

# KERALA STATE ELECTRICITY REGULATORY COMMISSION

## THIRUVANANTHAPURAM

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

**Date : September 1, 2008**

In the matter of

**Tariff revision Order w.e.f 1-12-2007 revising tariff for sea food processing units from LT industry to LT VII A Commercial category without any proposal**

**1. DP No. 39 of 2008**

M/s.Freeze Engineering Industries Pvt. Limited, Cochin - Petitioner  
Vs  
Kerala State Electricity Board - Respondent

**2. DP No.40 of 2008**

M/s. Aswin Associates, Cochin - Petitioner  
Vs  
Kerala State Electricity Board - Respondent

**3. DP No.41 of 2008**

M/s. Ameena Enterprises Pvt Limited, Chandroor - Petitioner  
Vs  
Kerala State Electricity Board - Respondent

**4. DP No.42 of 2008**

M/s. Fathima Sea Foods, Kochi -2 - Petitioner  
Vs  
Kerala State Electricity Board - Respondent

**5. DP No.43 of 2008**

Shri.Shajahan, M/s Premier Marine Foods - Petitioner  
Vs  
Kerala State Electricity Board - Respondent

**6. DP No.44 of 2008**

Shri. Abdu, Consumer No.8565, Chandroor - Petitioner  
Vs  
Kerala State Electricity Board - Respondent

7. DP No.45 of 2008

M/s. Paragon Sea Foods, Aroor

- Petitioner

Vs

Kerala State Electricity Board

- Respondent

8. DP No.46 of 2008

M/s. International Freezfish Exports (Unit-II), Aroor

- Petitioner

Vs

Kerala State Electricity Board

9. DP No.47 of 2008

M/s. Fazeela Enterprises, (Con.No.10705) Alleppey - 47

- Petitioner

Vs

Kerala State Electricity Board

- Respondent

10. DP No.48 of 2008

M/s Prime Fisheries Pvt Limited, Kochi -5

- Petitioner

Vs

Kerala State Electricity Board

- Respondent

11. DP No.49 of 2008

M/s Mangala Marine Exim Pvt Limited, Cochin

- Petitioner

Vs

Kerala State Electricity Board

- Respondent

12. DP No.50 of 2008

M/s Brony Sea Foods, Kollam

- Petitioner

Vs

Kerala State Electricity Board

- Respondent

13. DP No.51 of 2008

M/s Vayalat Exports, Kochi-6

- Petitioner

Vs

Kerala State Electricity Board

- Respondent

14. DP No.52 of 2008

M/s International Freezfish Exports (Unit-1),

Con. No.9174, Aroor

- Petitioner

Vs

Kerala State Electricity Board

15. DP No.53 of 2008

M/s Capithan Exporting Co. Unit II, Kollam

- Petitioner

Vs

Kerala State Electricity Board

- Respondent

<u>16. DP No.54 of 2008</u>	
M/s Capithan Exporting Co, Kollam	- Petitioner
Vs	
Kerala State Electricity Board	- Respondent
<u>17. DP No.55 of 2008</u>	
M/s International Freezfish Exports (Consumer No.16364), Aroor	- Petitioner
Vs	
Kerala State Electricity Board	- Respondent
<u>18. DP No.56 of 2008</u>	
Shri. Abdul Nazer, M/s Sonia Exports, Alappuzha	- Petitioner
Vs	
Kerala State Electricity Board	- Respondent
<u>19. DP No.57 of 2008</u>	
M/s Toyo Sea Foods, Kochi -5	- Petitioner
Vs	
Kerala State Electricity Board	- Respondent
<u>20. DP No.58 of 2008</u>	
M/s Accelerated Freeze Drying Company Limited, Alappuzha	- Petitioner
Vs	
Kerala State Electricity Board	- Respondent
<u>21. DP No.59 of 2008</u>	
M/s Geo Seafoods, Cochin-6	- Petitioner
Vs	
Kerala State Electricity Board	- Respondent
<u>22. DP No.60 of 2008</u>	
M/s Sea Bay Exports, Aroor	- Petitioner
Vs	
Kerala State Electricity Board	- Respondent
<u>23. DP No.61 of 2008</u>	
M/s Relish Foods, Alleppey	- Petitioner
Vs	
Kerala State Electricity Board	- Respondent
<u>24. DP No.62 of 2008</u>	
M/s Abad Fisheries, Kochi -2	- Petitioner
Vs	
Kerala State Electricity Board	- Respondent

25. DP No.63 of 2008

M/s Relish Custom Foods, Alleppey - 5 - Petitioner  
Vs  
Kerala State Electricity Board - Respondent

26. DP No.64 of 2008

M/s Freeze Exim, Alappuzha - Petitioner  
Vs  
Kerala State Electricity Board - Respondent

27. DP No.65 of 2008

M/s Chemmeens (Regd), Cochin - Petitioner  
Vs  
Kerala State Electricity Board - Respondent

28. DP No.66 of 2008

M/s Girija Shankar, M/s Gro Enterprises, Cochin - Petitioner  
Vs  
Kerala State Electricity Board - Respondent

29. DP No.67 of 2008

M/s Vanchinad Agencies, Cochin - Petitioner  
Vs  
Kerala State Electricity Board - Respondent

30. DP No.68 of 2008

1. M/s Sea Food Exporters Association of India, Cochin  
2. M/s Sreevas Export Enterprises (P) Limited, Cochin - Petitioners  
Vs  
Kerala State Electricity Board - Respondent

31. TP No.54 of 2008

M/s ABM Marine Products, Kochi - Petitioner  
Vs  
Kerala State Electricity Board - Respondent

*Counsel for Petitioners*

DP No. 39, 40, 42, 44,45,46,47,48,  
49,50,51,52,53,54,55,57,58,60,  
61,62,63,64,65,67 : Shri. Blaze K. Jose, Advocate  
Shri. Sunil Kumar K.K. Advocate

DP No. 41, 43, 56, 66 : Shri.Ziyad Rahman, Advocate

DP No.59 : Shri. Tom K Thomas, Advocate

DP No. 68 : Shri. Bechu Kurian Thomas, Advocate  
Shri. Paul Jacob, Advocate

Counsel for Respondents : Shri. B. Reghu, Chief Engineer (C&T)  
Shri. V. Ramesh Babu, Dy. CE (TRAC)  
Shri. S. Prasad, AEE (TRAC)  
Shri. Radhakrishna Kumar (TRAC)

## ORDER

The facts leading to the petitions are as follows:

1. The petitioners are sea food processing units, aggrieved by the notice and the bill issued by KSEB citing the Tariff Order effective from 1-12-2007 shifting the petitioners from LT IV industrial to LT VII (A) Commercial. The petitioners approached the Hon. High Court of Kerala. The Hon. High Court, issued an interim relief by allowing the petitioners to remit the tariff under LT IV till the matter is finally disposed off by the Commission and directed them to approach the Commission.
2. Accordingly petitioners filed petitions DP No. 39/2008 to DP No.56/2008 (17 nos) before the Commission as per KSERC (Conduct of Business) Regulations, 2003. The Commission admitted the petitions and fixed hearing on 17-4-2008 and communicated the matter to the petitioners and KSEB. KSEB vide their letter dated 10-4-2008, requested the Commission to postpone the hearing and the last date of filing of objections to 30-4-2008. On 17-4-2008, a preliminary hearing was held and the matter was further posted on 15-5-2008. KSEB vide letter dated 7-5-2008 filed objections on the petition. On 15-05-2008, representatives of the petitioners sought adjournment of the hearing stating the reason that the objections filed by KSEB was received only two days back and sought time for filing rejoinders. The Commission after considering the matter directed the petitioners to file their rejoinders within 10 days and posted the matter for hearing on 31-5-2008. In the meantime, several other petitioners including that of M/s. Sea Food Exporters Association of India approached the Commission and filed petitions on the same matter. The rejoinders to the objections of KSEB were filed by the counsels of petitioners except for petition

TP No.54/2008. On 31-5-2008, Adv. Sunil Kumar, who represented 24 petitioners, sought further extension of time for hearing. The Commission after considering the objections raised by KSEB, directed to post the matter for final hearing on 7-6-2008. The petitioners presented the matter in detail on 7-6-2008. As KSEB sought time for filing detailed objections, the matter was further adjourned to 21-6-2008.

3. Petitioner in DP No.66 of 2008 M/s Gro Enterprises is a LT consumer, engaged in the business of cold storage of seafood and petitioner in DP No.58/2008, M/s Accelerated Freeze Drying Company, is a HT consumer engaged in manufacture of freeze dried ready to eat seafood, vegetables, spices etc. All other petitioners claimed to be engaged in seafood processing having LT connection. Since the matters in all these petitions are common, the Commission decides to dispose these petitions by a common order.

**Hearing on the matter:**

4. The matter was heard by the Commission on 7-6-2008. Advocates Shri. Blaze K Jose and Shri. Sunil Kumar appearing for 24 petitioners stated that the petitioners approached the Commission for a review of the Tariff Order issued by the Commission effective from 1-12-2007, for the main reason that petitioners were categorised under LT VII (A) Commercial from LT IV industry, without giving reasonable opportunity of being heard. They further submitted that Board in its tariff revision proposal had proposed re-categorization of many consumer groups from industrial to commercial category. The Commission decided in the Tariff Order that the categories which are apparently commercial, but presently categorized in industrial, to be shifted to commercial category. Hence, categories such as freezing plants, cold storage, audio/video/CD recording/ duplication units and marble cutting units were shifted from LT IV to LT VII (A). The petitioners contented that, while re-categorizing, KSEB and the Commission omitted to consider industrial units which are purely doing manufacturing process having freezing plants and cold storages which cannot be segregated from their manufacturing activities. The units have registrations under Factories Act 1948, Export Inspection Council under the Ministry of Commerce and Industry, and MPEDA. The processes of the petitioners include procuring raw materials (sea foods), washing, dicing, beheading, peeling,

deveining, grading, filth washing, stuffing, filling in trays, freezing, glazing, packing and storing in cold storage for the purpose of exporting. Several machineries such as hydraulic motors, compressor motor, tunnel blower motors, condenser and evaporators, flake ice machine pump, fish cutting machine, trolley blower motors, condenser pump, condenser blowers, compressor motor pump, lab equipments like incubators, heater, oven, fridge etc. are used in the process. The freezing plant and cold storage are integral part of the industry. In the tariff existed prior to the revision, the petitioners were classified under the headings 'prawn peeling unit', 'freezing plant' and 'cold storage' under LT IV. The petitioners use electricity for the purpose of processing raw material which involves manufacturing process, for which freezing and storing are necessary till the product reaches the ultimate user. The petitioners do not freeze or store the raw materials on a commercial basis and no commercial activity is going on in the petitioners' units. Further the activities of freezing and storing cannot be separated from other activities in petitioners' units. The petitioner also brought the example of units such as Ice cream manufacturing, meat products, pharmaceuticals etc., where freezing and cold storages are used in the process of manufacturing but not brought under commercial category for the reason that they have freezing plant or cold storage. The Electricity Act 2003 does not contemplate classification on the basis of the equipment.

5. The petitioners contended that, in 2007, the Commission issued a draft Schedule of Tariff inviting objections, wherein petitioners' units were classified under 'prawn peeling units', 'freezing plants' and 'cold storage' and hence no objections were submitted before the Commission. However, when the tariff revision order was published, to the surprise of petitioners, the category of 'seafood processing units', 'freezing units' and 'cold storage' units were classified under LT VII (A) for which there was no proposal and no opportunity was given to them to react the proposal or report. Further, the matter should be governed by Section 62(3) of the Electricity Act, 2003, in which, purpose for which electricity is used, is to be considered.
6. Petitioner further argued that the KSEB has recognized the term 'factory' as defined in Factories Act 1948, in its 'Terms and conditions of Supply, 2005'. As per Section 2(k) of the Factories Act which defines manufacturing process as:

- “2(k) (i) making , altering, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal or  
(ii) Pumping oil, water sewage or any other substance or  
(iii) Generating, transforming or transmitting power or  
(iv) Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding or  
(v) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels or preserving or storing any article in cold storage”

Therefore the activities of the petitioners squarely falls within the scope of factory there by they engage in industrial activity and not commercial activity.

7. MPEDA and the Inspector of Factories and Boilers considered 'seafood processing' as industry. It is also to be noted that 'ice factories' and 'prawn peeling' units which are only having a part of the activity of that of petitioners' units are retained under LT IV Industry and categories which perform manufacturing activities similar to that of petitioners are categorized as commercial. In the case of HT commercial, the difference between industrial and commercial tariff is much lower compared to corresponding LT categories. On these arguments, the counsel for the petitioners prayed that the contentions of the petitioners may be accepted and requested the Commission to keep in abeyance the implementation of tariff order till final decision is taken on the points.
8. M/s Accelerated Seafood Drying Company limited, a HT consumer also challenged the tariff order dated 26-11-2007. Petitioner procures seafood, carry out activities such as storing the same in chilled form, dicing, cooling, flavouring and blast freezing and then freeze drying. According to the petitioner, classifying the petitioner's seafood processing units under HT IV Commercial based on the M/s Baby Marine case is illegal, arbitrary, unreasonable and violative of fundamental principles of natural justice and



hence unsustainable. Further the petitioner argued that in the Tariff Order, the Commission had not separately classified the seafood processing plants, and therefore it is to be decided that under which tariff it should fall. Petitioner also narrated the processes carried out in the unit to substantiate that the unit falls under industrial category. The petitioner also stated that in the similar case as that of M/s Kailas Cashew, the APTEL has categorically classified cashew packing under industrial category. The petitioner requested to reconsider the case of placing the petitioner's units under HT IV commercial category and with a notice to the petitioner if necessary review the tariff order and placing them under HT I industrial.

9. Adv. Shri. Bechu Kurian Thomas appeared for M/s.Sea Food Exporters Association of India and M/s.Sreevas Export Enterprises Private Limited, stated that the petition is filed as per the direction of Hon. High Court in W.P(C) 10363/2008, as objection to KSEB charging LTVII (A) on the ground that sea food processing units have cold storages and/or freezing plants. The main objection against the categorization of sea food processing units under commercial category is that the seafood processing units carryout processing/ manufacture and is an industry and it should be categorized under industrial category for tariff fixation. There is no separate category 'Seafood processing' included in the LT tariff categorization, KSEB is attempting to impose commercial rates on seafood processing by putting them under 'cold storages' or 'freezing plants'. Seafood processing plant will not change its nature of activity as 'commercial' merely on the presence of freezer or cold storage. It is unconstitutional to treat equals and unequals together. The advocate also submitted a report prepared by the consultant Shri. P.H. Abdul Rahseed, retired Chief Engineer, KSEB, detailing the processes involved in Seafood processing. He also pointed out that in other States also seafood processing units are categorized as industrial and there is no special situation existing in Kerala. While fixing tariff, Section 61(d) and Section 62(3) should also be borne in mind. Seafood processing units have many electrical items like hydraulic motors, compressor motor, conveyor systems, compressor and evaporators, compressor motor pump, lab equipments, water pump, cooling water tower fan, air curtain container power plug, exhaust fan, water pumps, ice crusher, plate freezer, grating machine shrink warp machine, freezing plants, cold storage plant etc., According to the Petitioner, KSEB provided connection for not to

operate a 'freezing plant' or 'cold storage' alone, but to operate all the above equipments.

10. The definition of 'manufacturing' by KSEB is to be taken from Factories Act, as Terms and Conditions of Supply defines the word factory which by referential incorporation incorporates the definitions of the Factories Act. Factories Act defines the term 'manufacture' which includes washing, cleaning, preserving or storing any article in cold storage etc. Since Seafood processing includes manufacturing plant and hence is to be considered as industry. According to the petitioner, the nature of supply for 'prawn peeling' and 'marine processing units' remain the same. He stated that the prawn peeling units are retained in the industrial category while other sea food processing units are taken out of industrial category which is violative of Article 14 of the Constitution, which also violates section 62(3). The interest of the consumer under section 61(d) of the Electricity Act should also be considered.

11. The original proposal of the Commission never had a proposal for shifting 'seafood processing' into commercial category. All along 'sea food processing' was included under industrial and no reason exists for changing the category to commercial. KSEB has to show the reason why such a change is necessary. There is no intelligible differentia between those left out of the group and even there is any differentia there is no nexus with the object sought to be achieved by such categorization. There is no justification afforded for a specific industry being segregated from the rest along with whom the industry has been paying the similar tariff under LT IV.

12. He further stated that in the case of M/s Baby Marine Exports Vs KSEB, the challenge in the APTEL was regarding the bill issued. The question of classification was not under challenge. Whereas in the Appeal No. 50/2007 and 80/2007 in M/s. Kailas Cashew Exporters Vs KSEB in Appellate Tribunal for Electricity, after exhaustive consideration of the issue held that cashew packing is manufacturing and does not qualify for commercial.

13. In HT category, the difference in tariff between HT and LT are not significant where as in LT category it is Rs.5 per unit. Such a sudden increase in tariff is violative of Regulation 5(3) of KSERC (terms and conditions of tariff for retail

sale of electricity). The industry as such is facing stiff competition and new tariff imposes additional burden of Rs. 1,00,000 per each unit per month. Hence this would be against public interest and submits that seafood processing units be included under LT IV Industrial tariff.

14. Advocate Shri. Ziyad Rahman appeared for M/s Aameena Enterprises, M/s Premier Marine Foods and M/s Sonia Exports. The petitioners are seafood processing units. Shri. Rahman argued that the main reason for charging seafood processing units, freezing plants and cold storages by the board is that the activities carried out are commercial in nature and no manufacturing process is carried out. The entire contentions of the Board is based on the Order on M/s Baby Marine Vs KSEB by APTEL. According to the petitioners, the finding in the M/s Baby Marine case is not applicable to the present case as the impact of revision is different for LT units and HT units. The change in tariff is about 2.5 times higher than LT IV industrial which is highly unreasonable, irrational and exorbitant. This classification would result in monopoly of HT units and ultimately lead to closure of LT units. Further in the said case, the question of classification for the purpose of tariff revision was not an issue and the contentions raised by the petitioners now are not brought before the APTEL then.

15. He further argued that the Electricity Act, 2003 or the regulations does not provide that 'manufacturing process' is necessary to include a consumer under industrial category. LT IV tariff is applicable to general purpose industrial load, where as LT VII (A) applicable to commercial consumers. All Departments have treated the petitioners' units as industrial units and allowed benefits applicable to industrial units. Shri. Rahman argued that even if for argument's sake the contention of the Board is accepted that manufacturing process is necessary, it cannot be sustained as manufacturing process is not defined in the Act or Regulations. He further brought to the notice of the Commission, the definition of 'manufacturing process under Section 2(k) of Factories Act, 1948. As per this definition, seafood processing, freezing plants and even cold storages are Factories. As KSEB adopted the definition of 'manufacturing process' under Factories Act for the purposes of Terms and Conditions of Supply, they cannot assign a different meaning for the purpose of tariff notification. Shri Rahman also placed before the Commission tariff orders of

Punjab, Madhya Pradesh and Chhattisgarh, where similar units are classified as industry.

16. He further detailed the history of tariff categorization followed by KSEB. According to him the concept of industrial cold storage and commercial cold storage was introduced in the tariff order 1982, where in the commercial cold storages were included in commercial category and ice factories with or without cold storages were included in the industrial category. Since there is no mention of freezing units or seafood processing units, such units were treated under the category of ice plants and given industrial tariff. The cold storages which are attached with commercial establishments such as shops or bakeries were classified under LT VII A. In the tariff order dated 30-7-1988, freezing plants and cold storages were specifically named and included in the tariff order and commercial cold storages were retained under commercial category. The situation continued and the following tariff orders were issued in 1991 (dated 28-12-1991), 1993 (dated 31-05-1993), 1994 (dated 30-9-1994), 1997 (dated 29-1-1997) 1991 (dated 14-05-1999), 2001 (dated 7-8-2001 and 2002 (dated 1-11-2002). Based on this premise he argued that storing articles in cold storage for commercial purpose is commercial activity and for industrial purpose it is industrial activity. He also presented different activities carried out in seafood processing units to support his arguments and submitted that the tariff order 2007 may be reviewed and appropriate orders may be passed for reclassifying the seafood processing units and freezing plants and industrial cold storages in LT IV industrial category.

17. **Advocate** Shri.Ziyad Rahman appeared for Shri. Girijashankar, M/s Gro Enterprises (DP 66/2008) also. The petitioner is an industrial cold storage and the main activity is storing seafood products so as to preserve the quality of the product until such products are transported for shipment. The activity is entirely different from commercial cold storage. The petitioner approached the Hon. High Court after receiving bill from the respondent KSEB. The High Court disposed the matter directing the petitioner to invoke statutory remedies. The petitioner submitted that the rate of energy charge under LT VII(A) is more than double that under LT IV. Instead of Rs.3.25/kWh under LT IV, the tariff under LT VII(A) is Rs.8.05/kWh, which is unreasonable and exorbitant. The petitioner

prayed before the Commission to direct KSEB to revise the bill and place the petitioner under LT IV category.

18. Advocate Shri. Tom K Thomas appeared for M/s. Geo Seafoods, stated that KSEB did not deny the process mentioned in the petition and hence admitting that the petitioner is an industry. The cold storage/freezing units in the seafood units cannot be separated from the manufacturing process as it is essential for preserving the product. The raw seafood is not an edible product and manufacturing process is involved to transform marine products into edible products. In the M/s Kailas Cashew case the Commission has conducted a field inspection. In the present case also the Commission should conduct a field inspection to ascertain the matter. Further, he argued that in the M/s Baby Marine Exports case manufacturing process, categorization issue was not agitated and was not contested.

### **Objections of KSEB**

19. The arguments of KSEB were presented by a team of officers led by Chief Engineer (Commercial & Tariff). KSEB in its letter dated 7-5-2008 had presented written objections on the petition. According to KSEB Tariff Order effective from time to time will form part of the agreement executed by the consumers. As per section 62(3), it is for the Commission to assign a consumer or batch of consumers with any tariff category based on the purpose for which supply is availed. APTEL in its order dated 7-3-2007 in the M/s Baby Marine case, upheld the decision of the Commission to include 'seafood units' under HT commercial. On the similar lines, inclusion of LT consumers in LT VII (A) is proper and just. In the LT category 'freezing plants', 'cold storage' etc., are categorised as LT VII Commercial. The petitioner's contention that a 'portion of the industry' is included under LT VII Commercial, KSEB stated that exclusive units like ice factories, prawn peeling units and shrimp farms are categorized under industrial tariff. Even if the 'prawn peeling' units and 'shrimp farms' are categorized under LT industrial category, when they use electricity for chilling/freezing with load above 20% they will be naturally transferred to LT VII Commercial. KSEB also objected to the statements of the petitioner that similar industries such as cashew, coconut oil etc., are retained under LT IV industry and seafood industry alone is classified as LT VII (Commercial). The

cold storages, freezing plants etc., are major loads in seafood units and such electrical loads consume considerably huge quantity of energy and also cause heavy 'techno commercial loss' to the system. The present tariff order issued by the Commission was after giving opportunity to all class of consumers and other stakeholders through various public hearing and discussions in the Advisory Committee. The order was issued after considering the views expressed in the public hearings and discussions, in the order it is explicitly mentioned by the Commission as:

*“the Commission has also recognized self financing educational institutions, seafood processing, milk chilling plants and call centers as new consumer groups and included them under appropriate commercial category (LTVII (A)/ LT IV)”.*

20. The Board also stated that in the M/s/ Baby Marine case, the petitioner challenged tariff and not the bill. The Board also brought to the notice of the Commission, Order of Division Bench of Hon. High Court of Kerala in WP(C).No.1843 of 2005 classifying cashew packing units under commercial category. KSEB pointed out ARR & ERC admitted on the basis of new tariff structure, will get totally distorted if the tariff change as requested by the petitioner is entertained.

21. During the hearing on 7-6-2008, KSEB stated that the petitioner has brought new contentions before the Commission and considering the rejoinders and new arguments of the petitioners; the Board sought more time to submit its objections, the Commission allowed the same and the hearing was adjourned to 21-6-2007. Another set of objections on the rejoinders filed by the petitioners was filed by KSEB vide its letter dated 20-6-2008.

22. In the hearing held on 21-6-2008, the Board presented their objections in detail. Board stated that, they never claimed that petitioners are not conducting seafood processing and only freezing and cold storage. Since the freezing /cold storage load exceeds 20%, of the total connected load, they should be categorized as commercial consumers. The Board contented that 'freezing plants' and 'cold storages' are generally causing heavy burden to the power system and consequential financial loss. KSEB objected to the arguments of

the petitioner that major share of energy consumed through cold storage/freezing units , is not for producing any product but to preserve its commercial value. KSEB contended that the petitioner accepted that 'cold storage'/ 'freezing units' being categorized as commercial even by APTEL. The voltage classification is only a technical matter and such class of consumers under commercial in LT is justified. KSEB also agreed to the contention that there is no prevailing Act or Rules relating to electricity for the basis of tariff classification. KSEB argued that even if prawn peeling units are classified as industrial, if the freezing /cold storage load of prawn peeling and shrimp farms exceed 20%, they will be billed under LT VII(A) tariff. In the tariff order there is no undue preference given to a consumer, but a group of consumers performing identical activity are classified as separate activity and hence no undue preference is shown to any consumer. They further stated that the Commission has accepted in principle the fact that consumers with predominant load of chilling /cold storage with a proportion of above 20% of the connected load should be brought under LT VII(A) by stating a portion of the Note (e)of LT IV tariff , ie., 'if it exceeds 20%, LT VII (A) tariff shall be applicable'

23. KSEB argued that the tariff orders of the other States presented are not relevant as they pertain to HT categories. Objecting to the contentions raised by M/s Geo Sea Foods, Board stated that in the tariff order 'seafood processing units' are not included in LT tariff category, but only in HT. In the absence of specific mention, Board has adopted same principle as that of HT consumers, and hence changing of tariff of such consumers is sustainable and legal. As per Section 62(3), the Commission can differentiate based on nature and purpose of supply. The nature of supply is whether LT or HT and purpose is for industrial or commercial. In the tariff petition filed by KSEB before the Commission the rationale for classifying seafood processing under commercial category was elaborated. Seafood processing would include activities like freezing, packing and sales and no new product is produced, but product is preserved to sell in appropriate markets at the appropriate time to ensure higher value and hence cannot be treated as industry for the purpose of tariff determination. KSEB also objected to the contention of petitioner that no opportunity was given to them before taking the decision, by stating the process followed during the disposal of tariff petition. KSEB produced a judgment dated 11-3-1999 of Hon. Supreme Court of India in Commissioner of Income tax,

Trivandrum Vs M/s Relish Foods where in it has been held that the activity of processing of prawns is not an activity of manufacture or production.

24. Objecting to the contention of M/s Seafood Processing Association of India and M/s Sreevas Export Enterprises (P) limited Cochin, KSEB stated that merging and transfer of consumer category into different tariff categories have been done in the past also and the Commission has the power to determine tariff under the Electricity Act, 2003. Board also objected to the contention of the Association that no notice was given before the tariff revision by stating that the tariff proposal is still available in the website of the Commission. In the tariff categories equipment based tariff categories are also present such as Pyrolators, crematoria, x-ray units etc., The study conducted by Shri. P.H. Abdul Rasheed clearly brought out the fact that about 3/4<sup>th</sup> of the total load is for freezing, thereby justifying the action of putting them under commercial activity. Board finally submitted that all petitioners of Seafood processing and exports having chilling/freezing /cold storage load of above 20% of the total connected load to be treated under LT VII(A) and realize electricity charges from 1-12-2007 with reasonable interest.

25. The petitioners refuted the arguments of KSEB strongly. Advocates of the petitioners argued that the Division Bench Order of Hon. High Court was presented. The said order was regarding the payment of arrears only and not about the tariff. Supreme Court Judgment on Relish Foods is in the matter of income tax, which is not applicable in the present situation. The petitioner relied on the dictionary meaning of manufacturing process, in the absence of any clear definition in the applicable Acts, rules and regulations. Further KSEB could not establish that a change is necessary in the present tariff. In the absence of definite reason, a change in tariff category is not required. If such a change is made, the entire seafood processing units in LT will be closed down. The Hon. High Court has given stay in the matter clearly shows that the present action of KSEB is unjust.



## **Analysis by the Commission:**

26. The Commission heard the petitioners and KSEB in detail. The petitioners have contented that no opportunity was provided before effecting the change in tariff. However, KSEB rightly objected to this argument. In the impugned Order, the Commission has narrated the events leading to the Order. Initially, in the absence of tariff petition from the licensee, KSEB, a draft schedule of terms and conditions of tariff was published by the Commission to be made effective from 1-6-2007. The same was given due publicity as provided under KSERC (conduct of business) Regulations, 2003. The Commission received number of objections/suggestions/responses to the public notice. Later, the licensee, KSEB, submitted comments on the draft schedule along with a tariff proposal. The Commission accepted the same as tariff petition. The petition was published and public hearing was conducted in three places, Thiruvananthapuram, Palakkad and Aluva and a final decision was taken after completing the due process in accordance with the law. The petitioners/representatives did not participate in the proceedings. In such kind of proceedings, giving individual notices is virtual impossibility. The Commission has followed the procedure envisaged under KSERC (conduct of business) Regulations, 2003 to dispose off the tariff petition of KSEB. Hence the contention of the petitioner that no opportunity was provided is not sustainable.

27. The main contention of the petitioners was that seafood processing is an industrial activity and manufacturing process is involved in seafood processing. To substantiate the claim, the petitioners have relied definitions given under Factories Act, 1948. The present categorization is historically evolved and it is true that there are distortions. However, the Commission is of the view that considering the distortions and huge cross subsidy existing in the present tariff structure, on including a certain category of consumers under industrial or commercial is a complex issue, which needs to be addressed after larger consultation. Similar view was expressed by the Commission's impugned order in the impugned Tariff Order, 2007 as follows:

*“The Board has also proposed recategorisation of many consumer groups from industrial category to commercial category. It is a fact that industrial tariff is comparatively low and many categories of consumers*

*claim to be 'industrial' to avail this benefit of lower tariff. Probably the reason could be the present higher tariff in the commercial category and comparatively lower tariff for industrial category. According to the Commission, definiteness is required on the definition of an industrial category. The Commission is of the view that the same can be decided after a consultation process by inviting suggestions from the stakeholders. Further there should be also an effort to bring down the substantial cross subsidies borne by the Commercial consumers."*

28. Holding the above view, the Commission feels that, it is not appropriate at this juncture to go into the larger issue of how consumers are to be categorized as industrial or commercial or the principle in which categorization is to be effected. Considering the importance and the complex issues involved in consumer categorization, the principle of consumer categorization are now being consulted in the Southern Electricity Regulatory Forum (SERF), in which KSEB is a member. The Commission would consider the views evolved in these deliberations before going for a comprehensive consultation process involving all stakeholders in the State. Nonetheless, huge differences in tariff among different categories are to be brought down or cross subsidies are to be reduced to acceptable levels before such an exercise is taken up.

29. Therefore the Commission is confining itself to the following issues addressed by the petitioners and respondent KSEB such as :

- a. In the light of Tariff Order dated 26-11-2007, should the 'seafood processing units' in LT to be billed under the category 'freezing units' / 'cold storage' under LT VII(A) tariff ?
- b. Which tariff category will be applicable to the Units engaged in 'cold storage' and 'freezing' alone?
- c. Whether any change in tariff is required for 'Seafood processing units' presently billed under HT IV Commercial ?

30. We may take up the first issue. In the Tariff Order dated May 14, 1999, KSEB categorized 'freezing units' and 'cold storage' under HT IV Commercial category. In the absence of a separate category, the HT consumers using electricity for processing seafood were categorized under 'freezing plants' and

'cold storage' and billed under HT IV Commercial tariff. In the Order dated 11-5-2006 (M/s Baby Marine Exports, Calicut, Vs. KSEB), the Commission held that KSEB had the authority to categorise consumers under the Electricity (Supply) Act, 1948 as done in the Order dated 14-5-1999 of KSEB. The Commission also held the view that discriminatory treatment between LT and HT consumers in the case of 'Freezing units' and 'Cold storages' was justified considering the large differences in the tariff between LT and HT and in the industrial and Commercial category. The relevant portion of Commission's order dated 11-5-2006 is reproduced below:

*"3.3 The third contention of M/s Baby Marine Exports, along with the contention of M/s Geo Sea Foods and M/s Bharat Sea Foods is regarding the discriminatory treatment meted out to HT and LT marine industries. Based on the average realization as per approved ARR and ERC for 2006-07, the average realization for LT Industrial consumers is Rs 4.09/kWh whereas average realization for HT-IV Commercial is Rs 4.53/kWh, showing a difference of 44 ps. per unit. But if LT-VII Commercial is applied for sea food industries, the rate shall be as high as Rs 6.86 /kWh whereas HT-Commercial tariff rate is Rs 4.53/kWh which results in a huge difference of Rs 2.33/kWh. So the reason for categorizing cold storages and freezing plants under Industrial tariff for LT and Commercial Tariff for HT is that the difference between the rates shall be minimized as the purpose for which electricity is used is the same i.e. cold storage and chilling plant. To keep the difference in unit rate for LT cold storages and HT cold storages, LT cold storages are assigned LT-IV Industrial Tariff and HT cold storages under HT-IV Commercial category."*

31. In the above case, it was brought before the notice of the Commission that 'seafood processing' is not limited to freezing or cold storage, but involves other processes too. It may also to be noted that, in the present proceedings also almost all petitioners have brought similar arguments. In the light of such issues, the Commission in the Tariff Order 2007 had decided to categorize 'Seafood processing units' as a separate category of consumers. As KSEB argued, the Hon APTEL in its judgment dated 3-7-2007 had endorsed the view of the Commission and rejected the appeal of M/s Baby Marine Exports. In the

light of Hon APTEL Order in the M/s Baby Marine Exports case, the Commission placed HT 'seafood processing units' under HT IV Commercial.

32. In the tariff Order 2007, the Commission had attempted rationalization of tariffs: ie., the activities which are apparently commercial in nature are classified under commercial. As mentioned above, 'freezing units' and 'cold storage' in HT category are included in HT IV Commercial. Hence, based on the proposal of KSEB and as part of rationalization process, the Commission shifted 'freezing plants' and 'cold storage' to LT VII (A) commercial from LT IV Industrial category there by categorizing the units which are engaged in freezing and cold storage alone under commercial category.
33. In the absence of a separate category 'seafood processing' in LT, it is needless to mention that the so called 'seafood processing units' in LT shall be continued to be billed under LT industrial category as their activities are not limited to freezing and cold storage alone. Further as argued by the petitioner, the activities similar to seafood processing such as prawn peeling are still under LT IV. The Commission did not create or separately mention 'seafood processing' in the LT category in the Tariff Order 2007 hence. Further, as argued by the petitioners, had these units placed in LT VII (A) commercial, there would be a tariff shock as the bill would increase to more than twice. Further, it would be against the view expressed in the Order dated 11-5-2006 which was upheld by APTEL Based on the above premises, the Commission hereby clarifies that 'seafood processing units' who are performing activities such as processing of seafood to be continued to bill under LT IV industrial.
34. It is also pertinent to consider the argument put forwarded by KSEB in this regard. KSEB argued that ARR & ERC admitted on the basis of new tariff structure will get totally distorted if the tariff change as requested by the petitioner is entertained. The Commission is of the opinion that this concern is unfounded as the revenue implication of changes in categorization was not quantified and factored in the 'Revenue from Tariff' for the year 2007-08 due to the lack of data. The Commission has gone by the revenue estimation provided by KSEB in this matter. Hence there would not be any adverse revenue implication to KSEB on this account.

35. KSEB during the proceedings have stated by pointing out the Note (e) under LT IV tariff in the Tariff Order 2007 that even if the 'prawn peeling units' and 'shrimp farms' are categorized under LT IV industrial category, when they use electricity for chilling/freezing with load above 20% they will be naturally transferred to LT VII Commercial i.e., for consumers categorized under LT IV, if the freezing / cold storage load is more than 20%, such consumers would be billed under LT VII (A). The Commission feels that there is no such intention in the said order. To clarify the matter, the said note is reproduced below.

*“The dairy farms/milk chilling plants with freezing or without chilling/freezing/cold storage shall be charged under industrial category provided the chilling/freezing/cold storage is limited to 20% of the total connected load. If it exceeds 20%, LT VII(A) tariff shall be applicable”*

36. Reading the above *ejusdem generis*, it can be seen that the limit of 20% of freezing load is applicable only to dairy farms and milk chilling units and need not be made applicable universally to consumers other than milk chilling and dairy farms.

37. Regarding the second issue, the Commission has taken a view that since freezing units and cold storages in HT are categorized in HT IV Commercial, which was upheld by Hon. APTEL, there is no reason why such categories in LT to be categorized differently. Such decision was arrived at as part of the rationalization process. It is true that there is a difference in tariff between LT industrial and commercial. Historically substantial cross subsidies are built in the system, the Commission felt that there should be a beginning for the long journey of removing distortions and reducing cross subsidy. The Commission has addressed the issue by reducing the cross subsidy level gradually by decreasing the tariff for LT VII (A) commercial. Hence LT consumers units which are engaged in the freezing and cold storage alone shall be billed under LT VII (A) Commercial as provided in the Tariff Order 2007.

38. The third issue is whether any reconsideration is required in the case of 'seafood processing units' in the HT IV category. The petitioners have argued that they are manufacturing units and should be classified under HT I industrial. As mentioned earlier, the Commission is not attempting a deliberation on the

issue of categorization as the same needs to be decided separately. More importantly, the difference between HT industrial and HT commercial tariff is not substantially large. In the light of APTEL order, and the circumstances mentioned, the Commission feels that there is no ground to deviate from the earlier stand.

### **Order of the Commission**

39. In the light of the discussions above, the Commission orders that 'seafood processing units' in LT shall be billed under LT IV industrial category. The concern of respondent KSEB that approved ARR would be distorted is unfounded as the revenue implication due to category change was not factored in the approved ARR. The LT consumers engaged in the freezing and cold storage activity shall be billed under LT VII (A) commercial as mentioned in the Tariff Order 2007. Similarly, the seafood processing units in HT category shall be billed under HT IV commercial as provided in the tariff order 2007. With these directions, the above petitions are disposed off.

Sd/-  
M.P. Aiyappan  
Member

Sd/-  
C. Abdulla  
Member

Sd/-  
C. Balakrishnan  
Chairman

Approved for issue

Sd/-  
Secretary in charge