KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

OA.No.9/2016

In the matter of Application for the Truing up of accounts of M/s KSEB for the financial year 2011-12

Applicant : Kerala State Electricity Board Ltd
Vydhyuthi Bhavanam, Pattom
Thiruvananthapuram
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ORDER DATED 16-03-2017

1. K.Vikraman Nair, Member

2. S.Venugopal, Member

1. Kerala State Electricity Board Limited (herein after referred to as the KSEB Ltd) filed the application on 19-11-2014 before the Commission for approval of truing up of C&AG audited accounts of its predecessor in interest namely KSEB for the year 2011-12. The petition was admitted as OA No. 9/2016. The Commission sought clarifications on the petition vide letter dated 29-1-2016 and the KSEB Ltd submitted the reply vide letter dated 31-05-2016. KSEB Ltd submitted additional details called for by the Commission, vide its submissions dated 8-8-2016 and 22-9-2016.

2. The Commission in its order dated 1st June 2011 in the matter of approval of ARR&ERC of KSEB for the year 2011-12, had approved the Aggregate Revenue Requirement (ARR) as Rs 6512.73 crore and Expected Revenue

from Charges (ERC) as Rs 5624.92 crore with a revenue gap of Rs.887.81 crore. Subsequently, the Commission in its order dated 21st November, 2011 had corrected an arithmetical error in the ARR for the year 2011-12 resulting in revising the ARR as Rs 6553.54 crore and revenue gap as Rs 928.62 crore. The actual revenue gap as per the audited accounts is Rs 1934.13 crore. A comparison of the approved ARR&ERC and the actual for the year 2011-12 as per the application for truing up is given below.

Table-1
Comparison of approved and actual ARR&ERC for 2011-12

Sl No	Particulars	ARR Order	As per audited accounts	Difference over approval
		(Rs. Cr)	(Rs. Cr)	(Rs. Cr
1	Generation of Power	264.58	281.65	17.07
2	Purchase of power	3660.67	4375.31	714.64
3	Interest & Finance Charges	265.26	340.52	75.26
4	Depreciation	548.37	466.00	(82.37)
5	Employee Cost	1582.11	1903.33	321.22
6	Repair & Maintenance	185.00	251.70	66.70
7	Administration & General Expenses	85.74	202.72	116.98
8	Other Expenses	12.00	73.22	61.22
9	**Gross Expenditure (A)**	**6603.73**	**7894.45**	1290.72
10	Less : Expenses Capitalized	116.32	126.61	10.29
11	Less : Interest Capitalized	33.87	30.51	(3.36)
12	**Net Expenditure (B)**	**6453.54**	**7737.33**	1283.79
13	Statutory Surplus/ Roe **(C)**	100.00	240.72	140.72
14	**ARR (D) = (B) + (C)**	**6553.54**	**7978.05**	1424.51
15	Less Non-Tariff Income	390.36	450.86	60.50
16	Less : Revenue from Tariff			
17	(a) With in the State	5234.56	5526.39	291.83
18	(b) Outside the State	0.00	66.63	66.63
19	Revenue from subsidies and grants	0.00	0.04	0.04
20	**Total Income**	**5624.92**	**6043.92**	419.00
21	**Revenue Gap**	**928.62**	**1934.13**	1005.51

3. KSEB Ltd in its application submitted that, as per section 172 (a) of the Electricity Act, 2003 and as mutually decided by the Government of India and Government of Kerala, KSEB was continuing as the State

Transmission Utility (STU) and distribution licensee till 24-09-2008. In exercise of powers conferred under sub-sections (1), (2), (5), (6) and (7) of section 131 of the Electricity Act, 2003, State Government vide the notification G.O (Ms).37/2008/PD dated 25th September, 2008 had vested all functions, properties, interests, rights, obligations and liabilities of KSEB with the State Government till it is re-vested in a corporate entity. The re-vesting process was completed on 1st November 2013. Accordingly, KSEB had continued all the functions as a Generator, State Transmission Utility and a Distribution Licensee in the State during the year 2011-12 managed by a Management Committee appointed by Government of Kerala. KSEB Ltd has further submitted that, though the Electricity (Supply) Act, 1948 stood repealed, the rules made under Section 69(1) of the said Act continued to be in force until such rules are rescinded or modified. Accordingly the Electricity (Supply) (Annual Accounts) Rules (ESAAR) 1985, were in force, and the Board has followed the instant Rules and the annual accounts are prepared in accordance with the above rules, which are audited and certified by the Comptroller and Auditor General of India.

4. In the meanwhile, KSEB Ltd filed an appeal petition before the Hon'ble Appellate Tribunal for Electricity (APTEL) against the order of the Commission dated 28th April-2012 challenging the various methodologies adopted by the Commission for approving the ARR&ERC for the year 2012-13 and the Hon'ble APTEL has admitted the petition as Appeal Petition No. 19 of 2013. KSEB Ltd had also filed appeal petitions against the Commission's order dated 30-10-2012 in the matter of 'truing up of accounts of KSEB for the year 2010-11'. The petition was admitted by Hon'ble APTEL as Appeal petition No. 1 of 2013. Hon'ble APTEL vide the common judgment dated 10th November-2014 had partially allowed the prayers of the appellant KSEB Ltd before the APTEL. The summary of the findings of the Hon'ble APTEL in judgment dated 10th November-2014 is extracted below for ready reference.

"*21. Summary of our findings.*

A) Issues common to Appeal no. 1 of 2013 and Appeal no. 19 of 2013 *i) Employees cost: We direct the State Commission to true up the employees cost from FY 2010-11 to FY 2012-13 as per the directions given in paragraphs 8.5 and 8.6.*

ii) Repair and Maintenance cost:
We do not find any reason to interfere with the findings of the State Commission.

iii) Administrative and General Expenses:
We do not find any infirmity in the findings of the State Commission.

iv) Return on Equity:
We direct the State Commission to allow Return on Equity at the rate of 15.5% as per the Central Commission's Regulations.

v) Depreciation:
In the absence of the data to be furnished by the Appellant, the State Commission has allowed the depreciation as per the 2004 Tariff Regulations. The State Commission has also estimated the consumer contribution in the absence of the separate data. Therefore, we are not inclined to interfere with the impugned orders of the State Commission. However, we grant liberty to the Appellant to file the complete data as per the CERC Regulations 2009 and the State Commission shall reconsider the same as per the Central Commission's 2009 Regulations.

vi) Capitalization of Assets:
Capitalization will be subjected to true-up as per actuals on the submissions of the accounts by the Court at the true up stage. In view of this, we do not find reason to interfere with the impugned order.

B) Appeal no. 1 of 2013

i) Inconsistent approach in the absence of the Regulations:
We have given certain directions to the Appellant as well as the State Commission under paragraphs 14.4 and 14.5

(ii) Subsidy from Government
We grant liberty to the Appellant to approach the State Commission with full details and the State Commission shall consider the same to examine if there has been double

accounting of the Government subsidy of Rs. 54 crores, and if it is so, necessary adjustment will be carried out in the ARR of the subsequent year with carrying cost by the State Commission.

C. Appeal No. 19 of 2013

i) Interest and Finance Charges

We find that the State Commission in the absence of Regulations have decided the Interest and Finance charges and interest on working capital arbitrarily. The interest on working capital is also decided on adhoc basis only. We feel that there is a need to make Regulations for the financial parameters. Till the Regulations are framed, the State Commission should follow the Central Commissions Regulations. As the FY 2012-13 is already over, we direct the State Commission to true up Interest and Finance charges for the FY 2012-13 based on the audited accounts.

ii) T&D Loss Reductions Target:
We feel that no interference is warranted in regard to T&D losses.

iii) Cost of generation:
We direct the State Commission to true-up the generating cost of the LSHS based power plant of the Appellant as per the directions given in paragraph 18.3.

iv) Energy sales approved:
The State Commission is directed to true-up of the energy sales and Power Purchase Cost after prudence check and also allow carrying cost on the excess cost of power purchase over the approved level, if any, as per the directions given in paragraph 19.2.

v) Energy available from Kudankulam:
We have already directed for truing up of Power Purchase Cost and for allowing carrying cost for additional Power Purchase Cost.

The Appeals are allowed in part as indicated above. The State Commission is directed to pass consequential orders in terms of our findings at the earliest.”

5. The paragraph 8.5 and 8.6 of the judgment dated 10-11-2014 in appeal petition No. 01 of 2013 and 19 of 2013 are regarding employee cost, which are extracted below.

> *"8.4 The State Commission has rightly shown concern about the high employees cost but we are not able to appreciate magnitude in the absence of a specific finding about the excess manpower and non-availability of Regulations. We feel that DA increase which is effected as per the Government orders have to be accounted for and allowed in the ARR as it compensates the employees for the inflation. The pay revision as per the agreements reached between the management and the unions have also to be honoured. The terminal benefits have also to be provided for.*
>
> *8.5 We find that the State Commission has taken the actual expenses trued-up for FY 2008-09 as the base. The State Commission should have at least allowed the actual basic pay and DA increase, pay revision and terminal benefits over the actual base year expenses without accounting for increase in manpower from 2008-09 to 2012-13. The gratuity directed to be paid as per the judgments of the High court dated 10.03.2003 as the Division bench of the High Court had dismissed the Appeal filed against this judgment, and which were disallowed by the State Commission by order in Appeal no. 1 of 2013 should also be allowed.*
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> *a. Accordingly, we direct the State Commission to true-up the employees cost from FY 2010-11 to FY 2012-13, as per the above directions."*

6. The Commission had filed a Review Petition RP No. 12/2015 and IA No. 129/2015 in the said order of the Hon'ble APTEL, seeking clarifications on certain legal and factual issues mentioned therein. The Hon'ble APTEL, in its order dated 13.04.2015, disposed of the Review Petition without giving clarifications on the points raised by the Commission. Soon on getting the order of the Hon'ble APTEL in RP No. 12/2015, the Commission took steps for implementation of the order of the Hon'ble APTEL dated 10.11.2014, by directing KSEB Ltd, as per letter No.356/CL/2013./KSERC dated 13.07.2015, to submit proposals with the details required for passing appropriate orders as per the directions of the Hon'ble APTEL. The relevant portions of the said letter are quoted hereunder.

> *"Your immediate attention is invited to the orders cited in reference. In para 8.5 and 8.6 the Hon'ble Appellate Tribunal for Electricity has*

directed the Commission to true up the employee cost from the financial year 2010-11 to the financial year 2012-13 as per the directions contained in para 8.4. In para 8.4 of the order the Hon'ble Appellate Tribunal for Electricity has observed that the State Commission has taken the actual expenses trued up for the financial year 2008-09 as the base and therefore the Commission should have at least allowed the actual basic pay and DA increase, pay revision and terminal benefits over the actual base year expenses without accounting for increase in man power from 2008-09 to 2012-13. The Hon'ble Appellate Tribunal for Electricity has further directed that the gratuity directed to be paid as per the judgment of the Hon'ble High Court dated 10.03.2003 as the Division Bench of the High Court had dismissed the appeal filed against this judgment, and which were disallowed by the State Commission should also be allowed. In para 11.3 the Hon'ble Appellate Tribunal for Electricity has directed that the State Commission should follow Central Electricity Regulatory Commission Regulations and allow return on equity of 15.5%. In para 14.4 it has been observed that the Hon'ble Appellate Tribunal for Electricity is in agreement with the State Commission that the accounts for generation, transmission and distribution functions have to be separately maintained by KSEB Ltd. and that without maintenance of separate accounts for generation, transmission and distribution functions it may not be possible to apply the norms specified in the regulations fully. In para 14.3 it has been clarified by the Hon'ble Appellate Tribunal for Electricity that there is absolutely no need for framing rules and regulations for a transient entity like the Managing Committee constituted by the Government to administer the assets and liabilities of the erstwhile Kerala State Electricity Board. In para 14.5 the Hon'ble Appellate Tribunal for Electricity has directed to give requisite data for generation, transmission and distribution functions as desired by the State Commission. In paras 15.1, 15.2 and 15.3 the Hon'ble Appellate Tribunal for Electricity has observed that KSEB Ltd. is at liberty to approach the State Commission with full details of subsidy received from Government so that the Commission can examine whether or not there had been any double accounting. With regard to the depreciation, the Hon'ble Appellate Tribunal for Electricity has *directed KSEB Ltd to file complete data as per Central Electricity Regulatory Commission Regulations, 2009 for the consideration of the State Commission. With regard to the claim for interest and finance charges in Appeal No.19/2013 the Commission has been directed to true up the interest and finance charges for the financial year 2012-13 based on the audited accounts. In para 18.3 the Commission has been directed to true up the generating cost of LSHS based power plants of KSEB Ltd after examining the annual data for this plants and after prudence check. With regard to the energy sales the Commission has been directed to true up the energy sales and power purchase cost after prudence check and also allow carrying cost on the excess cost of power purchase over the approved level as per the directions given in para 19.2. In view of the directions indicated above and the other directions contained in the order of the Hon'ble Appellate Tribunal for Electricity KSEB Ltd is hereby directed to submit detailed proposals with all necessary data for substantiating its claims so that the Commission can examine them and conduct prudence check where ever necessary and issue appropriate orders. KSEB Ltd is also directed to submit proposals as to how the excess amount in ARR, if any approved by the Commission, has to be recovered from the consumers. The above proposals with all necessary details shall be submitted within one month from the date of receipt of this letter.".*

7. Subsequently, KSEB Ltd, as per the Section 125 of the Electricity Act-2003, filed second appeal before Hon'ble Supreme Court, against the judgment of the Hon'ble APTEL dated 10th Novermber, 2014 in appeal petitions 1 of 2013 and 19 of 2013. Hon'ble Supreme Court has admitted the petitions as Civil Appeal Nos. 5473 and 5474 of 2015. However, there is no stay granted on the implementation of the judgment of the Hon'ble APTEL. The Commission has filed detailed counter affidavit in the above Civil Appeals. In the said counter affidavit the Commission has submitted before the Hon'ble Supreme Court the following important questions of law among others (the appellant mentioned in the questions of law is KSEB Ltd).

(i) *Whether or not the Hon'ble APTEL can, without hearing the affected parties namely the consumer and other stakeholders, issue a legally valid order in an appeal under Section 111 of the Electricity Act, 2003, resulting in increase of tariff.*

(ii) *Whether or not the functioning of the appellant as a bundled entity performing the functions of the State Transmission Utility, distribution licensee engaged in supply and trading in electricity, generating company and of the State Load Despatch Centre is in order.*

(iii) *If such a functioning as a bundled entity is in order, is it not mandatory for the State Transmission Utility, the distribution licensee, the generating company and the State Load Despatch Centre to function as separate and independent units as envisaged in the Electricity Act, 2003 and the Second Transfer Scheme issued by Government of Kerala.*

(iv) *Whether or not the appellant, which is functioning as a bundled entity can refuse to implement or claim immunity from the regulations issued by the respondent Commission.*

(v) *Whether or not the appellant, which is functioning as a bundled entity, can claim at its choice the benefits under various provisions of the regulations issued by the Central Electricity Regulatory Commission (CERC) which have no direct application to the licensees functioning in the State.*

(vi) *Whether or not the distribution licensee or the State Transmission Utility or the generating company is eligible to get the return on the enhanced equity as per the Second Transfer Scheme issued by the Government of Kerala under Section 131 of the Electricity Act, 2003, without any actual cash infusion into the business.*

(vii) *Whether or not the distribution licensee or the State Transmission Utility or the generating company is eligible to get*

depreciation or repairs and maintenance expenses based on the enhanced value of assets, consequent to upward revision of the value of assets, without any actual value addition.

(viii) *Whether or not the order issued by the Hon'ble APTEL directing the respondent Commission to allow to the appellant, the return on equity at 15.5% as per the Central Commission's Regulations is legally valid especially in view of the fact that the regulations issued by the respondent Commission specifies the return on equity at 14%.*

(ix) *Whether or not all the expenses which have not been objected to in the audit of accounts of the licensee, should necessarily be approved in the prudence check by the respondent Commission especially in view of the concurrent findings of the Hon'ble APTEL and the Hon'ble Supreme Court to the effect that audited accounts are not binding on the Commission while conducting prudence check for the purpose of approving the expenses to be passed on to the consumers by way of tariff.*

(x) *Whether or not the appellant can be allowed to approbate and reprobate at the same time, the tariff orders issued by the respondent Commission.*

The above questions of law as well as the matters raised by KSEB Ltd in the appeal are therefore under the consideration of the Hon'ble Supreme Court

8. It is to be noted that M/s.KSEBL has approached Hon. Supreme Court against the judgment of APTEL on the order of the Commission on Truing up for 2010-11 and ARR&ERC order for 2012-13. Accordingly, the Commission considered the issue whether the pendency of appeals before Apex court, the application for Truing up filed by KSEBL can be considered for disposal. After analyzing the matter in detail, the Commission has arrived at a considered view on this issue that mere pendency of appeal petitions before the Apex Court cannot be construed as a reason for not implementing the judgment of the Hon'ble APTEL, unless Hon'ble Supreme Court granted stay or suspended the operation of the judgment

of the Hon'ble APTEL. Some of the relevant orders and judgments to support the said view are discussed below.

(i) The Hon'ble Supreme Court in Ratansingh v Vijaysingh & Ors. reported in (2001) 1 Supreme Court Cases 469 in para 9 observed as follows:

> *"9. Filing of an appeal would not affect the enforceability of the decree, unless the appellate court stays its operation. But if the appeal results in a decree that would supersede the decree passed by the lower court then it is the appellate court decree which becomes enforceable. When the appellate order does not amount to a decree there would be no supersession and hence the lower court decree continues to be enforceable."*

(ii) Further, Hon'ble Supreme Court in Civil Appeal No. 7988 of 2004 has observed as follows.

> *"The provision empowers the Tribunal to pass an order of stay by reference to Rule 5 of Order 41 of the Code of Civil Procedure 1908 (hereinafter 'the Code', for short). This position was not disputed by the learned senior counsel appearing for either of the parties.*
> *Sub-Rule (1) and (3) of Rule 5 of Order 41 of the Code read as under:-*
> *"R.5 Stay by Appellate Court (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.*
> *Xxx xxx xxx xxx (3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the court making it is satisfied ___*
> *(a) that substantial loss may result to the party applying for stay of execution unless the order is made;*
> *(b) that the application has been made without unreasonable delay; and*
> *(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.*
> *xxx xxx xxx xxx"*
> *It is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the court below. A prayer for the grant of stay of proceedings or on the execution of decree or order appealed against has to be specifically made to the appellate Court and the appellate Court has discretion to grant an order of stay or to refuse the same. The only guiding factor, indicated in the Rule 5 aforesaid, is the existence of*

sufficient cause in favour of the appellant on the availability of which the appellate Court would be inclined to pass an order of stay.

(iii) Hon'ble APTEL vide its judgment dated 27th February 2013 in Appeal Petition No. 184 of 2011 has observed as follows.

"*This Tribunal while allowing the Appeal in Appeal No.28 of 2010 has specifically dealt with the said issue and rejected the contentions of the State Commission regarding the pendency of the Appeal before the Hon'ble Supreme Court in the absence of stay. The relevant portion of the observation of this Tribunal on this point is as follows:*

"18. It is contended by the Learned Counsel for the State Commission that this claim cannot be allowed in pursuance of the order dated 13.01.2009 of Tribunal since the State Commission has filed an Appeal against the said order and therefore it has not attained finality. In reply to the above submission, the Learned Counsel for the Appellant has submitted that while the Appeal has been filed by the State Commission before the Hon'ble Supreme Court, there was a considerable delay in filing the Appeal and therefore they filed an application for condonation of delay which has not been disposed of yet and further no stay has been granted by the Hon'ble Supreme Court and therefore, the State Commission ought to have followed the finding of the Tribunal. We are unable to accept the submission made by the Learned Counsel for the State Commission since mere pendency of the Appeal before the Hon'ble Supreme Court, would not entitle the State Commission to observe that they would not follow the order of the Tribunal merely because an Appeal has been filed. In this case, it is relevant to refer to the Hon'ble Supreme Court's decision in the case of Shree Chamundi Mopeds Limited v. Church of South India Trust Association, Madras (1992) 3 SCC 1 wherein it was held that even a stay granted by the Hon'ble Supreme Court would not mean that the decision rendered by the Appellate Court would become non-est. Therefore, this point is allowed in favour of the Appellant.

21. *Even when this judgment rejecting the said contentions of the State Commission in Appeal No.28 of 2010 was brought to the notice of State Commission, unfortunately, the State Commission again refused to follow the judgment of this Tribunal in the impugned order dated 26.8.2011 indicating that the Appeal as against the judgment in Appeal No.133 of 2007 was pending before the Hon'ble Supreme Court without even referring to the other judgment in Appeal No.28 of 2010. In fact, the ratio decided on this issue has already attained finality in Appeal No.28 of 2010 as admittedly, no Appeal had been filed before the Hon'ble Supreme Court as against the said decision through the judgment dated 29.9.2010. Thus, this attitude on the part of the State Commission to ignore the decision taken by this Tribunal on this point, would* *show its audacity to challenge the majesty of this Tribunal by refusing to implement the same, which is most unfortunate.*

22. It is settled law as laid down by the Hon'ble Supreme Court in its various decisions that mere pendency of an Appeal can never be a ground for non implementation of the decision taken by this Tribunal in the absence of any stay by the Hon'ble Supreme Court. The State Commission being the subordinate authority, cannot violate the orders of this Tribunal and refuse to implement the same. It is neither sustainable in law nor appropriate for the State Commission to refuse to implement the decision rendered by this Tribunal on the ground that the decision has not achieved finality.

(iv) Hon'ble APTEL had vide its judgment dated 11th February 2014 in Appeal Petitions 112, 113 and 114 of 2013 discussed the issue in detail and observed as follows.

13. The important question of law involved in these three Appeals as vehemently argued by the learned counsel for the Appellants is whether the learned Orissa Commission is justified in not implementing and complying with the judgments of this Appellate Tribunal simply on the ground of pendency of civil appeals before the Hon'ble Supreme Court particularly when the execution or operation of the judgments of this Tribunal has not been stayed or suspended by the Hon'ble Apex Court?

14. The learned Orissa Commission filed a Civil Appeal No. 759 of 2007 before the Hon'ble Supreme Court against the judgment of this Tribunal dated 13.12.2006 passed in Appeal Nos. 77, 78 & 79 of 2006 whereby this Tribunal directed the Orissa Commission to take a relook of the entire matter while undertaking true-up exercise without sticking to its earlier views believing the Orissa Commission shall have a relook in this respect by taking a practical view of the ground realities instead of proceeding on assumptions and surmises. While giving this direction to the Orissa Commission, this Tribunal was sure that the Orissa Commission will take a relook of the matter and grant the benefits to the DISCOMs. The Civil Appeal before the Hon'ble Supreme Court is said to be still pending for disposal.

15. The learned Orissa Commission also filed Civil Appeal Nos. 3595-3597 of 2011 before the Hon'ble Supreme Court against the Full Bench decision dated 08.11.2010 of this Tribunal passed in Appeal no. 52-54 of 2007 whereby this Tribunal again held that the targets fixed by the Orissa Commission are very high and are unrealistic. These Civil Appeals are also said to be pending before the Hon'ble Supreme Court.

16. Thus principles of law and dictum laid down and directions given by this Tribunal in the aforesaid judgment dated 13.12.2006 and 08.11.2010 are not being implemented by the Orissa Commission on the pretext that the Civil Appeals against those judgments are pending before the Hon'ble Supreme Court even though the operation of the said judgments passed by this Tribunal has *neither been stayed nor any interim order has been passed by the Hon'ble Supreme Court as yet. Likewise, the learned Orissa Commission is also said to have filed appeal against the judgment dated 03.07.2013 of this Tribunal passed in Appeal no. 26-28 of 2009 & batch which is said to be at the stage of admission.*

17. The relevant provisions in this regard are given in Order XLI Rule 5 of The Code of Civil Procedure, 1908, which is reproduced below: "5. Stay by Appellate Court – (1) An appeal shall not operate as stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay or execution of such decree.
[Explanation. – An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay or execution or any order to the contrary, be acted upon by the Court of first instance.]"

18. The Hon'ble Supreme Court in Ratansingh v Vijaysingh & Ors. reported in (2001) 1 Supreme Court Cases 469 in para 9 observed as follows: "9. Filing of an appeal would not affect the enforceability of the decree, unless the appellate court stays its operation. But if the appeal results in a decree that would supersede the decree passed by the lower court then it is the appellate court decree which becomes enforceable. When the appellate order does not amount to a decree there would be no supersession and hence the lower court decree continues to be enforceable."

19. The Hon'ble Supreme Court again in Atma Ram Properties (P) Ltd. v Federal Motors (P) Ltd. reported in (2005) 1 Supreme Court Cases 705 in para 8 has observed as follows: "8. It is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the court below."
20. The settled law on the aforementioned point is that mere pendency of an appeal in the higher court against the judgment or order of the lower Appellate Court/Tribunal shall not be a ground to stay the enforcement of the said judgments or orders passed by the lower court/Regulatory Commission. The learned Orissa Commission has kept the issue pending at its own level, whims and fancies just on the ground that the appeals are pending before the Hon'ble Supreme Court, even though there is no stay on the enforcement or operation of the said judgments of this Tribunal by the Hon'ble Supreme Court.

21. After considering the above legal position, this view of the learned Orissa Commission of not implementing and enforcing the judgments of this Appellate Tribunal is not proper and correct. We think, if this practice is allowed to continue without any proper guidance by this Tribunal to the Regulatory Commissions, this would create judicial indiscipline and anarchy in the judicial hierarchy of the Justice delivery system provided by law. The learned Orissa Commission is expected and directed either to obtain a stay order or interim order from the

Hon'ble Supreme Court in the aforesaid appeals within a period of two months from today, otherwise implement the said judgments of this Tribunal positively in which appeals are pending before the Hon'ble Supreme Court and send compliance report to this Tribunal after the expiry of two months. The non-implementation of the aforesaid judgments of this Tribunal is creating confusion between the litigant parties and by implementation of the aforesaid judgments of this Tribunal the learned Orissa Commission also can correct or rectify all the infirmities and errors, etc. after complying with the directions given by this Tribunal in the aforesaid judgments and then the issues pending for years will be finally settled this way or that way bringing to an end the whole impasse.

(v) Considering the above judgments of the Hon'ble Supreme Court and Appellate Tribunal, the Commission has decided to comply with the directions contained in the judgment dated 10th November 2014 in appeal petition No.1 of 2013 and 19 of 2013, while truing up the accounts of KSEB Ltd for the year 2011-12. However, this order is subject to the judgment of the Hon'ble Supreme Court in Civil Appeal Nos. 5473 and 5474 of 2015.

9. In the meanwhile, KSEB Ltd had filed a petition before the Commission to re-consider the truing up petitions for the year 2010-11, as per the directions of the Hon'ble APTEL in its judgment dated 10-11-2014 in appeal petitions No.01 of 2013 and 19 of 2013. The Commission vide its order No. 1464/CT/2015 dated 07.01.2016 had decided and disposed of the petition as follows.

"The Commission has already issued orders on truing up of accounts relating to the financial year 2010-11. The judgment of the Hon'ble APTEL can be implemented only by reviewing the order issued by the Commission on truing up of accounts relating to the financial year 2010-11. The applications filed by KSEB Ltd for truing up of accounts relating to 2011-12 and 2012-13 are pending before the Commission. Therefore the directions contained in the judgment of the Hon'ble APTEL dated 10.11.2014 in appeal petitions Nos. 1/2013 and 19/2013 can be followed while passing orders on truing up of accounts relating to the financial years 2011-12 and 2012-13. For reviewing the order issued on truing up of accounts relating to 2010-11 and for passing orders on truing up of accounts relating to the financial years 2011-12 and 2012-13, the detailed proposals as called for by the Commission in its letter dated 13.07.2015 are required. As soon as KSEB Ltd submits the detailed proposals with necessary data required for taking appropriate decisions by the Commission in accordance with the directions of the Hon'ble APTEL, orders subject to the judgment of the Hon'ble Supreme Court in civil appeals Nos.5473 and 5474 of 2015, can be issued in the petitions filed by KSEB Ltd for truing up of the accounts relating to the financial years 2011-

12 and 2012-13 and in the petition to be submitted by the KSEB Ltd for reviewing the order issued by the Commission on truing up of accounts relating to 2010-11

The petition dated 21.07.2015 filed by KSEB Ltd is disposed of as above.”.

10. The Commission had, as per its letter No. 2227/F&T/2014/KSERC dated 29.01.2016, directed KSEB Ltd to submit on or before 29.02.2016, the following additional details / clarifications required for passing orders on the applications for truing up of accounts relating to 2011-12 and 2012-13.

“

1) *Status of compliance on the directives issued by the Commission vide the order dated 1st June 2011 in OP No. 5 of 2011 in the matter of ARR&ERC for the year 2011-12.*
2) *Status of compliance on the directives issued by the Commission vide the order dated 28th April-2012 in OP No. 3 of 2012 in the matter of ARR&ERC for the year 2012-13.*
3) *Submit the Cash flow statements for the years 2011-12 and 2012-13.*
4) *Steps taken by the Board for reducing the T&D loss for the years 2011-12 and 2012-13.*
5) *Details of the capital investments made during the years 2011-12 and 2012-13.*
6) *Source-wise details of additional borrowing (long term/ short term separately) resorted during 2011-12 and 2012-13 and repayment thereon and interest charges*
7) *Month wise, source wise details the power purchase costs (fixed, variable, other charges – incentives, separately) in the given format for the years 2011-12 & 2012-13.*

Power purchase details for the month of ………… the FY 2011-12								
Source	*Energy produced/ Purchased*	*Auxiliary Consumption*	*External Loss*	*Net Energy input to KSEB T&D system*	*Fixed Costs*	*Incentive Tax, etc.,*	*Total Variable Cost*	*Total Cost*
	MU	*MU*	*MU*	*MU*	*Rs.Cr*	*Rs.Cr*	*Rs.Cr*	*Rs.Cr*

Power purchase details for the month of ………… the FY 2012-13								
	Energy produced/	*Auxiliary Consumption*	*External Loss*	*Net Energy*	*Fixed Costs*	*Incentive Tax, etc.,*	*Total Varia*	*Total Cost*

Source	Purchased			input to KSEB T&D system			ble Cost	
	MU	MU	MU	MU	Rs.Cr	Rs.Cr	Rs.Cr	Rs.Cr

8) *Actual disbursement of interest on the security to the consumers for the years 2011-12 & 2012-13.*
9) *Details of function wise capital expenditure may be provided for the years 2011-12 and 2012-13 and the contribution received for capital expenditure from other sources (consumers, etc.,) may be provided.*
10) *The opening balance, additions, withdrawals and closing balance of provident fund (provisions/ actual separately) for the years 2010-11, 2011-12, 2012-13.*
11) *Details of rebate allowed to the consumers on advance payment of electricity charges.*
12) *Details of loans on which guarantee commission, if any, is payable to the Government for 2011-12 and 2012-13.*
13) *Year-wise details of guarantee commission actually paid to the Government up to 2012-13.*
14) *The Actual interest on GPF with details for the year 2011-12 and 2012-13.*
15) *Details on the estimate of depreciation for the years 2011-12 and 2012-13 as per CERC (Terms and Conditions of Tariff) Regulations, 2004.*
16) *The details of vintage of the assets and the percentage at which depreciation is claimed for the years 2011-12 and 2012-13.*
17) *Attention is invited to the directions in the order dated 28th October-2013 in RP No. 1/2013, in the matter of 'Review of the order on Truing Up of accounts of KSEB for the year 2009-10', wherein the Commission has directed KSEB to <u>maintain the original books of accounts in the manner necessary to charge the depreciation as per CERC norms,</u> for claiming depreciation as per CERC norms. Please report the status of compliance.*

18) *Board shall submit the complete split up details of employee costs showing all provisions separately (including no. of employees) for 2011-12 and 2012-13. Please provide the utilization of provisions under each head for 2011-12 and 2012-13 or later years.*

19) *Attention is invited to the directions of the Commission given under employee cost vide the order dated 1st June 2011 in OP No. 5 of 2011 in the matter of ARR&ERC for the year 2011-12, which is extracted below.*

> *"The Commission is concerned at the increase in the operational expenses of the Board. Now the situation is that as per the estimates of the Board for 2010-11 and 2011-12, the deficit is about Rs.3700 crore, which require massive increase in tariff of about 70%, which is at any rate beyond any reasonable level. The Commission in this context, would like to reiterate that the Board has to sincerely venture in for radical internal reforms to control the costs. These measures are not suggested as aiming at retrenchment or reducing the existing benefits allowed to the employees but to aim at measures especially at the HR level that include redesigning the tasks, re-training, re-tooling, process re-engineering, infusion of proper IT and technology, intervention aiming at improving the efficiency and productivity of employees. The Commission hopes that the Board management along with the employees of the Board will work in tandem towards that goal."*

Further, Commission vide the order dated 28th April-2012 in OP No. 3 of 2012 in the matter of ARR&ERC for the year 2012-13 has again directed as follows.

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

KSEB Ltd may report the status of compliance of above directives on employee cost.

20) *The category wise details of the employees as on 31-03-2012 and 31-03-2013.*

21) *The year wise details of increase in employee strength, in each category, during the period from 2008-09 to 2012-13.*

22) *The details of the DA released to the employees during the period from 2008-09 to 2012-13.*

23) *The details of the DR released to the pensioners during the period from 2008-09 to 2012-13.*

24) *The year wise details of the provision created for pay revision during the period from 2008-09 to 2012-13.*

25) *Amount of gratuity released to the employees who retired after 2008-09.*

26) *The year wise details of the provision created for DA and DR revision from 2008-09 to 2012-13.*

27) *The details with respect to employee costs for the year 2011-12 and 2012-13 with specific reasons for increase over and above the approved figures by the Commission.*

28) *The category wise details of the pensioners as on 31-03-2012 and 31-03-2013.*

29) *Split up of R&M expenses – consumption of stores, and other costs, etc., including provisions if any made for 2011-12 and 2012-13.*

30) *The R&M expenses for the year 2011-12 is higher than the approved amount and even the projections of the Board. Board shall provide the steps taken for limiting the R&M expenses and specific reasons for higher R&M expenses.*

31) *The circle-wise details of the R&M cost in Generation, Transmission and Distribution functional areas.*

32) *The necessary documents to substantiate the claim made in the application towards R&M expenses for the years 2011-12 and 2012-13.*

33) *The reason for the substantially high provision for cost of purchase as on 31-03-2013.*

34) *The reason for the high provision for liability for capital supply/ works as on 31-03-2013.*

35) *Year wise details of the electricity duty booked under 'other liabilities' till the year 2012-13.*

36) *The total amount of subsidy provided to the consumers and rebate allowed for the years 2011-12 & 2012-13. Please also state under which account such expenses/ income are accounted.*

37) *Details of withdrawal of credits for the year 2011-12 and 2012-13 with reasons to substantiate the same.*

38) *Board shall provide the split up details of miscellaneous charges under non-tariff income in 2011-12 and 2012-13.*

39) *Board shall provide the split up details of interest from banks (along with rate of interest) for the years 2011-12 & 2012-13.*

40) *The details of source-wise deposits and interest earned as at the end of 2010-11, 2011-12 and 2012-13.*

41) *Month wise details of the fuel surcharge collected during the year 2011-12 and 2012-13 and under which head it reflected in the audited accounts.*

42) *Details of bad debts provided by the KSEB Ltd for the years 2011-12 and 2012-13 with necessary details and documents to substantiate the claim.*

43) *KSEB Ltd shall submit detailed proposals on implementation of the orders passed by the Appellate Tribunal for Electricity in Appeal Nos.1/2013 and 19/2013, as per the letter of the Commission, letter No.356/CL/2013/KSERC/927 dated 13-07-2015. (copy enclosed)*

KSEB Ltd shall submit the above details on or before 29-02-2016.".

11. Though the Commission has instructed to file the above details by 29-02-2016, KSEB Ltd has submitted the details vide its letter No. KSEB/TRAC/ Truing up/ 2012-13/ 2845 dated 30-5-2016. The summary of the details submitted by KSEB Ltd is given below.

Item No. 1 & 2
Status of compliance of directives contained in the order dated 01.06.2011 and 28.04.2012 in the matter of ARR & ERC for the years 2011-12 & 2012-13 are given separately.

Item No:3
Cash flow statements for the years 2011-12 & 2012-13 are given separately.

Item No:4
KSEB Ltd has submitted the steps taken for reducing the T&D loss for the years 2011-12 and 2012-13, which includes commissioning of substations and lines, upgradation of existing substation and lines, construction of more high voltage distribution lines, re-conductoring of old LT lines with high capacity conductor, rearrangement of LT feeders for optimal loadings, replacement of faulty metes

and sluggish electromechanical meters with electronic meters, intensive power theft detection by anti power theft squad.

Item No.5

KSEB Ltd has submitted the project wise details of the capital expenditure for 2011-12 and 2012-13 before the Commission.

Item No.6

Source-wise details of borrowings, repayments and interest for 2011-12 and 2012-13 are furnished separately.

Item No.7

Month-wise, Source-wise power purchase cost for 2011-12 and 2012-13 is furnished separately.

Item No.8

Actual disbursement of interest on security deposit to consumers made by KSEB Ltd is Rs 58.19 crore and Rs 58.39 crore for the years 2011-12 and 2012-13 respectively.

Item No.9

As per information furnished by KSEB Ltd, the contribution and grant received for the years 2011-12 and 2012-13 are Rs 310.11 crore and Rs 379.20 crore respectively.

Item No.10

The details of the provident fund for the years 2010-11 to 2012-13 submitted by KSEB Ltd is detailed below.

Details of Provident fund (Rs in crore)				
Year	Opening Balance	Additions during the year	Withdrawals	Closing Balance
2010-11	627.53	204.87	144.10	688.30
2011-12	688.30	437.80	188.20	937.90
2012-13	937.90	328.71	114.60	1152.01

Item No.11

Discount allowed for timely payment of bills for the years 2011-12 and 2012-13 are Rs 0.69 crore and Rs 0.11 crore respectively.

Item No.12

The outstanding balance of loans secured by Government guarantee as on 31-03-2011 and 31-03-2012 are Rs 170.18 crore and Rs 121.20 crore respectively.

Item No.13

KSEB Ltd has submitted the details of the guarantee commission actually paid/ adjusted upto the year 2012-13.

Item No.14

Actual interest on GPF for the years 2011-12 and 2012-13 are Rs 63.97 crore and Rs 87.99 crore respectively. Interest on PF from 01-04-2011 to 30-11-2011 was 8% and 8.60% for the remaining period of 2011-12. Interest allowed on PF for 2012-13 was 8.80%.

Item No.15 & 16.

KSEB Ltd has submitted all the relevant details on the depreciation claimed for the years 2011-12 and 2012-13.

Item No.17

KSEB Ltd has submitted that, from 01-11-2013 onwards, KSEB Ltd has been charging the depreciation as per the CERC norms in the books of accounts maintained by it.

Item-18

KSEB Ltd has submitted the split-up details of the employee cost including number of employees.

Item No.19

KSEB Ltd has submitted a copy of the report on the seminal study conducted by IIM Kozhikode to assess the man power requirement on both Technical and Non-Technical wing.

Item 20 & 21.

KSEB Ltd has submitted the category wise details of the employees as on 31-03-2012 and 31-03-2013 and the year wise details of the increase in employee strength in each category.

Item No. 22 and 23

KSEB has submitted the details of the DA and DR released to its employees from 2008-09 to 2012-13.

Item No.24

KSEB Ltd has submitted the year wise details of the provision created for pay revision and pension during the period from 2008-09 to 2012-13. The details are given below.

Year	Pay revision (Rs. Crore)	Pension revision (Rs. Crore)	Total (Rs. Crore)
2008-09	81.25	43.75	125.00
2009-10	107.15	30.41	137.56
2010-11	107.15	30.41	137.56
2011-12	0.00	30.41	30.41
Total	295.55	134.98	430.53

Item No.25

The details of gratuity released to employees retired after 2008-09 are as follows:

Year	Amount (Rs.in crore)
2008-09	20.74
2009-10	27.16
2010-11	20.92
2011-12	23.06
2012-13	48.22

Item No.26

The details of the provision created for liability on account of DA and DR are furnished by KSEB Ltd , as follows.

Year	DA	DR	Total
2008-09	32.11	24.00	56.11
2009-10	13.38	7.92	21.30
2010-11	12.51	6.39	18.90
2011-12	18.20	12.00	30.20
2012-13	16.80	9.00	25.80

Item No.27

KSEB Ltd has submitted the report on the on reasons for increase in employee cost over the approved level.

Item No.28

KSEB Ltd has submitted the category wise details of pensioners as on 31-03-2012 and 31-03-2013.

Item No.29

KSEB Ltd has submitted the split up details of R&M expenses among consumption of stores and other provisions.

Item No.30,31 and 32.

KSEB Ltd has submitted the details of the R&M expenses booked for the years 2011-12 and 2012-13.

Item No.33

KSEB Ltd has submitted a detailed explanation on the substantially high provision of cost of power purchase as on 31-03-2013. KSEB Ltd has submitted that, due to the failure of monsoon, KSEB Ltd has forced to schedule costly power from liquid fuel stations and also purchased power at higher rates from power exchanges and short-term market. This has resulted in to a situation that, the monthly bills of power purchase has exceeded the monthly revenue receipts. Due to the severe financial crisis faced by the KSEB Ltd, it had deferred the payment of power purchase bills. The details of the deferred payment of power purchase bills as on 31-03-2013 was Rs 1711.21 crore. The total outstanding liabilities of power purchase bills pertains to the year 2012-13 as on 01-06-2013 was Rs 1164.74 crore. The details are given below.

Description	**Power purchase claims pending as on 01.06.2013 pertains to the year 2012-13**	
Power purchase NTPC	976.5	
Power purchase NLC	93.15	
Transmission Charges - PGCIL	45.23	
Power purchase APCPL	49.86	
Total cost of power purchase deferred as on 01-06-2013		**1164.74**

Item No.34

KSEB Ltd has submitted that, *'KSEB has executed capital works to the tune of 844.18 crore in 2012-13. The Board was forced to defer the payments to the maximum possible extent in view of the acute financial position that resulted out of monsoon failure. The assignments to field offices were delayed even by 6 months during the year 2012-13, which resulted in accumulation of liabilities due to non discharge of liabilities in time.'*

Item No.35

Regarding the details of the electricity duty payable to the Government, KSEB Ltd has submitted as follows:

"Electricity duty payable to Government till 31.03.2006 amounting to Rs.1692.01 crore was netted off. Year wise details of Electricity duty booked there after till 31.03.2013 is furnished below:

Year	Total
2006-07	260.24
2007-08	276.13
2008-09	370.64
2009-10	340.91
2010-11	383.38
2011-12	427.60
2012-13	529.15
Total	2588.05

It may kindly be noted that the amount payable to the Government has been duly taken care of while drawing the Balance sheet of KSEB Ltd during the re vesting process."

Item No.36

KSEB Ltd has submitted the details of the subsidy provided to the consumers and rebate allowed for the years 2011-12 and 2012-13, as follows.

Rs.in crore

Year	Subsidy U/s 65 of EA 2003	Discount to consumers	Rebate allowed to Traders
2011-12	44.67	0.69	0.28
2012-13	281.98	-0.11	0.00

Item No.37

KSEB Ltd has submitted the details of the withdrawal of credits for the years 2011-12 and 2012-13.

Item No.38

The split details of the miscellaneous charges under non-tariff income for the years 2011-12 and 2012-13, was provided by KSEB Ltd.

Item No.39 and 40.

KSEB Ltd has submitted the details of the source wise deposits and interest from banks for the years 2011-12 and 2012-13.

Item No. 41
The details of the fuel surcharge collected from consumers during the year 2011-12 and 2012-13 is detailed below.

Sl No	Account head	FUEL SURCHARGE	2011-12	2012-13
			Amount (In Crores)	Amount (In Crores)
1	61 213	Domestic - Fuel Surcharge	81.62	156.27
2	61 223	Commercial - Fuel Surcharge	20.67	38.66
3	61 233	Public Lighting - Fuel Surcharge	3.48	6.55
4	61 243	Irrigation & Dewatering - Fuel Surcharge	2.58	4.34
5	61 246	Paddy Cultivators - Fuel Surcharge	0.55	1.18
6	61 253	Public Water Works - Fuel Surcharge	3.43	6.01
7	61 273	Industrial L.T. - Fuel Surcharge	10.20	18.09
8	61 283	Railway traction - Fuel Surcharge	1.60	3.17
9	61 293	Bulk Supply - Fuel Surcharge	3.21	10.09
10	61 323	H .T - Fuel Surcharge	25.16	45.36
11	61 333	E.H.T - Fuel Surcharge	11.92	23.16
		Total	**164.42**	**312.88**

Item No.42
KSEB Ltd submitted that, no further provision over the withdrawal of credits has been made towards bad debts during the years 2011-12 and 2012-13.

Item No.43
KSEB Ltd has provide the necessary details for implementing the orders passed by Hon'ble Appellate Tribunal for Electricity in appeal Nos. 1/2013 and 19/2013.

The Commission has considered the above reply of KSEBL appropriately for disposing of the application for truing up for the year 2011-12.

Public hearing on the petition

12. Immediately after the receipt of the required details sought by the Commission for processing the petition, the Commission had scheduled a public hearing on the applications for truing up for the years 2011-12 & 2012-13 on 12-7-2016 at Court Room, Thiruvananthapuram. M/s KSEBL

was represented by Sri. Joseph V.K, Chief Engineer, (Commercial & Tariff), Smt. Sreedevi.B Dy. Chief Engineer (Commercial), Sri. Biju.R, Financial Advisor & Chief Accounts Officer, Sri. K.G.P Namboothiri, Executive Engineer (TRAC), Sri. Girish Kumar V.S, Finance Officer, (TRAC). Sri. Joseph V.K, Chief Engineer presented the details of the application. Sri. Joseph V.K and Sri. Biju, responded to the queries of the Commission on the truing up of accounts for the years 2011-12 & 2012-13.

13. Sri. Dijo Kappan representing the Consumer Education Trust, presented the views and objections on the claims made by KSEBL. He stated that the claim of the licensee on Employee cost and Repair and maintenance cost are on the higher side and the same shall not be passed on to the consumers. He stressed that the Commission should have a look into the unnecessary posts sanctioned by the licensee, which is a reason for higher employee cost. The licensee may also be directed to have a proper perspective taking into consideration the trends existing in the economy while planning for procuring power from open market. He also requested that the hearing may also be conducted on other parts of the State, so that, consumers of other parts of the State too can submit their views and comments on the matter.

14. Sri. K.R.Radhakrishnan representing High Tension & Extra High Tension Electricity Industrial Consumers Association had requested before the Commission to grant another opportunity to submit their views and comments.

15. Sri. Shaji Sebastian, KSSIA, presented the views of Kerala Small Scale Industries Association. He stated that, the claim made by KSEB Ltd under miscellaneous expenses should be verified. According to him, the legal expenses claimed by the licensee are also on the higher side. He further mentioned that KSEBL is not taking any pro-active steps for promotion of renewable energy.

16. During the hearing held on 12-7-2016, the Commission had directed KSEB Ltd to submit the following additional details.

(a) The details of the base of capitalization of employee cost, A&G expenses and interest and finance charges.

(b) Details of the interest on security deposit actually paid and claimed under truing up of accounts.

(c) The methodology followed for booking the consumer contribution and grants.

(d) Separate books of account should be maintained for Generation, Transmission and Distribution businesses.

(e) Accounting policy followed by the Board for the apportionment in Generation, Transmission and Distribution businesses.

(f) Details of the outstanding Loans of KSEBL including the purpose for which the same was availed.

(g) Details of the category wise details of employees as on 31-03-2012, 31-03-2013, 31-03-2014, 31-03-2015, 31-03-2016, each functional area including generation, transmission and distribution.

(h) Details of the assets withdrawn during the year 2011-12 and 2012-13.

(i) Details of the replacement of assets made during the year 2011-12 and 2012-13.

(j) Details of the claim made under the provision of bad debt.

17. In addition to the above, the Commission vide letter dated 26-7-2016 further directed KSEB Ltd to clarify whether the applications for truing up for the years 2011-12 and 2012-13 were filed in compliance of the judgment of the Hon'ble APTEL dated 10th November, 2014 in appeal petitions No. 1 of 2013 and 19 of 2013. If not KSEB Ltd should provide necessary and sufficient details to implement the directions of the Hon' APTEL. KSEB Ltd has submitted its reply on 8-8-2016.

18. As requested by the HT&EHT Electricity Industrial Consumers Association, the Commission conducted the second hearing on the applications for approval of truing up of accounts on 09-08-2016 at Court hall of the Commission at Thiruvananthapuram. The HT&EHT Electricity Industrial Consumers Association was represented by Sri. George Thomas, Sri.A.R.Satheesh & Sri. A.A.M.Navas. Sri. George Thomas, presented in detail the views of the association and submitted written remarks. In the

presentation, specific comments/remarks were submitted on each claim made by the licensee in the applications for the truing up of accounts for the financial years 2011-12 & 2012-13. The major issues raised by the HT & EHT Association were:

(1) To disallow the true up petition on the background of KSEB Ltd joining the UDAY scheme, as was done by AP Commission.
(2) KSEB has not reported the T&D losses at each voltage level and no study has been carried out by the licensee in spite of repeated orders of the Commission.
(3) The Association requested the Commission to verify the cost benefit analysis reports and quarterly progress reports to ascertain the actual capital expenditure to be approved for the purpose of calculation of interest on loans and bonds.
(4) The amount collected as OYEC is being maintained by KSEB Ltd and the same should be used for reducing the working capital requirement of the licensee.
(5) The Association requested to carefully examine the manner in which OYEC amount collected was accounted.
(6) The employee cost components of the KSEB is much higher compared to other similar bundled utilities.
(7) The licensee has not complied with the directives issued by the Commission pertaining to Standards of Performance.
(8) The A&G and Repairs and Maintenance cost are much higher and hence should be allowed only after proper prudence check.
(9) Allow Return on Equity only at 14%.
(10) To disallow Electricity duty accounted by the licensee.

19. During the hearing, the Commission directed KSEB Ltd to submit the following:-

(1) The details along with supporting documents relating to the decision of KSEB Ltd. on joining the Ujjawal Discom Assurance Yojana (UDAY) Scheme.
(2) The details on the voltage wise cost of supply.
(3) The remarks and documents to substantiate the claims on power purchase from CGS and IPPs.
(4) The details on the modality followed in accounting the OYEC charges.
(5) The details on the prior period expenses

(6) Reason for the sudden increase in the bad debts and documents on the accounts stating the details on the provision for bad debts.

(7) A copy of the study report conducted by IIMK.

(8) Details of the interest on security deposit actually paid and claimed under truing up of accounts.

KSEB Ltd has submitted its reply vide its letter dated 22-09-2016.

20. With regard to the details pertaining to joining of KSEB Ltd to UDAY scheme, it has been reported by KSEB Ltd that, the question of whether to join the scheme is at the discretion of the State Government since as per the scheme, the participating State should undertake to achieve operational and financial turnaround of DISCOMs with measures outlined in the scheme. As per the scheme, Government of Kerala will have to take over 75% of the loan liability of KSEBL as on 30.09.2015. KSEB Ltd as per letter dated 28.12.2015 had intimated its willingness to the government to join the scheme. Government of Kerala (GOK) as per letter 8565/C1/15/PD dated 03.08.2015 informed MOP, GOI that Kerala is willing to sign MoU of UDAY for the operational efficiency improvement part alone. As the GOK has consented to sign the operational improvement part alone, the draft MoU prepared by the MoP for the scheme in total cannot be used and KSEBL has therefore to honor the capital liabilities on its own.

21. The Commission analyzed the above reply and decided to get the opinion of the State Government on the same. This was done since, it is the GOK which has to take a final decision with regard to the extent of participation under the scheme. Hence Commission wrote to GOK to intimate the commission its stand on the matter. No reply has been received from GOK yet.

22. The Commission, sought further clarifications vide its letter **dated 15-12-201**6 and KSEBL had furnished the replay on 16-1-2017and 15-02-2017**.**

Analysis and decision of the Commission

23. The Commission has considered the petition, the objections of the stakeholders and the arguments of the KSEBL. The findings of the Commission on various items of the petition are as follows:

Energy sales

24. In the order on ARR&ERC for the year 2011-12, the Commission had approved the energy sale for the year 2011-12 at 15600.15 MU. But the actual sale of energy as per the application for approval of truing up of accounts was 15980.53 MU up by 2.5% of the approved figures. The details are given below.

Table-2
Energy sale for 2010-11 and 2011-12 (MU)

Category	**2010-11** Actuals	**2011-12** Approved	Actuals	Increase (+) / Decrease (-) over approved level	Percentage increase over previous year
	(MU)	(MU)	(MU)	(MU)	(%)
LT Domestic	6877.83	7460.00	7705.86	245.86	12.04
Industrial	1053.45	1118.84	1097.04	-21.80	4.14
Commercial & Non Domestic	1951.74	2104.00	2141.22	37.22	9.71
Irrigation	231.56	260.00	286.18	26.18	23.59
Public Lighting	265.68	307.00	294.26	-12.74	10.76
Sub total	**10380.26**	**11249.84**	**11524.56**	274.72	11.02
HT Industrial	1516.01	1572.00	1595.68	23.68	5.26
Non-Industrial	101.71	119.30	115.86	-3.44	13.91
Commercial & Non Domestic	756.30	822.00	866.62	44.62	14.59
Others (Irrigation)	8.00	8.36	8.11	-0.25	1.37
Subtotal	**2382.02**	**2521.66**	**2586.27**	64.61	8.57
EHT 66KV	341.17	370.67	360.49	-10.18	5.66
110 KV	839.95	825.00	882.63	57.63	5.08
Railways	156.39	169.98	154.49	-15.49	-1.21
Subtotal	**1337.51**	**1365.65**	**1397.61**	31.96	4.49
Bulk Supply	448.11	463.00	472.09	9.09	5.35
Total	**14547.90**	**15600.15**	**15980.53**	380.38	9.85

25. KSEB Ltd has submitted that, the increase in energy demand over approved level is due to the following.

(i) KSEB has not introduced restriction on the use of energy during the year 2011-12.

(ii) KSEB has been providing quality power at right voltage to its consumers.

(iii) New service connections added and changes in the consumer habits and preferences.

26. As detailed above, the energy sale within the State has increased by 380.38 MU (2.43%) over the approved level. The increase was mainly contributed by the domestic and commercial categories.

27. Further, compared to the previous year, total energy sales has increased by 9.8% . Of the total sales, 72% is accounted for by the LT consumers, 16% by the HT Consumers and the balance of 12% by EHT and Bulk consumers. Domestic Consumption accounts for 48% of the total energy sales and the increase in consumption of this segment is 12% as compared to the previous years' figure which is greater than the State average of 9.85%. There is a decline in the consumption of LT Industrial, EHT 66 KV, Public Lighting and Railways. The Commission approves the actual energy sale reported by the KSEB Ltd for the purpose of truing up.

T&D loss

28. While approving the ARR&ERC for the year 2011-12, the Commission had approved a loss reduction target of 0.69% over the approved T&D loss level of 16% for the previous year 2010-11. Accordingly, the T&D loss level approved for the year 2011-12 was 15.31% (i.e., 0.69 % less than the T&D loss target of 16% approved for the year 2010-11).

29. As per the truing up of accounts, the actual T&D loss reduction achieved by the KSEB Ltd for the year 2011-12 was 0.44% less than the actual loss of 16.09% for the year 2010-11. Thus, the actual loss level reported by the licensee for the year 2011-12 is 15.65%.

30. As per the judgment of the Hon'ble APTEL dated 12th November, 2009 in appeal petition No. 94 of 2008, in the process of truing up, the Commission should have considered the actual loss level for the previous year as the base for approving the target for the current year concerned, since the penalty/ incentive was already allowed for the under achievement in T&D loss for the previous year.

31. The loss reduction target approved for the year 2011-12 was 0.69% over the 2010-11 approved figure. Against the target of 15.40%, the actual loss level reported by the licensee was 15.65%.

32. As per the application for truing up, the KSEB Ltd has reported the net generation and power purchase for the year 2011-12 at 18946.29 MU for supplying 15980.53MU to the consumers at a T&D loss level of 15.65%.

33. The Commission had time and again highlighted the need for voltage wise study and to report the losses separately as technical and commercial. This will enable the stakeholders to have a better appreciation of the nature of the loss and also help the management to take corrective steps. However the licensee has not taken any earnest effort to do the same in spite of repeated reminders. The Commission hence show cause the licensee has to why action should not be initiated against the licensee as per Section 142 of the Act and to submit the details of the study if any conducted by the licensee in this front.

34. The net generation and power purchase for supplying 15980.53 MU at the loss of 15.40% is only 18889.51 MU as against the 18946.29 MU reported by KSEB Ltd. Accordingly, the excess power purchase on account of non-achievement of T&D loss reduction target is estimated at 56.77MU for the year 2011-12. The details are given below.

Table-3
Excess power purchase on account of non-achievement of T&D loss reduction target

Sl No.	Particulars	Unit	ARR order	Actuals for the year 2011-12	Approved for true up
1	Energy sales within the State	(MU)	15600.00	15980.53	15980.53
2	T&D Loss as percentage of total energy input	(%)	15.31	15.65	15.40

3	Net Generation and Power Purchase at KSEB periphery (excl. PGCIL	(MU)	18420.00	18946.29	18889.52
4	Excess power purchase on account of under achievement of T&D loss (18946.29-18889.52)	(MU)			56.77

Generation and Power purchase

35. The Commission in the ARR order for the year 2011-12 had approved the hydel generation at 8258 MU, where as the actual hydel generation was 8058MU. The Commission had approved the generation of 318.81MU from the diesel stations at a cost of Rs 264.58 crore. The actual generation from diesel stations was 281.84MU at a cost of Rs 281.65 crore. While the approved variable cost of generation for BDPP was Rs 8.32 per unit and that for KDPP was Rs 8.27 per unit, where as the actual variable cost was Rs 10.11 per unit for BDPP and Rs 9.97 per unit for KDPP. A summary of the generation from BDPP and KDPP and the cost incurred is given below.

Table-4
Summary of the generation and cost from BDPP & KDPP for the year 2011-12

Month	KSERC Approval			Actual			Difference	
	Quantity	Rate	Amount	Quantity	Rate	Amount	Quantity	Amount
	(MU)	(Rs/kWh)	(Rs.Cr)	(MU)	(Rs/kWh)	(Rs.Cr)	(MU)	(Rs.Cr)
BDPP	91.65	8.32	76.62	54.29	10.11	54.89	-37.36	-21.73
KDPP	227.16	8.27	187.96	227.55	9.97	226.76	0.40	38.80
Total	318.81		264.58	281.84		281.65	-36.96	17.07

36. As per the application for truing up, the details of power purchase from central generating stations for the year 2011-12 are given below.

Table-5
Comparison of actual and approved power purchase from CGS for the year 2011-12

Station	ARR order			Actuals			Difference	
	Quantity	Amount	Avg. tariff	Quantity	Amount	Avg. tariff	Quantity	Amount
	(MU)	(Rs. Cr)	(Rs/ kWh)	(MU)	(Rs. Cr)	(Rs/ kWh)	(MU)	(Rs. Cr)
Talcher II	3008.00	771.26	2.56	2969.18	881.57	2.97	-38.82	110.31
NLC-II Stage -1	393.00	71.98	1.83	432.35	114.22	2.64	39.35	42.24

NTPC- Ramagundam (I,II&III)	2431.00	549.61	2.26	2463.19	587.58	2.39	32.19	37.97
NLC-II Stage-2	557.00	91.90	1.65	617.81	167.56	2.71	60.81	75.66
NLC-Expansion stg 1	354.00	105.40	2.98	401.61	165.05	4.11	47.61	59.65
NLC-Expansion II	175.00	70.18	4.01	0.00	0.00		-175.00	-70.18
Simhadry exp	314.00	89.12	2.84	168.02	65.80	3.92	-145.98	-23.32
MAPS	129.00	27.60	2.14	112.69	24.54	2.18	-16.31	-3.06
Kaiga stg 1	257.00	84.13	3.27					
Kaiga stg 2	240.00	77.00	3.21	416.85	135.87	3.26	-80.15	-25.26
Kudamkulam	242.00	82.82	3.42	0.00	0.00	0.00	-242.00	-82.82
Vallur	71.00	22.44	3.16	0.00	0.00	0.00	-71.00	-22.44
ER				297.07	99.68	3.36	297.07	99.68
Total	8171.00	2043.44	2.50	7878.77	2241.87	2.85	-292.23	198.43

37. KSEB Ltd has also submitted that, it had procured 533.42 MU as unscheduled interchange by incurring Rs 132.65 crore, at the average rate of Rs 2.49 per unit.

38. The details of the power purchase from IPPs as submitted by KSEB Ltd are shown below.

Table-6

Comparison of the power purchase from IPPs during the year 2011-12

Station	ARR order					Actuals					Difference	
	Quantity	Fixed cost	Variable cost/ Energy charge		Total (FC+ VC)	Quantity	Fixed cost	Variable cost/ Energy charge		Total (FC+ VC)	Quantity	Amount
	(MU)	(Rs.Cr)	(Rs/ kWh)	Amount	(Rs. Cr)	(MU)	(Rs. Cr)	(Rs/ kWh)	Amount	(Rs. Cr)	(MU)	(Rs. Cr)
RGCCPP	1003.00	93.38	8.79	881.25	974.63	486.4	202.77	10.08	490.19	692.96	-516.64	-281.67
BSES	0.00	87.72	8.95	0.00	87.72	46.61	87.00	9.76	45.47	132.47	46.61	44.75
KPCL	27.00	7.64	8.93	24.17	31.81	10.05	6.79	11.19	11.25	18.04	-16.95	-13.77
Wind	62.00	0.00	3.14	19.33	19.33	74.5	0.00	3.14	23.34	23.34	12.50	4.01
Ullumkal	34.00	0.00	2.00	6.80	6.80	23.16	0.00	2.00	4.63	4.63	-10.84	-2.17
MP Steel	41.00	0.00	2.31	9.42	9.42	20.51	0.00	2.31	4.74	4.74	-20.49	-4.68
Iruttukkanam	8.00	0.00	2.70	2.13	2.13	17.62	0.00	2.70	4.76	4.76	9.62	2.63
Philips Carbon	0.00	0.00	0.00	0.00	0.00	36.35	0.00	2.05	7.44	7.44	36.35	7.44
Total	1175.00	188.74		943.10	1131.84	715.2	296.56		591.82	888.38	-459.84	-243.46

39. As per the details submitted by KSEB Ltd, the actual schedule from RGCCPP Kayamkulam is less by about 516.60 MU, however, the cost of power purchase from RGCCPP was reduced only by Rs 281.67 crore. The Commission has examined the monthwise details of schedule from RGCCPP during the year 2011-12 and the details are given below.

Table-7

Details of energy schedule and the fixed cost and variable cost paid to RGCCPP

Month	Quantity (MU)			Fixed cost (Rs.Cr)			Variable cost (Rs/unit)			Remarks
	Approved	**Actual**	**Difference**	Approved	Actual	Difference	Approved	Actual	Difference	
Apr-11	**99.14**	**104.34**	**5.20**	7.78	7.78	0.00	8.79	9.71	0.92	
May-11	**102.44**	**67.85**	**-34.59**	7.78	7.50	-0.28	8.79	10.17	1.38	
Jun-11	**99.14**	**30.62**	**-68.52**	7.78	7.78	0.00	8.79	9.94	1.15	
Jul-11	**51.22**	**5.45**	**-45.77**	7.78	7.82	0.04	8.79	9.78	0.99	
Aug-11	**51.22**	**0.00**	**-51.22**	7.78	12.10	4.32	8.79			CERC revise the fixed cost
Sep-11	**49.57**	**0.00**	**-49.57**	7.78	17.95	10.17	8.79			TNEB withdraws from sharing 50% of the capacity from RGCCPP
Oct-11	**51.22**	**69.43**	**18.21**	7.78	24.20	16.42	8.79	9.68	0.89	
Nov-11	**99.14**	**53.54**	**-45.60**	7.78	23.38	15.60	8.79	9.71	0.92	
Dec-11	**102.44**	**0.00**	**-102.44**	7.78	24.20	16.42	8.79	10.29	1.50	
Jan-12	**102.44**	**30.28**	**-72.16**	7.78	24.20	16.42	8.79	9.80	1.01	
Feb-12	**92.53**	**29.95**	**-62.58**	7.78	22.37	14.59	8.79	10.15	1.36	
Mar-12	**102.44**	**94.90**	**-7.54**	7.78	23.48	15.70	8.79	11.05	2.26	
Total	**1002.94**	**486.36**	**-516.58**	93.38	202.77	109.39				

40. As per the application for truing up, KSEB Ltd had purchased 1682.62 MU through traders and energy exchange at an average rate of Rs 5.07 per unit during the year 2011-12. The details of purchase of power from the traders are given below.

Table-8

Summary of the energy procurement through traders and energy exchanges

	Particulars	Energy procured (KSEB periphery)	Total Amount	Per unit cost
		(MU)	(Rs.Cr)	(Rs/ kWh)
1	TATA	49.72	30.33	6.10
2	GMRETL	59.99	27.79	4.63
3	JSWPTC	515.03	211.79	4.11
4	IEX	494.42	292.40	5.91
5	PXIL	72.40	37.03	5.11
6	RPTCL	8.56	3.34	3.90
7	RETL	33.58	13.96	4.16
8	Arunachal	0.05	0.02	4.00
9	MPPTCL	13.06	5.30	4.06
10	IEX Term ahead	225.10	122.29	5.43
11	PXIL Term ahead	18.75	9.82	5.24
12	Global	133.44	65.55	4.91
13	TPTCL	6.28	3.27	5.21
14	RPG PTCL	7.02	2.77	3.95
15	Mittal	3.00	1.76	5.87
16	WPCL	42.22	25.22	5.97
	Total	1682.62	852.63	5.07

41. KSEB Ltd had also submitted that, during the year 2011-12, KSEB had paid Rs.259.78 crore to PGCIL as transmission charges against Rs 244.40 crore approved by the Commission.

42. The summary of the cost of power purchase approved by the Commission for the year 2011-12 vide the orders on ARR and the actual as per the audited accounts is given below.

Table-9
Summary of the cost of power purchase claimed for the year 2011-12

Particulars	ARR order			As per Accounts			Difference	
	Quantity	Amount	Avg rate	Quantity	Amount	Avg rate	Quantity	Amount
	(MU)	(Rs. Cr)	(Rs/ kWh)	(MU)	(Rs. Cr)	(Rs/ kWh)	(MU)	(Rs.
CGS	8171	2043.3	2.50	7878.77	2241.87	2.85	-292.23	198.43
UI				533.42	132.65	2.49	533.42	132.65
IPPs	1175	1131.84	9.63	715.16	888.38	12.42	-459.84	-243.46
Traders / Exchanges	536	240.99	4.50	1682.62	852.63	5.07	1146.62	611.64
Swap return				49.02			49.02	
Transmission Charges		244.4			259.78			15.38
Total	9882	3660.67	3.70	10858.99	4375.31	4.03	976.99	714.64

43. The Commission had examined in detail the cost of generation and power purchase claimed by the KSEB Ltd for the year 2011-12. The Commission had also examined the supporting documents. It is noted that NLC-Expansion II, Kudamkulam and Vallur did not commence commercial operation during the year as was expected and hence the provision set aside in the ARR for scheduling power from these stations did not materialize. As per the original ARR order 83% (8171 MU of a total 9882 MU units) of the total power purchase requirement of the utility was envisaged from CGS and 55% of the power purchase budget was earmarked for the same while 12% of the purchase requirement was assigned to IPP with a 31% allocation of the cost. However as per the actuals, CGS accounted for only 73% of the volume and accounted for 51% of the cost while IPP contributed to 6.6% of the volume of power purchased but accounted for 20% of the cost. The shortfall in the CGS volume was mainly made good by Traders/Exchanges and UI. The average rate of power purchase from IPP was as high as Rs. 12.42 per kWh, an increase of 29% from the budgeted figure for Rs. 9.63 per kWh.

The overall power purchase cost per unit was Rs.4.03 per kWh which was higher by 9% from the ARR figure of Rs.3.70 per kWh.

44. It is also noted that even though there was no provision for scheduling BSES power it is seen that, during the month of April, 2011, KSEB has scheduled 46.61 MU from BSES @ Rs. 9.75 variable cost per unit totaling to Rs.44.75 crore. The scheduling from BSES was mainly for sale out side the State at higher rate. The details are given below.

Table-10
Details of sale outside the state during the month of April-2011

Sl No	Source	Quantum (MU)	Amount (Rs.Cr)	Avg. rate (Rs/ kWh)
1	IEX	26.87	32.61	12.14
2	PXIL	1.69	2.17	12.84
3	TNEB	24.70	28.25	11.44
4	Total	53.26	63.03	11.83

45. The HT&EHT Association has pointed out that KSEBL has provided actual generation for 2011-12 as 8006 MU, after accounting for auxiliary consumption at 0.65%, when the Commission has approved hydro generation considering auxiliary consumption at 0.50% for hydel generation stations. Hence the Objector had requested the Commission to allow higher generation of 11.99 MU (0.65% - 0.50%) from hydel stations on account of auxiliary consumption and disallow the cost for an equivalent quantum at the cost of marginal stations. The Commission had examined the figures of auxiliary consumption provided by the licensee as per its audited accounts and it is seen that auxiliary consumption on generation stations is 38.45 MU out of a total hydel generation of 8058.01 MU which accounts for only 0.487% which is within the approved figures.

46. However, the cost of generation and power purchase claimed by the licensee for the year 2011-12 is for the total generation and purchase quantity of 18946.29 MU, which includes the excess power purchase of 56.77MU on account of under achievement of the T&D loss reduction target approved by the Commission for the year 2011-12. As per the methodology adopted by the APTEL in its judgment dated 12th November

2009 in appeal petition No. 94 of 2008 filed by KSEB against the first true up orders of the Commission for the years 2003-04 and 2004-05, read along with the judgment of the Hon'ble APTEL dated 4-12-2007 in appeal petition No. 100 of 2007 and appeal petition No. 9 of 2008, additional cost of purchase due to non-achievement of the loss target shall be deducted from the power purchase cost. The Commission has been following the same principle since for the truing up of accounts for the year 2003-04 onwards. Accordingly the average power purchase cost is worked out as follows:

Table-11
Average cost of power purchase for the year 2011-12

Particulars	As per Accounts	
	Quantity	Amount
	(MU)	(Rs. Cr)
Central Generating Stations	7878.77	2241.87
UI	533.42	132.65
IPPs	715.16	888.38
Traders / Exchanges	1682.62	852.63
Transmission Charges		259.78
Total	10809.97	4375.31
Average cost of power purchase (Rs/ kWh)	4.05	

47. The average cost of power purchase works out to Rs 4.05 per unit. Hence the total disallowance of cost of power purchase for 56.77 MU is Rs 22.99 crore.

48. Thus the total generation and power purchase cost approved for truing up of 2011-12 would be Rs 4633.97 crore as against the Rs 4656.96 crore as per the audited accounts as shown below.

Table-12
Cost of generation and Power purchase approved for the year 2011-12

Particulars	ARR order (Rs.Cr)	Actual (Rs.Cr)	Trued up (Rs.Cr)
Cost for internal generation (BDPP+ KDPP)	264.58	281.65	281.65
Power Purchase cost	3660.67	4375.31	4375.31
Less Power purchase cost deducted on non-achievement of T&D loss target			(22.99)
Total Generation and Power purchase cost	3925.25	4656.96	4633.97

Depreciation

49. The Commission vide the order dated 1st June 2011 in petition OP No. 5 of 2011 had approved the depreciation for the year 2011-12 as Rs 548.37 crore at the CERC rates applicable for the tariff period 2009-10 to 2013-14. The details are given below.

Table-13
Provisionally approved depreciation for 2011-12

Asset Class	GFA at the beginning of 2009-10	GFA at the beginning of 2010-11	Addition to GFA in 2010-12	GFA at the beginning of 2011-12	Rate of Depreciation	Depreciation allowed for 2011-12
	Rs. Crore	Rs. Crore	Rs. Crore	Rs. Crore	(%)	Rs. Crore
Land & Rights	280.80	306.27	25.62	331.89	-	-
Buildings	497.20	536.50	44.88	581.38	3.34	19.42
Hydraulic Works	899.02	974.37	81.51	1,055.88	5.28	55.75
Other Civil Works	301.93	325.36	27.22	352.58	3.34	11.78
Plant & Machinery	3,454.35	3,767.85	315.19	4,083.04	5.28	215.58
Cable Network etc	3,753.53	4,205.45	351.80	4,557.25	5.28	240.62
Vehicles	13.05	13.57	1.14	14.71	9.50	1.40
Furniture and Fixtures	13.92	15.04	1.26	16.30	6.33	1.03
Office Equipments	35.22	40.62	3.40	44.02	6.33	2.79
Total	**9,249.02**	**10,185.03**	**852.02**	**11,037.05**		**548.37**

50. Subsequently, the Commission vide the order dated 13-4-2012 has ordered that, from the year 2010-11 onwards, the Commission shall not allow depreciation on the assets created out of consumer contribution. The relevant portion of the order is extracted below.

> **"Orders of the Commission**
> *29. The Commission after examining the matter in detail hereby orders as follows:*
> *a. Depreciation need not be allowed on assets created out of contributions and grants by any Licensee in the State as a general rule. In the case of KSEB, this will be made applicable from 2010-11 and proposal for clawing back the depreciation already claimed upto 2009-10 is dispensed with.*
>
> *b. In future, all licensees shall provide separate statements under capital works programme for assets to be created out of contributions and grants in their ARR&ERC / truing up petitions. The depreciation estimations in these petitions shall also distinctly indicate the value of assets for which*

depreciation is claimed and that which is created out of contributions and grants.”

Accordingly, in the process of truing up for the year 2011-12, the depreciation on the assets created out of consumer contribution do not qualify for depreciation.

51. Further, from the year 2009-10 onwards, the Commission has taken a consistent stand that, for claiming depreciation at CERC rates applicable from the year 2009-10, the licensee has to provide the vintage of the assets created during the last 12 years.

52. In the application for truing up, KSEB Ltd had segregated the total assets as on 31-03-2011 into two parts.
    (i) Part-1: The assets created during the last 12 years from 1999-2000 to 2010-11 and
    (ii) Part-2: The assets created prior to 1999-2000.

    KSEB Ltd has submitted the details as Annexure to the application for truing up.

53. As per the details submitted by KSEB Ltd, the Gross Fixed Assets (GFA) as on 31-03-1999, i.e., (the assets having age more than 12 years) is Rs 2682.03 crore and the GFA created during the last 12 years during the period between 1999-2000 to 2010-11 is Rs 8521.72 crore. The year wise details of depreciation claimed on the assets created prior to the year 1999-2000 (i.e., assets having age more than 12 years) is also given and the balance value of the assets to be depreciated from the year 2011-12 is also given. The year wise details of the depreciation claimed on the assets created since 1999-2000 is also given. The assets created in each year are treated separately for arriving at the depreciation amount. The summary of the depreciation claimed by KSEB Ltd for the year 2011-12 is given below.

Table-14
Depreciation on the total assets for the year 2011-12 claimed by KSEB Ltd

Sl No.	Particulars	Depreciation on assets created every year (Rs.Cr)													Total (Rs. Cr)
		Old assets created prior to 1999-00	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	
1	Buildings	4.83	0.92	1.84	0.64	1.55	1.21	1.11	1.14	0.89	0.68	0.34	1.31	0.64	17.11
2	Hydraulic works	8.65	4.17	2.05	1.00	2.64	1.92	0.74	6.31	1.01	1.61	0.64	3.98	5.22	39.94
3	Other Civil works	1.09	0.44	0.45	0.39	1.39	0.86	1.04	1.62	0.82	0.69	0.97	0.78	2.21	12.75
4	Plant & Machinery	29.59	17.60	8.46	37.00	9.24	27.41	7.25	7.21	8.13	6.23	10.44	16.55	15.36	200.49
5	Lines cable networks etc		10.09	10.99	9.99	24.69	17.49	14.37	13.45	13.84	14.41	15.14	23.86	27.20	195.51
6	Vehicles		**0.05**	**0.00**	**0.00**	**0.00**	**0.00**	**0.03**	**0.03**	**0.01**	**0.00**	**0.11**	**0.03**	**0.05**	0.31
7	Furnitures & fixture		0.06	0.00	0.00	0.06	0.00	0.07	0.02	0.03	0.03	0.05	0.06	0.05	0.44
8	Office equipment		0.00	0.00	0.03	0.02	0.41	0.11	0.11	0.85	0.10	0.15	0.34	0.46	2.58

54. According to the KSEB Ltd, the total assets created out of consumer contribution is Rs 1543.40 crore. KSEB Ltd has assessed the depreciation on the assets created out of consumer contribution as Rs 81.50 crore and accordingly the total depreciation claimed for the year 2011-12 is Rs 387.64 crore. The details are given below.

Table-15
Depreciation claimed for the year 2011-12

Functional area	GFA as on 31-03-2011	Depreciation claimed for the year 2011-12	Assets created out of consumer contribution	Depreciation on the Assets created out of consumer contribution	Net Depreciation claimed for the year 2011-12
	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
Generation	3695.15	100.22			100.22
Transmission	3441.43	154.16			154.16
Distribution	4067.18	214.76	1543.4	81.50	133.27
Total	11203.76	469.14			387.64

Analysis and Decision of the Commission

55. The Commission has examined the details of the vintage of assets, the depreciation on the assets created during the last 12 years from 1999-00 to 2011-12 and the depreciation on the assets created prior to the year 1999-00 (assets having life more than 12 years). It is seen that, the methodology proposed by KSEB Ltd provides only a gross approximation

of the estimation of the depreciation as per the CERC norms considering vintage of assets. This fact is evident from the reply dated 31-5-2016, given by KSEBL. In the said letter, KSEBL has stated as shown below:

Year	Depreciation as per Accounts (Rs.crore)	Depreciation estimated as per CERC norms (Rs.crore)
2011-12	465.99	469.14
2012-13	509.31	494.34

56. As given in the table, the depreciation as per accounts is lower than the depreciation as per CERC norms for 2011-12, where as it is in the opposite in 2012-13, showing the limitations of estimation of depreciation based on assumptions. The Commission in its order dated 28th October 2013 in petition RP No. 1/2013 had approved the depreciation for the year 2009-10 based on the methodology proposed by KSEB Ltd.

57. As per the audited accounts of KSEB Ltd for the year 2011-12, the total assets created out of the consumer contribution, grants received from Government etc amounts to Rs 3308.49 crore. As per the provisions of the relevant accounting standards and based on the order dated 13th April-2012, KSEB Ltd is not eligible to claim depreciation on the assets created out of consumer contribution. Accordingly, the depreciation approved for the year 2011-12 for the purpose of truing up is Rs.330.60 crore The details are given below.

Table-16
Depreciation approved for the year 2011-12

Functional area	GFA as on 31-03-2011	Depreciation claimed for the year 2011-12	Assets created out of consumer contribution	Depreciation on the Assets created out of consumer contribution	Net Depreciation approved for the year 2011-12
	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
Generation	3695.15	154.73			154.73
Transmission	3441.43	144.10			144.10
Distribution	4067.18	170.31	3308.494	138.54	31.77
Total	11203.76	469.14			330.60

Interest and Finance charges

58. The actual interest and financing charges as per the accounts for 2011-12 amounts to Rs. 340.52 crore as against Rs. 265.26 crore approved by the Commission as shown below:

Table-17

Actual interest and finance charges claimed for the year 2011-12

Sl No	Particulars	ARR (Rs. Cr)	Actual (Rs.
1	Interest on outstanding Loans and Bonds	109.42	128.63
II	a) Interest on Security Deposit	64.73	68.01
	Total	174.15	196.64
III	Other Interest and Finance Charges		
	a) Interest on borrowings for working capital	15.00	82.25
	b) Discount to consumers for timely payment of Charges	3.25	0.97
	c) Interest on PF	55.25	54.79
	d) Other Interest charges	0.00	0.11
	e) Cost of raising finance	1.00	0.00
	f) Guarantee Commission	1.61	
	g)Bank Charges	15.00	5.75
	Total of III	91.11	143.88
	Grand Total (I+II+III)	265.26	340.52

59. The additional borrowings approved for the year 2011-12 was Rs 500.00 crore, whereas the actual borrowing was Rs 1380.26 crore. As per the accounts, the total redemption was Rs 1090.42 crore as against Rs 90 crore approved. The total outstanding liabilities as on 31-03-2011 was reported as Rs 1066.50 crore. KSEB has retained the duty under Section 4 of the Kerala Electricity Duty Act amounting to Rs 327.36 crore payable to the Government. The total capital investment during the year 2011-12 was Rs 1019.13 crore.

60. During the year 2011-12, KSEB had availed short-term loans amounting to Rs 1300.00 crore and repaid Rs 1000.00 crore. Accordingly, the outstanding short-term loans at the end of the year 2011-12 had increased from Rs 500.00 crore at the beginning of the year to Rs 800.00 crore at the end of the year.

61. KSEB has claimed Rs 82.25 crore as interest on overdraft and booked the same under interest on working capital. According to the KSEB Ltd, the revenue shortfall for the year 2008-09 was Rs 749.17 crore, the same for the year 2009-10 was Rs 1227.50 crore, the revenue short fall for the year 2010-11 was Rs 1229.63 crore. The revenue gap for 2011-12 as per the accounts is Rs 1934.13 crore. Since the revenue from tariff was not sufficient to meet the operating expenses, KSEB Ltd availed overdraft from financial institutions. KSEB Ltd has also submitted the month wise details of the overdraft outstanding at the end of each month during the year 2011-12.

62. KSEB Ltd has submitted that, the interest on security deposit on the outstanding security deposit is Rs 68.01 crore. The licensee in its the additional submission has mentioned that the outstanding balance of Security Deposit as per the books is Rs.1242.54 crore and the interest rate allowed was 6% and hence interest payable would be Rs.74.55 crore. However, the actual disbursement of the interest on security deposit made during the year 2011-12 was Rs 58.19 crore only. The discount allowed to the consumers for prompt payment is Rs 0.69 crore. The interest on GPF balance provided was Rs 54.79 crore. Other bank charges claimed as per the audited accounts includes Rs 4.50 crore as bank charges for fund transfer from head office to field units, bank commission for collection from consumers, and Rs 1.28 crore towards Guarantee commission.

63. The Commission has considered the contentions of the KSEB Ltd regarding the interest and finance charges. The details of the additional borrowings by the KSEB Ltd is detailed below.

Table-18
Summary of the borrowings and repayments during the year 2011-12

		Opening Balance		**Borrowing**		**Redemption**		**Closing Balance**	
Sl No	Item	ARR order (Rs. Cr)	Accounts (Rs. Cr)	ARR order (Rs. Cr)	Accounts (Rs. Cr)	ARR order (Rs. Cr)	Accounts (Rs. Cr)	ARR order (Rs. Cr)	Accounts (Rs. Cr)
I	Existing Bonds		10.45	0.00	0.00		10.45		0.00
II	Loans from Financial Institutions	788.38	1056.05	500.00	1380.26	90.24	1079.97	1198.14	1356.34
	Total	**788.38**	**1066.50**	**500.00**	**1380.26**	**90.24**	**1090.42**	**1198.14**	**1356.34**

64. As shown above, the additional borrowings for the year was Rs 1380.26 crore as against Rs 500.00 crore approved by the Commission. Further, the actual redemption of loan during the year 2011-12 was Rs 1090.42 crore against Rs 90.24 crore approved for the year 2011-12. The source wise details of borrowing and interest thereon as provided by KSEBL in its letter dated 31-5-2016 are as shown below:

Table-19

Details of borrowing and repayment of long term and short term loans in 2011-12

	Opening Balance	Borrowing	Redemption	Closing Balance	Interest for the year
	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
KSE Bonds	10.45	-	10.45	-	0.97
LIC	50.39	-	14.01	36.38	3.72
REC	360.03	-	60.15	299.88	37.87
PFC	5.79	-	5.79	-	0.02
PFC-R APDRP	139.83	80.26	-	220.08	22.81
Subtotal	**566.49**	**80.26**	**90.40**	**556.34**	**65.39**
Short Term loans					
SBI	300.00	300.00	300.00	300.00	30.00
SBI	-	100.00	-	100.00	0.68
Canara Bank	-	400.00	300.00	100.00	12.12
Vijayabank	200.00	400.00	400.00	200.00	19.74
Federal Bank	-	100.00	-	100.00	0.70
Subtotal	**500.00**	**1,300.00**	**1,000.00**	**800.00**	**63.24**
Total	**1,066.49**	**1,380.26**	**1,090.40**	**1,356.34**	**128.63**

65. As shown above, the net decrease in long term borrowings to the tune of Rs.10.15 crore, where as the short term borrowings have increased by Rs.300 crore. KSEBL has reported that the net increase in capital expenditure for the year is Rs.1019.13 crore. Thus it can be seen that the capital expenditure is mostly funded by the short term liabilities including overdrafts, which is not in accordance with the prudent financial practice.

66. As submitted by the KSEB Ltd, the major part of the additional borrowing is the short-term loans which were redeemed in the same year. Regarding the interest claimed on the outstanding bonds and loans, the Commission has

noted the audit findings of the C&AG (para 2.2.3.1 of the audit report), which is extracted below.

> *"Interest on other loans/ deferred credits – Rs 127.66 crore*
> *The above includes Rs 22.81 crore being interest booked @11.50 % on the loan availed by the Board from the Power Finance Corporation Limited under the Restructured Accelerated Power Development and Reforms programme. The Power Finance Corporation Limited had reduced (March 2012) the rate of interest on loan to 9 percent with effect fro 1 April-2011. This has resulted in overstatement of 'interest and finance charges' and 'other current liabilities' by Rs 4.96 crore. Consequently, surplus has been understated to the same extent".*

Duly considering the finding of the C&AG, the Commission approves the interest on other loans/ deferred credit as Rs 122.70 crore as against Rs 127.66 crore claimed by the licensee.

67. The Commission has been following a policy that in the truing up, the actual interest on security deposit which is passed on to the consumers is only allowed to pass through in tariff. Accordingly, the Commission sought the details of actual interest paid on the security deposit from the KSEB Ltd. In the letter dated 31-05-2016, the KSEB Ltd has submitted that only Rs.58.19 crore has been disbursed as interest on security deposit. Hence, the Commission allows Rs.58.19 crore under this head for the purpose of truing up. However it is noticed that as per the accounts of KSEB Ltd the amount of interest payable on security deposit payable is Rs.74.55 crore. Thus the actual payment of interest is less by Rs.16.36 crore. The licensee has not provided the reason for this difference. The Commission directs the licensee to provide the reason for not paying the entire amount as per the books and to ensure that the balance shown as security deposit is correct. **The licensee may get the details of their security deposit verified by the Statutory auditors of the licensee and a report on the verification may be submitted to the Commission**.

68. The KSEB Ltd has claimed the interest on PF balance as Rs.54.80 crore, against the approved level of Rs.55.25 crore. As per the details given by the KSEB Ltd the opening balance of GPF is Rs.688.30 crore, addition is Rs.437.80 crore, withdrawls Rs.188.20 crore. The balance available is Rs.937.90 crore. The Commission notes the observation of the C&AG in this regard. In para 2.2.3.3 of the Audit Report for the year 2011-12 it is

stated that interest on GPF account is over stated by Rs.0.42 Crore. The Commission after duly considering the audit observation, approves the interest on PF as Rs 54.38 crore as against Rs 54.80 crore claimed.

69. KSEB Ltd has claimed Rs 0.97 crore as discount to consumers for timely payment of electricity charges. The Commission approves the same in the process of truing up. KSEB Ltd has also given the details of the other bank charges and guarantee commission and the same is approved in the process of truing up.

70. KSEB Ltd has claimed Rs 82.25 crore as interest on working capital, which is the interest on the overdrafts availed during the year 2011-12. The Commission has examined the details given by the KSEB Ltd. As per the details submitted by KSEB Ltd, the total overdraft at the end of March 2011 is Rs.310.37 crore, which was increased to Rs 1114.36 crore at the end of March 2012. The details are given below:

Table 20
Details of overdraft availed by KSEB in 2011-12

Name of Bank	Opening Balance	Borrowing	Redemption	Interest for the year
	(Rs.cr)	(Rs.cr)	(Rs.cr)	(Rs.cr)
SBT	135.53	0.00	88.33	13.64
Canara bank	96.01	220.91	316.92	20.52
Allahadad bank	-	20.75	20.75	1.96
BOI	-	109.99	109.99	7.04
Federal bank	27.29		27.29	0.13
Vijaya Bank	26.31	73.59	99.90	8.80
UBI	25.23	73.52	98.75	6.95
CBI	-	329.91	329.91	20.76
NMGB	-	24.81	24.81	1.82
Dena Bank	-	25.00	25.00	0.62
IOB	0.02	0.10	0.12	-
Total	310.39	804.09	1,114.48	82.24

71. The increase in overdraft is to the tune of Rs.804.09 crore. According to the KSEB Ltd, the overdraft is availed from banks for meeting the un-bridged revenue gap incurred during the year 2011-12. The Commission

has examined the details of working capital of the KSEB then. As per the audited accounts, the working capital is as shown below:

Table 21
Working capital for the year 2011-12 as per audited accounts

	At the end of 31-3-2012
	(Rs.Cr)
Stock	393.62
Receivable against sale of power	634.90
Cash and bank balance	634.71
Loans and advances	133.64
Sundry Receivables	575.28
Total Current Assets	**2,372.15**
Current Liabilities	
Security deposit from consumers	1,583.97
Other current liabilities	4,697.92
Total current liabilities	**6,281.89**
Net Current Assets/Working capital	**-3,909.75**

72. As shown above, the KSEB had negative working capital gap or the current liabilities have much higher than the current assets. The net current liabilities are about Rs.3900 crore, showing that the working capital needs have been much more than compensated by the current liabilities. Hence, there is no requirement of funding of working capital separately. However, as pointed out above, the increase in short term and long term loans together for the year is only Rs.300 crore, where as the total capital expenditure is about Rs.1019 crore. Hence, it can safely assumed that balance capital expenditure might have been funded out of sources such as contribution & grants for capital assets (Rs.310.12 crore), Electricity duty, addition to GPF, etc., including overdrafts. The contribution and grants for capital assets is inclusive of consumer contribution towards cost of capital assets, subsidies and grants towards cost of capital assets and contribution of PWD & Public towards cost of capital assets. However, on analyzing the details of capital expenditure incurred, it is seen that there is a small gap in its funding and the Commission is inclined to believe that the same may have been funded

by using short term funds. Hence, additional interest which is required to fund the balance capital expenditure is arrived at as given below:

	Rs. Crore
1. Capital expenditure for the year 2011-12	1019.13
2. Increase in long term/short term loans	289.15
3. Contribution for capital assets for the year	310.12
4. Depreciation allowed	330.60
5.Sub total (2 to 4)	**929.87**
6.Balance amount of Capital Expenditure to be funded (1-5)	**89.26**
Average rate of Interest (@11% for 6 months)	***4.91***

Thus, an amount of Rs.4.91 Crore is additionally allowed for funding the capital expenditure as against the demand for interest on working capital.

73. The total interest and finance charges approved for the year 2011-12 are shown below.

Table-22
Interest and finance charges approved for the year 2011-12

Sl No	Particulars	ARR Order (Rs. Cr)	Actual (Rs. Cr)	Trued up (Rs. Cr)
1	Interest on bonds		0.97	0.97
2	Interest on other loans and deferred credits	109.42	127.66	122.70
3	Subtotal (1)+(2)	109.42	128.63	123.67
4	Interest on Security Deposit	64.73	68.01	58.19
5	Other Interest and Finance Charges			
	a) Interest on borrowings for working capital	15.00	82.25	
	b) Discount to consumers for timely payment of Charges	3.25	0.97	0.97
	c) Interest on PF	55.25	54.80	54.38
	d) Other Interest charges	0.00	0.11	0.11
	e) Cost of raising finance	1.00	0.00	0.00
	f) Guarantee Commission	1.61	1.28	1.28
	g)Bank Charges	15.00	4.47	4.47
	h) Additional interest for funding capital expenditure			4.91
	Total of (5)	91.11	143.88	66.12
	Grand Total (3+4+5a)	265.26	340.52	247.98

Employee cost

74. Vide the order on ARR&ERC for the year 2011-12 dated 1st June 2011, the Commission had approved the employee cost for the year 2011-12 at Rs

1582.10 crore. But the actuals as per the application for truing up of accounts is Rs 1903.33 crore. The details are given below.

Table-23
Details of employee cost claimed for the year 2011-12

<table>
<tr><th rowspan="3">Sl.No</th><th rowspan="3">Particulars</th><th rowspan="2">2010-11</th><th colspan="4">2011-12</th></tr>
<tr><th>KSEB proposed in ARR</th><th>ARR order</th><th>As per Accounts</th><th>Increase over approval</th></tr>
<tr><th>(Rs.Cr)</th><th>(Rs.Cr)</th><th>(Rs.Cr)</th><th>(Rs.Cr)</th><th>(Rs.Cr)</th></tr>
<tr><td>1</td><td>Salaries</td><td>406.59</td><td>430.12</td><td>413.82</td><td>685.98</td><td>272.16</td></tr>
<tr><td>2</td><td>DA</td><td>357.93</td><td>481.73</td><td rowspan="6">1168.29</td><td>373.28</td><td rowspan="6">49.06</td></tr>
<tr><td>3</td><td>Provision for Pay revision</td><td>107.15</td><td>141.58</td><td>0</td></tr>
<tr><td>4</td><td>Overtime, other allowances, Bonus.</td><td>33.19</td><td>37.69</td><td>44.55</td></tr>
<tr><td>5</td><td>Earned Leave encashment</td><td>63.45</td><td>64</td><td>81.16</td></tr>
<tr><td>6</td><td>Medical expenses reimbursement, staff Welfare expenses, payment under works men compensation,</td><td>5.29</td><td>4.83</td><td>7.32</td></tr>
<tr><td>7</td><td>Terminal benefits (excluding terminal Surrender)</td><td>739.2</td><td>750.67</td><td>711.04</td></tr>
<tr><td></td><td>Grand total</td><td>1712.8</td><td>1910.62</td><td>1582.11</td><td>1903.33</td><td>321.22</td></tr>
</table>

75. As detailed above, the employee cost including pension claimed for the year 2011-12 is about Rs 321.22 crore more than the approved level, out of which the increase in basic pay alone is Rs 272.16 crore.

76. According to the KSEB Ltd, the increase in basic salary was mainly on account of the following.

(i) *The basic salary as per the accounts is the revised basic pay after implementing the pay revision during the year 2011-12, which has been arrived at by merging the 45% DA up to July-2008 with the basic pay at the pre-revised scale and also applicable fitment benefit and service weightage.*

(ii) *However, Hon'ble Commission has approved the basic pay for the year 2011-12 at the pre-revised scale, i.e., the basic salary for the year 2011-12 was arrived at by escalating the basic salary for the year 2008-09 at the rate of 3% annually.*

77. According to KSEBL, pay revison and pension revision was implemented in KSEB w.e.f from July/August 2008 for the officers/workmen of the Board after merging the entire DA of 45% with basic pay. Dearness relief

is being released to pensioners at the same level to that of DA to employees. KSEB Ltd has also provided the details of the DA released to its employees during the year 2011-12, as detailed below.

Table-24.
DA released to KSEB employees

Date of effect	DA as a percentage of pre-revised basic pay		DA as a percentage of revised basic pay after pay revision	
	Rate of DA (percentage of the pre revised basic pay)	Total DA applicable on the Basic Pay (percentage of the pre revised basic		
Jul-08	7% of the pay	45%	Nil	Nil
Jan-09	10% of the pay	55%	7% of the pay	7%
Jul-09	9% of the pay	64%	6% of the pay	13%
Jan-10	14% of the pay	78%	9.048% of the pay	22.048%
Jul-10	16% of the pay	94%	11.310% of the pay	33.358%
Jan-11	12% of the pay	106%	6.786% of the pay	40.144%
Jul-11	12% of the pay	118%	7.917% of the pay	48.061%
Jan-12	12% of the pay	130%	7.917% of the pay	55.978%

78. The pension liabilities claimed as per the submission of the licensee is detailed below.

Table-25
Pension liabilities for the year 2011-12

Sl.No	Particulars	2010-11	2011-12			
			KSEB ARR	ARR order	Actuals	Difference over approval
		(Rs.Cr)	(Rs.Cr)	(Rs.Cr)	(Rs.Cr)	(Rs.Cr)
1	Monthly Pension	518.39	616.14	Not specifically approved pension, however based on the actual for the year 2008-09, provision for pension is Rs 660.88 crore only.	628.78	50.16
2	Gratuity	23.01	23.5		25.37	
3	Commutation	31.54	45		21.47	
4	Medical Allowance	3.55	6		3.52	
5	Special Festival Allowance	0.97			1.49	
6	Provision for pension revision	30.41	60.03		30.41	
7	Provision for Gratuity	131.34	0			
	Total	739.21	750.67		711.04	

79. The total provisions created for pay revisions and pension revision as detailed by KSEBL in its reply dated 31-5-2016 are given below:

Table 26

Provisions for pay revision and pension revision

Year	Pay revision (Rs.crore)	Pension revision (Rs.crore)	Total (Rs.crore)
2008-09	81.25	43.75	125.00
2009-10	107.15	30.41	137.56
2010-11	107.15	30.41	137.56
2011-12	0.00	30.41	30.41
Total	295.55	134.98	430.53

The details of gratuity released to employees retired after 2008-09 are as follows:

Table 27

Amount of gratuity actually paid over the years

Year	Amount (Rs.crore)
2008-09	20.74
2009-10	27.16
2010-11	20.92
2011-12	23.06

80. As instructed by the Commission, KSEB Ltd has also submitted the increase in employee strength from the year 2008-09 to 2012-13 as detailed below.

Table 28

Increase in employee strength from 2008-09 to 2011-12 (numbers)

Working strength				Increase over 2008-09		
2008-09	2009-10	2010-11	2011-12	2009-10	2010-11	2011-12
27175	28007	29864	31113	832	2689	3938

81. KSEB Ltd has also submitted the category wise recruitments made during the period from 2009-10 to 2012-13. The details are given below.

Table 29

Yearwise recruitment 2009-10 to 2011-12 in various categories

Designation wise recruitments	**2009-2010**	**2010-2011**	**2011-2012**
Assistant Engineer	221	213	87
Cashier	268	244	65
Driver II	3		28
Junior Assistant	3	1	1
Junior Fair Copy Assistant	5	5	8
Electricity worker	1159	1520	1325
Meter Reader	7	250	267

Office Attendant II	7	8	6
PTC Sweeper		1	8
Sub Engineer	61	14	18
Sweeper III	1		1
Divisional Accountant		1	
Overseer		1	
Accountant LA			
Meter Tester			
Total	**1735**	**2258**	**1814**

82. The details of category wise retirements furnished by KSEBL is given below:

Table 30
Retirements from 2009-10 to 2015-16 , category wise

Sl No	Category	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
1	AO	4	10	7		6	2	12
2	AAO	22	7	11		8	14	14
3	AE	93	86	73	12	67	44	64
4	AEE	32	40	21	1	29	36	51
5	AFO			1		1		2
6	CASH	5	6	14	1	2	2	9
7	CE	8	14	10		3	9	10
8	CA					2		3
9	DCAO		1					
10	DCE	13	20	4		6	3	6
11	DA	2		1	1	1		
12	DVR	29	18	15	2	12	15	23
13	EE	5	8	9	1	7	3	12
14	FA		1					
15	FO	1	1					
16	Foreman		1					
17	FCA			1				
18	FCS	2		1		1	3	2
19	JA	1	4	1	2			
20	JE						1	
21	LM	54	49	32	31	35	58	54
22	EW	20	20	10	12	8	10	8
23	MR	4	2	1		2	1	
24	OA	20	36	33	7	20	10	13
25	OSR	178	133	114	21	117	103	205
26	PO	1				21		
27	PTC	14	14	9	15	27	16	12
28	SA	33	48	27	5	10	35	55
29	SAO		1			4	1	
30	SCA	1	1	1		2	3	4

31	SFCS	1		1		2		
32	SFCA		4	4		37	5	10
33	SS	32	44	31	4	40	34	47
34	SE	42	39	59	14	1	43	46
35	SWP	7	13	8	6	1	2	
36	Clerical Attender	3						
37	CLR	1						
38	Laskar	1						
39	Line fitter	6	4	2				1
40	Mobile crane operator	1						1
41	Watch man	4						
42	Electrician	1						
43	Mech work asst	1	1					
44	Blue printer	1						1
45	Scavenger				1			1
46	Skilled Technician						1	
		643	626	501	136	472	454	666

83. KSEBL stated in their reply dated 31-5-2016 that pay revision wef July 2008/August 2008 was implemented in the year 2011-12 and the actual payments made due to pay revision resulted in cash outflows, over and above the sum approved by the Commission. To support their claim, the KSEBL has given a write up of the methodology adopted by the Commission and the actual expenses incurred by them, which is extracted below:

i. *Provision for pay revision has been approved by the Commission on the basis of 2008-09 accounts, which contained provision from July/August 2008 only. The provision when indexed for subsequent years would be insufficient since the base figure adopted is not for a complete year.*

ii. *DA has been released by the Board twice in a year based on the rates announced by the State Government based on AICPI IW, but the approval process adopted by the Commission did not considered such rates. It may kindly be noted that inflation under WPI are not considered for determining DA rates.*

iii. *DA is allowed to compensate the erosion in value of pay due to inflation and hence the rates are applied on pay to arrive at the expense under this head. The Commission, however, has applied the annualized weighted average inflation rate on the DA disbursed till 31.03.2009, which was just 55 % of pay. Further, actual DA announced for the years 2010-11 to 2012-13 on pre revised scales were considerably higher than the inflation allowed by the Commission as detailed below:*

	DA as per GoK %	*Annual Rate %*	*Annual Inflation allowed by KSERC on actual DA as on 31.03.2009*	*Effective rate allowed on basic pay*	*Shortfall in DA rate % approved over allowed*
1	*2*	*3*	*4*	*5*	*6=3-5*
DA as on 31.03.2009	*55*		*NA*		

2009-10- 07/2009	*9*	*10.25*	*9.80%*	*=55*9.80%=5.39*	*4.86*
01/2010	*14*				
2010-11- 07/2010	*16*	*15.00*	*10.17%*	*=55+5.39=60.39*	*8.86*
01/2011	*12*			*=60.39*10.17%=6.14*	
2011-12- 07/2011	*12*	*12.00*	*10.17%*	*=60.39+6.14=66.53*	*5.23*
01/2012	*12*			*=66.53*10.17%=6.77*	
2012-13- 07/2012	*12*	*12.75*	*8.04%*	*=66.53+6.77=73.30*	*6.86*
01/2013	*15*			*=73.30*8.04%=5.89*	
Total					*25.81*

iv. *The table given above clearly illustrates the fact that if DA percentages are not approved at actual level, the difference in expenses over approval would increase year after year as can be seen from the table given below. The following table illustrates the shortfall in approval, if inflation percentage approved by the Commission is allowed on Basic pay. It may kindly be noted that actual pay and DA for 2011-12 and 2012-13 represent revised pay and DA.*

Sl. No	***Particulars***	*2008-09*	*2009-10*	*2010-11*	*2011-12*	*2012-13*
1	***Inflation % approved***		*9.80*	*10.17*	*10.17*	*8.04*
2	*Basic pay- Approved*	*378.70*	*390.06*	*401.76*	*413.82*	*426.23*
3	*Provision for PR- for 9 months in 2008-09, annualized for subsequent years*	*82.35*	*109.80*	*120.56*	*132.82*	*146.33*
4	*Add: inflation allowed (3*1%)*		*10.76*	*12.26*	*13.51*	*11.76*
5	*Total (3+4)*		*120.56*	*132.82*	*146.33*	*158.09*
6	*DA*	*204.17*	*204.17*	*242.40*	*283.26*	*325.35*
7	*Add: inflation % on BP instead of DA. (2*1%)*		*38.23*	*40.86*	*42.09*	*34.27*
8	*Total (6+7)*		*242.40*	*283.26*	*325.35*	*359.62*
9	*Total Approval(2+5+8)*	*665.22*	*753.02*	*817.84*	*885.49*	*943.94*
10	*Actual Pay plus DA*	*665.22*	*753.11*	*871.67*	*1059.26*	*1190.06*
11	*Excess over approval*		*0.09*	*53.83*	*173.77*	*246.12*
12	*DA short fall %as per iii above.*		*4.86*	*13.72*	*18.95*	*25.81*
13	*DA amount at rates given above. (2*12%)*		*18.96*	*55.12*	*78.42*	*110.01*
14	*Excess(short) of approval*		*18.84*	*1.29*	*(95.35)*	*(136.11)*

84. According to KSEBL, the employee cost as per the audited accounts include the additional employees recruited after the year 2008-09 and as per the judgment of the Hon'ble APTEL, the Commission had to allow the employee cost and other benefits to the employees who were in the rolls of the licensee during the year 2008-09. In the letter dated 08.08.2016, KSEBL provided the details of recruitments and employee cost attributable to the newly recruited employees along with the minimum amount claimed as employee costs by KSEB Ltd as shown below:

Table 31
Summary employee cost attributable to increased staff strength in 2011-12 & 2012-13 as estimated by KSEBL

Particulars	2011-12	2012-13
	Rs. crore	Rs. crore
Basic pay	36.35	50.52
DA	19.78	30.79
Other Allowances	6.36	9.69
Total	62.49	91.00

85. KSEBL has worked out the above figures based on the revised pay and allowances. The basic pay of newly recruited employees for 2011-12 was estimated based on the excess newly recruited staff (ie., net of retirements) on a cumulative basis ie., basic pay of employees recruited in 2010-11 was considered on a full year basis and those recruited in2011-12 for 6 months on a average basis. The dearness allowance as a percentage of basic pay was considered at 54.42% for 2011-2. The other allowances for 2011-12 was considered at 17.49% of the Basic pay, which is the actual proportion of other allowances on Basic pay.

86. In the letter dated 16.1.2017, KSEBL submitted that, the basic pay, DA, pension, provision for pay revision etc approved by the Commission as per the orders on ARR&ERC for the year 2011-12 and 2012-13 were not sufficient to meet the absolute minimum amount that may be admissible as per the judgment of the Hon'ble APTEL dated 10-11-2014.

Analysis and Decision of the Commission

87. Employee cost is a controllable expense. The Commission vide the order dated 1st June 2011 in OP No.5 of 2011, in the matter of ARR&ERC of KSEB for the year 2011-12 has approved the employee cost as follows:

> *"The Commission has considered various parameters that have been presented by the Board as well as the stakeholders. Several State Commissions have been benchmarking the operational costs based on inflation indices - WPI (Wholesale price index) and CPI (consumer price index – for Industrial Workers). The KSERC (Terms and Conditions of Tariff for Retail Sale of Electricity) Regulations 2006 have also such provisions. Clause 15(3) of the said regulation provides that*

‘ the approved base value may be indexed to predetermined indices such as Consumer Price Index, Whole Price index or a combination of both indices for subsequent years. The Base value of O&M expenses can be indexed to 70% of CPI and 30% of WPI. Accordingly, the Commission after detailed deliberations decides to benchmark the O&M expenses based on CPI and WPI on a 70:30 ratio for 2011-12.

As per the Government of India reports, the inflation based on CPI and WPI recorded in the past is as follows:

Recorded CPI and WPI indices over the years

		Yearly		
Year	WPI	Increase	CPI	Increase
2006-07	111.4		125.00	
2007-08	116.6	4.74%	132.75	6.20%
2008-09	126.0	8.05%	144.83	9.10%
2009-10	130.8	3.81%	162.75	12.37%
2010-11	143.3	9.50%	179.75	10.45%

Based on the above, the inflation recorded based on CPI is 10.45% and WPI is 9.5% for 2010-11. On 70:30 basis, the composite increase would be about 10.18%. Considering the trends in inflation, the Commission uses the inflation as prevailing in 2010-11 for 2011-12 also for estimating the expenses. ***However, in the truing up process, the expenses will be allowed based on the actual inflation recorded based on CPI and WPI in 2011-12.***

For the above analysis, the Commission ***uses 2008-09 as a base year*** *since latest truing up is carried out for 2008-09. The employee cost consists of several components such as Basic pay, DA, HRA, other allowances etc. Generally Basic pay increase is on account of annual increments, which can neutralise considering the difference in pay of retirees and new recruits. However, the Commission provides 3% increase in Basic Pay for accounting for increments. The other components are benchmarked based on the 70:30 index (CPI:WPI) for estimating the increase in employee cost. As per the information provided by the Board, the employee costs in 2008-09 includes all provisions sufficient and more for covering pay& pension revision, DA/DR increase etc., Accordingly, the allowable employee cost for 2011-12 is estimated as follows:*

Approved estimate of Employee cost for 2011-12

		Estimates*		*Allowable expenses*
	2008-09 Rs. Crore	2009-10* (Rs. Crore)	2010-11* (Rs. Crore)	*2011-12 (Rs. Crore)*
Basic Pay Projection (3% increase)	378.70	390.06	401.76	*413.82*
Other components				

CPI weightage (70%)	613.54	689.43	761.45	*840.99*
WPI Weightage (30%)	262.94	272.96	298.90	*327.31*
Total	**1,255.18**	**1,352.45**	**1,462.11**	***1,582.11***
% increase		*7.75%*	*8.11%*	*8.21%*

** The figures arrived at for the intermediate years (2009-10 & 2010-11) are relevant only for estimation purpose, and cannot be construed as approved figures. Approved figures for these years remain as per the respective ARR&ERC Orders.*

Based on the above formula, the approved employee cost for 2011-12 is Rs.1582.11 Crore. The Board shall limit the employee expenses to the approved level. Any increase in the expenses over the approved level shall be met through productivity increase and additional income generation measures and cannot be passed on to the consumers through tariff. In the truing up process for the year, the allowable employee costs shall be refixed based on the actual CPI-WPI for the year 2011-12."

88. As detailed above, while approving the ARR&ERC of KSEB Ltd for the year 2011-12, the Commission had approved the employee cost for the year 2011-12 at Rs 1582.10 crore, after allowing inflationary increase over the year 2008-09 at the weighted average indices of WPI and CPI in the ratio of 30:70 on components other than basic pay, for which an annual increase of 3% is allowed over the year 2008-09.

89. The Commission has followed the methodology as stipulated under the Regulation-15 of the KSERC (Terms and Conditions of Tariff for Retail Sale of Electricity) Regulations 2006, for approving the employee cost vide the following orders:

(a) Order dated 30th October 2012 in OP No. 34 of 2011 in the matter of 'truing up of accounts of KSEB Ltd for the years 2010-11' and

(b) Order dated 28th April-2012 in OP No. 3 of 2012, in the matter of ARR &ERC of KSEB Ltd for the years 2012-13.

90. KSEB Ltd had filed appeal petitions against the above orders of the Commission before the Hon'ble Appellate Tribunal for Electricity (APTEL) and the APTEL admitted the appeal petition against KSERC order dated 30th October 2012 in OP No. 34 of 2011 in the matter of truing up of accounts of KSEB Ltd for the years 2010-11 as Appeal Petition No. 1 of 2013 and the appeal petition against KSERC order dated 28th April 2012 in OP No. 3 of 2012 as Appeal petition No. 19 of 2013.

91. Hon'ble APTEL vide the common judgment dated 10th November 2014 has decided on the issues raised in the Appeal Petitions 1 of 2013 and 19 of the 2013. The paragraph 8.3 to 8.6 of the said judgment dated 10th November 2014 deals with observation and directions of the APTEL regarding the employee cost and related matters, which are extracted below.

"8.3 We find that the State Commission in the impugned order dated 28.04.2012 has shown concern about the high employees cost and non-compliance of the directions given by the State Commission in this regard. The State Commission has noted that without a scientific study on manpower requirements, the recruitments are continuing and about 1000 persons are added every year. The State Commission has decided to benchmark employees expenses based on the base year expenses escalated at price indices. The State Commission has used FY 2008-09 as the base year since latest true-up was carried out for 2008-09. The State Commission provided 3% increase in basic pay for accounting for increments. The other components are benchmarked based on CPI/WPI indices with weightage of 70:30 for estimating the increase in employees cost. Thus, while basic pay was increased by 3% the other components of employees expenses viz. DA allowances, terminal benefits, pay revision, etc., were increased as per CPI/WPI indices with weightage of 70:30 (CPI:WPI).

8.4 The State Commission has rightly shown concern about the high employees cost but we are not able to appreciate magnitude in the absence of a specific finding about the excess manpower and non-availability of Regulations. We feel that DA increase which is effected as per the Government orders have to be accounted for and allowed in the ARR as it compensates the employees for the inflation. The pay revision as per the agreements reached between the management and the unions have also to be honoured. The terminal benefits have also to be provided for.

8.5 We find that the State Commission has taken the actual expenses trued-up for FY 2008-09 as the base. The State Commission should have at least allowed the actual basic pay and DA increase, pay revision and terminal benefits over the actual base year expenses without accounting for increase in manpower from 2008-09 to 2012-13. The gratuity directed to be paid as per the judgments of the High court dated 10.03.2003 as the Division bench of the High Court had dismissed the Appeal filed against this judgment, and which were disallowed by the State Commission by order in Appeal no. 1 of 2013 should also be allowed.

8.6 Accordingly, we direct the State Commission to true-up the employees cost from FY 2010-11 to FY 2012-13, as per the above directions.

92. As detailed above, Hon'ble APTEL vide the order dated 10th November, 2014 has ordered that, the actual basic pay, actual DA, pay revision etc for the employees on the rolls of licensee during the year 2008-09, should be

provided for. Hon'ble APTEL also ordered that, terminal benefit to be paid and Gratuity to be paid as directed by Hon'ble High Court should also be provided for. In order to arrive at the employee cost admissible for the year 2011-12 as per the judgment of the Hon'ble APTEL, the Commission directed KSEB Ltd to provide additional details pertaining to the employees newly recruited after 2008-09, the number of employees retired after the year 2008-09 and other relevant details required for approving the employee cost as per the direction of the Hon'ble APTEL.

93. The licensee has submitted the year wise details of the total employees retired since 2008-09, the total number of recruitment of employees cadre wise etc. KSEB Ltd also submitted an estimate of the employee cost attributed by the increase in manpower over the same in 2008-09. KSEB Ltd had submitted that, the total employee cost excluding the employee cost attributed by the increase in manpower may be allowed by the Commission in the process of truing up.

94. The Commission had examined the details submitted by KSEB Ltd and found that, the details are not sufficient to approving the employee cost as per the judgment of the Hon'ble APTEL vide its judgment dated 10-11-2014 in appeal petition No. 1 of 2013 and 19 of 2013. The Commission in its letter dated 15-12-2016 sought following additional information for implementing the judgment of the Hon'ble APTEL from 2009-10 to 2013-14.

(i) The year wise, cadre wise details of the employees retired in each year since 2008-09 including the cadre pay scale of the retired employees.

(ii) Cadre wise details of the new employees recruited in place of the retired employees, pay scale etc.

(iii) The details of the provisions created for pay revision from the year 2008-09 to 2010-11 and its utilization.

(iv) The basis of calculation of the revised basic pay after effecting the pay revision from the year 2011-12 onwards.

(v) The excess provision/ additional liability after effecting pay revision from 2008-09 and the same booked in the year 2011-12 and 2012-13.

(vi) The details of the provision created for pension revision from 2008-09 to 2010-11 and its utilization from 2011-12 onwards.

(vii) The year wise details of the provision created for DA revision in each year and its utilization

(viii) Any other relevant information which will enable us to make a reliable estimation

The Commission allowed one month time to submit the above details to the Commission. KSEBL has furnished the reply to the above queries on **16-1-2017 & 15-2-2017.**

95. The Commission has perused all the details given by KSEBL vide its letters dated 31-5-2016, 8-8-2016, 27-9-2016, 16-1-2017 and 17-2-2017. Some of the details provided by KSEBL such as details of salary particulars of existing employees (scale of pay in each cadre, average salary, maximum, minimum salary) are from 2012-13 only. KSEBL has also provided estimations on employee cost pertaining to excess recruited employees (net of retirements), which is given in Table 31. According to the Commission, truing up of accounts is based on the actual expenses incurred by the licensee as per the audited accounts and there is no estimation normally required for presenting the actual expenses. Hon. APTEL has directed the Commission to allow employee costs for the year 2011-12 based on the level of employees in 2008-09 (ie., 27175 nos). The Commission has approved the employee costs in the ARR&ERC of KSEB for the year 2011-12 based on parameters of CPI & WPI taking approved employee expenses in 2008-09 as base level. Though KSEBL has provided the details of actual expenses incurred by it in 2011-12, the actual expenses incurred by it as per the orders of APTEL in appeal no.1 &19/2013 were not furnished, except some estimations based on some assumptions. Further, KSEBL has not clearly established based on actual figures, that the approved level of employee expenses as per the ARR&ERC order were insufficient to meet employee cost required as per the Orders of Hon. APTEL.

96. In this circumstance, the Commission is inclined to rely on some minimum calculation of employee expenses for the year 2011-12 so as to comply with the directions of APTEL in its order in Appeal No 1 & 19 of 2013. The Commission has came to the conclusion that there may be some excess amount required over the approved level of expenses in the year 2011-12 even though no.of employees is frozen at 2008-09 level (ie., 27175 nos) on account of the following:

a. There can be an increase in basic pay over different years, even though retired employees having higher basic pay are replaced by employees in lowest entry cadre. The basic pay is not reduced as expected due to annual increments in Basic pay. As per the details provided by KSEBL, majority of the retirement takes place in the categories such as Overseer, Asst. Engineer, Lineman, Sub engineer, Senior Supt. and Asst. Exe. Engineers etc. The retirements from these categories account for nearly 70% of the total retired employees. Thus the savings in Basic pay will be the difference in basic pay between the highest and lowest pay in these cadres. Considering these factors, there can be an increase in the component of Basic pay even if employee strength is limited at 2008-09 level as shown below:

Table 32

Estimate of net increase in basic pay

	2008-09	2009-10	2010-11	2011-12
1. Total No. Of employees	27175	28007	29864	31113
2. No. of employees retired		643	626	501
3. Retirement as %of total employees on 2008-09		2.37%	2.30%	1.84%
4. % of salary of Retired	(1.5 times)	3.55%	3.46%	2.77%
5. Difference in Basic pay of Retired/Recruited employees.		55.00%	55.00%	55.00%
6. Savings in Basic pay (4x5)		1.95%	1.90%	1.52%
7. Average increment in revised pay for Existing employees	4%	3.91%	3.91%	3.93%
8. Net increase in Basic (7-6)		**1.95%**	**2.01%**	**2.41%**

In the above table, actual retirement in each year is about 1 to 2%, where as it was assumed that the total salary of the retired employees will be about 1.5 times as the employees retired are from higher average salary compared to existing employees. Accordingly, from the information provided by the licensee, it is seen that in 2011-12 about 1.84% of employees retired (taking 27175, ie the number of employees as on 2008-09) and they command about 2.77% of total salary. Further, the difference between salary of retired employees and new recruits to replace them is about 55%. Accordingly, the savings in basic pay will be about 1.52% for 2011-12. On the other hand the average rate of increments existing at present scales range from 3.5 % to 5% in KSEBL after pay revision and the average increment is about 4%. Hence the basic pay of the remaining 98.16% employees account for 97.23% of the salary which has to be escalated at 4% (increment rate) which gives an increase of about 3.93% in total salary in 2011-12. Accordingly there will be a net increase (3.93 - 1.52) in Basic pay by 2.41% even if no. of employees are frozen at 2008-09 level. Thus if the total basic salary were to reduce there should be no increments or with an increment of 4% year on year, the percentage of retirement should be above a thresh hold limit.

b. The component of actual DA, which is to be allowed as per the direction of APTEL for the level of employees at 2008-09, is more than the approved level. As per the approved level of expenses in the ARR, the components other than Basic Pay was increased at a rate of CPI:WPI at 70:30 weightage. Accordingly, the composite increase allowed for components including DA, terminal benefits, and other allowances in the ARR&ERC Order for 2011-12 is about 10.18%. ie., the component of DA, which accounted for 27% of components other than basic pay in 2008-09 increased actually at a rate higher than rate of CPI:WPI indexation estimated and approved by the Commission.

Table 33
Estimate of Increase in DA

	2008-09	2009-10	2010-11	2011-12
Basic Pay approved (Rs.crore)	378.70	390.06	401.76	413.82
Components other than Basic Pay approved (Rs.crore)	876.48	962.39	1,060.35	1,168.30
Total employee cost approved (Rs.crore)	1,255.18	1,352.45	1,462.11	1,582.12
Rate of Increase for components other than Basic pay in the approved employee cost		**9.80%**	**10.18%**	**10.18%**
Average yearly DA in Revised Scale		**13.8%**	**32.2%**	**48.1%**
Yearly Average Actual Increase in DA in Revised pay Scale	-	13.8%	18.5%	15.8%

c. Another reason for the increase in basic pay was due to the pay revision. The pay revision was made by merging 45% of DA with the Basic pay and providing fitment benefits and service weightage. Fitment benefit was 10% of the then existing basic pay and weightage was fixed at 0.6% of the basic pay in the pre-revised scale for each completed year of service as on 31.07.2008 subject to a maximum of 15%. Taking into consideration the fact that recruitment was not much during the period 2001 -2008 it can be safely assumed that majority of persons had completed between 10 to 12 years of service and hence a conservative estimate of 6% to 7% can be assumed to have been given as weightage. Thus there will be an increase of at least 16%-17% in basic pay due to pay fixation on a conservative estimate. Though the Commission has allowed the provision for pay revision for the base year 2008-09, it comes to only about 13.5% of the pre revised scale.

d. The rate of increase in actual terminal benefits (which is about 57% of the total employee cost in 2008-09) is also higher than the rate of increase as per the WPI: CPI indexation as shown below:

(₹ in crores)

	2008-09	2009-10	2010-11	2011-12
Actual terminal benefits paid	495.84	604.31	739.21	711.04
Terminal benefits based on approved level	495.84	544.44	599.86	660.93

97. Further, after analyzing the details of the information furnished by KSEBL on employee costs and the orders of the APTEL, the Commission is of the view that, there may be some level of calculation required for approving the

employee costs as per the Orders of the Hon. APTEL on account of the following reasons:

a. As per the order of APTEL, the number of employees is to be frozen as per the 2008-09 levels. There were 27175 employees in the year 2008-09, 3986 in officer category and 23189 in worker category.
b. The number of employees in each categories are different year on year. In some categories there are increases while in some other categories there is a decrease.
c. The number of new recruits in various categories is more than the total retirement. Since the timing of retirement and appointment as well as categories of recruitment and employees retired are different and cannot be matched at one to one basis, given the fact that the accounting of HR is decentralized in the KSEBL's system and the same was computerized only from 2012-13. Even in the computerized environment getting such a details may be difficult.

98. The Commission has also examined the detail of estimation given by KSEBL on excess employees as per the orders of APTEL, which is given in Table 31. KSEBL has given the estimations based on the following:

(i) The employee cost of the excess manpower recruited by the licensee in each year after 2008-09, over the year 2008-09 assessed.

(ii) The employee cost of the excess manpower arrived at as above is deducted from the total employee cost as per the audited accounts.

The Commission could not accept the estimation of the licensee mainly on following reasons:

a. The logic of the calculation was not properly explained.
b. The calculation was based on the taking the total number of excess employees in a particular year and multiplying the same with the basic salary of the entry cadre for six months without considering the year on year increase of the employees.
c. KSEB Ltd has also not considered the yearly increment of newly recruited employees.

d. The DA rates applied are at the higher percentage, ie the percentage at the end of the year which in fact can be applicable to only the last 3 months of the financial year.

99. Accordingly, the Commission calculated the employee costs for the year 2011-12 as per the Orders of APTEL in the following manner.

a. Hon'ble APTEL in its order had directed that the employee costs should be allowed without accounting for increase in manpower from 2008-09. From the details furnished by KSEBL, the no. of employees as on 31-3-2009 was 27175. Thus the employee cost to be allowed for the year from 2009-10 to 2012-13 is limited to the 27175 employees.

b. As per the orders of APTEL, terminal benefits have to be provided at actual. There is no reference on the other allowances. Hence the same can be approved at a level increased by CPI: WPI from 2008-09 level or actual which ever less.

c. The balance is with respect to Basic pay and DA. The Basic pay and DA for the level of employees existing at 2008-09 can be estimated if the Basic pay and DA at revised pay scales, for the excess newly recruited employees is deducted from the actual employee cost.

100. Based on the above, the excess employee cost is calculated considering the additions in employees each year. The actual recruitment for various cadre as per the details provided by KSEBL in Table 29 is reproduced below:

Designation wise recruitments	2009-2010	2010-2011	2011-2012	2012-2013	Total
Assistant Engineer	221	213	87	61	582
Cashier	268	244	65	22	599
Driver II	3		28	2	33
Junior Assistant	3	1	1	2	7
Junior Fair Copy Assistant	5	5	8	14	32

Electricity worker	1159	1520	1325	630	4634
Meter Reader	7	250	267	30	554
Office Attendant II	7	8	6	77	98
PTC Sweeper		1	8	1	10
Sub Engineer	61	14	18	16	109
Sweeper III	1		1	5	7
Divisional Accountant		1			1
Overseer		1			1
Accountant LA				1	1
Meter Tester				1	1
Total	**1735**	**2258**	**1814**	**862**	**6669**

As per the details furnished by KSEBL, the increase in employees or the excess employees over the number of newly recruited employees to replace the retired employees are shown below:

Table 34

Excess employees over the 2008-09 level as per APTEL order

	2008-09	2009-10	2010-11	2011-12
Total No. Of employees	27175	28007	29864	31113
Annual Increase in employees		832	1857	1249
Increase in employees over 2008-09 level		832	2689	3938

Accordingly the additional newly recruited employees in each year in proportion to the retirements is as shown below:

Table 35

Designation wise excess employees

Designation	2009-2010	2010-2011	2011-2012
Assistant Engineer	106	175	60
Cashier	129	201	45
Driver II	1	0	19
Junior Assistant	1	1	1
Junior Fair Copy Assistant	2	4	6
Electricity worker	556	1250	912

Meter Reader	3	206	184
Office Attendant II	3	7	4
PTC Sweeper	0	1	6
Sub Engineer	29	12	12
Sweeper III	0	0	1
Divisional Accountant	0	1	0
Overseer	0	1	0
Accountant LA	0	0	0
Meter Tester	0	0	0
Total	832	1857	1249

The details of revised basic pay and rate of increments as provided by KSEBL for the newly recruits are given below:

Table 36
Basic Pay and Increment rates after revision of pay

Designation	Basic pay (Rs.)	Increment (Rs.)	Period (no. of years)	Increment (Rs.)	Period (no of years	Increment (Rs.)	Period (no of years
Assistant Engineer	20170	870	2	945	6		
Cashier	10800	490	2	605	2		
Driver II	10800	490	2	605	2		
Junior Assistant	10800	490	2	605	2		
Junior Fair Copy Assistant	10800	490	2	605	2		
Electricity worker	8200	190	1	325	2	315	2
Meter Reader	10800	490	2	605	2		
Office Attendant II	8200	190	1	325	2	315	2
PTC Sweeper	8200	190	1	325	2	315	2
Sub Engineer	14470	740	3	870	6		
Sweeper III	8200	190	1	325	2	315	2
Divisional Accountant	20170	870	2	945	6		
Overseer	11780	605	2	740	5		
Accountant LA	10800	490	2	605	2		
Meter Tester	14470	740	3	870	6		

Taking into consideration the fact that a newly recruited employee will be fixed at the minimum of the entry cadre and the actual DA rates disbursed are also know, the basic pay and DA of the employees appointed over and above the thresh hold limit of 27175 can be calculated and the costs with respect to the additional employees as per the orders of APTEL is as shown below:

Table 37
Cost of excess employees

Designation	2009-10 (Rs.cr)	2010-11 (Rs.cr)	2011-12 (Rs.cr)
Assistant Engineer	2.57	6.91	8.66
Cashier	1.67	4.35	5.13
Driver II	0.01	0.01	0.26
Junior Assistant	0.01	0.03	0.04
Junior Fair Copy Assistant	0.03	0.08	0.16
Electricity worker	5.47	17.90	27.37
Meter Reader	0.04	2.71	5.22
Office Attendant II	0.03	0.10	0.14
PTC Sweeper	0.00	0.01	0.07
Sub Engineer	0.50	0.74	0.98
Sweeper III	0.00	-	0.01
Divisional Accountant	0.00	0.02	0.03
Overseer	0.00	0.01	0.01
Accountant LA	0.00	-	-
Meter Tester	0.00	-	-
Total	**10.33**	**32.88**	**48.08**
Average DA rates	13.8%	32.2%	48.1%
Total Basic pay & DA	11.75	43.47	71.19

101. **Terminal benefits:** As per the Orders of APTEL, the terminal benefits have to be provided for over the actual base year expenses and the gratuity directed to be paid as per the judgments of the High court should also be allowed. The details of terminal benefits booked by KSEBL is as shown below;

Table 38
Details of Actual of terminal benefits

	2008-09 (Rs.crore)	2009-10 (Rs.crore)	2010-11 (Rs.crore)	2011-12 (Rs.crore)
Monthly Pension including provisions	445.83	526.86	548.80	659.19
Gratuity	22.83	29.88	23.01	25.37
Commutation	25.03	42.13	31.54	21.47
Medical allowance	1.53	4.61	3.55	3.52
Special festival allowance	0.62	0.84	0.97	1.49
Provision for gratuity/commutation			131.34	
Total terminal benefits	**495.84**	**604.32**	**739.21**	**711.04**

102. As can be seen from the above table, KSEBL has given provision for gratuity to the tune of Rs.131.34 crore on account of the Order of Hon. High Court of Kerala. In the reply dated 31-5-2016, KSEBL has stated that the adoption of Gratuity Act was implemented after 2013 and the sums disbursed on this count were booked under gratuity account. A sum of Rs.41.47 crore had been deposited with various forums towards gratuity cases as on 31-3-2013 pending transfer to expenditure account. Accordingly, KSEBL has requested that the actual disbursement as per accounts along with sums lying under deposits may be approved towards gratuity. Hence, the Commission has sought the details of actual disbursement of gratuity by KSEBL and the same was furnished in the letter dated 31-5-2016. The actual gratuity released to retired employees after 2008-09 is shown in Table 27 is reproduced below::

Year	Rs. Crore
2008-09	20.74
2009-10	27.16
2010-11	20.92
2011-12	23.06
2012-13	48.22

103. It can be seen from the accounts that the gratuity released by KSEBL is less than the amounts booked in the accounts. As per the orders of APTEL, the gratuity paid based on the orders of the Hon. High Court is to

be allowed. Hence, as per the request of KSEBL and as per the orders of APTEL, the actual gratuity paid by the KSEBL in each year should be allowed. KSEBL also stated that an amount of Rs.41.47 crore is deposited in various forums towards gratuity related cases as on 31-3-2013. The same is also to be provided to comply with the orders of the APTEL, once the actual payment is effected as per the orders of respective forum. Based on the above, the terminal benefits to be allowed for the truing up are as shown below:

Table 39
Approved Terminal benefits

	2009-10 (Rs.crore)	2010-11 (Rs.crore)	2011-12 (Rs.crore)
Monthly Pension including provisions	526.86	548.80	659.19
Gratuity	27.16	20.92	23.06
Commutation	42.13	31.54	21.47
Medical allowance	4.61	3.55	3.52
Special festival allowance	0.84	0.97	1.49
Total terminal benefits allowed	**601.60**	**605.78**	**708.73**

The allowable employee cost is accordingly calculated as given below:

Table 40
Approved employee costs for 2011-12

	2009-10 (Rs.crore)	2010-11 (Rs.crore)	2011-12 (Rs.crore)
Basic Pay & DA as per Accounts	753.29	871.87	1,059.51
Less Basic pay & DA of additional employees	11.75	43.47	71.19
Net Basic pay & DA	741.54	828.40	988.32
Other allowances	93.92	101.73	125.38
Terminal benefits approved	601.60	605.78	708.73
Total Employee cost allowable	1,437.06	1,535.91	1,822.43

Repair and Maintenance Expenses

104. The repair and maintenance (R&M) expense as per the audited accounts is Rs 251.70 crore as against the approved amount of Rs 185.00 crore vide the order dated 1st June 2011, in the matter of ARR&ERC of KSEB Ltd for the year 2011-12. The details are given below.

Table-41
Repair and Maintenance Expense claimed for the year 2011-12

Sl No	Particulars	2010-11	2011-12			
		Actuals	KSERC Approval	Actuals	Difference over approval	Difference over last year
		(Rs.Cr)	(Rs.Cr)	(Rs.Cr)	(Rs.Cr)	(Rs.Cr)
1	Plant & Machinery	61.28	185	63.81	66.7	2.53
2	Buildings	5.06		5.78		0.72
3	Other Civil works	5.63		6.67		1.04
4	Hydraulic works	1.99		2.12		0.13
5	Lines, Cable networks	152.09		168.05		15.96
6	Vehicles	4.7		4.12		-0.58
7	Furniture and Fixtures	0.12		0.09		-0.03
8	Office equipment	0.98		1.06		0.08
	Total	231.85		251.7		19.85

105. As per the details submitted by KSEB Ltd, the R&M expenses incurred for the year 2011-12 is Rs 66.70 crore more than the approved level.

106. According to the KSEB Ltd, about 67% of the R&M expenses incurred is under Distribution and further, out of the same 97% is incurred under Lines, cable networks etc under distribution sector. KSEB Ltd has further submitted that,

(i) After the implementation of the KSERC Licensees (Standards of performance) Regulations, KSEB has been giving due care and attention on the maintenance of the distribution system.

(ii) Through centralized procurement, KSEB has been providing necessary materials for maintenance to the distribution without much time delay.

(iii) All the section offices of the Board have been converted into ‘Model Sections’ since January-2011. There is a separate wing for maintenance in each model section with one Sub Engineer, two overseers, two lineman and four electricity workers with vehicle.

(iv) The R&M works is highly susceptible to inflation. The inflation during the year was about 8.42% during the year 2011-12.

(v) Consumer strength has increased from 101.28 lakh as on 31-03-2011 to 104.58 lakh as on 31-03-2012.

(vi) Increase in the distribution assets from Rs Rs 4067.19 crore as on 31-03-2011 to Rs 4530.86 crore as on 31-03-2012, i.e., an increase of Rs 463.67 crore during the year 2011-12.

107. KSEB Ltd has further submitted that, the R&M expenses incurred was about 2.25% of the GFA. The details are given below.

Table-42
Function wise percentage of R&M costs as percentage of GFA

Particulars	GFA at the beginning of the Year	R&M Expenses	Percentage of GFA	Percentage of total
	(Rs. Cr)	(Rs. Cr)	(%)	(%)
Generation	3695.14	21.68	0.59	8.61
Transmission	3441.44	56.19	1.63	22.33
Distribution	4067.19	173.83	4.27	69.06
Total	11203.77	251.70	2.25	100.00

Analysis and Decision of the Commission

108. The Commission had examined the details submitted by KSEB Ltd. As per the estimate of the KSEB Ltd, the inflation is only 8.42% during the year 2011-12, where as the actual expense is about 36% higher than the approved level. The Commission has noticed that, though the R&M expenses is a controllable expenses, it has been increasing excessively over the years, as detailed below.

Table 43
Comparison of approved and actual R&M expense

Year	*Approved R&M*		Actual	
	Rs. Crore	*% increase over previous year*	Rs. Crore	% increase over previous year
2005-06	85.25		93.82	
2006-07	110.99	*30.19%*	110.99	18.30%
2007-08	116.26	*4.75%*	116.26	4.75%
2008-09	138.8	*19.39%*	138.80	19.39%
2009-10	152.74	*10.04%*	173.16	24.76%
2010-11	167.91	*9.93%*	231.85	33.89%
2011-12	185.00	*10.18%*	251.70	8.56%

109. In order to understand the nature of increase, the Commission decided to examine the accounts of R&M expenses on a sample level at the distribution offices of the licensee. Accordingly, staff of the Commission visited Electrical Division, Kundara and examined the nature of expenses

undertaken at the Division for a sample month (December, 2010) on 20-1-2012. The team noticed substantial misclassification of expenses, especially like booking capital items as revenue expenses. It was noted on a sample level that about 36% of the total expenses booked are misclassified as revenue expenses. Main misclassification noted was in respect of re-conductoring & conversion of lines which were classified as revenue expenses. Further, out of the total expenses about 5% of the expenses constitutes salary to meter readers who have been appointed on contract basis. It is clear that even though such items are small by nature it will boost up the revenue expenses. Thus, as against the reasons pointed out by the KSEB Ltd, *prima facie*, increase in R&M expenses is mainly on account of misclassification of capital expenses into revenue expenses, though a detailed study is required to arrive at a final conclusion. The Commission in almost all ARR&ERC orders have flagged the issue of rising O&M expenses and also directed the Board to take action for controlling the expenses. However, KSEB Ltd has not taken any concrete steps to control the R&M expenses.

110. While approving the order on ARR&ERC for the year 2011-12, the Commission had approved the R&M expenses linked to inflationary indices over the year 2008-09. The relevant portion of the order is extracted below.

"The Commission in the case of employee costs has benchmarked the costs with respect to CPI:WPI. The KSERC (Terms and Conditions of Determination of Tariff for Retail Supply) Regulations, 2006 of the Commission has also provided that O&M expenses have to be linked to inflationary components. Accordingly, similar to the methodology adopted for employee costs, the R&M expense is also benchmarked against the CPI and WPI. On 70:30 basis, the composite increase would be about 10.18%. Considering the trends in inflation, the Commission uses the inflation rate as of 2010-11 for 2011-12 also for estimating the expenses. ***However, in the truing up process, the expenses will be allowed based on the actual inflation recorded based on CPI and WPI in 2011-12.*** *The allowable expenses are worked out as follows:*

Approved R&M Expenses for 2011-12

		Estimates only*		*Allowable expenses*
R&M Expenses	2008-09 (Rs. Crore)	2009-10 (Rs.crore)	2010-11 (Rs.crore)	*2011-12 (Rs.crore)*
CPI weightage (70%)	97.15	109.17	120.57	*133.17*

WPI weightage (30%)	41.64	43.22	47.33	*51.83*
Total R&M Expenses	138.79	*152.39*	*167.91*	*185.00*
Yearly increase		*9.80%*	*10.18%*	*10.18%*

** The figures arrived at for the intermediate years (2009-10 & 2010-11) are relevant only for estimation purpose cannot be construed as approved figures. Approved figures for these years remain as per the respective ARR&ERC Orders.*

Based on the norms, the R&M expenses admissible for 2011-12 is Rs.185 crore."

111. The Commission had adopted the same methodology while approving the R&M expenses vide the order dated 30th October-2012 on truing up of accounts for the year 2010-11 and also vide the order dated 28th April-2012 on ARR&ERC for the years 2012-13.

112. The Commission has to ensure that, the approved expenses, which are passed on to the consumers are reasonable and prudent. Hence, the Commission decides to follow the same methodology adopted by the Commission in the order on ARR&ERC for the year 2011-12 for approving the truing up of accounts for the year 2011-12.

113. As per the Government of India reports, the inflation based on CPI and WPI recorded in the past is as follows:

Table 44
Recorded CPI and WPI Indices Over the years

Year	WPI	Yearly Increase	CPI	Yearly Increase
2004-05	100.00			
2005-06	104.50	4.44%		
2006-07	111.40	6.59%	125.00	
2007-08	116.60	4.74%	132.75	6.20%
2008-09	126.00	8.05%	144.83	9.10%
2009-10	130.80	3.81%	162.75	12.37%
2010-11	143.30	9.50%	179.75	10.45%
2011-12	156.10	8.99%	194.83	8.39%

114. Taking 2008-09 as the base year, the R&M expenses worked out for 2011-12 based on CPI:WPI at 70:30 basis as given below.

Table-45
R&M expenses based on CPI:WPI

R&M Expenses	2008-09 Rs. crore	2009-10 Rs.crore	2010-11 Rs.crore	*2011-12* *Rs.crore*
CPI weightage (70%)	97.15	109.17	120.57	130.69
WPI weightage (30%)	41.64	43.23	47.33	51.59
Total R&M Expenses	**138.79**	**152.39**	**167.91**	**182.28**
Yearly increase		*9.80%*	*10.18%*	*8.56%*

115. Based on the above, the R&M expenses approved for the year 2011-12 for the purpose of truing up is Rs 182.28 crore. **The Commission also directs that the amount booked under R&M Expenses may be test checked by the statutory auditors to know the extent of misclassification and a special report may be taken from the auditors for the accounting year 2016-17 and may be submitted before the commission during the next financial year before 30th September 2017.**

Table-46
R&M expenses approved in Truing Up

	2011-12 (Rs Cr)		
	ARR Order	Actual as per Audited accounts	**Allowed in True UP**
R&M Expenses	185.00	251.70	**182.28**

Administration and General Expenses

116. The actual A&G expenses booked by KSEB Ltd including the electricity duty under section 3(1), is Rs 202.72 crore for the year 2011-12. The A&G expenses excluding the electricity duty is Rs 109.41 crore against the approved level of Rs 85.73 crore. The details are given below.

Table-47
A&G expenses claimed for the year 2011-12

Sl.No.	Particulars	2010-11	2011-12	
		Actual (Rs.crore)	Approved (Rs.crore)	Actual (Rs.crore)
1	Rent, Rates and Taxes	4.3	85.73	5.56
2	Insurance	0.38		0.41

3	Telephone/telex/internet charges etc.	3.46		3.46
4	Legal charges	3.24		2.00
5	Audit fees	2.3		2.3
6	Consultancy charges	0.25		0.18
8	Other Professional charges	0.58		4.27
9	Conveyance and vehicle hire charges	23.99		34.08
11	Sub Total (Total of 1 to 9)	**38.5**		**52.26**
12	OTHER EXPENSES			
	a) Fess and subscriptions	0.53		0.47
	b) Printing & Stationary	7.65		9.18
	c) Advertisements	7.5		8.09
	e) Contributions/Donations	1.09		1.16
	f) Electricity Charges	5.26		5.12
	g) Water charges	0.28		0.24
	h) Entertainment	0.27		0.29
	i)Exhibition/publicity	0.19		0.22
	j)Sports and related activity	0.26		0.28
	k)Study tour/Training	1.58		0.77
	l)SRPC expenses	0.84		0.72
	m)DSM expenses	0.92		0.96
	n)APTS expenses	0.02		0.01
	o) Miscellaneous expenses	10.67		13.71
13	Total of OTHER EXPENSES	**37.06**		**41.22**
14	Freight	11.27		9.33
15	Other purchase related expenses	3.31		6.6
	Total (11+13+14+15)	**90.14**		**109.41**

117. KSEB Ltd has claimed that, the A&G expenses are linked to business growth of the utility and also the same are highly susceptible to inflation. The average inflation during the year 2011-12 was 8.42%. Further, the increase in A&G expenses are mainly on the following items.

Table-48
A&G expense components which recorded increase over approval
(₹ in crore)

Particulars	2008-09	2011-12	
	Actual	As per Accounts	Increase over 2010-11
Conveyance and vehicle hire	13.44	34.08	20.64
Miscellaneous expenses	7.24	13.71	6.47
Advertisements	3.3	8.09	4.79
Other Professional charges	0.40	4.27	3.87
Other purchase related expenses	4.11	6.6	2.49
Electricity Charges	3.44	5.12	1.68
Rent, Rates and Taxes	3.89	5.56	1.67
DSM expenses	0	0.96	0.96
Contributions/Donations	0.33	1.16	0.83

118. KSEB Ltd has further submitted that, increase in fuel price and vehicle running and maintenance expenses for the hired vehicles in various field offices are the major reason for increase in conveyance expenses. For the last few years, KSEB has been giving publicity through print and visual media on 'the importance of energy conservation' and the message on energy conservation in addition to the advertisement on tenders, public notice etc.

119. The HT&EHT electricity consumers association argued that, the A&G expenses shall be allowed based on the CPI:WPI in the ratio of 70:30.

Analysis and Decision of the Commission

120. The Commission examined the details submitted by KSEB Ltd and the objections raised by the stakeholders. The Commission vide the order dated 1st June 2011 in the matter of ARR&ERC for the year 2011-12 has approved the A&G expenses for the year 2011-12 at Rs 85.74 crore. The methodology adopted by the Commission is extracted below.

> ***"6.6.2 Analysis and Decision of the Commission***
> *The Commission noted the projection of A&G expenses by the Board. A&G expense no doubt is one of the controllable items and hence no escalation over inflation can be allowed for this item. The Commission notes that the actual A&G expenses for 2007-08 was only Rs.47.81 crore and for 2008-09 is Rs.60.99 crore. In comparison with this, A&G expenses projected for 2011-12 is 107.28 crore, which is 2.24 times more than 2007-08 level and showing an increase of 23% on a compounded rate. The expenses projected by the Board for a controllable item is much beyond the reasonable level. As shown in the earlier section the A&G expenses have been unreasonable in the past with respect to the many parameters which can be considered as benchmark such as number of consumers, sales, GFA, circuit lines, installed capacity etc., The Commission in the previous Order has limited the expenses at Rs.68.76 crore. However, the revised estimates of the Board shows Rs.96.91 crore, showing that the Board has not taken any efforts to limit the expenditure.*
>
> *Considering all the factors and stressing the need to contain the expenses under this head, the Commission decided to use the methodology based on CPI:WPI index for allowing the A&G expenses also, as per the Regulations.* ***However, in the truing up process, the expenses will be allowed based on the actual inflation recorded based on CPI and WPI in 2011-12.*** *The A&G expenses based on the CPI:WPI will be thus worked out as follows:*

Estimate of A&G Expenses linked to CPI:WPI

A&G Expenses		Estimates only		*Estimate*
	2008-09 Rs. Crore	2009-10 Rs.crore	2010-11 Rs.crore	*2011-12* *Rs.crore*
CPI weightage (70%)	42.69	47.97	52.99	*58.52*
WPI weightage (30%)	18.30	18.99	20.80	*22.78*
Total A&G Expenses	60.99	*66.97*	*73.78*	***81.30***
Yearly increase		*9.80%*	*10.18%*	*10.18%*

** The figures arrived at for the intermediate years (2009-10 & 2010-11) are relevant only for estimation purpose, an cannot be construed as approved figures. Approved figures for these years remain as per the respective ARR&ERC Orders.*

The A&G expense to be allowed is Rs.81.30 crore. However, the Commission has considered special requirements under the different heads in A&G expenses such as conveyance, consultancy charges, advertisements etc., and allows provisions higher than the basic formula and also would like to ensure that the provisions arrived as per at the formula are not more than the estimates requested by the Board.

A&G Expenses approved for 2011-12

Sl. No.	Particulars	2010-11 Rs. Crore Approved	2011-12 Rs.Crore ARR	2011-12 Rs.Crore Approved
1	Rents, rates and taxes	4.37	5.39	4.72
2	Insurance	0.56	0.48	0.48
3	Telephone/telex charges, etc.	4.42	4.80	4.80
4	Internet and related charges	0.01	0.03	0.01
5	Legal charges	1.96	3.61	2.11
6	Audit fees	2.53	3.00	2.73
7	Consultancy charges	0.07	0.82	0.82
8	Other Professional charges	0.57	0.33	0.33
9	Conveyance and vehicle hire charges	15.10	21.84	16.32
10	Sub Total (Total of 1 to 9)	**29.59**	**40.30**	**32.32**
11	OTHER EXPENSES			
	a) Fees and subscriptions	0.28	0.71	0.33
	b) Printing & stationary	8.15	10.46	9.66
	c) Advertisements	4.00	8.46	7.50
	d) Contributions/donations	0.37	0.61	0.44
	e) Electricity charges	3.88	5.36	4.60
	f) Water charges	0.30	0.27	0.27

Sl. No.	Particulars	2010-11 Rs. Crore	2011-12 Rs.Crore	2011-12 Rs.Crore
		Approved	ARR	Approved
	g) Entertainment	0.28	0.28	0.28
	h)Training expenses		2.37	2.27
	i) Miscellaneous expenses	9.45	17.11	11.21
	Sub total	**26.71**	**45.63**	**36.57**
13	Freight	7.84	17.50	13.00
14	Other purchase related expenses	4.63	3.85	3.85
	Total A&G Expenses	**68.77**	**107.28**	**85.74**

121. The Commission decides to follow the same methodology adopted by the Commission for approving the A&G expenses vide the order on ARR&ERC dated 1st June 2011, as extracted above for approving the A&G expenses in the process of truing up of accounts for the year 2011-12 also.

122. Accordingly, the Commission, has arrived at the A&G Expenses to be allowed for the year 2011-12 on the changes in CPI:WPI index. The A&G expenses based on the CPI:WPI thus worked out is as follows.

Table 49
A&G expenses admissible as per the CPI:WPI indices

	2008-09	2009-10	2010-11	*2011-12*
	Rs. crore	Rs.crore	Rs.crore	*Rs.crore*
CPI weightage (70%)	42.69	47.97	52.98	57.43
WPI weightage (30%)	18.3	19	20.8	22.67
Total A&G Expenses	***60.99***	***66.97***	***73.78***	***80.1***
Yearly increase		9.80%	10.18%	8.56%

As detailed above, the A&G expenses allowable based on the CPI:WPI over the base year 2008-09 will be Rs 80.10 crore only.

Table-50
A&G expenses approved for the year 2011-12

	2011-12 (Rs. Crore)		
	ARR Order	**Actual**	**Allowed in True UP**
A&G expenses other than Electricity duty	85.73	109.41	80.10

Other Expenses

123. The other expenses include 'Other debits' and 'Net prior period charges'. The KSEB Ltd has booked Rs.11.28 crore under Other debits, against the approved level of Rs.12.00 crore. The 'other debits' booked by the Board is given below:

Table-51
Other debits claimed for the year 2011-12 (Rs. Cr)

Sl No	Particulars	2010-11	2011-12 SERC Approved	2011-12 As per Accounts	2011-12 Difference over approval
1	Research and Development Expenses	0.39	1.50	0.52	-0.98
2	Provision for Bad and Doubtful debts	36.09	7.50	1.94	-5.56
3	Miscellaneous Losses and write-offs	8.69	3.00	8.82	5.82
	Total	45.17	12.00	11.28	-0.72

124. The major item of expenses is the provision given for bad and doubtful debts on account of miscellaneous losses and write-offs. KSEB Ltd had submitted the details of the miscellaneous losses and write-offs, the details are given below.

Table-52
Details of Miscellaneous losses and Write off

Sl No	Particulars	Amount (Rs.Cr)
1	Compensation for injuries deaths and Danger - Staff	1.08
2	Compensation for injuries deaths and Danger - Outsiders	3.69
3	Loss on obsolescence of spares at generating stations	4.04
4	Loss on sale of store	0.01
	Total	**8.82**

125. The Commission approves the other debits as per the audited accounts. Prior period credit charges as per the audited accounts is Rs 61.95 crore debit (expense) as shown below.

Table-53
Net prior period charges claimed by KSEB Ltd

Sl.No	Particulars	2010-11 Actuals (Rs.	2011-12 As per Accounts (Rs. Cr)
I. Income relating to previous year			
1	Receipt from consumers	65.61	0.68

2	Excess interest and finance charges	1.3	0.29
3	Other excess provision made in previous year	0.07	0.35
4	Other income relating to prior period	32.68	9.41
	Total	**99.66**	**10.73**
II. Expenditure relating to previous years			
1	Short provision of purchase	25.32	66.43
2	Operating expenses relating to prior period	0.35	0
3	Interest & finance charges	0.02	0.17
4	Other charges relating to previous years	0.41	6.08
	Total	**26.1**	**72.68**
Net prior period credit/charges (I-II)		**73.56**	**-61.95**

126. As per the details submitted by KSEB Ltd, the major item of expenditure relating to previous years is under the short-provision of power purchase. KSEB Ltd had submitted the details of the short-provision of power purchase under prior period expenses. The details are given below.

Table-54
Details of Prior Period Expenses- Short provision of purchase - for 2011-12
(Rs. Cr)

Being the purchase of power from Synthite from 28/02/11 to 30/04/11.	0.05
Being the POP from PGCIL	2.05
Being the EC payable to VIYYAT for 05/11 and arrear from 25/10/10 to 04/11/10.	0.18
Being the debit of transmission tariff as per CERCJeypore-Gazuwaka adn Ramagundum Hyderabad DC line	5.25
Being the transmission charges payable from 4/2009 to 3/2011	0.36
Being the monthly bill of PGCIL	0.03
Being the rev charges .(bill dtd.06.08.2011)	41.46
Reversal entry of Jl. No.53 of 3/2004 correctly accounted in CB on 12/3/04-1352400	0.47
Being the FBT admitted on 2/8/2009 for MAPS not recorded in Journal	0.96
Being the omission of orig. Jl. entry in 41107 rectified by proposing the RE charges	0.02
Being the payment made to PGCIL for 4/2009 to 3/2011	1.90
Being the rectification entry for Jl.No.41 of 9/2003.	0.03
Being the deferred non liability of 2009 up to 3/09-PG/SR/KSEB/11-12 DNOTE/13	13.55
Being the payment to NTPC (bill dtd. 06/01/2010)	0.10
Sub Total	**66.43**

127. The Commission after analyzing the details approves the prior period income/ charges as per the audited accounts. The summary of the other expenses approved for the purpose of truing up is shown below.

Table -55
Other expenses approved for the year 2011-12

	2010-11 (Rs. Cr)	2011-12 (Rs. Cr)		
	Trued up	ARR Order	Actuals	True up
Other debits	45.17	12.00	11.28	11.28
Prior period charges	-73.56		61.95	61.95
Total	-28.39	12.00	73.23	73.23

Expense capitalized

128. The interest and financing charges capitalised as per the audited accounts is Rs.30.51 crore and other expense capitalized is Rs.126.61 crore. KSEB Ltd has requested to approve the same as per the accounts. The HT&EHT association has also not raised any objections on expense capitalized. As per the principle adopted by the Commission, the same is approved for truing up.

Return on equity

129. The KSEB Ltd in the accounts booked return on equity as 15.5% of the equity capital of Rs.1553 crore. Thus the KSEB has claimed return of Rs.240.7 crore. According to the KSEB Ltd , as per the CERC terms and conditions of Tariff, RoE is decided as 15.5%. However, the Commission in the previous truing up order dated 30th October-2012 in OP No. 34 of 2011, for the year 2010-11 has allowed return on equity @14.00% on the equity capital of Rs 1553.00 crore.

130. KSEB Ltd has challenged above order before the Hon'ble APTEL as appeal petition No. 1 of 2013. Hon'ble APTEL vide the order dated 10th November 2014 has directed the Commission to allow the return on equity at the rate of 15.50% instead of 14.00%.. The relevant portion of the judgment of the Hon'ble APTEL dated 10-11-2014 is extracted below.

"11.3 We find that the State Commission has allowed ROE at the rate of 14% in its Tariff Regulations for generation and transmission. No Tariff Regulations have been framed by the State Commission. Section 61 of the Electricity Act, 2003 provides that the State Commission in specifying the terms and conditions for determining the tariff will be guided by the principles and methodologies specified by the Central Commission for determination of the tariff applicable to the

generating companies and transmission licensees. The Central Commission's Regulations provide for ROE of 15.5%. In the absence of State Commission's own Regulations, the State Commission should have followed the Central Commission's Regulations and allowed ROE of 15.5%. However, the State Commission has decided ROE of 14% without giving any reason. Learned Counsel for the State Commission is now giving reasons for not allowing ROE of 15.5% which is not permissible at appellate stage.

Accordingly, we direct the State Commission to allow ROE of 15.5%, as per the Central Commission's Regulations.

131. Thus, Hon. APTEL has made applicable the norm of 15.5% as RoE for the years 2010-11 and 2012-13. KSEB has not challenged the ARR&ERC orders of the Commission for the year 2011-12. In the audited accounts, KSEB has booked RoE at the rate of 15.5% of equity on the reason that it is as per provisions of regulations issued by CERC. However, the rationale was not used while booking depreciation, which was continued to be booked under the Government of India notification in 1994. Further, the Commission vide the notification 11 KSERC-2005/ XII dated 23rd March-2006 has notified the KSERC (Terms and Conditions of Tariff for Retail Sale of Electricity) Regulations, 2006. The Regulation-13 of the said regulation provides the rate base, which is extracted below.

13. Rate Base.- (1) The Commission shall determine appropriate rate base for computing returns by considering debt and equity separately.
(2) The Commission shall decide the rate of return to the licensees from time to time depending on the need to promote investment and safeguard consumer interest.

132. The Commission vide the notification 1/1/KSERC-2006/ XVI dated 12th October-2006 has notified the KSERC (Terms and Conditions for Determination of Tariff for Distribution and Retail Sale of Electricity under MYT framework) Regulations, 2006. The Regulation-20 of the said regulation provides for Return on Equity, which is extracted below.

20. Return of Equity.- Return on equity shall be computed on the equity base determined in accordance with clause 17 above and shall be @ 14% per annum.

For the purpose of return on equity, any cash resources available to the licensee from its share premium account or from its internal resources that are used to fund the equity commitments of the project under consideration shall be treated as equity subject to limitation contained in clause 17 above.

As requested by the erstwhile KSEB that, it is in the transition stage and hence KSEB may not be insisted for filing the ARR&ERC in the MYT frame work, the Commission has taken a lenient view in this regard and not insisted KSEB/KSEB Ltd to file the ARR under the provisions of the MYT regulation, 2006.

133. It is held by the Hon'ble Supreme Court and Hon'ble APTEL in various judgments that, once the Commission notifies a regulation, it shall be binding on all licensees and stakeholders unless its operation is stayed by Hon'ble High Court and Hon'ble Supreme Court. As per the records available with the Commission, the operation of the KSERC (Terms and Conditions of Tariff for Retail Sale of Electricity) Regulations, 2006 and KSERC (Terms and Conditions for Determination of Tariff for Distribution and Retail Sale of Electricity under MYT framework) Regulations, 2006 was not challenged by KSEB/ KSEB Ltd or other interested parties before the Hon'ble High Court and Hon'ble Supreme Court, till the above regulations are repealed by the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2014, which is notified on 14-11-2014. Hence the above regulations including the RoE provided in the said regulations are applicable to KSEB /KSEB Ltd and other interested parties.

134. The Commission has been approving the ARR & ERC of KSEB and also approving the truing up of accounts duly considering the Regulation-13 of the KSERC (Terms and Conditions of Tariff for Retail Sale of Electricity) Regulations, 2006 and Regulation-20 of the KSERC (Terms and Conditions for Determination of Tariff for Distribution and Retail Sale of Electricity under MYT framework) Regulations, 2006, allowing the RoE at the rate of 14% since the year 2006-07.

135. Further to this and considering the fact there is finality in the Order of the Commission on the ARR&ERC for the year 2011-12, the Commission hereby allows the RoE @14% on the equity of Rs 1553.00 crore, **amounting to Rs 217.42 crore for the year 2011-12**.

Non Tariff Income

136. As per the audited accounts, the total non tariff income is Rs 450.86 crore, as detailed below.

Table 56
Non tariff income claimed by KSEB Ltd

Particulars	2010-11 (Actual)	2011-12	
		ARR order	Actuals
	(Rs. Cr)	**(Rs. Cr)**	**(Rs. Cr)**
Meter Rent/Service Line Rental	154.38	160.00	158.14
Miscellaneous Charges (UCM, Service connection fee, Fee for maintenance of Public lighting, Testing fee, Reconnection fee, Penalty charges, Minimum Guarantee charges, Charges for Service connection minimum, Meter Box charges, Power allocation charges etc.	50.86	50.00	60.31
Wheeling charges & Reactive energy charges	0.00	0.00	6.36
Interest on Staff Loans and Advances	0.40	0.30	0.36
Income from Investments	0.01	0.00	0.00
Interest on Advances to suppliers/ Contractors	3.71	3.00	2.13
Interest from Banks	84.43	64.06	65.95
Rebate Received	72.65	60.00	81.36
Income from Trading	26.47	15.00	27.25
Miscellaneous Receipts	49.83	38.00	49.00
TOTAL	**442.74**	**390.36**	**450.86**

137. The Commission for the purpose of truing up approves the non-tariff income as per the audited accounts.

Revenue from tariffs

138. The total revenue from sale of power within the State as per the audited accounts is Rs 5526.39 crore for the sale of 15980.53 MU. The details are given below.

Table-57
Revenue from Sale of Power within the State

	KSERC order			Actuals		
	Energy sale	Revenue	Avg. Tariff	Energy sale	Revenue	Avg.
Category	(MU)	(Rs.Cr)	(Rs/kWh)	(MU)	(Rs.Cr)	
Domestic	7456.00	1444.08	1.94	7703.23	1531.84	1.99
Commercial	2104.00	1488.69	7.08	2141.22	1592.83	7.44
LT Industrial	1118.84	447.32	4.00	1097.04	461.39	4.21
LT Agriculture	260.00	23.56	0.91	286.18	30.77	1.08
Public Lighting	307.00	58.83	1.92	294.26	63.86	2.17
HT & EHT Total	3717.33	1507.29	4.05	3829.39	1600.75	4.18

Railway Traction	169.98	67.89	3.99	154.49	61.68	3.99
Bulk Supply	463.00	179.44	3.88	472.09	183.27	3.88
NPG	4.00	0.00	0.00	2.63	0	0.00
Total	15600.15	5217.10	3.34	15980.53	5526.39	3.46

139. KSEB Ltd has reported that, the revenue from sale of power as per the audited accounts for the year 2011-12 is inclusive of the fuel surcharge collected from consumers during the year 2011-12.

140. The Commission vide the order dated 21st July 2011 had approved Rs 181.14 crore as fuel surcharge (pertains to the 3rd and 4th quarter of the previous year 2010-11) and ordered to recover the same @Rs 0.25/unit from 1st August 2011 onwards for six months. No other order on fuel surcharge was implemented during the year 2011-12. The details of the fuel surcharge collected and accounted in the audited accounts for the year 2011-12 is detailed below.

Table-58
Details of fuel surcharge collected during the year 2011-12

Sl No	Account head	FUEL SURCHARGE	2011-12 Amount (Rs.Cr)
1	61 213	Domestic - Fuel Surcharge	81.62
2	61 223	Commercial - Fuel Surcharge	20.67
3	61 233	Public Lighting - Fuel Surcharge	3.48
4	61 243	Irrigation & Dewatering - Fuel Surcharge	2.58
5	61 246	Paddy Cultivators - Fuel Surcharge	0.55
6	61 253	Public Water Works - Fuel Surcharge	3.43
7	61 273	Industrial L.T. - Fuel Surcharge	10.20
8	61 283	Railway traction - Fuel Surcharge	1.60
9	61 293	Bulk Supply - Fuel Surcharge	3.21
10	61 323	H .T - Fuel Surcharge	25.16
11	61 333	E.H.T - Fuel Surcharge	11.92
		Total	**164.42**

141. There was no tariff revision during the year 2011-12. **As per the Table-57 and Table-58 above,** the net amount excluding fuel surcharge collected

from consumers through tariff is (Rs.5526.39 crore-Rs.164.42 crore) Rs 5361.97 crore @ 3.36/unit. The details are given below.

Table-59
Details of the revenue from tariff (excluding fuel surcharge collected)

Category	Actuals				
	Energy sale	Total Revenue including FC	Fuel surcharge collected	Net revenue from tariff excluding fuel surcharge	Avg. Tariff (excluding fuel surcharge)
	(MU)	(Rs.Cr)	(Rs.Cr)	(Rs.Cr)	(Rs/ kWh)
Domestic	7703.23	1531.84	81.62	1450.22	1.88
Commercial	2141.22	1592.83	20.67	1572.16	7.34
LT Industrial	1097.04	461.39	13.63	447.76	4.08
LT Agriculture	286.18	30.77	3.13	27.64	0.97
Public Lighting	294.26	63.86	3.48	60.38	2.05
HT & EHT Total	3829.39	1600.75	37.08	1563.67	4.08
Railway Traction	154.49	61.68	1.60	60.08	3.89
Bulk Supply	472.09	183.27	3.21	180.06	3.81
NPG	2.63	0	0	0.00	0.00
Total	15980.53	5526.39	164.42	5361.97	3.36

142. Further, as per the application for truing up, an amount of Rs 65.31 crore is shown as revenue through sale of surplus power outside the State. The details are given below.

Table 60
Details of sale during the year 2011-12

Month	IEX		PXIL		TNEB				Total	
	Quantum (MU)	Amount (Rs.Cr)	Quantum (MU)	Amount (Rs.Cr)	Quantum (MU)	VC (Rs.Cr)	Comfort charge	Total	Quantity (MU)	Amount (Rs.Cr)
Apr-11	26.87	32.61	1.69	2.17	24.70	25.79	2.47	28.26	53.26	63.03
May-11									0.00	0.00
Jun-11									0.00	0.00
Jul-11									0.00	0.00
Aug-11	0.03	0.01	0.06	0.02					0.09	0.02
Sep-11	5.53	1.95	1.46	0.30					6.98	2.25
Total	32.43	34.57	3.21	2.49					60.33	65.31

143. It is to be noted in this context that, the Commission vide the order dated 1-2-2012 in OP No. 32 of 2011 has approved Rs 161.10 crore as fuel surcharge pertaining to the 1st and 2nd quarter of the year 2011-12. The said amount was allowed to be collected @Rs 0.25/unit from the next

year only ie., from April-2012 onwards for six months. Thus the amount collected was accounted in the revenue from sale of power during the year 2012-13. Further, the Commission vide the order dated 28th May-2012 had approved Rs 77.22 crore as fuel surcharge for the 3rd quarter (Oct to Dec)of the year 2011-12. The said amount was allowed to be collected from the consumers @Rs 0.20/unit, during the year 2012-13 from October-2012 to December-2012 for three months. Thus the said amount was accounted in the audited accounts for the year 2012-13. The Commission vide the order dated 3rd October-2012 has approved Rs 51.84 crore as fuel surcharge for the fourth quarter (Jan to March) of the year 2011-12 and allowed to recover the same @Rs 0.10/unit from January-2013 to March-2013, and hence the same is reflected in the audited accounts of the year 2012-13. Thus the entire amount of fuel surcharge approved for the year 2011-12 as allowed by the Commission to be collected during the year 2012-13 have been accounted in the audited accounts of the year 2012-13. The Commission shall examine the details of the collection of the fuel surcharge approved for the year 2011-12 while examining the revenue from sale of power for the year 2012-13.

144. The Commission has examined the details submitted by KSEB Ltd. on the revenue from sale of power. There was no tariff revision during the year 2011-12. The Commission vide the order dated 21st July 2011 had approved Rs 181.14 crore as fuel surcharge (pertains to the 3rd and 4th quarter of the previous year 2010-11) and ordered to recover the same @Rs 0.25/unit from 1st August 2011 onwards for six months. No other order on fuel surcharge implemented during the year 2011-12. The actual amount collected as fuel surcharge was Rs 164.42 crore. The net revenue from tariff excluding the fuel surcharge is Rs 5361.97 crore @ Rs 3.36 /unit. In addition to the above, KSEB also earned revenue through sale power outside the State. As per the accounts, revenue from sale of energy outside State is Rs.66.63 crore.

145. It is to be noted that, C&AG has not pointed out any discrepancy in the accounts on revenue from sale of power. Hence, for the purpose of truing up, the Commission allows the income from sale of power as per the audited accounts. The details are given below.

Table-61
Revenue from sale of power approved for the year 2011-12

Particulars	ARR order	Audited accounts	Truing Up
	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
Revenue from sale of power within the State	5234.56	5526.39	5526.39
Revenue from sale of surplus power outside the State		66.63	66.63
Total	5234.56	5593.02	5593.02

Total Revenue gap/ surplus after Truing up:

146. As per the order dated 1st June 2011 in the matter of ARR&ERC for the year 2011-12, the total revenue gap approved was Rs 928.62 crore, against which the revenue gap reported by the KSEB Ltd as per the audited accounts was Rs. 1934.13 crore. As explained in the previous paragraphs, the Commission provisionally arrives at a revenue gap of Rs. 1386.97 crore for the year 2011-12 after the Truing up, as shown below.

Table-62
ARR&ERC for the year 2011-12 after Truing Up

Sl No	Particulars	ARR Order	As per Accounts	True up
		(Rs. Cr)	(Rs. Cr	(Rs. Cr
1	Generation Of Power	264.58	281.65	281.65
2	Purchase of power	3,660.67	4,375.31	4,352.32
3	Interest & Finance Charges	265.26	340.52	247.98
4	Depreciation	548.37	466.00	330.60
5	Employee Cost	1,582.11	1,903.33	1,822.43
6	Repair & Maintenance	185.00	251.70	182.28
7	Administration & General Expenses	85.73	202.72	80.10
8	Other Expenses	12.00	73.23	73.23
9	**Gross Expenditure (A)**	**6,603.72**	**7,894.46**	**7,370.59**
10	Less : Expenses Capitalized	116.32	126.61	126.61
11	Less : Interest Capitalized	33.87	30.51	30.51
12	**Net Expenditure (B)**	**6,453.53**	**7,737.34**	**7,213.47**
13	Statutory Surplus/ Roe **(C)**	100.00	240.72	217.42
14	**ARR (D) = (B) + (C)**	**6,553.53**	**7,978.06**	**7,430.89**
15	Non-Tariff Income	390.36	450.86	450.86

16	Revenue from Tariff			
17	(a) With in the State	5,234.56	5,526.39	5,526.39
18	(b) Outside the State	-	66.63	66.63
19	Revenue from subsidies and grants	-	0.04	0.04
20	**Total Income (15+17+18+19)**	**5,624.92**	**6,043.92**	**6,043.92**
21	**Revenue Gap**	**928.61**	**1,934.14**	**1,386.97**

Order of the Commission

134 The Commission after considering in detail, the petition filed by KSEB Ltd, the objections from stakeholders and other materials placed before it, arrived the revenue gap for the year 2011-12 at Rs 1386.97 crore, as against the revenue gap of Rs 1934.13 crore presented by KSEB Ltd based on the C&AG audited accounts for the year 2011-12.

135 The Commission notes that the licensee has not taken any earnest effort to conduct the voltage wise study on technical and commercial losses in spite of repeated reminders and directions. Considering the continued non-compliance of the orders of the Commission, the Commission hereby directs the licensee to show cause within one month from the date of the this Order, as to why action should not be initiated against the licensee as per Section 142 of the Act and to submit the details of the study if any conducted by the licensee in this front.

136 The Commission also directs that the amount booked under R&M Expenses may be test checked by the statutory auditors to know the extent of misclassification and a special report may be taken from the auditors for the accounting year 2016-17 and may be submitted before the commission during the next financial year before 30th September 2017. The petition disposed of. Ordered accordingly.

137 This order is subject to the final judgment of the Hon'ble Supreme Court in Civil Appeal Petition Nos. 5473 of 2015 and 5474 of 2015.

Sd/-	Sd/-
K.Vikraman Nair	S.Venugopal
Member	Member

Minority Order

T.M. Manoharan, Chairperson

1. While agreeing with the majority order on items such as cost of generation of power, cost of purchase of power, interests and finance charges, depreciation, return on equity, repairs and maintenance charges and administrative and general expenses, the undersigned is, with due deference to the decisions taken by the learned Members, constrained to differ with the findings and decisions on the items of the employee cost. For the reasons explained in the following paragraphs, the undersigned humbly believes that, the decision to approve in the truing up process, the excess expenses in such items, is;
   a) not in accordance with the scheme of law relating to determination of tariff,
   b) not in the interest of consumers, and
   c) not in the long term interest of KSEB Ltd, which should function more economically and efficiently to withstand and survive the impending tough competition in power sector.

2. KSEB Ltd has claimed a revenue gap of Rs. 1934.13 crore in its application for truing up of accounts for the financial year 2011-12. The learned Members have, as per their order, approved a revenue gap of Rs.1386.97 crore for the financial year 2011-12. The above revenue gap is mainly due to the increase in the expenditure approved for the following items,-

Table 1
KSEB Ltd – Details of excess expenditure approved in majority order

(Rs. in crore)

Sl. No.	Particulars	Approved in ARR order	Claimed in truing up	Approved in truing up
1	Generation of power	264.58	281.65	281.65
2	Purchase of power	3660.67	4375.31	4352.32
3	Employee cost	1582.11	1903.33	1822.43
4	Other expenses	12.00	73.23	73.23

Out of the above four items of expenditure, the cost of generation (item No.1) and the cost of power purchase (item No.2) are uncontrollable items of expenditure and therefore, the excess expenditure under the above items have to be approved.

The licensee could also have realized such excess expenditure for generation and purchase of power in accordance with the provisions of KSERC (Fuel Surcharge Formula) Regulations, 2009.

3. Kerala State Electricity Board (KSEB), the predecessor in interest of KSEB Ltd, had, in their **application dated 1-2-2011** for the approval of ARR and ERC, for the financial year 2011-12, preferred a claim for Rs. 1910.62 crore towards employee cost. This Commission had, in its **order dated 21-11-2011 in** the said application, approved an amount of Rs.1582.11 crore towards the employee cost. Government of Kerala had, 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, re-vested in KSEB Ltd, the assets, liabilities, rights and interests of the erstwhile KSEB. Thus with effect from 01.11.2013, KSEB Ltd has become operational, as the successor in interest of erstwhile KSEB. In the application dated 19.11.2014, KSEB Ltd has preferred a claim for Rs.1903.33 crore towards the employee cost. The amount of employee cost claimed by KSEB Ltd, the amount of employee cost approved by the Commission in the ARR order, the amount of employee cost claimed by KSEB Ltd in the application for truing up of accounts and the amount of employee cost approved by the learned Members for the financial year 2011-12 are tabulated hereunder.

Table 2
KSEB Ltd – Details of employee cost claimed and approved in the majority order

Particulars	ARR	Truing up	% of increase
Claimed	1910.62	1903.33	No increase
Approved	1582.11	1822.43	15.19%

From the above data, it can be found that KSEB Ltd has claimed an amount of Rs.1903.33 crore towards employee cost in the application for truing up of accounts as against Rs.1910.62 crore in the application for approval of ARR & ERC, without any increase. The learned Members have approved an amount of Rs.1822.43 crore towards employee cost in their order on truing up of accounts as against Rs.1582.11 crore approved in the order in the application for approval of ARR & ERC, with an **increase of 15.19%.** It would be worthwhile to examine the increases in employee cost claimed and **approved** in the financial years immediately prior to 2011-12. The details of the amounts claimed and the amounts approved towards employee cost are tabulated hereunder.

Table 3
KSEB Ltd – Details employee cost claimed and approved in ARR

Fin. Year	ARR Claimed (Rs.Crore)	% increase	ARR Approved (Rs.Crore)	% increase
2006-07	882.20		823.45	
2007-08	965.00	9.4%	1,090.00	32.4%
2008-09	1,136.86	17.8%	1,136.86	4.3%
2009-10	1,069.96	-5.9%	1,069.96	-5.9%
2010-11	1,690.42	58.0%	1,247.31	16.6%
2011-12	1,910.62	13.0%	1,582.11	26.8%

The increases in employee cost claimed by KSEB Ltd in their application for approval of ARR are in the **range from -6% to 58%** and the increases approved by the Commission are in the **range from -6% to 32%**. The details of amounts claimed and approved in the truing up orders are given below.

Table 4
KSEB Ltd – Details of amounts claimed and approved in truing up orders

Fin. Year	Truing up Claimed (Rs.crore)	% increase	Truing up Approved (Rs.crore)	% increase
2006-07	898.09		897.79	
2007-08	904.88	0.76%	904.88	0.79%
2008-09	1,255.19	38.71%	1,255.19	38.71%
2009-10	1,451.53	15.64%	1,352.45	7.75%
2010-11	1,712.80	18.00%	1,462.00	8.10%
2011-12	1,903.33	11.12%	1,822.43	24.65%

The increase in employee cost approved by the learned Members in their order on truing up of accounts appears to be on the higher side when compared to the increases claimed and approved in the truing up processes relating to the financial years prior to 2011-2012.

4. The scheme of law relating to approval of expenditure and determination of tariff, relevant to the issue are explained hereunder. The KSERC (Terms and Conditions for Determination of Tariff) Regulation, 2014 (hereinafter referred to as the Tariff Regulations, 2014), came into force with effect from 14.11.2014. Before that, the determination of tariff was governed by the following regulations.

1. Kerala State Electricity Regulatory Commission (Tariff) Regulations, 2003
2. Kerala State Electricity Regulatory Commission (Terms and Conditions of Tariff for Retail Sale of Electricity) Regulations, 2006
3. Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Distribution and Retail Sale of Electricity under MYT Framework) Regulations, 2006
4. Kerala State Electricity Regulatory Commission (Fuel Surcharge formula) Regulations, 2009

The above four regulations have been repealed by regulation 99 of the Tariff Regulations, 2014, which states as follows.

> ***99. Repeal and savings.–*** *(1) Save as otherwise provided in these Regulations, the "Kerala State Electricity Regulatory Commission (Tariff) Regulations, 2003", "Kerala State Electricity Regulatory Commission (Terms and Conditions of Tariff for Retail Sale of Electricity) Regulations, 2006", "Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Distribution and Retail Sale of Electricity under MYT Framework) Regulations, 2006" and the "Kerala State Electricity Regulatory Commission (Fuel Surcharge formula) Regulations, 2009" are hereby repealed.*
>
> *(2) Notwithstanding such repeal,-*
>
> *(a) any proceedings before the Commission pertaining to the period till March 31, 2015, including determination of tariff or truing up or review matters pertaining to the period till financial year 2014-15, i.e., up to 31st March 2015, shall be governed by the Kerala State Electricity Regulatory Commission (Tariff) Regulations, 2003, the Kerala State Electricity Regulatory Commission (Terms and Conditions of Tariff for*
>
> *Retail Sale of Electricity) Regulations, 2006 and the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Distribution and Retail Sale of Electricity under MYT Framework) Regulations, 2006, including amendments thereto as the case may be.*
>
> *(b) anything done or any action taken or purported to have been done or taken including any order or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed Regulations shall, in so*

far as it is not inconsistent with the provisions of these Regulations, be deemed to have been done or taken under the corresponding provisions of these Regulations.

Therefore, as per sub-regulation (2) of regulation 99 of the Tariff Regulations, 2014, the present application for truing up of accounts for the financial year 2011-12 has to be processed and decided, mainly in accordance with the provisions of the following regulations,-

(1) Kerala State Electricity Regulatory Commission (Terms and Conditions of Tariff for Retail Sale of Electricity) Regulations, 2006 (hereinafter referred to as Tariff Regulations, 2006)
(2) Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Distribution and Retail Sale of Electricity under MYT Framework) Regulations, 2006 (hereinafter referred to as MYT Regulations, 2006)
(3) Kerala State Electricity Regulatory Commission (Fuel Surcharge formula) Regulations, 2009 (hereinafter referred to as Fuel Surcharge Regulations, 2009)

5. The O&M expenses, have to be regulated in accordance with the provisions of the Tariff Regulations, 2006. Regulation 15 of the said regulations is quoted hereunder,-

> ***15. O&M Expenditure.-*** *(1) The component of revenue requirement consists of employee cost, administration and general expenses, repairs and maintenance expenses and other miscellaneous expenses.*
>
> *(2) These costs are to be taken at actuals or as allowed by the Commission whichever is lower and should be taken as base value.*
>
> *(3) The approved base value may be indexed to predetermined indices such as Consumer Price Index, Wholesale Price Index or a combination of both indices for subsequent years. Base value of O&M can be indexed to 70% of CPI and 30% of WPI.*

Sub-regulation (1) specifies that O&M expenditure shall consist of employee cost, repairs and maintenance expenses and administrative general expenses. As per sub-regulation (2), the actual expenditure or the approved expenditure whichever is less has to be taken as the base value. This has to be done in the process of truing up of accounts relating to previous financial year. The base value has to be indexed based on the weighted average of the consumer price index and wholesale price index in the ratio of 70 : 30. This has to be done for approving the O&M cost in the ARR for the next financial year.

6. The cost of power purchase and taxes on income are uncontrollable items of expenditure, whereas O&M expenses, return on equity, depreciation and non-tariff income are controllable items of expenditure. Truing up of accounts is a process of prudence check done by the Commission on the audited accounts of the licensee to evaluate its financial and operational performance compared to the approved forecast in the order on aggregate revenue requirements and expected revenue from charges. It has been held by the Hon'ble Supreme Court and Hon'ble APTEL that, auditing of accounts by the Comptroller and Auditor General (C&AG) and prudence check done by the Commission in the truing up process are totally different with different objective. The auditors examine the expenses of the licensee to ascertain whether or not there were any irregularities or non-compliance of rules and regulations relating to finance and accounting of the licensee. Prudence check is done by the Commission to examine the reasonableness of expenses incurred by the licensee and to ascertain how much of such expenditure can be passed on to the consumers by way of tariff. Prudence check in truing up process is the most effective step to safeguard consumer interest and therefore the Commission has the duty to perform it with utmost care and caution. Prior to the Tariff Regulations, 2014, in respect of controllable items, the actual amount of expenditure or the amount of expenditure in ARR whichever is less, had to be approved in the truing up process as per the regulations. In this process, if the licensee achieved some efficiency gains and reduced its expenditure below the level approved in ARR, the benefit was not made available to the licensee, since in the truing up process, the actual amount incurred or the amount approved in ARR, whichever is less, was being allowed. Thus the entire benefit of efficiency gains achieved by the licensee was made available to the consumer and therefore such system was not encouraging the licensee to make efficiency gains. It was in view of the above facts, the mechanism for sharing gains or losses on account of controllable factors was specified in regulation 15 of the Tariff Regulations, 2014. The said regulation 15 is quoted hereunder,-

> ***"15. Mechanism for sharing of gains or losses on account of controllable factors. –*** *(1) The aggregate gain to the generating*

business/company or transmission business/licensee or distribution business/licensee or state load despatch centre, as approved by the Commission, on account of controllable factors shall be dealt with in the following manner:-

(a) one-third of the amount of such gain shall be passed on to consumers as a rebate in tariffs;

(b) the balance two-third of the amount of such gain, may be utilised at the discretion of the generating business/company or transmission business/licensee or distribution business/licensee:

Provided that the net gain or loss to the generating business/company on account of normative operational parameters specified in sub-regulations (5), (6), (7), (8), and (9) of regulation 47 shall be shared as specified in regulation 41 of these Regulations.

(2) The aggregate loss to the generating business/company or transmission business/licensee or distribution business/licensee or state load dispatch centre, as approved by the Commission, on account of controllable factors shall be borne by such generating business/company or transmission business/licensee or distribution business/licensee or state load dispatch centre and shall not be passed on to the consumer in any manner."

From the above regulations it can easily be seen that prior to and after coming into force of the Tariff Regulations, 2014, the loss compared to the approved level of expenditure of the distribution licensee shall not be passed on to the consumers in any manner. There is no provision in the regulations to approve in truing up process, any excess expenditure over and above the amount approved in ARR in respect of controllable items of expenditure. Truing up is invariably based on the audited accounts of expenditure actually incurred by the licensee. The expenditure incurred by the licensee should also be supported by authentic records. KSEB Ltd has not pointed out any regulation which authorizes or empowers the Commission to transgress the limits of expenditure as approved in the ARR and to approve any excess employee cost in the truing up process without substantiating authentic records. Therefore the undersigned is of the humble view that the relevant regulations do not permit the Commission to approve in truing up process any expenditure in excess of the amount approved in ARR in respect of controllable items of expenditure and therefore, the order of the learned **Members approving an amount of Rs. 1822.43 Crore in truing up process, as against the amount of Rs. 1582.11 crore** approved in ARR is not in accordance with the scheme of law and regulations. This is all the more true in view of the judgments of the Hon'ble APTEL and of the Hon’ble Supreme Court to the effect that, the regulations issued by the Commission are subordinate legislations and therefore they are binding not only on the consumers, the licensees and the generators, but also on the Commissions which issued such regulations.

7. The Commission had been approving employee cost in the orders in the applications for approval of ARR & ERC (hereinafter referred to as ARR order) and in the orders in the application for truing up of accounts (hereinafter referred as truing up order). The amounts claimed and approved in ARR orders and truing up orders in the past have been tabulated in earlier paragraphs. From the above tables, it can easily be found that KSEB Ltd had been keeping the employee cost under check up to the financial year 2008-09. The number of employees and their average monthly salary are tabulated hereunder.

Table 5

KSEB Ltd – Details of employees and employee cost

Financial year	Number of employees (No.)	Employee cost claimed in truing up (Rs.crore)	Average monthly salary of employee (Rs.)
2006-07	25894	898.09	28,903
2007-08	25110	904.88	30,031
2008-09	27175	1,255.19	38,491
2009-10	28007	1,451.53	43,190
2010-11	29864	1,712.80	47,794
2011-12	31113	1,903.33	50,979

It appears that there was a change in the strategy or policy of the management of KSEB Ltd with regard to the number of employees and the employee cost which can be inferred from the above tables.

8. The learned Members appear to have approved a higher employee cost in excess of the employee cost approved in the ARR order, based on the common judgment dated 10.11.2014 of the Hon'ble APTEL in Appeal No. 1/2013 and Appeal No. 19/2013, the operative portions of which have been quoted in paragraphs 4 and 5 of their order. From para 8.4 of the said order dated 10.11.2014, it can be found that the Hon'ble APTEL had concurred with the right concern shown by the Commission with regard to the steep increase in number of employees and in employee cost of KSEB Ltd in the recent past. The Hon'ble APTEL had only expressed its view that the increase in DA, the increase in pay consequent to pay revision and the terminal benefits for employees should be granted without

accounting for the increase in man power from 2008-09 to 2012-13. The strength of employees in 2008-09 was 27175 numbers. It was also directed that the gratuity directed to be paid as per the judgments of the Hon'ble High Court dated 10.03.2003 should also be allowed. The Hon'ble APTEL had directed this Commission to true up the employee cost from 2010-11 to 2012-13 as per the above directions. The Commission had filed review petition RP No.12/2015 and IA No. 129/2015 in the said judgment dated 10.11.2014. The Hon'ble APTEL had as per its order dated 13.04.2015 disposed of the said review petition without giving clarifications on the points raised by the Commission.

9. KSEB Ltd had filed before the Hon'ble Supreme Court, the Civil Appeal No. 5473 and 5474 of 2015 from the order dated 10.11.2014 of the Hon'ble APTEL in appeal Nos. 1/2013 and 19/2013. The Commission had, in the counter affidavit filed in the above appeals, submitted certain important questions of law before the Hon'ble Supreme Court, as can be seen from para 7 of the order of the learned Members. The matter is therefore sub-judice. The Commission had taken steps for the implementation of the orders of the Hon'ble APTEL as explained in para 6 of the order of the learned Members. The Commission had as per letter dated 29.02.2016 had called for several details as explained in para 10 of their order. Public hearing was also done on 12.07.2016, the details of which are explained in para 12 to 19 of the order of the learned Members. The Commission had also sought for the views of the Government regarding taking over the liabilities of KSEB Ltd up to 01.11.2013, as explained in para 20 and 21 of the order of the learned Members. The Commission had sought further clarifications from KSEB Ltd vide letter dated 15.12.2016. It has been stated in para 95 of the order of the learned Members, as follows,-

> *"Though KSEB Ltd has provided the details of actual expenses incurred by it in 2011-12, the actual expenses incurred by it as per the order of the APTEL in appeal No. 1/2013 and 19/2013 were not furnished, except some estimations based on some assumptions. Further, KSEB Ltd has not clearly established based on actual figures, that the approved level of employee expenses as per the ARR &ERC Order were insufficient to meet employee cost required as per the order of Hon'ble APTEL."*

In para 96 of the order of the learned Members, it is seen stated by them that,-

> *"In this circumstance, the Commission is inclined to rely on some minimum calculations of employee expenses for the year 2011-12 so as to comply with the directions of APTEL in its order in appeal No. 1/2013 and 19/2013. The Commission has come to the conclusion that there may be some excess amount required over the approved level of*

expenses in the year 2011-12 even though number of employees is frozen at 2008-09 level (27175 numbers).”

It is seen stated that though retired employees having higher basic pay are replaced by employees in the lowest entry cadre, the basic pay is not reduced as expected due to annual increments in basic pay and that “there may be increase in the component of basic pay even if employee strength is limited at 2008-09 level”. It is also stated that the component of actual DA is more than the approved level. The pay revision has been cited as the third reason and the increase in terminal benefits is cited to be the fourth reason. KSEB Ltd has not produced necessary and sufficient authentic documents or records to substantiate such claims for higher employee cost pertaining to the 27175 employees who were in the service of KSEB Ltd in 2008-09.

10. In this regard, it appears that the following facts have not been fully appreciated. O&M expenditure consists of employee cost, R&M expenditure and A&G expenditure. As per the regulations, approval is given for the gross amount of O&M expenditure consisting of the above components. The Commission has no authority or responsibility to fix the pay and allowances of the employees of KSEB Ltd. It is the prerogative of the management of KSEB Ltd to determine the pay and allowances and service conditions of its employees, after following due procedures and after obtaining concurrence of the Government. KSEB Ltd may incur any expenditure for giving service benefits to its employees. The Commission has to fix only the reasonable limit of such expenditure under the head O&M expenditure, which can be passed on to the consumers by way of tariff. Within the normative maximum limit for the O&M expenditure, as fixed by the Commission in accordance with the regulations, the licensee has the freedom and latitude to regulate its expenditure under various sub heads. While approving the amounts under various expenditure heads such as cost of generation, cost of power purchase, interest and finance charges, O&M expenditure, depreciation and RoE, the Commission makes reasonable estimates based on the relevant regulations. In truing up process, the Commission has to conduct prudence check on the actual expenditure as per audited accounts of the licensee to evaluate its physical and financial performance as well as the efficiency gains, if any, achieved. The truing up process is based on actual expenses as evidenced by authentic accounts and records. In the absence of the details of actual expenses supported by authentic records, excess expenditure cannot be approved by the Commission in the truing up process. Even in the case of uncontrollable items of expenditure such as cost of power purchase, the Commission does not approve the entire amount claimed by the licensee, if it has not achieved target for reduction of T&D loss. The Commission fixes in the ARR order, a reasonable target for reduction of T&D loss.

The Commission does also approve the capital expenditure required for reducing T&D loss. If the licensee does not achieve the target for T&D loss, the cost of purchase of excess power on account of non-achievement of the target for reduction of T&D loss, is not allowed. Thus, only the excess expenditure within reasonable limits, in respect of uncontrollable items can be passed on to the consumers in accordance with the regulations and the excess expenditure above the amount approved in ARR in respect of controllable items in accordance with the regulations cannot be passed on to the consumers.

11. The Commission has been directing KSEB Ltd to submit the details and records required to be examined in the matter, as directed by the Hon'ble APTEL in its order dated 10.11.2014, whether or not the employee cost approved in ARR for the financial year 2011-12 was sufficient to meet the expenses relating to pay and allowances, gratuity and retirement benefits of the 27175 number of employees who were in the service of KSEB Ltd in 2008-09. KSEB Ltd is the custodian of such details and records. The Commission has been asking for such details and records during 2015 and 2016, that is about 4 years after incurring the expenditure. Even without asking for such details and records by the Commission, KSEB Ltd has the duty to submit proper applications with necessary and sufficient details and authentic documentary evidences and to prefer claims according to the order dated 10.11.2014 of the Hon'ble APTEL. KSEB Ltd has either failed to or refused to submit such details and records, even though it claims to have computerized all the matters relating to the management of human resources. When KSEB Ltd has failed or refused to submit such details and records which should be in its possession, the normal course of action in accordance with Section 114 of The Indian Evidence Act, 1872 is to draw adverse inference and to conclude that KSEB Ltd has failed to or refused to submit such details and records since they would disprove the claim for approval of excess employee cost in the guise of the order dated 10.11.2014 of the Hon'ble APTEL. Section 114 of The Indian Evidence Act, 1872 and clause (g) of the illustrations thereunder which are relevant for the purpose, are quoted hereunder.

> *"**114 Court may presume existence of certain facts:-** The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*
>
> *<u>Illustrations</u>*
>
> *The Court may presume-*

X X

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it"

Here in this case, KSEB Ltd should have in their possession, all the authentic records to substantiate its claim, if any, for employee cost in excess of the **amount of Rs.1582.11 crore**, approved by the Commission in the ARR order pertaining to 2011-12, if such amount was not sufficient to meet the pay and allowances, gratuity, pay revision, pension etc in respect of the 27175 employees in the service of KSEB Ltd in 2008-09, as directed in the order dated 10.11.2014 of the Hon'ble APTEL. Since KSEB Ltd has failed to or refused to produce such records, it has to be reasonably presumed that, if the authentic record are produced, they would prove that the amount approved by the Commission was sufficient to meet the pay and allowances, gratuity, pay revision, pension etc in respect of the 27175 employees in the service of KSEB Ltd in 2008-09. The Hon'ble APTEL has, in its order dated 10.11.2014, directed only to allow in truing up process the amount required to meet the pay and allowances, increase in DA, payment of gratuity, payment of pension, etc., in respect of the 27175 employees. Truing up has to be based on accounts of actual expenditure and authentic records to substantiate the claims of the licensee. Approval of excess expenditure under employee cost as per calculations based on assumptions and conclusions without authentic records, is not in accordance with the spirit of the order of the Hon'ble APTEL dated 10.11.2014. On the other hand it is only approving excess employee cost in the guise of implementation of the order of the Hon'ble APTEL. Therefore there is no justification in approving any excess expenditure towards employee cost over and above **Rs.1582.11** crore approved by the Commission in the ARR order pertaining to 2011-12.

12. According to the undersigned, the Commission has no duty or responsibility to 'calculate the employee cost' in a truing up process (as stated in para 99 of the order of the learned Members), basing on extrapolations or interpolations or assumptions or conclusions as in paras 96, 97 and 98 of the order of the learned Members. The approval **of an amount of Rs.1822.43** crore towards employee cost as granted by the learned Members without necessary, sufficient and proper records is fraught with another adverse eventuality. After having availed the benefit of such excess employee cost approved basing on such extrapolations or interpolations or assumptions or conclusions, the licensee can always challenge their veracity and validity.

13. In this regard the following facts do also deserve special consideration. The KSEB Ltd has challenged in the Writ Petition No. 465/2015, the validity of the Tariff Regulations, 2014. The Hon'ble High Court has not stayed the operation of any of the provisions of the said regulations. The Hon'ble High Court had issued an interim order dated 07.01.2015, directing the Commission not to reject the tariff proposal, if any, filed by KSEB Ltd. As per the Second Transfer Scheme notified by the Government under Section 131 of the Act, KSEB Ltd has been re-organized in to three strategic business units (SBUs) namely SBU-Generation, SBU-Transmission and SBU-Distribution. It was also directed therein that separate accounts and balance sheets shall be prepared for each SBU. However, in view of the order dated 07.01.2015, of the Hon'ble High Court, KSEB Ltd has filed an application for approval of composite ARR and ERC for all the SBUs together, for the financial year 2015-16, without any proposal for determination of tariff. It was also promised by KSEB Ltd that application for determination of tariff would be submitted separately. No such application has so far been filed by KSEB Ltd. No separate accounts and balance sheets for the SBUs have also been submitted. Further KSEB Ltd has not submitted any application for determination of tariff for the financial years 2016-17 and 2017-18 on the ground that the validity of the Tariff Regulations, 2014 has been challenged by them before the Hon'ble High Court. On 24.11.2016 KSEB Ltd has filed an interim application in Writ Petition No. 465/2015, with the prayer for a direction to the Commission to increase and re-fix the normative values of O&M charges for the control period 2015-16 to 2017-18 duly considering the trued up values for the financial years 2009-10 to 2013-14, based on the judgment of the Hon'ble APTEL and considering the actual observed escalations in cost and allow pass through of additional cost due to pay revision by amending the impugned regulations in line with the approach of the Hon’ble Central Electricity Regulatory Commission. Para 4 and 5 of the said interim application is quoted hereunder.

“4. In the meanwhile, following developments, which has a bearing on the matter in the petition has occurred subsequently as submitted below:

a) While the norms derived by the State Commission for the control period 2015-16 to 2017-18 are based on the trued up expenditure figures as approved by the State Commission for 2010-11, the very same figures are undergoing significant changes through the proceedings duly initiated by the State Commission for reviewing the said trued up figures in view of the judgment of Hon'ble APTEL dated 10th November 2014 in Appeal No.1 and 19 of 2013. Hon'ble APTEL vide judgment dated 27.4.2016 and 6.5.2016 in Appeal No.81 of 2014 *and Appeal No.135 of 2014 has also decided on the trued up orders issued by State Commission for the year 2009-10.*

b) In view of the said orders, the respondent, Commission is to issue consequential orders. The Hon'ble APTEL has granted considerable relief to the petitioner though the claims of the petitioner have not been fully allowed by the Hon'ble APTEL. KSEB has moved the Hon'ble Supreme Court in Civil Appeal No.5473 and 5474 of 2015 in respect of claims which have not been allowed by Hon'ble APTEL.

c) KSEBL has filed revised truing up petition for the years 2010-11, 2011-12, 2012-13 and 2013-14 before the State Commission in accordance with the orders of Hon'ble APTEL and the proceedings on these petitions are going on.

5. The above developments which occurred subsequently are relevant and have a significant bearing on the issues contested in the original writ petition as submitted below:

a) The respondent, Commission has fixed the operation and maintenance norms of KSEB Ltd. for the control period 2015-16 to 2017-18 in the impugned KSERC (Terms and Conditions of Tariff) Regulations, 2014 based on the expenses approved by it for the Financial year 2010-11 alone, in the absence of trued up figures for subsequent years.

b) The amount for the said financial year has been increased by a formula to arrive at the O&M cost norms for the control period 2015-16 to 2017-18.

c) When the base value relating to Financial year 2010-11 is changed as per the orders of APTEL, the normative values fixed by the respondent, Commission as per KSERC (Terms and Conditions of Tariff) Regulations, 2014 will have to be appropriately revised and increased.

d) Having recognized by the higher judicial forum that the base values adopted by the State Commission in arriving at the normative values in the impugned KSERC(Terms and Conditions of Tariff) Regulations,2014 need to be re-considered, State Commission is duty bound to re-determine the norms in the impugned regulation, failure of *which will lead to denial of justice and consequent financial loss to the petitioner.*

e)In view of the fact that the proceedings on the truing up petitions for the years 2011-12, 2012-13 and 2013-14 are almost over, there is no relevance on depending on a single year value of 2010-11 for fixing 0&M norms for the control period 2015-16 to 2017-18. CERC and other SERCs are adopting multi years for fixing norms.

f) Once the reliefs as per the orders of Hon'ble APTEL dtd.10.11.2014, 27.4.2016 and 6.5.2016 are granted to the petitioner, the formula followed by the respondent Commission to project the norms for the control period also has to undergo revision based on actual observed escalation rate of trued up costs and the trued up values for the period 2009-10 to 2013-14.

g) Thus it is clear that the normative values fixed as per the impunged KSERC (Terms and Conditions of Tariff Regulations, 2014 will undergo change based on trued up values for the financial years 2009-10 to 2013-14 and the actual observed escalation in costs. Such increase will grant partial relief to the present grievances of the petitioner.

h) The petitioner has implemented pay revision in respect of its 15 employees in line with the pay revision granted by the State Government and in accordance with the bi-partite agreement entered with recognized trade unions as per the Industrial Disputes Act. Hon'ble APTEL and Hon'ble Central Electricity Regulatory Commission has all along followed the approach of allowing the cost on account of pay revision as a pass through over and above the approved norms as it is an uncontrollable factor in the Multi-year Tariff Regulations issued by the Commission.

i) Hon'ble APTEL vide para 8.4 of the Judgment dated 10-11-2014 in Appeal No.l and 19 of 2013 has issued following directions:

"8.4 The State Commission has rightly shown concern about the high employees cost but we are not able to appreciate magnitude in the absence of a specific finding about the excess manpower and non-availability of Regulations. We feel that DA increase which is effected as per the Government orders have 30 to be accounted

for and allowed in the ARR as it compensates the employees for the inflation. The pay revision as per the agreements reached between the ^ management and the unions have also to be honored. The terminal benefits have also to be provided for."

j) In view of these provisions, the petitioner reasonably expects that the respondent, Commission will follow the same rationale approach.

k) Further, Hon'ble APTEL vide the orders dtd. 10-11-2014, 27-4- 2016 and 6-5-2016 in Appeal No.l and 19 of 2013 has directed the respondent, Commission to allow the RoE at the rate of 15.5% instead of 14% in line with the Regulations of Central Commission. Hon'ble Commission is yet to implement the above directions of Hon'ble APTE L. Hon'ble APTEL vide paragraph 11.3 of the judgment dated 10-11-2014 has issued following orders:

"11.3 .... The Central Commission's Regulations provide for RoE of 15.5%. In the absence of State Commission's own Regulations, the State Commission should have' followed the Central Commission's Regulations and allowed RoE of 15.5%. However, the State Commission has decided RoE of 14% without giving any reason, beamed Counsel for the State Commission is now giving reasons for not allowing RoE 20 of 15.5% which is not permissible at appellant stage. Accordingly, we direct the State Commission to allow RoE of 15.5%, as per the Central Commission's Regulations."

l) If the direction of Hon'ble APTEL is not complied by KSERC, the petitioner will not get reasonable return so as to augment further development works in the sector.”.

From the above facts it can easily be seen that the intention of KSEB Ltd is to get the excess employee costs claimed by it for the financial years 2009-10 to 2013-14, approved by the Commission and to get the consequential increase in the normative values of the employee costs as specified in the Tariff Regulations, 2014. As per the order of the learned Members an amount of **Rs.1822.43 is seen approved towards the employee cost as against the amount of Rs.1582.11 crore in the ARR order. The total sale of energy during 2011-12 was 15980 MU. The excess amount approved towards employee cost would therefore result in an average increase in tariff at a rate of Rs 0.15 per un**it. It is needless to point out that the approval of excess employee cost, as claimed by

KSEB Ltd, beyond the scope of the scheme of law and regulations and without substantiating authentic records, is not at all in the interest of the consumers.

14. The undersigned is of the view that the tariff should be fixed in accordance with the following principles as stipulated in Section 61 of the Electricity Act, 2003, which is quoted hereunder.

> *"61. Tariff Regulations.- The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-*
>
> *(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;*
> *(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;*
> *(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*
> *(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;*
> *(e) the principles rewarding efficiency in performance;*
> *(f) multi-year tariff principles;*
> *(g) that the tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies within the period to be specified by the Appropriate Commission;*
> *(h) the promotion of co-generation and generation of electricity from renewable sources of energy;*
> *(i) the National Electricity Policy and tariff policy:*
>
> *Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act, 1998 and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier.".*

From the clauses (c), (d), (e) and (f) it can easily be found that the Commission has a statutory duty to encourage competition, efficiency, economic use of resources, good performance, optimum investment, safeguarding interests of consumers, recovery of reasonable cost of electricity, rewarding efficiency in performance and reducing cross subsidies. Any order issued by the Commission, shall be in tune with the principles as stipulated above. The undersigned is of the humble view that the Commission has a paramount duty to protect the interest of the consumers and therefore the undersigned is constrained to differ from the decisions of the learned Members in this regard.

15. **From the table 5, it can** be seen that both the number of employees and the average cost per employee have been increasing at a rapid pace in the recent years. It would also be worthwhile to examine the data given in following table extracted from the Report on Study on Performance of distribution utilities, 2016 published by the Forum of Regulators

Annexure X -Employee Cost per unit of Input Energy

Table 34: KPI Trends: Employee Cost per unit Input Energy Employee cost per unit of input energy

Utility	2013	Utility	2012	Utility	2011	Utility	2010
NESCO	0.06	NESCO	0.04	NESCO	0.03	Puducherry PD	0.00
PGVCL	0.09	Pash VVN (Meerut)	0.08	Pash VVN (Meerut)	0.10	DVVN (Agra)	0.10
DGVCL	0.10	DVVN (Agra)	0.09	DVVN (Agra)	0.12	Pash VVN (Meerut)	0.12
DVVN (Agra)	0.11	PGVCL	0.11	DGVCL	0.12	APCPDCL	0.12
UGVCL	0.12	DGVCL	0.12	PGVCL	0.13	PGVCL	0.14
Pash VVN (Meerut)	0.16	UGVCL	0.15	UGVCL	0.17	DGVCL	0.15
Poorv VVN (Varanasi)	0.20	Poorv VVN (Varanasi)	0.19	APCPDCL	0.19	UGVCL	0.16
UtPCL	0.21	UtPCL	0.20	Poorv VVN (Varanasi)	0.20	APNPDCL	0.20
APCPDCL	0.22	APCPDCL	0.22	CESCO	0.21	UtPCL	0.20
BSES Rajdhani	0.26	Puducherry PD	0.23	Puducherry PD	0.21	Poorv VVN (Varanasi)	0.21
JSEB	0.27	MSEDCL	0.24	BSES Rajdhani	0.22	BESCOM	0.21
Puducherry PD	0.27	MVVN (Lucknow)	0.24	UtPCL	0.24	APSPDCL	0.22
BESCOM	0.28	BSES Rajdhani	0.26	MSEDCL	0.24	MSEDCL	0.23
SBPDCL	0.31	BESCOM	0.26	BESCOM	0.25	JSEB	0.23
APSPDCL	0.31	JSEB	0.29	JSEB	0.25	APEPDCL	0.24
MP Paschim kshetra VVCL	0.32	APNPDCL	0.29	MVVN (Lucknow)	0.27	GESCOM	0.26
MSEDCL	0.32	WESCO	0.29	MGVCL	0.30	J&K PDD	0.29
KESCO (kanpur)	0.32	DHBVNL	0.30	KESCO (kanpur)	0.31	JDVVNL	0.29
CSPDCL	0.32	APSPDCL	0.31	WESCO	0.31	HESCOM	0.30
WBSEDCL	0.33	GESCOM	0.31	DHBVNL	0.31	MVVN (Lucknow)	0.31
MVVN (Lucknow)	0.33	MP Paschim kshetra VVCL	0.31	CSPDCL	0.32	KESCO (kanpur)	0.32
MGVCL	0.34	KESCO (kanpur)	0.31	GESCOM	0.33	Sikkim PD	0.32
APNPDCL	0.34	APEPDCL	0.32	BSES Yamuna	0.34	BSES Rajdhani	0.33
MP Madhya kshetra VVCL	0.35	BSES Yamuna	0.33	NDPL	0.34	CSPDCL	0.34
BSES Yamuna	0.35	MGVCL	0.34	MP Paschim kshetra VVCL	0.36	MGVCL	0.35

NDPL	0.35	NDPL	0.36	HESCOM	0.36	NDPL	0.39
DHBVNL	0.36	MP Madhya kshetra VVCL	0.37	APNPDCL	0.38	MESCOM	0.39
HESCOM	0.36	HESCOM	0.39	J&K PDD	0.38	CHESCOM	0.40
J&K PDD	0.40	J&K PDD	0.41	APEPDCL	0.39	Goa PD	0.42
APEPDCL	0.40	CHESCOM	0.42	JDVVNL	0.39	MP Madhya kshetra VVCL	0.45
NBPDCL	0.41	UHBVNL	0.42	WBSEDCL	0.42	BSES Yamuna	0.46
GESCOM	0.42	WBSEDCL	0.46	UHBVNL	0.44	MP Purv kshetra VVCL	0.48
UHBVNL	0.43	MESCOM	0.46	MP Madhya kshetra VVCL	0.44	WBSEDCL	0.53
CHESCOM	0.46	Goa PD	0.48	Goa PD	0.45	DHBVNL	0.58
MESCOM	0.49	SESCO	0.49	APSPDCL	0.45	JVVNL	0.63
Goa PD	0.50	CESCO	0.50	MESCOM	0.48	MP Paschim kshetra VVCL	0.64
MP Purv kshetra VVCL	0.50	JVVNL	0.51	CHESCOM	0.49	APDCL	0.82
CESCO	0.51	MP Purv kshetra VVCL	0.53	MP Purv kshetra VVCL	0.54	KSEB	0.85
JVVNL	0.53	TANGEDCO	0.57	TANGEDCO	0.55	AVVNL	0.86
TANGEDCO	0.54	JDVVNL	0.73	AVVNL	0.57	Nagaland PD	0.88
WESCO	0.56	AVVNL	0.78	JVVNL	0.58	Mizoram PD	1.88
JDVVNL	0.57	APDCL	0.85	SESCO	0.64	Arunachal PD	3.74
CESC	0.57	PSPCL	0.87	PSPCL	0.75	CESC	
AVVNL	0.58	KSEB	0.99	Sikkim PD	0.78	CESCO	
MeECL/MePDCL	0.71	MeECL/MePDCL	0.99	MeECL/MePDCL	0.84	HPSEB Ltd.	
PSPCL	0.88	Sikkim PD	1.08	APDCL	0.84	Manipur PD	
APDCL	0.91	CSPDCL	1.08	HPSEB Ltd.	0.94	MeECL/MePDCL	
SESCO	0.93	TSECL	1.14	KSEB	0.98	NBPDCL	
KSEB	1.06	HPSEB Ltd.	1.42	TSECL	1.20	NESCO	
TSECL	1.13	Nagaland PD	1.44	Manipur PD	1.41	PSPCL	
Sikkim PD	1.16	Mizoram PD	1.63	Nagaland PD	1.73	SBPDCL	
Nagaland PD	1.34	Manipur PD	1.66	Mizoram PD	1.88	SESCO	
HPSEB Ltd.	1.37	Arunachal PD	2.04	Arunachal PD	2.40	TANGEDCO	
Manipur PD	1.62	CESC	CESC	TSECL			
Mizoram PD	1.85	NBPDCL	NBPDCL	UHBVNL			
Arunachal PD	2.52	SBPDCL	SBPDCL	WESCO			

16. From the above data it can easily be seen that the trend of increase of employee cost is rapid and disproportionate in the recent years. The employee cost per unit of electricity sold is also very much on the higher side. With a view to regulating the employee cost the Commission had been giving directions in the successive tariff orders issued by it. The Commission has explained the reasons and strategy of approving employee cost in its order dated 01.06.2011 in OP No.5/2011. The relevant portion has been quoted in para 87 of the order of the learned Members. It has been specifically stated therein that any increase in the expenses over the approved level shall be met through productivity increase and additional income generation measures and cannot be passed on to the consumers through tariff. In

the truing up process for the year allowable employee cast shall be re-fixed based on the actual CPI – WPI for the year 2011-12. From the above orders of the Commission, it can easily be seen that the Commission is not against granting any service benefits to the employees of KSEB Ltd over and above the approved level, provided such expenses are met through productivity increase and additional income generation. The Commission has been giving directions to KSEB Ltd to improve efficiency gains by adopting information technology in billing and revenue collection, meter reading, disbursement of pay and allowances and pension, keeping accounts of PF, etc. The Commission has also given direction to assess the requirement of employees in various divisions, re-skill and re-deploy the excess employees and to re-define the job content of different posts. In spite of repeated directions, the licensee is not seen to have taken such directions seriously and implemented them earnestly with a view to improving the performance and enhancing the efficiency gains.

17. The Electricity Act, 2003, has given the statutory right of open access to every consumer, licensee and generating company. The Commission has a duty to encourage open access and thereby encourage competition. The consumers in the subsidizing category with the tariff higher than the average cost of supply, are likely to take advantage of the open access facility to avail cheaper power from open market. If the proposed amendment to the Electricity Act, 2003, is passed by the Parliament, a new category of licensees namely, supply licensees are likely to emerge fast in the power sector. This will introduce more competition in supply of electricity. It is absolutely necessary that KSEB Ltd, being one of the very large public sector undertakings of the Government, with its long tradition of service to the people of Kerala, should continue to function more efficiently to render better service to the people. If KSEB Ltd has to survive such tough competition and sustain as an efficient distribution licensee, it will have to improve the work norms, the efficiency gains and the service to people. The recent studies conducted by Indian Institute of Management, Kozhikode reveals that many measures are yet to be taken by the licensee for improving efficiency, improving utilization of available human resources and for optimizing employee cost. Therefore the undersigned is of the humble view that approval of excess employee cost beyond the scope of regulations without substantiating authentic document and allowing such excess employee cost to be passed on to the consumers, would not be desirable in the long term interest of the efficient functioning of KSEB Ltd.

18. In view of the facts and circumstances as well as the scheme of law and regulations the undersigned is of the view that there is no reason to approve the employee cost in excess of the amount of Rs.1582.11 crore as approved in the

ARR order of the Commission dated 21-11-2011. It is made clear that this is only a minority order. The majority order by the learned Members will prevail over this order.

Sd/-

T.M.Manoharan
Chairman

Approved for Issue

Santhosh Kumar. K.B
Secretary