THE KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

Petition No. : RP 1/2014

In the matter of : Review Petition on the Order dated 14-8-2014 in OP No.9/2014 on ARR&ERC of KSEBL for the year 2014-15

Petitioner : Kerala State Electricity Board Limited, Vydhyuthi Bhavan, Thiruvananthapruam

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PRESENT : Shri. T.M.Manoharan, Chairman
Shri. Mathew George, Member

ORDER DATED 31-12-2014

ORDER

Background

1. Kerala State Electricity Board Limited (*hereinafter referred to as the licensee or KSEBL*) has filed a review petition on 28-10-2014 on the Order on ARR&ERC for 2014-15 and Tariff dated 14-8-2014. In the review petition, KSEBL has raised several issues for reconsideration. According to KSEBL, the Commission has disallowed a total of Rs.1838.43 crore worth of expenses projected by KSEBL for the year 2014-15 and the decision of the Commission denying the expenses would result in difficulty in meeting the obligations and carrying out the licensed business. The issues raised by KSEBL for review are; interest on working capital, depreciation, short fall in revenue due to reduction in meter rent, return on equity, disallowance in different components of O&M expenses, T&D loss reduction targets, and capitalization of expenses.

2. As per clause 67 of KSERC (Conduct of Business) (Amendment) Regulations, 2014, notified with effect from 23-9-2014, the petition for review is to be filed within 45 days from the date of order. Since there was a delay of 28 days in filing the petition, the

Commission decided to hold a admissibility hearing on the petition on 4-12-2014. Accordingly notice was issued to the petitioner and also the petition was placed in the website of the Commission and issued a press release for the information of the public for the purpose of obtaining objections, if any.

Hearing on the Petition

3. The petition was heard on 4-12-2014 at the office of the Commission. The Commission pointed out during the hearing that there is a delay in filing the petition and the petitioner KSEBL had admitted the delay. The Commission has also noted that there is no petition for condonation of delay. Hence, the Commission directed that if the KSEBL press for admission of the review petition, the petition for condonation of delay has to be filed. Accordingly, KSEBL filed the petition for condonation of delay on 18-12-2014, as per the provisions in the KSERC (Conduct of Business) (amendment) Regulations, 2014.

4. In the hearing held on 4-12-2014, other than the petitioner, Shri. Shaji Sebastain representing Kerala Small Scale Industries Association was present. In the hearing, KSEBL stated that though the Commission has disallowed Rs.1838.43 crore, review on limited items are sought in the petition. Among the items sought for review, the interest on working capital, according to KSEBL, is to be allowed for the total revenue gap including gap fixed during the ARR&ERC exercise. KSEBL requested to provide carrying cost for interest on working capital for the outstanding unbridged approved revenue gap amounting to Rs.2445.73 crore as on 31-3-2014 plus the unbridged revenue gap of Rs.409.79 crore for the year 2014-15.

5. Another claim raised in the petition relates to the depreciation on assets created out of consumer contribution and grants. Through the second transfer scheme, government has removed the consumer contribution from the books of account, the Commission has not recognized this for the purpose of allowing depreciation. KSEBL is not claiming depreciation on assets created out of contribution from 2013-14. Hence, KSEBL requested for accounting of depreciation as per transfer scheme notified by Government of Kerala and re-estimate the addition to consumer contributions.

6. According to the KSEBL the reduction in income due to changes in meter rent ordered by the Commission in the order dated 30-9-2014 has not been taken into account while estimating the revenue gap. The estimated reduction in income from meter rent will be about Rs.35.22 crore according to KSEBL. Another issue is on return on equity. The Commission has not allowed return on equity at 15.5% as per the CERC norms. Another major issue raised in the review proceeding is on accounting business growth while allowing O&M expenses. According to KSBEL, the business growth of the utility needs to be considered while approving employee costs, R&M expenses and A&G expenses.

7. KSEB Ltd submitted that, in the case of employee costs, the Commission has disallowed about Rs.772.34 crore from the employee costs projected by the KSEBL, which is about 38% of the total amount projected for the year 2014-15. This can be implemented only by drastic curtailing of basic pay, DA etc, to the serving employees, which is against the agreements entered into with the Unions. KSEBL cannot unilaterally withdraw from the wage agreements. KSEBL also pointed out a clerical error under the employee costs, ie., though an amount of Rs.1271.91crore, was approved under employee costs, for arriving at the revenue gap only Rs.1269.91 crore was considered. KSEBL requested to correct this error.

8. Similarly, for the expenses under R&M, KSEBL requested to adopt the recommendations in the Model regulations of Forum of Regulators. The GFA has increased by about 58.25% from 2008-09, where as the Commission has not allowed such increase in R&M expenses. The per unit R&M expenses remains at 11paise to 13 paise over the years, which does not cover the inflation. Thus, KSEBL requested for allowing R&M expenses as projected in the ARR petition.

9. In the case of A&G expenses, disallowance is to the tune of 21.69%. By doing so, the Commission has not considered the business growth of the utility including new connections provided, increase in energy sales, new works in progress etc., in addition to the inflationary factors. In the model regulations, A&G expenses are proposed to provide on a normative basis. The business growth in terms of consumer strength, energy sales, connected load, revenue, etc., considerably increased from 2008-09 level. Further the per unit rate of A&G expenses considering inflation alone will be much higher than the projections of KSBEL. Hence KSEBL requested to include the above parameters as well as other uncontrollable expenses

such as audit fees, licensee fee, fee for filing ARR&ERC etc., as part of A&G expenses.

10. Another claim of KSEBL was on T&D loss reduction targets. The KSEBL projected a loss reduction target of 0.25% for the year 2014-15, whereas, the Commission has approved a reduction of 0.5% which according to KSEBL, is unachievable. The capitalization of expenses approved by the Commission is same as that proposed by KSEBL, based on the capital investment plan for Rs.1300 crore, where as the Commission has approved capital expenditure for Rs.1000 crore only. Hence, proportionate reduction in capitalization is to be considered by the Commission. Based on the above, KSEBL requested to review the order of the Commission dated 14-8-2014 in OP No.9/2014.

Objections of the stakeholders:

11. The petition of KSEBL was objected to by Shri. Shaji Sebastain, representing Kerala Small Scale Industries Association (KSSIA), Ernakulam District. He stated that the entire issues dealt in the petition are to be addressed in the truing up process. Already there was a lag in filing the truing up petition, which is reflecting the inability of the KSEBL to manage accounts, collection and scrutiny of data. KSEBL is routinely delaying the filing of the ARR&ERC petition thereby delaying the order on ARR&ERC. Instead of filing review petition, they should have filed the truing up petitions and ARR&ERC petitions in time. According to KSEBL, the major portion of disallowance is on account of employee costs, which is mainly on account of non-compliance of directives of the Commission. Such burdens should not be loaded to the poor LT consumers. The employee cost from 2003-04 increased by 172%, where as energy sales increased by only 49%. The KSBEL is now a company and has to follow the principles of improving efficiency and productivity. The tariff increase from 2001 is almost double, though there was no increase in between 2002 and 2011, in the last three years, it has increased tremendously. Taking these facts into consideration, there is no ground to entertain the petition and hence is to be rejected.

12. The Kerala State HT-EHT Industrial Electricity Consumers' Association submitted written objections on the petition. The HT-EHT Association stated that KSEB has been filing review petitions on almost all the ARR&ERC Orders issued by the

Commission. The present petition is filed after considerable delay and the delay is not properly explained. As per the KSERC(Conduct of Business) Regulations 2003 amended on 7-8-2014, the petition should have been filed before 28th September 2014. All items except for the items such as meter rent, have been properly discussed by the Commission in the order and hence not admissible. In the case of meter rent, the matter is not dealt with in the order dated 14-8-2014 hence not admissible. Shri.K.P Ramachandran Nair, The State President of Kerala Sate Small Industries Association, Kalamassery in his written objections has also stated similar objections.

Analysis and decision of the Commission

13. The Commission has considered the arguments of KSEBL and the objections thereto in detail. The main contention of the stakeholders was the delay in filing the petition. KSEBL has filed a separate petition for condoning the delay. The Commission has considered the petition. The notification on the amendment to KSERC (Conduct of Business) Regulations is notified only on 23-9-2014, which reduces the time limit for filing the review petition from 90 days to 45 days. Accordingly, clause 67 of KSERC (Conduct of Business) Regulations provides that:

> *"67. Powers of review,-*
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> *(1) Any person or party affected by a decision, direction or order of the Commission may, within forty five days from the date of making such decision, direction or order apply for the review of the same.*
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> *(2) An application for such review shall be filed in the same manner as a petition under Chapter III of these regulations.*
>
> *(3) The Commission may after scrutiny of the application, review such decisions, directions or orders and pass such appropriate orders as the Commission deems fit within forty five days from the date of filing of such application:*
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> *Provided that the Commission may, at its discretion, afford the person or party who filed the application for review, an opportunity of being heard and in such cases the Commission may pass appropriate orders as the Commission deems fit within thirty days from the date of final hearing:*

Provided further that where the application for review cannot be disposed of within the periods as stipulated, the Commission shall record the reasons for the additional time taken for disposal of the same".

"67 A. Amendment of orders.- Clerical or arithmetical mistakes in the orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Commission either on its own motion or on an application of any of the parties".

Considering this, the Commission decided to accept the request for condolation of delay and admitted the petition.

14. At the outset, most of the issues raised in the review petition of the KSEBL have been deliberated in detail while considering the original petition. Along with this, KSEBL also pointed out a clerical error under the employee costs, ie., though an amount of Rs.1271.91crore, was approved under employee costs, for arriving at the revenue gap only Rs.1269.91 crore was considered. This error is to be corrected as the employee cost allowed is Rs.1271.91 crore and the total ARR for 2014-15 will be Rs. 10221.19 crore. Accordingly, the revenue gap will be Rs. 1094.78 crore instead of Rs.1092.78 crore mentioned in the impugned order.

15. Another issue to be considered is meter rent, for which no consideration is relevant as it is in the form of a tariff increase/decrease, for which the revenue shortfall or increase is bound to occur and cannot be addressed as a separate item. The revenue short fall is estimated at Rs.30 crore. The actual figures can be considered at the time of truing up.

16. Other than the above, KSEBL has raised no new issues for consideration in the review proceedings. An elaborate consideration of other arguments were made in the Order dated 14-8-2014 in OP 9 of 2014. 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) of the Electricity Act 2003, the Commission has been vested with the powers for reviewing its decisions, directions and orders as in the Code of Civil Procedure 1908. The application and the scope of the review of an Order are prescribed under Order 47, Rule 1, of Code of Civil

Procedure, 1908. The review power, under the aforesaid provision is reproduced below: -

> *"Application for review of judgment – (1) Any person considering himself aggrieved –*
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> *(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or*
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> *(b) by a decree or order from which no appeal is allowed; or*
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> *(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".*

17. As has been held in similar proceedings, the review jurisdiction 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 cannot enlarge the scope of the review jurisdiction to deliberate on the merits of the issues already decided.

Orders of the Commission

18. In the light of the materials placed before the Commission it has been found that there are no sufficient grounds for a review of the Order dated 14-8-2014 on ARR&ERC of KSEBL for the year 2014-15 and Tariff Order, except as provided in para 14 above. The petition is disposed of Ordered accordingly.

Sd/- **Mathew George** **Member**	Sd/- **T.M. Manoharan** **Chairman**

Approved for issue

Secretary