KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

OA.No.3/2017

In the matter of Applications for the Truing up of accounts of M/s KSEB Ltd for the financial year 2013-14

Applicant(s) Kerala State Electricity Board Ltd
Vydhyuthi Bhavanam, Pattom
Thiruvananthapuram

ORDER DATED 20-06-2017

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 22-08-2016 for approval of truing up of accounts for the year 2013-14 comprising of its predecessor in interest namely KSEB for the part of the year (1/4/2013 to 30-11-2013) and that of KSEB Ltd for balance period of 2013-14. The petition was admitted as OP No. 3/2017. The Commission sought clarifications on the petition vide the letter dated 4-11-2016 and KSEB Ltd had submitted the reply vide letter dated 17-02-2017.

2. The Commission in its order dated 30-4-2013 had approved ARR&ERC of KSEB for the year 2013-14, for an Aggregate Revenue Requirement (ARR) Rs 9546.20 crore, Expected Revenue from Charges (ERC) Rs. 8496.29 crore and revenue gap Rs 1049.91 crore. A comparison of the approved ARR&ERC and the actual as per the application for truing up for the year 2013-14 is given below

Table-1

Comparison of the approved and actual ARR&ERC for the year 2013-14

	Particulars	Approved ARR	As per Audited Accounts	Difference over approval
		(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
1	Generation of Power	207.77	240.45	32.68
2	Purchase of power	6,380.74	6,902.65	521.91
3	Interest & Finance Charges	465.37	834.81	369.44
4	Depreciation	371.45	516.28	144.83
5	Employee Cost	1,803.81	2,579.99	776.18
6	Repairs & Maintenance	216.11	227.04	10.93
7	Administration & General E	94.97	253.50	158.53
8	Other Expenses	19.50	28.51	9.01
9	Gross Expenditure	9,559.72	11,583.23	2,023.51
10	Less : Expenses Capitalized	168.24	182.95	14.71
11	Less : Interest Capitalized	62.71	117.31	54.60
12	Total Expenditure	9,328.77	11,282.97	1,954.20
13	Return on Equity/Statutory Surplus	217.42	366.40*	148.98
14	**ARR (12 + 13)**	**9,546.20**	**11,649.37**	**2,103.18**
15	Less Revenue from non-tariff	355.25	571.97	216.72
16	Net ARR	9,190.94	11,077.40	1,886.46
17	Revenue from Sale of power	8,141.04	9,978.88	1,837.84
18	**Revenue Gap/Surplus**	**1,049.91**	**1,098.52**	**48.62**

*In the accounts, RoE has been considered @15.5% on the equity amount of Rs.3499 crore for 5 months.

3. As shown above, the Commission approved a revenue gap of Rs.1049.91 crore for the year 2013-14. Based on the proposal of KSEB for revision of Tariff to the tune of Rs.1573.54 crore, the Commission approved a tariff revision for an amount of Rs.642.47 crore on a full year basis.

4. KSEB Ltd has submitted in the application 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 was done on 1st November 2013. Government of Kerala notified the opening balance sheet of KSEB Ltd as on 1-4-2012 under part II of Schedule A of Second Transfer Scheme stating that the opening balance sheet was drawn up based on the provisional balance sheet as on 31-3-2012. Subsequent adjustments if any, will be made within the provisional period of one year from the date of re-vesting for finalization of accounts and transfer scheme.

5. Subsequently, Govt. of Kerala notified the Second transfer scheme as per subsection(2) of Section 131 of Electricity Act 2003 read with 9(2) of the Kerala Electricity Second Transfer Scheme (Re-vesting) 2013 the State Government vide the notification G.O (P) No.3/2015/pd dated 28-1-2015 amended the sub-clause (8) and (9) of the clause 6 of the Kerala Electricity Second transfer scheme (Re-vesting) 2013 issued under G.O(P)No.46/2013/PD dated 31-10-2013. Accordingly, based on the second transfer scheme notified by GoK dated 31-10-2013 and its subsequent amendment dated 28-1-2015, KSEB Ltd had prepared the annual statement for the year 2013-14 as follows:
   a. Annual Statement of accounts for the period from 1-4-2013 to 31-10-2013 in respect of KSEB
   b. Annual accounts for the year 2013-14 for Kerala State Electricity Board Limited for the remaining period of the financial year 2013-14.

6. KSEB Ltd also stated that the Comptroller and Auditor General of India had audited the accounts of KSEB for the period from 1-4-2013 to 31-10-2013. The statutory auditors of KSEB Ltd has conducted audit report under Companies Act and issued certificate for the year 2013-14 and the supplementary audit report was issued by the C&AG on 18-7-2016. Accordingly, there are two revenue accounts for the period 2013-14 as mentioned above, and the present application is prepared after consolidating both the revenue accounts so as to give the complete picture of revenue and expenses for the year 2013-14. The details are given below:

Table 2
Consolidation of Revenue accounts for the year 2013-14

Particulars	**2013-14**		
	KSEB 01.04.2013 to 31.10.2013	**KSEB Ltd 01.04.2013 to 31.03.2014. (For the remaining period)**	**Total (01.04.2013 to 31.03.2014)**
Units sold (MU)	**10335.40**	**8533.24**	**18868.64**
I.INCOME	Rs. crore	Rs. crore	Rs. crore
a. Revenue from Sale of Power	4863.93	5114.95	9978.88
b. Revenue Subsidies and Grants	0.00	*0.00*	0.00
c. Other Income	300.49	271.48	571.97
Revenue gap/ Regulatory asset	848.29	0.00	848.29
Total (a+b+c+d)	6012.71	5386.43	11399.14
II. EXPENDITURE			
a. Repairs and Maintenance.	132.87	94.17	227.04
b. Employee Cost	1467.75	1112.24	2579.99
c. Administration and General Expenses	142.91	110.59	253.50
d. Depreciation	329.74	186.54	516.28
e. Interest and Finance charges	541.26	293.55	834.81
f. Subtotal (a+b+c+d+e)	2614.53	1797.09	4411.62
g. Less Capitalized Expenses:			
- Interest & Finance Charges	90.56	26.75	117.31
- Other Expenses	109.91	73.04	182.95
h. Other Debits	14.49	30.04	44.53
I. Extra Ordinary Items	0.00	0.00	0.00
j. Purchase of power	3290.54	3612.11	6902.65
k. Generation of Power	162.53	77.92	240.45
Total Expenditure (f-g+h+i+j+k)	5881.62	5417.37	11298.99
III. Profit /(Loss) before Tax (I-II)	131.09	-30.94	100.15
V.Net Prior period credits (Charges)	-9.33	-6.69	-16.02
VI. Surplus (Deficit)	140.42	-24.25	116.17
VIII. Rate of Return	15.50% on Equity		

Note: Return on equity *has not been considered in the accounts for the period from 01.11.2013 to 31.03.2014 as the accounts for the period are drawn up in line with the requirements of Companies Act.*

7. For processing the application for truing up of accounts for the year 2013-14, the Commission had, as per its letter No. 1454/F&T/2016/KSERC dated 4-11-2016, directed KSEB Ltd to submit additional details / clarifications regarding accounts relating for 2013-14. The KSEB Ltd furnished reply vide letter dated 17-2-2017.

8. KSEB filed an appeal petition before the Hon'ble Appellate Tribunal for Electricity (APTEL) against the order of the Commission dated 30-4-2013 and the APTEL vide its order dated 27-4-2016 disposed of the petition. The relevant portion of the Order is extracted below:

> *"After hearing and considering the request of the contesting parties, we dispose of this appeal with direction to the State Commission to ensure compliance of the direction given in our judgment dated 10-11-2014 in the aforesaid appeals nos. 1 of 2013 and 19 of 2013 while deciding the truing up petition for the period 2013-14."*

9. 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 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.

10. As soon as the order of the APTEL dated 27-4-2016 was received, the Commission vide its letter dated 27-6-2016 directed KSEB Ltd to file the truing up petition based on the accounts audited by C& AG along with all relevant details and supporting documents. Accordingly, KSEB Ltd submitted this application for truing up on 22-8-2016.

11. In this context it is pertinent to examine the issue of processing of the application for truing up of accounts for the year 2013-14 in the light of 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 rules that mere pendency of appeal petitions before the Apex Court cannot be construed as a bar for implementation of judgments. Accordingly, mere

pendency of the appeals before Hon. Supreme Court, be 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. Considering the judgments of the Hon'ble Supreme Court and Appellate Tribunal, the Commission decided to take up the truing up of accounts of 2013-14 , duly complying with the directions in the judgment dated 10th November 2014 in appeal petition 1 of 2013 and 19 of 2013.

Public hearing on the petition

12. The public hearing was initially scheduled on 28-2-2017 and the same was rescheduled on the request of the Kerala HT-EHT Industrial Electricity Consumers' Association. Public hearing on the petition was held on 15-03-2017 at the Court Room, office of the Commission, Thiruvananthapuram. M/s KSEB Ltd was represented by Sri. Joseph V.K, Chief Engineer, (Commercial & Tariff), Sri. Bipin Shankar, Deputy Chief Engineer, Sri. Biju.R, Financial Advisor & Chief Accounts Officer, Sri. K.G.P Namboothiri, Executive Engineer (TRAC) Sri. Girish Kumar V.S, Finance Officer, (TRAC) and Smt. Seema.P.Nair, Assistant Engineer (TRAC). Sri. Bipin Shankar, presented the details of the application explaining each claim made by the licensee. Sri. Joseph V.K, Sri. Biju and Sri.Girish Kumar V.S, responded to the queries of the Commission. The HT-EHT Association was represented by Sri. George Thomas, Sri. A.R. Satheesh and Sri. AAM Nawas.

13. During the hearing, the Kerala HT-EHT Industrial Electricity Consumers' Association (HT-EHT Association for short) made detailed presentation on their comments on the application for truing up. Shri. George Thomas presented the matter before the Commission. The Association submitted that there is considerable delay in filing the truing up petitions and the Commission as early as 2010 had imposed fine on KSEB for the delay in filing. As per the Judgment of Hon. Supreme Court in UPPCL Vs NTPC, past cost shall not be passed on to the new consumers. In the State of Andhra Pradesh, the complete cost of true up was disallowed as the state joined the Ujjwal Discom Assurance Yojana (UDAY), since the past liabilities have been taken over by the Government. According to the

Association, State of Kerala has given in principle approval for joining UDAY scheme and in such situation there is no requirement to transfer the revenue gap to consumers. Accordingly, the Association stated that the petition is to be rejected.

14. The Association further stated that KSEB Ltd has not undertaken the study on T&D loss and not submitted the consolidated results as directed by the Commission. The technical and commercial loss was not segregated by KSEB Ltd and the details of replacement of faulty meters were not provided. In the absence of the studies undertaken, the Commission should allow only the minimum loss target ie.,14.73% as against the 14.96% claimed by KSEB Ltd. Accordingly the excess power purchase of 56.10MU should be disallowed at cost of marginal power.

15. Regarding hydel generation, the Association submitted that as per the SRLDC report the gross injection is 8010MU and net generation given by KSEB Ltd of 7962 MU shows auxiliary consumption of 0.6%, whereas the Commission should allow only 0.5% and 8.11MU should be disallowed at cost of marginal stations.

16. Regarding power purchase cost, the association stated that the power purchase cost of KSEB Ltd is comparatively higher than the approved level and also high in comparison with other states such as Tamil Nadu and BESCOM. The Association requested the Commission to examine the actual power purchase bills, blending ratio of domestic and imported coal before allowing the variable costs.

17. The Association stated that KSEB Ltd procured 1461.78MU from IPPs, which is higher than the approved levels and the increased procurement is from liquid fuel stations of RGCCPP and BSES, against the direction of the Commission. The Commission should also examine the rates at which power is sold from BSES plant and should disallow Rs.137.98 crore on account of excess T&D loss (56.11MU), Excess auxiliary consumption (8.11MU) and erroneous excess estimation (8.11MU).

18. According to the Association, the Commission allowed KSEB Ltd to purchase from exchange and traders at a rate of Rs.5/unit whereas the actual purchase was at a rate of Rs.5.63/unit, and the excess amount on

this account is Rs.183 crore. The Association stated that the same is to be disallowed. The Association also pointed out that KSEB Ltd has not furnished petition for realizing the fuel surcharge on time for the year 2013-14. The Commission in OP 18/2014 stated that the entire amount of fuel surcharge will be disallowed if there is delay in filing the petitions as per regulations. The cost of fuel adjustment works out to be Rs.432 crore @ 25paise/unit. According to the Association, the purchase cost of power that can be allowed is Rs.6573 crore as against Rs.7143 crore as per the truing up application.

19. According to the Association, the Commission may verify whether approval was sought for the additional capital expenditure incurred over the quantum approved by it. The operations of KSEB Ltd show that there is no need for working capital as it is hugely cash flow positive and hence the interest on working capital to the tune of Rs.265.43 crore should be disallowed. With regard to interest and financing charges, it was argued that the actual interest paid only should be allowed. Further, interest paid on delay in payment of gratuity should not be allowed to be passed on to the consumers. Hence under interest and financing charges an amount of Rs.490.70 crore only shall be allowed instead of Rs.834.81 crore claimed. In the case of depreciation, the Commission shall not allow depreciation on assets financed by consumer contribution. According to the Association, the employee cost shows an abnormal increase over the years. As per the report of the Planning Commission, the average employee cost per unit sold is highest in Kerala. The Commission had directed earlier to fund the increase in employee cost due to wage revision through productivity improvement. The electricity duty under section 3(1) of Kerala Electricity Duty Act should not be allowed and higher legal charges should not allowed. A&G expenses and R&M expenses should be linked to CPI:WPI index. In the case of other expenses, the item material cost variance is not possible to estimate and return on equity should be allowed only at a rate of 14% only. Further the returns should be allowed on the reduced equity capital of Rs.283.91 crore as ordered by the APTEL. Accordingly, the RoE that can be allowed for the year is only Rs.39.75 crore only. According to the objector, there will be a surplus of Rs.1223.64 crore as against a deficit of Rs.1098.52 crore claimed by the licensee.

20. As per the directions of the Commission in the order dated 29-3-2017 to submit the reply to the comments/objections of HT-EHT Association, KSEB Ltd furnished the reply vide its letter dated 5-4-2017. Regarding UDAY scheme, KSEB Ltd stated as below:

“i. Hon’ble Commission may kindly note that UDAY Scheme was announced by the Ministry of Power Government of India as per office Memorandum dated 20.11.2015 to improve operational and financial efficiency of State owned DISCOMs. As per the scheme, participating states would undertake to achieve operational and financial turnaround of DISCOMs with measures outlined in the scheme. As per the scheme, Government of Kerala will have to take over 75% of the loan liability of KSEBL as on 30.09.2015. KSEBL as per letter dated 28.12.2015 had intimated its willingness to the Government to join the scheme. But the matter of joining the scheme is at the discretion of the concerned State Government.

ii.Government of Kerala, as per letter 8565/C1/15/PD dated 03.08.2015 informed Ministry of Power; Government of India that Kerala is willing to sign MoU for the Ujwal Discom Assurance Yojna (UDAY) for the operational efficiency improvement part alone. As the State Government has consented to sign the operational improvement part alone, Government of Kerala will not take over any portion of the loan liability of KSEBL. Further the draft MoU prepared by the Ministry of Power for the scheme in total cannot be used.

iii.It may kindly be noted that Karnataka has signed the MoU for UDAY for the operational part alone; the same was analyzed in detail. After making certain changes as part of customizing the same for Kerala, approval was granted by KSEBL for MoU for UDAY Scheme, only for achieving higher operational efficiency of KSEBL.

iv.It was also decided by KSEBL to inform Government of Kerala on its commitments which it agrees to by signing operational efficiency improvement part of UDAY scheme and to seek approval for the MoU. Further, Director (Distribution, Safety and Generation-Electrical) has been authorized to co ordinate the activities of KSEBL and to formulate an action plan for meeting the commitments of KSEBL arising out of signing the UDAY scheme.

v.Since the Government of Kerala is willing to sign MoU for the Ujwal DISCOM Assurance Yojna (UDAY) only for the operational efficiency improvement part, KSEBL has to honor the capital liabilities on its own.

vi.In this regard it may kindly be noted that the issue raised by the HT&EHT Industrial Consumers Association regarding UDAY Scheme is factually incorrect and hence may be ignored.

In the light of the details/information and explanations furnished above, it is clear that there is no merit in the arguments raised by the objector. Hence Hon'ble Commission may kindly reject the same."

21. Govt of Kerala in its letter No. PWR-A1/34/2017/POWER dated 4-4-2017 has informed the Commission as follows:

"I. Under UDAY agreement, the State Government and KSEB Ltd have signed up only in respect of the technical parameter improvement programme for the Utility and have not availed of the financial package.
II. Regarding the statement of KSERC that KSEB Ltd has forfeited its claim for the expenses for the years 2011-12 and 2012-13 by belated filing of accounts, it may be noted that the belated filing by KSEB Ltd of filing truing up petitions was not deliberate as it was held up by the process of issuance of orders by Government for revesting the assets and liabilities of the old KSE Board in the newly formed company, KSEB Ltd. More over Government is not aware of any legal bar to considering such claims.
III Regarding the other issues, kindly deal with the issues as per the law in force."

22. The Commission in its order dated 29.3.2017 directed KSEB Ltd to submit the following details by 5-4-2017.

a. Split up details of the subhead wise bookings of expenses in the books of accounts.
b. The reply submitted by the licensee to the audit objections/queries
c. Details of the project specific loans taken
d. Details of the outstanding Loans of KSEB Ltd including the purpose for which the same was availed

e. Details of the project specific loans where projects have been short closed and status of the loans and interest paid as the same after short closure.
f. Procedure for approving rate revision in tenders
g. Account code wise details of employee costs including terminal benefits
h. Provide in a tabular format the details pertaining to the employees recruited after 01-04-2009
    (i) HR No. of the Employee
    (ii) Date of entry to service
    (iii) Last drawn basic pay as on 31.03.2014 & 31.03.2015
    (iv) DA drawn as on 31.03.2014 & 31.03.2015
    (v) Other allowances as on 31.03.2014 & 31.03.2015
i. Actuarial valuation details for the year 2014-15
j. The stand on joining the UDAY scheme
k. The modality followed on the computation of security deposit with the licensee and interest thereon.
l. Details of the actual amount under pension disbursed in 2013-14 & 2014-15
m. Details of the faulty meters existing and replaced by KSEB Ltd.
n. The methodology followed for booking the consumer contribution and grants.
o. The details of the interest claimed and paid on the RAPDRP/RGGVY projects.

23. KSEB Ltd has furnished reply on 22-4-2017 for the above clarifications and provided actual disbursement of pay of employees recruited after 2008-09. However, in the case of pension, split up details of accounts were furnished

Analysis and Decision of the Commission

24. 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

25. KSEB Ltd submitted that, the State received copious monsoon during the months of June, July, August and September of the water year 2013-14.

There was power restrictions during the month of April and May 2013, which reduced the daily consumption by about 5 MU/day. The actual energy sales for the year 2013-14 was 17454 MU compared to 18239 MU approved by the Commission. There was also sale out side the State to the tune of 1414.60 MU. The details are given below:

Table 3
Energy Sales for the year 2013-14

Category	2013-14		
	Approved sales as per ARR	As per Accounts	Difference
	(MU)	(MU)	(MU)
LT Domestic	8936.00	8739.52	-196.48
Industrial	1125.00	1096.56	-28.44
Commercial & Non Domestic	2532.00	2229.34	-302.66
Irrigation	317.00	310.24	-6.76
Public Lighting	279.00	319.06	40.06
Sub total	**13189.00**	**12694.72**	**-494.28**
HT Industrial	1748.00	1770.68	22.68
Non-Industrial	114.00	131.88	17.88
Commercial & Non Domestic	1072.00	881.52	-190.48
Others (Irrigation)	8.00	7.56	-0.44
Subtotal	**2942.00**	**2791.64**	**-150.36**
EHT 66KV 110 KV	1413.00	1243.85	-169.15
Railways	144.00	200.69	56.69
Subtotal	**1557.00**	**1444.54**	**-112.46**
Bulk Supply	553.00	523.15	-29.85
NPG			
Total	**18239.00**	**17454.04**	**-784.96**
Inter State Sale		1414.60	1414.60
Grand total	**18239.00**	18868.64	629.64

Table 4
Consumer profile as at 31-3-2014

Category	Consumer Strength(nos)		Consumption (MU	
	Number of consumers as on 31.3.2014	% of total	Total for the year	% of total
Domestic	8788916	78.52	8739.52	50.07
LT Commercial	1795160	16.04	2229.34	12.77
LT Industrial	137744	1.23	1096.56	6.28
LT Others	466795	4.17	629.29	3.61
HT&EHT& Bulk licensees	4275	0.04	4759.33	27.27
Total	**11192890**		**17454.04**	

26. The actual increase in energy sales over the previous year 2012-13 was about 3.66% only. As against the approved energy sales of 18239 MU, the actual sales was 18868 MU. However, if the sales outside the state (1414.60MU) is not considered then actual sales within the State was lower (17454.04MU) compared to the approved sales (18239MU) for the year. According to KSEB Ltd the decrease in overall energy sales within the State is due to widespread monsoon and ½ hour load shedding during morning and evening hours in the month of April and May 2013. The sales to consumer categories such as LT commercial, HT commercial, EHT, categories has decreased by about 14%, where as sales to domestic, LT industrial, LT Agriculture decreased by about 3% as compared to the approved level.72% of the total sale within the state was in the LT Category while HT and EHT contributed 16% and 8% of the sales. Of the total sale 50% is accounted for by the domestic consumers. The preponderance of domestic consumption in the total sale exposes the entity to special risks particularly while estimating demand and planning for long term purchase of power and sensitivity to change in demand patterns based on weather conditions.

27. The increase in sales over the previous year to LT categories is about 3.56% as against the long term CAGR of 7.66%, whereas in the HT-EHT category it was 3.93% as against CAGR of 4.93%.

28. After examining the details of the energy sales for the year, the Commission approves the energy sale as reported above as per the audited accounts for the year 2013-14.

T&D Loss

29. While approving the ARR&ERC for the year 2013-14, the Commission had approved a loss reduction target of 0.50%, over the T&D loss level of approved for the year 2012-13. The loss target for 2013-14 is fixed based on the loss level of 15.23% estimated by the erstwhile KSEB for 2012-13. Hence the approved T&D loss for 2013-14 was 14.73% (15.23%-0.5%).

30. According to KSEB Ltd, the total T&D loss in the system for the year was 14.96%. Hence, the actual reduction in loss in percentile points for the year was 0.34%, considering T&D loss for the previous year 2012-13 at 15.30%. There is continuous reduction in T&D loss since 2001-02 from a level of 30.76% to 14.96% in 2013-14. This shows a T&D loss reduction of 15.80 percentile points. over the years. According to KSEB Ltd, considering the loss reduction achieved in the previous years, the penalty for underachievement may not be imposed.

Table 5

T&D Loss reported for the year 2013-14 as per the application for truing up

Sl No.	Particulars	Unit	ARR Approval	As per Accounts
1	Net Generation and Power Purchase at KSEB periphery (excl. PGCIL losses)	(MU)	21389.70	20525.25
2	Energy sales within the State	(MU)	18239.00	17454.04
3	Energy sales outside the State		0.00	1414.60
4	T&D Losses	(MU)	3150.70	3071.21
5	T&D Loss as percentage of total energy input	(%)	14.73	14.96
6	Loss reduction target approved/ achieved	(%)	0.50	0.34

Analysis and decision of the Commission

31. The actual loss level as per the audited accounts for the year 2012-13 was 15.30%. As per the application for Truing Up for the year 2013-14, the actual T&D loss was 14.96% and the reduction achieved was 0.34 percentile points over the actual loss of 15.30% reported for the previous year 2012-13.

32. The Commission had fixed a loss reduction target of 0.5 percentile points in the ARR&ERC order for 2013-14 from the actual loss reduction achieved in 2012-13. Accordingly the target T&D loss for the year was 14.80%. As against this, the actual T&D loss reported was 14.96%, showing an underachievement of target by 0.16 percentile points.

33. In line with the directions of Hon'ble APTEL judgment dated 12-11-2009 in Appeal Petition No. 94 of 2008, the Commission in the process of truing up 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. As per the application for truing up, the KSEB Ltd reported the sales for the year at 17454 MU and the net generation and power purchase at the periphery of the State at 20525MU. Based on the approved loss level target of 0.50%, the T&D loss target for the year 2013-14 for the purpose of truing up is 14.80% only. The net generation and power purchase for supplying 17454 MU at the loss of 14.8% is only 20486 MU as against the 20525 MU reported by KSEB Ltd. The details are given below.

Table - 6

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

Sl No.	Particulars	Unit	ARR order	Actual as per the application for Truing up	Approved for true up
1	Energy sales within the State	(MU)	18239	17454	17454
2	T&D Loss as percentage of total energy input	(%)	14.73%	14.96%	14.80%
3	Net Generation and Power Purchase at KSEB periphery (excl. PGCIL)	(MU)	21390	20525	20486
4	Excess power purchase on account of under achievement of T&D loss(20525-20486)	(MU)			39

35. Thus, for the purpose of truing up the Commission maintains and approves the T&D loss level as fixed at the time of approving the ARR, at 14.80% and excess power purchase on account of underachievement of distribution loss, at 39 MU.

Generation and Power purchase

36. The Commission in the ARR order for the year 2013-14 had approved the hydel generation of 6527 MU expecting normal monsoon, where as the actual hydel generation was 7962 MU which is 1435 MU higher than the approved level as shown below.

Table 7

Month wise details of Hydel Generation (before excluding s/s aux consumption) for the year 2013-14

Month	KSERC order (MU)	Actuals (MU)	Difference (MU)
Apr-13	359.86	391.17	31.31
May-13	368.83	313.25	-55.59
Jun-13	375.29	459.60	84.31
Jul-13	521.01	711.29	190.27
Aug-13	570.94	1040.60	469.66
Sep-13	576.03	1036.58	460.55
Oct-13	604.13	998.52	394.39
Nov-13	606.19	696.64	90.46
Dec-13	587.21	565.62	-21.59
Jan-14	587.82	591.88	4.06
Feb-14	623.73	515.35	-108.38
Mar-14	746.15	641.58	-104.57
Total	6527.20	7962.08	1434.88

37. The Commission in the ARR & ERC order for 2013-14, had approved 196 MU from diesel stations – BDPP and KDPP of KSEB Ltd at a total cost of Rs 207.78 crore. However the actual generation reported from diesel stations of KSEB Ltd was 221MU at a total cost of Rs 240.45 crore. While approving the ARR, the variable cost of BDPP was Rs 9.94 per unit and that of KDPP was Rs 10.64 per unit, where as the actual variable cost was Rs 11.33 per unit at BDPP and Rs 10.81 per unit at KDPP. The summary of the generation from BDPP and KDPP and the cost incurred is given below.

Table 8

Summary of the generation and cost from BDPP & KDPP for the year 2013-14

	KSERC Approval			Actual			Difference	
	Quantity	Rate	Amount	Quantity	Rate	Amount	Quantity	Amount
Month	(MU)	(Rs/kWh)	(Rs.Cr)	(MU)	(Rs/kWh)	(Rs.Cr)	(MU)	(Rs.Cr)
BDPP	87	9.94	86.48	29.	11.33	33.06	-58	-53.42
KDPP	114	10.64	121.3	192	10.81	207.39	78	86.09
Total	196	10.60	207.78	221	10.88	240.45	-18	32.67

38. The Commission had approved the purchase from CGS at 9156MU at a cost of Rs.2502.80 crore However, the new stations such as NLC-expansion stage II and Tuticorin could not start commercial operation and the Kudamkulam, Vallur and Simhadri could not achieve the generation as planned. Hence the actual energy scheduled from CGS was 8881 MU at a cost of Rs.2864.38 crore. KSEB, in order to meet the shortfall had procured power from Jajjar Plant.

39. As per the application for truing up, the details of power purchase from central generating stations against the approval for the year 2013-14 is detailed below.

Table 9

Comparison of actual and approved purchase of energy from CGS in 2013-14

Station	Approved by the Commission		As per Accounts		Difference	
	Energy purchased at KSEB bus (MU)	Cost (Rs in crore)	Energy purchased at KSEB bus (MU)	Cost (Rs in crore)	Energy purchased at KSEB bus (MU)	Cost (Rs in crore)
1	2	3	4	5	6=4-2	7=5-3
Talcher II	2,986	705.17	2883	735.14	-103	29.97
NLC-II Stage -1	373	100.27	449	151.59	76	51.32
NTPC- Ramagundam (old	2,263	518.10	2313	708.50	50	190.40
NLC-II Stage-2	531	143.52	644	195.65	113	52.13
NLC-Expansion stg 1	418	137.17	478	176.45	60	39.28
NLC-Expansion II	282	94.06	--	--	-282	-94.06
Simhadry exp	585	217.53	644	274.71	59	57.18
MAPS	123	26.19	91	19.39	-32	-6.80

Kaiga stg 1&2	449	140.59	496	158.82	48	18.23
Vallur	180	65.66	131	56.80	-49	-8.86
ER	229	78.14	14	14.99	-215	-63.15
Tuticorin JV	79	28.73	--	--	-79	-28.73
Koodamkulam	660	223.67	71	15.38	-589	-208.29
IGSTPS Jhajjar	-	-	669	356.96	669	356.96
Other charges including		24.00				
Total	9,156	2,502.80	8881	2,864.38	-275	361.58

40. The details of power purchase from IPPs furnished by KSEB Ltd are shown below.

Table 10
Energy schedule from IPPs during 2013-14

Station	Capacity (MW)	Approved by the Commission		As per provisional Accounts		Difference	
		Energy purchased (MU)	Cost (Rs in crore)	Energy purchased (MU)	Cost (Rs in crore)	Energy purchased (MU)	Cost (Rs in crore)
1		2	3	4	5	(6)= (4) - (2)	(7) = (5)-(3)
RGCCPP	359.58	831	1177.02	947.15	1410.18	116.15	233.16
BSES	157	0	85.02	337.92	493.41	337.92	408.39
KPCL	20	0	1.98	0	22.91	0	20.93
Wind	34	74	23.09	74.08	23.64	0.08	0.55
Other Small IPPs/ Captive	10	123	26.69	102.63	27.62	-20.37	0.93
Total		1028	1313.80	1461.78	1977.76	433.78	663.96

41. As per the application for truing up, KSEB Ltd purchased 3434 MU through traders and energy exchange at an average rate of Rs 5.10 per unit as against the approved quantity of 4482MU at Rs.2241 crore at a rate of Rs.5.00 per unit. This includes deviation settlement mechanism under UI at an average rate of Rs.2.11/kWh. The details of the purchase of power from the traders are given below.

Table 11

Details of power purchase through traders/Exchange

Source	Energy Purchased (MU)	Cost (Rs. Crore)	Average Rate (Rs./kWh)
Power Trading Corporation of India Ltd.	1460	698.65	4.79
Power Purchased from GEL	448	304.99	6.80
NTPC Vidyut Vyapar Nigam Limited NVVN	248	148.37	5.98
Tata Power Trading Company Limited	67	48.38	7.21
JSW Power Trading Company Ltd.	329	234.20	7.12
Mittal Processors Pvt.Limited	16	10.39	6.52
Shree Cement Ltd.	90	38.37	4.25
Jindal Power Ltd	3	3.08	9.69
Sesa sterlite ltd	5	2.50	4.88
IEX Ltd.	250	152.53	6.11
PXI Ltd.	5	1.54	3.36
Deviation Settlement mechanism	513	108.20	2.11
Total	**3434**	**1,751.19**	**5.10**

42. As per the details submitted by the KSEB Ltd, during the year 2013-14, KSEB Ltd had paid Rs. 309.32 crore to PGCIL as transmission charges against Rs. 323.14 crore approved by the Commission.

43. The summary of the cost of power purchase approved by the Commission for the year 2013-14 and the actual as per the audited accounts is given below.

Table 12

Summary of the cost of power purchase claimed

Station	**Approved by the Commission**			**As per provisional Accounts**		
	Energy purchased at KSEB bus (MU)	**Cost (Rs in crore)**	**Average Tariff (Rs./kWh)**	**Energy purchased at KSEB bus (MU)**	**Cost (Rs in crore)**	**Average Tariff (Rs./kWh)**
Talcher II	2986	705.17	2.36	2883	735.14	2.55
NLC-II Stage -1	373	100.27	2.69	449	151.59	3.37
NTPC- Ramagundam (old & new)	2262.5	518.10	2.29	2313	708.50	3.06
NLC-II Stage-2	530.5	143.52	2.71	644	195.65	3.04
NLC-Expansion stg 1	418	137.17	3.28	478	176.45	3.69
NLC-Expansion II	281.5	94.06	3.34	0	-	

Simhadry exp	585	217.53	3.72	644	274.71	4.27
MAPS	123	26.19	2.13	91	19.39	2.14
Kaiga stg 1&2	448.7	140.59	3.13	496	158.82	3.20
Vallur	180	65.66	3.65	131	56.80	4.35
ER	229	78.14	3.41	14	14.99	10.48
Tuticorin JV	79	28.73	3.64	0	-	
Koodamkulam	660	223.67	3.39	71	15.38	2.18
IGSTPS Jhajjar	0	-		669	356.96	5.34
Other charges for CGS including PGCIL	0	24.00		0	-	
RGCCPP	831	1,177.02	14.16	947	1,410.18	14.89
BSES	0	85.02		338	493.41	14.60
KPCL	0	1.98		0	22.91	
Wind	74	23.09	3.12	74	23.64	3.19
Ullumkal	34	6.80	2.00	24	5.76	2.44
MP Steel	41	9.42	2.30	26	5.45	2.08
Iruttukkanam	12	3.20	2.67	23	6.36	2.76
Philips Carbon Black	36	7.27	2.02	23	4.68	2.02
Karikkayam	0	-		7	5.34	8.13
Power from Mankulam Grama panchayath	0	-		0	0.02	4.00
Transmission Charges		323.14			309.32	
Traders & PEX/UI	4482	2,241.00	5.00	3434	1,751.19	5.10
Total	14666.2	6,380.74	4.35	13777	6,902.65	5.01

44. KSEB Ltd has stated that in 2013-14, 1414.6MU was sold outside the state for an amount of Rs.1336.98 crore (average rate of Rs.9.45/kWh) if the sale out side is also considered, the actual cost of power purchase is well within the limits.

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 BESCOM.
   b) KSEB Ltd has purchased 1462 MU from IPPs mainly RGCCPP and BSES against the direction of the Commission. Further, the average rate of purchase from traders, exchange and other short

term sources is higher (Rs.5.63/unit) than the rates approved by the Commission (Rs.5/unit).

46. With regard to the observation on the difference in costs of CGS stations as compared to the neighbouring states, KSEB Ltd has submitted that fixed charges and energy charges as approved by CERC only have been paid by KSEB Ltd after prudent check. The licensee has furnished the details of CERC orders approving the annual fixed charges. According to the licensee, 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. In reply to the objection that high cost of CGS compared to other southern stations, KSEB Ltd stated that the main reason for higher cost is due to

(i) Non-uniform allocation of power from different stations,
(ii) PoC loss is much higher for Kerala compared to other states
(iii) No own Central Stations for Kerala

48. The overall average cost of power CGS stations for different states will be different as the share of the states in these stations will be different. Further the cost of the stations are different which depends on the age of plant, grade of the coal used, blending and mixing ratio of coal etc., Even from a same station, the rate of power for the State can be different due to higher Point of Connection loss to Kerala.

49. KSEB Ltd has also scheduled energy from Jhajjar plant in 2013-14 at a higher average cost than other CGS. In this regard, KSEB Ltd has given following justification:

a. The Commission has approved the energy availability from CGS at 9156 MU at a cost of Rs.2502.80 crore. While approving the energy from CGS, the energy from central stations including NLC expansion stage II, Tuticorin etc., were considered, but commercial operation of the plants did not commence. Consequent shortfall of

999 MU was met from additional allocation from Jhajjar plant to the tune of 669MU @5.33 per unit.

b. In the case of Jhajjar plant there was assured corridor availability even in the event of transmission corridor constraints.

c. In the event of non-scheduling of Jhajjar the corridor allocated for the plant would have been gone to Tamil Nadu, and KSEB Ltd would have to schedule power from Kayamkulam, BSES, KDPP or BDPP.

50. With regard to the observation on scheduling of power from liquid fuel stations, it was submitted by the KSEB Ltd that scheduling of power from RGCCPP and BSES was resorted to for sale outside the state to TANGEDCO from December 2013 to May 2014 on a cost plus basis benefitting the consumers. The monthwise details of energy scheduled from RGCCPP and BSES and the details of sales to TANGEDCO are given below:

Table 13
Monthwise energy scheduled from RGCCPP and BSES for 2013-14

Month	RGCCPP		BSES		Total approved energy from BSES & RGCCPP	Total actual from BSES & RGCCPP	Sale to Tangedco	Balance schedule for consumption by KSEB Ltd
	Approved	Actual	Approved	Actual				
Apr-13	209.52	212.46	0.00	44.33	209.52	256.79		256.79
May-13	216.50	106.03	0.00		216.50	106.03		106.03
Jun-13		0.00	0.00		0.00	0.00		0.00
Jul-13		0.00	0.00		0.00	0.00		0.00
Aug-13		0.00	0.00		0.00	0.00		0.00
Sep-13	54.13	0.00	0.00		54.13	0.00		0.00
Oct-13	54.13	0.00	0.00		54.13	0.00		0.00
Nov-13	54.13	0.02	0.00	0.02	54.13	0.04		0.04
Dec-13	54.13	35.81	0.00	11.45	54.13	47.26	39.24	8.01
Jan-14	54.13	192.62	0.00	94.08	54.13	286.70	287.00	0.00
Feb-14	54.13	194.66	0.00	90.07	54.13	284.73	282.97	1.76
Mar-14	80.13	205.55	0.00	97.99	80.13	303.54	301.61	1.93
Total	830.93	947.15	0.00	337.95	1285.10	1285.10	910.83	374.27

51. As per the details furnished, KSEB Ltd has purchased power from RGCCPP and BSES @Rs.13.31 per unit including fixed cost and sold it at

a rate of Rs.13.85 per unit Thus, KSEB Ltd recovered the fixed cost of Rs.101.95 crore for the period from December 2013 to March 2014 and made a net gain of Rs.49.27 crore in the transaction by selling 911MU from these plants.

52. KSEB Ltd stated that they had made a total sale of 18868 MU for the year 2013-14 of which 1414.60 MU was Inter state sale and the balance 17454 MU is within the state. KSEB Ltd also stated that the sale revenue of Rs.115.26 crore on account of sale to TANGEDCO during the last week of March 2014 ie., from 24.3.2014 to 31.03.2014 was booked in the year 2014-15 instead of 2013-14. If the same is considered, the revenue from external sale to TANGEDCO for 2013-14 and 2014-15 would be Rs.1262.60 crore and Rs.501.84 crore instead of Rs.1147.34 crore and Rs.617.09 crore respectively as per the audited accounts.

53. KSEB Ltd had further stated that the balance sale of 503 MU for a total cost of Rs.184.64 crore is through traders and power exchanges at an average rate of Rs.3.77 per unit and was not sourced from high cost stations, but from hydel generation due to copious monsoon. According to KSEB Ltd, the Commission had approved purchase of 4482MU from traders and power exchange. During the year, KSEB Ltd had procured 2921MU through traders and exchange at an average rate of Rs.5.62 per unit.

Analysis and decision of the Commission

54. In the year, there was sufficient rains and the hydel generation was 1435MU more than the approved level. Though the Commission directed to limit the scheduling of own liquid fuel stations (BDPP & KDPP), the actual generation was higher by 26MU. As per the month wise scheduling details furnished by KSEB Ltd it is noted that these stations were used mainly during April & May 2013 before the rains and in March 2014. In the ARR, purchase approved from CGS was 9156MU but the actual power purchase from the CGS units was 8881MU, a reduction of about 275MU. The reason for the same too has been provided by the licensee. The anticipated generation from Koodamkulam, Tuticorin, NLC Expansion II, did not materialize and the same was compensated by scheduling power from Jajjar (669MU). The cost of power purchase from CGS approved for

the year was Rs.2502.80 crore whereas the actual was Rs.2865.38 crore. The increase was mainly on account of higher rate of power from Jajjar (Rs.5.34/unit) compared to stations such as Koodamkulam (Rs.3.39/unit), NLC Expansion II (Rs.3.33/unit) and Tuticorin JV (Rs.3.64/unit). The reason for scheduling the same has been provided by KSEB Ltd and considering the opportunity cost involved the same is approved.

55. As given in Table 13 above, generation from liquid fuel stations in April and May 2013 was entirely used for the internal consumption as there was power restrictions in vogue till May 2013. Generation from December 2013 to March 2014 was mainly used for sale to TANGEDCO. As per the details furnished by KSEB Ltd, the revenue realized from sale is as shown below:

Table 14
Details of monthwise energy sold, cost of power and amount received for sale of power to TANGEDCO

Month	Energy sold from BSES/RGCCPP to TANGEDCO (MU)	Combined fixed cost of RGCCPP and BSES (Rs. Crore)	Variable cost of sold power from RGCCPP and BSES (Rs in crore)	Total cost of power scheduled from RGCCPP and BSES for sale of to TANGEDCO (Rs. crore)	Amount received from sale of power to TANGEDCO (Rs. Crore)
December	39.24	26.32	52.36	78.68	54.36
January	287.74	25.66	308.68	334.34	408.3
February	282.97	23.86	634.75	388.62	388.41
March	301.61	26.12	385.58	411.69	411.53
Total	911.56	101.95	1111.37	1213.33	1262.6
Net Profit from sale of power to TANGEDCO (Rs. Crore)			49.27		
Net profit from sale of power to TANGEDCO considering the fact that KSEB Ltd had to otherwise bear the fixed cost in the event of not scheduling power (Rs. Crore)			151.22		

56. **Though as per the provisions of KSERC (fuel surcharge formula) Regulations 2009, KSEB Ltd has to file petition to recover the additional cost due to changed cost of fuel and power purchase, and also the change in cost due to hydro-thermal mix within 30 days of the close of the financial year, the same was not filed by KSEB Ltd.**

57. The Commission has been approving the cost of generation and power purchase incurred by the licensee after prudence check. However, the cost of generation and power purchase claimed by the KSEB Ltd for the year 2013-14 is for the total generation and purchase quantity of 20525 MU, which includes the excess power purchase of 39 MU on accounts of under achievement of the T&D loss reduction target approved by the Commission for the year 2013-14. Following the methodology adopted by the APTEL, additional cost of purchase due to non-achievement of the loss target has to be deducted from the power purchase cost. In this context, it is to be noted that KSEB Ltd had reported that about 911 MU has been scheduled from liquid fuel stations for sale of TANGEDCO and a revenue of Rs.1262.60 crore was realized. Since the generation of 911 MU was used for the sale to TANGEDCO, the variable cost of the same is to be excluded from estimating the average cost of power. Accordingly the average power purchase cost is worked out as follows.

Table-15

Average cost of power purchase for the year 2013-14

Particulars	Actuals	
	Quantity (MU)	Cost (Rs. Cr)
Central Generating Stations	8881	2864.38
IPPs	1462	1977.76
Traders / Exchanges /UI	3434	1751.19
Transmission charges		309.32
Total	13777	6902.65
Less Cost power from Liquid fuel stations used for export	912	1111.37
Net Cost of Power purchase	12865	5791.28
Average cost of power purchase (Rs/ kWh)	4.50	

58. As shown above, the average cost of power purchase for the year 2013-14 works out to Rs 4.50 per unit. Hence the total disallowance of cost of

power purchase as per the methodology approved by the Hon'ble APTEL for 39 MU is Rs.17.55 crore.

59. The independent auditors in their report (Annexure A to the Auditors Report) stated that an amount of Rs.2.87 crore pertaining to power purchase cost for the period subsequent to 31-3-2014 is included in the power purchase. Considering this, an amount of Rs.2.87crore is deducted from the approved purchase cost.

60. The total generation and power purchase cost for truing up is approved at Rs 7124.63 crore as against the Rs 7143.10 crore as per the audited accounts as shown below.

Table-16

Cost of generation and power purchase approved for the year 2013-14

Particulars	ARR order	Actual	Trued up
	(Rs.Cr)	(Rs.Cr)	(Rs.Cr)
Cost for internal generation (BDPP+ KDPP)	207.77	240.45	240.45
Power Purchase cost	6380.74	6,902.65	6,902.65
Total Generation and Power purchase cost	6588.51	7,143.10	7,143.10
Less Power purchase cost disallowed on account of excess T&D loss			(17.55)
Less Excess Cost booked as per Audit report			(2.87)
Generation and Power purchase cost Approved	**6588.51**	**7143.1**	**7,122.68**

61. 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. Further, the Commission also notes that the actual power purchase and generation cost is within the limits of approved power purchase cost if the cost of generation from liquid fuel stations used for sale outside is excluded **Hence there is no requirement of carrying cost to be allowed for the excess power purchase cost if any over the approved level**

Interest and Finance charges

62. The interest and finance charges as per the accounts for the year 2013-14 amounts to Rs 834.81 crore as against Rs 465.37 crore approved by the Commission, as shown below.

Table 17

Actual interest and finance charges claimed for the year 2013-14

Sl.No	Particulars	2013-14		
		SERC Approved (Rs.crore)	As per Accounts (Rs.crore)	Increase/ Decrease over approval (Rs.crore)
1	Interest on outstanding Loans and Bonds	284.23	299.56	15.33
II	a) Interest on Security Deposit	85.48	134.83	49.35
		369.71	434.39	64.68
III	**Other Interest and Finance Charges**			
	a) Interest on borrowings for working capital	-	265.43	265.43
	b) Discount to consumers for timely payment of Charges	1.00	0.34	-0.66
	c) Interest on PF	85.00	98.98	13.98
	d) Other Interest charges	-	30.04	30.04
	e) Cost of raising finance	1.00	0.05	-0.95
	f) Guarantee Commission	0.66	0.44	-0.22
	g)Bank Charges	8.00	5.14	-2.86
	Total of III	95.66	400.42	304.76
	Grand Total (I+II+III)	**465.37**	**834.81**	369.44

63. The increase in interest and financing charges is about Rs.369.44 crore over the approved amount, which has been mainly contributed by interest on working capital, other interest charges and interest on security deposits.

Table 18

Details of borrowing and redemption

	Opening Balance		**Borrowing**		**Redemption**		**Closing Balance**		**Increase/ decrease**	
	ARR order	As per audited Accounts	ARR Order	As per audited Accounts	ARR Order	As per audited Accounts	ARR Order	Accounts	ARR Order	As per audited Accounts
Item	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)

Long term Loans	550.38	608.20	-	886.86	72.70	63.58	477.68	1,431.48	- 72.70	823.28
Short term loans	1,626.00	1,526.00	500.00	2,450.00	-	2,449.99	2,126.00	1,526.01	500.00	0.00
Total	2,176.38	2,134.20	500.00	3,336.86	72.70	2,513.57	2,603.68	2,957.49	427.30	823.28

64. According to KSEB Ltd, the increase in interest expenses over approved levels is on account of carrying cost due to uncovered revenue gap. The additional borrowings approved for the year 2013-14 was Rs 500.00 crore. However, as per the audited accounts for the year 2013-14, the additional borrowing was 823.28 crore. The capital expenditure for the year was Rs.1114.87 crore. The details of loans taken and redeemed during 2013-14 is as shown below:

Table 19

Source wise details of loans availed during the year 2013-14

SL.NO.	Name of Firm	Loan Outstanding as on 31-03-2013 (Rs. crore)	Total Loan Received from 01-04-2013 to 31-03-2014 (Rs. crore)	Total Loan Repaid from 01-04-2013 to 31-03-2014 (Rs. crore)	Loan Outstanding as on 31-03-2014 (Rs. crore)
	Long Term Loans				
1	LIC	25.19	0.00	9.52	15.67
2	REC	235.04	0.00	53.88	181.17
	REC Transmission	86.63	45.83	0.00	132.46
3	REC-RGGVY	10.37	2.52	0.18	12.70
4	PFC	0.00	188.51	0.00	188.51
5	Medium Term Loan	0.00	650.00	0.00	650.00
6	R-APDRP Part A	89.26	0.00	0.00	89.26
	R-APDRP Part B	161.74	0.00	0.00	161.74
	Short Term Loans	0.00	0.00	0.00	0.00
7	State Bank Of India	300.00	600.00	600.00	300.00
8	Vijaya Bank	199.97	400.00	399.97	200.00
9	Canara Bank	0.00	100.00	100.00	0.00
10	Bank of India	0.00	200.00	0.02	199.98
11	South Indian Bank	350.00	600.00	550.00	400.00
12	Indian Overseas Bank	0.00	300.00	0.00	300.00

13	Dhanalekshmi Bank	0.00	100.00	0.00	100.00
14	REC - STL - 1 & 2	150.00	150.00	300.00	0.00
15	PFC - STL - 1 &2	500.00		500.00	0.00
16	KSPIFC - STL	26.00	0.00	0.00	26.00
	Short Term Loans-Sub	1525.96	2450.00	2449.99	1525.98
	Grand Total	2134.20	3336.86	2513.57	2957.48

65. KSEB Ltd, also submitted that, earlier, short term loans were taken to finance the non current expenditure, which were stopped during the year 2013-14. The details of dependence of short term loans as provided by KSEB Ltd is as given below:

Table 20

Details of short term loans availed over the years

Short term loans	Loan outstanding as at 31.03.2011	Loan outstanding as at 31.03.2012	Loan outstanding as at 31.03.2013	Amount received during 2013-14	Repayment during the year 2013-14	Loan outstanding as at 31.03.2014
	(Rs.Cr)	(Rs.Cr)	(Rs.Cr)	(Rs.Cr)	(Rs.Cr)	(Rs.Cr)
State Bank Of India	299.99	299.99	300.00	600.00	600.00	300.00
Vijaya Bank	200.00	200.00	199.97	400.00	399.97	200.00
Canara Bank		100.00	0.00	100.00	100.00	0.00
SBT		100.00				
Federal Bank		100.00				
Bank of India			0.00	200.00	0.02	199.98
South Indian Bank			350.00	600.00	550.00	400.00
Indian Overseas Bank			0.00	300.00	0.00	300.00
Dhanalekshmi Bank			0.00	100.00	0.00	100.00
REC - STL – 1			150.00	0.00	150.00	0.00
REC - STL – 2			0.00	150.00	150.00	0.00
PFC - STL – 1			250.00	0.00	250.00	0.00
PFC - STL – 2			250.00	0.00	250.00	0.00
KSPIFC - STL			26.00	0.00	0.00	26.00
Total	**499.99**	**799.99**	**1525.96**	2450.00	2449.99	**1525.98**

66. Thus, according to KSEB Ltd there is virtually no increase in short term loans in 2013-14 compared to previous years. it was also stated that the rate of interest for the short term loans increased compared to previous

years and the increase in interest charges for the short term loans is mainly on account of increase in interest rates as shown below:

Table 21

Details of short-term loan Interest from 2010-11 to 2013-14.

Bank	Interest for 2010-11		Interest for 2011-12		Interest for 2012-13		Interest for 2013-14	
	Rate (%)	Amount (Rs.Cr)	Rate (%)	Amount (Rs.Cr)	Rate (%)	Amount (Rs.Cr)	Rate (%)	Amount (Rs.Cr)
SBI	8.25	16.61	10.40	30.00	10.40	30.76	10.15	30.96
UBI	7.25	14.47		0.00		0.00		
SBT	8.50	0.22	10.75	0.68	10.75	10.00		
Canara Bank			10.75	12.12	10.75	1.12	10.75	3.61
Federal Bank			10.75	0.70	10.75	21.47		
Vijaya Bank	9.50		10.65	19.74	10.65	20.66	10.25	20.01
South Indian Bank					11.00	26.44	10.50	30.12
REC STL					13.00	4.63	13.00	20.61
PFC STL					12.50	11.16	12.50	42.52
PFC STL					12.75		12.75	
KSPIFC STL					11.50	1.33	11.50	2.99
Bank of India							10.50	9.07
Indian Overseas Bank							10.25	2.16
Dhanalekshmi Bank							11.50	0.82
Total		31.30		63.24		127.57		162.86

67. KSEB Ltd has claimed Rs 265.43 crore as interest on overdraft and booked the same under interest on working capital. The total outstanding overdraft at the beginning of the year 2013-14 was Rs 1942.97crore, which increased to Rs 2716.03 crore at the end of the year. Thus, there is a net increase in overdraft by Rs 773.06 crore on the year 2013-14. According to the KSEB Ltd, the increase in working capital/over draft was on account of increasing revenue gap over the years. According to KSEB Ltd, the approved and unbridged revenue gap as on 31-3-2014 is 2445.73 crore as shown below:

Table 22

Details of unbridged revenue gap as on 31-3-2014.

Year	Revenue gap approved	Revenue gap met through tariff revision	Net un-bridged revenue gap	Remarks
	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	

Till 31-03-2011			424.11	As per the Truing up orders
2011-12	928.62	Nil	928.62	No tariff revision
2012-13	1889.15	1257.13	632.02	Tariff revision effected from 01-07-2012 only.
2013-14	1049.91	588.93	460.98	Part of the revenue gap only allowed to be recovered
Total			2445.73	

68. As against the approved revenue gap, KSEB Ltd stated that actual revenue gap as per the accounts is Rs.5010.70 crore. KSEB Ltd further stated that out of the total revenue gap, Rs.3849.26 crore is attributable to the power purchase cost as shown below:

Table 23
Revenue gap due to power purchase and generation cost

	Approved by the Commission (cr)			Actuals (Rs in cr)			Increase
Year	Power Purchase	Cost of Generation	Total	Power Purchase	Cost of Generation	Total	(Rs. In cr)
2011-12	3,660.67	264.58	3,925.25	4,375.31	281.65	4,656.96	731.71
2012-13	5,008.49	193.15	5,201.64	7,199.61	564.99	7,764.60	2,562.96
2013-14	6,380.74	207.77	6,588.51	6,902.65	240.45	7,143.10	554.59
Total	15,049.90	665.50	15,715.40	18,477.57	1,087.09	19,564.66	3,849.26

69. KSEB Ltd also stated that directions of APTEL in the Order dated 10-11-2014 in Appeal no. 1 and 19 of 2013 is to be followed. Accordingly the interest and financing charges should be trued up based on audited accounts. Hence it is requested that the interest on working capital should be allowed as per the actuals.

70. Interest on security deposit approved by the Commission for the year 2013-14 was Rs.85.48 crore. As per the accounts interest on security deposit of Rs.134.84 crore was provided at rate of 8.5%. Though the accounts have been maintained on accrual system, the actual interest on security deposit paid was Rs.86.19 crore only. Other charges including bank charges, guarantee commission, service tax recovery by banks etc., amounting to Rs.5.58 crore was also incurred in 2013-14. Further KSEB Ltd also booked Rs.30.04 crore on interest paid on gratuity amount. The details of which are not provided.

71. KSEB Ltd further stated that interest on working capital may be allowed considering the revenue gap for the previous years. Upto the year 2010-11, the Commission had approved the revenue gap as Rs 457.47 crore. An amount of Rs.2445.73 crore has been recognized as revenue gap that has not been bridged through tariff revision in the ARR orders from 2011-12 to 2013-14. Thus, KSEB Ltd is entitled for carrying cost on Rs.2870 crore without considering the additional revenue gap approved truing up for 2011-12 and 2012-13. According to KSEB Ltd the actual interest on overdraft increased for the year 2013-14 amounting to Rs.265.42 crore is towards interest cost for the overdraft actually availed for the year 2013-14and the overdraft balance as on 31-3-2014 was to the tune of Rs.2303.62 crore, which is below the eligible amount as stated above. Hence it is requested to allow the actual interest on overdraft as per the accounts.

72. The HT-EHT Association in their comments on the application for truing up has stated that the operations of KSEB Ltd shows that there is no need for working capital as it is hugely cash flow positive and hence the interest on working capital to the tune of Rs.265.43 crore should be disallowed. In the case of interest and financing charges, the actual interest paid only should be allowed. Further interest paid on delay in payment of gratuity should not be allowed to passed on to the consumers. Hence under interest and financing charges only Rs.490.70 crore shall be allowed instead of Rs.834.81 crore claimed.

73. In the reply dated 5-4-2017, KSEB Ltd has submitted that accounts have been maintained as per the provisions of Electricity Supply Annual Accounting Rules 1985 and as per schedule 30, overdrafts/cash credits are disclosed under the title borrowing for working capital. The overdrafts are availed for meeting the accumulated revenue gap. The overdrafts and short term loans together exceeds Rs.5000 crore as on 24-3-2017 and the increasing trend in overdraft proves that heavy borrowings are resorted to, for meeting the revenue gap of earlier years. Regarding interest on gratuity amount, KSEB Ltd has stated that in the judgment dated 10-03-2013 of the Hon. High court of Kerala, gratuity has to be paid as per the Gratuity Act and as per the Order of the APTEL in appeal no. 1 of 2013, gratuity as per

the judgment of Hon. High court has to be allowed. Hence KSEB Ltd requested that the interest paid on gratuity may be allowed to KSEB Ltd.

Analysis and decision of the Commission

74. As per the details furnished by KSEB Ltd, the increase in long term loan is Rs.823.28 crore and there is no increase in short term loan. In previous years, the Commission has pointed out the risk of funding capital expenditure using short term funds and KSEB Ltd (as shown in Table 21), stated that it has discontinued the risky practice. Though there is no increase in short term loans, interest of Rs.162.86 crore has been claimed for short term loans out of Rs.299.56 crore, booked under interest on outstanding loans and bonds. Moreover, the contention that there is no increase in the short term loan outstanding cannot be technically taken at its face value, as about Rs.2450 crore short term loans were availed and Rs.2500 crore has been repaid in the same year itself. This too will involve some additional cost.

75. In the ARR&ERC order for 2013-14, the Commission allowed capital expenditure of Rs.1000 crore and interest has been allowed for an amount of Rs.500 crore. The balance Rs. 500 crore was met out of contributions etc., increase in security deposit, contribution from consumers etc., As per the reply letter dated 5-4-2017 by KSEB Ltd, the actual amount of capital expenditure for the year 2013-14 was Rs.1057.88 crore (Generation Rs.321.70 crore, Transmission Rs.169.97 crore and Distribution Rs.566.21 crore), where as actual addition to GFA is only Rs.798.20 cr. The increase in long term borrowing is about Rs.823 crore. The addition to contribution and grants for the year 2013-14 is Rs.172.60 crore. Thus, most of the capital expenditure for the year 2013-14 has been funded by contribution and through increase in long term loans.

76. In order to understand the nature of funding of capital projects, the Commission sought the details of project specific loans in respect of short closed projects and status of its loan and interest. In this regard, KSEBL vide its reply dated 22-4-2017 stated that low interest bearing short term loans were utilized for funding capital projects. The details furnished on the borrowings and repayments mentioned in table 20 consists the details of Overdraft together with project specific loans as well as other loans taken

by KSEBL. In the case of project specific loans for short closed projects, it was stated that Govt of Kerala allowed KSEBL to pre-close the contract for the Chathankottunada II SHEP, Thottiyar HEP and Pallivasal Extension scheme vide order dated 4-3-2016, and Pallivasal Extension was excluded from the purview as per the order dated 16-1-2017. According to KSEBL no project specific loans were availed in respect of short closed projects under consideration.

77. The Commission examined the reply furnished by KSEBL regarding the commitment of short closed projects. In the reply it is evident that though there is no specific loans availed by KSEBL for the short closed projects, the same were funded through the other loans (short term or otherwise). Hence there is an impact on the ARR and in turn on the tariff of the consumers due to such projects It is in this context the necessity of separate accounting of projects arises so as to properly assess the impact of short closed projects in the ARR

78. Considering the above position interest on long term loans is approved as per the audited accounts

Interest on short term loans

79. The claim of interest on short term borrowing for the year 2013-14 is Rs.162.86 crore. At an average rate of interest of 11%, the amount of loan works out to be about Rs.2961 crore. Though as per the details furnished by KSEBL there is no increase in short term loans, short term loans worth Rs.2450 crore was availed during 2013-14 and the same amount was repaid by the end of the year. According to KSEB Ltd, the outstanding overdraft was Rs.2716.03 crore at the end of 2013-14, showing an increase of Rs.773.06 crore in the year. KSEB Ltd further stated that, the increase in working capital/over draft was on account of increasing revenue gap over the years. KSEB Ltd claimed (as shown in Table 22), that the accumulated approved revenue gap at the end of 2013-14 is about Rs.2445.73 crore. KSEBL further states that as per the accounts the accumulated revenue gap is about Rs.5010.70 crore and out of this, Rs.3849.26 crore is attributable to power purchase cost alone as shown in Table 23.

80. The Commission has examined the contentions of the KSEB Ltd. According to KSEB Ltd, the interest on Short term loans/working capital is due to revenue gap and out of the revenue gap, major portion pertains to expenses incurred towards power purchase. In previous years, KSEB Ltd has availed short term loans for funding capital expenditure and the short term loans are not fully utilized for meeting the revenue shortfall.

81. Further, the claim of the KSEB Ltd based on the revenue gap as per audited accounts is also not tenable. The revenue gap as per the audited accounts includes many items of expenditure disallowed based on prudence check by the Commission and funding of such expenditure, through borrowing cannot be allowed since it negates the entire concept of prudence check.

82. Another argument of KSEB Ltd is that major part of the revenue gap has been incurred for power purchase. In this connection, it is to be noted that, as per the claim of KSEB Ltd itself, Rs.3849.26 crore is attributable to the power purchase cost. KSEB Ltd failed to furnish the petitions for fuel surcharge and the impact of hydro thermal mix as per the provisions of KSERC (Fuel Surcharge Formula) Regulations 2009 on time. If the petitions are filed on time, the additional cost of power purchase could have been met to a certain extent periodically.

83. It is also pertinent to note that KSEB Ltd has consistently delayed the filing of truing up petitions up to 2012-13, which has a considerable bearing on the unbridged revenue gap. Even if revenue gaps are fixed, KSEB Ltd seldom provides proposals for bridging the revenue gap. It is evidently clear that there is considerable limitation to increase the tariff on one side and to reduce the cross subsidy compensation to subsidizing categories. In such circumstances, the proposals to recover the revenue gap through tariff revision alone will prove to be an unviable option. Unless concerted efforts are taken to imbibe the principles of cost reduction in operations, meeting the revenue gap in future will be a surmountable task. KSEB Ltd shall also seriously consider the threats of increasing competition in supply due to increase in generation and influx of renewable energy in to the system, nationwide. When costs shoots up, high value consumer and bulk consumers will try to shift their requirements to open access which will enable them to reduce their operation costs. These factors coupled with

uncontrolled increases in cost will jeopardize the future sustainable operations of the entity.

Interest on security deposits

84. 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. In the letter dated 17-02-2017, the KSEB Ltd has submitted that Rs.86.19 crore has been disbursed as interest on security deposit during the year 2013-14. Accordingly, **Commission approves Rs.86.19 crore for interest on security deposit for the purpose of truing up for the year 2013-14.**

85. The Commission notes that there is a considerable gap between the interest claimed and actually booked. KSEBL should examine the details of the security deposits and separate the security deposits relating to inoperative consumer accounts on a priority basis.

86. The KSEB Ltd has claimed the interest on PF balance as Rs.98.98 crore, against the approved level of Rs.85 crore. As per the details given by the KSEB Ltd the opening balance of GPF is Rs.1152.01 crore, addition is Rs.354.76 crore, withdrawals were Rs.307.99 crore. The balance available is Rs.1198.78 crore. It is pertinent to mention that Annexure A to the Auditors Report states that GPF balances are subject to reconciliation and confirmation and interest on GPF is provided on the basis of estimated figures due to non-availability of actual interest of individual PF accounts of employees of the Company and GPF balance as on 31-3-2014 is subject to the adjustment in respect of the difference between the actual and estimated interest. In this context, it is to be noted that there is no certainty for the amount booked as interest on GPF balances. KSEB Ltd is claiming interest on GPF without properly transferring the interest to individual accounts. **Hence the actual interest paid on this account is not ascertainable. In the most probability such provisions will be higher than the actual requirement. In the absence of proper information, the Commission approves the interest on the GPF as per the audited accounts for the year 2013-14. However, this amount will be subjected to adjustment once GPF balances and interest thereon is reconciled.**

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.

87. KSEB Ltd has also claimed Rs 30.04 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.

88. KSEB Ltd has claimed Rs 265.43 crore as interest on working capital, which is the interest on the accumulated overdrafts up to the year 2013-14. 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 2013 was Rs 1942.97 crore, which increased to Rs 2303.62 crore at the end of March 2014. The increase in overdrafts is Rs.360.65 crore. The KSEB Ltd has given the month wise details of overdraft availed. According to the KSEB Ltd, the overdraft availed from banks is for meeting the unbridged revenue gap till the year 2013-14.

89. 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 2012-13 is 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*". This direction is applicable to 2013-14 also as per the order of APTEL in appeal no. 81 of 2014 dated 27-4-2016. The Commission has noted the directions of the APTEL. The norms specified in the Central Commissions' Regulations are not directly applicable to the bundled structure of KSEB. Hence, APTEL has directed to true up the interest and finance charges based on audited accounts. Hence, the Commission examined the submission of the KSEB Ltd and details in the accounts regarding the overdraft availed during the year 2013-14. The reason attributed for resorting to overdrafts is on account of increase in revenue gap. The increase in overdraft is to the tune of Rs.360.65 crore only. The Commission allowed interest on security deposits and as well as interest on outstanding GPF. In this context it is to be noted that the Commission has approved tariff increase of about 30% for the year 2012-13 and about 8% in 2013-14. Further, KSEB Ltd had

resorted to short term borrowing in the year to the tune of about Rs.2961 crore in 2013-14, which was fully redeemed at the end of the year. 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 24
Working capital for the year 2013-14 as per audited accounts

	At the end of 31-3-2014
Inventories	278.05
Trade receivables	1,119.67
Cash and cash equivalents	718.27
Short term loans and advances	33.80
Other current assets	41.79
Total current assets	**2,191.58**
trade payables	847.66
Other short term liabilities	1,973.12
Short term provisions	33.12
Total current liabilities	**2,853.90**
Net current assets/Working capital	**-662.32**

90. In the above table, short term loans worth Rs.2303.62 crore has not been included in the estimation of the working capital as shown above, considering the fact that KSEB Ltd has resorted to short term borrowing for funding capital assets in the past. As shown above, even after removing the short term loans, the KSEB has negative working capital gap or the current liabilities have much higher than the current assets. The net current liabilities are about Rs.662.32 crore, showing that the working capital needs have been much more than compensated by the current liabilities. The outstanding borrowing for working capital as per the details furnished by KSEB Ltd is about Rs.2303.62 crore only. In this context, it is also to be noted that the Commission is also allowing interest on GPF to the tune of Rs.98.98 crore on the balance of Rs.1198.78 crore. This is additional funds available to KSEB Ltd for working capital and other requirements. These funds are generally not reflected in any of the working capital estimations,

and hence might be used to fund the expenses which are not approved in the ARR.

91. Some of the SERCs allow interest on working capital. Generally on a normative basis following are the components of the working capital.

a. O&M expenses for one month
b. receivables at two months of revenue from existing tariffs
c. cost of maintenance spares equal to 1/12th of the book value of stores and materials.
d. Less the cost of one months power purchase and outstanding security deposits.

92. Based on the above, working capital requirements of KSEBL can be estimated as shown below:

	As per Accounts (Rs.crore)	For working capital (Rs.crore)
O&M Expenses for one month	3,060.53	255.04
Receivables equal to Two months revenue	9,978.88	1,663.15
Spares	314.28	26.19
Total	**13,353.69**	**1,944.38**
Less		
One month cost of power purchase	6,902.65	575.22
Security deposits outstanding	1,586.30	1,586.30
Total	**8,488.95**	**2,161.52**
Working capital		**-217.14**

93. Hence, Commission is at a loss as to how to substantiate the interest on working capital as claimed by the KSEB Ltd. It is true that the books of accounts contains these borrowings. However KSEB has not been able to effectively prove as to why so much working capital loan has been availed. As mentioned elsewhere the concern of the Commission is that the commission has approved and provided the interest on short terms loans and long terms loans and also sufficient provisions has been built in to finance the approved revenue gap. The licensee has failed to give a detailed reasoning for such high levels of borrowings and answer the concerns raised by the commission herein, in a conclusive manner based

on prudent reasoning. Hence Commission is not in a position to approve interest more than that as approved below, for the year 2013-14.

Table 25
Interest and finance charges approved for the year 2013-14

Sl.No	Particulars	2013-14		
		Approved costs (Rs.crore)	As per Accounts (Rs.crore)	Approved in truing up (Rs.crore)
1	Interest on outstanding Loans and Bonds	284.23	299.56	299.56
II	a) Interest on Security Deposit	85.48	134.83	86.19
		369.71	434.39	385.75
III	**Other Interest and Finance Charges**			
	a) Interest on borrowings for working capital	-	265.43	---
	b) Discount to consumers for timely payment of Charges	1.00	0.34	0.34
	c) Interest on PF	85.00	98.98	98.98
	d) Other Interest charges	-	30.04	--
	e) Cost of raising finance	1.00	0.05	0.55
	f) Guarantee Commission	0.66	0.44	0.44
	g)Bank Charges	8.00	5.14	5.14
	Total of III	95.66	400.42	105.45
	Grand Total (I+II+III)	**465.37**	**834.81**	**491.20**

Depreciation

94. In the order on ARR&ERC for the year 2013-14, the Commission had approved the depreciation for the year 2013-14 at Rs 371.45 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 directed that, KSEB Ltd to provide the vintage of assets at the time of truing up to claim the depreciation at CERC (Tariff) Regulation, 2014, else the Commission shall revert to CERC (Tariff) Regulations, 2004.

95. KSEB Ltd submitted that, it has been claiming depreciation in the audited accounts at the rates notified by Ministry of Power in the year 1994 as per the provisions in the Electricity (Supply) Annual Accounting Rules (ESAAR-1985). However, with effect from 1-11-2013 depreciation has been charged

based on CERC norms. Accordingly depreciation as per CERC norms for the GFA as on 31-3-2013 has been worked out on pro rata basis for 5 months and accounted in the books of accounts of KSEB Ltd. The gross depreciation for 2013-14 as per CERC norms amounts to Rs.447.69 crore. The details furnished by KSEB Ltd are give in the following table.

Table 26

Depreciation claimed for the year 2013-14

Sl.No.	Particulars	2013-14 (Rs. Crore)			
	Category	KSEB proposed in ARR	SERC Approved	As per audited Accounts	As per CERC Norms
1	Land and Rights	0			0
2	Buildings	18.81			15.90
3	Hydraulic works	35.51			40.65
4	Other Civil works	14.44			14.18
5	Plant & Machinery	205.16			153.78
6	Lines, Cable networks	250.18			219.73
7	Vehicles	0.58			0.20
8	Furniture & fixtures	1.03			0.55
9	Office equipment	3.42	371.45	516.28	2.70
	Total	529.13	371.45	516.28	447.69

The details of depreciation booked as per the accounts as submitted by KSEB Ltd is shown below:

Table 27

Depreciation for the year 2013-14 as per books of accounts

Asset Group	GROSS BLOCK					PROVISION FOR DEPRECIATION				NET BLOCK		
	At the end of the Previous Year 2012-13	Additions 01.04.2013 to 31.10.2013	Revaluation upon Restructuring 01.11.2013	Additions 01.11.2013 to 31.03.2014	As on 2013-14	At the end of the Previous Year 2012-13	Depreciation till 31.10.2013	Depreciation from 01.11.2013 to 31.03.2014	Total Depreciation for 2013-14	Up to 31.10.2014	As on 31.03.2014	At the end of the Previous Year 2012-13
	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.
Land & Land Rights	348.54	8.99	1277.00	13.66	1648.19	0	0	0	0	0	1648.19	348.54
Buildings	622.24	8.00		15.77	646.02	226.07	11.22	6.63	17.84	243.91	402.10	396.17
Hydraulic Works	1110.89	-13.97		5.71	1102.63	330.38	17.53	16.94	34.47	364.85	737.78	780.51
Other Civil Works	437.13	11.50		13.23	461.86	94.14	7.81	5.91	13.72	107.85	354.00	342.99

Plant & Machinery	4478.44	73.51	11988.98	127.38	16668.31	2344.22	107.64	64.08	171.72	2515.94	14152.37	2134.22
Lines, Cable, Network etc.	5601.10	188.96		336.24	6126.29	2770.67	181.30	91.55	272.86	3043.53	3082.76	2830.43
Vehicles	16.63	0.13		0.59	17.35	13.28	0.53	0.08	0.61	13.89	3.46	3.35
Furniture & Fixtures	18.50	0.63		1.38	20.51	12.67	0.57	0.23	0.80	13.47	7.04	5.83
Office Equipments	59.38	1.44		5.06	65.88	32.62	3.15	1.12	4.27	36.89	28.98	26.76
Sub Total	12692.86	279.19	11988.99	519.01	25480.05	5824.06	329.74	186.54	516.28	6340.35	19139.71	6868.80

96. Depreciation as per the books for the year 2013-14 is Rs.516.28 crore. KSEB Ltd stated that as per the books, the contribution and grants up to 31-3-2013 amounts to Rs.3997.81 crore. The entire amount is not used for creating assets but for providing priority in giving connections under OYEC schemes. Hence KSEB Ltd has requested that the amount collected under OYEC charges amounting to Rs.1764.79 crore may be excluded from the purview of consumer contribution for disallowing depreciation. Accordingly, depreciation on account of consumer contribution to the extent of 17.59% of Rs.447.69 crore is to be deducted from the allowable depreciation. Thus the depreciation for the year 2013-14 may be admitted at Rs.368.94 crore.

97. It may be noted that, in the petition, KSEB Ltd has reported depreciation of Rs.516.28 crore as per the Audited accounts and arrived at a revenue gap of Rs.1098.52 crore. However, KSEB Ltd claims depreciation for the year Rs.368.94 crore only, after deducting depreciation for assets created out of contribution and grants from the depreciation of Rs.447.69 crore estimated as per CERC norms .

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98. As per the CERC norms depreciation has to be calculated, considering vintage of assets. A higher rate of depreciation is provided for the first 12 years for the assets and a lower rate after 12 years. KSEB Ltd estimated the depreciation as per the norms at Rs.447.69 crore. It is also mentioned in the application for truing up that the depreciation booked in the accounts from 1-11-2013 is based the CERC norms. Hitherto KSEB Ltd had used the norms issued by Ministry of Power for booking depreciation in the books of accounts. KSEB Ltd also removed the depreciation for the assets created out of contribution and grants. It is also noted that KSEB Ltd has

not claimed depreciation for the assets revalued as part of the restructuring process under Section 131 of the Act.

99. The Commission verified the estimation of depreciation by KSEB Ltd. The detailed working of depreciation is not given by the KSEB Ltd. However, the average rate of depreciation works out to 3.53% compared to 4.07% as per the books of accounts as shown below:

Table 28
Depreciation claimed for the year 2013-14

	Category	GFA at the beginning of the Year 2013-14 (Rs. cr)	Depreciation as per audited Accounts (Rs. cr)	Depreciation claimed as per CERC Norms (Rs. cr)	Average rate of depreciation based on the figures in books of accounts	Average Depreciation rate as per CERC norms
1	Land and Rights	348.54		-		
2	Buildings	622.24	17.84	15.90	2.87%	2.56%
3	Hydraulic works	1,110.89	34.47	40.65	3.10%	3.66%
4	Other Civil works	437.13	13.72	14.18	3.14%	3.24%
5	Plant & Machinery	4,478.44	171.72	153.78	3.83%	3.43%
6	Lines, Cable networks	5,601.10	272.86	219.73	4.87%	3.92%
7	Vehicles	16.63	0.61	0.20	3.67%	1.20%
8	Furniture & fixtures	18.50	0.80	0.55	4.32%	2.97%
9	Office equipment	59.38	4.27	2.70	7.19%	4.55%
	Total	12,692.86	516.28	447.69	4.07%	3.53%

100. As per the audited accounts of KSEB Ltd for the year 2013-14, the total assets created out of the consumer contribution, grants received from Government etc amounts to Rs 3977.81 crore. As per the order dated 13-4-2012 and other relevant provisions of accepted accounting standards, KSEB Ltd is not eligible to claim depreciation on the assets created out of consumer contribution. It is also difficult to accept the argument of the KSEB Ltd to exclude the portion of OYEC charges of the consumer contributions as the same has been collected to give priority in giving connections. It is not disputed that the OYEC amounts have been collected from the consumers under the head contribution and if capital expenditure

is incurred over and above the contribution and grants received, it can only be presumed that the same has been funded out of OYEC charges. Hence, OYEC amount cannot be excluded from consumer contributions.

101. Accordingly, the depreciation approved for the year 2013-14 for the purpose of truing up is Rs 346.18 crore. The details are given below.

Table 29
Depreciation approved for the year 2013-14

		Rs. Crore	%
1	Gross fixed Assets at the beginning of the year	12,692.86	
2	Contribution & Grants as per the Books	3,997.81	31.50%
3	Depreciation claimed	447.69	
4	Less Depreciation attributable to contribution & grants	141.01	31.50%
5	Depreciation allowable	306.68	

102. Thus, depreciation approved for the year 2013-14 as per the CERC norms net of depreciation on assets created out of contribution and grants is Rs.306.68 crore as against Rs.368.94 crore claimed by KSEB Ltd.

Employee cost

103. In the order on ARR&ERC for the year 2013-14, the Commission had approved the employee cost of Rs 1803.81 crore. But the actual as per the application for truing up of accounts is Rs 2579.99crore. The details are given below.

Table 30
Details of employee cost claimed for the year 2013-14

Sl.No	Particulars	2013-14 (Amount in Rs. Cr)			
		KSEB in ARR	SERC Approved	As per Accounts	Actuals over approval
1	Salaries	756.29	439.02	768.54	329.52
2	DA	602.99	1364.79	690.01	446.67
3	Provision for Pay revision	82.55		45.00	
	Total	1441.83		1503.55	

4	Overtime, other allowances, Bonus.	50.25		47.65	
5	Earned Leave encashment	94		113.57	
6	Medical expenses reimbursement, staff Welfare expenses, payment under works men compensation,	8.6		9.18	
7	Terminal benefits (excluding terminal Surrender)	956.83		906.05	
	Grand total	2551.51	1803.81	2580.00	776.19

104. As detailed above, the employee cost including pension claimed for the year 2013-14 is about Rs 776.19 crore more than the approved level, out of which increase in basic pay alone is Rs 329.52 crore.

105. 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 2013-14 at the pre-revised scale, i.e., the basic salary for the year 2013-14 was arrived at by escalating the basic salary for the year 2008-09 at the rate of 3% annually.*

106. KSEB Ltd has also provided the details of the DA released to its employees during the year 2013-14, as detailed below

Table 31
DA released to KSEB employees

Date of effect	DA as a percentage of pre-revised basic pay (July 2003)		DA as a percentage of revised basic pay after pay revision (July 2008)	
	Rate of DA	Total DA applicable on the Basic Pay	Rate of DA	Total DA applicable on the 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%
Jul-13	17% of the pay	174%	11.310% of the pay	84.253%
Jan-14	17% of the pay	191%	11.310% of the pay	95.563%

107. The details of the pension liabilities claimed for the year 2013-14 is detailed below.

Table 32
Pension liabilities for the year 2013-14

<table>
<tr><th rowspan="3">Sl.No</th><th rowspan="3">Particulars</th><th colspan="4">2013-14</th></tr>
<tr><th>KSEB ARR</th><th>SERC Approved</th><th>Actuals</th><th>Difference over approval</th></tr>
<tr><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>832.53</td><td rowspan="9">No specific approval for terminal benefits, however based on the actuals for the year 2008-09 and considering inflation indices, the provision for pension is Rs 771.87 crore only.</td><td>721.03</td><td rowspan="8"></td></tr>
<tr><td>2</td><td>Gratuity</td><td>30.80</td><td>87.82</td></tr>
<tr><td>3</td><td>Commutation</td><td>27.50</td><td>22.72</td></tr>
<tr><td>4</td><td>Medical Allowance</td><td rowspan="2">6.00</td><td>3.36</td></tr>
<tr><td>5</td><td>Special Festival Allowance</td><td>1.66</td></tr>
<tr><td>6</td><td>Provision for pension revision</td><td>60.00</td><td>37.40</td></tr>
<tr><td>7</td><td>Provision for Gratuity</td><td></td><td>15.20</td></tr>
<tr><td>8</td><td>Provision for DR revision</td><td></td><td>15.60</td></tr>
<tr><td></td><td>Total</td><td>956.83</td><td>904.79</td><td>132.92</td></tr>
</table>

108. As instructed by the Commission, KSEB Ltd has also submitted the increase in employee strength from the year 2008-09 to 2013-14 as detailed below.

Table 33
Net Increase in employee strength from 2008-09 to 2015-16

Year	Working strength (no. of employees)	Cumulative increase over 2008-09 (no. of employees)
2008-09	27175	
2009-10	28007	832

2010-11	29864	2689
2011-12	31113	3938
2012-13	31783	4608
2013-14	31983	4808
2014-15	33041	5866
2015-16	32440	5265

109. KSEB Ltd has also submitted the category wise recruitments made during the period from 2009-10 to 2013-14. The details are given below.

Table 34
Categorywise recruitments from 2009-10 to 2013-14 (no. of employees)

Designation	2009-10	2010-11	2011-12	2012-13	2013-14	Total
Assistant Engineer	221	213	87	61	9	591
Cashier	268	244	65	22	10	609
Driver II	3		28	2	1	34
Junior Assistant	3	1	1	2	1	8
Junior Fair Copy Assistant	5	5	8	14	6	38
Electricity worker	1159	1520	1325	630	594	5228
Meter Reader	7	250	267	30	1	555
Office Attendant II	7	8	6	77	30	128
PTC Sweeper		1	8	1		10
Sub Engineer	61	14	18	16	3	112
Sweeper III	1		1	5	2	9
Divisional Accountant		1			4	5
Overseer		1				1
Accountant LA				1		1
Meter Tester				1		1
Total	**1735**	**2258**	**1814**	**862**	**661**	**7330**

110. The details of category wise retirements furnished by KSEB Ltd is given below:

Table 35
Retirements from 2009-10 to 2015-16 (no. of employees)

Sl No	Category	2009-10	2010-11	2011-12	2012-13	2013-14
1	AO	4	10	7		6
2	AAO	22	7	11		8
3	AE	93	86	73	12	67

4	AEE	32	40	21	1	29
5	AFO			1		1
6	CASH	5	6	14	1	2
7	CE	8	14	10		3
8	CA					2
9	DCAO		1			
10	DCE	13	20	4		6
11	DA	2		1	1	1
12	DVR	29	18	15	2	12
13	EE	5	8	9	1	7
14	FA		1			
15	FO	1	1			
16	Foreman		1			
17	FCA			1		
18	FCS	2		1		1
19	JA	1	4	1	2	
20	JE					
21	LM	54	49	32	31	35
22	EW	20	20	10	12	8
23	MR	4	2	1		2
24	OA	20	36	33	7	20
25	OSR	178	133	114	21	117
26	PO	1				21
27	PTC	14	14	9	15	27
28	SA	33	48	27	5	10
29	SAO		1			4
30	SCA	1	1	1		2
31	SFCS	1		1		2
32	SFCA		4	4		37
33	SS	32	44	31	4	40
34	SE	42	39	59	14	1
35	SWP	7	13	8	6	1
36	Clerical Attender	3				
37	CLR	1				
38	Laskar	1				
39	Line fitter	6	4	2		
40	Mobile crane operator	1				
41	Watch man	4				
42	Electrician	1				
43	Mech work asst	1	1			
44	Blue printer	1				
45	Scavenger				1	
46	Skilled Technician					
		643	626	501	136	472

111. In the reply dated 17-2-2017, KSEB Ltd furnished their version of the amount of employee cost as per the orders of the APTEL dated 27-4-2016. According to KSEB Ltd, 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. KSEB Ltd has estimated the allowable employee cost as given below:

a. basic pay attributable to the increased staff strength in 2013-14 over 2008-09 for 4808 employee amounting to Rs.54.54 crore. Basic pay attributable to employee recruited in 2013-14 has been considered for 6 months along with full year pay in respect of those recruited in 2010-11, 2011-12, and 2012-13.
b. Dearness allowance as a percentage of basic pay was 84.39% for the year 2013-14. Hence DA attributable to increased staff strength of Rs.54.54 crore is Rs.48.99 crore.
c. Allowances for 2013-14 were 20.08% of Basic pay .
d. Pro rata allowances, attributable to increased basic pay of Rs.54.54 crore on account of increased staff strength in 2013-14 over 2008-09, are Rs.10.95 crore being 20.08% of Rs.54.54 crore.
e. Actual employee cost for the year 2013-14 was Rs.2579.97 crore. However, the basic pay, DA and allowances attributable to the increased staff strength in 2013-14 were Rs.114.48 crore alone as shown below:

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Table 36

Employee cost attributable to increased staff strength in 2013-14

Particulars	(Rs. in crore)
Basic pay	54.54
DA	48.99
Other Allowances	10.95
Total	114.48

Analysis and decision of the Commission

112. The Commission in the order on ARR&ERC of KSEB for the year 2013-14 has approved the employee cost as follows.

"*5.106 Many of the stakeholders expressed their concern over the increase in employee cost. The Commission had also repeatedly dealt with this issue in detail, though no* *concerted efforts are seen taken by the Board in this regard. The Commission since inception had issued several directions to KSEB to control the expenses and to improve the productivity so as to regulate high employee expenses. As per the proposal of the Board, the employee cost is still about 32% of the revenue after about 30% increase in tariff. On a per unit basis, employee expenses is about Rs.1.38 per unit and consumes about 40% of the revenue.*

5.107 The above situation has forced the Commission to take steps to limit the impact on the consumers. The Commission has decided to benchmark the employee expenses based on CPI-WPI basis in the ARR&ERC order for 2011-12, which was continued in 2012-13 also. The Commission is of the view that the same method is to be followed 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:

Table 5.46
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	156.1	8.99%	194.83	8.39%
2012-13	167.2	7.11%	213.50	9.58%

5.108 Based on the above, the inflation recorded based on CPI is 9.58% and WPI is 7.11% for 2012-13. On 70:30 basis, the composite increase would be about 8.89%. Considering the prevailing trends in inflation, same percentage as that of 2012-13 is applied for the year 2013-14 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 2013-14.***

5.109 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 2013-14 is estimated as follows:

Table 5.47
Approved Estimate of Employee Cost for 2013-14

	Actual (Rs.cr)	Estimates (Rs.crore)				Approved expenses (Rs. crore)
	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
CPI rate of Increase (FY adjusted)		12.37%	10.45%	8.39%	9.58%	9.58%

WPI Rate of increase		*3.81%*	*9.50%*	*8.99%*	*7.11%*	*7.11%*
Basic Pay increase		*3.00%*	*3.00%*	*3.00%*	*3.00%*	*3.00%*
Basic Pay Projection	*378.70*	*390.06*	*401.76*	*413.82*	*426.23*	*439.02*
Other components						
CPI component (70%)	*613.54*	*689.43*	*761.45*	*825.34*	*904.42*	*991.06*
WPI Component (30%)	*262.94*	*272.96*	*298.90*	*325.78*	*348.93*	*373.73*
Total	***1,255.18***	***1,352.45***	***1,462.11***	***1,564.94***	***1,679.58***	***1,803.81***
% increase		*7.75%*	*8.11%*	*7.03%*	*7.33%*	*7.40%*

Note:The figures arrived at for the intermediate years (2009-10, 2010-11, 2011-12, 2012-13) 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.

5.110 ***Based on the above formula, the approved employee cost for 2013-14 is Rs.1803.81 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 2013-14"*

113. As detailed above, while approving the ARR&ERC of KSEB Ltd for the year 2013-14, the Commission had approved the employee cost for the year 2013-14 at Rs 1803.81 crore, after allowing inflationary increase over the 2008-09 figures 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% was allowed over the year 2008-09.

114. KSEB Ltd had filed an appeal petition against the ARR&ERC order for 2013-14 before the Hon'ble Appellate Tribunal for Electricity (APTEL) and the APTEL vide its order dated 27-4-2016 directed to follow the order in the appeal Petitions 1 of 2013 and 19 of the 2013 dated 10-11-2014.

115. Hon'ble APTEL vide the common judgment dated 10-11-2014 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.

116. 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.

117. In this context, a pertinent question arises is that whether the approved level of employee cost for 2013-14 is sufficient for allowing pay & allowances as per the Orders of APTEL ie., for the no. of employees frozen at the 2008-09 level ie., for 27175 employees. The Commission after analyzing the matter and after analyzing all the details that were made available by KSEB, had concluded that there is some additional allowances required over the approved level of employee costs, even if the no. of employees are pegged at 2008-09 level, on account of following reasons:

a. There can be an increase in total basic pay year on year, even though retired employees having higher basic pay are replaced by employees in lowest entry cadre. The basic pay is not reduced as expected due to annual increments in Basic pay sanctioned to the remaining employees. As per the details provided by KSEB Ltd, 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 37

Estimate of net increase in basic pay

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
1.Total No. Of employees (nos)	27175	28007	29864	31113	31783	31983
2.Retirement (nos)		643	626	501	136	472
3.Retirement as %of total		2.37%	2.30%	1.84%	0.50%	1.74%
4.A average salary of Retired employee as against the total average.	(1.5 times)	3.55%	3.46%	2.77%	0.75%	2.61%
5.Difference in Highest/Lowest salary		55.00%	55.00%	55.00%	55.00%	55.00%
6.Saving in Salary (4x5)		1.95%	1.90%	1.52%	0.41%	1.43%
7. Average Increase in BP of Existing employees	4%	3.91%	3.91%	3.93%	3.98%	3.93%
8.Net increase in Basic (7-6)		**1.95%**	**2.01%**	**2.41%**	**3.57%**	**2.50%**

In the above table, actual retirement in each year is about 1 to 2% of the 2008-09 levels. Based on the analysis of the data pertaining to the retired employees and the cadre from which they retire, it is estimated that the average total salary of the retired employees will be about 1.5 times of the average salary as the employees retire from higher salary scales as compared to remaining employees. Accordingly, from the information provided by the licensee, it is seen that in 2013-14 about 1.74% of employees retired (taking the number of employees in 2008-09 as the base ie., 27175 employees) who draw about 2.61% 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 taking into consideration the difference between the maximum and minimum of a pay scale, is about 55%. Accordingly, the savings in basic pay will be about 1.43% for 2013-14. On the other hand the average rate of increments existing at present pay scales, range from 3.5 % to 5% in KSEB Ltd after pay revision and the average increment is about 4%. Hence the basic pay of the remaining employees account for the salary which has to be escalated at 4% (increment rate) which gives an increase of about 3.93% in total salary in 2013-14. Accordingly there will be a net increase in Basic pay by 2.57% (3.93%-1.43%) even if no. of employees are frozen at 2008-09 level. Thus if the total basic salary are to reduce there should be no increments or with an increment of 4% year on year, the percentage of retirement should be above a threshold 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 38
Estimate of Increase in DA

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Basic Pay approved (Rs.crore)	378.7	390.06	401.76	413.82	426.23	*439.02*
Components other than Basic Pay approved in the employee cost (Rs.crore)	876.48	962.39	1,060.35	1,168.30	1,237.43	1,364.79
Total employee cost approved (Rs.crore)	1,255.18	1,352.45	1,462.11	1,582.12	1,663.66	1,803.81
Rate of Increase for components other than Basic pay in the approved employee cost		**9.80%**	**10.18%**	**10.18%**	5.92%	10.29%
Average yearly DA in Revised Scale		**13.80%**	**32.20%**	**48.10%**	**64.20%**	84.25%
Yearly Average Actual Increase in DA in Revised pay Scale	-	13.80%	18.50%	15.80%	16.10%	20.05%

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 2013-14 is 10.29% whereas the average DA increase in the revised pay scale for the same year is about 20% (ie.,pre-revised 2008-09 level)

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 new recruitment was limited 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 existing in 2008-09. Further, there is one more pay revision effected from July and August 2013 for employees and Officers which is also to be considered.

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

118. In order to arrive at the employee cost admissible for the year 2013-14 as per the judgment of the Hon'ble APTEL, the Commission sought relevant details vide letter dated 4-11-2016 to KSEB Ltd. 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. KSEB Ltd also furnished the estimate of employee cost attributable to newly recruited employees over above the limit of 27175 employees in 2008-09.

119. KSEB Ltd has also provided details vide its letters dated 31-5-2016, 8-8-2016, 27-9-2016, 16-1-2017 and 17-2-2017, with regard to the truing up petitions 2011-12 and 2012-13. Some of the details provided by KSEB Ltd 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. KSEB Ltd has also provided estimations on employee cost pertaining to excess recruited employees (net of retirements).

120. The Commission in the truing up orders for 2011-12 and 2012-13 had taken the view that *"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."* On examination of the details furnished by KSEBL, the Commission noted that the information furnished by KSEB Ltd was not sufficient for approving the

employee cost as per the order of Hon. APTEL. In the petition, KSEB Ltd had estimated the employee cost attributable to newly recruited employees and details of actual disbursal of salary for the excess employee were not provided. Hence, during the hearing held on 15-3-2017 the Commission directed KSEB Ltd for providing the following information.

(i) Account code wise details of employee costs including terminal benefits

(ii) Provide in a tabular format the details pertaining to the employees recruited after 01-04-2009

   a. HR No. of the Employee
   b. Date of entry to service
   c. Last drawn basic pay as on 31.03.2014 & 31.03.2015
   d. DA drawn as on 31.03.2014 & 31.03.2015
   e. Other allowances as on 31.03.2014 & 31.03.2015

(iii) Actuarial valuation details for the year 2014-15

(iv) Details of the actual amount under pension disbursed in 2013-14 & 2014-15

121. KSEB Ltd in its letter dated 22-4-2017 has provided item (ii) of the above from the Human Resources Information System, which is available from 2013-14. The list of employees containing HR No., date of birth, date of joining in service, pay and other details as on 31-3-2014 were provided. The list contains details of 7261 new employees as on 31-3-2014. KSEB Ltd. also furnished the actual month wise details of disbursement of salary of employees recruited since 2009-10 for the year 2013-14, and based on the same furnished the estimate of pay details of the 4808 excess employees from 2008-09 as shown below (of the 7261 new employees, 7261-4808 no. of employees are replacement of retired employees):

Table 39
Details of actual disbursement of pay and allowances of employees recruited since 1-4-2009 for the year 2013-14

Details pay and allowances for the year 2013-14 for employees recruited after 1-4-2009							Employee cost for excess 4808 nos	
Designation	N0. of employees recruited after 1-4-2009	PAY (Rs.cr)	DA (Rs.cr)	HRA (Rs.cr)	OTHERS (Rs.cr)	GROSS (Rs.cr)	Net increase in staff over 01.04.2009	Cost attributable to increased staff strength (Rs.cr)
Assistant Engineer	570	27.72	3.49	0.26	0.65	32.12	299	16.85
Assistant Executive Engineer	1	0.00	0.00	0.00	0.00	0.01	0	-
Cashier	356	10.53	1.78	0.20	0.11	12.61	261	9.25
Divisional Accounts Officer	6	0.08	0.01	0.00	0.00	0.09	4	0.06
Driver I	2	0.05	0.01	0.00	0.00	0.06	0	-
Driver II	32	0.76	0.12	0.02	0.03	0.92	31	0.89
Junior Assistant	20	0.42	0.08	0.01	0.01	0.53	5	0.13
Junior Fair Copy Assistant	37	0.84	0.12	0.02	0.01	1.00	30	0.81
Lineman II	879	18.17	2.85	0.33	0.71	22.06	0	-
Mazdoor	4324	70.20	10.97	1.53	1.92	84.61	3536	69.19
Meter Reader	544	13.40	2.17	0.25	0.26	16.08	460	13.60
Office Attendant II	119	1.77	0.28	0.05	0.04	2.15	118	2.13
Overseer	10	0.26	0.04	0.01	0.01	0.31	0	-
PTC Sweeper	9	0.09	0.01	0.00	0.00	0.10	9	0.10
Senior Assistant	238	4.58	0.68	0.08	0.03	5.37	0	-
Sub Engineer	105	3.44	0.58	0.05	0.09	4.15	47	1.86
Sweeper III	9	0.13	0.02	0.00	0.00	0.15	8	0.14
Total	**7261**	**152.42**	**23.20**	**2.82**	**3.87**	**182.32**	**4808**	**115.00**

122. Since the Commission received the actual disbursal of pay and allowances of employees recruited since 1-4-2009, the Commission decided to rely on the information furnished by KSEB Ltd from HRIS, which is a centralized database management system developed by KSEB Ltd for management of Human resources. The Commission notes that the details furnished by

KSEB Ltd now is the best possible information regarding actual pay and allowance disbursed to excess employees. However, the Commission has noted some discrepancies in the data furnished. As per the details furnished by KSEB Ltd, actual recruitments since 1-4-2009 and at the end of 31-3-2014 is 7330 on various categories as shown in Table 34. However, the details of actual pay and allowances disbursed furnished by KSEB Ltd pertain to 7261 employees only. KSEB Ltd did not explain the reasons on the reduction in employees. However, this could be due to absence of employees due to leave, permanent absence or resignation. The Commission also notes that in each month in 2013-14 also the number of employees in each category vary due to recruitments or promotions to higher cadre. The difference is as shown below:

Table 40

Variation in no. of employees as per the actual disbursements

Categories	No.of employees as per Table 34	No. Of employees as per details furnished vide letter dated. 22-4-2017
Assistant Engineer	591	570
Cashier	609	356
Driver II	34	32
Junior Assistant	8	20
Junior Fair Copy Assistant	38	37
Electricity worker	5228	4324
Meter Reader	555	544
Office Attendant II	128	119
PTC Sweeper	10	9
Sub Engineer	112	105
Sweeper III	9	9
Divisional Accountant	5	6
Overseer	1	10
Accountant LA	1	
Meter Tester	1	
Total	7330	**6141**
Assistant Executive Engineer		**1**
Driver I		2
Lineman II		879
Senior Assistant		238
Total		7261

123. As shown above, the major difference is in the category of Mazdoor and Cashier. This may be due to the fact that Lineman II and Senior Assistant are the promotion posts of Mazdoor and Cashier respectively. During the period, the persons recruited after 1-4-2009 might have been promoted to next category. The other differences in no. of employees in various categories may be due to leave or other absence from service.

124. While estimating the employee cost of excess employees, KSEBL did not consider these differences and hence, there is a possibility of underestimation of employee expenses on excess new employees. Hence, the Commission estimated the cost of excess employees considering these factors also. As shown in table 33 the number of excess employees from 2008-09 based year is 4808 for the year 2013-14 as given below.

Table 41
Excess number of employees over the 2008-09 level as per APTEL order

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Total No. Of employees	27175	28007	29864	31113	31783	31983
Annual Increase in employees (numbers)		832	1857	1249	670	200
Increase in employees over 2008-09 level (numbers)		832	2689	3938	4608	4808

125. Based on the actual no. of employees, who have been paid for the year 2013-14, the Commission has estimated the pay and allowances of excess 4808 employees as shown below:

Table 42
Pay and allowances of excess employees for the year 2013-14

	Actual cost of employees recruited after 1-4-2009 for the year 2013-14							Cost of excess employees	
Designation	**Total**	No. of new employees after 1-4-	**PAY Rs. Cr**	**DA Rs. Cr**	**HRA Rs.Cr**	**OTHERS Rs.Cr.**	**GROSS Rs.Cr.**	Excess employees (no.)	Gross pay (Rs.cr)

		2009							
Assistant Engineer	591	571	27.72	3.49	0.26	0.65	32.12	378	21.26
Cashier	609	594	15.10	2.46	0.28	0.14	17.99	393	11.90
Driver II	34	34	0.81	0.13	0.02	0.03	0.98	23	0.66
Junior Assistant	8	20	0.42	0.08	0.01	0.01	0.53	13	0.34
Junior Fair Copy Assistant	38	37	0.84	0.12	0.02	0.01	1.00	25	0.68
Mazdoor	5228	5203	88.37	13.81	1.86	2.63	106.66	3445	70.62
Meter Reader	555	544	13.40	2.17	0.25	0.26	16.08	360	10.64
Office Attendant II	128	119	1.77	0.28	0.05	0.04	2.15	79	1.43
PTC Sweeper	10	9	0.09	0.01	0.00	0.00	0.10	6	0.07
Sub Engineer	112	105	3.44	0.58	0.05	0.09	4.15	70	2.77
Sweeper III	9	9	0.13	0.02	0.00	0.00	0.15	6	0.10
Divisional Accountant	5	6	0.08	0.01	0.00	0.00	0.09	4	0.06
Overseer	1	10	0.26	0.04	0.01	0.01	0.31	7	0.22
Total	7330	7261	152.42	23.20	2.82	3.87	182.32	4808	120.75

126. Thus, as shown above, the Commission has made adjustments in some of categories such as Mazdoor/Lineman and Cashier/Senior Assistant etc., to properly account for promotions and changes taken place during the period from 2008-09. By doing the adjustments, excess no of employees in each cadre has been aligned to a certain extent. Based on this, cost of excess employees has been arrived at as per the orders of APTEL in appeal no.1 &19/2013 is Rs.120.75 crore.

127. **Other allowances:** As per the accounts other allowances payable include earned leave encashment, workmen compensation, terminal surrender etc., 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. As shown above, other allowances are allowed at the approved level as per CPI:WPI indexation or actual, whichever is lower as shown below:

Table 43
Other allowances approved for 2013-14

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Rate of Increase for the components of approved employee cost other than Basic pay (%)		9.80%	10.18%	10.18%	5.92%	10.29%

Other benefits(CPI:WPI)	94.06	103.28	113.79	125.38	132.79	146.46
Actuals other benefits (Rs in crore)	94.06	93.92	101.73	132.79	147.38	170.40
Other Benefits approved (Rs in crore)	94.06	93.92	101.73	125.38	132.79	146.46

128. **Terminal benefits:** As per the Orders of APTEL, the terminal benefits actually paid have to be provided in full and the gratuity directed to be paid as per the judgments of the High court should also be allowed. The Commission has sought details of actual disbursement of terminal benefits from KSEB Ltd. However, KSEB Ltd furnished the split up details as per accounts. The details of terminal benefits booked by KSEB Ltd is as shown below;

Table 44
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)	2013-14 (Rs.crore)
Monthly Pension including provisions	445.83	526.86	548.80	659.19	698.92	774.03
Gratuity	22.83	29.88	23.01	25.37	53.05	103.02
Commutation	25.03	42.13	31.54	21.47	8.42	22.72
Medical allowance	1.53	4.61	3.55	3.52	3.58	3.36
Special festival allowance	0.62	0.84	0.97	1.49	1.39	1.66
Provision for gratuity/commutation			131.34			
Total terminal benefits	**495.84**	**604.32**	**739.21**	**711.04**	**765.36**	**904.79**

129. Gratuity is provided at Rs.87.82 crore and provision for gratuity/commutation is given at Rs.15.20 crore totaling to Rs.103.02 crore. KSEB Ltd had furnished the details of actual disbursement of gratuity in the letter dated 31-5-2016. The actual gratuity released to retired employees after 2008-09 is shown below::

Year	Rs. Crore
2008-09	20.74
2009-10	27.16
2010-11	20.92
2011-12	23.06
2012-13	48.22
2013-14	87.81

130. It can be seen from the accounts that the gratuity released by KSEB Ltd 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 KSEB Ltd and as per the orders of APTEL, the actual gratuity paid by the KSEB Ltd in each year should be allowed. 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 45
Approved Terminal benefits

	2009-10 (Rs.crore)	2010-11 (Rs.crore)	2011-12 (Rs.crore)	2012-13 (Rs.crore)	2013-14 (Rs.crore)
Monthly Pension including provisions	526.86	548.80	659.19	698.92	774.03
Gratuity	27.16	20.92	23.06	48.22	87.81
Amount deposited towards Gratuity				41.47	
Commutation	42.13	31.54	21.47	8.42	22.72
Medical allowance	4.61	3.55	3.52	3.58	3.36
Special festival allowance	0.84	0.97	1.49	1.39	1.66
Total terminal benefits allowed	**601.60**	**605.78**	**708.73**	**802.00**	**889.58**

The allowable employee cost is accordingly estimated as given below

Table 46
Employee costs for 2013-14

	2009-10 (Rs.crore)	2010-11 (Rs.crore)	2011-12 (Rs.crore)	2012-13 (Rs.crore)	**2013-14 (Rs.crore)**
Basic Pay & DA as per Accounts	753.29	871.87	1,059.51	1,190.28	**1,503.55**
Less Basic pay & DA of additional employees	11.75	43.47	71.19	94.33	**120.75**
Net Basic pay & DA	741.54	828.40	988.32	1,095.95	**1,382.80**
Other allowances	93.92	101.73	125.38	132.80	**146.46**
Terminal benefits approved	601.60	605.78	708.73	802.00	**889.58**
Total Employee cost allowable	1,437.05	1,535.91	1,822.43	2,030.75	**2,418.84**

131. As shown above, the approved employee costs for 2013-14 as per the directions of the APTEL is Rs.2418.84 crore.

132. In this context, it is very pertinent to note that KSEB Ltd should take steps to control the Employee cost and other controllable costs. Taking into

consideration the changes that have already taken place in the legal and regulatory environment in which the utility operates, one cannot afford to ignore open access, cross subsidy boundaries that are already in vogue and concepts of supply licensee etc in the pipeline. An analysis of the cost structure of KSEB in recent years shows that even though the utility has been able to bring down the power purchase cost per unit, the saving attained in this important head has been negated by the increase in employee costs. In addition to the changes in the legal environment, the unique mix of the consumer base the utility has, also exposes the utility to other competitive and pricing risk - viewed in this background, the utility cannot ignore the importance of controlling the costs. Fifty percent of the power is consumed by the domestic consumers and they account for nearly 80 percent of the consumer base. Hence, it is all the more important that as an utility which gives importance to social facet, the utility has an important obligation to society at large to improve efficiency and control costs. The licensee should make a study of the utilisation of the existing staff and find out means by which their productivity can be improved through proper redeployment and training. Additional employees increase not only the present employee costs - it will also increase the pension liability. The percentage of pension outgo is also in the increase. With the improvement in technology the utility should find means and measures to adopt the same into the system like online bill payments, credit card payments, RTGS transfers for accepting bills; mechanization of meter reading; installation of pre paid meters to ensure that collection efficiency is improved with special emphasis on those consumers who are not prompt in making the payment; using communication facility to improve fault detection and selective change to smart grid and remote control and operation of substations; The utility should also curb the instinct of opening more and more section offices. Taking into consideration the rapid strides in communication technology and smart equipments, the same quality of services can be maintained with the existing staff provided there is an open mind to critically evaluate the present structure, process and procedures of the utility and take prompt strategic decisions before it is too late. In this context, KSEB should also take steps to implement the recommendations and suggestions made by IIM in their recent study and the views expressed by the Additional Chief Secretary (Finance) in the letter dated 19-02-2016 on pay revision and creation of new section offices. –The commission directs KSEB to prepare an action plan on the matters mentioned in this paragraph and other relevant matters which the utility finds important and submit a concrete proposal for improving efficiency and controlling costs. The same may be submitted to the Commission by December 31, 2017.

Repair and Maintenance expenses

133. The repair and maintenance (R&M) expense as per the audited accounts is Rs 227.03 crore as against the approved amount of Rs 216.11 crore. The details are given below.

Table 47
Repair and Maintenance Expenses claimed for the year 2013-14

Sl No	Particulars	2012-13	2013-14	
		Actuals	KSERC Approval	Actuals
		(Rs.Cr)	(Rs.Cr)	(Rs.Cr)
1	Plant & Machinery	67.41	216.11	55.18
2	Buildings	5.39		5.83
3	Other Civil works	6.61		7.84
4	Hydraulic works	3.64		2.50
5	Lines, Cable networks	163.92		150.69
6	Vehicles	3.30		3.36
7	Furniture and Fixtures	0.08		0.13
8	Office equipment	1.20		1.50
	Total	251.55	216.11	227.03

134. As detailed above, the R&M cost incurred during the 2013-14 is more than Rs.10.92 crore from the approved level. However, the same is lower than the actual for the previous year 2012-13. KSEB Ltd has stated that, the main element of R&M cost is under the head 'lines cable, networks' and 97% of the expenses under the head is for distribution. According to KSEB Ltd R&M expenses depend on gross fixed assets in use at the beginning of each financial year, age of assets as well as inflation.

135. According to the KSEB Ltd, major share of the R&M expenses incurred is under Distribution. KSEB Ltd 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 9.72 % during the year 2013-14.

(v) The consumer strength has increased from 108.07 lakh in 31-03-2013 to 111.90 lakh as on 31-03-2014.

136. KSEB Ltd has further submitted that, the R&M expenses incurred during the year 2013-14 was about 1.79% of the GFA. The details are given below.

Table 48

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	3633.02	16.12	0.44	7.10
Transmission	3866.06	44.06	1.14	19.41
Distribution	5193.78	166.85	3.21	73.49
Total	12692.86	227.03	1.79	100

137. The HT-EHT Association stated that the reason given by KSEB Ltd that increase in R&M expenses is due to increase in asset base, is not true as 31% of the asset are below five years and 80% are below 14 years of age and thus the assets are relatively new. The Association further stated that another reason given by KSEB Ltd for increase in R&M expenses is the

implementation of Standards of performance. However, the Commission itself had analysed the performance in 2011-12 and concluded that interruptions are low in towns but the time taken for restoration is more. Hence the argument of KSEB Ltd that increase in R&M expenses is due to implementation of standards of performance is not correct.

Analysis and decision of the Commission

138. As per the details submitted by KSEB Ltd, the increase in R&M expenses over the approved level is marginal only. KSEB Ltd has stated that R&M expenses is only 1.79% of GFA. However on functional segregation, the expenses in distribution is considerably high and it is more than 3% of GFA. KSEB Ltd also pointed out that increase in R&M expenses is due to implementation of KSERC (Standards of performance) Regulations. However, it is to be noted that KSEB Ltd has not yet furnished the details of its compliance on the regulations and achievement levels of each of the components of performance for the analysis on comprehensive manner. Unless such information is furnished and performance levels are assessed, the argument that costs have increased due to the stipulations of regulations cannot be accepted, as a ground for increasing R&M expenses.

139. While approving the order on ARR&ERC for the year 2013-14, the Commission had approved the R&M expenses linked to inflationary indices based on CPI:WPI indexation over the year 2008-09. Though KSEB Ltd challenged the ARR&ERC order of the Commission for the year 2013-14 before the Hon'ble Appellate Tribunal for Electricity (APTEL), Hon'ble APTEL directed to follow the orders in the common judgment dated 10-11-2014 in appeal petitions 1 of 2013 and 19 of 2013. In the said order Hon. APTEL had 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.

140. 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 earlier adopted, for approving the R&M expenses as per the orders on ARR & ERC for the

year 2013-14 for approving the R&M expenses while truing up the accounts for the year 2013-14. The Commission also notes that the above mentioned steps taken by the Commission has had a positive impact in the sense that, there has been a decrease in R&M expenses over the years as per the audited accounts.

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

Table 49

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%
2011-12	156.1	8.99%	194.83	8.39%
2012-13	167.6	7.35%	215.17	10.44%
2013-14	177.5	5.90%	236.00	9.68%

142. Taking 2008-09 as the base year, the R&M expenses worked out for 2013-14 based on CPI:WPI at 70:30 basis is as given below.

Table 50

R&M Expenses based on CPI:WPI

R&M Expenses	2008-09	2009-10	2010-11	*2011-12*	*2012-13*	2013-14
	Rs. crore	Rs.crore	Rs.crore	*Rs.crore*	*Rs.crore*	Rs. Crore
CPI weightage (70%)	97.15	109.17	120.57	130.69	144.33	158.30
WPI weightage (30%)	41.64	43.23	47.33	51.59	55.39	58.66
Total R&M expenses	**138.79**	**152.39**	**167.91**	**182.28**	**199.71**	**216.96**

143. Based on the above, the R&M expenses approved for the purpose of truing up of accounts for the year 2013-14 is Rs 216.96 crore.

Table 51

R&M expenses approved for the year 2013-14

	2013-14 (Rs Cr)		
	ARR Order	Actual as per Audited accounts	Allowed in True UP
R&M Expenses	216.11	227.03	216.96

Administration and General Expenses

144. The actual A&G expenses booked by KSEB Ltd including the electricity duty under section 3(1), is Rs 253.35 crore for the year 2013-14. The A&G expenses excluding the electricity duty is Rs 152.98 crore against the approved level of Rs 94.97 crore. The details are given below.

Table 52

A&G expenses claimed for the year 2013-14(Rs in crore)

Sl.No	Particulars	2011-12	2012-13	2013-14	
		Actual	Actual	Approved	As per audited Accounts
1	Rent, Rates and Taxes	5.56	5.24	94.97	5.50
2	Insurance	0.41	0.38		0.42
3	Telephone/telex/internet charges etc	3.46	3.45		3.60
4	Legal charges	2.00	1.54		1.75
5	Audit fees	2.30	2.30		1.35
6	Consultancy charges	0.18	0.02		0.26
8	Other Professional charges	4.27	4.53		4.03
9	Conveyance and vehicle hire charges	34.08	35.45		39.07
11	Sub Total (Total of 1 to 9)	52.26	52.92		55.98
12	OTHER EXPENSES				
	a) Fess and subscriptions	0.47	0.53		0.84
	b) Printing & Stationary	9.18	7.86		9.87
	c) Advertisements	8.09	0.91		3.77
	e) Contributions/Donations	1.16	1.17		4.55
	f) Electricity Charges	5.12	5.13		5.32
	g) Water charges	0.24	0.16		0.16
	h) Entertainment	0.29	0.27		0.32
	i)Exhibition/publicity	0.22	0.10		0.15

	j)Sports and related activity	0.28	0.39		0.27
	k)Study tour/Training	0.77	0.22		1.64
	l)SRPC expenses	0.72	0.57		0.74
	m)DSM expenses	0.96	0.22		0.02
	n)APTS expenses	0.01	0.01		0.01
	o)H&M Data charges	-	0.23		0.29
	p)Operating expenses	-	9.61		49.32
	q) Miscellaneous expenses	13.71	13.11		8.22
13	Total of OTHER EXPENSES	41.22	40.49		85.49
14	Freight	9.33	6.94		6.06
15	Other purchase related expenses	6.60	5.11		5.45
	Total (11+13+14+15)	109.41	105.46	94.97	152.98

145. 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. According to KSEB Ltd, the inflation levels remained high in 2013-14

146. The major increase are in conveyance expenses, contributions, 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 53
Breakup of conveyance and Vehicle hire charges for the year 2013-14

Particulars	2010-11 (Rs. cr)	2011-12 (Rs. cr)	2012-13 (Rs. cr)	2013-14 (Rs. cr)
Conveyance	5.48	3.64	1.72	1.77
Travelling expenses to staff	6.69	8.76	9.64	9.53
Travelling expenses to Board Members	0.09	0.07	0.06	0.1
Vehicle running expenses (except trucks etc.)	6.56	5.44	4.88	4.52
Vehicle licenses, registration insurance and taxes	0.51	0.63	0.6	0.56
Vehicle hire charges	4.66	15.74	18.56	22.59
Total	**23.99**	**34.08**	**35.46**	**39.07**

Table 54
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

147. Expenses under the head contributions, relates to contribution of KSEB Ltd to its employees welfare fund, which is a scheme for financial assistance of families of KSEB employee who die while in harness and to those who retire from the service on invalid grounds. KSEB Ltd booked Rs. 8.22 crore under miscellaneous expenses. Expenses which do not have specific heads are assigned under the category Miscellaneous expenses. KSEB Ltd has provided the ARU wise details of miscellaneous expense for the year 2013-14.

148. In the reply dated 17-2-2017, KSEB Ltd has stated that it had earnestly attempted to limit the expenses within the approved level. The increase in A&G expenses over the approved level is Rs58.01 crore, out of which Rs.49.32 crore is towards operating expenses. It is submitted that operating expenses and H&M data charges were not incurred in the base year 2008-09 and hence not factored in the approved A&G expenses in the subsequent years based on CPI:WPI indexation.

149. The HT-EHT Association stated that the electricity Duty under section 3 of the Electricity Act 2003 shall not be allowed to KSEB Ltd KSEB Ltd could not provide any evidence on the steps taken for limiting the expenses at approved level. The Association further stated that legal charges paid shall not be passed on to the consumers and shall be met from RoE as KSEB Ltd is frequently challenging the orders of the Commission and the burden of the same has to be borne by the consumers.

Analysis and decision of the Commission

150. The Commission examined the details submitted by KSEB Ltd and the objections raised by the stakeholders. KSEB Ltd had attributed the increase in A&G expenses to business growth such as consumer strength, sales, and GFA. However, it is to be noted that of the increase of Rs.58.51 crore in expenses over the approved level, the operating expenses alone contributes to Rs. 49.32 crore. KSEB Ltd has not provided any explanation or details on such items of expenditure. The main aim of benchmarking expenses is to have freedom to the licensees to plan and curtail the expenses at the approved level, without examining the gains/losses in each head. There can be reduction in many heads and increases in others, the licensee has to plan the expenditure in such a way that it limit the expenses overall level. It is also in the interest of the licensee to give details of the items which are material so as to enable the Commission to have a proper analysis.

151. The Commission in the order on ARR&ERC for the year 2013-14 has approved the A&G expense for the year 2013-14 at Rs 94.97 crore based on the methodology provided in the KSERC (terms and conditions for retail sale of electricity) Regulations 2006. Though KSEB Ltd had challenged the order of the Commission on ARR&ERC for the 2013-14 before the Hon'ble Appellate Tribunal for Electricity (APTEL), the Hon APTEL had directed to follow the directions in the common judgment dated 10-11-2014 in appeal petitions 1 of 2013 and 19 of 2013. In the said order, Hon APTEL 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.

152. Accordingly, A&G expenses linked to CPI:WPI for the truing up of accounts for the year 2013-14 is worked out as follows.

Table 55
A&G expenses except electricity duty for the year 2013-14

	2008-09	2009-10	2010-11	*2011-12*	*2012-13*	2013-14
	Rs. Crore	Rs.crore	Rs.crore	*Rs.crore*	*Rs.crore*	*Rs.crore*
CPI weightage (70%)	42.69	47.97	52.98	57.43	63.42	69.56
WPI weightage (30%)	18.30	19.00	20.80	22.67	24.34	25.78
Total A&G Expenses	***60.99***	***66.97***	***73.78***	***80.10***	***87.76***	***95.34***

153. As detailed above, the A&G expenses approved for the purpose of truing up of accounts for the year 2013-14 is Rs 95.34 crore.

Table 56

A&G expenses (except electricity duty) approved

	2013-14 (Rs. Crore)		
	ARR Order	**Actual**	**Allowed in True up**
A&G expenses other than Electricity duty	94.97	153.13	95.34

Other Expenses

154. The other expense include 'other debits' and 'net prior period charges'. KSEB Ltd had booked Rs 44.52 crore under 'other debits' for the year 2013-14 as against Rs 18.50 crore approved vide the order on ARR for the year 2013-14. The details are given below.

Table 57

Other debits claimed for the year 2013-14

Sl No	Particulars	Rs in crore			
		ARR	SERC Approved	As per audited Accounts	Difference over approval
1	Research and Development Expenses	1.50	1.50	0.55	-0.95
2	Sale of Stores Account	0.00	0.00	-0.06	-0.06
3	Provision for Bad and Doubtful debts	14.00	14.00	0.00	-14.00
4	Miscellaneous Losses and write-offs	3.00	3.00	4.37	1.37
5	Sundry expenses	0.00	0.00	0.05	0.05
6	Material cost variance			39.61	39.61
	Total	18.50	18.50	44.52	26.02

155. The major item of expense under 'other debits' is the material cost variance. Material cost variance represents the difference between the actual rate at which material was procured and the standard rate fixed for pricing the issue of materials. As per the ESAAR 1985 the material cost is first accounted at the standard rate and then subsequently difference between the actual and standards are accounted under the material cost variance. It is directed that KSEB should take steps to migrate to Weighted

average cost of pricing the issues. This will ensure that the problems of variances are done away with and make the accounting more simpler. With the advent of specialised software for inventory management, switching over to Weighted average method will ease out such type of complications. KSEB Ltd has not accounted any amount under provision for bad and doubtful debts. The miscellaneous losses and write-off mainly consists of the compensation for injuries and death of staff and outsiders. In this account KSEB Ltd has booked Rs. 4.37 crore. The details are given below:

Table 58
Details of Miscellaneous losses and Write off

SI No	Particulars	Amount (Rs.Cr)
1	Compensation for injuries deaths and Danger - Staff	4.05
2	Compensation for injuries deaths and Danger – Outsiders	0.32
	Total	4.37

The Commission has examined details furnished by KSEB Ltd under other debits and approves the other debits approved for the purpose of truing up for the year 2013-14 as per the audited accounts as detailed below.

Table 59
Other debits approved for the year 2013-14

SI No	Particulars	ARR order (Rs Cr)	Audited accounts (Rs Cr)	True up (Rs Cr)
1	Research and Development Expenses	1.50	0.55	0.74
2	Sale of Stores Account	0.00	-0.06	-0.14
3	Provision for Bad and Doubtful debts	14.00	0.00	0.00
4	Miscellaneous Losses and write-offs	3.00	4.37	4.37
5	Sundry expenses	0.00	0.05	0.05
6.	Material cost variance	-	39.61	39.61
	Total	18.50	44.52	44.52

156. The prior period credits as per the audited accounts is Rs 16.02 crore as detailed below.

Table 60
Net prior period charges

Sl.No.	Particulars	2011-12 (Rs. Cr)	2012-13 (Rs. Cr)	2013-14 (Rs. Cr)
I. Income relating to previous year				
1	Receipt from consumers	0.68	0.01	-
2	Excess interest and finance charges	0.29	-	1.61
3	Other excess provision made in previous	0.35	0.10	0.09
4	Other income relating to prior period	9.41	16.82	16.73
	Total	**10.73**	**16.93**	18.43
II. Expenditure relating to previous years				
1	Short provision of purchase	66.43	54.99	0.64
2	Operating expenses relating to prior period	-	0.31	0.14
6	Interest & finance charges	0.17	0.45	0.89
7	Other charges relating to previous years	6.08	2.38	0.74
	Total	**72.68**	**58.13**	**2.41**
	Net prior period credits/Charges	**-61.95**	**-41.20**	**16.02**

157. 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 KSEB Ltd should follow the accepted standards for accounting prior period items.

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

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

Table 61
Other expenses approved for the year 2013-14

	ARR Order	Actuals	True up
	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
Other debits	18.50	44.52	44.52
Prior period income		-16.02	-16.02
Total	18.50	28.50	28.50

Expense capitalized

160. The interest and financing charges capitalised as per the audited accounts is Rs.117.31 crore and other expense capitalized is Rs.182.95 crore.

Return on equity

161. The KSEB Ltd in the accounts booked return on equity as 15.5% of the equity capital of Rs.1553 crore for the period of 1-4-2013 to 31-10-2013 and 15.5% on increased equity capital of Rs.3499 crore for the period from 1-11-2013 to 31-3-2014. Thus the KSEB has claimed return of Rs.366.40 crore as shown below:

Table 62
Return on equity claimed by KSEB Ltd for 2013-14

Period	Period (Months)	Equity capital (Rs cr)	Rate	Return on equity (Rs cr)
1-4-2013 to 31-10-2013	7	1,554.00	15.50%	140.42
1-11-2013 to 31-3-2014	5	3,499.00	15.50%	225.98
Total	12			366.40

162. 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 ARR&ERC order has allowed RoE of 14% only. KSEB Ltd has challenged the above order before the Hon’ble APTEL and the APTEL had in the judgment dated

27-4-2016 in appeal no. 81 of 2014 and judgment dated 6-5-2016 in appeal no.135 of 2014 , directed to follow the orders in the judgment dated 10-11-2014 in appeal no. 1 & 19 of 2013. 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.

163. The HT-EHT association stated that the CERC regulation pertains to generation and transmission and there is no specific provision for distribution. The Association also pointed out the order of APTEL in Appeal No 247 of 2014 in which APTEL, and requested to allow RoE at the rate of 14% on the reduced equity capital of Rs.283.91 crore. Accordingly Association stated that RoE of Rs.39.75 crore only needs to be allowed.

164. KSEB Ltd has claimed RoE for the year in two periods ie., before and after second transfer scheme. Before revesting in to the KSEB Ltd, the equity was Rs.1553 crore whereas after revesting, enhanced equity capital of Rs.3499 crore was considered. In both cases, RoE is claimed at a rate of 15.5%. In the Order on ARR&ERC for 2014-15, the Commission has adopted the equity as per the second transfer scheme. Accordingly, the enhanced equity proposed as per the second transfer scheme is to be considered for deciding the RoE.

165. 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.

166. 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.

167. 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 on 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.

168. 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.

169. It has been 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 were 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.

170. However, in view of the direction of the Hon'ble APTEL vide the judgment dated 27-4-2017, the Commission hereby allows the RoE @15.50% on the equity of Rs 1553.00 crore for the period from 1-4-2013 to 31-10-2013 and Rs.3499 crore from 1-11-2013 to 31-3-2014 amounting to Rs. 366.40 crore for the year 2013-14.

Non Tariff Income

171. The non-tariff income as per the audited accounts for the year 2013-14 is Rs 571.97crore. The details are given below.

Table 63
Non tariff income claimed by KSEB Ltd for the year 2013-14

Particulars	2012-13	2013-14		
		KSEB proposed in ARR (Rs crore)	SERC Approved (Rs. crore)	Actuals (Rs. crore)
Meter Rent/Service Line Rental	163.40	167.50	167.50	195.75
Miscellaneous charges (UCM, Service connection fee, Fee for maintenance of Public lighting, Testing fee, Reconnection fee, Penalty charges, Minimum Guarantee charges, Charges for Service connection minimum, Meter Box charges, Power allocation charges etc.	60.19	50.00	60.00	80.70
Wheeling charges & Reactive energy charges	0.00	0.00	0.00	16.41

Interest on Staff Loans and Advances	0.31	0.20	0.25	0.67
Interest on Advances to suppliers/ Contractors	1.85	3.00	3.00	1.62
Interest from Banks	60.46	3.50	3.50	80.59
Rebate Received	54.03	35.00	40.00	90.36
Income from sale of scrap etc	30.58	32.00	32.00	41.64
Miscellaneous Receipts	65.00	42.00	49.00	64.22
TOTAL	435.82	333.20	355.25	571.97

172. There is no discrepancy noticed in the amount booked under non-tariff income as detailed above. The Commission for the purpose of truing up approves the non-tariff income as per the audited accounts

Revenue from Tariff

173. As per the ARR&ERC order, the Commission has approved revenue from sale of power at Rs.8141.04 crore, of which Rs.144.55 crore was revenue estimated at sale at higher rates during the power restriction months of April and May 2013 based on the Commission's directions. The Commission revised the tariff for all categories of consumers with effect from 1-5-2013. The revenue from sale of power within the State for the year 2013-14 as per the accounts is as shown below:

Table 64
Revenue from Sale of Power within the State

Category	KSERC order		Actuals	
	Energy sale	Revenue from Tariff	Energy sale	Revenue from Tariff
	(MU)	(Rs.Cr)	(MU)	(Rs.Cr)
Domestic	8936	2493.44	8737.94	2699.45
Commercial	2532	1928.52	2227.33	2103.48
LT Industrial	1125	574.70	1096.57	685.57
LT Agriculture	317	54.31	310.25	56.63
Public Lighting	279	76.61	321.06	118.99
HT & EHT Total	4355	2497.93	4035.49	2576.37
Railway Traction	144	75.02	200.69	107.77
Bulk Supply	553	295.98	523.15	293.64
NPG			1.58	0.00
Revenue at excess rates during April and May 2013		144.55		
Total energy sales within the State	18239	8141.04	17454.06	8641.90

174. 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 in April-2013 and revised rate from May 2013 to March-2014), and penal charges for the excess consumption for the restrictions imposed on energy usage. 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.

Table 65

Share of different consumer categories in Energy sales and Revenue

Category	Energy sale		Revenue from Tariff	
	(MU)	%	(Rs.Cr)	%
Domestic	8,738	50%	2,699.45	31%
Commercial	2,227	13%	2,103.48	24%
LT Industrial	1,097	6%	685.57	8%
LT Agriculture	310	2%	56.63	1%
Public Lighting	321	2%	118.99	1%
HT & EHT	4,035	23%	2,576.37	30%
Railway Traction	201	1%	107.77	1%
Bulk Supply	523	3%	293.64	3%
NPG	2	0%	-	0%
Total energy sales within the State	**17,454**	**100%**	**8,641.90**	**100%**

As shown above, major share of sales (50%) is to domestic category contributing only 31% of the revenue. In the commercial and HT-EHT categories the contribution to revenue is higher than the sale. Commercial category accounts for 1/4th of the revenue whereas the consumption is only 13%. Similarly, HT-EHT categories consumes 23% of the energy sales whereas the contribution to revenue is about 30%. Thus, these two categories cross subsidizes the revenue shortfall in other categories especially domestic and agriculture. For other categories, the percentage revenue share almost compares with the percentage sales share.

175. Further, as per the audited accounts, an additional revenue of Rs 1336.98 crore was realized by interstate sale of electricity. The details are given below.

Table 66
Revenue from interstate Sale of Power

	Energy sale MU	Revenue Rs in cr
Interstate sale	863.36	1147.34
Sale through power exchange	379.53	114.89
Sale through Traders	171.71	74.75
Total	1414.60	1336.98

176. The statutory Auditors has reported in the Annexure A to Auditors report that KSEB Ltd has against the supply of energy made to NVVN and BRPL under swap sale arrangement, is yet to get back about 87.06MU of energy as on 31-3-2014. The value of the energy is reported at Rs.33.26 crore. Considering the audit observation, the Commission hereby directs that steps may be taken to get back the energy as soon as possible if not received/adjusted the swap sale so far.

177. The details of power restriction imposed during the year is as given below:

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.

178. KSEB Ltd has not filed any application for the approving fuel surcharge during the year 2013-14.

179. The State government has exempted the domestic consumers having monthly consumption up to 120 units and low tension agriculture consumer from enhancement of electricity charges from 1-5-2013 to 31-7-2013. Further the subsidy ordered to be extended with effect from 1-7-2012 for the year 2012-13 was made applicable to the above categories of consumers during the year 2013-14. KSEB Ltd has not furnished the details of actual subsidy received from the Government for the year 2013-14. As per the annual statements of accounts for the period ended 31-10-2013 (before revesting), the revenue subsidy receivable from the Government increased by about Rs.144.48 crore compared to previous year. However, the balance sheet as at the end of 31-3-2014, do not provide separately the amount receivable from the Government as subsidies. However, in the Statement of accounting policies under para 38.2 'Revenue Recognition' in the annual accounts, it is stated that an amount of Rs.463.42 crore is recognised as unbilled revenue as on 31-3-2014 and the amount debited to sundry debtors for sale of power. It is to be examined separately whether such accounting procedure properly accounts for the subsidy receivable from government.

180. As per the provisions of Section 65 of the Electricity Act 2003, subsidy can be extended to the consumers only after the same is received from the Government in the manner specified by the Commission. In this context, since the details of subsidy received is not revealed by KSEB Ltd in their accounts and as such as per the provisions of the Act, the subsidy has to be stopped forthwith.

181. The revenue approved for the purpose of truing up is as shown below:

Table 67

Revenue from sale of power approved for the year

	Particulars	Approved	Audited Accounts	Approved for truing up
		(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
1	Revenue from energy sale	8141.04	9978.88	9978.88
2	Revenue from non-tariff income	355.25	571.97	571.97
	Total	**8496.29**	**10550.85**	**10550.85**

Total Revenue gap/ surplus after truing up

182. The revenue gap reported by KSEB Ltd as per the audited accounts is Rs 1098.52 crore. As detailed in the preceding paragraphs, for the purpose of truing up, the revenue gap approved for the year 2013-14 is Rs 200.45 crore, as detailed below.

:

Table 68

Suggested ARR&ERC for the year 2013-14 after truing up

	Particulars	Approved ARR	As per Audited Accounts	Approved in truing up
		(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
1	Generation Of Power	207.77	240.45	240.45
2	Purchase of power	6,380.74	6,902.65	6,882.23
3	Interest & Finance Charges	465.37	834.81	491.20
4	Depreciation	371.45	516.28	306.68
5	Employee Cost	1,803.81	2,579.99	2,418.84
6	Repairs & Maintenance	216.11	227.04	216.96
7	A&G Expenses	94.97	253.50	95.34
8	Other Expenses	19.50	28.51	28.51
9	**Gross Expenditure**	**9,559.72**	**11,583.23**	**10,680.21**
10	Less : Expenses Capitalized	168.24	182.95	182.95
11	Less : Interest Capitalized	62.71	117.31	117.31
12	**Total Expenditure**	**9,328.77**	**11,282.97**	**10,379.95**
13	Return on Equity/Statutory Surplus	217.42	366.40*	366.40

14	**ARR (12 + 13)**	**9,546.19**	**11,649.37**	**10,746.35**
15	Less Revenue from non-tariff income	355.25	571.97	571.97
16	Net ARR	9,190.94	11,077.40	10,174.38
17	Revenue from Sale of power	8,141.04	9,978.88	9,978.88
18	**Revenue (Gap)/Surplus**	**(1,049.90)**	**(1,098.52)**	**(195.50)**

183. Before parting it is pertinent to examine, discuss and record views on the proceedings dated 27-4-2017 of the Chairperson Sri T.M Manoharan, issued before demitting his office on 2-5-2017. The 'Proceedings of the Chairperson' dated 27-4-2017 (*hereinafter referred to as the Proceedings dated 27-4-2017*) prepared and signed by the Hon'ble former Chairperson Sri. T.M. Manoharan forms part of this order of Truing up of KSEB for the year 2013-14 is placed herewith, since the Hon'ble former Chairperson had participated in the proceedings thereto. The final order on the true up proceedings of KSEB Ltd for the year 2013-14 could not be finalized by the Commission, before the date of demitting the office by the Chairperson on 02.05.2017. Since some of the views expressed by the learned former Chairperson in the Proceedings dated 27-4-2017, pertains to the matters to be decided in the present truing up order and some concerns raised therein pertains directly on the procedures/ process followed on truing up of the accounts and also questions the "independence of the views" of the Commission, our views on the same too, need to be mentioned herein so as to enable the various stakeholders, a proper appraisal of the facts in issue .

184. At the outset we fully endorse the views of Additional Chief Secretary (Finance), quoted by the learned former Chairperson in the Proceedings dated 27-4-2017. We do also endorse the views of the learned former Chairperson on the study report of IIM, Kozhikode and it may be noted that the Commission had already issued directives for the same in the order on Suo-motu proceedings on the determination of tariff for electricity for the financial year 2017-18 dated 17-4-2017, which we have again reiterated in this order of truing up. However we do not agree with some of the views expressed in the Proceedings dated 27-4-2017. These are discussed hereunder:

A) The gist of the proceedings is that whatever the learned former Chairperson has stated in the Minority order dated 20.03.2017 in OA 10/2016 (*hence referred to as minority order*), holds good in the present true up order too. The minority order was mainly focused on the dissent on excess employee cost approved by the Commission in obedience to the directions of the Hon'ble APTEL vide its order dated 10-11-2014 in appeal No 1/2013 and 19/2013.It is stated in the proceedings dated 27-4-2017 that as per the existing law, rules and regulations, there is no provision for allowing excess expenses over the approved level in the case of the controllable item of expenditure such as O&M expenditure. There is no reason why Commission would estimate, calculate, the excess expenditure in the light of KSEB Ltd not producing necessary and sufficient details for approving the claim. In the absence of such details adverse inference as per Section 114(g) of India Evidence Act 1872 is to be drawn.

The proceeding dated 27-4-2017 states that :

> *"The decisions of the learned Members to approve expenditure in respect of controllable items, was not in accordance with the scheme of law relating to determination of tariff...."*

Whereas the minority order states thus:

> *"While agreeing with the majority order on items such as cost of generation of power, cost of purchase of power, interests and finance charges, depreciation, return on equity, repairs and maintenance charges and administrative and general expenses, the undersigned is, with due deference to the decisions taken by the learned Members, constrained to differ with the findings and decisions on the items of the employee cost........."*

Thus the matter mentioned in the proceedings dated 27-4-2017 is a deviation from what is stated in the minority order. The minority order specifically states there is agreement with the majority order on all items except that on employee costs while in the proceedings dated 27-4-2017, the term "controllable expenses" has been used in the place of employee cost. The words "controllable expenses" in the context of truing up is a more wider term than "employee cost" and encompasses within its scope other items along with employee costs.

In this context, we wish to mention the following :

KSEB has filed appeal petitions 1/2013 and 19/2013 before the Honble APTEL against the orders of the Commission on true up petition for the year 2010-11 and against the orders on ARR&ERC for the year 2102-13 on which the Hon'ble APTEL has delivered a common judgment on 14-11-2014. The Commission filed a review petition before the Hon'ble APTEL, but Hon'ble APTEL declined the same. The Commission has not filed any appeal before the Hon'ble Supreme Court under Section 111 of Electricity Act 2003. Hence Commission has to comply with the order dated 14.11.2014 of the Hon'ble APTEL. The matters decided in this order have been made applicable to the proceedings of truing up of accounts of KSEB Ltd for the year 2013-14 in terms of the Order dated 27-4-2016 of the Hon. APTEL.

As pointed out above, Hon'ble APTEL vide its order dated 27-4-2016 on an appeal filed by KSEBL against the order of the Commission on ARR&ERC for the year 2013-14 directed that :

> *"After hearing and considering the request of the contesting parties, we dispose of this appeal with direction to the State Commission to ensure compliance of the direction given in our judgment dated 10-11-2014 in the aforesaid appeals nos. 1 of 2013 and 19 of 2013 while deciding the truing up petition for the period 2013-14."*

In the order dated 10-11-2014, Hon APTEL in para 21 had summarised the decisions regarding controllable items of cost as shown below:

"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 data to be furnished by the Appellant the State Commission has allowed depreciation as per the 2004 Tariff Regulations. 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"

In para 8.5, Hon. APTEL had decided on the employee cost as follows:

"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."

Thus, Hon.APTEL had modified the decision of the Commission regarding employee costs, and directed the Commission to allow employee costs as per the directions in the said judgment ie., to allow at least actual basic pay and DA increase, pay revision and terminal benefits over the base year expenses without accounting for increase in man power from 2008-09 .The decision of the Commission with regard to other components of O&M expenses, such as R&M and A&G expenses, was upheld by the Hon'ble APTEL in the case. In this order we have attempted to comply with the Order of APTEL in letter and spirit. While doing so concrete reasoning were given for arriving at each of the decisions. In this order in para 117 it has been first examined the question whether additional expenses have to be allowed over and above the approved level of employee costs for 2013-14. After having affirmed the same, the amount of additional expenditure has been arrived at over and above the approved level of expenses in the ARR, so as to comply with the directions of Hon'ble APTEL.

The next question to be answered is whether KSEB Ltd has furnished the necessary and sufficient authentic documents or records to substantiate its claims for higher employee cost over the approved level pertaining to the level of employees in 2008-09.

In this context, it is mentioned that, after receiving the application, the Commission had, as per its letter No. 1454/F&T/2016/KSERC dated 4-11-2016, directed KSEB Ltd to submit additional data / clarifications regarding accounts relating for 2013-14. The KSEB Ltd furnished reply vide letter dated 17-2-2017. Further, the Commission in its order dated 29.3.2017 also directed KSEB Ltd to submit details regarding actual pay and allowances of persons recruited after 2008-09 and such other details required for processing the Petition. KSEB Ltd furnished the reply vide letter dated 22-4-2017, and provided actual disbursement of pay of employees recruited after 2008-09 based on the HRIS database system implemented in 2013-14. Regarding the cost of excess employees, in 2011-12 and 2012-13, KSEB Ltd had estimated the cost based on the revised pay & allowances, whereas for the year 2013-14 (that is for the current true up order), the actual data on disbursements were furnished as sought by the Commission. Thus it is pertinent to mention here that KSEB

Ltd has provided the relevant additional requirements that were asked for by the Commission for determining the Employee Cost for this truing up of accounts pertaining to 2013-14. Hence the statement in the proceedings dated 27-4-2017 that KSEB Ltd had not furnished the details as sought by the Commission is not correct.

Next question to be answered is the applicability of provisions of Indian Evidence Act and drawing adverse inference. This has to be examined in the light of existing legal provisions and regulatory framework in which State Commissions are functioning. The core of the arguments put forward in the proceedings dated 27-4-2017 is that controllable expenses especially employee costs shall be limited to the approved level in the event, KSEB Ltd fails to provide relevant details in respect of employees at the 2008-09 level, since, APTEL had ordered to limit the employee cost for the level of employees at 2008-09 level. Further it is mentioned in the Proceedings dated 27-4-2017 is that, if KSEB Ltd has failed or refused to submit records, the normal course of action to presume adverse inference as per Section 114 (g) of Indian Evidence Act 1872.

In this matter, it is pertinent to note the observations of Hon APTEL in its judgment dated 12-11-2009 involving this Commission in Appeal No. 94 of 2008 of KSEB Vs KSERC. In the said judgment, Hon. APTEL had drawn a basic approach in processing truing up petitions. Hon APTEL in its judgment dated 12-11-2009 (*KSEB Vs KSERC*) has held that, the proceedings of Truing up exercise of the licensee, is not of adversarial nature and the expenses that is to be passed through in the tariff is to be arrived at after examining the details furnished by the licensee. The relevant portion of the order is quoted below:

> "*25) It is contended by the respondent Commission that the appellant could not substantiate in any manner the increase in expenditure for R&M beyond its reasonable control for the year 2004-05. It is contended that the appellant could not produce any material before*

the commission on efforts made to limit the R&M expenses within the approved limit and also could not substantiate why higher expenses were made. The impugned order also says that the licensee could not justify in any quantifiable manner the increase in R&M expenses more than the approved level. It was contended on behalf of the Commission by Mr. Akhil Sibal that the Commission required to the appellant to produce the relevant data to justify the failure to limit the R&M expenses within Rs.66.70 Crores but the licensee did not respond to the same. The truing up petition, as mentioned above, merely states what amount of expenditure was actually incurred on R&M. Although it says that the R&M expenses was much less than what was projected by the appellant itself, there are no facts and figures given in support of such claim. Nothing is mentioned as to how instead of Rs.85.25 Crores the R&M was limited to Rs.74.49 Crores. In any case there is no explanation why the expenses could not be limited to the approved amount. The Commission says that the respondent was called upon to give a break up as to how the approved amount of Rs.66.70 Crores was proposed to be spent and the appellant failed to respond to that notice and therefore, failed to provide any basis to the Commission to examine whether the expenses incurred for R&M amounting to Rs.74.49 Crores could be justified and allowed to be pass through in tariff.

26) *Shri Sibal wants to put the onus on the appellant to justify the R&M expenditure claimed in excess of the amount approved in the ARR order. Mr. Ramachandran on the other hand says that the appellant was never put to notice during the truing up proceedings that any information, more than what was already submitted was required by the Commission.* ***The present litigation is not of adversarial nature. Nor were the truing up proceedings****.* ***It appears to us that the dialogue between the Commission and the appellant during the truing up proceedings was not sufficient and the Commission confirmed the already sanctioned***

> ***amount rather than probing into what should the expenses have been. We are of the opinion that the appellant and the Commission need to make further effort in determining the R&M expenses which should be passed through tariff**." (Emphasis added)*

Thus, in the similar matter involving R&M expenses, the Hon. APTEL has concluded that truing up proceedings are not adversarial in nature and in such process the Commission has to arrive at the reasonable level considering what should the expenses have been rather than limiting the expenses to the approved level. ***In such circumstances, in the truing up process and to implement the Orders of APTEL the Commission necessarily have to arrive at estimations and conclusions based on the prudent judgment of the allowable expenses.***

In order to examine the above contentions further, it is to be ascertained that whether Indian Evidence Act 1872 is directly applicable in the matter and if applicable the extent of its application. It has been held by the APEX court in many cases that Administrative and quasi-judicial tribunals, even though are judicial in character, are fact finding bodies and the method of fact finding varies from that sanctioned by law in the courts. The Apex Court in as early as in 1955 (*Dhakeswari Cottom Mills Ltd Vs Commissioner of Income tax, AIR 1955 SC 65; 19555 SCR 941*) has held that administrative and quasi-judicial tribunals are not fettered by technical rules of evidence and that they are entitled to act on the material which may not be accepted as evidence in court of Law. In some cases the Court identified these rules as are to be essential principles of natural justice (*Messets. Mehta Parikh& Commission V Commissioner of Income tax AIR 1956 SC 554*). In *Union of India Vs TR Varma* (AIR 1957 SC 882) it was held by Hon'ble Supreme Court that the Evidence Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of enquiry and if they do so their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a court of law.

It is a well settled principle that the presumption under section 114(g) is only permissible inference and not a necessary inference. Section 114 of the Evidence Act has given enough discretionary power to the court to draw certain inference from the facts. The presumption under the section is discretionary and not mandatory. If the document in possession is not produced after notice, there is a presumption under Section 114 illustration (g) that the evidence if produced would have been unfavourable to the person who withholds it. Presumption or adverse inference for non-production of evidence is always optional and a relevant factor to be considered in the background of facts involved in the case. Section 114 (g) of Indian Evidence Act 1872 presume that evidence is present with the party and it is withheld by the party. It is essential to appreciate the scope of Section 114(g) lest it be carried too far outside its limit. Adverse inference under that illustration can only be drawn if there is withholding or suppression of evidence and not merely on account of failure to obtain evidence. In short; (1) the evidence must be material and (2) withholding or suppression is deliberate. In the instant case, KSEB Ltd had submitted most of the information called for by the Commission and there is no deliberate suppression of information has been evident from the part of KSEB Ltd.

In the light of the above, the issue in the present case as well as the previous orders of the Commission viz OA9/2016 dated 16-3-2017 and OA10/2016 dated 20.03.2017 can be examined. In the instant matter, the Commission sought certain details regarding employee costs from KSEB Ltd in the light of the Order of the APTEL dated 27-4-2016. KSEB Ltd had furnished reply on the details sought by the Commission vide its letter dated 17-2-2017 and 22-4-2017. However, there can be difference of opinion on the veracity of the data furnished by KSEB Ltd. In such a case, it is upto the Commission to examine the data furnished by KSEB Ltd and apply prudence and decide on the veracity of the data based on the orders of APTEL and also the legal provisions. In the above circumstances, it is not correct to conclude that the licensee has not furnished authentic records and it is also untenable to conclude that ‘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 APTEL order dated 10-11-2014’. Accordingly, the comments in the Proceedings dated 27-4-2017, that it is only approving the excess employee cost in the guise of implementation of the order of the Hon. APTEL is also not only not acceptable, but also in derogation of the position of Hon. APTEL.. We have given a speaking order laying out in detail, with support of analysis of the data so as to arrive at the decision and how the amount was arrived at and why such an estimation will not be against the interest of consumers.

It is also mentioned in the said proceedings dated 27-4-2017 that the Commission has no duty or responsibility to calculate the employee cost in a truing up process basing on extrapolations or interpolations or assumptions or conclusions and the licensee still has the right to challenge their veracity and validity. We are of the view that, licensee or any affected person on the matter also has the right to challenge even if limiting the expenses to the approved level without considering the submissions of the rival parties.

We are of the opinion that in the process of truing up the Commission conducts a check on the audited accounts of the licensee and applies prudence check to ensure that only prudent expenses are passed on to the consumers. Accounts are maintained on accrual system and one can never do away with estimates in accrual system of accounting. The quality of an estimate depends on the available information, the experience and knowledge of the person making the estimates and the past trends. In the process of prudence checks too, some estimates are made by the Commission to decide what is prudent. When one resorts to estimates one need to follow the "principle of conservatism" ie, one should not over estimate and also ensure that it does end up providing an unintended benefit to the entity. Another aspect that is to be borne in mind is that when one resorts to estimates the estimates made should not deviate materially from the actual. The "concept of materiality" is another basic tenet used in accounting. What is material depends on the circumstance of each case. In accounts a deviation of 1 or 2% can be accepted as normal, based on the items estimated. However, the Commission should take sufficient precaution that when making an estimate with the available information, there should not be a material deviation from the actual figures which could be arrived at, in case if the missing information were also provided. The Commission cannot ignore whatever information that have been provided by the licensee and refuse to make an attempt at arriving at a figure with the help of an estimate when the Commission is aware that the missing information is not going to materially affect the situation and a reliable estimate can be made from the available information. This Commission too had made such estimates earlier and we are sure that in truing up the accounts of big utilities most of the Commissions have to resort to such estimates. The envisaging of Electricity Regulatory Commissions as a specialized entity, manned by persons who have special knowledge of the sector is intended for such matters also. However when Commission takes a decisions on matters before it, one should follow the maxims of natural justice.

In the order dated 20.03.2017 issued by the Commission the members were convinced that only the eligible amount as per the Order of Hon APTEL is approved. Sufficient prudence check was also exercised to ensure that there will be not be any undue advantage to the licensee at the cost of the consumer. The entire process that we had undertaken was given in detail in the orders.

To again reiterate the orders of APTEL, it was directed that the Commission while approving the employee cost, ought to have considered the claim of KSEB Ltd in such a manner that total number of employees remain the same as of 2008-09 levels. The total number of employees as per the records in 2008-09 was 27175. This number should be kept constant. In subsequent years there will be retirements. Hence naturally there will be a depletion in the work force from the 2008-09 levels. Recruitments also take place every year. It is also to be noted that recruitments are not in place of retired employees, but to the designated entry cadres. If the number of recruitments is greater than the number of retirements the total number of employees will exceed the 2008-09 levels. In such cases in order to ensure that the limit of 27175 is not breached a decision has to be taken as to how to determine who amongst the newly recruited employees should be considered for the replacement of the retired persons and who are the persons recruited over and above the limit

- and then the pay & allowances of those identified as "above the approved levels" should not be passed through in the truing up process. For an exact calculation to be done as suggested by the former learned Chairperson one needs to know the exact date of retirement and the exact date of appointment of the new recruitments for the replacements and the additional employees and the cadres to which the retirements and appointments have taken place. The number of appointments and number of retirements and the cadre from which retirement have taken placed have been given by the licensee. The missing information were (a) the date of retirement (b) the date of joining of the new employees who are considered "above the limits" to calculate the exact pay & allowances drawn by them and the pay and allowances paid to the new recruitees. The total salary and emoluments have been given by the licensee. The only aspect that has to be done to arrive at the figures of employee cost to be passed through is to take out the employee cost of that additional number of employees which exceed the 2008-09 levels. This amount can be arrived at by a simple calculation as given below even though the amount drawn by the new recruitees were not provided separately:

Employee costs consist of Basic Pay, DA, Allowances and Retirement benefits. As per the orders of APTEL the retirement benefits have to be provided in full. This figure was available and provided by KSEBL. The basic pay, actual DA and pay revisions approved under wage settlement of those employees who were in rolls in 2008-09 too have to be provided in full. That means in short the entire Pay and DA of the employees in rolls as on 2008-09 have to be provided in full along with the retirement benefits. The only item now remaining, that could be cut on prudence check on employee cost is the basic pay, DA and allowances of newly recruited employees who are in excess of 27175. Being a newly recruited person it is well known that pay will be fixed on the initial stage of the pay scale of the entry cadre. The pay scales of the various cadres and yearly rates of increments was available with the Commission. The DA rates too are available. From the above information the amount payable to a newly recruited employee can be found out without any difficulty.

The above facts were available with the Commission and it does not require any complicated extrapolations or interpolations to come to a prudent conclusion that the amount earlier allowed by the Commission is insufficient as that compared to one which will be required to be approved if the APTEL order were to be implemented.

We do not ascribe to the view that it is not the duty of the Commission to do such calculations, as mentioned in the Proceedings dated 27-4-2017.. The Commission is an expert body which is entrusted with the expertise work as per the Electricity Act, 2003. Persons manning the office of the Commission, i.e. Chairperson and Members, are drawn from entities where they have gathered experience, knowledge of the working and general understanding of the sector~~, ~~so that they are able to perform the duties entrusted on them.

We would also like to quote the following observation from judgment in OA 94 of 2008 of APTEL~~,~~ referred to earlier:

> *"On behalf of the Commission it is submitted by Mr. Sibal that it was for the appellant to explain how the cost towards DA and salary was higher than what was approved and it is not for the Commission to prove that the difference is unjustifiable. Mr. Sibal also fairly submits that the Commission should not adopt an adversarial or combative attitude. We are of the opinion that there cannot be any application of the theory of onus in the tariff proceedings or in the truing up proceedings as we do in the civil or criminal proceedings."*

Thus to conclude the discussion on this issue we are of the firm opinion that while exercising regulatory power and in particular, in dealing with the ARR and tariff determination and true up petitions under the functions and powers vested under The Electricity Act, 2003 , the Commission has to exercise inquisitorial powers. Jurisdiction of the Commission in determining an amount to be approved, so as to abide by Hon'ble APTEL's order, after scrutinizing the information provided by a licensee is not a process to decide a lis or dispute between two contesting parties. ***The proceedings before the Commission are not adversarial in nature, where the Commission is to consider only the material which is placed before it by the parties or the Commission is to accord hearing to all the objectors with regard to the entire material placed before it.*** While exercising its inquisitorial function to approve the true up application, the Commission can and is required to go farther than the case presented to it in the proceedings and seek out the truth of whatever is the issue. The Commission can carry out its own research, call its own witnesses and follow a spectrum of possible courses to effectively discharge its functions. We have done only that - nothing more, nothing less.

B). In the proceedings dated 27-4-2017, there is also a concern that, the Commission should guard against the possible allegations of bias, impropriety and unfair judicial practices especially citing the reason that, the Member (Engineering) of the Commission is the former Director (Transmission) of KSEB Ltd and the Member (Finance) of the Commission is the former Director (Finance) of KSEB Ltd.

The above statement from a Hon'ble Chairperson who himself had, held the post of Chairman of KSEB is to be construed as a "loaded statement". It is true that we were the directors of KSEB Ltd during the proposed truing up period and we have acted therein in our official capacity during the said period. The expenditure on employee costs and other controllable expenses were incurred by KSEBL in its ordinary operational functions. The learned former Chairperson who too was Chairman of the entity for a longer period of six years and for another short period of six months during 2011-12, should know better than anyone else, that there could not be any personal bias or financial bias when expenditure like employee expenses incurred by a state utility like KSEB Ltd is approved by the Commission in truing up proceedings.

We are of considered view that no personal or pecuniary interest is involved in this case so as to attract the legal dictum "No one should be a judge in his own cause" . We are at a loss to comprehend as to what material benefit accrues to a person when one approve "employee expenses" of a state utility, based on a reasoned decision and after a detailed analysis of the available information in the process of truing up. The offices held by the Members earlier cannot be reason to find bias on the part of the Members of the Commission by any stretch of imagination, in this context. To constitute bias there must be a predisposition to decide for or against one party without proper regard to the true merits of the disputes and there must be reasonable apprehension of that predisposition. In the present case there is no dispute between two parties. Here what is contemplated is the assessment of performance of the licensee during a particular financial year based on the audited accounts and on the background of Hon'ble APTEL decision. Moreover a detailed analysis was provided in the earlier order as well as in this order and the reasoning that went behind the decision have been elaborately provided.

Another issue raised in the Proceedings dated 27-4-2017 is that, as per the sub-section (3) of Section-64 of the Electricity Act-2003, the Commission is bound to issue the tariff order within 120 days from the date of receipt of the tariff application. The application for truing up OA 4/2017 was received on 16.11.2016 and the public hearing was conducted on 15.03.2017. The delay beyond 120 days for issuance of the final order can be depicted as an attempt to avoid minority order.

In this regard, it is to be mentioned that in the first instance, the said section cannot be attracted in the proceedings for truing up. Further the following may also be relevant

(i) KSEB Ltd had filed the application for approval of truing up of accounts for the year 2013-14 before the Commission on 22nd August 2016. As part of the processing of the application for approval of truing up, the Commission had vide the letter dated 03.11.2016, sought additional clarification on the application. In the said letter, as instructed by the then Chairperson, the following direction was also incorporated for the compliance of the licensee KSEB Ltd.

> *"KSEB Ltd shall submit the above details on or before 30.11.2016. The application for truing up shall be deemed to have been submitted only on the date of submission of the details called for above".*

(ii) However, KSEB Ltd had submitted the clarification only on 17.02.2017. Immediately on receipt of the letter, the Commission had initially scheduled the hearing on 28.02.2017. Subsequently, as requested by the HT&EHT Association, the hearing was re-scheduled to 15.03.2017.

(iii) In the mean time, on 16.11.2016, KSEB Ltd had filed the application for approval of the truing up of accounts for the year 2014-15 before the Commission. This petition was also heard on 15.03.2017, along with the application for approval of truing up of accounts for the year 2013-14

(iv) In the daily order dated 29.03.2017, the Commission granted time up to 05.04.2017, for filing additional details on the issues raised by the HT&EHT Association. KSEB Ltd submitted the comments on response of HT&EHT Association on 05.04.2017. The Commission vide the letter dated 06.04.2017 sought the details of the UDAY scheme etc, and allowed the time up to 17.04.2017. KSEB Ltd submitted the balance details, vide its letter dated 22.04.2017.

(v) Since the Commission and its staff were fully engaged in the finalization of the Tariff order for the year 2017-18 on suo-motu basis till 17.04.2017, the Commission started processing of the application for truing up for the years 2013-14 and 2014-15 from 3rd week of April 2017. However, the first draft for finalization of the application for approval was submitted before the Commission on 24.04.2017.

From the above it can be seen that there was no intentional delay from the part of the Commission. It is also a well known fact that since for the consideration of the application for truing up of KSEB Ltd, the Commission may require additional details and clarification, there will always be some delay in issuing orders on truing up due to the sheer volume of data and analysis to be made before issuing the orders

In view of the foregoing discussion on the contentions, we are of the view that the matter has been dealt with as per the provisions of the existing legal framework, Orders of Appellate Forum and in the larger interest of consumers Accordingly, to uphold the dignity of the office of the Commission, in just, transparent and impartial manner, this order along with the views expressed by the Hon'ble former Chairperson in the proceedings dated 27-4-2017 is placed in the public domain.

Order of the Commission

185. 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 2013-14 is Rs 195.50 crore, as against

the revenue gap of Rs 1098.52 crore presented by KSEB Ltd based on the C&AG audited accounts for the year 2013-14.

Directives

186. Following directives are issued for compliance as part of this order

1. The Commission notes that there is a considerable gap between the interest claimed and actually booked under security deposit from consumers. KSEBL should examine the details of the security deposits and separate the security deposits relating to inoperative consumer accounts on a priority basis.
2. That GPF balances shall be reconciled and confirmed and interest on GPF is to be provided on the basis of actual interest of individual PF accounts of employees of the Company. This exercise should be completed and details reported to the Commission by 30.09.2017.
3. The KSEB shall submit an action plan as directed in para 132 of this order on or before 31st December 2017.
4. The licensee shall ensure that the applications for the fuel surcharge shall be submitted on a timely basis.
5. The licensee shall provide an action taken report on the important qualification raised by the statutory auditors by 31st December 2017.
6. The licensee shall switch over to weighted average method of pricing issues for stores.

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

The petition disposed of. Ordered accordingly.

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

Proceedings dated 27-4-2017 of Sri. T.M. Manoharan, Chairperson.

1. KSEB Ltd had, on 23.08.2016 filed the application No. OA 3/2017 for truing up of the accounts of its predecessor in interest namely, Kerala State Electricity Board (KSEB) for the financial year 2013-14. After preliminary scrutiny of the application and after getting necessary clarifications, public hearing was conducted on 15.03.2017. The undersigned had also participated in the public hearing. On examination of the files relating to the said application, it is noticed that verification of the documents and data has not been completed by the officers of the finance and tariff wing and of the technical wing. The learned Members in charge of the financial and technical matters have also not completed their scrutiny of records and data. Therefore final order in the said application could not be issued so far. Being the Chairperson of the Commission, who participated in the public hearing, the undersigned has to express his views on the matters dealt with in the application and on the further course of action. Hence this order.

2. The Commission had, on 20.03.2017, issued its order in OA 10/2016, which was the application dated 21.04.2015 filed by KSEB Ltd for truing up of the accounts of the predecessor in interest namely KSEB. The said order dated 20.03.2017 was a majority order issued by the learned Members Shri. K.Vikraman Nair and Shri. S.Venugopal. In the said order the undersigned had issued a minority order expressing difference of views on the following grounds.
    a) The decision of the learned Members to approve expenditure in respect of controllable items, was not in accordance with the scheme of law relating to determination of tariff,
    b) The decision of the learned Members to approve expenditure in respect of controllable items not in the interest of consumers, and
    c) The decision of the learned Members to approve expenditure in respect of controllable items 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.
    d) The licensee could have realized excess expenditure for generation and for purchase of power in accordance with the provisions of KSERC (Fuel Surcharge Formula) Regulations, 2009.
    e) The re-organization of KSEB into functionally and financially independent units namely, strategic business unit-generation (SBU-G), strategic business unit-transmission(SBU-T) and strategic business unit-distribution(SBU-D), preparation of separate accounts and balance sheets for such SBUs, constitution of Master Trust for payment of pension and such other provisions in the Second Transfer Scheme (notified by Government as

per 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) have to be implemented without delay.

f) As held concurrently by the Hon’ble Supreme Court and by the Hon'ble APTEL, the Commission is also bound by the regulations issued by it and therefore truing up process should invariably done 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)

g) The cost of power purchase and taxes on income are uncontrollable items of expenditure, whereas interest on capital liabilities, interest on working capital and O&M expenses which consist of employee cost, repairs and maintenance charges and administrative and general expenses are controllable items of expenditure. Therefore O&M expenses, have to be regulated in accordance with the provisions of the Tariff Regulations, 2006, which 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.*

h) 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.

i) 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.

j) 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. Therefore 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. 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.

k) 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, which are now pending before the Apex Court.

l) KSEB Ltd has not produced necessary and sufficient authentic documents or records to substantiate its claims for higher employee cost pertaining to the 27175 employees who were in the service of KSEB Ltd in 2008-09.

m) 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.

n) 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.

o) 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”

p) 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.

q) According to the undersigned, the Commission has no duty or responsibility to ‘calculate the employee cost’ in a truing up process, basing on extrapolations or interpolations or assumptions or conclusions. 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.

r) 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.

s) The employee cost of KSEB Ltd, per unit of electricity sold is very much on the higher side. 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.

t) It is desirable in the interest of the licensee and of the consumers, to insist on efficiency gains and to regulate employee cost in accordance with the relevant regulations, instead of approving the excessively high employee cost which was increasing due to increase in number of employees and increase in pay and allowances of employees.

u) 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.

v) Such other grounds and facts as explained in the minority order in the order dated 20.03.2017 in OA 10/2016.

3. Therefore the undersigned is of 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. The above views expressed by the undersigned will hold good for processing the application for truing up of accounts for 2013-14.

4. KSEB Ltd shall take special note of the remarks dated 19.02.2016, given by the Additional Chief Secretary (Finance) on the proposal to approve the long term agreement (LTA) for pay revision. The said remarks were on the Note to the Board of Directors (No.CMD/102/P.R-Workmen and Officers/2/2016 dated 15.02.2016) on the 'Revision of Pay and Allowances of Workmen and Officers of KSEB Ltd', which was taken as agenda item No.OA1/2-2016. The Note to Board of Directors was to approve the pay revision of workmen with effect from

01.08.2013 and of the officers with effect from 01.07.2013. The additional financial commitment as per the said note was Rs.19.83 crore per month with an annual commitment of Rs.237.96 crore. The remarks of the Additional Chief Secretary dated 19.02.2016 are quoted hereunder.

> *"The following objection to the LTA may be recorded.*
> *The terms of the agreement were not discussed in the Board at sufficient length. The fact that the settlement was done at the Government level even before the Board was consulted and apprised is highly objectionable and militates against the very concept of the organizations autonomy.*
> *While, it is important to reward employee with a good compensation package, there are components in the package that should have been curtailed to reasonable levels. Distributing largesse based on such an LTA comes at a cost – as this translates into an extra burden for the consumers.*
> *It is understood that both for Non-Technical and Technical Staff the scale of pay in Electricity Board has been fixed at 2 to 4 stages above what is enjoyed by persons holding corresponding posts in government. There is absolutely no justification for doing this. If the idea is to provide compensation for the extra risk exposure of an employee, the correct approach should have been to compensate this extra risk through an additional risk allowance as is being done in Government.*
> *These facts will be brought to the notice of the Kerala State Electricity Regulatory Commission so that the unnecessary part of the expenditure on account of pay revision will not be passed on to the consumers while tariff are re-fixed." .*

5. Further, in the matter of creation of new electrical sections with additional posts, the Additional Chief Secretary (Finance) had, on 19.02.2016, recorded his remarks as follows,-

> *"The creation of the 27 new Electrical Section Offices in Kerala State Electricity Board Limited is strongly objected to. At a time when the efforts should be to reduce manpower through modernization and computerization, the Board is proposing to open 27 new offices at an estimate total outlay of approximately Rs.29 core.*
> *This financial burden will finally be passed on to the people of Kerala who are its consumers.*
> *Finance Department intends to bring this avoidable wastage of resources to the notice of the Kerala State Electricity Regulatory Commission, so that this additional expenditure will not be passed on the consumers of the Board.".*

The Additional Chief Secretary (Finance) has forwarded the above remarks for appropriate action by the Commission. KSEB Ltd shall take note of the above remarks of Additional Chief Secretary (Finance) and prepare and implement plans for optimizing the number of employees and the employee cost by improving efficiency. KSEB Ltd shall, on or before 30.09.2017, submit an action taken report on this issue.

6. KSEB Ltd shall improve and upgrade the skills/competencies of the workers and of the officers by implementing a well laid down training schedule with the latest state of art technological innovations in the sector and shall optimize the staff strength and employee cost, taking into consideration the recommendations of IIM Kozhikode and the concerns of Government as expressed by the Additional Chief Secretary (Finance). An action plan in this regard shall be submitted to the Commission on or before 30.09.2017.
7. KSEB Ltd has, in WP No. 465/2015, challenged the validity of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2014. KSEB Ltd has also filed petition in the said Writ Petition praying for upward revision of the O&M norms for the distribution business / licensees as specified by the Commission in Annexure IX to the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2014. The order of the Commission in the application for truing up of accounts for 2013-14 will have far reaching consequences. Therefore the Commission has to be extremely cautious while issuing orders after examining the claims and counter claims as well as the relevant documents and data.
8. Further, the Commission should also guard against the possible allegations of bias, impropriety and unfair judicial practices especially in view of the following facts,-
   (a) The learned Member Shri. K.Vikraman Nair had been the Director (Transmission) of KSEB Ltd till November 2014 and the learned Member Shri. S.Venugopal had been the Director (Finance) of KSEB Ltd till April 2015 and therefore they were the part of the management of KSEB Ltd which incurred the impugned expenditure.
   (b) The statutory time limit given as per sub-section (3) of Section 64 of the Electricity Act, 2003, for issuance of tariff order is 120 days from receipt of the tariff application. The application for truing up OA 3/2017 was received on 23.08.2016 and public hearing was conducted on 15.03.2017. The delay beyond 120 days for issuance of the final order can be depicted as an attempt to avoid minority order.
   (c) Additional details, which are obtained after the public hearing, are not made available to public and the comments thereon are not invited from public. Accepting such additional details without subjecting them to public scrutiny can be depicted as a dilution of the process of public hearing.

9. The Commission is an independent statutory body constituted under Section 82 of the Act with quasi-judicial and quasi-legislative functions. It has also been given functional and financial autonomy. Section 89 of the Act, stipulates the term of office and conditions of service of Members in such a way that the functional and financial independence are ensured to them. In this regard the following famous legal dicta relating to the principle of natural justice have to be adhered to by the Commission

   (i) "no-one should be a judge in his own cause."

   (j) "Justice must not only be done, but must be seen to be done"

10. Therefore the undersigned is of the view that the learned Members will consider the following two options before taking a final decision in OA 4/2017.

    (i) Issuing order by the learned Members, without a fresh public hearing, citing the reason that the Chairperson who heard the case, has demitted the office.

    (ii) Present the case before the new Chairperson on assumption of office and take further course of action following due procedures in accordance with law, in consultation with him.

    If the learned Members adopt the first option, the views expressed by the undersigned in this order may also please be referred to in their order.

11. The Secretary to the Commission, the Director (F&T) and other staff are directed to submit this proceedings and relevant records to the Members for appropriate action in accordance with law. Copy of this proceedings may please be made available in public domain.

Sd/-
T.M.Manoharan

Chairman

Approved for issue

Santhosh Kumar.K.B
Secretary