

**KERALA STATE ELECTRICITY REGULATORY COMMISSION  
THIRUVANANTHAPURAM**

**Present : Shri T K Jose, Chairman  
Adv. A.J Wilson, Member  
Shri B Pradeep, Member**

**OP No 40/2023**

In the matter of : Petition seeking formulation of appropriate Deviation Settlement Mechanism to handle the deviation during scheduling of surplus quantum of power generated from the Cogeneration Power Plant of the Petitioner to third parties by way of Open Access.

Petitioners : Phillips Carbon Black Limited (PCBL Ltd)

Respondent : 1) Kerala State Electricity Board Ltd (KSEB Ltd)  
2) State Load Dispatch Centre (SLDC)

Petitioner represented by : Adv. Biju Mattam, Counsel for the petitioner  
Shri. Nandgopal, M/s PCBL Ltd

KSEB Ltd represented by : Shri. M.P. Rajan, DY CE, TRAC, KSEB Ltd  
Smt. Latha S.V, AEE

SLDC Represented by : Shri. Viju Rajan John, Chief Engineer, TSO  
Smt. Kavitha C.K, Dy CE (Grid)

Date of hearing : 06.07.2023, 12:00 Noon

Venue : Court Hall of the Commission

**Order dated 22.08.2023**

1. M/s PCBL Limited (Formerly Phillips Carbon Black Limited), filed a petition dated 17.03.2023 before the Commission with the following prayers  

*“ (a) formulate an appropriate Deviation Settlement Mechanism to handle the deviation during scheduling of electricity to third parties by way of Open Access, including Power Exchange, after self -consumption by the Petitioner, by way of promulgating appropriate Regulations;  
(b) in the interim, allow the Petitioner to continue the scheduling of the surplus power after self-consumption by the Petitioner, to third parties including Power Exchange by way of open access and the deviation to be dealt with under existing interim deviation settlement mechanism in terms of the Supplementary Agreement executed between the Petitioner and KSEBL on 30.12.2022, till framing of appropriate*

*Regulations governing Deviation Settlement Mechanism by this Hon'ble Commission; and*

*(c) Pass any other order as this Hon'ble Commission may deem fit in the facts and the circumstances of the case."*

2. The Summary of the petition is given below;

- (1) The petitioner, M/s PCBL Ltd is a company incorporated and registered under the Companies Act, 1956 and engaged in the manufacturing of Carbon Black. M/s PCBL is an EHT 66 kV consumer (No;09/333) having a 10 MW Co-Generation plant at Ernakulam in 2010. The Co-generation plant is purely based on the industrial waste generated during the process of Carbon Black manufacturing. The plant of the Petitioner was synchronized with the grid at Vyttila substation through the 66 kV network of KSEB Ltd. Subsequently, in 2022, the Petitioner enhanced the capacity of the plant from 10MW to 17 MW.
- (2) The Petitioner further submitted that after consuming the power for its own use, it has surplus power up to 14 MW, which is being sold to the third parties by using the KSEBL grid by availing Open Access. During the injection of power generated through Open Access in pursuant to the scheduling and dispatch, there occurs deviation from the schedule by way of over injection and under drawal.
- (3) In order to address the deviation from Schedule, the Petitioner has executed an Agreement dated 25.09.2017 with SLDC of KSEB Ltd and it was amended vide the Supplementary Agreement dated 01.11.2019 and again amended by the Supplementary Agreement dated 30.12.2022.
- (4) The petitioner further submitted that, though the Central Electricity Regulatory Commission (CERC) has notified the Deviation Settlement Mechanism (DSM), the same has not been notified in the State to govern the intra-state deviation while wheeling the electricity to the third parties. In the absence of the DSM, the deviation below or over the scheduled injection while scheduling the power to the third parties was subjected to the interim deviation settlement mechanism as provided under the agreement dated 25.09.2017 and its amendments dated 01.11.2019 and 30.12.2022 executed between the petitioner and the KSEB Ltd.
- (5) The present petition is being filed under Section 86 read with Section 181 of the Electricity Act, 2003 and Regulation 69 of the KSERC (Conduct of Business) Regulations, 2003, seeking formulation of appropriate DSM for governing the deviation caused during the scheduling of the surplus quantum of power to third parties. The petitioner invokes the rule making powers of the Commission to form an appropriate Regulations for DSM.

- (6) The Clauses related to the DSM in the Original Agreement dated 25.09.2017 is extracted below;

"... Parties agree the following mechanism for handling the deviation from schedule in respect of co-generation plant of PCBL availing intra-state short term open access:

1. The under injection of energy by generator in any 15 minute time block may be charged at the marginal cost of power procured by KSEB Ltd. during the billing cycle.
2. Marginal cost is taken as the cost for procuring one unit electricity by KSEBL from different sources of electricity generation excluding the energy cost of RGCCP, BSES, KDPP and BDPP (marginal cost is furnished as Annexure 1. until the Hon'ble KSERC fixes a rate).
3. Over injection, if any, in any 15 minute time block may be billed and credited to the generators account at a rate of Rs. 2.02 per unit, which is the rate undertaken by PCBL for injection into KSEBL grid....."

**"Article 5: Invoice and Payments**

5.4 Provided further that in the event of under injection by the Open Access generator, KSEBL shall charge this under generation in any 15 minute time block at the marginal cost of power procured by KSEBL during the same billing cycle excluding the energy cost of RGCCP, BSES, KDPP and BDPP subject to the final approval of KSERC. If marginal cost for a particular cost is not available for billing purpose, the previous month's marginal rate will be taken for raising the bill and the difference if any shall be adjusted in the subsequent bills."

- (7) The original Agreement dated 25.09.2017 was subsequently amended/ revised vide the supplementary agreement dated 01.11.2019, whereby, the DSM was modified for under injection. The relevant portion of the amendment related to the DSM clauses is extracted below;

"Parties agree the following mechanism for handling the deviation from schedule in respect of co-generation plant of PCBL availing intra-state short term open access:

1. The under injection of energy by generator in any 15 minute time block may be charged at the "marginal cost of power during the billing cycle.
2. Marginal cost of power for charging the under injection by M/s PCBL shall be determined as the highest power purchase cost per unit among all sources excluding charges of RGCCP, BSES, KDPP and BDPP or the per unit sale of power by KSEBL through power exchanges. In case of power sourced from CGS or IPPS, the Fixed charge (including Capacity charges, RLDC charges and Transmission charges) component shall be computed on per unit basis based on the normative target PLF"

.....

Para 5.4 of the Article-5 of the Original Agreement modified as follows;

*Provided further that in the event of under injection by the Open Access generator, KSEBL shall charge this under generation in any 15 minute time block at the "marginal cost of power" during the same billing cycle subject to the final approval of KSERC. If marginal cost for a particular cost is not available for billing purpose. the previous month's marginal rate will be taken for raising the bill and the difference if any shall be adjusted in the subsequent bills."*

- (8) Subsequently, the petitioner enhanced the generating capacity of the Co-Generation plant from 10MW to 17MW. The petitioner had obtained sanction from KSEB Ltd to enhance the injection of surplus power from 7MW to 14MW.
- (9) The petitioner was granted the NOC by KSEB Ltd for scheduling of additional quantum of 7MW based on the existing arrangement of DSM in terms of agreement dated 25.09.2017 (amended) as an interim measure till the DSM formulated by the Commission, with the condition that the DSM shall be applicable from the date of commencement of the scheduling of additional 7MW power. It is also specified as a condition that, "the deviation charges for any 15 minute time block is to be billed and credited to the generators account as per the inter State DSM rate applicable for that time block or Rs 2.02 per unit whichever is lower.

KSEB Ltd also advised the petitioner to immediately approach this Commission seeking formulation of appropriate DSM in this regard.

- (10) Subsequently the Petitioner and the SLDC of the KSEB Ltd executed a supplementary agreement on 30.12.2022. The relevant portion related to the DSM is extracted below;

Item no. 3 under Article 1: DEFINITIONS

Existing Clause (amendment dated 01.11.2019)	Amended As
Over injection, if any, in any 15-minute time block may be billed and credited to the generators account at a rate of Rs. 2.02 per unit, which is the rate undertaken by PCBL for injection into KSEBL grid.	The <u>deviation charges for over injection</u> , if any, in any 15-minute time block is to be billed and credited to the generators account as per the <b><u>Interstate DSM rate applicable for that time block or Rs 2.02 per</u></b> unit whichever is lower.

Para no. 5.5 under Article 5: INVOICE AND PAYMENTS

Existing Clause(amendment dated 01.11.2019)	Amended as
Also provided in the event that more energy is injected into the Transmission/Distribution network by the Open Access user (Generator). KSEBL shall for this over injection in any 15-minute time block may be billed and credited to the generators	Also provided, in the event that more energy is injected into the Transmission/ Distribution network by the Open Access user (Generator). KSEBL shall for this over injection in any 15-minute time block may be billed and credited to

account at the rate of Rs. 2.02/- per unit kWh.	the generators <b><u>account as per the Interstate DSM rate applicable for that time block or Rs. 2.02 per unit, whichever is lower.</u></b>
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- (11) In view of the above facts and circumstances, the petitioner vide the present petition is invoking the regulatory jurisdiction to frame Regulations or mechanism to handle the deviation while wheeling the electricity, in order to ensure safe and secure grid operations within the State.
- (12) The petitioner further submitted that, the National Electricity Policy, 2005 obligates that the State Commission to promote Co-generation and generation of electricity from the non-conventional sources by affording suitable measures to such projects.
- (13) Further the Hon'ble APTEL vide the judgment dated 28.01.2020 in Appeal petition No.252 of 2018 ordered that the Regulatory Commissions are bound to promote Co-generation, the relevant portion of the Order is extracted below;

*“That there is also special impetus on generation of electricity from renewable sources of energy, this being a declared and avowed public policy of the State, is not in dispute and, for this, reference may be made, inter alia, to Section 61(h) and Section 86(1)(e), the conjoint effect of **which is to remind the Regulatory Commissions, established by the law, of their duty to promote "cogeneration and generation of electricity from renewable sources of energy", while discharging their statutory functions...**”*

- (14) The petitioner further submitted that, while formulating the deviation settlement mechanism, appropriate relaxation to cogeneration plants should be granted so that such plants can operate at their optimum capacity. The petitioner also submitted that, till the time appropriate DSM Regulations are framed, the petitioner may be allowed to be governed by the interim DSM made applicable by KSEBL by virtue of the supplementary agreement dated 30.12.2022 for injecting the surplus power of the petitioner.
3. The Commission admitted the petition as OP No. 40/2023. Hearing on the petition was held on 06.07.2023. Adv Biju Mattam, Council for the petitioner presented the matter on behalf of the petitioner. Shri Rajan M.P, Deputy Chief Engineer and Smt. Latha S.V, Asst: Executive Engineer, presented the comments on behalf of KSEB Ltd. Summary of the deliberations during the hearing is given below.
- (1) The petitioner M/s PCBL Ltd submitted that, M/s PCBL Ltd has installed a Co-generation plant of 17MW capacity, and out of it 14MW surplus capacity selling to third parties by availing open access. Since the Commission has not yet notified the Regulations on intra-state deviation settlement mechanism, the deviations are presently governed by the

agreements entered into between the petitioner and KSEB Ltd on such matters dated 25.09.2017, its amendment dated 01.11.2019 and its subsequent amendment dated 30.12.2022.

M/s PCBL Ltd further submitted that, KSEB Ltd vide the letter dated 19.12.2022 has sought the compliance of the following for the use of the grid for injecting surplus power of 7MW to the grid for third party sale.

- (i) *M/s PCBL has to submit an undertaking agreeing to the condition that the decision of KSERC on the deviation settlement procedure, as and when it is made, shall be applicable to them from the date of commencement of injection of the additional 7 MW power into the grid as an interim arrangement.*
- (ii) *The clause in the existing agreement on over injection shall be modified such that "the deviation charges for any 15 minute time block is to be billed and credited to the generators account as per the Inter State DSM rate applicable for that time block or Rs.2.02 per unit whichever is lower."*

KSEB Ltd vide letter dated 19.12.2022 also informed that M/s PCBL has to immediately approach KSERC seeking a procedure for settlement of deviations with respect to the injection to the grid.

- (2) KSEB Ltd submitted that, the Commission may notify the appropriate regulations on Intra-State Deviation Settlement Mechanism at the earliest. Till such time, the Commission may allow the parties to settle the deviations under the terms of the supplementary agreement.

SLDC also supported the comments of the KSEB Ltd.

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

4. The Commission having examined in detail, the petition filed by M/s PCBL for seeking formulation of appropriate Deviation Settlement Mechanism to handle the deviation during scheduling of surplus quantum of power generated from the Cogeneration Power Plant of the Petitioner to third parties by way of Open Access, the provisions of the Electricity Act,2003 and KSERC (Connectivity and Intrastate Open Access) Regulations, 2013, and other Rules and Regulations in force, decided as follows;
5. The following are the prayers of the petitioner M/s PCBL Ltd in the instant petition;
  - (1) Formulate an appropriate Deviation Settlement Mechanism to handle the deviation during scheduling of electricity to third parties by way of Open Access, including Power Exchange, after self -consumption by the Petitioner, by way of promulgating appropriate Regulations.
  - (2) As an interim measure the petitioner may be allowed to continue the scheduling of surplus power and the deviations due to scheduling shall be addressed as per the supplementary agreement dated 30.12.2022.

6. The Commission examined the prayer-(1) of the petitioner in detail and noted the following;

(1) The Commission vide the Order dated 23.03.2023 in petition OP No. 70/2022, in the matter of “Petition under Regulation 67 of the Kerala State Electricity Regulatory Commission (Connectivity and Intra State Open Access) Regulations, 2013 seeking notification of Intra State Deviation Settlement Mechanism regulations in the State” filed by KSEB Ltd, has appraised in detail the importance of notifying the Intra-State Deviation Settlement Mechanism in the State and also the steps initiated for notifying the same. The relevant portion of the Order of the Commission dated 23.03.2023 in petition OP No. 70/2022 is extracted below.

“ .....

8. ...., the Commission is aware of the fact that there is an emerging requirement of notifying the Regulations on Intra State Deviation Settlement Mechanism and the Regulations for forecasting and scheduling of renewable energy in the State of Kerala. The Kerala State Grid Code, 2005 and the KSEERC (Connectivity and Intra State Open Access) Regulations, 2013 also require a close scrutiny to assess the need for amendments in the wake of fast paced changes in the sector .

9. However, for framing regulations and to amend existing regulations due procedure including previous publication, proper and adequate stake holder consultation etc. has to take place. It cannot be amended based on petitions filed by any of the interested parties. Also the petition now filed by KSEB Ltd is bereft of sufficient details and lacks a proper understanding of the issues at hand. Accordingly, the prayer of the petitioner is rejected and the petition is disposed.

10. At the same time, the Commission clarifies that the process of notifying the Regulations on ‘Intra State Deviation Settlement Mechanisms in the State of Kerala’ and also the ‘Forecasting, Scheduling, Deviation Settlement and Related matters of Solar, Wind and other RE sources’, will be initiated separately as per the provisions of the EA-2003 and Clause-3 of the Electricity (Procedure for Previous Publications) Rules 2005, and other Rules and Regulations in force. The Commission expects SLDC Kerala to assist the Commission in the process and shall provide all the details and data for designing an appropriate deviation settlement mechanism suitable for the Kerala system. The details shall contain the status of all interface matters, communication systems, visibility of various generators and major prosumers/CPPs at SLDC , present procedures for adhering to CERC(Deviation Settlement Mechanism and related matters) Regulations, 2022, difficulties, if any, encountered due to unpredictable drawal from ISTS by embedded Open Access consumers etc. The SLDC shall include all relevant factors and details that it considers appropriate for designing the deviation settlement mechanism and for the forecasting and scheduling of RE sources, in the detailed report. The detailed report including suggestions, if any, shall be filed within 30 days of this Order.

### **Orders of the Commission**

11. The Commission after detailed examination of the petition filed by KSEB Ltd, comments and suggestions of various stakeholders during the public hearing held on 12.01.2023, the provisions of the EA-2003, the Regulations and Rules in force, hereby Orders the following;

(1) Reject the instant petition due to the reasons given in the preceding paragraphs of this Order.

(2) The SLDC Kerala shall assist the Commission in the design of a proper deviation settlement mechanism and the forecasting and scheduling process for RE sources and shall provide all the details and data required for the same. The details shall contain the status of all interface maters, communication systems, visibility of various generators and major prosumers/CPPs at SLDC , present procedures for adhering to CERC(Deviation Settlement Mechanism and related matters) Regulations, 2022, difficulties, if any, encountered due to unpredictable drawal from ISTS by embedded Open Access consumers etc. The detailed report including suggestions, if any, shall be filed *within 30 days of this Order.*”

- (2) In compliance of the direction of the Commission, SLDC vide the letter dated 25.07.2023 has submitted their proposal on formulating the Intra State Deviation Settlement Mechanism and the issues to be considered while formulating the same. The Commission has sought additional details from SLDC, Kerala. Thus, it may take few months for finalising the Regulations.

- (3) **The Commission further clarifies that the Commission cannot issue/finalize a Regulation on the basis of the petition filed by the consumers/petitions. The Commission has to follow due procedures, which includes pre-publication, stakeholder consultation and public hearing etc.**

7. The second prayer of the petitioner is to allow them to continue to schedule the surplus power and to address the deviation from the schedule of surplus power as per the supplementary agreement dated 30.12.2022.

The Commission has noted that the agreement dated 25.09.2017, the supplementary agreement dated 01.11.2019 and the supplementary agreement dated 30.12.2022 were made through mutual consensus between the PCBL Ltd and KSEB Ltd. The deviation from the schedule is being addressed as per the terms of these agreements. It is also agreed by the parties that the conditions specified in the agreements are applicable only till the Commission notifies the regulations on 'intra State Deviation Settlement Mechanism and related matters' in the State of Kerala.



Considering the entire aspects in details, the Commission has decided not to interfere in the agreements signed between the petitioner M/s PCBL and the respondent KSEB Ltd regarding the schedule of surplus power and to address the deviation from the schedule of surplus power by PCBL. **Hence, M/s PCBL is allowed to schedule the surplus power after self consumption from its co-generation plant to third parties by availing open access, and the deviations may be dealt as per the agreement dated 25.09.2017, the supplementary agreement dated 01.11.2019 and the supplementary agreement dated 30.12.2022.**

### **Order of the Commission**

8. The Commission after examining the petition filed by M/s PCBL dated 20.03.2023, the comments of the KSEB Ltd and SLDC of Kerala, the provisions of the Electricity Act,2003, KSERC (Connectivity and Intra-state Open Access) Regulations, 2013 and other Rules and Regulations in force, hereby Orders the following;
- (1) The prayer of the petitioner to notify the Regulations on the Deviation Settlement Mechanism is decided as per the paragraph-6 of this Order.
  - (2) M/s PCBL is allowed to schedule the surplus power after self consumption from its co-generation plant to third parties by availing open access, and the deviations may be dealt as per the agreement dated 25.09.2017, the supplementary agreement dated 01.11.2019 and the supplementary agreement dated 30.12.2022 signed between M/s PCBL Ltd and KSEB Ltd until regulations in this regard are notified.

The petition is disposed off. Ordered accordingly.

**Sd/-  
T K Jose  
Chairman**

**Sd/-  
Adv. A J Wilson  
Member**

**Sd/-  
B Pradeep  
Member**

Approved for issue

**Sd/-  
C R Satheesh Chandran  
Secretary**