

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

**Case No. T.P. - 6 of 2002-03**

**Case No. T.P. - 6 of 2003-04**

**AND**

**Case No. T.P. - 13 of 2003-04**

**IN RE THE TARIFF PETITION OF THE CALCUTTA ELECTRIC SUPPLY CORPORATION LTD.  
FOR THE YEARS 2002-03, 2003-04 & 2004-05 UNDER SECTION 64(3) READ WITH 62 OF  
THE ELECTRICITY ACT, 2003.**

**Present :**

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

For the petitioners :

Shri S. Banerjee, Managing Director  
Shri Utpal Bhattacharjee  
Shri D. N. Majumder  
Dr. B. Chakraborty, Advocate  
and others.

For the objectors who took part in/appeared at the hearing for 2002-03 & 2003-04:

Shri Ranjit Lodh, Bengal National Chamber of Commerce & Industry  
Shri Shibajee Dey, Organizing Secretary, Dakshin Kalikata Janaswartha Raksha Mancha  
Mrs. K. Sharma and Shri Amiya Ghosh, Consultant, Bharat Chamber of Commerce  
Shri M. K. Roy, Chief Engineer (Commercial) and Dr. S. C. Bhattacharjee, Dy. Chief Engineer,  
West Bengal State Electricity Board  
Shri Subhash Ch. Banerjee, Shri Asit Das Das and Shri Sanjit Biswas, All Bengal Electricity  
Consumers' Association  
Shri Pratik Ch. Banerjee, Advocate, Calcutta Chamber of Commerce  
Shri S. Mukhopadhyay, an individual consumer  
Shri Amal Maity, The Socialist Unity Centre of India  
Shri Manotosh Bhattacharjee, Indian Aluminium Company Ltd.  
Shri Prasanta Nandi Chowdhury, General Secretary, West Bengal State Electricity Board  
Workmens' Union  
Shri Suresh Agarwal, Honorary General Secretary, West Bengal Rolling Mills Association

Objectors who had filed written objections within the stipulated dates for 2002-2003 & 2003-2004  
:

Sri R. K. Bhuia  
Sri L. N. Das  
Sree Nath Kapoor  
D. K. Trivedi  
Sri Jayagopal Kundu  
Sri Amit Kapoor

Calcutta Chamber of Commerce  
 Anjan Banerjee  
 Rajasthan Fertilizers & Chemicals Corporation Ltd.  
 Bengal National Chamber of Commerce  
 S. Mukhopadhyay  
 Ganatantrik Nagarik Samity  
 Subodh Roy, (along with 88 objectors)  
 Dakshin Kolkata Anchalik Samity  
 Indian Jute Mills Association  
 Dakshin Kalikata Janaswartha Raksha Samiti  
 Bharat Chamber of Commerce  
 ICICI Bank  
 WBSEB Workmens' Union  
 West Bengal State Electricity Board  
 All Bengal Electricity Consumers Association  
 Socialist Unity Centre of India  
 Standard Chartered Bank  
 Federation of West Bengal Trade Association  
 Indian Alluminium Company  
 West Bengal Rolling Mills Association

Objectors who had filed written objections within the stipulated date for 2004-2005 :

West Bengal State Electricity Board  
 Bengal National Chamber of Commerce  
 Calcutta Chamber of Commerce  
 WBSEB Workmen's Union  
 Indian Aluminium Company Ltd.  
 Indian Jute Mills Association  
 Ganatantrik Nagarik Samity  
 All Bengal Electricity Consumers Association  
 Socialist Unity Centre of India  
 Bharat Chamber of Commerce  
 West Bengal Rolling Mills Association.

Dated : 24th May, 2004

## **CHAPTER – 1 : INTRODUCTION**

1.1 The West Bengal State Electricity Regulatory Commission (WBERC) has been constituted under Section 17 of the Electricity Regulatory Commission Act, 1998 and empowered to determine the tariff of power utilities in the State of West Bengal under Section 22(1) of the ERC Act, 1998. After repeal of the ERC Act, 1998 vide Section 185 of the Electricity Act, 2003, the WBERC is the State Electricity Regulatory Commission in terms of first proviso to Section 82(1) of the Electricity Act, 2003. The function of the State Commission is mainly given in Section 86 of the Electricity Act, 2003 which inter-alia also includes the determination of tariff for generation, supply, transmission and selling of electricity, wholesale bulk or retail, as the case may be, within the state. The Commission presently consists of 3 members including Chairperson.

1.2 The CESC Ltd. is constituted under the Company's Act 1956 and has been a Licensee under the Electricity Supply Act, 1948 and the Indian Electricity Act, 1910. The CESC Ltd. presently shall be deemed to be a Licensee under the Electricity Act, 2003 in terms of first proviso to Section 14 of the Electricity Act, 2003. In terms of the licence, CESC is supplying electricity in its licensed area in part of the KMDA area and part of Howrah.

1.3 The CESC Ltd. had earlier filed tariff petitions for fixation of tariff for the financial years 2000-01 and 2001-02 for which the Tariff Order dated 11th November, 2002 read with order dated 16th December, 2002 have been recorded for the concerned years. These orders for determination of tariff was issued by the Commission after re-calculation of the tariff based on the re-consideration

of the revenue requirement for the financial years 2000-01 and 2001-02 in terms of the directive of the Hon'ble Supreme Court of India in the case of WBERC Vs. CESC Ltd. vide their order dated 3rd October, 2002.

1.4 The above orders of the Commission have been challenged before the Hon'ble High Court at Calcutta. The Hon'ble Calcutta High Court vide their order 1st August, 2003 has set aside the order of the Commission dated 16th December, 2002 and remanded back the matter to the Commission with certain directions. The Commission has already held the hearings as per the directive of the Hon'ble Calcutta High Court in this case and also received the written submissions from such of the objectors as was directed by the Hon'ble Calcutta High Court. Some of the objectors, not satisfied with the decision of the Hon'ble Calcutta High Court, has filed an SLP before the Hon'ble Supreme Court of India. The tariff order dated 11th November, 2002 is under challenge before the Hon'ble Calcutta High Court and the final order is still awaited.

1.5 CESC Ltd. has prayed for filing of tariff petitions for 2002-03 and 2003-04 and also prayed for combining the same as submissions of both the petitions were pending and also for the purpose of administrative and other convenience. The Commission had considered the request of CESC Ltd. and permitted them to submit a combined tariff petition for 2002-03 and 2003-04 but within the last date of submission of Tariff Petition for 2003-04. The same were filed accordingly by CESC. It may also be noted that the Hon'ble Supreme Court of India, in its order 3rd October, 2002 has directed the Commission to consider the tariff petition for CESC Ltd. for 2002-03 by giving them extension of time for filing the tariff petition.

1.6 Due notification was made in prominent newspapers published from Kolkata (2 in English and 2 in Bengali) calling upon the interested parties to file objections, if any, against the revision of tariff proposed through the petition of CESC and also directed the utilities to file rejoinders for such objections within the specified time. The interested parties were afforded opportunities to inspection the petitions and other records and to take copies thereby as per CBR.

1.7 Only 26 objections were received from the objectors for the above orders, the names of whom have been given in the earlier part of the order.

1.8 The hearing of the petition for the financial year 2002-03 and 2003-04 was taken up together for the sake of early disposal and for avoiding unnecessary exercise of the same and similar matters.

1.9 Not only the petitioners but the consumers, consumers association and the persons likely to be effected by the tariff who had chosen to file objection in writing, hearing was allowed to all such persons who proposed to join after due information was given through publication in prominent newspapers of Kolkata (2 in English and 2 in Bengali). Hearing commenced from 3rd March, 2003 and concluded on 5th March, 2003. This hearing was in addition to the opportunity given to the effected persons to file written objections earlier which has been dealt in the subsequent parts of the order.

1.10 The Commission has also passed an interim order dated 23rd April, 2003 on the tariff petition for the year 2003-04, in exercise of its power under regulation 46 of CBR (Conduct of business rules, 2000) and allowed an ad-hoc increase of 25 paise/Kwh with effect from 1st April, 2003, billing month of May, 2003, with the terms and conditions mentioned therein. The present order also disposes of interim order dated 23rd April, 2003 in the manner as stated in the order.

1.11 The Commission was not able to pass tariff orders on the tariff petition relating to financial years 2002-03 and 2003-04 including determination of revenue requirement in view of the interim order on the stay application on the operation of the order dated 16th December, 2002 pertaining to the financial years 2000-01 and 2001-02 and its subsequent setting aside by order dated 1st August, 2003 and also as meanwhile the Electricity Act, 2003 was notified and came into force with effect from 10th June, 2003 by repealing the Indian Electricity Act, 1910, Electricity (Supply) Act, 1948 and the Electricity Regulatory Commission Act, 1998 to the extent specified u/s 185 of the Electricity Act, 2003. The Electricity Act, 2003 has brought in substantial changes by harmonising and rationalising the various Electricity Acts and providing new concepts and to strike the right balance given to the current realities of the power sector.

1.12 As per the Electricity Act, 2003, the function of the Commission has been given u/s 86 of the Act. The tariff is to be determined by the Commission and the power for determination of tariff has been given u/s 62 and the procedure for tariff is given u/s 64 of the Act. The guiding principles etc. for specifying the terms & conditions for determination of tariff has been given u/s 61 of the Act with a proviso that the terms & conditions for determination of tariff given in the earlier Acts shall continue to apply for a period of one year or until the terms & conditions for tariff are specified under this section, whichever is earlier. The Commission has already issued draft terms & conditions u/s 61 for public consultation before its notification and it is expected that the same will take some more time. Section 172 deals with transitional provisions. Section 174 of the Act gives overriding effect notwithstanding anything inconsistent contained in any other law except protection provided for consumer protection Act, Atomic energy Act and the Railways Act in terms of section 173 of the Act. These are some of the important provisions made in the Electricity Act, 2003 having bearing on the present tariff petition and appropriately dealt with as may be required in the order.

1.13 CESC submitted its tariff petition for the year 2004-05 which bears case no.TP-13/2003-04 dated 30th December, 2003 under the Electricity Act, 2003. The licensee was instructed to publish the application in leading newspapers of Kolkata (2 in English and 2 in Bengali) in the form and manner as has been directed by the Commission. In the contents of the application published, it has been stated that the objectors may file written submissions/objections in support of or against the petition directly to the Commission within 23rd February, 2004 and persons can inspect the copy of the petition in the office of the Commission and to obtain photo copy thereof apart from opportunity to inspect the petition at the selected offices of CESC.

1.14 Only 7 objections has been received from the objectors within the due date and time, the names of whom have been given in the earlier part of the order.

1.15 The present petitions are for fixation of tariff relating to the years 2002-03, 2003-04 and 2004-05. The Commission has carefully considered the question as to whether the individual tariff order of each year should be issued separately or a combined tariff order should be issued keeping in view the balance of convenience and inconvenience both in favour of utilities and the consumers. The Commission also noted that the financial years 2002-03 and 2003-04 are already over and 2004-05 has started. In case separate tariff orders are issued by the Commission for previous years, then it may create problem for the utilities who will have to collect arrears for last 2 years in addition to the arrears of 2000-01 and 2001-02 which are yet to be settled and so is the case of refund, if any, in certain cases. Also the consumers, particularly the consumers of commercial, industrial and domestic consumers have made a plea earlier that the tariff revision should normally be from a prospective date as it is difficult for commercial and industrial consumers to recover the additional costs from their consumers and it jeopardizes the earlier planning and budget if tariff is revised from retrospective effect. The Commission is recording one combined order keeping in view the above concerns and also has dealt the relevant pros and cons appropriately in the later part of the order. Accordingly, the present order for tariff petitions for the years 2002-03, 2003-04 and 2004-05 is being recorded keeping in view the provisions of the Electricity Act, 2003 and also the direction of the Hon'ble Supreme Court of India and the Hon'ble Calcutta High Court on interpretation which are relevant and may be applicable on new provisions of the Electricity Act, 2003. Due cognizance has been taken relevant and applicable provision of 1998 Act for determining the revenue requirement and the tariff of the relevant years.

## **CHAPTER – 2 : THE CASES OF CESC AS PER PETITION FOR 2002-03 & 2003-04**

2.1 The petition for the revision of tariff has been filed under Regulation 43 of the Conduct of Business Regulations (CBR), the Electricity Regulatory Commission Act, 1998 and Electricity Supply Act, 1948 for the years 2002-03 and 2003-04.

2.2 In the tariff petition, the CESC has stated that unless revenue sufficiency to meet costs is predictable, confidence of the stakeholders is bound to erode which will also have a significant repercussion on the State as a whole.

2.3 In the tariff petition, the CESC indicated the unitwise rated capacity of its Thermal Power Stations together with the figures of Plant Availability, Capacity Utilisation, Operating Efficiency

and also projected the availability of Generating Plant and availability of Fuel and its transportation and Ash removal. CESC contended that its Plant Availability is one of the best in the country.

2.3.1 CESC further stated that dispatch schedule is planned to maximize own generation to the extent feasible and cost effective under a widely varying peak and off-peak demand scenarios. The Company further stated that they proposed to pursue closure of Mulajore Generating Station in the financial year 2003-04.

2.5 The CESC further indicated the environmental standards and responsibilities of the company.

2.6 It was indicated that the transmission and distribution losses on all India basis is 50% whereas according to CESC, it had been 22% for it and CESC was trying hard to reduce it further. The CESC further contended that despite the inadequate legislative provisions and State administrative support, the Company had been making all out efforts to control the social menace of power theft they faced and it has attempted to check the same. The CESC has further indicated that their Loss Control Staff have to operate under such hostile circumstances and have been brutally manhandled time and again. They have voluminous documents showing the Company's efforts towards loss control and regular assaults by pilferers on its loss control staff.

2.6.1 The CESC indicated that TERI (Tata Energy Research Institute) has recently conducted a full fledged study on the issue of T & D loss and which confirms the above fact.

2.6.2 CESC also indicated that though the State Government has made the West Bengal Amendment of Electricity Act 1910 providing for penal provisions, but essential measures like establishment of special courts and special utility protection force had not yet materialized.

2.6.3 CESC also stated that keeping in view of the Hon'ble Commission's advice, vigilance activities were stepped up manifold and they gave the comparative figures of meters checked, removal of hooking, disconnection of meters, court cases and number of arrests made to show the substantial increase in such activities. CESC further stated that the oldest case relating to pilferage still pending dates back to 1984 and they had also settled about 14166 cases within 30 months through the two-tier dispute resolution mechanism.

2.6.4 CESC further contended that about 95% of the disconnections for tampering with meters are in underground supplies.

2.6.5 The CESC also gave the various steps being taken by them to check the pilferage / theft of energy.

2.6.6 CESC also justified the T & D loss on account of existence of substantial DC load, DC meters of acceptable quality are no longer available and existing DC meters continue to grossly under-register consumption. They further stated that the Government test bench for testing DC meters had been withdrawn. CESC has not been able to change the DC load to AC load in spite of repeated appeals to allow compulsory change over.

2.6.7 CESC also stated and justified the T & D loss because of change of sales mix where high voltage consumers are going down in CESC area, whereas low voltage sales has been on increase. It has been stated in the petition that to prevent any vested interest / collusion, meter reading staff are regularly rotated and the Company keeps a close surveillance on its employees and if found guilty of any misconduct, appropriate actions are taken.

2.6.8 CESC also stated that their primary distribution voltage level is at 6 KV and not 11 KV and ground realities not permitting upgradation to 11 KV. The CESC prayed for T & D loss of 20.3% in 2002-03 and 19.6% in 2003-04.

2.7 CESC gave the basis for energy sales estimation of sub-categorywise which according to them has been worked out based on Compounded Annual Growth Rate (CAGR) method of the period from 1995-96 onwards.

2.8 CESC justified its capital expenditure in consumers' interest as otherwise quality and reliability of services will suffer. They further justified the capital expenditure which according to them is less

than 5% of the gross fixed assets even though there is increase in number of consumers every year.

2.8.1 CESC also gave the details pertaining to the capital expenditure made in 2000-01 and 2001-02 as per the direction of the Commission towards the withheld amount and requested that the amount withheld by the Commission for 2000-01 and 2001-02 may be released with consequent treatment of reasonable return.

2.8.2 CESC also gave justification for proposed capital expenditure for 2002-03 and 2003-04.

2.9 CESC gave details of the working capital based on their interpretation of the Sixth Schedule and Indian Electricity Rules 1956 (Annexure - V, Statement - XII, items 1 and 13 of credit side and item 11 of debit side).

2.9.1 CESC contended that the Company strives to attain high PLF at its cost-effective power stations. Reliable coal supply is a critical need for achieving high PLF. CESC prayed for providing an average stock of 25 days and 30 days consumption for 2002-03 and 2003-04 respectively in view of the erratic coal supply and to achieve the level of generation target.

2.10 CESC contended that they have taken several steps and has been able to secure reduction in interest rates of certain loans and even though the Company could not meet payment obligations to lenders due to financial crisis. They further stated that their cash flow position will improve through recovery of arrears and every effort will be made to correct its payment defaults. The average interest rate is expected to reduce further thereafter.

2.11 CESC also gave the details and justified the liability of interest on loans as expense under various separate provisions of the Sixth Schedule.

2.12 CESC gave the details of the disallowance of other financial charges for 2000-01 and 2001-02 along with their reasons and stated that their tariff has not been timely revised in earlier years and they are yet to start the recovery of entitled tariff for 2000-01 and 2001-02 as fixed by the Commission. They further contended that inordinate delay in fixation of tariff led to non-payment of dues to suppliers for which additional financing is required. Even the High Court gave a long period of time for recovery of entitled dues of 2000-01 and 2001-02 and ultimately by the Commission vide its order dated 16.12.2002 but without charges for delay in recovery. CESC further contended that the concept of prudent financial management does not apply in such abnormal situation and therefore, the expenses towards delayed payment surcharge and such other charges should be allowed.

2.12.1 CESC further contended that delayed payment surcharge is a recognized and valid expenses and allowable expenditure under the Income Tax Act, 1961. CESC further justified the liability of delayed payment surcharge as delayed payment surcharge of the consumer is taken as income and thus, revenue requirement gets reduced and on the grounds of equity, interest payments / delayed payment surcharge payable, should be considered as legitimate expense, particularly when outstanding debtors are not considered in working capital. CESC also justified that the liability of DPS will go down in 2003-04, in the event the company is able to recover the tariff fixed in time and accordingly, no DPS has been claimed in 2003-04.

2.13 CESC also contended that they have incurred significant expenditure over income in 2000-01 and 2001-02 towards finance charges on temporary accommodations for coal and power purchase and for staggered payments to critical suppliers / State Government. They also prayed for allowing such legitimate expenditure over income including bad debts and for consideration of suitable interest for delayed recovery of tariff which has not been included in the revenue requirement.

2.14 In their petition, they also highlighted the problem related to delayed recovery of tariff and prayed that as billable consumer base gets eroded as certain consumers (including temporary consumers) continuously exit the system and they are not able to recover such increased tariff from them. They further contended that the longer span of recovery, the greater is the erosion of consumer base and since they are not able to recover the enhanced tariff, the legitimate amount should be allowed.

2.15 CESC also prayed that there should be suitable compensation for erosion of capital base due to failure to recover its entitled tariff revision in time resulted in default in loan repayments with consequent erosion in Capital Base and Reasonable Return. The Company further stated that they are not able to pay dividend to shareholders for the last 5 years as they have got arrears of tariff to be recovered of about Rs.500 crores as on April 2002 which resulted into default in loan repayments. CESC prayed for allowing its Reasonable Return that it had been deprived of due to capital base erosion.

2.16 They asserted that intense activities to stop pilferage of electricity also have an implication on the legal fees but this is being required to safeguard consumers' interest. They further stated that about 1465 cases relating to theft of electricity matters alone had to be filed in the last 18 months and therefore legal fees as claimed may be allowed.

2.17 They justified the claim of bad debt and stated that it represented less than 1% of turnover, adequate security deposit is not available, recovery of bad debts through filing of legal suits for small consumers not justifiable from the cost-benefit angle and they also tried to justify the bad debt prayed with norm fixed by various Commissions.

2.18 On lease rental they stated that action has been initiated in the line of the advices of the Commission and the lease rental expenses have already decreased in 2001-02 over 2000-01 and further reduction is expected in 2002-03 and 2003-04.

2.19 They stated that they have discontinued purchase of power from DVC with effect from 1st August, 2002 in line with the advice of the Commission. They further stated that own generation is sought to be maximized to the extent cost effective and dispatch plan adopted keeping in view operational constraints, peaking requirement, radial load and cost.

2.20 On fuel cost they asserted that the average fuel cost per unit remains same for both the years 2002-03 and 2003-04 and the increase over 2001-02 is less than the coal price increase in 2002-03.

2.20.1 They also asserted that to assure reliable supply and to achieve high PLF, the CESC is required to resort to a judicious mix of supply from Coal India Ltd. and captive / imported coal and to manage ash content. They further asserted that the supply of coal from Coal India Ltd. was erratic and they also prayed for average fuel stock of 25 / 30 days to enable to maintain a high PLF. They further stated that unless an adequate coal stock norm is there and guaranteed coal supply is available, own generation may suffer. They further asserted that Indian Coal received by them has high ash content and therefore, ash-handling expenses will increase considerably.

2.21 They justified the repairs and maintenance expenses for reducing unplanned outages, need for maintenance of plant, maintenance of desired schedule which could not be followed earlier due to adverse financial position, high PLF level and excessive overloading of plant and equipment due to high level of pilferage.

2.22 CESC also gave their proposed tariff structure.

2.23 CESC also gave their basic assumptions in formulating the tariff proposal including the basis of fuel and power purchase cost.

2.24 CESC gave the various details relating to their financial requirement and figures in connection with the working of revenue requirement and respective figures have been appropriately dealt with in the subsequent chapters. CESC annexed with their tariff petition statements and detail covering different aspects of their submission. CESC also prayed not only for increase in tariff, but also for tariff related pending decisions along with interim order.

### **CHAPTER – 3 : OBJECTIONS AGAINST THE TARIFF PETITION FOR THE YEAR 2002-03 AND 2003-04 AND REPLIES THERETO BY CESC.**

3.1 Objections have been submitted by 26 objectors (the list of which is already given earlier).

3.2 An objection has been filed by Shri R. K. Bhuia, an individual consumer who requested that

the utility and the Board may be forced to set up new power stations to avoid load shedding in Kolkata.

3.2.1 CESC stated that, in view of the financial condition of the Company and because of the non-receipt of timely tariff revision, it is difficult for Company to pursue further installation of Balagarh Power Station. CESC has further stated that feasibility of additional capacity creation at other stations is being explored.

3.3 Shri Lakshmi Narayan Das and some other consumers of CESC made critical observations on continuation of Mulajore Station which has an outdated technology leading to high cost of generation. They have prayed that cost effective solution for peaking requirement should be found and Mulajore station should be closed down. The consumers have also felt that CESC is running its other power stations efficiently with good control on Plant Load Factor and fuel cost.

3.3.1 CESC has justified the running of the Mulajore Station even though it is 64 years old. However, CESC has further stated that after the construction of the 132 KV overhead line inter-connection between Titagarh and Mulajore, this station will be closed, but closing the station also involved sensitive issues relating to separation and redeployment of the employees.

3.4 Shri Shree Nath Kapoor gave his objection as a shareholder of the Company and contended that the financial position of the Company has collapsed due to delays consequent to new regulatory regime and the regulator has to protect the interests of both the consumer as well as shareholders. The interests of the consumers and the shareholders is to be appropriately balanced and tariff rates for financial year 2002-03 and 2003-04 should be set at realistic level. Attention is also drawn to Section 29(2)(d) of the ERC Act 1998 to encourage optimum investments.

3.4.1 CESC stated that the regulatory environment will ensure timely receipt and recovery of revenue which is critical for overcoming its present financial crisis. They further contended that there should be a uniform norm of efficiency subject to minor variations, if any, and such variations should be transparent and supported by appropriate justification for all the utilities in the West Bengal who are under the purview of Section 29 of ERC Act 1998. They further contended that utility should earn a Reasonable Return as per set norms, and performance better than norms should get incentive in addition to Reasonable Return while failure to meet such norms within the control of the utility should result in penalties. The Company also placed the 31st report of the Standing Committee on Energy (2002) wherein the Committee was of the opinion that there should be penalty for non-performance and at the same time, an efficient licensee should be rewarded for the achievements.

3.5 Shri D. R. Trivedi made observations on reduction of the T & D loss and stated that the CESC has increased their vigilance activities and requested Commission to monitor the increase of vigilance activities and felt that this improvement has taken place only because of the right direction shown by the Commission. He further stated that failure of the State Government to put in place special police force and judicial system should be accepted as reasons for company's full claim to be allowed. Reliance was also placed on the Hon'ble Supreme Court decision and it was felt that overall T & D loss target for the years 2002-03 and 2003-04 should be 18%.

3.5.1 CESC submitted that 18% T & D loss for the year has not been decided by the Hon'ble Supreme Court and the T & D loss to be allowed for 2002-03 and 2003-04 has been left to the Commission for its determination based on material available before it, and the Commission could assess the efficiency or otherwise of the company in controlling the loss and re-fix this limit of T & D loss while fixing the tariff. They further contended that CESC has taken all possible measures for containing T & D loss and also relied on a recent study conducted by Tata Energy Research Institute which confirmed the fact. They also indicated the figures relating to reduction in T & D loss in the year 2002-03 and 2003-04 over the year 2000-01 and 2001-02 and prayed for no disallowance on this account in view of poor law and order environment, lack of proper administrative support, physical assaults, massive efforts made by the Company and the hostile environment, progressive deterioration of sales mix, loss prone DC load, primary distribution voltage level at 6 KV etc.

3.6 Shri Jayagopal Kundu suggested that CESC should be given a target of the amount they could spent on every unit they generate plus fuel cost and thereafter only increase in cost of fuel should



be allowed.

3.7 Shri Amit Kapoor, an objector stated that power purchase of CESC needed to be relooked since it is going against consumers' interest. The consumer felt that though the CESC has been able to control the fuel cost of generation, but its power purchase cost is still high and CESC stopped purchase of expensive power from DVC only when it was forced by Commission to stop such purchase. The objector wanted that Commission should give a direction to CESC to import power on available least cost option and not purchase from WBSEB which would bring additional burden on the consumers. The consumer suggested that the power from WBPDCCL should be purchased from CESC as they had already sent power outside the region at Rs. 2/- per unit to Power Trading Corporation.

3.7.1 CESC justified earlier purchase of power from DVC and WBSEB due to historical legacies and felt the same would have to continue in the near future. However, they admitted that lower cost of purchase of power would reduce the overall tariff and is in the interest of CESC's consumers and therefore, agree with the proposal. They prayed for further submission during hearing.

3.8 The Calcutta Chamber of Commerce gave their objection as a chamber of commerce and industry which represented the interests of several industrial concerns and trading houses. In addition, the Chamber is itself a consumer of electricity of CESC and has interest in the tariff petition and they also gave objections in their individual capacity as a consumer.

3.8.1(a) The objector stated that the Commission might not accept or allow any proposal that encouraged monopoly, inefficiency, wastage and/or uneconomical utilization of resources. The objector further stated that it could show that CESC has been trying to take advantage of its own wrong, or inefficiency, or that its claims are inflated habitually, or that it does not repay loans in time thereby leading to accrual of interest which can be avoided. There is wastage and redundancy in CESC and in order to promote efficiency, good performance, optimum management of its resources and competitiveness, the consumer should not pay for the fault of CESC.

3.8.1(b) The objector prayed that since CESC has not taken the increase in the tariff to be granted to WBSEB for the power to be purchased by CESC from them, the entire claim for purchase of power based on tariff from WBSEB should be deducted from their revenue requirement and CESC should wait till WBSEB tariff revision petition is disposed of and tariff fixed thereon.

3.8.1(c) The objector also pointed out that as CESC has admitted that it is unable to control operating efficiency or capacity utilization i.e. no increase in tariff should be given keeping in view the provisions of Section 29(2)(c) and (d) and 29(1)(d) of the ERC Act.

3.8.1(d) The objector also pointed out the high interest charges clearly showed lack of proper financial control and opined that CESC should be asked to explain why it has claimed so high a rate of interest. They should also be asked to produce the relevant documents in support of the rate of interest. He wondered why instead of accepting such a high rate of interest CESC had not challenged the same in litigation.

3.8.1(e) The objector also felt that the actual increase in the tariff is much more and CESC has hidden certain expenditures which is not justified based on the documents, particularly when the power purchase and fuel cost are excluded from total revenue requirement as per CESC claim in their petition.

3.8.1(f) The objector also felt that interest and depreciation should be excluded from the expenditure on administration. Salary and wages expenses are very high and actual pay hike is about 75.3% even though the CESC has stated that there would be reduction in the work force after VRS. The increase in D.A. and VRS amount claim is also questioned.

3.8.1(g) The objector also questioned the expenditure on computerization and felt that CESC has admitted that there is duplication of work and presently CESC used a labour intensive system and computerization would result in substantial retrenchment or lay off of employees. He accordingly concluded that the claim for computerization should not be allowed till CESC brought the agreement with the unions.

3.8.1(h) The objector also raised points on erosion of consumer base, excess of expenditure over income and reasonable return.

3.8.1(i) The objector has made observations on high T & D loss and questioned the policy of transmission of energy at low voltage and concluded that the impact of fault and lacunae on the part of the CESC on this account should not be passed on to the consumers.

3.8.1(j) The objector also pointed out the availability of West Bengal Amendment of Indian Electricity Act 1910 to conclude that the occasions of theft should have been reduced by taking recourse to the amendment and in court cases where ex-parte orders had passed, at least 50% of the demanded amount should have been realized. The existence of the amendment has not been disclosed by CESC, it was alleged.

3.8.1(k) The objector also pointed out that the Government of West Bengal had already given a directive to reduce the T & D loss @1.5% each year from 1993 onwards. The same should have gone down to 14% by 2000 and as a licensee the CESC was bound by such directive of the State of West Bengal.

3.8.1(l) The objector has stated that allowing T & D loss of more than 14% would amount to rewarding the CESC for its inefficiency.

3.8.1(m) The objector also pointed out that CESC supplies energy in urban areas of Calcutta where load is of high density, and felt that a T & D loss of even 18% which had been allowed by the Commission for 2001-02 was excessive.

3.8.1(n) The objector further pointed out that CESC is making inflated claims and the present claim on capital expenditure should be reduced by the same proportion that bears of its original claim and claim admitted by the Commission vide its order dated 11th November, 2002 for the year 2000-01 and 2001-02.

3.8.1(o) The objector also observed that the expenditure on the repair and maintenance showed lack of foresight and inefficiency and this could have been avoided by regular inspection.

3.8.1(p) The objector also stated that the fuel consumption and auxiliary consumption is computed at a rate higher than actuals and therefore, should be disallowed.

3.8.1(q) The objector also pointed out that the load factor of Budge Budge is lower than that of Titagarh Generating Station, and yet Budge Budge station has greater efficiency. Therefore, the consumer should not be made to pay for CESC's network constraints, if the inefficient Titagarh Generating Station is required to generate relatively more than Budge Budge station.

3.8.1(r) The objector also raised an objection on foreign exchange and concluded that payment of foreign exchange variations showed inefficiency and therefore such claim should not be allowed.

3.8.1(s) The objector also registered an objection on additional fault/damages due to digging operation done by other agencies, feeder tripping and electrical accidents etc.

3.8.1(t) The objector also felt that the CESC has suppressed many documents and most of the figures and documents submitted by the CESC are in the nature of summaries and conclusions, and statements of accounts, and does not disclose the documents, such as vouchers, invoices, bills, contracts, correspondence, purchase orders, release orders, loan sanctions, receipts, notes, research papers, reports and books of accounts on the basis of which the same has been prepared. The objector concluded that the statement of accounts should not be taken as true or correct and gave some example relating to computerization, non-submission of copy or licence and non-access to the original documents or duly authenticated copies of the same as indicated.

3.8.1(u) The objector wanted the Commission to give directive to CESC to disclose all the documents and material on the basis of which the books of accounts were being maintained by it and on which the audited accounts are based and also on all such documents and materials on the basis of which it has drawn some conclusions or reasons and figures, voucher, invoices, bills, contract, correspondence, purchase orders, release orders, loan sanction receipts, notes, research

paper, etc. and to allow the objector reasonable time after furnishing of the said documents and materials, to give additional objections.

3.8.2(a) CESC has disputed the written objections and stated that the objections are based on incorrect appreciation of the relevant facts and material and / or on incorrect premises and no credence could be given thereto.

3.8.2(b) CESC further stated that they have submitted a tariff petition with all the requirements, papers and correct facts in compliance with and the manner prescribed by the Hon'ble Commission and they denied all the allegations / objections made by the objector in this regard.

3.8.2(c) CESC also disputed and disallowed all allegations regarding inefficiency, inflated claim etc. and stated that the tariff is to be fixed and dealt with by the Competent Authority in terms of the statute and unless there is revenue sufficiency to meet costs in a predictable manner then further investment would not be made in the industry and it would be ultimately go against the interest of the consumer.

3.8.2(d) The CESC also disputed the allegation of increase in claims which according to them are wild and baseless and submitted that justification for addition to assets have been provided with and the same are essential for maintenance of reliable power supply in the interest of the consumers and to provide the supply to new consumers.

3.8.2(e) CESC further stated that the suggestion of the objector that the entire power purchase cost should have been struck off from the revenue requirement till WBSEB's tariff is fixed is impractical and untenable as CESC would have to pay WBSEB for purchase of power. CESC has only prayed for additional cost, if any, and included the current cost in the revenue requirements.

3.8.2(f) CESC stated that its Plant Availability Factor is high and PLF could not match PAF due to varying load conditions which is beyond CESC's control as energy cannot be generated and stored for later consumption. They further stated that PLF in CESC's modern stations is cost effective and is amongst the best in State. CESC's petition explained in detail the various positions and showed clearly that there was or is no inefficiency of CESC in these regard.

3.8.2(g) CESC also justified the availing of the loans which were made in line within the prevailing interest regime at that time. It was further stated that loans restructuring exercise has been taken and the benefits derived therefrom would go to the consumers. CESC further stated that the due to non-recovery of their legitimate dues from the consumers, their credit rating had gone down and financing costs has gone up.

3.8.2(h) CESC also disputed the objection of the objector regarding power purchase cost and fuel cost and stated that they are valid items of expenses and felt that incorrect appreciation of the relevant facts and materials and mere conjectures and surmises had been made with a deliberate attempt to mislead. CESC further justified that the employee strength over the last few years has not increased despite increase in generation capacity, adding of lakhs of new consumers, major network expansion and enhanced surveillance activities. CESC further justified the payment of DA, employees' cost and quoted the Hon'ble Supreme Court's judgement dated 3rd October, 2002. CESC also justified the introduction of new information technology and computerization in harmonious cooperation with its employees. Similarly, CESC justified the claim of erosion of consumer base, excess of expenditure over income and reasonable return and felt that the objector has not understood the legitimate and logical entitlement.

3.8.2(i) On T & D loss, CESC felt that vague allegation has been made. The Hon'ble Supreme Court has fixed the T & D loss of 19% and 18% for 2000-01 and 2001-02 respectively with direction to the Commission to fix future T & D losses based on materials available before the Commission. CESC contended that the petition contained sufficient materials on the required steps undertaken and possible efforts made by CESC within its power and control and therefore, CESC should not be penalized for the lapses in those years for which petition has been given.

CESC further felt that the advice of the Government of West Bengal is no longer of any relevance in the present proceedings after the matter had been already considered by the Hon'ble Calcutta

High Court and Hon'ble Supreme Court with a direction to the Commission which is to be kept in view.

3.8.2(j) On repair and maintenance, CESC felt that the objection is based on incorrect appreciation of technology / process. Machinery and plant could be operated round the clock for 365 days in a year but even with any regular preventive and plant maintenance, break down would be inevitable. The R & M cost of CESC is reasonable even though its Plant Availability Factor is very high and it could be compared with other utilities in the country and quoted a number of utilities where R & M expenditure was much higher than of CESC.

3.8.2(k) CESC also justified its load management and stated that there is no control of CESC on consumption of power and Titagarh Generating Station is sufficiently efficient. Similarly, the objection on computation of high fuel consumption and auxiliary consumption was denied.

3.8.2(l) CESC also justified the foreign exchange rate variation cost, coordination of activities of various agencies to avoid damage to their equipments, avoidance of electrical accidents, educational training of office personnel etc.

3.9.1 Shri Anjan Banerjee, objector of CESC's tariff proposal, objected on the expenses which are not as per Schedule VI of the Electricity (Supply) Act, 1948 and are not properly incurred and not in proper heads and were also excessive.

3.9.2 CESC stated that the objections are vague and non-specific and should not be taken as valid objections. They also denied and disputed that the expenses shown in the tariff petition are not correct or they have not been properly incurred or are excessive or not under proper heads as stated.

3.10.1 Rajasthan Fertilisers & Chemicals Corporation Ltd. stated that the present rate is high and the tariff should not be enhanced as if tariff is enhanced further, many industries small and large, would certainly shut down.

3.10.2 CESC justified the tariff charged by the utility depending on various parameters and felt that rate could not be compared between different utilities situated in different environments and having different parameters.

3.11.1 Bengal National Chamber of Commerce & Industry objected to high T & D loss of CESC and felt that the recent legislative measures including special court being put in place, the vigilance should be strengthened and T & D loss should be reduced @ 2.5% – 3% per year. They further felt that within 4-5 years, CESC's T & D loss should come down to 11.5% and felt that T & D loss for 2002-03 should be 18% and for 2003-04 it should be 16%.

3.11.1(a) The objector also objected to purchase of costlier power by CESC from WBSEB and suggested that CESC should purchase power from NTPC.

3.11.1(b) The objector also objected on O & M costs and suggested that CESC should come forward with clear cut cost control measures in order to reduce O & M charges along with manpower and administration charges.

3.11.1(c) The objector also suggested that CESC should come forward for restructuring of loans in order to reduce interest cost.

3.11.1(d) The objector also suggested that CESC should develop captive mines to reduce the coal cost and to improve quality.

3.11.1(e) The objector also recommended increase in charges to be realized from DC consumers and phase out of this inefficient supply. They also suggested providing incentives to DC consumers to switch over from DC to AC.

3.11.1(f) The objector also suggested certain modifications in levy of interest for delayed payment on energy bill.

3.11.1(g) The objector also raised objection on erosion of consumer base and security deposit.

3.11.1(h) The objector also raised points on close up of Mulajore and generation figure of Mulajore.

3.11.1(i) The objector also raised certain points on bad debts claimed by CESC.

3.11.2 On T & D loss CESC stated that the special courts and formation of Utility Protection Force has still not taken place which could help reduction in power theft.

CESC also stated that the T & D loss could not be compared between different utilities as it is dependent on multiple factors like voltage levels of supply, AC / DC supply, consumer mix, State Administrative support etc. They also disputed the comparison figures between BSES and stated that CESC had a larger area, yet it had lower number of consumers and concluded that BSES had about 75% of more consumers than CESC in every sq.km. and BSES had fully underground LT distribution network, whereas almost half of CESC's LT distribution network was overhead.

CESC also indicated the steps taken by them to control the T & D loss.

3.11.2(a) On merit order purchase, CESC felt that it could take additional power requirement on merit order purchase as it was in the interest of CESC's consumer subject to proper approvals / sanctions etc.

3.11.2(b) CESC also justified its operation and maintenance costs and pointed out certain discrepancies in the objection in the basis of calculation of the cost. CESC further informed about restructuring of loans which is already under progress.

3.11.2(c) CESC stated that it has already asked for higher surcharge on DC consumption and delayed payment surcharge had been calculated as per the direction of the Commission.

3.11.2(d) CESC justified its statement on erosion of the consumer base as part of the consumers (including temporary consumers) continuously exit the system and it was not possible to recover the arrears of tariff from them. CESC also justified the calculation of security deposit and bad debts and continuation of Mulajore station earlier.

3.12 Shri Swapan Mukhopadhyay, a consumer, referred to Section 6(b) of the Consumer Protection Act, 1986 and stated that consumer had a right to be informed about the price of goods or services. He further stated that a consumer could regulate the consumption of any commodity according to his capacity and price and therefore, objected the enhancement of charges of electricity with retrospective effect which deprived a consumer of his right mentioned above.

3.12.1(a) The objector also, quoting Section 24 of IE Act 1910, objected regarding outstanding dues of a previous consumer being recovered from a new consumer.

3.12.1(b) The objector also stated that the consumers should be responsible for payment of charges for electricity actually consumed by them and not for any kind of loss or damage due to leakage and transmission.

3.12.2 As regards retrospective effect of the tariff, CESC intimated that this issue had been dealt by the Commission earlier and had rejected similar contention due to interpretation of Provisions of ERC Act, 1998.

They further stated that the Provisions of Section 6(b) of Consumer Protection Act did not support the points raised by the consumer as it was based on complete misappreciation of the Provisions.

3.12.2(a) On the objection of realizing of dues of a previous consumer, CESC stated that Section 6(e) of the 1986 Act for consumer protection did not correctly reflect on the purported issue as contended by the objector and the objector had not correctly appreciated either the provisions of 1986 Consumer Protection Act or the relevant provisions of IE Act 1910 and Electricity (Supply) Act 1948.

CESC contended that they have followed the Provisions of Section 49B of Electricity (Supply) Act 1948 as applicable in West Bengal and also the principles and procedure as laid down by the Hon'ble Calcutta High Court in the case of Punam Chand Ranga Vs. CESC Limited, 1995 (11) CHN.

3.12.2(b) CESC also disputed that they had been negligent in recovery of losses and dues, or there had been any inefficiency on the part of the management in respect of addressing T & D loss.

3.13 Ganatantrik Nagarik Samity, Howrah raised objection on non-fulfilling the environmental responsibility of CESC in so far as disposal of the fly ash was concerned from the Titagarh Thermal Power Station.

3.13.1(a) The objector raised objection on T & D loss, additional charge of DC meters, purchase of costly power from WBSEB instead of cost-effective sources of WBPDCCL which is exporting cheaper power.

3.13.1(b) The objector also raised objection on the high employees' cost.

3.13.1(c) The objector felt that cross subsidy for marginal and domestic consumers, cottage and small scale industries should be given by the State Government u/s 29(5) of ERC Act.

3.13.1(d) The objector also prayed for checking of the CESC's accounts by independent competent agency.

3.13.1(e) The objector also felt that there were strong possibilities of errors of omission as well as commission in the matter of working out of fuel cost.

3.13.1(f) The objector also prayed for not releasing the amount withheld by the Commission for 2000-01 and 2001-02 from the capital base, inclusion of entire Cash and Bank balances in the working capital, payment of delayed payment surcharge, amount of erosion of capital base, bad debts.

3.13.1(g) The objector also felt that CESC should make all out efforts to reduce the interest and financial charges and the Commission should review the actual financial results of the Company with reference to tariff revision order of 2001-02.

3.13.2 CESC disputed the objection relating to disposal of fly ash.

3.13.2(a) The CESC justified its T & D loss and purchase of power from WBSEB (as had been covered in earlier objections)

3.13.2(b) On rate of purchase of power from WBSEB, CESC prayed for a special tariff to licensee.

3.13.2(c) CESC justified its employees' cost and informed that steps had been taken to close the Mulajore project and steps would be taken to dispose of the Cossipore unit at appropriate time.

3.13.2(d) CESC stated that the question of auditing by an independent agency did not arise in view of the Supreme Court judgement and its audit report.

3.13.2(e) CESC also prayed for recovery of FPPCA from time to time as per the formula.

3.13.2(f) CESC stated that an equitable level playing field should exist with uniform norms for efficiency, subject to minor variations, and the norms should be unbiased, transparent and supported by appropriate justification with reasonable incentives and penalties on such set norms. CESC quoted the recommendation of the Standing Committee of Energy in support of these claims.

3.13.2(g) CESC justified the increase in capital expenditure, inclusion of Cash and Bank balances and adequate fuel stock in working capital. CESC also justified the delayed payment surcharge to its suppliers in view of non-delivery of its due tariff in time.

3.13.2(h) CESC justified its bad debts claim and stated that they are taking steps to reduce the interest cost.

3.14 The objection filed by Shri Subodh Roy and 88 others are similar and accordingly dealt with appropriately by combining of these objections.

3.14.1 The objections preferred by these objectors related to higher tariff against their production cost, low plant load factor, ash handling, DC supply, quality of supply, un-justified increase in tariff, reasonable return, high T & D loss, loans, captive coal mines, additional security deposit, condition of supply, collection of arrears, supply of meters and collection of arrear fuel surcharge.

3.14.2 CESC stated that the objections were based on incorrect appreciation of the relevant facts and materials and therefore, should not be considered, as they were not based on facts, records, documents and law.

3.14.2(a) CESC further stated that 93 Paise unit cost quoted was only referred to proposed fuel cost which are not the total cost.

3.14.2(b) CESC further contended that both their PLF and PAF are quite high.

3.14.2(c) CESC justified the efforts being taken by them for ash handling and steps taken to curtail / reduce the T & D loss.

3.14.2(d) CESC also justified the quality of supply, levy of charge for DC consumption and claim for reasonable return.

3.15.1 Dakshin Kalikata Anchalik Byabasayee Samity's objections were similar to the objection raised by Shri Subodh Roy with 88 objectors.

3.15.2 CESC also gave similar reply to these objections as they have given to the objections of Shri Subodh Roy and 88 objectors.

3.16 The Indian Jute Mills Association gave objections relating to high T & D loss given by CESC and pointed out that CESC had spent Rs. 450 crores in updating its system to reduce T & D loss and Government of West Bengal had directed CESC to reduce the T & D loss by .7% each year from 1993, but still T & D loss of CESC has been increasing. They also compared T & D loss of CESC with BSES Ltd..

3.16.1(a) They also objected to additional expenditure on fixed assets.

3.16.1(b) The objector also commented upon delay in closure of Mulajore plant. The objector also commented and objected against the increase in employee's cost.

3.16.1(c) The objector also raised objection on high interest charges.

3.16.1(d) The objector prayed for calculation of load factor discount on maximum demand and not on contract demand.

3.16.2 CESC justified its T & D loss by giving detailed reasons as had already been covered in other objections discussed above. These are not being repeated to avoid repetition.

3.16.2(a) CESC justified for closure of Mulajore Station in December, 2003.

3.16.2(b) CESC also justified the employees' cost, interest and finance charges, PLF and levy of load factor rebate in terms of the Commission's order.

3.17 Dakshin Kalikata Janaswartha Raksha Mancha felt that the arguments of CESC for increase in tariff particularly relating to non-availability of good quality coal, expenditure on DC connections, sale during off-peak period, T & D loss, more T & D loss on account of LT consumers and reasonable return were not correct.

3.17.1 The objector also felt that the cost of generation of electricity for 2000-01 and 2001-02 worked out to 93 paise whereas the Commission had given the tariff of Rs. 390 Paise. They raised the issue of captive coal mines, reduction in HT consumption. They also raised points on security deposit, condition of supply, practice of realization of arrears of one person from another, date of repayment of loan from WBSEB by CESC, family-based meters in some areas, cross subsidy, investigation of energy report and audit report, stopping of realization of fuel surcharge arrears and implementation of tariff order dated 7th November, 2001.

3.17.2 CESC in its reply disputed the facts, statements and allegations of the objector and stated that figure of 93 paise / unit as proposed only related to fuel cost excluding all other legitimate costs.

3.17.2(a) CESC justified the PLF and Plant Availability Factor, ash handling charges, higher T & D loss on DC consumption, quality of supply, off-peak consumption, reasonable return, T & D loss, applicability of tariff of 2000-01 and 2001-02.

3.18 Bharat Chamber of Commerce prayed that utilities be allowed only so much of the cost as were needed and no inefficient costs be passed through to the consumers.

3.18.1(a) The objector felt that in the sales projection of the CESC there is need to exercise caution and adjust the predicted values to incorporate anticipated out of trend changes in the underlying determinates, which might be revealed from other sources other than CAGR method.

3.18.1(b) The objector raised objection on T & D loss and felt that T & D loss for 2002-03 be pegged at 17% and for 2003-04 at 16%.

3.18.1(c) The objector also raised objection on purchase of energy and suggested purchase of only 1000 MU of energy, and opined that this could be achieved if CESC would increase its generation, after considering the availability factor, marginal cost of generation and maintenance programme of the generators.

3.18.1(d) The objector stated that CESC had relied on non-existent Government of West Bengal norms and not taken cognisance to the normative efficiency parameters already fixed by the Commission in its earlier tariff orders and requested that CESC be directed to submit stationwise actual performance parameters attained till December 2002. The objector also raised a point relating to improvement upon the calorific value of coal as per the earlier order of the Commission and heat value. The objector also gave the normative efficiency parameters as already fixed by the Commission in a tabular form and calculated the fuel cost based on the parameters. The objector also calculated the power purchase cost based on the power purchase plan as calculated by the objector.

3.18.1(e) The objector also objected to the high employees' cost and raised the point relating to payment of overtime. The objector also raised a point on employees welfare expenses, and suggested an ad-hoc cut towards provision of leave encashment, pension contribution, OT payment. The objector also suggested 3% annual increase in salaries and wages excluding wage revision effect and 6% increase on other components of staff costs and worked down the employees' cost which according to them should be allowed.

3.18.1(f) The objector also objected to the administrative and general expenses which according to them was quite high and stated that these expenses in other utilities was 1.5% of total expenses and there is scope to curtail expenditure on travelling, regulatory affairs expenses, auditor's fees etc. The objector also suggested that a 6% increase might be allowed over the expenses earlier allowed by the Commission.

3.18.1(g) The objector felt that the claim against the erosion of capital base for delayed recovery of tariff should not be allowed, and similarly the objector prayed that excess of expenditure over income as claimed might be disallowed.

3.18.1(h) The objector also preferred objections to high legal charges, audit fees, bad debts, repairs and maintenance cost, foreign exchange rate variation, other finance charges, lease rental,



depreciation, ash handling charges, delayed payment surcharge, work-in-progress, capital expenditure, compulsory investment, accumulated depreciation.

3.18.1(i) The objector further objected to calculation of working capital as cost of stores at the end of each month had not been given, cost of store including fuel in hand as projected was high, capital stores might not be taken in working capital and they calculated the figures of working capital to be included in the tariff.

3.18.1(j) The objector also objected to the figures of the loan taken in the capital base and felt that loan on account of working capital and refinancing of debt servicing were not admissible and therefore, loan should be reduced to that extent.

3.18.1(k) The objector also objected to interest on loans and suggested that interest on general purpose loan of Rs. 1714 lakhs and Rs. 1242 lakhs towards excess capital cost on Budget Budget should be disallowed.

3.18.1(l) The objector also raised objection on reduction in other income.

3.18.1(m) The objector also made similar objections on the tariff petition for Financial Year 2003-04 in separate figures for various expenses, norms and income calculated in the petition.

3.18.1(n) The objector also worked out the capital base and the reasonable return for the Financial Year 2002-03 and 2003-04 along with the revenue requirement and suggested average cost of supply at 342 paise / kwh for 2002-03 and 346 paise / kwh for 2003-04 against 431 paise / kwh and 442 paise / kwh as claimed by CESC and prayed that as existing tariff was much higher than the new tariff and there was no case of upward revision of tariff for Financial Years 2002-03 and 2003-04.

3.18.2 CESC contended that the objections of the Bharat Chamber of Commerce are misconceived, based on incorrect appreciation of the relevant facts, materials and / or incorrect premises, surmises and conjectures and suggested that no credence should be given to these objections.

3.18.2(a) CESC contended that they have met all requirements and submitted all particulars in the petition in strict compliance with the manner prescribed by the Commission.

CESC further contended that the tariff petition of CESC was based on scientific method and available actuals.

3.18.2(b) On T & D loss, CESC felt that the comments of objector was vague and also referred to the consideration of fixation of T & D loss by the Hon'ble Supreme Court for the financial year 2000-01 and 2001-02 and the directions to the Commission to fix the T & D loss for subsequent years based on the materials available before the Commission.

CESC further contended that sufficient material had been placed before the Commission relating to the action taken by the CESC which clearly demonstrated that there had been no management inaction and all possible actions had been taken to reduce T & D losses.

CESC further justified their position by quoting the steps taken by them to contain and reduce T & D loss and quoted from the tariff petition in this regard in detail (which had already been quoted in various objections and not repeated again).

3.18.2(c) On purchase of energy, CESC contended that the comments on purchase of energy are based on inadequate knowledge of material facts or deliberately ignoring material facts and without any evidence in support of the objection. CESC further contended that support is sought to be derived from an order which by virtue of law no longer existed and by ignoring the present order of the Commission.

CESC justified action taken by them to discontinue the purchase of power from DVC and further contended that the relevant materials would show that there existed peak load gap of about 400 MW with highly skewed demand pattern which is required to be filled up by purchase from WBSEB.

CESC further stated that if consumers were ready to accept substantial power-cut during the daily peak period, then the purchase of power from WBSEB could be curtailed.

They also pointed out discrepancy in the minimum contractual obligation as quoted by the objector and once again purchase figure derived by the objector. Similarly, CESC also stated that the own generation figures had been calculated on assumptions and presumptions without appreciation of the technical parameters and stated that the Plant Availability Factor was the indicator for management efficiency. CESC further stated that PLF could not match PAF due to varying load condition which was beyond CESC's control and energy could not be generated and stored for later consumption. Similarly, CESC disputed the energy balance calculated by the objector.

3.18.2(d) CESC disputed the contention of the objector that the Government of West Bengal norms did not exist, and stated that the objector should quote the reference of the order based on which it had concluded about the non-existence of the norms.

CESC further contended that they had given all the requisite information regarding fuel cost and stated that any kind of norm setting required in-depth technical study and assessment of ground level realities like age, load profile, set size, technology and design parameters and also quoted the norms fixed by the Government of West Bengal and thereupon by the Commission for Barkreswar Power Station and Kolaghat Power Station as would appear from the tariff order of West Bengal Power Development Corporation Ltd. for the year 2002-03.

CESC further contended that the computation of the objector is erroneous and justified its own calculation including the coal price, declared heat value of coal, ash content and prayed that the objector should have produced the relevant materials in support of its various allegations and not relied upon the figures which were imaginary.

They further justified the fuel cost of Mulajore and New Cossipore and stated that the Mulajore station might be closed down keeping in view the directions of the Supreme Court and steps should be taken in respect of New Cossipore unit accordingly.

3.18.2(e) CESC justified the employees cost which according to CESC had to honour its contractual obligation with the employees and / or as per law and also quoted the Hon'ble Supreme Court judgement dated 3rd October, 2002 in support of their contention.

CESC further submitted that their employees cost projections in the petition were reasonable, just and proper, besides in accordance with the law and ad-hoc cut could not be imposed based on baseless allegation etc.

3.18.2(f) On administrative and generation expenses, CESC again contended that the figures quoted by the objectors were without any evidence in support and stated that the objector has not disclosed how expenditure figure restriction of 1.5% of the total expenses has been arrived at. Similarly, they disputed the proposed annual increase of 6% and prayed that the increase in expenses should be based on relevant records, inflation index, activity level, etc. and be just, fair, reasonable, proper and correct. Similarly, CESC justified the claim for erosion of consumer base which was due to delay in tariff fixation for consumers who had taken temporary connections or had exit the system for other reasons. CESC further contended that if a separate higher rate of tariff is fixed for such condition, then the position could be avoided to some extent in later years. Similarly, excess of expenditure over income, according to CESC, was the legitimate entitlement under the relevant statute.

3.18.2(g) In the same vein, CESC justified the claim of legal charges and reported that more expenses was to be incurred to reduce the theft and pilferage of electricity in the interest of utility and consumers, as well as to fight unnecessary litigation made by some mischievous consumers, instances of which even the Commission was aware of. Similarly, CESC justified the expenses on audit fee, bad debt, repair and maintenance cost, water charges, ash handling expenses, foreign exchange rate variation, other finance charges, interest on loan, lease rental, depreciation and delayed payment surcharge. In support of interest on loan, CESC quoted the relevant Provisions of the Sixth Schedule and Indian Electricity Rules and also made references to the judgement of the Hon'ble Supreme Court and Section 29 of the 1998 Act.

3.18.2(h) CESC also justified the claim for expenditure on cost of fixed asset and cost of work-in-progress and stated that there was no over-estimation of capital expenditure, or over-estimation of asset, or inflated capital base as alleged, and further stated that the allegations were vague, devoid of any material particulars and were, on the face of them, untenable and unsustainable. CESC further stated that they had given the relevant details as required by the Commission and that the capital expenditures in question were essential for reliable power supply in the interest of the consumers. CESC also justified the retirement of the assets in line with the past years and stated that fixed asset register already existed with the Company as could be seen from the audit report and the Commission could inspect it, if required.

3.18.2(i) On compulsory investment the CESC submitted that the investable funds had been permitted to be collected in installments and therefore, the contention of the objector in this behalf was not correct.

3.18.2(j) CESC also justified their claim of working capital and submitted that maintaining adequate stock level was essential for the proposed level of generation and improvement in cost effective generation was evident from the relevant records. CESC also submitted that effective blending was important to mitigate ash related constraints, serious coal availability problems, requirement of coal if high PLF was to be maintained and accordingly, the methodology of working capital requirement was correct as maintenance of adequate stock was in consumers' interest.

3.18.2(k) CESC also justified the figures of accumulated depreciation, other income, other items of capital base and loans. CESC contended that if interest was allowed on the arrear dues in addition to revenue requirement, in that event only the relevant amount might be reduced from finance charges now required to be borne by the Company.

3.18.2(l) CESC further stated that reply to the objection of 2002-03 might also be taken for 2003-04 as by and large similar allegation / objection had been made for this year also.

3.18.2(m) CESC also contended that the reasonable return and the revenue requirement for the Financial Year 2002-03 and 2003-04 as worked out by the objector is erroneous, and the objector has taken incorrect figures without any justifiable basis for the purpose of reduction in tariff from the existing tariff determined in line with the judgement of the Hon'ble Calcutta High Court to the extent as approved by the Hon'ble Supreme Court's judgement dated 3rd October, 2002 had been provided.

3.18.2(n) CESC contended that reasons for deviation from the principles laid down in the judgement of the Hon'ble Supreme Court has not been given by the objector and therefore all the observations and deductions proposed by the objector should be rejected with reference to the decisions of the Hon'ble High Court read with the amendments made by the Hon'ble Supreme Court.

3.19 ICICI Bank Limited gave the perspective of the lenders at the time of giving loan to CESC for installation of Budge Budge project and providing other financial assistance. The ICICI Bank Ltd. pointed out the necessity of consistency in tariff policy, prayed for the same and also suggested fixation of reasonable tariff to allow the utility to recover cost. ICICI Bank Ltd. felt that CESC compared well with other Indian power utilities with regard to operational efficiency.

3.19.1 ICICI Bank Ltd. also pointed out the downward revision in rating of CESC and problem in financing in the new capacity which was required for the 10th plan.

3.20 West Bengal State Electricity Board Workmen's Union registered objections as a Registered Union and pointed out the harassment to the consumers due to load-shedding, limiting drawal of power from WBSEB, and scope for reduction of cost for operation and maintenance. They prayed that the Commission might direct CESC to resort to standard and competitive bidding procedure for ensuring transparency in financial matters. They further pointed out substantial differences in demand for power between peak and off-peak periods from WBSEB system, higher auxiliary consumption from the WBPDC power station due to such drawal by CESC, and huge transmission loss. WBSEB Workmen's Union objected to increase in DC surcharge, interest on delayed recovery of tariff, surcharge for late payment, high rate of interest, non-allowing of any expenditure for Mulajore after December, 2003, high tariff increase claim, the alleged loss due to erosion of

consumer base, security deposit, increase in reasonable return, increase in administrative and general expenses, increase in legal charges and high rate of interest. They also argued in favour of parity in rates of return between CESC and WBSEB and demanded that CESC should pay subsidy to WBSEB.

3.20.1 Questioning the status of WBSEB Workmen's Union, CESC contended that WBSEB Workmen's Union was neither a consumer nor a party or a person who could be said to be affected by the present tariff proposals of CESC and hence, that Union had no locus standi particularly, keeping in view the judgement of the Hon'ble Supreme Court dated 3rd October, 2002.

CESC prayed that the locus standi issue might be decided as a preliminary issue and prayed that the objection filed by the Union should be rejected and if the Commission felt that the Union had a locus standi then their objection were more or less similar as filed by other objectors and their detailed replies thereto might be taken as reply for this objector to avoid repetition and such reply might be taken as a part of this reply to Union's objection petition

3.21 West Bengal State Electricity Board constituted u/s 5 of the ES Act 1948 also raised objections as a Board and supplier of energy to CESC.

3.21.1(a) The Board raised objection on T & D loss as claimed by CESC and stated that in view of the judgement of the Hon'ble Supreme Court of India, CESC itself should bear a substantial part of this loss rather than seeking to transfer the entire burden to the consumers.

3.21.1(b) WBSEB also preferred objection on power purchase projection of CESC from WBSEB, heat rate, projected sales, increase in fuel cost for the purpose of working capital, increase in coal and ash handling expenses, shortfall in gratuity fund, bad debts, loss of previous year, exchange rate variation, other financial charges, VRS amount, erosion of capital base and capital cost of Budget Budge project.

3.21.2 On the objections of WBSEB, CESC pointed out that the objections submitted by WBSEB had been submitted in its capacity as a Board, and questioned the locus standi in filing the objections and to participate in proceedings. In view of the judgement of the Hon'ble Supreme Court dated 3rd October, 2002, CESC further prayed that this preliminary issue i.e., whether the WBSEB had any locus standi might be determined first and in case, the contention of CESC was upheld, then the objections filed by WBSEB should be rejected.

They further prayed that in case, the Commission agreed with the locus standi of the WBSEB to participate in the present proceedings, then the objections filed by the WBSEB are more or less the same as had been filed by different objectors / consumers / consumer's association in the present proceedings and the replies filed by CESC might be taken as reply for this petition also to avoid prolixity and repetition.

3.22 All Bengal Electricity Consumers' Association asserted that the claim of the CESC for increase in tariff was not justified, baseless and contradictory to ERC Act and went against the interest of the consumers.

3.22.1(a) The objector suggested that the cost of production of CESC for the Financial Year 2001-02 is 93 paise per unit and there was no justification for further hike.

3.22.1(b) The objector also objected to the figures on T & D loss and stated that they had not given any specific proof with facts and figures in detail for theft of 11% of power.

3.22.1(c) They also stated that the problems of ash handling and low PLF was the responsibility of the CESC which they should handle efficiently.

3.22.1(d) They further objected to the low quality of supply, price hike, off-peak power, bad debt and contended that it is because of the inefficiency of the CESC that these had been happening and therefore, consumer should not be loaded for the lapses of CESC..

3.22.1(e) The objector also stated that the tariff should be fixed keeping in view the Provisions of Section 22(1) and Section 29 of the ERC Act 1998 and specifically quoted the relevant Sections

relating to improving level of efficiency, encouraging efficiency, economical use of resources, good performance, optimum investment, safeguarding of interest of the consumers etc.

3.22.1(f) Based on the observations in the order of the Commission dt. 7.11.2001, the objector analysed the petition of the CESC and raised further objections to conclude that the direction of the ERC had not been followed by CESC. They quoted in detail the various paras, particularly para 7.4, 7.9, 7.13, 8.9, 8.13, 8.15, 8.16, 9.2, 9.5.1, 9.7.1, 9.8.1, 9.13.1, 9.15.1, 12.7.1, 12.9.2.

3.22.1(g) The objector also referred to the concept of cross subsidy, gave an interpretation of Section 29(3) of ERC Act 1998 and argued for differentiation of the tariff for the factors given therein and also referred to the Court cases filed by Government of West Bengal in the Hon'ble High Court at Calcutta.

3.22.1(h) The objector also dealt with the statistics on T & D loss furnished by CESC and quoted the Supreme Court judgement dated 3.10.2002 in this regard. The objector further contended that T & D loss should not be more than 10% and there is no valid ground and sufficient reasons to claim high T & D loss.

3.22.1(i) The objector also objected to the projected sales and referred to the para 8.2 of ERC judgement dated 7.11.2001 to say that the sale underestimates had earlier been noticed by the Commission.

3.22.1(j) The objector also questioned the figures on generation and PLF given by CESC and stated that PLF had not increased in comparison to previous year to a reasonable and adequate level which might be taken to mean that CESC has not improved their efficiency.

3.22.1(k) The objector also felt that the justification sought to be given for showing techno-economic benefits from the capital expenditures, is not there at all and as such, addition to fixed asset and capital expenditure might not be allowed.

3.22.1(l) The objector also challenged the statistics given by CESC on working capital, and referred to the observations of the Commission on working capital requirement in its tariff order dated 7.11.2001.

3.22.1(m) The objector also objected to the loan schedule, financial charges, lease rental, bad debts keeping in view the observation of the direction of the Commission vide its order dated 7.11.2001.

3.22.1(n) The objector also questioned the claim of losses due to erosion of consumer base, erosion in capital base and reasonable return and legal charges.

3.22.1(o) The objector also objected to purchase of power from WBSEB and stated that if generation from the own station could be increased then the requirement of power purchase could go down.

3.22.1(p) The objector also questioned the figures on fuel cost, and referred to the Commission's order dated 7.11.2001 on the same item. The objector also expressed dissatisfaction on ash handling expenses, repairs and maintenance expenses, introduction of VRS, depreciation, reasonable return and increase in D.C. charge and security deposit.

3.22.2 On the objection of All Bengal Electricity Consumers' Association, CESC contended that the objections are based on incorrect appreciation of the relevant facts and matters and are based on incorrect premises / surmises and conjectures, and therefore, no credence should be given to such objections.

3.22.2(a) CESC contended that the required materials towards figures and data had been filed in compliance with directions from and in the manner prescribed by the Commission in the relevant rules and regulations and that the tariff proposals are in accordance with the relevant statute and regulations.

3.22.2(b) CESC contended that the objection on generation cost of 93 paise per unit is totally incorrect and not based on facts, and stated that the objector had only taken fuel cost per unit and not the total or overall cost.

3.22.2(c) CESC contended that the ash handling problem was a national problem faced by all the utilities and the problem is more acute for urban utilities like CESC. Still CESC had been making all efforts to control the phenomenon.

3.22.2(d) CESC further contended that its quality of supply was one of the best in the country and it was imperative that the utility made continuous investments to maintain that standard. However, unless tariff permitted the same, it would not be possible for the utility to make optimum investments. They further pointed out that reduction in high tension consumption could not be attributed to CESC.

3.22.2(e) CESC also asserted that increase in tariff had been fully justified in its tariff petition.

3.22.2(f) CESC justified its claims in respect of bad debt, PLF, PAF, generation, finance cost, delayed payment surcharge, loans, erosion of consumer base, loss of entitled revenue, legal charges, bad debts, purchase of power, peak / off-peak drawal, supply of coal, repairs and maintenance, VRS, redeployment of staff, depreciation, reasonable return and contended that full material and facts had been given in the petition with justification as per direction of the Commission.

3.22.2(g) CESC also justified the T & D loss quoting the Supreme Court judgement and also describing in details the actions taken by it in this regard (as had been explained in detail in earlier objections and not repeated again).

3.22.2(h) On the objection of categorywise fixation of tariff, differentiation of tariff etc., CESC stated that it was to be done by the competent authority and CESC could not make any comment.

3.22.2(i) CESC further submitted that the reasonable return and revenue requirement in the tariff petition had been computed in accordance with the prescribed manner as laid down in the statute, guidelines and the Commission's tariff order for the year 2000-01 and 2001-02 based on the judgement of the Hon'ble Calcutta High Court to the extent as approved by the Hon'ble Supreme Court in its judgement dated 3rd October, 2002. They also stated that Commission had the power to pass interim order and this had also been recognized by Hon'ble Supreme Court in its judgement dated 3rd October, 2002.

3.23.1 Socialist Unity Centre of India, West Bengal State Committee had filed objection petition on behalf of Socialist Unity Centre of India. The objections of the Socialist Unity Centre were by and large similar to the objections raised by All Bengal Electricity Consumers' Association and the same were therefore, had not been repeated again to avoid repetition.

3.23.2 The reply of the CESC on the objection filed by Socialist Unity Centre of India was similar to the reply given by them in case of All Bengal Electricity Consumers' Association and had not been repeated to avoid repetition.

3.24 Standard Chartered Bank had filed petition as a Bank and lender of CESC.

3.24.1 Standard Chartered Bank (SCB) gave the background of SCB and its relationship with CESC and concluded that SCB had got confidence in CESC on account of the various reasons given therein.

3.24.1(a) SCB prayed for a just tariff in proper time to the utility, and quality power at a reasonable price to consumer. They also stated that financial crisis of CESC was creating worries to the lenders as it had increased substantially the risk of doing business with CESC as they had advanced money for meeting working capital needs etc.

3.24.1(b) They further stated that due to uncertainty as to the timing and quantum of revision in the tariff, the lenders were finding difficult to rely on financial projection of CESC and a serious crisis might emerge unless causes of distress were addressed by the Commission in the present tariff application of the Company immediately.

3.24.1(c) They further stated that the position had deteriorated further as CESC had substantial receivables from its consumers on account of past tariff entitlement recoverable over a prolonged period without any interest and on the contrary, it was forced to resort to temporary accommodation to sustain such operations.

3.24.2 CESC in its reply to the petition of the Standard Chartered Bank acknowledged the assistance provided by the latter and stated that such financing had been obtained to meet the necessary expenses for carrying out the business.

3.24.2(a) CESC further stated that there was a typographical error in their table 3.1(D) to (K) on page 206 of CESC's tariff petition for the years 2002-03 and 2003-04. The phrase "Temporary Accommodation for" should be above the items (v), (vi) and (vii) and accordingly, item (vii) should be read as "Temporary Accommodation" as explained in para 8 of their submission text in the petition.

3.24.2(b) CESC further justified the temporary accommodation for working facilities due to arrear dues awaiting collection on which no interest was charged.

3.25 Federation of West Bengal Trade Associations filed objection, as the Federation is a consumer of electricity supplied by CESC. The Federation raised objections on increase in meter rent, investigation into administration, purchase, distribution system of CESC and their method of book keeping and policies to adjust losses and called for a CBI inquiry to verify their actual loss.

3.25.1(a) The Federation also registered its objection to the effect that the losses of CESC are due to their mismanagement and the objector complained against excess billing, not attending complaints in time, unjustified additional security deposit, replacement of meters, providing separate meters, testing of meters, purchase of meters by consumer, checking of wirings, replacement of defective poles and transformers, timely switching off street lights, low FPPCA, increase in interest on security deposit. The objector suggested that more supplying agencies to be developed and recommended appointment of a high power committee to probe on the allegations of hooking and dis-connection of lines.

3.25.2 CESC while replying to the objections of Federation of West Bengal Trade Associations, stated that the points raised by them are exactly same which had been raised in 2000-01. CESC stated that all such matters had been earlier clarified and the Commission had already taken a view of the same.

CESC also pointed out certain discrepancies / mis-directed statements in the objection to justify their submission.

CESC further stated that the objections had been made without correct appreciation of the data presented in the tariff petition. According to CESC one example of such unfounded objection was that CESC had allegedly raised its meter rent whereas no increase in meter rent has really been proposed.

3.25.2(a) CESC also referred to the Supreme Court judgement dated 3.10.2002 regarding the observation on the procedure for hearing and the right of the consumer and prayed that the objections should be rejected.

3.25.2(b) They further pointed out that no material fact had been placed by the objector.

3.26 Indian Aluminium Company Ltd., a HT consumer of CESC has filed its objections on the tariff proposal of CESC.

3.26.1(a) The Company gave, in brief, an introduction of the company, the tariff paid by the company, the importance of company's Belur factory to CESC, problems pertaining to electricity at factory, action taken by the company to reduce cost and conservation of resources, CESC's lack of efforts for promoting efficiency and reduction of costs.

3.26.1(b) The objector objected to the T & D loss and quoted Hon'ble Supreme Court's order dated 3.10.2002 on this account.

3.26.1(c) The objector also objected to the high percentage of auxiliary consumption which according to the objector indicated a decreasing level of efficiency.

3.26.1(d) The objector preferred objections to employment cost and stated that sufficient information had not been given with regard to average number of employees in 2001-02 and subsequent reduction in 2002-03 and 2003-04 on account of VRS. They further raised objection on sharp increases in DA claim, pointed out the high employment cost in CESC and stated that the new wage agreement did not include provisions relating to enhancement of efficiency and productivity. The latter could have reduced the unit cost of generation.

3.26.1(e) The objector was also critical of the total quantity of coal consumption and fuel consumption, and pointed out that it would have been correct to take the prices ruling as on 30th November, 2002 for determining the fuel cost, instead of taking a weighted average of actual prices for both the years.

3.26.1(f) The objector also objected to high legal expenses, bad debt, repair and maintenance, power purchase cost, delayed payment surcharge, bill discounting charge, excess of expenditure over income, additional fixed asset, working capital, loans, other finance charges, lease rent, reasonable return, investment in contingency reserve, restructuring of debt.

3.26.1(g) The objector also made a point regarding the necessity of input cost parity due to globalization.

3.26.1(h) The objector was also critical of the relatively high cost of power to industry due to cross subsidy and suggested lower tariff for 33 KV.

3.26.1(i) The objector also found no merit in the current captive power policy of the Government of West Bengal, and requested for amendment of the same in view of the problems and suggestions given by the objectors.

3.26.2 CESC pointed out that in the judgement of the Calcutta High Court dated 14th May, 2002 the average rate of tariff for 2002-03 was to be 400 paise / kwh which would be subject to further adjustments according to VIth schedule of the 1948 Act after the accounts of this year were finalized.

3.26.2(a) CESC denied that their present tariff proposal is contrary to either the letter or the spirit of the ERC Act 1998 and pleaded forcefully that no cost had been artificially inflated and there had been no contravention of law, as had been wrongly alleged.

3.26.2(b) CESC also gave their views on CESC's relationship with Indian Aluminium Co. Ltd., current tariff paid by the Company, importance of the Company to CESC, problem pertaining to electricity and actions taken by CESC in this regard.

3.26.2(c) On T & D loss CESC gave its detail reply (which had already covered in earlier objections and therefore not repeated to avoid the repetition).

3.26.2(d) CESC also justified its auxiliary consumption based on technical study, and the ground realities like age, load profile, set size, technology and design parameters etc.

They further contended that their auxiliary consumption was better than other similarly placed utilities in the State and also explained the problem of maintaining a high PLF.

3.26.2(e) CESC justified the expenditure incurred on employees, D.A. increase, wage agreement and also quoted Supreme Court's observation on the employees' cost.

3.26.2(f) CESC also gave justification and reasons for claim of the fuel cost, legal fees, bad debts, repair and maintenance, T & D loss, delayed payment surcharge, excess of expenditure over income, capital expenditure, working capital and maintenance of fuel stock level, interest rates, bill discounting charges, other finance charges, lease rentals, contingency reserves, reasonable return, power purchase cost, loans etc.



3.26.2(g) On the objection of cross subsidy and categorywise tariff fixation CESC submitted that the same was to be done by the competent authority, and similarly, for captive power policy, CESC felt that this was a matter of the State Government, and hence they did not make any comment.

3.27 West Bengal Rolling Mills Association filed objection through its Honorary General Secretary, Mr. Suresh Agarwal and also Mr. Suresh Agarwal in his individual capacity filed objection on the tariff petition.

3.27.1 The objector before making the objection for the tariff petition made certain submissions on two part tariff, fuel surcharge recovered earlier, incorrect retention of Government revenues, certain court cases, certain personal allegations and matters, certain matters relating to tariff fixation for 2000-01 and 2001-02 including the report of administration for Coal India Ltd., tariff orders of the Commission on WBPDC, orders of the Commission on tariff petition of DPSCL, tariff order of the Commission for CESC dated 7th November, 2001, court cases pertaining to tariff order dated 7th November, 2001 and judgement of the Calcutta High Court and Supreme Court on the tariff order dated 7th November, 2001 including the various affidavits etc. filed during the court proceedings, tariff order of the Commission in case of WBSEB, certain allegations against CESC relating to meter, meter replacement charge, installation of meter, billing, delayed payment surcharge, theft of electricity, recovery of dues towards theft of electricity, condition of supply as approved by the Government, amendment of Indian Electricity (West Bengal Amendment Act 2001) and its consequences, non-implementation of some directions of the Commission held dated 7th November, 2001, special conditions etc. for steel rolling mills, the argument of the objectors before the Hon'ble Supreme Court on the tariff determined by the Commission vide its order dated 7.11.2001, interpretation of the objector on the judgement of the Supreme Court dated 3.10.2002, submissions to be made by the objectors on its application filed on 30th October and 30th December, 2002 and certain correspondence in this regard, denial of personal hearing to the objector at the time of determination of tariff based on Supreme Court order dt. 3.10.2002 for 2000-01 and 2001-02 and its relevant correspondence and subsequent court cases, objections on the tariff order of the Commission issued by 11th November, 2002 read with 16th December, 2002 and consequent further correspondence by the objector in this regard and subsequent court cases etc..

3.27.1(a) Thereafter, the objector raised certain objections on the tariff petition.

3.27.1(b) The objector felt that the tariff petition is defective and therefore should be dismissed.

3.27.1(c) The objector stated that no financial disclosure of the Financial Year 2001-02 and the audited balance sheet had been given and hence the petition should not be considered. The objector gave certain information from Financial Year 1989-90 and onwards and sought certain further information and pointed out that based on such figures, CESC did not require any running capital for its business as CESC had recovered substantial delayed payment surcharge, but had not deployed more sources, and had failed to work out the real cost of tariff, state anything about recovery for unmetered consumption, as also about expenses incurred by CESC and concluded that in the absence of all the complete information as desired by the objector, it is difficult to have effective opposition to the tariff petition of CESC.

3.27.1(d) The objector prayed for appointment of independent Chartered Accountant at the cost of the objector.

3.27.1(e) The objector felt that the cost of fuel was to be regulated in terms of IXth Schedule of Electricity Supply Act 1948 and the Commission had no jurisdiction to fix the rate under IXth Schedule.

3.27.1(f) The objector also gave the details of the certain expenditure of previous years and felt that the cost of repair and maintenance and administrative and miscellaneous expenses, consumption of stores was very high and also made certain personal allegation.

3.27.1(g) The objector is also critical of the figures of cost of generation, distribution, administration and other expenses of CESC for the year 2000-01 and commented on poor PLF. The objector also raised certain personal allegation on sale of assets, certain expenses and

referred to some statement made by one of the Officers of the CESC on 26th December, 2002 in detail.

3.27.2 CESC gave detailed reply on the objections filed by West Bengal Rolling Mills Association and Shri Suresh Agarwal for the tariff petition for 2002-03 and 2003-04.

3.27.2(a) On the personal allegation levied by objector, CESC also levied some personal allegation against him as also against some of the other members of the West Bengal Rolling Mills Association and prayed that the Commission should not give cognizance to the statements made by objector in this behalf and should reject the objection petition outright.

3.27.2(b) CESC also stated that the objections filed by the objectors are frivolous, malafide and suffered from serious defects as they had brought out various extraneous issues which had no relevance to the matter of fixation of tariff for the years 2002-03 and 2003-04. The same issues had been ventilated by the objector before different authorities including judicial authorities and the Commission. The objector raised various issues scattered in various paragraphs in a jumbled up manner. The objector has also inserted some details of some Court proceedings which has no relevance with tariff petition. Also these matters were either finally disposed of or pending for disposal before the respective judicial forums.

They further contended that the allegations and purported materials are wholly irrelevant to the present proceedings and several of them had no connection whatsoever with the present proceedings.

CESC also pointed out that the objector's affidavit-in-opposition is replete with invectives against the Commission, which are not only malicious and false but also contemptuous in nature and they quoted various paragraphs in this regard.

CESC also pointed out that a large number of objections pertained to the tariff proceedings for the year 2000-01 and 2001-02 of some of the utilities in the State, and the orders passed therein by the Commission, which had no relevance to the present proceedings.

CESC further pointed out that any reference of the objection based on order dated 7th November, 2001 passed by the Commission for tariff of CESC and the order passed by the Hon'ble Calcutta High Court and, thereafter, by Hon'ble Supreme Court in the respective proceedings might be kept in view and disputed the contention of the objector that the order of the Calcutta High Court had been set aside by the Hon'ble Supreme Court and further quoted from the order of the Hon'ble Supreme Court dated 3.10.2002 to elucidate its terms, scope and effect.

3.27.2(c) CESC affirmed that all charges that were being recovered from the consumer had been in accordance with law and/or as per the approval and/or direction of the Commission, Hon'ble Calcutta High Court and Hon'ble Supreme Court.

CESC further contended that the conditions of supply had earlier been approved by the State Government and there was no harassment of the consumers except the dishonest consumers who might feel harassed when caught for stealing of electricity.

CESC further contended that personal grievances made out in the objection has no relevance in the present proceedings besides being incorrect and without any substance whatsoever.

CESC again contended that the order of the Commission dated 7th November, 2001 which had been set aside by the Hon'ble Calcutta High Court no longer existed, and no reference, non-compliance or any issue could be quoted for such non-existent order.

3.27.2(d) CESC further stated that the fuel surcharge is to be decided by ERC, and CESC did not make any profit out of it as fuel power purchase cost (FPPCA) was to be approved by the Commission.

3.27.2(e) CESC further disputed the contention that the accounts of CESC are incorrect and also stated that the re-audit of the accounts of the CESC should not be done and quoted the order of

the Supreme Court dated 3.10.2002 and the order of the Calcutta High Court dated 14th May, 2002 in this regard.

3.27.2(f) CESC further contended that the tariff petition has been filed as per the approved procedure and the Commission might take cognizance of the mischievous allegations made by the objector including against the Commission and also prayed to the Commission that the objector should be directed to produce before the Commission the evidence in support of malicious and mischievous allegations and in default, appropriate proceedings for defamation / contempt of the Commission should be initiated against the objector.

3.27.2(g) CESC also disputed the factum, validity and / or relevance of the various charts and the conclusion drawn therefrom by the objector and prayed for reference to the Provisions of Electricity (Supply) Act 1948 including the Schedules and Rules.

3.27.2(h) CESC further disputed the allegation preferred by the objector to the effect that CESC had acted against the interest of the consumers, or that CESC's consumers were not satisfied with it, or CESC indirectly enjoyed subsidies or CESC had not paid Electricity Duty to State Government, or has acted in negligent manner in relation to its plants.

3.27.2(i) CESC further disputed the objection relating to T & D loss.

#### **CHAPTER- 4 : OBJECTIONS / POINTS RAISED AT THE HEARING FOR 2002-03 AND 2003-04**

4.1 As indicated earlier, the objectors filed their written objections and CESC also gave their written submissions against the objections filed. During the hearing, the following objectors made their submissions after the tariff proposal of CESC was introduced by its Managing Director. The objectors who had not filed written objections, but wanted to join hearing, were also permitted to raise their points.

4.2 On behalf of CESC, Managing Director of CESC introduced the tariff proposal of the Company and highlighted the following points in his submission.

4.2(a) (i) CESC was catering to the power supply need of around 14 million residences apart from other consumers in its command area through nearly 19 lakh meters and continuously battling against odds of high pilferage.

(ii) CESC was very much alive to its environmental responsibilities, taking due care to ensure that governing environmental standards were complied with in all its generating stations.

(iii) CESC had been striving continuously for improvement in plant availability, capacity utilization and operational efficiency depending on external circumstances.

(iv) Though the maximization of own generation was always aimed at, it was often required to shut down/back down certain units at night to cope with the varying dispatch demand, radial load requirements and purchase obligations during off-peak period. Even with all such limiting factors, CESC's Budge Budge plant had been maintaining a PLF 75.9% and high plant availability for all the stations.

(v) The number of high voltage consumers had been steadily going down in CESC's area and the average monthly consumption of 63% of the consumers was only 48 units. Such low rate of consumption imposed greater financial burden on the company – apart from increase in T & D loss.

(vi) The additional burden and problems of CESC in maintaining D.C. supply in a limited area of Calcutta and the poor response from the concerned consumers for conversion to A.C. supply was also pointed out. The utility prayed for necessary direction from Commission in phasing out D.C. supply.

(vii) CESC succeeded in making substantial cost saving in minimizing power purchase by ensuring better operational performances of its own generating stations. It discontinued the practice of

obtaining power supply from DVC in the shortest possible time.

(viii) Though there was substantial expansion in its consumer base specially in household sector, CESC had made no increase in its employees' strength and yet was maintaining a satisfactorily high level of consumers' services.

(ix) According to CESC, the extent of T & D loss as had been allowed in the judgement of Hon'ble Supreme Court was on ad-hoc basis and the finality of the same had been left to the discretion of the Commission depending upon the circumstances and the evidence of efforts being put by the utility to minimize the same. CESC expected to bring down T & D loss to about 20.3% in the year 2002 - 03 and 19.6% in 2003 - 04 in spite of progressive deterioration of sales mix, existence of 6 KV primary distribution system and continuing D.C consumption. CESC had been taking all possible efforts to reduce T & D loss under the given circumstances including the serious problem of pilferage of power and its accompanying law & order problems. He spelt out the effective steps taken for timely meter reading, meter checking, removal of hookings, conducting raids and starting legal proceedings. He also pointed out that the cases of power theft were not confined in overhead supply lines alone, but were also substantial in underground lines. Though the West Bengal Amendment of Indian Electricity Act, 1910 has been given effect in July 2002, the essential measures like establishment of special courts and special utility protection force were yet to materialize. The earliest power theft case still pending with the court dated back to 1985. The work done by the Loss Reduction Cell of the company were also mentioned.

(x) CESC was trying to reduce the burden of interest element in its cost of supply by rescheduling the higher rate of loans and the matter was under negotiation with the lenders. CESC expected reduction of Rs. 80 crores in this regard in 2003-04.

(xi) The financial difficulties through which CESC was now passing was due to untimely, irregular and inadequate tariff fixation in past many years. The financial problems had led to insufficient attention to maintenance needs resulting ultimately in increase in the cost and risk.

(xii) He pointed out that due to inadequate cash flow the company could not pay dividends to its shareholders for last 5 years.

(xiii) CESC prayed for considering the possibility of 3 years' tariff exercise to enable the utilities to make better financial planning.

(xiv) It was felt by CESC that there was need to make proper differentiation between the licensees and consumers in accordance with the provisions of section 46 and section 49 of the Electricity (Supply) Act, 1948 while fixing power tariff for purchase by CESC.

(xv) CESC prayed for not making any discrimination between the public and private sector utilities in applying operational and other norms. The latter, in its opinion, should be allowed to enjoy the entitled returns as per the provision of the Act and some incentive might be considered for attaining efficiency above the set norms.

(xvi) CESC prayed not to be held responsible for the factors which were beyond their control and not to take any objection relating to management inefficiency into consideration without proper evidence. CESC maintained that the concept of penalty and reward should go side by side. The reasonable norms should be fixed in transparent and equitable manner and the utilities should not always be asked for improvement over past years where those had already been set at higher level.

(xvii) CESC also recommended concentration on the main and major points for cost reduction and gave an example. If more freedom of power purchase was given to the CESC, there would be a possible 90 paise reduction in unit power purchase cost, which in turn would lead to reduction of Rs. 120 crores in the Revenue Requirement of the company.

(xviii) It is stated that tariff increase prayed for 2002 - 03 is about 2% over the tariff if determined on revenue requirement calculated on actuals for 2001 - 02 and about 10% over

Commission's allowed tariff for the said year. In 2003 – 04, increase prayed for is less than 3% over CESC's prayed tariff for 2002 – 03. In justification of the tariff increase prayed for, CESC pointed out that they were not getting any State funding of loss or subsidy even though the consumption of many LV consumers are akin to Kutir Jyoti consumers.

4.2(b) The presentations of Shri Banerjee, M. D. of CESC were supplemented by Dr. S. Chakraborty, Advocate on certain legal points. The points advanced by him as clarifications are as under:-

(a) Member (F & A) wished to know what exactly CESC had meant when in certain rejoinders to objections, CESC had stated that the objections did not meet the requirement of Regulation 2(g). Dr. Chakraborty clarified that the objections had not been given on affidavits, though that was the requirement of Regulation 2(g) of the Commission.

(b) Dr. Chakraborty laid before the Commission a copy of the Judgement of the Hon'ble Supreme Court and drew the Commission's attention to the concerned para related to T & D loss. According to Dr. Chakraborty, the finality of the allowable extent of T & D loss was within the discretion of the Commission which would fix the same after taking into consideration of all related factors including the desired actions taken by the company within its control.

(c) Referring to the judgement of Hon'ble Supreme Court he raised the question of locus standi of certain objectors who were not consumers or body of consumers of CESC. He cited the example of WBSEB, WBSEB Workmens' Union etc.

(d) Dr. Chakraborty argued that all the details as required by the Commission had been given in the petition and mere allegations with no supporting documents, or insufficient documents should not be considered. He also brought on record the legal decision/dictum that "He who alleges must prove it". The objectors while objecting to the proposal should establish a wrong doing or not doing certain things in required manner by the CESC.

4.2(c) At this point of deliberation by CESC's representatives, the Member (F & A) put the following queries and desired that CESC should come up with replies if the same could not be readily given.

(a) How CESC would justify the extent of foreign exchange variations claimed in the Revenue Requirement?

(b) The rate of interest on different borrowings of CESC varied from 11% to 19%. The question was whether CESC was taking care to see high interest rate bearing loans were not defaulted in repayment by the loans bearing lower interest rate.

(c) Was it possible for CESC to further increase generation in their own plants during peak hours of the day, and curtail the need of the purchase of peak power?

(d) Was it possible for CESC to export power to other agencies during off-peak period?

(e) What were the effective measures which could be taken to win over the reluctance of the D.C. consumers for conversion to A.C?

(f) Whether the Rate of Return as per norms applicable for Electricity Boards would be acceptable to CESC?

(g) CESC should specify the utilization of Rs. 16 crores allowed for VRS during 2000-01 and 2001-02.

CESC noted the queries and committed to provide necessary replies to the Commission. On the point of the utilization of VRS amount of Rs. 16 crores, it was however explained by Shri Banerjee that the amount was allowed to them in the tariff order by the Commission in November, 2002 only, and that tariff had not yet been billed and hence utilization, as such, could not be done.

4.2(d) Member (Technical) also desired to know whether CESC was in a position to increase PLF of their generating stations by another 10%, so as to avoid peak off-peak penalty. CESC agreed to study the possibility and report back.

4.3 The objectors / other persons attending hearing have been then allowed to speak and they presented their points of objection in the hearing as under :

4.3(a) Bengal National Chamber of Commerce & Industry was represented in the hearing by Shri Ranjit Lodh. The points highlighted by the latter in their representations were as under:-

(a) CESC should first identify the quantum of technical loss with a fair degree of accuracy and should put more efforts to reduce the commercial loss. The T&D loss beyond 18% in 2002 – 03 and 16% in 2003 – 04 would be detrimental to the interest of large number of honest consumers in the city. They suggested gradual change over to the distribution voltage of 11 KV by CESC and phase out the existing 6 KV transmission and sub-transmission system. It was also suggested to have more 132 KV sub-stations. A suggestion regarding checking of accuracy of meters was also made.

(b) CESC should go for direct purchase of power from NTPC/PGCIL to avoid purchase of costlier power from WBSEB and increase its PLF from 71% which was low. CESC should give incentive during off-peak period with a view to have better load mangement.

(c) Strict cost control measures were imperative for CESC to bring down O & M cost within reasonable percentage of Net Capital Base.

(d) In the absence of data in regard to rate of increase of the number of consumers under different categories from year to year and also the rate of exit of consumers, with acceptable reasons therefor, the issue of the erosion of consumer base as brought out by CESC Ltd. was confusing.

(e) CESC should be more vigilant in recovering their outstanding dues so that the need of temporary financial accommodation could be avoided for the benefit of consumers.

4.3(b) Shri Shibajee Dey, Organizing Secretary, Dakshin Kalikata Janaswartha Raksha Mancha confined his presentation within the points raised by his organization in their written objections to CESC's tariff petition. The main thrust had been given by him on allowing only 15.5% T&D loss as per norms of CEA. Projected Fuel Cost & Price, R & M expenses were objected to and he viewed that the existing practice of realization of arrears of one person from other should be stopped. He also urged to abolish collection of 15% additional charges from D.C. consumers, as CESC had not been taking sufficient interest in converting D.C. consumers to A.C. consumers.

4.3(c) In their submission before the Commission, the Bharat Chamber of Commerce was represented by Mrs. K. Sharma and Shri Amiya Ghosh, their consultant. The highlights of the main points raised by the Chamber of Commerce were as under:-

(a) The tariff petition did not mention whether the figures given in the Annual Revenue Report for the FY 2000-01 & 2001-02 were as per Audited Reports or not. It was also argued that in certain cases, the information provided by CESC lacked detail narrations.

(b) The normative T & D loss level for the financial year 2002-03 should be at 17% (12%+5%). This worked out on allocation of the projected non-technical losses (8.3%) between consumers and the utility in the ratio 40 : 60.

(c) The increase in import of power from WBSEB as projected by CESC should not be allowed unless the same proved to be cheaper than the cost of CESC's own generation depending on varying load conditions.

(d) For CESC, there existed a scope to utilize the margin between Availability Factor and Load Factor by utilizing the intra-generation mix and therefore, CESC should maximize its own generation to reduce the need of power import.

(e) The operating norms as per Technical Committee of the Government of West Bengal had become redundant because of fresh norms as set by the Regulatory Commission in its earlier tariff order relating to CESC.

(f) The quantum of increase claimed in employees' cost was not justifiable and only the legitimate costs under this head should be allowed.

(g) The claims of CESC towards the consumer base erosion & "excess of expenditure over income" should not be allowed.

(h) The increase claimed over 2001-02 in coal and ash-handling expenses came to 28.89%, which was not supported by any justifiable reasons, including the G.C.V. adopted.

(i) The additional legal expenses to be incurred on account of drive against pilferage of electricity should not be passed on to tariff.

(j) Bad Debt should be restricted to the minimum possible amount as adequate safety. There already existed a provision of 3 months' Security Deposit to be taken from consumers.

(k) The projected R & M expenses for 2002-03 worked out about 2.4% of the cost of gross fixed asset and the same was considered quite high.

(l) In allowing interest, the general purpose loans which were not meant for any capital formation, should be eliminated. Similarly the interest on the excess capital cost of Budge Budge plant should also not be allowed.

(m) The claims of CESC towards the Foreign Exchange Rate Variation should be critically examined.

(n) The Schedule Capital addition should be supported by Techno-economic benefit analysis and CESC should be urged for early completion of capital works in progress to avoid interest burden on the cost of completion.

(o) No cost towards inefficiency of CESC be passed on to the consumers by way of tariff.

(p) Other points as raised by Bharat Chamber of Commerce in their written objections submitted to the Commission, were also mentioned during the hearing.

4.3(d) The next submission before the Commission against CESC's Tariff Petition both for 2002-03 and 2003-04 was made by WBSEB represented by Shri M. K. Roy, Chief Engineer (Commercial) and Dr. S. C. Bhattacharjee, Dy. Chief Engineer. As a question was raised in regard to locus standi of WBSEB as an objector to CESC's tariff petition, Dr. Bhattacharjee clarified that at number of places WBSEB was receiving power from CESC and as such WBSEB was qualified to raise objection to CESC's tariff proposal as a consumer. WBSEB's objections were mainly on the following points:

(a) The tariff in respect of CESC for the year 2002-03 and 2003-04 should reasonably be fixed on the basis of T&D loss of 17% and 16% respectively by reducing the same @ 1% per year in the context of promulgation of State Act against pilferage of electricity and in the line as decided by Hon'ble Supreme Court during 2001-02 over 2000-01.

(b) From the pattern of CESC's actual drawal of power from WBSEB during 2002-03, the power purchase for the year 2002-03 and 2003-04 could be fairly assessed as 1150 MU and 1335 MU respectively.

(c) There was no justification for considering increase in the heat rate during 2002-03 and 2003-04 in different generating stations of CESC over the heat rate allowed by the Hon'ble Commission in its order dated 7th November, 2001. For Budge Budge Station, the heat rate should be allowed at par with that admissible to Central Sector Generating Stations, as this station had been commissioned very recently.

(d) While the estimated sales growth during the year 2002-03 was higher than the actual growth during 2001-02, the reasons for reduction in sale growth during the year 2003-04 could not be reconciled.

(e) The average cost of stores for working capital purpose needed justification.

- (f) The reasons furnished by CESC for enhanced claim towards coal and ash handling cost were not convincing.
- (g) Bad Debts should not have been claimed as a percentage of sale; this should rather be calculated as a percentage of outstanding debtors.
- (h) Claiming recoupment of earlier year's losses through the tariff without prior approval of State Government would not be proper.
- (i) Variations in Foreign Exchange Rate were not chargeable to Revenue Account but should be capitalized as per Rules.
- (j) Raising the question of Budge Budge capital cost, WBSEB still maintained that it should be Rs. 1853 crores as worked out by WBSEB and submitted that the Commission should review its decision.

On completion of the submissions by WBSEB, the Member (F & A) wanted to know

- (a) whether WBSEB thought it proper and possible for the Commission to adopt the cost of Budge Budge plant as worked out by WBSEB in the light of Hon'ble Supreme Court's judgement in this regard dated 3.10.2002; and
- (b) whether it would be proper for CESC to capitalize the Foreign Exchange Rate variations at the time of the repayment of foreign loan and to change the historical & original cost of assets. The Hon'ble Chairperson desired that if WBSEB has got any affirmative replies on the points raised by the Hon'ble Member (F & A), the WBSEB might come up with legal opinions.

4.3(e) All Bengal Electricity Consumers' Association was represented in the hearing by Shri Subhash Ch. Banerjee, Shri Asit Das and Shri Sanjit Biswas. The Association narrated the points made in their written objections submitted before the Commission. The objectors pointed out various directives given by the Commission in regard to different operational and financial performances and urged CESC to abide by those directives. They raised their objections against the proposed increase in all the heads of expenditure and also against allowing any relaxation in T & D loss over the rate allowed by the Hon'ble Supreme Court. The Association opined that T&D loss should be fixed at rates below those fixed for 2002-03 and 2003-04. They also objected to the CESC's claim of interim relief. The Association also prayed for not allowing proposed capital additions without proper techno-economic analysis. According to the Association, the sales projections made by CESC were on the lower side and were so made in order to get the benefit of recovering fixed charges at higher rate. They questioned the justification of charging common tariff to all classes of consumers regardless to the quantum of their consumption and sought to establish that cross-subsidy and differential tariff had been provided for in the law itself.

It was pointed out by the Member (F & A) that the Commission had already decided in principle that no utility should get abnormal additional revenue towards recovery of fixed charges in case actual sale exceeded the projected sales, and an indication in this regard had already been given to CESC in the Tariff Order issued on 11th November, 2002. Now utility would have to come to the Commission in case of recovery of excess fixed costs in case of variances in projected sales as has been ordered in the recent orders of the Commission for other utilities. In regard to the question of charging common tariff to all classes of consumers, he stated that the matter was sub-judice and therefore, should not be taken up during the present proceedings.

4.3(f) Calcutta Chamber of Commerce was represented by Shri Pratik Ch. Banerjee, Advocate. Referring to the points contained in the written objections, submitted by his client and referring to the provision of section 22(1)(d) and section 29(2)(a) to (d) he prayed for regulating the tariff of CESC after carefully judging its efficiency in different aspects. He highlighted that if the cost of fuel and power purchase elements were excluded from the projected Revenue Requirements, the increase in other cost elements would come to 23.60% and 33.20% over the expenditures stated to have been incurred during 2001-02. He prayed for a critical scrutiny of the claims lodged by CESC. The latter's claims for higher T&D loss, proposed addition in capital base, higher R&M expenses, foreign exchange variation and Foreign Loans were objected to. He requested that he might be allowed to examine the CESC management on oath and CESC be directed to produce all



the vouchers, documents, accounts etc. for their/Commission's examination before fixing tariff. He also objected to computerization at this stage, as it would reduce the manpower necessitating & VRS. He also suggested that as the CESC's claims before the Commission for earlier years had been inflated, the same may be so for this year also.

4.3(g) Shri S. Mukhopadhyay, an individual consumer of CESC, presented his points of objections to CESC's tariff petition. Referring to provision of section 6(b) of the Consumer Protection Act of 1986, Shri Mukhopadhyay maintained that the enhancement of the charges of electricity with retrospective effect would not be justified. He also pointed out that the recovery of the outstanding amount against a previous occupant of a premises from its new occupant would be in contravention of section 6(e) of the Consumer Protection Act. According to him, the loss due to leakage and transmission, being the sole responsibility of the CESC, should not be included in the electricity tariff due to be paid by the consumers. The rate of meter charges being collected from the consumers was also objected to. He submitted that the consumers should be allowed to install their own meters. He also pleaded that CESC should not be allowed to include the amount involved in any disputed bill, in the bills for following months. He urged the utilities to pay reasonable interest on the amount of refund in the case the dispute was latter settled in favour of the consumers. He, however, recorded his appreciations for CESC for quick restoration of services on request, when power supply stopped temporarily for different reasons.

4.3(h) The Socialist Unity Centre of India was presented by Shri Amal Maity. In regard to their locus standi, as an objector, Shri Maity intimated that all their offices in the CESC command area are consumers of CESC. He presented and narrated all the points of their written objections submitted to the Commission and prayed for not allowing any interim relief to CESC. He also argued against any increase in the tariff of CESC.

4.3(i) Indian Aluminium Company Ltd. was represented in the hearing by Shri Manotosh Bhattacharjee. After narrating in detail the various objections filed by them in regard to CESC's tariff proposals, Shri Bhattacharjee specially prayed for the following:-

(i) He urged CESC to make fair disclosure of its costs and the cost reduction measures implemented by it;

(ii) He requested the Commission to consider whether a separate category in tariff structure should be constituted by the utility for power intensive industry such as his company;

(iii) He pleaded to the Commission for framing tariff with the final objective of eliminating cross-subsidy;

(iv) He also made a plea for making appropriate changes in the captive power policy of the Govt. of West Bengal in the line as prevailing in Maharashtra so that power intensive industries would find it profitable to set up their own captive plants;

(v) He disputed the claims made in the reply of CESC in its rejoinder relating to energy conservation measures, fuel cost, legal expenses, D.A. increase, employees' cost, R & M expenses, claim against withheld amount of addition to fixed assets of earlier years. He also pointed out that the utility had not furnished the details of interest on cash credit nor explained the benefits of debt-restructuring. He also felt that CESC was adding loan of last year to the figures concerning reasonable returns of the year under consideration and thus claiming double benefit.

4.3(j) Shri Prasanta Nandi Chowdhury, General Secretary of the WBSEB Workmens' Union, as was authorized by some of the consumers of CESC, raised the points of high T&D loss and operational expenses claimed by CESC in their tariff petition. He also disputed the capacity addition being asked by CESC and requested that the latter should advance proper justification for the same. He also suggested that all persons should be allowed in hearing. He felt that work-in-progress and legal costs should not be elements in tariff and loan repayment actually is investment.

4.3(k) West Bengal Rolling Mills Association was represented by Shri Suresh Agarwal, its Honorary General Secretary. Referring to the various points of objections to CESC's tariff petitions already submitted to the Commission by the Association, Shri Agarwal desired to draw the attention of the Commission to the claims of CESC for PLF, Auxiliary Consumption, T&D loss, owners money

invested, Cash Flow and projected expenditure on employees, Misc. expenses and also on capital expenditure. He demanded the submission of Audited Accounts and Audit Reports by CESC and prayed for deletion of excess cost on Budge Budge from accounts. While elaborating different points of objection, he pleaded to be allowed to cross-examine the CESC management on various issues including certain matters that verged on personal allegations. He felt that the audit of CESC's accounts should be got done by the auditors appointed by the Commission at the Association's cost. He also felt that an unpaid amount of Rs. 786 crores by CESC to WBSEB should be taken as CESC's income. In his opinion, the norms of WBPDL's generating station should be taken as norms of CESC's station also. He further contended that in case CESC did not want to purchase WBSEB's power, then it should file petition for arbitration. The tariff to industry should be at cheaper rates and there should not be any cross-subsidy. He also explained his views on incentives for off-peak power and load management. The point regarding implementation of VRS in Mulajore and New Cossipore was also raised against which Rs. 16 crores was given in 2001-02 order and it was contended that VRS be funded from sale of assets. He further read out details of various data and chart from 1990 onwards to show CESC has been earning profits & surplus cash flow. He further contended that Commission could only recommend the Fuel Surcharge under Schedule IX of Supply Act, 1948 and that too without any element of profit. He also read the extract from CAG report on non-payment of Electricity Duty and felt that interest earned on unpaid amount be taken for adjustment in Revenue Requirement. He also raised points relating to metering of street lights, security deposit, investment of security deposit, incentive to H.T. consumers for upgrading the voltage of supply to them, investment in Ballagarh, Purchase System, Sale of Assets, applicability of CRES to H.T. consumers, tariff for pilferage of electricity, meter replacement charge, approval of condition of supply by GOWB, reduction in the rate of DPS, Average Billing, Minimum Charge, Load Factor Formula for Rolling Mills. Shri Agarwal also demanded that all vouchers, records & other documents be produced before him/Commission for their examination. He also referred to various correspondences with Commission and the CESC remaining un-replied and viewed that consumers had full right to ask for more information through correspondence and Commission should provide that information to all consumers.

4.3(l) The Commission asked Shri Agarwal not to make personal allegations before the Commission and advised him to confine his arguments to the points which would be required by the Commission to consider in the process of decision making for fixing tariff for CESC in the instant cases. Shri Agarwal was repeatedly asked by Member (F&A) and also by Chairperson to confine his submissions and objections to the issue i.e., fixation of tariff for 2002-03 & 2003-04 for which the hearings was being conducted. Shri Agarwal was also asked to complete his arguments within a reasonable time. As he had already spoken for about 2 hours and as the time for the day's hearing would be over by 5 p.m., he was asked to complete his arguments within that time.

4.3(m) After completion of his submission, Member (F&A) desired to Shri Agarwal to answer a few queries. The queries were:-

(i) If Commission was not empowered to sanction FPPCA and could only recommend the same, then who would finally sanction the same?

(ii) How the excess cost of Budge Budge could be deleted from accounts against the certified & audited expenditure?

(iii) In case dues to WBSEB were to be taken as income in the accounts, would WBSEB agree to its write off and if not, how payment to WBSEB be regulated and accounted?

(iv) Was the 9th Schedule of E.S. Act, 1948 applicable to CESC for FSC? Could funding of VRS be denied by the Commission in view of the direction of the Hon'ble Supreme Court dated 3.10.2002?

There was no cogent reply to these queries from the end of Shri Agarwal.

4.3(n) Member (F & A) also wanted to know from Shri Agarwal whether he thought it feasible and in accordance with the provisions of Act as interpreted by the Hon'ble Supreme Court in its order dated 3.10.2002, for the Commission to enter into correspondence with around 60 lakhs of electricity consumers of CESC and other utilities, while performing its statutory functions as a quasi-judicial body. Shri Agarwal opined that Commission should reply to consumers and all copies of correspondences with the utility should also be sent to the consumers.

4.4 At the hearing, certain points were raised by the two Joint Directors and also further points were raised by the Members of the Commission and CESC was directed to reply to these points within 15 working days, if they are not able to clarify the points during hearing.

4.4(a) The Joint Directors on behalf of the Commission desired to know the designed heat rate in respect of power stations, details of Boiler, Turbine and Generators including the designed grade of coal, minimum load of the Boiler etc. Further information was sought on percentage and duration of continuous over load capacity of the each station. Details were also asked on the major auxiliaries, ESPs and Cooling Towers in power stations.

4.4(b) Further details were sought on progress of transmission lines from Titagarh to Mulajore along with the schedule date of completion.

4.4(c) Further details were sought on load demand curves and load curve of specified dates along with demand curve showing the maximum and minimum load.

4.4(d) Details were sought relating to generation of new Cossipore and Mulajore during off-peak hours, details of own consumption of 19 MU, generation of Mulajore Power Station for FY 2003-04.

4.4(e) A copy of TERI report regarding T & D loss was sought along with report of energy audit, if any, and certificates in respect of "Safe and Efficient Operation" of boiler.

4.4(f) Further details were asked on the power theft in underground cables.

4.4(g) Reason was sought from CESC for not furnishing FPPCA claim for the year 2000-01 and 2001-02.

4.4(h) Further information was sought on repairs and maintenance including statutory inspection of boiler and turbine, plan for boiler shut down for new Cossipore and Mulajore, reasons for dismantling of booster ejector from New Cossipore Station, survey and RLA study for New Cossipore Station, reasons for high SPM in New Cossipore Station, quality of DM water and its checking, ash disposal system in Budge Budge TPS and reasons of replacement of additional equipment in Mulajore.

4.4(i) Further details were sought for the basis of weighted average price of the coal.

4.4(j) Details were sought on the estimate and cost benefit analysis for 132 / 33 KV Botanical Garden Sub-station and investment in their HT and LT distribution system along with expected rate of growth in various sub-categories.

4.4(k) CESC was also asked to give Balance Sheet of the Company for 2001-02 audited under Companies Act, Statement of Accounts of the Company for 2001-02 audited under Electricity Act 1910, Cash Flow Statement for 2001-02 as certified by Auditors, Projected Cash Flow Statement for 2002-03 and 2003-04, broad outline of VRS scheme, plan for commercial utilization of fly ash, working of the negative adjustment in the revenue requirement in regard to capital cost differentials of Budge Budge plant.

4.4(l) Further details were sought for the ground realities which did not permit CESC to upgrade 6 KV system to 11 KV system along with techno-economic analysis if such upgradation is to be taken up.

4.4(m) Further details were sought on replacement by new capital additions of unserviceable and defunct assets along with their original capital cost and book value.

4.4(n) Further details were sought on calculation of working capital in terms of ES Act 1948 and clarification of their statement that "This working capital treatment is generally in consonance with the Hon'ble Supreme Court's views in C.A. No.: 4037 of 2002".

4.4(o) Further details were asked for regarding LIC claim towards arrear gratuity, inclusion of overtime allowances in employees' cost, projected rate hike in the D.A. to the employees, nature and break-up of terminal benefits claim and break-up of the general charges.

4.4(p) Further details were asked for on possibility of adoption of the process of cannibalization / transfer of some stores, consumables and equipments etc. to other station of CESC from Mulajore along with its value.

4.5 Member (Technical) desired CESC to spell out the current position of their outstanding dues to WBSEB and to provide information in regard to relief they got in the payment of late payment surcharge during the year 2002-03 in accordance with government's directives. Member (F & A) wanted to know whether with the internal control system and extent of the computerization done, CESC could not minimize consumers' grievances in cases like double billing, non-recording of payment transactions etc. as pointed out by some objectors. Member (F&A) also wanted to know whether in the New Wage agreement directions of the Hon'ble Supreme Court relating to O.T. had been kept in view. He further wanted to know the position / action being taken to dispose the assets of Mulajore including examination of the possibility of transfer of useable assets & parts to other stations. He also wanted to know what actions were being taken for Debtors realization and asked for copy of VRS, details of D.C. supply – No. of consumers, load & M.U.

4.6 Shri S. Banerjee, M.D., CESC dealt with the objections of different objectors and stated that rejoinders to all the written objections had been filed with the Commission and the same might be referred to while dealing with the various objections by the objectors. CESC clarified the objections and gave replies in particular as under :

(i) In regard to objections on insufficient details, he maintained that required and adequate data had already been given in the petition in line with the Commission's requirement and also in their rejoinders. He, however, committed to submit further details as would be needed by the Commission. He intimated that CESC had crores and crores of vouchers/documents etc. and if Commission wanted to have them or see them then CESC will comply with any such direction from the Commission.

(ii) He submitted that objections based on the order of the Commission dated 7.11.2001 should not be taken cognizance of as the same had been set aside by Hon'ble High Court and subsequently not reinstated by the Hon'ble Supreme Court.

(iii) He further submitted that issues like Budge Budge cost, Mulajore closure, VRS etc. were closed because of the judgement given by the Hon'ble Supreme Court and could not therefore be reopened.

(iv) In his opinion, the objections raised by different objectors keeping in mind only his/their own interest or group interest were contradictory to each other and rationalization of all these contradictory factors was beyond the reach of CESC. He referred to objections relating to Mulajore closure, reduction in H.T. tariff, T&D loss allocation, Foreign Loans, PLF/R&M etc. as examples.

(v) In regard to levying various charges, penalties, meter rent etc. at high rate, it was pointed out that realizations on these accounts went towards reducing Revenue Requirement and would bring no extra benefit to CESC. It was also pointed out that imposition of penalties on pilferers of power would benefit the honest consumers. Besides, he stated that all such charges were levied with the approval of the Commission.

(vi) In regard to suggestions from some objectors for auditing of the accounts of the utility by an auditor appointed by the Commission, CESC, he stated, was in favour of audit by one agency, in addition to Auditors under Company's Act be it appointed by the Government under provision of 1910 Act or by the Commission.

(vii) Referring to the judgement of Hon'ble Supreme Court, it was maintained that T&D penalty could only arise if management inaction was proved. That apart the Commission could refix the norm based on materials available to it. He again indicated in brief the actions in this regard taken by CESC within outside environmental constraints.

(viii) The prayer of CESC for interim tariff was in the line with the decisions given by the Hon'ble Supreme Court.

(ix) Regarding peak/off-peak import, CESC desired to be allowed to buy the power being exported out of the State at the suitable rate that might be fixed by the Commission.

(x) Regarding allowances of reasonable Bad Debt, it was pointed out that the same was considered as a permissible expense in the Sixth Schedule of E. S. Act, 1948.

(xi) The need of working capital had been worked out in the tariff petitions under consideration as per provision of Sixth Schedule of E. S. Act, 1948 read with the Rules, the only departure being fuel stock for generation station.

(xii) He submitted that progressive computerization and introduction of hand-held meters were not proofs of past inefficiency, as alleged by some objectors. On the other hand these were instances of absorption and application of the latest improved technology for the benefit of consumers.

(xiii) He also referred to other objections and queries concerning workers' safety, electricity duty, Interest, foreign exchange loan, dues of WBSEB, employees' cost, Power Purchase, P.L.F & P.A., Fuel Cost and submitted that compliance with directive issued by Commission in previous tariff orders etc. had been provided in the rejoinders submitted by CESC.

(xiv) Regarding the point on CESC's appearing before the consumers for cross-examination, as demanded by some consumers' body, CESC maintained that if required it would so appear before the Commission only. Besides, the consumers also had the right to be heard by the Commission in that forum in line with the Hon'ble Supreme Court ruling on the matter. CESC had 18 lakhs consumers and CESC management would not be able to do any other work except this if CESC was to be cross-examined by all of its consumers. Not only that, such cross examination by itself would not solve problems.

(xv) The present proceedings (not under Regulation 31) were a tariff fixing exercise for 2002-03 & 2003-04 and relevant data / documents / objections for that period should only be taken cognizance of. If Commission wished to consider and open past tariff approved by GOWB then due process should be started. If Commission was empowered to examine the tariffs of earlier periods and wished to go into that CESC would give its views and other data.

(xvi) As per sections 22 & 29 of the ERC Act, 1998 there could not be different basis for fixation of tariff for Private and Public bodies. All the norms & basis should be transparent, justifiable and equally applicable and there should be level playing field for all.

(xvii) Tariff should be on unbiased basis without tilt to any party/utility and be fixed in a transparent manner.

(xviii) He also quoted from Supreme Court Judgement dated 3.10.2002 on employees' cost, penalty for management inefficiency, T & D loss etc.

(xix) He opined that penalty and incentives should go side by side and only penalty would be against natural justice. Proper norms in a transparent, unbiased and justified manner should be laid down and then performance against the same should be judged with suitable incentives & penalty for good & bad performance in a transparent manner with coherent reasons and proof.

4.7 Member (F&A) suggested that CESC might engage a reputed NGO or expert body to learn factually and independently of its strength & weaknesses relating to consumer service. That would enable CESC to take appropriate actions in this regard to improve consumer service and its image.

## **CHAPTER – 5 : FURTHER REPLIES AND CLARIFICATIONS OF CESC FOR 2002-03 AND 2003-04**

5.1 CESC submitted parawise reply on the points raised by the Commission during the hearing.

5.2 CESC gave details relating to designed heat rate of various stations considering a uniform loading, and further gave reasons why the designed parameters could not be achieved. CESC submitted that some were not even within the control of the utilities, and requested for overall incentives for performance superior to norm after the norm had been established by way of transparent, uniform, equitable, realistic and unbiased way, for that would encourage the utilities to strive for improvements. CESC gave further details of actual heat rate achieved till December,

2002 and gave details of contingency overload capacity of various stations along with certain other relevant facts and figures.

5.3 CESC gave justification and details of Titagarh-Mulajore transmission line, major auxiliaries of various stations, generation in Mulajore for 2002-03 and 2003-04, details of repairs and maintenance and justification including boilers shut down for Mulajore and New Cossipore Station, rotor rewinding by Bhel, survey and RLA study of New Cossipore, ESP installation at New Cossipore, reasons for Booster Ejector dismantling for New Cossipore, forced outage at Titagarh, ash disposal at Budge Budge, fitting of new static exciter at Mulajore and New Cossipore, details of purchase of transformers and other capital assets, rationale for special projects relating to generation, growth estimation of sales.

5.4 CESC gave further details relating to load-demand curves of the specified dates as also load demand curves in New Cossipore and Mulajore Stations, generation of New Cossipore and Mulajore Stations during off-peak hours. CESC submitted TERI report on T & D loss and the energy audit report.

5.5 CESC gave details of own consumption and agreed to give Boiler Safety Certificates along with their FPPCA claim.

5.6 CESC gave details relating to theft from underground cables along with the manner of the thefts committed and the steps taken by the Company to control the T & D loss.

5.7 CESC gave reasons for not claiming FPPCA claim at present for 2000-01 and 2001-02.

5.8 CESC gave the details of weighted average price of coal, justification of 132 / 33 KV Botanical Garden Sub-station, growth estimation of sales.

5.9 CESC gave reasons for not submitting the audited annual accounts, but gave the unaudited accounts for 2001-02 as per Electricity Act along with Cash Flow Statement for 2002-03 and 2003-04 and also enclosed CESC's entitled dues as well as amount payable to WBSEB by CESC.

5.10 CESC stated that the existing VRS scheme had not evoked the desired response and a revised scheme was being proposed for VRS to achieve the desired objectives.

5.11 CESC gave details relating to commercial utilization of fly ash, problems in upgradation of distribution system from 6 KV to 11 KV along with the total capital investment requirement, transfer of stores, consumables and equipment from Mulajore to other stations, value of unserviceable and defunct assets, LIC claim towards arrear gratuity, working capital calculation under Provisions of 1948 Act along with the reasonable basis in case the tariff was fixed in advance, details of overtime allowances in their Memorandum of Settlement, justification in increase in Dearness Allowance, details of administrative and general charges, details of negative adjustment for Budge Budge project cost, details of loans repayment, export from Budge Budge during lean period, their views on working capital treatment in consonance with the Hon'ble Supreme Court's views, debt restructuring, status of change over from DC to AC supply, details of settlement plan with WBSEB, rationale for meter replacement / modernization.

5.12 CESC also clarified their objection on maintainability of certain objection petitions under Regulation 2(g), improvement in consumer service and consumer survey, status of change over from DC to AC supply.

## **CHAPTER – 6 : POINTS FOR DECISION AND DETERMINATION FOR 2002-03 AND 2003-04**

6.1 The legal requirements for fixation of tariff are indicated in ERC Act, and the Commission had framed its Conduct of Business Regulations to take up the determination of tariff. The Hon'ble Supreme Court of India in its judgement dated 3.10.2002 in the case of WBERC Vs. CESC Ltd. (C.A.No. 4037 of 2002) had also interpreted and laid down certain principles in regard to determination of tariff. The judgement of the Hon'ble Calcutta High Court dt. 14.5.2002 as

amended by the Hon'ble Supreme Court vide its order dt. 3.10.2002 also lays down some principles.

6.2 Objections have been raised on most of these parameters affecting the figures given by CESC, and accordingly, each one of disputed parameters should give rise to a point for decision / determination. The Commission has also noted that its order dated 7.11.2001 for fixation of tariff of CESC for 2000-01 and 2001-02 has been set aside by the Hon'ble Calcutta High Court vide its judgement dated 14th May, 2002 and the order of the Hon'ble Calcutta High Court has been modified / amended by the Hon'ble Supreme Court vide judgement dated 3.10.2002. Subsequently, the Commission has recalculated the revenue requirement of the CESC and fixed the tariff, keeping in view the direction of the Hon'ble Supreme Court as already indicated above, vide its order dated 11th November, 2002 and 16th December, 2002. The Hon'ble High Court of Calcutta, on an appeal filed by the Government of West Bengal had stayed the operation of the Commission's order of 16th December, 2002 till final disposal of the appeal. The order dated 16th December, 2002 has been now set aside by the Hon'ble Calcutta High Court against which some of the consumers have gone in appeal to Hon'ble Supreme Court of India. The Commission has kept in view the direction of the Hon'ble High Court and the Hon'ble Supreme Court while deciding the revenue requirement and the tariff for CESC. The Commission is also to consider the legal objections raised in the written objections and also during oral submissions.

6.3 The Commission is obliged to keep in view the provisions of the ERC Act 1998 which, in addition to the principles set forth in Schedule Sixth also give guidance to follow other principles as laid down in Section 29 of ERC Act. The Commission has also noted that under Section 30 of the ERC Act, the factors given in Clause (a) to (f) of Sub-Section 2 of Section 29 can be deviated from by the Commission to the extent provided under the Provisions of the Act and read with the judgement of the Hon'ble Supreme Court dated 3.10.2002 to the extent applicable in this regard.

6.4 In the next few chapters, we shall take up the points for determination, legal and factual, one after another.

## **CHAPTER – 7 : LAW POINTS FOR DETERMINATION FOR 2002-03 AND 2003-04**

7.1 The Commission has been created under ERC Act 1998 and given the powers under Section 22(1), 22(2)(n) and 22(2)(p) of the ERC Act 1998. The Commission has to fix the tariff in accordance with the Provisions of the ERC Act 1998 read with the Regulations framed thereunder and the interpretation of the various Sections given by the Hon'ble Calcutta High Court by the order dated 14.5.2002 and as amended by the Hon'ble Supreme Court in its judgement dated 3.10.2002 (in case of C.A. application no. 4037 of 2002). The Commission has considered the major relevant legal points raised by CESC and other objectors in their petition, replies and rejoinders and also during the course of hearing.

7.2 The first of the above points relates to the validity of the tariff order dated 7th November, 2001 in case of CESC for the years 2000-01 and 2001-02 and all the observation made based on this tariff order. We refer to the judgement of the Hon'ble Calcutta High Court dated 14th May, 2002 and note that in para-10 of page 94, the Hon'ble Calcutta High Court has passed order that "excepting to the extent approved by us in this order, because of the erroneous ways of allowing representation, and the erroneous comprehension of the principles in regard to the rate fixation of the licensee, the order of the Commission under appeal is cancelled and set aside". The Hon'ble Supreme Court in its order dated 3rd October, 2002 in case of WBERC vs. CESC has stated at page 100 that "For the reasons stated above, these appeals succeed to the extent mentioned hereinabove and the same are allowed to that extent". From the above direction of the Hon'ble Supreme Court, it is clear that the order dated 7.11.2001 of the Commission which has been set aside by the Hon'ble Calcutta High Court has not been fully restored. The order of the Hon'ble Calcutta High Court has only been modified as the appeals against the order of the Hon'ble Calcutta High Court have succeeded to the extent mentioned in the order of the Supreme Court and allowed to that extent only. The Commission is of the opinion that its order dated 7.11.2001 has been set aside by the Hon'ble Calcutta High Court and has not been restored by the Hon'ble Supreme Court and hence the same order of this Commission is not in existence and cannot be relied upon or referred to in the present case. The Commission, however, also notes that this Commission has already passed tariff order in case of CESC for FY 2000-01 and 2001-02 vide its order dated 11th November, 2002 and order dated 16th December, 2002 which is relevant and

applicable (The Commission order of 16th December, 2002 has since been set aside by the Hon'ble Calcutta High Court).

7.3 On the question of cross subsidy and differentiation of tariff based on Section 29(3), of the 1998 Act, the Commission is of the opinion that as the matter is subjudice under SLP before Hon'ble Supreme Court of India against the order of the Hon'ble Calcutta High Court, the Commission will not like to interpret or express any opinion on this legal issue.

7.4 WBSEB has raised an objection on the re-assessment of cost of Budge Budge project for the purpose of determination of tariff for the year 2002-03 and 2003-04. The Commission is of the opinion that since the matter has already been decided by the Hon'ble Supreme Court in its order dated 3rd October, 2002, it is not open for the Commission to re-examine the same as contended by WBSEB.

7.5 On the point whether the tariff can be revised retrospectively, the Commission has gone into the provisions of the Consumer Protection Act 1986 as well as the provisions as contained in the Act and regulations framed by the Commission. The Commission has noted that the law permits the licensee to revise its tariff once in a financial year and the procedure does not permit the licensee to revise its tariff at his sweetwill. The licensee is to come to the regulator, who, in his turn, must go through a transparent procedure so as to determine the tariff in a financial year. However, this process may not be completed in that financial year itself. If we take up a narrow interpretation of the provisions to disallow retrospective revision, then the right of the licensee to have a tariff may be defeated by a delayed proceeding including an appeal before the various appellate fora. In addition, the claim of FPPCA is normally allowed to be recovered with retrospective effect and also if we give a meaning to the word prospective application and the revised tariff is to be made effective only for the months remaining for that financial year after the date of order, then it has other financial and legal implications. We hold that it will be legally valid for the Commission to determine tariff even after the concerned year has passed and give retrospective effect, but never from the date prior to beginning of that financial year for which tariff is being determined. However, the Commission will endeavour to fix the tariff from prospective date to the extent possible.

7.6 Another legal point that has been raised is that objections relating to tariff determination and the connected issues only should be considered and no extraneous issue should not be taken into account by the Commission. This is a point which needs proper appreciation and examination. The utility has filed the tariff petition for a financial year and submitted the same in the format given in the guidelines/regulations and as per the procedure in the Regulations. The Commission has considered the petition and after admission, objections have been invited on the tariff petition the contents of which are to be determined by the Commission in accordance with the provisions of the Act. After receipt of the objections etc. and due consideration of the same the tariff is to be determined in accordance with the provisions of the Act. In view of this, the Commission is of the opinion that while considering the objections, only those which relate to tariff determination and connected issues should only be considered and taken into account and other issues which have no relevance to the matter under consideration need not be taken into account. Accordingly, the Commission will consider only those objections that relate to determination of tariff and its connecting issues for the year 2002-03 and 2003-04 in case of CESC which is a matter under consideration in this order.

7.7 Other legal points raised in course of the hearing included a question of the locus standi of the parties who have come to depose in the hearing, whether it is a bounden duty of the Commission to inform and correspond with all consumers, and demand of certain consumers for cross examination of the top management of CESC by some of the objectors, and checking of all voucher documents etc. The Commission has carefully examined these objections made by the objectors, the replies of the CESC as well as objections of the CESC to some of the questions like locus standi and cross examination of the party etc. The Commission has also looked into the decisions of the Hon'ble Supreme Court vide its judgement dated 3.10.2002. The Hon'ble Supreme Court at page 27 of its order has observed that "...A combined reading of these provisions of the Act, rules and regulations, clearly shows that the statute has unequivocally provided a right of hearing / representation to the consumers, though the manner of exercise of such right is to be regulated by the Commission. This right of the consumers is neither indiscriminate nor unregulated as erroneously held by the High Court. It is true that in Calcutta the respondent



company supplies energy to nearly 17 lacs consumers, but the statute does not give individual rights to everyone of these consumers. The same is controlled by the Regulations". On page 31 of the order the Hon'ble Court has held that "On the basis of the provisions found in the Regulations framed by the Commission, we are of the opinion that there is no room for any indiscriminate hearing before the Commission".

It is clear from the interpretation of the judgement of the Hon'ble Supreme Court that the right of the consumer is to be controlled by regulations and the statute does not give individual rights to everyone of its consumers. Therefore, the demand of certain consumers for cross examination by them of CESC top management, checking of all vouchers and documents by them or the demand that the Commission should give individual intimation / information and reply to all consumers are not in accordance with the provisions of the statute, the regulations made thereunder and the order dt. 3.10.2002 of the Hon'ble Supreme Court. The consumers have a right to file their objections to the tariff petition and then raise the objections during hearing before the Commission (if held). Thereafter, considering the submissions, petitions, other information / record required, the Commission will give its order. The Commission has to determine tariff while performing its statutory functions as a quasi-judicial body and therefore, we are of the view that Commission need not entertain correspondence with individual consumers who are nearby about 60-65 lakhs for all the utilities in West Bengal. But of course the consumers are free to inspect the documents and records and take copies in terms of the CBR and after paying appropriate fees. This is in line with the interpretation of the judgement of Hon'ble Supreme Court dt. 3.10.2002 and CBR under the ERC Act.

As regards the question of locus standi, it may be seen that u/s 27 of the ERC Act, any person aggrieved by any decision or order of the State Commission may file an appeal to the High Court. The Commission, therefore, is of the opinion that only the persons who are in any manner aggrieved or likely to be aggrieved by determination of tariff may be heard in the hearing and will have a right of audience before the Commission. In determination of tariff, it is to be noted that tariff is to be paid by the consumers and is to be recovered by the utility based on the order of the Commission and accordingly, consumers, consumer associations and the utility or any other person who can show that he is likely to be affected and or aggrieved by the determination of such tariff, has/have the right of audience before the Commission in the hearing. This view is also in line with the interpretation of the judgement dated 3.10.2002 of the Hon'ble Supreme Court. However, the position is different under the Electricity Act 2003. As per section 64 of the Electricity Act 2003, the objections can now be filed by the public

7.8 On the question of special tariff for licensee, the Commission is of the view that as the matter relates to cross subsidy and the matter of cross subsidy or differentiation of tariff is subjudice, the Commission will not like to express any opinion or take any view on the same.

7.9 Another question concerns taking of security deposit from the consumers for three month's consumption. The Commission has already decided that the security deposit is not a mere deposit of money as in commercial transactions. The object of security deposit is to ensure proper payment of bills. In taking this view reliance has been laid on the decision of the Hon'ble Supreme Court in this regard in the case of Ferro Alloys Corporation Vs. A. P. SEB as reported in AIR 1993 SC 2005. The Commission has also already issued regulations for security deposit under Electricity Act, 2003. Keeping in view the findings of the Apex Court, the point may not be further agitated before this forum unless the security deposit being demanded by CESC (or for that matter any other supplier) is not in line with the decision.

7.10 There was another objection questioning whether under Schedule-VI, fuel surcharge could be recovered under the direction of the Commission. It was contended that the cost of fuel was dealt with in Schedule-IX of Electricity Supply Act 1948 and the Commission has no power to sanction the fuel surcharge under ERC Act, but can only recommend the fuel surcharge under Schedule-IX. CESC contended that the cost of fuel / fuel surcharge was recognised as a legitimate mechanism for recovering of additional fuel cost and power purchase cost. The Commission has gone into the rival submission and noted that Schedule Sixth of the Electricity Supply Act 1948 allows expenditure properly incurred on generation and purchase of energy. It cannot be said that increase in the cost of coal, oil and purchase of energy, which is not fully within the control of utility, is not an expenditure properly incurred on generation and purchase of energy and that is why the Commission has allowed it to be recovered as per formula in case of all the utilities. The

Commission has also noted that the IXth Schedule is only applicable to allocation of cost of production at generating station and it is to be read with reference to the first schedule which is applicable for arrangement in respect of control stations covered u/s 34 and 36 of the Electricity Supply Act 1948. This clearly is not applicable to the present case. The Commission has also kept in view the decision of the Hon'ble Supreme Court in case of Hindusthan Zinc Ltd. Vs. A. P. SEB as reported in AIR 1991 which relates to a dispute on imposition of fuel adjustment cost on HT consumers only and the appellant before the Hon'ble Supreme Court raised a question "if the terms and conditions of supply" and "terms and conditions of tariff" carried different meanings as fuel adjustment was a term and condition of tariff and the memo on the basis of which FSC was charged does not speak of "terms and conditions of tariff". The words of that memo were explained by the Hon'ble Court and on the basis thereof the proposed distinction was thought to be of little consequence. Fuel cost adjustment charges were held proper even for a particular section of consumers. Also the provisions of the Sixth Schedule allows recovery of expenditure properly incurred on generation and purchase of energy. This, in our view, sets at rest the dispute raised on this point and in the view taken by the Commission CESC is entitled to recover FPPCA based on the formula and terms and conditions prescribed by the Commission in its order. It may be noted that now Section 62(4) of the Act 2003, also permits Commission to allow changes under the terms of any fuel surcharge formula

7.11 A question was very subtly raised to the effect that the tariff may not be determined for alleged absence of regulations on the terms and conditions for determination / fixation of tariff. In this regard the CBR 2000 framed by the Commission may be referred to. As per Chapter IV of the CBR 2000, the methodology and terms and conditions for fixation of tariff has been provided. Also guidelines have been issued under CBR for filing of Annual Revenue / Tariff proposals. The ERC Act under Section 29(2) only require laying down terms and conditions for fixation of Tariff by Regulation and does not require the Commission to spell out the methodology by a regulation. The provision of Section 61(1) of the Electricity Act permits the applicability of this for one year or till terms and conditions are specified under the Act, 2003.

7.12 CESC also raised the legal points concerning fixing the norms for the utility in a transparent, unbiased and equitable way with proper benchmarking of incentives and penalties, and not only penalties alone. CESC has further contended that the Commission has no power under the ERC Act to differentiate between various utilities and fixing different norms and parameters while determination of tariff. This point will be considered appropriately in subsequent paragraphs while determining the tariff of the CESC for the year 2002-03 and 2003-04.

7.13 On the question of applicability of the legal dictum that "who alleges must prove", CESC stated that mere allegation without support of reasonable documents and the basis cannot be considered by the Commission for penalizing for inefficiencies, acts of omission and commissions, disallowances / reduction in actual costs or losses or other allowable charges / appropriation etc. The Commission has examined the submissions and prima-facie agrees that normally "who alleges must prove". But in the exercise of its power for determination of tariff the Commission is not bound strictly with such a dictum and in case the Commission has any reasonable doubt about anything or if the Commission finds merit in the objection raised by the objectors, the Commission has power to look into the objection and call for the recovery of the documents and to examine objection in detail as may be considered appropriate by the Commission subject to the provisions of the Act and Regulations to protect the interest of the consumers and to correct determination of tariff.

7.14 On the question of non-submission of objection of its small consumers with proper affidavit, the Commission notes that the Commission has power under its Regulation to dispense with the requirements of the Regulations. The Commission noted that non-fulfillment of affidavit by small consumers is not a point on which their objection should be rejected.

7.15 The other points for consideration relating to facts and tariff determination has been taken under the subsequent chapters.

## **CHAPTER – 8 : THE CASE OF CESC AS PER PETITION FOR THE YEAR 2004-05**

The petition for revision of tariff for the financial year 2004-05 has been filed by CESC under

Regulation 43 – Conduct of Business Regulation, 2000 (CBR) and the Electricity Act, 2003. The CESC has published the gist of the application in abridged form and in the manner as has been directed by the Commission and in accordance with the procedure u/s 64 of the Electricity Act, 2003.

In the tariff petition for 2004-05, the CESC has stated that :-

8.1 CESC has about 12 lakhs consumers accounting for less than 700 MU sales, a meagre 48 units a month on average which is probably even lower than consumption by agricultural consumers but all cost relating to capital expenditure, break-down service, meter readings, billing and collection, T&D surveillance, over-all administration etc. have to be incurred for meeting the universal service obligation. The number of consumers in this category at Calcutta is 59% of the total consumers but only accounts for 12% of their sales.

8.2 Unless revenue sufficiency is predictably adequate to meet the cost and reasonable return, confidence of the stake holders is bound to erode the necessary fall out of which will be manifested through business of investment in this sector.

8.3 The final determination of scheme-wise tariff for the years 2000-01, 2001-02 pursuant to the order of Hon'ble Calcutta High Court dated 1st August, 2003 is under way and CESC has to collect substantial arrears in respect of these 2 years based on the revenue requirement determined by the Commission.

8.4 There is need to have an interim increase for the year 2002-03 along with the interim increase for the year 2003-04 as the final tariff determination of these 2 years is awaited.

8.5 CESC, in pursuance of the advice, has initiated several measures for continuous improvement in operational efficiency and through expansion in view of its improving performance, it is expected by CESC that the Commission will not make disallowances on its revenue requirement. The availability of its plant is largely a controllable parameter, but the rest depends on circumstances external to its stations and to a great extent are beyond their reasonable control. They requested incentivisation for PAF performance merit which according to them is one of the best in the country. Similarly, they stated that the Plant Load Factor is quite high in their cost effective plants i.e, Budge-Budge, Southern and Titagarh but the schedule has been drawn in anticipation of conducive operating condition, adequate load availability, optimum coal mixes and availability of satisfactory ash removing arrangement.

8.6 According to them the principles of rewarding efficiency in performance has been recognised in the new Electricity Act as one of the major guiding factor for determination of tariff. They quoted section 61(e) of the Act and have also suggested the basis of calculating incentive and sharing the incentive for PLF and requested the Commission to devise similar incentives for Plant Availability Factor.

8.7 It was indicated that CESC is taking all environmental responsibility and stated the award they got and the action being taken by them in this regard.

8.8 It was indicated that the T&D loss is largely an issue of power theft in the country, CESC operates its loss control in a highly volatile environment of increasing violence, and less than adequate administrative support, while the new judicial set up under the Electricity Act, 2003 is yet to be functional. CESC also described the action being taken by the management to control the pilferage including enhanced level of activity. They further quoted the Hon'ble Supreme Court's order/decision dated 3rd October, 2002 on the matter and also stated that T&D loss would be higher as high voltage consumers are coming out of CESC area gradually and the low voltage sale is increasing which caused higher T&D loss. They further indicated that the DC supply which is an obsolete loss prone supply, is still prevalent in Kolkata and even with their efforts the existing DC consumers had not changed to AC. They further gave summarised positions of the number of meters checked, hooking removed, meter disconnected for tampering, court cases instituted and number of arrests made for last 31/2 years and also gave the reasons and documents pertaining to tampering in underground supplies and other reasons and also stated in details the various steps taken by them and reason for higher T&D loss and justified their claim that no deduction

should be made on account of T&D loss which according to them is directed to 18.5% and which according to them is about 40% deduction in pilferage from 2000-01.

8.9 It has been indicated that they had estimated the power purchase cost at pre-interim tariff for WBSEB pending its finalisation by the Commission and submitted that any variation in such power purchase cost be considered additionally and be allowed through FPPCA or any other method. CESC further stated that they have taken steps to reduce purchase of power by additional generation.

8.10 CESC also indicated the basis for energy sales estimation. They further contended that in view of the provisions of the new Act, it is difficult to predict future sales considering uncertainties and suggested that the fixed cost recovery should be permitted on the estimated sales and suitable adjustment provision should be available to take care of variation of sales based on actual sales data available in future. In the opinion of CESC this approach is reasonable and its adoption would preclude the utilities deriving in its benefit and/or penalty. They further pointed out the uncertainty relating to increase in captive generation and risk of migration to captive generation which could not be assessed. They gave the details of projected sales for the year 2004-05.

8.11 On working capital, they stated that the basis of calculation is similar to the principle and basis as contended in tariff petition for the year 2002-03 and 2003-04. They further requested that to maintain high PLF an average stock of 1 month's consumption of fuel be permitted. Based on the above, working capital has been projected at Rs.163 crores and further contended that this treatment is generally in consonance with the Hon'ble Supreme Court's view in CA No.4037 of 2002 as relevant.

8.12 On loan, CESC stated that as per advice of the Commission for reduction in interest rate on high cost loans, they are constantly trying to achieve the same but it was a big task in view of the large number of lenders across the globe and the mounting loss and consequential defaults in debt service obligations. They further stated that all Rupee loans covered by debt restructuring exercise would henceforth carry an interest rate of 13.5% (against ranging from 16% to 19% earlier). CESC further intimated that interest has come down from Rs.288 crores in 2002-03 to Rs.203 crores in 2004-05. They further stated that in the restructuring exercise the tenure of the loans has been extended.

8.13 CESC further contended that they are incurring finance charges on guarantee commission, ECGD premium, bank charges, expenditure on mobilization and maintenance of public deposits, expenses on debt restructuring, cash credit, bill discounting facilities, temporary accommodation from bank, financial institution etc. They further contended that the weighted average cost of facilities has been reduced from 16% to 13.2%. CESC further stated that earlier the Commission effected some disallowance on account of finance charges on pre-supposition for both timely tariff revision and recovery thereof whereas the situation actually is just contrary and therefore, requested that other finance charges be allowed without any disallowance.

8.14 CESC also stated that delayed recovery of tariff has two effects. On one side, the company has to resort to temporary financing, delayed payment to suppliers etc. and on the other, billable consumer base gets eroded as certain consumers continuously exit this system including temporary consumers. They accordingly requested for partial compensation on this account and balance proposed to be claimed after final determination of erosion in consumer base on tariff to be decided by the Commission. They also gave some figures of erosion in consumer base for the financial years 2000-01 and 2001-02. The company justified and gave reasons for their claim on legal fees, bad debts, lease rental, claims pertaining to past order, fuel cost, ash handling charges, repairs and maintenance and gave the supporting material in various annexures forming part of the tariff petition. The justification for claiming such expenses in brief are as under:-

i) On legal fees, they contended that in view of the large number of cases due to pilferage they have to deal with the cases in appropriate courts.

ii) Bad Debts – The Bad Debts claimed as 1% of turn-over and is mainly on account of inadequate security deposit, uneconomical to fight legal cases for low end consumers and bad debts provisions based on norms devised by some other ERCs.

iii) Lease rental – They contended that the action has been initiated in the line advised by the Commission and lease rental expenses has been decreased.

iv) On fuel cost, they contended that average fuel cost per unit is projected to 112 paise per unit for the financial year 2004-05 compared to 114 paise per unit projected in last petition. They further contended that fuel consumption be permitted based on transparent, uniform, equitable, realistic and unbiased norms with scope for incentive for performance superior to norms and penalty which is not due to management inaction.

v) On ash handling charges, CESC contended that high PLF will entail high form of ash and for its removal. They further contended that Indian coal was found to have very high ash content.

vi) On repairs and maintenance, CESC contended that they have got plants and equipments of varying ages which needed proper up-keep to reduce in plant outages for improving reliability of supply. Maintenance cost also tended to be high as the PAF is being progressively increased and is quite high. According to CESC high level pilferage of electricity often led to excessive over loading of plants and equipments which got damaged frequently and needed special repairs and maintenance.

8.15 CESC also gave suggestion on fixation of norms and bench marking and its philosophy in this regard.

8.16 CESC also gave figures in connection with the working of revenue requirement as per the guidelines of the Commission. CESC annexed with their tariff petition statements and details covering different aspects of their submissions. The respective figures and submissions have been appropriately dealt with in tariff order.

8.17 CESC prayed for not only increase in tariff, allowing additional amount for any increase in power purchase cost from WBSEB, adjustment in fuel and power cost variation in future, appropriate surcharge on DC supplies, suitable interim increase and such other orders as the Commission might deem fit and proper.

## **CHAPTER – 9 : OBJECTIONS AGAINST TARIFF PETITION FOR THE YEAR 2004-05**

9.1 WBSEB has a number of objections to make on the petition of CESC.

i) WBSEB has disputed the claims on the T&D loss as claimed by CESC and stated that in view of the judgement of the Hon'ble Supreme Court of India, CESC should bear a substantial part of this loss by itself rather than seeking to transfer the entire burden on to the consumers. WBSEB has further contended that T&D loss for the year 2004-05 should reasonably be fixed on the basis of T&D loss of 15% in line with the direction of the Hon'ble Supreme Court of India in respect of reduction of T&D loss by 1% during the year 2001-02 over 2000-01.

ii) WBSEB has referred to the heat rate in respect of Budge-Budge, Titagarh and Southern Generating Station as claimed by CESC in its petition vis-à-vis the heat rate allowed by the Commission in its order dated 7th November, 2001 and has contended that since the Budge-Budge Thermal Station has been commissioned recently, the heat rate of that station should be considered at par with that admissible in terms of CERC notification dated 26th March, 2001, which has also been mentioned in draft regulation dated 1st January, 2004.

iii) WBSEB has further objected to the estimation of the sale growth, and commented that CESC has only shown a growth of 1.5% in the year 2004-05 higher than estimation for the year 2003-04, whereas it was already higher during the earlier years i.e., 2002-03 and 2003-04. WBSEB has further stated that H.T sale in 2002-03 is higher than the figure projected earlier and reason attributed by CESC relating to the captive generation is not correct as no particulars of such consumers with their respective annual consumption have been given.

iv) WBSEB has also stated that as CESC covers the densely populated area of Kolkata, it is not clear how the figure of sale of energy of 48 Kwh/month per consumer in respect of 12 lakhs consumers has been arrived at. CESC should substantiate the same.

v) WBSEB further objected to the projection of purchase of power by CESC from WBSEB and felt that the power to be purchased from WBSEB has been shown on higher side.

vi) WBSEB also made objections to charging of 25% of total cost of compensation payable to employees taking VRS, and felt that the additional cost involved in VRS should be spread over a longer period, say, 10 years in order to minimise the burden to consumers. WBSEB has also suggested to CESC that the above claim should not include any expenses/contribution for terminal benefit/gratuity for the period prior to 2004-05.

vii) WBSEB has also suggested that Rs.700 lakhs claimed by CESC for erosion of consumer base should be justified in details only after finalisation of the tariff of the respective years.

viii) WBSEB has also disputed CESC's claim for Rs.500 lakhs as legal charges, particularly when the number of cases instituted in 2002-03 was smaller than those in 2001-02 and a number of cases were settled through 2-tier dispute resolution mechanism.

ix) WBSEB has also objected to claim for repair and maintenance amounting to Rs.13171 lakhs which constitute 2.6% of total original cost of fixed assets including the cost of Budge-Budge Project which is not an old Power Station. WBSEB has further felt that R&M on some old project which needs more efficiency (in case in PLF) should have been charged to capital account.

x) WBSEB has also disputed the claim of interest amounting to Rs.17795 lakhs as claimed under Revenue Requirement and has pointed out that even though there is a payment of Rs.10 crores on account of fees to expert/lenders, the rate of interest has not been proposed for reduction. WBSEB has quoted the figures for last two years in support of their contention. WBSEB further pointed out that no interest is being capitalised when there exists a balance under work in progress.

xi) WBSEB has also objected to foreign exchange rate variation. According to WBSEB, foreign exchange variation claim show a very high cost and the same cannot be charged to revenue. Further, the same is not met according to accounting standard 11 of the GAPP. WBSEB further suggested that exchange rate variation should be adjusted in the fixed assets and depreciation should be provided in accordance with the accounting standard of AS-6.

xii) WBSEB has stated that financing charges claim of Rs.12100 lakhs includes Rs.10398 lakhs being the cost of borrowing during 2004-05 at an average cost of 13.2% per annum which is too high and not acceptable. WBSEB has further felt that such high finance charge should have been avoided by better financial management. Similarly, WBSEB also objected to payment of Rs.1000 lakhs as fees for Debt Restructuring Advisor, monitoring accountant appointed by lenders.

xiii) WBSEB has also disputed on the claim of 1% of total sale as Bad Debt and suggested that it should be based on the total amount of debtors of the previous year.

xiv) WBSEB has also objected to a performance incentive of Rs.2745 lakhs, as the National Power Policy is yet to be formulated and no rules governing this item has yet been framed.

xv) WBSEB has also registered its objections to the special appropriation, as the item is not charged under P&L accounts and claim towards amortisation of regulatory assets.

9.2 Bengal National Chamber of Commerce & Industries also raised objections on the petition of CESC.

i) The Chamber has made critical observations about the productivity in generation, which has remained unchanged.

ii) The Chamber observed that the auxiliary consumption should also include consumption of power at a generating station and sub-station and all other consumption should be shown under administrative expenses.

iii) While dealing with the item on T&D loss, the Chamber gave the figure of high voltage loss, distribution loss etc. The objector has also pointed out that the Apex Court has directed the Commission to fix T&D loss in future based on material available and therefore it is the duty of

CESC to furnish all material evidence as accurately as possible. The objector recommended the total T&D loss to be allowed should be 16,5% for the year 2004-05. The objector has also suggested conducting of more raids with surplus staff and to monitor its own employees and recommended suitable direction to the State Government for speedy settlement of Special Court.

iv) The objector has also objected to high purchase of peak power and has suggested that CESC may negotiate and claim State's share from CPSUs (Hydro-power) as it will be cheaper.

v) The objector has also referred to the philosophy of the new Act, 2003 which is to build competition which is presently lacking and is posing undue burden on helpless consumers. The objector also requested to do away its cross-subsidy altogether and gave the reasons why the consumers may opt for captive generation.

vi) The objector has also suggested that the CESC's scheme of "CRES" should be given wide publicity with involvement of more State Banks, supported by dispute resolution mechanism.

vii) The objector has observed that in the regime of declining interest rate, attempt for further improvement should be made.

viii) The objector has also suggested negotiation of settlement of long outstanding dues particularly with government, semi-government and local bodies and issuance of direction in this regard. The Chamber has supported the CESC's claim of 1% on bad debt based on the practice by the banks in case of NPA.

ix) The objector has supported CESC on performance based regulation and has expressed the view that the CESC should be the best judge to fix its own norms based on its experience. However, the objector also blamed the CESC management due to their performance below the desired level and felt that of-late they have now started taking corrective measures.

x) The objector has recommended tightening of the belt in consumption of fuel to achieve better results, and has compared the position of various power stations. The Chamber felt that the coal consumption should be allowed at the level of 2002-03. The objector also suggested disposal of fly ash on commercial basis.

xi) The objector also commented on repairs and maintenance cost, employees cost, administrative and general expenses.

xii) The objector also commented on continuation of cross-subsidy and open access.

9.3 A number of objections have been filed by Calcutta Chamber of Commerce.

i) The Chamber first gave in brief the legal position regarding tariff fixation, background of the tariff petition and the legal aspects relating to the tariff petition.

ii) The Chamber objected to the draft estimate figure for 2003-04 and the projected figure for 2004-05 over the estimated data, non-submission of audited accounts and records, non-disclosing of adequate documents, such as, vouchers, invoices, bills, contracts, correspondences, purchase orders, release orders, loan sanctions, receipts, test protocols, field notes, research papers, reports and books of accounts and rolls and pro-forma on the basis of which the same must have been prepared.

iii) The objector also has pointed out that the CESC has not taken into account any increase that is likely to be granted to the tariff of WBSEB for the power purchase by CESC from them. Therefore in their view, the entire claim of power purchase from WBSEB amounting to Rs.30851 lakhs should be deducted from the revenue requirement.

iv) The objector has also stated that CESC admitted that except plant availability factor, the rise of parameters (capacity utilisation, operating efficiency and environmental responsibility etc.) depend on external circumstances and to a great extent beyond their control. Therefore, this cause of inefficiency should not be passed on to the consumers.

v) The objector also commented critically on improper financial control of the tariff petitioner as would appear from the heavy interest charges including lease rental, unjustified increase in employees cost, inflated figure of erosion of consumers base, inflated figure of reasonable return.

vi) The objector has come to the conclusion that based on the petition of CESC it appears that CESC does not have adequate machinery, but CESC transmits at high voltage with step down transformer for low voltage requirement. Due to that factor it has to transmit more at low voltage and hence such cost cannot be passed on to the WBSEB. The objector, further, is of the view that the T&D loss should be 14%, keeping in view the direction and policy of the Government of West Bengal. The objector is also of the opinion that the measure to reduce DC meter is inadequate.

The objector also prayed for not allowing loss of profit in earlier years, disallowance of special appropriation for liability of earlier years, rejection of interest charges and reasonable return figure based on the same, issue directive to CESC to create a reserve fund for the purpose of consumers, two part tariff demand charges should be so fixed that a consumer whose load factor is reasonable shall not be required to pay more than average tariff.

#### 9.4 Objections have been filed by WBSEB Workmen's Union.

The objector is a registered trade union and some of its members are residing in the licensed area of CESC. The union has given the objections to protect the interest of those members and common electricity consumers.

i) The objector has felt that there is ample scope for reduction of cost of operation and maintenance and CESC has not explored all these things. CESC, according to the objector, is not following the bidding procedure as a result of which the related cost shoots up.

ii) CESC has allegedly projected an abnormal rise in their administrative and general expenses. The objector has also objected to higher auxiliary consumption and has felt that the same should not be allowed more than 9%.

iii) The objector also objected to T&D loss and felt that the same should not exceed more than 17.5% in 2004-05.

iv) The objector recommended passing of 100% benefit of higher PLF over normative value of PLF up to 85% to CESC and beyond 85%, both consumers and CESC may be allowed to share the benefit equally.

#### 9.5 Indian Aluminium Co. Ltd. also raised the objections.

i) The objector objected to tariff fixation for 2004-05 before finalising the tariff rate for 2000-01, 2001-02 and 2002-03.

a) The objector has also given the details of the case relating to refixation of tariff for 2000-01 and 2001-02.

b) The objector has objections to T&D loss based on the decision of the Hon'ble Supreme Court of India in its order dated 3rd October, 2002 and felt that T&D loss for 2004-05 should not exceed 16%.

c) The objector has also objected to the continuous increase in auxiliary consumption which indicates decreasing level of operation and prayed for fixing auxiliary consumption on the level of 2001-02 and also set up strict reduction target for coming years.

ii) The objector has also objected to employees cost, legal expenses, repairs and maintenance expenses.

iii) The objector has also disputed the fuel cost and felt that the coal consumption requirement of 638.9 T per MU on an average in 2001-02 should be the norm for coal consumption for 2004-05. The objector also calculated the secondary fuel requirement and worked out the fuel cost which according to them should be allowed both for coal and fuel.



- iv) The objector has also disputed CESC's claims on bad debts and felt that no provision for bad debts should be allowed as CESC collects security deposit from its consumers.
- v) The objector has prayed for review of the additional CAPEX proposal of the company for 2004-05 as the same are without techno-economic justification and therefore of no benefit to the consumers
- vi) The objector also objected to method of calculating working capital and felt that the same may be considered as '0' as was considered in 2000-01 and 2001-02.
- vii) The objector also objected to bill discounting charges and felt that adequate details for interest on cash credit facilities and working capital loan have not been provided and therefore, these are unsubstantiated.
- viii) The objector has also prayed that the lease rental should be retained as same figure as was proposed by them in 2003-04 i.e. Rs.2278 lakhs.
- ix) The objector has given some figures relating to investment from contingency reserve for early years and has come to the conclusion that the investment from contingency reserve should be disallowed in view of such non-investment earlier.
- x) The objector felt that incentives arising from any performance linked incentive scheme should not be included under reasonable return, as it is of purely revenue nature. The objector also felt that the reasonable return as claimed by CESC is highly exaggerated and recalculated the figures.
- xi) The objector has also recalculated the figures of average cost of supply which according to him comes to 366 paise/unit whereas 421 paise/unit is claimed by CESC. The objector has given the proposed tariff structure of 33 KV tariff and also gave their views on cross-subsidy and open access etc.

9.6 The objection was filed by Indian Jute Mills Association (IJMA).

- I) The objector has objected to the capital expenditure proposed in the tariff petition and wanted to know the benefit of the earlier capital expenditure incurred by CESC.
- ii) The objector has objected to high T&D loss and prayed that since CESC has given commitment to the Hon'ble Supreme Court of India to bring down T&D loss by 0.7% (Point seven percent) every year from 2001-02, the T&D loss should be accordingly allowed by the commitment given to Hon'ble Supreme Court of India.
- iii) The objector has also objected to any incentive in generation beyond PLF of 72%.
- iv) The objector has opined that no addition cost should be allowed on interest and finance charges, as the entire debt has been restructured.
- v) The objector also prayed for a rigorous analysis of the increase of administrative, legal and various other heads before any increases are allowed.

9.7 Ganatantrik Nagarik Samity also submitted the objections.

- i) The objector has felt that since CESC will be in net profit during the year 2003-04, in the opinion of the Samity, no increase should be allowed for 2004-05.
- ii) The objector has felt that compensation for VRS for non-performing employees should not be included and / or considered as a cost to be borne by the consumers. The very recruitment of such employees is an ill / wrong decision on the part of the management.
- iii) The objector has also pointed out that since CESC is asking for higher repairs and maintenance cost, higher level of fuel stock, therefore, the same should be duly considered while giving any

incentive under PLF.

iv) The objector has also objected to the T&D loss of 18.5% keeping in view the new stringent law, a compact area of the CESC's distribution network, non-availability of proper mechanism to determine the actual loss and also quoted the decision of the Hon'ble Supreme Court of India for the financial year 2001-02. The objector also objected on the surcharge on DC supply.

v) The objector has suggested getting the accounts of CESC adequately checked keeping in view the decision of the Hon'ble Supreme Court of India dated 3rd October, 2002.

vi) The objector has also given their views on the supply of coal from Coal India, fuel cost, FPPCA claim and prayed for issuance of direction to CESC to make purchase from WBPDCCL and also look into the opportunities to export power during low demand period.

vii) The objector has further commented on the norms related to penalty/incentive, common principle for tariff fixation, reasonable tariff for CESC for purchase from WBSEB.

viii) The objector has finally objected to enclosing entire cash and bank balance in the working capital, provision for bad debts.

9.8 All Bengal Electricity Consumers Association (ABECA) – The objector also gave detail objections on tariff petition for the year 2004-05.

i) The objector felt that since CESC's present proposal for revision of tariff with effect from 1st April, 2004 is not in accordance with the Electricity Act, 2003, the same should be rejected.

ii) The objector also states that the final tariff of 2000-01 to 2003-04 is not completed and therefore, the tariff for 2004-05 may not be fixed.

iii) The objector also raised objection with the fixation of tariff for 2004-05 and prayed it to be kept in abeyance till the Commission finalises the code and regulations under Electricity Act, 2003.

iv) The objector also pointed out that tariff for 2000-01 and 2001-02 including interim tariff for 2003-04 is under challenge before the Hon'ble Courts and hence tariff for 2004-05 should not be considered.

v) The objector objected the projection of projected/estimated figures, as the same, according to them, will go against the interest of the consumers.

vi) The objector also objected to the statement of CESC that the tariff of 421 paise/unit will be less than earlier years, arrears to be collected by CESC are false and may not be considered by the Commission.

vii) The objector also commented on PLF of CESC generating stations, purchase of power from WBSEB instead of WBLPDCL (WBPDCCL) , incentive for higher PLF.

viii) The objector also objected on the high T&D loss and gave the figures for 1991-92 to 1995-96 of T&D loss. The objector also stated that norms fixed for T&D loss as directed by the State Government, norms fixed by CEA and the norms fixed by the Hon'ble Supreme Court of India and concluded that based on the same, the T&D loss will be 15% for 2004-05 as per CESC's own commitment to the Hon'ble Supreme Court of India. The objector, however, felt that T&D loss should be less than 14% for 2004-05. The objector also felt that the CESC's claim for compensation for continued use of DC meter is baseless. The objector has further pointed out that CESC has failed to show how much technical loss and commercial loss has been reduced due to their efficiency and up-gradation of technology and administration and how much T&D loss has been reduced due to their so-called efforts of complaining and lodging F.I.R against the pilferer.

ix) The objector has objected to the projected sale for 2004-05 unless the same is verified with the projected sale for the earlier years as also with audited report for the respective years.

x) The objector has objected to inclusion in the working capital, as according to him, the same is not in accordance with the E.C.Act, 1948 in true sense and the 1948 Act has been repealed and new regulations are yet to be framed.

xi) The objector is also opposed to high interest on the loans, and recommended no reduction of the loan in respect of which specific approval of the State Government has not been obtained and non-capitalisation of foreign exchange variation. The objector is also against the finance charges relating to the debt restructuring for converting high cost loan to low cost loan. The objector has asked for cost benefit analysis of loan finance charges and clarification of purpose of loan condition on which loan was taken.

xii) The objector has opposed the claim on erosion of consumer base and regulatory assets as it has no legal sanction in Act and it is based on the fictitious project report and audit report.

xiii) The objector has also objected to payment of legal fees, provision for bad debts, lease rental, non-disclosure of benefit received from the government, ash handling charges, O & M expenses.

xiv) The objector has also objected to the philosophy of proposed fixation of norms, bench marking as the same is to be framed under the code and regulation to be fixed by the Commission.

xv) The objector has commented on fuel cost and basis of calculation of fuel cost and quoted norms of CEA etc.

xvi) The objector has also objected to expenses towards intangible assets as according to him CESC has got share premium money which could have been utilised for the purpose of write-off of intangible assets.

xvii) The objector has also objected the addition to the capital assets as it is not supported with any techno-economic benefit analysis.

9.9 Socialist Unity Centre of India (SUCI) has filed objections on the tariff of CESC.

The objection of SUCI is nearly similar to the objection filed by All Bengal Electricity Consumers Association (ABECA) (serial no.9.8) and the same is not, therefore, repeated.

9.10 Bharat Chamber of Commerce has also filed objections on the tariff petition of CESC.

i) The Chamber has objected to the incentive and felt that no incentive is to be considered at PLF level of less than 80%, incentives may be linked with PAF and if there is to be any incentive, there should be disincentive also.

ii) The objector objected to the T&D loss claimed by CESC, quoted the order of the Hon'ble Supreme Court of India dated 3rd October, 2002 in terms of which CESC has to bear a substantial part of T&D loss. The objector, therefore, prayed that T&D loss should not be more than 15.5% consisting of 12% technical loss and 3.5% non-technical loss.

iii) The objector prayed that the power purchase from WBSEB should be the barest minimum.

iv) The objector has objections to the sale forecast and has given the figures of the same between 1995-96 and 2002-03 and stated that the year 1999-2000 should not be taken into calculation of CAGR as there was drop in sale in that year. Similarly, the objector feels that the sale to H.T industrial consumer grade should be projected based on CAGR with suitable adjustment for out of trend changes. The sale figure in 2004-05 needs re-assessment as it is on lower side. The objector has also strongly objected to suitable adjustment in fixed cost recovery to take care of variation in sales, as this goes against the basic intention of the new Act.

v) The objector has objected on non-disclosure of cost of stores materials and supplies at the end of each month in the working capital requirement as per Sixth schedule. The objector also objects to the inclusion of capital stores in the requirement for working capital. The objector agrees that

the stock of fuel should be for one month and repair & maintenance expenses at two months level, but has calculated the working capital requirement at Rs.102.15 crores.

vi) The objector opposes the claim of interest on general purpose loan utilised for the purpose other than prudent capital formation and has requested for disallowance of Rs.2527 lakhs from CESC claim.

vii) The objector has also objected to the claim relating to bill discounting charges for procurement of coal and power, inclusion of fees and expenses on account of debt restructuring although restructuring package has already been finalised. The objector has also objected to interest on temporary accommodation due to delay in finalisation of tariff, and increase in interest on cash credit facilities.

viii) The objector has opposed the inclusion of claim relating to erosion of consumer base and regulatory assets. The objector does not find that any consideration is being made by the Commission for redressal of hardship of the consumers because of retrospective effect of the tariff.

ix) The objector has objected to additional legal fees and any such expenses against pilferage of electricity that should be borne by the petitioner as it will go to improve the revenue position of the petitioner only.

x) The objector has also objected to the claim relating to bad debts, lease rental, ash handling charges, repairs and maintenance, administrative and general expenses.

xi) The objector has objected to the projection of fuel cost based on normative consumption figure on the parameters set by the Government of West Bengal, which has been rejected by the Expert Committee constituted by the Commission, with valid argument. The objector points out the heat value of the coal in Budge Budge Power Station comes to a low level and suggested that the price of coal paid by the licensee to the coal company should form a basis of coal received and the heat value be determined as an average of maximum and minimum value of GCV declared for that grade by the coal company.

xii) The objector objected to projection of capital addition and prayed that they should be thoroughly scrutinised with reference to actual/un-audited figures for 2003-04.

xiii) The objector also prayed for the cost benefit analysis for expenses and cost incurred by the utility and the same should be included in the tariff petition. The objector also suggested for circulation of draft tariff order by the Commission and invite the comments from those persons who have given their objections before finalising the tariff.

9.11 West Bengal Steel Rolling Mills Association and Shri Suresh Agarwal, Honorary General Secretary of West Bengal Steel Rolling Mills Association also gave objections on the tariff petition which comprises of 227 pages and 270 paragraphs excluding the sub-paras at various pages.

The Commission has invited objections for the tariff petition for 2004-05 in case of CESC in accordance with the provisions of the Act and therefore, only those objections which relate to the objection on the tariff petition for 2004-05 have been taken into consideration. All objections relating to the stated cases of their theft of energy, additional recovery of fuel charge from 1989 onwards and its correspondences with the government, court cases relating to the earlier tariff orders and submission for the tariff years for 2000-01 and 2001-02, earlier tariff orders, correspondence on earlier tariff data have not been included, as specific objections are to be given only on the tariff petition filed by CESC on 30th December, 2003 for the financial year 2004-05 which is relevant for finalisation of tariff for 2004-05..

The objector also levelled certain allegation about the functioning of the Commission about use of its power etc. including the procedure being followed. The objections for tariff petition for 2004-05 mainly start from paragraph 268 at page 209. However, relevant objection in earlier paragraphs and having bearing on the present petition have been taken into consideration.

i) The objector has quoted some of the details given by CESC in its tariff petition dated 30th

December, 2003 relating to meters checking, number of hooking, number of meters disconnected for tampering, court cases instituted and number of arrests made, and suggested that the Commission should scrutinise each and every case in which CESC has alleged pilferage of electricity and has realised ransom from its consumers. The objector also prayed that the Commission should direct CESC to file an affidavit to the effect that CESC has not charged meter replacement charge from the consumers and also another affidavit stating that CESC has not charged higher tariff from its consumers on and from 6th January, 1999 other than the one fixed by the Commission by its order dated 7th November, 2001, 11th November, 2002 and 23rd April, 2003. The objector has stated that CESC has not given the data relating to units billed by CESC for 184734 consumers, whose supplies have been disconnected, as per tariff petition dated 30th December, 2003 along with the amount collected. The objector further stated that in the absence of such information it cannot be ascertained with the shortfall amount claimed by CESC for the year 2000-01, 2001-02 and 2002-03 are correct or inflated.

ii) The objector has prayed that he should be permitted to examine the officer of the CESC as the same is the right of the consumer. It can be proved that CESC has billed to the consumers from within the total number of units sent out in the system. The objector has also prayed for examination of each and every voucher of CESC and made some allegation in this regard and felt that CESC works against the interest of the consumers.

iii) The objector also gave certain data and figures from financial years 1990 to 2003 relating to sale, expenses, security deposit, contribution by consumers, interest, delayed payment, purchase, depreciation to demonstrate that CESC does not require any money for running any generating station, that CESC has not sold electricity to consumers on credit more than the security deposit, CESC is charging delayed payment surcharge from electricity consumers having dues which has not been paid to the State Government, that there is non-inclusion of amount realised from consumers for unmetered consumption, that there is non-ascertainment of cost per unit of electricity. The objector has also prayed for certain information relating to year 2002-03 and 2003-04 and in the absence of which it was difficult for the objector to give tariff objection to the tariff petition submitted by CESC dated 30th December, 2003.

iv) The objector felt that the tariff of CESC for the year 2004-05 should be 210 paise per unit instead of 421 paise per unit claimed as their claims are inflated.

v) The objector has prayed that CESC should disclose full particulars of its claim regarding 12 lakhs consumers being billed for meagre 48 units each per month along with the break-up of cost of distribution, T&D loss, commercial cost for collection of bills etc. to such class of consumers.

vi) The objector stated that the tariff petition for 2004-05 is not in accordance with the WBERC's CBR first amendment regulation 2000. The Commission's order dated 11th November, 2002 is subject matter of an appeal and also the order of the Hon'ble Calcutta High Court dated 1st August, 2003 is under appeal before the apex court. An interim order for 2003-04 is also under appeal.

vii) The objector objected to inclusion of VRS scheme to the employees of Mulajore because, in his view, when Mulajore Power Station is sold, it can fetch sufficient fund to meet the cost of VRS scheme to Mulajore employees.

viii) The objector stated that the PLF should be minimum at 68.5% and inefficiency of the utility should not be passed on to the consumers. The objector also felt that the consumers are not concerned with the plant availability factor and CESC has not disclosed the quantity of un-utilised capacity and the Commission of its own can not enter into such issue. The objector also prayed that CESC should give concession on supply during off period for un-utilised capacity. The objector also commented on performance incentive in this behalf.

ix) The objector has also objected to T&D loss and quoted the Hon'ble Supreme Court of India's decision dated 3rd October, 2002. He has felt that the T&D loss should not be more than 15%. The objector also suggested that by changing supply from 6.6 KV to 11 K.V the technical loss can be brought down from 11% to 6% in one year and CESC should give incentive of 20 paise per unit for two years to all H.T consumers to such switch over supply from 6600 Volts to 11000 Volts. The objector also suggested installation of meters at all distribution points and monitor by an

independent agency. The objector also commented on theft of energy and issues relating to its accounting.

x) The objector objected that in absence of claim not being approved by the State Government and by CEA, the Commission cannot allow additions of fixed assets to be deployed by CESC.

xi) The objector also objected to non-availability of audited balance-sheet and stated that in the absence of balance-sheet the Commission cannot decide either positively or negatively in company's current account or deposit account, working capital. The objector also commented on estimated sales in the absence of audited accounts. The objector also commented on the abnormal loans taken by CESC and felt that the Commission cannot look into the figures in the absence of audited balance-sheet for the earlier years. Similarly, the objector also objected on certain other figures in the absence of audited balance-sheet. The objector also felt that the erosion of capital base and erosion of consumer base is due to CESC. The objector also commented on the legal fee and wanted certain information on expenses pertaining to Law Department.

xii) The objector also objected to the bad debts. The objector also objected on the demand of rent and wanted certain details including audited balance-sheet. The objector objected to the purchase of power from WBSEB and DVC.

xiii) The objector also objected and said that the fuel cost falls under Ninth Schedule of 1948 Act and is beyond the scope of the Commission to decide the same and the Commission has only authority to decide tariff which falls under Sixth Schedule of 1948 Act.

xiv) The objector prayed for the dismissal of the CESC petition.

9.12 i) While dealing with the individual objections filed by the objectors, certain common objections taken by the various objectors have not been separately listed in details and a brief mention has been given in appropriate cases against that individual objectors.

ii) While dealing with the objections filed by the objectors, the objections which are not connected with the present petition relating to fixation of tariff for 2004-05 have not either been listed or listed by way of brief mention but has not been considered while determining the tariff for 2004-05. The Commission has also not taken into consideration the personal allegation levelled by some of the objectors, or the matter which is required to be covered through the petition to be filed separately under the Conduct of Business Regulation 2000 / 2003 and does not relates to the present tariff petition.

## **CHAPTER-10: POINTS FOR DECISION AND DETERMINATION OF TARIFF FOR 2004-05**

10.1 The Electricity Act, 2003 has come into force with effect from 10th June, 2003 except for section 121 of the Act. The Act has been amended subsequently by the Electricity (Amendment) Act 2003 on 27th January, 2004. The Electricity Act, 2003 save as otherwise provided in the Act repeals the Indian Electricity Act 1910, The Electricity (Supply) Act, 1948 and the Electricity Regulatory Act, 1998 in terms of section 185(1) of the Act. Section 185(2) also protect certain action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued notwithstanding such repeal. This section also provides that any such action, if it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of the act. The section 172 provides for transitional provision whereas section 173 deal with the inconsistency in laws and section 174 provides for over-riding effect. The legal requirement of fixation of tariff under the Act is provided under section 61, 62 and 63 of the Act, whereas procedure for tariff order is specified u/s 64 of the Act. The provision of subsidy by the State Government is provided u/s 65 of the Act. The function of the State Commission is given under section 86 of the Act and as per sub-section 86(3), the State Commission shall ensure transparency while exercising its power and discharge its function. As per section 95 all proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of section 193 and 228 of IPC and the Commission shall be deemed to be a civil court for the purpose of section 345 and 346 CCP, 1973.

The appeal against the order of the Commission lies with the Appeallate Tribunal u/s 111 of the Act.

10.2 Objections have been registered to some of the points covering the power of the Commission, the non-availability of the regulations, incomplete information in the data. However, the above quoted Sections will guide us to determine various issues along with the provisions contained in other sections of the Act.

10.3 In the next few chapters we shall take up the points for determination, legal and factual, as well as the objections raised by objectors one after another.

## **CHAPTER – 11 : LAW POINTS FOR DETERMINATION OF TARIFF FOR 2004-05**

11.1 West Bengal Electricity Regulatory Commission has been created under ERC Act, 1998 and by first proviso to section 82 of the Electricity Act, 2003, the West Bengal Electricity Regulatory Commission is the State Commission for the purpose of this Act for the State of West Bengal.

The Commission has made earlier regulations including Conduct of Business Regulations which shall be deemed to be regulation for the purpose of present Act in accordance with the provision of section 185(2) of the Act except to the extent it is inconsistent with the provision of the Act. The Commission has considered the major relevant legal points raised by CESC and other objectors in their objections in its tariff petition and objections.

11.2 The first of the above points relates to validity of the tariff order dated 7th November, 2001 in case of CESC for 2001-02 and observations/objections raised based on such tariff order. With reference to the judgement of Hon'ble Calcutta High Court dated 14th May, 2002, it is noted that in para 10 at page 94, the Hon'ble Calcutta High Court has passed the order that "excepting to the extent approved by us in this order, because of the erroneous ways of allowing representation, and the erroneous comprehension of the principles in regard to the rate fixation of licensee, the order of the Commission under appeal is cancelled and set aside". The Hon'ble Supreme Court of India in its order dated 3rd May, 2002 in case of WBERC Vs. CESC has stated at page 100 "for the reasons stated above, these appeals succeed to the extent mentioned hereinabove and the same are allowed to that extent".

From the above direction of the Hon'ble Supreme Court of India, it is clear that the order dated 7th November, 2001 of the Commission which has been set aside by the Hon'ble Calcutta High Court has not been restored but only the order of the Hon'ble Calcutta High Court has been modified to the extent mentioned in the order of the Hon'ble Supreme Court of India and allowed to that extent only. The Commission is of the opinion, that since its order dated 7.11.2001 has been set aside and not restored, hence it is not in existence and cannot be relied upon and referred to in the present case either by CESC or by the objectors. The Commission will, therefore, not consider any submission in support or against based on the tariff order dated 7th November, 2001.

11.3 Some of the objectors have raised a point to the effect that tariff for 2000-01 and 2001-02 has not been fixed and the average cost of supply so fixed by order dated 11th November, 2002 is under challenge. Some of the objectors have also contended that the tariff for 2002-03 has not been fixed and therefore, tariff for 2004-05 cannot be fixed. Some of the objectors also registered objections that since regulations/codes are not framed under the Electricity Act, 2003, the tariff for 2004-05 cannot be fixed.

The Commission has gone into the above submissions and noted that the tariff for 2004-05 is being fixed in terms of the provisions of the Electricity Act, 2003 based on the revenue requirement to be finalised under provisions of the Act and after considering the appropriate applicable Regulations. The Commission also noted that the procedure for tariff order has been given in section 64 of the Act. The Commission also observed that till the Regulations under the provisions of Electricity Act, 2003 are framed and notified, the existing Regulations to the extent that the same are not inconsistent with the provisions of the Act, shall be applicable keeping in view the provisions of section 185 of the Act read with section 172 of the Act. The Commission also noted that in terms of proviso of section 61, the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act, 1998 as they stood immediately before the appointed date shall continue to apply for a period of one year or till the terms and conditions for the tariff are specified u/s, whichever is earlier. The

Commission has also noted that revenue requirements for 2002-03 and 2003-04 are also being fixed by the Commission while determining tariff for 2004-05 and its consequential effect has been taken in the tariff for 2004-05. The Commission also notes the objections of some of the objectors wherein they have argued that the tariff should only be revised prospectively as retrospective revision of tariff creates lot of problems to the consumers. The Commission has, therefore, decided that the Commission will work out revenue requirement for 2002-03 and 2003-04 and the short-fall, if any, in the revenue requirement shall be considered while fixing the tariff for 2004-05 and the tariff will be revised from prospective date i.e. 1st April, 2004 and there will not be any revision in the tariff which will have effect from retrospective date for the financial year 2002-03 and 2003-04. The Commission also does not agree that if an appeal is filed against a tariff order, the Commission is automatically debarred from fixing the tariff. This can happen only if a stay is granted by an appropriate court. If the Commission has to wait for fixation of tariff for the future years till the tariff of any earlier year is finally up-held by the court of law, then it may lead to a situation where it will be a very long time before any tariff is finalized. It will have substantial effect, which automatically will be retrospective effect, on the tariff along with other consequences which will not be in the interest of either the utilities or the consumers. The Commission, therefore, has decided to work out revenue requirement for 2002-03, 2003-04 and 2004-05 and fix the tariff for 2004-05 with effect from 1st April, 2004 after considering the impact of short-fall/excess in revenue requirement and realisation later for the financial year 2002-03 and 2003-04.

11.4 On the point that the consumer should have the right to see all the documents, such as, vouchers, invoices, bills, contracts, correspondences, purchase orders, release orders, loans sanction, receipts, trust protocols, field notes, research papers, reports and books of accounts and rolls etc., as also the right to cross examine the management and officers of the licensee etc. The Commission is of the view that these points will have to be seen with reference to the provisions of the Act and appropriate applicable decision of the court of law. Section 64 of the Electricity Act, 2003 lays down the procedure for the tariff order. Section 62 of the Electricity Act, 2003 provide that the Commission shall determine the tariff in accordance with the provisions of the Act and it is not the consumer who has to determine the tariff. Therefore, it is the Commission who has to satisfy itself before determining the tariff and after considering the objections on the tariff petition in terms of section 64 of the Act. In case the Commission is not satisfied, the Commission can call for any information, record, documents and/or can appoint expert etc. to see the documents/figures before determining the tariff. If the right is given to the consumers to see to the vouchers or documents and/or to cross examine the management/officers of the licensee, then the position can logically be stretched to such an impossible and absurd level that the management/officers/commission will be subjected to cross examination and witnessing the cross examination of objectors. Keeping in view the number of electricity consumers, affected persons and the public also, this may well lead to a situation where it may not be possible to finalise any order even in one full year. The Hon'ble Supreme Court of India, vide its order dated 3rd October, 2002 in case of CESC has observed that "A combined reading of these provisions of the Act, rules & regulations, clearly shows that the statute has unequivocally provided a right of hearing/representation to the consumers, though the manner of exercise of such right is to be regulated by the Commission. This right of the consumers is neither indiscriminate nor unregulated as erroneously held by the Hon'ble Calcutta High Court. It is true that in Calcutta the respondent company supplies energy to nearly 17 lakhs consumers, but the statute does not give individual rights to every one of this consumers. The same is controlled by the Regulations" (underlining supplied by us).

It is clear from the interpretation from the judgement of the Hon'ble Supreme Court of India that the Hon'ble Court has held that the right of the consumers is to be controlled by regulations and the statute does not give individual rights to every one to its consumers and therefore, the idea of cross examination of CESC office/top management by them, or checking by them of vouchers, documents etc. or the Commission supplying individual intimation/information and reply to all consumers are not in accordance with the provisions of the statute, the regulations made thereunder and the order dated 3rd October, 2002 of the Hon'ble Supreme Court of India. This position and spirit of the law has not changed even under the Act 2003, rather as per the provisions of Section 64, the Commission has only to consider all suggestions/objections received from the public. The Commission may not hold public hearing nor receive submissions of rejoinders etc. subsequent to filing of tariff petition. The new Act now has widened its scope only



in one respect, i.e., it has permitted the filing of objections from the public instead of keeping the same restricted to affected persons only. The Commission also had issued detailed guidelines under regulation no.43 of the CBR, 2000 which listed in detail the relevant information and the documents etc. required to be filed and the manner in which it was to be filed for filing of revenue/tariff proposal. The licensee/generating company are filing the tariff petition in accordance with this guidelines, and the same, after a preliminary scrutiny is admitted by the Commission in terms of CBR, 2000. The CBR under Electricity Act, 2003 has been under notification and till that time CBR. 2000 is a regulation under the Electricity Act, 2003 as per the reasons given earlier. In the present case, CESC has filed the tariff petition accordingly and has publicised the application, in such abridged form and manner, as has been directed by the Commission in accordance with the provisions of section 64(2). The Commission will now issue the tariff order in accordance with the provisions contained in section 64(3) after considering all the suggestions and objections received from the public keeping in view the section 64(2) and other relevant provisions of the Act. The Commission has, accordingly, decided that for the purpose of processing of tariff petition for 2004-05 the Jt. Directors (officers of the Commission) would be authorised to seek additional information, if any, from the licensee for clarification/substantiation of any point that has already found in tariff petition. It is clear from the decision that no information on any extraneous point can be sought which is not there in the tariff petition and therefore, the Commission will only deal with the cases based on the tariff petition, objections received from the public and additional information, if any, in terms of this decision. Also since the tariff is to be fixed from a prospective date, un-audited figures/projections shall be taken into consideration, again subject to provisions of the Act and the regulations made therein. Tariff cannot be re-opened based on the actual expenditure on fixed cost, which as has been claimed by CESC and some of the objectors, as there is no such provisions under the Act and only amendment permissible under section 62 (4) relates to changes expressly permitted under the terms of fuel surcharge formula. However, it may be noted that in terms of Sixth Schedule of 1948 Act (protected under first proviso to section 61 for one year or till terms and conditions for tariff are notified), if the clear profit of the licensee in any year of account is in excess of amount of reasonable return, the excess amount will be treated as has been specified in the Sixth Schedule of Electricity (Supply) Act, 1948. The Commission will also, therefore, not allow any additional submissions/rejoinders either from the objectors and or from the Licensee/Generating company on the tariff petition already filed and deal with the petition in the light of section 64 of the Electricity Act, 2003 and other related provisions. It may be added that the CBR 2003 has been notified and published on 1st March,2004.

11.5 On the question of continuation of cross-subsidy, the Electricity Act, 2003 provides u/s 61(g) that the tariff should progressively reflect the cost of supply of electricity and also should reduce and finally eliminate cross-subsidy within a period to be specified by the Commission. Since the Act permits the cross-subsidy which is to be reduced and eliminated within a period of time, we find no merit in the argument that tariff should not have cross-subsidy. We also do not find any merit in the argument that while differentiating the tariff u/s 63(3), the cross-subsidy can be continued forever. The Commission cannot show any undue preference to any class of consumers but may differentiate according to the factors given in Section 63(3). This differentiation can be done, in the opinion of the Commission, keeping in view and provided that the additional cost of one class of consumers is not to be borne by other class of consumers by way of cross-subsidy.

The Commission is also of the opinion that if differentiation of tariff is done without reference to the cost of supply, then the very purpose of reducing and eliminating cross-subsidy will be defeated, and therefore, differentiation has to be done keeping in view the provisions of providing and eliminating the cross-subsidy.

11.6 The Commission is aware that it has not yet issued any regulation on reducing and finally eliminating the cross-subsidy within a given time in terms of section 61(g) of the Act. However, the Commission proposes to apply the following principles in this behalf till the Commission issues the required Regulation in terms of Section 61(g) of the Act after considering the provisions of the National Tariff Policy to be prepared and published by the Central Government under Section 3 of the Act.

i) The cross-subsidy will be eliminated in two phases. In the first phase, the tariff will reflect the average cost of supply of the licensee for each class of consumers. In the second phase, the tariff will reflect the cost of supply as allocable to each class of consumers. The class of consumers shall

be (a) agricultural, (b) domestic including Lokdeep, Kutir Jyoti and Lifeline consumers, (c) commercial, (d) industrial and (e) public utility service. Low voltage, medium voltage, high voltage and extra high voltage will appropriately be classified in above 5 categories.

ii) The span of time in each of these phases will be laid down in the Regulation to be prepared by the Commission in this behalf.

(iii) The cross-subsidy surcharge/additional surcharge etc. and recovery in terms of the Act will go towards reduction of cross-subsidy in that class of consumers from whom the cross-subsidy has been received and in case of no cross-subsidy in that category it will be taken into common account.

11.7 The other points for consideration relating and effecting the tariff determination has been taken appropriately under subsequent chapters.

## **CHAPTER – 12 : REVENUE REQUIREMENT FOR 2002-03**

In this chapter, the Commission will assess revenue requirement for 2002-03. For determining the revenue requirement, the Commission will assess the variable cost relating to fuel and purchase of power, fixed cost and reasonable return.

12.1 For estimating the variable cost for the year 2002-03, we shall proceed from the energy sales. CESC is basically a company for distribution of power and the major part of the power distributed by it is from its own generating stations and for the rest it purchases power from, as per petition, West Bengal State Electricity Board and for certain period from DVC. CESC also falls under the definition of generating company under the provisions of Electricity Act, 2003.

Once the quantity of power sold is determined (actual or estimated) and the generation can be assessed (as per normative level or actual), we can assess the quantity of power that may be required to be purchased from others for meeting the requirement of consumers, subject, however, to T&D loss.

### 12.2 Power Requirements

#### 12.2(a) Sales

I) As per petition of the CESC, the projected sale for the year is 5545 MU against the 5533 MU sale for 2001-02. It is true that the actual figures of sales for 2002-03 will be available as the year is already over. CESC based on the points raised during hearing, has submitted the actual sale from April, 2002 to January, 2003 at 4714 MU and projected for balance two months at 841 MU to make it 5545 MU as per petition.

ii) Some of the objectors have made observations to the effect that the sale is under-estimated and it should be based on the audited figures of the earlier years and actual for 2002-03 should also be taken from CESC. This point has been examined by the Commission and it is felt that if we take the actual sales figure of 2002-03 for the purpose of determination of tariff, then the same principle would have to be adopted in future and actual sales may have to be taken into account, which, as already discussed, is not correct, as the tariff has to be fixed/revised from prospective effect and not on retrospective effect. Basing calculations on actual sales in this case will involve retrospective fixation/revision effect. Similarly, in a logically extreme stand, the Commission may have to take all the expenses, income etc. as actually incurred and can not base its calculations on projected figures and/or on normative basis. The Commission will not like to micro-manage the affairs of the licensee and the Commission thinks it will be a step towards right direction to gradually move towards normative parameters for fixation of tariff and that too multi year tariff with suitable adjustments. The Commission is, therefore, not inclined to agree on the same and will continue to follow the practice of assessing the tariff based on the projected figures subject to the norms, past trends etc. and other stipulations of the Act. As earlier pointed out, the excess profit is to be dealt with as per provisions of the Act i.e. Schedule Sixth of 1948 Act. The Commission also notes that the sale figure for 2002-03 as projected by CESC in its tariff petition for 2004-05 pertaining to the year 2002-03 is only 5557 MU against 5545 MU projected in their tariff petition of 2002-03. The difference is only 12 MU which is negligible and is about point 2%.

The Commission, therefore, accepts the sale figure for 2002-03 as 5545 MU in view of the above stated reasons.

#### 12.2(b) T&D Loss

i) For the present year CESC has projected its T&D loss at 20.3% of the total energy available for distribution. Out of this, according to them, 11% goes towards technical loss and rest towards commercial or non-technical loss which according to CESC is mainly on account of pilferage. CESC has given a detailed description of steps being taken by it to check the pilferage and also pointed out the need of further requirements from the administration including setting up of special court and special protection force. CESC has also given the data of vigilance action taken by it relating to meter checking, hooking removal, court cases etc. and also pointed out that the oldest case pending dates back to 1984. CESC also attributed part of the loss to DC meters and stated that the existing DC meters are sluggish, testing facilities of these meters are not available and yet DC supply is not being discontinued. On the other hand, the consumers blame CESC for not taking sufficient and effective steps for controlling the T&D loss and have claimed that CESC should increase the transmission of energy at high voltage, the direction given by the Government of West Bengal for reduction of the loss from the year 1993 onwards and lay the fault of consumers with heavy load moving out of CESC system at the door of the CESC itself. Both i.e. CESC and the objectors have quoted the judgement of the Hon'ble Supreme Court of India dated 3rd October, 2002 in support of their respective claims. The detail submissions and the objections in this regard have already been covered in earlier chapters.

ii) The Commission has carefully gone through the submissions and counter submissions in this regard including the relevant portion of the judgement of the Hon'ble Supreme Court of India dated 3rd October, 2002 in the case of CESC. The Commission will like to put on record its view that theft of power is a phenomenon which should be resisted and attempted to be eradicated not only by the utility or by the law enforcing authorities, but by the general public as well. The consumers in general and objectors in this case should help in this regard to the extent possible within overall constraints, if any. The general consumers who pay for loss / pilferage should be made aware that they can contribute a great deal to the efforts to prevent power theft. The State may also think of authorising and making operational the special courts and special police protection force towards prevention of pilferages and punishment of the wrong doers. The licensee should also take up suitable effective programmes for making the people aware of this social menace and its effect on honest consumers by way of visual or audio visual advertisement to that effect. The licensee should also identify the theft prone areas and consider taking suitably effective steps to treat these areas specially as distinguished from the areas which do not report for such power theft. Thus the total blame for pilferage cannot be put on the utility alone and that was perhaps the reason why the entire T&D loss was not put on the licensee in terms of the Hon'ble Supreme Court of India's order dated 3rd October, 2002. The Commission now notes that the CESC has taken substantial effective steps on vigilance activities on checking of meters, removal of hooking etc. and by identifying the theft prone area but is yet to try to create a popular opinion which would make people aware of this social menace and lead to rejection of power theft and pilfering. The Commission also notes that the special court and the special protection force is still not in place and the licensee has a genuine problem in this regard. The Commission has also noted certain allegations of high handedness on the part of CESC while dealing with such cases. The Commission also notes, on the other hand, that it will not be proper to unnecessary load such cost on the honest consumers. Therefore, the interest of the licensee and that of the honest consumers would have to be balanced appropriately. The Commission is, therefore, not inclined to agree to allow a higher level of T&D loss of 20.3% and retain the same at the same level of 18% as was allowed during the last year keeping in view the extra efforts taken by CESC to control thefts and pilferages and the fact that the year 2002-03 has already passed and there is now no scope of effecting any improvement in the performance of the licensee for a past year. However, CESC is again directed that they should take effective steps in terms of the view as expressed by the Commission in this order and to bring down the T&D loss to 14% within next 4 years starting from 2004-05 and onwards with equal 1% reduction every year from 2004-05 and onwards.

iii) The Commission also directs CESC to carefully examine the feasibility of transmission at high voltage in appropriate cases and other steps to reduce the technical loss from their stated 11% technical loss. The Commission is not fully satisfied on technical loss of 11% and is of the view that there is a scope of reduction of technical loss from 11%. At the moment, pending an in-depth

study of this phenomenon and coming out with a suitable proposal by CESC, the Commission is not issuing any direction on this score but will review the T&D loss position when the tariff petition for 2005-06 will be taken up. As CESC has to come out with suitable proposals having techno-economic justification, this technical loss reduction target will be considered by the Commission in 2005-06 and onwards and will be in addition to loss reduction target given above.

iv) The Commission also directs CESC to take effective steps to control the DC meter supply and under all the consumption in DC supplies. It is also not clear to the Commission how the supply is continued to be made through such slow meters and how the replacement meters can be made available by CESC, if these meters are sluggish and there are no testing facilities. The possibility of the consumers procuring their own reliable DC meters with appropriate quality and certification, as also the possibility of CESC supplying and putting reliable check meters at suitable points to know the actual consumption in such cases before the supplies enter into the premises of the consumers need exploration. The Commission will also deal with this problem through the mechanism of the tariff subsequently, but the CESC should come out with a detailed paper on various aspects including those mentioned in this para within the next six months and later incorporate this matter in the next tariff petition.

v) The transmission loss on power wheeled not exceeding 4% may be reduced for the energy to be wheeled at the time of delivery, and the loss in that system will not be included in the T&D loss to be determined above.

### 12.3 Generation

CESC has given the figure of projected generation for 2002-03, auxiliary consumption, plant availability factor and plant load factor. There is some improvement in plant availability factor in the Budge Budge, Southern and Titagarh Stations but the plant availability factor of Mulajore and New Cossipore is discouraging. Similarly, there is improvement in the plant load factor of all power stations of CESC except for Mulajore. The CESC has projected a gross generation of 6343 MU during 2002-03 against 6176 MU for the corresponding period of the last year which according to CESC reflects overall plant load factor of 68% for all the stations put together. Since the plant load factor is much less than the plant availability factor and CESC has purchased power from WBSEB, it appears that this purchase has been made to meet the requirement of the peak demand and radial load, if any. The Commission also notes that the purchase of power from WBSEB is much costlier both for peak and off-peak than the generation of power from some of the existing stations particularly Budge Budge, Southern and Titagarh Stations. The latter three Stations should, therefore, be used in such a way that their plant load factor can be increased further. Since the plant availability factor of the new plant is 93% and plant load factor is 75.6% and high for other plants, the Commission will not like to opine on the generation but advises CESC that they should try to further improve operation of their system in more economical manner subject to the system constraints. CESC should also explore the possibility to export the power during off-peak hours instead of backing down the stations for want of demand. CESC may also explore the possibility for demand side management to shift part of the load from peak to off-peak which will give them more elbow room to reduce their cost by avoiding purchase of costlier power in peak hours and to some extent compulsory purchases during off-peak hours at the cost of their own cheaper generation. We, accordingly, accept for 2002-03 the generation figure of 6343 MU, auxiliary consumption of 604 MU and energy sent out at 5739 MU. The Commission also noted that the auxiliary consumption overall is 9.5% and CESC should try to reduce auxiliary consumption particularly in their new generating stations like Budge Budge. Details of gross energy generation, auxiliary consumption and net energy sent out for each station have been given in subsequent paragraphs at the time of working out of the fuel cost.

### 12.4 Purchase of Energy

CESC has given the figures of projected purchase of energy for 2002-03 at 1223 MU from W.B.S.E.B. The break-up of the drawal during non-off-peak period has been shown as 893 MU and during off-peak period 330 MU. The Commission has also noted that the rate to be paid by CESC to WBSEB is high in comparison to their own cost of generation on fuel cost basis. We, however, accept the purchase of energy figure as projected by CESC.

CESC also projected purchase of energy from DVC at 52 MU. They have further stated that they have discontinued purchase of energy from DVC w.e.f 1st August, 2002. The total purchase of energy for 2002-03 is 1275 MU including purchase from WBSEB and the same has been accepted by the Commission for the purpose of working out of cost in the revenue requirement.

#### 12.5 Expenditure Analysis on Fuel Cost

Once the generation and purchase figures have been given, we may proceed to assess the expenditure on fuel and purchase. The fuel cost depends on fuel consumption, which in turn depends on certain parameters, viz;

- i) station heat rate;
- ii) secondary fuel consumption;
- iii) specific consumption of oil;
- iv) gross calorific value of coal and oil;
- v) transit loss;
- vi) weighted average price of coal and oil.

The power purchase cost depends on the source of supplier, the rates of supplier both for demand charge, energy charge and also depend on peak, normal and off-peak purchase and consequential ratio, if any, prescribed therein.

a) CESC has given the month-wise consumption details and furnished value of the primary and secondary fuel. CESC has further stated that as it procures its requirement of coal primarily from Coal India and has to maintain the high load factor and manage the ash content, CESC is required to resort to judicious mix of supply from captive/imported sources for coal. CESC procures Low Density Oil the same is procured from Hindustan Petroleum and Indian Oil Corporation. CESC has also enclosed the price schedule of coal companies and oil companies along with the station-wise break-up of fuel cost including cost of transportation. CESC also submitted the declared heat value of coal, heat value of oil, grade-wise coal consumption based on the applicable Government of W.B norms. CESC further submitted that since their actual consumption is lower than the normative consumption on overall basis, it has based its claims on the lower of the two which is the actual consumption. CESC has further pointed out that though a system of joint sampling exists both with ECL and BCCL, still major problems exist relating to both regularity and quality of supply from Coal India subsidiaries. CESC has further stated that the actual heat value of coal sampled and measured by an independent agency are found to be lower than the stated. CESC further stated that the average fuel cost for 2002-03 is only 114 paise/unit compared to 110 paise/unit in 2001-02 even though there is an increase in coal price by over 6% in 2002-03 apart from rise in railway freight.

b) On the other hand, the consumers have registered their objections on the fuel consumption which according to them is at a rate higher than the actual, absence of merit order operation of the station, reliance on non-existent Government of W.B norms, non-improvement in calorific value of coal and heat value etc. The submissions and counter submissions have already been listed in earlier paras.

c) The Commission has gone through the various submissions made both by the CESC and the objectors and noted that the tariff order dated 7th November, 2001 of the Commission has been set aside by the Hon'ble Calcutta High Court which was modified by the Hon'ble Supreme Court of India vide its order dated 3rd October, 2002. The Commission has also noted that based on the above decision the actual fuel cost incurred by CESC which was less than the overall normative cost based on the Government of W.B norms, was allowed in their revised revenue requirement determination for 2000-01 and 2001-02 vide this Commission's order dated 11th November, 2002 based on the decision of Hon'ble Courts. It is to be noted that there actually are Government of W.B norms for stations of 60 MW and above. The Commission has also noted that in terms of the provisions of the Act and the decisions of Hon'ble Court, management inefficiency should not be

passed on to the consumers. However, it is to be seen that inefficiency, if any, is to be clearly established and proved, i.e mere allegations without any supporting proof or documents cannot lead to imposition of any penalty. There is also some merit in the contention of CESC that there should be penalty and reward simultaneously - and not penalty only - and the norms should be reasonable and achievable and further that inefficiency should be proved. The Commission has also noted that there still exists some problem in coal supplies and GCV therein as has been brought out repeatedly by various utilities.

d) Based on the above analysis, the Commission allows the fuel cost to CESC for various stations as claimed by them as it is lower than what would be arrived at if the norms of Government of W.B were made applicable. The total fuel costs on such basis comes to Rs.65652 lakhs. The fuel cost is based on prevailing prices and for the period after 30th November, 2002, prices prevailing as on 30th November, 2002. Presently we have not considered any incentive/penalty as the new performance norms are being examined and will be applicable later.

e) CESC has claimed Rs.32575 lakhs towards purchase of energy from WBSEB and DVC during the year. CESC has stated that the rate of WBSEB is based on the tariff order of the Commission dated 7th December, 2001. However, CESC has also included Rs.229 lakhs towards peak surcharge in respect of the year 2001-02 which according to them, they have not claimed in view of the decision of the Commission dated 18th November, 2002. The Commission does not agree to include such surcharge of Rs.229 lakhs pertaining to the year 2001-02, because if the amount is admissible, the same will form part of FPPCA claim for the year 2001-02. The Commission, therefore, allows the purchase of energy cost from WBSEB at Rs.31065 lakhs less Rs.229 lakhs i.e. Rs.30836 lakhs and Rs.1510 lakhs for DVC. The total cost of purchase of energy therefore will be Rs.32346 lakhs.

The FPPCA clause will be applicable on the above fuel cost and power purchase cost as per the formula given in this order, in case the price of fuel cost and or price of power purchase increases from the base taken in this order. It is further ordered that the FPPCA formula will be applicable to reimbursement for actual increase/decrease in the price if they vary from what has been taken in the order.

## 12.6 Employees Cost

a) The employees cost claimed by CESC for the revenue account of the company for the year 2002-03 is Rs.24671 lakhs. CESC has contended that the increase in employees cost over 2001-02 is mainly on account of sharp rise in DA and its consequential effect. The CESC has further justified the increase in employees cost on account of wage negotiation and finalisation of new wage agreement in August, 2002 with effect from April, 2002 to March, 2006 and also indicated that the wage negotiation includes effect in extension in tenure. They are also in the process of finalising agreement for improvement in productivity, elimination of agreemental overtime and improvement in their functioning and other efficiencies in the employees work. CESC has also given further details and financial impact of wage revision etc. for the year and tried to justify the overall increase of 16.67%. CESC further stated that there has been an effort on its part to reduce the number of employees from about existing strength of 14200 persons even though the number has been continuously declining from 1996-97 onwards, and yet generation, sales and number of consumers have increased substantially, over the aforesaid period.

Some of the objectors have objected to high employees cost and have pointed out various components of such high employees' cost whereas CESC has justified the same. The rival submissions have already been given in the earlier paras of the order.

The Commission finds that the contribution for P.F and other approved fund is about 16% of the gross salary. This appears to be quite high as normally, P.F contribution etc. is based on basic salary only and not on basic plus allowances and facilities. The Commission, therefore, directs CESC to have a re-look into such contribution and come up with relevant details regarding contributions being made to various approved funds and the basis of its contributions. This apart, the claim for expenses on employees welfare which is about 8% of the total salary & wages appears to be substantial. The Commission also directs CESC to look into such total expenses and come up with appropriate control method to control the overall expenses under Total Employees Cost.

As the claims under the head employees cost are as per the contractual obligation on the part of CESC and CESC is taking effective steps to reduce the number of employees and increase in efficiency/productivity of the employees, the Commission admits the amount as claimed amounting to Rs.24671 lakhs. However, the Commission will like to watch the cost under this head and see how in future years gains by way of reduction of staff, and increase in productivity accrue to CESC.

#### 12.7 Repairs & Maintenance

CESC has claimed Rs.11852 lakhs towards repairs & maintenance including the cost of consumables. The broad break-up of the projected amount is as under:-

Generating station	Rs.5726 lakhs
Transmission & Distribution System	Rs. 5790 lakhs
Sales	Rs. 108 lakhs
Other maintenance Expenses	Rs. 228 lakhs
	-----
	Rs.11852 lakhs

A number of consumers have objected to the amount of expenditure on repairs & maintenance claimed by CESC and its substantial increase from the earlier years. Some of the consumers felt that the repairs & maintenance shows lack of foresightedness and inefficiency as repairs & maintenance could have been avoided by regular inspection. Some of the consumers also pointed out that CESC should come out with clear cut cost control measures in order to reduce O & M charges. CESC has justified its expenses keeping in view its plant availability factor, regular preventive and plant maintenance work to reduce un-planned break-down and also argued in view of its precarious financial position CESC was not able to follow the appropriate maintenance scheduled earlier. The submissions made by the parties are already given in the earlier part of the order.

After considering the rival submissions and also noting that plant availability factor and plant load factor of the generating stations are proposed to be maintained at higher level, all backlog of maintenance needs to be attended to ensure uninterrupted quality power supply and high PAF/PLF, we allow the repair & maintenance cost of Rs.11852 lakhs for 2002-03 keeping in view that major expenses under R & M pertains to generation, transmission and distribution.

#### 12.8 Administrative, General & Miscellaneous Charges

CESC has claimed Rs.4542 lakhs under administrative, general and miscellaneous charges for 2002-03 excluding bad debts of Rs.1770 lakhs, and delayed payment surcharge of Rs.1165 lakhs (which have been considered separately by the Commission). The major portion of the expenses relates to traveling, vehicle, telephone, security, insurances, postage and other general miscellaneous expenses. CESC has justified incurrence of the expenses which according to them is only 6% above from 2001-02. It has also given the details of various requirement of the expenses relating to travelling, running of vehicles, advertisement expenses, stamp and courier charges, printing and stationery. P.F administrative fees, debenture trustee fees etc.

Some of the objectors have objected to high management and administrative expenses and opined that there is need to control such expenses. The rival submissions have been given in the earlier paras of the order.

The Commission after carefully going through the rival submissions notes that in its order dated 11th November, 2002 it has directed CESC to curtail such expenses particularly towards traveling,

auditor fees and other expenses and has reduced Rs.2 crores under 2001-02. The amount now claimed is Rs.4542 lakhs against Rs.4500 lakhs allowed 2001-02. The Commission admits the projected expenditure of Rs.4542 lakhs under the above head, subject to a direction to CESC that they should take some austerity measures to contain future rate of increase in their management and administrative expenses particularly when the number of employees will be reduced significantly after VRS is put into effect and there is increase in the productivity and efficiency of the existing employees and other suitable measures to contain such expenses.

#### 12.9 Coal and Ash Handling Charges

Coal and ash handling charges claimed by CESC is Rs.1691 lakhs. The company has pleaded for and justified the increase from the earlier year on the basis of significant spurt in volume due to high plant load factor and use of low grade coal having high ash content and covering of longer distances in view of stringent pollution control norms.

The Commission after going into rival submissions finds that the plant load factor of the new station is higher than in earlier year. Consumption of coal has also gone up to 4188546 Tons from 3945447 Tons in 2001-02 and particularly lower grade of coal with high ash content has apparently been used. In view of this position, we admit the projected coal and ash handling charges amounting to Rs.1691 lakhs.

#### 12.10 Rates & Taxes

CESC has projected an expenditure of Rs.673 lakhs towards rent, rates and taxes (other than on profit). Some of the objectors have objected to this projected expenditure figure while CESC has justified the increase of the expenditure. The Commission, however, finds that the increase which is about 6% increase over the previous year's expenditure is only normal and admits the projected figure of Rs.673 lakhs in this behalf..

#### 12.11 Legal Charges

The legal charges claimed by CESC is of an order of Rs.689 lakhs. CESC has justified the increase of expenditure in view of special incidence of legal expenses in 2002-03 as well as incidence of attending large number of court cases arising from theft of electricity and disconnection of supply. CESC has further justified the increase of legal expenditure to bring down the T&D loss as the cumulative effect of the action taken by them against checking the menace of theft of energy and also on account of certain legal entanglements which, in its view were not necessary, but which have been imposed on CESC though CESC has tried to settle a large number of cases amicably to contain the legal cost. Some of the objectors, on the other hand, have pointed out and commented critically on such huge legal expenses.

Though the Commission, after going through the rival submissions generally appreciates CESC's compulsions to take legal action to check the menace of electricity theft, and to protect their business interest etc., but it is not fully convinced of the unavailability of such heavy spending on legal account. The Commission is also of the view that CESC should be more prudent in this behalf and should curtail legal expenses and further that CESC should take proper steps in that direction. Since the Commission is of the opinion that such high cost of legal expenses are not prudent, are not in the true interest of consumers and further that there is scope to reduce the same by taking appropriate steps, the Commission would reduce the same by Rs.189 lakhs under this head and only allows Rs.500 lakhs with the direction that CESC should take effective steps to further reduce such expenses. It may be added that their claim for 2001-02 was Rs.414 lakhs and this allowed amount works out to 21% increase over the last year.

#### 12.12 Water Charges

CESC has claimed Rs.105 lakhs toward water charges which we admit keeping in view the plant load factor and inflation factor vis-à-vis for the year 2001-02.

12.13 CESC has retained audit fees and expenses at the level of 2001-02 i.e. Rs.30 lakhs . CESC has shown this amount towards statutory audit fees including reimbursement expenses, audit fee



for public deposit, income-tax, P.F, other funds and fees for miscellaneous certifications. The Commission, however, notes that payment to the auditor for other services, which were classified under the miscellaneous expenses earlier, is not shown separately and it is not clear if such payment to the auditors are being made or not. The Commission has noted that earlier, such payment was substantial. The Commission has already disapproved of such heavy payments to the auditors for availing of such other services and hoped that the views of the Commission have been duly kept in view by CESC and no payment to the auditors have been included for any other services under any other head of accounts. The Commission will, however, review the position and the CESC should indicate all payments to auditors in connection with various services separately and shall not combine them under any other expenses head keeping in mind the relevant observations of the Commission. For the present, we admit an amount of Rs.30 lakhs towards auditors fee and expenses and will direct CESC to contain this expenses under this head to the extent possible.

#### 12.14 Bad Debt

CESC has claimed Rs.1700 lakhs towards bad debt. CESC has justified the claim of bad debt on account of inadequate security deposit in case of LT supply and HT supply due to which doubtful debts are not fully adjustable against the security deposits. CESC has further contended that the recovery of the debts through filing of legal suits is not justifiable in many cases judged by cost benefit angle, and therefore, they suggested a norms of allowing bad debt as a percentage of turn-over.

A number of consumers have registered serious objections to the claim of CESC on the bad debts, as according to them, it puts more burden on the honest consumers due to the failure of CESC to take prompt action in recovering its dues.

After considering the rival submissions, while the Commission admits that a part of the receivables becoming bad debts is a phenomenon in any business activity, it holds that the same should be less so in case of CESC, where there monthly billing is in vogue for all the consumers and most of the billing and collection operations are fully computerised. The reasons for non-recovery of admissible security have not been fully explained. It is also noted by the Commission that CESC is not following any norm in this matter and bad debt as a percentage of sale revenue is found to vary significantly during the last 4 years. The Commission also glanced through the list of defaulting consumers as on 30th September,2002 enclosed with the tariff petition, the list of such defaulters having been subdivided into disconnected supplies, covered by court cases and others. The Commission understands that recovery of dues from those whose cases are in the court, but why others are pending is not clear. There are substantial number of cases outstanding against the Government Departments, both Central and the State, Municipalities etc. Outstandings against the Government or its Departments may not be a bad debt in normal circumstances. Even then, there is a need to start the ball rolling sometime. The Commission directs CESC to take prompt and speedy action for recovery of the debts and allows only Rs.1002 lakhs based on the year 2001-02 against their claim of Rs.1700 lakhs in view of the reasons indicated above.

#### 12.15 Erosion of Consumer Base

CESC has claimed a sum of Rs.1027 lakhs towards erosion of consumer base mainly on account of the problem associated with delayed fixation and recovery of tariff due to which a number of billable consumers (including temporary consumers) have continued to exit the system. CESC has further contended that longer the span of recovery, the greater is the erosion of consumer base and this was beyond the control of the company. They further contended that Rs.9 crores be allowed to compensate erosion of consumer base for 2000-01 and 2001-02. According to CESC, the money value of such loss for a part of 2002-03 is estimated at Rs.5 crores and CESC has prayed that it may be permitted to claim balance after final determination of erosion of consumer base. They thus claimed compensation for erosion of consumer base for 2002-03 in two instalments. The objectors have made a number of critical observations on the claim relating to erosion of consumer base. In their view, CESC should not be allowed such compensations, as the consumers are leaving the system due to inefficiency of the CESC itself and the consumers should not be asked to bear the cost of inefficiency of CESC.

After considering the rival submissions, the Commission admits that the erosion of consumer base happens if there is a delay in tariff announcement. There may be a possibility for the erosion of consumer base mainly relating to the temporary consumers unless there is a mechanism to charge higher tariff from them or adequate security deposit is kept for a longer period. The Commission also observed that this position can not be avoided in FPPCA claim from retrospective effect unless there is an arrangement for suitable security deposit/other amount for such contingencies. The Commission admits that there is merit in the submission of CESC and will put in place some suitable mechanism in future. The Commission has noted that the CESC has claimed part of the amount of 2000-01 and 2001-02 for erosion of consumer base and also for erosion for 2002-03. The Commission has considered the matter whether it should allow on estimated figures for the year before fixation of the tariff or allow based on the actual expenditure incurred in the earlier years. The Commission also noted that this problem of erosion in consumer base due to delay in fixation of tariff may not come in future but the problem due to delayed adjustment of FPPCA claim may be there but all such case should be covered in the bad debts. The Commission felt that since it is fixing the tariff based on the projected expenditure the same method may also be followed for this and excess over the clear profit or loss by the utility can be dealt with in accordance with the provisions of the Act. This will apply to their claim for the year 2000-01 and 2001-02. In view of the above discussion, the Commission do not allows Rs.5 crores as erosion in the consumer base for 2002-03.

#### 12.16 Interest

CESSC has claimed interest amounting to Rs.30634 lakhs as interest (gross including Rs.1242 lakhs pertaining to excess capital cost of Budge Budge. The net interest claimed by CESC, therefore, is Rs.29392 lakhs. Out of this interest, Rs.1375 lakhs pertains to interest on consumers security deposit and balance interest on borrowing for capital account and general purposes. The borrowing includes borrowing in foreign currencies i.e. US \$, GBP, Yen and DM. The equivalent amount of interest payment in rupees of foreign currency payment is projected at Rs.7564 lakhs. Part of the foreign currency loan has variable rate of interest/interest rate linked to LIBOR which may vary depending on the LIBOR rate and exchange rate at the time of payment. CESC has given detailed calculations of interest charges including amount of the loan, tenure, rate of interest and other relevant details for interest to be charged in the tariff. The interest on consumers security deposit has been calculated @ 5.5%. CESC has further contended that they have already taken several steps to secure reduction in interest rate in case of certain loans. CESC has also submitted that due to financial crisis, the company has been unable to meet its payment obligation to lenders in time, and with improvement of cash flow through recovery of arrears it will make every endeavour to correct its payment defaults. CESC has further contended that in terms of Sixth Schedule, interest on all loans are to be allowed as expenses and it has quoted various sections of Electricity Act, 1948 in this regard.

The objectors on the other hand, spoke of the high amount of interest payable by CESC and some of the objectors felt that its claims might have been inflated. According to some of the objectors it was a fault of CESC only not to repay the loan in time thereby leading to accrual of high interest and this could well have been avoided. Some of the objectors also felt that CESC is hardly using any of its own money and also doubted whether there really was requirement of loan to such an extent. The objectors also raised objections on interest on general purpose loan and refinancing of debt servicing. The CESC justified its requirement of loan mainly on account of delayed fixation of tariff necessitating substantial recovery to be made from the consumers, and also submitted cash flow statement for the financial years 2002-03 & 2003-04 and statement of total dues to be recovered relating to tariff and amount payable to WBSEB. CESC has contended that they have to recover about Rs.1200 crores towards arrear on tariff, fuel surcharge claim for 1998-99 and 1999-2000, claim of excess expenditure over income for earlier years and some other arrears. CESC also indicated that total outstanding dues to be paid to WBSEB as on 31st March, 2003 was only Rs.351 crores excluding claim of LPSC which has been neither raised by WBSEB nor claimed by CESC in the tariff. The submissions of the parties in the brief is recorded in the earlier chapter of the order.

After considering all the submissions, the Commission finds that there is a merit in the claim of CESC that CESC has to recover substantial arrear amounts including the claims which are under settlement from its consumers. It is possible that part of the claims may not finally be settled in favour of CESC. The fact, however, remains that pending issues need to be settled expeditiously.

The Commission has also noted that the CESC has taken loan at very high rates of interest. CESC has tried to justify the same on the ground of their adverse financial position. However, the Commission is also of the considered view that taking of at least part of the loan could have been avoided and had CESC pursued vigorously recovery of the outstanding dues and also curtailed during the relevant period some portion of the capital expenses which was not immediately essential. The Commission, however, also notes that during the year the CESC has started taking effective steps to control their interest and financing cost which had been abnormally high. The Commission understands that CESC has already initiated steps to restructure the loan to reduce the rate of interest. The effect of such exercise will be examined by the Commission while fixing the revenue requirements for 2003-04 and 2004-05. The Commission also hopes that with speedy recovery of the outstanding arrears and settlement of its claims, CESC will be in a position to reduce the financing cost at much accelerated rate in future. In the light of the above observations and the facts and the materials on record, the Commission has decided that interest to be allowed separately for foreign loan and Indian loan will be as under..

a) Foreign Loan – The interest payment on foreign loan mainly depends on the rate of exchange prevailing at the time of payment on the outstanding loan for the year 2002-03 which is already over and the claim on interest for foreign loan for the year 2002-03 is admitted as per the amount claimed amounting to Rs.7564 lakhs.

b) Indian Loan – CESC has claimed Rs.23070 lakhs on interest on Indian Loan including interest on consumers' security deposit. The Commission admits the interest on consumers security deposit as Rs.1375 lakhs. The other claim includes Rs.1242 lakhs towards loan towards capital cost disallowed for Budge Budge which is also disallowed under the head of interest (CESC has reduced the disallowance on Budge Budge by way of separate item). The balance interest of Rs.20453 lakhs is on the loan taken from mainly nationalised banks, Indian financial institution, Govt. of W.B with some amount towards fixed deposit and debentures. The Commission also notes that interest on debentures is only Rs.2133 lakhs and the same for fixed deposit is only Rs.1571 lakhs. The Commission admits the interest on Indian loans amounting to Rs.20453 lakhs. Thus, the total interest including Indian, foreign loans and consumers' security deposit comes to Rs.29392 lakhs.

c) Other finance charges – Under this heading we have dealt with claims pertaining to foreign exchange rate variation, lease rental and charges on temporary financial accommodation and other financing charges/costs.

CESC has claimed Rs.21768 lakhs under the above charges. CESC has justified the ascribed the grounds for incurring other financing charges to much delayed revision of tariff. CESC contended that only in the year 2002-03 they could start recovery of the tariff for the year 2000-01, 2001-02, and such inordinate delay led to non-payment and delayed payment of dues to suppliers as also use of additional financing facilities because of the fact that the entitled dues have usually been allowed to be recovered over a long period of time. They further contended that the concept of prudent financial management may not apply in such abnormal situation and the company had to find ways and means to survive. CESC further contended that when delayed payment surcharge from consumers has been taken as income, then on the ground of equity, interest payment/delayed surcharge payment should be fully considered as a legitimate expense particularly because outstanding debts are not considered in working capital. CESC also commented on an earlier year decision wherein delayed payment surcharge and part of the finance charge were disallowed. CESC has argued that if it is allowed to recover its dues in time there will be no claim for DPS. CESC also argued that temporary accommodation was required for purchase of coal and power and staggered payment to critical suppliers. On the other hand, the objectors challenged such high incidence of other financing charges, and felt that this is mainly on account of uneconomical utilisation of resources, lack of proper financial control, and overall inefficiency of CESC. Some of the objectors have felt that CESC does not require financing and gave the reasons and figures therefor. Similarly some objectors felt that foreign loans were not required and foreign exchange variation arises because of inefficiency on the part of CESC, while some others felt that the treatment of foreign exchange variation is not correct. The high rate of interest was also questioned. The rival submissions of the parties has already been recorded in brief in earlier chapter.

The Commission has gone into the rival submissions and has noted that the claim for foreign exchange rate variation arises on account of re-payment of foreign currency loan at a rate which is different from the rate that obtained at the time of original borrowing, recorded in the books of the CESC and based on the date of respective drawals of the loan instalments. The difference in the rate prevailing at the time of drawal and the rate prevailing at the time of payment is really an actual cost and it affects the cost in two ways. First, the amount of interest payable goes up or down depending on the exchange rate on the date of remittance and second, the amount of loan instalment to be paid also undergoes changes based on the prevalent rate of exchange. While the first part is covered under the interest, the second part is not covered in the interest. For this part, additional amount is required for licensee to repay loan if the exchange rate becomes adverse or he will have safeguard if exchange rate goes down/becomes favourable. There is a third angle that concerns how to treat depreciation for such additional capital cost consequent on loan repayment in capital cost in case additional financial cost is to be capitalised. However, we are only considering here the first two items and the third item is not permissible under Schedule Sixth at present in case of licensee. The CESC has claimed Rs.3591 lakhs towards foreign exchange rate variation on the instalments of the loans payable during the year 2002-03 and provided the details in the petition on such amount repayable in foreign currency amount in original rate and amount at the drive rate as it was seen that the US \$ rate has increased from Rs.34.39 to Rs.48.51 and BP (British Pound) has increased from Rs.50.05 to Rs.75.54 which resulted into increase of Rs.3591 lakhs. This increase in rate is calculated based on average exchange rate and may be different for each transaction depending upon the individual remittance. The Commission accepts this position and admits the claim of Rs.3591 lakhs in this behalf.

As regards lease rental, CESC has claimed Rs.3170 lakhs. The Commission has already specifically directed CESC to avoid taking assets on lease. CESC has confirmed that they have initiated the action in this light and remittance on lease rental expenses has come down to Rs.3170 lakhs in 2002-03 against Rs.4227 lakhs in 2000-01. We admit the amount of Rs.3170 lakhs.

On financing charges on temporary financial accommodation, CESC has claimed Rs.13104 lakhs for bill discounting of bills/suppliers credit for procurement of coal and power etc., cash credit facilities and temporary accommodation to meet their other financing needs in view of the reasons explained by them as above. The Commission notes that part of such facilities are covered under the working capital requirements which is added to the capital base for the purpose of return. Also the overall temporary financial accommodations along with cash credit facilities and bill discounting/suppliers credit is quite high in comparison to identifiable clear recoverable arrears which is in additions to default in loan repayments for which again interest is billed to consumers in the revenue requirements. The Commission also notes that the charges for bill discounting amounting to Rs.2900 lakhs, cash credit Rs.3500 lakhs and temporary financial accommodation Rs.6704 lakhs have been claimed and interest on defaulted loans is not ascertainable. Further, the amount allowed under working capital for the purpose of capital base is Rs.14171 lakhs. The Commission finds that the arrear amount collection shown during 2002-03 is very low in comparison to the total arrears. The Commission also notes that delay in arrear recovery of the claims is neither in the interest of the CESC nor in the interest of the consumers. The Commission is of the view that it goes against the interest of the consumers if the rate of recovery is slow as meanwhile the CESC is resorting to high cost of borrowing which is again claimed into a later tariff and therefore, it cannot be said that with this delayed recovery, it is the consumers who are paying through a higher tariff and that too at much higher rate if the costlier loan can not be avoided. The Commission is also of the view that instead of paying such high interest to other financial institutions, banks etc. CESC might consider raising fund by recovering the required security deposit from the consumers, and/or take some advances against supply of electricity from consumers and pay an appropriate rate of interest more or less equivalent to what CESC is paying/planning to pay to the institutions from which it has borrowed/proposes to borrow, CESC should suitably examine such a possibility, but stipulates simultaneously that no fund should be collected from the consumers without there being a scheme specifically approved by the Commission in this behalf. The Commission also notes that CESC has started taking action in reducing its interest liability which will be reviewed during 2003-04 and 2004-05 for which the revenue requirement is being determined in this order. The Commission has also gone through the cash flow statement for the year.

In view of the above discussion, Commission allows a sum of Rs.11000 lakhs towards charges for temporary financial accommodation, cash credit, bill discounting etc. but directs CESC that this

expense should be reduced to less than Rs.40 crores in next 4 years by improvement in their realization, recovery of the areas, better cash flow management etc. This reduction shall be in addition to the normal repayment of the loan for which if there should not be any default in repayment the additional cost will not be allowed in the tariff in future.

The Commission also notes that CESC has claimed a fee of Rs.6 crores towards the exercise of debt restructuring to reduce the rate of interest on costlier loan. The Commission allows the fee of Rs.6 crores but will like to watch for implementation of this scheme and the benefits being derived there from.

The other finance charge includes Rs.600 lakhs towards guarantee commission on Budge Budge loan, export guarantee premium amounting to Rs.203 lakhs, Rs.500 lakhs towards bank charges, LC charges etc. which is also allowed by the Commission.

In view of the above discussion, the Commission agrees to allow Rs.12903 lakhs instead of Rs.15007 lakhs towards other finance charges including charges on temporary financial accommodation etc. The above reduction in financing charges has been made keeping in view the amount of working capital allowed in the capital base and the average rate of borrowings of such loans/return.

#### 12.17 Delayed Payment Surcharge

CESC has claimed Rs.1165 lakhs towards delayed payment surcharge. The claimed amount is stated to be payable on over due WBSEB liability and government dues. CESC has further contended that the liability for delayed payment surcharge will be less in second part of 2002-03 and expects the same to be nil in future, as CESC will be more regular in settlement of such dues in view of start of recovery of arrears. Some of the consumers have objected to this and their objections have already been given in brief earlier. The Commission is of the view that since CESC has already availed substantial temporary financial accommodation including bill discounting, the expenses of which have been allowed by the Commission, and also since CESC is entitled to get working capital requirement to meet its other specified expenditure as per Schedule Sixth, cash flow projection of CESC and the discussion under temporary financial accommodation, there was no justification in delaying payment of the government dues or meet liabilities towards purchase. In view of this position, the Commission rejects the claim for any delayed payment surcharge separately, and disallows the claim of Rs.1165 lakhs.

#### 12.18 Depreciation

CESC has claimed a sum of Rs.32257 lakhs towards depreciation for the financial year 2002-03 keeping in view the terms of notification issued by the Government of India under the provisions of Electricity (Supply) Act, 1948. The above amount includes depreciation charges on disallowed capital cost of Budge Budge project amounting to Rs.2935 lakhs. The allowable depreciation charges, thus, comes to Rs.29322 lakhs which is admitted by the Commission.

#### 12.19 Write-off of Intangible Assets

The write-off of intangible assets of Rs.66 lakhs is admitted by the Commission.

#### 12.20 Special Appropriation

a) CESC has claimed Rs.1133 lakhs towards special appropriation. In regard to statutory appropriation towards contingency reserve under the provisions of Sixth Schedule of Electricity Act, 1948, we allow special appropriation of Rs.1133 lakhs as claimed. The Commission, however, notes that CESC has not invested till now, the amount of contingency reserve which has been allocated to it for the earlier years. The Commission has also notes the plea of CESC that it could not invest any contingency reserve due to its adverse financial position. The Commission will only like to urge and advise CESC to follow the relevant provisions in this regard.

b) CESC has claimed an amount of Rs.4400 lakhs as excess of expenditure over income for 2000-01 and 2001-02. Some of the stake holders have objected to this claim and the detailed

submission in this behalf has been recorded earlier.

The Commission has gone through the rival submissions and considered the same. The Commission finds that no clear details or explanations have been given by the CESC. Neither the latter has given any justification for such claim. The power tariff for CESC for the referred year was re-fixed by the Commission on remand of the case by Hon'ble Supreme Court of India. In view of the above, the Commission does not think it proper to re-open the issue in the present order. The Commission, besides, cannot admit the claim in the absence of proper justification and relevant details and therefore, does not admit the claims on this account.

12.21 In this part of our order, we will ascertain the capital base of CESC for the year 2002-03, different components of the capital base and net capital base on which the company is entitled to get return at standard rates and the amount of reasonable return. The same are being enumerated hereunder.

#### a) Original Cost of Fixed Assets

CESC has projected the original cost of fixed assets at Rs.491484 lakhs at the end of the financial year 2002-03. The projected cost does not include the effect of revaluation of certain fixed assets done by the company in the year 1993-94.

The company has justified the incurring of some capital expenditures which according to it are essential in consumers interest, as quality and reliability of services will otherwise suffer. CESC has further stated that such expenditures are required to take care of increase in number of consumers. These expenditures typically constitute less than 5% of gross fixed assets. The company further stated that the booking of the expenditure has been done between transmission & distribution of high voltage and distribution of medium and low voltage based on power supply at 11 KV, between 3.3 KV and 11 KV and below 3.3 KV respectively. CESC has also given the details of major capital expenditure proposed to be incurred during 2002-03, along with brief justification for the same and stated that in view of the plant repair and maintenance including overhauling etc. the value of scrapping and re-determination of asset is not significant. The projected amount includes the total cost of Budge Budge Plant estimated at Rs.268172 lakhs. However, CESC has excluded from the cost and expenses, the impact of additional cost incurred on the Budge Budge Plant over the cost approved by the Hon'ble Supreme Court of India. CESC further justified the incurrence of projected capital addition mainly on account of strengthening the system, replacements of old items, up-gradation, safety requirements, load growth etc. These have been dealt with in details while dealing with capital work in progress.

Some of the stake holders have objected to incurring of further capital expenditures which according to them have not been fully justified and which in their opinion is not necessary. On the contrary, CESC has justified the incurrence of expenditure and submissions of the parties already listed earlier.

The Commission has carefully considered the views of both sides. The Commission has noted that the CESC is incurring substantial amount of capital expenditure every year and has given justification for incurrence of such expenditure item-wise on major expenditure. The Commission also notes that the projected capital expenditure for 2002-03 is less than what they have projected in earlier years before the Commission. The Commission also notes that CESC has had financial problems due to which the company was unable to pay back its loans in time. Under such circumstances, CESC should have been more prudent in incurrence of capital expenditure in earlier years/future. However, the Commission also recognises the fact that some amount of capital expenditure is necessary to maintain the standard of services, system requirements, safety requirements, requirements on account of load growth etc. as well as for environmental compliance. Keeping in view the above, original cost of fixed assets as being admitted by us for the financial year 2002-03 works out as under:-

	<b>Rs. in Lakhs</b>
Opening Balance	479226
Add : Capitalization of work in progress	12758

	491984
Less :	
(i) Disallowed portion of Budge Budge Station	38615
(ii) Assets to retire	500
Net original cost of fixed assets	452869

#### b) Consumers' contribution

The balance amount of consumers' contribution towards construction of service line etc. is Rs.18033 lakhs at the beginning of 2002-03. CESC has projected receipt of Rs.2300 lakhs as fresh contribution from the consumers on this account during the year.

It has, however, been noted that certain amount received from the consumers as contribution towards capital works always remain unadjusted in the appropriate head of accounts and has been shown as advance in the accounts by the CESC. The balance amount of such unadjusted payment received from the consumers for such capital works was as high as Rs.3272 lakhs at the beginning of 2002-03. The Commission notes that this amount received from consumers towards capital works are being utilised by CESC on capital work-in-progress and this amount is being shown as awaiting adjustment/incurrence. This amount cannot be considered and taken outside the purview of accounts for the purpose of determination of revenue requirement. The Commission, therefore, is adding this amount to the consumer contribution, while reducing the same from the fixed assets capital work-in-progress and to that extent CESC's net capital base/return will be reduced.

In view of the above, consumer contribution for the purpose taken from the cost of fixed assets is as under:-

	Rs. in Lakhs
Opening Balance	18033
Receipt of contribution during the year	2300
Amount received from consumers towards capital work awaiting adjustment	3650*
	23983

\* The figure has been adopted as Rs.3650 lakhs based on estimation and past trend.

#### c) Cost of Intangible Assets

The projected balance of intangible assets (net of write-off) has been shown

as Rs.1127 lakhs at the end of 2002-03 which is admitted by us.

#### d) Original Cost of Work-in-progress

CESC has projected the closing balance of work-in-progress at Rs.7080 lakhs after capitalisation of Rs.12758 lakhs during the year. The opening balance of WIP was Rs.5018 lakhs. CESC has shown the capital expenditure under planned general capital expenditure and special projects amounting to Rs.11346 lakhs and Rs.2662 lakhs respectively. The company has also shown an expenditure of Rs.612 lakhs on public utility project on re-imburement basis and Rs.200 lakhs for interest during construction.

The observations of the objectors and the justification of CESC have already been given under the head 'fixed assets'.

The Commission has noted that the major expenditure under generation is relating to ash disposal system at Budge Budge, ESP for New Cossipore Station and other capital expenditure mainly at New Cossipore Station. The capital expenditure in the distribution sector has been projected at Rs.12503 lakhs which is mainly on account of purchase of meters, supplies for new connection and network resurfacing, tie-line between Titagarh, Mulajore & Botanical Garden Sub-stations etc. The Commission has also noted that though CESC is spending about Rs.217 crores during the year under CWIP but the interest during construction being capitalised amounts to only Rs.2 crores. This is very unusual particularly when a major amount such expenditures of CESC is financed through loan at high rate of interest. The alternative before the Commission therefore, is to reduce certain amount of interest from the interest chargeable to revenue account and capitalise it and then allow the return on the same with corresponding reduction of such loan. The Commission also notes that interest may not be chargeable on the certain assets like meters, equipments etc. which do not qualify for work-in-progress. The Commission, therefore, directs CESC to clearly identify in future the source from which such capital expenditure is being incurred. The Commission hopes however that the net impact of the same may not be much. Subject to the above, the Commission agrees for balance capital work-in-progress of Rs.7080 lakhs for 2002-03.

#### e) Investment in Contingency Reserve

CESC has projected an investment of Rs.2200 lakhs as investment in contingency reserve.

As provided in para xvii (i) (d) of the Sixth Schedule of the Electricity (Supply) Act, 1948, the amount of contingency reserve invested compulsorily in the security authorized under Indian Trust Act, 1882 is to be included in the computation of capital base. Some of the objectors have objected to non-investment of contingency reserve in the approved securities earlier by CESC. CESC has justified its non-investment due to its tight financial condition and they have projected to invest Rs.2200 lakhs during the year 2002-03 accordingly.

The Commission notes from the notes incorporated in the accounts for 2001-02 that even the contingency reserve upto 1999-2000 amounting to Rs.5270 lakhs has not been invested. CESC is now projecting about an investment of Rs.2200 lakhs during the year 2002-03. Also the Commission finds that CESC has not invested the amount due to its financial stringency and the position has not improved substantially during the year 2002-03 which will enable them to invest the fund of contingency reserve as they have already defaulted in loans and re-scheduling thereof. The Commission, therefore, doubts that CESC will be in a position to invest Rs.2200 lakhs as projected by them and therefore, disallows the same for the purpose of revenue requirement. The Commission has also noted that CESC has drawn Rs.1275 lakhs out of the contingency reserve and utilised it for capital work-in-progress with the approval of the State Government. CESC is directed that in the next tariff petition they should come out with the details along with terms and conditions so that the Commission can take a view on the same along with review the position of investments and inclusion in Revenue Requirements.

#### f) Working Capital

CESC has projected working capital requirement for 2002-03 at Rs.14171 lakhs representing cost of fuel at Rs.4497 lakhs, stores Rs.7174 lakhs and average cash flow and bank balance at Rs.2500 lakhs. CESC has justified the fuel cost based on average stock of 25 days. CESC has justified cost of stores other than fuel but has not given month-wise details as required under the Sixth Schedule.

Some of the consumers have objected to the projected working capital requirement and felt that the same should be worked out as has been worked out by the Commission earlier and ASCI. Some of the objectors are of the view that CESC does not require any working capital at all. CESC on the other hand, has justified that as tariff is to be fixed in advance, a reasonable basis is required beforehand for working out cash and bank balance, stock of stores and fuel. CESC also justified the projected working capital requirement based on the Sixth Schedule, subject to the adjustment of norms for 18 days of cash requirement which works out to Rs.132 crores. Similarly fuel stock for average 30' days period works out to Rs.54 crores and Rs.152 crores for stores and spares based on norms of 3% of gross fixed assets which according to them is the spirit of Sixth Schedule. CESC further contended that based on these norms, the working capital requirement



works out to Rs.338 crores against which their projection is too low because of severe cash flow problem.

The Commission has carefully considered the rival submissions and in view of the reasons advanced by CESC and also keeping in view its observations under financing charges on temporary financial accommodation etc. agrees with CESC's projection of working capital of Rs.14171 lakhs.

#### g) Accumulated Depreciation

CESSC has shown the accumulated depreciation at Rs.149457 lakhs at the beginning of the year 2002-03. The depreciation chargeable during the year based on straight line method, applying the rates and in the manner as approved by the government under the provisions of Electricity (Supply) Act, 1948, has been shown as Rs.32257 lakhs. The accumulated depreciation as well as the depreciation shown by CESC in the above figure includes the cost towards disallowed portion of Budge Budge Power Station which has been separately assessed by CESC. The amount of accumulated depreciation and the depreciation for the year for such disallowed portion of Budge Budge Power Station is Rs.8926 lakhs and Rs.2935 lakhs. The balance accumulated depreciation therefore, works out to Rs.169853 lakhs which has been admitted by the Commission.

h) CESC has given statements of loan for 2002-03 and has stated that due to delayed recovery of arrears amounting to Rs.500 crores the company could not meet its payment obligation. Still CESC tried to reduce interest on financing charges. CESC further stated that lenders have categorically refused to give any further loan to CESC. CESC has also worked out repayment for 2002-03 and stated that foreign currency loans are recorded in rupees. They have further given the details for loan taken from various institutions, the period of loan, original amount of loan, outstanding as on 31st March, 2002. CESC also stated that they are in discussion with the lenders on various issues relating to delay in payment obligation. CESC also quoted various sections of the Sixth Schedule regarding their interpretation on the loan and its depiction.

The objectors have raised a number of observations on the high amount of loan, rate of interest and some of the consumers even contended that CESC hardly require any loan to such extent for its operation. CESC, on its part, has justified its loan. The rival submissions have already been given in the earlier part of the order and also while dealing interest charge for 2002-03 along with the view of the Commission about admissibility of the interest on loan. Based on the analysis and information given by CESC, the position of their outstanding loans and borrowings towards specified and general capital works are summarised as under:

Rs. in Lakhs					
	Source	Balance as on 31-03-02	Projected Fresh drawal 2002-03	Projected repayments 2002-03	Balance at year end 2002-03
1.	Govt. of West Bengal	2300	--	--	2300
2.	Debenture	14885	--	4729	10156
3.	Floating Rate Notes etc.	25036	--	--	25036
4.	Other Banks / Institutions	161919	20030	7956	173993
5.	Public Deposit	12194	--	3438	8756
	Total	216334	20030	16123	220241

The outstanding balance of foreign currency loans as well as their repayments have been taken into account in rupee currency at the original exchange rates on the respective dates of drawal of loans.

The outstand balances of loans and borrowings shown above include disallowed portion of Budge Budge Power Station loan portion. The loan taken for such disallowance porton of Budge Budge

Power Station is Rs.7630 lakhs and after deduction of same, outstanding loan balance of Rs.212611 lakhs has been admitted by the Commission.

i) Security Deposit from Consumers

CESC has projected security deposit at Rs.3500 lakhs for 2002-03. With such projected additions, the balance of consumer security deposit comes to Rs.28495 lakhs.

The Commission observes that cash security deposit from the consumers is low and not equivalent to 3 months revenue requirement. The Commission also has noted that though the tariff has substantially gone up in 2000-01 and 2001-02, the security deposit has not increased as the tariff has been re-determined in the later part of the 2002-03. Tariff is still not final in view of the court cases. In view of the above position, the Commission accepts the projected figure of Rs.28495 lakhs.

j) Development Reserve, Investment Allowance Reserve & Consumers Accounts

The balance in the development reserve is Rs.220 lakhs, investment allowance reserve is Rs.1168 lakhs and the consumers accounts is Rs.71 lakhs which is unaltered from the previous year. The Commission accepts the projected figures.

k) Statement of Net Capital Base

Based on our analysis and decisions recorded in earlier paragraphs we now draw the Statement of Net Capital Base.

		Rs. in Lakhs	
		2002-03	
	Particulars	As per CESC	As admitted
1.	Original cost of Fixed Assets	491484	452869
	Less : Contribution from consumers	20333	23983
		471151	428886
2.	Cost of Intangible Assets (net of write-off)	1127	1127
3.	Original cost of Works-in-Progress	7080	7080
4.	Investment in Contingency Reserve	2200	Nil
5.	Working Capital		
	(a) Cost of Fuel in hand	4497	4497
	(b) Other Store, materials & supplies	7174	7174
	(c) Cash and Bank balance	2500	2500
	Sub-total	14171	14171
	Total (A)	495729	451264
	<b>Less :</b>		
6.	Accumulated Depreciation	181264	169853
7.	Loan	220241	212611
8.	Security Deposit from consumers	28495	28495
9.	Development Reserve	220	220
10.	Investment Allowance Reserve	1168	1168
11.	Consumers Accounts	71	71
	Total (B)	431459	412418
12.	Net Capital Base (A-B)	64270	38846

13.	Less : Impact of Budget Power Station cost overrun disallowed	14129	--
14.	Net Capital Base considered for allowing Returns	45141	38846

## I) Reasonable Return

Based on the above decisions in regard to Net Capital Base, we allow Reasonable Return to CESC for the year 2002-03 following the provisions contained in the Sixth Schedule to Electricity (Supply) Act 1948. Our computations of Reasonable Return are based on Bank Rates notified by RBI and applicable for the concerned financial year and on the age-wise break-up of Net Capital Base provided by CESC.

<b>STATEMENT OF REASONABLE RETURN</b>			
		<b>Rs. in Lakhs</b>	
		<b>For 2002-03</b>	
		As Claimed	As Allowed
<b>A. Returns of Standard Rate on Capital Base</b>			
1.	Capital Base upto 31.3.65	3362	3362
	Application Rate	7%	7%
	Return	235	235
2.	Capital Base from 1.4.65 to 31.3.92	6163	6163
	Applicable Rate	8.5%	8.5%
	Return	524	524
3.	Capital Base from 1.4.92 to 31.3.99	16119	16119
	Applicable Rate	11.50%	11.50%
	Return	1854	1854
4.	Capital Base from 1.4.99 onwards	19497	13202
	Applicable Rate	16%	16%
	Return	3119	2112
	Total Return at Standard Rates on Net Capital Base [(1)+(2)+(3)+(4)] = (A)	5732	4725
<b>B. Other Standard Items</b>			
1.	0.5% on Development and Investment Allowance Reserve	7	7
2.	0.5% on Loans	1063	1063
	Total (B)	1070	1070
	Total (A) + (B)	6802	5795

In addition to Return at Standard Rates on Net Capital Base and Other items shown in the above statement, CESC claimed Rs.3985 lakhs in the year 2002-03 towards loss of Returns in the earlier years with the following break-up and reasoning.

		<b>Rs. in Lakhs</b>
		<b>2002-03</b>
1.	Loss of Reasonable Return due to with-holding of Capex in Capital base	

	(i) @13% on Rs.5000 Lakhs for 2000-01	650
	(ii) @12% on Rs.10000 Lakhs for 2001-02	1200
2.	Loss of Reasonable Return entitlement arising out of reduction in Capital Base on account of actual delay in loan repayment of delayed recovery of tariff for 2000-01 and 2001-02.	2135

In regard to loss of Reasonable Return due to with-holding of Capex in the Capital Base, vide item no.(1) above, while re-fixing the tariff for 2000-01 and for 2001-02 on remand of the matter from the Hon'ble Supreme Court by its order dated 03-10-2002, the Commission withheld Rs.5000 lakhs and Rs.10000 lakhs from the Capital Base for the year 2000-01 and 2001-02 respectively. The CESC was asked to provide the detailed techno-economic justifications of their Capital expenditures/proposed Capital expenditures from the consumers benefit points of view in the next tariff petition so as to enable the Commission to take final view on the matter. CESC has now come up with detailed break-up of Capital Works with justifications as summerised in earlier part. The Commission, therefore, decides to allow the return on with-held Capital Base for earlier years at applicable rates on net capital base as claimed by CESC.

As stated by CESC, the company as on April,2002 had arrear tariff dues of about Rs.50000 lakhs which resulted in loan repayment default of Rs.13800 lakhs as on 31st March,2003. As failure to recover its entitled tariff revision in time resulted its default in loan repayments with consequent erosion in Capital Base and Reasonable Return, the company claimed Rs.2135 lakhs additional return on this account. The Commission holds the view that Returns are allowable on the Net Capital Base based on actual state of affairs and not on the basis of a hypothetical situation showing what would have been, in case the events were different. The deferment of the loan repayment in the past necessitated no fresh induction of own capital by the Company on which it is to claim returns. The interest burden on such deferred loan repayments and on the additional borrowing including in the form of Temporary Financial Accommodation is added in tariff. We do not, therefore, find any justification for allowing additional return claimed by the company on the ground of erosion of Capital Base.

Finally, the Reasonable Returns as claimed by CESC and as being MU admitted by us comes as under.

		Rs. in Lakhs	
		2002-03	
		As Claimed	As Admitted
i)	At standard Rates (vide para 8.13.2)	6802	5795
ii)	Re-imburement of Return on with-held Capital Base	1850	1850
iii)	Claims on account of erosion in Capital Base	2135	--
	Total	10787	7645

## 12.22 Unaccounted Energy

As discussed in earlier paras, the gross energy for sale is 6962 MU including net sent out from own generation amounting to 5739 MU and purchase of 1223 MU. The average cost plus 7.5% overheads thereon works out to Paise 152/Kwh. The allowable T&D loss @ 18% as discussed in earlier para, works out to 1253 MU whereas estimated sales are 5545 MU leaving unaccounted energy of 164 MU. Out of this, the consumption of power in the offices is to be deducted. However, CESC has given a figure of 18.58 MU which includes construction power. The construction power is to be capitalized. Since separate figures are not there we are assuming 10 MU for office and balance unaccounted energy is 154 MU. The cost of unaccounted energy works to Rs.2340 lakhs which has been reduced from the Revenue Requirements.

## 12.23 Other Income

CESC has projected non-power tariff income of Rs.4450 lakhs for the year 2002-03. CESC has given broad details of other income in the petition.

The Commission has, however, noted that other income projected is less than the figure of 2001-02. The main reduction in 2002-03 is projected on account of less DC surcharge/penal charge for 2001-02. No reason for reduction of this DC surcharge/penal charge has been indicated. Also it has been noted that this amount has been reduced towards DC surcharge/penal charge relating to earlier year, for which tariff has already been determined and the same is not admissible in this tariff. The Commission, therefore, disallows the reduction of Rs.1217 lakhs from the other income. Commission also noted that there is substantial amount of inter corporate deposit for which no interest has been accounted for. The Commission has also noticed that the action against pilferage and theft of energy has increased; if that be so, then penal recovery charges which should go to Misc. Receipts (and shown separately) should also be on the rise and it may reflect an increase in general trend and cannot be taken on the same basis as for earlier years as has been assessed by the CESC. The Commission, therefore, re-assess the general receipts from Rs.1170 lakhs to Rs.1700 lakhs and the other income with the above adjustment, therefore, works out to Rs.6197 lakhs which is slightly higher than projected figure of Rs.5812 lakhs at last year.

#### 12.24 Statement of Revenue Requirement - 2002-03

Based on our analysis and decision recorded earlier, we finally draw the admitted statement of revenue requirement as under:-

		<b>Rs. in Lakhs</b>	
		<b>2002-03</b>	
		<b>As Claimed</b>	<b>As Admitted</b>
1.	Fuel Cost	65652	65652
2.	Purchase of Power	32575	32346
3.	Employee Cost	24671	24671
4.	Repairs & Maintenance	11852	11852
5.	Administrative, General & Misc. Charges	4542	4542
6.	Coal & Ash handling charges	1691	1691
7.	Rent, Rates & Taxes	673	673
8.	Legal Charges	689	500
9.	Audit Fees & Expenses	30	30
10.	Bad Debts & Erosion in Consumer Base	2727	1002
11.	Water Charge	105	105
12.	Delayed Payment Surcharge	1165	--
13.	Interest	30634	29392
14.	Other Finance Charges		
	(a) Foreign Exchange Rate Variation	3591	3591
	(b) Lease Rental	3170	3170
	(c) Charges on temporary Financial Accommodation	15007	12903
15.	Depreciation	32257	29322
16.	Intangible Assets Written of	66	66
17.	Total Revenue Expenditures (1 to 16)	231097	221508
18.	Reasonable Return	10787	7645
19.	Special Appropriation	5630	1133
20.	Gross Revenue Required	247514	230286
21.	Less :		

	(a) Other Non-tariff Income	4450	6197
	(b) Budge-Budge disallowances	4274	*
	(c) Cost of unaccounted energy		2340
		238790	221749
	Net Projected Energy available of sale (MU)	5545	5545
	Average Cost of Supply (Paise/Kwh)	430.64	399.91

\* Budge-Budge disallowances as shown separately by CESC has been allocated to respective heads of expenditure.

Note: Figures have been regrouped/rearranged wherever considered necessary.

12.25 With the revenue requirement determination for 2002-03, we now have to consider whether we should determine the tariff for the year separately or whether we may do without fixing the tariff separately for 2002-03, as the year is already over, and keeping in view the observations and balance of convenience and inconvenience in fixing the tariff from retrospective effect. The Commission has already considered the issue in the earlier part of the order and has decided that normally tariff will not be revised with retrospective date and will be from prospective date. In the considered opinion of the Commission, therefore, tariff for 2002-03 will be retained and the shortfall/excess of revenue requirement so determined, may be dealt with appropriately subsequently.

## CHAPTER – 13 : REVENUE REQUIREMENT FOR 2003-04

In this chapter, the Commission will assess revenue requirement for 2003-04. For determining the revenue requirement, the Commission will assess the variable cost relating to fuel and purchase of power, fixed cost and reasonable return.

13.1 For estimating the variable cost for the year 2003-04, we shall proceed from the energy sales. The CESC is basically a company for distribution of power and the major part of the power distributed by them is from their own generating stations and for the rest, they purchase power from, as per petition, West Bengal State Electricity Board. The CESC also falls under the definition of generating company under the provisions of Electricity Act, 2003.

Once the quantity of power sold is determined (actual or estimated) and the generation is assessed (as per normative level or actual), we could assess the quantity of power that may be required to be purchased from others for meeting the requirement of consumers, subject, however, to T&D loss.

### 13.2 Power Requirements

#### 13.2a) Sales

i) As per petition of the CESC, the projected sale for the year is 5694 MU against the 5544 MU sale for 2002-03. It is, however, true that the actual figures of sales for 2002-03 will be available as the year is already over.

ii) Some of the stake-holders have raised the issue that the sale is underestimated and it should be based on the audited figures of the earlier years and actual for 2003-04 should also be taken from CESC. This point has been examined by the Commission in para 12.2 (a) (ii) above. It is felt that if we take the actual sales figure of 2003-04 (as per audited accounts) for the purpose of determination of tariff, then the same principle shall have to be adopted in future and only actual sales figures shall have to be taken in to account. As already discussed, this will not be correct as tariff has to be fixed/revised prospectively and not from retrospective effect. Actual sales will include retrospective fixation/revision effect as per the provisions of the Act. Similarly, then the Commission may have to take all the expenses, income etc. as actually incurred and not based on projected and or normative basis. The Commission is, therefore, not inclined to adopt such a

practice and will continue to follow the practice of assessing the tariff based on the projected figures subject to the norms, past trends etc. and other stipulations of the Act.

As earlier pointed out, the excess profit is to be dealt with as per provisions of the Act i.e. Schedule Sixth of 1948 Act. The Commission has also noted that the sale figure for 2002-03 as projected by CESC in their tariff petition for 2004-05 pertaining to the year 2002-03 is only 5557 MU against 5545 MU projected in their tariff petition of 2002-03. The difference is only 12 MU which is negligible and is about 0.2%. However, the Commission has also noted that the rate of growth projected in 2003-04 over 2002-03 is 2.69% against 4.20% in earlier year. The earlier trend is similar. Commission also noted that CESC is purchasing meters and other capex for new consumers. The Commission, therefore, adopts the same trend for the current year, and accepts the sale figure for 2003-04 as 5790 MU in view of the above stated reasons.

### 13.2b) T&D Loss

i) For the present year the CESC has projected their T&D loss at 19.6% of the total energy available for distribution. Out of this, according to them, 11% goes towards technical loss and rest towards commercial or non-technical loss which according to them is mainly on account of pilferage. CESC has submitted details of steps being taken by it to check pilferage and has also pointed out the assistance required from the administration including setting up of special court and special protection force. CESC has also given the data on vigilance action taken by them relating to meter checking, hooking removal, court cases etc. and also pointed out that the oldest case pending date back to 1984. CESC has also attributed part of the loss to DC meters as the existing DC meters are sluggish, and testing facilities of these meters are not available. Yet DC supply is not being discontinued. On the other hand, the consumers blame CESC for not taking sufficient and effective steps for controlling the T&D loss. Some of them have suggested that CESC should increase the transmission of energy at high voltage, a direction given by the Government of West Bengal for reduction of the loss from the year 1993 onwards. Some of them have also suggested that it is the fault of the CESC that consumers with heavy load are moving out of their system etc. Both i.e. CESC and the objectors also quoted the judgement of the Hon'ble Supreme Court of India dated 3rd October, 2002 in support of their claim. The detail submissions and the objections in this regard has already been covered in earlier chapters.

ii) The Commission has carefully gone through the submissions and counter submissions in this regard including the relevant portion of the judgement of the Hon'ble Supreme Court of India dated 3rd October, 2002 in the case of CESC. The Commission has dealt with in detail the issue of T&D loss while dealing with the tariff of CESC for 2002-03 and the same view and observations are applicable for 2003-04. The Commission's view is to retain the T&D loss at 18% for this year. At the same time, the Commission reiterates its directions to reduce the T&D loss at least to 14% within next 4 years starting from 2004-05 with equal 1% reduction every year from 2004-05 and onwards.

iii) The Commission also directs CESC to carefully examine the feasibility of transmission at high voltage in appropriate cases and other steps to reduce the technical loss from their stated 11% technical loss. The Commission is not fully satisfied on technical loss of 11% and is of the view that there is a scope of reduction of technical loss from 11%. At present, pending an in-depth study of this phenomenon and receipt of a suitable proposal from CESC, the Commission is not reducing any T&D loss in this score but will review T&D loss during tariff petition for 2005-06. As CESC has to come out with a suitable proposal which will have to be techno-economically justified, a more precise technical loss reduction target will be considered by the Commission in 2005-06, and will be in addition to loss reduction target given above.

iv) The Commission also directs CESC to take effective steps to control DC meter supply under all categories of consumers. It is also not clear to the Commission that if DC meters are sluggish and there are no testing facilities, then how the supply is continued to be made through such slow meters and how the replacement meters are made available by CESC. CESC may consider asking the consumers to procure their own reliable DC meters with appropriate quality having appropriate certification. Alternatively CESC may think of putting in place check meters to know the actual consumption in such cases before the supplies enter into the premises of the consumers. The Commission will deal with the problem through the mechanism of the tariff subsequently, but the

CESC should come out with detailed paper on various aspects including those mentioned in this para within the next six months and later incorporate this matter in the next tariff petition.

v) The transmission loss on power wheeled not exceeding 4% may be reduced for the energy to be wheeled at the time of delivery, and the loss in that system will not be included in the T&D loss to be determined above.

### 13.3 Generation

CESC has given the figure of projected generation for 2003-04, auxiliary consumption, plant availability factor and plant load factor. There is minor differences in plant availability factor in the Budge Budge, Southern and Titagarh Stations over the last year. Similarly, there is minor differences in the plant load factor of all power stations of CESC over the last year. The CESC has projected a gross generation of 6420 MU during 2003-04 against 6343 MU for the corresponding period of the last year which according to CESC reflects overall plant load factor of 69.6% for all the stations put together. Since the plant load factor is much less than the plant availability factor and CESC has purchased power from WBSEB, it appears that this purchase has been made to meet the requirement of the peak demand and radial load, if any. The Commission also notes that purchase of power from WBSEB is costlier both for peak and off-peak periods than the generation of power from some of the existing stations particularly Budge Budge, Southern and Titagarh. There may be a possibility of managing the demand in such a way that the plant load factor can be increased so that the gap between plant load factor and plant availability factor is reduced to the extent possible. Since the plant availability factor for new plant is 93.9% (Budge Budge) and plant load factor is 75.6% and high for other plants, the Commission will advise CESC that they should try to further improve operation of their system in more economical manner subject naturally to system constraints. We, accordingly, accept for 2003-04 the generation figure of 6420 MU. The Commission also notes that the claim of auxiliary consumption overall is 9.64% against 9.5% of earlier year. We have only accepted auxiliary consumption at 9.5% as accepted for earlier year. The excess auxiliary consumption of 9 MU has been added in unaccounted energy. CESC should try to reduce auxiliary consumption particularly in their new generating stations like Budge Budge. We accordingly, accept for 2003-04 the generation at 6420 MU., auxiliary consumption 610 MU, excess auxiliary consumption (to be taken in unaccounted energy) 9 MU and net energy sent out at 5801 MU.

### 13.4 Purchase of Energy

CESC has given the figures of projected purchase of energy for 2003-04 at 1335 MU from WBSEB. The break-up of the drawal during non-off-peak period has been shown as 975 MU and during off-peak period 360 MU. (The Commission also noted that the rate to be paid by CESC to WBSEB is high in comparison to their own cost of generation on fuel cost basis and therefore, there is ample scope to reduce the purchase from WBSEB particularly at off-peak period. We, however, accept the purchase of energy figure as projected by CESC with a direction that they should explore the possibility of purchasing energy at cheaper rate and also increase their own generation to the extent possible.)

The total purchase of energy is 1335 MU and the same has been accepted by the Commission for the purpose of working out of cost in the revenue requirement.

### 13.5 Expenditure Analysis on Fuel Cost & Power Purchase

Once the generation and purchase figures have been given, we may proceed to assess the expenditure on fuel and purchase. The fuel cost depends on fuel consumption, which in turn depends on certain parameters, viz;

- i) station heat rate;
- ii) secondary fuel consumption;
- iii) specific consumption of oil;
- iv) gross calorific value of coal and oil;
- v) transit loss;
- vi) weighted average price of coal and oil.



The power purchase cost depends on the source of supplier, the rates of supplier both for demand charge, energy charge and also depend on peak, normal and off-peak purchase and consequential ratio, if any, prescribed therein.

a) CESC has given the month-wise consumption details and furnished value of the primary and secondary fuel. CESC has further stated that as it procures its requirement of coal primarily from Coal India. To maintain the high power load factor and to manage the ash content, CESC submits that it is required to resort to a judicious mix of supply from captive/imported sources for coal. In regard to Low Density Oil the same is procured from Hindustan Petroleum and Indian Oil Corporation. They also enclosed the price schedule of coal companies and oil companies along with the station-wise break-up of fuel cost including cost of transportation. CESC also submitted the declared heat value of coal, heat value of oil, grade-wise coal consumption based on the applicable Government of W.B norms. CESC has further submitted that since their actual consumption is lower than the normative consumption on overall basis, it has submitted its claim on the basis of the lower of the two, which is the actual expenditure. CESC has further pointed out that though there is a system of the joint sampling with ECL and BCCL, still major problems exist relating to both regularity and quality of supply from Coal India subsidiaries. CESC has further stated that the actual heat value of coal sampled and measured by an independent agency are found to be lower than the stated. CESC further stated that the average fuel cost for 2003-04 is only 114 paise/unit compared to 110 paise/unit in 2001-02 even though there is an increase in coal price by over 6% in 2002-03 apart from rise in railway freight.

b) On the other hand, the consumers have expressed scepticism about validity of the fuel consumption data which according to them is at a rate higher than the actual, are without any merit order operation of the stations are incorrect because of reliance on non-existent Government of W.B norms, and are not acceptable because of non-improvement in calorific value of coal and heat value etc. The submissions and counter submissions have already been listed in earlier paras.

c) The Commission has gone through the various submissions made both by the CESC and the objectors and noted that the tariff order dated 7th November, 2001 of the Commission has been set aside by the Hon'ble Calcutta High Court which was modified by the Hon'ble Supreme Court of India vide its order dated 3rd October, 2002. The Commission has also noted that based on the above decisions the actual fuel cost incurred by CESC which was less than the overall normative cost based on the Government of W.B norms, was allowed in their revised revenue requirement determination for 2000-01 and 2001-02 vide order dated 11th November, 2002. The latter was based on the decisions of the Hon'ble Courts. The Commission is also of the view that it is not correct to say that there are no Government of W.B norms for stations of 60 MW and above. The Commission has also noted the provisions of the Act and the decisions of Hon'ble Court to the effect that management inefficiency should not be passed on to the consumers. However, it is to be seen that inefficiency, if any, is to be clearly established and proved, i.e., more allegations without any supporting brief or documents can not lead to imposition of any penalty. There is also some merit in the contention of CESC that there should be both penalty and reward simultaneously and not the penalty alone. Besides, the norms should be not starting from excellent, and the inefficiency if any should be proved. The Commission has also noted that there still exists some problem in coal supplies and GCV as has been brought out repeatedly by various utilities.

d) Based on the above analysis, the Commission allows the fuel cost to CESC for various stations as claimed by CESC as it is lower than what calculations based on the norms of Government of W.B (where applicable) will show. The total full costs on such basis comes to Rs.66290 lakhs. The fuel cost is based on prevailing prices as on 30th November, 2002. Presently, we have not considered any penalty/incentive as the revised performance norms etc. are being examined and will be made applicable in due course.

e) CESC has claimed Rs.33986 lakhs towards purchase of energy from WBSEB during the year. CESC has stated that the rate of WBSEB is based on the tariff order of the Commission dated 7th December, 2001. However, CESC has not included the 52 Paise/Kwh awarded to WBSEB as per interim order sanctioned by the W.B.E.R.C. This order was not only in favour of WBSEB, it was also applicable to CESC. The Commission has included the impact of this interim order while working out cost of purchase and difference, if any, was to be adjusted through FPPCA. The Commission, therefore, allows the purchase of energy from WBSEB at Rs.40928 lakhs.

f) The FPPCA clause will be applicable on the above fuel cost and power purchase cost as per the formula given in this order in case the price for fuel cost and or price of power purchase is increased from the base taken in the order. It is further ordered that the FPPCA formula will be applicable to reimbursement for actual increase/decrease in the price that vary from what has been taken in the order.

### 13.6 Employees Cost

a) The employees cost claimed by CESC for the revenue account of the company for the year 2003-04 is Rs.29975 lakhs. CESC has contended that the increase in employees cost over 2002-03 is mainly on account of wage revision effects, additional terminal benefits and shortfall in creating fund required by LIC. CESC has further stated that there has been an effort on the part of the company to reduce the number of employees from the existing strength of about 14200 persons even though there has been a continuous decline in employees strength from 1996-97 onwards. In spite of the gradually reduced strength of employees, claims CESC, generation, sales and number of consumers have increased substantially. CESC has further stated that the Mulajore station shall be closed down in December, 2003.

A number of stake-holders have objected to high employees cost and various components of such high cost covered in the employees cost whereas the CESC has justified the same and the rival submissions are given in the earlier para of the order.

The Commission finds that the contribution for P.F and other approved fund is about 16% of the gross salary which appears to be quite high. Normally, P.F contributions etc. are based on basic salary and not on basic plus allowances and facilities. The Commission, therefore, directs CESC to have a re-look at the figures of such contributions and come up with relevant details including contributions being made to various approved funds and the basis of such contributions. This apart, from the claim for substantial expenses on employees welfare is found to be about 8% of the total salary & wages. The Commission also directs CESC to re-examine these expenses and come up with appropriate control method to control the overall expenses under Total Employees Cost.

As the claims under the head 'employees cost' are as per the contractual obligation on the part of CESC, and CESC is taking effective steps to reduce the number of employees and increase in efficiency/productivity of the employees, the Commission admits the amount as claimed amounting to Rs.29975 lakhs. However, the Commission will like to watch the cost under this head to see if CESC gains by way of reduction of staff and increase in productivity in future years.

### 13.7 Repairs & Maintenance

CESC has claimed Rs.13281 lakhs towards repairs & maintenance including the cost of consumables. The broad break-up of the projected amount is as under:-

Generating station	Rs.6199 lakhs
Transmission & Distribution System	Rs. 6726 lakhs
Sales	Rs. 115 lakhs
Other maintenance Expenses	Rs. 241 lakhs
	-----
	Rs.13281 lakhs

A number of consumers have objected to the amount proposed to be spent on repairs & maintenance by CESC and its substantial increase from the earlier years. Some of the consumers felt that the repairs & maintenance show lack of foresightedness and inefficiency as repairs & maintenance could have been avoided by regular inspection. Some of the consumers also pointed out that CESC should come out with clear cut cost control measures in order to reduce O & M

charges. CESC has justified these expenses keeping in view its plant availability factor and regular preventive and plant maintenance work in order to reduce un-planned break-downs and also argued that because of its precarious financial position CESC was not able to follow the appropriate maintenance scheduled earlier. The submissions made by the parties are already given in the earlier part of the order.

After considering the rival submissions and also noting that plant availability factor and plant load factor of the generating stations are proposed to be maintained at higher level, all back log of maintenance need to ensure uninterrupted quality power supply and high PAF/PLF, we allow the repair & maintenance cost of Rs.13281 lakhs for 2003-04 keeping in view that major expenses under R & M pertains to generation, transmission and distribution and the expenses are less than 3% of the gross fixed assets comprising of generation, transmission and distribution assets of different vintages.

### 13.8 Administrative, General & Miscellaneous Charges

CESC has claimed a sum of Rs.4798 lakhs under administrative, general and miscellaneous charges for 2003-04 excluding bad debts of Rs.2000 lakhs, which has been considered separately by the Commission. The major portion of the expenses relating to traveling, vehicle, telephone, security, insurances, postage and other general miscellaneous expenses. CESC has justified incurrance of the expenses which according to it is only about 6% above from 2002-03. CESC has also given the details of various requirement of the expenses relating to travelling, running of vehicles, advertisement expenses, stamp and courier charges, printing and stationery. P.F administrative fees, debenture trustee fees etc.

Some of the objectors objected to what they felt were high management and administrative expenses and opined that there was need to control such expenses. The rival submissions given in the earlier paras of the order.

The Commission after carefully going through the rival submissions notes that in its order dated 11th November, 2002 the Commission has directed CESC to curtail such expenses particularly towards traveling, auditor fees and other expenses and had reduced Rs.2 crores under this head in 2001-02. The amount now claimed is Rs.4798 lakhs against Rs.4500 lakhs allowed in 2001-02 and Rs.4544 lakhs in 2002-03. This is a reasonable increase and therefore, the Commission admits the projected expenditure of Rs.4798 lakhs under the above head subject to a direction to CESC that the latter should take some austerity measures to contain future rate of increase in their management and administrative expenses, particularly when the number of employees may be reduced significantly after the proposed VRS and increase in the productivity and efficiency of the existing employees and other suitable measures to contain such expenses.

### 13.9 Coal and Ash Handling Charges

Coal and ash handling charges claimed by CESC is Rs.1956 lakhs. The company has pleaded and justified the increase from the earlier year on the basis of a significant spurt in volume of coal consumption due to high plant load factor and increased use of cost effective low grade coal which has high ash content and covering of longer distance in view of stringent pollution control norms.

The Commission after going into rival submissions and noted that the plant load factor of the new station is slightly more than earlier year. Consumption of coal has gone up to 4333028 Tons against 3945447 Tons in 2001-02 and estimated 4188546 Tons in 2002-03 and particularly lower grade of coal with high ash content has been used which further increases the disposal problems. In view of this position, we admit the projected coal and ash handling charges amounting to Rs.1956 lakhs.

### 13.10 Rates & Taxes

CESC has projected an expenditure of Rs.714 lakhs towards rent, rates and taxes (other than on profit). Some of the objectors have made objections on the same while CESC has justified the increase of the expenditure. The Commission finds the projected expenditure to be reasonable, and admits the projected Rs.714 lakhs which is 6% increase over the previous year.

### 13.11 Legal Charges

The legal charges claimed by CESC is Rs.465 lakhs. CESC has justified the increased expenditure by citing the incidence of attending large number of court cases relating to theft of electricity and disconnected consumers etc. CESC further justified the legal expenditure to bring down the T&D loss as the cumulative effect of the action taken by them against checking the menace of theft of energy and also on account of certain legal disputes which the company felt had been imposed on it. Some of the objectors, on the other hand, have pointed out the enormity of these expenditures and have commented on such huge legal expenses.

The Commission, after going through the rival submissions, though appreciates CESC's compulsion to take legal action to check the menace of electricity theft, but is not fully convinced of the wisdom to incur such heavy spending on legal account. The Commission is of the view that CESC should be more prudent to curtail legal expenses. The Commission, however, noted that the claim has been reduced by CESC from Rs.689 lakhs in last year to Rs.465 lakhs during the year. The Commission has allowed Rs.500 lakhs during last year. The Commission, therefore, allows Rs.465 lakhs with the direction that they should take further steps to further reduce such expenses.

### 13.12 Water Charges

CESC has claimed Rs.108 lakhs toward water charges which we admit keeping in view the plant load factor and inflation factor vis-à-vis for the year 2002-03.

13.13 CESC has retained audit fees and expenses at the level of 2001-02 i.e. Rs30 lakhs. CESC has shown this amount towards statutory audit fees including reimbursement expenses, audit fee for public deposit, income-tax, P.F, other funds and fees for miscellaneous certifications. The Commission, however, noted that payment to the auditor for other services which was classified under the miscellaneous expenses earlier is not shown and it is not clear if such payments to the auditors are being made or not. The Commission has noted that earlier such payments were substantial. The Commission has already disapproved of such heavy payments to the auditors for availing of such other services and hoped that the views of the Commission would be duly kept in view by the CESC. Apparently no payment to the auditors has been included for any other services in any other head of accounts. The Commission will, however, review the position and CESC should indicate all payments to auditors in connection with various services separately, and shall not combine them under 'any other expenses' head keeping in view of the observations of the Commission. In view of the above, we admit an amount of Rs.30 lakhs towards auditors fee and expenses and will direct CESC to contain this expenses under this head to the extent possible.

### 13.14 Bad Debt

CESC has claimed Rs.2000 lakhs towards bad debt. CESC has justified the claim of bad debt on account of inadequate security deposit in case of LT supply and HT supply due to which doubtful debts are sometimes not fully adjustable against the security deposits. The company has further contended that the recovery of the debts through filing of legal suit is not justifiable in many cases judged by cost benefit consideration, and therefore, they suggested a norms of allowing bad debt as a percentage of turn-over.

A number of consumers have raised objections to this claim on the bad debts, as according to them, it puts a larger burden on the honest consumers caused by failure of CESC in taking prompt action for recovering of its dues. This, according to them signifies inefficiency.

After considering the rival submissions, the Commission admit that a part of the receivable becoming bad is a phenomenon found in any business activity. But in the case of CESC where monthly billing is in vogue for all the consumers and most of the billing and collection operations are fully computerised, such possibilities should be small. The reasons for non-recovery of admissible security has not been fully explained by CESC. It is also noted by the Commission that CESC itself is not following any norm and bad debt as percentage of sale revenue is varying significantly during the last 4 years. The Commission also glanced through the list of defaulting consumers as on 30th September,2002 enclosed with the tariff petition for certain categories of the consumers. The list has been bifurcated into disconnected supplies, the court cases and others. The Commission can understand the reasons of default in those cases which are in the

court, but why action for recovery has been delayed or not taken in other cases is not clear. There are substantial number of cases outstanding against the Government Departments, both Central and the State, and municipalities. These may not be termed as bad debts in normal circumstances. Commission also noted that CESC has separately asked for erosion of consumer base. The Commission directs CESC to take prompt and speedy action for recovery of its debts and allows only Rs.1200 lakhs based on Rs.1002 lakhs for the year 2001-02 against their claim of Rs.2000 lakhs in view of the reasons indicated above.

### 13.15 Erosion of Consumer Base

CESC has claimed Rs.797 lakhs towards erosion of consumer base mainly on account of problem associated with delayed recovery of tariff due to which a number of billable consumers (including temporary consumers) have continued to exist the system. The balance they intent to claim after determination of tariff. The objectors have raised a number of observations on the claim relating to erosion of consumer base stating that they should not be allowed as the consumers are leaving the system due to inefficiency of the CESC for which the consumers should not be loaded in the tariff.

After considering the rival submissions, the Commission admits that the erosion of consumer base happens if there is delay in tariff announcement. There may be a possibility for the erosion of consumer base mainly relating to the temporary consumers unless there is a mechanism to charge higher tariff from them or adequate security deposit is kept for a longer period. The Commission also observed that this position cannot be avoided in FPPCA claim from retrospective effect unless there is an arrangement for suitable security deposit / other amount for such contingencies. The Commission admits that there is merit in the submission of CESC and will put in place some suitable mechanism in future but for the financial year 2003-04 the CESC needs to be compensated for erosion of consumer base. The Commission has considered the matter whether it should allow on estimated figures for the year before fixation of the tariff or allow based on the actual expenditure incurred in the earlier years. The Commission also noted that this problem of erosion in consumer base due to delay in fixation of tariff may not come in future but the problem due to delayed adjustment of FPPCA claim may be there. The Commission felt that since it is fixing the tariff based on the projected expenditure the same method may also be followed for this and excess over the clear profit or loss by the utility can be dealt with in accordance with the provisions of the Act. The Commission aware that the claim for erosion in consumer base can be taken care of in provisions for bad debts. The Commission, however, noted that it has decided to adjust the tariff for 2002-03 and 2003-04 from prospective date and therefore, there should not be any erosion in consumer base in view of above. In view of the above discussion, the Commission do not allow Rs.797 lakhs as erosion in the consumer base for 2003-04.

### 13.16 Interest

CESC has claimed a sum amounting to Rs.29172 lakhs as interest (gross including Rs.1201 lakhs pertaining to excess capital cost of Budge Budge). The net interest claimed by CESC, therefore, is Rs.27971 lakhs. Out of this interest, Rs.1567 lakhs pertains to interest on consumers' security deposit and balance interest on borrowings on capital account and general purposes. The borrowings include borrowing in foreign currencies i.e. US \$, GBP, Yen and DM. The equivalent amount of interest payment in Rupees of foreign currency payment is projected at Rs.6648 lakhs. The part of the foreign currency loan has variable rate of interest/interest rate linked to LIBOR which may vary depending on the LIBOR rate and exchange rate at the time of payment. CESC has given detail calculations for interest charges including amount of the loan, tenure, rate of interest and other relevant details for interest to be charged in the tariff. The interest on consumers security deposit has been calculated @ 5.5%. CESC has further contended that it has already taken several steps to secure reduction in interest rate in case of certain loans. It has submitted that due to financial crisis, the company has been unable to meet its payment obligation to lenders in time and with improvement of cash flow through recovery of arrears they will make every endeavour to correct its payment defaults. It has further contended that in terms of Sixth Schedule, interest on all loans are to be allowed as expenses and it has quoted various sections of Electricity Act, 1948 to support its claim in this regard.

The objectors on the other hand, have made critical comments on high amount of interest in case of CESC and some of the objectors have even felt that its claims are inflated. Some have opined

that CESC's failure to repay its loans in time leading to the accrual of interest should and could have been avoided. Some of the objectors also felt that CESC was hardly using any of its own money and also doubted the very requirement of loans to such an extent. The objectors have also objected to payment of interest on general purpose loan and refinancing of debt servicing. The CESC justified its requirement of loan mainly on account of delayed fixation of tariff, substantial recovery to be made from the consumers consequent upon such delayed recovery and also submitted cash flow statement for the financial years 2002-03 & 2003-04. It has also submitted a statement of total dues to be recovered relating to tariff and also showing amount payable to WBSEB. CESC has contended it has to recover about Rs.1200 crores towards arrear on tariff, fuel surcharge claim for 1998-99 and 1999-2000, claim of excess expenditure over income for earlier years and some other arrears. The submissions of the parties in the brief is recorded in the earlier chapter of the order.

After considering the rival submissions, the Commission noted that there is a merit in the claim of CESC that it has to recover substantial amounts from its consumers including the claims which are under settlement. While there is always a possibility that part of the claim may not be settled in favour of CESC, the fact remains that the pending issues need to be settled expeditiously. The Commission has also noted that the CESC had taken loans at very high rates of interest. CESC has tried to justify the same on the ground of its adverse financial position at that time which compelled it to take heavy loans at substantial rates of interest. However, the Commission is also of the view that taking at least a part of the loans could have been avoided if CESC would have pursued vigorously recovery of its outstanding dues and security deposit balance from the consumers and also would have curtailed some portion of the capital expenses which were not immediately essential during the relevant period of time. The Commission also notes that during the year, CESC has already started taking effective steps to control their interest and financing cost which were abnormally high. The net repayments projected during this year is Rs.42225 lakhs which is substantial. This, the Commission finds to be creditable and a step in the right direction. The full impact of this will come in future years by reduced costs and further speedy repayments. The Commission further notes that the CESC has also already taken steps to restructure some of its loans in first stage to reduce the rate of interest. The Commission finds that certain positive results are being achieved by CESC in this regard which is commendable in given circumstances. However, still more efforts can be made by CESC to further reduce the rate of interest and speedy payment of costlier loans. The Commission also hopes that with speedy recovery of the outstanding arrears and settlement of its claim, CESC will be in a position to reduce the financing cost at much accelerated rate in future. In the light of the above observations and the position, the Commission has decided the amount of interest to be allowed as under separately for foreign loans and Indian loans.

a) Foreign Loan – The interest payment on foreign loan mainly depends on the rate of exchange prevailing at the time of payment on the outstanding loan for the year 2003-04. It was noted by the Commission that the foreign exchange rate adopted is about Rs.48.00 per US Dollar and Rs.25.60 per DM, Rs.75.54 per Pound and Re.0.41 per Yen. The rates for Dollar and DM appears to be too high whereas the rate of Pound is low for a number of periods in the year. The major portion of the loans is in US currency. In view of this, the claim on interest for foreign loan for the year 2003-04 is admitted as per the amount claimed amounting to Rs.6648 lakhs. However, the Commission will like to come up with a policy to regulate foreign exchange variations including payment of interest for foreign loans in future.

b) Indian Loan – CESC has claimed Rs.22524 lakhs on interest on Indian Loan including interest on consumers security deposit. The Commission admits the interest on consumers security deposit as Rs.1567 lakhs. The claim includes Rs.1201 lakhs towards interest on loan and towards capital cost disallowed for Budge Budge which is also disallowed under the head of interest (CESC has reduced the disallowance on Budge Budge by way of separate item). The balance interest of Rs.19756 lakhs is on the loan taken from mainly nationalised banks, Indian financial institution, Govt. of W.B with some amount towards fixed deposit and debentures. The Commission also notes that interest on debentures has come down from Rs.2133 lakhs to Rs.1400 lakhs and the same for fixed deposit is now Rs.873 lakhs against Rs.1571 lakhs of the earlier period. This, therefore, shows a declining trend. Other interests excluding interest on debenture and fixed deposit comes to Rs.17483 lakhs. The Commission has already allowed substantial amounts towards expenses on capital restructuring last year as also this year, and therefore reasonably expects that CESC should be able to get the benefit of rates reduction in this year. This reduction shall be about 10%

of such interest. Therefore, the Commission accordingly reduces Rs.1748 lakhs and allows balance interest of Rs.15735 lakhs on this account. The Commission, thus, allows a total of Rs.19575 lakhs after disallowing Rs.1201 lakhs towards excess cost of Budget Budget and Rs.1748 lakhs on account of debt restructuring. The Commission will have a re-look into the position based on the agreements reached while determining the tariff for next year. The net interest allowed included foreign loans, Indian loans and consumer security deposit comes to Rs.26223 lakhs.

c) Other finance charges – Under this heading, we have dealt with claims pertaining to foreign exchange rate variation, lease rental and charges on temporary financial accommodation and other financing charges/costs.

CESC has claimed Rs.21675 lakhs under the above charges. CESC has justified the incurring of other financing charges due to non-revision of tariff in time. The company has contended that only in the year 2002-03 it was able to start recovery of its tariff for the year 2000-01, 2001-02 and such inordinate delay led to non-payment of dues to suppliers, delayed payment and use of additional financing facilities keeping in view that entitled dues have been allowed to be recovered over a long period of time. It has further contended that the concept of prudent financial management may not apply in such an abnormal situation and the company has to find ways and means to survive. CESC has also contended that when delayed payment surcharge from consumers has been taken as an income, then interest payment/delayed surcharge payment should be fully considered as a legitimate expenses particularly when outstanding debts are not considered in working capital. CESC also commented on the earlier year decision wherein delayed payment surcharge and part of the finance charge were disallowed. CESC has also stated that if it is allowed to recover its dues in time, there will be no claim for DPS. CESC has also argued that temporary accommodation was required for purchase of coal and power and staggered payment to critical suppliers. On the other hand, the objectors have objected to such high incidence of other financing charges and felt that this is mainly on account of uneconomical utilisation of resources, lack of proper financial control, and in general, inefficiency of CESC. Some of the objectors were also of the view that CESC does not require financing at all and gave reasons and figures to prove their point. Similarly, it has been felt by some that foreign loans are not required and foreign exchange variations arises because of inefficiencies on the part of CESC. The rival submissions of the parties have already been recorded in brief in earlier chapter.

The Commission has gone into the rival submissions. The Commission notes that claim for foreign exchange rate variation arises on account of re-payment of foreign currency loan at a rate which is different from the rate prevailing at the time of original borrowing based on the date of respective draws of the loan instalments. The difference in the rate prevailing at the time of drawal and the rate prevailing at the time of payment is really an actual cost and it affects the cost in two ways. First, the amount of interest payable goes up or down depending on the exchange rate on the date of remittance, and seconds the amount of loan instalment to be paid also undergoes changes based on the prevalent rate of exchange. While the first part is covered under the interest, the second part is not so covered which is why additional amounts may be required to repay the loan if the exchange rate becomes adverse. There is a third angle that concerns how to treat depreciation for such additional capital cost consequent on loan repayment in capital cost in case additional financial cost is to be capitalised. However, we are only considering here only the first and the second items and the third item being impermissible under Schedule Sixth. CESC has claimed Rs.5720 lakhs towards foreign exchange rate variation on the instalment of the loan payable during the year 2003-04, and provided in the petition the details of such amounts repayable in foreign currency, amount in original rate, and amount at the derived rate. It may be recalled that the US \$ rate has increased from Rs.34.39 to Rs.50.43 and BP has increased from Rs.50.05 to Rs.78.57. This increase in rate is calculated on the basis of the average exchange rate and may be different for each transaction depending upon the individual remittance. The Commission notes that the foreign exchange rate adopted particularly of US Dollar & DM is high and has varied during the year. The rate of British Pound, however, has gone above than anticipated. CESC has not given actual amounts involved in repayment in foreign currency, but has given the derived/anticipated rate in Indian rupees. The Commission has already decided to come up with a policy decision in this regard for future in its order for 2002-03. The Commission admits the claim of Rs.5720 lakhs.

As regards lease rental, CESC has claimed a sum of Rs.2926 lakhs. The Commission has already specifically directed CESC to avoid taking assets on lease. CESC has confirmed that it has initiated

action in this light and remittance on lease rental expenses has come down to Rs.2926 lakhs in 2003-04 against Rs.4227 lakhs in 2000-01. We admit the amount of Rs.2926 lakhs.

On financing charges arising from temporary financial accommodation, CESC has claimed Rs.11291 lakhs for procurement of coal and power etc., cash credit facilities and temporary accommodation to meet their other financing needs. The Commission notes that the figures representing collection of arrears shown during 2003-04 is very low in comparison to the total arrears. The Commission has also noted that delay in recovery of arrears is neither in the interest of CESC nor in the interest of the consumers. It goes against the interest of the consumers if the rate of recovery is slow because meanwhile the CESC is resorting to high cost borrowing, which is later claimed as a part of the next tariff. The consumers are therefore paying through a higher tariff and that too because of the factor of contracting a relatively costly loan. The Commission is also of the view that instead of paying such high interest to other financial institutions, banks etc. CESC should raise funds by recovering the required security deposit from the consumers and may even consider taking of some advances against supply of electricity from its own consumers and pay an appropriate rate of interest which should be more or less equivalent to what they are paying / planning to pay to some of the lending institutions. CESC may examine such a possibility, but stipulates simultaneously that no funds on such a ground should be collected from the consumers without there being a scheme specifically approved by the Commission in this behalf. The Commission has also noted that CESC has started taking action in reducing its interest liability and appreciate that the claim has been reduced from Rs.13104 lakhs to Rs.11291 lakhs during the year. In view of the above discussion, Commission allows a sum of Rs.9420 lakhs towards charges for temporary financial accommodation after disallowing Rs.1871 lakhs on the same basis and principles which are followed in the order for 2002-03 and given in detail in an earlier part.

The Commission also noted that CESC has claimed a fee of Rs700 lakhs towards the exercise of debt restructuring to reduce the rate of interest on costlier loan. The Commission allows the fee of Rs.700 lakhs but will like to watch for implementation of this scheme and the benefits being derived there from.

The other finance charge includes Rs.500 lakhs towards guarantee commission on Budge Budge, export guarantee premium amounting to Rs.138 lakhs, Rs.400 lakhs towards bank charges, LC charges etc. which is also allowed by the Commission.

In view of the above discussion, the Commission agrees to allow Rs.11881 lakhs towards other finance charges including charges on temporary financial accommodation etc. against their total claim of Rs.13029 lakhs.

#### 13.17 Delayed Payment Surcharge

CESC has not claimed any delayed payment surcharge for this year even though they have claimed Rs.1165 lakhs during last year.

#### 13.18 Depreciation

CESC has claimed Rs.32657 lakhs towards depreciation for the financial year 2003-04 keeping in view the terms of notification issued by the Government of India under the provisions of Electricity (Supply) Act, 1948. The above amount includes depreciation charges on disallowed capital cost of Budge Budge project amounting to Rs.2935 lakhs. The allowable depreciation charges, thus, comes to Rs.29722 lakhs which is admitted by the Commission.

#### 13.19 Write-off of Intangible Assets

The write-off of intangible assets of Rs.66 lakhs is admitted by the Commission.

#### 13.20 Special Appropriation

a) CESC has claimed Rs.1178 lakhs towards special appropriation. In regard to statutory appropriation towards contingency reserve under the provisions of Sixth Schedule of Electricity Act, 1948, we allow special appropriation of Rs.1178 lakhs as claimed. The Commission, however, notes that CESC has not invested the amount of contingency reserve as has been allocated to it



for the earlier years till now. The Commission has also noted the plea of CESC that it could not invest any contingency reserve in the past due to its adverse financial position. The Commission will only like to advise CESC to follow the relevant provisions of law in this regard.

b) CESC has claimed Rs.4400 lakhs as excess of expenditure over income for 2000-01 and 2001-02, and another sum of Rs.1382 lakhs as foreign exchange variations for earlier years. Some of the objectors have objected to this claim and the detailed submissions have been recorded earlier.

The Commission has gone through the rival submissions and notes that no clear details or explanations have been given by the CESC along with the justification for such claim. The power tariff for CESC for the referred year was re-fixed by the Commission on remand of the case by Hon'ble Supreme Court of India. In view of the above, the Commission does not think it to be proper to re-open the issue in the present tariff order and/or cannot admit the claim in the absence of proper justification and relevant details. Therefore, the claims on these accounts are not admitted.

c) The Government of West Bengal vide no.349/Power/11/IR-10/98 dated 31-7-2003 has also approved special appropriations of Rs.13.8 crores of 1998-2000 and Rs.83.24 crores on account of additional entitlement towards tariff for the period 19-10-1998 to 31-3-200 in accordance with the provisions of the Sixth Schedule. The additional requirement is on account of cost of Budget Budget in view of order of Hon'ble Supreme Court dated 3-10-2002. The CESC has been agitating for such claims as as pending in the petition/clarifications etc. Since now the Government of West Bengal has approved the above special appropriations which are very old and CESC justifies temporary accommodation at high rates because of such arrears, the Commission accepts the same and allows Rs.9704 lakhs but will allow it over a period of 4 (four) years from 2003-04. This year we allow Rs.2426 lakhs and Rs.2426 lakhs in next year.

The Commission is fully aware while deciding this issue that CESC has neither taken the approval of the Commission for the special appropriation of Rs.9740 lakhs nor has given all the relevant details and calculations for arriving at such figures and claims with appropriate justifications. The Commission is also aware that though the special appropriations has been approved by the Government of W.B but the Hon'ble Supreme Court of India in case of BSES Ltd. vs. M/s. TATA Power Co. Ltd. & others (C.A. No.8360 - 8361 of 2003) has held that after coming into force of ERC Act, 1998, it is the Commission who has the authority to decide on tariff. However, denial of such claim fully at this stage and then to consider the entire amount at a later stage will be neither in the interest of licensee nor the consumers. The Commission has, therefore, admitted the claim and allowed 25% (twenty-five percent) of such claim in this year and 25% (twenty-five percent) in 2004-05. The adjustment for the difference will be carried out in 2005-06 and 2006-07 after examining the relevant detail and the claim. Till then the admittance of the claim and figures are provisional and may be read accordingly and amount stated to be recovered under this account in the order including in 2004-05 only represent the balance claim of CESC pending scrutiny of the full claim by the Commission. CESC is accordingly directed to submit in the tariff petition for 2005-06 a detailed rate giving justification and basis of the claim, calculations and impact on already approved revenue requirements after the period subsequent to the period of claim along with other relevant data, figures and documents.

13.21 In this part of our order, we will ascertain the capital base of CESC for the year 2003-04, different components of the capital base and net capital base on which the company is entitled to get return at standard rates and the amount of reasonable return. These are being enumerated hereunder.

#### a) Original Cost of Fixed Assets

CESC has projected the original cost of fixed assets at Rs.508222 lakhs at the end of the financial year 2003-04. The projected cost does not include the effect of revaluation of certain fixed assets done by the company in the year 1993-94.

The company has justified the incurring of some capital expenditure which according to it is essential in consumers interest, as quality and reliability of services will otherwise suffer. It has further stated that such expenditures are required to take care of increase in number of consumers and constitute less than 5% of gross fixed assets. The company has further stated that

the booking of the expenditure has been done between transmission & distribution of high voltage and distribution of medium and low voltage based on power supply at 11 KV, between 3.3 KV and 11 KV and below 3.3 KV respectively. CESC has also given the details of major capital expenditure proposed to be incurred during 2003-04 along with brief justifications for the same and has stated that in view of the plant repair and maintenance including overhauling etc. the value of scrapping and re-determination of asset is not significant. The projected amount includes the total cost of Budge Budge Plant estimated at Rs.268172 lakhs. However, CESC has reduced from the cost and expenses, the impact of additional cost incurred on the Budge Budge Plant over the cost approved by the Hon'ble Supreme Court of India. CESC has further justified the incurrence of projected capital addition mainly on account of strengthening the system, replacements of old items, up-gradation, safety requirements, load growth etc. and has been dealt in details while dealing in capital work in progress.

Some of the objectors have objected to incurring of further capital expenditure which according to them have not been fully justified/necessary. On the other hand, CESC has justified the incurrence of expenditure and submissions of the parties already listed earlier.

The Commission has carefully considered the rival submissions of the parties. The Commission notes that the CESC is incurring substantial amount of capital expenditure every year and the company has given justification for incurrence of such expenditure item-wise on major expenditures. The Commission also notes that CESC has had financial problems due to which it was unable to pay its loan in time. But under such circumstances, the company should have been more prudent in incurrence of capital expenditure in earlier years / future. The Commission also recognises the fact that some amount of capital expenditure is usually necessary to maintain the standard of services, system requirements, safety requirements, requirements on account of load growth etc. as well as such expenses that are necessary for environmental compliance. Keeping in view the above, the original cost of fixed assets as being admitted by us for the financial year 2003-04 works out as under:-

	<b>Rs. in Lakhs</b>
Opening Balance	452869
Add : Capitalization of work in progress	17238
	470107
Less : (i) Assets to retire	2019
<b>Net Original cost of fixed assets</b>	<b>468088</b>

#### b) Consumers contribution

The balance amount of consumers contribution towards construction of service line etc. is Rs.23983 lakhs at the beginning of 2003-04 including unadjusted amounts. CESC has projected receipt of Rs.3500 lakhs as fresh contribution from the consumers on this account during the year.

It has, however, been noted that certain amount received from the consumers as contribution towards capital works, always remain unadjusted under the appropriate head of accounts and these have been shown as advance in the accounts by CESC. The balance amount of such unadjusted payment received from the consumers for such capital works was Rs.3272 lakhs at the beginning of 2002-03; it has been assessed to be a sum of Rs.3650 lakhs at the end of 2002-03. The same is adopted as outstanding at the end of 2003-04 in the absence of full details. The Commission notes that this amount received from consumers towards capital works is being utilised by CESC in capital work-in-progress and this amount is shown as awaiting adjustment/incurrence. The Commission finds that it cannot be considered and taken outside the purview of accounts for the purpose of determination of revenue requirement. The Commission, therefore, is adding this amount to the consumer contribution while reducing the same from the fixed assets capital work-in-progress. To that extent, CESC's net capital base/return will be reduced somewhat.

In view of the above, consumer contribution for the purpose taken from the cost of fixed assets is as under:-

	<b>Rs. in Lakhs</b>
Opening Balance	23983
Receipt of contribution during the year	3500
	27483

c) Cost of Intangible Assets

The projected balance of intangible assets (net of write-off) has been shown as Rs.1061 lakhs at the end of 2003-04 which is admitted by us.

d) Original Cost of Work-in-progress

CESC has projected the closing balance of work-in-progress at Rs.7106 lakhs after capitalisation of Rs.17238 lakhs during the year. The opening balance of WIP was Rs.7080 lakhs. CESC has shown the capital expenditure under planned general capital expenditure and special projects amounting to Rs.13091 lakhs and Rs.3360 lakhs respectively. The company has also shown an expenditure of Rs.613 lakhs on public utility project on re-imburement basis and Rs.200 lakhs for interest during construction.

The observations of the objectors and the justification given by CESC have already been given under the head fixed assets.

The Commission notes that a major expenditure under generation is related to ash disposal system at Budge Budge, ESP for New Cossipore Station and other capital expenditures mainly at New Cossipore Station. The capital expenditure in the distribution sector has been projected at Rs.12503 lakhs which is mainly on account of purchase of meters, supplies for new connection and network resurfacing, tie-line between Titagarh, Mulajore & Botanical Garden Sub-stations etc. The Commission has also noted that though CESC is spending about Rs.217 crores during the year under CWIP but the interest during construction being capitalised is only Rs.2 crores particularly when a major amount is financed through loan at high rate of interest. The alternative before the Commission therefore, is to reduce certain amount of interest from the interest chargeable to revenue account, capitalise it and then allow the return on the same with corresponding reduction of such loan. The Commission also notes that interest may not be chargeable on the certain assets like meters, equipments etc. which does not go for work-in-progress. The Commission, therefore, directs CESC to clearly identify the source from which the capital expenditure is being incurred in future. The Commission also noted that the net impact of this may not be much. Subject to the above, the Commission agrees capital work-in-progress of Rs.7106 lakhs for 2003-04.

e) Investment in Contingency Reserve

CESC has projected an investment of Rs.1135 lakhs as investment in contingency reserve.

As provided in para xvii (i) (d) of the Sixth Schedule of the Electricity (Supply) Act, 1948, the amount of contingency reserve invested compulsorily in the security authorized under Indian Trust Act, 1882 is to be included in the computation of capital base. Some of the objectors have objected to non-investment of contingency reserve in the approved securities earlier by CESC. CESC has defended its non-investment on the ground of its tight financial condition. It has projected to invest Rs.1135 lakhs during the year 2003-04 accordingly.

The Commission notes from the notes incorporated in the accounts for 2001-02 that even the contingency reserve upto 1999-2000 amounting to Rs.5270 lakhs has not been invested. CESC is now projecting an investment of Rs.1135 lakhs during the year 2003-04. Also the Commission notes that CESC has not invested the amount due to its financial stringency, and the position has not improved substantially during the year 2003-04. Only this might have enabled CESC to invest the fund of contingency reserve as the company has already defaulted in repayment of loans and re-scheduling thereof. The Commission, therefore, does not see how CESC will be in a position to invest Rs.1135 lakhs as projected by it and therefore, disallows the same for the purpose of revenue requirement. The Commission has also noted that CESC has drawn Rs.1275 lakhs out of the contingency reserve and utilised it for capital work-in-progress with the approval of the State

Government. CESC is directed that in the next tariff petition they should come out with the details along with terms and conditions so that the Commission can take a view on the same along with review the position of investments and inclusion in revenue requirements.

#### f) Working Capital

CESSC has projected working capital requirement for 2003-04 at Rs.15553 lakhs representing cost of fuel at Rs.5448 lakhs, stores Rs.7605 lakhs and average cash and bank balance at Rs.2500 lakhs. CESC has justified the fuel cost based on average stock of 25 days. CESC has also justified the cost of stores other than fuel, but has not given month-wise details as required under the Sixth Schedule.

Some of the consumers have objected to working capital requirement as projected. They have opined that the same should be worked out as has been worked out by the Commission earlier and ASCI. Some of the objectors are also of the view that CESC does not require any working capital. On its part CESC has pointed out that as the tariff is to be fixed in advance, a reasonable basis is required beforehand for working out cash and bank balance, stock of stores and fuel. CESC has stated that its calculations are based on the Sixth Schedule subject to the adjustment of norms for 18 days of cash requirement which works out to Rs.132 crores, Similar was fuel stock for average of 30 days' period which works out to Rs.54 crores, and about Rs.157 crores for stores and spares based on norms of 3% of gross fixed assets. These, according to CESC are as per the spirit of Sixth Schedule. CESC further contended that based on these norms the working capital requirement works out to Rs.338 crores. Against the latter, CESC's projection of Rs..15533 lakhs is too low because of severe cash flow problem.

After carefully considering the rival submissions and in view of the reasons advanced by CESC and also keeping in view its observations and financing charges on temporary financial accommodation etc., the Commission agrees with their projection of working capital of Rs.15553 lakhs.

#### g) Accumulated Depreciation

CESSC has shown the accumulated depreciation at Rs.181264 lakhs at the beginning of the year 2003-04. The depreciation chargeable during the year based on straight line method by applying the rates and in the manner as approved by the Government under the provisions of Electricity (Supply) Act, 1948 has been shown as Rs.32657 lakhs. The accumulated depreciation as well as the depreciation shown by CESC in the above figure include the cost towards disallowed portion of Budge Budge Power Station which has been separately assessed by CESC. The amount of accumulated depreciation and the depreciation for the year for such disallowed portion of Budge Budge Power Station is Rs.11861 lakhs and Rs.2935 lakhs. The balance accumulated depreciation therefore, works out to Rs.199125 lakhs which has been admitted by the Commission.

h) CESC has given statements of loan for 2003-04 and stated that due to delayed recovery of arrears amounting to Rs.500 crores the company could not meet its payment obligation. Still CESC has tried to reduce interest on financing charges. CESC further stated that lenders have categorically refused to give any further loan to CESC. CESC also worked out repayment for 2003-04 and stated that foreign currency loans are recorded in rupees. They have further given the details for loan taken from various institutions, the period of loan, original amount of loan, outstanding as on 31st March, 2003. CESC has also stated that it is engaged in discussion with its lenders on various issues relating to delay in payment obligation. CESC also quoted various sections of the Sixth Schedule regarding their interpretation on the loan and its depiction.

It has already been noted that while some of the stake-holders have objected to the high amount of loan and rate of interest, some of the consumers have even contended that CESC does not require any loan to finance such expenditures for its operation. However, CESC has justified its loan. The rival submissions have already been given in the earlier part of the order and also while dealing interest charge for 2003-04 along with the view of the Commission about admissibility of the interest on loan. Based on the analysis and information given by CESC, the position of their outstanding loans and borrowings towards specified and general capital works are summarised as under:

		<b>Rs. in Lakhs</b>		
	<b>Sources</b>	<b>Balance as on 31-03-03</b>	<b>Projected Repayments 2003-04 (Net)</b>	<b>Balance at year end 2003-04</b>
1.	Govt. of West Bengal	2300	300	2000
2.	Debenture	10156	4934	5222
3.	Floating Rate Notes etc.	25036	--	25036
4.	Other Banks / Institutions	173993	31113	142880
5.	Public Deposit	8756	5878	2878
	<b>Total</b>	<b>220241</b>	<b>42225</b>	<b>178016</b>

The outstanding balance of foreign currency loans as well as their repayments have been taken into account in rupee currency at the original exchange rates on the respective dates of drawal of loans.

The outstand balances of loans and borrowings shown above includes disallowance portion of Budge Budge Power Station loan portion. The loan taken for such disallowance porton of Budge Budge Power Station is Rs.7011 lakhs and after deduction of same, outstanding loan balance of Rs.171005 lakhs has been admitted by the Commission.

i) Security Deposit from Consumers

CESC has projected security deposit at Rs.3500 lakhs for 2003-04. With such projected additions, the balance of consumer security deposit comes to Rs.31995 lakhs.

The Commission observes that cash security deposit from the consumers is very low and not equivalent to 3 months revenue requirement. The Commission has also noted that though the tariff has substantially gone up in 2000-01 and 2001-02, security deposit has not increased as the tariff has been re-determined in the later part of the 2002-03. Tariff is still not final in view of the court cases. In view of the above position, the Commission accepts the projected figure of R.31995 lakhs.

j) Development Reserve, Investment Allowance Reserve & Consumers Accounts

The balance in the development reserve is Rs.220 lakhs, investment allowance reserve is Rs.1168 lakhs and the and consumers accounts is Rs.71 lakhs which is unaltered from the previous year. The Commission accepts the projected figures.

k) Statement of Net Capital Base

Based on our analysis and decisions recorded in earlier paragraphs we now draw the Statement of Net Capital Base.

		<b>Rs. in Lakhs</b>	
		<b>2003-04</b>	
	<b>Particulars</b>	<b>As per CESC</b>	<b>As Admitted</b>
1.	Original Cost of Fixed Assets	508222	468088
	Less : Contribution from consumers	23833	27483
		484389	440605
2.	Cost of Intangible Assets (net of write-off)	1061	1061
3.	Original Cost of Works-in-Progress	7106	7106
4.	Investment in Contingency Reserve	3335	Nil
5.	Working Capital		
	(a) Cost of Fuel in hand	5449	5449

	(b) Other Store, materials & supplies	7604	7604
	(c) Cash and Bank balance	2500	2500
	Sub-total	15553	15553
	Total (A)	511444	464325
	<b>Less :</b>		
6.	Accumulated Depreciation	213471	199125
7.	Loan	178016	171005
8.	Security Deposit from Consumers	31995	31995
9.	Development Reserve	220	220
10.	Investment Allowance Reserve	1168	1168
11.	Consumers Accounts	71	71
	Total (B)	424941	403584
12.	Net Capital Base (A - B)	86503	60741
13.	Less : Impact of Budge-Budge Power Station cost over-run disallowed	16813	--
14.	Net Capital Base considered for allowing Returns	69690	60741

#### I) Reasonable Return

Based on the above decisions in regard to Net Capital Base, we allow Reasonable Return to CESC for the year 2003-04 following the provisions contained in the Sixth Schedule to Electricity (Supply) Act 1948. Our computations of Reasonable Return are based on Bank Rates notified by RBI and applicable for the concerned financial year and on the age-wise break-up of Net Capital Base provided by CESC.

<b>STATEMENT OF REASONABLE RETURN</b>			
		<b>Rs. in Lakh</b>	
		<b>For 2003-04</b>	
	A. Returns at Standard Rate on Capital Base		
1.	Capital Base upto 31.3.65	3362	3362
	Applicable Rate	7%	7%
	Return	235	235
2.	Capital Base from 1.4.65 to 31.3.92	6163	6163
	Applicable Rate	8.25%	8.25%
	Return	508	508
3.	Capital Base from 1.4.92 to 31.3.99	16119	16119
	Applicable Rate	11.25%	11.25%
	Return	1813	1813
4.	Capital Base from 1.4.1999 onwards	44046	35097
	Applicable Rate	16%	16%
	Return	7047	5616
	Total Return at Standard Rates on Net Capital Base [(1) + (2) + (3) + (4)] = (A)	9603	8172
	B. Other Standard Items		
3.	0.5% on Development and Investment Allowance Reserve	7	7

4.	0.5% on Loans	855	855
	Total (B)	862	862
	Total (A) + (B)	10465	9034

In addition to Return at Standard Rates on Net Capital Base and Other items shown in the above statement, CESC has claimed Rs.4693 lakhs in the year 2003-04 towards loss of Returns in the earlier years with the following break-up and reasoning.

		Rs. in Lakhs
		2003-04
1.	Loss of Reasonable Return entitlement arising out of reduction in Capital Base on account of actual delay in loan repayment of delayed recovery of tariff for 2000-01 and 2001-02.	4693

As stated by CESC, the company as on April,2002 had arrear tariff dues of about Rs.50000 lakhs which resulted in loan repayment default of Rs.13800 lakhs as on 31st March,2003. As failure to recover its entitled tariff revision in time resulted its default in loan repayments with consequent erosion in Capital Base and Reasonable Return, the company claimed Rs.4693 lakhs additional return on this account. The Commission holds the view that Returns are allowable on the Net Capital Base based on actual state of affairs and not on the basis of what would have been the position had the parameters were different. The deferment of the loan re-payment in the past necessitated no fresh induction of own capital by the Company on which it is to claim returns. The interest burden on such deferred loan repayments and on the additional borrowing including in the form of Temporary Financial Accommodation is added in tariff. We do not, therefore, find any justification for allowing additional return claimed by the company on the ground of erosion of Capital Base.

Finally, the Reasonable Returns as claimed by CESC and as being admitted by us comes as under.

	Rs. in Lakhs	
	2003-04	
	As Claimed	As Admitted
At standard Rates	10465	9034
Claims on account of Erosion in Capital Base	4693	--
Total	15158	9034

### 13.22 Other Income

CESC has projected non-power tariff income of Rs.4297 lakhs for the year 2003-04. CESC has given broad details of other income in the petition.

The Commission has, however, noted that other income projected is less than the figure of 2001-02 and 2002-03. The main reduction in 2003-04 projection is on account of less DC surcharge/penal charge for 2001-02. No reason for reduction of this DC surcharge/penal charge has been indicated. Also it has been noted that this amount has been reduced towards DC surcharge/penal charge relating to earlier year for which tariff has already been determined and the same is not admissible in this tariff. The Commission, therefore, disallows the reduction of Rs.1408 lakhs from the other income. Also, as noted last year, there are inter corporate investments. The Commission has also noticed that the action on control of pilferage of theft of energy has increased; but if so, then penal recovery charges which should go to Misc. Receipts (and shown separately) should increase and it may reflect an increase in general trend and cannot be taken on the same basis as for earlier years as has been assessed by the CESC. The Commission, therefore, re-assess the general receipts from Rs.1170 lakhs to Rs.1700 lakhs and

the other income with the above adjustment, therefore, works out to Rs.6235 lakhs against Rs.6197 lakhs assessed for last year and Rs.5812 lakhs for 2001-02.

### 13.23 Unaccounted Energy

As discussed in earlier paras, the gross energy, for sale is 7136 MU including net sent out from own generation of 5801 MU and purchase of 1335 MU. The average cost plus 7.5% overheads works out to Paise 162 per Kwh. The allowable T&D loss @ 18% as discussed in earlier paras works out to 1284 MU whereas sales figures accepted are 5790 MU leaving unaccounted energy of 62 MU. Out of this, consumption of power in the office is to be deducted. However, CESC has given a figure of 19 MU which includes construction power. The construction power is to be capitalised. Since separate figures are not there, we are assessing 10 MU for office consumption and balance unaccounted energy comes to 52 MU. We have disallowed 9 MU as excess auxiliary consumption and the net unaccounted energy comes to 61 MU and its cost works out to Rs.988 lakhs which has been reduced from the revenue requirements.

### 13.24 Statement of Revenue Requirement - 2003-04

Based on our analysis and decision recorded earlier, we finally draw the admitted statement of revenue requirement as under:-

<b>STATEMENT OF REVENUE REQUIREMENTS</b>			
		<b>Rs. in Lakhs</b>	
		<b>2003-04</b>	
		<b>As Claimed</b>	<b>As Admitted</b>
1.	Fuel Cost	66290	66290
2.	Purchase of Power	33986	40928
3.	Employee Cost	29975	29975
4.	Repairs & Maintenance	13281	13281
5.	Administrative, General & Misc. Charges	4798	4798
6.	Coal & Ash handling charges	1956	1956
7.	Rent, Rates & Taxes	714	714
8.	Legal Charges	465	465
9.	Audit Fees & Expenses	30	30
10.	Bad Debts & Erosion in Consumer Base	2797	1200
11.	Water Charges	108	108
12.	Delayed Payment Surcharge	--	--
13.	Interest	29172	26223
14.	Other Finance Charges		
	(a) Foreign Exchange Rate Variation	5720	5720
	(b) Lease Rental	2926	2926
	(c) Charges on temporary Financial Accommodation	13029	11881
15.	Depreciation	32657	29722
16.	Intangible Assets Written-of	66	66
17.	Total Revenue Expenditure (1 to 16)	237970	236283
18.	Reasonable Return	15159	9034
19.	Special appropriation*	7057	3604
20.	Gross Revenue Required	*260186	248921
21.	Less :		
	(a) Other Non-tariff Income	4297	6235



	(b) Budge-Budge Disallowances	4233	--
	(c) Unaccounted Energy	--	988
		*251656	241698
	Net Projected Energy available of sale (MU)	5694	5790
	Average Cost of Supply (Paise/Kwh)	*441.97	417.44

\*Excluding Rs.8324 lakhs of Budge Budge for earlier years.

Budge-Budge disallowances as shown separately by CESC has been allocated to respective heads of expenditure.

Note : Figures have been regrouped/rearranged wherever considered necessary.

13.25 With the revenue requirement determination for 2003-04, we have to consider whether we should determine the tariff for the year separately or we may not fix the tariff separately for 2003-04 as the year is already over and keeping in view the observations and balance of convenience and inconvenience in fixing the tariff from retrospective effect. The Commission has already considered the issue in the earlier part of the order and has decided that tariff for 2003-04 will be retained and the shortfall/excess of revenue requirement so determined will be dealt appropriately subsequently. Therefore, tariff will not be revised with retrospective date and will be from prospective date.

## CHAPTER – 14 : REVENUE REQUIREMENT FOR 2004-05

In this chapter, the Commission will assess revenue requirement for 2004-05. For determining the revenue requirement, the Commission will assess the variable cost relating to fuel and purchase of power, fixed cost and reasonable return.

14.1 For estimating the variable cost for the year 2004-05, we shall proceed from the energy sales. The CESC is basically a company for distribution of power and the major part of the power distributed by them is from their own generating stations and for the rest they purchase power from, as per petition, West Bengal State Electricity Board. The CESC also falls under the definition of generating company under the provisions of Electricity Act, 2003.

Once the quantity of power sold is determined (actual or estimated) and the generation could be assessed (as per normative level or actual), we could assess the quantity of power that may be required to be purchased from others for meeting the requirement of consumers, subject, however, to T&D loss.

### 14.2 Power Requirements

#### 14.2(a) Sales

I) As per petition of the CESC, the projected sale for the year is 5780 MU against the 5694 MU sale estimated for 2003-04.

ii) Some of the objectors have observed that the sale is under estimated and it should be based on the audited figures of the earlier years. The Commission also notes that the sale figure for 2002-03 as projected by CESC in their tariff petition for 2004-05 pertaining to the year 2002-03 is only 5557 MU against 5545 MU projected in their tariff petition of 2002-03. The difference is only 12 MU which is negligible and is about 0.2%. However, Commission has noted that the projected growth is only 1.5% whereas earlier trend was much higher, and further that CESC is incurring capex for new consumers. The Commission, therefore, adopts the earlier trend of 4.2% for this year also, over the last year's accepted sale figure of 5790 MU. The Commission has, however, noted the concern of CESC that with the increase in captive generation and likely shifting of consumers after introduction of open access, no sale figures can be estimated realistically. It is even possible that there may be no growth at all. Since the Commission has assumed higher sales figures during 2003-04 and 2004-05 any shortfall in actual sales and its consequent effect may be taken care of in the next tariff petition, or by any other way which may be considered appropriate

by the Commission and permissible under law. The Commission, therefore, accepts the sale figure for 2004-05 as 6033 MU in view of the above stated reasons.

#### 14.2(b) T&D Loss

i) For the present year, CESC has projected their T&D loss at 18.5% of the total energy available for distribution. Out of this, according to the company, 11% goes towards technical loss and rest towards commercial or non-technical loss which - in the view of CESC - is mainly on account of pilferage. CESC has elaborated on the steps being taken by it to check pilferage and also pointed out the support requirement from the administration including setting up of special court and special protection force. The licensee has also given the data of vigilance action taken by it relating to meter checking, hooking removal, court cases etc. CESC has also pointed out that the oldest case pending date back to 1984. CESC attributes part of the loss to DC meters. The existing DC meters are sluggish, and testing facilities of these meters are not available, and yet DC supply is not being discontinued. On the other hand, the consumers blame CESC for not taking sufficient and effective steps for controlling the T&D loss and some have opined that CESC should increase the transmission of energy at high voltage, as per the direction given by the Government of West Bengal for reduction of the loss from the year 1993 onwards. They feel that it is because of the fault of CESC that is causing moving out of heavy load etc. Both i.e. CESC and the objectors also quoted the judgement of the Hon'ble Supreme Court of India dated 3rd October, 2002 in support of their respective claim. The detailed submissions and the objections in this regard has already been covered in earlier chapters.

ii) The Commission has carefully gone through the submissions and counter submissions in this regard including the relevant portion of the judgement of the Hon'ble Supreme Court of India dated 3rd October, 2002 in the case of CESC. The Commission has already dealt with the subject of T&D loss in details while dealing with the cases for 2002-03 and 2003-04 and generally the same views and observations are applicable for this year also. T&D loss for 2004-05 thus now fixed by it at 17%. However, the Commission has noted the concern of CESC of adverse change in mix of HT and LT supply which may further become adverse because of more captive generation and shifting of HT consumers after introduction of open access. The HT supply has less T&D loss in comparison to LT. The Commission will review the T&D target in case the HT / LT mixes changes adversely from which is prevailing in 2003-04. However, CESC is again directed that they should take effective steps in terms of the view as expressed by the Commission in this order and to bring down the T&D loss to 14% within next 3 years with equal 1% reduction every year from 2004-05 onwards.

iii) The Commission also directs CESC to carefully examine the feasibility of transmission at high voltage in appropriate cases to reduce the technical loss from their stated 11% technical loss. The Commission is not fully satisfied on technical loss of 11% and is of the view that there is a scope of reduction of technical loss from 11%. At present, pending an in-depth study of the matter by the Commission, and coming out with a suitable proposal by CESC, the Commission is not reducing any T&D loss in this score but will review T&D loss during tariff petition for 2005-06. As CESC has to come out with suitable proposal which is techno-economically justified this technical loss reduction target will be considered by the Commission in 2005-06 and onwards and will be in addition to loss reduction target given above.

iv) The transmission loss on power wheeled not exceeding 4% may be reduced for the energy to be wheeled at the time of delivery and the loss in that system will not be included in the T&D loss to be determined above.

#### 14.3 Generation

From the figure of projected generation for 2004-05, auxiliary consumption, plant availability factor and plant load factor furnished by CESC, it appears that the plant availability factor in the Budge Budge, Southern and Titagarh is very good while the plant availability factor of New Cossipore is good considering its age. CESC has projected a gross generation of 6615 MU during 2004-05 against 6420 MU for the corresponding period of last year which according to CESC reflects an overall plant load factor of 75% for all the stations put together, and this is an improvement over last year mainly because closure of Mulajore station whose PLF was low. Since

the plant load factor is less than the plant availability factor and CESC has purchased power from WBSEB, it appears that this purchase has been made to meet the requirement of the peak demand and radial load, if any. The Commission has also noted that the purchase of power from WBSEB is costlier both for peak and off-peak than the generation of power from some of the existing stations particularly Budge Budge Southern and Titagarh. CESC may make efforts so that the plant load factor is increased to bring down the gap between plant load factor and plant availability factor to the extent possible. Since the plant availability factor for new plant is 93.3% and plant load factor is 80.1% and high for other plants, CESC should try to further improve subject to system constraints. CESC should also explore the possibility to export the power during off-peak hours instead of backing down the stations for want of demand. CESC may also explore the possibility for demand side management to shift part of the load from peak to off-peak which will give them more elbow room to reduce their cost by avoiding purchase of costlier power in peak hours to some extent AND compulsory purchases during off-peak hours at the cost of their own cheaper generation. We, accordingly, accept for 2004-05 the generation figure of 6615 MU, auxiliary consumption of 631 MU and energy sent out at 5984 MU. The Commission, however, notes that the auxiliary consumption overall is 9.5% and feels that CESC should try to reduce auxiliary consumption, particularly in their new generating stations like Budge Budge.

#### 14.4 Purchase of Energy

CESC has given the figures of projected purchase of energy for 2004-05 at 1145 MU from WBSEB. The break-up of the drawal during non-off-peak period has been shown as 864 MU and during off-peak period 281 MU. The Commission also noted that the rate to be paid by CESC to WBSEB is high in comparison to their own cost of generation on fuel cost basis and therefore, there is ample scope to reduce the purchase from WBSEB particularly at off-peak period. We, however, accept the purchase of energy figure as projected by CESC with a direction that they should explore the possibility of purchasing energy at cheaper rate and also increase their own generation to the extent possible. However, we accept purchase of energy to the extent at 1297 MU in view of reasons given in para 14.5. ( c ) and advise that the purchase be made in most optimum manner to reduce the costs in the interest of the consumers from any source but within the ceiling of the rates payable to WBSEB.

#### 14.5 Expenditure Analysis on Fuel Cost & Power Purchase

Once the generation and purchase figures have been given, we may proceed to assess the expenditure on fuel and purchase. The fuel cost depends on fuel consumption, which in turn depends on certain parameters, viz;

- i) station heat rate;
- ii) secondary fuel consumption;
- III) specific consumption of oil;
- iv) gross calorific value of coal and oil;
- v) transit loss;
- vi) weighted average price of coal and oil.

The power purchase cost depends on the source of supplier, the rates of supplier both for demand charge, energy charge and also depend on peak, normal and off-peak purchase and consequential ratio, if any, prescribed therein.

a) CESC has given month-wise consumption details and furnished value of the primary and secondary fuel. CESC further stated that it procures its requirement of coal primarily from Coal India and to maintain the high power load factor and to manage the ash content, CESC is required to resort to judicious mix of supply from captive/imported sources for coal. As far as Low Density Oil is concerned, the same is procured from Hindustan Petroleum and Indian Oil Corporation. CESC has also enclosed the price schedules of coal companies and oil companies along with the

station-wise break-up of fuel cost including cost of transportation. CESC has also submitted the declared heat value of coal, heat value of oil, grade-wise coal consumption based on the applicable Government of W.B norms. CESC has further submitted that its actual consumption is lower than the normative consumption on overall basis, and therefore CESC has based its claims on the lower of the two, which is the actual expenditure. CESC has further pointed out that though joint sampling is done on coal supplied both by ECL and BCCL, still major problems exist relating to both regularity and quality of supply from Coal India subsidiaries. CESC further stated that the actual heat value of coal sampled and measured by an independent agency are found to be lower than the stated. CESC has further stated that the average fuel cost for 2004-05 is only 112 paise/unit compared to 114 paise/unit in 2002-03 and 2003-04 even though there is an increase in coal price by over 6% in 2002-03 apart from rise in railway freight.

b) On the other hand, some of the consumers have objected to the statistics given by CESC on fuel consumption which according to them is at a rate higher than the actual, have pointed out that there is no merit order operation of the station, there is reliance on non-existent norms and non-improvement in calorific value of coal and heat value etc. The submissions and counter submissions have already been listed in earlier para.

c) The Commission has gone through the various submissions made both by CESC and the objectors and noted that the tariff order dated 7th November, 2001 of the Commission has been set aside by the Hon'ble Calcutta High Court which was thereafter modified by the Hon'ble Supreme Court of India vide its order dated 3rd October, 2002. The Commission has also noted that based on the above decisions, the actual fuel cost incurred by CESC, which was less than the overall normative cost based on the Government of W.B norms, was allowed in CESC'S revised revenue requirement determination for 2000-01 and 2001-02 vide order dated 11th November, 2002 based on the decisions of the Hon'ble Court. The Commission also observes that it is not correct that there are no Government of W.B norms for 60 MW and above. The Commission also notes the provisions of the Act and the decisions of Hon'ble Court that the management inefficiency should not be passed on to the consumers. On the other hand, there is also some merit in the contention of CESC that there should be penalty and reward simultaneously and not penalty alone and further that the norms should not start from excellent and that inefficiency should be proved. The Commission has also noted that there still exists some problem in coal supplies and GCV as has been brought out repeatedly by various utilities.

d) Based on the above analysis, the Commission allows the fuel cost to CESC for various stations as claimed by them which is lower than earlier years. The total fuel costs on such basis comes to Rs.67162 lakhs. The fuel cost is based on coal price schedule prevalent from 17th August, 2002 and oil of April, 2003. Presently, we have not considered any incentive/penalty as the revised performance norms etc. are being examined and will be applicable shortly.

e) CESC has claimed Rs.30851 lakhs towards purchase of energy from WBSEB during the year. CESC has stated that the rate of WBSEB is based on the tariff order of the Commission dated 7th December, 2001. However, CESC has not included 52 Paise/Kwh towards interim sanctioned by WBERC in respect of the year 2003-04 and which is continuing. The Commission does not approve of non-inclusion of such interim. The Commission also observed that since it has increased the sales figure than the CESC may be required to purchase more power than anticipated. As per calculation given in later part, CESC may be required to purchase 1297 MU instead of 1145 MU projected and 1335 MU during last year. The Commission noted that the purchase price from WBSEB is quite high at Paise 322/Kwh including interim and CESC should immediately make efforts to bring down the costs including purchase from alternative sources in the interest of its consumers. The Commission, therefore, allows the purchase of energy of 1297 MU at Rs.40510 lakhs from WBSEB or any other source as has been permitted in this order. The above cost has been calculated on proportionate basis after considering the interim and taking demand charges constant as given in the petition.

f) The FPPCA clause will be applicable on the above fuel cost and power purchase cost as per the formula given in this order in case the fuel price and or price of power purchase is increased from the base taken in the order. It is further ordered that the FPPCA formula will be applicable to reimbursement for actual increase/decrease in the price that vary from taken in the order.

#### 14.6 Employees Cost

a) The employees cost claimed by CESC for the revenue account of the company for the year 2004-05 is Rs.29265 lakhs. CESC has contended that the difference in employees cost over 2003-04 is mainly on account of terminal benefits etc. and reduction on account of VRS. CESC further stated that there has been an effort on the part of the licensee to reduce the number of employees from existing strength of about 14200 persons even though there has been a continuous decline in employees strength starting from 1996-97 onwards and yet, generation, sales and number of consumers have increased substantially. The net employees cost has marginally decreased from the last year, and CESC has claimed that the savings from the VRS of 2250 employees is Rs.5145 lakhs, after taking into account the effects of normal increases which otherwise would have to be given. The above cost includes VRS component of Rs.5476 lakhs which is to be paid in instalments.

Some of the objectors have questioned the high employees cost and various components of such high cost covered in the employees cost.

The Commission observes that the contribution for P.F and other approved fund is about 16% of the gross salary. This appears to be quite high as normally the P.F contribution is based on basic salary and not on allowances and facilities. The Commission, therefore, directs CESC to give a re-look at such contribution and come up with relevant details regarding contributions being made to various approved funds and the basis of its contributions. This apart, the claim for substantial expenses on employees welfare is found to be about 8% of the total salary & wages. The Commission also directs CESC to look into such total expenses afresh and come up with appropriate control methods to control the overall expenses under Total Employees Cost. The Commission also notes that CESC has claimed Rs.1000 lakhs towards payment of LIC for shortfall in gratuity, which in the view of the Commission, is not allowable since after VRS, the shortfall in the gratuity fund/surplus, if any, is to be reassessed.

However, as the claims under the head 'employees cost' arise from contractual obligations and on the part of CESC, it is taking effective steps to reduce the number of employees and increase in efficiency/productivity of the employees, the Commission admits the amount as claimed, amounting to Rs.28265 lakhs. But, the Commission will like to watch the cost under this head to see whether the gains made by CESC by way of reduction of the staff strength and increase in productivity is consolidated in future years. Also CESC should keep a separate account of all payments made under VRS showing separately the payment made for compensation for VRS, Gratuity, Compensation for deferment, any other payments (with broad details) amount allowed by Commission and balance. The total amount paid by the Commission under VRS is Rs.8576 lakhs as under.

2001-02 - Rs.1600 lakhs  
2002-03 - Rs.1500 lakhs  
2003-04 - Rs.5476 lakhs

The balance, if any, required will be seen in next year after scrutinizing of the account/statement.

#### 14.7 Repairs & Maintenance

CESSC has claimed Rs.13171 lakhs towards repairs & maintenance including the cost of consumables.

A number of consumers have objected to the amount of fund sought for under the head repairs & maintenance as claimed by CESC. Some of the consumers felt that the repairs & maintenance show both lack of foresight and inefficiency, as so much of repairs & maintenance should have been avoided by regular inspection. CESC has justified its expenses keeping in view its plant load factor, regular preventive and plant maintenance work to reduce un-planned break-down and also argued in view of varying age of its plants and precarious financial position CESC was not able to follow the appropriate maintenance scheduled earlier. The submissions made by the parties are already given in the earlier part of the order.

After considering the rival submissions and also noting that plant availability factor and plant load factor of the generating stations are proposed to be maintained at higher level, the expenses claimed are found to be less than last year. We allow the repair & maintenance cost of Rs.13171

lakhs for 2004-05 keeping in view that major expenses under R & M pertains to generation, transmission and distribution.

#### 14.8 Administrative, General & Miscellaneous Charges

CESC has claimed Rs.5191 lakhs under administrative, general and miscellaneous charges for 2002-03 excluding bad debts of Rs.2402 lakhs which has been considered separately by the Commission. The major portion of the expenses relates to traveling, vehicle, telephone, security, insurances, postage and other general miscellaneous expenses. CESC has also given the details of various requirement of the expenses relating to travelling, running of vehicles, advertisement expenses, stamp and courier charges, printing and stationery. P.F administrative fees, debenture trustee fees etc. It has added an expense of Rs.130 lakhs as cash collection charges to banks for lifting the cash directly by the banks. Some of the objectors raised objections on high management and administrative expenses and underscored the point that there is need to control such expenses. The rival submissions have been given in the earlier paras of the order.

The Commission, after carefully going through the rival submissions, notes that its order dated 11th November, 2002 directed CESC to curtail such expenses, particularly towards traveling, auditor fees and other expenses, and had reduced Rs.2 crores under 2001-02. The amount now claimed is Rs.5191 lakhs against Rs.4500 lakhs allowed in 2001-02 and Rs.4798 lakhs in 2003-04. The Commission also notes that under some of the regulations issued under the Electricity Act, 2003 certain expenses will go up whereas a few expenses may come down. The Commission, therefore, admits the projected expenditure of Rs.5191 lakhs under the above head subject to a direction to CESC that the latter should take some austerity measures to contain future rate of increase in their management and administrative expenses particularly when the number of employees is going to be reduced significantly through the VRS route and increase in the productivity and efficiency of the rest of its employees and other suitable measures to contain such expenses.

#### 14.9 Coal and Ash Handling Charges

Coal and ash handling charges claimed by CESC is Rs.1407 lakhs. The expenses are less than that incurred in the last year. In view of this position, we admit the projected coal and ash handling charges amounting to Rs.1407 lakhs.

#### 14.10 Rates & Taxes

CESC has projected an expenditure of Rs.757 lakhs towards rent, rates and taxes (other than on profit). The Commission admits the projected Rs.757 lakhs which marks 6% increase over the same pertaining to previous year.

#### 14.11 Legal Charges

The legal charges claimed by CESC is Rs.500 lakhs. CESC has justified the expenditure in view of attending large number of court cases relating to theft of electricity and disconnected consumers etc. CESC has further justified the legal expenditure to bring down the T&D loss as the cumulative effect of the action taken by it against checking the menace of theft of energy and also on account of certain cases, which according to it were not necessary, but which have been imposed on the company. Some of the objectors, on the other hand, has pointed out and commented on such huge legal expenses.

The Commission after going through the rival submissions, appreciates, CESC's compulsion to legal action to contain legal recourse, check the menace of electricity theft to protect their business interest. But the Commission feels that such heavy spending on legal account need to be checked. The Commission is also of the view that CESC should be more prudent to curtail legal expenses and it should take proper steps in that direction. Since the Commission is of the opinion that such high cost of legal expenses are not prudent and there is scope to reduce the same by taking appropriate steps, the Commission allows Rs.465 lakhs as allowed during last year with the direction that CESC should take effective steps to further reduce such expenses.

#### 14.12 Water Charges

CESC has claimed Rs.582 lakhs toward water charges/cess. We admit the claim keeping in view the reasons explained by the CESC which is mainly on account of cess as levied by Ministry of Environment and Forests, Government of India.

#### 14.13 Audit Fees

CESC has asked for audit fees and expenses at Rs.35 lakhs. CESC has shown this amount towards statutory audit fees including reimbursement expenses, audit fee for public deposit, income-tax, P.F, other funds and fees for miscellaneous certifications. The Commission has however, noted that payment to the auditor for other services which were classified under the miscellaneous expenses earlier, is not shown and it is not clear if such payment to the auditors are being made or not. The Commission has noted that earlier such payment was substantial. The Commission has already disapproved of such heavy payments to the auditors for availing of such other services and the Commission hopes that the views of the Commission have been duly kept in view by CESC and no payment to the auditors has been included for any other services in any other head of accounts. The Commission will, however, review the position and CESC should indicate all payments to auditors in connection with various services separately and shall not combine under any other expenses head keeping in view of the observations of the Commission. In view of the above, we admit an amount of Rs.30 lakhs towards auditors fee and expenses, as was accepted for last year, and we direct CESC to contain this expenses under this head to the extent possible.

#### 14.14 Bad Debt

CESC has claimed Rs.2402 lakhs towards Bad Debt @ 1% of projected sales. CESC has justified the claim of Bad Debt on account of inadequate security deposit in case of LT supply and HT supply due to which doubtful debts are not fully adjustable against the security deposit. The licensee has further contended that the recovery of the debts through filing of legal suit is not justifiable in many cases from cost benefit angle and therefore, it has suggested a norm of allowing bad debt as a percentage of turn-over.

A number of consumers have registered their objections to the claim on bad debts, as according to them it puts more burden on the honest consumers due to inefficiency of CESC, in the latter's failure to take prompt action in recovering of dues.

After considering the rival submissions, the Commission admits that a part of the debt going bad is a phenomenon relating to all sorts of business activity. But it should be less so in case of CESC where there monthly billing is in vogue for all the consumers and most of the billing and collection operations are fully computerised and in urban area. The reasons for non-recovery of admissible security has not been fully explained. It has been also noted by the Commission that CESC itself has not been following any norm as such and bad debt as a percentage of sale revenue is varying noticeably during the last 4 years. The Commission has also glanced through the list of defaulting consumers as on 30th September,2002 enclosed with the tariff petition for certain categories of the consumers the list having been subdivided into disconnected supplies, the court cases and others. The Commission can understand the reasons of continuation of default in the cases which are in the court, but why the action has been delayed or not taken in other cases is not clear. There is a substantial number of cases outstanding against the Government Departments, both Central and the State, municipalities which cannot strictly be termed as bad debts in normal circumstances. The Commission directs CESC to take prompt and speedy action for its recovery of the debts and allows only Rs.1200 lakhs as was allowed last year against their claim of Rs.2402 lakhs in view of the reasons indicated above.

#### 14.15 Erosion of Consumer Base

CESC has claimed Rs.700 lakhs towards erosion of consumer base mainly on account of problem associated with delayed recovery of tariff due to which a number of billable consumers (including temporary consumers) continues to exit the system. The company has further contended that longer the span of recovery, the greater is the erosion of consumers base, and that this is beyond the control of the company. The objectors have raised observations on the claim relating to erosion of consumer base stating that those should not be allowed.

After considering the rival submissions, the Commission admits that for the erosion of consumer base happens if there is a delay in tariff announcement. There may be a possibility in the erosion of consumer base relating to the temporary consumers unless there is a mechanism to charge higher tariff from them or adequate security deposit is kept for a longer period. The Commission also observes that this position cannot be avoided in revision of FPPCA claim from retrospective effect unless there is an arrangement of suitable security deposit of appropriate amount for such contingencies. The Commission admits that there is a merit in the submission of CESC and will put in place some suitable mechanism. The Commission also noted that tariff for 2004-05 is being decided sufficient in time. Therefore, Commission does not allow claim in the revenue requirement at present. The Commission will also examine that whether the claim for erosion in consumer base can be taken care of while fixing the norms/provisions for bad debts before fixing the norms for bad debts in future.

#### 14.16 Interest

CESSC has claimed interest amounting to Rs.20322 lakhs as interest on loans. The net interest claimed by it after disallowing on excess cost of Budget Budget (Rs.970 lakhs) therefore, is Rs.19352 lakhs. In addition, interest of Rs.1878 lakhs is claimed for interest on consumers' security deposit. The borrowing includes borrowing in foreign currencies i.e. US \$, GBP, Yen and DM. The equivalent amount of interest payment in rupees of foreign currency payments is projected at Rs.3789 lakhs. A part of the foreign currency loan has variable rate of interest/interest rate linked to LIBOR which may vary depending on the LIBOR rate and exchange rate at the time of payment. CESC has given detailed calculations of interest charges including amount of the loan, tenure, rate of interest and other relevant details for interest to be charged in the tariff. The interest on consumers security deposit has been calculated @ 5.5%. CESC has further contended that it has already concluded in November,2003 a debt restructuring package by which it could reduce the rate of interest and henceforth they will carry interest rate at 13.5%.

The objectors on the other hand, have made critical comments on high amount of interest in case of CESC. Some of the objectors have felt that its claims are inflated and it does not repay loan in time, thereby leading to the accrual of interest, which can well be avoided. Some of the objectors have also felt that CESC is hardly using any of its own money and also that it should not require loan to such an extent as has been projected. The submissions of the parties in the brief is recorded in the earlier chapter of the order.

The Commission appreciates the problems associated with getting the rates of committed interest reduced from the consortium of such a large number of bankers/institutions etc. when figures of balance-sheet are adverse. The Commission appreciates the fact that certain positive results have been achieved by CESC in this regard. But still more efforts will need to be made by CESC to further reduce the rate of interest and effect a speedy payment of costlier loans. The Commission also hopes that with speedy recovery of the outstanding arrears and settlement of its claim, CESC will be in a position to reduce the financing cost at a more accelerated rate in future. In the light of the above observations and the facts and the materials on record, the Commission has decided an amount of interest to be allowed as under separately for foreign loan and Indian loan.

a) Foreign Loan – The interest payment on foreign loan mainly depends on the rate of exchange prevailing at the time of payment on the outstanding loan for the year 2004-05 and admit as per the amount claimed amounting to Rs.3789 lakhs.

b) Indian Loan – CESC has claimed Rs.16533 lakhs on interest on Indian Loan. The claim includes Rs.970 lakhs towards interest on loan towards capital cost disallowed for Budget Budget which is also disallowed under the head of interest (CESSC has reduced the disallowance on Budget Budget by way of separate item). The balance interest of Rs.15563 lakhs is on the loan taken from mainly nationalised banks, Indian financial institutions, Govt. of W.B with some amount towards fixed deposit and debentures. The Commission also notes that interest is showing a declining trend. The Commission accepts the interest of Rs.15563 lakhs. The interest on security deposit as Rs.1878 lakhs has been calculated at 5.5%. Since as per regulations interest to be allowed is 6% per annum the interest on security deposit admitted is Rs.2048 lakhs. The total interest including foreign loans, Indian loans and interest on security deposit admitted is Rs.21400 lakhs.



c) Other finance charges – Under this heading we have dealt with claims pertaining to foreign exchange rate variation, lease rental and charges on temporary financial accommodation and other financing charges/costs.

CESC has claimed Rs.22741 lakhs toward the above charges. CESC has justified the incurring of other financing charges on the ground of delayed revision of tariff. The company has contended that recovery of arrears is spread over several years and such inordinate delay leads to non-payment of dues to suppliers and/or delayed payment to the latter as also use of additional financing facilities keeping in view that its own entitled dues have been allowed to be recovered over a long period of time. CESC has further contended that the concept of prudent financial management may not apply in such abnormal situation and the company has to find ways and means to survive. CESC has also commented on the earlier years' decision wherein delayed payment surcharge and part of the finance charge was disallowed. CESC has also contended that if it is allowed to recover its dues in time, there will be no claim for DPS. CESC has also argued that temporary accommodation was unavoidable. On the other hand the objectors raised objection on such high incidence of other financing charges and felt that this is mainly on account of uneconomical utilisation of resources, lack of proper financial control, inefficiency of CESC which really does not require financing. The rival submissions of the charges has already been recorded in brief in earlier chapter.

The Commission has gone into the rival submissions and noted that claim for foreign exchange rate variation arises on account of re-payment of foreign currency loan at a rate which is different from the rate prevailing at the time of the original borrowing which has been recorded in the books of the CESC based on the date of respective drawals of the loan instalments. The difference in the rate prevailing at the time of drawal and the rate prevailing at the time of payment is really an actual cost and it affects the cost in two ways. First, the amount of interest payable goes up or down depending on the exchange rate on the dates of remittance and second, the amount of loan instalment to be paid also undergoes changes based on the prevalent rate of exchange. While the first part is covered under interest, the second part is not so covered under interest. An additional amount is required then for licensee to repay the loan if the exchange rate goes adverse. Alternatively if the exchange rate goes favourable/down the licensee has no cause to worry. There is a third angle concerning how to treat depreciation for such additional capital cost consequent on loan repayment in capital cost in case additional financial cost is to be capitalized. However, we are only considering here the first and the second items. The third item is not permissible under Schedule Sixth present in case of licensee. The CESC has claimed Rs.7843 lakhs towards foreign exchange rate variation on the instalment of the loan payable during the year 2004-05 and has provided the details in the petition on such amount repayable in foreign currency amount in original rate and amount at the derived rate. This increase in rate is calculated on the basis of the average exchange rate and may be different for each transaction depending upon the individual remittance. The Commission notes that the claim of Rs.7843 lakhs include Rs.2205 lakhs of previous year which is not admissible in view of earlier discussion relating to actual expenditure/excess income/expenditure of previous years. The Commission thus admits the claim of Rs.5638 lakhs on this count.

As regards lease rental, CESC claimed Rs.2798 lakhs. The Commission has already specifically directed CESC to avoid taking assets on lease. CESC has confirmed that they have initiated the action in this light. We admit the amount of Rs.2798 lakhs.

On financing charges, CESC has claimed Rs.12100 lakhs for procurement of coal and power etc., cash credit facilities and temporary accommodation and other financing costs to meet their other financing needs in view of the reasons explained by them as above. The Commission has noted that the arrear amount collection shown during 2004-05 is very low in comparison to the total arrears. The Commission has also noted that delay in arrear recovery is neither in the interest of the CESC nor in the interest of the consumers. The Commission is of the view that it goes against the interest of the consumers as has been shown in the orders for 2002-03 and 2003-04. If the rate of recovery is slow, CESC will be resorting to high cost borrowing which is later claimed and possibly allowed in the tariff. Therefore, it cannot be said that with this delayed recovery consumer is paying without charge. The consumers are paying through a higher tariff and that too at much higher rate if the costlier loan cannot be avoided. The Commission also notes that CESC has started taking action in reducing its interest liability and achieved moderate reductions. In view of the above discussion, Commission agrees to allow a sum of Rs.8200 lakhs towards

charges for temporary financial accommodation, bill discounting and cash credit, after disallowing Rs.2198 lakhs on the same basis and principles which were followed in the order for 2002-03 and 2003-04 and given in detail in earlier part. However, the Commission simultaneously directs CESC that this expenses should be reduced to Rs.50 crores in next 4 years by improvement in their realization, recovery of the areas, better cash flow management etc. This reduction shall be in addition to the normal repayment of the loan. If there is any default in repayment of the latter, the additional cost arising from the default will not be allowed in the tariff in future unless the licensee has totally convincing reasons for such default, as a substantial part of the problem is regularly to be removed in near future.

The other finance charge includes Rs.400 lakhs towards guarantee commission on Budge Budge loan, Rs.181 lakhs towards bank charges, LC charges etc. and Rs.1000 lakhs for balance debt restructuring expenses and Rs.122 lakhs on public deposit, totaling to Rs.1703 lakhs, which is also allowed by the Commission.

In view of the above discussion, the Commission agrees to allow Rs.9903 lakhs towards other finance charges including charges on temporary financial accommodation etc. and against total claim of Rs.12100 lakhs.

#### 14.17 Delayed Payment Surcharge

CESC has not claimed any amount in delayed payment surcharge.

#### 14.18 Depreciation

CESC has claimed Rs.32283 lakhs towards depreciation for the financial year 2004-05 keeping in view the terms of notification issued by the Government of India under the provisions of Electricity (Supply) Act, 1948. The above amount includes depreciation charges on disallowed capital cost of Budge Budge project amounting to Rs.2935 lakhs. The allowable depreciation charges, thus, comes to Rs.29348 lakhs which is admitted by the Commission.

#### 14.19 Write-off of Intangible Assets

The write-off of intangible assets of Rs.66 lakhs is admitted by the Commission.

#### 14.20 Special Appropriation

a) CESC has claimed Rs.8590 lakhs towards special appropriation. In regard to statutory appropriation towards contingency reserve under the provisions of Sixth Schedule of Electricity Act, 1948, we allow special appropriation of Rs.1206 lakhs as claimed. The Commission, however, notes that CESC has not invested the amount of contingency reserve as has been allocated to it for the earlier years till now. The Commission has also noted the plea of CESC that it could not invest any contingency reserve due to its financial position which is quite adverse. The Commission will only like to advise CESC to follow the relevant provisions in this regard.

b) CESC has claimed Rs.4162 lakhs due to disallowance of due cost of Budge Budge in earlier years for which special appropriation of Rs.8324 lakhs has been approved by the Government of West Bengal. Also Government of West Bengal has approved foreign exchange variation of Rs.1380 lakhs. As decided in order for 2003-04, we admit Rs.2426 lakhs for this year and for balance will review the claim next year as has been discussed earlier.

c) CESC has also claimed an instalment of Rs.3125 lakhs against regulatory asset of Rs.15628 lakhs consequent upon disallowance of certain charges by the Commission in earlier years and consequent loss of return. The Commission noted temporary accommodation and other finance charges has been allowed. The Commission also noted that actual loss, if any, can be allowed under Schedule Sixth subject to other provisions of the Acts. The Commission, therefore, disallows this claim. The special appropriation approved by the Commission is Rs.3632 (4602.4) lakhs.

14.21 In this part of our order, we will ascertain the capital base of CESC for the year 2004-05, different components of the capital base and net capital base on which the company is entitled to

get return at standard rates and the amount of reasonable return. The same are being enumerated hereunder.

#### a) Original Cost of Fixed Assets

CESC has projected the original cost of fixed assets at Rs.520882 lakhs at the end of the financial year 2004-05. The projected cost does not include the effect of revaluation of certain fixed assets done by the company in the year 1993-94.

The company has justified the incurrence of some capital expenditure which according to them is essential in consumers interest as quality and reliability of services will otherwise suffer. They have further stated that such expenditure is required to take care of increase in number of consumers and is typically less than 5% of gross fixed assets. The company has further stated that the booking of the expenditure has been done between transmission & distribution of high voltage and distribution of medium and low voltage based on power supply at 11 KV, between 3.3 KV and 11 KV and below 3.3 KV respectively. CESC has also given the details of major capital expenditure proposed to be incurred during 2004-05 along with brief justification of their incurrence and has stated that in view of the plant repair and maintenance including overhauling etc. the value of scrapping and re-determination of asset is not significant. The projected amount includes the total cost of Budge Budge Plant estimated at Rs.268172 lakhs. However, CESC has reduced from the cost and expenses the impact of additional cost incurred on the Budge Budge Plant over the cost approved by the Hon'ble Supreme Court of India. CESC has further justified the incurrence of projected capital addition mainly on account of strengthening the system, replacements of new items, up-gradation, safety requirements, load growth etc. These matters have been dealt with in details while dealing in capital work in progress.

Some of the objectors have objected to incurrence of further capital expenditure which according to them has not been fully justified/necessary. On the other hand, CESC has justified the incurrence of such expenditures. The respective submissions of the parties have already been listed earlier.

The Commission has gone through the rival submissions and has noted that CESC is incurring substantial amount of capital expenditure every year and the latter has given justification for incurrence of such expenditure item-wise on major expenditure. The Commission also notes that while CESC has had financial problems due to which it was unable to pay its loans in time, then the company should have been more prudent in incurrence of capital expenditure in earlier years/future. The Commission also recognises the fact that some amount of capital expenditure is necessary to maintain the standard of services, system requirements, safety requirements, requirements on account of load growth etc. as well as such expenses for environmental compliance. Keeping in view the above, the original cost of fixed assets as being admitted by us for the financial year 2004-05 works out as under:-

Rs. in lakhs

Opening Balance 468088

Add: Capitalisation of work in progress after  
adjusting less capitalization earlier. 16945  
485033

Less:

Assets to retire 500  
Net original cost of fixed assets 484533

#### b) Consumers contribution

The balance amount of consumers contribution towards construction of service line etc. is Rs.27483 lakhs at the beginning of 2004-05 whereas CESC has shown Rs.24442 lakhs and the latter does not include advance. CESC has projected receipt of Rs.2400 lakhs as first contribution

from the consumers on this account during the year, and shown a closing balance of Rs.26842 lakhs.

It has, however, been noted that certain amounts received from the consumers as contribution towards capital works always remain unadjusted under the appropriate head of accounts and has been shown as advance in the accounts by the CESC. The balance amount of such unadjusted payment received from the consumers for such capital works was Rs.3640 lakhs as per beginning of 2003-04 and the same is adopted as outstanding at the end of 2004-05 in the absence of details. The Commission notes that this amount received from consumers towards capital works are being utilised by CESC on the capital work-in-progress and this amount is shown awaiting adjustment/incurrence and it cannot be considered and taken outside the purview of accounts for the purpose of determination of revenue requirement. The Commission, therefore, is adding this amount to the consumer contribution while reducing the same from the fixed assets capital work-in-progress. To that extent CESC's net capital base/return will get reduced.

In view of the above, consumer contribution for the purpose taken from the cost of fixed assets is Rs.30482 lakhs which includes Rs.3640 lakhs of advance.

#### c) Cost of Intangible Assets

The projected balance of intangible assets (net of write-off) has been shown as Rs.995 lakhs at the end of 2004-05 which is admitted by us.

#### d) Original Cost of Work-in-progress

CESC has projected the closing balance of work-in-progress at Rs.7292 lakhs after capitalisation of Rs.17759 lakhs during the year. The opening balance of WIP was Rs.7610 lakhs. CESC has shown the capital expenditure under planned general capital expenditure and special projects amounting to Rs.13708 lakhs and Rs.3733 lakhs respectively.

The observations of the objectors and the justification of CESC have already been given under the head fixed assets.

The Commission notes that a major expenditure in generation is related to ash disposal system, ESP for New Cossipore Station, Refurbishment of generations at TGS and other capital expenditure mainly at New Cossipore Station. The capital expenditure in the distribution sector has been projected at Rs.12552 lakhs which is mainly on account of purchase of meters, supplies for new connection and network resurfacing, meeting load growth system stabilising etc. The Commission agrees capital work-in-progress of Rs.7292 lakhs for 2004-05.

#### e) Investment in Contingency Reserve

CESC has projected an investment of Rs.4500 lakhs as investment in contingency reserve.

As provided in para xvii (i) (d) of the Sixth Schedule of the Electricity (Supply) Act, 1948, the amount of contingency reserve invested compulsorily in the security authorized under Indian Trust Act, 1882 is to be included in the computation of capital base. Some of the objectors have raised objections to non-investment of contingency reserve in the approved securities earlier by CESC. CESC has justified its non-investment due to its tight financial condition and it has projected to invest Rs.4500 lakhs during the year 2004-05 accordingly.

The Commission find from the notes incorporated in the accounts for 2002-03 that even the contingency reserve held 1999-2000 amounting to Rs.5270 lakhs has not been invested. CESC is now projecting about an investment of Rs.4500 lakhs during the year 2004-05. The Commission has also noted that CESC has not invested the amount due to its financial stringency and the position is not likely to improve substantially during the year 2004-05. The Commission, therefore, is not inclined to agree that CESC will be in a position to invest Rs.4500 lakhs as projected by the company and therefore, disallows the same for the purpose of revenue requirement. The investment of Rs.4500 lakhs, if made, may be taken from the balance of outstanding investments to be made for earlier years.

#### f) Working Capital

CESC has projected a working capital requirement for 2004-05 at Rs.16283 lakhs representing cost of fuel at Rs.5520 lakhs, stores Rs.8263 lakhs and average cash flow and bank balance at Rs.2500 lakhs. CESC has justified the fuel cost based on average stock of 30 days. CESC has also justified cost of stores other than fuel, but has not given month-wise details as required under Sixth Schedule.

Some of the consumers have objected to the projected working capital requirement and felt that the same should be worked out as has been worked out by the Commission earlier and ASCI. Some of the objectors are of the view that CESC does not require any working capital. CESC has argued that as the tariff is to be fixed in advance, a reasonable basis is required beforehand for working out cash and bank balance, stock of stores and fuel. CESC has further contended that based on these norms, the working capital requirement works out to Rs.163 crores.

The Commission has gone into the rival submissions and in view of the reasons advanced by CESC, agrees with the latter's projection of working capital of Rs.16283 lakhs.

#### g) Accumulated Depreciation

CESC has shown an accumulated depreciation of Rs.212304 lakhs at the beginning of the year 2004-05. The depreciation chargeable during the year, based on straight line method by applying the rates and in the manner as approved by the government under the provisions of Electricity (Supply) Act, 1948 has been shown as Rs.32283 lakhs. The accumulated depreciation as well as the depreciation shown by CESC in the above figure include the cost towards disallowed portion of Budge Budge Power Station which has been separately assessed by CESC. The amount of accumulated depreciation and the depreciation for the year for such disallowed portion of Budge Budge Power Station is Rs.14796 lakhs and Rs.2935 lakhs. The total withdrawal from depreciation during this year and earlier year is Rs.2374 lakhs. The balance accumulated depreciation therefore, works out to Rs.226406 lakhs excluding impact of Budge Budge which has been admitted by the Commission.

h) CESC has given statements of loan for 2004-05 and stated that due to delayed recovery of arrears amounting to Rs.500 crores the company could not meet its payment obligation. Still CESC has tried to reduce interest on financing charges. CESC has further stated that lenders have categorically refused to give any further loan to CESC. CESC has also worked out the repayment for 2004-05 and stated that foreign currency loans are recorded in rupees. It has further given the details for loan taken from various institutions, the period of loan, original amount of loan, outstanding as on 31st March, 2004. CESC also stated that it is engaged in discussion with the lenders on various issues relating to delay in payment obligation. CESC has also quoted various sections of the Sixth Schedule regarding their interpretation on the loan and its depiction.

The objectors have made a number of observations on the high amount of loan, rate of interest and some of the consumers have even contended that CESC does not require any loan to finance such expenditures for its operation. CESC, however, has justified its loan. The rival submissions have already been given in the earlier part of the order and also while dealing interest charge for 2004-05 along with the view of the Commission about admissibility of the interest on loan. Based on the analysis and information given by CESC, the position of its outstanding loans and borrowings towards specified and general capital works, as given in the petition, works out to Rs.147884 lakhs.

The outstanding balance of foreign currency loans as well as their repayments have been taken into account in rupee currency at the original exchange rates on the respective dates of drawal of loans.

The outstanding balances of loans and borrowings shown above includes disallowance portion of Budge Budge Power Station loan portion. The loan taken for such disallowance portion of Budge Budge Power Station is Rs.6729 lakhs and after deduction of the same, outstanding loan balance of Rs.141155 lakhs has been admitted by the Commission.

#### i) Security Deposit from Consumers

CESC has projected security deposit at Rs.2500 lakhs for 2004-05. With such projected additions, the balance of consumer security deposit comes to Rs.36652 lakhs.

The Commission has observed that cash security deposit from the consumers is low and not equivalent to 3 months' revenue requirement. The Commission has also noted that though the tariff has substantially gone up in 2001-02 and 2002-03, the security deposit has not increased in a commensurate manner as the tariff has been re-determined in the later part of the 2002-03. In view of the above position, the Commission accepts the projected figure of R.36652 lakhs.

j) Development Reserve, Investment Allowance Reserve & Consumers Accounts

The balance in the development reserve is Rs.220 lakhs, investment allowance reserve is Rs.1168 lakhs and the and consumers accounts is Rs.71 lakhs which is unaltered from the previous year. The Commission accepts the projected figures.

k) Statement of Net Capital Base

Based on our analysis and decisions recorded in earlier paragraphs we now draw the Statement of Net Capital Base.

		<b>Rs. in Lakhs</b>	
		<b>2004-05</b>	
	<b>Particulars</b>	<b>As per CESC</b>	<b>As Admitted</b>
1.	Original cost of Fixed Assets	520882	484533
	Less : Contribution from consumers	26842	30482
		494040	454051
2.	Cost of Intangible Assets (net of write-off)	995	995
3.	Original cost of Works-in-Progress	7292	7292
4.	Investment in Contingency Reserve	4500	Nil
5.	Working Capital		
	(a) Cost of fuel in hand	5520	5520
	(b) Other Store, materials & Supplies	8263	8263
	(c) Cash and Bank Balance	2500	2500
	Total (A)	523110	478621
	<b>Less :</b>		
6.	Accumulated Depreciation	244137	226406
7.	Loan	147884	141155
8.	Security Deposit from Consumers	36652	36652
9.	Development Reserve	220	220
10.	Investment Allowance Reserve	1168	1168
11.	Consumers Accounts	71	71
	Total (B)	430132	405672
12.	Net Capital Base (A - B)	92978	72949
13.	Less : Impact of Budget-Budget Power Station cost over-run-disallowed	14160	--
14.	Net Capital Base considered for allowing Returns	78818	72949

l) Reasonable Return

Based on the above decisions in regard to Net Capital Base, we allow Reasonable Return to CESC for the year 2004-05 following the provisions contained in the Sixth Schedule to Electricity (Supply) Act 1948. Our computations of Reasonable Return are based on Bank Rates notified by RBI and applicable for the concerned financial year and on the age-wise break-up of Net Capital Base provided by CESC.

<b>STATEMENT OF REASONABLE RETURN</b>			
		<b>Rs. in Lakhs</b>	
		<b>For 2004-05</b>	
		<b>As Claimed</b>	<b>As Allowed</b>
	A. Return as Standard Rate on Capital Base		
1.	Capital Base upto 31.3.65	3362	3362
	Applicable Rate	7%	7%
	Return	235	235
2.	Capital Base from 1.4.65 to 31.3.92	6163	6163
	Applicable Rate	8.0%	8.0%
	Return	493	493
3.	Capital Base from 1.4.92 to 31.3.99	16086	16119
	Applicable Rate	11.00%	11.00%
	Return	1770	1773
4.	Capital Base from 1.4.1999 onwards	53206	47305
	Applicable Rate	16%	16%
	Return	8513	7569
	Total Return as Standard Rates on Net Capital Base [(1) + (2) + (3) + (4)] = (A)	11011	10070
	B. Other Standard Items		
5.	0.5% on Development and Investment Allowance Reserve	7	7
6.	0.5% on Loans	739	705
7.	Performance / Incentive	3745	--
8.	Less : Budge Budge	34	--
	Total (B)	4457	712
	Total (A) + (B)	14469	10782

The performance Incentive of Rs.3745 lakhs has not been admitted by the Commission in view of the reasons indicated under fuel costs.

#### 14.22 Other Income

CESC has projected non-power tariff income of Rs.5076 lakhs for the year 2004-05, and has given broad details of other income in the petition.

The Commission has however, noted that other income projected is smaller than what it be. The main reduction in 2004-05 is projected on account of less DC surcharge/penal charge for current year. No reason for reduction of this DC surcharge/penal charge has been indicated. The Commission, therefore, disallows the reduction of Rs.725 lakhs from the other income. The Commission has also noticed that since the action on control of pilferage of theft of energy has increased, then penal recovery charge should show an increase in receipts. The Commission,

therefore, re-assess the other income for the above adjustment and works out to Rs.6235 lakhs which is same as is approved for last year.

#### 14.23 Unaccounted Energy

As discussed earlier, gross energy for sale is 7281 MU including net sent out at 5984 MU from own generation and purchase of 1297 MU. The allowable T&D loss works out to 1238 MU. The balance energy to be sold is 6043 MU. Also the consumption in office is 10 MU as allowed during last year which may go down further in future because of closure of Mulajore and VRS to 2250 employees. The balance energy works out to 6033 MU which has been included in sales leaving unaccounted energy at NIL.

#### 14.24 Statement of Revenue Requirement - 2004-05

Based on our analysis and decision recorded earlier, we finally draw the admitted statement of revenue requirement as under:-

<b>STATEMENT OF REVENUE REQUIREMENTS</b>			
		<b>Rs. in Lakhs</b>	
		<b>2004-05</b>	
		<b>As Claimed</b>	<b>As Admitted</b>
1.	Fuel Cost	67162	67162
2.	Purchase of Power	30851	40510
3.	Employee Cost	29265	28265
4.	Repairs & Maintenance	13171	13171
5.	Administrative, General & Misc. Charges	5191	5191
6.	Coal & Ash handling charges	1407	1407
7.	Rent, Rates & Taxes	757	757
8.	Legal Charges	500	465
9.	Audit Fees & Expenses	35	30
10.	Bad Debts & Erosion in Consumer Base	3102	1200
11.	Water Charges	582	582
12.	Delayed Payment Surcharge	--	--
13.	Interest	22200	21400
14.	other Finance Charges		
	(a) Foreign Exchange Rate Variation	7843	5638
	(b) Lease Rental	2798	2798
	(c) Other financing charges including on temporary financial accommodation	12100	9903
15.	Depreciation	32283	29348
16.	Intangible Assets Written-off	66	66
17.	Total Revenue Expenditures (1 to 16)	229313	227893
18.	Reasonable Return	14469	10782
19.	Special Appropriation	8590	3632
20.	Gross Revenue Required	252372	242307
21.	Less :		
	(a) Other Non-tariff Income	5076	6235
	(b) Budge-Budge Disallowances	4001	--



		243295	236072
	Net Projected Energy available of sale (MU)	5780	6033
	Average Cost of Supply (Paise/Kwh)	421.00	391.30
		431*	

\* including impact of adjustment in purchase price from WBSEB based on interim order of the Commission

Budge-Budge disallowances as shown separately by CESC has been allocated to respective heads of expenses.

14.25 With the revenue requirement determination for 2004-05, we have to determine the tariff for the year.

b) Consumers contribution

The balance amount of consumers contribution towards construction of service line etc. is Rs.23983 lakhs at the beginning of 2003-04 including unadjusted amounts. CESC has projected receipt of Rs.3500 lakhs as fresh contribution from the consumers on this account during the year.

It has, however, been noted that certain amount received from the consumers as contribution towards capital works, always remain unadjusted under the appropriate head of accounts and these have been shown as advance in the accounts by CESC. The balance amount of such unadjusted payment received from the consumers for such capital works was Rs.3272 lakhs at the beginning of 2002-03; it has been assessed to be a sum of Rs.3650 lakhs at the end of 2002-03. The same is adopted as outstanding at the end of 2003-04 in the absence of full details. The Commission notes that this amount received from consumers towards capital works is being utilised by CESC in capital work-in-progress and this amount is shown as awaiting adjustment/incurrence. The Commission finds that it cannot be considered and taken outside the purview of accounts for the purpose of determination of revenue requirement. The Commission, therefore, is adding this amount to the consumer contribution while reducing the same from the fixed assets capital work-in-progress. To that extent, CESC's net capital base/return will be reduced somewhat.

In view of the above, consumer contribution for the purpose taken from the cost of fixed assets is as under:-

	<b>Rs. in Lakhs</b>
Opening Balance	23983
Receipt of contribution during the year	3500
	27483

c) Cost of Intangible Assets

The projected balance of intangible assets (net of write-off) has been shown as Rs.1061 lakhs at the end of 2003-04 which is admitted by us.

d) Original Cost of Work-in-progress

CESC has projected the closing balance of work-in-progress at Rs.7106 lakhs after capitalisation of Rs.17238 lakhs during the year. The opening balance of WIP was Rs.7080 lakhs. CESC has shown the capital expenditure under planned general capital expenditure and special projects amounting to Rs.13091 lakhs and Rs.3360 lakhs respectively. The company has also shown an expenditure of Rs.613 lakhs on public utility project on re-imburement basis and Rs.200 lakhs for interest during construction.

The observations of the objectors and the justification given by CESC have already been given under the head fixed assets.

The Commission notes that a major expenditure under generation is related to ash disposal system at Budge Budge, ESP for New Cossipore Station and other capital expenditures mainly at New Cossipore Station. The capital expenditure in the distribution sector has been projected at Rs.12503 lakhs which is mainly on account of purchase of meters, supplies for new connection and network resurfacing, tie-line between Titagarh, Mulajore & Botanical Garden Sub-stations etc. The Commission has also noted that though CESC is spending about Rs.217 crores during the year under CWIP but the interest during construction being capitalised is only Rs.2 crores particularly when a major amount is financed through loan at high rate of interest. The alternative before the Commission therefore, is to reduce certain amount of interest from the interest chargeable to revenue account, capitalise it and then allow the return on the same with corresponding reduction of such loan. The Commission also notes that interest may not be chargeable on the certain assets like meters, equipments etc. which does not go for work-in-progress. The Commission, therefore, directs CESC to clearly identify the source from which the capital expenditure is being incurred in future. The Commission also noted that the net impact of this may not be much. Subject to the above, the Commission agrees capital work-in-progress of Rs.7106 lakhs for 2003-04.

#### e) Investment in Contingency Reserve

CESC has projected an investment of Rs.1135 lakhs as investment in contingency reserve.

As provided in para xvii (i) (d) of the Sixth Schedule of the Electricity (Supply) Act, 1948, the amount of contingency reserve invested compulsorily in the security authorized under Indian Trust Act, 1882 is to be included in the computation of capital base. Some of the objectors have objected to non-investment of contingency reserve in the approved securities earlier by CESC. CESC has defended its non-investment on the ground of its tight financial condition. It has projected to invest Rs.1135 lakhs during the year 2003-04 accordingly.

The Commission notes from the notes incorporated in the accounts for 2001-02 that even the contingency reserve upto 1999-2000 amounting to Rs.5270 lakhs has not been invested. CESC is now projecting an investment of Rs.1135 lakhs during the year 2003-04. Also the Commission notes that CESC has not invested the amount due to its financial stringency, and the position has not improved substantially during the year 2003-04. Only this might have enabled CESC to invest the fund of contingency reserve as the company has already defaulted in repayment of loans and re-scheduling thereof. The Commission, therefore, does not see how CESC will be in a position to invest Rs.1135 lakhs as projected by it and therefore, disallows the same for the purpose of revenue requirement. The Commission has also noted that CESC has drawn Rs.1275 lakhs out of the contingency reserve and utilised it for capital work-in-progress with the approval of the State Government. CESC is directed that in the next tariff petition they should come out with the details along with terms and conditions so that the Commission can take a view on the same along with review the position of investments and inclusion in revenue requirements.

#### f) Working Capital

CESC has projected working capital requirement for 2003-04 at Rs.15553 lakhs representing cost of fuel at Rs.5448 lakhs, stores Rs.7605 lakhs and average cash and bank balance at Rs.2500 lakhs. CESC has justified the fuel cost based on average stock of 25 days. CESC has also justified the cost of stores other than fuel, but has not given month-wise details as required under the Sixth Schedule.

Some of the consumers have objected to working capital requirement as projected. They have opined that the same should be worked out as has been worked out by the Commission earlier and ASCI. Some of the objectors are also of the view that CESC does not require any working capital. On its part CESC has pointed out that as the tariff is to be fixed in advance, a reasonable basis is required beforehand for working out cash and bank balance, stock of stores and fuel. CESC has stated that its calculations are based on the Sixth Schedule subject to the adjustment of norms for 18 days of cash requirement which works out to Rs.132 crores, Similar was fuel stock for average of 30 days' period which works out to Rs.54 crores, and about Rs.157 crores for stores and spares based on norms of 3% of gross fixed assets. These, according to CESC are as per the spirit of Sixth Schedule. CESC further contended that based on these norms the working capital requirement works out to Rs.338 crores. Against the latter, CESC's projection of Rs..15533 lakhs is too low because of severe cash flow problem.

After carefully considering the rival submissions and in view of the reasons advanced by CESC and also keeping in view its observations and financing charges on temporary financial accommodation etc., the Commission agrees with their projection of working capital of Rs.15553 lakhs.

g) Accumulated Depreciation

CESSC has shown the accumulated depreciation at Rs.181264 lakhs at the beginning of the year 2003-04. The depreciation chargeable during the year based on straight line method by applying the rates and in the manner as approved by the Government under the provisions of Electricity (Supply) Act, 1948 has been shown as Rs.32657 lakhs. The accumulated depreciation as well as the depreciation shown by CESC in the above figure include the cost towards disallowed portion of Budge Budge Power Station which has been separately assessed by CESC. The amount of accumulated depreciation and the depreciation for the year for such disallowed portion of Budge Budge Power Station is Rs.11861 lakhs and Rs.2935 lakhs. The balance accumulated depreciation therefore, works out to Rs.199125 lakhs which has been admitted by the Commission.

h) CESC has given statements of loan for 2003-04 and stated that due to delayed recovery of arrears amounting to Rs.500 crores the company could not meet its payment obligation. Still CESC has tried to reduce interest on financing charges. CESC further stated that lenders have categorically refused to give any further loan to CESC. CESC also worked out repayment for 2003-04 and stated that foreign currency loans are recorded in rupees. They have further given the details for loan taken from various institutions, the period of loan, original amount of loan, outstanding as on 31st March, 2003. CESC has also stated that it is engaged in discussion with its lenders on various issues relating to delay in payment obligation. CESC also quoted various sections of the Sixth Schedule regarding their interpretation on the loan and its depiction.

It has already been noted that while some of the stake-holders have objected to the high amount of loan and rate of interest, some of the consumers have even contended that CESC does not require any loan to finance such expenditures for its operation. However, CESC has justified its loan. The rival submissions have already been given in the earlier part of the order and also while dealing interest charge for 2003-04 along with the view of the Commission about admissibility of the interest on loan. Based on the analysis and information given by CESC, the position of their outstanding loans and borrowings towards specified and general capital works are summarised as under:

		<b>Rs. in Lakhs</b>		
	<b>Sources</b>	<b>Balance as on 31-03-03</b>	<b>Projected Repayments 2003-04 (Net)</b>	<b>Balance at year end 2003-04</b>
1.	Govt. of West Bengal	2300	300	2000
2.	Debenture	10156	4934	5222
3.	Floating Rate Notes etc.	25036	--	25036
4.	Other Banks / Institutions	173993	31113	142880
5.	Public Deposit	8756	5878	2878
	<b>Total</b>	<b>220241</b>	<b>42225</b>	<b>178016</b>

The outstanding balance of foreign currency loans as well as their repayments have been taken into account in rupee currency at the original exchange rates on the respective dates of drawal of loans.

The outstand balances of loans and borrowings shown above includes disallowance portion of Budge Budge Power Station loan portion. The loan taken for such disallowance porton of Budge Budge Power Station is Rs.7011 lakhs and after deduction of same, outstanding loan balance of Rs.171005 lakhs has been admitted by the Commission.

i) Security Deposit from Consumers

CESC has projected security deposit at Rs.3500 lakhs for 2003-04. With such projected additions, the balance of consumer security deposit comes to Rs.31995 lakhs.

The Commission observes that cash security deposit from the consumers is very low and not equivalent to 3 months revenue requirement. The Commission has also noted that though the tariff has substantially gone up in 2000-01 and 2001-02, security deposit has not increased as the tariff has been re-determined in the later part of the 2002-03. Tariff is still not final in view of the court cases. In view of the above position, the Commission accepts the projected figure of R.31995 lakhs.

j) Development Reserve, Investment Allowance Reserve & Consumers Accounts

The balance in the development reserve is Rs.220 lakhs, investment allowance reserve is Rs.1168 lakhs and the and consumers accounts is Rs.71 lakhs which is unaltered from the previous year. The Commission accepts the projected figures.

k) Statement of Net Capital Base

Based on our analysis and decisions recorded in earlier paragraphs we now draw the Statement of Net Capital Base.

		<b>Rs. in Lakhs</b>	
		<b>2003-04</b>	
	Particulars	<b>As per CESC</b>	<b>As Admitted</b>
1.	Original Cost of Fixed Assets	508222	468088
	Less : Contribution from consumers	23833	27483
		484389	440605
2.	Cost of Intangible Assets (net of write-off)	1061	1061
3.	Original Cost of Works-in-Progress	7106	7106
4.	Investment in Contingency Reserve	3335	Nil
5.	Working Capital		
	(a) Cost of Fuel in hand	5449	5449
	(b) Other Store, materials & supplies	7604	7604
	(c) Cash and Bank balance	2500	2500
	Sub-total	15553	15553
	Total (A)	511444	464325
	<b>Less :</b>		
6.	Accumulated Depreciation	213471	199125
7.	Loan	178016	171005
8.	Security Deposit from Consumers	31995	31995
9.	Development Reserve	220	220
10.	Investment Allowance Reserve	1168	1168
11.	Consumers Accounts	71	71
	Total (B)	424941	403584
12.	Net Capital Base (A - B)	86503	60741
13.	Less : Impact of Budge-Budge Power Station cost over-run disallowed	16813	--
14.	Net Capital Base considered for allowing Returns	69690	60741

l) Reasonable Return

Based on the above decisions in regard to Net Capital Base, we allow Reasonable Return to CESC for the year 2003-04 following the provisions contained in the Sixth Schedule to Electricity (Supply) Act 1948. Our computations of Reasonable Return are based on Bank Rates notified by RBI and applicable for the concerned financial year and on the age-wise break-up of Net Capital Base provided by CESC.

<b>STATEMENT OF REASONABLE RETURN</b>			
		<b>Rs. in Lakh</b>	
		<b>For 2003-04</b>	
	A. Returns at Standard Rate on Capital Base		
1.	Capital Base upto 31.3.65	3362	3362
	Applicable Rate	7%	7%
	Return	235	235
2.	Capital Base from 1.4.65 to 31.3.92	6163	6163
	Applicable Rate	8.25%	8.25%
	Return	508	508
3.	Capital Base from 1.4.92 to 31.3.99	16119	16119
	Applicable Rate	11.25%	11.25%
	Return	1813	1813
4.	Capital Base from 1.4.1999 onwards	44046	35097
	Applicable Rate	16%	16%
	Return	7047	5616
	Total Return at Standard Rates on Net Capital Base [(1) + (2) + (3) + (4)] = (A)	9603	8172
	B. Other Standard Items		
3.	0.5% on Development and Investment Allowance Reserve	7	7
4.	0.5% on Loans	855	855
	Total (B)	862	862
	Total (A) + (B)	10465	9034

In addition to Return at Standard Rates on Net Capital Base and Other items shown in the above statement, CESC has claimed Rs.4693 lakhs in the year 2003-04 towards loss of Returns in the earlier years with the following break-up and reasoning.

		<b>Rs. in Lakhs</b>
		<b>2003-04</b>
1.	Loss of Reasonable Return entitlement arising out of reduction in Capital Base on account of actual delay in loan repayment of delayed recovery of tariff for 2000-01 and 2001-02.	4693

As stated by CESC, the company as on April,2002 had arrear tariff dues of about Rs.50000 lakhs which resulted in loan repayment default of Rs.13800 lakhs as on 31st March,2003. As failure to recover its entitled tariff revision in time resulted its default in loan repayments with consequent erosion in Capital Base and Reasonable Return, the company claimed Rs.4693 lakhs additional return on this account. The Commission holds the view that Returns are allowable on the Net Capital Base based on actual state of affairs and not on the basis of what would have been the position had the parameters were different. The deferment of the loan re-payment in the past

necessitated no fresh induction of own capital by the Company on which it is to claim returns. The interest burden on such deferred loan repayments and on the additional borrowing including in the form of Temporary Financial Accommodation is added in tariff. We do not, therefore, find any justification for allowing additional return claimed by the company on the ground of erosion of Capital Base.

Finally, the Reasonable Returns as claimed by CESC and as being admitted by us comes as under.

	<b>Rs. in Lakhs</b>	
	<b>2003-04</b>	
	<b>As Claimed</b>	<b>As Admitted</b>
At standard Rates	10465	9034
Claims on account of Erosion in Capital Base	4693	--
<b>Total</b>	<b>15158</b>	<b>9034</b>

### 13.22 Other Income

CESC has projected non-power tariff income of Rs.4297 lakhs for the year 2003-04. CESC has given broad details of other income in the petition.

The Commission has, however, noted that other income projected is less than the figure of 2001-02 and 2002-03. The main reduction in 2003-04 projection is on account of less DC surcharge/penal charge for 2001-02. No reason for reduction of this DC surcharge/penal charge has been indicated. Also it has been noted that this amount has been reduced towards DC surcharge/penal charge relating to earlier year for which tariff has already been determined and the same is not admissible in this tariff. The Commission, therefore, disallows the reduction of Rs.1408 lakhs from the other income. Also, as noted last year, there are inter corporate investments. The Commission has also noticed that the action on control of pilferage of theft of energy has increased; but if so, then penal recovery charges which should go to Misc. Receipts (and shown separately) should increase and it may reflect an increase in general trend and cannot be taken on the same basis as for earlier years as has been assessed by the CESC. The Commission, therefore, re-assess the general receipts from Rs.1170 lakhs to Rs.1700 lakhs and the other income with the above adjustment, therefore, works out to Rs.6235 lakhs against Rs.6197 lakhs assessed for last year and Rs.5812 lakhs for 2001-02.

### 13.23 Unaccounted Energy

As discussed in earlier paras, the gross energy, for sale is 7136 MU including net sent out from own generation of 5801 MU and purchase of 1335 MU. The average cost plus 7.5% overheads works out to Paise 162 per Kwh. The allowable T&D loss @ 18% as discussed in earlier paras works out to 1284 MU whereas sales figures accepted are 5790 MU leaving unaccounted energy of 62 MU. Out of this, consumption of power in the office is to be deducted. However, CESC has given a figure of 19 MU which includes construction power. The construction power is to be capitalised. Since separate figures are not there, we are assessing 10 MU for office consumption and balance unaccounted energy comes to 52 MU. We have disallowed 9 MU as excess auxiliary consumption and the net unaccounted energy comes to 61 MU and its cost works out to Rs.988 lakhs which has been reduced from the revenue requirements.

### 13.24 Statement of Revenue Requirement - 2003-04

Based on our analysis and decision recorded earlier, we finally draw the admitted statement of revenue requirement as under:-

<b>STATEMENT OF REVENUE REQUIREMENTS</b>		
		<b>Rs. in Lakhs</b>
		<b>2003-04</b>

		<b>As Claimed</b>	<b>As Admitted</b>
1.	Fuel Cost	66290	66290
2.	Purchase of Power	33986	40928
3.	Employee Cost	29975	29975
4.	Repairs & Maintenance	13281	13281
5.	Administrative, General & Misc. Charges	4798	4798
6.	Coal & Ash handling charges	1956	1956
7.	Rent, Rates & Taxes	714	714
8.	Legal Charges	465	465
9.	Audit Fees & Expenses	30	30
10.	Bad Debts & Erosion in Consumer Base	2797	1200
11.	Water Charges	108	108
12.	Delayed Payment Surcharge	--	--
13.	Interest	29172	26223
14.	Other Finance Charges		
	(a) Foreign Exchange Rate Variation	5720	5720
	(b) Lease Rental	2926	2926
	(c) Charges on temporary Financial Accommodation	13029	11881
15.	Depreciation	32657	29722
16.	Intangible Assets Written-of	66	66
17.	Total Revenue Expenditure (1 to 16)	237970	236283
18.	Reasonable Return	15159	9034
19.	Special appropriation*	7057	3604
20.	Gross Revenue Required	*260186	248921
21.	Less :		
	(a) Other Non-tariff Income	4297	6235
	(b) Budge-Budge Disallowances	4233	--
	(c) Unaccounted Energy	--	988
		*251656	241698
	Net Projected Energy available of sale (MU)	5694	5790
	Average Cost of Supply (Paise/Kwh)	*441.97	417.44

\*Excluding Rs.8324 lakhs of Budge Budge for earlier years.

Budge-Budge disallowances as shown separately by CESC has been allocated to respective heads of expenditure.

Note : Figures have been regrouped/rearranged wherever considered necessary.

13.25 With the revenue requirement determination for 2003-04, we have to consider whether we should determine the tariff for the year separately or we may not fix the tariff separately for 2003-04 as the year is already over and keeping in view the observations and balance of convenience and inconvenience in fixing the tariff from retrospective effect. The Commission has already considered the issue in the earlier part of the order and has decided that tariff for 2003-04 will be retained and the shortfall/excess of revenue requirement so determined will be dealt appropriately subsequently. Therefore, tariff will not be revised with retrospective date and will be from prospective date.

## **CHAPTER – 14 : REVENUE REQUIREMENT FOR 2004-05**

In this chapter, the Commission will assess revenue requirement for 2004-05. For determining the revenue requirement, the Commission will assess the variable cost relating to fuel and purchase of power, fixed cost and reasonable return.

14.1 For estimating the variable cost for the year 2004-05, we shall proceed from the energy sales. The CESC is basically a company for distribution of power and the major part of the power distributed by them is from their own generating stations and for the rest they purchase power from, as per petition, West Bengal State Electricity Board. The CESC also falls under the definition of generating company under the provisions of Electricity Act, 2003.

Once the quantity of power sold is determined (actual or estimated) and the generation could be assessed (as per normative level or actual), we could assess the quantity of power that may be required to be purchased from others for meeting the requirement of consumers, subject, however, to T&D loss.

## 14.2 Power Requirements

### 14.2(a) Sales

i) As per petition of the CESC, the projected sale for the year is 5780 MU against the 5694 MU sale estimated for 2003-04.

ii) Some of the objectors have observed that the sale is under estimated and it should be based on the audited figures of the earlier years. The Commission also notes that the sale figure for 2002-03 as projected by CESC in their tariff petition for 2004-05 pertaining to the year 2002-03 is only 5557 MU against 5545 MU projected in their tariff petition of 2002-03. The difference is only 12 MU which is negligible and is about 0.2%. However, Commission has noted that the projected growth is only 1.5% whereas earlier trend was much higher, and further that CESC is incurring capex for new consumers. The Commission, therefore, adopts the earlier trend of 4.2% for this year also, over the last year's accepted sale figure of 5790 MU. The Commission has, however, noted the concern of CESC that with the increase in captive generation and likely shifting of consumers after introduction of open access, no sale figures can be estimated realistically. It is even possible that there may be no growth at all. Since the Commission has assumed higher sales figures during 2003-04 and 2004-05 any shortfall in actual sales and its consequent effect may be taken care of in the next tariff petition, or by any other way which may be considered appropriate by the Commission and permissible under law. The Commission, therefore, accepts the sale figure for 2004-05 as 6033 MU in view of the above stated reasons.

### 14.2(b) T&D Loss

i) For the present year, CESC has projected their T&D loss at 18.5% of the total energy available for distribution. Out of this, according to the company, 11% goes towards technical loss and rest towards commercial or non-technical loss which - in the view of CESC - is mainly on account of pilferage. CESC has elaborated on the steps being taken by it to check pilferage and also pointed out the support requirement from the administration including setting up of special court and special protection force. The licensee has also given the data of vigilance action taken by it relating to meter checking, hooking removal, court cases etc. CESC has also pointed out that the oldest case pending date back to 1984. CESC attributes part of the loss to DC meters. The existing DC meters are sluggish, and testing facilities of these meters are not available, and yet DC supply is not being discontinued. On the other hand, the consumers blame CESC for not taking sufficient and effective steps for controlling the T&D loss and some have opined that CESC should increase the transmission of energy at high voltage, as per the direction given by the Government of West Bengal for reduction of the loss from the year 1993 onwards. They feel that it is because of the fault of CESC that is causing moving out of heavy load etc. Both i.e. CESC and the objectors also quoted the judgement of the Hon'ble Supreme Court of India dated 3rd October, 2002 in support of their respective claim. The detailed submissions and the objections in this regard has already been covered in earlier chapters.

ii) The Commission has carefully gone through the submissions and counter submissions in this regard including the relevant portion of the judgement of the Hon'ble Supreme Court of India dated 3rd October, 2002 in the case of CESC. The Commission has already dealt with the subject



of T&D loss in details while dealing with the cases for 2002-03 and 2003-04 and generally the same views and observations are applicable for this year also. T&D loss for 2004-05 thus now fixed by it at 17%. However, the Commission has noted the concern of CESC of adverse change in mix of HT and LT supply which may further become adverse because of more captive generation and shifting of HT consumers after introduction of open access. The HT supply has less T&D loss in comparison to LT. The Commission will review the T&D target in case the HT / LT mixes changes adversely from which is prevailing in 2003-04. However, CESC is again directed that they should take effective steps in terms of the view as expressed by the Commission in this order and to bring down the T&D loss to 14% within next 3 years with equal 1% reduction every year from 2004-05 onwards.

iii) The Commission also directs CESC to carefully examine the feasibility of transmission at high voltage in appropriate cases to reduce the technical loss from their stated 11% technical loss. The Commission is not fully satisfied on technical loss of 11% and is of the view that there is a scope of reduction of technical loss from 11%. At present, pending an in-depth study of the matter by the Commission, and coming out with a suitable proposal by CESC, the Commission is not reducing any T&D loss in this score but will review T&D loss during tariff petition for 2005-06. As CESC has to come out with suitable proposal which is techno-economically justified this technical loss reduction target will be considered by the Commission in 2005-06 and onwards and will be in addition to loss reduction target given above.

iv) The transmission loss on power wheeled not exceeding 4% may be reduced for the energy to be wheeled at the time of delivery and the loss in that system will not be included in the T&D loss to be determined above.

#### 14.3 Generation

From the figure of projected generation for 2004-05, auxiliary consumption, plant availability factor and plant load factor furnished by CESC, it appears that the plant availability factor in the Budge Budge, Southern and Titagarh is very good while the plant availability factor of New Cossipore is good considering its age. CESC has projected a gross generation of 6615 MU during 2004-05 against 6420 MU for the corresponding period of last year which according to CESC reflects an overall plant load factor of 75% for all the stations put together, and this is an improvement over last year mainly because closure of Mulajore station whose PLF was low. Since the plant load factor is less than the plant availability factor and CESC has purchased power from WBSEB, it appears that this purchase has been made to meet the requirement of the peak demand and radial load, if any. The Commission has also noted that the purchase of power from WBSEB is costlier both for peak and off-peak than the generation of power from some of the existing stations particularly Budge Budge Southern and Titagarh. CESC may make efforts so that the plant load factor is increased to bring down the gap between plant load factor and plant availability factor to the extent possible. Since the plant availability factor for new plant is 93.3% and plant load factor is 80.1% and high for other plants, CESC should try to further improve subject to system constraints. CESC should also explore the possibility to export the power during off-peak hours instead of backing down the stations for want of demand. CESC may also explore the possibility for demand side management to shift part of the load from peak to off-peak which will give them more elbow room to reduce their cost by avoiding purchase of costlier power in peak hours to some extent AND compulsory purchases during off-peak hours at the cost of their own cheaper generation. We, accordingly, accept for 2004-05 the generation figure of 6615 MU, auxiliary consumption of 631 MU and energy sent out at 5984 MU. The Commission, however, notes that the auxiliary consumption overall is 9.5% and feels that CESC should try to reduce auxiliary consumption, particularly in their new generating stations like Budge Budge.

#### 14.4 Purchase of Energy

CESC has given the figures of projected purchase of energy for 2004-05 at 1145 MU from WBSEB. The break-up of the drawal during non-off-peak period has been shown as 864 MU and during off-peak period 281 MU. The Commission also noted that the rate to be paid by CESC to WBSEB is high in comparison to their own cost of generation on fuel cost basis and therefore, there is ample scope to reduce the purchase from WBSEB particularly at off-peak period. We, however, accept

the purchase of energy figure as projected by CESC with a direction that they should explore the possibility of purchasing energy at cheaper rate and also increase their own generation to the extent possible. However, we accept purchase of energy to the extent at 1297 MU in view of reasons given in para 14.5. ( c ) and advise that the purchase be made in most optimum manner to reduce the costs in the interest of the consumers from any source but within the ceiling of the rates payable to WBSEB.

#### 14.5 Expenditure Analysis on Fuel Cost & Power Purchase

Once the generation and purchase figures have been given, we may proceed to assess the expenditure on fuel and purchase. The fuel cost depends on fuel consumption, which in turn depends on certain parameters, viz;

- i) station heat rate;
- ii) secondary fuel consumption;
- III) specific consumption of oil;
- iv) gross calorific value of coal and oil;
- v) transit loss;
- vi) weighted average price of coal and oil.

The power purchase cost depends on the source of supplier, the rates of supplier both for demand charge, energy charge and also depend on peak, normal and off-peak purchase and consequential ratio, if any, prescribed therein.

a) CESC has given month-wise consumption details and furnished value of the primary and secondary fuel. CESC further stated that it procures its requirement of coal primarily from Coal India and to maintain the high power load factor and to manage the ash content, CESC is required to resort to judicious mix of supply from captive/imported sources for coal. As far as Low Density Oil is concerned, the same is procured from Hindustan Petroleum and Indian Oil Corporation. CESC has also enclosed the price schedules of coal companies and oil companies along with the station-wise break-up of fuel cost including cost of transportation. CESC has also submitted the declared heat value of coal, heat value of oil, grade-wise coal consumption based on the applicable Government of W.B norms. CESC has further submitted that its actual consumption is lower than the normative consumption on overall basis, and therefore CESC has based its claims on the lower of the two, which is the actual expenditure. CESC has further pointed out that though joint sampling is done on coal supplied both by ECL and BCCL, still major problems exist relating to both regularity and quality of supply from Coal India subsidiaries. CESC further stated that the actual heat value of coal sampled and measured by an independent agency are found to be lower than the stated. CESC has further stated that the average fuel cost for 2004-05 is only 112 paise/unit compared to 114 paise/unit in 2002-03 and 2003-04 even though there is an increase in coal price by over 6% in 2002-03 apart from rise in railway freight.

b) On the other hand, some of the consumers have objected to the statistics given by CESC on fuel consumption which according to them is at a rate higher than the actual, have pointed out that there is no merit order operation of the station, there is reliance on non-existent norms and non-improvement in calorific value of coal and heat value etc. The submissions and counter submissions have already been listed in earlier para.

c) The Commission has gone through the various submissions made both by CESC and the objectors and noted that the tariff order dated 7th November, 2001 of the Commission has been set aside by the Hon'ble Calcutta High Court which was thereafter modified by the Hon'ble Supreme Court of India vide its order dated 3rd October, 2002. The Commission has also noted that based on the above decisions, the actual fuel cost incurred by CESC, which was less than the overall normative cost based on the Government of W.B norms, was allowed in CESC'S revised revenue requirement determination for 2000-01 and 2001-02 vide order dated 11th November, 2002 based on the decisions of the Hon'ble Court. The Commission also observes that it is not

correct that there are no Government of W.B norms for 60 MW and above. The Commission also notes the provisions of the Act and the decisions of Hon'ble Court that the management inefficiency should not be passed on to the consumers. On the other hand, there is also some merit in the contention of CESC that there should be penalty and reward simultaneously and not penalty alone and further that the norms should not start from excellent and that inefficiency should be proved. The Commission has also noted that there still exists some problem in coal supplies and GCV as has been brought out repeatedly by various utilities.

d) Based on the above analysis, the Commission allows the fuel cost to CESC for various stations as claimed by them which is lower than earlier years. The total fuel costs on such basis comes to Rs.67162 lakhs. The fuel cost is based on coal price schedule prevalent from 17th August, 2002 and oil of April, 2003. Presently, we have not considered any incentive/penalty as the revised performance norms etc. are being examined and will be applicable shortly.

e) CESC has claimed Rs.30851 lakhs towards purchase of energy from WBSEB during the year. CESC has stated that the rate of WBSEB is based on the tariff order of the Commission dated 7th December, 2001. However, CESC has not included 52 Paise/Kwh towards interim sanctioned by WBSEB in respect of the year 2003-04 and which is continuing. The Commission does not approve of non-inclusion of such interim. The Commission also observed that since it has increased the sales figure than the CESC may be required to purchase more power than anticipated. As per calculation given in later part, CESC may be required to purchase 1297 MU instead of 1145 MU projected and 1335 MU during last year. The Commission noted that the purchase price from WBSEB is quite high at Paise 322/Kwh including interim and CESC should immediately make efforts to bring down the costs including purchase from alternative sources in the interest of its consumers. The Commission, therefore, allows the purchase of energy of 1297 MU at Rs.40510 lakhs from WBSEB or any other source as has been permitted in this order. The above cost has been calculated on proportionate basis after considering the interim and taking demand charges constant as given in the petition.

f) The FPPCA clause will be applicable on the above fuel cost and power purchase cost as per the formula given in this order in case the fuel price and or price of power purchase is increased from the base taken in the order. It is further ordered that the FPPCA formula will be applicable to reimbursement for actual increase/decrease in the price that vary from taken in the order.

#### 14.6 Employees Cost

a) The employees cost claimed by CESC for the revenue account of the company for the year 2004-05 is Rs.29265 lakhs. CESC has contended that the difference in employees cost over 2003-04 is mainly on account of terminal benefits etc. and reduction on account of VRS. CESC further stated that there has been an effort on the part of the licensee to reduce the number of employees from existing strength of about 14200 persons even though there has been a continuous decline in employees strength starting from 1996-97 onwards and yet, generation, sales and number of consumers have increased substantially. The net employees cost has marginally decreased from the last year, and CESC has claimed that the savings from the VRS of 2250 employees is Rs.5145 lakhs, after taking into account the effects of normal increases which otherwise would have to be given. The above cost includes VRS component of Rs.5476 lakhs which is to be paid in instalments.

Some of the objectors have questioned the high employees cost and various components of such high cost covered in the employees cost.

The Commission observes that the contribution for P.F and other approved fund is about 16% of the gross salary. This appears to be quite high as normally the P.F contribution is based on basic salary and not on allowances and facilities. The Commission, therefore, directs CESC to give a re-look at such contribution and come up with relevant details regarding contributions being made to various approved funds and the basis of its contributions. This apart, the claim for substantial expenses on employees welfare is found to be about 8% of the total salary & wages. The Commission also directs CESC to look into such total expenses afresh and come up with appropriate control methods to control the overall expenses under Total Employees Cost. The Commission also notes that CESC has claimed Rs.1000 lakhs towards payment of LIC for shortfall

in gratuity, which in the view of the Commission, is not allowable since after VRS, the shortfall in the gratuity fund/surplus, if any, since to be reassessed.

However, as the claims under the head 'employees cost' arise from contractual obligations and on the part of CESC, it is taking effective steps to reduce the number of employees and increase in efficiency/productivity of the employees, the Commission admits the amount as claimed, amounting to Rs.28265 lakhs. But, the Commission will like to watch the cost under this head to see whether the gains made by CESC by way of reduction of the staff strength and increase in productivity is consolidated in future years. Also CESC should keep a separate account of all payments made under VRS showing separately the payment made for compensation for VRS, Gratuity, Compensation for deferment, any other payments (with broad details) amount allowed by Commission and balance. The total amount paid by the Commission under VRS is Rs.8576 lakhs as under.

2001-02 - Rs.1600 lakhs

2002-03 - Rs.1500 lakhs

2003-04 - Rs.5476 lakhs

The balance, if any, required will be seen in next year after scrutinizing of the account/statement.

#### 14.7 Repairs & Maintenance

CESC has claimed Rs.13171 lakhs towards repairs & maintenance including the cost of consumables.

A number of consumers have objected to the amount of fund sought for under the head repairs & maintenance as claimed by CESC. Some of the consumers felt that the repairs & maintenance show both lack of foresight and inefficiency, as so much of repairs & maintenance should have been avoided by regular inspection. CESC has justified its expenses keeping in view its plant load factor, regular preventive and plant maintenance work to reduce un-planned break-down and also argued in view of varying age of its plants and precarious financial position CESC was not able to follow the appropriate maintenance scheduled earlier. The submissions made by the parties are already given in the earlier part of the order.

After considering the rival submissions and also noting that plant availability factor and plant load factor of the generating stations are proposed to be maintained at higher level, the expenses claimed are found to be less than last year. We allow the repair & maintenance cost of Rs.13171 lakhs for 2004-05 keeping in view that major expenses under R & M pertains to generation, transmission and distribution.

#### 14.8 Administrative, General & Miscellaneous Charges

CESC has claimed Rs.5191 lakhs under administrative, general and miscellaneous charges for 2002-03 excluding bad debts of Rs.2402 lakhs which has been considered separately by the Commission. The major portion of the expenses relates to traveling, vehicle, telephone, security, insurances, postage and other general miscellaneous expenses. CESC has also given the details of various requirements of the expenses relating to travelling, running of vehicles, advertisement expenses, stamp and courier charges, printing and stationery. P.F administrative fees, debenture trustee fees etc. It has added an expense of Rs.130 lakhs as cash collection charges to banks for lifting the cash directly by the banks. Some of the objectors raised objections on high management and administrative expenses and underscored the point that there is need to control such expenses. The rival submissions have been given in the earlier paras of the order.

The Commission, after carefully going through the rival submissions, notes that its order dated 11th November, 2002 directed CESC to curtail such expenses, particularly towards traveling, auditor fees and other expenses, and had reduced Rs.2 crores under 2001-02. The amount now claimed is Rs.5191 lakhs against Rs.4500 lakhs allowed in 2001-02 and Rs.4798 lakhs in 2003-04. The Commission also notes that under some of the regulations issued under the Electricity Act, 2003 certain expenses will go up whereas a few expenses may come down. The Commission, therefore, admits the projected expenditure of Rs.5191 lakhs under the above head subject to a direction to CESC that the latter should take some austerity measures to contain future rate of

increase in their management and administrative expenses particularly when the number of employees is going to be reduced significantly through the VRS route and increase in the productivity and efficiency of the rest of its employees and other suitable measures to contain such expenses.

#### 14.9 Coal and Ash Handling Charges

Coal and ash handling charges claimed by CESC is Rs.1407 lakhs. The expenses are less than that incurred in the last year. In view of this position, we admit the projected coal and ash handling charges amounting to Rs.1407 lakhs.

#### 14.10 Rates & Taxes

CESC has projected an expenditure of Rs.757 lakhs towards rent, rates and taxes (other than on profit). The Commission admits the projected Rs.757 lakhs which marks 6% increase over the same pertaining to previous year.

#### 14.11 Legal Charges

The legal charges claimed by CESC is Rs.500 lakhs. CESC has justified the expenditure in view of attending large number of court cases relating to theft of electricity and disconnected consumers etc. CESC has further justified the legal expenditure to bring down the T&D loss as the cumulative effect of the action taken by it against checking the menace of theft of energy and also on account of certain cases, which according to it were not necessary, but which have been imposed on the company. Some of the objectors, on the other hand, has pointed out and commented on such huge legal expenses.

The Commission after going through the rival submissions, appreciates, CESC's compulsion to legal action to contain legal recourse, check the menace of electricity theft to protect their business interest. But the Commission feels that such heavy spending on legal account need to be checked. The Commission is also of the view that CESC should be more prudent to curtail legal expenses and it should take proper steps in that direction. Since the Commission is of the opinion that such high cost of legal expenses are not prudent and there is scope to reduce the same by taking appropriate steps, the Commission allows Rs.465 lakhs as allowed during last year with the direction that CESC should take effective steps to further reduce such expenses.

#### 14.12 Water Charges

CESC has claimed Rs.582 lakhs toward water charges/cess. We admit the claim keeping in view the reasons explained by the CESC which is mainly on account of cess as levied by Ministry of Environment and Forests, Government of India.

#### 14.13 Audit Fees

CESC has asked for audit fees and expenses at Rs.35 lakhs. CESC has shown this amount towards statutory audit fees including reimbursement expenses, audit fee for public deposit, income-tax, P.F, other funds and fees for miscellaneous certifications. The Commission has however, noted that payment to the auditor for other services which were classified under the miscellaneous expenses earlier, is not shown and it is not clear if such payment to the auditors are being made or not. The Commission has noted that earlier such payment was substantial. The Commission has already disapproved of such heavy payments to the auditors for availing of such other services and the Commission hopes that the views of the Commission have been duly kept in view by CESC and no payment to the auditors has been included for any other services in any other head of accounts. The Commission will, however, review the position and CESC should indicate all payments to auditors in connection with various services separately and shall not combine under any other expenses head keeping in view of the observations of the Commission. In view of the above, we admit an amount of Rs.30 lakhs towards auditors fee and expenses, as was accepted for last year, and we direct CESC to contain this expenses under this head to the extent possible.

#### 14.14 Bad Debt

CESC has claimed Rs.2402 lakhs towards Bad Debt @ 1% of projected sales. CESC has justified the claim of Bad Debt on account of inadequate security deposit in case of LT supply and HT supply due to which doubtful debts are not fully adjustable against the security deposit. The licensee has further contended that the recovery of the debts through filing of legal suit is not justifiable in many cases from cost benefit angle and therefore, it has suggested a norm of allowing bad debt as a percentage of turn-over.

A number of consumers have registered their objections to the claim on bad debts, as according to them it puts more burden on the honest consumers due to inefficiency of CESC, in the latter's failure to take prompt action in recovering of dues.

After considering the rival submissions, the Commission admits that a part of the debt going bad is a phenomenon relating to all sorts of business activity. But it should be less so in case of CESC where there monthly billing is in vogue for all the consumers and most of the billing and collection operations are fully computerised and in urban area. The reasons for non-recovery of admissible security has not been fully explained. It has been also noted by the Commission that CESC itself has not been following any norm as such and bad debt as a percentage of sale revenue is varying noticeably during the last 4 years. The Commission has also glanced through the list of defaulting consumers as on 30th September,2002 enclosed with the tariff petition for certain categories of the consumers the list having been subdivided into disconnected supplies, the court cases and others. The Commission can understand the reasons of continuation of default in the cases which are in the court, but why the action has been delayed or not taken in other cases is not clear. There is a substantial number of cases outstanding against the Government Departments, both Central and the State, municipalities which cannot strictly be termed as bad debts in normal circumstances. The Commission directs CESC to take prompt and speedy action for its recovery of the debts and allows only Rs.1200 lakhs as was allowed last year against their claim of Rs.2402 lakhs in view of the reasons indicated above.

#### 14.15 Erosion of Consumer Base

CESC has claimed Rs.700 lakhs towards erosion of consumer base mainly on account of problem associated with delayed recovery of tariff due to which a number of billable consumers (including temporary consumers) continues to exit the system. The company has further contended that longer the span of recovery, the greater is the erosion of consumers base, and that this is beyond the control of the company. The objectors have raised observations on the claim relating to erosion of consumer base stating that those should not be allowed.

After considering the rival submissions, the Commission admits that for the erosion of consumer base happens if there is a delay in tariff announcement. There may be a possibility in the erosion of consumer base relating to the temporary consumers unless there is a mechanism to charge higher tariff from them or adequate security deposit is kept for a longer period. The Commission also observes that this position cannot be avoided in revision of FPPCA claim from retrospective effect unless there is an arrangement of suitable security deposit of appropriate amount for such contingencies. The Commission admits that there is a merit in the submission of CESC and will put in place some suitable mechanism. The Commission also noted that tariff for 2004-05 is being decided sufficient in time. Therefore, Commission does not allow claim in the revenue requirement at present. The Commission will also examine that whether the claim for erosion in consumer base can be taken care of while fixing the norms/provisions for bad debts before fixing the norms for bad debts in future.

#### 14.16 Interest

CESC has claimed interest amounting to Rs.20322 lakhs as interest on loans. The net interest claimed by it after disallowing on excess cost of Budget Budget (Rs.970 lakhs) therefore, is Rs.19352 lakhs. In addition, interest of Rs.1878 lakhs is claimed for interest on consumers' security deposit. The borrowing includes borrowing in foreign currencies i.e. US \$, GBP, Yen and DM. The equivalent amount of interest payment in rupees of foreign currency payments is projected at Rs.3789 lakhs. A part of the foreign currency loan has variable rate of interest/interest rate linked to LIBOR which may vary depending on the LIBOR rate and exchange rate at the time of payment. CESC has given detailed calculations of interest charges including amount of the loan, tenure, rate of interest and other relevant details for interest to be charged in

the tariff. The interest on consumers security deposit has been calculated @ 5.5%. CESC has further contended that it has already concluded in November,2003 a debt restructuring package by which it could reduce the rate of interest and henceforth they will carry interest rate at 13.5%.

The objectors on the other hand, have made critical comments on high amount of interest in case of CESC. Some of the objectors have felt that its claims are inflated and it does not repay loan in time, thereby leading to the accrual of interest, which can well be avoided. Some of the objectors have also felt that CESC is hardly using any of its own money and also that it should not require loan to such an extent as has been projected. The submissions of the parties in the brief is recorded in the earlier chapter of the order.

The Commission appreciates the problems associated with getting the rates of committed interest reduced from the consortium of such a large number of bankers/institutions etc. when figures of balance-sheet are adverse. The Commission appreciates the fact that certain positive results have been achieved by CESC in this regard. But still more efforts will need to be made by CESC to further reduce the rate of interest and effect a speedy payment of costlier loans. The Commission also hopes that with speedy recovery of the outstanding arrears and settlement of its claim, CESC will be in a position to reduce the financing cost at a more accelerated rate in future. In the light of the above observations and the facts and the materials on record, the Commission has decided an amount of interest to be allowed as under separately for foreign loan and Indian loan.

a) Foreign Loan – The interest payment on foreign loan mainly depends on the rate of exchange prevailing at the time of payment on the outstanding loan for the year 2004-05 and admit as per the amount claimed amounting to Rs.3789 lakhs.

b) Indian Loan – CESC has claimed Rs.16533 lakhs on interest on Indian Loan. The claim includes Rs.970 lakhs towards interest on loan towards capital cost disallowed for Budget Budget which is also disallowed under the head of interest (CESC has reduced the disallowance on Budget Budget by way of separate item). The balance interest of Rs.15563 lakhs is on the loan taken from mainly nationalised banks, Indian financial institutions, Govt. of W.B with some amount towards fixed deposit and debentures. The Commission also notes that interest is showing a declining trend. The Commission accepts the interest of Rs.15563 lakhs. The interest on security deposit as Rs.1878 lakhs has been calculated at 5.5%. Since as per regulations interest to be allowed is 6% per annum the interest on security deposit admitted is Rs.2048 lakhs. The total interest including foreign loans, Indian loans and interest on security deposit admitted is Rs.21400 lakhs.

c) Other finance charges – Under this heading we have dealt with claims pertaining to foreign exchange rate variation, lease rental and charges on temporary financial accommodation and other financing charges/costs.

CESC has claimed Rs.22741 lakhs toward the above charges. CESC has justified the incurring of other financing charges on the ground of delayed revision of tariff. The company has contended that recovery of arrears is spread over several years and such inordinate delay leads to non-payment of dues to suppliers and/or delayed payment to the latter as also use of additional financing facilities keeping in view that its own entitled dues have been allowed to be recovered over a long period of time. CESC has further contended that the concept of prudent financial management may not apply in such abnormal situation and the company has to find ways and means to survive. CESC has also commented on the earlier years' decision wherein delayed payment surcharge and part of the finance charge was disallowed. CESC has also contended that if it is allowed to recover its dues in time, there will be no claim for DPS. CESC has also argued that temporary accommodation was unavoidable. On the other hand the objectors raised objection on such high incidence of other financing charges and felt that this is mainly on account of uneconomical utilisation of resources, lack of proper financial control, inefficiency of CESC which really does not require financing. The rival submissions of the charges has already been recorded in brief in earlier chapter.

The Commission has gone into the rival submissions and noted that claim for foreign exchange rate variation arises on account of re-payment of foreign currency loan at a rate which is different from the rate prevailing at the time of the original borrowing which has been recorded in the books of the CESC based on the date of respective drawals of the loan instalments. The difference in the rate prevailing at the time of drawal and the rate prevailing at the time of payment is really

an actual cost and it affects the cost in two ways. First, the amount of interest payable goes up or down depending on the exchange rate on the dates of remittance and second, the amount of loan instalment to be paid also undergoes changes based on the prevalent rate of exchange. While the first part is covered under interest, the second part is not so covered under interest. An additional amount is required then for licensee to repay the loan if the exchange rate goes adverse. Alternatively if the exchange rate goes favourable/down the licensee has no cause to worry. There is a third angle concerning how to treat depreciation for such additional capital cost consequent on loan repayment in capital cost in case additional financial cost is to be capitalized. However, we are only considering here the first and the second items. The third item is not permissible under Schedule Sixth present in case of licensee. The CESC has claimed Rs.7843 lakhs towards foreign exchange rate variation on the instalment of the loan payable during the year 2004-05 and has provided the details in the petition on such amount repayable in foreign currency amount in original rate and amount at the derived rate. This increase in rate is calculated on the basis of the average exchange rate and may be different for each transaction depending upon the individual remittance. The Commission notes that the claim of Rs.7843 lakhs include Rs.2205 lakhs of previous year which is not admissible in view of earlier discussion relating to actual expenditure/excess income/expenditure of previous years. The Commission thus admits the claim of Rs.5638 lakhs on this count.

As regards lease rental, CESC claimed Rs.2798 lakhs. The Commission has already specifically directed CESC to avoid taking assets on lease. CESC has confirmed that they have initiated the action in this light. We admit the amount of Rs.2798 lakhs.

On financing charges, CESC has claimed Rs.12100 lakhs for procurement of coal and power etc., cash credit facilities and temporary accommodation and other financing costs to meet their other financing needs in view of the reasons explained by them as above. The Commission has noted that the arrear amount collection shown during 2004-05 is very low in comparison to the total arrears. The Commission has also noted that delay in arrear recovery is neither in the interest of the CESC nor in the interest of the consumers. The Commission is of the view that it goes against the interest of the consumers as has been shown in the orders for 2002-03 and 2003-04. If the rate of recovery is slow, CESC will be resorting to high cost borrowing which is later claimed and possibly allowed in the tariff. Therefore, it cannot be said that with this delayed recovery consumer is paying without charge. The consumers are paying through a higher tariff and that too at much higher rate if the costlier loan cannot be avoided. The Commission also notes that CESC has started taking action in reducing its interest liability and achieved moderate reductions. In view of the above discussion, Commission agrees to allow a sum of Rs.8200 lakhs towards charges for temporary financial accommodation, bill discounting and cash credit, after disallowing Rs.2198 lakhs on the same basis and principles which were followed in the order for 2002-03 and 2003-04 and given in detail in earlier part. However, the Commission simultaneously directs CESC that this expenses should be reduced to Rs.50 crores in next 4 years by improvement in their realization, recovery of the areas, better cash flow management etc. This reduction shall be in addition to the normal repayment of the loan. If there is any default in repayment of the latter, the additional cost arising from the default will not be allowed in the tariff in future unless the licensee has totally convincing reasons for such default, as a substantial part of the problem is regularly to be removed in near future.

The other finance charge includes Rs.400 lakhs towards guarantee commission on Budge Budge loan, Rs.181 lakhs towards bank charges, LC charges etc. and Rs.1000 lakhs for balance debt restructuring expenses and Rs.122 lakhs on public deposit, totaling to Rs.1703 lakhs, which is also allowed by the Commission.

In view of the above discussion, the Commission agrees to allow Rs.9903 lakhs towards other finance charges including charges on temporary financial accommodation etc. and against total claim of Rs.12100 lakhs.

#### 14.17 Delayed Payment Surcharge

CESC has not claimed any amount in delayed payment surcharge.

#### 14.18 Depreciation



CESC has claimed Rs.32283 lakhs towards depreciation for the financial year 2004-05 keeping in view the terms of notification issued by the Government of India under the provisions of Electricity (Supply) Act, 1948. The above amount includes depreciation charges on disallowed capital cost of Budge Budge project amounting to Rs.2935 lakhs. The allowable depreciation charges, thus, comes to Rs.29348 lakhs which is admitted by the Commission.

#### 14.19 Write-off of Intangible Assets

The write-off of intangible assets of Rs.66 lakhs is admitted by the Commission.

#### 14.20 Special Appropriation

a) CESC has claimed Rs.8590 lakhs towards special appropriation. In regard to statutory appropriation towards contingency reserve under the provisions of Sixth Schedule of Electricity Act, 1948, we allow special appropriation of Rs.1206 lakhs as claimed. The Commission, however, notes that CESC has not invested the amount of contingency reserve as has been allocated to it for the earlier years till now. The Commission has also noted the plea of CESC that it could not invest any contingency reserve due to its financial position which is quite adverse. The Commission will only like to advise CESC to follow the relevant provisions in this regard.

b) CESC has claimed Rs.4162 lakhs due to disallowance of due cost of Budge Budge in earlier years for which special appropriation of Rs.8324 lakhs has been approved by the Government of West Bengal. Also Government of West Bengal has approved foreign exchange variation of Rs.1380 lakhs. As decided in order for 2003-04, we admit Rs.2426 lakhs for this year and for balance will review the claim next year as has been discussed earlier.

c) CESC has also claimed an instalment of Rs.3125 lakhs against regulatory asset of Rs.15628 lakhs consequent upon disallowance of certain charges by the Commission in earlier years and consequent loss of return. The Commission noted temporary accommodation and other finance charges has been allowed. The Commission also noted that actual loss, if any, can be allowed under Schedule Sixth subject to other provisions of the Acts. The Commission, therefore, disallows this claim. The special appropriation approved by the Commission is Rs.3632 (4602.4) lakhs.

14.21 In this part of our order, we will ascertain the capital base of CESC for the year 2004-05, different components of the capital base and net capital base on which the company is entitled to get return at standard rates and the amount of reasonable return. The same are being enumerated hereunder.

#### a) Original Cost of Fixed Assets

CESC has projected the original cost of fixed assets at Rs.520882 lakhs at the end of the financial year 2004-05. The projected cost does not include the effect of revaluation of certain fixed assets done by the company in the year 1993-94.

The company has justified the incurrence of some capital expenditure which according to them is essential in consumers interest as quality and reliability of services will otherwise suffer. They have further stated that such expenditure is required to take care of increase in number of consumers and is typically less than 5% of gross fixed assets. The company has further stated that the booking of the expenditure has been done between transmission & distribution of high voltage and distribution of medium and low voltage based on power supply at 11 KV, between 3.3 KV and 11 KV and below 3.3 KV respectively. CESC has also given the details of major capital expenditure proposed to be incurred during 2004-05 along with brief justification of their incurrence and has stated that in view of the plant repair and maintenance including overhauling etc. the value of scrapping and re-determination of asset is not significant. The projected amount includes the total cost of Budge Budge Plant estimated at Rs.268172 lakhs. However, CESC has reduced from the cost and expenses the impact of additional cost incurred on the Budge Budge Plant over the cost approved by the Hon'ble Supreme Court of India. CESC has further justified the incurrence of projected capital addition mainly on account of strengthening the system, replacements of new items, up-gradation, safety requirements, load growth etc. These matters have been dealt with in details while dealing in capital work in progress.

Some of the objectors have objected to incurrence of further capital expenditure which according to them has not been fully justified/necessary. On the other hand, CESC has justified the incurrence of such expenditures. The respective submissions of the parties have already been listed earlier.

The Commission has gone through the rival submissions and has noted that CESC is incurring substantial amount of capital expenditure every year and the latter has given justification for incurrence of such expenditure item-wise on major expenditure. The Commission also notes that while CESC has had financial problems due to which it was unable to pay its loans in time, then the company should have been more prudent in incurrence of capital expenditure in earlier years/future. The Commission also recognises the fact that some amount of capital expenditure is necessary to maintain the standard of services, system requirements, safety requirements, requirements on account of load growth etc. as well as such expenses for environmental compliance. Keeping in view the above, the original cost of fixed assets as being admitted by us for the financial year 2004-05 works out as under:-

Rs. in lakhs

Opening Balance 468088

Add: Capitalisation of work in progress after  
adjusting less capitalization earlier. 16945  
485033

Less:

Assets to retire 500  
Net original cost of fixed assets 484533

#### b) Consumers contribution

The balance amount of consumers contribution towards construction of service line etc. is Rs.27483 lakhs at the beginning of 2004-05 whereas CESC has shown Rs.24442 lakhs and the latter does not include advance. CESC has projected receipt of Rs.2400 lakhs as first contribution from the consumers on this account during the year, and shown a closing balance of Rs.26842 lakhs.

It has, however, been noted that certain amounts received from the consumers as contribution towards capital works always remain unadjusted under the appropriate head of accounts and has been shown as advance in the accounts by the CESC. The balance amount of such unadjusted payment received from the consumers for such capital works was Rs.3640 lakhs as per beginning of 2003-04 and the same is adopted as outstanding at the end of 2004-05 in the absence of details. The Commission notes that this amount received from consumers towards capital works are being utilised by CESC on the capital work-in-progress and this amount is shown awaiting adjustment/incurrence and it cannot be considered and taken outside the purview of accounts for the purpose of determination of revenue requirement. The Commission, therefore, is adding this amount to the consumer contribution while reducing the same from the fixed assets capital work-in-progress. To that extent CESC's net capital base/return will get reduced.

In view of the above, consumer contribution for the purpose taken from the cost of fixed assets is Rs.30482 lakhs which includes Rs.3640 lakhs of advance.

#### c) Cost of Intangible Assets

The projected balance of intangible assets (net of write-off) has been shown as Rs.995 lakhs at the end of 2004-05 which is admitted by us.

#### d) Original Cost of Work-in-progress

CESC has projected the closing balance of work-in-progress at Rs.7292 lakhs after capitalisation of Rs.17759 lakhs during the year. The opening balance of WIP was Rs.7610 lakhs. CESC has shown

the capital expenditure under planned general capital expenditure and special projects amounting to Rs.13708 lakhs and Rs.3733 lakhs respectively.

The observations of the objectors and the justification of CESC have already been given under the head fixed assets.

The Commission notes that a major expenditure in generation is related to ash disposal system, ESP for New Cossipore Station, Refurbishment of generations at TGS and other capital expenditure mainly at New Cossipore Station. The capital expenditure in the distribution sector has been projected at Rs.12552 lakhs which is mainly on account of purchase of meters, supplies for new connection and network resurfacing, meeting load growth system stabilising etc. The Commission agrees capital work-in-progress of Rs.7292 lakhs for 2004-05.

e) Investment in Contingency Reserve

CESC has projected an investment of Rs.4500 lakhs as investment in contingency reserve.

As provided in para xvii (i) (d) of the Sixth Schedule of the Electricity (Supply) Act, 1948, the amount of contingency reserve invested compulsorily in the security authorized under Indian Trust Act, 1882 is to be included in the computation of capital base. Some of the objectors have raised objections to non-investment of contingency reserve in the approved securities earlier by CESC. CESC has justified its non-investment due to its tight financial condition and it has projected to invest Rs.4500 lakhs during the year 2004-05 accordingly.

The Commission find from the notes incorporated in the accounts for 2002-03 that even the contingency reserve held 1999-2000 amounting to Rs.5270 lakhs has not been invested. CESC is now projecting about an investment of Rs.4500 lakhs during the year 2004-05. The Commission has also noted that CESC has not invested the amount due to its financial stringency and the position is not likely to improve substantially during the year 2004-05. The Commission, therefore, is not inclined to agree that CESC will be in a position to invest Rs.4500 lakhs as projected by the company and therefore, disallows the same for the purpose of revenue requirement. The investment of Rs.4500 lakhs, if made, may be taken from the balance of outstanding investments to be made for earlier years.

f) Working Capital

CESC has projected a working capital requirement for 2004-05 at Rs.16283 lakhs representing cost of fuel at Rs.5520 lakhs, stores Rs.8263 lakhs and average cash flow and bank balance at Rs.2500 lakhs. CESC has justified the fuel cost based on average stock of 30 days. CESC has also justified cost of stores other than fuel, but has not given month-wise details as required under Sixth Schedule.

Some of the consumers have objected to the projected working capital requirement and felt that the same should be worked out as has been worked out by the Commission earlier and ASCI. Some of the objectors are of the view that CESC does not require any working capital. CESC has argued that as the tariff is to be fixed in advance, a reasonable basis is required beforehand for working out cash and bank balance, stock of stores and fuel. CESC has further contended that based on these norms, the working capital requirement works out to Rs.163 crores.

The Commission has gone into the rival submissions and in view of the reasons advanced by CESC, agrees with the latter's projection of working capital of Rs.16283 lakhs.

g) Accumulated Depreciation

CESC has shown an accumulated depreciation of Rs.212304 lakhs at the beginning of the year 2004-05. The depreciation chargeable during the year, based on straight line method by applying the rates and in the manner as approved by the government under the provisions of Electricity (Supply) Act, 1948 has been shown as Rs.32283 lakhs. The accumulated depreciation as well as the depreciation shown by CESC in the above figure include the cost towards disallowed portion of Budge Budge Power Station which has been separately assessed by CESC. The amount of accumulated depreciation and the depreciation for the year for such disallowed portion of Budge Budge Power Station is Rs.14796 lakhs and Rs.2935 lakhs. The total withdrawal from depreciation

during this year and earlier year is Rs.2374 lakhs. The balance accumulated depreciation therefore, works out to Rs.226406 lakhs excluding impact of Budge Budge which has been admitted by the Commission.

h) CESC has given statements of loan for 2004-05 and stated that due to delayed recovery of arrears amounting to Rs.500 crores the company could not meet its payment obligation. Still CESC has tried to reduce interest on financing charges. CESC has further stated that lenders have categorically refused to give any further loan to CESC. CESC has also worked out the repayment for 2004-05 and stated that foreign currency loans are recorded in rupees. It has further given the details for loan taken from various institutions, the period of loan, original amount of loan, outstanding as on 31st March, 2004. CESC also stated that it is engaged in discussion with the lenders on various issues relating to delay in payment obligation. CESC has also quoted various sections of the Sixth Schedule regarding their interpretation on the loan and its depiction.

The objectors have made a number of observations on the high amount of loan, rate of interest and some of the consumers have even contended that CESC does not require any loan to finance such expenditures for its operation. CESC, however, has justified its loan. The rival submissions have already been given in the earlier part of the order and also while dealing interest charge for 2004-05 along with the view of the Commission about admissibility of the interest on loan. Based on the analysis and information given by CESC, the position of its outstanding loans and borrowings towards specified and general capital works, as given in the petition, works out to Rs.147884 lakhs.

The outstanding balance of foreign currency loans as well as their repayments have been taken into account in rupee currency at the original exchange rates on the respective dates of drawal of loans.

The outstanding balances of loans and borrowings shown above includes disallowance portion of Budge Budge Power Station loan portion. The loan taken for such disallowance portion of Budge Budge Power Station is Rs.6729 lakhs and after deduction of the same, outstanding loan balance of Rs.141155 lakhs has been admitted by the Commission.

#### i) Security Deposit from Consumers

CESC has projected security deposit at Rs.2500 lakhs for 2004-05. With such projected additions, the balance of consumer security deposit comes to Rs.36652 lakhs.

The Commission has observed that cash security deposit from the consumers is low and not equivalent to 3 months' revenue requirement. The Commission has also noted that though the tariff has substantially gone up in 2001-02 and 2002-03, the security deposit has not increased in a commensurate manner as the tariff has been re-determined in the later part of the 2002-03. In view of the above position, the Commission accepts the projected figure of R.36652 lakhs.

#### j) Development Reserve, Investment Allowance Reserve & Consumers Accounts

The balance in the development reserve is Rs.220 lakhs, investment allowance reserve is Rs.1168 lakhs and the and consumers accounts is Rs.71 lakhs which is unaltered from the previous year. The Commission accepts the projected figures.

#### k) Statement of Net Capital Base

Based on our analysis and decisions recorded in earlier paragraphs we now draw the Statement of Net Capital Base.

		<b>Rs. in Lakhs</b>	
		<b>2004-05</b>	
<b>Particulars</b>		<b>As per CESC</b>	<b>As Admitted</b>

1.	Original cost of Fixed Assets	520882	484533
	Less : Contribution from consumers	26842	30482
		494040	454051
2.	Cost of Intangible Assets (net of write-off)	995	995
3.	Original cost of Works-in-Progress	7292	7292
4.	Investment in Contingency Reserve	4500	Nil
5.	Working Capital		
	(a) Cost of fuel in hand	5520	5520
	(b) Other Store, materials & Supplies	8263	8263
	(c) Cash and Bank Balance	2500	2500
	Total (A)	523110	478621
	<b>Less :</b>		
6.	Accumulated Depreciation	244137	226406
7.	Loan	147884	141155
8.	Security Deposit from Consumers	36652	36652
9.	Development Reserve	220	220
10.	Investment Allowance Reserve	1168	1168
11.	Consumers Accounts	71	71
	Total (B)	430132	405672
12.	Net Capital Base (A - B)	92978	72949
13.	Less : Impact of Budge-Budge Power Station cost over-run-disallowed	14160	--
14.	Net Capital Base considered for allowing Returns	78818	72949

#### I) Reasonable Return

Based on the above decisions in regard to Net Capital Base, we allow Reasonable Return to CESC for the year 2004-05 following the provisions contained in the Sixth Schedule to Electricity (Supply) Act 1948. Our computations of Reasonable Return are based on Bank Rates notified by RBI and applicable for the concerned financial year and on the age-wise break-up of Net Capital Base provided by CESC.

<b>STATEMENT OF REASONABLE RETURN</b>			
		<b>Rs. in Lakhs</b>	
		<b>For 2004-05</b>	
		<b>As Claimed</b>	<b>As Allowed</b>
	A. Return as Standard Rate on Capital Base		
1.	Capital Base upto 31.3.65	3362	3362
	Applicable Rate	7%	7%
	Return	235	235
2.	Capital Base from 1.4.65 to 31.3.92	6163	6163
	Applicable Rate	8.0%	8.0%
	Return	493	493
3.	Capital Base from 1.4.92 to 31.3.99	16086	16119
	Applicable Rate	11.00%	11.00%
	Return	1770	1773

4.	Capital Base from 1.4.1999 onwards	53206	47305
	Applicable Rate	16%	16%
	Return	8513	7569
	Total Return as Standard Rates on Net Capital Base [(1) + (2) + (3) + (4)] = (A)	11011	10070
	<b>B. Other Standard Items</b>		
5.	0.5% on Development and Investment Allowance Reserve	7	7
6.	0.5% on Loans	739	705
7.	Performance / Incentive	3745	--
8.	Less : Budge Budge	34	--
	Total (B)	4457	712
	Total (A) + (B)	14469	10782

The performance Incentive of Rs.3745 lakhs has not been admitted by the Commission in view of the reasons indicated under fuel costs.

#### 14.22 Other Income

CESC has projected non-power tariff income of Rs.5076 lakhs for the year 2004-05, and has given broad details of other income in the petition.

The Commission has however, noted that other income projected is smaller than what it be. The main reduction in 2004-05 is projected on account of less DC surcharge/penal charge for current year. No reason for reduction of this DC surcharge/penal charge has been indicated. The Commission, therefore, disallows the reduction of Rs.725 lakhs from the other income. The Commission has also noticed that since the action on control of pilferage of theft of energy has increased, then penal recovery charge should show an increase in receipts. The Commission, therefore, re-assess the other income for the above adjustment and works out to Rs.6235 lakhs which is same as is approved for last year.

#### 14.23 Unaccounted Energy

As discussed earlier, gross energy for sale is 7281 MU including net sent out at 5984 MU from own generation and purchase of 1297 MU. The allowable T&D loss works out to 1238 MU. The balance energy to be sold is 6043 MU. Also the consumption in office is 10 MU as allowed during last year which may go down further in future because of closure of Mulajore and VRS to 2250 employees. The balance energy works out to 6033 MU which has been included in sales leaving unaccounted energy at NIL.

#### 14.24 Statement of Revenue Requirement - 2004-05

Based on our analysis and decision recorded earlier, we finally draw the admitted statement of revenue requirement as under:-

<b>STATEMENT OF REVENUE REQUIREMENTS</b>			
		<b>Rs. in Lakhs</b>	
		<b>2004-05</b>	
		<b>As Claimed</b>	<b>As Admitted</b>
1.	Fuel Cost	67162	67162
2.	Purchase of Power	30851	40510
3.	Employee Cost	29265	28265

4.	Repairs & Maintenance	13171	13171
5.	Administrative, General & Misc. Charges	5191	5191
6.	Coal & Ash handling charges	1407	1407
7.	Rent, Rates & Taxes	757	757
8.	Legal Charges	500	465
9.	Audit Fees & Expenses	35	30
10.	Bad Debts & Erosion in Consumer Base	3102	1200
11.	Water Charges	582	582
12.	Delayed Payment Surcharge	--	--
13.	Interest	22200	21400
14.	other Finance Charges		
	(a) Foreign Exchange Rate Variation	7843	5638
	(b) Lease Rental	2798	2798
	(c) Other financing charges including on temporary financial accommodation	12100	9903
15.	Depreciation	32283	29348
16.	Intangible Assets Written-off	66	66
17.	Total Revenue Expenditures (1 to 16)	229313	227893
18.	Reasonable Return	14469	10782
19.	Special Appropriation	8590	3632
20.	Gross Revenue Required	252372	242307
21.	Less :		
	(a) Other Non-tariff Income	5076	6235
	(b) Budget-Budget Disallowances	4001	--
		243295	236072
	Net Projected Energy available of sale (MU)	5780	6033
	Average Cost of Supply (Paise/Kwh)	421.00	391.30
		431*	

\* including impact of adjustment in purchase price from WBSEB based on interim order of the Commission

Budget-Budget disallowances as shown separately by CESC has been allocated to respective heads of expenses.

14.25 With the revenue requirement determination for 2004-05, we have to determine the tariff for the year.

#### CHAPTER – 15 : TARIFF

15.1 In our earlier part of the order, we had indicated our views on the various issues and also have since determined the revenue requirement separately for the financial year 2002-03, 2003-04 and 2004-05. The Commission is also aware that CESC has already been authorised to recover Rs.3.90 per Kwh tariff in 2001-02 which was also continued pending determination of tariff for that year. The Commission has also noted that the Commission has given an interim order by which CESC was authorised to charge 25 paise/unit over the applicable tariff with effect from 1st April,2003 and there was adjustment in DC charge w.e.f 1st June,2003. The Commission also passed an interim order on 31st March,2004 wherein status-quo was allowed in tariff as was prevailing on 31st March,2004.

15.2 a) The Commission retains and fixes the tariff for 2002-03 as has been approved by the Commission for the year 2001-02 for all the categories of consumers keeping in view the discussion made earlier. The shortfall between the admissible revenue requirement for the year and tariff realizable is carried over to the year 2004-05. The refund or recovery to individual consumers, if any, based on this order for the year has to be made but CESC may require some time to recast its bills for the year based on this tariff order for 2002-03. Also it will be practical difficulty for some of the consumers who are to pay more now, under this order, to pay at an enhanced rate and at the same time to clear the arrears at that rate for the full year. It will be an equal practical difficulty for the utility to return/adjust the sums payable to those consumers who had paid more than the rate which has been determined through this order in lump sum or few instalments.

b) Keeping this aspects in mind the Commission feels that there should be a breathing time both for the CESC and for the consumers and direct that the arrears either for realization or for refund/adjustment is to start from the billing month of August,2004 and shall be spread over a period of 24 months from that date in equal monthly instalments. It is further made clear that refund in terms of the order is to be made after adjustment of any admissible outstanding recovery and in proportion to all persons entitled to refund/receipt from the sums realized from the arrears. No interest shall be paid to or by the utility for any realization/refund/adjustment under this order.

15.3 a) The Commission retains and fixes the tariff for 2003-04 as has been approved by the Commission for the year 2001-02 plus 25 paise per Kwh + DC surcharge of 25 paise per Kwh for all the categories of consumers keeping in view the discussion made earlier. The shortfall between the admissible revenue requirement for the year and tariff realizable is carried over to the year 2004-05. The refund or recovery to individual consumers, if any, based on this order for the year has to be made but CESC may require some time to recast its bills for the year based on this tariff order for 2003-04. Also it will be practical difficulty for some of the consumers who are to pay more now, under this order, to pay at an enhanced rate and at the same time to clear the arrears at that rate for the full year. It will be an equal practical difficulty for the utility to return/adjust the sums payable to those consumers who had paid more than the rate which has been determined through this order in lump sum or few instalments.

b) Keeping this aspects in mind the Commission feels that there should be a breathing time both for the CESC and for the consumers and direct that the arrears either for realization or for refund/adjustment is to start from the billing month of August,2004 and shall be spread over a period of 24 months from that date in equal monthly instalments. Till August, 2004 the existing manner of realization / refund is to continue. It is further made clear that refund in terms of the order is to be made after adjustment of any admissible outstanding recovery and in proportion to all persons entitled to refund/receipt from the sums realized from the arrears. No interest shall be paid to or by the utility for any realization/refund/adjustment under this order. With the passage of final tariff for 2003-04, the interim order shall not be now applicable for that year.

15.4 Based on the above analysis the amount to be recovered by CESC through the tariff increase for 2004-05 including carry over of earlier years works out to as under:-

		Rs. in Lakhs
a)	Revenue requirement for 2002-03	Rs.221749 Lakhs
	Saleable units during 2002-03	5545 MU
	Tariff realized / realizable on average cost of supply of Rs.3.90 per Kwh. (5545 MU x Rs.3.90 per Kwh)	Rs.216255 Lakhs
	Net balance realisable (i)	Rs.5494 Lakhs
b)	Revenue requirement for 2003-04	Rs.241698 Lakhs
	Saleable units during 2003-04	5790 MU
	Tariff realized / realizable on average cost of supply of Rs.4.15 per Kwh. (5790 MU x Rs.4.15 per Kwh including 25 Paise/Kwh interim tariff)	Rs.240285 Lakhs



	Net balance realizable (ii)	Rs.1413 Lakhs
c)	Shortfall to be recovered during 2004-05 (i + ii)	Rs.6907 Lakhs
	Revenue requirement for 2004-05	Rs.236072 Lakhs
	Total	Rs.242979 Lakhs
	Saleable Unit (6033 MU)	
	Average Tariff	402.73 P/Kwh

15.5 Tariff schedule for 2004-05 and other associated conditions are given below.

a)	Category/Sub-category of Consumers	Energy Charge Paive/Kwh (gross rate)
	LV/MV	
i)	Domestic per month	
	Up to 25 Units	210
	Up to 60 Units	245
	Up to 100 Units	310
	Up to 300 Units	380
	Above 300 Units	465
ii)	Commercial per month	
	Up to 60 Units	355
	Up to 100 Units	410
	Up to 300 Units	460
	Above 300 Units	490
	Private Hospital / Educational Institutions includes hospital and educational institutions which are not covered under public utility service	395
iii)	Industrial per month	
	Up to 500 Units	380
	Up to 2000 Units	435
	Above 2000 Units	460
iv)	Public Utility Service	
	a) Public lighting, Water works & Pumping Stations & Govt. Hospitals / Educational Institutions	350
	b) Public Bodies	435
v)	HV Supply	
	Domestic	410
	Commercial	455
	Industrial	395
	Utility Services	360
	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. However, meter rentals for DC supplies shall increase by 30% with effect from 1st July,2004.

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 with a minimum of 60 paise/kwh.

iv) The peak period energy charge will be 30% more than the normal energy charge indicated at 15.5(a)(v) above whereas off-peak rate will be less by 25% in case of TOD tariff applicable to high voltage industrial consumers. CESC should also introduce TOD tariff for HT commercial consumers on optional basis within six months of the date of order. 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 and normal period will be 6.00 A.M up to 5.00 P.M. CESC should introduce TOD tariff for HT public utility service on optional basis within six months from the date of order.

v) The demand charge on H.T industrial shall be Rs.160 / kva / month. Demand charge for any month shall be based on maximum KVA demand recorded between 6.00 A.M & 10.00 P.M of the following day or 75% of average maximum demand of preceeding 12 months or 75% of the contract demand whichever is higher unless the demand itself has been brought / re-sanctioned downward. In such a case demand charges shall be levied with reference to revised demand. In case KVA demand cannot be determined but KWH demand is determined then the demand charge rate in KVA to be converted appropriately. The power factor to be taken will be 0.85.

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 will also not be applicable where force majeure applies. This is without prejudice to any other compensation if he is entitled as per any Act or the Regulations made under Electricity Act, 2003.

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 33KV 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 5% 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 5% on the energy charge on energy supplied to domestic consumers between 101 units to 150 units per month and 2.5% 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.

15.6 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 3 months from the due date of payment, delayed payment surcharge shall be increased to 1.5% per month for next 3 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.

15.7 The drawal of power more than sanctioned contract demand will attract following additional charges as may be applicable where meters record demand in KW/KVA for different periods and or consumption in different periods.

	<b>Demand Charge for the month</b>	<b>Energy charge on excess drawal</b>
During normal period	20% extra	30% extra
During peak period	30% extra	100% extra
During off peak period	No extra upto 20% excess and thereafter 10% extra	10% extra after 20% excess

This charge shall be applicable from 1st July,2004 and existing practice will continue till then

15.8 Temporary Supply – The rate for temporary supply shall be 8% above the applicable rate of supply for the respective applicable category of supply (class of consumers) but on the basis of highest rate of such class of consumers. In case there is no appropriate rate tariff, temporary supply shall be charged @ Rs.6/- per Kwh. The basis of calculation for temporary supply shall be as per existing practice.

15.9 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.

15.10 The above tariff shall be applicable from the billing month of / pertaining to April,2004 and onwards till 31st March,2005 or amended by the Commission as it may be deem fit from time to time subject to and in terms of the provisions of the Act and Regulations made thereunder.

15.11 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.

15.12 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 :

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

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.

Gown (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.

Eimp (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.

Q (KWH): Quantity of temporary supply sold during the adjustment period.

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.

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

eimp: Power purchase at sent out bus as admitted by the Commission in the tariff order corresponding to the adjustment period

b) 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 by the licensee for the subject matter revisions, and thereafter 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 the 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.

15.13 Recovery of Arrears/Refund - The Commission, as stated earlier, has tried to avoid the refund/recovery of arrears pertaining to the earlier years due to this order as the revised tariff shall be applicable from 1st April, 2004. However, there may be some arrear/refund becoming due by or to certain consumers for implementation of the tariff for 2004-05 as CESC will take sometime to implement this order. 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 equated monthly instalments. It is further made clear that the refund in terms of this order for 2004-05 is to be made only after adjusting the previous arrears, if any, due from that consumer and 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.

15.14 The Commission has fixed the tariffs in terms of this order in terms of provisions of section 64(3) read with section 62 of the Electricity Act, 2003 and keeping in view the provisions of sections 61, 172, 173, 174 and 185 of the Electricity Act, 2003. Due cognizance has been taken of the Electricity Regulatory Commission Act 1998 to the extent it is applicable.

15.15 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 paid in advance as has been specified, 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. 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 Regulations made thereunder and the tariff as fixed by the Commission shall be applicable.

I sign the order with following observations.

**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**

#### **Observations of Shri N. C. Roy, Member (Technical)**

Starting point for determination of Annual Revenue Requirement (ARR) is the assessment of Sale of Energy. Wherever actual sale figure is available the same should be considered for determination of ARR. Commission will assess the expenditure that should reasonably be incurred to achieve the sale. Commission need not necessarily accept the actual expenditure as per audited accounts in this matter as the actual expenditure may not reflect as the expenditure reasonably incurred for achieving the sale. This has been upheld by the apex court in the case of C.E.S.C. Ltd.

In the matter of T & D loss no transparent policy has been followed. While 11% is the technical loss in the C.E.S.C. system, balance claimed on account of T & D loss is the non-technical loss which is a controllable element and reduction of which depends much on the management effort. The non-technical losses claimed by C.E.S.C. Ltd. are 9.3%, 8.6% and 7.5% respectively for the years FY 03, FY 04 and FY 05, against the same Commission's recommendations are 7%, 7% and 6% respectively i.e. allowing 75%, 81% and 80% of the claim for the respective years. It does not reflect any transparent consistent policy.

Fuel cost need be determined power station-wise. GOWB Expert Committee norm i.r.o. operational parameters like heat rate, auxiliary consumption, sp. oil consumption etc. are called for when actual performance exceeds the norms. However, where the actual performance is lower than the norms, operational parameters as per actual performance should be the basis for determination of fuel cost. If the fuel cost of different power stations are clubbed together, which has been recommended here, inefficiency in operation, of some of the power stations will be absorbed by the savings achieved in fuel cost of the efficient power stations without the same being passed on to the consumers.

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

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