



**FURTHER ORDER OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN**

Case No. T.P. - 1 of 2000 - 01

AND

Case No. T.P. - 1 of 2001 - 02

**IN RE THE TARIFF PETITION OF
THE CALCUTTA ELECTRIC SUPPLY CORPORATION LTD.
FOR THE YEARS 2000-01, 2001-02
AFTER THE ORDER OF THE COMMISSION
DATED 11/11/2002**

Present :

Shri S. N. Ghosh, IAS (Retd.), Chairperson
Shri A. K. Jain, Member (Finance & Accounts)
Shri N. C. Roy, Member (Technical)

Parties to appeal who participated at the hearing:

Dr. Kalyan Bagchi, Principal Secretary, Power Department, Govt. of W.B.
Ms. Piyali Chatterjee, Advocate, Federation of Consumers Association.
Shri Ranjit Lodh, Bharat Chamber of Commerce.
Shri Suresh Agarwal, West Bengal Rolling Mills Association.
Shri A. Sen of Indian Aluminium Co. Ltd.
Shri Subhankar Nag, Advocate, Calcutta Chamber of Commerce.
Shri S.C. Banerjee of All Bengal Electricity Consumers Association (ABECA).
Shri R.P. Samaddar, Special Secretary, Power Department, Gov. of W.B.
Dr. S. Chakraborty, Advocate, CESC Ltd.

Parties to appeal who had filed written submissions.

Government of West Bengal.
C.E.S.C. Ltd.
Bharat Chamber of Commerce.
West Bengal Rolling Mills Association.
Indian Aluminium Co. Ltd.
Calcutta Chamber of Commerce.
All Bengal Electricity Consumers Association (ABECA).
Federation of Consumers Association.

Dated : 24th May, 2004

CHAPTER – 1

1.1 The present order may be treated as a sequel to the order of the Commission dated 11th November, 2002 and is to be read along with it.

1.2 The Commission has earlier recorded a order dated 16th December, 2002 in sequel to the order of the Commission dated 11th November,2002.

1.3 The order of the Commission dated 16th December,2002 was challenged before the Hon'ble High Court at Calcutta by the Government of West Bengal. The Hon'ble High Court of Calcutta has set aside the order of the Commission dated 16th December,2002 in case no.T.P-1 of 2000-01 and T.P-1 of 2001-02 under FMAT no.212 of 2003. The Hon'ble High Court of Calcutta has remanded back the matter to the Commission for determination of differential tariff u/s 29(3) of the Act and the question of grant of subsidy by the State u/s 29(5) afresh and to pass a reasoned order in this regard. The matter relating to refund / recovery based on the tariff order is also to be addressed by the Commission as per the order of the Hon'ble High Court at Calcutta. The Hon'ble High Court at Calcutta also directed that the matter may be decided by the Commission after hearing the parties and also issued certain directions to the to the Commission and to the parties to submit written submissions to the Commission. The Commission filed a clarification application on the judgement dated 1.8.2003 of the Hon'ble Calcutta High Court which was dismissed by the Hon'ble Division Bench by its order dated 28th November,2003 where it was inter-alia held that " we are of the view that the aforesaid judgement and order dated 1.8.2003 is absolutely clear and there is no ambiguity therein which needs clarification. Inter-alia, it was pointed out, in the matter of determination of tariff the Commission has also to apply the principles under Section 29(3) of the said Act and the Supreme Court never permitted determination of tariff applying Section 29(2) (e) which was the view of the Commission."

1.4 The Commission asked vide its letter dated 23rd September,2003 from CESC's clarification, data, documents, information and details which it considered essential in regard to determination of differential tariff as per the direction of the Hon'ble High Court at Calcutta.

All the relevant data, information and figures was required to be based on the tariff and cost as per the tariff order dated 11th November,2002 of the Commission in case of CESC for the relevant years of 2000-01 and 2001-02.

1.5 CESC gave information vide its letter dated 31st October,2003 along with various presumptions and assumptions. Information on certain parameters were not given as according to CESC the same was not amenable to direct measurement within the present infrastructure and they felt that the benefit accruing therefrom would outweigh the cost involved. CESC also further stated that in certain cases the exact impact is difficult to ascertain with precision because of the reasons given by them in the above letter. CESC also suggested that in the event the Commission desired such study might be undertaken in future and CESC would endeavour to ascertain such impact in accordance with the definition and the guidelines to be prescribed by the Commission. But CESC felt that such exercise would be an involved one and hence, both time and resource consuming. CESC further stated that the purpose of supply was a relevant factor u/s 49(3) of the Electricity (Supply) Act, 1948 and interpretation of this had come up for judicial consideration and they quoted case laws in this regard. They, however, provided data / figures to the extent, which according to them, were available.

1.6 The Commission issued a notice for hearing on 18th November,2003 to the parties to the case whereby they were asked to take copies of the reply of CESC, if required, and thereafter to file written submissions with copy to other parties to the case by 3rd December,2003. Subsequently the hearings were held on 8th December, 2003 and 7th January, 2004.

CHAPTER - 2

Hearing held on 8th December, 2003 and 7th January, 2004.

2.1 The representative of Government of West Bengal who had not submitted the written submissions, requested the Commission for extension of time for ten working days for filing the written submissions. The Commission extended time for filing written submissions upto 17TH December, 2003 by the Government of W.B and directed that copies of written submissions might be given to other parties in appeal. CESC, who had not filed written submissions was also directed to file written submissions. The Commission allowed all defaulting parties to file written submissions within 17th December,2003 with copies to other parties in the appeal and also

allowed the parties in the appeal who had already filed written submissions, to file fresh written submissions, if they so desired, within 17th December,2003 with copies to other parties in the appeal. The Commission also directed that the parties in appeal might file rejoinders on written submissions, if any, to the Commission by 26th December,2003 with copies to all other parties. The Commission also directed that the matter would again be heard in the hearing to be held on 7th January, 2004.

2.2 Member (F&A), WBERC sought some clarifications from CESC on the data furnished by them vide their letter dated 31st October,2003. Dr. S. Chakraborty, Advocate, CESC spoke on the issue and his submissions thereafter were supplemented by Shri U. Bhattacharjee of CESC. Member (F&A) also sought clarifications on whether it had been brought to the notice of the Hon'ble Calcutta High Court that relevant reliable data to differentiate tariff u/s 29(3) of the 1998 Act were not available and it would require substantial cost and time as now being stated before the Commission. There was no satisfactory reply on this point. Similarly, clarification was sought by Member (F&A) on para 59 of the objections filed by West Bengal Rolling Mills Association by their letter dated 3rd December,2003 which was clarified by their representative, Shri Suresh Agarwal.

2.3 CESC in their verbal submission took a stand that they were not directly affected by the proposed differentiation of tariff and informed that they were only interested to recover their approved revenue requirements for the financial years 2000-01 and 2001-02. CESC also requested for functioning of two part tariff structure including TOD tariff and except that they have got no views or suggestions on sections 29(3) & 29(5) of the Act.

2.4 Ms. Piyali Chatterjee, Advocate, Federation of Consumers Association, requested the Commission to conform strictly to Hon'ble Supreme Court's direction to determine the tariff for the use of electricity on the average cost of supply. It was also stated that question of granting subsidy to CESC by the Govt. of W.B would occur only when expenses were properly incurred in excess of revenue earned.

2.5 Shri Ranjit Lodh of Bharat Chamber of Commerce requested the Commission to ask CESC to disclose class-wise cost of supply and thereafter its average cost of supply. He further emphasized the need to differentiate tariff particularly on the nature of supply and purpose without showing any undue preference to any consumer and brought to the notice of the Commission its view that the element of cross subsidy would appear in fixation of differential tariff though the Apex Court has directed that the cross subsidy should not be borne by other consumers and felt that such cross subsidy should be paid by the State Government u/s 29(5). The objector further felt that CESC was evading supply of the required data as could be seen from the letter dated 31st October,2003 and suggested that the hearing be stayed till CESC gave the requisite data. Further, he gave his views on different factors to be considered u/s 29(3) and refund / recovery from the consumers.

2.6 Shri Suresh Agarwal of West Bengal Rolling Mills Association pointed out that the Government of West Bengal and CESC Ltd. did not file any written submissions and therefore, they should not be allowed to make any submissions in the hearing. He further argued that CESC had supported the written petition filed by the State Government and therefore, they should provide correct and relevant information required for fixation of tariff u/s 29(3) of the 1998 Act. He further argued that in terms of Apex Court order dated 3rd October,2002, the consumer was to pay on the basis of average cost of supply and should not pay for any subsidy for any consumer. He further felt that the Commission might assess the production cost of electricity which would be same for all and only the distribution cost would be different for different classes of consumers and the tariff should be fixed keeping in view the T&D loss for HT consumers and other distribution cost to HT consumers which was less than LT consumers. He further argued that no undue preference should be shown to any consumer. He also felt that since CESC did not supply the required information, the Commission should not fix differential tariff u/s 29(3) of the 1998 Act and also placed the latest decision of the Apex Court in case of BSES Vs Tata Power relating to powers of the Commission. Shri Agarwal also argued and his objections on certain data given by CESC and non-submission of any justification for two part tariff in view of the judgement of the Hon'ble Apex Court. He also gave his views on the refund / recovery and suggested action against the Government u/s 142 and 146 of 2003 Act in case full proposal was not received.

2.7 Shri A. Sen of Indian Aluminium Co. Ltd. felt that the cross subsidy was not an issue which had been dealt by the Hon'ble Court at Calcutta and the issue already been settled by the Apex Court. He further argued that though CESC had supplied the cost impact of supply for different voltages etc. in their tariff petition of 2000-01, the same information had not been provided now as required by the Commission and therefore, the information provided in the tariff petition be taken into consideration. He also gave his suggestion on category of consumers, two part tariff, energy and demand charge cost of HT and LT consumers and on the question of refund / recovery.

2.8 Shri Subhankar Nag, Advocate of Calcutta Chamber of Commerce stated that the Apex Court had not allowed cross subsidy and therefore, the Commission should fix tariff on the basis of average cost of supply. He argued that the average cost of supply be taken as a base and then different tariff be fixed so that the burden of one class of consumers was not borne by another. He felt that the CESC had not given the requisite and required data and requested for staying of the proceeding till the requisite data was made available by CESC. He further argued that no cross subsidy could be allowed in the name of differential tariff and gave his opinion on the factors relating to nature and purpose of supply.

2.9 Shri S.C. Banerjee of ABECA justified the differential tariff u/s 29(3) of the Act and observed that CESC had not submitted important documents like audited accounts. Besides CESC also had not supplied the information called by the Commission. He further objected to information being supplied on the basis of sample survey and commented that such information provided by CESC was not correct. He further gave his opinion on power factor rebate to LT consumers and suggested that electricity supply to the domestic consumers should be taken as a factor of purpose u/s 29(3) of the Act. He also felt that the nature of supply meant supply of energy mostly AC. He further quoted certain observations of the Hon'ble Calcutta High Court regarding that the HT consumers should not be equated with the LT consumers, HT consumers could shift the burden of enhanced tariff which LT consumers could not. He felt that TOD system should be introduced for all category of consumers on free of charge as TOD system gives benefit to the HT consumers only. He opined that the State Government u/s 29(5) should give Rs.300 crores to CESC as subsidy. Shri S. Dey of ABECA informed that the slab system should not be removed and it should be remain in force.

2.10 Dr. K.K. Bagchi, Principal Secretary, Power Department, Government of W.B felt that the consumer-wise tariff should now be determined under the Electricity Act,2003 since ERC Act,1998 has been replaced and quoted section 6 of General Clauses Act and gave other reasons in support of it. He further outlined the provisions of ERC Act 1998 and Electricity Act 2003 for differentiation of tariff and conceded that differentiation tariff might involve cross subsidy which however was permitted under Electricity Act 2003. Member (F&A) wondered whether it was possible / open to the Commission to fix tariff under 2003 Act in view of remand of the case with specific direction of the Hon'ble High Court at Calcutta. Dr. Bagchi also commented on the figures given by CESC and principles of allocation of cost etc. and felt that neither data / figures as were in the original petition as well as now given were reliable and therefore there was no alternative but to take subjective judgement. He further gave his views on the various factors for differential tariff and felt that old practice be retained. He argued for retention of earlier tariff structure by increasing some percentage point for LT consumers with corresponding reduction for HT consumers. He also suggested TOD metering for all consumers beyond consumption of 3500 units per month.

2.11 The next hearing was taken on 7th January,2004.

2.12 Shri S. Banerjee of ABECA requested for staying of the hearing as he had filed a petition for stay before the Commission. It was clarified to ABECA that the instant hearing was being held as per the specific direction to the Commission by the Hon'ble High Court at Calcutta and the hearing was to proceed accordingly. Therefore, petition for stay would be disposed separately in a separate proceeding.

2.13 Shri R.P. Samaddar, Special Secretary, Power Department, Government of W.B participated in the hearing and stated that the Government of W.B would not like to give any reply to rejoinders received by them and would stand by their views which had already been submitted in writing. He further confirmed, on a query of Member (F&A), that the Government of W.B had nothing further to add to the rejoinders submitted by the parties to the appeal to the written submission of Government of W.B.

2.14 Dr. S. Chakraborty, Advocate, CESC also took a stand that they had nothing to add except the submission and rejoinders submitted by CESC on the written submission of Government of W.B and ABECA. He also prayed that the matter not covered by the orders of the Hon'ble High Court at Calcutta might not be considered. Dr. Chakraborty gave views, on a query by the Chairperson - WBERC, relating to fixation of differential tariff in the absence of any data from CESC. Dr. Chakraborty could not clarify the query of Member (F&A) relating to not bringing to the notice of Hon'ble High Court at Calcutta for non-availability of effective and specific data on the factors mentioned u/s 29(3) of the 1998 Act.

However, he tried to justify the factors u/s 29(3) which he felt were similar to section 49 of the Electricity (Supply) Act 1948 and he informed that the order of the Hon'ble Courts relating to section 49 should be taken into consideration for differentiation of tariff and contended to support it by giving supporting information and data / documents etc. with reference to judgement of Hon'ble Supreme Court of India for each and every factor of Section 29(3) even though Member (F&A) pointed out that the factors mentioned u/s 49 of the 1948 Act and section 29(3) of the 1998 Act were not similar or the same.

2.15 Shri Ranjit Lodh of Bharat Chamber of Commerce commented on the written submission of the Government of West Bengal and felt that they were not relevant on the applicability of Act 2003 as it came into force with effect from 10th June,2003. He also quoted certain provisions of both the Acts to prove his point that Electricity Act, 2003 was not applicable. He further felt that the differentiation was required to be made between consumer to consumer and not class to class under the 1998 Act and it should be without any undue preference. He further brought to the notice the effect of HT consumers have on proper load management and suggested penalty for the consumers who were not able to help in load management. Similarly, he gave his views on various other factors which were by and large similar to the written submission made by the party. He also objected to reference by the State Government to fixing different cross subsidy by the other Commissions in a progressive manner keeping in view the direction of the Hon'ble Supreme Court of India and requested that the submissions made by the Government of West Bengal in paragraphs 9 to 22 might not be admitted. He also gave his views on the refund/recovery and on fixation of differential tariff u/s 29(3) after taking in view the judgement and order given by the Hon'ble Supreme Court of India on cross subsidy.

2.16 Shri S. Agarwal, representative of the West Bengal Rolling Mills Association, raised points relating to the verbal as well as written submissions made by the State Government and sought to bring out the difference between the submission of the State Government and the direction of Hon'ble Supreme Court of India as well as the provisions of the Act. He also objected to the suggestions of State Government to fix tariff under the provisions of 2003 Act and the reference of State Government to other Commission's orders in view of the direction to the Commission by the Hon'ble Apex Court dated 3rd October,2002. He requested that the entire submissions of the State Government be dismissed. He further disputed the data and submission of CESC and contended that no order u/s 29(3) could be given without reliable data and also referred to his earlier submissions relating to his view on how the tariff could be differentiated under 29(3). He also gave his views on refund and recovery.

2.17 Shri A. Sen of Indian Aluminium Co. Ltd. felt that the tariff itself should be determined afresh before determining the differential tariff and subsidy by the State Government. He also felt that there was enough data and information to determine the tariff and differential tariff in the CESC petition. On a query by Member (F&A), whether the data of all the factors of section 29(3) of the Act could be extracted from that data, he clarified that there was no data on nature of supply in the petition but sufficient data in ASCI report was available and there was reasonable clarification. He also felt that the State Government had now brought many new issues which were not raised anywhere and stated that the State Government was not a party to the original tariff fixation, appeal before the Hon'ble High Court at Calcutta or to the proceedings before the Hon'ble Supreme Court of India and only came first time after the Commission passed its order dated 16th December,2002. He also gave itemwise comments on State Government's submission and felt that the Commission might differentiate tariff according to section 29(3) of the 1998 Act keeping in view the observations of the Hon'ble Supreme Court of India order dated 3rd October,2002 without any cross subsidy. He further informed that their unit was making loss and they could not pass the burden to their consumers. He stated that they had no objection to reduce cross subsidy based on cost of supply in gradual manner to eliminate within a period of 3 to 5 years.

2.18 Shri Jyoti Ganguly, Advocate of Calcutta Chamber of Commerce supported the views of the Bharat Chamber of Commerce, Indian Aluminium Co. Ltd. and West Bengal Rolling Mills Association. He further contended that cross subsidy was not the issue before the Hon'ble High Court at Calcutta and the Apex Court had laid down the law and differentiation could be made without cross subsidy. He further objected to the proposal of fixing differential tariff without fixing of net revenue requirement as the matter had been remanded back to the Commission for its determination afresh. He suggested for re-determination of net revenue requirement of CESC afresh before any recovery was to be effected or differential tariff has fixed.

2.19 Shri S.C. Banerjee of ABECA felt that the CESC had tried to mislead the Commission while giving their reply in para 3 of their letter dated 31st October,2003 and commented on non-supply of information by CESC. He also commented on certain data of the CESC, the rejoinders given by Bharat Chamber of Commerce relating to lesser tariff to HT consumers and felt that the percentage of HT consumers was higher than that of LT consumers. He also gave his views on differentiation of tariff relating to purpose of use and felt that differentiation was not cross subsidy and purpose of supply should be given more importance. He also gave his views on the tariff to HT and other consumers, subsidy from the State Government and refund, if any. Shri Banerjee, on a query by Member (F&A) , admitted that the percentage of increase suggested was on ad-hoc basis.

Shri S. Dey of ABECA wanted to put on record that the State Government was avoiding the hearing and the Commission should take note of their absence while submissions were being made by the other parties in the appeal. He also argued that the State Government was trying to mislead the Commission and therefore, the written submissions should not be taken into cognizance.

CHAPTER - 3

3.1 The Commission has gone carefully through the direction of the Hon'ble Supreme Court of India by its order dated 3rd October, 2002, directions of the Hon'ble High Court at Calcutta vide its order dated 1st August, 2003, orders dated 28th November, 2003 on the clarificatory petition, the information given by CESC vide its letter dated 31st October,2003, written submissions made by various parties in the appeal, rejoinders, if any and the submissions made during the hearing dated 8th December,2003 and 7th January, 2004.

3.2 The Commission earlier issued a tariff order dated 16th December,2002 keeping in view the direction issued by the Hon'ble Supreme Court of India while remanding the matter back to the Commission by its judgement and order dated 3rd October,2002 and explained the position in detail in the order of the Commission dated 11th November, 2002 and 16th December, 2002 ((which was a sequel to the order dated 11th November,2002). Government of West Bengal thereafter filed an appeal against the order of the Commission dated 16th December,2002 which was set aside by the Hon'ble High Court at Calcutta in FMAT No.212 of 2003 vide its judgement dated 1st August, 2003. From the said judgement and order dated 1st August, 2003 of the Hon'ble Division Bench of Calcutta High Court certain relevant portions are quoted below :

[A] ".....After careful consideration of the aforesaid judgement of the Supreme Court it, however, appears to us that on a total mis- construction of the judgement of the Hon'ble Supreme Court in the aforesaid C.E.S.C. case now reported in 2002(8) SCC 715, the Commission has held that the Commission is prohibited from making such differentiation in terms of Section 29(3) of the Act in view of the aforesaid observation of the Supreme Court in the said case that there cannot be any subsidy and the customers have to be charged on the basis of their actual energy consumed and tariff should be determined on average cost of supply....."
(Page 9 & 10 of the Judgement).

[B] ".....After going through the entire judgement of the Supreme Court it appears to us although the Hon'ble Supreme Court while discussing the question of cross-subsidy has made certain observations, it never prohibited the Commission to differentiate amongst the consumers by determining the tariff under the Act in terms of Section 29(3) of the Act, nor did it strike down the provision of Section 29(3) of the said Act. On the contrary as it will appear from paragraph 52 of the judgement, in fact, it has approved the provision of Section 29(3) of the Act....." (emphasis

supplied).
(Page 10 of the Judgement).

[C] ".....In the said judgement it appears, the Supreme Court although agreed with the observations of the Commission made in its earlier order dated 6th November, 2001 which was the subject-matter of challenge before the earlier Division Bench and before the Hon'ble Supreme Court, that the cross-subsidy should be removed in phased manner, while interpreting the various provisions of Section 29 of the Act the Supreme Court clearly observed that while the Commission cannot show undue preference to any consumer of electricity while determining the tariff under the Act, may differentiate according to the consumers' load factor, power factor, total consumption of energy during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required under Section 29(3) of the Act....."

(Page 10 & 11 of the Judgement).

[D] ".....But by such observation it was never held by the Supreme Court that under Section 29(3) of the Act the Commission will not be entitled, in the matter of determination of tariff, to differentiate according to the consumers' load factor, power factor, total consumption of energy during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required, which is permissible under Section 29(3) of the Act.

The provision of differential tariff under Section 29(3) of the Act was never struck down by the Supreme Court....."

(Page 11 & 12 of the Judgement)

[E] ".....We therefore hold that the Hon'ble Supreme Court in the aforesaid judgement never prohibited the Commission from making customer-wise differentiation in terms of Section 29(3) of the said Act....."

(Page 12 & 13 of the Judgement)

[F] ".....The concept obviously flows from the fact that all consumers are not equal which can be illustrated by stating that a domestic consumer and an industrial consumer are not at par. Their load factors, power factors, total consumption of energy including time at which supply is required, geographical position, purpose and nature of supply are different....."

(Page 17 of the Judgement)

[G] ".....An industrial consumer who is consuming electricity @ 10,000 units per month and a domestic consumer who is consuming 100 units per month cannot be placed at par and charged at the same rate; in terms of Section 29(3) of the said 1998 Act the Commission can therefore differentiate in the rate of electricity tariff so far as these classes of consumers are concerned. Otherwise the purpose of Section 29(2)(e) which mandates protection of interest of the consumers will stand defeated and it would be impossible to control the demand of the larger industrial consumers, which might ultimately cause serious imbalance in the overall system....."

(Page 17 & 18 of the Judgement)

[H] ".....Section 29(3) of the Act requires different treatment of the unequals upon objective consideration and not on so-called equal treatment of all in disregard of their patent inequality....."

(Page 22 of the Judgement)

[I] ".....In our view the Commission has also made an error by doing away with system of TOD tariff demand charge etc., on the misinterpretation of the judgement of the Supreme Court in the CESC case and being of the view that TOD, demand charge etc. also being mingled with the question of subsidy the same cannot be permitted....."

(Page 22 of the Judgement)

[J] ".....For the reasons discussed above in detail the submissions of the learned Counsel appearing for the Bharat Chamber of Commerce that in view of the Supreme Court decision in the C.E.S.C. case on the question of cross-subsidy such differential tariff cannot be made under Section 29(3) of the Act, is wholly mis-conceived, as the Supreme Court in the said decision never prohibited such differential tariff under Section 29(3) of the Act but in fact permitted the same....."

(Page 31 of the Judgement)

[K] ".....The question before the Court in the present appeal is not whether cross-subsidy, which expression has not been defined in the present Act of 1998 or any other Act, should continue or not, but whether in the matter of determination of tariff, customer-wise differentiation can be made or not even though the legislature in its wisdom has specifically permitted the same by incorporating Section 29(3) of the Act....."
(Page 32 of the Judgement)

[L] ".....we do not find any reason why the expression 'purpose for which the supply is required' used in Section 29(3) of the Act has to be read down....."
(Page 37 of the Judgement)

[M] ".....The State after all being obligated under the Constitution to do justice to the people, economic, political and social, cannot also in its present day frenzy of free market economy and globalisation, totally disregard the interest of the largest number of consumers of electricity in the State, most of whom are low-tension consumers....."
(Page 39 of the Judgement)

[N] ".....Under Section 29 of the Act of 1998 therefore determination of tariff does not necessarily have to be made merely on the average cost of supply as it was done by the Commission; the law itself permits customer-wise differentiation in the matter of determination of tariff on the factors indicated in the said Section which is also a part and parcel of determination of tariff.

Section 29(3) of the Act requires different treatment of the unequals upon objective consideration and not on so-called equal treatment of all in disregard of their present inequality....."

(Page 22 of the Judgement)

[O] "....."A conjoint reading of Sections 29(3) and 29(5) of the Act clearly indicates that differentiation on the basis of the factors mentioned in Section 29(3) is permissible and differentiation amongst bulk consumers, small consumers, life-line consumers, industrial consumers, domestic mconsumers etc. can be made and only if the same is made, the question of decision of the State Government to subsidise any utility to make good any loss for making such differentiation in respect of any consumers or class of consumers can arise....."

(Page 28 of the Judgement)

3.3 The Commission has noted that the order and the direction of the Hon'ble High Court at Calcutta to the Commission has been passed after considering the order and judgement of Hon'ble Supreme Court of India and accordingly the Hon'ble High Court at Calcutta has struck down the order of the Commission dated 16th December,2002 which according to the Commission was the interpretation of the order of the Hon'ble Supreme Court of India. It is, therefore, not open to the Commission, as a subordinate quasi judicial authority to may further interpret the Hon'ble Supreme Court of India's judgement which has been interpreted by the Hon'ble High Court at Calcutta. The Commission is, therefore, duty bound to go as per interpretation and order of the Hon'ble High Court at Calcutta who has interpreted the order and judgement of the Hon'ble Supreme Court of India vide its order dated 1st August,2003. The Commission is, therefore, accordingly recording this order keeping in view the above interpretation of the law and judgement by the Hon'ble Court dated 1st August, 2003 and dated 28th November, 2003.

CHAPTER – 4

4.1 In the earlier chapter (chapter 3), certain observations/direction upon the Commission have already been stated.

4.2 Under those direction of the Hon'ble High Court at Calcutta, the Commission is to differentiate the tariff for the relevant years in accordance with the section 29(3) of the ERC Act 1998 and the directions issued in the judgement of Hon'ble High Court at Calcutta who have in that judgement also interpreted the direction of the Hon'ble Supreme Court of India.

4.3 Under section 29(3) of the 1998 Act, the differentiation has to be done in accordance with the following factors.

- a) Consumers' load factor;
- b) power factor;
- c) total consumption of energy during any specified period or the time at which the supply is required or geographical position of the area;
- d) nature of supply;
- e) purpose for which the supply is required.

Keeping in view of the above factors, the Commission has differentiated the tariff for 2000-01 and 2001-02 based on the revenue requirement determination vide its order dated 11th November, 2002. Accordingly, the tariff schedules for 2000-01 and 2001-02 along with associated conditions are given below.

4.4 Factors mentioned Section 29(3) in 1978 Act have received our careful consideration. In differentiating according to the consumer's load factor, power factor, total consumption of energy, nature of supply and the purpose for which the supply is required in the manner provided for under Section 29(3), the years in question pose serious problems because of the situation in which tariffs have to be determined. Those years, i.e., 2000-01 and 2001-02 are long over and as such several data required to determine exactly the different parameters are neither available nor can be made available. The Commission has also noted that suitable suggestions on how to differentiate the tariff have also not come from the Government of W.B which mainly argued for dealing the case under Electricity Act 2003, inadequacy of data and finally recommended that the Commission should take 1998 tariff structure as the base, and retain the same structure for 2000-01 and make small modification by percentage allocation for arriving at tariff for 2001-02. Since the matter has come on remand by the Hon'ble High Court at Calcutta with specific direction to differentiate the tariff u/s 29(3) of Act, it is not open for the Commission to fix the tariff under the Electricity Act, 2003. Also recommendations of the Government of W.B for retention of tariff structure of 1998 for 2000-01 is not only contrary to the orders of the Hon'ble High Court at Calcutta but also the Hon'ble Supreme Court of India order dated 3rd October, 2002 in case of CESC. The Hon'ble Apex Court has already struck down part order of the Hon'ble High Court at Calcutta dated 14th May, 2002 in which the Hon'ble High Court had maintained a tariff structure which had been prevailing prior to the Commission report i.e. 1998 tariff structure. Also the recommendation of the Government of W.B is not clear on how the tariff is to be fixed in that structure, as the cost of supply/revenue requirements are now different from the 1998 tariff order. Keeping in view of the above, the Commission has now undertaken its exercise for fixing the differential tariff within the above constraints and as ad-hoc decisions cannot be avoided in certain matters, while differentiating the tariff under such circumstances, the Commission has used its best judgement in achieving differentiation.

CHAPTER – 5 : TARIFF

5.1 Tariff schedule for 2000-01 and 2001-02 and other associated conditions are given below.

A)	Category/Sub-category of Consumers	Energy Charge Paise/Kwh (gross rate)	
		2000-01	2001-02
	LV/MV Supply		
i)	Domestic		
	Up to 25 units in a month	170	180
	Up to 60 units in a month	200	210
	Up to 100 units in a month	240	260
	Up to 300 units	315	355
	Above 300 units	480	470
ii)	Commercial		
	Up to 60 units in a month	310	320
	Up to 100 units in a month	390	395
	Up to 300 units in a month	450	450

	Above 300 units in a month	490	490
	Pvt. Hospital / Educational Institutions includes hospital and educational institutions which are not covered under public utility service	350	360
iii)	Industrial		
	Up to 500 units in a month	360	380
	Up to 2000 units in a month	430	435
	Above 2000 units in a month	465	460
iv)	Public Utility Service		
	a) Public Lighting, Water Works & Pumping Stations & Govt. Hospitals / Educational Institutions	290	320
	b) Public Bodies	420	430
v)	HV Supply		
	Domestic	385	395
	Commercial	450	460
	Industrial	410	410
	Utility Services	290	300
	Commercial includes supply to metro railway and tramways		

b) General –

i) There will not be any change in load factor rebate (except that rebate will be admissible only if load factor is more than 50% and for such excess only), power factor rebate/surcharge, meter rentals, testing, installation charges, disconnection and reconnection charges, fuse replacing charges. HT Industrial consumers will also qualify for load factor rebate in the same manner.

ii) There will be surcharges towards load factor on HT industrial and HT commercial consumers if the load factor is less than 25% and it shall be @ 30 paise/kwh and applicable on the short fall of the consumption from 25% level.

iii) DC surcharge shall be @ 20% of the gross rate.

iv) The peak period energy charge will be 30% more than the normal energy charge indicated in 5.1(a)(v) above whereas off-peak rate will be less by 25% in case of TOD tariff applicable to high voltage industrial consumers. The peak period will be between 5.00 P.M up to 10.00 P.M each day whereas off peak period will be 10.00 P.M up to 6.00 A.M of the following day and normal period will be 6.00 A.M up to 5.00 P.M.

v) The demand charge as applicable to existing HT Industrial consumers shall be Rs.180 / kw /month.

vi) The demand charge shall not be payable by the consumer for the period when the load of the consumer is totally shed/interrupteded for fault of the CESC or their system. This is without prejudice to any other compensation if he is entitled as per any Act

vii) The minimum charges excluding meter rent, taxes / levies etc. and arrears will be as under:-

	Rs. per month	Rs. per month per KW of sanctioned load
Domestic LT	Rs.30/-	Domestic HT Rs.500/-
LV/MV Commercial LT	Rs.60/-	Commercial HT Rs.1000/-
Industrial LT	Rs.120/-	

The minimum charge for DC supply will be 20% extra.

viii) For High Voltage Industrial Supply, the rebate for 33 KV and 66 KV supply will be 4% of the energy charge mentioned above and rebate for 132 KV and above supply shall be 8%.

ix) Rebate for Cold Storage plants exclusively used for fish, sea food, potato and perishable vegetable will be 8% on the energy charge provided the payment is made within due date.

x) There will be a special rebate of 10% on the energy charge on the energy supplied to Tramways provided the payment is made within the due date.

xi) There will be a special rebate of 10% on the energy charge on energy supplied to domestic consumers between 101 units to 150 units per month and 5% between 151 units to 200 units per month.

xii) The rebate for timely payment to all consumers excluding covered under sub-para (ix) & (x) of para 15.1 (b) shall be 2% of the amount of the bill excluding taxes, duties & levies and arrears.

5.2 Delayed Payment Surcharge shall be 1.25% per month and / or prorated for part thereof for all consumers for delay in payment beyond due date. However, where the payments are delayed by more than 6 months from the due date of payment, delayed payment surcharge shall be increased to 1.5% per month for next 6 months of delay and thereafter will shall be 2% per month. This is without prejudice to the other provisions of the Act and the Regulations made thereunder.

5.3 The penalty / extra charges for drawal of more power than sanctioned contract demand will be as per existing terms and conditions.

5.4 Temporary Supply - There shall be no change in the manner and basis of calculation for temporary supply.

5.5 The statutory levies like electricity duty or any other taxes, duties imposed by the competent authorities shall be extra. The above rates shall be exclusive of fuel and power purchase cost adjustment.

5.6 The above tariff shall be applicable from the billing month of / pertaining to April for financial years 2000-01 and 2001-02.

5.7 Fuel and Power purchase cost adjustment - In addition to the tariff already fixed, CESC would further be entitled to added sum towards the enhanced cost of fuel and power purchase after the date of effect of this tariff structure. The following formula will be applicable for such adjustment in cost. It may, however, be clarified that amount to be reimbursed under the formula shall not exceed in any case the additional amount proportionately incurred on fuel cost and power purchase cost based on the various normative parameters and limits if already laid down and within the direction of the Commission. It is also made clear that for reimbursement of additional fuel cost only the basic fuel cost plus applicable taxes and levies plus railway freight plus road transportation cost wherever it is required will be considered.

5.8 Formula for fuel and power purchase cost adjustment (FPPCA)

a) Fuel and power purchase cost adjustment charge per unit for energy sold during adjustment period shall be in terms of the following formula :

$$\text{FPPCA (p/kwh)} : \frac{(\text{FC} + \text{PPC}) - \text{CD} \pm \text{A}}{[(\text{Gown} + \text{Eimp}) \times (\text{I} - \text{L})]} - \frac{\text{fc} + \text{ppc}}{\text{gown} + \text{eimp} \times (\text{I} - \text{L})} \times 100$$

FC (Rs.): Fuel cost of own generation as per Normative parameters fixed by the Commission and / or on actual basis (in absence of any norm) for actual level of sales during the adjustment period.

PPC (Rs.): Total cost incurred including the cost for fuel for power purchase from different sources for actual level of sales during the adjustment period.

CD: Cost disallowed by the Commission as having been incurred in breach of its economic generation / purchase obligation, or of order / direction of the Commission, if any, or for any other reason during the adjustment period and adjusted corresponding to actual level of sales.

A (Rs.): Adjustment, if any, to be made in the current period to account for any excess / shortfall in recovery of fuel and power purchase cost in the past adjustment period based on directions / orders of the Commission.

G_{own} (KWH): Total energy sent out from utility's generating stations during the adjustment period based on normative or actual auxiliary consumption whichever is less, corresponding to actual level of sales.

E_{imp} (KWH): Total energy purchased at the sent out bus from different sources based on approved procurement plans during the adjustment period corresponding to actual level of sales.

L (%): Normative T & D loss fixed by the Commission.

fc: Fuel cost of own generation as allowed by the Commission in the tariff order corresponding to relevant adjustment period.

ppc: Power purchase cost allowed by the Commission for the relevant adjustment period in the tariff order.

g_{own}: Sent out own generation as admitted in the tariff order by the Commission corresponding to the adjustment period.

e_{imp}: Power purchase at sent out bus as admitted by the Commission in the tariff order corresponding to the adjustment period

b) We direct that the adjustment period shall be every six months. Any proposal for adjustment shall be subject to the approval of the Commission and once the proposal is approved, it should be reflected in the consumer's bill in a separate entry for their information. At the end of each adjustment period, the CESC shall calculate the FPPCA as per the above formula based on the approved parameters, cost and consumption. The complete details along with the cost data, quantitative details and relevant information / document duly certified for the subject matter revisions and duly audited for the whole year for the March revision should be submitted to the Commission for approval within six months of the close of the period or within four months from cause of action whichever is later. In case of any delay without adequate and justified reasons, the Commission may disallow wholly or partially the increase in FPPCA or in case of refund suitable compensation by way of interest to the consumers. These will not be allowed as pass through in tariff.

5.9 Recovery of Arrears/Refund – However, there may be some arrear/refund becoming due by or to certain consumers for implementation of the tariff for 2000-01 and 2001-02 as CESC will take sometime to implement this order and tariff has to be revised with retrospective effect. The Commission feels that keeping in view the large number of consumers there should be a breathing time for the CESC to adjust its billing system and raise the bills based on this tariff order. The Commission, therefore, directs that the revised realization / refund mechanism based on the present order is to be made effective from the billing month of August, 2004. Till August 2004, the existing manner of realization / refund is to continue and be spread over a period of 24 months in equal monthly instalments for the total arrears. The arrear realization / refund to be calculated shall be the difference of the total amount payable as per this order and amount already recovered pertaining to the respective years including arrears for these years. The overall total of these two years put together will be the amount due for refund/recovery. It is made clear that the refund in terms of this order is to be made only after adjusting the previous arrears, if any, due from that consumer. It is further made clear that refund in terms of this order is to be made proportionately to all persons entitled to refund / receipts from the sums realized from the arrears. The

Commission further directs that no interest shall be paid to or by the CESC for any realization/refund/adjustment. However, if arrears are not paid as per the directions of the Commission then delayed payment surcharge shall be applicable. Similarly, non-timely refund as per direction of the Commission will involve payment of interest by CESC to that consumer at equivalent rate. However, CESC shall extend the period of recovery suitably at the option of the consumer but with interest in case of domestic consumers shall be 0.75% per month and in case of other 1.25% per month in case of other for such extended period.

5.10 It is open to the State Government to grant any subsidy to any consumer or any class of consumer in the tariff determined by the Commission. If at all any such subsidy under the provisions of the Act is intimated to the CESC and to the Commission by the Govt. of W.B with clear indication of the consumer or class of consumers to be subsidized and the amount of the subsidy is actually paid in advance to CESC in cash along with the direction then the tariff of such consumer and/or the class of consumers shall be deemed to have been reduced accordingly as has been indicated by the Government. The Government if so chooses may give the payments in quarterly instalments but each quarterly instalment should be received by CESC at least 1 month before the start of the first billing month of the respective quarters. However, such direction of the Government shall not be operative if the payment is not made in accordance with the provisions of the Act and above stipulations and the tariff as fixed by the Commission shall be applicable.

Sd/- 24.05.2004
N.C. Roy
Member (Tech.)

Sd/- 24.05.2004
A.K. Jain
Member (F & A)

Sd/- 24.05.2004
S.N. Ghosh
Chairperson

[Back to list of Petitions](#)