BEFORE THE KERALA STATE ELECTRICITY REGULATORY COMMISSION

In the Matter of: **Review Petition against the KSERC order dated 20th June 2017 in Petition OA No 3/2017 in the matter of Truing Up of accounts of KSEB for the year 2013-14.**

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

THE PETITIONER HUMBLY STATES THAT:

1. Hon'ble Commission as per order dated **20th June 2017 i**n Petition **OA No 3/2017** in the matter of Truing Up of accounts of KSEB for the year 2013-14 has approved the revenue gap for the year at Rs 195.50 crore as against the revenue gap of Rs 951.18 crore sought to be trued up for the year. A comparison of the various expenses as per the C&AG audited accounts and the order on Truing Up for the year is detailed below.

Table-1 Comparison of the expenses as per Truing up petition and KSERC order (Rs in crore)

Sl.No	Particulars	As per Audited Accounts	True up claimed	Amount Trued up	Disallowance
1	**2**	**3**	**4**	**5**	**6 (4-5)**
	Revenue Income				
1	Non-Tariff Income	571.97	571.97	571.97	0.00
2	Revenue from tariff	9978.88	9978.88	9978.88	0.00
	Total A(1+2)	10550.85	10550.85	10550.85	0.00
	Revenue Expenses				
1	Power Generation	240.45	240.45	240.45	0.00
2	Power Purchase	6902.65	6902.65	6882.23	20.42
3	Interest Charges	834.81	834.81	491.20	343.61
4	Depreciation	516.28	368.94	306.68	62.26
5	Employee Cost	2579.99	2579.99	2418.84	161.15
6	Repairs &Maintenance	227.04	227.04	216.96	10.08
7	Admn.&Gen Expenses	253.50	253.5	95.34	158.16
8	Other Expenses	28.51	28.51	28.51	0.00
9	Return/ Surplus	116.17	366.4	366.40	0.00
	Total(1to9)	11699.40	11802.29	11046.61	755.68
	Less:				0.00
1	Expenses Capitalized	182.95	182.95	182.95	0.00
2	Interest Capitalized	117.31	117.31	117.31	0.00

	Total(1+2)	300.26	300.26	300.26	0.00
	TOTAL B	11399.14	11502.03	10746.35	755.68
	SURPLUS(DEFICIT) (A-B)	**-848.29**	**-951.18**	**-195.50**	**-755.68**

2. As detailed above, Hon'ble Commission had made a total disallowance of Rs 755.68 crore for the year 2013-14 as detailed below:

Table 2 Summary of disallowances

Sl. No	Expense head	Amount (Rs. in crore)
1	Cost of power purchase	20.42
2	Employee cost	161.15
3	Repair & Maintenance expenses	10.08
4	A&G expenses (excl 3(1) duty)	57.79
5	Depreciation	62.26
6	Interest and finance charges	343.61
7	Section 3(1) duty	100.37
8	Total	755.68

3. KSEBL submits that, while approving the truing up petition based on the audited accounts, Hon'ble Commission was pleased to approve most of the claims made by KSEBL. However, Hon'ble Commission has not considered the actual expenditure furnished by KSEBL in certain instances and made factual errors in assessment while approving certain expense components. Hence, KSEBL submits this petition before the Hon'ble Commission for the kind review of the order dated 20th June 2017.

I. Disallowance under purchase of power by Rs.20.42 crore.

4. Hon'ble Commission disallowed Rs.17.55 crore under power purchase cost towards under achievement of T&D loss target. Further, an amount of Rs. 2.87 crore disallowed as it pertains to 2014-15.

5. Hon'ble Commission ascertained the excess power purchased on account of under achievement of T&D loss at 39 MU and disallowed at the average rate of power purchase at Rs. 4.50 per unit. While ascertaining average rate of Rs.4.50 per unit, Hon'ble Commission considered Rs.1111.37 crore as cost of power from liquid fuel stations used for export. In this connection, the following points may kindly be noted.

(i) During the year, KSEBL scheduled 911.56 MU from BSES and RGCCPP stations for sale to TANGEDCO for Rs.1262.60 crore. KSEBL incurred Rs.1111.37 crore towards variable cost and after recovering the fixed charges of Rs.101.95 crore, net profit earned amounted to Rs.49.27 crore.

(ii) Entire profit of Rs. 49.27 crore earned from the transaction along with the benefit on account of reduction in fixed charges of Rs. 101.95 crore under power purchase cost, aggregating to Rs.151.22 crore has been passed on to the consumers in full.

(iii) However while determining average power purchase rate for penalizing KSEBL for under achievement of T&D loss target, Hon'ble Commission ignored the benefits passed on to consumers to the extent of Rs.151.22 crore and considered the variable cost component pertaining to the transaction alone. In other words, entire benefits passed on to the consumers have been factored in the power purchase cost while arriving at the per unit power purchase cost for penalizing KSEBL.

(iv) Therefore, Hon'ble Commission may kindly deduct the amount realized through export of power to TANGEDCO from the power purchase cost for the year for determining the average power purchase cost per unit, as computed below:

Table 3 Average power purchase cost for the year 2013-14

Particulars	Actual cost	
	Quantity (MU)	Cost (Rs. in crore)
Power purchase	13777	6902.65
Less: Realization from export of power	912	1262.60
Net cost of power purchase	12865	5640.05
Average cost of power purchase (Rs. per unit)		4.38
Penalty for under achievement of T&D loss.	39	17.08
Penalty levied as per order dated 20.06.2017.		17.55
Relief sought in Review Petition.		0.47

(v) Based on the calculation furnished above, Hon'ble Commission may be pleased to revise the penalty for under achievement of T&D loss determined at Rs.17.55 crore as per order to Rs. 17.08 crore (39 MU @ Rs.4.38 per unit).

6. Hon'ble Commission disallowed Rs. 2.87 crore based on observation contained in Auditors' report that the expense pertains

to power purchase cost for the period subsequent to 31.03.2014. In this connection, KSEBL submits the following:

(i) The prepaid expenses stated in the Audit observation relate to the open access claims paid to the traders viz NVVN, JSW Power, TPTCL, GEPL and MPPL. These claims are in the nature of reimbursement open access charges incurred through traders by KSEBL.

(ii) It may kindly be noted that as per the existing accounting procedure being followed consistently, the reimbursement of open access charges are treated as the expenditure for the year in which claims are raised by the traders.

(iii) Hence, Hon'ble Commission may be pleased to either approve this expense under power purchase for the year 2013-14 or allow the same under power purchase cost for 2014-15 in addition to the power purchase cost claimed for true up by KSEBL for 2014-15.

II. Disallowance of Employee cost by Rs.161.15 crore.

Disallowance comprises of the following:

(a) Employee expenses for the increased working strength in 2013-14 over the corresponding number in 2008-09 has been disallowed in full. In other words, basic pay, DA and all other allowances disbursed to 4808 nos of employees amounting to Rs. 120.75 crore has been disallowed.

(b) Other Allowances, including terminal surrender, in 2008-09 were indexed to WPI/CPI over the years to arrive at the allowable expenses for 2013-14 on the premise that there is no reference on other allowance in Hon'ble APTEL order. In the process, a sum of Rs.25.20 crore (Rs.171.66 crore-Rs.146.46 crore) disallowed.

(c) Provision for gratuity Rs.15.20 crore disallowed in full.

9. In this regard Kind attention of the Hon'ble Commission is invited the following:

(i) Hon'ble APTEL, as per judgment dated 10.11.2014 in Appeal no 1 and 19 of 2013, directed that:

…The pay revision as per the agreements reached between the management and Trade unions have also to be honored.

(ii) It may kindly be noted that the Long Term Settlement (LTS) entered into between the management and the recognized trade unions is for revising the existing wages and allowances and service conditions of all categories of workmen and the same is executed for a period of 5 years. In other words, revision of allowances is also an integral part of the pay revision as per the agreements reached between the management and trade unions. A copy of the long term settlement is attached as **Annexure 1.**

(iii) Hon'ble Commission was pleased to approve the revised basic pay and DA for the working strength as on 31.03.2009 in compliance of the Hon'ble APTEL judgment. But failed to consider the fact that HRA and other allowances along with service conditions too were revised along with basic pay and DA as per LTS. Hence revision of allowances forms an integral part of *the agreements reached between the management and Trade unions* as envisaged in the Hon'ble APTEL order.

(iv) Further, while approving other allowances by adopting the indexation over base year 2008-09, the vital aspect of pay revision wef 2008, implemented in 2011 had been omitted to be factored in approval.

(v) Hon'ble Commission disallowed Rs.120.75 crore towards Basic pay, DA, **HRA and other allowances** for the enhanced staff strength as on 31.03.2014 as per paragraph 125 of the order. Hon'ble Commission may kindly note that there is a conceptual error in the approval of other allowances. By adopting indexation methodology, Hon'ble Commission restricted other allowances at 2008-09 level amounting to Rs.146.46 crore on one hand and at the same time, disallowed allowances drawn by increased staff strength of 4808 nos amounting to Rs.4.43 crore {(2.82+3.87)/7261*4808}.

(vi) Since allowances applicable to the increased staff strength amounting to Rs.4.43 crore has already been disallowed, actual allowances disbursed amounting to Rs.170.40 crore and staff welfare expenses Rs.1.26 crore may kindly be approved in full since it pertains to the working strength as on 31.03.2009.

(vii) Therefore, in line with the Hon'ble APTEL judgment, Hon'ble Commission may kindly approve other allowances and staff welfare expenses amounting to Rs.171.66 crore as the requisite disallowance applicable to the increased staff strength have already been made in the true up order.

10. It is humbly submitted that while furnishing break up of terminal benefits, a compilation error crept in due to which provision for dearness relief (DR) for 2013-14 and 2014-15 amounting to Rs. 15.20 crore and Rs. 7.39 crore respectively was inadvertently disclosed as provision for gratuity. It may kindly be noted that no provision was created for gratuity either in 2013-14 or 2014-15. Hon'ble Commission may kindly consider the above submission and approve Rs.15.20 crore towards Dearness Relief provision as on 31.03.2014.

III. <u>Disallowance under interest and finance charges by Rs.343.61 crore.</u>

11. Break up of disallowance by the Hon'ble Commission under this head is summarized below:

Table4 Break up of disallowance under Interest and finance charges

Sl. No	Description	Amount (Rs in crore)
1	Interest on security deposit	48.64
2	Interest on borrowings for working capital	265.43
3	Other interest	30.04
4	Cost of raising finance	-0.50
5	Total	343.61

a. Interest on Security Deposit Rs. 48.64 crore.

12. In respect of disallowance under interest on security deposit, it is humbly submitted that:

(a) Hon'ble Commission has considered the actual interest allowed to consumers in 2013-14 against the provision created for that year. The provision for 2013-14 has been created on the closing balance of security deposit in the previous year (ie as on 01.04.2013) by applying the bank interest prevailed as on that date. Hence the interest as per accounts denotes the provision created at the balance sheet date, which is meant for disbursement during the first quarter of the succeeding year. Therefore these two figures are not comparable.

(b) The actual disbursement made in 2013-14 has been made against the provision created for the year 2012-13. The software calculates the exact amount of interest payable to each and every consumer by applying bank rate while making payment. Therefore actual disbursement has to be compared with the provision for the previous year only.

(c) Interest was provided at bank rate at 6% till 2011-12, @8% for 2012-13, @8.50% for 2013-14 and 9 % for 2014-15 on the opening balance of security deposit in respective years. But the interest so provided in accounts has been credited to the consumers account in the first quarter of the ensuing financial year only. This practice is being followed consistently in line with the provisions contained in Regulation 67 to 74 in chapter 4 of the Supply Code.

(d) In short, as against the provision for security deposit for 2013-14 amounting to Rs.134.83 crore, disbursements had been in 2014-15 amounting to Rs. 121.48 crore.

(e) Year wise break up of interest on security deposit provided in accounts and actually disbursed is furnished below:

Table5 Details of Security deposit and interest thereon

Financial Year	SD Balance (Rs. in cr)	Interest provided (Rs.in cr)	Rate	Interest disbursed during the year (Rs.in cr)
2009-10	1078.92	58.04		38.28
2010-11	1242.54	64.74	@ 6% (on 1078.92 cr)	44.80
2011-12	1424.73	68.01	@ 6% (on 1242.54 cr)	58.19
2012-13	1586.30	113.98	@ 8% (on 1424.73 cr)	58.49
2013-14	1805.61	134.84	@ 8.50% (on 1586.30cr)	86.19
2014-15	1975.31	162.50	@ 9% (on 1805.61cr)	121.48
2015-16	2287.31	167.90	@ 8.50% (on 1975.31cr)	153.64

(f) Hon'ble Commission may kindly approve the subsequent actual disbursement against provision created for the year of true up instead of allowing actual payment made against the provision created in preceding year.

(g) On the basis of above submission, Hon'ble Commission may be pleased to true up Rs.121.48 crore under interest on security deposits for 2013-14.

b. Interest on overdrafts Rs. 265.43 crore.

13. Hon'ble Commission has fully disallowed the interest on Overdrafts for the year 2013-14, actually paid by KSEB, to various financial institutions amounting to Rs 265.43 crore. While denying interest, Hon'ble Commission, per Table 24 of the truing up order, has ascertained Rs.662.32 crore as negative working capital for the year 2013-14 and concluded that working capital needs have been more than compensated by the current liabilities. Further, interest on PF was allowed to the tune of Rs.98.98 crore and it was presumed in the order that Overdrafts availed might be used to fund the expenses which are not approved in the ARR. In this connection, it is humbly submitted as follows:

(i) Even though the nomenclature used to disclose OD interest in accounts as 'interest on working capital' in line with ESAAR, 1985, it is humbly clarified that overdrafts were availed by KSEBL to make good the revenue deficit.

(ii) Hon'ble Commission may kindly consider the fact that KSEB had to avail overdrafts to meet the accumulated revenue gap and the interest on such borrowings were prayed to be allowed as carrying cost of Revenue gap in the truing up petition. The revenue gap , overdrafts, interest etc are showing increasing trend year after year as tabulated below, which clearly reveals that the revenue gap kept increasing year after year justifying the year on year increase in overdraft:

Table 6 Comparison of revenue gap and overdraft

Year	Cumulative approved and un bridged revenue Gap	Cumulative Revenue gap as per audited Accounts-.	Cumulative Generation and Power purchase cost over approval.	Overdraft outstanding at the year end.	Interest on OD for the year
31.03.2011	424.11			310.36	35.78
2011-12	1352.73	1934.13	731.71	1114.36	82.25
2012-13	1984.75	5933.27	3294.67	1942.96	167.94
2013-14	2445.73	7031.79	3849.26	2303.62	265.43

(iii) The following table discloses the un bridged revenue gap approved by the Hon'ble Commission before the commencement of the financial year 2013-14 at Rs.1984.75 crore. Further, approved revenue gap for 2013-14 net of additional realization due to tariff revision has been determined at Rs.460.98 crore. In short, approved and un bridged revenue gap as per the orders of the Hon'ble

Commission as on 31.03.2014 stood at Rs.2445.73 crore as detailed below:

Table 7 Details of approved and unbridged revenue gap as on 31-03-2014
(Rs in crore)

Year	Revenue gap approved	Additional revenue through tariff revision	Net un-bridged revenue gap	Remarks
Trued up value till 2010-11			424.11	True up order 2010-11 dated 30.11.2012.
ARR 2011-12	928.62	Nil	928.62	ARR Order dated 01.06.2011. No tariff revision
ARR 2012-13	1889.15	1257.13	632.02	ARR Order dated 28.04.2012.
Approved and un bridged revenue gap till 2012-13			1984.75	
ARR 2013-14	1049.91	588.93	460.98	ARR Order dated 30.04.2013.
Approved and un bridged revenue gap till 2013-14			**2445.73**	
ARR 2014-15	1094.78	615.50	479.28	ARR order dated 14.08.2014.
Total	4962.46	2461.56	**2925.01**	

(iv) Hon’ble Commission may kindly note that the OD outstanding as on 31.03.2014 was Rs.2303.62 crore, against approved revenue gap at the beginning of the year to the tune of Rs.2445.73 crore, is well within the un bridged revenue gap approved by the Hon’ble Commission.

(v) Subsequently, Hon’ble Commission was pleased to issue consequential orders for 2009-10 and 2010-11 true up. In addition, orders were also issued truing up the cost and revenue for 2011-12, 2012-13 and 2013-14. It may kindly be seen that the trued up values for each of these years, except for 2013-14 were higher than the revenue gap approved in ARR, as detailed below:

Table 8 Details of increase in revenue gap consequent to truing up (Rs in crore)

Year	Net un-bridged revenue gap as per ARR orders	Net un-bridged revenue gap as per true up orders	Subsequent increase in revenue gap	Remarks
Trued up value till 2010-11	424.11	424.11	0.00	True up order 2010-11 dated 30.11.2012.
Additional gap trued up for 2009-10.		107.90	107.90	As per consequential order dated 09.05.2017.
Additional gap trued up for 2010-11.		204.70	204.70	As per consequential order dated 19.05.2017.
ARR 2011-12	928.62	1386.97	458.35	True up order dated 16.03.2017.
ARR 2012-13	632.02	3132.97	2500.95	True up order dated 20.03.2017.
ARR 2013-14	460.98	195.50	-265.48	True up order dated 20.06.2017
Approved and un bridged revenue gap till 31.03.2014	**2445.73**	**5452.15**	**3006.42**	
ARR 2014-15	479.28			Rs.1809.17 crore sought by KSEBL for truing up.
Total	**2925.01**			

(vi) It may kindly be seen that trued up values till 31.03.2014 as per the orders of the Hon'ble Commission has exceeded ARR approval by Rs.3006.42 crore.

(vii) In view of the fact that the actual OD balance as on 31.03.2014 amounting to Rs.2303.62 crore was well within the approved revenue gap at the beginning of the year 2013-14 to the tune of Rs. 2445.73 crore. Hence Hon'ble Commission may be pleased to approve the interest on overdrafts claimed in truing up for 2013-14 towards interest on OD claimed by KSEBL.

(viii) With regard to Table 24 of the truing up order in which negative working capital for the year 2013-14 has been ascertained Rs.662.32 crore, it is humbly submitted that certain components like accumulated revenue gap are also to be considered in order to assess the need for borrowings.

(ix) Hence it is evident that borrowings are resorted to in order to meet the financing requirement and it can be clearly ascertained that borrowings were made to finance the un bridged revenue gap. The financing strategy followed by KSEB is to utilize all internal resources (electricity duty collection, security deposit, consumer contribution etc and deferred payments) before resorting to borrowing at lowest possible interest.

(x) The increasing trend in overdraft amply proves the fact that heavy borrowings were resorted to make good the huge revenue gap of earlier years. The OD balance as on 31.03.2008 had been Rs.51.81 crore which increased steadily thereafter and never receded owing to the year on year increase in revenue gap. The following table giving details of month wise balance of overdrafts from 2007-08 clearly establish the fact that the borrowings are directly related to the ever increasing revenue gap.

Table9 Details of month end balance of Overdraft

Month	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Apr	0.26	25.95	263.47	244.63	345.35	1275.76	2381.63	2431.58
May	28.11	20.16	303.59	252.07	464.23	992.85	2240.95	2619.45
Jun	53.00	52.58	282.04	98.63	317.99	1329.23	2666.25	2938.32
July	1.39	36.18	250.87	365.35	457.58	1479.85	2582.55	2572.77
Aug	39.22	140.86	491.67	232.59	600.89	1414.12	2651.03	2609.24
Sep	10.06	246.39	221.10	214.84	630.91	1368.81	2578.67	2517.98
Oct	0.26	219.41	146.67	139.13	763.95	1568.64	2816.5	2522.47
Nov	2.81	175.29	179.40	246.95	837.07	1511.65	2631	2602.21
Dec	-0.18	277.45	203.32	295.62	917.13	1624.01	2681.9	2858.46
Jan	38.89	356.33	159.20	276.69	968.53	1761.65	2545.43	2517.08
Feb	0.41	360.93	62.27	717.07	1239.33	1842.15	2716.03	2686.26
Mar	51.81	230.13	153.20	310.36	1114.36	1942.96	2303.62	2110.48
Interest on OD	**2.80**	**22.14**	**24.58**	**35.78**	**82.25**	**167.94**	**265.43**	**269.08**

(xi) From the table it can also be seen that the Overdrafts has gone up to Rs.2303.62 crore as on 31.03.2014 from Rs.51.81 crore as on 31.03.2008.

(xii) KSEBL, being a regulated utility, the increase in PF balance and non cash flow expenses like depreciation and Return on equity etc do not ensure cash availability as long as these are allowed to be fully recovered through tariff. In other words, PF recovery from salary makes the cash outflow net of such recovery. But cash availability to the utility is ensured only if the gross salary is allowed to be recovered through tariff. Similarly, interest on PF even though approved in order, unless and otherwise recovered through tariff it does not ensure cash availability. Similarly, Security deposit interest is approved to the extent of pay out actually resulting in reduced inflow. The accumulated approved and un bridged revenue gap amply testify the fact that borrowing has to be resorted to since recovery of revenue gap is not ensured. The huge un bridged gap amply makes it clear that the expenses were not allowed to be recovered fully, which in turn results in financial crunch.

(xiii) It is humbly submitted that Hon'ble Commission, in due recognition of these realities, had been pleased to approve interest on overdraft in full till 2010-11 as per orders on truing up for the respective years. However, it is seen from the truing up orders for 2011-12 and 2012-13 that amount spent on this account has been disallowed in full even though ad hoc allowances to the tune of Rs.15 crore and 20 crore were made in the respective ARR orders as detailed below.

Table 10 Details of actual interest on OD and approval by KSERC (Rs in crore)

Year	Interest on Overdraft	Interest on OD approved as per truing up order	Order reference
2007-08	2.80	2.80	10.06.2011
2008-09	22.15	22.15	10.06.2011
2009-10	24.58	24.58	25.10.2012
2010-11	35.78	35.78	30.10.2012
2011-12	82.25	0.00	16.04.2017. Allowed Rs.15 crore as per ARR Order dated 01.06.2011.
2012-13	167.94	0.00	20.04.2017. Allowed Rs.20 crore as per ARR Order dated 28.04.2012.

(xiv) Hon'ble Commission may kindly note that interest on overdrafts paid by KSEBL from 2011-12 till 2015-16 has exceeded Rs.1000 crore and denial of this expense would result in grave financial difficulty to the utility. The details are furnished below:

Table 11 Details of year end OD and interest for the year (Rs in crore)

Year	Year end OD balance	Interest for the year
2011-12	1114.36	82.25
2012-13	1942.96	167.94
2013-14	2303.62	265.43
2014-15	2110.48	269.08
2015-16	2171.94	229.43
Total		1014.13

(xv) Having considered the reality and gravity of the situation, Hon'ble Commission, as per orders on ARR for 2014-15 dated 14.08.2014 was pleased to approve an amount of Rs. 50.89 crore towards interest as carrying cost for approved revenue gap till 2010-11 as per truing up orders dated 30.11.2012. However, similar consideration of the matter was not accorded while issuing truing up orders for subsequent years.

(xvi) Moreover, the actual interest claimed in true up is well within the limits specified by the Hon'ble APTEL and hence eligible for pass through as explained below:

(xvii) Hon'ble APTEL, as per numerous judgments, has ordered allowance of carrying cost on approved and un recovered revenue gap. In this connection KSEBL submits that:

(a) Hon'ble APTEL, in its judgment dated 10.11.2014 in appeal petition no 1 of 2013 and 19 of 2013, judgment dated 06.05.2016 in the appeal no 135 of 2014 and judgment dated 27.04.2016 in appeal no 81 of 2014 has directed the Hon'ble Commission to pass orders in terms of its findings <u>along with carrying cost</u>. It may kindly be noted that the decision of the Hon'ble Commission in not allowing carrying cost, is not in line with the Hon'ble APTEL's specific direction to allow the same while issuing consequential orders.

(b) Hon'ble Commission as per order on ARR & ERC for the year 2014-15 dated 14.08.2014 had allowed Rs. 50.89 crore towards carrying cost on trued up revenue gap till 2010-11. The additional revenue gap in view of the Hon'ble APTEL orders dated 10.11.2014 and 06.05.2016 in the matter of Truing up of Accounts Rs.107.90 crore for 2009-10 and Rs.240.70 crore for 2010-11 should also have invariably been considered along with Rs.424.11 crore revenue gap already trued up till 31.03.2011.

(c) The stand of Hon'ble Commission is not in line with the directions given by the Hon'ble APTEL as per judgment dated 11.11.2011 in Appeal No. 1 of 2011, a decision which has been relied by the Hon'ble Commission to initiate the suo motu proceedings, that,

"*…create a problem of cash flow for the distribution licensees which are already burdened with heavy debts"* and that *"opening balances of uncovered gap must be covered through transition financing arrangement or capital restructuring", "Carrying Costs of Regulatory Asset should be allowed to the utilities"* and the "*Recovery of Regulatory Asset should be time-bound and within a* *period not exceeding three years at the most and preferably within control period".(para 62)*

Thus, creation of the regulatory asset will neither be in the interest of the respondent no. 1 nor the consumers.
Thus, we hold that the creation of the regulatory assets on the basis of projected shortfall in revenue, that too without any directions for time bound recovery for the regulatory asset along with its carrying cost, <u>is in contravention of the Tariff Policy</u> and the 05 Regulations". (para 8.12)
<u>Further, the creation of the regulatory asset without any directions for carrying cost and time bound recovery was neither in the interest of the distribution licensee nor the consumers. (para 63)</u>

Hon'ble APTEL, by invoking the powers under Section 121 of the Act issued directions to the State Commissions inter alia to allow

> *recovery of the Regulatory Asset should be time bound and within a period not exceeding three years at the most and preferably within Control Period. Carrying cost of the Regulatory Asset should be allowed to the utilities in the ARR of the year in which the Regulatory Assets are created to avoid problem of cash flow to the distribution licensee. (para 64(iv)*

(d) Kind attention of the Hon'ble Commission is also invited to the Hon'ble APTEL judgment dated 28 th November-2013 in Appeal petition No. 190 of 2011, in which circumstances necessitating the creation of regulatory asset and ordered as follows

83. The relevant principles which have been laid down in these decisions are extracted below:
(a) We do appreciate that the State Commission intents to keep the burden of the consumers as low as possible. At the same time, one has to remember that the burden of the consumers is not ultimately reduced by under estimating the cost today and truing up in future as such method also burdens the consumer with carrying cost.
(b) The carrying cost is allowed based on the financial principles that whenever the recovery of cost is deferred, the financing of the gap in cash flow arranged by the distribution company from lenders and /or promoters or accruals, has to be paid for by way of carrying cost.
© Carrying cost is a legitimate expense and therefore recovery of such carrying cost is legitimate expenditure of the distribution company.

(e) Further, as per judgment in Appeal 153 of 2009 dated 30.07.2010, which had been relied on the judgment dated 28.11.2013 referred to in (d) above, the Hon APTEL has clearly spelt out the circumstance in which carrying cost has to be allowed to utilities, as under:

83 (d) "11.5 The utility is entitled to carrying cost on its claim of legitimate expenditure if the expenditure is:

a) accepted but recovery is deferred e.g. interest on regulatory assets,

b) claim not approved within a reasonable time, and

c) disallowed by the State Commission but subsequently allowed by the Superior Authority."

d)Revenue gap as a result of allowance of legitimate expenditure in the true up.

(f) Hon'ble APTEL judgment dated 18 th October-2012 on Appeal petition No. 7 of 2011, 46 of 2011 and 122 of 2011, in respect of creation of regulatory asset and ordered that

carrying cost be allowed for such additional expenditure if approved during truing up, recovery is differed or allowed subsequently by a superior authority.

(g) The above decisions were upheld in the order dated 30-05-2014 in appeal nos. 147, 148 and 150 of 2013 also.

(i) It is humbly submitted that the Hon'ble Commission had already identified a revenue gap of Rs 424.11 Cr up to 31-03-2011 as per truing up orders for the year up to 2010-11. Further, an amount of Rs 928.62 Crore has already been recognized as revenue gap for 2011-12 and Rs. 632.03 crore for 2012-13 and Rs.460.98 crore for 2013-14 as per ARR order that has not been bridged through tariff revision. Thus an amount of Rs 2445.74 Cr comes under case (a) and (d) identified by Hon APTEL as above.

(ii) Further, Rs 107.90 Cr in 2009-10 and Rs 204.70 Cr in 2010-11 were identified by the Hon'ble Commission as part of implementing the Hon'ble APTEL order regarding true up of respective years. Thus a further amount of Rs 312.60 Cr (107.90 + 204.70) is also eligible for carrying cost as per ratio position held by Hon APTEL vide (c) above.

(iii) Hence, KSEB is eligible for carrying cost on Rs. 2758.34 Crore (Rs.2445.74cr+Rs.312.60cr) but the actual borrowings was of Rs.2303.62 crore for the year, which was well within this limit. It may kindly be noted that KSEBL has sought approval only for the actual interest payment made.

h. It is further submitted that the Hon'ble APTEL, as per judgment dated 08.04.2015 in Appeal 160 of 2012 and batch has laid down the principle on which carrying cost is to be allowed. The decision was reiterated in judgment dated

22.04.2015 in Appeal 174 of 2013 as well. The same is reproduced below:

42. We find that for carrying cost, the State Commission has considered the revenue gap to be applicable from the end of the year of the occurrence of the revenue gap up to the middle of the year in which the same is proposed to be recovered. This is not correct. The interest to be calculated for the period from the middle of the financial year in which the revenue gap had occurred up to the middle of the financial year in which the recovery has been proposed…This is because the expenditure is incurred throughout the year and its recovery is also spread out throughout the year. Admittedly, the revenue gap will be determined at the end of the financial year in which the expenditure is incurred. However under or over recovery is the resultant of the cost and revenue spread out throughout the year. Similarly, the revenue gap of the past year will be recovered throughout the financial year in which its recovery is allowed. Therefore interest on revenue gap as a result of true up for a financial year should be calculated from the mid of that year till the middle of the financial year in which such revenue gap is allowed to be recovered.
43. To explain this point let us assume that there is a revenue gap of 12 crores in the true up of FY 2010-11. If the cost and the revenue and the permitted expenditure had been properly balances, this gap of 12 crores would have been recovered throughout the 12 months of FY 2010-11. Now, this revenue gap is allowed to be recovered in tariff during FY 2013-14. The recovery of gap of Rs. 12 crores from the distribution licensee consumers will be spread over the 12 months period of 2013-14. Therefore carrying cost would be calculated from the middle of FY 2010-11 to middle of FY 2013-14 ie 3 years.

(xviii) In short, Hon’ble APTEL through various judgments has established the fact that carrying cost for the revenue gap is a legitimate expenditure, specified the components of revenue gap as eligible for carrying cost and the manner in which carrying cost is to be allowed.

(xix) It is humbly submitted that the Hon’ble Commission may kindly consider the fact that the revenue from tariff as well as the non-tariff income for the year has fully been considered on accrual basis while approving the orders on truing up. Further, KSEBL has no business other than the regulated business and therefore left with no option other than to borrow to make good the accumulated revenue gap.

14. Hon’ble Commission in truing up order for 2013-14 has presumed that Overdrafts availed might be used to fund the

expenses which are not approved in the ARR especially in view of interest on PF allowed to the tune of Rs.98.98 crore. In this connection, it is humbly submitted as follows:

(i) It is humbly submitted that the finances of the board may not improve with the approval of expenses alone unless recovery is approved.

(ii) The assumption regarding utilization of OD for meeting disallowed expenses is not factually correct on account of the fact that the disallowed expenses, involving cash outflow is considerably less in comparison to approved revenue gap. The breakup of disallowance involving cash outflow from 2011-12 to 2013-14 is furnished below:

Table 12 Disallowance involving cash outflow

	2011-12	2012-13	2013-14	Total
Power purchase (A)	**22.99**	**12.87**	**20.42**	**56.28**
Interest on OD	82.25	167.94	265.43	**515.62**
Interest on Gratuity	0.42	14.56	30.04	**45.02**
Interest on loans	0.05	0.00	0.00	**0.05**
Interest & FC (B)	**82.72**	**182.50**	**295.47**	**560.69**
Employee cost	80.90	72.28	161.15	**314.33**
Less: Provision for gratuity	0.00	0.00	15.20	**15.2**
Balance (C)	**80.90**	**72.28**	**145.95**	**299.13**
Repairs &Maintenance (D)	**69.42**	**51.84**	**10.08**	**131.34**
Admn.&Gen Expenses	122.62	114.67	158.16	**395.45**
Less: 3(1) duty	93.91	96.97	100.37	**291.25**
Balance (E)	**28.71**	**17.70**	**57.79**	**104.2**
Total (A+B+C+D+E)	**284.74**	**337.19**	**529.71**	**1151.64**
Less: OD interest	82.25	167.94	265.43	**515.62**
Disallowances other than OD interest (F)	**202.49**	**169.25**	**264.28**	**636.02**
Approved revenue gap	**1386.97**	**3132.97**	**195.50**	**4715.44**

15. It can be seen that the disallowed expenses involving cash outflow for the years 2011-12 to 2013-14 is only 13.48% of the trued up revenue gap.

16. In view of the above submission, Hon'ble Commission may kindly review the decision to disallow the interest on Overdraft in its entirety and may be pleased to approve the same actually paid during the year.

c. Other interest disallowed Rs.30.04 crore.

17. Hon’ble Commission has ordered that Rs.30.04 crore claimed as interest paid on delayed payment of gratuity is an abnormal amount that has arisen since the licensee has not paid its statutory liabilities in time and penal interest cannot be allowed to be passed on to the consumers. In this connection, the following submissions are made:

(a) In 2002, a retired employee of the Board filed an OP 674/2002 before the Hon’ble High Court of Kerala claiming gratuity as per the Gratuity Act, 1972. Hon’ble High Court, in its judgment dated 10.03.2003 ordered that the petitioner is eligible for gratuity as per the Gratuity Act, 1972. KSEB filed an appeal WA 1062/2003 against the judgment and the appeal was dismissed by the Division bench of Hon’ble High Court of Kerala as per judgment dated 08.01.2008. Subsequently, KSEB filed a Special Leave Petition (SLP No. 7744-7745/2008) before the Hon’ble Supreme Court and the Hon’ble Court stayed the operation of the impugned judgment of the Hon’ble High Court.

(b) Meanwhile, KSEB approached the State Government for exemption from the purview of the payment of Gratuity Act, 1972 invoking section 5 of the Act. Government as per order dated 20.01.2008 had exempted KSEB from the payment of Gratuity Act, 1972 but the same was cancelled by issuing another notification vide order dated 25.01.2008.

(c) Consequent to the judgment in OP 674/2002, other retired employees have also filed similar petitions and the Hon’ble High Court directed them to approach controlling authorities under the Act, Viz the District Labour Officers. As a result, thousands of petitions were filed by retired employees. In certain genuine cases, the controlling authorities have ordered to disburse the difference amount over and above DCRG paid as per KSR.

(d) During the bilateral discussions with the recognized Trade Unions for revising the pay and allowances, Unions demanded implementation of Gratuity Act, 1972. The Legal Adviser and Disciplinary Enquiry Officer (Serving District Judge) remarked that the employees of KSEB are entitled to gratuity as per the Act.

(e) Considering all these factors, KSEB as per order dated 24.05.2011 decided to make applicable the payment of

Gratuity Act to the employees of KSEB and also to withdraw the SLP filed before the Hon,ble Supreme Court of India. Further, as per order dated 05.06.2012, ordered that for the delay in payment of balance gratuity over and above DCRG released, simple interest of 10% pa may be given from the date on which it becomes payable to the date on which it is paid.

(f) The cell constituted by KSEB ascertained that there were 19555 beneficiaries of gratuity.

(g) Accordingly, KSEB released an amount of Rs.14.56 crore in 2012-13, Rs. 30.04 crore during 2013-14 and Rs.1.62 crore in 2014-15 were disbursed under interest on gratuity.

(h) It may kindly be noted that KSEB has already paid all its pensioners the benefit of DCRG as per KSR Part III and consequent to the implementation of Payment of Gratuity Act in KSEB as per order dated 24.05.2011, pensioners were eligible to get the balance amount of gratuity on which the interest was paid.

(i) Even after the implementation of Gratuity Act, the pensioners claimed interest with effect from the date prior to the date of BO (24.05.2011) .Even pensioners retired well before 2000, who have been paid gratuity as per KSR in time claimed interest which is against the meaning and spirit of the provisions of the Act and Board order. In view of the fact that the provisions governing DCRG as per KSR prevailed up to 24.05.2011,KSEB as per order dated 10.06.2014 ordered that interest on delayed payment of gratuity as per Gratuity Act ,simple interest @10% pa may be given only from 24.05.2011 to the date on which the gratuity is paid. However, the order has been stayed by the Hon'ble High Court of Kerala and the matter is pending disposal as of date.

(j) Hon'ble APTEL, as per common judgment dated 10.11.2014 has ordered that '*The gratuity directed to be paid as per the judgments of the High court dated 10.03.2003 as the Division bench of the High Court had dismissed the Appeal filed against this judgment, and which were disallowed by the State Commission by order in Appeal no. 1 of 2013 should also be allowed'.* In compliance of the order, Hon'ble Commission was pleased to allow the actual amount of gratuity paid by KSEB.

(k) It may kindly be noted that the Death Cum Retirement Gratuity (DCRG) as per KSR was paid in time and the payment made consequent to the implementation of the Gratuity Act and interest paid for only for the balance amount.

(l) From the above submission, Hon'ble Commission may kindly note that the delay in disbursement of balance gratuity was not attributable to any laxity on the part of KSEBL and beyond the control of KSEBL. Further, the interest was paid as per section 7 of the Gratuity Act, a statutory claim, which automatically becomes applicable once decided to implement the said Act in KSEB.

(m) The employees retiring from KSEB during the period in between the pronouncement of judgment by the Hon'ble High Court in OP No. 674/2002 and the cancellation of exemption granted earlier by the State Government vide notification dated 25.01.2008 have approached the controlling officer of gratuity viz the District Labour Officer (DLO) for balance amount of Gratuity. The DLO entertained all such cases including the cases filed even after the cancellation of notification in all 14 districts of Kerala by serving notices to KSEB. Orders were issued by DLO against KSEB in all such cases. Appeals were filed by KSEB before Regional Joint Labour Commissioner (RJLC) at Kollam, Ernakulam and Kozhikkode. Against the unfavorable orders of RJLC, appeals were filed before the Hon'ble High Court.

(n) It may kindly be noted that in all the gratuity cases filed before DLO, RJLC and the Hon'ble High Court, substantial time delay occurred for considering batch of cases, by respective authorities for statutory compliance of serving notice, submission of written statement, taking evidence, counter arguments, verification of admissibility of amount, time extension sought for submission of exhibits etc. Considerable time delay occurred at these forums viz DLO, RJLC and the Hon'ble High Court for evaluating the merit of each case with regard to the quantum of gratuity payable, period of service, prior service, disciplinary proceedings initiated, if any etc and for pronouncement of judgment.

(o) It is humbly submitted that the time delay as explained cannot be avoided as the same is because of the statutory procedural requirement necessarily complied with as per the provisions of the Act. Since the suits were pending finalization before various courts, KSEB was not in a position to settle disbursement of balance amount on individual claims.

(p) In view of the above submission, it may kindly be noted that the liability towards interest has occurred on account of the fact that claims were pending finalization before various statutory authorities for a considerable period of time.

18. It is already submitted that the delay resulted in interest payment of Rs.14.56 crore in 2012-13, Rs. 30.04 crore during 2013-14 and Rs.1.62 crore in 2014-15 under interest on gratuity.

19. It is submitted that the payment of interest is also envisaged in the Act and hence covered in the Hon'ble High Court judgment and the same has been ordered to be allowed by the Hon'ble APTEL.

20. Since the delayed payment was not deliberate on the part of KSEBL, Hon'ble Commission may kindly review the decision and may be pleased to approve the interest paid on gratuity in full.

IV. Disallowance of R&M Expenses Rs.10.08 crore and A&G expenses_other than Electricity duty Rs.57.79 crore

21. Hon'ble Commission, while approving the R&M expenses and A&G expense as per the audited account for 2013-14, has adopted the actual R&M expenses and A&G (except 3(1) duty) for the year 2008-09 as the base and allowed to escalate at the indices of 'Whole Sale Price Index and Consumer Price Index at the weightage of 30:70. The methodology adopted by the Hon'ble Commission has resulted in disallowance of considerable O&M expenses actually incurred as per the C&AG audited accounts as detailed below.

22. It is an accepted practice that, in the process of truing up, the State Commissions approve the actual expenses after prudence check. However, for the year 2013-14, Hon'ble Commission has not considered the actuals but merely applied certain indices on the base year value, which may kindly be reviewed considering the following.

(i) 2013-14 is the fifth year from 2008-09. As a growing power utility, the Fixed Asset base of KSEB has been increasing every year and therefore higher R&M cost.

(ii) Age of the assets. As the assets become old, the R&M cost required will be high.

(iii) Susceptibility to inflation. The major components of R&M costs are the cost of the material and labour and both are highly susceptible to inflation.

23. Hon'ble APTEL has not granted relief under these heads. Considering the fact that the approach adopted by the Hon'ble Commission ultimately resulted in considerable reduction of A&G and R&M expenses, KSEBL approached the Hon'ble Supreme Court for relief. It is humbly submitted that the Apex Court admitted the Second appeal and the same is pending disposal as of date.

V. Disallowed section 3(1) duty Rs.100.37 crore.

24. One of the major expense items booked under A&G expense is the section 3(1) duty payable by KSEB to the Government. The section 3(1) duty is a statutory levy. While approving the ARR&ERC/ Truing up petitions for the years from 2003-04 to 2006-07, Hon'ble Commission has considered this as revenue expenditure as part of the A&G expenses of the Board. Comptroller & Auditor General (C&AG) have also certified this as an essential expenditure under A&G expenses since the inception of the Board. Hon'ble Commission has not been admitting section 3(1) duty as a revenue expenditure quoting the provisions in the "Kerala Electricity Duty Act- 1963" that "(3) The duty under this section on the sales of energy should be borne by the Licensee and shall not be passed on to the consumers". Accordingly, since the year 2003-04, Hon'ble Commission has not admitted duty aggregating to Rs 849.52 crore till 2013-14.

25. The regulatory practice mandates allowance of an expense if incurred prudently. Hon'ble Commission may be aware that, KSEB has no business other than the regulated business of electricity distribution. KSEB cannot find an alternate means to meet this expense. KSEBL has always felt that disallowing section 3(1) duty is against the provision of the Electricity Act-2003 that, SERC's should have to ensure reasonable return to the utilities after meeting expenses including taxes and duties. If the section 3(1) duty is not allowed as an expense, the commercial viability of the utility will be affected. Hon'ble Commission may have the option to allow higher return to KSEB so that the net return after meeting section 3(1) duty shall be 15.50 % of the equity. As per the

provisions of the Electricity Act-2003, Hon'ble Commission is empowered to ensure financial sustainability of KSEBL as a Distribution Utility and with the statutory powers available; the matter of disallowance of section 3(1) duty is being raised again for reconsideration.

26. It is further submitted that considering the financial implication of the disallowance, KSEB had filed a second appeal before the Hon'ble Supreme Court of India against the disallowance, which is pending disposal as of date.

VI. Treatment of revenue deficit.

27. KSEBL prayed before the Hon'ble Commission that the 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

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 20th June 2017 in Petition OA No. 3 of 2017 in the matter of 'Truing Up of accounts of KSEB for the year 2013-14 on the items as detailed above in the petition.

Sd/-

Chief Engineer (Commercial & Tariff)