KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

OA.No.10/2016

In the matter of Applications for the Truing up of accounts of M/s KSEB for the financial year 2012-13

Applicant(s) Kerala State Electricity Board Ltd
Vydhyuthi Bhavanam, Pattom
Thiruvananthapuram
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ORDER DATED 20-3-2017

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 before the Commission on 21-04-2015 for approval of truing up of C&AG audited accounts of its predecessor in interest namely KSEB for the year 2012-13. The petition was admitted as OP No. 10/2016. The Commission sought clarifications on the petition vide the letter dated 29-1-2016 and the KSEB Ltd submitted the reply vide the letter dated 31-05-2016. KSEB Ltd has submitted additional clarification on the petition vide its letters dated 8-8-2016 and 22-09-2016.

2. The Commission vide the order dated 28-4-2012 in the matter of approval of ARR&ERC of KSEB for the year 2012-13, had approved the Aggregate Revenue Requirement (ARR) as Rs 7986.40 crore, Expected Revenue from Charges (ERC) as Rs 6097.24 crore and revenue gap as Rs 1889.15 crore.

3. A comparison of the approved ARR&ERC and the actual as per the application for truing up for the year 2012-13 is given below

Table-1

Comparison of the approved and actual ARR&ERC for the year 2012-13

(Rs in crore)

Particulars	As per order on ARR	As per Application for truing up	(-) decrease/ (+) increase
Generation Of Power	193.15	564.99	371.84
Purchase of power	5008.49	7199.61	2191.12
Interest & Finance Charges	370.19	580.53	210.34
Depreciation	414.62	509.31	94.69
Employee Cost	1663.66	2103.03	439.37
Repair & Maintenance	195.95	251.55	55.6
Administration & General Expenses	86.11	202.43	116.32
Other Expenses	18.5	272.73	254.23
Gross Expenditure (A)	**7950.67**	**11684.18**	**3733.51**
Less : Expenses Capitalized	134.6	150.74	16.14
Less : Interest Capitalized	47.09	116.06	68.97
Net Expenditure (B)	**7768.98**	**11417.38**	**3648.4**
Statutory Surplus/ Roe (C)	217.42	240.72	23.3
ARR (D) = (B) + (C)	**7986.4**	**11658.1**	**3671.7**
Less Non-Tariff Income	386.14	435.82	49.68
Less : Revenue from Tariff	5711.1	7223.39	1512.29
Total Income	6097.24	7659.21	1561.97
Revenue Gap	**1889.16**	**3998.89**	**2109.73**

4. KSEB Ltd has 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 had been continuing as the State Transmission utility 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. The re-vesting has been done from 1st November 2013 onwards. Accordingly, KSEB had continued all the functions as a

Generator, State Transmission Utility and a Distribution Licensee in the State during the year 2012-13. KSEB Ltd has further submitted that, though the Electricity (Supply) Act, 1948 stands repealed, the rules made under Section 69(1) of the said Act shall continue to have effect until such rules are rescinded or modified. Accordingly the Electricity (Supply) (Annual Accounts) Rules (ESAAR) 1985, are in force, and the Board is bound to follow the rules and the annual accounts are prepared in accordance with the above rules, which are certified and audited by the Comptroller and Auditor General of India.

5. KSEB has 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 has also filed Another appeal petition (No.1 of 2013) against the Commission's order dated 30-10-2012 in the matter of 'truing up of accounts of KSEB for the year 2010-11.

6. After hearing the parties, Hon'ble APTEL vide a common judgment dated 10-11-2014 in appeal petition Nos. 1 of 2013 and 19 of 2013 disposed of the petitions with certain directions to the Licensee and the State Commission.

7. The summary of the findings of the Hon'ble APTEL in judgment dated 10-11-2014 is extracted herein 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 to 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 crore, 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. 21.

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."

8. 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 is regarding employee cost, which is 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.

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.

9. 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 here under.

"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.".

10. 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 petition as Civil Appeal Nos. 5473 and 5474 of 2015, but no stay has been 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.

11. In the above circumstances, the Commission has to take a view on the processing of the application for truing up for 2012-13 in the light of the appeals filed before the Hon. Supreme Court. It may be noted that there are number of judgments by Hon'ble Supreme Court and APTEL which clearly states 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 suspend the operation of the judgment of the Hon'ble APTEL. The relevant case laws 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 vide its judgment dated 11th February 2014 in Appeal Petitions 112, 113 And 114 of 2013 had 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.*

12. Considering the above judgments of the Hon'ble Supreme Court and Appellate Tribunal, the Commission has decided to take up the truing up of accounts of 2012-13, duly complying with the directions in the judgment dated 10th November 2014 in appeal petition 1 of 2013 and 19 of 2013~~.~~ However, this order is subject to the final decision of the Hon'ble Supreme Court in Civil Appeal Nos. 5473 and 5474 of 2015.

13. 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 petition 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 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.".*

14. For the processing of the application for truing up of accounts, 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 application 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								
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.C r*	*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.".

15. Though the Commission has instructed to file the details by 29-02-2016, KSEB Ltd vide its letter No. KSEB/TRAC/ Truing up/ 2012-13/ 2845 dated 31st May 2016 has submitted the details sought by the Commission for passing the orders on truing up for the year 2011-12 and 2012-13. 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.	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-**	
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 Amount (In Crores)	2012-13 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 provided details of estimate of cost of excess employee from 2009-10 to 2012-13 for implementing the orders passed by Hon'ble Appellate Tribunal for Electricity in appeal Nos. 1/2013 and 19/2013.

Public hearing on the petition

16. Immediately after the receipt of the details sought by the Commission for processing the petition, the Commission had scheduled the public hearing on the applications for truing up 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.

17. 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.

18. 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.

19. 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. The legal expenses claimed by the licensee are also on the higher side mentioned that KSEBL is not giving taking any pro-active steps for promotion of renewable energy.

20. During the hearing, 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.

The Commission has 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. In reply, KSEB Ltd has submitted the details on 8-8-2016.

21. 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 important arguments 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.

22. 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 the details vide its letter dated 22-09-2016. 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 KSEB Ltd 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.

23. The Commission analyzed the above reply and decided to get the opinion of the State Government on the same, considering the fact that the GOK which has to take a final call 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.

24. The Commission had examined the details submitted by KSEB Ltd and found that, the details are not sufficient for approving the employee cost as per the judgment of the Hon'ble APTEL 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.

(1) The year wise details fo employees and salary particulars for the years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15

(2) Yearwise, categorywise details of the employees retired during the period from 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15

(3) In addition to the above, the following particulars shall also be furnished:

(a) number of assistant engineers drawing a pay and allowance above the scale of Asst. Executive Engineer, Executive Engineer and Deputy Chief Engineer separately.

(b) Number of Assistant Executive Engineer drawing a pay and allowances above the scale of Executive Engineer and Deputy Chief Engineer separately.

(c) Number of Executive Engineer drawing a pay and allowances above the scale of Deputy Chief Engineer.

(d) Number of Senior Assistants drawing a pay and allowances above the scale of Senior Superintendent

(e) Other categories if any

KSEBL has furnished the reply to the above queries on 16-1-2017 & 15-2-2017.

Analysis and Decision of the Commission

25. The Commission has considered the petition, the objections, the arguments of the KSEB Ltd and the findings of the Commission on various items of the petition are as follows.

Energy sales

26. KSEB Ltd had submitted that, the power situation in the State during the year 2012-13 was most critical due to the combined impact of the following factors.

"

(i) Failure of the monsoon to the extent up to 40% of the normal and consequent reduction in inflow and hydel generation.

(ii) Excessive increase in energy demand over the same approved by the Commission.

(iii) Reduction in power allocation from Central Generating Stations

(iv) Delay in commissioning of Kudankulam Nuclear Power Project

(v) Excessive increase in the prices of energy exchange and day ahead market.
(vi) Limitations on importing power from outside the State.
(vii) Transmission constraints in the southern region and difficulty in getting open access.
(viii) High price of energy available from liquid fuel stations

In order to tide over the critical power situation, KSEB was compelled to introduce load shedding and power restriction in the state during 2012-13 due to the failure of monsoon, reduction in energy availability from CGS etc. The details of restrictions are given below.

During the months of April and May 2012

(i) ½ hour cyclic load shedding was imposed wef 02.04.2012 to 23.05.2012.

(ii) 10% restriction on energy usage was imposed on all HT & EHT consumers from 05.04.2012 to 31.05.2012. The excess energy consumption was charged at Rs.10/- per unit.

(iii) 10% restriction was imposed on LT II, LT IV, LT VI (A), LT VI (B), LT VI(C), LT VII (A), LT VII (B) and LT VII(C) categories wef 26.04.2012 to 31.05.2012. The monthly consumption of domestic consumers was restricted at 300 units. For LT consumers also the consumption beyond restriction was charged at Rs.10/- per unit.

For the period from September 2012 to May 2013.

(i) ½ hour cyclic load shedding was imposed during morning and evening peak hours since 27.09.2012 (except during SSLC exam period from 04.03.2013 to 23.03.2013).
(ii) 25% restriction on energy usage was imposed on all HT & EHT consumers wef 15.12.2012 and the excess energy consumption was charged with a penalty at the per unit rate of energy charges.
(iii) 20% restriction was imposed on LT II, LT IV, LT VIA, LT VIB, LT VI C, LT VII A, LT VII B and LT VII C categories. The monthly consumption of domestic consumers was restricted at 300 units. For

LT consumers also the consumption beyond restriction was charged with a penalty at the per unit rate of energy charges."

27. In the order on ARR, the Commission had approved the energy sale for the year 2012-13 as 16386MU, but the actual sale reported by the KSEB Ltd is 16838.24 MU, i.e., the actual was 452.24 MU more than approval even with power restrictions and load shedding. The details are given below.

Table-2.
Energy sale for 2012-13

Category	**2011-12**	**2012-13**		
	Actuals	Approved	Actuals	Difference over approval
	(MU)	(MU)	(MU)	(MU)
LT Domestic	7703.23	8116	8311.41	-195.41
Industrial	1097.04	1104	1101.96	2.04
Commercial & Non Domestic	2141.22	2187	2224.06	-37.06
Irrigation	286.18	247	306.08	-59.08
Public Lighting	294.26	299	313.2	-14.2
Sub total	**11521.9**	**11953**	**12256.7**	**-303.71**
HT Industrial	1595.68	1554	1682.95	-128.95
Non-Industrial	115.86	120	125.45	-5.45
Commercial & Non Domestic	866.62	907	870.81	36.19
Others (Irrigation)	8.11	8	8.35	-0.35
Subtotal	**2586.27**	**2589**	**2687.56**	**-98.56**
EHT 66KV	360.49	375		
110 KV	882.63	860	1217.59	17.41
Railways	154.49	148	173.67	-25.67
Subtotal	**1397.61**	**1383**	**1391.26**	**-8.26**
Bulk Supply	472.09	462	500.76	-38.76
NPG	2.63	0	1.95	-1.95
Total	**15980.5**	**16386**	**16838.2**	**-452.24**

*Small differences are due to rounding off

28. Thus, even with the power restriction and load shedding, the energy sale for the year 2012-13 exceeded the approved ARR by 452.24 units which in percentage terms is 2.75%. However if we were to compare the actual of the current year with the actual of the previous year we find that there

has been an increase of about 5.36% in the consumption of electricity. This growth is less as compared to the overall growth rate of the recent periods where the growth has been hovering around 8%. This lower growth may be attributable to the restrictions imposed during the current period due to the failure of monsoon and the higher rates charged. The above table aptly captures the consumption pattern in the state under LT, HT and EHT. Of the total consumption in the state 73% is accounted for LT consumption, 16% for HT and the balance 11% accounted for by EHT & Bulk Supply. Of the total consumption of LT 68% is consumed by the domestic segment. In fact the domestic consumption is accounting for nearly 50% of the total consumption of the state and has also grown by 8% as compared to the previous year figures. Another trend that is discernable is that the growth in domestic consumption is greater than the average growth rate electricity consumption of the state. The preponderance of domestic consumption in the total consumption patterns brings with it additional challenges in power procurement planning and network management, LT/HT ratio and technical loss. Commercial consumption is the next highest category accounting for 18% of the total consumption followed by the industrial demand of 16.5%. The growth rate in industrial and commercial was below the average growth rate.

29. The Commission approves the actual energy sale as reported above as per the audited accounts for the year 2012-13.

T&D Loss

30. While approving the ARR&ERC for the year 2012-13, the Commission had approved a loss reduction target of 0.50%, over the T&D loss level of 15.31% approved for the year 2011-12 vide the orders on ARR for the year 2011-12. Thus the T&D loss level approved for the year 2012-13 vide the order on ARR&ERC for the year was 14.81%.

31. The actual loss level as per the audited accounts for the year 2011-12 was 15.65%. As per the application for Truing Up for the year 2012-13, the actual loss reduction achieved was 0.35% over the actual loss of 15.65% reported for the previous year 2011-12. Accordingly the actual loss level as per the audited accounts for the year 2012-13 is 15.30%.

32. As detailed above, as against the loss reduction target of 0.50%, the actual achievement was 0.35%.

33. In line with the directions of Hon'ble APTEL vide judgment dated 12th November-2009 in Appeal Petition No. 94 of 2008, in the process of truing up, the Commission considers 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 imposed for the under achievement in T&D loss for the previous year.

34. The actual T&D loss reduction achieved for the previous year 2011-12 was 15.65%. Thus, the T&D loss target approved for the year 2012-13 for the purpose of truing up was 15.65% less the target of loss reduction fixed for the year 2012-13- 0.50%, i.e., the T&D loss approved for the year 2012-13 was 15.15%, as against the actual loss level of 15.30% reported by the licensee.

35. As per the application for truing up, the KSEB Ltd has reported the net generation and power purchase for the year 2012-13 as 19879.70 MU for supplying 16838.24MU to the consumers at the T&D loss level of 15.30%. However, the loss level approved by the Commission for the purpose of truing up is 15.15% only. The net generation and power purchase for supplying 16838.24 MU at the loss of 15.15% is only 19844.71 MU as against the 19879.70 MU reported by KSEB Ltd. The details are given below.

Table-3

Excess power purchase on account of non-achievement of loss reduction target

Sl No.	Particulars	Unit	ARR order	Actual for the year 2012-13	Approved for true up
1	Energy sales within the State	(MU)	16386.00	16838.24	16838.24
2	T&D Loss as percentage of total energy input	(%)	14.81	15.30	15.15
3	Net Generation and Power Purchase at KSEB periphery (excl. PGCIL)	(MU)	19235.00	19870.70	19844.71
4	Excess power purchase on account of under achievement of T&D loss(19870.70-19844.71)	(MU)			25.99

Generation and Power purchase

36. The Commission in the ARR order for the year 2012-13 had approved the hydel generation of 6958 MU expecting normal monsoon, where as the actual hydel generation as 4820.93 MU only, i.e., 2137.07MU (30.7%) less than the approved level due to failure of monsoon. The details are given below.

Table-4
Comparison of hydel generation

Month	Approved (MU)	Actual (MU)	Difference (MU)
Apr-12	618.09	550.90	-67.19
May-12	628.69	663.35	34.66
Jun-12	492.88	502.58	9.71
Jul-12	516.68	423.03	-93.65
Aug-12	578.89	424.64	-154.25
Sep-12	595.43	497.58	-97.85
Oct-12	600.75	330.85	-269.90
Nov-12	522.43	250.52	-271.90
Dec-12	552.12	322.71	-229.41
Jan-13	563.16	218.56	-344.61
Feb-13	567.51	199.47	-368.03
Mar-13	721.38	436.74	-284.63
Total	6957.99	4820.93	-2137.07

37. Vide the order dated 28th April-2012 on ARR&ERC for the year 2012-13, the Commission had approved 205MU from diesel stations – BDPP and KDPP of KSEB Ltd at the total cost Rs 193.15 crore, however the actual generation reported from diesel stations of KSEB Ltd was 532.70MU at the total cost of Rs 564.99 crore. While approving the ARR, the variable cost of BDPP was Rs 9.11 per unit and that of KDPP was Rs 9.65 per unit, where as the actual variable cost was Rs 10.81 per unit at BDPP and Rs 10.57 per unit at KDPP. The summary of the generation from BDPP and KDPP and the cost incurred is given below.

Table-5

Summary of the generation and cost from BDPP & KDPP for the year 2012-13

Month	ARR order			Actual			Difference	
	Quantity	Rate	Amount	Quantity	Rate	Amount	Quantity	Amount
	(MU)	(Rs/kWh)	(Rs.Cr)	(MU)	(Rs/kWh)	(Rs.Cr)	(MU)	(Rs.Cr)
BDPP	88.00	9.11	80.19	83.59	10.81	90.32	4.41	-10.13
KDPP	117.00	9.65	112.96	449.11	10.57	474.67	-332.11	-361.71
Total	205.00	9.42	193.15	532.70		564.99	-327.70	-371.84

38. As per the application for truing up, the details of power purchase from central generating stations against the approval for the year 2012-13 is detailed below.

Table-6

Comparison of actual and approved purchase of energy from CGS in 2012-13

Station	ARR order		Actuals		Difference	
	Quantity (MU)	Cost (Rs. Cr)	Quantity (MU)	Cost (Rs. Cr)	Quantity (MU)	Cost (Rs. Cr)
Talcher II	2957.74	989.67	2916.39	669.53	-41.35	-320.14
NLC-II Stage -1	369.07	99.73	449.99	118.76	80.92	19.03
NTPC- Ramagundam	2241.08	530.56	2405.97	588.88	164.89	58.32
NLC-II Stage-2	525.59	142.00	650.11	170.43	124.52	28.43
NLC-Expansion stg 1	414.46	138.90	494.99	155.38	80.53	16.48
NLC-Expansion II	279.21	82.01			-279.21	-82.01
Simhadry exp	579.32	242.67	422.07	156.63	-157.25	-86.04
MAPS	122.11	25.51	126.84	26.07	4.73	0.56
Kaiga stg 1&2	444.35	141.92	429.26	127.16	-15.09	-14.76
Talcher I	240.61	81.27	0.00		-240.61	-81.27
Vallur	178.18	56.27	23.37	12.36	-154.81	-43.91
ER	632.99	211.44	450.58	139.46	-182.41	-71.98
Jhajjar			700.08	342.45	700.08	342.45
Koodamkulam	665.00	223.30	0.00	0.00	-665.00	-223.30
Total	9649.71	2965.25	8704.67	2507.11	-945.04	-458.14

39. The month wise details of the energy availability from CGS during the year 2012-13 is detailed below.

Table-7

Month wise details of the energy availability from CGS

Month	ARR order	Actual (including Jhajjar)	Short fall
	(MU)	(MU)	(MU)
Apr-12	726.82	811.98	-85.17
May-12	751.04	833.76	-82.72
Jun-12	726.82	797.46	-70.65
Jul-12	751.04	668.66	82.38
Aug-12	791.13	573.43	217.70
Sep-12	795.61	592.10	203.51
Oct-12	822.13	754.47	67.67
Nov-12	795.61	688.41	107.21
Dec-12	870.95	752.57	118.38
Jan-13	901.95	810.57	91.38
Feb-13	814.66	709.06	105.60
Mar-13	901.95	712.21	189.74
Total	9649.71	8704.68	945.04

40. The details of power purchase from IPPs given by KSEB Ltd is shown below.

Table -8

Energy schedule from IPPs during 2012-13

Station	As per ARR order		Actuals		Increase over approval	
	Quantity	Cost	Quantity	Cost	Quantity	Cost
	(MU)	(Rs. Cr)	(MU)	(Rs. Cr)	(MU)	(Rs. Cr)
RGCCPP	622.00	850.24	1517.59	1921.57	895.59	1071.33
BSES	0.00	71.50	131.34	236.84	131.34	165.34
KPCL	20.00	27.28	2.60	6.49	-17.40	-20.79
Wind	74.00	23.09	76.94	24.16	2.94	1.07
Ullumkal	34.00	6.80	14.37	2.87	-19.63	-3.93
MP Steel	41.00	9.42	7.43	1.72	-33.57	-7.70
Iruttukkanam	8.00	2.13	18.55	5.01	10.55	2.88
Philips Carbon Black	36.00	7.27	31.35	6.33	-4.65	-0.94
Total	835.00	997.73	1800.17	2204.99	965.17	1207.26

41. As per the application for truing up, KSEB Ltd has purchased 3075.55MU through traders and energy exchange at an average rate of Rs 6.17 per

unit. The details of the purchase of power from the traders are given below.

Table-9

Summary of the energy procurement through traders and energy exchanges

Sl No.	Source	Quantity (MU)	Amount (Rs.Cr)	Unit rate (Rs/kWh)
1	IEX	1242.01	864.64	6.96
2	PXIL	19.36	11.92	6.16
3	IEX (Term Ahead)	52.89	27.78	5.25
4	WARDHA	12.98	7.43	5.73
5	PTC	301.26	138.63	4.60
6	PTC (BALCO)	13.04	7.51	5.76
7	PTC (SEL)	23.89	11.91	4.98
8	Mittal	70.00	47.49	6.78
9	NVVN	569.86	299.96	5.26
10	SHREECEMENT	35.67	15.11	4.24
11	JSWPTC	285.71	189.82	6.64
12	TATA	2.92	1.21	4.14
13	GLOBAL	55.93	30.71	5.49
14	PTC Gridco	230.91	134.49	5.82
15	JSWPTC Global	16.37	12.06	7.36
16	NVVN (CSPDCL)	32.50	15.88	4.89
17	Global (KPTCL)	98.34	72.22	7.34
18	PTC	11.90	8.66	7.28
	Total	3075.55	1897.44	6.17

42. KSEB Ltd has further submitted that, it had availed 958.21 MU as UI at the cost of Rs 322.89 crore @ Rs 3.37/unit.

43. As per the details submitted by the KSEB Ltd, during the year 2012-13, KSEB Ltd had paid Rs. 267.19 crore to PGCIL as transmission charges against Rs. 325.83 crore approved by the Commission.

44. The summary of the cost of power purchase approved by the Commission for the year 2012-13 and the actual as per the audited accounts is given below.

Table-10
Summary of the cost of power purchase claimed

Particulars	ARR order		Actuals		Excess over approval	
	Quantity	Cost	Quantity	Cost	Quantity	Cost
	(MU)	(Rs. Cr)	(MU)	(Rs. Cr)	(MU)	(Rs. Cr)
Central Generating Stations	9649.71	2965.25	8704.67	2507.11	-945.04	-458.14
IPPs	835.00	997.73	1800.17	2204.99	965.17	1207.26
Traders / Exchanges	1599.00	719.68	3075.55	1897.44	1476.55	1177.76
UI			958.21	322.89	958.21	322.89
Swap return			13.22			
Transmission Charges		325.83		267.19		
	12083.71	5008.49	14551.82	7199.62	2454.89	2249.77

45. During the public hearing, objections were raised mainly on two aspects of power purchase viz:

a) that per unit cost claimed by KSEB for NLC stations and NPCL stations is higher than that of Tamil Nadu and Karnataka.

b) KSEBL has purchased 1,009.53 MU of extra power from BSES, RGCCP and KPCL than approved in ARR and ERC order for FY 2012-13. Owing to inefficient procurement planning by KSEBL, it was requested to the Commission to allow only 877.75 MU of excess purchase over the approved level and that too at the marginal cost of power purchase (Rs. 6.17/kWh procured from short term sources) instead at high priced LFS sources (weighted average price is Rs. 11.14/kWh for the power procurement from BSES, RGCCP and KPCL).

46. With regard to the observation on the difference in costs of CGS stations as compared to the neighbouring states, the licensee submitted that fixed charges and energy charges as approved by CERC only have been paid by KSEBL after prudent check. The licensee had submitted the details of monthwise fixed cost and variable cost for the years 2011-12 and 2012-13. KSEBL has submitted that stringent verification of the claims raised by CGS and IPPs are made before the admission of claims so as to ensure that the claims are in accordance with the approved tariff and as per the

terms of PPA. After admission of claim, the payment is arranged and necessary accounting entries made in books and the cost of power purchased included in the accounts subject to independent audit by C&AG.

47. With regard to the observation on high cost of power purchase and scheduling of liquid fuel station, it was submitted by the licensee that KSEBL has followed the merit order principle while scheduling the liquid fuel stations. Further, 2012-13 being a drought year KSEB was forced to schedule RGCCPP as well as other liquid fuel stations in order to meet the demand far exceeding the restricted import capability of the state due to transmission corridor congestion. Since the maximum import capability at that time was only less than 1800 MW, internal generation had to be resorted to meet the peak demand. Further the prices in the power exchanges touched the rate of Rs 15 to Rs 16 per unit at peak time during that period.

48. With regard to failure of monsoon and consequent scheduling of liquid fuel stations, KSEB Ltd had presented the facts before the Commission in its petition OP No. 38/2012 dated 26-09-2012. The Commission in its order dated 9th October-2012 and 12th October-2012 had noted these issues. The relevant portion of the order of the Commission dated 12th December 2012 is extracted below.

> "*17. Commission carefully examined all the facts, objections and views presented by the stakeholders and KSEB on the matter of imposing power restrictions. While issuing the interim order on the Petition on 9/10/2012 Commission had hoped that the North East Monsoon would be reasonably good and had ordered some restrictions in consumption. Commission had appealed to the Consumers in general to reduce consumption to tide over the crisis. It has been reported that even though peak load consumption had reduced to some extent, the energy usage on a round the clock basis had gone up.*

18. On receipt of a report from KSEB on the latest power situation on 29/11/2012 and taking into account the various facts presented by the stakeholders on the matter, Commission independently analysed the power scenario for the year 2012-13. The Monsoon had failed in an unprecedented scale in the State during the current water year. The inflow received in the reservoirs of KSEB this year till

30th November 2012 and the comparative figures of the previous years are given below:

2003-04 (Recent worst): 3657 MU
2007-08 (Recent best) : 8678 MU
2009-10 : 5818 MU
2010-11: 5831 MU
2011-12 : 6580 MU
2012-13 : 3386 MU

The Hydro storage available in the reservoirs as on 30th November 2012 is given below:

2003-04 (Recent worst): 1956 MU
2007-08 (Recent best) : 3625 MU
2009-10 : 3339 MU
2010-11: 3634 MU
2011-12 : 3423 MU
2012-13 : 1937 MU

19. In contrast to the projection of 6954 MU hydro availability in the ARR&ERC for the FY 2012-13 the expected hydro availability shall be only 5192 MU consequent to the failure of both the monsoons. In addition to the fall in hydro availability, there had been an unexpected reduction of CGS power due to the delay in commissioning of Kudamkulam Nuclear station, Vallur thermal station etc. The Kerala power system is relying very heavily on the costly liquid fuel based power stations. It has also been observed that KSEB is depending heavily on the short term power market, comprising of Power Exchanges, short term trades and UI transactions for meeting the power demands on a day to day basis. Due to the transmission constraints in the Southern Region the rates in the SR had also shot up when compared to the rates elsewhere in the country. The anticipated rates of market based purchases of power was only Rs 4.50 per unit in the ARR for FY 2012-13. In contrast to this, electricity is being procured by KSEB at an average price of approximately Rs 6/- per unit from the market to meet the demand. The dependence of Kerala power system on the short term power market had grown up to unhealthy levels. With such heavy dependence on market, the power planning and procurement machinery in KSEB needs to be strengthened to take full advantage of the markets without falling into costly pitfalls.

20. In these circumstances the energy availability projections and the expected power purchase cost of KSEB for FY 2012-13 has to be revised as follows:

	Approved as per ARR&ERC				Actuals Projected			
	Energy input (MU)	Cost (Cr.)	Energy %	**Cost (%)**	Energy input (MU)	Cost (Cr.)	Energy %	**Cost (%)**
Hydro	6954	-	36%	**0%**	5,192	-	25%	**0%**
CGS	9650	2965	50%	**61%**	9,072	2,632	44%	**36%**
Small IPPs etc	192	49	1%	**1%**	241	60	1%	**1%**
Traders Exchange etc	1599	720	8%	**15%**	2,841	1,465	14%	**20%**
Own LFS	196	193	1%	**4%**	2328	2772	11%	**39%**
Other LFS	642	949	3%	**19%**				
Unch Interch	-	-	-	**-**	1036	310	5%	**4%**
Total	19234	4876	100%	**100%**	20,712	7,239	100%	**100%**

21. The above it can be seen that an amount of Rs 2363 crore has to be expended this FY 2012-13 to meet the existing demand, over and above the power purchase cost projected in the approved ARR&ERC for the year. Out of this Rs 1630 crore is the outgo for drawing power from Liquid Fuel based stations alone. So also 39% of the power purchase cost is for acquiring 11% energy from Liquid fuel stations. The Commission in the interim order dated 9/10/2012 had pointed out that :

> *"This shortfall can be made up by extra generation from Liquid Fuel stations as well as by purchases through Traders, Power Exchanges and UI. No doubt this results in additional financial commitments to KSEB which has to be recovered from the consumers. The KSERC (Fuel Surcharge Formula) Regulations 2009 provide for the recovery of such variations in inflow availability. The relevant clauses are quoted below:*
>
> *"The Board or the distribution licensees as the case may be shall file separately the additional cost due to change in hydro thermal mix on account of excess /reduction in rainfall and subsequent excess/shortfall in purchase of energy within 30 days of the close of the every financial year. The Commission may approve the excess/shortfall in cost on account of mix change after receiving all information from the Board or Distribution licensee as the case may be on a provisional basis considering the merit order and the approval of purchase rates. The recovery shall be effective from the second quarter of the next financial year. The provisional estimates will be adjusted along with the first quarter FRR and allowed from the second quarter onwards."*

While the statutes provide for such recovery of the additional burden of licensees on the above account, the request of the KSEB for recovery of the additional expenses by restricting the normal tariff to 75% of the consumption and enforcing marginal cost of liquid stations for the balance consumption for the period 'till the power position improves' cannot be accepted."

22. Commission undoubtedly reiterates the above position even now. But consequent to further worsening of the power situation a review of the approach is needed. If the expected additional liability of Rs 2363 crore due to the change in hydro thermal mix and short fall in CGS share is to be recovered from the consumers , approximately 150 paise per unit will have to be recovered from all consumers for one year from July 2013 . This would result in a hike of more than 30% in current charges of every consumer in the state over and above the 30% hike in current charges made effective from July 2012. Commission do not want to inflict such tariff shock within a span of one year on the consumers. This tariff shock or surcharge shock next year can be eliminated to some extent if power consumption is restricted in the coming months. This situation had arisen primarily due to the failure of both South West and North East Monsoons this year. Short fall in CGS share as well as failure of KSEB in arranging long term/ medium term contracts for outsourcing power on time and implementing DSM measures also contributed to the crisis."

49. From the above, it can be seen that the Commission has recognized the unprecedented situation of power shortages and appropriate orders were also issued then. Hence, the concern expressed by the stakeholders was addressed by the Commission in the said period itself.

50. The Commission had examined in detail the cost of generation and power purchase claimed by the KSEB Ltd for the year 2012-13. It is true that, there was unprecedented failure of monsoon and consequent reduction in hydel availability during the year 2012-13. A closer examination of the power purchase cost brings to the fore the following facts. The ARR approval for power purchase from CGS was pegged at 9649.71 MU but the actual power purchase from the CGS units was only 8704.67 MU, lower by 943 MU indicating that only 90% of the ARR approval was available. An analysis of the records submitted by the licensee shows that it was mainly due to the delay in commissioning of certain CGS stations viz

Kudankulam, NLC II stage 2, NLC Expansion Stage 1, NLC Expansion II and Talcher I. The approved average cost power from the above units was lower than the sources from which power was ultimately sourced. The failure of monsoon coupled with reduction in availability of power from CGS sources further deteriorated the power situation. Consequently, the cost of power purchase was increased substantially. It is seen that the deficit made up by purchasing power from the liquid fuel stations having highest variable cost and which is more than about 2.5 times the average power purchase cost. The net impact was that the power purchase cost which touched a level of Rs. 7199.62 crore, an increase of Rs.2191.127 crore, ie., an increase of 45%.

51. With regard to the objection pertaining to the cost of purchase from CGS stations, after perusing the records submitted by the licensee and the audit report of the C&AG, Commission is of the view that the cost of power purchase as per the audited accounts can be accepted.

52. The Commission has also examined the monthwise details of the generation and power purchase from various sources. The details are given below.

Table-11
Monthwise details of generation and power purchase

	Hydel (net)	BDPP+ KDPP (net)	Wind & small Hydel IPPs	CGS (net)	Power exchanges	Traders & UI	RGCCPP Kylm	BSES & KPCL	Total
Month	(MU)/ day	(MU)/day	(MU)/day	(MU)/ day	(MU)/day	(MU)/ day	(MU)/day	(MU)/ day	(MU)/day
Apr-12	18.36	1.65	0.26	27.07	1.24	4.73	2.31	0.03	55.65
May-12	22.11	0.94	0.49	27.79	1.77	5.72	0.27	0.01	59.09
Jun-12	16.75	0.73	0.79	26.58	3.78	5.52	0.00	0.00	54.14
Jul-12	14.10	0.87	0.74	22.29	3.16	12.36	2.12	0.00	55.65
Aug-12	14.15	1.33	0.71	19.11	7.35	5.86	6.02	0.02	54.55
Sep-12	16.59	1.31	0.58	19.74	4.60	5.07	5.35	0.72	53.96
Oct-12	11.03	1.65	0.34	25.15	6.81	4.15	5.93	0.00	55.05
Nov-12	8.35	1.46	0.21	22.95	5.72	8.04	6.65	0.02	53.41
Dec-12	10.76	2.01	0.25	25.09	3.38	6.26	7.74	0.00	55.48
Jan-13	7.29	1.73	0.21	27.02	2.23	10.09	7.25	0.00	55.82
Feb-13	6.65	1.41	0.16	23.64	1.35	12.84	4.05	0.00	50.09
Mar-13	14.56	2.22	0.21	23.74	2.42	10.46	2.90	3.66	60.18

53. The monthwise details of the electricity purchase from RGCCPP Kayamkulam is as shown below:

Table-12
Monthwise details of the schedule from RGCCPP- Kayamkulam

Month	Approved							Actuals			Excess quantity over approval	Excess amount incurred over approval
	Quantity	Fixed Charge	Variable Cost		Total	Quantity	Fixed Charge	Variable Cost		Total		
	(MU)	(Rs.Cr)	(Rs.Cr)	(Rs/ unit)	(Rs.Cr)	(MU)	(Rs.Cr)	(Rs.Cr)	(Rs/ unit)	(Rs.Cr)	(MU)	(Rs.Cr)
Apr-12	8.09	17.52	8.31	10.28	25.83	69.44	18.96	81.05	11.67	100.01	61.35	74.18
May-12	48.52	17.52	49.87	10.28	67.39	8.02	19.53	9.33	11.63	28.85	-40.50	-38.54
Jun-12	26.12	17.52	26.85	10.28	44.37	0.00	19.03			19.03	-26.12	-25.34
Jul-12	58.47	17.52	60.10	10.28	77.62	63.71	19.73	67.54	10.60	87.26	5.24	9.64
Aug-12	24.88	17.52	25.58	10.28	43.09	180.47	19.35	191.80	10.63	211.15	155.59	168.06
Sep-12	9.33	17.52	9.59	10.28	27.11	160.43	20.00	186.65	11.63	206.65	151.10	179.55
Oct-12	70.91	17.52	72.89	10.28	90.41	177.82	19.03	201.62	11.34	220.65	106.91	130.24
Nov-12	96.41	17.52	99.11	10.28	116.62	178.10	19.03	201.62	11.32	220.65	81.69	104.02
Dec-12	102.63	17.52	105.50	10.28	123.02	232.05	20.18	260.38	11.22	280.56	129.42	157.55
Jan-13	69.66	17.52	71.61	10.28	89.13	217.50	20.28	247.75	11.39	268.04	147.84	178.91
Feb-13	34.83	17.52	35.81	10.28	53.32	121.58	18.03	140.02	11.52	158.05	86.75	104.73
Mar-13	72.77	17.52	74.81	10.28	92.33	87.11	17.63	103.03	11.83	120.66	14.34	28.34
Total	622.62	210.20	640.04	10.28	850.24	1496.23	230.78	1690.79	11.30	1921.57	873.61	1071.33

54. Though the Commission has directed the KSEB Ltd to file separate petition to recover the additional cost due to change in hydro-thermal mix on account of the reduction in rainfall and subsequent excess purchase of energy within 30 days of the close of the financial year as per the provisions of KSERC (fuel surcharge formula) Regulations 2010, KSEB Ltd has not filed the same.

55. The licensee has also brought to the attention of the Commission, the directives of Hon'ble APTEL dated 10th November 2014 in appeal petition No: 1/2013 and 19 of 2013, wherein it was mentioned that the State Commission to approve the actual cost of power purchase after prudence check and allow carrying cost for actual cost of power purchase over approved level, based on the audited accounts to be submitted by KSEB.

56. As per regulation 3(7) and 3(12) of KSERC (Fuel Surcharge Formula) Regulations 2009, the licensee has to file petition for approval of fuel surcharge on quarterly basis and separately file the additional cost due to change in hydro thermal mix on account of excess /reduction in rainfall and subsequent excess/shortfall in purchase of energy within 30 days of the close of the every financial year. The Commission in its order dated 12-12-2012 on power restrictions had also recognized the same. Tariff Policy also recognizes the fact that delay in filing of details may forfeit the claim of carrying costs. Hence, the Commission is not inclined to allow any carrying cost for the excess cost of power purchase incurred during the year 2012-13 due to the reason that, the licensee had not filed the application for recovering the excess amount incurred on generation and power purchase over approved level on time, as directed by the Commission.

57. The Commission has been approving the cost of generation and power purchase incurred by the licensee is approved after prudence check.

58. However, the cost of generation and power purchase claimed by the KSEB Ltd for the year 2012-13 is for the total generation and purchase quantity of 19879.70MU, which includes the excess power purchase of 25.99MU on accounts of under achievement of the T&D loss reduction target approved by the Commission for the year 2012-13. As per the methodology adopted by the APTEL, additional cost of purchase due to non-achievement of the loss target shall be deducted from the power purchase cost. Accordingly the average power purchase cost is worked out as follows.

Table-13.
Average cost of power purchase for the year 2012-13

Particulars	Actuals	
	Quantity (MU)	Cost (Rs. Cr)
Central Generating Stations	8704.67	2507.11
IPPs	1800.17	2204.99
Traders / Exchanges	3075.55	1897.44
UI	958.21	322.89
Transmission charges		267.19
Total	14538.60	7199.62
Average cost of power purchase (Rs/ kWh)	4.95	

59. The average cost of power purchase for the year 2012-13 works out to Rs 4.95 per unit. Hence the total disallowance of cost of power purchase as per the methodology approved by the Hon'ble APTEL for 25.99 MU is Rs 12.87 crore.

60. The total generation and power purchase cost approved for truing up would be Rs 7751.74 crore as against the Rs 7764.61 crore as per the audited accounts as shown below.

Table-14
Cost of generation and power purchase approved for the year 2012-13

Particulars	ARR order (Rs.Cr)	Actual (Rs.Cr)	Trued up (Rs.Cr)
Cost for internal generation (BDPP+ KDPP)	205.00	564.99	564.99
Power Purchase cost	5008.49	7199.62	7199.62
Less Power purchase cost disallowed			(12.87)
Total Generation and Power purchase cost	5213.49	7764.61	7751.74

Interest and Finance charges

61. The interest and finance charges as per the accounts for the year 2012-13 amounts to Rs 580.53 crore as against Rs 370.19 crore approved by the Commission, as shown below.

Table-15
Actual interest and finance charges claimed for the year 2012-13

Sl No	Particulars	ARR order (Rs,	Actual (Rs,	Increase over approval (Rs, Cr)
1	Interest on outstanding Loans and Bonds	178.14	182.36	4.22
II	Interest on Security Deposit	74.55	113.98	39.43
		252.69	296.34	43.65
III	**Other Interest and Finance Charges**			
	a) Interest on borrowings for working capital	20.00	167.94	147.94
	b) Discount to consumers for timely payment	2.50	-0.11	-2.61
	c) Interest on PF	83.00	96.33	13.33
	d) Other Interest charges	0.00	14.56	14.56
	e) Cost of raising finance	1.00	0.00	-1.00

	f) Guarantee Commission	1.00	0.91	-0.09
	g)Bank Charges	10.00	4.56	-5.44
	Total of III	117.50	284.19	166.69
	Grand Total (I+II+III)	**370.19**	**580.53**	**210.34**

62. The additional borrowings approved for the year 2012-13 was Rs 500.00 crore. However, as per the audited accounts for the year 2012-13, KSEB Ltd has availed fresh loans amounting to Rs 2499.35 crore and redeemed Rs 1721.49 crore, thus the net additional borrowings during the year 2012-13 was Rs 777.86 crore. KSEB Ltd has also submitted that, since short term loans were available at lower rates compared to the interest rate of long term borrowings, KSEB Ltd has availed short-term loans for meeting capital liabilities. During the year 2012-13, the short term loans has increased from Rs 800.00 crore at the beginning of the year to Rs 1526.00 crore at the end of the year, a net increase of Rs 726.00 crore during the year 2012-13.

63. KSEB Ltd has claimed Rs 167.94 crore as interest on overdraft and booked the same under interest on working capital. The total outstanding overdraft at the beginning of the year 2012-13 was Rs 1114.49 crore, which was increased to Rs 1942.96 crore at the end of the year. Thus, there is a net increase in overdraft by Rs 828.47 crore during the year 2012-13. According to the KSEB Ltd, as per the audited accounts for the year 2008-09, the revenue gap was Rs 749.17 crore, the same for the year 2009-10 was Rs 1227.50 crore. For the year 2010-11, the Commission had approved the revenue gap as Rs 457.47 crore, but as per the audited accounts, the revenue gap increased to Rs 1229.63 crore. For 2011-12 and 2012-13, the deficit had further mounted to Rs.1934.13 crore and Rs. 3998.89 crore respectively. There has been no tariff revision to bridge the revenue gap till 2010-11. Tariff revision was ordered wef 01.07.2012 to fetch additional revenue of Rs. 1257.63 Crore during the period 01.07.2012 to 31.03.2013. Aggravating the situation further, due to the failure of monsoon, KSEB Ltd was constrained to purchase energy from liquid fuel station and traders etc at a high cost, which in turn resulted in increase in cost of power purchase by Rs 2249.77 crore over approved level. KSEB Ltd has also submitted the month wise details of the overdraft availed during the year 2012-13.

64. KSEB Ltd has further submitted that, due to the severe financial crisis, it had deferred payments of Rs 1711.21 crore including cost of power purchase during the year 2012-13. Though as per the fuel surcharge formula regulation, the additional liability incurred on power purchase during the year 2012-13 can be passed on to the consumers as fuel surcharge, KSEB Ltd mentioned that licensee had not filed any proposal on the same before the Commission to avoid tariff shock to the consumers.

65. KSEB Ltd has submitted that, the interest on security deposit on the outstanding security deposit is Rs 113.98 crore. However, the actual disbursement of the interest on security deposit made during the year 2012-13 was Rs 58.3 crore only. The interest on GPF balance provided was Rs 96.33 crore. Other bank charges claimed as per the audited accounts includes Rs 4.56 crore as bank charges for fund transfer from head office to field units, bank commission for collection from consumers, and Rs 0.91 crore towards Guarantee commission.

66. 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-16

Summary of the borrowings and repayments during the year 2012-13

Sl No	Item	Opening Balance		Borrowing		Redemption		Closing Balance	
		As per order on ARR	Actual	As per order on ARR	Actual	As per order on ARR	Actual	As per order on ARR	Actual
		(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
I	Long term Loans	569.17	556.34	0.00	123.35	71.12	71.49	498.05	608.20
II	Short term loans	907.09	800.00	500.00	2376.00	0.00	1650.00	1407.09	1526.00
	Total	1476.26	1356.34	500.00	2499.35	71.12	1721.49	1905.14	2134.20

67. As shown above, the additional borrowings for the year was Rs 2499.35 crore as against Rs 500.00 crore approved by the Commission. Further, the actual redemption of loan during the year 2012-13 was Ra 1721.49 crore against Rs 71.12 crore approved for the year 2012-13. ie., the net additional borrowing was Rs. 777.86 crore as against ARR approved figure of Rs.428.88 crore, showing an increase of Rs. Rs.348.98 crore over the

approved level . The Commission has noted that, the major part of the additional borrowings are accounted for by the short-term loans which were redeemed in the same year.

Table 17
Details of borrowing resorted to by KSEB in 2012-13

	Opening Balance	Borrowing	Redemption	Closing Balance	Interest for the year
	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
LIC	36.38	-	11.19	25.19	2.55
REC	299.88	5.80	60.28	245.40	31.35
REC Transmission	0	86.63		86.63	0.37
PFC-R APDRP	220.08	30.92	-	251.00	20.52
Subtotal	556.34	**123.35**	**71.47**	608.22	**54.79**
Short Term loans	-				
SBI	300.00	300.00	300.00	300.00	30.76
SBT	100.00		100.00	-	10.00
Canara Bank	100.00		100.00	-	1.12
Vijayabank	200.00	400.00	400.02	199.98	20.66
Federal Bank	100.00	350.00	450.00	-	21.47
SIB		650.00	300.00	350.00	26.44
KSPIFC		26.00	-	26.00	1.33
PFC		500.00		500.00	11.16
REC		150.00		150.00	4.63
Subtotal	800.00	**2,376.00**	**1,650.02**	**1,525.98**	**127.57**
Total	1,356.34	**2,499.35**	**1,721.49**	**2,134.20**	**182.36**

68. As shown in Table 17, the increase in long term borrowing is about Rs.51.88 crore and short term borrowing is Rs.725.98 crore totaling to Rs.777.86 crore. The capital expenditure for the year is Rs.844.18 crore. In the truing up orders for 2011-12, the Commission has pointed out the unhealthy practice of funding the capital expenditure through short term sources and overdrafts. This situation is more or less continuing this year also. After considering the details given by KSEBL, the Commission approves the interest charges as claimed by KSEBL for the existing loans.

69. The Commission has been following a policy that in the truing up, the actual interest on security deposit paid only is 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 Rs.58.39 crore has been disbursed as interest on security deposit during the year 2012-13. Hence, the Commission approves Rs.58.39 crore under this head for the purpose of truing up for the year 2012-13.

70. The KSEB Ltd has claimed the interest on PF balance as Rs.96.33 crore, against the approved level of Rs.83.00 crore. As per the details given by the KSEB Ltd the opening balance of GPF is Rs.937.89 crore, addition is Rs.328.70 crore, withdrawals were Rs.114.60 crore. The balance available is Rs.1152.01 crore. The Commission approves the interest on the GPF as per the audited accounts for the year 2012-13.

71. 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.

72. KSEB Ltd has also claimed Rs 14.56 crore as interest paid on delayed payment of gratuity. Since this is an abnormal amount that has arisen since the licensee has not paid its statutory liabilities on time, the penal interest cannot be allowed to be passed on to the consumers.

73. KSEB Ltd has claimed Rs 167.94 crore as interest on working capital, which is the interest on the overdrafts availed during the year 2012-13 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 2012 was Rs 1114.49 crore, which was increased to Rs 1942.96 crore at the end of March 2013. The KSEB Ltd has given the monthwise details of overdraft availed. According to the KSEB Ltd, the overdraft is availed from banks is for meeting the unbridged revenue gap during the year 2012-13 and also for meeting the increase in cost of power purchase over approved level on account of the failure of the monsoon.

74. In Appeal No.19/2003, APTEL has ordered that *“…….till regulations are framed, the State Commission should follow the Central Commission’s Regulations. As the financial year 2012-13is already over, we direct the State Commission to true up the interest and finance charges for the FY 2012-13 base on the audited accounts*”. The Commission has noted the directions of the APTEL. The norms specified in the Central Commissions Regulatios are not directly applicable to the bundled structure of KSEB. The APTEL has directed to true up the interest and finance charges based on audited accounts. Hence, the Commission had examined the submission of the KSEB Ltd and details in the accounts regarding the overdraft availed during the year 2012-13. The reason for resorting to overdrafts is on account of increase in power purchase cost and consequent increase in revenue gap. The increase in overdraft is to the tune of Rs.828.48 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 18
Working capital for the year 2012-13 as per audited accounts

	At the end of 31-3-2013
	(Rs.Cr)
Stock	314.27
Receivable against sale of power	541.9
Cash and bank balance	780.49
Loans and advances	127.84
Sundry Receivables	388.02
Total Current Assets	**2,152.52**
Current Liabilities	
Security deposit from consumers	1,802.03
Other current liabilities	6,290.86
Total current liabilities	**8,092.89**
Net Current Assets/Working capital	**-5,940.37**

75. 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.5940 crore, showing that the working capital needs have been much more than compensated by the current liabilities. The outstanding borrowing for working capital is about Rs.1943 crore only. Hence, it is not conclusively established the requirement of funding of working capital separately.

76. In this connection it is to be noted that the increase in power purchase cost in 2012-13 over the approved level is about Rs. 2178.25 crore, whereas the increase in overdrafts in 2012-13 is only Rs.828.48 crore, thus clearly establishing the fact that majority of the increase in power purchase cost covered through fuel surcharge or charges for consumption over quota. Accordingly, the Commission is not in a position to allow interest on working capital.

77. In this connection, it is to pointed out that as per the provisions of KSERC (Fuel surcharge Formula) Regulations 2009, the licensee has to submit the details of power purchase and generation on account of mix change for consideration within 30 days from the close of each financial year before the Commission. However, KSEB has not furnished such details for determination of fuel surcharge. The Commission has in fact allowed fuel surcharge for the previous years and also allowed higher tariff for marginal consumption on account of failure of monsoon. Since the details are not filed on time for claiming additional power purchase cost, the Commission is not in a position to allow carrying cost for the additional power purchase cost as mentioned in para 56 above.

78. The total interest and finance charges approved for the year 2012-13 is as shown below.

Table-19

Interest and finance charges approved for the year 2012-13

Sl No	Particulars	ARR order	Actual	True up
		(Rs, Cr)	(Rs,	(Rs, Cr)
1	Interest on outstanding Loans and Bonds	178.14	182.36	182.36
II	Interest on Security Deposit	74.55	113.98	58.39
	Total I & II	252.69	296.34	240.75
III	**Other Interest and Finance Charges**			

	a) Interest on borrowings for working capital	20.00	167.94	0.00
	b) Discount to consumers for timely payment of Charges/NVVN	2.50	-0.11	-0.11
	c) Interest on PF	83.00	96.33	96.33
	d) Other Interest charges	0.00	14.56	0.00
	e) Cost of raising finance	1.00	0.00	0.00
	f) Guarantee Commission	1.00	0.91	0.91
	g)Bank Charges	10.00	4.56	4.56
	Total of III	117.50	284.19	101.69
	Grand Total (I+II+III)	**370.19**	**580.53**	**342.44**

Depreciation

79. In the order dated 28th April-2012 in the matter of ARR&ERC of KSEB Ltd for the year 2012-13, the Commission had approved the depreciation for the year 2012-13 at Rs 414.62 crore, in line with the provisions of at CERC (Tariff) Regulations, 2009. The depreciation so approved was excluding the depreciation on the asset created out of consumer contribution. Further, Commission has directed that, in the process of truing up, KSEB Ltd shall provide the vintage of assets to claim the depreciation at CERC (Tariff) Regulation, 2014, otherwise the Commission shall revert to CERC (Tariff) Regulations, 2004.

80. KSEB Ltd has submitted that, it has been claiming depreciation in the audited accounts at the depreciation rate notified by Ministry of Power in the year 1994 as per the provisions in the Electricity (Supply) Annual Accounting Rules (ESAAR-1985). Accordingly the depreciation claimed as per the audited accounts is Rs 509.31 crore.

81. However, in the application of truing up for the year 2012-13, the KSEB Ltd has estimated the depreciation as per the provisions of CERC regulations applicable for the period 2009-14, by following a the methodology used in the previous years duly considering the vintage of assets. The said methodology is given below:

82. In the application for truing up, KSEB Ltd had segregated the total assets as on 31-03-2012 into two parts.

(i) Part-1: The assets created during the last 12 years from 2000-2001 to 2011-12 and

(ii) Part-2: The assets created prior to 2000-2001.

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

83. As per the details submitted by KSEB Ltd, the Gross Fixed Assets (GFA) as on 31-03-2000, i.e., (the assets having age more than 12 years) is Rs 3347.16 crore and the GFA created during the last 12 years during the period between 2000-01 to 2011-12 is Rs 8726.46 crore. The year wise details of depreciation claimed on the assets created prior to the year 2000-01 (i.e., assets having age more than 12 years) and the balance value of the assets to be depreciated from the year 2011-12 are also given. The year wise details of the depreciation claimed on the assets created since 2000-01 are also given. The assets created in each year are treated separately for arriving depreciation. The summary of the depreciation claimed by KSEB Ltd for the year 2012-13 is given below.

Table-20

Depreciation on the total assets for the year 2012-13 claimed by KSEB Ltd

Sl No.	Particulars	Depreciation on assets created every year (Rs.Cr)													Total (Rs. Cr)
		Old assets created prior to 2000-01	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	5.54	1.84	0.64	1.55	1.21	1.11	1.14	0.89	0.68	0.34	1.31	0.64	1.77	18.67
2	Hydraulic works	10.07	2.05	1	2.64	1.92	0.74	6.31	1.01	1.61	0.64	3.98	5.22	1.52	38.72
3	Other Civil works	1.43	0.45	0.39	1.39	0.86	1.04	1.62	0.82	0.69	0.97	0.78	2.21	1.03	13.67
4	Plant & Machinery	41.59	8.46	37	9.24	27.41	7.25	7.21	8.13	6.23	10.44	16.55	15.36	14.78	209.67
5	Lines cable		10.99	9.99	24.69	17.49	14.37	13.45	13.84	14.41	15.14	23.86	27.2	24.54	209.96
6	Vehicles		0	0	0	0	0.03	0.03	0.01	0	0.11	0.03	0.05	0.14	0.4
7	Furnitures & fixture		0	0	0.06	0	0.07	0.02	0.03	0.03	0.05	0.06	0.05	0.07	0.45
8	Office equipment		0	0.03	0.02	0.41	0.11	0.11	0.85	0.1	0.15	0.34	0.46	0.24	2.82
	Total	58.63	23.79	49.05	39.59	49.3	24.72	29.88	25.59	23.76	27.83	46.91	51.19	44.09	494.34

84. According to the KSEB Ltd, the total assets created out of consumer contribution is Rs 1853.82 crore. KSEB Ltd has assessed the depreciation on the assets created out of consumer contribution as Rs 97.12 crore and accordingly the total depreciation claimed for the year 2012-13 is Rs 397.16 crore. The details are given below.

Table-21

Depreciation claimed for the year 2012-13

Functional area	GFA as on 31-03-2012	Depreciation claimed for the year 2012-13	Assets created out of consumer contribution	Depreciation on the Assets created out of consumer contribution	Net Depreciation claimed for the year 2012-13
	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
Generation	3806.87	47.84			47.84
Transmission	3735.89	208.98			208.98
Distribution	4530.86	237.52	1853.82	97.18	140.34
Total	12073.62	494.34			397.16

Analysis and Decision of the Commission

85. The Commission has examined the details of the estimation of depreciation duly considering vintage of assets the depreciation on the assets created during the last 12 years from 2000-01 to 2012-13 and the depreciation on the assets created prior to the year 2000-01 (assets having life more than 12 years). The details given by KSEB Ltd is only a gross approximation of the estimation of the depreciation as per the CERC norms duly considering vintage of assets. The Commission vide the order dated 28th October 2013 in petition RP No. 1/2013 has approved conditionally the depreciation for the year 2009-10 based on the similar methodology proposed by KSEB Ltd. Based on this, the depreciation including the depreciation on the assets created out of consumer contribution and grant amounts to Rs 494.34 crore. Since KSEBL has not provided the rationale for segregation of depreciation among generation, transmission and distribution, the same is apportioned among generation, transmission and distribution in the ratio of the GFA at the beginning of the year.

86. As per the audited accounts of KSEB Ltd for the year 2012-13, the total assets created out of the consumer contribution, grants received from Government etc amounts to Rs 3618.61 crore. As per the order dated 13th April-2012 and relevant provisions of accepted accounting practices, KSEB Ltd is not eligible to claim depreciation on the assets created out of consumer contribution. Accordingly, the depreciation approved for the year 2012-13 for the purpose of truing up is Rs 346.18 crore. The details are given below.

Table-22

Depreciation approved for the year 2012-13

Functional area	GFA as on 31-03-2012	Depreciation claimed for the year 2012-13 apportioned on GFA basis	Assets created out of consumer contribution	Depreciation on the Assets created out of consumer contribution	Net Depreciation claimed for the year 2012-13
	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
Generation	3806.87	155.87			155.87
Transmission	3735.89	152.96			152.96
Distribution	4530.85	185.51	3618.61	148.16	37.35
Total	12073.61	494.34			346.18

Employee cost

87. Vide the order on ARR&ERC for the year 2012-13 dated 28th April-2012, the Commission had approved the employee cost for the year 2012-13 at Rs 1663.66 crore. But the actual as per the application for truing up of accounts is Rs 2103.03 crore. The details are given below.

Table-23

Details of employee cost claimed for the year 2012-13

(₹ in crore)

<table>
<tr><th rowspan="2">Sl.No</th><th rowspan="2">Particulars</th><th rowspan="2">2011-12 (actual)</th><th colspan="3">2012-13</th></tr>
<tr><th>ARR order</th><th>Actual</th><th>Increase over approval</th></tr>
<tr><td>1</td><td>Salaries</td><td>685.98</td><td>426.23</td><td>739.38</td><td>313.15</td></tr>
<tr><td>2</td><td>DA</td><td>373.28</td><td rowspan="5">1237.43</td><td>450.68</td><td rowspan="5">126.21</td></tr>
<tr><td>3</td><td>Provision for Pay revision</td><td>0.00</td><td>0.00</td></tr>
<tr><td></td><td>Total</td><td>1059.26</td><td>1190.06</td></tr>
<tr><td>4</td><td>Overtime, other allowances,</td><td>44.55</td><td>45.71</td></tr>
<tr><td>5</td><td>Earned Leave encashment</td><td>81.16</td><td>94.25</td></tr>
</table>

6	Medical expenses reimbursement, staff Welfare expenses, payment under works men compensation,	7.32		7.66	
7	Terminal benefits (excluding terminal Surrender)	711.04		765.35	
	Grand total	1903.33	1663.67	2103.03	439.36

88. As detailed above, the employee cost including pension claimed for the year 2012-13 is about Rs 439.36 crore more than the approved level, out of which increase in basic pay alone is Rs 313.15 crore.

89. 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 2012-13 at the pre-revised scale, i.e., the basic salary for the year 2012-13 was arrived at by escalating the basic salary for the year 2008-09 at the rate of 3% annually.*

90. KSEB Ltd has also provided the details of the DA released to its employees during the year 2012-13, 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 pay)		
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%
Jul-12	12% of the pay	142%	7.917% of the pay	63.895%
Jan-13	15% of the pay	157%	9.048% of the pay	72.943%

91. The details of the pension liabilities claimed for the year 2012-13 is detailed below.

Table-25
Pension liabilities for the year 2012-13

<table>
<tr><th rowspan="3">Sl.No</th><th rowspan="3">Particulars</th><th rowspan="2">2011-12</th><th colspan="4">2012-13</th></tr>
<tr><th>KSEB</th><th>SERC Approved</th><th>Actuals</th><th>Difference</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>Monthly Pension</td><td>628.78</td><td>692.52</td><td rowspan="8">No specific approval for terminal benefits, however based on the actuals for the year 2008-09, the provision for pension is Rs 700.01 crore only.</td><td>698.92</td><td rowspan="8">65.34</td></tr>
<tr><td>2</td><td>Gratuity</td><td>25.37</td><td>28.6</td><td>53.05</td></tr>
<tr><td>3</td><td>Commutation</td><td>21.47</td><td>37.4</td><td>8.42</td></tr>
<tr><td>4</td><td>Medical Allowance</td><td>3.52</td><td rowspan="2">5.45</td><td>3.58</td></tr>
<tr><td>5</td><td>Special Festival Allowance</td><td>1.49</td><td>1.39</td></tr>
<tr><td>6</td><td>Provision for pension revision</td><td>30.41</td><td>80</td><td>0.00</td></tr>
<tr><td></td><td>Provision for Gratuity</td><td></td><td>10.00</td><td></td></tr>
<tr><td></td><td>Total</td><td>711.04</td><td>853.97</td><td>765.35</td></tr>
</table>

92. 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 26
Net Increase in employee strength from 2008-09 to 2012-13

Working strength					Cumulative increase over 2008-09			
2008-09	2009-10	2010-11	2011-12	2012-13	2009-10	2010-11	2011-12	2012-13
27175	28007	29864	31113	31783	832	2689	3938	4608

93. 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 27
Categorywise recruitments from 2009-10 to 2012-13

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**

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

Table 28
Retirements from 2009-10 to 2015-16

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

95. 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 impact of pay revision over and above the sum approved by the Commission, for the same was the reason for the variations for the years 2011-12 and 2012-13. To support the claim, the KSEBL computed and tabulated while comparing the methodology adopted by the Commission and the actual expenses which is stated 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)

96. 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 has 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 which is shown below:

Table 29
Summary of 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**

97. KSEBL has worked out the above figures based on the revised pay and allowances. The basic pay of newly recruited employees for 2012-13 was estimated based on the excess newly recruited staff from 2009-10 to 2012-13 (ie., net of retirements) on a cumulative basis ie., basic pay of employees recruited in 2009-10 to 2012-13 was considered on a full year basis and those recruited in 2012-13 for 6 months on a average basis. The dearness allowance as a percentage of basic pay was considered at 60.95% for 2012-13. The other allowances for 2012-13 was considered at 19.18% of the Basic pay, which is the actual proportion of other allowances on Basic pay.

98. 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

99. KSEB Ltd has also submitted the summary of the employee cost attributable to the increased staff strength over the year 2008-09 as detailed below.

Table 30

Summary employee cost attributable to increased staff strength in 2011-12 & 2012-13 (Rs. in crore)

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

Analysis and Decision of the Commission

100. The Commission vide the order dated 28-4-2012 in OP No. 3 of 2012, in the matter of ARR&ERC of KSEB for the year 2012-13 has approved the employee cost as follows.

" the Commission has decided to benchmark the employee expenses based on CPI-WPI basis in the ARR&ERC order for 2011-12. The Commission is of the view that the method is to be continued for this year also. 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

Year	WPI*	Yearly Increase	CPI	Increase
2004-05	100.0			
2005-06	104.5	4.44%		
2006-07	111.4	6.59%	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%
2011-12*	155.5	8.56%	193.80	7.82%

**WPI upto February, 2012; CPI upto Jan 2012*

Based on the above, the inflation recorded based on CPI is 7.82% and WPI is 8.56% for 2011-12. On 70:30 basis, the composite increase would be about 8.03%. Considering the trends in inflation, the Commission uses the inflation as prevailing in 2011-12 for 2012-13 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 2012-13.***

As in the case of previous year, the Commission used financial year 2008-09 as a base year since latest truing up was carried out for 2008-09. 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. Accordingly, the allowable employee cost for 2012- 13 is estimated as follows:

Approved estimate of Employee cost for 2012-13

	(Actual)	Estimates* (Rs. Crore			Approved expenses (Rs.Crore)
	2008-09	2009-10	2010-11	*2011-12*	*2012-13*
Basic Pay Projection	378.70	390.06	401.76	*413.82*	*426.23*
Other components					
CPI component (70%)	613.54	689.43	761.45	*820.97*	*885.14*
WPI Component (30%)	262.94	272.96	298.90	*324.50*	*352.29*
Total	**1,255.18**	**1,352.45**	**1,462.11**	***1,559.28***	***1,663.66***
% increase		*7.75%*	*8.11%*	*6.65%*	*6.69%*

** The figures arrived at for the intermediate years (2009-10, 2010-11 & 2011-12) are relevant only for estimation purpose, and cannot be construed as approved figures. Approved figures for these years are as per the respective ARR&ERC Orders.*

Based on the above formula, the approved employee cost for 2012-13 is Rs.1663.66 Crore. The Board shall limit the employee expenses to the approved level. The expenditure over the approved level shall not be passed on to the consumers through tariff. In the truing up process for the year, the allowable employee costs will be refixed based on the actual CPI-WPI for the year 2012-13. However, the Commission has referred this item to the consultants for their study and recommendation. The Commission is prepared to take a relook on the issue.

101. As detailed above, while approving the ARR&ERC of KSEB Ltd for the year 2012-13, the Commission had approved the employee cost for the year 2012-13 at Rs 1663.66 crore, on 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.

102. KSEB Ltd had filed appeal petitions against the order dated 28th April 2012 in the matter of ARR&ERC of KSEB for the year 2012-13 before the Hon'ble Appellate Tribunal for Electricity (APTEL) and the APTEL admitted the petition as Appeal Petition No. 19 of 2013. This matter was heard

along with the appeal petition No. 1 of 2013 filed by KSEB Ltd against the 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.

103. 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.

104. As detailed above, Hon'ble APTEL vide the order dated 10-11-2014 has ordered that, the actual basic pay, actual DA, pay revision etc on the employees who were in the rolls of the licensee during the year 2008-09, should be provided for. Hon'ble APTEL also ordered that, terminal benefit paid to be allowed in full. Gratuity paid as directed by Hon'ble High Court was also ordered to be allowed in full. In order to arrive the employee cost admissible for the year 2012-13 as per the judgment of the Hon'ble APTEL, the Commission directed KSEB Ltd to provide details of 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.

105. The licensee has submitted the year wise details of the total employees retired since 2008-09, the total number of induction cadre wise etc. KSEB Ltd also submitted an estimate of the employee cost attributed by the increase in manpower over the same in the year 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.

106. The Commission on examining the details submitted by KSEB Ltd found that, the details were not sufficient to approve 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 additional information and KSEBL has furnished its reply to the queries on 16-1-2017 & 15-2-2017.

107. 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 29. 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 room for estimation normally for presenting the actual expenses. Hon. APTEL has directed the Commission to allow employee costs for the year 2012-13 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 2012-13 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 2012-13, 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 were through the licensee had mentioned that amount approved by the Commission was sufficient to meet the employee expenses as ordered by APTEL.

108. In this circumstance, the Commission is inclined to rely on some minimum calculation of employee expenses for the year 2012-13 so as to comply with the directions of APTEL in its order in Appeal No 1 & 19 of 2013. The Commission after a thorough scrutiny of the information provided by the licensee, the amount approved by the Commission in the ARR & the directives of APTEL in its order, has came to the conclusion that there may be some excess amount required over the approved level of expenses in the year 2012-13 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 total basic pay year on year, even though retired employees having higher basic pay are replaced employees in lowest entry cadre. The basic pay is not reduced as expected due to annual increments in Basic pay sanctioned to the remaining employees. 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. The retirements from these categories account for nearly 70% of the total retirement . 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 may be increase in the component of Basic pay even if employee strength is limited at 2008-09 level as shown below:

Table 31

Estimate of net increase in basic pay

	2008-09	2009-10	2010-11	2011-12	2012-13
1. Total No. Of employees	27175	28007	29864	31113	31783
2. No. of employees retired		643	626	501	136
3. Retirement as %of total employees existing a on 2008-09		2.37%	2.30%	1.84%	0.50%
4. % of salary of Retired	(1.5 times)	3.55%	3.46%	2.77%	0.75%
5. Difference in Basic pay of Retired/Recruited employees.		55.00%	55.00%	55.00%	55.00%
6. Savings in Basic pay (4x5)		1.95%	1.90%	1.52%	0.41%
7. Average increment in revised pay for Existing employees	4%	3.91%	3.91%	3.93%	3.98%
8. Net increase in Basic (7-6)		**1.95%**	**2.01%**	**2.41%**	**3.57%**

In the above table, actual retirement in each year is about 1 to 2% of the 2008-09 levels. It is assumed that the total salary of the retired employees will be about 1.5 times as the employees retire from higher average salary compared to existing employees. Accordingly, from the information provided by the licensee, it is seen that in 2012-13 about 0.50% of employees retired (taking the number of employees in 2008-09 as the base ie., 27175 employees) who draw about 0.75% of total salary (retirement in 2012-13 is low compared to other years due to the increase in retirement age from 55 to 56 years). 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 0.41% for 2012-13. 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 99.5% employees account for 99.25% of the salary which has to be escalated at 4% (increment rate) which gives an increase of about

3.98% in total salary in 2012-13. Accordingly there will be a net increase in Basic pay by 3.57% (3.98%-0.41%) 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 threshhold 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 2012-13 is about 5.92%. 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 32
Estimate of Increase in DA

	2008-09	2009-10	2010-11	2011-12	2012-13
Basic Pay approved	378.70	390.06	401.76	413.82	426.23
Components other than Basic Pay approved	876.48	962.39	1,060.35	1,168.30	1,237.43
Total employee cost approved	1,255.18	1,352.45	1,462.11	1,582.12	1,663.66
Rate of Increase for components other than Basic pay in the approved employee cost		**9.80%**	**10.18%**	**10.18%**	**5.92%**
Average yearly DA in Revised Scale		**13.8%**	**32.2%**	**48.1%**	**64.2%**
Yearly Average Actual Increase in DA in Revised pay Scale	-	13.8%	18.5%	15.8%	16.1%

c. As shown in the table above, the rate of increase for the components other than basic pay (ie., DA & other components) allowed by the Commission in 2012-13 is 5.92% whereas the average DA increase in the revised pay scale for the same year is about 16%.

d. 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.

e. 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 CPI:WPI indexation as shown below:

(Rs. crore)

	2008-09	2009-10	2010-11	2011-12	2012-13
Actual terminal benefits	495.84	604.31	739.21	711.04	765.36
Terminal benefits based on approved level	495.84	544.44	599.86	660.93	700.04

109. 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.

110. 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 28. 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 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.

111. Accordingly, the Commission calculated the employee costs for the year 2012-13 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. The employee consists of the following components viz Basic Pay, DA, Other Allowances & Terminal Benefits.

c. As per the orders of APTEL, terminal benefits have to be provided at actual.

d. There is no reference on the other allowances in the APTEL order. Hence the same can be approved at a level increased by CPI: WPI from 2008-09 level or actual which ever less.

e. 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 arrived at if the Basic pay and DA at revised pay scales, for the excess newly recruited employees is deducted from the actual employee cost.

f. The entry cadres of the newly recruited employees are given. Newly recruited personnel will be placed in the minimum of the entry cadre and the pay scale of each cadre is known. Hence there is no problem in fixing the salary of the newly recruited employees.

g. The actual DA rates are known and the weighted average rate of the DA for the year can be calculated and the same may be taken to calculate the DA applicable to the newly recruited employees.

h. The basic pay & DA of a newly recruited employee is calculated, deducted for the full year from the total basic & DA to arrive at the amount due to the existing employees & the replacement of the retired employees, since the exact dates of joining and the exact substitute cannot be determined.

112. 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 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 33

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

	2008-09	2009-10	2010-11	2011-12	2012-13
Total No. Of employees	27175	28007	29864	31113	31783
Annual Increase in employees		832	1857	1249	670
Increase in employees over 2008-09 level		832	2689	3938	4608

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

Table 34

Designation wise excess number of employees

Designation	2009-2010	2010-2011	2011-2012	2012-2013
Assistant Engineer	106	175	60	47
Cashier	129	201	45	17
Driver II	1	0	19	2
Junior Assistant	1	1	1	2
Junior Fair Copy Assistant	2	4	6	11
Electricity worker	556	1250	912	490
Meter Reader	3	206	184	23
Office Attendant II	3	7	4	60
PTC Sweeper	0	1	6	1

Sub Engineer	29	12	12	12
Sweeper III	0	0	1	4
Divisional Accountant	0	1	0	0
Overseer	0	1	0	0
Accountant LA	0	0	0	1
Meter Tester	0	0	0	1
Total	832	1857	1249	670

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

Table 35
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 the pay of 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 36
Cost of excess employees

Designation	2009-10 (Rs.cr)	2010-11 (Rs.cr)	2011-12 (Rs.cr)	2012-13 (Rs.cr)
Assistant Engineer	2.57	6.91	8.66	10.16
Cashier	1.67	4.35	5.13	5.59
Driver II	0.01	0.01	0.26	0.30
Junior Assistant	0.01	0.03	0.04	0.07
Junior Fair Copy Assistant	0.03	0.08	0.16	0.31
Electricity worker	5.47	17.90	27.37	33.11
Meter Reader	0.04	2.71	5.22	5.75
Office Attendant II	0.03	0.10	0.14	0.73
PTC Sweeper	0.00	0.01	0.07	0.08
Sub Engineer	0.50	0.74	0.98	1.24
Sweeper III	0.00	-	0.01	0.05
Divisional Accountant	0.00	0.02	0.03	0.03
Overseer	0.00	0.01	0.01	0.02
Accountant LA	0.00	-	-	0.01
Meter Tester	0.00	-	-	0.02
Total	**10.33**	**32.88**	**48.08**	**57.46**
Average DA rates	13.8%	32.2%	48.1%	64.2%
Total Basic pay & DA	11.75	43.47	71.19	94.33

113. **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 37
Details of Actual of terminal benefits

	2008-09 (Rs.crore)	2009-10 (Rs.crore)	2010-11 (Rs.crore)	2011-12 (Rs.crore)	2012-13 (Rs.crore)
Monthly Pension including provisions	445.83	526.86	548.80	659.19	698.92

Gratuity	22.83	29.88	23.01	25.37	53.05
Commutation	25.03	42.13	31.54	21.47	8.42
Medical allowance	1.53	4.61	3.55	3.52	3.58
Special festival allowance	0.62	0.84	0.97	1.49	1.39
Provision for gratuity/commutation			131.34		
Total terminal benefits	**495.84**	**604.32**	**739.21**	**711.04**	**765.36**

114. 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 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 , 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

115. 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. Based

on the above, the terminal benefits to be allowed for the truing up are as shown below:

Table 38

Approved Terminal benefits

	2009-10 (Rs.crore)	2010-11 (Rs.crore)	2011-12 (Rs.crore)	2012-13 (Rs.crore)
Monthly Pension including provisions	526.86	548.80	659.19	698.92
Gratuity	27.16	20.92	23.06	48.22
Amount deposited towards Gratuity				41.47
Commutation	42.13	31.54	21.47	8.42
Medical allowance	4.61	3.55	3.52	3.58
Special festival allowance	0.84	0.97	1.49	1.39
Total terminal benefits allowed	**601.60**	**605.78**	**708.73**	**802.00**

The allowable employee cost is accordingly estimated as given below:

Table 39

Approved employee costs for 2012-13

	2009-10 (Rs.crore)	2010-11 (Rs.crore)	2011-12 (Rs.crore)	2012-13 (Rs.crore)
Basic Pay & DA as per Accounts	753.29	871.87	1,059.51	1,190.28
Less Basic pay & DA of additional employees	11.75	43.47	71.19	94.33
Net Basic pay & DA	741.54	828.40	988.32	1,095.95
Other allowances	93.92	101.73	125.38	132.80
Terminal benefits approved	601.60	605.78	708.73	802.00
Total Employee cost allowable	1,437.05	1,535.91	1,822.43	2030.75

Repair and Maintenance expenses

116. The repair and maintenance (R&M) expense as per the audited accounts is Rs 251.55 crore as against the approved amount of Rs 195.95 crore. The details are given below.

Table-40

Repair and Maintenance Expenses claimed for the year 2012-13

Sl No	Particulars	2011-12	2012-13			
		Actuals	ARR Order	Actuals	Difference over approval	Difference over last year
		(Rs.Cr)	(Rs.Cr)	(Rs.Cr)	(Rs.Cr)	(Rs.Cr)

1	Plant & Machinery	63.81		67.41		3.60
2	Buildings	5.78		5.39		-0.39
3	Other Civil works	6.67		6.61		-0.06
4	Hydraulic works	2.12		3.64		1.52
5	Lines, Cable networks	168.05	195.95	163.92	55.60	-4.13
6	Vehicles	4.12		3.30		-0.82
7	Furniture and Fixtures	0.09		0.08		-0.01
8	Office equipment	1.06		1.20		0.14
	Total	251.70	195.95	251.55	55.60	-0.15

As detailed above, the R&M cost incurred during the 2012-13 has increased by Rs 55.60 crore over approved level.

117. KSEB Ltd has submitted that, the R&M cost depends on gross fixed assets in use at the beginning of each financial year, age of assets as well as inflation.

118. 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 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 10.43% during the year 2012-13.

(v) Increase in the consumer strength- consumer strength has increased from 104.58 lakh as on 31-03-2012 to 108.07 lakh as on 31-03-2013.

(vi) Increase in the distribution assets from Rs Rs 4530.86 crore as on 31-03-2012 to Rs 5193.78 crore as on 31-03-2013, i.e., an increase of Rs 662.92 crore during the year 2012-13.

119. KSEB Ltd has further submitted that, the R&M expenses incurred during the year 2012-13 was about 2.08% of the GFA. The details are given below.

Table-41

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	3806.87	27.95	0.73	11.11
Transmission	3735.89	55.70	1.49	22.14
Distribution	4530.86	167.90	3.71	66.75
Total	12073.62	251.55	2.08	100.00

Analysis and Decision of the Commission

120. As per the details submitted by KSEB Ltd, the increase in R&M expenses over the approved level is 28.37%. While approving the order on ARR&ERC for the year 2012-13, 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 R&M expenses of the Board has been increasing over the years. The Board has stated that the R&M expenses is linked to the increase in assets. However, the Commission in the previous orders have analysed the matter in detail. There is no direct evidence to benchmark the R&M expenses given by the Board. While analyzing the R&M expenses in the previous years, the Commission has noted that one of the reasons for increase in cost is misclassification of expenses. Hence, the actual level of R&M expenses of the Board is not as projected by the Board.

The Commission in the case of employee costs has decided to follow the methodology employed for approving the R&M expenses in the previous year. Thus based on the CPI:WPI index, the allowable R&M expenses for the year 2012-13 is estimated as follows:

Approved R&M Expenses for 2012-13

R&M Expenses	*(Actual)*	*Estimates*			*Approved expenses*
	2008-09	*2009-10*	*2010-11*	*2011-12*	*2012-13*
	Rs. Crore	*Rs.crore*	*Rs.crore*	*Rs.crore*	*Rs.crore*
CPI weightage (70%)	*97.15*	*109.17*	*120.57*	*130.00*	*140.16*
WPI weightage (30%)	*41.64*	*43.23*	*47.33*	*51.39*	*55.79*
Total R&M Expenses	***138.79***	***152.39***	***167.91***	***181.38***	***195.95***
%age increase		*9.80%*	*10.18%*	*8.03%*	*8.03%*

** The figures arrived at for the intermediate years (2009-10, 2010-11 & 2011-12) are relevant only for estimation purpose, and cannot be construed as approved figures. Approved figures for these years will be as per the respective ARR&ERC Orders*

On 70:30 basis on CPI and WPI, the composite increase would be about 8.03%. Considering the trends in inflation, the Commission uses the inflation rate as of 2011-12 for 2012-13 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 2012-13.*** *Based on the formula, the R&M expenses admissible for 2012-13 is Rs.195.95 crore."*

121. KSEB Ltd has challenged the order of the Commission dated 28th April-2012 in the matter of ARR&ERC for the year before the Hon'ble Appellate Tribunal for Electricity (APTEL) as appeal petition No. 19 of 2013. Hon'ble APTEL vide the common judgment dated 10-11-2014 in appeal petitions 1 of 2013 and 19 of 2013 has endorsed the methodology adopted by the Commission for approving the R&M expenses linked to the CPI and WPI over the actual R&M expenses incurred during the year 2008-09.

122. The Commission has to ensure that, the approved expenses, which are passed on to the consumers are reasonable and prudent. Hence, the Commission has followed the same methodology adopted by the Commission for approving the R&M expenses as per the orders on ARR & ERC for the year 2012-13 for approving the R&M expenses while truing up the accounts for the year 2012-13. The Commission has also noted that the above mentioned steps taken by the Commission has had a positive impact in the sense that, it is seen that the actual repair expenses of 2012-13 is being maintained at the same levels of 2011-12, as per the audited accounts.

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

Table-42

Recorded CPI and WPI Indices Over the years

Year	WPI	Yearly Increase	CPI	Yearly Increase
2004-05	100.0			
2005-06	104.5	4.44%		
2006-07	111.4	6.59%	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%
2011-12	156.1	8.99%	194.83	8.39%
2012-13	167.6	7.35%	215.17	10.44%

124. Taking 2008-09 as the base year, the R&M expenses worked out for 2012-13 based on CPI:WPI at 70:30 basis as given below.

Table-43

R&M Expenses based on CPI:WPI

	2008-09	2009-10	2010-11	*2011-12*	*2012-13*
R&M Expenses	Rs. crore	Rs.crore	Rs.crore	*Rs.crore*	*Rs.crore*
CPI weightage (70%)	97.15	109.17	120.57	130.69	144.33
WPI weightage (30%)	41.64	43.23	47.33	51.59	55.39
Total R&M expenses	**138.79**	**152.39**	**167.91**	**182.28**	**199.71**
Yearly increase		*9.80%*	*10.18%*	*8.56%*	*9.56%*

125. Based on the above, the R&M expenses approved for the purpose of truing up of accounts for the year 2012-13 is Rs 199.71 crore.

Table 44

R&M expenses approved for the year 2012-13

	2012-13(Rs Cr)		
	ARR Order	Actual as per Audited accounts	Allowed in True UP

R&M Expenses	195.95	251.55	199.71

Administration and General Expenses

126. The actual A&G expenses booked by KSEB Ltd including the electricity duty under section 3(1), is Rs 202.43 crore for the year 2012-13. The A&G expenses excluding the electricity duty is Rs 105.46 crore against the approved level of Rs 86.10 crore. The details are given below.

Table 45
A&G expenses claimed for the year 2012-13 (Rs in crore)

Sl.No	Particulars	2011-12	2012-13	
		Actual	Approved	Actual
1	Rent, Rates and Taxes	5.56	86.10	5.24
2	Insurance	0.41		0.38
3	Telephone/telex/internet charges etc.	3.46		3.45
4	Legal charges	2.00		1.54
5	Audit fees	2.30		2.30
6	Consultancy charges	0.18		0.02
8	Other Professional charges	4.27		4.53
9	Conveyance and vehicle hire charges	34.08		35.45
11	Sub Total (Total of 1 to 9)	52.26		52.92
12	OTHER EXPENSES			
	a) Fess and subscriptions	0.47		0.53
	b) Printing & Stationary	9.18		7.86
	c) Advertisements	8.09		0.91
	e) Contributions/Donations	1.16		1.17
	f) Electricity Charges	5.12		5.13
	g) Water charges	0.24		0.16
	h) Entertainment	0.29		0.27
	i)Exhibition/publicity	0.22		0.10
	j)Sports and related activity	0.28		0.39
	k)Study tour/Training	0.77		0.22
	l)SRPC expenses	0.72		0.57
	m)DSM expenses	0.96		0.22
	n)APTS expenses	0.01		0.01
	o)H&M Data charges	0.00		0.23
	p)Operating expenses	0.00		9.61
	q) Miscellaneous expenses	13.71		13.11
13	Total of OTHER EXPENSES	41.22		40.49
14	Freight	9.33		6.94
15	Other purchase related expenses	6.60		5.11
	Total (11+13+14+15)	109.41		105.46

127. 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 2012-13 was 10.43%. Further, the major increase in A&G expenses are mainly on the following items as compared to the 2008-09.

Table-46

A&G expense components which recorded increase over base year 2008-09

Particulars	2008-09	As per Accounts for 2012-13	Increase over 2008-09
Other Professional charges	0.51	4.53	788%
Conveyance and vehicle hire charges	13.44	35.45	164%
a) Fess and subscriptions	0.25	0.53	112%
e) Contributions/Donations	0.33	1.17	255%
f) Electricity Charges	3.45	5.13	49%
h) Entertainment	0.13	0.27	108%
i)Exhibition/publicity	0.05	0.1	100%
j)Sports and related activity	0.12	0.39	225%
l)SRPC expenses	0.31	0.57	84%
m)DSM expenses	0	0.22	--
n)APTS expenses	0.01	0.01	0%
o)H&M Data charges	0	0.23	--
p)Operating expenses	0	9.61	--
q) Miscellaneous expenses	7.24	13.11	81%
Total	25.84	71.32	176%

128. The major increase are in professional charges, conveyance, contributions, sport related activities etc., KSEB Ltd has further submitted that, the increase in fuel price is one of the main reason for the increase in conveyance and vehicle hire charges. The details are given below.

Table –47

Breakup of conveyance and Vehicle hire charges for the year 2012-13

Particulars	2010-11 (Rs. cr)	2011-12 (Rs. cr)	2012-13 (Rs. cr)
Conveyance	5.48	3.64	1.72
Travelling expenses to staff	6.69	8.76	9.64
Travelling expenses to Board Members	0.09	0.07	0.06

Vehicle running expenses (except trucks etc.)	6.56	5.44	4.88
Vehicle licenses, registration insurance and taxes	0.51	0.63	0.60
Vehicle hire charges	4.66	15.74	18.56
Total	**23.99**	**34.08**	**35.46**

Table –48
Fuel prices in Delhi

Year	Fuel		Change in price		Increase over 2008-	
	Petrol	Diesel	Petrol	Diesel	Petrol	Diesel
31.03.2009	40.62	30.86				
31.03.2010	47.43	35.47	6.81	4.61	17%	15%
31.03.2011	58.37	37.75	17.75	6.89	44%	22%
31.03.2012	65.64	40.91	25.02	10.05	62%	33%
02.04.2013	69.42	48.63	28.80	17.77	71%	58%
01.04.2014	75.91	55.48	35.29	24.62	87%	80%
Increase over the period from 2008-09 to 2012-13.			35.29	24.62	87%	80%

Source mypetrolprice.com

Analysis and Decision of the Commission

129. The Commission examined the details submitted by KSEB Ltd and the objections raised by the stake holders. The Commission vide its order dated 28th April-2012 in the matter of ARR&ERC for the year 2012-13 has approved the A&G expense for the year 2012-13 Rs 86.11 crore. The methodology approved by the Commission is extracted below as explained in the order.

"6.6.2 Analysis and Decision of the Commission

The A&G expenses is a controllable item and hence no escalation over inflation can be allowed for this item. The Commission notes that the actual A&G expenses other than electricity duty in 2007-08 was only Rs.47.81 crore and in 2008-09 was Rs.60.99 crore. In comparison with this, A&G expenses projected for 2012-13 is Rs.118.85 crore. The amount under A&G expenses projected for 2012-13 is almost double compared to the actuals for 2008-09. The amount projected by the Board for this controllable item is much beyond reasonable level. Since there is no visible efforts taken by the Board for limiting the A&G expenses, the Commission decided to follow the same methodology adopted in the previous year for approving the A&G expenses for 2012-13.

Accordingly, the methodology based on CPI:WPI index for allowing the A&G expenses is used for approving the A&G expenses for 2012-13. ***In the truing up process, the expenses will be allowed based on the actual inflation recorded***

based on CPI and WPI in 2012-13. *The A&G expenses based on the CPI:WPI will be thus worked out as follows:*

Approved A&G Expenses for 2012-13

A&G Expenses	*(Actual)*	*Estimates**			*Approved expenses*
	2008-09	*2009-10*	*2010-11*	*2011-12*	*2012-13*
	Rs. Crore	*Rs.crore*	*Rs.crore*	*Rs.crore*	*Rs.crore*
CPI weightage (70%)	*42.69*	*47.97*	*52.98*	*57.12*	*61.59*
WPI weightage (30%)	*18.3*	*19.00*	*20.80*	*22.58*	*24.52*
Total A&G Expenses	*60.99*	*66.97*	*73.78*	*79.71*	*86.11*
%age increase		*9.80%*	*10.18%*	*8.03%*	*8.03%*

** The figures arrived at for the intermediate years (2009-10, 2010-11 & 2011-12) are relevant only for estimation purpose, and cannot be construed as approved figures. Approved figures for these years will be as per the respective ARR&ERC Orders.*

Hence, the A&G expenses to be allowed is Rs.86.11 crore for 2012-13. As per the Order of the APTEL, Electricity duty under Section 3(1) is not included in A&G expenses. Hence the same is not considered."

130. KSEB Ltd has challenged the order of the Commission dated 28th April-2012 in the matter of ARR&ERC for the year before the Hon'ble Appellate Tribunal for Electricity (APTEL) as appeal petition No. 19 of 2013. Hon'ble APTEL vide the common judgment dated 10-11-2014 in appeal petitions 1 of 2013 and 19 of 2013 has endorsed the methodology adopted by the Commission for approving the A&G expenses linked to the CPI and WPI over the actual A&G expenses incurred during the year 2008-09.

131. Hence, the Commission has decided to follow the same methodology linked to CPI:WPI adopted for approving ARR&ERC for the year 2012-13 is adopted for approving the truing up of accounts for the year 2012-13 also. As noted in the case of Repairs and Maintenance, it is noted that the A&G expenses actually booked during 2012-13 is lower than that of 2011-12, which gives credence to the fact that if the licensee is keen to control such expenses, it is a possible proposition.

132. Accordingly, the A&G expenses based on the CPI:WPI is worked out as follows.

Table-49

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

	2008-09	2009-10	2010-11	*2011-12*	*2012-13*
	Rs. crore	Rs.crore	Rs.crore	*Rs.crore*	*Rs.crore*
CPI weightage (70%)	42.69	47.97	52.98	57.43	63.42
WPI weightage (30%)	18.3	19	20.8	22.67	24.34
Total A&G Expenses	***60.99***	***66.97***	***73.78***	***80.1***	***87.76***
Yearly increase		9.80%	10.18%	8.56%	9.56%

133. As detailed above, the A&G expenses approved for the purpose of truing up of accounts for the year 2012-13 is Rs 87.76 crore.

Table-50

A&G expenses approved

	2012-13 (Rs. Crore)		
	ARR Order	**Actual**	**Allowed in Trueup**
A&G expenses other than Electricity duty	86.10	105.46	87.76

134. The Commission notes that conveyance, vehicle hire charges, professional charges, operating expenses and miscellaneous expenses are the major components of A&G expenses which have shown a substantial increase over the last four years, these components have increased substantially to the tune of about 100 to 300%. Considering the rate of increase of these expenses, there is always a scope for austerity measures to control the expenses. The Commission hereby directs that necessary steps may be initiated by KSEBL for curtailing A&G expenses. It is also noted that the amount booked under Miscellaneous expenditure is nearly 13% of the Administration expenses. The Commission directs the licensee to analyse the nature of expenses booked under this head and provide appropriate disclosure of the same.

Other Expenses

135. The other expense include ‘other debits’ and ‘net prior period charges’. KSEB Ltd had booked Rs 231.52 crore under other debits for the year 2012-13 as against Rs 18.50 crore approved vide the order on ARR for the year 2012-13. The details are given below.

Table-51.

Other debits claimed for the year 2012-13 (₹ in crore)

Sl No	Particulars	2011-12	2012-13			
			ARR	SERC Approved	As per audited Accounts	Difference over approval
1	Research and Development	0.52	1.50	1.50	0.74	-0.76
2	Sale of Stores Account	0.00	0.00	0.00	-0.14	-0.14
3	Provision for Bad and Doubtful debts	1.94	14.00	14.00	227.02	213.02
4	Miscellaneous Losses and write-offs	8.82	3.00	3.00	3.87	0.87
5	Sundry expenses	0.00	0.00	0.00	0.03	0.03
	Total	11.28	18.50	18.50	231.52	213.02

136. The major item of expense under 'other debits' is the provision for bad and doubtful debts. In this regard, KSEB Ltd has submitted as follows.

'The provision for Bad and Doubtful debts Rs 227.02 crore represents withdrawal of prior period credits to revenue account. Revenue recognized and accounted in earlier years but remained unrealized were withdrawn from books. During the year, income recognized on account of fixed transmission charges from the former SREB constituents as well as dues of M/s Steel Complex Ltd and M/s Malabar Steel Re rolling Mills were withdrawn. Details are given below:

(a) Erstwhile SREB constituents were used to share the cost of state owned transmission schemes among themselves based on the cost sharing principles formulated by the SREB from time to time. Accordingly, KSEB had demanded fixed transmission charges for the 400 kv transformers at Madakkathara from the SREB constituents. A sum of Rs.68.36 crore had been demanded for the period from 07/1992 to 01/2004. In the 134th meeting of the SREB, it has been decided to drop the whole issue of cost sharing of the state owned transmission schemes. None of the constituents had made any payment towards the demand made and the Board had decided to withdraw the entire arrears outstanding against the erstwhile SREB constituents towards fixed transmission charges of KSEB owned 400 KV transformers at Madakkathara amounting to Rs.68.36 crore from the books. SREB Constituent wise break up is as follows:

SREB Constituent wise break up of fixed transmission charges

Rs in crore

(i)	*APTRANSCO (07/92 to 01/04)*	*Rs.24.73*
(ii)	*TNEB (7/92 to 01/04)*	*Rs.25.22*
(iii)	*KPCL (7/92 to 01/04)*	*Rs.17.32*
(iv)	*Pondicherry (07/92 to 09/95)*	*Rs. 1.09*
	Total	*Rs.68.36*

In light of the decision taken in the 134th meeting of the erstwhile SREB, as it was found that the amount is not realisable, KSE Board had decided to withdraw the demand raised in this regard and accordingly, the arrears in this regard were written off.

(b) *M/s Steel Complex Ltd and M/s Malabar Steel Re rolling Mills had arrears and interest outstanding till September 2008 amounting to Rs.158.47 crore (Arrears Rs.60.86 crore and interest Rs.97.60 crore). Government of Kerala had accorded sanction for procuring the landed property by KSEB as a reciprocal arrangement in settlement of the arrears. Accordingly 72.413 cents of land in Elamkulam village, Ernakulam district and 346.3 cents of land at Venniyoor, Malappuram district valued at Rs.11.36 crore were transferred to KSEB in full settlement of dues till September 2008. Accordingly, outstanding liabilities of M/s Steel Complex Ltd and M/s Malabar Steel Re rolling Mills till September 2008 have been withdrawn from the books. The Government of Kerala had approved the decision vide order G.O (MS) No.29/10/ID dated 15.02.2010.*

The revenue authorities had assessed the land value of the above said property in Ernakulam as Rs.13,74,401/- per cent and for the property in Thirurangady village as Rs.40,724/- per cent. Accordingly KSE Board vide orderB.O (CM)No. 709/2011(TCP1/LA/2009) dated 05.03.2011 had decided to transfer the following land belonging to M/s Steel Complex Limited to KSEB towards the full and final settlement of all outstanding liabilities of M/s Steel Complex Limited till September 2008. The balance dues in the books at O/o Special Officer (Revenue) were written off.

Details of *land in settlement of dues of M/s Steel Complex Limited*

Description of Land	*Survey No.*	*Extent of Land*	*Land value per cent (Rs)*	*Total value of Land (Rs)*
Land at Ernakulam Village in Ernakulam Dist.	*340/1 & 341/3*	*72.413 Cents*	*13,74,401*	*9,95,24,500/-*
Land at Thirurangadi Village in Malappuram Dist.	*340/1 & 341/3*	*346.3 Cents*	*40,724*	*1,41,02,711/-*
Total Land value				*11,36,27,211/-*

137. The Commission had examined in detail the provision created for bad and doubtful debts amounts to Rs 227.02 crore, which includes (a) withdrawal of Rs 68.36 crore towards fixed transmission charges of KSEB owned 400 kV transformers at Madakkathara from SREB constituents and (b) the withdrawal of outstanding arrears of M/s Steel Complex Ltd and M/s Malabar Steel Rerolling mills against the transfer of land.

138. The issues on sharing of transmission charges of KSEB owned 400 kV transformers at Madakkathara from SREB constituents from 1992 to 2004

period is a long pending issue. This has to be settled between the KSEB and SR constituents amicably, without incurring financial losses. If the sharing of transmission charges is as per the well settled principles approved by the Central Commission, the SREB cannot decided to drop the sharing of state owned transmission system. This matter pertains to a period which is more than 15 years old and the company should have provided sufficient provisions as per prudent accounting practices, which seems not to have been done. Any how, the Commission cannot allow this expense on account of the withdrawal of credit issued during the period from the 1992 to 2004 to the consumers of the State at this juncture through tariff. If KSEB Ltd has any loss or liability in this issue, this may be raised at the appropriate forums including the CERC or at Central Government and may settled amicably.

139. Regarding the withdrawal of outstanding arrears of M/s Steel Complex Ltd and M/s Malabar Steel Rerolling mills against the transfer of land, it is noticed that, KSEB Ltd has not got prior approval of the Commission on transfer of land against the arrears on electricity charges. Moreover the practice of accounting as revenue, penal charges due on late payments without ascertaining the possibility of its realization is against the approved accounting standards for recognising revenue. Revenue recognition is to be made after following the accepted principles such as ascertainable amount of revenue, certainty of receipt etc., otherwise it leads to overstatement of revenue as well as the receivables. It is seen that KSEBL has the practice of overstating revenue in the case of arrears.

140. From the submissions of KSEB Ltd, it is seen that, the transactions are done as per the order of the State Government, the revenue loss and liability on this account may be recovered from the Government. Any how, the loss arising on account of settling the arrears against the transfer of land cannot be allowed to passed on to the consumers through tariff. The commission also is of the opinion that the loss sustained by the transaction is inflated since there has not been a proper valuation of land based on its current market value and land being an asset, where the probability of future increase in its value is very high - a fair and proper assessment of loss/gain has not been undertaken by the licensee for this transaction. Accordingly, the Commission hereby directs that KSEBL may undertake a

market valuation of the land takenover from M/s Steel complex and M/s.Malabar steel rolling mills and report to the Commission within three months from the date of this order.

141. KSEB Ltd has provided the details of the miscellaneous losses and write off, as detailed below.

Table 52

Details of Miscellaneous losses and Write off

Sl No	Particulars	Amount (Rs.Cr)
1	Compensation for injuries deaths and Danger - Staff	1.04
2	Compensation for injuries deaths and Danger – Outsiders	2.86
	Total	3.87

Commission approves the miscellaneous losses and write off as per the audited accounts. Accordingly, the other debits approved for the purpose of truing up for the year 2012-13 would be Rs.18.5 crore as detailed below.

Table 53

Other debits approved for the year 2012-13 (Rs Cr)

Sl No	Particulars	ARR order	Audited accounts	True up
1	Research and Development Expenses	1.50	0.74	0.74
2	Sale of Stores Account	0.00	-0.14	-0.14
3	Provision for Bad and Doubtful debts	14.00	227.02	14.00
4	Miscellaneous Losses and write-offs	3.00	3.87	3.87
5	Sundry expenses	0.00	0.03	0.03
	Total	18.50	231.52	18.50

142. The prior period charges as per the audited accounts is Rs 41.20 crore as detailed below.

Table-54

Net prior period charges (Rs. Cr)

Sl.No.	Particulars	2011-12	2012-13
I. Income relating to previous year			
1	Receipt from consumers	0.68	0.01
2	Excess interest and finance charges	0.29	
3	Other excess provision made in previous year	0.35	0.10
4	Other income relating to prior period	9.41	16.82
	Total	**10.73**	**16.93**
II. Expenditure relating to previous years			
1	Short provision of purchase	66.43	54.99
2	Operating expenses relating to prior period	0.00	0.31
6	Interest & finance charges	0.17	0.45
7	Other charges relating to previous years	6.08	2.38
	Total	**72.68**	**58.13**

143. As per the details submitted by KSEB Ltd, the major item of expenditure relating to previous years is under the heading 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 –55

Power purchase related prior period expenses for 2012-13 (Rs. crore)

1	Being the amount on account of capacity charges revision in respect of RSTPS III (2009-2012)	4.40
2	Being the UI charges revision from 4/09 to 5/10 to POSOCO	0.04
3	Being the debit note due to final tariff (2009-2012) LILO associated with Koodamkulam project- PGCIL	2.88
4	Being water cess revision 3/2012- NTPC	0.01
5	Being the deferred tax liability up to 31.03.2009 for central sector ULDC system materialized in 2010-11-PGCIL	0.25
6	Being the capacity charges revision RSTPS I station- NTPC	14.01
7	Being the capacity charges revision Simhadry (9/11-3/12) NTPC	5.77
8	Being the deferred tax liability up to 31.03.2009 for central sector ULDC system materialized in 2011-12 and revision of Transmission tariff 2004-09 for Ramagundam transmission system-PGCIL	10.51
9	Being the revision of capacity charges, FERV and SFC of Farakka station- NTPC	0.37
10	Being the cc revision Thalchar- NTPC	0.01
11	Being the cc revision Thalchar- NTPC	0.01
12	Being the FERV (2009-12) and differential AFC for 2011-12 Kayamkulam trans system- PGCIL	6.80

13	Being the RLDC fees and charges for NTPC stations.	3.74
14	Being the cc revision from 3/2010 Kahalgaon station- NTPC	0.25
15	Being the additional o&m expenses for 2006-09- NTPC	5.94
		54.99

144. As per the accepted accounting standards, Prior period items are the material charges or credits which gets recognised in the current year's financial statement as a result of errors or omissions in the preparation of the financial statements of one or more previous years. Further, the charge or credit arising on the outcome of a contingency, which at the time of occurrence could not be estimated accurately shall not constitute the correction of an error but a change in estimate and such an item shall not be treated as a prior period item. However, the majority of the items mentioned in the prior period credits/charges do not strictly fall in the category as defined by the Accounting Standards. The Commission is of the view that the KSEBL should follow the accepted standards for accounting prior period items.

145. The Commission after analyzing the details, approves the prior period income/ charges as per the audited accounts.

146. The summary of the other expenses approved for the purpose of truing up is shown below.

Table 56
Other expenses approved for the year 2012-13

	ARR Order	Actuals	True up
	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
Other debits	18.50	231.52	18.50
Prior period charges		41.20	41.20
Total	12.00	272.72	59.70

Expense capitalized

147. The interest and financing charges capitalised as per the audited accounts is Rs.116.06 crore and other expense capitalized is Rs.150.74 crore. The

Commission, approves the provision as per the audited accounts for the year 2012-13.

Return on equity

148. 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 fixed at 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.

149. KSEB Ltd has challenged above order before the Hon'ble APTEL as appeal petition No. 19 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% as per Central Commissions Regulations for the year for the year 2012-13. 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.*

150. 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.

151. The Commission has been adopting the provisions of the said regulation for approving the ARR & ERC of KSEB/ KSEB Ltd since the year 2011-12 and also for approving the truing up of accounts for the years 2009-10 onwards.

152. 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.

153. However, 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, the Commission has been allowing the RoE at the rate of 14% since the year 2006-07 onwards.

154. 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 is applicable to KSEB /KSEB Ltd and other interested parties.

155. However, in view of the direction of the Hon'ble APTEL vide the judgment dated 10-11-2014, the Commission hereby allows the RoE @15.50% on the equity of Rs 1553.00 crore, amounts to Rs 240.70 crore for the year 2012-13.

Non Tariff Income

156. The non-tariff income as per the audited accounts for the year 2012-13 is Rs 435.82 crore. The details are given below.

Table 57
Non tariff income claimed by KSEB Ltd for the year 2012-13

Particulars	2011-12 (Actual)	2012-13	
		SERC Approved	Actuals
	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
Meter Rent/Service Line Rental	158.14	165.00	163.40
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	60.31	50.00	60.19

allocation charges etc.			
Wheeling charges & Reactive energy charges	6.36	0.00	0.00
Interest on Staff Loans and Advances	0.36	0.25	0.31
Interest on Advances to suppliers/ Contractors	2.13	2.75	1.85
Interest from Banks	65.95	56.14	60.46
Rebate Received	81.36	40.00	54.03
Income from Trading	27.25	32.00	30.58
Miscellaneous Receipts	49.00	40.00	65.00
TOTAL	450.86	386.14	435.82

157. There is no discrepancy noticed in the amount booked under non-tariff income as detailed above. The audit too has not raised any adverse observation on the non-tariff income booked for the year 2012-13. The Commission for the purpose of truing up approves the non-tariff income as per the audited accounts.

Revenue from Tariff

158. The total revenue from sale of power within the State as per the audited accounts is Rs 7227.47 crore. Further, as per the audited accounts, an additional revenue of Rs 0.93 crore was realized by sale of electricity through energy exchanges. The details are given below.

Table-58

Revenue from Sale of Power within the State

Category	KSERC order			Actuals		
	Energy sale	Revenue from sale of power	Avg. tariff	Energy sale	Revenue from sale of power	Avg. Tariff
	(MU)	(Rs.Cr)	(Rs/ kWh)	(MU)	(Rs.Cr)	(Rs/kWh)
Domestic	8116.00	1620.65	2.00	8313.36	2154.16	2.59
Commercial	2187.00	1577.85	7.21	2224.06	1855.38	8.34
LT Industrial	1104.00	446.32	4.04	1101.96	587.12	5.33
LT Agriculture	247.00	22.84	0.92	306.08	47.28	1.54
Public Lighting	299.00	63.33	2.12	313.20	94.32	3.01
HT & EHT Total	3824.00	1582.11	4.14	3905.15	2146.40	5.50
Railway Traction	148.00	58.86	3.98	173.67	82.50	4.75
Bulk Supply	462.00	178.04	3.85	500.76	255.31	5.10
Total	16387.0	5550.00	3.39	16838.2	7222.47	4.29

159. KSEB Ltd has submitted that, the revenue from sale of power reported as per the audited accounts is at the tariff approved (at the pre-revised tariff for the consumption from April-2012 to June -2012 and revised rate from July-2012 to March-2013), penal charges for the excess consumption for the restrictions imposed on energy usage and fuel surcharge during the year 2012-13. KSEB Ltd has also submitted that, the revenue from sale of power as per the audited accounts is the total demand raised at the tariff approved by the Commission, irrespective of the tariff concessions and subsidy receivable from the Government.

160. During the year 2012-13, the Commission vide the order dated 25-7-2012, had revised the tariff of all consumers w.e.f 1st July 2012 onwards. The additional income expected through the tariff revision about Rs 1586.00 crore on annual basis. Since the tariff revision was ordered to implement from 1st July 2012 only, the additional income through the tariff revision is about Rs 1190.00 crore.

161. Further, considering the critical power situation of the State, with the approval of the Commission, KSEB Ltd had imposed the following restrictive measures during the year 2012-13.

<u>During the months of April and May 2012</u>

(i) ½ hour cyclic load shedding was imposed wef 02.04.2012 to 23.05.2012.

(ii) 10% restriction on energy usage was imposed on all HT & EHT consumers from 05.04.2012 to 31.05.2012. The excess energy consumption was charged at Rs.10/- per unit.

(iii) 10% restriction was imposed on LT II, LT IV, LT VI(A), LT VI(B), LT VI(C), LT VII(A), LT VII(B) and LT VII(C) categories wef 26.04.2012 to 31.05.2012. The monthly consumption of domestic consumers was restricted at 300 units. For LT consumers also the consumption beyond restriction was charged at Rs.10/- per unit.

<u>For the period from September 2012 to May 2013.</u>

(iv) ½ hour cyclic load shedding was imposed during morning and evening peak hours since 27.09.2012 (except during SSLC exam period from 04.03.2013 to 23.03.2013).

(v) 25% restriction on energy usage was imposed on all HT & EHT consumers wef 15.12.2012 and the excess energy consumption was charged with a penalty at the per unit rate of energy charges.

(vi) 20% restriction was imposed on LT II, LT IV, LT VIA, LT VIB, LT VI C, LT VII A, LT VII B and LT VII C categories. The monthly consumption of domestic consumers was restricted at 300 units. For LT consumers also the consumption beyond restriction was charged with a penalty at the per unit rate of energy charges.

162. The additional revenue collected and accounted as charges for excess consumption during the power restriction period is detailed below.

Table-59
Category wise details of the charges for excess consumption collected during the year 2012-13

Sl No	Account head	Category	Amount (In Crores)
1	61 214	Domestic	19.15
2	61 224	Commercial	42.35
3	61 234	Public Lighting	0.03
4	61 244	Irrigation & Dewatering	0.00
5	61 247	Exempted Paddy Cultivators	0.35
6	61 254	Public Water Works	11.19
7	61 274	Industrial L.T.	20.24
8	61 284	Railway traction	0.00
9	61 294	Bulk Supply	4.18
10	61 324	H .T	75.29
11	61 334	E.H.T	22.10
		Total	**194.88**

163. KSEB Ltd has not filed any application for the approving fuel surcharge during the year 2012-13. However, the entire fuel surcharge approved for

the year 2011-12 was implemented and collected during the year 2012-13 as detailed below.

(i) The Commission vide the order dated 1st February 2011 in OP No. 32 of 2011 has approved Rs 161.10 crore as fuel surcharge pertains to the 1st and 2nd quarter of the year 2011-12. The said amount was allowed to be collected @Rs 0.25/unit from April-2012 onwards for six months.

(ii) The Commission vide the order dated 28th May-2012 had approved Rs 77.22 crore as fuel surcharge for the 3nd 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.

(iii) 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 previous year 2011-12 and allowed the same to be recovered @Rs 0.10/unit from January-2013 to March-2013 of the subsequent year 2012-13.

(iv) As detailed above, the Commission has allowed to recover fuel surcharge amounts to Rs.290.16 crore during the year 2012-13, pertaining to the previous year 2011-12, as detailed below.

Table-60

Fuel surcharge implemented during the year 2012-13

Sl No	Fuel surcharge applicable	Amount approved (Rs.Cr)	Order No. & Date	Implementation period
1	Apr-2011 to Sep-2011	161.1	Order dated 1st Feb-2011 in OP No.32 of 2011	Apr-2012 to Sep -2012 @0.25/unit
2	Oct-2011 to Dec-2011	77.22	Order dated 28th May-2012 in OP No. 19/2012	Oct-2012 to Dec-2012 @0.20/unit
3	Jan-2012 to Mar-2012	51.84	Order dated 3rd Oct-2012 in OP No. 26/2012	Jan-2013 to Mar-2013 @0.10/unit
	Total	290.16		

164. KSEB Ltd has submitted the details of the fuel surcharge collected during the year 2012-13, as shown below.

Table-61
Details of the fuel surcharge collected during the year 2012-13

Sl No	Account head	**Category**	Amount (Rs. Cr)
1	61 213	Domestic	156.27
2	61 223	Commercial	38.66
3	61 233	Public Lighting	6.55
4	61 243	Irrigation &	4.34
5	61 246	Paddy Cultivators	1.18
6	61 253	Public Water Works	6.01
7	61 273	Industrial L.T.	18.09
8	61 283	Railway traction	3.17
9	61 293	Bulk Supply	10.09
10	61 323	H .T	45.36
11	61 333	E.H.T	23.16
		Total	**312.88**

165. Thus, during the year 2012-13, KSEB Ltd has collected Rs 194.88 crore as charges for excess consumption and also Rs 312.88 crore towards fuel surcharge pertains to the previous year over and above the revenue from sale of power under normal tariff. The details are given below.

Table-62
Total amount collected towards charges for excess consumption and fuel surcharge

Sl No	Category	Charges for excess consumption	Fuel surcharge	Total
		(Rs. Cr)	(Rs. Cr)	(Rs.Cr)
1	Domestic	19.15	156.27	175.42
2	Commercial	42.35	38.66	81.01
3	Public Lighting	0.03	6.55	6.58
4	Irrigation & Dewatering	0.00	4.34	4.34
5	Paddy Cultivators	0.35	1.18	1.53
6	Public Water Works	11.19	6.01	17.20
7	Industrial L.T.	20.24	18.09	38.33
8	Railway traction	0.00	3.17	3.17
9	Bulk Supply	4.18	10.09	14.27

10	H .T	75.29	45.36	120.65
11	E.H.T	22.10	23.16	45.26
	Total	194.88	312.88	507.76

166. The revenue from tariff (at pre-revised tariff from April-2012 to June 2012 and at revised tariff from July-2012 to March-2013) after accounting the charges for excess consumption and fuel surcharge is detailed below.

Table-63

Revenue from tariff for the year 2012-13

Category	Energy sale	Revenue from sale of power	Charges for excess consumption and fuel surcharge	Revenue from tariff
	(MU)	(Rs.Cr)	(Rs. Cr)	(Rs.Cr)
(1)	(2)	(3)	(4)	(5)= (3)-(4)
Domestic	8313.36	2154.16	175.42	1978.74
Commercial	2224.06	1855.38	81.01	1774.37
LT Industrial	1101.96	587.12	55.53	531.59
LT Agriculture	306.08	47.28	5.87	41.41
Public Lighting	313.20	94.32	6.58	87.74
HT & EHT Total	3905.15	2146.40	165.91	1980.49
Railway Traction	173.67	82.50	3.17	79.33
Bulk Supply	500.76	255.31	14.27	241.04
Total	16838.24	7222.47	507.76	6714.71

167. The average tariff at pre-revised for the year 2012-13 as per the order on ARR is given under Table-58 above. As per the tariff order dated 25-07-2012, the additional revenue expected through tariff revision was about Rs 1190.00 crore. The Commission has noted the fact, the tariff revision order was issued on 25-07-2012, however the same was effected retrospective effect from 01-07-2012. As per the details submitted by KSEB Ltd, there was some procedure delay in implementing the order on LT consumers for want of concurrence from the State Government. Hence, the additional revenue expected through increase in tariff may not be materialised entirely in 2012-13.

168. Considering all these factors, the Commission hereby approve the revenue from sale power including the charges of excess consumption fuel surcharge as per the audited accounts for the year 2012-13.

169. As per the audited accounts, KSEB Ltd has earned 0.91 crore as revenue from sale of power surplus power outside the State. The details are given below.

Table-64
Revenue from sale of power outside the State

Month	IEX		PXIL		Total	
	Quantum (MU)	Amount (Rs.Cr)	Quantum (MU)	Amount (Rs.Cr)	Qunatity (MU)	Amount (Rs.Cr)
Apr-12	0.17	0.20	0.00	0.00	0.17	0.20
May-12	0.24	0.28	0.41	0.45	0.65	0.73
Total	0.40	0.48			0.81	0.93

170. Hence for the purpose of truing up, the Commission approves the revenue from sale of power as detailed below.

Table-65
Revenue from sale of power approved for the year 2012-13

Particulars	ARR order	Audited accounts	Truing Up
	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
Revenue from sale of power within the State	5150.68	7222.47	7222.47
Revenue from sale of surplus power outside the State		0.93	0.93
Total	5150.68	7223.40	7223.40

Total Revenue gap/ surplus after truing up

171. The revenue gap reported by KSEB Ltd as per the audited accounts is Rs 3998.89 crore. As detailed in the preceding paragraphs, for the purpose of truing up, the revenue gap provisionally approved for the year 2012-13 is Rs 3132.97 crore, as detailed below.

Table-66

ARR&ERC for the year 2012-13 after truing up

Particulars	ARR Order	As per audited Accounts	True up
	(Rs. Cr)	(Rs. Cr	(Rs. Cr
Generation of Power	193.15	564.99	564.99
Purchase of power	5,008.49	7,199.61	7,186.74
Interest & Finance Charges	370.19	580.53	342.44
Depreciation	414.62	509.31	346.18
Employee Cost	1,663.66	2,103.03	2030.75
Repair & Maintenance	195.95	251.55	199.71
Administration & General Expenses	86.11	202.43	87.76
Other Expenses	18.50	272.73	59.70
Gross Expenditure (A)	**7,950.67**	**11,684.18**	**10818.27**
Less : Expenses Capitalized	134.60	150.74	150.74
Less : Interest Capitalized	47.09	116.06	116.06
Net Expenditure (B)	**7,768.98**	**11,417.38**	**10551.47**
Statutory Surplus/ Ro E(C)	217.42	240.72	240.72
ARR (D) = (B) + (C)	**7,986.40**	**11,658.10**	**10792.19**
Less Non-Tariff Income	386.14	435.82	435.82
Less : Revenue from Tariff	5,711.10	7,223.40	7,223.40
Total Income	6,097.24	7,659.21	7,659.21
Revenue Gap	**1,889.16**	**3,998.89**	**3132.97**

Order of the Commission

172. The Commission after considering in detail, the petition filed by KSEB Ltd, the objections from stakeholders and other materials placed before it, the revenue gap approved for the year 2012-13 is Rs 3132.97 crore, as against the revenue gap of Rs 3998.89 crore presented by KSEB Ltd based on the C&AG audited accounts for the year 2012-13This 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.

Directives:

1. The licensee shall provide the details of various provisions booked and its utilisations.

2. The licensee shall ensure that it follows the provisions of the relevant accounting standards while recording, recognising and disclosing information,

3. Miscellaneous items book under various heads should not exceed 5% of the total amount booked under the relevant head. If it exceeds the above thresh hold limit, the licensee should provide additional information of the same.

4. Land received in lieu of receivables shall be revalued based on the fair value and the exact loss on settlement determined and reported.

The petition disposed of. Ordered accordingly.

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 item 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. 3998.89 crore in its application for truing up of accounts for the financial year 2012-13. The learned Members have, as per their order, approved a revenue gap of Rs.3132.97crore for the financial year 2012-13. The above revenue gap is mainly due to the increase in the expenditure approved for the following items,-

Table 1
KSEB Ltd – Truing up for 2012-13
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	193.15	564.99	564.99
2	Purchase of power	5,008.49	7,199.61	7,186.74
3	Employee cost	1,663.66	2,103.03	2030.75
4	Other expenses	18.50	272.73	59.70

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 31-12-2011** for the approval of ARR and ERC, for the financial year 2012-13, preferred a claim for Rs. 2231.46 crore towards employee cost. This Commission had, in its **order dated 28-4-2012 in** the said application, approved an amount of Rs.1663.66 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 21-4-2015, KSEB Ltd has preferred a claim for Rs.2103.03 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 2012-13 are tabulated hereunder.

Table 2
KSEB Ltd – Truing up for 2012-13
Details of employee cost claimed and approved in the majority order

Particulars	ARR (Rs. crore)	Truing up (Rs. crore)	% of increase
Claimed	2,231.46	2,103.03	No increase
Approved	1,663.66	2,030.75	22.06%

From the above data, it can be found that KSEB Ltd has claimed an amount of Rs.2103.03 crore towards employee cost in the application for truing up of accounts as against Rs.2231.46 crore in the application for approval of ARR & ERC, without any increase. The learned Members have approved an amount of Rs.2030.75 crore towards employee cost in their order on truing up of accounts as against Rs.1663.66 crore approved in the order in the application for approval of ARR & ERC, with an **increase of 22.06%.** It would be worthwhile to examine the increases in employee cost claimed and **approved** in the financial years immediately prior to 2012-13. The details of the amounts claimed and the amounts approved towards employee cost are tabulated hereunder.

Table 3
KSEB Ltd – Truing up for 2012-13
Details employee cost claimed and approved in ARR up to 2012-13

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%
2012-13	2,231.46	16.8%	1,663.66	5.2%

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 – Truing up for 2012-13
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%
2012-13	2,103.03	10.49%	2,030.75	11.43%

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 2012-

13 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. 2030.75 Crore in truing up process, as against the amount of Rs. 1663.66 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 – Truing up for 2012-13
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
2012-13	31783	2,103.03	55,140

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 7 and 8 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 10 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 9 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 14 of their order. Public hearing was also done on 12.07.2016 & 9-8-2016, the details of which are explained in para 16 to 22 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 22 and 23 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 107 of the order of the learned Members, as follows,-

> *"Though KSEBL has provided the details of actual expenses incurred by it in 2012-13, 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 were through the licensee had mentioned that amount approved by the Commission was sufficient to meet the employee expenses as ordered by APTEL*."

In para 108 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 calculation of employee expenses for the year 2012-13 so as to comply with the directions of APTEL in its order in Appeal No 1 & 19 of 2013. The Commission after a thorough scrutiny of the information provided by the licensee, the amount approved by the Commission in the*

ARR & the directives of APTEL in its order, has came to the conclusion that there may be some excess amount required over the approved level of expenses in the year 2012-13 even though no.of employees is frozen at 2008-09 level (ie., 27175 nos)…."

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 2012-13 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. While approving the ARR, the Commission had only fixed the normative maximum expenditure under the head O&M expenses. Therefore the licensee has the freedom to incur expenditure on individual items, limiting the total of such expenses to the normative maximum fixed by the Commission. In the order of the Hon'ble APTEL, it has been directed to approve actual employee expenses in respect of the 27175 employees who were in the service of the KSEB Ltd in 2008-09. Therefore, if the Commission has to implement the order the Hon'ble APTEL in true spirit, it has to rely only on the details of actual expenses supported by authentic records. 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 3 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.*
>
> *Illustrations*
>
> *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.1663.66 crore**, approved by the Commission in the ARR order pertaining to 2012-13, 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. 1663.66 crore approved by the Commission in the ARR order pertaining to 2012-13.

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 111 of the order of the learned Members), basing on extrapolations or interpolations or assumptions or conclusions as in paras 108, 109 and 110 of the order of the learned Members. The approval **of an amount of Rs.2030.75** crore towards employee cost as granted by the learned Members without necessary, sufficient and proper records is likely to face another 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.2030.75 is seen approved towards the employee cost as against the amount of Rs.1663.66 crore in the ARR order. The total sale of energy during 2012-13 was 16838 MU. The excess amount approved towards employee cost would therefore result in an average increase in tariff at a rate of Rs 0.22 per unit. 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 and eliminates 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/MePD CL	0.71	MeECL/MePD CL	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 28-4-2012 in OP No.3/2012. The relevant portion has been quoted in para 100 of the order of the learned Members. It has been specifically stated therein that the licensee shall limit the employee expenses to the approved level and that the expenditure over the approved level shall not be passed on to the consumers through tariff. In the truing up process for the year allowable employee cost shall be re-fixed based on the actual CPI – WPI for the year 2012-13. 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 the additional expenses above the approved level of employee cost are not passed on to the consumers by way of tariff increase. 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.1663.66 crore as approved in the ARR order of the Commission dated 28-4-2012. 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