KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

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

Petition RP No.8/2017

In the matter of : Review of the Order dated 20-06-2017 on Truing up of Accounts of KSEB Ltd for the year 2013-14

Petitioner **:** Kerala State Electricity Board Limited, Thiruvananthapuram

ORDER DATED 01/01/2018

Background

1. Kerala State Electricity Board Limited (*hereinafter referred to as KSEB Ltd or the licensee*) filed on 3-8-2017 a petition for review of the order dated 20-6-2017 on the truing up of accounts of the KSEB Ltd for the year 2013-14. In the said petition the petitioner stated that while approving the truing up of accounts for 2013-14, the Commission has made factual errors in assessment on many items and hence the review is sought. The Commission admitted the petition as RP No.8/2017. The petition was uploaded in the website of the Commission and a press release was issued to inform the public for inviting objections.

Hearing on the petition

2. The hearing on the petition was held on 12-12-2017 at the Office of the Commission. During the hearing the representatives of KSEB and representatives of Kerala HT-EHT Industrial Electricity Consumers Association were present. Shri. Bipin Shankar, Deputy Chief Engineer and Sri. Biju, Chief Accounts Officer, representing KSEB Ltd presented the petition and responded to the queries of the Commission.

3. In the petition, KSEB Ltd claimed that the Commission has not approved the entire expenses as per the audited accounts. The Commission had disallowed Rs.755.68 crore and in certain instances had made factual errors in assessment while approving certain components. In the case of cost of power purchase, the Commission had disallowed an amount of Rs.17.55 crore and Rs.2.87 crore

totaling Rs.20.42 crore. While disallowing cost of power purchase on excess T&D loss, the Commission has not considered the revenue realized on account of sale to TANGEDCO. If the entire revenue realized from sale out side the state was considered the net average cost of power purchase per unit will reduce to Rs.4.38 per unit instead of Rs.4.50 per unit considered by the Commission. This would result in decrease in disallowance of power purchase cost by Rs.0.47 lakh. The amount of Rs.2.87 crore disallowed as per the observation of the internal auditors is the amount actually incurred, but pertains to subsequent period.

4. In the case of employee costs, though the Commission has allowed the Basic pay and DA in compliance of the order of Hon. APTEL, the HRA and other allowance which are part of the long term settlements were not allowed in full. Hence according to the petitioner, the entire other expenses and staff welfare expenses amounting to Rs.171.66 crore are to be allowed. KSEB Ltd further submitted that a compilation error crept in the accounts, due to which provisions of dearness relief for 2013-14 and 2014-15 amounting to Rs.15.20 crore and Rs.7.36 crore respectively were inadvertently disclosed as provision for gratuity. However, the Commission had disallowed this amount.

5. In the case of interest and financing charges an amount of Rs.343.61 crore has been disallowed. Out of this, Rs.48.64 crore was interest on security deposit. According to the petitioner, actual disbursement during 2013-14 is made against the provision created for previous year ie., 2012-13. Hence there is a mismatch in creating the provisions and the disbursement against the provision. According to KSEB Ltd actual disbursement has to be made against the provision for the previous year only and thus, Rs.121.48 crore is to be allowed for the actual payment of interest on security deposit. Regarding interest on overdrafts of Rs.265.43 crore, KSEB Ltd stated that the Commission has not considered the need for the borrowing requirement other than working capital. The heads 'working capital' and 'interest on working capital' in the accounts are as per the provisions of the Electricity Supply Annual Accounts Rules, but KSEB Ltd uses the borrowing under this head to finance revenue deficit. According to KSEB Ltd, it had to avail overdrafts to meet the accumulated revenue gap and the interest on such borrowing were to be allowed as carrying cost of revenue gap in the truing up petition. The increase in revenue gap necessitates increase in overdraft. The actual requirement of borrowing was Rs.7031.79 crore but the actual borrowing was much less than the requirement. On account of the financial strategy adopted by the KSEB Ltd the working capital borrowing was much lower than the total revenue deficit. KSEB Ltd further stated that being a regulated entity, increase in provident fund balance, and non-cash flow expenses like

depreciation, return on equity etc., do not create cash availability unless there are allowed to be fully recovered through tariff. Hon. APTEL allows carrying cost on the unbridged revenue gap and the stand taken by the Commission is not as per the sprit of the orders of APTEL dated 11-11-2011. KSEB Ltd also stated that they are eligible for carrying cost for the approved revenue gap. Based on the above, KSEB Ltd requested to review the disallowance of the interest on overdrafts in its entirety and requested to approve the same actually paid during the year. Another item was 'other interest charges' to the tune of Rs.30.04 crore claimed for delayed payment of gratuity which was disallowed.

6. The petitioner further stated that the approach of the Commission on R&M expenses in the process of truing up had ultimately resulted in disallowance of Rs.10.08 crore. Hence KSEB Ltd requested to allow the R&M expenses and A&G expenses as per the audited accounts. The R&M expense allowed by the Commission is much lower than the actuals. Similarly the under A&G expenses, duty under Section 3(1) of the Electricity Duty Act was disallowed, since KSEB Ltd as a regulated entity has no other means of paying duty.

7. Sri. A.R.Satheesh representing the Kerala High Tension and Extra High Tension Industrial Electricity Consumers' Association presented his views and objections on the review petition which are summarized below.

   a. It was mentioned that KSEBL had filed the Review Petition after 5 months of the issue of the order and no petition for condonation of delay in filing the review petition is submitted.
   b. The basic principle and judicial practice is that a review of an order is maintainable only if there is error apparent on face of record. A review on merit of the order is not admissible. In the instant case, it is to be examined and determined by the Commission whether the points raised by KSEBL are of error apparent in nature or whether it is a challenge on the merit of the findings and decisions of the Commission. According to the Association, KSEB Ltd has not brought out any new grounds, but merely repeated its arguments in the application for truing up. Since they have not brought out any mistake or any error apparent on the face of the record, the review petition is not maintainable and hence may be summarily rejected.
   c. The principle of a truing up process is that any expenditure under controllable items cannot be approved over and above the approved amount in the ARR&ERC Order.

d. Regarding power purchase cost, it was submitted that the Commission in the order has dealt with power purchase cost in detail and hence there is no reason to review the decision of the Commission on the same.
e. With regard to the employee cost, it was submitted that the employee cost is a controllable item and the Commission may stick on its order on ARR&ERC while finalizing the employee cost of the licensee. It was further submitted that the employee cost of KSEB Ltd is the highest as compared to any other utility in India. The remarks of Addl. Chief Secretary to the GoK dated 19-02-2016 was also paraphrased on the issue. It was also pointed out that KSEBL's request for allowing "other allowances" as per the APTEL direction shall not be accorded and the request of KSEB Ltd to review employee cost may be rejected.
f. With regard to interest on security deposit, it was submitted that the actual interest on security deposit paid only be allowed to pass through the tariff for the particular year.
g. The claim of KSEB Ltd to review interest on overdraft may be rejected as the operations of KSEB Ltd are cash flow positive.
h. It was submitted that KSEB Ltd has not paid gratuity on time and it is visible that KSEB Ltd has not taken any actions to prevent the delay. So the review sought on allowing interest on the gratuity may be rejected.
i. It was also submitted the recovery of revenue gap through the tariff revision is not the only viable option and KSEB Ltd should put efforts in reducing cost
j. The arguments provided by KSEB Ltd to review R&M and A&G expenses may be rejected as the approach of the Commission indexing based on WPI:CPI takes care of all such issues pointed by KSEB Ltd.
k. With regard to the disallowance of Electricity duty under Section 3 (1), it was submitted that the duty was disallowed in all the earlier ARR&ERC and True up orders. APTEL had also rejected the request of KSEB Ltd on the matter.

8. With the above arguments, the Association requested the Commission to consider its objections favorably and pass appropriate orders based on the above.

9. Sri. Pradeep.M representing Hindalco Industries Ltd. Kalamassery mentioned about the delay by KSEB Ltd in filing all the necessary applications before the Commission and stressed that the Commission should insist time frame for filing the applications. It was also submitted that KSEB Ltd should take all earnest efforts to curtail the expenses and the cost over run issues. He also stated that the review petition be summarily rejected.

10. Sri. Saji Mathew representing MRF Ltd, Sri. Viswanathan.K, DGM, Bharat Petroleum Corporation Ltd and Sri. Ratheesh Kumar representing English India Clay Limited, Thiruvananthapuram submitted that they fully agree and support the comments presented by the Kerala High Tension and Extra High Tension Industrial Electricity Consumers' Association.

Analysis and decision of the Commission

11. The Commission examined the arguments given by KSEB Ltd and the objections raised by the stakeholders. 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 of decisions, directions and orders as per the provisions of Code of Civil Procedure 1908. The provisions of the KSERC (Conduct of Business) Regulations 2003 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"*

12. Regarding the delay in filing the petition, the Commission notes that the petition was filed by KSEB Ltd on 3-8-2017 which was within the stipulated time. As per section 94(1)(f) of the Electricity Act 2003, review of decisions, directions and orders is to be as per the Code of Civil Procedure 1908, which provides for review 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. Further, the agitation on the merits of the issues presented in the original petition is not contemplated in the review proceedings. The review jurisdiction is a limited power to be exercised when new facts which could not be reasonably produced at the time of the original order or to consider any apparent error on the face of record. Based on this, the issues in the present petition have been analysed.

13. *Prima facie*, most of the issues raised in the petition were addressed in the original proceedings itself or which were already settled by the APTEL or is outside the legal provisions. Further, the review proceeding is not a forum for agitating on merit of the issues which were already raised in the original proceedings. However, in order to have a fair disposal of the matter, the Commission decided to examine the issues raised in the petition in detail.

14. First issue raised in the review petition is to consider the entire revenue received from the sale of surplus power to TANGEDCO while determining the average cost of power for disallowing cost of power purchase on account of excess T&D loss. According to KSEB Ltd, if the entire revenue received from sale of surplus power was accounted, then the average power purchase cost will come down to Rs.4.38/unit instead of Rs.4.50 per unit considered by the Commission. The Commission considered the arguments of KSEB Ltd. As per the methodology approved by Hon APTEL, the average power purchase cost is to be worked out based the power purchase of the KSEB Ltd. The consideration of revenue from export sale is not envisaged. However, the Commission has excluded the variable cost of power to the tune of Rs.1111.36 crore for a sale of 911 MU to TANDEDCO as the power was generated for sale to TANGEDCO. However the fixed charges was not considered as it has paid by KSEB Ltd as per obligations under the power purchase agreement. In this context it is to be noted that, the balance sale of 503.04 MU through traders and exchange realized Rs.189.64 crore at an average rate of Rs.3.77.kWh only. The Commission also notes that KSEB Ltd had not sought such a claim in the original petition. Hence, the Commission is of the view that there is no valid ground raised by KSEB Ltd for review of the item. Regarding the amount of Rs.2.87 crore disallowed, since the amount pertains to subsequent years as pointed out by the internal auditors.

15. Regarding disallowance of Employee cost to the tune of Rs.161.15 crore, KSEB Ltd had submitted that the Employee expenses for the increased working strength in 2013-14 over the corresponding number in 2008-09 amounting to Rs. 120.75 crore has been disallowed. Further an amount of Rs.25.20 crore has been disallowed from other allowances and the provision for gratuity amounting to Rs.15.20 crore was also disallowed. KSEB Ltd had submitted that the Long Term Settlement (LTS) entered into between the management and the recognized trade unions for revising the existing wages and allowances and service conditions of all categories of workmen and the same is executed for a period of 5 years. The licensee has further submitted that though the Commission had approved the revised basic pay and DA for the number of employees as on 31.03.2009 in compliance of the Hon'ble APTEL judgment, the Commission failed to consider the fact that HRA and other allowances along with service conditions too were revised during the Long Term Settlement. According to the licensee there is a conceptual error in the methodology used by the Commission for approval of other allowances. By adopting indexation methodology for approving other expenses, Commission restricted other allowances at 2008-09 level amounting to Rs.146.46 crore. By doing so other allowances drawn by increased staff strength of 4808 nos amounting to Rs.4.43 crore was also disallowed. In addition to the above requests, the licensee has also submitted that, a compilation error crept in while furnishing details of the terminal benefits in the original petition. The provision for dearness relief (DR) for 2013-14 and 2014-15 amounting to Rs. 15.20 crore and Rs. 7.39 crore respectively was inadvertently disclosed as provision for gratuity. The licensee has stated that no provision was created for gratuity either in 2013-14 or 2014-15 and the Commission may kindly consider the above submission and approve Rs.15.20 crore towards provision for Dearness Relief in 2013-14.

16. In the above claims, it may be noted that in the truing up order, the Commission had obtained actual disbursement of salary of employees recruited from 2009 (7261 nos) from KSEB Ltd. From this, the cost of excess employees (net of retirement 4808 nos) was estimated based on proportional basis and deducted from the employee cost (Basic & DA) as per accounts. According to KSEB Ltd, the furnished data on excess employees included the 'other allowances' also besides basic pay and DA. However, the Commission notes the details furnished by KSEB Ltd are the same as in the original proceedings and no additional details were furnished by KSEB Ltd in the petition to enable the Commission to have a review of this issue.

17. Regarding provision for gratuity wrongly accounted, it is clear the petitioner ignored to correct the errors during processing of original petition. KSEB Ltd has not furnished any details if any made in the accounts to rectify the errors. Further, no such claim was made during the consideration of original petition. Hence, the Commission is not in a position to consider additional facts during a review proceedings.

18. Regarding interest on security deposits, the Commission has been allowing *the* actual interest paid to the consumers as pass through in the tariff, whereas the accounts figures denotes the provision made for the interest payments. The interest on security deposit booked as well as actual amount disbursed is allowed based on the details furnished by KSEB Ltd. The mismatch pointed out by KSEB Ltd is continuing for last several years. Since actual interest disbursed in a year is allowed as pass through and the only issue raised by KSEB Ltd is that the actual disbursements in a year, is pertaining to the provisions made for the previous year. If the practice is to be changed, the interest allowed for the previous years should also be corrected. Since the Commission is allowing the actual disbursements in a year on a regular basis, there is no change necessary at present.

19. Regarding interest on overdrafts, there is no error apparent or new facts brought out in the petition. The Commission has considered the matter in detail and decided to allow the interest on working capital as mentioned in the order. It is to be pointed out that KSEB Ltd has consistently failed to invoke the provisions of KSERC (fuel surcharge formula) Regulations for year end adjustment of power purchase cost on account of mix change and other factors. As pointed out by KSEB Ltd itself in the previous proceedings, the major portion of cumulative revenue gap is on account of generation and power purchase cost only. Further, it is also pertinent to point out that the Government of Kerala has allowed KSEB Ltd to retain the electricity duty collected from the consumers. The Commission is also allowing interest on provident funds to the tune of Rs.98.98 crore. Considering all these factors into consideration, the contentions of KSEB Ltd on review of interest on working capital cannot be sustained.

20. Regarding interest on delayed payment of gratuity, the Commission has taken a position that the provision for penal interest cannot be passed on to the consumers. The licensee has submitted that the delay in disbursement of balance gratuity was not attributable to any laxity on the part of KSEBL and beyond the control of KSEBL. It was also submitted that the liability towards

interest was occurred on account of the fact that claims were pending finalization before various statutory authorities for a considerable period of time. KSEB Ltd has prayed the delayed payment was not deliberate on the part of KSEBL, and the Commission may kindly review the decision and approve the interest paid on gratuity in full. Hon. APTEL in its judgment dated 10-11-2014 in Appeal No. 1 and 19 of 2013 had directed to allow the gratuity as per the judgments of Hon. High Court. Based on the direction, the Commission has fully allowed the amount of gratuity paid by KSEB Ltd as per the details furnished by KSEB Ltd. In the review petition, KSEB Ltd could not provide additional details to substantiate the claim for penal interest. The issue was considered in detail in the impugned order and no additional details were furnished to enable the Commission to review the matter. Hence, the Commission is not in a position to review the same.

21. KSEB Ltd has also sought review on disallowance of R&M expense, A&G expenses and depreciation for assets created out of consumer contribution. In the present review petition, KSEB Ltd has furnished the same arguments as that made during the original proceedings and is unable to produce any additional material before the Commission to enable a review on this issue. It is pertinent to point out that Hon. APTEL has approved the methodology followed by the Commission in approving R&M expenses and A&G expenses for 2013-14. Hence, the Commission is not in a position to review these items.

22. Regarding electricity duty, the statutory provision under Section 3(1) of the Kerala Electricity Duty Act provides that the amount cannot be passed on to the consumers. The Commission cannot ignore statutory provisions as has been held by the APTEL in Appeal No.94 of 2008. Hence the said amount cannot be passed on to the consumers and it is needless to point out that the same is beyond the scope of review petition.

23. Finally, KSEB Ltd has stated the approved revenue gap is to be treated as regulatory assets and to be recovered in subsequent tariff revisions and carrying cost may also be allowed till such recovery of revenue deficit. As per the provisions of Electricity Act and the KSERC (terms and conditions for retail sale of electricity) Regulations 2006, if the Expected Revenue from Charges (ERC) is insufficient to meet the Aggregate Revenue Requirements (ARR), the licensee shall indicate in the ARR&ERC filing for the ensuing financial year the manner in which the gap shall be filled up. Further if the gap is to be filled up through tariff revision, tariff petition has to be filed. As per Section 64 of the Electricity Act 2003, the licensee shall make the application before the Commission for tariff

revision. These provisions are ample for the licensee for approaching the Commission for bridging the revenue gap if any determined after the truing up process.

24. Thus based on the above, the Commission is of the view that no review of the order dated 20-6-2017 is necessary at this stage.

Orders of the Commission

25. 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 20-6-2017 on the truing up of accounts of the Kerala State Electricity Board for 2013-14, under Section 94(1)(f) Electricity Act 2003.

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

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

Approved for issue
Sd/-
Santhosh Kumar.K.B
Secretary