BEFORE THE KERALA STATE ELECTRICITY REGULATORY COMMISSION

In the Matter of: **Review Petition against the KSERC order dated 20th March 2017 in Petition OA No 10/2016 in the matter of Truing Up of accounts of KSEB for the year 2012-13.**

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

THE PETITIONER HUMBLY STATES THAT:

1. Hon'ble Commission as per order dated **20th March 2017 in** Petition **OA No 10/2016** in the matter of Truing Up of accounts of KSEB for the year 2012-13 has approved the revenue gap for the year at Rs 3132.97 crore as against the revenue gap of Rs 3998.89 crore as per the C&AG audited accounts. A comparison of the various expenses as per the C&AG audited accounts and the order on Truing Up for the year is detailed below.

Table-1 Comparison of the expenses as per the C&AG audited accounts and KSERC order

Sl No.	Particulars	Actual	True Up order	Variation over Truing Up order & actuals (-) decrease /(+) increase
		(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
1	Generation Of Power	564.99	564.99	0.00
2	Purchase of power	7199.61	7186.74	12.87
3	Interest & Finance Charges	580.53	342.44	238.09
4	Depreciation	509.31	346.18	163.13
5	Employee Cost	2103.03	2030.75	72.28
6	Repair & Maintenance	251.55	199.71	51.84
7	Administration & General	202.43	87.76	114.67
8	Other Expenses	272.73	59.70	213.03
9	**Gross Expenditure (A)**	**11684.18**	**10818.27**	**865.91**
10	Less : Expenses Capitalized	150.74	150.74	0.00
11	Less : Interest Capitalized	116.06	116.06	0.00
12	**Net Expenditure (B)**	**11417.38**	**10551.47**	865.91
13	Statutory Surplus/ Roe **(C)**	240.72	240.72	0.00
14	**ARR (D) = (B) + (C)**	**11658.10**	**10792.19**	**865.91**
15	Less Non-Tariff Income	435.82	435.82	0.00
16	Less : Revenue from Tariff	7223.39	7223.40	-0.01
17	Revenue from subsidies and	0.00	0.00	0.00
18	**Total Income**	7659.21	7659.22	-0.01
19	**Revenue Gap**	**3998.89**	**3132.97**	**865.92**

2. As detailed above, Hon'ble Commission had made a total disallowance of Rs 865.92 crore for the year 2012-13 from the actuals as per the audited accounts. The major disallowance are:

Table 2 Summary of disallowances

Sl. No	Expense head	Amount (Rs. in crore)
1	Cost of power purchase	12.87
2	Employee cost	72.28
3	Repair & Maintenance expenses	51.84
4	A&G expenses (excl 3(1) duty)	17.70
5	Depreciation	163.13
6	Interest and finance charges	238.09
7	Other expenses	213.03
8	Section 3(1) duty	96.97
9	Total	865.92

3. KSEBL submits that, while approving the truing up petition based on the C&AG audited accounts, Hon'ble Commission was pleased to approve most of the claims made by KSEBL. However, Hon'ble Commission has not considered the actual expenditure furnished by KSEBL in certain instances and made factual errors in assessment while approving certain expense components. Hence, KSEBL submits this petition before the Hon'ble Commission for the kind review of the order dated **20th March 2017**.

I. Disallowance under interest and finance charges by Rs.238.09 crore.

4. Break up of disallowance by the Hon'ble Commission under this head is summarized below:

Table3 Break up of disallowance under Interest and finance charges

Sl. No	Description	Amount (Rs in crore)
1	Interest on security deposit	55.59
2	Interest on borrowings for working capital	167.94
3	Other interest	14.56
4	Total	238.09

a. Interest on Security Deposit Rs. 55.59 crore.

5. In respect of disallowance under interest on security deposit, it is humbly submitted that:

(a) Hon'ble Commission has considered the actual interest allowed to consumers in 2012-13 against the provision created for that year. The provision for 2012-13 has been created on the closing balance of security deposit in the previous year (ie as on 01.04.2012) by applying the bank interest prevailed as on that date. Hence the interest as per accounts denotes the provision created at the balance sheet date, which is meant for disbursement during the first quarter of the succeeding year. Therefore these two figures are not comparable.

(b) The actual disbursement made in 2012-13 has been made against the provision created for the year 2011-12. The software calculates the exact amount of interest payable to each and every consumer by applying bank rate while making payment. Therefore actual disbursement has to be compared with the provision for the previous year only.

(c) Interest was provided at bank rate at 6% till 2011-12, @8% for 2012-13, @8.50% for 2013-14 and 9 % for 2014-15 on the opening balance of security deposit in respective years. But the interest so provided in accounts has been credited to the consumers account in the first quarter of the ensuing financial year only. This practice is being followed consistently in line with the provisions contained in Regulation 67 to 74 in chapter 4 of the Supply Code.

(d) In short, as against the provision for security deposit for 2012-13 amounting to Rs.113.98 crore, disbursements had been in 2013-14 amounting to Rs. 86.19 crore.

(e) Year wise break up of interest on security deposit provided in accounts and actually disbursed is furnished below:

Table4 Details of Security deposit and interest thereon

Financial Year	SD Balance (Rs. in cr)	Interest provided (Rs.in cr)	Rate	Interest disbursed during the year (Rs.in cr)
2009-10	1078.92	58.04		38.28
2010-11	1242.54	64.74	@ 6% (on 1078.92 cr)	44.80
2011-12	1424.73	68.01	@ 6% (on 1242.54 cr)	58.19
2012-13	1586.30	113.98	@ 8% (on 1424.73 cr)	58.49
2013-14	1805.61	134.84	@ 8.50% (on 1586.30cr)	86.19
2014-15	1975.31	162.50	@ 9% (on 1805.61cr)	121.48
2015-16	2287.31	167.90	@ 8.50% (on 1975.31cr)	153.64

(f) Hon’ble Commission may kindly approve the subsequent actual disbursement against provision created for the year of true up instead of allowing actual payment made against the provision created in preceding year.

(g) On the basis of above submission, Hon’ble Commission may be pleased to true up Rs.86.19 crore under interest on security deposits for 2012-13.

b. Interest on overdrafts Rs. 167.94 crore.

6. Hon'ble Commission has fully disallowed the interest on Overdrafts for the year 2012-13, actually paid by KSEB, to various financial institutions amounting to Rs 167.94 crore. While denying interest, Hon'ble Commission, per Table 18 of the truing up order, has ascertained Rs.5940.37 crore as negative working capital for the year 2012-13 and concluded that working capital needs have been more than compensated by the current liabilities. In this connection, it is humbly submitted as follows:

(i) It is understood that the Hon'ble Commission has assessed the need for borrowings towards working capital but failed to assess the need for the borrowings requirement due to factors other than working capital. It seems that the nomenclature used to disclose the expenditure in accounts as 'interest on working capital' may have misguided the Hon'ble Commission in reaching the erroneous conclusion. Hon'ble Commission may kindly consider the following in this regard:

(ii) Kerala State Electricity Board had compiled its Annual Statement of Accounts till 31.10.2013 in accordance with the related provisions of the Electricity (Supply) Act, 1948 and the rules made there under it viz. Electricity Supply Annual Accounting Rules, 1985 (ESAAR), which has been saved under section 185(2)d of the Electricity Act, 2003. Accordingly had prepared its Annual Accounts for 2011-12 in the format prescribed for the purpose in ESAAR, 1985.

(iii) As per ESAAR, the overdrafts availed by the Board are to be disclosed under Schedule 30 of the Annual Statement of Accounts titled 'Borrowings for Working capital'. Interest on such borrowings is to be disclosed under 'Interest on borrowings for working capital', a sub item of schedule 12 titled 'Interest and Finance charges'. Accordingly, KSEB has disclosed the details in the Annual Statement of Accounts.

(iv) Section 59 of the Electricity (Supply) Act, 1948 mandates to carryout operations and adjust the tariff so as to ensure a surplus not less than 3% of the value of fixed assets of the Board at the beginning of the year. This statutory requirement negate the need for short term borrowings to meet the revenue gap arising out of operations and necessitates only with regard to the working capital borrowings. Hence ESAAR, 1985 had contained the nomenclature as mentioned above. It is pertinent to mention that from the year 2014-15 onwards, overdrafts were classified under Note 7 to the Annual statement of Accounts titled 'Short Term Borrowings' and 'interest on overdrafts' under Note 30 Finance cost.

(v) It is humbly clarified that even though nomenclature under which disclosure is made in accounts were that of ‘working capital’ in reality, overdrafts were availed by KSEB to make good the revenue deficit.

(vi) Hon’ble Commission may kindly consider the fact that KSEB had to avail overdrafts to meet the accumulated revenue gap and the interest on such borrowings were prayed to be allowed as carrying cost of Revenue gap in the truing up petition. The revenue gap , overdrafts, interest etc are showing increasing trend year after year as tabulated below, which clearly reveals that the revenue gap kept increasing year after year justifying the year on year increase in overdraft:

Table 5 Comparison of revenue gap and overdraft

Year	Cumulative approved and un bridged revenue Gap as per orders of Hon’ble Commission	Revenue gap as per audited Accounts- Year on year accumulation.	Cumulative Generation and Power purchase cost over approval by KSERC.	Overdraft outstanding at the year end.	Interest on OD for the year
31.03.2011	424.11			310.36	35.78
2011-12	1352.73	1934.13	731.71	1114.36	82.25
2012-13	1984.75	5933.27	3294.67	1942.96	167.94
2013-14	2445.73	7031.79	3849.26	2303.62	265.43
2014-15	2925.01	8847.04	4360.49	2110.48	269.08

Note: The Overdraft as on 31.03.2015 has come down by Rs.193.14 crore in comparison to the corresponding figures as on 31.03.2014 primarily because of the utilization of FD maturity proceeds aggregating to Rs.524.68 crore with interest Rs.53.74 crore in March 2015 for repayment of Overdrafts.

(vii) With regard to Table 18 of the truing up order in which negative working capital for the year 2012-13 has been ascertained Rs.5940.37 crore, it is humbly submitted that certain components like accumulated revenue gap are also to be considered in order to assess the need for borrowings.

(viii) In the tabulation referred above, Hon’ble Commission has fully considered other current liabilities amounting to Rs.6290.86 crore in which a substantial portion, to the tune of Rs.2588.05 crore; represent sums payable to Government of Kerala. This amount consists of (1) Electricity duty collected from consumers under section 4 of KED Act, 1962, (2) Electricity duty payable by KSEB u/s 3(1) of the KED Act, 1962 (which has never been allowed by the Hon’ble Commission by virtue of Section 3(3) of the KED Act, fully netted off against receivables from Government), (3) guarantee commission payable to Government etc. But, it may kindly be seen that sums receivables to KSEB from Government along with other sums to be netted off against payables to Government were not at all considered.

(ix) It is humbly submitted that subsidy receivable amounting to Rs.688.89 crore together with net subsidy to be written off to the tune of Rs. 1202.30 crore, aggregating to Rs.1891.19 crore existed as on 31.03.2013 has to be duly considered. It is submitted that the receivables from Government till 31.10.2013 were actually netted off against sums payable to Government at the time of re vesting. Further, un bridged revenue gap as per accounts as on 31.03.2013 was Rs.9326.88 crore, which could only be financed through borrowings.

(x) When these elements, which form an integral part of accounts, are duly considered, actual requirement of borrowing suffice to the tune of Rs.5277.70 crore, but KSEB had availed just 37% of requirement to carry out the operation during the year as detailed below:

Table 6 Computation of net requirement of borrowings

Sl. No	Particulars	Rs. in crore	Rs. in crore
1	Working capital as per Table 18 of the order		-5940.37
2	Add: Subsidy receivable from Government	688.89	
3	Net subsidy to be written off	1202.30	
4	Accumulated revenue gap	9326.88	11218.07
5	Net requirement of borrowings (1+4)		5277.70
6	Actual overdrafts as on 31.03.2012		1942.96
7	Borrowings as a % of requirement (6/5*100)		36.81

(xi) Hence it is evident that borrowings are resorted to in order to meet the financing requirement and it can be clearly ascertained that borrowings were made to finance the un bridged revenue gap. KSEB has been able to restrict actual borrowings to one third of requirement as tabulated above because of the financing strategy followed by KSEB ie to utilize all internal resources (electricity duty collection, security deposit, consumer contribution etc and deferred payments) before resorting to borrowing at lowest possible interest.

(xii) It is further submitted that the revenue gap as per accounts as well as the same approved by the Hon’ble Commission has been increasing year after year as shown below:

Table 7 Comparison of the approved revenue gap and actual as per accounts

Year	Un-bridged gap as per the orders of the Commission	Actual Revenue gap as per audited accounts including RoE	Increase over approval	Remarks
	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	
Up to 2010-11	424.11	3393.86		As per truing up order for 2010-11
2009-10-	290.00			Provisional order dated 01.12.2016 in Suo motu proceedings for 2016-17 and 2017-18 (additional gap determined In line with Hon'ble APTEL directions.)
2010-11	340.00			
2011-12	1386.97	1934.13	547.16	As per True up order (Rs.928.61 cr as per ARR order)
2012-13	3132.97	3999.14	866.17	As per True up order (Gap as per ARR order Rs. 632.03 crore, after tariff revision impact)
2013-14	460.98	1098.52	637.54	ARR order
2014-15	479.28	1815.25	1335.97	ARR order
Total	6514.31	12240.90		

(xiii) The increasing trend in overdraft amply proves the fact that heavy borrowings were resorted to make good the huge revenue gap of earlier years. The OD balance as on 31.03.2008 had been Rs.51.81 crore which increased steadily thereafter and never receded owing to the year on year increase in revenue gap. The following table giving details of month wise balance of overdrafts from 2007-08 clearly establish the fact that the borrowings are directly related to the ever increasing revenue gap.

Table8 Details of month end balance of Overdraft

Month	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Apr	0.26	25.95	263.47	244.63	345.35	1275.76	2381.63	2431.58
May	28.11	20.16	303.59	252.07	464.23	992.85	2240.95	2619.45
Jun	53.00	52.58	282.04	98.63	317.99	1329.23	2666.25	2938.32
July	1.39	36.18	250.87	365.35	457.58	1479.85	2582.55	2572.77
Aug	39.22	140.86	491.67	232.59	600.89	1414.12	2651.03	2609.24
Sep	10.06	246.39	221.10	214.84	630.91	1368.81	2578.67	2517.98
Oct	0.26	219.41	146.67	139.13	763.95	1568.64	2816.5	2522.47
Nov	2.81	175.29	179.40	246.95	837.07	1511.65	2631	2602.21
Dec	-0.18	277.45	203.32	295.62	917.13	1624.01	2681.9	2858.46
Jan	38.89	356.33	159.20	276.69	968.53	1761.65	2545.43	2517.08
Feb	0.41	360.93	62.27	717.07	1239.33	1842.15	2716.03	2686.26
Mar	51.81	230.13	153.20	310.36	1114.36	1942.96	2303.62	2110.48
Interest on OD	**2.80**	**22.14**	**24.58**	**35.78**	**82.25**	**167.94**	**265.43**	**269.08**

(xiv) From the table it can also be seen that the Overdrafts has gone up to Rs.2110.48 crore as on 31.03.2015 from Rs.51.81 crore as on 31.03.2008.KSEBL, being a regulated utility, the increase in PF balance and non cash flow expenses like depreciation and Return on equity etc do not ensure cash availability to it as long as these are allowed to be fully recovered through tariff. The huge un bridged gap amply makes it clear that the expenses were not allowed to be recovered fully, which in turn results in financial crunch.

(xv) It is humbly submitted that Hon'ble Commission, in due recognition of these realities, had been pleased to approve interest on overdraft in full till 2010-11 as per orders on truing up for the respective years. However, it is seen from the truing up orders for 2011-12 and 2012-13 that amount spent on this account has been disallowed in full even though ad hoc allowances to the tune of Rs.15 crore and 20 crore were made in the respective ARR orders as detailed below.

Table 9 Details of actual interest on OD and approval by KSERC (Rs in crore)

Year	Interest on Overdraft	Interest on OD approved as per truing up order	Order reference
2007-08	2.80	2.80	10.06.2011
2008-09	22.15	22.15	10.06.2011
2009-10	24.58	24.58	25.10.2012
2010-11	35.78	35.78	30.10.2012
2011-12	82.25	0.00	16.04.2017. Allowed Rs.15 crore as per ARR Order dated 01.06.2011.
2012-13	167.94	0.00	20.04.2017. Allowed Rs.20 crore as per ARR Order dated 28.04.2012.

(xvi) Hon'ble Commission may kindly note that interest on overdrafts paid by KSEBL from 2011-12 till 2015-16 has exceeded Rs.1000 crore and denial of this expense would result in grave financial difficulty to the utility. The details are furnished below:

Table 10 Details of year end OD and interest for the year (Rs in crore)

Year	Year end OD balance	Interest for the year
2011-12	1114.36	82.25
2012-13	1942.96	167.94
2013-14	2303.62	265.43
2014-15	2110.48	269.08
2015-16	2171.94	229.43
Total		1014.13

(xvii) Having considered the reality and gravity of the situation, Hon'ble Commission, as per orders on ARR for 2014-15 dated 14.08.2014 was pleased to approve an amount of Rs. 50.89 crore towards interest as carrying cost for approved revenue gap till 2010-11 as per truing up orders. However, similar consideration of the matter was not accorded while issuing orders on truing up for 2011-12 and 2012-13.

(xviii) Moreover, the actual interest claimed in true up is well within the limits specified by the Hon'ble APTEL and hence eligible for pass through as explained below:

(xix) Hon'ble APTEL, as per numerous judgments, has ordered allowance of carrying cost on approved and un recovered revenue gap. In this connection KSEBL submits that:

(a) Hon'ble APTEL, in its judgment dated 10.11.2014 in appeal petition no 1 of 2013 and 19 of 2013, judgment dated 06.05.2016 in the appeal no 135 of 2014 and judgment dated 27.04.2016 in appeal no 81 of 2014 has directed the Hon'ble Commission to pass orders in terms of its findings <u>along with carrying cost</u>. It may kindly be noted that the decision of the Hon'ble Commission in not allowing carrying cost, is not in line with the Hon'ble APTEL's specific direction to allow the same while issuing consequential orders.

(b) Hon'ble Commission as per order on ARR & ERC for the year 2014-15 dated 14.08.2014 had allowed Rs. 50.89 crore towards carrying cost on trued up revenue gap till 2010-11. In this context, it is kindly submitted that the additional revenue gap in view of the Hon'ble APTEL orders dated 10.11.2014 and 06.05.2016 in the matter of Truing up of Accounts for 2010-11 and 2009-10 should also have invariably been considered along with Rs.424.11 crore revenue gap already trued up till 31.03.2011. Hon'ble Commission has provisionally assessed Rs.290 crore for 2009-10 and Rs.340 crore for 2010-11 as per provisional order dated 01.12.2016 in the matter of suo motu proceedings for the years 2016-17 and 2017-18.

(c) The stand of Hon'ble Commission is not in line with the directions given by the Hon'ble APTEL as per judgment dated 11.11.2011 in Appeal No. 1 of 2011, a decision which has been relied by the Hon'ble Commission to initiate the suo motu proceedings, that,

"*create a problem of cash flow for the distribution licensees which are already burdened with heavy debts*" and that *"opening balances of uncovered gap must be covered through transition financing arrangement or capital restructuring", "Carrying Costs of Regulatory Asset should be allowed to the utilities"* and the "*Recovery of Regulatory Asset should be time-bound and within a period not exceeding three years at the most and preferably within control period".(para 62)*

Thus, creation of the regulatory asset will neither be in the interest of the respondent no. 1 nor the consumers.

Thus, we hold that the creation of the regulatory assets on the basis of projected shortfall in revenue, that too without any directions for time bound recovery for the regulatory asset along with its carrying cost, <u>is in contravention of the Tariff Policy</u> and the 05 Regulations". (para 8.12)

Further, the creation of the regulatory asset without any directions for carrying cost and time bound recovery was neither in the interest of the distribution licensee nor the consumers. (para 63)

Hon'ble APTEL, by invoking the powers under Section 121 of the Act issued directions to the State Commissions inter alia to allow

> *recovery of the Regulatory Asset should be time bound and within a period not exceeding three years at the most and preferably within Control Period. Carrying cost of the Regulatory Asset should be allowed to the utilities in the ARR of the year in which the Regulatory Assets are created to avoid problem of cash flow to the distribution licensee. (para 64(iv)*

(d) Kind attention of the Hon'ble Commission is also invited to the Hon'ble APTEL judgment dated 28 th November-2013 in Appeal petition No. 190 of 2011, in which circumstances necessitating the creation of regulatory asset and ordered as follows

83. The relevant principles which have been laid down in these decisions are extracted below:

(a) We do appreciate that the State Commission intents to keep the burden of the consumers as low as possible. At the same time, one has to remember that the burden of the consumers is not ultimately reduced by under estimating the cost today and truing up in future as such method also burdens the consumer with carrying cost.

(b) The carrying cost is allowed based on the financial principles that whenever the recovery of cost is deferred, the financing of the gap in cash flow arranged by the distribution company from lenders and /or promoters or accruals, has to be paid for by way of carrying cost.

© Carrying cost is a legitimate expense and therefore recovery of such carrying cost is legitimate expenditure of the distribution company.

(e) Further, as per judgment in Appeal 153 of 2009 dated 30.07.2010, which had been relied on the judgment dated 28.11.2013 referred to in (d) above, the Hon APTEL has clearly spelt out the circumstance in which carrying cost has to be allowed to utilities, as under:

83 (d) "11.5 The utility is entitled to carrying cost on its claim of legitimate expenditure if the expenditure is:

> *a) accepted but recovery is deferred e.g. interest on regulatory assets,*
> *b) claim not approved within a reasonable time, and*
> *c) disallowed by the State Commission but subsequently allowed by the Superior Authority."*
> *d)Revenue gap as a result of allowance of legitimate expenditure in the true up.*

(f) Hon'ble APTEL judgment dated 18 th October-2012 on Appeal petition No. 7 of 2011, 46 of 2011 and 122 of 2011, in respect of creation of regulatory asset and ordered that *carrying cost be allowed for such additional expenditure if approved during truing up, recovery is differed or allowed subsequently by a superior authority.*

(g) The above decisions were upheld in the order dated 30-05-2014 in appeal nos. 147, 148 and 150 of 2013 also.

(i) It is humbly submitted that the Hon'ble Commission had already identified a revenue gap of Rs 424.11 Cr up to 31-03-2011 as per truing up orders for the year up to 2010-11. Further, an amount of Rs 928.62 Crore has already been recognized as revenue gap for 2011-12 and Rs. 632.03 crore for 2012-13 as per ARR order that has not been bridged through tariff revision. Thus an amount of Rs 1984.76 Cr comes under case (a) and (d) identified by Hon APTEL as above.

(ii) Further, Rs 290 Cr in 2009-10 and Rs 340 Cr in 2010-11 were provisionally identified by the Hon'ble Commission as part of implementing the Hon'ble APTEL order regarding true up of respective years. Thus a further amount of Rs 630 Cr (290 + 340) is also eligible for carrying cost as per ratio position held by Hon APTEL vide (c) above.

(iii) Hence, KSEB is eligible for carrying cost on Rs. 2614.76 Crore (Rs.1984.76 cr+Rs.630 cr) but the actual borrowings was of Rs.1942.96 crore for the year, which was well within this limit. It may kindly be noted that KSEBL has sought approval only for the actual interest payment made.

h. It is further submitted that the Hon'ble APTEL, as per judgment dated 08.04.2015 in Appeal 160 of 2012 and batch has laid down the principle on which carrying cost is to be allowed. The decision was reiterated in judgment dated 22.04.2015 in Appeal 174 of 2013 as well. The same is reproduced below:

42. We find that for carrying cost, the State Commission has considered the revenue gap to be applicable from the end of the year of the occurrence of the revenue gap up to the middle of the year in which the same is proposed to be recovered. This is not correct. The interest to be calculated for the period from the middle of the financial year in which the revenue gap had occurred up to the middle of the financial year in which the recovery has been proposed…This is because the expenditure is incurred throughout the year and its recovery is also spread out throughout the year. Admittedly, the revenue gap will be determined at the end of the financial year in which the expenditure is incurred. However under or over recovery is the resultant of the cost and revenue spread out throughout the year. Similarly, the revenue gap of the past year will be recovered throughout the financial year in which its recovery is allowed. Therefore interest on revenue gap as a result of true up for a financial year should be calculated from the mid of that year till the middle of the financial year in which such revenue gap is allowed to be recovered.

43. To explain this point let us assume that there is a revenue gap of 12 crores in the true up of FY 2010-11. If the cost and the revenue and the permitted expenditure had been properly balances, this gap of 12 crores would have *been recovered throughout the 12 months of FY 2010-11. Now, this revenue gap is allowed to be recovered in tariff during FY 2013-14. The recovery of gap of Rs. 12 crores from the distribution licensee consumers will be spread over the 12 months period of 2013-14. Therefore carrying cost would be calculated from the middle of FY 2010-11 to middle of FY 2013-14 ie 3 years.*

(xx) In short, Hon'ble APTEL through various judgments has established the fact that carrying cost for the revenue gap is a legitimate expenditure, specified the components of revenue gap as eligible for carrying cost and the manner in which carrying cost is to be allowed.

(xxi) It is humbly submitted that the Hon'ble Commission may kindly consider the fact that the revenue from tariff as well as the non-tariff income for the year has fully been considered on accrual basis while approving the orders on truing up. Further, KSEBL has no business other than the regulated business and therefore left with no option other than to borrow to make good the accumulated revenue gap.

(xxii) In view of the above submission, Hon'ble Commission may kindly review the decision to disallow the interest on Overdraft in its entirety and may be pleased to approve the same actually paid during the year.

c. Other interest disallowed Rs.14.56 crore.

7. Hon'ble Commission has ordered that Rs.14.56 crore claimed as interest paid on delayed payment of gratuity is an abnormal amount that has arisen since the licensee has not paid its statutory liabilities in time and penal interest cannot be allowed to be passed on to the consumers. In this connection, the following submissions are made:

(i) The circumstances necessitated for making provision of Rs.131.34 crore had already been appraised before the Hon'ble Commission as follows.

(a) Hon'ble High Court of Kerala vide the judgment dated 10-03-2003 on OP No. 674/2002 has ordered that, the Board employee who had filed the petition is eligible to get gratuity as per the Gratuity Act, 1972. The appeal filed by the Board against the judgment before the Division Bench of the High Court was dismissed by the High Court vides its judgment dated 8-1-2008. Even though the Board approached the Government for granting exemption by invoking section 5 of the Act, the State Government declined to exempt the Board from the purview of Payment of Gratuity Act, 1972.

(b) Consequent to the judgment in OP 674/2002, thousands of petitions were filed by other retired employees of the Board before the Hon'ble High Court and the Court has directed them to approach the controlling authorities under the payment of Gratuity Act. During the bilateral discussion with the recognized trade unions for revising the pay and allowances, the Unions have demanded implementation of the Gratuity Act, 1972. The Legal Advisor and Disciplinary Enquiry Officer (Serving District Judge) has also remarked that the employees of KSEB are entitled to the Gratuity as envisaged under the Payment of Gratuity Act, 1972.

(c) Considering all these aspects, Board vide the Order dated 24-05-2011 has decided to implement the Payment Gratuity Act, 1972 in KSEB. Accordingly based on the audit observation of C&AG, KSEB had made a provision of Rs 131.34 crore for the year 2010-11 for payment of Gratuity for the already retired employees.

(d) Hon'ble Commission, however has not admitted the claim and aggrieved by the decision, KSEB had raised this issue in Appeal 1 of 2013. Hon'ble APTEL, as per common judgment dated 10.11.2014 has ordered that '*The gratuity directed to be paid as per the judgments of the High court dated 10.03.2003 as the Division bench of the High Court had dismissed the Appeal filed against this judgment, and which were disallowed by the State Commission by order in Appeal no. 1 of 2013 should also be allowed'.*

(ii) Hon'ble Commission, as per para 114 and 115 of the true up order for 2012-13 has decided to allow the actual gratuity disbursed in each year along with Rs.41.47 crore deposited in various forums. Further, KSEBL has appraised before the Hon'ble Commission that the adoption of the Gratuity Act was implemented after 2013.

(iii) Further, actual disbursement of gratuity after 2012-13 was also furnished before the Hon'ble Commission, in which it was submitted that Rs.87.81 crore has been disbursed under gratuity and Rs. 30.04 crore under interest during 2013-14 and Rs.1.62 crore in 2014-15.

(iv) It is submitted that the payment was made in line with the Hon'ble High Court judgment and the same has been ordered to be approved by the Hon'ble APTEL. Since the delayed payment was not deliberate on the part of KSEBL, Hon'ble Commission may kindly review the decision and may be pleased to approve the interest paid on gratuity in full.

II. Disallowance of R&M Expenses Rs.51.84 crore

8. Hon'ble Commission, while approving the R&M expenses and A&G expense as per the audited account for 2012-13, has adopted the following methodology.

(i) The actual R&M expenses and A&G for the year 2008-09 has been taken as the base.

(ii) The 'R&M cost' and 'A&G expenses- other than section 3(1) duty' for the subsequent years is allowed to escalate at the indices of 'Whole Sale Price Index and Consumer Price Index at the weightage of 30:70.

9. The methodology adopted by the Hon'ble Commission has resulted in disallowance of considerable O&M expenses actually incurred as per the C&AG audited accounts as detailed below.

- Repair and Maintenance expenses by Rs 51.84 crore
- A&G expenses by Rs 17.70 crore.

10. The methodology adopted by the Hon'ble Commission did not consider the business growth of the utility.

- As a utility engaged in distribution, transmission and generation, the consumer base, energy sale volume, capacity addition etc has been increasing every year.

- The section-43 of the Electricity Act-2003 has cast upon KSEB the responsibility to provide supply to the consumers on demand. The methodology adopted by the Hon'ble Commission may prevent KSEB from fulfilling its universal supply obligations.

- while approving the R&M expenses & A&G, expenses, Hon'ble Commission has not considered the business growth of the utility.

11. It is an accepted practice that, in the process of truing up, the State Commissions approve the actual expenses after prudence check. However, for the year 2012-13, Hon'ble Commission has not considered the actuals but merely applied certain indices on the base value.

12. KSEB is in operation since the year 1957 and the assets created since then are still in operation. The R&M cost is allowed to the utilities to maintain its assets in good condition to provide the service to the consumers. The R&M cost depends primarily on the following.

(i) The volume of the assets in use. As a growing power utility, the Fixed Asset base of KSEB has been increasing every year and therefore higher R&M cost.

(ii) Age of the assets. As the assets become old, the R&M cost required will be high.

(iii) Susceptibility to inflation. The major components of R&M costs are the cost of the material and labour and both are highly susceptible to inflation.

13. As per the audited accounts, the R&M cost actually incurred for the year 2012-13 was Rs 251.55 crore. However, Hon'ble Commission approved only Rs.199.71 crore. It is submitted that, the R&M cost as projected in the ARR increased due to the inflation, age of assets, new assets addition etc.

14. Regarding the need for notifying specific regulations under section-61 of the Electricity Act-2003, instead of generic tariff regulation, Hon'ble Tribunal in judgment dated 7-12-2012 in Petition No.186 of 2011 between Orissa Power Transmission Corporation Limited vs Orissa Electricity Regulatory Commission & Ors has observed that:

    the State Commission lays down <u>only general principles as per Section 61 of the Act for determination of transmission tariff without specifying the terms and conditions for determination of transmission tariff. (para 45)</u>
    The Hon'ble Supreme Court in PTC Vs CERC (2010) 4 SCC 603 has held that this Tribunal has powers under Section 121 of the Act to direct the Commission perform its statutory function of framing the Regulations.(para 46)

    Hon'ble APTEL reiterated this in its judgment in Appeal no. 110 of 2010 delivered on 19.4.2012 and directed the State Commission *to take immediate steps to <u>formulate specific Tariff Regulations for transmission of electricity in accordance with Section 181(zd) read with Section 61 of the Act."</u>*

15. It is further submitted that, while approving the truing up of accounts, the Hon'ble Commission has adopted a part of the KSERC (Terms and Conditions of Tariff for Retail Sale of Electricity) Regulations, 2006) Regulations. Hon'ble Commission had earlier admitted before the Hon'ble APTEL that, the KSERC (Terms and Conditions of Tariff for Retail Sale of Electricity) Regulations, 2006 has limited application to KSEB functioning as a single entity engaged in generation, transmission and distribution for approving its various expense components.

16. The fact being so, the approach adopted by the Hon'ble Commission for approving the expenses in the process of truing up ultimately resulted in considerable reduction of R&M expenses. Hence, KSEBL requests before the Hon'ble Commission to review the decision and to approve the R&M expenses and A&G expenses (other than section 3(1) duty) as per the C&AG audited accounts.

<u>Disallowance of A&G expenses other than Electricity duty Rs.17.70 crore.</u>

17. The audited A&G expenses (excluding duty) were Rs 105.46 crore. However Hon'ble Commission has approved only Rs 87.76 crore and disallowed Rs 17.70 crore.

18. Though Hon’ble Commission had considered the A&G expenses as fully controllable, expenses like rent, rates and taxes, insurance expenses, conveyance and vehicle hire charges, audit fees, legal expenses, study expenses, SRPC expenses, freight charges, professional charges etc are strictly not controllable considering the following.

(i) As a distribution licensee and State Transmission utilities, KSEB has to incur the SRPC expenses, legal expenses, audit fees etc.

(ii) With the networking and computerization of offices, the telephone and internet charges are on the increase every year.

(iii) KSEB as a distribution utility does not have much control on the printing and stationeries.

19. Break up of A&G expenses comprise of Administrative expenses 52%, other expenses 39% and purchase related expenses 9%. Administrative expenses has nearly doubled in 2011-12 as detailed below:

Particulars	2008-09	As per Accounts for 2012-13	Increase over 2008-09
Conveyance and vehicle hire charges	13.44	35.46	32.56
Other Professional charges, Technical and Consultancy charges	0.56	4.55	3.99
Audit fee	2.25	2.30	0.05
Legal charges	1.74	1.54	-0.20
Rent, Rates and Taxes	3.89	5.24	1.39
Telephone and internet	3.94	3.46	-0.48
Insurance	0.50	0.38	-0.12
Total	26.34	52.92	26.58

(i) The conveyance and vehicle hire charges is a major expense component of Administrative expenses, which depends heavily on the price variation of the fuels- petrol and diesel. KSEB has been taking vehicles on hire instead of acquiring new vehicles.

(ii) Predominant portion of other professional charges (Rs.3.73 crore) has been paid to the Hon’ble Commission against corresponding negligible amount in 2008-09.

(iii) Most of the offices of KSEB are taken on rent. Legal charges and audit fee payable to C&AG along with rent, taxes and rates are un controllable.

20. Among other expenses, increase was under printing and stationery, Electricity charges and operating expenses. Hon’ble Commission may kindly note that electricity charges increased primarily due to tariff revision.

21. Considering the difficulties in estimating the A&G expenses, almost all the regulators in the country has been allowing the A&G expenses on normative level duly considering the business growth of the utility.

22. Hon'ble APTEL vide its judgment dated 4th September-2012 had disposed the matter and directed as under.

"13.4 We find that there are presently no Regulations providing for norms for various expenses including A&G expenses. The State Commission has allowed an increase of 10% over the approved expenses for the FY 2008-09 for various heads of A&G expenses while allowing some assumed figure for legal expenses. We agree with the point raised by the Appellant regarding norms to be specified through statutory Regulations by the State Commission. We have already given a direction to the State Commission regarding specifying the Regulations providing for norms for various expenses."

13.5 Regarding A&G expenses for the FY 2009-10, we direct the State Commission to consider the actual A&G expenses as per the audited accounts of the Appellant in the true up and allow the same with carrying cost, after prudence check."

23. KSEB as per the truing up petition has appraised the increase in the various components of A&G expenses. Further, expenses under conveyance expenses, freight charges etc are directly linked to the fuel prices and these expenses cannot be confined to the general inflation indices alone.

23. Hon'ble Commission may kindly note that the methodology provide inflationary increase over the base year expense and there are various expenses in 2011-12 and 2012-13 which were not incurred in the base year ie 2008-09. Further, certain expenses, especially statutory payments, do not necessarily move according to inflation such as payments to KSERC etc. Such payments should have been approved in full. Hon'ble Commission did not even approve the payments made by KSEBL to KSERC in line with its regulations to the tune of Rs.3.73 crore.

24. Considering the facts and submission and also considering the directions of the Hon'ble APTEL vide its judgment dated 4th September-2012 on appeal petition No. 190 of 2010, Hon'ble Commission may kindly review the decision and approve the A&G expenses as per the audited accounts for the year 2012-13.

III. Disallowed section 3(1) duty Rs.96.97 crore.

25. One of the major expense items booked under A&G expense is the section 3(1) duty payable by KSEB to the Government. The section 3(1) duty is a statutory levy. While approving the ARR&ERC/ Truing up petitions for the years from 2003-04 to 2006-07, Hon'ble Commission has considered this as revenue expenditure as part of the A&G expenses of the Board. Comptroller & Auditor General (C&AG) have also certified this as an essential expenditure under A&G expenses since the inception of the Board. But, while approving the Truing Up of accounts of KSEB since the year 2003-04 and also while approving the orders on ARR since the year 2007-08, Hon'ble Commission has not been admitting section 3(1) duty as a revenue expenditure quoting the provisions in the "Kerala Electricity Duty Act- 1963" that "(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 consumers”. Accordingly, since the year 2003-04, Hon’ble Commission has not admitted duty aggregating to Rs 748.47 crore so far and the details are given below.

Table 12 Section 3(1) Duty not admitted

Year	Section 3(1) duty not admitted by KSERC (Rs. in crore)
2003-04	51.53
2004-05	54.98
2005-06	63.26
2006-07	71.78
2007-08	77.54
2008-09	74.47
2009-10	80.79
2010-11	84.42
2011-12	93.31
2012-13	96.97
Total	749.15

26. The regulatory practice mandates allowance of an expense if incurred prudently. Hon’ble Commission may be aware that, KSEB has no business other than the regulated business of electricity distribution. KSEB cannot find an alternate means to meet this expense. KSEBL has always felt that disallowing section 3(1) duty is against the provision of the Electricity Act-2003 that, SERC’s should have to ensure reasonable return to the utilities after meeting expenses including taxes and duties. If the section 3(1) duty is not allowed as an expense, the commercial viability of the utility will be affected. Hon’ble Commission may have the option to allow higher return to KSEB so that the net return after meeting section 3(1) duty shall be 15.50 % of the equity. As per the provisions of the Electricity Act-2003, Hon’ble Commission is empowered to ensure financial sustainability of KSEBL as a Distribution Utility and with the statutory powers available; the matter of disallowance of section 3(1) duty is being raised again for reconsideration.

27. It is further submitted that considering the financial implication of the disallowance, KSEB had filed a second appeal before the Hon’ble Supreme Court of India, which is pending disposal as of date.

IV. Disallowed the Depreciation by Rs 163.13 crore for the FY 2012-13

28. Hon’ble Commission may kindly note that KSEBL as per its submission has worked out gross depreciation as per CERC rates with due regard to the age of asset after excluding depreciation on consumer contribution applicable for the creation of fixed assets. However, Hon’ble Commission has ordered to disallow depreciation attributable to OYEC charges also, which may kindly be reviewed.

V. Disallowance of employee cost

29. Hon'ble APTEL in the judgment in Appeal No. 1 and 19 of 2013 has directed the Hon'ble Commission as follows:

We direct the State Commission to true up the employees cost from FY 2010-11 to FY 2012-13 as per the directions given in paragraphs 8.5 and 8.6.

> *8.5 We find that the State Commission has taken the actual expenses trued-up for FY 2008-09 as the base. The State Commission <u>should have at least allowed</u> the actual basic pay and DA increase, pay revision and terminal benefits over the actual base year expenses without accounting for increase in manpower from 2008-09 to 2012-13.*

30. However, Hon'ble Commission has restricted employee cost attributable to the staff strength as on 31.03.2009 without allowing any allowance towards the requirement of additional man power owing to the growth in business. Hon'ble Commission may kindly note that the expenses disallowed on enhanced working strength constitute 5.40 % of the employee cost for the year , which is reasonable with regard to the business growth during the period of 4 years from 01.04.2009 to 31.03.2013. Hence the employee cost may kindly be approved in full.

VI. Withdrawal of credits to revenue Rs. 213.03 crore.

31. Hon'ble Commission has totally disallowed the withdrawal of credits to the revenue account on account of SREB charges and M/S Steel Complex. In this connection, it is humbly submitted that:

(i) Erstwhile SREB constituents were used to share the cost of state owned transmission schemes among themselves based on the cost sharing principles formulated by the SREB from time to time. Accordingly, KSEB had demanded fixed transmission charges for the 400 kv transformers at Madakkathara from the SREB constituents. A sum of Rs.68.36 crore had been demanded for the period from 07/1992 to 01/2004. In the 134thmeeting of the SREB, it has been decided to drop the whole issue of cost sharing of the state owned transmission schemes. None of the constituents had made any payment towards the demand made and the Board had decided to withdraw the entire arrears outstanding against the erstwhile SREB constituents towards fixed transmission charges of KSEB owned 400 KV transformers at Madakkathara amounting to Rs.68.36 crore from the books.

(ii) It may kindly be noted that the amount has already been recognized as income and benefits passed on to consumers. Hon'ble Commission may please consider the fact that KSEB was also liable to pay sums to other constituents of erstwhile

SREB and through this arrangement and KSEB cannot unilaterally take alternative stand on the matter.

(iii) In respect of the value of land taken over from M/S Steel Complex, it is humbly submitted that KSEBL will comply with the direction issued by the Hon'ble Commission to ascertain market value of the land. It is humbly prayed that KSEBL may be allowed to approach the Hon'ble Commission with the details pertaining to gain/loss with regard to the transaction based on the market value of land.

VII. Treatment of revenue deficit.

32. Hon'ble Commission has determined the revenue gap for the year but the order is silent as to the treatment of approved revenue gap. It is humbly requested that the Hon'ble Commission may specify the same.

Prayer

Considering the reasons, facts and circumstances on the matters as detailed in the paragraphs above, KSEBL requests before the Hon'ble Commission to kindly review the order dated 20th March 2017 in Petition OA No. 10 of 2016 in the matter of 'Truing Up of accounts of KSEB for the year 2012-13 on the items as detailed above in the petition.

Chief Engineer (Commercial & Tariff)