

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM 695 003**

PRESENT: Shri M.K.G. Pillai, Chairman.
Shri C. Balakrishnan, Member.

April 30, 2004

Petition No. DP4	Dy.No. 00110 dt.21-6- 2003	Binani Zinc, Binanipuram. Secretary, Kerala State Electricity Board. Special Officer, Revenue, Kerala State Electricity Board.	Petitioner Respondent
Petition No. DP7	Dy. No. 00116 dt. 27-6- 2003	TCM Ltd., Kalamassery. Secretary, Kerala State Electricity Board Special Officer, Revenue, Kerala State Electricity Board.	Petitioner Respondent
Petition No. DP8	Dy. No. 00117 dt. 28-6- 2003	Kerala High Tension/Extra High Tension Industrial Electricity Consumers' Association, Kalamassery Secretary, Kerala State Electricity Board Special Officer, Revenue, Kerala State Electricity Board.	Petitioner Respondent

ORDER

1.Preamble

1.1 The above petitions arise out of the Kerala State Electricity Board's notification B.O.(FM) No. 1462/02/TRAC/TO-1/2002 dated 24th October 2002, revising the tariff for various categories of consumers served by the Board with effect from 1.10.2002. The petitioners have stated in their petition that the revision of tariff by the Board was causing huge financial burden on the industry. It was stated that the latest revision in October 2002, as a matter of fact, was only a few weeks prior to the constitution of Kerala State Electricity Regulatory Commission. It was further contented that with effect from the date of enforcement of the Electricity Regulatory Commissions Act, 1998 (Central Act

No. 14) which came into effect on 25.4.1998, the KSEB became bereft of power and jurisdiction to revise or re-determine the electricity tariff. It was also contented that if the State Government failed to constitute the Regulatory Commission, it would mean that the Electricity Board would be deprived of its right to revise the tariff applicable to electricity supply, wholesale, bulk, grid or retail.

1.2 The petitioners have, therefore, requested the Commission to determine the tariff applicable to EHT/HT consumers as per the Electricity Regulatory Commissions Act, 1998 (Central Act No. 14 of 1998). The Petitioners had earlier approached the Hon'ble High Court of Kerala and the Court had issued the following directions in the matter.

"The petitioners are permitted to represent to the Commission. They may do so within 30 days from today (28.5.2003). In case the petitioners submit a representation, the Commission shall consider and examine it in accordance with law. The respondents in the present proceedings shall also be entitled to put forth their viewpoint. It will be appreciated, if the Commission decides the matter as expeditiously as possible. Since we have expressed no opinion on the merits of the controversy, it shall be open to the parties to raise all such pleas as may be available under the law. After the decision by the Commission, the aggrieved party shall be entitled to seek its remedy, if any, before an appropriate forum."

In the light of the direction of the Hon'ble Court, the Commission issued notice to the Kerala State Electricity Board on 3rd July 2003, directing it to file parawise replies to the points raised in the petitions within 21 days. The Commission also sought the views of the Government of Kerala in the matter.

1.3 M/s Binani Zinc who is the petitioner in Petition No. DP4 had also filed an extension petition No. DP9 with the Commission enclosing the copy of the Judgment of the Hon'ble High Court of Kerala in W.P.C. 19678 of 2003P, subsequently filed by them. This petition was disposed of by the Commission *vide* its order dated July 11, 2003.

2. Grounds for the petitions

2.1 All the three petitioners have built up their case more or less on similar grounds, which are briefly stated below.

There has been a steep increase in the electricity charges during the last 12 years and the increase during the last 7 years from 1995 onwards was 200%. The KSEB has not taken into account the following factors while determining the tariff for large industrial consumers.

- a Transmission losses incurred in the case of large industry is about 2 to 3% as against 30% loss incurred for domestic consumers.
- b As against uniform power consumption by HT/EHT industries, there is significant increase in consumption by the domestic consumers during the peak hours as compared to their consumption during off peak periods.
- c The industries are burdened with penal charges for higher consumption during the peak period. There is 80% surcharge if there is more than 60% of the normal consumption during the peak period of 18 to 22 hours. As against this, the burden imposed on the domestic sector is load shedding for half an hour.
- d Installation and maintenance cost of HT & EHT transmission lines, transformers and switchgear is borne by the industries, especially EHT consumers. As against this, all related expenses for transmission and distribution for domestic consumers are borne by the KSEB.
- e The billing and collection charges are negligible in the case of HT/EHT consumers, whereas they are quite substantial in the case of domestic consumers.

In spite of the above mentioned advantages in respect of supply to large industrial consumers, they are called upon to heavily subsidize the consumption in domestic, irrigation, water works, and public lighting categories.

2.2 The petitioners have further stated there has been steep decline in the share of electricity consumption by the industries from 50% in 1984-85 to 29% in 2001-02 and as a result of this, several industries are winding up their operations. They have called for arresting this trend through rationalized power tariff applicable to the industrial sector. They have argued that unless there is serious attempt in rationalizing the tariff, the share of electricity consumption by the industrial sector is bound to further decrease in the

period to come. The petitioners have pointed out that these matters have not been given due consideration by the KSEB while revising the tariff all these years.

2.3 Apart from the common grounds mentioned above, M/s. Binani Zinc have stated that they, whose promoters are from outside Kerala, have stayed to their commitment for the past more than 35 years. Their cost of electricity increased from 12% of the production cost in 1998 to 24% in 2003. This is in spite of the fact that through energy conservation measures, the company brought down the consumption of energy from 5500 units per tonne of zinc during 1970s to less than 4500 units per tonne presently. The price of zinc has decreased from Rs.84,000/- per tonne in 1999 to Rs. 61,000/- in 2003. This has caused extreme hardship to the company.

The company has however, a programme for fresh investments to the tune of Rs.1000 crores in the State during the coming years. The tariff revision made by the KSEB has not been conducive to promote this investment.

3. Response of the KSEB

The KSEB furnished the replies to the petitions on 23rd July 2003.

3.1 The Board stated that tariff fixed for different categories of consumers in the State of Kerala were either low or comparable to the rates prevalent in other States. This fact has been sufficiently affirmed by several publications of agencies of the Central Government. In this connection, the Board quoted the Annual Report (2001-02) on “The Working of the State Electricity Boards and Electricity Departments” published by the Planning Commission (Power & Energy Division), Government of India, May 2002. The Board further stated that no provision under the Regulatory Commissions Act, 1998 explicitly prevented or implicitly indicated to prevent the State Electricity Boards from exercising their right to decide the tariff as per the applicable statutes till the formation of the State Electricity Regulatory Commissions. Under the Electricity Regulatory Commissions Act, 1998, while the formation of the Central Electricity Regulatory Commission was made mandatory, the formation of the State Electricity Regulatory Commissions was not made mandatory and left to the discretion of the State Governments under Section 17 of the Act. The Board further submitted that no time was fixed for constitution of the State Electricity Regulatory Commissions. It followed that

until the State Electricity Regulatory Commission was constituted, the rights of the Board to revise tariff as contained in the relevant provisions, *ie*, Section 49 and 59 of the Electricity Supply Act, 1948 would prevail. In Kerala, the State Electricity Regulatory Commission was constituted by the Government in accordance with the provisions of the Electricity Regulatory Commissions Act, 1998, only with effect from 29.11.2002. The tariff revisions by the Board were ordered well before coming into the existence of the Kerala Electricity Regulatory Commission. The Board also pointed out that either the Government or the Board had exercised any power conferred on the Commission after its constitution. Prior to the constitution of the Kerala State Electricity Regulatory Commission, the Board and the Government were perfectly within their powers to revise tariff. The Board also stated that this position had already been upheld by the Hon'ble High Court of Kerala in its judgment O.P/No.31049/2002.

3.2 The Board further stated that no provision in the Electricity Regulatory Commissions Act, 1998 removes the right of the Board for deciding the tariff before the formation of the Commission and the Board has the right to levy and realize electricity charges comparable to the cost of electricity. During 2001 and 2002, the Board was exposed to serious deficit due to huge difference between the average cost of energy and the average tariff prevalent. The Board was therefore compelled to revise the tariff and the rationale for revising the tariff has been stated in the relevant tariff notifications. The Board further stated that in respect of revision in August 2001 and October 2002, the tariff applicable to HT/EHT consumers is either low or comparable to that prevailing in other States.

3.3 As regards the grounds stated in support of the petitions, the Board stated that the electricity charges cannot be expected to remain constant over the years, particularly when the cost of inputs for power generation and supply are increasing. The increase in electricity charges is due to increase in cost of power purchase and other reasons stated in the tariff revision notifications published from time to time. While fixing the tariff, consideration has been given with regard to availability of power, cost, requirements of different categories of consumers including industry and Government policy to give power at affordable cost to some segments of the society. The consumers like EHT/HT industry that uses power for commercial and industrial activities involving profit making are charged comparatively higher tariff than the domestic category, which uses the energy for basic needs. The Board has argued that in a welfare society, it is unjust to

compare the cost of power supplied to the domestic category with other well to do categories.

The Board pointed out that transmission losses of large industries as stated in the petition are not correct and the transmission loss would work out to about 6%. Even the PGCIL claim 5% transmission loss in their 400/220 kV transmission systems. 30% loss computed by the Board is the total loss in the transmission and distribution of energy to all categories of consumers and not to domestic category alone. Thus, the data quoted in the petitions are misleading and not correct.

As regards the characteristic of load by different categories of consumers, the nature of consumption of energy by the domestic consumers is such that they cannot shift their load from peak to off-peak periods, whereas the industrial consumers are in a position to shift their loads to off-peak hours by properly adjusting their operations. The peak hour demands are being managed by encouraging large industries to shift their loads to off-peak hours and also by load shedding of LT consumers for half an hour. This has benefited all consumers and is not to the disadvantage of HT/EHT consumers.

3.4 The Board stated that there was no undue preference shown to any category of consumers or unnecessary burdening of any category of consumers. The interest of the industries are taken care of by avoiding power cut to industries even when there was poor water storage levels in the reservoirs, due to failure of monsoon. The tariff for HT and EHT consumers is also lowest as compared to other States.

3.5 The Board has further stated that the cost of installing and maintaining transmission facilities by the large industrial consumers are compensated by charging low tariff for industries, which are availing power at higher voltages. The Board also stated that the EHT consumers and most of the HT consumers pay charges, which are lower than the cost of supply. The Board further stated that a number of factors, in addition to rationalized cost, are taken into consideration while fixing the tariff and it is a well considered policy of the Government to supply power at subsidized rates to domestic consumers.

3.6 The Board stated that the KSEB has extended all possible concessions and considerations for the industrial growth in the State and followed the directions of the State Government in this regard.

In view of the above arguments, the Board pleaded for out-right rejection of the petitions by the Commission.

4. Rejoinder by the petitioners

The Commission forwarded the response of the Board to all the petitioners on 24.7.2003.

4.1 The rejoinder to the response from M/s Binani Zinc was received in the Commission on 7.8.2003 and from the Kerala HT & EHT Industrial Electricity Consumers' Association on 11.8.2003 and from TCM Ltd. Kalamassery on 23.8.2003. The Kerala HT & EHT Industrial Electricity Consumers' Association and TCM Ltd. have furnished more or less the same rejoinder. M/s Binani Zinc have made some additional points. All of them stated that the statements contained in the reply filed by the Board are not fully correct. The petitioners have stated that the averment of the Electricity Board that no time frame was fixed for the constitution of the State Electricity Regulatory Commission was not correct since the Government of Kerala in the order G.O.(Ms) 20/2002/PD dated 3.8.2001 had notified that the State Regulatory Commission shall be constituted within three months. The Government not only failed to constitute the Commission as per the above notification, but gave permission to the Electricity Board to increase the tariff with effect from 1.10.2002. The Commission was constituted only on 29.11.2002 after the tariff hike was implemented. The petitioners also argued that in the matter of fixation of tariff it might not be correct to go by the tariff fixed by other States. The question is whether the tariff fixed for HT & EHT consumers in the State by the KSEB is correct, fair and reasonable in the context of the relevant factors prevailing in the State. The petitioners have also questioned the contention that the State Commission is not entitled to consider the correctness of the tariff revision, which was effected prior to 29.11.2002. The provisions of the Electricity Regulatory Commissions Act, 1998 would show that the power of the Commission extended to determination of tariff applicable to different categories of consumers. This would include re-determination of tariff as well. Thus, notwithstanding the tariff revisions brought about

prior to 29.11.2002, if the Commission has come to the conclusion that the tariff currently applicable to any consumer is neither fair nor reasonable nor in conformity with the provisions of the statute, the power to intervene with the tariff hike and carry out re-determination of the tariff would nevertheless be vested with the Commission. The petitioners further stated that the Commission should not be fettered by the fact that the Electricity Board has already fixed the tariff. Fixation of tariff by the Commission is an exclusive statutory power granted to the Commission and not in any manner constrained by either the power originally available to the Electricity Board or the tariff order issued by the Electricity Board.

4.2 The petitioners have argued that the cost of supply is extremely low for HT & EHT Electricity Consumers whereas the same for other segment of consumers is extremely high and this is an important factor, which will have to be taken into account for fixing the tariff. The petitioners have also questioned the contention of the Board that industrial consumers can shift their load from peak to off-peak hours. In the case of most of the industries, such shifting will be detrimental to continuous operation, process efficiency, quality of products and optimization of necessary work force. In view of these difficulties, HT & EHT industries are required to pay according to TOD pricing scheme, which works out to about 6% more than the normal charges.

4.3 The petitioners stated that the HT & EHT industrial consumers in the State are heavily cross subsidizing the supply of electricity to other segments. The petitioners did not find any reason for the HT&EHT industrial sector cross subsidizing the other sectors so heavily. Whereas the average realization from domestic sector is much below the cost of power supply, the average realization from HT& EHT Industrial sector is much more than the cost. This adverse impact of cross subsidization by HT & EHT industrial consumers has been going up progressively every year because of lowering percentage of industrial consumption and growing percentage of domestic consumption of the total sale of energy by the KSEB.

4.4 M/s Binani Zinc have pointed out that if the transmission loss for large industries is assumed as 6% and the total T&D loss is 30%, the loss in the case of LT & domestic consumers would be much higher than 30% of the energy received by them. They have also stated that in view of the high penalty of 80% for peak hour consumption above the

60% limit and the low rebate of 25% for off-peak consumption over 30% limit, industrial consumers consuming energy on uniform basis are required to pay higher tariff for the consumption, if the same is calculated over a 24 hour period. M/s Binani Zinc have also stated that the contention of the Board that the EHT and HT consumers are paying lower than the cost of supply is clearly false. KSEB's statement of accounts for the year 2001-02 shows that the average realization is 81Ps per unit in the case of domestic consumers and 220 Ps per unit in the case of EHT industries.

In view of the foregoing arguments, the petitioners have reiterated their demand for redetermination of tariff without which it will not be possible for them to continue as viable units.

5. Views of the Govt. of Kerala

5.1 The Govt. of Kerala vide letter No.6439/A1/03/PD dated this 28th August 2003 stated that the Govt. endorsed the stand of KSEB on the petitions.

5.2 During the hearing on the petition DP9 of M/s.Binani Zinc on 11th July, 2003, the representatives of the Workers of Binani Zinc had stated that the Govt. of Kerala through G.O.(Rt) No.163/03/PD dated 24.4.2003 and G.O.(Ms)No.4/2003/ID dated 6.1.2003 had respectively offered tariff concession of Rs.3 crores to Indian Aluminium Company and exempted Travancore Cochin Chemicals Ltd., from the tariff revision effective from 1.10.2002. They argued that this amounted to discrimination against Binani Zinc.

The Commission vide letter No.12/1/KERC/2003/207 dated 16.7.2003 sought clarification on the above concessions from the Government. No reply was received from the Government to this letter. However, the KSEB *vide* letter No.KSEB/TRAC/SERC/BZ/319 dated August 5, 2003 informed the Commission the position regarding both the above Government orders. The Board stated that if the G.O. dated 6.1.2003 was implemented, the Board would stand to loose about Rs.51.88 crores. Therefore, the Board decided to write to the Government explaining the financial difficulties faced by the Board and accordingly requested the Government to modify the directions contained the G.O. The Board also informed that it has not so far implemented the G.O. dated 6.1.2003. As per the G.O. dated 24.4.2003, the

concessions to M/s.Indian Aluminium Company amounted to Re.1/- crore per month for 3 months. The financial commitment was to be borne by the Government and KSEB on 50:50 basis. Accordingly, the Board deducted an amount of Rs.1.5 crores for 3 months from the outstanding dues of the Company and directed the Company to remit the balance of arrears and to get the remaining Rs.1.5 crores reimbursed directly from the Government. The Company, however, adjusted the entire amount of Rs.3 crores from the arrears payable to the Board and pressed for full relief from the Board. The Board requested the Government to relieve the Board from the responsibilities of bearing the burden of reimbursement of the amount arising out of these concessions to the consumers. The Board pointed out that as per the provisions of Electricity Act, 2003 concessions or subsidies, if any, granted by the Government shall be made good to the Board in advance as ordered by the Regulatory Commission. The Government decision in this regard was awaited.

The Board pleaded for rejecting the petitions DP4, DP7 and DP8 as the relief sought by them are not permissible under the existing statutes.

6. Cost of supply

With a view to assessing the cost of supply to various categories of consumers, the Commission *vide* letter No.12/1/KERC/2003/223 dated 28.7.2003 had requested the KSEB to furnish information regarding the overall average cost of supply, average cost of realisation, cost of supply separately for consumers at 66kV & 110kV at EHT level and consumers at HT level with present level of realisation. The Board *vide* its letter No.TRAC/SERC/BZ/2003/341 dated 14.8.2003 furnished the following information.

Present level of overall average cost of supply/kWh	-	Rs.4.02
Present level of average realization/kWh	-	Rs.2.75
Present level of average cost of realisation for/kWh for EHT consumers on the basis of demand raised	}	- Rs.3.59
On the basis of amount collected		- Rs.3.18
Present level of average cost of realization/kWh for HT consumers on the basis of demand raised	}	- Rs.3.84
On the basis of amount collected		- Rs.3.25

The Board could not furnish the cost of supply separately for HT&EHT consumers in the absence of valuation of assets, liabilities and cost relating to transmission and

distribution profit centers of the Board. The Board, however, stated that it would be in a position to furnish the details of cost of supply for the various categories of consumers within an year.

7. Hearing of the matter

7.1 The Commission's proceeding to hear the parties to the petitions was initially fixed for 7.10.2003. However, the hearing was postponed on the request of one of the petitioners, M/s. Binani Zinc. The hearing, which was fixed for the second time on 28.10.2003, was postponed on the request of another petitioner, M/s. TCM Limited. The proceeding of the Commission to hear the parties to the petitions was finally held on 2.12.2003.

7.2 During the proceeding, the representatives of the petitioners reiterated the argument made in the petitions. They argued that the KSEB had no right to revise the tariff on 24th October, 2002 as the Regulatory Commissions Act, 1998 had come into effect on 25.4.1998. The power to revise the tariff after the date on which the Regulatory Commissions Act came into effect vested with the State Regulatory Commissions. The representatives of the petitioners also stated that the latest revision of the tariff by the State Electricity Board with effect 1.10.2002 was announced only a few weeks prior to the constitution of the Kerala State Electricity Regulatory Commission. They alleged that the Government of Kerala had purposely delayed the constitution, keeping the tariff revision in view. All the petitioners contended that the action of the KSEB in revising the tariff was illegal. The counsel for Binani Zinc produced a copy of the judgment dated October 17, 2003 of the Hon'ble Supreme Court of India in the case *BSES Ltd. Vs. Tata Power Company Limited and others*. The counsel quoted the statement made by the Hon'ble Court in para 19 of the judgment "*Therefore the notice to enhance the charges by the TPC, which was subsequent to the enforcement of the Act, can have no legal effect*" and argued that in the light of this statement of the Hon'ble Court, the action of the KSEB in revising the tariff after constitution of the KSERC was not legally sustainable.

The petitioners also contended that they would be incurring huge loss due to the tariff revision, which would make the HT & EHT industry in the State unviable. The

representatives of workers of Binani Zinc also supported the petitioners and stated that the management of Binani Zinc would be forced to close down the factory on account of the tariff revision by the KSEB and about 1000 workers of the unit might become jobless.

7.3 The representatives of the respondent, viz, the Kerala State Electricity Board argued that the tariff revision order was notified by the Board before the constitution of the Kerala State Electricity Regulatory Commission. No provision under the Regulatory Commissions Act, 1998 prevented the Board from revising the tariff prior to the constitution of the Commission. The tariff revision made by the Board was as per provisions of Section 59 of the Electricity (Supply) Act, 1948 under which the Board was entitled to adjust its tariff so as to ensure that the total revenue in any year of account, after meeting all expenses, shall generate a minimum surplus of 3%. The tariff revision ordered by the Board on 24th October 2002 was in accordance with this requirement. Therefore, the tariff revision was legal and binding on the petitioners. The representatives of the Board stated that the huge amount of arrears by the petitioners had adversely affected the financial position of the Board. The Board therefore pleaded that the petition should be rejected outright.

7.4 During the course of the proceeding to hear the parties, the Commission sought the views of the learned counsels of the petitioners as to whether the Commission was bound to entertain petitions relating to revision of tariffs from a consumer or a group of consumers, as per the relevant provisions of the Regulatory Commissions Act, 1998 and the Electricity Act, 2003. The counsels stated that it was not legally binding on the Commission to entertain tariff petition of consumers. However, they argued that special consideration should be given to their clients, as the tariff increase was unjustified.

7.5 Since all the petitioners had raised the issue of cross subsidy and stated that the HT & EHT consumers were called upon to heavily subsidize the other categories of consumers, the Commission felt that it was necessary to assess the cost of service to various categories of consumers, especially the HT & EHT consumers. During the hearing, the Board was therefore directed by the Commission to furnish the details of the cost of supply to various categories of consumers, as already called for in Commission's letter dated 28th July 2003. The representatives of the KSEB agreed to furnish the information, as early as possible.

8. Commission's findings

8.1 The main issue raised by the petitioners was that the KSEB had no right to revise the tariff, as the Regulatory Commissions Act, 1998 came into effect on 25.4.1998 and the power to revise the tariff after that date vested with the State Regulatory Commission. The Commission therefore felt that the main point to be considered in connection with the petitions is the legality of the tariff revision order notified by the KSEB in October 2002. The KSERC was constituted by the Government of Kerala on 14.11.2002 and the Commission assumed office on 29.11.2002. The constitution of the Commission and its timing were the prerogatives of the Government of Kerala, as Section 17 of the Electricity Regulatory Commissions Act, 1998 was not mandatory on any State Government. The Kerala State Electricity Board has been processing the revision of tariff for quite some time before the revision was finally notified in October, 2002. So the argument that the tariff was revised just prior to the constitution of the Commission does not hold good. Further, it was a general revision applicable to all categories of consumers and not aimed at the petitioners alone. As the State Government was processing the matter regarding the constitution of the Commission since the year 2001, there is no strength also in the argument that the constitution of the Commission was purposely delayed by the Government.

8.2 The Commission carefully went through the judgment dated October 17,2003 of the Hon'ble Supreme Court of India in the case *BSES Ltd. Vs. Tata Power Company Limited and others*, which was brought to the notice of the Commission during the proceeding to hear the parties. The case was an appeal filed in the Supreme Court against the order of the High Court of Maharashtra relating to a dispute on charges on standby facility payable by BSES to Tata Power Company. The appellant had questioned the jurisdiction of the Maharashtra Electricity Regulatory Commission to resolve the dispute and the High Court order suggesting interim arrangement for payment of standby charges and remitting the dispute back to the Regulatory Commission for *de-novo* consideration. The Core issue of the case was not the legal validity of the tariff order issued by any utility after enforcement of the Regulatory Commissions Act, 1998.

The appeal was dismissed by the Hon'ble Supreme Court and in the course of the judgment the Court made several observations. "*Therefore, the notice to enhance the charges given by TPC, which was subsequent to the enforcement of the Act, can have no legal effect*" is one such observation made by the Court in the course of evaluating a submission made by the counsel of one of the parties to the case. This statement cannot be construed as a verdict of the Hon'ble Court on the legal validity of any tariff order issued after the enforcement of the Regulatory Commissions Act, 1998, irrespective of whether the State Commission was set up or not. Therefore, the Commission is not in a position to accept the argument of the petitioners that this observation by the Hon'ble Supreme Court should be taken as a verdict against the tariff revision made after the enforcement of the Electricity Regulatory Commissions Act, 1998, *irrespective of whether the State Commission was set up or not.*

8.3 Prior to the constitution of the Commission, KSEB was empowered to determine the tariff in accordance with the provisions of Section 49 and 59 of the Electricity (Supply) Act, 1948. As per Sub-section (5) of Section 49 of the Act, the consumers are liable to pay the tariff framed or modified from time to time as per Sub-section (1) of Section 49 as applicable to them. The petitioners have not questioned the authority of the KSEB under Section 49 and 59 of the Electricity (Supply) Act, 1948.

8.4 In view of the foregoing, the Commission has come to the conclusion that the tariff revision order issued by the Board on 24.10.2002 is legally valid.

8.5 As confirmed by the counsels for the petitioners, both the 1998 and 2003 Acts do not specifically provide for entertaining tariff or tariff revision petitions by consumers. The Commission is therefore not legally bound to consider the plea of the petitioners for re-determination of their tariff. Nevertheless, in view of the directive of the Hon'ble High Court of Kerala and the need to safeguard consumer interest, the Commission decided to go into the merit of the case. The main grievance of the petitioners is that they are called upon to heavily cross subsidize other categories of consumers. In a bid to verify this, in the course of the hearing, the Commission directed the Board to furnish details of the cost of service to various categories of consumers. The Board furnished this information *vide* letter No.KSEB/TRAC/SERC/BZ/R2/04/182 dated 15.4.2004. As per the information furnished by the Board the cost of service to EHT consumers work out to

Rs. 2.51/kWh. The Board has, however, not furnished the cost of service to HT consumers and the information furnished is for HT & LT consumers combined. The Commission has separately carried out an exercise to assess the cost of service to various categories of consumers. As per this exercise, the cost of service to EHT & HT consumers work out to Rs.2.51/kWh and Rs.2.80/kWh respectively. It is thus seen that the cost of service for EHT consumers worked by the Commission is the same as that made available by the KSEB. Although it is necessary to firm up these results based on further studies, these may very well serve as valid indicators for the present exercise.

8.6 As per information furnished earlier by the KSEB, the average realization (billing demand) for EHT consumers works out to Rs.3.59/kWh and that for HT consumers works out to Rs.3.84/kWh. On the basis of the analysis made by the Commission in connection with the scrutiny of ARR & ERC of the KSEB for the year 2004-05, the average realization (billing demand) for EHT consumers works out to Rs.3.60/kWh and that for HT consumers works out to Rs.4.0/kWh. These figures would imply that the present level of cross subsidization by the EHT and HT consumers is around 43%.

8.7 The Commission notes that the practice of cross subsidization has been followed invariably by all utilities in India and the present level of cross subsidization by the EHT & HT consumers in Kerala compares favourable with the cross subsidies prevalent in many States. Based on a comparison of the cross subsidy levels prevalent in other States, the cross subsidy level of 43% cannot be considered exorbitantly high. In some of the States like Andhra Pradesh and Uttar Pradesh the present level of cross subsidies are in the range of 60-70%, whereas in States like Orissa and Karnataka, cross subsidization by industrial consumers is gradually coming down.

The Commission does not consider it prudent to interfere with the cross subsidies at this stage until the exercise on tariff rationalization covering all categories of consumers, in which the Commission is currently engaged, is completed.

8.8 As regards the Government of Kerala Order G.O.(Rt) No.163/03/PD dated 24.4.2003 and G.O.(Ms) No.4/2003/ID dated 6.1.2003, which offered tariff concessions to the Indian Aluminium Company and Travancore Cochin Chemicals Ltd., the Commission is of the view that both Government Orders violated the provisions of the

Electricity Regulatory Commissions Act, 1998. As the Commission was already in existence at the time of issue of both the above orders, they are not legally sustainable.

9. Commission's Decision

9.1 As the provisions of the Electricity (Supply) Act, 1948 were valid on the day of notification of tariff revision by the Board, the action of the Board in revising the tariff is legally sustainable. The Board is, therefore, entitled to collect the charges as per the tariff revision notified vide B.O.(FM)No.1462/02/TRAC/TO-1/2002 dated 24th October, 2002. The Commission rules that the order of the Board will remain in force until further orders of the Commission in this regard.

9.2 The Commission does not find any valid ground for re-determining the tariff for EHT & HT consumers at the request of the petitioners.

9.3 As the Government of Kerala Order G.O.(Rt) No.163/03/PD dated 24.4.2003 and G.O.(Ms) No.4/2003/ID dated 6.1.2003 are issued in violation of the provisions of the Electricity Regulatory Commissions Act, 1998, both the orders would remain null and void.

9.4 The petition Nos. DP4, DP7 and DP8 are disposed of accordingly.

**Sd/-
C.Balakrishnan
Member**

**Sd/-
M.K.G.Pillai
Chairman**

Authenticated copy for issue

Secretary (In-charge)

**LIST OF PARTICIPANTS IN THE PROCEEDINGS OF THE COMMISSION
HELD ON 2.12.2003 TO HEAR THE PARTIES TO THE PETITION**

PETITIONERS

1	Shri. George Thomas	Vice President, Kerala HT&EHT Industrial Electricity Consumers' Association.
2	Shri.A.A.Mohammed Nawaz	Asst.Vice President (Electrial & Instrumentation) Binani Zinc.
3	Shri.P.Sabu Mohan	General Manager (Admn) Binani Zinc.
4	Shri.P.Sukumaran Nair	Secretary, Binani Zinc Employees Union.
5	Shri.G.Arul Chandra	Secretary, Binani Zinc Employees Association.
6	Shri.K.J.Joseph	Secretary, Binani Zinc Employees Organisation.
7	Shri.S.S.Nair	Advocate, Ernakulam.(Representing TCM Ltd.)
8	Shri.V.Giri	Advocate Ernakulam (Representing Binani Zinc)

RESPONDENTS

1	Shri.B.Jalajakaran	Dy.Chief Engineer (TRAC), Kerala State Electricity Board.
2	Shri.D.Lal	Special Officer (Revenue), Kerala State Electricity Board.
3	Shri.K.Sukumaran Nair	Joint Secretary (Law), Kerala State Electricity Board.
4	Shri.Bipin Sankar Periyamana	AEE(TRAC), Kerala State Electricity Board.
5	Shri.B.Sakthidharan Nair	Standing Counsel, Kerala State Electricity Board.

KERALA STATE ELECTRICITY REGULATORY COMMISSION

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No. KSERC/2003/

April 30, 2004

To

Dear Sir,

Sub: Petitions Nos.DP4, DP7 & DP8 respectively by M/s.Binani Zinc, TCM Ltd, and Kerala High Tension and Extra High Tension Industrial Electricity Consumers' Association Vs Kerala State Electricity Board.

I am directed to enclose a copy of the Commission's order dated April 30, 2004 on the above petitions for information and necessary action.

Yours faithfully,

Secretary (In charge)

