

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

Sub: - KSERC -Non-payment of licence fee by KSEB -Securing compliance of the
licence conditions -Orders issued.

No.KSERC/Legal/Fee Regln/2009

Dated, Thiruvananthapuram .11.2010

ORDER

Kerala State Electricity Board (*hereinafter referred to as the Board*) is a deemed distribution licensee under the regulatory control of Kerala State Electricity Regulatory Commission (KSERC) in the State of Kerala. The conditions of licence issued as per KSERC (Conditions of Licence for existing Distribution Licensees) Regulations, 2006, stipulate that the distribution licensees shall pay licensee fee every year to the Commission at a rate of 0.03% of the revenue from sale of power as stated in the certified financial statement of the previous year. The Electricity Regulatory Commissions in the Country are collecting the licence fee from their licensees and all the licensees except the Board in Kerala are paying the licence fee regularly. The licence fee is levied as per Section 86(1) of the Electricity Act 2003 and on the basis of the Regulations, for discharging the functions of the Regulatory Commissions under the Act, such as specifying and enforcing the standards for quality, continuity and reliability of service by the licensees in Kerala, determining the tariff in a transparent manner for electricity supply, ensuring that licensees recover tariff from the consumers only at rates approved by the Commission, protecting the interests of the consumers, equipping the consumers for effective regulatory intervention and resolving conflicts and disputes between licensees. Non-payment of licence fee affects the discharge of functions of the Commission adversely. The licence fee from the Board is estimated at about Rs.1.5 Crore (Rs one and half Crore) per year from an expected sales revenue of about Rs.5000 Crore, which is included as part of the Aggregate Revenue Requirements approved by the Commission. Being a pass through item of expenditure the impact on a consumer will be negligible i.e., to the tune of 0.01 paise per unit only or one paise for every ten units.

This being the case, the Board is defaulting the payment of licence fee thereby violating the conditions of licence. This also amounts to wilful obstruction of the independent functioning of the Commission. The Commission has issued several notices to the Board for complying with the conditions of

licence. However, the Board so far failed to comply with the directions and the conditions of licence for one or other reasons.

In order to secure compliance with licence conditions by the Board, Commission has issued public notice under Section 130 of the Electricity Act, 2003 (hereinafter referred to as the 'Act') inviting suggestions and objections from the persons affected or likely to be affected in the matter. Notice was published in the Kerala Kaumudi and Hindu dailies dated 19.10.2010 and in the website of the Commission. Notice was also served on the Board.

Board has not responded to the statutory notice issued to them under Section 130 of the Act. But several associations/persons have responded to the notice.

1. Kerala State Small Industries Association:- They are of the opinion that Board should pay the licence fee complying with the respective Act & Regulations for the better performance of electrical systems in the state.
2. Binani Zinc Employees Organisation:- They have pointed out that for the independent function of the Commission and for carrying out the functions like tariff determination, ensure the standards of quality of electricity, protection of the interest of the licensees and consumers, Board should pay the fee prescribed in the Act. Non payment of 0.01 paise/unit as fee is intended to control the Commission by the Board, when this issue is viewed from consumer's side. When the tariff for HT & EHT consumers has been increased upto 200% for the period 1995 to 2002, after the constitution of the commission in the year 2002, this tariff has not yet been increased. In this circumstance Commission may take further action to levy the licence fee and thereby protect interests of consumers and other licensees.
3. Kerala High Tension and Extra High Tension Industrial Electricity Consumers' Association:- Board was increasing the tariff in Kerala according to the whims and fancy until 2002. Board has made alarming increase nearly three times for HT&EHT consumers during the period 1995 to 2002. Since the constitution of the Commission 2002, there has been no increase. Licensing conditions stipulate that the distribution licensee shall pay licence fee at a rate of 0.03% of revenue from sale of power. The expected revenue of the Board per annum is Rs.5000Crores. So the approximate fee is Rs.1.5Crores per year. The proceeds of the licence fee is for discharging the functions of the Commission under the Act. By defaulting the payment of licence fee, Board is violating the conditions of licence and is also willfully obstructing the independent functioning of the Commission. The Association strongly condemn the attitude of the Board in not conforming the statutory obligations. Association therefore opined that Commission should take approximate action to make KSEB pay the licence fee. Commission should also take action under penal provisions under Section 142 and 146 of the Act.

4. Kerala State Productivity Council:- They state that this association comprises Government nominees, Corporate and Trade Union representing labour mass. They have made the following comments.

Matter on electricity is of utmost importance to all the stake holders especially regarding the quality and the cost of power consumed in the industry or in the house holds. Before the implementation of Electricity Act 2003 and the formation of Kerala State Electricity Regulatory Commission, the electricity tariff was decided by the Government on the recommendation of KSEB, the one and only major distribution licensee in the State. The losses incurred by the KSEB on account of their inefficiency, high T&D losses etc. were passed on to the Consumers without audit or scrutiny by any agency and without giving an opportunity for the stake holders to express their opinions. The Officers and employees of KSEB have only one selfish interest ie to have higher salaries, better service conditions and create more vacancies. To compensate the losses, the Government had no other alternative but to increase tariff, that too on the industrial and commercial consumers. The Government did not dare to touch the domestic consumers who were cross subsidized by other categories of consumers because of the vote bank.

The situation changed and the KSEB had to submit the full details of their income and expenditure account which were accessible to the public. The opinion of the public were heard by the Hon. Commission and the Commission took independent decision evaluating the arguments of the Consumers. The ultimate result is that the Hon. Commission made KSEB responsible for their inefficiencies, T&D losses etc. there by improving the performance of KSEB. The result is that there is no increase in industrial power tariff from September 2003 onwards. Also it can be seen from the financial performance of KSEB that there is scope for decrease in tariff which will be of benefit to the full cross section of the Society.

The Commission can function and execute their powers as provided by the Act only if all the licensees pay their fees on time. The KSEB under the pressure of their employees, we presume, is purposefully not paying their dues to put the Regulatory Commission into a financially tight corner. The functioning of the Commission all these years has resulted in maintaining the existing tariff and had helped to improve the performance of the Board. The ulterior selfish motive of the Board and its employees can never be tolerated or allowed.

They urge the Kerala Government and the Hon. Minister for Electricity under whom the Board is functioning to direct the Board to pay the license fee arrears with immediate effect so that justice is not denied to the 100 Lakh plus consumers of the State. The situation is more or less the same, if the people refuse to pay taxes to the Government so that the

functioning of the Government is affected. Also the act of KSEB is a gross violation of Electricity Act 2003 passed by the Indian Parliament. These type of acts will only lead to anarchy and disrespect to the Constitution of India.

5. SEPR Refractors India Pvt Ltd (SAINT - GOBAIN):- They state that Commission has played a vital role in sustaining some major industries and other commercial establishments in Kerala with its judicious decision which has benefited one and all including the Board. Board should abide by the conditions of licence. Commission may take appropriate action to obtain the statutory dues from the Board.
6. Ernakulam Thirumala Devaswom:- They state that there is no increase in the tariff because of the control exercised by the Commission and the improvement of the functioning of the Board. They opined that the act of the Board in non payment of licence fee is gross violation of the Constitution of India and the Indian Parliament which enacted the Electricity Act, 2003. Hence they have made request to the Hon'ble Minister of Electricity to give instruction to KSEB to the licence fee.
7. Confederation of Real Estate Developers Association of India -Kerala:- They state that their association represents construction industry which requires power and therefore any matter on electricity is utmost important to them. Before the Constitution of the Commission, tariff was decided by the Government on recommendation of KSEB. The loss of KSEB on account of this inefficiency high T&D losses were passed on to the consumers without scrutiny by any agency and without giving an opportunity to the stakeholders to express their opinions. This situation has changed and the KSEB had to submit the full details of their income and expenditure which were accessible to the public Commission takes independent decision. The result is that the Commission made KSEB responsible for their efficiencies, T&D losses etc thereby improving the performance of KSEB. Commission can function and execute their powers only if all the licensees pay their fees. KSEB is not paying the fee under pressure from their employees. The utmost selfish motive of the Board and its employees can never be tolerated or allowed. They also urged the Government and the Hon'ble Minister for Electricity to direct the Board to pay the licence fee arrears so that justice is not denied to 100lakhs plus consumers of the State. They also state that there will a similar situation if the people refuse to pay taxes to Government so that the functioning of the Government is affected. The Act of KSEB is a gross violation of Electricity Act passed by the Parliament.
8. Forum for Consumer Justice:- They state that since the Board is taking strict action to recover any amount due from consumers, Commission need not show any leniency to the Board. Whatever be the amount due from Board, it should be recovered from them.
9. Consumer Vigilance Cell:- They have raised so many allegation against the functioning of the Board and appreciated the steps taken by the Commission to protect the interests of the public. They states that they have discussed with the public the issue of levying licence fee from the Board and the

public have given concurrence for levying the fees. They opined that no further notice is necessary and prosecution should be taken against the Board.

1. N. Peethambaran - Senior Citizen, Journalist and Social Worker: He opined that since Board is a Government Institution, exemption may be made from payment of licence fee. Though the fee is nominal now, it may increase in future. Dispute between Board and Commission may be avoided.

The comments at Sl. No. 1-9 are of representative character. They are all in very much support to the Commission to enforce the licence conditions on payment of licence fee. They are unanimously of the view that it is only because of the functions of the Commission, the tariff of consumers has not been increased for a long time. The performance of the Board has also improved.

Shri. N. Peethambaran, Sl No.10 above is not in favour of levying licence fee from KSEB. But his view appears to be without understanding the regulatory regime of the electricity sector by the Commission. Board is a licensee under the Act. It is not a Government institution, as he understands.

After examined the whole issue in detail and also the responses of the consumers, Commission has come to the conclusion that it is fit case to issue an order under Section 129 of the Electricity Act for the compliance of the licensing conditions.

NOW, THEREFORE, in exercise of the powers conferred by Section 129 of the Electricity Act, 2003, the Kerala State Electricity Regulatory Commission hereby order that KSEB shall pay the licence fee due to the Commission for the financial year 2006-07 to 2010-11 as follows;

Licence fee	Due on 01.04.2006	Rs.1.01Crores
Licence fee	Due on 01.04.2007	Rs.1.20Crores
Licence fee	Due on 01.04.2008	Rs.1.41Crores
Licence fee	Due on 01.04.2009	Rs.1.45Crores
Licence fee	Due on 01.04.2010	Rs.1.36Crores (Provisional)

KSEB shall comply with this order within one month from the date of receipt of this order.

By Order of the Commission



SECRETARY