

TARRIF ORDER FOR 00-01/01-02 **ORDER**

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

**Case No. T.P. - 1 of 2000-01
and
Case No. T.P. - 1 of 2001-02**

**IN RE THE TARIFF PETITION OF THE CALCUTTA ELECTRIC SUPPLY CORPORATION LTD.
FOR THE YEARS 2000-01 & 2001-02 UNDER SECTION 22(1) OF THE ERC ACT, 1998.**

Present :

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

For the petitioners :

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

For the objectors who had prayed for and were permitted to join the hearing :

Shri N. C. Roy, for WBSEB
Shri M. K. Jain, for Metro Rail
Shri Ajit Dasgupta individually as a consumer
Shri Sanjit Biswas for All Bengal Electricity Consumers' Association (ABECA)
Shri Shivaji De for Socialist Unity Centre of India (SUCI)
Smt. Keka Sharma for Bharat Chamber of Commerce (BCC)
Shri Anjan Roy Choudhury for BCC
Shri Anirudhdha Sen for Indian Aluminium Co. (INDALCO)
Shri S. C. Agarwal for W.B. Rolling Mills Association
Shri Asit Das for ABECA
Shri Subhash Banerjee for ABECA
Shri Mahesh Kr. Singhania for Federation of West Bengal Trade Association as also for self
Shri L. K. Chatterjee, Advocate for Federation of Consumers' Association
Shri M. Lahiri individually as a consumer
Shri A. K. De for ABECA
Shri S. Mondal for Standard and Chartered Bank
Shri Debashis Bose for INDALCO
Dr. S. C. Bhattacharya for WBSEB
Shri Rajarshi Roy for Consumer Unity and Trust Society

Objectors who had filed written objections within the stipulated dates for 2000-2001 & 2001-2002 :

West Bengal State Electricity Board (WBSEB)
Indian Aluminium Company (INDALCO)
Apsara Co-operative Housing Society
All Bengal Electricity Consumers' Association (ABECA)
Broad Street Bazar Byabsayee Samity
West Bengal Rolling Mills Association

Indian Council of Small Industries
 Federation of West Bengal Trade Association
 Advanced Medicare Research Institute
 Rabindra Sarobar Nagarik Committee
 Kreta Hitoishi Redress Forum
 Dakshin Kalikata Janaswartha Raksha Mancha
 Bhabanipore Byabsayee Samity
 Dakhsin Kalikata Anchalik Byabsayee Samity
 Ganatantrik Nagarik Samity
 Samiran Co-operative Housing Society
 Metro Railways
 Consumer Unit and Trust Society
 Federation of Consumer Association
 Titagarh Industries
 Bengal National Chamber of Commerce & Industry
 Silpara Byabsayee Samity & Others
 Socialist Unity Centre of India
 Shri Prasanta Chatterjee & Others
 Shri G. K. Ojha & Others
 Shri S. C. Dutta & Others
 Shri Krishan Deo Lal & Others
 Shri Rathin Ghosh & Others
 Shri Kalipada Sil
 Shri Ranjit Kumar Bose
 Shri N. N. Ghosal
 Shri Durgadas Roy Chowdhury
 Shri M. Lahiri
 Shri Vinod Kohli
 Smt. Mira Das & Others
 Shri Amit Ghosh
 Shri Nirmal Kumar Sarkar
 Shri Babu Dey
 Shri Mahesh Kumar Singhanian
 Shri Sujit Basu
 Shri Jayanta Kumar Mallik
 Shri Brojesh Chandra Sinha
 Shri Ardhendu Basu
 Shri P. C. Basu

Also heard :

Administrative Staff College of India,
 Consultants for the Commission.

Dated The 7th November, 2001.

CHAPTER-1 : THE COMMISSION

1.1 The West Bengal State Electricity Regulatory Commission has been formed under Section 17 of the Electricity Regulatory Commission Act, 1998 (Act 14 of 1998) in the year 1999. Prior to the legislation of this Act, generation, transmission and supply of electricity in India and the matters connected therewith had been covered by the Indian Electricity Act, 1910 (in short, 1910 Act) and the Electricity (Supply) Act, 1948 (in short, 1948 Act). The Act 14 of 1998 has introduced various provisions towards reforms in the power sector and the preamble of the Act declares that it is "an Act to provide for the establishment of a Central Electricity Regulatory Commission and State Electricity Regulatory Commissions, rationalization of electricity tariff, transparent policies regarding subsidies, promotion of efficiency and environmentally benign policies and for matters connected therewith and incidental thereto."

1.2 Initial difficulties were faced by the Commission, but the same were overcome by and by and the State framed rules under the Act 14 of 1998 ; the Commission framed its own Regulations and thereafter the Commission became fully functional from the second half of the year 2000.

1.3 The Commission is now constituted by the Chairperson, Justice (Retd.) S. K. Phaujdar and Member (Finance & Accounts) Shri A. K. Jain. [Member (Technical) Shri R. R. Ganguly having retired on 8.10.2001]

1.4 The Commission published its own Conduct of Business Regulations (CBR) and had also issued guidelines thereunder. As per the CBR and guidelines, the utilities within the jurisdiction of the Commission were called upon to submit their tariff revision petitions for the years 2000-01 and 2001-02, and in response thereto, the Calcutta Electric Supply Corporation Ltd. (CESC) came up with two petitions for these two years which were admitted and registered as Petition No. T.P. -1 of 00-01 and Petition No. T.P. - 1 of 01-02.

1.5 The filing of the tariff petitions were duly notified in the major newspapers published from Kolkata calling upon everybody interested in the matter to file objections against the proposed tariff for these two years and cut-off dates were indicated in the newspaper notification for receipt of written objections. Only those objections were taken up for consideration which were filed in time. Everybody had the opportunity to inspect the tariff petitions and take copies thereof along with the reply filed by the CESC on such objections.

1.6 The Commission had also under its relevant Regulations appointed the Administrative Staff College of India (ASCI) at Hyderabad as Consultants to analyse, scrutinise and verify the tariff petitions for 2000-01 and the objections thereto that were filed in time. The report of the ASCI was kept open for inspection and copies and parties were given opportunity to file objections against the report.

1.7 Hearing of the two tariff petitions for the two years in question was taken up together and the dates of hearing were also duly notified in major newspapers published from Kolkata and it was clearly indicated therein that all persons were free to join the hearing irrespective of their filing written petition. Both the tariff petitions were heard together for the sake of early disposal and for avoiding unnecessary exercises on same or similar matters in dispute. For the CESC petitions, hearing commenced on 23.4.2001 and continued for about a week.

CHAPTER - 2 : CASES OF CESC AS PER THEIR TARIFF PETITIONS

2.1 In their tariff petition for the year 2000-01, CESC had figured out their revenue requirement at Rs. 212718 lakhs as per the following table with certain more claims / submissions :

Sl. No.	Particulars	Rs. in lakhs
1.	Fuel including coal and ash handling	59828
2	Power purchase	27062
3	Employees cost including Directors fee	19625
4	Administrative and General charges	4552
5	Rents, rates and taxes	612
6	Legal charges	291
7	Audit fees	11
8	Bad debts	1025
9	R & M including consumables	9315
10	Interest charges on loans	36437
11	FERV	2016
12	Other finance charges	3022
13	Lease rental	4132
14	Interest on SD	1050
15	Depreciation	30719
16	Delayed payment surcharges	718

17	Water Charges	160
18	Intangible assets write-off	66
19	Less sale proceeds of Ash	(-) 6
	Total Expenditure	200635
20	Special appropriations	
	iii) Contingency Reserve	1175
	iv) Others	4610
21	Reasonable Return	12812
22	Total	219232
23	Less: Non-tariff income	6514
24	Revenue Required	212718

2.2 It was indicated that the present proposal could be submitted after about 25 months from the last revision made in October, 1998. The CESC highlighted their alleged shortfall between cost incurred and recovery at the existing tariff at more than Rs. 300 crs. The audited figures were submitted to mention that in the years 1997-98, 1998-99 and 1999-2000, the losses amounted to Rs. 105 crs., Rs. 158 crs. and Rs. 122 crs. respectively causing a cumulative net worth erosion from 15%, 33% to 48% with the passage to these years.

2.3 The CESC also indicated their obligation to meet and highlighted that they had about Rs. 3,000 crs. in debt in the books from domestic and overseas loans and the default in payment of these loans would have serious ramification. They also agitated their grievances on the existing system of cross subsidy and stated that due to this, sale to prime consumers had slowed down while there was a growth in sale in subsidised segments and that had affected their profitability.

2.4 For their petition for 2000-01, they identified the costs caused by different causers. They also made classification of costs.

2.5 Regarding power purchase cost, they indicated that demand charge for power purchase was related to consumer demand and rest to the expenses on energy. They split up the cost of generation under different heads and gave an analysis to say that about 35% of their costs were related to demand, 61% to energy and 4% to number of consumers. They contrasted cost against revenue as per following table :

Cost	Revenue as percentage of cost	
	Current tariff	Proposed tariff
LT 64%	39%	53%
HT 36%	39%	47%
Overall 100%	78%	100%

2.6 The CESC also gave an analysis of cost and revenue as per following table :

	Demand driven	Energy driven	Consumer number driven
Overall Cost	35%	61%	4%
Revenue on current tariff	6%	92%	2%
Revenue on proposed tariff	10%	87%	3%
H.T. Cost	34%	66%	Negligible
Revenue on current tariff	10%	91%	- do-

Revenue on proposed tariff	18%	81%	- do -
L.T. Cost	35%	58%	7%
Revenue on current tariff	2%	95%	3%
Revenue on proposed tariff	2%	92%	6%

2.7 In their petition for this year, the CESC also indicated their plans for reduction of losses. Stating that they were striving continuously for improvement in availability, capacity utilization, operating efficiently and sharing environmental responsibility, they claimed that they are the only thermal utility in the Eastern Region with free governor to support the frequency segregation of the grid.

2.8 They asserted that energy loss in transmission / distribution net-work was a key determinant in assessing the energy requirement in the system level. It was stated that part of energy loss was intensive to the process and was inescapable but open to reduction by adoption of appropriate measures of new-work development. Another part related to metering/billing disfunction and was largely controllable and there is a major element that was caused due to theft and the CESC pleaded their helplessness in this matter as it was a law and order problem within the administrative domain of the State Government.

2.9 According to them, the estimated sale in million units for 2000-01 was 2797 for LT consumers and 2195 for HT consumers. It was also indicated that there was a need to reduce cross subsidy and accordingly they proposed that the burden on the HT segments requires to be brought down with a proportionate increase of the burden on the LT segments. They also prayed for a cost-based tariff and asserted that cost to serve was higher for LT consumers compared to that for HT consumers. But they expected that marginal consumers were to be bracketed. It was submitted that tariff should give an impetus to efficiency measures.

2.10 After covering the basic tariff structure, the CESC has also dealt with fuel adjustment charges in their petition. Although basic tariff could be revised only once in any year of account, the cost of fuel, the primary component of cost in thermal power stations, was beyond the control of the utility and this cost usually escalated in the intervening period between basic tariff revisions. In their proposal, they included fuel related costs under the head of fuel cost. They referred to the norms fixed by the Govt. of West Bengal towards calculation of fuel adjustment cost.

2.11 In their petition, the CESC also indicated that they get bulk supply from WBSEB at 132 KV supply and for this loss due to technical reasons could not exceed 4% and they asserted that WBSEB accepted this situation, but still claimed 20% as T & D loss for supply to CESC, which, according to the present utility, was unjust. The CESC, therefore, calculated its fuel adjustment charge for 2000-01 on the basis of WBSEB's FAC claim conceding only 4% as T & D loss and not 20%, as claimed by WBSEB. This, according to CESC, would save for them a sum to the tune of Rs. 17.58 crs. and of a tariff deviation of 3.52 p per unit.

2.12 It was contended that CESC use to purchase power from DVC also. Revisions in CESC tariff were made in November, 1996 and October, 1998, but DVC rates were revised after November, 1996, in May, 1997, July, 1998 and again in July, 1999 and September, 2000. The increase in tariff of DVC had an adverse effect on revenue of CESC, and accordingly, the CESC came up with a formal prayer for power purchase price adjustment charge.

2.13 It was contended by the CESC that when the State Govt. had approved their tariff revision in October, 1998, there was a direction to keep apart a sum of Rs. 11.5 crs. to cover the impact of any prospective tariff hike by WBSEB. When the tariff was actually raised by WBSEB in January, 1999, the rate for CESC was much higher than stipulated earlier, and, in the present petition, the CESC prayed for a tariff revision on the basis of the increase to the extent of Rs. 11.5 crs. only and not the actual enhanced sum.

2.14 It was further stated that the WBSEB had unilaterally imposed a surcharge for peak / off-peak ratio beyond 1.4 with effect from 26.1.1999 contrary to the terms of agreement which provided that the CESC shall have to draw "maintaining peak / off-peak ratio on either WBSEB's system or the Company's system which was beneficial to them".

2.15 As regards the minimum charges payable to WBSEB, it was contended that CESC was required to draw a minimum of 1750 MU per year. For causes beyond their control, CESC was unable to draw this stipulated amount of power. In fact, they were unable to draw more than 1000 MU per year. Power purchase liability had been calculated on the assumption that no minimum charge was payable. It was submitted that in case the Commission thought that such minimum charge was payable, the same was to be added in the revenue requirement for the concerned year.

2.16 The CESC claimed that they were alive to the needs of their customers and elaborated the measures taken by them towards applications for new supplies, emergency breakdown services, timely delivery of bills, consumer grievances redressal, total quality management and the like.

2.17 To sum up, the CESC prayed for an interim relief pending decision and also for a final relief by way of increase in basic tariff by Rs. 356.12 crs., increase in fuel surcharge and also for rationalisation of T & D loss to the actuals and to confirm their revenue requirement as projected.

The CESC annexed with their tariff petition statements in details covering different aspects of their submissions.

CHAPTERS - 3 : OBJECTIONS AGAINST THE CLAIM OF CESC FOR THE YEAR 2000-01.

3.1 Objection by the W.B.S.E.B.

3.1.1 It was stated by WBSEB that they billed the CESC in accordance with the tariff as advised by the State Government vide its letter no. 755-Power/II/IR-9/98 dt. 24.12.1998 and the CESC should have indicated this rate in their tariff proposal.

3.1.2 They contended that fuel surcharge was a part of tariff and whatever T & D loss norm are fixed for calculation of basic tariff, should also form the basis for calculation of fuel surcharge. It was contended that for the supply from WBSEB to CESC, transmission and distribution loss was taken by CESC at 4% instead of 20% as claimed by WBSEB and calculations should have been made on the basis suggested by WBSEB.

3.1.3 In the third fold of their objections, the WBSEB stated that depreciation relating to coal and ash handling should be booked with basic charge as a fuel-related cost, and not with fuel charge and average calorific value of coal for computation of fuel cost is lower than the C.V. declared by Eastern coalfield. Interest on loan from unapproved organizations be disallowed. According to them, the fuel adjustment formula suggested by the CESC was not an acceptable one and according to WBSEB, CESC could not recover the additional liability for increase in tariff of DVC as it was beyond the provisions of Section-51 of the Electricity (Supply) Act, 1948.

3.1.4 They contended further that the tariff charge from CESC by WBSEB was traditionally lower than the rate charged from other consumers of WBSEB for 132 KV supply and only for computation of fuel adjustment charge, the normative T & D loss of 20% was being considered at the instance of the State Government. The WBSEB did not accept the theory that due to uniform FSC, bigger section of the consumers was being hard-hit.

3.1.5 Regarding peak / off-peak ratio, the WBSEB stated that the agreement between CESC and them permitted following the system of WBSEB or CESC whichever was more beneficial for the CESC ; but the payment clause for non-compliance of peak / off-peak ratio was in accordance with the prudent operation practice and the payment was approved by the Power Deptt. For the off-peak supply, the fuel cost of the supplier was also relevant as the supplier could not offer an off-

peak supply at a tariff which cannot ensure realization of the marginal cost of its thermal power stations.

3.1.6 Regarding the capital base of Budge Budge, the WBSEB had estimated the costs at Rs. 1853 crs. The State Government accepted this recommendation. The CESC made a reference to CEA under Section 44(3) of the 1948 Act, and the CEA gave an award fixing the project cost of Budge Budge Thermal Power Station at Rs. 2295.57 crs. The WBSEB took the matter to the High Court and finally the matter went to the Supreme Court and is pending there. The matter would be deliberated in this order when we take up the legal objections.

3.1.7 The WBSEB also raised objection regarding special appropriation of Rs. 1812 lakhs and Rs. 2284 lakhs on account of claim of DVC for supply of power and on account of foreign exchange variation as claimed by the CESC. It was stated that no approval from the State Government was taken as brought on record for Rs. 1900 and Rs. 2500 lakhs respectively, and it was stated that even without approval, the CESC had realized Rs. 2511 lakhs on account of the DVC's claim and Rs. 3307 lakhs on account of foreign exchange variation and thus there was over-realization of Rs. 611 lakhs and Rs. 807 lakhs on these two counts and the same is to be set off from the revenue requirement of the CESC for 2000-01 and the special appropriation for this year should be Rs. 171 lakhs only instead of Rs. 5785 lakhs as posed by the CESC. WBSEB also raised the point that the State Government has instructed CESC to reduce T & D losses by 1.5% each year from September, 1993 and now their T & D loss should be 14% only.

3.1.8 The WBSEB appended to their objection documents to justify the points raised by them.

3.2 Reply by the CESC on the objections of WBSEB

3.2.1 It was stated by the CESC that in the tariff petition application for 2000-01, the efficiency norms as communicated by the Power Deptt. were relied upon. It was stated that they relied on the formula as clarified by One Man Committee appointed by the State Government. It was further stated that power purchase price adjustment clause was not a prerogative of the WBSEB alone and all utilities were entitled to get the enhancement. On 4% normative T & D loss for calculating the cost of supply they received from the WBSEB, it was stated that uniform surcharge was not paid by all consumers and in fact, WBSEB themselves made differential charges for different consumers and that while drawing power from DPL, also paid FAC at a rate different from others. It was contended by CESC that if the WBSEB was allowed to assess T & D loss at 20%, the weaker section would have to pay more, once to WBSEB, and once again to CESC.

3.2.2 Regarding peak / off-peak ratio, the CESC stated that peak surcharge for non-compliance had never been agreed upon between WBSEB and CESC and the ratio was unilaterally changed by the WBSEB. On the price for power purchase, the CESC said that they had been compelled to accept terms and conditions which provide WBSEB to buy power from CESC at a price considerably lower than the rate at which WBSEB sold to CESC.

3.2.3 Regarding applicability of Section 44 of 1948 Act, the CESC relied on certain communications from the WBSEB. This point will be elaborately discussed at the relevant chapter.

3.2.4 On special appropriation, the CESC indicated that this was done under the 1998 tariff revision order and there was no instruction from the State Government for cessation of the same after any specific time or after recovery of any fixed sum. It was indicated that special appropriations were utilized for meeting the Forex and DVC dues.

3.3 Objection of Indian Aluminium Company

3.3.1 The Indian Aluminium Company (in short, INDALCO) run an aluminium rolled product factory in Howrah for the last 61 years meeting the demands of Defence Industry, packaging industry, bottle closer industry, pressure cooker industry, automobile industry and building industry. The INDALCO were supplied electricity by the CESC in terms of an agreement under which the controlled demand of INDALCO was 11990 KW and the present rate of tariff was Rs. 4.18 per KWH including provision for arrear FSC. INDALCO get power at 33 KV for which they had invested an amount of Rs. 5 crs.

3.3.2 Out of the total supply to INDALCO, their Belur Plant drew 43 million units per year at 33 KV level and this accounted for 50% of total 33 KV supply by CESC other than supply to traction. INDALCO paid annually an amount of about Rs. 18.7 crs. to CESC on account of supply of electricity. INDALCO claimed that they had high power factor of 96% and there was very low system loss and there was also high load factor ensuring consistency of load, wheeling maximum demand and it was a great help to the CESC in demand control. INDALCO pointed out that they were taking a high supply and there was no loss of power and there was timely payment ensuring steady flow of lumpsum cash every month and they demanded adequate incentive for this. The INDALCO came up with the comparative figures of tariff for them and other aluminium industries. For it, rate was Rs. 4.18/unit ; but for Hindalco and Balco in MP, NALCO in Orissa and Indian Aluminium Corporation (also in Orissa), the rates were - Re. 1.00, Re. 1.00, Re. 0.90 and Rs. 1.30 per unit. It was stated that even for WBSEB supply, the rate was 50p. lesser than the CESC rate.

3.3.3 The objectors pointed out that the cost of electricity ate up about 25% of their production cost in its Belur Unit. But there was absolute lack of fulfillment by CESC towards promoting efficiency and reduction of cost. They also complained on the quality and continued and reliability of supply from CESC. It was stated specifically that from September, 1999, to November, 2000, problems of voltage fluctuations were reported by the INDALCO to the CESC and the fluctuations were such, that for safety reason, the plant had to be shut down.

3.3.4 INDALCO also submitted objection regarding the heat rate and the oil rate and auxiliary consumption as claimed by the CESC and it was stated the correct figures and norms had not been reflected in the tariff petition. They contended that in most modern NTPC power plants, liquid fuel consumption norm was 2.5 ml/kwh and there was no reason for allowing any higher rate for the CESC stations. This objector raised objection on the rate of transit loss of coal claimed by CESC and stated that 4% was the maximum that was provided for by the Power Department and efficient management can bring it down even to 0%. Inefficiency on the part of the CESC in containing the transit loss would not be passed on to the consumers.

3.3.5 The objector also objected on the claim of T & D loss to the tune of 23% and brought on record the figures in other developing and developed countries and even the figures for the WBSEB.

3.3.6 It was contended that FAC should be levied on a normative T & D loss for 4% to 5% for 33 KV systems, 8% to 10% for 6.6/11 KV consumers and 18% to 20% on LT consumers.

3.3.7 Objections were raised on the proposed tariff and on the demand charge and power factor rebates and for retention of rebates on FAC. The objector pressed for gradual abolition of cross subsidy. For the TOD tariff suggested by CESC, they stated that no major incentive was offered to the industries. They referred to the order of the Maharashtra ERC in this respect. Attention of the Commission was drawn to the methodology of tariff determination and it was suggested that for the CESC a hybrid of performance based rate and revenue price would be more appropriate. It was also contended that tariff was not to be retrospective as that would cause immense hardship to the consumers.

3.4 Reply by CESC on the objections of INDALCO

3.4.1 According to CESC the objectors, INDALCO, had been paying less per unit compared to industries in Karnataka, Andhra Pradesh, Gujrat, Haryana and Mumbai. The CESC claimed that the objectors were given a discount of Rs. 48 lakhs in ten months from April, 2000, to January, 2001, and they had been conceded other benefits on account of voltage, specific rebate, uniform maximum demand, reduced energy charges during day and evening as also a special concession on night demand charge.

3.4.2 It was further the reply of CESC that the tariff proposed by them had offered attractive load factor rebate, readjustment of demand and energy charges, demand charges on KVA, attractive TOD tariff and also a special rebate to the industrial consumers having 33 KV supply.

3.4.3 The CESC pointed out their efforts towards promoting efficiency and reducing costs and they also highlighted their attempts to provide steady voltage. It was stated that they had developed a machinery for feed back from HT consumers. The CESC submitted in reply that normative oil

consumption at the Farakka TPS of NTPC was more than 2.5 ml/unit and that in Kahelgaon it was 7 ml/unit. The transit loss of coal, it was stated, was a hard reality and real transit loss was more than 4% and a cap of 4% was imposed only to immune the consumers from actual transit loss.

3.4.4 The CESC indicated the rates of T & D losses of some other utilities in the country to comment that in reality it was about 40 to 50% and it was submitted that without an enabling environment, a power utility, despite its commitment and endeavour, remains severely handicapped in taking action even in cases of established pilferage.

3.4.5 For INDALCO, it was specifically stated that they were given attractive rebate for 33 KV supply and for them the rebate on demand charge had also been enhanced. It was pointed out by the CESC that their fuel surcharge proposal was based on norms prescribed by the Heat Rate Committee set up by the State Government.

3.4.6 On the point of retrospective effect of the proposed tariff, it was the reply of the CESC that they proposed to get the tariff revised in December, 1999 ; but the Commission could take up the proposal only in November, 2000, and accordingly, they prayed for allowing them to recover the cost for the year 2000-01.

3.5 Objections by Apsara Co-operative Housing Society Ltd. and reply thereto.

3.5.1 The objector Society claimed that they received power from the CESC at 6 KV and they, in turn, supply power to their consumers at a further lower voltage and in this process, they suffer loss of several lakhs of rupees. Accordingly, they requested the CESC to take over all their installations free of cost and serve the consumers directly. The consumers also want direct supply from CESC. On any hike in tariff as proposed, it was contended that in past few years, CESC tariff had been hiked by more than 250%.

3.5.2 In reply, the CESC stated that the objectors were having a multi-storied high-rise building and CESC provided to them HT supply. The Society had desired that supply should be changed over to individual LT and medium voltage for each allottee which, according to the CESC, was not possible due to reasons of safety as also due to technical considerations as the load to this Society exceeded 50 KW. On this point, the CESC quoted a decision of the Calcutta High Court in a similar matter wherein it was held that the CESC was the best authority to judge as to whether it would be prudent, safe and also in the interest of all the shop owners of the complex to provide separate matters to each (Writ Petition 1225 of 1998).

3.5.3 Regarding the allegation that there had been exorbitant tariff increase in the last 11 years, the CESC came up with figures of increase of price during this period in other essential commodities like LPG, diesel, petrol and kerosin.

3.6 Objections by All Bengal Electricity Consumers' Association and Socialist Unity Centre of India and reply thereto

3.6.1 The objectors asserted that electricity could not be put in the same bracket with other consumer commodities as it was an instrument of progress and development in a modern society. It was stated that in an economy like ours, the entire question of tariff fixation was to be approached with an eye to the interest of small industries, small trade, marginal farmers and the weaker section of the people. Accordingly, they vehemently opposed the proposed hike in tariff and asserted that the proposal smacks of unreasonable profit for the CESC. They particularly referred to the charging of meter rent and indicated by figures as to how, according to them, CESC was making money in the name of meter rent, looking from the angle of price of a meter.

3.6.2 Quoting past history of alleged over-realization, the Consumers' Association pleaded for investigation into the accounts of CESC by a Government Agency.

3.6.3 On the T & D loss, the present objectors pleaded that the command area of CESC was in the urban area of Calcutta and its suburbs and, under a similar situation of supply, the Tata Electricity and BSES had indicated their T & D loss to the extent of 2.2% and 11.6% only, whereas the claim of the CESC was about 23% even though CESC has invested Rs. 450 crores in improvement of the system. They also claimed that the Govt. of West Bengal had earlier directed to reduce T & D loss

in phases and restricted it to 14%. The objectors proposed to say that neither Tata Electricity nor the BSES has enhanced their tariff during last six years. The Consumers' Association had also objected to the proposal of introduction of fixed charges from the consumers. It was contended that on terms of supply, the CESC was to supply electricity round the clock in a steady voltage and in case of failure therein, they are liable to pay compensation to the consumers. On the question of reasonable return, it was stated that the CESC was assured of a huge captive and monopoly market and a guaranteed profit of 3% must be taken as sufficient and the rate of profit was not to be enhanced. It was contended that better concessions for bigger buyers and the reverse for lesser buyers was not at all a philosophy to be adopted in the matters of supply of electricity. Rather, they came with a theory that there should be given lower slabs of tariff for domestic, commercial and industrial consumers.

3.6.4 On the claim of the CESC that they had earned profit till 1996-97 and never thereafter, these objectors raised the point stating that there could not be any loss after 1996-97 when tariff was actually raised. Although the CESC reported loss, an assessment by Batlibuoy & Co. had indicated positive profit for all these years.

3.6.5 The consumer body also challenged the data furnished by CESC for coal and oil consumption and alleged that there had been violation of the guidelines provided by the Heat Rate Committee set up by the Government of West Bengal and also the guidelines of the Central Government and also raised issue of Fuel Variation Clause. The proposal to enhance the amount of Security Deposits to three months' consumption was also seriously opposed along with less rate of interest on Security Deposit. They also objected to the high rate of salary given by CESC to its officers and raised issue of inflated capital cost, decrease in operational efficiency, non-payment of dues to WBSEB and State Government, high rate of surcharge, recovery of past dues of consumers from new-consumers etc.

3.6.6 In reply to these objections, the CESC asserted that the objections of the Associations were not in consumer interest, but gave pointwise reply to various objections. The CESC relied on a Supreme Court decision to say that members of the public are to approach the Court with bonafide intention and not with private and political motivation (AIR 1982 SC 149 - S. P. Gupta Vs Union of India ; 1994 (Supplementary) (2) SCC 116, (Kazi Lendup Dorji Vs CBI and 1987(2) SCC 295 Sachinandan Panday Vs State of West Bengal).

3.6.7 The CESC described the objection of the Association as contrary to the provisions of law and regulations. It was stated that under the ERC Act, the Commission was to see that electricity generation, transmission, distribution and supply were conducted on commercial principles.

3.6.8 On the question of purchase of own meters by the subscribers, it was stated by the CESC that they had supplied quality meters even to the domestic consumers. The average meter-related cost was more than the rent charged. Supply of meters by the CESC was a step towards checking pilferage and it was asserted that no fruitful purpose would be served by allowing the consumers to have their own meters, rather, that would require a periodical checking and in case of a defective meter, there would be difficulty in replacement thereof. It was stated that the meter rent demand was hinged to the cost of supply principles.

3.6.9 On the question of claim for 15p/unit as FSC about some 7 or 8 years ago and about consequent earning of an excess profit, it was stated that the matters stood finally resolved in April, 1998, and the State Government had allowed the CESC to recover arrear FSC to the tune of Rs. 97 crs. for the period from 1993-94 to 1995-96. It was asserted that the past issue, once settled, could not be re-agitated.

3.6.10 On the question of cost of work in progress in Budge Budge, the CESC replied that this cost was a legitimate component of capital base and based on the report of the One Man Committee ; the State Government had recorded its order, and the same could not be agitated again.

3.6.11 On the question of T & D loss, the CESC stated that there could not be any comparison with the figures of Tata Electricity as they were making bulk supply only, whereas, CESC mainly cater to low tension consumers. For the low rate of T & D in the BSES, the CESC contended that the basis thereof was not indicated. Moreover, it asserted that the same BSES runs a unit in Orissa and for them the T & D loss was about 40%. The CESC also referred to the T & D loss

increase in the case of WBSEB which was about 39%. It was contended that the Delhi Bidyut Board's T & D loss assessment at 50% had been accepted. CESC also contended that they are not able to control non-technical losses due to inherent problems to check theft of electricity in their area in spite of all out efforts.

3.6.12 For fixed charges, it was asserted that no provision of any statute was violated. The elements of cost proposed to be recovered through fixed charge, had no relationship with consumption and it was a step towards rationalization of tariff structure. It was further contended that the fuel surcharge was not introduced for making some extra money, rather, charging of FSC was a recognized mechanism for recovery of fuel cost separately from present tariff.

3.6.13 On the question of reasonable return, it was stated by the CESC that the rate of return for WBSEB could not be compared with that for the CESC, For CESC, it was to be calculated on the capital base, i.e. net fixed assets minus all debts. For the WBSEB, it was to be given on the entire fixed assets at a rate permitted by the statute.

3.6.14 On the question of cross subsidy, the CESC stated that such a policy was against the current legislative and economic policies and it was submitted that Section 29(2) of the ERC Act required that the tariff should progressively reflect the cost of supply of electricity at an adequate and improving level of efficiency.

3.6.15 The CESC pointed out that there had been tariff revisions in September, 1993 (after 22 months) ; in January, 1995 (after 16 months) ; in November, 1996 (after 21 months) and in October, 1998 (after 23 months). It was contended that for the commercial operation of a 500 MW Budge Budge Power Station, the need to recover the depreciation charges followed.

3.6.16 On the question of consistency of tariff of BSEB, it was contended that for many years it was more than the tariff rate prevailing in CESC and BSEB had a large generation supply, a low debt and low interest charge. It was contended that BSEB adjusted fuel cost every month and a revision of tariff was reflected to neutralise the effect of price hike in power projects. It was contended further that under the law the State was only the authority for revision in tariff, but for CESC, neither the frequency of revision nor its quantum was compatible the requirement of CESC. It was stated that on looking to the recast accounts of the CESC, the State Government had accepted the shortfall in its permitted return and allowed them a separate appropriation for recovery of past shortfall.

3.7 Objection by the Broad Street Bazar Babsayee Samity and reply thereto.

3.7.1 This Samity had indicated that in last six years, the CESC has enhanced their tariff thrice to an extent of 150% and fuel surcharge had been increased on four occasions by 350%. It was stated that CESC was trying to extract extra security deposit. They also opposed the claim of T & D loss and relied on the reports of the D. K. Bose Committee and the Batlibuoy Co.

3.7.2 In reply, it was contended that the CESC had the right to get a tariff revision in every financial year, but actually they were being allowed a revision not in that frequency. It was stated that their loss had accumulated to Rs. 385 crs. in last three financial years. On the question of realization of three months' bill amount as security deposit, they relied on a decision of the Supreme Court. It was contended that basic tariff could not be revised for more than once in a year, but coal prices were revised on the intervening periods beyond the control of CESC and the CESC was entitled to recoup the excess payment made towards purchase of coal.

3.8 Objections by West Bengal Rolling Mills Association and reply thereto.

3.8.1 The Association claimed to represent the entire Rerolling Industry in the State of West Bengal and the industries had an installed capacity of 26 m/tons per annum. Most of these Rerolling Mills were getting electricity from CESC. The Association alleged that due to inefficient management, the CESC was fast moving towards being declared a sick industry and once it is so declared, the 1.6 million consumers will be put to immense hardship. The Association claimed that the industries contributed Rs. 190,50,45,000 towards security deposit and further Rs. 1,36,67,31,000 as capital contribution for laying cables, and once CESC becomes sick, all these sums would become bad debts.

3.8.2 It was stated that due to acute shortage of power in 1976, the State Government came up with West Bengal (Maintenance of Supply) Order, 1977, under which the industries were restrained from using electricity for more than five days a week and were not to use more than 10% of the sanctioned load during peak hours, i.e., from 5.00 p.m. till 10.00 p.m. Even after these restrictions, there had been unscheduled load sheddings by CESC causing immense loss to the Rerolling industries. As a result, by the year 1995, the entire Rerolling industry in West Bengal became sick.

3.8.3 It is a usual practice for the licencees to adopt a two-part levy system for the supply to the bulk consumers. The first part represented the maximum demand charge, and the other was consumption charge. Such consumers are given trivector meters as also ordinary meters for measuring highest level/load and the total consumption respectively. The trivector meter did not roll back with change of load and had to be manually set after reading in each month. Although the maximum load for the supply is calculated on the maximum demand, actually such load is not maintained throughout the billing period. The CESC, however, did not allow any rebate for the periods of load shedding. The objectors relied on a Supreme Court decision to say that during the period supply of electricity was disrupted due to tripping, load shedding or power cut, the consumer was entitled to get proportionate rebate (AIR 1989 SC 1030 : Bihar SEB Vs Dhanwati Rice and Oil Mill).

3.8.4 The objectors stated that even after disconnection or surrender, refund was not being made of the security deposits to the consumers. It was alleged that the CESC transfer this sum to development reserve and this sum was also taken into consideration for assessment of reasonable return. In this regard also decisions of the Supreme Court were relied upon (AIR 1992 SC 1033 and AIR 1996 SC 646).

3.8.5 The Association stated that CESC had violated the provisions of Section 11(2) of the Electricity Act, 1910, as they failed to supply the copies of annual statements in Annexures 1 to 4.

3.8.6 Disconnection on allegation of pilferage by a consumer was also a point for grievance. It was stated that disconnection was done without any notice and reconnection would be made only on payment of a further sum. It was alleged that the CESC violated the provision of Section 26(6) of the 1910 Act. It was stated further that inflated bills were submitted and the consumer was called upon to deposit 50% of the billed amount although the Supreme Court had held in (1996) VIII SC 647 that in case of a dispute on quantum of energy consumed, the competent authority to estimate the quantum was the Chief Electrical Inspector. It was stated that CESC was not competent to make an estimate. It was further stated that up-keep of the meters was the responsibility of CESC. It was stated further that for alleged theft of electricity, the CESC never initiated any criminal action rather they made realization under duress and thus they acted both as prosecutors and a judge.

3.8.7 It was alleged that on account of loose connection of CT/PT meters, the CESC used to charge connection fee although the consumer was not at fault. In defective meters, CESC has no authority to adjudicate into any dispute.

3.8.8 For fuel costs, the objector wanted the CESC to furnish full data. On the question of fuel charge, reliance was placed on the decision of Supreme Court in the case of DCM Ltd. Vs. Municipal Corporation of Delhi reported in AIR 1997 SC 3225.

3.8.9 It was contended that the CESC was charging delayed payment surcharge from the consumers ; but the Electricity Duty collected by them was not being deposited to the State Exchequer and this inaction amounted to outright cheating and breach of trust.

3.8.10 It was further indicated that the CESC was compelling the consumers to make security deposits equivalent to charges for three months' consumption and was paying interest at a rate of 5.5% only, but when it was their turn to receive, they were charging interest at the rate of 48% per annum for delay in payment of bills. The objector challenged the income tax liability of CESC and the balance sheet that had relied upon. It also put a question on the cost of Budge Budge Power Project. They urged that until the special leave application no. 10061 of 2000 was decided by the Supreme Court, the Commission should not proceed to determine the basic tariff. On FSC,

it was stated that the Commission is to stay its hands as the matter was before a Division Bench of the Calcutta High Court.

3.8.11 On the expenses of the CESC, the objector stated that lavish bungalows were erected by the CESC for the use of top officers at Raichawk at a cost of more than Rs. 10 crs. and on a recurring expense of a heavy sum every year. Such expenses were absolutely unnecessary. The cost towards employees and other heads were also challenged.

3.8.12 In reply, the CESC stated that the objection was signed by Shri Suresh Agarwal, and he was the person whose premises were disconnected twice in the past on charges of theft of power. Reconnection was made only on payment of entire unmetered consumption. There was a criminal case against Shri Agarwal for theft of electricity and he was allowed anticipatory bail therein with a direction to attend Police Station twice a week. It was asserted by CESC that supply of power was disconnected to several industries under this Association on allegations of theft of power. It was further stated that Shri Agarwal, under the cover of aforesaid Association, had raised various issues extraneous to the matter under consideration and the Court proceedings referred to by the objectors were not at all relevant for tariff determination.

3.8.13 The CESC asserted that it was not a sick company and did not accept the assertion that 80% of the Rolling Mills in the State get electricity from them. Regarding non-planned load shedding, nothing beyond record was admitted. It was stated that on petitions filed by different consumers, the Calcutta High Court on two different occasions, appointed two Commissions and on receipt of the reports from the Commissions, the objections raised by the consumers were dismissed. The CESC justified the introduction of enhanced security deposit in terms of the order of the Supreme Court in the case of Ferro-Alloys Corpn. Vs. A. P. SEB as reported in AIR 1993 SC 0095. It was further asserted that the shareholders and promoters contributed to the equity of the CESC during the first seven years to the tune of more than Rs. 4,000 crs. which was much more than the sum of security deposit and capital contribution by the consumers.

3.8.14 On the question of proportionate rebate on demand charge, the CESC stated that as per decision of the Supreme Court in the case of Orissa SEB Vs. IPI Steel Ltd. (AIR 1995 SC 1553) the licensee was not required to allow any proportionate reduction on monthly demand charge for load-shedding/interruption/restriction. A decision of the Calcutta High Court was also relied upon in the case of WBSEB Vs. Siddhartha Ferro Alloy (1997 AIR Cal-221).

3.8.15 The CESC further asserted that they never refused to pay back the security deposits in cases of surrender or disconnection and they never transferred any security deposit to the development reserve. The RBI Act, relied upon by the objectors was stated to be inapplicable in the matter.

3.8.16 As regards the role of Chief Electrical Inspector, the CESC stated that he has no jurisdiction on the cases of theft of power. And in this regard also case laws were relied upon vide (1) AIR 1998 SC 71 (M P SEB Vs. Basanti Bai) (2) Judgement today 1998 (3) SC 84 (Hyderabad Vanaspati Vs. APSEB) (3) AIR 1996 Supreme Court 2258 (M P SEB Vs. Harsh Wood Product).

3.8.17 It was contended that for theft of electricity, one was liable for civil and criminal action. For the civil liability reconnection was made on payment of charges. For the criminal liability, CESC had lodged FIRs and the rest lay with the State machinery. There had been an FIR against Shri Suresh Agarwal, as stated above, and he got an order of an anticipatory bail with a direction to attend local Police Station twice a week. On the question of disconnection for detected theft, it was stated that the CESC never acted as a judge of its own cause and here also a decision of the Supreme Court was relied upon as per judgement in Hyderabad Vanaspati Vs. APSEB (quoted earlier).

3.8.18 The CESC asserted that Section 22B of the Electricity Act, 1910, never empowered the State Government to fix tariff. Regarding arrear fuel surcharge, the CESC stated that the same was realized only upon a clearance given by the State Government and there was no question of excess realization, and hence, no question of refund.

3.8.19 On the cost of Budge Budge Project, an arbitration proceeding was before the CEA and the present objector moved a writ petition for being added as a party in the arbitration proceeding.

The writ petition was dismissed, an appeal was preferred, which too was dismissed and a special leave petition that was presented before the Supreme Court, also stood dismissed.

3.8.20 The CESC asserted that collection of delayed payment surcharge (DPS) and payment of interest on security deposit were being done under the direction from the State Government, and in this respect also, the following cases were relied upon - (1) AIR 1979 SC 1511 (Adoni Ginning Factory Vs. A P SEB) ; (2) AIR 1988 AP 117 (A P SEB Vs. VBC Feeds) ; (3) AIR 1991 Allahabad 351 (Modi Industries Vs. Executive Engineer, U P SEB) and (4) AIR 1998 AP 118 (Rayalseema Rural Flour Mills Vs. A P SEB).

3.8.21 The CESC further indicated that Shri Suresh Agarwal initiated two criminal cases against CESC and the High Court had stayed the further proceedings in these criminal cases. The CESC denied the allegations leveled by the objectors of non-payment by Tramways and Corporation and also on the matters concerning the balance sheet and outstanding dues to DVC and WBSEB. The CESC stated that the decision reported in AIR 1967 SC at page 3225 (DCM Vs. Municipal Corporation of Delhi) was distinguishable as the ERC Act was enacted subsequent to this decision. On the question of payment of interest on security deposit, the CESC had already been paying interest and as such the decision of the Supreme Court in Jagadamba Paper Industries Vs. Haryana SEB (1983 AIR, SC page 1296) had no application. On the allegation of expensive bungalow at Raichawk, it was stated that the matter was extraneous to the instant case and the matter was brought on only to malign the CESC.

3.9 Objections on behalf of Indian Council of Small Industries, Federation of West Bengal Trade Association, Advanced Medicare Research Institute, Rabindra Sarobar Nagarik Committee, Kreta Hitoishi Redress Forum, Dakshin Kalikata Janaswartha Rakha Mancha, Bhabanipore Babsayee Samity, Dakshin Kalikata Anchalik Babsayee Samity and reply thereto.

3.9.1 These objectors had taken certain common objections and also some objections separate from others and for the sake of brevity, we take up all the objections in the instant chapter except which has been dealt elsewhere.

3.9.2 It was stated that the CESC, instead of boosting up their efficiency, were trying to increase the tariff in an unfair manner. It was pointed out that once the new tariff proposals are accepted, an additional revenue of Rs. 390 crs. would enter into the coffers of CESC putting an additional burden on 17 lakhs consumers at a rate of Rs. 5 per month for domestic consumers and Rs. 20 per month for the small industries. It was stated that the proposed meter rent would also enhance the liability of the consumers to different degrees. The proposed fuel surcharge was also objected to. Objections were also raised for excess billing, lack of attendance to complaints, demand of additional security, absence of meter testing, failure of replacement of defective meters and absence of complete metering. Demands were made for allowing the consumers to have their own meters, to have periodical checking of wiring and to grant interest on security deposit at the rate granted by the banks and the like. They also pointed out that in last six years, tariff was enhanced thrice to the extent of 150% while fuel surcharge was raised 4 times to the tune of 350%. They urged that the inefficiency of the CESC was sought to be passed on to the consumers. They challenged the employee and production ratio in the old generating stations and also challenged the rate of T & D loss claimed by the CESC.

3.9.3 As against these objections, the CESC reiterated that they had a right to adjust charges every year and they were within their legal rights to claim what has been indicated in the tariff petition. They rather stated that they had taken all steps towards improvement of consumers' services and to contain transmission/distribution costs and loss. On fuel surcharge, it was stated that the people may clamour against it, but grant of fuel surcharge was a matter accepted by law. It was further stated that reference to the decisions of the Supreme Court and the Calcutta High Court that there was no scope for giving any relaxation to the consumers for the load-shedding period. Reliance was placed on cases of Orissa SEB Vs. IPI Steel Ltd. as reported in AIR 1995 SC 1553 ; WBSEB Vs. Siddhartha Ferro Alloys as reported in AIR 1997 at page 221.

3.9.4 The CESC also stated that in the city of Kolkata, both DC and AC supplies were still prevalent and they indicated the steps taken towards improvement and conversion of DC supply to AC supply. It was stated that there was no over-realization on account of fuel surcharge and hence there was no question of any refund. There was also no excess billing. They proposed to

justify the demand of enhanced security deposit and they deprecated the proposal of procurement of meters by the consumers themselves.

3.9.5 It was also contended that there had been a special rebate to charitable hospitals under the HT supplies under the direction of the State Government and they were ready to abide by the direction of this Commission for any rebate to the Medicare Research Institute or any commercially run hospital.

3.9.6 It was asserted that the plant load factor of a generating station can not increase with increased flow of power from external agencies. It was pointed out that fuel (coal and oil) was being purchased from Government agencies only.

3.10 Objections by individual consumers and reply thereto.

3.10.1 In addition to the group objections discussed above, certain individual objectors came forward to place their grievances against the tariff proposals.

3.10.2 Shri Amit Ghosh raised a point that CESC were engaged in unfair business practice and were not exhibiting efficient and economic use of resources. The allegations were denied by CESC. They accepted that Shri Ghosh had addressed several letters to the CESC, but the contents were so incomprehensible that the problems could not be identified and hence steps could not be taken.

3.10.3 Shri Nirmal Kumar Sarkar and Shri Babu Dey raised their voices against hike in electricity charges, meter rent, fuel costs and they had given in a tabular form the rise of such charges from year to year. On these points, the CESC reacted with a statement that these consumers had enhanced their consumptions resulting in the increase in the charges. It was contended that the CESC were aware and alive of the financial situation of the low income group and with this situation in view, they had suggested a lower rate of tariff for this class of consumers.

3.10.4 Shri Mahesh Kumar Singhania in his objection opposed the proposal for tariff hike and enhancement of meter rent and he demanded a thorough investigation into the affairs of administration, purchase and distribution system of the CESC and also required an enquiry into the factor of actual loss as projected by CESC. He also alleged excess billing, non-attendance to complaints, unfair demand of enhanced security deposit, absolute failure to give separate meters on partition in a family, excess charges for new connections, etc. On these points, the CESC came up to reply to the fact that the material facts were not brought on record to justify these allegations. There was, according to CESC, no excess realization. They further discouraged procurement of meters by the consumers and also pointed out that though under the law, they were not bound to pay interest on security deposit, they were conceding interest @ 5.5% per annum on such deposit.

3.10.5 Shri Sujit Basu raised objection on the stipulated hike by 27.8% on the ground that since the last revision, All India CP Index had gone up by 5.70% only. It was contended that fuel related cost would not be taken as a fuel surcharge. It was contended by this objector that loss suffered, if any, should be recovered otherwise than by taxing the consumers. On these points, it was stated by the CESC that the AICP Index had no bearing with tariff fixation and they also explained the rationale behind fuel surcharge. On the question of meter rent, it was stated that the same is fixed considering the cost of meter, cost of maintenance and cost of replacement.

3.10.6 Shri Jayanta Kumar Mallick submitted his objection on the stipulated data. But his points stood covered by the objections from Shri Brojesh Chandra Sinha and Shri Ardhendu Basu. Points of objection cover the proposed increase in tariff and meter rent and also fuel surcharge adjustment and T & D loss. These points were answered by the CESC in the same line with the answer against other objections.

3.10.7 Shri P. C. Basu raised an objection that any rise in tariff, fuel cost or meter rent, must be proportionate with the actual inflation since the last revision. In any case, according to this objector, the low and domestic consumers were not to be victimised and the T & D loss must not be more than the national average. The CESC submitted that any rise in the tariff is to be done in terms of the relevant law and not in proportion to the inflation rate.

3.11 We may now indicate the objections that were received in writing against the tariff petition for 2001-02. We also indicate along with objections, reply of the CESC on the specific points except the main points dealt earlier.

3.12.1 Samiran Co-operative Housing Society Limited stated in their objection that their monthly average consumption ranged from 25000 KWH to 30000 KWH and stated further that they had a lot of transmission loss. Accordingly, they claimed that they should be treated differently from other bulk consumers of low-tension power.

3.12.2 As against this, the CESC submitted that the objection was not maintainable for non-compliance with the mandatory requirements of the regulations. The CESC submitted that the Objector Society was supplied high tension power on technical and safety consideration and the high tension domestic tariff compared favourably with high and low and medium voltage domestic tariff. It was indicated that had the Society been provided LT supply, the constituent residential units would have been divided to fall under any of the three categories of LT domestic consumers and while those consuming less than 300 units per month would have paid lower tariff, the others with consumption above than the said would be paid a considerable higher amount.

It was stated that the Society could not have claimed any differential treatment form bulk consumers of LT power. Such LT power consumers would be paid 78 p. per unit more at current tariff.

3.13.1 Sri Amit Ghosh filed an objection in his individual capacity as retail consumer and stated that the CESC failed to comply with the provisions under the Calcutta and District Consolidated Electric Licence, 1946. It was stated that they could not have been any charge beyond the provisions of the licences. He further stated that the CESC had failed in maintaining consumer relations and were attached in unfair business practices. He wanted the Commission to determine by regulations of terms and conditions for fixation of tariff for CESC and the overall tenor of his objection was that the factors like efficiency, economical use of resources, good performance, optimum investment should get the attention of the Commission in fixing the tariff.

3.13.2 As regards this objection, the CESC submitted that the objection was not maintainable in terms of the regulations of the Commission. The objections were utterly vague and non-specific.

3.14.1 The Metro Railway placed on record their objections against the tariff proposal for this year. They stated that the Metro Railway was a public utility transport organization and carried 2.7 lacs of passengers everyday and had an earning of only about 34 crores as an insistent expenditure of about 87 crores in the last year. They indicated that they availed power supply from CESC at 33 KV at four receiving stations and were a bulk consumer of CESC power consuming about 78 MU and paying about 32.5 crores to the CESC per annum. They have been good paymasters who had never defaulted. They prayed for parity with Calcutta Tramways tariff and drew attention to a request by the Railway Board to the Minister of Transport, Govt. of West Bengal for consideration of railway traction tariff at the same level as that of Calcutta Tramways tariff. It was stated that their tariff was very high and discriminatory in nature and any upward revision was unjustified. They raised objections on the proposed 15 minutes duration for maximum demand integration period from the existing 30 minutes. They also raised objections regarding the provisions for surcharge for drop in power factor as also had the proposal for monthly maximum demand charge at 75% of the contract demand or the actual monthly maximum KVA demand or 50 KVA whichever was highest. They also insisted that simultaneous recording to maximum demand be made for all the individual receiving points.

3.14.2 As against this objection, the CESC stated that the traction tariff for Metro Railways was comparatively low than the traction tariff for other utilities in the country. They also stated that they tried to reduce cross subsidy progressively in a phased manner and for Metro Railway the proposed reduction was far more than the other consumers. Citing facts and figures, the CESC stated that the Metro Railway could not compare it with the Calcutta Tramways Company. In any view of the matter, attempts were being made to bring the tariffs for these two consumers at par. The CESC proposed to rationalize demand and energy charges and stated that the proposal for changing the integration period to 15 minutes instead of 30 minutes would reflect the cost to serve the consumers in a precise manner. The concept was not a new one. In 1990 itself there was an agreement between DVC and CESC whereby demand integration period of 15 minutes was

incorporated. The CESC explained that despite severe cost pressure, the basic energy charges have been proposed to be kept at the existing level for all consumers while the overall basic tariff index of the Metro Railway had been proposed to be brought down. It was stated that on the point of control over power factor, the CESC had taken care of the concern of the Metro Railway. On tariff structure, it was stated that contract demand had a bearing on tariff and improvising of pointwise demand charge was in practice in WBSEB also. They supported the proposal for a two-part tariff structure and indicated the reason for claiming only 4% T & D loss on the purchase from WBSEB.

3.15.1 Sri N. N. Ghosh stated in his written objection that he was a retail consumer and stated further that the CESC could not get any hike in tariff. He insisted that if there was any reduction in income of the CESC, it was not due to their own fault on account of bad management, huge arrear in revenue collection etc.

3.15.2 As against this, the CESC replied that the objection was not maintainable under the regulations and the losses of the CESC were not due to failure in collection of arrears rather losses occurred due to inadequate tariff to recover the costs incurred. On pilferage of electricity it was stated that despite of all out efforts by the CESC, this socio-economic problem could not be combated.

3.16.1 A bunch of objections were filed by Sri Durgadas Roy Chowdhury as Secretary, Barisha Babsayee Samity and others, by Sri Govinda Lal Dey on behalf of Silpara Babsayee Samity and others as also by Sri Ranjit Kr. Bose and others, Sri Kalipada Sil, Smt. Mira Das and others, Sri Rathin Ghosh and others, Sri Krishan Deo Lal and others, Sri S. C. Dutta and others, Sri G. K. Ojha and others and by Sri Prasanta Kr. Chatterjee and others. All these objections were basically on the same lines and most of them were printed copy of each other. In these objections it was stated that the tariff of CESC even for the year 1999-2000 was higher than the tariff in other states. Any further rise would only suffocate the poor, middle class, small industries and small traders. They challenged the projected high rate of T & D loss and stated that for other utilities like Tata Electric and BSES, T & D loss was only 2.2% and 9%. They stated further that the story of loss as projected by CESC was not a truth. They objected to the proposals for rise in meter rent, rise in fuel surcharge, introduction of fixed charge and abolition of cross subsidy.

3.16.2 As against these objections, the CESC stated that they are entitled to earn a reasonable return to meet the obligation to present capital investors and also to compete for capital in the financial market for future requirements. They did not get the return to the degree, they were entitled and thus they were going through a recurring loss. They came out with reasons for coming up with a tariff revision obligations stating that the last revision was made more than 21/2 years ago. They also placed figures to say how the CESC tariff was lower than the tariff of certain other related utilities across India on T & D loss. Also it was stated that it was caused primarily on account of pilferage and the utilities referred to by the Objectors did not face this menace as they made supplies at high voltage level. In Orissa, the BSES run utilities suffered a T & D loss of more than 40%, as stated by the CESC. On the question of comments of the D. K. Bose Committee and M/s. S. R. Batlibuoy & Co. regarding losses of CESC, it was stated that the objectors did not understand the context or the financial principles or the statutes. Even the re-cast accounts has done by Batlibuoy & Co. indicated that CESC had a shortfall in the permitted return. It was stated that meter rent was proposed to be increased following the policy of progressive reflection of cost of supply. The CESC procured superior quality meters for its consumers and had planned to replace gradually the old meters in a phased manner. On fuel surcharge it was stated that it was an accepted mechanism to allow the utility to recover additional fuel cost towards generation and purchase of power. They indicated why fixed charges have been introduced and why cross subsidy was proposed to be phased out.

3.17.1 The separate objection was filed by Sri M. Lahiri in an individual capacity. It was stated that the CESC had been earning indiscriminate revenue for sale of power. The objector was claiming repeal of the Indian Electricity (West Bengal Amendment) Act, 1994 and objections were also taken on the proposed hike in tariff. It was stated that coal was a cheaper fuel than mineral oil imported from foreign countries and the objector wanted in detail a statement corroborated by Audit firm and accepted by the Government on the cost per unit of energy.

3.17.2 In reply, the CESC stated that the objection was not maintainable as per regulations. It was stated that the Commission had nothing to do with the repeal of the 1994 Amendment Act. The CESC further stated that fuel surcharge was legally leviable and no objection could be raised on principle. On the individual bills spoken off by this objector, relevant replies were given. The CESC explained why oil was being used as a support fuel and stated that oil had only a minimal consumption.

3.18.1 Sri Binod Koholi, another individual consumer raised his objections against the tariff revision proposals. He indicated through figures what was the impact of tariff revision with the increase in meter charge and with the introduction of a consumer charge and concluded that the CESC proposed to increase the tariff of the LT domestic consumers by more than 43%. He took an objection on the point that although CESC had been insisting that they were undergoing a loss for the last couple of years due to decline in sale, still then they had been pursuing with the new project. CESC's drawal from WBSEB was assured at 1750 MU during the clearance of Budge Budge TPS, but it has declined to only 1000 MU as per submissions of the CESC in their tariff proposal. CESC also acknowledged a fall in sale to the industrial sectors and their setting up a new generation project at Balagarh was totally unjustified. Their prayer for special appropriation was also opposed on the ground that the new consumers would be unfairly called upon to share a part of the earlier liability. The theory of sustained loss as projected by the CESC was also seriously challenged. It was stated that the cost of the Budge Budge TPS project was high, compared to the other 500 MW thermal power stations in the country. There was a hike allowed by the State Government in CESC's tariff w.e.f. October, 1998, but despite this rise the CESC projected an increase in their loss from 105 crores in 1997-98 to 115 crores in 1998-99. He challenged the quantum of projected T & D loss.

3.18.2 The objections were made by the CESC with a statement that the objection was not maintainable in terms of the regulations. It was stated that the cost of supply for LT domestic consumers was around 42% of overall costs while the proposed revenue from LT consumers covered only 30%. This was the reason for proposed entries in LT domestic tariff. It was stressed that the tariff should reflect the cost of supply of electricity. The CESC further stated that one of the main contributed factors for the rise in T & D loss was the theft of electricity, which was an accepted social norm now when the social stigma attached to the concept of theft has lost its moral impact. On the question of the Balagarh project it was submitted that its need has been confirmed by a study report on prospective power requirements carried out at the behest of the State Government. The expenses incurred so far on account of this project had not been included in the capital base and no return was being claimed on it. While question of special appropriation, it was stated that the objection was based on complete mis-conception of the term 'Special Appropriation' and the purpose for which the same was asked for and granted. They asserted that even assuming the Budge Budge project cost at the level decided by the CEA, the capital base attributable to Budge Budge alone would have been Rs. 765 crores based on a debt-equity ratio of 2 : 1. The CESC continued that for disallowance of entitled tariff the capital base had eroded to such an extent that the capital base attributable to the asset base other than Budge Budge has been totally wiped out. The company was under pressure to take up the Budge Budge TPS project because of severe load-shedding in Calcutta. With the cap of the cost of Budge Budge project, the CESC stated that the forfeited Rs. 81 crores have indicated why they sustained losses. CESC also clarified why there may not be any comparison between them and other utilities on the point of T & D loss.

3.19.1 A written objection was filed by WBSEB against the proposed tariff revision of CESC for the year 2001-02. The SEB relied on the agreement between them and the CESC and annexed the agreement to their objection. The WBSEB insisted on a notice of 60 days has envisaged in sixth Schedule, Item - I, 3rd proviso and stated that without such notice no enhancement could be effected. The SEB also stated that no separate T & D loss norm may be set for the purpose of calculation of fuel surcharge. According to them fuel surcharge was a part of the tariff and the norm of T & D loss decided upon by the Commission for the purpose of calculation of basic charge should also be applicable for computation of fuel surcharge. Although the CESC calculated the fuel cost on the basis of a fuel surcharge taking a 4% T & D loss in the system of the WBSEB (132 KV supply), the CESC should have calculated the revenue at the current tariff and not at the old one. It was further stated that coal and ash handling cost could not be computed in fuel surcharge although the CESC proposed to do it. The WBSEB also challenged the formula suggested for fuel surcharge. On the question of purchase price adjustment on account of enhancement of price of

purchase power from DVC between two successive tariff revisions, it was contended by WBSEB that Section - 51 of the Electricity (Supply) Act, 1948 was applicable to the SEB and not to the licencees and as such the price escalation in Fuel charges and power purchase between two successive tariff revision could not be taken care of by any price adjustment clause. The SEB also objected to calculations given by the CESC regarding the tariff charged by WBSEB from them stating that the CESC had deliberately shown the old tariff although it had undergone a change prior to the filing of the tariff petition. The extent of T & D loss as projected by CESC was also challenged. The SEB contended that the CESC was licencee and had been enjoying lower tariff in comparison to general consumers and the SEB had been charging them at the level of every consumers only for computation of fuel surcharge and for that purpose the overall T & D loss was being considered. It was stated that the T & D loss percentage considered by the DVC was not a relevant factor so far WBSEB supply was concerned, as DVC had been realising fuel surcharge at a uniform rate from 33 KV and 132 KV consumers. The SEB submitted that if at all they are directed to calculate fuel surcharge payable by CESC on the basis of 4% T & D loss, they should be allowed to recover the balance admissible fuel surcharge from other categories of consumers. They refuted the allegation of the CESC that in the 1999 January revision of tariff a higher rate was fixed what was allowed to the CESC in October, 1998. The tariff fixation in January, 1999 was made under Government orders and was enforceable under the law. On the peak / off-peak ratio the SEB referred to the agreement between the parties whereby CESC undertook to draw power maintaining the peak / off-peak ratio of either the system of the CESC or that of the SEB whichever was beneficial to the CESC. This was a rational stipulation. Regarding the penalty for non-compliance of reasonable peak / off-peak ratio in accordance with prudent operational practice, the operational consequences implemented by the applicant were duly approved by the Power Department, Govt. of West Bengal. It was stated that the supplier could not offer an off-peak tariff, which could not ensure realization of fuel costs of the thermal power station. On the question of minimum charge also the SEB referred to the agreement between the parties and on the basis thereof the SEB insisted that the minimum level of drawal was agreed to be 1750 MU and the CESC should have consider their liability on account of minimum charge in terms of the agreement. They raised objection on the calculation in the capital base. The cost of Budge Budge Thermal Power Station at Rs. 2295.57 crores. This point has been elaborated earlier and shall be taken as a note at the relevant chapter. On the question of special appropriation on account of arrear claims of DVC and SEB as also for foreign exchange variation in connection with the loan repayment, the SEB stated that the petitioner had not furnished any document relating to approval of the State Government in respect of special appropriation beyond 1900 lacs and Rs. 2500 lacs on account of claims of DVC and SEB and foreign exchange variation. Without the approval of the State Government the same could not be claimed in the tariff proposal as per the objection of the WBSEB.

3.19.2 These objections were sought to be met by the CESC in their reply. They indicated that as instructed by the State Government in the past, CESC had to abandon its plans of addition to its generating capacity, instead they had to depend on import of power from WBSEB. The Board had been playing a dual role as a defacto regulator for CESC as also that of a power supplier. The consequences of this had not been favourable to CESC and to its consumers. The CESC continued to say that the change of transmission loss in fuel surcharge calculation to 20% from 4% was an arbitrary step by the WBSEB. On the question of requirements of notice of 60 days the CESC submitted that since the law had undergone a major change by introduction of the ERC Act, 1998, the necessity of a notice has also been diluted. The present tariff application according to CESC was based on the guidelines issued by this Commission and they referred to the Government correspondence whereby they were indicated that since after constitution of this Commission the Government had no role in the matter of fixation of tariff. They also stated that the Board had no role to play under the present tariff fixation mechanism and as such there was no necessity of any notice to the Board as projected by the Board. On the question of fuel surcharge computation, the CESC stated that T & D loss norm as set out by the State Government, permitted fuel cost recovery and the total impact on fuel surcharge was not much. On the question to fuel related costs it was stated that the sum was shown in fuel surcharge as per consistent characters and for obvious reasons the costs were not shown again under non-fuel cost head. The CESC submitted that they would abide by the decision of the Commission on this point. The CESC insisted that the fuel surcharge formula has been laid in terms of the clarifications made by the one man committee on fuel surcharge appointed by the Government of West Bengal. The CESC also insisted that Section - 51 of the ES Act could not be narrowly interpreted and it speaks of price to be paid for Electricity by or to the Board. The ERC Act or the regulations made therein, according to the CESC

did not refer to Section 51 of the ES Act and in any case Section 52 thereof gives an overriding effect to the act with respect to anything inconsistent in any other enactment. The CESC proposed to explain the rationality for charging only 4% T & D loss while calculating the fuel surcharge so far payment to SEB is concerned. They insisted that they were not general consumers, but were a distribution agency and they were asked to shelve their generation plants and purchase powers from public sector in the interest of consumers. In that interest only they should be charged at a low T & D loss percentage than the projected one. The CESC stated further that the SEB had accepted on the principle of cost of supply at a specific voltage level and since CESC was also a licensee drawing power from WBSEB for redistribution, they should be favoured with a tariff which reflects the cost of supply at 132 kV at a rate they had been drawing power from WBSEB. The CESC further stated that while SEB insisted on uniform fuel surcharge to all categories of consumers they had shown preferential treatment to certain consumers namely, Singure Haripal Rural Electric Cooperative Society and stated that DPL also charged a lower rate of fuel surcharge from WBSEB over and above given them a special concessional tariff. The CESC also raised objections which really related to the tariff petition of WBSEB. On the question of tariff payable to WBSEB as projected by CESC, they stated that they acted upon certain understanding given by the State Government and they explained why they could not go for asking for a rating committee. On the question of off-peak drawal also the CESC had their own reply and stated that the matter was exhaustively discussed and mutually agreed and thereafter incorporated in the power purchase agreement. The CESC explained with reference to their original application as to what was their stand on the question of Budge Budge project cost. We need not go through the detailed reply as that had been indicated earlier and would be discussed at the appropriate time. On the question of special appropriation it was stated that the SEB had deliberately suppressed relevant facts. According to them special appropriation is an appropriation from revenue earned from the existing tariff as opposed to an appropriation of clear profit and is depending on actual recovery on units sold. Special appropriation was clubbed with the basic tariff and there was no instruction from the State Government regarding cessation of the sum after fixing time period of recovery of certain amount.

3.20.1 M/s. Indian Aluminium Co. Ltd., submitted their objections for this year also almost in the same lines they had adopted for the previous year. According to them, the CESC made no efforts towards promoting efficiency and reducing costs for maintaining the quality of power. They challenged the projected heat rate, oil heat rate and auxiliary consumption on the basis of which basic tariff was calculated. They also challenged the projected percentage of T & D loss and the fuel surcharge formula proposed by the CESC. They raised objection regarding demand charges, power factor rebate, rebate on fuel surcharge as also on the pattern of cross subsidy. They raised their voice on the "time of the day" tariff as also the tariff structure of the CESC. They insisted that in the era of globalisation the domestic companies were required to gear up to external world-wide competition and under this circumstances the price of basic inputs and the revenue from outputs are determined by global market forces. They further insisted that tariff must not be given a retrospective effect.

3.20.2 The CESC replied to these objections almost in the same lines that they had taken up for the objections raised by INDALCO for the past year. They indicated that the present tariff by INDALCO was the lowest in Calcutta compared to other units of aluminium industry at Karnataka, Andhra Pradesh, Gujarat, Hariyana and Mumbai. They indicated that they introduced a new feature of load factor rebate which gave an opportunity to INDALCO to qualify for a higher rebate. They also proposed load factor rebate, readjustment of demand and energy charges to encourage better utilization and introduction of demand charge based on KVA with a view to remove the gap of high power factor incentive and CESC also indicated, they proposed a directive TOD tariff as an incentive for off-peak drawal as also a special rebate for 33KV consumers like INDALCO. This indicated how they tackle the voltage variation and how they had the system of feedback survey on the complaints from HT consumers. They also explained that the actual heat rate, oil heat rate and auxiliary consumption can be computed from their tariff revision petition itself and those were not high in comparison to norms. On the percentage of T & D loss the CESC stated that the percentage has been raised in most of the states after the Regulatory Commissions took charge. They indicated that their fuel surcharge proposal was an acceptable one, and there were provisions in their proposal for re-adjustment of demand and energy charge with provision for load factor rebate. They further stated that contract demand had a bearing on tariff. They also stated that certain types of consumers have a tendency to draw high loads intermittently and this practice told upon the suppliers' capacity calling for investment to create further capacity. The

integration period was sought to be changed to 15 minutes in respect of 30 minutes with a view to reflect the cost to serve in a more precise manner. According to them the concept was not a new one as in 1990, there had been an agreement between the DVC and CESC whereby demand integration period of 15 minutes was incorporated. They indicated the rebates suggested and supported the cross subsidy and the TOD tariff. On the question of retrospective effect they indicated why there was delay in submission of the tariff petitions of 2000-01 and how the hearing took further time.

3.21.1 Ganatantrik Nagarik Samity, Howrah filed written objections. Comparing the existing tariff with the proposed one they indicated that there was the proposal of 35% increase in basic tariff for industrial rate 'A' consumers which was abnormal. The proposal of the CESC to compute demand charge on 15 minutes integration period as against the prevalent 30 minutes period was also opposed. The Samity opposed the introduction of steep monthly minimum demand charge and projected change in the pattern of cross subsidy. It was stated that the CESC had been operating in small area with high and low density and consequently enjoy low operating cost, but despite this advantage the CESC was charging its industrial consumers at a much higher rate and the disparity must be removed. It was stated further that the T & D loss projected by the CESC should be brought down to 4% only and it should be even lower for consumers drawing power at 6 KV and above. The Samity had serious objection on the proposal of the CESC to include Rs. 20 crores as interest income and they insisted that the Commission may ascertain the rate of interest and with whom such money had been invested by CESC. They feared the CESC must have invested a large sum of money for its own project after borrowing from financial institution and bank. They pointed out to the disparities at different pages of the tariff petition in respect of setting the reasonable return for different years. They questioned the wisdom of the CESC in pursuing their proposal for a new power station at Balagarh when according to them the sales have slowed down requiring a tariff hike. The CESC agreed to take 1750 MU of power from SEB, but this had been progressively declining and now the CESC proposed to bring down such drawal 1000 MU only. The cost of Budge Budge TPS had also been questioned stating that the cost overrun was due to inefficient project management by the CESC. The steps allegedly taken by the CESC to reduce commercial loss had not yielded any fruitful result and according to the objectors the CESC had done nothing except shifting the blame to the State Administration to cover up its own inefficiency to stop pilferage.

3.21.2 As against this objection, the CESC came with a reply to say that the objection was not filed in terms of regulations and was not maintainable. The CESC indicated that there were severe financial crisis, because of continued non-recovery of costs for last several years and the staggering losses aggregated to Rs. 385 crores and their net worth eroded by 98% and the debt-equity ratio had reached a level above 4 : 1. Under this background the tariff proposal was sought to be supported. In line with their replies against every objection the CESC stated that they had never been allowed to be self-reliant and had always been forced to purchase power from outside agencies. Transmission losses should be restricted to actual levels only so far supply to CESC was concerned. They indicated that as per the latest audited accounts of the company for 1999-2000 about 62, 63, 293 paid equity shares were forfeited by the company for non-payment of the balance due on its shares. They explained the necessity of the Balagarh project and stated that the project had been re-confirmed by a recent study report carried at the behest of the State Government. They supported their proposal for special appropriation and spoke a lot about the Budge Budge project cost. They made specific denial of the factual details asserted by the objectors.

3.22.1 In their objections the Consumer Unity and Trust Society questioned the assertion of the CESC on the point of cost pressure. They wanted to know if under the declining trend in the rate of interest necessary adjustment were incorporated by CESC and also to know the type of coal used by them at the degree of increase in coal and oil price. They also questioned if employees of Mulajore Generating Station be retained and posted in some other area within the CESC. The society also desired to know what measures have taken by the CESC towards financial management like forward rate agreement, fixed floating interest rate swaps, interest rate caps etc. They wanted a clarification as to who were the prime customers of CESC and how sales to them have slowed down due to cross subsidy. They questioned the cost overrun of the Budge Budge project and also challenged the projected degree of T & D loss due to power theft. They objected to the increase in tariff specifically to the two categories - "Public Water Works" and "Public Street Lighting". The society wanted to know how the CESC planned to salvage the

differences between the additional annual requirements of Rs. 450 crores and the amount of Rs. 362 crores claimed for the previous year. They also took an objection to the projected tariff structure and stated that the two part tariff system was not a feasible one and the system had practically failed. According to them any two- part tariff system were to revert back to single part tariff. The proposal for TOD tariff was also challenged. Together with the proposal for charging meter rent they alleged that the CESC was oblivious of their duties towards consumer grievances redressal.

3.22.2 The CESC came up with written replies on these points and to the preliminary objection regarding the maintainability of the objection as being against the regulations. It was stated that a roving enquiry could not be made in the name of objection. The indicated how coal and oil price have increased in course of years and also conceded that re-deployment of the workers in Mulajore Generating Station had already been made and a voluntary retirement scheme was also under contemplation. The CESC asserted that adequate analysis be made on the choice of the appropriate financial instruments. They further indicated that high tension industrial consumers accounted for the largest sale volume of the CESC as a single category and during the last couple of years the CESC suffered a decline in sale to such consumers. Industrial slow down contributed to this decline. CESC had no liberty to determine its own tariff structure and it had to comply with the tariff regime that was set to cross subsidise low end HT consumers with higher tariff to industrial and high end consumers. It was asserted that periodic feedbacks from domestic consumers have been taken through sample survey carried out by independent agencies. On the question of Budge Budge project cost over-run, it was stated that cost over-run was a phenomenal experience for every power project and the Budge Budge project had to be taken up, because of severe load-shedding in Calcutta. Cost over-run for Budge Budge project was caused according to CESC due to factors not under their control. They reiterated that due to non-grant of adequate tariff in the past years their net worth had eroded considerably. They also indicated the steps taken by them to check power theft. Regarding increase in tariff for street lighting and public water works it was stated that the proposed rise was nominal. The rates of tariff for different consumers have been projected on a five year CAGR bases. On the question of two part tariff and time of the day tariff, the CESC insisted that they had no information about the failure of the system in any state. The CESC explained that although they are not required to give any interest on the security deposit, they are conceding an interest at the rate of 5.5%. They further insisted that they were within their rights to demand 3 months consumption of electricity as security deposit.

3.23.1 The Federation of Consumers Association, West Bengal stated in their objection and questioned the claim of transmission and distribution losses at the projected degree. They wanted the relevant records to be produced to justify the projected T & D loss. On the question of sustained losses in the past 3 years the objectors questioned the very accounts of the companies. It was stated that fuel adjustment charge as projected could not be admissible to the CESC in the absence of a clear statement of the period for which such fuel surcharge was proposed to be recovered. They wanted that the CESC should produce before the Commission all relevant records and proceedings and notes exchanged between the CESC, Auditors and the State Government. They wanted that the report of the D. K. Bose Committee should also be brought on record. They questioned the cost over-run for the Budge Budge project.

3.23.2 On this point, the CESC stated that their accounts were audited as per rules and the audited accounts indicate a loss. It was stated that there was no exaggeration in the projection of T & D loss. They also indicated the measures taken to assess the losses and to stop the same, but they contended that social menace of power theft can not be fought by them alone without adequate legal administrative and social support. They justified their claim for fuel adjustment charges and tried to explain why there was cost over-run for the Budge Budge project. The report of the auditors and that of the D. K. Bose Committee were described as matters of past already settled through the orders of the State Government and according to CESC these were not relevant at all in the present proceedings. A technical objection was raised that the affidavit of the objector had referred to a paragraph marked 'A' in their objection although there was no such paragraph marked 'A'.

3.24.1 M/s. Titagarh Industries Limited questioned the assertion of CESC on the point of projected loss and proposed manner of recovery of fuel surcharge. It was stated that Cossipore and Mulajore Generating Station were very old plant and should have been shut down long back on the ground

of inefficiency, but CESC continued with them and finally came up with a voluntary retirement scheme for the employees of the Mulajore unit. According to CESC this station was kept running only as a peak station and this assertion was challenged. The unnecessary fuel cost in this plant raised overall rate of tariff for the consumers. The CESC had underground cabling and as such it did not require continuous investment for the maintenance of the cable line. If there was any loss on account of foreign loan, according to this objector, only the CESC was liable therefor as the sums were borrowed to cover their own foreign exchange losses and the sums were not utilized for the development of generating station. They questioned the assertion of decline in remunerative sales as there is growth subsidized schemes. According to the objectors the depreciated and out-dated old plants called for tremendous repair and maintenance work and it was high time that the CESC instead of running such plants replace them by plants on a new technology. The tariff revision according to the objectors could not be made to compensate the CESC for losses incurred due to its own inefficiency and for normal wastage. The degree of T & D loss as projected was also seriously challenged. The Budge Budge TPS cost over-run was also under challenge.

3.24.2 The CESC in their reply submitted that the objection was incomplete and the CESC claimed to reserve their right when complete objection was filed.

3.25.1 An objection was brought on record by Bengal National Chambers of Commerce. It was stated that simply because there was no revision for about two years, the CESC could not claim a tariff revision. It was stated further that the allowed increase in fuel cost and oil price were not justified by proper documents. Fuel cost have increased annually by 3.5% only and the adjustment mechanism should adequately take care of mis-match of increase. The objectors wanted the CESC to explain as to how many units were generated, how many units were sold and at what price and what were the subsidized sale. They questioned the claim of interest burden and depreciation. They also questioned the projected degree of T & D loss.

3.25.2 As against this objection, the CESC stated that the objection was not in proper form and hence not maintainable. It was stated that the CESC was entitled to a tariff revision every year and is also entitled to earn a reasonable return. But due to lack of adequate tariff revision at appropriate times they had suffered huge losses resulting in 14% erosion of their net worth. It was also indicated that during last 6 years tariff was revised only two times - one in November, 1996 by only 3% and again in October, 1998. It was contended that fuel surcharge was an accepted mechanism to allow to the utility to recover the increased fuel cost and oil crisis. It was stated that coal crisis had gone up very quickly during the last one year and without a proper adjustment of the enhanced fuel cost the CESC would be put to unnecessary loss. CESC explained why they had stated that they did not receive any external subsidy. In fact, no Government subsidy or subsidy from any other concern was given to them. The details sought for by the objectors were already there in the tariff petition as stated by the CESC. They insisted that the loan for setting of the Budge Budge generating station and the substantial interest of the borrowings on the said loan are charged to revenue and are recoverable expenses under the statute. The objections in this regard were unfounded on law. The objectors also misquoted the figures regarding interest charges. The CESC stated that the T & D loss have been projected on a realistic assessment of the situation.

3.26.1 The Socialist Unit Centre of India (SUCI) also challenged the projected hike in tariff. It was stated that CESC had been making profit till 1996 and they have given dividend to the shareholders. There had been tariff rise in 1996 and 1998 together with fuel surcharge and meter rent and there was no reason for the CESC to suffer any loss. It was stated that the T & D loss has been projected beyond reality and there was no attempt on the part of the CESC to stop or contain the commercial loss by way of power theft. The objectors contended that the accounts of CESC would show that there had been increase in depreciation and in administrative expenses and as such there was no justifiability of rise in tariff. Objection was raised on the proposal of the levying monthly fuel surcharge and it was further stated that fixed charge was a levy not permissible by law. The objectors also objected to the proposal of abolition of cross subsidy. They also objected to change in condition of supply and to the demand of additional security from the consumers.

3.26.2 As against this objections the CESC brought on record an interview of Professor D. K. Bose as published in Anandabazar Patrika with an official translation thereof and also a letter on D. K.

Bose addressed to the Statesman. In the absence of Sri Bose appearing before as in the public hearing of his own or on the requirement by any party we may indicate here itself that his opinion in this two papers may not be acted upon.

CESC in reply to the objections of SUCI stated that these were based on assumption and presumption, not supported by any material fact on legal contention. On the question of a public interest litigation the CESC submitted that such application should not smack of any ulterior motive and wanted the Commission to ensure that persons appearing before it are acting bonafide and not in personal profit motive or political motive. The CESC relied on the two decisions of the Supreme Court in the following cases :

1) S. P. Gupta vs. Union of India, AIR 1982 SC 149, 2) Kazi Landup Dorji Vs. Central Bureau of Investigation 1994 Supp (2) SCC 116), 3) Sachidanand Pandey Vs. State of West Bengal, 1987 (2) SCC 295).

The CESC submitted that the objection suffered from serious infirmities due to wrong interpretation of law and ignorance of technical issues and financial principles and also for furnishing factually incorrect statements and mistaken notations on some issues. It was indicated that in November, 1996 the CESC got only a marginal 3% rise in tariff after a gap of 23 months. It was stated that the CESC's accounts were audited by statutory auditors and the same could not be questioned. In last 6 years, according to CESC, tariff was revised only twice. The allegation of manipulation of accounts by considering loan as capital was stated to be ridiculously false. According to CESC the T & D loss was assessed after this study by the Tata Energy Research Institute and Indian & Union Research Agency of repute. In any view of the matter the reports of D. K. Bose or Batlibuoy & Co. were matters of past and were settled through orders of the State Government and could not be re-agitated. They justified the additional fuel surcharge as being charged by them. The practice of fuel surcharge according to them was prevalent practice corroborated with a legal sanctity behind it under numerous judgement of higher courts. It was stated that even monthly increase of fuel surcharge was practically in vogue in different utilities. The CESC justified introduction of the concept of the consumer charge for services rendered to the consumers. It was stated that the meters supplied by the CESC were quality ones and no complain could be raised on this point. On pilferage of electricity it was stated that this may not be combatted by simply allowing the consumers to have their own meters. The CESC insisted that they had always conformed to the norms regarding generation. They also explained that under the law they could demand a security deposit upto 3 months consumption of electricity and they were conceding an interest on such deposit. It was stated that their tariff was lower than the tariff charged by the number of utilities across the countries.

3.27.1 All Bengal Electricity Consumers Association came up with a written objection for the tariff proposal for 2001-2002. The objections were in the line of those raised for the previous year and in addition thereto it was stated that during the pendency of the petition for the revision for the year 2000-01, the present application could not be considered. They also spoke about the legality of the demand of fuel surcharge. The objections were made by the CESC again in the same line as they made the last years' objection.

3.27.2 As regards the objections' maintainability of the petition for 2001-02 we may say here that the Commission itself had allowed the two petitions to come in close succession and the Commission had taken up the two matters together and again the Commission is not prejudice the cost of the petitioner.

3.28.1 The West Bengal Rolling Mills Association filed a voluminous objection against the tariff proposal for the year 2001-02. The objections were made on the same line as were raised by them against tariff proposal for 2000-01 and in the paragraphs 3.8.1 onwards of this objection we have given the details.

3.28.2 The reply of the CESC on this objection is also in the same line that their reply for the last year and the same are contained in paragraph 3.8.12 onwards. We need not, therefore, reiterate the same.

3.29 CESC submitted replies to the objections in writing which were also open for inspection and comments by the objectors.

3.30 The objections raised and covered by one objector and also repeated by other objectors have not been included in the later case to avoid repetitions in some cases.

CHAPTER- 4 : POINTS RAISED DURING HEARING

4.1 As already indicated, the tariff proposals were kept open for inspection and copies and objections were invited through publication in major newspapers of Kolkata. After receipt of the objections, the dates of hearing were fixed and again insertions were given in the newspapers allowing everybody interested to take part in the hearing subject to permission from the Commission. We had indicated at the beginning of this order as to who had taken part in the public hearing.

4.2 During the hearing, the CESC highlighted the points taken by them in the tariff petitions as also in their replies to the objections. It was contended that for last about 30 months, there had been no revision of tariff and that was the reason for the proposed steep rise for the year 2000-01. It was contended that during the intervening period, coal prices, railway freight and oil prices had increased enormously and they had undertaken an expansion of the Budge Budge Project leading to a necessity of increased revenue. It was contended that all utilities should get a uniform approach from the Commission and tariff should be fixed at equitable rates with a reasonable base mark on each parameter. They insisted that tariff should be revised every year to avoid a steep hike. With reference to Electricity (Supply) Act of 1948, it was contended that in calculating the reasonable return, the interest of the utility must be protected. It was argued that the scars and damages inflicted by the earlier regulatory regime may not be ignored and a total view was to be taken to appreciate the claim of the CESC for hike in tariff.

4.3 Shri Ajit Dasgupta appeared in individual capacity to say that the ASCI report did not go into the technicalities and the Consultants have not examined the points of calorific value of the coal used by CESC. There was also lack of supervision by the CESC in this respect. Shri Sanjit Biswas, on behalf of All Bengal Electricity Consumers' Association, submitted that the meter rent was proposed to be raised by 37% and the consumers were entitled to buy their own meters as per provisions of Section 26 of Indian Electricity Act, 1910. It was contended that meter rent should not be taken as a source for profit. A question was raised by him if fuel surcharge could be a part of tariff and he pointed out that fuel surcharge had been increased time and again. He made submissions in reference to the report of D. K. Bose Committee on the question of loss due to pilferage and stated that this loss cannot be transmitted to the consumers. It was contended that electricity was a basic necessity and was closely associated with development and the Commission should allow only a 3% profit to the utility by way of reasonable return. It was contended further that as per the report of the Butlibuoy & Co., the CESC never suffered any loss in last three years. The capital base projected by the CESC was stated to have been inflated. Shri Biswas was supplemented by Shri Sivaji Dey, appearing for SUCI, and the All Bengal Electricity Consumers' Association. He contended that for recovery of cost, FSC could not be charged as a levy as that would violate Article 14 of the Constitution of India. He objected to the increase of heat rate, consequential oil rate, auxiliary consumption and transit loss of coal as claimed by CESC. It was further contended that a case was pending with the High Court on the question of fixed charge and the matter being subjudice, the Commission could not express any opinion on this point. He raised a voice on low voltage supply and load shedding by the CESC, and he also disputed the right of the CESC to claim additional security deposit from the consumers. According to him, the CESC had failed to pay the dues of WBSEB and to deposit the Electricity Duty in State Treasury, although collected from the consumers. It was contended by him that if at all there was any loss, it was due to top-heavy administration. He demanded that the consumers should be compensated for load shedding, low voltage supply and also for defective meters.

4.4 Smt. Keka Sharma of Bharat Chamber of Commerce raised objection regarding fuel cost, heat rate and absence of energy audit. She pointed out that in Cossipore and Mulajore Units, the CESC had employed 59% of their work-force, while these two units produce only 10% of their total generation. According to her, these two units must be directed to be shut down. She also challenged the high cost of staff, repair and maintenance, interest, administrative and also to the high rate of T & D loss claimed by CESC. According to her, the demand charges were inequitable and the stock of coal and oil was in excess of what was necessary. She also claimed that cross subsidy be brought down to the minimum.

4.5 Shri A. Roy Choudhury, appeared for Bharat Chamber of Commerce, and placed two decisions of the Calcutta High Court as reported in 1994(2) Calcutta High Court Notes, page 8 and 1996(1) Calcutta High Court Notes Page 289. Shri Aniruddha Sen, appearing for Indian Aluminium Company, submitted that the proposed hike and demand charge were not at all rational. According to him, the CESC was bound to give continuous and regular supply of quality power and they were to allow rebate to bulk consumers. He demanded that cross subsidy be phased out gradually. He required that the TOD tariff be introduced and put forth the plight of the local industries facing tough competition from global competitors.

4.6 Shri S. C. Agarwal appeared on behalf of the Rolling Mills Association and questioned the jurisdiction of the Commission to enter into the 9th Schedule for determination of FSC. He pressed the points taken in his written objection and in course of his arguments referred to the decisions reported in AIR 1977 SC 3225 on the question of assessing the fixed costs for FSC. He also relied on the decision reported in AIR 1983 Supreme Court 1296 on the question of rise in security deposit. Reliance was also placed on another decision of the Supreme Court in the case of Ajanta Iron as reported in AIR 1988 Supreme Court on the question of right of the licensee to disconnect a consumer.

4.7 Shri N. C. Roy advanced arguments on behalf of the WBSEB and highlighted the objections raised in writing relating to FSC, power purchase, price adjustment, T & D loss, off-peak tariff, projected cost of Budge Budge, special appropriation and on different aspects of the report of the Consultants. Objections were also raised on loans, TOD tariff and high load factor rebate. It was contended that for supply by the WBSEB to the CESC, the latter was bound by their power purchase agreement. The Budge Budge project cost was a matter pending before the Hon'ble Court and due discussion thereon would be taken up in the relevant chapter. The WBSEB questioned the special appropriation claimed by CESC on the ground that Government order in this regard had not been produced.

4.8 Shri Ashit Das and Shri Subhas Banerjee also made submission on behalf of All Bengal Electricity Consumers' Association and they questioned the legality of charging from the new consumers the dues of old consumers in a particular premises. In this regard, a decision of the Patna High Court was relied upon (AIR 1995 Patna 30).

4.9 On behalf of Standard & Chartered Bank, Shri S. Mondal made his submissions in support of the claim of CESC, highlighting the reasons for the proposed hike.

4.10 Shri Debasis Basu also made submission on behalf of Indian Aluminium Co. and submitted that rebate on energy may be retained and maximum demand charge may not be resorted to unless quality of power is maintained.

4.11 Shri S. Reddi, appeared on behalf of the Consultants (ASCI), and explained and justified their report. He met the points raised by Shri A. K. Das Gupta, Ms. Keka Sharma and others and those raised by WBSEB. It was stated that the calorific value of the coal was not checked and CEA norm was accepted for heat rate. On the high rate of T & D loss, it was argued that taking the ground realities in consideration, the high rate of T & D loss, projected by CESC, was to be accepted.

4.12 Arguments were advanced further by Shri N. C. Roy and Dr. S. C. Bhattacharjee on behalf of WBSEB on the question of legality of the award of CEA on the cost of Budge Budge Project.

4.13 Shri Rajarshi Roy appeared for Consumer Unity and Trust Society and he argued that the details of increase in coal prices were not given and he asserted that the employees in Mulajore Units should be shifted to other units and this unit was to be phased out. It was his contention that the consumers would not be saddled with the burden of Budge Budge Project cost. He also questioned the efficiency of the CESC in combating the theft menace and wanted to know what were the steps taken by the CESC in this regard.

4.14 The points raised by different objectors during argument were met by Dr. Bimal Chakraborty, Advocate, appearing for CESC. According to him, the arbitration by CEA was according to law and according to him, the controversy stood resolved by the Court's order. On the legitimacy of the claim of enhanced security deposit, he relied on a decision of the Supreme Court as reported in AIR 1993 SC 2005. For theft and consequent disconnection of a consumer's line, he referred to

another decision of the Supreme Court reported in 1998 JT(2) SC 84. On the question if fuel surcharge could be claimed by CESC and allowed by the Commission, reference was made to yet another decision of the Supreme Court reported in AIR 1991 SC 1473 (Hindusthan Zinc Vs. A. P. SEB) and he distinguished the decision reported in AIR 1997 SC 3225 which was relied upon by Shri S. C. Agarwal. On the question of burdening new consumers for the liability of old consumers on the same premises, he referred to the provisions of Section 49B of the 1948 Act as amended in 1994.

4.15 Shri Sumantra Banerjee, Managing Director of the CESC also advanced his arguments on the report of the ASCI and it was submitted that the year 2000-01 was already over and the actuals of the figures of generation and sale etc. may be considered for calculation of the tariff. On the dues to WBSEB, he submitted that the CESC have kept a provision of Rs. 11.5 crs. on the suggestion of the State Government, and if it was more, adjustment would be necessary. On T & D loss, he indicated the measures taken by CESC to control pilferage and stated that control of non-technical loss due to theft / pilferage was not solely within the power of CESC due to ground realities. It was also argued that 14% T & D loss allowed by the State Government only relates to FSC and in the FSC formula there are two components of FSC - merged in basic tariff and not - merged in basic tariff and 14% is applied on the latter. It was also contended that his Heat Rate for Budge Budge is less than the norm and therefore, CESC should be allowed incentive for efficiencies on equitable norms and not penalized. On coal transit loss, he prayed for a reasonable approach and equitable norm. He accepted during arguments that Cossipore and Mulajore Units were to be phased out slowly. On the question of delayed payment surcharge, it was stated that CESC failed to pay the dues as they did not get any fair returns in last three years.

4.16 The submissions of Shri Banerjee were supplemented on technical points by Shri Utpal Bhattacharjee of the CESC. He submitted that all possible measures were taken for controlling pilferage. On the question of 2-part tariff system, it was stated that the system was in vogue in Uttar Pradesh and Rajasthan. On the grievances of the consumers, he indicated that the complaint redressal machinery was fully working. He indicated further that the calorific value of coal was being measured by an independent agency and Coal India was supplying coal of lesser heat content. But he failed to give any quantification thereof. CESC had suggested a joint survey, then the suggestion was not taken seriously; but subsequently this was being done. It was further stated by Shri Bhattacharjee that the CESC had been a high tension consumer from WBSEB at 132 KV and there should not be any T & D loss charged from them. He prayed that the periodicity of adjustment of fuel adjustment cost should be three months.

4.17 Appearing for the Metro Rail, Shri M. K. Jain contended that they should get power on conditions at par with Calcutta Tramways Co. as the Metro Railway was a non-commercial public utility system and it had its own subsidised power structure. He demanded a concessional tariff for the survivality of the Metro Rail. It was pointed out by him that while high tension industrial consumers were getting a rebate, Metro Rail was not conceded any such rebate by the CESC. He insisted that rebate at power factor be retained. It was pointed out that T & D loss, so far the supply to Metro Rail is concerned, was only 4% ; but the CESC was charging at a rate of 14%. It was further stated that CESC was charging its consumers at a rate 23% higher than the rate at which they purchase power. On these objections, Shri Utpal Bhattacharjee of CESC submitted that Metro Rail could not be compared with other Railways or the Calcutta Tram Company.

4.18 Shri M. Lahiri raised objections on the proposal of decreasing the rebate rates and he wanted that the fuel charge should be totally deleted and he argued that consumer classification should not be for more than five slabs. Shri L. K. Chatterjee, Advocate, appeared for the Federation of Consumers' Associations and submitted that the ERC Act desired a fair deal to the consumers and also to safeguard their interest. His submission mainly covered the accounts of the CESC on an apprehension that the accounts were not brought on record for any year after 1995.

4.19 Shri Mahesh Singhania appeared for self and also in the capacity of Chairman of the Federation of West Bengal Trade Associations. He ventilated grievances that the CESC never paid heed to the complaints made by the consumers. It was submitted by him that tariff could be hiked only on actual rises of cost, and not on a presumed rise. It was submitted that the CESC should be a service-oriented industry and not a profit-making one. According to him, CESC was in clear profit as per the report of the Butlibuoy Co. If at all there was any loss, he felt, it was due to inefficiency of the management of the CESC.

4.20 In his further arguments, Shri A. K. Das Gupta submitted that coal was the principal fuel used by the CESC and they have a captive coal mine. He insisted on the testing of calorific value of coal and suggested that it can be done by Central Fuel Research Institute, Indian Institute of Management or Indian Standard Institute. In his concluding submission, Shri Sumantra Banerjee of the CESC claimed that power position in Kolkata was far better than other places and he was of the view that if the people desired regularity of quality supply, they should not hesitate paying proportionately. Compared with BSES rates, the CESC rates were lower according to Shri Banerjee. He was further of the view that when essential commodities like coal, kerosin, LPG, diesel and petrol were showing an upward trend in price, there cannot be an exception for electricity.

CHAPTER - 5 : POINTS FOR DECISION AND DETERMINATION

5.1 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 job of determination of tariff.

5.2 The Consultants have indicated the principles of tariff fixation and also gave their own approach and methodology for determination of different parameters on which the tariff revision is to be based.

5.3 As per the CBR, framed by this Commission, tariff is to be determined on the principle set forth in Schedule-VI to the Electricity (Supply) Act, 1948. A Licensee is to adjust its charges in such a manner that its clear profit in any year of account does not, as far as possible, exceed the amount of reasonable return.

5.4 This reasonable return is the amount arrived at by applying the standard rate to the capital base at the end of the year and $\frac{1}{2}$ of 1% on any loan advanced by Board and loans borrowed from organizations or institutions approved by the State Government.

5.5 The standard rate is 7% per annum on the capital base as on 31.3.1965 and for the remaining part of the capital base it is the R.B.I. rate ruling at the beginning of the year + 2% up to 16.10.1991 ; RBI rate + 5% upto 31.3.1999 ; and thereafter, at a flat rate of 16% without reference to the RBI rate.

5.6 What are to be taken as capital base and clear profit, have been defined in Clause XVII of Schedule-VI and the details thereof shall be quoted, interpreted and used at the relevant time when we take up the concerned matters.

5.7 Determination of tariff based on the principles as laid down in Schedule-VI, is a Cost Plus approach and the licensee is required to indicate the amount of gross revenue so that the reasonable return could be worked out and this sum is known as the revenue requirement.

5.8 The total revenue requirement has different components like fuel expenses, power purchase cost, cost for operation and maintenance, employees cost, administration and general expenses, depreciation expenses, interest on loans, reasonable return and income tax, etc.

5.9 Objections have been raised on most of these parameters affecting the figures given by the CESC, and accordingly, each one of these parameters shall give rise a point for decision/determination. Together with the same, the Commission is also to consider the legal objections raised in the written objections and also during oral submissions. The Commission is also obliged to keep in view the provisions of the ERC Act, 1998 which, in addition to the principles set forth in Schedule-VI had given mandatory or directory provisions towards determination of tariff. We may find these directions in the preamble of the ERC Act, 1998, requiring rationalization of electricity tariff and transparent policies regarding subsidy, promotion of efficient and environmentally benign policies. The Commission is also to keep in mind the provisions of Section 22(1) of the ERC Act requiring, amongst others, regulations on power projects, procurement process including price of purchase and promotion of competition, efficiency and economy in the activities of the electricity industry. The law further requires for the Commission to guide itself in a manner that the tariff progressively reflects the costs of supply of electricity at an adequate increase in level of efficiency. The Commission should be aware of the facts which would encourage efficient, economical use of the resources, good performances, optimum investment,

and the like. The Commission is to safeguard the interest of the consumers and at the same time ask them to pay for the use of electricity in a reasonable manner based on the cost of supply of energy. The Commission is to see that electricity generation, transmission and supply are conducted on commercial principles.

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

CHAPTER - 6 : LAW POINTS FOR DETERMINATION

6.1 The history of creation of this Commission and its becoming fully functional, has been indicated in the earlier chapters. The Commission became ready to receive petitions for revision of tariff for the different utilities only in the second half of the calendar year 2000. The prevailing situation compelled the Commission to invite petitions for the FY 2000-01 only in November, 2000, while that for next FY in December, 2000. The two petitions for the Fys 2000-01 and 2001-02 have been taken up for hearing analogously to save time and to avoid unnecessary exercises over the same/similar matter twice over. Three connected points stood up for consideration - (i) if there could be an enhancement of tariff for more than once in a financial year ; (ii) if there could be an order with retrospective effect so far the FY 2000-01 is concerned, as that FY has already passed ; (iii) if the two petitions are entertainable in the absence of notice of 60 days, as contemplated in the 3rd proviso to Schedule-VI, Clause-1.

6.2 For the first of the above three points, we may refer to Section 57 of the Electricity supply Act and also to Schedule VI to the Act. Section 57 directs that the Licensees are to realize charges of electricity from the consumers subject to the provision of Schedule-VI and under Clause-1 of this schedule, a licensee is entitled to so adjust his charges for the sale of electricity whether by enhancing or reducing them that his clear profit in any year of account does not exceed the amount of reasonable return. This clause is supplemented by a proviso that such charges shall not be enhanced more than once in any year of account. On the one hand the law entitles the utility to enhance its tariff in such a manner that its clear profit in any year of account does not exceed the amount of reasonable return and under this clause, the licensee can re-adjust its tariff for every year of account subject to the above limitation on clear profit. On the other hand, the first proviso puts a limitation on this power of enhancement of tariff. This provision must be read harmoniously with the basic provision of Clause-1. Keeping in mind the back ground in which the tariff petition for 2000-01 has been delayed and looking to the relevant provisions in Section 57 and Clause-1 of Schedule-VI, we are to give a meaningful interpretation to the words IN ANY YEAR OF ACCOUNT which, in our view, must be read as FOR ANY YEAR OF ACCOUNT, otherwise, the very substantive Clause-1 of Schedule VI loses its meaning. Under this interpretation, we feel, revision of tariff may be allowed only once for any year of account and it is not important if on the date of order for revision for any particular year of account, the year has actually passed.

6.3 On the second point enlisted above, we are faced with a question if tariff could be revised retrospectively. The objectors are of the view that tariff for 2000-01 cannot be fixed now. As interpreted in the last paragraph, tariff for 2000-01 may be determined even after the passage of the year, otherwise a valuable right given to the licensees shall be denied. In determining the tariff for 2000-01, we cannot make it effective from any date prior to the first date of the financial year, i.e., prior to 1.4.2000. We are also to act upon the parameters existing in that financial year only. In this sense certainly tariff is to be fixed prospectively. Once we fix the tariff for the financial year 2000-01, there is no bar for realization of the dues (or refund of excess realization) during a period beyond the limits of that financial year. While the law permits the licensee to revise its tariff once in a financial year, the procedure does not permit him to do so at his sweet will. The licensee is to come to the regulators, who, in their turn, must go through a procedure of transparent hearing and the process for determination of tariff for any financial year may not be complete in that financial year. At least, there is no such legal compulsion. If we take up a narrow interpretation of the provision to disallow retrospective revision, then the right of the licensee may be defeated by a delayed proceeding including an appeal before the appellate forum. That cannot be taken to be the intention of the legislators. Even for the tariff petition for 2001-02, revision could not be and cannot be made exactly on 1.4.2001, and if we give only a restricted meaning to the word prospective application the revised tariff could be effective only for the months remaining after the date of the order. We hold that this Commission can determine tariff for the year 2000-

01 even after the year has passed. But that must be done only on the parameters existing in that financial year. This tariff may be given effect to after the passage of the financial year, but never from a date prior to beginning of a financial year.

6.4 The third of the legal objections as spoken above, relates to notice of sixty days as contemplated in the third proviso to Clause-1 of the Schedule-VI. This third proviso of Clause-1 of Schedule-VI requires that a licensee shall not enhance the charge for supply of electricity until after the expiry of notice in writing of not less than sixty days of his intention to enhance the charges, given by him to the State Government and to the Board. This proviso is to be read along with Sections 57 and 57A of the Electricity Supply Act, 1948, which spoke of the involvement of the State Government in the process of tariff fixation/revision. This responsibility now rests with the Commission after the Commission has become functional under the ERC Act, 1998. The State has no role to play now except for the dictating the policies in public interest and also to take responsibility of payment to the utilities when it requires that certain subsidy is to be given to any particular sector. The Board has also no role to play in tariff fixation under the present law. Section 52 of the ERC Act gives an overriding effect of the Act over other provisions in other Acts in cases of inconsistency. Section 29(6) of the ERC Act provides that after the enactment of the ERC Act, no rating committee shall be constituted and it is for this Commission now to secure that the licensee complies with the provisions of the License regarding charges for electricity. Moreover, under Section 30 of the ERC Act, the Commission is entitled to deviate from the rigours of Section 29 (2) (a) after giving reasons. In our view, the clause for notice to State Government and the Board is non-est now with the change in the law. Even if any interpretation is given in favour of such notice, it would be only an empty formality, as the State Government or the Board could not have done anything towards revision of tariff even with the notice to them. We, therefore, deviate from the requirement of such notice as that would be an unnecessary exercise involving parties who are neither necessary nor proper for determination of tariff unless, of course, they by themselves propose to join to have their say in the matter.

6.5 We may view the problem from a different angle as well. The purpose of any notice under the law is to give to the noticee an advance information of any proposed action which has a legal bearing and if that purpose is served, law does not insist on any particular form of notice. The tariff revision petition was filed before this Commission and such filing was duly notified in prominent newspapers published from and read in the State. This publication must be regarded as sufficient notice not only to the State Government or to the Board, but also to everybody interested in the matter. The Board in fact had taken part in the proceedings. In our view, the prayer for revision may not be defeated for absence of notice of sixty days.

6.6 The WBSEB raised an objection on the assessment of cost of Budge Budge Project as claimed by the CESC. This objection appears to be a factual one, but it has a law point hidden in it as would be indicated presently. According to WBSEB, the State Government referred the matter to WBSEB for estimation of cost of Budge Budge Project taken up by CESC and on such reference, the WBSEB estimated the cost at Rs. 1853 crs. and the recommended estimation was accepted by the State Government and approval under section 44 was communicated by WBSEB to CESC. The CESC, however, referred the matter to the Central Electricity Authority (in short, CEA or the Authority) purportedly under Section 44 (3) of ES Act, 1948 as was advised by the State Government. WBSEB challenged the jurisdiction of CEA as, according to them, the action of the WBSEB was not one under Section 44 and so the CEA could not have taken up an arbitration under Section 44 (3) of the concerned Act. This Objection was over-ruled by the CEA and it made its own estimation of the projected cost of Budge Budge Project at Rs. 2295.57 crs. The WBSEB took up the matter to the Calcutta High Court. The Hon'ble Judge of the Calcutta High Court upheld the plea of the WBSEB and held that the CEA could not have acted under 44 (3) of Electricity Supply Act, 1948 in the concerned matter. Aggrieved by the order of the Hon'ble single judge, the CESC preferred an appeal before the Division Bench of Calcutta High Court and the Hon'ble judges of the Division Bench set aside the order of the Hon'ble single judge and held that the CEA had every jurisdiction to act under Section 44 (3) of the 1948 Act. Against this order, the WBSEB has moved the Supreme Court of India as in SLP (C) No. 11810 of 2001, and the matter is pending there. By an order dated 30.7.2001, the Supreme Court directed as follows:

"Issue Notice. The respondent, who is in caveat, accepts notice in the matter. The counter affidavit, if any, be filed within four weeks from today. Any decision taken by the regulatory authority will not be given effect to without leave of this Court."

6.7 The interim order of the Supreme Court clearly gives a signal to the Commission to proceed ahead with the decision making process and to record a decision with the only rider that the decision taken by the Commission shall not be given effect to without leave of the Court. The Commission may look to the law to guide itself on its function in determining tariff. Under the law, the Commission is to determine tariff for supply of electricity and the basic principles of such determination are enshrined in Schedule-VI of the Electricity Supply Act, 1948. The Commission is required to determine, amongst others, what is the capital base of the concerned utility upon which the CESC can be given a reasonable return. In determination of the capital base, according to Schedule-VI, the Commission is to consider the original cost of Fixed Assets available for use and necessary. Thus, the cost of Budge Budge Project is one of the issues to be determined by us to arrive at a decision towards estimation of capital base followed by assessment of reasonable return which in turn would lead to fixation of tariff. It appears that both the CESC and the WBSEB are aware of this situation. Section 44 of the 1948 Act asks the licensee to obtain previous consent of the Board to set up or to acquire a new generating station. If the capacity of the generating station exceeds 25,000 KW, the Board is obliged to consult CEA. If any dispute arises out of the provision of this Section-44, the same is to be referred to the arbitration of the CEA. The provisions of Section 44 are not applicable to a generating company. It appears that the costs of Budge Budge Project were estimated by the WBSEB at Rs. 1853 crs. The CESC termed this assessment as an action under Section -44 as communicated to them and accordingly, they sought an arbitration by the CEA as they were not satisfied with the estimation made by WBSEB. WBSEB took up an objection on the question of jurisdiction as stated above, but CEA rejected the plea and recorded an award. The award is also being disputed as not an award of CEA in the real sense, but a mere recommendation of arbitrators. According to arbitrators appointed by the CEA, the estimated costs are Rs. 2295.97 crs. The point agitated before the High Court and the Apex Court touches the interpretation of Section -44 in general and 44 (3) in particular, and in our humble view, the issue when finally decided, may either uphold the view of Hon'ble single judge or may confirm the view expressed by the Division Bench or the Supreme Court may give any other appropriate direction. But we humbly note that the Supreme Court has directed us to proceed with our decision, but however the Commission will not go into the legal aspects of the dispute.

6.8 In our view, the law requires us to determine the tariff and for that end in view to make an assessment or estimation of the costs of Budge Budge Project. We are bound by the law to make our own assessment not only of the costs of Fixed Assets but also their availability for use and necessity. The overriding effect of the ERC Act, 1998 (barring the Consumer Protection Act) does not limit the powers of this Commission and does not ask the Commission to be bound either by the assessment of WBSEB or of the CEA or of the State or Central Governments. These findings however may provide the materials for framing our own assessment on the project cost but may not be conclusive so far the Commission is concerned. In view of this interpretation and in view of the direction of the Supreme Court permitting us to proceed with our decision on the point, we can proceed to assess the costs of Budge Budge Project but with a clear direction that our decision shall be subject to the directions if any, of the Hon'ble Supreme Court. The estimation will be taken up when we deal with the estimation of capital base.

6.9 The objectors have raised a point that the CESC had no right to enhance unilaterally the security deposit of the consumers to three months' consumption. It was contended that the terms of the existing contract could not be changed by one party to the contract without the consent of the other. The CESC relied on the decision of the Supreme Court in this regard in the case of Ferro Alloys Corporation Vs. A. P. SEB as reported in AIR 1993 SC 2005. The Hon'ble Court has observed on this point that 'to offset part of the amount, the consumer owes to the Board continually to ensure of the payment of bills by the Board to its suppliers, the advance consumption deposit is required to be kept with the Board before commencing supply to the High Tension consumers. The clause in the contract in relation to the condition of supply of electrical energy enables the Board to adjust the bill against such deposits. Therefore, this is not a mere deposit of money as in commercial transactions. In demanding security deposit, it is open to the court to take note of pilferage. In such circumstances, it can be said that the object of security deposit is to ensure proper payment of bills. Three months' security deposit required from HT consumers cannot be characterised as unreasonable and arbitrary.' In view of this finding of the Apex Court, the point may not be further agitated before this forum.

6.10 In this regard, however, the objector drew our attention to Clauses 12 (a) and 12 (b) of the conditions of supply stating that these were contrary to Clause-14 of the model conditions of

supply. In our view, the model conditions were merely directory and the State Government had a right under Section 21 of the Electricity Act, 1910, to modify or alter any such condition and such action would override the model conditions. Thus, the objection in this regard is over-ruled.

6.11 It was also agitated that the CESC was not legally entitled to charge from a new consumer in a particular premises the outstanding dues from an old consumer in the same premises. The CESC proposed to justify its action with reference to the provisions of Section 49B as introduced by an amendment in 1994 and also relied on a decision of the Supreme Court in the case of Punam Chand Ranga Vs. CESC Ltd. as reported in 1994 (II) Calcutta High Court notes at page 4. In this case, it was held with reference to the provisions of Electricity Act, 1910, that a tenant or occupier of a premises who enjoys the benefit of electricity in the premises also came within the definition of the term "consumer", and therefore, such tenant or occupier cannot obviously get supply at his own name by-passing the liability of the earlier consumer to make payment of the outstanding dues of electricity charges before supply is restored in the premises. The court was of the view that unless this was done, Section 24 (1) of the Electricity Act, 1910, would be frustrated.

6.12 For interpretation of Section 49B of the Electricity Supply Act, 1948, we may read the section again. It clearly indicates that this provision relates to supply of electricity to industrial or commercial consumers and even the dues of licensee could be recovered under this provision. But the procedure for realization either from the former or the subsequent owner of the premises is not through billing, but by an action under PDR Act. On this point, we only direct the CESC to proceed according to law on the true interpretation of 49B and in line with the decision of the High Court in Punam Chand Ranga's case.

6.13 There was yet another objection raised by one of the objectors on the question if under Schedule-VI, fuel surcharge could be recovered under a direction of the Commission. It was stated that cost of fuel was dealt with in Schedule-IX of E.S. Act only which was not covered in Section 29 of the ERC Act, 1998. It was contended in this regard by the CESC that the cost of fuel/fuel surcharge was recognised as a legitimate mechanism for recovering of fuel cost. Reliance was placed at a decision of the Supreme Court in the case of Hindusthan Zinc Ltd. Vs. A. P. SEB as reported in AIR 1991 Supreme Court at page 1473. This case arose out of a dispute on imposition of fuel adjustment cost on HT consumers only and the appellant before the 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 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 Schedule VI of E.S. Act, 1948 allows expenditure properly incurred on Generation and Purchase of energy and it can not be said that increase in the cost of coal, oil and purchase of energy, which is not within the control of utility, is not an expenditure properly incurred on Generation & Purchase of energy and that is why it has been allowed to be recovered as per the formula. This, in our view, sets at rest the dispute raised on this point. An objection was raised on the power of the CESC to disconnect supply on the ground of pilferage. It was argued that the CESC's act was unilateral to allege and decide the question of pilferage; and no one should be allowed to be a judge of his own cause. In an answer to this objection, CESC again placed before us case laws as reported in JT 1998 (3) SC 84 (Hyderabad Vanaspati Vs. APSEB), AIR 1996 SC 2258 (M.P. SEB Vs. Harsh Wood Produce). It was held in the first-mentioned case that the Maxim Nemo Judex in Causa Sua (no one can be the judge of his own cause) is not applicable in cases of assessing the loss or damage on account of pilferage or mal-practices, assessment having been made by officers of Board, who have no personal interest. Under the terms and conditions of supply (Clause 39 in the concerned case), a consumer gives an undertaking that if he is found indulging in mal-practice, etc., he shall pay additional charges levied by the Board and the Board has a right to disconnect electricity to his premises for such rate as may be decided by the Board. In the second mentioned decision, it was held that when a consumer was found prima facie to have committed theft of electricity, hearing before disconnection was not necessary in view of agreed conditions of supply and prima facie conclusion of theft and the provisions of Section 24 of the Electricity Act, 1910, stipulating a notice were not applicable in cases of pilferage of electricity. The order of disconnection in the concerned case was held NOT violative of Articles 14 and 20 of the Constitution of India. The Indian ELECTRICITY ACT, 1910 also provides the procedure to be followed in case of difference or dispute. The objections now raised before us as indicated in this paragraph are over-ruled. However, the Commission will

like to advise CESC to make a more transparent procedure for dealing with such cases to avoid hardship in genuine cases.

6.14 The All Bengal Electricity Consumers' Association placed before the Commission a letter from their Advocate Shri Bhabesh Gaguli dated 25.8.99 to say that the imposition of fixed charges was challenged before High Court in WP 14808 (W) of 1999 and the matter is pending. It was stated that the Commission must not deal with this subjudice matter. Almost two years have passed since the date of this communication, but nothing was placed before this Commission to show that there has been any interim order of stay or injunction restricting the Commission to record a decision on this point. Under the overriding provision of the ERC Act, 1998, the Commission is not only empowered but also obliged to deal with every aspect of fixation of tariff and can also differentiate according to the consumer's loadfactor, power factor, total consumption of energy during any specified period or time, geographical position of area, nature and the purpose of supply. The Commission is therefore entitled to give its own finding and impose fixed charges. The decision on this point, however, shall be subject to any finding of the High Court in the concerned Writ Petition.

6.15 A point was raised if Section 24A of the Electricity Act, 1910, as introduced by an amendment in 1994 in West Bengal was a proper legislation as it took away the right of a consumer to agitate a dispute over any matter against CESC. It was stated by the CESC that the amending Act was not brought into effect by notification as required. In any view of the matter the ERC Act is operative notwithstanding anything contrary in any other law (barring Consumer Protection Act). The validity of Section 24A of 1910 Act is, thus, only of academic importance and may not be one that may stop the Commission in determining tariff or even to look to consumer grievances.

6.16 A question was very subtly raised if the petition of CESC was premature for alleged absence of regulations on the terms and conditions for determination/fixation of tariff. In this regard the CBR framed by the Commission may be referred to. After it was amended, the CBR provided in Chapter IV the methodology and terms and conditions for fixation of tariff. Guidelines were also issued under CBR for filing of Annual Revenue / Tariff proposals. The ERC Act under Section 29(2) only required 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.

6.17 A question was raised by the various consumer organizations as well as individual objectors regarding denial of legal right to purchase their own meters under section 26 of ELECTRICITY Act 1910. CESC argued that they have right to install check meters as meter is a vital instrument to charge for correct energy supplied. Hence consumer will not benefit as CESC may like to install the check meters and charge rent and consumer will not have any financial benefit in such case. Moreover they contented that meter rent goes as income in Revenue Requirement and reduces the tariff. We have gone into rival submissions and are of the opinion that normally a right given under the Act cannot be unilaterally denied and CESC can put reasonable restrictions in regard to see / check the quality and accuracy of such meters. However, before taking a final decision to change the long existing practice, the Commission will like CESC to give a detailed note outlying the advantage, disadvantage of both the systems and in brief the restrictions on quality of meters etc. and procedure for testing installation and its checking which CESC will like to follow if such right is exercised by the consumer. This note may be filed with the next Tariff Petition for 2002-2003.

CHAPTER-7: OTHER POINTS FOR CONSIDERATION FOR THE YEAR 2000-01.

7.1 Under this Chapter, we propose to take up first the question of capital base and addition thereto.

7.1.1 As per analysis by the ASCI for this year, there has been an increase in assets by Rs.325.92 crs. From 1991-92 to 1995-96; and thereafter, it rose steeply and the cost of assets touched the height of Rs.3120.50 crs. between 1997-98 and 1999-2000. This rise has been attributed mainly to the cost of Budge Budge Thermal Power Station accounting for Rs.2681 crs. as projected by the CESC. As indicated earlier, the matter gave rise to litigation and the assessment of Arbitrators

appointed by CEA for this cost is only Rs.2296 crs. while the WBSEB assessed it at Rs.1853 crs. only. The matter is pending before the Supreme Court now and in the chapter on legal objections, we had given a thorough reflection of how the matter proceeded and had also indicated what is the direction of the Supreme Court. We had already indicated, on a discussion on law, that whether the legality of the arbitration before the CEA is upheld or not, we are obliged under the law to arrive at our own finding on the necessary cost of Budge Budge Thermal Power Station Project to come to a decision on the addition to the capital base for calculating reasonable return admissible to the CESC and that decision in its turn would lead us to fixation of tariff.

7.1.2 A question would naturally crop up if the determination by the CEA under Section 44(3) is final and binding on this Commission. In this connection, reference may be made to Section 76 of the Electricity Supply Act, 1948, which states that any matter or question required to be referred to arbitration by this Act shall be so referred and the award of the authority shall be final and conclusive. We may also refer to Section 35 of the Arbitration and Conciliation Act which says that subject to Chapter 8 of that Act, an arbitral award shall be final and binding on the parties and persons claiming under it respectively. The finality and conclusiveness of the award as spoken of under Section 76 of the Electricity Supply Act, 1948, must be read along with Section 35 of the Arbitration and Conciliation Act, 1996, and in our view, the award is final and binding on the parties and persons claiming under them. The parties to the arbitration were the WBSEB (their objection being kept open) and the CESC. The award may be deemed binding and final for WBSEB and CESC subject to the jurisdiction of the CEA to sit in arbitration which is a matter to be decided by the court. But the Commission is neither a party to the arbitration, nor it can be stated to be a person claiming either under the WBSEB or CESC or under the CEA. We may also refer to Section 22(2)(n) of the ERC Act, 1998, which has overriding effect over other provisions in other Act (except Consumer Protection Act), which gives power to the Commission to adjudicate upon the disputes and differences between the licencees and utilities and to refer the matter for arbitration.

7.1.3 While the opinion of the WBSEB or the arbitrators appointed by CEA may not be binding, their approach towards determination of cost of Budge Budge Project may help the Commission to make its own assessment.

7.1.4 It is gathered from the materials on record that the original cost of the Budge Budge Project was estimated by the CEA in November, 1991, at Rs.1285.90 crs. Later, the Ministry of Power, Govt. of India, approved the financial plan for Rs.1638 crs. in October, 1992. Subsequently, the WBSEB estimated the cost at Rs.1853 crs. and only then on reference of the dispute, CEA appointed Arbitrators (this is under challenge) to assess the cost at Rs. 2295.57 crs. only. As per the CESC, the increase was due to cost over-run in view of inability to generate necessary interflow transfers for the project.

7.1.5 We have before us the statements from the WBSEB and CESC and the analysis by the Arbitrators. According to that analysis, the original commissioning schedule of the two units of Budge Budge Power Station Project spoke of two days - end of August, 1996, for the first unit; and August, 1997, for the second. Actually, however, these units were commercially commissioned in September, 1997, for Unit no. 1; and in July, 1999, for Unit No. 2. Thus, the first unit was delayed by thirteen months and the second by twenty two months. As observed by the Arbitrators appointed by CEA, this delay was caused due to (i) delay in supply of steam generators by the supplier chosen with the understanding of the Govt. of India and State Govt.; (ii) embargo on project construction issued by the Ministry of Environment & Forests for seven months from May to December, 1993; (iii) delay in finalisation of lay-out of land available for the project and (iv) non-allowance of the interest funding by way of appropriate tariff revision.

7.1.6 The Arbitrators gave an allowance of 12 months only towards delay in commissioning the first unit, and again, a period of 12 months for the second unit, from the date of commissioning of the first. Thus, according to CEA, the first unit should have been commissioned by August, 1997, and the second by August, 1998, i.e. 12 months after the original schedule.

Neither the CESC nor WBSEB placed before us the relevant documents excepting the decision of Arbitrators and copies of the Writ Petition and the grounds of appeal containing the supplemental facts. We, therefore, base our views on these papers only and we shall proceed to see if the approach of Arbitrators could be upheld or we should see the available facts and have a different approach.

7.1.7 The embargo, spoken of in (ii) of paragraph 7.1.5 had caused the delay of only seven months and that too in 1993. It is not clear if the delay, as spoken of in (i) in paragraph 7.1.5 coincided with the delay spoken of in (ii) and (iii). Moreover, it is not indicated as to what has caused the escalation in project cost - simple inflation or any other factor? If it is inflation, we have some standard before us; if it is enhancement of interest liability, we could understand. But if it is due to any change in technological set up, we may put a question mark on the admissibility of such an expenditure. Also we have to see if increase in cost can be taken in tariff and to what extent.

7.1.8 In our view the Board and/or the Central Govt. and the State Govt. had a role to play in according permission to a licensee for setting up a power unit after a techno-commercial study. They could not however insist on the licensee to enter into an agreement for purchase from any particular manufacturer. Purchase of steam generator from ABL was out and out within the choice of the CESC and the delay in supply may be attributed to them only for which they may not get any concession.

7.1.9 Nothing has been placed before the Commission to show the why and where of the delay in finalisation of lay-out of land available for the project. It is believed that only after clearance on this front any further step could have been taken and so no concession could be given on this score to the CESC to explain the delay in commissioning the units at Budge Budge and the consequential escalation in project cost. Our Consultants ASCI have recommended to accept the cost of Budge Budge at Rs. 2296 crore taking it as the award of CEA and cost determined by CEA, which is a disputed point.

7.1.10 The reason for delay as set out in (iv) of paragraph 7.1.5 is however, worth consideration, as admittedly the CESC was allowed revised tariff in 1996 and again in 1998 only, but also we have to consider the original financing plan, modified financing plan, actual financing plan, alternative contingency financing plan and other allied reasons.

7.1.11 We are thus of the view that we could neither act upon the estimate made by the WBSEB, nor upon the one made by the arbitrators appointed by CEA. Keeping in view the non-admissible delay as pointed out above, we provisionally re-assess the project cost of Budge Budge Thermal power Station at Rs. 2075 crs. only for the purpose of tariff fixation at present which will be subject to adjustments as per the directions of the Hon'ble Supreme Court or if need arises will be re-assessed by the Commission and adjustments made in the Tariff/Revenue Requirements as the Commission may consider appropriate. CESC should approach the Commission immediately on receipt of the orders of Hon'ble Supreme Court in this regard.

7.2 CESC has claimed Rs. 22964 lakhs as addition to Assets during 2000-2001 towards transmission and distribution and others. However, it has been seen that CESC is doing a lot of new work, replacement work etc. in its existing area of operation. The addition of Rs. 22964 lakhs in a year is very substantial, keeping in view its existing area of operation, expenditure earlier incurred and invested subsequently from time to time, T & D loss etc. and it needs detailed justification showing Techno-Economic benefits both from utility side and consumer side. In addition, additional assets amounting to Rs. 1628 lakhs has been taken on lease during the year. The financing plan for such expenditure is also not clear particularly when CESC is stated to have negative internal resources. We, therefore, direct the CESC to give full details and justification along with Techno-Economic benefit analysis on such capital addition of major assets of last 4 years plus for 2000-2001 and review the assets which are not in use or not economically used or not usable and take them out of Fixed Assets also. This report may be submitted with the Tariff Petition for 2002-2003 along with such details for future years and then Commission will take a final view and if need be matter will be got more thoroughly investigated before giving appropriate directions. Pending this we reduce provisionally Rs. 50 crores which represent about 20% and which will be reviewed after receipt of report. The CESC has also shown certain items as retired from services with an original cost of Rs.3.63 crs only. This cost is to be reduced for the cost of fixed asset. The cost of Fixed Assets is estimated after such reductions at Rs. 399243 lakhs only.

7.3 For the present year and the next year (2001-2002) we propose to assess the Fixed Assets on the closing balance of the year. This approach may be reviewed for the future years.

7.4 Contribution from consumers

The capital contribution from consumer as projected in the petition and accepted by our Consultant is Rs. 16167 lakhs. However, it has been observed that they have not taken into account the figures of Rs. 3028 lakhs which has been classified as advance. It is directed that this figure may be added in the contribution from consumers and deducted from cost of Fixed Assets. The amount of contribution from consumer therefore comes to Rs. 19195 lakhs.

7.5 Original cost of work in progress.

In this respect, we may accept the assessment of our Consultants and the stand taken by the CESC before them subject to para 7.3 and we limit the cost of work in progress at Rs. 12944 lakhs only.

7.6 WORKING CAPITAL

The projected working capital for 2000-01 is Rs.23897 lakhs as per the tariff petition of the CESC. This does not appear to be in conformity with the provisions of Schedule-VI of the Electricity Supply Act. The Consultants have made detailed discussion on this point and have come forward with three acceptable alternatives to provide for working capital requirement of the CESC to carry out its business.

Rs. in lakhs.

Alternative A:	Directly in accordance with Schedule-VI.	- 23191
Alternative B:	Following Schedule-VI with some variation.	8845
Alternative C:	Further modification of Alternative B to meet the cash expenditure of the utility.	10247

In the opinion of the Consultants, Alternative C is most appropriate in the instant case; but the CESC desires further modification even of this liberal alternative and prayed for an increase of Rs.2914 lakhs in the cash requirement and also to derive revenue requirement excluding DPS income of Rs.2000 lakhs. In the alternative, the CESC desired to increase the cash requirement considering three months' cash expenditure so that they might enjoy the required fund at any given point of time.

7.7 We have deliberated on the projection by the CESC in this regard as also on the recommendation of the Consultants. We find that the working capital in accordance with Schedule VI of ES Act, 1948 comes to negative Rs. 23191 lakhs. The Schedule - VI provides incentives and restrictions to utility in various paras. It is therefore not fair to isolate and look into one para alone. Positive figure of Rs. 10247 lakhs, which makes such a substantial difference, may not be correct in overall circumstances and there is greater need to have better funds management and we advice CESC accordingly. We have already commented on similar relevant points separately. However, on a balanced approach and as a special case we also do not take the negative balance for this year and the next year. The position will be reviewed during 2002-2003.

7.8 Accumulated depreciation.

As per projection by the CESC, the accumulated depreciation on all assets of generation, transmission and distribution as also on other assets was Rs.118638 lakhs by the end of 2000-01 and calculations have been made in the straight-line method applying rates notified by the Central Govt. from time to time. The Consultants have looked to the prevalent practice of providing depreciation only on the assets in existence at the beginning of the year and have agreed that no depreciation had been provided on assets withdrawn/added during the year. They have opined that the calculations are correct but they have also spoken of the amount disallowed from the original cost of fixed assets. As per our calculation made earlier, we have disallowed a portion and taken Budget Budget project cost at a sum of Rs. 2075 crores and a corresponding accumulated depreciation works out as per the following calculations.

Item	Rs. in lakhs
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Actuals upto 1999-2000.	87919
Addition during 2000-01	26474
Less depreciation upto 1999-2000 on Budge Budge	2383
On retired assets	325
Accumulated depreciation on 31.3.2000	111685

7.9 Loans

As per the tariff petition, the outstanding loans at the end of the year 2000-01 was Rs.250531 lakhs. The loans have been identified with specific projects and some were taken to meet the working capital requirement as per CESC. The sources of loans are Commercial Banks, Financial Institutions, Finance Corporation, Asian Development Bank, Debentures and Fixed Deposit. The Consultants have verified that all the loans were from recognized institutions as required by Schedule-VI. However, this does not appear to be the position as per the petition and is even objected to by objectors. It was also observed by the Commission that the amount of Loans are high, specific purpose and or utilisation of loans has not been furnished. The disallowance of loans taken from non-recognised institutions will not be in the interest of the consumers as it will increase the capital base on which they will get return instead of interest. It will not be in the overall interest of the utility if the interest actually paid by them is disallowed and return given. The Commission directs the CESC to file with Tariff petition for 2002-2003 more details pertaining to loans taken separately from recognised and unrecognised institutions, specific purpose of loan, actual utilization and effective steps taken to reduce the loans and rates of interest as certain rates / costs on which loans have been taken are very high even from recognised institutions. In view of this we are not making any change on this score at present. However, the position will be reviewed after examination of the note.

7.10 In view of the restrictions on the capital cost of Budge Budge Power Station, the corresponding outstanding loans are identified at Rs. 12040 lakhs. We also disallow loans for working capital and some bills for discounting power purchase and coal as they do not come under capital loan. The figures are given below -

Rs. in lakhs.

Budge Budge Project.	12040
Working capital Loans	16011
Bills discounting for power and coal	9919
T O T A L	37970

7.11 When we deduct this sum from the projected figure under this head, we allow the outstanding capital loan for sum of Rs. 212561 lakhs only.

7.12 Upon the above consideration and the calculations as made above, we give below in a tabular form the capital base as projected, as recommended by our Consultants and as assessed by us.

Capital Base 2000 - 01.

Ref.	Particulars	Rs. in lakhs.		
		As Projected By CESC	ASCI's Analysis	Assessment of the Commission
1	Positive Side 1 Original cost of Fixed Assets (net of contribution from consumers)	449115	410132	380048
2	2 Cost of intangible assets (net of	1260	1260	1260

	write-offs)			
3	3 Original cost of Work in progress	12944	10944	12944
4	Investments	8	8	8
5	Working capital	23897	10247	
6	Total A	487224	432591	394260
7	Negative Side Depreciation	118638	112322	111685
8	Loan or subvention	250530	224949	212561
9	Cash Security Deposit by consumers	21873	21873	21873
10	Tariff and Dividend Control Reserve	0	0	0
11	Development Reserve (including investment allowance reserve)	1388	1388	1388
12	Consumers Account	71	71	71
13	Total B	392500	360603	347578
14	Net Capital Base (A - B)	94724	71988	46682

7.13 Our Consultants ASCI have recommended Rs. 2021 lakhs from Investments not included in Capital Base as other Income to be included in Reasonable Return in addition to Return on Capital Base. However, Investment schedule attached with the Balance Sheet as at 31.3.2000 does not justify the inclusion of such amount as additional income in the Reasonable Return. The total income from investment shown in the accounts for 1999-2000 is Rs. 133 lakhs only and income from interest is Rs. 1941 lakhs. The major investment shown is Rs. 1084 lakhs in CESC (wholly owned subsidiary for consultancy, energy audit and operation and maintenance jobs mainly in power sector) from which there is no income. Also CESC has not invested Rs. 5264 lakhs of Contingency Reserve in the specified securities as per the Provisions of the E.S. Act stating its inadequate Cash Resources as a reason. However, it was observed that they stated to have given Rs. 69 crores as Loans / advances to Balagarh Power Company Ltd., Rs. 19 crores to integrated Coal Mining Limited in addition to above in CESC. In addition Rs. 29 crores has been outstanding as Inter Corporate Deposits. CESC is justifying Loans on higher interest rates / Financing charges / lease rentals etc. due to inadequacy of cash resources for CESC.

The Commission, therefore, finds no justification in allowing Rs. 2021 lakhs as income from investments not included in Capital Base and disallow it as Reasonable Return. The Commission further direct CESC to furnish a detailed note for reasons of non-investing amount of Contingency Reserve as per the Act, details along with justification and sources of Financing in subsidiary companies and inter-corporate deposits along with total financial commitment / expenses incurred by CESC in this regard and income benefits derived therefrom.

7.14 Once we assessed the capital base, we may proceed for calculation of the reasonable return and for this calculation we shall be guided by the principles enunciated in Schedule-VI. Different percentages of return had been authorized for different periods on the capital base. The following table gives the figures.

Reasonable Return

Rs. in lakhs

Ref	Particulars	As claimed by CESC	As per analysis of ASCI	Assessment of the Commission
A	Reasonable Return as claimed on Capital Base			
1	Capital Base up to 13.3.65	3362	3362	3362

	Applicable Rate of Return	7%	7%	7%
	Capital Base X Applicable Rate of Return	235	235	235
2.	Capital Base from 1.4.65 to 31.3.92	616	6163	6163
	Applicable Rate of Return	39%	10%	10%
	Capital Base X Applicable Rate of Return	555	616	616
3	Capital Base from 1.4.92 to 31.3.99	71740	55004	37157
	Applicable Rate of Return	12%	13%	13%
	Capital Base X Applicable Rate of Return	8609	7151	4830
4	Capital Base from 1.4.99	13459	7459	
	Applicable Rate of Return	16%	16%	
	Capital Base X Applicable Rate of Return	2153	1193	
	Total of A	11552	9195	5681
B	Other Items			
1	½ of 1% on Development & Investment Allowance Reserves	7	7	7
2	½ of 1% on all loans	1253	1125	1063
3	Income from Investments not included in capital base		2021	
	Total of B	1260	3153	1070
	Grand Total (A+B)	12812	12348	6751

7.15 Non-Tariff Income

The amount projected under this head by the CESC is Rs.6514 lakhs in the financial year 2000-01 which included increase in the proposed meter rent of Rs. 3826 lakhs against existing Rs. 2789 lakhs. The CESC had, however, failed to include the interest on investment and explained that this was not also shown at annual revenue requirement. The Consultants are of the view that the absence of the figures for this year the income from interest on investment may be at the same level of the previous year and recommended non-tariff income to Rs. 7550 lakhs. However, it was noted as observed in para 7.13 that the above amount not only represent income from investments but also interest income.

We, therefore, accept non-tariff income of Rs. 7550 lakhs with the above adjustments.

CHAPTER 8 : VARIABLE COSTS FOR FY 2000 - 01.

8.1 For estimating the variable costs for the year 2000-01, we proceed from the energy sales. The CESC is basically a company for distribution of power and a part of the power distributed by them is their own generation. For the rest, they purchase from others. Once the quantity of power sold is fixed (actual or estimated) and the generation could be assessed (as per normative PLF or actual), we could reach the quantity of power that is to be purchased from others for meeting the sale to the consumers, subject, however, to T & D loss.

8.2 Sale for the year 2000 -01.

As per petition of the CESC, the projected sale for this year is 4992 MU. This is against the actuals of 4937 MU in 1999-2000; 5071 MU in 1998-99 and 5019 MU in 1997-98. The analysis by the Consultants suggests that the CESC had taken 1995-96 as the reference year and projected CAGR upto 1999-2000 and the same growth rate was accepted for projecting the sales for 2000-01. Although there was decline in consumption (sale) in the 1999-2000, there was no corresponding fall in generation and purchase. By the time the hearing was taken up on the tariff petition for this year, the year 2000-01 has already passed. The CESC came up with the actual figures and the same show the sale at 5165 MU. The year being over, the Consultants recommend that the actuals be accepted. However, the energy available for sale on T & D loss now approved by the Commission will be as under :-

		M.U.
Energy sent out		5569
Purchase		1196
Total		6765
T & D loss @ 16.8%	1137	
Consumption in office	18	
		1155
Energy available for sale		5610

For the present year the CESC have projected their transmission & distribution loss at 1498.326 MU being 22.36% of the total energy received for distribution. Out of this, about 11.6% goes towards technical loss as per the CESC and the rest of about 11% towards commercial or non-technical loss, i.e. due to defective metering, defective billing and also pilferage. According to CESC, their distribution system is totally metered with fairly accurate devices and their billing portion is also streamlined and the non-technical loss thus may be attributed solely to pilferage. It is the case of the CESC that such pilferage could be stopped only with the active support from the administration.

8.4 The Consultants have recommended acceptance of 16% T & D loss earlier but later on enhanced it to 22% for 2000-01 as the year has already passed with a further suggestion that directives be issued to bring it down to 2% every year to achieve the target of 18% in course of time. However, while working out this T & D loss, the Consultants have also included the power to be wheeled.

8.5 Materials and arguments placed before us indicate that in the year 1993 itself the T & D loss for the CESC was given a ceiling with a direction to bring it down by 1.5% every year to reach a target of 14%. This is to be kept in consideration when we take up the claim of the CESC on T & D loss / unaccounted energy. Thus, the main reason for enhancement of T & D loss as projected by the CESC is pilferage. It is true that in the socio-economic background that prevails in this part of the country, it may not be possible for the CESC alone to check pilferage as has been argued by CESC and they have given documents / letters to indicate the actions taken by them, but they could not achieve the full result. There is some merit in their argument. T & D loss is really the unaccounted energy.

8.6 In our view, 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 they may also seek the help of the public in general. The general consumers who pay for the loss due to pilferage should be made aware that they can help to prevent power theft. The State administration must also give a quick response to the reported cases of power theft and take effective measures towards early detection to book the offenders. They must also take measures of prevention of such pilferages. State may also think of making more stringent laws to punish power thieves. The utility, it is seen, remains satisfied by lodging an F.I.R. for power theft. It is for the utility to strengthen its Watch & Ward network and to follow up every case of power theft after intimating the authorities and also ensure that there is no leakage at their end including connivance with their staff. They should also take up programmes for making the people aware of this social menace and may resort to visual or audio-visual advertisement to that effect. The utility may also identify the theft-prone areas and take effective steps to alienate those areas from the areas which do not report power theft. Part of CESC system is underground where chances of pilferage by hooking is remote. They may strengthen their vigilance staff and also take effective steps against negligent staff in whose areas

power theft is rampant. CESC is advised to ensure to provide new connections expeditiously and rationalize its procedures including costs charged from the prospective consumers as it may also obviate pilferage. Though the utility has spent substantial amount towards expenditure on strengthening the transmission and distribution assets as pointed out, but not spend on effectively educating the consumers as indicated above. The discussion in the last paragraph indicates that the total blame for pilferage may not be put on utility only. We, therefore, feel and direct that CESC may be given some more time to bring its loss / unaccounted energy down to 14% in view of the above reasons and constraints. They should also make efforts to bring it down further. We, therefore, allow them 20% more over 14% T & D loss i.e. 16.8% which they should bring down at least to 14% in next 4 years by reduction of 0.7% every year. The T & D loss to be allowed in 2001-2002 will be 16.1% of energy sent out plus purchase. Transmission loss on power wheeled not exceeding 4% may be reduced from the energy to be wheeled at the time of delivery and appropriate wheeling charges charged separately.

8.7 Generation

CESC have given the revised figures of Generation, Auxiliary Consumption and PLF for 2000-2001. There is some improvement in PLF of Budge Budge and Titagarh against the projected figures of 2000-2001. However, the PLF for Southern, New-Cossipore and Mulajore is quite less. The Plant Load Factor, however, is much less than the Plant Availability Factor and CESC have purchased power from WBSEB and DVC to meet its requirements. Normally these purchases should be to meet the Peak Demand and radial load if any. However, it appears that they could not generate more but have to purchase substantial power from WBSEB and also from DVC which ultimately may not be cheaper. Since the year 2000-2001 is already over and 6 months of 2001-2002 are also over, we will not comment on generation but direct CESC that they should operate the system in most economical manner subject to systems constraints. However, we direct CESC to give a detailed note in their Tariff Petition for 2002-2003 on the system operation and generation along with justification for purchase from various utilities including Techno-Economic criteria followed. We, accordingly accept for 2000-2001 the generation figures of 6147 M.U. and Auxiliary consumption 578 MU and energy sent out 5569 MU.

8.8 Purchase of Energy

CESC have given figures of actual purchase of energy 1397 MU during 2000-2001 out of which 201 M.U. is the energy wheeled for WBSEB which can not be taken as purchase. The purchase of energy actually therefore is only 1196 M.U. out of which 1015 M.U. is from WBSEB and 181 M.U. from DVC. We accept the purchase of energy figure of 1196 M.U.

8.9 Expenditure analysis on variable costs.

Once the generation and purchase figures have been given with specific apportionment of purchase from different sources, we may proceed to assess the expenditure on fuel and purchase.

8.10 Fuel cost.

Fuel costs depends on fuel consumption, which in turn, depends on certain parameters, viz. (1) station heat rate; (2) secondary fuel consumption (oil); (3) specific consumption of oil; (4) auxiliary consumption; (5) gross calorific value of coal and oil; (6) transit loss of coal, (7) weighted average price of coal and (8) price of oil.

8.11 For station heat rate, secondary fuel consumption and auxiliary consumption, we have two sets of norms as fixed by the CEA / GOI and by the Govt. of West Bengal. The norms set up by CEA / GOI is lower than the norms notified by Govt. of West Bengal. The CESC in their Tariff filing have submitted the actual Fuel consumption and also the consumption based on the recommendations of the Committee set up by Govt. of West Bengal. The projected cost was well below the norms as claimed by CESC. Some of the objectors expressed that the norms accepted by the State Government are very much on high side and asked for revision of these norms by the Commission under ERC Act.

8.12 On the basis of performance at different stations, the Consultants have recommended the following norms.

Station	Heat rate K-Cal/KWH.	Oil Consumption ml/KWH	Auxiliary Consumption %
Budge Budge	2350	Upto 1	9.5
Southern	2800	Upto 3.5	10.5
Titagarh	2800	Upto 3	9
New Cossipore			9
Mulajore			10.3

For the last two stations, the specific coal consumption figures have been recommended as .88 kg. per KWH and 1.12 kg. per KWH respectively.

8.13 Calorific value of coal.

The coal received at the power stations of CESC has been analysed by an agency (M/s. R.B. Briggs Co.) at Kolkata. Some of the test results were checked by the Consultants and their figures tally with those given by the CESC and they have recommended it for acceptance. However, it is observed from the test results submitted with the petitions that the agency have not taken samples but analysis have been done on sample delivered to them. It was also observed that the minimum declared Heat value was substantial less than the Heat Rate adopted by CESC while working out the Coal consumption. For grade slippage, no norm has been fixed for allowing the same. The so-called grade slippage is a matter between the supplier and the purchaser.

8.14 Transit loss of coal.

The Govt. of West Bengal had accepted a transit loss due to weighment in coal upto 4%, actual loss suffered by the CESC in last few years ranged between 0.5 to 0.9% only. This figure for the year 1999-00 was only 0.5%. CESC claimed a transit loss of 1% for 2000-01 and the Consultants recommended only 0.5%. Giving a thoughtful consideration over the matter, we admit a transit loss of 0.5% only based on actuals.

8.15 After considering the two sets of norms, performance of the individual stations and the recommendations of the Consultants and keeping the vintage of New Cossipore and Mulajore Stations with their small generation capacity and type of boilers used there, we fix the following norms stationwise.

Sl. No.	Stations	Heat rate k.cal/kwh	Spec. oil Consumption ml./kwh	Auxiliary Consumption %
1	Budge Budge	2350	0.737	9.5
2	Southern	2800	3.825	10
3	Titagarh	2800	2.184	9
4	New Cossipore	5018		9
5	Mulajore	6174		10.3

8.16 Cost of coal & oil

The weighted average price of coal (Rs. / Tonne) as submitted by CESC in its tariff filing and as accepted by ASCI is as under :

	CESC	ASCI
Budge Budge	1464	1427
Titagarh	1531	1531
Southern	1549	1498

New Cossipore	1810	1765
Mulajore	1873	1829

The cost of coal as projected by CESC included price revision of April, 2000 whereas it was exclusive in case of ASCI.

The weighted cost of oil per KL as projected by CESC and accepted by ASCI was Rs. 15227 for Budge Budge, Rs. 15248 for Titagarh and Rs. 15313 for Southern. This was exclusive of price revision of October, 2000.

CESC was directed to give details relating to purchase of coal, category-wise, calorific value of coal its prices and Road Transportation of coal. CESC has submitted in May, 2001 the revised fuel price for 2000-2001 and overall total cost of fuel which includes the price revisions of coal in April, 2000 and February, 2001 and oil price increase in October, 2000 though they have again stated it provisional. The Commission noted that the coal price of Mulajore and New Cossipore is still very high. However, we accept the coal and oil prices as under along with consumption of coal and oil for this year :

Station	Coal price Rs. / Tonne	Oil price Rs./KL.	Quantity	
			Coal MT	Oil KL
Budge Budge	1404	15193	17,91,647	2390
Titagarh	1505	15138	9,21,248	3551
Southern	1505	15468	4,04,208	2456
New Cossipore	1770		4,34,508	
Mulajore	1837		1,65,345	
			37,16,956	8397

The above quantity does not include the Transit Loss which is allowed @ ½% on the above quantity keeping in view the actual loss incurred during last year and reasons explained elsewhere. Based on the above the total Fuel Costs comes to Rs. 56772 lakhs as under :-

Rs. in lakhs

Coal Oil Total

	Coal	Oil	Total
Budge Budge	25281	363	25644
Titagarh	13934	538	14472
Southern	6114	380	6494
New Cossipore	7729		7729
Mulajore	3053		3053
Total	56111	1281	57392
Less : Claims lodged for transit loss	620		620
Total Costs	55491	1281	56772

As we have accepted the actual costs as indicated above, we direct that for this year no further fuel adjustment or fuel surcharge shall be allowed for cost covered under this para. The cost of coal and its consumption is quite high in Mulajore and New Cossipore along with the total delivered price of coal. We, however, call upon CESC to make every effort to reduce the costs particularly in Mulajore, New-Cossipore and re-look and avoid Road Transport of coal wherever it is not economical and Transportation by Rail is feasible. CESC should also look into the necessity to continue unloading facility at Ultadanga and take up at appropriate level in CPT to remove bottlenecks in smooth transportation of coal through Rail.

8.17 Our Consultants have shown fuel related cost under the broad head of variable costs; but we are of the view that this should be delinked from fuel costs and should go to the fixed cost head. Fuel related cost will be taken up at the appropriate stage under the broad head of fixed costs.

8.18 Power purchase cost.

CESC purchases power from the DVC and WBSEB and the projection of power purchased for the year 2000-01 is as follows:

Source	Demand (MVA)	Energy (MU)
WBSEB.	310	1015
D V C	39	181

The CESC also furnished the tariff for power purchase from these two organisations at actual tariff rates as per the following table:

Source	Demand charge (Rs./KVA)	Energy charge (P/KWH)	Fuel surcharge (P/KWH)
WBSEB.	125	130	32.42
D V C	375.79	157.95	31.61

8.19 The quantum of purchase and cost, estimated to be as follows for the year 2000-01.

Source	Energy Purchase in MU Recommended			Costs Rs. lakhs		
	Projected	by Consultants	Actual	Projected	Recommended by Consultants	Accepted by omission
WBSEB	1000	1015	1015	21973	21926	24445
D V C	180	123	181	5082	3551	5105
TOTAL	1180	1138	1196	27055	25477	29550

The cost projected by CESC and recommended by ASCI for the purchase from WBSEB has been taken based on certain assumptions on rate and transmission loss. We are of the opinion that in the Tariff the rate and basis as approved by the Govt. of West Bengal and billed by the WBSEB should have been taken in this case and dispute if any shown separately in the petition. We have, therefore, included Rs. 24445 lakhs provisionally for WBSEB adopting the same basis as claimed by WBSEB in their petition. The difference if any admissible pertaining and for the year 2000-2001 may be claimed by CESC through FCA with all the relevant documents.

CHAPTER - 9 : FIXED COST.

9.1 Under this head, we shall take up the consideration on the employees cost, administrative and general expenses, rent, rates and taxes, legal charges, audit fee, bad debts, repairs and maintenance charges, interest on loans, etc., foreign exchange variation, other financial charges, lease rental, interest on security deposit, depreciation, delayed payment surcharge, water charges, intangible assets write-off and special appropriations.

9.2 Employees cost.

For the year 2000-01, the projected figure on this head is Rs. 19617 lakhs. This has been calculated from the total cost towards employees, minus 14% of capitalization of this sum towards the cost of employees involved in capital work. The rate of capitalization on this account has been examined by the Consultants and they found the rate reasonable. The Consultants have also examined the employees cost over the last three years for the CESC and found that there had been an increase of 6.6% on this head over expenses in the previous year. The employees cost has been examined from various angles by the Consultants viz., the number of employees per 1000 consumers, number of employees per million KWH sold, the percentage of the employees cost on the sales revenue. The Consultants compared these figures with corresponding figures of other organizations in the power generation/ distribution activities. According to the Consultants, the figures appeared reasonable except for the number of employees which is 14542 as per the following break-up.

Generation	3457
Transmission & Distribution	9131
Centrally maintained services	1954

It is further gathered that out of 3457 employees in generation, 1958 are engaged in New Cossipore and Mulajore and are on higher side and also substantial overtime is being also paid there. Consultant has recommended to shut down these stations as it will save substantial costs.

9.2.1 From the figures it further appears that the New Cossipore and Mulajore Stations sent out only 10% of the total own generation of the CESC, while they have 59% of the work strength engaged for this small generation. There appears to be substantial excess manpower in these two stations and there is need to contain / reduce the expenses. There is therefore need to retrain and redeploy the employees to reduce the work from external agencies / bodies to the extent possible. We do not agree with the consultant for closing Mulajore and New Cossipore unless we see the cost benefit analysis as purchase cost of DVC is much higher and even WBSEB power may not work out to be cheaper in ultimate analysis. We will also like to know the amount of Fixed costs of these stations shared under other expenses centrally maintained i.e. total cost allowable / pertaining to these stations. We, therefore, direct CESC to give a note on this with various alternatives available advantages and disadvantages of continuation or closing down these two stations. Note may also include whether it is possible to renovate and modernize these plants and if yes, its implications, costs and advantages / benefits. We have already separately emphasized the need to curtail / reduce costs particularly fuel costs on these two stations.

9.2.2 Consultants have pointed out that the employees cost for 2000-01 includes a sum of Rs.2233 lakhs as over-time payment to the employees. In the previous year also, expenses for over-time payment was to the tune of Rs.2147 lakhs. No doubt, the New Cossipore and Mulajore stations are over-staffed and work at a low PLF; but still the employees there had been paid Rs. 141 lakhs and Rs. 214 lakhs respectively. This suggests that overtime payment is made irrespective of actual overtime work taken from an employee. The Commission noted that the overtime payment is extremely high in comparison to total salaries and wages when it is compared after excluding contribution to funds, welfare expenses, non-entitled categories and also surplus staff available. There is therefore greater need to re-look into the payment of overtime. We advice CESC to take adequate steps to control overtime payments and pay overtime when overtime work is taken and only to those who are actually engaged in overtime duty mainly in Generation, Transmission and Distribution and after considering the redeployment of excess employees to the extent possible. We, however, impose an adhoc cut at present.

9.2.3 The consultants has recommended Rs. 19625 lakhs as employee costs even though they have reservation on number of employees. We have also observed that the expenses so claimed and recommended includes contribution to pension not covered by the Act as well as certain provisions for future leave encashment etc. We, therefore, disallow these also along with adhoc cut on overtime. We do not propose to impose further cut for excess staff at present pending their re-training and redeployment.

9.2.4 Upon the above analysis and with the above directions, we assess the employees cost at Rs. 18369 lakhs only for the year 2000-01 after considering the adhoc cut of Rs. 447 lakhs towards overtime, Rs. 600 lakhs towards pension contribution and Rs. 208 lakhs towards provision for leave encashment.

9.3 Administrative, general expenses and miscellaneous expenses

9.3.1 On this head, the projected expenses are assessed at Rs. 4552 lakhs. We accept the recommendation of the Consultants to disallow Rs. 150 lakhs under the common corporate expenses and Rs. 106 lakhs under stamp and courier services charges. We, however, find there is need to curtail some expenses particularly, travelling, certain payments to Auditors booked under miscellaneous expenses, expenses for Regulatory Affairs etc. We put up an adhoc cut of Rs. 100 lakhs and allow Rs. 4196 lakhs only for this year.

9.4 Rent, rates, taxes, legal charges and audit fee.

9.4.1 The rent, rates and taxes cover Municipal Tax, building rent, property tax, vehicle tax, etc. and the actuals for 2000-01 are only 6% more than the actuals of the previous year. We accept the projected sum of Rs. 612 lakhs.

9.4.2 The legal charges of Rs. 291 lakhs appears to be on higher side and advice CESC to curtail such expenses to extent possible and with this we accept Rs. 291 lakhs.

9.4.3 It was observed by the Commission that substantial payments made to Auditors towards Audit fees, certification and other services has been shown under miscellaneous expenses in the accounts and accordingly in this petition. We accept the claim of Rs. 11 lakhs for Audit fee, but again advice to curtail the other payments to Auditors booked under miscellaneous expenses for which token adhoc cut has been imposed separately at present.

9.5 Bad debts.

9.5.1 The projected sum under this head is Rs. 1025 lakhs and the corresponding sums for the previous two years were Rs. 701 lakhs and Rs. 767 lakhs. The dues pending on 31.3.2000 were Rs. 67159 lakhs. Considering that the area of operation of CESC has an urban high load density with residential, commercial and industrial consumers, Consultants has recommended 1% of the pending dues on this score and assessed the bad debts at Rs. 671 lakhs only for this year. However, it has been observed that the actual Bad debts written off as per last year accounts is Rs. 542 lakhs against Rs. 767 lakhs claimed. The objectors have raised certain points regarding write off of Bad debts when there is a fully computerised efficient billing and collection system and CESC has Security Deposit of 3 months. There is some merit in the argument and we advice CESC to review the system and procedure. We, therefore, retain the amount of Bad debt at Rs. 542 lakhs keeping in view actuals of last year.

9.6 Repair & Maintenance Charges etc.

9.6.1 Under this head, we consider not only repair and maintenance charges, but also the utilization of spares and water charges. The sum projected under these items for the present year is Rs. 9475 lakhs including a projected water charge of Rs. 160 lakhs. Break-up of the costs as projected and the past actuals have been examined by our Consultants. They have opined that the expenses worked out to only 2% of the gross fixed assets and is comparable with expenses of other utilities on the present items. The Consultants are also of the view that substantial increase in stores and spares could be attributed to procurement of spares for Budge Budge Project. They have kept in mind the fact that CESC was an old concern and repair and maintenance were necessary. However, the procurement of stores and spares will go to Inventory and old concern does not mean more Repairs and Maintenance. CESC has added major capacity at Budge Budge recently and has incurred substantial amount of capital expenditure on strengthening the system and therefore, it should have effect on R & M expenses. Normally expenses may not go up by 20% when last year itself there was increase of 15% over 98-99. Also the expenses under centrally maintained is quite high and needs reduction. Keeping this in view, we only allow 8% increase over actual expenses of last year and hence allow Rs. 8560 lakhs as Repair and Maintenance charges. We allow only Rs. 92 lakhs towards water charges after disallowing Rs. 68 lakhs towards arrears included therein. The total of Repairs and Maintenance and water charges will be Rs. 8652 lakhs.

9.7 Interests, loans etc.

9.7.1 The claim of the CESC show a sum of Rs. 36437 lakhs as interest on loans borrowed from commercial banks, financial institutions and also covers the debentures issued and foreign currency loans. The loans from different sources, interest rates, loan outstanding on 31.3.2000 and 31.3.2001 were examined and verified by the Consultants. The Consultants have recommended Rs. 34322 lakhs as interest after disallowing Rs. 1340 lakhs towards excess capital cost of Budge Budge and Rs. 775 lakhs on working capital included therein. There has been a substantial cut in the estimation of this Commission in the cost of the Budge Budge TPS Project, and accordingly, we disallow a sum of Rs. 2105 lakhs on account of interest on loans related to the excess capital cost. The Commission further noticed that some more working capital loans are included in the loan schedule. The Commission therefore further disallow a sum of Rs. 2169 lakhs claimed as interest on these working capital loans as the interest under this head applies to capital

loans. Regarding the cut on the capital cost of Budge Budge Project, it was contended by the CESC that the project cost was run down from Rs. 2672 crs. to Rs. 2296 crs. by the CEA and any further cut by this Commission on the interest on loan would pose a double jeopardy to them. In our view (expressed earlier), the cost of Budge Budge Project was Rs. 2075 crs. only and the interest on the sum of loan in excess thereof is to be excluded as the consumers may not be saddled with a high cost over-run. Accordingly, we assess the interest on loans at Rs. 32162 lakhs only. The interest on loan disallowed and loan amount has been also calculated on the same basis as was recommended by ASCI for excess capital cost at present. This will be reviewed as indicated earlier. It was also observed by the Commission that rate of interest on certain loans are very high and effective steps are to be taken to either get the rates reduced or substitute it by cheaper loans. We have already given some direction in this regard under chapter 7.9.

9.8 Foreign Exchange variation.

9.8.1 The claim of the CESC in this regard is a sum of Rs. 2016 lakhs on the ground of foreign exchange loss on a foreign currency loan repayment for the year 2000-01. Our Consultant ASCI has stated that although this is not specifically covered under para. XVII, 2(b) of Schedule - VI of the Electricity (Supply) Act, 1948, the amount is admissible as per the Income Tax Act, and as such, is admissible here as well as "other expenses" under the aforesaid paragraph. The Consultants have assessed the actuals at Rs. 2010 lakhs. We have gone into the issue and do not fully agree with the view of the Consultants that the amount is admissible as per the Income Tax Act. The Income Tax Act only permits variation in the capital cost of such assets due to such F.E. variation subject to stipulated conditions. However, it was observed that the State Government has earlier permitted such Foreign Exchange variation and therefore, we do not intend to interfere in the same and allow the amount this year and next year as a special case and review the position in Tariff Petition of 2002-2003. We, therefore, allow Rs. 2010 lakhs.

9.9 Other finance charges.

9.9.1 The sum projected under this head is Rs. 3022 lakhs. The Consultants have, on a good reasoning, recommend a reduction of Rs. 1290 lakhs in bill discount charges and Rs. 404 lakhs towards bank charges. However, it has been observed that disallowance of Bank charges towards remittance of FY loan repayments, commission fee for deferred payment guarantee scheme, public deposit expenses fully is not correct. We, therefore, allow 50% of such claim and allow Rs. 1530 lakhs.

9.10 Lease Rental.

9.10.1 The Consultants has recommended Rs.4132 lakhs as rental as claimed by CESC. The Lease rental is paid by CESC on assets like meters, computers and plant & machinery taken on lease in addition to capital additions. We have already commented on this earlier. We also note that real cost of these rentals is very high and advice CESC to take adequate steps to reduce such costs. At present we accept the lease rental of Rs. 4132 lakhs.

9.11 Interest on Security Deposit.

9.11.1 The CESC paid to its consumers interest @ 5.5 % per annum on their security deposit and they have claimed an expenditure of Rs. 1050 lakhs on this score. The objectors are vociferous on this point to say that the rate of interest should have been at par with the rate of delayed payment surcharge collected from the consumers which is 48 % per annum. An objection was also raised on the demand of additional security deposit as imposed by the CESC. This point has been answered in para 6.9 of this order. In our view, consumer deposit is a security deposit as the consumer is using electricity in advance. These deposits could be adjusted any time for default in payment of bills and this deposit is NOT one in the nature of fixed deposit with CESC. We do not propose to interfere with the practice of allowing 5.5% per annum interest by the CESC on the security deposits made by the consumers. We also allow the expenses on this account amounting to Rs. 1050 lakhs.

9.12 Depreciation.

9.12.1 For the year 2000-01, the CESC projected a sum of Rs. 30719 lakhs as depreciation on generation and Transmission & Distribution assets as per the following break-up:

I t e m	Rs. (in lakhs)
Generation assets.	21390
Transmission assets.	3575
Distribution assets	3626
Meters	988
Others assets	1140
T O T A L	30719

9.12.2 The Consultants have found that the depreciation had been calculated in a proper manner; but they suggested a reduction on account of restricting the capital cost of Budget Project. The Commission has further restricted the cost of Budget Project and therefore reworked out depreciation provisionally on same basis as has been worked out by ASCI. We assess the sum under this head at Rs. 26474 lakhs.

9.13 Delayed payment surcharge.

9.13.1 On this score, the CESC had claimed a sum of Rs. 718 lakhs to meet their liability towards delayed payment surcharge, for power purchases from WBSEB and DVC as also to the State Govt. towards Electricity Duty and they wanted this sum to be included in their revenue requirement. They pleaded that the company was on the brink of financial disaster and due to financial crunches, they could not make payment in time of the dues to WBSEB and DVC and also the State Govt. on account of Electricity Duty. The Consultants are of the view that this claim is to be disallowed. The Commission has also passed certain comments / observations on related matters under para 7.2, 7.6, 7.9 and 7.13. The most of the consumers are already paying as per the approved tariff and also given security deposits. On a thoughtful consideration of the matter, we are of the view that timely payment is a liability of the utility and the penalty for the delay may not be passed on to the consumers.

9.14 Intangible assets write-off.

9.14.1 As recommended by the Consultants, we allow Rs. 66 lakhs as projected as the intangible assets write off for this year.

9.15 Special appropriation.

9.15.1 Under this head, a proposal has been advanced for Rs. 1175 lakhs towards contingency reserve for the present year. This was in terms of Schedule-VI of the 1948 Act. The original cost of fixed assets has been assessed at Rs. 3,99,242 lakhs and we accept the recommendation of the Consultants to allow 0.25% of this sum towards contingency reserve for this year and the amount works out at Rs. 998 lakhs. The Commission noted that the CESC has not invested Rs. 5264 lakhs in the approved securities as per the requirement of the E.S. Act, 1948. It was also observed that the advance earlier taken from the Contingency Reserve amounting to Rs. 2654 lakhs has not been repaid to Contingency Reserve on the plea that the terms has not been fixed by the Government. We call upon CESC to immediately take up with State Government and get the term fixed for repayment of Contingency Reserve and start its repayment accordingly. For investment of balance Contingency Reserve we have already given directions in para 7.13.

9.15.2 Special appropriation has also been claimed on DVC's claim and FERV to the tune of Rs. 1812 lakhs and Rs. 2984 lakhs respectively. The claims related to a period prior to 1.4.2000. There is no approval of the State Govt. for inclusion of their claims in the Tariff for this year. The Commission under this petition is only examining and fixing Tariff for this year. The claim is therefore disallowed.

9.16 The Consultants have, however, recommended for allowing a sum of Rs.414 lakhs as claimed by the CESC towards net shortfall in reasonable return as approved by the State Government. The Commission accepts this and allow Rs. 414 lakhs as approved by the State Government, but like

to make it clear that Commission has not gone into the merit or legality of this and hence this may not be taken and quoted as precedence.

CHAPTER-10 : REVENUE REQUIREMENT FOR 2000 - 01 .

10.1 The revenue requirement is the sum of all expenses and the reasonable return less non-tariff income. On our analysis, as made above, on different parameters of expenditure and the capital base, we arrived at the revenue requirement as detailed below.

Sl. No	Particulars	Rs. in lakhs		
		As proposed by CESC	As per ASCI Analysis(Revised)	As assessed by the Commission
1	Fuel including coal	59828	57640	56772
2	Power purchase	27062	25477	29550
3	Employees cost including Directors fee	19625	19625	18369
4	a) Administrative and general charges	4552	4296	4196
	b) Ash & coal handling expenses			1000
5	Rents, rates and taxes	612	612	612
6	Legal charges	291	291	291
7	Audit fees	11	11	11
8	Bad debts	1025	671	542
9	R & M including consumables	9315	9315	8560
10	Interest charges on loans	36437	34322	32162
11	FERV	2016	2010	2010
12	Other finance charges	3022	1328	1530
13	Lease rental	4132	4132	4132
14	Interest on SD	1050	1050	1050
15	Depreciation	30719	27784	26474
16	Delayed payment surcharges	718		
17	Water Charges	160	92	92
18	Intangible assets write-off	66	66	66
19	Less sale proceeds of Ash	(-) 6	(-) 6	Incl. in Misc. Income
	Total Expenditure	200635	188716	187419
20	Special appropriations			
	iii) Contingency Reserve	1175	1025	998
	iv) Others	4610	414	414
21	Reasonable Return	12812	12348	6751
22	Total	219232	202503	195582
23	Less: Non-tariff income	6514	7550	7550
24	Revenue Required	212718	194953	188032
25	Average cost of supply (p/kwh)	426	390	335
26	Average increase (Approx.)	28%	13.34%	

The figures may not be comparable because of assumptions, inclusions and exclusions made by CESC and ASCI. The figures has been regrouped appropriately.

10.2 Average cost of supply for the year 2000-01.

10.2.1 The average cost of supply during this year works out at 335.17 p. per KWH as per the following figures.

Net revenue	Rs. 188032 lakhs.
Net energy available for sale	5610 MU.
Sale of energy as certified	5165 MU
Unaccounted energy after T & D loss as approved	445 MU
Cost to be reduced from Net Revenue for the above unaccounted energy at gross average overall LT rate of 295.9 p/kwh	Rs. 13168 lakhs
Balance Net Revenue to be realised	Rs. 174864 lakhs
Average net tariff to be realized	338.56 p./KWH.

10.2.2 The year 2000-01 has already passed. We, therefore, are not inclined to fix any new tariff structure, but retain the existing tariff structure for this year. We direct that the utility shall work out over-realisation / shortfall from the sum allowed by us and the sum actually realised / realisable for supply in 2000-01. After such calculation, the utility shall adjust the sum to / from the consumers for 2000-01 in the same percentage of sharing the total revenue / average tariff as stood on 31.3.2000 and we further direct that refund / realisation is to be made from December, 2001 to March, 2002 in equal monthly instalments and the amount are to be shown separately in the bills for information of the consumers.

CHAPTER 11: CLAIM FOR THE YEAR 2001-02 AND DETERMINATION THEREOF.

11.1 We shall now proceed to analyse the capital base and expenditure for the year 2001-02 to work out the reasonable return for this year, the revenue requirement and the average tariff. We shall also engage ourselves to fix a tariff structure for this year and we shall indicate the formula for fuel and power purchase cost adjustment. We shall also give necessary directions to the CESC that we want them to follow.

11.2 Capital base for the year 2001-02.

11.2.1 As discussed in Chapter 7 of this order, we have assessed the cost of Budge Budge Project at Rs. 2075 crs only. The findings in paragraph 7.1.11, 7.10, 7.11, 7.12, 7.14 and other consequential adjustments in chapter 10.2.2, chapter 16 and chapter 17 would be given effect to only with the leave of the Supreme Court as directed by the Apex Court.

11.2.2 For this year (2001-02), the CESC have projected additional capital expenditure of Rs. 206.68 crs. mainly for assets pertaining to transmission and distribution. They have not shown any item as retired from services during this year. We have already commented on such huge capital expenditure being incurred by CESC in para 7.2 and passed certain directions. The same is applicable this year also and we provisionally disallow Rs. 100 crores i.e. about 50% from this year proposed capital expenditure with similar directions as given in para 7.2. This sum is to be reduced from the cost of fixed assets. The cost of fixed assets is, therefore, assessed at Rs. 409929 lakhs only. The contribution from consumer for this year is projected at Rs. 2500 lakhs which is accepted. The total contribution from consumer will be Rs. 21695 lakhs and net fixed assets will be 388234 lakhs.

11.3 Original cost of works in progress.

11.3.1 In line with the approach made for 2000-01 and subject to para 7.2, we provisionally allow the cost under this head at Rs. 14530 lakhs after disallowing Rs. 1500 lakhs.

11.4 Compulsory investment.

11.4.1 In line with our reasonings given for the year 2000-01, while discussing on this head for that year, we direct the CESC to invest in the next financial year the contingency reserve allowed by the Commission for this year. We have taken Rs. 998 lakhs allowed during last year in the capital base provisionally on the assumption that the amount will be invested as per the E.S. Act.

11.5 Working capital.

11.5.1 The projected working capital was negative Rs. 23191 lakhs for the previous year. We had advanced reasons for our views on working capital for the year 2000-01. On the same reasoning, we do not include negative working Capital Base this year also and disallow their claim in this regard.

11.6 Accumulated depreciation.

11.6.1 The amount projected by the CESC under this head for this year is Rs. 150414 lakhs. In our calculations in paragraph 7.8, we have disallowed a portion from Budge Budge Project cost and a corresponding accumulated depreciation is to be deducted for the present year also. Accordingly, the accumulated depreciation works out as follows:

I t e m s	Rs. in lakhs.
Actuals upto 2000-01	111685
Addition during 2001-02	27839
T o t a l	139524

Accordingly, the accumulated depreciation as on 31.3.2002 is Rs. 1,39,524 lakhs according to this commission.

11.7 Loans.

11.7.1 As per the tariff petition for this year, the outstanding loans at the end of the year 2001-02 would be Rs. 223694 lakhs. We have already commented and given detail reasons for the loans during 2000-2001. The outstanding loan allowed and outstanding at the year end would be Rs. 212561 lakhs for the year 2000-2001.

11.7.2 We had, for the year 2000-01, disallowed certain sums on account of loan for Budge Budge Project, working capital and bill discounting for power and coal. For the past year, we had allowed a sum of Rs. 212561 lakhs only towards outstanding capital loan. For this year (2001-02), we allow on this head a sum of Rs. 180724 lakhs only.

11.7.3 On the above considerations and calculations, we give below a table showing capital base as projected by CESC for 2001-2002 and as allowed/ assessed/ accepted by this Commission.

Capital Base : 2001-02

Ref.	Particulars	As projected by CESC (Rs. in lakhs.)	As assessed by the Commission. (Rs. in lakhs)
A	Positive Side		
1	Original Cost of Fixed Assets (net of contributions from consumers)	467283	388234
2	Cost of intangible assets (net of write-offs)	1194	1194
3	Original cost of works in progress	16030	14530
4	Investments	1175	1006
5	Working Capital	27082	
6	Total A	512764	404964
B.	Negative Side		
7	Depreciation	150414	139524
8	Loan	223694	180724
9	Cash Security Deposit by consumers	24837	24837
10	Tariff and Dividend control Reserve		
11	Development Reserve (including	1388	1388

	investment allowance Reserve		
12	Consumers Account	71	71
13	Total B	400404	346544
14	Net Capital Base (A - B)	112360	58420

11.8 Reasonable Return.

11.8.1 For calculation of reasonable return, we shall be guided by Schedule - VI of the 1948 Act, and we indicate our calculation/assessment in the following table.

Reasonable Return

Ref.	Particulars	As claimed by CESC (Rs. / lakhs)	As allowed by the Commission (Rs. / lakhs)
A	Reasonable Return as claimed on Capital Base		
	Capital Base up to 31.3.65	3362	3362
1	Applicable Rate of Return	7%	7%
	Capital Base X Applicable Rate of Return	235	235
	Capital Base from 1.4.65 to 31.3.92	6163	6163
2	Applicable Rate of Return	10%	10%
	Capital Base X Applicable Rate of Return	616	616
	Capital Base from 1.4.92 to 31.3.99	71740	48895
3	Applicable Rate of Return	13%	13%
	Capital Base X Applicable Rate of Return	9326	6356
	Capital Base from 1.4.99	31095	
4	Applicable Rate of Return	16%	
	Capital Base X Applicable Rate of Return	4975	
	Total of A	15153	7207
B	Other Items		
1	½% on Development & Investment Allowance Reserves	7	7
2	½% on all loans	1118	904
3	Income from Investments not included in capital base		
	Total of B	1125	911
	Grand Total (A+B)	16278	8118

11.9 Non-tariff Income.

11.9.1 We had indicated our approach on this head for the past year and we do follow the same approach for the present year also and assess the non-tariff income at Rs. 7800 lakhs only.

CHAPTER 12 : VARIABLE COSTS FOR 2001 - 02.

12.1 In this chapter, we start with energy sales for this year. As indicated earlier, the CESC supplies power to its consumers partly from its own generation and the rest from purchase.

12.2 Sale for 2001-02.

12.2.1 The projected sale for this year is 5285 MU. For a comparison with the actuals for the past few years and taking the actuals at 5165 units and keeping in view the new consumers to be added, growth in demand from existing consumers, CAGR etc., we estimate the sale for this year at 5395 MU and energy available for sale at 5520 MU as per details in chapter 16.2.

12.3 T & D Loss.

12.3.1 We had advanced detailed reasonings for assessing the T & D loss for the last year in Chapter - 8 of this order. The same reasonings hold good for assessing the T & D loss for this year also and this rate also is to be applied for the total energy available for sale. As directed earlier, the T & D loss for this year will be 16.1%.

12.4 Generation for 2001-02.

12.4.1 For the previous year, we had accepted the actual figures as the year had already passed when we took up the matter for consideration. For this year, however, we are to go by normative generation based on the PLF of the stations. The following table gives the station-wise normative generation.

Sl. No	Name of the station	Capacity (MW)	P L F (%)	Normative Generation (MU)
1	Budge Budge	500	71.7	3000
2	Southern	135	60.5	810
3	Titagarh	240	71.3	1440
4	New Cossipore	130 (160)	41.3	780
5	Mulajore	60 (120)	24.7	360
	Total Generation	1065		6390

12.5 It appears that 210 MU of power is wheeled through the transmission system of the CESC and for the T & D loss for this wheeling the directions as given in 2000-2001 will be applicable for wheeling for this year also.

12.5.1 The estimation of sale of energy for 2001-02 has been made by this Commission keeping in view actual generation for 2000-2001 and the following table would show the station-wise generation as projected and as estimated by this Commission.

Sl. No.	Station	As projected(in MU)	Estimated by the Commission(in MU)
1	Budge Budge	3140	3243
2	Southern	716	716
3	Titagarh	1500	1626
4	New Cossipore	470	499
5	Mulajore	130	137
	T O T A L	5956	6221

The Auxiliary Consumption is 585 MU and Energy sent out 5636 MU.

12.5.2 With the energy requirement figures and the generation figures arrived at by this Commission, we may reach the purchase figures for the year 2001-02 and the following table would show the figures of purchase as projected, and also the ones allowed by this Commission.

Sl. No.	Source	Projected(in MU)	Allowed by the Commission(in MU)
1	W.B.S.E.B.	1000	944
2	D.V.C.	210	Nil
3	TOTAL	1210	944

12.6 Expenditure analysis on variable cost for 2001-02

12.6.1 The generation and purchase figures having been arrived at with specific apportionment of purchases from different sources, the Commission would now proceed to assess the expenditure on fuel and purchase.

12.7 Fuel Cost

12.7.1 The Commission has already given out its mind in its discussion on the present head when the point for fuel cost for 2000-01 was taken up. The Commission fixes the same norms (stationwise) for heat rate, specific coal consumption, specific oil consumption and auxiliary consumption as had been fixed in Paragraph 8.15 of this order and directions contained therein will be applicable for this year also. We have earlier commented upon the calorific value of the coal shown. CESC has to ensure and improve upon the calorific value of coal and bring economy in consumption and in cost of coal as directed earlier. The Commission accepts the weighted average price of coal for the past year plus 8% for this year. Under those norms, the following table would indicate generation and fuel consumption for the year 2001-02 as worked out in our office.

Sl. No.	Station	As submitted in Tariff Filing		As worked out by the Commission	
		Generation(MU)	Coal Consumption(M/T)	Generation(MU)	Coal Consumption(M/T)
1	Budge Budge	3140	1771916	3243	1807285
2	Southern	716	436523	716	453775
3	Titagarh	1500	895324	1626	920670
4	New Cossipore	470	427795	499	466117
5	Mulajore	130	165521	137	143306

12.8 Transit loss

12.8.1 For transit loss of coal also, we stick to the limit we had allowed for the last year. We also take the same approach on calorific value of coal as was done for the last year. Accordingly, the fuel costs for the present year is shown as per the following table :

Sl. No.	Item	Budge Budge	Southern	Titagarh	New Cossipore	Mulajore
1	Gross Generation (MU)	3243	715.642	1626	499	137
2	Heat rate K.Cal/ KWH	2350	2800	2800	5018	6174
3	Total heat required (2x1) M.K.Cal.	7621050	2003797.6	4552800	2503982	845838
4	GCV of Oil (K.Cal/litre)	10562	10562	10562		
5	Specific oil consumption (ml./KWH)	0.737	3.825	2.184		
6	Oil consumed (5x1) (Kl.)	2390.1	2737.3	3551.2		
7	Weighted average price of oil (Rs./kl)	15193	15468	15138		
8	Cost of oil (Rs./lakhs)	363.13	423.41	537.58		

	(7x6)					
9	Heat generated from oil M.K.Cal (4x6)	25244.2	28911.4	37507.8		
10	Heat generated from coal M.K. Cal (3-9)	7595805.8	1974886.2	4515292.2	2503982	845838
11	GCV of coal K.Cal/kg. (weighted average)	4224	4374	4929	5399	5932
12	Coal required (10, 11) MT	1798249	451506	916067	463786	142589
13	Coal with transit loss of 0.5% (MT)	1807285	453775	920670	466117	143306
14	Weighted average cost of coal (Rs./MT) including freight	1516	1625	1625	1912	1984
15	Cost of coal (Rs.lakhs) (14x13)	27398.44	7373.84	14960.89	8912.16	2843.19
16	Fuel costs (coal + oil) (8+15) (Rs. lakhs)	27761.57	7797.25	15498.47	8912.16	2843.19
	Total fuel costs (Rs. lakhs)					62812.64
	Less : Claim lodged for transit loss (Rs. lakhs)					(-) 669.60
	Net Fuel Cost (Rs. lakhs)					62143.04

Say 62143 lakhs

12.9 Power purchase cost for 2001-02

12.9.1 The quantum of power purchase and costs, we estimate as follows :

Source	Energy purchase (MU)		Cost (Rs. in lakhs)	
	Projected	Allowed	Projected	Allowed
W.B.S.E.B	1000	944	21982	22744
D.V.C.	210	Nil	5916	
TOTAL	1210	944	27898	22744

12.9.2 The Commission has assessed higher generation and therefore there should be a reduction in purchase from DVC who supply a costlier power compared to the supply by WBSEB and own generation. Also some reduction in purchase from WBSEB will be there. If it is necessary, a further reduction in purchase from WBSEB may be made if own generation is found cheaper. The above is subject to peaking requirements, load in the system, radial load and operational requirements. On above calculations, power purchase cost is limited to Rs. 22744 lakhs only adopting the rate based on claim of WBSEB.

CHAPTER - 13 : FIXED COSTS

13.1 While discussing the relevant point for 2000-01, we had already expressed our views on the number of employees and had indicated our disapproval of liberal payment of overtime allowance to all and sundry. We allow only 7% increase on employees cost over the last year and assess the cost at Rs. 19654 lakhs.

13.2 Rent, rates, taxes, legal charges and audit fee

13.2.1 For the present year, the claim on the above heads is Rs. 661 lakhs. For the past year, the Commission had accepted the projected cost on this head as the then sum was only 6% more

over the costs of the year before last. It is found that the figure for the present year is 8% more than the cost on these heads that has been accepted for the last year. Accordingly, we accept 6% rise in costs under these heads and allow a sum of Rs. 649 lakhs only.

13.3 Administrative and general expenses

13.3.1 On this head, for the last year, we had disallowed Rs. 250 lakhs under common corporate expenses and Rs. 106 lakhs under stamp and courier services charges. The projected cost for this year is Rs. 5809 lakhs including Rs. 800 lakhs for terminal benefits. We allow 6% increase over the expenses allowed last year and also do not allow Rs. 800 lakhs for terminal benefits in view of reasons explained earlier. The amount allowed under this head is Rs. 4448 lakhs.

13.3.2 Ash Handling Expenses

We allow Rs. 1000 lakhs against this head as was allowed for last year.

13.3.3 Legal Charges

The Legal Charges as pointed out earlier is already high and therefore we retain it at last year level i.e. Rs. 291 lakhs.

13.3.4 Audit Fee

The audit fee are also retained at last year level.

13.4 Bad debts

13.4.1 For the previous year, we had allowed bad debt. For the present year, we allow Rs. 542 lakhs as Bad debts as allowed for last year on the same basis as last year.

13.5 Repair & Maintenance Charges, utilization of spares and water charges

13.5.1 For the previous year, a sum of Rs. 8560 lakhs was allowed towards R & M costs. With the same approach, the cost under R & M for the present year is assessed at Rs. 9339 lakhs which is previous year figure plus 10% increase over 99-2000. On water charges, we allow only a sum to be paid during this year and not the arrears and the sum allowed is Rs. 92 lakhs.

13.6 Interest on loans, etc.

13.6.1 For reasons indicated in paragraph 11.7 of this order we assess cost under this head at Rs. 29030 lakhs only.

13.7 Foreign Exchange variation

13.7.1 On the same reasoning that we had advanced for the costs under this head for the last year, we accept the cost of Rs. 3454 lakhs keeping in view the basis of last year.

13.8 Other finance charges

13.8.1 The claim under this head is Rs. 2588 lakhs. We deduct Rs 1289 lakhs in the bill discounting charges and a further Rs 224 lakhs towards bank charges etc. and allow a total sum of Rs. 1075 lakhs on this account.

13.9 Lease rental

13.9.1 The sum claimed under this head for the present year is Rs. 3350 lakhs. We accept a sum of Rs. 3200 lakhs on this score after deducting adhoc Rs. 150 lakhs and direct CESC to curtail costs further under this head.

13.10 Interest on security deposit

13.10.1 We have given reasons for acceptance of rate of interest by 5.5% on the security deposit made by the consumers while discussing the point for assessing the fixed cost for the last year.

The deposit is known and the costs on the above rate of interest calculates to Rs. 1286 lakhs and the Commission allows this sum.

13.11 Depreciation

13.11.1 For the present year the projected expenses on this score is Rs. 31776 lakhs.

13.11.2 The method of calculation is not questioned, but there should be a reduction on account of restricting the capital cost of Budge Budge Project and adhoc reduction in the capital expenditure and we assess the sum under this head as Rs. 27839 lakhs which is as allowed last year plus 7.6% (average) on addition allowed provisionally in the previous year.

13.12 Delayed payment surcharge

13.12.1 For reasons already stated, we disallow the claim under this head.

13.13 Intangible assets write-off

13.13.1 We allow the projected claim under this head as the amount is small and as the projected sum for the last year was also admitted.

13.14 Special appropriation

13.14.1 We allow 0.25% of the original cost of fixed assets as special appropriation for contingency reserve and the sum works out at Rs. 1025 lakhs. We do not allow special appropriation on DVC claim and foreign exchange rate variation (FERV) as commented earlier.

CHAPTER - 14 : REVENUE REQUIREMENT FOR THE YEAR 2001-02

14.1 The costs of fixed assets, variable and fixed costs having been assessed, the following table would give the revenue requirement for the year 2001-02 for the C.E.S.C.

Sl. No.	Particulars	As proposed by CESC(Rs. in lakhs)	As assessed by the Commission(Rs. in lakhs)
1	Fuel including coal	59500	62143
2	Power purchase	27898	22744
3	Employees cost including Directors fee	24040	19654
4	a) Administrative and General charges	5809	4448
	b) Ash Handling Charges	1072	1000
5	Rents, rates and taxes	661	649
6	Legal charges	314	291
7	Audit fees	11	11
8	Bad debts	1285	542
9	R & M including consumables	10186	9339
10	Interest charges on loans	34592	29030
11	FERV	4256	3454
12	Other finance charges	2588	1075
13	Lease rental	3350	3200
14	Interest on SD	1286	1286
15	Depreciation	31776	27839
16	Delayed payment charges	500	
17	Water charges	92	92

18	Intangible assets write off	66	66
19	Total Expenditure	209282	186863
	Special Appropriations		
20	iii) Contingency Reserve	1215	1025
	iv) Others	4249	-
21	Reasonable Return	16278	8118
22	Total	231024	196006
23	Less : Non-tariff income	6760	7800
24	Revenue Required	224264	188206
25	Average cost of supply (p/kwh)	424	341

The figures may not be comparable because of assumptions, inclusions, exclusions made by CESC. The figures has been re-grouped wherever necessary.

14.2 Average cost of supply for 2001-02

14.2.1 The average cost of supply (average tariff) during 2001-02 works out at 341 p per kwh as per the following -

Net revenue : Rs. 188206 lakhs
 Net energy available for sale : 5520 MU
 Average tariff to be realised : 340.95 p./KWH

14.2.2 With this average cost in the background and the existing structure of consumer classes with a necessity for a change as desired by the law, we set out in the next Chapter the tariff philosophy in the tariff structure.

CHAPTER - 15 : PRINCIPLE OF TARIFF STRUCTURE

15.1 In our earlier orders on tariff petitions for other utilities, we had indicated our view on the concept of a two-part tariff. It is an accepted norm in the power sector to follow a two-part system for pricing the supply of electricity. Under this system, a consumer is liable to pay a demand charge on the KVA supply and also an energy charge for the energy consumed to cover the various costs of supply like purchase of power, cost of generation and cost of transmission & distribution. This demand charge should normally be proportionate of the fixed charge of the system.

15.2 It is felt that for efficient and economic use of electricity, we should progressively shift towards a two-part tariff system (demand and energy charge) for all the consumers. We intend to introduce Fixed Charges gradually and enlarge the concept of Minimum charges. Normally, the fixed charge should be proportionate to the contract demand / maximum load of the consumers; but we are of the view that initially we may introduce a fixed charge on per consumer basis till we get full reliable details from the utility about the connected load data of each individual / class of consumer. It may be indicated here that the introduction of the fixed charge will not change the overall rates of the consumers at normal drawal. We direct the CESC to furnish the details of connected load / maximum demand of each consumer belonging to the above category of consumers.

15.3 A point has arisen if a demand charge could be claimed even for the period when no supply was made. It is pointed out that DVC follows a practice not to claim any demand charge for the period when there was no supply. It is felt that the CESC, if it has not already changed over, should rectify its practice and should not make a demand charge for a period when there is no supply for the fault of the CESC or their system.

15.4 Although the Commission is of the view that there should not be any artificial classification between two consumers enjoying power at the same voltage, we propose to maintain mainly the existing classes of consumers as no abrupt change is thought prudent. In their next tariff petition, the utility may come up with suggestion of reducing the classes so that the matter may be settled after open hearing and after taking into consideration the views of all classes of consumers.

15.5 It is found from the figures given by the CESC that certain consumers are getting power at a rate lower than certain others. The concession given to one class is compensated by charging more from the other class, mainly, the industrial consumer of higher consumption. It is found that the industries, HT commercial consumers, certain categories of LT domestic and commercial consumers are taxed more by way of a higher tariff only to give a relief to other consumers. The reason behind it may be to make available electricity to the weaker section. But if in achieving that goal, the concession goes to others who may not fall in the weaker section or if it affects the very existence of the industries, a second thought must be given to these system of what is known as the cross subsidy. Looking from the point of view of the industries, electricity is one of the major factors of expenditure and that tells upon the costs of their product. The Commission is aware of the power situation in West Bengal and has been informed about the hardship faced by the industries in having the electricity at a rate much higher than the average rate only to subsidise cheaper supply to certain other classes of consumers. For industries, electricity is one of the major factors for expenditure. They are to face harder competition from foreign products as a result of globalisation and keeping in view the industrial situation in West Bengal, all steps are to be taken within the frame-work of law to see that for a forbidding price of electricity the industries may not be compelled to close down or to be taken away from West Bengal. The Commission is of the view that while it is proper to allow certain concession to the life line consumers, such concession should remain to them only and that too at a level that even they may not get power at a rate lower than the marginal cost of supply. The spirit of the ERC Act is to achieve uniformity of tariff based on cost of supply and, barring the life line consumers, the Commission would therefore make attempt to fix a rate for the consumers near the cost of supply in a phased manner.

15.6 Upon these considerations, we feel that the tariff structure that followed would be the first step towards rationalisation of tariff on commercial basis to give a signal to the consumers that they are to pay for the benefit they enjoy and also to send signal to the utility that they have a duty to the consumers to supply constant and steady power by improving operational efficiency.

CHAPTER - 16 : TARIFF STRUCTURE FOR 2001 - 02

16.1 The Tariff schedule for the year 2001-2002 and other associated conditions are given below :-

Category/Sub-category of Consumers	Energy Charge p/kwh (Gross Rate)
LT DOMESTIC : Rate G	
For consumption upto 500 U	
First 25 U	160
Next 35 U	210
Next 40 U	280
Next 50 U	325
Next 150 U	335
Next 50 U	500
Next 150 U	500
For consumption above 500 U	
All Units	410
LT COMMERCIAL : Rate M	
For consumption upto 500 U	

First 60 U		300
Next 40 U		395
Next 50 U		415
Next 150 U		450
Next 200 U		500
For consumption above 500 U		
All Units		470
Category/Sub-category of Consumers		Energy Charge p/kwh
LT INDUSTRIAL : Rate K		
For consumption upto 2000 U		
First 500 U		300
Next 1500 U		410
For consumption above 2000 U		
All Units		410
LT Concessional : Rate P		220
LT Public Water Works : Rate J		230
LT Public Bodies :		
State Government		320
Central Government		345
Calcutta Corporation (General Purpose)		320
Calcutta Port Trust		345
STREET LIGHTING : Rate C		
Calcutta Corporation		270
Other Municipalities		270
CALCUTTA TRAMWAYS		300
HT DOMESTIC : Rate R		345
HT COMMERCIAL : Rate B		425
	Demand Charge Rs./KVA/Month	
HT INDUSTRIAL : Rate A	136	360
METRO RAIL	136	350
HT Public Water Works & Pumping Stations : Rate U	136	270

Notes :

1. There shall not be any change in the existing net rate (after rebate) for the cold storage plants for potato and perishable vegetables subject to stipulated other terms and conditions.
2. In case of street lighting, where installation and maintenance is made at CESC's cost, 2% extra on energy charge will be applicable subject to existing terms.

General

i. TOD tariff :

From	To	Energy charge
6 A.M.	5 P.M.	Normal Rate
5 P.M.	10 P.M.	130% of Normal Rate
10 P.M.	6 A.M.	75% of Normal Rate

Consumers of Public Water Works Rate 'U' and H.T. Domestic Rate (R), H.T. Commercial Rate (B) may also opt for TOD Tariff at their discretion in addition to the other consumers who are presently entitled for the same.

ii. Power Factor Rebate / Surcharge
(For Industrial consumers only)

Rebate : @ 0.5% on the energy charge for every 1% increase in the P.F. above 92% subject to a ceiling of 2%.

Surcharge : @ 0.5% on the energy charge for every 1% fall in the P.F. below 85% subject to a ceiling of 2.5%.

iii. Billing Demand : Demand charge for any month shall be based on maximum KVA demand recorded between 6 A.M. and 10 P.M. of the day or 75% of average maximum demand of preceding 12 months, whichever is higher unless the demand itself has been got re-sanctioned downwards. In such a case demand charges will be levied with reference to revised demand. In case KVA demand cannot be determined but kwh demand is determined than the Demand Charge (Rate) in KVA be converted appropriately. The power factor to be taken will be .85.

iv. Demand charge shall not be payable by the consumer for the periods when the load of a consumer is totally shed / interrupted for the fault of the CESC or their system.

v. The present rate of Minimum Charge is enhanced from Rs. 15 per month to Rs. 22 per month in case of Domestic (G) and from Rs. 25 to Rs. 30 in case of concessional (P). Where the sanctioned load is more than 5 kwh, the minimum charge shall be Rs. 60/kw/month for LT Commercial (Rate M) and L.T. Industrial (Rate K) and Rs. 20/kw/month for Domestic (G) and Concessional (P). The consumer shall be given a reasonable opportunity to adjust its present sanctioned load which shall be done by CESC promptly without any charge before implementing this from 1.1.2002.

vi. For DC supplies, the surcharge is enhanced from 10% to 15%. The minimum charge, if applicable, shall be 50% higher than minimum charge applicable for AC supplies. The consumers shall be intimated immediately about the enhanced rate of surcharge and minimum charge and given again opportunity to shift for AC supplies as per existing conditions / policy. They may be further informed that if they do not shift to AC supplies surcharge is likely to be enhanced substantially shortly.

vii. Load Factor Rebate / Penalty for RATE 'A' & Metro

a) where monthly Load Factor is between 55% and upto 70% - a rebate of 10 paise per unit.

b) where monthly load factor is more than 70% - a rebate of 20 paise per unit.

c) where monthly load factor is less than 25% - a penalty of 10 paise per unit.

Delayed Payment Surcharge :

The delayed payment surcharge shall be 1.25% per month.

Other Terms and Conditions and Charges :

There shall not be any change in the other existing Terms and Conditions, Rebates, Incentives and Charges.

16.2 Expected Revenue for the full year (2001-2002) at the approved tariff

Category of consumers	No. of consumers	Sales (MU)	Demand/charge per month (Rs/KVA/month)	Energy charge (p/kwh)	Over all rate (p/ kwh)	Revenue from power supply bills Rs.(L)
LT Domestic : Rate G	1415000	1897		270	270	51176
LT Commercial : Rate M	267050	525		416	416	21866
LT Industrial : Rate K	64170	387		370	370	14327
LT Concessional:Rate P	600	11		220	220	242
LT Public Water	355	19		230	230	437

Works : Rate J						
LT Public Bodies	3310	92		327	327	3004
Street Lighting : Rate C	420	90		270	270	2430
Overall LT	1750905	3021		309	309	93482
HT Domestic :Rate R	330	228		345	345	7866
HT Commercial : Rate B	480	372		425	425	15810
HT Industrial : Rate A	770	1480	136	360	405	59940
Metro Rail	4	77	136	350	405	3119
HT Public Water Works & Pumping Stations Rate U	100	205	136	270	320	6560
Calcutta Tramways	1	12		300	300	360
Overall HT	1685	2374			395	93655
Overall *	1752590	5520			341	188206

* After taking into account :- 1) Unaccounted Energy 125 MU - 3868 lakhs.
2) Rebates / Incentives / Penalty etc. - (-) 2800 lakhs.

Energy charge / overall rate is rounded in paise.

16.3

Impact of approved tariff of 2001-2002 vis-à-vis existing tariff on projected sale for 2001-2002

Category	As per existing tariff		As per approved tariff	
	Overall Rate (p/kwh)	% of Avg. Cost	Overall Rate (p/kwh)	% of Avg. Cost
LT Domestic : Rate G	256	77	270	79
LT Commercial : Rate M	413	124	416	122
LT Industrial : Rate K	358	108	370	108
LT Concessional:Rate P	186	56	220	65
LT Public Water Works : Rate J	200	60	230	67
LT Public Bodies	260	78	327	96
Street Lighting : Rate C	250	75	270	79
Overall LT	296	89	309	91
HT Domestic :Rate R	328	99	345	101
HT Commercial : Rate B	435	131	425	125
HT Industrial : Rate A	405	122	405	119
Metro Rail	406	122	405	119
HT Public Water Works & Pumping Stations Rate U	296	89	320	94
Calcutta Tramways	290	87	300	88
Overall HT	392	118	395	116

Average Rate	332	341
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The average approximate increase per month, their revised rates and % of cost of supply (Balance subsidized) in case of certain LT Domestic, Commercial and Industrial consumers based on consumption will be as under :-

Category	Increase	Average Rate p/kwh	% of Average cost of supply	Subsidy %
LT Domestic				
Upto 25 units / p.m.				
Upto 60 units / p.m.	. Rs. 3.75 per month	160	47	53
Upto 100 units / p.m.	Rs. 9.00 per month	189	55	45
Upto 150 units / p.m.	Rs. 17.00 per month	225	66	34
Upto 200 units / p.m.	Rs. 29.50 per month	259	76	24
Upto 300 units / p.m.	Rs. 42 per month	278	82	18
LT Commercial	Rs. 67 per month	297	88	12
Upto 60 units / p.m		300	88	12
Upto 100 units / p.m.	Rs. 12 per month	338	99	1
Upto 300 units / p.m.	Rs. 12 per month	407	119	-
LT Industrial	Rs. 4.50 per month			
Upto 100 units / p.m.		300	88	12
Upto 250 units / p.m.	Rs. 30 per month	300	88	12
Upto 500 units / p.m.	Rs. 75 per month	300	88	12
	Rs. 150 per month			

CHAPTER - 17 : FUEL AND POWER PURCHASE COST ADJUSTMENT

17.1 We had indicated in the Chapter on tariff structure that in addition to the tariff already fixed through this order, the CESC would further be entitled to an added sum towards the enhanced cost actually paid for fuel and power purchase after the date of effect of the tariff structure. The

cost of fuel or the price of power purchase from other utilities is not under the control of CESC and it is a norm in the power sector to take into account the cost of fuel and power purchase at the beginning of the year for determination of tariff and also to provide for compensation / adjustment for any variation in such cost in the intervening period and normally adjustment is made every six months. We prescribe the following formula for such adjustment. It may, however, be clarified that the amount to be reimbursed under the formula shall not exceed in any case the additional amount properly incurred on Fuel costs and Power Purchase costs based on various normative parameters and limits laid down in this order and within the directions of the Commission.

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

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

$$(FC + PPC) - CD - CR + A$$

FPPCA (p/kwh) : ----- x 100

$$(Gown + Eimp) \times (I - L)$$

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 (Rs.) : 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.

CR (Rs.) : Fuel and power purchase cost already realized through basic tariff and associated FPPCA charge during the relevant adjustment period, 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 periods.

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 during the adjustment period corresponding to actual level of sales.

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

17.2.2 We direct that the adjustment period shall be every six months. As we have accepted the actuals for the year 2000-01, for prices of fuel we do not allow any increase towards cost of fuel for this year, and the CESC shall apply the formula for 2000-01 only if there had been any variation in the power purchase cost. For the year 2001-02, realization may be made on the basis of the above formula. The dates of adjustment would be 30.9.2000, 31.3.2001, 30.9.2001 and 31.3.2002. 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. The normative parameters fixed by the Commission and the costs taken have been appropriately dealt with in this order. At the end of each adjustment period, the CESC shall calculate the FPPCA as per the above formula based on the approved parameters, cost and consumption. The complete details along with the cost data, quantitative details and relevant information / document duly certified for the subject matter revisions and duly audited for the whole year for the March revision shall be submitted to the Commission for approval.

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

Sd/- (S. K. Phaujdar) Chairperson

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

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

AND

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

**IN RE THE TARIFF PETITION OF
THE CALCUTTA ELECTRIC SUPPLY CORPORATION LTD.
FOR THE YEARS 2000-01 & 2001-02
UNDER SECTION 22(1) OF THE ERC ACT, 1998
ON REMAND OF THE MATTER FROM THE SUPREME COURT
BY ITS ORDER DATED 3.10.2002
IN CIVIL APPEAL 4037 OF 2002 AND CONNECTED APPEALS.**

Present :

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

Dated: the 11th of November, 2002

CHAPTER - 1.

1.1 The West Bengal Electricity Regulatory Commission was constituted in the year 1999 u/s 17 of the Electricity Regulatory Commissions Act, 1998 (Act 14 of 1998).

1.2 The State of West Bengal, after constitution of the Commission framed Rules in terms of Act 14 of 1998 and the Commission also framed its own regulations, amongst others, for determination of tariff as per the Act. The Commission had also issued guidelines for guidance for different utilities in presenting tariff petitions for determination of tariff by the Commission.

1.3 Under the Conduct of Business Regulations (CBR) and the guidelines thereunder the Commission called upon the utilities to submit their tariff revision petitions for the years 2000-01 and 2001-02 and in response thereto the Calcutta Electric Supply Corporation Ltd. (CESC) came up with two petitions for the above two years which were admitted and registered as petition No. T.P. 1 of 2000-01 and T.P. 1 of 2001-02.

1.4 The filing of the tariff petition were notified in the major newspapers published from Kolkata calling upon everybody interested in the matter to file objections against the proposed tariff for these years and cut off dates were indicated in the newspapers' notifications in respect of written objections. Only those objections were taken up for consideration which were filed in time. Everybody had the opportunity to inspect the tariff petition and to take copies thereof along with the reply filed by the CESC against such objections.

1.5 The two tariff petitions as above were taken up together for hearing after duly notifying the dates in major newspapers published from Kolkata. It was made clear in the notifications that all persons were free to join the hearing irrespective of their filing written petitions. The matter was initially heard in April, 2001 and on the following dates for about a week.

CHAPTER - 2.

2.1 In their tariff petition the CESC had figured out their revenue requirement for the two years in question. For the first year the figure stood at Rs. 212718 lakhs while for the second year in question it was Rs. 224264 lakhs. The above revenue requirements had a number of exclusions and assumptions having substantial additional financial impact.

CHAPTER - 3.

3.1 Different objectors filed objections against the claim of the CESC for these years.

3.2 At the hearing consumers' participation was allowed subject to regulations framed by the Commission.

CHAPTER - 4.

4.1 After hearing the Commission framed its points for decision and took up those points one after another.

4.2 On the basis thereof the revenue requirement was determined and average cost of supply was calculated.

4.3 For the first year under consideration there was no new tariff structure and the utility was directed to retain the existing tariff structure with a direction to work out and recover the increase proportionately and for adjustment. For the second year under question, after determination of revenue requirement and the average tariff, a tariff structure was indicated for different categories of consumers.

4.4 In this connection the Commission engaged itself in setting out the principles of tariff structure and it was observed that for efficient and economic use of electricity the Commission should progressively shift towards a two-part tariff system (demand and energy charge) for all consumers. The Commission indicated to introduce fixed charges gradually and enlarge the concept of minimum charge.

4.5 As regards subsidization the Commission was of the view that while it was proper to allow certain concession to the life line consumers, such concession should remain to them only and that too at a level that even those consumers might not get power at a rate lower than the marginal cost of supply. The Commission was of the view that the spirit of the ERC Act was to achieve uniformity of tariff based on cost of supply and, barring life line consumers, the Commission attempted to fix a rate for the consumers near the cost of supply in a phased manner.

4.6 For the first year in question the average net tariff was fixed at 338.56 paise per kilo watt hour and for the second year in question the sum was 340.95 paise per kilo watt hour.

CHAPTER - 5.

5.1 Being aggrieved by the order of the Commission specially on the average rate of tariff as indicated in the last chapter the CESC moved the Calcutta High Court in FMAT 2 of 2002 making the WBERC the sole respondent in the matter. The appeal was preferred u/s 27 of the ERC Act.

5.2 Several other interested parties did appear before the Hon'ble High Court to have their say in the matter. The division bench of the High Court heard the matter at length and set aside the order of the Commission giving specific findings and directions by its order dated 14th May, 2002.

5.3 The Hon'ble High Court directed that for the first year in question the average tariff should be 396 paise per kilo watt hour.

5.4 The Hon'ble High Court also tentatively assessed the average tariff for the second year in question at 400 paise per kilo watt hour which CESC was permitted to adjust after September, 2002 as per its own accounts, to fit the Sixth Schedule and earn the full reasonable return. The Hon'ble High Court was of the view that the Commission had wrongly rejected the prayer of the CESC for extension of time for filing tariff petition for the year 2002-03 and the High Court had determined the tariff for the year 2002-03 also at 400 paise per kilo watt hour with a clear observation that it would be open for the CESC to adjust its rate after September 2002 without any intervention by the Commission.

CHAPTER - 6.

6.1 The order of the Hon'ble Calcutta High Court was appealed against before the Supreme Court through a Special Leave Petition by the Commission as the powers of the Commission to determine tariff were also put to challenge by the High Court decision.

6.2 Several other interested parties also moved separate appeals before the Supreme Court through Special Leave Applications.

6.3 The Special Leave Applications of all these parties were taken up together and were allowed and the appeals were also heard together.

6.4 By its order dated 3.10.2002 a three Judge division bench of the Supreme Court remanded the matter to the Commission with positive findings on certain major points and with comments on some incidental points. The Supreme Court on some points set aside the findings of the High Court and had confirmed the same on some others.

6.5 At the conclusion of the order the Supreme Court gave directions to the Commission and the same is quoted below:

"Directions to the Commission:

In these appeals we have decided certain contentious legal and factual issues. The High Court in the impugned judgment has also reversed the finding of the Commission on many other incidental questions, primarily basing its finding on the application of law as understood by it. We in this judgment had taken a different view from that of the High Court in regard to many of these while affirming some of them. The views taken by us are likely to affect the finding arrived at by the High Court on these incidental issues also about which we have not given our opinion, therefore, there is a need that these issues decided by the High Court in regard to which we have not given any specific finding be also reconsidered by the Commission in the light of this judgment of ours. Therefore, we remand these matters back to the Commission to fix the tariff for the relevant years in accordance with this judgment of ours and bearing in mind the findings and directions issued in this judgment.

We further direct that the interim order made by this Court dated 12.7.2002 will continue till such time as the Commission refixes the tariff in accordance with the directions contained in this judgment and on such re-fixation it shall be open to the Commission to adjust excess payment or short payment of tariff already paid by the consumers in such manner as it thinks appropriate.

The Commission shall also condone the delay in filing the application for tariff fixation for the year 2002-03 and fix the tariff in accordance with law for the said year.

We must make it clear that though we have heard many appellants, some of whom have not even appeared before the Commission or the High Court, this does not ipso facto confer a right of representation on them in the future proceedings either before the Commission or the High Court. Their right to take part in such proceedings, be it the Commission or the High Court shall be dependent on them being permitted by the Commission or the High Court as per the Regulations framed by the Commission.

For the reasons stated above, these appeals succeed to the extent mentioned hereinabove and the same are allowed to that extent. The matter will now stand remitted to the West Bengal State Electricity Regulatory Commission for disposal in accordance with law" (Page 99, 100 & 101).

CHAPTER - 7

The Commission reconsidered the revenue requirement as prayed for by the CESC and as approved by the Hon'ble High Court of Calcutta for the year 2000-01 keeping in view the direction of the Hon'ble Supreme Court as already indicated above. As directed by the Hon'ble Supreme Court the Commission has reviewed and reconsidered the issue which was before the Hon'ble Supreme Court keeping in view the direction given by the Hon'ble Supreme Court in the judgement dated 3rd October, 2002. The Commission has adjusted certain expenditure from the approved revenue requirement of 2000-01 keeping in line with the specific findings of the Hon'ble Supreme Court. The adjustments in expenditure relating to incidental issues is on account of either management inefficiency or keeping in view the consumers' interest or both in line with the Supreme Court judgement, read with Section 29(2) of the ERC Act and the Regulations of the Commission. Similar procedure has been followed for revenue requirement for 2001-02.

1) T & D loss

The Hon'ble Supreme Court had observed that the Company (CESC) has been suffering substantial loss by way of T & D losses and while calculating tariff under the 1948 Act, the entirety of this loss was taken as an expenditure of the Company. The Hon'ble Supreme Court has allowed 19% T & D loss for 2000-01 and 18% T & D loss for 2001-02 against a projected loss of 22.36% and 21.36% respectively (refer page 71, 72, 73, 77, 78 and 79 of Supreme Court Judgement) and opined that the company should bear a substantial part of this loss by itself rather than seeking to transfer the entire burden on the consumers. The Commission also noted that the High Court order has reversed the view of the Commission for taking the T & D loss as notional income which has not been interfered by the Hon'ble Supreme Court. The Commission, thus, re-worked out the financial implication of excess T & D loss on the basis of cost incurred as against the Notional Sales basis considered earlier.

Based on the above referred decision of the Hon'ble Supreme Court read with the decision of the Hon'ble High Court, the total T & D loss disallowed based on the decision of the Supreme Court is 276 MU for 2000-01 and 278 MU for 2001-02. The Commission has determined the expenditure disallowed by taking the weighted average cost of fuel and purchase of power and on that it has added 7.5% thereof towards incidental expenses, overheads and other charges related to such prime cost. This percentage of 7.5% has been assessed as actual in this score can not be determined in view of the integrated operation of the company and maintenance of expenses pertaining to generation, transmission, distribution and sales etc. The total amount disallowed on this account comes to Rs. 41 crores for 2000-01 and Rs. 43 crores for 2001-02.

2) Administration and General Expenses

It was noted that the allowed expenditure under this head is Rs. 43 crores for 2000-01 and Rs. 47 crores for 2001-02. The Commission felt it necessary to curtail part of some expenditure, particularly towards travelling, certain payments to auditors (classified under miscellaneous expenses) and other expenses, particularly relating to regulatory affairs etc. keeping in view the interest of the consumers. The Commission is of the opinion that the expenditure under this head should be reduced by Rs. 1 crore in 2000-01 and Rs. 2 crores in 2001-02.

3) Bad debts

The approved amount of bad debt is Rs. 9 crores for 2000-01 and Rs. 10 crores for 2001-02. The Commission has observed that the actual bad debt written off during the last year (1999-2000) was only Rs. 5.24 crores and there is no justification for continuing to charge for bad debt to the extent of amount claimed as CESC has a fully computerized billing system along with adequate security deposit of 3 months' average consumption. Keeping this in view, the Commission disallows Rs. 4 crores from the bad debt amount for 2000-01 and Rs 5 crores for 2001-02. Non-timely realisation of the amount of bills by CESC is neither in the interest of the consumers nor in the interest of the utility.

4) Repair and Maintenance

The CESC claimed and had been allowed Rs. 91 crores under this head for 2000-01 and Rs. 95 crores in 2001-02. The Commission reconsidered the matter and noted that the repairs and maintenance expenditure of the CESC should not increase to this extent as they have already incurred substantial amount of capital expenditure to strengthen the system and their Budget plant is a new plant. The expenses should be normally in line with cost of repair and maintenance of the Plant & Machinery, equipment etc. keeping in view the normal increase, age of equipments, Plant & Machinery etc. plus additions. The items which are required to be maintained / overhauled at periodical intervals which, in case of CESC, should be a normal affair. The substantial increase in expenditure over actuals of 1998-99 is, therefore, not justified. The Commission, therefore, disallows expenditure of Rs. 6 crores for 2000-01 and Rs. 2 crores for 2001-02.

5) Other Finance Charges

Other finance charges claimed and approved is Rs. 43 crores for 2000-01 and Rs. 47 crores for 2001-02 apart from allowing Rs. 2 crores and Rs. 20 crores for delayed payment surcharge respectively. The other finance charges include bill-discounting charges. The Commission feels that once the tariff has been fixed and the sum is to be recovered timely by the utility, the bill discounting charges or delayed payment surcharge for non-payment of dues to the supplier should not be loaded to the consumers particularly when interest on temporary accommodation and bank overdraft is being claimed as a re-imbusement. It is the duty of the utility to manage the financing in a prudent manner and also it is not in the interest of the consumers that in addition to the timely payment of the tariff, they should also be settled with the burden of delayed payment surcharge or additional financing charges for bill discount in addition to interest/ financial charges on temporary accommodation, bank overdrafts or working capital, specially, when part of the finance available with the company has been deployed to group / subsidy companies for which no immediate direct benefit passes to them. Accordingly, Rs. 28 crores and Rs. 2 crores respectively is deducted for finance charges and delayed payment surcharge for the year 2000-01 and Rs. 29 crores and Rs. 20 crores for 2001-02. The Commission will like to again emphasize the necessity to reduce the Financing and Interest costs particularly as the Rate of Interest is very high on some of the loans and temporary accommodations.

6) Lease Rental

The lease rental claimed for 2000-01 is Rs. 43 crores and for 2001-02 is Rs. 35 crores. The Commission observed that the CESC apart from taking substantial temporary financial accommodation including bank overdraft, working capital loan etc. is also taking the assets on lease by paying lease rentals. The assets, which have been taken on lease, included meters, computers etc. which are in addition to their own direct purchases. It was also noted that the real cost of lease rental is very high and the Commission liked the CESC to avoid such cost. In view of this, we make a token deduction of Rs. 1 crore for 2000-01. No deduction was however made for 2001-02 as some improvement has been shown in this regard. The Commission directs that costs in this regard may be further reduced gradually.

7) Adjustment in Capital Base

a) Working Capital

Hon'ble Supreme Court has given a direction that negative working capital of the CESC should not be reduced from the capital base as has been done by the Hon'ble High Court. Accordingly, the Commission is increasing the capital base by Rs. 213 crores for 2000-01 and Rs. 271 crores for 2001-02 respectively from the capital base considered by the Hon'ble High Court.

b) Additions in Fixed Assets

The Commission observed that CESC has been adding substantial assets without justifiable reasons due to which real benefit passed on to the consumers, if any, is not clear and therefore, not in the interest of the consumers. Even, with such substantial capital expenditure, the other recurring expenses including repairs and maintenance and expenditure towards T & D loss is increasing which is not justified. Moreover, the book value of the old non-working assets should have been taken out of the Capital Base as and when the new replacements are taken in or after

expiry of its useful life. The unjustified capital expenditure is neither in the interest of the consumer, nor a prudent financial management particularly when the utility is not able to discharge its financial obligations and resort to borrowings at high cost. The Commission, therefore, withholds Rs. 50 crores and Rs. 100 crores from the capital base for 2000-01 and 2001-02 respectively. The CESC must give detailed techno-economic justifications of capital expenditure / proposed capital expenditure including benefits to the consumers / system in the next tariff petition before the Commission takes the final view on the same.

c) Advance from consumers

It is observed that the CESC has not deducted from its capital base the advances taken from the customers towards the capital work on the plea that those are advances classified under Advance head of accounts and not finally charged to "Contribution from Consumers". This means that the contribution received from the consumers for the works has been classified in different two heads, which is CESC's internal accounting policy matter, and not in the interest of the consumer and does not reflect the real nature of the transaction. In view of this, the Commission deducts Rs. 31 crores from the capital base for both the years 2000-01 and 2001-02.

Based on the above analysis, the capital base of the utility will increase (net) by Rs. 132 crores in 2000-01 and Rs. 141 crores in 2001-02. This additional capital base will increase the return by Rs. 16 crores for 2000-01 and Rs. 16 crores for 2001-02 after considering the respective slabs and Rate of Return.

8) Keeping in view the directions of the Hon'ble Supreme Court, the Commission also allows funds to finance the VRS Scheme of CESC in 2001-02 revenue requirements itself so that the VRS can be started in 2002-03 and CESC may not take the plea of non-availability of funds for this purpose as CESC has been permitted to file the tariff petition for 2002-03 within 30 days of the receipt of this order and its disposal will take some time. The balance required funds for VRS will be considered in 2002-03. The Commission expects that a reasonable VRS scheme will be implemented and considerable improvements will be achieved in reduction of Employees' costs. The Commission allows Rs. 16 crores in this regard during 2001-02.

9) Investment / interest income / non-tariff income

It was observed that the utility is getting some income from investment / interest income which they are claiming over the return justifying their view by quoting the provisions of Schedule VI. We are of the opinion that the said interest on investment income may not be given in addition to the return keeping in view the position of investment schedule attached with the balance sheet as at 31st March, 2000 and also keeping in view that the amount charged in Tariff towards contingency reserve has not been invested fully and financial obligation towards loan repayments etc. not fully discharged stating the reasons of inadequacy of funds. Allowing such return in addition to the reasonable return will not be in the interest of the consumer and therefore, the Commission feels that Rs. 7 crores each may be disallowed from the year 2000-01 and 2001-02 in view of above.

10) The revised net revenue requirement based on the directive of the Hon'ble Supreme Court read with the orders of the High Court is as per Annexure-1. The average cost of supply will be 381 p / kwh for 2000-01 and 390 p / kwh for 2001-02.

11) There will not be any FPPCA over the above except to the extent of increase in the cost of power purchased from WBSEB and DVC over the price considered in the order of the Hon'ble High Court. The reimbursement for the increase will not exceed the actuals and will be further limited to approved norms and parameters and deductions stipulated in this order.

12) The Delayed Payment Surcharge will be 1.25% per month for the year 2001-02 and onwards.

13) There will not be any change in the other existing Terms and Conditions, Rebates, Incentives and charges.

14) The Commission will fix the customerwise tariff after receipt of communication from G.O.W.B. in regard to subsidy, if any, to be provided in accordance with the provisions of 1998 Act. The

required reference to the Government may be made accordingly.

Sd/- 11.11.2002 (A. K. Jain) Member (F&A) Sd/- 11.11.2002 (S. K. Phaujdar) Chairperson

Annexure - 1

REVISED REVENUE REQUIREMENT FOR THE YEAR 2000-01 AND 2001-02 OF CESC

	2000-01		2001-02	
	Rs. in crores		Rs. in crores	
1. Net Revenue Requirement		2045(As decided by High Court)		2154(As submitted by CESC before High Court)
LESS :2. Cost of T & D loss of power in excess of maximum limit decided by Hon'ble Supreme Court	41		43	
3. Admn. & General charges	1		2	
4. Bad debts	4		5	
5. Repairs & Maintenance	6		2	
6. Other Finance charges	28		29	
7. Delayed Payment Surcharge	2		20	
8. Interest income not accounted for	7		7	
8A. Lease Rental	1			
9. Total (2 to 8)		90		108
		1955		2046
ADD :10. Adjustment in Reasonable Return allowed / submitted to Hon'ble High Court	16		16	
11. Amount allocated for VRS		16		32
12. Net Revenue Requirement now allowed by the Commission		1971		2078
13. Sales (M.U.)		5165		5332
14. Average cost of supply (Paise/kwh)		381		390

Sd/- 11.11.2002 (A. K. Jain) Member (F&A) Sd/- 11.11.2002 (S. K. Phaujdar) Chairperson

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

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

AND

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

**IN RE THE TARIFF PETITION OF
THE CALCUTTA ELECTRIC SUPPLY CORPORATION LTD.
FOR THE YEARS 2000-01 & 2001-02
AFTER THE ORDER OF THE COMMISSION
DATED 11.11.2002**

Present :

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

Dated : 16th December, 2002.

CHAPTER - 1.

1.1 The present order may be treated as a sequel to the order of the Commission dated 11.11.2002 signed by the Chairperson and the Member (F&A) and is to be read along with it.

1.2 In page 14 of the order dated 11.11.2002, in the concluding paragraph, the Commission had directed a reference to be made to the Government of West Bengal to know from them, if any subsidy under Section 29(5) of the ERC Act was to be conceded by the Government for any class of consumers.

1.3 Accordingly, the Commission, vide letter no. ERC/A-6/3/424 dated 12.11.2002, had written to the Principal Secretary, Power Department under the signature of the Secretary of the Commission, which is reproduced in Annexure -1 of this order.

1.4 In the aforesaid letter, the State was informed of the sale figures in Million Units for the two years under consideration as also the average cost of supply in paise / kwh for the concerned two years. The Commission requested the State Government to indicate within 15 days from the date of receipt of the communication, if the State Government desired to subsidize any category of consumers under Section 29(5) of the ERC Act and if so, the extent thereof and the method of payment.

1.5 Even, prior to the recording of the order dated 11.11.2002, the Chairperson of the Commission had written to the Hon'ble MIC, Power in advance intimating him of the decision of the Supreme Court in Civil Appeal 4037 of 2002 and giving an extract of the Supreme Court order regarding the observations of the Apex Court on cross subsidy (see Annexure-2). In response to this letter dated 7.10.2002, a long and argumentative reply was received from the Power Department through a letter dated 7.11.2002 under the signature of the Principal Secretary and the views and arguments of the State Government, on the interpretation of the provisions of the Act and Supreme Court order on cross subsidy, were ventilated along with some documents (see Annexure-3)

1.6 After the communication dated 12th November, 2002, a reply was received from the State Government by their letter no. SP(Misc.)-506/02 dated 18.11.2002 wherein reference was made to the letter dated 7th November, 2002 and the State indicated that unless cross subsidy under Section 29(3) of the ERC Act was determined the State could not express its views for subsidization under Section 29(5) of the ERC Act.

1.7 The State also made a reference to a clarificatory petition filed before the Supreme Court by the All Bengal Electricity Consumers' Association intimating further that the same was likely to come up for hearing on 2nd December, 2002 and the State was of the view that it would be appropriate to wait till the verdict of the Supreme Court on that petition was made known.

1.8 A copy of this letter of the Principal Secretary, Power is annexed to the instant order as Annexure - 4.

1.9 The Commission thought it proper to send a reply to the last mentioned letter and it was clearly indicated that the Commission's initial order dated 7.11.2001 was set aside by the High Court and was not restored by the Supreme Court and as such the said order was non-est in the eye of law. The Commission indicated clearly in this letter dated 22.11.2002 that the Apex Court of the country had, after discussion on Sections 29(2)(d), 29(3) and 29(5) of the ERC Act, held that the only subsidy thought of under the law was one under Section 29(5) of the ERC Act and it

was not open to the Commission, as a subordinate and quasi-judicial authority to attempt to further interpret the Supreme Court judgement. It was also made clear that in view of the interpretation of the Highest Judicial Authority of the country, it was not possible for the Commission to refer to documents in any attempt to interpret the law once it has been done by the Supreme Court. It was, however, made clear to the State Government that if the Government feels that any interpretation is still open on Section 29(3), 29(5) or any other provisions of ERC Act, they should take the opportunity of the pendency of the clarificatory petition to place their views and papers before the Supreme Court subject to the leave of the Apex Court (see Annexure-5).

1.10 In response to the last mentioned letter, the Principal Secretary again wrote to this Commission indicating inter-alia their version of the interpretation of Section 29(3) and 29(5) of the ERC Act and they posed certain questions touching the very questions of tariff fixation. They had also indicated in unambiguous terms that the State Government would maintain the stand regarding Section 29(3) and they had moved the Government of India to intervene in the Supreme Court and the State Government had also taken serious note of the advice of the Commission presumably the one of placing their view and papers to the Supreme Court. In this letter, the State Government wanted the Commission to make available to them the answers of their queries and also indicated that some relief for lifeline consumers would perhaps be unavoids. It was further indicated that if at all the Commission desired to record a consumerwise tariff, provision be kept for change in tariff for certain classes after decision under Section 29(5) is made known to the Commission. In this letter, it was indicated that the State was considering issuance of directions under Section 39 of the ERC Act and two drafts in this regard were also annexed to this letter. A copy of this letter of the Principal Secretary, Power is annexed as Annexure - 6.

1.11 The last mentioned letter was discussed at the Commission and based on unanimously decision, the Chairperson wrote back to the Principal Secretary, Power Department on 3.12.2002 indicating clearly its views on the draft directions and the Commission's interpretation of Section 39. It was made clear that the Commission would not, by way of communication, indicate its views on tariff structure and indicated further that the Commission was duty bound to implement the Supreme Court's order at an early date. It was made clear in this letter dated 3.12.2002 that the tariff order to be recorded (which is now being recorded) would be subject to any concession by the State Government towards giving subsidy to lifeline or any other classes of consumers and will also be subject to any clarification/further direction of the Supreme Court on the clarificatory application by All Bengal Electricity Consumers' Association. A copy of the letter is annexed as Annexure - 7.

1.12 The Commission was informed by the All Bengal Electricity Consumers' Association through a letter that their clarificatory petition was to come up before the Supreme Court for "hearing" on 2.12.2002. As the decision of the Hon'ble Supreme Court was clear to the Commission and the Commission being Quasi-judicial Authority, the Commission could not have joined / go to Supreme Court but decided that our Advocate will be present during the hearing to clarify any point if sought by the Hon'ble Supreme Court. The hearing was held on 3.12.2002 and our Advocate intimated that the petition stood dismissed.

1.13 Accordingly, the Commission, in all deference to the Supreme Court direction is recording the instant order on tariff making it clear that it would still be open for the State Government to subsidize any class of consumers under Section 29(5) of the ERC Act and the tariff order would be modified in terms of the order of the State Government under Section 29(5). It was also made clear that the instant order will be subject to any clarification / further direction of the Supreme Court upon the clarificatory petition filed by the All Bengal Electricity Consumers' Association. The Hon'ble Supreme Court has given its order on 3.12.2002 dismissing the petition but certified copy is yet to be received.

CHAPTER - 2.

2.1 In the order of the Commission dated 11.11.2002, in paragraph 6.5, the directions upon the Commission have been quoted verbatim.

2.2 Under those directions, the Commission is to fix the tariff for the relevant years in accordance with the judgement of the Supreme Court and bearing in mind the findings and directions issued in that judgement.

2.3 The Commission had already determined the total revenue requirement and the average cost of supply. The question that would come up for consideration of this Commission are as follows :

- (a) Whether the Commission would direct cross subsidy.
- (b) Whether the Commission would go for a two part tariff.
- (c) Whether the Commission would give a direction on TOD tariff.
- (d) Whether the Commission would provide for any incentive or penalty in its tariff order.

2.4 At page 87 of the judgement in Civil Appeal 4037 of 2002 (WBERC Vs. CESC Ltd.) the Supreme Court had recorded its observations on "cross subsidy". Under that heading the Supreme Court had perused the provisions of Section 29(2)(d), 29(3) and 29(5) of ERC Act 1998 and had observed that the consumers should be charged only for the electricity consumed by them on the basis of average cost of supply of energy. It was further observed that tariff should be determined by the State Commission without showing any undue preference to any consumer. The Supreme Court further observed that the Court had noticed that the object of the 1998 Act was to prevent discrimination in fixation of tariff by imposing cross subsidy and at the same time, under Section 29(5) of the Act, it was for the State Government to choose to subsidize any particular classes of consumers. The purport of the Act was clearly explained by the Supreme Court that the burden of losses suffered by the company in giving a subsidy to any class of consumers is borne by the State Government and not imposed on any other classes of consumers.

2.5 When all the provisions of law have been looked into by the Supreme Court regarding possible discrimination in rate of tariff and when after considering all aspects, it was decided that the purport of the 1998 Act was to prevent discrimination in fixation of tariff by imposing cross subsidy, and the Act has been interpreted as stated above, it is not for this subordinate and quasi-judicial authority to attempt to interpret the law otherwise as was suggested by the State Government in its communications.

2.6 The question of TOD tariff or a two part tariff is also mingled with the question of cross subsidy. In a two part tariff as per practice only the industrial consumers are required to pay, firstly, on the basis of energy consumed and secondly, on the basis of demand/projected demand pattern. In the aforesaid observations the Supreme Court had clearly directed that the consumer should be charged ONLY for the electricity consumed by them and that too on the basis of average cost of supply of energy. In a TOD system different rates of tariff are fixed for different periods of the day and demand charges are based on contract demand, maximum demand etc. and historically the low-tension consumers are kept out of its ambit. Accordingly, these approaches are against the Supreme Court direction that consumers should be charged only for the electricity consumed and that too on the basis of average cost of supply of energy.

2.7 In obedience to this direction of the Supreme Court, the Consumers should be charged only for the electricity consumed. We could arrive at an average rate of tariff.

2.8 This average rate consists of two components - recovery of the fixed cost and recovery of the variable cost. In fixing the average tariff the utility is given the total fixed cost and the total variable cost as projected or actuals (for the years that have passed). The Commission feels that it should keep in mind the existing situation in the power sector and after determination of the average tariff, should impose some penalty or should concede some incentive or reward for better utilization of available infrastructure and better response to the contracted demand keeping in view the additional cost for procurement of power during any particular period / time. Similarly, the utility should not get abnormal additional revenue towards fixed costs in case of more sales than projected.

2.9 This can be viewed from another angle. Load factor of a high voltage consumer is directly related with its demand unless there is some incentive for maintaining the load factor or upward variation of load factor within the demand pattern and unless there is reciprocal penalty for drawal below the load factor which will be difficult for the utility to maintain a consistent supply.

2.10 Under the above circumstances, the Commission proposes to introduce the concept of incentive of penalty in the pattern of use of electricity specially for high voltage consumers as the variation in consumption of those consumers has a significant impact on the licensee's revenue and costs and stability and discipline in the system while the variation in consumption by the low voltage consumers is insignificant.

2.11 There is, however, no direction in the Supreme Court order, nor is there any restrictive provision in the Act to allow certain incentive for good and efficient performance and the Commission feels that the concept of giving an incentive carries with it the concept of penalty for bad and inefficient performance. The object of 1998 Act also provides for promotion of efficient and environmentally benign policies, encourage efficiency, good performance etc. The Commission feels that it applies not only to the utility but also to consumers. This aspect will be explained in the subsequent paragraphs.

CHAPTER - 3 : TARIFF ORDER.

3.1 In view of the observation made in the earlier two chapters, the Commission fixes the tariff for all categories of consumers at the average rate of supply as determined in its order dated 11.11.2002. To be precise the rate for consumption of electricity in the year 2000-01 for all categories of consumers would be Rs. 3.81 per kwh and that for the year 2001-02 for every category of consumer shall be Rs. 3.90 per kwh.

3.2 As the tariff for the year 2000-01 is to take effect from 1.4.2000 and that for the year 2001-02 is to take effect from 1.4.2001, the Commission directs the above rates of tariff shall be applicable for the concerned financial years from the 1st April, 2000 and 1st April, 2001 respectively.

3.3 After the initial order was passed by this Commission in November, 2001, the matter was reviewed by the Division Bench of the Calcutta High Court fixing the rates for the concerned two years at Rs. 3.96 and Rs. 4.00 (provisionally) respectively.

3.4 The Supreme Court while remanding the matter to this Commission for recalculation and re-determination, directed the continuance of the rate of tariff as determined by the High Court till the matter is finally decided by the Commission. Thus, the CESC is now to realize not at the rate as fixed by the High Court and as provisionally continued by the Supreme Court by its order, but at the rates now determined by the Commission by this order, as directed by the Supreme Court.

3.5 The Supreme Court has also left the matter for realization or adjustment for determination by this Commission. Arrears are for more than two years now for the first year under consideration and for more than one year for the second year under consideration and it would be a difficult task for the utility to recast its bills and at the same time it will be a practical difficulty for 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. It will be an equal practical difficulty for the utility to return / adjust the sums payable to those consumers who had earlier paid more than the rate which has been determined through this order.

3.6 Keeping this aspects in mind, the Commission feels that there should be a breathing time both for the utility and for the consumers and directs that realization in terms of the present order is to be made from the billing month of February, 2003. For arrears either for realization or for refund / adjustment the Commission feels, in view of the substantial amount involved in the transaction, a sufficiently long period should be given to make it easy both for the consumer and for the utility. We direct that realization of arrears and refund / adjustment is to start from the billing month of April, 2003 and shall be spread over a period of two years from that date in equal monthly installments. It is further made clear that refund in terms of the order is to be made proportionately to all persons entitled to refund / receipt from the sums realized from the arrears.

3.7 The Commission further directs that no interest shall be paid to or by the utility for any realization / refund / adjustment.

3.8 Once the tariff and mode of realization / refund has been directed, the Commission is now to proceed on the question of incentive and penalty for efficiency / inefficiency on the part of both the utility and the consumers.

3.9 On the question of penalty, the Commission has given a thought on the cases where contract demand is not reached. For such cases, to avoid loss of fixed cost component of the revenue of the utility, the Commission directs that unless the consumption reaches at least the 20% load factor level of the contract demand in any month, the HT consumer is to pay a penalty at a rate of 20 paise per kwh on the shortfall of consumption from the 20% level.

3.10 The above concept must be associated with a penalty for the utility in case it fails to provide at least 90% availability of supply in terms of time. If there be any such failure below this level, the utility is to compensate the HT consumers at a rate of 1% of the net amount of the energy bill for each drop of 2% or part below 90% level.

3.11 Likewise, on the question of incentive, we direct that when a HT consumer having a particular contract demand attains a load factor of more than 80% level of the contract demand in any month, he will get a rebate of 20 paise per kwh in the energy charge on the excess consumption above 80% level of load factor with reference to the contract demand.

3.12 The percentages indicated above will always be calculated on the available hours of supply at the desired voltage.

3.13 On the concept of penalty and incentive, the Commission further directs that bills are to be raised in terms of the rates fixed by the Commission and a rebate for timely payment at a rate of 10 paise per kwh is to be given while for payment made after the due date there will be an extra payment of 10 paise per unit in addition to the delayed payment surcharge indicated in the order dated 11.11.2002. It is further directed that any over-realisation or under-realisation on this score shall be taken care of in the next tariff petition and the utility is to keep a separate account for this. This direction has been introduced to ensure timely payment which would lead to the benefit of both the consumer and the utility. There is yet another aspect on the question of penalty if there be a HT consumer who draws more than the contract demand in any month, the recorded maximum demand will be treated as contract demand for that month for all purposes and in addition to this provision such HT consumer will have to pay a penalty @ 1% of the net amount of the energy bill.

3.14 It is still open for the State to indicate its intention to subsidise any class of consumers including the ones described by it as Life line/ Kutir Jyoti / Lokdeep consumers. If at all any such subsidy under Section 29(5) of the ERC Act is intimated to the Commission by the Government of West Bengal with clear indication of the category to be subsidized, the amount of subsidy and the proposed mode of payment to the utility, the Commission will issue further orders / directions for subsidized tariff for such category as may be indicated by the Government.

3.15 Before conclusion, we indicate clearly that in addition to the tariff whatever is legally chargeable in the bill towards meter rent and miscellaneous charges shall be charged as usual. The existing terms and conditions and charges shall stand modified in terms of the instant order.

Sd/- 11.11.2002 (A. K. Jain) Member (F&A)

Sd/- 11.11.2002 (S. K. Phaujdar) Chairperson

Annexure - 1

From :
Dr. R.N. Das, I.A.S.
Secretary, WBERC

To
Dr. Kalyan Bagchi, I.A.S.
Principal Secretary,
Department of Power, Government of West Bengal,

N.S. Buildings, Block - A, 7th Floor,
1, K.S. Roy Road,
Kolkata - 700 001

Subject : Tariff Petitions No. T.P. - 1 of 2000 - 01 and T.P. - 1 of 2001 - 02 filed by Calcutta Electric Supply Corporation Ltd. for the years 2000 - 01 and 2001 - 02 u/s 22(1) of the ERC Act, 1998 on remand of the matter from the Hon'ble Supreme Court by its order dated 03/10/2002 in Civil Appeal 4037 of 2002 and connected appeals.

Sir,

I am directed to intimate the decision contained in the order of the West Bengal Electricity Regulatory Commission dated 11.11.2002 on average cost of supply (paise/kwh) keeping in view the Hon'ble Supreme Court's order :

Year	Sale Figure M.U.	Average Cost of Supply (paise/kwh)
2000 - 01	5165	381
2001 - 02	5332	390

and to request you to kindly favour the Commission with the views of the State Govt. within 15 days from the date of receipt of this communication on the following :

- a) Whether the State Govt. desires to exercise its option u/s 29(5) of the ERC Act, 1998 towards subsidization;
- b) If so, the extent of subsidization, category of consumers whom the State Govt. desires the benefit to be given and the method in which the State Govt. proposes to make over the sum to the utility;

so that the Commission would get the opportunity to fix the customer-wise tariff after the receipt of that communication or after waiting for 15 days for reply.

Annexure - 2

Justice (Retd.) S.K. Phaujdar
Chairperson

Dear Sri Bagchi,

You are aware that the Supreme Court has recorded its judgment in Civil Appeal 4037 of of 2002 (WBERC Vs. CESC Ltd.) and allied matters on 3.10.2002. The High Court Judgment which was appealed against has been interfered with by the Supreme Court on most of the points. The matter has been remanded to this Commission for refixation of tariff in the light of the directions and observations made in the judgment of the Supreme Court and the Commission will soon take up the matter for implementation of the judgment of the Supreme Court.

I beg to draw your attention to the judgment of the Supreme Court on the poing of cross-subsidy at pages 87 to 89 of the Supreme court Judgment. For your perusal I am enclosing herewith a photocopy of the relevant portion of the judgment.

The Supreme Court has observed that "the object of the 1998 Act is to prevent discrimination in fixation of tariff by imposing cross-subsidy, but at the same time u/s 29(5) of the 1998 Act, if the State Government so chooses to subsidies the supply of energy to any particular class of consumers, the same can be done provided of course the burden of loss suffered by the company is borne by the State Government and not imposed on any other class of consumers".

This is an interpretation of the law as mentioned in sections 29(2)(d), 29(3) and 29(5) of the ERC Act, 1998 and is thus applicable not only to the case of the CESC but also to the cases of WBSEB, Singur Haripal Rural electric Co-operative Society Ltd., DPL and DPSC. I request that the Government may consider the question of affording subsidy, if it so chooses, to any consumer or class of consumers so that the provision of section 29(5) of the ERC Act, as interpreted by the Supreme Court, may be given effect to. This may be considered as an advance intimation. The Government is at liberty to exercise its option u/s 29(5) after fixation of tariff by this Commission.

still, with a view to assist the finances of the Company for the year 2001 - 02, it took a figure of zero and calculated the working capital base. We think this approach of the Commission, which was done as a favour to the Company, to the extent possible ought not to have been interfered by the High Court. Therefore we set aside the finding of the High Court in this regard and accept the finding of the Commission, which is meant for the year 2001 - 02.

Cross subsidy :

A perusal of Sections 29(2)(d), 29(3) and 29(5) of the 1998 Act shows that the consumers should be charged only for the electricity consumed by them on the basis of average cost of supply of energy, and the tariff should be determined by the State Commission without showing any undue preference to any consumer. The statute also obligates the State Government to bear the subsidy which if it requires to be given to any consumer or any class of consumers, should be only on such conditions that the Commission may fix and such burden should be borne by the Government. However, the High Court in its judgment has directed the Company to maintain its tariff structure in regard to different types of supplies as it was prevailing before the Commission fixed the new tariff. It also directed the increase in the average rate of tariff which it had permitted to be distributed pro rata by the Company amongst different consumers, so that the percentage of increase of each rate is the same. In effect, therefore, the High Court has directed the continuance of cross subsidy. One of the reasons given by the High Court in this regard is that the Calcutta Tramways which is otherwise running a cheap transportation system might have to increase its fare and the same cannot be permitted since the Calcutta Tramways were not heard in the matter of fixation of tariff and there is, therefore, a likelihood of wide discontentment if the fares are to be increases. We have noticed the object of the 1998 Act is to prevent discrimination in fixation of tariff by imposing cross subsidy, but at the same time under Section 29(5) of the 1998 Act, if the State Government so chooses to subsidize the supply of energy to any particular class of consumers, the same can be done provided of course the burden of loss suffered by the Company is borne by the State Government and not imposed on any other class of consumers. In this view of the matter, we are of the opinion that while the Commission was justified in its view as to the non-applicability of cross-subsidy, the High Court was in error in issuing a direction to the Commission, contrary to the object and provisions of the 1998 Act to maintain a tariff structure which was prevailing prior to the Commission's report. It is still open to the State Government if it so chooses to direct the Commission to fix the tariff of supply of electricity to any class of consumers at a reduced rate provided the State Government itself subsidizes the same.

Fixation of tariff for 2002 - 03 :

The Commission has refused to fix tariff for 2002 - 03 as prayed for by the Company on the ground that the application for the same was made by the Company beyond the time granted by the Commission. The High Court on the contrary, by the impugned judgment has held that in view of paucity of time, it is futile to send the same back to the Commission. In the said view of the matter, though it held that it has no facts and figures before it and it had no time for detailed fact-finding, still it thought it appropriate that the tariff fixed for the year 2001 - 025.

Annexure - 3

Dr. K.K. Bagchi

To
Justice (Retd.) S.K. Phaujdar,
Chairman,

West Bengal Electricity Regulatory Commission,
Kolkata

Sir,

Kindly refer to your D.O. No. ERC/A-8/364 dated, 7.10.2002 addressed to the MIC, Power, Government of West Bengal. I have been directed to bring the following points to your kind attention :

1. The judgment of the Supreme Court is divided into two parts, the first part dealing with the legal issues and the second one with certain factual issues arising in the appeals. In fact, the Supreme Court observes at page 63 "Having discussed various statutory provisions of the enactments involved in the procedure of tariff fixation and the duties and obligations of the Commission and High Court under the 1998 Act, we will now take up for consideration certain factual issues which have arisen in these appeals". The Court then proceeds to deal with items like Budge Budge cost, transmission and distribution loses, employees' cost, working capital, cross subsidy, etc. It is clear that the Supreme Court considers the issue of cross subsidy to be a factual issue of the case. It is well settled that the pronouncement of the courts on legal issues will not remain confined to the parties of the instant case, but the factual issues are specific to a particular case and the decisions would apply only between the parties to that case. It, therefore, appears that the issue of cross subsidy (irrespective of the interpretation of the views of the Supreme Court on it) which has been decided as a factual issue by the Supreme Court will have no application in the cases of WBSEB, Singur-Haripal Co-operative Society Ltd., DPL, DPSC.

2. In the concluding portion of "Direction to the Commission" part of the judgment the Supreme Court has held "The matter will now stand remitted to the West Bengal State Electricity Regulatory Commission for disposal in accordance with law" (emphasis added). At page 99 of the judgment the Supreme Court has observed "In these appeals we have decided certain contentious legal and factual issues". It is also noted that at the end of the same paragraph the court has observed "Therefore, we remand these matters back to the Commission to fix the tariff for the relevant years in accordance with this judgment of ours and bearing in mind the findings and directions issued in the judgment". It appears, however, that this observation has to be read in the context of what have been stated in the paragraph concerned viz. the issues on which the Supreme Court has not given any specific finding but which are also required to be reconsidered by the Commission in the light of the judgment of the Supreme Court.

3. The views of the Supreme Court under the heading "Cross Subsidy" have to be carefully noted. The opening sentence says "A perusal of sections 29(2)(d), 29(3) and 29(5) of the 1998 Act shows that the consumers should be charged only for the electricity consumed by them on the basis of average cost of supply of energy, and the tariff should be determined by the State Commission without showing any undue preference to any consumer". At page 89, the Court observes "In this view of the matter, we are of the opinion that while the Commission was justified in its view as to the non-applicability of cross subsidy, the High Court was in error in issuing a direction to the Commission, contrary to the object and provisions of the 1998 Act to maintain a tariff structure which was prevailing prior to the Commission's report". It appears, therefore, that the view of High Court in this matter has been held to be in error and the view of the Commission has been upheld. A reference to Commission's order of tariff for the year 1999 - 2000 and 2000 - 01 at chapter 15 and 16 of its order re: CESC tariff shows that Commission had reduced cross subsidy but did not abolish it.

4. At this stage it is appropriate to refer to S.29(3) of the 1998 Act, which states "The State Commission, while determining the tariff under this Act, shall not show undue preference to any consumer of electricity, but may differentiate according to the consumer's load factor, power factor, total consumption of energy during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required" (emphasis added). The 1998 Act requires the Commission not to show any undue preference to any consumer of electricity but specifically empowers the Commission to differentiate amongst consumers on grounds mentioned in this sub-section. This scheme of empowering the Commission to differentiate amongst consumers on specific grounds obviously leads to the concept of Cross Subsidization which also finds support in para 4(d) of the "Statement

of Objects and Reasons" of the 1998 Act. It is important to note that there is only one reference to cross subsidy in the statement of objects and reasons of the 1998 Act which runs as follows :

"It is essential that the Government implement significant reforms by focusing on fundamental issues, facing the power sector, namely, the lack of rational tariffs, the high level of cross subsidies, poor planning and operation inadequate capacity, the neglect of the consumer, the limited involvement of private sector skills and resources and the absence of an independent regulatory authority". Para 4(d) of the statement of objects and reasons is important and is reproduced below :

"It also aims at improving the financial health of the State Electricity Boards (SEBs) which are losing heavily on account of irrational tariffs and lack of budgetary support from the State Governments as a result of which, the SEBs have become incapable of even proper maintenance, leave alone purposive investment. Further the lack of creditworthiness of SEBs has been a deterrent in attracting investment both from the public and private sectors. Hence, it is made mandatory for State Commissions to fix tariff in a manner that none of the consumers or class of consumers shall be charged less than fifty percent of the average cost of supply, it enable the State Governments to exercise the option of providing subsidies to weaker sections or condition that the State Governments through a subsidy compensate the SEBs. As regards the agriculture sector, it provides that if the State Commission considers it necessary it may allow the consumers in the agricultural sector to be charged less than fifty percent for a maximum period of three years from the date of commencement of the Ordinance. It also empowers the State Government to reduce the tariff further but in that case it shall compensate the SEBs or its successor utility, the difference between the tariff fixed by the State Commission and the tariff proposed by the State Government by providing budgetary allocations. Therefore, it enables the State Governments to fix any tariff for agriculture and other sectors provided it gives subsidy to State Electricity Boards to meet the loss".

It may further be noted that some of the stated objects are not reflected in any specific provision of the Act as passed by the Parliament. In fact, the provisions of S.19(3), 29(4) and 29(5) of the Electricity Regulatory Ordinance 1998 (the provisions which was introduced as a bill to replace the ordinance) and the provisions of same sub-sections in the Act passed by the Parliament are substantially different. The object of the 1998 Act as mentioned in the statement of objects and reasons do not contain any specific reference to prevent discrimination in the fixation of tariff by imposing cross subsidy. In fact, the provisions of para 4(d) as quoted earlier and the wordings of S.29(3) indicate otherwise. I am enclosing a portion of the transcript of parliamentary debate on the bill. The reply of the then Power Minister of India during the debate as found in p.2 (of 6) and at p.3 (of 6) makes the intent of the legislature very clear. It states "our objectives are clear. We are very clear that where subsidy has to be given, that subsidy, after cross subsidization, must be made available by the State Governments". It appears that this is also the reason why the word "subsidy" has been used in S.29(5) instead of the words "cross subsidy".

5. It is worthwhile to mention that nowhere in this judgment or elsewhere the Supreme Court declared the provisions of Section 29(3) ultra vires and no part of section 29(2)(e) especially the words "in a reasonable manner" have not been found fault with. It is submitted, therefore, that the observation of the Supreme Court as quoted by the Commission will need to be read in the context of the "direction" portion of the judgment which mandates the State Electricity Regulatory Commission to dispose of the remanded matter in accordance with law.

6. it is submitted that a passing observation of the Supreme Court may not be independently interpreted and has to be read in the context of facts and the law as it stands in a statute book. The attention of the Commission is drawn to the observations of supreme Court at Page 98 "..... we notice that the Central Electricity Regulatory Commission has a Judicial Member as also a number of other members". A reference to the section 4 of the 1998 Act will show that while a person who is or has been a judge of the Supreme Court or the Chief Justice of a High Court may be appointed as a Chairperson of the Commission, it is not mandatory to do so and there is no provision otherwise to appoint a "Judicial Member". The Commission would surely agree that this observation of the Supreme Court will not be taken as an interpretation of section 4 of 1998 Act that one of the members of CERC has to be a Judicial Member. At page 89 the Supreme Court has observed "In this view of the matter, we are of the opinion that while the Commission was justified in its view as to the non-applicability of the cross subsidy, the High Court was an error in issuing a direction to the Commission,". The Commission would agree that in chapter 15 and 16 dealing with tariff structure of CESC for the year 2001 - 02 the Commission reduced the Cross

Subsidy but did not take a view that the cross subsidy was not applicable. This observation of the Supreme Court has to be read in the context of what has been stated by the Commission in Chapter 15 of their order and the tariff schedule as indicated in Chapter 16 of the same order.

7. At para 15.5 of the Commission's orders on CESC tariff, the Commission had made certain observations about the tariff for industries, HT commercial consumers, etc. later in the paragraph the Commission again dwelt on the condition of industries in West Bengal (if they have to pay a high price of electricity). In this connection I am enclosing a copy of a publication of Central Electricity Authority which indicates the tariff of electricity for various classes of consumers across the states. This publication does not contain the latest information in respect of all the states but the available information gives a good idea of the level of tariff of industrial consumers in the so-called industrially advanced states. It is submitted that the Commission may consider this information while finally fixing the tariff.

8. It is not clear to the State Government as to how the Commission intends to interpret the Supreme Court judgment on the point of cross subsidy. The Commission, while determining tariff of CESC Ltd. for the year 2001 - 02, reduced the existing cross subsidy as a first step towards rationalization of tariff on commercial basis but clearly did not do away with cross subsidy altogether. The Commission clearly stated "... The Commission would, therefore, make attempt to fix a rate for the consumers near the cost of supply in a phased manner". The Commission had also made certain observations about the need to allow certain concession to the lifeline consumers. It is submitted that a harmonious interpretation of Supreme Court judgment with special reference to its orders in the direction portion read with observation views under the head "cross subsidy", keeping in view the provisions of section 29(2)(e) and section 29(3) of the 1998 Act (which have not been found bad) will be that the scheme of cross subsidy adopted by the Commission for the year 2001 - 02 may continue and any increase of the overall average tariff granted by the Commission in view of the Supreme Court's order over and above what it had granted earlier, may suitably be distributed over all classes of consumers.

9. The views of the State Government have been discussed in details in the paras above. it appears from a reading of the Commission's letter that the Commission might feel that the Supreme Court's observation on cross subsidy is an interpretation of law to the extent that discrimination and fixation of tariff by imposing cross subsidy has to be prevented. Even if it is accepted for argument's sake that cross subsidy has to be abolished totally, nowhere the Supreme Court has said that this has to be done overnight or with retrospective effect. If cross subsidy is abolished totally, there can but be only one point tariff in the system (Unless of course State Government subsidizes under section 29(5)). In such a situation it has also to be considered as to what will happen to two part tariff and TOD tariff. Since these are extremely important matters the Commission may kindly consider if they should approach the Supreme Court for a clarificatory order on the issue. It may kindly be appreciated that till the views of the Commission regarding fixation of tariff are made known, it is not possible for the State Government to take a view regarding provisions of subsidy under section 29(5) of the Act.

10. It is not known whether the Commission will afford an opportunity of hearing before deciding this issue. In case it does, the State Government will seek an opportunity to state its case. The Commission may kindly treat this letter as an application for the same. If however the Commission decides not to give an opportunity of any hearing at this stage before finally determining the tariff, these views of the State Government may kindly be taken on record and be given appropriate consideration before taking a final decision.

Annexure - 4

Dr. K.K. Bagchi

To
Hon'ble Justice (Retd.) S.K. Phaujdar,
Chairman,
West Bengal Electricity Regulatory Commission,
Kolkata

Sir,

I am directed to refer to the Commission's letter No. ERC/A-6/3/424 dated November 12, 2002. The Commission's decision for fixing the average cost of supply for the years 2000 - 01, 2001 - 02 at Rs.3.81 /k Wh and Rs.3.90 /k Wh for CESC Ltd. has been noted. I would request you kindly to refer to para 4 of our letter No.Sp(Misc.)-499/02 dated, 7.11.02. According to our interpretation of Section 29(3) of the 1998 Act, as amply clarified during the parliamentary debate on the 1998 Bill, (transcript of the relevant portion enclosed with our earlier letter) if subsidy to be given under section 29(5) that subsidy, after cross subsidization must be made available by the State Government. The decision of the Commission on cross subsidization amongst the different classes of consumers is not yet known to the State Government. The State Government thus finds it difficult to take a decision under section 29(5).

2. In this connection., the decisions of the Commission at para 4.4 and para 4.5 of its orders in case No. TP-1 of 2000 - 01 and in case No. TP-1 of 2001 - 02 dated, 11th November, 2002 may kindly be referred to. It is mentioned that the Commission attempted to fix the rate for consumers near the cost of supply in a phased manner. The Commission also observed that it was proper to allow certain concession to the lifeline consumers. The expression 'lifeline consumer' used by the Commission has not been defined by the Commission. The Commission may kindly, clarify as to what they mean by 'lifeline consumer' and what concession the Commission intends to make available to them. Obviously, whatever concession is granted by the Commission to the 'lifeline consumers', can only be given by the Commission through cross subsidization. It may kindly be appreciated that only after the decision of the Commission is known in the matter the State Government can exercise its option under section 29(5).

3. To illustrate, a reference may be made to the original tariff determined by the Commission for the year 2001 - 02 on the basis of an average cost of supply of Rs.3.41/k Wh. It is found that the rate per unit for LT consumers with monthly consumption up to 25 units tariff was fixed at Rs.1.60 (unit=kWh). The same for monthly consumption between 26 to 60 units came to Rs.1.79 on an average. The average rates for LT domestic consumers, LT commercial and LT industrial consumers were fixed at Rs.2.70 per unit, Rs.4.16 per unit and Rs.3.16 per unit respectively. There was variation within these groups on the basis of consumption slabs. Similarly, HT domestic, HT commercial and HT industrial rates were fixed at Rs.3.45, Rs.4.25 and Rs.4.05 per unit respectively. If cross subsidization is continued on the basis of similar reasons with average cost of supply at Rs.3.90 per unit for the year 2001 - 02, the average LT domestic rate might be fixed at Rs.3.09 per unit, LT commercial at Rs.4.76 per unit and LT industrial at Rs.4.23 per unit with HT domestic at Rs.3.95, HT commercial at Rs.4.86 and HT industrial at Rs.4.63 per unit. The scheme of cross subsidization will then become clear. If on the basis of cross subsidization the Commission fixes the rate for LT domestic consumers with monthly consumption up to 25 units at say Rs.1.75 per unit and for the group consuming between 26 to 60 units per month at say Rs.2.00 per unit and then if the State Government feels that for these low consuming groups the tariff should rather be fixed at say, Rs.1.50 and Rs.1.75 per unit respectively then for 2.4 lakh consumers in the first group and 3.35 lakh consumers in the second group consuming respectively about 30 million units and 178 million units per year, the relevant subsidy will have to be provided by the State Government under section 29(5) and this will then be provided by the State Government through a suitable budgetary mechanism to CESC (including adjustment of loans and other dues to the State Government and West Bengal State Electricity Board, if necessary) after the Commission has taken a view in this matter.

4. I hope, it is clear from the above illustration that it is really not possible for the State Government to take a view under section 29(5) until the scheme of cross subsidization is made known to the State Government. Subsidy under section 29(5) is applicable only after cross subsidy under section 29(3) is determined.

5. It is understood that All Bengal Electricity Consumers' Association has filed a clarificatory petition before the Supreme Court on this issue and the hearing has been fixed on 2nd December 2002. It might be appropriate to wait till the verdict of the Supreme Court on this petition is known before a final decision is taken.

Justice (Retd.) S.K. Phaujdar
Chairperson

Dear Sri Bagchi,

Your letter no. SP(Misc.)-506/02 dated November 18, 2002 under a confidential cover has been received today and opened by me. The matter, being one in response to a letter written by this Commission, has been discussed in the Commission. The Commission wanted to know, if at all the State Government wanted to exercise its right under Section 29(5) of the ERC Act and, if so, to what extent, for which section of consumers and also for the mode of payment by the State Government.

In your letter at paragraph 4, we read it clearly that the State Government is unwilling to concede any subsidization under Section 29(5) of the ERC Act, but the reason therefore is one, not tenable under the law, as per this Commission.

In your letter under reference, you had made reference to certain observations of this Commission in its order dated 11th November, 2002 in paragraphs 4.4 and 4.5. You will kindly appreciate that these paragraphs had indicated the view of the Commission as expressed in its order dated 7.11.2001 and your office had not taken note of the statements in paragraph 5.2 of the Commission's order dated 11.11.2002 which clearly indicated that the order of the Commission dated 7.11.2001 was set aside by the Division Bench of the Calcutta High Court on 14th May, 2002. You will kindly refer to chapter 6 of the order dated 11.11.2002 recorded by this Commission in which the decision of the Supreme Court dated 3.10.2002 has been referred to and the directions to this Commission by the Supreme court have been quoted verbatim.

The directions of the Supreme Court makes it clear that the appeal filed by the Commission against the High Court order stood allowed only to the extent spoken of by the Supreme Court and nowhere the Supreme court had restored the original order of the Commission dated 7.11.2001.

Accordingly, the Commission's observations in the order-dated 7.11.2001, unless specifically confirmed by the Supreme Court, are not-est and no inference may be drawn from these observations. The extract of the Supreme Court judgment was sent to the Hon'ble MIC, Power under a confidential cover. The Supreme Court judgment, at page 87 under the head Cross Subsidy, discussed Sections 29(2)(d), 29(3) and 29(5) and the Commission, as a subordinate quasi-judicial authority, cannot further interpret the Supreme Court judgment. In view of this interpretation by the highest judicial authority of the country, it may not be possible for the Commission to refer to the parliamentary discussions in any attempt to interpret the law, which has already been done by the Supreme Court.

Your letter under reference is taken as an answer to our request made through letter no. ERC/A-6/3/424 dated November 12, 2002 and we shall now proceed to record the tariff ORDER IN TERMS OF THE supreme Court directions and on the basis of the revenue requirement, sale and average cost determined by us and as communicated to you. if the Government feels that any interpretation is still open on Section 29(3), 29(5) or any provisions of the ERC Act, it is open for the Government to approach the Apex Court and when the clarificatory petition by the All Bengal Electricity Consumers' Association is pending before the Supreme Court, I believe the State Government should not miss the chance to place all its views and papers before the Supreme Court subject of course to the leave of the Supreme Court.

Annexure - 6

Dr. K.K. Bagchi

Dear Justice Phaujdar,

I have received your D.O. letter dated 22.11.2002 and carefully noted the contents thereof. You may kindly note that the state Government's interpretation of the Supreme Court's order dated 3.10.2002 was communicated to you through my letter no. SP(Misc.)-499/002 dated 7.11.02 and apart from your first communication on the subject through a D.O. to the MIC giving advance intimation to the State Government on the issue of cross subsidy the final view of the Commission on this issue was not made clear to the State Government. In this connection you may kindly refer to paras 3, 4, 5 and 9 of my letter dated 7.11.02. You may kindly note that apart from a verbatim reproduction of the decision of the Supreme Court including the direction to the commission, the Commission in its order dated 11.11.2002 or in the letter addressed to the Government dated 12.11.2002 the Commission had not clearly indicated its interpretation of the order of the Supreme Court. The interpretation of the State Government was communicated to you vide my letter dated 7.11.02. It was thus necessary to respond to your communication dated, 12.11.2002 in manner that we did.

2. I will now deal with your letter dated 22.11.2002. I am thankful to you for clarifying certain issues but will record that the reading of the Commission as mentioned in para 2 of your letter is not correct. The view of the State Government is that Section 29(5) can be applied only after cross subsidization and until cross subsidization under Section 29(3) is applied, the question of application of section 29(5) does not arise. In para 5 of your letter you have interpreted the Supreme Court's judgment as "..... the only subsidy thought of under the law is one under section 29(5)". We take it to imply that according to the Commission section 29(3) will have no application whatsoever and unless State Government intends to make any subsidy available under section 29(5), all classes of consumers will have to pay at the overall average tariff fixed by the Commission. A few questions arise here :

i> Assuming that the tariff for all classes of consumer will required to be fixed at the overall average rate in the absence of any subsidy from the State Government under section 29(5), will be slab system within each class e.g. I.T. Domestic (Rate G), LT Commercial (Rate M), LT Industrial (Rate K), HT Commercial (Rate B), HT Industrial (Rate A) etc. will also be abolished? In shorth, will tariff for everyone be the same irrespective of class of consumption or any slab of consumption?

ii> Will two-part tariff be abolished?

iii> Will TOD system be abolished?

If the Commission has already decided on such issues, it will be very helpful if the views are communicated to us. It is easier to take a decision in such a case regarding subsidy under section 29(5) rather than dealing with presumptions and possible views. Before reverting to uour observations in para 2 of your D.O., I will first touch upon two issues which are matters of public interest :

i> The Commission is perhaps aware that the hydel:thermal generation capacity mix in the State is of the order of 3:97 against an ideal of 40:60 and the peak demand : off-peak demand ratio is also very adverse here. The peak off-peak ratio varies from 1:0:7 in summer to 1:0:45 in winter. It is extremely difficult to handle the situation with thermal generation alone. The consequence is major fluctuation in grid frequency leading to all kinds of serious problem. It is important therefore that all attempts should be made to shift a part of the demand from the peak period to the off-peak period. The State Government considers it a matter of public interest under section 39 of the 1998 Act to try to correct the situation through a price signal through tariff to achieve this. A draft direction under section 39 is enclosed for your observation if any. You may kindly let us know your views if any before finally deciding on the consumer wise tariff so that this "direction" may be taken consideration by you.

ii> The Commission is perhaps aware that the State is already facing a shortage in the peak demand hours and in course of the next few years the problem is likely to aggravate and the state may face an overall shortage of energy. This has happened, as some of the proposals for new power plants did not materialize. It is essential therefore that energy conservation be practiced and wasteful avoidable expenditure of energy be curbed. The most important tool in this area is price signal through tariff. The State Government considers this to be a matter of public interest and proposes to issue "directions" under section 39. A draft is enclosed for your kind observation,

if any. You may kindly let us know your views if any before finally deciding on the consumer wise tariff so that this "direction" may be taken into consideration by you.

3. I will now deal with your observations at para 2 of your letter. In the absence of a specific view on the matter if it is presumed (to deal with the worst case scenario) that in absence of section 29(5) subsidy the Commission will fix the tariff for all consumers of CESC irrespective of class of consumption or amount of consumption in the same class, at Rs.3.81/unit (1 unit=1kWh) for 2000 - 01 and Rs.3.90/unit for 2001 - 02, then the State Government may have to consider some subsidy for "lifeline" consumers. In the LT Domestic class in the slabs 1 - 25 units / month and 26 - 60 units / month the average tariff has varied from 36% to 45% of the overall average tariff from 1991 to 2001 in CESC. The present average tariff of these two groups are Rs.1.72/unit and Rs.2.24/unit respectively. If they are now suddenly charged at Rs.3.90/unit with retrospective effect, it will no doubt be extremely difficult for them. Many of them may not be able to afford this. The consequences are clear and I need not dwell on the same. Whatever the view the State Government takes here will also apply elsewhere in the state when such questions arise. In fact, you had mentioned that in Commission's view your interpretation of cross subsidy would apply in cases of WBSEB, DPL, DPSC, etc. also. We had interpreted differently and your final views are not yet known. Assuming again that the Commission continues to hold the views indicated earlier, the State Government will need to extend similar benefits to consumers in other parts of the state when the occasion arises. In addition, there is the question of Kutir Jyoti / Lokdeep consumers and also the matter of agricultural consumer.

4. The Commission is aware that the utilities are suffering major losses and are in serious financial difficulties. The State government has to extend financial support to the WBSEB and the DPL to the extent of about Rs.1000 - 1200 cr./year. In terms of the Securitisation Scheme, the State Government has taken over the past burden of more than Rs.2000 cr. of WBSEB. More than Rs.4500 cr. of loan of the State Government to WBSEB remain unpaid. CESC's debt burden I known to the Commission. DPL also is no different. In the ultimate analysis, in the present society people need electricity and willy nilly the burden descends on the State government. Any subsidy under section 29(5) comes out of general revenues and general revenues come from all walks of people including people who are non-consumers of electricity. We may keep in mind that in rural Bengal today 80% of the households do not have power. A part of subsidy from general revenue will also have to be contributed by them.

5. The State Government therefore would maintain its stand regarding section 29(3). The State Government had requested WBERC to seek clarification before the Supreme court. It is easier for the Commission as they are parties to the case and in view of their original decision I am sure there may not be any objection in seeking a clarification when the opportunity has presented itself. The State government has moved the Government of India to intervene in the Supreme Court. The State Government has also taken serious note of your advice contained in the concluding paragraph.

6. As a matter of last resort when all these avenues are closed, the State Government may consider some subsidy to lifeline consumers. In order to take a firm view we need to know :

i> Whether the Commission has finally taken a view that all consumers will be charged at Rs.3.81/unit and Rs.3.90/unit for the years 2000 - 02 irrespective of class of consumption and the slabs inside each class if no subsidy under section 29(5) is forthcoming?

ii> Whether the Commission is of the opinion that this interpretation of cross subsidy would be applied by the Commission in case of WBSEB, DPL, DPSE, etc.?

iii> Whether the Commission will abolish two part tariff, TOD tariff and slab system?

7. I shall be grateful if the views of the Commission on these issues are quickly made available to us. Assuming a scenario emerges when some subsidy needs to be made available you will kindly appreciate that consultation with Finance Department is essential and the matter has to go the Cabinet. This procedure takes a minimum of 3 to 4 weeks.

8. If the tariff is fixed for everyone at overall average tariff and if the State Government wanted the subsidise everyone who were required to pay more, then a rough calculation shows that a sum

of more than Rs.500 cr. would be needed fro two years 2000 - 01 and 2001 - 02 for CESC alone. Undoubtedly, the State Government is not looking at that kind of a situation. But if the situation becomes difficult, some relief for "lifeline" consumers would perhaps be unavoidable, I hope the position of the State Government has been clarified.

9. Our request therefore, is that you may kindly respond to the issues raised and then allow us 3 to 4 weeks' time to let you know the quantum of subsidy under section 29(5) and the classes of consumers to whom the State Government intends to make it available. And in case the Commission feels the urgency of publishing the consumer wise tariff without waiting to hear from us as suggested, a provision may be kept for change in tariff for certain classes after decision under section 29(5) is made known to the Commission. The date of implementation (in any case this will have retrospective effect) of this tariff may kindly be suitably fixed to accommodate this.

10. I hope this clarifies all issues raised.

Draft

Direction u/s. 39 of the Electricity Regulatory Commission Act, 1998

WHEREAS in view of shortage in supply during the peak demand of electricity in the state it is necessary to promote energy efficiency and to avoid wasteful consumption of energy,

AND WHEREAS it is felt that the price signal through the tariff system might be an important tool to ensure avoidance of wasteful use of energy,

NOW THEREFORE, in the exercise of the powers conferred under section 39 of the Electricity Regulatory Commission Act, 1998 the Governor is pleased to direct that while determining the tariff for any particular group of consumers the Commission shall fix the tariff in appropriate slabs so that persons consuming higher amounts of energy are required to pay at a higher rate.

Draft

Direction u/s. 39 of the Electricity Regulatory Commission Act, 1998

WHEREAS the hydel thermal ratio in electricity production in West Bengal is of the order of 3:97 against an ideal combination of 40:60.

AND WHEREAS the ratio of peak deamd to off-peak demand of electricity the stater varies between 1:0.7 to 1:0.45 from summer to winter,

AND WHEREAS it is extremely difficult to arrange power supply in such a scenario from thermal power plants alone,

AND WHEREAS the hydel electrical power production potential in the state is also limited,

AND WHEREAS it is necessary to shift some of the load from peak period to off-peak period by price signals through tariff mechanism.

NOW THEREFORE, in the exercise of power conferred under section 39 of the Electricity Regulatory Commission Act, 1998, the Governor is pleased to direct that compulsory TOD metering for all existing and futhre industrial consumers and for commercial consumers as may be necessary must be enforced, and to start with, there will be three windows of consumption period namely, 1600 hrs. to 2200 hrs. (peak period) 2200 hrs. to 0600 hrs. (lean period) - 0600 hrs. to 1600 hrs. - (normal period) with the ratio of tariff in these periods to be 1.3:1:0.7 (with suitable adjustments for winter period).

Justice (Retd.) S.K. Phaujdar
Chairperson

Dear Sri Bagchi,

Your D.O. no. SP(Misc.)-512/02 dated 28.11.2002 was received on the next day at about 5.30 P.M. This is perhaps the third letter from your end. The earlier ones being no. SP(Misc.)-499/02 dated 7th November, 2002 and SP(Misc.)-506/02 dated 18th November, 2002 and all these letters including the latest one relate to some aspect or other of the Supreme Court direction on cross subsidy. The matter has been considered in the Commission.

You will kindly recall that on the application of the CESC for fixation of tariff for 2000 - 01 and 2001 - 02, a single order was passed by this Commission on 7.11.2001 fixing the revenue requirement, indicating the average cost of supply and also laying out a tariff structure for different classes of consumers, maintaining the concept of cross subsidy, but reducing the scale of the same.

This order of the Commission was appealed against before the Calcutta High Court and a Division Bench of the Calcutta High Court had set aside the aforesaid order of its judgment-dated 14.5.2002. In the same order the High Court had made observations on the points which touched the very exercise of jurisdiction by the Commission in the ERC Act 1998. In the High Court the Commission was made the sole respondent.

Accordingly, the Commission went up to the Supreme Court with a special leave petition and a Civil Appeal. Several consumers / Consumer Association had also moved SLP/Appeals against the order of the Calcutta High Court. All these appeals stood disposed of by the Supreme Court by its order dated 3.10.2002 and in our earliest correspondence dated 7.10.2002 to the Hon'ble MIC, Power we had indicated the observation of the Supreme Court and on the letter that followed, we had indicated the direction of the Supreme Court and had also indicated the revenue requirement and average cost of supply as determined by us.

As we had read the judgment, the Supreme Court had in clear terms disapproved giving of any cross subsidy and we had made it clear to you that under this observation of the Supreme Court the State might indicate if it wished to exercise the powers under Section 29(5) of the ERC Act 1998 to grant subsidy for any class of consumers and if yes, the extent thereof and also the mode of payment thereof. We had also requested the State Government to take the opportunity of the Pendency of the clarificatory petition filed by All Bengal Electricity Consumers' Association for a clarification on the point of cross subsidy and the matter is likely to come this week before the Supreme Court as reported.

The history of correspondence has been traced in short so that the old correspondences may not be leafed over again. Your latest communication dated 28.11.2002 proposed to raise certain questions before the Commission as indicated in paragraph 2 of your letter. All these questions relate to fixation of tariff and are to be answered only in the tariff order and not otherwise.

Your letter dated 28.11.2002 also dealt with certain issues which according to you were matters of public interest and you had indicated in your letter that the State Government desired to give certain directions under Section 39 of the ERC Act and that was to be done under public interest. You had also forwarded drafts of such directions for our perusal. Regarding issuance of direction under section 39 we propose to draw your attention to the Section itself.

"Sec 39 : (1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final."

It is felt that directions must relate to policy and the policy must involve a public interest. Whether the policy involves a public interest is totally within the domain of the state Government to decide, but it must be a policy decision and not one for giving direction against the statutory provisions, which have been explained by the Supreme Court. It is further the State Government to decide whether they would like to flout or bypass the statute or the Supreme Court direction by way of giving a "policy" direction. It is believed that under the law whether the policy direction is under public interest may not be challenged, but whether the direction is a policy direction can always be challenged. This legal aspect may kindly be given a second thought. The question arises if in the name of giving a policy direction the State Government can direct the imposition of cross subsidy, and if so, whether it should be spelt out in the direction itself.

In any view of the matter exercise of the power under Section 39 is not subject to any approval of the Commission and the way the communication of the two draft directions has been made may be viewed as an infringement of the independence of the Commission which is the most precious aspect of creation of a Regulatory Commission, and particularly when these are against the Supreme Court direction.

Referring to para 3 of your letter dated 28.11.2002 the Commission would only say that whatever be the interpretation of the Supreme Court order regarding cross subsidy the same would apply not only to the CEST tariff, but also to the tariff of the other utilities in the state. All the tariff petitions were heard after due notification in the print media and everybody interested was permitted to have its say at the time of hearing. The Commission fails to understand why the State had not joined the hearing to place its case before the Commission and before the High Court and the Supreme Court to indicate its stands regarding Kutir-Jyoti / Lokdeep consumers or the agricultural consumers or small consumers.

In paragraph 4 of your letter dated 28.11.2002 a question had been posed if a non-consumer of electricity should pay for others by way of subsidy by State Government from general revenue. This is a question of policy involving public interest and should have been urged at the proper time and not now when a definite direction for the Supreme Court has come.

In paragraph 5 of your concerned letter you had repeated your request to this Commission to seek clarification from the Supreme Court. The directions of the Supreme Court are on the Commission and the Commission s to implement the directions and it is, therefore, the Commission who is to implement all the directions as appears from a plain reading thereof. We are happy to know from your observations in paragraph 5 of your letter that "The State Government has also taken serious note of your advice contained in the concluding paragraph". We may repeat that in the concluding paragraph of our letter dated 22.11.2002 we had observed "the State Government should not miss the chance to place all its views and papers before the Supreme Court subject, of course, to the leave of the Supreme Court". We have noted with appreciation that the State Government might consider some subsidy to lifeline consumers and even requested that the Commission should convey its views on the issues raised by the State Government at an early date. I may reiterate that certain views may not be expressed in correspondence and have to be indicated in the tariff order itself and we would intimate you the tariff order as soon as it is recorded.

You will kindly appreciate that the order of the Commission in fixing the revenue requirement and in determining the average cost of supply was recorded on 11.11.2002 and three weeks have passed since then and it would be improper to wait indefinitely towards implementation of the Supreme Court decision and as such we propose to record the tariff order at an early date in strict compliance of the Supreme Court order and the said order will certainly be subject to any concession by the State Government towards giving subsidy to lifeline or any other class of consumers and will also be subject to any clarification / further direction from the Supreme Court on the clarificatory application of All Bengal Electricity Consumers' Association.

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