

**BEFORE THE KERALA STATE ELECTRICITY
REGULATORY COMMISSION**

In the Matter of: **Review Petition against the consequential order dated 9th May 2017 issued by KSERC in terms of Hon'ble APTEL's findings in the order dated 06.05.2016 on Appeal No. 135 of 2014 filed by KSEB.**

Petitioner : **Kerala State Electricity Board Limited,
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram**

THE PETITIONER HUMBLY STATES THAT:

Hon'ble Commission, as per order dated 9th May 2017, issued consequential orders in terms of Hon'ble APTEL's findings in the order dated 06.05.2016 on Appeal No. 135 of 2014 relating to the Truing Up of accounts of KSEB for the year 2009-10. As per order dated 09.05.2017, Hon'ble Commission was pleased to approve an additional amount of Rs.84.61 crore under employee cost and Rs.23.29 crore under RoE aggregating to Rs.107.90 crore.

However, Hon'ble Commission has not granted any relief through the consequential order under power purchase and A&G expenses due to factual errors in assessment. Hence, KSEBL submits the following before the Hon'ble Commission for the kind review of the order dated 9th May 2017.

A. Power purchase

- (1) Hon'ble Commission, since 2003-04 has been truing up power purchase cost actually incurred after prudence check and except for the year 2009-10, actual power purchase cost was trued up. Disallowance was made only to the extent of under achievement of loss target fixed. But the increase in liability for power purchase in 2009-10 over 2008-09 to the extent of Rs.174.24 crore was not allowed to be recovered under power purchase cost for 2009-10.
- (2) While declining to allow power purchase cost to the tune of Rs.174 crore, Hon'ble Commission, as per para 9 of the order has made the following observations:

9. The Commission had examined the submission of KSEB Ltd on this issue. The power purchase and the actual cost incurred for power purchase as per the invoices raised by the generators/suppliers are considered as uncontrollable expenses by the Commission while truing up of accounts. In the instant case the Commission is of the studied view that the existing provision will suffice to meet the expenses of the year taking into consideration the actual annual power purchase cost incurred by the licensee. As per the audited accounts of KSEB for 2009-10 the total power purchase cost for the year is Rs.3384.52 crore. The power purchase bills are paid within one month lag. That is power purchased for the month of March will be paid in the month of April. Thus the provision to be created for payment of March bill should be provided for. Based on the annual power purchase cost provided by the licensee, average monthly bill will come to Rs 282 crore. Even after taking into consideration that March being a summer month and the actual power purchase bill will be greater than the average, the provision already existing for the same is Rs.552.11 crore at the beginning of the year (as on 1-4-2009) which is more than 87% of the average monthly power purchase cost. As per the details submitted by KSEB, the total amount claimed by KSEB for power purchase including provision is Rs. 3384.52 crore which comes to Rs. 282 crore per month which is very high compared to the actual power purchase cost calculated by the Commission. Over the years, complete power purchase cost has been allowed by the Commission, except the cost of power purchase, if any, on account of the under achievement of T&D losses. KSEB Ltd has not submitted the split up details of the Rs.552.11 crore outstanding current liability as on 31.03.2009 under the head "liability for power from central stations and purchase of power. If the amount booked in each year under power purchases is completely paid, there will not be any outstanding amount under current liabilities. In the present case the outstanding liability arose because either KSEB did not pay the complete amount booked under power purchase over the years or excess amount was booked under the head and hence a balance amount of Rs. 552.11 crore was outstanding as on 1-4-2009. Since the power purchase cost booked in such years has been fully allowed to pass through in the ARR after true up, the amount outstanding of Rs. 552 crore is the excess booked over the actual payment. The Commission in the impugned order dated 25.10.2012 has stated that, since there is a balance provision of Rs. 552.11 crore as on 31.03.2009 meeting the short term liability towards power purchase, there is no need to provide additional provision under this head for the year 2009-10. Hence, in the absence of details furnished by KSEB on the outstanding liability of Rs.552.11 crore, Commission finds no evidence that the net cost of power purchase as approved in the impugned order dated 25.10.2012, for the year 2009-10 at Rs.3210.25 crore is insufficient.

- (3) Major observations of the Hon'ble Commission contained in the order dated 09.05.2017 are summarized below:

- (i) *The power purchase bills are paid within one month lag. That is power purchased for the month of March will be paid in the month of April. Thus the provision to be created for payment of March bill should be provided for.*
 - (ii) *the provision already existing for the same is Rs.552.11 crore at the beginning of the year (as on 1-4-2009) which is more than 87% of the average monthly power purchase cost.*
 - (iii) *the total amount claimed by KSEB for power purchase including provision is Rs. 3384.52 crore which comes to Rs. 282 crore per month which is very high compared to the actual power purchase cost calculated by the Commission.*
 - (iv) *existing provision will suffice to meet the expenses of the year taking into consideration the actual annual power purchase cost incurred by the licensee...power purchase cost booked in such years has been fully allowed to pass through in the ARR after true up, the amount outstanding of Rs. 552 crore is the excess booked over the actual payment.*
 - (v) *in the absence of details furnished by KSEB on the outstanding liability of Rs.552.11 crore, Commission finds no evidence that the net cost of power purchase as approved in the impugned order dated 25.10.2012, for the year 2009-10 at Rs.3210.25 crore is insufficient.*
- (4) In response to the observations listed above, KSEBL humbly submits the following before the Hon'ble Commission.
- (i) *The power purchase bills are paid within one month lag. That is power purchased for the month of March will be paid in the month of April. Thus the provision to be created for payment of March bill should be provided for.*
 - (ii) *the provision already existing for the same is Rs.552.11 crore at the beginning of the year (as on 1-4-2009) which is more than 87% of the average monthly power purchase cost.*
- (5) It is humbly submitted that liabilities would continue to remain in books till these are discharged. In the years of financial difficulties, liabilities could not be discharged promptly and the same would pile up and therefore no ceiling can be fixed on liabilities arising out of legally binding agreements as these are to be settled. The liabilities remain as long as paid or settled. The following table illustrates the year end outstanding liabilities on account of power purchase till 31.03.2015, which shows that the unpaid liability has crossed 1600 crore in 2012-13, which was a drought year and KSEB had to procure costly power due to the acute shortfall in hydro generation.

- (6) This fact can also be ascertained from the table given below, in which power purchase cost as well as yearend liability towards power purchases for the period from 2001-02 to 2014-15 is tabulated.

Year	Liability towards power purchase at the beginning of the year	Power purchase cost as per P&L Account	Average monthly expenses	Power purchase liability at the end of the year	Actual payments effected/ adjusted	Yearly payment as a % of expense	Outstanding liability as a % of expense	Outstanding liability equivalent to Monthly expenses (times)
1	2	3	4=(3/12)	5	6=(2+3-5)	7=(6/3)	8=(5/3)	9=(5/4)
2001-02	423.03	1451.55	120.96	1234.74	639.84	44	85	10.2
2002-03	1234.74	1872.07	156.01	405.50	2701.31	144	22	2.6
2003-04	405.5	1887.11	157.26	344.63	1947.98	103	18	2.2
2004-05	344.63	1463.03	121.92	436.29	1371.37	94	30	3.6
2005-06	436.29	1533.93	127.83	543.36	1426.86	93	35	4.3
2006-07	543.36	1629.30	135.78	417.41	1755.25	108	26	3.1
2007-08	417.41	2101.07	175.09	473.74	2044.74	97	23	2.7
2008-09	473.74	3417.22	284.77	552.11	3338.85	98	16	1.9
2009-10	552.11	3384.51	282.04	726.37	3210.25	95	21	2.6
2010-11	726.37	3721.58	310.13	768.59	3679.36	99	21	2.5
2011-12	768.59	4375.3	364.61	727.14	4416.75	101	17	2.0
2012-13	727.14	7199.61	599.97	1626.1	6300.65	88	23	2.7
2013-14	1626.1	6902.65	575.22	847.66	7681.09	111	12	1.5
2014-15	847.66	6782.76	565.23	609.48	7020.94	104	9	1.1

- (7) It may kindly be seen that the power purchase liability as on 31.03.2002 was settled as per the Tripartite agreement in line with the recommendations of Ahluwalia Committee and the dues as on 31.03.2013 settled subsequently in 2013-14. It can be seen from column (9) that power purchase bills were never paid in one month lag.

(iii) *the total amount claimed by KSEB for power purchase including provision is Rs. 3384.52 crore which comes to Rs. 282 crore per month which is very high compared to the actual power purchase cost calculated by the Commission.*

- (8) It is humbly submitted that KSEB in the truing up petition for 2009-10 has fully explained the reasons for increase in power purchase cost over approval in ARR. Hon'ble Commission has not raised any objection regarding the actual cost of power purchase. This position was reiterated in the order on Review petition dated 28.10.2013 that *12.It is clear from the above that the Commission has not disallowed the power purchase cost for the year 2009-10. The power purchase cost for 2009-10 was fully admitted....*

- (9) Further, Hon'ble Commission as per the counter affidavit filed before the Hon'ble APTEL in Appeal No. 135 of 2014 submitted that 27. *In reply to para 8(I) (B)(II) (page 10 to 14 of Appeal paper book), it is respectfully submitted that the claims of the petitioner are incorrect and hence denied. The respondent has not disallowed any power purchase cost as alleged by the Appellant.....28. In this connection, it may kindly be noted that this respondent neither disallowed any amount under power purchase nor raised any disputes on the provision created by the appellant to the tune of Rs. 174.26 crore, which may be required to pay the power purchase bill for the year 2009-10.*
- (10) It is humbly submitted that the views expressed in the order with regard to the cost being at a higher side in comparison to the power purchase cost calculated by the Hon'ble Commission are not in line with the earlier established position.
- (iv) *existing provision will suffice to meet the expenses of the year taking into consideration the actual annual power purchase cost incurred by the licensee...power purchase cost booked in such years has been fully allowed to pass through in the ARR after true up, the amount outstanding of Rs. 552 crore is the excess booked over the actual payment.*
- (11) KSEBL humbly submits the following before the Hon'ble Commission
- (i) Hon'ble Commission started issuing orders rationalizing tariff from 2003-04 onwards. Till then, tariff orders were issued by the Government of Kerala in exercise of enabling provisions contained in the Electricity (Supply) Act, 1948.
- (ii) In compliance to the provisions contained in section 59 of the Electricity (Supply) Act, 1948 with regard to minimum 3% RoR, Government of Kerala ordered to grant subsidy to make good the revenue gap and accordingly accumulated subsidies receivable from Government was to the tune of Rs.3513.43 crore as on 31.03.2003. This amount was far in excess of revenue from tariff of Rs.2480.69 crore for 2002-03, which amply makes it clear that the cost has never been passed on to the consumers in full.
- (iii) It may kindly be seen from the table that power purchase liability as on 31.03.2003 was Rs.405.50 crore, equivalent to 2.6 month's average power purchase cost and almost 1/4th of the power purchase cost for the year. Hence it is clear that year end liability represent unpaid amount and it does not confine to the liability for power purchase in the month of March or to that of average power purchase cost for one month.
- (iv) From the above submission, it is clear that the cost pertaining to earlier years were not ordered to be passed on to the

consumers in its entirety by the Government till 2002-03. Further, Hon'ble Commission tried up accounts from 2003-04 to 2008-09 on the basis of petitions filed by KSEB. The orders were issued after observing due process inter alia public hearing, seeking additional details/clarifications and most importantly after conducting the prudence check.

- (v) For the period from 2003-04 to 2008-09, Hon'ble Commission has not come across any anomaly with regard to power purchase cost for any of these years. No such instances were observed for 2009-10 either.
 - (vi) In view of the above, it is clear that the observation with regard to *power purchase cost booked in such years has been fully allowed to pass through in the ARR after true up* is against facts since expenses till 2002-03 were not allowed to be recovered in full by the Government of Kerala and thereafter, Hon'ble Commission approved expenses for each succeeding year after conducting prudence check.
 - (vii) As submitted above, the increase in liabilities on power purchase was not due to creation of higher provisions of power purchase, but due to the belated payment of the power purchase bills. It has been the admitted position of the Hon'ble Commission that the power purchase is an uncontrollable expense to the utility.
 - (viii) It is worthwhile to mention here that Hon'ble Commission, while conducting prudence check, has not raised any objection with regards to either the volume of power purchased in 2009-10 or the rate at which the purchase was effected. However, has disallowed the power purchase expenses to the extent of Rs 174.24 crore on wrong premises of increase in current liabilities on account of the higher provision created.
 - (v) *in the absence of details furnished by KSEB on the outstanding liability of Rs.552.11 crore, Commission finds no evidence that the net cost of power purchase as approved in the impugned order dated 25.10.2012, for the year 2009-10 at Rs.3210.25 crore is insufficient.*
- (12) With regard to the non submission of details, it is humbly submitted that in compliance of the direction given by the Hon'ble Commission during the course of hearing on 15.05.2013 on the Review petition filed by KSEB against truing up order, KSEB, as per letter dated 10.06.2013 had submitted the source wise details of outstanding power purchase liabilities as on 31.03.2009. Further Hon'ble Commission has also not made any adverse remarks with regard to non submission of details in order dated 28.10.2013 on the Review petition filed by KSEB against truing up order dated 25.10.2012.

- (13) However, the required information with regard to the breakup of outstanding liabilities as on 31.03.2009 contained in the letter dated 10.06.2013 is reproduced below for ready reference.

SI No	Name of Supplier	As on 31-03-2009	As on 3-03-2010	Increase
		(Rs. Cr)	(Rs. Cr)	(Rs. Cr)
1	NTPC	213.66	385.80	172.14
2	TNEB-102	0.08	0.08	0.00
3	Karnataka EB	1.75	2.91	1.16
4	NPCIL	6.40	9.33	2.93
5	NLC	137.60	129.71	-7.89
6	TNEB-107	18.28	18.28	0.00
7	PGCIL	28.83	20.18	-8.65
8	PGCIL-UI	0.01	0.53	0.52
9	Gridco	-0.03	-0.03	0.00
10	CSEB	0.01	0.01	0.00
11	MSEB	2.31	2.31	0.00
12	BSES	116.02	127.82	11.80
13	KPCL	21.25	24.91	3.66
14	TATA	2.23	0.00	-2.23
15	NVVN	1.36	1.36	0.00
16	JSW	0.00	0.08	0.08
17	EDCL	0.00	2.44	2.44
18	Wind Electric Generators	0.22	0.66	0.44
19	MP Steels	2.14	0.00	-2.14
		552.12	726.38	174.26

- (14) Further same information has been incorporated in the Appeal petition No.135 of 2014 as well, on which the Hon'ble Commission filed counter affidavit before the Hon'ble APTEL. It may kindly be noted that the Hon'ble Commission has not considered the information furnished in this regard. Hence the observation that KSEB has not submitted the details is not true and hence the decision taken on this incorrect observation may kindly be reviewed.

- (15) As submitted above, Hon'ble Commission may kindly review the decision to curtail power purchase cost to the extent of increase in outstanding liabilities amounts to Rs 174.24 crore.

B. Administration and General expenses

- (16) Hon'ble APTEL directed the Hon'ble Commission to consider the A&G expense as per audited accounts and to allow the same with carrying cost after prudence check. KSEBL, submitted details with explanation with regard to various components of A&G expenses like freight and conveyance, DSM expenses, printing and stationery etc. In order to create awareness among consumers on energy conservation, KSEB had undertaken numerous initiatives through campaigns and the cost involved were booked under Advertisements and DSM expenses.

Similarly explanations were furnished for other components as well but Hon'ble Commission observed that the expenses shall be limited to the approved level in ARR in the process of truing up.

- (17) KSEBL is of the humble view that this position of the Hon'ble Commission is contrary to the directions issued by the Hon'ble APTEL, which was to consider the actual expenses as per audited accounts for prudence check.
- (18) In view of the above submission, Hon'ble Commission may kindly review decision and allow Rs.19.20 crore.

C. Carrying cost on Revenue gap approved.

- (19) Hon'ble Commission has determined the additional revenue gap for the year at Rs. 107.90 crore. KSEBL prayed before the Hon'ble Commission that the additional revenue gap may be treated as regulatory asset to be discharged in subsequent tariff revision and carrying cost may also be allowed till such discharge. It is humbly requested that the Hon'ble Commission may specify the same.

Prayer

- (20) Considering the reasons, facts and circumstances on the matters as detailed in the paragraphs above, KSEBL requests before the Hon'ble Commission to kindly review the order dated 9th May 2017 issued in terms of Hon'ble APTEL's findings in the order dated 06.05.2016 on Appeal No. 135 of 2014 filed by KSEB.

Sd/-
Chief Engineer (Commercial & Tariff)