

KERALA STATE ELECTRICITY REGULATORY COMMISSION THIRUVANANTHAPURAM

RP NO.3/2019

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

In the matter of : Review Petition against Order in OA 12/2018
dated 14-9-2018 on Truing up of Accounts of
KSEB Ltd for the year 2016-17

Applicant : Kerala State Electricity Board Limited
Thiruvananthapuram

Order dated 16-05-2019(With covering letter)

1. M/s KSEB Ltd in filed a petition dated on 6-2-2019 for Review of the Order of the Commission in OA 12/2018 dated 14-9-2018 on Truing up of Accounts of KSEB Ltd for the year 2016-17. The petition was admitted after condoning delay of 102 days, which was explained satisfactorily by KSEB Ltd. After admitting the petition, the Commission issued notices to the parties for the public hearing and also issued press release for the information of the public.

Public hearing on the petition

2. The review petition was heard on 19-3-2019 at the Office of the Commission. Sri. Bipin Shankar, Dy Chief Engineer, representing KSEB Ltd presented the matter. According to KSEB Ltd, there is an apparent error on the estimation of normative loan for the year 2015-16 since the accumulated depreciation considered is not correct. Accordingly, the interest charges for the year 2016-17 is to be revised to Rs.272.13 crore as against Rs.223.26 crore approved by the Commission. Further, KSEB Ltd argued that the disallowance in the employee expenses by Rs.217.35 crore is without considering the business growth in the system. The decision on the disallowance of electricity duty under Section 3(1) of the Kerala Electricity duty Act and depreciation to the tune of Rs.247.63 crore for the assets created out of contribution and grants are also requested to be reviewed. KSEB Ltd have also requested to consider the expenses which were not allowed on account of adjustments made under Ind AS. ie., under other debits Rs.33.90 crore on account of fair value adjustments and Rs.14.26 crore on arrears of interest on GPF pertains to the year 2015-16 was also required to be approved.

3. Sri. Dijo Kappen, while objecting to the review petition raised the issue whether the petition can be taken up when the model code of conduct of General Elections are in place. He also stated that the issues raised in the review petition are akin to an appeal, which are beyond the scope of the review. Further, admission of the petition with such delay itself is not proper and hence the petition is to be rejected. He also demanded that KSEB Ltd should be treated at par as that of other licensees in the State and no special treatment should be provided.
4. Sri. Ratheesh Kumar, Joint Secretary, representing the Kerala HT-EHT Industrial Electricity Consumers stated that KSEB Ltd is seeking review for allowing an additional amount of Rs.780 crore. The petition itself is not maintainable with more than 170 days of delay. According to him, the basic principle and judicial practice of reviewing an order is maintainable only if there is an error apparent on the face of record. KSEB Ltd could not point out any error apparent on the items such as disallowance of employee cost, disallowance of electricity duty and disallowance of depreciation. The fair value adjustments and arrears of interest on GPF are only accounting practice and therefore should be ignored. Hence the Commission may scrutinize and determine whether there is any error apparent in the issues. The Association also prayed that since there is exorbitant delay in filing the petition, henceforth public hearing should be conducted before admitting the delay condonation petition. Sri. Ayyappan Nair stated that written objections will be filed within two days after studying the issue.
5. In the letter dated 11-4-2019, KSEB Ltd had furnished the reply to the objections raised by the HT-EHT Association. According to KSEB Ltd, a petition seeking condonation of delay was submitted to the Commission and the same was granted by the Commission vide order dated 5-3-2019. Regarding electricity duty, KSEB Ltd did not seek a review of the decision on the matter but requested before the Commission to consider the its approval based on the decision of the Apex court/ government in the matter. Further, according to KSEB Ltd there is no provision in the Regulations for conducting public hearing for the condonation of delay, but the same is to be decided by the Commission in the interest of justice on a case to case basis. Regarding fair valuation, KSEB Ltd stated that, review was sought strictly on the denial of genuine expenses in truing up on account of Ind AS adjustments. Thus KSEB Ltd stated that there is there is no merit in the objections of the Association and hence requested to the reject the same.

6. KSEB Ltd in their letter dated 10-4-2019 had also furnished additional details as sought by the Commission in the daily order dated 25-03-2019. These details will be examined in the respective sections of this order.

Analysis and decision of the Commission

7. The Commission noted the arguments given by KSEB Ltd in the review petition and the objections raised by the stakeholders. At the outset, it needs to be mentioned that the Commission has been conferred with the powers 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 and Regulation 67(1) of KSERC (Conduct of Business) Regulations, 2003. As per section 94(1)(f) of the Electricity Act 2003, the Commission may review decisions, directions and orders as per the provisions of Code of Civil Procedure 1908. As per the provisions 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. The agitation on the merits of the issues presented in the original petition is not contemplated in the review proceedings. It is beyond doubt that the review jurisdiction is a limited power to be exercised when new facts which could not be reasonably produced at the time of the issue of original order or to consider any apparent error on the face of record.
8. The provisions of the KSERC (Conduct of Business) (Amendment) Regulations 2014 provides that:

“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”

9. As per Regulation 67 of the KSERC (Conduct of Business) (Amendment) Regulations 2014, any person or party affected by the decision, direction or order of the Commission may, within forty five days of making such decision, direction or order, apply for a review. In case, an opportunity of being heard is given to the party, the appropriate orders have to be passed within 30 days of the date of final hearing. While the matter was under the consideration of the Commission, model code of conduct for the General Elections was effective and hence the Commission after hearing the matter on 19-3-2019 has to reserve the issue of the order till the expiry of effect of the model code of conduct.
10. KSEB Ltd has taken up following issues in the review petition: (a) determination of normative loan and interest thereof, (b) disallowance of the cost of excess employee, (c) disallowance of depreciation on grants and contribution, (d) disallowance of Section 3(1) duty, (e) changes on account of fair value adjustments and (f) arrears of interest on GPF. Each of these items are taken up below:
11. As the first issue, KSEB Ltd has claimed that the interest on loan was not properly considered by the Commission. The interest charges were approved on a normative basis. According to KSEB Ltd there is an error apparent on the computation of net fixed assets and consequently the normative loan as on 1-4-2015 on account of the omission of the depreciation clawed back in earlier years. The Commission has determined the total depreciation allowed till 1-4-2015 at Rs.6135.25 crore and worked out the NFA as on 1-4-2015. According to KSEB Ltd though the Commission has rightly excluded the disallowed depreciation, due to difference in the rate; however, Commission has not considered the extent of depreciation disallowed on account of assets created out of contribution and grants (Rs.689.40 crore) as shown below:

12. As per KSEB Ltd, the Commission did not consider depreciation disallowed on account of assets created out of contribution and grants (Rs.689.40 crore) as shown below:

Year	As per accounts	Approved by KSERC	Disallowance		
			Due to Rate/methodology difference	Due to Claw back	Total
	Rs. Crore	Rs. Crore	Rs. Crore	Rs. Crore	Rs. crore
Till 31.03.2003	1502.57	1502.57	--	--	--
2003-04	394.29	394.29	--	--	--
2004-05	374.77	374.77	--	--	--
2005-06	392.65	392.65	--	--	--
2006-07	405.98	230.67	175.31	0	175.31
2007-08	419.09	274.51	144.58	0	144.58
2008-09	434.74	291.96	142.78	0	142.78
2009-10	451.22	399.65	51.57	0	51.57
2010-11	473.43	286.33	70.13	116.97	187.10
2011-12	466.00	330.6	-3.14	138.54	135.40
2012-13	509.31	346.18	14.97	148.16	163.13
2013-14	516.28	306.68	68.59	141.01	209.60
2014-15*	459.70	314.99	0.00	144.71	144.71
Total	6800.04	5445.85	664.80	689.40	1354.18

**True up order for 2014-15 is yet to be issued and therefore claw back for the year is provisional. The depreciation as per accounts has been worked out on the basis of rates and methodology prescribed by the Hon'ble Commission. Therefore, the extent of claw back based on the methodology adopted in 2013-14 has been reduced to arrive at the approved depreciation (provisional) for 2014-15*

13. The Commission till 2005-06 had approved the depreciation as per the annual accounts of the KSEB Ltd (erstwhile KSEB). However, from 2005-06, as per the provisions of the Tariff Policy 2006, depreciation rates were decreased by CERC, which was made applicable in the State also. However, erstwhile KSEB continued to book depreciation as per the provisions of the Electricity (Supply) Act and Electricity Supply Annual Accounting Rules at a higher rate based on the notification of Government of India. The Commission hence for the purposes of ARR&ERC approved only the reduced rates of depreciation as per the CERC norms. Further, from 2009-10, the Commission decided that depreciation for the assets created out of grants and contribution will not be passed on to the consumers. Thus there is a difference in approved depreciation as compared to the depreciation booked in the accounts, on account of these two factors as mentioned above. Thus, according to KSEB Ltd, there was a total disallowance of depreciation to the tune of Rs.1354.18 crore till 2014-15 (instead of Rs.664.80 crore considered by the Commission).

14. As mentioned in the Review petition, depreciation for the year 2014-15 is an assumed figure by KSEB Ltd, since the Commission has not issued truing up orders for the year 2014-15. If the above argument is considered the approved depreciation till 1-4-2015 has to be Rs.5445.85 crore (Rs.6135.25 – Rs.689.4 crore). This works out to be Rs.37.25% of GFA and the NFA as on 1-4-2015 would be Rs.9171.22 crore (Rs.14617.07 – 5445.85 crore). The consumer contribution, capital subsidy and grants for the purpose of normative loan would be as follows as per the KSEB Ltd estimates.

No	Particulars	Rs. Cr	Rs. Cr
1	Contribution & Grants till 31.10.2014	4169.87	
2	Addition from 01.11.14 to 31.03.15	500.14	4670.01
7	Depreciation available for repayment of loan	5445.85	
8	GFA	14617.07	
9	Depreciation %	37.25	
10	Depreciated contribution @ 37.25%		1739.58
11	Balance contribution available		2930.43

15. If this is the case, according to KSEB Ltd the normative loan as on 1-4-2016 and the interest on loan would be as shown below:

	Particulars	SBU G	SBU T	SBU D	Total
1	GFA as on 01.04.2015	16395.04	4097.22	6115.79	26608.05
2	Less: revalued portion	11988.98			11988.98
3	Balance GFA as on 01.04.2015	4406.06	4097.22	6115.79	14619.07
4	Less: Approved depreciation till 01.04.2015				5445.85
5	Net Fixed Assets (3-4)				9173.22
6	Less: Equity Capital				3499.05
7	Less: pro rata Contribution & grants				2930.35
8	Normative loan 01.04.2015 (5-6-7)				2743.82
9	Less: Depreciation for 2015-16				334.87
10	Add: Additional loan 2015-16				380.06
11	Normative loan 31.03.2016 (8-9+10)				2789.01
12	Less: Depreciation for 2016-17				369.87
13	Normative loan 31.03.2016 (10-11)				2419.14
14	Average loan for 2016-17 (11+13/2)				2604.08
15	Weighted average rate of interest				10.45%
16	Normative interest on loan till 01.04.2016				272.13
17	GFA ratio	28.92	28.06	43.02	100.00
18	SBU wise Interest apportionment	78.70	76.36	117.07	272.13

16. As shown above, KSEB Ltd argued that the interest on normative loan for 2016-17 would be Rs.272.13 crore as against Rs.223.13 crore approved by the Commission.

17. The Commission examined the arguments and details furnished by KSEB Ltd regarding normative loan. The crux of the argument of KSEB Ltd was that the depreciation disallowed for the assets created out of contribution and grants to the tune of Rs.689.40 crore (upto 2014-15) is to be considered while arriving at the normative loan. It is to be noted that there is a difference in depreciation approved by the Commission and depreciation booked in the accounts : the difference arose due to two reasons viz. firstly the rate of depreciation used by KSEB and the rate as per CERC regulations and secondly, the depreciation for assets created out of grants and contributions. The Commission in the truing up of accounts for the year 2015-16, had considered the accumulated depreciation as per accounts (Rs.6800.04 crore) and the disallowed depreciation to the tune of Rs.664.80 crore on account of difference in rate of depreciation (ie., Rs.6800.04 crore – Rs.664.80 crore = Rs.6135.25 crore). The contention of KSEB Ltd is that reduction made on account of depreciation of assets created out of grants and contribution to the tune of Rs.689.40 crore (till 2014-15) is also to be deducted and net accumulated depreciation of Rs.5445.85 crore is to be taken instead of Rs.6135.25 crore taken by the Commission.

18. Since KSEB Ltd has raised the dispute in the figures, it is pertinent to examine the provisions of the relevant Regulation of KSERC (terms and conditions for determination of Tariff) Regulations 2014. Regulation 27 provides for the debt : equity ratio and the relevant portions are given below:

“27. Debt-equity ratio. – (1) For the purpose of determination of tariff, debt-equity ratio as on date of commercial operation in the case of a new generating station, transmission line and distribution line or substation commissioned or capacity expanded on or after the First day of April 2015, shall be 70:30 of the capital cost approved by the Commission:

Provided that the debt-equity ratio shall be applied only to the balance of such approved capital cost after deducting the financial support provided through consumer contribution, deposit work, capital subsidy or grant, if any.

(2) Where equity employed is more than thirty percent of the approved capital cost, the amount of equity for the purpose of tariff shall be limited to thirty percent and the balance amount shall be considered as normative loan and interest on the same may be allowed at the weighted average rate of interest of the actual loan portfolio.

(3) Where actual equity employed is less than thirty percent of the approved capital cost, the actual equity shall be considered.

(4) If any fixed asset is capitalised on account of capital expenditure incurred prior to the First day of April, 2015, debt-equity ratio allowed by the Commission for determination of tariff for the period ending the Thirty First day of March, 2015 shall be considered.

.....
.....”
.....

19. Regulation 30 provides for interest and financing charges, which is given below:

30. Interest and finance charges. – (1) (a) The loans arrived at in the manner indicated in regulation 27 shall be considered as gross normative loan for calculation of interest on loan.

(b) The interest and finance charges on capital works in progress shall be excluded from such consideration.

(c) In the case of retirement or replacement of assets, the loan amount approved by the Commission shall be reduced to the extent of outstanding loan component of the original cost of the retired or replaced assets, based on documentary evidence.

(2) The normative loan outstanding as on the First day of April, 2015, shall be worked out by deducting the amount of cumulative repayment as approved by the Commission up to the Thirty First day of March, 2015, from the normative loan.

(3) Notwithstanding any moratorium period availed by the generating business/company or the transmission business/licensee or the distribution business/licensee, the repayment of loan shall be considered from the first financial year of commercial operation of the project and shall be equal to the depreciation allowed for that financial year.

(4) The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio at the beginning of each financial year applicable to the generating business/company or the transmission business/licensee or the distribution business/licensee or state load despatch centre:

Provided that if there is no actual loan for a particular financial year but normative loan is still outstanding, the weighted average rate of interest on the last available loan shall be considered:

Provided further that if the regulated business of the generating business/company or the transmission business/licensee or the distribution business/licensee or state load despatch centre does not have actual loan, then interest shall be allowed at the base rate.

(5) The interest on loan shall be calculated on the normative average loan for the financial year by applying the weighted average rate of interest.

(6) The generating business/company or the transmission business/licensee or the distribution business/licensee or the state load despatch centre, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the beneficiaries and any benefit from such refinancing shall be shared in the ratio 1:1 among,-

(i) the generating business/company and the persons sharing the capacity charge; or

(ii) transmission business/licensee and long-term intra-State open access customers including distribution business/licensee; or

(iii) distribution business/licensee and consumers.

(7) The changes to the terms and conditions of the loans during the financial year, if any, shall be effective from the date of coming into force of such changes.

(8) Interest shall be allowed on the amount held as security deposit in cash from users of the transmission system or distribution system and consumers at the bank rate as on the First day of April of the financial year in which the application is filed:

Provided that interest on security deposit actually paid to the users of the transmission system or distribution system and to the consumers during the financial year, shall be considered at the time of truing up for the financial year.”

20. As per the Regulations, KSEB Ltd is not eligible for any return on the assets created out of contributions and grants and recovery on account of depreciation.

21. In the present case, the normative loan outstanding as on 1-4-2015 is the issue raised by KSEB Ltd. The normative loan as on 1-4-2015 is to be arrived at by the Commission after deducting cumulative depreciation from Gross fixed assets. In the truing up order for 2015-16 para 133 to 140 of chapter 2 explains the methodology followed by the Commission in detail. The methodology followed by the Commission for arriving at the normative loan as on 1-4-2015 is that, the increased value of assets on account of revaluation (Rs.11988.98 crore) was deducted from the GFA as per accounts as on 1-4-2015 (Rs.26608.06 crore) as shown below:

GFA as per accounts as on 1-4-2015	Rs.26608.06 crore
Value of assets enhanced through upward revaluation as part of Transfer scheme	<u>Rs.11988.99 crore</u>
GFA Less enhanced value as on 1-4-2015	<u>Rs.14619.07 crore</u>

22. Thus, the opening GFA as on 1-4-2015 for estimation of normative loan was arrived at as Rs.14619.07 crore. From the above figure, the cumulative depreciation was deducted. In order to arrive at the cumulative depreciation, depreciation disallowed by the Commission on account of difference in rates to the tune of Rs.664.79 crore was deducted from the depreciation as per accounts as on 1-4-2015 of Rs.6800.04 crore (Rs.6800.04 crore - Rs.664.79 crore = Rs.6135.25 crore). The share of accumulated depreciation as a percentage in the GFA is 42%. Thus, the Net fixed assets as on 1-4-2015 was arrived at as Rs.8483.82 crore (Rs.14619.07 crore – Rs.6135.25 crore). In normative mode, the entire NFA is funded out of equity, grants and contributions and normative loans. As per Regulation 35(b), the equity of Government of Kerala as per transfer scheme published under Section 131 of the Act shall be considered. Thus Rs.3499 crore as equity as per the booked of accounts is one source of funding of NFA. The balance amount of Rs.4984.82 crore is funded out of grants/contribution and normative loan.

23. As per the Regulations, depreciation is not allowable for assets created out of contribution and grants. The total grants and contribution as on 1-4-2015 is Rs.4670 crore. The Commission, in order to arrive at the net value of assets created out of grants, deducted the proportionate share of accumulated depreciation (42%) for the entire value of assets including that created out of grants and contribution. Thus the net value of assets created out of grants and contribution is arrived at as Rs.2708.60 crore (58% of Rs.4760 crore) . The balance value of assets is treated as funded out of normative loan as shown below:

1. Net fixed assets as on 1-4-2015	Rs.8483.82 crore
2. Equity as per accounts	Rs.3499.05 crore
3. Grants and Contributions (after depreciation)	Rs.2708.60 crore
4. Balance value of NFA funded through Normative loan (4=1-(2+3))	Rs.2276.17 crore

24. Thus, the Commission has arrived at the normative loan as on 1-4-2015 as Rs.2276.17 crore. After deducing the normative repayment equivalent to the depreciation, the net normative loan at the end of 2015-16 was Rs.1941.30 crore. The addition to normative loan i.e., net increase in fixed assets excluding grants and contribution, was Rs.380.08 crore. Thus closing level of normative loan (31-3-2016) was Rs.2321.38 crore. The normative repayment for the year 2016-17 is equivalent to the depreciation allowed Rs.369.87 crore and the closing level loans is Rs.1951.51 crore. The weighted average rate of interest on the

actual loan portfolio is 10.45% and the interest on existing normative loan is estimated as Rs.223.26 crore

25.KSEB Ltd in their petition stated that the Commission has not considered the depreciation on the assets created out of consumer contribution and grants to the tune of Rs.689.40 crore (including the notional amount for 2014-15) , which is an error apparent. However, it is clear from the above calculations, the entire depreciation applicable for the assets created out of grants and contribution to the tune of Rs.1961.40 crore was deducted from the gross value of grants to arrive at the value of Net Fixed Assets funded through grants and contributions, though only disallowed value of depreciation alone is to be deducted. In such circumstances, if the value of assets to the tune of Rs.689.40 crore is deducted as argued by KSEB Ltd, it would amounts to double deduction of depreciation on assets created out of contribution and grants. Hence the Commission finds no merit in the argument put forwarded by KSEB Ltd in this regard.

26.In this context, it is to be noted that, the figures for 2014-15 is only provisional, and as and when the same is finalized, the Commission will take an appropriate decision for revision of normative loan, considering the magnitude of the changes.

27.Next issue agitated by KSEB Ltd is on the employee costs. According to KSEB Ltd. The Employee expenses for the working strength between 2008-09 and 2015-16 has been disallowed in full. Ie., according to KSEB Ltd, basic pay, DA and all other allowances disbursed to 6089 nos of employees amounting to Rs. 217.35 crore has been disallowed. It is stated by KSEB Ltd that as per the judgment dated 28-02-2018 of the Hon'ble High Court of Kerala, Truing up orders from 2015-16 to 2017-18 are to be passed with due regard to the findings of the orders of APTEL in Appeal no.1 & 19 of 2013 and also consequential orders passed for the years 2010-11 onwards. The version of KSEB Ltd is that Hon. APTEL decided to approve employee cost at least at the 2008-09 level and the tribunal has not fixed any upper ceiling in the order. It is necessary that the growth in employee strength and payment of wages and allowances as per agreement too to be considered in approving employee cost. Without considering the facts, the Commission has disallowed the employee costs to the tune of Rs.217.35crore for the employee recruited post 2008-09 onwards of 6089 employees. Hence, KSEB Ltd argued that since no upper ceiling was fixed by APTEL, the approval of the employee cost is to be reviewed.

28. The Commission in the impugned order dated 14-9-2018 had examined the matter in detail and arrived at the decision. The Commission is of the view that there is no apparent error pointed out by KSEB Ltd on this issue necessitating a review. KSEB Ltd had submitted before the Hon High Court that the grievance on account of O&M expenses will be addressed to certain extent if the truing up of accounts for the years 2015-16 to 2017-18 is done in the same manner as that of the years 2009-10 to 2012-13 based on the Orders of the Hon. APTEL. In the above circumstances, the Commission as per the directions of the Hon. High Court had arrived at the employee cost for the year 2015-16 and 2016-17 duly considering the Orders of Hon APTEL in 1 and 19 of 2013 and the details furnished by KSEB Ltd. KSEB Ltd in their petition argues that there is no ceiling limit for employee cost or number of employees fixed by Hon. APTEL in the order in Appeal no 1 and 19 of 2013. A plain reading of the relevant portion of Para 8.5 of the Hon. Tribunal reveals that employee cost directed to be approved without considering the increase in man power from 2008-09 to 2012-13. The relevant portion is reproduced below:

“8.5. We find that State Commission has taken the actual expenses trued up for FY2008-09 as the base. The State Commission should have at least allowed the actual basic pay and DA increase, pay revision and terminal benefits over the actual base year expenses without accounting for manpower from 2008-09 to 2012-13.....”
(emphasis added).

29. As shown above, Hon. APTEL has directed to allow at least the actual basic pay, DA increase, pay revision and terminal benefits. Thus no ceiling was given for these components, but a floor level, whereas ceiling was given for number of employees, which is pegged at the 2008-09 level. Hence there is no ambiguity in the Orders of the Hon Tribunal and the Commission had diligently complied with the orders and directions of the Hon. High Court of Kerala in this regard.

30. Next issue is the dis allowance of depreciation for assets created out of contribution and grants. KSEB Ltd argues that depreciation attributable to grants and consumer contribution to the tune of Rs.247.63 crore was disallowed. According to KSEB Ltd, it had adopted the balance sheet as per the reversioning scheme ordered by the Government of Kerala. The Government after considering all aspects, had removed the contribution and grants till 31-3-2013 from the books of accounts, while notifying the transfer scheme. Therefore KSEB Ltd requested to review the decision and restrict the clawback of depreciation to the extent of consumer contribution and grants as per the audited accounts (ie., from 1-4-2013 only).

31. The Commission has examined the issues raised by KSEB Ltd. The Commission has allowed the depreciation as per the provisions of the Regulations after duly considering the audited accounts. Regulation 35(c) of the Tariff Regulations 2014 states that reduction of assets made out of consumer contribution and grants as part of the transfer scheme shall not be reckoned while computing depreciation. Hence, the value of assets as on 1-4-2015 is to be taken inclusive of assets created out of contribution and grants. In this context, it is to be noted that while writing off the grants and contribution under the liabilities side in the balance sheet, the Government did not remove the assets corresponding to it. Thus, KSEB could not point out any error or illegality in the matter warranting a review.
32. The next issue raised by KSEB Ltd is on disallowance of Section 3(1) duty to the tune of Rs.115.27 crore. KSEB Ltd stated that since 2003-04, the Commission has not admitted duty as a pass through in the tariff and KSEB Ltd has taken up the matter with the Government and also filed a second appeal before the Hon. Supreme Court of the India in the matter. So KSEB Ltd stated that the said matter may be reviewed based on the government decision / Judgment of Supreme Court.
33. Thus, regarding electricity duty, KSEB Ltd's request is that as and when the decision of the Government or the Hon. Supreme Court is issued, the matter is to be reviewed as per the order. In the context, the Commission is of the view nothing is to be examined at this juncture as there is no demand for review on the subject at present.
34. Next issue is the other debits and expenses on account of fair valuation to the tune of Rs.33.90 crore. KSEB Ltd has pointed out that the other expenses as per the accounts (Rs.49.75 crore) is comprised of the following elements .

Other expenses for 2016-17

Particulars	SBU G	SBU T	SBU D	Total
Other debits	0.35	-2.93	91.21	88.63
Prior period exp/income	41.76	74.83	-121.58	-4.99
Changes due to fair valuation	-0.95	-1.96	-30.98	-33.90
Total	41.16	69.94	-61.35	49.75
Approved by KSERC	41.16	69.94	-71.61	39.49

35. Out of the above, the Commission has approved Rs.39.49 crore. Under the above heads, the changes due to fair valuation was Rs.33.90 crore, which was inclusive of adjustments due to fair valuation against the interest account (Rs.33.73 crore) and grants and contributions (Rs.0.17 crore). i.e., in the interest

on loans as per audited accounts (Rs.435.79 crore) is inclusive of Rs.33.90 crore due to fair valuation. This additional amount of interest booked under interest and financing charges was adjusted against the head Other expenses by including income due to fair valuation (Rs.39.90 crore), thereby nullifying the effect of fair valuation adjustments. KSEB Ltd argued that since the Commission has allowed interest and financing charges on normative basis, this adjustment for the additional expenses booked due to fair valuation under interest charges was not included, whereas the income booked under other expenses was taken into consideration. Thus according to KSEB Ltd, by doing so, the other expenses was understated to the tune of Rs.33.90 crore and requested to review this aspect.

36. The Commission examined the details furnished by KSEB Ltd. In the truing up petition, KSEB Ltd has claimed Rs.49.75 crore as other expenses. The other expenses comprised of two items, other debits and net prior period credit/charges. The other expenses claimed by KSEB Ltd is inclusive of adjustments made as part of fair valuation. The details are given below:

Particulars	Rs. Crore
Other debits	88.63
Prior period exp/income	-4.99
Changes due to fair valuation	-33.89
Total	49.75

37. Thus, as shown above, KSEB Ltd as claimed the other expenses by netting of the income booked in the accounts on account of fair valuation to the tune of Rs.33.89 crore. However, The total adjustments on account of fair valuation as per the accounts was Rs.65.67 crore. Of this, Rs.31.77 crore was on account of fair value adjustments on grants and the balance Rs.33.89 crore was on account of fair value adjustments towards interest and financing charges. KSEB Ltd had excluded the income on account of adjustments to grants as the Commission approves the depreciation excluding the depreciation for assets created out of contribution and grants. Thus, KSEB Ltd itself had made the claim in the original petition including the adjustments to interest charges. The Commission approved the same as sought by the KSEB Ltd since even after seeking the impact of adjustments on account of fair valuation by the Commission, KSEB Ltd could not sought the present claim during the original proceedings. The present claim as such is a fresh one and since there is a merit in the argument of the licensee, the Commission decided to examine the same. According to KSEB Ltd, the fair valuation income deducted from the other expenses is inclusive of

fair value adjustments. Since the interest charges are approved on normative basis, such adjustments are not reflected in the interest charges, but deducted from other expenses as income. The Commission is of the view that the same to the tune of Rs.33.73 crore can be allowed.

38. As the last item, KSEB Ltd raised the claim of arrears of interest on GPF of Rs.14.26 crore. This amount pertains to the arrears of interest of on GPF for the year 2015-16, and was included in the 2016-17 accounts. Since the claim was rejected by the auditors, as part of the one time adjustments of accounts, the same was included the restated accounts of 2015-16. According to KSEB Ltd the claim was not included in the 2015-16 accounts which was submitted before the Commission for truing up of accounts and it was also excluded from 2016-17 accounts. The amount is not trued up in 2015-16 and 2016-17. KSEB Ltd in the petition stated that the adjustment was included in the additional clarifications furnished to the Commission, but was not considered.

39. The Commission examined the details furnished by KSEB Ltd. As in the case of interest charges, there was no specific prayer in the petition for truing up of accounts for 2016-17 on the claim on arrears on interest charges on GPF. The details were furnished as part of the clarifications sought by the Commission and while furnishing the clarifications, KSEB Ltd did not make any specific claim for the above item and has not made any amendments to the original prayer. In such circumstances, such claim was not included as part of the impugned order. In this context it is to be noted that, a claim similar to the present one, on power purchase cost to the tune of Rs.158.09 crore was specifically claimed in the petition for truing up of accounts for 2016-17. The same was allowed by the Commission after examining the veracity of the claim.

40. Regarding the present claim, though the same raised as a fresh claim in the review proceeding, the Commission is of the view that the it can be considered as a special case and as a one time measure. Hence, the Commission allow Rs.14.26 crore as arrears of interest on GPF. In future, such fresh claims will not be entertained in the review proceedings.

Orders of the Commission

41. In the light of the above analysis of all the points raised by KSEB Ltd as well as the objectors, the Commission is of the view that there are no sufficient grounds placed by the petitioner for a review of the Order dated 14-9-2018 on the truing up of -accounts of the Kerala State Electricity Board for 2016-17 , under Section -94(1)(f) Electricity Act 2003, except for the claims admitted in para 37

and 40. Accordingly, the revenue gap for the year 2016-17 is revised to Rs. 1079.05 crore from Rs.1031.06 crore as determined in the impugned order, after admitting the claim on interest and financing charges on account of fair valuation adjustments (Rs.33.73 crore) and arrears of interest on GPF (Rs.14.26 crore).

42. With the above, the petition disposed of, ordered accordingly.

Sd/-
K.Vikraman Nair
Member

Sd/-
S. Venugopal
Member

Approve for Issue

G.Jyothichudan
Secretary