

**BEFORE THE HONOURABLE KERALA STATE ELECTRICITY
REGULATORY COMMISSION**

at its office at C.V. Raman Pillai Road, Vellayambalam. Thiruvananthapuram.

FILING NO /2023

CASE No.

IN THE MATTER OF:

Review Petition against KSERC order dated 14th July 2022 in Petition OP No 63/2021 in the matter of redetermination of allowable employee strength in KSEBL since 31.03.2009.

AND

IN THE MATTER OF:

Kerala State Electricity Board Limited, Vidyuthi Bhavanam, Pattom,
Thiruvananthapuram.

Applicant


Deputy Chief Engineer
TRAC


Kerala State Electricity Board Limited

AFFIDAVIT VERIFYING THE APPLICATION ACCOMPANYING THE REVIEW PETITION AGAINST KSERC ORDER DATED 14TH JULY 2022 IN PETITION OP NO 63/2021 IN THE MATTER OF REDETERMINATION OF ALLOWABLE EMPLOYEE STRENGTH IN KSEBL SINCE 31.03.2009.

I, Rajan M.P, son of Sri. M.S. Podiyan, aged 50 years residing at Jayas, Hilltop Haven, NAD PO, Aluva, Ernakulam do solemnly affirm and say as follows:

I am working as Deputy Chief Engineer (TRAC), Kerala State Electricity Board Limited, Vydyuthi Bhavanam, Pattom, Thiruvananthapuram and the petitioner in the above matter and I am duly authorized by the Board to make this affidavit on its behalf. I solemnly affirm at Thiruvananthapuram on this the 3rd day of February 2023 that the contents of the above petition are true to my information, knowledge and belief. I believe that no part of it is false and no material has been concealed there from.


Deponent


Deputy Chief Engineer (TRAC)
Kerala State Electricity Board Limited,
Vydyuthi Bhavanam, Pattom
Thiruvananthapuram – 695 004.

VERIFICATION

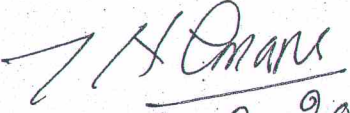
I, the above-named deponent, solemnly affirm at Thiruvananthapuram on this, the 3rd day of February 2023 that the contents of the affidavit are true to my information, knowledge and belief, that no part of it is false and that no material has been concealed there from.

Deponent


Deputy Chief Engineer (TRAC)
Kerala State Electricity Board Limited
Vydyuthi Bhavanam, Pattom
Thiruvananthapuram – 695 004.

2023/0161/2023
3-2-2023
on page no 4
2023/0161/2023
Solemnly affirmed and signed before me.




3-2-2023
T.N. OMANA
Advocate and Notary
Thiruvananthapuram Revenue District
Kerala State South India

**BEFORE THE HON'BLE KERALA STATE ELECTRICITY
REGULATORY COMMISSION**

In the Matter of: **Review Petition against KSERC order dated 14th July 2022 in Petition OP No 63/2021 in the matter of redetermination of allowable employee strength in KSEBL since 31.03.2009**

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

THE PETITIONER HUMBLY STATES THAT:

1. Hon'ble Commission as per order dated 14th July 2022 in Petition OA No 63/2021 has redetermined the allowable employee strength in KSEBL since 31.03.2009 as 30321 nos. The summary of need-based requirement of man power as per Table 11 of the order is extracted below for ready reference:

<i>Summary of the need-based requirement of Manpower of KSEB Ltd as on 31.03.2022</i>		
	<i>Particulars</i>	<i>Numbers</i>
1	<i>Number of employees in the pay roll of KSEBL as on 31.03.2009</i>	<i>27175</i>
2	<i>Vacancies reported to PSC prior to 31.03.2009 but joined after 31.03.2009</i>	<i>1610</i>
3	<i>Posts created by the State Government vide the GO dated 16.07.2012</i>	<i>1248</i>
4	<i>Posts created vide the Director Board Order BO dated 31.12.2013</i>	<i>288</i>
	<i>Total</i>	<i>30321</i>

2. Category wise employee strength approved as above is computed and furnished in **Appendix 1**.
3. Hon'ble Commission has issued orders on a petition filed by KSEBL on 06.12.2021, after withdrawing appeal petitions filed by KSEBL before the Hon'ble APTEL against the disallowance of employee cost. The order was issued after due procedures and public hearing on 25.01.2022. The operating part of the order is extracted below for ready reference:

Orders of the Commission

51. *The Commission, after examining the petition filed by KSEB Ltd, the objections raised by the stake holders and other interested parties as per the provisions of the Electricity Act, 2003 and provisions of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021, hereby orders the following.*

(1) The Commission hereby approves the total number of posts in various categories of KSEB Ltd as 30321.

(2) The effect of this revision shall be from the FY 2022-23.

(3) In View of the advances in technology e.g. smart meters, computerisation etc, KSEB Ltd is hereby directed to review/ the necessity of retaining the above sanctioned posts and wherever possible skill upgradation, training etc. be provided to make the incumbent employees more effective.

(4) The Commission hereby makes it clear that the above sanction of posts is subject to the outcome of the WP(C) No. 4752 of 2022 pending before the Hon'ble High Court of Kerala.

Petition disposed off. Ordered accordingly.

4. As extracted above, Hon'ble Commission has approved the total number of posts in various category of employees at 30321, which include the employees in the roll of KSEB on 31.03.2009 (27175 nos), Vacancies reported to PSC prior to 31.03.2009 but joined service after 31.03.2009 (1610 nos), Posts created by the State Government vide the GO dated 16.07.2012 (1248 nos) and Posts created vide the Director Board Order dated 31.12.2013 (288 nos). Thus, Hon'ble Commission has clearly mentioned the date from which the additional staff strength has been regularized.
5. The additional employee strength now approved (3146 nos) were in the rolls of KSEBL prior to 2013. But the order states that the effect of revision shall be from 2022-23. It may kindly be noted that the regularized employees have since been completed service of 9 years. But the cost recovery aspect is not deliberated in the order.
6. It is respectfully submitted that KSEBL has actually disbursed the pay and allowances to the employees who were in the rolls since 2009, including the employees regularized as per the order dated 14.07.2022. During the truing up process, Hon'ble Commission has disallowed a sum of Rs. 1041.13 Cr from 2009-10 to 2017-18 (except 2014-15) towards the cost attributable to the staff strength above 2009 level (27175 nos).
7. As stated earlier, Hon'ble Commission has clearly identified the period from which the additional employee strength is recognized. Based on this, KSEBL is entitled to get an amount of Rs. 580.07 Cr (55.72% of the actual disallowance of Rs. 1041.13 Cr) for the recognized additional staff strength for the period from 2009-10 to 2017-18. The details are furnished below:

Table 1 Additional claim under employee cost during 2009-10 to 2017-18

Year	Employee Strength disallowed as per TU Orders (Nos)	Cost disallowed as per TU order (Rs Cr)	Claim preferred for employee strength on the basis of order dated 14.07.2022-Cumulative (Nos)	Additional cost claim-Pro rata (Rs Cr)
1	2	3	4	5=(3/2)*4
2009-10	832	11.75	832	11.75
2010-11	2689	43.46	1577	25.49
2011-12	3938	78.59	1597	31.87
2012-13	4608	108.91	2845	67.24
2013-14	4808	145.95	3146	95.50
2014-15	5866	NA	3146	NA
2015-16	5265	202.37	3146	120.92
2016-17	6089	217.35	3146	112.30
2017-18	6367	232.75	3146	115.00
Total		1041.13		580.07

8. The back ground of the facts and circumstances which necessitated filing of OP 63/2021 is briefly furnished below:
9. The employee cost for the working strength over 27175 nos (working strength as on 31.03.2009) were fully disallowed during the period from 2009-10 to 2014. Even though cost recovery had been envisaged under normative basis for the period from 2015-16 to 2017-18 (First 3-year control period), employee cost attributable for the increased staff strength over 27175 nos were disallowed while truing up the accounts by virtue of the Hon'ble High Court order in WP 465 of 2015.
10. Aggrieved by the non-approval of expenses including employee cost, KSEBL filed appeal petition before Hon'ble APTEL for the years 2011-12, 2012-13, 2013-14, 2015-16 and 2016-17.
11. Hon'ble Commission, while truing up the accounts for 2017-18, had taken a considered view that, the Commission may relook into the increase in manpower in the rolls of KSEB/KSEB Ltd with the approval of the State Government/ Full Board of KSEB/ KSEB Ltd. In this matter, the Hon'ble Commission vide the letter No. 2819/F&T/OA-09/2020/KSERC/634 dated 10.08.2020 issued the following directions to KSEB Ltd.

"Item no. 2. KSEB Ltd has sought approval of actual employee cost for the year 2017-18. The Commission has decided to consider the same. In order to facilitate this process, KSEB Ltd may make available the following documents:

- a. *Copy of all Kerala Government orders sanctioning posts in Kerala State Electricity Board from 1.4.2009 to 31.10.2013 i.e., for the prior period to re vesting of the Board under section 131 of the Electricity Act.*
 - b. *Full Board resolutions of KSEB Ltd sanctioning posts in KSEB Ltd from 1.11.2013 to 31.03.2018."*
12. In compliance of the directions of the Hon'ble Commission, KSEBL, vide the letter dated 20.10.2020 had furnished the details of the Kerala Government orders and Full Board Resolutions for sanctioning additional places in KSEB Ltd from 01.4.2009 to 31.03.2018. Even though the details were furnished by KSEBL, Hon'ble Commission did not appraise the same and revisit the staff strength in 2017-18 over the working strength as on 01.04.2009.
 13. Based on the submission of KSEBL, Hon'ble Commission, in the final Tariff Regulations, 2021 (for the 5-year control period from 2022-23 to 2026-27), has mentioned that the final norms of KSEB Ltd can be arrived at only after the truing up of the figures from the financial year 2018-19 is over and after the sub judice matter is resolved. The norms will be reworked accordingly. It may please be noted that the O&M norms in the Tariff Regulation has been determined on the basis of the sum approved as per ARR order dated 08.07.2019 for 2018-19, which captured the cost of 27175 employees only. Relevant portion of Tariff Regulation, 2021 contained as foot note to Annexure 7 is extracted below for ready reference:

Note:

Details provided in para 2 and figures provided in Tables 2 to 7 above are provisional. The issue of employee strength of KSEB Ltd as mentioned above is sub judice. Hence, the employee strength adopted in the Order on the Truing Up of accounts for the year 2017-18 is retained. It is noted that KSEB Ltd has not yet filed the petition for the truing up of accounts for the financial years 2019-20 and 2020-21 based on the audited accounts of the respective financial years.

Many stakeholders and Associations have raised their serious concern with regard to the number of employees actually available in KSEB Ltd vis-à-vis those numbers considered by the Commission while truing up of accounts of the previous years. During February 2021, KSEB Ltd has implemented the Pay Revision with effect from July/August 2018 for its Officers and staff. As per Hon'ble APTEL decision in OP 1/2013 and 19/2013 in the Order dated 10.11.2014, the effect of pay revision have to be allowed as part of employee cost. The final norms of KSEB Ltd can be arrived at only after the truing up of the figures from the financial year 2018-19 is over and after the sub judice matter is resolved. The norms will be reworked accordingly. KSEB Ltd may file the petition for the approval of ARR & ERC for the Control period based on the provisional figures as mentioned in Tables 2 to 7 above.

14. In order to resolve the sub judice matter, KSEBL has withdrawn the appeals pending before the APTEL with liberty to refile fresh appeals with regard to challenged issues other than employee cost and filed OP 63/2021 before the Hon'ble Commission seeking redetermination of allowable employee strength since 31.03.2009 with the following prayer:

(i) *Hon'ble Commission may kindly consider the year wise details of the number of employees as detailed in the Table- 11 above for approving the employee cost for the relevant years considered.*

(ii) *Hon'ble Commission may, fix the O&M norms of KSEB Ltd as per the Regulation 80 of the KSERC (Terms and Conditions of Tariff) Regulations, 2021 for the next control period starting from the Year 2022-23 to 2026-27, for employee cost for the 33296 Nos of employees in the year 2018-19.*

15. Thus, KSEBL has sought approval of employee cost for the relevant years as well as to fix norms for the ensuing control period by adopting employee cost for 33296 employees as the base instead of 27175 nos.

16. Hon'ble Commission had approved 30321 posts in various categories of KSEBL against 33296 nos prayed for.

17. In due regards to and recognition of the above direction of the Hon'ble Commission, it is humbly submitted that the staff strength approved by the Hon'ble Commission is agreeable to KSEBL even though it is lesser by 2975 nos sought for approval in the petition. Year wise details of additional strength sought for approval by KSEBL (Table 15 of OP 63/2021) and corresponding strength approved by the Hon'ble Commission is tabulated below:

Table 2 Comparison of additional employee strength over 31.03.2009

Year	Additional strength sought for approval by KSEBL (Nos)	Additional strength approved by KSERC (Nos)			
		Reported to PSC prior to 2009	GO dt16.07.2012	BO dt 31.12.2013	Total
2009-10	832	1535			1535
2010-11	2784	42			42
2011-12	263	20			20
2012-13	1248		1248		1248
2013-14	13	13		288	301
2014-15					
2015-16	1056				
Total	6196	1610	1248	288	3146

18. As already stated, it was prayed in OP No. 63/2021 to approve the strength of employees working in the Board for the relevant years from 2009-10 to 2017-18 for cost recovery and also to fix norms for the recovery of O&M cost for the control period from 2022-23 to 2026-27.
19. The Hon'ble Commission, after appraising the matter, has disposed of the petition by approving the employee strength as 30321 with effect from 2022-23.
20. It may kindly be noted that The Hon'ble Commission has issued orders on Truing Up for the year 2018-19, 2019-20 and 2020-21 with provisional approval of employee cost by citing pendency of OA 63/2011. It was clarified in the respective orders that, *regarding the issue of employee strength these orders are provisional as OP No.63/2021 was pending disposal.* Relevant portion of the true up orders is extracted below for ready reference:

KSERC order dated 14.06.2022 in OA No 13/2020 in the matter of TU 2018-19.

5.119.... *The Commission also took note of the fact that a petition OP No. 63/2021 has been filed by KSEB Ltd regarding redetermination of allowable employee strength since 31.03.2009. Since a final decision of the matter is yet to be taken, the Commission decided to approve provisionally the employee expenses for the period 2018-19.*

5.132...*As above, the Commission approve the employee expenses of SBU-D of KSEB Ltd provisionally at Rs 1876.16 crore for the year 2018-19 as per the Tariff Regulations, 2018. The Commission also clarifies that this approval is subject to the final decision in OP No 63/2021 submitted by KSEB Ltd in the matter of 'Petition seeking determination of allowable employee strength since 2009.'*

KSERC order dated 21.06.2022 in OA No 22/2022 in the matter of TU 2019-20.

5.130 *The Commission also took note of the fact that a petition OP No. 63/2021 dated 06.12.2021 has been filed by KSEB Ltd regarding redetermination of allowable employee strength since 31.03.2009. Since a final decision in this matter is yet to be taken, the Commission decided to approve provisionally the employee expenses for the period 2019-20. Therefore, the Commission is constrained to limit the employee expenses of KSEB Ltd provisionally to the levels as per the norms specified in the Tariff Regulations 2018.*

Since the petition OP 63/2021, filed by KSEB Ltd is pending for final orders before the Commission, this amount of Rs.2033.46 crore is provisional.

KSERC order dated 24.06.2022 in OP No 23/2022 in the matter of TU 2020-21.

5.138 *The Commission also took note of the fact that a petition OP No. 63/2021 dated 06.12.2021 has been filed by KSEB Ltd regarding redetermination of allowable employee strength since 31.03.2009. Since a final decision in this matter is yet to be taken, the Commission decided to approve provisionally the employee expenses for the period 2020-21. Therefore, the Commission is constrained to limit the employee*

expenses of KSEB Ltd provisionally to the levels as per the norms specified in the Tariff Regulations 2018. KSEB Ltd on 06.12.2021 filed a petition in OP 63/2021, before the Commission in the matter of "Petition seeking determination of allowable employee strength since 31.03.2009". The Commission is the process of approval of the said petition. Since the petition is pending for final orders before the Commission, this amount of Rs.2164.99 crore is provisional.

21. However, the present order has no retrospective effect as clearly specified in the order itself.
22. It is pertinent to point out that the Hon'ble Commission has allowed the increase in the number of employees on the basis of relevant Government orders and Board orders in this regard and after accepting the requirement of such additional number of employees. It was also well found that, the State Government and the Board of Directors have the competencies to create such additional posts if found necessary. Regarding the vacancies reported to PSC prior to 31.03.2009 but joined after 31.03.2009, Hon'ble Commission rightly found that the same can also be allowed. As such it was found that a total increase of 3146 employees is genuine and acceptable.
23. As the Hon'ble Commission was pleased to recognize the essential requirement of additional man power for carrying out the functions of SBU G, SBU D and SBU D of KSEBL and approved a part of the newly appointed employees after satisfying itself that such additional strength is essential. It is humbly submitted that KSEBL has actually disbursed pay and allowances to such employees and therefore denial of cost is not justifiable.
24. Hon'ble Commission, based on its interpretation of APTEL order in appeal 1 & 19 of 2013, had disallowed employee cost to the tune of Rs. 388.66 Cr for the period from 2009-10 to 2013-14 as detailed below:

Year	True up order date	Disallowance under employee cost (Rs. Cr)	Actual strength	Increased strength over 27175 nos	APTEL Appeal
2009-10	25.09.2017	11.75	28007	832	
2010-11	19.05.2017	43.46	29864	2689	
2011-12	16.03.2017	78.59	31113	3938	109/2018
2012-13	20.03.2017	108.91	31783	4608	110/2018
2013-14	20.06.2017	145.95	31983	4808	209/2018
Total		388.66			

25. Hon'ble Commission, by virtue of the Hon'ble High Court order in WP 465/2015, had adopted similar methodology for employee cost approval and disallowed Rs. 652.47 Cr from 2015-16 to 2017-18. KSEBL had challenged the orders for 2015-16 and 2016-17 as detailed below:

Year	True up order date	Disallowance under employee cost (Rs. Cr)	Actual working strength	Increased strength over 27175 nos	Appeal No
2015-16	21.08.2018	202.37	32440	5265	27/2021
2016-17	14.09.2019	217.35	33264	6089	31/2021
2017-18	25.06.2021	232.75	33542	6367	
Total		652.47			

26. Thus, the total disallowance under employee cost was made to the extent of Rs.1041.13 Cr (Rs. 388.66 Cr + Rs.652.47 Cr) for the period from 2009-10 to 2017-18 (except for 2014-15).
27. Hon'ble Commission may kindly note that KSEBL has already withdrawn challenges raised before the Hon'ble APTEL against tried up employee cost in good faith that the same would be addressed in OP 63/2021. But to the surprise of KSEBL, the Hon'ble Commission had omitted to address this vital issue. The only concern of KSEBL is the denial of actually incurred cost for the approved additional staff strength in relevant years.
28. In view of the above, KSEBL humbly requests the Hon'ble Commission to review the order dated 14.07.2022 to that extent and approve recovery of actually incurred employee cost applicable for the additional employee strength now approved.
29. Details of year wise additional strength approved and the claim for cost recovery is furnished below. It may kindly be noted that additional employee strength is claimed only to the extent or below the actual working strength in the respective years.

Table 5 Year wise claim of additional employee strength

Year	Additional strength approved (Nos)	Claim preferred- Annual (Nos)	Claim preferred- Cumulative (Nos)
2009-10	1535	832	832
2010-11	42	745	1577
2011-12	20	20	1597
2012-13	1248	1248	2845
2013-14	301	301	3146
2014-15			3146
2015-16			3146
2016-17			3146
2017-18			3146
Total	3146	3146	

30. Thus, KSEBL has determined that a sum of Rs.580.07 Cr is allowable for period from 2009-10 to 2017-18 towards the additional 3146 employees. It may kindly be seen that the same works out to 55.72% of the amount already incurred but disallowed (Rs. 1041.13 Cr) during the period as detailed in Table 1.

31. In view of the above, KSEBL is fervently appealed that the Hon'ble Commission may kindly review the order dated 14.07.2022 on the admissibility of actually incurred cost applicable for the additional employee strength approved by the Hon'ble Commission.

Prayer

Considering the reasons, facts and circumstances on the matter as detailed in the paragraphs above, KSEBL requests before the Hon'ble Commission to kindly review the order dated 14th July, 2022 in Petition OP No. 63 of 2021 and approve the applicable cost for the recognized additional employees from the year of recognition, as detailed in Table 1.


Deputy Chief Engineer
TRAC

Appendix 1 Category wise staff strength approved by KSERC as per order dt 14.07.2022 in OP 63/2021

Sl. No.	Category	Working strength 31.03.2009	Vacancies reported to PSC prior to 31.03.2009 but joined after 31.03.2009	Posts created by the State Government vide the GO dated 16.07.2012	Posts created vide the Director Board Order BO dated 31.12.2013	Working strength approved for cost recovery from 2022-23
1	Accounts Officer	38				38
2	Asst. Accounts Officer	76				76
3	Asst. Engineer (Civil)	203				203
4	Asst. Engineer (Ele)	1555	302			1857
5	Asst. Executive Engineer (Civil)	154				154
6	Asst. Executive Engineer (Ele)	556				556
7	Asst. Finance Officer	15				15
8	Chief Engineer (Civil)	3				3
9	Chief Engineer (Electrical)	12				12
10	Confidential Assistant	109				109
11	Deputy Chief Engineer (Civil)	11				11
12	Deputy Chief Engineer (Ele)	63				63
13	Divisional Accountant	42	13			55
14	Driver	364				364
15	Electricity Worker	3692	835	312	96	4935
16	Executive Engineer (Civil)	51				51
17	Executive Engineer (Ele)	215				215
18	Fair Copy Assistant	241				241
19	Finance Officer	2				2
20	Financial Adviser	1				1
21	Junior Assistant /Cashier	914	427			1341
22	Line Man	7389		624	192	8205
23	Meter Reader	1458	33			1491
24	Office Attendant	509				509
25	Others	23				23
26	Overseer (Civil)	29				29
27	Overseer (Ele)	2900		312		3212
28	Personnel Officer/CPO	1				1
29	PTC	463				463
30	Regional Personnel Officer	1				1
31	Senior Accounts Officer	3				3
32	Senior Assistant	2582				2582
33	Senior Fair Copy Suptd	5				5
34	Senior Finance Officer	1				1
35	Senior Superintendent	978				978
36	Sub Engineer (Civil)	324				324
37	Sub Engineer (Ele)	2133				2133
38	Sweeper/Scavenger	59				59
	Total	27175	1610	1248	288	30321