed by the petitioner M/s THDCIL India Ltd and the respondent KSEB Ltd, the petitioner is not eligible to reimburse the tax on RoE from KSEB Ltd, and also not eligible to pass through the taxes and duties to KSEB Ltd, as detailed under paragraph 42 and 43 of this order.*

- (5) As mentioned under Paragraph 18 of this Order, the present proceedings are limited to determination of tariff for the project as per Section 62 of the Electricity Act, 2003. **The petitioner M/s THDCIL India Limited and the respondent KSEB Ltd is required to modify the initialled PSA with the approved tariff as above, and shall file a separate petition for approval of the PSA as per the provisions of the Electricity Act, 2003 and the Regulations notified by this Commission.**
10. As above, the Commission vide Order dated 17.03.2021 had approved the tariff for the electricity generated from the 50MW Solar Plant of THDCIL at Kasargod District @Rs 3.10/unit. The Commission in the said Order, directed the parties M/s THDCIL and KSEB Ltd to modify the initialled PSA with the approved tariff, and directed to file a separate petition for the approval of the PSA as per the provisions of the Electricity Act, 2003 and Regulations notified by the Commission.
11. As per the Section 86(1)(b) of the Electricity Act, 2003, the approval of the 'agreements for purchase of power by the distribution licensees for distribution and supply within the State' is one among the statutory powers vested with the State Electricity Regulatory Commissions. The relevant Section of the Electricity Act, 2003 is extracted below.
- "86 Functions of the State Commission. - (1) The State Commission shall discharge the following functions, namely:-*
- .....*
- (b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;".*
12. Further, as per the Regulation 77 of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2018, prior approval of this Commission is mandatory for the procurement of power by the Distribution licensees from the generating companies or from any sources. The relevant Regulation is extracted below.

*"76. Approval of power purchase agreement. -(1) Every agreement for procurement of power by the distribution business/licensee from the generating business/company or licensee or from other sources of supply entered into after the date of commencement of these Regulations shall come into effect only with the approval of the Commission:*

*Provided that the approval of the Commission shall also be required in accordance with this Regulation for any change to an existing agreement for power procurement, whether or not such existing agreement was approved by the Commission.”*

13. As discussed above, as per the Section 86(1)(b) of the Electricity Act, 2003, and Regulations, 77 of the KSERC (Terms and Conditions of Determination of Tariff) Regulations, 2018, this Commission has to approve the initialed Power Supply Agreement between THDCIL and KSEB Ltd, for the procurement of power from the 50MW Solar plant of THDCIL at Kasargod District, at the tariff determined by this Commission.
14. M/s THDCIL and KSEB Ltd signed the draft PSA on 16.01.2019, and subsequently signed the Amendment dated 12.07.2021 incorporating the tariff approved vide Order dated 17.03.2021.
15. The Commission has examined the PSA initialed by THDCIL and KSEB Ltd in detail. The Commission noticed few discrepancies in the initialed PSA, mainly in Clause 5.1, Clause 5.3.4 and Clause-9 of the PSA, which are explained under paragraph -4 of this Order. Out of the above three clauses, the parties M/s THDCIL and KSEB Ltd. reached consensus to modify the Clause 5.1 and Clause 9.0 of the initialed PSA as follows.

#### **(1) Clause 5.1 of the initialed PSA**

##### **Original clause**

*It is understood and agreed by and between the parties that THDCIL shall operate the Project as per applicable grid operating standards and relevant statutory provisions / guidelines and codes, as applicable from time to time. It is agreed between the Parties that the Project shall be treated as 'MUST RUN' and shall not be subject to merit order scheduling. THDCIL shall engage necessary field staff to facilitate proper forecasting and scheduling of power. The power from the plant will be scheduled as per KSERC Regulation. In the absence of KSERC Regulations, CERC regulations regarding forecast and scheduling shall be followed.*

##### **Modification agreed and consented by both the parties to the agreement.**

*It is understood and agreed by and between the parties that THDCIL shall operate the Project as per applicable grid operating standards and relevant statutory provisions / guidelines and codes, as applicable from time to time. 'The project, shall be treated as 'MUST RUN' power plant and shall not be subjected to 'Merit order Dispatch' principles. Scheduling of Renewable Energy plants shall be governed by KSERC (Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulations, 2019 and its amendments from time to time'. THDCIL shall engage necessary field staff to facilitate proper forecasting and scheduling of power'.*

#### **(2) Clause 9.2 of the initialed PSA**

##### **Original clause**

*In the event that the parties are unable to resolve any dispute, controversy or claim relating to or arising under this Agreement, the same shall be dealt with as per the provisions of the Electricity Act, 2003.*

**Modification agreed and consented by the parties to the agreement.**

*In the event that the parties are unable to resolve any dispute, controversy or claim relating to or arising under this Agreement the parties shall approach Kerala State Electricity Regulatory Commission for resolving the same.*

16. The Commission noted the modifications in Clause 5.1 and Clause 9.0 of the initialed PSA, agreed and consented by both the parties M/s THDCIL and KSEB Ltd. Hence, the Commission hereby approve the modifications of the Clauses 5.1 and Clause 9.0 as proposed by the parties as discussed under Paragraph 15 above.
17. Regarding the Clause-5.3.4, KSEB Ltd proposed to modify the Clause as follows.

**Clause 5.3.4**

**Original clause**

*KSEBL may identify the energy procured from the Project to meet its Renewable Purchase Obligations (as mandated by the Appropriate Commission). Entire energy generated from the contracted capacity of the Project shall be sold by THDCIL to KSEBL and KSEBL agrees to buy the entire energy at a tariff as per clause 7.0. Any shortfall in annual generation below annual CUF of 19% (ie, 1.667 MU / Megawatt per annum) shall make THDCIL liable to pay compensation. The shortfall in generation shall be adjusted considering non-availability of grid for power evacuation which is beyond the control of the SPD, if the measured Global Horizontal Irradiance (GHI) per year is less than 1865 / kWh/m<sup>2</sup>, Force Majeure conditions and annual degradation of 0.8%. The amount of compensation shall be equal to the compensation payable by the KSEBL towards non-meeting of RPOs on pro rata basis, if such compensation is ordered by the State Regulatory Commission. Any compensation shall be levied after completion of first Accounting Year.*

**Modified clause**

*KSEBL may identify the energy procured from the Project to meet its Renewable Purchase Obligations (as mandated by the Appropriate Commission). Entire energy generated from the contracted capacity of the Project shall be sold by THDCIL to KSEBL and KSEBL agrees to buy the entire energy at a tariff as per Clause 7.0. Any shortfall in annual generation below annual CUF of 19% (ie, 1.66 MU / Megawatt per annum) shall make THDCIL liable to pay compensation. 'In case the project generates and supplies energy less than the energy corresponding to the minimum CUF, the solar power generator will be liable to pay to KSEBL, penalty for such shortfall below such contracted CUF level. SPG shall offset KSEBL for all potential costs (opportunity cost associated with shortfall in supply of contracted power, penalty for non-compliance of RPO obligation and other associated costs if any) associated with low generation and supply of power under the PPA, subject to a minimum of 25% (twenty five percent) of the cost of this shortfall in energy terms calculated at PPA tariff. In case the availability is more than the maximum specified CUF, KSEBL purchases the excess generation, at 75% (seventy-five per cent) of the PPA tariff.'*

However, the petitioner THDCIL suggested to retain the original clause of 5.3.4 as in the initialed PSA signed on 16.01.2019, and subsequently in its amendment dated 12.07.2021. THDCIL submitted that, the PSA signed earlier as on 16.01.2019 was not based on "Tariff Based Competitive Bidding Process

for Procurement of Power from Grid Connected Solar PV Power Project’.

The Commission noted the submission of the THDCIL. The Commission noted that the Original Clause 5.3.4 has included a penalty for shortfall in annual generation below CUF of 19% calculated as 1.667 MUs/Megawatt per annum. Further “ the amount of compensation shall be equal to the compensation payable by KSEB Ltd towards non-meeting of RPOs on pro rata basis, if such compensation is ordered by the State Regulatory Commission. Any compensation shall be levied after completion of first Accounting year”.

The above Clause clearly lays down the basis and methodology for penalty for shortfall in generation. One of the fundamental principles to be ensured in any contract is to ensure that there is parity between the contracting parties. A contract between two parties cannot have unequal penalty or reward and definitely cannot be to the obvious disadvantage of one party and corresponding advantage of the other.

The Commission also noted that while Clause 5.3.4 does contain the penal provision, there is however no corresponding reward provision in case of excess generation. On the other hand, KSEB Ltd proposal is to limit the tariff of any excess generation over and above the CUF of 19% (1.667MU/year) to 75% of the PPA tariff. Acceptance of such a proposal would result in a double whammy of the generator loosing if there is either shortfall in generation or generation exceeds the CUF MUs. Such a proposal is inherently unacceptable and cannot be justified. Further in a state like Kerala having limited renewable energy resources, such Projects must be encouraged.

The Commission further noted that since the Clause 5.3.4 of the initialed PSA dated 16.01.2019 and its amendment dated 12.07.2021 were agreed and consented by the petitioner THDCIL and the respondent KSEB Ltd, there is no justification whatsoever to alter this Clause. Hence the Commission has decided to retain the Clause 5.3.4 of the PSA as it is.

### **Orders of the Commission**

18. The Commission, after examining in detail the petition filed by THDCIL Ltd dated 23.07.2021, comments of KSEB Ltd, as per the provisions of the Electricity Act, 2003, KSERC (Terms and Conditions for Determinations of Tariff) Regulations, 2018, and other Rules and Regulations in force, hereby orders the following.
  - (1) Approve the Power Sale Agreement dated 16.01.2019 read with the Amendment dated 12.07.2021 with KSEB Ltd for the procurement of power from the 50MW Power Plant of THDCIL at Kasargod District, subject to the following.
    - (i) Clause-5.1 and Clause- 9.2 of the PSA shall be modified as agreed to and consented by the parties as per paragraph-15 of this Order.

- (ii) In view of the Commission's observations at Paras 17 of this Order, Clause 5.3.4 of the draft initialed PSA dated 16.01.2019 and its amendment dated 12.07.2021 shall be retained as it is and the modified clause proposed by KSEB Ltd is not agreed to.
- (2) THDCIL and KSEB Ltd shall sign the PSA within one month from the date of this Order.
- (3) A copy of the signed PSA shall be submitted before the Commission within two months of its signature for information and record.

The petition is disposed off. Ordered accordingly.

**Sd/-**  
**Adv. A.J. Wilson**  
**Member (Law)**

**Sd/-**  
**Preman Dinaraj**  
**Chairman**

Approved for issue

C R Satheeshchandran  
Secretary (i/c)