BEFORE THE HON'BLE KERALA STATE ELECTRICITY REGULATORY COMMISSION, Thiruvananthapuram

OBJECTIONS BY

THE KERALA HT&EHT INDUSTRIAL ELECTRICITY CONSUMERS' ASSOCIATION

IN THE MATTER OF

Objections of HT & EHT Association on Review petition of KSEBL against the KSERC Order dated 14 Sep 2018 in petition OA No: 12/2018 in the matter of Truing Up of accounts of KSEBL for the year 2016-17.

19th March, 2019

OBJECTIONS OF THE KERALA HT & EHT INDUSTRIAL ELECTRICITY CONSUMERS' ASSOCIATION

- Hon'ble Commission as per order dated 14 Sep 2019 in Petition OA No 12/2018 in the matter of Truing Up of accounts of KSEB for the year 2016-17 has approved the revenue gap for the year at Rs 1031.06 Cr.

- **Now KSEBL has come up with a Review Petition after 6 months of the issue of the Order dated 14 Sep 2018 demanding Rs. 1010.54Cr, on account of disallowance by Hon'ble Commission in its Truing Up Order. The first question that arises is whether a review petition submitted after 5 months can be admitted or not?**

OBJECTIONS OF THE KERALA HT & EHT INDUSTRIAL ELECTRICITY CONSUMERS' ASSOCIATION

- **The basic principle and judicial practice is that a review of an order is maintainable only if the points raised are of an error apparent in nature. A review on merit of the order is not admissible. In the instant case, it is to be examined and determined by the Hon'ble Commission whether the points raised by KSEBL are of error apparent in nature or it is a challenge on the merit of the findings and decisions of the Hon'ble Commission.**

OBJECTIONS

- **As per Regulation 67 of the KSERC (Conduct of Business) Regulations 2003, a review petition has to be filed within 45 days of issue of the relevant order. In the case of KSEBL's review petition, it has been filed after 150 days.**

- **On this count itself, this review petition of KSEBL is not admissible and hence it should be rejected. We suspect that the motive of the KSEBL is to get this petition rejected by the Hon'ble Commission and to approach the Hon'ble APTEL, since KSEBL cannot approach the APTEL as the time period has also expired.**

OBJECTIONS

- As per Section 157 (Review) of Electricity Act 2003, any review petition shall be entertained on the ground that it was passed under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record. In the Review petition of KSEBL, they have not brought out any of the grounds mentioned above, except for the item 1," Disallowance under interest & finance charges". All the other heads KSEBL asked for a review through this petition such as

  a) Disallowance of Employee cost by Rs.217.35 crore.

  b) Disallowed section 3(1) duty Rs.115.27 crore

  c) Disallowed depreciation Rs.247.63 Cr

Disallowance under interest & finance charges

- **Interest net of capitalization**

  Hon'ble KSERC denied this claim in the order itself by stating *"KSEB Ltd has accounted the depreciation as per rates notified by Government of India, whereas the Commission has allowed depreciation as per the rates notified by CERC, as provided in the Electricity Act and as well as Tariff Policy. Accordingly, from 2006-07 onwards, the Commission has disallowed the depreciation on account of the difference between the rates"*, hence the claim for Rs 272.13 Cr against Rs 223.36 Cr approved in the truing up order has to be revisited.

Disallowance under interest & finance charges

- **OD interest**

As per the KSERC Order dated 14 Sep 2018 in petition OA No: 12/2018 in the matter of Truing Up of accounts of KSEBL for the year 2016-17. It is clearly mentioned that "*KSEB Ltd did not provide SBU wise details of these over drafts. According to KSEB Ltd, the overdrafts are availed mainly for meeting the revenue deficits and no interest charges assigned to SBU-G. Hence the Commission is not approving any interest on account of overdrafts availed*". Due to the above mentioned point the claim for OD interest need not be considered.

FAIR VALUE ADJUSTMENTS AND ARREARS OF INTEREST ON GPF FOR FY 2016 - 17

- **KSEBL has claimed to calculate the loan through IGAAP In AS accounting adjustment practice in the true up petition. Accordingly, they have claimed interest on the adjusted loan amount of Rs.435.90 crores, with an anticipated fair value adjustment of other expenses as Rs. 33.90 crore. However, Commission has approached normative method to calculate the loan amount and approved Rs. 402.06 crore as interest. Thus, KSEBL in review petition is proposing an additional expense on account of fair value adjustment (Rs. 33.90 Crore).**

Electricity Duty -Section 3 (1).

- **As per the Kerala Electricity Duty Act 1963, the Electricity duty under Section 3 (1) shall be borne by the Licensee and shall not be passed on to the consumers. The Hon'ble Commission had disallowed this duty fully in all the earlier ARR&ERC and True up orders from 2003 onwards. APTEL also rejected KSEBL's similar request on Electricity Duty under Section 3(1) in its orders. We are constrained to point out that this is an irritant action from KSEBL time and again in spite of the orders of the Hon'ble Commission and Hon'ble APTEL.**

Prayer

1. Considering the points elaborated above, we request the Hon’ble Commission to summarily reject the KSEBL’s review petition on Truing Up order for 2016-17 due to the exorbitant delay (150 days) in submitting the review petition.

2. To bring a control on condonation petitions, we request the Hon’ble Commission to conduct a public hearing before admitting condonation petitions for important matters such as ARR & ERC, Truing up and Fuel Surcharge, as prevailed earlier.

1.

Prayer

3. The KSEBL has not pointed out any error apparent in the truing up order for the following items
   a) Disallowance of Employee cost by Rs.217.35 crore.
   b) Disallowed section 3(1) duty Rs.115.27 crore
   c) Disallowed depreciation Rs.247.63 Cr

   Since KSEBL has not brought out any mistake of fact, ignorance of any material fact or any error apparent on the face of the record, the above three heads in the review petition need not be revisited.

Prayer

4. **We request the Hon'ble Commission that the Fair Value adjustments and Arrears of interest on GPF are only accounting practice and actual payout (repayment and interest are based on the loan agreement signed with lenders, GPF) are not subjected to such adjustments. Thus, fair value expenses proposed by KSEBL can be ignored.**

5. **We request the Hon'ble Commission to instruct KSEBL not to take up the Electricity Duty under section 3 (1) forever**

Thank you