KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

August 27, 2009

PRESENT: Shri. C. Abdulla, Member
Shri. M.P.Aiyappan, Member

Review Petition RP No. 5 of 2009

IN THE MATTER OF
Review in respect of the Order on TP 60 of 2008 on ARR & ERC of KSEB for the year 2009-10

Kerala State Electricity Board ---- Petitioner

ORDER

Background

1. Kerala State Electricity Board filed a Review Petition on 27-5-2009 on the ARR & ERC Order for KSEB for the year 2009-10 dated 17-04-2009. The Commission accepted the petition as RP No.5 of 2009 and fixed hearing on 1-8-2009 and issued notice. The Commission also issued a press note for the information of the public and for obtaining comments. The Commission also placed the petition in its website. Adv. Shri. Sebastain Kurian, Kottayam, the Kerala High Tension and Extra High Tension Industrial Electricity Consumers' Association, M/s Binani Zinc Limited, M/s FACT Limited, M/s MRF Limited, and Shri. Shaji Sebatain representing the Kerala State Small Scale Industries Association filed objections on the petition.

Hearing on the matter

2. In the public hearing held on 1-8-2009, KSEB presented the grounds for the review petition. List of persons who attended the hearing is attached at the end of the Order. According to KSEB many expenses and statutory levies are not allowed in the ARR & ERC for 2009-10 and the Commission did not consider the directions issued by the State Government. KSEB also brought to the notice of the Commission, the Order of Appellate Tribunal for Electricity, New Delhi on Appeal No. 51 of 2008 in support of the review. KSEB pointed out that in the impugned order, decisions on items such as cost of generation, cost of power purchase, interest and financing charges, depreciation, repair and maintenance expense, A&G expenses and other expenses, require review.

3. On cost of generation, KSEB pointed out that, the Commission has approved fuel cost of Rs.4.85/kWh for BDPP and KDPP as against the proposal of Rs.5/kWh by KSEB. The price of LSHS is varying and as on 1-5-2009, the variable cost is Rs.5.61/kWh. KSEB requested that a base price may be fixed for LSHS for approving the cost of generation and the increase in fuel cost in each month over the approved rates may be declared as automatic pass through by specifying a fuel cost adjustment formula. On generation from Central Generating Stations, KSEB contented that the higher availability assumed by the Commission for different stations needs to be reviewed as it resulted in denying power purchase from open market /power exchange at a rate of Rs.7.50/kWh. Further, the rates for the purchase of power from Talcher and Ramagundam stations have been higher than the rates proposed in the ARR due to import of coal.

4. Regarding interest and financing charges, KSEB has stated that the Commission has reduced the interest on fresh loans to Rs.30.40 crore as against Rs. 71.80 Crore proposed. As per the CERC

norms, a normative loan of Rs. 963.97 crore (70% of the capital expenditure of Rs.1377 Crore) could be availed by KSEB, but Rs.764.87 Crore only was proposed in the ARR. According to the Board the reason given by the Commission for reducing the interest is an error in judgment from the part of the Commission.

5. KSEB also objected to the reduction in interest on working capital. As per the CERC norms KSEB is eligible for working capital interest of Rs.108.80 Crore, but the Commission allowed only Rs.5.31Crore. In the case of depreciation, the Commission has allowed the expense based on CERC norms where as KSEB is following rules under Electricity (Supply) Act, 1948. KSEB also contended that the disallowance of Section 3(1) duty and A&G Expenses need a review. According to KSEB, since no norms have been fixed for A&G expenses, no disallowance could be made by the Commission.

6. Regarding repair & maintenance expenses, KSEB stated that as per the annual accounting rules 1985, KSEB has been booking R&M expenses on asset basis and with present accounting system it is difficult to segregate the R&M expenses on functional lines. The total assets of Rs.10791 crore are situated all over the state and it is impracticable to arrive at function wise R&M expenses of these assets. KSEB requested to have R&M expense based on GFA.

7. KSEB also objected to the disallowance of prior period expenses. In the petition, KSEB stated that prior period expenses could not be projected accurately, and the proposal is made based on the past trends. In the case of other debits, KSEB submitted that decision on netting off of dues were taken before the Commission came into existence. KSEB also raised a question whether an issue between the Government and Board prior to the establishment of the Commission can be denied by the Commission in total ?

8. In the case of revenue from sale of power, the additional revenue expected for the month of May 2009 would not be available since, the Commission withdrew the power restrictions vide Order dated 27-4-2009. KSEB also requested to revise the T&D loss target fixed by the Commission.

9. Other participants in the public hearing objected to the petition. The Kerala High Tension and Extra High Tension Industrial Electricity Consumers' Association requested that the Commission may properly assess the maintainability of the review petition under the provisions of the Act. They contended that KSEB continues to use illegal means of accounting which is responsible for inflated numbers and there is absolute lack of cost control despite claims on operating on commercial principle and prudent utility practices. The Board is extremely uncomfortable with public scrutiny and wants to maintain the monopoly status. Regarding cost of generation and generation from central stations, the Association objected to the stand taken by KSEB. Regarding interest on loan, the Association stated that return should be allowed only for the funds from equity contribution and not from depreciation. Regarding depreciation, KSEB fails to follow the directions of the Commission and the case laws presented by the Board is the appeals against original orders passed by SERCs before the notification of National Tariff Policy. In states such as Chattisgarh, Himachal Pradesh and Bihar where SEBs are existing, CERC norms for depreciation is being followed. The Association strongly argued that the section 3(1) duty cannot be passed on to the consumer as per the Duty Act. Further, the legal expenses could be controlled by the KSEB and the reason for admitting the R&M expenses proposed by KSEB should not be accepted. The prior period expenses could be passed on the truing up only. In the case of netting off of dues, KSEB wants to circumvent the provisions of Section 65 of the Act. They have also criticized the

stand taken by KSEB on complying with the directions issued by the Commission.

10. M/s Binani Zinc while endorsing the comments of the Association stated that the Board could not point out any error or omissions in the Original order to qualify for a review, but have simply repeated the arguments made in the original petition. M/s Binani Zinc suggested to adopt the Fuel Adjustment formula for addressing the fuel price risk. Shri. K.K George mentioned that KSEB should have waited till the end of the year for submitting such a petition. Shri Advocate Sebastain Kurien mentioned that KSEB was not publishing the notices in a proper way. Instead of publishing the notices in the dailies having wide circulation, they chose to publish the petitions in dailies having limited circulation to avoid public scrutiny. He also pointed out the lack of enthusiasm in collecting the arrears by the Board. According to him, the Commission should vigorously verify the expenses made by the Board.

11. Representative of M/s Carborandum Universal mentioned that the petition is not maintainable as no grounds for review could be made by the Board. He suggested in order to cover the risk of fuel price, fuel price adjustment formula should be specified. The availability from central stations have been always higher and rain fall for the year is also high. Hence the contentions of the Board on power purchase should be rejected. The stand taken by the Commission over the years on Section 3(1) duty should not be changed. The Small Scale Industries Association stated that the Board is yet to publish the terms and conditions of supply. The increase in legal expenses is mainly due to the fact that KSEB is not conducting the cases properly and huge amounts are blocked in court cases. Other persons present in the public hearing also expressed similar opinions.

Findings of the Commission

12. The Commission considered the petition of KSEB and the arguments made by KSEB and objections on the petition. The Commission in its Order dated 11-3-2008 on Review Petitions on TP 20 and TP 22 of 2006 and in respect of the Order on TP 23 of 2006, has taken a view that review petition has to be qualified within the purview of the powers conferred upon the Commission under Section 94(1)(f), which has to be as per Order 47, Rule 1, of Code of Civil Procedure. The Commission in its original order dated 17-4-2009 had considered in detail different aspects of the issues put forwarded by KSEB such as T&D loss, power purchase, interest & financing charges, Depreciation, A&G expenses, Electricity Duty under Section 3(1) of KED Act, and prior period expenses including netting of dues. The rationale for arriving at each decision was deliberated in the original Order in detail.

13. Since KSEB is insisting on review of the decisions taken on merits, the Commission is of the view that even at the cost of duplication, it may be useful to deliberate on the issues raised in this petition. KSEB based on the price existing as in November 2009 estimated variable cost of Rs.4/kWh for naphtha based stations and Rs.5/kWh for diesel based stations. KSEB has also stated in the petition that price of liquid fuels are fluactuating. Since the cost of fuel was changed, the Commission adopted the prices existing as on March 2009, and approved the cost of fuel for the naphtha based stations as Rs.4.75/kWh (instead of Rs.4/kWh proposed by KSEB), and Rs.4.85/kWh for diesel stations (instead of Rs.5/kWh proposed by KSEB). It is interesting to note that, though KSEB raised the issue of 15ps/kWh reduction in diesel stations, did not mention anything on 85ps/kWh increase approved for naphtha based stations. Hence, it is evident that, by adopting latest available data to reduce the fuel price risk of the licensee, the Commission has acted fairly and reasonably, on which no ground

for review is established by the petitioner. Regarding cost of central generating stations, KSEB submitted in the present petition that rates for Talcher and Ramagundam stations have increased due to import of coal. In ARR & ERC petition for 2009-10, KSEB has stated that they did not anticipate any fuel shortage for Central Generating Stations. Following the submissions made by the Board, the Commission has adopted latest data for liquid fuel, where as no change in fuel cost was considered for Central stations as import of fuel is not required as per the submissions of KSEB. In any case, the change in fuel cost for the approved generation and power purchase is an eligible pass through in the tariff, which could be effected in the same year itself. Hence, as mentioned in the original order, the Commission may specify the fuel adjustment formula regulations to address the fuel price risk of the licensees. Similarly, KSEB could not convincingly substantiate the arguments on the decision to allow the generation based on the average PLF for central stations. The Commission has stated in the Original Order the reasons for disallowing the proposal for power purchase at higher rates, for which no convincing arguments could be made by KSEB for a review.

14. Regarding interest and financial charges, the Commission has considered the past performance of the Board and the status of borrowing as provided by the Board. In place of Rs.587.34 crore additional borrowing proposed by the Board for 2008-09, only Rs.85.15 Crore was borrowed where as the Commission has allowed Rs.293.67 Crore borrowing and corresponding interest. Hence, the opening balance of additional borrowing was also much less than what was proposed by KSEB. Further, in the Original Order, the Commission has noted that the progress of capital investment by the Board is much tardy. Considering the internal sources available including the contribution from consumers, the requirement of additional borrowing could be much less. In the previous years, the Board has claimed interest on additional

borrowing based on much higher estimates, which on an actual basis was much lower. In the public hearing such estimates were objected by the consumers. In any case, if the Board could substantiate reasonably and prudently the requirements of additional borrowing, the interest would be any way a pass through in the consumer tariff. The argument of the Board that the reasoning given by the Commission for reducing the interest is an error in judgment by Commission, cannot be accepted, and shall not be a ground for review. Regarding working capital, while considering the norms, the security deposit available to the Board should also be considered. The question of depreciation and duty under Section 3(1) of KED Act have been addressed in detail in various previous orders and the matter is before the Appellate Tribunal. Hence, no comment is made.

15. In the case of A&G expenses and T&D loss, the Commission has given reason for the decision and KSEB could not provide any additional material or argument to substantiate a case for review.

16. Regarding repair & maintenance expenses, KSEB submitted that, as per the Annual Accounting Rules 1985, and with present accounting system it is difficult to segregate the expenses on functional lines. Further the Board has stated that, the total assets of Rs.10,791 crore situated all around the state and it is impracticable to arrive at the function wise R&M expenses of these assets. According to the Commission, such argument of the Board is a conscious effort on their part to mislead the Commission and the public at large which needs to be addressed seriously. As per Statement 6 of the Annual Statement of Accounts, income and expenses are segregated into functional lines on Generation, transmission, construction, distribution, stores organization and Management and Administration. Further as per Schedule 20, Fixed assets are also segregated on functional lines. Thus, already Assets and Expenses are booked on functional basis, though some

heads such as management & administration, stores, and construction needs to apportioned properly. The fact being so, **the Commission may be forced to proceed against the persons responsible for signing the affidavit in the petition for providing such false and misleading statements**.

17. In the case of prior period expenses and other debits, the Commission has given its detailed reasoning in the original order. KSEB could not provide any new information or establish an error on the face of record which warrants for a review. Further the arguments of the Board that it is difficult to estimate the items under prior period credits/charges substantiates the stand taken by the Commission. Regarding netting of dues, KSEB has raised a question whether an issue between the Government and Board prior to the establishment of the Commission can be denied by the Commission in total ? It may be pointed out that, the netting off proposal put forwarded by the Board pertains to the period upto 31-3-2006, on which the Commission has full authority to interfere. It is to be reminded that, the Order No.G.O.(MS) No.25/02/PD dated 9-10-2002 on the netting off dues by the Government, it is clearly mentioned that it is for 'a period upto 31-3-2002, without any cash transaction by converting that portion of the loan to grant which was earlier ordered for conversion into equity'. However, no further action could be taken thereafter, and in a meeting held on 25-11-2006, it was decided to net off the dues as on 31-3-2006, and Rs.2002 crore payable to the Board would be written off in 5 years. In the netting off proposal, approved by the Government vide G.O. dated 9-10-2002 no write off proposal was made and no burden was placed on the consumers. It may also be pointed out that Minutes of the Meeting held on 25-11-2006 clearly states that approval of Council of ministers is required for the proposal considering the substantial financial implication of the proposal. Para 2 of the minutes of the meeting held on 25-11-2006, states as follows:

"2. Principal Secretary (Power) and Chairman, KSEB stated that the above were important matters involving financial implication for the Board and therefore required the approval of the full board as well as the Government in Power Department. The Principal Secretary (Finance) stated that this finally required the approval of Council of Ministers."

However, the Board is continuously urging to write off the receivable from the Government based on a proposal having no formal approval. Hence, the Commission is inclined to hold the its view taken in its order dated 19-4-2008 that:

"Thus in the nutshell, based on the details furnished, the Board failed to show anywhere in the minutes or orders that the statutes (Electricity Act, 2003 or Electricity (Supply) Act 1948 or any other states in force or repealed) on which Electricity Board and Government relied on for such write offs. More importantly, the proposal in its legality is still in the form of a proposal only as the same was not approved by the Government yet. Hence the Commission is not in a position to accept the proposal of netting off of dues which increases the financial burden of the consumers, the same can be considered on merits only when the formal approval process is completed within the boundaries of existing statutes."

18. In the case of additional revenue expected for the month of May 2009 on account of additional sales, the matter came up after 17-4-2009, the Commission is of the view that it cannot be taken up in the present review proceedings. The Review Jurisdiction shall be invoked only for a limited purpose as laid down in Order 47, Rule 1 of Code of Civil Procedure. KSEB could not convincingly urge any ground for invoking our jurisdiction under Order 47, Rule 1 of Code of Civil Procedure, whereby necessitating the review of the decision taken in the Order dated 17-4-2009.

19. KSEB has consistently urged for fixing norms for approving various expenses. Since KSEB is following annual filing, approval for various expenses by the Commission are on a yearly basis considering the past trends and prudency, usefulness and efficiency norms. The Commission is of the view that multiyear principles need to be introduced to limit the regulatory risk for the licensee. Hence, by accepting the suggestion of KSEB for fixing norms for various items, the Commission hereby directs that a proposal for fixing norms for generation, transmission and distribution separately shall be filed by KSEB within two months, with all supporting details including past 10 years function level expenses and performance. Further, voltage level (including LT), T&D loss figures including the estimates of technical and non-technical losses on a circle wise basis shall also be filed within two months.

Order of the Commission

On hearing both sides and considering the materials placed by the parties, the Commission is of the view that the present petition for review is not maintainable under Section 94(1)(f) of the Electricity Act. The petition shall stand dismissed with above directions.

Sd/-	Sd/-
M.P. Aiyappan	C. Abdulla
Member	Member

Approved for issue

Sd/-
Secretary in charge

List of persons attended the Public hearing held on 1-8-2009 on Review petition on ARR& ERC for 2009-10 filed by KSEB

1. Shri. George Thomas, President, HT & EHT Association
2. Shri. AA Mohammed Nawas, Binani Zinc, Binanipuram
3. Shri.K.K George, Secretary, HT&EHT Association
4. Shri. PS Iyer, HNL Kottayam
5. Shri. G. Venugopalan, HOCL, Kochi
6. Adv. Sebastain Kurien, Kottayam
7. Shri. AR Satheesh, Carborandum Universal
8. Shri. Ahammaed Kunju, WIP Limited, Valappattanam
9. Shri. Shaji Sebastain, KSSIA
10. Shri. S.K. Unnikrishanan Nair, Ernakulam
11. Shri. G. Mohan kumar, FACT, TVM
12. Shri. MC. Vijayakumar, Excel Glasses, Alleppey
13. Shri.Girija Shankar, Gro Enterprices, Kochi
14. Shri Sajith, TTP Limited, Trivandrum
15. Shri. Xavier, Kuruvithadam Associates
16. Shri. Mathew George, Ernakulam
17. Shri,. George Mathew Ernakulam
18. Shri. Renjith Jacob, Appolo Tyres, Perambra
19. Shri Pradeep Kumar, MRF Limited, Kottayam
20. Shri. Kurien Varghese, KSEB
21. Shri. V Ramesh Babu, KSEB
22. Shri. PV Sivaprasad, KSEB