

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

Review Petition No: RP 6/ 2021

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

In the matter of : **Review petition filed by M/s KSEB Ltd against the Order of the Commission dated 28.08.2021 in OP 28/2021**

Petitioner : M/s Kerala State Electricity Board Ltd.,
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram-695004

Petitioner Represented by : Smt. Latha S.V, AEE, TRAC

Respondents : (1) The Kerala High Tension and Extra High Tension
Industrial Consumers Association
Productivity House, Jawaharlal Nehru Road
Kalamassery- 683102, Ernakulam

(2) Carborandum Universal Limited
Electrominerals Division, P.B No-1 Kalamassery
Development Plot P.O
South Kalamassery, Ernakulam

(3) MRF Limited
PB No.2, Vadavathoor P.O
Kottayam -686010

(4) Apollo Tyres Ltd
Perambra P.O
Thrissur -680689

(5) Travancore Cochin Chemicals Ltd
P.B No.4, Udyogamandal P.O
Kochi-683501

Respondents represented by : List of participants attached as Annexure 1

Date of E- Hearing : **24.02.2022, 11:00 AM**

Order dated 26.03.2022 in RP No 6/2021

1. M/s Kerala State Electricity Board Limited, a Power utility company constituted by the State Government for carrying out the Generation, Transmission and Distribution functions through three strategic business units, have filed this petition

before the Commission to Review the Order dated 28.08.2021 of the Commission in OP 28/2021, with respect to limited ground, on the directions for energy accounting of all the open access transactions from 05.2021 to 28.08.2021.

2. M/s KSEB Ltd has filed this review petition on 26.10.2021 against the Order of the Commission dated 28.08.2021 in OP No.28/2021, with respect to the limited grounds on the directions for energy accounting of all the open access transactions from 05.2021 to 28.08.2021. KSEB Ltd has filed the review petition with a delay of 19 days. The Hon'ble Supreme Court of India in the Order dated 08.03.2021 in the Suo Motu Writ Petition (Civil) No.3 of 2020 has excluded the period from 15.03.2020 to 14.03.2021 in computing the period of limitation of any suit, appeal, application or proceeding. The period was later extended from 15.03.2020 to 02.10.2021 in the Order of the Hon'ble Supreme Court of India dated 23.09.2021 in M.A 665 of 2021. The Order portion of the Hon'ble Supreme Court in M.A 665 of 2021 is quoted below:

“1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.”

Based on the above Order of the Hon'ble Supreme Court excluding the period from 28.08.2021, from the date of Order of the Commission in OP No.28/2021 to 02.10.2021, the review petition is filed by KSEB Ltd within the stipulated time.

3. The review petition is filed by KSEB Ltd based on the facts that, by adopting the Order dated 28.08.2021 in OP No.28/2021, Hon'ble Commission has invalidated the energy accounting for all the open access transactions from 05.2021 to 28.08.2021. The said direction will lead to banking of open access energy and KSEB Ltd will have to reimburse an amount of Rs.1.40 Cr, which has been withheld from the Open Access Consumers as part of implementation of the Order of the Commission in OP No.29/2020. In the above said circumstances, KSEB Ltd has filed this review petition with the prayer to review the Order dated 28.08.2021 in OP No.28/2021, with respect to the limited grounds on the directions for energy accounting for all the open access transactions from 05.2021 to 28.08.2021.

Brief History of the issue

4. M/s HT & EHT Industrial Consumers Association, on 17th June 2021 filed a petition under Section 67 of the Kerala State Electricity Regulatory Commission (Connectivity and Intra-State Open Access) Regulations, 2013, seeking the removal of difficulties due to the Licensee taking the underutilized Energy

Scheduled by the Embedded Open Access consumers through the Day Ahead Inter-State Short Term Open Access (Collective Transaction). The following were the prayers of the petitioner in that petition:

- (i) Issue a direction clarifying the applicability of the Order vide; OP No.29/ 2020 to non-similar Open Access consumers;
 - (ii) Enact a Deviation Settlement Mechanism (DSM) Regulation for the State of Kerala, in line with the DSM Regulations of CERC;
 - (iii) Amend the KSERC (Connectivity and Intra-state Open Access) Regulations, 2013 and the detailed procedure for Open Access, incorporating the Deviation Settlement Mechanism for under drawal of Embedded Open Access consumers.
5. Subsequently, four more individual consumers (all are members of the petitioner association) filed Interlocutory Applications (IA) for impleading as respondents in the petition. These IAs were admitted as IA 09/21(Carborundum Universal limited), IA 10/21(MRF Limited), IA 11/21(The Travancore Cochin Chemicals) and IA 12/21 (Apollo Tyres).
6. The Commission admitted the petition as OP No. 28/2021 and conducted the hearing on 05.08.2021. The Commission, after due examination of the petition and the IAs, the Open Access Regulations and the detailed procedure published, averments of the petitioners and the licensee during the hearing, the provisions under the Indian Electricity Grid Code and the Electricity Act 2003, the notified energy accounting procedures and systems in force, and the related documents produced, issued the Final Order on 28.08.2021. The order portion of the Commission from Para 19 is quoted below:

“19 (1) In view of the SLDC submission that they are capable of 15-minute time block wise energy accounting for the embedded open access consumers, the order dated 23.03.2021 in OP No. 29/2020 regarding the adoption of 15-minute time block wise energy accounting of open access consumers is now made applicable to all the open access consumers in the State.

(2) The action of SLDC/ KSEBL in revising the energy accounting system of all open access transactions from 05/ 2021 is however not in order, since the OP No. 29/2020 pertains to certain specific issues and it was during the hearing on that petition that the present issue of open access drawal emerged. However, since the petitioners were not a party to that OP and its proceedings, the Order dated 23.03.2021 is applicable only to similar

embedded open access consumers i.e., consumers having their own generation, open access and are embedded consumer of KSEB Ltd.

- (3) It is hereby ordered that, the adoption of 15-minute time block wise energy accounting of open access consumers shall be applicable to all the embedded open access consumers in the State from the date of this Order. The bills issued till now shall be revised and adjusted accordingly.*
- (4) KSEB Ltd. shall prepare the monthly bills of the embedded open access consumers for the accounted energy based on the ToD tariff on monthly basis as per the Tariff orders issued by the Commission from time to time.*
- (5) The open access consumers can have the real time consumption data locally, if required. On receipt of such a request from the consumer, the licensee shall provide without delay, the necessary assistance for installing the facility at the consumer premises for monitoring their real time consumption data.*
- (6) KSEBL shall promptly intimate all the planned outages to the concerned consumers at least 48 hours in advance. Further consumers with critical loads shall make appropriate arrangements for standby feeder/ backup generation to meet any unscheduled emergency outages.*
- (7) The Open Access Regulations in force in the State do not have provision for compensating the under drawal of embedded consumers, except as a result of non-availability of the distribution system or unscheduled load shedding. In the case of under drawal due to non-availability of the distribution system or unscheduled load shedding, the consumer shall promptly notify the same to the distribution licensee and SLDC for approval, certification and for eligible compensation. Any disputes in this regard, shall be referred to the Co-ordination Committee and the Committee shall resolve the same as specified in Regulation 62 of the Open Access Regulations.*

7. By this Order of the Commission, the energy accounting done on 15-minute time block wise energy for all the Open Access transactions from 05.2021 to 28.08.2021 has been invalidated. The adoption of 15-minute time block wise energy accounting of open access consumers was made applicable to all the embedded open access consumers in the State from the date of this Order only i.e., from 28.08.2021. KSEB Ltd in this Review petition has stated that, the said direction will lead to banking of open access energy and also KSEB Ltd will have to reimburse an amount of Rs.1.40 Cr., which has been withheld from the open

access consumers as part of implementation of the Order of the Commission in OP No.29/2020.

8. M/s KSEB Ltd further submitted that, there are 56 Open Access Consumers registered with SLDC. The short-term open access power purchase by embedded consumers is based on the 15 minutes time block wise cost of power in the market i.e., from IEX through collective transactions. As per the Open Access Regulations, the open access consumers shall in advance provide the 15 minutes time-block wise drawal scheme from KSEB Ltd after accounting for the power availed through open access, which is not being adhered to by the open access consumers.
9. These embedded open access consumers purchase power through the power exchange, whenever the effective delivered price is lower than the ToD Tariff, in the Tariff Order issued by the Commission. M/s KSEB Ltd further stated that the drawal/ actual schedules in the respective time blocks by the Open Access Consumers is different from the quantum of power which they sourced from the power exchange and most of the time it is under drawn. The State Transmission Utility had to rework its Load Generation Balance as per the finalised open access schedule in the exchange. But, the variations of open access schedules in real time drawal make the DSM compliance including sign change and sometimes may lead to penalties. The Open Access Consumers of the State are not charged for the deviations made by them from the schedule submitted to the SLDC, since there is no intra state DSM Regulations.
10. The open access energy scheduled by the Consumers through power exchanges are not always fully utilised in the same 15-minute time block. There are instances of under drawal of scheduled open access, which leads to a deemed injection to the grid. Since there is no 15-minute time block wise accounting, the under drawal in certain time blocks get merged against over drawal in other time blocks, which leads to the banking of excess energy. The Open Access Consumers have been benefitting by this method of accounting, since they can under draw in time blocks when the rate of power in the exchange is less and this surplus power in their credit can be used to adjust the energy in any other time blocks during the time at which no purchase is made from the power exchange due to higher price.
11. The banking of open access energy, is not allowed as per the Regulations. Any deviations made by the Open Access Consumers in the scheduled drawing leads to loss for the licensee, which is ultimately borne by the ordinary consumers of the State. With the increase in the open access quantum, the extent of such banking and loss becomes substantial. This is in addition to the penalties to be borne by KSEB Ltd for the interstate deviations, caused by the deviations made by these

open access consumers. At the time of issuance of NOC, SLDC directs the open access consumers to restrict their open access drawal to their real time requirement, but the practice of underdrawing is still continuing.

12. M/s KSEB Ltd has highlighted the Hon'ble Commission's Order dated 23.03.2021 in OP No. 29/2020, which permits the SLDC for adopting 15-minute time block wise energy accounting for all the open access consumers. It also mentions about the billing of the electricity charges, based on the ToD tariff on monthly basis as per the Tariff Order issued by the Commission. Based on this Order, KSEB Ltd has implemented the 15-minute time block wise accounting of energy for all the Open Access Consumers from 05.2021 onwards. The Order of the Commission dated 23.03.2021 in OP No 29/2020 is reproduced below:

"29. The Commission, after careful examination of the petition by M/s Hindalco Industries Limited, the arguments of the respondent KSEB Ltd, the remarks of the SLDC, Chief Electrical Inspectorate and ANERT, as per the provisions of the Electricity Act, 2003 and the various Regulations notified by the State and Central Commission related to renewable energy, hereby order the following.

(1) Allow the petitioner HINDALCO Industries Ltd, to maintain the 1 MW Solar plant with REC benefits and 2 MW Solar plant with banking facilities in the same premises as two separate Solar plants, subject to the safe and reliable working of the Programmable Logic Controller (PLC) based interlocking system installed by the petitioner, and also subjected to the other conditions specified under paragraph 22 of this order.

(2) As suggested by the petitioner HINDALCO Industries Ltd, and also as agreed by the SLDC Kerala, the SLDC shall adopt the 15minute energy accounting for the petitioner and similar open access consumers. However, the monthly bills of the petitioner and open access consumers shall be prepared for the accounted energy based on the ToD tariff on monthly basis as per the Tariff orders issued by the Commission from time to time."

13. As per the Order of the Commission mentioned above, KSEB Ltd has implemented 15-minute time block wise accounting for all the Open Access Consumers of the State and issued bills accordingly from 05.2021. Aggrieved by the adoption of 15-minute block wise energy accounting for all the open access consumers, M/s HT & EHT Industrial Consumers Association has filed the petition OP No. 28/2021 for removal of the difficulties, due to the Licensee taking the underutilized energy scheduled by the Open Access Consumers. The Order of the Commission in this OP NO.28/2021 is mentioned in Para 6 above. M/s KSEB Ltd submitted that, as per the revised Order, the energy accounting system of open access transactions which was adopted by KSEB Ltd from 05.2021 as per the Commission's Order in

OP No.29/2020 has been invalidated. The direction in the Order of the Commission leads to banking of open access energy, which is not allowed as per Regulations. KSEB Ltd have to reimburse an amount of **Rs 1.41 Cr**, withheld from the open access consumers as part of implementation of the Order, which will lead to a loss for KSEB Ltd. The month wise amount to be reimbursed is shown below;

Amount to be reimbursed to Open Access Consumers

SI No	Month	Amount to be reimbursed (in Rs. Cr)
1	May	0.69
2	June	0.32
3	July	0.34
4	August	0.06
	Total	1.41

14. KSEB Ltd further submitted that, KSERC Order dated 28.08.2021 in OP No.28/2021 has allowed Open Access Consumers to carryout banking of open access energy for the period from 05.2021 to 28.08.2021. Hon'ble Commission in the above Order has directed KSEB Ltd to reimburse the amount withheld for improper action of Open Access Consumers, even when the Open Access Regulations have no provision for payment in case of under drawal.

15. M/s KSEB Ltd has submitted the following before the Hon'ble Commission:

- 1) The embedded open access consumers and limited open access consumers shall in advance provide the 15-minute time block wise drawal schedules from KSEB Ltd, after accounting for the power availed through open access, before 10:00 Hrs of the previous day;
- 2) Any deviation from schedule and gaming would be penalized as specified by the Commission;
- 3) In case actual energy drawal is more than the scheduled drawal and the recorded maximum demand is within the contract demand, customer shall be liable to pay for such over drawal at the applicable tariff rates for each time zone as determined by the Commission from time to time;
- 4) In case the actual drawal of energy is more than the scheduled energy drawal and the total recorded maximum demand is more than the contracted demand in any time block, payment for the capacity over and

above the contract demand, shall have to be made at the penal rate as specified by the Commission for such categories of customers in the tariff schedule from time to time;

- 5) In the case of under drawal as a result of non- availability of the distribution system or unscheduled load shedding, the embedded open access customer shall be compensated by the distribution licensee by an equal quantum of energy injected by the participating generator in the same time block and the generator will not be eligible for any compensatory payments for that quantum of energy.
 - 6) Actual payment of such unscheduled interchange charges may be deferred by the Commission till such period which may be determined by the Commission having regard to the extent of demand for open access and the extent of involvement of private operators in power generation and distribution.
16. The Commission admitted the Review Petition as RP No. 06/2021 and hearing was held through Video Conference on 24.02.2022 at 11:00 AM. The list of the respondents participated in the hearing is attached as Annexure1. The deliberations and the arguments during the hearing are detailed below:

Hearing of the Review Petition and the arguments presented

17. Smt. Latha S.V, AEE, TRAC, represented KSEB Ltd and made a detailed presentation regarding the arguments for filing the petition. The arguments put forward by KSEB Ltd are detailed below:

- (1) KSEB Ltd mentioned that they have filed the Review petition as per the Provisions in the Code of Civil Procedure. The power of review can be exercised on the following grounds;
 - a. Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or
 - b. On account of some mistake or error apparent on the face of the record, or
 - c. For any other sufficient reason.
- (2) The Commission in OP No 28/2021, stated that as per the submission of SLDC that they are capable of 15-minute time block wise accounting for the embedded open access consumers, the Commission has decided in the Order

dated 23.03.2021, in OP No.29/2020 i.e., adoption of 15-minute time block wise accounting for all open access consumers and made it applicable to all the open access consumers in the State. But, as per this Order in OP No.28/2021, the adoption of 15-minute block accounting is made applicable to all open access consumers only from 28.08.2021. However, SLDC in OP No.29/2020 itself has submitted that, they are capable of 15-minute time block wise accounting for the embedded open access consumers. The relevant portion of the Order dated 23.03.2021 in OP No.29/2020 is extracted below:

“

17(2) SLDC during the hearing submitted that, they are is ready for 15 minutes time block wise energy accounting for all open access consumers including the petitioner. At present, scheduling of power is being done for 96-time block for open access consumers. So, if the 15-minute time block wise energy accounting is followed, the open access drawal more than the demand of the consumers and the deemed injection by open access consumers can be avoided. Hence, the SLDC agrees with the 15-minute energy accounting proposed by KSEB Ltd.

However, the ToD billing system may be followed on monthly/ bi-monthly basis as per the approval of the Commission.”

- (3) The final Order of the Commission in OP No 28/2021 (reproduced in Para 6 of this Order) mentioned that, since the petitioners were not a party to that OP and its proceedings in OP No 29/2020, the Order of the Commission dated 23.03.2021 in OP No.29/2020 is applicable only to similar embedded open access consumers i.e., consumers having their own generation, open access and are embedded consumer of KSEB Ltd. However, in the same Order itself, in the Analysis of the petition in para 15 of the Order dated 28.08.2021 in OP No.28/2021, the Hon'ble Commission itself mentioned that the energy accounting system implemented by SLDC/ KSEBL for the embedded OA consumers from 05.2021 complies with the Regulations and approved procedures in force and hence is in order. Therefore, the final Order is in contradiction with the conclusion arrived by the Hon'ble Commission in the analysis of the petition. The analysis of the Commission in para 15 of the Order dated 28.08.2021 in OP No. 28/2021 is reproduced below;

“15) In view of the above, it is clear that the energy accounting system implemented by SLDC/ KSEBL for the embedded OA consumers from 05/ 2021 complies with the Regulations and approved procedures in force and hence is in order.”

- (4) The Order has been issued by the Commission in OP No.28/2021 citing that HT & EHT Association were not respondents in OP No.29/2020. However, the open access transactions of the petitioners is governed by the KSERC (Connectivity and Intra- State Open Access) Regulations, 2013 and the “Detailed Procedure for Grant of Connectivity and Open Access in Intra-State Transmission system” approved by the Commission. As per para 23.9 of the detailed procedure which is quoted below hereunder, the embedded Open Access Consumers have to provide 15-minute time block wise drawal schedule from KSEB Ltd and the power proposed to be availed on Open Access, by 10:00hrs of the previous day. Any deviation from schedule and gaming would be penalized as specified by the Commission. Also, the Open Access Regulation in the State do not have any provisions for compensating the under drawal of the embedded consumers, except as a result of non- availability of the distribution system or unscheduled load shedding.

“23.9 The embedded open access consumers and limited open access consumers shall in advance provide the 15 minutes time-block wise drawal schedules from KSEB Ltd., after accounting for the power availed on open access, before 10:00 Hrs of the previous day. Any deviation from schedule and gaming would be penalized as specified by the Commission.”

The KSERC (Connectivity and Intra- State Open Access) Regulations, 2013 came into force from Year 2013 itself and the petitioners are bound by this Regulation. Therefore, an apparent error is seen in the conclusion arrived by the Commission in the Order dated 28.08.2021 in OP No.28/2021, that since the petitioner was not a party in OP No.29/2020 ,15-minute block wise accounting cannot be made applicable to them from 23.03.2021.

- (5) Further, the Commission in Para 27 of the Order dated OP No.29/2020 mentioned that SLDC is permitted to adopt the 15-minute time block wise energy accounting of all open access consumers including the petitioner so that the deemed injection by the open access consumers can be avoided. However, the Order of the Commission dated 28.08.2021 in OP No.28/2021 exempting the SLDC/ KSEB Ltd in revising the energy accounting system of all open access transactions from 05.2021 leads to carrying out the banking of Open Access transactions from 05.2021 to 28.08.2021. The Para 27 of the Order dated 23.03.2021 in OP No 29/2020 is indicated below:

“27. With the above observations, the Commission hereby permits the SLDC for adopting 15-minute block wise energy accounting of all open access consumers including the petitioner so that the deemed injection by the open access consumers can be avoided. However, the billing of electricity charges for all the embedded HT&EHT open consumers shall be done as per the ToD tariff on monthly basis as per the Tariff Order issued by the Commission from time to time.”

(6) Further, as per Para 19(7) of the Order dated 28.08.2021 in OP No.28/2021 which is highlighted in Para 6 above, the Open Access Regulations in force in the State do not have provision for compensating the under drawal of embedded consumers, except as a result of non- availability of the distribution system or unscheduled load shedding. However, Hon’ble Commission under Para 19(2) of the same Order itself has stated that the action of SLDC in revising the energy accounting system from 05.2021 to 28.08.2021 is not in order. Hon’ble Commission in 19(3) of the Order has also ordered that the bills issued till now shall be revised and adjusted accordingly which is equivalent to allowing compensation of under drawal. This will carry out the banking of open access energy for the period from 05.2021 to 28.08.2021. The Order of the Commission dated 28.08.2021 in OP No.28/2021, in Para 16(4) also stated that no relaxation is to be provided to the consumer on account of excess power purchased. The para 16(4) is reproduced below:

“16(4) Due to the implementation of the Real Time Market in Power Exchanges, the consumers can purchase power in real time also with a time gap of only six blocks (one and a half hour before) to meet with their real time demand. Moreover, all open access consumers under Kerala SLDC are embedded open access consumers who are having power supply agreement with the Distribution licensees, and they will not be affected by any shortage of power. Hence, there is no need for any relaxation to be provided to the consumer on account of excess power purchased through open access.”

(7) In view of the above-described error apparent and contradictions, KSEB Ltd humbly requested the Hon’ble Commission to review the Order dated 28.08.2021 in OP No.28/2021 with respect to the limited ground on the directions for energy accounting of all open access transactions from 05/2021 to 28.08.2021.

18. Sri Radhakrishnan K.R representing HT & EHT Association made a detailed presentation regarding their counter arguments. The arguments are detailed below:

- (i) After the introduction of the KSERC (Connectivity and Intra-State Open Access) Regulations, 2013, majority of the Industrial consumers have started availing a portion of their energy through open access procurement, in addition to the energy procured from KSEB Ltd. About 50 of the members of the Association are embedded open access consumers of KSEB Ltd. The bidding of open access energy has been based on 15-minute interval and the accounting of energy is based on monthly basis.
- (ii) M/s Hindalco Industries have filed a petition on 23.09.2020 before the Hon'ble Commission with the following prayers;
 - (a) Pass an Order / direction/ clarification inter alia, that the petitioner's newly installed 2 MW solar power plant at Kalamassery is a separate unit and do not interfere with the existing 1 MW plant;
 - (b) Allow banking facility exclusively for the 2 MW solar power plant;
 - (c) Pass any other Order / direction as it deems fit and appropriate in the facts and circumstances of the case;

After the deliberations and arguments, the Commission has issued the Order dated 23.03.2021 in OP No.29/2020. The Order portion of the Commission is below:

"29(1) Allow the petitioner HINDALCO Industries Ltd, to maintain the 1 MW Solar plant with REC benefits and 2 MW Solar plant with banking facilities in the same premises as two separate Solar plants, subject to the safe and reliable working of the Programmable Logic Controller (PLC) based interlocking system installed by the petitioner, and also subjected to the other conditions specified under paragraph 22 of this order.

(2) As suggested by the petitioner HINDALCO Industries Ltd, and also as agreed by the SLDC Kerala, the SLDC shall adopt the 15minute energy accounting for the petitioner and similar open access consumers. However, the monthly bills of the petitioner and open access consumers shall be prepared for the accounted energy based on the ToD tariff on monthly basis as per the Tariff orders issued by the Commission from time to time."

- (iii) By virtue of the above Order of the Commission in Para 29(2), KSEB Ltd adopted the 15-minute block wise energy accounting for all the embedded open

access consumers in the State and has arbitrarily taken the underutilized energy by these consumers within the 15-minute time slot. The Order clearly mentions that, it is applicable only for similar embedded open access consumers in the State having Captive generating unit on their premises and managing with a single net metering facility. For getting clarification on the applicability of the Order of the Commission in OP No.29/2020, the HT & EHT Association has filed the petition OP No. 28/2021 on 17.06.2021.

- (iv) The Commission's Order in OP No.28/2021 has clearly mentioned that the action of SLDC/ KSEB Ltd in revising the energy accounting system of all open access transactions from 05. 2021 is however not in order, since the OP No. 29/2020 pertains to certain specific issues and it was during the hearing on that petition that the present issue of open access drawal emerged. However, since the petitioners were not a party to that OP and its proceedings, the Order dated 23.03.2021 is applicable only to similar embedded open access consumers i.e., consumers having their own generation, open access and are embedded consumer of KSEB Ltd. Also, the Hon'ble Commission has adopted 15-minute time block wise energy accounting of open access consumers shall be applicable to all the embedded open access consumers in the State from the date of this Order.
- (v) Hon'ble Commission has reiterated the effective date of 15-minute time block wise accounting from the date of the Order of the Commission in OP No.28/2021 i.e., 28.08.2021. KSEB Ltd has filed this review petition dishonouring the Order of the Commission in OP No.28/2021. The petition is not maintainable as there is no error apparent in both the Orders of the Commission in OP No.29/2020 and OP No.28/2021. HT & EHT Association has the following prayers before the Commission:
- (a) Reject the review petition as there is no apparent error in the Order of the Commission dated 28.08.2021 in OP No.28/2021;
 - (b) Direct KSEB Ltd to honour the Order of the Hon'ble Commission and refund the amount retained from the embedded open access consumers with interest;
 - (c) Enact a Deviation Settlement Mechanism (DSM) Regulation for the State of Kerala, in line with the DSM Regulation of CERC;
19. Sri. Rajesh Kuruvila J, representing Carborundum Universal Limited opined that the review petition is not maintainable as there is no error apparent in the Order of the Commission in OP No.28/2021. The Commission in OP No.28/2021 ordered that, the adoption of 15-minute time block wise energy accounting of open access

consumers shall be applicable to all the embedded open access consumers in the State from the date of this Order. The bills issued till now has to be revised and adjusted accordingly. But KSEB Ltd has not revised and adjusted the bills till now. A Deviation Settlement Mechanism (DSM) Regulation for the State of Kerala is required to settle the issues with the underutilised energy. He also prayed before the Commission to reject the review petition, to direct KSEB Ltd to honour the Order of the Hon'ble Commission and refund the amount retained from the embedded open access consumers with penal interest and also to enact deviation settlement mechanism for the State of Kerala.

20. Sri. Saji Mathew, MRF opined that the review petition is not maintainable as there is no error apparent in the Order of the Commission in OP No.28/2021. The Commission in the Order of the petition in OP No.28/2021 has clearly mentioned that the action of SLDC/ KSEB Ltd in revising the energy accounting system of all open access transactions from 05. 2021 is however not in order, since the OP No. 29/2020 pertains to certain specific issues. KSEB Ltd is reluctant to implement the Order of the Commission in OP No.28/2021 and not adjusted/revised their bills till now as per the above Order of the Commission. Sri. Saji Mathew has put forward a suggestion; to amend the KSERC (Connectivity and Intra-State Open Access) Regulations,2013 while implementing Deviation Settlement Mechanism (DSM) Regulation for the State of Kerala for avoiding further disputes between KSEB Ltd and the Open Access consumers.
21. Sri. Renjit Jacob representing Apollo Tyres Ltd, also suggested that there is no maintainability in this review petition. The Order of the Commission dated 23.03.2021 in OP No.29/2020 clearly mentions that, it is applicable only for similar embedded open access consumers in the State having Captive generating unit on their premises and managing with a single net metering facility. However, since the petitioners are not the respondents in OP No.29/2020, the Order of the Commission is not applicable for them. The Commission in the Order of the petition in OP No.28/2021 clearly mentioned that the action of SLDC/ KSEB Ltd in revising the energy accounting system of all open access transactions from 05. 2021 is however not in order. The Hon'ble Commission has ordered that the 15-minute time block wise energy accounting of open access consumers shall be applicable to all the embedded open access consumers in the State from the date of this Order i.e., from 28.08.2021. He also suggested to reject the review petition and highlighted the prayers in Para 18(v) of HT & EHT Association.
22. Sri. Shibu Kurian, TCCL also represented HT & EHT Association, mentioned that KSEB has not envisaged the para 19(3) in the Order of the Commission dated 28.08.2021 which mentions to revise and adjust the bills issued to the open access

consumers from 05. 2021 to 28.08.2021, thereby denying natural justice for them. He also suggested to reject the review petition and quoted the prayers mentioned in Para 18(v).

Review of the facts by the Commission

23. The Commission during the deliberations mentioned that, in the Order dated 23.03.2021 in OP No.29/2020, in view of the mutual agreement between the petitioner HINDALCO Industries Ltd and SLDC Kerala, the Commission had permitted SLDC to adopt the 15 minute time block wise energy accounting for the petitioner and similar open access consumers. However, the monthly bills of the petitioner and open access consumers shall be prepared for the accounted energy based on the ToD tariff on monthly basis as per the Tariff orders issued by the Commission from time to time.
24. Here the Commission has specified the word “similar open access consumers”. The intent of the Commission in the Order was that, it will be applicable to the open access consumers who have captive generation and open access and are embedded consumers of KSEB Ltd. In this case, Hindalco Industries have a 1MW and a 2 MW solar plant, a small hydro plant, open access and also is an embedded consumer. Since the word “similar” is used, this Order is not applicable to all the open access consumers of the State.
25. If KSEB Ltd required any clarifications on the the Order of the Commission in OP No.29/2020, they could have approached the Commission itself to know the intent of the word “similar”. But KSEB Ltd failed to do so, and unilaterally implemented the Order portion of the Commission regarding 15-minute time block wise accounting to all the open access consumers of the State. KSEB Ltd has billed all the open access consumers from May 2021 as per 15-minute time block wise accounting.
26. The detailed procedure for grant of Connectivity and Open Access in Intra State Transmission System mentioned that the embedded open access consumers and limited open access consumers shall in advance provide the 15 minutes time-block wise drawal schedules from KSEB Ltd, after accounting for the power availed on open access, before 10:00 AM of the previous day. Any deviation from the schedule and gaming would be penalized as specified by the Commission. The Commission asked KSEB Ltd, whether KSEB Ltd can provide details from the year 2013 for the 15-time block wise accounting of open access consumers. The Commission also noted that KSEB Ltd has only implemented 15-minute time block wise accounting from the dated of the Order of the Commission in OP No.28/2021

i.e., from 28.08.2021, even though KSERC (Connectivity and Intra-State Open Access) Regulations, 2013 was effective from 30th November 2013. The Commission asked KSEB Ltd to clarify the reasons as to, why they have been silent on the energy banked to the grid before May 2021 and why KSEB Ltd seeks the directions for energy accounting of all open access transactions be limited to the period from 05. 2021 to 28.08.2021 only.

27. KSEB Ltd, during the hearing mentioned that the quantum for open access has increased, only from 2020 onwards. The Commission is of the view that quantum wise judgement of the applicability of open access accounting is an irrelevant argument. Even if, the open access is for 1-unit, KSEB Ltd shall follow the Regulations of KSERC. Further no Order of the Commission specifies that quantum is a relevant factor for time block wise open access for accounting. KSEB Ltd, during the hearing mentioned that, SLDC has been giving directions from 2020, to the open access consumers to limit their drawal and also to schedule energy through open access as per their requirement and the Commission directed KSEB Ltd to submit the same. ***However, the Commission is at a loss to understand as to the reasons for KSEB Ltd not accounting such transactions. In fact, the loss due to this non- implementation has resulted in underbilling of many crores of Rupees which has been recovered from all consumers of KSEB Ltd through tariff.***
28. The Commission asked KSEB Ltd to point out the date at which SLDC was capable of accounting the open access energy in 15 minutes block wise and the reasons why KSEB Ltd have not implemented 15 minutes block wise energy accounting as per the detailed procedures of KSERC (Connectivity and Intra-State Open Access) Regulations, 2013. The Commission directed KSEB Ltd to submit the details regarding the date and time when KSEB Ltd was capable of 15-minute time block wise accounting for open access consumers.

Analysis and decision of Commission

29. As per the provisions of the Electricity Act - 2003 and Order 47, Rule 1 of the Code of Civil Procedure, 1908, the review jurisdiction of the Commission is very limited. For reviewing its decisions, the discovery of new and important matter or evidence, which was not within the knowledge of the petitioner or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on face of record, or for any other sufficient reason is needed. There are several decisions of Supreme Court and High Court that deals with the scope and ambit of review. Some of them are summarized here to reach a conclusion regarding the maintainability.

- (a) In *Ajit Kumar Rath vs. State of Orissa*, (1999) 9 SCC 596, Hon. Supreme Court has reiterated that power of review vested in the Tribunal is similar to the one conferred upon a civil court as follows:

“30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression ‘any other sufficient reason’ used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the Rule.

31. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.”

- (b) In *Haridas Das v. Usha Rani Banik (Smt.) and Ors.* MANU/SC/8039/2006: (2006) 4 SCC 78, the question arose out of an appeal in the High Court, wherein the High Court accepted the prayer for review. This Court held as follows:

“ 13. The parameters are prescribed in Order 47 Code of Civil Procedure and for the purposes of this lis, permit the Defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the Rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulates a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is

based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection.... [Yashwant Sinha and Ors. vs. Central Bureau of Investigation and Ors. (14.11.2019 - SC)].”

- (c) In State of West Bengal and Ors. v. Kamal Sengupta and Anr. MANU/SC/3011/2008: (2008) 8 SCC 612, this Court, inter alia, held as follows:

“21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier. [Yashwant Sinha and Ors. vs. Central Bureau of Investigation and Ors. (14.11.2019 - SC)].”

- (d) Attention is invited to the observations of the Hon'ble Delhi High Court in Aizaz Alam Versus Union of India & Others **(2006 (130) DLT 63: 2006(5) AD (Delhi) 297)** The relevant extract from the aforesaid judgment is reproduced below: -

“We may also gainfully extract the following passage from the decision of the Supreme Court in Meera Bhanja V. Nirmala Kumari Choudhury, where the Court, while dealing with the scope of review, has observed: The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. The review petition has to be entertained on the ground of error apparent on the face of record and not on any other ground (emphasis added) The review must remain confined to finding out whether there is any apparent error on the face of the record”.

- (e) The maintainability of a review petition is clearly summarized in the Order of the Hon'ble Supreme Court of India in Kamlesh Verma vs Mayawati and Others (2013) 8 SCC 320, in which the court concluded that the review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived. The review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness

or results in miscarriage of justice. The relevant portion from the Order of Hon'ble Supreme Court of India is as follows:

"20.2. When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (i) Minor mistakes of inconsequential import.*
- (ii) Review proceedings cannot be equated with the original hearing of the case.*
- (iii) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- (iv) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*
- (v) The mere possibility of two views on the subject cannot be a ground for review.*
- (vi) The error apparent on the face of the record should not be an error which has to be fished out and searched*
- (vii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*
- (viii) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived. [Yashwant Sinha and Ors. vs. Central Bureau of Investigation and Ors. (14.11.2019 - SC)]"*

30. By examining the above Orders of Supreme Court and High Court that deals with the scope and ambit of review, it can be concluded that "the review petition has to be entertained on the ground of error apparent on the face of record and not on any other ground and the review must remain confined to finding out whether there is any apparent error on the face of the record". The Commission is vested with limited powers under the review jurisdiction.

31. The Petitioner's contention that the direction in Para 19(3) of the Order dated 28-8-2021 in OP No.28/2021 described in Para 6 above, directing adoption of 15-minute time block wise energy accounting of open access consumers shall be applicable to all the embedded open access consumers in the State from the date of Order along with the direction that the bills issued till now shall be revised and adjusted accordingly cannot be considered, as an error apparent and would be a

cause for review, is not sustainable. The said directions cannot be treated as an apparent error in the original order.

32. Further, the Petitioner has not submitted any new documents along with the review petition before the Commission to establish their views or arguments to undertake review of the original order. The Petitioner could not succeed in invoking the powers of the Commission to a review of the Order, since the petitioner failed to produce a new and important matter of evidence or any sufficient reasons for a review. They have also failed to point out any apparent mistake or error on the face of records to succeed in invoking the review jurisdiction of the Commission. It is also evident that while issuing the original order dated 28-8-.2021 in OP No. 28/2021, the Commission has not violated any of the provisions of the Electricity Act, 2003. Hence, this review petition is not maintainable as per the provisions of the Electricity Act, 2003 and the regulations thereunder.
33. The Commission has carefully examined the petition of KSEB Ltd, deliberations during the hearing and the averments of the respondents. KSEB Ltd in their petition stated that the open access energy scheduled by the consumers through power exchanges are not always fully utilised in the same 15-minute time block. It is a fact that, there are instances of under drawal of scheduled open access, which leads to a deemed injection to the grid. Since KSEB Ltd had not implemented the 15-minute time block wise accounting inspite of SLDC being capable of such time block wise accounting, the under drawal in certain time blocks get merged against over drawal in other time blocks, which leads to the banking of excess energy.
34. The Open Access consumers have benefitted by this method of accounting, since they can under draw in time blocks when the rate of power in the exchange is less and this surplus power in their credit can be used to adjust the energy in any other time blocks during the time at which no purchase is made from the power exchange due to higher price. The Commission has noted that KSEB Ltd though having the capability even earlier adopted the 15-minute block wise accounting for the open access consumers from May 2021 and that too based on the Order of the Commission dated 23.03.2021 in OP No.29/2020. In this Order, the Commission had clearly mentioned that the SLDC shall adopt the 15-minute energy accounting for the petitioner and “*similar*” embedded open access consumers in the State having Captive generating unit on their premises and managing with a single net metering facility.
35. KSEB Ltd has misinterpreted the Order of the Commission in OP No29 /2020 and adopted 15-minute time block wise accounting for all the Open Access Consumers

and issued bills accordingly from May 2021. Thereafter, M/s HT & EHT Industrial Consumers Association filed the petition OP No.28/2021 seeking the removal of difficulties due to the Licensee taking the underutilized Energy Scheduled by the Embedded Open Access consumers through Day Ahead Inter-State Short Term Open Access (Collective Transaction). Subsequently, four more individual consumers (all are members of the petitioner association) filed Interlocutory Applications (IA) for impleading as respondents in the petition.

36. The Commission admitted the petition as OP No.28/2021 and based in the deliberations during the hearing and the provision under the Indian Electricity Grid Code and the Electricity Act 2003, the notified energy accounting procedures and systems in force, the Commission issued Order on 28.08.2021 (mentioned in Para 6 above), which directs KSEB Ltd to adopt 15-minute time block wise accounting for all the open access consumers from the date of the Order only i.e., 28.08.2021. The Commission in the Order also directed KSEB Ltd to revise and adjust the amount that KSEB Ltd has withheld from the open access consumers from May 2021, which they collected by misinterpreting the Order of the Commission in OP No. 29/2020.
37. The Commission had concluded the Order in OP No.28/2021 after analysing the following issues concerned with the open access transactions in the State:
 - 1) Whether the action of the licensee/ KSEBL in implementing the 15-minute time block wise energy accounting system to all the embedded OA consumers in the State, is a violation of the Order dated 23.03.2021 in OP No. 29/2020?
 - 2) What was the intent of the Commission while ordering: 'As suggested by the petitioner HINDALCO Industries Ltd, and also as agreed by the SLDC Kerala, the SLDC shall adopt the 15minute energy accounting for the petitioner and similar open access consumers?
 - 3) Whether non availability of the distribution/ transmission system is considered while preparing the energy account, as envisaged in the OA Regulations?
 - 4) Whether the consumer is aware of the real time consumption? If not, what can be done in this regard?
 - 5) What is the dispute resolution mechanism with respect to the OA transactions existing?
 - 6) How force majeure conditions affect the OA transactions?
 - 7) What are the mechanism existing for providing plant/ line shutdown intimation to the consumers?
 - 8) Whether the data regarding frequent under drawal and gaming, if any, is available?

- 9) What are the issues preventing the OA consumers from adhering to the scheduling properly?
- 10) What are the difficulties faced by the Licensee due to the under drawal by the OA consumers?
- 11) Whether the system followed requires any improvements?
- 12) How Unscheduled Interchange (UI) of power is dealt in the State?
38. From the above identification of issues and its analysis, it is clear that the Commission had considered the entire facts holistically and arrived at a well-considered decision. Hence, it was only after careful examination of the above issues, the Commission decided to implement 15-minute time block wise accounting for all the open access consumers in the State from 28.08.2021. The Commission also directed KSEB Ltd to revise the bills of the Open access consumers for the period from 05.2021 to date of the Order i.e., 28.08.2021. The Commission also directed KSEB Ltd. to prepare monthly bills of the embedded open access consumers for the accounted energy based on the ToD Tariff on monthly basis as per the Tariff Orders issued by the Commission.
39. By virtue of the above Order of the Commission in OP No 29/2020, KSEB Ltd by misinterpreting the Order adopted the 15-minute block wise energy accounting for all the embedded open access consumers in the State. They have also arbitrarily taken the underutilized energy by these consumers within the 15-minute time slot. The Order clearly mentions that, it is applicable only for “*similar*” embedded open access consumers in the State having Captive generating unit on their premises and managing with a single net metering facility.
40. Here the Commission has specified the word “similar open access consumers”. The intent of the Commission in the Order was that, it will be applicable to the open access consumers who have captive generation and open access such as M/s Hindalco Industries who have a 1MW and a 2 MW solar plants, small hydro plant, open access and also is an embedded consumer. Since the word “similar” is used, it is clear that this Order is not applicable to all the open access consumers of the State. It will also be a travesty of justice if this Order is made applicable to all open access consumers in the State who were not made respondents in this petition and hence denied the opportunity to defend their views and infringe on the principles of natural justice.
41. The Commission has observed that, the Order in OP No.28/2021 clearly mentioned that the action of SLDC/ KSEBL in revising the energy accounting methodology of all the open access transactions from 05. 2021 is however not in order, since the OP No. 29/2020 pertains to certain specific issues. It was during

the deliberations in OP No.29/2020, in view of the mutual agreement between M/s HINDALCO Industries and SLDC Kerala, the Commission had permitted to adopt the 15-minute time block wise accounting for the petitioner HINDALCO Industries and similar open access consumers. KSEB Ltd is however reluctant to implement the Order of the Commission in OP No.28/2021 and has not adjusted/ revised their bills till now as per the above Order of the Commission. Instead, they have filed this Review Petition to review the Order dated 28-8-2021 in OP 28/2021, with respect to limited ground on the directions for energy accounting of all open access transactions from 05. 2021 to 28.08.2021.

42. Based on the Commission's analysis, it is clear that there is no apparent error in the Order of the Commission, as it is very clear and specific. Without analysing the intent of word "similar open access consumers" mentioned in the Commission's Order, KSEB Ltd has issued bills to all the open access consumers. If they required any clarifications regarding the Order of the Commission in OP No.29/2020, they could have approached the Commission itself to know the intent of the word "similar". But KSEB Ltd failed to do so, and adopted the 15-minute time block wise accounting for all the open access consumers of the State.
43. The Petitioner's contention that the direction in Para 19(3) of the Order dated 28-8-2021 in OP No.28/2021 described in Para 6 above, directing that adoption of 15-minute time block wise energy accounting of open access consumers shall be applicable to all the embedded open access consumers in the State from the date of Order along with the direction that the bills issued till now shall be revised and adjusted accordingly' is not a part of the Commission's Order and hence cannot be considered, as an error apparent and a cause for review. Hence, this argument of KSEB Ltd is not sustainable. The said directions cannot be treated as an apparent error in the original order.
44. The Petitioner KSEB Ltd, could not succeed in invoking the powers of the Commission for a review of the Order, since the petitioner failed to produce any new and important matter of evidence or any sufficient reasons for a review. They have also failed to point out any apparent mistake or error on the face of records to succeed in invoking the review jurisdiction of the Commission. It is also evident that while issuing the original order dated 28.08.2021 in OP No. 28/2021, the Commission has not violated any of the provisions of the Electricity Act, 2003. Hence, this review petition is not maintainable as per the provisions of the Electricity Act, 2003 and the Regulations thereunder.

45. The Commission also notes that it is in the process of drafting a Deviation Settlement Mechanism (DSM) Regulation for the State and is expected to publish the draft in due course. Until that time, the present KSERC (Connectivity and Intra-State Open Access) Regulations, 2013 and the Detailed Procedure for Grant of Connectivity and Open Access in Intra State Transmission System as approved by the Commission shall prevail.

Order of the Commission

46. The Commission after duly considering the review petition filed by KSEB Ltd, the arguments of the stakeholders during the hearing, KSERC (Conduct of Business) Regulations, 2003, KSERC (Connectivity and Intra- State Open Access) Regulations, 2013 and, the analysis and decisions made above, hereby orders as follows;

- (1) The petitioner has failed to point out any mistake or error apparent on the face of records to succeed in invoking the review petition in OP No.28/2021. Hence, this petition is not maintainable;
- (2) The Commission did not find any merit for consideration in the prayers of the applicant in the review petition and the petition is dismissed;
- (3) KSEB Ltd shall adjust/revise the bills of the Open access consumers as per the Order of the Commission dated 28.08.2021 in OP No.28/2021.

The review petition is disposed off as ordered above.

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

Sd/-
Preman Dinaraj
Chairman

Approved for issue

Sd/-
C R Satheesh Chandran
Secretary

List of respondents participated in the hearing held on 24.02.2021

1. Sri. Satheesh A.R, President, HT & EHT Association
2. Sri. Pradeep M, Hindalco, Kalamassery
3. Sri. Renjit Jacob, Apollo, Koratty
4. Sri. Rajesh. J. Kuruvila, CUMI, Koratty
5. Sri. Saji Mathew, MRF, Kottayam
6. Smt. Prini Peter, CUMI, Edapally
7. Sri. Prabhakaran. K.V, HT & EHT Association
8. Sri. Viswanathan K, HT & EHT Association
9. Sri. Nair Nandakumar, CUMI, Edapally
10. Sri. Satheesh Kumar K.P, SM Power Management, EMD, EDA, CUMI
11. Sri.Anand G, HT & EHT Association
12. Sri. Radhakrishnan K.R, CUMI, Edapally
13. Sri. Ananthkrishnan B.S, HT & EHT Association
14. Sri. Sarath.R, HT & EHT Association
15. Sri. Romy George, HT & EHT Association
16. Sri.Shibu Kurian, TCCL