

**KERALA STATE ELECTRICITY REGULATORY COMMISSION**  
**THIRUVANANTHAPURAM**

**Present: Shri. Preman Dinaraj, Chairman**  
**Adv. A.J Wilson, Member (Law)**

**Date of Hearings**

**First hearing on : 21.01.2021**  
**Second hearing on : 05.03.2021**

**OP No 33/2020**

In the matter of : Petition in compliance with Order dated 02-06-2017 in OP 02/2017 seeking approval for modifying the terms and conditions of the Agreement entered into between KSEBL and M/s. INDSIL in line with the provisions in the Kerala State Electricity Regulatory Commission (Renewable Energy and Net Metering) Regulations, 2020

Petitioner : Kerala State Electricity Board Ltd (KSEB Ltd)  
KSEB Ltd represented by : Sri. KGP Nampoothiri, Executive Engineer

Respondents : INDSIL Hydro Power and Manganese Limited  
Respondents represented by : Sri. Adv Joseph Kodianthara, Senior Advocate

**Daily Order dated 08.03.2021**

1. M/s. KSEB Ltd (hereinafter referred to as the petitioner or KSEBL), on 02.11.2020, filed a petition before the Commission with the following prayers:

“In accordance with the direction contained in the Order dated 02-06-2017 and the provisions in the Kerala State Electricity Regulatory Commission (Renewable Energy and Net Metering) Regulations, 2020, it is humbly prayed that the proposal for modifying the agreement executed by KSEBL with M/s. INDSIL may be approved”

2. The Commission admitted the petition as OP 33/2020 and hearing was conducted through video conference on 21.01.2021. Sri. KGP Nampoothiri, represented the petitioner KSEB Ltd and Adv Joseph Kodianthara, for the

respondent M/s.INDSIL. Based on the deliberations during the hearing, the Commission directed the petitioner KSEB Ltd and the respondent INDSIL to comply the following:

- (i) KSEB Ltd shall submit the comments on the counter filed by the respondent INDSIL latest by 12.02.2021, with a copy to the respondent.
  - (ii) KSEB Ltd shall also submit the following details latest by 12.02.2021, with a copy to the respondent.
    - (1) Month wise details of the energy generated from Kuthumkal plant of the respondent, total energy consumption of the factory of the respondent and the open access availed during the period from July 2019 to June 2020.
    - (2) The details of instructions issued by SLDC to the respondent to restrict or stop power generation from the Kuthumkal plant during the period of close down of the factory of the respondent, as required under Clause 12 of the Agreement dated 30.12.1994.
  - (iii) The respondent INDSIL shall submit their comments and written note on the subject matter latest by 18.02.2021.
3. In compliance to the Order of the Commission, KSEBL submitted its comments on 18.02.2021 and M/s INDSIL submitted its comments on 02.03.2021.
4. The second hearing on the petition was held on 05.03.2021 at 11 AM through video conference. Sri K G P Nampoothiri represented KSEB Ltd and Adv. Joseph Kodianthara, the respondent, M/s INDSIL. Summary of the deliberations during the hearing is given below.
- (1) To the query raised by the Commission Chairman regarding the writ petition filed by INDSIL in the Kerala High Court, the Respondent INDSIL submitted that, this Writ Petition is not related to is not related to the issues raised before the Commission. The Writ Petition is against the action initiated by KSEB Ltd for the disconnection of the electricity supply and encashment of bank guarantee.
  - (2) KSEBL submitted that, the Kuthumkal plant of the INDSIL was allotted as a Captive plant, for meeting their self-consumption. It is not intended for sale of electricity. As and when water is available and the machine is ready as informed by the INDSIL through Phone, permission is granted to them for generation of electricity. There is no information given to SLDC regarding the consumption of their factories. Further,

SLDC also does not formally issue any schedule or approval for generation and injection of power from the Kuthumkal plant.

KSEBL further submitted that, since the plant is a captive plant developed for their own consumption, they should have to stop or reduce the generation when the factory consumption is low as is the case during the Covid-19 pandemic. Instead, they generated power from the plant and banked the same with KSEB Ltd. Due to Covid-19, KSEB Ltd also did not require the power from the plant for meeting the electricity demand during the said period. Even hydro generation from KSEB Ltd's own plants and schedule of generation from CGS and IPPs were reduced during the said period. Power was also available in the power exchanges at cheap rates. Under these circumstances, KSEBL did not require the banked power from the respondent INDSIL.

KSEBL further submitted that the Hon'ble APTEL vide the judgment dated 29.07.2019 filed by the respondent against the Order of the Commission dated 02.06.2017 in petition No.02/2017, endorsed the directions issued by the Commission to modify the terms of the Agreement dated 30.12.1994.

- (3) The respondent INDSIL reiterated their earlier submission that, Hon'ble Supreme Court in the Judgment dated 30.07.2019 in Civil Appeal No. 5943-5945 of 2019, observed that, the entire provisions of the Agreement dated 30.12.1994 shall be considered in totality. KSEBL cannot proposed to modify some of the clauses of the Agreement according to their benefit and that too unilaterally.

The respondent further submitted that, Clause-11 of the Agreement dated 30.12.1994 permit them to bank the surplus energy with KSEB Ltd, the surplus banked energy shall be settled at EHT tariff applicable to the respondent at the end of the settlement period on 30<sup>th</sup> June every year.

The respondent has been generating power as instructed by SLDC of Kerala. There were no instructions from SLDC to stop generation. More importantly, KSEB Ltd has used the entire energy injected to their grid for meeting the electricity demands of the near areas of the power plant wherein it was situated. In order to support this claim, the respondent INDSIL further submitted that, KSEB Ltd has established a substation at Rajakkad in the premise of the power plant, in the land owned by INDSIL, to feed the electricity generated from the plant to the grid to meet the electricity demand of the Rajakkad area. This is in addition to feeding the electricity generated from the plant to the Neriamangalam grid.

Moreover, the power plant was established as per the Captive Power Policy of the State Government notified in the year 1990. KSEB Ltd

cannot seek to modify the Agreement dated 30.12.1994, which was arrived at based on the said Policy.

5. Based on the deliberations during the hearing, the Commission hereby direct the petitioner KSEB Ltd and the respondent INDSIL the following.

- (1) KSEB Ltd shall clarify the reasons for establishing the substation at the land owned by INDSIL at the project area of Kuthumkal.
- (2) Whether KSEBL is willing to modify the entire terms of the Agreement dated 30.12.1994, especially whether KSEBL is willing to alter the term of the Agreement beyond 30 years.
- (3) INDSIL is also permitted to submit additional documents to support their claims.
- (4) Both the parties shall submit the details on or before 12<sup>th</sup> March 2021.

**Sd/-**  
**Adv. A.J. Wilson**  
**Member (Law)**

**Sd/-**  
**Preman Dinaraj**  
**Chairman**

Approved for issue

C R Satheeshchandran  
Secretary(i/c)