KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: **Shri. R. Preman Dinaraj, Chairman**
Shri. S. Venugopal, Member

OA Nos.14/2019, 15/2019, 16/2019, 17/2019, 18/2019, 19/2019, 20/2019, 21/2019, 22/2019, 23/2019, 24/2019

In the matter of Petitions for truing up of accounts filed by M/s KINESCO Power and Utilities Private Limited (KPUPL) for the years from 2004-05 to 2014-15

Petitioner : KINESCO Power and Utilities Private Limited,
Room No.302-306, 2nd Floor, CFC Buildings
Kinfra Park Office,
Infopark P.O, Kakkanad
Kochi

Respondent : Kerala State Electricity Board Limited,
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram

Order dated 31-03-2020

1. M/s KPUPL, (hereinafter referred to as the *licensee or the petitioner*) vide letter dated 15-1-2019 had submitted separate petitions for truing up of accounts for the years from 2004-05 to 2009-10 and vide letter dated 31-1-2019 had submitted truing up petitions for the years from 2010-11 to 2016-17. Of these, for the years from 2004-05 to 2014-15, the Commission has already issued orders on truing up. The licensee has now filed the present petitions for a fresh true up for these years. On the other hand, petitions for 2015-16 and 2016-17 are for first time truing up. After considering the petitions, the Commission has decided to admit the petitions for the years from 2004-05 to 2014-15.

2. In this context, it is to be noted that the Commission had approved the truing up of accounts for the licensee as shown below:

Petition No.	Year	Filed by	Date of order
OP 48/2010	2004-05	M/s Kinfra Export Promotion Industrial Parks Limited (KEPIP)	6-12-2011
OP 49/2010	2005-06	M/s Kinfra Export Promotion Industrial Parks Limited (KEPIP)	
OP 50/2010	2006-07	M/s Kinfra Export Promotion Industrial Parks Limited (KEPIP)	
OP 51/2010	2007-08	M/s Kinfra Export Promotion Industrial Parks Limited (KEPIP)	
OP 52/2010	2008-09	M/s Kinfra Export Promotion Industrial Parks Limited (KEPIP)	
OA 15/2016	2009-10	M/s KINESCO Power and Utilities (P) Ltd (KPUPL)	10-3-2017 & amendment order dated 20-3-2017
OA 16/2016	2010-11	M/s KINESCO Power and Utilities (P) Ltd (KPUPL)	

OA 17/2016	2011-12	M/s KINESCO Power and Utilities (P) Ltd (KPUPL)	20-3-2017
OA 18/2016	2012-13	M/s KINESCO Power and Utilities (P) Ltd (KPUPL)	
OA 19/2016	2013-14	M/s KINESCO Power and Utilities (P) Ltd (KPUPL)	
OA 20/2016	2014-15	M/s KINESCO Power and Utilities (P) Ltd (KPUPL)	

3. After issuing these orders, the licensee had filed review petitions against the orders on truing up of the accounts for the years 2009-10 to 2014-15. While the petitions were under the consideration of the Commission, the licensee as per letter dated 6-02-2018, sought permission for withdrawing the petitions filed for the review of the said orders. of truing up of accounts for the years 2009-10 to 2014-15. In the said letter, the licensee had requested as follows:

> *"As the distribution licence has been transferred to KPUPL from KEPIP and the same has been considered as continuity of licence, it becomes necessary for KPUPL to re-submit the truing up petitions for the period from 2004-05 to 2008-09 for making up the deficiencies and to sort out the regulatory surplus of Rs.1413.01 lakhs up to 2008-09. We would, therefore, humbly request the Hon. Commission to permit us to withdraw the review petitions filed by us for the period from 2009-10 to 2014-15 and to resubmit the same afresh including that of 2004-05 to 2008-09".*

4. The Commission considered the request of the licensee and vide order dated 4-5-2018 permitted the licensee to withdraw the review petitions. Regarding the request for resubmission of fresh petitions for truing up of accounts for the years from 2004-05 to 2014-15, the Commission categorically stated that such petitions if any filed shall be considered on merits as per law. The specific portion of the order dated 4-5-2018 is given below:

> *"5. The Commission had considered the request of the licensee. Since the licensee has requested for the withdrawal of the petitions, the Commission is of the view that the request is to be allowed. Accordingly, the petitions are dismissed as withdrawn*
>
> *6.Regarding the request for resubmission of fresh petitions for truing up of accounts for the years 2004-05 to 2014-15, it is informed categorically that such petitions if any filed shall be considered on merits as per law"*

5. Thereafter the licensee filed the present petitions along with new audit report pertaining to the distribution business. The reasons stated in the petitions by the licensee for filing the fresh truing up petitions are as shown below:

- To give finality to the true up of the licensing operations from 2004-05 to 2014-15.
- Transfer of licence from M/s KEPIP to M/s.KPUPL was effected from 1-2-2010 and prior to that period, the Commission has determined the surplus of Rs.1413.01lakhs after the truing up for the years from 2004-05 to 2008-09. Since M/s KPUPL is the licensee in succession, the transfer of surplus from KEPIP to

KPUPL and the notional interest being charged on the regulatory surplus are presently borne by KPUPL.

- Though the Commission had directed to complete the transfer process immediately, due to termination of Joint Venture agreement, the transfer process got delayed till 7-9-2016.
- In order to bring the value of assets in line with the regulatory norms, supplementary agreements dated 27-10-2017 were signed between Kinfra/KEPIP and KPUPL.
- Erstwhile licensee M/s KEPIP submitted the truing up petition with depreciation as per the provisions of the Companies Act 1956. However, depreciation and value of assets as per KSERC norms are different. Hence asset base and depreciation rates used had to be reworked, so the asset value and investment base have undergone changes.
- The methodology adopted by M/s KEPIP while submitting the truing up petitions was also not uniform in every year and accordingly, the power purchase cost was not computed accurately.
- The Commission vide orders dated 10-3-2017/20-3-2017 had disallowed certain expenditures like depreciation, interest on loan, tax, RoE and portion of O&M expenses.
- In view of the above issues and to find out logical solution to the regulatory issues, KPUPL had decided to submit the present petitions for re-truing up.

6. In comparison with the original filing for the years from 2004-05 to 2008-09 in which order dated 6-12-2011 was made, the licensee in the present petitions had made the following changes:
    a) Revenue other than sale of power has been revised in some years. Non-tariff income revised after excluding interest on fixed deposits
    b) Interest on loans claimed on a normative basis
    c) The licensee claimed that equity is not identifiable, hence notional RoE of Rs 10 lakhs allowed earlier is retained.
    d) The value of assets created out of consumer contribution and grants under the scheme for *Assistance to States for Development of Export Infrastructure and Allied Activities* (ASIDE) were segregated.

7. Similarly, in the petitions for 2009-10 to 2014-15, the following changes are made
    a) Revenue from sale of power for 2010-11 has been revised
    b) Interest charges, depreciation, and Return on Equity in all years have been changed taking into consideration the revised asset transfer agreement
    c) The Asset values and depreciation has been changed considering the asset transfer agreement.

8. In the petitions, the main and common prayers are as follows:
    a) Approve the truing up petition based on the revised forms and annexures
    b) Approve the revenue surplus as per the petition and cumulative surplus up to the year
    c) Approve the capital expenditure for the respective years

d) Condone inadvertent omissions, errors, shortcomings and permit KPUPL to add/change/modify/alter the filing and make further submissions as may be required

e) Pass such other and further orders as deemed fit and proper in the facts and circumstances of the case

9. After examining the petition, the Commission vide letter dated 25-6-2019 sought following clarifications on the petition giving time till 10-7-2019 for the licensee to reply to the clarifications.

<u>For the period 2004-05 to 2008-09</u>

a. Copy of the proposals for funding the assets in M/s.KEPIP sent by KINFRA to Government and the Sanction orders of the Government thereon.

b. Copy of the Board resolutions/Orders/Sanctions of Fund Allocations by Kinfra to KEPIP and its successors

c. Documentary evidence on the government loans extended to KEPIP for development of assets and its share towards distribution assets.

d. As per the audited accounts of M/s KEPIP, the source of funds includes grants from Government of India, grants from ASIDE etc., The details of utilisation of the above grants for creation of assets is to be provided.

e. Of the total grants allotted/transferred to KEPIP from Government of India and ASIDE, the amount of matching grants received from Government of Kerala and the utilisation thereof.

f. Government order specifying conditions of loans given to KEPIP/KPUPL

g. Whether KEPIP/KPUPL had paid any interest to Government of Kerala? if yes details thereof.

h. Changes made in the balance sheet of KEPIP (whole business) especially on items such as share capital (Rs. 25.01 lakh), Grant from Govt. of India (Rs.1000 lakh), Grand from ASIDE (Rs.375 lakh), Value of Assets taken over from consumers (Rs.621.29 lakh) etc., after the date of transfer (1-2-2010) to reflect transfer of assets /liabilities.

i. Copy of the Annual statement of Accounts of KEPIP for the year 2008-09 and 2009-10.

j. Documentary evidence to show the excess funds/investments pertains to KEPIP and not that of distribution business.

<u>For the period 2009-10 to 2014-15</u>

a) A reconciliation statement on balance sheets of M/s KPUPL (schedule of fixed assets and liabilities) between Audited annual accounts as per Companies Act and the balance sheet furnished for truing up.

b) How the value of assets created out of grants and consumer contributions before and after the transfer is arrived at.

c) The books of accounts of the new licensee KPUPL does not reflect the value of assets created out of grants and contributions and its depreciation. This issue needs to be explained.

d) The treatment of Current assets and liabilities as on the date of transfer and after is not mentioned

e) The liabilities towards pre-paid meters (ie., consumer advance for electricity charges on account of pre-paid metering system) is Rs.1.64 crore. While effecting the transfer, the licensee has deducted this amount from the total transfer value to arrive at the NFA. Whether such treatment is correct as it will reduce the original value of Fixed assets in the books of accounts ? It is also not clear, how the new entity will discharge this liability.

f) Closing balance sheet of KEPIP distribution business as on the date of transfer and opening balance sheet of KPUPL and adjustments made to arrive at the opening balance sheet is to be furnished.

g) Details of Post transfer Asset additions, with value of assets and name of asset stating whether the assets are put into use

h) Source of funding of addition to assets after transfer is to be provided

i) Current liabilities/assets as on the date of transfer and the amount of current assets/liabilities actually transferred to the new entity KPUPL

j) It is noted that in the Statement showing fixed asset addition from 1-4-2004 to 31-1-2010, the gross block is shown as on 31-3-2009. This figure is not matching with GFA as per Form V of present truing up petition for 2008-09.

k) The Assets of KEPIP is stated to be the loans from Kinfra. Thus, the treatment of notional D/E ratio of 70:30 to arrive at the amount of equity in the absence of infusion of funds is to be explained

l) Prudency of capital expenditure additions after the transfer is to be provided.

m) Details of net prior period expenses in 2009-10

n) It is to be clarified whether, the transactions such as Treatment of Security Deposit with KSEB and its interest, penalty paid for power purchase, final settlement made with KSEB by KEPIP, etc., are reflected in the transfer scheme

o) Treatment of SD with KSEB (Rs.6.128 crore) and the adjustment of interest thereof.

p) Whether lease hold land can be treated as fixed assets. If so the accounting treatment of such asset may be explained.

10. The licensee has furnished the details vide letter dated 21-8-2019. Thereafter the Commission has issued notices to the petitioner, KSEB Ltd, M/s.KEPIP and M/s KInfra for the hearing on the petition.

Public hearing on the petitions

11. Public hearing on the petitions was held at Conference Hall, KINFRA Park Office, Kakkanad on 25-11-2019. The licensee was represented by Adv.Joseph Kodiyanthara, Senior Advocate, Adv.P.G.Jayashankar, Adv.P.K.Reshma, Smt. D.S.Girija Devi, Chief Executive Officer, Sri. S.N.Ashok Kumar Manager (Finance) and other officers of the petitioner. Adv.Joseph Kodiyanthara and Adv.P.G.Jayashankar presented the details of the petitions and gave clarifications to the queries of the Commission. It was stated that KPUPL had revised the figures for some years for revenue from sale of power by adjusting the electricity duty, non-tariff income, depreciation, interest and finance charges, return on equity etc. Adv.Joseph Kodiyanthara stated that the stand of the Commission that interest charges are payable only if it is actually paid is reasonable, but the main request in the petition is that, since the terms of the loan availed from KINFRA have not been finalized by the Government as on date, the licensee may be allowed consequential relief as and when such terms are confirmed by the Government. He also stated that detailed written submission will be placed before the Commission to explain the requests of the petitioner.

12. KSEB Ltd furnished their written comments. The major points raised by the KSEB Ltd are given below.

    a. The petitions are not maintainable either under law or facts as it is not permissible in legal parlance to reopen settled issues involving same parties that too on expiry of a considerable period attracting the law of limitation.

    b. The present petitions are barred by the Law of Limitation. As per Section 3 of the Limitation Act, 1963 read with item no.137 to the Schedule therein the time limit prescribed for filing the present petitions is three years which has already been expired. Accordingly, the present petitions are liable to be dismissed as not maintainable.

    c. It is not justifiable to re-open the concluded issues such as Revenue from sale of power, other income, employee cost, R&M expenses, A&G expenses, depreciation and interest and finance charges and RoE in various years. Review, if any done may be limited to RoE, depreciation & interest and finance charges based on convincing evidence.

    d. Even though the effective date of transfer of asset as per agreements executed in 2016 & 2017 is 10.2.2010, the licensee states that the effect of same was brought into the books in the year 2017-18 to comply with the requirements of Companies Act 2013. The asset transfer effected as per book of account need only be taken for evaluation of equity, interest and finance charges and depreciation.Net prior period liability and deferred tax liability may be looked into based on proper records submitted by the licensee.

13. Though notice was issued to M/s Kinfra, no details or comments were furnished by Kinfra either supporting or objecting the petition.

14. The Commission as per the daily order dated 13-12-2019 allowed two weeks for the licensee to furnish additional documents, if any. In compliance to the Commission's directions vide order dated 13-12-2019, the licensee filed written submission only on 13-1-2020.

15. In the written submissions dated 13-1-2020, the licensee stated that the Commission after considering the issues involved, had, in the Order dated 6-12-2011 found that findings arrived therein are subject to the final decision on interest charges and rate base. According to the licensee, though the truing up applications were filed by KEPIP in which the Commission had issued the order dated 6-12-2011, the decisions are applicable to the KEPIP as well as KPUPL, since the licensee business is continuous. This being the case, there is a *locus standi* for KPUPL, the petitioner herein to agitate the issue relating to the truing up of accounts from 2004-05. Further, the Commission also issued notice to KEPIP for the hearing and it had formally appeared through Counsel and supported the contentions of KPUPL. The licensee further pointed out that the Order dated 6-12-2011 has been accepted by KEPIP and KSEB Ltd and neither of them challenged the same. However, it is relevant to note that the findings therein cannot be said to have attained finality particularly in view of the fact that the asset transfer scheme was not finalised nor approved by the Commission consequent to which the said order in essence remains only as a provisional one. The asset transfer agreement was finalised and executed on 7-9-2016 and presented before the Commission on 8-9-2016. Pending approval of the same the Commission passed orders dated 10-3-2019 and 20-3-2019, purportedly finalising the truing up applications for the year 2009-10 to 2014-15.

16. The licensee further stated that the Commission denied the interest charges and depreciation in the absence of documentary evidences on acquisition of assets and consideration thereof. According to the licensee, while passing the truing up orders for the year 2009-10, the Commission, proceeded without considering the asset transfer agreement submitted along with the application. The licensee filed review petition pointing out the patent errors that had crept in while issuing the order dated 10-3-2017. Being convinced of the above fact, the Commission permitted the petitioner to withdraw the review applications and asserted that truing up applications if preferred for the years 2004-05 to 2014-15 can be finalised based on the newly emerged facts and situation. According to the licensee, the Commission found that the earlier proceedings ought to be re-examined in the light of the asset transfer agreement and the supplementary agreements and decided to hear the truing up application *de novo*. Thus, the licensee argued that as such the applications before the Commission are effectively for a *de novo* truing up in the light of earlier orders and view of the submissions of the asset transfer agreements and its supplementary agreements.

17. According to the licensee, in the initial truing up applications for the years 2009-10 to 2014-15 on which the Commission had issued orders dated 10-3-2017 and 20-3-2017, the licensee had considered the depreciation on asset value of Rs.18.02 crore, which is the Written Down Value (WDV) of the fixed assets of KEPIP as per deprecation rates notified by KSERC. However, as per the asset transfer agreement of 7-9-2016, the assets were transferred at the depreciated book value of Rs.13.42 crore, adopting the WDV method of charging depreciation under Schedule XIV of the Companies Act 1956 on the date of transfer. KUPUL too had used the value of asset taken over at Rs.13.42 crore (as per Companies Act). Later, through the Supplementary Agreement dated 27-10-2017, the asset value was revised, considering the ASIDE grants, consumer contribution etc,. The revised asset value as per supplementary agreement of Rs. 10.53 crore was effected in the books for the year 2017-18. The licensee also stated that since the valuation of shares were to be done and the procedures as per the Companies Act were to be complied with, shares were issued to KINFRA in the year 2017-18 and accordingly the equity and the debt portions were accounted for in the books for the year 2017-18.

18. The petitioner further stated in the written submissions that in the petitions dated 30-1-2019 (ie., truing up petition from 2009-10) both agreements were given for the consideration of the Commission and for passing appropriate orders. The petitioner requested the Commission to approve the transfer scheme in terms of para 1.2 of the explanatory note.

19. Regarding the objections raised by KSEB Ltd, the petitioner stated that KSEB Ltd had specifically confined their submission to the aspect of *res judicata* alone, without expressing any objection whatsoever on the aspect of approval of asset transfer agreement. Hence, KSEB Ltd has clearly and without any demur agreed to the asset transfer agreement and not disputed the legality or otherwise of the said Agreement. According to the licensee, KSEB Ltd’s contention of *res judicata* is made without fully comprehending the fact that the present exercise is a *de novo* truing up process, which has been necessitated in view of the execution of the asset transfer agreement. In the present case, by the order dated 4-5-2018, the Commission has in fact opened the issue, the effect of which would be essentially for a re-determination or *de novo* determination of the facts and figures which by itself would not be an agitation of the same case for the second time. According to the petitioner, the present exercise is essentially for approval of the asset transfer agreement and the supplementary agreement, and consequent revision of the earlier figures. The petitioner further stated that the present application is not a review process, but a *de novo* process based on the new facts and circumstances which did not exist at the time of Original Application. The petitioner further maintained that in terms of order dated 6-12-2011 and 10-3-2017, the Commission has maintained that truing up can be finalised effectively only after the approval of asset transfer agreement, which exercise is sought to be done in the present proceedings. Regarding the argument of the application of limitation, the petitioner stated that the same is not

applicable to truing up. Based on these, the petitioner argued that the contentions of KSEB Ltd have no merit and hence are to be rejected

Analysis and decision of the Commission

20. The Commission has examined the averments in the petition, written submission of the petitioner and counter statement of KSEB Ltd. KPUPL has argued that they have *locus standi* in filing the petition for truing up from 2004-05, though the period is prior to the transfer of licence. According to the petitioner, only after the asset transfer agreement is approved, can the truing up be finalized. The petitioner further argued that the present petitions are for *de novo* trueing up, necessitated as per the orders of the Commission dated 6-12-2011 and 10-3-2017. Since there are patent errors in the said Orders, the Commission had allowed the petitioner to withdraw the review petitions, and to file fresh petitions.

21. KSEB Ltd has mainly contented that there cannot be any fresh truing up of accounts for the entire years since these orders have attained finality. In case any consideration is made it should be limited to the matters which were kept provisional in the order dated 6-12-2011. Considering these conflicting contentions, the Commission decided to address the contentious issues before taking up the examination of the truing up applications. In this context, it is useful to summarize the events chronologically to understand how the matters unfolded.

Chronology of Events

- Government of Kerala vide order G.O.(P). 18/2003/PD dated 8-5-2003 granted supply licence to Kinfra Export Promotion Industrial Parks (KEPIP) campus in Kakkanad for supplying electricity to the said area. Since this Order preceded the coming into effect of the Electricity Act, 2003 (Act), as per the provisions of the Act KEPIP was became a deemed distribution licensee.
- KSERC had as per petition LP-6 of 2007, issued Order dated 23-10-2008 extending the area of licence of KEPIP by including Kakkanad in Thrikkakara Grama Panchyath, Thrikkakkara North in Kalamassery Municipality, Puthussery Central Village in Puthussery Panchayath and Elappully I village in Elappully Grama Panchyath in Palakkad
- Pursuant to a Joint Venture Agreement between Kinfra and NTPC Electric Supply Company Limited (NESCL), a joint venture company namely Kinesco Power and Utilities Private Limited (KPUPL) with 50:50 share holding between Kinfra and NESCL was formed to takeover the power distribution business of industrial parks/SEZs and parks developed by KEPIP/Kinfra, where Kinfra was a licensee or becomes licensee from time to time.
- KSERC vide Order dated 30-11-2009 transferred the distribution licence from KEPIP to KPUPL in the areas of Kakkanad, Kalamassery and Palakkad.

- KEPIP and KPUPL had entered into an Agreement of Operations dated 27-1-2010 with effect from 1-2-2010, where the parties agreed to transfer the utilities and fixed assets of KEPIP at the depreciated book value as on 31-1-2010. This was to be effected through a separate instrument of transfer.
- The Commission had issued truing up orders dated 6-12-2011 for the years from 2004-05 to 2008-09. In the said Order, the Commission did not allow any interest on loans and allowed RoE provisionally. This was because the amount of equity in the business was inconclusive and the licensee could not provide sufficient details on assets created out of grants received from Government of India and out of contributions from consumers. Further, the details of loans from Kinfra was also inconclusive. The Commission directed the licensee to complete the transfer process and furnish the details.
- The licensee was further directed to file truing up petitions vide letter dated 3-8-2012 and vide letter dated 10-10-2012 for the years 2009-10, 2010-11 and 2012-13 immediately.
- The erstwhile licensee KEPIP filed the truing up petition for 2009-10 for the first 10 months vide letter dated 3-4-2013. The Commission pointed out the defects in the petition and notified the licensee to cure the defects in the petition vide letter dated 5-3-2013. However, even after repeated directions, the defects were not cured. Hence the Commission returned the petition with a direction to furnish the petition with necessary details vide letter dated 22-5-2014.
- The Commission vide Orders on the ARR& ERC for the years 2011-12 dated 3-1-2012 in OP 31/2011, ARR&ERC Order for the year 2012-13 dated 22-6-2012 in OP 12/2012, and the ARR & ERC order dated 15-5-2013 in OP 9 of 2013 for the year 2013-14, directed the licensee to submit statements regarding transfer deed, position of assets with necessary details on the transfer.
- Since the above Orders were not complied with, the Commission decided to initiate *suo motu* proceedings for non-compliance of conditions of licence and issued a Show Cause Notice dated 18-12-2013 to KPUPL under Section 19(3) of the Electricity Act 2003 asking as to why their licence for distribution of electricity should not be revoked. The Commission also pointed out certain lacunae in the petitions regarding filing of truing up petitions for 2009-10, failure to establish distribution system in Palakkad licence area and absence of long term PPA for purchase of power. After hearing the parties, the Commission in its order dated 5-6-2014, directed the parties viz., M/s KPUPL and M/s Kinfra, to submit a road map with time line for complying with the conditions of licence and directions of the Commission latest by 30-6-2014.
- Government of Kerala vide order no. G.O.(Rt) No. 756/2014/ID dated 7-7-2014 permitted Kinfra to withdraw from the Joint Venture Agreement dated 24-7-2008 and enter into a termination agreement for withdrawal from JV with NESCL.
- Kinfra vide letter dated 7-7-2014 furnished a road map as per the order dated 5-4-2014. The Commission vide letter dated 18-7-2014 agreed to the time line furnished by Kinfra.

- On 15-12-2015, Kinfra acquired the 50% share from NESCL, and KPUPL become a 100% subsidiary of Kinfra.
- The licensee filed the revised truing up petition for 2009-10, 2010-11, 2011-12, 2012-13 and 2014-15 vide letters dated 17-12-2014, 29-4-2016, 30-6-2016, 30-6-2016, and 20-7-2016. However, the applications could not be processed due to want of details of asset transfer. Thereafter the Commission issued a letter dated 29-8-2016 directing the licensee to furnish the details of asset transfer by 9-9-2016, failing which the applications for truing up will be rejected and appropriate actions will be taken.
- KPUPL informed that the signing of PPA for Kakkand and Palakkad vide letter dated 24-6-2016 - PPA for Kakkanad and Palakkad from 10-6-2016, Kalamassery from 4-8-2016.
- On 7-9-2016, Kinfra, KEPIP and KPUPL entered into an Asset transfer agreement for transferring the assets and for deciding the consideration thereon. The value of assets fixed was inclusive of consumer contributed assets and assets created out of grants. Asset transfer agreement dated 7-9-2016 was furnished on 8-9-2016. The Commission took up the truing up process for the year 2009-10 to 2014-15.
- The Commission had issued the truing up orders for the year 2009-10 on 10-3-2017 and from 2010-11 to 2014-15 on 20-3-2017 based on the documents furnished by the licensee including the asset transfer agreement dated 7-9-2016. In the said order, the Commission disallowed the interest and financing charges, depreciation and return on equity on the ground that "an asset transfer agreement with retrospective effect cannot confer any right on the licensee to claim depreciation, unless the licensee had actually incurred expenditure for acquisition or creation of asset in the corresponding years. Since the licensee could not furnish any details or documents to substantiate the expenditure incurred in acquisition of assets, depreciation cannot be allowed at present".
- After the issue of truing up orders, KPUPL after a lapse of 7 months, entered into a Supplementary Agreement dated 27-10-2017. According to KPUPL as per the petition, the Supplementary Agreement was entered into *'since the asset transfer agreement was found to be defective due to the inclusion of assets created out of consumer contribution and grant and also in the absence of the movement of consideration.'* Supplementary agreement substituted clause 3 (which mentions about the purchase price) and clause 7 (which describes the value of lease hold land) of the original asset transfer agreement. Salient points of the agreements are as given below:
    - First Asset transfer agreement executed on 07-09-2016 between KINFRA, KEPIP and KPUPL, for transfer of assets in Kakkanad ie., KEPIP area. (Gross transfer value Rs.1424.08 lakhs)
    - Asset transfer agreement dated 07-09-2016 executed between KINFRA and KPUPL for transfer of assets in Kalamassery area (Gross transfer value Rs.104.40 lakh)
    - Supplementary Asset transfer agreement dated 27-10-2017 executed between KINFRA and KPUPL for amending the clause 3 and 7 of the agreement no.1 cited above. (revised the transfer value to Rs.805.14 lakh, from Rs.1424.08 lakh and deducted the grants and value of assets received from consumers).

- On 16-11-2017 (after curing defects) KPUPL submitted the review petitions on the truing up of accounts for the years 2009-10 to 2014-15 based on the supplementary asset transfer agreement dated 27-10-2017 stating that the defects pointed out in the truing up order for 2009-10 were rectified.
- While processing the said review petitions, M/s.KPUPL vide letter dated 06-02-2018 requested the Commission for withdrawing the review petitions filed on the truing up orders for the financial years 2009-10 to 2014-15 and also seeking permission from to re-submit petitions for truing up of accounts for the financial years from 2004-05 to 2008-09 for making up the deficiencies and to sort out the regulatory surplus of Rs.1413.01 lakh upto 31-3-2008 determined by the Commission.
- Based on the submission of the licensee, the Commission, vide order dated 4-5-2018 dismissed the review petitions as withdrawn. Regarding the request for filing new petitions for truing up, the Commission categorically informed that if such petitions are filed the same shall be considered on merits as per law.
- The present petitions are filed thereafter, vide letters dated 15-1-2019 for truing up of accounts for the year 2004-05 to 2009-10 and vide letter dated 31-1-2019 for truing up of accounts for 2010-11 to 2016-17, thereby revising the figures and incorporating assets additions/adjustments and incorporating value of lease hold land etc.,
- The clarifications and further details on the petitions were furnished on 22-8-2019, 13-1-2020 and on 20-2-2020.

22. From the above, it can be seen that the though the agreement for transfer of operations was entered into in 2010, the formalities were completed only in the year 2017 and that too after the Commission initiated proceedings for revocation of licence for breach of licence conditions.

23. The Commission has examined the petition and the supporting details furnished by the licensee and the observations of KSEB Ltd. After examining the matter in detail the following issues are framed for arriving at a decision before examining the truing up petitions.

Issues to be considered:

a) Whether KPUPL has any *locus standi* in filing the petitions from 2004-05 to 2014-15 ?
b) Whether the Order dated 6-12-2011 for 2004-05 to 2008-09 and the Order dated 20-3-2017 are to be considered as final ?
c) Whether, as argued by the petitioner, a *de novo* consideration of all issues in the petitions is possible ?
d) Whether the Commission should consider approving the Assets Transfer Agreements entered into by the parties?

Each of the above issue is dealt with in detail below:

a) Whether KPUPL has any locus standi in filing the petitions from 2004-05 to 2014-15 ?

24. The first issue the Commission considered is whether, the licensee, KPUPL has any *locus standi* in filing the petitions pertaining to the periods prior to the date of transfer. The licensee has argued that since the licensee business is a continuous one, by applying the principle of on-going concern, the new licensee ie., the present petitioner KPUPL has *locus standi* in filing the petitions for the years 2004-05 to 2014-15.

25. The Commission considered the issue based on the licensee's submissions and counterpoints raised by KSEB Ltd. From the facts brought to record, it is true that the licensee has been continuing with the power distribution business continuously, in spite of the corporate changes in its ownership. The Commission further noted that based on a petition filed by M/s KPUPL, the Commission had transferred the licence of the petitioner to the new licensee who continued with the same business. Further, as argued by the petitioner, since the licence business is a going concern or a continuous one.

26. In a similar matter pertaining to M/s KDHPCL (*Appeal No.93 of 2011, KDPHCL Vs KSERC*), Hon. APTEL in its Order dated 27-4-2012 had upheld the decision of the Commission permitting the truing up of accounts for the period prior to the date of transfer filed by M/s KDPHCL. Hon. APTEL has held as follows:

> *"12. The Commission has rightly observed that the first Appellant has taken over the distribution business as a going concern from the second appellant and all the assets, liabilities, interest, rights and obligations stood transferred to the first Appellant and when this is done the responsibility lay upon the first Appellant to carry on the duties and activities consequential to the transfer of business of the second appellant."*

27. However, the pertinent question that arises is as to how far in time such issues can be considered. The Commission considered this issue based on the facts available and has concluded that the answer to these questions depends on the issue being considered and the facts associated with it. ***After considering the above issue, submissions and objections, the Commission is of the view that the petitioner has a locus standi in filing the petitions for periods prior to or after the transfer, provided such issues were either left open or decided by the Commission provisionally.***

b) Whether the Order dated 6-12-2011 for 2004-05 to 2008-09 and the Orders dated 20-3-2017 are to be considered to be final ?

28. The issue raised here is whether the truing up of accounts for the years 2004-05 to 2014-15 is to be considered as final*.* The licensee has contented that all the matters of truing

up from 2004-05 to 2014-15 as mentioned in the petitions are to be treated afresh and hence, the matters needed a *de novo* consideration.

29. To this, KSEB Ltd has argued that the principle of *res judicata* is applicable to this issue. This is because of the fact that the matters prior to the date of transfer has already attained finality and there is no challenge to the said Orders. KSEB Ltd has further objected to the reasoning given by the petitioner and argued that the matter is barred by limitation and may not be re-opened. KSEB Ltd pointed out that the Commission has approved the truing up order for the years from 2004-05 to 2008-09 on 6-12-2011. The petitioner has raised the issue after a long delay of eight years and the petitioner cannot agitate on the matters which are already concluded. KSEB Ltd stated that such decided matters cannot be re-opened and fresh matters if any only are to be considered and should be limited to the subjects which were kept provisional. In support of their stand, KSEB Ltd pointed out that the principle of *res judicata* is applicable in the present case and the same matter cannot be agitated again and again in the same forum. Hence, KSEB Ltd argued that the petition may not be entertained and if entertained, the scope may be limited to the items which were kept provisional by the Commission.

30. In their response to KSEB Ltd, contentions, the licensee stated that the principle of *res judicata* is not applicable to the truing up process. According to the petitioner, KPUPL is the present licence holder for the power distribution in the parks maintained by M/s Kinfra Export Promotion Industrial Park Limited. In the said parks, M/s KEPIP was the erstwhile licensee and this licence has already been transferred to the licensee by the Commission. According to the petitioner, the present petition is only for giving finality to the true up of the licensed operations for the years 2004-05 to 2014-15 as some of the issues were left undecided or treated as provisional by the Commission in the earlier orders.

31. The Commission examined the contentions of the petitioner and KSEB Ltd in this regard. It is a fact that the petitioner M/s.KPUPL is the licence holder for the distribution of electricity in KINFRA Export Promotion Industrial Park, Kakkanad, KINFRA Hi-Tech Park Kalamassery, and KINFRA Integrated Industrial and Textile Park Palakkad. The original distribution licence vested with M/s KEPIP for supplying electricity at Kakkanad which was granted by Government of Kerala vide G.O.(P) No.18/2003 dated 8-5-2001. With the coming into effect of the Electricity Act, 2003, KEPIP became a “deemed distribution licensee” of the Commission. Thereafter based on the petition of M/s KEPIP for extension of area of supply to Kakkanad (extension), Kalamasserry and Palakkad, the Commission extended the area of supply vide order No.KSERC/II/LP-6/2007 dated 23-10-2008.

32. Thereafter, based on the approval of the Government of Kerala, a new joint venture company namely M/s KINESCO Power and Utilities Private Limited (KPUPL) was incorporated on 17-9-2008 with 50% equity holding each by KINFRA and NTPC Electric Supply Company Limited (NESCL) to take over the electricity distribution business in the

Parks of KINFRA. Accordingly, the licence for distribution of electricity of M/s KEPIP was transferred after due process to the newly formed company M/s KPUPL as per the Order dated 30-11-2009 of the Commission. M/s KPUPL started licensed operations from 1-2-2010 based on an A*greement for Operations* dated 27-1-2010 with M/s KEPIP. Since the business between the joint venture partners did not proceed as anticipated, based on the Government order dated 7-7-2014, KINFRA withdrew from the joint venture agreement with NESCL and M/s KPUPL become 100% subsidiary of KINFRA.

33. Though M/s KPUPL had taken over the operational control of the Assets on 2010, the final asset transfer and the consideration for the asset transfer were not finalized at that time. Since the transfer process was getting unduly delayed, the Commission directed the licensee to complete the transfer process and report back to the Commission vide orders on ARR&ERC for 2011-12 and 2012-13. The licensee however did not comply with the Commission's directions to submit the statement regarding transfer deed, position of assets etc., the Commission under Section 19(3) of the Electricity Act 2003 issued notice dated 18-12-2013 for revocation of distribution licence. Thereafter, the Commission in their order dated 5-6-2014 directed the licensee to submit a roadmap with timelines for complying with the conditions of licence and directives of the Commission.

34. In compliance to the directions of the Commission, the licensee finally entered into an asset transfer agreement with M/s KEPIP and KINFRA on 7-9-2016 for the transfer of assets from M/s KEPIP, and with KINFRA for transfer of Assets from Kalamassery Licence Area. The said agreement was modified with a supplementary agreement dated 27-10-2017. The licensee further argued in the written submissions, that considering the orders dated 6-12-2011 and 4-5-2018, the Commission has allowed *de novo* truing up of accounts for the year 2004-05 to 2014-15.

35. The Commission considered the above facts. In this context, it is relevant to note that the Commission in its order dated 6-12-2011 had approved the truing up of accounts of M/s KEPIP for 2004-05 to 2008-09. In the said Order, the Commission after duly examining the accounts of the licensed business of KEPIP had ***left open the issue of interest on loans, whereas the issue of ROE was decided on provisional basis. This was considering the fact that the then licensee KEPIP, could not furnish details on the actual loan portfolio. Further, the assets of KEPIP was found to be funded out of grants from Government of India and ASIDE scheme (Assistance to States for Development of Export Infrastructure and Allied Activities) as revealed from the audited accounts of consolidated business of KEPIP*** .

36. Regarding interest charges, the Commission after examining the details had observed in the order dated 6-12-2011 that

> '*in the above circumstances, the Commission is not in a position to reasonably ascertain the loan and interest commitment of the licensee*".

Accordingly, the matter was deferred and no interest charges were admitted.

37. Regarding Return on Equity, the Commission noted in the said Order that :

> "*… the exact amount of equity in the business cannot be ascertained and the licensee has stated that the business is developed from loan from Kinfra, which was sourced from Government of Kerala. In the amount of actual equity invested in the electricity business the Commission is not in a position to allow any return. The Commission proposes to conduct a study to ascertain the possible level of equity/rate base for allowing return for the licensees. Till such time, the Commission is of the view that certain provision for return is needed for sustaining the business in a continuous manner. Accordingly, the Commission provisionally allows Rs.10 lakh for each of the years considered for truing up*."

38. ***In the said order the Commission also directed the licensee to finalize the transfer process and to submit the transfer scheme to the Commission***. From the above facts, it is clear that in the said order, the regulatory surplus of Rs.1375.07 lakhs arrived at during the truing up process was subject to the final decision on interest charges and RoE. ***Hence, in the Order dated 6-12-2011, the matter regarding interest charges was left open. Further, the ROE was considered only on provisional basis. Hence, there is no bar in considering the same in the present proceedings. In the case of the matters pertaining to truing up for 2009-10 to 2014-15, the issue is in detail examined along with the next issue.***

39. Before examining the next issue, it is pertinent to consider the following arguments made by the petitioner. The petitioner maintained that in terms of order dated 6-12-2011 and 10-3-2017, the Commission has decided that truing up can be finalised effectively only after the approval of asset transfer agreement, which exercise is sought to be done in the present proceedings. ***However, such contentions are not correct and the Commission does not agree with this view.*** The issues to be decided before and after the asset transfer are different. The approval of agreements and the value of assets transferred etc., are not a determining factor prior to the date of transfer. Such issues are relevant only after the transfer of licence/business. Further, the pertinent issues which were not finalized in the order dated 6-12-2011 and 10-3-2017/20-3-2017 are different.

40. The Commission notes that in the first order ie., the Order dated 6-12-2011, the Commission was constrained to disallow the interest charges and allow RoE only on provisional basis. Regarding the RoE issue, the Commission could not finalise the actual equity deployed by the licensee, since the source of funding of assets could not be provided by the licensee. Further, the erstwhile licensee has not recorded appropriate

entries in their books regarding the accounting of the grants received from Government and the assets taken over from the consumers. Hence there was ambiguity in the funding of Assets. Under such circumstances, the Commission had no alternative but to defer the matter of RoE till the erstwhile licensee furnished complete details.

41. As far as interest on loans is concerned, the Commission notes that during this period, the ambiguity regarding the source of funds did not allow the Commission to arrive at any reliable figure on the outstanding loan amount. Further, the licensee's accounts did not indicate any outstanding loan portfolio during this period and therefore the Commission did not provide any interest on this account during the truing up of accounts for this period.

42. The Commission also notes that while issuing orders pertaining to truing up of accounts for the year 2009-10 to 2014-15 ie., post transfer of licence to the JV, the main issue was the non-finalisation of the value of assets transferred to the newly formed JV which was further compounded by the earlier ambiguity in asset values. ***Thus, the contention of the petitioner that approval of asset transfer agreements was a precondition for truing up is rejected by the Commission in the case of truing up prior to transfer of licence.***

c)Whether, as argued by the petitioner, a de novo consideration of all issues in the petitions are possible?

43. The next pertinent issue considered by the Commission is whether the claim of the petitioner for *de novo* consideration of entire truing up can be allowed. The petitioner has requested in the petition that *de novo* consideration of truing up is to be considered for all the years from 2004-05 to 2014-15. In this regard, KSEB Ltd had objected to the claim and stated that even if such matters are to be considered, it should be limited only to the issues left provisional in the orders of the Commission.

44. According to the licensee, while passing the truing up orders for the year 2009-10, the Commission, proceeded without considering the asset transfer agreement submitted along with the application. The licensee stated that review petitions were filed pointing out the patent errors that had crept in while issuing the order dated 10-3-2017. According to the licensee, being convinced of the above fact, the Commission permitted the petitioner to withdraw the review applications and asserted that truing up applications if preferred for the years 2004-05 to 2014-15 can be finalized based on the newly emerged facts and situation. According to the licensee, the Commission was convinced that the earlier proceedings ought to be re-examined in the light of the asset transfer agreement and the supplementary agreements and hence decided to hear the truing up application *de novo*. Hence, the licensee argued that as such the applications before the Commission are for a *de novo* truing up in the light of earlier orders and submissions of the asset transfer agreements and its supplementary agreements.

45. The Commission has duly examined the contentions of the licensee based on evidence. It is a fact that the Commission had permitted the withdrawal of the petitions for the review of the truing up filed by the licensee based on their request. ***Further, as seen from the Commission's Order dated 04.05.2018, there were no preconditions attached to the said Order***. The basis on which the licensee concluded that the Commission was convinced of the apparent error on the part of the Commission in truing up of account for 2009-10 to 2014-15 is a figment of imagination. It is amply clear from the Order dated 04-05-2018, the Commission did not deliberate on the merits of the said review petitions filed by the licensee. Instead, the Commission permitted the withdrawal of the petitions based on the request of the licensee.

46. Further, the Commission had also clearly mentioned in that Order that any resubmission of fresh petitions for truing up if filed, shall be considered on its merits. It is evident from the Commission's Order and events thereafter that the withdrawal of review petitions and subsequent filing of the present petitions are due to the errors in the agreements, as admitted by the licensee in the present petitions. Since the contention of the petitioner is contrary to the facts, the Commission rejects the above contentions of the petitioner. ***Accordingly, the contentions of the licensee regarding de novo consideration of the petitions are devoid of any merits and hence rejected.***

47. The licensee has claimed in the written submission that the asset transfer agreement finalised and executed on 7-9-2016, was presented before the Commission on 8-9-2016. Pending approval of the same, the Commission passed orders, purportedly finalising the truing up applications. A perusal of the relevant records however reveal a different story. It is clear from the petitioner's submissions that the asset transfer agreement was not in line with the Commission's directions regarding the accounting of Government grants and assets created out of consumer contribution.

48. The licensee filed the revised truing up petition for 2009-10 vide letter dated 17-12-2014, truing up for the year 2010-11 vide letter dated 29-4-2016, for the year 2011-12 vide letter dated 30-6-2016, for the year 2012-13 vide letter dated 30-6-2016, and for the year 2013-14 vide letter dated 20-7-2016. However, the Commission could not process these petitions since the licensee did not furnish the details of asset transfer. Under such circumstance, the Commission issued a letter dated 29-8-2016 directing the licensee to furnish the details of asset transfer by 9-9-2016. The Commission also warned the licensee that failure to comply with the Commission's Orders will result in rejection of the licensee's truing up petition and appropriate actions will be taken.

49. The Commission notes that on 7-9-2016, Kinfra, KEPIP and KPUPL had entered into an Asset Transfer Agreement for transferring the assets and for deciding the consideration thereon. A copy of this Agreement was made available to the Commission on 08-09-2016. However, the value of fixed assets finalized included assets created from consumer

contribution and from Grants. The licensee had furnished the asset transfer agreement after a long delay and after initiating the steps for revocation of licence under section 19(3) of the Electricity Act by the Commission. It is also a fact that the petitioner did not file any petition for approval of the asset transfer agreements. The Commission took up the truing up process for the year 2009-10 to 2014-15 and issued the orders dated 10-3-2017 and 20-3-2017, and while doing so, the Agreement dated 7-9-2016 was considered by the Commission.

50. In this regard, the Commission in the order dated 10-3-2017 has stated clearly as follows:

> *29. The Commission has examined the details furnished by the licensee. Though the Commission had directed to furnish the details of asset transfer agreement and the value of assets transferred, the licensee could provide the details only on 7-9-2016. The licensee could not produce any materials to substantiate the investment made or asset additions during the year nor details of settlement of purchase consideration. Further, as per the details given by the licensee, it is understood that agreement of operations with Kinfra for the management of the distribution business.*
>
> *30. In the distribution business, distribution assets are financed by sourcing loans availed from financial institutions, equity contribution of the shareholders or from the grants received from Government or any other institution or consumers. Depreciation cannot be allowed for the assets acquired by way of grants or for the assets created out of grants or contributions received from the Government or any other institution or consumers. In the present context, the crucial question is, whether or not the licensee had actually incurred any expenditure towards creation or acquisition of the capital asset in the financial year under consideration by sourcing funds from third parties which involved a cost to the licensee. Only if the licensee has actually incurred any expenditure for acquisition or creation of assets in the corresponding financial year, depreciation can be allowed. An asset transfer agreement with retrospective effect cannot confer any right on the licensee to claim depreciation, unless the licensee had actually incurred expenditure for acquisition or creation of asset in the corresponding years. Since the licensee could not furnish any details or documents to substantiate the expenditure incurred in acquisition of assets, depreciation cannot be allowed at present.*

51. In this context, it is also pertinent to point out that the licensee has admitted that there were defects in the asset transfer agreement dated 7-9-2016. The extracts of the statement of the licensee given in the present petition for the year 2014-15 is quoted below: :

> *"In the meantime, the company had filed the true up petitions for the year 2014-15 before the Hon. Commission on 26-10-2016. However, the Hon. Commission had not processed the true up petitions filed by the Company in the absence of asset transfer agreement which could be entered into on 7-9-2016. The process of joint venture termination could be materialised on 15-12-2015 and the operations were taken over by the new management from 1-1-2016. Again the asset transfer agreement was found defective due to the inclusion of assets created out of*

consumer contribution and grant and also in the absence of the movement of consideration. Through the supplementary agreement dated 17-10-2017 the defects were rectified"

……………………

……………………

The Commission issued orders on truing up of accounts for 2014-15 on 20-3-2017, before executing the supplementary agreement rectifying the defects. The Commission had disapproved majority of expenditure incurred by the Company such as RoE, interest and financing charges, depreciation etc., due to defects in the initial asset transfer agreement.

Since the company had executed the supplementary Asset transfer Agreement on 27-10-2017 rectifying the defects in the initial agreement, the company is hereby submitting the truing up petition afresh for the year 2014-15 for the kind consideration and approval of the Commission"

52. Similar averments were made in the petitions for 2010-11, 2011-12, 2012-13 and 2013-14. ***Thus, it is clear that the licensee themselves have admitted that the asset transfer agreement dated 7-9-2016 was faulty***.

53. The petitioner, further argued that that the findings in the Order dated 6-12-2011 have not attained finality since the Commission did not approve the asset transfer agreement. Hence, the said order in essence is only a provisional one. Such contentions by the licensee however are not aligned with facts, since at the time of the issue of the Order dated 6-12-2011 there existed no asset transfer agreement. The agreement that existed at that time was the Agreement for Operations, which did not provide any asset value for transfer. Even though the Agreement for Operations was entered into in 2010, there was no progress on the final transfer of assets. The Commission further note that even the final agreement was entered into only on 27-10-2017, ie., after a lapse of 7 years. From these facts, the circumstances which led the Commission to direct the licensee vide Order dated 6-12-2011 to complete the transfer process and furnish the necessary details becomes clear.

54. According to the petitioner, the asset transfer agreement finalised and executed on 7-9-2016, was presented before the Commission on 8-9-2016. Pending approval of the same the Commission passed orders finalising the truing up applications for the period from 2009-10 onwards. ***In this context, the Commission would like to put the records straight***. The Commission reiterates that consideration of an Agreement finalized in 2016 has no relevance for finalization of the truing up of accounts for the year prior to date of transfer ie., from 2004-05 to 2008-09. As mentioned earlier, non-determination of matters (interest charges and RoE) prior to date of transfer was on account of non-furnishing of the relevant details regarding the source of funding of its assets by the petitioner in their truing up petition.

55. The argument of the petitioner that during the pendency of the asset transfer agreements executed on 7-9-2016, before the Commission, the truing up petitions were finalised from 2009-10 onwards is also incorrect. The facts indicate that the truing up petitions for the year 2009-10 was filed by the petitioner on 18-12-2014, when there was no asset transfer agreement. It is also to be noted that, the licensee has modified the assets transfer agreement on 27-6-2017, which is even subsequent to the issue of truing up order for 2009-10 on 10-3-2017. This clearly reveals that even when the petitions for truing up was filed for the period subsequent to the transfer assets, no finalised asset transfer agreements were in place. ***In view of the above facts, the contention of the petitioner on this issue is rejected.***

56. From the foregoing details it is clear that the Commission in the Order dated 6-12-2011 had no option but to allow RoE on a provisional basis in the absence of details on the fixed assets and its funding. The interest charges claimed could also not be approved on this account and considering the fact that there was no outstanding loan portfolio in the licensee's accounts. Instead the Commission deferred the interest charges till reliable data regarding the source of funds were made available by the licensee. The Commission therefore has concluded that ***except on the financing costs (Interest charges and RoE), all other items on the ARR&ERC for 2004-05 to 2008-09 become final. It is also a fact that the licensee has not raised any dispute on these figures so far. Hence, the Commission shall not reconsider any other item as petitioned by the licensee since such an effort is neither necessary nor allowable as per the extant laws.***

57. Hence the Commission is limiting the scope of review on the truing up for the years 2004-05 to 2008-09 only on the items kept as provisional in the order dated 6-12-2011. Thus, the primary task undertaken in the present procedure is to finalise the value of fixed assets for the years from 2004-05 to 2008-09 and its sources of funding. Any change in the values of the assets and its nature of funding compared to the original orders, is being considered in this Order and corresponding adjustments or re-determination on interest changes, depreciation and RoE, if required will be taken up. In order to examine the financing charges for each year, the asset addition details have also to be finalized.

58. Thus, the Commission has already taken a position that there are some issues which were kept provisional in the Order dated 6-12-2011. As admitted by the petitioner, there is no challenge on all or any matters decided in the order dated 6-12-2011 and the hence except for the matters left provisional, all issues attained finality for the years from 2004-05 to 2008-09. Thus, the argument of the petitioner that there is *de novo* truing up of accounts for the years from 2004-05 to 2008-09 is cannot be admitted. ***However, for the period subsequent to 2008-09, considering the facts that the source of funding of assets are inconclusive and that asset transfer process was incomplete, the argument that de novo truing up is to be undertaken can be considered, as the***

finalization of asset values are necessary for finalizing the truing up. However, the Commission in this context hasten to add that such situation was created and prolonged by the licensee's delay in completion of transfer process.

d)Whether the Commission should consider approving the assets transfer agreements entered into by the parties

59. The licensee in the written submission has mentioned of approval of asset transfer agreement though there is no specific prayers for approval of the agreement. The Commission has examined the matter in detail. Though the licensee has not made any specific prayer for the approval of the asset transfer agreement, in the petition for 2010-11 to 2014-15, as part of the grounds for re-submission of truing up petitions the licensee has stated as follows:

> *" 2. The Hon'ble Commission had also directed in the Order dated 6-12-2011 that the transfer process between KEPIP and KPUPL shall be finalised immediately and transfer scheme with complete details shall be filed before the Commission for approval. Due to the failure of the joint venture for the distribution business between Kinfra and NESCL, and on approval of the termination of the JV by Government of Kerala the process of finalising the asset transfer scheme got delayed till 7-9-2016 and submitted to the Hon'ble Commission for approval on 8-9-2016. However, to bring the value of the assets in line with the norms of the Hon'ble Commission Supplementary Agreements dated 27-10-2017 were signed between Kinfra/KEPIP and KPUPL. Hence there occurred a delay in compliance on this matter. Hon'ble Commission may kindly condone the delay and approve the transfer scheme"*

60. ***Considering the above request, the Commission has perused the agreements and examined the matter. The Commission's conclusions and directions are in this regard is given in subsequent parts of this Order.***

61. The petitioner has stated that the effective date of transfer of asset as per agreements executed in 2016 & 2017 is 10.2.2010. However, the effect of the first Agreement was brought into the licensee's books in the year 2017-18 to comply with the requirements of Companies Act 2013. The revised asset value as per supplementary agreement of 2017 was effected in the licensee's books for the year 2016-17. The licensee further stated that since the valuation of shares were to be ascertained and the procedures as per the Companies Act were to be complied with, shares were issued to KINFRA in the year 2017-18 and accordingly, the equity and the debt portions were accounted for in the books for the year 2017-18.

62. The Commission has examined the matter. The present books of accounts of the licensee reflects the Operational Agreements and the Asset Transfer Agreements dated 7-9-2016. The licensee states that a supplementary agreement was entered into for correcting the asset values and deciding the transfer price. The corresponding changes will be effected in the books only in the year 2017-18. The Commission notes that the licensee's procedure for arriving at the value and amount of equity and loan component is not as per the regulatory norms. This is because the assets are shown to be entirely created using loans and hence cannot be said to have been funded out of equity. However, the licensee may proceed to restate the books as required under the statute. However, for the purpose of truing up, the values as per the regulatory principles in the respective years are used irrespective of whether the same is reflected in the books of accounts or not.

63. Based on the above principle and for the sake of convenience, the entire petitions are dealt with in this Order in three parts:

    a. the first part deals with matters which were kept provisional in the Commission's Order dated 6-12-2011 for the years from 2004-05 to 2008-09.
    b. The second part deals with *de novo* truing up for the year 2009-10 ie, the year of transfer of assets and the process of approval of asset transfer agreements
    c. the third part deals with truing up for the rest of the years ie., from 2010-11 to 2014-15

64. Each of the above parts is examined in the following paragraphs.

Part – I

65. In the present petitions for 2004-05 to 2008-09, the licensee has revised many items of the ARR&ERC. A comparison of the revised ARR&ERC and the approved values as per the Commission's Order dated 6-12-2011 are given below:

Table 1

Comparison of approved and revised values for the ARR&ERC from 2004-05 to 2009-10

	2004-05			2005-06			2006-07		
	Actual[1]	Approved[2]	Revised[3]	Actual[1]	Approved[2]	Revised[3]	Actual[1]	Approved[2]	Revised[3]
	(Rs. Lakh)	(Rs. Lakh)	(Rs. Lakh)	(Rs. Lakh)	(Rs. Lakh)	(Rs. Lakh)	(Rs. Lakh)	(Rs. Lakh)	(Rs. Lakh)
Revenue from sale of power	651.44	665.06	650.99	1,241.96	1,241.96	1,241.96	1,350.48	1,350.48	1,310.68
Electricity Duty (Sec-4)	18.58		18.58	38.46		38.46	39.80		39.80
Less Electricity Duty	-29.22		-18.58	-38.46		-38.46	-39.80		-39.80
Service connection charges	24.26		24.71	25.72	25.72	25.72	4.55	4.55	-
Other Charges						13.42			
Total	**665.06**	**665.06**	**675.70**	**1,267.68**	**1,267.68**	**1,281.10**	**1,355.03**	**1,355.03**	**1,310.68**
Non-Tariff Income	2.57	3.21		60.45	70.43	9.64	86.60	103.06	26.91
Supervision charges			3.40						

Miscellaneous receipts			0.31			1.00			
Total	**667.63**	**668.27**	**679.41**	**1,328.13**	**1,338.11**	**1,291.74**	**1,441.63**	**1,458.09**	**1,337.59**
Power Purchase Cost	527.66	503.83	527.66	1,042.70	1,023.98	1,023.98	1,105.09	1,046.40	1,046.40
R&M Expenses	22.92	22.92	22.92	24.84	24.84	24.84	13.28	13.28	13.28
Employee cost	12.15	12.15	12.15	10.07	10.07	10.07	17.88	17.88	17.88
A&G expenses	13.30	13.30	23.94	27.16	27.16	45.88	33.86	33.86	52.75
Depreciation	23.65	23.65	23.65	28.24	28.24	28.24	29.95	29.95	29.95
Interest charges	50.78		79.91	133.97		83.42	119.78		83.42
RoE		10.00	10.00		10.00	10.00		10.00	10.00
Prior period charges/credits			-20.82	-11.20	-11.20	-0.33	-46.76	-46.76	
Deferred tax liability			36.00	3.56			26.11		
Total ARR	**650.46**	**585.85**	**715.41**	**1,259.34**	**1,113.09**	**1,226.10**	**1,299.19**	**1,104.61**	**1,253.68**
Surplus/Gap	**17.17**	**82.42**	**-36.00**	**68.79**	**225.02**	**65.64**	**142.44**	**353.48**	**83.91**

1- Actual as per the original petition for truing up
2- Approved by the Commission vide order dated 6-12-2011
3- Revised figures as per the present petitions

Table 1 (cont..)
Comparison of approved and revised values for the ARR&ERC from 2004-05 to 2009-10

	2007-08			2008-09		
	Actual[1]	Approved[2]	Revised[3]	Actual[1]	Approved[2]	Revised[3]
	(Rs. Lakh)	(Rs. Lakh)	(Rs. Lakh)	(Rs. Lakh)	(Rs. Lakh)	(Rs. Lakh)
Revenue from sale of power	1,242.36	1,242.36	1,201.75	1,536.86	1,536.86	1,492.47
Electricity Duty (Sec-4)			40.61			45.76
Less Electricity Duty			-40.61			-45.76
Service connection charges	10.35	10.35	10.35	11.63	11.63	11.63
Other Charges				193.46	193.46	193.46
Total	**1,252.71**	**1,252.71**	**1,212.10**	**1,741.95**	**1,741.95**	**1,697.56**
Non-Tariff Income	83.13	90.14	31.27	32.68	36.53	49.51
Supervision charges			55.00			17.24
Miscellaneous receipts			13.17			0.05
Total	**1,335.84**	**1,342.85**	**1,311.54**	**1,774.63**	**1,778.48**	**1,764.36**
Power Purchase Cost	995.84	938.89	931.41	1,266.58	1,200.83	1,200.83
R&M Expenses	15.44	15.44	15.44	20.58	20.58	20.58
Employee cost	12.07	12.07	12.07	14.80	14.80	14.80
A&G expenses	35.27	35.27	51.62	40.28	40.28	60.27
Depreciation	30.87	30.87	39.76	28.50	28.50	40.26
Interest charges	87.20		83.42	68.00		83.42
RoE		10.00	10.00		10.00	10.00
Prior period charges/credits	-12.97	-12.97	0.02	-24.68	24.68	
Deferred tax liability	9.39			73.26		
Total ARR	**1,173.11**	**1,029.57**	**1,143.74**	**1,487.32**	**1,290.31**	**1,430.16**
Surplus/Gap	**162.73**	**313.28**	**167.80**	**237.95**	**438.81**	**334.20**

1- Actual as per the original petition for truing up
2- Approved by the Commission vide order dated 6-12-2011
3- Revised figures as per the present petitions

66. As shown above, the licensee except during 2004-05 and 2005-06, has revised downwards, the Revenue figures other than from sale of power. Non-tariff income has been revised after excluding interest on fixed deposits. Based on the revised fixed assets, interest on loans are claimed on a normative basis. The licensee claimed that since equity is not identifiable from 2004-05 to 2008-09, notional RoE of Rs 10 lakhs allowed earlier is retained in the revised petitions.

67. In the case of interest charges, the licensee has claimed that the investments by KINFRA in erstwhile licensee KEPIP was received as loan by KINFRA from Government of Kerala. Since Government of Kerala has been providing investment loan to KINFRA at an annual interest rate of 11.5%, the same rate of interest has been used for accounting interest charges. In order to support the claim, the licensee furnished the Government Order No.G.O.(t) No.64/99/ID dated 27-1-1999**,** which essentially examines the treatment of the capital grants given by Govt. of Kerala to Kinfra. In the said Order, Government has ordered that out of the total assistance of Rs.86.371 crore given to Kinfra from 1993-94, the amount equal to the grant received by Kinfra from the Government of India will be treated as matching grant of Government of Kerala to Kinfra and the balance amount will be treated as loan. It is also mentioned in the order that the terms and conditions of the loan will be decided separately. ***Hence, the Commission cannot allow any interest on loans till finalization of the interest rate by the Government of Kerala. Moreover, the licensee has not provided any proof of servicing of loans or repayment of loan principal to the Government of Kerala to support their claim of interest charges.***

Funding of Fixed Assets:

68. The Commission in their Order dated 6-12-2011 had observed that the consolidated accounts of M/s KEPIP, included grants from Government of India, ASIDE and the consumer contribution as sources to fund the licensee's assets. In the absence of specific details regarding the sources of funding for the segregated accounts of distribution business, the Commission was constrained to observe that it was not in a position to ascertain the source of funds and its mix. Hence no interest charges were allowed and RoE was allowed only on provisional basis. However, in the present filing, the licensee had furnished the revised balance sheet for the distribution business for the years from 2004-05 onwards. As per the details, the gross block and cumulative depreciation booked is as shown below:

Table 2

Gross Fixed Assets and Depreciation as per Petition (Form C)

	31-03-2004	31-03-2005	31-03-2006	31-03-2007	31-03-2008	31-03-2009
	Rs.lakh	Rs.lakh	Rs.lakh	Rs.lakh	Rs.lakh	Rs.lakh
Fixed Assets						
a) Gross block	664.23	729.18	839.41	870.55	1,565.90	2,232.97
b) Less accumulated Depreciation	7.30	30.95	59.19	85.88	141.08	220.29
c) Net Block	**656.93**	**698.23**	**780.22**	**784.67**	**1,424.82**	**2,012.68**

69. As per the details furnished in Form U, the asset group wise details are furnished below:

Table 3
Details of GFA as per the petitions

	2004-05	**2005-06**	**2006-07**	**2007-08**	**2008-09**
	Rs.lakh	Rs.lakh	Rs.lakh	Rs.lakh	Rs.lakh
Land & Rights	61.20	61.20	61.20	61.20	61.20
Substation	646.09	659.51	651.08	651.08	651.08
11kV works	15.50	15.50	15.50	697.30	1,362.78
Metering equipments	6.39	6.39	30.37	38.57	38.57
Others		96.81	112.40	117.75	119.34
Total	**729.18**	**839.41**	**870.55**	**1,565.90**	**2,232.97**

70. In the Commission's order dated 6-12-2011, had observed that there is a need for clarity regarding the funding of assets using consumer contribution and grants, if any received. In the petition, the licensee has stated that two type of grants were given by the Government of India to KEPIP. The first lot of grant amounting to Rs.10 crore has been accounted in the balance sheet of KEPIP. The licensee in their petition has stated that the said grant was utilised for the land and land development and the receipt has been appropriately factored in, while deciding the lease rent for the land. In order to support this claim, the licensee has furnished the Minutes of the Pricing Committee meeting held on 14-1-2002.

71. The other source of funds is the grants from ASIDE, which was used for expansion of the 110kV substation at Kakkanad and for water treatment plant. Based on the details furnished by the licensee, the Commission has assessed that the assets of the licensee are funded out of the following sources:

(a) **Government Grants :** Government of India has grant of Rs. 10 crore. ASIDE grant of Rs.750.89 lakh These two sources of funds are explained below:

(i) Government of India Grant : The Commission in its Order dated 6-12-2011 noted that the accounts of KEPIP reveals that an amount of Rs.10 crore was received from Government of India in the form of Grants. The Commission vide letter dated 25-6-2019 had sought details of the utilization of this grant. The licensee in their reply dated 21-8-2019 stated that the said amount was utilized for the purchase of land and for land development and the same was factored in while determining the lease rent for the land by the Pricing Committee of the Government. The licensee has also furnished a Table showing among other things the cost of land for pricing arrived at by the Pricing Committee. In the said Table, the total cost considered by the Committee was Rs.4609.04 lakh., Out of this amount, the land acquisition cost was Rs. 863.87 lakh, cost of land development and road works Rs.1461.68 lakh, Power Rs.556.42 lakh, water distribution

Rs.254.70 lakh standard design factory for IT and electronics Rs.1001.54 lakh etc. The total grant of Rs.1000 lakh received from Government of India was proportionately assigned/deducted from each of these components and net value was taken for considering the cost for pricing of lease rent for the land. The Commission sought further details of the component of Power (Rs.556.42 lakh) from the licensee vide letter dated 4-2-2020. The licensee in its reply (dated Nil, received in the office of the Commission on 20-02-2020 stated as follows:

> *"The pricing committee in its meeting held on 1-1-2002, considered utilization of GoI grant to the tune of Rs.10 crore. It is also confirmed by Kinfra that out of the grant of Rs. 10 crore, an amount of Rs.177.62 lakh was utilized for developing electrical assets in the park. This for the kind information of the Hon. Commission."*

Thus, in deviation of the licensee's earlier clarification, they have now clearly stated that Rs. 177.62 lakhs from the Government of India Grant has been accounted towards power distribution. Hence, the Commission has treated Rs.177.62 lakh as grants for development of Power Distribution assets as stated by the licensee.

(ii) Assistance to States for Development of Export Infrastructure and Allied Activities (ASIDE) Scheme funds : KEPIP also received an amount of Rs.750.89 lakh as ASIDE grant for the improvement of water supply system and upgradation of the then existing 110kV substation at Kakkanad. According to the licensee Rs.379.05 lakh was utlised for the expansion of the 110kV substation which was later set off against the capital reserve in the books of accounts of KEPIP. Hence these assets were taken at a nominal value of Rs.1/- while transferring the assets to M/s KPUPL. It was also stated that there was no matching grant received against the ASIDE funds.

The Commission's examination of the details furnished by the licensee reveals that KEPIP had given a proposal for a total of Rs.760 lakhs towards ASIDE grants. Of this, Rs.379.05 lakh was received for capacity expansion of the existing 110 kV substation. and the balance was given for the water supply scheme. The details furnished by the licensee as part of the clarifications dated 22-8-2019 pertaining to electricity business is given below:

Table 4
Capacity Expansion works of 110 KV sub-station at Kakkanad under ASIDE Scheme

SI No.	Particulars	Amount (Rs in lakhs)
1.	Purchase of a 20 MVA Capacity Transformer of TELK make	206.84
2.	Expansion of 110 KV sub-station awarded to M/s.Imperial Engineering Company, covering (1) Construction of 110 KV bay for installing new 20 MVA transformer (as shown above), including cost of structures, 110KV breaker, C&R panel, Isolators, CTs& PTs, additional earthing, 11 KV BCV panels, Control and power cables etc including erection of 20 MVA transformer (2) fixing of fans in the existing two transformers to enhance its capacity to 12.5 MVA.	163.03
3.	Consultancy charges paid to KITCO against the expansion work of 110 KV sub-station	9.18
	Total cost of the capacity expansion work of sub-station at Kakkanad	379.05

The Commission noted that there was difference of figures mentioned in the petitions and the details furnished. Hence, the Commission sought clarifications on the difference in the figures reported on the ASIDE grant. In the reply to the clarification sought by the Commission vide letter dated 4-2-2020, the licensee stated as follows:

"An amount of Rs. 750.89 lakh was released to KEPIP as ASIDE grant against the proposal put up by KEPIP and out of which an amount of Rs.379.05 lakh was reported to the government as utilize for expansion of the 110kV substation. On this account, KEPIP had procured a Transformer from TELK at a landed cost fo Rs.206.84 lakh and had also spent an amount of Rs.173.97 lakh for the erection of the Transformer. The actual amount spent for developing the asset was, thus, Rs.380.82 lakh and reduced from the value of the gross fixed assets. Rs.380.82 lakh were considered as deduction both in Form V of the truing up petition as well as supplementary asset transfer agreement dated 27-10-2017."

Based on this clarification, the Commission hereby treats the value of assets created out of ASIDE funds at Rs.380.82 lakh. The licensee has shown assets worth Rs.1082.23 lakh (Rs.380.82 lakh under ASIDE grants and Rs.701.41 lakh as consumer contribution upto 31-3-2009) as withdrawn from the books at the time of transfer. Thus, Rs.380.82 lakh is treated as assets created using ASIDE grants.

(b) **Government funds :** The licensee has explained the procedure followed in the development of park vide their reply dated 21-8-2019. KINFRA during every plan period places financial proposal before the Government for various parks developed by KINFRA and subsidiary companies based on their requirement. Till 1998-99, Government of Kerala released assistance to KINFRA under the Capital Head of Account. Considering the objections raised by Accountant General, Kerala regarding release of funds under capital head of account, the Government vide G.O (Rt)No. 64/95/ID dated 27-1-1999 accorded sanction to convert equivalent amount received from Government of India as matching grant from Government of Kerala and balance amount as loan. Accordingly, Government vide G.O (Rt) No.692/03/ID dated 11-7-

2003 has accorded sanction for converting Rs.19.82 crore as matching grant and balance of Rs.123.31 crore as loan.

Regarding the funding of other assets, the licensee vide letter dated 21-8-2019 had also stated that the amount of funds given by Government of Kerala specifically include funds for construction of 110 kV substation (vide G.O. (Rt) No. 497/98/ID dated 12-6-1998) amounting to Rs. 1 crore, G.O (Rt) 247/99/ID dated 17-3-1999 for Rs.3 crore and G.O.(Rt) No. 58/98/ID dated 19-1-1998 for Rs.5 crore. Thus, according to the licensee, an amount of Rs.9 crore has been given by Government of Kerala for creation of KEPIP electricity distribution assets.

The Commission sought documentary evidence for the government loans extended to KEPIP for the developments of assets and its share towards distribution assets vide its letter dated 25-6-2019. In reply, the licensee vide their affidavit dated 22-8-2019 stated that GoK has released Rs. 8 crore exclusively for the development of 110kV substation at Kakkanad vide G.O (Rt)/58/98/ID dated 19-1-1998 (Rs. 5 crore) and G.O.(Rt)/247/99/ID dated 17-3-1999 (Rs. 3 crore) under loan head of account. The balance amount for the development of electrical assets were utilised out of common funds provided KINFRA and from the surplus funds accrued from the licensee business of KEPIP

The main plank of argument of the licensee is that the funds received from KINFRA by KEPIP is in the form of loans. In order to substantiate this, the licensee furnished the copy of G.O (Rt) No 692/0./ID dated 11-7-2003, which states that the total funding provided by GoK to Kinfra up to 31-3-2002 was Rs.143.12 crore. Out of this, an amount of Rs.19.81 crore was considered as matching grants from GoK for the grants received from Govt of India for various parks of KINFRA. The balance amount of Rs.123.31 Crore was treated as loan to Kinfra up to 31-3-2002. Since the funding for KEPIP was done by Kinfra using this funds, according to the licensee, the same amount should be treated as loan.

In order to examine this claim, the Commission sought copies of Government Order specifying the conditions of loan given to KEPIP/KPUPL by Kinfra. ***In reply, the licensee stated that though the Government converted the funds received under the capital head of account to loans, no terms and conditions have been fixed by the Government so far***. Hence, the licensee adopted the rate of interest as 11.5% based on the Government Order G.O. (Rt) No. 339/2016/ID dated 31-3-2016, though the same is not applicable to the electricity business.

It is also categorically stated by the licensee in their reply affidavit dated 21-8-2019 that no interest has been paid by KEPIP to Kinfra. However based on the asset transfer agreement executed between Kinfra/KEPIP and KPUPL, 70% of the transfer proceeds were treated as loan and interest at 11.5% has been provided in the books of accounts of KPUPL from 2017-18 and actual payment of interest has been made from 1-4-2018 onwards as EMI for 15 years. It was also stated that loan amount of Rs.235 lakh from Kinfra was taken for completion of Palakkad substation at an interest rate of 11.5% on 5-3-2015 and the refund of loan was started with effect from 1-4-2017 as per the terms of loan agreement.

(c) **Consumer contributions:** The Commission in the order dated 6-12-2011 had pointed out the assets created out of contributions and grants based on the details furnished by the licensee then. Now in the present petitions, the licensee has furnished the details of the assets taken over from the consumers in various years. Thus, the total fixed assets funded by consumers in various years are given below:

Table 5
Year wise details of Assets taken over from consumers

Name of consumers	2007-08	2008-09	2009-10	Total
	Rs. Lakhs	Rs. lakhs	Rs. lakhs	Rs. lakhs
Siemens	6.03			6.03
Infopark	630.18	100.00	2.05	732.23
Leela & Wipro	33.96		76.03	109.99
L&T	11.63			11.63
KEPIP-prorata		-246.77		-246.77
ASIDE				-
Leelasoft		96.38		96.38
Total	**681.80**	**-50.39**	**78.08**	**709.49**
ASIDE grants		372.74		372.74
Total Grants & contribution	**681.80**	**322.35**	**78.08**	**1,082.23**
Cumulative Gross contribution	681.80	1,004.15	1,082.23	

The Commission sought the details vide letter dated 4-2-2020 on the share of pro-rata of KEPIP of Rs.246.77 lakh in the consumer contributions. The licensee in reply stated as follows:

"KEPIP was in possession of 180 acres of land in Infopark area. Vide G.O.(MS) No. 46/2005/ID dated 10-5-2005, Government of Kerala directed KEPIP to transfer 91.9 acres of land in the licensee area along with the assets therein to the newly formed entity 'Infopark Kerala' and accordingly, the land other infrastructure developed by KEPIP were transferred to Infopark Kerala. In the mean time, a contract for developing electrical infrastructure in the common park area was awarded to M/s Siemens India limited. The Siemens Contract was also handed over to Infopark along with the transferred assets for execution. Infopark on completion of the contract transferred a portion of the assets to KEPIP as consumer contribution. The remaining portion of the electrical assets was transferred to KEPIP being in their area of operation. The details of the transfer proceeds are given below:

Sl.No	Particulars	Amount (Rs.lakh)
1	*Total amount of electrical works completed by siemens and transferred to KEPIP by Infopark initially as consumer contribution*	*630.18*
2	*Pro-rata share fo KEPIP in the works were transferred to KEPIP. Assets considered as belonging to KEPIP since the same was in the operating area of KEPIP and forms part of KEPIP asset. This asset was later transferred to KPUPL*	*246.77*
3	*Balance amount remained as consumer contribution surrendered by Infopark Kerala to KEPIP*	*383.41*

72. Thus, based on the clarifications and details furnished by the licensee and based on the above discussions, the Commission has concluded that the following are the sources of funds employed for the development of distribution assets (as on 31-3-2009):

a) Share of Rs.10 crore Government of India grants - Rs.177.62 lakh
b) ASIDE funds - Rs.380.82 lakh
c) Assets created by consumers/Consumer contribution - Rs.631.41 lakh
d) Loans from Kinfra/GoK - Rs.1051.20 lakh

The Commission notes that the Government of Kerala is yet to determine the terms and conditions of the loan given to KINFRA including its rate of interest.

73. Based on the above, the net GFA of the licensee is as shown below:

Table 6
GFA details from 2004-05 to 2008-09

	2004-05	**2005-06**	**2006-07**	**2007-08**	**2008-09**
	Rs.lakh	Rs. Lakh	Rs. lakh	Rs. lakh	Rs. Lakh
Land & Rights	61.20	61.20	61.20	61.20	61.20
Substation	646.09	659.51	651.08	651.08	651.08
11kV works	15.50	15.50	15.50	697.30	1,362.78
Metering equipment	6.39	6.39	30.37	38.57	38.57
Others		96.81	112.40	117.75	119.34
Total	**729.18**	**839.41**	**870.55**	**1,565.90**	**2,232.97**
Grants/Contribution					
11kV works (Consumers contribution)	-	-	-	681.80	631.41*
Substation (ASIDE)	0	0	0	0	372.74
GoI Grant	177.62	177.62	177.62	177.62	177.62
Total Grants/contributions	**177.62**	**177.62**	**177.62**	**859.42**	**1,181.77**
Net GFA excluding grants and contributions	**551.56**	**661.79**	**692.93**	**706.48**	**1,051.20**

*Rs.78.08 lakh consumer contributed assets added in 2009-10

74. Based on the above figures as the source of funds for the creation of electricity distribution assets from 2004-05 to 2008-09. After due consideration of the issues in the Commission's Order dated 6-12-2011, the Commission hereby examines the following

items viz., depreciation, interest charges and RoE for the years 2004-05 to 2008-09. These items are dealt with in the following sections.

Depreciation:

75. The licensee has claimed depreciation of Rs.23.65 lakh for the year 2004-05 which is the same as that approved by the Commission vide order dated 6-12-2011 and requested to retain the depreciation as already approved. As per the petition, the depreciation claimed by the licensee from 2004-05 to 2008-09 are as shown below:

Table 7

Comparison of depreciation proposed in the petitions

	Approved in the Order dated 6-12-2011	As per Revised petition
Year	(Rs. Lakhs)	(Rs.lakhs)
2004-05	23.65	23.65
2005-06	28.24	28.24
2006-07	29.95	29.95
2007-08	30.87	39.76
2008-09	28.50	40.26

76. The licensee has claimed the same depreciation as approved in the order dated 6-12-2011 till 2006-07. The depreciation claimed thereafter was higher. This may be due to the fact that the licensee has modified assets additions during that period compared to the original filing. The licensee claimed the depreciation after deducting the depreciation for the assets created out of contribution and grants as shown below:

Table 8

Depreciation claimed as per the petition*

	2003-04	2004-05	**2005-06**	**2006-07**	**2007-08**	**2008-09**
	Rs. Lakh	Rs. Lakh	Rs. Lakh	Rs. Lakh	Rs. Lakh	Rs. Lakh
Land & Rights						
Substation	7.1	23.00	23.49	23.37	23.37	23.37
11kV works	0.17	0.56	0.18	0.18	24.72	48.68
Metering equipments	0.03	0.09		1.60	2.15	2.15
Others			4.57	4.80	4.97	5.02
Total	**7.30**	**23.65**	**28.24**	**29.95**	**55.21**	**79.22**
Grants/Contribution						
11kV works (Consumers contribution)					15.44	25.25
Substation (ASIDE)						13.71
Total	**-**	**-**	**-**	**-**	**15.44**	**38.96**
Net Depreciation	**7.30**	**23.65**	**28.24**	**29.95**	**39.77**	**40.26**

*The share of assets created from GoI Grant of Rs.177.62 lakh was not shown in the petition.

77. The Commission has examined the eligibility for depreciation, considering the issues such as addition of assets in the past, funding of assets, depreciation rates applicable for the

period etc. Though depreciation was allowed in the Order dated 6-12-2011, the matter has to be relooked in the present proceedings considering the details furnished regarding the asset additions and source of funding. It is to be noted that the depreciation rates applicable for the period 2004-09 is as per CERC rates, which is lower than the current levels. The depreciation rates applicable for the period 2004-05 to 2008-09 are shown below:

Table 9
Depreciation rates applicable for the period 2004-05 to 2008-09

	Useful life	Depreciation rate applicable for the period 2004-05 to 2008-09
Land & Rights	If lease, period of lease	Nil
Substation	25	3.60%
11kV works	25	3.60%
Metering equipment	15	6.00%
Others	25	3.60%

Depreciation for Assets created out of grants and contribution:

78. While considering the depreciation, the assets created out of contribution and grants is important. The Commission in the Order dated 13-4-2012 decided that depreciation on assets created out of consumer contribution and grants shall not be charged on to the consumers. This order was made applicable from 2010-11. Hence, up to 2009-10, the Commission allowed depreciation for the assets created out of contribution and grants (including Government of India grants) for all licensees. The Commission therefore has allowed depreciation for the entire licensee assets (including the assets funded out of grants and contributions) till 2009-10. The GFA figures furnished by the licensee, for the control period is as shown below:

Table 10
Approved Gross Fixed Assets for 2004-05 to 2008-09

Gross Fixed Assets					
	2004-05	**2005-06**	**2006-07**	**2007-08**	**2008-09**
	Rs.lakhs	**Rs.lakhs**	**Rs.lakhs**	**Rs.lakhs**	**Rs.lakhs**
Land & Rights	61.20	61.20	61.20	61.20	61.20
Substation	646.09	659.51	651.08	651.08	651.08
11kV works	15.50	15.50	15.50	697.30	1,362.78
Metering equipments	6.39	6.39	30.37	38.57	38.57
Others	-	96.81	112.40	117.75	119.34
Total	**729.18**	**839.41**	**870.55**	**1,565.90**	**2,232.97**

79. Though the licensee has later acknowledged the assets created out of the share of Government of India grants to the tune of Rs.177.62 lakh, the total value of assets will not change as there is only a change in source of funding. Based on the approved depreciation rates and GFA, the depreciation for each year is as shown below:

Table 11

Depreciation for the Fixed Assets for 2004-05 to 2008-09

	2004-05	2005-06	2006-07	2007-08	2008-09
	Rs. lakhs	Rs. lakhs	Rs. lakhs	Rs. lakhs	Rs. lakhs
Land & Rights	-	-	-	-	-
Substation	23.00	23.49	23.37	23.37	23.37
11kV works	0.56	0.18	0.18	24.72	48.68
Metering equipment	0.09	0.09	1.60	2.15	2.15
Others	-	4.48	4.80	4.97	5.02
Total	**23.65**	**28.24**	**29.95**	**55.21**	**79.22**

80. Thus, the depreciation approved for the period from 2004-05 to 2008-09 is as shown below

Table 12

Approved Depreciation for the years from 2004-05 to 2008-09

	As per Order 6-12-2011	As per Petition	Approved depreciation
	Rs. Lakhs	Rs. Lakhs	Rs. Lakhs
2004-05	23.65	23.65	23.65
2005-06	28.24	28.24	28.24
2006-07	29.95	29.95	29.95
2007-08	30.87	39.76	55.21
2008-09	28.50	40.26	79.22

Interest and financing charges:

81. In the petition, the licensee has given the details of distribution electrical assets developed in the park. Accordingly, the licensee declared that the investments of KINFRA made in KEPIP as shown in the statement financed by loan given to KINFRA by Government of Kerala. It is also mentioned that Government of Kerala have been providing investment loan to KINFRA at an annual interest rate of 11.5%. According to the licensee, they are eligible for interest on the normative loan for the debt component. The company has availed loan from KINFRA at an interest rate of 11.5% per annum and accordingly the interest charges claimed by the licensee from 2004-05 to 2008-09 are given below:

Table 13

Normative debt and interest charges claimed in the petition

Year	Debt at the end of the year as per the petition (Rs. Lakhs)	Rate of interest	Interest charges claimed (Rs. Lakhs)
2004-05	725.43	11.50%	79.91
2005-06	725.43	11.50%	83.42
2006-07	725.43	11.50%	83.42
2007-08	725.43	11.50%	83.42
2008-09	725.43	11.50%	83.42

82. The Commission has examined the claim of the licensee regarding interest charges. The licensee has claimed interest charges at the rate of 11.5% for the period. As per the details furnished by the licensee, the source of funding for the years is as shown below:

Table 14

Liabilities as per the petition

	31-03-2004	31-03-2005	31-03-2006	31-03-2007	31-03-2008	31-03-2009
	Rs.lakh	Rs.lakh	Rs.lakh	Rs.lakh	Rs.lakh	Rs.lakh
A) Capital						
a)Capital Reserve					794.38	1,027.83
b) Reserves and surplus	-45.21	-56.02	19.61	113.53	291.38	635.59
b) unsecured loan (from kinfra)	664.23	725.43	725.43	725.43	725.43	725.43
Total Source of funds	**619.02**	**669.41**	**745.04**	**838.96**	**1,811.19**	**2,388.85**

83. As shown above, the licensee has treated the source of funding of assets using reserve funds, capital reserve and unsecured loan from KINFRA. The licensee has repeatedly stated that the assets of KEPIP was financed by funds extended by KINFRA, which is was given by the Government of Kerala as loans. As mentioned in earlier sections, the assets of the licensee included assets created out of contribution from consumers, ASIDE /GOI grants and also funds sourced from KINFRA. The licensee in the petition has shown the source of consumer contributed assets and ASIDE grants under the capital reserve and reserves and surplus.

84. As per the details furnished, upto 2007-08, there is was no capital reserves and assets are said to be funded out of reserves and surplus and unsecured loan. Further, the Commission's examination of the licensee's records revealed that the addition of assets (including that of grants and consumer contribution) over the years are matched by adjustments in the reserves and surplus. It is also interesting to note that addition of assets during these years, especially in 2007-08 and 2008-09 are through takeover of assets funded by consumers and assets created out of ASIDE grants. It is also pertinent to mention that the licensee has not claimed any Return on Equity for the said amount, since the source of funds for such assets are contribution and grants, which shown in the

regulatory filings as capital reserve and reserves and surplus. As per the information furnished by the licensee the details of assets are as shown below:

Table 15
Details of Fixed assets as filed by the licensee

	2004-05	2005-06	2006-07	2007-08	2008-09
	Rs. lakhs	Rs. lakhs	Rs. lakhs	Rs. lakhs	Rs. lakhs
GFA	**729.18**	**839.41**	**870.55**	**1,565.90**	**2,232.97**
Consumer contribution				681.8	631.41
Substation (ASIDE)					372.74
Net GFA excluding contribution and grants	**729.18**	**839.41**	**870.55**	**884.1**	**1,228.82**

85. As shown above, the net GFA after deducting the assets created out of grants and contribution, the net GFA is Rs.1228.82 lakh in the year 2008-09 as per the petition *(Including the assets worth Rs.177.62 lakhs, which later declared as from the share of GoI grants-vide letter received licensee on 20-2-2020)* . As per the contention of the licensee, the funds utilized for creation of assets net of contribution and grants is to be treated as loans from KINFRA. In order to support the argument, the licensee has produced the Government Orders stating that the Government has after deducting the matching grants received from the Government of India, treated the capital funds provided to KINFRA as loans. In this regard, the licensee in its reply dated 22/8/2019 had stated as follows:

> *"Till 1989-99, Government of Kerala released assistance to KINFRA under Capital Head of Account. Considering the objections raised by Accountant General, Kerala during the course of audit, in releasing funds under capital head of account, Government of Kerala vide G.O.(Rt) No.64/95/ID dated 27-1-1999 has accorded sanction to convert equivalent amount received from Government of India as matching grant from Government of Kerala and the balance amount as loan. Accordingly, Government vide G,O, (Rt) ;No. 692/03/ID dated 11-7-2003 had accorded sanction for conversion of Rs.19.8137 crore as matching grant including Rs. 10 crore received for KEPIP project from Government of India and balance amount of Rs.123.3073 crore as loan"*

86. The license further stated that even though an amount of Rs.123.3073 crore given to KINFRA was converted as loan, the rate of interest was not fixed by the Government. According to the licensee, the rate of interest presently charged by Government of Kerala as per the Government Order (G.O. (Rt) No. 48/2008/ID dated 17-01-2008) is 11.5% and hence the same is to be allowed to the licensee for the funds extended by the Government.

87. Though the licensee claimed interest on loans for the amount of funds extended by Government of Kerala, the licensee could not provide any specific orders on the rate of interest on which the funds were transferred to KEPIP from the Government. During the hearing, the licensee has clarified that so far, KINFRA has not sought any interest charges from KEPIP and hence no interest charges has been paid for the funds received from Government of Kerala. The learned Counsel for the licensee Adv. Joseph Kodianthara during the hearing stated that the stand of the Commission that the licensee is not eligible for interest charges at present, is appreciated. However, since the Government may at any time raise the claim of interest for the funds provided the order of the Commission should have a provision enabling the KEPIP to claim the interest charges, if demanded by the Government.

88. The Commission has examined the details furnished by the licensee. The following documents are provided by the licensee in support of the claim of interest charges.

   (a) *G.O.(Rt) No.64/95/ID dated 27-1-1999 – conversion of amount received from 1993-94 from Government of Kerala, after deducing the equal amount received from Government of India to be converted as loan*
   (b) *G,O, (Rt) ;No. 692/03/ID dated 11-7-2003- The balance amount of Rs.129.691 crore remaining as loan from Government of Kerala as on 31-3-2002.*
   (c) *G,O, (Rt) ;No. 48/08/ID dated 17-1-2008 – fixing rate of interest at 11.5% for the Government loan given to Small industries park Kunnamthanam,*

89. As per the above orders, from 1992-93, Government has treated an amount of Rs.129.69 crore given to KINFRA after deducting the matching grants, as loans. However, for the funds given to KINFRA for development of KEPIP, the Government has not determined the rate of interest and the licensee has not paid any interest to the Government till date. This has been admitted by the licensee in their letter dated 22-8-2019. ***Hence, the Commission is of the view that since the terms of the loan has not been fixed by the Government, it is not prudent to allow any interest charges at present since there is no outflow of funds either in the form of interest charges or repayment. However, as and when the same is paid, the licensee may file a petition before the Commission for consideration***. Accordingly, the loan amount applicable each year shall be as follows:

Table 16
Approved loans for the year 2004-05 to 2008-09

	2004-05	2005-06	2006-07	2007-08	2008-09
	Rs.lakh	Rs.lakh	Rs.lakh	Rs.lakh	Rs.lakh
GFA	**729.18**	**839.41**	**870.55**	**1,565.90**	**2,232.97**
Consumer Contributed Assets				681.80	631.41
Assets from ASIDE grants	-	-	-	-	372.74
Assets from GoI Grant	177.62	177.62	177.62	177.62	177.62
Net GFA/Balance Loans from Govt.	**551.56**	**661.79**	**692.93**	**706.48**	**1,051.20**
Cumulative Repayment/ Depreciation	23.65	51.89	81.84	137.05	216.27
Balance amount of Loans	**527.91**	**609.90**	**611.09**	**569.43**	**834.93**

Return on Equity

90. In the petition, the licensee has claimed Return on Equity at the rate of Rs.10 lakh per year till 2008-09, which is the provisional amount allowed by the Commission as per the Order dated 6-12-2011. In the said order, the Commission had decided to allow a provisional return of Rs.10 lakh, since there was lack of clarity on the amount of equity in the licensed business. Considering this, the licensee has, in the revised petition sought only Rs.10 lakh as return on equity.

91. The Commission has considered the petition of the licensee. The licensee has claimed Rs.10 lakh per year as RoE, which is the same amount allowed by the Commission in the order dated 6-12-2011. In the said order, the Commission could not reasonably fix the return since the source of funding of assets was not known. However, as explained in the sections above, the source of funding of Assets are now reasonably known. As per the revised balance sheet for the years 2004-05 to 2008-09, the fixed assets are stated as funded through capital reserve, reserves and surplus and unsecured loan from KINFRA. However, the Commission after examining the details furnished by the licensee, had concluded that the fixed assets are funded through grants from Government of India, consumer contributions and capital funds (which is later converted as Government Loans). From this, it can be reasonably concluded that no specific equity fund was directly invested in the business and the capital reserves and reserves and surplus were essentially contributed by consumers and ASIDE grants as per the accounts given in the petition. As per the norms, in case the equity is not identifiable, returns can be provided at a rate equal to 3% of the NFA excluding contributions and grants. Accordingly, the Commission has decided to provide return in the form of return on NFA at the beginning of the year as shown below:

Table 17
Return on Net Fixed Assets for the years 2004-05 to 2008-09

	2004-05	2005-06	2006-07	2007-08	2008-09
	Rs.lakh	Rs.lakhs	Rs.lakhs	Rs.lakhs	Rs.lakhs
GFA	**729.18**	**839.41**	**870.55**	**1,565.90**	**2,232.97**
Less Contribution from consumers				681.80	631.41
Less ASIDE grants (Substation)					372.74
Less share of GoI Grant	177.62	177.62	177.62	177.62	177.62
GFA Excluding grants/ Contributions	**551.56**	**661.79**	**692.93**	**706.48**	**1,051.20**
Less cumulative Depreciation	23.65	51.89	81.84	137.05	216.27
Net Fixed Assets at the end of FY	**527.91**	**609.90**	**611.09**	**569.43**	**834.93**
Return @ 3% NFA	**16.55**	**15.84**	**18.30**	**18.33**	**17.08**

Approved ARR&ERC for 2004-05 to 2008-09

92. Based on the analysis in the foregoing sections, the approved ARR&ERC for the period is as shown below:

Table 18
Approved ARR&ERC for 2004-05 to 2008-09 after final truing up (cont..)

	2004-05			2005-06			2006-07		
	As per Order dated 6-12-2011	As per revised petition	Approved	As per Order dated 6-12-2011	As per revised petition	Approved	As per Order dated 6-12-2011	As per revised petition	Approved
	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh
Revenue from sale of power	665.06	650.99	651.44	1,241.96	1,241.96	1,241.96	1,350.48	1,310.68	1,350.48
Service connection charges		24.71	24.26	25.72	25.72	25.75	4.55	-	4.55
Other Charges					13.42				
Total	**665.06**	**675.70**	**675.70**	**1,267.68**	**1,281.10**	**1,267.71**	**1,355.03**	**1,310.68**	**1,355.03**
Non-Tariff Income	3.21		3.21	70.43	9.64	70.43	103.06	26.91	103.06
Supervision charges		3.40							
Miscellaneous receipts		0.31			1.00				
Total	**668.27**	**679.41**	**678.91**	**1,338.11**	**1,291.74**	**1,338.14**	**1,458.09**	**1,337.59**	**1,458.09**
Power Purchase Cost	503.83	527.66	503.83	1,023.98	1,023.98	1,023.98	1,046.40	1,046.40	1,046.40
R&M Expenses	22.92	22.92	22.92	24.84	24.84	24.84	13.28	13.28	13.28
Employee cost	12.15	12.15	12.15	10.07	10.07	10.07	17.88	17.88	17.88
A&G expenses	13.30	23.94	13.30	27.16	45.88	27.16	33.86	52.75	33.86
Depreciation	23.65	23.65	23.65	28.24	28.24	28.24	29.95	29.95	29.95
Interest charges		79.91			83.42			83.42	
RoE/RoNFA	10.00	10.00	16.55	10.00	10.00	15.84	10.00	10.00	18.30
Prior period charges/credits		-20.82		-11.20	-0.33	-11.20	-46.76		-46.76
Deferred tax liability		36.00							
Total ARR	585.85	715.41	592.40	1,113.09	1,226.10	1,118.93	1,104.61	1,253.68	1,112.91
Surplus/Gap	82.42	-36.00	86.51	225.02	65.64	219.21	353.48	83.91	345.18

Table 18 (Cont…)
Approved ARR&ERC for 2004-05 to 2008-09

	2007-08			2008-09		
	As per Order dated 6-12-2011	As per revised petition	Approved	As per Order dated 6-12-2011	As per revised petition	Approved
	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh
Revenue from sale of power	1,242.36	1,201.75	1,242.36	1,536.86	1,492.47	1,536.86
Service connection charges	10.35	10.35	10.35	11.63	11.63	11.63
Other Charges				193.46	193.46	193.46
Total	**1,252.71**	**1,212.10**	**1,252.71**	**1,741.95**	**1,697.56**	**1,741.95**
Non-Tariff Income	90.14	31.27	90.14	36.53	49.51	36.53
Supervision charges		55.00			17.24	
Miscellaneous receipts		13.17			0.05	
Total	**1,342.85**	**1,311.54**	**1,342.85**	**1,778.48**	**1,764.36**	**1,778.48**
Power Purchase Cost	938.89	931.41	938.89	1,200.83	1,200.83	1,200.83
R&M Expenses	15.44	15.44	15.44	20.58	20.58	20.58
Employee cost	12.07	12.07	12.07	14.80	14.80	14.80
A&G expenses	35.27	51.62	35.27	40.28	60.27	40.28
Depreciation	30.87	39.76	55.21	28.50	40.26	79.22
Interest charges		83.42			83.42	
RoE	10.00	10.00	18.33	10.00	10.00	17.08
Prior period charges/credits	-12.97	0.02	-12.97	24.68		-24.68
Deferred tax liability						
Total ARR	1,029.57	1,143.74	1,062.24	1,339.67	1,430.16	1,348.11
Surplus/Gap	313.28	167.80	280.61	438.81	334.20	430.37

93. Based on the petition and additional details furnished by the licensee and the comments of KSEB Ltd, the revenue gap/surplus for the years 2004-05 to 2008-09 is determined as detailed in the Table above. Accordingly, the approved revenue gap/surplus for the years is as shown below:

Table 19
Approved Revenue surplus for 2004-05 to 2008-09

	As per Order 6-12-2011	As per Petition	Approved
	Rs.lakhs	Rs.lakhs	Rs.lakhs
2004-05	82.42	-36.00	86.51
2005-06	225.05	65.64	219.21
2006-07	353.48	83.91	345.18
2007-08	313.28	167.80	280.61
2008-09	438.81	334.20	430.37
Total	**1,413.04**	**615.55**	**1,361.88**

Part II

94. In this section, transfer of licence and Utilities from KEPIP to KPUPL is considered along with truing up of accounts for 2009-10. Since the determination of the value of assets and related matters are to be considered for the truing up, the issues related to the transfer of assets are dealt with in the first part, which is followed by the truing up for the year 2009-10.

Transfer of licence and utilities

95. The licensee stated in the petition that originally M/s KEPIP was the holder of the licence conferred upon by Government of Kerala as per G.O.(P) No.18/2003/PD dated 8-5-2003 to supply electricity within the area of Kinfra Export Promotion Industrial Park campus at Kakkanad, Kochi. Later, M/s KEPIP sought inclusion of new areas at Kakkanad, Kalamassery and Palakkad in the distribution licence, which was granted by the Commission vide order No.KSERC/II/LP-6/2007 dated 23-10-2008. The area of licence thus covers:

    1) Kinfra export promotion industrial park, Kakkanad (180.126 acre)
    2) Land of Kinfra for KEPIP expansion at Kakkanad (100 Acre)
    3) Kinfra High Tech Pak Kalamassery (240 acres)
    4) Kinfra Integrated Industrial and Textile Park, Palakkad (350 Acres)

96. Subsequently, Government of Kerala accorded sanction for formation of a joint venture company namely Kinesco Power and Utilities Private Limited (KPUPL) at 50:50 holding between Kinfra and NTPC Electric Supply Company Limited (NESCL) vide order dated G.O. (MS)No. 88/2008/ID dated 27-6-2008 for distribution of power as a licensee in the industrial parks, SEZ and other industrial projects to bring quality and reliable power supply in the distribution sector and to bring in new technologies.

97. Based on the petition from KEPIP/KPUPL, the Commission after due process transferred the licence from KEPIP to KPUPL vide Order dated 30-11-2009. The licensee operations of M/s KPUPL was started based on the Agreement for Operations between KEPIP and KPUPL. According to the petitioner licensee, the operational control and licensee operations started from 1-2-2010 at KEPIP, Kakkanad by taking over distribution infrastructure of erstwhile licensee, KEPIP. The licensee commenced the operations at Kalamassery Hi Tech Park on 6-2-2011 based on a similar agreement for operations with Kinfra on 1-9-2011. As per the terms agreed upon, the utilities and assets of KINFRA HI-techpark including lease hold rights on the land belonging to KINFRA was to be transferred and taken over at the depreciated book value by KPUPL for the purpose of licensee operations on 1-9-2011. This included the 110kV substation & 11 kV ring main

distribution (completed but not commissioned) and the already existing 11kV/415 V installations. However, KPUPL took over only the 11kV/415V electrical installation and added the asset value into the books. The licensee operations at Kinfra Integrated Park at Kalamassery was started after commissioning 22/11kV substation along with related distribution network by KPUPL from 5-8-2016.

98. Based on the direction of the Commission, the licensee entered into PPA with KSEB Ltd for supply of power at Kakkanad, Kalamassery and Palakkad. Further to this, the licensee entered into the asset transfer agreement on 7-9-2016, effective from 1-2-2010 with Kinfra and KEPIP for Kakkanad and Kalamassery in continuation of the operational agreement dated 27-1-2010. The Asset values in the transfer agreement was determined based on the written down value based on the provisions of the Companies Act 1956 as maintained by KEPIP, whereas the approval of ARR and truing up were based on the Regulations issued by the Commission.

99. In order to bring the values in the books on the same base as that of the Commission, the licensee again entered into a supplementary agreement dated 27-10-2017. While doing so, the licensee has segregated the assets created out of contribution from consumers and Government Grants. Further depreciated value based on the depreciation rates as per the Regulations were also used. Based on these changes, the licensee has now approached the Commission for approval of the agreements and truing up.

100. The Commission has examined the contentions of the petitioner and points raised by KSEB Ltd. The petitioner M/s.KPUPL holds licence for distribution of electricity in KINFRA Export Promotion Industrial Park (KEPIP), Kakkanad, KINFRA Hi-Tech Park Kalamassery, and KINFRA Integrated Industrial and Textile Park Palakkad. The original distribution licence was vested with M/s KEPIP which was granted by Government of Kerala vide G.O.(P) No.18/2003 dated 8-5-2001 for supply of electricity at Kakkanad only. Based on the petition of M/s KEPIP for extension of area of supply to Kakkanad (extension), Kalamasserry and Palakkad, the Commission had extended the area of supply vide order No.KSERC/II/LP-6/2007 dated 23-10-2008. Later with the approval of Government of Kerala a joint venture company namely M/s KINESCO Power and Utilities Private Limited (KPUPL) was incorporated on 17-9-2008 with 50% each equity held by KINFRA and NTPC Electric Supply Company Limited (NESCL) to take over the activities of the distribution of electricity in the Parks of KINFRA.

101. Based on the petition for transfer of licence from M/s KEPIP/KPUPL, the licence for distribution of electricity of M/s KEPIP was transferred after due process to the newly formed company namely M/s KPUPL as per the Order dated 30-11-2009 of the Commission. M/s KPUPL started licence operations from 1-2-2010 based on an *agreement for operations* dated 27-1-2010 with M/s KEPIP. In the mean time, based on the Government order dated 7-7-2014 KINFRA withdrew from the joint venture

agreement with NESCL and subsequently, M/s. NESCL transferred its share to KINFRA and accordingly, M/s KPUPL has become 100% subsidiary of KINFRA.

102. The Commission also notes that though, based on the agreement for operations dated 27-1-2010, M/s KPUPL had taken over the operational control of the assets, the accounting formalities for final transfer of assets and the consideration thereof were not finalized then. Since the transfer process was delayed, the Commission had directed the licensee in the orders on ARR&ERC for 2011-12 and 2012-13, to complete the transfer process and report to the Commission. However, M/s KPUPL, the distribution licensee could not submit the statement regarding transfer deed, position of assets etc. as directed. The licensee also failed to enter into PPA with KSEB Ltd for bulk purchase of power for distribution. Since the licensee failed to comply with the directions, the Commission under Section 19(3) of the Electricity Act 2003 issued a notice dated 18-12-2013 for revocation of distribution licence and thereupon vide order dated 5-6-2014, the Commission directed the licensee to submit a roadmap with timelines for complying with the conditions of licence and directives of the Commission. In compliance of the directions of the Commission, the licensee finally entered into asset transfer agreements with M/s KEPIP and KINFRA on 7-9-2016 for transfer of assets from M/s KEPIP and KINFRA for transfer of Assets from Kakkanad and Kalamassery Licence Area respectively. The said agreement was modified with a supplementary agreement entered into by the respective parties on 27-10-2017. The licensee in the present petitions had admitted that the Supplementary agreement was entered into with the parties for correcting the errors that occurred in the asset transfer agreement dated 7-9-2016.

103. The licensee in the petition for the year 2010-11 has made a general statement that there occurred a delay in finalising the transfer scheme till 7-9-2017, and requested to condone the delay in compliance of the matter and approve the transfer scheme. The licensee has repeated the same in para 14 of the consolidated note dated 13-1-2020 stating that there are specific prayers for approval of agreements. In this context, the Commission notes that though the licensee has not included the approval of transfer scheme as part of the specific prayers in the petition, the Commission has taken up matter and dealt with the same in the following sections, as a special case.

Asset Transfer agreements and transfer of Assets

104. The Commission has analysed in detail the agreements relating to asset transfer and the value of assets transferred thereto. As per the details furnished by the licensee following agreements are entered into by the licensee

Table 20

List of Agreements entered into for Transfer of Assets pursuant to licence transfer

Sl.No	Name of Agreement	Date of agreement	Parties	Remarks
1.	Agreement for operations of KEPIP Park at Kakkanad	27-1-2010	M/s,KEPIP M/s.KPUPL	Pursuant to Joint Venture Agreement (JVA) dated 24-7-2008 among KEPIP, KPUPL and Kinfra for taking over the operational control of distribution assets of erstwhile licence prior to finalization of final transfer of assets
2.	Agreement for operations at Hi-Tech Park, Kalamassery	1-9-2011	M/s,KEPIP M/s.KPUPL	Pursuant to the JVA taking over of operational control at Kinfra Hi-Tech Park, Kalamassery
3.	Asset Transfer Agreement	7-9-2016	M/s.Kinfra M/s.KPUPL M/s.KEPIP	Pursuant to JVA and agreement for operations dated 27-1-2010 for actual transfer of assets and determining the transfer value of KEPIP park at Kakkanad. Gross Transfer value (Rs.1424.08 lakh) determined at depreciated book value maintained by KEPIP as per Companies Act (Rs.1341.63 lakh) and the CWIP (Rs.82.45 lakh). Net consideration arrived at after setting off the liabilities towards pre-paid metering advance (Rs.164.45 lakh)
4	Asset transfer agreement	7-9-2016	M/sKEPIP M/s.KPUPL	Pursuant to JVA and agreement for operations dated 1-9-2011 for actual transfer of assets and determining the transfer value of Rs.104.40 lakh at Kinfra Hi-tech park at Kalamassery
5.	Supplementary asset transfer for Kakkanad	27-10-2017	M/s.Kinfra M/s.KPUPL M/s.KEPIP	For modifying clause 3 and clause 7 of the agreement dated 7-9-2016 relating to Kakkanad, so as to revise the purchase price considering the NFA as per Regulatory norms (removing assets created out of grants and contributions). Accordingly transfer price modified as Rs.949.01 lakh.
6.	Supplementary asset transfer for Kalamassery	27-10-2017	M/sKEPIP M/s.KPUPL	For incorporating the debt equity ratio as 70:30 for the value of Assets transferred (Rs.104.40 lakh)

105. Details of the above agreements are given below:

1. Agreement for Operations at Kakkanad dated 27-1-2010

106. Pursuant to the JVA, the parties viz., M/s KEPIP and M/s KPUPL have mutually agreed that the utilities and fixed assets of KEPIP electrical licence shall be transferred to M/s KPUPL at the depreciated book value as on 31-1-2010, the consideration for which shall be as agreed to in the JVA entered into between KEPIP, Kinfra and KPUPL on 24-7-2008. The parties mutually agreed to and initiated steps for transfer of utilities and assets to M/s KPUPL to commence operations from 1/2/2010. The capital work in progress existing as on date was also to be transferred to M/s.KPUPL It was agreed upon by the parties that the agreement was be in operation till the utilities and assets are transferred to M/s KPUPL. All obligations, financial and non-financial upto and including 31-01-2010 shall be to the account of KEPIP and beyond that is that of M/s KPUPL.

2. **Agreement for operations at Kinfra Hi-Tech Park, Kalamassery dated 1-9-2011**

107. As per order dated 23-10-2008, the Commission had extended the distribution licence of KEPIP to Kakkanad in Thrikkakara Grama Panchyath, Thrikkakkara North in Kalamassery Municipality, Puthussery central village in Puthussery Panchyath and Elappully I village in Elappully Grama Panchyath. Pursuant to the transfer of licence, distribution areas of Kakkanad, Palakkad and Kalamassery were transferred to M/s. KPUPL on 30-11-2009.

108. As per the terms of this agreement the utilities and assets of Kinfra Hi-Tech park Kalamassery were transferred to M/s.KPUPL for upkeep, preservation, and licensee operation. The system consists of underground cables and a mini distribution system (which includes the 11kV substation near security gate and 11kV substation at TIC building) connected from KSEB Substation Kalamassery. Both parties agreed to transfer the assets at depreciated book value as on 1-9-2011. Actual assets were transferred as per the agreement dated 7-9-2016.

3. **Asset Transfer Agreement dated 7-9-2016 for Kakkanad**

109. The said Asset transfer agreement relating to Kakkanad licence area was entered into among M/s Kinfra, M/s.KPUPL and M/s KEPIP to draw up the formal instrument of transfer so as to transfer the rights of M/s.KEPIP in respect of the distribution assets in favour of M/s.KPUPL. As per clause 1 of the agreement the list of assets mainly the distribution assets of M/s.KEPIP were transferred to M/s.KPUPL. Regarding liabilities, which is mentioned in clause 2 of the agreement, M/s.KPUPL shall not assume or be responsible for any payment or discharge of liability or debt of M/s.KEPIP except the liabilities on account of prepaid metering advance received by KEPIP amounting to Rs.164.40 lakh as on 31-1-2010.

110. In term of clause 3, the consideration was agreed upon by the parties. The gross amount paid for the take over of assets shall be Rs.1424.08 lakh. The said gross consideration amount was arrived at based on the written down value of assets of Rs.1341.63 lakh as on 31-1-2010 as per the books of accounts of KEPIP and the capital works in progress of Rs.82.45 lakh. The net consideration after setting off the prepaid metering advance of Rs.164.65 lakh from KEPIP was Rs.1259.43 lakh.

4. **Asset transfer agreement dated 7-9-2016 for Kalamassery**

111. Asset transfer agreement relating to Kalamassery was entered into by the parties based on the joint venture agreement dated 24-7-2008 and the agreement of operations dated 1-9-2011 with effect from 1-9-2011 at the depreciated book value as on 1-9-2011 for

purchase of utilities and assets from Kinfra to KPUPL. The gross purchase price to be paid for the assets was fixed at Rs.104.40 lakh for the Kalamassery Area.

5. Supplementary asset Transfer agreement dated 27-10-2017 for Kakkanad

112. In continuation of the above, supplementary agreement was entered into on 27-10-2017 by the parties for modifying the asset transfer agreement dated 7-9-2016 for the Kakkanad area, considering the observations of the Commission in the Order dated 13-3-2017 in OA No 15/2017 (first truing up of accounts for the year 2009-10). In the said order the Commission has observed that depreciation shall be as per the rates approved by the Commission and the assets created out of grants from government and contribution from consumers shall not be reckoned for depreciation apparently taking cognizance of the asset transfer agreement of the licensee. Accordingly, the licensee amended clause 3 and the net consideration to be paid by KPUPL after settling the prepaid metering advances from KEPIP was modified as Rs.949.01 lakh. Similarly, the clause 7(b) was also amended to decide the equity and debt portion of the said amount at 30:70 basis (Rs.284.00 lakh and Rs.665.01 lakh respectively). It was further provided in the said agreement that the debt portion shall carry an interest rate of 11.5% (ie., the rate of interest charged by Government for the loan provided to Kinfra) and for the equity portion, KPUPL shall issue shares to Kinfra.

6. Supplementary asset Transfer agreement dated 27-10-2017 for Kalamassery

113. Similarly on 27-10-2017, supplementary agreement was entered into for the Kalamassery area for which the consideration was fixed at Rs.104.40 lakh, the debt equity portion was agreed to as 70:30 (ie., Rs.72.40 lakh as debt and Rs.32 lakh as equity). The rate of interest for the debt portion was agreed to at 11.5% with effect from 1-9-2011 and the for the equity portion KPUPL shall issue shares to Kinfra. The net effect of the above agreements are summarized as shown below:

Table 21
Purchase price and value of assets as per Asset Transfer Agreements

	As per Asset Transfer Agreement dated 7-9-2016	Supplementary Agreement dated 27-10-2017
	Rs. lakh	Rs. lakh
Written Down Value of Assets/ NFA as on 31-1-2010	1,341.63	1,802.50
Add Capital works in Progress	82.44	82.44
Less Written down value of Consumer Assets		641.66
Less Written down value of ASIDE Assets		355.69
Less :Pre-paid metering advance	164.65	164.65
Add Value of leasehold land		226.07
Net Purchase price	**1,259.42**	**949.01**
Value of Assets in Kalamassery Area		104.50

Total	**1,259.42**	**1,053.51**
Debt portion (70%)	881.59	664.31
Equity Portion (30%)	377.83	284.70

Note: (as given in the petition for truing up for 2010-11)

1. The fixed addition of Rs.82.45 lakh has been considered in the truing up petition is transferred from the books of accounts of KEPIP in 2010-11 and reflected in the books of KPUPL in 2012-13.
2. The addition of fixed asset of to the tune of Rs.30.82 lakh was clerical error which was reversed in the year 2014-15. Hence the fixed asset addition of Rs.30.82 lakh has not been considered for the purpose of truing up.
3. The balances of sundry debtors, loans and advances and sundry creditors are subject to confirmation and reconciliation

Value of Assets as per petition after transfer

114. The Commission notes that there are differences in the values given in the truing up petition and the values as per the asset transfer agreement. The Commission has sought the details of arriving at the closing/opening book value given in the petition. As part of the clarifications dated 22-8-2019 and Annexure A1 of the details furnished on 20-2-2020, the details on the transfer value of assets are given below:

Table 22
GFA as at the end of 2009-10

	Rs. Lakh
GFA as on 31-3-2009	2232.97
Add addition of assets (1-4-2009 to 31-1-2010)	29.05
Deduct: Common assets of KEPIP*	199.49
GFA of KEPIP as on 31-1-2010	**2062.53**
Deduct: GFA Assets taken over from Consumers as on 31-1-2010	701.41
Deduct : GFA Assets created out of ASIDE Grants	380.82
GFA for transfer value (31-1-2010)	**980.30**
Add Asset Addition from 1-2-2010 to 31-3-2010 by KPUPL	1.66
Add Value of lease hold land	226.07
GFA KPUPL as on 31-3-2010	**1,208.03**

Note: *GFA changes from 31-3-2009 to 31-3-2010 (Ref: Part I(d) of clarifications dated 22-8-2019*
**This pertains to allocation of common assets to the distribution business by KEPIP in the books such as Air conditioners and other common share of assets. After the transfer KPUPL being separate company removed such allocated common assets*

115. The value of assets in the balance sheet furnished as part of the petition for the year 2009-10 is also consistent with the above figures as shown below:

Table 23

Comparison of Balance sheet before and after transfer as per the Petition for the year 2009-10

	As on 31-03-2009	As on 31-01-2010	As on 31-03-2010*
A) Capital			
a)Capital Reserve	1,027.83	997.35	
b) Reserves and surplus	635.59	771.99	-18.46
b) Unsecured loan (from Kinfra)	725.43	725.43	664.31
Total Source of funds	**2,388.85**	**2,494.77**	**645.85**
Application of funds			
a) Gross block	2,232.97	**2,062.53**	**1,208.04**
b) Less Depreciation	220.29	260.03	180.51
c) Net Block	**2,012.68**	**1,802.50**	**1,027.53**
Capital works in progress		82.18	
Current assets			
Loans and advances/deposit with KSEB/long term loan	50.62		
Deposits and investments	905.84	990.71	
Sundry receivables	140.18		10.13
Cash and Bank balances	108.41	305.31	165.52
Total	**1,205.05**	**1,296.02**	**175.65**
Current liabilities and provisions			
Payment due on capital liabilities			-71.19
Security deposits from consumers	3.27		0.35
Borrowing for WC	451.80	521.31	
Other Current liabilities	373.83	164.64	307.45
Total	**828.90**	**685.95**	**236.61**
Net current assets	376.15	610.07	-60.96
Total Application of funds	**2,388.83**	**2,494.75**	**966.57**

*As per the details furnished, source and application of funds are not matched as on 31-3-2010

Changes made in the Books of Accounts

116. In the order dated 6-12-2011, the Commission, had noted that the figures regarding consumer contributed assets, assets created out of government grants and ASIDE grants, funding of assets through loan etc, are inconclusive. Hence, the Commission sought the details of changes made in the books of account for the grants received from Government of India (Rs.1000 lakhs), ASIDE grants (Rs.375 lakhs) and assets taken over from consumers, on account of the finalisation of transfer. The licensee in its reply dated 22-8-2019 stated that in the KEPIP books, the Kinfra's share capital in KEPIP was Rs.25.01 lakhs. Regarding GoI grant of Rs.1000 lakhs, the licensee was stated that the same was utilised by KEPIP for the development of infrastructure and not utilised for distribution assets. Further, Grants from government of India to the tune of Rs.1000 lakh adjusted while determining the lease premium for the land. Hence the effect of Rs. 1000 lakh was not brought to the books of KEPIP or KPUPL.

117. However, the Commission sought the further clarifications on the Pricing of land and lease rent, the licensee in its letter dated nil (received in the office of the Commission on 20-2-2020) stated that an amount of Rs.177.62 lakh was in fact is the apportioned share in the Assets used for Distribution of Power. Based on the revised details furnished by the licensee, the Commission has calculated the value of assets developed through Government of India grants. In the case of ASIDE grants and assets created out of consumer contribution, on transfer of assets from KEPIP to KPUPL, the depreciated value of the said assets retained in capital reserve was written back in the books of KEPIP in the year 2017-18. This has done based on the supplementary agreement dated 27-10-2017 and the same was accounted in the books of accounts of KPUPL at a nominal value of Rs,1/-.

Current assets and liabilities

118. Regarding query on the current liabilities as on the date of transfer and actually transferred by the licensee, it was clarified by the licensee in the reply dated 22-8-2019 that the current assets and the capital work in progress as reported in the accounts of 2009-10 was transferred by KEPIP to KINFRA in the year 2016-17 and the same was accounted in the books of KPUPL by debiting KEPIP and crediting KINFRA The consequential adjustment of capital reserve was done in the year 2017-18 by KEPIP.

119. The Commission also sought the details of security deposit with KSEB Ltd and its treatment. In this regard, the licensee has stated the following :

> *"The treatment of security deposit, interest on SD, penalty for exceeding Contract Demand etc., are done outside the transfer scheme. The transfer scheme covered only the fixed assets identified for the distribution business as on 31-1-2010 and the balance of pre-paid advance collected by KEPIP from consumers and retained by them as on 31-1-2010."*

Accounting of Assets after Transfer

120. Book entries in both KEPIP and KPUPL was done in 2009-10 based on the Agreement for Operations between both parties, with the provisional valuation of net fixed assets based on the depreciation rates as per the Companies Act for an amount of Rs.1424.08 lakh, which is inclusive of assets created out of contribution and grants. The effect of the asset transfer on 31-1-2010, with revised value of NFA taking depreciation as per the provisions of the Regulations issued under the Electricity Act, 2003 and removing the consumer contributions and ASIDE grant in line with Supplementary agreement dated 27-10-2017, was reflected in the books of KEPIP in the year 2017-18. KPUPL had given effect of the transfer of final consideration in the year 2017-18. Thus, in the petition, the licensee had stated following changes in the Gross fixed assets during the transfer process.

Table 24
Closing and Opening value of assets upon transfer

Asset category		2009-10					
	2008-09	1-4-2009 to 31-01-2010			1-2-2010 to 31-3-2010		
	As on 31-3-2009	Additions	Deductions	as on 31-01-2010	Additions	Deductions	as on 31-03-2010
	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh
Land & Rights	61.20		61.20	-	226.07		226.07*
Substation	651.08			651.08			651.08
11kV works	1,362.78	2.05	18.95	1,345.88		1,082.23	263.65**
Metering equipment	38.57	27.00		65.57			65.57
Others	119.34		119.34	-	1.66		1.66***
Total	2,232.97	29.05	199.49	2,062.53	227.73	1,082.23	1,208.03

**Before transfer the value of land and rights (Rs.61.20 lakh) are based on the apportionment of common assets of KEPIP. Upon transfer the land to the tune of 2.63 acre required for distribution assets is treated as lease hold land for 30 years from KINFRA to KPUPL for a lease premium of Rs.85.96 lakh per acre effective from the date of transfer (Rs.226.07 lakh). Upon transfer original value of deducted (Rs.61.20 lakh) and Rs.226.07 lakh was added.*

***The value of assets created out of contribution from consumers and ASIDE grants (Rs.1082.23 lakh=Rs.701.41 lakh+Rs.380.82 lakh) removed from the books*

****The value of common assets of KEPIP was booked /apportioned (AC, etc.) as part of distribution was removed upon transfer (Rs.119.34 lakh).*

Order on Approval of Asset transfer and opening value of assets:

121. The Commission has gone through the Asset values used by the licensee for arriving at the consideration to be paid for the transfer of assets. It may be noted that the erstwhile licensee Viz., M/s KEPIP and the new licensee M/s KPUPL are companies promoted by Kinfra. The submissions given by the petitioner states that the source of funds for creation of assets is from Kinfra, and Kinfra in turn sourced it from Government of Kerala in the form of capital funds, a part of which were later converted as loans. According to the petitioner, since the funds employed by Kinfra is sourced from Government of Kerala in the form of loans bearing rate of interest of 11.5%, the same is transferred to these companies in the same terms and conditions.

122. The source of funding of assets of KEPIP used for distribution which is subsequently transferred to KPUPL comprises of three sources only viz.(a) loan from Kinfra (b) assets contributed by consumers (c) Assets created out of GoI and ASIDE grants. While effecting the transfer, licensee has removed/separated the value of assets created out of contribution and grants (Except the value of the share of assets created out of Government of India grants) and transferred them at a nominal rate of Rs.1/-. The Commission notes that though the share of the value of assets using Government of India grants was subsequently admitted by the licensee, the same was not incorporated in the transfer process. However, the same is accounted by the Commission for the *purpose of regulatory accounts. Thus, the balance value of assets can be treated as entirely sourced through loans from Kinfra/Government. ie., the entire value of Gross Assets (Rs. 1208.03 lakh) less the value of the share of Government of India grants is to be treated as funded from loan from Government of Kerala/Kinfra, since there is no materials provided to substantiate any other source of funds.*

123. After effecting the transfer, the licensee divided the total funds notionally among the debt & equity at the ratio of 70:30 on the value of assets (including the share of assets using Government of India grants) and 70% of these assets are treated as funded out of loan and balance 30% has treated as funded out of equity and share certificates were issued in favour of Kinfra.

124. It can also be seen from the above that, the licensee while in the process of transfer mainly accounted the fixed assets only. The current assets/current liabilities in the form of cash and bank balances (fixed deposits, regulatory surplus, deposits given to KSEB Ltd for power supply etc.,) security deposit from consumers, prepayment electricity charges,) etc., were not included as part of the transfer. It was mentioned in the petition (as notes to accounts), that the Directors would take appropriate decision in the matter. In the case of regulatory surplus, the licensee is of the view that it can be ascertained only after truing up. The Commission notes the contentions of the licensee. The licensee was following a pre-payment metering system in Kakkanad licence area. In the books of accounts, there is prepaid electricity charges from consumers. ***Since the liability has to be honoured by the new licensee as well, the Commission is not making any adjustments on this amount and no separate cost of funds will be provided for such advances. Similar is the treatment regarding the security deposit given to KSEB Ltd in the asset side.***

125. The licensee has stated that the assets taken over from consumers funds and assets created out of grants ~~are~~ were taken over at a notional value of Rs.1/-. In this context, the Commission is of the view that the licensee should have transferred the same with full value as per the alternative provisions of Accounting Standards for accounting grants especially considering the fact that the said assets are funded using Government Grants and contribution of consumers. Since the same has not been followed, the Commission directs that the licensee should properly maintain the register of assets created out of contribution and grants. In addition, the Commission hereby directs in order to maintain full transparency, that this fact must be properly disclosed in the licensee's accounts through a specific note.

126. The licensee has submitted that in the agreement for operations, the date of transfer is agreed to be effective from 1-2-2010. However, in the books of accounts of the licensee KPUPL, the depreciated book value based on the Companies Act 1956 is followed. However, from 1-2-2010 as per the supplementary agreement entered into amongst the

parties, the transfer value has been changed. According to the licensee, the changes will be effected in the books of accounts of KPUPL from 2017-18. The Commission for the purpose of regulatory accounting has adopted the date of acquisition of assets as the date of transfer ie., 1-2-2010 and the same will be considered for estimation of depreciation for regulatory purposes.

127. ***The Commission also directs that the licensee shall keep the accounts separately for each area of licence for accounting assets and corresponding liabilities including consumer contribution and grants. The licensee shall also maintain at all times a proper fixed asset register in this regard, separately for each licence area.***

128. Since the Commission has finalised the approach towards the asset transfer agreements as above, the truing up for the year 2009-10 can be dealt with as given below:

Truing up of accounts for the year 2009-10

129. M/s KPUPL in their petition stated the rationale for the present petition for truing up for the year 2009-10. The Commission in the order dated 10-3-2017 in OA 15/2016 had disallowed certain expenses like depreciation on assets, interest on normative loan, tax expenses and return on equity on the reason that source of funding of assets were not ascertained. The licensee also contented that major portion of O&M expenses were also disallowed based on the previous year truing up figures of the financial year 2008-09 which was pertaining to the period of operation of the erstwhile licensee KEPIP. According to the licensee, KPUPL is an exclusive distribution licensee and entire expenses have to be accounted separately unlike KEPIP, which was managed the distribution as part of their main business. Further, the minimum qualified manpower as per the norms prescribed by CEA has to be placed for the operation of the distribution business.

130. The licensee has furnished the details for the year 2009-10 in two periods : before and after the transfer ie., from 1-4-2009 to 31-1-2010 (KEPIP period) and from 1-2-2010 to 31-3-2010 (KPUPL period)

131. A comparison of the claims made in the initial filing and the present petition is given below:

Table 25
Comparison of ARR&ERC for the year 2009-10

Particulars	2009-10				
	As per Initial filing 18-12-2014	As per order dated 10-3-2017 & 20-3-2017	As per new filing		
			till 31-1-2010	1-2-2010 to31-3-2010	Total
	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh
Revenue from sale of power	1,627.75	1,627.75	1,353.61	282.61	1,636.22
Non-Tariff Income	23.44	130.68	66.51	0.09	66.60
Total	**1,651.19**	**1,758.43**	**1,420.12**	**282.70**	**1,702.82**
Power Purchase Cost	1,340.99	1,340.99	1,098.66	242.33	1,340.99
R&M Expenses	22.52	22.52	18.92	3.60	22.52
Employee cost	17.92	16.25	12.04	5.88	17.92
A&G expenses	53.27	46.12	49.53	27.70	77.23
Depreciation	53.52		42.46		42.46
Interest charges	37.26		69.52	12.73	82.25
RoE	87.10	10.00	10.00	-	10.00
Total ARR	**1,612.58**	**1,435.88**	**1,301.13**	**292.24**	**1,593.37**
Surplus/Gap (-)	**38.61**	**322.55**	**118.99**	**-9.54**	**109.45**

132. As shown above, the licensee has furnished details for the year 2009-10. In the current filing, revisions were made in A&G expenses, interest charges, RoE, non-tariff income etc., Each of the items are dealt with in the subsequent sections.

133. **Energy Sales:** The details of the number of consumers and the actual sales to various categories of consumers (HT connections, DHT consumers, LT consumers and temporary connections) reported by the licensee is as shown below:

Table 26
Details of Sale of energy for the FY 2009-10

Category	As per revised petition			
	No.of consumers	Energy sales (MU)		
		Till 31-1-2010	1-2-2010 to 31-3-2010	Total 2009-10
HT/DHT Consumers	24	29.60	6.54	36.14
LT Consumers & Temp. Connections	88	3.29	0.64	3.93
Total	**112**	**32.89**	**7.18**	**40.07**

134. The licensee has not made any revisions in the energy sales in the revised petition. Since there is no change in the energy sales figures, ***the Commission approves the***

actual energy sales as furnished by the licensee for the purpose of truing up of accounts for the year 2009-10.

135. **Energy Input:** As per the details furnished by the licensee, the total energy purchase for the year is 40.38MU. Out of this, 33.12 MU is before the transfer period and 7.26 MU is after the transfer period. There is no change in the figures furnished by the licensee for energy input. Hence the Commission approves this figure for Truing up.

136. **Distribution loss:** Considering the energy input and sales for the year, the distribution loss works out to be 0.77% of the energy input. The Commission in the ARR&ERC order for the year 2009-10 had approved the distribution loss of 2.60%. The details of the energy input and distribution loss furnished for 2009-10 in the present petition are given below.

Table 27
Distribution loss for the year 2009-10

Particulars	2008-09	2009-10			
			Actuals as per revised true up application		
	Actuals	Approved in the ARR	KEPIP from 1-4-2009 to 31-1-2010	KPUPL 1-2-2010 to 31-3-2010	Total
Energy Purchased (MU)	33.53	62.86	33.12	7.26	40.38
Energy Sold (MU)	33.49	61.27	32.89	7.18	40.07
Distribution loss(MU)	0.04	1.59	0.23	0.07	0.31
Distribution Loss %	0.12%	2.60%	0.70%	1.00%	0.77%

137. As shown above, the actual distribution loss is 0.77%, whereas the approved level is 2.60%. Since, the distribution loss is a controllable factor and lower distribution loss can be attributed as a measure for better performance of the licensee. The quantum of power purchase to be approved by the Commission is to be based on the distribution loss of 0.77%. As per sub-regulation (3) of regulation 9 of the Tariff Regulations,2006 the licensee shall have to share with the consumers part of the financial gain arising from achieving higher reduction in distribution loss *vis-a-vis* the target. Loss on account of underachievement of loss reduction target shall be entirely borne by the licensee. The Regulations does not specify the efficiency gain sharing formula. However, as per the MYT Regulations 2006, the efficiency gain shall be shared at 70:30 basis to licensee and consumers.

138. The distribution loss as approved by the Commission in the order dated 30-08-2008 for approving the ARR&ERC for the year 2009-10 is to be used for computing power purchase/sale of power to consumers for that year. Therefore, the Commission uses the approved distribution loss at 2.60% for the purpose of truing up of accounts for the financial year 2009-10. Accordingly, the efficiency gain for the year is as shown below:

Table 28

Efficiency gain due to Reduction in Distribution loss for 2009-10

		Actuals	Approved
Energy Sales	MU	40.07	40.07
Distribution loss	%	0.77%	2.60%
Energy input at approved Distribution loss	MU	40.38	41.14
Efficiency gain	MU		0.76

139. **Cost of Power Purchase**: The details of cost of power purchase given in the truing up petition for the financial year 2009-10 are tabulated below.

Table 29

Power Purchase Cost for the year 2009-10 as per the petition

Particulars	Unit	Actuals		
		KEPIP from 1-4-2009 to 31-1-2010	KPUPL 1-2-2010 to 31-3-2010	Total
Units purchased	MU	33.12	7.26	40.38
Fixed Charges	Rs.lakh	187.75	42.68	230.43
Variable Charges	Rs.lakh	910.91	199.65	1,110.56
Total charges	Rs.lakh	1,098.66	242.33	1,340.99
Average rate	Rs./kWh	3.32	3.34	3.32

140. As mentioned above, the actual distribution loss is lower than the approved level. The savings in power purchase cost is equal to the cost of saving 0.76MU. At an average power purchase cost (Rs.3.32/kWh) the amount is Rs.25.23 lakh. Out of this, 30% is to be shared with the consumer and the balance can be retained by the licensee. Accordingly, the power purchase cost approved for the year is as shown below:

Table 30

Approved power purchase cost for the year 2009-10

	Particulars	Unit	2009-10
1.	Energy purchase	MU	40.38
2	Total Demand charges	Rs. lakh	230.43
3	Total Energy Charges	Rs. lakh	1,110.56
4	**Total Cost of power purchase**	**Rs. lakh**	**1,340.99**
5	Average cost of purchase	Rs,/kWh	3.32
6	Efficiency gain at approved Distribution loss (7.6 lakh units x Rs.3.32)	Rs.lakh	25.23
7	Efficiency gain to be retained by the licensee	Rs.lakh	17.66
8=4+7	**Approved power purchase cost**	**Rs.lakh**	**1,358.65**

Employee Cost:

141. As mentioned above, in the new filing, the licensee has not made any changes in the claim of employee costs. The licensee has claimed Rs.17.92 lakh towards employee costs for the year 2009-10. The employee cost approved as part of the ARR&ERC was Rs.33.55 lakh for the year as shown below:

Table 31
Employee cost claimed for 2009-10

		Approved for 2009-10 (Rs.lakh)	Actuals for 2009-10 (Rs.lakh)		
	Actuals 2008-09 (Rs.lakh)		KEPIP from 1-4-2009 to 31-1-2010 (Rs.lakh)	KPUPL 1-2-2010 to 31-3-2010 (Rs.lakh)	Total for the year (Rs.lakh)
Employee expenses	14.80	33.55	12.04	5.88	17.92

142. As shown above, the actual expenses are much lower than the approved level. There is an increase of about 21% over the previous year. According to the petitioner licensee, for the period prior to transfer, the erstwhile licensee M/s KEPIP used to allocate 80% of the employee cost towards distribution business, whereas the entire cost of new licensee M/s KPUPL is assigned to distribution business as distribution of electricity is the sole business of the new entity. The licensee in the petition has stated that during the period prior to the transfer, KEPIP used the common human resources for both power distribution business and consolidated business. However, in the case of KPUPL, the expenditure incurred is exclusively for the power distribution business. Hence, according to the licensee, the expenditure incurred after transfer cannot be compared with that of the employee expenditure incurred during the yester years. It is to be noted here that the licensee has not furnished any additional details to substantiate higher employee costs over the previous year.

Table 32
Split up details of employee costs for 2009-10

		As per new filing		
	2008-09	till 31-1-2010	1-2-2010 to31-3-2010	Total
	Rs. Lakh	Rs. Lakh	Rs. Lakh	Rs. Lakh
Salaries and allowances	12.59	11.68	5.19	16.87
Other allowances	1.35	0.35	0.42	0.77
Medical reimbursement	0.85			
Staff welfare expenses			0.27	0.27
Total	**14.79**	**12.03**	**5.88**	**17.92**

143. Employee cost is considered as a controllable expense. The licensee has not made any convincing reason for substantiating the higher employee costs. As per clause 15(3) of Tariff Regulations, 2006 the O&M Expenditure ie., employee cost, administration and

general expenses, repairs and maintenance expenses and other miscellaneous expenses may be indexed to combination of indices at 70% of CPI and 30% of WPI. Accordingly the composite inflation rate of WPI and CPI at 30:70 for the period is as given below:

Table 33
Composite inflation rate (CPI:WPI) for various years

Year	WPI		CPI		CPI:WPI at 70:30 Basis
	Index	Yearly increase	Index	Yearly increase	
2006-07	111.40		125.00		
2007-08	116.60	4.67%	132.75	6.20%	5.74%
2008-09	126.00	8.06%	144.83	9.10%	8.79%
2009-10	130.80	3.81%	162.75	12.37%	9.80%

144. As shown above, the inflation index of CPI:WPI at 70:30 basis for the year 2009-10 9.80% over the previous year. Accordingly, as per the provisions of Regulations, the approved employee cost for 2009-10 is shown below:

Table 34
Approved employee cost for 2009-10

	2009-10
	Rs.lakh
Employee cost for 2008-09	14.80
Yearly increase at CPI:WPI basis	*9.8%*
Employee cost for 2009-10	**16.25**

145. As shown in the above, the total employee costs approved for the year 2009-10 is Rs.16.25 lakh as against Rs.17.92 lakh as claimed by the licensee.

Repairs and Maintenance Charges:

146. The licensee has claimed Rs.22.52 lakh towards R&M expenses for the year 2009-10. Details of R&M expenses claimed for the year in the petition is as shown below:

Table 35
R&M Expenses claimed for 2009-10

	Approved for 2008-09 (Rs.lakh)	Approved in 2009-10 (Rs.lakh)	Actuals for 2009-10 (Rs.lakh)		
			KEPIP from 1-4-2009 to 31-1-2010	KPUPL 1-2-2010 to 31-3-2010	Total
Repair & Maintenance expenses	20.58	65.92	18.92	3.60	22.52

147. The R&M expense is mainly the cost incurred for outsourcing the operation and management activities of the distribution system. According to the licensee, since the agency employed in the year is same before and after transfer, there is no effect on the R&M expenses on account of transfer of licence.

148. The Commission has examined the claim of R&M expenses. It is about 9.4% more than the actuals for the previous year 2008-09. The R&M expenses being a controllable expenses, it has to be approved as per the composite inflation rate based on CPI:WPI at 70:30 basis is (9.8%). It can be seen that the increase in R&M expenses over the previous year is almost the same as that of the indexed inflation rate. Hence, for the year 2009-10 it is approved at actuals for the year 2009-10 as shown below:

Table 36
R&M Expenses approved for 2009-10

Particulars	Approved in ARR (Rs.lakh)	Actuals claimed (Rs. Lakh)	Approved in Truing up (Rs.lakh)
R&M expenses	65.92	22.52	22.52

Administration and General Expenses:

149. The actual amount booked as per the revised petition under A&G expense is Rs.77.23 lakh for 2009-10 as against the approved expenses of Rs.70.72 lakh as shown below:

Table 37
A&G Expenses claimed for 2009-10

	2008-09 (Rs.lakh)	Approved for 2009-10 (Rs.lakh)	Actuals for 2009-10		
			KEPIP from 1-4-2009 to 31-1-2010 (Rs. Lakh)	KPUPL 1-2-2010 to 31-3-2010 (Rs. Lakh)	Total for the year (Rs. Lakh)
A&G expenses	40.28	70.72	49.53	27.70	77.23

150. Further the Duty under the Section 3(1) the Electricity Duty Act is not to be passed on to the consumers. A&G expenses include expenses towards security arrangements (Rs.7.15 lakh), other professional charges (Rs.10.14 lakh), advertisements (Rs.5.30 lakh), other statutory fees (Rs.7.11 lakh), electricity duty (Rs.23.96 lakh) etc. The A&G expense excluding electricity duty is about 32% higher than the previous year (2008-09). About 44% of the A&G expenses (Rs.27.70 lakh) is incurred in the months of February and March ie., after the takeover by KPUPL, which is abnormal. The A&G expenses excluding duty is Rs.53.27 lakh.

151. As per the details furnished by the licensee, during pre-transfer, major share of A&G expenses is apportionment of total expenses of KEPIP. As per the provisions of the Regulations, A&G expenses is a controllable expense and is to be allowed based on the indexation of CPI:WPI composite inflation rate. The composite inflation rate based on CPI:WPI at 70:30 basis is (9.8%) and the A&G expenses approved for the year is Rs.44.23 lakh as against Rs.77.73 lakh claimed by the licensee as shown below:

Table 38
A&G Expenses approved for 2009-10

	2009-10
	Rs. lakh
A&G expenses for 2008-09	40.28
Yearly increase at CPI:WPI basis	*9.8%*
A&G expenses for 2009-10	**44.23**

Depreciation

152. The depreciation claimed as per the new filing is Rs.42.46 lakh compared to the Rs.53.52 lakh claimed in the original petition/initial filing, in which the Commission had not approved any depreciation in the order dated 10-3-2017. The depreciation claimed by the licensee for the year 2009-10 is as shown below:

Table 39
Depreciation claimed for 2009-10

	Claimed in the initial petition (Rs.lakh)	**Approved in the Order dated 10-3-2017 (Rs.lakh)**	**Claimed in the new filing (Rs.lakh)**
Depreciation	53.52	0.00	42.46

153. According to the licensee, though the Asset Transfer Agreement (ATA) was executed on 7-9-2016 and supplementary agreement on 27-10-2017, the effective date of transfer was 1-2-2010. The assets created out of grants and contribution was separated and the depreciation was estimated based on the Regulations. Since the company was taken an area of 2.63 acre of land from KINFRA on a lease for 30 years with a lease premium of Rs.226.07 lakh, the proportionate amount for two months lease premium was amortised and added to the depreciation. The licensee also stated that the effect was brought into the books in the year 2016-17 and shown as ‘exceptional items’ in the P&L account for the year 2016-17. According to the licensee, the depreciation was reduced on account of the removal of depreciation of consumer funded and ASIDE funded assets. Details of the GFA as per Form N and V annexed to the petition are as shown below:

Table 40

GFA for the period 2009-10 (Before and after the Asset Transfer) as per the petition

Category	At the end of 2008-09	2009-10					
		1-4-2009 to 31-01-2010			1-2-2010 to 31-3-2010		
		Additions	Deductions	as on 31-01-2010	Additions	Deductions	as on 31-03-2010
	Rs.lakhs	Rs.lakhs	Rs.lakhs	Rs.lakhs	Rs.lakhs	Rs.lakhs	Rs.lakhs
Land & Rights	61.20		61.20	-	226.07		226.07
Substation	651.08			651.08			651.08
11kV works	1,362.78	2.05	18.95	1,345.88		1,082.23	263.65
Metering equipments	38.57	27.00		65.57			65.57
Others	119.34		119.34	-	1.66		1.66
Total	**2,232.97**	**29.05**	**199.49**	**2,062.53**	**227.73**	**1,082.23**	**1,208.03**

154. The amount of Rs.61.20 lakh under land and rights deducted, is the proportionate share of the value of land assigned by KEPIP as part of the distribution asset. Further Rs.119.34 lakh is also the proportionate value of common assets assigned by KEPIP as part of distribution assets. According to the licensee, the new company KPUPL is an exclusive distribution licensee, the proportionate allocation of common assets are not necessary and the same was deducted from GFA at the time of transfer. During KPUPL period, an amount of Rs.1082.23 lakh was deducted on account of assets created out of contributions from consumers and the assets created out of ASIDE grant. Further, the value of lease hold land transferred as part of ARR&ERC is also included. The capital addition made by KPUPL after transfer of assets is Rs.1.66 lakh which is also added as part of assets during the year. Based on the above, the depreciation claimed is as shown below

Table 41

Details of depreciation claimed for the year 2009-10

Categories	Accumulated depreciation upto 2008-09	2009-10						
		1-4-2009 to 31-01-2010			1-2-2010 to 31-3-2010			Depreciation for the year
		For the Period	With-drawal	Accumulated up to 31-1-2010	For the period	With-drawal	Accumulated up to the period	
	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh
Land & Rights					1.25		1.25	1.25
Substation	120.43	19.47		139.90	1.61		141.51	21.08
11kV works	74.49	40.63	4.29	110.83	3.88	86.93	27.78	44.51
Metering equipment	6.02	3.29		9.31	0.66		9.97	3.95
Others	19.36	4.19	23.55	-	0.01		0.01	4.20
Total	**220.30**	**67.58**	**27.84**	**260.04**	**7.41**	**86.93**	**180.52**	**74.99**
Less consumer assets	40.69	21.10		61.79			61.79	21.10
Less ASIDE grant	13.71	11.42		25.13			25.13	11.42
Total	**165.90**	**35.06**	**27.84**	**173.12**	**7.41**	**86.93**	**93.60**	**42.47**

155. The Commission has examined the depreciation claims of the licensee. As shown above, the depreciation claimed in the new filing is after considering the removal of assets created out of contribution and grants and the corresponding depreciation for the year. However, the licensee has not accounted in the petition, the value of assets financed using Government of India grants (Rs.177.62 lakhs), which was later admitted by the licensee. The licensee has also amortised the leasehold land received after transfer for the lease period (30 years) and the same is included as part of depreciation. As per the terms of KSERC (terms and conditions of tariff for distribution and retail sale of electricity under MYT network) Regulations 2006, the depreciation equivalent for the period of lease, is allowed for land held under lease. **Since the Commission has considered and approved the transfer scheme, the matters as part of transfer scheme is to be approved and accordingly allows amortization of lease hold land**.

156. The total depreciation for the period is Rs.74.99 lakh. Of this, depreciation before transfer is Rs.67.58 lakh out of which Rs.35.06 lakh is the depreciation for the assets excluding that created out of contribution and grants. The depreciation for the period after the transfer is Rs.7.41 lakh. Thus, the total depreciation claimed is Rs.42.47 lakh (Rs. 35.06 lakh+Rs.7.41 lakh).

157. As per the Order dated 13-4-2012 of the Commission regarding depreciation for Assets created out of grants and contribution, depreciation on such assets are not allowable from 2010-11 onwards. Hence, up to 2009-10, the Commission had allowed depreciation for the assets created out of contribution and grants for all licensees. Since this being the case, and for having a level playing field, the Commission inclined to allow depreciation for the assets for the year 2009-10 for the entire assets. Accordingly, the depreciation for the year approved is as shown below:

Table 42

Depreciation approved for the year 2009-10

	2009-10		
	1-4-2009 to 31-01-2010	1-2-2010 to 31-3-2010	Total for the period
	Rs.lakhs	Rs.lakhs	Rs.lakhs
Land & Rights		1.25	1.25
Substation	19.47	1.61	21.08
11kV works	40.63	3.88	44.51
Metering equipment	3.29	0.66	3.95
Others	4.19	0.01	4.20
Total	**67.58**	**7.41**	**74.99**

158. The above depreciation is inclusive of the depreciation for the assets created out of the share of Government of India grants (Rs.177.62 lakhs). Since no reduction is effected

for the assets created out of grants, total depreciation of Rs.74.99 lakh is allowed for the year.

Interest and financing charges

159. The licensee in the petition has claimed interest and financing charges for the year at Rs.82.25 lakhs at a rate of 11.5% for the normative loan. According to the licensee, the as per Regulation 17 of the MYT regulation 2006, the licensee is eligible for the interest on normative loan for the debt component. The licensee has availed loan from Kinfra at a rate of interest of 11.5% and the effect of the same is brought into the books in the year 2017-18 to comply with the requirements of the Companies Act. Interest charges claimed by the licensee is as shown below:

Table 43

Interest Charges claimed for the year 2009-10

	Debt at the end of the period	Rate of Interest	Interest charges
	Rs.lakh	%	Rs.lakh
1-4-2009 to 31-01-2010	725.43	11.50%	69.52
1-2-2010 to 31-3-2010	664.31	11.50%	12.73
Total			82.25

160. The Commission has examined the claim of the licensee regarding interest charges. The licensee has claimed interest charges at the rate of 11.5% for the period. As per the details furnished by the licensee, the source of funding for the years is as shown below:

Table 44

Liabilities as per the petition

	31-03-2008	31-03-2009	31-01-2010	31-03-2010
	Rs.lakh	Rs.lakh	Rs.lakh	Rs.lakh
A) Capital				
a)Capital Reserve	794.38	1,027.83	997.35	
b) Reserves and surplus	291.38	635.59	771.99	-18.46
b) unsecured loan (from kinfra)	725.43	725.43	725.43	664.31
Total Source of funds	**1,811.19**	**2,388.85**	**2,494.77**	**645.85**

161. As shown above, the licensee has treated the source of funding of assets using reserve funds, capital reserve and unsecured loan from KINFRA. As per the details furnished by the licensee the details of assets are as shown below:

Table 45
Details of Fixed assets

Category	2008-09	2009-10					
		1-4-2009 to 31-01-2010			1-2-2010 to 31-3-2010		
		Additions	Deductions	as on 31-01-2010	Additions	Deductions	as on 31-03-2010
	Rs.lakhs	Rs.lakhs	Rs.lakhs	Rs.lakhs	Rs.lakhs	Rs.lakhs	Rs.lakhs
Land & Rights	61.20		61.20	-	226.07		226.07
Substation	651.08			651.08			651.08
11kV works	1,362.78	2.05	18.95	1,345.88		1,082.23	263.65
Metering equipments	38.57	27.00		65.57			65.57
Others	119.34		119.34	-	1.66		1.66
Total	**2,232.97**	**29.05**	**199.49**	**2,062.53**	**227.73**	**1,082.23**	**1,208.03**

162. As shown above, the net GFA after deducting the assets created out of grants and contribution, is Rs.1208.03 lakh at the end of 2009-10. As per the contention given by the licensee under Affidavit, the funds for creation of assets net of contribution and grants is to be treated as loans from KINFRA. However, as per the clarification received in the office of the Commission dated 20-2-2020, the licensee has admitted that assets worth Rs.177.62 lakh is from the share of Government of India grants. This amount is also to be adjusted for arriving at the net value of assets and the loans.

163. In this regard, as held by the Commission based on the submissions of the licensee, the source of funding of assets excluding assets created out of consumer contribution, GOI grants and ASIDE grants can be treated as loans from Kinfra, which in turn is given by Government of Kerala. ***However, it is not prudent on the part of the Commission to allow interest since the terms of the loan have not been fixed by the Government. Further neither the licensee (erstwhile or the present) nor Kinfra had paid any interest charges to the Government. However, as and when the same is payable, it will be allowed to the licensee.*** In such case, the loan amount applicable each year is to be determined. The licensee while determining the transfer value and the amount of equity and loans, has used the net fixed assets after removing the value of grants and contribution as on the date of transfer as the base. The net fixed assets after deducting the prepaid electricity charges is notionally determined as the value of assets as on the date of transfer and the consideration was determined accordingly. The licensee assumed debt equity ratio of 70:30. The Commission based on the details furnished on the value of consumer contributed assets, ASIDE grant, GoI Grants and cumulative depreciation allowed from 2004-05 t0 2009-10, had arrived at the value of Net Fixed Assets as shown below:

Table 46
Approved NFA for the year 2009-10

	2008-09	2009-10
	Rs.lakhs	Rs.lakh
GFA	2232.97	2,232.97
Less assets created using consumer Contributions	631.41	701.41
Less Assets created using ASIDE grants	372.74	380.82
Less Assets using the share of GoI Grant	177.92	177.92
Asset Additions (1-4-2009 to 31-1-2010)		29.05
Asset Additions (1-2-2010 to 31-3-2010)		227.73
Asset Deductions (1-4-2009 to 31-1-2010)		199.49**
Net GFA	**1,050.90**	**1,030.11**
Cumulative Repayment/Depreciation	216.27	291.26
NFA	**834.63**	**738.85**

*****addition of assets using grants/consumer contribution in 2009-10 Rs.78.08 lakh
**Common assets of KEPIP removed from GFA

164. If at all interest on loans to be allowed, 70%of the above value is to be considered as against the claim of the licensee.

Return on Equity:

165. According to the licensee, as per the orders of the Hon. APTEL in appeal No. 121 of 2011 (MPGenco Vs MPERC), ROE should be allowed from the date of vesting. However, the licensee has claimed in the present petition Return of Rs.10 lakh for the year as the equity of the Company KPUPL was only Rs.10 lakh.

166. The Commission has examined the contention of the licensee. The case law pertaining to RoE cited by the petitioner is not applicable in the case since the same is as per transfer scheme in accordance with Section 131 of the Act. In the case of the licensee section 131 is not applicable. Further, as contented by the licensee, the entire funds are sourced from Kinfra in the form of loans and Kinfra in turn sourced from Government of Kerala in the form of loans. Since the promoter is the same before and after the transfer and source of funding is also same. As per the submission of the licensee and the books of the accounts, the paid up equity is Rs.10 lakh. This might be the reason why the licensee has claimed only Rs.10 lakh as Return on equity and no reason has given for claiming such amount. The licensee in the petition also stated that share certificates are also issued in the year 2017-18 in favour of Kinfra for the amount of equity shown as per the supplementary asset transfer agreement. Since these transactions have taken place subsequent to the date of transfer and as such amount of equity in the business at the beginning of the year is not determinate. **Hence, the Commission is of the considered view that for the regulatory purpose, 3% return on Net Fixed Assets can be applied for the year 2009-10.**

Table 47
Return on NFA for the year 2009-10

	2008-09	2009-10
	Rs.lakhs	Rs.lakh
GFA	2232.97	2,232.97
Less Contributions	631.41	701.41
Less ASIDE grants	372.74	380.82
Less share of GoI Grant	177.92	177.92
Additions (1-4-2009 to 31-1-2010)		29.05
Additions (1-2-2010 to 31-3-2010)		227.73
Deductions (1-4-2009 to 31-1-2010)		199.49
Net GFA	1,050.90	1,030.11
Cumulative Depreciation allowed	216.27	291.26
NFA at the End of the year	834.63	738.85
3% NFA at the beginning of the Year	17.08	25.04

Revenue from Sale of power:

167. The licensee has reported the revenue from sale of power for the year 2009-10 as shown below

Table 48
Revenue reported by the licensee for 2009-10

	Original petition (Rs.lakh)	Approved for 2009-10 (Rs.lakh)	Revised claim 2009-10 (Rs.lakh)		
			KEPIP from 1-4-2009 to 31-1-2010	KPUPL 1-2-2010 to 31-3-2010	Total
Revenue from Tariff	1627.76	1627.75	1353.61	282.61	1636.22

168. The consumer category wise revenue realized in 2009-10 is as follows.

Table 49
Consumer category wise revenue for 2009-10

	2009-10 (Rs.lakh)
HT/DHT Consumers	1,453.05
LT Consumers	162.52
Temp. Connections	20.65
Total	**1,636.22**

169. The licensee has reported the revenue from sale of power excluding the Section 4 duty. The Commission for the purpose of truing up approve the revenue reported by the licensee as per the petition.

Non-tariff income:

170. In the revised filing, the licensee has reported Rs.66.60 lakh as non-tariff income in comparison to Rs.29.73 lakh reported in the original filing. The details are given below:

Table 50
Details of Non-Tariff Income

Particulars	Original Petition	2009-10		
		KEPIP	KPUPL	Total
		April - Jan	Feb-March	
	Rs. Lakh	Rs. Lakh	Rs. Lakh	Rs. Lakh
Interest on fixed deposits	19.84	56.61		56.61
Electricity connection charges	6.38	6.39		6.39
Profit on transfer of fixed assets	2.02	2.02		2.02
Miscellaneous receipts	1.49	1.49	0.09	1.58
Total	**29.73**	**66.51**	**0.09**	**66.60**

171. The licensee in the petition has stated that erstwhile licensee had booked 80% of the interest income from fixed deposits to the distribution business. However, in the present petition, according to the licensee, the cumulative revenue surplus upto 2008-09 is Rs.594.79 lakh. Considering the surplus and the cash flow statement an amount of Rs.56.61 lakh is now stated as interest on fixed deposit for the year 2009-10. Further the licensee has stated that further scrutiny of the accounts of the power business, income received under the heading such as electricity connection charges Rs.6.38 lakh, profit on transfer of assets Rs.2.02 lakh, other receipts (Rs.0.09 lakh) and miscellaneous income from consumers Rs.1.49 lakh were reconciled. Hence the licensee has requested to accept the revised claims.

172. The Commission has examined the details furnished by the licensee. The interest from fixed deposits has been increased by the licensee considering the estimates of accumulated surplus over the previous years. The increase in non-tariff income is mainly due to the interest shown from bank fixed deposits. The Commission is inclined to accept the above figures.

Revenue Surplus/(gap):

173. The Commission after duly considering the application of the licensee for truing up of account for the year 2009-10, clarifications and the additional details submitted by the licensee thereon along with the comments/objections of KSEB Ltd, the revenue surplus/gap approved for truing up of accounts for the financial year 2009-10 is tabulated below:

Table 51

Revenue Surplus/ Gap for the year 2009-10 after truing up

	2009-10		
	As per Order dated 10-3-2017	**As per revised petition**	**Approved**
	Rs. lakh	Rs. lakh	Rs. lakh
Revenue from sale of power	1627.75	1,636.22	1,636.22
Non-Tariff Income	130.68	66.60	66.60
Total	1,758.43	1,702.82	1,702.82
Power Purchase Cost	1,340.99	1,340.99	1,358.65
R&M Expenses	22.52	22.52	22.52
Employee cost	16.25	17.92	16.25
A&G expenses	46.12	77.23	44.23
Depreciation		42.46	74.99
Interest charges		82.25	
RoE/RoNFA	10.00	10.00	25.04
Prior period charges/credits		3.13	3.13
Total ARR	**1,435.88**	**1,596.50**	**1,544.81**
Surplus	**322.55**	**106.32**	**158.01**

174. The revenue surplus for the year 2009-10 after truing up of accounts is Rs.158.01 lakh as against a revenue surplus of Rs.106.32 lakh presented by the licensee as per the truing up application. ***The accumulated revenue surplus including Rs.158.01 lakh after this truing up of accounts for the financial year 2009-10 will be Rs.1519.89 lakh***

Part -III

Truing up of accounts for 2010-11 to 2014-15

175. The Commission has issued truing up orders for the years 2010-11 to 2014-15 separately for each of the years vide Orders dated 20-3-2017. As mentioned in the above sections, the licensee has furnished separate truing up petitions for these years for a fresh truing up mentioning that the Commission has disallowed the depreciation, interest on loan and RoE, increase in O&M expenses, accounting of capital additions after transfer etc., The Commission has in detail considered these matters and decided to true up the accounts for these years considering the present petitions as given below:

176. A comparison of the initial petition of the licensee, the approved figures as per orders dated 20-3-2017 and the revised figures for truing up is given below:

Table 52
Comparison of the Truing up for 2010-11 to 2014-15

	2010-11			2011-12			2012-13		
	As per initial petition	Approved in Order dated 20-7-2017	As per Revised petition	As per initial petition	Approved in Order dated 20-7-2017	As per Revised petition	As per initial petition	Approved in Order dated 20-7-2017	As per Revised petition
	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh
Revenue from sale	1627.76	1,873.80	1873.80	2208.63	2,208.63	2208.63	2947.58	3,211.59	2947.55
Non-Tariff Income	23.44	175.31	13.82	58.98	233.23	58.98	94.29	299.73	94.29
Total	**1,651.20**	**2,049.11**	**1,887.62**	**2,267.61**	**2,441.86**	**2,267.61**	**3,041.87**	**3,511.32**	**3,041.84**
Power Purchase Cost	1579.92	1,579.92	1579.92	1818.88	1,795.66	1818.89	3064.93	3,025.40	3064.93
R&M Expenses	29.01	24.81	29.01	40.34	26.93	40.34	45.23	29.50	45.23
Employee cost	39.13	17.90	39.13	46.25	19.44	46.25	83.44	23.47	83.44
A&G expenses	51.3	23.33	51.3	57.5	25.33	57.50	64.18	27.74	64.18
Depreciation	79.07	-	48.15	81.12	-	54.07	95.88	-	55.85
Interest charges	12.74	-	89.14	16.64		101.44	9.58		81.19
RoE	53.79	10.00	41.26	54.18	10.00	45.64	61.56	10.00	45.64
Prior period charges/credits			-2.06				-13.19	-13.19	
Deferred tax liability			83.01	82.79		82.79	54.33		54.33
Total ARR	**1,844.96**	**1,655.96**	**1,958.86**	**2,197.70**	**1,877.36**	**2,246.92**	**3,465.94**	**3,102.92**	**3,494.79**
Surplus/Gap	**-193.76**	**393.15**	**-71.24**	**69.91**	**564.50**	**20.69**	**-424.07**	**408.40**	**-452.95**

Table 52 (Cont…)
Comparison of the Truing up for 2010-11 to 2014-15

	2013-14			2014-15		
	As per initial petition	Approved in Order dated 20-7-2017	As per Revised petition	As per initial petition	Approved in Order dated 20-7-2017	As per Revised petition
	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh
Revenue from sale of power	4006.46	4,117.85	4006.17	4653.25	4,653.25	4653.25
Non-Tariff Income	32.1	306.57	32.10	42.53	363.80	42.53
Total	**4,038.56**	**4,424.42**	**4,038.27**	**4,695.78**	**5,017.05**	**4,695.78**
Power Purchase Cost	3733.66	3,722.94	3733.66	4382.47	4,282.09	4382.47
R&M Expenses	54.20	32.52	54.20	58.95	33.63	58.95
Employee cost	66.28	23.11	66.28	64.63	24.27	64.63
A&G expenses	60.09	30.11	60.09	71.88	31.62	71.88
Depreciation	90.06		55.86	89.93		55.58
Interest charges	18.16		102.97	12.71		97.52
RoE		10.00	45.64	52.27	10.00	45.64
Prior period charges/credits	55.32			-8.28		-8.28
Deferred tax liability	-174.59		-174.59	15.71		15.71
Total ARR	**3,903.18**	**3,818.68**	**3,944.11**	**4,740.27**	**4,381.61**	**4,784.10**
Surplus/Gap	**135.38**	**605.74**	**94.16**	**-44.49**	**635.44**	**-88.32**

177. As can be seen that the licensee has revised the figures for truing up of accounts for the above years, mainly under depreciation, interest and financing charges, and ROE considering the supplementary asset transfer agreement dated 27-10-2017. Each of the items in the petitions is dealt with in the following sections

Energy Sales

178. The details of the number of consumers and the actual sales to various categories of consumers (HT connections, DHT consumers, LT consumers and temporary connections) reported by the licensee for the years from 2010-11to 2014-15 are given below:

Table 53
No. of consumers

	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
HT Consumers	24	28	40	53	61	64
LT Consumers	88	92	114	149	158	177
Temporary			17			
Total	**112**	**120**	**171**	**202**	**219**	**241**

Table 54
Category wise Sales

	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
	MU	MU	MU	MU	MU	MU
HT Consumers	36.14	42.17	49.30	52.92	58.28	65.01
LT Consumers	3.93	4.12	4.82	6.48	6.73	6.89
Temporary			0.45			
Total	**46.28**	**46.29**	**54.57**	**59.40**	**65.01**	**71.90**
Sales approved		**69.80**	**55.11**	**67.71**	**65.28**	**66.81**

179. As can be seen from the above table, that there is a substantial increase in sales from 2011-12. The increase might be on account of taking over of new licence area in Kalamassery by the licensee, which is revealed from the increase in number of consumers As per the details furnished by the licensee, operations at Kalamassery was taken over from 6-2-2011. After examining the details furnished by the licensee, ***the Commission approves the actual energy sales reported by the licensee for the purpose of truing up of accounts for the year 2010-11 to 2014-15.***

180. **Energy Input and Distribution Loss:** The details of the energy input and the distribution loss approved by the Commission for the licensee over the years from 2009-10 to 2014-15 are tabulated below.

Table 55
Approved Energy Requirement and Distribution Loss

	2010-11	2011-12	2012-13	2013-14	2014-15
	MU	MU	MU	MU	MU
Sales	69.80	55.11	67.71	65.28	66.81
Purchase	71.96	55.39	68.05	66.26	67.83
Distribution loss	2.16	0.28	0.34	0.98	1.02
Distribution loss (%)	3.00%	0.51%	0.50%	1.48%	1.50%

181. The details of the energy input and the actual distribution loss by the licensee over the years from 2009-10 to 2014-15 are tabulated below.

Table 56
Actual Energy Requirement and Distribution Loss

	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
	MU	MU	MU	MU	MU	MU
Energy Sales	40.07	46.29	54.57	59.40	65.01	71.90
Purchase	40.38	46.71	55.55	60.48	66.19	74.70
Distribution loss	0.30	0.42	0.98	1.08	1.18	2.80
Distribution loss (%)	0.74%	0.90%	1.76%	1.79%	1.78%	3.75%

182. A comparison of the distribution loss target fixed by the Commission in the ARR&ERC orders and the actuals for these years is given below:

Table 57
Comparison of approved and actual distribution loss

	Approved Loss (%)	Actual Loss (%)
2010-11	3.00%	0.90%
2011-12	0.51%	1.76%
2012-13	0.50%	1.79%
2013-14	1.48%	1.78%
2014-15	1.50%	3.75%

183. As shown above, except for the year 2010-11, the actual loss is higher than the approved level of losses. According to the details furnished by the licensee, the new area ie., Kalamassery was added from 6-2-2011. This may have resulted in increase in losses due to limited operations in the initial periods. The licensee presented the theoretical estimates of no load losses to support the higher level of distribution loss from 2010-11 onwards as shown in the Table below.

Table 58
Average No load loss based on technical specification

Year	Energy input (MU)	Technical loss (MU)	Percentage
2011-12	55.55	1.011	1.82%
2012-13	60.48	1.103	1.82%
2013-14	66.19	1.453	2.20%
2014-15	74.70	1.990	2.66%
Total	256.92	5.560	2.16%

184. The licensee has estimated the technical losses as shown above for each of the years based on the energy input for each year and no-load loss of transformer. The licensee stated the no load loss of transformer (12.5.MVA and 20MVA) as certified by M/s Telk is 11.21 kW. Assuming that transformer loss at 15kW, and distribution transformer loss at 0.75% of the connected capacity of the total transformers, the estimated no load loss would range from 1.82% to 2.66% as shown in the table above.

185. The Commission has examined the contentions of the licensee regarding distribution loss. According to the licensee, operations have increased over the years. The licensee also given the growth in the system to support the increase in the level of losses. The Commission noted that the distribution loss is higher than the approved levels in all the years except in 2010-11. The licensee has stated in the petition that if the estimated no-load losses alone is considered, it would be more than the loss level approved by the Commission. However, such theoretical estimation, by and large is a gross approximation and is not in line with the actual loss figures. It is also true that the actual loss in 2009-10 was only 0.77%. In this context, the Commission also considered the submission of the licensee. The licensee stated that they have conducted an energy audit in the system and the recommendations are being implemented from 2015-16 and accordingly the losses in the system has been reduced. The Commission has sought the details of phase wise details of distribution loss from the licensee. The licensee, vide its letter received on 20-02-2020 at the Office of the Commission provided the following details:

Table 59
Phase wise loss reported by the licensee for 2009-10 to 2014-15

	Kakkanad			Kalamassery			Total Loss%
	Purchase (MU)	Sale (MU)	Loss%	Purchase (MU)	Sale (MU)	Loss%	
2009-10	40.38	40.07	0.77%	-	-	0.00%	0.77%
2010-11	46.71	46.28	0.92%	-	-	0.00%	0.92%
2011-12	55.47	54.49	1.77%	0.08	0.08	0.00%	1.76%
2012-13	60.40	58.93	2.43%	0.47	0.47	0.00%	1.79%
2013-14	65.63	64.45	1.80%	0.56	0.56	0.00%	1.78%
2014-15	73.46	70.66	3.81%	1.24	1.24	0.00%	3.75%

186. The licensee has stated that in the Kalamassery area, they are not separately accounting for losses and purchase from KSEB Ltd is treated as sales. Hence, as shown in the above table, the overall losses were lower. The licensee also stated that through the energy audit study and measures taken, the losses were reduced in subsequent years. Thus, it is clear that the increase in losses in the system from 0.77% in 2009-10 to 3.81% in 2014-15 is due to the inaction of the licensee in monitoring and taking corrective actions on the distribution loss. It is also important to note that the Commission has increased the loss targets during 2013-14 and 2014-15, considering the increased actual level of losses. However, the licensee could not achieve these targets as approved by the Commission. Hence, the contention of the licensee that the approved losses were much lower and difficult to achieve cannot be accepted and the Commission is not inclined to change the approved losses levels at this point of time. In case the licensee is aggrieved of the same, the licensee may approach the Commission with proper details, for a review.

Table 60
Approved Distribution loss from 2010-11 to 2014-15

Year	Total Energy input (MU)	Approved loss%	Actual Loss	Excess distribution loss	
				%	MU
2010-11	46.71	3.00%	0.92%	2.08%	0.97
2011-12	55.55	0.51%	1.76%	-1.25%	-0.69
2012-13	60.87	0.50%	1.79%	-1.29%	-0.79
2013-14	66.19	1.48%	1.78%	-0.30%	-0.20
2014-15	74.70	1.50%	3.75%	-2.25%	-1.68

Power purchase cost

187. A comparison of approved and actual power purchase cost for the years 2010-11 to 2014-15 is shown below:

Table 61
Approved power purchase cost

Approved	Unit	2010-11	2011-12	2012-13	2013-14	2014-15
Units purchased	MU	71.96	55.39	68.05	66.26	67.83
Fixed charges	Rs.lakh	345.45	297.68	365.66	465.75	534.74
Variable Charges	Rs.lakh	1,978.85	1,750.32	2,150.38	2,749.79	3,221.93
Total Power purchase cost	**Rs.lakh**	**2,324.30**	**2,048.00**	**2,516.04**	**3,215.54**	**3,756.67**

Table 62
Actual power purchase cost

Actual	Unit	2010-11	2011-12	2012-13	2013-14	2014-15
Units purchased	MU	46.71	55.55	60.48	66.19	74.70
Fixed charges	Rs.lakh	255.69	305.79	423.15	584.00	581.13
Variable Charges	Rs.lakh	1,324.23	1,513.70	2,641.78	3,150.00	3,801.34
Total Power purchase cost	**Rs.lakh**	**1,579.92**	**1,819.49**	**3,064.93**	**3,734.00**	**4,382.47**
Average Power purchase cost	Rs./kWh	3.38	3.28	5.07	5.64	5.87

188. The licensee in the petition has stated that power purchase cost has been reconciled with the bills of KSEB Ltd from 2009-10 to 2014-15. The licensee has furnished the re-conciliation statement along with the petitions. Further the licensee also mentioned in the petition that all pending bills on power purchase has been settled with KSEB Ltd .

189. As mentioned above, the approved power purchase cost is to be based on the approved distribution loss. The efficiency gain/loss is to be adjusted against the power purchase cost as shown below:

Table 63
Efficiency gain/loss based on approved distribution loss

Year	Total Energy input (MU)	Approved loss (%)	Actual Loss (%)	Excess distribution loss		Average power purchase cost (Rs./kWh)	Efficiency gain/loss (Rs.lakh)
				%	MU		
2010-11	46.71	3.00%	0.92%	2.08%	0.97	3.38	32.86
2011-12	55.55	0.51%	1.76%	-1.25%	-0.69	3.28	-22.74
2012-13	60.87	0.50%	1.79%	-1.29%	-0.79	5.07	-39.79
2013-14	66.19	1.48%	1.78%	-0.30%	-0.20	5.64	-11.20
2014-15	74.70	1.50%	3.75%	-2.25%	-1.68	5.87	-98.61

Table 64
Approved power purchase cost

Actual	Unit	2010-11	2011-12	2012-13	2013-14	2014-15
Units purchased	MU	46.71	55.55	60.48	66.19	74.70
Fixed charges	Rs.lakh	255.69	305.79	423.15	584.00	581.13
Variable Charges	Rs.lakh	1,324.23	1,513.70	2,641.78	3,150.00	3,801.34
Total Power purchase cost	**Rs.lakh**	**1,579.92**	**1,819.49**	**3,064.93**	**3,734.00**	**4,382.47**
Average Power purchase cost	Rs./kWh	3.38	3.28	5.07	5.64	5.87
Efficiency loss (-)/Gain(+)	Rs.lakh	32.86	-22.74	-39.79	-11.20	-98.61
Approved Power purchase cost	**Rs.lakh**	**1,612.78**	**1,796.75**	**3,025.14**	**3,722.80**	**4,283.86**

190. The Commission notes that there a dispute with KSEB regarding the power purchase during these years. The Commission in its *suomotu* proceedings on revision of Bulk Supply Tariff applicable to the licensees had issued an order dated 13-12-2010 and had increased the Bulk supply Tariff from 1.12-2010. Accordingly, the energy charge was increased from 2.75/kWh to 3.16/kWh. The licensee withheld the payment to the tune of

increase in BST and has filed a petition for review before the Commission, which was rejected. Subsequently, the licensee filed appeal before Hon. APTEL and APTEL in its order dated 30-5-2012 disposed off the matter upholding the arrear bill. Thereafter the licensee paid the arrear bill raised by KSEB Ltd including the penal charges.

Dispute with KSEB Ltd on enhancing contract demand:

191. KSEB Ltd and KPUPL had agreed for enhancing contract demand from 9 MVA to 11 MVA. However, KSEB Ltd did not increase the contract demand even after KPUPL applied for enhancement of contract demand, but charged for excess demand charges for breaching the contract demand above 9 MVA. KPUPL did not pay the excess demand charges and approached the Commission against the disputed bill. The Commission directed the licensee to enter into PPA with KSEB Ltd. The existing PPA for bulk supply was between KSEB Ltd and erstwhile licensee KEPIP. However, in the mean time, KSEB Ltd claimed excess demand charges from the licensee. Finally, after KSEB Ltd had agreed to enhance the contract demand, PPA was entered into by the parties with effect from 1-9-2014, thereupon the agreement with KEPIP was terminated. Upon signing the PPA, KPUPL furnished fresh security deposit for Rs.612 lakh as per the terms of PPA. The total arrears of electricity charges amounting to Rs.146.25 lakh including principal and interest was adjusted against the security deposit with interest (amounting to Rs.188.87 lakh) provided by erstwhile licensee KEPIP with KSEB Ltd, and balance amount of Rs.42.62 lakh was refunded to KEPIP. It was settled as per the proceeding dated 6-12-2014 of Special Officer Revenue of KSEB Ltd. As per the operational agreement, KPUPL has to provide interest charges for the amount received from KSEB Ltd to KEPIP at the rate of 6% (rate of interest). In this context, it is to be noted that KPUPL cannot make separate claim on the additional fund requirements for providing security deposit to KSEB Ltd since the licence business is continuous.

192. After considering the details furnished by the licensee the Commission approved the entire power purchase cost. However, in the mean time, KSEB Ltd approached the Hon. APTEL against the order of the Commission for fixing the ~~of~~ arrear amount of KPUPL. In the Order in Appeal No. 104 of 2015 dated 2-6-2016, Hon. APTEL has partly allowed the appeal and directed to restrict the penal demand charges from February 2011 to 9-8-2012 and adjust the amount already paid. Hon. APTEL has also directed monitoring the compliance to its ~~the~~ Order. ***Hence, the Commission hereby directs that the entire issue of payment towards power purchase cost including that of arrears shall be reviewed retrospectively from 2009-10 in compliance to the Order of Hon.APTEL for final settlement while considering the truing up petition for 2016-17 or 2017-18. Till then the power purchase cost approved from 2009-10 shall be considered as provisional and revision or adjustments if any will be resorted to retrospectively. The licensee shall furnish all the details for enabling the review.***

O&M expenses:

193. The licensee in the petition stated that the erstwhile licensee, KEPIP was handling the power distribution along with the park activities and using the same resources for both activities. However, with KPUPL, which is an exclusive distribution licensee, the entire cost incurred is for the licence activity ie., distribution business. Hence, according to the licensee, it is 'irrelevant' to compare the O&M expenses before the transfer period and the O&M expenses is independent due to this bifurcation. R&M expenses from 2010-11 incurred is mainly for the operation and maintenance of substations which was outsourced through tendering and hence the cost is uncontrollable. Each of the item of the O&M expenses are dealt with as shown below:

Employee expenses:

194. The licensee stated that the employee cost has increased during the period of KPUPL due to the entire expenses incurred for distribution of electricity being booked in the distribution business (unlike the erstwhile licensee, where apportioned cost was used). Further, the affairs of the company were managed by the joint venture partner who was a central public sector undertaking. A CEO and a head of finance was engaged from the Central PSU and the salary and allowances of the staff were governed by the rules of Central PSUs. The increase in expense from 2014-15 was due to revision of pay in NTPC Ltd, which may be considered as reasonable, since the revision is based on the norms of Government of India. Further in 2012-13, payment of arrears of Rs.26 lakhs for terminal benefits were released. The year wise employee cost claimed is as shown below:

Table 65

Details of employee cost claimed from 2010-11 to 2014-15

	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
	Rs. Lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh
Salaries	16.87	35.13	42.79	77.17	52.63	51.32
Staff welfare expenses	1.05	1.34	0.54	3.06	1.12	1.57
Payment under workmen compensation			2.91			
Terminal benefits		2.65		3.21	12.53	11.73
Total	**17.92**	**39.12**	**46.24**	**83.44**	**66.28**	**64.62**
Increase over previous year		118%	18%	80%	-21%	-3%

195. As shown above, there is substantial increase in employee costs over the years. According to the licensee it was due to the formation of the new company and employment of persons from Central PSU that resulted in the increase in employee cost.

196. The Commission examined the details furnished by the licensee. Considering the fact that the licensee has changed the ownership and transfer of assets taken place at the fag end of the year 2009-10, the Commission for the purpose of approving employee costs, taken the expenses in 2010-11 as the base.

197. As per the provisions of the clause 15(3) of the KSERC (Terms and conditions of tariff for Retail Sale of Electricity) Regulations 2006, O&M expenses may be indexed to pre-determined indices such as CPI, WPI or a combination of both indices to 70% of CPI and 30% of WPI. The composite index of CPI and WPI for the relevant period is worked out is as shown below:

Table 66

Composite index of CPI:WPI over the years

Year	WPI		CPI		CPI:WPI at 70:30 Basis
	Index	Yearly increase	Index	Yearly increase	
2009-10	130.80	3.81%	162.75	12.37%	9.80%
2010-11	143.30	9.56%	179.75	10.45%	10.18%
2011-12	156.10	8.93%	194.83	8.39%	8.55%
2012-13	167.60	7.37%	215.17	10.44%	9.52%
2013-14	177.60	5.97%	236.00	9.68%	8.57%
2014-15	181.19	2.02%	250.83	6.29%	5.01%

198. Based on the above, the employee costs approved for the years is as shown below:

Table 67

Approved employee costs for 2010-11 to 2014-15

	2010-11	2011-12	2012-13	2013-14	2014-15
	Rs lakh	Rs lakh	Rs lakh	Rs lakh	Rs lakh
Employee cost Claimed	39.12	46.24	83.44	66.28	64.62
CPI:WPI Index increase (%)	10.18%	8.55%	9.52%	8.57%	5.01%
Employee costs Approved	**39.12**	**42.46**	**46.51**	**50.49**	**53.02**

199. The liensee has stated that in 2012-13, an amount of Rs. 26 lakh was released towards contribution to terminal benefits. The Commission after considering the matter, allows the claim separately for the year 2012-13.

R&M Expenses

200. Regarding R&M expenses, the licensee stated in the petition that there is a difference in the business model of the licensee compared to the erstwhile licensee. As per the norms of CEA, minimum qualified man power is to placed for the operation of distribution business. According to the licensee only minimum man power for the operations are

employed and contracts for outsourcing of activities are based on the open tendering process.

201. The licensee furnished detailed split up details of R&M expenses for the year under consideration as shown below:

Table 68

R&M expenses claimed for 2010-11 to 2014-15

	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
	Rs lakh	Rs lakh	Rs lakh	Rs lakh	Rs lakh	Rs lakh
R&M expenses	22.52	29.01	40.34	45.23	54.2	58.95

202. The licensee also stated that the increase in R&M expenses is due to the increase in business due to increase in area of operation as shown below:

Table 69

Split up details of R&M expenses

	2010-11	2011-12	2012-13	2013-14	2014-15
	Rs lakh	Rs lakh	Rs lakh	Rs lakh	Rs lakh
R&M Office equipments	0.42	0.33	0.22	0.38	0.19
O&M :Kakkanad SS	24.18	33.43	30.74	33.73	36.60
O&M :Kalamassery LA			4.38	5.48	5.94
Pre-paid metering (CMS)	2.84	2.40	3.94	4.14	4.59
GSM bill for transfer of Data	0.83	1.82	1.48	2.15	3.43
Man power support	0.74	2.37	4.46	8.32	8.20
R&M Total	**29.01**	**40.34**	**45.23**	**54.20**	**58.95**

203. The licensee has furnished the following details as the reason for increase in R&M cost over the years.

Table 70

Reasons furnished for increase in R&M expenses

	2010-11	2011-12	2012-13	2013-14	2014-15
O&M Awarded rate/month (Rs.)	154500	225000	214000	288400	333046
Service Tax rates (%)	10.30%	10.30%	12.36%	12.36%	12.36%
Wage settlement date 17-10-2013				>30%	
Increase in Rate over previous month		45.63%	-4.89%	34.77%	15.48%
Reason for increase		Increase in scope/ Kalamassery	Decrease due to Competition	Wage Settlement/ Kalamassery scope increase	Single response

204. The following are the details of minimum number of persons to be engaged by the contractor as per the contract for O&M activities

Table 71
Minimum number of persons to be engaged by the contractor

Kakkanad	Qualification	2010-11	2011-12	2012-13	2013-14	2014-15
Station Engineer	B-Tech+ 5 year	1	1	1	1	1
Shift Operator	B Tech	4	4	4	4	4
Shift Assistant	ITI+2 years	4	4	4	4	4
Maintenance Engineer	Diploma +3year	1	1	1	1	1
Maintenance Technician	ITI+2 years	2	2	2	2	2
Maintenance helper	SSLC pass + Experience	1	1	1	1	1
House keeping Helper	Pre-metric above	1	1	1	1	1
Total		**14**	**14**	**14**	**14**	**14**
Kalamassery						
Technician	ITI +3 years		1	1	4	4
Maintenance Helper	SSLC pass +E xperience		1	1		
Total			**2**	**2**	**4**	**4**

205. As per the details furnished by the licensee, the billing and metering costs alone is about 10-12% of the R&M expenses as shown below:

Table 72
Metering and billing costs under R&M expenses

	2010-11	**2011-12**	**2012-13**	**2013-14**	**2014-15**
	Rs lakh	Rs lakh	Rs lakh	Rs lakh	Rs lakh
Total R&M Costs (Rs.Lakh	29.01	40.34	45.23	54.20	58.95
Prepaid billing costs (Rs.lakh)	3.67	4.21	5.43	6.29	8.02
% to total R&M expenses	12.6%	10.4%	12.0%	11.6%	13.6%
No. of consumers	120	171	202	219	241
Billing cost/consumer/month (Rs./consumer/month)	254.80	205.25	223.88	239.47	277.19

206. The Commission has considered the above details. As per the details furnished by the licensee, increase in overall R&M costs are on account of addition of Kalamassery licence area and increase in the rates. Further, the licensee also furnished that there is an increase in scope of work in Kalamassery area. However, the increase in R&M expenses are mostly driven by the increase in costs of Kakkanad area. The no. of people engaged, according to the licensee is in compliance of the stipulation of CEA. Further, as per the details furnished, the billing cost is also included as part of the R&M expenses, which is about 10 to 12%.

Table 73
Share of R&M expenses for each licence area

	2011-12	2012-13	2013-14	2014-15
Total R&M expenses	39%	12%	20%	9%
Kakkanad	38%	-8%	10%	8%
Kalamassery			25%	9%

Table 74
Per unit R&M expenses

	2010-11	2011-12	2012-13	2013-14	2014-15
Total R&M Expenses (Rs.Lakh	29.01	40.34	45.23	54.20	58.95
Energy Sales (MU)	46.29	54.57	59.4	65.01	71.9
R&M expenses per unit (Rs./kWh)	0.06	0.07	0.08	0.08	0.08

207. As shown above, the per unit R&M expenses is 7 to 8 paise per unit over the years. As per the provisions of the Regulations, R&M expenses are to be approved as per CPI:WPI indexation. However, considering the fact that new licence area have come into operation and deployment of R&M manpower is as per CEA norms the Commission approves the R&M costs at actuals as furnished by the licensee.

A&G Expenses

208. The actual amount booked on A&G expense for the years by the licensee is inclusive of the Electricity duty under Section 3 of the Kerala Electricity Duty Act. The claim of A&G expenses for the years from 2010-11 to 2014-15 is as shown below:

Table 75
Details of A&G expenses

	Actuals as per initial petition	Approved in the order dated 20-3-2019	As per Revised petition
	Rs. Lakh	Rs.lakh	Rs.lakh
2008-09	40.28	40.28	60.27
2009-10	53.27	46.12	77.23
2010-11	51.30	23.33	51.30
2011-12	57.50	25.33	57.50
2012-13	64.18	27.74	64.18
2013-14	60.09	30.11	60.09
2014-15	71.88	31.62	71.88

209. The A&G expenses claimed is same as that of the previous petition. The licensee has stated that A&G expenses has increased over the operational period of KPUPL. The erstwhile licensee has booked A&G expenses as an apportionment from the total business. The licensee has requested the Commission to approve the A&G expenses as per the actuals. The split up details of A&G expenses of the licensee is as shown below:

Table 76
Split up details of A&G expenses

	2010-11	2011-12	2012-13	2013-14	2014-15
	Rs. Lakh	**Rs. Lakh**	**Rs. Lakh**	**Rs. Lakh**	**Rs. Lakh**
Rents, rates and taxes	3.74	2.86	3.20	3.26	3.59
Insurance	2.82	0.04	0.91	1.11	0.95
Consultancy charges	5.16	1.06		0.58	0.76
Telephone telex charges, etc	0.52	0.67	0.79		
Legal charges	1.52		0.38	0.25	0.20
Audit fees	0.17	1.12	0.67	0.87	1.24
Hospitality expenses			0.27		
Bank charges		1.10	1.13		
Other Professional charges		1.58		0.64	0.97
Travelling expenses	4.53	5.60	6.40	5.80	7.14
Conveyance and vehicle hire charges	1.67	4.32	4.10	1.49	0.56
Sub total	**20.13**	**18.35**	**17.85**	**14.00**	**15.41**
OTHER EXPENSES					
Books & periodicals		0.05			
Printing & stationery		0.21	0.24	0.16	0.12
Advertisements	0.08	-			1.03
Contribution/donations		0.05			
Entertainment	0.56	0.47			
Miscellaneous expenses	2.57	5.29	2.88	3.71	6.99
Total of other Expenses	**3.21**	**6.07**	**3.12**	**3.87**	**8.14**
Total Excluding Ele. Duty	**23.34**	**24.42**	**20.97**	**17.87**	**23.55**
Electricity Duty (Sec 3(1)	27.97	33.08	43.20	42.21	48.34
Grand Total	**51.31**	**57.50**	**64.17**	**60.08**	**71.89**
Increase over previous years		4.6%	-14.1%	-14.8%	31.8%

210. As shown above, the A&G expenses is inclusive of Electricity duty under Section 3 of Kerala Electricity 'Duty Act. The duty under Section 3(1) of the Kerala Electricity Duty Act 1963 is a statutory levy. Section 3 of the said Act is quoted hereunder,-

> *"3. Levy of electricity duty on sales of energy by licensees.- (1) Save as otherwise provided in sub-section (2); every licensee in the State of Kerala shall pay every month to the Government in the prescribed manner, a duty calculated at 6 nayepaise per unit of energy sold or a price more than 12 nayepaise per unit;*

Provided that no duty under this sub-section shall be payable by the Kerala State Electricity Board on the energy sold by it to another licensee.

(2) Where a licensee holds more than one licence, duty shall be calculated and levied under this section separately in respect of each licence.

(3) The duty under this Section on the sales of energy should be borne by the licensee and shall not be passed on to the consumer."

211. From the above it is clear that the duty under Section 3(1) is payable by the licensee to the Government calculate at a rate of 6 paise per unit for energy sold at a price more than 12 paise per unit. Further the duty paid under this section is not passed on to the consumer. Hon.APTEL in the order dated 12-11-2009 in appeal no 94/2008 had also ruled that the Section 3(1) duty cannot passed on to the consumers.

212. Hence, the amount of electricity duty under Section 3 (1) of the Kerala Electricity Duty Act,1963, cannot be admitted as an item of expenditure in view of the above statutory provisions and orders of APTEL. A&G expenses excluding duty is as shown below:

Table 77

A&G expenses excluding Electricity duty

	2010-11	2011-12	2012-13	2013-14	2014-15
	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh
Total A&G expenses	51.31	57.50	64.17	60.08	71.89
Electricity Duty (Sec 3(1)	27.97	33.08	43.20	42.21	48.34
Total A&G expense excluding Ele. Duty	23.34	24.42	20.97	17.87	23.55
Increase percentage		4.6%	-14.1%	-14.8%	31.8%

213. As shown above, the increase over the year is not substantial except in 2014-15, which is due to base effect. As per the provisions of KSERC (Terms and Conditions of Tariff for Retail Sale of Electricity) Regulations, 2006 the O&M expenses have to be indexed to CPI and WPI at 70:30 basis. The A&G expenses as per the norms would be as shown below:

Table 78

A&G expenses as per norms

	Unit	2010-11	2011-12	2012-13	2013-14	2014-15
Actual A&G expenses (excluding duty)	Rs.lakh	23.34	24.42	20.97	17.87	23.55
CPI:WPI Index increase (%)	%	10.18%	8.55%	9.52%	8.57%	5.01%
A&G expenses based on Index	Rs.lakh	23.34	24.43	25.52	26.61	27.66

214. As shown above, the A&G expenses as per norms is lower than the actual in some years. After due consideration to each of the items under this head and after deducting the Electricity Duty from this account, the Commission approves the A&G expenses at actuals.

Asset Additions

215. In the petition, the licensee stated that in the year 2010-11, after bifurcation of the power distribution business, a new office was created and an amount of Rs.2.95 lakh was incurred towards capital assets. In the year 2011-12, the additional area of Kalamassery was taken over and the licensee invested Rs.130.31 lakh for asset additions. During the year 2012-13, the asset addition to the tune of Rs.31.60 lakh was added. Further, asset additions to the tune of Rs.2.58 lakh and Rs.1.15 lakh was made in the year 2013-14 and 2014-15 respectively. The licensee requested to approve the above asset additions.

Table 79
Asset additions from 2010-11 to 2014-15

	2010-11	2011-12	2012-13	2013-14	2014-15
	Rs.lakhs	Rs.lakhs	Rs.lakhs	Rs.lakhs	Rs.lakhs
Land & Rights	-	-	-	-	-
Substation	78.36	105.56	10.75	2.4	-
11kV works	-	-	-	-	-
Metering equipments	-	20.63	20.8	-	1.82
Others	2.95	4.12	0.49	0.27	-
Total	**81.31**	**130.31**	**32.04**	**2.67**	**1.82**
Consumer contributions	**13.71**	**130.34**	**247.79**	**-**	**44.47**

216. The Commission examined the details of the asset additions made by the licensee. It is noted that the licensee has not obtained prior approval for the above capital expenses. However, the ***Commission after considering the this issue holistically, accords sanction for the approval for the asset additions from 2010-11 to 2014-15 as shown above as part of the present truing up process***.

Depreciation

217. The licensee has claimed depreciation for the years as per the depreciation rates notified by the Commission. The details are given below:

Table 80
Depreciation claimed for the year 2010-11 to 2014-15

Depreciation	2010-11	2011-12	2012-13	2013-14	2014-15
	Rs.lakhs	**Rs.lakhs**	**Rs.lakhs**	**Rs.lakhs**	**Rs.lakhs**
Land & Rights	7.53	7.53	7.53	7.53	7.53
Substation	12.62	16.42	16.81	16.90	16.90
11kV works	23.36	23.36	23.36	23.36	23.36
Metering equipment	3.95	5.32	6.71	6.71	6.83
Others	0.69	1.43	1.45	1.36	0.97
Total	**48.15**	**54.06**	**55.86**	**55.86**	**55.59**

218. The licensee in the petition stated that it had entered into the asset transfer agreement on 07-09-2016 and supplementary agreement on 27-10-2017, with the effective date of transfer as 01-02-2010. The assets created out of consumer contribution and Government grants including ASIDE grants were separated and the differential depreciation was accounted for in the P&L account for the year 2016-17 as an 'exceptional item'. The Commission took notes of this aspect. However, the Commission has noted that in the petition, the licensee has not taken into consideration the share of GoI grants to the tune of Rs.177.62 lakh, which has been revealed during the clarification stage. Hence, the depreciation for these assets is deducted from the depreciation claimed. Thus, the eligible depreciation for the years is as shown below:

Table 81

Depreciation approved from 2010-11 to 2014-15

	2010-11	2011-12	2012-13	2013-14	2014-15
	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh
Land & Rights	7.53	7.53	7.53	7.53	7.53
Substation	12.62	16.42	16.81	16.90	16.90
11kV works	23.36	23.36	23.36	23.36	23.36
Metering equipments	3.95	5.32	6.71	6.71	6.83
Others	0.69	1.43	1.45	1.36	0.97
Total	**48.15**	**54.06**	**55.86**	**55.86**	**55.59**
Less Depreciation for the Share of GoI grants	6.36	6.36	6.36	6.36	6.36
Depreciation Approved	**41.79**	**47.70**	**49.50**	**49.50**	**49.23**

219. The Commission has noted that the licensee has amortised the cost of lease hold land based on the period of lease. In this connection, it is to be noted that the asset transfer agreement is finalised as per supplementary agreement dated 27-10-2017. As per the operational agreement entered into by the parties and the joint venture agreement, the date of effect of the transfer is 01-02-2010. Though the licensee has made the adjustments in the books of accounts only in the year 2016-17, in the petition, the licensee has shown the details as though the transfer is effected from 01-02-2010.

220. The Commission has examined the details furnished by the licensee. Though the details of the transfer are reflected in the accounts for year 2016-17 only, since the licensee was functioning as a separate entity from 01-02-2010, the Commission accepts the date of effect of the transaction as 01-02-2010. Accordingly, the depreciation and financing costs are also made effective from 01-02-2010 post transfer. The licensee has claimed the depreciation as per the rates approved in the Regulations. Based on the details furnished by the licensee, the Commission approves the depreciation as shown above.

Interest and financing charges.

221. The interest and financing charges claimed by the licensee for the year 2010-11 to 2014-5 is as shown below:

Table 82

Interest charges claimed by the licensee

	2010-11	2011-12	2012-13	2013-14	2014-15
	Rs.lakh	Rs.lakh	Rs.lakh	Rs.lakh	Rs.lakh
Interest on loan	76.40	84.80	84.80	84.80	84.80
Interest on security deposit paid	12.74	16.64	3.69	3.45	3.30
Reversal of excess interest provided in 2010-11 & 11-12			-13.19		
Interest difference paid to KEPIP			5.89	5.89	7.41
interest paid to KSEB Ltd on arrears				8.83	
Provision for interest payable to Kinfra					2.01
Total	**89.14**	**101.44**	**81.19**	**102.97**	**97.52**

222. According to the licensee, as per Regulation 17, the Debt equity ratio is 70:30. The debt equity ratio as per the asset transfer agreement dated 27-10-2017 is 70:30 and the effective date of transfer is 01-02-2010. From the annual accounts of the licensee for the year 2017-18, it is seen that the company has issued 2,16,438 equity shares worth Rs.10 each at a premium of Rs.136 each, to Kinfra as per the Extraordinary General Meeting dated 23-03-2018. It was also stated that a loan from the promoter Kinfra for an amount of Rs.737.41 lakh was availed. The licensee stated that the equity participation by the promoter is increased from Rs.10 lakh to Rs.325.99 lakh. The licensee stated that the effect of the transaction was taken into the books in the year 2017-18.

223. The licensee further stated that as per the Regulation, the licensee is eligible for interest on normative loan for the debt component. The Company availed loan from KINFRA at an interest rate of 11.5%. The interest calculated for the years are as shown below:

Table 83

Interest on loan claimed by the licensee in the petition

	Debt at the end of the year Rs. Lakh	Rate of interest	Interest on loan Rs. lakh
2010-11	664.31	11.50%	76.40
2011-12	737.41	11.50%	84.80
2012-13	737.41	11.50%	84.80
2013-14	737.41	11.50%	84.80
2014-15	737.41	11.50%	84.80

224. The Commission has examined each of these items separately. Regarding interest on loans, the licensee has claimed interest at the rate of 11.5% for the 70% of the value of assets transferred as per the supplementary asset transfer agreement dated 27-10-2017. The licensee has claimed that as per the Regulations, debt equity ratio permitted is 70:30 and for 70% of the funds the licensee is eligible for interest. The licensee claimed interest at the rate of 11.5%, which is the rate of interest stated to be charged by Government of Kerala for the funds advanced to Kinfra.

225. In this regard the Commission as stated earlier has decided that assets created from funds excluding assets created out of consumer contribution, share of GoI grants and ASIDE grants can be treated as loans from Kinfra, and given by Government of Kerala. However, since the terms and conditions of the loan including the interest rate is yet to be finalized, the Commission does not consider prudent to allow any interest at present. The Commission also notes that as on date, there is neither any claim for interest from Kinfra, nor has any payment on account of interest charges been paid by KPUPL. Thus, both, the rate of interest for the funds as well as any claim for its payment is indeterminate at present. ***Hence, the Commission cannot accept the claim for interest as proposed by the licensee. Further, neither the erstwhile licensee nor the present licensee or even Kinfra has paid any interest charges to the Government. The Commission therefore directs that as and when the interest rates and other terms and conditions of the loan are fixed by the Government and claim raised for servicing the debt, the licensee can file a petition before the Commission for its consideration.***

Interest on security deposits :

226. The licensee has claimed interest on security deposit paid, difference in interest charges paid to KEPIP for the security provided to KSEB Ltd, interest paid on KSEB arrears and provision for interest payable to Kinfra. As per the details available from the audited accounts of the licensee, security deposit available from the consumers is as shown below:

Table 84
Security deposit from consumers and interest claimed

As at the end of	Security deposit as per Books of Accounts (Rs.lakh)	Rate of Interest provided (Rs. Lakh)	Interest charges claimed (Rs. Lakh)
31-03-2011	0.69		12.74
31-03-2012	2.99		16.64
31-03-2013	45.26	6%	3.69 /(-13.19))
31-03-2014	50.61	6%	3.45
31-03-2015	59.12	6%	3.30

227. Though the licensee has claimed interest on security deposits, they have not specifically mentioned for which licence area the security deposit is collected. In the Kakkanad area, the licensee is following a pre-payment metering system. As per the Regulations and Order of Hon. APTEL, interest on security deposit actually paid to the consumers can only be claimed by the licensee. In the present case, the licensee has made a provision for payment of interest on security deposit. While examining the annual accounts, the licensee has accounted outstanding security deposit at the end of the year 2010-11 and 2011-12 as Rs.0.69 lakh and Rs.2.99 lakhs, whereas the interest booked was Rs.12.74 and Rs.16.64 lakh. The licensee could not provide any explanation as to why such high provision of interest charges were made. Hence the Commission is not allowing interest on security deposit at present and till the accounts of the licensee are reconciled.

228. The licensee has also booked the difference in interest charges paid to KEPIP. It is not clear from the petition as to why any interest is payable to KEPIP. Prima facie, such charges are not allowable. Thus, for the purpose of truing up no interest charges is allowed at present except the interest on security deposits and that too will be considered only after the licensee conducts a proper reconciliation of accounts.

Return on Equity

229. The licensee in the petition has stated that as per Regulation 20 of the MYT Regulation 2006, the return on equity shall be computed on equity base determined according to Regulation 17 and shall be 14% per annum. The licensee has brought the effect of the supplementary asset transfer agreement dated 27-10-2017 into the books of accounts from 2017-18, though it came into effect from 01-02-2010. The licensee further stated that since the debt : equity ratio as per the asset transfer agreement is 70:30, the company has issued 2,16,438 equity shares of Rs.10/- each at a premium of Rs.136/- each aggregating to Rs.315.99 lakh. Accordingly, the total equity participation by the promoter has increased from Rs.10 lakh to Rs.325.99 lakh. The effect of this transaction was brought into the books in the year 2017-18 to comply with the requirements of the Companies Act 2013. The RoE claimed by the licensee is as shown below:

Table 85
RoE claimed in the petition for the years 2010-11 to 2014-15

	Equity (Rs.lakh)	ROE (%)	ROE (Rs. Lakh)
2010-11	294.71	14%	41.26
2011-12	326.03	14%	45.64
2012-13	326.03	14%	45.64
2013-14	326.03	14%	45.64
2014-15	326.03	14%	45.64

230. The licensee has claimed the RoE for the amount of equity as shown above which is the paid up equity capital in the books of accounts of the licensee as on 31-03-2018. However, it is seen that as per the supplementary agreement the value of equity was only Rs.284.00 lakh. The licensee has not been able to explain as to how the paid up equity has increased to Rs.326 lakh without corresponding infusion of capital.

231. It is also seen that the licensee has followed the methodology of excluding the value of assets created out of consumer contribution and ASIDE grant from the written down value of assets as per Regulatory accounts. However, while doing so, the licensee has not excluded the value of assets created using Government of India grants (Rs.177.62 lakh). This fact has also been confirmed by the licensee as per the clarification received in the office of the Commission on 20-2-2020. Thus, even if the Commission were to follow the same methodology adopted by the licensee for determining the equity, the amount of equity so arrived at would still be lower if the grants worth Rs.177.62 lakh from Government of India is also to be considered.

232. In this context, it is to be noted that the as per the landmark judgment of the Hon. Supreme Court in WBERC Vs CESC, the Apex Court has held that Regulatory Commissions are not bound by the audited accounts of the licensees which is prepared as per the provisions of the Companies Act. The Commission also notes that the effect of increase in equity has been made in the licensee's accounts only in the year 2017-18. Since the change has brought in the books only from 2017-18, the issue whether the Commission can allow any equity consideration during the intervening period is doubtful. Thus, the Commission is of the considered view that in the current effort, it can only allow returns based on NFA and not on the RoE as claimed by the licensee. Thus, for the purpose of truing up, the amount of return is arrived at as shown below:

Table 86

RoNFA Approved for the years 2010-11 to 2014-15

	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh
GFA	2,232.97	1,289.34	1,419.65	1,451.69	1,454.36	1,456.18
Less Contributions	701.41					
Less ASIDE grants	380.82					
Less share of GoI Grant	177.92					
Additions (1-4-2009 to 31-1-2010)	29.05					
Additions (1-2-2010 to 31-3-2010)	227.73					
Deductions (1-4-2009 to 31-1-2010)	199.49					
Net GFA	1,030.11	1,289.34	1,419.65	1,451.69	1,454.36	1,456.18
Cumulative Depreciation allowed	291.26	333.05	380.75	430.25	479.75	528.99
NFA at the End of the year	738.85	956.29	1,038.90	1,021.44	974.61	927.19
Return @3% of NFA at the beginning of the year		22.17	28.69	31.17	30.64	29.24

Revenue from sale of power

233. The revenue from sale of power reported by the licensee is as shown below:

Table 87
Revenue from sale of power

	2010-11	2011-12	2012-13	2013-14	2014-15
	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh
HT Consumers	1,696.65	1,984.23	2,598.40	3,553.46	4,075.53
LT Consumers	177.15	184.80	349.15	452.71	577.72
Temporary Consumers		39.60			
Total	1,873.80	2,208.63	2,947.55	4,006.17	4,653.25

234. The revenue from sale of power reported is excluding the electricity duty collected and remitted to the Government. After examining the licensee's claim - based on the details furnished by the licensee, the Commission hereby approves it for the purpose of truing up.

Non-Tariff Income

235. Non tariff income reported by the licensee is mainly the interest income from bank deposits during the period and other charges. The licensee reported that KEPIP has not transferred the surplus to the present licensee since the matter of finalisation of regulatory surplus upto 2009-10 has to be finalised by the Commission. The licensee also stated that since the erstwhile licensee KEPIP was promoted by Kinfra, clearance from Kinfra is to be obtained for transfer of surplus funds from KEPIP to KPUPL. Hence, the licensee has not included the interest on regulatory surplus in the truing up of accounts. The non-tariff income reported by the licensee is as shown below:

Table 88
Details of Non-Tariff income as per the petition

	2010-11	2011-12	2012-13	2013-14	2014-15
	Rs. Lakh	**Rs. Lakh**	**Rs. Lakh**	**Rs. Lakh**	**Rs. Lakh**
Interest on bank deposits	7.45	33.97	46.53	22.83	36.63
Application fee received	0.08	0.15	0.17	0.08	0.05
Collection charges	0.65	0.74	0.99	1.15	1.16
Installation charges	4.20	8.21	8.22	4.94	3.12
Supervision charges	1.37	13.03	24.78	1.11	
Meter rent		2.42	1.68	1.92	1.45
Deferred income			11.88		
Other miscellaneous charges	0.07	0.46	0.04	0.07	0.13
Total	**13.82**	**58.98**	**94.29**	**32.10**	**42.54**

236. The Commission has examined the details furnished by the licensee. As reported by the licensee, interest income from revenue surplus is not properly reflected in the non-tariff income. The details of approved revenue surplus over the years is as shown below:

Table 89
Revenue surplus over the years

	As per Order 6-12-2011	As per Petitions	Approved revenue surplus after truing up	Accumulated revenue surplus after true up
	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh
2004-05	82.42	-36	86.51	86.51
2005-06	225.05	65.64	219.21	305.73
2006-07	353.48	83.91	345.18	650.91
2007-08	313.28	167.8	280.61	931.52
2008-09	438.81	334.2	430.37	1,361.88
2009-10	322.55	106.32	158.01	1,519.89

237. The licensee has stated that since the revenue surplus was not finally approved by the Commission after the truing up, the same was not recognised for non-tariff income. The licensee has accounted interest charges from the bank deposits, which reflects only a fraction of the approved accumulated revenue surplus.

238. Regarding the interest on accumulated revenue surplus, the Commission in the case of other licensees too have accounted the same from 2013-14 onwards using the SBI base rate for estimating the interest charges. In the instant case, the licensee has not accounted for the notional interest charges while arriving at the non tariff income. As per the accrual accounting requirements, this income has to be accounted for in the licensee's books of accounts. Non-inclusion of a duly eligible income in the licensee's accounts can, in a dispute situation create difficulties in recovery of this amount by the licensee, especially if the debtor takes up the argument that such an outstanding is not even reflected in the licensee's books of account. Moreover, the Commission is also required to adopt a uniform approach for all its licensees regarding the treatment of revenue surplus. Under such circumstances, the Commission has accounted the notional interest charges for the accumulated revenue surplus from 2013-14 onwards at the applicable SBI base rate, as in the case of other licensees.

239. The licensee in the submission dated 24-1-2020 stated that the erstwhile licensee had inadvertently included the amount of electricity duty recovered and remitted to the Government under section 4 of the Electricity Duty Act 1963 for the period 2004-05 to 2008-09 in the sales revenue and power purchase cost, in the truing up petitions. Based on this submission, the Commission has deducted the an amount of Rs.184.85 lakh from the power purchase cost and approved its accountal towards the revenue surplus.

The license has drawn the Commission's attention to the fact that since notional interest is applicable to the revenue surplus, there is a cascading effect on the licensee's accounts in the form of interest on revenue surplus. Hence the licensee requested the Commission not to penalize it repeatedly because of a mistake KEPIP.

240. The Commission examined the matter in detail. In the initial petitions for 2004-05 to 2008-09, the licensee had included the Duty under Section 3 and Section 4 of the Kerala Electricity Duty Act 1963 as part of the power purchase cost (except for the year 2005-06). The Commission has deducted the same from the power purchase cost before allowing the same. However, the licensee has now submitted that a mistake has since continued and the income from sale of power reported to the Commission was also inclusive of the Section 4 duty. If this error is not rectified, it would result in cumulative penalization of the licensee by adding to the notional surplus and notional interest thereof. According to the licensee, the error occurred due to the fact that the erstwhile licensee KEPIP, had reported the revenue from sale of power including section 4 duty without making proper contra entry. Accordingly, in the Order dated 6-12-2011, revenue from sale of power was approved by the Commission as furnished by the licensee, which was inclusive of Section 4 duty. Hence, the licensee submitted that the revenue is overstated to the extent of the duty amount. However, now in the revised filing, the licensee has rectified the error and has reported that the revenue from sale of power excluding Section 4 duty as shown below:

Table 90

Revenue from sale of power considered in the Order dated 6-12-2011

	Revenue from sale of power approved in the order dated 6-12-2011	Revised Revenue from sale of power (excluding duty)
	Rs. Lakh	Rs.lakh
2004-05	651.44	650.99
2005-06	1,241.96	1,241.96
2006-07	1,350.48	1,310.68
2007-08	1,242.36	1,201.75
2008-09	1,536.86	1,492.47

241. The licensee has requested the Commission to deduct the said duty amount from revenue from sale of power. The Commission has duly examined the request of the licensee and is convinced that it will not be correct to allow any adjustments as requested for by the licensee in the present proceedings, especially considering the long lapse of time. The order was issued on 6-12-2011 and after more than 8 years after-the truing up of the said item, it will not be possible to reconsider the same. The Commission also noted that the licensee has not made any efforts in the intervening time to correct the error. Hence, the Commission is of the considered view that it will be setting a wrong

precedent if it were to allow such claims. However, the Commission has after duly considering the facts taken a sympathetic view and decided that the grievance of the licensee would be addressed to a great extent if the additional burden in the form of notional interest is excluded for the said amount as a special case. Accordingly, for estimating the notional interest on accumulated surplus, the said duty amount is excluded.

242. Thus, as shown above, from 2006-07 to 2008-09, the revenue approved in the Order dated 6-12-2011 was inclusive of the electricity duty under section 4. The total amount of duty for the three years is Rs.124.80 lakh. Since the said amount was already remitted to the Government, the same is excluded while calculating the interest for accumulated revenue surplus as a special case. Accordingly, the interest charges applicable for each year from 2013-14 is as shown below:

Table 91

Revenue from accumulated revenue surplus

	unit	2010-11	2011-12	2012-13	2013-14	2014-15
Accumulated Revenue surplus at the beginning of the year	Rs.lakh	1,519.89	1,639.31	1,926.55	1,723.88	1,968.93
Surplus excluding the Duty	Rs.lakh	1,395.09	1,514.51	1,801.75	1,599.08	1,844.13
Applicable interest rate	%				9.70	10.00
Revenue from Accumulated surplus	Rs.lakh	-	-	-	**155.11**	**184.41**

243. For the purpose of truing up, the Commission has considered the interest on bank deposits actually booked by the licensee. Since this amount is already accounted for as income, the balance amount of the revenue from regulatory surplus is included as part of the non-tariff income. Based on the above, the revenue from non-tariff income is revised as shown below:

Table 92

Approved non-tariff income

Particulars	2010-11	2011-12	2012-13	2013-14	2014-15
	Rs. Lakh	Rs. Lakh	Rs. Lakh	Rs. Lakh	Rs. Lakh
Interest on bank deposits	7.45	33.97	46.53	22.83	36.63
Interest on accumulated surplus				132.28	147.78
Application fee received	0.08	0.15	0.17	0.08	0.05
Collection charges	0.65	0.74	0.99	1.15	1.16
Installation charges	4.20	8.21	8.22	4.94	3.12
Supervision charges	1.37	13.03	24.78	1.11	
Meter rent		2.42	1.68	1.92	1.45
Deferred income			11.88		
Other miscellaneous charges	0.07	0.46	0.04	0.07	0.13
Total	13.82	58.98	94.29	164.38	190.32

244. The interest on bank deposits are considered at actuals and the interest on revenue surplus is adjusted based on the interest from bank deposits.

Total revenue from operations

245. Based on the above, the total revenue approved for each year is as given below:

Table 93

Total revenue for the year 2010-11 to 2014-15

	2010-11		2011-12		2012-13		2013-14		2014-15	
	As per petition	Approved in true up	As per petition	Approved in true up	As per petition	Approved in true up	As per petition	Approved in true up	As per petition	Approved in true up
	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh	Rs. lakh
Revenue from sale of power	1,873.80	1,873.80	2,208.63	2,208.63	2,947.55	2,947.55	4,006.17	4,006.17	4,653.25	4,653.25
Non tariff income	13.82	13.82	58.98	58.98	94.29	94.29	32.10	164.38	42.53	190.32
Total Revenue	1,887.62	1,887.62	2,267.61	2,267.61	3,041.84	3,041.84	4,038.27	4,170.55	4,695.78	4,843.57

Revenue gap/ Surplus

246. Based on the above, the approved revenue surplus /gap for each year is as shown below:

Table 94

Revenue gap/Surplus after truing up

Particulars	2010-11			2011-12			2012-13		
	Claimed in the initial petition	As per revised petition	Approved in true up	Claimed in the initial petition	As per revised petition	Approved in true up	Claimed in the initial petition	As per revised petition	Approved in true up
	Rs. Lakh	Rs. Lakh	Rs. Lakh	Rs. Lakh	Rs. Lakh	Rs. Lakh	Rs. Lakh	Rs. Lakh	Rs. Lakh
Revenue from sale of power	1,627.76	1,873.80	1,873.80	2,208.63	2,208.63	2,208.63	2,947.58	2,947.55	2,947.55
Non-Tariff Income	23.44	13.82	13.82	58.98	58.98	58.98	94.29	94.29	94.29
Total	**1,651.20**	**1,887.62**	**1,887.62**	**2,267.61**	**2,267.61**	**2,267.61**	**3,041.87**	**3,041.84**	**3,041.84**
Power Purchase Cost	1,579.92	1,579.92	1,612.78	1,818.88	1,818.89	1,796.75	3,064.93	3,064.93	3,025.14
R&M Expenses	29.01	29.01	29.01	40.34	40.34	40.34	45.23	45.23	45.23
Employee cost	39.13	39.13	39.12	46.25	46.25	42.46	83.44	83.44	72.51
A&G expenses	51.30	51.30	23.34	57.50	57.50	24.42	64.18	64.18	20.97
Depreciation	79.07	48.15	41.79	81.12	54.07	47.70	95.88	55.85	49.50
Interest charges	12.74	89.14		16.64	101.44		9.58	81.19	
RoE/RoNFA	53.79	41.26	22.17	54.18	45.64	28.69	61.56	45.64	31.17
Prior period charges/credits		-2.06					-13.19		
Deferred tax liability		83.01		82.79	82.79		54.33	54.33	
Total ARR	**1,844.96**	**1,958.86**	**1,768.21**	**2,197.70**	**2,246.92**	**1,980.36**	**3,465.94**	**3,494.79**	**3,244.51**
Surplus/Gap	**-193.76**	**-71.24**	**119.41**	**69.91**	**20.69**	**287.25**	**-424.07**	**-452.95**	**-202.67**

Table 94 (cont..)
Revenue gap/Surplus after truing up

	2013-14			2014-15		
	Claimed in the initial petition	As per revised petition	Approved in true up	Claimed in the initial petition	As per revised petition	Approved in true up
	Rs. Lakh	Rs. Lakh	Rs. Lakh	Rs. Lakh	Rs. Lakh	Rs. Lakh
Revenue from sale of power	4,006.46	4,006.17	4,006.17	4,653.25	4,653.25	4,653.25
Non-Tariff Income	32.10	32.10	164.38	42.53	42.53	190.32
Total	**4,038.56**	**4,038.27**	**4,170.55**	**4,695.78**	**4,695.78**	**4,843.57**
Power Purchase Cost	3,733.66	3,733.66	3,722.80	4,382.47	4,382.47	4,283.86
R&M Expenses	54.20	54.20	54.20	58.95	58.95	58.95
Employee cost	66.28	66.28	50.49	64.63	64.63	53.02
A&G expenses	60.09	60.09	17.87	71.88	71.88	23.55
Depreciation	90.06	55.86	49.50	89.93	55.58	49.23
Interest charges	18.16	102.97		12.71	97.52	
RoE/RoNFA		45.64	30.64	52.27	45.64	29.24
Prior period charges/credits	55.32			-8.28	-8.28	
Deferred tax liability	-174.59	-174.59		15.71	15.71	
Total ARR	**3,903.18**	**3,944.11**	**3,925.51**	**4,740.27**	**4,784.10**	**4,497.86**
Surplus/Gap	**135.38**	**94.16**	**245.05**	**-44.49**	**-88.32**	**345.72**

247. The accumulated revenue surplus from 2004-05 to 2014-15 is as shown below:

Table 95
Accumulated Revenue Surplus from 2004-05 to 2014-15

	As per earlier orders dated 6-12-2011/20-3-2017	As per revised Petition	Approved after truing up
	Rs. lakhs	Rs. lakhs	Rs. lakhs
2004-05	82.42	-36	86.51
2005-06	225.05	65.64	219.21
2006-07	353.48	83.91	345.18
2007-08	313.28	167.8	280.61
2008-09	438.81	334.2	430.37
2009-10	322.55	106.32	158.01
2010-11	393.15	-71.24	119.41
2011-12	564.50	20.69	287.25
2012-13	408.40	-452.95	-202.67
2013-14	605.74	94.16	245.05
2014-15	635.44	-88.32	345.72
Total	4,342.82	224.21	2,314.64

Orders of the Commission

248. The Commission after considering the petitions for truing up from 2004-05 to 2014-15 hereby approves an accumulated revenue surplus of Rs.2314.64 lakh. The order dated 6-12-2011 on truing up of accounts for 2004-05 to 2008-09 and Orders dated 10-3-2017 & 20-3-2017 for the years from 2009-10 to 2014-15 stand modified to the extent as mentioned in this Order.

249. Petitions are disposed of. Ordered accordingly.

Sd/-	**Sd/-**
S. Venugopal	**Preman Dinaraj**
Member	**Chairman**

Approved for issue

Sd/-

Secretary (i/c)