

**KERALA STATE ELECTRICITY REGULATORY COMMISSION  
THIRUVANANTHAPURAM**

Present: Shri. C.Balakrishnan, Chairman  
Shri. C.Abdulla, Member  
Shri. M.P.Aiyappan, Member

**April 16, 2008**

Petition DP No. 36 (a)	Dy. No. 001310  dated 05-12-2007	Indsil Electrosmelts Limited Indsil House T.V.Samy Road, R.S.Puram Coimbatore	Petitioner
		Kerala State Electricity Board Vaidyuthi Bhavanam Thiruvananthapuram	Respondent

**ORDER**

**1. Background**

The Petitioner M/s. Indsil Electrosmelts Limited has filed a petition before the Commission on 05.12.07 under section 86 (1) (f) and 86 (a) of the Electricity Act, 2003. In this petition, the petitioner has submitted that M/s. Indsil Electrosmelts Limited have a hydro electric power station, with a capacity of 21 MW, which generates power throughout the day and throughout the year subject to availability of adequate water. The generating station generates power through all the 3 time zones of the day and a TOD meter is fixed at the generating station for recording the same. Monthly generation is recorded by the certifying authority of the KSEB during the end of every month and readings are taken from the TOD meter for the same. In terms of zonewise power generation, the monthly generation statement which is certified by the KSEB Engineers splits the generation into 3 zones and records power generation zonewise during the normal, peak and off peak hours respectively. All the readings are taken from the TOD meter. The Accounts office of the KSEB, based at Trivandrum, bills their consuming facilities for energy consumed over and above power generation at their captive hydro electric power plant. Such billing is done on a monthly basis and charges are applied based on time of use. TOD meter installed at the consuming facilities are used for the same. Monthly billing includes charges for peak hour consumption which is charged after netting out power generation during peak hours.

Petitioner further states that even though the power generation during peak hours was recorded by TOD meter at the generating station and such readings were duly certified by the authorized Engineers of the KSEB, the Accounts office of the KSEB did not reckon such recordings made from the TOD meter. The Accounts office of the KSEB relied on the TOD meter readings for taking into account total power generation during the end of given month. However, for the purpose of peak hour power generation alone, the Accounts office used a formula and assumptions to arrive at power generation effected during peak hours during any given month. Petitioner further states that, instead of using the actual recorded power generation during peak hours (duly certified by KSEB), the accounts office of the KSEB used assumption and formulas to arrive at peak hour power generation and applied such figures in the monthly billing statement issued to the consuming facility at Palakkad, Kerala. Therefore, in every monthly billing cycle, there was a difference between the actual power generation recorded during peak hours from the TOD meter and the power generation shown by the accounts officer of the KSEB in the monthly bill after arriving at such figures on an assumptive basis.

According to the petitioner, as per the Regulations framed by the Commission on 06/08/2007 relating to power supply from captive generating plants, Clause 4 (120) provides “ **the peak hour extra charges and off peak hour rebate shall be on nett energy consumed after deducting captive generation during the respective periods**”. Therefore, according to the petitioner actual generation made during peak hours and other periods should be reckoned while taking into account nett energy billing.

Petitioner further prayed the intervention of the Commission so as to direct KSEB on the following:

- a. To ensure that peak hour power generation effected by the generating station is reckoned at actuals as per the readings made in the TOD meter which is duly certified by the KSEB Engineers on a monthly basis.
- b. To apply such actual TOD meter reading in the case of generation made during none peak hour generation as well.
- c. To apply actual readings instead of the assumed figures for the entire generation period commencing from June 1, 2001.

In order to support the claims made by the petitioner, the petitioner produced invoice bills issued by KSEB for the month of June 2007, along with the details of energy consumption demand charge, monthly generation statement etc. The representation made by the petitioner dated 18/5/2007 to the KSEB, was also submitted along with the petition.

On 11/12/2007 the Commission addressed the Principal Secretary of Power Department, Govt. of Kerala, and the Chairman of KSEB by forwarding the copy of the petition for getting their remarks in that petition on or before 26/12/07. On 21/12/2007 the Chairman, KSEB vide his letter No. KSEB/TRAC/Indsil/R2/07/588 dated 21.12.2007 sought time to grant extension up to 10/1/2008, so as to furnish the remarks of KSEB. The Commission vide its proceeding order No. KSERC/I/Indsil-Petition/2007 dated 03/01/2008, considered the request of KSEB and extended the time for submitting the remarks of the KSEB till 10/1/2008. The Chairman, KSEB vide letter No. KSEB/TRAC/Indsil/R2/07/16 dated 10/01/2008 sought some more time to submit their remarks and the Commission granted time to submit the remarks on or before 24/01/2008. On 24.1/2008 the Chairman, KSEB vide his letter No.KSEB/TRAC/Indsil/R2/07/48 dated 24.01.2008, submitted their reply. In the said reply, KSEB has stated that M/s. Indsil Electrosmelts Ltd., Palakkad owns and operates the Kuthungal Hydro Electric Power Project at Rajakkad in Idukki district having an installed capacity of 21 MW. The firm had executed an agreement with KSEB on 30.12.1994, (copy annexed) according to which “the company had agreed to abide by the rules and regulations to be framed by the State Government and or/ KSEB from time to time in the matter of electricity generation by private agencies”. The agreement prescribes the terms and conditions for operation of the project, generation and evacuation of power, utilization of power for captive consumption and procedure for billing. Energy accounting and billing are done as per para 10 in the agreement dated 30.12.1994. Accordingly the total power drawn from the KSEB grid minus the power injected into KSEB grid from their generating station is taken as the net consumption in the factories of the company and their associates. Differential pricing system was introduced in KSEB from November 1998 for EHT consumers. Billing is done as per the differential pricing system for the net consumption of energy. i.e., the total consumption by the company less the number of units generated from Kuthungal Hydro Electric Project and fed to the KSEB grid. Since there was no provision in the agreement regarding the method to be adopted to adjust the energy generation from time zone based consumption, the total units injected to the KSEB grid from Kuthungal Hydro Electric Project, after deducting 12% wheeling charges , has been apportioned to each zone on a pro-rata basis with respect to the consumption made in the respective zones and accordingly, the net consumption in each zone was arrived at, for the purpose of billing since June 2001, as temporary measure.

KSEB has further submitted that the agreement executed between M/s. Indsil and KSEB on 3/12/1994, does not contain any provision for installation of TOD meter at generation point nor any agreement has been entered into between KSEB and the Company regarding this. It is understood that the firm had installed TOD meter on their own choice at Kuthungal on 23.06.2003 to differentiate zone wise energy even though there was no mutual

agreement between Indisil and KSEB in this respect. Even if there is no provision for such a claim as per the agreement, the petitioner has breached the agreement conditions through deferring payment on the above grounds.

The KSEB relied para 25 of the said agreement which stipulates that “ in case any dispute and /or difference between company and the KSEB arises, the matter would be referred to Government of Kerala and their decision shall be final and binding on both the parties”. Therefore the Government has to take appropriate decision in this regard. KSEB also submitted the details of Electricity charges as per the calculation of the petitioner and the details of arrears under various heads pending with in detail.

### **Abstract of Arrears**

<b>Particulars</b>	<b>Period</b>	<b>Amount (Rs)</b>
Deemed generation benefit	21.8.01 to 05/2006	14,27,06,707
Maximum demand relief	6/2001 to 9/2006	10,22,74,596
Short remittance of energy charges	4/2003 to 6/2007	3,23,95,364
<b>Total</b>		<b>27,73,76,667</b>

The petitioner has to pay interest on the above defaulted amount. Hence the KSEB requested that the subject of issue has to be considered by the Government and direct the petitioner to clear the outstanding arrears at the earliest.

## **2. Hearing on the matter**

On the basis of submissions filed by the petitioner and the KSEB, the Commission held public hearing on 16/4/08 at the Office of the Commission.

The Petitioner submitted that this petition was filed under section 86(F) of the Electricity Act 2003, read with regulations framed there under, since the petitioner could not redress the grievance, in any of the legal fora existing in the State. The Petitioner admitted that, there is no ‘dispute’ subsists or exist in order to attract the provisions contained in section 86 (1) (f) which enables the Commission to act accordingly. The only relief that the petitioner sought from the Commission is entered in this petition and give some relief to them. Petitioner further submitted that, they have got a Hydro Electronic Power Generating

Station with a capacity of 21 MW which generates power throughout the day and through out the year subject to availability of adequate water supply. The generating station generates power through all the 3 time zones of the day and a TOD meter is fixed at the generating station for recording the same. Monthly generation is recorded by the certifying authority of the KSEB during the end of every month and readings are taken from the TOD meter for the same. In terms of zonewise power generation, the monthly generation statement which is certified by the KSEB Engineers splits the generation into 3 zones and records power generation zonewise during the normal, peak, and off peak hours respectively. All the readings are taken from the TOD meter. According to the petitioner they got Electric Connection for their plant in 1994. From June 2001 onwards they have started captive power plant after agreeing Power Purchase Agreement with KSEB. The TOD meters installed at the power generation plant. The reading is done on monthly basis and charges are applied based on time of use. According to the petitioner this monthly billing includes charges for peak hour consumption, normal and off peak consumption. The petitioner argued that the power generated during peak hour which is recorded by TOD meter at generating station is taken as Power generated by the petitioner and issued consumption bills accordingly. This is not a correct formula. Therefore they have submitted the petition before KSEB to correct reading of power generation and monthly consumption bill. But there was no reply or any corrective measures taken by KSEB till date. Therefore the petitioner approaches the Commission to give appropriate direction to KSEB to settle the matter.

During the course of public hearing on 16/4/2008 held at the Commissions office, the KSEB submitted that the petitioner has executed the Power Purchase Agreement with the KSEB on 30/12/1994, in order to setup Kuthungal phase I and phase II electric project with 21 MW capacities at their own cost. The Generation, Operation, Supply, Maintenance of electricity are detailed in the agreement and also the metering of energy generated from that project. According to KSEB, the validity of the agreement was not challenged or disputed by the petitioner, hence there exist no 'dispute' for adjudication by KSERC as contemplated in section 86 (1) (f) of the Electricity Act. According to KSEB, para 25 of the said agreement which stipulates that “ in case any dispute and/or difference between company and the KSEB arises, the matter would be referred to Government of Kerala and their decision shall be final and binding on both the parties”. Therefore the Government has to take appropriate decision in this regard.

In reply to the above submission of KSEB the petitioner relied on Clause 10 of the agreement which deals with the reading of the quantum of energy by KSEB. It was further argued by the petitioner that, at the time of agreement in 1994, there was no concept of recording or reading of time of day of generation plants. The concept was started by KSEB only from June 2001 onwards.

### **3. Commission's Findings**

The submission of both the parties in this petition were examined in detail along with the documents, submitted by the parties. At the outset, it is to be noted that Petitioner filed this petition as per section 86(1) (f) of the Electricity Act, 2003 which read as follows. "adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration". It is to be further noted that the petitioner admitted that there was no dispute as such pending with KSEB at present. As such petitioner has no grievance to approach this Commission for redressal. The only point made out by the petitioner is that, the KSEB did not give any reply to their representation regarding their electricity charges etc. Therefore, the Commission finds that there is no substantial ground to keep the grievance of the petitioner to proceed further.

In this connection it is relevant to note that the Secretary, Ministry of Power, Govt. of India vide his letter No. 45/2/2006-R&R dated 15/02/2008 informed this Commission that any Power Purchase Agreement which stood legally concluded before the notification of the tariff policy on 6<sup>th</sup> January 2006 would not alter the legal enforceability unless and until it is mutually altered on agreeable terms and conditions by the parties therein.

In the light of the above guidelines of Government of India this Commission did not find to interfere in this matter since the PPA was executed by the parties as early as in 1994.

### **4. Commission's Order**

Commission, after the detailed examination in the matter found that the petition filed under section 86(1)(f) of the Electricity Act, 2003 by Indsil Electrosmelts Ltd, Coimbatore does not have any substantial ground for intervention by the Commission.

The Petition No 36 (a) disposed accordingly.

Sd/-  
M.P.Aiyappan  
Member (F)

Sd/-  
C.Abdulla  
Member (E)

Sd/-  
C.Balakrishnan  
Chairman

Authenticated copy for issue

Secretary (in charge)