a) The Commission shall designate an agency as the State Agency for accreditation and recommending the renewable energy projects for registration and to undertake functions under these Regulations.

b) The State Agency shall function in accordance with the directions issued by the Commission and shall act in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.

c) The State Agency shall submit quarterly status to the Commission in respect of compliance of renewable purchase obligation by the obligated entities in the format as stipulated by the Commission and may suggest appropriate action to the Commission, if required, for compliance of the renewable purchase obligation.

d) The Commission may from time to time fix the remuneration and charges payable to the State Agency for discharge of its functions under these Regulations.

7. Distribution Licensee

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7.1 Each distribution licensee shall indicate, along with sufficient proof thereof, the estimated quantum of purchase from renewable energy sources for the ensuing year in tariff/ annual performance review petition in accordance with Regulations notified by the Commission. The estimated quantum of purchase shall be in accordance with clause 4.1 of these Regulations of the approved power purchase quantity for the ensuing year(s). In the event of the actual consumption in the license area being different from that approved by the Commission, the RPO shall be deemed to have been modified in accordance with clause 4.1. If the distribution licensee is unable to fulfil the obligation, the shortfall of the specified quantum of that year would be added to the specified quantum for the next year. However, credit for excess purchase from renewable energy sources would not be adjusted in the ensuing year.

7.2 Despite availability of renewable energy sources, if the distribution licensee fails to fulfil the minimum quantum of purchase from renewable energy sources, it shall be liable to pay compensation as per clause 9 of these Regulations.

8. Captive and Open Access User(s)/ Consumer(s)

8.1 The quantum of RPO mentioned in clause 4.1 shall be applicable to captive and open access user(s)/ consumer(s) from the date as would be notified in the Official Gazette.

8.2 Every Captive and Open access consumer(s)/ user(s) shall have to submit necessary details regarding total consumption of electricity and purchase of energy from renewable sources for fulfillment of RPO on yearly basis on or before 30th April to the State Agency.

8.3 Captive and Open Access Consumer(s)/ User(s) shall purchase renewable energy as stated in Table 1 of these Regulations. If the Captive user(s) and Open Access consumer(s) are unable to fulfil the criteria, the shortfall of the targeted quantum would attract payment of regulatory charge as per clause 9.

8.4 Captive/ Open Access consumer(s)/ User(s) may fulfil its RPO through the renewable energy certificate as provided in clause 5 above.

9. Consequences of default

9.1 If an obligated entity does not fulfil the renewable purchase obligation as provided in these Regulations during any year and also does not purchase the certificates, the Commission may direct the obligated entity to deposit into a separate fund, to be created and maintained by such obligated entity, such amount as the Commission may determine on the basis of the

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shortfall in units of RPO and the forbearance price decided by the Central Commission:

Provided that the fund so created shall be utilised, as may be directed by the Commission, partly for purchase of the certificates and partly for development of transmission infrastructure for evacuation of power from generating stations based on renewable energy sources.

Provided that the obligated entities shall not be authorized to use the fund created in pursuance of the above, without prior approval of the Commission;

Provided further that the Commission may empower an officer of the State Agency to procure from the Power Exchange the required number of certificates to the extent of the shortfall in the fulfillment of the obligations, out of the amount in the fund:

Provided also that the distribution licensee shall be in breach of its license condition if it fails to deposit the amount directed by the Commission within 15 days of the communication of the direction.

Provided that in case of any genuine difficulty in complying with the renewable purchase obligation because of non-availability of power from renewable energy sources or the RECs, the obligated entity can approach

the Commission to carry forward the compliance requirement to the next year:

Provided further that where the Commission has consented to carry forward of compliance requirement, the provision regarding payment of regulatory charges as specified above shall not be applicable.

10. Grid Connectivity

10.1 Any person generating electricity from renewable energy sources, irrespective of installed capacity, shall have open access to any Licensee's transmission system and/or distribution system or grid as the case may be. On an application from such person, the transmission licensee or distribution licensee shall provide appropriate interconnection facilities, as far as feasible, before Commercial Operation Date of the renewable energy project. Such interconnection shall follow the grid connectivity Standards as specified in the Indian Standard Grid Code, State Grid Code and/or the manner prescribed by the Central Electricity Authority.

The STU/SLDC/Licensee shall make best efforts to strengthen the system to provide timely open access to transmit power from renewable energy sources.

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11. Cross-Subsidy

Third Party Sale from renewable energy sources shall be exempted from the cross-subsidy surcharge determined by the Commission from time to time. However, no banking facility shall be provided for supply (third party sale) from renewable energy sources through open access. Further, ABT compatible interface metering system capable of energy accounting for each block of 15 minutes shall be provided at both supply as well and drawal point.

For third party sale, energy generation from renewable energy sources in each 15 minute time block shall be set off against the captive/ open access user(s) consumption in the same 15 minute time block.

12. Power to remove difficulties

12.1 The Commission shall *suo motu* or on an application from any person generating electricity from renewable energy sources or a distribution licensee or captive user or open access consumer may review, add, amend or alter these Regulations and pass appropriate orders to remove any difficulty in exercising the provisions of these Regulations.

13. Repeal

13.1 The previous Regulation No.15 of 2005 dt. 29th October, 2005 is hereby repealed.

Sd/-

Place: Ahmedabad
Date: 17 April 2010

(Sanjay Nandan Agrawal)
SECRETARY
Gujarat Electricity Regulatory Commission

Paras 46-49

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KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

PRESENT

Shri.T.M.Manoharan, Chairman

Shri. P. Parameswaran, Member

Shri. Mathew George, Member

OP No. 30/2012

In the matter of: Accreditation of M/s INDSIL as a 'Renewable Energy Generator for their 21 MW Kuthungal SHP by ANERT

7th August 2013

Petitioner	:	Kerala State Electricity Board
Respondent s	:	ANERT, Thiruvananthapuram
	:	M/s INDSIL Hydro Power & Manganese Ltd, Coimbatore.

ORDER

1. The Govt. of Kerala, with the concurrence of the Kerala State Electricity Board(KSEB), had allocated the 3 x 7 MW Kuthungal Small HydroelectricProject (SHP)) to INDSIL Hydro Power & Manganese Ltd(M/s. INDSIL) during the year 1992. The project isutilising controlled release also from KSEB's Anayirankal reservoir. The project was allocated as a captive power project (CPP), as a promotional measure to attract private participation in power generation. The power generated in the Kuthungal project is used to meet the power requirements of the industrial units of M/s. INDSIL, namelyINDSIL Electrosmelts Ltd, and associated units at Palakkad. The company

entered into an agreement with KSEB on 30-12-1994 .The project started commercial operation on 1.6.2001.

2. M/s. INDSIL applied for accreditation of the project as a renewable energy generator as per Notification No. 1517/CT/2010/KSERC dated, 23/11/2010to the designated state agency namely Agency for Non- Conventional Energy & Rural Technology(ANERT).As per Clause 5(2) of the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, ANERT granted accreditation No.KL0NSINDSL001A191211 for the project on 19/12/2011 as and subsequentlythe Central Agency namely National Load Despatch Centre(NLDC) also approved the project under REC mechanism and granted registration certificate No.KL0NSINDSL001R160112 on 16.01.2012.

3. As part of the process stipulated under the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, a generating company is required to apply for the issuance of Renewable Energy Certificates (RECs) to the Central Agency, with the approved injection report from the State Load Dispatch Centre (SLDC). In case the eligible entity is a captive power producer (CPP), connected to the transmission /distribution network of the transmission /distribution utility, the SLDC shall establish protocol for receipt of information andmaintenance of the record of meter readings andarrange to communicate injection report for each accredited project of the registered eligible entity within the state to the Central Agency on a monthly basis. The SLDC has to follow the Indian Electricity Grid Code (IEGC) as well as Kerala State Grid Code for the purpose of accounting the renewable energy injected into the grid.

4. M/s. INDSIL filed a complaint on 2/4/12 before the Commission against KSEBabout the non-compliance of the CERC regulations and Commission's directions to report the required detailsof energy injected by therenewable energygenerator plant on

monthly basis, from the State Load Despatch Centre (SLDC)to NLDC and ANERT. The remarks of KSEB on the complaint were sought for by the Commission.

5. KSEB filed a petition before the Commission objecting to the accreditation of M/s INDSIL as a renewable energy generator by ANERT claiming it as irregular. KSEB pointed out that accreditation under REC mechanism would enable a renewable energy generator to trade the RE Certificate provided to it, corresponding to the energy generated , in the power exchange to earn additional revenue, which in turn will deprive KSEB from accounting the generation from that project against the Renewable Purchase Obligations (RPO) of KSEB.

Prayers of the Petitioner (KSEB)

6. The prayers of the petitioner are the following.

i) Withdraw the certificate of accreditation as renewable energygenerator given to INDSIL for their 21 MW SHP at Kuthungal

ii) Request NLDC to revoke the REC Registration given to INDSIL based on the certificate of ANERT.

iii) While granting accreditation, strictly follow the procedures stated in the rules and regulations framed by CERC and KSERC in future.

Hearing of the matter

7. The petition was admitted as OP 30/12 withKSEB asPetitioner, and ANERT and INDSIL as respondents. The Commission heard the arguments of KSEB, ANERT and INDSIL on 5-9-2012 and on 21.05.2013.Both KSEB and INDSIL submitted connected documents and detailed argument notes to establish their claims. The points submitted and arguments raised by the parties are summarised below.

Arguments of KSEB

8. KSERC had designated ANERT as the state agency for accreditation and recommending the renewable energy projects for registration and to undertake functions under the KSERC (Renewable Energy Purchase Obligation and Its

Compliance)Regulations, 2010. (hereinafter referred to as KSERC RPO Regulations, 2010) ANERT has to function as per clause (5) of the said Regulations.

9. CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 dt 14-1-2010 specify the eligibility criteria for participating in the REC schemes by generators and other captive power producers.

10. The project was allocated by the State Govt. to M/s INDSIL as a CPP as a promotional measure to attract private participation in electricity generation, much before the enactment of Electricity Act 2003, utilizing the regulated resources developed by KSEB at its cost. An agreement was executed between KSEB and INDSIL on 30.12.1994. KSEB argued that the Kuthungal project of M/s INDSIL is not eligible for accreditation under REC mechanism due to the following reasons:

a) CPPs are eligible for REC benefits only if they have not availed or do not propose to avail any benefit in the form of concessional / promotional transmission or wheeling charges, banking facility benefit and waiver of electricity duty. Out of the total 16.5 KM of transmission lines required for evacuation of power from the project, KSEB had constructed 12.5 KM of 110KV transmission line free of cost as a promotional measure for the CPP . M/s. INDSIL is thus enjoying an added benefit of Rs. 0.62 per unit towards transmission charges, wheeling charges and T&D loss.

b) KSERC RPORegulations, 2010 provide for 5% banking charges whereas the agreement dated 30.12.1994 provides only for 1% banking charges. The concessional banking charges allowed by KSEB to the extent of 4% is an additional benefit being enjoyed byM/s. INDSIL

c) Relief in maximum demand charges to the company by virtue of contribution of power generated by the company and fed in to the KSEB grid, is another advantage.

d) CERC vide order No. L-1/12/2010-CERC dt 9-11-2010 has approved for implementation, the detailed procedures for granting benefits under REC mechanism. ANERT as a state agency has not followed the step No.5 and step No. 7 of the said procedure approved by CERC.

11. KSEB submitted additional statements on 19-9-2012and on1-11- 2012 to substantiate their arguments. The main arguments submitted by KSEB are the following.

a) As per the DPR prepared by KSEB for Kuthungal project, the power generated at Kuthungal is to be transmitted to the 110 kV substation at Sengulam by constructing 10 km long single circuit transmission line. During the course of execution, the interconnection point was changed from Sengulam to Neriamangalam, due to serious constraints on land availability for extending the yard etc. It is the responsibility of the CPP to construct the transmission system from the generator switchyard to the substation of the distribution utility.A reduction in the capital cost of the Kuthungal project to the extent of Rs. 8.78 Crores was enjoyed by M/s. INDSIL on account of this.

b) CERC (Terms and conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) (First amendment) Regulations, 2010 (hereinafter referred to as CERC – REC Amendment Regulations, 2010) stipulated that if the CPP availed any concessional / promotional transmission or wheeling charges, they are not eligible for any benefits under REC mechanism.The developer is relieved of transmission charges to the extent of Rs.0.40 paise per unit, which would have been incurred by the CPP on the energy produced by them.

c) KSEB has been providing banking facilities to the developer on water year basis, i.e., to bank the surplus energy every month and to use the same in subsequent months when generation from the CPP is less than their consumption. KSEB has requested the Commission to direct the CPP to provide month wise adjustment of banked energy during the past two water years, viz., June to May for 2010-11 and 2011-12.

d) KSEB has been extending the banking facilities to the developer since the commissioning of the project. The banking charges is 1% of the net energy banked. The net energy input into the KSEB grid from the CPP after deducting the 12% transmission and wheeling charges is adjusted against the total consumption of their industry, M/s INDSIL Electrosmelts Ltd, Palakkad. i.e., the net energy input from the CPP to KSEB grid is

adjusted against the total consumption. Any excess generation from the plant after adjusting the consumption is allowed to be banked after deducting 1% of the excess generation as banking charges.

e) When the consumption of a month in a time zone exceeds the 'net banked energy available in the corresponding zone' KSEB has been permitting the developer to adjust the consumption in that zone against the banked energy if available in any other time zone.

f) The plant is located in the Panniarriverand getting controlled release from KSEB's Anayirankal reservoir also. Since various projects such as Pallivasal, Sengulam, Panniar and Neriamangalam are established and operated by KSEB in the Mudirapuzha basin, the hydrology of the Mudirapuzha basin is well established and validated. Hence there is no merit in the argument that energy generated from the plant is infirm.

12. KSEB further furnished their reply to the statement of defence submitted by INDSIL on 3-10-'12. In the said reply KSEB argued that 12.5 km 110kV transmission line was constructed by KSEBfree of cost and it amounts to promotional transmission charges as contemplated in CERC notification dt 29-9-2010, since this resulted in foregoing the transmission investment by M/s. INDSIL and its annual recurring costs.Regarding banking facilities, KSEB argued that M/s. INDSIL had entered into an agreement with KSEB on 30-12-1994 which covers the modalities for excess drawl of power by M/s INDSIL over their self-generation, adjustment of banked energy with KSEBetcand this agreement is still valid and hence there is no scope for applying provisions of KSERC (Supply of Power from Captive Generating Plant to Distribution Licensees) Regulations, 2007 (hereinafter referred to as KSERC CGP Regulations, 2007).

Arguments of ANERT

13. ANERT filed reply to the petition vide letter dated 1-9-2012 in the following lines.

a) The application for accreditation was received on 19.1.2011. Details were sought from KSEB on 9.8.2011 and 4.10.2011. Reply was not received from KSEB.

b) ANERT has granted accreditation to INDSIL on 19-12-2011 after verifying the authenticity of the documents and after verifying metering and other details at SLDC. Response from KSEB was received only on 3.1.2012.

c) KSEB does not claim to have given any promotional transmission charge.

d) CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, dated 29-9-2010 does not specifically mention concessional/promotional transmission facility as an ineligibility condition.

e) ANERT verified the conditions mentioned in Step 5 and Step 7, which mentions the duties of the central agency and not that of ANERT

f) ANERT feels that no concessions stipulated as ineligibility criteria, as per CERC Regulations, were availed by M/s. INDSIL and accreditation was granted as per their interpretation of CERC Regulations.

Arguments of M/s.INDSIL Hydro Power and Manganese Ltd

14. M/s. INDSILfiled their statement of defence with the following arguments.

a) KSEB was indirectly attempting to treat the wheeled energy generated by the respondent as procured energy so as to satisfy their REC purchase obligations.

b) An elaborate and pervasive enquiry was conducted by ANERT which is the notified agency by the Commission before issuing the accreditation.

c) Despite the directions of the Commission, SLDC sought to forward conditional reports which were objected to by NLDC and later SLDC issued unconditional injectionreports for the months of January to March 12. Hence, they are eligible for availing REC benefits.

d) The objections raised by KSEB were appraised by ANERT and NLDC and found to be untenable.

e) The accreditation, registration and RECs issued are final and revocation is contemplated under specific contingencies which do not exist in the present petition. The attempt by KSEB is a direct violation of the judgement of Hon. Supreme Court in the case of Vadilal Chemicals Ltd (AIR 2005 SC 3073)

f) REC mechanism or the CERC guidelines oneligibility do not concern itself about the source of water for a hydro power project of the renewable energy generator in terms of identifying the eligibility status of renewable energy generators.

g) The respondents plant is a CPP whereas the rate of Rs. 2.44 per unit is applicable to IPPs.

h) Projecting Kuthungal SHP as a tail race scheme is an intentional attempt to mislead the Commission.

15. In reply to the rejoinder of KSEB, M/s.INDSIL further submitted as follows:

(1) KSEB could not point out anystatutory provision under REC mechanism guidelines /notifications that enable them to present this petition and thereforethe petition deserves to be dismissed.

(2) The CPP pays charges to the tune of 12% on energy generated which is much more than the 5% wheeling charge and loss stipulated by the KSERC for similar CPPs within the state.As a CPP, the company does not enjoy any concession whatsoever in the form of transmission or wheeling charges and any CPP in the state has to pay only 5% wheeling and transmission charge and loss.

Additional points submitted by M/s. INDSIL on 21.05.2013

16.The arguments centred around the following three main questions raised by the Commission.

a) *Whether the KSEB has any locus standii to file a petition before the KSERC or any other authority challenging accreditation or registration of a renewable energygenerator*

i) M/s.INDSIL argued in this regard that, as per CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, read with amendments, the distribution licensee namely, KSEB has absolutely no role, power or any authority in any process with respect to the 3 stages contemplated therein of accreditation, registration and issue of RECs. KSEB has no *locus standii* nor is

there any provision for filing of the present petition before the Commission and hence the petition is not maintainable.

ii) Regulation 5(1) entitles a generating company to apply for registration and issuance and dealing certificates on the condition that it has obtained accreditation from the state agency. The amendment incorporated after Clause 5(1)(c) states that " *the disputes if any on the question as to whether such concessional benefits were availed by a CPP or not shall be referred to the Appropriate Commission."* Such disputes can arise only between the state agency ANERT and thegenerator M/s.INDSIL and no such dispute has arisen so far.In fact, after due and proper diligence, ANERT has granted accreditation. ANERT continues to maintain its position that M/s. INDSIL is eligible for the accreditation.

iii)KSEB does not stand to lose anything whatsoever by M/s.INDSIL getting accreditation under REC mechanism. KSEB cannot claim any credit towards RPO for the power generated by a CPP within the State. TheGovt of India and CERC have come out with a specific national initiative to promoterenewable energy generation by giving a fixed time frame incentive window for eligible parties. KSEB has no material loss or benefit with respect to this incentive given to any captive renewable energy generator player within the state. There is no question of KSEB being an aggrieved party of any manner.

iv)CERC regulationsclearly outline specific guidelines on when and how a registration can be revoked. Such proceedings can arise only before NLDC or CERC.

b) *Whether the promotional measure mentioned in Clause 9 of the agreement on cost of construction of transmission line amounts to concessional transmission charges mentioned in the regulations.*

With regard to this issue, M/s. INDSIL submitted the following:

KSEB does not have a case that INDSIL enjoys payment of concessional transmission and wheeling charges, while generating power from Kuthungal. KSEB is trying to say

that transmission line was constructed by KSEB, as a promotional measure, which in turn tantamounts to an indirect concession in terms of transmission charges.

Proviso to clause (c) of sub regulation (1) of regulation (5) reads as follows:

"Provided further that the Captive Power Producer (CPP) based on renewable energy sources shall be eligible for the entire electricity 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 benefits and waiver of electricity duty".

The Clause(9) of the Agreement dated 30.12.1994 between KSEB and INDSIL reads asfollows:

"Clause (9). The transmission line required for transferring power from the power house to the nearest grid station and/or other locations as suggested by the KSEB up to a length of 4 km shall be built by the KSEB at the cost ofthe company, as a deposit work and the balance constructed by the KSEB at its cost as a promotional measure for encouraging the private entrepreneurs for generation of power. After construction of the line for the company by KSEB, it shall be transferred to KSEB without any compensation....."

The construction of the transmission line from Kuthungal Power Station to Neriamangalam Power House was not a concession to M/s. INDSIL. The words in the Clause 9 of the agreement mention transmission line to transfer power from the power house should be to the nearest grid substation. The original DPR also points to it. KSEB, to suit its own convenience and load requirements, decided to draw the transmission line to Neriamangalam Power House. The KSEB built the entire line and cost for the construction of 4 km of 110kV transmission line was realised from M/s. INDSIL. The entire line has become the sole propertyof KSEB. Recently, KSEB has commenced the work of a new 110 kV sub stationwithin the premises of KuthungalPower House for transmission of energy to the nearby SenapathyPanchayat. This shows that the

development of the transmission infra structure is intended solely for the convenience and needs of KSEB and not a benefit or concession to the developer. It is also to be noted that irrespective of the destination of power being ferried, transmission charges remains the same throughout the state. Hence the subject of identifying whether transmission charges were a concession or not, cannot be limited to an activity relating to the line between Kuthungal and Neriamangalam alone.

c) *Whether the provision for banking energy as in Clause 10 and 11 of the Agreement dated 30.12.1994 could mean banking facility benefit mentioned in CERC Regulations. Regarding this issue M/s. INDSIL submitted as follows:*

KSEB has completely misunderstood the scope and ambit of the issue. What is in contemplation is "banking facility benefit", and not mere "banking facility". The Regulationclearly stipulates *"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."* The emphasis is therefore on "benefit of such banking facility". Obviously, therefore, what is contemplated is "benefit" of utilising the energy injected into the grid in 'off-peak hours' towards energy consumed in peak and normal hours. Reverse would only be a 'penalty' and not a 'benefit'. In fact, not even once in the history of the project, has KSEB allowed the company to set off power generated during off-peak hours against the consumption during normal or peak hours. The criteria that adjustment of off-peak generation against peak/normal consumption is totally absent. Therefore M/s. INDSIL is entitled to the REC benefits.

Analysis and decisions of the commission.

17. The important issues which arise for consideration in this case are the following.

(1) Whether or not KSERC has the jurisdiction and competence to examine the issues raised by KSEB in OP No. 30/2012 and to grant the following prayers of KSEB

(i) Withdraw the certificate of accreditation as RE Generator given to INDSIL for their 21 MW SHP at Kuthungal

(ii) Request NLDC to revoke the REC Registration given to INDSIL based on the certificate of ANERT

(iii) While granting accreditation, strictly follow the procedures stated in the rules and regulations framed by CERC and KSERC in future.

(2) Whether or not KSEB has any locus standii to file this petition

(3) Whether or not M/s. INDSIL is in receipt of any concessional / promotional / transmission or wheeling charges as contemplated in the proviso to clause (c) of sub-regulation (1) of Regulation 5 of the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations 2010 read with its amendments

(4) Whether or not M/s. INDSIL is in receipt of any banking facility benefits as contemplated in the above mentioned proviso read with the explanation thereunder, to the effect that '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 it during off peak hours'.

(5) Whether or not M/s. INDSIL is in receipt of any waiver of electricity duty as contemplated in the above proviso

18. The above issues have to be examined and decided with special reference to the relevant legal provisions and policies contained in

(1) The Electricity Act 2003 and its amendments

(2) Policies of Central and State Governments relating to renewable energy.

(3) 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

(4) KSERC (Supply of Power from Captive Generating Plants to Distribution Licensees) Regulations, 2007

(5) KSERC (Power Procurement from Renewable Sources by Distribution Licensee) Regulations, 2006.

(6) KSERC (Renewable Purchase Obligation and Its Compliance) Regulations, 2010

19. The issue no.1 relating to the jurisdiction and competence of the Commission has to be examined with reference to the provisions in KSERC (Renewable Purchase Obligation and Its Compliance) Regulations, 2010. Clause (5) of the said regulations states as follows:

" If the Commission is satisfied that the State Agency is not able to discharge its functions satisfactorily, it may by general or special order, and by recording reasons, in writing, designate any other agency to function as State Agency as it considers appropriate".

Agency for Non-conventional Energy and Rural Technology (ANERT) is the state agency designated by the Commission for the accreditation of the renewable energy projects and for recommending them for registration. The dispute raised by KSEB is whether the Certificate of Accreditation given by ANERT to M/s. INDSIL as a renewable energy generator is valid in accordance with the eligibility criteria fixed for a renewable energy generator. M/s. INDSIL and ANERT argued that the accreditation given by ANERT to M/s. INDSIL is in order. In view of the above quoted provision in KSERC (Renewable Purchase Obligation and Its Compliance) Regulations, 2010 the Commission has the authority to examine whether or not M/s. ANERT has performed its functions in this regard satisfactorily.

20. Further, the proviso under Clause (c) sub regulation (1) of regulation (5) of CERC (Terms and Conditions for Recognition and Issuance of REC for Renewable Energy

Generation) as amended by the First Amendment Regulations, 2010 dated 29.09.2010 states as follows:

"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".

The first prayer of KSEB is to withdraw the Certificate of Accreditation as renewable energy generator given to M/s. INDSIL for their 21 MW small hydro project at Kuthungal, on the ground that they are availing benefits which would make M/s. INDSIL ineligible for the REC benefits. In view of the above legal provisions it can easily be found that the Commission has jurisdiction and competence to examine the issues relating to the first prayer of KSEB for the withdrawal of the Certificate of the Accreditation as renewable energy generator given to M/s. INDSIL by ANERT.

21. In the second prayer KSEB has requested the Commission to make a request to National Load Despatch Centre to revoke the REC registration given to M/s. INDSIL based on the Certificate of Accreditation given by ANERT. It is well known that the State Commission has no power of superintendence over the National Load Despatch Centre and therefore the second prayer of KSEB is a misplaced one.

22. Regarding the third prayer of KSEB, no separate directions are required to any agency to strictly follow the rules and regulations framed by CERC and KSERC in future. The rules and regulations are framed by CERC and KSERC only for strict compliance by the concerned utilities.

23. In view of the above facts and consequent finding to the effect that Commission has jurisdiction and competence to examine the issue relating to accreditation given by ANERT,the analysis and findings of the Commission are confined to the first prayer of KSEB, with regard to which the Commission has jurisdiction and competence.

24. Regarding issue No. 2 relating to the locus standii of KSEB to file this petition, M/s. INDSIL have contended that as per Clause (c) under sub-regulation 1 of Regulation 5 of CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 read with its amendment dated 29.09.2010, "the dispute if any on the question as to whether such

concessional benefits were availed by as CPP or not shall be referred to the appropriate Commission. According to M/s. INDSIL, the parties involved in the process of granting accreditation are only M/s. INDSIL and ANERT and such dispute as referred to in the regulation cited above can arise only between the state agency namely ANERT and generator namely M/s. INDSIL. No such dispute has arisen between these parties. KSEB does not stand to lose or to gain in the process. The REC benefit can be availed only by the renewable energy generator and therefore KSEB has nothing to be aggrieved about granting accreditation to M/s. INDSIL.

25. Regarding issue No. 2 relating to the locus standii of KSEB to file this petition, it has to be noticed that the nodal agency namely ANERT had, while processing the application dated 19.01.2011 of M/s. INDSIL, called for remarks from KSEB as early as on 09.08.2011 and 04.10.2011 . KSEB did not respond to the request of ANERT for months together till 03.01.2012. In view of the inordinate delay,M/s. INDSIL had approached this Commission for issuance of directions to KSEB to furnish necessary information to ANERT. KSEB has filed this petition before the Commission after forfeiting its chance to present the relevant facts before the state agency. KSEB is not an affected party in this process. M/s. INDSIL is a CPP which is consuming the energy generated in the Kuthungal small hydro project. There is no power purchase agreement (PPA) between M/s. INDSIL and KSEB for the purchase of energy generated in Kuthungal SHP. In the absence of PPA, the contention of KSEB to the effect that the energy generated in Kuthungal small hydro project can be accounted towards their renewable energy purchase obligation, cannot succeed. If KSEB has accounted the energy generated in Kuthungal small hydro project towards their renewable energy purchase obligation, it will have to be reviewed for which the Commission will issue separate directions. The REC benefit can be availed by the renewable energy generator as an incentive in accordance with the provisions of the relevant regulations issued by CERC and KSERC. It is an entitlement of the renewable energy generator provided it satisfies the necessary and sufficient conditions stipulated by the above regulations. It cannot be claimed by KSEB since the entitlement for incentive is only for the renewable energy generator. Neither can KSEB prefer a rival

claim nor can it insist the renewable energy generator to forgo its legal entitlement for the incentive for irregularly accounting the renewable energy generated by the CPP towards the renewable energy purchase obligation of KSEB. Therefore, KSEB which is not a party to the process of granting accreditation under the relevant CERC regulations, cannot have locus standii to file this petition before the Commission, especially after having forfeited its chance to represent the issues before the state agency due to the lapses and inordinate delay, on its own part. However the Commission considers that the allegation raised in the petition filed by KSEB deserve consideration by the Commission in the interest of justice. Therefore the Commission has decided to examine the issues no. 3, 4 & 5.

26.While considering issues no. 3, 4 & 5 it has to be appreciated that the policy of the Central and State Governments is to promote renewable energy as much as possible. It is with this policy objective the Central and State Governments have announced many promotional measures to encourage generation of renewable energy. The Government have, by way of various legal provisions and implementation of various policies and programmes, introduced many incentives to renewable energy projects such as small hydro projects, wind energy projects, solar energy projects etc. Such incentives include capital subsidy, soft loans with low interest rates and long repayment period, accelerated depreciation and consequential income tax benefits, concessional transmission charge and wheeling charge, banking facility benefits, concession with regard to electricity duty and concessions on surcharges as provided in Section 38, Section 39, Section 40 and Section 42 of the Electricity Act 2003.

27. From the CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 dated 14.01.2010 and its amendment dated 29.09.2010 it can easily be found that the intention of the Govt. is to grant incentives to all the renewable energy generators including CPPs. As per the above said amendment dated 29.09.2010 it has been specifically stipulated 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". Therefore he CPPs can be deprived of their entitlement to receive the REC benefit only if they are receiving the following benefits.

1. Concessional transmission/wheeling charge
2. Banking facility benefits
3. Concessional electricity duty

Availing of other incentives such as capital subsidies, soft loans, accelerated depreciation, tax benefits and/or concessions in surcharge as provided in Sections 38,39, 40 & 42 of Electricity Act is inconsequential as far as granting of REC benefit under the above mentioned CERC Regulations.

28. The DPR of the Kuthungal hydroelectric project was prepared and approved by KSEB. The said project was allotted to M/s. INDSIL as per BO No. 1483/92(PLG.VI/1/92/PP) dated 22.08.1992 of KSEB read with GO Ms No. 23/90/PD dated 07.12.1990 and GO Ms. No. 5/92/PD dated 12.03.1992. The implementation agreement was executed between M/s. INDSIL and KSEB as early as on 30.12.1994 The project was completed and commissioned on 01.06.2001 Thus it can be seen that the project was allotted implemented and commissioned prior to enactment of Electricity Act 2003. The CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations 2010 and its amendments were issued only in 2010. Therefore while determining the eligibility of the project for REC benefits, the facts relating to the operation of the project have to be evaluated with reference to the relevant provisions in Electricity Act 2003, policy relating to renewable energy, CERC (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations 2010 with its amendment and in the regulations issued by KSERC on renewable energy purchase obligation. Therefore the Commission has examined the issues relating to

concessional transmission/wheeling charges, banking facility benefits and concessional electricity duty in the following paragraphs.

Concessional/promotional transmission & wheeling charges

29. KSEB argued that the transmission facility extended by KSEB is a promotional measure for the CPP. The developer had borne the cost of the transmission system (110 KV Line) from the power house up to 4 KM only and the cost of the balance transmission system to the extent of 12.5 KM was borne by KSEB as a promotional measure. Clause 9 of the Agreementdt.30-12-1994 between KSEB and the CPP (INDSIL) regarding transmission line says that*"the balance constructed by the KSEB at its cost as a promotional measure for encouraging the private entrepreneurs for generation of power". KSEB has also argued that* though no direct concessionin transmission charge is offered to the Company, cost of the line constructed by KSEB would be equivalent to having offered with concessional transmission charge.

30. KSEB has further argued that the developer has benefited by way of not bearing the transmission investment cost for the 12.5 KM of 110 KV transmission system. Due to this there was reduction in the capital cost of the Kuthungal project by Rs. 8.78 Crores. CERC regulations stipulate that if the CPP has availed any concessional/ promotional transmission or wheeling charges, such CPP is not eligible for the benefits under REC mechanism. As per the version of KSEB,the developer is relieved of transmission charges to the extent of Rs.0.40 paise per unit,as per the computation of KSEB which would have been incurred by the CPP on the energy produced by them.KSEB argued that the REC benefit can be allowed only after the developer foregoes the benefit by remitting the entire cost of the 12.5 KM transmission system constructed by KSEB for evacuating power from the project.

31. KSEB argued that due to the transmission facilities extended by KSEB as a promotional measure for the CPP to the extent of 12.5 KM out of the total 16.5 KM, the CPP is enjoying an added benefit of Rs. 0.62 per unit towards transmission charges,

wheeling charges and T&D loss. As per the prevailing energy charge for EHT supply, wheeling and transmission losses would have to be Rs. 0.35 per unit. The transmission charges and wheeling charges for open access consumers isRs.0.32 per unit and Rs. 0.50 per unit respectively. Assuming transmission loss of 5 % in KSEB system, M/s. INDSIL has to bear a total charges of Rs. 0.97 per unit towards transmission, wheeling, and T&D losses for using transmission system of KSEB. KSEB pointed out that the developer is bearing only Rs. 0.35 per unit towards transmission charges, wheeling charges and T& D losses against Rs. 0.97 per unit

32. The respondents stated that the issues regarding the construction of 12.5 KM transmission line out of 16.5 KM is outside the scope of the CERC - REC Regulations. M/s. INDSIL argued that granting of REC benefits to renewable energygenerator is not concerned with concessions in the form of capital expenditure or capital subsidies.It isconcernedonly with concessional wheeling and transmission charge, concessional banking facilities and waiver of electricity duty.The concession was a common one meant to encourage new hydro plants, because most hydro sites were far away from grid stations and the prohibitive cost of the transmission lines were preventing hydel projects from coming up. That was why clause 9 of the PPA was incorporated as follows: *"The transmission line required for transferring power from the power house to the nearest grid substation and or other locations as suggested by the KSEB up to a length of 4 KM shall be built by KSEB at the cost of the company as a deposit work and balance constructed by KSEB as a promotional measure for encouraging the private enterpreneurs for generation of power".*

33. M/s. INDSIL has further pointed out that in the case of Kuthungal project, the nearest grid substation was Sengulam. This was captured in the original DPR of KSEB. KSEB for its own distribution convenience opted for receipt of power at Neriamangalam at a distance of 16 KM as compared to Sengulam, which is at a distance less than half the distance from Kuthungal. This issue is totally outside the scope and ambit of REC mechanism. The relevant pages of the DPR prepared by KSEB for Kuthungal project was submitted by KSEB. As per para 1.11 of the DPR (page 15), *"the power generated at*

Kuthungal power house is proposed to be transmitted to 110 KV substation of Sengulam by a single circuit 10KM long transmission line". During the course of execution, the interconnection point was changed by KSEB from Sengulam substation to Neriamangalam substation, only to suit its convenience. The ownership of 4km of 110kV transmission line, for which M/s. INDSIL had borne the cost, has also been transferred to KSEB free of cost.

34. Clause 10 of the Agreement 30.12.1994between KSEB and the CPP reads as follows;*" The energy from Kuthungal phase I and II project fed in to the KSEB grid will be metered at a location as detailed above (using meter duly calibrated by KSEB) and this quantum of energy less 12 % towards wheeling charges and T&D losses will be delivered free of cost to the Company and their associates M/s Sun Metals and Alloys Pvt. Ltd. Kanjikode, Palakkad 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."*

35. M/s. INDSIL pointed out that only transmission chargesare applicable to the transmission of energy at voltage of and above 66 KV and wheeling charges are applicable to voltage levels of and below 33 KV. The petitioner transmits energy on 110 KV line and consumes from the 66 KV line. But for the agreement, the respondent would have to incur only 5 % transmission and wheeling charges and loss, as against 12% actually being incurred as per agreement and therefore CPP is eligible for the benefits under the REC mechanism. According to M/s. INDSIL, as per CERC Regulation dated 29.09.2010, one of the eligibility criteria is that the CPP does not enjoy any benefit in terms of concessional transmission or wheeling charges.M/s. INDSIL incurs to the tune of 12% of the energy generated as transmission charges and line loss. The Commission has fixed only 5% of the wheeled energy as transmission and wheeling charges including line loss within the state for a CPP. Clause 4(7) of the notification of KSERC (Supply of Power from Captive Generating Plants to Distribution Licensees) Regulations, 2007, dated 6.8.2007 read as follows:

"The captive generating plants seeking open access to transmit electricity to the destination of use shall pay transmission and wheeling charges including line losses as determined by the Commission. Such plants shall be regulated in the same manner as provided under Kerala State Electricity Regulatory Commission (Open Access) Regulations, 2005. Provided that the captive generating plants generating infirm power from renewable energy sources shall pay transmission and wheeling charges including losses at 5% of wheeled energy"

36. KSERC has fixed transmission and wheeling charges including losses for all renewable energy captive producers in the state producing infirm power @5% of the wheeled energy. The agreement between KSEB and the CPP is for 12% wheeling charges as against 5% wheeling charge prescribed by the State Commission. This cannot be treated as enjoying a concession in terms of payment of transmission and wheeling charges. KSEB is well aware that only transmission charges are applicable to all voltage levels of and above 66KV and wheeling charges are applicable to voltage levels of and below 33KV. Any captive small hydro or wind project in the State of Kerala would have to incur only 5% as wheeling and transmission charges including line loss as per the provisions pointed out above. M/s. INDSIL is incurring 12% energy as wheeling charge and loss. Therefore contrary to concession, it is incurring for transmission charges and line loss at a rate more than the prescribed rate for other CPPs.

37. In the counter argument, ANERT has stated that there was considerable delay in obtaining reply from KSEB and ANERT had granted accreditation to M/s. INDSIL after verifying authenticity of the documents. CERC Regulation dt 29th Sep 2010 does not specify any concessional/promotional transmission "facility" as an ineligibility condition. KSEB does not claim to have given M/s. INDSIL any promotional transmission "charge" and therefore ANERT has not considered the concession as an ineligibility condition for giving accreditation to M/s. INDSIL as an renewable energy generator.

38. The Commission examined the above arguments. It is well-known that the transmission loss in the Kerala power system could not be more than 5% even in 2001. The agreement between KSEB and the CPP provides for losses and wheeling charges at

the rate of12%.Hence the generator was bound to incur more than 7 % towards the transmission charges and loss even in 2001, wheeling charges not being relevant in this case. This cannot be treated as a concession in terms of payment of transmission and wheeling charges.

39. In view of the fact that KSEB is realising 12% of the generated energy towards losses and transmission charges, which could translate to around 8% transmission charges throughout the agreement period. Therefore the allegation that the generator is enjoying concessional transmission charges do not carry any weight of reason. As pointed out by the generator , had there been no such agreement , the generator would end up paying transmission charges applicable for 110KV consumers as determined by the Commission from year to year. The gains by KSEB due to the 8% energy surrendered by the generator would be higher than such transmission charges by any standards.

40. On the question of investment cost of thededicated transmission line *constructed by the KSEB at its cost as a promotional measure* also,the arguments of KSEB cannot be accepted . Even though KSEB has been designated as the STU in the state , they have not yet functioned as a transmission licensee. If a dedicated transmission line is constructed by a transmission licensee , the cost of the work is realised through transmission charges from the beneficiaries. But in actual practice, KSEB being an unbundled entity , the transmission charges which may include depreciation , return on equity (ROE) , operation and maintenance (O&M) cost etc are never computed or realised from the beneficiaries in the state. KSEB has neither demanded transmission charges nor allowed any concessions on the charges to M/s INDSIL. KSEB has not produced any records to show that they had computed transmission charges payable by the generator on the 12.5KM dedicated transmission line done at KSEBs cost nor allowed any concession on the same from the date of commissioning till date. The CERC regulation clearly indicates transmission charges computed and made payable to unbundled entities who realise the dedicated transmission investment cost from the beneficiaries based upon the terms and conditions of tariff approved by the Commission.

41. Commission is of the view that, as the state transmission utility, the KSEB is duty bound to develop transmission facilities in the state and its cost can be realised from the consumers either upfront or in instalment or by way of transmission charges. After having realised transmission charges at the rates more than that fixed by the Commission as explained above, KSEB cannot successfully contend that M/s. INDSIL is enjoying concessional transmission charges . The promotional investment made by KSEB as per the agreement entered into with M/s. INDSIL in 1994, based on the policy of the then Govt. cannot be conceived as concessional transmission charges contemplated in the CERC regulations dated 29.09.2010.

Banking Facility Benefit

42. Another issue to be examined is the Banking of energy. The clauses 10 & 11 of the implementation agreement dated 30.12.1994 are reproduced below:

Clause 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 duly 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.*

Clause 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 the 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 in 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.

43. On a perusal of the above clauses it becomes clear that :

(a) The company can bank their generated energy on the KSEB system upto a period of one accounting year,the accounting year being reckoned as 1st July to 30th June.

(b) The company can use the banked energy during any time zone of their choice, presumably due to the fact the TOD energy accounting was not in vogue during the year 1994.

(c) The excess energy available on year end , that is 30thjune will not be carried over but can be sold to KSEB at *'the rate at which the KSEB sell the energy to the EHT consumers in the same voltage clause' (class)*, that is, energy charges of 110KV consumers excluding demand charges.

44. On the other hand, the CERC regulations insist that *'banking facility benefit'* shall not be available for the CPP to be eligible for REC and explains that *'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'.

45. From the clauses 10 & 11 of the agreement it can be seen that the terms of the agreement do not provide for such restrictions on banking and use of the banked energy. The generator company has argued that the CERC regulation stipulates to verify whether a project is enjoying additional value realization measures by having the facility of generating power during off peak hours and having the luxury of setting off or selling the same during peak hours. They also argue that mere granting of the facility to carry over power does not mean that it is a benefit in terms of the eligibility criteria fixed by CERC. It was also argued that taking of the night off peak generation to set off against peak and normal time consumption alone is conceived as a benefit under CERC regulations. The generator company has stated that, in actual practice, they had never used the energy banked during the night off peak hours for consumption during other time zones. In fact usage had been the other way round on many occasions. Electricity generated during peak and normal hours have been used to offset consumption during night off peak hours during many months. On the other hand KSEB has alleged that the generator had been allowed to utilise the energy banked in a particular time zone during other time zones.Before the commencement of computerised billing the energy was adjusted on a monthly basis without verifying the time zone wise data. Use of energy banked in any particular time zone during any other time zone will disentitle renewable energy generator from availing REC benefit as perCERC regulations. Both KSEB as well as M/s. INDSIL produced billing data for different time zones of different months to establish their points.

46. The arguments and the data produced by both the parties were carefully examined by the commission. The issue of *banking facility benefit cannot* be analysed based upon the actual energy accounts of the past years .The terms of the agreement between the parties have also to be examined. CERC regulation very clearly states that *'the benefit of utilizing the banked energy at any time'* shall act as a disqualification. The reasonable interpretation can be that the energy injected during any time zone has to

be used during the same time zone itself for making the CPP eligible for REC benefits. It should be understood in the background of the concept of the time-slot related price of electricity developing in the country.

47. Commission analyzed the provisions of the agreement dated 30.12.1994. It is clear that the agreement allows utilizing the banked energy at any time without any restrictions and the excess energy if available on an annual basis shall be surrendered to KSEB. This provision in the agreement is not in tune with the CERC regulations on REC. Hence it becomes clear that the generator should not be eligible for REC benefitif the CPP is allowed the benefit of utilising the banked energy during any time slot including peak hours. But the CPP M/s. INDSIL has submitted that they have never been allowed to utilise this facility as is evident from the energy accounts.

48. In this regard it has to be specially noted that the generation and transmission of energy from Kuthungalhydro electric project are regulated by the SLDC under KSEB. Unless SLDC schedules the generation, the CPP cannot generate the energy. The despatch of energy is also done by SLDC. Therefore the CPP M/s. INDSIL has no freedom to generate, transmit and sell energy during various time zones at their choice.

49. Another issue that caught the attention of the Commission is the provision for selling the excess power in any accounting year as per clause 11 of the agreement cited. The clause allows the generator to sell the excess energy to KSEB.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 class at which the KSEB receives the energy from the company, excluding demand charges component. That is, the generator will get the applicable energy charges of 110 KV consumers for the surrendered excess energy during the agreement period. This is not envisaged in the REC structure. As per the provisions of the CERC regulations, the total compensation allowable for a renewable energy generator is the sum of average pooled power purchase cost (APPC) and market price of REC. For the energy sold to KSEB , the generator will be eligible for a price not exceeding the pooled cost of power purchase of KSEB as per the CERC REC regulations dated 14.1.2010.

50. In view of the above facts and relevant legal provisions on the matter and with an intention to promote the development of renewable energy and REC trade, the Commission decides to regulate the issue as follows :

The accreditation given to the generator company shall remain valid and the company shall be eligible to avail REC subject to the following conditions:

1) 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.

2) 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.

3) 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.

51. The generator will have to execute an under taking in stamp paper agreeing to the above conditions before the state agency ANERT *within one month* under intimation to KSEB and the Commission. The above undertaking will form part and parcel of the agreement dated 30.12.1994 between KSEB and M/s. INDSIL.If the generator fails to do so, reporting of injection by the generator by SLDC to the Central Agency will be suspended and the state agency ANERT and Central Agency will have to proceed with action to revoke accreditation and registration as per CERC regulations.

52. 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 of the statutes immediately.

Orders of the commission

53. After carefully examining the petition, counter statements, the documents and arguments presentedby 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.

Copies of this order shall be sent to the Central Agency designated by the CERC also for information.

Petition disposed off accordingly.

Sd/-	Sd/-	Sd/-
P.Parameswaran	Mathew George	T.M.Manoharan
Member	Member	Chairman

Approved for issue

Sd/-
Secretary

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COMBINED SUMMARY OF STATE POLICIES

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COMBINED SUMMARY OF STATE POLICIES FOR SMALL HYDRO POWER PROJECTS

Sl. No	Name of State/ Description	Andhra Pradesh	Arunachal Pradesh	Assam	Bihar (From RE Policy of State)
1	Order Date	G.O.Ms No. 165 dated 11.07.2007- for Mini Hydel Projects	No: PWRS/HPD/W- 1305/2005/ dated 24th January, 2008 and No: PWRS/W-1305/2005/ Pt-I dated 13th Oct. 08	Notification No.PEL. 196/2002/ 199 dated March 2007	
2	Eligible Producer		• Local entrepreneurs with sole proprietorship /NGOs/ Co-operative Societies / JV concerns • Consortium with one partner to be Arunachalee. • Any registered company from outside the State with differentiation in free power, upfront money and processing fee with that of local entrepreneurs		Any Industry, Institution, Private Agency, Partnership Firm, Consortia, Panchayat, Co-Operative or Registered Society
3	Land Allotment		• Land shall be acquired and leased to the developer against payment of land revenue as per relevant tariff of the State Government (SG). • Lease till BOOT period.	Land to be allotted / sold at premium / lease, case wise and shall form part of bid document.	Government land, if available on lease, otherwise private purchase.
4	Operative Period		50 years	Thirty five years from the date of award	5 Years with immediate effect
5	Sale of Power and Tariff		To SG at 10 paise lower tariff as per CERC/ SERC or for sale outside the State	ASEB/Successor Co/HT consumer up to 5 MW/local grid/any consumer outside the State	State grid/ BSEB/third party/HT Consumer of BSEB/Pvt. Consumer
6	Wheeling		Wheeling rate as determined by the SERC/State.	Wheeling charges as decided by AERC	On BSEB T&D system as per agreed terms with Developer
7	Banking		Not allowed without prior permission of SG	Banking facility within fixed period of 6 months	

Sl. No	Name of State/ Description	Andhra Pradesh	Arunachal Pradesh	Assam	Bihar (From RE policy of State)
8	**Water Royalty**	Percentage of energy generated		• For project up to 5 MW – No royalty if sold in Assam. • Above 5 MW @ Rs.0.25 per unit. • For power project on irrigation canal fall/ barrages / dams, a water cess @ Rs. 0.05 /kWh / year	Developer to give price equivalent to 10% of the power generated to the SG in lieu of the water rights/ cess.
9	**Power Evacuation and Grid Interfacing**	Evacuation facilities at developer's cost	Developer to bear the cost of transmission network from the project to the point of sale	• ASEB/ GENCO to provide evacuation facilities at charges to be mutually agreed. • Cost of transmission lines in excess of 5 km to be borne by the IPPs/user society and ASEB/ GENCO on mutually agreed terms and conditions	Developer to bear cost for evacuation of power to the nearest State/BSEB grid/sub-station.
10	**Incentives and General**		• SG to allow 50% share of Carbon Credit under CDM. • Indigenous tribal Developer exempted from supplying free power to the SG for projects up to 5 MW capacity.	No entry tax on power generation & transmission equipments for projects.	• Incentives/concessions as applicable to new Industrial units/backward areas. • Concessions to industrial units in backward areas applicable to the projects in backward areas.

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COMBINED SUMMARY OF STATE POLICIES FOR SMALL HYDRO POWER PROJECTS

Sl. No	Name of State/ Description	Chhattisgarh	Haryana (From RE policy of State)	Himachal Pradesh Up to 5 MW	Himachal Pradesh Above 5 MW
1	**Order Date**	Notification No. 131/DoE/2002 dated 29.08.2002	GoH, Renewable Energy Deptt. Dated 23-11-2005		
2	**Eligible Producer**	• Generally Private investors. • CREDA/CSEB may also install.	Companies, Cooperatives, Partnerships, Local Self Governments, State Nodal Agency, Boards & Corporations, Power utilities, Private developers, Public – Private Partnership Companies, Consortia, Registered Societies, NGOs, individuals etc.	• SHP up to 2 MW reserved for Himachalis / and Cooperative Societies comprising Himachalis. • Up to 5 MW, preference to Himachalis. • Any Private Investor / PSU/ Co-operative Societies comprising Himachalis	• Any Private Investor /Co-operative Society comprising of the bonafide Himachalis. • Not more than 2 projects to IPP
3	**Land Allotment**	Award of land by State Govt.	State Govt. to acquire land if necessary at the cost of IPP.	• Govt. to acquire land for permanent structures • Land for other purposes on lease basis on Govt. approved rates.	
4	**Operative Period**	Up to 28.08.2010	Date of notification till a new policy is notified	40 years after which the Project to revert to the State Government free of cost	
5	**Sale of Power and Tariff**	CSEB to buy surplus power @ Rs. 2.25 per unit after captive consumption or sale to third party	• To Licensee/Utilities at HERC tariff • Surplus power from captive power/Co-generation to utilities at negotiated price.	• HPSEB to purchase power @ Rs. 2.50 per unit • Third party sale within the State allowed where cost of generation is above Rs. 2.50 per unit	• Developer free to dispose off merchant power • Govt. of HP/HPSEB to have right of first refusal on sale.
6	**Wheeling**	Wheeling charges to be fixed by CSEB.	Licensee / Utilities to transmit power on its grid, and make it available to the producer for captive use or for third Party sale within the State as per approved tariff / surcharge, notified by HERC	• For captive use at a fee of 2% (including losses) • For sale / captive use of power out side state 1% of energy received (including losses)	

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Sl. No	Name of State/ Description	Chhattisgarh	Haryana (From RE policy of State)	Himachal Pradesh Up To 5 MW	Himachal Pradesh Above 5 MW
7	**Banking**		• To be allowed by HVPNL/ DHBVN/ UHBVN/ for a period of one year free of cost. • If the banked energy is not utilized within 12 months no charges shall be paid inlieu of this power.	Allowed	
8	**Water Royalty**	Payable to SG at prescribed rates	• Allowed to use the water for power generation through micro/ mini/ small hydel plants. • No royalty on water used for power generation for non-consumptive use.	No royalty up to 5 MW for 12 years, 12% for next 18 years and beyond at 18% for sale within the state	Free power @ 12% for 12 years, 18% for next 18 years and thereafter 30%
9	**Power Evacuation and Grid Interfacing**	• Upto 2 km by Developer • After 2 Km to be shared equally between developer and CSEB (upto 5 km.) • Laying of the transmission lines by CSEB.	Cost of power evacuation up to HVPN / UHBVN, DHBVN network to be borne by the Developer.	Cost to be borne by Developer	
10	**Incentives and General**	• No electricity duty payable for 5 years • CREDA may cancel the allotment of site in case of non execution of Project within time limit set by it	All new projects to be treated as "Industry" in terms of Industrial Policy, 2005 and all the incentives available to new projects to be applicable as per this Policy.	• As per MNRE/HP Govt. For new projects • Upfront premium exempted for projects up to 2 MW • Above 2 MW and up to 5 MW - Rs.45,000/- per MW with celling of Rs.75,000/-	• As per MNRE/HP Govt. • Incentives for early commissioning

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COMBINED SUMMARY OF STATE POLICIES FOR SMALL HYDRO POWER PROJECTS

Sl. No	Name of State/ Description	J&K	Karnataka (From RE policy of State)	Kerala (Captive Plant)	Kerala (IPP)
1	**Order Date**	Or. No. 211-PDD of 2003 dated. 09.10.2003	No. EN 354 NCE 2008 Bangalore, Dated 19th January, 2010	G.O. (MS) No.5/2006/PD dated 17-03-2006	G.O. (MS) No.5/2006/PD dated 17-03-2006
2	**Eligible Producer**	Independent Power Producer (IPP) to bid for identified projects.		• Who intends to set CPP for its own consumption within the State • Preference to HT/EHT industrial consumers	Company or body corporate or association or body of individual or artificial judicial person
3	**Land Allotment**	• Private land at their cost • Govt. land at lease for 40 Yrs	• Government to provide land to Karnataka Renewable Energy Development Limited for sublease to Developer • After 30 years the project stands transferred to Government • Farmers to be equity partners of not less than 5% of gross energy generated		
4	**Operative Period**	Forty years from date of award & then revert back to GOJK / extension on mutually agreed terms	Up to 2014	BOOT period -30 years from scheduled date of allotment	BOOT period -30 years from scheduled date of allotment
5	**Sale of Power and Tariff**	HT consumer/Local grids/ (J&KPDD) main grid/Consumer outside	State Government is committed to procure RE power & reserves first right of refusal of Purchase of Power	• KSEB have first right to purchase excess power over the captive consumption at a tariff approved by KSERC • Otherwise CPP is allowed to sell to third party	• KSEB to purchase energy generated by IPP at the bid rates. • If KSEB does not purchase power, Commission to permit open access
6	**Wheeling**	No wheeling charges for sale to J&KPDD /Local Grid	5% wheeling charges	Surcharge , transmission & wheeling charges as decided by KSREC	
7	**Banking**	Allowed for 2 months	Allowed for energy banked with KPTCL/Distribution licensee		
8	**Water Royalty**	• Exempted for first 15 years • After 15 years, 12% of net energy wheeled minus wheeling charges.	To be determined by the Government		No water cess

Sl. No	Name of State/ Description	J&K	Karnataka (From RE policy of State)	Kerala (Captive Plant)	Kerala (IPP)
9	**Power Evacuation and Grid Interfacing**	IPPs to lay lines for connectivity to the nearest grid substation normally at 132 kV or 33 kV	KPTCL to provide transmission lines and developers to bear the cost of lines from the project site to the sub-stations as per grid norms	• Developer to construct & maintain the transmission facilities up to KSEB/ STU grid at its own cost • Developer to bear the cost of any modification/ up-gradation of sub station of KSEB/ STU which draws power from the project	• Developer to construct & maintain the transmission facilities up to KSEB/ STU grid at its own cost • Modification/ up- gradation of sub station of KSEB to be at the cost of developer.
10	**Incentives and General**	• Micro projects exempted from Income Tax • No entry tax on power generation, transmission equipment and building material for projects. • SHP to be treated as an industry and incentives available accordingly	• Incentives allowed by MNRE/Government of India to be passed on to the developer through KREDL • Generation of electricity from RE sources to be treated as industry and incentives available to industrial units extended to RE projects.	• Developer to pay all taxes, duties and other levies • Project to be made operational within 36 months from the date of financial closure , failure to result in cancellation of allotment of site and forfeiture of upfront premium & CPP to pay penalty • Project not transferable other than take over by Govt. • If developer leaves project incomplete, Government reserves the right to take over the project with out compensation • On completion of BOOT period, the entire project components including transmission system to stand transferred to Govt. in proper working condition, free of cost & encumbrances • Any tail race scheme dam toe and other regulated flows are open only to KSEB/ successor entities.	• Installed capacity of single Hydro Electric Project to be limited to 25 MW • Allotment of project to be based on two stage bidding. Bidder to quote Premium per MW payable upfront • Criterion for selection to be the lowest levelised tariff rate for sale of electricity for the entire BOOT period. • Developer to pay all taxes, duties and other levies • Project to be made operational within 36 months from the date of financial closure , failure to result in cancellation of allotment of site and forfeiture of upfront premium & IPP to pay liquidity damages as per Implementation agreement • During implementation transfer of ownership permitted, subject to approval of Government. • On completion of BOOT period, the entire project components including transmission system to stand transferred to Govt. in proper working condition free of cost & encumbrances.

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COMBINED SUMMARY OF STATE POLICIES FOR SMALL HYDRO POWER PROJECTS

Sl. No	Name of State/ Description	Madhya Pradesh	Maharashtra	Manipur (From RE policy of State)	Meghalaya (From RE policy of State)
1	**Order Date**		No. PVT-1204/(160/2004)/ H P Dated: 15th September 2005	No.1/1/2005- S& (Misc) dated 12-09-2006	
2	**Eligible Producer**			• All Power producers generating Grid-grade electricity with installed capacity not exceeding 25 MW • SHP (up to 25 MW) to be installed by MANIREDA either by direct implementation or through producers • Producers generating electricity for captive consumption • Companies, Co-operative, partnerships, Village Development Board/ Village Authorities, individuals etc.	• Power producing entrepreneur. Companies, cooperative, partnership individuals etc. • Power producers with capacity less than 10 kW and more than 25 MW not eligible. • Power producers for captive consumption
3	**Land Allotment**	• Govt. land on lease • Premium and lease rent @ of Rs.1 per year • Private land to be acquired by Govt. at developers' cost • Forest land as per Forest Act	Govt. land on lease rent @ Rs.1/ kW of installed capacity/year, other wise private land at developer cost		
4	**Operative Period**	Date of notification till revised	Date of publication till revised	Date of publication till superseded or modified	
5	**Sale of Power and Tariff**	• 100% IPP • Surplus Power of CPP to any consumer/ Distribution companies / Power Trading Co. (PTC)	• To any consumer of Maharashtra / distribution licensee or power trading company. • Maharashtra DISCOM to have first right of refusal.	• Minimum Rs.2.25/- per unit to be increased every year for 10 operational years. • Thereafter the rate of increase to be mutually settled between Power Deptt. and developer.	By DISCOMS at SERC tariff.

Sl. No	Name of State/ Description	Madhya Pradesh	Maharashtra	Manipur (From RE policy of State)	Meghalaya (From RE policy of State)
		• State Distribution Co/ SPTC to have first right of refusal for purchase of Power		• PPA for 20 years unless Developer wants shorter period	
6	**Wheeling**	• Wheeling and transmission charges for sale of power to Third Party Consumers / Distribution Licensee / Power Trading Company • Subsidy @ 4% towards wheeling charges within the State	Wheeling and transmission losses as per MERC	Wheeling charges @ 2% of the energy fed to the grid.	As applicable
7	**Banking**	Allowed 100% of energy every financial year on payment of 2% of banked energy.	As per MERC	Allowed up to 1 year	
8	**Water Royalty**		At the rate of Rs.0.05 per unit of energy generated quarterly to be escalated by 5% (compounded) every year.	Not exceeding 10% of the tariff for electricity consumers	Charges as admissible.
9	**Power Evacuation and Grid Interfacing**	Cost to be borne by Developer	Developer to bear the cost of transmission lines to destination of his use.	• Developer to bear the cost of Evacuation facilities and Grid interfacing including maintenance to nearest HT line • Power Department to undertake augmentation of the sub-station capacity at 33/11 kV or higher transmission line levels at its cost to receive the power generated.	Developer to bear the entire cost.
10	**Incentives and General**	• No electricity cess • SHPs to be treated as Industry and eligible for incentives • Power for captive use or third party sale exempted from Electricity Duty	• CPPs exempted from Electricity Duty on self consumption for first five years • CPPs exempted from tax on Sale of Electricity for consumption in Maharashtra.	• Exemption from electricity duty for 5 years from COD for captive use or sale to a third party. • Producers to be treated as industrial units and similar incentives available to them	• Infrastructural facilities to be provided on the lines of industrial estates. • Consumption of electricity for captive use or sale to third party exempted from electricity duty for 5 years.

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Sl. No	Name of State/ Description	Madhya Pradesh	Maharashtra	Manipur (From RE policy of State)	Meghalaya (From RE policy of State)
		• Carbon Credit/any such incentive • No entry tax for 5 years on plant and machinery • 50% Incentive of free power to developers for early COD • IPP's free to change option to CPP & vice versa with approval of WRD / NVDA • Transfer of Project allowed with approval	• Incentives for early commissioning • IPPs / CPPs free to change their entity • Transfer of allotment with approval of SG	• Concession given to Industrial units in backward areas to be provided • Infrastructural facilities to be provided on the lines to other industrial units if plant is set up in industrial area developed by State Govt. • GoI Incentives for RE promotion • Exemption of tax on RE devices and spare parts. • Sale Tax exempted • Allowed to use water for power generation, wherever possible.	• Eligible for Sales Tax/ VAT deferment/ remission.

COMBINED SUMMARY OF STATE POLICIES FOR SMALL HYDRO POWER PROJECTS

Sl. No	Name of State/ Description	Mizoram (From RE policy of State)	Orissa (From RE policy of State)	Punjab (From RE policy of State)	Tripura (From RE policy of State)
1	Order Date		Resolution No. 6971/ST, Bhubaneswar, ST-IV-RE-13/ 2005, dated 3-12-2005	No.10/106/2006-STE(1)5390 dated 24th Nov, 2006.	
2	Eligible Producer	• Companies, cooperative, partnerships, individuals, charitable societies, Non-Governmental Organizations etc. • Government agencies and the producers. (JV) • Power producers for captive consumption.	Any Public Sector, Private Entrepreneur, Registered NGOs, Cooperatives, Consortia etc.		• Companies, cooperative, partnerships, individuals, charitable societies, Non-Governmental Organizations etc. • Government agencies and the producers (JV) • Power producers for captive consumption.
3	Land Allotment			• Government land at lease rent of Rs.1/sq. meter / annum for 33 years. • Agricultural land without conversion charges	• Government Land on lease. • Private Land on payment • Forest Land as per the Forest Conservation Act
4	Operative Period	From date of publication in the official gazette till superseeded or modified.	10 years	Five years w.e.f. 8th December, 2006.	Date of notification till superseded or modified
5	Sale of Power and Tariff	SG to purchase at a minimum rate of Rs. 3.50/unit for 2002-03 with escalation of 5% every year for 10 years.	To the bulk suppliers/ distribution licensee	• Mini/ Micro Hydel project Rs.3.49 per unit (Base year 2006-07) with five annual escalations @ 3% up to 2011-2012. • Thereafter PSEB/HT tariff whichever is higher.	• Department / TSECL to purchase electricity at TERC tariff • Third party sale permitted. • PPA for a minimum period of 10 years. • Department to consider PPA for shorter period on merit.
6	Wheeling	Wheeling charges of 2% of the energy supplied to the grid.	• Allowed, subject to payment of transmission/ distribution and wheeling charges both for captive use and sale out side the State as approved by OERC	2% of energy fed to the grid	2% of the energy supplied to the grid.

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Sl. No	Name of State/ Description	Mizoram (From RE policy of State)	Orissa (From RE policy of State)	Punjab (From RE policy of State)	Tripura (From RE policy of State)
			• No transmission charges for CPP or NRSE maintenance for 5 years.		
7	**Banking**	Allowed up to one year	• Allowed on annual basis. • Banking charges - 2.5% of energy despatched.	Allowed.	Banked for one Financial year.
8	**Water Royalty**	No royalty		For use of river/ canal water, cess @ one paise per unit	• No royalty for initial period of 7 years. • Exempted for mini projects.
9	**Power Evacuation and Grid Interfacing**	• Developers to bear the entire cost to the nearest HT lines. • Cost of augmentation of sub-station capacity at 33/ 11 kV or higher and transmission lines to be borne by the Department	Grid interfacing with the generating units to be constructed by the developer at his own cost		• Developers to bear the entire cost to the nearest HT lines. • Cost of augmentation of sub-station capacity at 33/ 11 kV or higher and transmission lines to be borne by the Department
10	**Incentives and General**	• Consumption of electricity for captive use/sale to third party exempted from electricity duty. • Developers to be treated as industrial units for incentives. • Concession given to the industrial unit in the backward areas to be provided to Developers. • Renewable Energy equipment and materials exempted from State sales tax.	• Exempted from electricity duty	• PEDA to assist in carbon credits. • Exemption from electricity duty. • VAT @ 4% on manufacturing and sale of NRSE devise system and equipment/machinery. • Octroi on energy generation and equipment machinery exempted.	• Producers to be treated an Industry and similar incentives available to them. • Incentives provided by Central Government : as per "North East Industrial and Incentive Promotion Policy (NEIIP), 2007. • Renewable Energy equipment and materials exempted from State sales tax / VAT, alternately reimbursed. • 100% CDM benefit to developers in first year, 10% to beneficiaries in 2nd year to be increased by 10% every year upto 50% and then shared equally between developer and beneficiary.

COMBINED SUMMARY OF STATE POLICIES FOR SMALL HYDRO POWER PROJECTS

Sl. No	Name of State/ Description	Uttar Pradesh	Uttarakhand	West Bengal
1	Order Date			
2	Eligible Producer			HV/EHV Industrial Consumers for captive HEP up to 3 MW
3	Land Allotment	• No acquisition fee and stamp duty for land acquired through State Govt. • Govt. land for 30 years lease at fixed rate of Rs.100 per acre		
4	Operative Period		Forty years from date of award	
5	Sale of Power and Tariff		HT consumer/Local rural grids not connected to UPCL main grid/Rural Power Distribution entities/Outside the state	No sale of power by the industrial undertaking to any third party.
6	Wheeling		UERC to determine the wheeling charges for third party consumers or sale outside the state	• Wheeling charges of 30 paise / kWh • Wheeling of power not allowed to more than one unit of the same industrial undertaking.
7	Banking		Allowed. Developer to bear the difference between average pooled price of banked-in and banked-out energy	Allowed for a period of six months beyond which sale at weighted average of the fuel cost of Thermal Generating station of the utility
8	Water Royalty	For use of river/canal water, water royalty to be charged @ 5 paisa/unit sold	• Exempted first 15 years, • Beyond 15 years royalty @ 18% to GOU • Sale to other Parties, 12% of net Energy wheeled	
9	Power Evacuation and Grid Interfacing	• Developers to provide evacuation facilities from project to grid sub-station • UPPCL/DISCOMs to bear 50% cost of transmission system	IPPs to lay lines for connectivity to the nearest grid substation normally at 132 kV or 33 kV	Industrial undertaking to lay its own transmission lines and the associated system up to the nearest grid sub-station of the utility.

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Sl. No	Name of State/ Description	Uttar Pradesh	Uttarakhand	West Bengal (From RE policy of State)
10	Incentives and General	• All necessary facilities for SHP in private sector • Power generation exempted from electricity duty.	• No entry Tax on Generation, Transmission equipment & Building Materials for project • Incentives for early commissioning • Levies, taxes, charges on IPPs applicable for 10 years • Penalty in case Plant not made operational in time limit	

COMBINED SUMMARY OF STATE POLICIES FOR WIND POWER PROJECTS

Sl. No	Name of State/ Description	Andhra Pradesh	Bihar (From RE policy of State)	Chhattisgarh	Gujarat
1	Order Date	• G.O.Ms.No.48 dated 11.04.2008 and Amendment dated 09.09.2008 • G.O.Ms.No.19 dated 16.03.1996		Notification No. 1905/2006 dated 7th August , 2006	• G.R. No. EDA-102001-3054-B dated 13th June, 2007 • G.R. No. WND-11-2008-2321-B dated 7.1.09
2	Eligible Producer	• Wind Farm Developers, Wind Energy Generator (WEG) manufacturers, Govt. owned Co. Joint Venture Co. and Private Investors. • Minimum Turbine Capacity of WEGs to be 225 kW	Any Industry, Institution, Private Agency, Partnership Firm, Consortia, Panchayat, Co-Operative Or Registered Society		Any company or body corporate or association of body of individuals, whether incorporated or not, or artificial juridical person for setting up Wind Turbine Generators (WTG), either for captive use and /or for selling of electricity
3	Land Allotment	• Developer to be allocated Govt. land to harness up to maximum 200 MW • Private land from land owner on their own	Government land on lease, otherwise private purchase.	• Govt. land on lease • Private land to be acquired by the Govt. and made available to the party at acquisition cost.	WTGs may be set up on private land, or revenue waste land/ Gujarat Energy Development Agency GEDA land if available
4	Operative Period	5 Years from date of Policy	5 Years with immediate effect	From date of publication in the Gazette till revised.	20th June, 2007 to 30th June, 2012.
5	Sale of Power and Tariff	• For captive use , third party sale or to DISCOMS • First 10 years from COD - Rs.3.10 / unit • 11th to 20th year as per APERC • Beyond 20th year as mutually agreed	State grid/ BSEB/third party/HT Consumer of BSEB/Pvt. Consumer	• First to State Government / Agency at the CSERC rate. • Otherwise to third party.	• GUVNL/ Distribution licensee to purchase surplus power after captive use • Third party sale allowed • Rs. 3.50 / unit. w. e. f. 1st April, 2009
6	Wheeling	Concessional wheeling and transmission charges in kind @ 5% of energy delivered in to the	On BSEB transmission and distribution system as per agreed terms		To consumption site: At 66 kV & above:-

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Sl. No	Name of State/ Description	Andhra Pradesh	Bihar (From RE policy of State)	Chhattisgarh	Gujarat
		grid (including T&D losses) for captive use or third party sale			• On payment of transmission charges including losses Below 66 kV: • Transmission and wheeling losses @ 10% of the energy fed to the grid. • For only one WTG transmission charges & transmission and wheeling losses @ 7% of the energy fed to the grid. **Note:** For wheeling to more than 2 locations 5 paise per unit on energy fed to the grid
7	**Banking**	Not allowed			
8	**Power Evacuation and Grid Interfacing**	Developer to bear entire cost for interconnection to Grid.	Developer to bear cost for evacuation of power to the nearest State/BSEB grid/sub-station.	Through CSEB grid on CSERC tariff	At 66 kV up to 100 km by the developer and beyond by GETCO
9	**Incentives and General**	Developer to share Carbon Credits with DISCOMS in the ratio of 90% and 10%	Incentives/concessions as applicable to new Industrial units/backward areas.		

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COMBINED SUMMARY OF STATE POLICIES FOR WIND POWER PROJECTS

Sl. No	Name of State/ Description	Karnataka (From RE policy of State)	Kerala	Madhya Pradesh (From RE policy of State)	Maharashtra (From RE policy of State)
1	Order Date	No. EN 354 NCE 2008 Bangalore, Dated 19th January, 2010	GO (MS) No.7/2007/PD dated 11-05-2007 & Amendment GO (Rt.) No. 295/08/PD dated 22.11.2008	Notification dated 17.10. 2006 & Amendment dated 12.05.2008 and as per MPERC order dated 11.06.2004 & 01.03.2006	Government Resolution (i) No.APAU(NCE)-2007/ Pra.Kra.693/ Urja-7 dated 14th October 2008 (ii) Amendment dated 03-08-2009
2	Eligible Producer	KPTCL for allotment of projects above 500 MW	Any individual, Company, Body corporate, Partnership firm, Joint venture- whether incorporated or not, Artificial judicial person / Captive generating plant owner	• Any Industry, Institution or Private unit, a Joint Venture • Public sector units.	
3	Land Allotment	• Government land for Karnataka Renewable Energy Development Limited (KREDL) • Private land from owners • Land owner farmers to be equity partners for equity not less than 5% of gross energy generated • 10% barren Government land reserved for industrial use to KREDL for RE development • KREDL to sub-lease land to developer for 30 years.		• Land @ Rs. 1/- year (token premium) for 30 years or life of the Project • Private land to be acquired by Govt. & made available to Developer at acquisition cost • Private land including Agricultural land exempted from Land Ceiling for its acquisition • 50% exemption on stamp duty on private land. • Land use permission for sites certified by MNES/C-WET	The barren land meant for industrial use on lease for 30 years.
4	Operative Period	5 years up to 2014		5 years	
5	Sale of Power and Tariff	To ESCOMs in area where the project is located, at KERC Tariff	To other buyers If KSEB/ Successor entities refuse	Varying from Rs. 4.03/ kWh In 1st year to Rs. 3.36 /kWh in 5th year	It shall be binding on Developers to sell 100% of electricity generated to Licensee or Client in the State.
6	Wheeling	5% wheeling charges		• Wheeling charges as per MPERC • 4% subsidy on wheeling charges	

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Sl. No	Name of State/ Description	Karnataka (From RE policy of State)	Kerala	Madhya Pradesh (From RE policy of State)	Maharashtra (From RE policy of State)
7	**Banking**	Allowed for energy banked with KPTCL/Distribution licensee		• Allowed 100% • MPSEB / Distribution Co. to charge 2% of Banked power as banking charges	
8	**Power Evacuation and Grid Interfacing**	KPCTL to provide transmission lines and developers to bear the cost of lines from the project site to the sub-station	Developer to construct & maintain Evacuation facilities at their own cost	Cost for Power evacuation facilities to be borne by Developer	• Developers to install the power evacuation facilities including modification from project site to HV / EHV substation including transmission lines • After commissioning, evacuation arrangement to be transferred to MSETC / MSEDCL with ownership and maintenance work • 50% of the approved expenses on evacuation arrangement to be reimbursed to Developer as subsidy from Green Energy Fund
9	**Incentives and General**	• KREDL to facilitate availing CDM benefits • After the plant completes 11 years, it has to sell power to Energy supply companies on tariff based on variable cost as per KERC norms • Developer to commission the project with grid synchronization within 3 years from date of statutory clearance • 50% of the installed capacity assigned for captive use	• Benefits of Carbon Credit, to be shared equally between STU/ buyer and investor • Reactive power charges as per KSERC • Taxes, duties and other levies of Central / State Government as per rules.	• Carbon credit to Investor • Exempted from Entry Tax / Octroi / VAT. • Developer to pay @ Rs. 50,000/- / MW as non refundable processing fee along with application • One Private party to be allowed to install Wind monitoring mast at 15 locations at a time. • If Private Institution is not able to complete the Wind monitoring & start Project within 18 months time from the date of approval, the Energy Department may allot location to another institution for transfer of Project use. • Developer to commission the Project in 15 months	• MSEDCL to pay through Letter of Credit (LC) to the Developer • Cost of opening of LC to be reimbursed from Green Energy Fund (GEF) by MEDA as 100% subsidy • 100% refund of Octroi Tax/ Entry Tax for equipments to be made through GEF • Promoters/ developers/ investors who do not wish to obtain facilities - concessions under this policy, need not take infrastructure clearance from the Government • No Electricity duty for first 10 years from COD for captive use/third party sale

COMBINED SUMMARY OF STATE POLICIES FOR WIND POWER PROJECTS

Sl. No	Name of State/ Description	Manipur (From RE policy of State)	Meghalaya (From RE policy of State)	Mizoram (From RE policy of State)	Orissa (From RE policy of State)
1	Order Date	No.1/1/2005- S& (Misc) dated 12-09-2006			Resolution No. 6971/ST, Bhubaneswar, ST-IV-RE-13/ 2005, dated 3-12-2005
2	Eligible Producer	• All Power producers generating Grid-grade electricity with installed capacity not exceeding 25 MW • Producers generating electricity for captive consumption • Companies, Co-operative, partnerships, Village Development Board/ Village Authorities, individuals etc.	• Power producing entrepreneur. Companies, cooperative, partnership individuals etc. • All power producers generating grid-grade electricity with installed capacity between 10 kW and 25 MW • For captive consumption	• Companies, cooperative, partnerships, individuals, charitable societies, Non-Governmental Organizations, etc. • Producers generating 10 kW to 25 MW of grid-grade Electricity • Producers in the joint-sector, formed by Government agencies and the producers. • For captive consumption.	Any Public Sector, Private Entrepreneur, Registered NGOs, Cooperatives, Consortia etc.
3	Land Allotment			Land lease not exceeding 99 years,	Government land if available
4	Operative Period	From the date of publication till superseded or modified		From the date of publication till superseded or modified	With immediate effect for 10 years
5	Sale of Power and Tariff	• Power Department to purchase electricity at a minimum rate of Rs.2.25/- per unit to be increased every year for 10 operational years. • Thereafter the rate of increase to be mutually settled between Power Deptt. and developer. • PPA for 20 years unless Developer wants shorter period	DISCOM to purchase electricity at SERC rate & on mutually accepted terms and conditions	• Department to purchase electricity at a minimum rate of Rs. 3.50/unit applicable for the year 2002-03 with escalation of 5% every year for 10 operational years. • Thereafter the rate of increase to be mutually settled between Department and the Producer. • It shall not be compulsory for power producer to sell power to Department • Developers with concurrence of the Department may sell the	• To bulk suppliers/ distribution licensee on basis of PPA with the approval of OERC • Energy not utilized during the year for captive use to be treated as sold to GRIDCO/ DISTCO.

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Sl. No	Name of State/ Description	Manipur (From RE policy of State)	Meghalaya (From RE policy of State)	Mizoram (From RE policy of State)	Orissa (From RE policy of State)
				electricity to a third party within and outside the State, at a rate to be mutually settled between them. • PPA for minimum period of 10 years unless Developer wants for shorter period	
6	**Wheeling**	• Department to transmit on its grid the power generated by producer and make it available to him for captive use or to a third party for sale within the State, at a uniform wheeling charge of 2% of the energy fed to the grid, • Third party to be a HT consumer of power.	• STU to transmit on its grid the power for captive use of developer or to a third party for sale within the state, at an applicable wheeling charge. • Third party to be HT consumer unless condition relaxed by DISCOM.	• Department to transmit on its grid the power generated and make it available to him for captive use or to a third party nominated by eligible producer for sale within the State, at a uniform wheeling charge of 2% of the energy supplied to the grid. • Third party to be HT consumer unless condition relaxed by DISCOM	• Allowed, subject to payment of transmission/ distribution and wheeling charges both for captive use and sale out side the State as approved by OERC • Developer may supply energy to any one area not served by the Licensee.
7	**Banking**	Allowed up to 1 year		Allowed up to 1year	• Allowed on annual basis. • Banking charges - 2.5% of energy dispatched
8	**Power Evacuation and Grid Interfacing**	• Developer to bear cost for evacuation facilities & interfacing up to the nearest HT lines as well as for Mtc. • Alternatively, these works and their maintenance could be undertaken by the Power department at charges to be decided by the Department • Cost of augmentation of sub-station capacity at 33/11 kV or higher & transmission lines to be borne by the Department.	• Developer to bear cost for evacuation facilities & interfacing up to the nearest HT lines as well as for Maintenance. • Alternatively, these works and their maintenance could be undertaken by the DISCOM at charges to be decided by the DISCOM/ SERC	• Developer to bear cost for evacuation facilities & interfacing up to the nearest HT lines as well as for Maintenance • Alternatively, the above works and their maintenance could be undertaken by the Department at charges to be decided by the Department and the producer on mutual agreement. • Cost of augmentation of sub-station capacity at 33/11 kV or higher & transmission lines to be borne by the Department.	• Grid interfacing with the generating units to be constructed by the developer at their own cost. • Scheme for inter connection to the nearest substation to be approved by GRIDCO/ DISTCO and shall form the part of DPR.

Sl. No	Name of State/ Description	Manipur (From RE policy of State)	Meghalaya (From RE policy of State)	Mizoram (From RE policy of State)	Orissa (From RE policy of State)
9	Incentives and General	• All transactions involving wheeling, banking or sale of power to be settled on monthly basis • Exemption from electricity duty for 5 years from COD for captive use or third party sale. • Producers to be treated as industrial units and similar incentives available to them • Concessions given to Industrial units in backward areas to be provided • Infrastructural facilities to be on the lines of industrial units if plant is set up in industrial area developed by State Govt. • GoI Incentives • Exemption of tax on RE devices and spare parts. • Sale Tax exempted • MANIREDA to facilitate grant of loans by IREDA & MNRE & accord of clearances for execution • If the applicant does not take effective steps (i.e at least 10% of the total project cost not incurred within six months) to implement the project, the agreement to be terminated and site allotted to another applicant	• Infrastructural facilities to be on the lines of industrial units if plant is set up in industrial area developed by State Govt. • Exemption from electricity duty for 5 years from COD for captive use or third party sale. • Sales Tax/ VAT deferment / remission as applicable • Meghalaya Non-Conventional and Rural Energy Development Agency (MNREDA), to facilitate clearances for the projects at the State and Central levels and grant of loans by Indian Renewal Energy Development Authority (IREDA) and subsidies by MNRE. • Developer to submit applications for projects and grid interfacing to MNREDA and DISCOM. • MNREDA/ State government to provide clearance within a period of 2 months from the date of submission of application	• Exemption from electricity duty for captive use or third party sale • Infrastructural facilities to be on the lines of industrial units if plant is set up in industrial area developed by State Govt. • Producers to be treated as industrial units and similar incentives available to them • Concessions given to Industrial units in backward areas to be provided • State Government to extend all incentives and facilities granted by the Central Government for similar Undertaking in other States. • Equipments and materials exempted from State sales tax • All transactions involving wheeling, banking or sale of power to be settled on a monthly basis • Reduction in contract demand up to 30% of installed capacity permitted, in case power plant is not utilizing Department's Grid for supply of power to the consumer	• Exempted from electricity duty • No transmission charges for CPP or NRSE maintenance for a period for 5 years from COD • In the event of project work not started within a year of approval of PPA, the MOU and PPA will automatically stand cancelled.

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COMBINED SUMMARY OF STATE POLICIES FOR WIND POWER PROJECTS

Sl. No	Name of State/ Description	Punjab (From RE policy of State)	Rajasthan	Tamilnadu	Uttarakhand (From RE policy of State)
1	**Order Date**	No.10/106/2006-STE(1)5390 dated 24th Nov, 2006	Energy Deptt. letter No.F.20(3) Energy / 98/Pt.III dated 30.4.2003		No.263/I(2)/2008-04(8)-96/ 2001 29th dated Jan, 2008
2	**Eligible Producer**	Private developers to set up wind power projects on first come first served basis on the basis of wind data assessment carried out by them	• Wind Farm Developers (WFD), Wind Energy Generator (WEG) manufacturers, Government Owned Companies, Private companies, Joint Venture Companies and Private investors. • Minimum capacity of WEG's to be 225 kW.		
3	**Land Allotment**	• Government at lease rent of Rs.1 / sq. m / annum for 33 years • Agricultural land without conversion charges	State Government to provide land for wind farm at 10% of 'District Level Committee (DLC) rates on first cum first served basis.		
4	**Operative Period**	Five years w.e.f. 8th December, 2006.	Plants commissioned up to 31st March, 2009, unless superseded /modified		
5	**Sale of Power and Tariff**	• Rs.3.49 per unit (Base year 2006-07) with annual escalation @ 5% up to 2011-2012 • There after PSEB / HT tariff, whichever is higher.	• For captive consumption or sale to a third party or to RVPN • To RVPN/ DISCOMS, at a rate of Rs. 3.32 per unit during 2003-04 plus 2% increase per year for 10 years • Thereafter, a fixed rate of Rs. 3.92 per unit up to the 20th year	Reasonable power tariff	• UPCL to have first right of purchase of electricity • UERC to determine price of electricity • State Government to provide guarantee for payments to be made by UPCL for purchase of power
6	**Wheeling**	2% of energy fed to the grid	10% of the energy fed into the grid.	Concessional wheeling charges @5% for captive use	• UPCL/PTCUL to transmit the power generated through its grid for captive use or third party sale within/ outside the state • Wheeling charges to be announced in advance

Sl. No	Name of State/ Description	Punjab (From RE policy of State)	Rajasthan	Tamilnadu	Uttarakhand (From RE policy of State)
7	Banking	Allowed.	• Allowed in a calendar year • Banked energy, not consumed to be treated as sold to RVPN at 60% of the prevailing 'Large industrial tariff'.	Allowed subject to 5% charges in a financial year	Allowed at mutually agreed terms
8	Power Evacuation and Grid Interfacing	Developer, to bear the cost for providing the evacuation system including transmission lines.	Developer to undertake and bear the cost of grid interfacing facilities plus maintenance cost.	Power evacuation arrangements to be provided by Developer.	T&D lines from generation site to be provided by UPCL/ PTCUL
9	Incentives and General	• VAT @ 4% on manufacturing & sale of NRSE devise / system and equipment / machinery • PEDA to assist in seeking carbon credit under CDM • Octroi exempted		A. MNRE, Govt. of India • Accelerated depreciation up to 80% for income tax calculations subject to a minimum utilization for 6 months in the year in which deduction is claimed. • Import of wind electric generator permitted under Open General License. • Customer duty concessions on wind electric generators and certain essential spares. • Tax holiday for 10 years B. Govt. of Tamilnadu To buy surplus energy at Rs. 2.75 per unit from the wind mills commissioned before 15.05.2006 and Rs 2.90 per unit commissioned after 15.05.2006	• CDM Benefits to be passed to the developers • Not more than three projects in each category to be allotted to a developer • Preference to industrial units located in State in the open competitive bidding process provided the bid is not less than 80% of the highest bid • If developer does not restrict to the prescribed time schedule of completion of project, premium to be forfeited and allotment canceled • Projects to be offered for 40 years from the date of award • Application fee (Non-refundable) - Rs. 5000/- • Processing fee (Non-refundable) - For projects up to 1MW - Rs. 10,000/- and more than 1MW - Rs. 25,000/- • Security Payment - For projects up to 1MW - Rs. 20,000/- and more than 1MW- Rs. 50,000/- • Committee headed by Chief Secretary to accord approvals/clearances through a single window mechanism

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COMBINED SUMMARY OF STATE POLICIES FOR SOLAR POWER PROJECTS

Sl. No	Name of State/ Description	Bihar (From RE policy of State)	Chhattisgarh (From RE policy of State)	Gujarat	Haryana (From RE policy of State)
1	**Order Date**		Notification No. 38 dated April 8, 2002	Solar Power Policy - 2009 G.R.No.SLR-11-2008-2176-B dated 6th January, 2009	GoH, Renewable Energy Deptt. Dated 23-11-2005
2	**Eligible Producer**	Any Industry, Institution, Private Agency, Partnership Firm, Consortia, Panchayat, Co-Operative Or Registered Society	• Every unit, organisation or Private agency setting up of RE projects . • Parties may set-up units either themselves or as a joint venture	• Any company or body corporate or association of body of Individuals, whether incorporated or not, or artificial juidical person, • Minimum project capacity of a Solar Power Generators (SPG), in case of solar Photovoltaic (SPV) and Solar Thermal (ST) to be 5 MW each • A maximum 500 MW SPG allowed for Installation	Companies, Cooperatives, Partnerships, Local Self Governments, State Nodal Agency, Boards & Corporations, Power utilities, Private developers, Public - Private Partnership Companies, Consortia, Registered Societies, NGOs, individuals etc.
3	**Land Allotment**	Government land, if available on lease, otherwise private purchase.	• Govt. land, if available, on lease, • Private land to be acquired by the Govt. and made available to the party at acquisition cost.		State Govt. to acquire land if necessary at the cost of IPP.
4	**Operative Period**	5 Years with immediate effect		Up to 31.3.2014.	Date of notification till a new policy is notified
5	**Sale of Power and Tariff**	State grid/ BSEB/third party/HT Consumer of BSEB/Pvt. Consumer	• Parties may use the power themselves or sell it to a third party after permission from GoC, CSEB. • CSEB to purchase at rate of Rs. 2.25 per unit. • For third party, the rates to be settled mutually .	• Open Access for Third part sale • Cross subsidy surcharge not applicable for open access for third party sale within the state. • Energy to be sold to Distribution licensees in the State at levelised fixed tariff for SPV & ST (as detailed in Policy) for 25 years	• To Licensee/ Utilities at HERC tariff (for new projects after this Policy) • Surplus power from captive power to utilities at negotiated price. (for old projects)

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 35 of 2011

Dated: 10th February, 2012

Present: HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. V J TALWAR, TECHNICAL MEMBER,

In The Matter Of

Konark Power Projects Ltd,
Village Ballapura, Bugudanahalli
Distric Tumkur
Karnataka ... **Appellant**

Versus

1. **Bangalore Electric Supply Company Ltd.**
   K R Circle, Bangalore
   Karnataka

2. **Karnataka Electricity Regulatory Commission**
   Mahalaxmi Chambers
   Bangalore, Karnataka. ...**Respondent(s)**

Counsel for Appellant(s): Mr. A Mariarputham Sr. Advocate
Mr. T N Rao
Mr. Yusuf Khan

Counsel for Respondent(s): Mr. S S Nagananda, Sr. Advocate
Mr. Venkat Subramaniam
Mr Raghavendra Srivastva for R-1

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JUDGMENT

PER HON'BLE MR. V J TALWAR TECHNICAL MEMBER

1. Konark Power Project Limited, a Biomass based Generating Company is the Appellant here in.

2. The Bangalore Electric Supply Company Limited, a Distribution Licensee in the State of Karnataka is the first Respondent and Karnataka Electricity Regulatory Commission (the State Commission) is the second Respondent.

3. Aggrieved by the Order dated 16.9.2010 passed by the State Commission dismissing the Appellant's petition for revision of tariff, the Appellant, Konark Power Project Limited has filed this Appeal.

4. The brief facts of the case are as follows:

   I. The Appellant Konark Power Project Ltd. (Generating Company) has established a 6 MW biomass based power generating plant at Ballapura village of Tumkur District in the State of Karnataka. On 4.4.2002 it entered into a Power Purchase Agreement (PPA) with Karnataka Power Transmission Corporation Limited (KPTCL) with tariff fixed as per prevalent MNES Guidelines.

   II. The PPA dated 4.4.2002 was terminated by KPTCL in 2003 unilaterally. KPTCL then asked the all the Biomass based Generating Companies in the state of Karnataka to enter into fresh PPAs at reduced tariff.

   III. In the mean time all PPAs entered into between the Generation Companies and KPTCL, a State Transmission Utility, were assigned to respective Distribution Licensees.

IV. Since the project of the Appellant was already commissioned on 5.5.2005 and the Appellant had made huge investments, it was left with no choice but to enter into revised PPA with lower tariff. Thus PPA dated 4.4.2002 was revised with lower tariff and a supplemental PPA was entered into on 27.2.2006 for enhanced Capacity of 7.5 MW.

V. Due to unforeseen increase in the price of Biomass fuel, the Appellant was not in a position to produce power and supply to the Licensee (R-1) with the lower tariff fixed. The Appellant, therefore, decided to stop the power generation by declaring lay off to employees and by suspension of all contracts and agreements. The generating plant of the Appellant remained closed from July 2009 to March 2010

VI. Government of Karnataka vide GO No. EN 65 EEB dated. 6.4.2010 issued directions under Section 11 of 2003 Act to all the Biomass based generators in the state to supply Electricity to the grid at a 'Realistic Tariff' of Rs 5 per unit. Accordingly, the Appellant restarted generation and fed power in to the Grid during the period between April 2010 and June 2010 i.e. during imposition of State Government's Order under Section 11 of the 2003 Act. The generating plant was again shut down in July 2010.

VII. In the mean time, the Appellant filed a petition before the State Commission seeking amendment to PPA dated 4.4.2002 and Supplemental PPA dated 27.2.2006 and prayed for fixing tariff for electricity at generated by its plant Rs 5.60 per unit as the cost of Biomass fuel had increased enormously and it had become

practically impossible for the Biomass Power Plants to generate power with the existing tariff.

VIII. The State Commission vide its Impugned Order dated 16.9.2010 dismissed the petition on the ground that adequate material had not been placed before it by the Appellant to justify its claim for revision of tariff.

IX. Aggrieved by the said order, the Appellant has filed this Appeal No. 35 of 2011 with the prayer to set aside the impugned Order dated 16.9.2010 and to suitably amend the PPA dated 4.4.2002 read along with the Supplemental PPA dated 27.2.2006 by fixing tariff at Rs 5.60 per unit.

X. During the pendency of this Appeal the Appellant filed an Interlocutory Application bearing no. 82 of 2011 on 8.4.2011with a following alternative prayers.

i. To grant open access to sell power to third party during the pendency of the Appeal OR

ii. To direct the Respondent Distribution licensee to purchase power at least at a rate of Rs 4.27 being paid to other power companies OR

iii. To direct the Respondent to permit the Appellant to Claim Renewable Energy Certificates (REC) component at existing tariff.

XI. The said IA was listed and heard together along with the main Appeal and the same is being disposed off.

5. The Learned Senior Counsel for the Appellant has urged the following contentions:

I. The original PPA dated 4.4.2002 had a provision for tariff based on MNRE recommendations and which was quite remunerative. The Respondent – 1 Distribution Licensee unilaterally terminated the valid PPA and coerced the Appellant Generating Company to enter in to a revised PPA at much less tariff. Since the Appellant Generating Company had invested huge amount of money in the project it had no option but to accept the revised PPA.

II. The rate negotiated by the Appellant with the Respondent -1 worked out to Rs.3.348 for 6 MW and Rs.3.07 for the remaining 1.5 MW for the year 2010-11. This rate has become unworkable and uneconomical in view of the steep increase in the cost of production of electricity. The cost of biomass has gone up abnormally because of the scarcity of the material and competition among the biomass power plants.

III. The other similarly situated biomass generators in the State are paid at a higher tariff by Distribution Licensees. The table submitted before the Tribunal reveals that the higher rates at which the other Biomass based Generating Companies are being paid for the electricity being supplied to Distribution Licensees in the State, whereas the Appellant is being given the lesser tariff.

IV. One of the Generators viz., M/s R K Power Gen did not agree with the tariff but approached the Commission against illegal unilateral termination of original PPA by the Respondent. In that case the Commission held that the termination was illegal and restored the PPA. This was confirmed by the Hon'ble Supreme Court as well.

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Accordingly, the said Generating Company is getting much higher tariff as per original PPA i.e. determined as per MNRE guidelines. The Appellant on the other hand accepted the revised PPA and thus being penalised by getting only lower Tariff.

V. Maharashtra Electricity Regulatory Commission has increased the tariff of Biomass units considerably taking into account the increase in the cost of fuel, limited availability of biomass and the high cost incurred in procuring the same.

VI. Under the provisions of Electricity Act, 2003, the Commission has ample power to modify and increase the tariff.

VII. Two judgments of the Hon'ble Supreme Court, one in the case of the Transmission Corporation of Andhra Pradesh Vs. Sai Renewable Power Private Limited (Civil Appeal No.2976/2006) and the second in the case of M/s PTC India Limited Vs. CERC (2010 4 SCC 603) would support the plea of the Appellant.

6. Per contra, the Learned Senior Counsel for the Respondent Distribution Licensee opposed the contentions of the Appellant by submitting that the Appeal has no merits and the same is liable to be dismissed. In elaboration of this point, he has submitted the following reply:

I. Once there is a PPA which is valid and subsisting, there is no right for either of the parties to seek modification of the same including the rates unless mutually agreed upon and approved by the Commission.

II. The submissions made in support of the increase in tariff cannot be considered, as the PPA doesn't contemplate any increase in tariff for any reason whatsoever.

III. Similar plants getting higher rates cannot be a ground for the Appellant to seek increase in the rates for his plant, as in each case the sale and purchase of electricity and the rate would depend upon the terms of the PPA and one PPA cannot be compared with another.

IV. The contention on behalf of the Appellant that the tariff is liable to be increased on account of higher prices being paid to other suppliers is completely misconceived. In the case of R.K. Power Gen, their PPA of 18.10.2001 was terminated on 5.7.2003 (in a similar manner the Appellant's PPA was also terminated) but the said Company questioned the termination and the termination was held to be bad upto the Supreme Court and therefore, they would be governed by the terms of their PPA which provides for higher tariff. As such the other power producers are not comparable to the Appellant

V. The State Commission, on 27.9.2004, has notified Regulations for Power Procurement from Renewable Sources of Energy by Distribution Licensee (2004 Regulations). Clause 5.1 of these Regulations provide that the State Commission shall determine the tariff for purchase of electricity from renewable sources by the Respondent. It also provided that the PPAs approved by the Commission including the PPAs deemed to have been approved under Section 27(2) of the Karnataka Electricity Reforms Act 1999, prior to notification of these Regulations shall continue to apply for such period as mentioned in those PPAs. Clause 5.2 of these regulations provided that the State Commission shall determine the tariff separately for each category of renewable source of energy.

VI. The Power to modify the tariff is vested with the State Commission This has to be exercised only in the manner contemplated by the Regulations. The Regulations do not contemplate any modification of the price payable to an individual Generating Company. It can only be done for a class of generators. It is not the role of the State Commission to keep on modifying the tariff agreed by the parties in a PPA.

7. In the light of the rival contentions urged by the Learned Counsel for the parties, the only question would arise for our consideration as to Whether the Commission has the power to modify the tariff contained in a subsisting PPA.

8. Before we proceed further, let us examine the findings of the State Commission on this issue which are reproduced below:

> *"Under Section 86 of the Electricity Act, 2003 read with sections 62 & 64, the Commission has the power to determine the tariff of the generating companies including NCE projects who supply electricity to the Distribution Licensees. In exercise of its powers under these provisions, the Commission has passed two orders, one during 2005 and another on 11.12.2009, and has also approved the PPAs. Once this Commission has powers to fix and approve the tariff, in our considered view, the same includes the power to modify the same in case there are circumstances warranting such modification."*

9. The main objection raised by the learned Senior Counsel for the 1st Respondent before us is that under the 2004 Regulations framed by the State Commission, the State Commission would fix the normative tariff for energy generated from different types of Renewable Sources of energy and sold to distribution Company. Accordingly, the State Commission, vide its Order dated 18.1.2005, fixed generic tariff for Biomass based plants. The tariff so fixed can be modified generally and