

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

NOTICE

No.3279 /Con. Engg/2023/ KSERC Dated Thiruvananthapuram, 1st December, 2023

In exercise of the powers conferred under sub section (1) of Section 181, read with Section 61 of the Electricity Act, 2003 (Central Act 36 of 2003), and all other powers enabling it in this behalf, the Kerala State Electricity Regulatory Commission hereby publishes under 'the Electricity (Procedure for previous publication) Rules, 2005' issued by the Central Government, the following **draft** of the proposed Regulations, namely: - '**Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) (Second Amendment) Regulations, 2023**', and the explanatory memorandum for the information of the persons and stake holders likely to be affected thereby. Any objections or suggestions thereon may be forwarded to the Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, C.V. Raman Pillai Road, Vellayambalam, Thiruvananthapuram- 695 010, on or before 19th December, 2023. Objections and suggestions received on or before the said date shall be considered by the Commission while finalization of this draft regulation. A public hearing on the same will be conducted and its date and venue shall be intimated separately.

Sd/-

Secretary

**Draft of the proposed amendments (2023) to the Kerala State Electricity
Regulatory Commission (Terms and Conditions for Determination of Tariff)
Regulations, 2021**

1. Short Title and Commencement. –

- (1) These Regulations may be called the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) (Second Amendment) Regulations, 2023;
- (2) These Regulations shall come into force from the date of publication of the same in the Official Gazette of the State of Kerala.

2. Amendments in the Principal Regulations. - In the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2021;

A. Regulation 34 (iv) of the Draft Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2021 notified on 6th August, 2021 is provided as below:

34. (iv) Only the payment of interest on the bonds issued to the Master Trust will be approved for computation of Aggregate Revenue Requirement and the amount of repayment of such bonds shall not be reckoned for computation of Aggregate Revenue Requirement;

B. Subsequently after the stakeholder consultation and public hearing held on 15.09.2021, the Commission has finalized Regulation 34 (iv) of the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2021 as below.

34. (iv) The amounts required for the payment of interest on the bonds issued to the Master Trust and for the principal repayment of such bonds shall be reckoned for computation of Aggregate Revenue Requirement and for truing up of accounts;

The final KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021 was notified on 16th November 2021, and published the same in the official Gazette on 22nd November 2021.

C. In the Writ Petition WP(c) No. 19205 of 2023 filed by 'the Kerala High Tension & Extra High Tension Industrial Electricity Consumers' Association', Hon'ble High Court vide the Order dated 7th September, 2023 has set aside Regulation 34(iv) of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021, to the extent it differs from the draft published on

6th August 2021, due to the reasons that changes made in the draft does not conform to the requirements of Section 181(3) of the Electricity Act, 2003 and the Electricity (Procedures for Previous Publication) Rules, 2005. Accordingly, in view of the Judgement of the Hon'ble High Court dated 7th September, 2023, clause (iv) of Regulation 34 of the said Regulation stand modified as below;

34(iv) The amounts required for the payment of interest on the bonds issued to the Master Trust shall only be reckoned for computation of Aggregate Revenue Requirement and for truing up of accounts;

D. Now, in view of the liberty granted by the Hon'ble High Court in the Order dated 7th September, 2023 to specify the terms and conditions for the determination of tariff as regards repayment of principal amount on Master Trust Bonds after complying with the requirement of Section 181 (3) of the Electricity Act, 2003 and the Electricity (Procedures for Previous Publication) Rules, 2005 and in accordance with law, and the Commission intend to substitute clause (iv) of Regulation 34 of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021 as follows;

34(iv) The amounts required for the payment of both the principal and interest on the bonds issued to the Master Trust from time to time and which are serviced by KSEB Ltd shall be reckoned for computation of Aggregate Revenue Requirement and for truing up of accounts of KSEB Ltd;

Explanatory Memorandum

Sub: Draft Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) (Second Amendment) Regulations, 2023;

1. The Commission, by invoking the powers conferred on it under sub section (1) of Section 181 read along with Section 61 of the Electricity Act, 2003, had notified the draft of the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2021 on 6th August, 2021 (herein after referred to as Draft Tariff Regulations, 2021).
2. The Regulation 34(iv) of the Draft Tariff Regulations, 2021, deals with the repayment of the principal and interest of the KSEB Ltd bonds issued to the Master Trust constituted for meeting the pension liabilities of the pensioners of KSEB Ltd, which read as follows;

“34. (iv) Only the payment of interest on the bonds issued to the Master Trust will be approved for computation of Aggregate Revenue Requirement and the amount of repayment of such bonds shall not be reckoned for computation of Aggregate Revenue Requirement;

3. As mandated under Section 181 (3) of the Electricity Act, 2003 and the Electricity (Procedures for Previous Publication) Rules, 2005, the Commission had published the draft Tariff Regulations, 2021 in its website for information of the stake holders and to invite their comments. The Commission had also conducted public hearings on the petition on 15.09.2021. Duly considering the objections and suggestions of the various stake holders on the Draft Tariff Regulations, 2021, the Commission had finalised the Draft Tariff Regulations, 2021 on 16th November 2021 and the final KSEB (Terms and Conditions for Determination of Tariff) Regulations, 2021 (herein after referred to as Tariff Regulations, 2021) was notified at Commission's website on 16th November 2021, and published the same in the official Gazette on 22nd November 2021.
4. Regulation 34(iv) of the Tariff Regulations, 2021 notified on 16th November 2021 read as follows;

“34. (iv) The amounts required for the payment of interest on the bonds issued to the Master Trust and for the principal repayment of such bonds shall be reckoned for computation of Aggregate Revenue Requirement and for truing up of accounts;

5. The Commission had approved the ARR, ERC and Revenue gap of KSEB Ltd for the MYT period from 2022-23 to 2026-27 (herein after referred as MYT Order dated 25.06.2022), strictly as per the provisions of the Tariff Regulations, 2021. The Commission has also determined the retail tariff of

the electricity consumers in the State of Kerala for the period from 26.06.2022 to 31.03.2023 to bridge the approved revenue as per the MYT Order dated 25.06.2022. The Commission has also directed KSEB Ltd to file separate petition for the determination of tariff for the remaining periods of the MYT from 01.04.2023 to 31.03.2027 based on the approved revenue gap as per the MYT Order dated 25.06.2022.

6. In compliance of the directions of the Commission, KSEB Ltd on 08.02.2023 had filed the petition OP No. 18/2023 for approval of the retail tariff, for the remaining MYT period from FY 2023-24 to FY 2026-27 to bridge the approved revenue gap as per the MYT Order dated 25.06.2022.
7. During the deliberation of the subject petition OP No. 18/2023, the HT and EHT Industrial Consumers Association of Kerala had filed a Writ Petition WP(C) No. 19205 of 2023, before the Hon'ble High Court, against the tariff determination process initiated by the Kerala State Electricity Regulatory Commission with the following prayers:
 - (1) *“ To direct Kerala State Electricity Regulatory Commission to comply with the provisions of the Electricity Act, 2003, in particular in Sections 61 and 62, and National Electricity Policy, and Tariff Policy issued by the Ministry of Power, Government of India, as well as the directions of the Appellate Tribunal for Electricity (APTEL) and frame voltage wise cost of supply with intent to reduce cross subsidies and frame tariff for various voltage classes in accordance therewith;*
 - (2) *To declare that Tariff regulation framed by the KSERC is illegal, ultra vires and to quash the same by a writ of certiorari;*
 - (3) *To declare that the Regulatory Commission cannot proceed to fix electricity tariff based on the equity of Rs 3499 Crores claimed by the KSEB Ltd and has to adopt the correct and cogent figure as directed by the APTEL;*
 - (4) *Stay all further proceedings before the Kerala State Electricity Regulatory Commission pursuant to Tariff Revision Petition in so far as the HT & EHT Association and its members comprising HT & EHT Industrial consumers are concerned.”*
8. The Hon'ble High Court, after detailed deliberations on the Writ Petition WP(C) No. 19205 of 2023, vide the judgment dated 07.09.2023 decided on the Writ petition. Vide the judgment dated 07.09.2023, Hon'ble High Court has not gone into the prayers (1), (3) and (4) raised by the HT& EHT Association. However, the Hon'ble High Court had decided on the Prayer-2 of the Writ Petition WP(C) No. 19205 of 2023, as follows;

“ 23. It is not in dispute that as per the draft regulations (Regulation 34), only interest on the bonds was proposed to be approved for computation of ARR and the repayment of principal was not proposed to be reckoned for computation of ARR. The KSEBL did not propose the repayment of principal amount on the Master Trust Bonds to be charged on to the ARR. Ext. P21(d) final tariff regulations which approved the repayment of principal amount on Master Trust Bonds to be charged on to the ARR would, no doubt, create tariff shock for consumers. Ext. P21(d) final tariff regulations published is substantially different from Ext. P21(c) draft tariff regulations so far as it approved the repayment of principal amount on Master Trust Bonds to be charged on to the ARR, contrary to the draft Regulation that only repayment of interest on Master Trust Bonds will be charged on to the ARR. Ext. P21(d) regulations to the aforesaid extent do not conform to the requirement of Section 181 (3) of the Electricity Act, 2003 and the Electricity (Procedure for Previous Publication) Rules, 2005. When the draft regulations is published providing that only the payment of interest on the bonds issued to the Master Trust will be approved for computation of ARR and the amount of repayment of such bonds shall not be reckoned for computation of ARR, and when changes are made to the draft regulations providing that repayment of such bonds will be reckoned for computation of ARR, which proposal was not conceivable in the draft regulation, the Regulatory Commission ought to have followed the requirement of previous publication as contemplated under Section 181 (3) of the Electricity Act, 2003 and the Electricity (Procedure for Previous Publication) Rules, 2005. When changes are made to the draft regulations which are not incidental or ancillary to the draft regulations, but foreign to the draft, such changes should be notified/published for the information of persons likely to be affected and inviting their objections and suggestions thereto. Relying on the decision in Association of Residents of Mhow (ROM) and another v. Delimitation Commission of India [(2009) 5 SCC 404], it was contended that every suggestion or objection cannot ultimately result in any fresh proposal and there cannot be fresh proposal depending upon every objection and suggestion as may be received in response to the proposal. Here, it is to be noted that the change to the draft proposal was not pursuant to any objection or suggestion received by the Regulatory Commission. Ext. P21(d) final tariff regulations notified the repayment of principal amount on Master Trust Bonds to be charged on to the ARR without calling for any objection or suggestion of persons likely to be affected. The same is impermissible and defeats the object of previous publication contemplated under the Electricity Act and Rules. The decision in Association of Residents of Mhow (supra) was rendered in the context of delimitation of constituencies and considering the Constitutional mandate of conducting timely elections and in the light of bar of interference of Courts in the matter of delimitation of constituencies under Article 329 (a) of the Constitution. The

changes to the draft regulations were not notified and no objections or suggestions were invited with respect to the changes made in the draft regulations as regards repayment of such bonds to be reckoned for computation of ARR. Ext. P21(d) final tariff regulations to the aforesaid extent does not conform to the requirement of Section 181 (3) of the Electricity Act, 2003 and the Electricity (Procedure for Previous Publication) Rules, 2005. Accordingly, Regulation 34 (iv) of Ext. P21(d) final Tariff Regulations to the extent it differs from Regulation 34 (iv) of Ext. P21(c) draft Tariff Regulations is declared as illegal and is, set aside. It will be open to the Regulatory Commission to specify the terms and conditions for the determination of tariff as regards repayment of principal amount on Master Trust Bonds after complying with the requirement of Section 181 (3) of the Electricity Act, 2003 and the Electricity (Procedure for Previous Publication) Rules, 2005 and in accordance with law.”

Accordingly, as per the Judgment of the Hon’ble High Court dated 7th September 2023, the Regulation 34(iv) of the Tariff Regulations, 2021, is modified and read as in the Draft Tariff Regulations, 2021 published on 6th August 2021, which read as follows.

“34. (iv) *The amounts required for the payment of interest on the bonds issued to the Master Trust shall only be reckoned for computation of Aggregate Revenue Requirement and for truing up of accounts;*

9. As extracted above, Hon’ble High Court vide the judgment dated 7th September 2023 has set aside Regulation 34(iv) of the Tariff Regulations, 2021 citing the reason that, there is substantial difference in the Draft Tariff Regulations, 2021 notified on 6th August 2021 and the final Tariff Regulations, 2021 notified on 16th November, 2021, in the matter of approval of the repayment of principal amount on Master Trust Bonds to be charged on to the ARR is concerned. Hon’ble High Court further observed that, substantial difference in the final Regulations from the Draft Regulations to the aforesaid extent do not conform to the requirement of Section 181(3) of the Electricity Act, 2003 and Electricity (Procedures for Previous Publication) Rules, 2005.
10. However, Hon’ble High Court vide the judgment dated 7th September 2023 in WP(C) No. 19205/2023 has granted liberty to the Commission to specify the terms and conditions for the determination of tariff as regards to the repayment of principal amount on Master Trust Bonds after complying with the requirement of Section 181(3) of the Electricity Act, 2003, Electricity (Procedures for Previous Publication) Rules, 2005 and in accordance with the law. The relevant portion of the Judgment is extracted below.

“It will be open to the Regulatory Commission to specify the terms and conditions for the determination of tariff as regards repayment of principal amount on Master Trust Bonds after complying with the requirement of Section 181 (3) of the Electricity Act, 2003 and the Electricity (Procedure for Previous Publication) Rules, 2005 and in accordance with law.”

11. In view of the liberty granted by the Hon'ble High Court to relook into the matter of specifying the repayment of principal amount on Master Trust Bonds after complying with the requirement of Section 181(3) of the Electricity Act, 2003, Electricity (Procedures for Previous Publication) Rules, 2005, the Commission has examined the entire issue of Master Trust bonds in its totality and its summary is given below.

(1) In exercise of the powers conferred under sub sections (1),(2),(5),(6) and (7) of Section 131 and Section 133 of the Electricity Act, 2003, the State Government vide G.O (P) No. 46/2013/PD dated 31st October 2013 had notified the Kerala Electricity Second Transfer Scheme, 2013, for re-vesting of all the functions, properties and all interests, rights in properties, all rights and liabilities of the erstwhile KSEB into the new company (KSEB Ltd) w.e.f 01.11.2013.

(2) Subsequently, the State Government, 'by invoking the powers conferred by sub-section (2) of Section 131 of the Electricity Act, 2003 read with sub-clause (2) of Clause-9 of the Kerala Electricity Second Transfer Scheme (Re-vesting), 2013', had amended certain clauses of the Kerala Electricity Second Transfer Scheme (Re-vesting), 2013 issued under GO (P) No. 46/2013/PD dated 31.10.2013. The amendment was notified vide the GO (P) No. 3/2015/PD dated 28th January 2015, and read as Kerala Electricity Second Transfer (Amendment) Scheme (Re-vesting), 2015.

(3) The sub-clause (8) and (9) of Clause-6 of the Government Notifications dated 31st October 2013 and 28th January 2015, dealt with the Master Trust and related issues for safeguarding the interest of the pensioners and employees in the roll of the erstwhile KSEB as on 31.10.2013. The relevant clauses are extracted below.

“6(8) The State Government shall make appropriate arrangements in respect of funding of the terminal liabilities to the extent they are unfunded on the date of transfer of the personnel from the erstwhile Board or KSEB, as mentioned in subclause (9) of clause 6 of this Scheme. As per the actuarial valuation carried out by the registered valuer, the net present value of unfunded liability is approximately

12419.00 crore as on the date of revesting i.e. 31st October 2013. Till such time arrangements are made, the transferee and State Government shall be jointly and severally responsible to duly make such arrangements to the existing pensioners as well as the personnel who retire after the date of transfer but before the arrangement are put in place. The State Government, Kerala State Electricity Board Limited, and Employee Unions have entered into a tripartite agreement on 1st August 2014, in consideration of the promises and mutual conditions set forth therein. The Tripartite Agreement which forms part of this Scheme is appended as Schedule C.”

“ 6(9) The State Government will fund Rs 5861 crore (Rupees Five thousand eight hundred and sixty one crores) over a period of next 10 years from the date of transfer to the KSEB Ltd on annual basis for meeting the unfunded liabilities by way of retention of electricity duty.

(a) Kerala State Electricity Board Ltd will issue two series of bonds to a Master Trust:

(i) 20 year bond with a coupon rate of 10% p.a. for Rs.8144 Cr (Rupees eight thousand one hundred and forty four crores).

(ii) 10 year bond with a coupon rate of 9% p.a. for Rs. 3751 Cr (Rupees three thousand seven hundred and fifty one crores).

(b) Bonds will be issued to the trust shall meet the liability of pension etc. in future from the **interest and principal repayment from KSEB Ltd against the bonds issued in favour of the trust.** With these arrangements the net present value of the fund towards pension etc. shall be Rs 12419.00 crores (approx) as on 31st October 2013 with matching investments in securities issued by the KSEB Ltd for Rs 11895.00 crore on net present value basis.

(c) Another, Rs 524 crore will be funded by the State Government through budgetary provision over a period of 10 years in equal installments as per G.O (Ms) No. 43/2011/PD dated 3rd November 2011. Accordingly an amount of Rs 52.4 crore is being provided in the budget from the FY 2012-13 onwards.

(d) State Government will permit the electricity duty collected by KSEB for the period from 01.04.2008 to 31.03.2012 to be retained by the KSEBL as its contribution for funding the terminal liability.

(e) In addition to the interest on bonds and repayment of principal, KSEB Ltd will be paying the annual pension contribution based on actuarial valuation to the master trust in respect of the personnel transferred to KSEBL.”

- (4) As per the Government notifications dated 31.10.2013 and 28.01.2015, the assets and liabilities of erstwhile KSEB was re-vested into KSEB Ltd with effect from 01.11.2013. The pension payment and payment of terminal liabilities through the Master Trust, as envisaged under sub-clause (8) and (9) of Clause-6 of the re-vesting notifications also has to commence from 01.11.2013 onwards.

However the master trust was in operation from 01.04.2017 only, due to the delay in getting income tax exemption for the transactions through the Master Trust. Hence, during the period from 01.11.2013 to 31.03.2017, KSEB Ltd had paid the pension and terminal liabilities directly from its accounts, and booked under its Operation and Maintenance expenses. This Commission also allowed the pension reimbursements made during the said periods while Truing Up of accounts of the respective years.

- (5) As per the Kerala Electricity Second Transfer (Amendment) Scheme (Re-vesting), 2015, the total unfunded pension liabilities assessed through the actuarial valuation of the registered valuer as on 31.10.2013 is Rs 12419.00 crore.

Two series of bonds as envisaged under sub-clause (9)(a) of Clause-6 of the Re-vesting Notification dated 28.02.2015 is provided for meeting this liability.

- (6) Further, the sub-clause (9)(e) of Clause-6 of the Re-vesting Notification dated 28.02.2015 also envisaged to carryout the actuarial valuation of the pension liabilities and to pay the annual pension contribution to the trust on annual basis. However, due to the delay in implementation of the trust from 01.04.2013 to 31.03.2017, this annual actuarial valuation process was also not carried out by KSEB Ltd till 31.03.2017.

12. As per the sub cluse (9) of Clause-6 of the re-vesting notifications dated 31.10.2013 and 28.01.2015, the Master Trust shall meet the liability of the pension and terminal liabilities from the interest and principal repayment from KSEB Ltd against the two series of bonds issued in favour of the Master trust.

It is also envisaged under sub-clause 9 of Clause-6 of the re-vesting notification dated 28.01.2015 that, the State Government shall fund the liabilities including the principal repayment and interest of the 10 year bond of Rs 3751.00 crore @9% per annum issued by the KSEB Ltd in favour of the trust.

13. However, as per the sub-clause 9 of Clause-6 of the re-vesting notification dated 28.01.2015, KSEB Ltd as its own has to provide the interest @10% per annum and the principal repayment of the 20 year bond of Rs 8144.00 crore to the Master Trust.
14. As per the provisions of the Electricity Act, 2003, KSEB Ltd is the incumbent distribution licensee, and also the State Transmission Utility in the State. KSEB Ltd also own generation assets in addition to its Transmission and Distribution business. As a regulated entity, all the expenses and income of the KSEB Ltd is regulated by the Commission as per the provisions of the Electricity Act, 2003, and other Rules and Regulations in force, consistent with the Electricity Act, 2003. As per the provisions of the Electricity Act, 2003, the State Commission is also duty bound to ensure the financial health of the licensee while ensuring quality power at reasonable cost to its consumers.

Hence, it is reasonable that, the Commission has to ensure the repayment of the principal and interest on the 20 year bond of Rs 8144.00 crore @10% issued by KSEB Ltd in favour of the Master Trust.

15. However, the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2014 dated 14th November 2014 applicable from 2015-16 to 2017-18 and KSERC (Terms and Conditions of Determination of Tariff) Regulations, 2018 dated 26th October 2018 had the provision only to claim the interest on the 20year bond of Rs 8144.00 crore @10% per annum issued by KSEB Ltd in favour of the Master Trust.

Hence, the Commission has not been allowing the repayment of the principal of the 20year bond of Rs 8144.00 crore to the trust. This has resulted, serious financial problems to KSEB Ltd and management of the master trust as discussed below.

16. As per the ARR and Truing up of accounts submitted before the Commission, though KSEB Ltd has been making the pension disbursement through the Master Trust, the licensee was not able to provide the funds to the Master Trust as envisaged under sub-clause-9 of Clause-6 of the re-vesting notifications dated 28.01.2015. During the deliberations of the ARR and Truing up petitions, KSEB Ltd has clarified that, the actual fund flow as per the provisions in the existing Tariff Regulations and ARR and ERC Orders of respective years is much less than the actual disbursement of pension and terminal liabilities through the Trust in the respective years concerned. Hence KSEB Ltd submitted that, in order to provide the funds to the Trust as per sub-clause-9 of clause-6 of the re-vesting notifications, the licensee has to avail additional borrowings at higher interest rate to provide the funds to the Trust

as per sub-clause-9 of the clause-6 of re-vesting notifications. The details are given below.

Details of the fund provided to KSEB Ltd and actual pension disbursement

Year	Fund available to KSEB Ltd				Actual pension disbursement	Short fall
	20 year bond of RS 8144.00 crore @10% (borne by KSEB Ltd)	10 year bond of RS 3751.00 crore @9% (borne by State Government)	Addl fund (as per sub-clause 9(c) of Clause-6 of re-vesting notifications (Budgetary allocation)	Total		
	(Interest only as per the Tariff Regulations in force)	(Interest and principal repayment)				
	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)	(Rs. Cr)		
(1)	(2)	(3)	(4)	(5)= (2)+(3)+(4)	(6)	(7)= (5)-(6)
2017-18	814.40	586.10	52.40	1452.90	1341.36	111.54
2018-19	773.68	586.10	0.00	1359.78	1378.04	-18.26
2019-20	732.96	586.10	209.60	1528.66	1558.88	-30.22
2020-21	692.24	586.10	209.60	1487.94	1737.05	-249.11
2021-22	651.52	586.10	0.00	1237.62	2376.69	-1139.07
2022-23	610.80	586.10	52.40	1249.30	2524.10	-1274.80
Total	4275.60	3516.60	524.00	8316.20	10916.12	-2599.92

17. As detailed above, the actual pension disbursement during the period from 2017-18 to 2022-23 was Rs 10916.12 crore as against the availability of Rs 8316.20 crore to the trust without the repayment of the principal of the 20 year bond of Rs 8144.00 crore .

If the principal repayment @Rs 407.20 crore also was allowed through ARR/ Truing up of the respective years, an additional fund of Rs 2443.20 crore also would have been available to KSEB Ltd to provide to the Trust.

18. Pension is a statutory liability of KSEB Ltd. The licensee cannot escape from its statutory obligation of pension payment to its existing pensioners as on the date of re-vesting and the personnel in the rolls of KSEB Ltd as on the date of re-vesting and retiring subsequently. If KSEB Ltd could not fulfil the pension payment obligations, it may result in employees' unrest and other administrative and legal hurdles.

But if KSEB Ltd is allowed to borrow additional funds to meet its pension payment obligations, it may result in liquidity problems and even affect the sustainability of the company.

19. As per the provisions of the Electricity Act, 2003, the Commission is duty bound to ensure financial viability of the utility also, while ensuring electricity at reasonable cost to the consumers of the State.
20. The Commission further noted that, as per the actuarial valuation done by the actuary in subsequent years as mandated in the statutory transfer scheme, the actuarial liabilities has been increasing year after year due to various factors including pension liability against service put in by the existing employees during the period subsequent to the date of effect of transfer scheme, higher inflation, pay revision, release of instalments of higher DA/ DR allowances, life expectancy etc., than that considered at the time of initial valuation.

As per the Truing Up of accounts of KSEB Ltd for the year 2021-22, the unfunded pension liabilities as on 31.03.2022 has increased to ₹ 35,804.63 Crore. Though the Commission has not gone into the details of the actuarial valuation report, the Commission has allowed Rs 200.00 crore in the year 2017-18 and Rs 300.00 crore each in the years 2018-19, 2019-20, 2021-22 and 2022-23, while Truing Up of accounts of the respective years, for meeting the increase in unfunded pension liabilities based on the actuarial valuation report. In order to approve the necessary funding scheme for meeting the enhancement in unfunded liability based on the actuary report, the Commission has directed the licensee to submit a necessary proposal to fund the same with the approval of the State Government. However, the licensee is yet to be submit the details for want of approval of the State Government. Once the KSEB Ltd submit the petition with the necessary and sufficient details including the approval of the State Government, and with all supporting documents, the Commission may grant approval for recovery of the additional unfunded liability based on the actuarial valuation conducted by the actuaries, through ARR after prudence check, and as per the provisions of the Tariff Regulations, 2021 and its amendments.

21. From the above it is evident that, without granting approval of the recovery of the principal repayment of the 20 year bond of Rs 8144.00 crore @10% per annum issued by KSEB Ltd to the Master Trust, the licensee could not even meet partially its pension payment obligations.
22. Hence, the Commission is of the considered view that, the repayment of the principal amount of the Master Trust Bond of Rs 8144.00 crore issued by the KSEB Ltd to the Master Trust with the tenure of 20 year @10% per annum may be allowed through the ARR. The Regulation 34(iv) of the Tariff Regulations, 2021 set aside by the Hon'ble High Court vide the Judgment dated 07.09.2023 in Writ Petition WP(C) No. 19205 of 2023 is to be modified through pubic consultation after complying with the requirement of Section

181(3) of the Electricity Act, 2003 and Electricity (Procedures for Previous Publication) Rules, 2005.

This process of modifications of Regulation 34(iv) of the Tariff Regulations 2021, is initiated in consideration of the liberty granted by the Hon'ble High Court vide the judgment dated 07.09.2023 in Writ Petition WP(C) No. 19205 of 2023.

These draft regulations are published, for incorporating the above objectives.