

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: Shri. K.Vikraman Nair, Member
Shri. S. Venugopal, Member

O.P. No.2/2017

In the matter of : **Dispute with KSEB relating to non-payment of invoice dated 29-07-2016 raised by the petitioner (Generator) for banked energy**

Petitioner : M/s Indsil Hydro Power and Manganese Limited,
Indsil House, T.V. Samy Road (West),
R.S. Puram, Coimbatore.

Respondent : Kerala State Electricity Board Limited, (KSEB Ltd)
Thiruvananthapuram.

Petitioner represented by : Sri. Joseph Kodianthara, Sr. Advocate
Sri. Rajan Jose, M/s INDSIL
Sri. Antappan, M/s INDSIL

KSEB Ltd represented by : Sri. Joseph . V. K, Chief Engineer, KSEB Ltd
Sri. Bipin Sankar, Deputy CE, TRAC, KSEB Ltd
Sri. K G P Namboothiri, EE, TRAC, KSEB Ltd
Smt. Latha S.V, AEE, TRAC
Sri. Sivakumar D, AEE, Commercial
Sri. Anoop Mathew, SA, TRAC

Order dated 02.06.2017

1. M/s Indsil Hydro Power and Manganese Limited (herein after referred as the petitioner) filed a petition before the Commission on 29-12-2016, in the matter of Dispute with KSEB relating to non-payment of invoice dated 29-07-2016 raised by the petitioner (Generator) for banked energy. The summary of the issues raised in the petition is given below.
 - (i) The petitioner is an Extra High Tension Consumer manufacturing Silico Manganese, Ferro Silicon etc. at Pallatheri, Palakkad District.

- (ii) As part of the State Government policy G.O (Ms) No. 23/90/PD dated 7.12.1990 and G.O (Ms) No. 5/92/PD dated 12.3.1992, on setting up of Small/ Mini/ Micro Hydel Schemes by private agencies, the Government has allotted the 21 MW Hydro Electric Project at Kuthungal in Idukki District to the petitioner, for their captive use. The first unit was commissioned on 15th May 2000. An agreement was executed between the petitioner and KSEB on 30-12-1994, regarding the construction, commissioning, operation and maintenance, adjustment of the captive consumption, banking etc. The clause-11 of the agreement deals with adjustment of the generation from the Kuthungal plant against the captive consumption, banking of the excess generation, its adjustment etc. The clause-11 of the agreement is extracted below.

11. *If the energy in excess of the requirement of the Company is generated from the project during one accounting year is not utilized by the Company and their associates during that accounting year, the Company may sell the excess banked energy to KSEB. The sale shall be deemed to be effected at the EHT terminals of the KSEB where the power generated by the Company is fed into the KSEB grid. The energy fed into the KSEB grid less banking commission, royalty and/or other levies shall be deemed to be the energy sold to the KSEB. The wheeling charge and loss towards transmission and distribution shall not be taken into account to determine the energy sold. The rate at which the KSEB shall pay to the company for such sale will be at the rate at which the KSEB sell the energy to the EHT consumers in the same voltage clause at which the KSEB receives the energy from the company. The KSEB shall not pay to the Company for the maximum demand component of the energy sold to KSEB. Under no circumstances shall the Company be entitled to sell or transfer any excess energy or any energy produced from the project to any party other than the KSEB and their associates. The accounting and billing of the energy fed into the grid by the Company and/or supplied by KSEB to the company for operating its factories, if any, in Kerala will be settled on monthly basis. The year of accounting will be reckoned from 1st of July to 30th June. In the case of supply or receipt made in LT lines of the Company the charges for losses will be extra as stipulated by the KSEB. If the energy banked is not utilized by the Company and their associates during one accounting year, it shall not be carried over to the next accounting year and shall be treated as lapsed. The Company has however the option to sell the excess energy to KSEB on the terms specified in the agreement. Otherwise, the company has no claim over the energy banked."*

- (iii) The Commission vide the order dated 7th August 2013 in OP No. 30/2012, had endorsed the accreditation granted by the state agency ANERT, as per the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy) Regulations, 2010, to the Kuthungal power plant of the petitioner. The sub paragraph (2)(c) and (3) of the order dated 7th August 2013 is extracted below.

“c) The generator shall have the option to sell the excess energy in any accounting year to KSEB as provided in the Agreement ‘at a price not exceeding the average pooled cost of power purchase of KSEB as per clause (c) of sub regulation (1) of regulation 5 of the CERC REC regulations dated 14.1.2010 read with its amendment dated 29.09.2010.

(3) The generator shall execute an undertaking in stamp paper agreeing to the above conditions before the state agency ANERT within one month under intimation to KSEB and the Commission, failing which reporting of injection by the generator by SLDC to the Central Agency will be suspended and the state agency ANERT and Central Agency shall proceed with action to revoke accreditation and registration as per CERC regulations. This undertaking shall form part and parcel of the agreement dated 30.12.1994 between KSEB and M/s. INDSIL.”

- (iv) Pursuant to the above, the petitioner executed an undertaking on 27.8.2013. The invoice for the banked energy was raised strictly at the average pooled cost rate.
- (v) The Central Commission, vide the notification dated 23.03.2016, had amended the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy) Regulations, 2010, and by virtue of the amendment, the Kuthungal power plant became ineligible for participating in the REC scheme from 01-04-2016. Since the Kuthungal plant is ineligible for participating in the REC scheme, the banked energy will have to be billed as per the original clause 11 of the agreement dated 30-12-1994, executed between KSEB and the petitioner.
- (vi) The petitioner, vide its letter dated 29th July 2016 had raised an invoice for Rs 53,06,680/- for the excess banked energy of 10,82,996 units as on 30-06-2016 @ Rs 4.90/unit, at the EHT tariff applicable to the petitioner, as per the clause-11 of the agreement dated 30-12-1994 . However, there was no action/ response from KSEB Ltd. The petitioner representative met the respondent KSEB and the authorities in KSEB orally informed that,

they are in agreement with the aforesaid position emanating consequent to the statutory amendment with effect from 31.03.2016 and that the entitlement of the petitioner despite its ouster from REC scheme will only be to claim the price of banked energy at the average pooled cost of power purchase rate subject to further conditions as aforementioned in the order of the Commission dated 7th August 2013.

(vii) Aggrieved by the stand of KSEB Ltd, the petitioner filed this petition under Section 86(f) of the Electricity Act-2003 with following prayers.

- i. Direct the respondents KSEB to forthwith settle and pay the Petitioner's invoice dated 29.07.2016 in full and accordingly to settle any future invoice for banked energy also strictly in accordance with original clause 11 of the agreement dated 30.12.1994 and uninfluenced and undisturbed by the subsequent directions and undertakings in sub para(3) of the para 53 of the order dated 7th August 2013.
- ii. Pass such other orders as are deemed just and necessary in the facts and circumstance of the case.

2. Subsequently, the petitioner vide the affidavit dated 5th January 2017 filed additional submission on the subject, which is extracted below.

- (i) The petitioner had received a letter dated 22.12.2016 from the respondent KSEB Ltd. The copy of the letter is attached as Annexure to the additional affidavit. In the letter, KSEB raised untenable claim to deny the petitioners entitlement to settle its invoice in question. The petitioner therefore to place on record the letter of the KSEB Ltd dated 22.12.2016 and to challenge the same as part of the main petition before the Commission.
- (ii) The petitioner submitted that, the letter of the KSEB dated 22.12.2016 is illegal and unsustainable. Right of the petitioner to bank energy is at the petitioners desire as per the clause 10 of the agreement dated 30.12.1994. The clause 11 of the agreement dated 30.12.1994, does not in any manner specify or restrict as to what are the contingencies in which the energy in excess of the requirement of the petitioner is generated and banked. KSEB Ltd is liable to pay charge for the energy banked with KSEB Ltd. The fact that the petitioner has purchased energy under the open access or any other issue that has led to the reduction of the petitioners requirement and any resultant excess generation banked is

irrelevant in so far as the liability of KSEB Ltd to pay for the banked energy is concerned. The stand taken by KSEB Ltd in the letter is patently illegal, arbitrary and unsustainable.

- (iii) Strictly without prejudice to the above, if such view of KSEB is permitted which is absolutely alien to , and in fact, contrary to the agreement dated 30.12.1994, in such a situation, the only alternative is to carry forward the banked energy and the allow the petitioner to consume the same as and when the requirement arises in any subsequent year. Suffice to state, KSEB which has admittedly received the banked energy must either pay for the same per the clause-11 of the agreement dated 30.12.1994 or make such energy available as and when the same is required by the Petitioner at any subsequent point of time. The petitioner therefore requested to treat the affidavit dated 05.01.2017 as part of the main petition. It is also prayed that, the relief sought in the main petition be allowed and the letter dated 22.12.2016 of the KSEB Ltd may set aside.
3. The Commission had admitted the petition and forwarded a copy of the petition vide the notice dated 09.03.2017 to KSEB Ltd for their comments. The Commission vide the letter dated 09.03.2017 has directed the petitioner M/s INDISIL Hydro Power and Manganese Ltd, to submit the monthwise details of the energy consumption, energy generation from Kuthungal, power availed through open access and the energy banked with KSEB Ltd, for the last three water years till December 2016, within 15 days from the date of the letter. However, till date the petitioner has not submitted the details.
4. KSEB Ltd, vide the letter No. KSEB/TRAC/KSERC/INDSIL/2016-17 dated 30.03.2017 has submitted the counter affidavit on the petition filed by the petitioner M/s INDISIL Hydro Power and Manganese Ltd. The summary of the counter affidavit of KSEB Ltd is given below.
- (i) The State Government vide the G.O (Ms) No. 23/90/PD dated 7.12.1990, and G.O (Ms) No. 5/92/PD dated 12.3.1992, issued policy guidelines on setting up of small/mini/ micro hydel projects in the State. The main provisions in the policy guidelines in relation to a captive hydro power plant set up by private agencies are listed below.

“

- a. Has to utilize the generation from the captive plant for adjusting its consumption after deducting 12% towards wheeling charges and T&D loss.
 - b. In case energy in excess of the requirement of the agency is generated from the scheme, during one accounting year, such excess energy shall be fed into the state itself at rates to be mutually agreed upon.
 - c. Under no circumstances shall the agency be entitled for the sale/transfer of any excess energy or any energy produced from the plant to any party other than the Government/Board.
 - d. The accounting of the energy fed into the grid and supplied to the company by the Board will be settled on an annual basis, the year being reckoned from 1st of July to 30th June.
 - e. In case the state grid is not in a position to absorb the energy generated from the scheme for any reason the generation from the scheme will have to be temporarily stopped as directed by the Board.”
- (ii) M/s.INDSIL entered into an agreement with KSEB on 30-12-1994 on construction, operation and maintenance including construction of transmission system, evacuation system etc. for the Kuthungal project. The agreement also covers the modalities for excess drawal of power by M/s.INDSIL over their self generation, adjustment of banked energy with KSEB, charging the excess energy fed into the KSEB system from the plant after meeting their internal consumption etc. This agreement is still valid. The policy guidelines issued by GoK in 1990 and 1992 forms part of this Agreement executed. A copy of the agreement executed during 1994 is attached as Annexure-2 to the counter affidavit.
- (iii) As per the clauses 10,11,12 and 13 of the agreement signed between M/s.INDSIL and KSEBL:
- (1) The company can sell the excess banked energy to KSEB only if the energy in excess of the requirement of the Company is generated from the project during one accounting year is not utilized by the Company and their associates during that accounting year.
 - (2) If the energy banked is not utilized by the Company and their associates during one accounting year, it shall not be carried over to the next accounting year and shall be treated as lapsed.
 - (3) The Company has however the option to sell the excess energy to KSEB on the terms specified in the agreement. Otherwise, the company has no claim over the energy banked. There is no provision

in the agreement enforcing KSEBL to purchase excess banked energy. KSEBL can purchase excess power only if KSEBL requires it, the authority to purchase power entirely lies with KSEBL. KSEBL purchase of power is based on merit order principle.

- (4) If the KSEB grid is not in a position to absorb the energy generated from the project for any reason, the generation from the project will have to be restricted to the extent of generation for captive consumption as directed by KSEB. Therefore the company has to appropriately schedule the generation prudently considering their requirement.
- (iv) The project started commercial operation on 01-06-2001. The project was allotted before the commencement of the Electricity Act-2003. As per the clause-13 of the agreement dated 30.12.1994, the total power consumption in the factories of the Company and their associates is inclusive of the power supplied from the KSEB grid as well as the power generated by the Company and fed into the KSEB grid. The net drawal of power from KSEB grid is worked out by deducting the net generation from Kuthungal plant (after the adjustment of 12% towards T&D losses and wheeling charges).
- (v) ANERT has granted REC accreditation for 21 MW Kuthungal plant of the petitioner on 19.12.2011. Subsequently, the Commission vide the order dated 07.08.2013 endorsed the action of the ANERT in granting REC accreditation and issued the following orders.

“a) The energy, if any, banked by M/s. INDSIL with KSEB shall be permitted to be consumed by M/s. INDSIL only in such a way that the banking facility benefit as contemplated in the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 dated 14.01.2010 read with its amendment dated 29.09.2010 is not available to M/s. INDSIL.

b) Carrying over of the excess energy on any day or month shall be allowed as provided in the Agreement dated 30.12.1994 between the generator and KSEB, on a time zone wise basis.

*c) The generator shall have **the option** to sell the excess energy in any accounting year to KSEB as provided in the Agreement ‘at a price not exceeding the average pooled cost of power purchase of KSEB as per clause (c) of sub regulation (1) of regulation 5 of the CERC REC regulations dated 14.1.2010 read with its amendment dated 29.09.2010.*

*(3) The generator shall execute an undertaking in stamp paper agreeing to the above conditions before the state agency ANERT within one month under intimation to KSEB and the Commission, failing which reporting of injection by the generator by SLDC to the Central Agency will be suspended and the state agency ANERT and Central Agency shall proceed with action to revoke accreditation and registration as per CERC regulations. This undertaking shall form part and parcel of the agreement dated 30.12.1994 between KSEB and M/s. INDSIL.
.....”*

- (vi) INDSIL executed an undertaking with ANERT on 27.08.2013, agreeing to the conditions specified in the order. As per the undertaking, the sale rate for the excess energy if any banked with KSEB Ltd is to be charged at the APPC rate. In the year 2014-15, KSEB Ltd had purchased the excess energy at the APPC rate. In view of the REC mechanism availed by the petitioner, KSEB Ltd was also not accounting the energy generated from the Kuthungal plant towards its RPO, though KSEB Ltd has been providing banking facility to INDSIL.
- (vii) From 25-2-2015 onwards, INDSIL started availing open access also for meeting the consumption at their factories at Palakkad even though the provision of 'open access' was not envisaged in the agreement executed between KSEBL and INDSIL in 1994. Till February 2016, the open access availed by INDSIL was up to 30% of the total consumption and the balance was met through banked energy of its own generation from Kuthungal plant short fall if any is met through drawing supply from KSEB Ltd.
- (viii) As per the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (Fourth Amendment) Regulations, 2016, the captive plants commissioned prior to 29-09-2010 is not eligible for REC, since such captive plants are already adequately compensated in terms of savings on tariff because of lesser procurement of power from distribution companies. Accordingly, the Kuthmkal power plant of M/s INDSIL became ineligible for REC with effect from 01-04-2016.
- (ix) Subsequent to the amendments in REC Regulations by CERC, the petitioner started availing more volume of open access for meeting the consumption of their factories at Palakkad, keeping the captive generation

at Kuthungal banked and unutilized. The volume of open access availed by INDSIL has gone above 50% after March 2016 and upto a level of 88% of the total consumption in September-2016.

- (x) The company had a cumulative banked energy of 4.682 MU and 3.322 MU during the months of May and June 2016 (last months of the water year). The petitioner instead of utilizing this banked energy, availed open access to the tune of 3.337MU in May 2016 and 4.087 MU in June 2016 for meeting its consumption. The adjustment of banked energy in the consumption of INDSIL is made as per the request of the petitioner. The copies of the bills raised by the petitioner for the months of April, May and June 2016 are enclosed as Annexure-3. This clearly indicates that the petitioner was purposefully carrying out a process of hidden trading by purchasing low cost power through open access and selling energy to KSEBL at high cost, which the petitioner is not empowered to, as per the statutes and rules and regulations in force. The action of the petitioner is in violation of Section 12 of the Electricity Act, 2003.
- (xi) The actual present cost of generation from Kuthungal plant set up in 2000 for Rs.55 Crores as per the prevailing norms of Hon'ble Commission will come only in the range of 35-40 ps/unit. The petitioner is trying to sell this low cost energy to KSEBL at Rs.4.90/unit to gain undue huge profit. Further, the Clauses 10,11,12 and 13 of the agreement signed between INDSIL and KSEBL specifically states that the company can sell the excess banked energy to KSEB only if the energy in excess of the requirement of the Company is generated from the project during one accounting year is not utilized by the Company and their associates during that accounting year.
- (xii) By exercising such illegal practice, the petitioner banked surplus power to the tune of 10,82,996 units as at the end of June 2016 and raised an invoice of Rs. 53,06,680/- (Rupees Fifty Three Lakhs Six Thousand Six Hundred and Eighty only) at the rate of Rs.4.90/unit vide the letter dated 29-7-2016. The bill issued by INDSIL is illegal. KSEBL is not bound to pay this bill. The sale of banked power to KSEBL as per the agreement is only optional, not mandatory; correspondingly buying of power by KSEBL is also optional. KSEBL need to consider the quantum of energy requirement and cost thereof before making a purchase decision. No correspondence between KSEBL and INDSIL had occurred in respect of sale offer or purchase intimation of excess banked power. There is no written or implied contract in this regard. In the absence of such 'sale

purchase contract' or correspondence/mutual consensus the bill raised by INDSIL is illegal. There is no provision in the agreement for the mandatory purchase of power by KSEBL from Kuthungal plant. The plant is set up solely for meeting the captive requirement of the factories of INDSIL at Palakkad.

- (xiii) As per Clause 11 of the agreement, the unused banked energy of one accounting year, shall not be carried over and gets lapsed. This clause provides an option to sell the excess energy to KSEB on the terms specified in the agreement. KSEBL is not bound to purchase all the banked power in the agreement. Otherwise, the company has no claim over the energy banked. Clause 11 of the agreement provides only an option for sale of excess banked energy to KSEB, which is to be exercised only based on the discretion of KSEBL and cannot be imposed on KSEBL by INDSIL. In view of the above and in accordance with the provisions of the agreement executed between INDSIL and KSEBL, the claim of INDSIL for an amount of Rs. 53,06,680/- for the surplus banked power at the end of June 2016 was not admitted by KSEBL and the matter was intimated to INDSIL vide letter dated 22-12-2016. KSEB Ltd, further submitted that purchase of the banked surplus power of INDSIL at a high rate of Rs.4.90/- (which is much higher than APPC of Rs.3.14/unit) will incur huge financial liability for KSEBL and the ultimate consumers of this state and will only encourage and motivate the petitioner in carrying out such unethical practices. KSEB Ltd further requested that Hon'ble Commission may kindly dismiss the petition filed by M/s.INDSIL with a direction to the petitioner to restrict the open access quantum strictly to the requirement of the factories of INDSIL after utilizing the entire generation from Kuthungal project including the banked energy of the accounting water year.
5. The Commission had held the hearing on the petition on 03-04-2017. Sri. Joseph Kodianthara, Senior Advocate, presented the matter on behalf of the petitioner before the Commission and Sri. Bipin Sankar, presented the matter on behalf of the respondent.
6. The main issues raised by the petitioner during the hearing are summarized below.
- (i) The petitioner had entered into an agreement with KSEB on 30-12-1994, regarding the Kuthungal small hydro project allotted to them by the State Government for their captive consumption. The agreement covers various

aspect of the project including its implementation, operation and maintenance, scheduling and dispatching etc.

- (ii) As per the paragraph-11 of the agreement, the petitioner had the option to sell the excess energy to KSEB on the terms specified in the agreement. The accounting year for the purpose of the agreement is from 1st of July to 30th June. The energy banked not utilized during the accounting year, shall not be carried over to the next accounting year. The excess energy so banked, fed in to KSEB grid less banking commission, royalty and/or other levies shall be deemed to be the energy sold to the KSEB. The rate at which KSEB shall pay to the Company for such sale will be at the rate at which KSEB sell the energy to the EHT consumers in the same voltage class at which KSEB receives the energy from the project. Accordingly, during the accounting year 2015-16, there was excess banked energy of 10,82,996 units as on 30th June 2016, and as per the provisions of the agreement, the petitioner had raised an invoice of Rs 53,06,680/- @Rs 4.90/unit for the banked energy. But, KSEB Ltd had refused to pay the amount.
- (iii) The petitioner had further submitted that, as per the provisions of the agreement dated 30-12-1994, the petitioner cannot sell the energy generated from the project to any other party other than KSEB. Hence, if the excess banked energy is not sold to the KSEB as per the provisions of the agreement, it will get lapsed.
- (iv) The petitioner had also raised the issue that, at present KSEB Ltd has been permitting to bank the energy at zone wise (peak period, normal period and off-peak period) separately. The zone wise details of the banked energy reveals that, the excess energy is banked only during peak period. The excess power during peak period happened due to the sole reason that, KSEB Ltd is not permitting to use the excess energy banked at peak period against their industrial consumption during normal period and off-peak period.
- (v) The petitioner had also pointed that, the banked energy is only about 2.7% of the energy generated from Kuthungal project and about 1.80% of their industrial consumption. The petitioner has prayed that KSEBL may be directed to admit the invoice raised for the sale of banked energy or permit them to carry over the banked energy to the next accounting year

7. The respondent KSEB Ltd has submitted that,
- (i) The Kuthungal small hydro project was allotted to M/s Indsil for their captive use. There is no mandatory provision in the agreement to purchase the banked energy by KSEB Ltd. KSEB Ltd can purchase the excess energy if it comes in the merit order. The authority of the purchase of the excess power entirely lies with KSEB Ltd.
 - (ii) As per the provisions of the agreement dated 30-12-1994, the excess generation over their requirement only qualify for sale to KSEB. The actual energy generation from Kuthungal for the captive use was 34.70MU as against their industrial consumption of 53.20 MU. Hence, if the entire energy generated is consumed by the petitioner, there would not be any energy left for sale at the end of the accounting year 2015-16.
 - (iii) KSEB Ltd further raised the issue that, the petitioner has been purchasing energy from outside the State by availing open access facility, instead of utilizing the energy available from the captive Kuthungal plant. KSEB Ltd pointed out that, during the month of May-2016, the open access consumption was 53% of the total consumption where as the captive use was only 38%. Further, for the month of June-2016, the open access consumption was 73% of the total consumption as against the captive use of 27% of total consumption. The excess banking happened at the end of the accounting period 30th June-2016 was mainly on account of the excess power purchase under open access route.
 - (iv) During the year 2014-15, KSEB Ltd settled the banked energy at the average pooled power purchase cost of Rs 3.14 / unit, as per the order of the Commission dated 7th August 2013 in OP No. 30/2012. Since the Kuthungal plant at present is not eligible for REC, the petitioner is trying to sell the low cost energy @Rs 4.90/unit to gain undue profit. By this, the petitioner is purposefully carrying out a process of hidden trading by purchasing low cost power through open access and selling energy to KSEB Ltd at high cost. Hence the bill issued by M/s INDSIL is illegal.
 - (v) The agreement with M/s INDSIL was signed before the enactment of Electricity Act-2003. The Kuthungal plant was setup in the year 2000, with a capital cost of Rs 55.00 crore. At the prevailing tariff norms, the cost of electricity generated from the plant is only Rs 0.35/unit to Rs 0.40/unit. The petitioner wants to sell this low cost energy to KSEB Ltd at the rate of Rs 4.90 /unit.
8. The Commission vide the daily order dated 07.04.2017 has directed the petitioner INDSIL and the respondent KSEB Ltd to clarify the following, on or before 20.04.2017:

- (i) Whether the petitioner was not allowed to adjust the energy banked during peak hours against energy consumption of normal period and off-peak period. The details may be provided with supporting evidence.
 - (ii) Whether there was any correspondence between the petitioner INDSIL and the respondent KSEB Ltd regarding the sale of surplus energy from the Kuthungal plant of INDSIL to KSEB Ltd since the year 2014-15.
 - (iii) Any other relevant details.
9. In compliance of the daily order of the Commission dated 07.04.2017, KSEB Ltd had filed additional submission vide its letter dated 12.04.2017. The summary of the additional submission filed by KSEB Ltd is given below.
- (i) KSEB Ltd submitted that, during the period where the petitioner availed REC mechanism, the facility for adjustment of banked energy of any zone with the consumption of other zones had been extended to the petitioner INDSIL. KSEBL submitted documentary evidence for supporting the same.
 - (ii) However, the Commission vide the order dated 7-08-2013 has ordered that, for availing the benefit of REC to the Kuthungal plant of the petitioner, the petitioner shall not avail the benefit of banking as contemplated in the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulation, 2010. Accordingly, in accordance with the undertaking of the petitioner with ANERT, the adjustment of generation and consumption had to be done only on zone to zone basis and the sale rate of excess energy if any to KSEB Ltd after adjustment of banked energy from Kuthungal is to be charged at APPC rate. However, from March 2016 onwards the REC mechanism stands withdrawn and the petitioner wants back the original provisions in the agreement dated 30.12.1994.
 - (iii) The adjustment of generation against the consumption and the quantum so adjusted and banked are being done as per the requirement of INDSIL. The copies of the letters issued by INDSIL to KSEB for the months of March-2016, April-2016 and May-2016 are enclosed. The letter of the INDSIL dated 1st June-2016 to KSEBL regarding the banking and adjustment is extracted below.

“With reference to the bill for consumption of power for the month of May 2016 and with specific reference to adjustment of power generated vs. power consumed slot wise, we request you to kindly effect adjustment of power generated/banked while raising the bill as under.

In this connection, we may add here that we have open access purchases to the extent of 33,47,291 units. As is the normal practice followed by KSEB

- 1. Normal power generation has been 9,19,000 units. After adjustment of wheeling charges at 12%, the nett generated power is 8,08,720 units. We have a carried forward banked power of nil units. The nett effective open access power purchases after Regional losses and State losses 21,57,655 units. Our consumption is 30,70,050 units. The nett consumption after adjustment of open access purchases is 9,12,395 units. This may be kindly be adjusted against generated power and carried forward power. The balance of carried forward power after adjustment thus is nil units.*
- 2. Peak hour generation has been 7,02,000 units. After adjustment of wheeling charges at 12%, the nett generated power is 6,17,760 units. We have a carried forward and banked power of 19,02,948 units. The nett effective open access power purchases after Regional losses and State losses nil units. Our consumption 10,39,830 units. This may kindly be adjusted against generated power and balance from banked power.*
- 3. Off-peak hour generation has been 5,85,000 units. After adjustment of wheeling charges at 12%, the nett generated power is 5,14,800 units. We have a carried forward banked power of nil units. The nett effective open access power purchases after Regional losses and State losses 11,89,636 units. Our consumption is 21,87,510 units. The nett consumption after adjustment of open access purchases is 9,97,874 units. This may kindly be adjusted against generated power.*

The balance of carried forward power will be 14,80,878 units.

- (iv) During the year 2014-15, the petitioner had an excess banked energy which was intimated to KSEBL by INDSIL well in advance vide its letter dated 20th May 2015. In the year 2015-16, there was no correspondence, as was made in 2014-15 in respect of purchase of excess banked energy. The petitioner raised a bill after the water year without any purchase agreement. KSEBL had not agreed to purchase the excess power in any way. Therefore the invoice is illegal.
- (v) Eventhough the petitioner had excess banked energy for the peak hours as on 31-3-2016, no requirement from the side of INDSIL was

made for adjustment of this excess in the peak hours in the consumption of other time zones. The net billed units of INDSIL for the months of April, May and June 2016 and the banked balance at the end of these months are tabulated below.

	Net billed units (for all zones)	Cumulative energy in bank at the end of the month
Apr-16	777855	1902948.3
May-16	586749	1480878.30
Jun-16	582680	953038.3

The petitioner could have nullified the billed units with the banked energy in their account as had done during the water year 2011-12. There was no restriction for the petitioner to adjust the excess banked energy of peak hours in the excess drawal from KSEBL grid during the other time zones. Since the petitioner neither exercised the facility for adjusting the excess generation of peak hours in other time zones in the water year itself nor approached KSEBL with the option of purchase of excess energy , the excess energy gets lapsed as per the clause 11 of the Agreement.

10. The petitioner M/s INDSIL Hydro Power and Manganese Limited vide the letter dated 20th April 2017 has submitted the additional details as per the directions contained in the daily order dated 07.04.2017 in OP No. 2/2017. The details are given below.

(i) Whether the petitioner is not allowed to adjust the energy banked during peak hours against energy consumption of normal period and off-peak period. The details may be provided with supporting evidence.

The petitioner submitted that, as per the order of the Commission dated 13.08.2013, the Commission had ordered as follows.

“The energy, if any, banked by M/s. INDSIL with KSEB shall be permitted to be consumed by M/s. INDSIL only in such a way that the banking facility benefit as contemplated in the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 dated 14.01.2010 read with its amendment dated 29.09.2010 is not available to M/s. INDSIL”

Therefore, from the above, it is very clear that, the petitioner was not allowed to interchange zones in terms of generation and consumption when it comes to banked energy. It is also clear from the history of electricity bills pertaining to the petitioner Company that this arrangement was to strictly follow zone wise adjustment of consumption vs generation and there has been no single case where this has been diluted.

- (ii) Whether there is any correspondence between the petitioner INDSIL and the respondent KSEB Ltd regarding the sale of surplus energy from the Kuthungal plant of INDSIL to KSEB Ltd since the year 2014-15.

The petitioner had enclosed two communications, dated 30th July 2016 and 8th August 2016. The letter dated 30th July 2016 was intimation to KSEB Ltd that, the petitioner is out of REC mechanism and therefore not obliged to sell power at the weighted average cost of pooled power. Instead the petitioner had to go for 1994 agreement terms in terms of tariff to be applied for sale of excess energy.

The 8th August 2016, letter specifically refers that, the petitioner agreeing for the payment to be made in the form of adjustment against the future electricity bills.

Analysis and Decision

11. The Commission has examined in detail the petition dated 29.12.2016, filed by the petitioner M/s M/s INDSIL Hydro Power and Manganese Limited, the additional affidavit dated 05.01.2017 filed by the petitioner, the counter affidavit filed by the respondent KSEB Ltd, the argument raised by the petitioner and the respondent during the hearing held on 03.04.2017, the clarifications submitted by the petitioner and the respondent in compliance of the directions contained in the daily order of the Commission dated 07.04.2017, other documents and materials placed on records, and other statutory provisions and regulations in force.
12. The State Government vide the G.O (Ms) No. 23/90/PD dated 7.12.1990, had notified the policy guidelines on setting up of small/mini/micro Hydel Scheme through private participation. Further, the State Government vide the G.O (Ms) No. 5/92/PD dated 12.03.1992 had notified additional guidelines. The clause 9 and 10 of the State Government policy dated 7.12.1990 is extracted below.

“9. The captive plant energy fed into the KSEB grid will be metered at a location as above(using meter calibrated by KSEB). This quantum of

energy less 12% towards wheeling charges, T&D losses etc. will be delivered free of cost to the agency at their HT terminals at the point of supply of their HT installation. The above wheeling charges deduction covers the service charges for making use of Board's transmission system and 10% deduction cover losses. In the case of supply or receipt made in LT lines the allowance for losses and wheeling charges will be as stipulated by the Government/Board.

In case energy in excess of the requirement of the agency is generated from the scheme, during one accounting year, such excess energy shall be fed into the state itself at rates to be mutually agreed upon. Under no circumstances shall the agency be entitled for the sale/transfer of any excess energy or any energy produced from the plant to any party other than the Government/Board. The accounting of the energy fed into the grid and supplied to the company by the Board will be settled on an annual basis, the year being reckoned from 1st of July to 30th June.

10. In case the state grid is not in a position to absorb the energy generated from the scheme for any reason the generation from the scheme will have to be temporarily stopped as directed by the Board. The pattern of power generation from the scheme shall be as directed by the regional Load Despatch Centre of the KSEB."

13. As extracted above, the State Government policy dated 7.12.1990 in the matter of setting up of small/mini/micro hydel scheme by private agencies stipulated the following regarding the metering, banking and adjusting the excess energy fed in to the grid from the captive power plants.
 - a. KSEB shall deliver the energy generated from the captive plant less 12% towards wheeling charges and T&D losses, at the HT terminals of the consumer end of the captive power developer.
 - b. In case energy in excess of the requirement of the agency is generated from the scheme, during one accounting year, such excess energy shall necessarily be fed into the state grid itself at rates to be mutually agreed upon by the KSEB and the captive producer.
 - c. Under no circumstances shall the agency be entitled for the sale/transfer of any excess energy or any energy produced from the plant to any party other than the Government/Board.

- d. The accounting of the energy fed into the grid and supplied to the company by the Board will be settled on an annual basis, the year being reckoned from 1st of July to 30th June.
 - e. In case the state grid is not in a position to absorb the energy generated from the scheme for any reason the generation from the scheme will have to be temporarily stopped as directed by the Board.
14. In line with the policy guidelines of the State Government, KSEB as per its order No. 1483/92 dated 22.08.1992 had allotted the Kuthungal Small Hydro Project (21 MW) in Idukki District to INDSIL Electro smelts Ltd for execution and operation of the project for thirty years from the date of commissioning of the project. The project started commercial operation on 01.06.2001.
15. The petitioner M/s.INDSIL and the respondent KSEB, on 30.12.1994 had entered into an agreement, regarding the construction, operation and maintenance of the Kuthungal hydro project. The agreement also covers the settlement and accounting of the electricity generated of the Kuthungal project, adjustment of banked energy with KSEB, charging the excess energy fed into the KSEB system from the plant after meeting their internal consumption etc. The policy guidelines issued by GoK in 1990 and 1992 forms part of this Agreement executed. The clauses 10,11, 12 and 13 of the agreement deals with metering, banking, the settlement of the excess energy banked with KSEB etc, which are extracted below.

“10. *The energy from Kuthungal Phase I & Phase II project fed into the KSEB grid will be metered at a location as detailed above(using meter calibrated by KSEB and this quantum of energy less 12% (twelve percent) towards wheeling charges and T&D losses will be delivered free of cost to the company and their associates M/s.Sun Metals & Alloys Pvt.Ltd. Kanjikode, Palaghat at the EHT terminals at the point of supply in their installations if any, or it will be banked by the KSEB, if the company so desires. The KSEB will collect 1% (one percent) of the energy so banked as its commission. This will be in addition to wheeling and loss towards transmission and distribution charges.*

11. *If the energy in excess of the requirement of the Company is generated from the project during one accounting year is not utilized by the Company and their associates during that accounting year, the Company may sell the excess banked energy to KSEB. The sale shall be deemed to be effected at the EHT terminals of the KSEB where the power generated by the Company is fed into the KSEB grid. The energy fed into the KSEB grid less banking commission, royalty and/or other levies shall be deemed to be the energy*

sold to the KSEB. The wheeling charge and loss towards transmission and distribution shall not be taken into account to determine the energy sold. The rate at which the KSEB shall pay to the company for such sale will be at the rate at which the KSEB sell the energy to the EHT consumers in the same voltage clause at which the KSEB receives the energy from the company. The KSEB shall not pay to the Company for the maximum demand component of the energy sold to KSEB. Under no circumstances shall the Company be entitled to sell or transfer any excess energy or any energy produced from the project to any party other than the KSEB and their associates. The accounting and billing of the energy fed into the grid by the Company and/or supplied by KSEB to the company for operating its factories, if any, in Kerala will be settled on monthly basis. The year of accounting will be reckoned from 1st of July to 30th June. In the case of supply or receipt made in LT lines of the Company the charges for losses will be extra as stipulated by the KSEB. If the energy banked is not utilized by the Company and their associates during one accounting year, it shall not be carried over to the next accounting year and shall be treated as lapsed. The Company has however the option to sell the excess energy to KSEB on the terms specified in the agreement. Otherwise, the company has no claim over the energy banked.

12. *If the KSEB grid is not in a position to absorb the energy generated from the project for any reason such as high level of storage in reservoirs, breakdown of transmission lines and/or other reasons beyond the control of KSEB, the generation from the project will have to be restricted to the extent of generation for captive consumption as directed by KSEB. The schedule of power generation from the project shall be as directed by the KSEB.*
 13. *The total power consumption in the factories of the Company and their associates is inclusive of the power supplied from the KSEB grid as well as the power generated by the Company and fed into the KSEB grid. During the period of power cut and/or other restrictions imposed by the KSEB, the KSEB shall work out the base consumption by the company and their associates based on total consumption for its factories on the same principle as applicable to the consumers fed by the KSEB.”*
16. The Commission has carefully examined the clauses 10,11,12 and 13 of the agreement, and it is observed that,
- (i) The company have the option either to consume the energy generated from the Kuthungal at their factory located at Palakkad or can bank the energy with KSEB if the company so desires. 1% of the energy banked with KSEB will be the commission for banking.

- (ii) If the energy in excess of the requirement of the Company is generated during an accounting year is not utilized by the Company and their associates during that accounting year, the Company may sell the excess banked energy to KSEB.

The above condition provide that, the excess energy generated from the Kuthungal project, after meeting their requirement during an accounting year may be sold to the KSEB.

- (iii) The rate at which the KSEB shall pay to the company for such sale will be at the rate at which KSEB sell the energy to the EHT consumers in the same voltage clause at which the KSEB receives energy from the company.

As per the above condition, the rate of settlement for the sale if any to KSEB is at the EHT tariff applicable to the INDSIL and their associates at Palakkad.

- (iv) The company cannot sell or transfer any excess energy or energy produced from the project to any third party other than the KSEB and their associates.
- (v) The accounting and billing of the energy fed into the grid by the company and/or supplied by KSEB will be settled on monthly basis. The accounting year will be reckoned from 1st of July to 30th of June.
- (vi) There is no provision to carry forward the energy banked with KSEB during an accounting year to the next accounting year. If the company not utilized the entire energy banked with KSEB during an accounting year, the unutilized energy shall be treated as lapsed.
- (vii) However, the company have the option to sell the excess energy to KSEB on the terms specified in the agreement, otherwise, the company has no claim over the energy banked.
- (viii) The schedule of power generation from the project shall be as directed by KSEB.
- (ix) It is also specified under clause 13 of the agreement that, the total power consumption in the factories of the company and their associates is

inclusive of the power supplied from KSEB grid as well as the power generated by the company and fed into the grid.

- (x) The Company can use/adjust the energy generated and/or banked from the Kuthungal hydro project, without any restriction, against the energy consumption of the factory, at any time zone/period, during the accounting year concerned.
17. Hon'ble Central Electricity Regulatory Commission (CERC), in exercise of the powers conferred on it under sub-section (1) of Section 178 and Section 66 read with clause (y) of sub-section (2) of Section 178 of the Electricity Act 2003, vide the notification No. L-1/12/2010-CERC dated 14th January 2010 had notified the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010. The Regulation-5 of the said regulation provide the eligibility criterion of the generating company from renewable energy sources. The relevant portion of the regulation is extracted below.

"5. Eligibility and Registration for Certificates:

(1) A generating company engaged in generation of electricity from renewable energy sources shall be eligible to apply for registration for issuance of and dealing in Certificates if it fulfills the following conditions:

- a. it has obtained accreditation from the State Agency;*
- b. it does not have any power purchase agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Appropriate Commission; and*
- c. it sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.*

Explanation.- for the purpose of these regulations 'Pooled Cost of Purchase' means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be."

18. Subsequently, CERC vide the notification dated 29th September-2010, amended the Regulation-5 of the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, making the Captive Power Producer (CPP) based on the renewable energy sources shall also be eligible for the entire energy generated from such plants for participating in the REC scheme subject to certain conditions

stipulated therein. The relevant portion of the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (First Amendment) Regulations, 2010 is extracted below.

“

Provided further that a Captive Power Producer (CPP) based on renewable energy sources shall be eligible for the entire energy generated from such plant including self consumption for participating in the REC scheme subject to the condition that such CPP has not availed or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty.

Provided also that if such a CPP forgoes on its own, the benefits of concessional transmission or wheeling charges, banking facility benefit and waiver of electricity duty, it shall become eligible for participating in the REC scheme only after a period of three years has elapsed from the date of forgoing such benefits.

Provided also that the abovementioned condition for CPPs for participating in the REC scheme shall not apply if the benefits given to such CPPs in the form of concessional transmission or wheeling charges, banking facility benefit and waiver of electricity duty are withdrawn by the State Electricity Regulatory Commission and/or the State Government.

The dispute, if any, on the question as to whether such concessional/promotional benefits were availed by a CPP or not shall be referred to the Appropriate Commission.”

Explanation:- For the purpose of this Regulation, the expression ‘banking facility benefit’ shall mean only such banking facility whereby the CPP gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into grid during off-peak hours.”

19. Based on the above amendments in the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (First Amendment) Regulations, 2010, M/s INDSIL applied for accreditation of the Kuthungal project as a renewable generator before the designated state agency namely ‘Agency for Non- Conventional Energy & Rural Technology (ANERT), and the ANERT granted accreditation to the project as a renewable energy generator on 19.12.2011. KSEB had filed a petition before this Commission, objecting to the accreditation granted to M/s INDSIL by ANERT, to their Kuthungal project.
20. The Commission vide the order dated 7.8.2013 in OP No. 30/2012, in the matter of accreditation of M/s INDSIL as a ‘Renewable Energy Generator’ for their 21MW Kuthungal SHP by ANERT, had dismissed the petition filed by KSEB.

However, the Commission ordered that, the accreditation given to M/s INDSIL shall continue to be valid and the company shall be eligible to avail REC benefits subject to certain conditions stipulated in the order dated 7.8.2013. The relevant portion of the order dated 7.8.2013 is extracted below.

“Orders of the commission

53. After carefully examining the petition, counter statements, the documents and arguments presented by all the parties the Commission issues the following orders:

(1) The petition submitted by KSEB is dismissed.

(2) The accreditation given to M/s. INDSIL shall continue to be valid and the company shall be eligible to avail REC benefits subject to the following conditions:

a) The energy, if any, banked by M/s. INDSIL with KSEB shall be permitted to be consumed by M/s. INDSIL only in such a way that the banking facility benefit as contemplated in the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 dated 14.01.2010 read with its amendment dated 29.09.2010 is not available to M/s. INDSIL.

b) Carrying over of the excess energy on any day or month shall be allowed as provided in the Agreement dated 30.12.1994 between the generator and KSEB, on a time zone wise basis.

c) The generator shall have the option to sell the excess energy in any accounting year to KSEB as provided in the Agreement ‘at a price not exceeding the average pooled cost of power purchase of KSEB as per clause (c) of sub regulation (1) of regulation 5 of the CERC REC regulations dated 14.1.2010 read with its amendment dated 29.09.2010.

(3) The generator shall execute an undertaking in stamp paper agreeing to the above conditions before the state agency ANERT within one month under intimation to KSEB and the Commission, failing which reporting of injection by the generator by SLDC to the Central Agency will be suspended and the state agency ANERT and Central Agency shall proceed with action to revoke accreditation and registration as per CERC regulations. This undertaking shall form part and parcel of the agreement dated 30.12.1994 between KSEB and M/s. INDSIL.

(4) The state designated agency ANERT shall issue notice to the generator incorporating the above directives under Section 9 of the detailed procedure approved by CERC by order dated 1.6.2010 and other enabling provisions immediately.”

21. As extracted above, the Commission vide the order dated 07.08.2013, had ordered to effect the following changes in the agreement dated 30.12.1994 between the petitioner INDSIL and the respondent KSEB, to get the accreditation for availing REC benefit to the Kuthungal project as per the provisions of CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulation, 2010.

(1) Banking facility : The Commission had ordered that, the banking facility as contemplated in the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulation, 2010 is not available to INDSIL.

The banking facility as defined in the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (First Amendment) Regulations, 2010 dated 29th September, 2010 is extracted below.

***“Explanation:-** For the purpose of this Regulation, the expression ‘banking facility benefit’ shall mean only such banking facility whereby the CPP gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into grid during off-peak hours.”*

As per the order of the Commission dated 07.08.2013, the unconditional banking as per the agreement dated 30.12.1994 is not available to the electricity generated from Kuthungal small hydro project of the petitioner since then.

(2) Further, as per the order of the Commission dated 07.08.2013, the maximum rate for the sale of excess power to KSEB is fixed at the average pooled cost of power purchase of KSEB instead of the EHT tariff applicable to the petitioner as per the clause-11 of the agreement dated 30.12.1994.

In compliance of the order of the Commission dated 07.08.2013, the petitioner had executed an undertaking with the ANERT on 27.08.2013.

22. Hon’ble CERC vide the notification dated 23.03.2016 in File No. L-1/12/2010-CERC, has amended (fourth amendment) the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulation, 2010. As per the amendments, the CPP’s based on renewable energy sources, commissioned prior to 29th September 2010 is not

eligible for getting REC benefit from 01.04.2016. The relevant portion of the amendment in the CERC regulation is extracted below.

“(1B) A Captive Generating Plant (CGP) based on renewable energy sources, including renewable energy generating plant not fulfilling the conditions of CGP as prescribed in the Electricity Rules, 2005 but having self-consumption, shall not be eligible for participating in the REC scheme for the energy generated from such plant to the extent of self-consumption, if such a plant:

- a) has been commissioned prior to 29th September 2010 or after 31st March 2016; or*
- b) is not registered with Central Agency under REC scheme on or before 30th June 2016.”*

23. The Kuthungal plant of the petitioner was started commercial operation on 01-06-2001. Since the plant was commissioned prior to 29th September-2010, the electricity generated from the Kuthungal from 01.04.2016 is not eligible for REC as per the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (Fourth Amendment) Regulations, 2016,
24. The petitioner has claimed that, as on 30th June-2016, the net unutilized banked energy from Kuthungal plant for the accounting year 2015-16 is 10,82,996 units. According to the petitioner, since the REC benefit is not available from 1st April-2016 onwards, the unutilized energy has to be settled at the prevailing EHT tariff @Rs 4.90/unit as per the original agreement dated 30.12.1994, instead of the APPC @Rs 3.14/unit, as per the order of the Commission dated 7.8.2013. Accordingly, as per the invoice dated 29.07.2016, the petitioner has raised an invoice for Rs 53,06,680/- for the un-utilised energy of 10,82,996 units during the accounting year 2015-16, at the EHT tariff of Rs 4.90/unit.
25. The respondent KSEB Ltd has not admitted the bill, citing the reason that, during the year 2015-16 the petitioner has purchased 12.799MU through open access for the consumption at the factories of INDSIL at Palakkad, instead of utilizing the energy generated from Kuthungal plant, which was allotted exclusively for the captive consumption of the factories of the petitioner at INDSIL. KSEB has further submitted that, since the petitioner neither exercised the facility for adjusting the excess generation of peak hours in other time zones in the water year itself nor approached KSEBL with the option of purchase of excess energy, the excess energy gets lapsed as per the clause 11 of the Agreement.
26. The CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (Fourth Amendment) Regulations, 2016 is applicable only from 01.04.2016 and hence the electricity

generated from the Kuthungal plant upto 31.03.2016 is eligible for REC, as per the provisions of the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (First Amendment) Regulations, 2010. Accordingly, the order of the Commission dated 07.08.2013 is applicable for the electricity generated and banked from the Kuthungal project upto 31.03.2016 of the year 2015-16.

27. The Commission has compiled the monthwise details of the energy consumption of factories of INDSIL, the energy generation from Kuthungal, adjustment of generation from Kuthungal against the consumption at the factories, net banked energy etc. The details are given below.

Month	Factory consumption (total)	Net Generation from Kuthungal for the month	Adjustment from Kuthungal including from banking against factory consumption	Banking/ adjustment from banking during the month	Cumulative banking at the end of the month
	(MU)	(MU)	(MU)	(MU)	(MU)
(1)	(2)	(3)	(4)	(5) = [(4) - (3)] * .99	(6)
Jul-15	6.73	3.21	3.21	0.000	0
Aug-15	6.60	1.75	1.75	0.001	0.00
Sep-15	6.11	2.19	1.86	0.324	0.32
Oct-15	6.69	2.73	2.53	0.202	0.53
Nov-15	6.32	5.84	5.50	0.337	0.86
Dec-15	6.42	4.89	4.81	0.082	0.95
Jan-16	0.33	1.43	0.26	1.157	2.10
Feb-16	1.38	0.41	0.76	-0.345	1.76
Mar-16	6.06	4.41	4.45	-0.034	1.72
Total	46.64	26.87	25.12	1.72	

28. As detailed above, the total generation from Kuthungal plant upto 31.03.2016 during the accounting year 2015-16 was 26.87 MU. As per the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) (Third amendment) Regulation, 2014, the REC issued to the RE generator is valid for one thousand and ninety five days (three years) from the date of issuance the certificates.
29. Further, as on 31.03.2016, the net banked energy of the Kuthungal plant at the EHT terminal of the factory of the petitioner is 1.72 MU. Since the electricity generated from the Kuthungal plant upto 31.03.2016 is eligible for REC, the net

banked energy upto 31.03.2016, shall be settled as per the order of this Commission dated 07.08.2013. Accordingly, as per the order of the Commission dated 07.08.2013, the petitioner has the option to sell the excess energy banked with KSEB Ltd as on 31.03.2016, at a price not exceeding the average pooled cost of power purchase of KSEB. The average pooled cost of power purchase approved by the Commission as per the order dated 30.09.2014 in OP No. 9/2014 @ Rs 3.14/unit was applicable for the year 2015-16. Hence the petitioner is entitled to sell the energy banked with KSEB Ltd as on 31.03.2016 at the average pooled cost of power purchase of Rs 3.14/unit.

30. During the period from 01.04.2016 to 30.06.2016, total power consumption of the factories of the petitioner and their associates shall be settled against the electricity generated from Kuthungal plant and the power supplied from KSEB Ltd as per the clause-13 of the agreement dated 30.12.1994.
31. The Commission has further noted that, the agreement dated 30.12.1994, between the petitioner INDSIL and the respondent KSEB was signed much before the enactment of the Electricity Act-2003. Prior to the enactment of the Electricity Act, 2003, the factories of company did not have the option to purchase power from traders/ generator by availing the facility of open access and the entire electricity requirement has to be met from KSEB and/or by consuming the electricity generated from their captive plant at Kuthungal. Similarly, the company has no option to sell the excess energy if any generated from Kuthungal project to third party other than KSEB. Accordingly, the agreement provides for the sale of excess energy banked with KSEB after meeting the requirement of the factories of the company at the EHT rate applicable to the factories of the company. However, after the enactment of the Electricity Act-2003, the electricity market in the country has changed considerably, especially with the introduction of electricity trading and open access. Further, as per the provisions of the Electricity Act-2003, the Electricity Regulatory Commission is the sole authority for regulating the electricity purchase and procurement process of the distribution licensees including the price at which electricity can be purchased. Hon'ble Apex Court and Hon'ble Appellate Tribunal of Electricity in its various judgments has ordered that the State Electricity Regulatory Commissions have the authority to revisit, even the already concluded PPAs, if the circumstances necessitated. The Commission is of the considered view that, some of the clauses of the agreement dated 30.12.1994 is to be modified in line with the provisions of the Electricity Act-2003. Hence, considering the larger interest of the consumers of the State, it is directed

that, KSEB Ltd shall approach the Commission with proposal for modifying the agreement dated 30.12.1994.

Order of the Commission

32. After carefully examining the petition and the additional affidavit filed by the petitioner, the counter affidavit filed by the respondent KSEB Ltd, the arguments raised by the petitioner and respondent during the hearing held on 03.04.2017, the additional clarification provided by the petitioner and the respondent, the Commission issues the following orders.

(1) The net banked energy from the Kuthungal plant of the petitioner INDSIL as on 31.03.2016 of the accounting year 2015-16, shall be sold to KSEB Ltd @Rs 3.14/unit, the average pooled cost of power purchase of KSEB Ltd.

(2) During the period from 01.04.2016 to 30.06.2016 of the accounting year 2015-16, total power consumption of the factories of the petitioner and their associates shall be settled against the electricity generated from Kuthungal plant and the power supplied from KSEB Ltd, as per the clause-13 of the agreement dated 30.12.1994.

Petition disposed off. Ordered accordingly.

Sd/-
K.Vikraman Nair
Member

Sd/-
S.Venugopal
Member

Approved for issue

Sd/-
K B Santhosh Kumar
Secretary