

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: Shri. Preman Dinaraj, Chairman
Adv. A.J.Wilson, Member (Law)

RP No. 01/2021

In the matter of Petition for Review of the Order dated 12-10-2020 in OA, No. 64/2019 approval of addition of assets as part of Truing up of Accounts for the financial year 2016-17.:

Petitioner : M/s Kerala State Electricity Board Limited.

Dates of hearing : 1st hearing on 31.03.2021
2nd hearing on 23.06.2021

Order dated 21-07-2021

1. The instant petition is filed on 30-12-2020 by M/s. Kerala State Electricity Board Limited (*hereinafter referred to as KSEB Ltd or the Petitioner or the Licensee*) for the review of Order dated 12-10-2020 in Petition OA No. 64/2019 approving the addition of assets as part of Truing up of accounts of the petitioner for the financial year 2016-17. There was a delay of 35 days in filing the petition and the petitioner also filed a petition (IA No.14/2020) for condonation of delay stating that there was no deliberate negligence on the part of the petitioner and the delay was on account of procedural matters in getting comments/ remarks/ additional details from various offices based on which the review petition is filed. The petitioner requested, on the interest of justice, to condone the delay. The Commission after considering the reasons given in the petition in detail had decided to condone the delay and admitted the petition, vide Order dated 25-01-2021.
2. The Commission vide Order dated 14.09.2018, in the truing up of the Accounts for 2016-17 of KSEB Ltd. had deferred the approval of costs relating to addition of assets for the year 2016-17 for want of required details on the capital expenditure and addition of assets as per the provisions of Regulations.
3. Subsequently, KSEB had filed a Petition (OA No. 64/2019) for approval of addition of assets for the year 2016-17 for completing the Truing up of accounts for 2016-17. The Commission after considering this petition had issued the impugned Order dated 12-10-2020, approving GFA addition of Rs.1459.87 crore as against Rs.1563.59 crore sought by KSEB Ltd. In the said Order, the interest on normative loan approved was Rs.27.05 crore as against Rs.47.02

crore sought by KSEB Ltd and Rs.12.56 crore was approved for depreciation as against Rs.16.74 crore sought by the petitioner. Based on this, a revenue gap of Rs.1118.66 crore was approved after truing up. Aggrieved by the Order dated 12-10-2020, petitioner filed the instant petition to review the Order seeking the approval of additional amount of Rs.1.26 crore under depreciation and Rs.14.71 crore under interest on loan, since according to the petitioner certain apparent errors have crept while approving the interest charges and depreciation by the Commission. Specific issues raised in the review petition are:

- (i) The rate of depreciation considered for the addition of assets for the year 2016-17 is 5.14 % instead of 5.28% considered for the assets prior to 01-04-2016.
- (ii) Excess deduction on the amount of land while arriving at the GFA eligible for depreciation for 2016-17
- (iii) Non-consideration of GFA addition made for 2014-15 & 2015-16 by virtue of Ind AS adoption in 2016-17, for interest on normative loan.

Details of the claims are given below:

4. Regarding the first claim petitioner stated that in the truing up Order in OA12/2018 dated 14-09-2018 for 2016-17, depreciation was allowed at a rate of 5.28% for the GFA added till 31-03-2016. However, while approving the depreciation for the addition of GFA for the year 2016-17, as per the impugned Order dated 12-10-2020, the depreciation was allowed at a rate of 5.14% only. The said decision was based on the deliberations in the MYT Order dated 08-07-2019 for the control period 2018-19 to 2021-22, considering the weighted average life of 31 years for the assets. According to the petitioner, two different rates were adopted for the same financial year ie., for the assets added up to the beginning of the year 2016-17, depreciation rate of 5.28% was used and for the asset addition for the year 2016-17, average depreciation of 5.14% was used. Hence the petitioner requested to allow the depreciation at 5.28% for the approved asset addition for 2016-17 also.
5. In the case of the second claim, the petitioner stated that while approving the depreciation for GFA addition for 2016-17, the Commission has excluded the value of land added during 2016-17 amounting to Rs.41.42 crore to arrive at the GFA eligible for depreciation. According to the petitioner, part capitalized assets for the year 2016-17 to the tune for Rs.69.78 crore has already been excluded by the petitioner and also by the Commission, which included land value to the extent of Rs.34.69 crore. Hence, the value of land to the extent of Rs.6.73 crore (Rs.41.42 crore- 34.69 crore) alone was to be deducted instead of Rs.41.42 crore. According to the petitioner, this has resulted in deduction of land value to the tune of Rs.76.11 crore (Rs.41.42 crore + 34.69 crore) instead of Rs.41.42 crore. The petitioner requested for correcting this error apparent on the face of

record and allow the additional depreciation to the tune of Rs.0.92 crore for the value of asset of Rs.34.69 crore @ 5.28%. Accordingly, the petitioner requested to approve the GFA eligible for depreciation at Rs.523.47 crore instead of Rs.488.78 crore approved in the impugned order and depreciation for the year is to be approved at Rs.13.82 crore instead of Rs.12.56 crore.

6. Regarding the third issue, the petitioner stated that GFA addition of Rs.282.73 crore pertaining to 2014-15 and 2015-16 accounted in 2016-17 by virtue of initial adoption of Ind AS, was not considered for allowing the interest on normative loan. According to the petitioner while approving the normative loan for 2015-16 and 2016-17 the addition considered was based on the IGAAP accounts. Hence, the petitioner stated that non-approval of normative loan attributable to this GFA addition and that of normative loan is an error apparent on the face of record though depreciation on such assets have already approved. In view of the above, the petitioner sought interest charges additionally at Rs.14.71 crore as shown below:

		As per OA 64/2019	Review Sought	Total
1	Additional normative loan approved for 2016-17	530.20	282.73	812.93
2	Less: Depreciation approved (Normative repayment)	12.56	1.26	13.82
3=(1-2)	Net Additional normative loan approved for 2016-17	517.64	281.47	799.11
4=(3x10.45%)/2	Normative interest approved	27.05	14.71	41.76

Hearing on the Petition

7. The first hearing was conducted on 31.03.2021 through video conference mode. After hearing the petitioner, the Commission has sought following additional information vide daily order dated 31.03.2021
- (i) Whether the valuation of fixed assets under Ind As is based on the cost model or revaluation model. If so, the adjustments made in the fixed assets due to Ind As towards fair value adjustments/ revaluation adjustment to be provided
 - (ii) Net addition of land under SBU-G for the year 2016-17 is –ve (Rs. (-) 8.16 Crore) after removing part capitalisation and duplication. Reason for negative value may be furnished.
 - (iii) Whether any fair value adjustments included in the claims under the asset additions during 2015-16 and 2016-17.
 - (iv) Whether the interest rate booked under the accounts for 2016-17 includes any fair value adjustments. If so, the details.
8. The petitioner in compliance of the Commission's direction vide daily Order dated 31.03.2021, submitted the following clarifications vide letter dated 28.04.2021.

- (i) The valuation of fixed assets is done under cost basis and revaluation adjustment/fair value adjustments have not been done on adoption of Ind AS.
- (ii) In reply to the negative addition of land (Rs.8.16 crore), as per the details given in Table 7 of the petition OA 64/2019, under SBU-G, the petitioner stated that total asset addition of Rs.450.22 crore under SBU-G comprised of Rs.15.77 crore under land. The petitioner proposed to remove the duplication, part-capitalised assets and misclassified assets from the total asset addition of Rs.450.22 crore under SBU-G as adjustments. Accordingly, Rs.37.80 crore shown as part capitalized assets and Rs.31.69 crore shown as mis-classification and Rs.81.98 shown as duplication. Thus, the net assets sought to be added was Rs.298.75 crore only. Of the part capitalized assets (Rs.37.80 crore), Rs.23.33 crore was under land & land and rights. Thus, after adjustments the net value of land added in 2016-17 under SBU-G is Rs.(-)8.16 crore (15.17 crore-23.33 crore=(-)8.16 crore).

According to the petitioner, the negative value land (Rs.(-)8.16 crore) in the net addition of assets under SBU-G is due to the reversal of Rs.10.38 crore during 2016-17 which was a wrong booking by civil circle Kothamangalam under the head "land" during the period from 2012-13 to 2015-16. KSEB Ltd in its reply dated 28-04-2021 stated that the Statutory Auditors as per paragraph 6(c) of their report for 2015-16 had observed that civil circle Kothamangalam had wrongly booked a portion of the expenses to be capitalized under 'land' during the period from 2012-13 to 2015-16. In order to rectify the mistake a sum of Rs.10.38 crore has been reversed during the year 2016-17. The negative addition under Land A/c in 2016-17 was due to this reversal entry.

- (iii) No amount has been included in the GFA addition for 2015-16 and 2016-17 towards revaluation of assets/ fair valuation and the GFA additions were made during these years strictly on cost basis.
- (iv) Interest booked for 2016-17 includes fair value adjustments and the adjustments are already furnished in the truing up petition.

9. A second hearing on the matter was conducted on 23.06.2021. During the hearing, the petitioner explained the clarifications furnished as per letter dated 28-04-2021. After the hearing the Commission reserved the matter for Orders.

Analysis and Decision of the Commission

10. The Commission has carefully considered the arguments given by KSEB Ltd in the review petition. At the outset, it needs to be mentioned that the Commission draws powers conferred upon it under the provisions of the Electricity Act 2003 and the Regulations issued thereon. It is to be noted that the power of review available with the Commission is as per the provisions of Section 94(1)(f) of the Electricity Act, 2003. As per section 94(1)(f) of the Electricity Act 2003, the Commission may review its decisions, directions and orders as per the

provisions of Code of Civil Procedure 1908. Further, Regulation 67 of KSERC (Conduct of Business) Regulations provides as follows:

“67. Powers of review, -

(1) Any person or party affected by a decision, direction or order of the Commission may, within forty five days from the date of making such decision, direction or order apply for the review of the same.

(2) An application for such review shall be filed in the same manner as a petition under Chapter III of these regulations.

(3) The Commission may after scrutiny of the application, review such decisions, directions or orders and pass such appropriate orders as the Commission deems fit within forty five days from the date of filing of such application:

Provided that the Commission may, at its discretion, afford the person or party who filed the application for review, an opportunity of being heard and in such cases the Commission may pass appropriate orders as the Commission deems fit within thirty days from the date of final hearing:

Provided further that where the application for review cannot be disposed of within the periods as stipulated, the Commission shall record the reasons for the additional time taken for disposal of the same”

11. As per the Order 47, Rule 1 of the Code of Civil Procedure 1908, review is justified on discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by the parties at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reasons. Hence, the review petition has to be dealt with as per the powers conferred upon the Commission. It is beyond doubt that the review jurisdiction is a limited power to be exercised by the Commission.
12. Based on the above premise the Commission analyzed the petition and the additional details and clarifications furnished by KSEB Ltd. Accordingly, each of the issues raised in the review petition and the additional information furnished by the petitioner are discussed below:

Depreciation rate of 5.28% for the addition of Assets for the year 2016-17

13. Regarding first claim, the petitioner sought to apply the depreciation rate of 5.28% on the addition of assets instead of 5.14% approved by the Commission so as to avoid adoption of two different rates in the same year. As per the contention of the petitioner the rate of 5.14% was arrived at based on the deliberations in the MYT order dated 08.07.2019 for the control period 2018-19 to 2021-22 and hence it is applicable only from 2018-19.
14. Regarding the adoption of rate of 5.14% for the calculation of depreciation, the Commission clearly explained the rationale in arriving at the rates in para 150 of the impugned Order dated 12-10-2020, which is reproduced below:

“KSEB Ltd has claimed depreciation at the rate of 5.28%. However, considering the mix of assets, the average depreciation rates would be lower than 5.28%. In order to overcome this issue, the Commission has estimated the average depreciation rates based on the historical mix of assets of KSEB Ltd till 2015-16. Accordingly, the Commission has arrived at an average depreciation rate of 5.14% for the assets having life less than 12 years. The Commission has adopted the same rate for allowing depreciation for the assets added during 2016-17, since about 8% of the assets of KSEB Ltd is having a depreciation rate of 3.34% and the average rate of depreciation of 5.14% would fairly reflect the depreciation for the different categories of new assets having life less than 12 years.”

15. The Commission notes that the petitioner has not claimed any error apparent on the above, but pointed out the difference in rate adopted for same year i.e., 5.28% for assets upto 31-03-2016 as per the Truing up Order for 2016-17 and 5.14% for the addition of assets for 2016-17. The Commission is of the view that there is no inconsistency in using the rate of 5.14%, since the rate of 5.14% was arrived at, when more information was available. There cannot be any inconsistency when more accurate information is used. The Commission has adopted the depreciation rate 5.14% for addition of assets for the year 2016-17 based on the average life of the existing assets as this rate considered to be more rational and would fairly reflect the correct depreciation. It should also be pointed out that such an exercise was not done while approving the depreciation for the assets as on 31-03-2016 and hence adopted the rate of 5.28%. Since the petitioner has raised the issue of difference in rates, the Commission is inclined to allow the depreciation rate of 5.28% for the assets added during the year 2016-17. However, it is also pointed out that the rate of 5.14% made applicable for the years from 2018-19 to 2021-22 has not been challenged yet and hence become final. **Accordingly, the additional depreciation of Rs.0.34 crore is allowed for assets eligible for depreciation as per the Order dated 12-10-2020 amounting to Rs.488.78 crore** (488.78 crore X (5.28%-5.14%)/2).

Approved GFA addition for the purpose of Depreciation

16. In the case of the second claim, the petitioner stated that for approving the depreciation for GFA addition for 2016-17, the Commission has excluded the value of land amounting to Rs.41.42 crore from the approved asset addition for the year (Rs.1459.87 crore) to arrive at the GFA eligible for depreciation. However, in order to arrive at the approved Asset Addition of Rs.1459.87 crore, part capitalized assets for the year 2016-17 to the tune for Rs.69.78 crore was already removed by the Commission as proposed by the petitioner. The part capitalized assets (Rs.69.78 crore), which was removed included land value to the extent of Rs.34.69 crore. Hence, according to the petitioner, since the land value to the extent of Rs.34.69 crore was already removed along with the part capitalized assets, the value of land to the extent of Rs.6.73 crore (Rs.41.42

crore- 34.69 crore) alone needs to be deducted from the approved asset addition of Rs.1459.87 crore instead of the full amount Rs.41.42 crore pertaining to land. According to the petitioner, this has resulted in double deduction of land value to the tune of Rs.76.11 crore (Rs.41.42 crore + 34.69 crore). The petitioner requested for correcting this error apparent on the face of record and allow the additional depreciation to the tune of Rs.0.92 crore for the value of asset of Rs.34.69 crore @ 5.28%. Accordingly, the petitioner requested to approve the GFA eligible for depreciation at Rs.523.47 crore instead of Rs.488.78 crore approved in the impugned order.

17. The Commission has examined the contentions of the petitioner vis-a vis the details furnished in the petition OA No. 64/2019. As per the impugned Order dated 12-10-2020 in OA 64/2019, the Commission had approved the GFA addition for the year 2016-17 and the corresponding depreciation on the assets as shown below:

Table 43
Summary of the Asset additions approved for each SBUs for 2016-17

	<i>SBU G</i>	<i>SBU T</i>	<i>SBU D</i>	<i>TOTAL</i>
	<i>Rs. Crore</i>	<i>Rs. Crore</i>	<i>Rs. Crore</i>	<i>Rs. Crore</i>
<i>Assets capitalised during the year (as per IndAS)</i>	450.22	410.19	908.25	1768.66
<i>Less: Duplication</i>	81.98	53.31	-	135.29
<i>Less: Part capitalization</i>	37.80	31.98	-	69.78
<i>Less: Part capitalization during previous years</i>	81.28	5.80	-	87.08
<i>Less: Decommissioning Liability</i>	-	-	16.64	16.64
<i>Less: Additional Capitalization for which details are required</i>				0
<i>Less: Cost overrun for which detailed justification pending</i>				0
<i>GFA addition under SBU D wrongly included under SBU G</i>	-31.69	-	31.69	0
<i>GFA addition approved for 2016-17</i>	217.47	319.10	923.30	1,459.87

Table-44
Depreciation approved for the assets added during the year 2016-17

	<i>SBU-G</i>	<i>SBU-T</i>	<i>SBU-D</i>	<i>Total</i>
	<i>Rs. crore</i>	<i>Rs. Crore</i>	<i>Rs. Crore</i>	<i>Rs. crore</i>
<i>GFA addition approved for the year</i>	217.47	319.10	923.30	1,459.87
<i>Less Consumer contribution & Grants</i>	13.05	79.12	554.77	646.94
<i>Less Value of land</i>	15.17	25.40	0.85	41.42
<i>Less value of Ind AS addition considered in TU order for 2015-16</i>	13.32	81.26	188.15	282.73
<i>GFA eligible for depreciation</i>	175.93	133.32	179.53	488.78
<i>Depreciation for the year @half of normal rate (5.14%/2)</i>	4.52	3.43	4.61	12.56

18. As shown above, the depreciation has been worked out by the Commission on the eligible asset additions after making the adjustments for land, assets created

out of consumer contribution & Grant and also the asset addition already considered in the Truing up Order as part of Ind AS adjustments.

19. The Commission notes that based on the materials made available to the Commission; the land value included under part capitalized Assets is Rs.34.69 crore. Hence out of the total value of land to be deducted for the year is Rs.6.73 crore only (Rs.41.42 crore-Rs.34.69 crore) for calculating the depreciation as contented by the petitioner. Hence the excess deducted value of land is to be restored for calculating depreciation. In other words, the petitioner is eligible for average depreciation for the amount of Rs.34.69 crore at the rate of 5.14%. **Accordingly, additional depreciation of Rs.0.92 crore (34.69 x 5.28%/2) is provisionally approved.**
20. Though the Commission has inclined to allow the additional depreciation, it is necessary to examine details furnished by the petitioner. As per the request of the petitioner, the value of land for the year is only Rs.6.73 crore for the total eligible asset addition of Rs.1459.87 crore ie., the share of land in the value of assets added works out to 0.46% only. However, the value of land as a percentage of GFA addition per year ranges from 2.7% to 3.9% till 2015-16. Thus, the share of land of 0.46% for the year 2016-17 seems to be much lower. Considering this, **it is directed that KSEB Ltd may furnish the asset class wise details showing value of land separately for the full value of assets added during the year 2016-17.**

Additional normative loan for the year 2016-17

21. The third issue raised by the petitioner is on allowing interest on normative loan for the addition of assets pertaining to 2014-15 and 2015-16, made by virtue of Ind AS adoption of Accounts. In the Order dated 12-10-2020, the Commission has approved the interest on normative loan, which is reproduced below:

*Table 45
Interest on normative loan approved for the year 2016-17*

	SBU-G (Rs. Crore)	SBU-T (Rs. Crore)	SBU-D (Rs. Crore)	Total (Rs. Crore)
<i>GFA addition approved for the year</i>	217.47	319.10	923.30	1,459.87
<i>Less Contribution and Grants</i>	13.05	79.12	554.77	646.94
<i>Less Ind AS addition allowed in 2015-16</i>	13.32	81.26	188.15	282.73
<i>Less Repayment / Depreciation</i>	4.52	3.43	4.61	12.56
<i>Net Additional Normative Loan for 2016-17</i>	186.58	155.29	175.77	517.64
<i>Rate of Interest approved for the year</i>	10.45%	10.45%	10.45%	10.45%
<i>Interest Charges approved for the year</i>	9.75	8.11	9.18	27.05

22. According to the petitioner as shown above, Rs.282.73 crore has been deducted from the GFA, which is pertaining to the asset addition for the year 2014-15 and 2015-16, but claimed in the year 2016-17 only. The petitioner also

cited the truing up Order of the Commission for the year 2015-16, which categorically excluded the asset addition of Rs.282.73 made as a part of adjustments on account of Ind AS adoption for want of proper details. Details were filed as part of petition OA64/2019 on which the impugned Order was issued deducting the said amount. According to the petitioner, since the said amount was not claimed in the previous years, it is eligible for interest on loan for the year 2016-17.

23. The Commission has examined the matter in detail. The petitioner had included the asset additions relating to 2014-15 and 2015-16 in the restated accounts (as part of the Ind AS adoption) for 2016-17 and claimed as part of the assets addition for the year 2016-17 in OP 64/2019. However, the adjustments in the accounts became final and complete only when the total effect of the asset additions, by virtue of Ind AS compliance, was withdrawn in the year 2017-18 accounts. The Commission is of the view that in order to be eligible for a claim, such claim has to be fully reflected in the accounts for the year in which such claim is raised. It is a fact that depreciation has already been allowed for this amount by the Commission as part of the truing up for 2016-17 vide Order dated 14-09-2018 in OA.No.12/2018 with provisional details. However, this cannot be a ground for the claim of interest charges since the Commission observed after examining the details in the petition OA 64, that there were considerable issues in the fixed assets details of the petitioner such as part capitalization, duplication, mis-classification etc. Hence, the Commission is of the considered view that asset addition is to be considered only when the full effect of the same is reflected in the accounts and the asset has been put to its intended use. Unless these details are fully reflected in the accounts, it is not possible to verify the same on consistent basis. Accordingly, the claim of the petitioner to allow interest on normative loan on these assets from 2016-17 cannot be accepted. However, the petitioner is eligible for interest on normative loan on these asset additions from the year 2017-18, as the petitioner has done necessary adjustments to include it in the GFA in the year 2017-18

Orders of the Commission

24. The Commission, after considering the petition in detail, has decided to allow the claim of depreciation at 5.28% and also on account of excess deduction of land as pointed out by the licensee provisionally totaling to Rs.1.26 crore (0.34 crore+0.92 crore), subject to the condition that the licensee shall furnish the asset category wise details separately showing the '*land and land rights*' for each of the assets capitalized and put to intended use for the year 2016-17. As mentioned above, the other claims are rejected.
25. Though there will be corresponding reduction in the interest charges on normative loan, the same was ignored as the amount is small.

26. Based on the above, the revised Revenue Gap/surplus for the year 2016-17 is as shown below:

Revised Revenue Gap approved for the year 2016-17

	Rs. Crore
Revenue Gap approved as per Order dated 12-10-2020	1118.66
Additional Depreciation approved (0.92 crore+0.34 crore)	1.26
Revised Revenue Gap for 2016-17	1119.92

27. With the above, petition is disposed of. Ordered accordingly.

Sd/-
Adv. A J Wilson
Member (Law)

Sd/-
Preman Dinaraj
Chairman

Approved for issue

Sd/-
Secretary (i/c)