

**BEFORE THE KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

Present : **Sri. T.M. Manoharan, Chairman**
Sri. K. Vikraman Nair, Member
Sri. S. Venugopal, Member

In the matter of the petition for seeking extension of the validity of the tariff orders dated 14-08-2014, 25-09-2014 and 30-09-2014 in OP No.9/2014.

Petitioner : Kerala State Electricity Board Ltd.,
Vydyuthi Bhavanam,
Thiruvananthapuram – 695 004.

ORDER No.539/F&T/2016/KSERC, DATED 03-08-2016

Background:

1. Kerala State Electricity Board Limited (hereinafter referred to as KSEB Ltd or the licensee) has filed a petition vide letter No.KSEB/TRAC/Tariff Petition/2016-17/2707 dated 04-04-2016 under section 62(4) and 62(6) of the Electricity Act, 2003 read along with Regulations 22(b), 44 and 69 of KSERC (Conduct of Business) Regulations, 2003 seeking extension of the validity period of tariff which expired on 31-03-2016.
2. The prayers of KSEB Ltd in the petition are -
 - (a) The delay in filing the instant petition for grant of extension of validity period of approved tariff beyond 31-03-2016 may kindly be condoned.
 - (b) Hon'ble Commission may kindly grant extension of the validity of tariff order dated 14-08-2014, 25-09-2014 and 30-09-2014 in petition OP No.9/2014 till 30-09-2016 or the date of effect of the new tariff order pertaining to the financial year 2016-17, whichever is earlier.
3. In the said petition dated 04.04.2016, KSEB Ltd has submitted that the petitioner is the State Transmission Utility (STU) and the distribution licensee in the state of Kerala which also owns generation assets. As per the Second Transfer Scheme notified by the Government under Section 131 of the Electricity Act, 2003, the activities of the company are being carried out through Strategic Business Units (SBUs) for each of the functions of generation, transmission and distribution. The Commission had, on 14.08.2014, issued order in OP No. 9/2014 filed by KSEB Ltd determining the retail sale tariff (RST) of electricity. The Commission had also issued order dated 25.09.2014 revising the bulk supply tariff applicable to the sale of electricity to other distribution licensees. Further the Commission

had also issued order dated 30.09.2014 approving the Open Access charges, pooled cost of power purchase, meter rent etc.

4. In the petition dated 04.04.2016, KSEB Ltd has further submitted that the Hon'ble APTEL vide its order dated 10.11.2014 in appeal Nos. 1/2013 and 19/2013, has remanded the matter of truing up of accounts of KSEB Ltd with certain findings which are expected to alter various trued up figures applicable to KSEB Ltd for the year 2010-11.
5. In the petition dated 04.04.2016, KSEB Ltd has also submitted that as per regulation 9 (2) of the Tariff Regulations, 2014, an application for approval of the ARR & ERC in MYT frame work for the second year of the control period shall be based on elements like,-
 - (i) Approval of ARR by the Commission for the control period along with the determination of tariff for the first year of the control period.
 - (ii) Revised forecast of the ARR for the ensuing year.
 - (iii) Truing up of expenses and revenue of previous financial year.
6. KSEB Ltd has also stated that it is facing difficulty in complying with the direction of the Commission in view of the fact that the application for approval of ARR & ERC for the first year of the control period (2015-16) is pending before the Commission.
7. In para 18 of the petition dated 04.04.2016, KSEB Ltd has submitted that non-availability of approved tariff will severely affect its effective functioning including financials and that the absence of approved tariff could cripple the entire revenue generation activity, which in turn could lead to default in payment to generators, central transmission utility, banks and financing agencies etc., which could have serious consequences in maintaining power supply within the State. It has been further submitted that without an approved tariff applicable for retail supply, KSEB Ltd will not be able to effectively perform its various duties and responsibilities mandated under the Electricity Act, 2003 as a distribution licensee. Therefore KSEB Ltd requested the Commission to extend the validity of the existing tariff orders dated 14.08.2014, 25.09.2014 and 30.09.2014 in OP No.9/2014 till 30.09.2016 or the date of effect of new tariff order pertaining to the financial year 2016-17 whichever is earlier.

Admissibility Hearing on the Matter:

8. Conducted the admissibility hearing at the Court Room, Office of Commission on 13-07-2016 at 11.30 AM on the petition seeking for extension of the validity of the tariff orders dated 14-08-2014, 25-09-2014 and 30-09-2014 in OP No.9/2014.
9. Sri. K.G.P. Namboothiri, Executive Engineer, TRAC, KSEB Ltd presented the views of Kerala State Electricity Board Ltd, which is summarized below:
 - (a) Distribution business utility of the KSEB Ltd is the only revenue generating sector and the absence of the approved tariff, could cripple the entire generation activity leading to default in payments to generators, Central Transmission Utility, Banks, Financial institutions, etc., This can hamper the maintenance of power supply within the State.
 - (b) Without an approved tariff for retail supply, KSEB Ltd cannot perform its various duties and responsibilities mandated under the Act.
 - (c) As per the direction of Govt. of Kerala, KSEB Ltd has remitted an amount of Rs.3.13 Crore towards the licence fee on 04-07-2016.
 - (d) In the meanwhile, it has come to the notice that Hon'ble Commission has initiated procedure for suo mottu determination of tariff and has posted the same for a public hearing on 27-07-2016. In this regard, KSEB Ltd will file the details at the earliest.

Analysis and decision of the Commission:

10. Section 62 and Section 64 of the Electricity Act-2003, deal with 'determination of tariff' and 'procedure for tariff order' respectively. The Commission has, under Section 61 of the Act, published the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2014 (hereinafter mentioned as the Tariff Regulations, 2014) vide the notification No. 787/SEA/2011/KSERC dated 14th November 2014. As per regulation 11 of the Tariff Regulations, 2014, KSEB Ltd is bound to submit, on or before 30.11.2015, an application for determination of tariff relating to 2016-17.
11. The Government of Kerala has issued the First Transfer Scheme and Second Transfer Scheme under Section 131 of the Act, re-organizing the erstwhile Kerala State Electricity Board which was constituted under Section 5 of the Electricity (Supply) Act, 1948. As per the First Transfer Scheme issued vide GO (MS) 37/2008/PD dated 25.09.2008 and published as Statutory Rules and Orders (SRO) No 990/2008 in Kerala Gazette Extra Ordinary No.2090 dated 25.09.2008, the assets, liabilities, rights, and interests of the erstwhile KSEB stood transferred to and vested in Government. The Government of Kerala has, thereafter incorporated a Government Company namely, KSEB Ltd, with effect from 14.01.2011. As per the Second Transfer Scheme issued vide GO (P) No.

46/2013/PD dated 31.10.2013 and published as Statutory Rules and Orders (SRO) No 871/2013 in Kerala Gazette Extra Ordinary No.3103 dated 31.10.2013, the assets, liabilities, rights and interests of the erstwhile KSEB which were vested with the Government as per the First Transfer Scheme, were re-vested to the three Strategic Business Units (SBUs) namely, the Strategic Business Unit (Generation), the Strategic Business Unit (Transmission) and the Strategic Business Unit (Distribution) under KSEB Ltd. As per the Second Transfer Scheme, the above strategic business units shall undertake the functions of generating company, State Transmission Utility and the distribution licensee. Sub-clause (viii) of clause 3 of the Second Transfer Scheme stipulates as follows:-

Within the provisional period of one year from the date of re-vesting, the accounts of three SBUs will be segregated by the transferee so as to facilitate the evaluation of financial performance of these units. Separate balance sheet will be prepared for the three SBUs and suitable transfer pricing mechanism between the SBUs shall be worked out by the transferee taking into consideration the financial soundness of the three SBUs.

Admittedly by KSEB Ltd, it is functioning as the State Transmission Utility, distribution licensee and generating company. State Load Despatch Center is also functioning under the State Transmission Utility. The functions of State Transmission Utility, distribution licensee and generating company are performed respectively by the strategic business unit (transmission), the strategic business unit (distribution) and the strategic business unit (generation) of KSEB Ltd.

The first proviso under sub-section (1) of Section 39 of the Act states as follows,-

Provided that the State Transmission Utility shall not engage in the business of trading in electricity:

The second proviso under sub-section (2) of Section 31 of the Act states as follows,-

Provided further that no State Load Despatch Centre shall engage in the business of trading in electricity.

The third proviso under Section 41 of the Act states as follows,-

Provided also that no transmission licensee shall enter into any contract or otherwise engage in the business of trading in electricity.

In view of the statutory provisions in the second proviso under sub-section (2) of Section 31, the first proviso under sub-section (1) of Section 39 and the third proviso under Section 41 of the Act, these different Strategic Business Units under the same corporate office shall invariably function independent of each other.

12. The Tariff Regulations, 2014, specifies the technical and financial norms for determination of tariff applicable to the Strategic Business Units (SBUs) of KSEB Ltd including Generation, Transmission and Distribution. Further, the said regulations also specify the principles, procedures, methodology and time lines for filing before the State Commission the application for approval of ARR&ERC and for determination of tariff of each licensee in the State including KSEB Ltd and its SBUs. The normative values for determination of various components of the aggregate revenue requirements and tariff as per the Tariff Regulation, 2014 are applicable for the first control period, 2015-16 to 2017-18. As per the Regulation-11 of the said regulation, the application for approval of aggregate revenue requirement and determination of tariff for the first year of the first control period 2015-16 to 2017-2018 should be filed before the Commission on or before 31-12-2014. The regulation 11(2) of the Tariff Regulation stipulates that, during the subsequent years, an application for the approval of the revised aggregate revenue requirement, if any, for the ensuing financial year and for the determination of tariff for the ensuing financial year shall be filed, on or before 30th November of every subsequent financial year. The Regulation 11 of the Tariff Regulation 2014 is quoted hereunder.

“11. Filing under multi-year tariff (MYT) framework. – (1) Every generating business/company or transmission business/licensee or distribution business/licensee or state load dispatch centre shall file, on or before the Thirtieth day of November of the current financial year, the following applications for the control period:

- a) Application for approval of aggregate revenue requirement for each year of the control period and determination of tariff for the ensuing financial year.*
- b) Application for truing up of aggregate revenue requirement for the previous financial year:*

Provided that truing up for the financial years of the previous control period prior to the introduction of MYT framework shall be carried out under relevant Regulations applicable to the respective periods.

Provided further that the time limit specified for filing applications as per clause (a) and (b) above for the first year of first control period shall be the Thirty first day of December, 2014.

(2) Every generating business/company or transmission business/licensee or distribution business/licensee or state load dispatch centre shall file, on or before the Thirtieth day of November of every subsequent financial year during the control period, the following applications:

- a) Application for approval of revised aggregate revenue requirement, if any, for the ensuing financial year and determination of tariff for the ensuing financial year:*
- b) Application for Truing up of aggregate revenue requirement for the previous financial year:*

Provided that truing up for the financial years of the previous control period prior to the introduction of MYT framework shall be carried out under relevant Regulations applicable to the respective periods.

- (3) All applications shall be filed in the manner specified in the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003, as amended from time to time.*
- (4) Failure to file the application within the stipulated time may attract the provisions of Section 142 and Section 146 of the Act.*
- (5) In case the generation business/company or transmission business/licensee or distribution business/licensee or state load dispatch centre does not file the application under these Regulations within one month of stipulated date, the Commission may, on its own initiate proceedings for tariff determination.*
- (6) The applicant shall submit the forecast of aggregate revenue requirement and proposal for revision of tariff, if required, for the ensuing financial year, in such manner and within such time limit as specified in these Regulations:*
- (7) The formats for furnishing information for calculating expected revenue and expenditure and for determining tariff shall be as per Annexure-XII to these Regulations.*
- (8) The applicant shall provide full details supporting the forecast, including but not limited to the details of past performance, proposed initiatives for achieving efficiency or productivity gains, technical studies, contractual*

arrangements and/or secondary research and such other details to enable the Commission to assess the reasonableness of the forecast.

(9) The applicant shall develop the aggregate revenue requirement based on the data and reasonable forecast of the behaviour of individual variables that comprise the aggregate revenue requirement during the control period.

(10) The applicant shall develop the forecast of expected revenue from existing tariff and charges based on the following:-

(a) In the case of generating business/company, estimates of generation capacity allocated to distribution business/licensees and expected electricity generation by each unit/station for each financial year of the control period;

(b) In the case of transmission business/licensee, estimates of transmission capacity allocated to users of the transmission system and expected energy to be transmitted for each financial year of the control period;

(c) In the case of distribution business/licensee, estimates of contracted demand and quantum of electricity to be supplied to consumers and to be wheeled on behalf of users of the distribution system for each financial year of the control period;

(d) Prevailing tariffs and charges as on the date of making the application.

(11) Based on the forecast of aggregate revenue requirement and expected revenue from existing tariff and charges, the generating business/company or transmission business/licensee or distribution business/licensee shall submit the means, including efficiency gains, tariff increase or any other means, with complete details of such measures, for meeting the gap, if any, in the aggregate revenue requirement.

(12) The Application shall include the following:-

(a) A statement of the existing schedule of tariff and terms and conditions of tariff and expected revenue from the existing tariff and charges for the ensuing financial year;

(b) A statement of the proposed schedule of tariff and terms and conditions of tariff and expected revenue from the proposed tariff and charges for the ensuing financial year;

(c) A statement containing full details of subsidy received, or due from the State Government, if any, the consumers to whom it is directed and

showing how the subsidy is reflected in the existing and proposed tariff applicable to those consumers;

(d) A statement of the estimated change in annual revenues that would result from the proposed changes in tariff in the period in which they are to be implemented;

(e) The audited accounting statements for the previous financial year and in case the audited accounting statements for the previous financial year are not available, the audited accounting statements for the financial year immediately preceding the previous financial year along with the unaudited accounting statements for the previous financial year:

Provided that separate audited accounting statements shall be submitted by the applicant for each separate regulated business (generation, transmission and distribution business and state load despatch centre) of the company;

(f) In the case of distribution business/licensee, if the proposed tariff is to be introduced after the start of a financial year, a statement of the proportion of revenue expected and quantities of electricity supplied under each proposed tariff modification during the remaining months of the financial year shall be included;

(g) A statement showing calculations of the amount of cross subsidy in the existing tariff and in the proposed changes in tariff in respect of each category of consumer;

(h) An explanatory note giving the rationale for the proposed tariff changes;

(i) If the transmission business/licensee or distribution business/licensee is engaged in any other business, as specified under regulations 63 and 85, respectively, the transmission business/licensee or distribution business/licensee shall submit the following information:

(i) Name and description of all other businesses that the licensee is engaged in;

- (ii) For each such other business, amount of revenue generated in the previous financial year, estimated during the current financial year and projected for the ensuing financial year;*
 - (iii) Assets and resources of licensed business used by the licensee to generate the above revenue;*
 - (iv) Expenses incurred to generate the above revenue, separately for each other business;*
 - (v) Proportion of such expenses included in the aggregate revenue requirement of the licensee, if any, basis of apportionment and justification for the basis of apportionment.*
 - (vi) Any other information, as required by the relevant licensee or desired by the Commission.*
- (13) If a person holds more than one licence, he shall submit separate calculations as above in respect of each licence.*
- (14) In the case of a licensee having more than one area of supply, it shall submit separate calculation for each area of supply.*
- (15) The generating business/ company shall submit generating station-wise calculations, except for small hydro-electric generating stations, in whose case it may be combined.*
- (16) In case the distribution licensee owns and operates a generating station it shall maintain and submit separate accounts of generation, its licensed business and other business:*
- (17) The tariff determined for a particular financial year shall remain applicable only till end of such financial year, unless the Commission approves the continuation of such tariff for subsequent periods.*
- (18) Soft copy of the application for approval of aggregate revenue requirement and determination of tariff as well as financial models with linkages in spreadsheet shall also be submitted along with the application to the Commission.*
- (19) During the first year of the first control period, if an integrated utility has not prepared separate accounts for the businesses of generation, transmission, distribution and load despatch, the Commission may, at its discretion, allow such utility to apportion the total expenditure among such businesses with proper basis and justification for such apportionment.*
- (20) An integrated utility may be allowed by the Commission, to apportion its common expenses among the regulated businesses on proper basis and justification.”*

13. KSEB Ltd filed a Writ Petition against the said regulation before the Hon'ble High Court of Kerala, stating that the norms for expenditure specified in the Tariff Regulations are inadequate resulting in under recovery of its expenses. The petition was admitted by Hon'ble High Court as WP 465/2015 (G). Hon'ble High Court vide the interim order dated 07-01-2015 has ordered as follows,-

'The tariff petition if any submitted by the petitioner KSEB Ltd shall not be rejected on the basis of Tariff Regulations, 2014'.

14. In accordance with the provisions of the Tariff Regulations, 2014, which came into force with effect from 14.11.2014, the earlier regulations issued by the Commission for determination of tariff were repealed. The Hon'ble High Court not stayed or quashed the impugned Tariff Regulations, 2014. Therefore, the tariff petition filed by KSEB Ltd can be processed only in accordance with Tariff Regulations, 2014, which is in force even now. Since the Writ Petition challenging the validity of Tariff Regulations, 2014 is under consideration of the Hon'ble High Court, the order on the tariff petition filed by KSEB Ltd can only be subject to the final judgment of the Hon'ble High Court in Writ Petition 465/2015. Therefore the Commission had sought clarification from the Hon'ble High Court on implementation of the said order. The clarification is yet to be issued by the Hon'ble High Court. Admittedly, there is no stay on the implementation of the said regulation. The ARR&ERC of all licensees other than KSEB Ltd have been approved as per the provisions of the Tariff Regulations, 2014. In the hearings relating to the applications filed by the licensees other than KSEB Ltd, for the approval of their ARR & ERC and for determination of tariff, KSEB Ltd had argued that the provisions of Tariff Regulations, 2014 shall be applied to such licensees. Thus KSEB Ltd has taken a dichotomous stand to the effect that the provisions of the Tariff Regulations, 2014 are applicable to the licensees other than KSEB Ltd and are not applicable to KSEB Ltd.
15. KSEB Ltd had, on 30-03-2015, filed before the Commission, a single application for the approval of a composite ARR&ERC exclusively for the year 2015-16 without segregating the accounts for SBU (G), SBU (T) and SBU (D). The said application dated 30.03.2015 was not prepared and filed according to the relevant provisions of the Tariff Regulation, 2014. KSEB Ltd had also not prepared and submitted separate accounts and balance sheets as directed by the Government in the Second Transfer Scheme issued under Section 131 of the Act. However, duly complying with the interim order of the Hon'ble High Court dated 07-01-2015, the Commission has not rejected the application though not filed as per the provisions of the Tariff Regulations, 2014. However, the

Commission could not process the said application for want of clarifications from the Hon'ble High Court. However no tariff petition was filed by the licensee, KSEB Ltd.

16. The Commission had, vide its orders dated 14.08.2014, 25.09.2014 and 30.09.2014 in OP No. 9/2014, determined the retail supply tariff (RST), bulk supply tariff (BST), transmission charges, wheeling charges etc. for the period till 31.03.2015. In view of the pendency of the Writ Petition 465/2015 before the Hon'ble High Court and the pendency of the application dated 30.03.2015, the Commission had, suo motu extended the validity of the above said orders till 31-03-2016, the details of which are given hereunder,-

Particulars	Date of order	Period of extension
Tariff order in OP No.9/2014	14.08.2014	16.08.2014 to 31.03.2015
	25.03.2015	01.04.2015 to 30.09.2015
	25.09.2015	01.10.2015 to 31.12.2015
	14.12.2015	01.01.2016 to 31.03.2016
BST order in OP No. 9/2014	25.09.2014	16.08.2014 to 31.03.2015
	25.03.2015	01.04.2015 to 30.09.2015
	25.09.2015	01.10.2015 to 31.12.2015
	14.12.2015	01.01.2016 to 31.03.2016
Transmission charges, wheeling charges, open access charges	30.09.2014	16.08.2014 to 31.03.2015
	25.03.2015	01.04.2015 to 30.09.2015
	25.09.2015	01.10.2015 to 31.12.2015
	14.12.2015	01.01.2016 to 31.03.2016

17. Though as per the provisions contained under section-64 of the Electricity Act-2003 and Tariff Regulation, 2014, KSEB Ltd has to file the application for the approval of aggregate revenue requirements for the years 2016-17 and 2017-18, and determination of tariff for the year 2016-17, on or before 30th November 2015, KSEB Ltd had not submitted the same till 30th March-2016. Hence, the Commission vide letter dated 31-03-2016 communicated to the KSEB Ltd that, it has not filed any application for the approval of the aggregate revenue requirement and for determination of tariff for the year 2016-17 and that the validity of the tariff orders dated 14-08-2014 and 30-09-2014 in OP No. 9/2014 applicable to KSEB Ltd would expire on 31-03-2016. The Commission also directed KSEB Ltd to take appropriate action.

18. In response to the letter of the Commission dated 31-03-2016, KSEB Ltd vide its letter dated 04-04-2016, filed the instant petition for the extension of the validity of the tariff order dated 14-08-2014, 25-09-2014 and 30-09-2014 in OP No. 9/2014 till 30-09-2016 or the date of effect of the new tariff order pertaining to the financial year 2016-17, whichever is earlier. KSEB Ltd vide its petition dated 04.04.2016, requested the Commission, to extent the validity of the tariff orders for a period up to 30.09.2016 or till the present rates are revised by the Commission. However the licensee has not submitted any relevant records, documents and data pertaining to its revenue expenditure and income as well as capital expenditure plan. The above details are inevitable for determination of tariff. KSEB Ltd thus, has requested the Commission to extend the validity of the existing tariff orders without any application for approval of ARR & ERC and for determination of tariff and without submitting any details and data relating to its performance during 2015-16 and the anticipated expenditure and revenue during 2016-17.
19. KSEB Ltd has already implemented the order dated 14.08.2014, 25.09.2014 and 30.09.2014 in OP No. 9/2014 and has been collecting revenue, as per the revised tariff. The said tariff order was finalized duly considering the higher cost of power purchase and other relevant factors prevailing at that time. It has been noticed by the Commission, that the cost of power purchase which constitutes more than 60% of the operational cost, has been decreasing in view of surplus power available in the market. Further KSEB Ltd must also have attained efficiency gains based on the directives issued by the Commission from time to time. Hence it would not be appropriate for the Commission to fix the tariff applicable to 2016-17 without considering any relevant facts or figures for the relevant periods.
20. Being the State Transmission Utility and the distribution licensee owning most of the generation assets in the State, KSEB Ltd ought to have known that ARR is only an estimate of expenditure for a financial year and ERC is an estimate of revenue for that particular financial year at the prevalent existing tariff. While submitting application for approval of ARR and ERC, KSEB Ltd has to submit application for determination of tariff for various categories of consumers depending upon the revenue gap or revenue surplus anticipated during the relevant financial year. The Commission has to conduct public hearing on the said application as a part of the procedure for determination of tariff. After duly considering all the relevant facts presented by the licensee and by the stakeholders and after prudence check, the Commission will issue appropriate orders determining the tariff. It is the prime and foremost duty of KSEB Ltd to

submit applications for ARR&ERC for the relevant years along with the truing up of accounts of the previous years with actual figures of revenue and expenditure, so that the Commission can, after due consideration of all the relevant facts and figures and after prudence check issue appropriate orders thereon. The pendency of a Writ Petition before the Hon'ble High Court does not prohibit the licensee from submitting before the Commission its financial records, capital expenditure plans and information of its other operational parameters.

21. It is a well-known fact that Tariff Regulations, 2014 is a regulation issued by the Commission under Section 61 of the Act, after duly completing all the formalities such as previous publication and public hearing. Any affected person can file Writ Petition against the said Regulations, before the Hon'ble High Court. Mere pendency of such Writ Petition will not ipso facto, invalidate any of the provisions of Tariff Regulations, 2014, unless the Hon'ble High Court issues specific order to that effect. Therefore Tariff Regulations, 2014 is legally valid even as on date. KSEB Ltd with a large contingent of law officers in its law wing, cannot be ignorant about such common legal position.

22. It is also well known fact that KSEB Ltd is a company incorporated under the provisions of the Companies Act, 1956. As per the provision of the Companies Act, every company has to finalize the annual accounts of one financial year before the stipulated date in the next financial year. The accounts shall be got approved by the Board of Directors and such accounts shall be got audited by Internal Auditor and Statutory Auditor before the stipulated date in the next financial year. KSEB Ltd is a Public Sector Undertaking fully owned by Government of Kerala. Therefore, KSEB Ltd has to submit the accounts and administrative report before the Government and Kerala Legislative Assembly. As per rule, the copy of accounts shall made available to any person on payment of price fixed on a no profit no loss basis. Any citizen of India has the right under Right to Information Act to get copy of any documents in KSEB Ltd including the accounts. In spite of the above facts, the petitioner KSEB Ltd is under one pretext or other, refusing deliberately to submit the facts and figures which are inevitably required for determination of tariff. It cannot be presumed that such refusal to submit accounts and other details is an innocent act on the part of the licensee.

23. The petitioner has stated that it would be subjected to many hardships if the validity of the tariff order dated 14.08.2014 is not extended. It is well known that tariff for distribution of electricity can be determined only by the State Electricity Regulatory Commission and that a distribution licensee can validly collect electricity charges only in accordance with the tariff order issued by the Commission. Therefore it is for the licensee to take timely appropriate advance action to get the tariff order issued in time, after completing all statutory formalities such as previous publication and public hearing. The licensee has in fact failed to perform its statutory function by refusing to submit the application with all relevant details, for determination of tariff.
24. The ARR & ERC of each financial year are independent and of the ARR & ERC of previous financial year, since ARR is the estimated revenue expenditure including RoE and depreciation and the ERC is estimated revenue at the existing tariff. Such estimations do not depend on the outcome of litigation pending before judicial fora such as Hon'ble Supreme Court, Hon'ble High Court and Hon'ble APTEL. It is only after truing up of accounts, the real impact of actual expenditure and actual revenue collected can be known. The petitioner has been challenging the tariff orders issued by the Commission before the Hon'ble APTEL and Hon'ble Supreme Court. Without waiting for the final outcome of such cases, the petitioner had been filing application for approval of ARR, ERC and for determination of tariff. In fact there are litigations relating to truing up of accounts for the years from 2009-10. Whenever tariff increase was required, the licensee used to file application for determination of tariff, without waiting for the outcome of the petitions for truing up of accounts and the outcome of litigations pending before the Hon'ble APTEL and Hon'ble Supreme Court. The reasons cited by the petitioner for not filing the application for determination of ARR & ERC and Tariff do not therefore appeal to reason. It has to be reasonably concluded that the petitioner is deliberately withholding the actual accounts pertaining to 2014-15 and 2015-16 with ulterior motives.

25. Considering the petition along with views/submissions of KSEB Ltd during hearing, the Commission noted the following.

(a) The Commission had revised and determined the tariff applicable to 2014-15 as per its orders dated 14.08.2014, 25.09.2014 and 30.09.2014 in OP No. 9/2014. The said tariffs were valid up to 31.03.2015. Commission has further extended the validity of tariff orders up to 31.03.2016. KSEB Ltd has already implemented the said order and realized revenue as per the revised higher tariff. KSEB Ltd is duty bound to submit to the Commission the details of the actual expenses and revenue incurred during the years 2014-15 and 2015-16. But KSEB Ltd has not, submitted any such details for the years 2014-15 and 2015-16.

(b) As per the provisions of the Tariff Regulations, 2014, KSEB Ltd is bound to submit applications for determination of tariff as per MYT principles as specified in the regulations. KSEB Ltd obtained an interim order dated 07.01.2015, in WP (C) 465/2015 to the effect that the application filed by it shall not be rejected in terms of the Tariff Regulations, 2014. Thereafter KSEB Ltd submitted an application for approval of ARR and ERC for the financial year 2015-16, disregarding the provisions in the Tariff Regulations, 2014. The said application did not contain any proposal for determination of tariff for various categories of consumers. In view of the interim order of the Hon'ble High Court, the Commission has not disposed of the said application. The pendency of such application for approval of ARR & ERC for the year 2015-16 cannot be a reason for not submitting the application for approval of ARR&ERC and the proposal for determination of tariff for the year 2016-17.

(c) The amount of fee paid for filing the petition and for condoning the delay is not as per the provisions of KSERC (Conduct of Business) Regulation 2003.

(d) ARR and ERC are only the estimate of expenditure and revenue for the relevant years. As already intimated by the Commission, the pendency of WP (C) 465/2015 is not a reason for not filing proper applications for determination of tariff for 2016-17, in accordance with the provisions of the Tariff Regulations, 2014.

(e) The cost of power purchase has been decreasing in view of surplus power available in the market. Further KSEB Ltd must also have attained efficiency gains based on the directives issued by the Commission from

time to time. It would not be appropriate for the Commission to fix the tariff applicable to 2016-17 without considering any relevant facts.

Orders of the Commission:

26. In view of the facts and statutory provisions explained above the Commission has found that the request of the licensee in this petition cannot be granted.

The petition is disposed of and it is ordered accordingly.

Sd/-
K. Vikraman Nair
Member

Sd/-
S. Venugopal
Member

Sd/-
T.M. Manoharan
Chairman

Approved for issue,

Santhosh Kumar.K.B
Secretary