

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present : Sri. T.K Jose, Chairman
Adv. A. J. Wilson, Member (Law)
Sri. B Pradeep, Member (Technical)

No. 3279/Con.Engg/2023/KSERC

Dated 27th February, 2024

STATEMENT OF REASONS

In the matter of: Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) (Second Amendment) Regulations, 2024.

1. The Commission, by invoking the powers conferred on it under sub section (1) of Section 181 read along with Section 61 of the Electricity Act, 2003, has notified the draft of the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2021 on 6th August, 2021.
2. The Regulation 34(iv) of the Draft Tariff Regulations, 2021, deals with the repayment of the principal and interest of the KSEB Ltd bonds issued to the Master Trust constituted for meeting the pension liabilities towards the pensioners of KSEB Ltd, which read as follows;

“34. (iv) Only the payment of interest on the bonds issued to the Master Trust will be approved for computation of Aggregate Revenue Requirement and the amount of repayment of such bonds shall not be reckoned for computation of Aggregate Revenue Requirement;

3. As mandated under Section 181 (3) of the Electricity Act, 2003 and the Electricity (Procedures for Previous Publication) Rules, 2005, the Commission had published the draft Tariff Regulations, 2021 in its website for information of the stakeholders and to invite their comments. The Commission had also conducted public hearing on the matter on 15.09.2021. Duly considering the objections and suggestions of the various stake holders on the Draft Tariff Regulations, 2021, the Commission finalised the Draft Tariff Regulations, 2021 on 16th November 2021 and the final KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021 was notified at Commission’s website on 16th November 2021, and published the same in the official Gazette on 22nd November 2021.

4. Regulation 34(iv) of the Tariff Regulations, 2021 notified on 16th November 2021 read as follows;

“**34. (iv)** The amounts required for the payment of interest on the bonds issued to the Master Trust and for the principal repayment of such bonds shall be reckoned for computation of Aggregate Revenue Requirement and for truing up of accounts;

5. The Commission had approved the ARR, ERC and Revenue gap of KSEB Ltd for the MYT period from 2022-23 to 2026-27, strictly as per the provisions of the Tariff Regulations, 2021. The Commission has also determined the retail tariff of the electricity consumers in the State of Kerala for the period from 26.06.2022 to 31.03.2023 along with the MYT Order dated 25.06.2022. The Commission has directed KSEB Ltd to file separate petition for the determination of tariff for the remaining periods of the MYT from 01.04.2023 to 31.03.2027, based on the approved revenue gap as per the MYT Order dated 25.06.2022.

6. In compliance of the directions of the Commission, KSEB Ltd on 08.02.2023 filed the Tariff Petition OP No. 18/2023, for approval of the retail tariff, for the remaining MYT period from FY 2023-24 to FY 2026-27, to bridge the approved revenue gap as per the MYT Order dated 25.06.2022.

7. During the deliberation of the subject petition OP No. 18/2023, the Kerala HT and EHT Industrial Electricity Consumers Association filed a Writ Petition WP(C) No. 19205 of 2023, before the Hon'ble High Court, against the tariff determination process initiated by the Kerala State Electricity Regulatory Commission with the following prayers:

(1) *“ To direct Kerala State Electricity Regulatory Commission to comply with the provisions of the Electricity Act, 2003, in particular in Sections 61 and 62, and National Electricity Policy, and Tariff Policy issued by the Ministry of Power, Government of India, as well as the directions of the Appellate Tribunal for Electricity (APTEL) and frame voltage wise cost of supply with intent to reduce cross subsidies and frame tariff for various voltage classes in accordance therewith;*

(2) *To declare that Tariff regulation framed by the KSERC is illegal, ultra vires and to quash the same by a writ of certiorari;*

(3) *To declare that the Regulatory Commission cannot proceed to fix electricity tariff based on the equity of Rs 3499 Crores claimed by the KSEB Ltd and has to adopt the correct and cogent figure as directed by the APTEL;*

(4) *Stay all further proceedings before the Kerala State Electricity Regulatory Commission pursuant to Tariff Revision Petition in so far as*

the HT & EHT Association and its members comprising HT & EHT Industrial consumers are concerned.”

8. Hon'ble High Court vide the judgment dated 7th September 2023 has set aside Regulation 34(iv) of the Tariff Regulations, 2021 to the extent it differs from the draft citing the reason that, there is substantial difference in the Draft Tariff Regulations, 2021 notified on 6th August 2021 and the final Tariff Regulations, 2021 notified on 16th November, 2021, in the matter of approval of the repayment of principal amount on Master Trust Bonds to be charged on to the ARR is concerned. Hon'ble High Court further observed that, substantial difference in the final Regulations from the Draft Regulations to the aforesaid extent do not conform to the requirement of Section 181(3) of the Electricity Act, 2003 and Electricity (Procedures for Previous Publication) Rules, 2005. Accordingly, as per the Judgment of the Hon'ble High Court dated 7th September 2023, the Regulation 34(iv) of the Tariff Regulations, 2021, stands modified as follows.

“34. (iv) The amounts required for the payment of interest on the bonds issued to the Master Trust shall only be reckoned for computation of Aggregate Revenue Requirement and for truing up of accounts;

9. Further, Hon'ble High Court vide the judgment dated 7th September, 2023 in WP(C) No. 19205/2023 has granted liberty to the Commission to specify the terms and conditions for the determination of tariff as regards the repayment of principal amount on Master Trust Bonds after complying with the requirement of Section 181(3) of the Electricity Act, 2003, Electricity (Procedures for Previous Publication) Rules, 2005 and in accordance with the law. The relevant portion of the Judgment is extracted below.

“It will be open to the Regulatory Commission to specify the terms and conditions for the determination of tariff as regards repayment of principal amount on Master Trust Bonds after complying with the requirement of Section 181 (3) of the Electricity Act, 2003 and the Electricity (Procedure for Previous Publication) Rules, 2005 and in accordance with law.”

10. In view of the liberty granted by the Hon'ble High Court to examine the matter of specifying the repayment of principal amount on Master Trust Bonds in accordance with law after complying with the requirement of Section 181(3) of the Electricity Act, 2003 and Electricity (Procedures for Previous Publication) Rules, 2005, the Commission has examined the entire issue of Master Trust bonds in its totality.
11. As per the provisions of the Electricity Act, 2003, the Commission is duty bound to ensure financial viability of the utility also, while ensuring electricity at

reasonable cost to the consumers of the State. Further it is noted that, without granting approval of the recovery of the principal repayment of the bonds issued by KSEB Ltd to the Master Trust, the licensee could not even meet partially its statutory pension payment obligations. Hence, Commission considered it necessary that the Regulation 34(iv) of the Tariff Regulations, 2021, as modified by the Hon'ble High Court vide the Judgment dated 07.09.2023 in Writ Petition WP(C) No. 19205 of 2023, is to be further amended through due legal process of previous publication and public consultation, complying with the requirement of Section 181(3) of the Electricity Act, 2003 and Electricity (Procedures for Previous Publication) Rules, 2005, in accordance with law, based on the liberty granted by the Hon'ble High Court.

12. In view of the above, the Commission published the draft KSERC (Terms and Conditions for Determination of Tariff) (Second Amendment) Regulations, 2023 in the website of the Commission on 01.12.2023, for inviting stakeholder comments and objections. To enhance transparency and improve informed stakeholder participation the Commission has also published detailed explanatory memorandum along with the draft Amendment Regulations, which details the facts and circumstances led to the publication of the draft amendment regulation, in view of the liberty granted by the Hon'ble High Court. Further, the Commission conducted hearing on the draft Regulations on 04.01.2024 through hybrid mode. Fifty six Stakeholders participated in the public hearing and many of them have presented their views/ suggestions on the draft Amendment Regulations. Further 13 stakeholders have submitted their written suggestions/ observations on the draft Amendment Regulations. The Commission has considered all the comments received from stakeholders for finalizing the Regulations. The list of participants attended the hearing and those who submitted their written suggestion is attached as Annexure- 1 and Annexure -2 respectively.
13. The Commission, complying with the provisions of the Act and the Electricity (Procedure for Previous Publication) Rules, 2005 proceeded to finalize the Draft KSERC (Terms and Conditions for Determination of Tariff) (Second Amendment) Regulations, 2023. Since the Regulations are finalized in the year 2024, the amendment Regulation is renamed as KSERC (Terms and Conditions for Determination of Tariff) (Second Amendment) Regulations, 2024.
14. The Commission considered the comments/suggestions of the stakeholders on the Draft Amendment Regulations. The Regulations have been finalized after due consideration of the various issues raised. The analysis of the issues and findings of the Commission thereon are discussed in subsequent paragraphs. It may be noted that all the suggestions given by the stakeholders have been considered, and the Commission has attempted to elaborate all the suggestions as well as the Commission's decisions on each suggestion in the Statement of

Reasons. However, in case any suggestion is not specifically elaborated, it does not mean that the same has not been considered. Wherever possible, the comments and suggestions have been summarised, along with the Commission's analysis and ruling on the same.

15. The Commission while analysing the comments furnished by the stakeholders has noted that there are some gaps in understanding on the transfer scheme notified by the Government and on the discharge of liability towards terminal benefits of the pensioners and the employees existed in erstwhile Kerala State Electricity Board as on the date of transfer, among the stakeholders in general. Before dealing with specific issues raised by the stakeholders, Commission considers it necessary to examine the scheme notified for discharging of the terminal liabilities. The relevant provisions of the statutory transfer scheme notified on 31st October, 2013 by the State Government under sub sections (1) , (2), (5), (6) and (7) of Section 131 and Section 133 of the Electricity Act 2003, as amended by notification dated 28th January, 2015 are extracted below:

“6(1) The transfer of personnel shall be subject to the terms and conditions contained in Sections 133 and 134 of the Act.

6(2) From the date of the transfer, the personnel of the Kerala State Electricity Board shall stand assigned to the services of the Transferee and they shall continue to officiate in the place where they are posted on the date of re-vesting and thereafter shall be under the disposal of the Transferee:

Provided that the transfer shall be governed by the conditions enumerated in Schedule- B of this Scheme;

.....

6(5) Notwithstanding anything contained elsewhere,

(a) the Transferee and the State Government shall be jointly and severally responsible to duly make all such payments to the personnel in respect of the rights, responsibilities, liabilities and obligations and personnel related matters including the statutory dues such as salary, wages, gratuity, pension, provident fund, compensation, terminal and retirements benefits till the date of re-vesting and thereafter by the Transferee;

.....

6(7) In respect of all statutory and other Schemes and employment related matters including the provident fund, gratuity, pension and any other superannuation fund or any other fund created or existing for the benefit of the personnel, the Transferee shall stand substituted for the erstwhile Board for all intents and purposes, rights, powers and obligations of the

erstwhile Board and the services of the personnel shall be treated as continuing for the above purpose;

6(8) *The State Government shall make appropriate arrangements in respect of funding of the terminal liabilities to the extent they are unfunded on the date of transfer of the personnel from the erstwhile Board or KSEB, as mentioned in subclause (9) of clause 6 of this Scheme. As per the actuarial valuation carried out by the registered valuer, the net present value of unfunded liability is approximately Rs 12,419 Crores (Rupees Twelve Thousand four hundred and nineteen Crores) as on the date of revesting i.e. 31st October 2013. Till such time arrangements are made, the Transferee and State Government shall be jointly and severally responsible to duly make such payments to the existing pensioners as well as the personnel who retire after the date of transfer but before the arrangement are put in place. The State Government, Kerala State Electricity Board Limited, and Employees Unions have entered into a tripartite agreement on 1st August 2014, in consideration of the promises and mutual conditions set forth therein. The Tripartite Agreement which forms part of this Scheme is appended as Schedule C.*

6(9) *The State Government will fund Rs 5,861 Crores (Rupees Five thousand eight hundred and sixty one crores) over a period of next 10 years from the date of transfer to the Kerala State Electricity Board Limited on annual basis for meeting the unfunded terminal liabilities by way of retention of electricity duty.*

(a) *Kerala State Electricity Board Ltd will issue two series of bonds to a Master Trust:—*

(i) *20 year bond with a coupon rate of 10% p.a. for Rs.8,144 Crores (Rupees Eight thousand one hundred and forty four crores).*

(ii) *10 year bond with a coupon rate of 9% p.a. for Rs. 3,751 Crores (Rupees Three thousand seven hundred and fifty one crores).*

(b) *Bonds will be issued to the trust which shall meet the liability of pension etc. in future from the interest and principal repayment from Kerala State Electricity Board Limited against the bonds issued in favour of the trust. With these arrangements the net present value of the liability of the fund towards pension etc. shall be Rs 12,419 Crores (Rupees Twelve Thousand four hundred and nineteen crores) (approximately) as on 31st October 2013 with matching investments in securities issued by the Kerala State Electricity Board Limited for Rs 11,895 Crores (Rupees Eleven thousand eight hundred and ninety five crores) on net present value basis.*

(c) Another Rs 524 Crores (Rupees Five hundred and twenty four crores) will be funded by the State Government through budgetary provision over a period of 10 years in equal instalments as per G.O (Ms) No. 43/2011/PD dated 3rd November 2011. Accordingly an amount of Rs 52.4 crore is being provided in the budget from the FY 2012-13 onwards.

(d) State Government will permit the electricity duty collected by KSEB for the period from 01.04.2008 to 31.03.2012 to be retained by the Kerala State Electricity Board Limited as its contribution for funding the terminal liability.

(e) In addition to the interest on bonds and repayment of principal, Kerala State Electricity Board Limited will be paying the annual pension contribution based on actuarial valuation to the Master Trust in respect of the Personnel transferred to Kerala State Electricity Board Limited.”

16. As per the tripartite agreement appended to the notified scheme, entered into among Government of Kerala, KSEB Ltd and Kerala State Electricity Board Employees' Unions and Associations, the State Government and KSEB Ltd has further undertook to make good any shortages in the fund available to the Master Trust to meet its obligations relating to payment of pensionary benefits in future.

17. Section 133 of Electricity Act, 2003 deals with the provisions relating to transfer of officers and employees under the transfer scheme as below:

“Section 133. (Provisions relating to officers and employees): ---

(1) *The State Government may, by a transfer scheme, provide for the transfer of the officers and employees to the transferee on the vesting of properties, rights and liabilities in such transferee as provided under section 131.*

(2) *Upon such transfer under the transfer scheme, the personnel shall hold office or service under the transferee on such terms and conditions as may be determined in accordance with the transfer scheme:*

Provided that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such transfer under the transfer scheme:

Provided further that the transfer can be provisional for a stipulated period.”

18. A perusal of the scheme and statutory provisions would clearly establish the following:

- (1) The discharge of terminal benefits including pension, gratuity etc. payable to pensioners and employees who remained in the rolls of erstwhile Kerala State Electricity Board as on the date of transfer is in the nature of a statutory liability.
- (2) The said liability remained unfunded as on the date of transfer.
- (3) The liability to make payments towards terminal and retirement benefits including pension, gratuity etc. of the employees and pensioners who remained in the rolls of erstwhile Kerala State Electricity Board as on the date of transfer stands transferred to Kerala State Electricity Board Limited from the date of notification of the transfer scheme.
- (4) Since, the Electricity Act, 2003 mandates that the successor entity of the erstwhile State Electricity Boards shall be a company registered under the Companies Act (explanation under Section 131 of the Act), the applicable accounting principles required assessment of all the unfunded liabilities and incorporation of such assessed liabilities into the opening balance sheet and accounts of the successor entity.
- (5) The State Government notified an arrangement to capture the unfunded pension liabilities as identified as on date of notification of the transfer scheme and for discharge of the said liabilities by the successor entity i.e. KSEB Ltd. The assessment of unfunded liabilities is by way of actuarial valuation to estimate the future cash flow requirements based on reasonable assumptions and thereafter arriving at the Net Present Value (NPV) based on prudent economic principles.
- (6) The unfunded liability as on the date of transfer was assessed as Rs 12,419 Crores based on actuarial valuation carried out by registered valuer.
- (7) The State Government undertook to fund a portion of the unfunded liabilities assessed as on the date of notification of the transfer scheme, over a period of 10 years from the date of transfer.
- (8) KSEB Ltd shall meet the balance portion of the unfunded liability as on the date of notification of the transfer scheme. Since raising huge amount by KSEB Ltd for transfer to the master trust in one go can create serious cash flow crisis resulting in severe tariff shock to the consumers, the scheme envisaged transfer of required funds to meet the unfunded portion of assessed liabilities as on the date of transfer, over a period of next 20 years, by way of transfer of principal and interest towards the first series bond issued in favour of the Master Trust by KSEB Ltd.
- (9) The liability towards additional terminal liabilities created subsequent to the date of transfer has to be met by the successor entity, viz., the Kerala State Electricity Board Ltd.

19. It is evident that the unfunded liability assessed and mentioned in the transfer scheme is as on date of the transfer. Obviously this assessment has to be done periodically as envisaged in the transfer scheme and is bound to change due to the following:
- (1) The subsequent service put in by employees in KSEB Ltd after the date of transfer, who remained in the rolls of Kerala State Electricity Board as on the date of transfer, will increase the liability towards future payment of terminal benefits including pension, gratuity etc.
 - (2) Actuarial Gain/ losses on obligations due to:
 - (i) Change in financial assumptions;
 - (ii) Change in demographic assumption;
 - (iii) Experience assessments by the valuer.
20. Thus, the actuarial assessment of the liability towards terminal benefits will increase during the assessments carried out subsequent to the date of transfer till all the employees who were in the service of Kerala State Electricity Board as on date of transfer retire from service of KSEB Ltd on efflux of time. Similarly due to economy wide changes like inflation, yield on securities etc. even the original estimate as on the date of transfer can change. Also changes in assumptions taken during the valuation like wage revisions, life expectancy etc. will also necessitate revision of the original assessment in subsequent years. As per the transfer scheme, the transferee, i.e. Kerala State Electricity Board Limited has to fund the increase in the assessed liabilities during annual assessments made in the subsequent years.
21. On perusing the details of subsequent Actuarial valuations, the Commission has noted that the factor namely 'Current Service Cost' which captures the incremental addition to unfunded terminal liabilities on account of the subsequent service put in by employees who were in the rolls of erstwhile KSEB as on the date of transfer and presently in the rolls of KSEB Ltd is a stable contribution to enhancement in assessed value in all annual assessments. This can come down only on retirement of these employees on afflux of time. At the same time, the increase in assessed value in all subsequent years as a result of change in assumptions from that made during the initial assessment is comparatively higher. For example, the discount rate considered by actuary in subsequent years is significantly lower than that considered initially and has resulted in huge increase in estimated net present value of future liabilities. Similar changes in other assumptions are also noted. Experience indicates that a call on the additional funding requirements resulting from change in basic assumptions has to be taken after reviewing the assessments made over a significant period. However, funding requirements to meet the addition of liabilities owing to 'Current Service Cost' has to be arranged promptly by the utility.

22. Obviously, the factors leading to changes in the liabilities towards payment of terminal benefits including pension are beyond the control of the utility. This is due to the fact that the terminal benefits of employees who entered into the service of the erstwhile Kerala State Electricity Board till 31.03.2013 were in the nature of a defined benefit scheme. With economic development, improvement in standard of living etc. the life expectancy of the general public and the employees in particular has improved over the years. World over, the experience on retirement social security plans provided in the form of defined benefit schemes coupled with the improvement in the life expectancy has led to an understanding that the open ended risk of funding such a scheme is huge. Accordingly, there has been measures to substantially enhance the retirement age as well as to move towards a defined contribution scheme (as against the defined benefit scheme), which limits the exposure of the employer. In India also similar measures have been initiated in the last few decades. At the same time the rights of employees recruited prior to the change in the retirement plans are statutorily protected and the same remains true in the case of successor entities of erstwhile State Electricity Boards in view of Section 133 of the Electricity Act, 2003. The Commission is duty bound to act in accordance with the scheme of the Act and the statutory transfer scheme notified in accordance with the provisions in the Electricity Act, 2003.
23. The State Government by taking over the liability to service a sizeable portion (Rs 6,385 Crores towards principle and interest of Rs 3,751 Crore bond and Rs 52.4 Crore annually) of the future liability, over a period of 10 years, has significantly reduced the burden to be passed on to electricity consumers. The Commission accordingly has not charged these amounts undertaken by the Government to the ARR of KSEB Ltd. However, the balance portion of the liability is to be discharged by KSEB Ltd, which has to be appropriately included in the ARR of KSEB Ltd.
24. Based on the provisions of the transfer scheme, KSEB Ltd issued the two series bonds and the scheme became effective from 1st April, 2017. At the same time, the Commission in its various Orders has noted that the successor entity, KSEB Ltd, has not been successful in satisfactorily putting in place the scheme envisaged under the statutory transfer scheme. Even though Master Trust has been created in 2017 and annual actuarial assessment of future liability is being carried out, no steps have been taken to fund the addition in liabilities nor the transfer of already committed funds to the Master Trust. Commission has viewed these lapses seriously and issued specific directions to be followed by the utility and expect that KSEB Ltd in consultation with the State Government will come up with adequate proposals before the Commission on this matter for its approval.

25. On the basis of the statutory scheme as explained above, the Commission proceeds to examine the suggestions given by all stakeholders and record its decisions on each of these suggestions as below.
26. The Kerala HT and EHT Industrial Electricity Consumers Association and M/s Western India Plywoods Limited (WIPL) have raised numerous issues to present their objection to the draft Second Amendment Regulations. The following major issues are raised by the association:
- a) KSERC observations and decisions in this matter in previous ARR orders;
 - b) The need for additional bonds;
 - c) The arrangement in other States;
 - d) Late formation of Master Trust;
 - e) Root Cause;
 - f) KSEB Ltd was allowed to retain the electricity duty collected from the year 2008 amounting to Rs 1127.71 Cr;
 - g) Pension liability is to be borne entirely by the Government of Kerala and not of KSEB Ltd. In due consideration of this fact the Commission notified the Tariff Regulations 2014 and 2018;
 - h) Proposed amendment comes out of blue after 10 years;
 - i) There is enough fund available to Master Trust to manage terminal liabilities;
 - j) Association also raised above objections during the subsequent public hearing;
27. The issue wise remarks on the objections raised by the HT and EHT Industrial Consumers Association and M/s WIPL are furnished below. Identical issues raised by other stakeholders are examined along with:
- a) KSERC observations and decisions in this matter in previous ARR orders were highlighted by the Association and WIPL. Also, during the hearing, many stakeholders including A R Satheesh, Saji Mathew, MRF have raised identical contentions as below.

KSEB Ltd in the ARR & ERC petition for 2014-15 has agreed to meet the repayment of Bond from the increased RoE. Further, in the MYT Tariff Regulations 2014 and 2018, the Commission has not allowed the pass through of principal amount through ARR. Based on that the Commission has made the decision that, principal amount of Master Trust bond by KSEB Ltd will not be allowed to pass through the ARR and True up.

Comments of KSEB Ltd

- (1) The Orders on ARR and ERC for the year 2014-15 were issued much before the date of final re vesting notification on 28.01.2015, by the Government. The Commission had taken a final view on the matter based on the re vesting notification dated 28.01.2015 and netting off order dated 13.05.2015 of the Government. Therefore, the finding in the provisional order does not survive as the matter has attained finality.
- (2) KSEB Ltd did not claim the Repayment of principal amount in the ARR for 2014-15, to avoid Tariff shock to the consumers. KSEB Ltd decided so, after careful assessment of the expenditure claimed in the ARR for the year 2014-15 and satisfied itself that the principal repayment obligation could be met if the expenditure claimed in the ARR and ERC are approved by the Commission for 2014-15. KSEB Ltd claimed 15.50% return on equity on the enhanced equity, depreciation, and interest on working capital as per the revised balance sheet and expected that the Commission would admit the same by virtue of section 131 (3) (b) of the Electricity Act, 2003.
- (3) It was mentioned that expenditure as claimed in the ARR with enhanced return on equity and depreciation would be sufficient to repay bond in 2014-15. But contrary to the expectation, the Commission made substantial disallowance in the ARR proposed for the year 2014-15, which in turn left KSEB Ltd not in a position to meet the bond repayment obligation within the limits approved by the Commission in ARR. However, repayment of bonds did not materialize in 2014-15 and hence cash flow problems did not arise.
- (4) KSEB Ltd has started functioning on the provisional Balance sheet allocated through Second Transfer scheme; KSEB Ltd has filed its petition estimating the ARR for FY 2014-15 considering the provisional balance sheet of KSEB Ltd as on 1st April 2013. Thus, the ARR & ERC petition was prepared keeping in mind a restructured balance sheet with re vested asset value and a higher depreciation, return on equity and I&F charges. Accordingly, KSEB Ltd did not claim for repayment of bond. KSEB Ltd reasonably expected approval of the following:
 - (i) KSEB Ltd claimed depreciation amounting to Rs 585.504 considering the provisional asset base of KSEB Ltd as on 01.04.2013. However, to avoid tariff shock KSEB Ltd did not claim depreciation on revalued asset base with a request to the Commission to consider the depreciation of the revalued asset base at the time of truing up since the accounts relied for ARR estimation was provisional. While

estimating the depreciation amount, KSEB Ltd had relied on consumer contribution and grants allocated through the transfer scheme notified by the State Government and the provisional balance sheet of KSEB Ltd for year 2012-13. Thus, KSEB Ltd expected a higher depreciation amount for 2014-15.

- (ii) Further, KSEB Ltd claimed Rs 542.35 Crore as return on equity for year 2014-15 at the rate of 15.5% as per CERC Regulation, which was upheld by the Hon'ble APTEL vide order dated 10.11.2014 in appeal 1 & 19 of 2013. KSEB Ltd estimated RoE considering the re-vested equity base of Rs 3499 Crores as on 1st April 2013. KSEB Ltd also claimed Rs 250 Cr as interest on working capital and interest on long-term borrowing amounting to Rs 350 Cr.
- (iii) By way of enhanced return of equity (542.35 - 217.42) and enhanced depreciation (Rs. 585.50 – Rs. 414.80), KSEB Ltd expected additional revenue of Rs. 496.05 during 2014-15. Based on the same and to avoid immediate tariff shock, KSEB Ltd proposed not to claim the principal repayment amount for the financial year 2014-15.
- (iv) Contrary to the expectation of KSEB Ltd that the ARR will be approved by the Commission in line with the statutory provision under section 131 (3) (b) of the Electricity Act 2003, the Commission did not recognize the revised balance sheet as such and did not approve the expenses as claimed by KSEB Ltd., while issuing order dated 14.8.2014. The deviations of the estimate and approval are as follows:

Table 1: Comparison of claim and approval for 2014-15 (in Rs Cr)

Particulars	Claim	Approval	Disallowance
Return of equity	542.35	489.36	-52.99
Depreciation	585.50	414.80	-170.70
subtotal	1127.85	904.16	-223.69
Interest on working capital	250	50.89	-199.11
Total	1377.85	955.55	-422.80

- (v) Thus, the approval was granted after effecting disallowance of Rs. 422.80 Cr and in turn the anticipation of KSEB Ltd to accommodate the bond repayment obligation without charging the ARR got jeopardized. The additional allocation on which reliance was placed

by KSEB Ltd to meet bond repayment was not approved and at the same time the proposal of KSEB Ltd of not claiming repayment of the principal amount was duly recognized. Since the liability of bond repayment did not materialize till 2017-18, the values were not taken up in the truing up proceedings till 2017-18.

- (vi) KSEB Ltd.'s proposal on repayment of principal in the ARR for 2014-15 was limited to financial year 2014-15 only. ARR & ERC petitions were filed by KSEB Ltd on annual basis from 2003-04 to 2015-16 by virtue of Tariff Regulations, 2003 and the expenditure was claimed on a single year basis. The Commission also granted approval of expenses and revenue and determined the Tariff on single year basis till 2014-15.

Analysis and Decision of Commission

- (1) The Association and WIPL has relied on the ARR & ERC petition of KSEB Ltd for the year 2014-15 filed on 15.05.2014 and the order issued by the Commission on the same on 14.08.2014. KSEB Ltd has filed single year ARR & ERC petition on 15.05.2014 and Orders were issued on 14.08.2014. The Orders on ARR and ERC for the year 2014-15 were issued much before the date of final re-vesting notification on 28.01.2015, by the Government. Also, the petition and approval were governed by the earlier Tariff Regulation, 2003. It was clearly mentioned in the petition of KSEB Ltd as well as in the Orders of the Commission that these were provisional and subject to the final statutory re-vesting notification by the Government.
- (2) The claims made by KSEB Ltd in the petition and the submission that additional fund from RoE may be used to repay bonds, was with a view to avoid tariff shock for 2014-15 only. Further the Association all along since 2014-15 had argued before the Commission that KSEB Ltd does not have additional equity and RoE against additional equity should not be approved in ARR and True up. The matter was raised before the Hon'ble High Court in WP (C) 19205/2023 and Hon'ble APTEL also. Accordingly, the present contention that principal payment shall be made from additional RoE is contrary to their own submissions.
- (3) Also Commission has taken note on the fact that the Master Trust was made operational from 01.04.2017 only and thus payment towards Master Trust based on the envisaged bonds has not materialized in the year 2014-15. Accordingly while truing up of the accounts of KSEB Ltd for 2015-16 and 2016-17 Commission has allowed payment of

pension and other terminal benefits by KSEB Ltd directly and has directed that the same shall be met jointly by KSEB Ltd and the State Government till the operationalization of the Master Trust, as envisaged in the notified transfer scheme. Thus the order made while approving the ARR and ERC for the year 2014-15 based on the initial transfer scheme does not have applicability at this stage.

- (4) Further, the association has only relied on the observation of the Commission in the Order dated 14.08.2014, on equity enhancement to the extent that the equity additionally claimed does not materially enhance any benefits to the consumers. The Commission, based on the final re-vesting notification by the Government, has clarified its position all along through subsequent ARR / True up orders and Tariff regulations.
- (5) The restructuring of accounts of the erstwhile KSEB was done in compliance of the legal mandate regarding the reorganization of Board under section 131 of the Electricity Act, 2003. Therefore, the restructuring process cannot be viewed in the limited prism of Master Trust alone. Prime objective of the restructuring process was to make the re-vested balance sheet a healthier one to carry out its operations as envisaged in the Act. Adequate equity capital in relation to the asset base is one of the important parameters to be addressed in the process. Therefore, while re-vesting, the State Government enhanced the equity capital from Rs. 1553 Cr to Rs. 3499 Cr. Government of Kerala has clearly stated in the G.O. (Ms) No. 17/2015/PD dated 13.05.2015 that the enhancement of equity was through real cash infusion through a process of netting off dues between the State Government and KSEB Ltd. The said amount has been utilized for meeting the capital expenditure of KSEB Ltd. The Government of Kerala, in the order dated 13.05.2015, has clarified that the enhanced equity is through conversion of a part of electricity duty collected and that the increased equity is a result of cash infusion to KSEB Ltd by Government. The relevant portion of the order is extracted below:

“(vii) As per the Balance sheet of KSEB Limited as on 1.11.2013 which forms part of the Kerala Electricity Second Transfer Scheme (Re-Vesting) 2015, issued as per G.O. read as eighth paper above, the equity of Government in KSEB Limited taking into the assets and liabilities of KSEB as on 01.04.2012 is Rs. 3499 crore in the place of Rs. 1553 crore at the time of vesting, as mentioned in the provisional Balance sheet as at 31.03.2008, incorporated in the Kerala Electricity First Transfer Scheme 2008, issued as per G.O. read as fifth paper above.

Taking into consideration that netting off of dues between KSEB Ltd and the Government forms an integral part of re-structuring of KSEB, along with cleaning up of KSEB Ltd's Balance sheet, a part of duty collected i.e, Rs.1946 crore stands converted into the increased portion of equity (3499-1553) so as to ensure that the increased equity is a result of cash infusion into KSEB Ltd by the Government, thereby enabling the Government to participate in increased return on equity in future years."

- (6) On the matter of equity the Commission based on the final transfer scheme dated 28.01.2015 has decided in the Orders dated 08.07.2019, 14.06.2022, 21.06.2022, 24.06.2022 and 03.10.2023 as follows:

Abstracted portion of ARR order dated 08.07.2019

"3.141 The Commission has carefully considered the issue of equity especially with regard to the amount that is required to be considered for its calculations. KSEB Ltd in their submission has claimed an RoE @ of 14% per annum for an equity amount of Rs.3499 crore. KSEB Ltd has submitted Regulation 34(b) provides that equity of the Government of Kerala as per the transfer scheme published under section 131 of the Act will be considered for computation of return on equity. As per clause 5 of the second transfer scheme "Kerala Electricity Second Transfer Scheme (Revesting) 2013" notified by Government of Kerala vide G.O.(P) No.46/2013/PD dated 13-10-2013, asset and liabilities of the erstwhile KSEB, which was vested into Government of Kerala, has been revested into the Company namely Kerala State Electricity Board Limited and opening balance sheet has been notified as part II of Schedule A of the said G.O, with and Equity amount of Rs.3499 crore.

The HT & EHT Association has drawn attention of the Commission to the order of the Hon'ble APTEL wherein, the Commission was directed to determine the recommendation of the consultant. In this context, the Commission notes that the Government of Kerala subsequent to the G.O dated 13-10-2013 had issued G.O. (P) NO.3/2015/PD dated 28-1-2015 and G.O. (Ms) No.17/2015/PD dated 13-5-2015. The G.O. dated 28-1-2015 pertains to the amendments to Kerala Electricity Transfer Scheme (Revesting) 2013 and G.O dated 13-5-2015 pertains to the netting off of dues between Government and KSEB as on 13-10-2013 i.e., the date of revesting. In the G.O dated 13-5-2013, it is mentioned that :

“.....Taking into consideration that netting off of dues between KSEB Ltd and Government forms an integral part of restructuring of KSEB along with cleaning up of KSEB Limited’s Balance sheet, a part of the duty collected ie., Rs.1946 crore stands converted into the increased portion of equity (3499-1553) so as to ensure that the increase equity is a result of cash infusion to KSEB Ltd by Government thereby enabling the Government to participate in the increased return on equity in future years...”.

The Commission also notes that in compliance to the above GO, KSEB Ltd has issued 349,92,00,000 equity shares of Rs.10 each in favour of Government Kerala for Rs.3499 crore as per the provisions of the Companies Act, 2013, deals with the issue of equity shares and its allotments. In this regard the Commission is satisfied that the allotment of equity shares for Rs.3499.2 crore in compliance to the GO conforms to the requirement for allotment of equity shares as per the provisions of the Companies Act, 2013. It was on this basis that, the Commission while considering the truing up petitions of KSEB Ltd for 2015-16 and 2016-17 had recognized the equity amount as Rs. 3499 crore and allowed RoE @ of 14% per annum.

Considering the above facts, the Commission is of the considered view that the claim of KSEB Ltd for anRoE @ 14% per annum for an amount of Rs.3499 crore is established and justified. Therefore the Commission allows Rs.116.38 crore as the RoE in the ARR of SBU-G.

3.142 As per the provisions of the Regulation 34, the Commission is allowing the amount of equity as per the provisions of the Transfer Scheme and RoE of 14% is permissible on this amount of equity. The Regulations were finalised by the Commission after following the due process such as previous publication, public hearing etc., Once the Regulation has been finalised and notified after following the due procedure, it is binding on all the parties concerned and there is no scope for any deviation whatsoever. Therefore the arguments of the Association cannot be accepted. Accordingly the share of RoE for SBU-G at the rate of 14% is allowed to be included in the ARR. Accordingly Rs.116.38 crore is included in the ARR.”

(7) The same view was upheld by the Commission in its various orders referred in Para 6 above. Hence, it is evident that the enhancement in equity is on investment by the State Government by cash infusions

into KSEB Ltd and the State Government intends to receive returns on such investment.

- (8) The 2014 MYT Regulation was applicable for a control period of three years commencing from 01.04.2015. Since the Master Trust was not operational due to reasons recognized by the Commission during most of the period of the control period, the non-consideration of principle portion of the bond was not of significance during that period. The 2018 MYT Regulation which was applicable for a four year control period commencing from 01.04.2018 has not allowed the principle portion of the bond for pass through in ARR. The Commission has examined the cash flow requirements of Master Trust for the period from 2015-16 onwards (True up of FY 2014-15 has not been finalized owing to pendency of the matter before Hon'ble Supreme Court) as against the fund allowed by the Commission for pass through in ARR and the funds provided by State Government as below:

Table 2: Cash flow requirements

Year	Pension Payments (in Rs Cr)	Pass through in ARR		Funds from State Government		Total (Rs. Cr)	Surplus/ Deficit (Rs. Cr)
		Interest on Bond/ Special Provision (Rs. Cr)	Additional contribution (Rs. Cr)	Servicing of Bond/ Special Provision (Rs. Cr)	Budgetary allocation (Rs. Cr)		
2015-16	1004.50	814.40*		190.10*		1004.5	0
2016-17	1221.06	814.40*		406.66*		1221.06	0
2017-18	1341.36	814.60	200	586.10	52.40	1653.1	311.74
2018-19	1378.04	773.68	300	586.10	0.00	1659.78	281.74
2019-20	1558.88	732.96	300	586.10	209.60	1828.66	269.78
2020-21	1737.05	692.24	300	586.10	209.60	1787.94	50.89
2021-22	2376.69	651.52	300	586.10	0.00	1537.62	-839.07
2022-23**	2524.10	610.80	400**	586.10	52.40	1649.3	-874.8
Total	13141.68	5904.60	1800.00	4113.36	524.00	12341.96	-799.72

*Special provision ordered in the true up of accounts of KSEB Ltd for FYs 2015-16 and 2016-17

** To be trued up

- (9) It can be seen that the cash flow requirements has shown increase in later years as a result of significant increase in number of new retirees and consequent one time payments like terminal leave surrender,

commutation, gratuity etc. The large quantum of retirements is anticipated for few more years, as per data in the actuarial reports. At the same time, the funds allowed through ARR &ERC and transfer from Government is coming down. As can be noted from the data above, over a period of time the cash flow available for the Master Trust as per orders of the Commission has become inadequate to fully meet the pension liabilities.

- (10) As per the provisions of the Electricity Act, 2003, KSEB Ltd is the incumbent distribution licensee, and also the State Transmission Utility in the State. KSEB Ltd also own generation assets in addition to its Transmission and Distribution business. As a regulated entity, all the expenses and income of KSEB Ltd is regulated by the Commission as per the provisions of the Electricity Act, 2003, and other Rules and Regulations in force, consistent with the Electricity Act, 2003. As per the provisions of the Electricity Act, 2003, the State Commission is duty bound to ensure the financial health of the licensee while ensuring quality power at reasonable cost to its consumers.
- (11) The regulatory regime mandates approval of reasonable cost to the utility, which comprise of prudent expenses and reasonable return on investment. It is a settled position under regulatory regime that reasonable return should be allowed. Regarding Return on Investment, the National Tariff Policy, 2016 states that balance needs to be maintained between the interests of consumers and the need for investments while laying down the rate of return. Return should attract investments at par with, if not in preference to, other sectors so that the electricity sector is able to create adequate capacity. The rate of return should be such that it allows generation of reasonable surplus for growth of the sector.
- (12) The Commission is statutorily bound u/s 61 (i) and 86 (4) to consider the National Electricity Policy and the National Tariff Policy while discharging duties. The Commission shall, subject to the provisions of the Act, specify the terms and conditions for the determination of tariff. In discharge of its functions, the Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff policy. Based on the above, the Commission considers it improper to specify usage of return on equity for any other purpose including for payment of principal of the bonds issued for discharge of pension liabilities.
- (13) In view of the provisions in the Electricity Act and National Tariff Policy, mandating the utilization of reasonable return for meeting prudent business cost is incorrect. Also, the 2021 MYT Regulations has considered the return on equity as freely available to the regulated

entity to utilize it at the wisdom of the utility and if invested outside, income accruing out of it should not to be reckoned in the regulated accounts as below:

“46 (4) The interest earned from investments made out of return on equity by the generation business/ company shall not be included in other income.

60 (4) The interest earned from investments made out of return on equity of the transmission business/ licensee shall not be included in other income.

83 (4) The interest earned from the investments made out of the return on investment by the distribution business/ licensee shall not be included in other Income.”

(14) In view of the above, the Commission is not in a position to accept the contention raised by the stakeholders.

b) The need for additional bonds

KSEBL vide its order B.O(BB) No.45/2021/Master Trust Bond/2020-21 dated 19.01.2021 have decided to issue new bonds. There are several disparity and injustice to the consumer's right, from the inception of transfer scheme. The Association objected KSEB Ltd move, to issue new bonds considering that the repayment of the principal amount as well as the interest will be passed on to the consumers.

Comments of KSEB Ltd

(1) The paragraph 2(9) (e) of the statutory revesting order dated 28.01.2015 provides that “in addition to the interest on bonds and repayment of principal, Kerala State Electricity Board Limited will be paying the annual pension contribution based on the actuarial valuation to the Master Trust in respect of the personnel transferred to Kerala State Electricity Board Limited.

(2) The bonds were issued and Master Trust was operationalized only on 01.04.2017 and therefore, the actuarial liability from 01.11.2013 to 31.03.2014 in FY 2013-14, 2014-15, 2015-16 and 2016-17 could not be accounted for in the manner prescribed above. The actuarial additional liability since 31.10.2013 remains unfunded. The actuarial liability since 31.10.2013 has been duly accounted in the books of KSEB Ltd, but the claim in this regard was not made under regulatory regime as the ascertained liability remain unfunded. Tariff Regulation also provides for claiming the actuarial additional liability in respective years.

- (3) The association, while raising the argument that there is no scope for additional bond issue as per transfer scheme, is conveniently ignoring the fact that the consumers were benefited over these years to the extent of unfunded actuarial liability, had the regulations were duly complied with.
- (4) Further, Regulation 30 (3) of Tariff Regulation, 2021 provides for the modalities connected with the funding of the unfunded liability in which approval of Government is an essential pre requisite. As the matter is under the consideration of the Government, Government of Kerala may take appropriate decision in the matter. The association is unnecessarily feeling aggrieved, since any additional amount on this count would be made pass through in tariff only after the compliance of Regulation 30 (3) is fully ensured. KSEB Ltd has resolved to initiate action to issue bonds to the extent of unfunded liability subject to Government approval and Government sanction to amend the Articles of Association of KSEBL.
- (5) The proposal is strictly in accordance with the requirements mandated in Regulation 30 (3). Further, the consumers were not burdened with the actuarial unfunded liability so far and therefore cannot claim to be aggrieved. In addition, the repayment of bonds in future, as envisaged in the proposed amendment, should invariably be approved by the Commission as per Regulation 30 (3) and the same is to be paid by KSEB Ltd to the trust.

Analysis and Decision of Commission

As per the Truing up accounts of KSEB Ltd for the year 2021-22, the unfunded pension liabilities as on 31.03.2022 has increased to ₹ 35,804.63 Crore, as per the actuarial valuation done by the actuary in subsequent years as mandated in the statutory transfer scheme. The actuarial liabilities has been increasing year after year due to various factors including pension liability against service put in by the existing employees during the period subsequent to the date of effect of transfer scheme, higher inflation, change in assumptions on wage/ DA revisions, enhancement in life expectancy etc., than that considered at the time of initial valuation. Further, it is noted that the proposal for issuance of new bonds to the Master Trust is subject to the approval of the State Government. The Commission will look into the necessity or otherwise for considering the inclusion of cash flow requirements in lieu of additional bonds issued, if any, in the ARR and ERC, only after complying with due procedure under Regulation 30(3) of the 2021 MYT Regulations. Accordingly the objection raised is premature and cannot be considered at this stage.

c) Arrangement in other states.

The Association has mentioned that while implementing the transfer schemes, majority of the Indian states have fully taken over the terminal liability of the Employees, some of the States have taken over significant portion of this liability. But in the case of Kerala major portion of the liability is being passed on to the consumers.

Analysis and Decision of Commission

- (1) Even though the Association has claimed that in most of the States the pension liability has been taken over by the State Government, they have pointed out certain provisions in the transfer scheme of the State of Karnataka alone. The provision pointed out by the association is as below:

“6. Transfer of Personnel.-

(7) The State Government shall make appropriate arrangements in regard to the funding of the pension funds and other personnel related funds to the extent they are unfunded on the effective date of first transfer of the Personnel from the Board

(8) The State Government shall make appropriate arrangements in regard to the funding and due payment of all terminal benefits to the existing pensioners of the Board as on the effective date of transfer”

- (2) The above provisions are more or less similar to the provisions in the transfer scheme notified by the Government of Kerala and as reproduced in Para 15 above. In fact the Government of Kerala has taken further steps to clearly specify the said arrangements in the transfer scheme itself. For ease of reference, relevant portion of clause 6(8) and 6(9) of the transfer scheme is reproduced below:

*“6(8) The State Government shall make appropriate arrangements in respect of funding of the terminal liabilities to the extent they are unfunded on the date of transfer of the personnel from the erstwhile Board or KSEB, as mentioned in sub clause (9) of clause 6 of this Scheme.
.....*

6(9) The State Government will fund Rs 5,861 Crores (Rupees Five thousand eight hundred and sixty one crores) over a period of next 10 years from the date of transfer to the Kerala State Electricity Board Limited on annual basis for meeting the

unfunded terminal liabilities by way of retention of electricity duty.....

6(9) (c) Another Rs 524 Crores (Rupees Five hundred and twenty four crores) will be funded by the State Government through budgetary provision over a period of 10 years in equal instalments as per G.O (Ms) No. 43/2011/PD dated 3rd November 2011. Accordingly an amount of Rs 52.4 crore is being provided in the budget from the FY 2012-13 onwards.....”

(3) As can be seen, the State Government has funded a sizeable portion of the unfunded liability to the tune of Rs 6,385 Crores. This has benefited the electricity consumers of the State by significantly reducing the burden passed on in the ARR of KSEB Ltd by the Commission. The pension liability passed on to the consumers through ARR during the period from 2015-16 was less by 41.37% of the actual pension liability as shown in Table 3 below:

Table 3: Details of reduction in pension liabilities passed to consumers due to Master Trust and as result of Government contribution to the trust

Financial Year	Actual Pension Payment (disbursement as per accounts) (in Rs Cr)	Allowed to pass on to consumers through ARR			Reduction in pension liabilities passed on to consumers (in Rs Cr)	Percentage of reduction (in %)
		Interest on Bonds/ Special Provision (in Rs Cr)	Additional contribution (in Rs Cr)	Total (in Rs Cr)		
(1)	(2)	(3)	(4)	(5)	(6) = (2) - (5)	(7) = (6)/(2)
2015-16	1004.5	814.4		814.4	190.1	18.92
2016-17	1221.06	814.4		814.4	406.66	33.30
2017-18	1341.36	814.6	200	1014.6	326.76	24.36
2018-19	1378.04	773.68	300	1073.68	304.36	22.09
2019-20	1558.88	732.96	300	1032.96	525.92	33.74
2020-21	1737.05	692.24	300	992.24	744.81	42.88
2021-22	2376.69	651.52	300	951.52	1425.17	59.96
2022-23*	2524.1	610.8	400	1010.8	1513.3	59.95
Total	13141.68	5904.6	1800	7704.6	5437.08	41.37

- (4) On the contrary, the Association has not produced any document on the Karnataka Government taking on any portion of the pension liability of their erstwhile Electricity Board. Accordingly, the Commission notes that no credible information or no documentary evidence has been produced by the association in support of their contention and the Commission is not in a position to accept the same.

d) Late formation of Master Trust.

The Master Trust was originally envisaged to commence in 2013 itself and the interest liability would come down on year on year. But the Master Trust was actually formed in 2017 only, but KSEB Ltd was claiming the interest of Rs.814.4 crore annually during this period. This was an additional burden on the consumers purely due to the lapse from KSEB Ltd.

Comments of KSEB Ltd

- (1) The Master Trust was envisaged in the revesting order dated 31.10.2013. Further the State Government has notified the opening balance sheet of KSEBL as on 1st April 2012, under Part II of Schedule A of the Second Transfer Scheme. In addition, the Second Transfer Scheme clearly mentions that the opening balance sheet for KSEB Ltd as on 1st April 2012 has been drawn up based on the provisional balance sheet of KSEB as on 31st March 2012. Any adjustments subsequent will be adjusted within the provisional period of one year from the date of re-vesting for finalization of accounts and Transfer Scheme. Later, the State Government vide the notification G.O (P) No.3/2015/PD dated 28th January 2015 amended the sub-clause (8) and (9) of clause 6 of the Kerala Electricity Second Transfer Scheme (Re-vesting) 2013 issued under G.O (P) No. 46/2013/PD dated 31st October-2013 and notified the balance sheet as on 31.10.2013. The Master Trust was registered on 12.02.2015.
- (2) Even though the Trust was registered on 12.02.2015, KSEB Ltd could not issue Bonds to the Master Trust and make it fully functional during the year 2014-15, due to non-receipt of approval from the Commissioner of Income Tax. If the bonds were issued to Master Trust without obtaining recognition from income tax department, cash flows to the Trust might have been affected due to income tax issues leaving it not in a position to fulfil its obligations. KSEB Ltd had pursued the matter with the income tax department all along and succeeded in obtaining recognition of the Trust from the Income tax Department on 08.09.2016.

Analysis and Decision of Commission

- (1) The contention of the association that interest on bonds were allowed between 2013 and 2017 and has created additional burden on consumers is incorrect. The relevant portion of the True up for the financial year 2015-16 is extracted below:

“3.66 Hence, though the Master Trust was created on 12-2-2015, it could not be fully operationalised due to non- receipt of approval from the Income Tax Department. The scheme was made fully operational from 1-4-2017. KSEB Ltd stated that since the delay in operationalisation of the Master Trust was beyond the control of KSEB Ltd, the terminal benefits should be fully allowed under the employee cost.

3.67 The Commission has examined the matter. The amount booked as per the petition under terminal benefits is Rs.1221.06 crore for KSEB Ltd. It is a fact that the Master Trust was not operationalised due to the factors beyond the control of KSEB Ltd. Hence, funding of terminal benefits out of Master Trust was not possible as per the Regulations.

3.68 The Government has issued the second transfer scheme order vide G.O.(P) No.46/2013/PD dated 31-10-2013 and subsequently amended the same vide G.O.(P) No.3/2015/PD dated 28-1-2015. In the said Order, clause 6 provides for the transfer of personnel by the State and sub-clause 8 provides for the arrangement for payment of pension. The relevant portions of the scheme are quoted below:

Sub clause 8 of clause 6:

“(8) The State Government shall make appropriate arrangements in respect of funding the terminal benefits to the extent they are unfunded on the date of the transfer of the personnel from the erstwhile Board or”

3.69 As per the APTEL Order in Appeal Nos. 1 and 19 of 2013, the terminal liabilities have to be provided for. The provisions of the G.O dated 28-1-2015 had specifically stated that the funding of terminal liabilities till the formation of the Master Trust was to be shared jointly and severally by KSEB Ltd and the State Government. However, the amount of contribution from the State Government was not specifically mentioned.

3.70 The Commission in the ARR&ERC order for 2014-15 and also in the suo motu determination of Tariff for 2017-18, had allowed an

amount of Rs.814.40 crore for funding the terminal liabilities. Hence, till the formation of the Master Trust, the Commission, in the intermediate period had considered and allowed Rs.814.40 crore per year towards meeting the terminal benefits. The Commission allowed the entire terminal benefits for 2015-16 and of this, Rs.814.40 crore as part of the truing up for 2015-16. Therefore the Commission approves the total terminal liability of Rs.1221.06 crore as per the petition of KSEB Ltd and apportions Rs.814.40 crore to KSEB Ltd account for the year2016-17 towards terminal benefits in line with the provisions of the G.O.(P) No.3/2015/PD dated 28-1-2015. KSEB Ltd shall make up the balance amount of Rs.406.66 crore from the State Government either through adjustment of electricity duty retained or through subvention as per the direction of the Government. This shall comply with the G.O provisions and fulfill the obligation of the Government in funding terminal liabilities during the interim period till the Master Trust is formed.”

- (2) As can be seen, against a liability of Rs. 1221.06 Crores as pension payment Commission has allowed only Rs. 814.40 Crore as pass through in tariff and has directed KSEB to meet the balance liability by seeking funds from the Government since the liability is to be shared by the Government and State Government as per the transfer scheme, till the Master Trust is operational. In view of the above, the Commission notes that the objection is not based on facts.

e) Root Cause

After the formation of KSEB Ltd in 2013, there were adequate funds to meet the pension liability of existing employees in the earlier years of KSEB Ltd. It is seen that the pension liability has been increasing rapidly. Further it is observed that the actual reason for the Amendment Regulation is the spiralling pension liability. The employee cost of KSEB Ltd is one of the highest among all the DISCOMS in India. The average monthly pension in KSEB Ltd is more than Rs.64,000/-.

Comments of KSEB Ltd

KSEB Ltd mentioned that average service pension is Rs. 48124/- and average family pension is Rs. 23391/-. Thus, the average monthly pension (both service and family pensioners) works out to Rs. 38,926/-. The relevant details is extracted below:

Table 4: Summary Data based on actuarial valuation report for FY 2022-23

Particulars	Pensioners	Family Pensioners
Number of Pensioners/ Family Pensioners	23,620	13,984
Total Monthly Pension (in Rs.)	1,13,66,77,516	32,71,01,599
Average Monthly Pension (in Rs.)	48,124	23,391
Average Age (Years)	70.24	79.08
Average Duration (Years)	N.A.	N. A

Analysis and Decision of Commission

The Commission has gone through the objection raised by the Association. The Association has referred to the observations of the Commission on employee cost in the True up Order for FY 2013-14. The Commission approved the employee cost applicable for 27175 employees only, since 2009-10 to 2017-18, for pass through in tariff. Further, such approved cost alone had been considered as base to determine the norms for recovery of cost under MYT frame work from 2018-19 to 2026-27. The Commission has approved the pay revision expenses also for the strength approved for cost recovery alone. Hon'ble APTEL, vide the judgement dated 10.11.2014 in appeal petition No. 01/2013, 19/2013 had issued the following judgements regarding the employee cost:

“8.4 The State Commission has rightly shown concern about the high employees cost but we are not able to appreciate magnitude in the absence of a specific finding about the excess man power and non-availability of Regulations. We feel that DA increase which is effected as per the Government orders have to be accounted for and allowed in the ARR as it compensates the employees for the inflation. The pay revision as per the agreements reached between the management and the unions have also to be honored. The terminal benefits have also to be provided for.

8.5 We find that the State Commission has taken the actual expenses trued-up for FY 2008-09 as the base. The State Commission should have at least allowed the actual basic pay and DA increase ,pay revision and terminal benefits over the actual base year expenses without accounting for increase in manpower from 2008-09 to 2012-13. The gratuity directed to be paid as per the judgment of the High court dated 10.03.2003 as the Division bench of the High court had dismissed the Appeal filed against the judgment, and which were disallowed by the State Commission by order in Appeal no.1 of 2013 should also be allowed.

8.6 Accordingly, we direct the State Commission to true-up the employees cost from FY 2010-11 to FY 2012-13, as per the above directions.”

Further, the Commission has redetermined the allowable employee strength in KSEB Ltd as 30321, in the Order dated 14.07.2022 in OP No. 63/2021. Thus, the Commission has controlled the wage related expenses in a reasonable manner. In view of the statutory provisions and scheme as well as the orders of the Hon'ble APTEL, the Commission is duty bound to allow the costs related to the payment of pension in the ARR appropriately.

- f) KSEB Ltd was allowed to retain the electricity duty collected from 2008 amounting to Rs. 1127.71 Cr.

The association has mentioned that KSEB Ltd was allowed to retain the electricity duty collected from the period 2008 for the corpus fund of Master trust. The amount so collected during the period 2008 to 2011-12 was 1127.71 Cr. Hence there is adequate funds to meet the pension liability of existing employees in the earlier years of KSEB Ltd.

Comments of KSEB Ltd

Government of Kerala has clearly stated in the G.O. (Ms) No. 17/2015/PD dated 13.05.2015 that the enhancement of equity was through real cash infusion as a result of a process of netting off of the receivables and payments between the State Government and KSEB Ltd. The said amount has been utilized for meeting capital expenditure of KSEB Ltd. The Government of Kerala, in the Order dated 13.05.2015, has clarified that the enhanced equity is through conversion of a part of electricity duty collected and that the increased equity is a result of cash infusion to KSEB Ltd by Government. Therefore, no amount is available for KSEB Ltd against the electricity duty for meeting the terminal benefits. Further, the issue of Government equity is before the consideration of the Hon'ble Supreme court of India. {Civil Appeal Diary No(s). 9846/2016, Civil Appeal Nos.7247-48 of 2016}. The petitioner is the respondent of the said appeal. The relevant portion is quoted below:

“(vii) As per the Balance sheet of KSEB Limited as on 1.11.2013 which forms part of the Kerala Electricity Second Transfer Scheme (Re-Vesting) 2015, issued as per G.O. read as eighth paper above, the equity of Government in KSEB Limited taking into the assets and liabilities of KSEB as on 01.04.2012 is Rs. 3499 crore in the place of Rs.1553 crore at the time of vesting, as mentioned in the provisional Balance sheet as at 31.03.2008, incorporated in the Kerala Electricity First Transfer Scheme 2008, issued as per G.O. read as fifth paper above.”

Taking into consideration that netting off of dues between KSEB Ltd and the Government forms an integral part of re-structuring of KSEB, along with cleaning up of KSEB Ltd.'s Balance sheet, a part of duty collected i.e. Rs.1946 crore stands converted into the increased portion of equity (3499-1553) so as to ensure that the increased equity is a result of cash infusion into KSEB Ltd by the Government, thereby enabling the Government to participate in increased return on equity in future years."

Analysis and Decision of Commission

- (1) The pension disbursement from Master trust could be made only after the trust became operational from 01.04.2017. The provisions of the G.O.(P) No.46/2013/PD dated 31-10-2013, requires the funding of terminal benefits till the formation of the Master Trust (ie., from 01-11-2013 till formation of the Trust 1- 4-2017) is to be jointly and severally the responsibility of KSEB Ltd and the State Government. Terminal benefits disbursed during the intervening period from 31.10.2013 to 31.03.2017 were trued up in line with the revesting order. The Commission has approved Rs. 814.40 Cr each for FYs 2015-16 and 2016-17 against actually incurred terminal benefits for these years Rs. 1004.50 Cr and Rs. 1221.06 Cr. Further Rs. 596.76 Cr has been ordered to be recovered from the Government.
- (2) Further, the Commission is yet to issue orders on Truing up for the year 2014-15 in view of pendency of the matter before Hon'ble Supreme Court. Thus, the Government share of terminal benefits disbursed during the year 2014-15 is not known. The Commission is of the view that, by virtue of the netting off order dated 13.05.2015, KSEB Ltd does not have sufficient amount available by way of duty retention for meeting the terminal liabilities, as claimed by the Association.
- (3) The Commission in the order dated 08.07.2019 while approving the ARR has recognized the final transfer scheme notified by the State Government wherein it has been clearly stated that the enhancement of equity is based on cash infusion from the electricity duty collected (Rs 1946 Crores) and retained by KSEB Ltd, which inter alia includes duty collected prior to 2012. The relevant portion of the Order is reproduced under Para 27 above. Further, the netting off of dues for the period subsequent to year 2015 between KSEB Ltd and State Government considering the Electricity Duty collected by KSEB Ltd, amounts receivable from the Government on account of payment towards the Series two bond, subsidy receivable under Section 65 of the Act, arrears of Kerala Water Authority taken over by Government and payable to KSEB Ltd in instalments etc. are yet to take place. A perusal of available records does not indicate sufficiency of

funds through Electricity Duty and thus the figures furnished by the Association cannot be relied upon. Accordingly the contention of the association that the electricity duty prior to 2012 is fully available for meeting the requirements of Master Trust cannot be accepted.

- g) Pension liability is to be borne entirely by the Government of Kerala and not of KSEB Ltd. In due recognition of this fact the Hon'ble Commission notified the Tariff Regulation, 2014 and Tariff Regulation, 2018.

The Association and WPIL mentioned that there can never be any proposal for payment of the pension liability to Government employees as on date of the transfer of erstwhile KSEB to KSEB Ltd. It is mentioned that such liability is casted only on the State Government and cannot be transferred to KSEB Ltd and ultimately to the consumer.

Analysis and Decision of Commission

The contention of the association is completely misleading. As can be seen from the transfer scheme as extracted under Para 15 above, only liability towards the employees and pensioners of the erstwhile KSEB is transferred to the successor entity viz. KSEB Ltd. Also, the Association has not produced any legal provisions or evidence to substantiate their contention that pension liabilities of KSEB Ltd is to be borne by the Government.

In view of the above, Commission consider that there is no merit in the observation made by the Association.

- h) Proposed amendment comes out of the blue after 10 years.

The Association and WPIL mentioned that without prejudice to the above, the proposed amendment came out of the blue and after the gap of nearly 10 years, suddenly takes into account the fact that KSEB's financial position has deteriorated. This can under no circumstances constitute a ground to violate an established principle and practice adopted for the past 10 years with respect to payment of pension liability through a Master Trust.

Analysis and Decision of Commission

- (1) The formation of Master Trust for the disbursement of pension liabilities has been envisaged in the Revesting notification dated 31.10.2013 of the Government. The assessment of actuarial liability which remain unfunded and has to be discharged over a long period in the future of more than 40 years for such a large organization has been done for the first time in the State and the learnings thereof and the subsequent assessments has to be considered by the Commission to effectively regulate the sector. The

additional liability accrued over and above the initial assessment due to various factors explained herein above was also not available to the Commission at the time of framing the previous MYT Regulations.

(2) The Multi Year Tariff (MYT) regulatory regime was envisaged under the Electricity Act, 2003 and the National Tariff Policy to meet the twin objectives of regulatory consistency and need for reforms/ changes over a long period. To meet the objective of regulatory consistency, a reasonable control period of 3 to 5 years is envisaged under MYT, during which period no significant regulatory policy changes are desirable. At the same time, to meet the objective of reforms and changes to be carried out in the sector as well as to take into account latest developments impacting the functioning of the sector, the regulatory policies are bound to be different for different control periods. It is common knowledge that to meet the long term reform objectives laid down in the Act as well as to address various issues impacting the functioning of the sector, a range of policy options are available. One such policy option, which is best suited in a given situation, may not yield desired results in another situation. Thus, regulatory policies have to evolve over time by adopting appropriate policy options in the best possible manner. The Regulations has to continuously evolve after assessing the impact of various developments in the power sector on the regulated entity and it is incorrect to content that the same shall be governed by predetermined notions or understandings of a previous period.

i) There is enough funds available to Master Trust to manage terminal liabilities. Master trust balance as on 31.03.2022 amounts to Rs. 10274 Cr.

HT and EHT Association, WPIL, A.R Satheesh and Sri. Saji Mathew has mentioned that KSEB Ltd was allowed to retain the electricity duty collected from the period 2008 for the corpus fund of Master trust. The amount so collected during the period 2008 to 2011-12 was 1127.71 Crore. Also, a table containing funds available to the trust for each of the subsequent years was worked out by the Association and furnished for the consideration of the Commission. There could be enough funds available in Master Trust to manage the terminal liability.

Comments of KSEB Ltd

(1) The year-on-year actual cash flow and payments since the issue of bonds is detailed below:

Table 5: Details of amount due to Master Trust and transfer of fund to the Trust (Rs Cr)-Year wise break up

YEAR	Bond				Total	Budgetary Allocation	Additional contribution approved	Payable to Trust	Amount transferred to Trust	Balance payable	Cumulative balance
	10%		9%								
	Principal	Interest	Principal	Interest							
31-03-2018	407.20	814.40	248.51	337.59	1807.70	52.40		1860.10	1341.36	518.74	518.74
31-03-2019	407.20	773.68	270.88	315.22	1766.98	0.00	200.00	1966.98	1378.04	588.94	1107.68
31-03-2020		732.96		290.85	1023.81	209.60	200.00	1433.41	1558.88	-125.47	982.21
31-03-2021	407.20	692.24	295.25	264.27	1658.96	209.60	200.00	2068.56	1737.05	331.51	1313.72
31-03-2022	407.20	651.52	321.83	235.31	1615.86	0.00	400.00	2015.86	2376.69	-360.83	952.89
31-03-2023	407.20	610.80	350.79	203.74	1572.53	52.40	700.00	2324.93	2524.10	-199.17	753.72
Total	2036.00	4275.60	1487.26	1646.98	9445.84	524.00	1700.00	11669.84	10916.12	753.72	

(2) The year wise contribution approved by the Commission is shown below:

Table 6: Year wise additional contribution ordered (Rs Cr)

Order	Addl Contribution	FY for which applicable
MYT Order dated 08.07.2019-For FY 2018-19 & 2019-20	400.00	2019-20
MYT Order dated 08.07.2019-For 2020-21	200.00	2020-21
Truing up 2017-18 dated 25.06.2021	200.00	2021-22
MYT Order dated 08.07.2019-for 2021-22	200.00	
Truing up 18-19, 19-20 & 20-21 dated 14.06.2022, 21.06.2022 and 24.06.2022-Additional amount of Rs. 100 Cr each year	300.00	2022-23
MYT Order dated 25.06.2022-for 2022-23	400.00	
Total	1700.00	

(3) The bond repayments, interest, and budgetary allocation has been fully transferred to the Trust and Rs. 946.28 Cr out of the total additionally

approved amount by the Commission. Thus, a sum of Rs. 753.72 Cr is payable to the Master Trust by KSEB Ltd as on 31.03.2023. This sum has been determined after duly taking in to consideration, the repayment of bonds and additional contribution ordered by the Commission. Further, due to non approval of principal repayment (Rs 407.20 Cr), huge trued up deficit (Rs. 7130.73 Cr till 2020-21) and absence of cost reflective tariff in the past had resulted in shortfall in transfer of funds to the trust as per the Bond agreement in earlier years. The increased liability after 31.10.2013 is also to be taken in to consideration.

- (4) KSEB Ltd is now facing financial difficulties due to factors such as increase in power purchase cost etc. State Government has directed KSEB Ltd to remit the electricity duty collected to the Government from 01.11.2023 onwards, as the Government liability to service the second series bonds were over by 31.10.2023. KSEB Ltd has to remit the duty collection to the Government and at the same time ensure fund flow to the Trust for meeting the pension liabilities and the electricity duty retained in the past for servicing second series bonds is no longer available for the purpose. Realization of dues from Government departments and Kerala Water Authority has been sluggish and these arrears till 30.11.2023 amounted to Rs. 2681.50 Cr (including surcharge at OTS rate). Out of the above amount, arrears of Kerala Water Authority alone amounts to Rs. 2141.88 Crore. This has caused cash flow problems to KSEB Ltd. Under the circumstances, KSEB Ltd has been left with no option but to raise additional borrowings to meet the enhanced level of expenditure and Master Trust commitments.
- (5) Further, Ministry of Power, Government of India has brought about reform initiatives with an intention to increase the viability, ease of doing business, supply of 24X7 reliable and quality power, use of green energy etc. Under this, parameters were made extremely stringent for the integrated rating of power distribution utilities with highest focus being placed on financial sustainability by assigning 75 % of total score. Additional prudential guidelines were issued for sanctioning working capital loans to State power utilities, which created considerable difficulty to raise additional borrowing. Additional prudential norms stipulate stringent conditions viz on filing of tariff petition, tariff order in place at the commencement of financial year, overall ceiling limit for working capital loans on total revenue, no outstanding dues from Government departments, adherence to loss reduction trajectory, submission of quarterly accounts etc. Mandatory accounting standards and additional disclosure in accounts incorporating

the above is also contemplated. Accordingly, Central Government has notified the Draft Electricity Distribution (Accounting aspects of specified items and additional disclosure) Rules 2023 on 01.09.2023.

Analysis and Decision of Commission

- (1) The Commission has gone through the matter in detail. It is seen that the association has considered Rs. 1127.71 Cr as duty retention from 2007-08 to 2011-12. KSEB Ltd has already submitted that the amount cannot be considered as such in view of non-issuance of truing up order for 2014-15. Also, the Commission has noted that duty collected till the year 2012 was considered for enhancing the equity contribution of the Government in KSEB Ltd from Rs 1553 Crores to Rs 3499 Crores. Thus, it cannot be concluded that the entire duty collected prior to 2012, amounting to Rs 1127 Crore is available to Master Trust. Further, the Master trust was operational from 01.04.2017. Repayment of bond commences only after one year from the date of issue of bond. The bonds were issued only on 01.04.2017. The first repayment on bonds issued on 01.04.2017 is due only on 01.04.2018, i.e. in the financial year 2018-19.
- (2) The Commission has trued up the terminal benefits for FY 2013-14 and therefore, payment from trust as shown in computation is incorrect. The association considered Rs. 1500 Cr as additional contribution approved from FYs 2017-18 to 2021-22. The additional contribution of Rs. 200 Cr was approved for FY 2017-18 in the True up Order dated 25.06.2021. Further, the Commission approved Rs. 200 Cr for each year of the 4-year control period from FYs 2018-19 to 2021-22 as per MYT order dated 08.07.2019 (FY 2019-20). Therefore, it is incorrect to consider any amount as due for payment to the Trust in 2018-19. The association has considered the trued-up figures at Rs. 300 Cr from 2018-19 to 2020-21. In fact, these orders were issued only during 2022-23. The Commission trued up Rs. 300 Cr for FY 2021-22 as per Order dated 03.10.2023 in the FY 2023-24 and the association considered Rs. 400 Cr as amount due to the Trust from KSEB Ltd in the year FY 2021.22. The association has tabulated repayment of 1st series bond @ Rs. 407 Cr per year but regulatory regime did not approve any funds to KSEB Ltd for the purpose for any of the years tabulated.
- (3) According to KSEB Ltd, the bond repayments, interest, and budgetary allocation has been fully transferred to the Trust and Rs. 946.28 Cr out of the total additionally approved amount by the Commission. Thus, a sum of Rs. 753.72 Crore only is payable to the Master Trust by KSEB Ltd as on 31.03.2023. This sum has been determined after duly taking into

consideration, the repayment of bonds and additional contribution ordered by the Commission.

- (4) The Commission has examined the funds provided under the ARR & ERC/ True up by the Commission and that available from the Government during the period and is tabulated under Table 2 above.
 - (5) As can be seen from the Table 2, the actual pension disbursement during the period from FYs 2015-16 to 2022-23 was Rs 13,141 crore as against the availability of Rs 12,341 crore to the trust without considering the repayment of the principal of the 20 year bond of Rs 8144.00 Crore, which was not charged on ARR.
 - (6) Accordingly, Commission finds no merits in the contention of the Association.
- j) Association raised its objections during the subsequent public hearing

Many stakeholders including HT and EHT Association, WPIL has raised the matter that they have raised the issue not to consider the principal repayment of the bonds to the Master Trust during the hearing of the draft Tariff Regulation 2021 and subsequent ARR & ERC proceedings for the MYT period.

Analysis and Decision of Commission

The public hearings conducted on MYT petition and truing up petitions did not have any scope to examine the validity of Tariff regulation framed under section 61 of the Electricity Act, 2003. It is a settled position that, the validity of the regulations framed by Central Commission/ State Commission is subordinate legislation and can be challenged only by seeking judicial review under Article 226 of the Constitution of India. Hon'ble Supreme Court in the case of PTC India Ltd. Vs. Central Electricity Regulatory Commission reported in AIR 2010 SC 1338: (2010) 3 SCR 609 in para 60 decided that: "The validity of the Regulations may, however, be challenged by seeking judicial review under Article 226 of the Constitution of India."

During public consultation process of draft regulation, KSEB Pensioner Association, KSEB Pensioner Kootayma, KSEB Seniors Forum etc. has requested before the Commission for the inclusion of provision in the Tariff regulations to reckon the amounts required for principal amount on interest on the bonds plus future liability as per actuarial valuation done after 2013, to ensure that sufficient funds are there with the Master Trust to fulfil the pension liabilities. HT and EHT Association had participated in the

proceedings and had the opportunity to counter the same through a written submission.

It is the duty of the Commission to consider the merit on the submissions made in the public consultation process and therefore the contention of the stakeholders is rejected.

28. Sr. Adv. Joseph Kodianthara (representing HT and EHT Association), WPIL, Saji Mathew and other stakeholders mentioned that the proposed amendment does not seek to make any change on Regulation 30 (3) of the draft regulation, 2021.

Analysis and Decision of Commission

- (1) In the draft Tariff Regulation, 2021 notified on 06.08.2021, Regulation 30 (3) read as follows:

“30. Interest on bonds issued by KSEB Limited to service the terminal liabilities of its employees. –

(3) The funds required for repayment of the bonds issued by KSEB Limited to service the terminal liabilities of its employees shall not be allowed for recovery through tariff.”

- (2) Whereas, in the final Regulations Regulation 30 (3) read as follows:

“30. Interest on bonds issued by KSEB Limited to service the terminal liabilities of its employees. –

(3) KSEB Ltd shall determine the up-to-date actuarial liability, draw up a proposal regarding how to fund the liability/uncovered liability and after its approval by the KSEB Board of Directors, shall submit to the Government for consideration. Once the Government has accorded approval in this regard, KSEB Ltd. shall submit a petition in line with the Government approval to the Commission with the complete details indicating the assessed and approved actuarial liability and the proposal to fund this liability. The Commission shall consider this petition at the time of truing up of the accounts. Till such time, the Commission may, based on a petition by KSEB Ltd consider approving a provisional amount towards the discharge of this liability.”

- (3) It has to be seen that since the final regulation has been notified, the provisions in the draft Regulation would not survive. The association did not challenge the Regulation 30 (3) before the Hon'ble High Court or at any stage. Moreover, Regulation 34 (iv) alone was set aside by the Hon'ble High Court of Kerala and the proposed amendment would amply satisfy the law.

Further, Hon'ble High Court vide the judgment dated 7th September, 2023 in WP(C) No. 19205/2023 has granted liberty to the Commission to specify the terms and conditions for the determination of tariff as regards to the repayment of principal amount on Master Trust Bonds after complying with the requirement of Section 181(3) of the Electricity Act, 2003, Electricity (Procedures for Previous Publication) Rules, 2005.

Therefore, there is no merit in the argument of the stakeholders and hence rejected.

29. Sri. Saji Mathew, MRF, WPIL, Dejo Kappan, Kerala Small Scale Industries Association, HT and EHT Association and Sujith HOCL have mentioned that the present amendment is made without government approval and without any data submission by KSEB Ltd for allowing the principal repayment of the Master Trust bonds through ARR and True up. They raised the apprehension that the proposed amendments permit KSEB Ltd to issue additional bonds without the approval of the Commission and claim the payments thereof through ARR. Therefore, Amendment is illegal and liable to be challenged before the Hon'ble High Court.

Analysis and Decision of Commission

- (1) As per the actuarial valuation done by the actuary in subsequent years as mandated in the statutory transfer scheme, the actuarial liabilities has been increasing year after year due to various factors including pension liability against service put in by the existing employees during the period subsequent to the date of effect of transfer scheme, higher inflation, change in assumptions on wage/ DA revisions, yield of securities, enhanced life expectancy etc., than that considered at the time of initial valuation.
- (2) As per the Truing Up of accounts of KSEB Ltd for the FY 2021-22, the unfunded pension liabilities as on 31.03.2022 has increased to ₹ 35,804.63 Crore. Though the Commission has not gone into the details of the actuarial valuation report, the Commission has allowed Rs 200.00 crore in the FY 2017-18 and Rs 300 crore each in the FYs 2018-19, 2019-20, 2020-21 and 2021-22, while Truing Up of accounts of the respective years, for meeting the increase in unfunded pension liabilities based on the actuarial valuation report. In order to approve the necessary funding scheme for meeting the enhancement in unfunded liability based on the actuary report, the Commission has directed the licensee to submit a necessary proposal to fund the same with the approval of the State Government. However, the licensee is yet to be submit the details for want of approval of the State Government. Once KSEB Ltd submit the petition with the

necessary and sufficient details including the approval of the State Government, and with all supporting documents, the Commission may grant approval for recovery of the additional unfunded liability based on the actuarial valuation conducted by the actuaries, through ARR after prudence check, and as per the provisions of the Tariff Regulations, 2021 and its amendments.

- (3) There is no legal infirmity in the present amendment as the proposed amendment should be read along with Regulation 30 (3) of the Tariff Regulations, 2021, which is extracted below for ready reference:

“30(3) KSEB Ltd shall determine the up-to-date actuarial liability, draw up a proposal regarding how to fund the liability/uncovered liability and after its approval by the KSEB Board of Directors, shall submit to the Government for consideration. Once the Government has accorded approval in this regard, KSEB Ltd shall submit a petition in line with the Government approval to the Commission with the complete details indicating the assessed and approved actuarial liability and the proposal to fund this liability. The Commission shall consider this petition at the time of truing up of the accounts. Till such time, the Commission may based on a petition by KSEB Ltd consider approving a provisional amount towards the discharge of this liability.”

- (4) The approval of unfunded liability through bond issue in future could only be made as per Regulation 30 (3). Till the compliance of regulation 30 (3) is made, only ad hoc provisions are allowed in ARR as per provisions in the Regulations. Therefore, it is legally incorrect to argue that the proposed amendment should be finalized only after the compliance of conditions specified in Reg 30 (3).

30. The Association, WPIL, HOCL and other stakeholders have raised the concern that the principal payment allowed again will be loading the consumers twice for the same purpose, one way as additional RoE and secondly as contribution towards Master Trust.

Analysis and Decision of Commission

- (1) The regulatory regime mandates approval of reasonable cost to the utility, which comprise of prudent expenses and reasonable return on investment. It is a settled position under regulatory regime that reasonable return should be allowed over and above all legitimate expenses. The reasonable return allowed to the utility cannot be earmarked for meeting a genuine expenditure

viz. repayment of bonds of the regulated entity. Nowhere in the Electricity Act, Tariff Policy or any of the Tariff Regulations allow such an approach.

(2) As per the provisions of the Electricity Act, 2003, KSEB Ltd is the incumbent distribution licensee, and also the State Transmission Utility in the State. KSEB Ltd also own generation assets in addition to its Transmission and Distribution business. As a regulated entity, all the expenses and income of the KSEB Ltd is regulated by the Commission as per the provisions of the Electricity Act, 2003, and other Rules and Regulations in force, consistent with the Electricity Act, 2003. As per the provisions of the Electricity Act, 2003, the Commission is duty bound to ensure the financial health of the licensee while ensuring quality power at reasonable cost to its consumers.

(3) The stakeholders have raised the objection with scant regard for the basic principles of regulatory regime which permits all prudent cost and reasonable return. Therefore, any submission to link RoE as a source to meet the legitimate expense in the form of principal repayment of bond is bad at law and hence rejected.

31. M/s Saji Mathew, Dejo Kappan, A R Satheesh, KSEBOA, KSEBEA etc. has requested to check the actual functioning of the Master Trust. Also requested to give directions to KSEB Ltd to ensure the additional funds approved by the Commission in ARR are to be transferred to Master Trust account. They also requested the Commission to ensure that the principal repayment and interest from the year 2017 is properly accounted as per the Second Transfer scheme. KSEB Pensioner Koottayma, KSEB Pensioner Association has also requested before the Commission to take a comprehensive view of the whole process of functioning of the trust, review and determine the amount that should have been paid to the Master Trust for KSEB Ltd. It was also mentioned that KSEB Ltd is not assessing the amount payable to the Master Trust and properly accounting and publishing it and also requested to direct KSEB Ltd to furnish a comprehensive scheme for the operation of Master Trust as envisaged in the law.

Comments of KSEB Ltd

The Master Trust could not function in the manner specified in the transfer scheme on account of various reasons beyond the control of KSEB Ltd such as delay in issuance of bonds, delay in getting approval from Government for funding unfunded liability, inadequate transfer of funds to trust, non-funding of actuarial additional liability since 31.10.2013. These matters were promptly

appraised before the Commission during the truing up proceedings in earlier years.

Analysis and Decision of Commission

- (1) The Commission has noted that though the Master Trust was required to be set up as per the Transfer Scheme in 2013, the same did not materialize due to delay in the receipt of Income Tax exemption. The Master Trust could start functioning from FY 2017 and is currently being operated on the lines of a current account. This is not at all desirable. The Commission further noted that, the remittance of money into this account as proposed in the divesting scheme has not really happened. The Commission recognizes the fact that pension provides for security of retired employees in their twilight years. Considering the huge unfunded liability as on 31.03.2022, the Commission has proposed the amendment that the amount required for interest on bonds issued for Master Trust and for principal repayment of such bonds shall be reckoned for computation of ARR and Truing up of accounts.
 - (2) Further, the Commission in the True – up Orders of KSEB Ltd has directed to file a proper petition with complete details on the unfunded actuarial liability and suitable proposal to fund the additional liability over the schemes already approved, with the approval of the Director Board of KSEB Ltd and with the approval of the State Government. It was also directed to deposit the balance unfunded actuarial liability based on the already approved schemes to the Master Trust Account. Further directed KSEB Ltd to deposit the provisionally approved amount to meet the unfunded liability of the pension and gratuity to the Master Trust.
 - (3) The Commission will review functioning of the trust, and also ensure transfer of the amount that should have been paid to the Master Trust by KSEB Ltd. Further, the Commission will allow amount to meet the unfunded liability of the pension and gratuity to the Master Trust only through the actuarial evaluation and prudent analysis of the accounts of the Master trust.
32. M/s KSEB Ltd, KSEB Pensioners Koottayma, KSEB Pensioners Association, KSEB Seniors Forum, KSEB Workers Association (CITU) and Sudhi V R mentioned that, earlier KSEB was meeting the pensionary and terminal benefits from its own revenue alone. Since 2013, it is receiving amounts from the Government for the above payments. Significantly these amounts are not factored in the tariff of electricity and consumers are being benefitted by the helping hand extended by the Government. During the period from 2013 to 2023, Government disbursed Rs.7971Cr.to KSEB Ltd. If there was no transformation of

erstwhile KSEB to KSEB Limited, this amount would have been on the shoulders of the consumers. This has been a great relief to all the categories of consumers of KSEB Limited. These facts are submitted to convey a realistic picture of the present financial scenario of KSEBL. They have requested that the proposed amendment to Clause 34(iv) of the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2021 be notified as such.

Analysis and Decision of Commission

After detailed analysis of the objections and suggestions of the various stakeholders, the Commission is of the considered view that, the repayment of the principal amount of bond issued to the Master Trust and fully serviced by KSEB Ltd itself is to be allowed as a genuine expense of KSEB Ltd., through the ARR/ True up accounts. Hence, the amendment proposed to Regulation 34(iv) of the Tariff Regulations, 2021 is to be finalized as such.

33. The Commission has published the draft of KSERC (Terms and Conditions for Determination of Tariff) (Second Amendment) Regulations, 2023 on 1st December, 2023. The Commission conducted a public hearing on 04.01.2024. After due consideration of the comments/ suggestions/ objections received, the Commission has now finalized the Kerala State Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2024 and notified on 27.02.2024. This statement of reasons is not a part of the notification, but is to explain the intend and necessity for notification of these Amendment Regulations.

Sd/-
T. K Jose
Chairman

Sd/-
Adv. A. J. Wilson
Member

Sd/-
B Pradeep
Member

Approved for issue
Sd/-
C R Satheeshchandran
Secretary

List of participants attended the public hearing of the Draft Regulations

1. Sri. Rajan M. P, Deputy Chief Engineer, TRAC, KSEB Ltd
2. Smt. Latha S.V, Executive Engineer, TRAC
3. Sri. Girishkumar, FO, TRAC
4. Sri. Balachandran, KSEB Ltd
5. Sri. V. P Radhakrishnan, KSEB Ltd
6. Sri. C. S Sanal kumar, KSEB Ltd
7. Sri. N Balagopal, KSEB Ltd
8. Sri. Noushad, AEE, KSEB Ltd
9. Sri. N.J Thankanchan, KSEB Pensioners Koottayma
10. Sri. Radhakrishnan V. P, KSEB Pensioners Koottayma
11. Sri. Sasidharan Pillai, KSEB Pensioners Association
12. Sri. Venugoopal N, KSEB Pensioners Association
13. Sri. K.S Sunil, KSEB Pensioners Association
14. Sri. Suresh B, KSEB Pensioners Association
15. Sri. Ramesh chandran, KSEB Pensioners Association
16. Sri. S Sreekumar, KSEB Pensioners Association
17. Sri Jyothi Sasi Bai, KSEB Pensioners Association
18. Sri. Bijuprakash S. P, Kerala Power Board Officers Federation
19. Sri. Manju L, Kerala Power Board Officers Federation
20. Sri. M.G Sureshkumar, KSEB Seniors Forum
21. Sri. Mohammad Kasim, KSEB Seniors Forum
22. Sri. Manoj G, KSEBOA
23. Sri. Mohammad Rafi. KSEBEA
24. Sri. Dony C.S, KSEBEA
25. Sri. Kunjunni P S, KSEBEA
26. Sri. Noushad, KSEBEA
27. Sri. Sibikutty Francis, Kerala Electricity Employees Confederation (INTUC)
28. Sri. Rajeshkumar S R, Kerala Electricity Employees Confederation (INTUC)
29. Sri Anilkumar, Kerala Electricity Employees Confederation (INTUC)
30. Sri Ashokkumar K, Kerala Electricity Employees Confederation (INTUC)
31. Sri. Biju Prakash, KSEB Power Board Officers Federation
32. Sri. M Sasidharan Nair
33. Sri P.S Prasanth, KEOL
34. Sri Dejo Kappan

35. Sri. M A Rawther
36. Sri. M. T Varghese
37. Sri. Sharafudheen A
38. Sri. Madhulal Jayadevan
39. Sri. Sujith P.M
40. Sri. A. R Satheesh
41. Sri. A A Mohammad Nawaz
42. Sri. Mohammad Rafeeq, R R Electricals
43. Sri. Prasanth P.P, Madhyamam Daily
44. Smt Neenu Skaria, Kerala Small Scale Industries Association, Ernakulam
45. Sri. Bose Jacob, Convenor, Friends of Electricity Employees and Consumers Kozhikode.
46. Sri. Kurien Sebastian, Registrar, INSIDES
47. Sri. Mayan Mohammad, Western India Plywoods Ltd.
48. Sri. Bava T.M, Western India Plywoods Ltd.
49. Adv Joseph Kodianthara, representing HT and EHT Association.
50. Sri. Saji Mathew, Vice President, HT and EHT Association.
51. Sri. Radhakrishnan K.R, HT and EHT Association.
52. Sri. Pradeep M, HT and EHT Association.
53. Sri. Sarath, HT and EHT Association.
54. Sri. Prabhakaran K. V, HT and EHT Association.
55. Sri. Sujith, HOCL
56. Sri. A. N Nizarudeen, State President, Kerala State Small Industries Association

List of participants submitted written suggestions on the Draft Regulations

1. Kerala State Electricity Board Limited
2. HT and EHT Industrial Association
3. KSEB Officers Association
4. KSEB Engineers Association
5. KSEB Workers Association (CITU)
6. Kerala State Small Industries Association
7. Western India Plywoods Ltd
8. Kerala Small Scale Industries Association, Ernakulam
9. KSEB Pensioners Association
10. KSEB Pensioners Koottayma
11. Friends of Electricity Employees and Consumers Kozhikode.
12. Sri. A. R Satheesh
13. Sri. Sudhi V R, Retired Deputy CE, KSEB Ltd.