



KERALA GAZETTE

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EXTRAORDINARY

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GOVERNMENT OF KERALA

Power (C) Department

NOTIFICATION

G.O. (Ms.) No. 37/2008/PD. Dated, Thiruvananthapuram, 25th September, 2008.

S. R. O. No. 990/2008.—In exercise of powers conferred under sub-sections (1), (2), (5), (6) and (7) of section 131 and section 133 of the Electricity Act, 2003 (Central Act 36 of 2003) the Government of Kerala hereby makes the following Scheme for the purpose of vesting of functions, properties, interests, rights, obligations and liabilities of the Kerala State Electricity Board in the State Government on such terms as agreed to by the Kerala State Electricity Board and the State Government and re-vesting thereof by the State Government in a corporate entity and also for the transfer of personnel of the Board to the corporate entity and for determining the terms and conditions on which such transfers and vesting shall be made.

1. *Short title, extent and commencement namely.*—(1) This Scheme may be called the Kerala Electricity First Transfer Scheme, 2008.

(2) It shall come into force at once.

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2. *Definitions.*—(1) In this Scheme, unless the context otherwise requires,—

- (a) "Act" means the Electricity Act, 2003 (No. 36 of 2003);
- (b) "Board" means Kerala State Electricity Board constituted under sub-section (1) of section 5 of the erstwhile Electricity (Supply) Act, 1948 (54 of 1948);
- (c) "Company" means the company to be incorporated as a fully owned Government company under Companies Act, 1956 (Act I of 1956);
- (d) "Commission" means the Kerala State Electricity Regulatory Commission, initially constituted under sub-section (1) of section 17 of the Electricity Regulatory Commissions Act, 1998 (Central Act 14 of 1998) and recognized under section 82 of the Electricity Act, 2003 (Central Act 36 of 2003);
- (e) "Date of transfer" means the date notified by the State Government for effecting the transfer of functions, properties, interest, rights, liabilities, proceedings and personnel to the Transferee in accordance with the Act and this Scheme;
- (f) "liabilities" include all liabilities, debts, duties, obligations and other outgoings including statutory liabilities and Government levies of whatever nature and contingent liabilities which may arise in regard to the dealings before the date of the transfer in respect of the Undertakings of the Board transferred under this Scheme;
- (g) "personnel" means workmen, employees, staff and officers of the Board by whatever name called and includes trainees, if any, for the recruitment in the Board and those on deputation from the Board to other organizations or institutions;
- (h) "proceedings" means the proceedings of whatever nature including suits, appeals, complaints, petitions, applications, conciliatory, arbitration, whether civil or criminal or otherwise;
- (i) "property" includes power systems, plant, machinery, land, buildings, offices, stores, furniture, fixtures, vehicles, residential quarters and guest houses and amenities and installations pertaining thereto and other movable and immovable assets, cash in hand, cash at bank, investments, book debts—corporeal and incorporeal, tangible and intangible assets, benefits, consents, authorities, licenses, concessions, grants, registrations, patents, trade marks and powers of every kind, nature and description whatsoever, privileges, liberties, easements, advantages, and approvals, contracts, deeds, schemes, bonds, shares, agreements and other instruments and interest of whatever nature and wherever situate belonging to the Board;

(j) "Schedule" means the Schedule appended to this Scheme;

(k) "State" means the State of Kerala;

(l) "State Government" means the Government of Kerala;

(m) "transferee" means the company, in whom the functions and undertakings of the Board are vested in terms of the provisions of the Act and this Scheme;

(n) "undertaking" means the functions, properties, interest, rights and liabilities of the Board as specified in this Scheme;

2. Words and expressions used in this Scheme and defined in the Act but not specifically defined in this Scheme shall have the meanings respectively as assigned to them in the Act.

3. The functions and undertakings of the Board, as the State Government has considered appropriate are classified in the Schedule.

4. (1) The functions, properties and all interests, rights in properties, all rights and liabilities of the Board as specified in the Schedule shall stand vested in the State Government as provided in sub-section (1) of section 131 of the Act with effect from the date on which this transfer Scheme is published in the official gazette.

(2) Nothing in sub-clause (1) shall apply to rights, responsibilities, liabilities and obligations in respect of the personnel and personnel related matters including the statutory dues such as salary, wages, gratuity, pension, provident fund, compensation, terminal and retirement benefits and the same shall be dealt in such manner as provided under clauses hereafter.

5: (1) All interests, rights in properties, all rights and liabilities of the Board vested in the State Government under clause 4 shall be administered by the Government in the name as 'Kerala State Electricity Board' by appointing a special officer for this purpose and a managing committee till the date of re-vesting to be notified by the State Government to re-vest the same in a company as provided in sub-section (2) of section 131 of the Act.

(2) The managing committee shall consist of the Chairman and Members of the Board and the person who is holding the post of Chairman shall officiate as special officer to act for and on behalf of State Government to administer all properties, undertakings, assets, liabilities and personnel vested in the State Government as per sub-clause (1) and (2) of clause 4 in the name of transferor.

(3) The State Government shall have the power to appoint such additional members, remove or appoint member, special officer or the managing committee as the case may be as it deems fit, by fixing appropriate terms and conditions of service.

(4) The terms and conditions of service of the special officer and members of the managing committee shall be the same as in the Board prior to the commencement of this Scheme.

(5) The State Government shall continue to discharge all rights and obligations under any licenses which the Board was discharging prior to the commencement of this Scheme for the purpose of generation, transmission, distribution and any other functions in the place of the Board and in the name as 'Kerala State Electricity Board', subject to the provisions of the Act.

(6) The existing officers and employees of the Board, subject to their conditions of service, will continue to discharge their duties, responsibilities, obligations and functions as was done before as per the existing delegation of powers on behalf of the Government in the place of the Board and in the name as 'Kerala State Electricity Board' till it is re-vested in a company by the State Government in accordance with sub-section (2) of section 131 of the Act and the officers and employees who are discharging their duties under the Scheme during this period shall be deemed to be under the services of the State Government.

(7) The special officer, the managing committee, the officers and employees who are discharging their functions under the Scheme during the period mentioned in sub-clause (6) above shall perform all duties in connection with the collection of revenue, incurring expenditures in the name as 'Kerala State Electricity Board' and for and on behalf of the State Government subject to their delegated powers.

(8) The special officer, the managing committee and the officers who are discharging their functions under the Scheme during the period mentioned in sub-clause (6) above may execute or enter into any agreements in the name as 'Kerala State Electricity Board' and for and on behalf of the State Government subject to their delegated powers.

(9) All communications, bills, vouchers, receipts and other expressions to be issued during the period of the Scheme shall be entered into in the name as 'Kerala State Electricity Board' and the same shall be entered for and on behalf of the State Government.

(10) All bank accounts in the name of the Board may continue to be operated by such officers, mentioned in sub-clause (6) above till re-vesting subject to their existing delegation of powers.

(11) All orders and circulars issued by competent authorities of the Board till the date of vesting would continue to be applicable during the period till re-vesting and to the transferee on re-vesting and the managing committee shall have power to modify these circulars according to the rules and procedures as was done by the Board.

6. (1) The functions and Undertakings of the Board set out in Schedule and as vested in Government under clause 4 shall stand re-vested in the Company on and from the date of the transfer to be notified by the State Government for the purpose of re-vesting, subject to the provisions of the Act and this Scheme, within 30th September 2009.

(2) Any residual functions and Undertakings, Properties, Liabilities of the Board not included in the Schedule shall be retained by the Government and administered by the special officer and managing committee, till further orders of the State Government.

(3) On such transfer and vesting of the functions and Undertakings in terms of sub-clauses (1) and (2) above and except as otherwise provided, the Transferee, shall be responsible for the functions, contracts, rights, deeds, schemes, bonds, agreements and other instruments of whatever nature relating to the respective Undertakings transferred to it to which the Board was a party, subsisting or having effect on the date of the transfer, in the same manner as the Board was liable immediately before the date of the vesting and the same shall be in force and effect against or in favour of the Transferee and may be enforced effectively as if the Transferee had been a party thereto instead of the Board. The same shall be applicable to the properties and all interests, rights in properties, all rights and liabilities and personnel vested in Government till the time of re-vesting.

(4) The provisional opening balance sheet of the Transferor as on the 1st April 2008 as described in Part II of the Schedule of this Scheme shall be reconciled and incorporated with effect from the date of notification of re-vesting and till such time the procedure followed hitherto for the maintenance of accounts shall be continued.

(5) In consideration of the undertakings transferred, the transferee shall issue shares and instruments in favour of the Government as decided by the State Government.

(6) The re-vesting of the Undertakings in the name of Transferee in terms of this Scheme shall take effect immediately on the date of the re-vesting notified by the State Government for the purpose irrespective of the fact whether the value of such Undertaking re-vested have not been finally determined or determined provisionally as on the date of Transfer.

7. (1) The transfer of personnel shall be subject to the terms and conditions contained in section 133 of the Act.

(2) On the date of Transfer notified by the State Government for re-vesting of the Undertakings to the company under sub-clause (1) of clause 6 above, the personnel of the Board shall stand assigned to the services of the company and they will 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 company.

(3) The company in which the Government re-vests the assets and liabilities under the Scheme shall absorb all permanent eligible personnel so transferred to it in its permanent services and the personnel shall form part of the services of the Transferee, in the post, scale of pay etc. in accordance with the orders that may be issued by the transferee for this purpose, without any further act, deed or thing to be done by the State Government or the personnel and the State Government or the transferee shall issue appropriate orders in the case of all other provisional, contingent, part time, temporary personnel engaged prior to the vesting by the Board.

(4) Notwithstanding anything contained elsewhere, the Transferee and the 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 retirement benefits till the date of re-vesting and thereafter by the company.

(5) Subject to the provisions of the Act and this Scheme, the Transferee shall be entitled to modify or frame new regulations governing the conditions of service of personnel transferred to the transferee under this Scheme, but the rank, scale of pay, salary, allowances and other pecuniary benefits including terminal benefits after the effective date of transfer shall not in any way be inferior to those applicable to them immediately before the transfer.

(6) 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 intent, purposes, rights, powers and obligations of the erstwhile Board and the services of the personnel shall be treated as continuing for the purpose of the above.

(7) The State Government shall take appropriate arrangements in regard to the funding for the provision of pension and other personnel related funds of the personnel of the erstwhile Board including for the due payment of the amounts to personnel who retire till the date of the re-vesting and thereafter, by the transferee to which the personnel are transferred and further the Transferee and the Government shall jointly and severally be liable to make such payments to the personnel.

(8) The State Government shall notify appropriate arrangements in regard to the funding and due payment of the pension and other benefits including terminal benefits which are not yet disbursed to the existing pensioners of the erstwhile Board as on the date of re-vesting and the Transferee and the Government shall be jointly and severally responsible to make such payments to the existing pensioners till such arrangements are made.

For the purpose of this clause the term,—

(i) "Existing Pensioner" means all the persons eligible for the pension as on the date of re-vesting including that of the erstwhile Board and shall include eligible family members of the personnel, and

(ii) "Terminal Benefits" means the Kerala State Electricity Board's employee-related liabilities, payments of pension, gratuity, leave encashment, and general provident fund, and any other retirement benefits and other applicable benefits including the right to have the appropriate revisions in the above benefits consistent with the practice that were prevalent in the erstwhile Board.

(9) All proceedings including disciplinary proceedings pending against the personnel as on the date of vesting and initiated thereafter till re-vesting which relates to misconduct, lapses or acts of commission or omission committed before the date of the transfer, shall not abate and may be continued by the Transferee.

(10) The personnel transferred to the Transferee, shall be deemed to have entered into an agreement with the Transferee to repay loans, advances and other sums due and perform obligations undertaken by them to the Board which remain outstanding as on the date of the transfer in the same manner and on the same terms and conditions as existed prior to the vesting.

(11) Nothing contained in this Scheme shall apply to personnel of the State Government or other organisations who are on deputation to the Board as on the date of the re-vesting but such personnel shall continue on deputation to the transferee till further orders of the Transferee or the Government.

8. (1) All Proceedings of whatever nature including legal proceedings pending before any courts, tribunals or forums in India by or against the Board pending on the date of the vesting or re-vesting shall not abate or discontinue or otherwise in anyway prejudicially be affected by reason of the transfer under this Scheme and the proceedings may be continued, prosecuted and enforced by or against the Transferee. The said provision shall also apply to the Government till the time of re-vesting so far as applicable.

(2) The proceedings referred to in sub-clause (1) above may be continued in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Board if the transfers specified in this Scheme had not been made.

9. (1) Till the date of re-vesting under the Scheme the State Government shall have powers to modify the classification, transfer of Undertakings including personnel under this Scheme construing entries in the schedule as provisional.

(2) With effect from the date on which the State Government re-vest and transfer the undertakings, properties, interests, rights, liabilities, personnel and proceedings made in accordance with this Scheme the same shall become final to the extent it contains in the Government notification on re-vesting and those undertakings, properties, interests, rights and liabilities left out unnoticed or not listed specifically in the Schedule or omitted inadvertently or discovered subsequently shall be deemed to be vested in Government and re-vested to the company on such future dates as may be notified by the Government.

10. The transfers of personnel under this Scheme shall operate and be effective pursuant to action of the State Government in terms of this Scheme without any further act, deed or thing to be done by the State Government, Board, transferee or any other person.

11. (1) The tariff, terms and conditions for the sale and supply of electricity shall be continued as such from the date of vesting and until such modified orders are issued by the Commission.

(2) The Government shall not realize, appropriate, or otherwise divert the revenue accruals of the Board as on the date of vesting under the scheme or all undertakings, properties, interests, rights and liabilities of the Board shall not in any way be liable for any of the liabilities of the State Government in any manner and any revenue accruals of the erstwhile Board and the subsequent

revenue accrual thereon on the date of re-vesting shall be carried over to the transferee. Any liability or expenditures incurred to the Government consequent to the management of all undertakings, properties, interests, rights, liabilities and personnel vested to it till the time of re-vesting shall be charged on such undertakings, properties, interests, rights and liabilities.

(3) As per section 14 of the Act read with section 131 thereof the Transferee shall be a deemed Licensee for the activities and functions of the erstwhile Board transferred to it.

12. The State Government by an order may amend, vary, modify, add, delete or otherwise change the terms and conditions specified in the Schedule or any clauses of the Scheme at any time as it deems fit.

13. (1) If any doubt, dispute, difference or issue that may arise in regard to the transfers under this Scheme the decision of State Government thereon shall be final, subject to the provisions of the Act.

(2) The State Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulties arising in implementing the transfers under this Scheme.

By order of the Governor,

PAUL ANTONY,
Principal Secretary to Government.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

As per the G O. (Ms.) No. 29/08/PD dated 25-8-2008, Government of Kerala has decided to restructure the Kerala State Electricity Board as a company under the Indian Companies Act, 1956 as stipulated in the Electricity Act, 2003. Under the Electricity Act, 2003, Government is required to prepare a transfer scheme to vest the assets and liabilities of Kerala State Electricity Board in Government on such terms as agreed to between the Government and the Board and re-vest in the successor entity.

The notification is intended to achieve the above object.

SCHEDULE

The assets and liabilities belonging to the Kerala State Electricity Board concerning Generation, Transmission and Distribution of Electricity including but not limited to the following:

I. The Assets and liabilities belonging to the Kerala State Electricity Board concerning the Generation of electricity including but not limited to the following:

1. EXISTING POWER STATIONS

The existing power stations of KSEB are attached as annexure 1.

2. POWER PROJECTS UNDER CONSTRUCTION

The list of generation projects under construction is attached as annexure 2.

II. The Assets and Liabilities belonging to the Kerala State Electricity Board concerning the transmission of electricity including but not limited to the following:

All the existing transmission substations and lines (listed in Annexure 3) as well as those under construction having the capacity to carry electricity at voltages of 33 KV and above (notwithstanding the same are presently charged at voltages below 66 KV) of various capacities with all associated and related equipment, including step up, step-down transformers, circuit breakers, metering arrangements and other protective devices with power-line communication system, allied control rooms, load dispatch center, lands (including right of way), buildings, roads and other auxiliary assets spread over within and outside the territory of the State Including such assets under construction and assets acquired, transferred or rights of which were vested with the Board by transfer, sale, lease or otherwise, but excluding such constructions or installations lawfully owned and operated by others.

III. The Assets, Liabilities and proceedings belonging to the Board concerning the distribution of electricity in the area of supply in the state of Kerala except in the areas of other distribution licensees including but not limited to the following.

All 33 KV, 11.KV, L T. (Single phase 2 wire to 3 phase 5 wire) lines (with overhead lines Aerial Bunched cables and underground cables) and Sub-stations on different types of supports with various sizes of conductors and step up/step down transformers, breakers protective and metering devices and control

rooms, testing laboratories, lands (including right of way), buildings, roads, service connections and installations inside consumer's premises, street lighting and signal systems owned by or leased to the Board but excluding fittings, fixtures and installations owned, by private persons or local authorities, including any of the above assets under construction as on effective date of transfer.

IV. GENERAL ASSETS

The following assets, pertaining to the Board and referred to in Para I, II and III above or activities related to the Board:

Special tools and equipment, material handling equipment, earth movers, bulldozers, concrete mixtures, cranes, trailers, heavy and light vehicles, furniture, fixtures, office equipment, air conditioners, refrigerators, computers and signal systems, spares, consumables, raw materials, lands and civil works installations including dams, barrages, canals roads, buildings, staff quarters, rest houses, properties and structures and their associated buildings, schools, dispensaries, testing laboratories and equipment, training centers, workshops, works in progress, machinery and equipment sent for repairs, scraps and obsolete.

(b) All Independent and stand-alone Rest houses/Installations of the Board.

(c) The office establishment and other buildings and lands, not covered elsewhere in this schedule, which are occupied/used for the activities of of the Board as on the effective date of transfer.

V. MISCELLANEOUS

1. Contracts, agreements, interest and arrangements to the extent they are associated with or related to activities or to the Undertakings or assets referred to in Para I to IV above including power purchase and bulk power transmission agreements.

2. Loans, secured and unsecured to the extent they are associated with or related to activities or to the Undertakings or assets referred to in Para I to IV above.

3. Other current assets to the extent they are associated with or related to activities or to the Undertakings or assets referred to in Para I to IV above.

4. Other Current liabilities and provisions to the extent they are associated with or related to activities or the Undertakings or Assets referred to in Para I to IV above.

5. Contingent liabilities to the extent they are recognised and are associated with or related to , activities or to the Undertakings or Assets referred to in Paras I to IV above.

6. Other liabilities to the extent they are associated with or related to activities or to the Undertakings or Assets referred to in Para I to IV above.

7. Proceedings to the extent they are associated with or related to activities or to the Undertakings or Assets referred to in Para I to IV above.

8. Shares, assets, interests and liabilities connected with allotment of Baitarni West Coal Block, Baitarni West Coal Company Limited and shares in Kerala State Power and Infrastructure Development Corporation.

9. Shares, assets, interests and liabilities existing and not mentioned elsewhere in the schedule.

10. Any residual assets or liabilities not forming part of Schedule and not otherwise adjusted or settled by the State Government.

VI. OTHER FUNCTIONS

1. The bulk purchase and supply functions, namely, purchase of electricity in bulk from the generating companies, traders, power exchange or any other source and supply of electricity in bulk. The existing power purchase contracts and bulk power transmission agreements including the agreements, arrangements, allocation and other commitments for purchase of energy and transmission in the future shall also vest in the Company.

2. Control over and supervision of Common Assets and the Management of the Common Facilities and Common Services

VII. GENERAL

(1) The assets of the Generation, Transmission and distribution wing as described above shall vest in the proposed company.

(2) In consideration of the transfer mentioned above, the company shall issue equity shares, in favour of the Government as specified in Part-II of Schedule to this Scheme

(3) The assets, properties, rights and liabilities mentioned above are to be quantified in monetary terms and the State Government shall have power to add such figures after evaluating the assets, properties and liabilities which also shall become part of this schedule. Any other assets which is left out inadvertently, or omitted or discovered subsequently belonging to the Board shall also form part of this schedule. The Government may make such modifications in the schedule by making notifications from to time.