THE KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

PRESENT: Shri P Parameswaran, Member
Shri. Mathew George, Member

September 27, 2012

RPNo.6/2012

In the matter of

Review Petition on the Order on ARR&ERC of KSEB for the year 2012-13

The Kerala State Electricity Board

- **Petitioner**

ORDER

Background

1. The Order on ARR&ERC of the Kerala State Electricity Board for the year 2012-13 was issued on 28-4-2012. After the receipt of the Order, the Kerala State Electricity Board (*hereinafter referred to as the Board or KSEB*) has filed a review petition on 11-7-2012. The Commission admitted the petition as RP No.6 of 2012. Prior to this, the Kerala State HT&EHT Industrial Electricity Consumers' Association had also filed a review petition on the same order seeking review of the approval of hydro generation.

2. In the review petition, the Board has raised several issues for reconsideration. The issues raised by the Board are on estimation of energy sales, energy availability from Koodamkulam Plant, Employee cost, A&G expenses, R&M expenses, Return on Equity, Interest and financing charges, depreciation, T&D Losses, Expenses capitalization etc. The petition was placed in the website of the Commission and a press release was also issued for information of the public for the purpose of getting their objections, if any.

Hearing on the Petition

3. The petition was heard on 6-8-2012. The representatives of the petitioner and the representatives of the Kerala HT & EHT Industrial Electricity Consumers' Association were present for the hearing. During the hearing, the Board was represented by a team led by the Chief Engineer (Commercial & Tariff). The Board sought review of the impugned order on the following items:

    a) Energy sales
    b) Energy availability from Koodamkulam Plant.
    c) Employee Cost
    d) Repair and Maintenance Expenses
    e) Administration and General Expenses
    f) Return on Equity
    g) Interest and Finance Charges
    h) Depreciation
    i) T&D loss reduction target
    j) Capitalization of expenses

4. Regarding energy sales, KSEB stated that the Commission had approved energy sales for the year 2012-13 as 16385 MU without any power restrictions where as KSEB had proposed same level of sales, by regulating the consumption by 15% of the previous year level. The Commission directed to limit the sales through DSM activities. According to KSEB, the trends in energy usage in the months of April to June 2012 showed that there was an increase of 2 to 3% in demand compared to approved level for the year. With the present trend, the energy sales will be more than 17140MU, which is about 754MU more than the approved level. Considering the transmission constraints, the Board may be forced to schedule the liquid fuel stations. Hence, the Board requested to approve energy sales of 17140MU and to procure 875.66 MU from liquid fuel stations at the rate of Rs.10.29 per unit.

5. Regarding energy availability from Koodamkulam Plant, the Board stated that the Commission had approved energy availability of first unit of Koodamkulam plant from August 2012 and 2nd unit from December 2012. According to KSEB, it is a remote possibility that the Plant will be commissioned in this year, especially the 2nd unit. Since the Koodamkulam Plant is not likely to be commissioned in this year, the

Board requested to review the decision and to allow the Board to purchase energy from alternate sources at the average rate of Rs.4.50 for short term purchase. In the case of employee costs, the Board raised a contention that the Commission had approved the employee costs at Rs.1663.66 crore, which is about 25% less than the amount projected by the Board, thereby disallowing Rs.567.8 Crore. Based on its own estimations of the approved employee cost, the Board stated that about 53.75% of DA, 17.45% of the pension liabilities and 32.76% of the provision for pay revision had been disallowed by the Commission. According to KSEB there is conceptual mistake in the methodology adopted by the Commission by taking a composite index of WPI and CPI. The increase of 3% allowed for basic pay is not sufficient. In the case of DA the Commission has allowed increase based on WPI-CPI index, which does not cover the actual increase in DA announced by the Government. The pension liabilities are also firm commitment of the Board, which again cannot be linked to any indices. The Board has further stated that the base year adopted by the Commission is 2008-09. However, the impact of pay revision or provision for pay revision has been made only for the part of the year ie., Rs.117.08 crore only, where as the full year provision is about Rs.174.12 crore. Hence, full year's impact may be considered if the base year of 2008-09 is considered. The Board has explained with data starting from 2003-04 that the increase in actual per unit employee cost is less than that of the inflation.

6. Regarding R&M expenses, KSEB has pointed out that the Commission had reduced the R&M costs by about Rs. 130.12 crore from the amount projected by the Board. The reduction was made without considering the increase in assets and new assets added into the system. In between 2008-09 and 2012-13 the GFA of KSEB has increased by Rs.3534.55 crore ie., about 40.70%. As in the case of employee costs, the Board stated that by taking base year of 2008-09, the per unit R&M expenses based on inflation is actually more than the actual per unit R&M costs, which shows the efficiency of the Board. The Board further stated that the KSERC (Terms and Conditions of Retail sale of Electricity) Regulations 2006 is for the distribution utility, which is not applicable for an integrated utility like KSEB. Hence, the Board requested to approve the R&M expenses as projected in the ARR& ERC petition.

7. Regarding A&G expenses, KSEB stated that though it is a controllable item, increase in proportion to the business growth of the utility to service new connections, increase in energy sales, capital works in progress etc are to be

considered in addition to inflationary factors. According to the Board, a comparison of the per unit A&G expenses based on inflation is less than actual A&G cost of the Board, which shows that the amount approved by the Board is much lower than the amount admissible based on inflation. KSEB also requested for allowing Section 3(1) duty as part of A&G expenses. Another claim made by KSEB is on return on equity. The Government has already reverted the decision in its order dated 13-12-2010, so as to continue the Equity to the tune of Rs.1553 crore. The Board has claimed 15.50% return on this equity component as per the CERC norms, which is as per the provisions of Electricity Act 2003 and the National Electricity Policy.

8. Regarding interest and financing charges, KSEB stated that the Commission had considered additional loan commitment of Rs.500 Crore as against the projection of Rs.1200 crore. The Commission had also considered the funds available from provident fund, security deposit and duty under section 4. Out of this, provident funds and depreciation are non-cash items, which is available only if the complete revenue gap is met through revision of tariffs. The Board also pointed that the Commission had allowed the interest cost for short term loan as Rs.121.49 crore, where as the estimated cost would be Rs.133.06 crore. The Commission had not fully admitted the interest on working capital, considering the fact that the approved revenue gap till 2011-12 was more than Rs.2000 crore. Considering this, the Board requested to review the level of interest on overdraft at the level projected by the Board.

9. In the case of depreciation, the Commission had not allowed the depreciation on the assets created out of contribution. Considering the impact on the finances, the Board requested to review the decision till the completion of the revesting of the assets and liabilities of KSEB into a new corporate entity. The Board also sought to review the T&D loss targets fixed by the Commission for the year 2012-13. Though the Board had sought to reduce the loss level by 0.25%, the Commission arbitrarily fixed the target as 0.5%. KSEB has also stated that though the Commission reduced the expenses and interest and financing charges, the expenses and interest capitalized were not reduced proportionately.

Objections of the stakeholders:

10. Objecting to the petition of the Board, the representatives of the Kerala State HT-EHT Industrial Electricity Consumers' Association stated that KSEB has been filing

review petitions on almost all the ARR&ERC Orders issued by the Commission. The Board is continuously harping on issues which are already settled like the electricity duty under Section 3(1) of KED Act.

11. Regarding the issue of approval of energy sales, the Association stated that the Board itself has mentioned the Commission's justification in arriving at the energy sales, by initiating appropriate DSM activities. The Association contended that the figure arrived at by the Commission in the order cannot be challenged in the review petition, as only apparent error can be challenged in the review process. In the case of energy from Koodamkulam plant, the Commission had arrived at the decision based on the information available at the point of time, which cannot be challenged through a review petition. As per the information available from the website of the Nuclear Power Corporation of India, the expected date of commencement of commercial operation of the first unit is August 2012. Hence there is no merit in the argument of the Board. Regarding employee costs, the Board has not brought any new points, through substantial portion of the petition is used to explain this point. Since there is no new points in the arguments, the review will not hold good. The Board has pointed out that the model tariff regulations notified by FOR states about the normative R&M expenses, which is linked to Gross Fixed Assets. The Association stated that the model regulations issued by the FOR is not a regulation to be followed by any one, but a model based on which the Commissions may formulate their own regulations. Further , the Board has not pointed out this argument in the original petition and a new ground cannot be brought now for a review. Based on this they requested to reject the argument of the Board. In the case of A&G expenses also, the Association pointed out that model regulations cannot be a point in the review petition. The Commission had considered the argument of business growth pointed out by the Board in the original petition. Hence the same point cannot be challenged in the review petition. In the case of return on Equity the Commission had carefully considered the arguments and allowed 14% RoE. The KSERC(terms and conditions for determination of tariff for distribution and retail supply of tariff under MYT framework) regulations provides for 14% return on Equity. Hence, the provisions in the CERC regulations need not be applied.

12. The argument of KSEB regarding interest and financing charges was also objected to by the Association. The Commission had considered Rs.500 crore as the loan requirement for which there is no error apparent. The delay in effecting the tariff

revision is not the fault of the Commission or the consumers. Regarding the electricity duty, the Commission had given a reasoned decision that till re-vesting of assets in the new company and formation of pension fund, the electricity duty retained would be available. The argument of the Board on the depreciation cannot be considered as the Board wants to review the decision of the Commission till they file a review petition on the Order of the Commission on depreciation on the assets created out of depreciation. The Association further argued that the T&D loss reduction target was fixed by the Commission after considering the matter in detail and the loss reduction of 0.5% fixed by the Commission is a soft target. The Association requested to summarily reject the review petition of the Board considering these arguments.

13. The Confederation of Consumer Vigilance Centre (CVC) in their written submission requested to reject the review petition of the Board. According to CVC, the reduction made by the Commission in employee costs is justifiable since the Board has been employing persons without justification. Even after such practice, at the grassroot level, large number of persons are employed on contract basis. similarly, on depreciation and power purchase also no review is required. Accordingly they requested to reject the review petition of the Board.

Analysis and decision of the Commission

14. The Commission has considered the detailed arguments of the Board and the objections thereto. At the outset, most of the issues raised in the review petition of the Board have been deliberated in detail on previous occasions. An elaborate consideration of similar arguments was made in the Order dated 21-11-2009 in RP 9 of 2011. As has been held on previous occasions, the Commission is bound by the provisions of the Electricity Act and Regulations. As per the provisions of Section 94(1)(f), the Commission has been vested with the powers for reviewing its decisions, directions and orders as in the Code of Civil Procedure 1908. Accordingly, clause 67(1) of KSERC (Conduct of Business) Regulations, 2003 provides that:

> *Powers of Review, Revision etc.,-(1) The Commission may either on its own motion or on an application made by any interested or affected party, within 90 days of the making or issuing of any decision , direction, order, notice, or other document or the taking of any action in pursuance of these regulations, review revoke, revise, modify, amend, alter, or otherwise change such decision,*

direction, order, notice, or other document issued or action taken by the Commission or any of its officers.

15. The application and the scope of the review of an Order are circumscribed under Order 47, Rule 1, of Code of Civil Procedure, 1908. The review power, under the aforesaid provision is reproduced as below: -

> *"Application for review of judgment – (1) Any person considering himself aggrieved –*
>
> *(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or*
>
> *(b) by a decree or order from which no appeal is allowed; or*
>
> *(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order".*

16. The review jurisdiction, hence is a limited power to be exercised when new facts which could not be produced at the time of the order or any apparent error on the face of record are brought to the notice of the Commission. The review is not in any way envisaged for challenging the merits of the case. This being the position, the Commission does not wish to enlarge the scope of the review jurisdiction to deliberate on the merits of the issues already decided. Based on the arguments and submissions made by the parties, the major issues raised by the Board in the petition are dealt in the following sections.

17. The Board has sought review of the energy sales approved by the Commission on the ground that the same level of sales was projected by the Board based on 15% restrictions. Further, actual energy demand for the previous months of the year has also shown higher level of consumption. The Commission is of the view that there is no ground for review on the energy sales as sought by the Board, considering the fact that the Board did not take any effective measure as envisaged in the Order. The Commission had specifically pointed out that the demand levels could be curtailed through effective DSM measures. The Commission had also allowed

restrictions in the use of power till May 31, 2012, based on the demand of the Board. Hence, the Board was fully aware of the demand and supply conditions. However, even after fully realizing the supply shortfall due to severe monsoon deficiency and demand growth, the Board did not envisage any DSM initiatives to curtail the demand as ordered by the Commission. On the contrary, the Board sought extension of time for submitting DSM action plan.

18. Regarding Koodamkulam plant also the contentions of the Board cannot be accepted. The Commission had arrived at a considered decision on the scheduling of the plant based on the available information at that point of time. It may be pointed out that the Board did not approach the Commission with sufficient details and alternate and firm proposal in the case of non-availability of power from Koodamkulam Plant. Instead, Board has sought review of the decision and requested for blanket sanction for scheduling of costly plants and purchase from traders without making any effort to draw up alternate proposal.

19. In the case of employee cost, the Board has sought review of the methodology on cost approval. By separating the approved employee cost into several components, the Board has argued that the Basic pay, DA and pension are not sufficient to meet the obligation. The Board has argued that the methodology of the Commission based on CPI-WPI does not reflect the actual increase in the employee costs. The Commission has already made it clear that the employee cost allowed is the reasonable level of expenses which can be passed onto the consumers. The Commission had further stated in the Order that as follows:

> *"However, the Commission would like to reiterate the comments made in the previous ARR&ERC order. The Board has to sincerely venture in for radical internal reforms to control the costs. The reform measures are not aiming at retrenchment or reducing the existing benefits allowed to the employees but to aim at measures especially at the HR level that include redesigning the tasks, re-training, re-tooling, process re-engineering, infusion of proper IT and technology, intervention aiming at improving the efficiency and productivity of employees."*

20. In the case of R&M Expenses, A&G expenses, Depreciation and RoE, the arguments made by the Board do not seem to warrant a review as the arguments do not seem to fall within the review jurisdiction. Further, the Board has relied on the provisions of Model Tariff Regulations published by the Forum of Regulators to

support their claim. As argued by the Association, the Board cannot rely on materials which were not presented in the original petition.

21. Regarding interest and financing charges, the Board could not point out any reasons for obtaining a review of the decision. The Commission had arrived at the total allowable interest costs based on sound reasoning. The interest on additional short term borrowing was arrived at based on the average interest rate of 10.5%.

22. In the case of T&D loss reduction target, the Commission had arrived at the target after analyzing the matter in detail with the previous year's achievements. Hence, the Commission is of the view that there is no ground to re-open the loss reduction target fixed by the Commission. Regarding capitalization of expenses, generally the actual capitalized amounts have been allowed by the Commission in the truing up process. The Board did not properly explain in any of the ARR&ERC petitions, the methodology relied for the capitalization of expenses. Accordingly the Commission relied on the projections of the Board. In any case, the Board does not seem to have been injured by the decision of the Commission so far as the actual expenses have been allowed in the truing up process.

Orders of the Commission

23. In the light of the materials placed before the Commission and the detailed analysis as above, the Commission has come to the view that there are no sufficient grounds placed by the petitioner for a review of the Order dated 28-4-2012 on ARR&ERC of KSEB for the year 2012-13 Accordingly, the petition is rejected.

Sd/- Sd/-

P.Parameswaran **Mathew George**
Member **Member**

Approved for Issue

Secretary