

Power (B)

From

Paul Antony,
No.70, GCDA Road,
Periyar Gardens,
Thottakattukara,
Aluva 683108



4-6-2022

Prl. Secretary (Power)**Examine & Put up**

8/6/22
K. KRISHNANKUTTY
Minister for Electricity
Government of Kerala

To

Shri K. Krishnankutty,
Hon'ble Minister for Electricity,
Government of Kerala,
Secretariat,
Thiruvananthapuram

*P. Krishnankutty**Dear Sir,**14/6*
US (Power)

Sub: Request to re-examine the decision to not approve deviations in the Bidding Procedure for DBFOO power and cancel the purchase of 465 MW of power by KSEB - reg

It was recently that I learnt about the decision taken in a meeting held by the Finance Secretary in January 2022 to not approve deviations in the Bidding Procedure for DBFOO power and cancel the purchase of 465 MW of power.

Since I have worked as Power Secretary from June 2016 to December 2017, and have therefore some knowledge of the issues involved, I request you to have this decision re-examined.

Some of the noteworthy issues in this context are the following:

DBFOO Tender link to Transmission Corridor Availability: The DBFOO tender was inextricably linked to transmission corridor availability. In the pre-2014 period, transmission corridor availability was severely limited, and several corridor applications of KSEB had been repeatedly rejected. As per the CERC guidelines for allotting interregional transmission corridors, applications for corridor allocation were to be processed on *first-come-first-served* basis, and applicants with long term power contracts had top priority. Applications for long term allocations were processed on a half yearly basis (January-June and July-December) and to be filed along with concluded contracts in the earliest window of opportunity as other Southern States were also vying for the upcoming availability. But this regime also stipulated that if a Discom could not draw power after contracting power from a generator for lack of corridor availability, the Discom would have to pay the generator 50% of the fixed costs. New transmission corridor availability for 600 MW was expected to become available from June 2016, with the next enhancement of corridor only from October 2017.

So award of DBFOO bids had to be synchronised with corridor availability.

Why Two Simultaneous Bids: KSEB's additional long term power requirement at that time was identified as 850 MW. Out of this, a 3 year contract for 400 MW entered in 2013 was to commence from March 2014 and continue till February 2017. So the requirement from 2016-17 was 450 MW, and 850 MW from 2017-18 onwards.

In view of the foregoing the option of two separate bids with separate start dates was selected. KSEB's bids were timed to be concluded latest by December 2014.

Deviations from Procedure: The deviations in the procedure followed by KSEB from that notified by MOP must be viewed against this background. KSEB did comply with the standard bid documents. KSEB's deviations were only in the bid evaluation part.

The results on the opening of the two bids were as below:

Bid 1: Date of Opening : 31-10-2014				Bid 2: Date of Opening : 14-11-2014					
Sl. No.	Name of Firm	Quantum of power in MW	Tariff as on Bid Date (Rs./kWh)	Sl. No.	Name of Firm	Quantum of power in MW	Tariff as on Bid Date (Rs./kWh)		
1	Jindal Power Limited	200	3.6	1	Bharat Aluminium Co. Ltd	100	4.29		
2	Jhabua Power Limited	115	4.15	2	Jindal India Thermal Power Ltd	150	4.37		
		315		3	Jhabua Power Limited	100	4.41		
Validity Period of Bid 1: 28-2-2015						4	Jindal Power Limited	100	4.43
Power Supply from : 1-12-2016						5	East Coast Energy Private Ltd	100	4.45
						550			
				Power Supply from : 1-10-2017					

Bid 1 had 10 bidders, quoting from Rs.3.60 to Rs.7.29 per kWh, and Bid 2 had 11 bidders quoting Rs.4.29 to Rs.5.95 per kWh. But L1 in Bid 1 offered just 200 MW as against the tendered 450 MW, and L1 in Bid 2 offered just 100 MW as against 400 MW tendered.

MOP's Standard Bid Documents only provided for award of contract to L1 bidders, and did not provide guidance in a situation where the L1 offer was only 300 MW as against the tendered 850 MW. KSEB's queries to MOP on 23-8-2014 and 16-9-2014 in this regard went unanswered. Re-tendering would have delayed awards, leading to possible loss of corridor.

Hence in order to tie up the balance quantum, KSEB requested the L2 to L4 bidders of Bid 1 and L2 to L6 bidders of Bid 2 to match the tariff of the lowest bidder. No one was ready to match the L1 tariff in case of Bid 1. However, bidders L2 to L5 gave concurrence to match the L1 tariff of Bid 2, and their offers were accepted by KSEB.

During the period of processing Bid 2, Bid 1 was also live with a bid validity period upto 28-2-2015. The L1 tariff of Bid 2 is Rs.4.29 per kWh, whereas the tariff quoted by the L2 Bidder of Bid 1 is Rs.4.15 per kWh; over a 25 year period this 14 paise per kWh differential on 115 MW meant around Rs.350 crores. Considering this, KSEB accepted this offer of L2 also.

Later, as the East Coast Energy plant was not completed in time, 100 MW was terminated, so that KSEB now has only 765 MW.

Section 63 of the Electricity Act, 2003 requires the tariff discovered in tender to be adopted by the KSERC. But the KSERC on 30-8-2016 approved tariff for only 300 MW of

PSAs executed by L1 bidders of Bid 1 and Bid 2. KSERC directed KSEB to get the approval of the State Government and MOP for deviations in the bidding procedure used by KSEB to approve the tariff for the long term procurement of remaining power.

KSEB's rates were the lowest at a weighted average of Rs.4.11 per kWh, compared to L1 bid rates Rs.4.48 got by Uttar Pradesh, Rs.4.517 by Rajasthan, and Rs.4.91 by Tamil Nādu in the bids floated during that time.

KSEB obtained open access approval from PGCIL for transmitting 765 MW power, i.e 315 MW supply from 1-12-2016 onwards and 450 MW supply from 1-10-2017 onwards.

Purchase Already Approved by Government: The DBFOO purchase of 865 MW by KSEBL was approved by the Cabinet as Council Decision No.6114 on 17-12-2014, following which GO(Ms)No.45/2014/PD dated 20-12-2014 was issued.

I understand that the major points being used to decry the DBFOO power purchase are the following. I have asked around and my views on the ramifications thereof are given alongside.

1. Better to purchase from power exchanges as the rates there are much lower: Rates in power exchanges remained low, between Rs.3 to 4 per unit, from November 2018 till mid 2021. This was due to a combination of factors, like two consecutive good monsoons, significant increase in production of coal and lower than usual power demand due to Covid lockdowns.

The scenario has changed significantly from August 2021 onwards as power demand returned with economic activity picking up. The average price in power exchange was around Rs.5 per unit in August 2021 and has moved up to Rs.12 per unit now (it had gone up to Rs.20 per unit in March 2022). It is not going above Rs.12 now only because of the ceiling imposed by CERC from 1-4-2022.

Even though the present power shortage is ascribed to low coal stock, actually domestic coal production is at record levels in 2021-22 and in April 2022, with some problems only in rake availability. The issue has deeper roots: less than planned addition to power generation capacity, and higher global energy prices. Both factors are likely to persist for a long time.

Thus, the bid price in the disputed contracts of Rs.4.15 (L2, Bid 1) and 4.29 (Bid 2) per unit are much below present market rates and cannot be substituted profitably by power purchases from the exchanges.

2. KSEB has surplus power. Continuing the DBFOO contracts leads to unnecessary payment of fixed charges: The power flow from two bids commenced from December 2016 and October 2017. And with this power, KSEB could avoid power restrictions in the State during 2016-17 and 2017-18 despite those years being tough drought years. KSEB could avoid high cost power from the exchanges based on the enhanced availability from these contracts. Also, costly thermal stations within Kerala could be backed down.

But in 2018-19 and 2019-20, owing to high inflow into reservoirs due to floods, and fall in power demand due to wet conditions, there was surplus power availability. In 2020-21 the surplus was even more, due to Covid lockdowns. During this period power could be considered "surplus" only with Central allocation power from stations like Kudgi and Simhadri plants owned by NTPC, NLC, etc., which is costlier, at Rs.5 or more per unit, than the DBFOO power.

But now, this surplus has already disappeared and KSEB has had to contract 270 MW additionally from January 2022 onwards to meet the growing demand.

The shortage anticipated till 2026-27 by KSEB itself may be seen in its Tariff Petition filed before KSERC, projecting a deficit of around 300-500 MW in the summer months in next two years, with a significant deficit round the year reaching upto 1,200 MW from 2024-25 onwards.

There is no denying that Kerala has a long term power deficit. Capacity cannot be added in Kerala. Prudence requires addressing bulk of this deficit with long term arrangements rather than relying on power exchanges where prices can go either way.

3. The procedure followed by KSEB has deviated from the MOP's Standard Bidding Document, and Gol has not agreed to ratify it: KSEB has complied with the Standard Bid Documents; it has deviated only in the method for bid evaluation. But clause 1.1.4 of the Model Request for Proposal which is part of the Standard Bidding Documents notified by MOP implicitly allows price matching with L1 bidder for selection of subsequent bidders in case the entire bid quantity is not offered by the L1 bidder: *"1.1.4 Applicants may bid for the capacity specified in Clause 1.1.1, or a part thereof, not being less than 25% of such capacity. Provided, however, that the Utility may, in its sole discretion, accept only those Bids which match the lowest Bid."*

Thus, the price matching followed in Bid 2 appears to be in order as the L1 bidder has offered a quantum of only 100 MW against the bid quantum of 400 MW.

And the Rs.350 crore advantage to KSEB in purchasing 115 MW power from the L2 Bidder in Bid 1 is too huge to be ignored. Financial prudence demands approval of this as well.

MOP has advised that consequent to the amendment to the 'Guidelines for Procurement of Electricity from Thermal Power Stations set up on DBFOO basis' notified on 6-5-2015, the matter may be resolved in consultation with KSERC, rather than with Gol as earlier.

4. C & AG has concluded that the contract is causing monetary loss to KSEB: The imputation of loss by C & AG was only in their Draft Para. Subsequently, based on the reply furnished by KSEB, the same was dropped. C & AG's *Report No.2 of 2021 -Public Sector Undertakings, Government of Kerala*, tabled in the Legislative Assembly in April 2021 (Chapter III, Para 3.1) does not include this portion. All it says is this: *"Recommendation 3.1: Power procurement may be carried out complying with all the applicable guidelines/ procedures. Any modifications required in the applicable*

guidelines/ procedures may be taken up with the appropriate authority for its approval before initiating the tendering process."

5. If the deviations from the MOP guidelines are not concurred to by the State Government, the gain will be about Rs.800 crores: Under the MOP guidelines and bid documents, tariff consists of a fixed charge and fuel charge components; the fuel charge is further segregated into fuel transportation charges and cost of fuel. During bid evaluation, comparison happens at level of only the total tariff.

But the price quoted as on bid date is allowed to vary during actual supply in each accounting year. Most importantly, the fuel cost and fuel transportation charge are pass-through items. Accordingly, any variation subsequent to the bid date in coal price as notified by Coal India Ltd (CIL) and rail transportation rate as notified by the Railways is automatically captured in the billing rate for each month.

Under Bid 2, BALCO was the L1 bidder. Their quote was based on a rail transportation distance of 275 KM based on the coal linkage provided by CIL at the time of bidding (2014 November). However, by the time actual supply commenced (2017 October) Railways had rationalised their coal linkages and supply to BALCO commenced from a mine within 50 KM. This resulted in reduction of the tariff of BALCO during actual supply from that quoted at the time of bidding.

However, the transportation distance in case of other generators who matched BALCO's total tariff has not changed. This resulted in a significant price difference with BALCO and other generators during actual supply.

But KSERC ordered in August 2020 that any rate higher than that of BALCO will not be allowed to KSEB as an expense item. Since recovery of cost of KSEB became an issue, KSEB started limiting the payment to other generators in Bid 2 at the rate billed by BALCO for the bills from August 2020 onwards. This order of KSERC is now under challenge before Appellate Tribunal for Electricity (APTEL) and Supreme Court (against interim order of APTEL).

KSEB has projected the NPV @ 10% discount of the differential amount between BALCO's tariff and other bidders of Bid 2 from August 2020 onwards for the entire contract period up to September 2042 as savings of Rs.1109 crores, and between L2 Bidder's tariff and L1 tariff of Bid 1 at Rs.758 crores, totalling Rs.1866 crores.

This assumption is flawed on many counts. In case the Supreme Court finally rules in favour of the generators, the projected savings vanishes.

Most importantly, KSEB is implicitly assuming that it will be able to procure power from alternate sources at a rate equal to or lower than the BALCO rate. The present rate for power in the market does not justify such an assumption. It seems unlikely that KSEB will be able contract 1500 MW (1000 MW shortage from 2024 onwards plus 465 MW against contracts proposed to be canceled) at a rate cheaper than that of the present contracts. Also, the quantum being offered in recent bids in the country is much below the

requisitioned quantum (often less than 30%), indicating lack of adequate untied generation capacity in the country.

KSEB further computes the termination payments to the 3 PSAs in Bid 2 and 1 PSA in Bid 1 (in case they do not agree to their respective L1 tariff) at Rs.488 crores, and compensation for LTA relinquishment at Rs.543 crores, totalling Rs.1031 crores. There is no denying that this compensation will have to be paid under the contracts.

KSEB has projected the difference between Rs.1866 crores and Rs.1031 crores of about Rs.800 crores as *'the gain if the deviations are not accepted by Government'*. This is baffling. Compensation of Rs.1031 crores will certainly have to be paid, while the projected savings of Rs.1866 crores may never happen.

Thus, cancelling the present contracts of KSEB is likely to result in financial loss to the State /KSEB, major power restrictions, scheduling of the unaffordable Kayamkulam and diesel stations, raising cost to consumers and derailing KSEB finances in coming years.

In view of the foregoing, I urge you to kindly re-visit the January 2022 decision.

Yours faithfully,


Paul Antony