KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

PRESENT

Shri T.M.Manoharan, Chairman
Shri P.Parameswaran, Member
Shri Mathew George, Member

PETITION IN THE MATTER OF

Review on KSERC Order dated 30-04-2013 in petition No 2 of 2013 approving ARR&ERC and Tariff Order of KSEB for the year 2013-14

Petition No	Dy No		
RP No 7/13 RP No 8/13		1. Cochin International Airport, Kochi Airport P.O.Ernakulam 683111 2. Trivandrum International Airport Thiruvananthapuram.	Petitioners
		Kerala State Electricity Board Ltd., Vaidyuthi Bhavanam, Pattom, Thiruvananthapuram 695004	Respondent

Order dated 13.03.2014

Introduction

1. Cochin International Airport Limited (CIAL) has filed a petition dated 29.09.2013 for review of the order of the Commission dated 30.04.2013 in OP. No.2 of 2013 by which the Commission had approved the ARR and ERC of Kerala State Electricity Board Ltd., and tariff order applicable to Kerala State Electricity Board Ltd., for the year 2013-2014. The said review petition relates to the classification of airports into a new category namely EHT non-industrial (66 kV, 110 kV, 220 kV) and the retail tariff applicable to them. The Trivandrum International Airport has also filed a petition on 20.11.2013 for the review of the above mentioned EHT non-industrial tariff applicable to airports as contained in the order dated 30.04.2013 in OP No. 2 of 2013. The grounds and prayers in both these petitions are similar and therefore the Commission has decided to jointly hear and dispose of these petitions.

Prayer

2. The prayers of the petitioner in RP 7/13, M/s Cochin International Airport Ltd., were the following

(1) Commission be pleased to review the order dated 30-04-2013 of this Commission in Petition OP No 2 of 2013 in so far as it creates a new consumer category of EHT Non Industrial and classifying airports into this category.

(2) Pending hearing and disposal of this review petition this Commission be pleased to stay the effect and implementation of the order dated 30-04-2013 of this Commission in Petition OP No 2 of 2013 in so far as it applies to the electricity tariff payable by the petitioner.

3. The prayers of M/s Trivandrum International Airport in RP 8/13 are

(1) Review the order dated 30-04-2013 of this Commission in OP No 2 of 2013 and set aside it in so far as it creates a new consumer category of ' EHT Non Industrial ' and classifying Airports into this category;

(2) Classify air ports as 'public utility services' which was done earlier from the commencement of this Airport; and

(3) Issue such other relief which may be prayed for by the petitioner during the course of these proceedings.

Admission and notice

4. In paragraph 2 to 11 in the petition dated 24.09.2011, Cochin International Airport Ltd has stated as follows

"2. The petitioner hereinafter also referred to as "CIAL', is a company formed under Indian Companies Act 1956 with an objective to develop, own, and operate Cochin International Airport and other supporting infrastructures. The Airport commenced business operations on 10.6.1999. The airport was built at a cost of Rs.315 crore, under a unique ownership structure involving equity contributions from State government, financial institutions, and more than 11000 individual investors. CIAL is widely recognized as a low-cost functionally efficient airport in the country. The State of Kerala is the major share holder of the petitioner holding nearly 32.24% of the total shares. Central and State Government enterprises, general public and private individuals hold the balance share. The Chairman of CIAL is the Chief Minister of the State of Kerala.

3. CIAL, in its capacity as the owner and operator of Cochin International Airport, is carrying out various aeronautical services and providing facilities which are essentially public utility services to the airlines and the passengers. Operation of aerodrome is an essential service under the Essential Services Maintenance Act, 1968. CIAL is committed to provide the utility services and facilities at Airport free of cost by not charging any users fees from the general public. The services rendered by CIAL is at

par with the International Standards to the travelling passengers for which it requires twenty-four hours uninterrupted power supplies, with electricity constituting approximately 20% of the operational expenses of CIAL. Therefore, the power procured by CIAL constitute a very important element of the day-to-day functioning of the Airport.

4. To reduce the cost of procuring power for the functioning of the Airport by availing power at 110 kV directly from the respondent / KSEB's grid, in July 2012, CIAL commissioned their own hybrid substations at a cost of about 20 crores to step down the power from 110 kV to 11 kV. CIAL entered into an EHT Agreement dated 29/6/2012 with the respondent for supply at 110 kV up to a total quantity of 4000 KVA (4 MVA) at the EHT tariff for 110 KV consumers of KSEB in force from time to time. The tariff applicable to EHT supply at 110 kV was:

Supply Voltage	*Demand Charge (Rs / kVA of Billing Demand / Month*	*Energy Charge (Paise / kWh)*
110 kV	*290*	*400*

5. In KSEB's ARR & ERC petition for the year 2013-14 (Petition OP No. 2 of 2013), KSEB, in clause 11.19 (at pages 160-161) proposed creation of a new category 'EHT commercial category' for those who are availing EHT supply for commercial use and proposed the following tariff.

Particulars	
Demand Charge (Rs./kVA/month	*400*
Energy Charge (Rs./unit)	*6*

6. This Commission vide order dated 30.4.2013 in Petition OP No.2 of 2013 decided to segregate EHT tariff based on industrial and non-industrial purposes and accordingly reclassified the existing EHT tariff at 66 kV, 110 kV and 220 kV as EHT Industrial and EHT Non Industrial tariff. The Commission approved tariff of Rs.290 per kVA per month and energy charge of Rs.4.30 per unit for 'EHT 110 kV Industrial Category'. The Commission decided to further designate the following tariff as EHT Non Industrial tariff applicable to all Non Industrial Power supply at 66 kV, 110kV and 220 kV:

Approved Tariff for EHT Non-Industrial category

Particulars	***Approved tariff***
Demand charge (Rs / kVA per month	*375*
Energy charge (paise per unit) *Up to 60,000 units* *Above 60,000 units*	*600* *700*

Whereas for supply of electricity to the Railway for traction at 11 kV EHT the tariff is as follows:

Existing, proposed and Approved Tarff for Railways

Particulars	*Existing Tariff*	*Proposed Tariff*	*Approved Tariff*
Demand charge (Rs. / kVA per month)	*250*	*310*	*250*
Energy charge (Paise per unit)	*400*	*475*	*435*

7. There was nothing in the KSEB's ARR & ERC petition for the year 2013-14 or in the order dated 30.4.2013, to suggest that petitioner would be classified in the newly created EHT Non-Industrial Category and subjected to the exorbitant tariff thereunder. In this regard it is very important to reiterate that running an aerodrome is an essential and public utility service. It is not a regular commercial activity. It is pertinent to note that unlike the other major airports in the country, CIAL does not charge any users fees from the general public.

8. However, when the respondent issued order No. B.O. (MF) No.1110/2013 (KSEB/TRAC/Tariff Rev-2013-14) dated 21.5.2013 regarding implementation of the revised tariff for HT and EHT consumers w.e.f. 1.5.2013, it was mentioned therein that EHT Non-Industrial tariff will be applicable to airports. A copy of the tariff order No. B.O. (MF) No. 1110/2013 (KSEB/TRAC/Tariff Rev-2013-14) dated 21.5.2013 issued by KSB is enclosed herewith and marked ***Annexure P1.***

9. *Immediately thereupon the petitioner addressed letters dated 21.6.2013 to this Commission and KSEB pointing out that there is no justification for introducing this new exorbitant tariff for airports; that the same is causing grave prejudice to the petitioner and requested KSERC to remove airports from the EHT Non-Industrial category and give tariff on par with EHT Industrial category. Copies of the letters dated 21.6.2013 from the petitioner to KSERC and KSEB are enclosed herewith and marked Annexure P2 and Annexure P3 respectively. KSEB replied by letter dated*

5.8.2013 stating that KSERC is solely empowered for formulation of categorization of consumers and fixing tariff for each category. A copy of KSEB's letter dated 5.8.2013 to the petitioner is enclosed herewith and marked Annexure P4. On 19/9/2013, the petitioner received a letter dated 13/9/2013 from this Commission, in reply to Annexure P2 letter, stating that the points raised by the petitioner shall be considered in the next tariff revision. A copy of the letter dated 13.9.2013 from this Commission received by the petitioner on 19.9.2013 is enclosed herewith and marked Annexure P5.

10. It is submitted that average monthly consumption of the petitioner is about 1.5 million units. The tariff shock due to this arbitrary classification of the petitioner into the EHT Non-Industrial category is tremendously high at about 54% with additional minimum expenditure of minimum Rs.6 crores per year for CIAL. The cross subsidy in the new tariff is 54.37% whereas the cross subsidy in the earlier tariff applicable to the petitioner was only 8.84%. This is in contravention of the National Tariff Policy. This new tariff is almost equivalent to the rates of High Tension (HT-IV) commercial and High Tension HT – V) general tariff. This is highly arbitrary and illegal. The Commission failed to take note of the fact that KSEB did not have to incur any expenditure in setting up such sub stations, as in the case of other HT consumers, and that the transmission and distribution losses at EHT are minimal. The tariff for EHT supply has to therefore necessarily be significantly less than the tariff for the HT supply. Further, the Commission failed to take note of the fact that running of an airport is not a commercial activity and that the electricity tariff applicable to commercial categories cannot be imposed on airports. The present increase in tariff applicable to airports availing EHT supply is in contravention of Section 61 and 62 of the Electricity Act, 2003.

11. In view thereof, the petitioner humbly submits that the Commission ought to review the creation of new category of 'EHT Non-Industrial' with very high tariff and classification of airports under that category, on the following grounds, among others.

Grounds for Review

A. *Section 62(3) of the Electricity Act states that the Commission shall not, while determining tariff, show any undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required. From KSEB's ARR & ERC petition for 2013-14 and the order under review, it seems that the only reason for creating a separate category of EHT Non-Industrial and charging a significantly higher tariff as*

compared to regular EHT users (industrial), is that the 'purpose for which supply is required' by the former category is for 'commercial purposes'. But while classifying 'airports' in this category, the Commission is erred in not noting that running an aerodrome is not a 'commercial activity'. An aerodrome is a public infrastructure utility, much like the railways. An essential infrastructure, necessary for the industrial and economic development of the state. It is also an 'essential service' under the Essential Services Maintenance Act, 1968. A public utility service like running an airport, in terms of Section 62(3) of the Electricity Act, 2003, mandated a positive differentiation i.e. a lower tariff as compared to the regular EHT users (industrial), similar to the positive differentiation provided to railways. There is thus a clear failure on the part of the Commission to exercise its discretion vested under Section 62(3) of the Act.

B. *In KSEB's ARR & ERC petition for the year 2013-14 (Petition OP No.2 of 2013), proposed creation of a new category 'EHT commercial category'. However the Hon. Commission vide order dated 30.04.2013 in Petition OP No.2 of 2013 arbitrarily decided to segregate EHT tariff based on industrial and non-industrial purposes which finally resulted in a higher tariff to the petitioner even above the EHT commercial category proposed by KSEB. This act of the Commission is bad and is liable be reviewed.*
C. *In a similar fact situation, in its judgment dated 31.5.2011 in Appeal No. 195 of 2009 (Mumbai International Airport Limited Vs. MERC & Anr), the Appellate Tribunal for Electricity has categorically found that activities of an airport should not be put in the commercial category and that they could be classified together with railway stations, bus terminus etc. on the basis of common purpose of supply related to public transportation. The order under review, in so far it classifies airport along with commercial activities and is charging very high tariff as EHT Non-Industrial, is bad and is liable be reviewed as regards this aspect.*
D. *The petitioner being an airport, the approach of putting it along with hotels/restaurants and all other excluding 'industrial category' is wrong and is violative of Article 14 of the Constitution as it is arbitrary and amounts to treating unequal as equals.*
E. *Bifurcation of the EHT category into EHT Industrial and EHT Non-Industrial was done only on the basis of the bald assertion of KSEB (unsupported by any evidence whatsoever) that "recently a few existing HT-IV commercial categories are seeking supply at EHT tariff". This is not a valid ground under Section 62(3) of the Electricity Act for differentiating between consumers as regards tariff, when the cost of supply is the same. The Commission failed to take into account the significantly reduced cost of supply at EHT and the reduction in transmission and distribution losses. The bifurcation therefore suffers from complete non-application of mind and is in contravention of Section 62(3) of the Electricity Act.*

F. *The cross subsidy element in the EHT Non-Industrial tariff is not within ± 20% of the average cost of supply and is therefore contrary to the mandate of the National Tariff Policy issued by the Ministry of Power.*

G. *As stated above, the tariff shock for the petitioner on account of this fresh classification is prohibitatively high. The petitioner will have a minimum additional expenditure of about Rs.6 crores on electricity charges. This will significantly affect the operations of the petitioner and the ability of the petitioner to provide quality service to the public, keeping in mind that unlike other airports the petitioner is not charging any user fee to the travelling public. On the contrary, the petitioner understands that additional revenue to KSEB on account of this new category is marginal as there are not many commercial establishments availing EHT supply.*

5. In paragraph 4 to 16 of the petition dated 20.11.2013 M/s Trivandrum International Airport has stated as follows

"4. The airport services provided by the Airport Authority are per se public utility services to the airlines and the passengers and the management of aerodrome is an essential service under the Essential Services Maintenance Act, 1968. Trivandrum International Airport is committed to provide the utility services and facilities at Airport free of cost. The services rendered by AAI is at par with the International Standards to the travelling passengers for which it requires twenty four hours uninterrupted power supplies, with electricity charges constituting approximately 75% of the electrical operational expenses of Trivandrum Airport. This is 12% of the total operational expenditure of Trivandrum Airport. Therefore, the power procured by AAI constitute a very important element of the day-to-day functioning of the Airport.

5. The Airport Authority is committed to the smooth functioning of the Airports in India and to maintain standards as per international norms, for the same the petitioner is required to provide the requisite aviation infrastructure in terms of various aeronautical and non-aeronautical services and facilities to the airlines and the passengers. The petitioner cannot compromise or reduce any of these services as they form the part of its obligation. The efficiency of these operations cannot be compromised under any circumstances. Trivandrum Airport is one of the country's top transport hub and acts as a catalyst for economic growth and facilitator of commerce and industry on a national, regional and local scale. Therefore, the petitioner should be provided with a tariff having regard to the necessity of consumption of power for these activities.

6. Trivandrum Airport was declared as International Airport in the year 1991, which had been functioning as Domestic Airport till then. The 11 KV KSEB Power Supply to this Airport (Consumer No. 13/1351) was fed

from Veli Substation with contract demand of 2250 KVA under tariff HT-II (Industrial Public Utility). Subsequent to commissioning of New International Terminal Building in 2010 we migrated from11 KV to 66 kV EHT with contract demand of 6000 kVA with the same consumer number vide agreement No. 24/2010-2011 dated 5th May 2010 with KSEB. As per the above agreement, EHT Tariff for 66 kV consumers (power intensive and non-power intensive) was applicable and accordingly, tariff was fixed and electricity bills paid as under from 5/5/2010.

Demand Charges in Rs/kVA

Normal = 130
Peak = 60.67
Off peak = 69.33

Energy Charges in Ps/KWH

Normal = 290
Peak = 377
Off peak = 246.5

7. To reduce the cost of procuring power for the functioning of the Airport, we have constructed 66 KV substation inside the Airport premises for availing power at 66 kV directly from the respondent/ KSEB's grid, in May 2010, at a cost of about 42.02 Crores as a deposit work by KSEB and entered into an EHT Agreement dated 5.10.2010 with the respondent for supply at 66 kV up to a maximum demand of 6000 kVA (6 MVA) at the EHT tariff for 66 kV consumers of KSEB in force from time to time.
The tariff applicable to EHT supply at 66 kV was:

Supply Voltage 66 kV	*Demand Charges (Rs / kVA of Billing Demand / Month*	*Energy charges (Paise / kWH)*
Normal *Peak* *Off peak*	*130* *60.67* *69.33*	*290* *377* *246.5*

8. In KSEB's ARR & ERC petition for the year 2013-14 (Petition OP No.2 of 2013), KSEB, in clause 11.19 (at pages 160 – 161), proposed creation of a new category 'EHT non-industrial' for those who are availing EHT supply for commercial use and proposed the following tariff.

Particulars	
Demand Charge (Rs./kVA/month	*400*
Energy Charge (Rs/unit)	*6.00*

9. This Commission vide order dated 30.04.2013 in OP No. 2 of 2013 decided to segregate EHT tariff based on industrial and non-industrial purposes and accordingly reclassified the existing EHT tariff at 66 kV,110 kV and 220 kV as EHT Industrial and EHT Non-Industrial tariff. The Commission approved tariff of Rs.300 per kVA per month and energy charge of Rs.4.40 per unit for 'EHT 66 kV Industrial Category'. The Commission decided to further designate the following tariff as EHT Non-Industrial tariff applicable to all Non Industrial Power supply at 66 kV, 110 kV and 220 kV:

Approved Tariff for EHT Non-Industrial category:-

Particulars	*Approved tariff*
Demand charge (Rs. / kVA per month)	*375*
Energy charge (paise per unit):- *Up to 60,000 units* *Above 60,000 units*	 *600* *700*

Whereas for supply of electricity to the Railway for traction at 11 kV EHT the tariff is as follows:

Existing, proposed and Approved Tariff for Railways:-

Particulars	*Existing Tariff*	*Proposed Tariff*	*Approved Tariff*
Demand charge (Rs. / kVA per month	*250*	*310*	*250*
Energy Charge (paise per unit)	*400*	*475*	*435*

True copy of the order dated 30.4.2013 in OP No. 2 of 2013 passed by this Hon. Commission is produced herewith and marked as Annexure P1.

10. In the wake of tariff revision effected from 1/5/2013, a new tariff category called "EHT non-industrial" has been introduced with steep increase in demand and Energy charges and the Airports are included in this new category. A table showing the revision in tariff from 5/5/2010 is given below for information.

With effect from	Demand Charges in Rs.			Percentage increase
	Normal	Peak	Off peak	
5/5/2010	130	60.67	69.33	--
1/1/2011	130	65	69.33	7% (Peak Hrs.)
1/7/2012	150	75	80	15%
1/5/2013	375			23%

With effect from	Energy charges in Rs.			Percentage increase
	Normal	Peak	Off Peak	
5/5/2010	2.90	3.77	2.465	--
1/1/2011	2.90	4.06	2.465	7.7%(Peak Hrs)
1/7/2012	4.00	5.60	3.40	38%
1/5/2013	7.00	10.50	5.25	75% 88% 54%

From the table it is apparent that demand charges and energy charges are increased by 44% and 88% respectively for Airport whereas the increase for other HT consumers is around 10% only towards energy charges and there is no change in demand charges. Details of billing tariff from 1999 are produced herewith and marked as Annexure P2. True copies of electricity bills are produced herewith and marked as Annexure P3.

11. The steep hike in electricity bill is adversely affecting our organization due to additional financial burden, whereas organizations like Railways are categorized as 'EHT industrial category' and are paying comparatively lesser charges (increase is around 10% only). It may be noted that like Railways, Airport also comes under the service sector providing passenger facilitation to around 2.8 million passengers, majority, lower middle class people in and around Kerala working in Gulf sector. It is submitted that the return from the service sector is much lower than industries and the service sector has limited options to raise the cost of service consistent with hike in energy charges and hence quality of service rendered could be jeopardized.

12. The Electricity Act, 2003 mandates that the Appropriate Commission has to differentiate between consumers in the process of determination of tariff depending upon (a) load factor, (b) power factor, (c) voltage, (d) total supply, (e) geographical position, (f) nature of supply and (g) purpose of supply. The State Commission in the impugned order failed to exercise the statutory power in accordance with the said mandate by failing to take into consideration the purpose of object for which the power was being

supplied, i.e. the operation of public utility/essential service. According to the petitioner airport is a public utility service and therefore, it should be given special consideration and should not be exposed to higher tariff.

13. There was nothing in the KSEB's ARR & ERC petition for the year 2013-14 or in the order dated 30.4.2013, to suggest that petitioner would be classified in the newly created "EHT Non-Industrial Category" and subject to the exorbitant tariff there under. In this regard it is very important to reiterate that running an aerodrome is an essential and public utility service. It is not a regular commercial activity. The income generated from the activities of AAI is being utilized for public purposes only. Hence it cannot be equated with other commercial activities carried on by individuals for their own personal gains.

14. However, in the order No. B.O.(MF) No.1110/2013 (KSEB/TRAC/Tariff Rev-2013-14) dated 21.05.2013 issued by the respondent, regarding implementation of the revised tariff for HT and EHT consumers w.e.f. 1/5/2013, it was mentioned therein that EHT Non-industrial tariff will be applicable to airports. A true copy of the tariff order No. B.O.(MF) No. 1110/2013 (KSEB/TRAC/Tariff Rev-2013-14) dated 21.5.2013 issued by KSEB is produced herewith and marked as Annexure P4.

15. Immediately the petitioner addressed a representation No. AAT/Engg(E)/AMED/PS/13-14/120 dated 26/7/2013 to this Commission and KSEB pointing out that there is no justification for applying this new exorbitant tariff for airports; that the same is causing grave prejudice to the petitioner and requested KSERC to remove airports from the EHT Non-Industrial category and give tariff on par with EHT 66 kV Industrial category. True copies of the representations dated 26/7/2013 submitted by the petitioner to KSERC and KSEB are produced herewith and marked Annexure P5 and Annexure P6, respectively. KSERC replied vide letter No. 1446/CT/KSERC/2013/1024 dated 10/9/2013 stating that the points raised by petitioner shall be considered in the next tariff revision and advised the petitioner to present the case in the public hearing of the Tariff Revision Petition of KSEB. KSERC is solely empowered for formulation of categorization of consumers and fixing tariff for each category. True copy of the letter dated 10/9/2013 issued from this Hon. Commission is enclosed herewith and marked as Annexure P7.

16. It is submitted that average monthly consumption of the petitioner is about 01.21 million units. The tariff shock due to this arbitrary classification of the petitioner into the EHT Non-Industrial category is tremendously high at about 88% with additional expenditure of minimum Rs. 2.88 crores per year. This new tariff is almost equivalent to the rates of High Tension (HT-IV) commercial and High Tension (HT-V) general tariff. This is highly arbitrary and illegal. The Commission failed to take

note of the fact that KSEB did not have to incur any expenditure in setting up such substations, as in the case of other HT consumers, and that the transmission and distribution losses at EHT level are minimal. The tariff for EHT supply has to therefore necessarily be significantly less that the tariff for the HT supply. Further, the Commission failed to take note of the fact that running of an airport is not a commercial activity and that electricity tariff applicable to commercial categories cannot be imposed on airports. Airport operations carry a mix of activities. However, it is to be noted that the metering in the existing system is integrated and it will be difficult to segregate the commercial operation from the aviations service. The commercial activities related to passenger facilitation is only meager compared to public utility infrastructure and services. The present increase in tariff applicable to airports availing EHT supply is in contravention of Sections 61 and 62 of the Electricity Act, 2003.

GROUNDS

A. *The impugned order in so far as the petitioner is included in EHT Non-Industrial category, is without proper application of mind and hence arbitrary, illegal and unsustainable in law.*
B. *Section 62(3) of the Electricity Act states that the Commission shall not while determining tariff, show any undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required. From KSEB's ARR & ERC petition for 2013-14 and the order under review, it seems that the only reason for creating a separate category of EHT Non-Industrial' and charging a significantly higher tariff as compared to regular EHT users)(EHT Industrial), is that the 'purpose for which supply is required' by the former category is for 'commercial purposes'. But while classifying 'airports' in this category, this Hon. Commission is erred in not noting that running an aerodrome is not a 'commercial activity'. An aerodrome is a public infrastructure utility, much like the railways, an essential infrastructure necessary for the industrial and economic development of the State. It is also an 'essential service' under the Essential Services Maintenance Act, 1968. A public utility service like running an airport, in terms of Section 62(3) of the Electricity Act, 2003, mandated a positive differentiation i.e. a lower tariff as compared to the regular EHT users (Industrial), similar to the positive differentiation provided to railways. Thus the Commission has not properly exercised its discretion vested under Section 62(3) of the Act.*
C. *In KSEB's ARR & ERC petition for the year 2013-14 (O.P. No. 2 of 2013), proposed creation of a new category as 'EHT commercial'.*

However this Hon. Commission vide order dated 30.04.2013 in O.P. No. 2 of 2013 arbitrarily decided to segregate EHT tariff based on industrial and non-industrial purposes, which finally resulted in a higher tariff to the petitioner even above the 'EHT commercial' category proposed by KSEB. This act of this Hon. Commission is bad and is liable to be reviewed.

D. *In a similar fact situation, in its judgment dated 31.05.2011 in Appeal No.195 of 2009 (Mumbai International Airport Limited Vs. MERC & Anr.), the Appellate Tribunal for Electricity has categorically found that activities of an airport should not be put in the commercial category and that they could be classified together with railway stations, bus terminus, etc. on the basis of common purpose of supply related to public transportation.*

E. *This Hon. Commission while revising the tariff ought to have noted that like Indian Railway, the Airport is also owned by the Government of India and is a public utility provider. Both railways and airports are availing Extra High Tension electricity supply facility from the KSEB. Railway availing power at 110 kV and this Airport is availing power at 66 kV. This Hon. Commission at para 8.43 of the impugned order has stated that as per the mandate of the Electricity Act under Section 61(b) and (g), the supply of electricity has to be conducted on commercial principles and the cost of supply of electricity has to be recovered through tariff. This Hon. Commission has also observed that a separate reduced tariff for Railways at EHT level will not be in tune with the tariff principle. However, on the other hand, this Hon. Commission has rightly held that the Commission has also exempted Railway traction from ToD tariff, because the Commission observed that traction supply caterers to a very important activity like Rail movement. It is pertinent to note that operation and managing an aerodrome is also an important activity like railway, which caters the need of the public for a standardized transport system through air. Hence the Airports are also entitled to get the same treatment as given to the Railway. In these circumstances, classifying Airports in 'EHT Non Industrial' category at a high rate of tariff and classifying railways in 'Railway Traction' category with the tariff at a low rate, is arbitrary, discriminatory and violative of Article 14 of the Constitution of India since the equals are treated unequally.*

F. *Airways, aircraft and air navigation, provision of aerodromes, regulation and organization of air traffic and aerodrome etc. fall under the Entry 29, List 1 – Union List, of Seventh Schedule of the Constitution of India. As a sovereign function of the Union of India, Parliament has exclusive power to make laws in respect of any of the matters enumerated in the List 1 in the Seventh Schedule, referred to as the Union list. Accordingly Airports Authority of India Act, 1994 was enacted, by the Parliament, interalia for controlling and administrating Airways, aircrafts and air navigation and aerodromes etc. The petitioner being an airport, 100%*

owned by Government of India under the Airports Authority of India Act,1994, the approach of tagging it along with "hotel/restaurants and all others excluding industrial category" is wrong and violative of Article 14 of the Constitution of India as it is arbitrary, discriminatory and amounts to treating unequal as equals.

G. *Bifurcation of the EHT category into 'EHT Industrial' and 'EHT Non-Industrial' was done only on the basis of the bad assertion of KSEB (unsupported by any evidence whatsoever) that "recently a few existing 'HT-IV commercial' categories are seeking supply at EHT tariff". This is not a valid ground under section 62(3) of the Electricity Act for differentiating between consumers as regards tariff, when the cost of supply is the same. The Commission failed to take into account the significantly reduced cost of supply at EHT and the reduction in transmission and distribution losses. The bifurcation therefore suffers from complete non-application of mind and is in contravention of Section 62(3) of the Electricity Act.*

H. *As stated above, the tariff shock for the petitioner on account of this fresh classification is prohibitively high. The petitioner will have a minimum additional expenditure of about Rs.02.88 crores on electricity charges. This will adversely affect the operations of the petitioner and the ability of the petitioner to provide quality service to the public. Airports are public utility sector and greatly impacted by the price of electricity. The burden of higher electricity charges would result in higher operational cost affecting the commerce and industry and also availability of air transport services at competitive price to the public at large. This will result in cascading effect of increase in passenger service charges and ultimately affecting travelling public, predominantly the lower middle class gulf passengers. The petitioner understands that additional revenue to KSEB on account of this new category is marginal as there are not many commercial establishments availing EHT supply."*

The petition filed by M/s Cochin International Airport was admitted on 18.10.2013 and was numbered as RP. 7/13. The petition filed by Trivandrum International Airport was admitted on 25-11-13 and was numbered as RP 8/13. Notice was issued to Respondents on 15-11-13 and 25-11-13 and hearing was fixed on 27-11-13.

6. In reply dated 21.11.2013 in RP 7/13 KSEB has stated as follows;

" 1. As per the section 62(3) of the Electricity Act-2003, Hon'ble Commission is empowered to differentiate the consumers based on the purpose of usage of electricity. The section 62(3) of the Electricity ***Act-2003 is extracted below for ready reference.***

"The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required."

2. *Accordingly, the consumers are categorized under different categories such as industrial, commercial, agriculture etc., based on the purpose of usage even if they are availing electric supply at the same voltage level such as LT or HT. But there were no such sub-categorisation for EHT category before 01.05.2013 as Industrial consumers had only been availing EHT supply.*
3. *Historically, airports in the State, availing power supply at HT level are categorized under HT-IV Commercial categories and so far, airports availing power under HT level had not raised any issue on their categorization under HT-IV before the Hon'ble Commission.*
4. *Till recently, industrial units were only availing electricity at EHT – 66kV and 110 kV voltage level and hence tariff at EHT level is being fixed considering the electricity usage at EHT level are for industrial purposes. Considering the reduction in transmission losses associated with providing supply at EHT level compared to the HT level, EHT tariff was about 2% less than that of HT Industrial tariff.*
5. *Recently, few existing HT-IV consumers including airports and hospitals, has been migrating the supply from HT to EHT level. However, as submitted earlier, there was no categorization under EHT category based on purpose of usage and hence, those who are migrating from HT-IV commercial category to EHT level also charged under the EHT tariff fixed for industrial usage. The details of the HT-1 Industrial tariff, HT-IV commercial tariff and EHT industrial tariff prevailing in the State till 30-04-2013 is detailed below :*

Particulars	*HT-1 Industrial*	*HT-IV Commercial*	*EHT 110kV*	*(%) Reduction of EHT tariff over HT-1 Industrial*	*(%) Reduction of EHT tariff over HT-IV commercial*
Fixed charge (Rs./KVA/month)	*300*	*400*	*290*	*3.33*	*27.50*
Energy charge (Rs./unit)					
Consumption upto 30,000 units per month	*4.10*	*5.5*	*4.00*	*2.44*	*27.27*
Consumption above 30,000 units per month		*6.5*			*38.46*

6. *As detailed above, prior to the prevailing tariff revision, if an HT-IV commercial consumer migrate to EHT category, he may get reduction in tariff to the extent of 27 to 38%, where as the same for industrial categories was in the range of 2 to 3.33 % only. This anomaly was due to the lack of sub categorization at EHT level based on the purpose of usage.*
7. *Considering this anomaly, KSEB vide ARR, ERC and Tariff Petition dated 30th December-2013 has requested before the Hon'ble Commission to include a subcategory at EHT level to accommodate the consumers using electricity for commercial purposes and also for those who migrate from HT-IV commercial category to EHT level. Since historically the airports are categorized at HT level under HT-IV commercial category, definitely once the existing consumers migrate to EHT level, KSEB intend to include them at EHT commercial category.*
8. *Hon'ble Commission had invited objections from the stakeholders and also conducted public hearing across the State at three locations viz., Thiruvananthapuram, Ernakulam and Kozhikode on the ARR, ERC and Tariff petition filed by KSEB. As per the information available with the Board, the petitioner has not filed any written objections and also not lodged objections during the public hearings.*
9. *Hon'ble Commission vide its order dated 30th April-2013 had decided on the matter and formed a separate category- 'EHT Non industrial category' to accommodate all consumers other than those who use electricity for industrial purposes. This order was applicable from May-2013 onwards and KSEB has been charging all the EHT consumers other than EHT-industrial consumers at the EHT-non industrial tariff from May-2013 onwards.*
10. *Vide the petition dated 18-10-2013, i.e., after implementing the order by 5 months and 18 days, M/s Cochin International Airport had requested before the Hon'ble Commission to review the tariff order dated 30-04-2013. In this matter, KSEB may submit the following before the Hon'ble Commission.*
    (i) Hon'ble Commission vide its various orders has cited the limited jurisdiction for reviewing an order under the Electricity Act-2013. "The review petition has to be dealt with as per the provisions of the Electricity Act 2003. Clause 67(1) of KSERC (Conduct of Business) Regulations, 2003 provides that within 90 days of issuing of any decision, direction, order, notice, or other document or the taking of any action in pursuance of these regulations, the Commission may 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. The review has

to be as per the provisions of Section 94(1)(f) of the Electricity Act 2003, as in Order 47, Rule 1, of Code of Civil Procedure".
As cited above, there is limited scope for reviewing the present order issued by the Hon'ble Commission. However, the prevailing tariff is applicable only upto 30th March-2014. The petitioner can raise their issues during the next tariff determination process.

Hon'ble Commission has been functioning as per the provisions of the Electricity Act-2003. The regulations notified by the Commission are within the scope of the Electricity Act-2003.

(ii) *The petitioner has raised the issue that, they cannot be construed under commercial category and they may be treated at par with railways.*
There is no merit in the argument of the petitioner. They are availing electricity at HT level during the period from 1999 to 2012 and they were categorized under Commercial category at HT level. As per KSEB records, the petitioner had not raised any objection on categorizing them under 'Commercial' when they were availing power supply at HT level. Eventhough they are availing supply at EHT level since June-2012, they did not changed their purpose of usage of electricity; hence they cannot be categorized under Industrial category. Since, Hon'ble Commission has ordered to categorise all the EHT consumers other than industrial at 'EHT Non-Industrial category' they falls under the new tariff category introduced at EHT level w.e.f May-2013.

The railways are the common man's public transport system and airports cannot be compared with railways. Historically also, considering the importance of rail transportation, the railways traction tariff in the State was less than the industrial tariff. In other states across the country, the railway traction tariff is being at par with industrial tariff and the airports are categorized at par with commercial consumers. The volume of passengers using the railway system in the State is many fold higher than the passengers using the airports.

Hence, there is no merit in the argument on this issue.

(iii) *The petitioner has also cited the judgment of the Hon'bl APTEL in appeal No. 195 of 2009. This is a specific issue related to Mumbai International Airport and the reasons cited therein cannot be applicable to the State.*

Considering the above, there is no merit on the argument of the petitioner and hence the review petition may be rejected with permission to raise the issues during the next tariff determination process."

7. In the written reply dated 12.12.2013 in RP 8/13 KSEB has stated as follows

"1. M/s Trivandrum International Airport have been availing supply at HT level till 05.05.2010 and thereafter they are availing supply at EHT(66 kV).

2. As per the KSEB records, the petitioner has been billed at HT-II Non-Industrial Non-Commercial tariff till the month of November 2007. Hon'ble Commission vide the tariff order dated 26-11-2012 had re-categorised the airports at HT level under Commercial category from December-2007 and accordingly during the period from December -2007 till 05-05-2010, the petitioner had been billed under HT-IV commercial category. The invoices raised to M/s Trivandrum International Airport during the month of December 2007 and January 2008 is enclosed as Annexure 1 and 2. However, since 05-05-2010, the petitioner has changed the supply at EHT level.

3. Historically, industrial consumers were only been availing electric supply at EHT level and hence there was no differentiation of tariff at EHT level based on the purpose of usage. The EHT tariff then fixed was linked with the corresponding HT-1 Industrial tariff. i.e., the EHT tariff was about 2 to 3% less than the HT-1 Industrial tariff considering the reduction in transmission losses associated with providing supply at EHT level compared to that at HT level.

4. When the Trivandrum Airport changed the supply from HT to EHT level, there was no proper tariff categorization under EHT based on their purpose of usage. Hence, the petitioner was billed under EHT Industrial tariff since 05-10-2010, the only tariff category prevailed then at EHT level, ie.,in the absence of proper classification of tariff at EHT level based on the purpose of usage, Trivandrum International Airport was charged at Industrial tariff, though there was no change in the purpose of usage when the supply level was changed from HT to EHT category. Thus the petitioner has been enjoying the benefit of Industrial tariff in the absence of proper re-categorisation at EHT level based on the purpose of usage such as commercial, industrial etc.

5. It may be noted that, the EHT industrial tariff was about 2 to 3% less than the corresponding HT-I Industrial tariff, however when compared to the HT-IV commercial category, the EHT industrial tariff was less by 38%. Thus, when a consumer billed under commercial tariff at HT level, on changing its supply from HT level to EHT was resulting in considerable revenue loss available to the state. A

comparison of the HT-I Industrial tariff, HT-IV commercial tariff and EHT industrial tariff prevailed in the state till 30th April-2013 is detailed below.

6.

Particulars	*HT-1 Industrial*	*HT-IV Commercial*	*EHT 110kV*	*(%) Reduction of EHT tariff over HT-1 Industrial*	*(%) Reduction of EHT tariff over HT-IV commercial*
Fixed charge (Rs./KVA/month)	*300*	*400*	*290*	*3.33*	*27.50*
Energy charge (Rs./unit)					
Consumption upto 30,000 units per month	*4.10*	*5.5*	*4.00*	*2.44*	*27.27*
Consumption above 30,000 units per month		*6.5*			*38.46*

7. *During the recent past, few more consumers billed under Commercial category at HT level requested to change their supply to EHT level. Considering the potential revenue loss, KSEB vide ARR, ERC and Tariff Petition dated 30th December-2013 has requested before the Hon'ble Commission to include a subcategory at EHT level to accommodate the consumers using electricity for commercial purposes and also for those who change their supply from HT-IV commercial category to EHT level. Since the airports are categorized at HT level under HT-IV Commercial category, KSEB intend to separate them from the EHT industrial tariff.*
8. *It is also noticed that, the airports across the country are generally categorized under Commercial category and not under Industrial category.*
9. *Hon'ble Commission had invited objections from the stakeholders and also conducted public hearing across the State at three locations viz., Thiruvananthapuram, Ernakulam and Kozhikode on the ARR, ERC and Tariff petition filed by KSEB. As per the information available with the Board, the petitioner has not filed any written objections and also not lodged objections during the public hearings.*
10. *Hon'ble Commission vide its order dated 30th April-2013 had decided on the matter and formed a separate category- 'EHT Non industrial category' to accommodate all consumers other than those who use electricity for industrial purposes. This order was applicable from May-2013 onwards and KSEB has been charging all the EHT consumers other than EHT-Industrial consumers at the EHT-Non industrial tariff from May-2013 onwards.*

11. *Now the petitioner vide the petition dated 25.11.2013 had requested before the Hon'ble Commission to review the order dated 30th April-2013 and requested to re-categorise them under a separate category-'public utility services'.*
12. *In this matter, KSEB may submit the following :*

(i) *Hon'ble Commission vide its various orders has cited the limited jurisdiction for reviewing an order under the Electricity Act-2013. "The review petition has to be dealt with as per the provisions of the Electricity Act 2003. Clause 67(1) of KSERC (Conduct of Business) Regulations, 2003 provides that within 90 days of issuing of any decision, direction, order, notice, or other document or the taking of any action in pursuance of these regulations, the Commission may 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. The review has to be as per the provisions of Section 94(1)(f) of the Electricity Act 2003, as in Order 47, Rule 1, of Code of Civil Procedure".*
As cited above, there is limited scope for reviewing the present order issued by the Hon'ble Commission. However, the prevailing tariff is applicable only upto 30th March-2014. The petitioner can raise their issues during the next tariff determination process.

(ii) *The petitioner has raised the issue that, while availing supply at 11kV, they were categorized under HT-II (Non-Industrial Non-Commercial) and on changing the supply to 66kV EHT, they were re-classified under EHT(66kV) Industrial. Hence they cannot be construed under commercial category and they may be treated at par with railways.*
In this matter, KSEB may submit that there is no fact in the argument of the petitioner.

- *While availing HT supply, they were classified under HT-IV Commercial w.e.f 01.12.2007 till they changed the supply level to EHT.*
- *As per KSEB records, the petitioner had not raised any objection on categorizing them under 'Commercial' when they were availing power supply at HT level.*
- *Eventhough the consumer had changed the supply from HT to EHT, there is no change in the purpose of usage.*
- *Across the country, industrial tariff is not assigned to airports.*
- *Till Hon'ble Commission notified the order dated 30th April-2013, there was no categorization for EHT supply based on*

the purpose of usage as per the section 62(3) of the Electricity Act-2003.

- *The petitioner wants to continue the benefit enjoyed by them due to the absence of proper classification at EHT level for non industrial purpose.*
- *In the case of Railway Traction, electric supply is availed exclusively for the purpose of running the trains and not for use of railway stations. Separate service connections are being availed for the railway stations for the purpose of lighting the platforms, offices, commercial establishments etc., in the railway stations. At present railway station at LT level is categorized under LT-VI(C), which is one of the highest tariff prevailing in the State. However, there was no proper classification for railway stations at HT & EHT level.*

  Moreover, railway is the common man's public transport system and airports cannot be compared with railways in that manner too. The volume of passengers using the railway system in the State is many fold higher than the passengers using the airports.

  Hence, there is no merit in the argument on this issue.

(iii) *The petitioner has also cited the judgment of the Hon'ble APTEL in appeal No. 195 of 2009. This is a specific issue related to Mumbai International Airport and the reasons cited therein cannot be applicable to the State. Further, the Hon'ble APTEL has not given any direction to classify airports under industrial category.*

(iv) *The petitioner has stated that the demand charges and energy charges was increased by 44% and 88% for Airports, whereas the increase is around 10% for other HT consumers.*

As submitted earlier, this anomaly was due to the fact that, there was no proper tariff classification for the airports at EHT level and accordingly EHT industrial tariff was assigned to them. The EHT industrial tariff was about 38% less than HT-IV commercial category. Hence, when the petitioner changes the supply level from HT-IV commercial to EHT industrial category, there was substantial reduction on the tariff payable by the petitioner. If there was proper tariff category at EHT level to accommodate the consumers other than industrial category who changes its supply from HT to EHT, definitely the reduction in tariff would be in the range of 2 to 3% only.

However, Hon'ble Commission vide the order dated 30-04-2013 has introduced a new tariff category at EHT for accommodating the consumers other than industrial consumers.

(v) *The petitioner has stated that 'Trivandrum International Airport is committed to provide the utility services and facilities at Airport free of cost'. They have also stated that 'running an aerodrome is not a commercial activity'.*
Contradictorily, it is also emphasized in their petition that the burden of higher electricity charges would result in higher operational costs, resulting in cascading effect of increase in passenger service charges ultimately affecting traveling public, especially the lower middle class gulf passengers.

From this, it is evident that airport can definitely pass its operating cost to the ultimate beneficiaries who avail their services.

(vi) *Eventhough, no. of consumers registered under the category of EHT Non-Industrial is less, the consumption of these consumers is extremely high and a concession by that way may cause a huge financial loss to Board.*
As per the order issued by the Hon'ble Commission dated 30-04-2013, all the consumers other than industrial category availing supply at EHT level are categorized under 'EHT Non Industrial'. At present, other than industrial consumers, four consumers including Trivandrum International Airport, Cochin International Airport Limited, Co-operative Medical College, Ernakulam and VSSC, Thumba are availing supply at EHT level.

Out of the four consumers, Trivandrum International Airport, Cochin International Airport and Co-operative Medical College were categorized under HT-IV Commercial while availing supply at HT level. VSSC, a Central Government organisation was categorized under HT-II Non Industrial Non Commercial while availing HT supply.

Considering the above, there is no merit on the argument of the petitioner and hence the review petition may be rejected with permission to raise the issues during the next tariff determination process."

8.In the hearing dated 27-11-2013 M/s Cochin International Airport was represented by Sri Poulose C. Abraham highlighted the points raised in their RP 7/13. M/s Trivandrum International Airport was represented by Sri P.Dileepkumar and he highlighted the points raised in RP 8/13.

9. Cochin International Airport in the rejoinder dated 09-12-2013 stated as follows.

" 2.I reiterate what is stated in the Review Petition and deny all that is stated in the Comments on the Review Petition dated 21.11.2013 filed by the respondent which are contrary thereto or inconsistent therewith. The petitioner does not admit any of the said Comments other than those expressly admitted herein.

3. It is pointed out that the respondent has absolutely no defense in the Comments to the petitioner's specific case that the tariff shock and the exorbitant cross subsidy on the petitioner on account the new categorization and tariff is inconsistent with the provisions of the Electricity Act, 2003, the National Tariff Policy and the dictum laid down by the APTEL in various judgments. Section 61 (g) of the Electricity Act requires the tariff to be progressively reflecting the cost of supply which is violated in the case of the petitioner. The petitioner is a 'subsidizing consumer' as opposed to a 'subsidized consumer'. Contrary to the legal mandate, the cross subsidy borne by the petitioner has been increased drastically with substantial tariff shock. The Review Petition is liable to be allowed on this ground alone.

4.In this regard, in addition to APTEL judgment dated 31.05.2011 in Appeal No. 195 of 2009 (Mumbai International Airport Limited v. MERC & Anr), reliance is placed on the APTEL judgment dated 25.10.2013 in Appeal No. 10 of 2013 (Association of Approved and Classified Hotels of Kerala v. KSERC & Anr.). It would also be pertinent to refer to the findings of the APTEL in its judgment dated 31.5.2013 in Appeal no. 179 of 2012 (Kerala High Tension and Extra High Tension Industrial Electricity Consumer's Association v. The Kerala State Electricity Regulatory Commission & Others), wherein APTEL has directed the State Commission to determine the voltage-wise cost of supply for the various categories of consumers within six months of passing of the order and take that into account in determining the cross subsidy and tariffs in future as per the dictum laid down by the Tribunal. It is pertinent to note that the cross subsidy in the new tariff was calculated as 54.37% by the petitioner on the basis of the average cost of supply to KSEB as stated in the Order under review. If the voltage-wise cost of supply is considered, the cross subsidy will be even higher.

*5. Copies of the electricity bills of the petitioner for the months of October 2012, November 2012, October 2013 and November 2013 are enclosed herewith and marked **Annexure P6 (series)** to highlight the tariff shock suffered by petitioner.*

6. The stand of the respondent in paragraph 2 and 4 is to the effect that prior to 1.5.2013 only industrial consumers had been availing EHT supply and hence there was no sub-categorization of EHT category prior thereto. However, it is pertinent to note that the petitioner and a few other essential public utility service providers like Airports Authority of India,

ISRO and Govt Controlled Medical Colleges were availing EHT Voltage supply prior thereto. The respondent thus, in effect, admits that there was no reason to impose a higher tariff for such public utility service providers availing power at EHT voltage and they were to be treated at par with regular industries availing EHT voltage supply. Thus, there is no rational basis for discriminating against such public utility service providers now, having treated them at par with regular industries in the past. Such discrimination is arbitrary and liable to be reviewed.

*7.The respondent's comments in paragraph 3 are not fully correct and are denied. The petitioner was categorized as HT-II – non-industrial and 'non-commercial' from the time of commencement of business operations till November 2007. Only in December 2007, for the first time, was the petitioner was categorized as HT-IV commercial. At the concerned point in time when this change in categorization took place (HT-II to HT-IV), there was no significant difference in the tariff and hence there was no much cause for this respondent to challenge the categorization. More over during that time the Kerala state Electrical Inspectorate suggested petitioner to change over to EHT as the connected load was increasing. In this regard, in response to the application of petitioner dated 12th March 2007, the respondent had allotted power to the extent of 4 MVA on 110 KV at the tariff applicable to EHT consumers prevailing in KSE Board vide their order no: CE/TRN/E4/CIAL/PA No.5 /08-09/1795 dated 6-12-2008 enclosed herewith and marked as **Annexure P7**. Hence the priority of the respondent from 2007 onwards was to mobilize huge resources to comply with the regulations and to avail power at EHT Voltage level. In any event, the question whether the petitioner had challenged the earlier categorization as HT-IV commercial or not is irrelevant to issue at hand. Under applicable laws, the respondent is not entitled to categorize the Petitioner along with other commercial establishments and charge rates applicable to such commercial establishments.*

8. The respondent in paragraph 5 and 6 of the Comments argues that the creation of a new category in EHT for the petitioner is only on the basis that "Recently a few existing HT-IV commercial categories are seeking supply at EHT tariff". This in itself is not at all a valid ground under Section 62(3) of the Electricity Act for differentiating between consumers as regards tariff, when the cost of supply is the same. The Kerala Electricity Supply Code, 2005 specifies the supply voltage for different connected loads. The petitioner, having a contract demand of more than 3000 kVA, can only avail power at EHT voltage level in terms of the Supply Code. The respondent had allocated 4MVA on 110 kV to the petitioner on 06-12-2008 itself. But due to paucity of resources and other unforeseen events the completion of 110 kV Substation in the premises of the petitioner got delayed. Hence the statement of the respondent that recently few HT consumers are 'migrating' to EHT is factually incorrect. The supply voltage

at the point of supply is not as insisted by the petitioner but is as per regulations notified by Kerala State Electricity Regulatory Commission.

9. The comment in paragraph 7 that historically the airports are categorized under HT-IV commercial category is not fully correct and the same has already been dealt with above. Further, as stated above, it was not a voluntary 'migration' by the petitioner to EHT but merely compliance by the petitioner to the legal requirement to avail supply at EHT voltage for contract demand of 400o kVA. The petitioner thus having not 'migrated' voluntarily and the petitioner not been a commercial establishment, it cannot be argued that the petitioner ought to have known that KSEB intended to include the petitioner in the 'EHT commercial category' proposed in the ARR & ERC for 2013-14. In view thereof, since the EHT Industrial tariff proposed by the respondent was found to be reasonable by the petitioner, the petitioner had no cause to file any objection in the ARR & ERC petition filed by the respondent. It was only when the respondent issued Annexure P1 dated 21.5.2013 regarding implementation of the revised tariff for HT and EHT consumers that the petitioner came to know that EHT Non-industrial tariff will be applicable to Airports. Hence, the petitioner cannot be faulted for not raising any objections during the public hearing on the ARR & ERC petition. Therefore, the respondent's statements in paragraph 8 of the comments do not disentitle the petitioner from seeking review of the new categorization and tariff applicable to the petitioner.

10. It is submitted that the categorization or classification of consumers should be based on proper criteria and justified by reasons. The expression 'may differentiate' appearing in sub-section (3) of Section 62 of the Electricity Act is clearly a judicial discretion to be exercised by the Commission on the basis of the valid reasons. Therefore, it would not be proper for the State Commission to group the different types of consumers in one category without considering that inherent differentiation based on the purpose for which the electricity is required to exist between them. The re-categorization of airports with consumers of commercial category such as multiplexes, shopping malls, hotels, etc., is patently wrong.

11. The APTEL, while giving judgment dated 20th October 2011 in Appeal No.110, of 2009, (Association of Hospitals, v. Maharashtra Electricity Regulatory Commission & Anr.), and connected judgments, in paragraph 17(iv), stated that;

"The categorization or classification of consumers should be based on proper criteria and justified by reasons. The expression 'may differentiate' appearing in Sub Section (3) of Section 62 is clearly a judicial discretion to be exercised by the Commission on the basis of the valid reasons. Therefore, it would not be proper for the State Commission to group the different types of consumers in one category without considering that inherent differentiation based on the purpose for which the electricity is

required to exist between them. The re-categorisation of hospitals, educational institutions and grouping them with consumers of commercial category such as multiplexes, shopping malls, hotels, cinema theatres etc., is patently wrong."

Further, the APTEL categorically stated, in paragraph 57(ii), that;

"The real meaning of expression 'purpose for which the supply is required' as used in Section 62 (3) of the Act does not merely relate to the nature of the activity carried out by a consumer but has to be necessarily determined from the objects sought to be achieved through such activity. The Railways and Delhi Metro Rail Corporation have been differentiated as separate category as they are providing essential services. The same would apply to the Appellants as well."

This issue further stands covered in favour of the petitioner by APTEL judgments dated 26.2.2009 in Appeal No. 106 of 2008 (Mumbai International Airport Limited v. MERC & Anr.) and dated 31.05.2011 in Appeal No. 195 of 2009 (Mumbai International Airport Limited v. MERC & Anr.).

12. The submissions in paragraph 10 (i) of the respondent's comments that there is no scope for reviewing the order and that the petitioner can raise their issues in the next tariff determination process are wrong and are denied. Permitting the respondent to continue to charge the higher tariff, when they are legally not entitled to, will amount to unjust enrichment for the respondent. On the contrary, as was ordered by the APTEL in Appeal No. 10. of 2013 (Association of Approved and Classified Hotels of Kerala v. KSERC & Anr.), the tariff should be reduced and the excess amount charged by the respondent should be refunded in the subsequent bills of the petitioner.

13. The argument in paragraph 10(ii) of the respondent's comments, with reference to earlier categorization of the petitioner under HT-IV, is repetitive and is denied.

14. In view of what is stated above, it is submitted that the respondent has no valid defense to the claims and arguments put forth by the petitioner in the Review Petition. Therefore, it is humbly prayed that this Commission may be pleased to condone the delay in filing the Review Petition and allow the Review Petition."

10. Trivandrum International Airport in the Rejoinder Dated 26th December, 2013 stated as follows:

" With reference to the counter/reply submitted by the respondent, the petitioner submits the following facts for kind consideration of this Hon'ble Commission.

1. The petitioner has received the copy of the counter/reply of the Respondent by e-mail on 12.12.2013 and subsequently by post on 18.12.2013. This rejoinder is filed in reply to the counter/reply filed by the respondent.

2. All averments in the counter filed by the respondent are denied except those which are specifically admitted hereunder. The contentions of the Respondent in its counter dated 12th December 2013 are wrong in fact and belief in the history of this litigation. The petitioner reiterates what is stated in the Review Petition and deny all that is stated by the respondent in the counter to the Review Petition filed by the respondent, which are contrary thereto or inconsistent therewith. The petitioner does not admit any of the contentions in the counter of the respondent other than those expressly admitted herein.

3. In paragraph (1) of the counter the respondent has wrongly mentioned the name of the petitioner as "M/s Trivandrum International Airport", instead of "Trivandrum International Airport", which is coming under the Airports Authority of India (AAI), which is a public sector undertaking, 100% owned by the Government of India. The respondent is under the impression that the petitioner is a mere airport operator whose activities are confined to commercial only. It is once again reiterated that the petitioner cannot be equated to other Private Airport operators whose main intention is making profit only. It seems that the respondent is viewing the entire case with this perception only.

4. Trivandrum Airport was declared as International Airport in the year 1991, which had been functioning as Domestic Airport till then. The 11 KV KSEB Power Supply to this Airport (Consumer No.13/1351) was fed from VELI Substation with contract demand of 2250 kVA under tariff HT-II (Industrial- Public Utility). The respondent without any proper intimation in writing, changed the tariff from HT-II (Industrial-Public Utility) to HT-IV (Commercial) w.e.f December, 2007, which is in clear violation of the contract agreement. However, AAI had not taken up the matter with KSEB because of the fact that by that time AAI had already initiated action for converting power supply to EHT category by providing two independent 66 KV feeders for Airport for which AAI Board had already cleared approval in August 2007 itself in the wake of construction of New International Terminal building. Subsequent to commissioning of New International Terminal Building in 2010, the petitioner migrated from 11 KV to 66 kV EHT with contract demand of 6000 kVA with the same consumer number vide agreement No.24/2010-2011 dated 5th May 2010 with KSEB. Level of supply of AAI Trivandrum was increased to 66 KV, spending 42.02 crores anticipating a reduction in electricity tariff as the then HT tariff (2008) was causing a hole in the pocket of AAI. As per the above agreement, EHT Tariff for 66 kV consumers (power intensive and non-power intensive) was applicable and accordingly, tariff was fixed and

*electricity bills paid from 05.05.2010. True copies of the electricity bills for the period from September 2007 to August 2013 is produced herewith and marked as **Annexure-P1**.*

5. In the counter, the respondent has absolutely no defence to the petitioner's specific case that the tariff shock and the exorbitant cross subsidy on the petitioner on account of the new categorization and tariff is inconsistent with the provisions of the Electricity Act, 2003, the National Tariff Policy and the dictum laid down by the Hon'ble Appellate Tribunal for Electricity (APTEL) in various judgments. The cross subsidy element in the EHT Non-Industrial tariff applied to the petitioner is not within ± 20% of the average cost of supply and is therefore contrary to the mandate of the National Tariff Policy. Also Section 61 (g) of the Electricity Act requires the tariff to be progressively reflecting the cost of supply, which is bluntly violated in the case of the petitioner.

6. The respondent in para 3 , 4 & 5 of its counter is arguing that tariff of the petitioner is fixed by comparing the tariff of EHT (industrial) vis-a-vis to that of HT (Industrial) and applying the similar discount factor in the newly created category. The table in para 6 of the counter is furnished by the respondent to substantiate the same. In terms of section 62(3) of the Electricity Act, the Hon'ble State Commissions are required to differentiate the consumers and fix the tariff firstly according to the voltage of supply apart from the purpose for which the supply is availed and by not considering or taking into account a discount factor applied for some other category of consumers at different voltage level. Hence this consideration itself for tariff determination is not valid and hence liable for rejection as it is out of the scope of any mandate or Act thereon.

7. The Kerala Electricity Supply Code, 2005, Chapter II, Clause 4 (5), specifies the supply voltage for different connected loads. The Petitioner has a contract demand of more than 3000 KVA and hence can only avail power at EHT Voltage Level. The Supply voltage at the point of supply is not as insisted by the petitioner but as per regulations notified by KSERC. Hence the allegation of the respondent in para 4 of the counter that the petitioner has been enjoying the benefit of Industrial tariff in the absence of proper re-categorisation at EHT level based on the purpose of usage such as commercial, industrial, etc., is totally baseless and hence denied.

8. The petitioner is availing power supply at 66 KV from the Respondent's Grid. The entire cost of 66 kV substations and the related transmission to the substation has been borne by the petitioner. In any case, for the respondent, charges in respect of other HT consumers are bound to be higher than that to the EHT power supplied to the petitioner. HT industries are at different lower voltage levels such as 11KV, 22KV, 33KV for which Respondent had to incur expenditure in setting up 110/33/22/11 kV substations, transformers, long 33/22/11 kV sub transmission lines or

underground cables, recruitment of man power to maintain these substation, cables, sub transmission lines, etc., to step down power as per the requirement of the HT industries. It is, thereby, because of such huge expenditure incurred by the respondent, the Charges in respect of HT category come out to be higher than that of EHT category. It would also be pertinent to refer to the findings of the Hon'ble APTEL in its judgment dated 31.05.2013 in Appeal No. 179 of 2012 (Kerala High Tension and Extra High Tension Industrial Electricity Consumer's Association v. The Kerala State Electricity Regulatory Commission & Others), wherein the Hon'ble Tribunal has directed this Hon'ble State Commission to determine the voltage-wise cost of supply for the various categories of consumers within six months of passing of the order and take that into account in determining the cross subsidy and tariffs in future as per the dictum laid down by the Hon'ble Tribunal.

9. It is submitted that, the categorization or classification of consumers should be based on proper criteria and justified by reasons. The expression 'may differentiate' appearing in Sub Section (3) of Section 62 of the Electricity Act is clearly a judicial discretion to be exercised by the Hon'ble Commission on the basis of valid reasons. The re-categorization of Airports with consumers of commercial category such as multiplexes, shopping malls, star rated hotels, large jewelleries, etc., is patently wrong.

10. The respondent in para 8 of the counter has contended that the airports across the country are generally categorized under Commercial category. However in this regard, reliance is placed on the Hon'ble APTEL judgment dated 31.05.2011 in Appeal No. 195 of 2009 (Mumbai International Airport Limited v. Maharashtra Electricity Regulatory Commission & Another), wherein it is a settled position that Airports cannot be considered as Commercial and the respondent doesn't have any right to argue the contrary. Hence the reclassification of the Airports in the impugned order under review is wrong and is liable be reviewed.

11. Regarding Para 9 of the counter filed by the respondent, the petitioner states that, there was nothing in the KSEB's ARR & ERC petition for the year 2013-'14 or in the order dated 30.04.2013, to suggest that the petitioner would be classified in the newly proposed EHT Commercial Category and subjected to the exorbitant tariff there under. Hence the petitioner has not raised any objections in the hearing but was agreeing to the reasonable tariff hike proposed in the category of EHT (industrial) wherein it was placed as follows:-

Particulars	***Proposed rate***
EHT-1 66 kV	
Demand charge	*360.00*

Energy Charge (Rs/kWh)	*4.75*

It was only when the respondent issued order No. B.O. (MF) No. 1110 / 2013 (KSEB/TRAC/Tariff Rev-2013-14) dated 21.5.2013 regarding implementation of the revised tariff for HT and EHT consumers w.e.f. 1.5.2013, that the petitioner came to know that EHT Non-industrial tariff will be applicable to airports. Immediately thereupon the petitioner approached this Hon'ble Commission and KSEB and requested to review the order.

12. In para 10 of the counter, one of the reasons indicated by the Respondent in re-categorising the petitioner is that within the existing categories created by the honourable Commission, i.e EHT Non industrial category, to accommodate all consumers other than those who use electricity for industrial purposes. The respondent argues that the petitioner could have come only under the Commercial category since it did not fall under the industrial category when comparing with similarly placed EHT consumers as well as the classification in HT category. In this regard, it is pointed out that the Hon'ble APTEL, while rendering judgment dated 20th October, 2011 in Appeal No.110 of 2009 (Association of Hospitals v. Maharashtra Electricity Regulatory Commission & Another), and connected cases, in paragraph 48 states that:-

"The State Commission cannot create a residuary category such as non domestic or non-industrial and group some categories not otherwise dealt elsewhere, particularly, in the background that the State Commission had proceeded to impose excessive tariff on such category."

Further, the Hon'ble Tribunal categorically stated in paragraph 51 that:-

"The Commission has completely ignored the obligation cast upon him. One of the reasons indicated by the Respondent Commission for re-categorising the Appellant in HT-Commercial category is that within the existing categories created by the Respondent Commission, the Appellant could have come only under the Commercial category since it did not fall under the Industrial or Residential category. It is to be stated that such a simplistic approach adopted by the Respondent Commission is not only discriminatory, but it also shows failure of the Respondent Commission to discharge its functions under section 62 (3) of the Act."

13. The contentions of the respondent in para 12(i) of the counter that there is no scope for reviewing the order and that the petitioner can raise their issues in the next tariff determination process are wrong and are denied. Permitting the respondent to continue to charge the higher tariff, when they are legally not entitled to, will amount to unjust enrichment for the respondent. On the contrary, as was ordered by the Hon'ble APTEL in

Appeal No. 10 of 2013 (Association of Approved and Classified Hotels of Kerala v. Kerala State Electricity Regulatory Commission & Another), the tariff should be reduced and the excess amount charged by the respondent should be refunded in the subsequent bills of the petitioner. Hence it is humbly requested that the argument of the respondent to deny the petition on technical grounds and not to condone the technical delay in admitting the petition may please be rejected as the matter under review has great importance. This petitioner submits that irreparable injury will be caused to the petitioner if any delay (not admitted) in filing the review petition is not condoned by this Hon'ble Commission. Considering the significant issues pointed out by the petitioner in the review petition and in this rejoinder, the balance of convenience also lies in favour of this delay being condoned. However, if ultimately this Hon'ble Commission finds that there is any delay, sufficient time may be granted to file a petition to condone the same.

14. The Hon'ble Appellate Tribunal for Electricity in the case of Udyog Nagar Factory Owners Association v. BSES Rajdhani Power Limited and another, has held that the differential tariff can be fixed for the railway traction and DMRC as they stand on different footing than other class of consumers i.e. the railway and DMRC draw power to satisfy the needs of masses. Therefore, there can be separate category for Railways and DMRC. Similarly, the Petitioner is providing essential public utility services and the same cannot be equated with purely commercial activities carried out by other consumers categorised under EHT/HT Commercial category like star rated hotels, large jewelleries, large Textile shops, large private hospitals, etc.

15. Trivandrum Airport is different from other airports in the country because most of the passengers are poor Gulf labourers. The airport has been developed recently spending Rs. 300 Crores at the behest of the State Government mainly for the benefits of the Malayalee gulf passengers. But the revenue from the Airport is meagre. KSEB being a state run utility should support AAI by categorising it in the public utility category like Railways.

16. The Trivandrum International Airport is availing power at EHT level from May 2010 onwards and was classified under EHT Industrial (Power intensive and Non Power intensive) or EHT industrial 66 kV. Current tariff revision vide Petition O.P. No. 2 of 2013 by this Hon'ble Commission is the second comprehensive tariff revision after the commencement of the regulatory regime in the State. During the previous revisions the respondent has not proposed for commercial categorization of Airports availing power under EHT categories. Respondent categorically stated that AAI, Trivandrum Airport was billed under HT-II public utility services till November 2007 and it may be noted that without any change in the purpose of power supply and voltage level, the respondent changed

petitioner's tariff category to HT-IV commercial which is a clear violation of contract agreement. The petitioner had taken action for upgrading the voltage level anticipating the considerable reduction in the tariff rates from then onwards.

17. The impugned order under review is contrary to the various judgments of the Hon'ble APTEL, which mandates that no category of consumers should be levied with a tariff shock which has been done to the petitioner in the impugned tariff order, while increasing the tariff more than 80% in violation of National Tariff Policy, 2006. In this regard reliance is placed on the recent judgment of the Hon'ble APTEL in Appeal No. 10 of 2013 (Association of Approved and Classified Hotels of Kerala vs. KSERC & Another) on a similar subject.

18. The purpose for which supply is required by the Petitioner cannot be equated to that of malls and multiplexes along with which the Petitioner has been categorized in the EHT Non Industrial category. It is submitted that it is absolutely clear that the object for which electricity is required by the Petitioner is to perform the essential services. The motive behind the same can be profit or no-profit. However, the Petitioner is not seeking review of its re-categorisation on the basis of profit or no-profit. The Petitioner is seeking re-categorisation of the petitioner on the basis of purpose for which electricity is consumed by the petitioner to discharge functions which are essentially public utility services to the airlines and the passengers. Operation of aerodrome is an essential service under the Essential Services Maintenance Act, 1968. Hence the question of passing on the expenses to the ultimate consumer as contended by the respondent in para 12(v) of the counter doesn't have any consideration in the Electricity Act, 2003 and the National Tariff Policy for the tariff determination for retail supply. Moreover, the tariff of the petitioner is governed under AERA Act 2008 and the guidelines and orders issued by the Authority from time to time. Hence the contention of respondent in Para 12(v) of the counter is irrelevant and liable to be discarded.

19. It is pointed out by the respondent in para 12 (vi) of the counter has stated that while revising the tariff in 2007, VSSC has been included in the HT-II Non-Industrial Non commercial category being a Central Government organisation where as Trivandrum International Airport has been categorised as HT-IV commercial, which is pure discrimination as Trivandrum Airport is also owned and governed by Govt. of India.

20. In fact VSSC does not directly benefit the common man of the state in any way whereas services of Trivandrum Airport are directly benefited to lakhs of common man in Kerala. The logic applied in categorising VSSC in HT-II Non-Industrial Non commercial category should also be extended to Trivandrum Airport from 2007 onwards. It appears that KSEB has treated AAI at par with Cochin International Airport Ltd. (CIAL) which is a

private corporate company which cannot be equated with Govt. owned Trivandrum Airport. It may be noted that Trivandrum Airport was billed under HT-II public utility services till November 2007 and without any change in the purpose of power supply and voltage level, the respondent changed the petitioner's tariff category to HT-IV commercial which is clear violation of contract agreement and violation of Article 14 of the Constitution of India since equals are treated unequally.

21. A combined reading of Section 61 relating to Tariff Regulation and Section 62 relating to Determination of Tariff would indicate that the Hon'ble State Commission shall determine tariff without showing any undue preference to any consumer of electricity. If no preference is to be shown to any consumer then it would mean that all the consumers are to be supplied electricity reflecting the cost of supply. In other words, uniform tariff is to be recovered from every category of consumer having same cost of supply.

Therefore, considering the above, there is no merit in the contentions of the respondent raised in its counter/reply and accepting the contentions of the petitioner in the review petition and the rejoinder, this Hon'ble Commission may be pleased to allow the review petition, after giving an opportunity of being heard, in the interest of justice.

Analysis

11. Before going into the merits of the petitions on various issues, the Commission first looks into the powers vested in it to review its orders for taking a decision on maintainability of the Petition. In this regard, reference is drawn to section 94(1)(f) of the Electricity Act, 2003 which specifically empowers the Commission to undertake review, which can be exercised in the same manner as a Civil Court exercises such powers under section 114 and Order XLVII of the Code of Civil Procedure, 1908 (CPC). The powers available to the Commission in this connection have been defined in section 114 and Order 47 of the CPC.

In accordance with the provisions under order 47 Rule 1 of the Code of Civil Procedure a Court of review may allow a review only on three specific grounds which are stated as under:-

(i) Discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the aggrieved person or such matter or evidence could not be produced by him at the time when the order was made; or

(ii) Mistake or error apparent on the face of the record; or

(iii) For any other sufficient reason which is analogous to the above two grounds.

12. Under Order 47, Rule 1, CPC, Order/Judgement may be open to Review, inter-alia, if there is a mistake or an error apparent on the face of the record. An error, which is not self-evident, has to be detected by process of reasoning and such an error can hardly be said to be an error apparent on the face of the record, justifying the Court to exercise its power of review under the above said provisions.

13. An error apparent on the face of the record may not be defined precisely and exhaustively, as there is an element of indefiniteness inherited in the term so used and it must be left to the Court to determine judicially, on the basis of the facts of each case. However, an error must be one which speaks of itself and it glares at the face, which renders it difficult to be ignored. The error is not one limited to one of facts but it also included obvious error of law. A Review Petition has a limited purpose and that cannot be allowed to be an appeal in disguise.

14. The application for review on the discovery of new evidence should be considered with great caution. The applicant should show: -

(i) that such evidence was available and of undoubtable character.

(ii) that it was such material that the absence might cause miscarriage of justice.

(iii) that it could not with reasonable care and diligence has been brought forward at the time of decree/order. It is well settled that new evidence discovered must be relevant and of such character that it has clear possibility of altering the judgment and just not merely reopening the case for the sake of it.

15. There are definitive limits to the exercise of power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made. It may be exercised where some mistake or error apparent on the face of the record is found. It may also be exercised on any analogous ground. A Review Petition has a limited purpose that cannot be allowed to be an appeal in disguise.

16. The Commission has examined the relevant provisions of the Act, Rules and Regulations made there under and the records placed before the Commission. The Commission has also considered the arguments advanced by Cochin International Airport Ltd., and Trivandrum International Airport, the review petitioners who argued in depth to convince the Commission to reduce the tariff fixed for EHT Non-Industrial category and to categorize Airports under Industrial Tariff in the impugned order.

However, Commission is not convinced with the pleas raised by the petitioners. The Commission is of the considered view that the petitioners has not been able to make out a case for review of the impugned order dated 30-04-2013 in petition OP No 2of 2013 approving ARR&ERC and Tariff Order of KSEB for the year 2013-14.

Further, the Petitioner has not been able to show that there is any error apparent on the face of the record which would require re-consideration of the impugned order by the Commission.

However in view of the fact that both the petitioners are public institutions owned by Government of India / Kerala, Commission wish to record some facts for the sake of clarity on the matter. In the tariff petition for the year 2013-14 para 11.19 KSEB had pointed out that when the HT consumers under non industrial categories migrate to EHT category due to load growth, they come under EHT category and get the tariff applicable to EHT industries at low rates, since the prevailing EHT (66 kV, 110 kV, 220 kV) tariff was indented for industrial use only. KSEB pointed out that when the consumers, migrate from HT IV category to EHT level they do not change their purpose of usage. Hence KSEB proposed the commercial tariff at EHT level. All the proposals of KSEB in Tariff petition were given wide publicity. Public hearing was also conducted at 3 places in the state where more than 330 persons took part in the deliberations. The Commission after carefully considering the proposals of KSEB as well as the objections and opinion of the public, issued orders on the matter on April 30, 2013. In the order, Commission decided to categories the non industrial EHT consumers into the new EHT non-industrial category and decided that their tariff should be comparable to the relevant groups in the HT level. Unfortunately the petitioners did not turn up and record their view points before the Commission on the matter on time.

However the Commission would like to record that the petitioners would be free to air their views and suggestions for re-categorization again when the tariff petitions of KSEB for the year 2014-15 is taken up by the Commission. Commission shall duly consider such suggestions at that stage.

Decision of the Commission

17. Since the Review Petitions do not meet the basic criteria for entertaining such petitions, it is liable to be dismissed at the admission stage itself. The Commission orders accordingly. The review Petitions are dismissed.

Sd	Sd	Sd
Member (Finance)	Member(Engineering)	Chairman

Approved for issue

Secretary.