

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 584/MP/2020 along with IA Nos. 30/2022 and 116/2025

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 for adjudication of the issues arising out of the Power Supply Agreement (PSA) dated 26.12.2014 for supply of 100 MW and Power Sale Agreement dated 31.12.2014 for supply of 115 MW of power to Kerala State Electricity Board Ltd.

Petitioner : Jhabua Power Limited (JPL)

Respondents : Kerala State Electricity Board Limited (KSEBL)

Date of Hearing : **17.9.2026**

Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member

Parties Present : Ms. Swapna Seshadri, Advocate, JPL
Ms. Harsha V Rao, Advocate, JPL
Ms. Aishwarya Subramani, Advocate, JPL
Shri. Pranav Devraj, Advocate, JPL
Shri Prabhas Bajaj, Advocate, KSEBL
Shri Rishabh Yadav, Advocate, KSEBL

Record of Proceedings

At the outset, learned counsel for the Petitioner submitted that the present Petition raises multiple claims, including deduction of fixed and variable charges and other miscellaneous claims. The learned counsel further, while addressing IAs filed seeking amendments of the Petition, submitted as under:

- (i) The pertinent issue involved in the matter is the consideration of the annual reconciliation of the cumulative monthly availability by the Respondent, KSEB. The Petitioner had already raised the issue of KSEBL's misinterpretation of Article 21.4.5 by to restrict declared availability on a monthly basis since the start of power supply under the PSAs. During pendency of the Petition, KSEBL started restricting declared availability on a daily basis and therefore, the Petitioner filed IA No. 30/2022 raising this additional ground.
- (ii) In its reply to the IA No. 30/2022, KSEBL has itself admitted that no amendment of pleadings and no additional ground is required for the Commission to adjudicate

upon the correctness of the deductions being effected by KSEBL from the invoice for January 2022 onwards, as the same would follow as a natural corollary of the Commission's decision. Thus, as per KSEBL's own submissions, if the issue of the non-consideration of the Annual Reconciliation of cumulative monthly availability is held in the Petitioner's favour, the issue of restricting the availability on a daily basis will automatically have no ground. Accordingly, IA No. 30/2022 may be disposed of as per KSEBL's admitted position.

- (iii) The Petitioner has also filed another IA No. 116/2025 seeking modification of the prayers in the Petition to limit the same to the period of power supply of power till 20.8.2023 along with the carrying cost and remove the prayer in relation to the establishment of the payment security mechanism, which is no longer applicable. Further, prayers (a) to (d) as mentioned in Para 22 of the application, were already part of the original Petition. As regards prayer (e), KSEBL has already admitted that the issue of restricting declared availability on a daily basis is covered by the main Petition. The only additional prayer (f) relates to the rebate which was wrongly deducted by KSEBL under disputed bills since commencement of supply till 20.8.2023. Such prayer is consequential to prayers (a) to (e) and the same may be taken up at the stage of final hearing in the matter.

2. The learned counsel for KSEBL in respect of IA No. 30/2022 submitted that the issue relating to calculation of availability is no longer *res integra*. Similar contentions raised by other generators relying on identical clauses have already been rejected, and the issue has been decided in favour of KSEBL by way of judgments dated 19.9.2023 and 17.10.2024 passed by the APTEL in Appeal No. 346 of 2023 and Appeal No. 236 of 2024, respectively. Thus, the ground raised by the Petitioner can be considered at the time of the hearing in the main Petition. In respect of IA No. 116/2025, he submitted that the Petitioner has altered the nature of the claims by stating that KSERC never approved the PSAs. Through this IA, the Petitioner is materially changing the nature of the Petition by converting the pending contractual claims into claims for compensation, while relying on the PSAs merely as a reference framework for quantification. Further, the judgment dated 13.2.2025 of the APTEL is under challenge before the Hon'ble Supreme Court in Civil Appeal No. 6961/2025. Thus, the question of approval and enforceability of the PSAs has not attained finality. As regards prayer (f) relating to the claim of rebate, it is a distinct monetary claim raised by the Petitioner which is also barred by the principles of limitation and Order II Rule 2 of CPC. He also reiterated that IA No. 116/2025 should remain pending till the Hon'ble Supreme Court decides the above civil appeal.

3. Based on the submissions of the parties, the Commission deemed it appropriate to allow the IA No. 116/2025, reserving the rights of the parties to raise all objections, including on the aspect of maintainability of the amendments, at the stage of final hearing. Further, the IA No. 30/2022 was also disposed of as not having been pressed by the Petitioner. In view of the above, the Petitioner was directed to file an Amended Petition incorporating the necessary amendments within a week. The Respondent, KSEBL, was permitted to file its comprehensive reply within a week with a copy to the Petitioner, who may file its rejoinder within two weeks thereafter.

4. The Petition will be listed for the hearing on **19.11.2026**.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)