

**KERALA STATE ELECTRICITY REGULATORY COMMISSION  
THIRUVANANTHAPURAM**

PRESENT: Sri.K.J.Mathew, Chairman  
Sri. P.Parameswaran, Member  
Sri.Mathew George, Member

**December 9, 2011**

*Petition No. OP21/2011*

**In the matter of**

**Petition on Amending Clause 64 of KSERC (Conduct of Business)  
Amendment Regulations on 'Fees on application or petition and to exempt  
from the payment of Licence fee for the period 2006-07 to 2010-11'**

Kerala State Electricity Board

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Petitioner

**ORDER**

**1. Background**

KSEB has submitted a petition requesting to reduce the level of fees and charges prescribed in Annexure-II of KSERC (Conduct of Business) Amendment Regulations, 2010 and also to exempt KSEB from payment of license fee arrears due for the period 2006-07 to 2010-11. It is pointed out in the petition that as per 5<sup>th</sup> Proviso to Section 14 of the Electricity Act, 2003 KSEB is a deemed Licensee and has been filing various petitions before the Hon Commission for approval of ARR and ERC, Tariff Petitions, Truing up petitions, petitions for approval of fuel surcharge and other miscellaneous petitions from time to time since the year 2003-04. KSEB has been duly remitting the fees and charges as per Annexure -II of Clause 64 of KSERC (Conduct of Business) Regulations, 2003. KSERC vide Notification No 2114 /CT/2010/KSERC dated 08-12-2010 has made certain amendments in the KSERC (Conduct of Business ) Regulations, 2003 by which Commission has made hike in the fees and charges for filing petitions of ARR/ERC, petitions for Tariff Revision, petitions for Fuel Surcharge , truing up petitions. Further the Commission vide order dated 23-11-2010 has directed to remit licence fee with retrospective effect from financial year 2006-07 onwards. KSEB has not paid licence fees till the year 2010-11 in view of the policy directives of the Government of Kerala.

**2. Prayers**

- (1) The fees and charges for filing various petitions as per Annex II of KSERC (Conduct of Business ) Amendment Regulations , 2010 may be reduced to the level of fees and charges prescribed in Anex II KSERC (Conduct of Business) Regulations, 2003 by making necessary amendments on the KSERC (Conduct of Business) Amendment Regulations, 2010

(2) Exempt KSEB from payment of Licence fees arrears for the period 2006-07 to 2010-11

### **3. Hearing of the petition**

3.1 In the hearing of the petition conducted on 19-10-11 in the Office of the Commission, KSEB stated as follows. The annual fees and charges payable by KSEB to the Commission as per the revised schedule of fees and charges is about Rs 1.4 Crore/Annum for the current year and it may further increase by about 7% to 10% in subsequent years. Over and above the fees and charges prescribed under Annex II of KSERC (Conduct of Business) Regulations, 2003 KSEB has not been remitting any other fees or charges including licence fee till 2010-11.

3.2 KSEB vide Order No BO (FM) 1416/2011(KSEB/TRAC/Licence Fee/C) dated 1-06-2011 has ordered to remit licence fee to the Commission from the current financial year onwards. Accordingly KSEB has remitted Rs 1.51 crore as licence fee for the year 2011-12. Since KSEB has decided to remit the license fee from 2011-12 onwards and has already remitted Rs 1.514 Crore as licence fee for the year 2011-12, the financial requirements of the Commission can be met without levy of excessive charges as per Annex-II of KSERC(Conduct of Business) (Amendment) Regulations, 2010.

3.3 Licence fee prescribed as per KSERC (Conditions of Licence for existing Distribution Licensee) Regulation is .03% of the annual revenue, whereas petition fee as per KSERC(Conduct of Business ) Amendment Regulation 2010 for filing ARR and ERC petitions , Tariff Petitions, Fuel surcharge petitions etc are between .02% to .025% of the revenue only. Thus the amount of Licence fee receivable was higher than fees and charges receivable as per the amended regulation

3.4 Board is of the opinion that the licence fees and also the fees for filing ARR/ERC etc are pass through items in Tariff and ultimately consumers have to bear these costs. It is not justifiable to charge excessive amounts as fees. Hence KSEB is requesting the Commission to reduce the fees and charges enhanced vide KSERC (Conduct of Business) Amendment Regulations, 2010 to the level of fees and charges prescribed in KSERC (Conduct of Business) Regulations, 2003

### **4. Analysis by the Commission.**

4.1 As stated in the explanatory note of KSERC( Conduct of Business) (Amendment) Regulations, 2010. among the tasks entrusted with the Commission, the empowerment of consumers about their rights and duties for effective regulatory intervention is important. As part of effective regulation , the Commission has to engage independent third party studies on many financial and technical issues on the licensees. The number of licensees in the State has increased and many new issues are coming before Commission for decision. The number of cases before Aptel , High Court of Kerala and Supreme Court of India has also increased. Thus the volume of work has increased many fold since the inception of the Commission , which requires corresponding increase in human and financial resources of the Commission. Hence it is necessary to enhance the fees and charges which were fixed in 2003 at the inception of the Commission. While enhancing the then existing fees, the

Commission has also taken into consideration the fees and charges levied by other State Regulatory Commissions. Public hearing of the Draft KSERC (Conduct of Business) (Amendment) Regulations, 2010.was conducted and the response of the stake holders including KSEB was considered by KSERC while finalizing the Regulations.

4.2 Section 86(g) of the Electricity Act, 2003 empowers the Commission to levy fee for the purposes of the Act. So the levy of fee is for the efficient discharge of the function of the Commission as provided in the Act 2003. Though all the licensees in the State are legally bound to remit the licence fee as per the conditions of licence, the petitioner was not remitting the fee under the cover of an order issued by the Government under Section 108 of the Act. Commission has time and again directed the petitioner to remit the licence fee since the Government order is against the statute and therefore not binding on the Commission. Commission was functioning with the fund raised through petition fee, licence fee remitted by other licensees in the State and the grant being given by Government. The very purpose of empowering the Commission to levy fee is to see that the Commission is functioning independently. So it is not desirable to depend on the Government grant for its function. The petitioner has remitted the licence fee (on protest) only after the Commission took steps under Section 129 of the Act. Even now there is no statement by or commitment the petitioner that they will remit the licence fee regularly in future. It has already been shown that the impact on tariff consequent on the payment of licence fee by the petitioner will definitely be negligible. Any how the Commission will reexamine the issue of various fees payable by the licencees on a later date, once the KSEB furnishes an unconditional commitment for remitting the Licence Fee in future and the financial position of the Commission improves to a satisfactory level.

## **5. Order of the Commission**

After examining the petition in detail and based on the points discussed above, the following orders are hereby issued:

5.1 The request of KSEB to reduce the fees and charges for filing various petitions as per Anex II of KSERC (Conduct of Business ) Amendment Regulations , 2010 cannot be allowed and hence rejected.

5.2 The request to exempt KSEB from payment of Licence Fee arrears for the period 2006-07 to 2010-11 cannot be allowed and hence rejected.

The petition is disposed of accordingly.

**Sd/-  
Mathew George  
Member**

**Sd/-  
P.Parameswaran  
Member**

**Sd/-  
K.J.Mathew  
Chairman**

**Approved for Issue**

**Sd/-  
Secretary**

