

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

Present: Shri. Preman Dinaraj, Chairman
Shri. A.J. Wilson, Member (Law)

OP No.40/2020

In the matter of : Petition for approval of One Time Settlement Scheme
2021 filed by KSEB Ltd

Petitioner : Kerala State Electricity Board Limited
Represented by Shri. Suresh, Exe. Engineer, TRAC, VB

Date of Hearing : 28-12-2020 : 11:00 AM (Video conference mode)

Order dated 11-02-2021

1. KSEB Ltd filed a petition before the Commission for the approval of '*The Scheme for One Time Settlement of Arrears-2021 (OTS 2021)*' under the provision of Regulation 136 (5) of Kerala Electricity Supply Code-2014, with the following prayers:
 - a. The Commission may approve the OTS to be implemented for the consumers of KSEB Ltd for a period from 20-12-2020 to 28-02-2021 and specify a special rate of interest for settlement of arrears which are more than 15 years old.
 - b. The Commission may approve the settlement made by KSEB Ltd applying the OTS 2019 scheme in genuine applications received after the expiry of the scheme period in anticipation of the extension of OTS 2019 by the Commission.
2. In the petition, KSEB Ltd stated that several requests have been received from the consumers that they could not remit the settled amount under OTS 2019 within the stipulated time and requested for extension of time for payment. Though KSEB Ltd requested for extension of the scheme till 31-12-2020, the Commission vide Order dated 29-09-2020 denied the extension and directed KSEB Ltd. to furnish if required, a separate petition for a fresh scheme as per Regulations. Hence, KSEB Ltd. has filed the present petition. The gist of the petition is given below:
 - a) As per the Commission's Order dated 17.09.2019, sanction was accorded for the implementation of One Time Settlement Scheme (OTS-2019) for the period from 01.10.2019 to 31.01.2020, which was later revised from 01.11.2019 to 29.02.2020 with the concurrence of the

Commission, considering the commencement of the Model Code of Conduct and subsequent elections in Kerala to the local bodies.

- b) Due to Covid-19 pandemic, several requests have been received from consumers stating that they could not remit within the stipulated time the settled amount in OTS-2019 and requested for granting extension for payment.
 - c) In addition, several new requests were also received from Government Institutions, PSUs, sick industries and self-financing institutions for settling their arrears under OTS. According to KSEB Ltd., an effective OTS scheme can limit the accumulation of arrears to a great extent.
 - d) KSEB Ltd mentioned that they were concentrating on collection of arrears above 15 years and is therefore requesting for a special reduced rate of interest to be decided by the Commission for such arrears.
 - e) Hitherto, the cases settled in the previous OTS schemes were not eligible to be considered under the new scheme. Considering the prevailing Covid-19 situation and as per the requests made by the consumers who participated in the previous OTS, KSEB Ltd is proposing that the cases decided under the previous OTS schemes but could not be taken to its conclusion due to various reasons may also be allowed to be settled afresh under the present scheme.
 - f) KSEB Ltd further submitted that genuine requests for settlement under OTS 2019 received after the due date, were allowed by them in anticipation of the approval of the Commission. Hence, KSEB Ltd requested that approval may be given for the said cases also.
 - g) KSEB Ltd furnished the 'Terms and conditions of One Time Settlement Special Scheme (OTS 2021)' as Exhibit -3 (Annexure-1) and 'Guidelines for settling arrears which are entangled in court cases and similar issues by the District Committee as per OTS 2021' as Exhibit P4 (Annexure-2) of the petition.
3. Under the OTS-2019 Scheme, an amount of Rs.6.53 crore was collected by KSEB Ltd, from a total of 2873 applications involving an amount of Rs.11.31 crore. The summary of arrears collected under OTS- 2019 is given below.

Table 1
Arrears settled under One Time Settlement (OTS-2019)

Particulars	Actual Arrears (Rs. crore)			Settled under OTS (Rs. crore)		
	Principal	Interest	Total	Principal	Interest	Total
LT Consumers	3.89	3.36	7.25	3.03	1.09	4.12
EHT & HT Consumers	1.77	2.29	4.06	1.67	0.74	2.41
Total	5.66	5.65	11.31	4.70	1.83	6.53

4. As shown above, KSEB Ltd could only collect an amount of Rs.6.53 crore under OTS-19 Scheme. Before implementing the OTS-2019 scheme, KSEB Ltd.'s outstanding arrears as on 30.09.2019 was Rs.1544.03 crore. However, the arrears have since increased to Rs.2715.54 crore as on 30.09.2020, due to the Covid-19 pandemic situation. The age wise analysis of these arrears indicates that the outstanding upto 12 months is Rs.1813.83 crore and the arrears above 1 year is only Rs.900.71 crore. The summary of the arrears as provided by KSEB Ltd. as on 30.09.2020 is shown below,-

Table -2
Abstract of arrears of current charges as on 30-09-2020

Sl No	Name of the Department	Arrear excluding litigation (Rs.crore)			Arrear under litigation (Rs. crore)			Grand total (Rs.crore)
		LT	HT	Total	LT	HT	Total	
1	State Government Departments	21.71	36.74	58.44	42.39	0.07	42.46	100.90
2	State Public Sector Undertakings	166.15	379.95	546.11	0.22	43.11	43.33	589.44
3	Public Institutions	5.71	22.79	28.50	0.67	13.95	14.62	43.12
4	Local Bodies	7.45	0.03	7.48	1.82	-	1.82	9.30
5	Central Government Departments	2.98	0.06	3.04	0.53	-	0.53	3.57
6	Central Public Sector Undertakings	6.40	50.58	56.98	1.16	4.29	5.45	62.44
7	Domestic	758.27	-	758.27	6.57	-	6.57	764.84
8	Private Institutions	446.55	297.96	744.51	34.17	288.43	322.60	1,067.12
9	Captive Power Plants	-	7.94	7.94	-	51.15	51.15	59.09
10	Inter State	-	-	-	-	3.86	3.86	3.86
11	Licensee	-	0.77	0.77	-	10.88	10.88	11.65
12	Others	0.19	-	0.19	0.03	-	0.03	0.22
	Grand Total	1,415.41	796.82	2,212.23	87.57	415.75	503.31	2,715.54

5. The summary of the Terms and Conditions of One Time Settlement Special Scheme-OTS 2021 as proposed by KSEB Ltd in the petition (given as Exhibit-3-Annexure-1) is given below:

1. Eligibility: *Consumers with arrears for more than two years will be eligible to apply for One Time Settlement Scheme 2021 i.e., arrears resulted from demand raised prior to 01-01-2019. The Scheme will also be open to those cases where RR action is initiated and those which are pending before the Courts. However, theft cases under Section 135 of the Electricity Act will not be considered.*

2. Period of Scheme: *The scheme will be open from 20.12.2020 to 28.02.2021*

3. Time Schedule of the Scheme:

- 20.12.2020- Intimating consumer about the scheme
- 20.12.2020- Acceptance of application
- 01.01.2021- Commencement of issue of demand notice
- 15.02.2021- Last date of accepting application form
- 28.02.2021- Last date to issue demand notice and remittance of first installment by the consumers.

4. The Scheme: *The consumer will be allowed a reduced rate of interest and this interest can be remitted in six monthly equal installments. However, the principal portion of the arrear shall be remitted in lump sum along with the first installment of interest.*

5. Reduction in Interest rate: *For arrears of and below 5 years old and above 2 years a reduced flat interest rate equivalent to previous six months (Prior 01-12-2020) average MCLR rate notified by SBI instead of 18% interest will be applicable for the entire arrear. For arrears more than 5 years and below 15 years old, the rate of interest rate of 6% will be applicable for entire arrears. For arrears more than 15 years old, a special rate approved by the Commission shall be applicable for the entire arrears. For arrears of continuous nature, the entire arrears will be split age wise and applicable rate of interest will be applied ie., special rate for arrears above 15 years, 6% interest on arrears between 5 to 15 years, MCLR rate arrived at for arrears between 2 to 5 years and the ruling rate of 18% for arrears less than two years from the date of OTS. No further interest will be levied for the payment of interest portion in instalments upto 6 months.*

6. Full settlement option: *Consumer has the option to remit the entire principal amount and total reduced interest in lump sum. In such cases a rebate of 2% on interest amount (on total reduced interest amount) would be granted.*

7. Installment for principal amount: *In certain deserving cases (Government Departments, Public Undertakings, Government Institutions, local bodies, other deserving consumers with long pending arrears), installment will be provided after the approval of the concerned Deputy Chief Engineer or full time Directors of KSEBL. Six equal monthly installments shall be provided on the principal amount by Deputy Chief Engineer of the concerned circle office and for installments above 6 and up to 18, the approval of the full time Director is needed. Such equal monthly installments up to 12 will bear an interest rate of 12% per annum and for above 12 installments up to 18 will bear an interest rate of 14%.*

- 8. Dismantled connection:** *The MD charges/fixed charges demanded will be limited to 6 months after disconnection. No charges will be levied after the date of dismantling except for minimum guarantee or rental liability cases. Fresh applications for new connection will have to be submitted for reconnection of services in dismantled cases.*
- 9. Industrial units/plantations with different spells of closure (intermittent period of closure):** *The MD charges or fixed charges will be limited to 6 months from the date of disconnection in each spell of closure.*
- 10. Revenue recovery action cases:** *The surcharge and the Demand notice charges with respect to the revenue department will have to be remitted by the consumer additionally when RR action is initiated by KSEB Ltd.*
- 11. Arrears under litigation:** *The applications from LT consumers for settling arrears under litigation will be received by Senior Superintendent in the concerned section office. Arrears under litigation will be settled under OTS only after withdrawal of cases in courts. However, District Level Committees (DLC) formed for this purpose will examine the matter on a case to case basis and settle the cases. Cases where the party is not agreeing for withdrawal of cases before courts for settlement under OTS, it shall be consolidated by Deputy Chief Engineers (District Head Quarters) and placed before District Level Committees. The Committee shall interact with the consumers and propose settlement formula. In genuine cases, the Committee may review the principal amount with reasons clearly specified in the report. There will not be any financial limit to settle the cases. The decision of the Committee, if accepted by the party, will be implemented subsequent to the respective court allowing withdrawal of cases. The cases which cannot be settled by the District Level Committee shall be taken up with the Director (D&IT).*

The District Level Committee shall comprise of the following members,-

- i. Deputy Chief Engineer, Electrical Circle in District Headquarters (Convener)*
- ii. Deputy Chief Engineers of Electrical Circles*
- iii. Executive Engineers of Distribution Divisions*
- iv. Assistant Executive Engineers of Electrical Subdivisions*
- v. Special Officer (Revenue) or his representative*
- vi. Representative of Legal Advisor and Disciplinary Enquiry Officers*

Application for settlement of arrears with litigation from HT consumers will be received at the office of SOR. The application shall be processed by SOR and placed before the State Level (Expert) Committee. The State Level (Expert) Committee constituted as given below shall examine carefully the issues in such cases, shall interact with consumers and shall propose a settlement to Full Time Directors for decision. The State Level Committee may also recommend review in the principal amount in genuine cases, the reason shall be stated clearly in the report. The State level (Expert) Committee shall comprise of the following members,-

- i. Deputy Chief Engineer (Commercial & Planning) with full powers of Chief Engineer (Chairman)*
- ii. Special Officer (Revenue) (Convener)*
- iii. Joint Secretary (Law)*
- iv. Accounts Officer, Arrear Clearance Cell*
- v. T.A to Director (Distribution & IT)*

The guidelines to be followed by KSEB Ltd as per above OTS scheme for settling arrears which are entangled in court cases and similar issues is attached separately in Annexure-2

12. Receipt and processing of application for settlement:

Application from LT consumers will be accepted in respective Electrical Section Office and forwarded to Deputy Chief Engineers of Electrical Circle for settlement. Deputy Chief Engineers of all Electrical Circles will be authorized to settle arrears of LT consumers without limit. However, request for more than six installments on principal amount shall be taken up with FTD through Director (Distribution & IT). Application from HT and EHT consumers will be accepted by Special Officer (Revenue). Those cases will be put up before FTD with the recommendation of expert committee for settlement.

The applications received from Government/PSU's and Local Bodies after the expiry of OTS period may be collected at respective section offices and office of the Special Officer (Revenue) as may be applicable and are to be forwarded to the office of the Director (Distribution & IT), from where the same has to be placed before the Board with proper recommendations of the expert committee. On getting the approval of the Board for considering the application, the Deputy Chief Engineer (Commercial & Planning) with full powers of Chief Engineer will submit the same before the KSERC for approval.

13. Publicity: *The Public Relations Officer, KSEB Ltd. and Deputy Chief Engineers of Electrical Circles shall give wide publicity about the scheme and local newspapers, cable TV, FM radios etc., periodically till end of the scheme. The Senior Superintendent of Electrical Section Office and Special Officer (Revenue) at Corporate Level will be responsible for informing consumers with arrears about the scheme. Intimation shall be given to all such consumers clearly indicating the savings the consumer would get by opting the scheme. The Accounts Officer (Arrear Clearance Cell), Office of the CIA shall intimate the details of the scheme directly to heads of all Government Departments, PSU's, Government Institutions and local bodies.*

6. KSEB Ltd states that the intention behind the new scheme is to encourage the defaulted consumers to settle the dues by availing the reduced rate of interest. KSEB Ltd expects that a number of long pending issues could be settled through this scheme which would reduce arrears considerably.

Public hearing on the petition:

7. Public hearing on the matter was held on 28-12-2020 through video conference mode. Shri. Suresh, Exe. Engineer representing KSEB Ltd briefly presented the contents of the petition. He mentioned that the total arrears as on 30-09-2020 is Rs.2715.54 crore from all categories. The arrears upto 12 months is Rs.1813.83 crore and the arrears above 1 year is thus only Rs.900.71 crore. KSEB Ltd is among others targeting to collect arrears above 15 years on priority and sought the approval of a special rate of interest for the same. KSEB Ltd also mentioned that they had settled three cases after the last date of OTS 2019, in anticipation of the approval of the Commission. These cases pertain to Kozhikode Corporation and the value is Rs.85,274/-. Further KSEB Ltd proposes that the cases which were ordered to be settled under OTS-2019, but where the consumers could not make the full payment due to difficulties that arose out of Covid-19 be also included in the new scheme.
8. Shri. Dijo Kappen mentioned that there has been a lot of manipulations in the settlement of arrears during the previous OTS schemes. Hence it is essential that any scheme now approved by the Commission has to necessarily safeguard against such subjectivity. He further added that in the CAG Report of 2016 there has been serious observations about the settlement of arrears in the case of Punalur Paper Mills. He pointed out that the arrears to the tune of Rs.106 crore has been settled by KSEB Ltd for Rs.95 lakh. Further, a similar settlement was also made in the case of Binani Zinc Limited. He demanded that such settlements must be investigated and exemplary action taken against the officials in case any wrong doing is detected. According to him, it is paradoxical that the arrears for the domestic consumers for one year as per

the details furnished by the KSEB Ltd is only Rs.23 crore, which is due to the prompt disconnection measures taken by the KSEB Ltd. However, it is not clear why KSEB Ltd is not resorting to such measures for large consumers. KSEB Ltd is not making any earnest efforts in vacating stay orders extended by the Courts and he sought intervention of the Commission to seek the status from the legal wing of KSEB Ltd on the actions taken in such cases for vacating the stay. He also suggested that the Commission should give a ceiling amount for settlement. Shri. Kappen also pointed out that wherever consumers have obtained stay from the courts, only the recovery of petitioned amount is stayed and KSEB Ltd does not have any reason not to recover fresh bills from such consumers.

9. Advocate Rahman mentioned that rebate should be given not only for the interest charges but also for the principal amount especially for long pending cases. Shri. A.R Sathish, representing the HT-EHT Association mentioned that there should not be any ambiguity in the conditions specified in the OTS scheme and the scheme should be transparent. All abstract terms and discretion given to officers of KSEB Ltd should be avoided. The term 'deserving cases' mentioned in condition 7 of Annexure-1 needs to be defined. He mentioned that KSEB Ltd has not given the details of cases settled under OTS 2019. He also pointed out that condition 9 of Annex-2 of the petition gives an impression that KSEB Ltd is not interested in the settlement of court cases. He also suggested that instead of having a pre-condition that cases before the various courts should be withdrawn for consideration under OTS scheme, it would be ideal that KSEB Ltd should first give an estimated bill, so that the consumer can consider various options and decide as to whether to withdraw the case and to proceed with OTS. He also suggested that if the split up details of HT-EHT consumers is given, the Association can pursue with their members for settlement of arrears.
10. Shri. Sajan Peter Kallada mentioned that litigation cases should also be considered under the Scheme. He further added that KSEB Ltd should be directed to prepare bills under Regulation 153 of the Supply Code and as per the provisions of the Regulations and Orders of the Commission. Shri. Radhakrishnan, Carborandum Universal also raised the issue regarding unauthorised additional load. He further stated that their arrears shown under the head 'captive' is incorrect and they do not have any such arrears. *Chairman, KSEB directed KSEB Ltd to reconcile the accounts so that the factual position is reflected in the submission before the Commission.*
11. Sri Saji Mathew, MRF Limited stated that in OTS scheme 2019 only Rs.6 crore has been collected, which shows that the scheme is neither attractive nor successful. The scheme should be implemented in such a way that it is a win-win proposition for KSEB Ltd and the consumers. The interest rate should be

about 2-3% for long pending arrears. He also objected to the telescopic treatment for calculation of interest charges.

12. Shri. K.K. George mentioned that the hearing is very encouraging and the Commission should come out with a scheme which is beneficial for the KSEB Ltd and consumers. Shri. Prabhakaran mentioned that since issues with respect to each case is different, issuing a general guideline may be difficult. So officers should be instructed accordingly to settle the cases.
13. The Commission also received written comments from M/s. Edayar Zinc Limited (erstwhile Binani Zinc Limited) and North Malabar Chamber of Commerce. In their written comments, M/s Edayar Zinc Limited supported KSEB Ltd's proposal for OTS, especially the Clauses 1 and 8 of the Guidelines annexed as Exhibit to the petition. According to them, such clauses will help reduce litigations and settlement of cases. The North Malabar Chamber of Commerce, established with the objective of promoting and protecting the trade, commerce and industry of North Malabar, has made some suggestions on the scheme. According to them, considering the amounts settled (Rs.6.53 crore) in OTS-2019, the scheme failed to lure the consumers since it offered only reduction in interest charges and not reduction in principal amount. Reduction in principal amount may have to be offered at least in cases where litigations are continuing for several years and the hope for recovery is bleak. They have cited the tax litigation cases, in which State Government offered waiver upto 60% of the principal tax amount. Similar cases were introduced by Excise Department as well in 2013. They suggested a 25% waiver of principal amount and complete waiver of interest charges in long pending litigation cases by forming committees for negotiated settlement which would result in a win-win situation for both KSEB Ltd and its consumers.
14. After the hearing, the Commission vide daily order dated 29.12.2021 instructed KSEB Ltd to furnish written submissions on the specific cases mentioned in the hearing and also to furnish the following details by January 15, 2021 for speedy disposal of the matter
 - a. Details of Rs.6.53 crore collected under OTS-19 i.e. name of the consumer, total arrears, amount paid, balance amount etc.
 - b. Cases settled under OTS 2019 after its expiry for which approval of the Commission is sought in the present scheme.
 - c. The criteria to be adopted for the cases to be treated as never told as mentioned under condition 7 of the scheme.
15. KSEB Ltd vide letter dated 14-1-2021 furnished the details sought by the Commission such as the details of Rs. 6.53 crores collected under OTS 2019, the details of consumers who had availed the scheme, the consumers who after availing the scheme had defaulted on the payment and the details of cases settled under OTS 2019 after the expiry of the scheme ie., after 29.02

2020 for which approval is sought. However, in reply to the criteria to be adopted for cases to be treated as 'deserving cases', KSEB Ltd in their reply dated 14.01.2021 mentioned that "presently there is no criteria fixed as per the OTS scheme for evaluating the repayment capacity of the consumer. Most loss-making companies, BPL consumer, cooperative units et cetera requests for making the payment under instalments". From the above statement it is clear that the term "deserving cases" has neither been properly defined nor has any criteria being prescribed to decide such cases. Hence the Commission notes that ambiguity on this account remains.

Analysis and decision of the Commission

16. Based on the petition submitted by KSEB Ltd, the comments of the stakeholders, reply received from KSEB Ltd. to the Commission's query in Daily Order dated 29.12 2020 and after carefully analyzing the "Terms and Conditions of One-time Settlement Special Scheme (OTS – 2021)" (furnished as Annexure-1 / Exhibit P3), and the 'Guidelines for settling arrears which are entangled in court cases and similar issues by the District level committee, as per OTS 2021' (furnished as Annexure -2/Exhibit P4), the Commission has arrived at the following observations and decisions.
17. The Commission would like to appreciate the sincere attempts being made by KSEB Ltd. towards collecting long pending arrears. At the same time the Commission would like to mention that any such effort has to be transparent, based on objective and measurable criteria and should not have any element of subjectivity or any scope for individual interpretation. Hence, it is essential that both the 'Terms and Conditions' submitted by KSEB Ltd. and the 'Guidelines for settling arrears pertaining to court cases' must mention reliable and objective criteria. However, as mentioned above, certain terms such as "deserving cases", "process of settlement is equitable, fair as well as transparent", "reasonable discretion", "absolutely deserving cases" etc., have been mentioned in the annexure/exhibits submitted by the petitioner. The Commission notes that since such terms have not been objectively defined or measurable or quantifiable parameters fixed, it may lead to subjective implementation of a well-intended decision.
18. Further, the Commission would like to mention that such OTS schemes are exceptions to the normal collection of arrears and are designed as a one-time measure to bring down arrears in the organization. Considering the sanctity attached to the implementation of such schemes, these schemes cannot be made a regular feature or a periodical one. **Hence, the Commission hereby directs that all out efforts must be made by KSEB Ltd during the tenancy of the scheme to ensure that maximum collection of arrears is achieved. The Commission would like to reiterate that it will not be in a position to approve such schemes on a periodical basis.**

19. During the hearing, the stakeholders have raised conflicting views relating to the settlement scheme. While some stakeholders argued for fixing a maximum ceiling amount for such settlements, regular of follow up court cases and for effective steps to safeguard against the Scheme being manipulated or misused, others argued that only the reduction in interest charges without any waiver of the principal amount will fail to attract consumers for settlement. Hence, they proposed that rebate must also be extended to the principal amount so as to make the Scheme attractive. Further, the present proposal of applying interest in a telescopic manner considering the age of arrears may be avoided and a reduced single rate be applied uniformly irrespective of the age of the arrears.
20. Further, they have also stated that there should not be any ambiguity in the Terms and Conditions of the Scheme to safeguard from its subjective interpretation. The consumer may also be informed the probable settlement amount in advance, so that they can make an informed choice regarding whether to opt for the Scheme or otherwise.
21. The Commission has carefully considered the suggestions that emerged during the hearing. The Commission notes that the major aim of this OTS Scheme is to reduce the long pending arrears of the licensee. Accordingly, the enabling provision for One Time Settlement Scheme as per the Kerala Electricity Supply Code, 2014 is applicable. While implementing this provision, the Commission is required to take sufficient safeguards to ensure that while such schemes encourage and effect reduction in long pending arrears, it should not also act as a disincentive for prompt paying consumers. Hence, a balance is to be maintained while determining the Terms and Conditions of such Schemes.
22. The Commission has noted that as per KSEB Ltd's petition, the outstanding arrears before implementing the OTS-2019 Scheme (as on 30.09.2019) was Rs.1544.03 crore, whereas the arrears as on 30.09.2020 is Rs. 2714.54 crore. Since the 2019 Scheme ended on 29.02.2010 and the Covid 19 lockdown commenced w.e.f. 24.03.2020, the Commission is of the view that this increase maybe due to the special situation that arose from the pandemic. However, it is also a fact that OTS 2019 was not a success and could collect only a measly sum of Rs.6.53 crore.
23. Though the argument to make the Scheme more attractive may have some merit, it is to be clearly understood that any waiver of money that is legally due to KSEB Ltd. will have an adverse impact on the tariff. Further, while this benefit is extended to a few consumers, the total burden of this rebate will fall on all consumers of KSEB Ltd. Hence, the Commission is also duty bound to protect the interest of the paying consumers and ensure that such socialisation of burden does not occur.

24. The Commission has noted that the arrears of EHT consumers as on 31-12-2020 is about Rs.311.34 crore involving 18 consumers, which may also include current year arrears. Out of this, Rs.202.09 crore is under litigation, hence the litigation free arrears is just Rs. 109.25. Moreover, during the Commission's hearing, Shri Sateesh of HT-EHT Association has offered to assist in the process of settling these arrears. Hence, KSEB Ltd is directed to pursue these arrears on fast track to settle especially the long pending ones.
25. KSEB Ltd has furnished the complete list of cases settled under OTS 2019. Of the 2873 cases settled, 7 cases are of HT consumers and the balance is LT consumers. Further, the Commission notes that different categories of consumers including domestic, commercial, agriculture and general categories including government and public institutions have availed the scheme. The 7 HT consumers are mainly industrial and have fully settled their dues.
26. Based on the deliberations in the public hearing, Terms and Conditions of the Scheme and General conditions for settlement furnished by KSEB Ltd as Exhibits P3 & P4 of the petition are analysed below:

I. Terms and Conditions of One time Settlement Special Scheme (OTS 2021) furnished as Annexure-1 /Exhibit P3 of the petition

- a. **Clause 1 Eligibility:** Clause 1 of the Terms and Conditions explains the Eligibility conditions of the Scheme. The Commission's view is that cases settled under any previous OTS are not eligible to be considered under the new Scheme. In the petition, KSEB Ltd proposed that *"As per OTS 2019 scheme, the cases once settled in the previous OTS schemes were not eligible to be considered. However, due to the situation prevailing due to Covid-19 pandemic and the request made by the consumers settled under previous OTS scheme, it is proposed that the cases earlier settled under OTS schemes may also be allowed to be freshly settled under the proposed scheme if the consumers could not utilise the same due to various reasons"*. From the above proposal the Commission notes that KSEB Ltd has proposed to include the earlier settled cases also to be eligible for fresh settlement under the OTS 2021, if such consumers could not utilise the same due to various reasons, considering the Covid-19 situation. Thus, KSEB Ltd has sought a major deviation in the eligibility conditions from the previous schemes so as to include the cases settled under previous OTS, but discontinued on various reasons. KSEB Ltd.'s proposal has however, not limited this condition to situations arising out of the Covid 19 pandemic.

The Commission notes that as per the details furnished by KSEB Ltd, only 9 consumers have defaulted in the OTS 2019 Scheme and fall within the special situation of Covid-19 pandemic. Instead, the relaxation sought by KSEB Ltd. is a general deviation applicable to all cases, for which no specific justification has been given by KSEB Ltd. Since KSEB Ltd has not been able to provide any reasonable justification for seeking this general deviation, the Commission reiterates that consumers who have once availed the benefit under OTS have to be excluded in order to maintain the sanctity of the Scheme. Further, this action will also safeguard against consumers misusing such Schemes. Hence, the Scheme objective of ensuring early settlement of cases and collection of arrears can be ensured only if a consumer who had once availed the benefit of any previous Scheme was unable to complete the settlement for valid reasons. **Hence KSEB Ltd.'s proposal for a general exemption to such cases is not agreed to.**

However, taking an objective view of this issue and considering the fact that OTS 2019 failed to achieve its stated objective and the peculiar Covid 19 situation, the Commission hereby agrees to provide consumers whose recovery could not be made due to the Covid-19 pandemic can be allowed to participate in this Scheme. Hence, the Commission hereby directs that as a special measure, a one-time relaxation is allowed in the said condition. Accordingly, the eligibility condition is modified as shown below:

“Eligibility: *Consumers with arrears for more than two (2) years will be eligible to apply for One Time Settlement Scheme 2021 i.e., arrears that resulted from demand **raised prior to 01-01-2019 only.** The Scheme will also be open to those consumers where revenue recovery action is initiated and for those who have challenged the dues before the Courts subject to the condition that such arrears have arisen as a result of **bills raised prior to 01.01 2019.** As a **one-time relaxation, one additional chance for fresh settlement under this Scheme is given to those cases which were “settled” under previous OTS schemes, but could not avail the benefit due to various reasons.** However, theft cases under Section 135 of the Electricity Act will not be considered under the scheme”.*

- b. **Clause 2: Period of the scheme:** The period of the Scheme proposed by KSEB Ltd is from 20.12.2020 to 28.02.2021. The Commission notes that as per the proviso to clause 136(5) of the Kerala Electricity Supply Code 2014, the scheme shall be open only for short duration. Hence, the Commission hereby directs that the Scheme period the operational from **15-02-2021 to 31-3-2021.** KSEB Ltd is required to revise the time schedule of the scheme accordingly.

c. **Clause 5: Reduction in interest:** Clause 5 provides for reduced interest rates for settling the arrears as given below:

(i) **Special rate for arrears above 15 years:** KSEB Ltd. in the petition has submitted that in order to make the scheme attractive for settlement of long pending arrears, a special reduced rate of interest may be approved by the Commission. However, the Commission notes that KSEB Ltd. has not proposed any such special rate of interest. As on 30.09.2020, the receivables without interest of such category of consumers stood at Rs.267.33 crores including Rs.164.99 crore pending from private institutions. However, this is the pending principal amount and interest thereon has not been provided by KSEB Ltd.

The Commission notes with concern that KSEB Ltd. had in the first place allowed such arrears to accumulate over such long periods. It should have been the endeavour of KSEB Ltd. to initiate early and prompt action to recover such amounts. However, in view of the situation per se and after carefully considering KSEB Ltd.'s request and noting that such long pending arrears are normally difficult to recover and may involve prolonged and costly litigation, the Commission is inclined to consider KSEB Ltd.'s request. The Commission hopes that any such measure may act as a catalyst and encourage the settlement of such long pending arrears.

The Commission has also noted that KSEB Ltd. in their petition has proposed an interest rate of 6% per annum for arrears above 5 years but less than 15 years. Hence, any such reduced rate of interest has to be below the 6% proposed for arrears above 15 years. It is a fact that in the current economic scenario, the interest rates have shown a steadily declining trend and the current Financial Benchmark India Ltd. (FBIL) 6 months Overnight MIBOR as on 25.01.2021 stood at 3.46%, Market Repo Overnight Rate at 3.27% and the one-month term MIBOR at 3.60%. Considering all these aspects and the fact that these dues are pending for over 15 years, the **Commission approves a one-time interest rate of 4% for arrears pending over 15 years.**

(ii) **Interest Rate for arrears between 5 to 15 years:** In their submission, KSEB Ltd. has requested for a reduced flat interest rate of 6% per annum. **The Commission has considered this proposal and is pleased to agree to KSEB Ltd.'s proposal of 6% for arrears falling within this group.**

(iii) **Interest rates for arrears between 2 years and 5 years:** In the case of arrears older than 2 years and upto 5 years, average MCLR rate for the previous 6 months is considered. Since MCLR rates are proposed for

different tenors, the Commission hereby specifies that the average of the previous six months MCLR of one month tenor as notified by SBI is to be applied. ***Based on this criterion, the Commission hereby approves an interest rate of 6.65% per annum.***

- d. **Clause 7: Instalment for Principal amount:** In the said clause, it is mentioned that *“In certain deserving cases (Government departments, public undertakings, government institutions, local bodies, other deserving consumers with long pending arrears) instalment will be provided after the approval of concerned Dy Chief Engineer/Full time directors of KSEB Ltd”* As mentioned in para 15 above, KSEB Ltd in their reply dated 14.01.2021 have not clarified as to how the criteria deserving cases is to be assessed.

However, in the Terms and Conditions of One-Time Settlement Special Scheme (OTS – 2021) in condition 7 ‘Instalment for principal amount’ KSEB Ltd have mentioned that in deserving cases (government departments, public undertakings, government institutions, local bodies, other deserving consumers with long pending arrears), instalment to be provided on the principal amount by Deputy Chief Engineer of the concerned circle office. The terms and conditions mention that six equal monthly instalments on the principal amount shall be provided by the Deputy Chief Engineer of the concerned Circle Office and for instalment above 6 and upto 18, the approval of Full Time Directors is needed.

During the public hearing, the stakeholders have pointed out that such terms like ‘*deserving cases*’ should be defined properly so as to reduce the ambiguity and selective application. The Commission has sought clarification on the criteria to be adopted for the cases to be treated as ‘*deserving cases*’ as mentioned under condition 7, in the Daily Order dated 29-12-2020. KSEB Ltd in its reply dated 14-1-2021 has mentioned as follows:

“ In certain cases, it was found that the consumers having arrears are willing to make payment but are not having the amount to pay the whole amount in lumpsum. This is also applicable to Government consumers where there will not be sufficient budget approval for making payment of full arrear amount. In such cases, there was a provision given in the scheme for giving instalment on the principal amount. However, interest rate of 12% per annum will be charged on the instalment given upto 12 and for above 12 instalments to 18 instalments will be charged at 18% interest rate. In order to limit the above provision to the genuine consumers only, the approval for making such instalments upto 12 were given to the Deputy Chief engineer of concerned circles and beyond that the approval of the full time directors were needed. This provision was incorporated for limiting the cases. Presently there are no criteria

fixed as per the OTS scheme for evaluating the deserving consumers. However, the granting authority is issuing instalments by evaluating the repayment capacity of the consumer. Mostly loss making companies, BPL consumer, co-operative units etc requests for making the payment under instalments. It may be noted that the instalments given under the above scheme charge an interest rate of 12 and 18 percent. Further, if at all any default is made in the instalment payment by the consumer then the entire benefit of the scheme will be cancelled. Considering the fact that the scheme is implemented for collecting the long pending arrears from the consumers, it is requested that the instalment facility provided in the proposed scheme may be allowed. It may be noted that in the previous OTS scheme approved by the Hon'ble Commission also the same instalment facility has been followed”

The Commission notes the reply of KSEB Ltd. In the previous scheme also, the same condition was in vogue. As per the reply furnished by KSEB Ltd ‘deserving cases’ are to be decided by evaluating the repayment capacity of the consumer and mostly loss-making companies, BPL consumer, co-operative units etc. requests for instalment option for the principal amount. According to KSEB Ltd., since interest charges is applicable for instalments and if any default is made, the entire benefit of the scheme is not available to the consumer, the said condition would be used diligently.

The Commission also noted that monthly instalments up to 12 will bear an interest rate of 12 percentage per annum and monthly instalments above 12 and up to a maximum of 18 monthly instalments, will bear an interest rate of 14 percentage. ***The Commission has considered the KSEB Ltd contention and is pleased to agree with the proposal. Hence, the Commission chose to retain the said provision.***

- e. **Clause 11. Arrears Under litigation:** The Commission has carefully considered the Condition 11 of the Terms and Conditions of the One Time Settlement Special Scheme (OTS 2021) of KSEB Ltd. While the clause requires that the arrears under litigation will be settled only after the withdrawal of cases in the courts, the District Level Committees (DLC)/State Level (expert) Committee will examine the matter on a case to case basis and settle the cases. In cases where the party is not agreeing for the withdrawal of cases before the courts for settlement under OTS, condition says that the Committee shall interact with the consumers and propose settlement formula. In genuine cases, the Committee may review the principal amount with reasons clearly specified in the report. There will not be any financial limit to settle the case. The decision of the Committee, if accepted by the party will be implemented subsequent to the respective court allowing withdrawal of cases.

The Commission is of the considered view that the cases pending before the courts have to be withdrawn before the arrears can be settled under the OTS. While the Commission has no objections to the DLC/State level (expert) Committee discussing the arrears with the consumers, the Commission is not agreeable for any negotiation to reduce the principal amount. ***No rebate or any discount shall be allowed by KSEB Ltd in the principal amount and the interest to be charged shall strictly comply with the interest rates as mentioned at para 'c' above. Hence, KSEB Ltd is directed to modify this clause accordingly.***

- f. **Clause 12. Receipt and processing of applications for settlement:** As per clause 12 of the Terms and conditions of the Scheme, the application received from Government, PSUs and local bodies after the expiry of OTS scheme period may be collected at the respective Section Offices/SOR as may be applicable and are to be forwarded to the office of the Director (Distribution & IT), from where the same has to be placed before the Board with proper recommendations of the Expert Committee. On getting approval of the Board for considering the application, the same is to be submitted before the KSERC for approval.

The Commission considered the above condition and is of the considered view that there is a sanctity attached to the period of the scheme. Any such consideration beyond the date of applicability of the scheme is not correct and therefore not agreed to. ***Hence the Commission hereby directs that the above-mentioned portion of clause 12 be deleted.***

II. Guidelines for settling areas entangled in court cases and similar issues by the District Level Committee as per OTS 2021.

- a. KSEB Ltd may correct the serial nos in the Guidelines given as Exhibit-4 (Annexure-2)
- b. **Clause 2 Disputes pertaining to Minimum Guarantee:** Under clause 2 of the Guideline for settlement, it is mentioned that “*the benefit of reduced interest can invariably be extended to the consumers in such cases.*” The Commission reiterates that no reduction in interest beyond what stands approved by the Commission as per para 26 I (c) can be permitted by KSEB Ltd. ***Hence, wherever in these Guidelines the words “reduction in interest’ is mentioned it shall necessarily mean the interest rate for age wise category as approved by the Commission in para 26 I (c).***
- c. **Clause 8 Reduction in the MD for Demand based Billing Consumers during the period of Closure:** The Commission has noted that in the General guideline for settlement, the proposal is for settling the outstanding

demand “considering the recorded MD as an indicator for a *seriously negotiated settlement* as part of the OTS scheme”. The Commission is not able to assess what shall be the criteria for a seriously negotiated settlement, since no measurable parameter is indicated. Moreover, such negotiations would bring in an element of subjectivity and can lead to avoidable misgivings and disputes at a later stage. **Since KSEB Ltd has not specified criteria/parameter for such settlement, the Commission cannot agree to this clause. Hence the Commission hereby directs that the clause in the Guidelines be deleted**

- d. **Clause 9 Unauthorised use of electricity:** In the General Guidelines for settlement, it is mentioned that *“the settlement authority shall exercise logical discretion in appropriate cases to persuade the consumer to settle the matter. It shall be ensured that the process of settlement is equitable, fair as well as transparent”*. The Commission is of the considered view that any settlement under the Scheme has to be on the basis of well-defined measurable parameters. Usage of phrases such as “logical discretion”, “equitable”, “fairness” and “transparency” etc., are terms that can lead to an element of subjectivity. **The Commission is of the considered view that till such time reliable and measurable criteria/parameters are evolved by KSEB Ltd, such cases shall not be settled under this scheme. Hence, this guideline is to be deleted.**
- e. **GENERAL ISSUES (c) Leakage of electrical energy owing to wiring faults :** As per the clause (c) of General guidelines proposed under the scheme, *“Those pending cases pertaining to the subject matter may be taken up for settlement through a fair process of negotiation and the settlement authority should exercise its reasonable discretion to rework the assessment up to a maximum of 50% reduction of the original assessment on a case to case basis, if such arrears qualify for being included in the OTS scheme. This shall not be taken as a norm and shall be done only in deserving cases of very low paying capacity.”*

The Commission notes that the above guideline contains an element of subjectivity. In order to bring transparency as well as equitable settlement, the Commission hereby **directs the licensee that this clause shall be made applicable only in the case of consumers whose average monthly consumption is below hundred units. This clause in the Guidelines is to be amended accordingly**

- f. The Commission has carefully considered the following clauses in the Guidelines and has noticed that either no criteria or subjective terminology which cannot be quantified have been mentioned in the General Guideline

for settlement. The Commission is of the considered view that all waiver of incomes to a public utility has to be on the basis of well-defined and quantifiable/ measurable parameters. The clauses mentioned below however does not conform to these requirements. Hence, the Commission is of the view that KSEB Ltd have to evolve reliable, measurable and objective parameters for including these clauses in the scheme. ***It is therefore directed that these clauses mentioned in the Guidelines under the following headings in the Exhibit P4 Guidelines, be not included the scheme notification:***

- i. Litigations pertaining to detection of un-authorized additional load
- ii. Litigations pertaining to detection of misuse of electrical energy (use of electricity for a purpose other than that authorised)
- iii. **Note:** “The above guidelines can invariably extended to arrears pending for periods less than one year also, where cases are existing, but the benefit of OTS rates of interest are not applicable in such cases.”

27.Cases settled under OTS 2019 after due date: KSEB Ltd. has also sought approval for the regularisation of cases under OTS 2019 after the due date. In the hearing, KSEB Ltd has clarified that the cases pertain to Kozhikode Corporation and as part of the clarifications dated 14-01-2020, furnished the details of the cases. The settlements pertain to 3 cases only and the settled amount is Rs.85,274/-. The Commission is of the opinion that it is not a desirable practice to entertain cases after the due date. ***However, taking a lenient view and considering the fact that the number of consumers and the amounts are not significant, the Commission approves the same in relaxation to the Order dated 17-09-2019.***

28.Request of the consumers to let them know the final payment amount before agreeing to join the OTS 2021: During the hearing some of the participant/stakeholders requested that KSEB Ltd may inform the interested consumers the final amounts that they would have to pay in order to settle their arrears. Since this would enable the consumer to make an informed choice, the Commission views the suggestion favourably and hereby ***directs KSEB Ltd that in case a request from the consumer is received in this context, they shall extend full support and provide required information.***

Orders of the Commission

29.After considering the petition and additional clarifications furnished by KSEB Ltd and the comments of stakeholders, the Commission decided to approve the OTS 2021, with the modifications in the Exhibit P3 Annexure-1 'Terms and Conditions of One Time Settlement Special Scheme (OTS 2021) and Exhibit P4-Annexire 2 “Guidelines for settling arrears which are entangled in court

cases and similar issues by District Level Committee as per OTS 2021” as **detailed in para 26 above**, in accordance with the provisions of Regulation 136(5) of Kerala Electricity Supply Code, 2014. The modifications as detailed in para 26 shall be appropriately incorporated in the Exhibit P3-Annexure-1 ‘Terms and Conditions of One Time Settlement Special Scheme (OTS 2021)’ and Exhibit P4-Annexure 2 “Guidelines for settling arrears which are entangled in court cases and similar issues by District Level Committee as per OTS 2021’. There shall not be any deviation from the above approved scheme.

30. It is further directed that, within one month after the closure of the OTS 2021, KSEB Ltd shall submit to the Commission, the consumer wise details of the arrears settled under the scheme, with all particulars including the tariff category, principal amount, age of the arrears, amount settled under OTS, interest due, interest settled, instalment facilities availed by the consumers etc.
31. As sought in the petition, the Commission also approves the settlement made by KSEB Ltd applying the OTS 2019 scheme in the three cases received after the expiry of the scheme period.
32. The petition disposed of accordingly.

Sd/-
A.J. Wilson
Member (Law)

Sd/-
Preman Dinaraj
Chairman

Approved for Issue

Sd/-
Secretary (i/c)