

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: Sri. T M Manoharan, Chairman
Sri. K.Vikraman Nair, Member
Sri. S. Venugopal, Member

O.P. No.12/2016

In the matter of : Directing KSEB Ltd for expediting processing of application for consent of open access to Cochin Special Economic Zone authority (CSEZA)

Petitioner : Cochin Special Economic Zone Authority (CSEZA), Kochi.

Petitioner represented by : Sri. Saju Surendran, CSEZA
Sri. Savio T A, CSEZA
Sri. Krisha Varma K, CSEZA
Sri. A R Satheesh CSEZA
Sri. Arun C Aby, PTC India Ltd

Respondent : Kerala State Electricity Board Ltd,
Vydhyuthi Bhavanam, Pattom
Thiruvananthapuram

Respondent represented by : Sri. V K Joseph, CE (C&T), KSEB Ltd
Sri.K.G.P Nampoothiri, EE, TRAC, KSEB Ltd
Sri. Latha S V, AEE, TRAC, KSEB Ltd
Sri. Anoop Mathew, TRAC, KSEB Ltd

Order dated 17.10.2016

1. The Cochin Special Economic Zone Authority (hereinafter referred to as CSEZA or the Petitioner) filed a petition on 30.8.2016, requesting the Commission for directing KSEB Ltd for expediting the application of the CSEZA for granting consent for open access.

2. The summary of the petition filed by CSEZA is given below.

- (i) CSEZA is a power distribution licensee having connectivity and valid PPA for contract demand of 10MVA with KSEB Ltd. Presently CSEZA is availing power from KSEB Ltd at 110 kV from Kalamassery at the Bulk Supply Tariff approved by the Commission from time to time.
- (ii) Out of the total power consumption of CSEZA, 85 % of energy is consumed by HT consumers. Since August 2014 onwards, the BST of CSEZA is Rs 5.30 per unit and the RST applicable to HT consumers is Rs 5.20 per unit.
- (iii) As per the latest approved ARR & ERC, CSEZA is in deficit finance. CSEZA therefore, intends to avail power through open access to utilize the cheaper power to reduce the power purchase cost. CSEZA had requested for the consent for open access for 3 MVA to reduce the cost of power purchase. CSEZA has installed ABT compatible meters and CT with 0.2S accuracy.
- (iv) CSEZA had submitted application for consent of open access to the Deputy Chief Engineer, Transmission Circle, Kalamassery on 28-6-2016. The Deputy Chief Engineer, Transmission Circle, Kalamassery, forwarded the application to Chief Engineer (Transmission) System operation. The Chief Engineer (Transmission) System operation, referred the matter to the Chief Engineer (Commercial & Tariff) for clarification and necessary guidelines.
- (v) The matter is being continuously followed up by CSEZA, but no responses were received. The undue delay by KSEB Ltd for processing the application for consent of open access results in delay in open access power procurement and consequent financial losses due to the same.

Hence the CSEZA had filed the petition before the Commission.

3. The Commission admitted the petition as OP No 12/2016 and conducted hearing on 5.10.2016 at the Commission's office.
4. Sri. Saju Surendran, representing CSEZA briefly presented the matter and answered to the queries raised by the Commission on the petition.
5. Sri V K Joseph, Chief Engineer (Commercial & Tariff), representing the respondent, KSEB Ltd submitted the following..

(1) The Commission, granted no objection in operationalizing the license granted by Government of Kerala to Cochin Special Economic Zone Authority (CSEZA) subject to the following conditions:

- i. CSEZ shall purchase the power for distribution from any Licensee or generating company and the Power Purchase Agreement for such purpose including the rate at which power is purchased shall be submitted to the Commission for prior approval.*
- ii. The tariff for retail sale of power by CSEZ shall be as charged by KSEB in its area of supply for HT-I and LT-IV category of consumers.*

(2) KSEB and CSEZ entered into a PPA on 23-4-2005 for a contract demand of 7961KVA at 110KV for a period of 20 years from 18-3-2005. As per the provisions of the PPA entered into by KSEBL with CSEZ on 18-3-2005, the Board shall supply to the Licensee and the latter shall take from the Board power up to a total quantity of 7961KVA for the purpose of supply by virtue of the license given to them by the GoK. The PPA signed on 18-3-2005 was subsequently renewed on 18-6-2007 with same terms and conditions and validity for a period of 20 years from 1-4-2005. Subsequently, the contract demand was enhanced to 10MVA vide PPA signed on 31-12-2009.

(3) In compliance with the mandate provided under section 43 of the EA-2003, and the PPA entered into with CSEZ, KSEBL, has been supplying power to the petitioner since 2005 by arranging power through long term power purchase contracts entered into by KSEBL with various generators both inside the state as well as outside.

(4) Thus in terms of the PPA entered into by CSEZ with KSEBL for a contract demand of 10MVA, the petitioner is bound by the agreements to purchase power from KSEBL for the contracted quantum and KSEBL is bound to supply power to the licensee.

(5) As per section 39(2)(c) of the EA-2003, KSEBL as a transmission utility has to ensure development of an efficient, co-ordinated and economical system

- of intra-State transmission lines for smooth flow of electricity from a generating station to the load centers.*
- (6) *In terms of the PPA entered into by CSEZ with KSEBL for a contract demand of 10MVA, the petitioner is bound by the agreements to purchase power from KSEBL for the contracted quantum and KSEB is bound to supply power to the licensee as per the terms and conditions of the contract.*
- (7) *Subsequently, the petitioner requested KSEBL for additional power of 3MVA and the process of signing a PPA for this additional quantum is in the final stage.*
- (8) *In the meanwhile, the petitioner submitted an application for consent of open access on 28-6-2016 to the Deputy Chief Engineer, Transmission Circle, Kalamassery as per the KSERC (Connectivity and Intra state Open Access) Regulations, 2013 notified by Hon'ble Commission on 10-9-2013.*
- (9) *As per Regulation 15(2) of the KSERC(Connectivity and Intra state Open Access) Regulations, 2013, and Paragraph 16 . 3 of detailed procedure, all applicants for open access shall submit an undertaking for not having entered into any power purchase agreement (PPA) or any other bilateral agreement with more than one person for the same capacity /quantum of power for which open access is applied for.*
- (10) *The petitioner has made the application for consent of open access in format B-2 prescribed in the detailed procedure approved by Hon'ble Commission as per the Regulation 55(3) of KSERC (Connectivity and Intra state Open Access) Regulations, 2013. Format B2 is the application to be made by an embedded open access consumer for Short Term Open Access. As per the details furnished by the petitioner in the format, the open access consent has been applied for a quantum of 3MVA out of the 10MVA contract demand for a period from 1-8-2016 00.00 Hrs to 31-7-2017 24.00 Hrs.*
- (11) *From the above, it is observed that the quantum for which consent for open access has been requested is already tied up by the petitioner with KSEBL as per the PPA signed on 31-12-2009. Hence as per the Regulation 15(2) of the KSERC (Connectivity and Intra state Open Access) Regulations, 2013, the applicant is not eligible for open access for the quantum for which PPA is tied up with KSEBL. KSEB Ltd sought clarification on the same. No undertaking has been obtained from the petitioner so far as required in the KSERC (Connectivity and Intra state Open Access) Regulations, 2013 declaring that the quantum for which open access has been requested is not included under the PPA signed by CSEZ with KSEB.*

(12) *It may be submitted that in the case of a Power Purchase Agreement between a generator and a beneficiary, the fixed cost commitment of the generator is fully recovered through the fixed charges from the beneficiaries. Hence even if a beneficiary surrenders power and opts for availing from other sources, he is assured of his fixed cost recovery. **The PPA between a ‘licensee’ and KSEBL is distinct from that of the PPA, a ‘Generator’ has with the beneficiaries.** In the case of a ‘licensee’, even though the tariff is two part with ‘demand charges’ and ‘energy charges’, the fixed cost commitment of KSEBL is not fully recovered through the ‘demand charges’ of the licensee. Hence if a licensee opts for open access, KSEBL will incur huge financial loss.*

(13) *It is further submitted that as per the clause 11.1 and 11.2 of the detailed Procedure for grant of connectivity & Open Access in Intrastate Transmission system approved by the Hon’ble KSERC, the persons intending to avail short-term open access shall register with the SLDC at least two months ahead of the first intending transaction after installation of CTs, PTs of requisite standards as per CEA metering regulation, 2006 for facilitating installation of Special Energy Meters, indicating the details of load, point of drawal and/or injection, contact details etc as per Format-R. However, no application in the required format, Format R and fees have been received at SLDC from the petitioner, for the One Time Registration for Open Access, which is the first step of Open access Procedure. Hence it is submitted that the averments made by the petitioner in the instant petition that KSEBL has made undue delay for processing of the consent for open access of the petitioner is not correct.*

(14) Ambiguity in dealing with the open access application of the petitioner

- i. It is additionally submitted that as already submitted, Hon’ble Commission has clearly specified while formulating the PPA with the petitioner that the petitioner shall not to be treated as a ‘consumer’.*
- ii. **Format-B2 submitted by the petitioner for consent for open access is related with the short term open access of embedded open access consumers as per the Regulation.***
- iii. Kerala State Electricity Regulatory Commission (Connectivity and Intrastate Open Access) Regulations, 2013 defines “embedded open access consumer” or in short ‘embedded consumer’ as a consumer who has a supply agreement with the distribution licensee in whose area of supply the consumer is located and avails the option of drawing part or full of its demand from any other person by availing open access, in any one or more time slots during a day or more in any month or more during the year, without ceasing to be a consumer of the said distribution licensee and*

continues to pay monthly demand charges and other charges as per rate schedule applicable to relevant category.

- iv. Being specifically mentioned by Hon'ble Commission that the petitioner is not a 'consumer', consent for STOA applicable for 'embedded open access consumers' applied by the petitioner has no legality.*
- v. It is further submitted that any transactions through open access are subject to deviations from schedule and there are no regulations now in force in the state for intra state ABT and intra state deviation settlement mechanism.*
- vi. Hence any deviation made by licensees from schedule goes unaccounted. Since the licensee has opted for embedded open access any deviation from schedule of this licensee is to be absorbed by KSEBL, as the distribution licensee in the state, and the licensee becomes immune to such deviations. Hence control over the net drawal of power from ISTS and the deviation charges become incident on KSEBL.*
- vii. Hence in order to enable and put in place 'open access' for licensees, it is required that intra state ABT and Deviation Settlement Mechanism need to be implemented in the state.*
- viii. As already submitted, there is no mechanism to compensate a distribution licensee if a buyer supply licensee opts for 'Open Access' under the prevailing Regulations of Hon'ble Commission. However, if a 'consumer' of a distribution licensee opts for 'open access', the distribution licensee is compensated by 'Cross subsidy surcharge' as stipulated under Regulation 40 of the KSERC Regulations, and 'Additional Surcharge' as stipulated under Regulation 41 of the KSERC Regulations to meet the fixed cost of such distribution licensee arising out of his obligation to supply as provided under sub-section (4) of section 42 of the Act. Hon'ble Commission has vide order dated 30-09-2014 in Petition No.OP 9/2014 has approved the transmission charges, wheeling charges, cross subsidy surcharge payable by open access consumers. However, the said order has not specified any cross subsidy surcharge or additional surcharge for bulk supply licensees. Hence KSEBL as a 'supplier distribution licensee' is not compensated for its fixed cost commitment already created out of the PPA with a 'buyer distribution licensee' if the 'buyer bulk distribution licensee' opts for open access.*
- ix. The petitioner in the instant petition has stated that the petitioner has a deficit finance and have negative cash flow problem on account of the increased power purchase cost and hence is intending to avail power supply from grid also by adopting open access, so as to utilize reduced power procurement cost and to make up the deficit.*

- x. *In this matter it is submitted that the distribution licensees in the state of Kerala have a peculiar feature that they purchase power from KSEBL at a bulk supply tariff approved by Hon'ble Commission for the supply to consumers within their respective areas of license. Hon'ble Commission determines the bulk supply tariff of each distribution licensee after consideration of the socio-economic conditions within the area of license. The retail tariff structure to all categories of consumers in the state are uniform and the bulk supply tariff at which power is procured by the small distribution licensees including the petitioner are different. This differentiation in BST among the licensees are fixed in such a way that the net income, after providing for depreciation, interest and finance charges, O&M expenses, return on equity and such other expenses is passed onto KSEBL by way of bulk supply tariff.*
- xi. *Availing open access will change the power procurement cost and the net income of the small distribution licensees which will in turn distort the bulk supply tariff of the distribution licensees in view of the above peculiar bulk supply tariff design. Since the open access availed is for short term and the power purchase quantum and cost in the short term market is highly flexible, there cannot be a rigid bulk supply tariff that can be fixed on the licensee as per the above design. Frequent revision of bulk supply tariff is against the provisions of section 62(4) of the Electricity Act, 2003 which prescribes that "No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified."*

- 6. KSEB Ltd therefore prayed to the Commission to dismiss the petition filed by CSEZA.

Analysis and Decision

- 7. The petitioner CSEZA is a deemed distribution licensee of the State. As per the details submitted by the petitioner CSEZA and the respondent KSEB Ltd, the petitioner has entered into long term Power Purchase Agreement with KSEB Ltd for procuring 10 MVA power from KSEB Ltd. The petitioner CSEZA and the respondent KSEB Ltd are bound by the terms and conditions of the PPA entered into between both the parties.
- 8. The petitioner proposes to avail 3 MVA power out of the 10 MVA power contracted with KSEB Ltd through IEX by availing short-term open access on day ahead basis. Further, CSEZA requires backup power from KSEB Ltd, in the event of any curtailment/ non-availability of power from the seller.

9. The open access in the State is governed by KSERC (Connectivity and Inter state open access) Regulation, 2013 (here after refereed as Open access regulation, 2013). As per the provisions of the open access regulation, the nodal agency for processing the short-term open access in transmission and distribution is the SLDC of the State.
10. The Regulation 15 of the open access regulation, 2013 specify the procedure for application for open access, which is extracted below.

15.Procedure for application for open access.- (1) All applications for open access shall be submitted to the nodal agency as stipulated in the schedule to these regulations in the format as stipulated in the detailed procedure.

(2) All applicants for open access shall submit an undertaking for not having entered into any power purchase agreement (PPA) or any other bilateral agreement with more than one person for the same capacity /quantum of power for which open access is applied for.

(3) Subject to the provisions of these regulations, the details such as the nodal agency, application fee, documents to accompany the application and time frame for disposal of application shall be as specified in the schedule to these regulations. However the details in the schedule are only indicative and charges other than those indicated in the schedule may also be payable as approved by the Commission depending upon the combination of systems utilized for actual drawal of power.

11. As per the sub regulation (2) to Regulation-15 of the Open Access regulation, 2013, an applicant proposes to avail open access, cannot avail open access for the quantum of power already contracted with others.
12. As per the details available, CSEZA already had entered into PPA with KSEB Ltd for availing 10 MVA power on long term basis. As a distribution licensee, CSEZA can purchase power from any sources by availing open access of the transmission system of the State as per the provisions of the Electricity Act-2003. However, for meeting their power requirement to the extent of 10 MVA, CSEZA has entered into long term contract with KSEB Ltd. Hence, as per the sub regulation(2) to Regulation-15 of the open access regulation-2013, CSEZA

cannot avail open access for the quantum of electricity, for which it has already entered in to PPA with KSEB Ltd.

13. However, if CSEZA requires additional power over and above 10 MVA power already contracted with KSEB Ltd, CSEZA can purchase the additional power from any source by availing open access on the transmission system of the KSEB Ltd.
14. KSEB Ltd has submitted that, the petitioner has not filed proper petition before the SLDC, the nodal agency for processing the short-term open access. Hence, it is directed that the petitioner CSEZA may file proper application before the nodal agency for availing open access as per the provisions of the KSERC (Connectivity and Inter state open access) Regulation, 2013 and detailed procedure for grant of connectivity & open access in intra-state transmission system and the nodal agency shall process the application as per the provisions of the KSERC (Connectivity and Inter state open access) Regulation, 2013 and the detailed procedure for grant of connectivity & open access in intra-state transmission system .

Order of the Commission

15. The petitioner CSEZA may file proper application before the nodal agency for availing open access as per the provisions of the by KSERC (Connectivity and Inter state open access) Regulation, 2013 and detailed procedure for grant of connectivity & open access in intra-state transmission system, and the nodal agency shall process the application as per the provisions of the KSERC (Connectivity and Inter state open access) Regulation, 2013 and the detailed procedure for grant of connectivity & open access in intra-state transmission system .

The petition disposed of. Ordered accordingly.

Sd/-
K.Vikraman Nair
Member

Sd/-
S Venugopal
Member

Sd/-
T M Manoharan
Chairman

Approved for issue

Sd/-
Santhosh Kumar K.B
Secretary