

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

August 12, 2009

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

Review Petition RP No. 4 of 2009

IN THE MATTER OF

Review of the Order on OP 1 of 2009 on Truing up of Accounts of KSEB
for the year 2005-06

Kerala State Electricity Board

---- Petitioner

ORDER

Background

1. Kerala State Electricity Board (hereinafter referred as KSEB or the Board) filed a Review Petition on the Order dated 24-4-2009 of the Commission on the Truing up Petition for the year 2005-06 (Petition OP.No.1/2008) on 12-5-2009. The Commission accepted the petition as RP No.4 of 2009, and issued notices for hearing on 23-6-2009 at the Commission's Office, Thiruvananthapuram. The Commission issued press release for the information of the general public for inviting comments on the review petition. The Commission also placed the petition in its website. The Commission sought clarifications to KSEB on the petition on issues such as 20 paise subsidy, interest on section 3(1) duty etc., vide its letter dated 26-6-2009. KSEB vide letter dated 27-6-2009 provided the details sought during the public hearing and further by letter

dated 3-7-2009 furnished the clarifications sought by the Commission vide letter dated 26-6-2009. The Kerala High Tension and Extra High Tension Industrial Electricity Consumers' Association and M/s Binani Zinc Limited filed objections on the petition during the public hearing. The list of persons attended the public hearing is given at the end of this order.

Public Hearing on the matter

2. In the public hearing held on 23-6-2009, Shri. Arunagireeswara Iyer, Financial Advisor, KSEB presented the grounds for the review petition. According to him, there is an error apparent on the face of record which calls for review of the impugned Order as the Commission did not give an opportunity to the Board before disallowing the expenses. The decision of the Commission on matters such as disallowance of power purchase on account of excess T&D loss, provision for interest on security deposits, provision for bad and doubtful debts, provision for electricity duty, employee costs, etc., was erroneous and hence is to be revised. KSEB also produced the decision of APTEL on Appeal No. 51 of 2008 in support of the argument.
3. The Board contented that the Commission allowed only Rs.3.26 crore on interest on security deposits against Rs.32.74 crore provided by the Board on the reasons that actual payment of security depots for the year 2005-06 was only Rs.3.26 crore. According to KSEB, since accrual method of accounting is being followed, allowing actuals is not acceptable. Regarding bad debts, the Commission allowed only Rs.24.20 Crore against the provision of Rs.129.56 crore, which was based on the remarks of the C&AG. The Board gave the reasoning based on age of receivables for such a high provision for write off in the petition which was not

considered. The Board also contented that in the prior period expenses, the interest on security deposit (Rs.28.72 crore) and interest on belated payment of section 3(1) duty from 1995-96 to 2004-05 (Rs.173.14 Crore) should also be allowed. In the case of revenue from tariff, the Board stated that the revenue from tariff of Rs.3170.79 Crore for 2005-06 is the demand raised at normal tariff i.e., without the rebate of 20 paise allowed to domestic and commercial consumers from January 2006. However, the Commission treated Rs.15.64 Crore as additional income on account of subsidy. The Board also stated that the disallowance of employee cost on account of other allowance/overtime/holiday wages etc., and repair and maintenance expenses, and section 3(1) duty under Administration and General expenses etc., are also to be reviewed.

4. The Kerala High Tension and Extra High Tension Industrial Electricity Consumers' Association objected to the contentions of the Board. The Association stated that it is not true to say that Commission did not seek information from the Board before taking the decision. The Association challenged the argument of the Board that utilities in other states have two sets of accounts, in such case the Association demanded the Board to prepare two sets of accounts since required regulations have been notified for the purpose. They also objected to the argument of the Board that in a rapidly changing environment it is difficult to make accurate estimate of expenses. According to them, the Board as a licensee and a commercial entity is duty bound to do such exercises before the Commission. Based on the data presented by the Board, more than 41% of the receivables are more than 3 years old. In such a situation, they questioned the claim of the Board that they function along 'commercial principles' They sought the details on arrears and the recovery made so far. They requested to reject the

contentions of the Board on interest on security deposits. Regarding interest on electricity duty payable, the Association submitted that the question of payment of interest does not arise at all since duty itself has been disallowed by the Commission. The Association stated that the Board could not curtail the employee costs, and an organization which is unable to control its input cost cannot be regarded as functioning along commercial principles. They supported the stand taken by the Commission in curtailing the expenses such as A&G, which are unreasonably high. In regard to reduction in T&D loss, they presented the data from 1990-91 onwards, which shows that T&D loss in the year 2000-01 was only 17.21%, which increased to 30.76% in 2001-02. Thus they sought to withdraw the claims of the Board that 'earnest efforts are being made in the reduction of T&D Loss which resulted in savings in power purchase cost'. M/s Binani Zinc Limited also filed similar objections.

Analysis and Findings of the Commission

5. The Commission considered the petition filed by KSEB and the arguments and the written submissions of the Board and the objectors. Based on the arguments made by the petitioner and the objectors the Commission considers the following issues.
 - a. Whether adequate opportunity was given to the Board for presenting the matter ?
 - b. Whether there is error apparent in the impugned order which calls for modification in terms of allowing T&D loss, interest and financing charges, Section 3(1) duty, A&G expenses, Employee costs, revenue from tariffs, etc., ?
6. Regarding review of the Order, the Commission has taken a consistent stand in exercising the powers of review jurisdiction, under Section 94(1)(f) of the Electricity Act. However, the Board

has argued that the petition is maintainable as there is error apparent and sufficient details were not called for by the Commission before taking the decision. However, the Commission is of the view that sufficient opportunity was given to the Board in the Public hearing held on 19-8-2008 and the Commission has also sought detailed clarification on various issues vide letter dated 2-10-2008 before pronouncing the impugned order. Further, in the present proceedings also, the Board had sufficient opportunity to substantiate its claims, since the Commission sought details on the claims of the Board. Hence, the Commission is of the view that the Board could present their points in detail and the Commission received adequate information for taking an informed decision on the petition. Hence, the argument of the Board that sufficient opportunity was not given is not sustainable.

7. Regarding the second issue, each item may be taken up separately in line with the power under review jurisdiction. In the case of disallowance of excess T&D loss, the Board could not produce any new material to substantiate that the decision taken in the original order is erroneous. The Commission has taken conscious decision to disallow the excess power purchase on account of excess T&D loss. The Commission in the order dated 24-4-2009 had concluded that the Board could not achieve the T&D loss target fixed by the Commission mainly on account of lack of performance of the Board due to the delay in replacement of faulty meters, tardy capital expenditure etc., for which consumers shall not be punished. The disallowance of power purchase cost along the principles adopted by APTEL, need not be construed as penalty, but a measure to pass on the prudent cost to the consumers. The objectors have also expressed similar opinion. Further, the claim of the Board that the Commission has fixed unrealistic targets without consultation with the Board, cannot be maintainable at all.

Since the inception of regulatory regime in the State, the Commission has been continuously directing the Board to study and report on T&D loss at voltage level and technical/commercial loss separation, which the Board could not provide even today. In a State having 100% metering for the consumers and at the 11 kV feeder level, as claimed by the Board, realistic estimation of T&D loss is not an uphill task. Only the Board could be held responsible for not carrying out proper studies on T&D Loss even after repeated directions by the Commission. There were many opportunities and funding mechanisms available to the Board on soft terms to carryout such studies, such as APDRP, Energy Efficiency measures of Govt of India, which were not utilized effectively. As against the claim of the Board that loss reduction targets are proposed based on actuals in the past, investment proposed and other efforts, the Commission is of the view that whatever loss reduction proposed by the Board themselves could not be achieved in the past, even though the loss reduction targets proposed by the Board in most of the years have been accepted by the Commission for truing up. The Board could not produce any additional materials to make a case for the review of the decision taken in the original order on this matter.

8. In the case of interest on security deposits disallowed on account of excess provision for the year 2005-06, the Commission has stated the reasons in the original order itself. The Board cannot profit on such items as the interest on security deposits are a complete pass through in the consumer tariff and whatever actual amount given as interest is allowed in the tariff. The Board should have completely credited the interest to the consumers' account to qualify for a pass through in the tariff. It is highly improper to have higher provision on the one side and spending less on the other, which may result in higher rate of return than the allowable rate to

the licensee, which is not contemplated under the Act. The same is the case with provision of interest on security deposits under prior period expenses. In support of the claim, the Board has placed the letter 19-8-2005 of the Commission to provide for interest during 2004-05. However, it was amply made clear in the original order that the provision would be necessary only from 1-4-2005 onwards and the provision of Rs.28.72 Crore for the year 2004-05 is unnecessary.

9. In the case of bad debts under the head other debits, the Commission has made a detailed analysis before the decision. The Commission in the Order on ARR & ERC for 2005-06 has stated the method of allowing bad debts. Further, the provision given in 2005-06 is unreasonably higher than (10.3%) the previous years. If the Board is allowed to write off the receivables, there may not be any concerted effort to collect the arrears. Further it is an easy way through to reduce the receivables, one of the benchmarks for performance evaluation. The Board has given a table showing the agewise receivables, however, there is no explanation as to how such figures are arrived. In order to qualify for an expense to be passed on, complete details have to be provided. As per the provision, the 'bad debts' are to be written off. Thus, it is to be made sure that the receivable is bad and non-recoverable and hence is to be written off. Further, all efforts should also have to be made to recover the demand in time. Further, if the Board is writing off the receivables such a fast rate of 10.3%, within no time the total receivables would be erased from the books. Considering the above, there is no scope for review on the matter and the prayer is rejected.
10. Regarding the interest on section 3(1) duty for the period from 1995-96 to 2004-05, the Commission had held that the interest

due to non-payment of duty cannot be passed on to the consumers as it is the duty of the Board to provide for the statutory levies on time. However, in the present petition, the Board claimed that payment of duty was under dispute since 1988 and the Government on various occasions have exempted KSEB from payment of duty. The Board also produced a copy of the minutes of the meeting held with Government of Kerala on 25-6-1993. In the meeting it was decided to keep the payment of section 3(1) duty for the imported power to be kept in abeyance till the final decision of Hon. Supreme Court in the Civil Appeal No.3112 of 1990 between State of AP and NTPC & Ors. Later, based on the final judgment of the Hon. Supreme Court, Government of Kerala communicated to the Board vide letter dated 24-8-2004 that electricity duty under section 3(1) is payable for imported power. Hence, according to the Board, default in payment of electricity duty for the imported power is not a deliberate action from the part of the Board *but it is a collective decision taken by the Board, Government and Chief Electrical inspector in the meeting held on 25-6-1993*. Though the C&AG has recommended to provide penal interest at the rate of 18%, the Board provided only 9% on the duty outstanding, which is the rate of interest paid for Government loans. The Board further gave the reason that total receivable from the Government is Rs.4485 Crore whereas the duty payable is only Rs.1692.01 Crore to substantiate the non-payment. In view of the above, the Board requested for allowing the interest on electricity duty.

11. In the petition, KSEB stated that the delay in payment of duty “*is a collective decision taken by the Board, Government and Chief Electrical Inspector vide minutes of the meeting held on 25-06-1993*”. The Board further stated in the petition that Govt. vide letter dated 24-8-2004 had clarified that duty under Section 3(1) on imported energy could be levied. Based on this premise, the Commission

sought clarification from the Board vide letter dated 26-6-2009 whether KSEB had raised this important matter involving Rs.173.14 Crore to the Govt/CAG for exempting penal interest on duty for the period 1995-96 to 2004-05 for which demand was not clearly ascertained and to provide all communications by the Board to Govt and C&AG in this matter. In reply, KSEB vide letter dated 3-7-2009 stated that in the Audit report for 2001-02 C&AG had remarked that section 3(1) duty is payable from 1995-06 to 2001-02. In the Audit report for 2002-03, Board has included Rs.165.57 crore in the accounts as the opinion of the Government was also in line with C&AG. The Board further stated that there were differences in the books of Chief Electrical Inspector and the Board regarding the quantum of electricity duty payable under section 3(1). According to the Board in order to settle the dispute between KSEB and Chief Electrical Inspector, the Government endorsed the stand taken by the CEI that the Board is bound to pay duty on imported power and communicated the matter vide letter dated 24-8-2004. Hence the Board contented that it cannot be construed that since the final decision on the matter was made by the Government vide letter dated 24-8-2004 duty on imported power is due from only that date. In order to support the claim the Board has given following letters:

1. Letter no. 1017/C2/97/PD dated 21-4-1998 of Government of Kerala
2. Letter No.PL1/III/97-98 dated 4-6-1998 of Member (A), KSEB
3. Letter No. PL1/III dated 31-5-1999 of FA, KSEB
4. Letter No. PL1/III dated 19-8-2000 of Member (F), KSEB
5. Letter No.5358/02/99/PD dated 9-10-2000 of Government of Kerala
6. Letter No. Annual Accounts/Duty3(1)/2000-01 dated 16-12-2000 of Member (F) KSEB

7. Letter No. TC/SL/Reforms/2000/2 dated 10-11-2000 of Secretary, KSEB
8. Letter D.O No.21791/PU.A4/2000 Fin DATED 19-5-2001 from Government of Kerala
9. Letter No.5358/C2/99/PD dated 20-4-2001 of Government of Kerala
10. Letter No.PL1/111/ dated 18-7-2001 of FA, KSEB
11. Letter No. Annual Accounts/Duty3(1)/00-01 dated 23-5-2001 of Member (F) KSEB
12. D.O.No.PL1/III/Duty dated 15-6-2002 of FA, KSEB
13. D.O. Letter No. 21791/PU A4/2000/Fin dated 20-3-2002 of Government of Kerala

All the above letters pertain to the request of the Board and reply of the Government for converting the section 3(1) into loan and the dispute on the amount of duty payable.

12. After having examined the matter in detail based on the information made available before the Commission and the clarifications sought, the Commission is of the view that the issue of payment of duty under section 3(1) was known to the Board and payment was not effected by the Board by its own choice, which attracted penalty. Even if the question of payment of duty is examined separately for the imported power and internal generation, it is amply clear that only in the case of imported power there was lack of clarity, which was cleared vide letter dated 24-8-2004. The circumstances leading to the matter based on the material submitted is as follows: Payment of Section 3(1) duty was exempted by the Government till 1994-95. Since then even after repeated requests, Government did not exempt the Board from payment of the duty. The Board was continuously booking section 3(1) duty for internal generation in its books, for which no payment was made even after directions from the Government to effect

payment and the arrears kept on mounting. In the mean time the dispute arose among the parties whether duty is payable for the imported power or not. In the meeting held on 25-6-1993, as per the version of the Board, a collective decision was taken by the Board, Government and the Chief Electrical Inspector to keep the duty on imported power in abeyance. However, Board has taken up the matter with the Government to convert the section 3(1) duty into loan and equity. The letters as mentioned above produced before the Commission shows such correspondence. The Government in the letter dated 20-4-2001 conveyed to the Board that conversion of duty as loan and then equity cannot be agreed to. Further vide letter dated 24-8-2004, the Government conveyed that duty is payable on imported power also.

13. Thus, based on the submissions of the Board itself, it is clear that it was known to the Board that duty was payable. If the claim of the Board that delay in payment of duty is a collective decision taken by the Board, Government and Chief Electrical Inspector, naturally a question arises, why did the Board not claim exemption from the Government for penal interest on the duty for imported power. This being the case, the Commission is of the view that a clear picture on duty for imported is available as per the letter of 24-8-2004, and there is a claim for the Board to request before the Government for exemption from penal interest on the portion of interest on the duty levied from the imported power. As a commercial entity, the Board should have raised this to the Government. On the other hand, if the liability of duty on the imported power was made known by the Government either through Chief Electrical Inspector or other sources, earlier than 24-8-2004, it was the duty of the Board to provide for such payment, and non-payment is entirely attributable to the Board only. Based on the submission given by the Board it is revealed that the Board

has recognised the duty for imported power including arrears in the years 2003-04 and 2004-05. Further vide letter dated 3-7-2009, the Board has stated that *'it cannot be construed that since the final decision on the matter was made by the Government vide letter dated 24-08-2004, duty on imported power is due only from that date'*. Thus the Board was aware of the commitment on payment of duty for internal generation as well as for the import of power. Further, the Board should have taken into consideration the provision under section 8 of the Kerala Electricity Duty Act 1963, which provides for penal interest of 18% for non-payment. As an entity functioning on commercial principles and following commercial accounting rules, it is a basic accounting premise that it shall anticipate *all expenses and losses but no income unless it is realized*. Hence, the view taken by the Commission in the Order dated 24-4-2009 is fully endorsed by the additional submissions made by the Board.

14. In the Original Order the Commission has noted that *"In the previous years even though C&AG made observation on provision of interest on account of non-payment of duty, the Board has been consistently taking a position that subsidy payable by the Government is not paid on time and duty could not be paid to the Government. However, suddenly in 2005-06, the Board has made a provision of Rs.173.14 crore on this account. This financial commitment is purely on account of violation of statutory provision by KSEB. Had the Board promptly paid the duty to the Government, this burden could not have been passed on to the consumers"*. Hence, the willful and conscious action of the Board for non-payment of duty to the government has resulted in additional commitment of Rs.173.14 Crore, for which the consumers could not be held liable. It is pertinent to note the argument of the objectors that if the duty itself is not admitted how can the interest

be allowed to pass on to the consumers ? Hence, based on the information submitted, Commission is not in a position to accept the arguments of the Board to review the stand taken in the original order.

15. Regarding revenue from tariff, the Board has contended that the Commission has disallowed Rs. 15.64 Crore on account of 20 paise subsidy given to domestic and commercial consumers, which was already included in the revenue from sale of power. The Commission has sought clarification on the matter as the average revenue from domestic and commercial consumers for the year 2005-06 was decreased by about 5 paise as per the audited accounts. The Board in its reply stated that reduction in average realization is due to increase in domestic consumers in the lower slabs compared to others. However, the Board did not explain the reason for reduction in average tariff of commercial category. Though the explanation given by the Board on reduction in average tariff is not fully convincing, considering the fact that Board has accounted the subsidy allowed to the consumers and demand for sale of power separately in the bill, the argument of the Board is accepted and the decision of the Commission to increase the revenue from sale of power by Rs.15.64 crore and revenue surplus for the year 2005-06 is modified to that extent.
16. The contentions on account of employee cost and A&G expenses have been considered in detail in the original order and no additional material was placed before the Commission to make a ground for review.
17. In the case of repair and maintenance expenses, the argument of the Board that it is a herculean tasks to assess the physical and financial plan for R&M works is difficult to accept in the case of a commercial utility like the Board. If such expertise is not available

in the Board, assistance from outside should have been resorted. In the public hearing consumers have been also objected to the stand taken by the Board. The Commission consistently maintained that without proper plan of action no effort could be made to control expenses. Hence, such arguments cannot be accepted at any count.

Order of the Commission

18. On hearing the parties and considering the materials produced before the Commission, the Commission hereby disposes the petition and orders that review of the Order dated 24-4-2009 is allowed to the extent provided in this order. Accordingly, the revenue surplus for the year 2005-06 would be Rs.181.36 crore as against Rs.197 Crore mentioned in the Original Order, which shall be adjusted against the revenue gap of Rs.335.30 Crore for the year 2009-10.

Sd/-
M.P. Aiyappan
Member

Sd/-
C. Abdulla
Member

Approved for issue

Sd/-
Secretary (in charge)

List of persons attended the Public hearing held on 23-6-2009

1. George Thomas, President, HT & EHT Association
2. Sabu Mohan, M/s Binani Zinc Limited
3. A R Satheesh, Carborandum Universal Limited
4. K K George, Secretary, HT & EHT Association
5. M S Giri, CMRL Edayar, Aluva
6. G. Venugopal, HOCL, Kochi
7. Jayaraman C, BPCL, Kochi Refinery
8. John Mathews, HNL, News print Nagar
9. Arunagireeswara Iyer, FA, KSEB
10. Johnson Peter Kallada, CE, KSEB
11. Ramesh Babu V, DCE, KSEB
12. PV Sivaprasad, EE, KSEB