

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

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

Suo motu Order No. 1129/D(T)/2018/KSERC

In the matter of : Sharing the transmission and distribution assets of KSEB Ltd by a Joint Venture Company namely, Kerala Fibre Optic Network(KFON) project.

Order dated 27.04.2020

1. KSEB Ltd, vide the letter dated 10.07.2018, intimated the following as per Section-41 and Section-51 of the Electricity Act, 2003, regarding the sharing the transmission and distribution assets of KSEB Ltd by a Joint Venture Company namely, KFON project (Kerala Fibre Optic Network project)
 - (i) Government of Kerala, vide the Government Order G.O (Ms) No. 10/2017/ITD dated 18.5.2017 has accorded administrative sanction (AS) to lay fiber optic network throughout Kerala and provide cost effective internet connection to 30000 Government offices and educational institutions and free internet access to 20 lakh BPL families, with a total cost of Rs 1028.00 crore. This network will be created in parallel to KSEBL electric network. The Government has designated KSITIL as the implementing agency of the project.
 - (ii) Subsequently, the State Government vide the Government Order G.O (Ms) No.22/2017/ ITD dated 13.10.2017 has given in principle approval for the formation of a JV company with KSITIL, KSEB Ltd and GoK on an equity participation in the ratio of 49:49:2 for implementation of the project.
 - (iii) Board of Directors of KSEB Ltd vide the order dated 29.01.2018 has accorded in principle approval with certain conditions.
 - (iv) The initial authorized and paid up capital of the SPV is Rs 1,00,00,000/- (Rupees one crore). Any further equity requirement shall be met by KSITIL and contribution of KSEBL shall be in kind in lieu of the value already brought in by KSEB Ltd. The value considered for the same includes RoW, the OPGW fibers provided under transmission network etc. 30% of the project cost will be contributed to the SPV in the form of grant from Government. If grant is not given, the source of

the same will be decided by the Government. Debt financing for the project is through KIIFB.

- (v) The KFON project encompasses use of KSEBL Transmission and Distribution Infrastructure / ROW for laying OPGW and OFC cable infrastructure respectively. KSEBL is laying out OPGW fibers in Transmission lines under the Transgrid project with PSDF support. The spare OPGW fibers (minimum of 24 cores) in these routes will be given free of cost to KFON. If OPGW fibers are required in other transmission routes, KFON will lay the same and hand over the assets to KSEBL. KFON will also lay the fibre infrastructure (ADSS cables) in distribution network of KSEBL and 4 fiber cores will be given free of cost to KSEBL (47,289 km). KFON will pay KSEBL the pole rentals at the prevailing rates against the distribution poles used for drawing ADSS cables.

The details of KSEBL infrastructure envisaged for use of KFON is as follows:

Network Type	Infrastructure	Route km	Total km
Backbone (OPGW +ADSS)	66kV & Above (OPGW)	4884	8306
	33kV Poles (ADSS)	1500	
	HT/LT Distribution poles (ADSS)	1922	
Last Mile Network (ADSS)	LT/HT Distribution Poles	43867	43867

The Right of Way and assets of these OPGW and ADSS routes will be owned by KSEBL. The assets of KSEBL used for the project will not be encumbered in any manner for availing loans by KFON and subsequent repayment.

KSEB Ltd, has also submitted the copies of the Government orders, draft JV agreement, resolution of the Board of Directors of KSEB Ltd etc, for the information of the Commission.

2. The Commission has examined the documents submitted by KSEB and noted the following.
- (1) The State Government, vide the G.O (Ms) No. 2017/ITD dated 18.05.2017, had accorded administrative sanction for KFON project with a total cost of Rs 1028.00 crore. The KFON project, aims to build a state wide optical fiber network infrastructure for providing high speed connectivity to all Government, educational institutions (approx. 30000 numbers) and to provide free internet connections to 20 lakh BPL families in the State. The new fiber pathway is proposed to create

in parallel to the electric power network of KSEB Ltd. KSITIL is designated as the implementing agency for the project.

(2) A meeting on the formation of JV company for the implementation of the KFON project was held by Chief Secretary, Government of Kerala on 14.09.2017, with the CMD, KSEB Ltd, IT Secretary GoK, Director Kerala State IT Mission, Directors and other officers of KSEB Ltd and KSITM. The important recommendations in the meeting is summarized below.

- (i) KSEB Ltd will be investing in KFON to the extent of the pole rentals, ROW charges, fiber hire charges and any other usage charges, which are likely to be considered with respect to using the Transmission and Distribution infrastructure of KSEB Ltd. In lieu of this, 50% share in the executing SPV will be issued to KSEB Ltd.
- (ii) KSITIL and KSEB Ltd can form a 50:50 Joint Venture Company with equal shareholding. The 50% share of KSEB Ltd will be as a quid pro quo for sharing the assets and resources of KSEB Ltd.
- (iii) The specification of the OPGW to be laid by KSEB Ltd under GOI support shall be in tune with the KFON project specifications. The OPGW network of KSEB Ltd shall be the first stretch of the KFON network. The asset shall be owned by KSEBL but KSEBL will unconditionally allow the full usage of the fibre by KSITIL for the KFON network after provisioning of the fibre required for the KSEB operations which will be decided by the core committee. Sharing of OPGW fiber will be on the same lines and as per the same terms of sharing the fibers of KSEBL with KSITIL, for its transmission and distribution network.
- (iv) A core committee shall be formed under the chairmanship of CMD KSEB with IT secretary and core senior staff from KSEBL and IT mission which shall take the project forward till institutional arrangements are finalized. The core committee shall firm up the specifications of the fiber that is going to be laid under Transgrid project in alignment with the technical requirements of KFON.
- (v) KSEB Ltd shall not lease/ extend the RoW along with its transmission and distribution infrastructure and shall renew any lease/ permission only with the explicit approval of the core committee / restructured KSITIL.

The above meeting was chaired by Chief Secretary, GoK, CMD KSEBL, IT Secretary GoK, Director, Kerala State IT Mission, Director (Transmission) KSEBL, Director (Distribution) KSEBL and other senior officers of KSEB Ltd and Kerala State IT Mission.

- (3) The State Government vide the G.O (Ms) No. 22/2017/ITD dated 13.10.2017 has accorded in-principle approval for the formation of a JV with the association of KSITIL and KSEB Ltd with equal equity participation for the implementation of the KFON project with KIIFB assistance. The equity participation of the KSEB Ltd in the new JV will be treated as quid pro quo for sharing the assets and resources of KSEB Ltd for the implementation of the project.

The Government also constituted a core committee with CMD, KSEB Ltd as the Chairman of the committee and Secretary IT, KSITIL/KSITM officials as members to formulate the draft Memorandum of Association, articles of association and organization structure of the proposed JV company for the implementation of the KFON project.

- (4) KSEB Ltd, vide its Resolution BO No. (DB) No. 276/2018 dated 29.01.2018, has discussed and decided the following regarding the KFON project.

(i) The first charge on KFON revenues shall be towards repayment of loan availed at 70% of project cost would mean that the realization of the pole rentals would be doubtful if the project doesnot turn out to be viable.

(ii) Granted in principle approval of the KFON Joint Venture Company **subject to the approval of the KSERC**, and subject to the certain conditions, and the important conditions are extracted below.

i. **Regulatory Commission approval** as per Section 41 and 51 of the EA-2003 for sharing, right of way, assets etc to JV company for business activities other than the core business and investment appraisal, if any, shall be required in the matter.

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v. KSEBL will engage the SPV as the Bid Process Coordinator for implementing the PSDF funded OPGW fiber infrastructure to ensure timely completion of KFON with single point co-ordination. RoW and assets in OPGW routes will be owned by KSEB Ltd and the spare fibers (minimum of 24 cores) will be spared to the SPV on **unconditional right of use basis, free of cost.**

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vii. In the distribution network, KFON will lay fiber infrastructure observing relevant guidelines of KSEB Ltd and 4 fiber cores will be given to KSEBL at free of cost. Pole rentals will be paid by JV company to KSEBL at the prevailing rates.

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(ix). In all the ADSS (all dielectric self supporting) cable routes KFON company will pay pole rentals for the **poles used at the existing rates of KSEB Ltd.**

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(xi) **Existing fiber lease contracts will not be renewed in transmission.**

....
(xiv) The first charge on KFON revenues shall be towards repayment of loan availed at 70% of the project cost.

(5) The Article 6.01.01 of the draft JV Agreement to be signed for the implement of the KFON project deals with the assistance to be provided by KSEB Ltd, which is extracted below.

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(e) shall provide required space at substations for installing equipment in pre-fabricated structures for setting up PoPs within the overall safety parameters of KSEBL.

.....
(k) Existing fiber lease contracts will not be renewed in transmission. As far as distribution network is concerned the present mechanism of renting of poles will be continued in stretches where ever KFON is not rolled out. In all the ADSS cable routes KFON company will pay pole rentals for the poles used at the **prevailing rates of KSEB Ltd.**

(l) Shall allow usage of the free fiber core(s) available in the OPGW already made and provide maintenance and operational support for these fiber cores.

(m) KSEBL shall construct OPGW fiber infrastructure as per KFON specification in all route where projects like PSDF/ Transgrid upgradations are being undertaken by KSEB Ltd and the spare fibers (minimum of 24 cores) will be spared to SPV **on unconditional right of use basis free of cost.** RoW and assets of these OPGW routes will be owned by KSEB Ltd.

(n) Shall allow using distribution poles of KSEB Ltd to lay fiber infrastructure observing relevant guidelines.

(q) All the above points are subjected to the approval of the KSERC.

3. In the meantime, two pensioners of KSEB Ltd, Sri. Premji Easaw Jacob and Sri. Jonas Derak, filed a petition before the Commission against the utilization of assets of KSEB Ltd by a JV company, namely KFON project. The summary of the issues raised in the petitioners are.

- (1) Likely security and safety threats if the transmission and distribution of assets of KSEB Ltd is permitted to use by a third party, the JV company namely KFON project.
 - (2) A dual ownership of assets shall lead to conflict of interest between the KSEB Ltd and the communicating company.
 - (3) The maintenance of OPGW can be done only by KSEB Ltd due to safety and security reasons.
 - (4) Likely loss in revenue by about Rs 65.00 crore, presently getting by way of renting the distribution poles of KSEB Ltd to cable operators etc.
4. The Commission has discussed and deliberated the KFON projects and the role of KSEB Ltd in detail in the hearing conducted on 18.09.2018. Based on the deliberations in the hearing and also relied on the documents and other details submitted by KSEB Ltd, the Commission vide the interim order dated 04.10.2018, has directed KSEB Ltd to submit the following details.
- (1) The details of assets of KSEB Ltd, proposed to be used by a JV company, namely K-FON. Whether as per the provisions of the Electricity Act, 2003, this is permissible?
 - (2) What is the revenue earned during the last '10 years' through renting out the distribution poles and leasing out spare optical fibers?
 - (3) How, KSEB Ltd can ensure the pole rentals and lease rents from the JV company.
 - (4) Whether the proposed JV communication company got approval and license from TRAI.
 - (5) How, as per the provisions of the EA – 2003, the assets created/ regulated as per the provisions of the EA – 2003 can be used for an entirely different purpose. Please clarify.
 - (6) Whether, as per the provisions of the Electricity Act, 2003, the State Government can issue the directions as per its orders (1) G.O (MS) No. 10/2017/ITD dated 18.05.2017 and (2) G.O (MS) No. 22/2017/ITD dated 13.10.2017. Please clarify with supporting documents.
 - (7) Whether the transmission assets and distribution assets created with the grant from Central Government including PSDF fund. R-APDRP / IPDS can be allowed to be used for other business by a JV company?
 - (8) How the safety and security aspects of the assets of KSEB Ltd, which is intended and created for the sole purpose of electricity business can be ensured?
 - (9) The equity of KSEB Ltd in the JV company is less than 50% only. Hence, how KSEB Ltd can ensure the interest of KSEB Ltd and its electricity consumers, when its assets being permitted to use by the JV company.

- (10) How, the JV company can ensure the financial viability, since most of the existing communication companies are under severe financial and liquidity problems.
- (11) KSEB Ltd is bound to function as per the safety and security standards specified by the CEA, CERC, KSERC and other statutory authorities. How, KSEB Ltd can ensure the safety and security aspects of the assets permitted to use by the JV company for its use?
- (12) Whether there will be any duplication of efforts as compared to NOFIN/Bharat Net project of Central Govt.

The Commission has also directed KSEB Ltd to file a proper petition for other business by optimum utilization of transmission and distribution assets with necessary supporting documents and documentary evidences.

5. In compliance of the directions of the Commission, KSEB Ltd submitted its reply on 15.02.2019 and its summary is given below.
 - (1) The direction of the Commission to file a petition seeking permission for conducting business is not based on any provision of the Electricity Act.
 - (2) The Commission has not communicated any observation on the intimation submitted by KSEB Ltd regarding the KFON project by utilizing its assets.
 - (3) KSERC has not specified the details of other business to be furnished by transmission / distribution licensees.
 - (4) The Commission has not specified any regulation, similar to the CERC (Sharing of revenue derived from utilization of transmission assets for other business) Regulations 2017 which is applicable to owners of interstate transmission lines whose tariff is determined by CERC.
 - (5) As per the Section 41 and 51 of the Electricity Act, 2003, prior intimation only necessary for doing other business for optimum utilization of assets.
 - (6) KSEB Ltd has nothing further to be done on the matter. As and when revenue from other business point KSEBL will be filing the same as part of its ARR & ERC filings in accordance with the Regulations.
 - (7) The petition filed by individuals regarding formation of KFON is not maintainable and same may be disposed of accordingly.
 - (8) KSEB Ltd willing to provide or the available data for information as may be required by the Commission in continuance to prior intimation furnished by KSEB Ltd in accordance with Section 41 & 51 of the Electricity Act.

Analysis and Decision of the Commission

6. The Commission has examined in detail the letters of the KSEB Ltd dated 10.07.2018 and 15.02.2019, regarding the intimation of KSEB Ltd as per the Section 41 and Section 51 of the Electricity Act, for sharing the transmission and distribution assets of KSEB Ltd by a JV company, namely the KFON project. The observation and decisions of the Commission on the subject matter is detailed in the subsequent paragraphs.
7. Kerala State Electricity Regulatory Commission (KSERC) is a quasi judicial body functioning as per the provisions of the Electricity Act-2003 (EA-03). The functions, powers and authority of the KSERC is prescribed under various Sections of the EA-03. Among many other functions, grant of licence for transmission and distribution of electricity within the State, specifying terms and condition of the license etc are few of the statutory functions of the Commission.
8. KSEB Ltd, the State Government owned power utility in the State, is the State Transmission Utility (STU), incumbent distribution licensee and also holding generation assets. KSEB Ltd is the successor entity to the erstwhile KSEB. All the assets of KSEB Ltd in generation, transmission and distribution are created with public money and its cost are recovered through tariff in form of the cost for generation, transmission charges, wheeling charges or retail tariff from the consumers and other stakeholders.
9. Section 41 of the Electricity Act permit the transmission licensees to carry out other business for its utilization of assets, with prior intimates to the Commission. The relevant Section is extracted below.

“Section 41. (Other business of transmission licensee):

A transmission licensee may, with prior intimation to the Appropriate Commission , engage in any business for optimum utilisation of its assets:

Provided that a proportion of the revenues derived from such business shall, as may be specified by the Appropriate Commission, be utilised for reducing its charges for transmission and wheeling:

Provided further that the transmission licensee shall maintain separate accounts for each such business undertaking to ensure that transmission business neither subsidises in any way such business undertaking nor encumbers its transmission assets in any way to support such business:

Provided also that no transmission licensee shall enter into any contract or otherwise engage in the business of trading in electricity.”

As extracted above the KSEB Ltd as a STU can engage in other business for the optimum utilization of its assets, and a portion of the revenue earned through other business shall be utilized for reducing the transmission and wheeling charges. However, while doing so KSEB Ltd shall ensure that the

core transmission business shall not subsidise the other business, nor the other business act as an encumber to the transmission business of KSEB Ltd.

10. Section 51 of Electricity Act 2003, permits the distribution licensees to engage in other business with the prior intimation of the Commission. The relevant Section of the EA-2003 is extracted below.

“Section 51. (Other businesses of distribution licensees):

A distribution licensee may, with prior intimation to the Appropriate Commission, engage in any other business for optimum utilisation of its assets:

Provided that a proportion of the revenues derived from such business shall, as may be specified by the concerned State Commission, be utilised for reducing its charges for wheeling :

Provided further that the distribution licensee shall maintain separate accounts for each such business undertaking to ensure that distribution business neither subsidises in any way such business undertaking nor encumbers its distribution assets in any way to support such business.

Provided also that nothing contained in this section shall apply to a local authority engaged, before the commencement of this Act, in the business of distribution of electricity.”

As above, KSEBL as the distribution licensee can engage in other business for optimum utilization of its assets, and a proportion of the revenue derived from such business shall be utilized for reducing its charges for wheeling. It is also specified therein that, main distribution business neither subsidize the other business nor the other business act as an encumber to the distribution core business.

11. As per the Section 14 of the Electricity Act, 2003, the authority for granting licence for transmission, distribution and trading of electricity within the State is vested with KSERC. Further, as per the fifth proviso to Section 14 of the EA-2003, the erstwhile KSEB and its successor entity KSEB Ltd, is a deemed licensee for transmission and distribution of electricity within the State.

Section 16 of the Electricity Act, 2003 empowers the State Commissions to specify the conditions of license. Further, as per the proviso to Section-16 of the EA-2003, the conditions specified in the conditions of license shall be applicable to deemed licensees also.

12. Subsection (3) of the Section 17 of the EA-2003 prescribed that, the licensees shall not transfer or lease or exchange without prior approval of the Commission. The relevant Section is extracted below.

“(3) No licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission.

13. The Commission, by invoking the powers conferred on it under Section 181 (2) (d) of the EA-2003, and also as per the Section-16 of the EA-2003, on 28.02.2016, notified the ‘KSERC(Conditions of License for Existing Distribution Licensees) Regulations, 2006. (hereinafter referred as Licensing Regulation). The Regulation-6 of the Licensing Regulation deals with other business of the distribution licensees, which is extracted below.

“6. Other Activities of the Licensee.-(1) *The Licensee with prior intimation to the Commission may engage in any other business, **only so long as such activity is likely to result in the optimum utilization of the assets and infrastructure comprising the distribution system** and subject to the following conditions:*

- (a) *provided the distribution business and the conduct thereof by the Licensee is not prejudiced and / or adversely affected in any manner;*
- (b) *provided that a proportion of the revenues derived from such business shall, as may be specified by the Commission, be utilized for reducing the wheeling charges of the Licensee;*
- (c) *provided further that the Licensee shall maintain **separate accounts** for each such business to ensure that distribution business neither subsidizes in any way such business undertaking nor encumbers its distribution assets in any way to support such business.*
- (d) *the Licensee shall always comply with such guidelines that the Commission may specify in this regard.*

14. Further, as per the Regulation-13 of the Licensing Regulations, the distribution licensee can transfer or relinquish the operational control of its assets having value more than 25 lakh only with the approval of the Commission. The relevant Regulation is extracted below for ready reference.

13. *Transfer or disposal of assets.- (1) The distribution licensee shall give to the Commission prior notice of its intention to transfer or relinquish operational control over any asset whose value exceeds the amount specified by the Commission under the special conditions in Part V and the distribution licensee shall disclose all relevant facts in the communication to the Commission. The Licensee shall not divide or partition or split the assets or costs thereof, which would result in circumventing this condition. The Commission may, within 30 days of the receipt of the notice, seek further information in support of the transaction and shall, generally within 30 days of such further information being submitted by the distribution licensee, and where no such further information is sought by the Commission as aforesaid, within 60 days of prior notice, approve the transfer arrangement subject to such terms and conditions or modifications as is considered appropriate or reject the same, for reasons to be contained in the order issued by the Commission.*

(2) The distribution licensee may transfer or relinquish operational control over any asset as is detailed in any notice given under sub-clause(1) where –
(a) the Commission confirms in writing that it consents to such transfer or relinquishment of operational control subject to such conditions as the Commission may impose; or
(b) the Commission does not inform the distribution licensee in writing of any objection to such transfer or relinquishment of operational control within the notice period referred to in sub-clause (1) and the transfer is effected by transparent and competitive bidding procedures.

(3) The distribution licensee may also transfer or relinquish operational control over any asset where –

(a) the Commission has issued directions for the purposes of this clause containing a general consent (whether or not subject to conditions) to –

(i) the transactions of a specified description, and/or

(ii) the transfer or relinquishment of operational control over assets of a specified description, and/or

(iii) the transfer or relinquishment of operational control in accordance with any conditions to which the consent is subjected to,

(b) the transfer or relinquishment of operational control in question is mandated under any other law; or

(c) the asset in question was acquired and used by the distribution licensee exclusively or primarily in connection with any other business and does not constitute a legal or beneficial interest in land, or otherwise form part of the distribution system or is not otherwise an asset required for the licensed business.

15. According to the KSEB Ltd, as per the Section 41 and 51 of the Electricity Act, 2003, the approval of the Commission is not required for other business, even when the assets of the transmission and distribution business is shared with a third party as part of other business. The argument of the KSEB Ltd is without appraising the provisions of the Electricity Act 2003 and the Regulations notified by this Commission in consistent with the EA-2003 in totality.

A combined reading of the Section 14, 16, 17 , 41 and 51 of the Electricity Act, 2003 along with the Licensing Regulations, 2006 reveals that, the State Commission has the statutory power and authority to issue necessary directions and orders to the transmission licensees and distribution while engaging in other business by utilizing its assets. The licensees can do other business only, subject to the terms and conditions to be specified by the Commission in the formal order.

16. According to the KSEB Ltd, the Commission has not specified any Regulations on other business. The argument of the KSEB Ltd is without appraising the Regulations notified by this Commission. As already extracted under paragraph 13 of this order, this Commission has notified the Licensing Regulations in the Year 2006. The Regulations -6 of the Licensing Regulations specifies the conditions to be satisfied by the licensees while

engaging in other business. Further, the Regulation 13 of the Licensing Regulations specifies the conditions to be followed by the licensees while transferring its assets or relinquishing the operational control of its assets to a third party.

Further, as per Judgment of the Hon'ble Supreme Court dated 10th March 2010 in Civil Appeal No.3903 of 2006, the notifying Regulations is not a prerequisite for carrying out the statutory functions of the Commission as per the Electricity Act, 2003.

As already mentioned, the assets of KSEB Ltd are created with public money, and the electricity consumers are bearing the cost of the assets so created in the form of tariff. Hence, any activity of the KSEB Ltd as a licensee by utilizing its assets, requires the prior approval of the Commission to proceed with.

17. As discussed above, as per the Section 41 and 51 of the Electricity Act 2003 and Regulation 6 of the Licensing Regulations, KSEB Ltd as the STU/transmission licensee, distribution licensee can engage in other business for optimum utilization of its assets, with the prior intimation to this Commission, and the revenue earned from the other business shall be used for reducing the wheeling charges. However, if the other business involves the sharing of the assets of the transmission and distribution licensee by a third party, the licensee has to get prior approval for such sharing of assets.
18. However in the present case, there is no clarity on the transmission and distribution assets to be shared for the KFON project. Further, once the JV agreement is entered into, the KFON project may impose restriction on KSEB Ltd to utilize its transmission and distribution assets for other business. There is also uncertainty even in getting the present additional revenue earned through other business once the JV agreement is entered into,

Considering these issues and to appraise the entire matter in totality, this Commission vide the interim order dated 04.10.2018, directed KSEB Ltd to submit clarifications and additional details to further proceed in the matter. However, the response of KSEB Ltd toward this direction is unhelpful and they have not complied with the directions of the Commission.

19. Over the years, KSEB/ KSEB Ltd has been engaging in other business, by renting its distribution poles to cable TV operators, and the revenue so earned is accounted under the head 'other income', and such income is accounted as additional income and is adjusted against the approved expenses of KSEB Ltd. Accordingly, at present the revenue earned from other business is fully passed on to the consumers of the State.
20. However, as per the intimation dated 10.07.2018, the KFON projects encompasses the use of Transmission and Distribution infrastructure/ Right of Way (RoW) for laying OPGW and OFC cable infrastructure. Further, KFON project put restrictions on KSEB Ltd for utilizing its transmission and distribution assets for other business, such as:

- (i) Existing fibre lease contracts shall not be renewed in transmission.
 - (ii) KSEB Ltd can rent its distribution only in stretches where KFON is not rolled out.
 - (iii) KFON shall be allowed to lay fibre infrastructure using distribution poles of KSEB Ltd.
 - (iv) Infuture, KSEB shall construct the OPGW fibre infrastructure in all routes using PSDF/ Transgridprojects as per the KFON specifications.
 - (v) KSEB shall provide required space at substations for installing equipments in pre-fabricated structures for setting up POPs within the overall safety parameters of KSEB Ltd.
21. Further, as per the details submitted before the Commission, KSEB Ltd having 49% equity share in the JV company and its equity share in the company will be treated as 'quid pro quo' for 'sharing the assets and resources of KSEB Ltd'. As per the legal interpretations, this means that, the value of the assets of the JV company KFON includes the part of the value of the transmission and distribution assets of KSEB Ltd and it may also reflect the balance sheet of the JV company namely KFON.
22. The Commission would like to reiterate that it is not against the KFON project envisaged by the State Government for facilitating internet connections as envisaged in the Government orders dated 18.05.2017 and 13.10.2017 discussed under **paragraphs 2(1) and 2(2) above**, by sharing the assets and resources of KSEB Ltd.

The KFON project intends to use the transmission and distribution assets of KSEB Ltd. KSEB Ltd is a regulated entity as per the Electricity Act, 2003. As the deemed transmission licensee and distributions licensee, KSEB Ltd has to function as per the conditions specified under the Licensing Regulations, 2006 referred under **paragraphs 13 and 14 above**.

23. The JV Company KFON is entirely a different legal entity and the Commission has no control over it. Hence, if KFON is allowed to use the assets of KSEB Ltd freely and without any conditions for the use, it may create problems in future.

Further, as already mentioned, the assets of KSEB Ltd are created with public money, for the intended purpose of transmission and distribution of electricity within the State. The ultimate beneficiary of the KSEB Ltd is the end electricity consumers of the State. KSEB Ltd as a regulated entity duty bound to functions as per the provisions of the Electricity Act, 2003, and also as per the Regulations, Orders and Directions issued by the Commission in consistence with the provisions of the Electricity Act, 2003. The Commission as the electricity regulator, has the powers and authority to correct KSEB Ltd, if any of its action, affects the electricity transmission and distribution within the State, or, such any action which may create additional liability of the ultimate

consumers of the Stet. Though the Commission has sought clarifications regarding the intended use of the assets of KSEB Ltd by KFON and its impact on the power sector of the State, however, KSEB Ltd has shown reluctance to provide the clarifications on the issues raised by KSEB Ltd, as detailed under paragraph 4 of this order.

24. It is ironical to note that, as detailed under paragraph 2(4) above, the Board of Directors of KSEB Ltd, vide its order dated 29.01.2018, granted in principle approval of the KFON Joint Venture Project, subject to the approval of the Commission only, however, no approval has been sought by KSEB Ltd.

Further, the Article 6.01.01 of the draft JV agreement, discussed under paragraph 2(5) of also stipulate that, the assistance to KSEB Ltd to SPV are subject to the approval of the Commission.

However, KSEB Ltd has yet to file a petition for the approval for entering into KFON project by utilizing its transmission and distribution assets. In the above background, the Commission has directed the KSEB Ltd vide the interim order dated 04.10.2018 to file a proper petition before the Commission, with necessary supporting documents. However, the representative of KSEB Ltd vide the letter dated 05.02.2019 submitted that, the direction of the Commission to file a petition is against the provisions of the EA-2003. The present stand communicated is totally against the decision of the Board of Directors of KSEB Ltd and also as per the provisions of the draft JV agreement submitted before the Commission.

25. The Commission can grant approval of the KFON project, provided the interest of KSEB Ltd is protected as a transmission licensee and distribution licensee, and it shall not put any liability on KSEB Ltd and its ultimate consumers. KSEB Ltd has to appraise these facts before the Commission. Further, for granting approval for any matter, KSEB Ltd has to file a proper petition with full supporting documents, as per the provisions of the KSERC (Conduct of Business) Regulations, 2003. The parties to the JV company, M/s Kerala State Infrastructure Limited (KSITIL) and the IT department in Government of Kerala may also be impleaded as party to the petition, and their views has be heard and recorded. The Commission, may grant formal approval after stakeholders consultations, and after complying all the procedure formalities as per the provisions of the Electricity Act, 2003, Regulations notified by this Commission, and as per the prudent practices followed across the country. KSEB shall enter into JV agreement for KFON project, only after getting formal approval, and subject to the terms and conditions as may be specified in the final order.

Order of the Commission

26. The Commission, after carefully examining the letters of the KSEB Ltd dated 10.07.2018 and 15.02.2019, for sharing the transmission and distribution assets of KSEB Ltd for the use of KFON project, and other documents and materials placed before it as per the provisions of the EA-2003, issue the following directions to KSEB Ltd for compliance.

- (i) As per the Section 14, 16, 17 , 41 and 51 of the Electricity Act, 2003 along with the Licensing Regulations, 2006, KSEB Ltd has to get formal approval from the Commission, for sharing the transmission and distribution assets of KSEB Ltd by the Joint Venture Company KFON.
- (ii) KSEB Ltd shall file a proper petition for approval for sharing the transmission and distribution assets of it, by the Joint Venture Company KFON, alongwith the details as specified under paragraph-4 of this order, with all supporting documents.
- (iii) The parties to the JV Company KFON, the Kerala State IT Infrastructure Ltd and IT department in Government of Kerala, shall be impleaded as party to the petition.
- (iv) KSEB Ltd shall, enter into JV agreement for KFON, by sharing the transmission and distribution assets of KSEB Ltd, only after getting the formal approval of the Commission.

Sd/-

**S.Venugopal
Member**

Sd/-

**Preman Dinaraj
Chairman**

Approved for issue

C.R Satheesh Chandran
Administrative Officer
(In Charge of Secretary)