KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

Present : Sri. T.K Jose, Chairman

Adv. A. J. Wilson, Member

Sri. B Pradeep, Member

No. 3102/Con.Engg/2023/KSERC Dated 13th August, 2024

STATEMENT OF REASONS

In the matter of: Kerala State Electricity Regulatory Commission (Adjudicating Procedure) Regulations, 2024.

1. The Energy Conservation Act, 2001 was enacted by the Central Government on 29th September, 2001. The overall objective of the Energy Conservation Act, 2001 was to provide necessary legal framework for promoting efficient use of energy and its conservation measures in India. The Act provides directions to establish systems and procedures for measuring and monitoring energy efficiency to coordinate policies and programs on efficient use of energy with stakeholders.

2. The Central Government established the Bureau of Energy Efficiency (BEE/ Bureau) under the provisions of the Act. The Act empowers the Bureau to specify guidelines, regulations and framework to various programs of Bureau such as Perform Achieve and Trade scheme (PAT), Standards and Labeling (S&L), Energy Conservation and Sustainable Building Codes, Certification of Energy Managers and Energy Auditors, and Energy Audit/Accounting of Designated Consumers.

3. Section 15 of the Energy Conservation Act, 2001 entrusted certain powers to the State Government for enforcing the provisions in the Act, for ensuring efficient use of energy and its conservation. Section 15(d) mandates the State Government to designate an agency to coordinate, regulate and enforce provisions of the Act within the State. The Energy Management Centre (EMC) has been designated as the nodal agency in Kerala, to co-ordinate, regulate and enforce the provisions for implementing the Energy Conservation Act, 2001 (hereinafter referred as Act).

4. Provisions for inquiry, adjudication and penalty are intended in the Energy Conservation Act, to ensure effective operation of all the schemes / regulations. As per Section 27 of the Act, the State Electricity Regulatory Commission shall

appoint any of its members as an Adjudicating Officer for holding inquiry and adjudging and imposing penalty envisaged under Section 26 of the Act. Section 27 of the Act has been supplemented with the Energy Conservation (Manner of holding inquiry) Rules, 2009, notified by the Central Government. The amendments made to the said Rules in 2022 provides for the appointment of an Adjudicating Officer in the State Electricity Regulatory Commission in a time bound manner and also to appoint an alternate Adjudicating Officer as may be required. Accordingly, as per its Order dated 19.01.2023, the Commission has appointed Member (Technical) of the Commission as the Adjudicating Officer for the purpose of adjudging under Section 26 of the Act.

5. As per the Energy Conservation (Amendment) Act, 2022 (No.19 of 2022), new Section 27A was inserted to empower the State Electricity Regulatory Commission to make regulations to provide for the manner of making applications before the Commission and the fee payable and for any other matter for the purposes of its function. The Bureau of Energy Efficiency vide letter No. BEE/ECBC/EC Act/22-23/8824-53 dated 02.03.2023 requested the Commission to formulate necessary regulations at the earliest and to intimate the compliance.

6. The violations/ non-compliance of the following provisions of the Energy Conservation Act, 2001 come under the purview of these Regulations:-

*"**13A. Prohibition of use of deceptive name, etc.***

(1) No person shall, without previous permission of the Bureau, use any name which so nearly resembles the name of the Bureau as to deceive or likely to deceive the public.

***14. Power of Central Government to enforce efficient use of energy and its conservation**.—The Central Government may, by notification, in consultation with the Bureau,—*

(c) prohibit manufacture or import of any equipment or appliance or vehicle or vessel specified under clause (b), unless it conforms to energy consumption standards specified under clause (a):

Provided that an industrial unit specified under clause (b) shall close its operations unless it conforms to the norms for processes or energy consumption standards specified under clause (a):

Provided further that from the date of notification of norms for processes and energy consumption standards under clause (a), no notification prohibiting such manufacture or import shall be issued—

(i) within a period of six months in the case of equipment or appliance or vehicle or vessel; and

(ii) within a period of two years for closure of industrial unit:

Provided also that the Central Government may, having regard to the market share and the technological development having impact on equipment or appliance or vehicle or vessel, and for reasons to be recorded in writing, extend the said period of six months referred to above, by a further period not exceeding six months;

(d) direct display of such particulars on label on equipment or on appliance specified under clause (b) and in such manner as may be specified by regulations;

(h) direct, having regard to quantity of energy consumed or the norms and standards of energy consumption specified under clause (a), the Energy Intensive Industries and other establishments specified in the Schedule to get energy audit conducted by an accredited energy auditor in such manner and intervals of time as may be specified by regulations;

(i) direct, if considered necessary for efficient use of energy and its conservation, any designated consumer to get energy audit conducted by an accredited energy auditor;

(k) direct any designated consumer to furnish to the designated agency, in such form and manner and within such period, as may be prescribed, the information with regard to the energy consumed and action taken on the recommendation of the accredited energy auditor;

(l) direct any designated consumer to designate or appoint energy auditor or energy manager in charge of activities for efficient use of energy and its conservation and submit a report, in the form and manner as may be prescribed, on the status of energy consumption at the end of every financial year to the designated agency;

(n) direct every designated consumer to comply with energy consumption norms and standards;

(x) specify minimum share of consumption of non-fossil sources by designated consumers as energy or feedstock, provided different share of consumption may be specified for different types of non-fossil sources for different designated consumers:

Provided that the powers under clauses (p) to (s) shall be exercised in consultation with the concerned State.

15. Power of State Government to enforce certain provisions for efficient use of energy and its conservation*.—The State Government may, by notification, in consultation with the Bureau—*

(c) direct, if considered necessary for efficient use of energy and its conservation, any designated consumer referred to in clause (b) to get energy audit conducted by an accredited energy auditor in such manner and at such intervals of time as may be specified by regulations;

(h) direct, any designated consumer to furnish to the designated agency, in such form and manner and within such period as may be specified by rules made by it, information with regard to the energy consumed by such consumer;

52. Power to obtain information*.—Every designated consumer or manufacturer of equipment or appliance or any other person or entity covered under this Act shall furnish to the Bureau such information, documents or records relating to energy consumption, and such samples of any material or substance used in relation to any equipment or appliance, as the Bureau may require."*

Any other matters relating to the powers and functions of the Adjudicating Officer under the provisions of the Act 2001, as amended from time to time.

7. To address the matters indicated above, the Commission published the draft Kerala State Electricity Regulatory Commission (Adjudicating Procedure) Regulations, 2024 on 19th March, 2024, for inviting stakeholder comments and objections. To enhance transparency and to improve the informed stakeholder participation, the Commission has also published detailed explanatory memorandum along with the draft Regulations, which details the facts and circumstances led to its publication. Further, the Commission conducted public hearing on the draft regulations on 22.05.2024 through hybrid mode at Thiruvananthapuram. Many Stakeholders participated in the public hearings and presented their views/ suggestions on the draft Regulations. The Commission has considered all the comments received from the stakeholders for finalizing the Regulations. The list of participants attended the hearing is attached as Annexure.

8. The Commission, complying with the provisions of the Act, the Electricity Act, 2003 and the Electricity (Procedure for Previous Publication) Rules, 2005 proceeded to finalize the Kerala State Electricity Regulatory Commission (Adjudicating Procedure) Regulations, 2024.

9. The Commission considered the comments/suggestions of the stakeholders on the Draft. The Regulations have been finalized after due consideration of the various issues raised and after obtaining legal opinion on the objections raised by Kerala State Electricity Board limited (hereinafter referred as KSEB Ltd). It may be noted that all the suggestions given by the stakeholders have been considered, and the Commission has attempted to elaborate all the suggestions as well as the Commission's decisions on each suggestion in the Statement of Reasons. However, in case any suggestion is not specifically elaborated, it does not mean that the same has not been considered. Wherever possible, the comments and suggestions have been summarised, along with the Commission's analysis and ruling on the same. The analysis of the issues and findings of the Commission thereon are discussed in subsequent paragraphs.

10. Regulation 2

2. Objective. — The objective of these regulations is to notify the provisions regarding the procedure for adjudication before the Adjudicating Officer appointed by the Commission under Section 27 of the Energy Conservation Act, 2001, as amended from time to time. The violations/ non-compliance of the following provisions of the Energy Conservation Act, 2001 come under the purview of these regulations:-

(i) clauses (c), (d), (h), (i), (k), (l), (n) and (x) of Section 14;

(ii) clauses (c) and (h) of Section 15;

(iii) sub section (1) of Section 13A;

(iv) Section 52;

(v) any other matters relating to the powers and functions of the Adjudicating Officer under the provisions of the Energy Conservation Act 2001, as amended from time to time.

Analysis and Decision of Commission

In Regulation 2 of the draft, objective of the Regulations is limited to the violations/non compliance of certain provisions of the Act. But on scrutiny it is seen that in Section 48 of the Act, the default by Companies and contravention of some other provisions such as clause (r) and (s) of Section 14, clause (b) of Section 15 etc, liability to proceed against the concerned person(s) including the defaulting Company and their officers, covered in Section 48 of the Act and the imposition of penalty under Section 26 of the Act are dealt with. But the above provisions are not included in clause 2. In clause 2 only the provisions mentioned in section 26 of the Act, are mentioned. The relevant portion of the Act is extracted below:

"***48. Default by companies***.—*(1) Where a company makes a default in complying with the provisions of clause (c) or clause (d) or clause (h) or clause (i) or clause (k) or clause (l) or clause (n) or clause (r) or clause (s) of section 14 or clause (b) or clause (c) or clause (h) of section 15, every person who at the time of such contravention was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to have acted in contravention of the said provisions and shall be liable to be proceeded against and imposed penalty under section 26 accordingly:*

Provided that nothing contained in this sub-section shall render any such person liable for penalty provided in this Act if he proves that the contravention of the aforesaid provisions was committed without his knowledge or that he exercised all due diligence to prevent the contravention of the aforesaid provision.

(2) Notwithstanding anything contained in sub-section (1), where any contravention of the provisions of clause (c) or clause (d) or clause (h) or clause (i) or clause (k) or clause (l) or clause (n) or clause (r) or clause (s) of section 14 or clause (b) or clause (c) or clause (h) of section 15 has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to have contravened the said provisions and shall be liable to be proceeded for imposition of penalty accordingly.

Explanation.—For the purposes of this section, "company" means a body corporate and includes a firm or other association of individuals."

Further, MoP vide notification dated 20th October, 2023 in consultation with the Bureau of Energy Efficiency, specified the minimum share of consumption of non-fossil sources (renewable energy) by designated consumers as energy or feedstock and different share of consumption for different types of non-fossil sources, for different designated consumers in respect of electricity distribution licensee and other designated consumers, who are open access consumers or captive users to the extent of consumption of electricity from sources other than distribution licensee as a percentage of their total share of energy consumption. In the said notification, MoP has specified that any shortfall in specified renewable energy consumption targets shall be treated as non-compliance and penalty shall be imposed at such rate specified under sub-section (3) of Section 26 of the Act. The relevant provision of the notification is quoted hereunder:

"*6. The specified renewable energy consumption targets shall be met either directly or through Certificate in accordance with the Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy*

Certificates for Renewable Energy Generation) Regulations, 2022, published in the Gazette of India, Extraordinary, Part III, Section 4, dated the 24th May, 2022:

Provided that any shortfall in specified renewable energy consumption targets shall be treated as non-compliance and penalty shall be imposed as such rate specified under sub-section (3) of section 26 of the said Act."

Considering the above provisions from the Act and notification of MoP, Commission is of the view that specifying the violations/ non compliance of certain provisions of the Act, as in the draft may lead to omission of other provisions of the Act and other relevant matters. Hence, Commission has decided to revise the Regulation 2 as below:

2. Objective. — The objective of these regulations is to notify the provisions regarding the procedure for adjudication before the Adjudicating Officer appointed by the Commission under Section 27 of the Energy Conservation Act, 2001, as amended from time to time.

11. Regulation 11(i) and 12

11. **Initiation of proceedings.—** Proceedings may be initiated under these Regulations in one of the following manners:-

(i) suo motu by the Adjudicating Officer;

12. Suo motu proceedings. — (1) When the Adjudicating Officer initiates the proceedings *suo motu*, it shall be by a notice of inquiry (hereinafter referred to as the "notice of inquiry") issued by the office of the Adjudicating Officer.

Comments from the stakeholders:-

KSEB Ltd

They opined that the power of the Adjudicating Officer is very limited and restricted to adjudication of penalties under Section 26 of the Act. Further, as per the Ministry of Power (MoP), Government of India (GoI) notification dated 23rd December, 2022, with respect to the detailed procedure for initiation of adjudicatory action in case of non compliance by the Electricity Distribution Companies does not envisage any *suo motu* action by the Commission. The relevant portion is quoted below:

" *(b) that in case of non-compliance of these directions or and non-submission of periodic energy accounting reports or annual energy audit reports or such other reports as required, submission of incorrect data or misrepresentation of facts, the State Designated Agency or Bureau or any person as designated by the Central Government shall file petition for non-compliance*

to the respective State Electricity Regulatory Commission or Joint Electricity Regulatory Commission."

In view of the above, KSEB Ltd suggested that the proposed clauses 11(i) and 12 may be dropped.

Analysis and Decision of Commission

As per Notification of MoP in S.O.6027(E) dated 23rd December, 2022, MoP, in consultation with the Bureau of Energy Efficiency (BEE) directed every Electricity Distribution Company to designate or appoint energy manager and accredited energy auditor and get periodic energy accounting by the energy manager and annual energy audit by the accredited energy auditor and furnish reports to State Designated Agency (SDA) and Bureau in accordance with the Bureau of Energy Efficiency (Manner and Intervals for Conduct of Energy Audit in electricity distribution companies) Regulations, 2021 as amended from time to time.

The above notification also directs that in case of non-compliance of these directions or and non-submission of periodic energy accounting reports or annual energy audit reports or such other reports as required, submission of incorrect data or misrepresentation of facts, the State Designated Agency or Bureau or any person as designated by the Central Government shall file petition for non-compliance to the respective State Electricity Regulatory Commission or Joint Electricity Regulatory Commission.

Section 25 to 29 of the Act, provides for the role of State Electricity Regulatory Commission, in areas of ensuring compliance by way of penalties and adjudication. As per the Act, Rules and Regulations made thereunder the Adjudicating officer is the authority to impose penalty for the noncompliance of the provisions of Section 26 of the Act.

The Energy Conservation (Amendment) Act 2022, inter alia amended the penalty provisions and inserted a new Section 27A, empowering the State Electricity Regulatory Commission to make regulations for smooth discharge of its functions. As per Section 2(u) of the Act, the words and expressions used and not defined in that Act shall have the same meanings as respectively assigned to them in the Electricity Act. The relevant portion is quoted hereunder:

"2(u) words and expressions used and not defined in this Act but defined in the Indian Electricity Act, 1910 (9 of 1910) or the Electricity (Supply) Act, 1948 (54 of 1948) or the Electricity Regulatory Commissions Act, 1998 (14 of 1998) shall have the meanings respectively assigned to them in those Acts."

(The above 3 Acts were repealed vide Section 185 of the Electricity Act, 2003)

In the Electricity Act, 2003 the word "person" is defined as follows:

2(49)"person" shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person.

This implies that the penalty provision is meant not only for the Electricity Distribution companies. Regulation 2 of the 'Kerala State Electricity Regulatory Commission (Adjudicating Procedure) Regulations, 2024 deals with the objective of the regulations. Further, as per sub rule (5) of Rule 3 of the Energy Conservation (Manner of holding inquiry) Rules,2009, made by the Central Government, the Adjudicating Officer, while holding inquiry, shall follow as far as possible the same procedure as is followed in the proceedings of the State Commission in exercise of its powers and discharge of its functions. The relevant portion from the Energy Conservation (Manner of holding inquiry) Rules,2009 is quoted below:

"3(5) The Adjudicating Officer, while holding inquiry, shall follow as far as possible the same procedure as is followed in the proceedings of the State Commission in exercise of its powers and discharge of its functions."

A Suo motu proceeding by the Commission is one of the manners of initiation of proceedings in the Commission as per the Kerala State Electricity Regulatory Commission (Conduct of Business) Regulations, 2003.

In view of the above, the apprehension raised by the stakeholder is not correct. Hence, Commission has decided to retain the same as proposed.

12. Regulation 16

16. Authorized representative to appear before the Adjudicating Officer.

(1) A person may appear himself or may authorize any of his employees to appear before the Adjudicating Officer and to act and plead on his behalf.

(2) A person may authorize an advocate or a registered consultant or a member of any statutory professional body holding a certificate of practice to act and plead on his behalf before the Adjudicating Officer.

(3) Notwithstanding anything contained in sub-regulations (1) and (2) above the Adjudicating Officer may allow any consumer group or association, or any person duly authorized by such consumer group or association to appear in any proceedings before the Adjudicating Officer.

Comments from the stakeholders:-

KSEB Ltd

KSEB Ltd suggested that a certified energy professional (Accredited Energy Auditor Certified/ Energy Auditor/ Certified Energy Manager) may also be included among the persons authorized to represent before the Adjudicating

Officer as they are explicitly recognised for performing statutory functions under the Energy Conservation Act and the inclusion would be appropriate.

Analysis and Decision of Commission

The Act provides mainly for efficient use of energy and its conservation and for matters connected therewith or incidental thereto. As per the said Act, it is mandatory for all the designated energy consumers to get energy audit conducted by an Accredited Energy Auditor [under clause 14(h) and 14(i)] and to designate or appoint an Energy Manager [under clause 14(l)]. As per notification dated 28th September, 2020, MoP, in consultation with the Bureau of Energy Efficiency, has notified the Energy Conservation (Minimum Qualification for Energy Auditors, Energy Auditors (Building) and Energy Managers) Rules, 2020, to prescribe the minimum qualifications for Energy Auditors and Energy Managers.

Further, as per Section 44 of the Act, it is specified that a person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of a legal practitioner or an accredited energy auditor of his choice to present his case before the Appellate Tribunal. The relevant provision from the Act is extracted hereunder:

"44. Right of appellant to take assistance of legal practitioner or accredited auditor and of Government to appoint presenting officers.—(1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of a legal practitioner or an accredited energy auditor of his choice to present his case before the Appellate Tribunal, as the case may be.

(2) The Central Government or the State Government may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal, as the case may be."

As per the Appellate Tribunal for Energy Conservation (Procedure, Form, Fee and Record of Proceedings) Rules, 2012 notified by MoP vide dated 28th June, 2012, it is seen that the legal practitioner is entitled to appear and act before the Appellate Tribunal, if he files a vakalatnama executed by or on behalf of the party. As per Rule 64, if a legal practitioner who has filed vakalatnama engages or nominates accredited energy auditor to appear and argue his client's case but not to act for the client, the Appellate tribunal may permit such accredited energy auditor to appear and argue on an oral request made before the commencement of the proceedings. The relevant provisions from the Rules, 2012 is extracted below:

2(d) "legal practitioner" means an advocate who is entitled to practice the profession of law under the Advocates Act, 1961 (25 of 1961)

63. Appearance of legal practitioners.- Subject to as hereinafter provided, no legal practitioner shall be entitled to appear and act, in any proceeding before the Appellate Tribunal unless he files into Appellate Tribunal a vakalatnama in Form VI annexed to these rules, duly executed by or on behalf of the party for whom he appears.

64. Nomination or engagement of another legal practitioner or accredited energy auditor.- Where a legal practitioner who has filed the vakalatnama engages or nominates accredited energy auditor or another legal practitioner to appear and argue his client's case but not to act for the client, the Appellate Tribunal may permit such other legal practitioner or accredited energy auditor to appear and argue on an oral request being made before commencement of the proceedings."

In view of the above provisions, it is seen that the legal practitioner may engage or nominate accredited energy auditor to appear and argue his client's case but not to act for the client. On the basis of the above provisions of the Act and the Rules thereunder, it is seen that there is no impropriety in including the certified energy professional (Accredited Energy Auditor/ certified Energy Auditor/ certified Energy Manager) to appear and argue for the parties. Hence, Commission has decided to include provision for certified energy professional (Accredited Energy Auditor Certified/ Energy Auditor/ Certified Energy Manager) to represent before the Adjudicating Officer, as 3rd sub regulation in Regulation 16, and the 3rd sub regulation in the draft shall be renumbered as sub regulation (4). Regulation 16 is modified as:

16. Authorized representative to appear before the Adjudicating Officer.

(1) A person may appear himself or may authorize any of his employees to appear before the Adjudicating Officer and to act and plead on his behalf.

(2) A person may authorize an advocate or a registered consultant or a member of any statutory professional body holding a certificate of practice to act and plead on his behalf before the Adjudicating Officer.

(3) A person may authorize a certified energy professional (Accredited Energy Auditor/ certified Energy Auditor/ certified Energy Manager) to appear and argue his case before the Adjudicating Officer but not to act for him.

(4) Notwithstanding anything contained in sub-regulations (1) and (2) above the Adjudicating Officer may allow any consumer group or association, or

any person duly authorized by such consumer group or association to appear in any proceedings before the Adjudicating Officer.

13. Regulation 18(1) and 18(4)

18.Service of notices and process issued by the Adjudicating Officer. —(1) Any notice or process to be issued by the Adjudicating Officer may be served by any one or more of the following modes as may be directed by the Adjudicating Officer:-

(i) by hand delivery or courier ;

(ii) service by the petitioner or any other party in the proceedings;

(iii) by registered post with acknowledgement due;

(iv) by any electronic mode such as e-mail etc.;

(v) by publication in two local newspapers one in English and one in Malayalam, in cases where the Adjudicating Officer is satisfied that it is not reasonably practicable to serve the notices, process etc., on any person in the manner mentioned above;

(vi) in any other manner as may be considered appropriate by the Adjudicating Officer.

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…….

(4) Where a notice is served by a party to the proceedings on any other party either in person or through registered post, an affidavit of service shall be filed by such party with the Adjudicating Officer giving details of the date and manner of service of notices and processes and proof of such service.

Comments from the stakeholders:-

KSEB Ltd

KSEB Ltd opined that the draft regulation proposes service of a notice or process issued by the Adjudicating Officer or by the petitioner or any other party in the proceedings. Notice or process issued by the Adjudicating officer has to be served appropriately by the office [designated under draft Regulation 9(2)] on behalf of Adjudicating Officer. Publication of notices in newspapers etc. can obviously be done by any of the parties. Considering the above sub-regulations 18(1)(ii) &18(4) are also to be dropped.

Analysis and Decision of Commission

As per sub rule (5) of Rule 3 of the Energy Conservation (Manner of holding inquiry) Rules,2009, the Adjudicating Officer, while holding inquiry, shall follow as far as possible the same procedure as is followed in the proceedings of the State Commission in exercise of its powers and discharge of its functions.

In this connection it may seen that Section 94 of the Electricity Act, 2003 deals with the powers of the Appropriate Commission, which reads as follows:

"94. Powers of Appropriate Commission.- (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) discovery and production of any document or other material object producible as evidence;

(c) receiving evidence on affidavits;

(d) requisitioning of any public record;

(e) issuing commission for the examination of witnesses;

(f) reviewing its decisions, directions and orders;

(g) any other matter which may be prescribed.

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.

(3) The Appropriate Commission may authorise any person, as it deems fit, to represent the interest of the consumers in the proceedings before it."

The provisions for the service of notices and process issued by the Adjudicating officer proposed in the draft based on Regulation 27 of the KSERC (Conduct of Business) Regulations, 2003 and in line with the provisions of the Code of Civil Procedure and the Civil Rules of Practice, Kerala.

Considering the provisions as per the Energy Conservation (Manner of holding inquiry) Rules, 2009 and Electricity Act, 2003, read with KSERC (Conduct of Business) Regulations, 2003, Commission is of the view that there is no need to omit the clauses 18(1)(ii) &18(4). Hence, Commission has decided to retain the same as proposed.

14. Regulation 22

22. Filing of objections etc., by the public. — (1) Every other person who intends to file objections or comments in regard to a matter pending before the Adjudicating Officer, pursuant to the publication issued for the purpose (other than the persons to whom notices, processes etc. have been issued calling for reply) shall deliver to the Receiving Officer the statement of objections or comments with copies of the documents and evidence in support thereof within the time fixed for the purpose.

(2) The Adjudicating Officer may permit such person(s)/ organization(s) or groups as he may consider appropriate to facilitate the proceedings and the decision in the matter.

(3)Unless permitted by the Adjudicating Officer, the person filing objections or comments pursuant to sub-regulation (1) above shall not be entitled to make oral submissions. However, the Adjudicating Officer may take into account the objections and comments filed after giving such opportunity to the parties in the proceedings as the Adjudicating Officer considers appropriate to deal with the objections and comments.

Comments from the stakeholders:-

KSEB Ltd

KSEB Ltd opined that the publication of the process of adjudication and inviting public response is not something mandated by the law. It is submitted that the adjudication is limited to penalties for noncompliance by designated consumer in any of the sectors notified under the Energy Conservation Act. Draft regulation 11(v) and its first proviso forbids initiation of proceedings by unaffected person and hence the stipulation regarding publication of proceedings, i.e., proposed Regulation may be avoided.

Analysis and Decision of Commission

KSEB Ltd mentioned that draft regulation 11(v) and its first proviso forbids initiation of proceedings by unaffected person. The Regulation 11 of the draft KSERC (Adjudicating Procedure) Regulations, 2024 is quoted hereunder:

*"11. **Initiation of proceedings. —** Proceedings may be initiated under these Regulations in one of the following manners:-*

(i) suo motu by the Adjudicating Officer;

(ii) upon a petition filed by the Bureau of Energy Efficiency;

(iii) upon a petition filed by the Designated Agency in the State of Kerala;

(iv) upon a petition filed by any person designated by Central

Government;

(v) upon a petition or any other filing by any affected or interested person:

Provided that the Adjudicating Officer shall have the right to decide or order that any party is not an affected party for the purpose of these regulations:

Provided further that the proceedings under (i) to (v) above shall pertain to matters relating to the powers and functions of the Adjudicating Officer as assigned to it under the provisions of the Act, Rules and these Regulations."

From Regulation11 (v), it is clear that proceedings can be initiated upon a petition filed by any interested or affected person. The Adjudicating Officer shall have the right to decide or order that any party is not an affected party. No such interpretation can be given to the first proviso, as opined by the KSEB Ltd. The apprehension raised by the stakeholder is not correct. Hence, Commission has decided to retain the same as proposed.

15. Regulation 23

23. Collection of information. — The Adjudicating Officer may make such order as he thinks fit in terms of the provisions of the Act for collection of information, inquiry, investigation, entry, search, seizure, without prejudice to the generality of his powers in regard to the following: -

(i) The Adjudicating Officer may specially authorize the Secretary or any other officer of the Commission, to enter any building or place where there is reason to believe that any document or record relating to the subject matter of his inquiry or adjudication under the Act may be found and to seize or take extracts or copies thereof.

(ii) The Adjudicating Officer may, at any time, direct the Secretary or any one or more officers or consultants or any other person as he considers appropriate to study, investigate or furnish information with respect to any matter within his purview.

(iii) The Adjudicating Officer may for the above purpose give such other directions as he may deem fit and specify the time within which the report is to be submitted or information furnished.

(iv) The Adjudicating Officer may issue or authorize the Secretary or an officer of the Commission, to issue directions to any person to produce before him and allow to be examined and kept by an officer specified in this behalf, the books of accounts etc. or to furnish information to the specified officer.

(v) The Adjudicating Officer may, for the purpose of collecting any information, particulars or documents which the Adjudicating Officer consider necessary in connection with the discharge of his functions under the Act, issue such directions as may be considered necessary.

(vi) If any such report or information obtained appears to the Adjudicating Officer to be insufficient or inadequate, the Adjudicating Officer or the Secretary or an officer authorized for the purpose may give directions for further inquiry, report and furnishing of information.

(vii) The Adjudicating Officer may direct such incidental, consequential and supplemental matters that may be considered relevant in connection with the above, be attended to.

Comments from the stakeholders:-

KSEB Ltd

KSEB Ltd opined that Regulation 23(i) empowers the Adjudicating Officer to authorize entry of officials into a private space and seizure of documents. The Energy Conservation Act does not bestow any such power on the Adjudicating Officer. Section 96 of the Electricity Act, 2003 bestows such power in relation to inquiries in terms of the Act. In the first place such powers are not provided in relation to the process of adjudication in terms of the Act and secondly the power of authorization there is vested with the honourable Commission under Electricity Act 2003, and not with the Adjudicating Officer. Even a proper inspection in terms of Section 96 of the Electricity Act, 2003 duly authorized by the Commission, cannot be an unconditional entry. It has to be a lawful entry subject to provisions of Section 100 of the Code of Criminal Procedure 1973, which requires a legitimate warrant for search.

Compliance to the procedure laid down in Regulation 23 may lead to complaints and legal complications and hence the provision for entry, seizure etc. proposed in regulation 23 is to be dropped.

Analysis and Decision of Commission

In this connection it is seen that as per sub rule (5) of Rule 3 of the Energy Conservation (Manner of holding inquiry) Rules, 2009, the adjudicating officer, while holding inquiry, shall follow as far as possible the same procedure as is followed in the proceedings of the State Commission in exercise of its powers and discharge of its functions. Regulation 42 of the KSERC (Conduct of Business) Regulations, 2003 is quoted hereunder:

"42. Collection of information.- (1) The Commission may make such order or orders as it may consider appropriate in terms of section 96 of the Act for

collection of information, inquiry and investigation, entry, search and seizure, without prejudice to the generality of its powers in regard to the following:-

(a) The Commission may at any time, direct the Secretary or any one or more officers or consultants or any other person, as the Commission considers appropriate to study, investigate or furnish information with respect to any matter within the purview of the Commission under the Act.

(b) The Commission may for the above purpose give such other directions as it may deem fit and specify the time within which the report is to be submitted or information furnished.

(c) The Commission may issue or authorise the Secretary or an officer to issue directions to any person to produce before it and allow to be examined and kept by an officer of the Commission specified in this behalf, the books, accounts, etc., or to furnish information to the specified officer

……..."

The Act, the Energy Conservation (Manner of holding inquiry) Rules, 2009 and KSERC (Conduct of Business) Regulations, 2003, bestow power on the Adjudicating Officer to authorize officials' entry into private space and seizure of documents, if required. However, noting that the said powers are embedded in the substantive portion of proposed Regulation 23, and thus there is no necessity to reiterate the same as a sub clause, the Commission has decided to omit clause (i) of Regulation 23 and the clauses (ii) to (vii) is renumbered as (i) to (vi). Regulation 23 is revised as below:

23. **Collection of information. —** The Adjudicating Officer may make such order as he thinks fit in terms of the provisions of the Act for collection of information, inquiry, investigation, entry, search, seizure, without prejudice to the generality of his powers in regard to the following: -

(i)The Adjudicating Officer may, at any time, direct the Secretary or any one or more Officers or Consultants or any other person as he considers appropriate to study, investigate or furnish information with respect to any matter within his purview.

(ii)The Adjudicating Officer may for the above purpose give such other directions as he may deem fit and specify the time within which the report is to be submitted or information furnished.

(iii)The Adjudicating Officer may issue or authorize the Secretary or an officer of the Commission, to issue directions to any person to produce before him and allow to be examined and kept by an officer specified in this behalf, the books of accounts etc. or to furnish information to the specified

officer.

(iv) The Adjudicating Officer may, for the purpose of collecting any information, particulars or documents which the Adjudicating Officer consider necessary in connection with the discharge of his functions under the Act, issue such directions as may be considered necessary.

(v) If any such report or information obtained appears to the Adjudicating Officer to be insufficient or inadequate, the Adjudicating Officer or the Secretary or an Officer authorized for the purpose may give directions for further inquiry, report and furnishing of information.

(vi) The Adjudicating Officer may direct such incidental, consequential and supplemental matters that may be considered relevant in connection with the above, be attended to.

16. Energy Management Centre, the Designated Agency in the State of Kerala to co-ordinate, regulate and enforce the provisions of the Act, mentioned that the Regulations clearly details the manner of making applications before the Adjudicating Officer, the fee payable and other matter for the purposes of carrying out the functions of Adjudicating Officer, as per the provisions of the Act.

17. The Commission published the draft of Kerala State Electricity Regulatory Commission (Adjudicating Procedure) Regulations, 2024 on 19th March, 2024. The Commission conducted public hearing on 22.05.2024. After due consideration of the comments/ suggestions/ objections received, the Commission has now finalized the Kerala State Electricity Regulatory Commission (Adjudicating Procedure) Regulations, 2024 and notified on xx .08.2024. This statement of reasons is not a part of the notification, but is to explain the intend and necessity for notification of these Amendment Regulations.

Sd/-	Sd/-	Sd/-
T. K Jose	**Adv. A. J. Wilson**	**B Pradeep**
Chairman	**Member**	**Member**

Approved for issue

Sd/-

C R Satheesh Chandran

Secretary

Annexure

List of participants attended the public hearing on 22.05.2024

1. Sri. Rajan M. P, Deputy Chief Engineer, TRAC, KSEB Ltd
2. Smt. Latha S V, Executive Engineer, TRAC, KSEB Ltd
3. Sri. Bijuraj R, Executive Engineer, Energy Manager, KSEB Ltd
4. Sri. Edward P Bonafice, Assistant Executive Engineer, TRAC, KSEB Ltd
5. Sri. Manusenan V, Assistant Engineer, TRAC, KSEB Ltd
6. Sri. Johnson Daniel, Head (NMEE & DSM) Division, Energy Management Centre (EMC)
7. Sri. Ashwin Mohan, Energy Auditor, EMC
8. Sri. Sarath Krishnan, Energy Technologist, EMC
9. Sri. Shajilal, Madhyamam
10. Sri. Pramodu S, Secretary, Cochin Special Economic Zone (CSEZA)
11. Sri. Sajeev, Resident Engineer, Kinesco Power and Utilities Private Limited (KPUPL)