

ORDER OF WBPDC FOR THE YEAR 2000-2001 & 2001-2002**ORDER****ORDER OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
ON**

Petition No. TP-5/00-01 and Petition No. TP-4/01-02

In Re the Petitions of West Bengal Power Development Corporation under Section 22(1)(a) of the Electricity Regulatory Commissions Act, 1998.

Present :

Justice (Retd.) S. K. Phaujdar, Chairperson
Shri R. R. Ganguly, Member (Technical)
Shri A. K. Jain, Member (Finance & Accounts)

For the petitioners :

Shri Deepto Bhattacharya, Advocate
Shri B. Paul, Managing Director, WBPDC
Shri K. K. Dasgupta, General Manager, WBPDC

For objectors :

Shri N. C. Roy, Chief Engineer (Com.), WBSEB
Dr. S. C. Bhattacharya, Superintending Engineer (Com.), WBSEB

Dated the 12th July, 2001

CHAPTER - 1 : THE COMMISSION

1.1 Generation, Transmission and supply of electricity in India and the matters connected therewith had been, till 1998, covered by Indian Electricity Act, 1910 (in short, the 1910 Act) and the Electricity (Supply) Act, 1948 (in short 1948 Act). In 1998, the Parliament passed the Electricity Regulatory Commission Act (Act 14 of 1998) making various provisions towards reform in the power sector and as per the preamble of the Act, it was "an Act to provide for the establishment of a Central Electricity Regulatory Commission and State Electricity Regulatory Commissions, rationalization of electricity tariff, transparent policies regarding subsidies, promotion of efficiency and environmentally benign policies and for matters connected therewith and incidental thereto".

1.2 The West Bengal State Electricity Regulatory Commission was established by the State Government under Section 17 of the Act 14 of 1998, and the Commission consists of three Members including the Chairperson.

1.3 After crossing the initial hurdles of setting up an absolutely new office, the Commission was finally empowered to manage its own finance and the State also approved, although partly, the staff pattern suggested by the Commission. After staying in a small residential quarters for quite a long time the Commission finally acquired a suitable office space on rent in the Pura Bhaban from the Bidhannagar Municipality and shifted to the new office after the interior was done in a befitting manner.

1.4 Under Chapter-5 under Section 22 (1)(a) of the Act 14, 1998, the Commission has been statutorily empowered to determine the tariff for electricity, wholesale, bulk, grid or retail as the case may be in the manner provided for in Section 29 of the Act. The rest of the statutory functions are not relevant for the present proceedings.

1.5 Section 29 of Act 14 of 1998 speaks of determination of tariff by the State Commission notwithstanding anything contained in any other law and such determination is to be

made in accordance with the provisions of the Act and the Commission is obliged to determine by regulations the terms and conditions for fixation of tariff and the Section also enlists the guiding principles for framing such regulations. We need not state here the details of this section and shall quote or refer to the different provisions as and when required. Section 30 of the Act 14 of 1998 empowers the Commission to depart from the factors specified in different clauses of Section 29(2) of the Act, subject to recording of reasons in writing for such departure.

1.6 Chapter-8 of Act 14 of 1998 directs the Commission to ensure transparency while exercising its powers and discharge its functions and in doing so, the Commission is to be guided by such directions in the matter of policy involving public interest as the State Government may give to it in writing. The proceedings before the Commission are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code and the Commission is also to be deemed to be a Civil Court for the purpose of Sections 345 and 346 of Code of Criminal Procedure. The Commission, under the said Act, is also vested with certain powers of the Civil Court to enforce attendance of witness, to direct production of documents, materials, to receive affidavits, to issue a commission for examination of witnesses and also to review its decisions, directions and orders. The provisions of Act 14 of 1998 have been given an overriding effect over any other law inconsistent with the present enactment except for the provisions of the Consumer Protection Act (Act 68 of 1986) and the Atomic Energy Act (Act 33 of 1962). The Act also provided for rule-making power to the State Govt. and regulation-making power to the State Commission and in exercise of such powers the Govt. of West Bengal framed different sets of rules for salaries, allowances and conditions of services of Chairperson and other Members as also for the procedure for subscribing to oath of office and secrecy by Chairperson and Members. The State also framed rules for

appointment of Chairperson and Members, functions, budget and annual reports.

1.7 In exercise of its powers, the Commission also made six Regulations and the first one of them was the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulation 2000 published on 3.2.2000. This was amended by another Regulation published on 19.10.2000. Regulations were also framed prescribing the terms and conditions of Consultants, for miscellaneous provisions relating to petitions and the last mentioned regulation was also amended by another Regulation on 5.2.2001. In addition to these Regulations, the Commission also issued Guidelines for filing of petitions for annual revenue and tariff revision and circulated the same to all utilities who were likely to approach the Commission for revision of their tariff.

1.8 Under the rules framed by the Government and notified on 4.1.2000, the Commission was entitled to conduct its proceedings at Kolkata with liberty to hold hearing in any other places in West Bengal. All hearings before the Commission were to be held in public and before taking any decision on revision of tariff, the Commission was obliged to notify its intention in leading newspapers in West Bengal and hold public hearing for the purpose.

1.9 Under the Conduct of Business Regulations framed by the Commission (in short, CBR), the utilities were required to come up with their prayers for revision of tariff in the proforma set out in the Guidelines and such petitions were to be filed for any revenue year (April of any year to March of the next year) by the 31st December of the previous calendar year. No hearing could, under the law, be taken up in the absence of rules and regulations and as such only for the year 2000-01 the utilities were permitted to come up with tariff petitions by 15th December, 2000. As per CBR, the tariff revision petition for 2001-02 were, in the usual course, to be submitted by 31st December, 2000. Notifications were given in leading newspapers published from Kolkata (both English and Bengali) indicating the intention of the Commission to receive the petitions. After receipt of the petitions, objections were invited again through publication in

widely circulated newspapers published from Kolkata (both English and Bengali) giving sufficient time for

the prospective objectors to file their objections. Some objections were received within the stipulated date and some were received beyond the date and could not be considered. However, as per provisions of the CBR, general information was given through publication in newspapers as to the date and venue of hearing making it known to everybody that persons desirous to take part in hearing - whether they filed objections or not - were entitled to present themselves before the Commission during the hearing and to pray for permission to be heard.

1.10 In terms of its Regulation No. 2 of 2000, the Commission had appointed the Administrative Staff College of India (in short, ASCI) at Hyderabad as Consultants for scrutiny, examination, verification and analysis of the petitions and objections for the financial year 2000-01. The report that was received from ASCI was kept open for inspection and for obtaining copy, interested parties had the liberty of filing objections against the report of the Consultants.

1.11 To avoid any further delay, hearing of the tariff petitions for the years 2000-01 and 2001-02 were taken up together so that early disposal of claims and objections could be made for these two years. Against the two petitions of WBPDC, the only objector in writing and at the hearing was the W.B. State Electricity Board (in short, WBSEB). The hearing was taken up and concluded on 3.5.2001.

CHAPTER - 2 : TARIFF PETITION OF WBPDC

2.1 Claim for the year 2000-01 as per petition No. TP-5/00-01.

2.1.1 The WBPDC sought revision of bulk tariff for the concerned year and indicated that it was a generating company with Clause (4-A) of Section 2 of the 1948 Act and was in the business of electricity. The application spoke of determination of tariff for the concerned year only for the Kolaghat Thermal Power Station and they requested the Commission to grant additional time for filing a tariff proposal for Bakreswar Thermal Power Station as only one unit out of three, had started operation during this year and cost estimate and financing structure for this Station were being worked out.

2.1.2 The WBPDC indicated that the fixed component of the current tariff for them remained unchanged since November, 1996, although they had been partially compensated for the increase in fuel package through periodical revision in the fuel surcharge component and the last revision on this score was effected for the period from October, 1998, to March, 1999. The fuel surcharge proposal for 1999-2000 was yet to be approved. Through the instant proposal, the WBPDC proposed to recover the uncovered increase in cost amounting to Rs. 986 crs. inclusive of Rs. 133.21 crs. towards reasonable return surplus by suitable revision of tariff for 2000-01. They relied on the provisions of Section 43-A(2) of the 1948 Act and claimed that the Government of India had specified a rate of return of 16% to Generating Companies on the equity subscribed and made the calculations of reasonable return on that rate. They explained that their generating stations were of various vintages having been commissioned from 1984 to 1994 and any revision of the differences in the local operating conditions, the Govt. of West Bengal had constituted a Committee to consider the issues of Station Heat Rate, secondary fuel oil consumption and auxiliary consumption for coal-based thermal power plants in West Bengal. They projected the variable costs of KTPS on the norms prescribed by the Committee.

2.1.3 The costs under various heads were projected as per the Annexure (T1).

2.1.4 They also projected the expected revenue from the current tariff charges and also indicated the proposed rate of tariff for 2000-01. (Annexure T2).

2.1.5 According to WBPDC, the existing tariff was Rs. 1.51 per unit comprising of Rs. 0.57 per unit as approved by the Govt. of West Bengal in 1996 with effect from 19.11.1996 and a variable charge of 0.94 / unit indicating further that the proposal for revision of variable charge for the period ending on 31.3.2000 was still to be determined by the Govt. of West Bengal.

2.1.6 The WBPDC prayed for acceptance of the tariff proposal for KTPS, grant of additional time for submitting proposal for Bakreswar Thermal Power Project and also for recording an interim order allowing them to recover part of the increased cost at the earliest. They also prayed for a direction on the WBSEB to settle their dues and for approval of the pending proposals for revision of fixed and variable charges till 31.3.2000.

2.2 Claim for the year 2001-02 as per Petition No. TP-4/01-02.

2.2.1 The preliminaries in these petitions were verbatim the same as indicated for the petition for 2000-01. The instant petition was also for Kolaghat Thermal Power Station only and through the instant proposal, the WBPDCCL proposed to recover the cost which, according to them, amounted to Rs. 1029.33 crs. inclusive of Rs. 133.21 crs. towards the reasonable return for the year 2001-02.

2.2.2 For this year also, the cost under various heads were projected as per the Annexure T3.

2.2.3 Similarly, the expected revenue from the current tariff charges and the proposed tariffs were given as per the Annexure T4.

2.2.4 The prayers for this year were also worded in the same manner as for the year 2000-01.

CHAPTER - 3 : OBJECTIONS BY THE WBSEB

3.1 Objections for the tariff revision prayer for 2000-01

3.1.1 The WBSEB was constituted under the Section-5 of the Electricity (Supply) Act. It has been purchasing electricity from WBPDCCL's Kolaghat Power Station in accordance with an agreement executed between WBPDCCL and WBSEB on 4.5.1991. This agreement is on record.

3.1.2 The WBPDCCL also took up construction of the first three units of Bakreswar Thermal Power Project with total capacity of 630 MW - the first unit had gone into commercial operation with effect from 29.11.2000, while the second was undergoing trial run.

3.1.3 The WBSEB was to purchase power from Bakreswar TPP also and the power purchase agreement was to be suitably modified. Pending finalisation of the modification of the agreement, the WBSEB was receiving infirm power and firm supply from Bakreswar TPP during 2000-01.

3.1.4 WBPDCCL preferred bills to the WBSEB on the basis of the same estimated rate of 86.02 p. on account of supply of firm power without seeking any approval for infirm or firm power supply from Bakreswar TPP in their tariff proposal for 2000-01 through the present petition. It was contended by WBSEB that the Commission should advise the WBPDCCL for coming up with a proposal for tariff for 2000-01 for infirm and firm power supply from Bakreswar TPP so that its impact on the revenue expenditure of WBSEB for the relevant year can be duly considered by the Commission.

3.1.5 In their tariff petition for the year 2000-01 the WBPDCCL had shown their interest liability to WBSEB at Rs. 11.05 crs. although in reality, for the year in question, it was a mere sum of Rs. 0.55 cr. and thus there had been an increase in the revenue expenditure to the tune of Rs. 10.50 crs. and the WBSEB sought the interference by the Commission on this point.

3.1.6 The WBSEB also took an objection on the sum shown as depreciation for the concerned year which was exactly at par with that for the previous year. Its was stated that the depreciation cost was likely to decrease due to reaching of depreciated value of asset to its residual value and no further depreciation was chargeable.

3.1.7 It was contended by WBSEB that the tariff proposal of WBPDCCL did not indicate the revenue expenditure for Bakreswar TPP and they wanted clarification on the points if the employees cost, administrative cost and certain other costs as projected, were to be apportioned between Bakreswar TPP and KTPS.

3.1.8 It was asserted by the WBSEB in its objection that a consolidated tariff of 151.48 p. per KWH was never approved by the State Government and the figures approved were as under:

Basic Energy Charge	57 p. per KWH
Basic Fuel Cost	6.02 p. per KWH
and Fuel Surcharge	76.63 p. per KWH

3.1.9 It was stated that the WBPDCCL should have computed the present tariff at 139.69 p. per KWH showing separately the three elements of charges.

3.1.10 It was also contended by the WBSEB that substantial power was purchased by them from WBPDCCL and as such realisation of fixed charge should be based on normative PLF of the power Station and accordingly, the fixed charge component, i.e., the basic charge in the tariff should reasonably be finalised on the basis of normative PLF. Unless any other norm is fixed by the Commission, the normative PLF should be taken as 68.5 and they prayed for specific indication of the three elements, i.e., basic charge based on normative PLF of 68.5%, basic fuel cost and the fuel surcharge.

3.2 Objection for the tariff revision petition for the year 2001-02

3.2.1 The objections for this year were on the same line as were for the year 2000-01. For this year also, objection

was taken on the interest liability of WBSEB loan, which, according to WBPDCCL, was Rs. 11.05 crs. and according to WBSEB it was nil. Objection regarding depreciation was also the same as for the previous year. Similar objections were raised for this year also on basic energy charge, basic fuel cost and fuel surcharge as the earlier year.

3.2.2 For both the years under consideration, the WBSEB prayed for a direction upon WBPDCCL to submit their tariff proposal for Bakreswar TPP, for a direction for clarification on the points raised, and for permitting a tariff in such a manner so that realization of petitioner's fixed charge was dependent on achievement of normative PLF on 68.5%.

CHAPTER - 4 : OBSERVATIONS BY THE CONSULTANTS ON TARIFF PETITION AND OBJECTIONS FOR THE YEAR 2000-01

4.1 The ASCI, our Consultants, were required to scrutinize, examine, verify and analyse the tariff proposal for the year 2000-01 only. They set-out the principles of tariff fixation and referred to Section 43A of the 1948 Act. It may be pointed out here that they ignored that Section 43A stood omitted in terms of Section 51 of Act 14 of 1998 with effect from 11.9.2000 by a proper notification by the Central Government and tariff is to be fixed under Section 29(2) of the ERC Act, 1998, after coming into force of the said Act as it has an overriding effect under Section 52 and Section 29 of the Act.

4.2 For the Kolaghat TPS, according to ASCI, the projected gross generation was 6150 MU out of which, according to their calculation, 9.9% went towards auxiliary consumption bringing down the net generation to 5541.57 MU with a PLF of 55.72%. The Consultants made calculations on the basis of the existing tariff of 151.48 p. per KWH and considered the proposed rate of 166.90 p. per KWH.

4.3 According to our Consultants Kolaghat TPS is capable of achieving a PLF of 68.5% and they recommended that for this year only the WBPDCCL be allowed full fixed cost at PLF of 55.72%. For the next year there should a commitment by the WBSEB to draw a minimum of 6842 MU and if the WBPDCCL fail to meet this commitment, then fixed costs were to be reduced in proportion to achieved PLF. This recommendation will be considered in due course.

4.4 According to the analysis of the fuel cost as projected by WBPDCCL, the ASCI was of the opinion that fuel cost and fuel related cost should aggregate to a sum of Rs. 511.73 crs. against the claim of Rs. 534.58 crs. against projected generation of 6150 MU.

4.5 ASCI assessed the total fixed cost at Rs. 441.70 crs. and with the fuel cost, the total revenue required has been

assessed at Rs. 953.43 crs. The WBPDCCL projected other income at Rs. 61.40 crs., and accordingly, the income from tariff was assessed by the ASCI at Rs. 892.03 crs. and chargeable tariff was calculated on the energy sales at 160.97 p. per KWH as against a claim of 166.90 p. per KWH.

4.6 As per ASCI, the tariff proposal for the KTPS alone was not barred nay law and they opined that the entire employees cost for the Bakreswar TPP and that the corporate office could be capitalized until all

the units are commissioned. They are of the view that the basic charge components of the tariff should be finalized on the basis of normative PLF of the Power Station for 2001-02 if WBSEB omits to draw a minimum of 6842 MU of power.

CHAPTER - 5 : POINTS RAISED DURING PUBLIC HEARING

5.1 It was contended during arguments by WBPDCCL that they had got a revision in tariff only in 1996 and during these five years there had been considerable rise in coal price and railway freight. Prayers were reiterated for additional time for the tariff for Barkreswar TPP.

5.2 It was disclosed during arguments that the Bakreswsar TPP's first unit started commercial generation from 28.11.2000 and the second on 1.4.2001 while the third was likely to start commercial operation from June, 2001. They also advanced arguments on the objection raised by ASCI on points if penal interest could be loaded on tariff and demurrage could also be included in the tariff.

5.3 It was submitted by WBPDCCL on the point of transit loss of coal that the normative 4% loss was taken into account on the basis of the report of the Heat Rate Committee and pilferage was a common menace in addition to physical loss due to evaporation of moisture, grade slippage and the like.

5.4 On Heat Rate, it was submitted by WBPDCCL that the normative rate of 2500 K. Cal/KWH was taken into consideration with the permitted relaxation of 8%.

5.5 The sole objector, WBSEB, in their arguments referred to the agreement dt. 4.5.1991. It was contended that when power from the Bakreswar TPP was actually being purchased by WBSEB, there should be a fresh agreement between the two parties. The interest liability in respect of WBSEB loan as indicated in the written objection was also highlighted during argument. The points taken for depreciation were also agitated during argument. On enquiry by the Commission, Shri N. C. Roy, Chief Engineer (Com.), representing WBSEB, gave out that the WBSEB was ready to accept and pay for deemed generation at the normative PLF of 68.5%.

5.6 Shri S. Reddi, on behalf of ASCI, supported their opinion in the report and stated that allowing a transit loss of 4% would increase the laxity when in another utility transit loss was taken as 1% only. On heat rate, he argued that the normative rate should be taken as there was no ageing of three units at KTPS.

CHAPTER - 6 : POINTS FOR CONSIDERATION

6.1 Certain points of law and certain techno-commercial points are required to be answered for reaching a final decision on the revision of tariff and its implementation.

6.2 An objection was taken that the petition of WBPDCCL would not lie for KTPS in view of present commercial operation of Bakreswar TPP. If we go chronologically, the Bakreswar TPP had not started commercial generation at the time of formation of the Commission, not did it function commercially when the Commission called upon the utilities to submit their tariff revision petitions. Only on 28.11.2000 the first unit of Bakreswar TPP started generation, the second unit in April, 2001, while the third unit was expected to generate commercially by June, 2001. There is no yet any PPA between WBPDCCL and WBSEB for purchase of power from Bakreswar TPP. There has been the move for revision of tariff for KTPS supply only and facts & figures have come forward for that end only. It would be open for the WBPDCCL to approach the Commission with the tariff proposal for the supply from Bakreswar TPP and seek approval of any PPA and it is for the Commission again to decide the maintainability of such prayer. WBPDCCL has already prayed for extension of time. In view of the prayer made by the WBPDCCL for extension of time for tariff proposals for the Bakreswar TPP supply the Commission permits the WBPDCCL to make an application according to law for Bakreswar TPP within 60 days of the date of this order. It would be open for WBSEB to take up any objection as they feel proper. For the present, the Commission is of the considered view that when the Bakreswar TPP was not in power generation picture on 1.4.2000, the Commission without hesitation can take up the matter for the KTPS alone not only for 2000-01, but also for 2001-02 as the Commission has, as above, permitted petition for Bakreswar TPP for these two years.

6.3 Another legal objection in connection with the present two petitions relates to the provisions of the law under which the reasonable return of WBPDCCL is to be calculated. The petitioners had relied on the provisions of Section 43A(2) of the 1948 Act and our Consultants had also approached the problem from that angle and G.O.I. order of 31.3.92 applicable for Financial Packages approved after that date as far

as Rate of Return is concerned. For other factors like PLF, Heat Rate, O&M expenses, etc., Section-43A(2) is not proposed to be followed. Both of them have missed the provisions of Section 29, Section 51 and Section 52 of 1998 Act and the notification of the Central Government under Section 51 whereby Section 43A of the 1948 Act has been omitted with effect from 11.9.2000; so far the State of West Bengal is concerned (Notification No. SO 826 (E) dt. 11.9.2000 published in the Gazette of India Extra Ordinary dt. 14.9.2000). We may not rely on a deleted provision only for the purpose of Return and we are to follow the provision of Section 29 of the ERC Act and our CBR giving the Methodology to guide ourselves towards determination of tariff for these two years as the WBPDC, as a generating company, supplies electricity wholesale to the WBSEB in the State of West Bengal. In case there be any lack of required information to be given by WBPDC as required by our guidelines, then we may for these two years only deviate. Once we decide to consider the petition in terms of Schedule VI, only those factors as mentioned therein are to be taken into consideration to assess the expenditure subject to any deviation that may be granted. The point will be elaborated when we take up the relevant clauses of expenditure.

6.4 Once we decide broadly to follow Schedule VI, another legal point crops up. In the proviso to Clause-1, Schedule VI, it is stated that the charges for sale of electricity shall not be enhanced more than once in any year of account. For reasons stated in the opening chapter of this order we are confronted with two petitions for two consecutive years - 2000-01 and 2001-02 - and we have also thought it proper to hear the two petitions together. Thus declaration of revision of tariff, if any, for the two years shall be simultaneous and we are to look to the legality of such an order in view of the proviso to Clause-1 of Schedule-VI. Analogous hearing was thought proper to save time and to avoid further delay and unnecessary exercises over similar points twice over.

The first proviso to Clause-1 of Schedule-VI of the 1948 Act is to be read with Section 57 of the Act which entitles the Licencee (we may read the "Generating Company" so far these cases concerned) to realize charges of electricity from the consumer subject to the provision of Schedule VI. We have already spoken about the first proviso to Clause-1 of Schedule-VI which restricts the periodicity of any revision as one year and not to any shorter period. It is for the licencee to enhance the tariff, under Clause-1, in such a manner that its clear profit in any year of account does not exceed the amount of reasonable return. In the instant case, therefore, the WBPDC is entitled to readjust its tariff for every year of account provided its clear profit does not exceed the reasonable return. We must interpret the first proviso to Clause-1 of Schedule VI as a limitation of this general power of revision of tariff and the provision must be read harmoniously with the other provisions of law to avoid any unreasonable restriction. Non-functioning of the Commission in early December, 1999, cessation of power of the State Govt. in this regard and the active operationalisation of the Commission at a late stage had kept suspended any proposal by WBPDC for enhancement of tariff. Keeping in mind this background and looking to the provisions of Clause-1 of Schedule-VI and Section 57 of the 1948 Act, it can only be interpreted that the words "in any year of account" are to be read as "for any year of account" as otherwise, the utility would be denied a valuable right that has been given to them by law for reasons which are beyond their control. We, therefore, conclude that revision of tariff may be allowed only once FOR any financial year and it is not important when the order of revision is passed (as in the instant case we are recording orders IN the FY 2001-02 FOR two financial years - 2000-01 and 2001-02).

6.5 For the purpose of easy reference and reading, we take up the techno-commercial points in the next few chapters one by one.

CHAPTER - 7 : TECHNO-COMMERCIAL POINTS FOR DETERMINATION

7.1 The Commission is to determine what are the fixed costs, what next are the fuel costs and once these two costs are assessed, the Commission is to look to the return that may be permissible to the WBPDC to be covered under Fixed Costs for the two years separately and once that exercise is over, the Commission is to determine the mode of recovery / realization. The Commission will give necessary directions to the WBPDC to achieve efficiency and to diminish the costs.

7.2 The fixed costs are to be judged on (a) interest on loan capital and finance charges, (b) depreciation, (c) employees cost, (d) repair and maintenance cost, (e) administrative and general expenses, (f) fuel related cost and (g) Reasonable return.

7.3 For determination of fuel cost, the Commission is to consider
(a) heat rate of the Station,

- (b) gross calorific value of coal and oil,
- (c) secondary oil consumption,
- (d) transit loss of coal,
- (e) total coal requirement,
- (f) prices of coal and oil,
- (g) gross generation,
- (h) permissible auxiliary consumption.

CHAPTER - 8 : FIXED COST FOR 2000-01

8.1 On interest on loan and financial charges, the WBPDCCL have claimed interest of Rs. 102 crs. on loan receipts from various sources. The figures include a sum of Rs. 93.40 crs. for capital loan, Rs. 2.60 crs. for guarantee fee and Rs. 6.00 crs. towards interest on working capital. The last mentioned sum, in our view is to be covered under CAPITAL base for the purpose of Reasonable Return under Schedule-VI, and, hence, kept out of consideration. The sum of Rs. 93.40 crs. for capital loans includes penal interest paid by the company for delay in repayment of loans primarily due to huge outstanding dues of WBSEB against power supply bills. It is felt that the consumer cannot be asked to bear the burden of this penal interest. During the hearing also, the WBSEB pointed out that an amount of Rs. 10.50 crs. was to be disallowed from the total interest claim as this was not due. The interest payable to WBSEB was projected as Rs. 11.5 crs., while, according to WBSEB, it was only Rs. 0.55 cr. This point was not disputed during argument by the WBPDCCL. We must, therefore, deduct Rs. 10.50 crs. from the sum of Rs. 93.40 crs. Our Consultants have worked out the interest on capital loan on the revised details supplied to them and according to them it was Rs. 83.21 crs. and we are to add Rs. 2.60 crs. towards guarantee fee taking total to Rs. 85.81 crs. and once we take Rs. 10.50 crs. as indicated above, the total under the present head comes to Rs. 75.31 crs.

8.2 On the point of depreciation, the WBPDCCL has claimed an amount of Rs. 104.48 crs. The average depreciation rate works out to 6.36% on the opening balance of original cost as on 1.4.2000 and this is considered reasonable and is accordingly accepted. In this connection the Commission is, however, of the view that this depreciation has been allowed in consideration of the fact that WBPDCCL did not maintain full records of information including quantitative details of the fixed assets and their latest status to facilitate proper verification by the Commission. Moreover, the calculation of depreciation is also to be done according to rules and not on straight line method on 90% of the cost. WBPDCCL must be careful in future to remove the aforesaid defects and to assess depreciation on 100% cost up to 90% of the cost.

8.3 Employees Cost

On this head, WBPDCCL has claimed an amount of Rs. 28.49 crs. and it appears to be reasonable. However, the sum includes one for Rs. 2 crs. for overtime payment which may not be acceptable in toto. Overtime expenditure cannot be taken as routine expense and should be limited only to the essential needs for engagement of employees on overtime basis for attending to emergency situations. In our view, 25% of the amount projected for overtime, i.e., a sum of Rs. 0.50 crs. is to be disallowed from the projected employees cost for this year. The employees cost accordingly comes down to Rs. 28 crs. only. We must, however, say that every attempt must be made by the WBPDCCL to contain their expenditure and overtime allowances must not be doled out as a routine measure and/or even to persons not concerned with emergency duties.

8.4 Repairs and maintenance

WBPDCCL has projected an amount of Rs. 77.67 crs. including consumable stores for this year and this sum works out at 4.7% of the gross fixed cost of the Station and in our view, is quite high compared to similarly placed generating stations. We may have a comparison of the expenses under this head for the last three years.

Year	Amount (cr.)	% increase over previous year
1997-98	39.12	24.8
1998-99	42.21	7.9
1999-2000	64.37	52.5
2000-01	77.67	20.7

It is clear from this table that in the financial year 1999-2000, there had been a steep jump of expenditure in that year which could be attributed to some major repair work during that year. It is not understood why after such a major overhaul, there could further be an increase in repair and maintenance cost by 20.7% from the year 1999-2000. We may skip the exceptional year of 1999-2000 and assess the R&M cost with reference to the base year 1998-99 and allow about 10% of increase in R&M cost from what was spent in 1998-99. In our calculation on the above logic, the R&M cost amounts to Rs. 46.40 crs. only as against a claim of Rs. 77.67 crs.

8.5 Administrative and general expenses.

The projected cost on this score in Rs. 5.89 crs. Our consultants have examined this aspect. This cost includes vehicle hire charges, security expenses, insurance, rent rates and other takes. These figures indicate an average annual increase by 2.7% over the preceding year and these expenses accounts for only 0.7% of the total operating expenses. We agree with our consultants on these points as also with proposal of WBPDCCL and we do not propose to interfere with this estimation.

8.6 Fuel related cost

It is another head of expenditure which must be delinked from fuel cost and is to be brought under the head of fixed cost as these are in nature the cost towards Ash and Coal Plant Handling and the like. For this year, the fuel-related cost have been projected by WBPDCCL at Rs. 32.07 crs. and this includes a sum of Rs. 1.23 crs. towards demurrage paid to the railways. We agree with our consultants to opine that demurrage charges could not be allowed to permeate to the consumers. No doubt, the WBPDCCL has tried to explain why the demurrage costs were paid as, according to them, the RIys. had dumped all the wagons at a time making it difficult for WBPDCCL to unload the same. We are not in a position to accept this explanation. Demurrage, in our view, reflects inefficiency on the part of the persons responsible for unloading wagons and taking up with Railways suitably and no person should get a benefit out of its own default of that of its employees. We have to deduct Rs. 1.23 crs. for this year from the fuel related cost and this, amounts to Rs. 30.84 crs.

8.7 We may now come to a question, hint of which had been given earlier. This relates to the provision of law which would be applicable for assessing the reasonable return that may be admissible to WBPDCCL for the present two years 2000-01 and 2001-02. Three provisions in the 1948 Act referred to different norms of return for different class of utilities. Section - 43A(2) of the 1948 Act spoke of norms regarding operation and plant load factor, reasonable return etc. for determination of tariff for generating companies. Further, norms were amended on 31.3.92 for Power Stations of Generating Companies whose financial package was approved on or after 31.3.92. This Section, as indicated earlier, has been deleted by Section-51 of the ERC Act read with the required notification from the Central Government. These provisions are, therefore, non-existent now and we may not fall back upon these provisions under any interpretation as that would be given effect to a provision which the legislature had thought prudent to be deleted.

8.8 The other provision is spoken of in Section -59 of the 1948 Act which dealt with adjustment of tariff so as to ensure that total revenue in any year of account shall, after meeting the expenses properly chargeable to revenue including operating, maintenance, managerial expenses, taxes on income and profits, depreciation of the interest on debentures, bonds and loans, leave such surplus not less than 3% of the value of the fixed assets at the beginning of the year. The percentage may be increased by the State Govt. by notification in the official gazette. This provision is applicable to the State Electricity Boards. We may overlook this provision also for the WBPDCCL which is generating company.

8.9 The third provision regarding reasonable return is contained in Section -57 according to which licensees charge to consumers are to be determined in accordance with the provisions of schedule-VI of the 1948 Act. Under this schedule, the reasonable return has also been defined. One of the factors for determination of reasonable returns is the amount found by applying standard rates to the capital base at the end of the years. The other factors are minor in nature. These provisions must now be read with Section-29 of the ERC Act, as the wholesale distribution of electricity in West Bengal by the WBPDCCL would bring this utility under the purview of this section and according to Section 29(2) (a) of ERC Act, 1998, Schedule-VI of the Act of 1998 will be applicable. To determine the standard rate for this utility we must have before us the capital base, unfortunately, the WBPDCCL did not come up with the figures as required by Sec-57 and Schedule-VI as they had based their calculations on return on the provisions of Section-59 and Section 43A of the 1948 Act and have further claimed 16% reasonable return on equity

at par with central generating companies in terms of a letter of the Central Govt. for its companies. Consultants have recommended their case and have also based on Govt. of India Notification dt. 31.3.1992. As per this notification, the provisions thereof were applicable for projects whose financial packages were approved on or after 31.3.1992. The consultants have missed this point as, certainly, the WBPDCCL is not covered by this 1992 orders as it come into being in 1986 and the KTPS was transferred to them that year.

8.10 Under these circumstances a working formula must be found out to give the WBPDCCL a reasonable return that may give them a life breath and do not abruptly change due to historical reasons. We must, therefore, depart from the rigidness of the requirement of Section-29 of the ERC Act as permissible under Section-30 of the said Act. We therefore allow them 12% return of Equity invested in Kolghat Power Station as special case. The equity of KTPS is Rs. 833.29 crs. and return at 12% thereon works out at Rs.100.00 crs. and will cover against all the entitlements for Clear Profit including special appropriations etc. It is pointed out that this deviation is made for these two years only and may not be used as precedence for future years or for other utilities.

CHAPTER-9 : VARIABLE COSTS - FUEL COST.

9.1 Before going to the costs of coal and oil, the commission feels it necessary to devote some time towards the general principles of generation. As per existing arrangement, the entire power generated by KTPS is purchased by WBSEB. The WBPDCCL have projected a generation of 6150 MU during the financial year 2000-01 at a plant load factor of 55.72% which is much below the normative PLF of 68.5% fixed by the Govt. of India for sale of power by the generating companies to the SEBs. An objection in this respect for a lower PLF of WBPDCCL has also been raised by the WBSEB. On analysis of the performance of the Kolaghat Station during the financial year 00, i.e. 1999-2000, it is revealed that the major factors responsible for low PLF of the station was forced outage of units, poor supply / shortage of coal, non-availability of spares and these factors are controllable by improving overall management of the station. Even by getting a reasonable margin of 15% to 16% for plant and forced outage, the station should be able to achieve higher PLF then the instant PLF. Had there been an operation at the desired level of PLF, WBSEB could have bought power at a more economical rate and that could have discharged them from purchasing more expensive power form other sources or even from its own generation. It would be unfair to pass the burden of higher cost of power due to low PLF of the power station to the ultimate consumers. The generation of 6150 MU at 55.72% PLF as projected by WBPDCCL for FY 2000-01 cannot be accepted. But we must keep in mind that this is the first year of the new regulatory regime and as a special case, bench-mark PLF for full realisation of fixed cost by the generating company may be fixed at 60.5% after giving credit for the loss of generation of about 8% due to low system demand as declared by WBPDCCL. With 60.5% PLF the projected generation for the six units of Kolaghat Power Station for the year 2000-01 is calculated at 6677.75 MU instead of 6150MU as proposed by the Consultants.

9.2 It is also necessary to indicate the efficiency parameters for calculation of fuel consumption of KTPs. In their petition, the WBPDCCL have projected the efficiency norms as follows -

- i) Heat rate (kcal / KWH) 2727
- ii) Oil consumption (ml/KWH) 3.7
- iii) Auxiliary Consumption (%) 9.9

It appears that the heat rate of the station adopted by WBPDCCL is as per the recommendation of the Expert Committee set up by the Govt. of West Bengal which had taken into consideration PLF of the Stations as well as the age of the units for allowing operating margin over Govt. of India norms. Operating conditions of the generating stations in the Eastern Region are such that the units cannot run at about 68.5% PLF due to low system demand and accordingly, the stations deserve consideration for adjustment of heat rate for low PLF. The Commission is, however, of the view that in giving this adjustment, no further margin may be allowed on the age of the units as recommended by our consultants for determining heat rate because, units of similar vintage are performing at a much better efficiency elsewhere. For the norms of oil consumption and auxiliary consumption we may not deviate from the norms fixed by the Govt. of India except for the year 2000-01 while we maintain the percentage of auxiliary consumption as per Govt. of India norms. Accordingly, we fix the following efficiency parameters for the WBPDCCL. (1) Heat rate - 2700 kcal/kwh (on the basis of GOWB norm). (2) Oil consumption - 3.7 ml (being actual) for 2000-01 only and 3.5 for the following years. (3) Auxiliary consumption - 9.5%.

9.3 Normally the aforesaid three parameters and the normative generation as calculated above would determine the requirement of fuel and its cost, but there is still a rider on the actual figure of consumption of coal as there is always some transit loss from pit head to the plant and due to gross calorific value difference between declared and received. This may be due to physical reasons like loss of moisture and vapour and grade slippage and for pilferage. WBPDCI claimed transit loss at 4% over the coal consumption on normative heat rate. The transit loss upto 4% was approved by the Govt. of West Bengal. The commission, however, takes note of the fact that in this State itself, another utility (CESC) claimed transit loss up to 1% only. Our consultants have also reported that in some other States where coal is to be transported through a longer distance than that covered by WBPDCI, the transit loss is less than 2%. For grade slippage, no norm has been fixed at any point of time. The so-called grade slippage is a matter between the supplier and the purchaser. On the percentage of transit loss in other utilities, the commission accepts the recommendation of the consultants allowing 1% transit loss as a reasonable one.

9.4 For computation of fuel cost, gross calorific value and weighted average price of coal and oil supply to the power station as declared by the WBPDCI were looked into and accepted by the consultants. However, WBPDCI has not given break up of the gradewise quantity of coal and its price with declared Gross Calorific value. It appears that GCV has been taken based on receipt at plant and not declared value at respective grades at mines for which payment was made. We may at present provisionally take these figures as claimed and indicated hereunder:

Fuel	G C V	Price
Coal	4090 (kcal / kg)	1125 (Rs./MT)
Oil	10562(kcal / ltr)	12,053 (Rs./kl)

With the above figures, the cost of generation of coal and oil is as under:

1	Normative generation (MU)	:	6677.75
2	Auxiliary consumption (MU) @ 9.5%	:	634.39
3	Energy available for sale (MU)	:	6043.36
4	Heat rate (kcal/kwh)	:	2700
5	Total heat required (kcal) 4 X 1	:	18029925
6	GCV of oil (kcal/L)	:	10562
7	Sp. Oil consumption (ml/kwh)	:	3.7
8	Oil consumption (kl) 7 X 1	:	24707
9			