
(2003) 11 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 5371 of 2002

Siel Limited, through Sh. P.K. Bhalla, Director

APPELLANT

Vs

Punjab State Electricity Regulatory Commission

RESPONDENT

Date of Decision : 21-11-2003

Acts Referred:

Citation : (2004) 1 RCR(Civil) 732

Hon'ble Judges : J.S.Narang, J

Advocate : Mr. M.L. Sarin, Sr. Advocate with Mr. H.S. Sethi, Advocate and Harmanjit Singh, Advocates. Mr. Sarup Singh, Advocate and Mr. Gural Singh, Advocates. Mr. Govind Goel, Advocate., Advocates for appearing Parties

Judgement

J.S. Narang, J.

1. This judgment would dispose of FAO Nos. 5371 of 2002, 5243 of 2002, 5298 of 2002, 216 of 2003, 278 of 2003, 371 of 2003, 412 of 2003, 508 of 2003 and 875 of 2003 as common questions of law and in some cases, common facts are also involved in all the aforesaid appeals. However, the facts are being taken from FAO No. 5371 of 2002.

2. This appeal has been filed by SIEL Limited. The appellant has set up a large industrial estate jointly with Government of Punjab within the precincts of the Industrial Estate near Rajpura, District Patiala. In this very estate, a commercial complex was also to be set up, which is to act as nucleus for the ancillary industry. In the aforesaid endeavour, the land had been acquired by Government of Punjab and a unit under the name and style of Sri Ram Industrial Enterprises Limited had been promulgated for setting up an industrial estate. The complex was also known commonly as Siel Chemical Complex to be developed at a cost of Rs. 210 crores. The chemical complex came into existence and the commercial production was started with effect from February, 1999. The main products being produced are Caustic soda and Chlorine by electrochemical process. In this process, "power cost" projected in the manufacturing cost is around 60%. Thus, the appellant is a large intensive power consumer of the

Punjab State Electricity Board (hereinafter referred to as "the PSEB"). The contract demand of appellant is 35 Megawatts whereas the active load is 38 Megawatts (MWs). The power consumed in terms of money during the financial year 20012002 came to be around Rs. 60 crores based upon the applicable tariff of Rs. 3.17 per unit. It is further averred that the appellant is not a defaulter of the PSEB and has been paying the power bills regularly.

3. The Punjab State Electricity Regulatory Commission (hereinafter referred to as "the Commission") has been constituted by virtue of the statutory powers conferred under Section 17 of the Electricity Regulatory Commission Act, 1998 (hereinafter to as "the ERC Act") for determination of tariff by the Commission. The guidelines and the parameters have been provided under Section 29 of the ERC Act. It shall be apposite to notice the aforesaid provision, which reads as under :

"29. Determination of tariff by State Commission (1) Notwithstanding anything contained in any other law, the tariff for intra State transmission of electricity and the tariff for supply of electricity, grid, wholesale, bulk or retail, as the case may be, in a State (hereinafter referred to as the "tariff", shall be subject to the provisions of this Act and the tariff shall be determined by the State Commission of that State in accordance with the provisions of this Act.

(2) The State Commission shall determine by regulations the terms and conditions for the fixation of tariff, and in doing so, shall be guided by the following, namely :

(a) the principles and their applications provided in section 46, 57 and 5A of the Electricity (Supply) Act, 1948 and the Sixth Schedule thereto :

(b) in the case of the Board or its successor entities, the principles under section 59 of the Electricity (Supply) Act, 1948;

(c) that the tariff progressively reflects the cost of supply of electricity at an adequate and improving level of efficiency;

(d) the factors which would encourage efficiency, economical use of the resources, good performance optimum investments, and other matters which the State Commission considers appropriate for the purpose of this Act;

(e) the interests of the consumers are safeguarded at the same time, the consumers pay for the use of electricity in a reasonable manner based on the average cost of supply of energy;

(f) the electricity generation, transmission, distribution and supply are conducted on commercial principles;

(g) national power plans formulated by the Central Government.

(3) 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 an area, the nature of supply, and the purpose for which the supply is required.

(4) The holder of each licence and other persons including the Board or its successor body authorised to transmit, sell, distribute or supply electricity wholesale, bulk or retail, in the State shall observe the methodologies and procedures specified by the State Commission from time to time in calculating the expected revenue from charges which he is permitted to recover and in determining tariffs to collect those revenues.

(5) If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under this section, the State Government shall pay the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the license or any other person concerned to implement the subsidy provided for by the State Government.

(6) Notwithstanding anything contained in section 57A and 57B of the Electricity (Supply) Act, 1948 no rating committee shall be constituted after the date of commencement of this Act and the Commission shall secure that the licensees comply with the provisions of their licence regarding the charges for the sale of electricity both wholesale and retail and for connections and use of their assets or systems in accordance with the provisions of this Act."

Apart from the above, for conducting the business by the Commission, the regulations have been promulgated which are known as Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2002 (hereinafter referred to as "the Regulations"). A pointed reference has been made to regulation Nos. 22 and 32 which read as under :

"22. Functions of State Commission (1) Subject to the provisions of Chapter III, the State Commission shall discharge the following functions, namely :

(a) to determine the tariff for electricity, wholesale, bulk, grid or retail as the case may be, in the manner provided in section 29;

(b) to determine the tariff payable for the use of the transmission facilities in the manner provided in Section 29;

(c) to regulate power purchase and procurement process of the transmission utilities and distribution utilities including the price at which the power shall be procured from the generating companies, generating stations or from other sources for transmission, sale distribution and supply in the State.

(d) to promote completion (competition ?), efficiency and economy in the activities of the electricity industry to achieve the objects and purposes of this Act.

(2) Subject to the provisions of Chapter III and without prejudice to the provisions of subsection (1), the State Government may, by notification in the Official Gazette, confer any of the following functions upon the State Commission, namely :

(a) to regulate the investment approval for generation, transmission, distribution and supply of electricity to the entities operating within the State;

(b) to aid and advise the State Government in matters, concerning electricity generation, transmission, distribution and supply in the State;

(c) to regulate the operation of the power system within the State;

(d) to issue licences for transmission, bulk supply, distribution or supply of electricity and determine the conditions to be included in the licences;

(e) to regulate the working of the licensees and other persons authorised or permitted to engage in the electricity industry in the State and to promote their working in an efficient, economical and equitable manner;

(f) to require licensees to formulate perspective plans and schemes in co ordination with others for the promotion of generation, transmission, distribution, supply and utilisation of electricity, quality of service and to devise proper power purchase and procurement process;

(g) to set standards for the electricity industry in the State including standards relating to quality, continuity and reliability of service;

(h) to promote competitiveness and make avenues for participation of private sector in the electricity industry in the State, and also to ensure a fair deal to the customers;

(i) to lay down and enforce safety standards;

(j) to aid and advise the State Government in the formulation of State Power policy;

(k) to collect and record information concerning the generation, transmission, distribution and utilisation of electricity;

(l) to collect and publish data and forecasts on the demand for the use of electricity in the State and to require the licensees to collect and publish such data;

(m) to regulate the assets, properties and interest in properties concerning or related to the electricity industry in the State including the conditions governing entry into and exit from the electricity industry in the such manner as to safeguard the public interest;

(n) to adjudicate upon the disputes and differences between the licensees and utilities and to refer the matter for arbitration;

(o) to coordinate with environmental regulatory agencies and to evolve policies and procedures for appropriate environmental regulation of the electricity sector and utilities in the State; and

(p) to aid and advise the State Government on any other matter referred to the State Commission by such Government;

(3) The State Commission shall exercise its functions in conformity with the national power plan.

4. Before the fixation of the tariff for supply of electricity by the PSEB, the Commission received objections from various consumer organisations/consumers, inclusive of the explanations of the PSEB and the Government of Punjab. The Commission heard the consumers and all the concerned persons at the public hearings and that the State Advisory Committee had also been consulted. The relevant material required for the purpose of determining the tariff was also examined by the Commission. An order dated 6.9.2002 has been passed by the Commission and that the tariff described and prescribed has been made effective from 1.8.2002.

5. The PSEB submitted a proposal to the Commission for "Annual Revenue Requirement" (ARR) of Rs. 7857.78 crores for the year 20022003. The Commission has observed that the Annual Revenue Requirement projected a wide gap between estimated "total cost" (TC) and the "revenue receipts" (RR) from the existing tariff for the year 20022003. It was expected that the PSEB would file an application for revision of tariffs before the Commission. There were number of other deficiencies which were found and the PSEB was required to make up the same before the matter could be considered finally by the Commission.

6. The Commission issued Public Notices in the Daily Newspapers, i.e., The Tribune, Indian Express, Punjab Kesri and Jagbani and Punjabi Tribune. The written objections had been invited to be filed within 30 days from the date of issue of the Public Notice i.e. 6.5.2002. However, the last date for receiving the objections was extended upto 18.6.2002 as the PSEB could not supply the proposals for ARR and Tariff Revisions were not made available to the consumer still about 15.5.2002. Upon receipt of the objections, all the objectors had also been given the opportunity to substantiate their view points/objections in the public hearings, which were held at Ludhiana, Bathinda and Chandigarh on 21.6.2002, 26.6.2002 and 1.7.2002 respectively. A total of 61 written objections had been received, though various technical objections had been raised as the objections had not been filed in conformity with the requirements spelt out in the regulations. De hors of the technical objections, the Commission took cognizance of all the objections and apart from that the objections received after the due date were also entertained and the due hearings were granted to the objectors.

7. The PSEB submitted counters to the written objections. In the public hearings, the PSEB was also represented through the duly authorised representatives to

controvert the oral submissions made by some of the consumers/consumer organisations. The State Government also made written submissions, which were taken on record by the Commission, to which the reply was also submitted by the PSEB. Resultantly, as per the Commission, adequate opportunity had been given to all persons in making submissions personally or through representative and or duly authorised persons.

8. The principles of tariff determination and methodology proposed to be adopted by the Commission is "Rate to Return Regulations" (ROR) and "Performance or Incentive Based Requests" (PBR). The revenue requirement would reflect certain amount of gross revenues required to be raised and that the "Revenue Requirement" (RR) comprises of expenses, Rate of Return (ROR), Capital Based (CB) or Net Fixed Assets (NFA). The formula reads as under :

Revenue Return (RR) = Expenses + ROR x CB or NFA.

The expenses would include fuel costs, purchase of power costs, operation of maintenance expenses including employees cost, administrative and general expenses, depreciation expenses, interest of loans and taxes etc. The Capital Base has been defined in the Sixth Schedule in Electricity (Supply) Act, 1948, which reads as under :

"XVII. For the purposes of this Schedule

(1) "capital base" means the sum of

(a) the original cost of fixed assets available for use and necessary for the purpose of the undertaking subject to the provisions of paragraph XII in respect of service lines, and the excess amount referred to in the proviso to subparagraph (2) of paragraph VII in respect of any fixed asset which has ceased to be available for use;

(b) the cost of intangible assets, including expenses on account of new capital issue;

(c) the original cost of works in progress;

(d) the amount of investments compulsorily made under paragraph IV of this Schedule together with the amount of such investments made after the commencement of this Act from contributions towards depreciation as in the opinion of the Authority could not be utilised for the purpose of the business of electricity supply of the undertaking.

(e) an amount on account of working capital equal to the sum of

(i) onetwelfth of the sum of the book cost of stores, materials and supplies including fuel on hand at the end of each month of the year of account;

(ii) onetwelfth of the sum of cash and bank balance (whether credit or debit) and call and short term deposits at the end of each month of the year of account, not exceeding in the aggregate an amount equal to onequarter of the expenditure

under subparagraph (2)(b) of this paragraph excluding clauses (i), (iv), (iva), (ivb) and (x);

less

(i) the amounts written off or set aside on account of depreciation of fixed assets and amounts written off in respect of intangible assets in the books of the undertaking before or after the commencement of this Act,

(ii) the amount of any loans advanced by the Board;

(iia) the amount of any loans borrowed from the organisations or institutions approved by the State Government;

(iib) the amount of any debentures issued by the licensee;

(iii) the amounts deposited in cash with the licensee by consumers by way of security;

(iv) the amount standing to the credit of the Tariffs and Dividends Control Reserve at the beginning of the year of account;

(v) the amount standing to the credit of the Development Reserve at the close of the year of account;

(vi) the amount carried forward at the beginning of the year of account in the accounts of the licensee for distribution to the consumers under paragraph II."

"Net Fixed Assets" are decipherable as per Section 59 of Electricity (Supply) Act, 1948, which reads as under :

"59. General principles for Board's Finance. (1) The Board shall, after taking credit for any subvention from the State Government under Section 63, carry on its operations under this Act and adjust its tariffs so as to ensure that the total revenues in any year of account shall, after meeting all expenses properly chargeable to revenues, including operating, maintenance and management expenses, taxes (if any) on income and profits, depreciation and interest payable on all debentures, bonds and loans, leave such surplus as is not less than three per cent or such higher percentage, as the State Government may, by notification in the Official Gazette, specify in this behalf, of the value of the fixed assets of the Board in service at the beginning of such year.

Explanation For the purposes of this subsection, "value of the fixed assets of the Board in service at the beginning of the year" means the original cost of such fixed assets as reduced by the aggregate of the cumulative depreciation in respect of such assets calculated in accordance with the provisions of this Act and consumers' contribution for service lines.

(2) In specifying any higher percentage under subsection (1), the State Government shall have due regard to the availability of amounts accrued by way of depreciation and the liability for loan amortization and leave

- (a) a reasonable sum to contribute towards the cost of capital works; and
- (b) where in respect of the Board, a notification has been issued under sub section (1) of Section 12A, a reasonable sum by way of return on the capital provided by the State Government under subsection (3) of that section and the amount of the loans (if any) converted by the State Government into capital under subsection (1) of section 66A."

Under ROR regulations, the utility (the PSEB) has to provide all the required data to arrive at the revenue requirement to the satisfaction of the Commission. The onus is on the utility (the PSEB) to reflect the proposed revenue requirements which would include only prudently incurred cost and the sales and revenue reasonably estimated.

So far as Performance Based Regulation (PBR) is concerned, it is taken as an alternative to ROR regulations. It focuses on utility incentives to attain particular results and its product performance rather than costs. Resultantly, principle of "regulatory system" have shifted or have planned to shift to PBR as the same has been widely accepted. However, ROR has been considered to be complicated and has been found to be unsuitable at the time when the competition is introduced. Commonly, PBR is also known as "price cap" which is fixed for longer period of time, i.e., 4 to 5 years so that lot of incentives come in for reduction of the costs. A well designed price cap scheme begins by setting the initial rate for each class, based on appropriate allocations of costs. However, a scope for an increase from year to year is also allowed keeping in view the effect of "inflation".

9. The Commission adopted ROR regulations with some modification by introducing certain performance tracks such as reduction of (Transmission and Distribution) T & D losses, better metering, billing and revenue realisation and other quantifiable items. The PBR system has not been adopted as the comprehensively reliable and vital data, which is an essential requirements, is not available.

The Commission has take into consideration three approaches to determine overall the revenue requirements :

i) actual historic amounting costs ; (ii) estimation of Future amounting costs ; (iii) estimation of marginal cost. In actual "historic cost", the regulation defined a specific 12 months period in recent past as the historic test year data, whereas "Future amounting cost" uses a forecast of future cost and future load in a specific 12 months period. The utility (the PSEB) may not be able to project the cost with sufficient degree of reliability. So far as "marginal cost" approach in comparison to the aforestated is concerned, it would reflect the cost of explaining the system efficiently, specify the load forecast over a long time horizon. Thus, estimation of long term marginal cost is difficult and sensitive to many subjective systems that must be adopted/adhered to during the estimation process. Thus, keeping the probabilities and the pros and cons in respect of the aforestated, "historical amounting cost" has been accepted by the Commission, being

traditionally used in the Indian Power Sector. The usage of other variant have not been commonly known and on account of lack of applicability, the safest approach has been adopted by the Commission.

The consumer tariff has been examined under three classes :

- (i) embedded cost based allocation;
- (ii) marginal cost based allocation;
- (iii) social tariff making.

So far as "embedded cost" based allocation is concerned, the factors which would contribute in this class would be, the peak demand, energy projected by each class as a percentage of total sale, the number of consumers in the class. The advantage is that factors can be measured, based on the data that has been recorded in the books of the utility. However, such tariff would not reflect the economic cost, which the consumer imposes on the utility through their electricity consumption. Thus, it would always differ from the economic costs. Therefore, for determination of economic cost, factors which require to be taken into consideration are : voltage at which the class of consumers are served. T and D losses at each voltage load contribution of the class, this would include instant peak demand/non coincident peak demand, demand/energy, energy consumed by the class, nature of load etc. The State Electricity Boards in India have not been able to collect the data to arrive at the actual cost incurred for delivering the electricity to each class of consumers. Thus, in the absence of such data, the achievement of determination of "economic cost" becomes virtually impossible in the present times.

10. The second approach, i.e., "marginal cost" based allocation has been examined upon the premises that it represents the economic value that the utility (the PSEB) has to incur in order to provide consumers with additional unit of electricity. Thus, it provides efficient price signals to consumers. However, the biggest disadvantage is that it does not ensure appropriate cost for the utility and it will not be feasible/possible to determine as to it shall be lower or higher than the average cost of supply.

11. Thirdly, the "social tariff" approach is tempered by social policy objectives and there is no relationship between the costs and the price which the consumer may be required to pay. Subsidised power for agriculture and other classes would lead to very low price and that the measure of cost may have to be forgotten. In this situation, it can be accepted only, if the Government from its own body, by defining such classes of consumers, subsidises the shortfall in the recovery of the cost.

12. The Commission has adopted and has accepted the "embeddedcost based allocation" with suitable modifications by permitting it to be punctured by some socio economic factor. However, the negative of this approach, as aforesaid, has been observed to be explained by providing the required data on the pattern

of consumption for each class and categories of consumers.

13. The factors such as "subsidies" and "crosssubsidies" have also been examined. It has been observed that "crosssubsidy" takes place when one consumer group passes off a part of or entire of the cost imposed on the system, upon another consumer group. For comparison, it has been mentioned that crosssubsidisation with some categories of consumers like large industries, commercial and railways, which pay well above the average cost of supply, are comparable to other consumers like agriculture and domestic, meaning thereby that industry, commercial and railways have been required or have been expected to pay far above the average cost to make up the relief which has been given to the "agriculture" and "domestic sector".

14. So far as "subsidy" is concerned, it has been examined as the difference between the cost of service and tariff charged to a consumer class. Thus, it is absolutely essential that in order to determine the amount of subsidy, one must first estimate the cost of providing service to the customer, subsidisation would utterly mean that a particular consumer class would be entitled to consumer electricity without the same being metered. In such a situation, it is very important that the State Government should clarify its stand as to how much subsidy amount, it proposes to transfer, for bridging the gap between the average cost of service to subsidised categories and tariff charged to them.

15. Resultantly, the Commission has observed that a demand shall be made to minimise crosssubsidy over a period of time. So far as subsidisation is concerned, the Government has been asked to clarify its stand.

16. The proposal to adopt "multi year tariff" has not been accepted by the Commission, as the long term tariff determination and implementation is possible only in a stable demand and supply frame work. Since the market conditions are not stable and that the fluctuations are very wide so far as investments and costs are concerned, it is not possible nor it is safe to adopt multi year tariff policy, which can only be adopted when the market conditions are stable. Resultantly, Commission has adopted "Early Tariff Fillings".

17. The Commission proceeded to determine the tariff, de hors of safe advantages and disadvantages of various options available and which have been discussed and that the methodology adopted is as under :

- i) Rate of Return Regulations (ROR) has been adopted for determining the revenue requirement with certain performance targets for better performance of the utility;
- ii) Average cost of supply has been adopted in determination of tariff to different class of consumers;
- iii) Reduce crosssubsidisation gradually with improved efficiency of the utility and in this regard, a plan requires to be developed accordingly;

(iv) The tariff fillings should be on yearly basis in the initial years till the demand and supply conditions as well as cost becomes stable in the market."

18. For the purpose of generation and distribution of electricity/power within the State of Punjab, the PSEB was promulgated in the year 1967 under the Provisions of Electricity (Supply) Act, 1948, and on 1.4.2002, the PSEB has achieved installed capacity of production of 4459.20 Megawatts (MWs). In addition, it has a share of 1205 MWs from Central Sector Generation and thus, total capacity available for the State of Punjab is 5664 MWs. The PSEB serves about 54 lac consumers as per the data available on 1.4.2002. It is about 8.50 lacs "agricultural pump sets" which are working on the power generated as aforesaid. By sale of power during 2001-02, the PSEB received Rs. 4287 crores besides nontariff income of Rs. 400 crores for managing the power supply as aforesaid, the manpower strength is 91624. Thus, the number of employees per million unit sold and 1000 consumers served is the highest in the country.

19. The commercial performance has been examined for the purpose of determination of the tariff. The heads under which the discussion has been reflected are as under :

- a) Metering
- b) Consumption by agricultural Pump sets;
- c) Transmission and Distribution losses;
- d) Current tariff structure of the PSEB.

a) Metering

According to mathematical calculations placed before the Commission, it has been observed that the power supply to agricultural pump sets represents about 28% of the total energy sold, is not metered. It has also been noticed that there are some other categories which are metered and which comprise of 3.2% of the meters." which are allegedly defective. It has been observed that substantial quantum of energy including energy loss in the system (technical loss) is metered.

b) Consumption by Agricultural Pump sets.

As per the observation, the agricultural consumption is not metered but a method has been evolved for assessing the consumption and that the method adopted upto the year 1999-2000 is as under :

Energy consumption by agricultural pump sets., = Energy available (Generation + Purchases), (Metered consumption + Predetermined transmission and distribution (T&D) losses)

However, from 2000-2001, the agricultural consumption has been determined on the basis of sample metering of 3220 pump sets on 322 per 11 KV feeders representing about 0.38 %age of the total pump sets. Thus, basing on the

sample metering, the energy consumption of agricultural pump sets during the aforesaid year have been estimated at 5535 MU against 8233 MU during 1999-2000. It has also been disclosed that sample metering have been earlier adopted since 1994-95. No explanation is forthcoming as to why the agricultural consumption estimation based on sample metering was not adopted earlier. It has been observed by the Commission that the size of sampling, as aforesaid, is too small to provide the realistic consumption by the pump sets.

c) Transmission and Distribution (T&D) Losses

The PSEB has reflected the transmission and distribution losses at about 17 and 18% purely on conjectural basis, there is no mathematical answer which has been provided by the PSEB. However, it may be noticed that about 1415 % of losses were being shown as agricultural consumption. The figures which have been taken earlier for the year 1999-2000 and the figures which have been projected for the year 2000-01, the difference comes to be 3345 MU and the same has been described as nontechnical (commercial) losses. The Transmission and Distribution (Technical and Nontechnical) have been worked out to about 30.80% during 1999-2000 as against 17.76% presented officially, which actually pertained to technical losses only. It has been noticed that the level of losses is high for a small system with high load density. So far as the figures pertaining to the year 2000-01 are concerned, the losses are stated to have been reduced to 26.5%. In the next year, i.e., 2001-02, the losses have been contemplated to be 25.5% (17% technical losses and 8.5% non technical losses), which is again only estimated figure.

The method which has been adopted to bring an equaliser, the consumption by agricultural pumps and transmission and distribution losses, have been termed as two sides of the coin i.e., if one is reduced, the other has to be increased. It looks that the Commission was not seized of the real mathematical figures from the PSEB. It also seems that the Commission was pressed for time as it was necessary to determine the tariff before the period time framed statutorily.

(d) Tariffs.

The current tariff structure as adopted by the PSEB is based upon various features which have also been examined by the Commission and that various factors such as tariff for agricultural pump sets, which was quite low till 1996-97, has been taken into consideration and that in 1997, the said power supply was made absolutely free on the basis of incentives offered and made available to by the Government. Apart from this, the power supply to various Scheduled Caste Households was also made free upto certain limits with effect from January 1998. Resultantly, the table representing average cost of supply and realisation have been placed before the Commission. It shall be apposite to notice the same, which reads as under :

Table 3.3 : Average cost of supply and realisation

Year

Average cost of supply (Paise/Kwh)

Average realisation (Paise/Kwh)

199798

193.83

147.80

199899

211.54

156.81

19992000

235.26

162.24

200001

286.75

206.73

200102

337.03

212.02

The perusal of the aforesaid figures shows that the average cost of supply has increased tremendously from 1997 upto 200102 and that the factors responsible for the same have been projected as fuel costs; setting up of power projects; and operational expenses in respect of power projects already in existence. It has also been projected by the PSEB that the increase has been suffered on account of two major aspects i.e. supply to Agriculture and the Schedule Caste House Holds upto certain limits having been made totally free.

20. The Commission has also examined the financial position as projected by the PSEB since 199192 to 200001. The figures projected have shown the deficit in every year. The projectable figures show that the financial health of the PSEB has been deteriorating from day one and that the factors which have been found responsible for the same have been noticed by the Commission which read as under :

"*Supply to agriculture tubewells was made free w.e.f. 14.2.1997 and cash compensation promised by the Government of Punjab was not made available to the PSEB.

*Provision of free supply to certain units per month to the SC families w.e.f April 1998.

* Provision of urban pattern, i.e., 24 hours supply to villages.

* Intermittent and inadequate revision of tariff, incongruent to the growth in expenditure and loss of revenue.

* Very little financial support from the Government even for the execution of capital works (excluding RSD).

* RE subsidy being provided by the State Government limited to interest on Government loans was sanctioned only upto 199798.

* Resultant heavy debt exposure of the Board to the Financial Institutions to support its cash deficit and capital works."

21. It has also been noticed by the Commission that in the years 199497, the gross operating surplus left with the PSEB were adequate to take care of the interest on institutional loans though this could not cover depreciation and interest on Government loans. The tariff revisions during the years 19972000 showed only an annual average rise of 4.6%. The percentage was low because of supply of free power as aforesaid. Resultantly, the PSEB went into gross operating deficit and loss spiraled up and have been increasing more than 2 1/2 times between 19982002. The net result was that the finished product i.e. the power produced by the PSEB was not allowed to be sold at the rate at which it could have covered the operating deficit. The PSEB tried to formulate its own policies for the purpose of selling power but the same were defused or were deflated by the rigor of the State Government policies. No doubt, the State Government permits subsidy for catering to their policies for the benefit of the society at large and that one such benefit which was agreed to be given by the Government was "Rural Electrification Credit". The State Government sanctioned subsidy to the PSEB to achieve and maintain a rate of return of 9.5% on capital base upto 1987. However, in that year, the State Government intimated the PSEB that the subsidy shall be limited to the interest on the State Government loans. The PSEB had no option and being a constituent of State Government the directions were required to be implemented. Resultantly, the losses were incurred as the interest payable was lower than the amount to be received as per return of 9.5% on capital base. It had been further clarified that subsidy would not be paid in cash but adjusted against dues payable by the PSEB to the State Government by way of interest on Government loans. However, the Commission did notice that the State Government has not paid the subsidy claimed by the PSEB for the years 199899 to 200102. The Government disputed the agricultural consumption figures submitted by the Board stating that the T and D losses are loaded on to the agricultural consumption. It shall be apposite to notice that the Government sanctioned the subsidy to the extent of Rs. 2891 crores to the Board during the financial year 1992 to Financial year 1998. Further the loans to the extent of Rs. 2801 crores were converted into equity during the above period and

that gave a relief in respect of the interest charged to the extent of Rs. 300 crores per annum.

22. The PSEB has outstanding institutional loans of about Rs. 5107 crores and debt servicing of about Rs. 2136 crores as on March, 2002. The current liabilities have also been projected as Rs. 795 crores towards power purchase, the coal etc. The interest factor upon the aforesaid is very large. Thus, the comprehensive financial restructuring of the PSEB is urgently required.

However, only the revenues requirement of the PSEB for the year 20022003 has been duly reflected before the Commission and that the total whereof is Rs. 7857.78 crores. By taking the total expenses and the receipts of the PSEB, the gap has been found to be of Rs. 2618.60 crores. The PSEB has claimed that the upwards revision of tariff in the past five years was inadequate. The PSEB has further stated that the financial position is precarious as it has fallen into a debt trap. The PSEB has asked for tariff increase of about 25% to 47% for different categories except for agriculture where a rate of Rs. 2/ per unit or alternatively Rs. 240 Bhp/month has been proposed. The PSEB has further demanded that in the ARR filing the tariff be increased to the extent of 61%.

23. So far as demand forecast in respect of consumer consumption of power is concerned, it has been suggested that for the year 200102, the demand had increased by 2% but for the year 200203, it is estimated to grow by 11%. A suggestion has been made in this regard that an independent agency be set up to examine the aspect of increase in the demand in regard to various categories including agriculture. The PSEB has accepted the increase in demand as the same was in line with 16th Electric Power Survey.

24. The agricultural consumption has also given a criticism, the consumers have pointed out that the number of pump sets have gone up, the consumption was lower in 200001 as compared to 19992000 but at present, the projection of such consumption is far more and that the same requires to be clarified by the PSEB and or the Government. The stand of the PSEB is that agricultural consumption used to be arrived at by deducting the metered sales and normal T & D losses from the energy in put to the system. It may be noticed that the agricultural consumption had been assessed on sample metering at 3220 pump sets on 322 per 11 kv. feeder and the resultant effect is that the assessed consumption for the year 200203 had been projected as 1930 Kwh/Kw/annum.

25. So far as transmission and distribution losses are concerned, the consumers have questioned the aforesaid losses as the projection given is 24.5% for the year 200203. It has been further objected that the losses which are attributable to theft and pilferage etc. cannot be brought under this head and to be passed on to the consumers. It has been suggested that an independent estimation of the aforesaid losses should be made by obtaining technical data and the exact loss be opined accordingly. However, it has been stated that the Planning Commission's report of June, 2001 had disclosed the T&D losses for the year

200001 as 16.86 whereas for the same year, it has been recorded as 26.51%. Thus, keeping in view the aforestated difference in the two figures, the projected T&D losses for the year 200203 should be taken as 20.5%. It has been further suggested that 50% of the nontechnical losses may be absorbed by the PSEB and that the balance 50% be charged to the consumers. On the other hand, the PSEB has attributed T & D losses under two heads :

Technical and Nontechnical.

26. So far as technical losses are concerned, the same are dependent on the Ht. and Lt. supply, ratio of T & D system would be dependent thereon accordingly. Low density load must react to power requirement and reactive consumption, available distance from generating station to load centres, loading system and other system related factors. The nontechnical losses i.e., Commercial losses are dependent upon defective or absence of meters, theft and pilferage of power and wrong meter reading etc.

27. The PSEB has stated that for reducing the aforestated losses, some investments are required and that the cost of which has been set apart i.e. about Rs. 955.5 crores required for upgradation of stations and connected transmission lines, improvements of the system at distribution level would require additional amount of Rs. 48 crores for providing such transmission at circle levels. However, for checking nontechnical losses, the PSEB has undertaken extensive testing of meters, consumption and investigation of installations for theft/pilferage of energy etc. It has been explained that the estimated agricultural consumption based on sample metering is being sought to be subtracted from the T & D losses as the same would be initially deducted from the energy input into the system. However, it has also been stated that all new agricultural connections are being provided with meters. The Commission has opined that after taking into consideration all the facts and figures, it is difficult to arrive at realistic T & D losses and that the nontechnical losses are generally being shown as agricultural consumptions. The losses are generally high. It is necessary to conduct energy audit to arrive at technical losses and also identify high loss areas.

28. So far as fuel costs are concerned, number of suggestions have been made by the consumers/organisations and that the comment of the PSEB has been obtained and that the Commission has come to the conclusion that heat rate of 2500 kcal/KWh is reasonable for the Thermal Power Stations. Similarly, purchase of power, the suggestions have been made, the Commission has taken the view that the power to be purchased should be restricted to the requirement, as such, nothing much hinges thereon.

29. So far as explanation in respect of the employees is concerned, the PSEB has informed that the measures have been adopted, such as, complete freeze of creation of posts, ban on recruitment, man power has been reduced in comparison to the previous years. A high level committee comprising of Chairman, Member (Finance), Member (Technical) has been constituted to

examine the method to reduce man power by 10% in a phased manner. It is expected that there shall be reduction of 8 to 10 thousand posts in the operation organisations. The Commission has formed a view point accordingly.

30. The matter relating to free/subsidised power supply to employees has also been discussed and the Commission has opined that sudden withdrawal of the facility may cause industrial unrest but this matter has been perhaps left open to be examined after getting detailed feed back/comments from the PSEB.

31. A matter relating to interest on loans has been objected to by the consumers. It has been stated that the PSEB has reflected the figure pertaining to subsidy receivable as Rs. 3713.49 crores. Thus, commensurate to this, the interest figure should be deducted therefrom and that the same should not be passed on to the consumers. It is stated that if the Government had provided in time the subsidy due to the PSEB, the interest charges would have been less by Rs. 445.60 crores, which has been charged at the rate of 12% P.A. For this incompetence on the part of the PSEB, the interest liability cannot be passed on to the consumers and that the same should be passed on the Government or should be borne by the PSEB. The Commission has scrutinised the loans sanction documents and has therefore, resultantly, reduced the interest suitably. But disallowed the interest charges to the extent of the subsidy not sanctioned by the State Government for the past, which may result in serious financial implication to the PSEB.

32. The objectors had a serious objection in respect of the return on the investment of the State Government. It is stated that 12% return on equity (ROE) to State Government in addition to statutory return of 3% on net fixed assets (NFA) is not justifiable. Thus, the provision of Rs. 337 crores for return upon equity is not justifiable. The PSEB has controverted and has stated that the State Government demanded a return of 60% on this equity of 2806 crores vide communication dated 24.9.2001 but the PSEB has only provided 12% and that resultantly, the ARR has been worked out. The Commission has examined and has opined that the PSEB is governed by Section 59 and the statutory return allowable is 3% on NFA. It is not known whether the State Government has ever fixed a higher percentage of surplus for the PSEB under the aforesaid provisions as the Government can specify a higher percentage of surplus after taking into consideration the losses converted by the State Government into Capital. Thus, it clarifies that ROE is not in addition to the return of NFA as envisaged under Section 59 of the Electricity Supply Act, 1948.

33. So far as payment/recovery of subsidy from the State Government is concerned, the consumers have stated that free power supply to agricultural sector and to Scheduled Castes/Scheduled Tribes and others, the subsidy provided in lieu thereof should be recovered and that the figure has been pointed out as Rs. 3713.49 crores and that if the interest is adjusted, the said amount would be recoverable/payable from/by the Government to the PSEB as per Section 29(5) of the Electricity Regulatory Commission Act, 1998. The PSEB has

stated that the R.E. Subsidy provided by the Government had been limited to interest on Government loans, which had been sanctioned upto 199798. The R.E. subsidy has been claimed at the rate of 15% of average capital base without limiting it to interest due on Government loans for the year 199899 onwards but the Government has not sanctioned the same so far.

34. The matter has also been taken up in respect of cost of supply and cross subsidy. The rationality of tariff, based on average cost of supply, has been questioned and it has been suggested that the tariff should be based on cost of supply to the consumers category wise and voltage wise. The PSEB has stated that the tariffs are required to reflect the average cost of supply of electricity by adhering to the principles provided in Section 29(2) of the Electricity Regulatory Commission Act, 1998 and Regulation 3(c) of Commissions Tariff Regulations. It has been projected that each utility is required to identify and eliminate the crosssubsidy and that all out efforts are being made toward the economic cost of supply. The figures have been projected that as per the proposal, the agricultural consumers are to be subjected to a tariff of Rs. 2/ Kwh or Rs. 240 Bhp P.M. so that the crosssubsidy is reduced from Rs. 3001.67 crores to Rs. 1303.10 crores. The Commission has observed that before moving to tariff based on cost of supply, the PSEB should improve its efficiency so that the average cost of supply is reduced.

35. The objectors/consumers have raised objections in respect of various other heads and that answers in respect thereof have been submitted by the PSEB, which have further been examined by the Commission and taken note of by the Commission. However, pointed objection has been raised in respect of annualisation and decisions on revenue requirements. The estimated energy sales have been taken as 22627 MU in the year 20022003. The sales have been taken into consideration category wise and the table in respect thereof reads as under :

Table. 6.1 : Estimated energy sales for 200203

Category

200001

200102(RE) 200203(Estimates)

(Actual) MU

% age

MU % age

MUs

Increase Increase

Domestic

4261

4332

1.67

4917

13.50

Nonresidential supply

962

979

1.77

1111

13.48

Public lighting

76

77

1.32

88

14.29

Agriculture

5535

5756

4.00

5986

4.00

Pump sets (AP Sets)

Small Power(Loads upto 20 KW)

661

673

1.82

764

13.52

Medium Supply (Loads above 20 KW upto 100 KW)

1195

1214

1.59

1379

13.59

Large Supply(Load above 100 KW)

6266

6371

1.68

7232

13.51

Bulk/Grid Supply

390

396

1.54

450

13.64

Subtotal

19346

19798

21927

Common Pool

51

60

340

Outside State Sales

795

360

360

Total :

20192

20218

22627"

36. It has been observed by the Commission that the figures contained in the aforesaid table have not been arrived at having been based on any scientific methods, such as, trend, end use, econometric or the combination of these methods. The apportionment has been made amongst the seven categories of consumers in the same percentage as has been based in the year 200001 and that the annual growth of agricultural Pump Sets has been taken as 4%.

37. The categorywise energy sales for the year 20022003 based on 10 years cumulative annual growth rate (CAGR) has been projected in the table, which reads as under :

"Table 6.2 : Categorywise Energy Sales for 200203 based on

10 year CAGR

Category

Ten year Projected Dema

CAGR (%)

(M

Domestic

10.64

4793

Nonresidential

11.78

1094

Public lighting

10.56

85

Small Power Supply

Medium Supply Large Supply

6.55

8799"

It has also been noticed that the alleged study of Punjab Agricultural University has also been taken into consideration so far as consumption of energy by agricultural Pump Sets is concerned. It is not discernible how far and how accurate such projection can be. As a comparison, the consumption in other States, like State of Haryana and other States as has been considered by the other State Electricity Regulatory Commissions, have also been taken into consideration by the Commission. Resultantly, it has been held by the Commission that for the purpose of consumption in respect of agricultural Pump Sets, the same is likely to be 1700 Kwh/KW as against 1930 Kwh/KW as adopted by the PSEB. De hors of this, it has been observed that the PSEB shall get a study conducted by an independent agency to arrive at realistic consumption by agricultural Pump Sets. The methodology proposed to be adhered to should be brought to the notice of the Commission and also the agency which is being engaged for the aforesaid pursuit. It has been observed that till the aforesaid report is received, the figure arrived at by the Commission shall be adhered to.

38. The Commission has approved energy sales of 21876 MU including common pool and outside sales as against 22627 MU projected by the PSEB in the ARR file. So far as transmission and distribution (T&D) losses are concerned, keeping in view the figures projected for the years 200001, 200102, the figures for the current year have been accepted by the Commission as 25.52% as against the claim of 27.52%. However, the CEA has indicated in their "Guidelines for reduction of transmission and distribution losses" that in a well designed system, the technical losses should be about 10 to 15%. This indication has been diluted on the premises that for reduction of such losses to the aforesaid percentage, it will take time and require considerable investment. Though, the Government has suggested that the losses should be restricted to 22.5%, it is not understandable as to how and on what basis, the Commission was arrived at the percentage of 25.52% for the current year. However, the PSEB has mooted out the proposal for undertaking a revised action plan for reduction of T&D losses during the next 5 years i.e., upto 200607 and that the said details accordingly shall be furnished to the Commission. It looks that there has not been a very serious discussion for examining the aspect of reduction of T&D losses despite the indication of CEA. The difference is quite a lot and if the indication is accepted, such loss can be saved to the extent of about 10.52% to 15.52%.

39. The energy input has also been examined by the Commission and the same has been approved as 29132 MU as against the projection given by the PSEB as 29743 MU. The table containing projection of energy production relating to the power stations does not reflect the projection capacity and at what efficiency level the same are run, meaning thereby the scope to achieve the efficiency level has neither been projected nor examined. Though while discussing, it has been noticed as to at what efficiency level all these power stations have been working but while keeping into consideration, the production from all sources, it has been noticed that the PSEB is generating 21816 MU from its own stations as against

the need pegged down to 29132 MU. Resultantly, the balance requirement of 7316 MU has to be arranged through new projects or from central generating stations or other sources. Thus, by way of purchasing the power, the cost is added on but nothing has been examined to upgrade the efficiency by the PSEB of its own power generating stations. If some measures are adopted, the shortfall can be reduced and which shall resultantly affect the costing accordingly.

40. Likewise, the cost at various points like fuel costs etc. also needs to be examined which would certainly affect the costing once all over again. It has been admitted that there is no specific norm for transit loss and that the Commission has approved the transit loss of coal at 3%. Though, the PSEB has been directed to take effective steps to reduce the transit loss but in what manner and under what methodology the same can be achieved. The Commission and so also the PSEB are silent in this regard. An expert advise for transportation could have been obtained but nothing of the kind has been mentioned nor observed. The aforestated percentage would again affect the costing immensely.

41. It has been noticed that the PSEB has been required to deposit surcharge of 15% on railway freight and that the same could be and should be avoided and such unnecessary costs can provide a cushion for reduction in costing. The Commission has categorically disallowed the inclusion of the surcharge upon the cost of the coal and it has been observed that the PSEB must deposit the amount with railways and avoid the yearly surcharge amounting to about Rs. 170 crores. Such like acts need be examined in the total functioning of the PSEB while generating power. However, in the entire projection, nothing has been seen as to what effort is being made by the PSEB for reducing the cost by way of sale of the coal dust, which is presumably used by the Cement producing units and likewise the disposal of the oil after it has lost its density, such oil is repurchased by the units for upgrading the density to be used at lesser efficient units as per the density required by them. Such act would affect beneficially the costing. This aspect was also required to be considered by the Commission and so also the PSEB.

42. So far as the percentage of capitalisation of employees costs is concerned, the Commission has taken a liberal view in allowing the employees costs at the current level on the condition that PSEB shall put the man power to optimum utilisation, identify the surplus staff and redeploy them after proper training in the areas of customer service, such as meter reading and billing and revenue utilisation for attending customers complaints promptly so as to provide better service to consumers. However, neither the PSEB nor the Commission has examined as to how much man power is principally and technically required for running the unit, in the present times of computerisation, the cost of man power can be reduced considerably. There is no direction by the Commission to examine this aspect for reducing the cost accordingly, though the PSEB has projected that the employees cost has been steadily showing an upward trend whereas the

effort is required to reduce such cost. It depends upon the utilisation of the employee in a manner so that it may cut down the cost accordingly.

43. The State Government loans have been referred and the interest accrued thereon have been reflected for the current year to the extent of Rs. 571 crores, whereas the sales have been accepted by the Commission as Rs. 553.88 crores against the outstanding of the Government as Rs. 4537.52 crores and that the additional loan drawing during the year 200102 has been Rs. 18.85 crores. The PSEB has claimed an amount of Rs. 197.90 crores, the interest to be capitalised in the current year i.e. 200203.

44. The objections have been put forth before the Commission that the burden of interest cannot be passed on to the consumers and that the subsidy payable by the Government, if it is set off against the loan amount, the interest figure would come down drastically. It is further contended that if the diversion of funds from the capital account is made to meet revenue deficit, burden of interest shall also be corelatively affected. This principle has not been spelt out mathematically and that the exact amount can be worked out but since no such exercise seems to have been carried out and no date having been made available to the Commission, the interest burden has been allowed to be passed on to the consumers for the current year. In any case, the matter has been left open by the Commission for the next year after the requisite information is obtained by the PSEB. One suggestion has also been mooted out that the loan should be rescheduled keeping in view the subsidy and after restructuring, the interest burden could be made much lighter to be consumable by the PSEB. The fall in the rate of interest all over has not been examined and if this fact is taken into consideration, the high cost of borrowings would become replaceable and the liability shall also lighten accordingly. Though, the Commission has made an observation that the PSEB should explore the possibility of rescheduling their loans and negotiate with financial institutions for the purpose of reducing the interest liability.

45. Another aspect which has been dealt with is in respect of the return upon the net fixed assets (NFA). This needs still better probing in view of the statutory applicability in allowing return on net fixed assets i.e. its stipulation under Section 59 of the Act that minimum of 3% return on Net Fixed Assets should be taken into consideration. If this fact is examined in the right and correct perspective, the liabilities may be diluted accordingly.

46. The PSEB had been declared as body corporate with a capital of Rs. 5 crores way back in the year 1967. Over the years, the total State Government equity in the PSEB has now come to be Rs. 2086.11 crores. The Government is demanding 16% return on the capital in the form of equity. Considering the pros and cons, the PSEB has included Rs. 337 crores towards 12% return on equity in the ARR. This burden again has been passed on to the consumers. It has been contended by the objectors that there is no provision under the Act or the rules for recovery of return on the equity in the PSEB. The equity is payable as dividend and that

too out of the next surplus and not over and above or in addition to the surplus. The Commission has therefore declined the aforesaid, however, in favour of the State Government.

47. It is contended that for providing a cushion for the PSEB, it shall be equitable if the loan amount is further converted into equity and that the subsidy agreed to be paid by the Government is paid to clip off the liabilities so that the interest factor is completely wiped out. It is suggested that the mathematical exercise once again needs to be carried out so that minimal of the burden is passed on to the consumers and that the balance has to be maintained so that the PSEB is not required to put in extra weight to maintain the equilibrium. It has also been argued that with better orientations, the burdens can be spread out in a manner that the final figure passed on may not be such, which may give a throb to the consumer, thus, causing explosion in the blood vessels.

48. The tariff proposed by the PSEB to meet the annual revenue requirement (ARR) for the current year is that the previous tariff be increased to the extent of 25 to 47%. However, at the current tariff rate, the revenue input is admittedly Rs. 5239.18 crores as against the requirement of Rs. 7857.78 crores. Thus, the gap of Rs. 2618.60 crores is proposed to be recovered and the tariff needs to be hiked out accordingly. The PSEB has suggested a tariff of Rs. 2/ per Kwh or Rs. 240 per Bhp/P.M. for agricultural pump sets against free power supply at present. It has also been proposed that the rate for MS and LS Consumers i.e., for loads above 20 Kwh be made uniform. It is further suggested that there should be no free power supply to Scheduled Caste Consumers.

49. The Commission while fixing the tariff has taken into consideration the advantages and disadvantages of various methodologies propounded by the objectors, the PSEB and the Government of Punjab. Infact the Commission has been asked to play the pivotal role in balancing the interest of the utility as well consumers. The two objects which have been spelt out by the Commissioner and which have been kept in mind are as under :

- i) Rationalisation of tariff structure moving closely to average cost of supply;
- ii) Avoidance of theft causing increase in tariffs.

The Commission proposed to consider introduction of two levels of tariff for LS and MS industrial consumers from the next tariff revision after considering the implementation of methodology in consultation with PSEB. In the meanwhile, PSEB has been directed to submit required data, such as, contract demand etc. to facilitate introduction of two level tariff.

50. The cost of supply and cross subsidy have been examined by the Commission and it has been observed that all consumer categories must pay the cost of supply of electricity and that there should be no crosssubsidisation. However, it has been further observed that the cross subsidies should be phased out with the resultant effect that the tariff should come down. The endeavour has been

expressed to bring the tariff of all categories of consumers close to the cost of supply as far as possible. The socioeconomic and political reasons behind the cross subsidies have not been observed to be done away with, resultantly, phasing out the crosssubsidies would have to be taken care of gradually. The Commission has admitted that giving of any tariff shock by way of unusual high increase in the tariff by allowing the passing of shortfall of the subsidies to specified consumer categories should be avoided. The Commission has assumed that in the current year, the Government subsidy would be made available so that the actual tariff payable by the particular category of consumers becomes less.

51. The introduction of duration of time of use in the specified hours or date (TOD) with differential rates of tariff in the peak power and night power, has not been accepted directly. The PSEB has been directed to study the feasibility of implementation of TOD meters and make a report available within three months.

52. So far as rebates for power supply on higher voltage and for higher power factor are concerned, the PSEB has been directed to assess the economics for serving the consumers accordingly, keeping in mind the cost benefit. Examination notice record has been deferred to the next tariff orders.

53. The transmission and distribution losses and reduction thereof in the next five years has been directed to be examined by the PSEB and submit a revised action plan for energy audit and side by side it has been observed that the investments required for such action plan should also be disclosed accordingly and that the entire exercise should be carried out within three months.

54. The agricultural tariff has been examined by the Commission and it has been observed that there is no option that like all other consumers of electricity, the AP set users should also be made liable to pay appropriate tariff for the use of power. If the A.P. Set Users are asking for improvement in quality and availability of power supply, they must pay for services rendered. The Commission has accepted the proposal of the PSEB and has taken a decision that a tariff of Rs. 2/ per unit and 212 per Bhp per month with again Rs. 240 Bhp per month worked out by the Board for A.P. Set Users would be leviable. The flat rate system has been expected to be replaced by universal metering for A.P. Sets, no doubt such transition would take time. Resultantly, the PSEB has been directed to prepare the plan for gradual shift from the average rate system to meter supply system. The interest of the A.P. Set users has been expressed by the Commission in so many words that the tariff payable by such users would be rather low as a result of Government subsidy but a word of caution has also been mentioned that the quality of power supply to A.P. Set Users should be regular, equitable and good, failing which the Commission might have to work out formula for appropriate fixation for the A.P. Set users. In this eventuality, the burden shall have to be shared by the utility and the other consumers.

55. The Commission while deciding the tariff structure of the supply of electricity,

kept in view the two factors:

- (i) Average cost of supply;
- (ii) The revenue deficits expected with reference to existing tariffs;

56. The cost of supply required to be finalised by the Commission is one of the basic parameters which is dependent upon various combinations added for arriving at the said figure. The revenue gap is determined by working out the difference between the revenue from existing tariff and the admissible items of expenditure. To bridge the gap between the two, the increase in the tariff has to be worked out accordingly. Thus, keeping in view the said factors, the subsidising categories of consumers have been subjected to increase in the tariff by 8% only. The tariff for subsidised categories has been required to be increased by 11%. The cumulative effect of both the increases would help to reduce the levels of cross subsidisation.

In this regard, the exact projection by the Commission needs to be noticed as has been mentioned in the order, which reads as under :

"7.3 Tariffs.

Two main factors for deciding the tariff structure of the supply of electricity, are the average cost of supply and the revenue deficit expected with reference to existing tariffs. The cost of supply as finalised by the Commission is one of the basic parameters, as tariffs for all consumer categories are to progressively reflect the cost of supply of electricity as clearly laid down under Section 29(2)(c) of the ERC Act, 1998. Expected revenue from each consumer category is calculated by multiplying the quantum of electricity supplied to each consumer category with the average cost of supply. Its variance from the revenues expected with reference to existing tariffs indicates the cross subsidy made available or the cross subsidy received as the case may be.

The revenue gap is determined by working out the difference between the revenue from existing tariffs and the admissible items of expenditure. The revenue gap thus worked out by the Commission is used to determine the overall average increase in tariff required. For the current year, this works out to about 10% on the existing tariffs after excluding revenue of Rs. 1047 crore expected from agriculture. As the tariffs need to progressively reflect the cost of supply of electricity under Section 29(2)(c) of the ERC Act, 1998, the consumer classes were divided into two groups one, those consumer categories which are subsidizing (by already paying more than the new average cost of supply) the other categories and two, consumer categories which are being subsidized as they are paying less than the new average cost of supply. It has, therefore, been decided that the tariffs for the subsidizing categories of consumers be increased by 8% only and the tariffs for subsidized categories be increased by 11%. This would help to reduce the levels of cross subsidization in the proposed tariffs of the Commission.

Based on above, categorywise sale of energy and expected revenues as per the existing tariff and the new tariffs approved by the Commission are depicted in Table 7.2.

Table 7.2 also indicates the variance between the revenue expected from each category of consumers with reference to average cost of supply and the revenue with tariff as determined by the Commission. It will be seen therefrom that while a cross subsidy of Rs. 392.93 crores is available, a cross subsidy of Rs. 1043.04 crores is required. It may be indicated that in the table 7.2 for calculating revenue from existing tariff as well as proposed tariff, the revenue expected from various charges such as MMC, PLEC, Peak Load Violations etc. has been excluded. The Commission has assessed that these charges will total upto Rs. 227 crores both for existing tariff as well as for proposed tariff. There is no dependable basis for these calculations as no detailed data has been supplied by the Board and the Commission has thus taken these as approximation. Furthermore, nontariff income has been assessed at Rs. 462 crores. For all practical purpose, these amounts will be regarded as total amount available for crosssubsidization even though in a very strict interpretation thus may not be fully warranted. Therefore, the aggregated amount available for cross subsidization will be 1081.93 crores (Rs. 392.93 + Rs. 462 + Rs. 227 crores). As against this, the amount required for cross subsidization is Rs. 1043.04. After allocating crosssubsidy to each consumer category to the extent necessary to bring the income from that consumer class upto the level of expected revenue from that consumer category as worked out on the basis of average cost, a net surplus of Rs. 38.89 becomes available.

In view of the acute cash deficit being faced by the Board, the Commission decides to allow this surplus to be retained by the Board."

57. The tariffs payable in respect of the existing tariff, the proposed tariff by the PSEB and the tariff approved by the Commission also requires to be noticed which reads as under :

Table 7.3

Existing Tariff, Tariff as Proposed by PSEB and Tariff as approved by the Commission

Existing Tariff

Tariff proposed by PSEB

Tariff approved

Sl. No.

Category of Consumers

Energy Rate P/Kwh

MMC Rs./KW or part thereof

Energy Rate P/Kwh

MMC Rs./KW or part thereof

by the Commission (Energy Rate P/Kwh).

A)

PERMANENT SUPPLY

1)

Domestic Supply

a)

Upto 100 Units

161

200

179

b)

101 to 300 units

271

35

340

44

301

c)

Above 300 units

301

380

334

2)

Non Residential

361

125

455

157

390

3)

Public lighting

361

As per 8 hrs/day

455

As per 8 hrs/day

390

4)

Irrigation tube wells

Free

N.A.

200(metered) or Rs. 240/ BHP/month

Rs. 240/BHP/ month

i) Without Govt. subsidy 200 P/Kwh or Rs. 212/BHP/Month ii) With Govt. subsidy 57 P/Kwh or Rs. 60 /BHP/Month

5)

Industrial supply

a)

Small power

261

100

366

140

290

b)

Medium Supply

296

135

436

190

329

c)

Large supply

i)

General Industry

317

135

436

190

342

ii)

PIU

317

370

436

510

342

iii)

Arc Furnace

317

350

436

485

342

6)

Bulk Supply

HT

326

200/KVA

410

250/KVA

352

LT

346

200/KW

425

250/KW

374

Avg. 336

Avg. 417.5

Avg. 363

7)

Railway traction

411

200/KVA

515

250/KVA

444

8)

Outside state

225

NA

225

NP

225

B)

SEASONAL INDUSTRY : COTTON GINNING, PRESSING AND BAILING PLANT, RICE SHELLERS/HULLER MILLS, RICE BRAN STABILIZATION UNITS (WITHOUT T.G. SETS) (SP, MS, LS)

a)

During season (1st Sept. to 31st May) next year

Relevant industrial tariff A(5)

Rs. 370/KW

Relevant industrial tariff A(5)

555/kW

Relevant industrial tariff as per A(5)

b)

Off season

SP

311

NA

435

NA

SP 345

MS

346

500

MS 384

LS

366

500

LS 395

C)

ICE FACTORY & ICE CANDIES AND COLD STORAGE

a)

season (April to July)

SP

261

366

Rs. 750/
SP 290
MS
296
Rs. 500/KW
436
KW
MS 329
LS
317 (April to July)
436
(April to July)
LS 342
b)
Off season
SP
do
100/KW
do
140/KW
do
MS
do
135/KW
do
190/KW
do
LS
do
135/KW

do

190/KW

do

D)

GOLDEN TEMPLE, AMRITSAR

a)

First 2000 Units

Free

NA

Free

NA

Free

b)

Beyond 2000 Units

222

NA

299

NA

246

E)

TEMPORARY SUPPLY

i)

Domestic

496

Rs. 500 or Rs. 100/KW whichever is higher

620

Rs. 625 or Rs. 125/KW whichever is higher

546

ii)

NRS

496

Rs. 1000 or Rs. 250/kW whichever higher

620

Rs. 1250 or Rs. 312/kW whichever is higher

546

iii)

Industrial (SP, MS and LS)

Existing rate for permanent supply as at A(5) + 100%

Rs. 400/kW of sanctioned load

As per tariff proposed of A(5) above for permanent supply + 100%

Rs. 600/kW of sanctioned load

As per tariff approved at A(5) above for permanent supply + 100%

iv)

Wheat thrasher

do

do

do

do

do

v)

Fairs, exhibition and Melas Congregations

Bulk supply tariff at A(6) + 50%

Rs. 4000 per service

Bulk supply tariff at A(6) + 50%

Rs. 5000/ per service

Bulk supply tariff at A(6) + 50%

vi)

Touring Cinemas

a)

Light and Fans

a) 496

For a) and (b) Rs. 1000 or

a) 620

For (a) and (b) Rs. 1500 or

b)

Motive load

b) Existing rate for Industrial permanent supply as at A(5) + 100%

Rs. 250/kW of sanctioned load whichever is higher

b) As per tariff proposal for industry as at A(5) + 100%

Rs. 375/kW of sanctioned load whichever is higher

Existing rate for industrial permanent supply as at A(5) + 100%.

* The Monthly Minimum Charges are being retained at the current level for all categories.

** Domestic consumers belonging to SC category, with connected load upto 300 Watts, will be given 50 units of free power per month as per provision of Government subsidy.

*** In the case of categories following under E(i)(ii)(via), a uniform increase of 10% has been allowed.

The Commission asked for the comments of Government of Punjab in respect of its willingness to extend subsidy to A.P. Set Users and domestic categories. The Government has given the answer vide D.O.No. 4(1)21/23FE4/7325 dated 29.8.2002/2.9.2002 by expressing the view as under :

"a) The State Government would be in a position to extend a subsidy to the tune of about Rs. 800 crores during the current year to the PSEB which includes retention of electricity duty by the PSEB and adjustment of interest due to the State Government by the PSEB.

b) The subsidy being extended by the State Government may be allocated to the agricultural power consumer and domestic consumers belonging to the Scheduled Castes to whom the Government has decided to give 100 units of free power per billing cycle, subject to a ceiling of 300 Watts."

58. It may be noticed that the Commission has approved the interest payable by the PSEB on Government loans at Rs. 553.88 crores, resultantly, the balance amount of Rs. 246.12 crores has been allowed to be paid to the PSEB by way of retention of electricity duty and that in face of shortfall, it has been directed that the Government should pay the same in cash. All these payments are to be adjusted/to be payable within the current financial year. In view of the aforesaid

amount having been accepted as payable by way of subsidy, the relief claimed in respect of agricultural power consumers, domestic consumers belonging to Scheduled Castes has been accepted accordingly. The entire mathematics has been worked out and it has been held that the tariff chargeable from A.P. Set Users from 60 Bhp. P.M. for unmetered supply and/or 57 paise per unit for metered supply.

59. The effective date of current tariff chargeable has been defined as August 1, 2002 by relaxing Regulation 11 of the Tariff Regulation of the Commission. The theory of annualisation has been approved and accepted as the entire figure work has been taken note of at the time of commencing of the claim propounded by the PSEB. However, in case, Government decides to charge the agricultural power consumer from a future date than from the date to be decided by the Commission, the Government would be willing to suitably subsidise the PSEB in this account as well. The said occurrence has been received from the Government by the Commission vide letter No. 4(1)21/023FE IV/Spl2 dated 4.9.2002.

60. The Commission has spelt out in a chart the approved rates of increase due to annualisation of tariff made operative for the current financial year i.e., upto 31.3.2003 which would automatically lapse with effect from 1.4.2003 and thereafter, the rates approved by the Commission shall be applicable. The table reads as under :

Table 7.4

Tariff approved by the Commission without Annualisation and after Annualisation

Table 7.4

Tariff approved by the Commission without Annualisation and after Annualisation

Sl. No.

Category of Consumers

Tariff approved by the Commission without annualisation (Energy Rate P/Kwh)*

Tariff after Annualisation (P/Kwh)*

A)

Permanent Supply

1)

Domestic Supply**

a)

Upto 100 Units

179

188

b)

101 to 300 units

301

316

c)

Above 300 units

334

351

2)

Non Residential

390

405

3)

Public lighting

390

405

4)

Irrigation tubewells

i) Without Govt. subsidy 200 Ps/Kwh or Rs. 212/BHP/Month As given in para 7.3.8

ii) With Govt. subsidy 57 Ps/Kwh or Rs. 60/BHP/Month

5)

Industrial supply

a)

Small power

290

305

b)

Medium Supply

329

346

c)

Large supply

i)

General Industry

342

355

ii)

PIU

342

355

iii)

Arc Furnace

342

355

6)

Bulk Supply

HT

352

365

LT

374

388

Avg. 363

Avg. 376.5

7)

Railway traction

444

461

8)

Outside state

225

225

B)

SEASONAL INDUSTRY : COTTON GINNING, PRESSING AND BAILING PLANT, RICE SHELLERS/ HULLER MILLS, RICE BRAN STABILIZATION UNITS (WITHOUT T.G. SETS) (SP, MS, LS)

a)

During season (1st Sept. to 31st May) next year

Relevant Industrial tariff as per A(5)

Relevant industrial tariff as per A(5) approved by the Commission

b)

Off season

SP

SP 345

362

MS

MS 384

403

LS

LS 395

410

Sl. No.

Category of consumers

Tariff approved by the Commission (Energy Rate P/Kwh)*

Tariff after Annualisation

C)

ICE FACTORY & ICE CANDIES AND COLD STORAGE

a)

season (April to July)

SP

SP 290

305

MS

MS 329

346

LS

LS 342

355

b)

Off season

SP

do

do

MS

do

do

LS

do

do

D)

GOLDEN TEMPLE, AMRITSAR

a)

First 2000 Units

Free

Free

b)

Beyond 2000 Units

246

258

E)

TEMPORARY SUPPLY

i)

Domestic

546

571

ii)

NRS

546

571

iii)

Industrial (SP, ML and LS)

As per tariff approved at A(5) above for permanent supply + 100%

As per tariff approved at A(5) above for permanent supply + 100%

iv)

Wheat thrasher

do

do

v)

Fairs, exhibition and Melas Congregations

Bulk supply tariff at A(6) + 50%

Bulk supply tariff as at A(6) + 50% approved by the commission.

vi)

Touring Cinemas

a)

Light and Fans

546

571

b)

Motive load

Existing rate for Industrial permanent supply as at A(5) + 100%

Existing rate for industrial permanent supply as at A(5) + 100% approved by the Commission

*The Monthly Minimum Charges are being retained at the current level for all categories.

** Domestic consumers belonging to SC category, with connected load upto 300 Watts, will be given 50 units of free power per month as per provision of Government subsidy.

61. The rigor of annualisation has not been applied so far as A.P. Set Users are concerned in view of the fact that the Government has consented to extend full subsidy to neutralise the effect in the case of A.P. Set users. Resultantly, the Commission has directed that the additional subsidy shall be payable by the Government in this account to the extent of Rs. 100 crores which shall be paid in equal monthly instalments starting from 2.10.2002 and that this has been directed to be paid in addition to the subsidy of Rs. 800 crores.

62. The Commission has noticed the complacency on the part of the PSEB and it has been observed that the Annual Revenue Requirement (ARR) of the next year should be filed by the Commission latest by 30.11.2002 so that there is enough time to examine and annualise the same and the increase, if any, should be made effective for the whole year without substantial retrospective effect.

63. The Commission has also examined the figures reflected in the balance sheet of the PSEB and especially in respect of unpaid rural electricity subsidy (RE) from the Government and that this has been made as a device to meet the assessed gap of liabilities noticed in the balance sheet. The aggregate claim for RE subsidy is of 3607.78 crores. The stand of the Government has been that it shall pay RE subsidy only upto the amount equal to the interest due from PSEB upon the loans taken. Resultantly, the accumulated amount has been reflected as Rs. 3355.00 crores. The figure reflected as Rs. 3616.39 has been accepted as a more realistic picture about the real accumulated losses of the PSEB as on 31.3.2002. In this regard, the observation of the Commission needs to be noticed which reads as under:

"xxx xxxx xxxx xxxx x

On sound accounting and business principles, interest burden of expenditure not prudently incurred is not chargeable to Revenues. Similar would be the position of the excessive cost (by way of interest rates above the normal rates) of the debt raised even for legitimate capital works. These costs cannot be passed on to the consumers, year after year. Considering the extremely poor financial status of the Board and total inability of the Government of Punjab to extend any subvention to the Board, over and above the subsidy for the sake of AP set

users, the Commission has no option but to make a one time exception and to request the consumers to bear the cross for this year. The State Government may disclaim responsibility for the faulty policies of the PSEB in the past but as the owner of the PSEB and as the custodian of the interests of the people in general, the Government cannot escape the consequences of the situation. It has to accept its duty to save and nurse the PSEB, which is one of the most vital institutions on which the health of the economy and the well being of all the people depends.

xxxxx xxxxx xxxxxx xxxxx xxxxxx"

64. The Commission has also noticed the heavy costs which had to be incurred by the Government on account of inordinate delay in completion of the projects, such as Shahpur Kandi Project, Ranjit Sagar Dam Project and resultantly, generation of energy for the PSEB, which had been found to be far below the rated capacity. As a result thereof, the PSEB has to bear the burden of interest costs of the entire debt burden and repayment liabilities thereon. This approach of the PSEB, by virtue of which the unnecessary liabilities have been allowed to be accumulated, such kind of losses cannot be allowed to be passed on to the consumers. Resultantly, the electricity consumers have therefore rightly claimed that they are being subjected to pay unjustified costs on account of

(i) unfairly large debts transferred to PSEB, even when the Ranjit Sagar Dam project cannot be said to be a complete project till the completion of Shahpur Kandi Project.

(ii) Higher depreciation and ROR (Rate of return) charges on grossly over valued assets. Sufficient force has been found in this contention but the conclusion has been left open.

65. The Commission has issued certain directives to the PSEB but it is not explicit as to whether the same are enforceable or only advisory in nature.

66. Learned counsel for the respective appellants have addressed arguments and in the first instance, the contentions have been submitted by Mr. M.L. Sarin, Sr. Advocate, who has right in the beginning conceded that the fixation of costs is not being challenged. However, it has been contended that the tariff should be fixed on commercial basis, i.e., most of the appellants are from the subsidising category and that pointed objections are :

The shortfall for bridging the gap of the revenue should not be passed on to the appellants.

67. The tariff wherever it has been subsidised at the asking of the Government of Punjab and the promise having been made to pay the subsidy accordingly and the same having not been paid. Resultantly, the losses having been suffered, such as : the burden of interest, nonutilisation of capital, which components have contributed in widening the gap between current revenue receipts and the current expenditure. The cumulative effect of which has been passed on to the

subsidising category of consumers by way of increasing the tariff. The subsidy which has been reflected in the balance sheet and which has been admitted by the Government, if had been paid at the relevant time and the loan liability had been clipped off accordingly, the rigor of interest would be much less and the revenue gap would have also decreased automatically, as a result thereof, the fixation of tariff figure could have been different.

68. The second contention is that the accumulation of liability in non completion of the dams, such as Ranjit Sagar Dam and Shahpur Kandi Project within the timeframe and the projection of power accordingly, could have enhanced the earning figure of the PSEB, the revenue and expenditure gap would have been much less. The Commission has admitted that such kind of liabilities cannot be allowed to be passed on to the electricity consumers, despite holding as above, the logical conclusion has not been reflected by the Commission and accordingly benefit accruable therefrom to the electricity consumers, has not been passed on. If this fact is taken into consideration, the revenue gap shall get reduced automatically to considerable extent and resultantly, the fixation of tariff would also have to undergo the change.

69. The third contention is that the Commission has erred in applying the rule of annualisation. It has been statutorily provided as to in what time frame, the PSEB has been required to make submissions to the Commission for determination of the tariff, so that each consumer and especially the subsidising consumers are able to spell out and synchronise their budget vis a vis electricity consumption. No such opportunity has been made available to the subsidising consumers, thus, by applying the principle of annualisation, the total liability payable in one year has been passed on to such consumers, which is absolutely unfair and violative of the rule of equivalence. The Commission itself has observed that the PSEB ought to reflect and file the ARR (Annual revenue requirement) for the next year latest by the end of November so that enough time is made available to annualise and follow the procedures laid down for issuing the orders of revision of tariff, so that the same is made effective comfortably for the whole year without being asked to adhere to the unequivocal rule of retrospective effect. The rule of annualisation has come in as a rude shock for the subsidising consumers and so also others. It does require to be noticed that the A.P. Set Users have been exempted from the rule of annualisation and the Government has been allowed to pay the subsidy in respect thereof amounting to Rs. 100 crores in monthly instalments and at the same time, the monthly instalment has not been spelt out, whereas the other consumers have not been treated at par and that the rule of annualisation has been applied accordingly. The consumers have not been treated equally as has been established from admitted facts. Resultantly, the rule of annualisation, as applied by the Commission is directly hit by the right to equality as enshrined under the Constitution. Applicability of rule of annualisation would effect the financial set up of the consumers because like the Government, the PSEB and the A.P. Set Users, the other consumers also require time to frame up their policies to bear such

kind of burden.

70. It has been further argued that so far as payment of subsidy by the Government to the extent of Rs. 800 crores is concerned, the same has been projected by way of mathematical calculations only, whereas, the effect of nonpayment of subsidies in all these years, which have been reflected in the balance sheet of PSEB and which have also been noticed by the Commission, the nonpayment thereof and the resultant effect of interest, is a major component for widening the revenue gap and for hiking the tariffs accordingly.

71. It has also been argued that so far as capitalisation is concerned and the return thereon the normal rule of sharing of profit has not been applied and that the rate of return has been defined as so much of percentage by way of invocation of power under Section 59 of the Act. The rate has been projected by the Commission but no basis in respect thereof has been discussed or has been mentioned in the order. Thus, creation of such liability is not justified and the same would always widen the revenue gap so far as PSEB is concerned and that every time, the same shall be passed on to the subsidising consumers. This aspect needs consideration as to how and in what manner, the power has been exercised under Section 59 of the Act while defining the rate of return upon the capitalisation accepted in favour of the Government.

72. Learned counsel has drawn my attention to the table projecting the tariff approved by the Commission without annualisation and after annualisation which has already been reproduced here above. It is pointed out that without annualisation, the rate has been reflected as Rs. 342/ and nonannualisation, the same has been projected as Rs. 355/ so far as the power intensive units are concerned. It may be seen that from existing tariff rates i.e., Rs. 317/, the approved tariff rate by the Commission is Rs. 342/, thus in what manner, by way of annualisation, it has been further subjected to increase of 13 paise and making it to Rs. 355/. No mathematical calculation nor any observation has been made by the Commission in this regard.

73. It has been further contended that the Commission can exercise its power for determination of tariff only within the framework provided by the Legislature under section 29 of the ERC Act (which has already been reproduced hereabove). A pointed reference has been made to subclause (c) of subsection 2 that the tariff should reflect progressively, the cost of supply of electricity at a declared and improving level of efficiency. The perusal of the order of the Commission does not reflect the aforesaid ingredients as the cost of supply of electricity has not been discussed at all. The endeavour has been made only to make up the revenue gap.

74. Further, the reference has been made to subclause (e) specifically pointing out that the interest of the consumers are to be safeguarded as they are required to pay for the use of electricity in a reasonable manner based on the average cost of supply of energy. The reasonableness of the average cost of

supply of energy has neither been disclosed by the PSEB nor has been examined by the Commission. Reference has also been made to subclause (f) to the effect that the electricity generation, transmission, distribution and supply are to be conducted on commercial principles. Admittedly, the transmission and distribution losses have neither been spelt out technically and mathematically nor they have been based upon the commercial principles. It has not been answered as to at what efficiency level, the projects are running for generating electricity. It is the common principle under the rule of commerce that if the project runs at its optimum efficiency and the consumption is equivalent, the cost would certainly come down as the entire mathematics would change so far as the fixed costs are concerned. This aspect has neither been dealt with nor has been examined by the Commission in the right and correct perspective. However, a direction has been issued to the PSEB to submit a report in respect of the transmission and distribution losses because the only answer which has been given by the PSEB is that some extra cost has to be incurred for reducing the distribution and transmission losses. Is it not required to take into consideration all such expenditures when the detailed project reports are prepared by the utility ? In this regard, the detailed project reports have not been discussed nor have been projected by the PSEB. It is strange, the power production comes into existence and that the effect of transmission and distribution losses are being examined by the authority, which has to determine the rate of tariff to be charged from the electricity consumers. Is it justifiable that such losses suffered on account of the lapse on the PSEB should be passed on to the electricity consumers ? The Commission has made an observation while considering the liability suffered on account of delay on completion of Ranjit Sagar Dam Project and in noncompletion of Shahpur Kandi Project as yet, it has been categorically observed by the Commission that such kind of liabilities cannot be passed on to the electricity consumers. If the said terminology and analogy is applied to the losses which have been suffered on account of transmission and distribution, the PSEB is not entitled to pass on such losses to the electricity consumers. Is it a commercial and a business like approach of the PSEB, which has been required to be followed statutorily as has been noticed above.

75. It has been further argued that a restraint has been imposed upon the Commission that while determining the tariff under the Act, no undue preference to any consumers of electricity shall be shown. However, the differentiation can be made only on account of load factor, power factor, total consumption of energy during any specified period or the time at which the supply is required and or the geographical position of any area, the nature of supply and the purpose for which the supply is required. If for argument sake, the A.P. Set Users can be read into the category of subsection (3) of Section 29 of the ERC Act as aforestated, the same requires to be subsidised by the Government as the same would reflect the political policy vis a vis satisfaction of the consumers. The Government has been obligated to pay the subsidy in respect of such consumers or class of consumers. A reference has been made to subsection (5) of Section

29 of the ERC Act, wherein it has been specifically provided that if the tariff determined by the State Commission is sought to be subsidised in favour of any consumer or class of consumers, the State Government shall pay the amount to compensate the person affected by the grant of subsidy in the manner of State Commission may direct. Can the Commission give a direction which may run counter to the interest of another set of consumers ? The Government has been allowed to pay the subsidy in respect of A.P. Set Users to the extent of Rs. 100 crores only to overcome the direction that instead of charging the flat rate, the metered bills shall be adhered to but this subsidy has been allowed to be paid month wise without defining the quantum. But in the first instance can such a consumer be exempted by the Commission in the wake of subsidy, whereas the other consumers have been directed to pay the rate after annualisation. This kind of exercise of power by the Commission has neither been justified nor justifiable.

76. Mr. Ashok Aggarwal, Senior Advocate, appearing for the appellant in F.A.O. No. 5243 of 2002 has adopted substantial part of the arguments addressed by Mr. M.L. Sarin, Sr. Advocate. However, he has not accepted the average cost derived at by the respondents. His thrust of the argument has been addressed under various heads.

77. In the first instance, it has been argued that the line losses which are suffered on account of thefts and which have been restricted to 22.5% by Government of Punjab have been allowed to the extent of 25.52% by the Commission. If the Board acts with appropriate vigilance such kind of losses can be reduced or eliminated. The loss suffered on account thereof by the PSEB cannot be passed on to different consumers and that the lapse on the part of the PSEB cannot be allowed to be made good from the heads of the consumers. Similar is the situation so far as technical losses are concerned which are defined as "Transmission and Distribution Losses", this again is on account of the lapse on the part of the Board as the same can be minimised and ought to be minimised if the Board acts in an efficient manner by deployment of appropriate equipments to cut out such kind of losses. It shall be appropriate to notice that such losses have been claimed to the extent of 27.52% but the same have been allowed to the extent of 25.52% (200102) and for the year 200203, Transmission and Distribution Losses have been given as 24.50% but the Commission has taken the same as 25.52%. However, it is not understandable as to how 25.52% has been calculated and that this loss has also been passed on to the specified consumers but the other consumers like general consumers and the agricultural consumers have been exempted from such load.

78. The average cost which has been taken as Rs. 3.11 is also not justified as the Government of Punjab has not made the subsidy available to the Board which could be utilised for setting off the amount payable by the Board and resultantly, the interest factor suffered could have been eliminated. Apart from this, the PSEB has borrowed money upon a rate of interest which is not justifiable. The tabulated form of the figure shows that the Government of Punjab has to pay

subsidy to the extent of Rs. 3555 crores and that this figure is far too excessive in destabilising the average cost determined by the Board as against the outstandings. The PSEB has claimed Rs. 571 crores towards interest on the loans for the year 20022003. Charging of interest is unjustifiable if the recovery of the subsidy is made accordingly. The interest has widened the gap between the expected revenue and the revenue required from the sale of power. The tabulated form of both the figures has been given as under :

Table 6.34 : Revenue Requirement, Revenue Gap and average cost of supply as claimed by PSEB/as suggested by Government of Punjab and as determined by the Commission.

Sl. No.

Item of expenses

As claimed by PSEB @

As Suggested by Govt. of Punjab

Approved by the Commission

1.

Cost of Fuel

1988.98

1957.16

1936.33

2.

Cost of Power purchase

1556.16

910.13

1318.80

3.

O&M Expenditure

215.00

215.00

206.00

4.

Employees Costs

1316.50

1123.83

1250.13

5.

Administrative and General Charges

47.00

47.00

37.0

6.

a) Interest Charges

1500.30

1184.83

1307.55

b) Finance Charges

40.00

40.00

25.00

7.

Interest Capitalized

197.90

156.29

165.92

8.

Depreciation

829.80@

659.55

659.55

9.

Return of Equity

337.00

10.

Surplus required (3% return on NFA)

224.94

228.70

11.

Total Revenue Requirement

7857.78@

5981.20

6803.14

12.

Less other income (Nontariff income)

420.00

420.00

462.00

13.

Revenue Requirement from Sale of Power

7437.78@

5561.20

6341.14

14.

Revenue expected at current tariff

4819.18

4919.18

4919.18

15.

Gap (1314)

2618.60@

642.02

1421.96

16.

Energy sales

22347

21200

21876

17.

Average cost of supply (11/16)

351.63

282.15

310.99

Thus, for bridging the gap, the average cost of supply as suggested by PSEB is Rs. 351.63 as against the suggested rate by the Government i.e. Rs. 282.15. The rate approved by the Commission is Rs. 310.99. As per the argument of the counsel, the aforesaid figures are mainly affected by the losses which have been suffered by the PSEB on account of their own lapses and the extra expenditure which has been incurred while completion of the Dams and the major factor is attributable to Ranjit Sagar Dam. Whereas, the principal admission made by various authorities, the expenditure incurred is far too high than the power generation, which fact can also be seen from the proposed figures given of the power generation as the proposed figure given of the power generation as the proposed figure given in 4458 (million unit) as against the expected figure by the Commission, i.e., 4008 (Million Unit). However, from all sources, the gross generation has been taken as 2165 (million nit) and the power which is purchased is 7812 (million unit). Resultantly, total energy available is 29463 (million unit). After granting the transmission and distribution losses the energy available for sale comes out to 22347 (million units). The Commission has approved the purchase of 7584 Million Units at a cost of Rs. 1318.80 crores for the year 20022003 which is at a very high cost, whereas the PSEB can bring down the number of Million Units required to be purchased, if the gross generation is coordinated and is retrieved from the power units accordingly. It goes without saying that the power losses if minimised/eliminated, the very small amount of the power may have to be purchased from outside. All these lapses and laxities on the part of the PSEB are being passed on to the consumers. Thus, the justification for enhancing the average cost is not at all tenable, the gap projected is not explainable by the PPSEB and resultantly the reasoning accepted by the Commission is not sustainable.

79. It has been further argued that the rates at which the coal and the oil has been purchased by the PSEB is not justifiable as the increase projected from the previous years is far too high. Resultantly, liability has been raised to the extent of 40%. It is not justifiable from any angle as no reasoning for such escalation in the price has been projected.

80. It has also been argued that from the report of the Commission, it is decipherable that the total facts and figures have not been provided by the Board for examining the mannerism in which the gap has been spelt out and the same has been suggested to be filled in. It was obligatory on the part of the Commission to have examined the facts in detail and wherever the details were not available, the same could have ascertained from the PSEB within the time frame. It is nowhere the formule to be applied for bridging the gap on the basis of the facts and figures not ascertainable and determinable. It is expected from the Commission to have examined all these aspects in details and certainly not to pass the determinable tariff on the basis of "Buts and Ifs". The gap is full of lapses on the part of the PSEB which should not have been allowed to be passed on to the consumers. It looks that the Government and the PSEB have virtually joined hands in spelling out answers for bridging the gaps which are certainly not based on any proper reasons but hypothetical stand has been taken and each one of the authorities has tried to put the blame on each other and that the resultant effect is that the burden is being sought to be passed on to the consumers. It is the matter of common knowledge that for some of the consumers, the power is raw material and that the price of the raw material cannot be allowed to be raised to cover up the gap which are definitely attributable to the lapses on the part of the Government and so also the PSEB. This fact has not been examined by the Commission which was expected to take a judicious decision vis a vis interest of all the consumers. In fact the objectors have not been given the appropriate opportunity to raise the objections as the requisite information had not been supplied by the Government and so also by the PSEB for arriving at correct conclusions. It is also argued tat the Commission, despite having admitted the lapse on the part of the PSEB, has not given and relied upon the correct figures. The current tariff rate has not been subjected to any restriction. Thus, by accepting the contentions of the PSEB and so also the Government, the current tariff once having been determined would be revisable for the benefit of the consumers.

81. Another argument which has been raised for and on behalf of the appellant is that the current tariff has not been published in the gazette as is envisaged under Section 57A(d) of the Act. It is the settled law that unless the tariff is published in the Gazette, the same would not be enforceable.

82. On the other hand, the respondents have contested that submissions of the appellants.

83. Mr. Sarup Singh, Advocate, learned counsel for the Commission has controverted the arguments of learned counsel for the appellants. It has been argued that the tariff prescribed for agriculture having been agreed to be subsidised by the Government, has not been passed on to the other consumers. The current tariff progressively takes into consideration the expenditure which does get effected on account of various noticeable cause factors applicable to the ingredients required for production of power and that all these factors have been

taken into consideration while determining the current tariff chargeable from the consumers. So far as annualisation is concerned, it has been contended that the method of annualisation has been approved by the apex Court while rendering judgment in re : Association of Industrial Electricity Users v. State of Andhra Pradesh and others, 2002(3) RCR(Civil) 374 (SC) : AIR 2002 (SC) 1361. The aforestated rule is applicable as the cost factors come into play immediately upon the commencement of the Financial Year. If the time is consumed on account of one factor or the other and the current tariff rate is described/prescribed much after the commencement of the financial year, the expenditure incurred during all this period cannot be/could be ignored. Thus, the rule of annualisation has been correctly applied and the recovery has also been correctly allowed to be made accordingly.

84. It is further argued that the matter relating to crosssubsidy has also be been permitted and has been upheld by the apex Court. It has been further argued that the appellants, who have not appeared before the Commission despite the opportunity having been granted, they have no locus standi to file the appeal for contesting the award of the Commission. Reliance has been placed upon a judgment of the apex Court in re : Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd., 1997(4) Supreme Court Cases 452. Thus, no infirmity can be found in current tariff prescribed by the Commission as the same is based upon the facts and figures technically calculated by the competent authority. Since the calculations are based upon the admitted and accepted formulas and no legal infirmity has been pointed out, as such, the order/award of the Commission is not at all assailable and that the appeals deserve to be dismissed.

85. Mr. Govind Goel, Advocate, learned counsel for the PSEB has virtually adopted the argument of learned counsel for the Commission. However, he has made additional submissions which are as under :

"The relief claimable and grantable on account of Transmission and Distribution losses has been correctly projected by the PSEB, which are based upon the technical data collected by the relevant quarters. The PSEB has suggested certain measures too. However, in respect of the aforestated losses the corrective measure has been suggested by way of deployment of such kind of equipment which would minimise the losses. The installation of the same would take a lot of time and of course, substantial funds would also be required. Since the funds are not available and if losses are continuously allowed to be incurred the interest factor would be added tremendously and the current tariff for the subsequent years may have to be increased still further. Though the effort is being made for bringing replacement and additions in this regard but the said exercise shall consume time corelated with money. The effort would be to reduce the Transmission and Distribution losses. There are still some such losses which are beyond repair and beyond being controlled which shall always need to be taken in the stride. So far as the losses attributable to thefts are concerned, the efforts are made to detect thefts and to plug them. The cost factor is again very

high and at some places it had to be given up on the premises that the costs to be incurred for blocking such defalcations would be much higher than the loss which is being suffered. It is Catch 22 formation in which some times the organisations are caught. However, with the existing infrastructure, the effort is being continuously made to eliminate such kind of losses.

86. The Government loans and the interest thereon and so also the subsidy which is payable by the Government are also the figures, which eliminate each other as the same virtually become complimentary to each other. The Government, thus insists upon the return of the loans and in turn the subsidy sometimes gets wiped out by virtue of the interest factor. However, we cannot loose (lose sight ?) site of the factors, such as, the power which is consumed for the benefit of the society, i.e., Street Lights etc. The consumption in respect thereof has to be included under one head or the other and that this payment is not being made by any one. Resultantly, the effect thereof has to be borne by the consumers rateably.

87. It also cannot be lost sight of that the general consumer has to be kept at a different pedestal than the commercial consumer. However, some cost in this regard has to be recovered from the general consumer. Because, may be, the power which is purchased over and above the generated power is consumed by the general consumer and that some shortfall of the payment in that regard is charged from subsidising consumer. Thus, it is a misnomer that the general consumer is not being subjected to the tariff hike at all, whereas, mathematically the facts are otherwise. Thus, the argument that the other consumers are being treated differently than the specified consumers, is not at all sustainable. The Commission has kept in view the difficulties and the nonretrievable situations where the facts and figures were required to be given but the same could not be ascertained on account of the situation falling beyond the control of the PSEB. In such cases, the calculable figures which are nearest to the acceptable figures have to be applied for assessing the liabilities for the purpose of calculating the sale price of the power being generated.

88. It has been further argued that so far as technical losses are concerned, the same are based on accepted practice, as no firm formulas are available as yet, which are being applied all over the world. Thus, the element of ad hocism in fixation of T & D losses cannot be ignored in the absence of exact facts and figures. Reference has been made to a judgment of the apex Court in re : West Bengal Electricity Regulatory Commission v. C.E.S.C. Ltd. etc., JT 2002(7) SC 578.

89. I have heard learned counsel for the parties and I have also perused the respective pleadings of the parties. The pointed reference has been made to various observations made by the Commission whereby it is inferable that lot of information which was required to be supplied by the utility was not available and that the reliance has been placed upon the practice or the best judgment, on the basis of the inconclusive facts available. The endeavour has been to

somehow or the other, bridge the gap between the previous tariff and the cost which has accrued, thus leaving hardly any marginal profit for the utility. It has been projected that the cost figure has gone high on account of various factors which have ensued from the date of determination of the previous tariff. However, the perusal of the order of the Commission shows that the mathematical reasons for increase of such costs have not been examined, as the facts were not available exhaustively and or mathematically. Thus, to rely upon, the correct cost propounded by the utility and spiraling up the tariff is not justifiable. No doubt, the Commission has been conferred the right and the total freedom to fix the tariff but this right has been admittedly subjected to certain constraints and restraints as envisaged under the provisions of the Act by virtue of which the Commission has come into existence.

90. The scientific pursuits and innovations have not ended so far as the passing of the benefits to the consumer are concerned. The competitive world has come nearer to each other and without the obvious benefit has to go to the consumer. The principle which is being followed now, is that the number of consumers should be more and the facility available should be of highest order and standard but the rate should come down to avoid the puncturing or making a hole in the pocket of the consumer. Further the principle which is being sought to be adhered to is paying capacity of consumer would be measured to its lowest level and for this purpose, the rate has to be moderate and considerate. Unfortunately, these principles are not being adhered to by the utility nor they have been kept in mind by the Commission while determining the tariff to be paid at the relevant time. The endeavour and the effort has been to bridge the gap so that the utility keeps functioning. It looks that by bridging the gap, a gradation has been put upon the lapses and the deficiency of the utility and that the interest of the consumer has not been kept paramount.

91. The Commission has observed under various heads that the information shall be supplied by the Board within a period of three months or in the some cases, the time has been left open and in others it has been observed that the information should be put forth when the next tariff is to be determined. It has been propounded by the PSEB that the tariffs are required to reflect the average cost of supply of electricity by adhering to the principles provided in Section 29(2) of the ERC Act coupled with regulation 3(c) of Commission's Tariff Regulations. It is imperative that the Commission should look into the calculations when the figure of average cost of the supply of electricity is determined by the utility. By placing reliance merely upon the figures which are given by the utility is not enough. The apex Court has observed in the latest judgment whereby an observation has been made that the Commission constituted under Section 17 of the ERC Act is an expert body and the determination of tariff which has to be made by the Commission involves a very high technical procedure requiring working knowledge of law, engineering, finance, commerce, economics and management. Thus, appeal should also be provided to a similar expert body so that the various questions which are factual

and technical which may arise in such an appeal, get appropriate consideration in the first appellate stage. Reference be made to the observations of the apex Court in re : West Bengal Electricity Regulatory Commission v. C.E.S.C. Ltd. etc. etc., JT 2002(7) SC 578. In another judgment, the apex Court has observed that the judicial review in a matter with regard to fixing of tariff has not to be as that of an Appellate Authority in exercise of its jurisdiction under Article 226 of the Constitution of India. However, the High Court has to be satisfied that the Commission has followed the proper procedure and unless it can be administered that its decision is on the face of it arbitrary or illegal or contrary to the Act, the Court will not interfere. It has been further observed that fixing a tariff and providing for cross subsidy is essentially a matter of policy and normally a Court would refrain from interfering with a policy decision unless the power exercised is arbitrary or ex facie bad in law. Reference may be made to the judgment of the apex Court rendered in re : Association of Industrial Electricity Users v. State of Andhra Pradesh and others, AIR 2002 SC 1361.

92. It has been categorically observed by the Commission that the PSEB shall get a study conducted by an independent agency to arrive at realistic consumption by Agricultural Pump Sets. It may be noticed that the consumption by the Agricultural Pump Sets has been passed on to the subsidizing consumers, virtually no data available, thus, some methodology was proposed to be adhered to for determining such consumption. It is too much to subject the consumers to the cost/loss suffered of the energy when the same is being supplied virtually without the same having been metered. In such a situation, it is absolutely impossible to cover that loss by way of cross subsidy as well. Such like element having been allowed to be added to the actual cost, resulted into the increase in the said cost and the same element has been sought to be passed on to the consumers. The Commission has very fairly observed that till the aforesaid report is submitted by the PSEB, the figures arrived at by the Commission shall be adhered to, admittedly, the said figure is without any basis.

93. The Commission has accepted the Transmission Distribution (T & D) losses to the extent of 25.52%. However, the CEA has indicated in their guidelines for reduction of "Transmission Distribution (T & D) Losses" in a well designed system, the technical losses at about 10 to 15%. This indication has been diluted on the premises that for reduction of such losses to the aforesaid percentage, it will take time and require considerable investment. Though, the Government has suggested that losses should be restricted to 22.5% but despite this suggestion, the Commission has arrived at percentage of 25.52% for the relevant period. There is no answer for arriving at such percentage but the PSEB has undertaken to lodge an action plan for reduction of T & D losses during the next 5 years i.e., upto 200607 and it has been promised that the said details shall be furnished to the Commission accordingly. Thus, such losses which have been accepted and passed on to the consumers are not effectively based on any mathematical calculations available before the Commission. It looks that there has not been a very serious discussion for examining the aspect of reduction of Transmission and

Distribution Losses, despite the indication received from CEA. The gap between the percentage indicated by CEA and the one which has been accepted by the Commission without calculation is to the extent of about 10.52% to 15.52%. These substantial differences got added into the average cost.

94. Another aspect which has not been taken into consideration by the Commission is "the energy generation", i.e, the input. The mathematical figures have not been examined discretely while comparing the proposed generating figures from various power stations installed by the PSEB. It has not been put forth by the PSEB as to why the power stations have not been or cannot function at the optimum efficiency for producing the power. If this aspect is taken into consideration and is examined seriously by the Commission and the PSEB is required to make up its lapses in not producing the optimum power proposed to be produced from the power stations, the cost figure would be considerably affected. It is a common principle that any unit which functions below a particular efficiency level, the cost figure is always higher and for this deficiency, the producer is liable and not the consumer.

95. It cannot be lost sight of that substantially, the power consumers are commercial units and for them, energy is the raw material. If the cost of the raw material is not controlled effectively, the same would affect the economic aspect all round, which ultimately has to reach the general consumer. This would effect the economy of the country ultimately and in a substantial manner. There is no suggestion which has come from the PSEB as to how and in what manner the power generating stations are proposed to be upgraded to achieve maximum efficiency level, which would resultantly reduce the cost accordingly. The losses of the raw material used for production of power generation have been approved by the Commission on conjectures and that the mathematical calculations have neither been correctly projected nor have been examined in the right and correct perspective. The methodology adopted for transportation have undergone sea change all over the world but this fact has been completely ignored by the PSEB and perhaps experts in this regard have not been engaged by them to cut down the transportation cost which ultimately would effect the calculation of energy cost. There is no doubt, extensive and exhaustive jurisdiction has been conferred upon the Commission, which has been accepted as an expert body comprising of best of the talents from various facets of life and that combined effort of those have to produce the best of the results for the benefit of the power consumer and ultimately, the general consumer at large in the country, which ultimately would effect the economy in a comprehensive and composite manner.

96. Yet, another aspect which has been effectively examined by the Commission and which has not been appraised in a beneficial manner for the power consumer i.e, the man power required for running the entire system controlled and headed by the PSEB. In the present times of computerisation, the cost of man power can be reduced considerably and this would ultimately effect the costs in a big way. There is no doubt that the country has been facing problem of unemployment in

a manner to which the answers are not readily available but this would not mean that the mathematical employment required in a project should be done away with and the expense of those persons should be passed on to the consumer accordingly. The PSEB has projected that the man power shall be reduced over the years, which shall effectively bring down the cost accordingly. This could be examined in a manner that if the energy cost is reduced, that may encourage the setting up of units by the entrepreneurs in a comfortable manner and that the employment can be generated which is actually and factually required. This approach may reduce unemployment more mathematically and which may ultimately contribute for the uplift of the economy generally. This aspect has to be kept in mind while fixing the tariff.

97. The investment is another important feature of business which is vitally affected by the theory of capitalisation, which has been discussed while keeping in view the loan factors projected by the PSEB. It is the basic principle that the capital invested and capitalised in a mathematical manner should generate the profit to cover up the interest and at the same time, it should not pinch the pocket of the person at the receiving end. By adding on the interest into the cost is not the answer, which, as projected by the PSEB has been accepted by the Commission. However, the matter had to be gone into in a mathematical manner to examine as to whether the loan received by the PSEB has been correctly capitalised so that minimal effect of interest could be passed on to the consumer. But consideration of this aspect is not forthcoming as no such calculation has been examined or put forth by the PSEB and that the Commission has been silent on this aspect. The formula, of passing on the burden of interest to the consumer has been dealt with in a very light hearted manner and that the same has been sought to be tapered off by the induction of element of subsidy payable by the Government. The projection of subsidy comes in only when the unit is unable to run profitably and the end result, when it is negative, the same is to be passed on to the consumer at a price below the cost. But, in the present case, the effect of subsidy has not been examined in the right and correct perspective by the PSEB nor it has been pointed out accordingly by the Commission. It has been observed that the State Electricity Boards all over the country are suffering from the fever of financial stringencies. But why so ? This aspect needed thorough examination by an authority, which has in fact been promulgated by the statute, i.e. the ERC Act i.e., the Commission. The jurisdiction of the Commission has never ever been doubted and that the Commission had been expected to play the pivotal role to bring down the financial fever being suffered by the State Electricity Boards. In that aspect, nothing is forthcoming as the observation and the opinions made by the Commission are devoid of such directions.

98. The principle inducted by virtue of the statutory provisions with regard to return upon the net fixed assets also requires to be examined. The Governments and the State Electricity Boards have participated in the equity by way of converting their losses accordingly. This change of nomenclature from that of

liability into Capital is not a step to improve the financial health, but infact this shall become constant source of generation of liability by way of return payable statutorily at a fixed percentage. This may not be workable in the present times due to the new financial lay outs in this country as well as all over the world. Such percentages, statutorily provided, need a new look so that the same do not add on to the inflation of the average cost and ultimately to be passed on to the consumers i.e., commercial and general.

99. The matter relating to the cross subsidy has been placed upon such a pedestal that it is sought to be passed on to a specified power consumer but the ultimate result in respect thereof has not been logically concluded so that the burden thereof is tapered of and finally wiped out. If the State Government agrees to subsidise the shortfall in the tariff on account of a particular consumer, the same should always be recompensated to the concerned quarters in a time bound manner. The recalcitrant attitude adopted in this regard should not be permitted, i.e., the utility to straighten the balance sheet by passing the said such burden to another specified power consumer. In this regard, agricultural pump sets have been given the advantage to consume power absolutely free or at the lowest possible rates on the basis of the political policies of the Government but the aftermath effect of such policies could not and should not have been accepted by the Commission and in this regard categoric mathematical answer ought to be provided by the Commission upon which the onerous responsibility has been casted by virtue of the statutory provision. The act of subsidisation is to meet the reduction in the average cost caused by an act of a constituent and that this act should be required to be performed at the highest priority so that the effect thereof is never ever required to be passed on to another set of consumers. This aspect seems to have been completely ignored and as a result thereof the tariff has been burdened accordingly.

100. The apex Court in another recent judgment rendered in re : BSES Ltd. v. Tata Power Co. Ltd. and others, C.A. No. 83608361 of 2003 (arising out of Special Leave Petition (Civil) Nos. 1087710878 of 2003) and Civil Appeal No. 1146111462 of 2003 decided on 17.10.2003, has observed that the Commission has been necessarily created to arrest deteriorating condition of the State Electricity Boards and to make plans for the future developments. It shall be opposite to notice the observation of the apex Court which read as under :

"..... The objects and Reasons of the Act show that the main function of the State Electricity Regulatory Commission shall be (i) to determine the tariff for electricity, wholesale, bulk, grid and retail; (ii) to determine the tariff payable for the use of the transmission facilities; (iii) to regulate power purchase and procurement process of the transmission utilities etc. The changed scenario may give rise to problems of highly complex and technical nature between the generator, supplier and distributor of energy, which can be better resolved by technically qualified people who may constitute the aforesaid Regulatory Commission....."

101. It has also been observed by their Lordships of the apex Court that the word "tariff" has not been defined in the Act. "Tariff" is a cartel of commerce and normally it is a book of rates. It will mean a schedule of standard prices of charges provided for the category or categories of customers specified in the tariff. The determination of the tariff is dependent upon a large number of factors which has to be codified and balanced out, in the first instance by the manufacturer of the power but the equilibrium has been sought to be created through agency of the Commission. Thus, there is no doubt that the Commission has to play the pivotal role in balancing all the factors in an equitable and conscious manner and that nothing should be allowed to lie dormant so that silently it should be allowed to effect the tariff substantially. Thus, any lapse which is attributable to any authority, should be looked into by the Commission and the appropriate liability and responsibility are to be fastened upon the said authority instead of allowing the game of escapism being played by the said authority.

102. The apex Court has also considered and has observed as to how in what manner and by which factors the Commission shall be guided while performing their onerous duty. It shall be apposite to refer to the following observations of their Lordships of the Supreme Court as contained in para 16 of the aforesaid judgment :

"16. The word "tariff" has not been defined in the Act. "Tariff" is a cartel of commerce and normal it is a book of rates. It will mean a schedule of standard prices or charges provided to the category or categories of customers specified in the tariff. Subsection (1) of Section 22 clearly lays down that the State Commission shall determine the tariff for electricity (wholesale, bulk, grid or retain) and also for use of transmission facilities. It has also the power to regulate power purchase of the distribution utilities including the price at which the power shall be procured from the generating companies of transmission, sale distribution and supply in the State. 'Utility' has been defined in Section 2(1) of the Act and it means any person or entity engaged in the generation, transmission, sale, distribution or supply, as the case may be, of energy. Section 29 lays down that the tariff for intraState transmission of electricity and tariff for supply of electricity, wholesale, bulk, or retail in a State shall be subject to the provisions of the Act and the tariff shall be determined by the State Commission. Subsection (2) of Section 29 shows that terms and conditions for fixation of tariff shall be determined by Regulations and while doing so, the Commission shall be guided by the factors enumerated in Clauses (a) to (g) thereof. The Regulations referred to earlier show that generating companies and utilities have to first approach the Commission for approval of their tariff whether for generation, transmission, distribution or supply and also for terms and conditions of supply. They can charge from their customers only such tariff which has been approved by the Commission. Charging of a tariff which has not been approved by the Commission is an offence which is punishable under Section 45 of the Act. The provisions of the Act and Regulations show that the Commission has the

exclusive power to determine the tariff. The tariff approved by the Commission is final and binding and it is not permissible for the licensee, utility or any one else to charge a different tariff."

103. The role of the Commission is not only to bridge the gap of revenue being earned by virtue of the previous tariff and the increase in the expenditure projected by the utility. Determination of tariff is an act of expertise required to be performed by the Commission keeping in mind the balancing principles applicable in this regard mathematically and so also futuristic approach. I am afraid this act has not been performed by the Commission in the manner in which the experts are required to perform, be it on account of lapses having been committed at the concerned quarters and/or lack of information on the part of the utility. In the present commercial world, the calculators are based on the data which should be made available by the concerned quarters and at no given point of time the figures based on conjectures should be brought in.

104. Another argument raised by the learned counsel for the appellants in respect of annualisation requires to be looked into. However, I am quite convinced by the stand taken by the utility and which has been correctly accepted by the Commission in passing the order in this regard which has been made subject matter of challenge in the present appeal. The rule of annualisation as provided under the provisions of law has been applied accordingly. It cannot be ignored that the continuous enjoyment of energy by the consumer, shall not give a right to enjoy at a particular tariff from a particular date as the cost factors do creep in after a particular date, may be at the commencement of the financial year. This effect has to be kept in mind while determining the tariff and defining the date of applicability, which necessarily requires the following of rule of annualisation. The cost factor did come into play much earlier from the determination of tariff. Thus, the Commission has taken into consideration the effect caused thereon by such factors while determining the tariff and resultantly by applying the rule of annualisation the date has been correctly defined. As such, this act of the Commission does not require any interference.

105. The appellants have also laid emphasis upon the theft of energy taking place right under the nose of PSEB and that the losses suffered in pursuant thereto being passed on to the consumer. There is no doubt that such situation is a difficult situation to be dealt with and tackled accordingly. The loss of energy on account theft may be measurable and such acts to be performed cannot be projected beyond the control of the PSEB. The theft of electricity would virtually mean supplying electricity free of cost but to curb such kind of acts the PSEB has provided itself with a battery of persons by carving out a special branch in this regard. It is at this stage the PSEB was required to give the exact figures visavis the losses being suffered on account of theft and the expenditures being incurred for maintaining such branch by the PSEB. If the expenditure for maintenance of such branch are more than the losses caused on account of theft, an appropriate decision shall have to be taken by the PSEB accordingly. This aspect is also to be

looked into by the Commission so that such losses are not allowed to be passed on to the power consumer.

106. However, the respondents have taken the objection in respect of maintainability of some of the appeals filed by some of the consumers, who did not put in appearance before the Commission despite the publication, invitations made for receiving the objections. Resultantly, they have not been reflected as a party before the Commission, as a sequel thereto, the locus standi of the said appellants has been challenged. I refrain myself from opining in any manner in respect of this objection as the appeals are being allowed which have been filed by the appellants whose locus standi is not under challenge and that the matter is being remitted to the Commission for a fresh decision.

107. Another argument addressed by the learned counsel for the appellants in regard to enforcement of the tariff, as the same has not been gazetted in view of the rule referred by the appellants, which has been noticed hereinabove. This shall also not require any consideration by this Court in view of the fact that the appeals are being allowed on some other pleas raised by the appellants. As such, I refrain myself from giving any opinion in this regard.

108. The statutory authority has been conferred upon the Commission for determination of the tariff by virtue of Section 29 of the ERC Act but for exercising such authority, power has been subjugated to the constraints and the restraints which are comprised of caution and so also the responsibilities. A specific reference may be made to Section 29(2)(a)(cc)(e) and (f) and so also subclauses (iii) and (iv) of the aforesaid Section, which need to be kept in mind by the Commission while determining the tariff. Admittedly, the same have not been found effectively reflected in the impugned order.

109. In view of the above, the appeals are accepted and the impugned order dated 6.9.2002 of the Commission is set aside. The matter is remitted to the Commission to be decided afresh in view of the observations made hereinabove and also after eliciting the appropriate information from the PSEB wherever it has been found deficient on the part of the PSEB. It shall be appreciated that the Commission may now redetermine the matter accordingly within a period of two months from the date of receipt of certified copy of this order. No order as to costs.

It may be observed that some of the appellants/consumers have paid the amount accordingly and some perhaps on account of the interim order of this Court have not deposited. Those who have deposited shall be entitled to appropriation of the amount upon fresh determination of the tariff accordingly and those who have not paid shall deposit the said amount as per the directions of the Commission when the matter is taken up by the Commission accordingly on the date fixed.

Registry is directed to send the certified copy of this order to the Chairman forthwith. The parties are directed to appear before the Commission on

December 18, 2003.

Appeals allowed.