

**Before the Karnataka Electricity Regulatory Commission, Bangalore****Dated this 15th day of December 2003****Present**

**Sri Philipose Matthai** - Chairman  
**Sri H.S.Subramanya** - Member  
**Sri S.D.Ukkali** - Member

**Case No OP 33 / 2003****In the matter of: Applications filed by KPTCL/ESCOMs on the following:**

| <b>Application dated</b> | <b>Subject</b>   |
|--------------------------|--|
| 24.5.03                  | Approval of Special Incentive Scheme to the HT industrial consumers at Rs. 3.80 per unit   |
| 11.7.03                  | Approval of Power Purchase and Other Cost Adjustment (POCA) formula.   |
| 4.8.03                   | Approval of the additional gap of KPTCL and ESCOMs worked out based on actual details of Income and Expenditure for FY03.  |
| 7.8.03                   | Approval for enhancement of Bulk Supply Tariff (BST) and retail supply tariff consequent on allowing US \$ 0.04 per kwh towards fixed charges payable to Tanir Bavi Power Company Ltd (TBPCL) as per the Arbitral Award. |

- 1) Karnataka Power Transmission Corporation Ltd (KPTCL)
- 2) Bangalore Electricity Supply Company Ltd }
- 3) Mangalore Electricity Supply Company Ltd } (ESCOMs)
- 4) Hubli Electricity Supply Company Ltd }
- 5) Gulbarga Electricity Supply Company Ltd }

**- Applicants**  
**(MD, KPTCL, MDs, ESCOMs)**

**Date of Hearing:** 21.11.2003**ORDER**

1. KPTCL/ESCOMs have filed the above applications for amendment of the tariff approved by the Commission in Tariff Order 2003 issued on

10.3.03. The Commission in its Order dated 17.9.03 (Annexe - 1 to this Order) had ordered that an abridged version of the four applications be published by KPTCL/ESCOMs within 10 days of the Order, allowing 10 working days time to the consumers to file their objections, if any. It was also directed in the said Order that rejoinder to the objections received shall be published by KPTCL/ESCOMs in the newspapers within 8 days from the last day for receiving objections. KPTCL in their letter dated 27.9.03 had requested the Commission to grant time for publishing the applications upto 15.10.03, which was accordingly granted by the Commission. KPTCL/ESCOMs have published the applications vide notice dated 15.10.03 in the following newspapers on the dates noted against each of them:

The Indian Express : 16.10.03 and 17.10.03

The Vijaya Times : 16.10.03

The Times of India : 17.10.03

Prajavani : 16.10.03 and 17.10.03

Vijaya Karnataka : 16.10.03 and 17.10.03

2. In the above said notice published by KPTCL/ESCOMs, details of the additional amount proposed to be recovered through amended tariffs are as indicated below:

| <b>Sl No</b> | <b>Particulars</b>   | <b>Amount (Rs in crores)</b>                |
|--------------|--|---|
| 1            | On account of lower revenues from Industrial consumers as a result of proposed Rs. 3.80 per unit under Special Incentive Scheme to HT consumers                    | Nil   |
| 2            | On account of lower hydro availability in FY04 than the forecast and variation in other expenses by applying proposed POCA formula for the period ending Aug 2003. | 77.74                                       |
| 3            | On account of revenue gap for FY03 (including additional power purchase cost of Rs.158.10 crores pertaining to TBPCL for FY03)                                     | 224.02                                      |
| 4            | On account of Arbitral Award in Tanir Bavi Power Company case  | 294.94<br>(For FY02 and FY04 with interest) |
|              | <b>Total (Serial no 3 &amp; 4 only)</b>  | <b>518.96</b>                               |

3. According to the said notice, out of the above revenue gap of Rs.518.96 crores, KPTCL/ESCOMs have proposed recovery of Rs.68.86 crores through tariff hike during the financial year FY04 for the period from November 2003 to March 2004 and the balance of Rs. 450.10 crores in the next tariff filing. Details for the additional revenue of Rs.68.86 crores proposed to be raised by KPTCL/ESCOMs in FY04 as notified by the Licensees are as indicated below:

(Rs crores)

| Tariff Category              | Category                                       | Revenue at existing tariff for 5 months from Nov 03 to March 04 | Revenue at proposed tariff (5 months) | Additional revenue expected | Percentage increase |
|------------------------------|--|---|---------------------------------------|-----------------------------|---------------------|
| LT 1(a)                      | Bhagya jyothi/<br>Kutir Jyothi                 | 28.90   | 28.90                                 | 0.00                        | 0.00                |
| LT 2(a)                      | Domestic lighting / AEH                        | 597.93  | 597.93                                | 0.00                        | 0.00                |
| LT 2(b)                      | Private professional educational institutions  | 3.18  | 3.30                                  | 0.13                        | 3.93                |
| LT 3                         | Commercial and non-commercial lighting         | 207.91  | 225.83                                | 17.92                       | 8.62                |
| LT 4 (a)<br>(b), (c),<br>(d) | I.P. Sets                                      | 247.61  | 247.61                                | 0.00                        | 0.00                |
| LT 5                         | Industrial heating and motive power            | 279.12  | 291.12                                | 12.00                       | 4.40                |
| LT 6                         | Water Supply & Public Lighting (Urban & Rural) | 148.80  | 148.80                                | 0.00                        | 0.00                |
| LT7                          | Temporary Power supply                         | 15.88   | 15.88                                 | 0.00                        | 0.00                |
| H.T.1                        | Public Water Supply and Sewerage Pump          | 99.88   | 99.88                                 | 0.00                        | 0.00                |
| HT 2(a)                      | Industrial, non-industrial and motive power    | 599.63  | 625.74                                | 26.11                       | 4.35                |

(Rs crores)

| Tariff Category | Category                                      | Revenue at existing tariff for 5 months from Nov 03 to March 04 | Revenue at proposed tariff (5 months) | Additional revenue expected | Percentage increase |
|-----------------|---|---|---------------------------------------|-----------------------------|---------------------|
| HT 2(b)         | Commercial                                    | 140.11  | 152.82                                | 12.71                       | 9.07                |
| HT 3 (a&b)      | Irrigation & Agricultural Farms, LI Societies | 3.73  | 3.73                                  | 0.00                        | 0.00                |
| HT 4            | Private Residential Apartments                | 12.78   | 14.83                                 | 0.00                        | 0.00                |
|                 | <b>Total</b>                                  | 2385.47   | 2456.38                               | 68.86                       | 2.89                |

4. The category wise tariff increase proposed by KPTCL/ESCOMs to raise the additional revenue of Rs.68.86 crores in FY04 is as follows:

| Tariff Category | Category  | Increase in energy charges proposed |
|-----------------|---|-------------------------------------|
| LT 2(b)         | Private professional educational institutions etc | 20 paise per unit                   |
| LT 3            | Commercial and non-commercial lighting            | 50 paise per unit                   |
| LT 5            | Industrial heating and motive power               | 20 paise per unit                   |
| HT 2(a)         | Industrial, non-industrial and motive power       | 20 paise per unit                   |
| HT 2(b)         | Commercial  | 50 paise per unit                   |

No change is proposed by KPTCL/ESCOMs in the fixed charge/demand charge or any other terms and conditions of tariff. The notification issued by KPTCL/ESCOMs further states that for other categories the existing tariff continues.

5. In response to the publication of the applications in the newspapers by KPTCL/ESCOMs, the details of the objections received by the Commission are as follows:

Objections received in proper form along with affidavit - 162

Objections received without affidavit - 4203

6. KPTCL/ESCOMs have published the rejoinder to the objections received, in the newspapers as follows:

The Indian Express : 10.11.03

The Times of India : 10.11.03

Prajavani : 10.11.03

Vijaya Karnataka : 10.11.03

7. After issuing due notice to the objectors in the newspapers on 14.11.03, the Commission held a public hearing on 21.11.03 at the Commission's office in Bangalore. In the public hearing, 24 objectors representing political parties, Industries, organisations, consumers groups and individuals participated.

8. The names and addresses of the objectors whose objections were received in proper form are given in Annexe – 2A. The list of objectors who participated in the public hearing is given at Annexe - 2B. A summary of the objections received and the response of the Licensees thereto is given at Annexe-3 to this Order. Further, the objections raised by the consumers, response of the Licensees and the views of the Commission thereon have been discussed in the appropriate places of this Order.

9. Some of the objections raised by the objectors are:  
(i) Applications filed by the Licensees are not in proper form, (ii) Proper procedures have not been followed by the Licensees in filing the applications, (iii) A single application is filed by KPTCL & ESCOMs, (iv) Audited Accounts for FY03 have not been made available. These objections have been examined by the Commission and the Commission has noted the responses of the Licensees in this regard. The Commission advises KPTCL/ESCOMs to file separate applications in future and also to provide audited accounts while filing the ERCs. Regarding the objection by some of the objectors that the charges for
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the sale of applications prescribed by KPTCL/ESCOMs are excessive, the Commission agrees with this view and directs KPTCL/ESCOMs to charge the cost of the booklet only at actuals in future.

10. Considering the applications filed by the licensees and the objections received thereon, the Commission has proceeded to determine the additional revenue requirement sought by the licensees in the following paragraphs. Since all the four applications filed by KPTCL/ESCOMs include additional amount under the Arbitral Award of TBPCL, the Commission considers it appropriate to discuss this application first.

**11. Enhancement of BST & Retail Supply Tariff consequent to Arbitral Award in respect of Tanir Bavi Power Company:**

- 11.1 Some of the salient aspects relevant to the issue that is now before the Commission are noted below:

11.2 KPTCL had entered into an agreement with Tanirbavi Power Company Ltd.<sup>1</sup> (TBPCL) for purchase of power on 15.12.1997. The Power Purchase Agreement (PPA) was amended through supplementary agreements dated 29.5.99, 30.9.99 and 25.1.01.

11.3 Soon after the TBPCL started its commercial operation and raised invoices on the KPTCL for the power supply, KPTCL had raised some disputes relating to the manner of computation of fixed charges. It may also be noted that the KPTCL had come to the firm conclusion about the very grave financial implications of the claims made by TBPCL. The CMD, KPTCL, in his letter dated 27.9.01 to the Principal Secretary, Energy Dept, GoK, had clearly stated that:

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<sup>1</sup> Now known as GMR Energy Ltd., as reported vide GMR Energy Ltd., letter dated 1.10.03

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"If the contention of the Company is accepted, KPTCL would be incurring excess fixed charges of Rs.1040.80 crores over a period of seven years without any justification.

The position maintained by the Company on charging the ceiling amount of \$ 0.04 per kWh would imply, as per their own figure, collecting at least Rs.2503 crores in fixed cost on an investment of Rs.934 crores. This would mean a profit of Rs.1299.20 crores on Dollar denominated investment of Rs.275 crores. The RoE in such a situation would be greater than 65 % year on year".

(vide para 8.5.15 of the Tariff Order 2002).

11.4 A dispute arose between KPTCL and TBPCL regarding the amount of fixed charges (FC). While TBPCL claimed US \$0.04 FC, KPTCL differed from it. The dispute was referred to GoK. The GoK directed KPTCL to pay FC at the rate of US \$ 0.04 per kWh.

11.5 Consequently, KPTCL filed revised ERC for FY02 and FY03 with the Commission, by including the revised FC payable to TBPCL. The Commission in its Tariff Order 2002 issued on 8.5.02, decided that additional fixed charges of Rs.121.79 crores for FY02 and Rs.163.81 crores for FY03 payable to TBPCL are disallowed, for inclusion in the ERC, for the respective years and the Commission directed KPTCL not to take any further action on the claim of the TBPCL, without following the dispute resolution mechanism provided in the PPA.

11.6 The Commission in this matter noted as follows regarding the scope and nature of the issues that had to be decided upon in its Tariff Order 2002:

12. "The Commission has considered all these arguments very carefully. KPTCL has sought to pass through in the tariff that is

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to be paid by the ultimate consumers the extra payment that has now arisen as a consequence of the Government's interpretation of the PPA. The sums involved are extremely large. Without in any way going into the merits of the case and pronouncing an opinion as to whether or not the payment claimed by TPC is due to them, the Commission notes that the minimum that would be expected of KPTCL is to adhere to the provisions included in the PPA for settlement of disputes of this type. The Commission notes that a three-stage process has been provided in the PPA for resolution of disputes. **Without resorting to such a process and arriving at a judicially valid determination of the rights and obligations of the respective parties, KPTCL would be failing in its duty as a Licensee to purchase power in an economical manner and through a transparent power procurement process (Clause (j) of Sub-Section (4) of Section 17 of the Act) if payments were made to TPC merely on the strength of any "directive" that may be issued in this connection by the Government.** This requirement to purchase power through a transparent power purchase process would require that where disputes are raised as to the interpretation of certain clauses of PPAs, KPTCL should seek an appropriate judicial determination of the same through the self contained mechanisms envisaged under the PPA. **In the process of such determination, the Licensee is obliged to take all possible steps for protection of its and, in turn, the Consumers' interests.** Until such time as there is a determination of this type, the Commission would be unable to accept any payment made as being eligible for inclusion in the tariff charged to end consumers.

13. **The issue involved in this matter, therefore, boils down to one of whether any Licensee can permit the performance of its duties and obligations as such Licensee to be hindered or**



**prevented by any action of another party to whom it may have certain obligations either of a legal or of a contractual character.** ..... The non-fulfillment of duties and obligations of a Licensee would, irrespective of the circumstances sought to be advanced as mitigating such non-fulfillment, open the Licensee to the penal action provided in the Licence and the statute under which the same is issued. The licence is a statutory document and obligations are cast upon the Licensee thereunder. As has been made clear above, the obligation to purchase power in an economical manner and through a transparent power procurement process requires that the dispute resolution mechanism envisaged in the PPA be followed **and the Licensee take all action that is necessary to defend its interests."**

(emphasis supplied).

(vide para 8.5.12 & 8.5.13 of Tariff Order 2002).

11.7 The Commission had laid special emphasis upon all the above points especially in order to impress upon the Licensee, the obligations that derived under the licence to safeguard the interest of the public, in as effective and conscientious manner as possible, if it sought to transfer the liabilities incurred by it under any contract, to which it was a party, to the consumers.

11.8 The matter was referred by KPTCL and TBPCL to an Arbitral Tribunal for arbitration. The Tribunal passed orders upholding the claim of TBPCL for payment of FC at the rate of US \$ 0.04 along with interest. It has been submitted that KPTCL as well as the State Government have accepted this award.

11.9 Consequent to passing of orders by the Arbitral Tribunal the additional cost towards payment of FC, is as hereunder according to KPTCL:

| Rs. In Crores        |        |
|----------------------|--------|
| For FY02-Actuals     | 113.50 |
| For FY03-Actuals     | 158.10 |
| For FY04 (estimated) | 147.34 |
| Interest             | 34.10  |
| Total                | 453.04 |

11.10 Several objectors have raised serious questions about the extent to which KPTCL, as a Licensee has discharged its obligation. Some of the objections raised by the objectors are as hereunder:

- i) Determination of tariff is not in accordance with provisions of Electricity (Supply) Act, 1948, Notification of Gol dated 30.3.1992 as amended from time to time, and Gol guidelines dated 3.6.1997 regarding inviting Tariff based bids.
- ii) Tariff fixed on the principles of competition and the PPA is antithetical. The Arbitral Tribunal has failed to examine the process of bidding.
- iii) Fixed Charge is not fixed price and is not "fixed" in the PPA. The PPA being a statutory contract for tariff purposes, the meaning of fixed charge cannot be inferred from either the context of competition or from Lexicon, but can be only extracted from Annexure III of the 'Guidelines for inviting tariff based bids' issued by the Ministry of Power (MoP).
- iv) Considering the fixed charge as settled price, without reference to cost, the Company is ensured excess profit which is against public policy and hence the award is to be set aside.
- v) PPA is unenforceable and 4 cents not tenable under any interpretations.
- vi) Supplementary agreements were signed subsequent to formation of KERC.
- vii) Additional burden arising on account of Tribunal Award shall not be passed on to the consumers.

- viii) The PPA being a statutory contract is not a concluded contract and hence subject to review by KERC.
- ix) It results in high return on equity allowed to TBPCL and defective tendering process.
- x) The Arbitral Tribunal did not have expert advice.
- xi) Electricity Act 2003 was promulgated to be effective from 10.6.03. The Arbitral award was issued on 19.5.03. Hence, the validity of the award will be only up to 10.6.03.
- xii) Termination of PPA has been done in case of Co-Generation Plants of Sugar Mills and similarly the PPA with TBPCL should be terminated by KPTCL.
- xiii) Objectors have cited a decision of the Hon'ble Supreme Court (ONGC v/s Saw Pipes Ltd.) where it has been stated that the court may set aside Arbitral Award, if it is in conflict with the public policy of India.
- xiv) The shares of M/s Chicago Power Inc., (Company) involved at the time of bidding) have been purchased by M/s GMR Group. Subsequent changes and reasons for the same needs to be examined.

11.11 Further in the public hearing held by the Commission on 21.11.03 the objectors have raised the following points in addition to the above objections.

- i) The PPA should be reopened in the interest of the public and tariff for TBPCL should be determined by the Commission under the provisions of Electricity Act 2003.
- ii) The Commission should direct the petitioners to challenge the Arbitral Award in the court of law instead of asking the consumers to file a PIL.
- iii) The Tariff of this project is not reflective of the actual costs incurred. They quoted the CAG report and pointed out that the FC is 2.05 cents for single cycle operation and therefore FC should be less than 2.05 cents for combined cycle operation.
- iv) As a result of arbitral award, KPTCL will be paying excess amount of Rs.1050 crores for a period of seven years which would be around Rs.750 crores in terms of NPV and thus the RoE thereon, will be far more than the 16%, as per the Gol norms.
- v) The original bids were called for 150 MW and the capacity has been modified to 230 MW subsequently stating that the

earlier capacity was unviable. Considering the economies of scale the fixed cost per unit should have come down which has not been properly negotiated.

11.12 KPTCL in their response to the objections have stated the following:

Sec 43-A of the Electricity (Supply) Act, 1948 enables a generating company to enter into a contract for sale of energy with a Board, at a tariff that is to be determined in accordance with the norms regarding operations and Plant load factor as may be laid down by the Central Government through a notification. The GoI has issued guidelines for Competitive Bidding Route for Private Power Projects in January 1995 and for Tariff Based Bids in June 1997. Amendments to the tariff Notification of 1992 were issued in June 1997. The tariff for the project has been derived in accordance with these guidelines, since this project was set up through the bid route. The bids were evaluated by a High Level Committee constituted by the Government comprising of Senior Officers of the Government and then, decision taken.

The issue regarding the process of bidding was not under the purview of the Tribunal. The issue before the Tribunal was only regarding the Dollar Denominated Fixed Charges i.e., whether it is 4 cents or 2.254 cents per kWh for the 1<sup>st</sup> Tariff year as per the PPA signed between the parties. KERC also had directed to get this decided as per the contract.

The objector has urged on the dictionary/literal meaning of the word "FIXED". The 'Guidelines for inviting tariff based bids' issued by the MoP in 1995 (clause 4.9 v) requires that the bidder mention the inflation factor as well as the exchange rates in the RFP document. In the amendment to the notification issued by Ministry of Power in 1992 regarding tariff for thermal power generating stations determined through competitive bidding. Sec 4 states that the fixed charge shall consist of the following:

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- i) A component on which foreign exchange escalation shall be paid at actuals.
- ii) A component, which shall be indexed to domestic inflation  
and
- iii) A component on which no escalation shall be payable.

Accordingly, the bidders were required to quote the tariff comprising of fixed and variable charges with Forex Protection provided for FDSC. As said in the pre-paras, this is a bid route project and bids evaluated based on the competitive tariff. As such, neither the Government nor the then KEB could have calculated the profit that the Company could have earned.

An agreement is always a concluded contract between the seller and purchaser and hence the PPA cannot be termed as non-enforceable. That the PPA is a concluded contract has also been upheld by the KERC in its Tariff Order, 2002. (Chapter 8, page 117)

KERC in its Tariff Order, 2002, directed the KPTCL to follow the dispute resolution mechanism included in the PPA for settling the claims of TBPCL. Accordingly, KPTCL initiated arbitration proceedings as per clause 14 of the PPA. The Tribunal interpreted clauses 7.3 and 7.4 of the PPA and decided that TBPCL is entitled to FC of 4 cents per kWh.

The erudite Arbitral Tribunal comprised of two former judges and former Chief Justice of Hon'ble Supreme Court. It was for the Tribunal to seek any expert advice if required. The Tribunal has gone into all the merits of the case before pronouncing its award. The Arbitral Award has been passed by eminent former judges of the Supreme Court. Therefore, the KPTCL has accepted the award. If the objectors desire they may move the Court. KPTCL would co-operate with the objectors. The Corporation denies the contention of the objectors regarding non-

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exercise of due diligence in the matter pertaining to the dispute between KPTCL & TBPCL. KPTCL has taken all steps to protect its interest and had endeavoured to present its case before the Tribunal in its entirety. However, the Tribunal has upheld the claim of TBPCL regarding payment of fixed charges with due reasons. The award of the Tribunal therefore has been accepted.

The KER Act, 1999 was promulgated to be effective from 1.6.1999. The Karnataka Electricity Regulatory Commission was constituted and became operational on 15<sup>th</sup> November 1999. Hence, approval to the Supplemental Agreement – II (which was signed on 30<sup>th</sup> September 1999) was not obtained on the PPA. The 25<sup>th</sup> Jan 2001 amendment introduced the definition of financial closing and modified clause 14.3 (c) of the PPA to enable arbitration under the Arbitration and Conciliation Act, 1996 instead of arbitration under UNCITRAL. These changes do not have any financial impact and did not require the Commission's approval.

Electricity Act 2003 has come into force on 10.6.03 and does not have retrospective effect. Accordingly it is PPA, which governs the price of electricity supply by TBPCL, being a concluded contract. KERC also in its Tariff Order 2002 at page 117 has held that the PPA is a concluded contract and is deemed to have been approved by it and binding on the parties.

The PPAs in respect of co-generation power plants were terminated since the developers of these plants failed to fulfil the conditions precedent prescribed in the respective PPAs.

Further during the public hearing KPTCL / ESCOMs have stated as follows:

Regarding reopening of TBPCL contract, it was stated that the PPA has attained the status of a concluded contract and the same has been reiterated by the Commission in its Tariff Order 2002. As per the direction of the Commission the dispute on FC was referred to an arbitration panel. KPTCL/GoK has accepted the award as it has been passed by eminent former Supreme Court judges and former Chief Justice. KPTCL stated that if any of the consumers desire to challenge the arbitral award, KPTCL would fully cooperate with such objectors and in case they succeed, the entire legal expenses would be reimbursed by KPTCL. KPTCL is also examining various options for reducing cost of power purchase from TBPCL.

11.13 Thus, one of the main questions raised by the objectors is that in the presentation of its case before the Hon'ble Arbitral Tribunal, the KPTCL has been found guilty of grave omissions. Specifically, objectors have pointed out that the applicable law under which the terms of the PPA need to be interpreted has not been presented at all before the Tribunal, by the KPTCL. The objectors contend that the law that governs the PPA and more specially the tariff that is computed under the terms of such PPA, is Section 43(A) of the Electricity (Supply) Act, 1948 and all the notifications issued there under. Objectors have stated that if the said section and the notifications issued thereunder had in fact been considered, the interpretation of the specific clauses of the PPA that were in dispute, would have been of an entirely different character.

11.14 The main thrust of the objectors is that the award is wrong and opposed to law and that the liability thereunder should not be passed on to the consumers, by way of increase in tariff. Several reasons have been given by the objectors in support of their submission that the award is illegal and that a direction should be issued to the KPTCL to challenge this award. KPTCL replied thereto and have taken a stand that they would not challenge the award and the award

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having been passed by an erudite Tribunal and the Tribunal having gone into all the merits of the case, KPTCL as well as GoK have accepted the award and that the objectors if they so desire, may move the Court and that KPTCL would cooperate with the objectors and in case the objectors succeed, KPTCL would reimburse the expenses.

11.15 The Commission has examined the aspects canvassed by the objectors and also that of the Licensee. The position of the Licensee, vis-à-vis, the public interest in a broader sense, is that of a trustee, since public money and interest are involved. It is evidently responsible and answerable to the public. The position and status of the Licensee cannot be equated to that of an individual litigant and the *lis* embraces the interest of the consumers at large also. In such an institution where public money and interest is involved, accountability is writ large. There is a public element in the discharge of the functions by the KPTCL which is equivalent to discharging of duty, as is expected by a State.

11.16 The jurisdiction and powers of the Commission are controlled by the Karnataka Electricity Reforms Act, 1999 and the Commission being a creature of the said statute has to function within the four corners of the same. At this juncture, it would be pertinent to point out that Section 61 and Section 62 of the Electricity Act 2003 are not applicable in view of the proviso to Section 61. The Commission is therefore required to fall back upon Section 27 of the Karnataka Electricity Reforms Act read with Section 11 thereof. Reference can also be made to Section 86 of the Act of 2003. If the parties to the *lis* before the Arbitral Tribunal have consciously taken a decision to accept the award, the Commission cannot insist upon a party to challenge or not to challenge the award, however strong or otherwise the reasons may be. Therefore, the Commission is not going into the various aspects canvassed by the objectors against the tenability of the award.

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- 11.17 The next question that arises is whether the liability under the award should be passed on to the consumers by way of increased tariff. The Commission is bound by the provisions contained in the statute in the discharge of its functions. As the donee of such statutory power, the Commission is of the view that before revising the tariff, the claim of KPTCL/ESCOMS should muster the tests laid down in the statute.
- 11.18 Under Section 27 of Karnataka Electricity Reforms Act, in the matter of determination of tariff, the Commission is required to be guided by the factors set out in Section 27 (2) (a) to (g). The same considerations also apply to revision / amendment of tariff under Section 27 (8) and (10) of the Act. It is true that with regard to "contracts concluded" prior to the commencement of the Act, the same shall be deemed to have been approved by the Commission under the provisions of the Act and shall be given effect to, by the Commission (Section 27 (2) proviso). The question therefore that arises for consideration, at the outset, is whether the present claim of the applicants is covered by the said proviso to Section 27 (2) rendering inapplicable the various factors set out in Section 27 (2) (a) to (g). The proviso refers to "contracts concluded". For the conclusion of a contract, the law requires the existence of a *consensus ad idem* i.e. meeting of minds as on the date of commencement of the Act.
- 11.19 In respect of FC of 4 cents claimed by TBPCL, the KPTCL admitted the claim to an extent of 2.054 cents and raised a dispute regarding the balance of 1.946 cents. Thus, evidently, there was a dispute on this aspect of 1.946 cents. As on 1.6.1999 when the KER Act came into force, there was no concluded contract as such, in respect of this aspect of 1.946 cents, as there was no *consensus ad idem* on this crucial aspect, in between the parties to the agreement.
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11.20 It is obvious from the award that the parties thereto, had a dispute as to the meaning and content of the relevant clauses of the PPA which has given rise to the award and claim for revision of tariff. That being so, there was no meeting of the minds of the parties. Per contra it is otherwise. Until the meaning and purport of the relevant clauses of the contract were determined by the Arbitral Award, the understanding of the parties was nebulous and not crystallized. When the parties themselves were at variance as to their understanding, it is inconceivable that the Commission could have determined that with reference to those disputed clauses there was a concluded contract. It is also pertinent to state that the Licensee did not seek approval of the Commission for the supplementary agreements entered into with TBPCCL after coming into force of the KER Act, 1999. The Commission's observation in the earlier Tariff Order on the PPA entered into between the parties, should reasonably be understood as applicable to only those portions of the PPA with respect to which the parties have no dispute as to their respective rights and obligations. This is not a case where there is a dispute about performance of obligations under an undisputed contract. The dispute centres around the very existence of obligation under the contract and thus necessitated this Commission to issue appropriate directions in the Tariff Order 2002. The Commission therefore is of the view that Section 27 (2) (proviso) is not attracted to Clause 7.3 and 7.4 of the PPA, under which the claim arises, as on these clauses, the parties cannot be said to have formed, *ab initio*, a consensus *ad idem* as evidenced by the stand of the applicants before this Commission. The Commission is therefore obliged to examine the claim of the applicants for revision on the touchstone of Section 27 (2) (a) to (g) of the Act.

11.21 Section 27 and Section 11 have to be read conjointly, to understand the scope of the powers of the Commission in tariff determination. Section 11 (1) (a) reads as follows:

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**“11. Functions of the Commission.-** (1) Subject to the provisions of this Act, the Commission shall be responsible to discharge, amongst others, the following functions, namely.-

- (a) To regulate the purchase, distribution, supply and utilization of electricity, the quality of service, the tariff and charges payable keeping in view the interest of the consumer as well as the consideration that the supply and distribution cannot be maintained unless the charges for the electricity supplied are adequately levied and duly collected...”

11.22 Section 21 of the Karnataka Electricity Reform Act, *inter alia*, imposes a duty upon the Licensee to maintain an economical system of electricity supply. It cannot be doubted that the applicants are discharging a public duty and every aspect of its activity must be motivated by a desire to promote consumer interest. While it cannot be disputed that the applicants are the judges of their actions, the Commission is the donee of statutory power to promote consumer interest also. Under the pre- KERA regime, fixation of tariff lacked transparency. This lacuna or mischief is sought to be remedied by the Act, by assuring a total transparency in tariff fixation. The Commission is therefore entitled to oversee the functions of the Licensee to ensure that transparency in decision-making is assured and that consumer interest is adequately protected.

11.23 In this regard, the Commission has adopted the principle of interpretation as articulated by the Hon'ble Supreme Court of India in Reserve Bank of India v. Peerless General Finance, (1987) 1 SCC 424 wherein the Hon'ble Court laid down the applicable principle of statutory interpretation thus:

“33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which

makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute- maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by context..."

11.24 In the instant case, the applicants in their reply to the objectors have been content to state as follows with regard to the award:

- (i) The erudite Arbitral Tribunal comprised of two former judges and former Chief Justice of Hon'ble Supreme Court. It was for the Tribunal to seek any expert advice if required. The Tribunal has gone into all the merits of the case before pronouncing its award.
- (ii) KERC in its Tariff Order, 2002, directed the KPTCL to follow the dispute resolution mechanism included in the PPA for settling the claims of TBPCL. Accordingly, KPTCL initiated arbitration proceedings as per clause 14 of the PPA. The Arbitral Award has been passed by eminent judges of the Supreme Court. Therefore, the KPTCL and the GoK has accepted the award. If the objectors desire, they may move the court and KPTCL would co-operate with the objectors and also reimburse the expenses if the objectors succeed.

11.25 While it is true that the Arbitral Tribunal comprised of erudite judges, the issues raised by the objectors both on facts and law still remain un-addressed. The applicants have not been sensitive to the concern of the consumers who ultimately are the carriers of the financial burden. The Commission is therefore not satisfied that consumer interest has been adequately protected by the licensee and that the decision of the licensee not to challenge the award is transparent. Section 27 (2) (e) requires that the interest of the consumers are

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safeguarded and that 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.

11.26 Evidently, the Commission is mandated under the statute to protect the interest of the consumers and also to regulate the activities of the power sector. Section 27 of the KER Act of 1999 holds the field for determination of Tariff in question. KPTCL has sought to pass through in the tariff an amount of Rs.453.04 crores on the account for the period from FY02 to FY04, including the interest on the delayed payment. For the entire period of 7 years, according to KPTCL, the payment would amount to Rs.1040 crores. Further all the contentions raised by the objectors have not been duly met by the KPTCL in the rejoinder in proper perspective. In the totality of the circumstances, an exorbitant sum is involved and the utility seeks to pass on the burden to the consumers without being transparent in its decision as to the tenability of the award and with respect to various contentions that have been raised by the objectors.

11.27 What is the resultant effect of such an agreement entered into between the KPTCL and the generator has been very vividly summed up by the erstwhile CMD of KPTCL in his letter dated 25.9.01 to the Principal Secretary, Energy Department, Government of Karnataka, which is already reflected and which is once again reiterated here at the cost of repetition, having regard to its relevance, which letter in essence states, that if the contention of the company is accepted, KPTCL would be incurring excess fixed charges of Rs.1040.80 crores over a period of 7 years without any justification and that the position maintained by the company on charging the ceiling amount of \$0.04 per kWh would imply, as per their own figure, collecting at least Rs.2503 crores in fixed cost on an investment of Rs.934 crores and this would mean a profit of Rs.1299.20 crores on dollar denominated investment

of Rs.275 crores, the RoE in such a situation being greater than 65% year on year.

11.28 This letter by the KPTCL, the very licensee, clearly unfolds the state of affairs and it has been admitted by the licensee who is a party to the contract, the grave financial burden which it wants to pass on to the consumers. The Commission is of the view, having regard to the reply filed by the licensee to the objections and considering all the relevant aspects including the law which governs the field, the licensee has failed to discharge its duties under section 21 of the Act and its inherent obligation as a public utility provider. Besides, such a burden, it goes without saying, over burdens the consumers at large, having also adverse impact on all fields of economy in the State particularly agriculture, industry, commerce etc. The regulator cannot be a mere spectator in the situation. It is the bounden duty of the regulator to regulate the activities of the power sector in the background of protecting the interest of the consumers also. The very KPTCL in essence, has reflected in its letter as to how it amounts to an excess payment.

11.29 For all these reasons, the Commission does not consider it prudent to pass on this burden to the consumers and as such, the Commission decides not to allow the additional fixed charges as a pass through in the tariff.

## 12. **POCA Formula:**

12.1 KPTCL had sought for approval of Power Purchase Cost Adjustment (PPCA) Formula or in the alternative the Mix Change Adjustment (MCA) Formula in the ERC filing for FY04 & tariff filing. The Commission had indicated in the Tariff Order 2003 (Para 3, page 86 of the Tariff Order 2003) that KPTCL may approach the Commission during the first week of October 2003 when the hydro inflow position would be largely known, with details of extra requirement of funds for power purchase

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and that the Commission will examine the proposal in terms of the approved power purchase quantity, approved T&D loss and the shortfall in hydro generation and pass appropriate orders to safeguard KPTCL's finances against the risk of poor monsoon. KPTCL in their application dated 11.7.03 on the POCA formula have stated that the KPTCL is facing acute financial crisis due to failure of the monsoon and it is essential that this issue is addressed by the Commission without delay. KPTCL in their written submission dated 4.9.03 have further stated that there has been failure of monsoon and on account of the same, it has been constrained to purchase power from other sources at a higher price and that consequently it has been facing acute financial crisis due to adverse cash flow position.

12.2 POCA formula proposed by KPTCL is as follows:

$$\text{POCA} = \frac{\text{Total POCA in Rs. Crores}}{\text{Rs./Kwh (Energy sales + Estimated Consumption + Excess T\&D Loss) / 10}}$$

Where Total POCA in Rs. Crores = C + I + B + Z

Where POCA = Total power purchase and other cost adjustment in Rs. Crores

C = Power purchase cost variance (F.C. Variance + V. C. variance)

I = Interest on working capital

B = Adjustment factor for over recovery / under Recovery.

Z = Unpredictable and Uncontrollable expenses / Income / earned by KPTCL & ESCOMS, subject to approval of the Commission.

Energy Sales = Metered sales in MU

Estimated Consumption = Unmetered consumption as estimated in MU

Excess T & D Loss = (Actual T & D Loss – Approved T & D Loss) in MU

12.3 KPTCL have stated in their application that the existence of a price adjustment formula shall be in the over all interest of the utilities as well as consumers. They have stated that POCA will facilitate monthly

fixation of tariff and the utilities will have to furnish all the relevant data relating to the previous month to the Commission for getting the tariff for the next month determined and approved by the Commission. The formula proposed provides for adjustment of excess/ shortage on a month-to-month basis and as a pass thorough to the consumers both for metered and unmetered consumers. KPTCL have further stated that MERC has approved a Fuel & Other Cost Adjustment Formula (FOCA) in its Order dated 31.7.01.

12.4 A large number of consumers have objected to the proposed formula and following are the major objections:

- i. Application of POCA formula is not maintainable either under law or facts. Approval of the formula amounts to tariff revision every month or more than once in a year which would be a gross violation of Section 27(10) of the KER Act 1999 as well as Section 62(4) of Electricity Act 2003.
  - ii. Suggested formula is not correct, definite and is vague. The formula should be given wide publicity and should be subjected to wide public debate as it is having serious financial consequences. The formula contains arbitrary, relative and vague variables like adjustment factor, unpredictable and uncontrollable expenses etc., which should not be allowed.
  - iii. If the formula is approved, there will not be any sanctity for the ERC approved by the Commission.
  - iv. Since FEC formula has not been specified by the Commission through regulations under Section 62(4) of the Electricity Act 2003, the Commission does not have authority to approve the formula in the present proceedings.
  - v. Since the Commission has already approved the tariffs under Section 27(10) of KER Act, 1999 in the Tariff Order 2003, no further amendment to the tariff is permissible during the financial year through a formula or otherwise.
  - vi. Once the formula is approved, the tariffs may change from month to month which will lead to instability in the tariff, which is not desirable. It brings uncertainty in the tariffs affecting their forecasts etc.
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12.5 KPTCL/ESCOMs in their rejoinder have stated that the Commission has the power to approve such a formula under Section 27(10) of the KER Act, and that approval of the formula will not be a violation of the Electricity Act 2003. Such a formula is contemplated in the Act itself. They have further stated that once the formula is approved, all the details will be submitted to the Commission and after approval only the rates are applied to the consumers. They have further clarified that the uncontrollable expenses may occur because of vagaries of nature, changes in the laws, judicial pronouncements, government policies, market conditions etc and such expenses will be subject to the approval of the Commission. The Maharashtra Electricity Regulatory Commission has approved a similar formula.

12.6 In the public hearing held on 21<sup>st</sup> November 2003, the objectors have raised the following additional points:

- a. POCA is opposed to both letter and spirit of the KER Act and Electricity Act 2003, as it gives room for tariff revision more than once a year.
- b. The only reason in support of POCA is that the Maharashtra Electricity Regulatory Commission has approved similar formula. But the Rules in Karnataka are different as compared to Maharashtra. If tariff is revised every month without obtaining the opinion of the consumers, there will not be any transparency in fixation of tariff.

KPTCL/ESCOMs in their response during the public hearing stated that the POCA formula is permissible under the Act which can be approved by the Commission and further that implementation of POCA formula need not necessarily increase the rates but may also result in reduction in tariff. MD/KPTCL also stated that the tariffs are expected to reduce in subsequent years considering the alternate fuels likely to be available for generation of power and also higher efficiency norms likely to be included in the National Tariff Policy and

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CERC norms on generation of power to be issued under the Electricity Act 2003.

12.7 The Commission finds substance in many objections raised by the consumers. According to Section 27(10) of the KER Act, "No tariff or part of any tariff implemented under sub-section (5) may be amended more than once in a financial year, except in respect of any charges expressly permitted under the terms of any fuel surcharge formula as may be approved by the Commission". Similarly, Section 62(4) of Electricity Act, 2003 provides that "No tariff or part of any tariff may ordinarily be amended, more frequently than once in a financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified". What both the Acts provide for, through a formula, is limited to changes expressly permitted under fuel surcharge. Infact, all estimated and anticipated variations in the expenses including anticipated increase in the power purchase cost (which includes increase in fuel cost) in the subsequent year are already included by the Licensees in the ERCs and are approved by the Commission after due scrutiny. Therefore, the Commission is of the view that the scope for further variation in expenses during the course of a year is very limited except in the case of change in hydro-thermal mix which is dependent on the vagaries of monsoon. Therefore, what needs to be provided is a correction factor in the course of the year for change in hydro- thermal mix than what was anticipated at the beginning of the year in the ERC. In the event of any substantial variation in other expenses for valid reasons, the Licensees are free to approach the Commission for amendment of the tariff as provided for under the Act.

12.8 Regarding the contention of one of the objectors that the tariff has already been amended by the Commission in the Tariff order 2003 under Section 27(10) of the Act and no further amendment is permissible, it is to be clarified that in the Tariff Order 2003, tariffs were

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determined in the annual exercise and such tariff can be amended once during the course of the financial year as provided specifically under Section 27(10) of the KER Act.

12.9 The amount claimed by KPTCL under the POCA formula for the period from April 03 to Aug 03 is Rs.77.74 crores. KPTCL has provided working details for this amount in their letter dated 5.11.03 and the Commission notes that this amount includes only the difference in the power purchase cost and no other components of expenditure as proposed in the formula are included. The amount of Rs.77.74 crores includes difference in the fixed cost of TBPCCL amounting to Rs.53.34 crores which perhaps may be on account of the additional fixed cost under the Arbitral Award. When this amount of Rs.53.34 crores is excluded for the reasons mentioned earlier, the net increase on account of power purchase cost from April 03 to August 03 would be Rs. 24.40 crores. Further, KPTCL in its letter dated 12.11.03 has provided the revised estimates of power purchase quantity and cost for FY04 as desired by the Commission by considering the actuals upto September 03 and estimated figures for the balance period. There are significant differences in the actuals provided upto Aug 03 between the KPTCL letter dated 5.11.03 and letter dated 12.11.03 as detailed below:

| Particulars                 | Power purchase quantity from Apr 03 to Aug 03 (MU) | Power purchase cost from Apr 03 to Aug 03 (Rs crores) |
|-----------------------------|--|---|
| KPTCL letter dated 5.11.03  | 11846  | 2238.82   |
| KPTCL letter dated 12.11.03 | 11894  | 2192.86   |
| Difference                  | 48   | (-) 45.96   |

Note: No details have been provided by KPTCL for these variations.

12.10 In the details provided by KPTCL, within a course of one week, while the power purchase quantity has increased by 48 MU, the power purchase cost is less by Rs.45.96 crores. If this reduction of Rs. 45.96

crores is also considered, then the amount proposed for recovery under the POCA formula by KPTCL for the period from April 03 to Aug 03 would become negative. Further the Commission points out that the additional fixed charges payable to TBPCCL under the Arbitral Award for FY04 estimated as Rs. 147.34 crores has already been included by KPTCL in the application on the TBPCCL claim amounting to Rs.453.04 crores. Therefore if this claim is included again under POCA formula by KPTCL, this would result in double counting of the same amount. It may become difficult to keep track of such discrepancies if the formula is applied every month as proposed by KPTCL.

12.11 In the light of the above discussion, the Commission will examine the formula proposed by KPTCL while specifying the fuel surcharge formula under Section 62(4) of the Electricity Act 2003.

### **13. Change in Hydro thermal mix:**

13.1 The Commission finds that it may be necessary to provide for correction of tariff once during the course of the year if such tariff has been determined at the beginning of the year in order to provide for change in hydro thermal mix since accurate forecasting of monsoon has not been possible. Such an amendment of tariff once in a year is specifically provided for in the KER Act. Therefore the Commission had directed the Licensees in the Tariff Order 2003 (vide para 5.2.4 of Tariff Order 2003) to approach the Commission in the first week of October 2003 when the hydro inflow position would be largely known, with details of extra requirement of funds for power purchase and that the Commission will examine the proposal in terms of approved power purchase quantity, approved T&D loss and the shortfall in hydro generation and pass appropriate orders to safeguard KPTCL's finances against risk of poor monsoon. However, since KPTCL has not made such application in respect of the shortfall in hydro generation in FY04 but has sought approval for the POCA formula to take care of such

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variations as discussed earlier, the Commission will proceed to assess the shortfall in hydro generation in FY04 based on the information available with the Commission and to provide for the extra requirement of funds on that account to safeguard KPTCL's finances as indicated in Tariff Order 2003.

13.2 The details of hydro generation as approved by the Commission in the ERC for FY04 and revised estimate according to the Commission's assessment are as follows:

| Particulars   | KPCL Hydro Stations | VVNL Hydro Stations | Total            |
|---|---------------------|---------------------|------------------|
| As approved in the ERC  | 9337                | 404                 | 9741             |
| Actual generation from April 03 to Nov.03                                       | 4384                | 261                 | 4645             |
| Anticipated generation from Dec.03 to March 04 (as assessed by the Commission*) | 2500                | 88                  | 2588             |
| Total revised estimate for FY04   | 6884                | 349                 | 7233             |
| Shortfall in Hydro generation in FY04   | 2453                | 55                  | 2508<br>Say 2500 |

\*Working details provided in Annexe- 4.

14. **Additional requirement of funds in FY04:** The additional requirement of funds to meet the above shortfall in hydro generation in FY04 has been estimated by the Commission as follows:

|   |               |                      |
|---|---------------|----------------------|
| Shortfall in Hydro generation in FY04   | MU            | 2500                 |
| Average Hydro Tariff as in ERC for FY04 (KPCL + VVNL Stations)  | Ps/unit       | 61.75                |
| Average Tariff from non - hydro sources as in ERC for FY04  | Ps/unit       | 239.16               |
| Additional power purchase cost required:<br>At non - hydro Tariff 2500 MU x 239.16 = 597.90<br>Less at hydro Tariff 2500 MU x 61.75 = 154.37<br>-----<br>443.53 | Rs.<br>Crores | 443.53<br>say 444.00 |

Although the Commission has estimated the additional requirement of funds due to change in hydro thermal mix in FY04 as Rs.444 crores, going by the past performance, the actual requirement of additional funds may be substantially less for the reason that the entire power purchase quantity as approved in the ERC may not be fully drawn. Infact, in FY03 as against the power purchase quantity of 30552 MU approved in the ERC, the actual power purchase was 29242 MU, i.e less by 1310 MU. Similarly, in FY04, for the period from April 03 to August 03, the energy drawal is less by 586 MU when compared to the approved quantity for that period (on a proportionate basis) according to KPTCL. Thus the additional requirement as worked out above may vary and therefore, the Commission decides that the additional requirement of funds on account of change in hydro thermal mix would be subject to actuals at the year end and further subject to efficiency norms and other parameters as set out in the earlier Tariff Orders. However, in the present proceedings, the Commission considers the additional requirement of funds for FY04 as Rs.444.00 crores.

#### **15. Revenue Gap for FY03:**

- 15.1 In the ERC for FY04, the revenue gap of KPTCL/ESCOMs for FY03 was estimated as Rs. 432.35 crores (Rs. 164.68 crores in respect of KPTCL and Rs. 267.67 crores in respect of ESCOMs). KPTCL/ESCOMs had stated in their applications that the gap had arisen mainly on account of failure of monsoon and lower reservoir levels in hydro stations and requested the Commission to institute a mechanism so that ESCOMs can recover the deficit from the consumers. The Commission, in its Tariff Order 2003 vide para 11.5 has ordered that KPTCL/ESCOMs may approach the Commission as and when the FY03 actual figures are available and the Commission will review the same and take appropriate decision after duly considering the efficiency norms and other parameters fixed in

the earlier Tariff Orders. The above revenue gap did not include the additional fixed charges payable to TBPCL.

15.2 In the application dated 4.8.03, KPTCL/ESCOMs have stated the actual revenue gap for FY03 as Rs.433.74 crores which includes an amount of Rs.158.10 crores being the additional fixed charges payable to TBPCL under the Arbitral Award. On seeking certain clarification by the Commission, the gap was revised to Rs. 238.16 crores in KPTCL's letter dated 3.9.03 and further to Rs.224.02 crores in reply dated 18.9.03. If the additional fixed charge of TBPCL amounting to Rs.158.10 crores is excluded, the net revenue gap now claimed would be Rs. 65.92 crores only. Therefore, the revenue gap that was claimed by KPTCL/ESCOMs for FY03 in the FY04 filing was higher by Rs.366.43 crores when compared to the present filing. (Rs. 432.35 crores minus Rs.65.92 crores),

15.3 The following are the major objections that have been raised by the consumers on the Revenue Gap for FY03 :

- 1) There is no information about units sold by ESCOMs to consumers in order to determine losses.
- 2) Total expenditure is substantially higher than the total revenue generated.
- 3) Revenue receipt and expenditure figures are assumptions and presumptions and not actuals.
- 4) Audited annual accounts for 02 – 03 are not submitted even after 6 months after the close of financial year.
- 5) Revenue gap for FY03 was Rs.433.74 crores as claimed in KPTCL letter dated 4.8.03 which has been subsequently revised to Rs.238.16 crores .
- 6) MAT was not included in original ERC filed for FY03, but inclusion of same in review petition as expenditure is not correct.
- 7) KPTCL and ESCOMs are claiming gap on one hand and providing for MAT on profit on the other hand. If gap exists no profit can exist and providing for MAT does not arise.
- 8) The applicant has indicated the total gap to be recovered instead of consumer category wise gap to be recovered through tariff revision.

- 9) Considering 3% ROR by Transmission Company and also Distribution Company should be on value added by each Company to avoid any cascading effect.
- 10) Disallowance of interest on power purchase dues by Commission on earlier occasions still holds good and the same has to be disallowed this time also.
- 11) Allowing tariff increase to only certain category of consumers is not provided under the law.

15.4 KPTCL/ESCOs have replied to the objections stating that

- 1) the gap is based on provisional accounts prepared by KPTCL/ESCOs and that the statutory audit and AG's audit is in progress and that they have requested for increase in tariff to cover the gap.
- 2) that KPTCL/ESCOs are required to show a minimum return of 3% on the net fixed assets as per the requirement of Electricity (supply) Act 1948 and to ensure this, the deficit has to be either passed on to the consumers through tariff or to be borne by GoK. Hence the companies are justified in showing 3% ROR as profit and also providing for MAT since it is a statutory provision.
- 3) The tariff is being fixed on the average cost of supply across all category of consumers and not based on delivered cost of supply to each class of consumers and therefore the tariff revision sought is in accordance with law.
- 4) Different rates to different categories of consumers have been proposed as provided for under section 27(5) of KER Act.
- 5) Incurring interest on delayed payment of power purchase dues is inevitable in the existing scenario and beyond the control of KPTCL since outside players are involved in the activity. Main reasons for interest on power purchase cost are (a) incurring additional power purchase expenditure due to non-availability of hydel power and (b) non-release of subsidy by GoK.

15.5 The request of KPTCL / ESCOs for allowing the revenue gap is dealt with as under:



### 15.6 Revenue gap of KPTCL:

- a) **Power purchase cost:** In the revised estimates for FY03 filed by KPTCL along with the ERC of FY04, KPTCL had indicated the total power purchase cost for FY03 as Rs. 5418.25 crores for 28904 MU, with average power purchase cost at 187.46 paise per unit. As against this, the average power purchase cost approved by the Commission in the Tariff Order 2002 for FY03 was 177.42 paise per unit, with total power purchase cost of Rs. 5420.45 crores for 30552 MU. Actual power purchase cost for FY03 as filed by KPTCL is Rs. 5352.50 crores, which is inclusive of additional fixed charges of TBPCL amounting to Rs.158.10 crores under the Arbitral Award. Accordingly, KPTCL has requested the Commission to increase the BST suitably.

For the reasons stated in para 11 of this order, the Commission has not allowed in the present proceedings the inclusion of difference in fixed cost on account of TBPCL. In accordance with this decision and applying efficiency norms as spelt out in the Tariff Order 2003, the bulk supply tariff has been worked out as follows:

| <b>Particulars</b>                | As per Approved ERC for FY 03 | Present filing by KPTCL for FY03 | As worked out by the Commission |
|-----------------------------------|-------------------------------|----------------------------------|---------------------------------|
| Total Input (MU)                  | 30552                         | 29242                            | 29242                           |
| Losses (%)                        | 6.39%                         | 6.5%                             | 6.39%                           |
| Total Sales (ESCOMs+ Hukeri) (MU) | 28578                         | 27111                            | 27374                           |
| Power purchase cost               | 5420.45                       | 5352.50                          | 5352.50                         |
| Disallowance on account of TBPCL  |                               |                                  | 158.10                          |
| Net Power purchase cost           | 5420.45                       | 5352.50                          | 5194.40                         |
| Bulk supply Tariff (Rs./kWh)      | <b>1.90</b>                   | <b>1.97</b>                      | <b>1.90</b>                     |

The total quantity of power purchase for FY03 was lower than the approved quantity of 30552 MU by 1310 MU. KPTCL has indicated the actual transmission losses as 6.5% compared to the approved level of 6.39%. The total power purchase cost excluding TBPCL component was Rs. 5194.40 crores. By applying the approved level of losses, the revised BST works out to Rs. 1.90/kWh, which is the same as that approved in the ERC. Thus by following the efficiency norms and principles set out in previous Tariff Orders, no increase in BST is permissible.

b) **Transmission expenses** : The total transmission expenses approved for FY 03 for KPTCL was Rs. 704.38 crores. In the ERC filing for FY04, KPTCL has mentioned the revised transmission expenses as Rs. 584.24 crores. As against this, the actual expenses filed by KPTCL is Rs. 744.15 crores. The difference between the approved ERC and the actuals for FY03 are as follows.

**Comparison of approved and actual transmission expenses for FY03**

| <b>Particulars</b>                | <b>As per Approved ERC</b> | <b>Present filing of KPTCL</b> | <b>Difference</b>   |
|-----------------------------------|----------------------------|--------------------------------|---------------------|
|                                   | <b>(Rs. crores)</b>        | <b>(Rs. crores)</b>            | <b>(Rs. crores)</b> |
| Employee Cost                     | 102.01                     | 113.83                         | 11.82               |
| Repair & Maintenance              | 29.17                      | 13.08                          | -16.09              |
| Administration & General          | 52.79                      | 27.65                          | -25.14              |
| Interest & Financial charges      | 400.24                     | 394.35                         | -5.89               |
| Depreciation                      | 154.83                     | 144.13                         | -10.70              |
| Other expenses                    | 6.28                       | 3.16                           | -3.12               |
| Net prior period expenses/credits | 3.79                       | 23.83                          | 20.04               |
| Less: Expenses capitalised        | -85.50                     | -20.45                         | 65.05               |
| Return on NFA                     | 40.77                      | 41.46                          | 0.69                |
| Provision for MAT at 7.5% of RoR  |                            | 3.11                           | 3.11                |
| <b>Sub Total</b>                  | <b>704.38</b>              | <b>744.15</b>                  | <b>39.77</b>        |

The employee costs furnished by KPTCL is inclusive of bonus and free lighting to employees, which were not allowed as a pass through in the tariff by the Commission. KPTCL has indicated that Rs. 1.61 crores is towards bonus, where as no estimate for free lighting to employees is given. Hence the net increase in employee cost after considering the disallowance of bonus would be Rs. 9.39 crores. Thus the net increase over the approved level is Rs. 39.77 crores. However, under interest and financial charges, interest on power purchase to the tune of Rs. 96.32 crores has been included. For the reasons mentioned vide para 5.1.3 of the Tariff Order 2003, the Commission is unable to allow the amount of Rs.96.32 crores towards interest and financial expenses. This will reduce the allowable transmission expenses to Rs. 647.83 crores. Revenue gap / surplus on account of transmission expenses is worked out as follows:

| <b>Particulars</b>                      | <b>As per Approved ERC for FY 03</b> | <b>Present filing by KPTCL</b> | <b>As worked out by the Commission</b> |
|---|--------------------------------------|--------------------------------|--|
|   | <b>(Rs. Crores)</b>                  | <b>(Rs. Crores)</b>            | <b>(Rs. Crores)</b>                    |
| Transmission expenses                   | 704.38                               | 744.15                         | 744.15                                 |
| Less: Bonus to employees                |                                      |                                | 1.61                                   |
| Less : Interest on power purchase       |                                      |                                | 96.32                                  |
| Less : Other income                     | 0.00                                 | 94.67                          | 94.67                                  |
| Net Transmission expenses               | 704.38                               | 649.48                         | 551.55                                 |
| Power purchase                          | 5420.00                              | 5352.50                        | 5194.40                                |
| Total expenses including Power purchase | 6124.38                              | 6001.98                        | 5745.95                                |
| Revenue from sale of power              | 6131.52                              | 5836.63                        | 5836.63                                |
| <b>Revenue Surplus (+)/Deficit (-)</b>  | <b>6.69</b>                          | <b>-165.35</b>                 | <b>90.68</b>                           |

The actual transmission expenses excluding other income and interest on power purchase is Rs. 551.55 crores as worked out by the Commission as against approved level of Rs. 704.38 crores. Considering both power purchase and transmission expenses as

worked out above, there is no revenue gap and on the other hand there should have been a revenue surplus of Rs. 90.68 crores.

### 15.7 Revenue gap of ESCOMs

The approved figures for FY03 for ESCOMs are set out in Split ERC as filed by KPTCL/ ESCOMs. For the purpose of validation of revenue gap for FY03 all the ESCOMs are considered together as filed by ESCOMs.

- a) **Power purchase & Transmission cost:** ESCOMs are paying BST and transmission charges as determined by the Commission in the Order on the split ERC. As discussed earlier, no revision of BST for FY03 is required. Hence total power purchase cost paid by ESCOMs i.e., Rs. 5824.93 crores is treated as the expenses for FY 03, which needs no adjustments.
- b) **Distribution Costs:** The distribution expenses approved by the Commission for FY03 is Rs. 1148.2 crores, as against this the actual expenditure was Rs.1043.98 crores which is lower by Rs.104.22 crores as detailed below.

| Particulars                       | Approved by KERC<br>(Rs. crores) | ESCOMs Actual<br>(Rs. crores) | Difference<br>(Rs. crores) |
|-----------------------------------|----------------------------------|-------------------------------|----------------------------|
| Employee Cost                     | 583.77                           | 630.99                        | 47.22                      |
| Repair & Maintenance              | 81.79                            | 74.48                         | -7.31                      |
| Administration & General          | 41.89                            | 61.92                         | 20.03                      |
| Interest & Financial charges      | 132.94                           | 89.75                         | -43.19                     |
| Depreciation                      | 246.25                           | 221.65                        | -24.6                      |
| Other expenses                    | 13.08                            | -69.86                        | -82.94                     |
| Net prior period expenses/credits | 7.89                             | -19.58                        | -27.47                     |
| Less: Expenses capitalised        | -8.88                            | -0.57                         | 8.31                       |
| Return on NFA                     | 49.47                            | 51.52                         | 2.05                       |
| Provision for MAT at 7.5% of RoR  |                                  | 3.88                          | 3.88                       |
| <b>Total</b>                      | <b>1148.20</b>                   | <b>1044.17</b>                | <b>-104.03</b>             |

Out of Rs. 47.22 crores increase in employee costs, Rs. 10.11 crores is towards free lighting to employees and Rs. 7.05 crores towards bonus, which were not allowed by the Commission as a pass through in the tariff in the ERC for FY03. The net expenditure including power purchase cost of Rs. 5824.93 crores considering other income (Rs. 32.66 crores) is Rs. 6819.09 crores. As against this, the revenue from sale of power for ESCOMS for FY03 was Rs.5243.48 crores. The net deficit is as follows.

| <b>Particulars</b>                                 | <b>As per Approved ERC for FY 03</b> | <b>Present filing by KPTCL/ ESCOMS</b> | <b>As worked out by the Commission</b> |
|--|--------------------------------------|--|--|
|  | <b>(Rs. Crores)</b>                  | <b>(Rs. Crores)</b>                    | <b>(Rs. Crores)</b>                    |
| Distribution expenses                              | 1148.2                               | 1043.98                                | 1043.98                                |
| Less : Other income                                | 62.11                                | 32.66                                  | 32.66                                  |
| Less: Cost of free lighting and bonus to employees |                                      |  | 17.16                                  |
| Net distribution expenses                          | 1086.09                              | 1011.32                                | 994.16                                 |
| Power purchase                                     | 6131.86                              | 5824.93                                | 5824.93                                |
| <b>Total expenses</b>                              | <b>7217.95</b>                       | <b>6836.25</b>                         | <b>6819.09</b>                         |
| <b>Revenue from sale of power</b>                  | <b>5660.94</b>                       | <b>5243.28</b>                         | <b>5243.28</b>                         |
| Difference (Total expenses – Total revenue)        | 1557.01                              | 1592.97                                | 1575.81                                |
| Subsidy  | 1565.24                              | 1534.5                                 | 1534.50                                |
| <b>Net surplus/deficit</b>                         | <b>8.23</b>                          | <b>-58.47</b>                          | <b>-41.31</b>                          |

- c) **T&D loss:** KPTCL had projected 32% T&D loss for FY03 in the ERC for FY03. The Commission has allowed T&D loss at 28% in the Tariff Order 2002 for FY03 where as the actual T&D loss for that year has been reported by KPTCL/ESCOMs as 30.7%. Following this norm of 28% loss, the total energy sales should have been higher by 790 MU (2.7% on 29242 MU) and the revenue earned should have been higher by Rs.197.5 crores (at an average realisation rate of Rs.2.50 per unit as indicated in the Tariff Order 2002). Had this additional revenue been earned, the net

revenue surplus/deficit for that year would have been as follows:

| Particulars   | Rs. Crores |
|---|------------|
| Revenue Gap/Surplus after subsidy   | (41.31)    |
| Additional revenue that should have been raised from efficiency improvement (790 MU X Rs.2.5) | 197.50     |
| Net gap (-) /surplus (+)  | 156.18     |

By applying the efficiency norms set out in the previous Tariff Orders there should have been a revenue surplus of Rs. 156.18 crores to the account of ESCOMs.

However, the Commission notes that as reported by KPTCL/ESCOMs, they have been able to reduce the T&D loss from 35.86% in FY02 (as per audited accounts) to 30.7%, in FY03 i.e. a reduction of 5.16% which deserves to be appreciated.

**15.8 Total revenue surplus/ Gap for FY03:** The total revenue surplus for FY03, if KPTCL and ESCOMs are considered together, is Rs. 246.86 crores (Rs.90.68 crores plus Rs. 156.18 crores). Thus the Commission concludes that there is no revenue gap in FY03 that is required to be passed on to the consumers in the tariff following the efficiency norms prescribed by the Commission.

15.9 Since the accounts furnished by KPTCL/ESCOMs are pre-actual, the Commission at present is not making any adjustment towards the revenue surplus. As and when audited accounts are available, the Commission will decide the treatment of such revenue surplus appropriately. In the present order, the Commission has not gone into the details of expenditure incurred under each head of account by KPTCL/ ESCOMs, considering the fact that the assumptions made by KPTCL in the split ERC were not properly backed up with sufficient data.

However in future, the Commission will consider variation only in respect of uncontrollable expenses for such truing up at the end of the year.

- 16. Abstract of Additional requirement of funds in FY04:** An abstract of additional requirement of funds for FY04 as allowed by the Commission is given below:

| Details  | Amount allowed by the Commission in the present proceedings (Rs crores) |
|--|---|
| Difference in fixed cost in respect of Tanir Bavi Power Company            | Nil   |
| POCA formula   | Nil   |
| Additional requirement of funds due to change in hydro thermal mix in FY04 | 444.00  |
| Revenue Gap in FY03  | Nil   |
| <b>Total</b>   | <b>444.00</b>   |

- 17. Average Cost of Supply:** The Commission had determined the average cost of supply in FY04 as Rs.3.41 per unit in Tariff Order 2003. Considering the additional requirement of funds as above, the revised average cost of supply in FY04 is indicated below:

|   |           |         |
|---|-----------|---------|
| Total expenditure of ESCOMs as approved in the ERC for FY04                       | Rs crores | 7131.15 |
| Additional requirement of funds in FY04   | Rs crores | 444.00  |
| Total revised expenditure   | Rs crores | 7575.15 |
| Estimated sales in FY04 as approved in ERC for FY04 (before efficiency parameter) | MU        | 20913   |
| Revised average cost of supply  | Rs/unit   | 3.62    |

Thus, the average cost of supply has increased by 21 paise per unit in FY04 in view of additional requirement of funds.

**18. Tariff Proposal:**

KPTCL in its letter dated 17.10.03 has requested the Commission to approve the proposed tariff hike to be effective from 1.11.03 to raise additional revenue of Rs.68.86 crores in FY04. The Commission notes that the tariff hike has been proposed to only a few categories of consumers.

The consumers under the commercial and industrial category to whom tariff hike is proposed have vehemently objected to the proposal and have urged the following points:

- i) The present proposal will increase cross subsidisation, which is not permissible under the KER Act.
- ii) The Licensees have not filed the cost of service before the Commission, in the absence of which the Licensees have chosen to single out industry and trade to fill in the revenue gap. This is against natural justice and amounts to unjust discrimination among consumers.
- iii) The proposal is against the provisions of section 27 of the KER Act and Section 61, 62(3 &4) of the Electricity Act 2003.
- iv) There is no provision under Section 27 of KER Act for loading the tariff hike to only certain category of consumers. The proposal gives no reason for differentiation among the consumers for loading tariff. This amounts to arbitrariness in the matter of revision of tariff.
- v) The selective application of tariff hike leads to increase in the prices of food and beverages, which affects the common man.
- vi) Industrial consumers are not capable of competing with multi national companies who have invested foreign capital. If further hike in electricity charges is permitted, it will have deleterious effect on their products.
- vii) The existing rates are very high and further increase will affect the cost of production. The rates are comparatively higher than in other states.



Other objections raised in the matter of tariff revision are as follows:

- i) Generally oppose any tariff hike.
- ii) The petitioners have no right to come before the Commission seeking tariff increase without taking necessary steps to improve the quality of service.
- iii) The Licensees have not implemented the directives issued by the Commission in the earlier Tariff Orders. Therefore the Commission should not consider the present proposal.
- iv) Tariff to IP sets and BJ consumers should not be increased.
- v) KPTCL/ESCOMs have failed to step up vigilance to contain theft and curb T&D losses. If losses are contained, revision of tariff is not necessary.
- vi) The Commission's order stating that KPTCL/ESCOMs may approach the Commission in October 2003 is erroneous and illegal since the Tariff Order for 2003 itself was passed under Section 27(10) and further revision in the same financial year is without jurisdiction.

In their response, KPTCL/ESCOMs have stated as follows:

- i) Different tariff rates have been fixed for different categories of consumers as per Section 27(5) of the KER Act. As per KER Act 1999 the supply companies /utilities can differentiate among different classes of consumers according to need for cross subsidisation.
- ii) KPTCL and ESCOMs have studied the cost of supply to each class of consumers. The increase in tariff proposed is based on the revised average cost of supply.
- iii) The present filing is made to fill the gap of FY 03 and the gap on account of additional power purchase cost.
- iv) Though the proposed tariff hike may increase the cost of production of industries, the same is based on the revenue requirement and gap of the utilities.
- v) KPTCL and ESCOMs are giving utmost priority to the implementation of the Commission's directives, which is a continuous exercise and is being attended to in all seriousness. Continuous efforts are also being made for improvement in quality of service.

- vi) The actual loss in the KPTCL system is 30.72% for FY03. In order to reduce loss by one percent KPTCL/ESCOMs have to invest on an average of Rs.800 Crores. Since the borrowing and investing capacities are limited, KPTCL and ESCOMs are making efforts to reduce the losses in a phased manner.
- vii) Tariff can be revised once in a year and the revised tariff can also be amended in the same year as per KER Act. The Commission has the power to revise the tariff from the date proposed.

18.4 In the public hearing held on 21.11.03, in addition to the points raised in the written objections, the following issues were raised:

- a. Proposed tariff hike is towards filling the revenue gap of Rs.519 crores. But only Rs. 68 crores which is 13% of the total gap is proposed to be recovered through tariff hike. The treatment of remaining deficit of 87% is not made known.
- b. A suggestion was made for creation of a hydro equalisation fund to meet the deficit in the event of poor monsoon, so that the burden is not passed on to consumers every year.
- c. It was also pointed out that the Commission in its Tariff Order 2000 had directed that the loss level for FY02 be reduced to 24%. This has not been adhered to and hence the application for tariff hike should be rejected.

KPTCL/ESCOMS in their reply during the hearing stated as follows:

- a) Power purchase bills amounting to Rs.1800 crores are pending as on date and GoK has not released subsidy in time. KPTCL/ESCOMs are facing severe financial crunch and to meet the gap in resources, KPTCL/ESCOMs are forced to hike the tariff.
- b) Regarding the recovery of only 13% of the deficit in the proposed tariff hike, MD/KPTCL stated that if the entire amount is passed on immediately there would be a tariff shock to consumers and hence remaining amount would be recovered subsequently.
- c) KPTCL/ESCOMs are making all efforts to reduce losses and the loss levels have been brought down from 35.5% in FY02 to 30.7% in FY03. In this regard schemes like Own Your Transformers is being introduced for IP sets and single phase

supply is being provided on a trial basis to certain rural areas in order to provide 24 hours supply to rural house holds. For monitoring the duration of supply to rural feeders micro-controllers are being installed in all rural feeders. All these efforts are expected to bring down the losses.

18.5 The Commission has examined in detail the application of KPTCL/ESCOMs for tariff hike and the objections received in this regard. According to Section 27(5) (a) of the KER Act, the tariff may be differentiated according to consumer's load factor, power factor, and total consumption of energy during any specified period or the time at which supply is required, or the geographical position of the area, the nature of the supply and the purpose for which supply is required; or paying capacity of category of consumers and need for cross subsidisation. Therefore, the Commission notes that differentiation between the consumers in the matter of tariff is permissible under the KER Act 1999.

**18.6 Consultation with the Commission Advisory Committee:**

The proposal of KPTCL/ ESCOMS for amendment of tariff was placed before the Commission Advisory Committee in the meeting held on 6.11.2003 and discussed.

18.7 In exercise of the powers conferred with the Commission under Section 27(10) of KER Act 1999, the Commission approves to amend the tariff determined in Tariff Order 2003 as detailed below:

| <b>Cat<br/>eg<br/>ory</b> | <b>Category</b>   | <b>Existing Tariff as in Tariff<br/>Order 2003</b>  | <b>Tariff as proposed by KPTCL<br/>/ESCOMs and as approved<br/>by KERC in the present<br/>Order</b>   |
|---------------------------|---|---|---|
| <b>LT –<br/>2b</b>        | Private professional and other private educational institutions, etc. | Fixed charges: Rs. 30/kW subject to a minimum of Rs. 60 per month.<br><br>Energy Charges: Rs.per unit<br>For first 100 units - 3.95<br>Next 100 units - 4.45<br>Next 200 units - 4.70<br>Above 400 units - 5.05 | Fixed charges: Rs. 30/kW subject to a minimum of Rs. 60 per month.<br><br>Energy Charges: Rs.per unit<br>For first 100 units - 4.15<br>Next 100 units - 4.65<br>Next 200 units - 4.90<br>Above 400 units - 5.25 |

| Category | Category   | Existing Tariff as in Tariff Order 2003   | Tariff as proposed by KPTCL /ESCOs and as approved by KERC in the present Order   |
|----------|--|---|---|
| LT-3     | Commercial lighting and heating, etc.                    | Fixed charges: Rs. 35/kW of sanctioned load per month.<br><br>Energy Charges: Rs.per unit<br>For first 50 units - 4.55<br>Above 50 units - 5.50<br><br>Demand based tariff (Optional) where sanctioned load is above 5 KW but below 50 KW:<br>Fixed charges : Rs.50 per KW<br>Energy charges: As above  | Fixed charges: Rs. 35/kW of sanctioned load per month.<br><br>Energy Charges: Rs.per unit<br>For first 50 units - 5.05<br>Above 50 units 6.00<br><br>Demand based tariff (Optional) where sanctioned load is above 5 KW but below 50 KW:<br>Fixed charges : Rs.50 per KW<br>Energy charges: As above  |
| LT - 5   | Industrial/Non-industrial heating and motive power, etc. | Fixed charge: Rs./HP/Month of sanctioned load<br>Upto & inclusive of 5 HP : 25<br>Above 5 HP & below 40 HP : 30<br>40 HP & above but below 67 HP : 40<br>67 HP and above : 100<br><br>Demand based tariff (optional)<br>Rs.per kW/month<br>On billing demand<br>Above 5 HP & below 40 HP : 50<br>40 HP & above and below 67 HP : 70<br>67 HP & above : 150<br><br>Energy Charges: Rs.per unit<br>For first 500 units - 3.10<br>Next 500 units - 3.60<br>Above 1000 units - 3.85 | Fixed charge: Rs./HP/Month of sanctioned load<br>Upto & inclusive of 5 HP : 25<br>Above 5 HP & below 40 HP : 30<br>40 HP & above but below 67 HP : 40<br>67 HP and above : 100<br><br>Demand based tariff (optional)<br>Rs.per kW/month<br>On billing demand<br>Above 5 HP & below 40 HP : 50<br>40 HP & above and below 67 HP : 70<br>67 HP & above : 150<br><br>Energy Charges: Rs.per unit<br>For first 500 units - 3.30<br>Next 500 units - 3.80<br>Above 1000 units - 4.05 |

| Category     | Category  | Existing Tariff as in Tariff Order 2003  | Tariff as proposed by KPTCL /ESCOMs and as approved by KERC in the present Order   |
|--------------|---|--|--|
| <b>HT 2a</b> | Industrial, Non-industrial and Non-commercial, etc.   | Demand charges: Rs.180 per kVA of billing demand/month.<br><br>Energy Charges: Rs.per unit<br>For first 1 lakh units - 3.60<br>Above 1 lakh units - 4.10<br><br>Note: Energy charges for all units consumed by Railway Traction and Effluent treatment plants shall be Rs.3.60 per unit. | Demand charges: Rs.180 per kVA of billing demand/month.<br><br>Energy Charges: Rs.per unit<br>For first 1 lakh units - 3.80<br>Above 1 lakh units - 4.30<br><br>Note: Energy charges for all units consumed by Railway Traction and Effluent treatment plants shall be Rs.3.80 per unit. |
| <b>HT 2b</b> | Commercial installations including IT enabled services and IT based Medical Transcription Centres, etc. | Demand charges: Rs.200 per kVA of billing demand/month.<br><br>Energy Charges: Rs.per unit<br>For first 2 lakh units - 4.35<br>Above 2 lakh units - 4.65   | Demand charges: Rs.200 per kVA of billing demand/month.<br><br>Energy Charges: Rs.per unit<br>For first 2 lakh units - 4.85<br>Above 2 lakh units - 5.15   |

Note: i) There is no change in tariff in respect of other categories.

ii) There is no change in terms and conditions of tariff.

18.8 For the three months period during which the revised tariffs are expected to be applicable in FY04, the estimated additional revenue amounts to Rs.41.31 crores.

18.9 Out of the additional requirement of funds of Rs.444 crores in FY04, the present increase in tariff is estimated to fetch additional revenue of Rs. 41 crores assuming that the revised tariff will be effective for a period of

3 months in FY04 and the Commission approves to carry forward the balance amount of Rs. 403 crores to the next tariff filing.

18.10 By the present tariff increase, the revised cross subsidisation in FY04 for the above categories of consumers are follows.

#### Cost Coverage

| Tariff category | As per Tariff Order 2003  |                            | As per present proceedings |                             |
|-----------------|---------------------------|----------------------------|----------------------------|-----------------------------|
|                 | Average Revenue (Rs./kWh) | Percent of cost of supply* | Average Revenue (Rs./kWh)  | Percent of cost of supply** |
| LT 2(b)         | 5.09                      | 149.17                     | 5.29                       | 146.50                      |
| LT 3            | 5.80                      | 170.15                     | 6.30                       | 174.03                      |
| LT 5            | 4.65                      | 136.42                     | 4.85                       | 133.98                      |
| HT 2(a)         | 4.59                      | 134.70                     | 4.79                       | 132.32                      |
| HT 2(b)         | 5.51                      | 161.66                     | 6.01                       | 166.03                      |

\* Considering average cost of supply as Rs.3.41/ unit.

\*\* Considering the revised average cost of supply as Rs.3.62/unit.

The Commission will endeavour to balance the cross subsidy appropriately while determining the tariff in the next filing.

19. **Bulk Supply Tariff:** The Commission has approved BST as 193.57 paise per unit in the ERC for FY04. In order to provide for additional requirement of funds as discussed earlier, the revised BST would be as follows for power supply from KPTCL to ESCOMs and Hukeri Society in FY04:

|  |           |          |
|--|-----------|----------|
| Total Bulk supply cost as approved in ERC for FY04                       | Rs crores | 5446.42  |
| Additional requirement of funds in FY04                                  | Rs crores | 444.00   |
| Total revised bulk supply cost   | Rs crores | 5890.42  |
| Energy input to ESCOMs and to Hukeri Society as approved in ERC for FY04 | MU        | 28137.00 |
| Revised BST  | Ps/unit   | 209.35   |

Thus, the BST will increase by 15.78 paise per unit in FY04. The Commission approves to increase the BST by 15.78 paise per unit for supply to ESCOMs/ Hukkeri Society. Any further adjustment in the BST to Hukkeri Society will be considered when the details of actual income and expenditure of the Society for FY04 are available.

## **20. Special Incentive Scheme to HT consumers:**

20.1 In the Tariff Order 2003, the Commission has ordered discontinuation of the Special incentive scheme to HT consumers at Rs. 3.50 per unit. In their applications dated 24.5.03, ESCOMs have proposed reintroduction of the special scheme with a tariff Rs.3.80 per unit. ESCOMs have stated in their applications that after discontinuation of the special scheme many industries that were availing the said scheme have represented for re-introducing the special scheme as they had made commitments to their clients based on the earlier special scheme. It is further stated in the applications that considering the request of the HT consumers and keeping in view the observations of the Commission while declining approval to the incentive scheme that the rate of HT consumers shall not be below Rs.3.60, the Companies have formulated a fresh scheme as under:

- i) It is proposed to supply additional power to HT industries at a rate of Rs.3.80 per unit over and above their present average consumption level of the past 12 months. This rate shall be inclusive of the electricity tax. ESCOMs will have flexibility in fixing base consumption.
- ii) The Electricity tax is currently charged at the rate of 5% advalorem. After deducting it from Rs.3.80, the net realization to ESCOMs shall be Rs.3.60 per unit. This realization has been almost at the level of Rs.3.60 per unit determined by the

Commission, below which the power should not be supplied to HT industries.

- iii) The scheme is intended to promote more and more of metered consumption. It has been experienced in the past few months that after discontinuation of such a scheme, the meter consumption by HT industries has declined.
- iv) KPTCL & ESCOMs have submitted before the Commission earlier that the present cost of delivery of power is about Rs.3.77 per unit. This delivery cost has been determined after taking into consideration the losses at LT levels also. Assuming that the LT losses are not less than 8%, it can safely be assumed that the delivery cost at 11KV level will be not more than Rs.3.47 per unit. Therefore, the net realization of Rs.3.61 per unit by ESCOMs is definitely going to be more than the cost of power supplied at 11 KV level.
- v) By offering the present scheme ESCOMs intend to earn additional revenue and at the same time help the HT consumers who were availing earlier special scheme to meet their commitments or use electricity more from the grid.
- vi) Apart from the above reasons, ESCOMs are State Undertakings and are conscious of their obligations to the HT consumers as a class. This class has been contributing substantially to the revenues of KPTCL / ESCOMs. Based on the special scheme for supply of incremental power at Rs.3.50 per unit several HT industries have made projections. If the scheme is continued even at a higher rate it will benefit HT industry as a whole and will discourage them from going in for other measures which are more expensive and generally not eco friendly. The special



scheme will be a good incentive to HT consumers to augment their off take resulting in increase in metered consumption leading to better revenue to ESCOMs.

20.2 It is further indicated in the notice published by KPTCL/ESCOMs in the newspapers dated 16/17.10.03 that the special incentive scheme of Rs.3.80 per unit offered may undergo an upward change marginally. In the hearing held on 21.11.03, the MD/KPTCL stated that the rate be revised to Rs.4 per unit (including tax). This amounts to Rs.3.80 per unit excluding tax at 5%.

In the public notice of the applications of the KPTCL/ESCOMs which appeared in the news papers, KPTCL has indicated that additional burden on account of special scheme as 'nil'. KPTCL in its letter dated 05.11.2003 has clarified that by selling additional units KPTCL/ESCOMs may not gain but it will help in increasing the metered sales which in turn will reduce the average cost of supply and increase average realisation. KPTCL/ESCOMs expect that there will not be any loss or profit by selling energy to HT industries and in the event of amendment to tariff, the rate offered may under go an upward change marginally. KPTCL also stated in the letter that, the HT consumers who opt for additional units over and above the predetermined average consumption (base consumption) would be allotted additional units at Rs. 3.80/kWh. This incentive is for the extra units that KPTCL/ESCOMs anticipate from industries by reduction of the captive consumption. The expected additional sale of energy to industries can be managed by additional procurement from PTC. Already KPTCL is procuring 100 MW power from PTC @ Rs. 2.05/kWh which will be available during the period from 10:30 PM to 4:30 PM of the next day. By procuring additional power from PTC /outside sources and by rescheduling the 3 phase supply timing to IP sets, the additional requirement of energy to industries during the day time can be easily managed.

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A few industrial consumers have requested the Commission to re-introduce the special incentive scheme, which may enable them to draw higher quantity of power from the grid. At the same time some consumers have objected to the special incentive scheme stating that the scheme is illegal and against principle of KER Act and Electricity Act, 2003 and the principles of reduction and elimination of cross subsidy. The consumers have also pointed out the contradiction in proposing an increase for tariff for industrial class on the one hand and proposing a scheme at a lower tariff on the other. Some objectors have stated that the KPTCL has not provided the details of terms and conditions applicable to the scheme.

In the public hearing it was also pointed out that it is outside the scope of the Commission to extend incentives and only Government of Karnataka can extend such incentives. Some of the objectors welcomed the scheme but stated that the rate per unit should not be more than Rs. 3.80.

KPTCL has responded to these objections by stating that, the proposal is maintainable under the law and KER Act and on facts and, the scheme will not go against the factors of encouraging competition, efficiency and reduction in cross subsidy. It will attract the HT consumers to use the grid power instead of their captive generation. The introduction of the scheme would increase the metered sales. The tariff hike proposed is to meet the revenue gap based on normal consumption and is different from the incentive scheme as the incentive scheme is applicable only when the consumption is above normal level.

The proposal submitted by ESCOMs and the objections raised have been examined. The Commission has determined the average cost of supply during FY04 as Rs.3.41 per unit vide para 11.2 of the Tariff Order 2003. Considering the estimated additional expenditure in FY04 as

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determined by the Commission in the previous paras, the revised average cost of supply for FY04 is Rs. 3.61 per unit.

The existing energy charges for HT 2(a) consumers is Rs.3.60 per unit for the first one lakh units and Rs.4.10 per unit for the balance. The revised average cost of supply is Rs. 3.61/kWh as discussed earlier. The Commission in this order has revised the tariff for HT 2(a) category to the tune of 20 paise per kWh. Thus the tariff at the first slab would be Rs. 3.80/kWh for the first one lakh units.

The government has recently levied the tax on the generation from captive units at Rs.0.50 per unit. This would increase the cost of captive generation. If an incentive scheme is available, industrial consumers may expect largely to use grid power than captive. Besides, KPTCL/ESCOMs have argued that selling additional units to industrial consumers will improve the metered consumption and it is expected by KPTCL/ESCOMs that additional burden on power purchase if any can be covered from the guaranteed revenue from the scheme.

In the light of the above discussion, the Commission approves the special incentive scheme to HT industrial consumers at a rate of Rs.3.80 per unit (excluding tax). The scheme shall be in operation with the following terms and conditions:

- i) The scheme is applicable to all HT 2(a) consumers in the State subject to the eligibility mentioned below. The benefit of the scheme shall be extended to all eligible HT2(a) consumers upon their request.
- ii) The rate applicable for eligible consumption under the scheme is Rs. 3.80 paise per unit, excluding tax. All other consumption shall be billed at the prevailing tariff.

- iii) Eligibility: The consumption over and above the base consumption fixed for a month is eligible for tariff under the scheme. The base period is defined as the past 12 months consumption as proposed by KPTCL/ESCOMs. The base consumption shall be determined with reference to the consumption from 1.12.2002 to 30.11.2003 irrespective of the date of request by the consumer. The base consumption shall be the average of monthly-billed energy supplied by ESCOMs during the base period. Energy consumed under special scheme if any, during the base period shall not be accounted for arriving at base consumption.
- iv) For new consumers the scheme is available upon their completion of 12 calendar months. The base period and base consumption shall be calculated accordingly.
- v) In order to avail the special scheme, 20% increase in contract demand shall be allowed to the availing consumers during the currency of the scheme without any special request from the consumers. Penalty for exceeding maximum demand for the consumers availing the scheme thus would be 120% of the sanctioned contract demand. The minimum billing demand shall also be enhanced accordingly.
- vi) In respect of eligible consumers who increase their contract demand on a permanent basis during the currency of the scheme, existing base consumption shall be increased at a rate of 100 kWh/kVA per month from the month in which additional contract demand has come into effect.
- vii) No additional security deposit shall be levied for the units consumed under the scheme.

The scheme shall be in operation with the terms and conditions mentioned in this Order from the date of effect of this Order for a period of 12 months initially. If any amendments are required to be made to the rate due to variation in power purchase cost or to the terms and conditions mentioned in the Order, the ESCOMs shall approach the Commission for approval. Further, the ESCOMs shall also approach the Commission for amendment/revision/withdrawal of the scheme if the finances of ESCOMs are likely to be adversely affected due to the implementation of the Scheme.

Since the scheme is being implemented by the ESCOMs for increasing metered consumption and consequential increase in their revenue, the Commission feels that the benefit of such a scheme should not be limited to only a few categories of consumers, but be extended to similarly placed other consumers also. Hence, the Commission suggests ESCOMs to prepare a similar scheme for the benefit of other category of consumers such as LT-5 and HT 2(b) categories, and place it before the Commission for consideration along with next tariff filing.

21. The tariff as amended in this Order including the BST and the special incentive scheme to HT consumers shall take effect after due publication by the licensees as required under section 27(9) of the KER Act, 1999.
22. The Order is signed, dated and issued by the Karnataka Electricity Regulatory Commission.

S/d  
**(Philipose Matthai )**  
Chairman

S/d  
**(H.S.Subramanya)**  
Member

S/d  
**(S.D.Ukkali)**  
Member