

One Time Settlement Scheme (OTS-2019) – implementation of KSERC order – sanctioned - Orders issued.

**CORPORATE OFFICE (PLANNING)**

BO(FTD) No.797/2019(TRAC/GL/OTS-2019/19-20)dated,Thiruvananthapuram 31.10.2019

Read:-1. Petition No. OP 52/19 filed by KSEB before the Hon'ble KSERC.

2. KSERC Order dated 17.09.2019 in Petition OP 52/19

3. Note No. TRAC/GL/OTS-2019/19-20/444 dated 29.10.2019 of the Deputy Chief Engineer (Commercial &amp; Planning) with full powers of the Chief Engineer (Agenda – 84/10/19)

**ORDER**

The Hon'ble KSERC as per the order read as 2<sup>nd</sup> paper above has given approval for implementing the One Time Settlement (OTS-2019) scheme from 01.10.2019 to 31.01.2020 with certain modifications in the proposal submitted by KSEBL. Further, it was also directed that the consumer wise details of the arrears settled under OTS-2019 with all particulars including the principal amount, age of arrear amount settled under OTS, interest due, interest settled, instalment facilities availed by the consumer etc has to be submitted to the Hon'ble KSERC within month after the closure of OTS -2019 scheme. Regarding the approval for settlements made by KSEBL after the expiry of OTS-2018 scheme, it was informed to submit the consumer wise details of the same.

However, due to bye elections declared in the five legislative constituencies, the implementation of the OTS-2019 scheme was postponed till the model code of conduct has receded. Now as the elections are over, the Deputy Chief Engineer (Commercial & Planning) with full powers of Chief Engineer as per the note read as 3<sup>rd</sup> paper above has recommended for implementing the OTS-2019 scheme from 01.11.2019. Since there was delay of one month in implementing the above scheme, it was also suggested for extending the scheme upto 29.02.2020.

Having considered the note read above, the Full Time Directors in the meeting held on 29.10.2019 has resolved to accord sanction for the following

- (i) To implement the OTS-2019 scheme from 01.11.2019 onwards.
- (ii) To approve the terms & conditions and the Guidelines for settling cases under litigation for OTS-2019 scheme prepared as per the approval given by KSERC attached herewith as Annexure 1&2 respectively.
- (iii) To authorise the Accounts Officer, Arrear Clearance Cell, O/o the Chief Internal Auditor to collect the consumer wise details of the arrears settled under OTS-2019 scheme with all particulars specified by the Hon'ble Commission within one month after the closure of OTS-2019 and also the consumer wise details of the OTS sanctioned after the expiry of OTS-2018.
- (iv) To approach the Hon'ble Commission for extending the time period of OTS-2019 scheme upto 29.02.2020.

Orders are issued accordingly

By Order of Full Time Directors

Sd/-

Lekha G.

Company Secretary I/c

To

The Deputy Chief Engineer (Commercial & Planning) wfp of Chief Engineer  
The Chief Engineer, Distribution (South/Central/North/ North Malabar)  
The Special Officer (Revenue)  
The Accounts Officer, Arrear Clearance Cell

Copy to:

The Financial Advisor/ Deputy Chief Engineer (TRAC)  
The All Deputy Chief Engineer, Electrical Circles  
The Chief Internal Auditor  
T.A to (Chairman & Managing Director)  
T.A to Director (Gen. Civil / T.A to Director (T,SO,S,CP&REES)  
T.A to Director (Gen. Ele & SCM)  
PA to Director (Finance)/ Sr. CA to Secretary/CA to ADGP (CVO, KSEB),  
CPRO/Fair Copy Superintendent / Library.

Forwarded by order

  
Assistant Executive Engineer



**Terms and conditions of One Time Settlement Special Scheme**

**(Annexure 1)**

**1. Eligibility**

Consumers with arrears for more than two years will be eligible to apply for One-time-settlement scheme. ie; arrear resulted from demand raised prior 01.11.2017. The scheme will also be open to those cases where RR action has been initiated and those pending before courts. However the cases once settled under previous OTS and theft cases booked under section 135 of Electricity Act 2003 will not be considered.

**2. Period of the scheme:**

The scheme shall be open from 01.11.2019 to 29.02.2020.

**3. Time schedule of the scheme**

01.11.2019 -	Intimating consumer about the scheme.
01.11.2019 -	Acceptance of application.
15.11.2019 -	Commencement of issue of demand notice
01.02.2020 -	Last date of accepting application form
29.02.2020 -	Last date to issue of demand notice and remittance of first installment by the consumer

**4. The Scheme:**

The Consumer will be eligible to get reduced rate in interest as mentioned below. The Interest can be remitted in six months time with equal installments. However, the Principal portion of the arrear shall be remitted in lump sum along with first installment of interest.

**5. Reduction in Interests :**

For arrears below 5 years old, a reduced flat interest rate equivalent to previous 6 months (prior 01.11.2019) average MCLR rate notified by SBI instead of 18% interest will be applicable for the entire arrear and for arrears more than 5 years old, a reduction to flat 6% will be applicable for the entire arrear. No further interest will be levied for payment of interest portion in installment upto six months.

**6. Full settlement option:**

Consumer may also remit the entire principal amount and total reduced interest in one lump sum. In such cases a rebate of 2% on interest amount (total reduced interest amount) would be granted.

**7. Installment for principal amount:**

In certain deserving cases, (Government departments, Public undertakings, Government institutions, local bodies, other deserving consumers with long pending arrears) installment will be provided after the approval of the concerned Deputy Chief Engineer/Full time Directors of KSEBL. Six equal monthly installments shall be provided on the principal amount by Deputy Chief Engineer of the concerned circle office and for installments above 6 and upto 18, the approval of the Full Time Directors is needed. Such equal monthly installments upto 12 will bear an interest rate of 12% per annum and for above 12 installments upto 18 will bear an interest rate of 14%.

**8. Dismantled connections :**

The MD charges /fixed charges demanded will be limited to six months after disconnection. No charges will be levied after the date of dismantling except for minimum guarantee/rental liability cases. Fresh application for new connection will have to be submitted for reconnection of services in dismantled cases.

**9. Industrial units/Plantations with different spells of closure (intermittent period of closure):**

The MD charges /fixed charges will be limited to six months from the date of disconnection in each spell of closure.

**10. Revenue Recovery action cases:**

The surcharge and the Demand notice charges with respect to the revenue department will have to be remitted by the consumer additionally when RR action is initiated by KSEBL.

**11. Arrears under litigation :**

The applications from LT consumers for settling arrears under litigation will be received by Senior Superintendant in the concerned section office. Arrears under litigation will be settled under OTS only after withdrawal of cases in courts. However, District Level Committees (DLC) formed for this purpose will examine the matter on a case to case basis and settle the cases. Cases where the party is not agreeing for withdrawal of cases before courts for settlement under OTS, it shall be consolidated by Deputy Chief Engineers (District Headquarters) and placed before DLC. The committee shall interact with the consumers and propose settlement formula. In genuine cases, the committee may review the principal amount with reasons clearly specified in the report. There will not be any financial limit to settle the cases. The decision of the Committee, if accepted by the party, will be implemented subsequent to the respective court allowing withdrawal of cases. Cases which cannot be settled by the District Level Committee shall be taken up with the Director (D&IT).

The District Committee shall comprise of the following members:

1. Deputy Chief Engineer, Electrical Circle in District Head quarters (Convener)
2. Deputy Chief Engineers of Electrical circle
3. Executive Engineers of Distribution Divisions
4. Assistant Executive Engineers of Electrical Subdivisions
5. Special Officer (Revenue) or his representative
6. Representative of Legal Advisor & Disciplinary Enquiry Officer

Applications for settlement of Arrears with litigation from HT consumers will be received at the office of SOR. The applications shall be processed by SOR and placed before the State Level (Expert) Committee. The State Level (Expert) Committee constituted as given below shall examine carefully the issues in such cases, shall interact with consumer and shall propose a settlement to Full Time Directors for decision. The State level Committee may also recommend review in the principal amount in genuine cases, the reasons shall be stated clearly in the Report.

The State Level Expert Committee shall comprise of the following members:

1. Deputy Chief Engineer (Com & Plg) with full powers of CE (Chairman)
2. Special Officer (R) (Convener)
3. Joint Secretary (Law)
4. Accounts Officer, Arrear Clearance Cell
5. T.A to Director (Dist & IT)

The guidelines to be followed by KSEBL as per the above OTS scheme for settling arrears which are entangled in court cases and similar issues is attached separately in Annexure 2.



**12. Receipt and processing of Application for settlement :**

Application from LT consumers will be accepted in respective Electrical Section Office and forwarded to Deputy Chief Engineers of electrical circle for settlement. Deputy Chief Engineers of all Electrical Circles will be authorized to settle arrears of LT consumers without limit. However request for more than 6 installments on principal amount shall be taken up with FTD through Director (D&IT). Applications from HT & EHT consumers will be accepted by SOR. Those cases will be put up before FTD with the recommendation of expert committee for settlement.

The applications received from Government, PSU's and Local Bodies after the expiry of OTS period may be collected at respective section offices and office of the SOR as may be applicable and are to be forwarded to the office of the Director (Distribution & IT), from where the same has to be placed before the Board with proper recommendations of the expert committee. On getting the approval of the Board for considering the application, the Deputy Chief Engineer (Commercial & Planning) with full powers of the Chief Engineer will submit the same before the KSERC for approval.

**13. Publicity :**

The Public Relations Officer, KSEBL and Deputy Chief Engineers of Electrical Circles shall give wide publicity about the scheme in local news papers, cable TV, FM radios etc; periodically till end of the scheme. The Senior Superintendent at Electrical Section Office and Special Officer (Revenue) at Corporate Level will be responsible for informing consumers with arrears about the scheme. Intimation shall be given to all such consumers clearly indicating the savings the consumer would get by opting the scheme. The Accounts Officer (Arrear Clearance Cell), O/o CIA shall intimate the details of the scheme directly to heads of all Government departments, PSUs, Government institutions and local bodies.

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**Guidelines for settling arrears which are entangled in court cases and similar issues by the District level committee, as per OTS 2019.**

The alarming accumulation of pending arrears has been a constant cause of concern for KSEB Ltd. A substantial share of such arrears is being held up in litigation before various Courts. This in turn precipitates huge revenue arrears in Board's accounts, which includes amounts that may be practically unrecoverable by any lawful means. The OTS schemes implemented previously has been quite effective as large no of arrears pending has been realized. In order to collect the maximum amount of arrears held up in litigation and other issues, the Board is introducing a new scheme (OTS -2019) for favour of implementing. The present scheme covers arrears for more than two years but specifically excludes two items from the scope of the scheme, which are

- i) Cases once settled under previous OTS schemes.
- ii) Theft cases booked under Section 135 of the Electricity Act 2003

The scheme includes all other pending arrears including amounts charged for unauthorised additional loads, disputed meter faulty cases etc.

As the judicial processes involved in resolving disputes are time consuming affairs and as the parties are at liberty to go for appeals, such disputes would be shuttling back and forth by way of appeals, remissions, de-novo disposals etc., and the Board would remain deprived of a fair share of its revenue by way of the predicament. Taking a serious view of the matter, the Board has decided to issue the following guidelines which is almost in line with the earlier guideline issued for OTS -2018 except for the changes made with the inclusion of new matters in the proposed one time settlement scheme 2019.

**1. LITIGATIONS PERTAINING TO ASSESSMENTS MADE IN METER FAULTY CASES**

**Probable situations and positions :** Back assessments for meter faulty cases are being effected in several cases, pursuant to RAO audit/AG audit. In a majority such cases assessments are issued for several months without any uniformity. In this context it is worth mentioning the fact that the licensee Board is bound to issue such assessments under Regulations 125 of the Kerala Electricity Supply Code, 2014 only. If the consumer was already issued with monthly/bi-monthly bills for average consumption, then the Board is not empowered to issue revised short assessments after taking into consideration the average consumption after the meter is replaced. This position has been clarified by the Kerala State Electricity Regulatory Commission vide clarification letter dated 30.05.2017 wherein it is clearly stated that "*there is no provision for re-assessment of current charges for the meter faulty period by taking an average of subsequent meter reading, after realizing the electricity charges on the basis of average consumption of the past three billing cycles*". Moreover, as per Section 55(1) of the Electricity



Act, 2003 “ No licensee shall supply electricity, after the expiry of two years from the appointed date, except through installation of a correct meter in accordance with the regulations to be made in this behalf by the Authority”.

**General guide line for settlement** : Back assessments for periods of meter fault, where regular bills were issued on average consumption is unlawful and is liable to be withdrawn. Hence litigations in such issues can be closed by withdrawing such demands.

## **2. DISPUTES PERTAINING TO MINIMUM GUARANTEE**

**Probable situations and positions**: The concept of Minimum Guarantee is no longer in existence and there are certain isolated instances of disputes pertaining to the same subject matter which had its genesis based on the previous regulations. Many of such demands are presently tied up in litigations. Most of such installations might have already become self remunerative with a few exceptions.

**General guide line for settlement**: In cases where the installations have become self remunerative, demands already issued can be revoked. The benefit of reduced interest can invariably be extended to the consumers in such cases.

### **1. DISPUTES REGARDING UNCONNECTED MINIMUM (UCM)**

**Probable situations and positions**: Unconnected Minimum is the offshoot of the erstwhile regulation and there are a few disputes/ litigations still pending on it. By placing reliance upon whether the infrastructure has become self remunerative bills already issued can be withdrawn, recording genuine and convincing reasons. Whereas, if the infrastructure is being erected for the sole purpose of the party in dispute and if the same is still remaining unutilised, the party is legally bound to remit the said amount.

**General guide line for settlement**: In cases where the installations have become self remunerative, demands already issued can be revoked. Reduction in interest shall be considered at the interest rates proposed in the new OTS scheme.

## **4. INSTANCES OF PART PAYMENTS**

**Probable situations and positions**: It has come to the notice of the Board that certain consumers have defaulted payments after remitting a portion of the disputed figure or after remitting a few instalments. In some cases, they have already availed amnesty like OTS and have become defaulters again. Several such cases may be lying entangled in litigations.

**General guide line for settlement** : Such issues can be reopened in appropriate cases and can rework the out standings based on the present guidelines/schemes. Whereas, if the arrear is already settled completely and remitted in full under any of the previous schemes, the same shall not be re-opened.

## **5. DISPUTES PERTAINING TO MOBILE TOWERS**

**Probable situations and positions:** For a while the High Court of Kerala was flooded with writ petitions regarding the penalisation connected with mobile towers. Having regard to the directive of the Hon'ble High Court in its various judgments, the Board has issued an exhaustive Board Order dated 16.04.2016 and a good majority of those disputes have already been settled based on the guidelines stipulated in the said BO.

**General guide line for settling** The same dictum can invariably be employed to settle the remaining such disputes, if any.

## **6. DISPUTES CONNECTED WITH WRONG APPLICATION OF MULTIPLICATION FACTOR**

**Probable situations and positions:** Instances of detection of wrong application of multiplication factor at a later date and its consequential back assessment has led to several legal wrangles. In such cases the licensee is well within the legal frame work to back assess the consumer notwithstanding the time span.

**General guide line for settling:** Considerable reduction in interest as per the scheme and suitable instalments can be considered in genuine cases.

## **7. MATTERS CONNECTED WITH REVENUE RECOVERY ACTIONS**

**Probable situations and positions:** Revenue recovery is the extreme legal measure resorted to by the Board to realise its pending arrears. It is a time consuming process. In certain instances, it might have ended up in litigations and a consequent stalemate. In some other cases, the correct address of the defaulter may be untraceable even after earnest efforts and the arrear would be unrecoverable by lawful means.

**General guide line for settlement:** The settlement authority can explore the possibility of a potential settlement by negotiating with the debtor by offering considerable reduction in interest rate as per the scheme. In instances where correct address remain untraceable the same may immediately be brought before the notice of the Board to get the outstanding figure written off after due diligence, for ensuring sanitisation of the debt burden.

## **8. REDUCTION IN MD FOR DEMAND BASED BILLING CONSUMERS DURING PERIODS OF CLOSURE**

**Probable situations and positions** In the case of HT/EHT/LT industrial consumers under demand based tariff, there are instances where the production process ceases for a considerable period, with nominal consumption. Even under such conditions, the billing demand is 75% of contract demand, with actual utilisation. Several such demands may have ended up in litigations and may be remaining unrealised.



**General guide line for settlement** In such cases, outstanding demands may be settled considering the recorded MD as an indicator for a seriously negotiated settlement as part of the OTS scheme.

## **9. UNAUTHORISED USE OF ELECTRICITY**

**Probable situations and positions** : A substantial number of pending litigations comes under this category. The guidelines enunciated herein pertain to arrears of electricity charges for unauthorised uses of electricity that are pending adjudication before various courts. Implementation of any decision in the matter shall be done only after obtaining order of disposal from the respective Courts.

**General guide line for settlement** The settlement authority shall exercise logical discretion in appropriate cases to persuade the consumer to settle the matter. It shall be ensured that the process of settlement is equitable, fair as well as transparent. Implementation of any decision in the matter shall be done only after obtaining order of disposal from the respective Courts.

### **a) LITIGATIONS PERTAINING TO DETECTION OF UNAUTHORISED ADDITIONAL LOAD**

**Probable situations and positions:** Assessments for unauthorised additional loads emanate from detection of loads connected over and above the contracted connected load. Assessments are usually made for the actual period of unauthorised use if it is known or else for a period of one year. Objections against assessments are usually regarding the quantum of load connected as well as the period of assessment.

**General guide line for settlement:** If there are genuine and convincing reasons, contentions regarding revision of both the elements, i.e., the quantum of load as well as the period taken for arriving at the assessment can be considered for arriving at a mutually agreed settlement.

### **b) LITIGATIONS PERTAINING TO DETECTION OF MISUSE OF ELECTRICAL ENERGY (USE OF ELECTRICITY FOR A PURPOSE OTHER THAN THAT AUTHORISED)**

#### **Probable situations and positions:**

This is another area wherein a considerable number of disputes have its origin. In this case also, the objections would normally be on the quantum of energy used for the unauthorised purpose as well as the period of assessment.

**General guide line for settlement:** If there are genuine and convincing reasons, contentions regarding revision of both the elements, i.e., the quantum of energy used for the unauthorised purpose, as well as the period taken for arriving at the assessment can be considered for arriving at a mutually agreed settlement. The cases where prosecution proceedings in terms of Section 135 of the Electricity Act 2003 have been initiated would not qualify for consideration under the OTS scheme.

c) LITIGATIONS PERTAINING TO ASSESSMENTS FOR TEMPORARY EXTENSION UNDER LT VIII AND LT IIIB

**Probable situations and positions:** It is a settled legal proposition that penalisation for temporary extension on a daily basis (previously under the tariff category LT VIII and presently under the tariff category LT III B) is legally unsustainable. Time and again various judicial fora have turned down such assessments as having no statutory backing.

**General guide line for settlement:** In such cases revoke those assessments and issue fresh assessments in the respective tariff for which energy was used. Interest may be computed from the date on which such fresh assessments are issued, based on OTS rates of interest.

**GENERAL ISSUES**

Certain general issues that are relevant to the OTS scheme, but are not necessarily under litigation.

a) **Power supply to temporary buildings and make shift establishments, during periods of disasters**

**Probable situations and positions** : The Board provides power supply to temporary buildings and make shift establishments, during periods of disasters. Emergency connections provided during the Tsunami disaster are examples. But the current charges and its consequential interest have accumulated as huge arrears in several cases. Similarly, the Board has undertaken some capital works and effected electric connection to certain disaster prone areas, for which no amount has been remitted into the Board's exchequer.

**General guide line for settlement** The settlement regime shall be instructed to take up the matter with the State Tsunami Cell/Disaster Management Authority/ concerned revenue authorities to get the arrears realised at the earliest. In such cases, interest can be reduced based on the present scheme.

b) **Pending arrears, Part remittances:**

**Probable situations and positions:** In the cases of pending arrears, if some piecemeal interim remittances are made.

**General guide line for settlement** : Such figures can be reworked afresh by reassessing the principal amount on the date of remittance and suitable reductions can be effected in the principal and interest components. That means, interim remittance made previously may be adjusted as on the date of remittance against the interest calculated at OTS rates and the balance amount if any, to the principal.



### **c) Leakage of electrical energy owing to wiring faults**

**Probable situations and positions** It is the bounden duty of the consumer to keep the electrical appliances and wiring in good condition. But there are many reported instances wherein exorbitant readings are shown due to leakage of electrical energy owing to wiring faults which is solely attributable to the consumer. The recent trend shows that many such disputes are being adjudicated in favour of the consumers by judicial/quasi judicial forum alleging various technical/ legal reasons, thereby depriving the Board a fair share of revenue due to it. Having regard to the fate of such disputes,

**General guide line for settlement** : Those pending cases pertaining to the subject matter can be taken up for settlement through a fair process of negotiation and the settlement authority should exercise its reasonable discretion to rework the assessment up to a maximum of 50% reduction of the original assessment on a case to case basis, if such arrears qualify for being included in the OTS scheme. This shall not be taken as a norm and shall be done only in absolutely deserving cases of very low paying capacity.

### **d) Arrears of community drinking water schemes**

**Probable situations and positions** : Arrears of community drinking water schemes is another area of concern that require specific attention, as part of the OTS scheme. Such schemes are usually registered as a society with the beneficiaries as its members. The electric connection would be availed by the society. Once the society becomes defunct the Board cannot move further to realise the arrears as the society remains only in papers. Initiating revenue recovery action may also be practically impossible as the said society may no longer be in existence and legally it is impermissible to proceed against the individual members.

**General guide line for settlement**: In such cases a serious drive may be undertaken at the Subdivision level to meet the office bearers of the society alerting them of coercive-penal action from the part of the Board. Taking up the issue with the local self government concerned may also be resorted to. Reduced rates of interest can invariably be extended, if the arrear qualifies to be included in the OTS scheme.

**Note:** The above guidelines can invariably be extended to arrears pending for periods less than one year also, where cases are existing. But the benefit of OTS rates of interest are not applicable in such cases.