

No.N/14/2020

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,  
No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.**

**Dated: 31.03.2021**

**Present**

<b>Shri Shambhu Dayal Meena</b>	<b>: Chairman</b>
<b>Shri H.M. Manjunatha</b>	<b>: Member</b>
<b>Shri M.D. Ravi</b>	<b>: Member</b>

**OP No.02/2020**

**BETWEEN:**

Coromandal Sugars Limited,  
A Company Registered under the provisions  
of the Companies Act, 1956  
having its Registered Office at  
Dhun Building, No. 827, 4th Floor, Anna Salai,  
CHENNAI-600 002.

(Represented by its Authorized Signatory)

**... PETITIONER**

(Represented by Sri Shridhar Prabhu, Advocate for  
M/s Navayana Law Offices)

**AND:**

1) State Load Despatch Centre-Karnataka,  
A Nodal Agency under the Central Electricity Regulatory  
Commission (Open Access in Inter State Transmission)  
Regulation 2008 having office at  
Karnataka Power Transmission Corporation Limited,  
Race Course Cross Road, A.R. Circle,  
BENGALURU - 560 001  
(Represented by its Chief Engineer - Electricity)

2) Chamundeshwari Electricity Supply Company Limited,  
A company Registered under the provisions of  
Companies Act, 1956 having its Registered  
Office at No.29, Vijayanagar 2<sup>nd</sup> Stage, Hinkal,  
MYSURU-570 017.

**.... RESPONDENTS**

(Represented by its Managing Director)

(Respondent No.1 represented by Sri S. Srinaga,

Ms. Sumana Naganand & Ms. Medha M. Puranik, Advocates  
for M/s JUSTLAW.  
Respondent No.2 represented by Sri Shahbaaz Husain,  
Advocate for M/s Precinct Legal).

### **ORDERS**

1. This Petition is filed under section 86 (1) (f) of the Electricity Act, 2003 praying

for following reliefs:

- a) To Set aside the Provisional Bill No. OA/ Deviation/ SLDC/ 15816-25 dated 6th January, 2020 issued by the 1st Respondent, produced as Annexure- P1;
- b) To Set aside the Provisional Bill No. OA/Deviation/SLDC/ 13339-46 dated 26th November 2019 issued by Respondent No.1, produced as Annexure P2;
- c) To Direct the Respondent No.1 to refund the amount of Rs.11,71,649/- (Rupees Eleven Lakh Seventy One Thousand Six Hundred and Forty Nine only) to the Petitioner;
- d) To Award the entire costs of this Petition in favour of the Petitioner;
- e) To Order refund of Court Fee paid by the Petitioner upon the present Petition; and
- f) Grant any other reliefs as this Hon'ble Commission deems fit in the facts and circumstances of the case in the interest of justice and equity.

2. The brief facts of the case as stated by the Petitioner in this petition are:

- a) The Petitioner (formerly known as M/s ICL Sugars Limited), a bagasse based cogeneration power generating company having 12 MW installed capacity with 6.4 MW exportable surplus, entered into Power Purchase Agreement (PPA) dated 23.12.1998 with the erstwhile Karnataka

Electricity Board to supply contracted capacity of Power as per applicable rate of tariff.

b) Subsequent to the expiry of the PPA, the Petitioner has been selling the surplus exportable capacity under the Open Access duly complying with all the requisite formalities and obtaining approvals.

c) The Petitioner, obtained Inter State Open Access approval for the period from 26.07.2019 to 31.07.2019, 01.08.2019 to 31.08.2019, 01.09.2019 to 30.09.2019, 01.10.2019 to 31.10.2019, 01.11.2019 to 30.11.2019 and from 01.12.2019 to 31.12.2019 by complying with all technical and legal requirements. The NoCs issued by SLDC are at Annexure-P3 (collectively) [Note: It is found that in different paras of the petition, documents at Annexure-P3 to P7 are incorrectly described as Annexure-P2 to P6 respectively].

d) The Petitioner is a registered consumer of Chamundeswari Electricity Supply Corporation Limited (CESC), having RR No. EHTTP01 and sources its power requirements from CESC under Power Supply Agreement executed between the Petitioner and CESC. The power sanctioned confirmation letter dated 23.07.2019 issued by CESC is at Annexure-P4.

e) It is pertinent to note that during this Inter State Open Access transaction, the Power Supply Agreement with CESC was neither scrapped nor suspended and it remained perfectly in force. Accordingly, CESC billed

the Petitioner for the energy sourced by the Petitioner under existing Power Supply Agreement with it as per Annexure-P5 (collectively).

- f) It is noticed that the 1st Respondent (SLDC) raised a bill bearing No.0A/ Deviation/SLDC/13339-46 dated 26.11.2019 (Annexure-P2) towards 'Import Charges' for the very same quantum of energy which the Petitioner has imported from CESC for the months of August and SLDC R-1, terms these charges as 'Import Charges' for having imported power during open access period. The 1<sup>st</sup> Respondent has levied a sum of Rs.11,71,649/- (Rupees Eleven Lakh Seventy One Thousand Six Hundred and Forty Nine only) for import during the periods from 30.07.2019 to 31.07.2019 & 01.08.2019 and various other periods up to 31.08.2019. The 1<sup>st</sup> Respondent has also deducted Rs.2,53,452/- (Rupees Two Lakh Fifty Three Thousand Four Hundred Fifty Two only) towards the Deviation Settlement Mechanism Calculation as payable to Petitioner and has demanded the balance of Rs.9,18,197/- (Rupees Nine Lakh, Eighteen Thousand, One hundred & Ninety Seven only) from the Petitioner.
- g) The Petitioner submitted a representation dated 09.11.2019 to the 1<sup>st</sup> Respondent specifically bringing to its notice the existence of Supply agreement between the Petitioner and CESC in respect of the energy sourced by the Petitioner. A copy of the representation dated 09.11.2019 submitted by the Petitioner to the 1<sup>st</sup> Respondent is enclosed herein as Annexure-P6.

- h) Despite representation and requests to the 1<sup>st</sup> Respondent (SLDC) about the illegal & unauthorized levy by SLDC, the levy of Imported energy Charges has not been reversed by the 1<sup>st</sup> Respondent (SLDC).
- i) It is contended that when there is an existing agreement between the Petitioner and Distribution Licensee and the energy is sourced under the said agreement against the bills raised by the Distribution Licensee, the levy of 'Imported energy Charges' by the 1<sup>st</sup> Respondent, is illegal, untenable and opposed to Electricity Act, 2003 and the regulations framed thereunder.
- j) The 1<sup>st</sup> Respondent coerced the Petitioner to make the payment else, the grant of Open Access would be under jeopardy for the petitioner. Hence, on 05.12.2019, the Petitioner has paid the amounts demanded by the Respondent No.1 under protest, without prejudice to its rights and contentions. A copy of the protest letter dated 05.12.2019 depositing the sums demanded by the Petitioner is produced herein as Annexure-P7.
- k) On 06.01.2020, the 1<sup>st</sup> Respondent (SLDC) has issued another Provisional Bill No. OA/Deviation/SLDC/15816-25 (Annexure-P1) charging the Petitioner towards certain 'Import Charges' for the very same quantum of energy imported by the Petitioner from CESC for September, 2019. It is also noted that the 1<sup>st</sup> Respondent (SLDC) termed the charges as 'Import Charges' for having imported power during open access period. For the

period from 01.09.2019 to 30.09.2019 SLDC has levied a sum of Rs.11,65,148/- (Rupees Eleven Lakh, Sixty Five Thousand, One Hundred and Forty Eight only) and at the same time it has deducted Rs.1,38,681/- (Rupees One Lakh Thirty Eight Thousand Six Hundred and Eighty One only) towards the amount payable under the Deviation Settlement Mechanism to the Petitioner and has demanded the balance of Rs.10,26,467/- (Rupees Ten Lakh Twenty Six Thousand Four Hundred and Sixty Seven only) from the Petitioner.

I) Aggrieved by issuance of the said bills at Annexure-P1 and Annexure-P2, the Petitioner has filed this Petition. Apart from the above facts, the petitioner has urged the following grounds in the petition:

i) The Petitioner, being a Registered Consumer, having a Power Supply Agreement signed with CESC which is in force and when sourced such supply as agreed upon in the agreement for which bills are raised and settled by the Petitioner with CESC, the 1st Respondent SLDC is not authorized to collect any sums, much less the sums termed as Energy charges for imported power.

ii) The Hon'ble Commission in its Order in Complaint No. 5 of 2017 in the case of Bidadi Industries Association (R) v.

Bangalore Electricity Supply Company Limited has specifically ordered as follows:

*".... The applicability of Clause 11(viii) of the Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2004, as amended by the Notification No. Y/03/4 dated 31.5.2006, shall be as follows:*

*(a) An 'Existing Consumer' of the Respondent (BESCOM) availing Open Access and drawing power from the Grid, during the period when there is no injection of power due to outages of generator or in excess of the Open Access Drawal Schedule, shall be charged for the said quantum of power:*

- i. at the regular tariff applicable to that category of consumer upto the Contract Demand with the Respondent (BESCOM), but not at the tariff for temporary connection;*
- ii. at the tariff for temporary connection applicable to that category of consumer, exceeding the Contract Demand with the Respondent (BESCOM); and,*

*(b) An 'Exclusive Consumer' of the Respondent (BESCOM) availing Open Access and drawing power from the Grid, during the period when there is no injection of power due to outages of generator or in excess of the Open Access Drawal Schedule, shall be charged at the tariff for temporary connection applicable to that category of consumer for the said quantum of power."*

iii) Because it is settled that the Petitioner is an 'Existing Consumer' of CESC availing Open Access and drawing power from CESC.

Therefore, for all the inputs, falling within the contract demand

limit from CESC, has to be charged under the tariff schedule approved by this Hon'ble Commission of CESC consumers.

- iv) The 1st Respondent has charged unapproved rates for so called import of energy even when the Petitioner has clearly submitted a representation to the 1st Respondent that it is an 'Existing Consumer' of CESC.
- v) This Commission in several other cases including in the case of Matrix Agro Private Limited v. SLDC and Others in O.P. No. 199 of 2017 vide order dated 17th October, 2019, citing several earlier orders of this Commission, has reiterated that SLDC is not authorised to charge for the import energy when there exists an Agreement between a Consumer and Distribution Company and SLDC cannot charge for the import of energy.

3. Upon issuance of Notice, the Respondents appeared through their Counsels/Advocates and presented their defences by filing statement of objections as hereunder:

4. The 1<sup>st</sup> Respondent (State Load Despatch Centre) has filed the objections as hereunder:

- a) The Petitioner through this petition seeking for setting aside the provisional bill bearing No. OA/Deviation/SLDC/15816- 25 dated 6.1.2020



and provisional bill bearing No. OA/Deviation/SLDC/13339-46 dated 26.11.2019 issued by Respondent-1, SLDC, has also requested for a direction to this Respondent to refund Rs.11,71,649/- (Rupees Eleven Lakh Seventy-One Thousand Six Hundred Forty-Nine only) and also for reimbursement of the cost of petition and refund of court fee etc.

b) It is a fact that the present dispute pertains to energy imported during the inter-state open access period. It is submitted that as per Section 79 of the Electricity Act, 2003 (hereinafter referred to as "Act"), Central Electricity Regulatory Commission (hereinafter referred as "CERC") regulates the inter-state transmission of electricity. Any dispute as to the inter-state transmission of electricity has to be adjudicated by the CERC as per Section 79 (1)(f) of the Act and Rule 26 of CERC (Open Access in Inter State Transmission) Regulations, 2008. It is contended that the State Commission does not have the jurisdiction to adjudicate the present petition and that the present petition is not maintainable and is liable to be dismissed.

c) Apart from the preliminary objection on maintainability of the petition before this Commission, the 1<sup>st</sup> Respondent (SLDC) has further submitted the following objections on the contentions raised by the Petitioner in the petition as hereunder:

d) The Petitioner established a 12 MW bagasse-based co-generation power plant, has availed inter-state open access as per CERC Regulations and has exported energy less than scheduled in the months of July 2019 (30.07.2019 to 31.07.2019), August 2019 (01.08.2019 to 08.08.2019, 13.08.2019, 15.08.2019 to 31.08.2019) and September 2019 (01.09.2019 to 31.09.2019). In view of the shortfall in the energy supplied, the Respondent No.1 herein has raised the impugned bills demanding deviation charges and imported energy charges. Aggrieved by the said levy of DSM charges, import energy/Backup supply charges, the Petitioner has filed the present petition.

e) In response to the contentions raised by the Petitioner, the 1<sup>st</sup> Respondent (SLDC) submitted that the impugned demand has been demanded strictly in accordance with the Law and Regulations. That the Petitioner is selling power to third party consumers by availing inter-state open access. The Petitioner has exported energy less than scheduled quantity in the months of July, August, and September 2019. In the light of shortfall in the energy supplied, the Petitioner is liable to pay deviation charges as per CERC (Deviation Settlement Mechanism and related matters) Regulations, 2014 and import energy charges as per Clause 11(viii) of KERC (Terms and Conditions for Open Access) Regulations, 2004.

- f) The attention of this Hon'ble Commission is also drawn to Regulation 11(viii) of the KERC (Terms and Conditions for Open Access) Regulations, 2004 which is extracted as hereunder:

*“Charges for arranging backup supply from the grid shall be payable by the open access customer in the event of failure of contracted supply. In case of outages of generators supplying to a consumer on open access, standby arrangements should be provided by the licensee on payment of tariff for temporary connection to that consumer category as specified by the commission.”*

- g) It is stated that it is an undisputed fact that in the months of July, August and September 2019, the Petitioner has supplied energy less than the scheduled quantity and drawn energy from the grid. Therefore, in terms of Clause 11(viii) of the KERC (Terms and Conditions for Open Access) Regulations, 2004 the Petitioner is liable to pay import energy charges/back up supply charges.
- h) The 1<sup>st</sup> Respondent (SLDC) has also submitted that the Appellate Tribunal for Electricity (APTEL) had examined this very issue pertaining to correctness or otherwise of the levy of back up supply charges/ import energy charges as per Regulations of KERC on a generator engaged in open access under the CERC (Open Access in Inter-State Transmission) Regulations, 2008 in Appeal No. 26 of 2013 and connected matters and held that such generators are required to pay for the energy drawn from the State Grid for any purpose as per the Regulations of

the KERC. In the present case, the Respondent has issued the impugned bills for the energy drawn by the Petitioner in terms of Regulation 11 (viii) of KERC (Terms and Conditions for Open Access) Regulations, 2004. This issue of levy of back up supply charges/ import energy charges as per Regulations of KERC on a generator engaged in open access business has already been examined and clarified by the Hon'ble APTEL. Therefore, the said question is no longer *res integra*. The 1<sup>st</sup> Respondent (SLDC) furnished the copy of order of the APTEL as Annexure-R1.

- i) The Petitioner is a consumer of 2<sup>nd</sup> Respondent (CESC) is of no relevance to the facts of the present case as the impugned demands are raised on account of shortfall in energy supplied by the Petitioner in its capacity as generator. In view of the shortfall in supply of energy by this generator to Inter State open access consumer, it has imported deficit energy from the grid. The Respondent herein has raised impugned demand for energy imported in terms of 11(viii) of KERC (Terms and Conditions for Open Access) Regulations, 2004. The energy bills raised by the 2<sup>nd</sup> Respondent (CESC) pertains to energy consumed by the Petitioner in its capacity as a consumer. Hence, the same is independent of the demand raised by the Respondent herein.
- j) The averment that the Petitioner is a registered consumer of the 2<sup>nd</sup> Respondent (CESC), has executed power supply agreement with it is

not within the knowledge of the answering Respondent. It is ought to be noted that the Petitioner has not produced the power supply agreement executed with the 2<sup>nd</sup> Respondent (CESC). It is of no relevance that the Petitioner being a consumer of the 2<sup>nd</sup> Respondent (CESC), to the facts of the present case as the impugned demand are raised on the Petitioner in its capacity as a Generator on account of shortfall in energy supply during inter-state open access transaction. The energy bills raised by the 2<sup>nd</sup> Respondent (CESC) pertains to energy consumed by the Petitioner in its capacity as a consumer and not as generator and the same is independent of the demand raised by the Respondent herein.

- k) The averment that the Respondent herein has raised impugned demand letter dated 26.11.2019 towards import energy charges for the very same quantum of energy imported by the Petitioner from the 2<sup>nd</sup> Respondent (CESC) is a misleading statement. It is submitted that impugned demand letters and energy bills are issued for different quantum of energy. The Respondent coerced the Petitioner to make the payment is untenable and denied.
- l) That the Respondent has issued provisional bill towards import charges for the very same quantum of energy imported by the Petitioner from the 2<sup>nd</sup> Respondent (CESC) is untenable and denied. That the

Respondent is not liable to pay import charges as the Respondent is a consumer of the CESC is untenable and denied.

m) It was submitted that no reliance can be placed on the Orders in Complaint No.5 of 2017 and OP No. 199 of 2017 of this Commission as the same are not applicable to the facts and circumstance of the present case. The 1<sup>st</sup> Respondent (SLDC) denied all other averments not specifically traversed and contrary to the facts of the case and prayed for dismissal of the present petition in the interest of justice and equity.

5. The Chamundeswari Electricity Supply Company (CESC), 2<sup>nd</sup> Respondent, has filed the objections as hereunder:

a) The Petitioner has sought for setting aside the provisional bills dated 06.01.2020 and 26.11.2019, raised upon the Petitioner by the 1<sup>st</sup> Respondent (SLDC). The Petitioner has also prayed for a direction to the Respondent-1 to refund the amount of Rs. 11,71,649/- (Eleven Lakh, Seventy One Thousand Six Hundred Forty-Nine Rupees Only). Further sought stay of the operation of the bill dated 06.01.2020. This Respondent, states that save and except those which are specifically admitted hereunder, it denies and disputes all the interpretations, claims and averments of the Petitioner.

- b) The Petitioner is a bagasse based cogeneration power generating company having 12 MW installed capacity with 6.4 MW exportable surplus, had entered into Power Purchase Agreement (hereinafter referred to as PPA) dated 23.12.1998 with the 2<sup>nd</sup> Respondent (CESC), which was valid for a period of 10 years and further renewed for the second tenure of 10 years which was expired on 22.12.2018. About two months before the expiry of the PPA, the Petitioner requested for renewal of the PPA for the third tenure of 10 years which was under consideration of KERC and Energy Department during the cane crushing operation, again sought for renewal of PPA with the 2<sup>nd</sup> Respondent upto 31.03.2019 which was however not renewed.
- c) In the meanwhile, the Petitioner had obtained an order to import of power through 66 kV line vide letter dated 11.07.2019. Subsequently, the Petitioner applied for a temporary EHT connection to the extent of 3700 HP on 66 kV with existing infrastructures for import of power for the purpose of starting up of the power plant vide letter dated 12.07.2019. Temporary EHT connection was granted to the Petitioner on 23.07.2017.
- d) Pursuant to the grant of temporary EHT connection, the Petitioner applied for permanent EHT connection to an extent of 2500kVA on 66kv with existing infrastructures vide letter dated 07.08.2019. Permanent EHT connection was granted to the Petitioner on 20.05.2020 after completion of requisite procedures with KPTCL.

e) Being a registered consumer of CESC, the Petitioner has availed inter-state open access for the following periods:

- (i) 26th July, 2019 to 31st July 2019
- (ii) 01<sup>st</sup> August 2019 to 31st August 2019
- (iii) 01st September 2019 to 30th September 2019
- (iv) 01st October 2019 to 31st December 2019
- (v) 01st November 2019 to 30th November 2019
- (vi) 01st December 2019 to 31st December 2019

f) The Petitioner also possesses the No Objection Certificate granted by Respondent No. 1 (SLDC) for engaging in Open Access business.

g) That the Respondent-2 has been raising bills periodically upon the Petitioner as per the existing Power Supply Agreement dated 16.08.2019 (Annexure-R1). For the demand towards the energy sourced by the Petitioner from The 2<sup>nd</sup> Respondent (CESC), which the 1<sup>st</sup> Respondent (SLDC) has termed it as "Import Charges" or "Power Supply Charges." The power supply charges are collected under the Power Supply Agreement and also under Clause 18 of the KEREC (Terms and Conditions for Open Access) Regulations, 2004. Clause 18 of the regulation mentioned supra is reproduced below:

*"18. Collection and Disbursement of Charges:*

*The charges may be collected either by the distribution licensee, the transmission licensee or the STU, depending on*



*whose facilities are used by the consumer for availing open access. In all cases, the amounts collected from a particular consumer should be given to the distribution licensee in whose area the consumer is located. In case of two licensees supplying in the same area the licensee from whom the consumer was availing supply shall be paid the amounts collected. Provided further that transmission charges shall be payable to the concerned transmission licensee."*

- h) The Petitioner alleged that the 1<sup>st</sup> Respondent has been raising bills for import charges along with DSM (Deviation Settlement Mechanism) charges upon the Petitioner and stated that the demands of the 1<sup>st</sup> Respondent are illegal, untenable and against the Electricity Act, 2003. The petitioner further clarified that the import charges ought to be paid to the Distribution licensee and the DSM charges ought to be paid to the Respondent-1. The DSM charges are levied by the Respondent-1 when there is shortfall or excess generation affecting the grid frequency. Such charges ought to be collected by the nodal agency 1<sup>st</sup> Respondent (SLDC) as per both CERC and KERC regulations, however, the import energy charges, by the mandate of regulations, are to be collected by the 2<sup>nd</sup> Respondent (CESC) under the Power Supply Agreement and also under the KERC (Terms and Conditions of Open Access) Regulations, 2004 and its subsequent amendments.
- i) The 1<sup>st</sup> Respondent (SLDC) appears to have raised the impugned bills towards import charges by relying upon the Regulation No.20 of CERC

Regulations and KERC (Terms and Conditions of Open Access) Regulations, 2004.

j) In fact, this Respondent has the exclusive right to bill the energy drawn by its consumers such as the Petitioner and the bills so raised by this Respondent in the instant case are in accordance with law for the following reasons:

(i) The Respondent-2 CESC and the Petitioner have a binding Power Supply Agreement, which entitles the Respondent-2 to charge the Petitioner for the power sourced by it.

(ii) The Respondent-1 relies on the Regulation 20 of the CERC Regulations. The reliance of Respondent-1 to CERC (Open Access in Inter State Transmission) Regulations, 2008, does not hold water in so far as levy of Import Charges are concerned, as Regulation 20 of the said Regulations refers to UI (Unscheduled Inter Change Charges). However, CESC doesn't dispute the claiming of UI charges or the DSM charges which is rightly ought to be collected by the SLDC/Nodal Agency. Regulation 20 is reproduced hereunder:

*“20.(1) All transactions for state utilities and for intra state entities scheduled by the nodal agency under these regulations, shall be accounted for and included in the respective day ahead net interchange schedules of the concerned regional entity issued by the Regional Load Despatch Centre.*

- (2) *Based on net metering on the periphery of each regional entity, composite UI accounts shall be issued for each regional entity on a weekly cycle and transaction wise UI accounting and UI accounting for intra state entities shall not be carried out at the regional level.*
  - (3) *The state utility designated for the purpose of collection / disbursement of UI charges from/ to intra state entities shall be responsible for timely payment of the state's composite dues to the regional UI pool account.*
  - (4) *Any mismatch between the scheduled and the actual drawal at drawal points and scheduled and the actual injection at injection points for the intra state entities shall be determined by the concerned State Load Despatch Centre and covered in the intra-state UI accounting scheme.*
  - (5) *Unless specified otherwise by the concerned state commission, UI rate for intra state entity shall be 105% (for over drawls or under generation) and 95% (for under drawals or over generation) of UI rate at the periphery of regional entity.*
  - (6) *In an interconnection (integrated A.C. grid), since MW deviations from schedule of an entity are met from the entire grid, and the local utility is not solely responsible for absorbing these deviations, restrictions regarding magnitude of deviations (except on account of over stressing of concerned transmission or distributions system), and charges other than those applicable in accordance with these regulations (such as standby charges, grid support charges, parallel operation charges) shall not be imposed by the state utilities on the customers of inter state open access."*
- k) The 2<sup>nd</sup> Respondent (CESC) submitted that the KERC (Terms and Conditions for Open Access) Regulations, 2004 should apply to the instant case. The said Regulations state that they shall apply to open access customers for use of intra state transmission system/s and or

distribution system/s of the licensees in the state, including such system/s which are incidental to the inter-state transmission of electricity. Wherefore, procurement of power by the Petitioner from the 2<sup>nd</sup> Respondent (CESC) is incidental to the inter-state transmission of electricity and is covered by the KERC (Terms and Conditions for Open Access) Regulations, 2004.

- l) The claim of 1<sup>st</sup> Respondent for Import Charges stems from an incorrect understanding of the said KERC (Terms and Conditions for Open Access) Regulations, 2004. The Clause-18 of the said Regulations notified vide No. Y/03/04 dated 31<sup>st</sup> May, 2006 was amended to enable the distribution companies to collect charges from the consumers. Prior to this amendment, the nodal agency (1<sup>st</sup> Respondent) had the right to collect such charges.
- m) In the absence of an enabling provision that entitles the 2<sup>nd</sup> Respondent (CESC) to collect import charges, the 1<sup>st</sup> Respondent has been rightly billing the Petitioner for import charges. It is also submitted that the 1<sup>st</sup> Respondent (SLDC) is well within its right to collect DSM charges from the Petitioner.
- n) Under the above circumstances, submissions and facts, the 2<sup>nd</sup> Respondent (CESC) prayed for passing suitable orders in the above petition in the interest of justice and equity.

6. We have heard the learned counsel for the parties and perused the records.
7. From the pleadings and the documents and from the submissions made by the parties, the following Issues arise for our consideration:

Issue No.1: Whether this Commission has jurisdiction to decide the dispute involved in the present case as contended by 1<sup>st</sup> Respondent (SLDC)?

Issue No.2: Whether the Petitioner incurs any liability to pay backup charges as contemplated under Regulation 11 (viii) of the KERC OA Regulations, 2004, for the energy imported by it during the Open Access period?

Issue No.3: To which relief the Petitioner is entitled to, depending on the answer to be arrived on Issue No.2?

Issue No.4: What Order?

8. Before considering the Issues, for better understanding of the controversies involved in this case, the following facts emerging from records and pleadings may be noted:

a) The Petitioner is a bagasse based Co-gen Unit having 12 MW installed capacity with 6.4 MW exportable surplus. It had entered into a PPA dated 23.12.1998 with erstwhile KEB which was subsequently assigned to the 2<sup>nd</sup> Respondent (CESC). After the expiry of the twenty years' term of the PPA, the request of the Petitioner for further extension of the term of PPA was not allowed. Subsequent to termination of the PPA with the 2<sup>nd</sup> Respondent (CESC), due to efflux of time, the Petitioner applied vide letter dated 12.07.2019 for grant of temporary EHT connection to the

extent of 3700 HP on 66 kV existing infrastructures for import of power from the Grid. The same was granted on 23.07.2019 by the 2<sup>nd</sup> Respondent (CESC). In that connection, the Petitioner entered into Power Supply Agreement dated 16.08.2019 (Annexure-R1) with the 2<sup>nd</sup> Respondent (CESC). Annexure-R1 shows that the supply of electricity is for the purpose of Industrial consumption in the premises of the Co-gen Unit of the Petitioner and the supply would be up to the maximum of 2500 KVA being the contracted demand. Subsequently, permanent EHT connection was granted to the Petitioner on 20.05.2020 after following the requisite procedures.

b) After obtaining the power connection, the Petitioner availed short-term inter-state Open Access for the following periods:

- a) 26.07.2019 to 31.07.2019.
- b) 01.08.2019 to 31.08.2019.
- c) 01.09.2019 to 30.09.2019.
- d) 01.10.2019 to 31.10.2019.
- e) 01.11.2019 to 30.11.2019.
- f) 01.12.2019 to 31.12.2019.

c) The present petition is filed on 08.01.2020. The Petitioner has challenged the validity of Annexure-P2, the Bill dated 26.11.2019 raised by the 1<sup>st</sup> Respondent for the billing periods for 30.07.2019 & 31.07.2019 and 01.08.2019 to 08.08.2019, 13.08.2019, 15.08.2019 to 31.08.2019 and also the validity of Annexure-P1, the Bill dated 06.01.2020 raised by the 1<sup>st</sup>

Respondent for the billing period between 01.09.2019 and 30.09.2019, towards import energy consumed by the Petitioner during Open Access period. In these bills namely; Annexure-P2 and P1, the 1<sup>st</sup> Respondent (SLDC) has also noted the deviation charges (U.I. charges) for the said Open Access periods, payable to the Petitioner.

d) The 2<sup>nd</sup> Respondent (CESC) has also raised consumption bills for the months of July, August, September and October, 2019 marked at Annexure-P5 (collectively) at pages 29 to 32 of the petition.

e) There was demand for payment by the 1<sup>st</sup> Respondent (SLDC) as well as the 2<sup>nd</sup> Respondent (CESC) for the energy imported by the Co-gen Unit of the Petitioner for the above said periods. It may be noted that the demands raised by the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent for these periods vary to some extent. The 1<sup>st</sup> Respondent claims that it has raised the demands for import energy only for the Open Access periods noted in the bills, whereas the 2<sup>nd</sup> Respondent (CESC) claims that it has raised the demands towards monthly energy bills.

f) Therefore, the Petitioner claims that he was billed twice by the 1<sup>st</sup> Respondent as well as the 2<sup>nd</sup> Respondent for the quantum of energy imported. The Petitioner further claims that the so-called import energy bills raised by the 1<sup>st</sup> Respondent (SLDC) are invalid and illegal.

g) It may also be noted even for the subsequent billing period also, the 1<sup>st</sup> Respondent as well as the 2<sup>nd</sup> Respondent have raised the bills for import energy, as noted above.

9. The learned counsel for the 1<sup>st</sup> Respondent (SLDC) submitted that the present dispute is to be decided by the CERC but not by this Commission. Regarding the merit of the contention of the 1<sup>st</sup> Respondent, he submitted that the Petitioner has exported energy less than what was scheduled in the months of July, August and September, 2019, therefore, the Petitioner was liable to pay for deviation charges as per CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2014 (DSM Regulation, 2014), as well as for the import energy charges as per Clause 11 (viii) of KERC (Terms & Conditions for Open Access), Regulations, 2004 (KERC Open Access Regulations, 2004).
10. On the other hand, the learned counsel for the Petitioner contended that the Petitioner is a consumer of 2<sup>nd</sup> Respondent (CESC) and it has entered into power supply agreement and for its own consumption during the period when there would be no generation from its generating unit, the Petitioner has drawn the power from the grid of the 2<sup>nd</sup> Respondent (CESC). Therefore, the learned counsel submitted that the energy imported by the Petitioner from the grid of the 2<sup>nd</sup> Respondent is to be billed as per the power supply agreement and the 1<sup>st</sup> Respondent has no authority to raise the bill for such import of energy. Further, he submitted that Clause 11 (viii) of the Regulations, 2004, has no applicability and the 1<sup>st</sup> Respondent has wrongly



applied the said Regulation in issuing the bills for the import energy for the Open Access period. Further, he submitted that this Commission has jurisdiction to decide as to whether Clause 11 (viii) of the Regulations, 2004 would apply to transactions covering under Short-term Inter-State Open Access or not.

11. On consideration of the submissions of the parties and the pleadings and records our findings on the above Issues are as follows:

12. Issue No.1: Whether this Commission has jurisdiction to decide the dispute involved in the present case as contended by 1<sup>st</sup> Respondent (SLDC)?

a) Regulation 26 of the CERC (Open Access in Inter-State Transmission) Regulations, 2008 (CERC Open Access Regulations, 2008), which would apply to the applications made for grant of Inter-State Short-term Open Access, reads as follows:

*“Redressal Mechanism:*

*26. All disputes arising under these Regulations shall be decided by the Commission based on an application made by the person aggrieved.”*

b) Therefore, it is to be seen as to whether the present dispute arises under the CERC OA Regulations, 2008 or not. The present dispute relates to the alleged liability of the Petitioner to pay Open Access Charges as specified in Regulation 11 (viii) of the KERC (Terms & Conditions for Open

Access) Regulations, 2004 (KERC OA Regulations, 2004) which reads as follows:

“11 Open Access Charges:

The charges for the use of the transmission/distribution system by an open access customer shall be regulated as under:

(i) to (vii).....

(viii) – Charges for arranging backup supply from the grid shall be payable by the Open Access customer in the event of failure of contracted supply. In case of outages of generators supplying to a consumer on Open Access, stand by arrangements should be provided by the Licensee on payment of tariff for temporary connection to that consumer category as specified by the Commission.”

(ix) to (xiii) .....

c) Regulation 16 (2) of CERC OA Regulations, 2008 provides that the intra-State entities shall pay the transmission charges for use of the State network as fixed by the respective State Commission in addition to the charges specified under clause (1) of this Regulation. Clause 1 of the said Regulation provides for payment of transmission charges for inter-state transmission system. In the same way, Regulation 21 (2) provides that the reactive energy draws and injections by the intra-state entities shall be governed by the Regulations applicable within the State concerned. Regulation 25 (1) of the said Regulations, provides for collection of transmission charges towards intra-state transmission system

and payment of the same to State Transmission Utility, apart from collection of transmission charges for inter-state transmission system.

Regulation 25 (6) of the said Regulations, provides as follows:

“25 (6) - The wheeling and other charges payable to distribution utilities shall be paid by the applicant seeking Open Access in accordance with the Open Access Regulation of the concerned State Commission.”

d) Regulation 1 (iii) of the KERC (OA Regulations), 2004 provides that “these Regulations shall apply to the Open Access customers for use of intra-state transmission system/s and/or distribution system/s of licensee/s the State, including such system/s, which are incidental to inter-state transmission of electricity.”

e) Regulation 14 of the KERC (OA Regulations), 2004 reads as follows:

“ 14 – *Dispute Resolution:*

*(1) All disputes and complaints relating to open access shall be made to the SLDC, which may investigate and endeavour to resolve the grievance.*

*(2) If the SLDC is unable to redress the grievance, it may be referred to the Commission for resolution.”*

f) Any dispute relating to the liability of an Open Access customer for payment of backup supply charges is a dispute or a complaint relating to intra-state Open Access. Such dispute is to be decided by this Commission in case the SLDC could not resolve such dispute or

complaint. As already noted Regulation 25 (6) of CERC OA Regulations, 2008 provides that wheeling and other charges payable to distribution utilities shall be paid by the applicant seeking Open Access, in accordance with the Open Access Regulations of the concerned State Commission. Therefore, any dispute relating to payment of wheeling and other charges including 'backup charges' to distribution utilities under Open Access Regulations of the State Commission shall be resolved under the provisions of Open Access Regulations of the State Commission itself. Such dispute relating to payment of wheeling and other charges including backup charges to distribution utilities cannot be termed as a dispute arising under Regulation 26 of the CERC OA Regulations, 2008. Therefore, such dispute cannot be entertained by CERC, but it should be dealt by the State Commission itself.

g) The 1<sup>st</sup> Respondent (SLDC) has contended that the present dispute relating to the liability to pay Open Access charges as per Regulation 11 (viii) of the KERC OA Regulations, 2004, is a dispute arising under the CERC OA Regulations, 2008, therefore, it shall be decided by the CERC under said Regulation 26. For the reasons stated above, we are of the considered view that such dispute does not fall under the CERC OA Regulations, 2008.

h) The Hon'ble ATE in Appeal No.70 of 2015 decided on 07.04.2016 between State Load Despatch Centre, Vadodara, Gujarat & Another Vs. Gujarat

Electricity Regulatory Commission & Another, has dealt with a similar question regarding the State Commission's jurisdiction to decide as to whether the dispute regarding the refusal of NOC by SLDC in respect of an inter-state Open Access transactions, would fall under State Commission's jurisdiction or not. In that case, the SLDC had refused NOC for availing inter-state Open Access by an Intra-State Entity. That dispute was taken before the State Commission by the Intra-State Entity. Regulation 8 of the CERC OA Regulations, 2008 provides for obtaining concurrence of SLDC for bilateral and collective transactions in advance by the applicant and he has to submit such concurrence along with the application to the Nodal Agency for obtaining inter-state short-term Open Access. On consideration of the rival contentions, Gujarat Electricity Regulatory Commission held that the refusal of NOC by SLDC was improper and not valid. SLDC of Gujarat had preferred appeal against that order before the Hon'ble ATE mainly contending that the dispute regarding refusal of NOC in respect of inter-state Open Access transaction, should be dealt with by CERC as per the CERC OA Regulations, 2008. That contention is not accepted by the Hon'ble ATE holding that, if the dispute arises for users of Intra-State network in collective transaction, it would fall within the jurisdiction of the respective State Commission within whose jurisdiction the Intra-State network falls. Therefore, it is held that the Gujarat State Regulatory Commission had

the jurisdiction to deal with the said dispute. We are of the opinion that on the same principle, this Commission has jurisdiction to deal with the present dispute involved in this case regarding the liability to pay the backup charges by the Petitioner-Generator for the energy imported from the grid of the 2<sup>nd</sup> Respondent (CESC).

i) For the above reasons, we hold Issue No.1 in affirmative.

13. Issue No.2: Whether the Petitioner incurs any liability to pay backup charges as contemplated under Regulation 11 (viii) of the KERC OA Regulations, 2004, for the energy imported by it during the Open Access period?

a) We may note the scope and applicability of Regulation 11 (viii) of the KERC OA Regulations, 2004. This provision was amended vide Notification No.Y/03/4 dated 31.05.2006 w.e.f. 22.06.2006. For better understanding of the scope and applicability of this provision, the un-amended and the amended provision may be noted which are as follows:

Before Amendment	After Amendment
Charges for arranging backup supply from the grid shall be payable by the Open Access customer in the event of failure of contracted supply <b><u>to cover the risk. The amount of backup charges shall be mutually agreed between the parties.</u></b>	Charges for arranging backup supply from the grid shall be payable by the Open Access customer in the event of failure of contracted supply. In case of outages of generators supplying to a consumer on Open Access, stand by arrangements should be provided by the Licensee on payment of tariff for temporary connection to that consumer category as specified by the Commission.

The amendment to Regulation 11 (viii) was effected to bring the existing provision in consonance with the Tariff Policy published on 06.01.2006. The relevant portion of Tariff Policy dated 06.01.2006 dealing with Cross-subsidy surcharge and additional surcharge for open access at para 8.5 reads as follows:

"8.5 Cross-subsidy surcharge and additional surcharge for open access -

8.5.1 to 8.5.5 xxxxxxxxxxxxxxxx

8.5.6 In case of outages of generator supplying to a consumer on open access, standby arrangements should be provided by the licensee on the payment of tariff for temporary connection to that consumer category as specified by the Appropriate Commission."

b) Whenever any consumer of a Distribution Licensee availed open access, that distribution licensee was required to supply energy to the extent of contracted supply with the generator/s, in case of outages of generator/s. It is obvious that in case the distribution licensee supplies any quantity of energy to the open access consumer, because of the fault of the generator/s, the distribution licensee should be suitably compensated. Earlier to amendment such compensation payable, was required to be mutually agreed between the distribution licensee and the open access customer. One can say that in the event there could not be any consensus between parties regarding the amount payable

to such supply of energy, there was no obligation on the part of the distribution licensee to supply the energy in case of failure of contracted supply due to outages of generators. Subsequent to amendment such supply is obligated on the part of distribution licensee, on receipt of tariff for temporary connection to that consumer category. The phrases used 'arranging backup supply' and 'standby arrangement' in Regulation 11 (viii), are synonymous and they are not having different meanings in the said clause. The said provision cannot be interpreted to mean that in case of outages of generators, the open access consumer as well as the generator are required to pay backup supply charges to the local distribution licensee even in case of intra-state open access. It may be noted that in Complaint No.05/2017 between Bidadi Industries Association (R) and BESCO, decided by this Commission on 24.10.2017 it is clarified that the Regulation 11 (viii) of the KERC OA Regulations, 2004 would apply to 'Exclusive Consumers' who has no contract demand with the ESCOM but not to the 'Existing Consumers' already having contract demand provided such consumer draws energy within the contract demand.

- c) The above facility to the open access consumer or the obligation on the part of the distribution licensee specified in Regulation 11 (viii), applies only in case of intra-state open access transactions. This important aspect is to be kept in mind while arriving charges payable to the



distribution licensee as provided in Regulation 25 (6) of the CERC OA Regulations, 2008, in case of short-term inter-state open access. The generator injecting power to the grid and the open access consumer purchasing energy under bi-lateral inter-state open access would be invariably in different States. Therefore, any of the distribution licensees of a State, where the generator is situated, supplying backup energy to the open access consumer does not arise. Therefore, for inter-state open access transactions, the above provision of 11 (viii) of the KERC OA Regulation, 2004 cannot be applied.

- d) In case of inter-state short-term open access, all applications of Intra-State Entities for bilateral transactions within a State are consolidated for the purpose of scheduling by the concerned SLDC and the Intra-State Entities are not permitted revision of schedule within a specified time. Therefore, the variations in injection or drawl schedules are compensated by Unscheduled Interchange Charges under UI Mechanism/DSM Mechanism. Therefore, in cases of inter-state short-term open access, the imposition of backup charges as contemplated in Regulation 11 (viii) of the KERC OA Regulations, 2004, is unwarranted. It is important to note that Regulation 11 (viii) does not deal with supply of energy by the local distribution licensee to the generator for its consumption during non-generation period and the payment to be made towards such supply. The said provision provides for supply of

energy to the open access consumer in the event of outages of generator supplying to that consumer on open access, but not to the supply of energy to the generator under Supply Agreement.

- e) The 1<sup>st</sup> Respondent SLDC has contended in paras 4, 5 & 7 of its Statement of Objections that the Petitioner has exported energy less than what was scheduled in the months of July, August & September, 2019 and has drawn different quantities of energy from the grid in these months, therefore, in the light of shortfall in the energy injected by the Petitioner it is liable to pay: (i) deviation charges as per CERC (Deviation Settlement Mechanism & Related Matters), Regulations, 2014 [DSM Regulations, 2014]; and (ii) import energy charges as per Regulation 11 (viii) of KERC OA Regulations, 2004.
- f) It may be noted that for the above said months, the Petitioner has exported more than what was scheduled and he was paid deviation charges. It may also be noted from the various demands raised by the 1<sup>st</sup> Respondent in subsequent months that it had raised bills for the energy imported by the Petitioner, claiming that the said demand was permitted as per Clause 11 (viii) of Regulations, 2004, irrespective of the fact whether the Petitioner exported the energy more or less than the scheduled energy. Therefore, what was urged in the objection statement of the 1<sup>st</sup> Respondent to the effect that the Petitioner had exported energy less than what was scheduled in different months was the reason

for imposing Deviation charges under DSM Regulations, 2014 and for imposing import energy charges as per Regulation 11 (viii) of the KERC OA Regulations, 2004, is not correct. The contention of the 1<sup>st</sup> Respondent is made more clear in its letter dated 21.08.2020 addressed to the Assistant Executive Engineer, O&M Sub-Division, CESC, K.R. Pet, produced by the Petitioner during the course of hearing. This letter has been addressed to AEE, O&M Sub-Division, CESC, K.R. Pet, in response to the representations made by the Petitioner through his different letters regarding import energy charges billing under Open Access during NOC period. The relevant paras are as follows:

“Para 1: .....

Para 2: Referring to the above context, it is to inform that, as per CERC Regulation 20 Clause (5) the STOA customers availing Open Access shall be billed by SLDC which is the Nodal Agency for billing the Open Access transactions as per the existing Open Access Regulations. The Open Access billing at SLDC includes the DSM charges and Import Energy charges (Fixed and Energy charges) which are billed only for the energy used during Open Access period i.e., only for the period of NOC issued by SLDC at existing temporary tariff (HT-5) in accordance with KERC (Terms and Conditions of Open Access) Regulations, 2004 and its subsequent Amendments dated 31.05.2006. The NOC for availing Open Access is issued by SLDC for the entire month or for part of days in a month depending on the request of the Generator/STOA customer.

Para 3: .....

Para 4: As SLDC is nominated by CERC as Nodal Agency for computing UI energy for STOA customer of its jurisdiction. Accordingly, SLDC is computing UI charges to STOA generator situated in Karnataka on monthly basis and Import energy charges for the energy imported by them

during Open Access period as per KERC Regulation vide No.Y/3/4 dated 31.05.2006.

Para 5: .....

Para 6: In this regard in future it is requested/directed to raise the Import Energy bills only for the non-Open Access period of the EHT consumers who have availed Open Access and after communicating with SLDC about the period of NOC issued as the amount for energy imported during Open Access period has to be paid at SLDC only as SLDC/KPTCL being a Nodal Agency has to collect these charges as per Clause 11 (viii) of KERC Order No.Y/03/04 dated 31.05.2016 & share the amount to ESCOMs as per sharing ratio of GoK."

- g) Therefore, according to the 1<sup>st</sup> Respondent (SLDC) as per the above letter, it has to raise the bill for energy imported by the Generator during the period of Open Access apart from raising the bill for deviation charges as per DSM Regulations, 2014. Further, it claims that for the energy imported for the period other than Open Access period, the concerned distribution licensee has to raise the bill.
- h) There is no dispute that the 1<sup>st</sup> Respondent (SLDC) is entitled to raise the bill for deviation charges as per DSM Regulations, 2014 for any deviation by the Generator in injecting the energy to the grid to that of the given schedule. The only dispute is regarding the authority of the 1<sup>st</sup> Respondent (SLDC) to raise the bill for the energy imported by the Petitioner-Generator during non-generation period for any reason whatsoever.
- i) In the present case, the Petitioner-Generator has imported energy from the grid of the 2<sup>nd</sup> Respondent (CESC) under power supply agreement

dated 16.08.2019 (Annexure-R1) executed between them. The liability of the Petitioner for consumption of energy supplied by 2<sup>nd</sup> Respondent (CESC) is to be governed by the terms of supply agreement (Annexure-R1).

j) The 1<sup>st</sup> Respondent (SLDC) has relied upon the judgment dated 16.04.2019 passed in Appeal No.26/2013 by the Hon'ble ATE between SLDC, Karnataka and CERC & Others along with other connected appeals. The Hon'ble ATE has framed the following Issues in this appeal:

Issue No.1: Whether backup supply charges can be levied on a generator engaged in open access transaction under the CERC (Open Access in Inter-State Transmission) Regulations, 2008?

Issue No.2: Whether State Load Despatch Centre has authority under law to issue impugned invoices levying backup supply charges?"

k) In respect of 1<sup>st</sup> Issue at para 8.7 of the judgment it is held as follows:

"8.7 - .....

.....

We thus hold that the generating companies provided with Open Access for inter-state transactions under CERC Regulations are not liable to pay any additional charges as per Regulations 20 (6), however, any power consumed from the State Grid through the local distribution licensee is chargeable as per the KERC Regulations by considering temporary tariff under relevant category of consumers. However, these supply

charges cannot be equated with backup supply charges as being contemplated by the Appellant."

l) In respect of 2nd Issue at the end of para 9.3 of the judgment it is concluded as follows:

"9.3 - .....  
.....

Hence, we are of the considered opinion that the action of the Appellant in issuing the invoices to the Respondent Generating Companies for supply of power from the State Grid is not in violation of law or Regulations."

m) In para 10 of the judgment Summary of the Findings is noted as follows:

"10 - After microscopic evaluation of the entire material available on records and after taking into consideration the discussion, reasoning and findings regarding Issue Nos.1 & 2 mentioned above, we are of the considered opinion that as specified under the CERC Open Access Regulations, no charges other than those specified under Regulation 20 (6) shall be payable by any person granted short term open access under these Regulations. However, if any generating company consumes power from the state grid for any purpose, it is liable to pay supply charges as applicable under the KERC Regulations, 2004 (as amended). Accordingly, the orders passed by CERC in various petitions stipulated above (Janki orders and others) would need to be corrected to remove, pointed out inconsistencies and also, to provide clarity on various charges namely

backup supply charges and distribution/supply charges. In view of these facts and circumstances of the case, the instant appeals deserve to be partly allowed and the impugned orders passed by the first Respondent/CERC are liable to be set aside so far it relate to the findings in the preceding paragraph above.”

n) Ultimately, the Hon’ble ATE has remitted back the matter to the CERC with the direction to pass the appropriate order. The relevant portion of the order at para 3 is as follows:

“O R D E R

.....

.....

The matter stands remitted back to the first Respondent/CERC with the direction to pass the appropriate order in compliance of the observations made in Paragraph No.10 of this judgment, as stated above, as expeditiously as possible at any rate within a period of six months from the date of appearance of the parties.

.....

.....”

o) The learned counsel for the 1<sup>st</sup> Respondent (SLDC) has contended that the findings in Appeal No.26 of 2013 of the Hon’ble ATE support the contention of the 1<sup>st</sup> Respondent. On consideration of the findings and directions given by the Hon’ble ATE in said appeal, it appears to us that in reality the said judgment does not support the contention of the 1<sup>st</sup> Respondent (SLDC). In the findings on Issue No.1, the Hon’ble ATE has

made it clear that the supply charges i.e., the energy charges for the energy consumed by the generator for its own use cannot be equated with backup supply charges as being contemplated by the Appellant SLDC. In the operative portion of the Order, the Hon'ble ATE has specifically directed the 1<sup>st</sup> Respondent (CERC) to pass the appropriate order in compliance of the observations made in paragraph 10 of the judgment. In paragraph 10, it is made clear that:

*"however, if any generating company consumes power from the state grid for any purpose, it is liable to pay supply charges as applicable under the KERC Regulations, 2004 (as amended)."*

p) As already considered by us on the analysis of the Regulation 11 (viii) of the KERC OA Regulations, 2004, in the case of generator availing inter-state open access and importing energy for its consumption from the grid of the local distribution licensee, is not liable for any 'backup charges' as contemplated in the said Regulation 11 (viii). We also note that the Hon'ble ATE in its Summary of Findings has observed that:

*"Accordingly, the orders passed by CERC in various petitions stipulated above (Janki orders and others) would need to be corrected to remove, pointed out inconsistencies and also, to provide clarity on various charges namely backup supply charges and distribution/supply charges."*



The above direction to the CERC would make it clear that the Hon'ble ATE has not finally given its Findings on the applicability of backup charges as contemplated in Regulation 11 (viii) for the energy consumed by the generator availing inter-state Open Access. Therefore, on the conjoint reading of the Findings of the Hon'ble ATE in the above said appeals, one can say that the Findings in the said appeals do not support the contention of the 1<sup>st</sup> Respondent (SLDC).

q) The meaning of UI (Unscheduled Interchange) and its practical benefit is explained in para 10 & 11 of the judgment cited in (2007) 8 Supreme Court Cases 197 between Central Power Distribution Company and Others Vs. Central Electricity Regulatory Commission & Another by the Hon'ble Supreme Court of India is as follows:

*“What is UI (Unscheduled Interchange)*

*10. In addition to two charges, a third charge contemplated in the ABT Scheme is for the Unscheduled Interchange of Power (UI Charges). UI Charges are payable depending upon what is deviation from the schedule and also subject to the Grid conditions at that point of time. This element was introduced to bring about the effective discipline in the system. Under this system UI charges will be payable, if:*

- (i) a generator generates more than the schedule thereby increasing the frequency;*
- (ii) a generator generates less than the schedule, thereby decreasing the frequency;*
- (iii) a beneficiary overdraws power, thereby decreasing the frequency;*

*(iv) a beneficiary underdraws power, thereby increasing the frequency.*

*11. It is thus clear from the above that UI charges are a commercial mechanism to maintain Grid discipline. UI charges penalize whosoever caused Grid indiscipline, whether generator (NTPC) or distributor, is subject to payment of UI charges who are not following the schedule. UI charges are not payable if the appellants maintain their drawl of electricity consistent with the schedule given by themselves. Therefore, there is no merit in the contention of the appellants that UI charges are by way of penalty."*

r) The UI Mechanism/DSM not only brings grid discipline among the different users of the grid, but also settles the right or the liability of them for variation of their despatch schedule or drawl schedule, by payment of UI Charges/DSM Charges.

s) In our State Intra-State ABT is yet to be implemented. Therefore, the drawl of energy by the generator from the grid under Power Supply Agreement during the inter-state open access period, cannot be brought under UI Mechanism/DSM.

t) In view of the above reasons, we hold Issue No.2 in negative.

14. Issue No.3: To which relief the Petitioner is entitled to, depending on the answer to be arrived on Issue No.2?

a) The 1<sup>st</sup> Respondent (SLDC) in its letter dated 21.08.2020 addressed to the Assistant Executive Engineer (O&M) Sub-Division No.1, CESC, K.R. Pet has stated that the 2<sup>nd</sup> Respondent (CESC) has to raise the import energy

bills only for the non-open access period of the EHT consumers who have availed open access and the 1<sup>st</sup> Respondent (SLDC) would raise the bill for the import energy consumed during open access period and that it would share the amount to ESCOMs as per sharing ratio of GoK. As already noted this procedure is not contemplated under any provision of law, therefore, such unnecessary exercise need not be taken by the 1<sup>st</sup> Respondent SLDC. It may be noted that the 1<sup>st</sup> Respondent (SLDC) appears to have imposed fixed charges for the whole month irrespective of the period of energy imported during open access or otherwise. The 2<sup>nd</sup> Respondent (CESC) has also imposed the full fixed charges. One cannot support the imposition of the fixed charges twice in a billing period.

- b) Considering the facts and relevant provision of law, we are of the view that the 1<sup>st</sup> Respondent (SLDC) need not burden itself for raising the bill for import energy supplied under Power Supply Agreement during open access period and pay the same to the concerned distribution licensee or to all the distribution licensees of the State as per sharing ratio of the energy.
- c) From any angle, the 1<sup>st</sup> Respondent (SLDC) cannot raise the bills for the energy consumed by the Petitioner under Power Supply Agreement during inter-state open access period or otherwise under Regulation 11 (viii) of the KERC OA Regulations, 2004.

d)Therefore, the bills raised by the 1<sup>st</sup> Respondent (SLDC) cannot be sustained as regards the import energy charges are concerned. The amounts recovered from the Petitioner if any, by the 1<sup>st</sup> Respondent towards such bills is to be credited to the account of the 2<sup>nd</sup> Respondent (CESC) and the 2<sup>nd</sup> Respondent is required to adjust the said amount towards the future consumption bills of the Petitioner.

e) For the above reasons, Issue No.3 is held accordingly.

15. Issue No.4: What Order?

For the above reasons, we proceed to pass the following:

**ORDER**

The petition is substantially allowed:

- (a) It is held that the 1<sup>st</sup> Respondent (SLDC) should not raise the bills for the energy consumed by the Petitioner under Power Supply Agreement during inter-state open access period or otherwise under Regulation 11 (viii) of the KERC OA Regulations, 2004.
- (b) The 1<sup>st</sup> Respondent (SLDC) shall credit the amounts recovered from the Petitioner if any, towards such bills excluding the amount which is payable by the generator if any, towards DSM charges within a period of 30 (thirty) days from the date of this Order to the account of the 2<sup>nd</sup> Respondent (CESC).

- (c) The 2<sup>nd</sup> Respondent (CESC) shall adjust the said amounts received from the 1<sup>st</sup> Respondent (SLDC) towards the future consumption bills of the Petitioner.
- (d) It is made clear that SLDC is entitled to raise bills towards DSM charges in accordance with the CERC (Deviation Settlement Mechanism and related matters) Regulations, 2014, wherever it applies.
- (e) The other reliefs prayed for by the Petitioner are not allowed.

sd/-  
(SHAMBHU DAYAL MEENA)  
Chairman

sd/-  
(H.M. MANJUNATHA)  
Member

sd/-  
(M.D. RAVI)  
Member