

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present : **Shri T.M.Manoharan, Chairman**
Shri K.Vikraman Nair, Member
Shri S.Venugopal, Member

In the matter of: Removing the difficulties due to denial of application for NOC for Interstate short term open access (Collective transaction)

Interim Order dated 03-08-2016 in Petition No. 1232/DD(T)/OA-NOC/2016/KSERC

1. Hon'ble High Court in its judgment dated 29th July, 2016 in Writ petition No 25043 of 2016 has directed the Commission as follows:
 - (i) That the Regulatory Commission shall immediately taken into consideration Exhibit-P6 and pass appropriate orders after hearing the parties with in a period of one week from the date of receipt of a copy of this judgment.
 - (ii) The parties shall appear before the Regulatory Commission on 1st August, 2016.
 - (iii) It shall always be open for the Regulatory Commission to pass appropriate interim orders after hearing either parties.

2. The facts leading to the above judgment are summarized below.
 - (i) The Commission had issued the Kerala State Electricity Regulatory Commission (Connectivity and Intra-state Open Access) Regulations, 2013, (here after referred as 'Open Access Regulations 2013') enabling the consumers and licensees to avail non-discriminatory open access to the transmission system of the State Transmission Utility under Kerala State Electricity Board Ltd. The Commission had also approved the detailed procedure for grant of connectivity and open access in intra-state transmission system as per its order dated 21-04-2015.
 - (ii) The petitioners were enjoying the facility of open access. In the meanwhile the Chief Engineer, System Operation, Kerala State Electricity Board Ltd, Kalamassery declined the request of petitioners for NOC to avail open access facility for the purchase of power from power exchanges. The reasons cited for the denial of NOC as per letter No CESO/EELDII/ Inter

State OA/ 2016-17/1449 dated 19.07.2016 of Chief Engineer, System Operation are as follows:

(1) Non compliance of section 11(4) of the KSERC Connectivity and Open Access Regulations 2013 and clause 12.4 and clause 15.5 of the detailed procedure for grant of connectivity and open access in intrastate transmission system approved by the Hon'ble KSERC.

(2) Prevailing very low demand in Kerala Grid leading to violation of clause 5.4 of IEGC.

3. The petitioner, HT and EHT Industrial Electricity Consumers Association (hereinafter referred to as HT / EHT Association) submitted a representation before the Commission on 20-07-2016, with following prayers,-

“ 1. To issue direction to KSEBL to maintain the statusquo regarding the issue of NOC for Open Access for a period of Three months.

2. On the basis of our petition, we humbly request the Hon.ble commission to hear our submissions and take a judicious approach so that the difficulties encountered by the Open access consumers are eliminated and made consumer friendly.”

The said representation dated 20-07-2016, has been produced and marked as Exhibit P6 in Writ Petition No. 25043 of 2016.

4. The summary of facts and regulations cited by the petitioners are extracted below:

“

(1) In Kerala, fifteen Industrial Consumers in HT and EHT category are availing short term open access. All these consumers are members of the Kerala State High Tension and Extra High Tension Industrial Consumers' Association. The total quantum of power sourced through open access is less than 2% of the total electricity demand of the State.

(2) The members of the association are availing open access by obtaining the NOC from the nodal agency and also complying with the regulations in force. Suddenly, the Chief Engineer (Transmission System Operation) vide the letter dated 19-07-2016 was denied open access from 23rd July 2016. There was no prior communication in the matter. The members of the petitioner are aggrieved by this action of Transmission Licensee denying the permission for open access, as it seriously affects the interests and rights of the petitioner adversely. The said letter is totally against the provisions of the KSERC Connectivity and Open Access Regulations 2013, 'Detailed procedure for

grant of Connectivity & Open Access in intra state transmission system' issued by KSERC, right of the consumers, and also the tenor and sprit of the EA 2003. Hence the petitioner has no other option, but to approach the Honourable Commission representing our members, which is the right forum for resolving this particular dispute.

(3) The petitioner further submitted that, there was no new development now on account of which permission is denied. There is no change in the circumstances prior to or after the said letter from respondent. The grounds mentioned in the letter is totally baseless and not applicable to the petitioner as explained below.

(i) Regarding ground (a), the relevant provisions are quoted below.

Clause 11 (4) Before granting open access, the nodal agency shall ensure that special energy meters are installed and maintained in accordance with the provisions of The Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from time to time and remote terminal units (RTU) are installed and maintained, as stipulated in the detailed procedure, to facilitate real time monitoring by SLDC.

Provided that, the distribution licensee shall install special energy meters and remote terminal units in the premises of the applicants for open access within the time frame as stipulated in the detailed procedure.

12.4 Before granting open access, the nodal agency shall ensure that special energy meters are installed and maintained in accordance with the provisions of The Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from time to time and remote terminal units (RTU) are installed and maintained, as stipulated herein, to facilitate real time monitoring by SLDC.

15.5 After ensuring existence of metering infrastructure and other relevant information, the SLDC shall communicate the registration details including the unique registration number to the applicant in Format-R1. The applicant shall indicate the unique registration number in all future communication with the nodal agencies.

It has been categorically mentioned that the distribution licensee is responsible for installation of Special Energy Meter and remote terminal units in the premises of the applicants for OA within the timeframe as per the regulation.

Though this being the case, the petitioner has agreed to install the meters of their own cost and also have installed such meters. For installing the RTU, the make and other technical details are being discussed and the opinion is sought from the respondent to install the same. It will be completed soon. After receiving letter from SLDC in connection with RTU installation at open access consumer end, we have initiated a meeting with CE.SO on 20th May 2016. Based on the discussion it was decided to submit the single line diagram of the consumer for finalising the input and output points before June 10th as a first step. All open access consumers have complied this decision. Most of the consumers, so far, have not received any further communication from the concerned. There is no delay on the part of the petitioner for implementing the RTU. The delay is mainly due to non-finalisation of the details by STU. We fail to understand the hurry and intention of the SLDC to deny the NOC on this ground, as it is the primary responsibility of DU/STU and the delay is not on account of the action of petitioner. It is to be noted that, even without RTU, open access was granted previously, and the present denial is unreasonable and unfair

(ii) *Regarding point (b), the relevant provision in the IEGC is given below.*

5.4 Demand Management

5.4.1 Introduction

This section is concerned with the provisions to be made by SLDCs to effect a reduction of demand in the event of insufficient generating capacity, and inadequate transfers from external interconnections to meet demand, or in the event of breakdown or congestion in intra-state or inter-state transmission system or other operating problems (such as frequency, voltage levels beyond normal operating limit, or thermal overloads, etc.) or overdrawl of power vis-à-vis of the regional entities beyond the limits mentioned in UI regulation of CERC

5.4.2 Demand Disconnection

(a) SLDC/ SEB/distribution licensee and bulk consumer shall initiate action to restrict the drawal of its control area, from the grid, within the net drawal schedule whenever the system frequency falls to 49.7 Hz

(b) The SLDC/ SEB/distribution licensee and bulk consumer shall ensure that requisite load shedding is carried out in its control area so that there is no overdrawl when frequency is 49.5 Hz. or below.

c) Each User/STU/SLDC shall formulate contingency procedures and make arrangements that will enable demand disconnection to take place, as instructed by the RLDC/SLDC, under normal and/or

contingent conditions. These contingency procedures and arrangements shall regularly be / updated by User/STU and monitored by RLDC/SLDC. RLDC/SLDC may direct any User/STU to modify the above procedures/arrangement, if required, in the interest of grid security and the concerned User/STU shall abide by these directions.

d) The SLDC through respective State Electricity Boards/Distribution Licensees shall also formulate and implement state-of-the-art demand management schemes for automatic demand management like rotational load shedding, demand response (which may include lower tariff for interruptible loads) etc. before 01.01.2011, to reduce overdrawl in order to comply para 5.4.2 (a) and (b) . A Report detailing the scheme and periodic reports on progress of implementation of the schemes shall be sent to the Central Commission by the concerned SLDC.

e) In order to maintain the frequency within the stipulated band and maintaining the network security, the interruptible loads shall be arranged in four groups of loads, for scheduled power cuts/load shedding, loads for unscheduled load shedding, loads to be shed through under frequency relays/ df/dt relays and loads to be shed under any System Protection Scheme identified at the RPC level. These loads shall be grouped in such a manner, that there is no overlapping between different Groups of loads. In case of certain contingencies and/or threat to system security, the RLDC may direct any SLDC/ SEB/distribution licensee or bulk consumer connected to the ISTS to decrease drawal of its control area by a certain quantum. Such directions shall immediately be acted upon. SLDC shall send compliance report immediately after compliance of these directions to RLDC.

f) To comply with the direction of RLDC, SLDC may direct any SEB/ distribution licensee/bulk consumer connected to the STU to curtail drawal from grid. SLDC shall monitor the action taken by the concerned entity and ensure the reduction of drawal from the grid as directed by RLDC.

g) RLDCs shall devise standard, instantaneous, message formats in order to give directions in case of contingencies and /or threat to the system security to reduce overdrawl by the bulk consumer , SLDC/ State at different overdrawal conditions depending upon the severity of the overdrawal. The concerned SLDC shall ensure immediate compliance with these directions of RLDC and send a compliance report to the concerned RLDC.

h) All Users, SLDC/ SEB/distribution licensee or bulk consumer shall comply with direction of RLDC/SLDC and carry out requisite load shedding or backing down of generation in case of congestion in transmission system to ensure safety and reliability of the system. The procedure for application of measures to relieve congestion in real time as well as provisions of withdrawal of congestion shall be in accordance with Central Electricity Regulatory Commission (Measures to relieve congestion in real time operation) Regulations, 2009.

i) The measures taken by the User's, SLDC SEB/distribution licensee or bulk consumer shall not be withdrawn as long as the frequency remains at a level lower than the limits specified in para 5.2 or congestion continues, unless specifically permitted by the RLDC/SLDC.

The said section is mainly intended for real time operation. The said section cannot be used to deny open access. The members of the petitioner are always willing to follow the directions of SLDC, which is a proven fact. The petitioners even before availing open access followed the directions for shedding the load as per the direction of SLDC to maintain the stability of the grid.

It may be noted that, there is no stipulation in IEGC for direct disconnection of load by SLDC or other agencies. It is based on the direction of RLDC and SLDC, the distribution licensee and bulk consumers have to act to shed the load.

The reason of prevailing low load situation is not applicable. There is no congestion or overload to impose these restrictions now. These are to be followed on a real time basis. There is no instance in the past to show that the petitioner is not following the directions of SLDC in grid management.

Hence , the reasons cited in the letter is prima facie baseless and will not stand on technical and legal grounds.”.

5. The Commission admitted the petition and issued notice to the respondent to submit remarks on the petition. Further, the Commission directed the petitioner to cure certain defects in the petition, since it was not filed as per the provisions in the KSERC (Conduct of Business) Regulations 2003. After curing the defects, the petitioner filed the petition on 26-07-2016.
6. In the meanwhile, the petitioners filed writ petition with the following prayers before the Hon'ble High Court.

“

- (i) *Issue a writ of certiorari or any other appropriate writ, order or direction calling for the records leading to Exhibit –P2 and quash the same;*
- (ii) *Issue a writ declaring that the petitioners 2,3,and 4 and the members of the 1st petitioner, who are availing the facility of open access system, are entitled to have the facility in terms of law and the same cannot be denied for the reasons shown in Exhibit-P2, P2(a) and P2(b);*
- (iii) *Issue a writ mandamus directing the 3rd respondent to pass order on Exhibit P6;*
- (iv) *Issue such other writ, order or direction as this Court may deem fit in the facts and circumstances of the case.”.*

7. The petitioner of the writ petition submitted a copy of judgment dated 29.07.2016 of the Hon'ble High Court before the Commission on 01.08.2016, in accordance with directions of Hon'ble High Court. The Commission has thereupon issued a notice to the parties for hearing at 10:30 AM on 03.08.2016 at Court Hall of the Commission.

Hearing the petition

8. As scheduled, the Commission heard the petition at 10:30 AM on 03-08-2016 at Court Hall of the Commission. Sri. A. R. Satheesh, President, HT&EHT Association presented the case on behalf of the petitioner. Sri. S.R. Anand, Deputy Chief Engineer, appeared before the Commission on behalf of SLDC of Kerala and Sri. K. G. P. Namboothiri, Executive Engineer and Smt Latha S.V, Assistant Executive Engineer appeared before the Commission on behalf of KSEB Ltd.
9. Sri. A. R Satheesh, submitted that, the reasons cited in the letter of the Chief Engineer (Transmission & System Operation) dated 20-07-2016 for the denial of open access are invalid. As per the first proviso to Regulation 11(4) of the Open Access Regulations 2013, it is the responsibility of the distribution licensee to install special energy meters and remote terminal units in the premises of the applicants for open access within the time frame as stipulated in the detailed procedure. However the embedded consumers agreed to install RTU by themselves and the process for the same is in progress. Mr. Satheesh further submitted that, the second reason for denial of open access, i.e. low demand in Kerala Grid leading to violation of paragraph 5(4) of the IEGC, is also invalid since the paragraph 5(4) of the IEGC deals with contingency situation relating to demand management.

10. Sri. S. R. Anand, submitted that, as per the Regulation-26 of the CERC (Open Access in Inter-state Transmission) Regulations, 2008, the CERC has the jurisdiction to adjudicate the matter relating to inter-state open access involving consumers of the distribution licensees. He also submitted that, as per the paragraph 12.4 of the detailed procedure for grant of connectivity and open access, the nodal agency (SLDC for short term open access) shall ensure that, special energy meters and RTU are installed and maintained, to facilitate real time monitoring by SLDC. He also, submitted that, due to the low demand, the SLDC has been curtailing the open access granted to KSEB Ltd. Since the petitioners have been availing short-term open access for the purchase of power from power exchanges, there is no provision to curtail such energy transactions. Therefore this may be discriminatory to KSEB Ltd.
11. Sri. K. G. P. Namboothiri, on behalf of KSEB Ltd sought more time to file the written submission.
12. Adv. Surya Binoy, appeared before the Commission in a separate petition filed by M/s Indsil Hydro Power and Manganese Limited on the very same subject matter and submitted that, the denial of NoC for availing open access is against the provisions of the Electricity Act, 2003, and the regulations issued by the Commission regarding the grant of open access. She further submitted that, the burden of proof for the reason for denial of open access is on KSEB Ltd and that such order ought to have been supported by adequate documents. She further submitted that, as per the Regulation 2 read with Regulation 63 of the Open Access Regulations, 2013, the State Commission has jurisdiction to hear the matter.

Analysis and Decision.

13. Regarding the open access and related issues, the following provisions in the Electricity Act 2003 and KSERC (Connectivity and Intra-state Open Access) Regulations, 2003 deserve special consideration.

(i) *Section 2(47) of the EA-2003*

47) "open access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;

- (ii) Section 32 of the Electricity Act-2003 (Functions of the State Load Despatch Centers)
32. (1) *The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.*
- (2) *The State Load Despatch Centre shall -*
- (a) *be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State;*
- (b) *monitor grid operations;*
- (c) *keep accounts of the quantity of electricity transmitted through the State grid;*
- (d) *exercise supervision and control over the intra-state transmission system; and*
- (e) *be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.*
- (3) *The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission.*
- (ii) Section 39 (2)(d) of the EA 2003
- (d) *to provide non-discriminatory open access to its transmission system for use by-*
- (i) *any licensee or generating company on payment of the transmission charges ; or*
- (ii) *any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:*
- Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:*
- Provided further that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the State Commission:*
- Provided also that such surcharge may be levied till such time the cross subsidies are not eliminated:*
- Provided also that the manner of payment and utilisation of the surcharge shall be specified by the State Commission.*
- Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant.*
- (iii) Section 42(2) to 42(4) of the Electricity Act-2003
- (2) *The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and*

other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that such open access may be allowed before the cross subsidies are eliminated on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission :

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee :

Provided also that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access .

(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

- (iv) Regulation 3(14) of 'Open Access Regulations, 2013' "embedded open access consumer" or in short 'embedded consumer' means a consumer who has a supply agreement with the distribution licensee in whose area of supply the consumer is located and avails the option of drawing part or full of its demand from any other person by availing open access, in any one or more time slots during a day or more in any month or more during the year, without ceasing to be a consumer of the said distribution licensee and continues to pay monthly demand charges and other charges as per rate schedule applicable to relevant category;

- (v) Regulation 11 of 'Open Access Regulations, 2013'.
11. Eligibility for open access and conditions to be satisfied.- (1) Subject to the provisions of these regulations and with due regard to the operational constraints and such other relevant matters, the licensees, generating companies including persons who have established captive generating plants, generation plants, electricity traders and consumers shall be eligible for open access to the intra-state transmission system of the State Transmission Utility or of any transmission licensee other than STU on payment of transmission and other charges as may be determined by the Commission from time to time.
(2) Subject to the provisions of these regulations and with due regard to the operational constraints and such other relevant matters, the licensees, generating companies including persons who have established a captive generating plant, generation plants, electricity traders and consumers shall be eligible for open access to distribution system of a distribution licensee on payment of the wheeling charges and other charges if any, as may be determined by the Commission from time to time:
Provided that the open access customers using intra-state transmission system and distribution system will also be subjected to the load shedding imposed by the distribution licensee unless they are connected through a dedicated feeder emanating from a grid substation.
(3) A person having outstanding dues against him for more than two months billing of transmission or distribution licensee at the time of application shall not be eligible for open access:
Provided that, the amount payable to transmission or distribution licensee will not be considered as outstanding dues if a judicial authority or any other competent authority has passed an order staying the realization of the said amount.
(4) Before granting open access, the nodal agency shall ensure that special energy meters are installed and maintained in accordance with the provisions of The Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from time to time and remote terminal units (RTU) are installed and maintained, as stipulated in the detailed procedure, to facilitate real time monitoring by SLDC.
Provided that, the distribution licensee shall install special energy meters and remote terminal units in the premises of the applicants for open access within the time frame as stipulated in the detailed procedure.
(5) The applicant and the distribution licensee shall comply with the provisions of the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 as amended from time to time.
- (vi) Regulation 16(5) & 16(6) of the Open Access Regulations, 2013, deals with the procedure for grant of open access to inter-state transmission system in respect of a consumer connected to a distribution system.

16(5) *In respect of a consumer connected to a distribution system seeking inter-State long-term or medium-term or short-term open access, the SLDC, before giving its consent shall obtain the consent of the distribution licensee concerned:*

Provided that, in the case of short-term open access, the said distribution licensee shall convey its consent or otherwise within three working days of receipt of request of the applicant.

Provided further that, any applicant connected to the intra-state transmission or distribution system can utilise the inter-State open access, only after availing intrastate open access and SLDC shall, before giving consent to the CTU, ensure that such intra-state open access has been approved for the corresponding periods.

16(6) *In respect of a consumer connected to a distribution system seeking inter- state short-term open access, the SLDC, before giving its consent and standing clearance for collective transactions to the RLDC as required under the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 as amended from time to time, shall require the consumer to submit the consent of the distribution licensee concerned:*

Provided that any applicant connected to the state transmission or distribution system can utilise the inter-State open access only after availing intra-state open access and the SLDC shall, before giving consent to the CTU, ensure that such intra-state open access has been approved for the corresponding periods.

(vii) Regulation 8 of the CERC (Open access in inter-state transmission) Regulation, 2008

Concurrence of State Load Despatch Centre for bilateral and collective transactions

8. (1) *Wherever the proposed bilateral transaction has a State utility or an intra-State entity as a buyer or a seller, concurrence of the State Load Despatch Centre shall be obtained in advance and submitted along with the application to the nodal agency. The concurrence of the State Load Despatch Centre shall be in such form as may be provided in the detailed procedure.*

(2) *When a State utility or an intra-State entity proposes to participate in trading through a power exchange, it shall obtain a “no objection” or a prior standing clearance from the State Load Despatch Centre in such form as may be prescribed in the detailed procedure, specifying the MW up to which the entity may submit a buy or sell bid in a power exchange.*

3[(a) *For obtaining concurrence or ‘no objection’ or prior standing clearance an application shall be made before the State Load Despatch Centre who shall, acknowledge receipt of the application, either by e-mail or fax, or any other usually recognised mode of communication, within twenty four hours from the time of receipt of the application: Provided that where the application has been submitted in person, the acknowledgement shall be provided at the time of submission of the*

application. (b) While processing the application for concurrence or 'no objection' or prior standing clearance, as the case may be, the State Load Despatch Centre shall verify the following, namely- (i) existence of infrastructure necessary for time-block-wise energy metering and accounting in accordance with the provisions of the Grid Code in force, and (ii) availability of surplus transmission capacity in the State network. (c) Where existence of necessary infrastructure and availability of surplus transmission capacity in the State network has been established, the State Load Despatch Centre shall convey its concurrence or 'no objection' or prior standing clearance, as the case may be, to the applicant by e-mail or fax, in addition to any other usually recognised mode of communication, within three (3) working days of receipt of the application:

Provided that when short-term open access has been applied for the first time by any person, the buyer or the seller, the State Load Despatch Centre shall convey to the applicant such concurrence or 'no objection' or prior standing clearance, as the case may be, within seven (7) working days of receipt of the application by e-mail or fax, in addition to any other usually recognised mode of communication.]

[(3A) In case the State Load Despatch Centre finds that the application for concurrence or 'no objection' or prior standing clearance, as the case may be, is incomplete or defective in any respect, it shall communicate the deficiency or defect to the applicant by e-mail or fax, in addition to any other usually recognised mode of communication, within two (2) working days of receipt of the application: Provided that in cases where the State Load Despatch Centre has communicated any deficiency or defect in the application, the date of receipt of application shall be the date on which the application has been received duly completed, after removing the deficiency or rectifying the defects, as the case may be.]

4. *[In case the application has been found to be in order but the State Load Despatch Centre refuses to give concurrence or 'no objection' or prior standing clearance as the case may be, on the grounds of non-existence of necessary infrastructure or unavailability of surplus transmission capacity in the State network, such refusal shall be communicated to the applicant by e-mail or fax, in addition to any other usually recognized mode of communication, within the period of three (3) working days or seven (7) working days, as the case may be, from the date of receipt of the application, specified under clause (3), along with reasons for such refusal: Provided that where the State Load Despatch Centre has not communicated any deficiency or defect in the application within two (2) days from the date of receipt of application or refusal or concurrence or 'no objection' or prior standing clearance, as the case may be, within the specified period of three (3) working days or seven (7) working days, as applicable, from the date of receipt of the application, concurrence or 'no objection' or prior standing clearance, as the case may be, shall be deemed to have been granted: Provided further that where concurrence or 'no objection' or prior standing clearance, as the case may*

be, is deemed to have been granted by the State Load Despatch Centre, the applicant while making application 17[] shall submit to the nodal agency an affidavit (in the format provided in the detailed procedure), duly notarised, declaring that – (a) the State Load Despatch Centre has failed to convey any deficiency or defect in the application or its refusal or concurrence or ‘no objection’ or prior standing clearance, as the case may be, within the specified time, (b) necessary infrastructure for time-block-wise energy metering and accounting in accordance with the provisions of the Grid Code in force, is in place; and enclosing with the affidavit – (i) a copy of the complete application after removal of deficiency or rectification of defects, if any communicated, made to the State Load Despatch Centre for seeking concurrence or ‘no objection’ or prior standing clearance, as the case may be, and (ii) a copy of the acknowledgement, if any, given by the State Load Despatch Centre, or any other evidence in support of delivery of the application to the State Load Despatch Centre.]

- (viii) The paragraph 17 of the ‘detailed procedure for grant of Connectivity and Open Access in intra state transmission system’ approved by the Commission deals with ‘Processing of Applications for inter-state Open Access’ which is extracted below.

17. Processing of Application for inter-state open access.

17.1

17.2 The procedure for grant of short-term open access involving inter State transmission system shall be as per the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 or its statutory re- enactments as amended from time to time.

17.3

17.4 In the case of short-term open access, the STU shall convey its consent or otherwise as per the provision of Central Electricity Regulatory (Open Access in Inter- State Transmission) Regulations, 2008 or its statutory re-enactments as amended from time to time.

17.5 In respect of a consumer connected to a distribution system seeking inter-State long-term or medium-term or short-term open access, the SLDC, before giving its consent shall obtain the consent of the distribution licensee concerned:

Provided that, in the case of short-term open access, the said distribution licensee shall convey its consent or otherwise within three working days of receipt of request of the applicant.

Provided further that, any applicant connected to the intra-state transmission or distribution system can utilise the inter-State open access, only after availing intra- state open access and SLDC shall, before giving

consent to the CTU, ensure that such intra-state open access has been approved for the corresponding periods.

17.6 In respect of a consumer connected to a distribution system seeking inter-state short-term open access, the SLDC, before giving its consent and standing clearance for collective transactions to the RLDC as required under the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 as amended from time to time, shall require the consumer to submit the consent of the distribution licensee concerned:

Provided that any applicant connected to the state transmission or distribution system can utilise the inter-State open access only after availing intra-state open access and the SLDC shall, before giving consent to the CTU, ensure that such intra-state open access has been approved for the corresponding periods.

14. The Commission has examined in detail the provisions in the Electricity Act 2003 in providing non-discriminatory open access to the transmission system of the State Transmission Utility and distribution system of the licensee, provisions in the Open Access Regulations, 2013 notified by the KSERC vide the notification dated 10th September-2013, the detailed procedure for grant of connectivity & open access in intra-state transmission system approved by the Commission on 21-04-2015, the CERC (Open Access in Inter State Transmission) Regulation, 2008.
15. The members of the petitioner association are embedded consumers of the KSEB Ltd and they are procuring power from power exchanges under open access through the transmission and distribution system of KSEB Ltd, as and when the electricity price at the power exchanges and other charges payable by open access consumers including transmission charges, wheeling charges, cross subsidy surcharge and additional surcharges are favourable to them in comparison with the prevailing tariff applicable to them for the electricity supplied by KSEB Ltd.
16. Commission has also noted that, as per the Open Access Regulations, 2013, before applying for NOC to the SLDC, these consumers have obtained no objection certificate from the SBU- Distribution of KSEB Ltd and State Transmission Utility of KSEB Ltd.
17. Further, as per the sub regulation (4) of the Regulation 11 of the Open access Regulations, 2013, it is the responsibility of the KSEB Ltd as the distribution licensee to provide special energy meters and Remote Terminal Units (RTU) to the embedded consumers who avail open access. Since the KSEB Ltd as the distribution licensee and STU has already granted NOC, as their systems are capable of providing open access, there is no valid reason for the denial of NOC

by SLDC invoking paragraph 5(4) of the IEGC. It should also be noted that paragraph 5 (4) of the IEGC has no application in this context. As per the section 32 of the Electricity Act, 2003, the SLDC has to function independently. The responsibility to look after the commercial interest of the distribution licensee is with the SBU (Distribution) of KSEB Ltd, and the SBU (Distribution) has not so far presented any such matter before the Commission. The SLDC failed to substantiate the reasons cited in their letter dated 20-07-2016 for the denial of open access to the members of the petitioner association.

18. In view of the provisions of the Electricity Act 2003, KSERC (Connectivity and Intra-State Open Access) Regulations, 2013, and the detailed procedure for grant of connectivity & open access in intra-state transmission system approved by the Commission on 21-04-2015, the Commission has provisionally found that, the reasons cited in the letter No. CESO/ EE LDII/ Inter State OA/ 2016-17 dated 20-07-2016 of Chief Engineer (Transmission System Operation) for denying the NOC for Short Term Open Access are not legally sustainable,

Interim Order

19. In compliance with the directions of the Hon'ble High Court in its judgment dated 29.07.2016, in Writ Petition No. 25043/2016, the Commission hereby issues the following interim orders,-
- (1) The orders issued by the Chief Engineer (System Operations) KSEB Ltd denying the NOC for Short Term Open Access to the petitioners in the Writ Petition are hereby quashed and the applications already submitted by them shall be considered afresh and orders issued on or before 06.08.2016.
 - (2) The orders issued by the Chief Engineer (System Operations) KSEB Ltd denying the NOC for Short Term Open Access to the other embedded consumers are also quashed and the applications already submitted by such consumers shall also be considered afresh and orders issued on or before 06.08.2016.
 - (3) SBU (Distribution), SBU (Transmission) and SLDC under KSEB Ltd are granted time upto 19.08.2016 for filing their written statements for consideration of the Commission while issuing the final orders.

Sd/-
K. Vikraman Nair
Member

Sd/-
S. Venugopal
Member

Sd/-
T.M. Manoharan
Chairman

Approved for issue,

Santhosh Kumar.K.B
Secretary