

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

PRESENT: Sri. K.J. Mathew, Chairman
Sri. P. Parameswaran, Member
Sri. Mathew George, Member

August 3, 2011

Petition No. OP 6 of 2011

In the matter of
Payment of share of cost of 110 kV Kattaribagh Substation amounting to
Rs. 201.5 Lakhs by M/s. Cochin Port Trust filed by KSEB

Kerala State Electricity Board	-	Petitioner
Cochin Port Trust	-	Respondent

ORDER

Background

1. K.S.E. Board had filed Appeal Petition No. 152 of 2010 before Hon. Appellate Tribunal for Electricity, New Delhi (ATE) against the order dated 15-07-2009 of the Kerala State Electricity Regulatory Commission (KSERC) in the matter of levy of Service Connection Charge and share of Cost of 110 kV Substation constructed at Kattaribagh. Hon. ATE had issued its judgment on 13-07-2010 upholding the order of KSERC on realizing Service Connection Charges from M/s. Cochin Port Trust (CPT) and also ordered that regarding the claim for sharing the cost of 110 kV Kattaribagh Substation, KSEB is at liberty to approach KSERC. In the light of this verdict of the Hon. ATE and also under section 86 of the Electricity Act, 2003, this petition has been filed by the Chief Engineer (Commercial & Tariff) in the matter of payment of the share in the cost

of the 110 kV Kattaribagh Substation of Rs. 201.5 Lakhs by M/s. Cochin Port Trust.

Petition

2. The respondent M/s. CPT, is a deemed Licensee purchasing power from the petitioner for distribution of electricity at the specified area of Willington Island, Kochi in the State of Kerala. The supply was fed from Perumanoor Substation at 11 kV for a Contract Demand of 3.5 MVA.
3. During August 1988 and July 1993, the respondent enhanced their Contract Demand with an additional load each of 1.5 MVA, totalling the load demand to 6.5 MVA. During 1993, the respondent requested for a further additional load of 6.5 MVA, enhancing the total demand to 13 MVA in 11 kV. During the same period, Cochin Naval Base, another Licensee, also demanded additional 2 MVA Power Allocation.
4. As per clause 50 of Electricity Rules 1956 prevalent at that time, supply shall not be provided at 11 kV for loads above 3000 kVA. A 110 kV Substation at Kattaribagh was proposed to be constructed by the petitioner. The beneficiaries including the respondent in the meeting held in 1993 by the then Minister for Electricity and Coir agreed that the total cost of the 110 kV Kattaribagh alias Willington Island Substation would be shared among the three based on their respective load requirement.
5. Accordingly, the estimate amounting to Rs. 620 Lakhs was prepared and the share of KSEB, Naval Base and CPT were fixed and intimated as Rs. 341 Lakhs, Rs. 77.5 lakhs and Rs. 201.5 Lakhs respectively. The Naval Base remitted Rs. 75 Lakhs and also provided land to the tune of 30.8 acres to KSEB for constructing the substation. The respondent promised to pay the share of Rs. 201.5 lakhs due from them when they were ready to avail the power. While allocating the enhanced share of power to the respondent, the petitioner again raised the claim for the proportional cost of the substation. Instead of remitting the committed Rs. 201.5 lakhs, the respondent demanded to adjust Rs 121.24 Lakhs remitted to KSEB for the 11 kV cables drawn previously from Perumanoor Substation to Mattancherry.

6. The respondent had remitted Rs. 121.24 Lakhs towards the expenses incurred for 4.8 kms of 300 sq.mm XLPE cable laid from Perumannoor Substation to Mattancherry exclusively for meeting the additional load of 1.5 MVA mentioned in para 2.2. As per clause 16 (a) of the Power Purchase Agreement between KSEB and CPT, all cost of works for modification / alteration / enhancement of capacity of the existing transmission lines / substations necessitated to supply the increased contract demand shall be borne by the Licensee itself. The respondent had remitted Rs.121.24 Lakhs towards the works necessitated for drawing 11 kV cable. Therefore, KSEB argued that their claim to adjust the above amount of Rs.121.24 Lakhs in the new substation expenses is not maintainable or justifiable.
7. Even though CPT had not remitted the amount, on completion of the works, KSEB provided supply to M/s CPT at 11 kV till December 2008 from Kattaribagh Substation. The respondent confirmed in the meeting convened by the petitioner on 03.11.2003 that their share of cost towards the substation would be taken up with the Board of CPT and would be settled before energisation of the substation. Again, on 17-12-2003 the petitioner informed that Rs.201.5 Lakhs would be remitted at the time of energizing the 110 kV supply.
8. After investing a substantial sum for providing supply as per the consensus during 1993 in the presence of the Hon. Minister for Electricity and Coir, the respondent has made a total reversal from the promise vide their reply on 16-10-2008 that the matter of payment of Rs. 201.5 Lakhs, would be subject to approval of KSERC. The respondent further confirmed vide letter dated 25-10-2008 that "the issue of payment of 201.5 lakhs shall be taken up separately and settled within a reasonable period." The respondent also had issued an undertaking to the petitioner on 14-11-2008 that they "*shall pay to KSEB the 1/3rd share of Kattaribagh substation (Rs. 201.5 lakhs) claimed by KSEB if Hon. KSERC find and order that the said amount is payable to KSEB by CoPT in the petition being filed before KSERC by CoPT regarding the subject dispute between both parties.*"

9. The very thought of having the Kattaribagh Substation emerged only due to the total demand of 13 MVA from CPT otherwise the investment could have been used for the benefit of its own consumers elsewhere. The withdrawal from the promise of cost sharing and denial later when the investment was actually made by KSEB, after availing supply at 110 kV is a clear breach of promise and a totally unfair act on the part of the respondent.

Prayer

- i) The respondent may be directed to pay Rs. 201.5 Lakhs towards their proportionate share of the cost of 110 kV Kattaribagh Substation.
 - ii) The respondent may be directed to pay the above amount with applicable interest.
 - iii) The respondent may be directed to reimburse to the Board an amount of Rs. 10,100/- towards the cost of filing this petition
10. The Commission admitted the petition and hearings on the matter were held on *30.03.2011 and 03.05.2011* at the Commission's Office at Vellayambalam, Trivandrum.

Hearing of petition

11. During the hearing on 30.03.2011 the petitioner presented the petition in detail. On the second hearing held on 03.05.2011 the petitioner and the respondent submitted additional statements and documents to support their arguments. In addition the Commission allowed time up to 15.05.2011 for submitting the alleged amendment to the minutes of the meeting dated 05.03.1993 and any other relevant documents. KSEB submitted copies of all the correspondence with the respondent available in their files.
12. KSEB also pointed out that the respondent had not even once disputed the methodology of cost sharing in any correspondence. The respondent CPT is enjoying the benefits of the Kattaribagh substation by way of enhanced quality of supply and higher voltage of 110kV. The fact the amount already remitted by them was for providing 11KV UG cables from Perumanoor substation as per their requests for additional loads much before the construction of the

Kattaribagh substation was pointed out to the respondents on several occasions. Even then the respondents had been insisting that the amounts paid by them earlier had to be deducted from their share of cost of Kattaribagh substation repeatedly and avoided the settlement of the issue for the last two decades. In November 2008 they had promised to remit the amount after obtaining orders from this Commission but they did not move any petition for a decision by this Commission.

13. The arguments raised by the respondent during the hearings and through submissions and documents are as follows:

14. The power supply to the respondent was fed from Perumanoor substation at 11 kV level for a contract demand of 5000 kVA till 1993 which was enhanced to 6500 kVA during 1994 after remitting an amount of Rs 121.24 lakhs by the Respondent towards the cost of UG cable. The respondent had remitted an amount of Rs 53.3 lakhs in 1986 for enhancing the cable capacity. Thus the respondent had remitted an amount of Rs 1.73 Crores towards the cost of providing 11kV supply from Perumanoor substation for availing power of 6.5 MVA load.

15. The respondent was frequently requesting for additional load of 6.5 MVA, totalling to 13 MVA, from 1991 onwards but only 6.5 MVA was granted. For the enhanced power requirement in Willington Island area, the respondent had approached KSEB and attended a number of meetings convened by various departments including the petitioner.

16. In the meeting convened by the Secretary (Industries) on 13-07-1992 it was informed by KSEB that immediate action would be taken to complete the construction work of Kattaribagh substation. Another meeting was convened by the then Minister of Electricity & Coir on 05-03-1993 in which it was agreed that the existing load of 6.5 MVA of CPT shall be shifted to Kattaribagh substation when it is commissioned. This may necessitate additional transformer being set up in Kattaribagh as load will exceed 20MVA, the total capacity of 2 transformers and extra space will be required. It was decided that the Chief Engineer and technical personnel of CPT and Navy would work out the best alternative to tackle the problem. It was agreed by all concerned that the cost of

such work would be met by the Navy, Cochin Port Trust and KSEB in proportion to their additional requirement. The money already received from the Navy, and the Cochin Port Trust would be adjusted against the share of the final estimate cost payable by them.

17. Instead of preparing the estimate for augmentation of transformer in the Kattaribagh substation required for delivering additional power, the petitioner wanted the entire substation cost to be shared and demanded to remit the amount of Rs 201.5 Lakhs.

18. In order to clarify certain technical and commercial matters the respondent had sent series of letters to the petitioner. The petitioner had neither shown the courtesy to send a reply to the respondent nor granted the additional power till 13-05-1996.

19. After 3 years, the petitioner had intimated vide letter dated 13.05.1996 that additional 1 MVA load to the CPT would be arranged from the Perumanoor substation by rearranging the KSEB load to the proposed Willington Island substation when it is commissioned. The petitioner further clarified that this arrangement would be carried out without any additional payment from Cochin Port Trust as no alteration in feeding arrangements was necessitated. In that letter, petitioner had relieved the respondent from paying the construction cost of Kattaribagh substation. Finally the petitioner had advised that for availing any extent of power beyond 7.5MVA load the supply system should be changed over to EHT system. Thus the issue now put forth by the petitioner had already been closed by the petitioner himself during the year 1996.

20. After commissioning of Kattaribagh substation (9.11.1997), the Petitioner had changed the feeding arrangements of Respondent from Perumanoor substation to the newly commissioned Kattaribagh substation in their own interest to reduce the load at Perumanoor substation.

21. In order to comply with the statutory rules prevalent during that time and to provide stable and reliable power to the consumers of the respondent, the respondent had decided to upgrade the supply system from 11kV to 110kV for which a meeting was arranged on 03-11-2003 with the petitioner. In the meeting

the petitioner again projected the issue of payment of Rs 201.5 Lakhs and respondent agreed to take up the matter with higher authorities. Also the respondent was instructed to apply for power allocation at 110 kV in a prescribed format and to remit required fees. Accordingly the Respondent had applied for enhancement of contract demand from the existing 6.5 MVA to 8.5 MVA at 110 kV system vide the application dated 02-04-2003.

22. The petitioner had accorded administrative sanction for power allocation of 6.5 MVA load at 110 kV system. The Respondent remitted Rs 63,51,000/- towards the cost of bay expansion work for drawing 110 KV supply.

23. In September 2008, the Petitioner intimated following conditions to Respondent for extending supply at 110 kV.

- a. To remit Rs 2,24,57,964 as security deposit,
- b. To remit Rs 201.5 Lakhs towards 1/3rd cost of construction of Kattaribagh substation,
- c. To remit Rs 26,32,500/- towards service connection charge and
- d. to execute an agreement with Petitioner, Board.

24. The Respondent remitted the Security deposit, and also paid service connection charge under protest in September 2008 and in October 2008 respectively before energization of supply at 110kV. Regarding sharing of 1/3rd cost Kattaribagh substation, the Respondent informed to petitioner that the said amount should be remitted if Hon: KSERC finds that it is payable by the Respondent.

25. Power supply to respondent was energized on 28-11-2008 and CPT has been drawing the power at 110 kV system.

26. The respondent could not submit petition to KSERC for want of old and relevant records for preparing the petition to settle the issue of the said amount of Rs 201.5 Lakhs as the matter is a long pending dispute for more than 15 years.

27. In the meantime the petitioner has raised this issue before this Commission during the hearing on "Refund of service connection charges" vide DP-74 of

2009 filed by this respondent. The Commission in its order observed that “Coming to the issue of Kattaribagh substation it is noted that the respondent could not produce any documentary proof to show that there was any attempt to collect the cost before the commencement of work. How the substation was commissioned without collecting the cost from CPT is not made clear. Thus the Commission concludes that the argument of the petitioner that the respondent in the letter dated 25th May 2004 had not insisted on the cost of Kattaribagh substation as a proof to reinforce his argument is accepted”.

28. Considering all the above factors the averments put forth by the Petitioner is not correct and hence denied.

29. The respondent submitted that no additional power was granted by the petitioner over and above the quantity allocated on 14-08-1991, i.e. 6.5 MVA, for which the respondent has remitted total amount of Rs.1.73 Crore on 06-02-86 and 07-01-92. The present claim was related to an expected enhancement of power from 6.5 MVA to 13 MVA, which has not materialized.

30. The clause 16(a) of PPA executed on 17-11-2008, is for the increase of contract demand. Here the contract demand is same as 6.5 MVA. The cost incurred for conversion from 11 kV to 110 kV has already been remitted by the respondent on 30-03-05. Further the PPA signed on 17-11-2008, cannot be made applicable retrospectively to a dispute evolved during 1993. Here the petitioner is mixing up conditions prevalent in two different time periods and deliberately trying to extract the advantages, such tactful attitude of the petitioner cannot be agreed to. Hence the claim put forth by the petitioner is not justifiable.

31. At the time of sanctioning the power allocation of 11 kV with contract demand of 6500 kVA in the year 1996, the respondent had remitted a sum of Rs. 1.73 crores for the strengthening of the distribution network including the HT cable, switch gears, control panels, O.H structure etc. The infrastructure developed in the year 1996 at the cost of the respondent is now being utilized by the petitioner, for giving power connection to other consumers and it has not remained redundant due to the transition from HT to EHT. Moreover no additional burden is incurred to the Board as the facilities are now operational for giving power supply to other consumers. The result is that the Board had a

substantial financial gain on the changeover of the respondent from 11 kV to 110 kV.

32. M/s Navy had informed in writing to the effect that the said minutes were not correct and they had not agreed on the cost sharing proposal for the entire construction cost of the substation.
33. As per the procedure, the deposit work is being carried out by the petitioner only after remittance of the full amount in advance by the concerned agency. Under such a condition, the original proposal for establishing a substation at Kattaribagh vide BO No. 240/7C3/55/5/89 dated 08-5-1991 was not a deposit work, but as a system improvement project of the petitioner. Later vide BO TC1/S/1482/91 dated 08-11-93 the cost sharing pattern was approved. However the extracts of the Board order is not furnished by the petitioner so far.
34. As per the alleged minutes dated 05-03-1993, the parties are bound to pay the amount in proportion to their additional requirement only. The respondent has not received any additional power from the Kataribagh Substation.
35. The contention of the petitioner that the supply to the respondent has changed its source is unfounded. The supply through out when the same was 11 kV or 110 kV, the 'source' is not changed at all.
36. Board has not suffered any loss in completing the work of the Kataribagh Sub Station. Electricity consumption and the demand are on very higher side day by day. The petitioner is getting the advantage in this aspect.
37. By considering all above factors, the claims of the petitioner to levy the cost sharing of Kattaribagh substation is not justifiable and hence the petition should be rejected.

Analysis of the Commission

38. The Commission heard the matter in detail. The Commission also analysed the documents submitted by the petitioner and the respondent and the arguments

raised by both parties during the hearing. The Commission has also considered the fact that the petitioner and the respondent are existing distribution licensees.

39. As per the judgment dated 13-07-2010 of the Appellate Tribunal for Electricity, New Delhi on the Appeal Petition No. 152 of 2010, KSEB was at liberty to approach KSERC regarding the claim for sharing the cost of 110 kV Kattaribagh Substation against the Commission's order dated 15-07-2009. The petition was submitted based on the above. Since the dispute in question dated back to 1990 onwards, the Commission had to rely heavily on the records, documents and communications between the parties involved.

40. In connection with the sharing of the cost of the Kattaribagh substation of KSEB at Wellington Island and the allocation of power to the respondent from the Substation a large number of correspondence had been going on and several meetings had taken place at various levels from 1990 onwards. As per the order dated 21.05.1990 of the Government of Kerala, the respondent made a request to the petitioner for an additional power requirement of 2.5 MVA on 07.06.1990. The petitioner vide letter dated 15.05.1991 had replied that additional power would be given from the proposed 110kV substation at Kattaribagh at 66kV or 110 kV, when it is commissioned.

41. During the discussion between the petitioner and respondent on 07.06.1991, the respondent informed that the power requirement by January 1992 will be 7.5 MVA with an additional allocation of 2.5 MVA for which two options were discussed. As a long term measure power will be drawn from the proposed Kattaribagh substation at 11kV and till then additional power can be drawn from the existing Perumanoor Substation using Underground cables. The respondent expressed willingness to meet the cost of laying cables from the Perumanoor substation. Accordingly the estimate amount of Rs. 121.24 lakhs had been remitted by the respondent to take power from Perumanoor. The additional 1500 kVA power at 11kV was allocated by the petitioner after laying an additional 300 square mm UG cable from Perumannur Substation to meet the additional requirement. The total load of the respondent became 6500 kVA.

42. In the meeting held by the Secretary (Industries) on 13.07.1992 to discuss the power requirement of the respondent, it was agreed that the Kattaribagh

substation will meet the additional requirement of 6.5MVA. Further it was decided to complete the construction work of the substation very quickly. KSEB jointly with CPT will also consider whether any augmentation of the substation is required to meet future loads.

43. In the Cabinet Sub committee meeting held on 13.01.1993 regarding the supply of power to CPT the following points were raised by the respondent.

- i) 3000 kVA will be required in 1993-94
- ii) Ultimate requirement would be 13000 kVA by the end of 1996
- iii) There are proposals for number of industries for which bulk power will be required.

44. In that meeting the Hon' ble Minister for Electricity outlined the position as follows:

- i) To meet the additional requirement of 3 MVA, the Board has already taken action to enhance the capacity of Perumanoor substation from 32.5 MVA to 35 MVA.
- ii) Further additional loads will be given only after completing the 110kV Kattaribagh substation. For the construction of the substation an estimate amounting to Rs. 620 lakhs had been sanctioned on deposit basis. Out of this Naval authorities already remitted Rs. 75 lakhs. The balance cost will have to be shared between KSEB and Port Trust authorities. The details of cost sharing have to be worked out in a separate meeting to be held with Minister for Electricity, the Chairman KSEB and Naval and Cochin Port Trust Authorities.

45. As per the decision taken in the sub committee meeting, the then Minister of Electricity & Coir had convened a meeting on 05-03-1993 to discuss the matter on the sharing of cost of 110 kV Kattaribagh Substation. The Minutes of the meetings is quoted below:

46. The issue was regarding increasing the supply of power availability to Cochin Port Trust as well as to Navy. The additional power required by Cochin Port Trust is 6.5 MVA in addition to the present supply of 6.5 MVA. This includes the likely power requirement of industries that may come up in Cochin Port Trust area, and to whom power will be supplied by Cochin Port Trust being a licensee.

Additional requirement of Navy is assessed at 2.5 MVA. The substation at Kattaribagh with two transformers of 10 MVA each are proposed to be setup. At present power is supplied from Perumanoor to Cochin Port Trust but once the transformers in Kataribagh are ready this load will be shifted to Kattaribagh. This will necessitate additional transformer being set up in Kattaribagh as load will exceed 20MVA, the total capacity of 2 transformers and extra space will be required. It was decided that the Chief Engineer, K.S.E Board, and technical personnel of Cochin Port Trust and Navy will jointly work out the best alternative to tackle this problem. It was agreed by all concerned that the cost will be met by Navy, Cochin Port Trust and Electricity Board in proportion to their additional requirement which will now be met. The money already received from Navy, and Cochin Port Trust will be adjusted against the share of the final estimate cost payable by them'.

47. As per KSEB documents the then Chairman of KSEB noted in the file on 5.3.1993 as: *"I attended a meeting today (5.3.93) convened by Minister (Ele) with Cochin Port Trust and the Naval authorities. The Port Trust agreed to meet the cost of Kattaribagh Substation up to their additional requirement of 6.5 MVA. The additional requirement of Navy is 2.5 MVA which will be met by Navy subject to adjusting the Rs. 75 lacs already deposited by them. CE (Tr) explained that currently both Navy and Cochin Port Trust are connected up to 6.5 MVA each from the Perumanoor Substation and if the load plus the addl load (6.5+2.5=9) is catered to from the Kattaribagh substation the proposed capacity of 2x10 MVA will not sufficient. Navy agreed that extra load of an additional 5MVA transformer could also be made available provided the layout is feasible. It was agreed that CE (Tr) would inspect the site and if feasible, a proposal of addl 5MVA transformer capacity will also be given by CE (Tr). If so the additional cost will also be borne by Port Trust and Navy in the same proportion subject to further examination by them. If needed another meeting will be convened at Cochin to finalise the matter. CE (Tr) may be asked to report the outcome after a fortnight"*.

48. As per the decision taken on 5.3.93 the estimated cost of the work has to be shared between three licensees viz. the petitioner, the respondent and Navy as per their respective additional requirement of power after adjusting the payments already received from Navy and Cochin Port Trust.

49. Copy of the minutes of the meeting held on 5.3.1993 had been forwarded to the concerned officials from the Power Department vide reference No. 1893/A1/93/PD dated 9.3.1993. In the minutes it is recorded that *“it was agreed by all concerned that the cost will be met by Navy, Cochin Port Trust and Electricity Board in equal proportion.”* The Commodore J.K.Talwar, Chief Staff Officer (P&A), Southern Naval Command vide letter No. DO WK/0451 dated 10.03.1993 to the Commissioner & Secretary to the Government, Power Department, requested for amendment in the minutes. He quoted that *“In the minutes, a mention has been made that the cost of the substation would be shared equally between Cochin Port Trust, Navy and Electricity Board in equal proportion. However this was not what was agreed upon. Sharing of the cost in proportion of additional requirement of power was what was agreed to”*. Based on the letter of Navy, the original minutes might have been corrected and the amended minutes was sent to all participants of the meeting. Any way the minutes submitted by both the parties in this case are same and contain the amended version as requested by Navy.

50. The KSEB had sanctioned an estimate amounting to Rs 620/- lakhs for the establishment of 2X10MVA 110/11kV substation at Wellington Island (Kattaribagh) vide Board Order No. 240/TC3/SS/5/89 dated 08.05.91. The cost sharing pattern based on the additional requirement of the respondent was approved as per reference No. TC1/S/1482/91 dated 8.11.93 as noted in the communication dated 27.12.93 from the petitioner to the respondent. As per the above reference the respondent had to share 32.5% of the cost of work. This amounts to Rs 201.5 lakhs. KSEB had requested the respondent to pay this amount from 1993 onwards and the respondent wanted KSEB to deduct the cost of works remitted by them earlier towards the cable laying works from Perumanoor substation. At no point KSEB had informed Cochin Port Trust that this adjustment is unacceptable to them. On the other hand on 13.5.1996 the Chief Engineer (Transmission) informed CPT that ‘as they are not willing to share the cost of construction of Wellington Island Substation no power can be made available from this substation’. KSEB took the position that the power supply to CPT will continue to be from the Perumanoor substation since the CPT is not willing to share the cost of the new substation.

51. It is true that the Chairman of CPT in a DO letter dated 30.5.1996 to Chairman of KSEB pointed out that there will be heavy voltage drops in the proposed arrangement and made it clear that they would like to have feeding from 'the new substation' for their existing load of 6.5MVA and the additional load of 1MVA (which was not availed). But the contention of the petitioner that they had shifted the existing load of CPT to Kattaribagh on condition of sharing of cost is not correct. Shifting the load to Kattaribagh cannot be said to be only in the interest of the consumer (CPT), since KSEB has to ensure quality power which was possible only from Kattaribagh and not from Perumanoor. It is true that KSEB had raised the demand of payment of Rs.201.5 lakhs in 2003 when CPT's request for allocation of 8.5MVA of power at 110 kV was approved by the Board. But in the subsequent meeting held on 3/11/03 CPT informed that they do not require any additional power allocation but only converting the existing load of 6.5MVA from 11kV to 110 kV and there was no agreement on the payment of share of cost of substation.

52. The Kattaribagh substation was commissioned on 11.11.1997 and the entire 6.5 MVA load of respondent was shifted to the new substation on 20.12.1997 as noted in the letter dated 1.1.1999 of the respondent. As per the above reference the respondent requested for conversion of 11 kV supply to 110 kV. Though in 2003 KSEB had raised the demand of payment of Rs.201.5 lakhs, it is seen that this was linked to their request for allocation of 8.5MVA of power which was subsequently withdrawn by the respondent. However the respondent agreed that the Board of CPT will look into this and payment will be arranged at the time of energisation of the substation at 110 kV. In September 2008 the petitioner, among other things, insisted on payment of Rs 201.5 Lakhs towards 1/3rd cost of construction of Kattaribagh substation, as a precondition for availing 110 kV supply. The respondent informed the petitioner that the said amount will be remitted if Hon: KSERC finds that it is payable by the respondent. KSEB raised this issue before the State Commission in 2009 and the Commission concluded "that the argument of the petitioner (CPT) that the respondent (KSEB) in the letter dated 25th May 2004 had not insisted on the cost of Kattaribagh substation as a proof to reinforce his argument is accepted".

53. The Commission feel that the following issues are to be decided before arriving at a judicious conclusion on the matter:

1. Whether the construction of 110 kV substation at Kattaribagh by KSEB was initiated at the instance of Cochin Port Trust as a deposit work?
2. Whether the adjustment of amount paid in advance mentioned in the minutes of the meeting held on 5/3/1993 is only in respect of Navy and whether the payments made by the respondent to KSEB on different occasions are to be deducted from the amount payable?
3. Whether the petitioner had relieved the respondent from paying share of the construction cost of Kattaribagh substation with the letter dated 13/5/96 from the Chief Engineer (Transmission), KSEB?
4. Whether KSEB has made any demand of share cost of the substation in 2005 when the demand of Rs.63.51 lakhs was raised for bay extension work?
5. Whether licensee can insist on payment of share of cost when no additional power is availed by the beneficiary from the new substation?

These issues are examined below:

54. Whether the construction of 110kV substation at Kattaribagh by KSEB was initiated at the instance of Cochin Port Trust as a deposit work?

KSEB seldom takes up deposit works without advance payment of share of cost by the parties and in this case the petitioner could not produce any proof of an administrative decision to exempt such advance payment by Cochin Port Trust. On the other hand it is seen from the records that the proposal for setting up a 110 kV substation at Kattaribagh was under consideration of the Board even before CPT approached them for additional power in 1990, leading one to the conclusion that the substation was in the scheme of things of KSEB much before the request came from Cochin Port Trust. The only requirement pointed out by KSEB was additional transformers and extra space in Kattaribagh as load will exceed 20MVA, and not sharing the entire cost of substation. From the large number of correspondences and documents submitted before the Commission it is clear that the issue of sharing the cost of the Kattaribagh substation by Cochin Port Trust was never clear-cut or unambiguous as claimed by the Petitioner.

55. Whether the adjustment of money paid in advance mentioned in the minutes of the meeting held on 5/3/1993 is only in respect of Navy and whether the payments made by the respondent to KSEB on different occasions are to be deducted from the amounts payable?

The power supply to the respondent was fed from Perumanoor substation at 11 kV level for a contract demand of 5000 kVA till 1993 which was enhanced to 6500 kVA during 1994 after remitting an amount of Rs 121.24 lakhs on 07-01-92 by the respondent towards the cost of UG cable. When the meeting was held on 5/3/93 by the Minister of Electricity and Coir, Cochin Port Trust had already remitted Rs.121.24 lakhs towards the cost of underground cable from Perumanoor to Mattancherry and waiting for additional power which was given to them during 1994. The reference in the minutes of the meeting held on 5/3/93 that “the money already received from Navy and Cochin Port Trust will be adjusted against the share of the final estimate cost payable by them” is to be read in this background. It is clear that Navy had paid Rs.75 lakhs in advance towards the cost of Kattaribagh substation and CPT has not paid any advance specifically for this purpose. So it can be safely concluded that the reference of money received from Cochin Port Trust refers to this payment of Rs.121.24 lakhs which was paid by them for augmentation of power which was not yet allotted by KSEB when the meeting was held on 5/3/93. Moreover KSEB has never categorically questioned this reference in the minutes of this meeting nor unambiguously conveyed to Port Trust that such an adjustment cannot be allowed. However the argument of Cochin Port Trust that this reference in the minutes includes Rs. 53.3 lakhs paid on 06-02-86 for enhancing the cable capacity is far fetched. Payment made more than seven years ago cannot be considered to have any relevance to the additional power sought for in 1993.

56. Whether the petitioner had relieved the respondent from paying share of the construction cost of Kattaribagh substation with the letter dated 13/5/96 from the Chief Engineer (Transmission), KSEB?

The letter dated 13/5/1996 from the Chief Engineer (Transmission) is a crucial document which throws light on the relative positions taken by the parties at

that time. Till 1996 Cochin Port Trust was not allotted any additional power from the new station nor did they show any signs of acknowledging the demand of share of cost of the new substation. They continued to draw power from Perumanoor, though there were frequent complaints about the quality of power. After 3 years, the petitioner had intimated vide letter dated 13.05.1996 that additional 1 MVA load to the CPT would be arranged from the Perumanoor substation by rearranging the KSEB load to the proposed Wellington Island substation when it is commissioned. The petitioner further clarified that this arrangement is resorted to since Cochin Port Trust is not willing to share the cost of the new substation. However even this additional 1MVA power is not seen availed by Cochin Port Trust. Obviously the position taken by KSEB is that since CPT is not willing to share the cost of Kattaribagh substation they will continue to get the power from Perumanoor. However the load of CPT was shifted to Kattaribagh in 1997 to ensure better quality of service and for rearranging the load from KSEB's point of view. There was no additional allocation of power to CPT from the new substation and also there was no precondition of sharing cost associated with this shifting of the existing load from one substation to another. Thus the argument of the respondent that the letter dated 13/5/1996 from the petitioner had relieved the respondent from paying the cost of the Kattaribagh substation cannot be brushed aside.

57. Whether KSEB has made any demand of share cost of the substation in 2005 when the demand of Rs.63.51 lakhs was raised for bay extension work?

Cochin Port Trust requested for upgrading their supply voltage from 11kV to EHT during April 2003 and it is seen from the records that KSEB while agreeing to their request insisted on payment of Rs.201.4 lakhs towards share of construction of Wellington Island substation. In KSEB's letter dated 15/9/2003 communicating the demand, there was also mention of 8.5MVA power allocation sanctioned by the Board. It is seen that CPT neither availed this additional power allocation nor made any payment as demanded by KSEB. However they agreed to consider this at the time of energisation at 110kV, as per the minutes of the meeting held on 3/11/2003. But there are no documents to prove that KSEB insisted on this payment in 2005 when the demand of Rs.63.51 lakhs was raised for bay extension work. The issue was once again raised by KSEB in 2008 which has led to the current dispute.

58. Whether licensee can insist on payment of share of cost when no additional power is availed by the beneficiary from the new substation?

The question whether KSEB can insist on payment in respect of a deposit work when no additional power is availed by the beneficiary can be answered only after considering the nature of application made by the beneficiary, the supply conditions of the licensee and the circumstances of the case. Usually an application for a deposit work is considered as a firm demand only after payment of the share of cost by the beneficiary and then only the licensee starts investing in the project. However it is likely that in the present case, CPT being a Govt. of India undertaking, assurances and oral undertakings at discussions might have prompted KSEB in proceeding with the work without advance payment. Records also reveal that CPT on different occasions had agreed to consider this payment of share of cost.

59. Thus the construction of Kattaribagh substation was a technical necessity for KSEB to ensure quality power supply to Cochin Port Trust and also to relieve Perumanoor substation for KSEB's own requirements. The additional requirement of power once projected by CPT and later withdrawn by them cannot be said to be the sole reason for KSEB to invest in the construction of the substation. But this additional demand of CPT, along with the projected demand from Navy also could have been supporting reasons that compelled KSEB for such an investment of Rs.620 lakhs. However the fact remains that CPT has not availed any extra power from the new substation and their allocation remained at 6.5MVA of contract demand ever since 1994. The tangible benefit they received was supply at EHT, for which they have paid extra money for bay extension work. However the minutes of the meeting held by the Minister of Electricity and Power on 5/3/1993 makes a clear reference to sharing of proportionate cost after adjusting the money received from Cochin Port Trust. Also at the time of considering the request by CPT for EHT supply in 2003, they had agreed to place the matter before their Board of Directors. The Deputy Chief Engineer (Electrical) of Cochin Port Trust in his letter dated 17/12/2003 had also committed to make this payment at the time of energising the 110kV supply. Thus while the respondent Cochin Port Trust has committed themselves for payment of their share of cost of construction of Kattaribagh substation, may be under compelling conditions for immediate requirement of voltage upgradation, the petitioner had never made it clear to

the respondent that payment of Rs.121.24 lakhs made by them towards cost of laying underground cable cannot be adjusted from the share of cost of the substation. During 1993 when the meeting was held by the Minister, this money of CPT was with KSEB as an advance for augmenting power of CPT, though not from the new substation but from the old substation at Perumanoor. Subsequently in 1997 KSEB had shifted the load of CPT to Kattaribagh and the cable became spare for possible use of KSEB. Taking all these into account it would only be fair if this payment made by CPT is adjusted from their share of the cost of construction of Kattaribagh substation.

Orders of the Commission

60. The respondent Cochin Port Trust is liable to pay their share of the cost of construction of Kattaribagh substation. However Rs.121.24 lakhs paid by the respondent on 7/1/92 towards the cost of laying underground cable from Perumanoor to Mattanchery shall be adjusted from this liability. The net amount of Rs.80.26 lakhs (Rs.201.5 lakhs-121.24 lakhs) shall be paid by Cochin Port Trust to the Petitioner KSEB within one month from the date of this order.
61. The respondent Cochin Port Trust shall be entitled to claim the above amount as capital expenditure in the ARR&ERC for the year in which the payment is actually made.
63. There shall be no order as to interest and costs.
64. The petition is disposed of. Ordered accordingly.

Sd/-
P. Parameswaran
Member

Sd/-
Mathew George
Member

Sd/-
K.J.Mathew
Chairman

Approved for Issue

Secretary