BEFORE THE KERALA STATE ELECTRICITY REGULATORY COMMISSION

In the Matter of: **Review Petition against KSERC order dated 21st August 2018 in Petition OA No 06/2018 in the matter of Truing Up of accounts of KSEBL for the year 2015-16.**

Petitioner : **Kerala State Electricity Board Limited,**
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram

THE PETITIONER HUMBLY STATES THAT:

1. Hon'ble Commission as per order dated **21st August 2018 i**n Petition **OA No 06/2018** in the matter of Truing Up of accounts of KSEBL for the year 2015-16 has approved the revenue gap for the year at Rs 202.97 Cr as against the revenue gap of Rs 808.90 Cr sought to be trued up for the year. A comparison of the various expenses as per the C&AG audited accounts and the order on Truing Up for the year is detailed below.

Table-1 Comparison of the expenses as per Truing up petition and KSERC order (Rs in Cr)

	As per True up petition				Approved by KSERC				Difference			
	G	**T**	**D**	**Total**	**G**	**T**	**D**	**Total**	**G**	**T**	**D**	**Total**
Cost of power Generation	104.26	0.00	**0.00**	**104.26**	104.26			**104.26**	0.00	0.00	0.00	0.00
Generation of power			**633.37**	**633.37**			**563.99**	**563.99**	0.00	0.00	69.38	69.38
Intra State Transmission		0.00	**751.62**	**751.62**			**666.74**	**666.74**	0.00	0.00	84.88	84.88
Purchase of power			5912.38	**5912.38**			**5901.16**	**5901.16**	0.00	0.00	11.22	**11.22**
Interstate transmission			424.44	**424.44**			**424.44**	**424.44**	0.00	0.00	0.00	0.00
Employee cost	101.56	255.45	1743.04	**2100.05**	**91.77**	**230.83**	**1575.06**	**1897.66**	9.79	24.62	167.98	202.39
R&M expenses	26.02	47.91	185.82	**259.75**	**18.73**	**65.25**	**183.47**	**267.45**	7.29	-17.34	2.35	-7.70
A&G expenses	16.31	50.41	261.15	**327.87**	**4.34**	**15.48**	**80.98**	**100.80**	11.97	34.93	180.17	227.07
New generating stations					**5.17**			**5.17**	-5.17	0.00	0.00	-5.17
O&M expenses	**143.89**	**353.77**	**2190.01**	**2687.67**	**120.01**	**311.56**	**1839.51**	**2271.08**	23.88	42.21	350.50	**416.59**
Int on capital liabilities	46.32	49.63	249.65	**345.60**	**68.47**	**63.91**	**95.86**	**228.24**	-22.15	-14.28	153.79	117.36
Additional interest 2015-16				**0.00**	**0.97**	**5.91**	**13.69**	**20.57**	-0.97	-5.91	-13.69	-20.57
Interest on working capital			229.43	**229.43**	**7.86**	**8.33**	**0.00**	**16.19**	-7.86	-8.33	229.43	213.24
Interest on GPF			106.25	**106.25**	**5.47**	**11.37**	**89.40**	**106.24**	-5.47	-11.37	16.85	0.01
Other interest		0.00	2.24	**2.24**			**2.23**	**2.23**	0.00	0.00	0.01	0.01
Interest on SD		0.00	153.64	**153.64**			**153.64**	**153.64**	0.00	0.00	0.00	0.00
Interest & FC	**46.32**	**49.63**	**741.18**	**837.15**	**82.77**	**89.52**	**354.82**	**527.11**	-36.45	-39.89	386.36	**310.04**
Depreciation	**122.05**	**133.04**	**236.13**	**491.22**	**122.05**	**132.84**	**79.98**	**334.87**	0.00	0.20	156.15	**156.35**
Carrying cost							**439.57**	**439.57**	0.00	0.00	-439.57	-439.57
RoE	**203.63**	**217.59**	**68.64**	**489.86**	**129.88**	**142.23**	**217.75**	**489.86**	73.75	75.36	-149.11	0.00
Other expenses	**-7.96**	**-5.76**	**98.30**	**84.58**	**-7.96**	**-5.76**	**98.28**	**84.56**	0.00	0.00	0.02	0.02
Terminal benefits	**40.61**	**37.09**	**926.79**	**1004.49**	**32.92**	**30.07**	**751.42**	**814.41**	7.69	7.02	175.37	**190.08**
Excess Aux consumption					**-0.52**			**-0.52**	0.52	0.00	0.00	**0.52**
Total ARR	**652.80**	**785.36**	**11982.87**	**12036.04**	**583.42**	**700.48**	**11337.65**	**11390.82**	69.38	84.88	645.22	**645.22**
Non Tariff income	19.43	33.74	686.27	**739.44**	**19.43**	**33.74**	**646.97**	**700.14**	0.00	0.00	39.30	39.30
Tariff income	633.37	751.62	10487.71	**10487.71**	**563.99**	**666.74**	**10487.71**	**10487.71**	69.38	84.88	0.00	0.00
Total ERC/Transfer price	**652.80**	**785.36**	**11173.98**	**11227.15**			**11134.68**	**11187.85**	652.80	785.36	39.30	39.30
Revenue gap			**808.89**	**808.89**			**202.97**	**202.97**	0.00	0.00	605.92	**605.92**

2. As detailed above, Hon'ble Commission had made a total disallowance of Rs 605.92 Cr for the year 2015-16 as detailed below:

Table 2 Summary of disallowance TU 16			
No.	**Particulars**	**Rs Cr**	**Rs Cr**
1	Purchase of power	11.22	
2	Interest & Finance Charges	310.04	
3	Depreciation	156.35	
4	Employee Cost	202.37	
5	Terminal benefits*	190.09	
6	Administration & General Expenses	227.07	
7	Cost of excess Auxiliary consumption	0.52	**1097.66**
	Less: Approval made over claim preferred		
8	Repair & Maintenance as per norms over actuals	7.70	
9	O&M for new stations allowed as per norms	5.17	
10	Carrying cost for accumulated revenue gap	439.57	
11	Non-Tariff Income not considered	39.30	491.74
	Net disallowance		**605.92**

3. KSEBL submits that, while approving the truing up petition based on the audited accounts, Hon'ble Commission was pleased to approve most of the claims made by KSEBL. However, Hon'ble Commission has not considered the actual expenditure furnished by KSEBL in certain instances and made factual errors in assessment while approving certain expense components. Hence, KSEBL submits this petition before the Hon'ble Commission for the kind review of the order dated 21st August 2018.

I. Disallowance under interest & finance charges (Rs.310.04 Cr)

4. Item wise details of disallowance is furnished below:

Table -3 : SUMMARY OF I&F FY 2015-16				
No	**Particulars**	**Trued up claimed**	**Trued up by KSERC**	**Disallowance**
1	Interest net of capitalization	345.60	248.81	96.79
2	Interest on GPF	106.25	106.24	0.01
3	Other interest	2.23	2.23	0.00
4	Interest on Master Trust	0.00		0.00
5	Int on SD	153.64	153.64	0.00
6	OD interest	229.43	0.00	229.43
7	Int on Working Capital	0.00	16.19	-16.19
	Total I&F	**837.15**	**527.11**	**310.04**

5. It may be kindly seen that the disallowances were made under interest on loan and overdraft. In the order, Hon'ble Commission was pleased to approve carrying cost on approved revenue gap as well as interest on working capital. The approval of interest on loans were made on normative basis, the methodology as spelt out in the order (page 57) is reproduced below:

129. Concurrent reading of the provisions in Regulation 27 and 30 shows that the interest charges applicable to the assets created up to 1.4.2015 and after 1.4.2015 (ie., assets addition during the year 2015-16) shall be provided. Proviso to Regulation 27(1) provides that funds received in the form of grants *and contributions are to be reduced from the fund requirements. Regulation 30(1)(b) specifies that, interest charges for capital works in progress are not allowable. Further, in the case of assets during construction, the same is to be treated as part of fixed assets only when the assets are put to use.*

130. Hence, Regulation provides for treatment of loans and interest charges thereon on a normative basis. The normative loan amount required to meet the value of fixed assets as on 1-4-2015 (ie., the date of effect of control period) in the books of the licensee is taken as the funding requirement….

131. Rate of interest for the loan is specified in Regulation 30 (4) As per this the rate of interest shall be the weighted average rate of interest calculated on the basis of actual loan portfolio of each financial year applicable to the Generating business, Transmission business or Distribution business as the case may be….

6. Based on the above methodology, Hon'ble Commission has determined the following:
   (i) the average rate of interest for 2015-16 at 10.82%.
   (ii) GFA less enhanced value as on 1-4-2015 at Rs. 14619.07 Cr.
   (iii) Total depreciation allowed till 1-4-2015 at Rs.6135.25 Cr (works out to 42% of the value of GFA) after excluding Rs.664.79 Cr from the cumulative depreciation as per accounts amounting to Rs.6800.04 Cr.(Rs.6800.04 Cr-Rs.664.79 Cr) and worked out Net Fixed Assets at Rs.8483.82 Cr. (Rs.14619.07Cr-Rs.6135.25 Cr)
   (iv) Considered Equity at Rs.3499.05 Cr as per Regulation 35 (a)
   (v) Actual Grants and contribution amounting to Rs.4670 Cr as on 1-4-2015 has been reduced to the extent of depreciation ie. 42% to arrive at Grants and Contribution to be considered for the determination of normative loan at Rs. 2708.60 Cr (Rs.4670 Cr-Rs.1961.40Cr)
   (vi) The normative loan as on 1-4-2015 has been determined at Rs.2276.17 Cr after deducting equity and grants as described in (iv) and (v) above from the NFA as per (iii) above {Rs.8483.82 Cr-(Rs.3499.05 Cr+ Rs. 2708.60Cr)}
   (vii) Closing balance of normative loan as on 31.03.2016 (except additional borrowings for 2015-16) was determined at Rs.1941.13 Cr after deducting approved depreciation for 2015-16 amounting to Rs.334.87 Cr towards repayment (Rs.2276.17-Rs.334.87 Cr)
   (viii) Average rate as per (i) above has been applied on the average loan of Rs. 2108.65 Cr {(Rs.2276.17 Cr+Rs.1941.13 Cr)/2} to arrive at the interest of Rs.228.24 Cr (Rs.2108.65 Cr*10.82%)
   (ix) Interest on additional loans during 2015-16 worked out at Rs.20.57 Cr by applying average interest rate of 10.82% on GFA less grants and contribution.
   (x) Thus total normative loan has been arrived at Rs.248.41 Cr (Rs.228.24 Cr+Rs.20.57 Cr)

7. It is respectfully submitted that **there has been an error apparent in the computation of net fixed assets as on 1-4-2015 on account of omission of depreciation clawed back in earlier years in the computation.** Total depreciation allowed till 1-4-2015 has been determined at Rs.6135.25 Cr and considered the same to work out NFA as on 1-4-2015. The relevant portion of the order (page 59) is extracted below for ready reference:

134. As per the accounts the cumulative depreciation as on 1-4-2015 is Rs.6800.04 crore. It may be noted that the Commission has not approved the entire depreciation as per the accounts in the previous years mainly on account of the fact that KSEB Ltd has accounted the depreciation as per the rates notified by Government of India, whereas the commission has allowed depreciation as per the rates notified by CERC, as provided in Electricity Act and as well as Tariff Policy. Accordingly, from 2006-07 onwards, the Commission has disallowed the depreciation on account of difference between the rates. The total depreciation disallowed by the Commission from 2006-07 to 2013-14 is 664.79 Cr. Thus the depreciatyion approved by the Commission is Rs. 6135.25 crore (Rs.6800.04-Rs.664.79 crore). Based on this, the net fixed assets as on 1-4-2015 is Rs.8483.82 crore (Rs.14619.07 crore-Rs.6135.25 crore).

8. It may be kindly noted that Hon'ble Commission rightly excluded disallowed depreciation due to change in rates but omitted to consider the extent of depreciation disallowed (Rs.689.40 Cr) as attributable to the assets created out of consumer contribution and grants. Details are furnished below:

Table 4 Computation of depreciation for the determination of normative loan as on 01.04.2015.

Year	As per accounts	Approved by KSERC	Disallowance		
			Due to Rate/methodology difference	Due to Claw back	Total
Till 31.03.2003	1502.57	1502.57			
2003-04	394.29	394.29			
2004-05	374.77	374.77			
2005-06	392.65	392.65			
2006-07	405.98	230.67	175.31	0	175.31
2007-08	419.09	274.51	144.58	0	144.58
2008-09	434.74	291.96	142.78	0	142.78
2009-10	451.22	399.65	51.57	0	51.57
2010-11	473.43	286.33	70.13	116.97	187.10
2011-12	466.00	330.6	-3.14	138.54	135.40
2012-13	509.31	346.18	14.97	148.16	163.13
2013-14	516.28	306.68	68.59	141.01	209.60
2014-15*	459.70	314.99	0.00	144.71	144.71
Total	6800.04	5445.85	664.80	689.40	1354.18

**True up order for 2014-15 is yet to be issued and therefore claw back for the year is provisional. The depreciation as per accounts has been worked out on the basis of rates and methodology prescribed by the Hon'ble Commission. Therefore, the extent of claw back based on the methodology adopted in 2013-14 has been reduced to arrive at the approved depreciation (provisional) for 2014-15.*

9. Therefore, the approved depreciation till 1-4-2015 has to be Rs.5445.85 Cr (Rs. 6135.25 Cr-Rs.689.40Cr). This works out to 37.25 % of GFA (Rs.5445.85 Cr/14617.07*100). Further, NFA as on 1-4-2015 would be Rs. 9171.22 Cr (Rs.14617.07-5445.85 Cr).

10. Based on the methodology followed by the Hon'ble Commission, Consumer contribution, capital subsidy and grants for the purpose of normative loan computation has been determined as per table below:

Table 5: Computation of depreciated Contribution & Grants

No	Particulars	Rs. Cr	Rs. Cr
1	Contribution & Grants till 31.10.2014	4169.87	
2	Addition from 01.11.14 to 31.03.15	500.14	4670.01
7	Depreciation available for repayment of loan	5445.85	
8	GFA	14617.07	
9	Depreciation %	37.25	
10	Depreciated contribution @ 37.25%		1739.58
11	Balance contribution available		2930.43

11. Accordingly, normative loan and interest as on 01.04.2015 is worked out as follows:

Table 6 Normative loan and interest - As per KSEBL based on KSERC methodology

	Particulars	SBU G	SBU T	SBU D	Total
1	GFA as on 01.04.2015	16395.04	4097.22	6115.79	26608.05
2	Less: revalued portion	11988.98			11988.98
3	Balance GFA as on 01.04.2015	4406.06	4097.22	6115.79	14619.07
4	Less: Approved depreciation till 01.04.2015				5445.85
5	Net Fixed Assets (3-4)				9173.22
6	Less: Equity Capital				3499.05
7	Less: pro rata Contribution & grants				2930.35
8	Normative loan 01.04.2015 (5-6-7)				2743.82
9	Less: Depreciation for 2015-16				334.87
10	Normative loan 31.03.2016 (8-9)				2408.95
11	Average loan (8+10)/2)				2576.38
12	Weighted average rate of interest				10.82%
13	Normative interest on loan till 01.04.2015				278.76
14	GFA ratio	30.00	28.00	42.00	100.00
15	SBU wise Interest apportionment	83.63	78.05	117.08	278.76
16	Interest for additional borrowings (as per order)	0.97	5.91	13.69	20.57
17	Interest for 2015-16	84.60	83.96	130.77	299.33

12. In view of the above, eligible interest on normative loan for 2015-16 will be Rs.299.33 Cr against Rs. 248.81 Cr approved in TU order. Hon'ble Commission may be pleased to review the order and approve interest on loans for 2015-16 as above.

II. <u>Disallowance of Employee cost by Rs.202.37 crore.</u>

(a) Employee expenses for the increased working strength in 2015-16 over the corresponding number in 2008-09 has been disallowed in full. In other words, basic pay, DA and <u>all other allowances</u> disbursed to 5265 nos of employees amounting to Rs. 202.37 crore (Pay and allowances Rs.170.45 Cr and 31.93 Cr towards pay revision) has been disallowed.

(b) It is humbly submitted that the Hon'ble High Court of Kerala, in the judgment dated 28.02.2018 directed Hon'ble Commission to pass Truing up orders from 2015-16 to 2017-18 with due regard to the findings of the orders of Hon'ble APTEL in Appeal no.1 & 19 of 2013 and also consequential orders passed for the years 2010-11 onwards.

(c) Hon Tribunal, in the Common judgment dated 10.11.2014, in the Appeal Petition 01 of 2013 and 19 of 2013, has directed in para 8.4 to 8.6 of the order, the manner in which employee cost to be approved. These paragraphs are reproduced below:

"8.4 The State Commission has rightly shown concern about the high employees cost but we are not able to appreciate magnitude in the absence of a specific finding about the excess manpower and non-availability of Regulations. We feel that DA increase which is effected as per the Government orders have to be accounted for and allowed in the ARR as it compensates the employees for the inflation. ***<u>The pay revision as per the agreements reached between the management and the unions have also to be honored</u>.*** *The terminal benefits have also to be provided for.*

8.5 We find that the State Commission has taken the actual expenses trued-up for FY 2008-09 as the base. ***The State Commission <u>should have at least allowed</u> the actual basic pay and DA increase, pay revision and terminal benefits over the actual base year expenses without accounting for increase in manpower from 2008-09 to 2012-13.*** *The gratuity directed to be paid as per the judgments of the High court dated 10.03.2003 as the Division bench of the High Court had dismissed the Appeal filed against this judgment, and which were disallowed by the State Commission by order in Appeal no. 1 of 2013 should also be allowed.*

8.6 Accordingly, we direct the State Commission to true-up the employees cost from FY 2010-11 to FY 2012-13, as per the above direction"

(d) Hon'ble Commission, however, limited the employee cost corresponding to number of employees in 2008-09. That is pay and allowances disbursed to 5265 employees amounting to **Rs. 202.37 Cr** have been disallowed.

(e) The reasons for increase in staff strength between 2008-09 and 2015-16 have been explained in the truing up petition. The substantial portion of the increased staff belonged to the essential categories like Line man, Mazdoor etc required to maintain quality supply to increasing consumer strength and business growth. The table given below illustrates this fact. It is humbly submitted that KSEBL has the statutory obligation to provide supply to all the consumers and the corresponding increase in employee count cannot be eliminated.

Table 7 Growth of business activity since 2008-09

Year	2008-09	2009-10	2010-11	2011-12	2012- 13	013-14	2014-15	2015-16	% growth
Consumer strength(Lakhs)	94	98	102	105	108	112	114	117	24
Annual energy sale (MU)	12414	13971	14548	19521	16779	17454	18426	19325	56
Connected load (MW)	15267	15866	16682	17518	18523	19684	20391	20981	37
Substations (Nos)	314	336	349	359	370	377	378	387	23
EHT lines (Km)	10056	10403	10500	10582	10706	10947	11065	11195	11
HT Lines (Km)	41440	44839	48503	51489	53068	53740	55547	57650	39
LT lines (Km)	241849	249687	256449	260554	263620	264117	268753	285970	18
Dist. Transformers (Nos)	46359	52149	57954	62329	64972	67546	71195	73460	58
No. Of employees	27175	28007	29864	31113	31783	31983	33041	32440	19

(f) The order of this Hon Tribunal was to approve employee cost <u>at least</u> at the 2008-09 level. Hon Tribunal has not fixed an upper ceiling in the order, but a lower one. It is necessary that the growth in employee strength and payment of wages and allowances as per agreement has also to be considered in approving employee cost. These grave factors may kindly be seriously considered by the Hon'ble commission.

(g) The following table depicts the category wise growth in consumers.

Table 8 Growth under various category of employees

Sl No	Category	31.03.2009	31.03.2016	Increase	Increase %
1	Lineman	7389	9400	2011	27
2	Electricity Worker	3692	4297	605	16
3	Overseer (Ele)	2900	5118	2218	76
4	Sub Engineer (Ele)	2133	2459	326	15
5	Asst Engineer (Ele)	1555	1827	272	17
6	Meter Reader	1458	867	-591	-41
7	Sub total	19127	23968	4841	25
8	Other categories	8048	8472	424	5
9	Working strength	27175	32440	5265	19
10	7 as a % of 9	70	74		

(h) It may kindly be seen that increase under other categories is negligible and strength of meter readers were almost halved. This amply proves that the recruitments are made only under essential categories.

(i) Therefore, it is humbly pleaded the Hon'ble Commission may consider the following and allow the employee cost in full.

a. ceiling limits are not fixed by the Hon'ble Tribunal and the curtailment in staff strength at 2009 level while approving employee cost may kindly be reviewed.
b. to consider the business growth since a growing utility cannot maintain its staff strength in a stagnant manner.

c. Increase in staff is under essential categories only on where mechanization has very limited role.

III. Disallowed section 3(1) duty Rs.111.37 crore.

13. One of the major expense items booked under A&G expense is the section 3(1) duty payable by KSEB to the Government. The section 3(1) duty is a statutory levy. Hon'ble Commission has not been admitting section 3(1) duty as a revenue expenditure quoting the provisions in the "Kerala Electricity Duty Act- 1963" that "(3) The duty under this section on the sales of energy should be borne by the Licensee and shall not be passed on to the consumers". Accordingly, since the year 2003-04, Hon'ble Commission has not admitted duty as pass through in tariff. It is humbly submitted that KSEB had already taken up the matter with the Government and also filed a second appeal before the Hon'ble Supreme Court of India in the matter.

14. In view of the above, Hon'ble Commission may be kind enough to re consider the issue on the basis of Government decision/ Hon'ble Supreme Court verdict.

IV. Disallowed depreciation Rs.156.35 Cr

15. Hon'ble Commission disallowed Rs.156.35 Cr under ARR of SBU D towards depreciation attributable to consumer contribution and capital grants. In this connection, the following submission are made:

(i) Hon'ble Commission, in line with the provisions contained in Tariff Regulation, 2014 has excluded depreciation applicable to consumer contribution and grants till 31.10.2013, extent to which was not re vested in KSEBL by the Government. KSEBL as a new entity formed vide the Government notification G.O (p) No. 46/2013/PD dated 31st October-2013, KSEBL has to follow the balance sheet as per the above Government notification on re-vesting. Hence, for the purpose of calculation of depreciation on consumer contribution and grants, KSEBL has relied upon consumer contribution and grants as per audited accounts.

(ii) It is respectfully submitted that Government, as per re vesting order dated 31.10.2013, had notified the opening balance sheet of KSEBL after carefully examining all aspects including un funded terminal liabilities and made suitable re structuring in accounts with a view to ensure sustainability of the newly formed entity. Government had duly considered all relevant facts and then only decided to eliminate contribution and grants till 31.03.2013 while notifying opening balance sheet.

(iii) Being a Regulated entity, KSEBL can raise any amount only with the approval of the Hon'ble Commission. Such approval is granted after meticulously examining the accounts/ petition of KSEBL in line with the provisions contained in Tariff Regulations. It is humbly submitted that approval for expenses are ordered for each purpose and to the barest minimum level.

(iv) It is respectfully submitted that through the restructuring process, the Government envisaged a financially strong KSEBL capable of meeting various statutory functions entrusted on it. Further, the Transfer scheme has a statutory force and is binding to all. Therefore, Hon'ble Commission may kindly review the matter and pleased to restrict claw back of depreciation to the extent of consumer contribution and grants as per audited accounts.

Prayer

Considering the reasons, facts and circumstances on the matters as detailed in the paragraphs above, KSEBL requests before the Hon'ble Commission to kindly review the order dated 21st August 2018 in Petition OA No. 6 of 2018 in the matter of 'Truing Up of accounts of KSEB for the year 2015-16 on the items as detailed above in the petition.

Sd/-
Deputy Chief Engineer (Commercial & Planning)
With full powers of Chief Engineer