Before the Karnataka Electricity Regulatory Commission, Bangalore

Dated this the 20th day of May 2004

Present

1. Sri. Philipose Matthai - Chairman
2. Sri. H.S. Subramanya - Member
3. Sri. S.D.Ukkali - Member

CaseNo.D/07/2002

Between

1) Karnataka Power Transmission Corporation Ltd.,
   Kaveri Bhavan,
   BANGALORE - 560 009
   (Rep. by Chief Engineer Electricity, Regulatory Affairs)

2) Bangalore Electricity Supply Co. Ltd.,
   CFC Building, Nrupathunga Road,
   BANGALORE - 560 001

3) Mangalore Electricity Supply Co. Ltd.,
   PB No. 920, Maroli, Kulshekar PO,
   Mangalore

4) Hubli Electricity Supply Co. Ltd.,
   Navanagar,
   HUBLI.

5) Gulbarga Electricity Supply Co. Ltd.,
   Main Road,
   Gulbarga.

...Respondents
   (By Sri. S.S. Naganand Adv.)

1. Kanara Small Industries Association,
   Association Building,
Industries Area, Baikampady, Mangalore 575 011.

2. Karnataka Paper Merchants & Stationer’s Association, II Floor, Sringeri Mutt Building, Sultanpet, Bangalore 560 053.

3. Shimoga District Chamber of Commerce & Industry, Park Road (Behind City Club), Shimoga 577 201.

4. Karnataka Pradesh Hotels & Restaurants Association, Jeevan Building, Ill Floor, No.11, Kumara Park East, Bangalore 560 001.

5. Mahalakshmi Rice Mills Industry, Bapuji Colony Road, Bellary

6. Malnad Allooy Castings (P) Ltd., 36-A, Shimoga-Bhadravathi Industrial Area, Machenahalli 577 222, Shimoga

7. J.A.M.Pipes, No.64, Industrial Area, Machenahalli, Nidige P.O., Shimoga 577 222.

8. Bhadra Concrete Products Products, No.22A, KIADB Industrial Area, Machenahalli, Nidige Post, Shimoga 577 222


10. Karnataka Small Scale Industries Association, 2/106, 17th Cross, Magadi Chord Road, Vijayanagar, Bangalore 560 040.

11) The Bangalore Commercial Association,
"Commercial House",
No.125/1, Second Floor,
Dispensary Road, Bangalore 560 001.
12) Vasavadatta Cement,
   Sedam 585 222, Gulbarga.
13) Balakedarara Hitharakshana Sangha,
    C.P.Bazar, Sirsi,
    Uttara Kannada.
14) Bangalore North Small Scale Industries Association,
    Chirag Card Containers,
    Kamakshipalya, Magadi Road,
    Bangalore 560 079.
15) Raichur Chamber of Commerce & Industry,
    Katkam Krishtaiyah Complex,
    City Talkies Road, Raichur 584 101.
16) Kashmiri Association,
    Bangalore
17) Federation of Karnataka Chamber of Commerce & Industry,
    Federation House,
    Kempegowda Road, P.B.No.9996,
    Bangalore 560 009.
18) Bellary District Chamber of Commerce & Industry,
    K.C.Road, Bellary 583 101.
19) Karnataka Umbrella Industries & Traders Association,
    27, V.S.Lane, Chickpet Cross,
    Bangalore 560 053.
20) Karnataka Textiles Mills Association,
    "Vastra Bhavan",
    No.64, 4th Main, Near,
    18th Cross, Malleswaram,
    Bangalore 560 055.
21) Hyderabad Karnataka Chamber of Commerce & Industry,
    Chamber Building Complex,
    Super Market, Gulbarga 585 101.
22) Greater Mysore Chamber of Industries,
This case is about the security deposit to be collected by the supplier of electricity from its consumers. Since the consumer first utilizes the electricity and then makes payment after the supplier prefers the bills for his consumption, the time-gap between the utilization and payment depends on the billing cycle chosen by the supplier. Therefore, it is inevitable for the consumer to make a reasonable deposit to cover the time-gap between consumption and payment. The issue of what constitutes the reasonable period is contentious and it has a chequered history of litigations between the consumers and suppliers. For a number of years, the suppliers in the State of Karnataka have been collecting 3 months deposit from their consumers for a monthly billing cycle, and not paying any interest on such deposits. The consumers have been agitating that 3 months deposit for a billing period of one month is unreasonable. At the time of revision of tariff on the previous two occasions, the Commission had received a large number of objections from the consumers on the equity of the 3 months deposit being collected. The Commission had segregated this issue from other objections relating to tariff, and heard the views of the above listed parties and passed an order dated 24.01.2003, in No. D/07/ 02, by holding that 2 months deposit is reasonable. This was a majority decision and one Learned member of the Commission had held a dissenting view that the deposit should be of 3 months. This case was heard and decided according to the provisions of Karnataka Electricity Reforms Act, 1999 (hereinafter referred to as KER Act) and the rules/regulations made there under.
2. The above Order was impugned in MFAs No.1832/2003 and No.2183/2003 before the Hon. High Court of Karnataka.

3. During the pendency of these appeals before the Hon. High Court, the Electricity Act, 2003, (hereinafter referred to as Act) came into force with effect from 10.6.2003. The Act made substantive changes in the law that was existing relating to electricity. The Hon’ble High Court after hearing all the aspects, has allowed the appeals by setting aside the order of the Commission and remanding the matter, in their order dated 9.9.2003, the relevant portion of which being as hereunder:

"............we allow the appeals and set aside the impugned order of the first respondent Commission dated 24.01.2002 and remand the proceedings to the first respondent-Commission to refix the rate of security deposit, taking into consideration of the requirement of giving statutory notice of not less than 15 days under Section 56 of the Act before effecting disconnection and other facts and circumstances germane to the decision-making. The liberty is reserved for the parties to these appeals to put forth all the contentions raised by them in those appeals before the Commission. .........."

4. The Hon. High Court, in the above order had fixed the date of hearing before the Commission and directed the parties to appear before the Commission on that date, without further notice from the Commission. Accordingly the Commission has fully heard the case ab initio once again, on the said date fixed by the Hon. High Court and also on subsequent dates, as requested by the parties.

5. In view of the Order of the Hon’ble High Court remanding the matter, the materials are placed on record in their proper perspective, to determine the issue involved in the proceedings which lead to the impugned order that was set aside and also the materials subsequently placed, have to be considered.

6. Sri S.S. Nagananda, learned Counsel for the ESCOMs, has contended that in the earlier order that was impugned before the Hon’ble High Court, the Commission had revised the period of security deposit from 3 months to 2
months, by holding that the realization of the bill amounts requires less than two months for the billing cycle of one month. He contended that the security deposit for 3 months is now fully justified in view of the provisions of S.56 of the Act, that the notice for disconnection has been revised from 7 days to 15 days in the new Act, which takes the realization of the bills beyond 2 months, that the Commission had not considered the period for realization of cheques, as requested by the licensee, that a large number of consumers make payment in the form of cheques and consideration of at least one week’s period for this purpose is justifiable, and that there is a large number of disconnections for non-payment of bills and the period for disconnection should also be taken into account while deciding the period of security deposit. He however conceded that he does not have supporting documents and that he would make efforts to furnish such details at a later date, if permitted.

7. Sri Uday Holla, learned Counsel for objector No.22, contended that the provisions of the new Act are not applicable to the licensees according to proviso under S.14 of the new Act until 10.6.2004. He further pointed out that S.172 (b) of the new Act provides that the old Act shall continue to function as if the repealed laws were in force with respect to such licensees and that there is no reason to reexamine the earlier order of the Commission under the provisions of new Act. It was also contended that the Respondents are not issuing separate notice for disconnection but publishing the said condition on the reverse of the bill to the effect that the bill itself is a notice of disconnection if payment is not made within the due date. He relied upon the decision of the Hon. High Court of Karnataka in the case KEB and another vs B.P.Vasudeva Murthy and another (2001(4) KLJ 228) wherein it has been held that the stipulation on the over leaf of the bill satisfies the requirement of law, regarding issue of notice of disconnection. He contended further that the public authorities like the respondents cannot take different stands before different fora on the same issue and are bound by this decision. He argued that the bill date and the date of notice of disconnection coincide and there is no appreciable increase in the
period of security deposit even with the enforcement of new Act and the order requires no revision or change.

8. Sri Kaleemullah Shariff, learned Counsel for Objector No.10, in his written submission, has argued that the billing cycle would be within 60 days even after the application of S.56 of the new Act. He has contended that most of the consumers pay their bills within due date and coercive action like disconnections is limited to very few consumers.

9. Sri A.V. Amaranath, learned Counsel for Objector No. 9 contended that the notice under S.56 of the new Act is applicable only in case of defaulters and the majority of consumers are not concerned with that provision. He stated in essence that the defaulters might be around 2% of the total consumers and the provision which is complied with by majority of consumers should not be allowed to be amended for the sake of negligible percentage of defaulting consumers.

10. Sri Pramod Kathavi, learned Counsel for Objector No.12, stated that the ESCOMs have failed to produce statistics relating to number of defaulters in each month in the past. He alleged that this information is not being furnished by the suppliers, as that would expose the hollowness of their case. He has pleaded that it would be unjust to equate law abiding consumers with the defaulters in deciding the period of security deposit.

11. Sri Nagananda, learned Counsel for the Respondents, has furnished some details relating to the defaulters and the cheques bounced etc. along with a written submission on 08.01.2004, and contended that the factum of total number of defaulters is irrelevant to determine whether and to what extent security must be obtained from the purchaser. He argued that the supplier has to ensure security in every case irrespective of the good performance of the party, since there is no guarantee about the punctuality in payment every month that he would not default every month. He further added that the period of notice is enhanced from 7 days to 15 days irrespective of the fact whether separate
notice is issued or a clause is printed on the bill. It was also contended that the clauses relied upon by the objectors do not apply to Part VI of the new Act and their contention that the new Act is not applicable to the existing licensees, is devoid of merit.

12. The Commission has carefully considered the points urged by the various parties. The details made available by the Counsel for Respondents have also been examined. The earlier order of the Commission was rendered on 24.1.2003, under the provisions of KER Act and the Rules/Regulations made there under. The "Act" came into force with effect from 10.6.2003. The Act has made sweeping changes in the laws relating to Electricity Sector. The K.E.R. Act and the new Act are simultaneously in operation. However, S.185 (3) of the Act provides that the provisions of the K.E.R. Act, not inconsistent with the provisions of the new Act, shall apply.

13. The source of authority empowering the licensees to collect the Security Deposit emanates from Section 30.02 of KERC(ES&D)Code, 2000-01. The requirement to demand additional security deposit derived from Section 30.03 of the said Code. The said provision is as hereunder:

"30.02. Estimated power consumption charges/Initial Security Deposit (ISD):
All prospective consumers, shall pay unless exempted security towards estimated power consumption charges to cover three months (3MMD) power supply bills worked out on basis of the estimated consumption as per the table given below or the three months line minimum charges whichever is higher.
The estimated power supply charges shall include fixed charges, if any, for LT installations and demand charges on 100% contract demand for HT and EHT installations. The fixed charges shall be as per Tariff schedule in force from time to time.

Table

<table>
<thead>
<tr>
<th>Type of installation</th>
<th>Estimated consumption per month</th>
</tr>
</thead>
<tbody>
<tr>
<td>LT INSTALLATION</td>
<td></td>
</tr>
<tr>
<td>a) Domestic/Non-Domestic, Non-Commercial lighting</td>
<td>10 units for every 250 watts or part thereof of sanctioned load.</td>
</tr>
<tr>
<td>b) Non-commercial combined lighting, heating and power</td>
<td>100 units per KW or part thereof of sanctioned load</td>
</tr>
<tr>
<td>c) Commercial Lighting</td>
<td>20 units for every 250 watts or part thereof of sanctioned load</td>
</tr>
<tr>
<td>------------------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>d) Commercial heating and/or Motive power</td>
<td>135 units for every KW or part thereof sanctioned load</td>
</tr>
<tr>
<td>e) Irrigation Pump sets</td>
<td>Yearly minimum charges as per Tariff in force from time to time</td>
</tr>
<tr>
<td>f) Public lighting</td>
<td>As per prevailing Tariff</td>
</tr>
<tr>
<td>g) Others</td>
<td>135 units per KW or part thereof sanctioned load per shift</td>
</tr>
<tr>
<td><strong>HT INSTALLATION</strong></td>
<td></td>
</tr>
<tr>
<td>h) All HT installations</td>
<td>100 units per KVA of contract demand</td>
</tr>
</tbody>
</table>

Note: The following types of installations are exempted from payment of ISD:

i) Water supply & Sewerage installations of Village Panchayats and Town Municipalities
ii) Public lamp installations of Village Panchayats and Town Municipalities.

14. It is evident that the quantum of Security Deposit that could be demanded and collected by the licensees is intimately connected with and has a direct bearing on the billing cycle of the licensee.

15. In this context, the Code of Practice on payment of bills as prescribed by the Commission, gains all the more importance on the questions involved. Section 3 of the Code of Practice on payment of bills is as hereunder:

"3. Bills for supply of power:

3.1. Periodicity: In accordance with Section 29.02(a) of KERC (ES&D) Code, 2000-01.

(a) The Licensee will furnish to the Consumer every month or at such interval, as prescribed by the Licensee from time to time, the power supply bills for the actual or in its absence, the assessed demand and/or consumption, either at the spot or by post. The billed amount shall be rounded off to the nearest rupee i.e., the bill amount of 50 paise and above shall be rounded off to the next rupee and amount less than 50 paise ignored.

Bills shall be served to the consumer on the spot or sent through courier or by post. **The bill shall be issued on the same day in case of spot billing and not later than 4 days after reading of meter in other cases whether it is computerized or manual billing. Where spot billing is not followed, the bill date as incorporated in the print out of the bill should be meter reading date + 4 days Consequently the due date for payment would be 15 days from bill date i.e., meter reading date + 19 days.** (emphasis supplied)
(b) It shall be clearly indicated on the bill that a maximum period of 15 days from the bill date is allowed for making the payment and also that the installation shall be disconnected without further notice after expiry of 7 clear days from the end of this period of 15 days in case of non payment. (emphasis supplied)

Note: 1. The energy consumption shall be rounded off to the nearest unit.

   2. Non receipt of the bill by the consumer is not a valid reason for non-payment. The Consumer shall notify the office of issue if the bill is not received within 7 days from the meter reading date. Otherwise, it will be deemed that the bills have reached the consumer in due time.

3.3. Payment of Bill:

a) The Consumer shall pay the power supply charges at the office of issue or at the jurisdictional cash counters as indicated hereunder:

   i) In respect of revenue payments i.e., monthly power supply charges up to and inclusive of Rs.10,000 shall be made by cash or cheque or DD and payments above Rs.10,000/- shall be by cheque or DD only.

   ii) Payments under other heads of account i.e., other than revenue payments shall be made by cash or DD upto and inclusive of Rs.10,000 and above Rs.10,000 shall be by DD only.

   iii) By availing Electronic Clearing System(ECS)/through credit cards/online E payment @www.billjunction.com at counters wherever such facility is provided by the Licensee.

   iv) Through banks authorized by the Licensee. (The date of payment in the bank will be the date of payment of the bill).

Note: (i) Demand draft/Cheque shall be issued in favour of Licensee drawn on any scheduled commercial bank situated at the headquarters of the office of issue along with the bill. No outstation cheques shall be accepted. The RR No. and ledger folio No. shall be indicated on the reverse side of the Demand Draft/Cheque. Receipt for payment shall be obtained.

(ii) Payment by cheque/demand draft sent by post or by money order shall also be accepted. The consumer shall invariably furnish RR No., Ledger No., and Folio No., on the reverse of cheque/demand draft sent by post/on money order form. The consumer has to collect the receipt.

(b) In case the amount is paid at the cash counter in person, bill shall be produced. In the absence of the bill, the RR No., ledger and folio No. shall be furnished.

(c) The Licensee will accept the cheque from the consumer in good faith and shall issue receipt subject to realization. If the cheque is not realized but returned by the bank, it amounts to non-payment and the consumer is liable for levy of interest and disconnection of power supply without further notice or after expiry of 7 clear days from the due date whichever is later.
(d) In the event of non-realisation of cheque, no further cheques shall be accepted from such consumer without prejudice to the licensee taking action such as levying cheque dishonour fee as per Section 30.18 of the KERC (ES&D) Code 2000-01 and initiating other actions as per law.

(e) Cheques can be dropped in a box meant for the same at the licensee's designated office for payment of bill charges and the licensee shall draw the receipt and consumer shall collect the receipt.

(f) If any consumer wishes to make advance payment of power supply bills for his own convenience he may do so. The same will be adjusted towards the periodical bills and will be shown in the bills furnished to the consumer.

16. The essence of the arguments advanced by the KPTCL is that the aspects involved about this deposit and the payment of interest etc., have been dealt with by various Courts and ultimately by the Hon'ble High Court in the decision reported in AIR 1993 SC 2005 (Ferro Alloys Corporation Ltd., v/s A.P.Electricity Board and another), that there is no justification or authority to go into the issue as the issue is no longer res integra, and that a substantial amount is held by KPTCL and any reduction in the amount would have an adverse impact on the finances of the KPTCL.

17. The learned counsel for KPTCL in support of his contentions relied upon the following:

2. KEB V/s Gadag Mining Co. - AIR 1986 Kar.252.
3. Copy of the order dt.10.8.1989 passed in WP No.10729/1989
5. Ferro Alloys Corporation Ltd., v/s APSEB - J.T. 1993(3) SC 82.
7. Somawanti V/s State of Punjab - AIR 1963 SC 151

18. Before embarking to go in to the legal issues involved, it is considered appropriate at the first instance, to dwell on the billing cycle of the licensee. As evidenced from the extract of Code of Practice on payment of bills reflected above, the licensee has to furnish to the consumer every month the power supply bill, either on the spot or by post. Such a bill has to be issued on the very
same day in the case of spot billing and in other cases not later than 4 days after
the reading of the meter. It is immaterial, whether it is computerized or manual
billing. Based on its cycle and the period of time prescribed for subsequent
activities, the maximum number of days consumption that could be outstanding
against the consumer before he becomes liable for disconnection of supply due
to non payment will be hereunder:

| Consumption period of one month: | 30 or 31 days |
| Maximum period for issue of bills from the end of the month: | 4 days |
| Maximum time allowed for payment: | 15 days |
| Notice period for disconnection: | 7 days |
| Total: | 56 or 57 days |

19. In view of Section 56 of the Act the period of notice for disconnection now
provided, is 15 days in which case the total number of days would  work out to
64/65 days.

20. In the written arguments submitted in the additional written submissions
submitted by KPTCL about billing cycle on 15.10.03, the period according to
them has been mentioned as here under:

| Consumption period of one month: | 30 or 31 days |
| Maximum period of issue of bill from the end of the month | 04 |
| Maximum time allowed for payment: | 15 |
| Time taken for crediting the cheque & receipt of the non-
realized cheque from the bank by the licensee : | 06 |
| Notice period for disconnection: | 15 |
| Time taken for delivery of notice | 02 |
| Total | 72 or 73 days |

Further, it is also contended by the respondent KPTCL in their written submissions
that a further period of 10 days is required for actual disconnection after the
expiry of the notice.
21. It is evident from the above that the KPTCL has taken a very elastic view with regard to time factor and the limits stipulated in the ES&D Code and the Code of practice on payment of bills, both of which have the force of law. The last date for payment of bills can only be 30 or 31 days + 4 days + 15 days. Payment by cheques applies only to such consumers who chose to pay in that mode. Even in such a case, only local cheques are accepted. If there are any administrative lapses on the part of KPTCL in respect of collection of dues, that cannot be used as a plank for levying an unjustified impost on the consumer. It is needless to say that any inaction or laxity on the part of any agency in managing its affairs systematically cannot be an excuse to saddle the citizen with liability on that count. The time schedule spelt out by KPTCL is 82/83 days. KPTCL's time schedule clearly infers a slack of around 18 days compared to that provided in the Commission’s Code even after taking into consideration the mandatory period of 15 days provided under Section 56 of the Act.

22. As far as the points of law involved in this issue are concerned, the Commission notes that the order in WP Nos. 14734 of 1979 and other connected writ petitions was successfully challenged by the then KEB in the Gadag Mining Co case (AIR 1986 Karnataka 252). The Division Bench of the Hon'ble High Court of Karnataka in its order on the said writ appeal had relied upon the decision of the Supreme Court in the Jagadamba Paper Industries case (AIR 1983 SC 1296). The Supreme Court in the said case had gone into the issue of the power of SEBs to require a security deposit to be furnished and held that "we are of the view that the Board has been conferred with statutory power under Section 49(1) of the Act to determine the conditions on the basis of which supply is to be made" (para 7). In the AP case referred to, in Jagadamba Paper Industries, the AP High Court had held that "we have already referred to the fact that it is reasonable on the part of the Board to recover security for 3 months consumption charges. Now to require that amount to be deposited in the form of cash is eminently reasonable". However, in the case of Jagadamba Paper Industries, where the Respondent Electricity Board was the Haryana State Electricity Board, the Supreme Court has held as follows:
"We agree, however, on the facts placed that the stand of the Board that the demand equal to the energy bill of 2 months or a little more is not unreasonable. Once we reach the conclusion that the Board has the power to unilaterally revise the conditions of supply, it must follow that the demand of higher additional security for payment of energy bills is unassailable, provided that the power is not exercised arbitrarily or unreasonably". (Para 10)

23. Thus, it is clear from the judgement of the Hon’ble High Court in Jagadamba Paper Industries case, that the quantum of security deposit has to be reasonable on the facts and circumstances of particular case. While the Hon'ble High Court accepted the view of AP High Court in respect of the levy of three months security deposit, in the Jagadamba Paper Industries case the conclusion was that the payment of two months consumption deposit was a reasonable one.

24. In the Gadag Mining Co case, (AIR 1986 Kar 252) the Hon’ble High Court of Karnataka after going through the billing cycle as was presented to it by the Appellant concluded as follows:

"It appears to us it would be reasonable to take a view that it will take 15 days to prepare the bill after the end of the particular month and send it on to the consumer and consumers will have 15 days to pay the bill and whenever the bills are paid in cheques, it may take a week for realization of the cheque and in the case of default as the Board is required to give 7 clear days notice it will take 2 1/2 months or a little more before the Board could realize the amount due from such consumers and in the meanwhile the consumers will be consuming electric energy without making payment". (Para 7).

The Court further held that

"Having regard to these facts and circumstances it appears to us that it is difficult to say that requirement to deposit 3 months charges is unreasonable". (Para 8).(emphasis supplied)

25. As is evident from the Code of practice on payment of bills, the time limits prescribed for various stages of the billing cycle are now different from the billing cycle that has been dealt with in the judgement of Gadag Mining Company's case. Even where spot billing is not resorted to, the maximum of 4 days for service of bill on the consumer has been provided compared to 15 days
considered in the judgement. Likewise the Code of practice prescribes that the bill shall itself contain a notice that the installation shall be liable for disconnection for non payment after the expiry of the 7 clear days from the end of period of 15 days provided for payment without any requirement to give any further notice.

Similarly, where the payments are received through demand drafts/cheques the same would have to be drawn on a schedule commercial bank situated at the HQ of the office of issue of bill. In the Code, it has been made clear that no out-station cheques will be accepted. The period of six days for the realization of local cheques is also therefore not required under the present scheme. As such, it is clear that the billing cycle that was the basis for the judgement in the Gadag Mining Company’s case is not applicable to the present situation.

26. In WA 1672 of 1989 and connected matters, where consumers went in appeal against the Order in W.P. 10729 of 1989, the Division bench of the Hon’ble High Court of Karnataka in its order dt.23.8.90 upheld the requirement of 3 months security deposit on the basis of the highest bill of the past year. The ratio of this decision relied upon the findings of the High Court in the Gadag Mining Company case (AIR 1986 KAR 252) which has already been extracted above. The Court found that the same views were reiterated in AIR 1990 AP 58 in Para 16 of the judgement where it was held in relation to the requirement of 3 months deposit, that

"16......................It cannot be said that the said condition is so unreasonable and arbitrary as to call for interference by this Court under Article 226 of the Constitution. We reiterate that even if this court comes to the conclusion that the deposit should not be 3 months, but 2 months 7 days or 2 1/2 months, it would not be entitled to interfere in the matter, not being an appellate authority. It cannot substitute its own opinion for the opinion of the Board. It can interfere only when the exercise of powers is shown to be arbitrary and unrelated to the object sought to be achieved. Learned counsel for the Board indeed agrees with the proposition that the Board has to act reasonably. He gave an illustration rightly in our opinion, where the Board would say that such deposit should be equal to the annual consumption charges. He points out that in such a situation it would cease to be consumption deposit. Such a condition would be
unrelated to the object underlying consumption deposit viz., securing prompt payment of monthly bills and other amounts due to the Board. It would cease to be consumption deposit and would become contribution, it can no longer be called consumption deposit. Not that we are saying that this Court will not interfere unless such extreme situation arises. What we are emphasizing is that a slight difference of opinion as to the basis of calculation of such deposit would not entitle this court to interfere or to amend the conditions of supply. Now take an ordinary case. For the whole month the consumer avails energy without paying for it. The bill is served, normally speaking, within about 15 days of the expiry of the month. Another 15 days is given for payment of the bill amount. If it is not paid a 7 days notice has to be given as required by S.24 of the 1910 Act. All this takes 2 months 7 days. Apart from this, there are the practical difficulties stated in the counter-affidavit. The Board says that it takes some time for it to discover the default and that at any rate, no immediate disconnection is effected mechanically, but that a realistic approach is adopted and the amount is included in the next month’s bill. It is pointed that only when the default is repeated, would they resort to disconnection. All this would bring the three months’ deposit perfectly within the realm of reasonableness. It cannot be termed as arbitrary or unreasonable, nor can it be said that the said requirement is unrelated to the object for which the said condition was issued.”

27. The Division Bench of the Karnataka High Court did not agree with the views expressed in AIR 1987 Rajasthan 131 where it was held that the 3 months criterion of the highest consumption of the previous year adopted by the Board was arbitrary and irrational.

28. The basic billing cycle that has been considered in W.A. 1672 of 1989 is the same as has been considered by the High Court in Gadag Mining Company’s case. The billing cycle considered by the A.P.High Court in AIR 1990 AP 58, the ratio of which has also been adopted by the Karnataka High Court, is essentially the same, i.e., service of bill within about 15 days of the expiry of the month followed by other activities. It is but evident, that the existing regulations of the Commission and the Code of Practices on payment of bills contemplate a shorter billing cycle.

29. The conclusions of the Hon'ble Supreme Court relating to the nature of consumption security deposit are to be found in paragraphs 100 to 116 of the judgement in the Ferro Alloys Corporation Ltd case. Even here, the Supreme Court has proceeded on the basis of an extended billing cycle and in para 104
of the said judgement, the Court had given one illustration relating to the case of Rajasthan. The billing cycle in this case as has been considered by the Court is as follows:

"(a)Consumption period: 30 days
(b) Period consumed after taking the meter readings to issue bills 10 days
(c) Period allowed for payment 17 days
(d) Notice for disconnecting supply if consumer fails to deposit energy bill in time 7 days
(e) Period taken in actual disconnection after expiry of notice. 10 days

Total 74 days"

On this basis the Court has concluded as follows:

"105. In practice, some time is also taken between the period allowed for payment and the notice of disconnection. At the same time, there is no obligation that the consumer must use only a particular quantum of electricity. He could even consume more than the average consumption. The Board after 2 1/2 months recovers amount for the electricity supplied by it. It could charge late surcharge in case of high tension tariff after the expiry of the said period.

106. Thus, it will be clear that the true nature of the transaction in these cases is one of advance payment of charges for consumption of electricity estimated for a period of approximately three months. Such an advance is liable to be made good and kept at the stipulated level from month to month. It is open to the consumer to permit adjustment of the advance in the first instance. Thereafter, he could make good the shortfall in consumption charges and the security deposit before actual disconnection. Actually speaking, it is only after three months the disconnection takes place. Hence, it is like running current account".

30. In paras 113-116 of the order in the Ferro Alloys case, the Supreme Court has also quoted judgments of various High Courts in similar contexts. For example the judgment in K.C.Works V/s Secretary, APSEB (AIR 1979 Andhra Pradesh 291) has been quoted. In its counter in this case, the APSEB had stated that:

"The consumer is billed for such month separately. The consumer's electricity consumption during the month is billed at the end of the succeeding month and 30 days time is given to him for payment of the bill. If he does not pay
the bill his supply is liable to be disconnected after giving one weeks' notice under Section 24 of the Indian Electricity Act, 1910. Meanwhile, he will be consuming the power. So by the time the supply is disconnected to a defaulting consumer he would have consumed energy for three months. The Board's interest requires that there should be some protection by way of security of advance payment in respect of consumption of this three months' period".

Having examined this, the AP High Court had concluded that

"this is how the Board sought to explain the reasonableness of the requirement of security representing three months' average consumption charges"

and had proceed to state that this was reasonable.

31. It is clear, that the billing cycles considered in these cases are very different from that which exists at present under the KERC's Code of Practice on payment of bills.

32. The Hon'ble Supreme Court has also extracted in para 115 of the judgement in Ferro Alloys case, the judgement in Haryana Ice Factory v/s Municipal Corporation of Delhi (AIR 1986 Delhi 78) to the following effect:

"Also the demand of the security was correlated to the consumption pattern of the consumers and to cover the energy charges from the date of its consumption till the date of ultimate disconnection as a result of non payment of the charges due. The Court cannot enter into mathematical calculations to come to a conclusion that instead of three months, it should be 2 1/2 months. The fixing of the period of security equal to energy consumption of three months is reasonable. It may be that the Haryana Electricity Board has fixed the period of security deposit equal to the amount of energy consumed for a period of two months but that would depend upon the billing cycle adopted by the Haryana Electricity Board".(emphasis supplied)

33. In view of the foregoing discussions, it is crystal clear that the amount of security deposit would depend upon the billing cycle of the utility and that this would normally cover the period from the commencement of the consumption, till the date of ultimate disconnection as a result of default in payment of the amounts due. There is no definite finding of any Court that a State Electricity Board (or a Licensee in the present case) has an unqualified or unrestricted right to demand payment of a deposit equal to 3 months consumption only and that
this should not in any circumstances be reduced. On going through these cases it may be seen that where the demand of 3 months consumption deposit was challenged, Courts have confined themselves to broad questions of reasonableness and have specifically restrained themselves from substituting their judgment with that of the SEBs. The Courts have not functioned as appellate authorities and gone into a de novo reappraisal of the factual situation. It is clear that a statutorily empowered authority that has now been vested with the powers earlier enjoyed by the SEBs can look into the issue afresh on the basis of facts related to the billing cycle and come to reasonable conclusions.

34. It is evident that the cases referred to above dealt with the powers of the State Electricity Boards to prescribe the terms and conditions for the supply of power to their consumers. They have in essence held that Section 49 of the Electricity (Supply) Act, empowers the SEBs to frame such terms and conditions as the board deems fit for the supply of electricity to any person not being a licensee, with the authority to demand deposits from the consumers. Likewise Section 79(J) which empowers the board to make regulations governing the supply of electricity to consumers also authorizes the SEBs to demand deposits. In essence, the courts have held that SEBs in their statutory capacity under the Electricity (Supply) Act, are entirely competent to lay down the terms and conditions on which they have to supply power to consumers.

35. When the SEBs thus levy a deposit as one of the conditions for supply of power, the nature of judicial review is of a limited character. It has been held in Southern Steel Ltd., Hyderabad V/s APSEB (AIR 1990 AP 58) that

"We reiterate that even if this court comes to the conclusion that the deposit should not be 3 months, but 2 months 7 days or 2 1/2 months, it would not be entitled to interfere in the matter, not being an appellate authority. It cannot substitute its own opinion for the opinion of the Board. It can interfere only when the exercise of powers is shown to be arbitrary and unrelated to the object sought to be achieved."
In the Ferro Allows Corporation Ltd., case the Supreme Court has agreed with the view of the AP High Court quoted above.

36. The situation in the present case is entirely different. The Karnataka Electricity Regulatory Commission has been set up under the Karnataka Electricity Reform Act, 1999, with a wide ranging mandate to regulate the activities of the Electricity Sector in Karnataka. The functions of the Commission which are dealt with in Section 11(1) of the Act provide that the Commission shall be responsible to discharge, amongst others, the following functions

"(d) to regulate the working the licensees and to promote their working in an efficient, economical and equitable manner.

(j) to set appropriate codes of conduct and standards for the electricity industry in the State and standards of service to the consumers by licensees".

37. Under Section 18 of the Act, no person can supply electricity without obtaining a licence from the Commission or an exemption from licence. Section 19 of the Act provides for the grant of licence by the Commission. Sub-section (3) of Section 19 further provides that the Licence shall contain the terms and conditions under which the supply of energy is to be made and also such other conditions as the Commission may consider appropriate for achieving the purposes of the Act.

38. In exercise of its powers under the said Act, the Karnataka Electricity Regulatory Commission had framed the KERC (Licensing) Regulations, 2000. Regulation 22 of the said Regulations provides that the licensee shall adopt the model conditions of supply of power and for operation and maintenance of power systems and electric supply line and such other activities and standards as may be framed by the Commission from time to time, by order with such variations as the Commission may frame upon an application being made in that behalf.
39. Condition 3 of the supply licenses granted to the respondent supply companies provides that the licensees shall always comply with the directions issued by the Commission from time to time and shall act in accordance with the terms of licence, except where the licensee obtains the approval of the Commission for any deviation on such directions and terms. Condition 23.1 of the supply licence further provides that the Commission's approval for the Code of Practice on Payment of Bills is to be obtained. The Commission framed the KERC (ES&D) Code, 2000-01 and the Code of Practices on Payment of Bills in terms of the above stated provisions.

40. The KERC is vested with the requisite authority to frame the terms and conditions of supply of power. Under Section 11(1) of the KER Act, the Commission is duty bound to frame such terms and conditions. As part of it, the Commission is empowered to frame the terms and conditions under which the licensees are authorized to conduct their business. The Commission is fully empowered to prescribe how deposits should be furnished by consumers, how they have to be billed for energy supplied to them, the period within which the payment has to be made etc., subject to the applicable norms.

41. As has been stated earlier, the Courts have proceeded on the basis that the amount of security deposit is closely linked to the billing cycle of the suppliers. In several instances that have been extracted above, the courts have come to the conclusion that demand of deposits for three months consumption cannot be termed to be unreasonable on the basis of billing cycles that has been shown to be very different from that prescribed under the various regulations and codes of KERC. As such, the licensee cannot claim a right to demand the security deposit equal to the 3 months charges as a matter of routine, since the quantum of security deposit is linked to the billing cycle.

42. KPTCL has mentioned that there are a number of administrative problems which arise in effecting disconnection promptly on the date on which the consumer who has defaulted in payment of bills is liable for disconnection. The
vital aspect to be considered in such a situation is the percentage of consumers coming within the purview of disconnection. The KPTCL has furnished information relating to the number of consumers who do not make payments within the due dates and the number of disconnections to which the licensee resorts on an average per month along with their written submission dated 8.1.2004. From the said statement, it transpires that the percentage of the value of dishonoured cheques to the total payments made by cheques is only 0.88% which is negligible. The said statement reflects the number of defaulters and the disconnection effected in each month during the period from April 03 to September 03. The number of defaulters to the total number of consumers has not been indicated. It is clear that the percentage of defaulters works out to be about 7.90%. If IP sets, Bhagyajothi, Streetlight and Water supply installations of VPs and TMCs for whom 3 MMD is not applicable are excluded from the total number of consumers, then the percentage of consumers who commit default works out to be about 10.5%. Thus, it may be inferred from the above that about 90% of the consumers in the State are punctual and prompt in their payment of bills. In other words, for those 90% of consumers, at any given point of time, question of disconnection does not arise.

43. It is relevant to mention here that the major portion of outstanding arrears is accounted for by irrigation pumpsets and the water supply and street light installations of local bodies. As is evident from Sections 5.03 and 30.02 of the ES&D Code, Bhagya Jyothi, Kuteera Jyothi installations and water supply and sewage installations as well as public lamp installations of village panchayat and town municipalities are exempted from the requirement of providing security deposits. On the contrary, since the consumption of industrial and commercial categories is relatively high, the maximum amount of deposits are collected from these consumers. The outstandings in respect of these categories of consumers is extremely low. It would therefore appear that there is hardly any need for the licensee to have a 3 months deposits from these regular non defaulting consumers. Besides, the customer who pays his dues promptly has to be
appreciated and encouraged and he should not be treated on par with defaulters.

44. Another line of argument advanced by the Learned Counsel for KPTCL was that there is no need to adjudicate the entire issue since the Courts have already examined the rationale and reasonableness of the issue and held the requirement of 3 months deposits to be valid. He argued that unless the facts of the present case present a drastically different situation or circumstances no reconsideration is called for. He stated that merely placing some arguments for or against the quantum of 3 MMD would not justify any interference with the established principle on which the system now works. He relied upon the cases of Ambika Prasad v/s State of Uttar Pradesh (AIR 1980 SC 1762) and Somavanti v/s State of Punjab (AIR 1963 SC 151). In Somavanti v/s State of Punjab it has been held that "the binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided".

45. As has been pointed out earlier, all the Courts that have considered the issue of security deposits have looked at the reasonableness of a particular demand based on the billing cycle. The ratio of the several judgments referred to above have been applied by the Commission to the prevalent facts and circumstances in the light of the Codes prescribed by the Commission. The Commission is of the opinion that the Supreme Court's decision in Ambikaprasad v/s State of Uttar Pradesh also does not come in the way of the Commission exercising its authority granted under the statute to determine the quantum of security deposit. Obviously there cannot be an uniform quantum of security deposit for all the States, notwithstanding the findings in the Ferro Alloys case, nor is that the contention of the learned counsel for KPTCL.

46. The argument that the situation does not warrant the reopening the issue of security deposit and that it is a settled matter in view of the Ferro Alloys case,
does not appear to be rational and reasonable. The billing cycle is the determinant of the security deposit and any variation in its ingredients, changes the value of security deposit. Better practices, prompt and timely efficient action of the licensee is certain to make a great deal of impact on the billing cycle and reduce the quantum of the security deposit. Therefore, there is justification in the consumer demanding that the licensee should follow better practices in its operation and thereby improve its efficiency in the revenue recovery. The Ferro Alloys case does not forbid the determination of the quantum of security deposit and as long as the object of the deposit is fulfilled, it is permissible to vary the quantum. In all the cases cited before us, and the cases extracted in the Ferro Alloys case, a certain deposit is considered to be reasonable in relation to a certain billing cycle and a set of practices followed by the licensee. There is nothing sacrosanct about the deposit being equal to 3 months energy consumption, and if there is a rationale justifying a different basis that could be followed.

47. There is another aspect of the security deposit that has been explained by the Supreme Court in the Ferro Alloys case which also needs to be considered here. In paras 106 to 109 of the judgment in that case, the Court has explained how the security deposit also partakes of the character of working capital finance for the SEBs. The Court has stressed the fact that SEBs have to expend money on generation and purchase of power, maintaining stocks of coal and oil etc. The Court has also said that advances, which do not bear interest, are required to be maintained with Central Projects like NTPC/NHPC for purchase of power. The Court has said that, however, "while the Electricity Board is required to make colossal advances to generate electricity and supply to consumers, the consumers use and consume electricity on credit ranging from 2 to 3 months depending upon the category of consumers. To offset part of the amount the consumer owes to the Board continually to ensure timely payment of bills by the Board to its suppliers, the advance consumption deposit is required to be kept with the Board before commencing supply to the consumer." (para 109).
48. Applying the ratio of the above to the present situation, it is clear that while Karnataka Power Corporation Ltd., is required to maintain inventory of fuel, their working capital financing charges are built in to the tariffs applicable. No advance for power purchase is required to be placed by the KPTCL with either KPCL or with Central Generating Stations. On the contrary, KPCL raises bills on KPTCL for power supplied in any calendar month by the 5th of the succeeding month. Payment is due from KPTCL to KPCL latest by 30 days from the date of presentation of the bill, where payment is made after this period; an interest rate of 12% p.a. on the arrears is applied. In the case of the IPPs supplying power to KPTCL, the bills are raised by the IPPs in the first week of the month following the month of the supply and over 20 days time allowed for payment of the same. In the case of Central Generating Stations, i.e., NTPC, NLC, NPC also, the bills for power supply to KPTCL are raised in the first week of the month following the month of supply, and periods of 30 to 60 days are allowed for making payment. To this extent, present factual position differs from that considered in the Ferro Alloys case. It should be possible, therefore for the licensees to pay for power purchase based on collections from consumers. Even if this were completely ignored and the billing cycle applicable to consumers alone were considered, the working capital support that is required for financing receivables from consumers who pay regularly can only be a maximum of one month's consumption, which is the period intervening between two successive billing dates. Any deposit in excess of this amount in the case of consumers who pay regularly would amount to an unjustified impost and an implicit cross subsidy and burden imposed on regularly paying customers to finance losses caused by consumers who default and in whose cases the licensee does not take prompt action to recover amounts though empowered by law.

49. Evidently the period of 6 days claimed by KPTCL in their billing cycle submitted in their written submissions dated 15.10.03 as time taken for crediting the cheques and receipt of non-realised cheques from the bank by the licensee is not a matter to be considered in view of the fact that the percentage of non-
realised cheques etc., is a miniscule out of the total and that cannot be made as a reason to make the majority who pay their bill within a period of 50 days to suffer. Likewise, the claims for two days as time taken for delivery of notice etc., cannot be considered for the purpose of saddling the consumer with additional security deposit. Similarly the contention that about 10 days period is required for actual disconnection after the expiry of notice to be granted, cannot be a valid ground to fasten the liability with the concept of security deposit. It is needless to say that laxity or inaction or want of efficiency on the part of a service organization cannot be a ground to penalize a citizen.

50 The resultant effect is that the total period comes to 64/65 days including the notice period of disconnection of 15 days provided under Section 56 of the Act. The billing cycle put forth by the respondents has already been reflected. The billing cycle, according to the Commission, including the notice period for disconnection of 15 days provided under Section 56 of the Act, will come to 64/65 days, as already reflected. The percentage of defaulters who are liable for disconnection will be about 10.5%. In other words, it is evident that about 90% of the consumers are prompt, punctual in their payment of dues. Thus, majority of the consumers pay their bills within the time contemplated, that is, within a period of 49 or 50 days (30 or 31 days billing period + 4 days for issue of bill + 15 days provided for payment = 49 or 50 days). When spot billing is introduced in the entire State, even the period of 4 days provided for issuance of bills will be eliminated. In any view of the matter, the utility will be in receipt of the bill amount from a prompt and punctual consumer within a period of 50 days and the percentage of such consumers who pay punctually at any given point of time will be about 90%.

51 Prompt and punctual consumers who form the majority cannot be equated with the consumers who commit default. They cannot be considered on par. A distinction has to be drawn between a prompt consumer and a defaulting consumer. Electricity, as water supply, is an essential service to the very existence of a citizen and majority of the consumers do not risk a situation
which results in disconnection and deprivation of the essential service. Another important aspect to be noted is that the question of issuance of notice of disconnection never arises at all in case of consumers who are prompt. Since the total period of billing cycle for a prompt consumer comes to 49 or 50 days, such consumers must be rewarded for their good performance and punctuality in payment of their bills.

52. As mentioned above, the total period works out to be 64/65 days including the notice period of disconnection of 15 days provided under Section 56 of the Act. The period of 4/5 days does not constitute or make an appreciable or phenomenal difference over a two months period. In the totality of the circumstances, it does not alter the situation appreciably. The Commission is of the considered view that for fixation of security deposit, the period 4 or 5 days which exceed the period of 2 months, can be ignored and it will be just and reasonable in the circumstances, to fix the period of security deposit as two months. It is once again reiterated that utility realizes its bill amount from the prompt consumers who constitute the majority, within the period of 50 days, since the issuance of notice of disconnection in such a situation never arises at all.

53. Having due regard and consideration to the information furnished by the utility, the emerging scenario is that at any given point of time, about 90% constitute punctual consumers and the default percentage will be approximately 10%. From this 90%, at any given point of time, within a span of 50 days, the bill amount is realized by the utility and the contingency of issuance of a disconnection notice of 15 days never occurs in respect of this percentage. It is not denied that even in the case of prompt and punctual consumers, there may be some occasions for default and even in such cases, any variation in the number of defaulting consumers will be marginal and therefore negligible. It will be all the more appropriate in the circumstances, to
imbibe punctuality on the part of consumers by envisaging a mechanism by which the defaulting consumer loses the benefit of 2 MMD.

54. The contention on the side of the Objector No.22 to the effect that the provisions of the Electricity Act 2004 are not applicable to licensee up to June 2004 etc., is not germane and relevant for determination of the issues involved since the matter is remanded to the Commission with certain directions and as such, that aspect cannot be entertained in these proceedings.

55. The only issue remaining to be considered is KPTCL’s plea that the amounts held as 3 MMD are very substantial and that any reduction in this amount would have a substantial adverse impact on the finances of the licensees. This argument has some force. The Commission recognizes the need to avoid sudden cash outflow on the licensees. The Commission feels that this objective will be served by reducing the security deposit requirement for new consumers to two months estimated consumption chargers and prohibiting the licensee from demanding additional deposits from existing consumers till the deposit now held becomes less than the required, on the basis of 2 month’s consumption.

56 (a) In view of the above discussions, the Commission passes the following order:

i) Two months consumption charges shall be collected from the new consumers as security deposit.

ii) In case of existing consumers who have not committed any default in payment during the preceding calendar year, additional deposit shall henceforth should not be called for, till the deposit held falls short of 2 MMD calculated based on the average monthly bill amount of the preceding calendar year, as incentive to prompt paying consumers.
iii) When the deposit held falls short of 2 MMD, only then, additional deposit to the extent of short fall up to 2 MMD, shall be called for payment in full.

iv) If the consumer fails to make his bill payment within the due date in any month, the benefit of 2 MMD gets forfeited for a period of 12 months. In such an event, the licensee shall serve a notice to the consumer to pay the balance amount, to make up the deposit of 3 months average consumption charge, which shall be paid by the consumer within one month, failing which, consumer's installation shall be liable for disconnection in accordance with law.

v) Necessary amendments to KERC (ES&D) Code, 2001 will be issued separately to take into effect from the date of this Order.

56 (b) It is made clear that this Order will be in force till the coming into force of the Regulations that is contemplated under Section 47 of the Act.

56 (c) This Order is without prejudice to the order already made by the Commission in Tariff Order 2002 for refund of excess 3 MMD if it is more than 120% of the 3 MMD calculated on the basis of the preceding calendar year.

57. The Order is signed, dated and issued by the Karnataka Electricity Regulatory Commission.

(Philipose Matthai) (H.S. Subramanya) (S.D. Ukkali)
Chairman Member-1 Member-2

58. I respectfully disagree with my learned colleagues on the following grounds:

1) The Hon'ble High Court of Karnataka has remanded the case to K.E.R.C. to refix the rate of security deposit taking into consideration of the requirement of giving statutory notice of not less than 15 days under Section 56 of Electricity Act 2003 before effecting
disconnection. Now presently 7 days notice is being given and therefore 8 more days are required before disconnection of any installation.

2) In this order now put up a period of 64/65 days for monthly billing cycle without any margin for practical working of ESCOMS is considered. Even then 4/5 days more are required over and above 60 days and passing order again as 2 MMD is unreasonable and these 4/5 days cannot be ignored when the Hon'ble High Court of Karnataka has remanded the case to refix the security deposit considering 8 more days for disconnection than the existing system.

3) In my opinion 72/73 days period calculated by ESCOMS is reasonable considering all aspects and 2 MMD is not sufficient security for a present monthly billing cycle and collection of 3 MMD is reasonable.

S.D.UKKALI, Member-II