

KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

PRESENT: Shri. T.M.Manoharan, Chairman
Shri. P. Parameswaran, Member
Shri. Mathew George, Member

28th October, 2013

Petition RP No.1/2013

In the matter of
Review of the Order on Truing up of Accounts of KSEB for 2009-10

Kerala State Electricity Board

- **Petitioner**

ORDER

Background

1. Kerala State Electricity Board (hereinafter referred to as the Board or KSEB) filed a petition for review of the order dated 25-10-2012 on the truing up of accounts of the Board for the year 2009-10. On being aggrieved by certain decisions in the Order, the petitioner KSEB filed this review petition on 4-2-2013. The petitioner has raised several issues for reconsideration such as disallowance of cost of power purchase, disallowance of O&M expenses (employee costs, R&M expenses, A&G expenses), disallowance of depreciation, disallowance of return on equity, and recognition of surplus which according to the petitioner does not exist. The Commission after initial scrutiny, admitted the petition on 3-4-2013 as RP NO.1/2013. The petition was uploaded in the website of the Commission and a press release was issued to inform the public. The hearing on the petition was held on 15-5-2013 at the Office of the Commission.

Hearing on the petition

2. In the hearing held on 15-5-2013, besides the representatives of KSEB, representatives of Kerala HT-EHT Industrial Electricity Consumers Association and Kerala State Small Scale Industries Association were present. Shri. Sivaprasad, Exe. Engineer representing KSEB stated that the Commission has disallowed about Rs.588 crore while approving the truing up for 2009-10, which

has resulted in considerable financial impact to KSEB. He further pointed out that the Commission did not consider the actual accounts provided by the Board and made factual errors while approving the truing up. In the case of power purchase, KSEB stated that the total cost of power purchase is the sum total of monthly invoices raised for procurement from April to March 2009, which were admitted by the KSEB. No provision has been created for additional liability on account of tariff revision for CGS and any anticipated additional payment towards CGS. As per the audited accounts, the current liabilities of power purchase in the beginning of the year 2009-10 was Rs.552.11 crore, which was increased by Rs.174.26 crore as on 31-3-2010. According to KSEB, the increase was on not on account higher provisions, but because of belated payments and also due to increase in power purchase bills in March 2010 compared to March 2009. The Board stated that the Commission has to allow expenses as per accounting norms or as per actual prudence check. In 2009-10, the Commission disallowed the power purchase bills to the tune of Rs.174.24 lakhs on the wrong premise.

3. On O&M expenses, the Board has stated that the Commission has disallowed employee costs by Rs.99.08 crore, R&M expenses by Rs.20.42 crore and A&G expenses by Rs.19.20 crore. The methodology followed by the Commission in approving the costs has the limitation that it does not account for business growth of the utility. The methodology adopted by the Commission in variance with the previous years results in considerable reduction in O&M expenses. In the case of employee costs, DA is uncontrollable and pension is a unfunded liability. The salary and other benefits of the employees are based on a wage settlement agreement entered into between KSEB and trade unions. Further, the employee cost based on the inflationary index in 2009-10 would be Rs.1.32 per unit, whereas the Board has claimed only Rs.1.04 per unit. In the case of R&M expenses, the Commission has allowed only the approved R&M expenses as against the actual for 2009-10 and while doing so, business growth and inflation has not been considered. Regarding A&G expenses, the Board has stated that Hon. APTEL in its order dated 12-9-2012 directed that the Commission may consider the actual A&G expenses as per the audited accounts in the truing up and allow the same with carrying cost after prudence check. However, the Commission has not complied with the direction and disallowed Rs.19.20 crore. In this case also business growth was not considered.
4. The depreciation as per the audited accounts were also disallowed by the Commission on the ground that the Board has not given the vintage of assets for determining depreciation as per the CERC norms. Based on the data showing addition to GFA in the last 12 years, it was argued that about 88% of the value of

assets were created 15 years prior to 2009-10. The Board requested that based on the details of addition to GFA, depreciation at revised CERC rates may be allowed.

5. The Board further pointed out in the petition that, return on equity has been allowed only at 14%, whereas the Board has claimed 15.5%, without specifying the reason. As per the Tariff Policy, rate of return allowed for transmission may be allowed to distribution with appropriate modification in view of the higher risks involved. Since the Board is continuing as a single entity, only RoE at 15.5% is accounted by the Board. The Board further requested that the revenue gap arrived at after truing up shall not be adjusted against the surplus in the prior period as there is no surplus available with the Board on this account. Considering the above grounds, the Board sought for review of the impugned order on the items mentioned above.
6. In their objections, the Kerala HT & EHT Industrial Electricity Consumers Association stated that the Commission has considered the arguments of KSEB regarding power purchase at the time of approving the truing up of accounts and no new arguments have been presented by the Board. There is also no apparent error pointed out by the Board in any of the items. In the case of O&M expenses, the Commission is carrying out the truing up based on the KSERC (Terms and conditions of tariff for retail sale of electricity) Regulations, 2006. There cannot be a vacuum till new regulations are in place. Hence, according to the Association, the methodology adopted by the Commission is absolutely correct. In the case of employee costs, the Commission had allowed the employee cost much more than the approved costs in ARR&ERC for 2009-10. Since the Commission has already allowed a generous hike of 26.4% over the approved level in the Truing up, there is no necessity for further review. The Board in fact has repeated the arguments presented in the original petition. The Association also pointed out that if the actual employee cost and employee cost escalated at actual inflation considered, already substantial excess of Rs.282.5 crore has been allowed by the Commission in the truing up. According to the Association, if the organization is not able to control the input cost cannot be said to be operating on commercial principles. Regarding R&M expenses, the Association pointed out that the Commission has clearly pointed out that increase in R&M expenses is not on account of meeting standards of performance and is due to lack of cost control measures taken up by the Board. Hon. APTEL has stated that A&G expenses as per audited accounts can be allowed only after prudence check. Accordingly the Commission allowed Rs.66.97 crore which is higher than the level approved in the ARR order. In the case of depreciation, the Commission has clearly

mentioned in the Order that KSEB has not provided depreciation as per the CERC norms. Hence same was disallowed. Regarding return on equity, in many states such as Gujarat, Bihar, etc., RoE is allowed at 14% only. Hence, there is no need to review the return on equity. The Commission has already rejected the petition for recognizing the amount utilized for meeting the capital expenses, repaying capital liabilities and creation of fixed deposits, hence the claim of recognition of surplus has no merit and cannot be allowed. Based on these premises, the Association requested to reject the review petition.

7. Shri, Shaji Sebastain stated that the claim of the Board in the review petition need not be considered. The statement of the Board that the revenue gap and disallowances has to be met through loans is objectionable as any cost which are not approved shall be in the account of the licensee or to be recovered from the employees.
8. The Commission after the hearing the parties directed the Board to furnish a statement on why the provisions created for power purchase of power for 2009-10 is to be allowed and also directed to furnish the split-up details of provisions at the beginning and end of the year 2009-10 within one week. The Board in its reply dated 10-6-2013 has furnished the explanation on the provisions created for 2009-10 and also furnished estimated depreciation for the year 2009-10 based on the CERC norms taking into account the vintage of assets for the consideration of the Commission. The veracity of these details are examined in the respective paragraphs below.

Analysis and decision of the Commission

9. The Commission notes that the arguments given by the Board in the review petition are almost same as those presented in the original proceedings. The Commission has carefully considered the arguments of the Board and the objections and additional details furnished by the Board. At the outset, the power of review available with the Commission is as per the provisions of Section 94(1)(f) of the Electricity Act, 2003 and Regulation 67(1) of KSERC (Conduct of Business) Regulations, 2003. The said clause in the regulation provides that:

67. Powers of Review, Revision etc.,-(1) The Commission may either on its own motion or on an application made by any interested or affected party, within 90 days of the making or issuing of any decision , direction, order, notice, or other document or the taking of any action in pursuance of these regulations, review revoke, revise, modify, amend, alter, or otherwise

change such decision, direction, order, notice, or other document issued or action taken by the Commission or nay of its officers.

10. As per section 94(1)(f) of the Electricity Act 2003, review of decisions, directions and orders is to be as per the Code of Civil Procedure 1908, which provides for review on discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by the parties at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reasons. Hence, the review petition has to be dealt with as per the powers conferred upon the Commission. The agitation on the merits of the issues presented in the original petition is not contemplated in the review proceedings. The review jurisdiction is limited power to be exercised when new facts which could not be reasonably produced at the time of the order or to consider any apparent error on the face of record. Based on this, the issues in the present petition have been analysed.
11. First issue in the review petition is on the non-admission of power purchase cost to the tune of Rs.174.26.crore. The Board has argued that the increase in current liabilities is due to the reason that there is change in the rebate scheme prevailing during the year 2009-10 and 2010-11. In this context the Commission in the impugned order has stated as follows:

“Though the Commission has sought the split up details of provisions made for the Rs.726.37 crore, the Board has given only the provision created for the year 2009-10. As per the details given by the Board, a provision of Rs. 498.49 crore has been created for the power purchase bills due for the month of March 2010. It can be noted that average power purchase cost per month (including CGS, IPPs, transmission charges and the provision of Rs.498.49 crore) works out to only Rs.282 crore, which is Rs.216.5 crore less than the provision created. It can be noticed that as on 31-3-2009, already an unutilised provision of Rs.552.11 crore is available to the Board, which has already been passed on to the consumers and in addition for the year, the Board has created a net provision of Rs. 174.26 crore. Since the Board has not furnished the details of provisions already created for the earlier years and also the reasons as to why the provisions are created for current year, the Commission is not in a position to ascertain the reasonableness of the excess provisions. In any case, the Board may not need further provision more than Rs.552.11 crore already available, even if the revision of tariff applicable to CGS is also considered. Accordingly, the Commission is of the view that the extra provision created of Rs.174.26 crore (Rs.726.37

crore-Rs.552.11 crore) is not necessary. Accordingly it has been decided to deduct this amount from the power purchase cost.”

12. It is clear from the above, that the Commission has not disallowed the power purchase cost for the year 2009-10. The power purchase cost for the year 2009-10 was fully admitted. However, in the balance sheet of the Board, in the end of the year 2008-09 (ie., as on 31-3-2009), an accumulated amount of Rs.552.11 crore was available under the head ‘liability for state share of power from CGS and purchase of power’. As per the information given by the Board, power purchase bill from NTPC for the month of March 2009 worth Rs.130.97 crore was remitted on 31-3-2009 itself, and the balance due to NTPC was only Rs.43.48 crore. Another corroboratory evidence that, the net addition to provision for power purchase for the year 2008-09 was Rs.114.37 crore, of which the major liability (ie., balance payable to NTPC) was only Rs.43.48 crore which was paid in April 2009. Thus it is clear that the opening balance of provisions available to the Board (which was on account of excess provisions created in previous years and charged in the ARR already) was more than sufficient and this provisions were still unutilized. The argument of the Board that it was due to change in rebate scheme etc., has not been substantiated convincingly and hence has no force. Hence the Commission has rightly taken a decision to deduct the additions to the provision for the year 2009-10 till the excess provisions already available in the accounts are exhausted. Thus, on this count, the decision taken by the Commission is after due diligence and the additional details provided by the Board fully supports the decision of the Commission.

13. The next issue is O&M expenses which include employee costs, R&M expenses and A&G expenses. Regarding employee costs, the Board has stated that business growth has not been considered. The Commission has in detail dealt with the uncontrolled increase in O&M expenses especially employee costs. The issues raised by the Board has been addressed in several orders of the Commission. The Commission in para 46 to 55 of the impugned order has deliberated the issue of employee costs in detail and decided to adopt CPI:WPI indexation method for regulatory purposes.

14. In the case of R&M expenses, the increase sought by the Board was about 25% as against the approved level of expenses giving 16.6% increase over previous year. The Commission has also noted that the abnormal increase in R&M expenses from 2008-09 was mainly on account of misclassification. Considering the uncontrolled increase in expenses, the Commission adopted the approach of

benchmarking the expenses based on CPI:WPI index. Similarly for A&G expenses also the Commission after considering all aspects in detail has decided to benchmark the expenses at the CPI:WPI. Further, the Board could not give any new facts for allowing the expenses in variance to the approved figures. Hence, the Commission is of the view that there is no grounds for review on these items, which were decided with proper reasons.

15. Another issued raised by the Board is on depreciation. According to the Board, depreciation as per the revised CERC norms can be estimated based on the audited accounts itself and disallowance of depreciation as per the new norms is not correct. The Commission in the impugned order, allowed depreciation for the year 2009-10 as per rates given in the CERC norms applicable for the period 2004-09, on the reason that the Board did not provide proper details on depreciation and maintained the accounts as directed by the Commission. The Commission in the ARR&ERC Order for 2009-10 had allowed the depreciation at revised CERC norms applicable for the tariff period 2009-14 on the condition that at the time of truing up, the Board has to update the accounts and provide the depreciation as per the revised norms, which the Board still did not to do. The Board in the petition sought for the depreciation as per the rates of 1994 Government of India notification. The Board did not update the accounts in line with the provisions of revised CERC norms. Hence the Commission in the impugned order has allowed depreciation as per the earlier norms.

16. However, now in the present proceedings, in variance to the arguments given in the review petition that with the existing accounts itself the depreciation as per the new norms can be estimated, the Board as part of the clarifications, vide letter dated 10-6-2013 had given separate estimate of depreciation using a spreadsheet model considering the vintage of assets. In the new estimates, the depreciation was estimated at Rs.399.65 crore as against the estimate of Rs.459.3 crore given as part of the original proceedings using the same principles. This difference in estimates amply shows that the contention of Board that with existing accounting methods itself depreciation as per new norms can be estimated, is incorrect. While furnishing the revised estimates vide letter dated 10-6-2013, the Board has stated that *“the total depreciation admission as per revised CERC norms for the assets created during the last 12 years prior to 2009-10 ie., during the period from 1997-98 to 2008-09 and pre-revised rates for the old assets created upto 31-3-1997 is Rs.399.65 crore as against the depreciation of Rs.451.22 crore claimed as per the audited accounts at MoP rates”*.

17. The summary of the estimates for depreciation for the year 2009-10 given by the Board is as shown below:

S I N O	Particulars	Depreciation on assets created every year (Rs.Cr)													Total (Rs. Cr)
		Old assets created prior to 1997-1998	98-99	99-00	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	2009-10	
1	Buildings	2.27	2.95	0.38	0.92	1.84	0.64	1.55	1.21	1.11	1.14	0.89	0.68	0.34	15.93
2	Hydraulic works	4.56	6.63	5.36	4.17	2.05	1.00	2.64	1.92	0.74	6.31	1.01	1.61	0.64	38.65
3	Other Civil works	0.74	0.09	0.37	0.44	0.45	0.39	1.39	0.86	1.04	1.62	0.82	0.69	0.97	9.86
4	Plant & Machinery	13.79	16.96	6.21	17.60	8.46	37.00	9.24	27.41	7.25	7.21	8.13	6.23	10.44	175.95
5	Lines cable networks etc		4.15	7.84	10.09	10.99	9.99	24.69	17.49	14.37	13.45	13.84	14.41	15.14	156.44
6	Vehicles		0.09	0.08	0.03	0.00	0.00	0.00	0.00	0.01	0.02	0.00	0.00	0.06	0.30
7	Furniture & fixture		0.02	0.09	0.05	0.06	0.02	0.05	0.05	0.06	0.02	0.03	0.03	0.04	0.51
8	Office equipment		0.02	0.09	0.05	0.09	0.03	0.02	0.41	0.11	0.11	0.85	0.08	0.15	2.01
	Total	21.37	30.91	20.41	33.36	23.93	49.07	39.58	49.35	24.70	29.87	25.58	23.74	27.77	399.65

18. The Commission examined the details furnished by the Board. Though some discrepancies and adjustments are noted, the estimates given by the Board is by and large a *gross approximation* of the estimated depreciation as per the new CERC norms. However, this practice of artificial construction of value of assets and estimation of depreciation every year considering the vintage of assets cannot be continued for all the years to come. This is mainly on account of the fact that as per the new norms, assets for the first 12 years will be eligible for higher rate of depreciation and once the repayment period of 12 years is over the balance depreciation is to be spread over the useful life. Thus proper tracking of the depreciation charges for each assets is necessary. Hence, the Commission is of the view that depreciation of Rs.399.65 crore now claimed by the Board can be allowed on the condition that the Board maintains the original books of accounts in the manner necessary to charge depreciation as per new CERC norms. As provided in the Tariff Policy, these depreciation rates shall be used now onwards for accounting purpose also. Unless the condition is satisfied, depreciation as per the new norms cannot be granted at all. The practice of estimating depreciation separately different from the books of accounts for the purpose of regulatory accounts shall be dispensed with.

19.Regarding other issues raised such as return on equity and adjustment of surplus, the Board could not provide sufficient grounds warranting review. Accordingly the no review is necessary at this stage.

Orders of the Commission

20.In the light of the above analysis of all the points raised by the Board as well as the objectors, the Commission is of the view that there are no sufficient grounds placed by the petitioner for a review of the Order dated 25-10-2012 on the truing up of accounts of the Kerala State Electricity Board for 2009-10, under Section 94(1)(f) Electricity Act 2003, except on the depreciation. The depreciation of Rs.399.65 crore for 2009-10 is allowed based on the revised estimations given by the Board on the condition that the Board shall maintain the accounts as mentioned in para 18.

21. Accordingly **the revenue gap for the year 2009-10 after truing up of accounts is revised to Rs.739.14 crore instead of Rs.639.43 crore mentioned in the impugned order. The order dated 25-10-2012 is modified to this extent.**

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

**Sd/-
P.Parameswaran
Member**

**Sd/-
Mathew George
Member**

**Sd/-
T.M.Manoharan
Chairman**

Approved for Issue

Secretary