

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

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

Petition No. 1232/DD(T)/OA-NoC/2016

**In the matter of removing the difficulties due to denial of application for NOC for
Interstate short term open access (Collective transaction)**

Petitioner : The High Tension and Extra High Tension Industrial
Electricity Consumers' Association, Kerala

Respondent : 1. The Chief Engineer (Transmission System,
Operation), L.D. Centre, HMT Colony P.O.,
Kalamassery, Ernakulam District - 683 503.
2. The Kerala State Electricity Board Ltd., Represented
by the Chairman and Managing Director, Vidyuthi
Bhavanam, Pattom, Thiruvananthapuram - 695 001.

Petition No. 1270/F&T/2016./KSERC

**In the matter of Petition under Section 86 of Electricity Act and Regulation 63 of
the KSERC (Connectivity and Intra State Open Access)
Regulations, 2013 challenging the denial of NOC for short term
open access to the petitioner company**

Petitioner : M/s Indsil Hydro Power and Manganese Limited.,
INDSIL House, Pallathery P O , Palakkad, 678007.

Respondent : The Kerala State Electricity Board Ltd./ State Load
dispatch centre, Represented by its Chairman and
Managing Director, Vidyuthi Bhavanam, Pattom,
Thiruvananthapuram - 695 001.

Common Order dated 21-12-2016

1. The HT and EHT Industrial Electricity Consumers Association (hereinafter referred to as HT& EHT Association or the petitioner) filed a petition before the Commission on 20-07-2016, with the following prayers,-

“ 1. To issue direction to KSEBL to maintain the status quo regarding the issue of NOC for Open Access for a period of Three months.

2. On the basis of our petition, we humbly request the Hon’ble commission to hear our submissions and take a judicious approach so that the difficulties encountered by the Open access consumers are eliminated and made consumer friendly.”

2. The summary of facts and regulations cited by the petitioners are extracted below:

(1) In Kerala, fifteen Industrial Consumers in HT and EHT category are availing short term open access. All these consumers are members of the Kerala State High Tension and Extra High Tension Industrial Consumers’ Association. The total quantum of power sourced through open access is less than 2% of the total electricity demand of the State.

(2) The members of the association are availing open access by obtaining the NOC from the nodal agency and also complying with the regulations in force. Suddenly, the Chief Engineer (Transmission - System Operation) vide the letter dated 19-07-2016 denied open access from 23rd July 2016. There was no prior communication in the matter. The members of the petitioner are aggrieved by this action of Transmission Licensee denying the permission for open access, as it seriously affects the interests and rights of the petitioner adversely. The said letter is totally against the provisions of the KSERC Connectivity and Open Access Regulations, 2013, 'Detailed procedure for grant of Connectivity & Open Access in intra state transmission system' issued by KSERC, right of the consumers, and also the tenor and spirit of the EA 2003. Hence the petitioner has no other option, but to approach the Honourable Commission representing its members, which is the right forum for resolving this particular dispute.

(3) The petitioner further submitted that, there was no new development now on account of which permission is denied. There is no change in the circumstances prior to or after the said letter from respondent. The petitioner submitted that the grounds mentioned in the letter are totally baseless and not applicable to them, which are extracted below.

“

(i) Regarding ground (a), the relevant provisions are quoted below.

Clause 11 (4) Before granting open access, the nodal agency shall ensure that special energy meters are installed and maintained in

accordance with the provisions of The Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from time to time and remote terminal units (RTU) are installed and maintained, as stipulated in the detailed procedure, to facilitate real time monitoring by SLDC.

Provided that, the distribution licensee shall install special energy meters and remote terminal units in the premises of the applicants for open access within the time frame as stipulated in the detailed procedure.

12.4 Before granting open access, the nodal agency shall ensure that special energy meters are installed and maintained in accordance with the provisions of The Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from time to time and remote terminal units (RTU) are installed and maintained, as stipulated herein, to facilitate real time monitoring by SLDC.

15.5 After ensuring existence of metering infrastructure and other relevant information, the SLDC shall communicate the registration details including the unique registration number to the applicant in Format-R1. The applicant shall indicate the unique registration number in all future communication with the nodal agencies.

It has been categorically mentioned that the distribution licensee is responsible for installation of Special Energy Meter and remote terminal units in the premises of the applicants for OA within the timeframe as per the regulation.

Though this being the case, the petitioner has agreed to install the meters of their own cost and also have installed such meters. For installing the RTU, the make and other technical details are being discussed and the opinion is sought from the respondent to install the same. It will be completed soon. After receiving letter from SLDC in connection with RTU installation at open access consumer end, we have initiated a meeting with CE.SO on 20thMay 2016. Based on the discussion it was decided to submit the single line diagram of the consumer for finalising the input and output points before June 10th as a first step. All open access consumers have complied this decision. Most of the consumers, so far, have not received any further communication from the concerned. There is no delay on the part of

the petitioner for implementing the RTU. The delay is mainly due to non-finalisation of the details by STU. We fail to understand the hurry and intention of the SLDC to deny the NOC on this ground, as it is the primary responsibility of DU/STU and the delay is not on account of the action of petitioner. It is to be noted that, even without RTU, open access was granted previously, and the present denial is unreasonable and unfair.

(ii) Regarding point (b), the relevant provision in the IEGC is given below.

5.4 Demand Management

5.4.1 Introduction

This section is concerned with the provisions to be made by SLDCs to effect a reduction of demand in the event of insufficient generating capacity, and inadequate transfers from external interconnections to meet demand, or in the event of breakdown or congestion in intra-state or inter-state transmission system or other operating problems (such as frequency, voltage levels beyond normal operating limit, or thermal overloads , etc.) or overdrawl of power vis-à-vis of the regional entities beyond the limits mentioned in UI regulation of CERC

5.4.2 Demand Disconnection

(a) SLDC/ SEB/distribution licensee and bulk consumer shall initiate action to restrict the drawal of its control area, from the grid, within the net drawal schedule whenever the system frequency falls to 49.7 Hz (b) The SLDC/ SEB/distribution licensee and bulk consumer shall ensure that requisite load shedding is carried out in its control area so that there is no overdrawl when frequency is 49.5 Hz. or below.

c) Each User/STU/SLDC shall formulate contingency procedures and make arrangements that will enable demand disconnection to take place, as instructed by the RLDC/SLDC, under normal and/or contingent conditions. These contingency procedures and arrangements shall regularly be / updated by User/STU and monitored by RLDC/SLDC. RLDC/SLDC may direct any User/STU to modify the above procedures/arrangement, if required, in the interest of grid security and the concerned User/STU shall abide by these directions.

d) The SLDC through respective State Electricity Boards/Distribution Licensees shall also formulate and implement state-of-the-art demand management schemes for automatic demand management like rotational load shedding, demand response (which may include lower tariff for interruptible loads) etc. before 01.01.2011, to reduce

overdrawl in order to comply para 5.4.2 (a) and (b) . A Report detailing the scheme and periodic reports on progress of implementation of the schemes shall be sent to the Central Commission by the concerned SLDC.

e) In order to maintain the frequency within the stipulated band and maintaining the network security, the interruptible loads shall be arranged in four groups of loads, for scheduled power cuts/load shedding, loads for unscheduled load shedding, loads to be shed through under frequency relays/ df/dt relays and loads to be shed under any System Protection Scheme identified at the RPC level. These loads shall be grouped in such a manner that there is no overlapping between different Groups of loads. In case of certain contingencies and/or threat to system security, the RLDC may direct any SLDC/ SEB/distribution licensee or bulk consumer connected to the ISTS to decrease drawal of its control area by a certain quantum. Such directions shall immediately be acted upon. SLDC shall send compliance report immediately after compliance of these directions to RLDC.

f) To comply with the direction of RLDC, SLDC may direct any SEB/ distribution licensee/bulk consumer connected to the STU to curtail drawal from grid. SLDC shall monitor the action taken by the concerned entity and ensure the reduction of drawal from the grid as directed by RLDC.

g) RLDCs shall devise standard, instantaneous, message formats in order to give directions in case of contingencies and /or threat to the system security to reduce overdrawl by the bulk consumer, SLDC/ State at different overdrawal conditions depending upon the severity of the overdrawal. The concerned SLDC shall ensure immediate compliance with these directions of RLDC and send a compliance report to the concerned RLDC.

h) All Users, SLDC/ SEB/distribution licensee or bulk consumer shall comply with direction of RLDC/SLDC and carry out requisite load shedding or backing down of generation in case of congestion in transmission system to ensure safety and reliability of the system. The procedure for application of measures to relieve congestion in real time as well as provisions of withdrawal of congestion shall be in accordance with Central Electricity Regulatory Commission (Measures to relieve congestion in real time operation) Regulations, 2009.

i) The measures taken by the User's, SLDC SEB/distribution licensee or bulk consumer shall not be withdrawn as long as the frequency

remains at a level lower than the limits specified in para 5.2 or congestion continues, unless specifically permitted by the RLDC/SLDC.

The said section is mainly intended for real time operation. The said section cannot be used to deny open access. The members of the petitioner are always willing to follow the directions of SLDC, which is a proven fact. The petitioners even before availing open access followed the directions for shedding the load as per the direction of SLDC to maintain the stability of the grid.

It may be noted that, there is no stipulation in IEGC for direct disconnection of load by SLDC or other agencies. It is based on the direction of RLDC and SLDC, the distribution licensee and bulk consumers have to act to shed the load.

The reason of prevailing low load situation is not applicable. There is no congestion or overload to impose these restrictions now. These are to be followed on a real time basis. There is no instance in the past to show that the petitioner is not following the directions of SLDC in grid management.

Hence, the reasons cited in the letter is prima facie baseless and will not stand on technical and legal grounds.”.

3. The Commission admitted the petition and issued notice to the respondent KSEB Ltd to submit reply to the petition. Further, the Commission directed the petitioner to cure certain defects in the petition, since it was not filed as per the provisions in the KSERC (Conduct of Business) Regulation 2003. After curing the defects, the petitioner filed the petition on 26-07-2016.
4. In the meanwhile, the petitioners filed Writ Petition No.25043/2016 before the Hon’ble High Court, with the following prayers,-
“
 - (i) *Issue a writ of certiorari or any other appropriate writ, order or direction calling for the records leading to Exhibit -P2 and quash the same;*
 - (ii) *Issue a writ declaring that the petitioners 2,3,and 4 and the members of the 1st petitioner, who are availing the facility of open access system, are entitled to have the facility in terms of law and the same cannot be denied for the reasons shown in Exhibit-P2, P2(a) and P2(b);*
 - (iii) *Issue a writ mandamus directing the 3rd respondent to pass order on Exhibit P6;*”

(iv) *Issue such other writ, order or direction as this Court may deem fit in the facts and circumstances of the case.”.*

5. The Hon’ble High Court of Kerala, in its judgment dated 29th July, 2016 in Writ petition No 25043 of 2016 has directed the Commission as follows:

(i) *That the Regulatory Commission shall immediately taken into consideration Exhibit-P6 and pass appropriate orders after hearing the parties with in a period of one week from the date of receipt of a copy of this judgment.*

(ii) *The parties shall appear before the Regulatory Commission on 1st August, 2016.*

(iii) *It shall always be open for the Regulatory Commission to pass appropriate interim orders after hearing either parties.*

6. The facts leading to the above judgment are summarized below.

(i) The Commission had issued the Kerala State Electricity Regulatory Commission (Connectivity and Intra-state Open Access) Regulation, 2013, (hereinafter referred to as ‘Open Access Regulations, 2013’) enabling the consumers and licensees to avail non-discriminatory open access to the transmission system of the State Transmission Utility under Kerala State Electricity Board Ltd. The Commission had also approved the detailed procedure for grant of connectivity and open access in intra-state transmission system as per its order dated 21-04-2015.

(ii) The petitioners were enjoying the facility of open access. In the meanwhile the Chief Engineer, System Operation, Kerala State Electricity Board Ltd, Kalamassery declined the request of petitioners for NOC to avail open access facility for the purchase of power from power exchanges. The reasons cited for the denial of NOC as per letter No CESO/EELDII/ Inter State OA/ 2016-17/1449 dated 19.07.2016 of Chief Engineer, System Operation are as follows:

(1) *Non compliance of section 11(4) of the KSERC Connectivity and Open Access Regulations, 2013 and clause 12.4 and clause 15.5 of the detailed procedure for grant of connectivity and open access in intrastate transmission system approved by the Hon’ble KSERC.*

(2) *Prevailing very low demand in Kerala Grid leading to violation of clause 5.4 of IEGC.*

7. The HT&EHT association submitted a copy of judgment dated 29.07.2016 of the Hon'ble High Court before the Commission on 01.08.2016, in accordance with directions of Hon'ble High Court. The Commission has thereupon issued a notice to the parties for hearing at 10:30 AM on 03.08.2016 at Court Hall of the Commission.
8. The petition dated 25.07.2016 filed by M/s Indsil Hydro Power and Manganese Limited on the same matter is also decided to be heard along with the petition filed by HT&EHT association.

Hearings of the petition

9. The Commission heard the petition at 10:30 AM on 03-08-2016 at Court Hall of the Commission. Sri. A. R. Satheesh, President, HT&EHT Association presented the case on behalf of the petitioner. Sri. S.R. Anand, Deputy Chief Engineer, appeared before the Commission on behalf of SLDC of Kerala and Sri. K. G. P. Namboothiri, Executive Engineer and Smt Latha S.V, Assistant Executive Engineer appeared before the Commission on behalf of KSEB Ltd.
10. Sri. A. R Satheesh, submitted that, the reasons cited in the letter of the Chief Engineer (Transmission & System Operation) dated 20-07-2016 for the denial of open access are invalid. As per the first proviso to Regulation 11(4) of the Open Access Regulations 2013, it is the responsibility of the distribution licensee to install special energy meters and remote terminal units in the premises of the applicants for open access within the time frame as stipulated in the detailed procedure. However the embedded consumers agreed to install RTU by themselves and the process for the same is in progress. Mr. Satheesh further submitted that, the second reason for denial of open access, i.e. low demand in Kerala Grid leading to violation of paragraph 5(4) of the IEGC, is also invalid since the paragraph 5(4) of the IEGC deals with contingency situation relating to demand management.
11. Sri. K. G. P. Namboothiri, on behalf of KSEB Ltd sought more time to file the written submission.
12. Adv. Surya Binoy, appeared before the Commission in a separate petition filed by M/s Indsil Hydro Power and Manganese Limited on the very same subject matter and submitted that, the denial of NoC for availing open access is against the provisions of the Electricity Act, 2003, and the regulations issued by the Commission regarding the grant of open access. She further submitted that, the burden of proof for denial of open access is on KSEB Ltd and that such order ought to have been supported by adequate documents. She further submitted that, as per the Regulation 2 read with Regulation 63 of the Open Access Regulations, 2013, the State Commission has jurisdiction to hear the matter.

13. The Commission, after examining in detail the provisions in the Electricity Act 2003, on providing non-discriminatory open access to the transmission system of the State Transmission Utility and distribution system of the licensee, provisions in the Open Access Regulations, 2013, the detailed procedure for grant of connectivity & open access in intra-state transmission system approved by the Commission on 21-04-2015, the CERC (Open Access in Inter State Transmission) Regulation, 2008, issued interim order on 3.8.2016 as follows:

In compliance with the directions of the Hon'ble High Court in its judgment dated 29.07.2016, in Writ Petition No. 25043/2016, the Commission hereby issues the following interim orders,-

- (1) The orders issued by the Chief Engineer (System Operations) KSEB Ltd denying the NOC for Short Term Open Access to the petitioners in the Writ Petition are hereby quashed and the applications already submitted by them shall be considered afresh and orders issued on or before 06.08.2016.*
 - (2) The orders issued by the Chief Engineer (System Operations) KSEB Ltd denying the NOC for Short Term Open Access to the other embedded consumers are also quashed and the applications already submitted by such consumers shall also be considered afresh and orders issued on or before 06.08.2016.*
 - (3) SBU (Distribution), SBU (Transmission) and SLDC under KSEB Ltd are granted time upto 19.08.2016 for filing their written statements for consideration of the Commission while issuing the final orders.*
14. In compliance of the interim order dated 3.8.2016, Chief Engineer (Commercial & Tariff) of KSEB Ltd, had, on 18.8.2016, submitted a combined submission on behalf of the SLDC, SBU-T and SBU-D of the KSEB Ltd. The summary of the issues raised by KSEB Ltd is as follows:
- (1) Issues raised by the petitioner in the instant petitions are the matters to be resolved by Hon'ble CERC and accordingly the instant petition filed by M/s HT&EHT association is not maintainable. In support of this claim, KSEB Ltd has further submitted that,
 - (i) The procedure for grant of inter-state short term open access and the provisions relating to the inter-state short term access are governed by the provisions of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 and the petitioners have been buying power through inter-state power exchange after obtaining inter-State open access.
 - (ii) Also, Regulation 26 of the first amendment to 'STOA Regulations' notified by CERC vide the notification

No.L7/105(121)/2007-CERC dated the, 20th May 2009 stipulates that all disputes arising under interstate open access shall be decided by Hon'ble Central Commission.

- (iii) In a similar issue of denial of NOC by SLDC, Karnataka for inter-state STOA, M/s.UPCL, had raised the matter before CERC for resolving the dispute vide Petition No.517/MP/2014. The jurisdiction of Central Commission in redressal of disputes in inter-state open access has been ascertained by Hon'ble CERC in order dtd. 30-6-2016 in Petition No. 98/MP/2014.
- (iv) As per Regulation 62 of the Kerala State Electricity Regulatory Commission (Connectivity and Intra state open access) Regulations, 2013, all disputes arising under the intra state open access regulations of KSERC shall be decided by the co-ordination committee and appeal against the decision of the co-ordination committee shall only be brought before KSERC. The relevant clause of the regulation is extracted below.

“ 62. Dispute resolution- (1) All disputes and complaints arising under these regulations shall be decided by the co-ordination committee constituted as per Regulation 54 within a period of thirty days from the date of receipt of application from the concerned party.

(2) Appeal against the decision of the co-ordination committee shall lie before the Commission.

(3) The decision of the Commission shall be final and binding.”

- (v) No such procedure has been followed by the petitioner in the instant case. Hence K S E B Ltd. prayed to dismiss the petition and to direct the petitioner to follow the procedures stipulated in the CERC (Open Access in inter-state Transmission) Regulation, 2008.

(2) The erratic behaviour of the open access transaction during low demand period creates load-generation imbalances in the State and bottle necks for the operation of SLDC to effectively carry out the responsibilities vested on SLDC as per the provisions of Electricity Act, 2003, and IEGC and also results in huge financial losses on KSEB Ltd. In this matter KSEB Ltd further submit that,

- (i) As per the section 43 of the Electricity Act, 2003, KSEB Ltd as the distribution licensee in the State has a universal supply obligation and mandated to give supply of electricity to an applicant requiring such supply.
- (ii) In order to meet the growing demand of the State, KSEB Ltd has entered into medium term and long term contracts with different date of commencement. As on date, KSEB Ltd has

entered in to long term and medium contract contract for procuring 3315MW from sources outside the State including Central Generating Stations. The tariff for power procured from the Central Generating stations and IPPs under long term are under two part tariff consisting of fixed charges and energy charges. The fixed charges are paid for the capacity availability of the station and energy charges are paid for meeting the fuel cost of the plant. The variable charges have to be paid based on the energy scheduled. Hence for all the long term contracts entered into, KSEB Ltd. is liable for paying fixed charges even if KSEB Ltd. does not schedule power from these plants.

(iii) As per the provisions of the Electricity Act-2003 and the KSERC (Connectivity and Intra-state open access) Regulations, 2013 and as per the detailed procedure for grant of connectivity and open access in intra-state transmission system dated 21-04-2015, open access is allowed in the State of Kerala. As on 1st July 2016, about fourteen Industrial consumers in HT and EHT Category are availing short term open access. The open access consumers coming up in the state are of the category 'embedded open access' consumers and the transactions are day ahead transactions through IEX. The purchase of power by the consumers of KSEBL through open access route has been showing increasing trend. The consumers who have opted for open access are applying on monthly basis and they are furnishing a tentative schedule of power purchase, but this is not strictly adhered to. While the consumers have opted for purchase of power through open access route in addition to the consumption from KSEBL, these consumers have become customers of the transmission licensee and/ or distribution licensee as well. The energy accounting of the embedded open access consumers are as stipulated under regulation-20 of the Open Access Regulations, 2013.

(iv) The sub-regulation (4) of the Regulation-11 of the open access regulation provide as follows.

(4) Before granting open access, the nodal agency shall ensure that special energy meters are installed and maintained in accordance with the provisions of The Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from time to time and remote terminal units (RTU) are installed and maintained, as stipulated in the detailed procedure, to facilitate real time monitoring by SLDC.

Provided that, the distribution licensee shall install special energy meters and remote terminal units in the premises of the applicants for open access within the time frame as stipulated in the detailed procedure.

- (v) The open access consumers have not installed the RTUs as stipulated in the regulation. Without installing RTUs, the SLDC is kept in dark about the actual drawal of power by the open access customers as the visibility of these drawal points are not available to SLDC as stipulated in regulation 11.
- (vi) The requirement of RTUs were not insisted previously as the purchase of power by open access customers were low compared to the import of power to Kerala control area at that time. However, the quantum of power purchase through open access route in the state is increasing considerably with improvement in transmission capacity. K S E B Ltd. submitted that the purchase of power by open access consumers is 4.66 MU and 142 MU in 2014-15 and 2015-16 respectively. They have availed 119.45 MU in 2016-17, upto July 2016-17.
- (vii) K S E B Ltd. also submitted that the procurement of power through open access by the embedded consumers of KSEB Ltd is highly erratic and opportunistic varying from 2.48 MU to 38.798 MU with in a period from April 2015 to July 2016.
- (viii) The erratic behavior of the open access transactions in the state is creating bottle necks for the operation of SLDC to effectively carry out the responsibilities vested on SLDC as per the provisions of EA, 2003 and IEGC. This is in addition to the responsibility on SLDC to effectively operate the grid and to keep the interstate drawal of the state as a whole within the schedule and limit the deviation volume within the limits specified in the CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2014.
- (ix) As per Regulation 11 (4) of the KSERC Connectivity and Open access regulation 2013, before granting open access, the nodal agency shall ensure that special energy meters are installed and maintained in accordance with the provisions of the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from time to time and remote terminal units (RTU) are installed and maintained, as stipulated in the detailed procedure, to facilitate real time monitoring by SLDC. As per the proviso to this regulation, the distribution licensee shall install special energy meters and remote terminal units in the premises of the applicants for open access within the time frame as stipulated in the detailed procedure.
- (x) As per the first proviso to Regulation 36 of the open access regulation, in case an open access customer or embedded consumer elects to purchase his own special energy meter, he shall purchase the same from the firms empanelled by the STU as specified in The Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from

time to time. Thus the regulation has clearly given the freedom to the consumer to procure energy meter on its own, and several consumers have opted this facility for availing open access as embedded customers. The matter was discussed with the intending open access customers and as per their request, the specifications for meters and RTUs were furnished to them. As the maintenance of the RTU is the responsibility of the customer, it was observed that placing the purchase order directly by the customer will only facilitate after sale support and AMC (Annual Maintenance Contract) by the supplier.

- (xi) For encouraging open access, several provisions of the regulations, were condoned initially and open access was allowed. However, as the situation has come to the level where the power system management was getting affected because of the increase in the quantity of power transacted through open access, the necessity of implementing the provisions of regulations became essential.
- (3) The open access availed by the embedded consumers has been resulting in huge financial liability on KSEB Ltd. KSEB Ltd further submit that,
- (i) In order to comply with universal supply obligation on demand under the section-43 of the Electricity Act-2003, KSEB Ltd has entered in to contract for procuring about 3315 MW power through long term and medium term contracts.
 - (ii) The unpredictable and increased quantum of open access transactions are severely affecting the load generation balance planned by KSEB Ltd. leading to surrender of power tied up by KSEB Ltd. under long term contracts. It is submitted that about 297MU of power was surrendered by KSEB Ltd on merit order during 2015-16, out of which, 135MU corresponds to open access transaction of the consumers of KSEBL. The approximate financial liability of this surrender corresponds to about Rs.24.30 Crores (135MU * Rs.1.80/unit) adopting the average fixed cost of central generating stations and transmission charges. This is exclusive of the loss in tariff due to cross subsidy component.
 - (iii) During the year 2016-17, KSEB Ltd. is forced to surrender power purchased through traders also in addition to the surrender of CGS. During the current year for the month of June alone about 36.92 MU had to be surrendered against open access purchase by the consumers .The total surrender made during the year 2016-17 up to July 2016 was 286 MU.

- (iv) The open access consumers generally avail open access facility on a day ahead basis as and when the energy prices in the short-term market is less than the prevailing tariff. During monsoon months (June to December every year), energy demand in the State is usually less by 15 to 20% on the demand during summer months. Also, KSEBL is constrained to schedule about 450to 600MW of must run hydro to minimize the spill.
- (v) The liabilities due to the stranded capacity arising out of opportunistic behavior of consumers availing open access would be loaded in the retail tariff of general consumers who are not beneficiaries of open access. In view of this additional liability in retail tariff, Cross subsidy surcharge and additional surcharge may be imposed on the open access consumers.
- (vi) The cross subsidy surcharge now prevailing in the state for open access consumers as per the order of Hon'ble Commission order dtd.30-9-2014 in OP 9/2014 are negligible and nil for majority of consumers. KSEBL humbly request Hon'ble Commission for considering the petition filed by KSEBL and approve cross subsidy surcharge and additional surcharge for open access consumers as per tariff policy 2016 in the interest of the common consumers of this State.

(4) KSEB Ltd has further submitted that,

- (i) The total demand of the state is monitored at SLDC and the typical variation of consumption of electricity over the day is depicted in a load curve. The consumption pattern varies widely with weather conditions. It can be seen that with the onset of monsoon, the demand has drastically got reduced and the reduction during night off peak hours (00:00hrs to 06:00hrs and 23:00hrs to 24:00hrs) and during day time (06:00hrs to 18:00hrs) is comparatively more than the reduction in demand during peak hours. This is a reflection in the utilization pattern of electricity by the consumers in the state. The balancing of the reduction in consumption by the domestic consumers is to be obtained from the firm power consumption by the industries. However, the purchase by such consumers from open market more during the period other than the peak hours is contributing more to the imbalance in the requirement and availability of power.
- (ii) The schedule of power from external sources on open access and its variations over and above the schedule is possible only as per the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters [DSM])

Regulations, 2014. Hon'ble CERC has imposed the following limits on deviation volume as per the DSM regulations.

"The over-drawals / under drawals of electricity by any buyer during a time block shall not exceed 12% of its scheduled drawal or 150 MW, whichever is lower, when grid frequency is "49.70Hz and above". The charges for deviation for under drawal by the buyer in excess of the volume limit specified above shall be zero.

ii. No over drawal of electricity by any buyer shall be permissible when grid frequency is "below 49.70 Hz".

- (iii) Further, the DSM regulation provides penalty for over drawal at low frequency conditions (frequency less than 49.7Hz) and under drawal at frequency more than 50.10Hz. By virtue of the responsibility cast on the SLDC vide section 32 of the electricity act 2003, measures are to be taken by SLDC to avoid such penalties.
- (iv) The purchase of KSEBL comprises of LTA, MTOA and STOA. The purchase by the open access customers at present is only through the day ahead market of power exchange. The bids are placed in the exchange between 10:00hrs and 12:00hrs and the power purchase is effected depends on the rate quoted by them. The purchase made by the open access customers is dependent on the price of power discovered in the exchange. Hence the availability of such traded power will be revealed by around 17:00hrs on normal days. Till then, SLDC will have no idea on the requirement of power for the next day.

(5) Further, KSEB Ltd has prayed that,

- (i) *Permit SLDC to deny the application for NOC by the consumers till the metering infrastructure and the visibility to SLDC are fully provided by the consumers who are opting as open access customers.*
- (ii) *Approve cross subsidy surcharge and additional surcharge for open access consumers considering the petition filed by KSEBL in the interest of the common consumers of this State with retrospective effect so that the common consumers are not affected, in line with the provisions of the Tariff policy.*
- (iii) *Permit SLDC to issue curtailed NOC to those open access customers, who comply with all requirements as provided in the regulations and detailed procedure, during the low demand period in the state in proportion to the expected curtailment made in the schedules of KSEBL so that the discrimination against the distribution licensee does not occur.*

(iv) *Implement appropriate DSM mechanism so that the open access customers faithfully project their demand and the purchase of power from open market and from KSEL separately and adhere to it.*

15. The petitioner HT&EHT association submitted the written comments on 22.9.2016, on the submission of KSEB Ltd. The summary of the comments of the petitioner is given below.

(i) Most of the submissions of KSEBL are merely statement of facts which are not at all relevant to the present context of “Denial of NOC for Open Access”. It was also submitted that the arguments in the KSEBL’s submission are different from the reasons stated by SLDC for denying NOC for Open Access.

(ii) As per the provisions of the Electricity Act-2003, the ring fencing of the SLDC has to done.

(iii) Regarding the authority of the Commission in matters related to interstate open access, the association submitted that as per the scope of the open access regulation, 2013;

Scope: - These regulations shall apply to connectivity and open access for use of intra-state transmission system and distribution systems in the State of Kerala, including when such system is used in conjunction with inter-State transmission system.

Therefore the collective transaction of open access by embedded consumers are coming under the preview of the above regulation and the Commission is the final authority regarding the matters related to open access in Kerala

(iv) The reasons stated in letter no. OA/ 2016-17/1449 dated 19.07.2016 issued by Chief Engineer, System Operation denying NOC for Open Access are:

(1) Non compliance of section 11(4) of the KSERC Connectivity and Open Access Regulations, 2013 and clause 12.4 and clause 15.5 of the detailed procedure for grant of connectivity and open access in intrastate transmission system approved by the Hon’ble KSERC.

(2) Prevailing very low demand in Kerala Grid leading to violation of clause 5.4 of IEGC

As extracted above, the denial of open access was done as per the provisions of the Open Access Regulations, 2013 notified by the KSERC.

(v) The argument that the dispute is to be settled by co-ordination committee is also not maintainable because it is the duty of the KSEBL

to constitute such a committee. Till such a forum is constituted, the Commission can take up the responsibility of dispute resolution as aggrieved persons cannot wait till formation of the committee. Also, Commission is the appellate body as per the regulation for dispute resolution.

- (vi) The petition indicated by KSEBL is on a matter of “Non Compliance of Regulation 8 (6) of Central Electricity Regulatory Commission (Sharing of Interstate Transmission Charges and losses) Regulations-2010 and SRLDC, NLDC, CTU and SRPC are involved. Hence the issues raised are totally unrelated, irrelevant and no way connected with the issue of denial of NOC to Open Access Consumers in Kerala.
- (vii) KSEBL has submitted their written statements as a single entity. The relevant part from the Interim Order is extracted below.

19. (3) SBU (Distribution), SBU (Transmission) and SLDC under KSEB Ltd are granted time up to 19.08.2016 for filing their written statements for consideration of the Commission while issuing the final orders.

KSEBL has not complied with the directions of Commission that SBU (Distribution), SBU (Transmission) and SLDC under KSEB Ltd are to submit their views, but the submission is made as a single entity. The association requested that this issue may be suitably dealt with.
- (viii) The petitioner submitted that day ahead market is an opportunity market and the market price and availability varies on slot basis depending on demand and supply. More than 4000 Open Access consumers are availing power from power exchange in the country and around 120 to 150 MU are traded in a day while in Kerala only 14 Open Access consumers are participating in day ahead power purchase and the maximum energy transacted is around 1.25MU on an average and the maximum being 1.7 MU/day, which is less than 2.2% of Kerala requirement.
- (ix) All the Open Access consumers in Kerala are embedded consumers. The pattern of electricity consumption of all the open access consumers is known to KSEBL and SLDC.
- (x) As per regulation 11 Kerala State Electricity Regulatory Commission (Connectivity and Intrastate Open Access) Regulations, 2013, it is very clear that the installation of Special Energy Meter (SEM) and RTU is the responsibility of the distribution licensee. However, the Open Access consumers agreed to install RTU with consumer’s meter as requested by KSEBL. The procedure for installation of RTU is in progress.
- (xi) As per regulation 36, installation of RTU is mandated only after the same is specified by the Commission. Till date, no order has been issued by

the Commission regarding the installation of RTU. Hence the arguments raised by KSEBL regarding installation of RTU are not relevant and the petitioner requested the Commission to fix a time frame.

- (xii) The association submitted that the open access consumption for the current year is mere 1.48 % of the total. Whereas the % OA of the total consumption in Gujarat is 7%, Rajasthan 10%, Andhra Pradesh 5% and in Panjab, it went up to 20% in June 2016. It can be seen that compared to other States share of Open Access in Kerala is very less. The apprehensions raised by KSEBL in this regard are totally baseless. Also, there are only 14 Open access consumers and it is likely to remain the same. The number of Open Access consumers compared to total number of HT & EHT consumers is insignificant. KSEBL's apprehensions in this regard are baseless.
- (xiii) The Open Access is mandated as per Electricity Act 2003. The fluctuation in demand and consumption due to drawl of power by open access consumers is a pan India phenomena. It is managed by all other states in India, even by states having an open access share of up to 20%. Managing of fluctuations in demand is the responsibility of the distribution licensee. It has been observed that, the share of open access power vary from 0.49 to 2.18%. This is quite low compared to other states.
- (xiv) The Electricity Act 2003 envisages a dynamic energy market in India through Open Access. It is quite wrong to describe the variation in drawl of Open Access power as "erratic behaviour". The wording reflects the reluctance of KSEBL to accept the Open Access concept. Further, the total of the power drawn from KSEBL and power exchange remains the same.
- (xv) The association stated that the root cause of problems related to Open Access is due to dealing of Open Access related matters by Transmission, Distribution and SLDC wings in a combined manner. It was requested to intervene in the matter and direct each entity to perform its duties as envisaged in Electricity Act 2003.
- (xvi) Without prejudices to the earlier statement that installation of SEM and RTU is the responsibility of distribution licensee, the petitioner stated that there was no delay from the part of Open Access consumers. The procedure for procurement of RTU as per KSEBL approved specification has been initiated by all the consumers.
- (xvii) The quantum of Open Access power was in the range of 0.13 to 2.18%. Kerala's peak to off peak demand variation is almost 150 % to 70 % of the average daily demand and hence SLDC should have easily managed such an insignificant variation. The surrender of contracted power is due to

lack of proper planning and demand management of KSEBL and it cannot be passed on to the 14 Open Access consumers. Non - discriminatory Open Access is a facility provided in Electricity Act 2003 to encourage competition and improve efficiency in power sector. The distribution licensee has to find out ways and means to manage the dynamics in the market.

- (xviii) The KSEBL has not submitted any tariff petition since 2014. This is not the right context to raise the issue of Cross Subsidy and Additional Surcharge through this submission. This issue cannot be linked to denial of NOC for Open Access.
- (xix) All the arguments of KSEBL submission on provision in IEGC 5(4) has already been dismissed by the Commission.
- (xx) The association submitted the following comments on prayer of KSEB Ltd
 - (a) *KSEBL does not have a right to deny NOC for Open Access consumers on the ground of not installing RTU. Installing SEM and RTU is responsibility of licensee. This has been confirmed by the Hon'ble Commission in its Interim Order dated 3rd Aug 2016. The time frame has to be fixed by the Hon'ble Commission.*
 - (b) *Determination of Open Access charges cannot be linked with denial of NOC for Open Access.*
 - (c) *SLDC has to issue NOC to Open Access consumers strictly as per the provisions of KSERC Open Access regulations. We request Hon'ble Commission not to permit the intention of KSEBL to curtail Open Access facility to consumers.*
 - (d) *The Open Access consumers are already submitting all the data relating to Open Access to SLDC. As embedded consumers we are paying demand charge and are entitled to draw power from distribution licensee up to contract demand limit.*

Analysis and Decision

16. The Commission has examined in detail the issues raised in the petition, written submission by KSEB Ltd, reply of HT&EHT association to the submissions of KSEB Ltd and the arguments during the hearing. The respondent has raised an issue relating to the jurisdiction of the Commission to entertain these petitions. In view of the provisions in the Open Access Regulations, 2013 and the judgment of the Hon'ble High Court in Writ Petition No. 25043/2016, it is found that the Commission has the jurisdiction and duty to examine and decide the issues raised in the petitions.

17. The open access and related issues are governed by the provisions in the Electricity Act 2003, the KSERC (Connectivity and Intra-state Open Access) Regulations 2013, the Detailed Procedure for Grant of Connectivity and Open Access in Intra-state Transmission System as approved by KSERC and the CERC (Open Access in Inter-state Transmission) Regulations, 2008. The relevant statutory and regulatory provisions are quoted below, -

(i) Section 2(47) of the EA-2003

47) “ open access” means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;

(ii) Section 32 of the Electricity Act-2003 (Functions of the State Load Despatch Centers)

32. (1) The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.

(2) The State Load Despatch Centre shall -

(a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State;

(b) monitor grid operations;

(c) keep accounts of the quantity of electricity transmitted through the State grid;

(d) exercise supervision and control over the intra-state transmission system; and

(e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.

(3) The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission.

(iii) Section 39 (2)(d) of the Electricity Act, 2003

(d) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges ; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the State Commission:

Provided also that such surcharge may be levied till such time the cross subsidies are not eliminated:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the State Commission.

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant.

(iv) Section 42(2) to 42(4) of the Electricity Act-2003

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that such open access may be allowed before the cross subsidies are eliminated on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission :

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee :

Provided also that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access .

(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be

specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

(v) As per section 43 of the Electricity Act, 2003

43. (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate commissioning or within such period as may be specified by the Appropriate Commission.

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission .

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

(vi) Regulation 3(14) of ‘Open Access Regulations, 2013’

“embedded open access consumer” or in short ‘embedded consumer’ means 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;

(vii) Regulation 11 of ‘Open Access Regulations, 2013’.

11. Eligibility for open access and conditions to be satisfied.- (1) Subject to the provisions of these regulations and with due regard to the operational constraints and such other relevant matters, the licensees, generating companies including persons who have established captive generating plants, generation plants, electricity traders and consumers shall be eligible for open access to the intra-state transmission system

of the State Transmission Utility or of any transmission licensee other than STU on payment of transmission and other charges as may be determined by the Commission from time to time.

(2) Subject to the provisions of these regulations and with due regard to the operational constraints and such other relevant matters, the licensees, generating companies including persons who have established a captive generating plant, generation plants, electricity traders and consumers shall be eligible for open access to distribution system of a distribution licensee on payment of the wheeling charges and other charges if any, as may be determined by the Commission from time to time:

Provided that the open access customers using intra-state transmission system and distribution system will also be subjected to the load shedding imposed by the distribution licensee unless they are connected through a dedicated feeder emanating from a grid substation.

(3) A person having outstanding dues against him for more than two months billing of transmission or distribution licensee at the time of application shall not be eligible for open access:

Provided that, the amount payable to transmission or distribution licensee will not be considered as outstanding dues if a judicial authority or any other competent authority has passed an order staying the realization of the said amount.

(4) Before granting open access, the nodal agency shall ensure that special energy meters are installed and maintained in accordance with the provisions of The Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from time to time and remote terminal units (RTU) are installed and maintained, as stipulated in the detailed procedure, to facilitate real time monitoring by SLDC.

Provided that, the distribution licensee shall install special energy meters and remote terminal units in the premises of the applicants for open access within the time frame as stipulated in the detailed procedure.

(5) The applicant and the distribution licensee shall comply with the provisions of the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 as amended from time to time.

- (viii) Regulation 16(5) & 16(6) of the Open Access Regulations, 2013, deals with the procedure for grant of open access to inter-state transmission system in respect of a consumer connected to a distribution system.

16(5) In respect of a consumer connected to a distribution system seeking inter-State long-term or medium-term or short-term open access, the SLDC, before giving its consent shall obtain the consent of the distribution licensee concerned:

Provided that, in the case of short-term open access, the said distribution licensee shall convey its consent or otherwise within three working days of receipt of request of the applicant.

Provided further that, any applicant connected to the intra-state transmission or distribution system can utilise the inter-State open access, only after availing intrastate open access and SLDC shall, before giving consent to the CTU, ensure that such intra-state open access has been approved for the corresponding periods.

16(6) In respect of a consumer connected to a distribution system seeking inter- state short-term open access, the SLDC, before giving its consent and standing clearance for collective transactions to the RLDC as required under the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 as amended from time to time, shall require the consumer to submit the consent of the distribution licensee concerned:

Provided that any applicant connected to the state transmission or distribution system can utilise the inter-State open access only after availing intra-state open access and the SLDC shall, before giving consent to the CTU, ensure that such intra-state open access has been approved for the corresponding periods.

(ix) Regulation 31(1) of ‘open access regulation 2013’

31. Scheduling for embedded open access consumers. - (1) Scheduling shall be done in accordance with the relevant provisions of IEGC for inter-State transactions and in accordance with the relevant provisions of the State Grid Code for intra-state transactions.

(x) Regulation 36 of ‘open access regulation 2013’

36. Metering. - (1) All generating stations irrespective of capacity and all open access customers including embedded consumers shall be provided with special energy meters (SEM) by the State Transmission Utility or the distribution licensee, as the case may be:

Provided that, in case an open access customer or embedded consumer elects to purchase his own special energy meter, he shall purchase the same from the firms empanelled by the STU as specified in The Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from time to time:

Provided further that the Commission, in consultation with the STU or the distribution licensees, may exempt small generators of capacity less than or equal to 1 MW and consumers with contract demand less than or equal to 1 MVA from this condition as and when found necessary.

(2) *Special Energy Meters installed shall be capable of time-differentiated measurements for time-block-wise active energy and voltage differentiated measurement of reactive energy in accordance with The Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from time to time and the provisions of State Grid Code and shall have remote terminal unit (RTU) to facilitate real time monitoring by the SLDC as and when specified by the Commission.*

(3) *Special Energy Meters shall be open for inspection by any person authorized by the STU or the State Load Despatch Centre or the distribution licensee as the case may be.*

(4) *All open access customers, STU, transmission licensee other than STU, distribution licensee and generating company shall abide by The Central Electricity Authority (Installation and Operation of Meters) Regulations 2006 as amended from time to time.*

- (xi) The paragraph 17 of the ‘detailed procedure for grant of Connectivity and Open Access in intra state transmission system’ approved by the Commission deals with ‘Processing of Applications for inter-state Open Access’ which is extracted below.

17. Processing of Application for inter-state open access.

17.1

17.2 The procedure for grant of short-term open access involving inter State transmission system shall be as per the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 or its statutory re- enactments as amended from time to time.

17.3

17.4 In the case of short-term open access, the STU shall convey its consent or otherwise as per the provision of Central Electricity Regulatory (Open Access in Inter- State Transmission) Regulations, 2008 or its statutory re-enactments as amended from time to time.

17.5 In respect of a consumer connected to a distribution system seeking inter-State long-term or medium-term or short-term open access, the SLDC, before giving its consent shall obtain the consent of the distribution licensee concerned:

Provided that, in the case of short-term open access, the said distribution licensee shall convey its consent or otherwise within three working days of receipt of request of the applicant.

Provided further that, any applicant connected to the intra-state transmission or distribution system can utilise the inter-State open

access, only after availing intra- state open access and SLDC shall, before giving consent to the CTU, ensure that such intra-state open access has been approved for the corresponding periods.

17.6 In respect of a consumer connected to a distribution system seeking inter-state short-term open access, the SLDC, before giving its consent and standing clearance for collective transactions to the RLDC as required under the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 as amended from time to time, shall require the consumer to submit the consent of the distribution licensee concerned:

Provided that any applicant connected to the state transmission or distribution system can utilise the inter-State open access only after availing intra-state open access and the SLDC shall, before giving consent to the CTU, ensure that such intra-state open access has been approved for the corresponding periods.

(xii) Regulation 8 of the CERC (Open access in inter-state transmission) Regulation, 2008

Concurrence of State Load Despatch Centre for bilateral and collective transactions

8. (1) Wherever the proposed bilateral transaction has a State utility or an intra-State entity as a buyer or a seller, concurrence of the State Load Despatch Centre shall be obtained in advance and submitted along with the application to the nodal agency. The concurrence of the State Load Despatch Centre shall be in such form as may be provided in the detailed procedure.

(2) When a State utility or an intra-State entity proposes to participate in trading through a power exchange, it shall obtain a “no objection” or a prior standing clearance from the State Load Despatch Centre in such form as may be prescribed in the detailed procedure, specifying the MW up to which the entity may submit a buy or sell bid in a power exchange.

3[(a) For obtaining concurrence or ‘no objection’ or prior standing clearance an application shall be made before the State Load Despatch Centre who shall, acknowledge receipt of the application, either by e-mail or fax, or any other usually recognised mode of communication, within twenty four hours from the time of receipt of the application: Provided that where the application has been submitted in person, the acknowledgement shall be provided at the time of submission of the application. (b) While processing the application for concurrence or ‘no objection’ or prior standing clearance, as the case may be, the State Load Despatch Centre shall verify the following, namely- (i) existence of infrastructure necessary for time-block-wise energy metering and accounting in accordance with the provisions of the Grid Code in force, and (ii) availability of surplus transmission capacity in the State

network. (c) Where existence of necessary infrastructure and availability of surplus transmission capacity in the State network has been established, the State Load Despatch Centre shall convey its concurrence or 'no objection' or prior standing clearance, as the case may be, to the applicant by e-mail or fax, in addition to any other usually recognised mode of communication, within three (3) working days of receipt of the application:

Provided that when short-term open access has been applied for the first time by any person, the buyer or the seller, the State Load Despatch Centre shall convey to the applicant such concurrence or 'no objection' or prior standing clearance, as the case may be, within seven (7) working days of receipt of the application by e-mail or fax, in addition to any other usually recognised mode of communication.]

[(3A) In case the State Load Despatch Centre finds that the application for concurrence or 'no objection' or prior standing clearance, as the case may be, is incomplete or defective in any respect, it shall communicate the deficiency or defect to the applicant by e-mail or fax, in addition to any other usually recognised mode of communication, within two (2) working days of receipt of the application: Provided that in cases where the State Load Despatch Centre has communicated any deficiency or defect in the application, the date of receipt of application shall be the date on which the application has been received duly completed, after removing the deficiency or rectifying the defects, as the case may be.]

4. *[In case the application has been found to be in order but the State Load Despatch Centre refuses to give concurrence or 'no objection' or prior standing clearance as the case may be, on the grounds of non-existence of necessary infrastructure or unavailability of surplus transmission capacity in the State network, such refusal shall be communicated to the applicant by e-mail or fax, in addition to any other usually recognized mode of communication, within the period of three (3) working days or seven (7) working days, as the case may be, from the date of receipt of the application, specified under clause (3), along with reasons for such refusal: Provided that where the State Load Despatch Centre has not communicated any deficiency or defect in the application within two (2) days from the date of receipt of application or refusal or concurrence or 'no objection' or prior standing clearance, as the case may be, within the specified period of three (3) working days or seven (7) working days, as applicable, from the date of receipt of the application, concurrence or 'no objection' or prior standing clearance, as the case may be, shall be deemed to have been granted: Provided further that where concurrence or 'no objection' or prior standing clearance, as the case may be, is deemed to have been granted by the State Load Despatch Centre, the applicant while making application 17[] shall submit to the nodal agency an affidavit (in the format provided in the detailed procedure), duly notarised, declaring that - (a) the State Load Despatch Centre has failed to convey any*

deficiency or defect in the application or its refusal or concurrence or 'no objection' or prior standing clearance, as the case may be, within the specified time,

(b) necessary infrastructure for time-block-wise energy metering and accounting in accordance with the provisions of the Grid Code in force, is in place; and enclosing with the affidavit - (i) a copy of the complete application after removal of deficiency or rectification of defects, if any communicated, made to the State Load Despatch Centre for seeking concurrence or 'no objection' or prior standing clearance, as the case may be, and (ii) a copy of the acknowledgement, if any, given by the State Load Despatch Centre, or any other evidence in support of delivery of the application to the State Load Despatch Centre.]

(xiii) The regulation 5.4.2 of Indian Electricity Grid Code, (IEGC) is extracted below;

5.4.2 Demand Disconnection

(a) SLDC/ SEB/distribution licensee and bulk consumer shall initiate action to restrict the drawal of its control area ,from the grid, within the net drawal schedule whenever the system frequency falls to 49.7 Hz

(b) The SLDC/ SEB/distribution licensee and bulk consumer shall ensure that requisite load shedding is carried out in its control area so that there is no overdrawl when frequency is 49.5 Hz. or below.

c) Each User/STU/SLDC shall formulate contingency procedures and make arrangements that will enable demand disconnection to take place, as instructed by the RLDC/SLDC, under normal and/or contingent conditions. These contingency procedures and arrangements shall regularly be / updated by User/STU and monitored by RLDC/SLDC. RLDC/SLDC may direct any User/STU to modify the above procedures/arrangement, if required, in the interest of grid security and the concerned User/STU shall abide by these directions.

d) The SLDC through respective State Electricity Boards/Distribution Licensees shall also formulate and implement state-of-the-art demand management schemes for automatic demand management like rotational load shedding, demand response (which may include lower tariff for interruptible loads) etc. before 01.01.2011, to reduce overdrawl in order to comply para 5.4.2 (a) and (b) . A Report detailing the scheme and periodic reports on progress of implementation of the schemes shall be sent to the Central Commission by the concerned SLDC.

e) In order to maintain the frequency within the stipulated band and maintaining the network security, the interruptible loads shall be arranged in four groups of loads, for scheduled power cuts/load shedding, loads for unscheduled load shedding, loads to be shed through under frequency relays/ df/dt relays and loads to be shed under any System Protection Scheme identified at the RPC level. These loads shall

be grouped in such a manner , that there is no overlapping between different Groups of loads. In case of certain contingencies and/or threat to system security, the RLDC may direct any SLDC/ SEB/distribution licensee or bulk consumer connected to the ISTS to decrease drawal of its control area by a certain quantum. Such directions shall immediately be acted upon. SLDC shall send compliance report immediately after compliance of these directions to RLDC.

f) To comply with the direction of RLDC, SLDC may direct any SEB/ distribution licensee/bulk consumer connected to the STU to curtail drawal from grid. SLDC shall monitor the action taken by the concerned entity and ensure the reduction of drawal from the grid as directed by RLDC.

g) RLDCs shall devise standard, instantaneous, message formats in order to give directions in case of contingencies and /or threat to the system security to reduce overdrawl by the bulk consumer , SLDC/ State at different overdrawal conditions depending upon the severity of the overdrawal. The concerned SLDC shall ensure immediate compliance with these directions of RLDC and send a compliance report to the concerned RLDC.

h) All Users, SLDC/ SEB/distribution licensee or bulk consumer shall comply with direction of RLDC/SLDC and carry out requisite load shedding or backing down of generation in case of congestion in transmission system to ensure safety and reliability of the system. The procedure for application of measures to relieve congestion in real time as well as provisions of withdrawl of congestion shall be in accordance with Central Electricity Regulatory Commission (Measures to relieve congestion in real time operation) Regulations, 2009.

i) The measures taken by the User's, SLDC SEB/distribution licensee or bulk consumer shall not be withdrawn as long as the frequency remains at a level lower than the limits specified in para 5.2 or congestion continues, unless specifically permitted by the RLDC/SLDC.

18. The Commission has examined in detail all the submission made by the appellants and the respondents in the light of the provisions in the Electricity Act 2003 in providing non-discriminatory open access to the transmission system of the State Transmission Utility and distribution system of the licensee, the provisions in the Open Access Regulations, 2013, the detailed procedure for grant of connectivity & open access in intra-state transmission system approved by the Commission on 21-04-2015 and the CERC (Open Access in Inter State Transmission) Regulation, 2008.
19. The members of the petitioner association are embedded consumers of the KSEB Ltd and they are procuring power from power exchanges under open access through the transmission and distribution system of KSEB Ltd, as and when the electricity price at the power exchanges and other charges payable

by open access consumers including transmission charges, wheeling charges, etc are favourable to them in comparison with the prevailing tariff applicable to them for the electricity supplied by KSEB Ltd.

20. The present issues arose on account of the denial of the petitioner's request for NOC to avail the open access facility for the purchase of power from power exchanges by the Chief Engineer, System Operation as per letter dated 19-07-2016, citing the following reasons.

- (1) *Non compliance of section 11(4) of the KSERC Connectivity and Open Access Regulations, 2013 and clause 12.4 and clause 15.5 of the detailed procedure for grant of connectivity and open access in intrastate transmission system approved by the Hon'ble KSERC.*
- (2) *Prevailing very low demand in Kerala Grid leading to violation of clause 5.4 of IEGC.*

Aggrieved by the action of the Chief Engineer (System Operation), the HT&EHT association filed the present petition with following prayers.

*" 1. To issue direction to KSEBL to maintain the status quo regarding the issue of NOC for Open Access for a period of Three months.
2. On the basis of our petition, we humbly request the Hon'ble commission to hear our submissions and take a judicious approach so that the difficulties encountered by the Open access consumers are eliminated and made consumer friendly."*

21. KSEB Ltd in its reply dated 03-08-2016 has submitted that, the issues raised by the petitioner in the instant petition are the matters to be resolved by Hon'ble CERC and hence the instant petition filed by HT&EHT association are not maintainable. The Commission has examined the submission of the KSEB Ltd on the question of jurisdiction of the Commission to deal with the issues emerging out on denial of NOC for short term open access to the consumers of the HT&EHT association considering the subject transaction as a power conveyance through power exchange. In a similar case in Appeal No.70 of 2015, Hon'ble Appellate Tribunal vide its judgment dated 7th April-2016, has ordered that, the State Commission has jurisdiction to deal with the issues emerging out on denial of short term open access. The relevant portion of the judgment dated 7th April-2016 is extracted below.

"9. After having gone through all the relevant aspects of the present Appeal as stated above, our observations are as under:-

- (i) *On perusal of letter dated 30.04.2014 of the Appellant No. 1 to the Respondent No. 2, it has been noted that the Appellants have dealt*

with the issue in accordance with clause 16(1) of the Intra-State Open Access Regulations, 2011 of the State Commission issued by the State Commission.

- (ii) The Respondent No. 2 is an embedded consumer of the Appellant No.2. Any transaction whether bilateral or collective or Intra-State would not change the position of the Respondent No. 2 as an embedded consumer of the Appellant No. 2. Even if we consider that one to one relation of the buyer and seller of power in respect of the power exchange transaction of Respondent No.2 is not known but the drawl point is known on the day one. Even uncertainty of the delivery point does not make it an Inter-State transmission case in light of the fact that drawal point is well known and the fact that the open access as sought by the Respondent No. 2 is for the use of transmission and distribution system of the State located in the command area of the Appellant No. 2. If the dispute arises for users of Intra-State network in collective transaction, it would fall within the jurisdiction of the respective State Commission within whose jurisdiction the Intra-State network falls.*
- (iii) Having regard to the provisions of Section 32 and 33 of the Electricity Act, 2003 pertaining to the functions of the State Load Despatch Centre and compliance of its directions, this case falls within the ambit of Appellant No. 1 and 2. We have further noted that as per the prevailing Regulations of the State Commission, any dispute arising due to non-issuance of NOC by the Appellants has to be brought before the State Commission which in this case is GERC and for the same reason, the GERC's jurisdiction is attracted.*
- (iv) We are of the considered view that the State Commission was right in dealing with the present case. The State Commission has the jurisdiction in the present case."*

In the above case, The State Load Despatch Centre, Vadorara, is the Appellant No.1, Paschim Gujarat Vij Company Limited is the Appellant No.2, Gujarat Electricity Regulatory Commission, Respondent No. 1 and M/s. Steel cast Limited is a consumer of the Appellant No. 2 having a contract demand of 6,000 KVA and in addition, it has been obtaining Short Term Open Access to purchase power through the power exchange since March, 2013 is the respondent No.2.

22. The above judgment of the Hon'ble APTEL dated 7th April-2016 in Appeal No. 70 of 2015 is squarely applicable to the subject issue on denial of open access by the Chief Engineer (System Operation) on behalf of the SLDC of Kerala. The members of the petitioner association are the embedded consumers of the KSEB Ltd. Further, the Chief Engineer (System Operation) of KSEB Ltd declined

the request of the petitioners for NOC for availing the open access facility for purchasing power from power exchanges citing sub-regulation (4) of Regulation -11 of the KSERC (Connectivity and Intra-state Open Access) Regulation, 2013 notified by this Commission, and clause 12.4 and clause 15.5 of the detailed procedure for grant of connectivity and open access in intra-state transmission system approved by this Commission.

23. KSEB Ltd further submitted that, as per the Regulation-62 of the KSERC (Connectivity and Intra-state Open Access) Regulation, 2013, all the disputes arising under the Open Access Regulations, 2013 shall be decided by the co-ordination committee and the appeal against the decision of the co-ordination committee shall lie before the Commission. The Commission has examined the argument of the respondent KSEB Ltd. The relevant portion of the open access regulation is extracted below.

“ 62. Dispute resolution. - (1) All disputes and complaints arising under these regulations shall be decided by the co-ordination committee constituted as per regulation 54 within a period of thirty days from the date of receipt of application from the concerned party.

(2) Appeal against the decision of the co-ordination committee shall lie before the Commission.

(3)The decision of the Commission shall be final and binding.

The Regulation 54 of the open access regulation, 2013 which deals with the constitution of the co-ordination committee is extracted below.

54. Constitution of co-ordination committee.- The STU shall constitute a coordination committee within one month from the date of notification of these regulations. The co-ordination committee shall have a nominee each of the distribution licensees, transmission licensees and the SLDC. The nominee of the STU shall be the chairperson of the co-ordination committee.”

The Commission has notified the KSERC (Connectivity and Intrastate Open Access) Regulations, 2013 on 10th September-2013. The STU of KSEB Ltd constituted a co-ordination committee as per order No BO(CM)No.2726/2013(K S E B Ltd./TRAC/Open Access/R2/2013) dated 20.12.2013 in accordance with the Regulation-54 of the Open Access Regulations, 2013. Hence the petitioners should have approached the Co-ordination committee as contained in Regulation 62 before filing this petition before the Commission. But the petitioners directly approached this Commission for the resolution of dispute that arose on declining of the NOC for open access by the SLDC of Kerala. The

Commission decided to admit the petition taking a considered view on the issue on the basis of the following facts:

- (i) the appeal against the decision of the co-ordination committee vests with this Commission
- (ii) financial implication on the timely disposal of the petition
- (iii) the judgment dated 29.07.2016 of the Hon'ble High Court of Kerala in Writ Petition No. 25043/2016, directing the Commission to dispose the case within one week.

24. Duly considering the provisions of the Electricity Act-2003, the Open Access Regulations, 2013 and also in view of the judgment of the Hon'ble APTEL dated 7th April-2016 in Appeal No. 70 of 2015, the Commission is of the considered view that, it has the authority and duty to examine and dispose of the present cases.
25. Regarding the issue raised by the KSEB Ltd on not installing the remote terminal units as per sub regulation (4) of Regulation-11 of the Open Access Regulations, 2013 and denial of NOC for open access by invoking paragraph 5(4) of the IEGC, the Commission vide paragraph-17 of the interim order dated 03-08-2016 stated as follows.

“17. Further, as per the sub regulation (4) of the Regulation 11 of the Open access Regulations, 2013, it is the responsibility of the KSEB Ltd as the distribution licensee to provide special energy meters and Remote Terminal Units (RTU) to the embedded consumers who avail open access. Since the KSEB Ltd as the distribution licensee and STU has already granted NOC, as their systems are capable of providing open access, there is no valid reason for the denial of NOC by SLDC invoking paragraph 5(4) of the IEGC. It should also be noted that paragraph 5 (4) of the IEGC has no application in this context.”

The statement stands still relevant and hence issue is settled accordingly.

26. KSEB Ltd has raised certain other issues such as the financial loss due to granting open access and the determination of cross subsidy surcharge and additional surcharge. In this regard the provisions in para 8.5 of the Tariff Policy, 2016, which is quoted hereunder, should also be taken note of.

8.5 Cross-subsidy surcharge and additional surcharge for open access

8.5.1 National Electricity Policy lays down that the amount of cross-subsidy surcharge and the additional surcharge to be levied from

consumers who are permitted open access should not be so onerous that it eliminates competition which is intended to be fostered in generation and supply of power directly to the consumers through open access. A consumer who is permitted open access will have to make payment to the generator, the transmission licensee whose transmission systems are used, distribution utility for the wheeling charges and, in addition, the cross subsidy surcharge. The computation of cross subsidy surcharge, therefore, needs to be done in a manner that while it compensates the distribution licensee, it does not constrain introduction of competition through open access.

A consumer would avail of open access only if the payment of all the charges leads to a benefit to him. While the interest of distribution licensee needs to be protected it would be essential that this provision of the Act, which requires the open access to be introduced in a time-bound manner, is used to bring about competition in the larger interest of consumers.

SERCs may calculate the cost of supply of electricity by the distribution licensee to consumers of the applicable class as aggregate of (a) per unit weighted average cost of power purchase including meeting the Renewable Purchase Obligation; (b) transmission and distribution losses applicable to the relevant voltage level and commercial losses allowed by the SERC; (c) transmission, distribution and wheeling charges up to the relevant voltage level; and (d) per unit cost of carrying regulatory assets, if applicable.

From the above policy guidelines it can be seen that the consumer who avails open access will definitely derive certain financial benefits. But it cannot be prevented by the licensee or by the Commission, since the non-discriminatory open access and the benefits therefrom are the statutory rights of the consumers. The Commission is bound to protect the interest of the consumers and the interest of the distribution licensees. The issues relating to cross subsidy surcharge and additional surcharge are to be decided by the Commission while determining tariff and other miscellaneous charges. The Commission would take appropriate decision in the applications filed, if any, by KSEB Ltd in this regard, in accordance with the provisions of the Electricity Act-2003, National Tariff Policy, 2016, KSEB (Terms and Conditions for Determination of Tariff) Regulations, 2014 and other relevant regulations in force.

27. The Commission vide the interim order dated 3-08-2016 had ordered as follows.

In compliance with the directions of the Hon'ble High Court in its judgment dated 29.07.2016, in Writ Petition No. 25043/2016, the Commission hereby issues the following interim orders,-

- (1) The orders issued by the Chief Engineer (System Operations) KSEB Ltd denying the NOC for Short Term Open Access to the petitioners in the Writ Petition are hereby quashed and the applications already submitted by them shall be considered afresh and orders issued on or before 06.08.2016.*
 - (2) The orders issued by the Chief Engineer (System Operations) KSEB Ltd denying the NOC for Short Term Open Access to the other embedded consumers are also quashed and the applications already submitted by such consumers shall also be considered afresh and orders issued on or before 06.08.2016.*
 - (3) SBU (Distribution), SBU (Transmission) and SLDC under KSEB Ltd are granted time upto 19.08.2016 for filing their written statements for consideration of the Commission while issuing the final orders.*
28. It has been reported that KSEB Ltd has already complied with the interim order of the Commission dated 03.08.2016 and granted NOC for short term open access to the members of the petitioner HT&EHT association and to M/s Indsil Hydro Power and Manganese Ltd, and hence the issues raised in the petitions have become infructuous since they have already been mitigated and settled. It has also been reported that KSEB Ltd has already constituted the Co-ordination Committee as per BO (CM) No.2726/2013/(KSEB/TRAC/Open Access/R2/2013) dated 20.12.2013. But for the directions given by the Hon'ble High Court in its judgment in Writ Petition No. 25043/2016, the petitioners ought to have approached the Co-ordination Committee for the redressal of their grievances.

Order of the Commission

29. Duly considering the issues raised by the petitioners, arguments of the KSEB Ltd, the provisions of the Electricity Act-2003, KSERC (Connectivity and Inter-state Open Access) Regulations, 2013 as well as other relevant regulations and the provisions in Tariff Policy, 2016, the Commission hereby orders that,-
- (1) The denial by the Chief Engineer (System Operations), KSEB Ltd as per his letter No.CESO/EELDII/Inter-State OA/2016-17/1449 dated 19.07.2016, of the NOC to avail open access facility for the purchase of power from power exchanges, by M/s Carborandum Universal Ltd, and other members of the petitioner association, is not in order. Hence the same is set aside.

- (2) The denial by the Chief Engineer (System Operations), KSEB Ltd as per his letter No.CESO/EELDII/Inter-State OA/2016-17/1451 dated 19.07.2016, of the NOC to avail open access facility for the purchase of power from power exchanges, by M/s Indsil Hydro Power and Manganese Limited, is not in order. Hence the said order is set aside.
- (3) KSEB Ltd is directed to process the applications for open access and to take decisions thereon strictly in accordance with the relevant statutory provisions, regulations and policy guidelines.
- (4) The petitioner association and M/s Indsil Hydro Power and Manganese Limited are directed to prefer such complaints before the Co-ordination Committee hereafter.

The petitions are disposed of with the above findings and directions and it is ordered accordingly.

Sd/-
K. Vikraman Nair
Member

Sd/-
S. Venugopal
Member

Sd/-
T.M. Manoharan
Chairman

Approved for issue

Santhosh Kumar.K.B
Secretary