BEFORE THE KERALA STATE ELECTRICITY REGULATORY COMMISSION

In the Matter of: **Review Petition on KSERC order dated 17th April 2009 on Petition No. TP-60of 2008 on ARR & ERC of KSEB for the year 2009-10.**

Petitioner : **Kerala State Electricity Board, Vydyuthi Bhavanam, Pattom, Thiruvananthapuram**

THE PETITIONER HUMBLY STATES THAT:

1. Kind attention of the Hon'ble Commission is invited to the order dated 17-04-2009 on ARR & ERC of KSEB for the year 2009-10. As per the order, Commission has approved the revenue gap for the year as Rs 335.30 crore against the Board's projection of Rs 1099.28 crore for 2009-10, by not admitting many of the expenses projected by the Board. A comparison of the various expenses estimated by the Board and approved by the Commission is given below.

Comparison of ARR&ERC estimated by the Board and approved by KSERC

Particulars	KSEB (ARR)	KSERC (Order)	Difference
Generation Of Power	310.85	301.54	9.31
Purchase of power	3024.61	2781.99	242.62
Interest & Finance Charges	345.31	333.11	12.20
Depreciation	489.41	477.90	11.51
Employee Cost	1069.96	1069.96	0.00
Repair & Maintenance	152.74	152.74	0.00
Administration & General Expenses	155.21	64.22	90.99
Other Expenses	431.40	1.10	430.30
Gross Expenditure (A)	**5979.49**	**5182.56**	796.93
Less : Expenses Capitalised	55.82	55.82	0.00
Less : Interest Capitalised	27.87	27.87	0.00
Net Expenditure (B)	**5895.80**	**5098.87**	796.93
Statutory Surplus/ RoE	217.42	217.42	0.00
ARR (D) = (B) + (C)	**6113.22**	**5316.29**	796.93
Less Non-Tariff Income	491.01	491.01	0.00
Less : Revenue from Tariff			0.00
(a) With in the State	4399.40	4399.40	0.00
(b) Revenue from excess consumption	123.53	90.59	32.94
Total Income	**5013.94**	**4981.00**	32.94
Revenue Gap	**1099.28**	**335.30**	763.98

2. In the Order, Hon'ble Commission has curtailed many expense components such as cost of generation, cost of power purchase, interest and finance charges, depreciation, Administration and General expenses, other expenses etc.

3. Hon'ble Commission may kindly note that, KSEB has been estimating various expenses as per the Annual Accounting Rules 1985. The Truing Up petition is filed based on the accounts prepared as per the Annual Accounting Rules and duly audited and approved by C&AG

4. Over the years, Hon'ble Commission is not admitting many inevitable expenses proposed in the ARR as per the Annual Accounting Rules. Also, in the orders on truing up of actuals at the end of the year, Commission had been not admitting such essential expenses actually incurred by the Board raising objection that it exceeded the approval of the Commission. While doing so, Hon'ble Commission has not even considered the inflation, business growth over previous years, policy direction of the State Government, provisions in the Electricity Act-2003 and National Tariff Policy, Prudent Utility Practices and Accounting policies followed in the Country.

5. Kind attention of the Commission is invited to the G.O (Ms) No. 34/ 06/PD dated 16-02-2006 on policy directions issued by the State Government to the Commission in pursuance to the section –108 of the Electricity Act-2003. Paragraph- ix of the policy directives deals with ARR of KSEB, which is quoted below.

> " The Aggregate Revenue Requirement of the Board has to be determined realistically. For permanent nature of jobs, contracts appoints cannot be done. While estimating the revenue expenditure factors like DA to employees, pay revision etc should be considered. There could not be much difference the ARR estimated at the beginning of the year and the actuals at the end and it may ultimately lead to tariff shock and ultimately lead to greate adverse social impact. KSEB has been preparing the accounts of the Board and C&AG auditing the accounts based on the Annual Accounting Rules notified by the Central Government from time to time. While admitting various expense components including Repair and Maintenance expenses, it is not a good practice to have difference in the various expenses as audited by C&AG and admitted by KSERC.

While approving the revenue requirement of the utilities, the above factors should be considered".

But it is painfully submitted that, Hon'Commission has totally ignored the policy directives of the State Government issued under section –108 of the Electricity Act-2003 issued on public interest while approving ARR..

6. Attention of the Hon'ble Commission is also invited to the letter No. 4695/C1.08/PD dated 15-07-2008 from the Secretary to Government, where in Government has requested the State Commission that:

"

(a) **KSEB may be allowed to account depreciation as per the rates notified vide Gazette dated 29th March 1994 by Ministry of Power based on Annual Accounting Rules, 1985.**

(b) **To book section 3(1) duty as per the KED Act 1963 as revenue expenditures under A&G expenses of the Board".**

But in the order on ARR&ERC for 2009-10, the State Commission has not allowed depreciation at the schedule of rates notified by Central Government and also not admitted the section 3(1) duty as revenue expenditure. Commission in the order on ARR has remarked about the letter of the Government as under

> "The Board in its filing has stated that Government has given directions to the Commission on allowing duty under section 3(1) of KED Act as revenue expenses and Depreciation under GoI norms by citing a letter from the Government No.4695/c1/08/PD dated 15-7-2008. In the said letter Government requested the Commission to issue necessary orders on the above items. ***As per the provisions of the Act, direction from the Government shall be under section 108 and for the public interest***. The letter from the Government is apparently on the request of the Board vide No KSEB/TRAC/TF-06/379 dated 9-6-08 from the Chairman of KSEB, *which under no circumstances could be treated as directions as per the Act*. "

Hon'ble Commission may kindly see that, the request of the State Government is for the best interest of the General Public in the State of the Kerala and also for the sustainability of the KSEB, the only power utility who, generate, purchase, transmit and distribute electricity for the entire State of Kerala.

7. Kind attention of the Hon'ble Commission is invited to the basic objectives of the reforms in the power sector, constitution of SERCs and enactment of Electricity Act –2003 by the Central Government.

As per the provisions of the Act-2003 (preamble and part-VII on Tariff) all power utilities are allowed to function on commercial principles. Electricity Act-03 also envisages that, *while safeguarding the interest of the consumers, the State Commission should also have to ensure recovery of cost of electricity in a reasonable manner*. Also, as per the Tariff Policy notified by the Central Government (section-8) , *the Regulatory Commissions need to strike the right balance between the requirement of the commercial viability of the distribution licensees and consumer interest*. The Electricity Act and Tariff Policy is for protecting consumer interest and also for ensuring financial viability to the utilities in the power sector. But, above decisions of the Hon'ble Commission are against the existence of the KSEB.

8. Kind attention of the Hon'ble Commission is invited to section 61(a) of the Electricty Act-03, wherein it is specified that

> "the principles and methodologies specified by the Central Commission for determination of tariff applicable to generating companies and transmission licensees are the guiding factor for the State Commission for specifying the terms and conditions for determination of tariff."

As per the CERC (Terms and Conditions of Tariff) regulations, many expenses including interest on debt, interest on working capital, O&M expenses are allowing to the generation and transmission utilities on normative basis. Also, CERC is allowing all statutory levies including taxes and duties payable by the Power Utilities to the State and Central Government is as pass through in tariff. But, in the State of Kerala, Hon'ble Commission is yet to finalise the tariff applicable to KSEB on normative basis. Also, Commission is not allowing the duties payable by KSEB to the State Government as an expenditure of the Board. Above act of the Commission is against the provisions of the Act.

9. KSEB feels that, there is error apparent on the face of record, erroeneous assumption and against policy directives of the State Government in not admitting various items in the order on ARR for 2009-10. Such items are listed below.

(a) Cost of generation
(b) Cost of power purchase
(c) Interest and finance charges
(d) Depreciation
(e) Repair and Maintenance expenses
(f) Administration and General expenses and
(g) Other expenses.

10. Kind attention of the Hon'ble Commission is invited to the Judgment of Hon'ble Appellate Tribunal for Electricity (ATE), New Delhi on Appeal No. 51 of 2008 filed by Tamilnadu Electricity Board against TNERC and others. In the paragraph-11 of the Judgment, Hon'ble ATE has reproduced the judgment of the Hon'ble Supreme Court on reviewing an order of a judicial forum, which is quoted below.

Quote

11.

"**90.** Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

In this judgment, the Supreme Court also said that justice is a virtue that transcends all barriers and rules or procedures or technicalities of law cannot stand in the way of administration of justice. The Supreme Court observed if the court finds that an error pointed out was such that an earlier judgment would not have been passed but for erroneous assumptions and that its perpetration would result in miscarriage of justice, it can be rectified by the court under its power of review.

11. Hence, KSEB feels that, there are sufficient reasons for reviewing the erroneous judgment of the impunged order on ARR & ERC for 2009-10. The detailed appeal on each items in the ARR, not admitted by KSERC is detailed below.

Cost of generation from BDPP & KDPP

12. KSEB has proposed generation of 182.50MU from BDPP and 438.00MU from KDPP at an average variable cost of Rs 5.00 per unit. Commission has approved the total quantity proposed as above from BDPP and KDPP, but not approved the cost of Rs 9.31 crore from KSEB proposal.

13. KSEB has prepared the ARR during November-2008 and adopted the base price for estimating the cost as Rs 5.00 per unit based on the LSHS price during November-2008. But, taking into consideration of the reduction in LSHS price during the month of March-2009, Commission has adopted the variable cost as Rs 4.85 per unit for approving the cost of generation. But, the price of LSHS is continuously varying and the average variable cost as on 1st of May 2009 is about Rs 5.61 per unit. The basis of adopting a reduced LSHS price for approving the ARR is not convincing, without providing a mechanism to compensate the losses on KSEB on account of increase in prices. Hence, KSEB request that, a base price may be fixed for LSHS for approving cost of generation and the increase in fuel cost in each month over approval may be allowed as automatic pass through by specifying a Fuel Cost Adjustment formula. But, the State Commission is yet to finalize the FOCA for approving the variation in fuel prices over approval.

Reduction in cost of Power Purchase by approving excess generation from NTPC and NLC stations.

14. KSEB has estimated the energy availability from Central Generating Stations (CGS) as 7026 MU for the year 2009-10, based on the prevailing CERC norms, i.e. target availability for full fixed cost recovery, auxiliary consumption etc. KSEB has adopted an availability of <u>80% for NTPC stations and 75% for NLC- stations</u> and auxiliary consumption of 8.5% for NTPC stations and 10% for NLC stations. But, the Commission has approved the energy availability from CGS as 7655MU, i.e, 629MU higher than the estimate of the Board. The revision has been made by adopting a

higher availability of **<u>88% for Talcher of NTPC, 89% of Ramagundam and 87% for NLC-expansion</u>** based on the past availability achieved.

15. Hon'ble Commission may please see that, almost all the regulators in the Country has been approving the energy availability from CGS based on the CERC norms. It may be noted that, during the year 2008-09, there was acute fuel shortages and Coal linkage is not even available for achieving the normative level fixed by CERC. NTPC is now importing coal from other countries to meet the fuel requirements. Under such circumstances prevailing in the country, it is doubtful to get the increased generation as approved by KSERC. By estimating a higher availability of 629MU from comparatively cheaper NTPC and NLC stations, Hon'ble Commission has not approved the power purchase of equivalent quantity from open market/ power exchange / traders. In the ARR, KSEB has proposed to purchase 589.32 MU through traders at an average variable cost of Rs 7.50 per unit. But, by way of anticipating excess energy from NTPC and NLC stations, Commission has not approved the additional power purchase through traders and thus reduced the cost of power purchase by Rs 242.62 crore.

16. While not approving the power purchase as per CERC norms, Commission has not considered the reduction in energy availability from CGS during 2008-09 due to fuel shortages and other reasons. A comparison of the energy approved in the ARR and actual for the year 2008-09 is given below.

Table. 1 Comparison of Power purchase approved in the ARR and actuals

Month	Approval in the ARR as per CERC norms	Actuals	Excess/ shortage	
	(MU)	(MU)	(MU)	(%)
Apr-08	615.84	635.10	19.26	3.1%
May-08	636.37	610.33	-26.04	-4.1%
Jun-08	615.84	550.27	-65.57	-10.6%
Jul-08	636.37	554.48	-81.89	-12.9%
Aug-08	636.37	496.11	-140.26	-22.0%
Sep-08	615.84	525.80	-90.04	-14.6%
Oct-08	636.37	541.50	-94.87	-14.9%
Nov-08	615.84	485.84	-130.00	-21.1%
Dec-08	636.37	579.11	-57.26	-9.0%
Jan-09	739.15	664.49	-74.66	-10.1%
Feb-09	667.62	604.85	-62.77	-9.4%
Mar-09	765.84	700.67	-65.17	-8.5%
Total	7817.82	6948.55	-869.27	-11.1%

17. It can be seen that, there was a reduction in energy availability of up to 22.0% over the monthly power purchase approved in the ARR for 2008-09. As mentioned earlier, coal shortages is still prevailing in the country and NTPC is importing coal from other countries at higher cost to meet the shortages. In the order on ARR, KSEB has estimated the variable cost of generation from Talcher and Ramagundam stations as Rs 0.78 per unit and Rs 1.28 per unit based on the landed cost of domestic coal. But, due to the coal shortages NTPC has been importing coal from other countries at higher cost and the actual variable as per bills from Nov-08 to Mar-09 is given below.

Table-2. Comparison of variable cost approved and actuals

Month	Talcher			Ramagundam		
	Rate adopted in order	Actual	% increase	Rate adopted in order	Actual	% increase
	(Rs/ kWh)	(Rs/ kWh)	(Rs/ kWh)	(Rs/ kWh)	(Rs/ kWh)	(Rs/ kWh)
Nov-08	0.78	0.92	17.95	1.28	1.31	2.34
Dec-08	0.78	1.40	79.49	1.28	1.54	20.31
Jan-09	0.78	1.30	66.67	1.28	1.34	4.69
Feb-09	0.78	1.16	48.72	1.28	1.60	25.00
Mar-09	0.78	1.34	71.79	1.28	1.70	32.81

18. Commission has not considered the likely increase in variable cost for importing coal from other countries, while approving excess generation in anticipation of higher availability as in the previous years.

19. Kind attention of the Hon'ble Commission is invited to its order on petition No. TP No. 54 of 2008 dated 18th August 2008 on imposing thermal surcharge to all categories of consumers in the State of Kerala, which is quoted below

> " Provisions of the Act permits only adjustment in changes in fuel prices periodically. Any increase in cost due to mix change would be allowed after prudence check during truing up process"

It means that, financial consequences on mix changes such as reduction in energy availability from CGS over approval, hydel variation etc can be allowed in truing up of accounts only. As per the present practices, minimum 1 ½ years is being taking after the end of the financial year to get the accounts audited and to file the true-up petitions on audited accounts.

20. KSEB feels that on account of the most likely reduction in energy from CGS stations from the approved quantity in the order on ARR, KSEB would have adverse financial impact during 2009-10.

21. Considering the above facts, KSEB may request before the Commission to review its decision to approve higher quantum of cheaper power from NTPC and NLC stations for 2009-10 and revise the quantity projected in the ARR by KSEB.

Interest and Finance charges

(a) Interest for fresh borrowings for 2009-10

22. In the ARR, Board has proposed a fresh borrowing of Rs 764.87 crore for 2009-10, which includes Rs 695.37 crore as additional loan from financial institution and Rs 69.50 crore as loans from Government to meet the fund requirements for the capital investments proposed. KSEB has estimated the interest for fresh borrowings as Rs 71.80 crore at an interest rate of 11.5%. But, in the order, Commission has approved the fresh borrowing as Rs 382.44 crore, i.e, 50% the borrowings proposed and accordingly reduced the interest on fresh borrowings as Rs 30.40 crore as against Rs 71.80 crore estimated by the Board. Thus, the interest on fresh borrowing allowed by the Commission is less by Rs 41.40 crore. The remarks of the KSERC on disallowing 50% fresh borrowing is quoted below.

> Quote – page 53 of the order
> "Considering the planned redemption proposed to the tune of Rs.227.65 crore and depreciation and other non-cash expenses available to the Board, the Commission is of the view that the borrowing proposed to the tune of Rs.764.87 Crore may not be required for 2009-10. From the experience of previous years, the Commission could not judge reasonably the actual amount of capital investment to be incurred in 2009-10 over the projection of Rs.1377 Crore. Further, the Commission has allowed depreciation in the revised norms of CERC, which also provides additional cash to the Board. Hence, the Commission would stick on to the stand taken in the previous order that 50% of the borrowing (Rs.382.44 Crore) would only be needed in the year 2009-10. Hence, the interest for the additional borrowing would be limited to Rs.30.40 Crore as against Rs.71.80 Crore proposed by the Board."
> Unquote

But, Board has assessed the requirement after accounting all the funds from internal resources such as Depreciation, contribution & grants, receipts from Debt & deposit etc. The details are given as Table 7.25 of the

ARR and which is reproduced below.

Sources & Uses (2009-10)

	Particulars	Amount (Rs. Cr)
1	Net Deficit from earnings	-881.86
2	Add Depreciation	489.41
3	Add Contributions & Grants	281.85
4	Add Receipts from Debt & Deposit	950.48
5	Internal resources (1+2+3+4)	839.88
6	Less Repayment of Loans	227.65
7	Less Funds for capital work	1377.10
8	**Fresh Borrowing required (5-6-7)**	**764.87**

Without considering these facts, the argument of the Commission that the 'fresh borrowings required will be less due to the planned redemption and other non-cash expenses available to the Board' is an error in the judgment from the part of the Commission.

23. Hon'ble Commission may please note that, as per the prevailing tariff norms notified by CERC, a normative debt: equity of 70:30 can be claimed in the ARR. As per the section 61(a) of the Electricity Act-03. " the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generation companies and transmission licensees " is a guiding factor for determination of tariff by SERCs. Hence, as per the norms, a debt of Rs 963.97 crore (70% of Rs 1377.10) can be claimed for the capital investment of Rs 1377.10 crore proposed in the ARR, but KSEB has climed a fresh borrowing of Rs 764.87 crore only. Hon'ble Commission may also note that, availability of fund from internal resources such as depreciation etc is not a criterion for allowing debt for meeting capital investments.

24. It is ironical to note that, at one side Hon'ble Commission has directed the Board to achieve the T&D loss and other performance standards as desired by the Commission, but on the other side the capital investment required for achieving such targets is not admitted at all. Hence the decision of the Commission to limit the fresh borrowing as 50% of the KSEB proposal may kindly be reviewed.

25. Considering these facts, KSEB request before the Hon'ble Commission that, the fresh borrowing Rs 764.84 crore and its interest of Rs 71.80 crore as proposed in the ARR may kindly be approved.

(b) Interest on working capital requirement

26. In the ARR for 2009-10, KSEB has made a provision of Rs 18.00 crore as interest on working capital considering overdraft requirement for the day to day operation of the Board. But the Commission has admitted only Rs 5.31 crore under this head and thus not admitted Rs 12.69 crore from the estimate. According to the Commission, "*the situation in 2008-09 was unprecedented and the actual working capital requirement could have been higher than anticipated. This situation shall not be cited as a reason for claiming interest for the year 2009-10 also."*

27. KSEB has been claiming working capital and its interest based on the past actuals. But almost all the SERCs in the Country and CERC is allowing working capital on normative basis, i.e, amount of working capital allowed is equivalent to (a) two months receivables (b) 1 ½ month fuel cost including stock, (c) one month O&M cost (includes Employee cost, A&G expenses and R&M expenses). As per the ARR, two months receivables works out to be Rs 835.65 crore, 1 ½ month fuel stock for BDPP and KDPP is about Rs 38.75 crore and one month O&M cost is about Rs 114.73 crore. Thus, the working capital to be allowed as per normative basis is about Rs 989.13 crore and its interest @11% is works out to Rs 108.80 crore. KSEB has claimed a nominal amount of Rs 18.00 crore even if based on the past actuals that the Commission has not admitted.

28. It is also pointed out that, once Commission approves an amount in the ARR and the actuals based on the prudent utility practices exceeds the approved level is not being admitted by KSERC. This has lead to face severe financial consequences to the Board as well unnecessary legal battle between Hon'ble Commission and KSEB. Considering said facts, KSEB may request before the Commission that,
Commission may either :

(a) approve the interest on working capital as claimed by the Board or
(b) allow the interest on working capital on normative basis as approved by CERC and other SERCs.

(c) Interest on Government loan

29. As per the decision of the Board on netting-off the dues between KSEB and the State Government, all the outstanding Government Loan as on 31-03-2006 is to be adjusted against the dues receivable from Government. This is a decision taken even before the constitution of KSERC by the Government.

30. Since the Board is filing the Truing Up of accounts based on the actuals and audited accounts, it may not be able to claim the interest on the Government loans unless the netting off is made effective in the Government accounts also.

Depreciation

31. KSEB has claimed the depreciation for 2009-10 as Rs 489.41 crore based on the annual accounting rules followed by the Board. But, in the order, Commission has admitted depreciation as Rs 477.90 crore as per the prevailing CERC norms. Thus, the depreciation admitted by KSERC is Rs 11.51 crore less than the claim of the Board.

32. Though the Electricity (supply) Act 1948, stands repealed with the enactment of Electricity Act 2003, as per the section 185(2) (d) of Electricity Act, all rules made under sub-section (1) of section 69 of the Electricity (Supply) Act 1948, shall continue to have effect until such rules are rescinded or modified as the case may be. KSEB has been following the Electricity (Supply) Annual Accounts Rules 1985 for preparation of the Annual Accounts of the Board as it is not yet rescinded or modified. As per the section 69(2) of the Electricity (Supply) Act 1948, the accounts of the KSEB shall be and are being audited by the Comptroller and Auditor General of India. The statutory authority of the C & AG has not been altered by the new Act (Electricity Act, 2003). As per the section-68 of the Electricity (Supply) Act, the Board shall provide each year for depreciation such sum calculated in accordance with such principles as the Central Government may, after consultation with the authority, by notification in the official gazette, lay down from time to time. The Ministry of Power has notified the revised depreciation rate vide the Gazette dated 29th March 1994.

33. As stated in paragraph-5, attention of the Commission is invited to the G.O (Ms) No. 34/ 06/PD dated 16-02-2006 on policy directions issued by the State Government to the Commission in pursuance to the section –108 of the Electricity Act-2003. Paragraph- ix of the policy directives deals with ARR of KSEB, which is quoted below for ready reference.

> “ The Aggregate Revenue Requirement of the Board has to be determined realistically. For permanent nature of jobs, contracts appoints cannot be done. While estimating the revenue expenditure factors like DA to employees, pay revision etc should be considered. There could not be much difference the ARR estimated at the beginning of the year and the actuals at the end and it may ultimately lead to tariff shock and ultimately lead to greate adverse social impact. KSEB has been preparing the accounts of the Board and C&AG auditing the accounts based on the Annual Accounting Rules notified by the Central Government from time to time. While admitting various expense components including Repair and Maintenance expenses, it is not a good practice to have difference in the various expenses as audited by C&AG and admitted by KSERC. While approving the revenue requirement of the utilities, the above factors should be considered”.

34. Since 2006-07, KSERC has been admitting depreciation as per CERC norms only. But, CERC has notified schedule of depreciation only for generation and transmission assets. Hon’ble Commission may kindly take note of the fact that many SERC’s in the country are allowing depreciation as per the MoP rates. Kind attention of the Commission is invited to the Tariff order dated 23rd March 2006 of the Andhra Pradesh Electricty Regulatory Commission on Distribution Business for the period 2006-07 to 2008-09, APERC has adopted depreciation as per the MoP rates. The relevant pages of the above order of APERC is reproduced below.

"

Para- 163. The Commission has carefully considered this issue. Considering that the CERC is yet to come up with the revised rates of depreciation for generation and transmission and the FOR also has thereafter to consider those rates for adoption for distribution as envisaged in the Tariff Policy, the Commission is of the view that no useful purpose will be served by going in for any adhoc arrangement, by now adopting the existing CERC rates (depreciation plus AAD) only to switch over later to the new CERC/FOR formulation. Accordingly, the Commission has decided to allow the DISCOMs insofar as the present control period is concerned depreciation at the MOP rates as hithertofore.

Para-252. The DISCOMs have projected Depreciation plus advance against depreciation (AAD) as stipulated in the CERC Regulation on terms and conditions of tariff, in accordance with the provisions of the W&RST Regulation. As discussed in **Paragraph 160 to 163,** however, the Commission has decided to continue with the existing practice of following MoP rates for depreciation. Accordingly, no AAD is provided".

35. Hon'ble Appellate Tribunal for Electricity, vide its order dated 24th May 2006 and 29th September, 2006 and Hon'ble Supreme Court of India vide the judgement dated 15-02-2997 in civil appeal no. 2773 has directed to adopt depreciation as per the MoP rates for the distribution utilities in Delhi. Eventhough, that judgement is for Delhi, it indicates that 'CERC norms are not the universal model for states and different states' continue with MoP model for accounting depreciation.

36. Attention of the Hon'ble Commission is also invited to the letter No. 4695/C1.08/PD dated 15-07-2008 from the Secretary to Government, where in Government has requested the State Commission that:

"

(a) KSEB may be allowed to account depreciation as per the rates notified vide Gazette dated 29th March 1994 by Ministry of Power based on Annual Accounting Rules, 1985.
(b) To book section 3(1) duty as per the KED Act 1963 as revenue expenditures under A&G expenses of the Board".

37. But, above letter from the Government has seen not admitted by the Commission and not admitted the depreciation at the schedule of rates notified by Ministry of Power.

38. Hence, the decision of the Commission not allowing the depreciation as per the schedule of rates notified by the KSERC is

(a) against the policy directions issued by the State Government vide G.O (Ms) No. 34/06/PD dated 16-02-2006 under 108 of the Electricity Act-2003

(b) Judgment of the Hon'ble Appellate Tribunal for Electricity on appeal No. 38, 39, 122 of 2005 and 48 of 2006

(c) Judgment of Hon'ble Supreme Court on Civil appeal No. 2773 of 2006.

(d) Prudent utility practices followed in the Country.

39. Considering the submission as above, KSEB may request before the Hon'ble Commission to admit the depreciation at the schedule of rates notified by the Central Government.

A&G Expenses

Section 3(1) duty

40. As done in the previous orders on ARR and Truing Up, Hon'ble Commission has not approved **Rs79.86 crore** as section 3(1) duty projected by the Board and not allowed to claim it as a revenue expenditure of the Board.

41. Section 3(1) duty is a statutory levy to the State Government and a cash outflow. Board has been accounting the section 3(1) duty as part of the A&G expenses of the Board since 1963, even much before the Constitution of the State Commission by the State Government.

42. The State Commission is not allowing the duty quoting a sentence in the Kerala Electricty Duty Act, 1963 that

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

The State Government, vide the letter No. 4695/C1.08/PD dated 15-07-2008 has directed the State Commission **"to book section 3(1) duty as per the KED Act 1963 as revenue expenditures under A&G expenses of the Board".** But, the State Commission has not considered the clarification issued by the State Government.

43. Hon’ble Commission while denying a statutory levy, involving a substantial cash outflow, has so far not specified any other alternate means to meet the obligation on payment of duty. Such an act of the Hon’ble Commission is against the spirit of the Electricity Act, National Tariff policy and even the basic intension of constituting the SERCs .

44. Hon’ble Commission may kindly note that accumulated total of Rs 471.54 crore as detailed below remains un admitted since 2003-04 under section 3(1) duty payable to the Government.

Year	Section 3(1) duty in Crores	Remarks
2003-04	51.53	
2004-05	54.98	
2005-06	63.26	
2006-07	71.78	
2007-08	77.54	Actual
2008-09	72.59	Estimate
2009-10	79.86	Estimate
Total	471.54	

45. Denying such a huge sum to the Board ultimately leads to difficulty in sustainability of the public sector utility. The Electricity Act or Tariff Policy is not against allowing genuine expenses incurred by the utilities. It is the primary function of the Commission to ensure financial sustainability of the utility. But above said decisions of the State Commission ultimately affect KSEB very adversely.

46. Considering the said facts, KSEB may request before the Hon’ble Commission to review its earlier descion and kindly consider the section 3(1) duty as revenue expenditure of KSEB.

A&G expenses excluding section 3(1) duty

47. Excluding 3(1) duty, Board has made a projection Rs 75.35 crore as A&G expenses, but Commission has approved the same as Rs 64.22 crore and disapproved Rs 11.13 crore on no reasons. In the order, Commission has not made any rational for reducing the various estimate of the Board. The detail statement of various expenses not admitted by the Commission is given below.

Comparison of A&G expenses estimated by KSEB and approved by the Commission

Sl No.	Particulars	ARR (Rs. Cr)	Order (Rs. Cr)	Not admitted (Rs. Cr)
1	Rents, rates and taxes	4.60	4.46	0.14
2	Insurance	0.85	1.21	-0.36
3	Telephone/telex charges, etc.	4.57	4.37	0.20
4	Internet and related charges	0.07	0.07	0.00
5	Legal charges	9.98	5.00	4.98
6	Audit fees	2.65	2.15	0.50
7	Consultancy charges	0.21	0.20	0.01
8	Other Professional charges	0.51	0.42	0.09
9	Conveyance and vehicle hire charges	16.46	15.74	0.72
10	**Sub Total (Total of 1to 10)**	**39.90**	**33.60**	6.30
11	OTHER EXPENSES			
	a) Fees and subscriptions	0.60	0.29	0.31
	d) Printing & stationary	5.28	4.33	0.95
	e) Advertisements	1.47	0.75	0.72
	f) Contributions/donations	1.73	1	0.73
	g) Electricity charges	4.25	3.74	0.51
	h) Water charges	0.17	0.17	0.00
	i) Entertainment	0.32	0.31	0.01
	j) Miscellaneous expenses	9.93	8.84	1.09
12	**TOTAL OF OTHER EXPENSES**	**23.75**	**19.43**	4.32
13	Freight	8.17	7.81	0.36
14	Other purchase related expenses	3.54	3.39	0.15
	Total	**75.36**	**64.22**	11.14

48. It can be seen that, Commission has reduced Rs 4.98 crore from legal expenses, Rs 0.50 crore from audit fees, Rs 0.72 crore from conveyance charges, Rs 0.95 crore from printing and stationary, Rs 0.73 crore from advertisement charges etc. In a regulatory regime, KSEB could not reduce the legal expenses. Hon'ble Commission also aware of the fact that number of cases before High Court and Hon'ble Appellate Tribunal for Electricity are on increasing.

49. It is also worth to mention that, the State Commission is yet to fix norms for allowing A&G expenses. In the absences of any such norm or basis reducing the expenses as clamed by the Board based on the past actual, present trends and prudent utility practices is not justifiable.

50. Hence, KSEB may request to the Hon'ble Commission to kindly allow the A&G expenses as projected in the ARR.

Repair and Maintenance Expenses

51. In the ARR, KSEB has projected the R&M expenses as Rs 152.74 crore and Hon'ble Commisison is please to approve the same. But, Commission has also stated that

> **"However, the higher provision is allowed on the condition that Board has to provide detailed quantified assessment showing the function wise R&M works necessary and plan for carrying out the same, within one month of this order. In the absence of it, the Commission would allow only 10% compounded increase over the actual expenses in 2007-08 (ie., Rs.140.36 Crore based on provisional accounts) during the truing up process."**

52. Hon'ble Commission may kindly note that, as per the Annual Accounting Rules 1985, KSEB has been booking the R&M expenses on asset basis and with the present accounting system it is difficult to segregate it on functional basis. Also, Board has total assets of about Rs 10,791 .00 crore situated all around the State. It is impracticable to arrive the function wise R&M expenses of these assets.

53. In this matter, KSEB invite the attention of the Hon'ble Commission on the procedures followed by CERC and other SERCs in allowing R&M expenses. Almost all the SERCs and also CERC is allowing R&M expenses on normative basis. Some SERC's allows to account it as part of the O&M expenses and others to account separately. Most of the SERCs and CERC are allowing R&M expenses at normative levels, i.e, Rs/MW for generating stations and Rs/ckt.km for transmission system and percentage of GFA for distribution system etc.

54. Considering above said factors KSEB may request before the Hon'ble Commission that

    (a) Kindly allow to retain the R&M expenses approved
    (b) In future, KSEB may be allowed to claim R&M expenses on normative basis and Commission may notify necessary regulation for fixing operating norms for claiming R&M expenses.

Other Expenses

(a) Prior Period expenses

55. In the ARR, Board has projected Rs 27.30 crore as prior period expenses, but the Commission has not admitted the same in full and stated that

> *" Commission is inclined to dis allow the provision under prior period charges as the same could be covered in the truing up excesice."*

But, it is worthwhile to mention that, in the truing up of accounts for 2005-06, Commission has admitted the prior period income in full, but not admitted prior expenses of Rs 201.00 crore. It is a general approach from the part of the Commission to make reduction in the expenses projected in the ARR with out any basis or norms. But, the actuals are most often exceeded the approved level on account of reasons beyond the control of the Board. The increase over the actuals can be claimed only on Truing Up, which usually take 1 ½ to 2 years from the completion of the financial year. This has created cash shortage during the year and most often lead to borrowings to meet shorterm obligations. If the Commission approved expenses as projected by the Board, this would have been avoided. It is also seen, over the years, Commission even not approving may expenses actually incurred in good faith above the approved level.

56. Hon'ble Commission may kindly note that, as per the Annual Accounting Rules 1985, Prior period expenses is a necessary entry in the accounts. Account head 65 deals with prior period income, which includes receipts from consumers relating to prior period, interest income from prior period, excess provision for income tax, excess provision for depreciation related to prior periods, etc. Similarly, account head 83.0 deals with prior period expenses or lossess. Which include short provision for power purchased in previous years, operating expenses of the previous years, excise duty, employee cost, depreciation, interest and finance charges, other charges etc related to previous years. Also, as per the Accounting Standard (AS)5 issued by the Institute of Chartered Accountants of India (ICAI) clearly state that the nature and amounts of prior period items should be separately disclosed in the statement of profit and loss in a manner that their impact on the current profit or loss can be perceived.

57. Hon'ble Commission may be aware that, it is very difficult to estimate the income and expenses related to prior period accurately and is subjected to changes in numerous factors such as tariff orders of CERC, pay revision, DA release, Government policies. It could be seen in the past that due to various reasons beyond the control of KSEB entire expenses incurred in an year cannot be accounted during the year itself. The expenses booked under prior period expenses for the last 10 years are summarized below:

Table-4 Prior period expenses since 1997-98

Year	Expenses (Rs. Cr)
97-98	25.38
98-99	50.01
99-00	58.64
00-01	289.39
01-02	386.45
02-03	58.87
03-04	120.63
04-05	81.05
05-06	82.01
06-07	15.20
07-08	-60.75

58. The exact estimation of prior period expenses could not be made due to reasons beyond the control of the Board and the presence of this item in accounts is inevitable. Hence necessary provision based on past experience have to be made. It is therefore clear that even though there are provisions made under various heads, postponement of payment to subsequent years are inevitable in any organization especially of the size of KSEB and therefore the occurrence of expenses pertaining to earlier years cannot be dispensed with. The table given above clearly illustrates the actual level of expenses under this head. It is there fore an integral part of accounting under the accrual concept where precise figures under certain heads are not possible and could only be estimated on the basis of past history. Had it been known earlier, the expenses would have been booked and shown under appropriate heads in ARR.

59. Considering the reasons above, KSEB request before the Hon'ble Commission to kindly review its earlier descion and to admit the prior period expenses as estimated in the ARR.

(ii) Other debits

60. As done in the previous years, Hon'ble Commission has not admitted the provision of Rs 403.00 crore for netting off the dues between KSEB and Government. The decision of the netting-off was taken vide the Government order No. G.O (Ms) No. 25/02/PD dated 09-10-2002, much before the constitution of the State Commission.

61. It is worth to note that, through the above proposal, the committee, on netting off has not recommended tariff revision to compensate the revenue short fall due to netting off the dues from the Government to the Board. In

case KSEB goes into revenue deficit during netting –off, the gap in revenue will be covered by Government by providing cash subsidy to the Board. More over it is a legal issue, whether an issue between the Government and Board prior to the establishment of the Commission can be denied by the Commission in total.

62. Considering the said factors, KSEB request before the Hon'ble Commission that, Rs 403.00 crores provided as provision for netting off the dues between the Government and Board may kindly be admitted.

Revenue from Excess consumption over restriction

63. In the order on ARR, Hon'ble Commission has approved an excess sale of 83.70 MU over the restriction during May-09 and also approved an additional revenue of Rs 46.00 crore @ Rs 5.50 per unit. But, vide the order dated 27th April-2009, Commission has withdrawn the power restriction and the additional revenue as approved by the Commission is not available for May-09. Hon'ble Commission may also note that, by the withdrawal of power restriction, the power consumption in the State has increased by an average of 3 MU per day and there is likely additional power purchase due to the same. Hence, considering the impact of the withdrawl of power restriction, Hon'ble Commission may kindly revise the revenue approved from excess sale over power restriction for the month of May-09.

Transmission and Distribution Loss

64. In the ARR, Board has proposed to reduce the T&D loss to 17.43% during 2009-10, where as the Commission has directed to reduced the loss to 16.92%. The target fixed by the Commission is 0.51% higher than the target fixed by the Commission. In the present order on ARR also, Commission has not specified scientific study and basis for fixing such a higher targets. KSEB has been continuously requesting before the Hon'ble Commission to avoid fixing T&D loss reduction targets on arbitrary basis.

65. KSEB request before the Hon'ble Commission to compare the loss reduction achieved by KSEB with other power utilities in the country. The reduction achieved during the last 8 years is the highest when compared to others.

Year	T&D loss reduction achived		Remarks
	For the year	Cumulative	
2002-03	1.68%	1.68%	Actuals
2003-04	1.64%	3.32%	
2004-05	2.49%	5.81%	
2005-06	1.99%	7.80%	
2006-07	1.50%	9.30%	
2007-08	1.45%	10.75%	
2008-09	1.32%	12.07%	Estimate
2009-10	1.27%	13.34%	

66. Considering the achievement of T&D loss reduction and the capital investment proposed, Hon'ble Commission may kindly approve the T&D loss reduction as proposed by the Board.

Directives of the Commission

67. Hon'ble Commission has issued sixteen directives to the Commission for immediate compliance. Board has been taking steps to implement the directives at various levels. But some of the directives take more and also with the present set some are difficult to implement. A separate proposal on implementation plan for the directives issued by the Commission shall be filed separately before the Commission.

<u>Prayer</u>

Considering the facts, circumstances and other reasons explained in detail in the preceding paragraphs, KSEB request before the Hon'ble Commission that, Hon'ble Commission may

(1) Kindly review the order dated 17-04-2009 on ARR&ERC of KSEB for 2009-10 (Petition No. TP 60/2008 of KSEB) and may issue necessary corrective orders.

(2) Kindly allow KSEB to claim various expenses like Repair and Maintenance Expenses, Administration & General Expenses, Interest and Finance Charges etc on 'normative basis' and may notify necessary regulations for the same.

(3) Kindly follow the principles adopted by CERC in all tariff in whole related matters wherever applicable as required under section 61(a) and section 86(4) of Electricity Act, 2003.

Chief Engineer (Commercial & Tariff)