

KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

PRESENT

Shri.T.M.Manoharan, Chairman

Shri. P. Parameswaran, Member

Shri. Mathew George, Member

OP No. 30/2012

In the matter of: Accreditation of M/s INDSIL as a 'Renewable Energy Generator for their 21 MW Kuthungal SHP by ANERT

7th August 2013

Petitioner : Kerala State Electricity Board
Respondent s : ANERT, Thiruvananthapuram
: M/s INDSIL Hydro Power & Manganese Ltd,
Coimbatore.

ORDER

1. The Govt. of Kerala, with the concurrence of the Kerala State Electricity Board(KSEB), had allocated the 3 x 7 MW Kuthungal Small HydroelectricProject (SHP)) to INDSIL Hydro Power & Manganese Ltd(M/s. INDSIL) during the year 1992. The project isutilising controlled release also from KSEB's Anayirankal reservoir. The project was allocated as a captive power project (CPP), as a promotional measure to attract private participation in power generation. The power generated in the Kuthungal project is used to meet the power requirements of the industrial units of M/s. INDSIL, namelyINDSIL Electrosmelts Ltd, and associated units at Palakkad. The company

entered into an agreement with KSEB on 30-12-1994 .The project started commercial operation on 1.6.2001.

2. M/s. INDSIL applied for accreditation of the project as a renewable energy generator as per Notification No. 1517/CT/2010/KSERC dated, 23/11/2010 to the designated state agency namely Agency for Non- Conventional Energy & Rural Technology (ANERT). As per Clause 5(2) of the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, ANERT granted accreditation No.KLONSINDSL001A191211 for the project on 19/12/2011 as and subsequently the Central Agency namely National Load Despatch Centre (NLDC) also approved the project under REC mechanism and granted registration certificate No.KLONSINDSL001R160112 on 16.01.2012.

3. As part of the process stipulated under the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, a generating company is required to apply for the issuance of Renewable Energy Certificates (RECs) to the Central Agency, with the approved injection report from the State Load Dispatch Centre (SLDC). In case the eligible entity is a captive power producer (CPP), connected to the transmission /distribution network of the transmission /distribution utility, the SLDC shall establish protocol for receipt of information and maintenance of the record of meter readings and arrange to communicate injection report for each accredited project of the registered eligible entity within the state to the Central Agency on a monthly basis. The SLDC has to follow the Indian Electricity Grid Code (IEGC) as well as Kerala State Grid Code for the purpose of accounting the renewable energy injected into the grid.

4. M/s. INDSIL filed a complaint on 2/4/12 before the Commission against KSEB about the non-compliance of the CERC regulations and Commission's directions to report the required details of energy injected by the renewable energy generator plant on

monthly basis, from the State Load Despatch Centre (SLDC) to NLDC and ANERT. The remarks of KSEB on the complaint were sought for by the Commission.

5. KSEB filed a petition before the Commission objecting to the accreditation of M/s INDSIL as a renewable energy generator by ANERT claiming it as irregular. KSEB pointed out that accreditation under REC mechanism would enable a renewable energy generator to trade the RE Certificate provided to it, corresponding to the energy generated, in the power exchange to earn additional revenue, which in turn will deprive KSEB from accounting the generation from that project against the Renewable Purchase Obligations (RPO) of KSEB.

Prayers of the Petitioner (KSEB)

6. The prayers of the petitioner are the following.

- i) Withdraw the certificate of accreditation as renewable energy generator given to INDSIL for their 21 MW SHP at Kuthungal
- ii) Request NLDC to revoke the REC Registration given to INDSIL based on the certificate of ANERT.
- iii) While granting accreditation, strictly follow the procedures stated in the rules and regulations framed by CERC and KSERC in future.

Hearing of the matter

7. The petition was admitted as OP 30/12 with KSEB as Petitioner, and ANERT and INDSIL as respondents. The Commission heard the arguments of KSEB, ANERT and INDSIL on 5-9-2012 and on 21.05.2013. Both KSEB and INDSIL submitted connected documents and detailed argument notes to establish their claims. The points submitted and arguments raised by the parties are summarised below.

Arguments of KSEB

8. KSERC had designated ANERT as the state agency for accreditation and recommending the renewable energy projects for registration and to undertake functions under the KSERC (Renewable Energy Purchase Obligation and Its

Compliance)Regulations, 2010. (hereinafter referred to as KSERC RPO Regulations, 2010) ANERT has to function as per clause (5) of the said Regulations.

9. CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 dt 14-1-2010 specify the eligibility criteria for participating in the REC schemes by generators and other captive power producers.

10. The project was allocated by the State Govt. to M/s INDSIL as a CPP as a promotional measure to attract private participation in electricity generation, much before the enactment of Electricity Act 2003, utilizing the regulated resources developed by KSEB at its cost. An agreement was executed between KSEB and INDSIL on 30.12.1994. KSEB argued that the Kuthungal project of M/s INDSIL is not eligible for accreditation under REC mechanism due to the following reasons:

a) CPPs are eligible for REC benefits only if they have not availed or do not propose to avail any benefit in the form of concessional / promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty. Out of the total 16.5 KM of transmission lines required for evacuation of power from the project, KSEB had constructed 12.5 KM of 110KV transmission line free of cost as a promotional measure for the CPP . M/s. INDSIL is thus enjoying an added benefit of Rs. 0.62 per unit towards transmission charges, wheeling charges and T&D loss.

b) KSERC RPORegulations, 2010 provide for 5% banking charges whereas the agreement dated 30.12.1994 provides only for 1% banking charges. The concessional banking charges allowed by KSEB to the extent of 4% is an additional benefit being enjoyed byM/s. INDSIL

c) Relief in maximum demand charges to the company by virtue of contribution of power generated by the company and fed in to the KSEB grid, is another advantage.

d) CERC vide order No. L-1/12/2010-CERC dt 9-11-2010 has approved for implementation, the detailed procedures for granting benefits under REC mechanism. ANERT as a state agency has not followed the step No.5 and step No. 7 of the said procedure approved by CERC.

11. KSEB submitted additional statements on 19-9-2012 and on 1-11-2012 to substantiate their arguments. The main arguments submitted by KSEB are the following.

a) As per the DPR prepared by KSEB for Kuthungal project, the power generated at Kuthungal is to be transmitted to the 110 kV substation at Sengulam by constructing 10 km long single circuit transmission line. During the course of execution, the interconnection point was changed from Sengulam to Neriamangalam, due to serious constraints on land availability for extending the yard etc. It is the responsibility of the CPP to construct the transmission system from the generator switchyard to the substation of the distribution utility. A reduction in the capital cost of the Kuthungal project to the extent of Rs. 8.78 Crores was enjoyed by M/s. INDSIL on account of this.

b) CERC (Terms and conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) (First amendment) Regulations, 2010 (hereinafter referred to as CERC – REC Amendment Regulations, 2010) stipulated that if the CPP availed any concessional / promotional transmission or wheeling charges, they are not eligible for any benefits under REC mechanism. The developer is relieved of transmission charges to the extent of Rs. 0.40 paise per unit, which would have been incurred by the CPP on the energy produced by them.

c) KSEB has been providing banking facilities to the developer on water year basis, i.e., to bank the surplus energy every month and to use the same in subsequent months when generation from the CPP is less than their consumption. KSEB has requested the Commission to direct the CPP to provide month wise adjustment of banked energy during the past two water years, viz., June to May for 2010-11 and 2011-12.

d) KSEB has been extending the banking facilities to the developer since the commissioning of the project. The banking charges is 1% of the net energy banked. The net energy input into the KSEB grid from the CPP after deducting the 12% transmission and wheeling charges is adjusted against the total consumption of their industry, M/s INDSIL Electrosmelts Ltd, Palakkad. i.e., the net energy input from the CPP to KSEB grid is

adjusted against the total consumption. Any excess generation from the plant after adjusting the consumption is allowed to be banked after deducting 1% of the excess generation as banking charges.

- e) When the consumption of a month in a time zone exceeds the 'net banked energy available in the corresponding zone' KSEB has been permitting the developer to adjust the consumption in that zone against the banked energy if available in any other time zone.
- f) The plant is located in the Panniar river and getting controlled release from KSEB's Anayirankal reservoir also. Since various projects such as Pallivasal, Sengulam, Panniar and Neriamangalam are established and operated by KSEB in the Mudirapuzha basin, the hydrology of the Mudirapuzha basin is well established and validated. Hence there is no merit in the argument that energy generated from the plant is infirm.

12. KSEB further furnished their reply to the statement of defence submitted by INDSIL on 3-10-'12. In the said reply KSEB argued that 12.5 km 110kV transmission line was constructed by KSEB free of cost and it amounts to promotional transmission charges as contemplated in CERC notification dt 29-9-2010, since this resulted in foregoing the transmission investment by M/s. INDSIL and its annual recurring costs. Regarding banking facilities, KSEB argued that M/s. INDSIL had entered into an agreement with KSEB on 30-12-1994 which covers the modalities for excess drawl of power by M/s INDSIL over their self-generation, adjustment of banked energy with KSEB and this agreement is still valid and hence there is no scope for applying provisions of KSERC (Supply of Power from Captive Generating Plant to Distribution Licensees) Regulations, 2007 (hereinafter referred to as KSERC CGP Regulations, 2007).

Arguments of ANERT

13. ANERT filed reply to the petition vide letter dated 1-9-2012 in the following lines.

- a) The application for accreditation was received on 19.1.2011. Details were sought from KSEB on 9.8.2011 and 4.10.2011. Reply was not received from KSEB.

b) ANERT has granted accreditation to INDSIL on 19-12-2011 after verifying the authenticity of the documents and after verifying metering and other details at SLDC. Response from KSEB was received only on 3.1.2012.

c) KSEB does not claim to have given any promotional transmission charge.

d) CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, dated 29-9-2010 does not specifically mention concessional/promotional transmission facility as an ineligibility condition.

e) ANERT verified the conditions mentioned in Step 5 and Step 7, which mentions the duties of the central agency and not that of ANERT

f) ANERT feels that no concessions stipulated as ineligibility criteria, as per CERC Regulations, were availed by M/s. INDSIL and accreditation was granted as per their interpretation of CERC Regulations.

Arguments of M/s.INDSIL Hydro Power and Manganese Ltd

14. M/s. INDSIL filed their statement of defence with the following arguments.

a) KSEB was indirectly attempting to treat the wheeled energy generated by the respondent as procured energy so as to satisfy their REC purchase obligations.

b) An elaborate and pervasive enquiry was conducted by ANERT which is the notified agency by the Commission before issuing the accreditation.

c) Despite the directions of the Commission, SLDC sought to forward conditional reports which were objected to by NLDC and later SLDC issued unconditional injection reports for the months of January to March 12. Hence, they are eligible for availing REC benefits.

d) The objections raised by KSEB were appraised by ANERT and NLDC and found to be untenable.

e) The accreditation, registration and RECs issued are final and revocation is contemplated under specific contingencies which do not exist in the present petition. The attempt by KSEB is a direct violation of the judgement of Hon. Supreme Court in the case of Vadilal Chemicals Ltd (AIR 2005 SC 3073)

- f) REC mechanism or the CERC guidelines on eligibility do not concern itself about the source of water for a hydro power project of the renewable energy generator in terms of identifying the eligibility status of renewable energy generators.
- g) The respondents plant is a CPP whereas the rate of Rs. 2.44 per unit is applicable to IPPs.
- h) Projecting Kuthungal SHP as a tail race scheme is an intentional attempt to mislead the Commission.

15. In reply to the rejoinder of KSEB, M/s.INDSIL further submitted as follows:

- (1) KSEB could not point out any statutory provision under REC mechanism guidelines /notifications that enable them to present this petition and therefore the petition deserves to be dismissed.
- (2) The CPP pays charges to the tune of 12% on energy generated which is much more than the 5% wheeling charge and loss stipulated by the KSEB for similar CPPs within the state. As a CPP, the company does not enjoy any concession whatsoever in the form of transmission or wheeling charges and any CPP in the state has to pay only 5% wheeling and transmission charge and loss.

Additional points submitted by M/s. INDSIL on 21.05.2013

16. The arguments centred around the following three main questions raised by the Commission.

- a) *Whether the KSEB has any locus standii to file a petition before the KSEB or any other authority challenging accreditation or registration of a renewable energy generator*
 - i) M/s.INDSIL argued in this regard that, as per CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, read with amendments, the distribution licensee namely, KSEB has absolutely no role, power or any authority in any process with respect to the 3 stages contemplated therein of accreditation, registration and issue of RECs. KSEB has no *locus standii* nor is

there any provision for filing of the present petition before the Commission and hence the petition is not maintainable.

ii) Regulation 5(1) entitles a generating company to apply for registration and issuance and dealing certificates on the condition that it has obtained accreditation from the state agency. The amendment incorporated after Clause 5(1)(c) states that “*the disputes if any on the question as to whether such concessional benefits were availed by a CPP or not shall be referred to the Appropriate Commission.*” Such disputes can arise only between the state agency ANERT and the generator M/s. INDSIL and no such dispute has arisen so far. In fact, after due and proper diligence, ANERT has granted accreditation. ANERT continues to maintain its position that M/s. INDSIL is eligible for the accreditation.

iii) KSEB does not stand to lose anything whatsoever by M/s. INDSIL getting accreditation under REC mechanism. KSEB cannot claim any credit towards RPO for the power generated by a CPP within the State. The Govt of India and CERC have come out with a specific national initiative to promote renewable energy generation by giving a fixed time frame incentive window for eligible parties. KSEB has no material loss or benefit with respect to this incentive given to any captive renewable energy generator player within the state. There is no question of KSEB being an aggrieved party of any manner.

iv) CERC regulations clearly outline specific guidelines on when and how a registration can be revoked. Such proceedings can arise only before NLDC or CERC.

b) *Whether the promotional measure mentioned in Clause 9 of the agreement on cost of construction of transmission line amounts to concessional transmission charges mentioned in the regulations.*

With regard to this issue, M/s. INDSIL submitted the following:

KSEB does not have a case that INDSIL enjoys payment of concessional transmission and wheeling charges, while generating power from Kuthungal. KSEB is trying to say

that transmission line was constructed by KSEB, as a promotional measure, which in turn tantamounts to an indirect concession in terms of transmission charges.

Proviso to clause (c) of sub regulation (1) of regulation (5) reads as follows:

“Provided further that the Captive Power Producer (CPP) based on renewable energy sources shall be eligible for the entire electricity generated from such plant including self consumption for participating in the REC Scheme subject to the condition that such CPP has not availed or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges, banking facility benefits and waiver of electricity duty”.

The Clause(9) of the Agreement dated 30.12.1994 between KSEB and INDSIL reads as follows:

“Clause (9). The transmission line required for transferring power from the power house to the nearest grid station and/or other locations as suggested by the KSEB up to a length of 4 km shall be built by the KSEB at the cost of the company, as a deposit work and the balance constructed by the KSEB at its cost as a promotional measure for encouraging the private entrepreneurs for generation of power. After construction of the line for the company by KSEB, it shall be transferred to KSEB without any compensation.....”

The construction of the transmission line from Kuthungal Power Station to Neriamangalam Power House was not a concession to M/s. INDSIL. The words in the Clause 9 of the agreement mention transmission line to transfer power from the power house should be to the nearest grid substation. The original DPR also points to it. KSEB, to suit its own convenience and load requirements, decided to draw the transmission line to Neriamangalam Power House. The KSEB built the entire line and cost for the construction of 4 km of 110kV transmission line was realised from M/s. INDSIL. The entire line has become the sole property of KSEB. Recently, KSEB has commenced the work of a new 110 kV sub station within the premises of Kuthungal Power House for transmission of energy to the nearby Senapathy Panchayat. This shows that the

development of the transmission infra structure is intended solely for the convenience and needs of KSEB and not a benefit or concession to the developer. It is also to be noted that irrespective of the destination of power being ferried, transmission charges remains the same throughout the state. Hence the subject of identifying whether transmission charges were a concession or not, cannot be limited to an activity relating to the line between Kuthungal and Neriamangalam alone.

c) *Whether the provision for banking energy as in Clause 10 and 11 of the Agreement dated 30.12.1994 could mean banking facility benefit mentioned in CERC Regulations. Regarding this issue M/s. INDSIL submitted as follows:*

KSEB has completely misunderstood the scope and ambit of the issue. What is in contemplation is “banking facility benefit”, and not mere “banking facility”. The Regulation clearly stipulates *“For the purpose of this Regulation, the expression “banking facility benefit” shall mean only such banking facility whereby the CPP gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into grid during off-peak hours.”* The emphasis is therefore on “benefit of such banking facility”. Obviously, therefore, what is contemplated is “benefit” of utilising the energy injected into the grid in ‘off-peak hours’ towards energy consumed in peak and normal hours. Reverse would only be a ‘penalty’ and not a ‘benefit’. In fact, not even once in the history of the project, has KSEB allowed the company to set off power generated during off-peak hours against the consumption during normal or peak hours. The criteria that adjustment of off-peak generation against peak/normal consumption is totally absent. Therefore M/s. INDSIL is entitled to the REC benefits.

Analysis and decisions of the commission.

17. The important issues which arise for consideration in this case are the following.

- (1) Whether or not KSERC has the jurisdiction and competence to examine the issues raised by KSEB in OP No. 30/2012 and to grant the following prayers of KSEB

- (i) Withdraw the certificate of accreditation as RE Generator given to INDSIL for their 21 MW SHP at Kuthungal
 - (ii) Request NLDC to revoke the REC Registration given to INDSIL based on the certificate of ANERT
 - (iii) While granting accreditation, strictly follow the procedures stated in the rules and regulations framed by CERC and KSERC in future.
- (2) Whether or not KSEB has any locus standii to file this petition
- (3) Whether or not M/s. INDSIL is in receipt of any concessional / promotional / transmission or wheeling charges as contemplated in the proviso to clause (c) of sub-regulation (1) of Regulation 5 of the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations 2010 read with its amendments
- (4) Whether or not M/s. INDSIL is in receipt of any banking facility benefits as contemplated in the above mentioned proviso read with the explanation thereunder, to the effect that 'for the purpose of this regulation, the expression banking facility benefit shall mean only such banking facility whereby the CPP gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into it during off peak hours'.
- (5) Whether or not M/s. INDSIL is in receipt of any waiver of electricity duty as contemplated in the above proviso

18. The above issues have to be examined and decided with special reference to the relevant legal provisions and policies contained in

(1) The Electricity Act 2003 and its amendments

(2) Policies of Central and State Governments relating to renewable energy.

(3) Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 dated 14.01.2010 read with its amendment dated 29.09.2010

(4) KSERC (Supply of Power from Captive Generating Plants to Distribution Licensees) Regulations, 2007

(5) KSERC (Power Procurement from Renewable Sources by Distribution Licensee) Regulations, 2006.

(6) KSERC (Renewable Purchase Obligation and Its Compliance) Regulations, 2010

19. The issue no.1 relating to the jurisdiction and competence of the Commission has to be examined with reference to the provisions in KSERC (Renewable Purchase Obligation and Its Compliance) Regulations, 2010. Clause (5) of the said regulations states as follows:

“ If the Commission is satisfied that the State Agency is not able to discharge its functions satisfactorily, it may by general or special order, and by recording reasons, in writing, designate any other agency to function as State Agency as it considers appropriate”.

Agency for Non-conventional Energy and Rural Technology (ANERT) is the state agency designated by the Commission for the accreditation of the renewable energy projects and for recommending them for registration. The dispute raised by KSEB is whether the Certificate of Accreditation given by ANERT to M/s. INDSIL as a renewable energy generator is valid in accordance with the eligibility criteria fixed for a renewable energy generator. M/s. INDSIL and ANERT argued that the accreditation given by ANERT to M/s. INDSIL is in order. In view of the above quoted provision in KSERC (Renewable Purchase Obligation and Its Compliance) Regulations, 2010 the Commission has the authority to examine whether or not M/s. ANERT has performed its functions in this regard satisfactorily.

20. Further, the proviso under Clause (c) sub regulation (1) of regulation (5) of CERC (Terms and Conditions for Recognition and Issuance of REC for Renewable Energy

Generation) as amended by the First Amendment Regulations, 2010 dated 29.09.2010 states as follows:

“The dispute if any, on the question as to whether such concessional/promotional benefits were availed by a CPP or not shall be referred to the Appropriate Commission”.

The first prayer of KSEB is to withdraw the Certificate of Accreditation as renewable energy generator given to M/s. INDSIL for their 21 MW small hydro project at Kuthungal, on the ground that they are availing benefits which would make M/s. INDSIL ineligible for the REC benefits. In view of the above legal provisions it can easily be found that the Commission has jurisdiction and competence to examine the issues relating to the first prayer of KSEB for the withdrawal of the Certificate of the Accreditation as renewable energy generator given to M/s. INDSIL by ANERT.

21. In the second prayer KSEB has requested the Commission to make a request to National Load Despatch Centre to revoke the REC registration given to M/s. INDSIL based on the Certificate of Accreditation given by ANERT. It is well known that the State Commission has no power of superintendence over the National Load Despatch Centre and therefore the second prayer of KSEB is a misplaced one.

22. Regarding the third prayer of KSEB, no separate directions are required to any agency to strictly follow the rules and regulations framed by CERC and KSERC in future. The rules and regulations are framed by CERC and KSERC only for strict compliance by the concerned utilities.

23. In view of the above facts and consequent finding to the effect that Commission has jurisdiction and competence to examine the issue relating to accreditation given by ANERT, the analysis and findings of the Commission are confined to the first prayer of KSEB, with regard to which the Commission has jurisdiction and competence.

24. Regarding issue No. 2 relating to the locus standii of KSEB to file this petition, M/s. INDSIL have contended that as per Clause (c) under sub-regulation 1 of Regulation 5 of CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 read with its amendment dated 29.09.2010, “the dispute if any on the question as to whether such

concessional benefits were availed by as CPP or not shall be referred to the appropriate Commission. According to M/s. INDSIL, the parties involved in the process of granting accreditation are only M/s. INDSIL and ANERT and such dispute as referred to in the regulation cited above can arise only between the state agency namely ANERT and generator namely M/s. INDSIL. No such dispute has arisen between these parties. KSEB does not stand to lose or to gain in the process. The REC benefit can be availed only by the renewable energy generator and therefore KSEB has nothing to be aggrieved about granting accreditation to M/s. INDSIL.

25. Regarding issue No. 2 relating to the locus standii of KSEB to file this petition, it has to be noticed that the nodal agency namely ANERT had, while processing the application dated 19.01.2011 of M/s. INDSIL, called for remarks from KSEB as early as on 09.08.2011 and 04.10.2011 . KSEB did not respond to the request of ANERT for months together till 03.01.2012. In view of the inordinate delay, M/s. INDSIL had approached this Commission for issuance of directions to KSEB to furnish necessary information to ANERT. KSEB has filed this petition before the Commission after forfeiting its chance to present the relevant facts before the state agency. KSEB is not an affected party in this process. M/s. INDSIL is a CPP which is consuming the energy generated in the Kuthungal small hydro project. There is no power purchase agreement (PPA) between M/s. INDSIL and KSEB for the purchase of energy generated in Kuthungal SHP. In the absence of PPA, the contention of KSEB to the effect that the energy generated in Kuthungal small hydro project can be accounted towards their renewable energy purchase obligation, cannot succeed. If KSEB has accounted the energy generated in Kuthungal small hydro project towards their renewable energy purchase obligation, it will have to be reviewed for which the Commission will issue separate directions. The REC benefit can be availed by the renewable energy generator as an incentive in accordance with the provisions of the relevant regulations issued by CERC and KSERC. It is an entitlement of the renewable energy generator provided it satisfies the necessary and sufficient conditions stipulated by the above regulations. It cannot be claimed by KSEB since the entitlement for incentive is only for the renewable energy generator. Neither can KSEB prefer a rival

claim nor can it insist the renewable energy generator to forgo its legal entitlement for the incentive for irregularly accounting the renewable energy generated by the CPP towards the renewable energy purchase obligation of KSEB. Therefore, KSEB which is not a party to the process of granting accreditation under the relevant CERC regulations, cannot have locus standii to file this petition before the Commission, especially after having forfeited its chance to represent the issues before the state agency due to the lapses and inordinate delay, on its own part. However the Commission considers that the allegation raised in the petition filed by KSEB deserve consideration by the Commission in the interest of justice. Therefore the Commission has decided to examine the issues no. 3, 4 & 5.

26. While considering issues no. 3, 4 & 5 it has to be appreciated that the policy of the Central and State Governments is to promote renewable energy as much as possible. It is with this policy objective the Central and State Governments have announced many promotional measures to encourage generation of renewable energy. The Government have, by way of various legal provisions and implementation of various policies and programmes, introduced many incentives to renewable energy projects such as small hydro projects, wind energy projects, solar energy projects etc. Such incentives include capital subsidy, soft loans with low interest rates and long repayment period, accelerated depreciation and consequential income tax benefits, concessional transmission charge and wheeling charge, banking facility benefits, concession with regard to electricity duty and concessions on surcharges as provided in Section 38, Section 39, Section 40 and Section 42 of the Electricity Act 2003.

27. From the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 dated 14.01.2010 and its amendment dated 29.09.2010 it can easily be found that the intention of the Govt. is to grant incentives to all the renewable energy generators including CPPs. As per the above said amendment dated 29.09.2010 it has been specifically stipulated that "a Captive Power Producer (CPP) based on renewable energy sources shall be eligible for the entire energy generated from such plant including self

consumption for participating in the REC scheme subject to the condition that such CPP has not availed or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty". Therefore the CPPs can be deprived of their entitlement to receive the REC benefit only if they are receiving the following benefits.

1. Concessional transmission/wheeling charge
2. Banking facility benefits
3. Concessional electricity duty

Availing of other incentives such as capital subsidies, soft loans, accelerated depreciation, tax benefits and/or concessions in surcharge as provided in Sections 38,39, 40 & 42 of Electricity Act is inconsequential as far as granting of REC benefit under the above mentioned CERC Regulations.

28. The DPR of the Kuthungal hydroelectric project was prepared and approved by KSEB. The said project was allotted to M/s. INDSIL as per BO No. 1483/92(PLG.VI/1/92/PP) dated 22.08.1992 of KSEB read with GO Ms No. 23/90/PD dated 07.12.1990 and GO Ms. No. 5/92/PD dated 12.03.1992. The implementation agreement was executed between M/s. INDSIL and KSEB as early as on 30.12.1994. The project was completed and commissioned on 01.06.2001. Thus it can be seen that the project was allotted, implemented and commissioned prior to enactment of Electricity Act 2003. The CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations 2010 and its amendments were issued only in 2010. Therefore while determining the eligibility of the project for REC benefits, the facts relating to the operation of the project have to be evaluated with reference to the relevant provisions in Electricity Act 2003, policy relating to renewable energy, CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations 2010 with its amendment and in the regulations issued by KSERC on renewable energy purchase obligation. Therefore the Commission has examined the issues relating to

concessional transmission/wheeling charges, banking facility benefits and concessional electricity duty in the following paragraphs.

Concessional/promotional transmission & wheeling charges

29. KSEB argued that the transmission facility extended by KSEB is a promotional measure for the CPP. The developer had borne the cost of the transmission system (110 KV Line) from the power house up to 4 KM only and the cost of the balance transmission system to the extent of 12.5 KM was borne by KSEB as a promotional measure. Clause 9 of the Agreement dt.30-12-1994 between KSEB and the CPP (INDSIL) regarding transmission line says that *“the balance constructed by the KSEB at its cost as a promotional measure for encouraging the private entrepreneurs for generation of power”*. KSEB has also argued that though no direct concession in transmission charge is offered to the Company, cost of the line constructed by KSEB would be equivalent to having offered with concessional transmission charge.

30. KSEB has further argued that the developer has benefited by way of not bearing the transmission investment cost for the 12.5 KM of 110 KV transmission system. Due to this there was reduction in the capital cost of the Kuthungal project by Rs. 8.78 Crores. CERC regulations stipulate that if the CPP has availed any concessional/ promotional transmission or wheeling charges, such CPP is not eligible for the benefits under REC mechanism. As per the version of KSEB, the developer is relieved of transmission charges to the extent of Rs.0.40 paise per unit, as per the computation of KSEB which would have been incurred by the CPP on the energy produced by them. KSEB argued that the REC benefit can be allowed only after the developer foregoes the benefit by remitting the entire cost of the 12.5 KM transmission system constructed by KSEB for evacuating power from the project.

31. KSEB argued that due to the transmission facilities extended by KSEB as a promotional measure for the CPP to the extent of 12.5 KM out of the total 16.5 KM, the CPP is enjoying an added benefit of Rs. 0.62 per unit towards transmission charges,

wheeling charges and T&D loss. As per the prevailing energy charge for EHT supply, wheeling and transmission losses would have to be Rs. 0.35 per unit. The transmission charges and wheeling charges for open access consumers is Rs.0.32 per unit and Rs. 0.50 per unit respectively. Assuming transmission loss of 5 % in KSEB system, M/s. INDSIL has to bear a total charges of Rs. 0.97 per unit towards transmission, wheeling, and T&D losses for using transmission system of KSEB. KSEB pointed out that the developer is bearing only Rs. 0.35 per unit towards transmission charges, wheeling charges and T& D losses against Rs. 0.97 per unit

32. The respondents stated that the issues regarding the construction of 12.5 KM transmission line out of 16.5 KM is outside the scope of the CERC - REC Regulations. M/s. INDSIL argued that granting of REC benefits to renewable energy generator is not concerned with concessions in the form of capital expenditure or capital subsidies. It is concerned only with concessional wheeling and transmission charge, concessional banking facilities and waiver of electricity duty. The concession was a common one meant to encourage new hydro plants, because most hydro sites were far away from grid stations and the prohibitive cost of the transmission lines were preventing hydel projects from coming up. That was why clause 9 of the PPA was incorporated as follows: *“The transmission line required for transferring power from the power house to the nearest grid substation and or other locations as suggested by the KSEB up to a length of 4 KM shall be built by KSEB at the cost of the company as a deposit work and balance constructed by KSEB as a promotional measure for encouraging the private entrepreneurs for generation of power”.*

33. M/s. INDSIL has further pointed out that in the case of Kuthungal project, the nearest grid substation was Sengulam. This was captured in the original DPR of KSEB. KSEB for its own distribution convenience opted for receipt of power at Neriamangalam at a distance of 16 KM as compared to Sengulam, which is at a distance less than half the distance from Kuthungal. This issue is totally outside the scope and ambit of REC mechanism. The relevant pages of the DPR prepared by KSEB for Kuthungal project was submitted by KSEB. As per para 1.11 of the DPR (page 15), *“the power generated at*

Kuthungal power house is proposed to be transmitted to 110 KV substation of Sengulam by a single circuit 10KM long transmission line". During the course of execution, the interconnection point was changed by KSEB from Sengulam substation to Neriamangalam substation, only to suit its convenience. The ownership of 4km of 110kV transmission line, for which M/s. INDSIL had borne the cost, has also been transferred to KSEB free of cost.

34. Clause 10 of the Agreement 30.12.1994 between KSEB and the CPP reads as follows; *"The energy from Kuthungal phase I and II project fed in to the KSEB grid will be metered at a location as detailed above (using meter duly calibrated by KSEB) and this quantum of energy less 12 % towards wheeling charges and T&D losses will be delivered free of cost to the Company and their associates M/s Sun Metals and Alloys Pvt. Ltd. Kanjikode, Palakkad at the EHT terminals at the point of supply in their installations if any, or it will be banked by the KSEB , if the company so desires. The KSEB will collect 1 % (one percent) of the energy so banked as its commission. This will be in addition to wheeling and loss towards transmission and distribution charges."*

35. M/s. INDSIL pointed out that only transmission charges are applicable to the transmission of energy at voltage of and above 66 KV and wheeling charges are applicable to voltage levels of and below 33 KV. The petitioner transmits energy on 110 KV line and consumes from the 66 KV line. But for the agreement, the respondent would have to incur only 5 % transmission and wheeling charges and loss, as against 12% actually being incurred as per agreement and therefore CPP is eligible for the benefits under the REC mechanism. According to M/s. INDSIL, as per CERC Regulation dated 29.09.2010, one of the eligibility criteria is that the CPP does not enjoy any benefit in terms of concessional transmission or wheeling charges. M/s. INDSIL incurs to the tune of 12% of the energy generated as transmission charges and line loss. The Commission has fixed only 5% of the wheeled energy as transmission and wheeling charges including line loss within the state for a CPP. Clause 4(7) of the notification of KSERC (Supply of Power from Captive Generating Plants to Distribution Licensees) Regulations, 2007, dated 6.8.2007 read as follows:

“The captive generating plants seeking open access to transmit electricity to the destination of use shall pay transmission and wheeling charges including line losses as determined by the Commission. Such plants shall be regulated in the same manner as provided under Kerala State Electricity Regulatory Commission (Open Access) Regulations, 2005. Provided that the captive generating plants generating infirm power from renewable energy sources shall pay transmission and wheeling charges including losses at 5% of wheeled energy”

36. KSERC has fixed transmission and wheeling charges including losses for all renewable energy captive producers in the state producing infirm power @5% of the wheeled energy. The agreement between KSEB and the CPP is for 12% wheeling charges as against 5% wheeling charge prescribed by the State Commission. This cannot be treated as enjoying a concession in terms of payment of transmission and wheeling charges. KSEB is well aware that only transmission charges are applicable to all voltage levels of and above 66KV and wheeling charges are applicable to voltage levels of and below 33KV. Any captive small hydro or wind project in the State of Kerala would have to incur only 5% as wheeling and transmission charges including line loss as per the provisions pointed out above. M/s. INDSIL is incurring 12% energy as wheeling charge and loss. Therefore contrary to concession, it is incurring for transmission charges and line loss at a rate more than the prescribed rate for other CPPs.
37. In the counter argument, ANERT has stated that there was considerable delay in obtaining reply from KSEB and ANERT had granted accreditation to M/s. INDSIL after verifying authenticity of the documents. CERC Regulation dt 29th Sep 2010 does not specify any concessional/promotional transmission “facility” as an ineligibility condition. KSEB does not claim to have given M/s. INDSIL any promotional transmission “charge” and therefore ANERT has not considered the concession as an ineligibility condition for giving accreditation to M/s. INDSIL as an renewable energy generator.
38. The Commission examined the above arguments. It is well-known that the transmission loss in the Kerala power system could not be more than 5% even in 2001. The agreement between KSEB and the CPP provides for losses and wheeling charges at

the rate of 12%. Hence the generator was bound to incur more than 7 % towards the transmission charges and loss even in 2001, wheeling charges not being relevant in this case. This cannot be treated as a concession in terms of payment of transmission and wheeling charges.

39. In view of the fact that KSEB is realising 12% of the generated energy towards losses and transmission charges, which could translate to around 8% transmission charges throughout the agreement period. Therefore the allegation that the generator is enjoying concessional transmission charges do not carry any weight of reason. As pointed out by the generator, had there been no such agreement, the generator would end up paying transmission charges applicable for 110KV consumers as determined by the Commission from year to year. The gains by KSEB due to the 8% energy surrendered by the generator would be higher than such transmission charges by any standards.

40. On the question of investment cost of the dedicated transmission line *constructed by the KSEB at its cost as a promotional measure* also, the arguments of KSEB cannot be accepted. Even though KSEB has been designated as the STU in the state, they have not yet functioned as a transmission licensee. If a dedicated transmission line is constructed by a transmission licensee, the cost of the work is realised through transmission charges from the beneficiaries. But in actual practice, KSEB being an unbundled entity, the transmission charges which may include depreciation, return on equity (ROE), operation and maintenance (O&M) cost etc are never computed or realised from the beneficiaries in the state. KSEB has neither demanded transmission charges nor allowed any concessions on the charges to M/s INDSIL. KSEB has not produced any records to show that they had computed transmission charges payable by the generator on the 12.5KM dedicated transmission line done at KSEBs cost nor allowed any concession on the same from the date of commissioning till date. The CERC regulation clearly indicates transmission charges computed and made payable to unbundled entities who realise the dedicated transmission investment cost from the beneficiaries based upon the terms and conditions of tariff approved by the Commission.

41. Commission is of the view that, as the state transmission utility, the KSEB is duty bound to develop transmission facilities in the state and its cost can be realised from the consumers either upfront or in instalment or by way of transmission charges. After having realised transmission charges at the rates more than that fixed by the Commission as explained above, KSEB cannot successfully contend that M/s. INDSIL is enjoying concessional transmission charges. The promotional investment made by KSEB as per the agreement entered into with M/s. INDSIL in 1994, based on the policy of the then Govt. cannot be conceived as concessional transmission charges contemplated in the CERC regulations dated 29.09.2010.

Banking Facility Benefit

42. Another issue to be examined is the Banking of energy. The clauses 10 & 11 of the implementation agreement dated 30.12.1994 are reproduced below:

Clause 10. *The energy from KUTHUNGAL PHASE I & PHASE II project fed into the KSEB grid will be metered at a location as detailed above (using meter duly calibrated by KSEB) and this quantum of energy less 12% (twelve percent) towards wheeling charges and T&D losses will be delivered free of cost to the company and their associates M/s. Sun Metals & Alloys Pvt Ltd. Kanjikode, Palaghat at the EHT Terminals at the point of supply in their installations if any, or it will be banked by the KSEB, if the company so desires. The KSEB will collect 1% (one percent) of the energy so banked as its commission. This will be in addition to wheeling and loss towards transmission and distribution charges.*

Clause 11. *If the energy in excess of the requirement of the company is generated from the project during one accounting year is not utilized by the company and their associates during that accounting year, the company may sell the excess banked energy to the KSEB. The sale shall be deemed to be effected at the EHT terminals of the KSEB where the power generated by the company is fed into the KSEB grid. The energy fed in the KSEB grid less banking commission, royalty and / or other levies shall be deemed to be the energy sold to the KSEB. The wheeling charge and loss towards transmission and distribution shall not be taken into account to determine the energy sold. The rate at*

which the KSEB shall pay to the company for such sale will be at the rate at which the KSEB sell the energy to the EHT consumers in the same voltage clause at which the KSEB receives the energy from the company. The KSEB shall not pay to the company for the maximum demand component of the energy sold to KSEB. Under no circumstances shall the company be entitled to sell or transfer any excess energy or any energy produced from the project to any party other than the KSEB and their associates. The accounting and billing of the energy fed into the grid by the company and / or supplied by KSEB to the company for operating its factories, if any, in Kerala will be settled on monthly basis. The year of accounting will be reckoned from 1st of July to 30th June. In the case of supply or receipt made in LT lines of the company the charges for losses will be extra as stipulated by the KSEB. If the energy banked is not utilized by the company and their associates during one accounting year, it shall not be carried over to the next accounting year and shall be treated as lapsed. The company has however the option to sell the excess energy to KSEB on the terms specified in the agreement. Otherwise, the company has no claim over the energy banked.

43. On a perusal of the above clauses it becomes clear that :

- (a) The company can bank their generated energy on the KSEB system upto a period of one accounting year, the accounting year being reckoned as 1st July to 30th June.
- (b) The company can use the banked energy during any time zone of their choice, presumably due to the fact the TOD energy accounting was not in vogue during the year 1994.
- (c) The excess energy available on year end , that is 30th June will not be carried over but can be sold to KSEB at '*the rate at which the KSEB sell the energy to the EHT consumers in the same voltage clause*' (class), that is, energy charges of 110KV consumers excluding demand charges.

44. On the other hand, the CERC regulations insist that '*banking facility benefit*' shall not be available for the CPP to be eligible for REC and explains that '*for the purpose of this Regulation, the expression 'banking facility benefit' shall mean only such banking*

facility whereby the CPP gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into grid during off-peak hours’.

45. From the clauses 10 & 11 of the agreement it can be seen that the terms of the agreement do not provide for such restrictions on banking and use of the banked energy. The generator company has argued that the CERC regulation stipulates to verify whether a project is enjoying additional value realization measures by having the facility of generating power during off peak hours and having the luxury of setting off or selling the same during peak hours. They also argue that mere granting of the facility to carry over power does not mean that it is a benefit in terms of the eligibility criteria fixed by CERC. It was also argued that taking of the night off peak generation to set off against peak and normal time consumption alone is conceived as a benefit under CERC regulations. The generator company has stated that, in actual practice, they had never used the energy banked during the night off peak hours for consumption during other time zones. In fact usage had been the other way round on many occasions. Electricity generated during peak and normal hours have been used to offset consumption during night off peak hours during many months. On the other hand KSEB has alleged that the generator had been allowed to utilise the energy banked in a particular time zone during other time zones. Before the commencement of computerised billing the energy was adjusted on a monthly basis without verifying the time zone wise data. Use of energy banked in any particular time zone during any other time zone will disentitle renewable energy generator from availing REC benefit as per CERC regulations. Both KSEB as well as M/s. INDSIL produced billing data for different time zones of different months to establish their points.

46. The arguments and the data produced by both the parties were carefully examined by the commission. The issue of *banking facility benefit cannot* be analysed based upon the actual energy accounts of the past years. The terms of the agreement between the parties have also to be examined. CERC regulation very clearly states that *‘the benefit of utilizing the banked energy at any time’* shall act as a disqualification. The reasonable interpretation can be that the energy injected during any time zone has to

be used during the same time zone itself for making the CPP eligible for REC benefits. It should be understood in the background of the concept of the time-slot related price of electricity developing in the country.

47. Commission analyzed the provisions of the agreement dated 30.12.1994. It is clear that the agreement allows utilizing the banked energy at any time without any restrictions and the excess energy if available on an annual basis shall be surrendered to KSEB. This provision in the agreement is not in tune with the CERC regulations on REC. Hence it becomes clear that the generator should not be eligible for REC benefit if the CPP is allowed the benefit of utilising the banked energy during any time slot including peak hours. But the CPP M/s. INDSIL has submitted that they have never been allowed to utilise this facility as is evident from the energy accounts.

48. In this regard it has to be specially noted that the generation and transmission of energy from Kuthungalhydro electric project are regulated by the SLDC under KSEB. Unless SLDC schedules the generation, the CPP cannot generate the energy. The despatch of energy is also done by SLDC. Therefore the CPP M/s. INDSIL has no freedom to generate, transmit and sell energy during various time zones at their choice.

49. Another issue that caught the attention of the Commission is the provision for selling the excess power in any accounting year as per clause 11 of the agreement cited. The clause allows the generator to sell the excess energy to KSEB. The rate at which the KSEB shall pay to the company for such sale will be at the rate at which the KSEB sell the energy to the EHT consumers in the same voltage class at which the KSEB receives the energy from the company, excluding demand charges component. That is, the generator will get the applicable energy charges of 110 KV consumers for the surrendered excess energy during the agreement period. This is not envisaged in the REC structure. As per the provisions of the CERC regulations, the total compensation allowable for a renewable energy generator is the sum of average pooled power purchase cost (APPC) and market price of REC. For the energy sold to KSEB, the generator will be eligible for a price not exceeding the pooled cost of power purchase of KSEB as per the CERC REC regulations dated 14.1.2010.

50. In view of the above facts and relevant legal provisions on the matter and with an intention to promote the development of renewable energy and REC trade, the Commission decides to regulate the issue as follows :

The accreditation given to the generator company shall remain valid and the company shall be eligible to avail REC subject to the following conditions:

1) The energy, if any, banked by M/s. INDSIL with KSEB shall be permitted to be consumed by M/s. INDSIL only in such a way that the banking facility benefit as contemplated in the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 dated 14.01.2010 read with its amendment dated 29.09.2010 is not available to M/s. INDSIL.

2) Carrying over of the excess energy on any day or month shall be allowed as provided in the Agreement dated 30.12.1994 between the generator and KSEB, on a time zone wise basis.

3) The generator shall have the option to sell the excess energy in any accounting year to KSEB as provided in the Agreement 'at a price not exceeding the average pooled cost of power purchase of KSEB as per clause (c) of sub regulation (1) of regulation 5 of the CERC REC regulations dated 14.1.2010 read with its amendment dated 29.09.2010.

51. The generator will have to execute an under taking in stamp paper agreeing to the above conditions before the state agency ANERT *within one month* under intimation to KSEB and the Commission. The above undertaking will form part and parcel of the agreement dated 30.12.1994 between KSEB and M/s. INDSIL. If the generator fails to do so, reporting of injection by the generator by SLDC to the Central Agency will be suspended and the state agency ANERT and Central Agency will have to proceed with action to revoke accreditation and registration as per CERC regulations.

52. The state designated agency ANERT shall issue notice to the generator incorporating the above directives under section 9 of the detailed procedure approved

by CERC by order dated 1.6.2010 and other enabling provisions of the statutes immediately.

Orders of the commission

53. After carefully examining the petition, counter statements, the documents and arguments presented by all the parties the Commission issues the following orders:

(1) The petition submitted by KSEB is dismissed.

(2) The accreditation given to M/s. INDSIL shall continue to be valid and the company shall be eligible to avail REC benefits subject to the following conditions:

a) The energy, if any, banked by M/s. INDSIL with KSEB shall be permitted to be consumed by M/s. INDSIL only in such a way that the banking facility benefit as contemplated in the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 dated 14.01.2010 read with its amendment dated 29.09.2010 is not available to M/s. INDSIL.

b) Carrying over of the excess energy on any day or month shall be allowed as provided in the Agreement dated 30.12.1994 between the generator and KSEB, on a time zone wise basis.

c) The generator shall have the option to sell the excess energy in any accounting year to KSEB as provided in the Agreement 'at a price not exceeding the average pooled cost of power purchase of KSEB as per clause (c) of sub regulation (1) of regulation 5 of the CERC REC regulations dated 14.1.2010 read with its amendment dated 29.09.2010.

(3) The generator shall execute an undertaking in stamp paper agreeing to the above conditions before the state agency ANERT *within one month* under intimation to KSEB and the Commission, failing which reporting of injection by the generator by SLDC to the Central Agency will be suspended and the state agency ANERT and Central Agency shall proceed with action to revoke accreditation and registration as per CERC regulations. This undertaking shall form part and parcel of the agreement dated 30.12.1994 between KSEB and M/s. INDSIL.

(4) The state designated agency ANERT shall issue notice to the generator incorporating the above directives under Section 9 of the detailed procedure approved by CERC by order dated 1.6.2010 and other enabling provisions immediately.

Copies of this order shall be sent to the Central Agency designated by the CERC also for information.

Petition disposed off accordingly.

Sd/-
P.Parameswaran
Member

Sd/-
Mathew George
Member

Sd/-
T.M.Manoharan
Chairman

Approved for issue

Sd/-
Secretary