KERALA STATE ELECTRICITY REGULATORY COMMISSION
<u>THIRUVANANTHAPURAM</u>

Present : **Shri K.Vikraman Nair, Member**
Shri S.Venugopal, Member

File No. 1337/F&T/2016

In the matter of : Seeking consequential orders in terms of findings of Hon'ble APTEL in the judgment dated 06.05.2016 on appeal petition No. 135 of 2014 in the matter of Truing up of accounts for the year 2009-10

Applicant : Kerala State Electricity Board Ltd
Vydhyuthi Bhavanam, Pattom
Thiruvananthapuram

`

ORDER DATED 09-05-2017

1. The Kerala State Electricity Regulatory Commission (here in after referred as the Commission)' vide its order dated 25th October 2012 in petition OP No. 27 of 2011 had approved the 'Truing up of Accounts of Kerala State Electricity Board (herein after referred as KSEB) for the year 2009-10, wherein the Commission had approved the revenue gap for the year 2009-10 at Rs 639.43 crore. Subsequently, KSEB has filed a review petition against the order and the Commission, in the order dated 28th October-2013 in RP No. 1/2013, had enhanced the revenue gap to Rs 739.14 crore by allowing the depreciation as per the CERC (Terms and Conditions of Tariff) Regulations, 2009.

2. KSEB had filed an appeal petition before the Hon'ble Appellate Tribunal for Electricity (herein after referred as Hon'ble APTEL) against the order and the petition was admitted as Appeal Petition No.135 of 2013. The main issues raised in the appeal petition are (i) cost of power purchase, (ii) employee cost (iii)administration and general expenses and return on equity.

3. Hon'ble APTEL vide judgment dated 6th May 2016 had decided on the issues raised by KSEB. The extract of the order of the Hon'ble APTEL dated 6th May 2016 is given below.

"5) Following are the grievances, raised by the appellant in this appeal:

(a) ***Power Purchase Cost:*** *It has been disallowed to the extent of increase in amount payable on account of purchase of power in FY 2009-10 over FY 2008-09 and disallowed Rs.174.24 Crores. According to the KSEB, the true up account for the relevant period in question should be modified and corrected as per the directions given in judgment dated 10.11.2014 in Appeal Nos.1 of 2013 and 19 of 2013, passed by this Appellate Tribunal, in paragraph 19.2 thereof, which is quoted hereunder"*

"19.2 The FY 2012-13 is already over. The accounts of FY 2012-13 are required to be trued up. The KSEB shall submit the audited accounts along with the Application for true-up. The State Commission shall approve the true-up energy sales and cost of power purchase after prudence check and also allow carrying cost on the excess cost of power purchase over the approved level, if any. Accordingly, directed."

After considering the aforesaid para 19.2 of our earlier judgment dated 10.11.2014, we dispose of this issue as per directions given by us in the earlier judgment dated 10.11.2014 and the State Commission is directed to decide this issue as per directions contained in para 19.2 of our judgment dated 10.11.2014 in Appeal Nos. 1 of 2013 and 19 of 2013.

(b) *Findings in the matter of Employee cost*
That the ***employee cost*** *of the Board amounting to Rs.99.08 Crores has been disallowed by the State Commission in the Impugned order. According to the KSEB, this matter/issue is also covered by our aforesaid judgment dated 10.11.2014 (supra), particularly para 8.4 and 8.5 thereof, which are quoted as under:*

"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."*

After hearing the parties, we decide this issue as per the directions contained in para 8.4 and 8.5 of our earlier judgment dated 10.11.2014. The State Commission is further directed to dispose the said point as per the said directions.

(c) Findings in the matter of Repairs and Maintenance cost

Repair and Maintenance Cost: *According to the KSEB, repair and maintenance, to the extent of Rs.20.42 crores has been disallowed. This issue has been decided against the KSEB by the aforesaid judgment dated 10.11.2014. Hence, disallowed and decided against the KSEB.*

(d) Findings in the matter of Administrative and General Expenses cost

Administrative and General Expenses*: According to the KSEB, the Electricity Board had incurred Rs.86.17 Crores but Hon'ble Commission had approved only Rs.66.97 Crores and a gap of Rs.19.20 Crores State has been made. The learned counsel for the KSEB had cited in support of this contention, para 20(vi) dealing with A&G expenses of our judgment dated 04.09.2012 in Appeal Nos. 190 of 2009 and 46 of 2010, are quoted below:*

"iv) A&G Expenses: The State Commission shall consider the A&G expenses as per the audited accounts of the KSEB in the true up and allow the same with carrying cost, after prudence check. We have also given directions to the State Commission regarding framing of Regulation for normative expenditure to be allowed for various costs including A&G expenses in paragraph 13.4."

After going through the judgment dated 04.09.2012 (supra), we dispose of this issue and direct the State Commission to consider and decide this issue as per our direction contained in para 20(vi) dealing with A&G Expenses in judgment dated 04.09.2010 in Appeal Nos. 190 of 2009 and 46 of 2010.

(e) Findings in the matter of Return on equity:

Return on equity *This issue has admittedly been decided by this Appellate Tribunal vide judgment dated 10.11.2014 in Appeal No.1 of 2013 and 19 of 2013 (supra). Hence, we decide this issue in favour of the KSEB as per judgment dated 10.11.2014 in Appeal Nos. 1 of 2013 and 19 of 2013, passed by this Appellate Tribunal, para 11.3 of which is reproduced here under:*

"11.3 We find that the State Commission has allowed ROE at the rate of 14% in its Tariff Regulations for generation and transmission omission. 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 licenses. 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."

This issue is disposed of as per direction contained in para 11.3 dealing with return on equity in our judgment dated 10.11.2014 in Appeal Nos. 1 of 2013 and 19 of 2013.

(f) Findings in the matter of Interest on finance charges

***Interest on finance charges**: This issue dealing with interest and finance charges, as per the KSEB, has been decided in favour of the KSEB vide judgment dated 10.11.2014 of this Appellate Tribunal in Appeal Nos. 1 of 2013 and 19 of 2013, passed by this Appellate Tribunal. Relevant portion of para 16.2 and 16.3 are as under:*

"16.2 According to the Learned Counsel for the State Commission, the State Commission had come to a reasonable conclusion on the requirements of interest and finance charges. The State Commission has also correctly kept an adhoc provisions of Rs. 20 crores as interest on working capital to meet the short term fund requirements.

16.3 We find that the State Commission in the absence of Regulations have decided the Interest and Finance charges and interest on working capital. 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."

This issue has been decided in favor of the KSEB vide our judgment dated 10.11.2014(supra). The State Commission is directed to decide this issue as per directions contained in our judgment dated 10.11.2014 in Appeal Nos. 1 of 2013 and 19 of 2013.

*6) In view of the above, **we allow the instant appeal, being Appeal No.135 of 2014,** to the extent indicated above, and Impugned Order is modified to the extent indicated above without imposing any cost. The State Commission is directed to comply with the aforesaid directions in letter and spirit and pass consequential orders within three months from today positively, under intimation to this Appellate Tribunal.*

4. The Commission vide the letter No. 1025/F&T/2016/KSERC/629 dated 27.06.2016 had directed the KSEB Ltd (the successor entity to the its predecessor in interest namely KSEB) to submit the necessary and sufficient details to reconsider the order of the Commission dated 25.10.2012 in the matter of truing up of accounts of KSEB for the year 2009-10, as per the directions contained in the judgment of Hon. APTEL dated 6-5-2016 in Appeal No. 135 of 2013.

5. KSEB Ltd, on 01-08-2016 had filed this petition, seeking consequential orders in the matter of Truing up of accounts for the year 2009-10 in terms of findings of Hon'ble APTEL in the judgment dated 06.05.2016 in appeal petition No. 135 of 2014. The items remanded back to the Commission for re-consideration in view of the judgment of the Hon'ble APTEL dated 06.05.2016 are (i) cost of power purchase (ii) employee cost, (iii) administration and general expense and (iv) Return on equity. The analysis and decision on the issues remanded back to the Commission, as per the judgment of the Hon'ble APTEL dated 06.05.2016 in Appeal petition No. 135 of 2016, in the matter of truing up of account of KSEB for the year 2009-10 are discussed below.

Cost of power purchase

6. The Commission vide the order dated 25th October 2012 in petition OP No. 27 of 2011 had admitted the entire cost of power purchase amounting to Rs 3384.51 crore, as per the C&G audited accounts. However, the Commission had deducted an amount of Rs 174.26 crore from the admitted amount, on the reason that, there is an excess provision of Rs 174.26 crore created in the accounts during the year 2009-10, when compared to the provision created for power purchase for the previous year 2008-09. The Commission had found that, the liability towards power purchase from CGS under current liabilities as on 31-03-2009 was Rs 552.11 crore, which was increased to Rs 726.37 crore as on 31-03-2010. Thus there is an increase in current liabilities towards power purchase by Rs 174.26 crore (Rs 726.37 crore – Rs 552.11 crore). The Commission is of the view that, since there is already a provision of Rs 552.11 crore, the extra provision created during the year 2009-10 amounting to Rs 174.26 crore is not necessary. Accordingly, the extra provision created was deducted from the admitted cost of power purchase for the year 2009-10.

7. KSEB has raised this issue in the appeal petition No. 135 of 2014 filed before the Hon'ble APTEL against the order dated 25-10-2012 in the matter of truing up of accounts of KSEB for the year 2009-10. Hon'ble APTEL in its judgment dated 06.05.2016 had decided on the issue, which is extracted below.

> *(a)* ***Power Purchase Cost:*** *It has been disallowed to the extent of increase in amount payable on account of purchase of power in FY 2009-10 over FY 2008-09 and disallowed Rs.174.24 Crores. According to the KSEB, the true up account for the relevant period in question should be modified and corrected as per the directions given in judgment dated 10.11.2014 in Appeal Nos.1 of 2013 and 19 of 2013, passed by this Appellate Tribunal, in paragraph 19.2 thereof, which is quoted hereunder"*
>
> *"19.2 The FY 2012-13 is already over. The accounts of FY 2012-13 are required to be trued up. The KSEB shall submit the audited accounts along with the Application for true-up. The State Commission shall approve the true-up energy sales and cost of power purchase after prudence check and also allow carrying cost on the excess cost of power purchase over the approved level, if any. Accordingly, directed."*
>
> *After considering the aforesaid para 19.2 of our earlier judgment dated 10.11.2014, we dispose of this issue as per directions given by us in the earlier judgment dated 10.11.2014 and the State Commission is directed to decide this issue as per directions contained in para 19.2 of our judgment dated 10.11.2014 in Appeal Nos. 1 of 2013 and 19 of 2013.*

As per the judgment of the Hon'ble APTEL, the Commission has to true-up the cost of power purchase based on the audited account, and shall approve the true-up energy sales and cost of power purchase after prudence check.

8. KSEB Ltd in the remand petition had submitted the following regarding this issue.

"

(i) *During the year 2008-09, the entire power purchase bill of NTPC for the month of March 2009 (except Rs 46.81 crore claimed at the month end) was paid during the month of March-2009 itself for availing the benefit of rebate scheme prevalent then. However, no such rebate scheme was available during the year 2009-10. Hence the entire power purchase bill of NTPC for the month of March 2010 amounting to Rs 221.33 crore was paid only during the month of April-2010. Therefore the bill towards power purchase for March 2010 from NTPC was reflected under liabilities pending for payment for the year 2009-10. Accordingly, the liability towards power purchase from NTPC was increased by Rs 174.52 crore (Rs 221.33 crore minus Rs 46.81 crore) in the audited accounts for the*

year 2009-10. This is the main reason for the increase in current liability towards power purchase from CGS during the year 2009-10 compared to the previous year 2008-09.

(ii) *The enhancement in outstanding liability as on 31.03.2010 is not due to any provision created but is the liability in the form of invoices raised by the suppliers which has been accepted by KSEB and remaining to be discharged for want of sufficient cash flow. The enhancement in liability towards power purchase is entirely different from that of the provision created for pay revision or DA revision.*

(iii) *As per the accrual system of accounting, expenses are to be accounted and liability to be recognized to the extent of sums payable against such expenses. In the present case, the cost of power procured has been accounted under power purchase expenses and the sums payable on account of such purchase was included under liabilities for supply of power. Such liability shall remain in books till payment is made or through any other mode of settlement by mutual consent.*

(iv) *Due to the decision of the Hon'ble Commission to disapprove this increase in liability, power purchase cost to this extent was denied to KSEB. In effect, this resulted in disallowance of power purchase cost to the tune of Rs.174.26 crore. In short, liability created on genuine grounds was disapproved by the Hon'ble Commission, citing the reason that sufficient provisions towards power purchase is already available.*

(v) *Power purchases are made on the basis of power purchase Agreements entered into with suppliers, who in turn raise their bills towards the supplies made in a month in the corresponding month itself. Hence the liabilities on this count can be ascertained clearly and there is <u>no need for provisioning.</u> Further, it has already been affirmed that the KSEB has not created any provision towards power purchase, which could be made only upon estimation, for the financial year 2009-10.*

(vi) *The liability towards power purchase denotes the sums to be paid or claims to be honored. The balance under such liability varies with the creation of the additional liabilities as well as payments made or settlements effected. Hence the year end liability depends on the cash flow. In other words power <u>purchase cost for a year is based on actual bills admitted whereas the outstanding liability on account of such power purchase for a given year end depends on actual cash flow or the quantum of payments effected in that year.</u>*

(vii) *In view of the above, the increase in yearend liability towards power purchase from Rs.552.12 crore in 2008-09 to Rs.726.38 crore in 2009-10 has <u>nothing to do with the power purchase cost</u> for the year 2009-10, since this happened purely on account of payments effected during the* *year 2009-10. In other words, had KSEB made an additional payment of Rs.100 crore than what had actually been paid in 2009-10, the liability would have come down to Rs.626.38 crore. Similarly, if the actual payment was less by Rs.100 crore than actual payment made in the year, the liability would have gone up to Rs.826.38 crore. It is pertinent to note here that in either case, the cost of power purchase is certain and would remain at the same level at Rs.3384.52 crore.*

(viii) It is humbly submitted that in the years of financial difficulties, liabilities could not be discharged promptly and hence no ceiling limits can be fixed on liabilities arising out of legally binding agreements as these are to be honored. Restricting unsettled liabilities at the eligible level or artificial curtailment would invariably result in audit objections.

(ix) It is an admitted fact that the power purchase is an uncontrollable expense to the utility and the Hon'ble Commission may allow the same after prudence checks. It is worthwhile to mention here that the Hon'ble Commission, while conducting prudence check, has not raised any objection with regards to either the volume of power purchased in 2009-10 or the rate at which the purchase was effected.

(x) Therefore the Hon'ble Commission may kindly allow the genuine liability created on account of power purchase so as to allow KSEB to recover the actually incurred cost of Rs.3384.51 crore towards power purchase for the year 2009-10 in full."

9. The Commission had examined the submission of the KSEB Ltd on this issue. The power purchase and the actual cost incurred for power purchase as per the invoices raised by the generators/ suppliers are considered as uncontrollable expenses by the Commission while truing up the accounts. In the instant case the Commission is of the studied view that the existing provision will suffice to meet the expenses of the year taking into consideration the actual annual power purchase cost incurred by the licensee. As per the audited accounts of KSEB for the 2009-10 the total power purchase cost for the year is Rs.3384.52 crore. The power purchase bills are paid with a one month lag. That is power purchased for the month of March will be paid in the month of April. Thus the provision to be created for the payment of March bill should be provided for. Based on the annual power purchase cost provided by the licensee, average monthly bill of power purchase will come to Rs.282 crore. Even after taking into consideration that March being a summer month and the actual power purchase bill will be greater than the average, the provision already existing for the same is

Rs.552.11 crore at the beginning of the year (as on 1-4-2009) which is more than 87% of the average monthly power purchase cost. As per the details submitted by KSEB, the total amount claimed by KSEB for power purchase including provision is Rs.3384.52 crore which comes to Rs.282. crore per month which is very high compared to the actual power purchase cost calculated by the Commission. Over the years, complete power purchase cost has been allowed by the Commission except the cost of excess power purchase, if any, on account of the under achievement of T&D losses. KSEB Ltd has not submitted the split up details of the Rs 552.11 crore outstanding current liability as on 31-03-2009 under the head 'liability for power from central stations and purchase of power'. If the amount booked in each year under power purchase is completely paid, then there will not be any outstanding amount under current liabilities. In the present case, the outstanding liability arose because either KSEB did not pay the complete amount booked under power purchase over the years or excess amount was booked under the head and hence a balance amount of Rs.552.11 crore was outstanding as on 1-4-2009. Since the power purchase cost booked in such years has been fully allowed to pass through in the ARR after truing up, the amount outstanding of Rs.552 crore is the excess booked over the actual payment. The Commission in the impugned order dated 25.10.2012 has stated that, since there is already a balance provision of Rs 552.11 crore as on 31.03.2009 meeting the short term liability towards power purchase, there is no need to provide additional provision under this head for the year 2009-10. Hence, in the absence of details furnished by KSEB on the outstanding liability of Rs.552.11 crore, the Commission finds no evidence that the net cost of power purchase as approved in the impugned order dated 25.10.2012, for the year 2009-10 at Rs 3210.25 crore is insufficient.

Employee cost

10. While approving the truing up of accounts of KSEB for the year 2009-10 vide the order dated 25.10.2012 in petition OP No. 27 of 2011, the Commission had approved the employee cost for the year 2009-10 as follows.

> *"47. Considering the uncontrolled increase of O&M expenses that is getting highly prejudicial to consumer interests year after year, the Commission has adopted a methodology based on CPI:WPI weighted method for benchmarking the employee expenses from the ARR of 2011-12, taking the actuals of*

2008-09 as a base. While allowing the employee expenses at CPI:WPI basis, the salary component was inflated at 3% per annum considering the increments involved. Since the controllable expenses are allowed to increase at the inflation level, incentive is available to the licensee to limit the costs below the approved level and reap the benefits of savings. The allowable expenses based on this method is as shown below:

Employee costs based on CPI-WPI based index

	2008-09 Rs. Crore	*2009-10 (Rs. Crore)*	*2010-11 (Rs. Crore)*
Basic Pay Projection (3% increase)	*378.70*	*390.06*	*401.76*
Other components			
CPI weightage (70%)	*613.54*	*689.43*	*761.45*
WPI Weightage (30%)	*262.94*	*272.96*	*298.90*
Total	***1,255.18***	***1,352.45***	***1,462.11***
% increase		*7.75%*	*8.11%*

Accordingly, the employee cost approved for the year 2009-10 as per the order dated 25.10.2012 is given below.

Employee cost approved for the year 2009-10

	Actual as per accounts (Rs. Cr)	*Allowed in True UP (Rs. Cr)*
Employee expenses	*1451.53*	*1352.45*

11. As detailed above, while approving the truing up of accounts for year 2009-10, the Commission had approved the employee cost for the year 2009-10 at Rs 1352.45 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 basic pay, an annual increase of 3% is allowed over the year 2008-09.

12. KSEB Ltd had filed appeal petitions against the above order of the Commission before the Hon'ble Appellate Tribunal for Electricity (APTEL) and the APTEL admitted the appeal petition as Appeal Petition No. 135 of 2014. Hon'ble APTEL vide the judgment dated 6.05.2016 in Appeal Petition No. 135 of 2014 had decided on the issue as follows.

__(c)__ Findings in the matter of Employee cost

*That the **employee cost** of the Board amounting to Rs.99.08 Crores has been disallowed by the State Commission in the Impugned order. According* *to the KSEB, this matter/issue is also covered by our aforesaid judgment dated 10.11.2014 (supra), particularly para 8.4 and 8.5 thereof, which are quoted as under:*

"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."

After hearing the parties, we decide this issue as per the directions contained in para 8.4 and 8.5 of our earlier judgment dated 10.11.2014. The State Commission is further directed to dispose the said point as per the said directions.

13. As detailed above, Hon'ble APTEL has ordered that without accounting for the increase in numbers of employees over the base year, 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.

14. KSEB Ltd, in the remand petition dated 01.08.2016, had submitted the year wise details of the total employees retired since 2008-09, the total number of recruitment of employees cadre wise etc. KSEB Ltd also submitted an estimate of the employee cost attributed by the increase in manpower over the same in 2008-09. KSEB Ltd had submitted that, the total employee cost excluding the employee cost attributed by the increase in manpower may be allowed by the Commission in the process of truing up. The summary of the employee cost attributable to increase in man power claimed by KSEB Ltd is given below.

Table-1

Summary of the employee cost attributable to increased manpower

	2009-10 (Rs. crore)
Basic pay	3.24
DA	2.16
Other Allowances	0.69
Total	6.09

15. The Commission has examined the details of estimation submitted by KSEB Ltd, and do not accept the same mainly on following reasons.
    (a) The logic of the calculation was not properly explained.
    (b) The calculation is seen done based on 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 which is only an estimate.
    (c) 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.

16. Accordingly, the Commission calculated the employee costs for the year 2009-10 as per the Orders of APTEL in the following manner. The same has been estimated based on the available information with the Commission and the Commission was forced to do the estimation due to the reasons explained above.
    (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 2009-10 is limited to the 27175 employees.
    (b) As per the orders of APTEL, terminal benefits have to be provided at actual.
    (c) There is no reference on the other allowances. Hence the other allowance can be approved at a level increased by actual CPI: WPI from 2008-09 level or actual which ever less.
    (d) The balance is with respect to Basic pay and DA. The Basic pay and DA for the number of employees existing at 2008-09 can be calculated by deducting

the Basic pay and DA at revised pay scales, for the newly recruited excess employees from the actual employee cost.

17. Based on the above, the excess employee cost is calculated considering the additions in employees each year. The actual recruitment for various categories as per the details submitted by KSEB Ltd is detailed below.

Table-2

Year wise details of the new recruitments since 2008-09

Designation wise recruitments	2009-2010
Assistant Engineer	221
Cashier	268
Driver II	3
Junior Assistant	3
Junior Fair Copy Assistant	5
Electricity worker	1159
Meter Reader	7
Office Attendant II	7
Sub Engineer	61
Sweeper III	1
Total	1735

18. As per the details furnished by KSEB Ltd, the increase in employees over 2008-09 is shown below.

Table 3

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

	2008-09	2009-10
Total No. of employees	27175	28007
Increase in employees over 2008-09 level		832

19. The newly recruited additional employees in proportion to the retirements is as shown below:

Table 4

Designation wise excess employees over the year 2008-09

Designation	2009-10
Assistant Engineer	106
Cashier	129
Driver II	1
Junior Assistant	1
Junior Fair Copy Assistant	2
Electricity worker	556
Meter Reader	3
Office Attendant II	3
PTC Sweeper	0
Sub Engineer	29
Total	832

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

Table 5

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		

21. Taking into consideration the fact that a newly recruited employee will be fixed at the minimum of the scale and the actual DA rates disbursed are also known, the basic pay and DA of the employees appointed over and above the threshold 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- 6
Cost of excess employees (Basic & DA)

Designation	2009-10 (Rs. Cr)
Assistant Engineer	2.57
Cashier	1.67
Driver II	0.01
Junior Assistant	0.01
Junior Fair Copy Assistant	0.03
Electricity worker	5.47
Meter Reader	0.04
Office Attendant II	0.03
PTC Sweeper	0.00
Sub Engineer	0.50
Total	**10.33**
Average DA rates	13.8%
Total Basic pay & DA	11.75

22. **Terminal benefits:** As per the Orders of APTEL, the terminal benefits have to be provided for at actual and the gratuity directed to be paid as per the judgments of the Hon'ble High court should also be allowed. The details of terminal benefits booked by KSEBL is as shown below;

Table 7
Details of terminal benefits booked under audited accounts

	2008-09 (Rs. Cr)	2009-10 Rs. Cr)
Monthly Pension including provisions	445.83	526.86
Gratuity	22.83	29.88
Commutation	25.03	42.13
Medical allowance	1.53	4.61
Special festival allowance	0.62	0.84
Provision for gratuity/commutation		
Total terminal benefits	**495.84**	**604.32**

23. As can be seen from the above table, KSEB has included Rs 29.88 crore towards gratuity for the year 2009-10. the Commission has sought the details of actual

disbursement of gratuity by KSEBL and the details submitted are reproduced below:

Table-8

Details of the actual disbursement of gratuity

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

24. It can be seen from the accounts that the gratuity released by KSEBL is Rs 27.16 crore only as against Rs 29.88 crore booked in the accounts. As per the directions of the Hon'ble APTEL, the actual disbursement of gratuity only be approved in the process of truing up. Based on the above, the terminal benefits to be allowed for the truing up as per the judgment of the Hon'ble APTEL dated 6.5.2016 is as shown below:

Table 9
Approved Terminal benefits

	2009-10
Monthly Pension including provisions	526.86
Gratuity	27.16
Commutation	42.13
Medical allowance	4.61
Special festival allowance	0.84
Total terminal benefits allowed	**601.60**

25. Accordingly, the employee cost admissible as per the judgment of the Hon'ble APTEL is detailed below.

Table 10
Approved employee costs for 2009-10

	2009-10 (Rs.crore)
Basic Pay & DA as per Accounts	753.29
Basic pay & DA of excess employees	11.75
Net Basic pay & DA	741.54
Other allowances	93.92
Terminal benefits approved	601.60
Total Employee cost allowable	1,437.06

26. The employee cost approved for the year 2010-11 as per the remand petition filed by KSEB Ltd as per the direction of the Hon'ble APTEL in its judgment dated 06.05.2016 in appeal petition No. 135 of 2014 is given below.

Table-11

Employee cost approved for the year 2009-10 as per the remand petition as per the judgment of the Hon'ble APTEL dated 06.05.2016

Particulars	Actual as per accounts	Allowed in True UP order dated 30-10-2012	Approved in the remand petition
	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
Employee expenses	1451.53	1352.45	1437.06

Administration and General Expenses

27. The Commission vide the order dated 25.10.2012 in the matter of truing up of accounts for the year 2009-10 had approved the A&G expenses for the year 2009-10 at Rs 66.97 crore as against Rs 86.17 crore as per the audited accounts. The relevant portion of the order of the Commission dated 25.10.2012 is extracted below.

"67. The Commission in its ARR&ERC order for 2009-10 has given 10% increase over the approved level of A&G expenses in 2008-09 for the year 2009-10, specifically to give signal for the need to control the A&G expenses. However, the actual increase over the approved level of expenses is much higher - about 34% over the approved level, which is by any standard is unreasonable. The Commission has also limited the legal expenses to Rs.5 Crore, which was twice than that of 2007-08 level. The increase of 34% over the approved level and about 41% over the previous year in any standards cannot be justified. A&G expenses is a controllable item of expenses and the Board has to take conscious efforts to limit the expenses. Generally increases in controllable expenses are allowed to cover the inflation only. The Commission has examined the level of inflation during the period. As per the CPI and WPI data inflation in 2009-10 is as shown below:

Recorded CPI and WPI indices over the years

		Yearly		
Year	*WPI**	*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%*

68. In 2009-10, general inflation based on WPI was only 3.81%, where as inflation based on CPI is about 12.5%. On a composite level, it would work out to about 10% in 2009-10, for which provision was already given in the ARR&ERC order for 2009-10. Significantly, considering the controllable nature of expenses, the Commission introduced CPI-WPI weighted benchmark for O&M expenses in 2011-12 keeping the expenses in 2008-09 as base. Based on the CPI-WPI benchmark, the A&G expenses worked out for 2009-10 is as shown below. Based on the index, it would works out to Rs.66.97 Crore only.

A&G Expenses linked to CPI:WPI index

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

69. The Commission has sought the reasons for increase in the controllable expenses over the approved level. The Board has given the reason for increase in expenses. The major items on which cost escalation have been incurred are freight related expenses, DSM, Advertisement, & printing and stationery. However, Board could not provide any evidence on the steps taken for limiting expenses at the approved level. All the reasons given are for justifying the actual expenses, which is not expected of while analysing the prudency of expenses. In the ARR&ERC Order for 2011-12, the Commission has concluded that increase in A&G expenses is unreasonable in the past with respect to the many parameters which can be considered as benchmark such as number of consumers, sales, GFA, circuit lines, installed capacity etc., The Commission is much concerned on the lack of cost control & planning in the Board, which has been elaborately given in all ARR&ERC and truing up orders. As pointed out earlier, the Commission has to ensure that the expenses passed on are reasonable. Hon. APTEL in its order dated 4-9-2012 had also ordered to consider the A&G expenses for 2009-10 based on the audited *accounts after prudence check. After considering reasons given above, and the explanation of the Board, the Commission arrives at a considered view that A&G expenses may be allowed as per the approved level for the purpose of Truing up. However, as per inflation based index, the allowable expenses works out to Rs.66.97 crore, the Commission allows the same amount for truing up as shown below.*

	2009-10 (Rs. Crore)		
	ARR Order	***Actual***	***Allowed in True UP***
A&G expenses other than Electricity duty	*64.22*	*86.17*	*66.97*

28. KSEB Ltd had raised this issue in the appeal petition filed before the Hon'ble APTEL, in the appeal petition No. 135 of 2014.against the order of the Commission dated 25.10.2012 in the matter of truing up of accounts of KSEB for the year 2009-10. Hon'ble APTEL in its judgment dated 06.05.2016 had issued following directions to the Commission on this issue.

(d) Findings in the matter of Administrative and General Expenses cost

***Administrative and General Expenses**: According to the KSEB, the Electricity Board had incurred Rs.86.17 Crores but Hon'ble Commission had approved only Rs.66.97 Crores and a gap of Rs.19.20 Crores State has been made. The learned counsel for the KSEB had cited in support of this contention, para 20(vi) dealing with A&G expenses of our judgment dated 04.09.2012 in Appeal Nos. 190 of 2009 and 46 of 2010, are quoted below:*

"iv) A&G Expenses: The State Commission shall consider the A&G expenses as per the audited accounts of the KSEB in the true up and allow the same with carrying cost, after prudence check. We have also given directions to the State Commission regarding framing of Regulation for normative expenditure to be allowed for various costs including A&G expenses in paragraph 13.4."

After going through the judgment dated 04.09.2012 (supra), we dispose of this issue and direct the State Commission to consider and decide this issue as per our direction contained in para 20(vi) dealing with A&G Expenses in judgment dated 04.09.2010 in Appeal Nos. 190 of 2009 and 46 of 2010.

29. KSEB Ltd in this remand petition has given some descriptions on the various items included in the A&G expenses. The Commission had examined the details submitted by KSEB Ltd. The Commission in its previous orders has reiterated the

position that, the A&G expense is a controllable expenses and the same shall be limited to the approved level in the ARR in the process of truing up. However, KSEB Ltd has not submitted any convincing details on the efforts taken by it to control the A&G expenses at the approved level and reasons for the abnormal increase on the same.

30. The Commission has also examined the directions of the Hon'ble APTEL in its judgment dated 06.05.2016 in appeal petition No. 135 of 2014 and in the judgment dated 04.09-2012 in Appeal Nos. 190 of 2009 and 46 of 2010.

31. A close perusal of the paragraph 69 of the order of the Commission dated 25.10.2012, which is extracted under paragraph 28 above, reveals that, the Commission had duly considered the judgment of the Hon'ble APTEL dated 04.09.2012 in appeal petition No. 190 of 2009 and 46 of 2010 while approving the A&G expenses for the purpose of truing up of accounts for the year 2009-10. Since KSEB Ltd had not submitted any additional details with supporting evidence on the excessive increase of the A&G expenses over approved level , the Commission is of the considered view that, there is no need to relook in to the A&G expenses approved by the Commission vide the order dated 25.10.2012. Accordingly it is reaffirmed that, the administration and general expenses approved for the purpose of truing up for the year 2009-10 is Rs 66.97 crore.

Return on Equity

32. While approving the application for approval of truing up of accounts for the year 2009-10 vide its order dated 25.10.2012 in OP No. 27 of 2011, the Commission had approved the RoE at Rs 217.42 crore, on the equity capital of Rs 1553.00 crore @14.00%. KSEB Ltd has challenged this issue in the appeal petition No. 135 of 2014, filed before the Hon'ble APTEL against the order dated 25.10.2012. Hon'ble APTEL vide the judgment dated 06.05.2016 had directed the Commission to allow the RoE @15.50% as per the norms specified by the Central Commission in its Tariff Regulations. The relevant portion of the judgment of the Hon'ble APTEL dated 06.05.2014 is extracted below.

(e) Findings in the matter of Return on equity:

Return on equity *This issue has admittedly been decided by this Appellate Tribunal vide judgment dated 10.11.2014 in Appeal No.1 of 2013 and 19 of 2013 (supra). Hence, we decide this issue in favour of the KSEB as per judgment dated 10.11.2014 in Appeal Nos. 1 of 2013 and 19 of 2013, passed by this Appellate Tribunal, para 11.3 of which is reproduced here under:*

"11.3 We find that the State Commission has allowed ROE at the rate of 14% in its Tariff Regulations for generation and transmission omission. 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 licenses. 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."

This issue is disposed of as per direction contained in para 11.3 dealing with return on equity in our judgment dated 10.11.2014 in Appeal Nos. 1 of 2013 and 19 of 2013.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. However, in view of the direction of the Hon'ble APTEL vide the judgment dated 06.05.2016, 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 2009-10. The details are given below.

Table-12

RoE approved in the remand petition

Particulars	Actual as per accounts	Allowed in True UP order dated 25.10.2012	Approved in the remand petition
	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
Return on Equity	240.71	217.42	240.71

Summary of the Decisions

39. Accordingly, duly considering the judgment of the Hon'ble APTEL dated 06.05.2016 in appeal petition No. 135 of 2014, and the additional details submitted by KSEB Ltd in its petition dated 01.08.2016, the Commission here by approve the following modifications in the order dated 25.10.2012 in the matter of Truing Up of accounts of KSEB for the year 2009-10.

Table-13

Revenue gap approved after final truing up as per the judgment of the Hon'ble APTEL dated 06.05.2016 in appeal petition No. 135 of 2014.

Particulars	As per the True up order dated 25.10.2012	Re-considered in this remand petition	Final approval on the application for truing up of accounts for the year 2009-10
	(Rs.Cr)	(Rs. Cr)	(Rs.Cr)
Generation Of Power	364.35		364.35
Purchase of power	3210.28		3210.28
Interest & Finance Charges	243.79		243.79
Depreciation	399.65		399.65
Employee Cost	1352.45	1437.06	1437.06
Repair & Maintenance	152.74		152.74

Administration & General	66.97		66.97
Other Expenses	23.15		23.15
Gross Expenditure (A)	5813.38		**5897.99**
Less : Expenses Capitalized	85.35		85.35
Less : Interest Capitalized	22.45		22.45
Net Expenditure (B)	5705.58		**5790.19**
Statutory RoE (C)	217.42	240.71	240.71
ARR (D) = (B) + (C)	**5923.00**		**6030.90**
Less Non-Tariff Income	436.69		436.69
Less : Revenue from sale of			
(a) Within the State	4679.66		4679.66
(b) Outside the State	67.51		67.51
Total Income	**5183.86**		**5183.86**
Revenue Gap	**739.14**		**847.04**

Order of the Commission

40. The Commission, after considering the directions contained in the judgment of the Hon'ble APTEL dated 06.05.2016 in appeal petition No. 135 of 2014, the details submitted by KSEB Ltd in its remand petition dated 01-08-2016, modified the order of the Commission dated 25.10.2012 in petition OP No. 27 of 2011, to the extent as detailed in the Table-13 above. Accordingly, the revenue gap approved for the year 2009-10 for the purpose of truing up at Rs 847.04 crore against the revenue gap of Rs 739.14 crore approved vide the order of the Commission in OP No. 27 of 2011 dated 25.10.2012.

Petition disposed of. Ordered accordingly.

Sd/-
K.Vikraman Nair
Member

Sd/-
S.Venugopal
Member

Sd/-
Santhosh Kumar.K.B
Secretary