

# KERALA STATE ELECTRICITY REGULATORY COMMISSION THIRUVANANTHAPURAM

**Application No. KSEB/TRAC/ARR&ERC/2015-16/1673 dated 30.03.2015**

**File No.603/F&T/2015/KSERC of the Commission**

**In the matter of**                    The Application filed by M/s Kerala State Electricity Board Limited (KSEB Ltd) for approval of the Aggregate Revenue Requirements & Expected Revenue from Charges for the financial year 2015-16

Applicant                         : M/s. Kerala State Electricity Board Limited (KSEB Ltd.)

**Application No. KSEB/TRAC/ARR&ERC/2015-16/1673 dated 30.03.2015**

**File No. 604/F&T/2015/KSERC of the Commission**

**In the matter of**                    The Application for condonation of delay filed by M/s Kerala State Electricity Board Limited (KSEB Ltd) for the delay in filing the application for the approval of the Aggregate Revenue Requirements & Expected Revenue from Charges for the financial year 2015-16

Applicant                         : M/s. Kerala State Electricity Board Limited (KSEB Ltd.)

**Common Order No. No.603/F&T/2015/KSERC - Dated 01.03.2017**

1. The Kerala State Electricity Board Ltd., (hereinafter referred to as KSEB Ltd or the licensee) vide its letter No.KSEB/TRAC/ARR&ERC 2015-16/1673 dated 30.03.2015, submitted before the Commission an application for the approval of Aggregate Revenue Requirements & Expected Revenue from Charges (ARR&ERC) for the financial year 2015-16. The licensee has also filed a petition dated 30.03.2015, for the condonation of delay in filing the application for the approval of the Aggregate Revenue Requirements & Expected Revenue from Charges for the financial year 2015-16. In the application dated 30.03.2015 the

applicant had also submitted that it would file separate proposals for bridging the revenue gap calculated by them in the ARR & ERC application.

2. The facts and circumstances leading to submission of the above applications are briefly stated below,-

(a) The Commission had, in exercise of its powers under Section 61 of the Act, issued, vide notification No.787/SEA/2011/KSERC dated 14.11.2014, the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2014 (hereinafter referred to as the Tariff Regulations). The said regulation specify the detailed principles and procedures for determination of tariff applicable to the generating companies, the transmission licensees, the distribution licensees and the State Load Dispatch Centre. As per clause (f) of Section 61 of the Electricity Act, 2003 (hereinafter referred to as the Act), multi-year tariff principles shall be adopted for determination of tariff. As per clause (g) of Section 61 of the said Act, the tariff shall be fixed in such a way that the tariff progressively reflects the cost of supply of electricity and also reduces cross subsidies.

(b) As per sub-section (2) of Section 62 of the Act, the licensee has to necessarily submit separate details in respect of generation, transmission and distribution as may be specified by regulations issued by the Commission for the purpose of determination of tariff. Sub-section (2) of Section 62 is quoted below:

*“The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff”*

(c) As per sub-section (4) of Section 62 of the Act, no tariff or part of any tariff may be amended more frequently than once in any financial year. As per the provisions under sub-section (1) of Section 64 of the Electricity Act, 2003, an application for determination of tariff under section 62 shall be made by a

- generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.
- (d) As per sub-section (3) of Section 64, the Commission shall, within 120 days from the date of receipt of the application under sub-section (1), issue a tariff order in accordance with the due procedures stipulated by the Act and the Regulations.
- (e) As per sub-regulation (1) of regulation 11 of the Tariff Regulations, 2014, the licensee has to submit on or before 30<sup>th</sup> November of 2014, the application for determination of tariff for the ensuing financial year. The above date has been fixed in such a way that the Commission can issue tariff order on or before 31<sup>st</sup> March 2015, (that is 120 days from 30<sup>th</sup> November), after complying with all the procedures for determination of tariff in accordance with sub-section (3) of Section 64 of the Act. The licensee has to submit specific application for determination of tariff duly considering the revenue gap, the regulatory assets, if any, and such other facts.
- (f) The Govt. of Kerala has, vide G.O.(P) No.46/2013/PD dated 31/10/2013, issued the Kerala Electricity Second Transfer Scheme (Re-vesting), 2013 for the re-vesting of all the functions, properties, interests in properties, rights and liabilities of the Board vested in the State Government earlier into Strategic Business Unit –Generation (SBU-G), Strategic Business Unit –Transmission (SBU-T) and Strategic Business Unit –Distribution (SBU-D). Clause 5 of the said G.O clearly states the transfer of Undertaking by the State to the KSEB Ltd with decentralized functions. Clause 5(viii) of the said G.O further states that within the provisional period of one year from the date of re-vesting, the accounts of the three SBUs (Strategic Business Units) will be segregated by the KSEB Ltd so as to facilitate the evaluation of financial performance of these units. Separate balance sheet will be prepared for the three SBUs and suitable transfer pricing mechanism between the SBUs shall be worked out by the KSEB Ltd taking into consideration the financial soundness of the three SBUs.

From the above facts, it can easily be found that, KSEB Ltd shall file on or before 30<sup>th</sup> of November every year, the application for determination of tariff for the

next financial year, separately for the SBU-G, SBU-T and SBU-D under multi-year tariff principles as specified in the Tariff Regulations

3. The Commission had, on application by the licensee, granted time up to 31.01.2015 for filing the application for the determination of tariff and for the approval of Aggregate Revenue Requirements & Expected Revenue from Charges as per the KSERC (Terms and conditions for the determination of Tariff) Regulations 2014. The licensee vide the application dated 30.03.2015 submitted before the Commission an application for the approval of Aggregate Revenue Requirements & Expected Revenue from Charges (ARR&ERC) only for the financial year 2015-16. As per the petition for the condonation of delay, the licensee stated that the delay in submission of application for determination of tariff was due to the delay in finalization of the provisional accounts of KSEB Ltd.
4. KSEB Ltd had to submit application for ARR&ERC for the first control period consisting of 2015-16, 2016-17 and 2017-18, as per regulation 11 of the Tariff Regulations, 2014 which is extracted below by 31.12.2014.

***“11. Filing under multi-year tariff (MYT) framework. – (1) Every generating business/company or transmission business/licensee or distribution business/licensee or state load despatch centre shall file, on or before the Thirtieth day of November of the current financial year, the following applications for the control period:***

*a) Application for approval of aggregate revenue requirement for each year of the control period and determination of tariff for the ensuing financial year.*

*b) Application for truing up of aggregate revenue requirement for the previous financial year:*

*Provided that truing up for the financial years of the previous control period prior to the introduction of MYT framework shall be carried out under relevant Regulations applicable to the respective periods.*

*Provided further that the time limit specified for filing applications as per clause (a) and (b) above for the first year of first control period shall be the Thirty first day of December, 2014.”.*

5. In the meanwhile, KSEB Ltd challenged the validity of the Tariff Regulations, 2014, before the Hon'ble High Court of Kerala in the Writ Petition No.465/2015(G), mainly stating the reason that the norms for expenditure specified in the Tariff Regulations, 2014 are inadequate resulting in under recovery of its expenses. The prayers in the Writ Petition are the following,-

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- (i) Issue a writ of certiorari or any other appropriate writ, order or direction calling for the records leading to Exhibits P5 and quash the same as illegal and violative of Article 14 of the Constitution of India.*
- (ii) Issue writ of mandamus or any other appropriate writ, order or direction to the respondent to revise Exhibit P5 regulations strictly as per the legal mandate provided in the Electricity Act, 2003, National Electricity Policy and on the basis of past performance of KSEB including its audited accounts; and*
- (iii) Issue such other writs, orders or direction which this Hon'ble Court may deem fit and proper to issue in the facts and circumstances of the case”.*

6. While admitting the above Writ Petition the Hon'ble High Court was pleased to issue an interim order on 07.01.2015 to the effect that tariff proposal, if any, submitted by the petitioner KSEB Ltd shall not be rejected on the basis of the Tariff Regulations, 2014. The Hon'ble High Court has not declared any of the provision in the Tariff Regulations, 2014, as invalid. The earlier regulations which governed determination of tariff were repealed as per the provisions in the Tariff Regulations, 2014. Therefore, the application for determination of tariff filed by any licensee including KSEB Ltd can be processed only in accordance with the provisions of the Tariff Regulations, 2014. It is a well-established legal principle

that any statutory provision, rule, regulation or order will continue to be in force unless it is quashed or its operation is stayed by a competent Court. KSEB Ltd has also, in the application for truing up of accounts for the financial year 2011-12, contended that pendency of civil appeals before the Hon'ble Supreme Court will not prevent the Commission from processing its application unless the impugned judgment of the Hon'ble APTEL has been stayed by the Hon'ble Supreme Court. Since the Hon'ble High Court has not invalidated or stayed the operation of any of the provisions in the Tariff Regulations, 2014, KSEB Ltd has to honour the provisions of the Tariff Regulations and has to file proper application for determination of tariff in accordance with regulation 11 of the Tariff Regulations, 2014. In the above circumstances, the Commission had, on receipt of the interim order of the Hon'ble High Court dated 07.01.2015, filed a petition before the Hon'ble High Court seeking clarifications with regard to the implementation of the said order and prayed for orders to process the application submitted by KSEB Ltd in accordance with the provisions of the Tariff Regulations, 2014. The Hon'ble High Court is yet to issue orders clarifying the points raised by the Commission therein.

7. KSEB Ltd had only submitted an application for approval of a composite ARR & ERC for the generation, transmission, distribution and load dispatch functions together for the financial year 2015-16 without separation of accounts of SBUs and SLDC. Further KSEB Ltd had not submitted any application for determination of tariff for various categories of consumers. The proposal submitted by KSEB Ltd did also not contain any details in accordance with MYT tariff principles as stipulated in the Tariff Regulations, 2014. However in view of the interim order dated 07.01.2015 in WP No. 465/2015(G) of the Hon'ble High Court, the Commission has not rejected the application dated 30.03.2015 submitted by KSEB Ltd for the approval of the composite ARR & ERC of all the SBUs under KSEB Ltd together for the financial year 2015-16. Thus KSEB Ltd has not complied with the relevant statutory provisions in the Electricity Act, 2003 and the regulations relating to determination of tariff issued by the Commission.

8. The ARR is the estimate of expenditure of the licensee under various heads of accounts such as cost of power purchase, interest and finance charges, O&M expenses (which include the employee cost, the repairs and maintenance cost and the administration and general expenses), interest on working capital, depreciation, return on equity etc. The expected revenue from charges (ERC) is the estimate of revenue at the existing tariff. The difference between ARR & ERC is the revenue gap. The licensee has to submit application under Section 64 of the Act and the relevant regulations in the Tariff Regulations for revision of tariff to meet the revenue gap. The petitioner, KSEB Ltd had, in its letter No.KSEB/TRAC/ARR&ERC/2015-16/1673 dated 30.03.2015, submitted that it would submit application for revision of tariff subsequently. KSEB Ltd has not so far submitted any application for revision of tariff relating to the FY 2015-16, as promised in its letter dated 30.03.2015. In view of the interim order dated 07.01.2015 issued by the Hon'ble High Court in Writ Petition No. 465/2015 and in view of the pendency of the application filed by the Commission before the Hon'ble High Court, the Commission had, in various orders, extended the validity of the tariff order dated 14.08.2014 for the financial year 2015-16 also. As the financial year 2015-16 is already over, the approval of the estimate of expenditure and of the revenue for the said year has lost its relevance and therefore the request of KSEB Ltd for the approval of the Aggregate Revenue Requirements & Expected Revenue from Charges for the financial year 2015-16 has become infructuous. Neither can a tariff order for the financial year 2015-16 be issued at present in view of the above facts. KSEB Ltd being a company incorporated under the provisions of the Companies Act 1956, it should have finalized its annual accounts after audit, on or before 30.09.2016. As per regulation 11 of the Tariff Regulations, KSEB Ltd should submit on or before 30.11.2016, the application for determination of tariff for the financial year 2017-18 along with the application for truing up of accounts for the financial year 2015-16. KSEB Ltd has not yet submitted application for truing up of accounts for the financial year 2015-16. In the above circumstances the proper course of action that can be adopted by the Commission is to direct KSEB Ltd to submit the application for truing up of accounts of SBU-G, SBU-T and SBU-D of KSEB

Ltd for the financial year 2015-16 and to take appropriate decision thereon after following the due procedures specified in the Tariff Regulations, 2014.

### **Order of the Commission**

9. (1) In view of the statutory provisions, the regulations and the directions of the Government in the Second Transfer Scheme as well as the facts and circumstances explained above, KSEB Ltd is directed to submit its application for truing up of accounts of SBU-G, SBU-T, SBU- D and SLDC of KSEB Ltd for the financial year 2015-16 along with all necessary and sufficient particulars of the actual expenditure and revenue, in accordance with the Tariff Regulations, 2014.
- (2) The facts may be brought to the notice of the Hon'ble High Court for appropriate directions

**Sd/-**  
**K.Vikraman Nair**  
**Member**

**Sd/-**  
**S.Venugopal**  
**Member**

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

**Approved for issue,**

**Santhosh Kumar.K.B**  
**Secretary**