

KERALA STATE ELECTRICITY REGULATORY COMMISSION THIRUVANANTHAPURAM

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

RP 04/2021

In the matter of : Review Petition against the Order dated 25.06.2021 in OA 09/2020 in the matter of Truing up of accounts for the F.Y 2017-18.

Petitioner: : M/s Kerala State Electricity Board Limited

Date & Venue of Hearing: 31-05-2022, Video Conference Mode at 11.00 AM

Order Dated 16-07-2022

1. KSEB Ltd on 22.10.2021 filed a petition for reviewing the Order of the Commission dated 25.06.2021 in petition OA No.09/2020 in the matter of Truing Up of accounts for the year 2017-18. In the review petition, KSEB Ltd submitted the disallowances made under following heads for review and reconsideration.

Table 1
Summary of disallowances

No	Particulars	Rs. In Cr
1	Cost of Power Purchase	50.52
2	Total Interest & Finance charges	212.93
3	Depreciation	183.15
4	Total O&M Expenses	461.72
5	Other expenses	6.05
6	Claim for achievement of T&D loss reduction	1.10
7	Auxiliary consumption above norms	0.83
8	Interest on unfunded actuarial liability	331.39
	Total	1247.68

2. The summary of the issues raised by KSEB Ltd in the review petition is given below.

Non approval of cost of power purchase of unapproved DBFOO contract amount into Rs.42.63 crore.

3. KSEB Ltd raised the issue that while approving the cost of power purchase from the three unapproved DBFOO contracts namely 150 MW from Jindal Power Ltd in Bid 2, 100 MW from Jhabua Power Ltd in Bid 2 and 100 MW from Jindal India Thermal Power Ltd in Bid 2, the Commission had limited the cost of power purchase at the rate of BALCO power at Kerala periphery. KSEB Ltd raised the

issue that the Commission ordered to limit the rate of power purchase from the above unapproved contracts at BALCO rates vide Order dated 08.07.2019 in petition OA No.15/2018 in the matter of MYT Order for the Control Period from 2018-19 to 2021-22.

According to KSEB Ltd, the Truing up Order was issued subsequently after the completion of the financial year 2017-18, whereas while allowing schedule of power from stations in 2017-18 the Commission have not imposed any restriction on payment at PSA rates though the final approval of the rates were not granted then. KSEB Ltd further submitted that the order issue by the Commission subsequent to the year 2017-18, i.e, on 08.07.2019 may not be applied retrospectively back to 2017-18 which is legally not correct. Hence, KSEB Ltd requested to reconsider the cost of power purchase in respect of unapproved DBFOO contracts amounting to Rs.42.63 crore.

Interest and finance charges

4. KSEB Ltd submitted the following regarding the disallowance on interest and finance charges for the year 2017-18.

Table -2
Summary of Interest & Finance charges for the year 2017-18 (Rs Cr)

Sl No	Particulars	Trued up claimed	Trued up by KSERC	Variance
1	Normative interest	317.70	271.63	46.07
2	Working capital interest	24.30	14.51	9.79
3	Carrying cost	444.49	344.75	99.74
4	Carrying cost on current year gap	61.12	3.80	57.32
5	Total	847.61	634.69	212.92

Though the Commission has disallowed Rs.212.92 crore under interest and finance charges, KSEB Ltd has reviewed the Interest and Finance charges under following two heads.

- (i) Interest on working capital of SBU-T

KSEB Ltd submitted that while allowing interest on working capital for SBU-T, the Commission has not considered receivables for one month amounting to Rs.77 Crore though the Tariff Regulations, 2014, provides for interest on working capital of SBU-T for receivables also.

- (ii) Carrying cost

KSEB Ltd claimed that while allowing carrying cost, the Commission has considered the excess security deposit over and above working capital requirement as cash available to meet its revenue deficit. KSEB Ltd submitted that the Regulation 33 of Tariff Regulations, 2014, doesn't deal with excess security deposit and its treatment. Further, the Commission while approving the Truing Up Order for the year 2015-16 and 2016-17 haven't considered excess

security deposits while allowing carrying cost. Hence KSEB Ltd requested to review its claim.

Claim for achievement of T&D loss reduction

5. KSEB Ltd claimed that on account of T&D loss reduction, the Commission allowed incentive of Rs 48.19 crore considering the average cost of power purchase of Rs 3.938 per unit. KSEB Ltd in this petition requested to revise the average cost of power purchase to Rs 3.96/unit by considering the dis-allowed portion of the cost of purchase. KSEB Ltd requested to allow the incentive @Rs 3.96/unit instead of Rs 3.938 per unit.

Excess Auxiliary consumption 9.56 MU (Rs.0.83 Cr)

6. KSEB Ltd submitted that in the year 2017-18 the actual auxiliary consumption of Hydro Station is higher than the norms specified in the Tariff regulations 2014. The Commission imposed a penalty of Rs.0.83 Crore at the average hydro generation cost of Rs.0.91 per unit.

KSEB Ltd further submitted that in the year 2016-17, in a similar situation, the Commission has not imposed any penalty for excess auxiliary consumption of hydro stations. Hence KSEB Ltd requested to not impose penalty on the excess auxiliary consumption.

Public Hearing on the Petition

7. The Commission admitted the petition as RP 04/2021. The Commission conducted public hearing on the petition on 31.05.2022. Shri Rajan, Deputy Chief Engineer and Shri Girish Kumar, Finance Officer presented the petition on behalf of the petitioner KSEB limited. The summary of the deliberations during the hearing is given below.

(1) Interest on Working Capital of SBU-T of KSEB Ltd.

KSEB Ltd submitted that as per Regulation 33 (1)(d) of the KSERC terms and conditions of determination of Tariff Regulations,2014 the components of working capital of SBU-T shall comprise of the following.

- (i) operation and maintenance expenses for one month; plus*
- (ii) cost of maintenance spares at one per cent of the historical cost; plus*
- (iii)receivables equivalent to transmission charges for one month calculated at target availability:*

Provided that the amount, if any, held as security deposits except the security deposits held in the form of bank guarantee from users of the transmission system shall be reduced while computing the working capital requirement.

KSEB Ltd submitted that while approving the interest on working capital for SBU-T, the Commission has not considered the receivables equal to 1 month transmission charges. According to KSEB Ltd, this is an error apparent on record.

(2) Carrying cost

KSEB Ltd submitted that while allowing carrying cost on the approved revenue gap, the Commission has deducted the average PF balance during the year and also the excess security deposit available with KSEB Ltd after meeting the working capital requirements. According to KSEB Ltd, the revenue from sale of power is accounted as per the accrual system and hence as and when an invoice/bill is issued to a consumer, the amount as per invoice/bill is accounted as its income. Hence KSEB Ltd requested that, the excess security may not be considered while allowing carrying cost.

(3) Excess Auxiliary consumption 9.56 MU (Rs.0.83 Cr)

KSEB Ltd submitted that, the Commission had penalized on account of excess auxiliary consumption to the extent of 9.56 MU for Rs. 0.83 Cr computed at average hydro generation cost of Rs.0.91 per unit.

KSEB Ltd further submitted that, in Truing up order for 2016-17 in Petition OA 12/2018 dated 14.09.2018, the issue was deliberated and approved actual auxiliary consumption owing to the deficient monsoon. The actual hydro generation during normal monsoon years will range from 6000 to 7000 MU and actual generation in 2016-17 was 4319 MU. It was further observed that it is not fair to allow auxiliary consumption based on the percentage of actual gross generation during low hydro years.

On similar grounds, net hydro generation in 2017-18 too (5468 MU) was below normal 6000-7000 MU range. The KSEB Ltd requested to the Commission, may kindly review the order and do away with the penalization for excess aux consumption in line with 2016-17 Truing Up Order.

(4) Non approval of power purchase cost Rs.42.63 Cr.

The KSEB Ltd submitted that, in the Suo motu Order dated 17.04.2017 for the period 2017-18, the Commission has not approved power from Jindal Power Ltd Bid II (150 MW), Jhabua Power Ltd -Bid II (100 MW) and Jindal India Thermal Power Ltd (100 MW) and instead approved annual ceiling limit of Rs 4.33 per unit for meeting the shortfall in power requirements during 2017-18. The KSEB Ltd further stated that, the adoption of BALCO rates for approval of power purchase cost of these 3 generators were ordered for the first time only during the proceedings on the fuel surcharge petition for 2019-20 dated 14th February 2020 which was confirmed through orders on review petition dated 14.08.2020.

KSEB Ltd further submitted that, since August 2020, it had fully complied with the decision of Hon'ble Commission in order dated 14.02.2020,

27.04.2020 and 14.08.2020 by limiting the payment to these generators at the rate of power purchase from BALCO at Kerala periphery. The order on approval of fuel surcharge (14.02.2020) was issued well after the financial year 2017-18 and 2018-19. Therefore, KSEB Ltd was not at all in a position to comply with these orders in 2017-18.

The KSEB Ltd requested that, the average rate of power purchase through short term contracts including the power purchase from the above mentioned three stations during the year was Rs.3.59 per unit, which was well within the approved rate of Rs.4.33 per unit and these purchases were done after fully observing merit order dispatch; KSEB Ltd requests before the Commission to review the order and approve Rs. 42.63 Cr under power purchase cost for FY 2017-18.

(5) Claim for achievement of T&D loss reduction

KSEB Ltd claimed its share of gain on 122.35 MU @ Rs.4.02 per unit of Rs. 49.27 Cr. The Commission was approved a Rs. 48.17 Cr by considering Rs.3.938 per unit as average power purchase cost per unit. The rate per unit adopted by the Commission was based on approved power purchase cost of Rs.7346.56 Cr (after excluding Rs.50.52 Cr on DBFOO and INOX and Rs.1.59 Cr towards energy not billed). KSEB Ltd, in this petition is seeking review of non-approval power purchase to the tune of Rs. 42.63 Cr (power purchase from DBFOO contracts approved at the rates applicable to Balco). KSEB Ltd requested to the Commission redetermine APPC after considering Rs. 42.63 Cr under power purchase cost.

Analysis and decision of the Commission

8. The Commission has examined in detail, the Review Petition filed by KSEB Ltd as per the Provisions of Electricity Act 2003, Code of Civil Procedure Code 1908, KSERC (Conduct of Business) Regulations, 2003 and other relevant documents and records.
9. The present petition was filed against the Order of the Commission dated 25.06.2021 in the matter of Truing up of accounts of KSEB Ltd for the year 2017-18.
10. Before going into the merit of the issues raised in the petition, the Commission has examined the review jurisdiction provided in the Electricity Act, 2003, for reviewing its order and decisions. The relevant provisions are discussed below.
 - (1) As per the Section 94 of the EA-2003, the review jurisdiction of the Commission is very limited in reviewing its orders and directions. The relevant Sections is extracted below:

“ Section 94. (Powers of Appropriate Commission): --- (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

- (a) *summoning and enforcing the attendance of any person and examining him on oath;*
 - (b) *discovery and production of any document or other material object producible as evidence;*
 - (c) *receiving evidence on affidavits;*
 - (d) *requisitioning of any public record;*
 - (e) *issuing commission for the examination of witnesses;*
 - (f) *reviewing its decisions, directions and orders;*
 - (g) *any other matter which may be prescribed. “*
- (2) Order 47 Rule 1 of the Code of Civil Procedure dealing with review of the orders and decisions of a Civil court, which is s quoted below:

“ Application for review of judgment.-(1) Any person considering himself aggrieved,—

- (a) *by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
- (b) *by a decree or order from which no appeal is allowed, or*
- (c) *by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.*

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation: The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.”

As extracted above, as per the provisions of the Electricity Act - 2003 and Order 47 Rule 1 of the Code of Civil Procedure, the review jurisdiction of the Commission is very limited. For reviewing its decisions, discovery of new and important matter or evidence, which was not within the knowledge of the petitioner or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on face of record, or for any other sufficient reason.

- (3) The Regulations 67 of the KSERC (Conduct of Business) Regulations, 2010 and its amendments specified as follows.

“67. Powers of review, - (1) Any person or party affected by a decision, direction or order of the Commission may, within forty-five days from the date of making such decision, direction or order apply for the review of the same. (2) An application for such review shall be filed in the same manner as a petition under Chapter III of these regulations. (3) The Commission may after scrutiny of the

application, review such decisions, directions or orders and pass such appropriate orders as the Commission deems fit within forty-five days from the date of filing of such application:

Provided that the Commission may, at its discretion, afford the person or party who filed the application for review, an opportunity of being heard and in such cases the Commission may pass appropriate orders as the Commission deems fit within thirty days from the date of final hearing: Provided further that where the application for review cannot be disposed of within the periods as stipulated, the Commission shall record the reasons for the additional time taken for disposal of the same”.

11. The Commission has examined the issues raised by KSEB Ltd in the Review Petition in detail and noted that there is no scope for review in most of the issues. For the sake of clarity, the Commission has examined the issues raised in the petition with the reasons and explanations provided in the impugned Order dated 25.06.2021 in the matter of Truing of Accounts for the year 2017-18.

Non approval of cost of power purchase of unapproved DBFOO contract amount into Rs.42.63 crore.

12. One of the major issues raised by KSEB Ltd is regarding limiting the cost of power purchase of unapproved DBFOO contracts in Bid 2 at BALCO rate at Kerala periphery, i.e., the L1 rate in Bid 2. This issue was appraised in detail in Para 5.72 and 5.75 of the impugned Order OA 09/2020 dated 25.06.2021 in the matter of Truing Up of Accounts of KSEB Ltd for the year 2017-18.

The Commission has noted that KSEB Ltd could not produce any new facts on this issue. Hence, this issue does not comply with the requirements of review jurisdiction of the Commission under Section 94 of the Electricity Act, 2003 read with the Order 47, Rule 1 of the Code of Civil Procedure, 1908. Hence, the ***Commission rejects this prayer of KSEB Ltd to review the cost of power purchase and allow Rs 42.63 crore dis-allowed in the Truing up Order dated 25.06.2021***

Claim for achievement of T&D loss reduction

13. The next issue raised by KSEB Ltd in this review petition is regarding the average cost of power purchase considered for allowing incentive for the overachievement of T&D loss reduction. Since the Commission has already rejected the prayer of the KSEB Ltd to review the cost of power purchase as mentioned at para-12 above, the Commission disallows this prayer of KSEB Ltd and there shall be no change in the average cost of power purchase approved in the impugned Order dated 25.06.2021 in the matter of Truing up of accounts.

Hence the request of KSEB Ltd on this issue also rejected.

Excess Auxiliary consumption 9.56 MU (Rs.0.83 Cr)

14. The Commission has examined the prayer raised by KSEB Ltd in the review petition in detail. As per the provisions of the Tariff Regulations, 2014, the

auxiliary consumption is a controllable item. Further, this Regulations has also specified the normative auxiliary consumption for the hydro stations of KSEB Ltd. The justification provided by KSEB Ltd that, such an excess auxiliary consumption was allowed by the Commission in Truing up Order of 2016-17 cannot be a valid reason for such relaxation. The Commission also noted that, the year 2016-17 was a period of relatively less rain fall. The issue raised by KSEB Ltd in this review petition does not fulfill the provisions enabling the Commission's review jurisdiction. Further, the Tariff Regulations 2014, requires the Commission to impose penalty in case of excess auxiliary consumption and at the average cost of hydel generation. The Commission cannot deviate from these provisions and cannot grant any such relief in this review petition.

Hence the request of the KSEB Ltd to review its decision on imposing penalty for excess auxiliary consumption is rejected.

Interest on Working Capital of SBU-T

15. The Commission in Order dated OA 09/2020 dated 25.06.2021 on Truing Up of Accounts for the year 2017-18 had approved Interest on working capital amounting to Rs. 8.04 crore as shown below.

Table 3
Interest on working capital for SBU-T

Particulars	SBU-T
	(Rs. crore)
O&M expenses for one month	26.12
Cost of maintenance of spares 1% of historical cost	46.29
Total	72.40
Less Security deposits	0.00
Total Normative Working capital Requirement	72.40
Base rate as on 1-4-2016	9.10%
Interest rate on working capital	11.10%
Interest on working capital	8.04

KSEB Ltd in this review petition has requested the Commission to review the Interest on working Capital of SBU-T allowed by the Commission at the stage of Truing up. KSEB Ltd has pointed out that the Commission has not considered the receivables equivalent to transmission charges for 1 month, while calculating working capital requirement of SBU-T in the Truing up.

16. The Commission has examined this prayer of KSEB Ltd keeping in mind the provisions of the Tariff Regulations, 2014 regarding the computation of working capital requirements of SBU-T, which is extracted below.

“33. Interest on working capital. – (1) The generation business/company or transmission business/licensee or distribution business/licensee or the state load despatch centre shall be allowed interest on the normative level of working capital for the financial year, computed as under,-

.....

(d) In the case of transmission business/licensee the working capital shall comprise of,-

- (i) operation and maintenance expenses for one month; plus
- (ii) cost of maintenance spares at one per cent of the historical cost; plus
- (iii) receivables equivalent to transmission charges for one month calculated at target availability:

Provided that the amount, if any, held as security deposits except the security deposits held in the form of bank guarantee from users of the transmission system shall be reduced while computing the working capital requirement.

However, with reference to the Table above, the Commission has noted that it had not included the receivables of SBU-T of one month, while computing the working capital requirement. From this fact, it is clear that an apparent error had crept into the calculation of working capital, which is required to be addressed.

The Commission there after examined the computation of working capital in detail and after due considerations decided to re-assess the working capital requirement of SBU-T for the year 2017-18 strictly as per the provisions of the Tariff Regulations, 2014. The revised computation of working capital requirement of SBU-T and the interest on working capital is given in the Table below.

Table 4
Interest on working capital revised for the year 2017-18

Particulars	SBU-T
	(Rs. crore)
O&M expenses for one month	26.12
Cost of maintenance of spares 1% of historical cost	46.29
Receivables for 1 month	63.81
Total	136.22
Less Security deposits	0.00
Total Normative Working Capital Requirement	136.22
Base rate as on 1-4-2016	9.10%
Interest rate on working capital	11.10%
Interest on working capital	15.12

The above table indicates that, against the approved interest on working capital of SBU-T for the year 2017-18 at Rs 8.04 crore in the impugned Order dated 25.06.2021, the Commission has recalculated this amount as Rs 15.12 crore. Accordingly, an additional amount of Rs 7.08 crore is hereby allowed under this head.

17. As discussed in the preceding paragraphs, except for the calculation of interest on working capital, all other issues sought for review in this petition is rejected.

Orders of the Commission

18. The Commission, after examining the petition filed by KSEB Ltd for reviewing the Order of the Commission dated 25.06.2021 in Petition OA No. 09/2020, as per the provisions of the Electricity Act, 2003, Tariff Regulations 2014 and other relevant documents and records, hereby order the following.
- (1) Revise the computation of working capital requirement and interest hereon of SBU-T of KSEB Ltd for the year 2017-18 as detailed in the paragraphs 15 and 16 of this Order as above. Accordingly, the interest on working capital of SBU-T for the year 2017-18 is revised @Rs 15.12 crore as against Rs 8.04 crore approved in the impugned order dated 25.06.2021.
 - (2) The transfer cost of SBU-T to SBU-D of KSEB Ltd for the year 2017-18 is also revised from Rs.765.77 crore to Rs. 772.85 crore.
 - (3) The overall revenue gap for the year 2017-18 for KSEB Ltd is revised to Rs. 91.21 crore from Rs.84.13 crore as determined in the impugned order, after admitting the claim on additional interest on working capital (Rs.7.08 crore).
 - (4) All other issues raised in this review petition is hereby rejected.

The review petition is hereby disposed off. Ordered accordingly.

Sd/-
Adv A J Wilson
Member (Law)

Sd/-
Preman Dinaraj
Chairman

Approved for issue

C R Satheeshchandran
Secretary