



The Jammu and Kashmir Electricity (Supply) Act, 1971

Act 11 of 1971

Keyword(s):

Bulk Licensee, Controlled Station, Generating Station, Licensee, Main Transmission lines, Maximum Demand, Reserve Bank, Transmission Lines, Year of Account

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**THE JAMMU AND KASHMIR ELECTRICITY
(SUPPLY) ACT, 1971.**

ACT NO. XI OF 1971.

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**THE JAMMU AND KASHMIR ELECTRICITY
(SUPPLY) ACT, 1971.**

ACT NO. XI OF 1971.

[Received the assent of the Governor on 7th May, 1971 and published in Government Gazette dated 13th May, 1971 (Extra).]

An Act to provide for the rationalisation of the production and supply of electricity and generally for taking measures conducive to electrical development.

Whereas it is expedient to provide for the rationalisation of the production and supply of electricity, for taking measures conducive to electrical development and for all matters incidental thereto ;

It is hereby enacted by the Jammu and Kashmir State Legislature in the Twenty-second Year of the Republic of India as follows :—

CHAPTER I.

INTRODUCTORY.

1. Short title, extent and commencement.—(1) This Act may be called the Jammu and Kashmir Electricity (Supply) Act, 1971.

(2) It extends to whole of the State of Jammu and Kashmir.

1[(3) This Act shall come into force on such date as the Government may, by notification in the Government Gazette, appoint.]

2. Interpretation.—In this Act, unless there is anything repugnant in the subject or the context,—

(1) "Board" means the Jammu and Kashmir Electricity Board constituted under section 3 ;

(2) "bulk licensee" means a licensee who is authorised by his licence to supply electricity to other licensees for distribution by them ;

(3) "Controlled station" means a generating station designated in a scheme sanctioned under Chapter IV as a controlled station ;

(4) "generating station" or "station" means any station for generating electricity, including any building and plant used for that purpose and the site thereof, a site intended to be used for a generating station, and any buildings used for housing the operating staff of a generating station, and where electricity is generated by Water power, includes penstocks head and tail works, main and regulating reservoirs, dams and other hydraulic works but does not in any case include any sub-station for transforming, converting or distributing electricity ;

(5) "licensee" means a person licensed under the Jammu and Kashmir Electricity Act, Svt. 1997 to supply energy or a person who has obtained sanction under section 28 of that Act to engage in the business of supplying energy but, the provisions of section 23 of this Act notwithstanding, does not include the Board ;

(6) "main transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or together with any step up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works and the operating staff thereof ;

(7) "maximum demand" in relation to any period shall, unless otherwise provided in any general or special order of the Government, mean twice the largest number of kilowatt hour or kilovolt-ampere-hours supplied and taken during any consecutive thirty minutes in that period ;

(8) "prescribed" means prescribed by rules made under this Act ;

(9) "regulations" means regulations made by the Board under this Act ;

(10) "Reserve Bank" means the Reserve Bank of India ;

(11) "transmission lines" means all works mentioned in clause (6) used wholly or partially for the purposes of distribution ;

(12) "year" means in relation to the Board the year commencing on the 1st day of April ;

(13) "year of account" means, in relation to a licensee, his financial year ;

(14) other expressions have the meanings respectively assigned to them in the Jammu and Kashmir Electricity Act, Svt. 1997 (1940).

CHAPTER II.

ELECTRICITY BOARD.

3. Constitution and composition of Board.—(1) The Government shall, after the issue of the notification under sub-section (3) of section 1, constitute, by notification in the Government Gazette, the Electricity Board under the name "Jammu and Kashmir Electricity Board".

1[(2) The Board shall consist of a Chairman and such other members, not less than three and not more than six, as the Government may appoint.]

(3) Of the members—

(a) one shall be an Electrical Engineer with wide experience ;

(b) one shall be a person who has experience of, and has shown capacity in commercial matters and administration ;

(c) one shall be a person who has experience of accounting and financial matters in a public utility undertaking, preferably an Electricity Supply Undertaking.

2[(4) Omitted.]

3[(5) Omitted.]

1. Sub-section (2) substituted by Act XIII of 1972.

2. Sub-section (4) omitted *ibid.*

3. Sub-section (5) omitted by Act XXVI of 1975, s-2.

(6) No act done by the Board shall be called in question on the ground of only of the existence of any vacancy in, or any defect in the constitution of, the Board.

4. Term of office and conditions for re-appointment of the members of the Board.—The Chairman and the other members of the Board shall hold office for such period, and shall be eligible for re-appointment under such conditions, as may be prescribed.

5. Members not to hold interest in certain concerns.—(1) A member of the Board shall, prior to his appointment, give to the Government intimation of, and shall, before taking charge of his office, divest himself of, any interest which he may have for his own benefit whether in his own name or otherwise, in any firm or company carrying on the business of supplying electricity or any fuel plant, equipment, apparatus or fittings for the generation, transmission, distribution or use of electricity or any interest in the managing agency or shares or securities of any such company; and it shall not be lawful for a member of the Board, so long as he holds office, to acquire or purchase any such interest in any such firm or company and if he, under any will or by succession or gift, becomes entitled for his own benefit to any such interest, he shall sell the same within three months after becoming so entitled thereto; and he shall also, within three months, sever any connection he may have and cease to have any interest, direct or indirect, in any such concern.

(2) Nothing contained in sub-section (1) shall prevent a member from acquiring or holding any share or interest in any firm or company other than a firm or company mentioned in sub-section (1):

Provided that if the Board has entered into, or is about to enter into any contract or agreement with any such Firm or Company in which a member holds any share or interest he shall disclose the fact and nature of such interest and he shall not be entitled to vote on any decision of the Board relating to such contract or agreement.

(3) A disclosure referred to in the proviso to sub-section (2) shall forthwith be recorded in the minutes of the Board and communicated to the Government and the Government may thereupon give such directions as it may deem proper.

6. **Removal or suspension of members.**—(1) The Government may suspend from office for such period as it thinks fit or remove from office any member of the Board who—

(a) is found to be a lunatic or becomes of unsound mind ; or

(b) is adjudged insolvent ; or

(c) fails to comply with the provisions of section 5 ; or

(d) becomes or seeks to become a member of Parliament or any State Legislature or any local authority ; or

(e) in the opinion of the Government—

(i) has refused to act ; or

(ii) has become incapable of acting ; or

(iii) has so abused his position as a member as to render his continuance on the Board detrimental to the interest of the general public ; or

(iv) is otherwise unfit to continue as a member ; or

(f) is convicted of an offence involving moral turpitude.

(2) The Government may suspend any member pending an enquiry against him.

(3) No order of removal shall be made under this section unless the member concerned has been given an opportunity to submit his explanation to the Government and when such order is passed, the seat of the member removed shall become vacant and another member may be appointed under section 3 to fill up the vacancy.

(4) A member who has been removed shall not be eligible for re-appointment as a member or in any other capacity to the Board.

(5) If the Board fails to carry out its functions, refuses or fails to follow the directions issued by the Government under this Act, the Government may remove the Chairman and the members of the Board and appoint a Chairman and members in their places.

7. Power of Government to declare certain transactions void.—

(1) The Government may declare void any transaction in connection with which a member has been removed under sub-clause (iii) of clause (e) of sub-section (1) of section 6 after considering the report on the facts of the case may to it by Authority or Commission as may be nominated by the Government in this behalf.

(2) The Authority or the Commission nominated under sub-section (1) shall, before making his report under that sub-section to the Government in relation to any transaction, give all parties interested in the transaction, reasonable opportunity of being heard.

(3) Where a transaction is declared void under this section, it shall not be enforceable by any party to the transaction but the provisions of section 65 of the Contract Act, 1977 shall, so far as may be, apply to such transaction as they apply to an agreement which is discovered to be void or a contract which becomes void.

(4) The decision of the Government declaring any transaction void under this section shall be final and shall not be called in question in any Court.

8. Temporary absence of members.—If the Chairman or any other member of the Board is by infirmity or otherwise rendered temporarily incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his appointment, the Government may appoint another person to officiate for him and carry out his functions under this Act or any rule or regulation made thereunder.

9. Incorporation of Board.—The Board shall be a body corporate by the name notified under sub-section (1) of section 3, having perpetual succession and a common seal with power to acquire and hold property, both moveable and immoveable, and shall by the said name sue or be sued.

10. Authentication of orders and other instruments of the Board.—All orders and decisions of the Board shall be authenticated by the signatures of the Chairman or any other member authorised by the Board in this behalf and all other instruments issued by the Board shall be authenticated by the signature of such member or officer of the Board as may in like manner be authorised in this behalf.

11. **Meetings of the Board.**—(1) The Board shall hold ordinary meetings at such intervals, as may be provided in the regulations; and a meeting may be convened by the Chairman at any other time for the transaction of the urgent business.

(2) The number of members necessary to constitute a quorum at a meeting shall be such as may be provided in the regulations.

12. **Appointment of staff.**—The Board may appoint a Secretary and such other officers and servants as may be required to enable the Board to carry out its functions under this Act:

Provided that the appointment of the Secretary shall be subject to the approval of the Government:

Provided further that in making appointment of officers and servants under this section, the rules and orders, from time to time, issued by the Government for making provision for reservation of appointments and posts in favour of the Scheduled Castes and Backward Classes, shall apply in the same manner as they apply in respect of appointments and posts under the Government.

13. **State Electricity Consultative Council.**—(1) The Government ¹[may] constitute a State Electricity Consultative Council for the State.

(2) The State Electricity Consultative Council shall consist of the members of the Board and such other persons being not less than seven and not more than fifteen, as the Government may appoint after consultation with such representatives or bodies, representative of the following interests as the Government thinks fit, that is to say, Local Self Government, Electricity supply industry, commerce, industry, transport, agriculture, labour employed in the electricity supply industry and consumers of electricity but so that there shall be at least one member representing each such interest in the Council.

(3) The Chairman of the Board shall be ex-officio Chairman of the State Electricity Consultative Council.

(4) The State Electricity Consultative Council shall meet at least once in every three months.

1. Substituted by Act XIII of 1972 for "shall".

(5) The functions of the State Electricity Consultative Council shall be as follows :—

- (i) to advise the Board on major questions of policy and major schemes ;
- (ii) to review the progress and the work of the Board from time to time ;
- (iii) to consider such other matters as the Board may place before it ; and
- (iv) to consider such matters as the Government may by rules prescribe.

(6) The Board shall place before the State Electricity Consultative Council the annual financial statement and supplementary statement, if any, before submitting such statement to the Government under section 58 together with copies of the report and proceedings.

14. Local Advisory Committee.—(1) The Government may, from time to time, constitute for such areas as it may determine local advisory committees, consisting of such number of persons as it may think fit in each case and on such terms and conditions as may be prescribed.

(2) The Board may, if it thinks fit, consult the local advisory committee concerned on any business coming before it and shall so do in respect of such business as the Government may, by general or special order in this behalf, specify or when required by the regulations so to do.

(3) The Chairman of the Board or such other member of the Board as he may nominate in this behalf shall be ex-officio Chairman of a local advisory committee.

(4) Local advisory committees shall meet at intervals as may be prescribed, and for the transaction of the urgent business on such other occasions as the Chairman of the Board may require.

(5) The number of members necessary to constitute a quorum at the meeting of a local advisory committee shall be such as the Government may specify.

CHAPTER III.

POWERS AND DUTIES OF BOARD.

15. **General duties of the Board.**—Subject to the provisions of this Act, the Board shall be charged with the general duty of promoting the co-ordinated development of the generation, supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in areas not for the time being served or adequately served by any licensee and without prejudice to the generality of the foregoing provisions, it shall be the duty of the Board—

- (a) to prepare and carry out schemes sanctioned under Chapter IV ;
- (b) to supply electricity to owners of controlled stations and to licensees whose stations are closed down under this Act ;
- (c) to supply electricity as soon as practicable to any other licensee or persons requiring such supply and whom the Board may be competent under this Act so to supply.

16. **Powers of the Board to supply Electricity.**—(1) The Board may, subject to provisions of this Act, supply electricity to any licensee or person requiring such supply in any area in which a scheme sanctioned under Chapter IV is in force :

Provided that the Board shall not—

- (a) supply electricity for any purpose directly to any licensee for use in any part of the area of the supply of a bulk licensee without the consent of the bulk licensee, unless the licensee to be supplied has an absolute right to veto on any right of the bulk licensee to supply electricity for such purposes in the said part of such area or unless the bulk licensee is unable or unwilling to supply electricity for such purpose in the said part of such area on reasonable terms and conditions and within a reasonable time ; or
- (b) supply electricity for any purpose to any person, not being a licensee for use in any part of the area of supply

of a licensee without the consent of the licensee, unless—

- (i) the actual effective capacity of the licensee's generating station computed in accordance with paragraph IX of the first Schedule at the time when such supply was required was less than twice the maximum demand asked for by any such person ; or
- (ii) the maximum demand of the licensee, being a distributing licensee and taking a supply of energy in bulk, is, at the time of the request, less than twice the maximum demand asked for by any such person ; or
- (iii) the licensee is unable or unwilling to supply electricity for such purpose in the said part of such area on reasonable terms and conditions and within a reasonable time.

(2) After the Board has declared its intention to supply electricity for any purpose in any area, for which purpose and in which area it is under this section competent to supply electricity, no licensee shall, the provisions of his licence notwithstanding, at any time be entitled without the consent of the Board to supply electricity for that purpose in that area.

(3) For the purposes of sub-section (1) "Absolute right of Veto" means an unqualified right vested in a licensee by virtue of any law, licence or other instrument whereby a bulk licensee is prevented from supplying electricity in any specified area without the consent of the licensee in whom the right of veto vests.

(4) If any question arises under sub-section (1) as to the reasonableness of the terms or conditions or time therein mentioned, it shall be determined as provided in section 72.

17. Power of Board to engage in certain understandings.—

(1) The Board may, in accordance with any regulations made in this behalf, manufacture, purchase, sell or let on hire on the execution of a hire purchase agreement or otherwise, any electric machinery, control gear-fittings, wires or apparatus for lighting, heating, cooling, or motive power or for any other purpose for which electricity can or may be used or any Industrial or Agricultural machinery operated by electricity, and may instal,

connect, repair, maintain or remove such fittings, wires, apparatus, machinery or control gear and in respect thereof demand and take such remuneration or rents and charges and make such terms and conditions as it deems fit.

(2) The Board may maintain shops and showrooms for the display, sale or hire of fittings, wires, apparatus and machinery as aforesaid, conduct displays, exhibitions and demonstrations thereof, and generally do all things, including advertising, incidental to the sale and hire of such fittings, wires, apparatus and machinery and to the promotion and encouragement of the use of electricity.

(3) The Board shall show separately in its accounts moneys received and expended by it in connection with any undertakings in which it engages under this section.

18. Powers of Board in relation to Water-Power.—The Board may, with the previous approval of the Government, take such measures as in the opinion of the Board are calculated to advance the development of water-power in the State, and may organise and carry out power and hydrometric survey work and cause to be made such maps, plans, sections and estimates as are necessary for any of the said purposes :

Provided that where any such measures relate to a source of water-power already operated upon by a licensee under a licence, the Board shall give the licensee notice of such measures and an opportunity to be heard on any representation he may desire to make in that behalf and may consider such representation.

19. Power of Board to conduct investigations.—Subject to so far as the provisions of this section relate to water-power, to the previous approval of the Government, the Board may, at its own expense, conduct such investigations, experiments and trials as it thinks fit for the improvement of the methods of transmission, distribution and supply of electricity or of the utilisation of fuel, water-power or other means of generating electricity, and may establish and maintain laboratories for the testing and standardization of electrical instruments and equipment.

20. Loans by Board to Licensees.—(1) Subject to any regulations made in this behalf, the Board may grant loans or advances to any licensee for the purposes of his undertaking on such terms as the Board thinks proper.

(2) The Board in the discharge of its functions may call upon a licensee to expand his undertaking and offer to advance to him a loan on such terms and conditions, as it may deem proper for such expansion, and if the licensee refuses, fails or neglects to accept the loan from the Board on the terms and conditions offered or to raise a loan from other sources or to employ his own funds for purposes of such expansion and to carry out such expansion, the Board may, after giving the licensee six months notice in writing, purchase his undertaking.

21. Power of Board to contribute to certain Associations.—The Board may, subject to any regulations made in this behalf,—

- (1) pay such subscriptions, as it thinks fit, to any association for the promotion of the common interests of persons engaged in the generation, distribution and supply of electricity and the members of which consist mainly of such persons ;
- (2) contribute such sums as it thinks fit, to the funds of any recognised society the object of which is to foster the development and use of electricity or promotion of knowledge and research in respect of electricity or electrical appliances.

22. Consulting Engineers.—The Board may, subject to such conditions as may be prescribed, from time to time, appoint qualified persons to be consulting engineers to the Board and pay them such remuneration as it thinks proper.

23. Board to have powers and obligations of licensee under Act XVI of S. 1997.—Subject to the provisions of this Act, the Board shall, in respect of the whole State, have all the powers and obligations of a licensee under the Jammu and Kashmir Electricity Act, 1997 and this Act shall be deemed to be the licence of the Board for the purposes of that Act :

Provided that nothing in sections 3 to 10, sub-sections (2) and (3) of sections 21, 22, 23 and 27 of that Act or in the Schedule to that Act relating to the duties and obligations of a licensee shall apply to the Board.

24. Other functions of the Board.—The Board shall have such further powers and duties as are provided in this Act.

1[24-A. **Power of Board to entrust functions, powers and duties.**—Notwithstanding anything contained in this Act, the Board may, with the consent of the Government, entrust either conditionally or unconditionally to any department of the Government all or any of the functions, powers and duties of the Board under this Act or the Rules made thereunder and upon such entrustment, anything done, or action taken by such department under this Act or the Rules made thereunder shall be construed to have been done or taken by the Board.]

CHAPTER IV.

THE BOARD'S WORKS AND TRADING PROCEDURE.

25. **Preparation of schemes.**—With a view to rationalising the production and supply of electricity in any area, the Board may, from time to time, prepare a scheme, inconsistent with this Act, for that area, in which provision may be made for all or any of the following matters, namely:—

- (a) the establishment of the Board's own generating stations ;
- (b) the designation of generating stations whether existing stations or new stations as controlled stations at which electricity shall be generated for the purposes of the Board ;
- (c) the interconnection by means of main transmission lines to be constructed or acquired by the Board of any generating stations with any others and with any systems of licensees ;
- (d) where a scheme relates to a specified area, the interconnection of the system of the Board in that area with the system of the Board in any other area with respect to which a scheme is in being or may subsequently be made ;
- (e) the construction or acquisition of such other main transmission lines as the scheme may require ;
- (f) the use by the Board of any transmission lines or main transmission lines of any licensees ;

- (g) such supplemental, incidental and consequential provisions as may appear necessary or expedient for any of the purposes aforesaid :

Provided that no scheme which is estimated to result in a capital expenditure exceeding 50 lacs rupees shall be prepared by the Board without prior consultation with the Government :

Provided further that a scheme shall not, without the consent of the owner,—

- (i) designate as a controlled station, any generating station belonging to a person other than a licensee ;
- (ii) authorise the use or acquisition of a transmission line or a main transmission line belonging to a person other than a licensee.

26. Publication and sanctioning of schemes.—(1) Unless otherwise directed by the Government, the Board shall send a copy of every scheme prepared under section 25 to the Government and shall cause every such scheme to be published in the Government Gazette and in such local newspapers as it may consider necessary, and shall give public notice of the date, not being less than two months after the date of the notice, by which licensees and other persons interested may make representations thereon and when publishing such a scheme, the Board shall show estimates of the capital expenditure involved and of the initial and ultimate revenues anticipated from the sale of energy, meter rentals and other services.

(2) The Board, after considering any such representations and after making such inquiries, if any, as it thinks fit, may sanction the scheme either without modification or subject to such modifications as it thinks fit, and either generally or in respect of any part of the area specified in the published scheme, and shall publish the scheme as sanctioned by it, and where the scheme has been sanctioned in respect of part of the said area, it may subsequently be sanctioned in respect of other parts of that area :

Provided that no sanction shall be accorded by the Board to any scheme or part of a scheme estimated to result in a capital expenditure exceeding one crore of rupees without prior consultation with the Government.

(3) In respect of any scheme to which the proviso to subsection (2) applies, the Board shall, within one month after being requested by the Government so to do, supply the Government with all such information incidental or supplementary to the scheme as may be specified in the request.

27. Carrying out of schemes.—The Board shall carry out and give effect to a scheme as soon as reasonably practicable after it has been sanctioned and published.

28. Power to alter or extend schemes.—The Board may, from time to time, alter or extend a scheme by a supplementary scheme made and sanctioned in the manner hereinbefore provided :

Provided that any alterations or extensions of a scheme which are in the opinion of the Board and the Government minor in character may be made without preparing a supplementary scheme.

29. Controlled stations.—Where a generating station situate within an area for which a scheme is in force has been designated in the scheme as a controlled station, the relations between the Board and the licensee owning the station shall, subject to any arrangements agreed under section 42, be regulated by the provisions of the First Schedule.

30. Supply by the Board to licensees owning generating stations.—The Board may, at any time, declare to a licensee owning a generating station, other than a controlled station, situate within an area for which a scheme is in force, that it is ready to make a supply of electricity available to the licensee for the purposes of his undertaking, and thereupon but without prejudice to the provisions of section 42, the provisions of the Second Schedule shall apply in respect of the relations between the Board and the said licensee.

31. Power of Board to close down generating stations.—The Board may at any time declare to a licensee owning a generating station situate within an area for which a scheme is in force that the station shall be permanently closed down, and thereupon but without prejudice to the provisions of section 42 where the station is a controlled station, the provisions of part III of the First Schedule, or in other cases the provisions of the Third Schedule, shall apply in respect of the relations between the Board and the licensee with reference to the station to be closed down.

32. **Purchase of generating stations or undertakings or main transmission lines by the Board.**—(1) Where under the First or Third Schedule any generating station or undertaking is to be purchased by the Board, or where a sanctioned scheme provides for the purchase by the Board, of a main transmission line belonging to any licensee,—

- (a) the generating station or undertaking from such date of purchase, as may be fixed under the appropriate schedule or the main transmission line from such date of purchase as the Board shall, by notice in writing given not less than one month before the said date, intimate to the licensee, shall vest in the Board free, save, as provided in sub-section (2) from any debt, mortgages, lien or other similar obligation of the licensee or attaching to the station or undertaking or lien, as the case may be, and any such debt, mortgage, lien or obligation shall, save as aforesaid, attach to the purchase money in substitution of the station or undertaking or line :

Provided that, notwithstanding any agreement to the contrary, the licensee shall pay and the mortgagee, chargee, lien-holder or obligee shall accept the whole or part of the purchase-money, as the case may be, in full or part satisfaction of the debt according as the amount of the purchase-money is more or less than the amount of his debt ;

- (b) without prejudice to the provisions of section 42, the Board shall pay or tender payment of the price to be determined in accordance with the Fourth Schedule as soon as the amount thereof has been determined, together with interest on such amount from the date of purchase to date of payment or tender or payment as aforesaid at the rate of one per centum over the average of the Reserve Bank rates between the said dates ;
- (c) the receipt of the licensee shall, notwithstanding anything in any other law, be a full and sufficient discharge to the Board for the payment due in respect of the purchase.

(2) Where a generating station or undertaking or main transmission line purchased by the Board under this Act is in course of construction, extension or repair at the date of purchase, the rights and liabilities of the former owner thereof under any contract for such construction, extension or repair shall be deemed

to have been transferred to the Board, except such rights or liabilities acquired or incurred after the date of receipt of the notice of the purchase without the prior sanction of the Board.

(3) Notwithstanding anything contained elsewhere in this Act,—

- (i) where any generating station purchased by the Board under this Act contains any plant or apparatus which while the station was in operation were used jointly for the purposes of generation and transmission or distribution or wholly for the purposes of transmission or distribution, then unless otherwise agreed between the Board and the licensee, such plant or apparatus shall not be purchased by the Board but shall remain the property of the licensee ;
- (ii) where under the provisions of section 27 a scheme provides for the purchase of any main transmission line belonging to any licensee, the Board shall not exercise the powers of acquisition thereby afforded without the prior consent of the licensee, which consent shall not be unreasonably withheld.

33. Provision of new generating stations.—The Board shall itself establish a new generating station in any area in which it is required by any sanctioned scheme to be situated, but the Board may, with the sanction of the Government, make arrangements with any licensee or other person for the establishment of a new generating station required by a sanctioned scheme, if, in the opinion of the Board, it is desirable so to do.

34. Operation of Board's generating stations.—Where the Board itself establishes a new generating station or acquires a generating station otherwise for the purpose of closing it down, it shall operate the station itself, but the Board may, with the sanction of the Government, make arrangements with any licensee or other person for its operation, if, in the opinion of the Board, it is desirable so to do.

35. Provision regarding connections with main transmission lines purchased by the Board.—Where the Board has purchased a main transmission line and by reason of the user thereof by the Board any alteration or replacement of switch-gear or other

apparatus of any licensee connected with the line becomes necessary, the Board may, in its discretion, itself carry out such alteration or replacement at its own cost or defray the reasonable expenses incurred by the licensee in effecting such alteration or replacement and any question whether such alteration or replacement is necessary or whether the expenses incurred in connection therewith are reasonable shall, in default of agreement, be determined as provided under section 72.

36. Use by Board of transmission lines.—(1) Where the Board considers it necessary to use for any of its purposes any transmission lines or main transmission lines of a licensee, the Board shall have power to use such lines to the extent to which the capacity thereof is or thereafter remains surplus to the requirements of the licensee for the transmission of electricity on payment of charges calculated in accordance with the provisions of the Fifth Schedule.

(2) The Board may, by agreement with any licensee or other person use any transmission line or main transmission line of that licensee or person for such time and upon such terms as may be agreed.

37. Powers of Board for placing wires, poles, etc.—Notwithstanding anything contained in sections 11, 15, 17 and 18 of the Jammu and Kashmir Electricity Act, Svt. 1997 but without prejudice to the requirements of section 16 of that Act, where provision in such behalf is made in a sanctioned scheme, the Board shall have for the placing of any wires, poles, wall-brackets, stays, apparatus and appliances for the transmission and distribution of electricity, such powers as may be prescribed.

38. Powers of Board to enter into arrangement for purchase or sale of electricity under certain conditions.—(1) The Board may enter into arrangements with any person producing electricity within the State for the purchase by the Board, on such terms as may be agreed, of any surplus electricity which that person may be able to dispose of.

(2) Where a sanctioned scheme so provides, the Board may, on such terms as may be agreed upon, enter into arrangements with any Government or person for the purchase or sale of electricity to be generated or used outside the State :

Provided that the Board may not enter into such arrangements with any such Government or person without the consent of the

Government, or into arrangements with any such person without the consent of the Government of the State within which the electricity is to be generated or used.

39. Restrictions on establishment of new generating stations or major additions or replacement of plant in generating stations.—(1) Notwithstanding anything contained in any other law for the time being in force or in any licence, but subject to the provisions of this Act, it shall not be lawful for a licensee or any other person not being the Government except with the previous consent in writing of the Board, to establish or acquire a new generating station or to extend or replace any major unit of plant or works pertaining to the generation of electricity in a generating station :

Provided that such consent shall not, except in relation to a controlled station, be withheld unless within three months from the date of receipt of an application—

- (a) for consent to the establishment or acquisition of new generating station, the Board—
 - (i) gives to the applicant being a licensee an undertaking that it is competent to and will, within twenty-four months from the said date, afford to him a supply of electricity sufficient for his requirements pursuant to his application ; or
 - (ii) shows to the applicant that the electricity required by him pursuant to his application could be more economically obtained within a reasonable time from another appropriate source ;
- (b) for consent to the extension of any major unit of plant or works as aforesaid, the Board—
 - (i) gives to the applicant being a licensee an undertaking that within twenty-four months from the said date either the station to which the application pertains will become a controlled station in terms of section 29 or the Board will make a declaration to the applicant in terms of section 30 offering him a supply of electricity sufficient for his requirements pursuant to his application, or the Board will make a declaration to him in terms of section 31 ; or

- (ii) shows to the applicant that the electricity required by him pursuant to his application could be more economically obtained within a reasonable time from another appropriate source or by other appropriate means ;
- (c) for consent to the replacement of any major unit of plant or works, the Board—
- (i) gives to the applicant being a licensee an undertaking that within eighteen months from the said date either the station to which the application pertains will become a controlled station in terms of section 29 or the Board will make a declaration to him in terms of section 31 ; or
 - (ii) shows to the applicant that the electricity required by him pursuant to his application could be more economically obtained within a reasonable time from another appropriate source or by other appropriate means.

(2) There shall be stated in every application under this section such particulars as the Board may reasonably require of the station, plant or works, as the case may be, in respect of which it is made, and, where consent is given thereto, in acting in pursuance of such consent the applicant shall not, without the further consent of the Board make any material variation in the particulars so stated.

(3) Any difference or dispute arising out of the provisions of this section shall be referred to the arbitration of such person or authority as the Government may appoint.

40. Power of Board to enter upon and shut down generating stations in certain circumstances.—(1) If any licensee fails to close down his generating station pursuant to a declaration of the Board under section 31, or if any person establishes or acquires a new generating station or extends or replaces any plant or works in any generating station in contravention of section 39, the Board may authorize any of its officers to enter upon the premises of such station and shut down the station or the plant or works, as the case may be, in respect of which the failure or contravention has occurred.

(2) Any expenses incurred by the Board under this section shall be recoverable from the licensee or person concerned as an arrear of land revenue.

(3) Any difference or dispute arising out of the provisions of this section shall be referred to the arbitration of such person or authority as the Government may appoint.

41. **The Grid Tariff.**—(1) A tariff to be known as the Grid Tariff shall, in accordance with any regulations made in this behalf, be fixed from time to time by the Board in respect of each area for which a scheme is in force, and tariffs fixed under this section may, if the Board thinks fit, differ for different areas.

(2) Without prejudice to the provisions of section 42, the Grid Tariff shall apply to sales of electricity by the Board to licensees where so required under any of the First, Second and Third Schedules, and shall, subject as hereinafter provided, also be applicable to sales of electricity by the Board to licensees in other cases :

Provided that if in any such other case it appears to the Board that having regard to the extent of the supply required, the transmission expenses involved in affording the supply are higher than those allowed in fixing the Grid Tariff, the Board may make such additional charges as it considers appropriate.

(3) The Grid Tariff shall be so framed as to include as part of the charge, and show separately a fixed kilowatt charges component and a running charges component :

Provided that if in respect of any area the electricity to be sold by the Board is wholly or substantially derived from hydro-electric sources the running charges component may be omitted.

(4) The fixed kilowatt charges component in the Grid Tariff may be framed so as to vary with the magnitude of maximum demand.

(5) Where only a portion of a licensee's maximum demand for the purposes of his undertaking is chargeable at the Grid Tariff, the price payable for that portion shall not be greater than the average price which would have been payable had the whole of the said maximum demand of the licensee been chargeable at the Grid Tariff.

(6) The Grid Tariff may contain provisions for—

(a) adjustment of price having regard to the power factor of supply taken or the cost of fuel or both ;

(b) a minimum-charge related to a past or prospective demand of a licensee on the Board.

(7) The Grid Tariff may contain such other terms and conditions, not inconsistent with this Act and the regulations, as the Board thinks fit.

42. Power of Board to make alternative arrangements with licensees.—Notwithstanding anything contained in sections 29 to 32 and sub-section (2) of section 41 but subject to any regulations made in this behalf, the Board may make such arrangements as may be mutually agreed with any licensee whose area of supply is situate within an area for which a scheme is in force, in regard to the purchase or sale of electricity and the price thereof, or the purchase, operation or control of any generating station or main transmission line :

Provided that in making any such arrangement the Board shall not show undue preference to any licensee.

43. Power of licensee to carry out arrangements under this Act.—Where under any provision of this Act the Board is authorized or required to enter into arrangements with any licensee for any purpose, then notwithstanding anything contained in any law or in any licence, memorandum of association or other instrument regulating the constitution or powers of the licensee, it shall be lawful for the licensee to enter into and carry out any such arrangements.

44. Provision for the sale of electricity by the Board to persons other than licensees.—Subject to the provisions of this Act and of any regulations made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board may from time to time fix having regard to the nature and geographical position of the supply and the purposes for which it is required :

Provided that in fixing any such terms and conditions the Board shall not show undue preference to any person.

45. Board not to supply electricity in certain circumstances.—Nothing contained in sections 29, 30 and 31 shall apply in any case where under section 16 it is not permissible for the Board to supply electricity directly to a licensee owning a generating station ; and nothing in sections 41, 42 and 44 shall empower the

Board to supply electricity directly to any licensee or person to whom it is not otherwise entitled so to supply electricity.

46. **Provisional payments.**—Where the price to be paid for electricity by or to the Board under this Act cannot be finally ascertained until after the end of a year of account, the amount to be paid shall be ascertained as soon as practicable thereafter, but the party from whom the payment is due shall make to the other monthly payments on account of the net amounts due in accordance with estimates made for the purpose, subject to adjustment as soon after the end of the year of account as the actual liability can be ascertained.

47. **Lower limit of power factor in supply by Board.**—Unless otherwise agreed between the Board and the licensee, no supply of electricity taken by a licensee from the Board under this Act shall be taken at an average power factor below 0.85 during the period of maximum demand of the licensee in any month, and in the event of the average power factor as aforesaid being lower than 0.85, the licensee shall within a reasonable time take such measures, the cost of which shall not be borne by the Board, as may be necessary to raise it to a value not lower than 0.85.

48. **Provision of accommodation and right of way.**—(1) Where the Board for the purposes of any arrangements which it has made with any licensee under this Act requires accommodation on, in, under or over the premises of the licensee for any works or apparatus to be provided by the Board, the licensee shall, if suitable and sufficient accommodation exists, grant such accommodation free of cost to the Board, or if such a accommodation does not exist, it shall be provided upon such terms and conditions as may be agreed between the Board and the licensee.

(2) The Board and any licensee shall each have a right of access at all times to his own property on, in, over and under the property of the other.

49. **Power of Board to connect meters, etc. to apparatus of licensees.**—The Board shall have power to connect with the apparatus of any licensee any such correct meters, switch-gear and other equipment as may be necessary to enable it to carry out the provisions of this Act and such meters, switch-gear and other equipment shall, unless otherwise agreed, be provided and maintained by the Board at its own cost.

50. Licensee to comply with Board's directions.—(1) Every licensee shall comply with such reasonable directions as the Board may from time to time give him for the purpose of achieving the maximum of economy and efficiency in the operation of his undertaking or any part thereof.

(2) If any dispute arises between the Board and the licensee as to whether any directions given under sub-section (1) are reasonable or not, it shall be referred to such person or authority as the Government may appoint and the decision of such person or authority thereon shall be final.

51. Leases of generating stations.—No licensee shall, except with the previous approval in writing of the Board and subject to any conditions which the Board may think fit to impose, enter into any arrangement whereby any generating station is to be let or held on lease by him, and any such arrangement entered into in contravention of this sub-section shall be void and of no effect.

52. Licensee's charges to consumers.—The provisions of the Sixth Schedule and the Seventh Schedule shall be deemed to be incorporated in the licence of every licensee, not being a local authority—

- (a) in the case of a licence granted before the commencement of this Act, from the date of the commencement of the licensee's next succeeding year of account ; and
- (b) in the case of a licence granted after the commencement of this Act, from the date of the commencement of supply,

and as from the said date, the licensee shall comply with the provisions of the said Schedules accordingly, and any provision of the Jammu and Kashmir Electricity Act, Svt. 1997 and the licence granted to him thereunder and of any other law, agreement or instrument applicable to the licensee shall, in relation to the licensee, be void and of no effect in so far as they are inconsistent with the provisions of section 53 and the said Schedules.

53. Rating committees.—(1) Where the provisions of the Sixth Schedule and the Seventh Schedule are under section 52 deemed to be incorporated in the licence of any licensee, the following provisions shall have effect in relation to the said licensee, namely :—

- (a) the Board—
 - (i) may, if satisfied that the licensee has failed to comply with any of the provisions of the Sixth Schedule ; and

- (ii) shall, when so requested by the licensee in writing, constitute a rating committee to examine the licensee's charges for the supply of electricity and to make recommendations in that behalf to the Government :

Provided that where it is proposed to constitute a rating committee under this section on account of the failure of the licensee to comply with any provisions of the Sixth Schedule, such committee shall not be constituted unless the licensee has been given a notice in writing of thirty clear days which period if the circumstances so warrant may be extended from time to time to show cause against the action proposed to be taken :

Provided further that no such rating committee shall be constituted if the alleged failure of the licensee to comply with any provisions of the Sixth Schedule raises any dispute or difference as to the interpretation of the said provisions or any matter arising therefrom and such difference or dispute has been referred by the licensee to the arbitration under paragraph XVI of that Schedule before the notice referred to in the preceding proviso was given or is so referred within the period of the said notice :

Provided also that no rating committee shall be constituted in respect of a licensee within three years from the date on which such a committee has reported in respect of that licensee, unless the Government declares that in its opinion circumstances have arisen rendering the orders passed on the recommendations of the previous rating committee unfair to the licensee or any of his consumers ;

(b) a rating committee under clause (a) shall—

- (i) where such committee is to be constituted under sub-clause (i) of that clause, be constituted not later than three months after the expiry of the notice referred to in the first proviso to that clause ;
- (ii) where such committee is to be constituted at the request of the licensee, be constituted within three months of the date of such request ;
- (c) a rating committee shall, after giving the licensee a reasonable opportunity of being heard and after taking into consideration the efficiency of operation and management and the potentialities of his undertaking, report

to the Government within three months from the date of its constitution making recommendations, with reasons therefor, regarding the charges for electricity which the licensee may make to any class or classes of consumers so, however, that the recommendations are not likely to prevent the licensee from earning clear profit sufficient when taken with the sums available in the Tariffs and Dividends Control Reserve to afford him a reasonable return as defined in the Sixth Schedule during his next succeeding three years of account :

Provided that the Government may, if it so deems necessary, extend the said period of three months by a further period not exceeding three months within which the report of the rating committee may be submitted to it ;

- (d) within one month after the receipt of the report under clause (c), the Government shall cause the report to be published in the Government Gazette and may at the same time make an order in accordance therewith fixing the licensee's charges for the supply of electricity with effect from such date, not earlier than two months or later than three months, after the date of publication of the report as may be specified in the order and the licensee shall forthwith give effect to such order ;
- (e) the charges for the supply of electricity fixed under clause (d) shall be in operation for such period not exceeding three years as the Government may specify in the order :

Provided that nothing in this clause shall be deemed to prevent a licensee from reducing at any time any charges so fixed.

(2) The rating committee shall consist of three members as follows :—

- (i) one member shall be nominated by the Government who shall be a person who is a judicial officer not below the rank of a District Judge ;
- (ii) one member shall be a member of the Board having experience of accounting and financial matters ; and
- (iii) one member shall be a representative co-opted jointly by the two members referred to in clauses (i) and (ii) from

an association of licensees of which the licensee concerned is or is eligible to be a member and if there is no such association, from such Chamber of Commerce or similar body as the Government may direct.

(3) The judicial member of rating committee shall be its Chairman.

(4) A rating committee may act notwithstanding that one of its members is absent.

(5) The expenditure incurred in connection with a rating committee as certified by it shall be payable—

(a) where the rating committee was constituted at the request of a licensee, or where the rating committee has held that the licensee has failed to comply with any of the provisions of the Sixth Schedule, by the licensee from that part of the clear profit to which the licensee is entitled under that Schedule ;

(b) in any other case, by the Board.

(6) Where a licensee makes default in paying any amount which he is liable to pay under sub-section (5), such amount may, on a certificate being issued by the Board, be recovered as arrears of land revenue.

54. Power of rating committee to call for information.—A rating committee constituted under section 53 may, for the purpose of discharging its functions, by notice in writing, require the licensee to give such information or to furnish such accounts and other documents in his possession or power, as may be specified in the notice.

55. Power to direct amortisation and tariffs policies of licensees being local authorities.—The Board shall have power to direct the amortisation and tariffs policies of any licensee, being a local authority, with respect to his licensed undertaking in such manner as the Board, after giving the local authority a reasonable opportunity of being heard, considers expedient for the purposes of this Act and the licensee, being a local authority, the provisions of any other law or of any rules made or directions

given thereunder notwithstanding ; shall give effect to any such directions of the Board :

Provided that the Board shall not issue any directions under this section except after obtaining the prior approval of the Government.

CHAPTER V.

THE BOARD'S FINANCE, ACCOUNTS AND AUDIT.

56. **General principles for Board's finance.**—The Board shall not, as far as practicable and after taking credit for any subventions from the Government under section 60, carry on its operations under this Act at a loss, and shall adjust its charges accordingly from time to time :

Provided that where necessary any amounts due for meeting the operating, maintenance and management expenses of the Board or for the purposes of clauses (i) and (ii) of section 64 may, to such extent as may be sanctioned by the Government, be paid out of capital.

57. **Board to assume obligations of Government in respect of matters to which this Act applies.**—(1) All debts and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Government for any of the purposes of this Act before the first constitution of the Board shall be deemed to have been incurred, entered into or engaged to be done by, with or for the Board ; and all suits or other legal proceedings instituted or which might but for the issue of the notification under sub-section ¹[(3)] of section I, have been instituted by or against the Government may be continued or instituted by or against the Board.

(2) All schemes sanctioned by the Government and transferred to the Board shall, for the purposes of this Act, be deemed to have been sanctioned by the Board.

(3) All expenditure which the Government may, not later than one year after the first constitution of the Board, declare to have been incurred before the issue of the notification under sub-section ¹[(3)] of section I on capital account in connection with the purposes of this Act shall be deemed to be a loan advanced

to the Board under section 61 on the date of the said declaration, and all the assets acquired by such expenditure shall thereupon vest in the Board.

58. Annual financial statement.—(1) In February of each year the Board shall submit to the Government a statement in the prescribed form of the estimated capital and revenue receipts and expenditure for the ensuing year.

(2) The said statement shall include a statement of the salaries of members, officers and servants of the Board and of such other particulars as may be prescribed.

(3) The Government shall, as soon as may be after the receipt of the said statement, cause it to be laid on the table of both the Houses of the Legislature; and the said statement shall be open to discussion therein, but shall not be subject to vote.

(4) The Board shall take into consideration any comments made on the said statement in the Legislature.

(5) The Board may, at any time during the year in respect of which a statement under sub-section (1) has been submitted, submit to the Government a supplementary statement, and all the provisions of this section shall apply to such statement as they apply to the statement under the said sub-section.

59. Restriction on unbudgetted expenditure.—(1) Save where in the opinion of the Board circumstances of extreme urgency have arisen, no sum exceeding twenty-five thousand rupees on account of recurring expenditure or exceeding one lakh of rupees on account of non recurring expenditure shall be expended by the Board in any year of account unless such sum has been included in a statement submitted under sub-section (1) or sub-section (5) of section 58.

(2) Where any such sum is expended under circumstances of extreme urgency a report thereon indicating the sources from which it is proposed to meet the expenditure shall be made as soon as practicable to the Government.

60. Subventions to the Board.—The Government may, with the approval of the Legislative Assembly, from time to time make subventions to the Board for the purposes of this Act on such terms and conditions as the Government may determine.

61. **Loans to the Board.**—The Government may from time to time advance loans to the Board on such terms and conditions, not inconsistent with the provisions of this Act, as the Government may determine.

62. **Power of Board to borrow.**—(1) The Board may, from time to time, with the previous sanction of the Government and subject to the provisions of this Act and to such conditions as may be prescribed in this behalf, borrow any sum required for the purposes of this Act.

(2) Rules made by the Government for the purposes of this section may empower the Board to borrow by the issue of bonds or stocks or otherwise and to make arrangements with bankers, and may apply to the Board with such modifications as may be necessary to be consistent with this Act.

(3) The maximum amount which the Board may at any time have on loan under sub-section (1) shall be ¹[such amount as the Government may, from time to time sanction keeping in view the requirements of the Board.]

(4) Stock issued by the Board under this section shall be issued, transferred, dealt with and redeemed in such manner as may be prescribed.

63. **Guarantee of loans.**—The Government may guarantee in such manner as it thinks fit the payment of the principal and interest of any loan proposed to be raised by the Board or of either the principal or the interest :

Provided that the Government shall, so long as any such guarantees are in force, lay before both the Houses of the Legislature in every year during the budget session a statement of the guarantees, if any, given during the current financial year of the State and an up-to-date account of the total sums, if any, which have been paid out of State revenue by reason of any such guarantees or paid into State revenues towards repayment of any money so paid out.

64. **Priority of liabilities of the Board.**—The revenue of the Board shall, after meeting its operating, maintenance and management expenses and after provision has been made for the

1. Substituted by Act XXXIX of 1978, s-2.

payment of taxes on its income and profits be distributed as far as they are available in the following order, namely:—

- (i) interest on bonds not guaranteed under section 63 ;
- (ii) interest on stock not so guaranteed ;
- (iii) credits to depreciation reserve under section 65 ;
- (iv) interest on bonds guaranteed under section 63 ;
- (v) interest on stock so guaranteed ;
- (vi) interest on sums paid by the Government under guarantees under section 63 ;
- (vii) the write-down of amounts paid from capital under the proviso to section 56 ;
- (viii) the write-down of amounts in respect of intangible assets to the extent to which they are actually appropriated in any year for the purpose in the books of the Board ;
- (ix) contribution to general reserve of an amount not exceeding one-half of one per centum per annum of the original cost of fixed assets employed by the Board so however that the total standing to the credit of such reserve shall not exceed eight per centum of the original cost of such fixed assets ;
- (x) interest on loans advanced or deemed to be advanced to the Board under section 61 including arrears of such interest ;
- (xi) of the balance remaining, one-half in the reduction of tariffs or for such other purposes beneficial to electrical development in the State, as the Board may think fit, and the remaining one-half to the Consolidated Funds of the State.

65. **Depreciation reserve.**—(1) The Board shall create a depreciation reserve and, as far as compliance with the provisions of section 64 makes it practicable, shall, at the end of every year, credit to such reserve from its revenue, such amount as would if made annually throughout the prescribed periods of assets specified in the Table appended to the Seventh Schedule

and accumulated at compound interest at the rate of three per centum per annum produce by the end on the prescribed period an amount equal to 90 per centum of the original cost of the assets after taking into account the sums already written off and set aside in the books of the Board.

(2) The amount to be credited every year to the depreciation reserve under sub-section (1) shall consist of the incremental deposit plus interest on the accumulated balance in the reserve :

Provided that the contribution in respect of any asset to the depreciation reserve under this section shall cease at the end of the prescribed period as defined in the Sixth Schedule or when the asset ceases to be used by the Board, whichever is earlier :

Provided further that if in any year it is not practicable fully to comply with the provisions of this section, the amount by which the sums actually credited falls short of the amount required under this section in respect of that year, shall be carried forward and together with compound interest thereon at the aforesaid rate, shall be credited to the said reserve as soon as it is found possible in accordance with section 64, so to do :

Provided also that the accumulations in the depreciation reserve may be invested in the business of the Board or, utilised for repayment of principal not guaranteed under section 63 or for repayment of sums paid by the Government under guarantees under that section.

66. Accounts and Audit.—(1) The Board shall cause proper accounts and other records in relation thereto to be kept, including a proper system of internal check and prepare an annual statement of accounts, including the profit and loss account and the balance sheet in such form as may be prescribed by the Government.

(2) The accounts of the Board shall be audited by such person or authority as the Government may specify in this behalf and any expenditure incurred by him or it in connection with such audit shall be payable by the Board.

(3) The person or the authority specified by the Government under sub-section (2) in connection with the audit of the accounts of the Board shall have the same rights, privileges and authority

in connection with such audit as the Auditor of the Government has in relation to the Government accounts and in particular shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Board.

(4) The accounts of the Board as certified by the person or authority specified under sub-section (2) together with the audit report thereon shall be forwarded annually to the Government and the Government may issue such instructions to the Board in respect thereof as it deems fit and the Board shall comply with such instructions.

(5) The Government shall—

- (a) cause the accounts of the Board together with the audit report thereon forwarded to it under sub-section (4) to be laid annually before both the Houses of Legislature ; and
- (b) cause the accounts of the Board to be published in the prescribed manner and make available copies thereof on sale at a reasonable price.

CHAPTER VI.

MISCELLANEOUS.

67. Effect of other laws.—(1) No provision of the Jammu and Kashmir Electricity Act, Svt. 1997, or of any rules made thereunder or of any instrument having effect by virtue of such law or rule shall, so far as it is inconsistent with any of the provisions of this Act, have any effect :

Provided that nothing in this Act shall be deemed to prevent the Government from granting, after consultation with the Board, a licence not inconsistent with the provisions of the Jammu and Kashmir Electricity Act, Svt. 1997, to any person in respect of such area and on such terms and conditions as the Government may think fit.

(2) Save as otherwise provided in this Act, the provisions of this Act, shall be in addition to and not in derogation of the Jammu and Kashmir Electricity Act of 1997.

68. **Water power concessions to be granted only to the Board.**—The Government shall not grant any concession for the development or use of water-power for any electrical purpose to any person other than the Board, unless the Government is of the opinion that it is not expedient for the Board or that the Board is unable so to develop or use the water-power concerned.

69. **Co-ordination between the Board's schemes and multipurposes schemes.**—Where a multipurpose scheme for the development of any river in any region is in operation, the Board shall co-ordinate its activities with the activities of the persons responsible for such scheme in so far as they are inter-related.

70. **Power of entry.**—Any officer or servant of the Board, generally or specially authorised by the Board, in this behalf, may, at any reasonable time after giving the owner or occupier reasonable notice, enter upon any land or premises and there do such things as may be reasonably necessary for the purposes of lawfully using any transmission lines or main transmission lines or of making any survey, examination or investigation preliminary or incidental to the exercise of powers or the performance of duties by the Board under this Act.

71. **Annual reports, statistics and returns.**—(1) The Board shall, before such date and in such form as may be prescribed, submit to the Government an annual report upon such matters as may be prescribed, and the Government shall cause such report to be published in the Government Gazette.

(2) Without prejudice to the provisions of sub-section (1), the Board shall, as soon as may be after the end of each financial year, prepare and submit to the Government in such form as may be prescribed a report giving an account of its activities during the previous financial year and the report shall also give an account of activities, if any, which are likely to be undertaken by the Board in the next financial year; and the Government shall cause every such report to be laid before both the Houses of the Legislature as soon as may be after it is received by the Government.

(3) The Board shall furnish to the Government at such times and in such form and manner as may be prescribed or as the Government may direct, such statistics and returns and such particulars in regard to any proposed or existing scheme as the Government may from time to time require.

(4) The Board may, at any time by notice in writing, require any licensee or person supplying electricity for public or private purposes or generating electricity for his own use to furnish it with such information and accounts relating to such supply or generation and in such form and manner as the notice may specify.

72. Arbitration.—(1) All questions arising between the Government or the Board and a licensee or other person shall be determined by such person or authority as the Government may appoint.

(2) Subject to the provisions of this section, the provisions of the Jammu and Kashmir Arbitration Act, 2002 shall apply to arbitrations under this Act.

(3) The arbitrator shall in making his award have regard to the provisions of this Act and any rules and regulations made thereunder relevant to the reference.

(4) The arbitrator may, if he thinks it expedient so to do, call in the aid of one or more qualified assessors and here the reference wholly or partially with the aid of such assessors.

73. Penalties.—If any licensee or other person, not being the Board, fails without reasonable excuse to comply with, or give effect to, any direction, order or requirement made under any of the following provisions, namely :—

(a) section 50 ; or

(b) clause (d) of sub-section (1) of section 53 ; or

(c) section 54 ; or

(d) section 55 ; or

(e) sub-section (3) of section 71 ;

he shall be punishable with fine which may extend to five hundred rupees, and in the case of a continuing offence with a further fine which may extend to fifty rupees for each day after the first during which the offence continues.

74. Source from which fines may be paid.—All fines payable by a licensee under this Act, or under any other law for the time being in force, in respect of any offence committed by the licensee,

shall be payable by him from that part of the clear profit to which he is entitled under the Sixth Schedule.

75. Offences by companies.—(1) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance or is attributable to any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

- (a) 'Company' means any body corporate and includes a firm or other association of individuals ; and
- (b) 'Director' in relation to a firm means a partner in the firm.

76. Cognizance of offences.—No Court shall take cognizance of an offence under section 73 except on the complaint of an officer of the Board authorised by the Board in that behalf.

77. Power to make rules.—(1) The Government may, after previous publication, by notification in the Government Gazette, make rules to give effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the powers of the Chairman and the term of office of the Chairman and other members of the Board, the conditions under which they shall be eligible for re-appointment and their remuneration, allowances and other conditions of service ;

- (b) the terms and conditions of appointment of members of Electricity Consultative Council and Local Advisory Committees, the convening of meetings of such Council and Committees and the conduct of business thereat ;
- (c) the form in which the annual financial statement and supplementary statements under section 58 shall be prepared by the Board and the particulars to be included therein ;
- (d) the conditions subject to which the Board may borrow under section 62 ;
- (e) the manner in which stock issued by the Board shall be issued, transferred, dealt with and re-deemed ;
- (f) the manner in which the accounts of the Board shall be published under section 66 ;
- (g) the form in which and the date by which the annual report of the Board shall be submitted under section 71 and the form and manner of furnishing statistics and returns by the Board under that section ;
- (h) the business of the Board upon which the Local Advisory Committees concerned shall be consulted.

78. Directions by the Government.—(1) In the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the Government.

(2) If any dispute arises between the Board and the Government as to whether a question is or is not a question of policy, the decision of the Government thereon shall be final.

79. Power to make regulations.—The Board may make regulations not inconsistent with this Act and the rules made thereunder to provide for all or any of the following matters, namely :—

- (a) the administration of the funds and other property of the Board, and the maintenance of its accounts ;
- (b) the summoning and holding of meetings of the Board, the times and places at which such meetings shall be held, the conduct of business thereat and the number of members necessary to constitute a quorum ;

- (c) the duties of officers and servants of the Board, and their salaries, allowances and other conditions of service ;
- (d) all matters necessary or expedient for regulating the operations of the Board under section 17 ;
- (e) advances to licensees by the Board under section 20 and the manner of repayment of such advances ;
- (f) the making of contributions by the Board under section 21 ;
- (g) the procedure to be followed by the Board in inviting, considering and accepting tenders ;
- (h) principles governing the fixing of Grid Tariffs ;
- (i) principles governing the making of arrangements with licensees under section 42 ;
- (j) principles governing the supply of electricity by the Board to persons other than licensees under section 44 ;
- (k) any other matter arising out of the Board's functions under this Act for which it is necessary or expedient to make regulations :

Provided that regulations under clauses (a) and (d) shall be made only with the previous approval of the Government.

80. Members, officers and servants of the Board to be public servants.—All members, officers and servants of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Ranbir Penal Code, 1989.

81. Protection to persons acting under this Act.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

82. Removal of difficulties.—If any difficulty arises as to the first constitution of the Board or the continuance of the services, posting and adjustment of any employee or otherwise in giving effect to the provisions of this Act, the Government may by order do anything which appears to it necessary for the purposes of removing the difficulties.

THE FIRST SCHEDULE.

ARRANGEMENTS IN RESPECT OF
CONTROLLED STATIONS.

PART I.

ASSUMPTION OF CONTROL.

I. (1) The Board shall by notice in writing to the licensee fix a date (hereafter in this Schedule referred to as the date of control), being the first day of a year of account of the licensee and from such date licensee shall, except where prevented by causes beyond his control, be under obligation—

- (a) subject to such directions as the Board may from time to time give him, to keep the station at all times in good and substantial repair and condition and ready for use, together with adequate staff for operating, maintaining and controlling the station, and not to make any substantial alterations or renewals in, or remove any essential or substantial part of, the station without the consent in writing of the Board ;
- (b) to operate the station so as to generate such quantity of electricity with such units of plant at such rates of output and at such times, or to cease to generate electricity during such periods, as the Board may direct ;
- (c) to carry out as soon as may be practicable such reasonable extensions, alterations or renewals of the station or any part thereof as the Board may from time to time direct ;
- (d) to supply to the Board all the electricity generated at the station.

(2) To enable a licensee to comply with any direction under sub-paragraph (1) requiring extension of the station or any part thereof for purposes of the Board, the Board may, if it considers it expedient and practicable so to do, offer to advance to him a loan upon such terms and conditions as it may deem proper and the licensee may accept the loan from the Board on the terms and

conditions offered or may raise a loan from other sources or employ his own funds for the purpose of such extensions :

Provided that notwithstanding anything contained in any law or in any mortgage, charge or instrument executed by the licensee, the loan so advanced by the Board and the interest thereon shall be a first charge on the extension and subject to any prior encumbrance shall also be charged on the undertaking and all the revenues of the licensee and no such loan shall be amortised in any way by the licensee :

Provided further that if at the date of purchase of the station under this Act or of the licensee's undertaking under the Jammu and Kashmir Electricity Act, S. 1997, the said principal or any part thereof remains unpaid though due, for redemption, or is not on that date due for redemption, then any sum payable by the purchaser as a percentage on account of compulsory purchase under this Act or the said Act shall be reduced by an amount which bears the same proportion to that sum as the amount of the said principal or part thereof remaining unpaid or not being due for redemption as aforesaid bears to the total of the ordinary, preference and debenture capital of the licensee and the loans advanced by the Board under this sub-paragraph.

Explanation.—In this sub-paragraph, the expressions “ordinary capital”, “preference capital” and “debenture capital” have the meanings respectively assigned to them in the Sixth Schedule.

II. From the date of control the Board shall, except where prevented by causes beyond its control, be under obligation to supply to the licensee and the licensee shall be under obligation to take from the Board, the whole of the electricity required by the licensee for the purposes of his undertaking, except such quantity of electricity as the licensee may for the time being be entitled under paragraph III to purchase from a source other than the Board or as he may be generating in another station, not being a controlled station.

III. Unless otherwise agreed between the Board and the licensee, the licensee shall not, where he has received a notice under paragraph I, purchase after the date of control any quantity of electricity from a source other than the Board :

Provided that where on the date of the receipt of such notice the licensee is bound under any contract to purchase any quantity of electricity from some other source, he may, for a period not

exceeding two years after the date of control or for such further period, if any, as the Board may allow, continue to purchase electricity under the said contract from such other source.

IV. The Board shall pay to the licensee, whether or not any electricity is generated at the station, the costs ascertained in accordance with the provisions of the Eighth Schedule.

V. The price to be paid by the licensee for electricity supplied by the Board shall be determined in the manner provided in the appropriate part of this Schedule.

VI. The points at which electricity to be supplied under this Schedule shall be delivered by the Board and the licensee respectively shall, unless otherwise agreed between the Board and the licensee, be at the generating station, and the pressure of the supplies shall be such as the Board and the licensee may agree.

VII. Where any licensee owns more than one controlled station—

- (a) such of the several controlled stations as are interconnected shall, for the purposes of this Schedule, be deemed to comprise a single controlled station and, unless the subject or context otherwise requires, the provisions of this Schedule shall be construed as if the word "combined" had been inserted before the word "station" or the words "generating station" wherever they occur;
- (b) the electricity supplied at the several controlled stations by the licensee to the Board or by the Board to the licensee, shall each respectively be treated as single supplies;
- (c) in the application of clause (a) of paragraph XII, the costs of production at each of the several controlled stations shall be separately ascertained, and in the application of clause (c) of the said paragraph—
 - (i) the sum ascertained in accordance with clause (a) of paragraph I of the Eighth Schedule in respect of each of the several controlled stations shall be separately allocated between fixed costs and running costs; and

- (ii) the sum of the several fixed costs and the sum of the several running costs shall be the fixed costs and the running costs respectively of the combined station ;
- (d) in directing the operation of the combined station under clause (b) of sub-paragraph (I) of paragraph I, the Board shall have regard to the nature and capacity of the licensee's transmission system inter-connecting the several controlled stations and to the requirements of the licensee at each of those stations.

VIII. In the event of the licensee failing, except where prevented by causes beyond his control, to perform or continue to perform any obligation imposed upon him under this part, the Board may give notice to him in writing that on the first day of the licensee's next succeeding year of the account the generating station will be purchased by the Board, and on such day the Board shall purchase the station at a price determined in accordance with the Fourth Schedule, and thereafter—

- (a) all the provisions of this Schedule except paragraph II and this paragraph shall, in relation to the licensee, cease to have effect ;
- (b) the Board shall supply the licensee with the electricity required by him under paragraph II at such price and on such conditions as the Board may determine.

PART II.

PRICE TO BE PAID FOR ELECTRICITY SUPPLIED BY THE BOARD UNDER PART I.

IX. There shall be agreed between the Board and the licensee in respect of each month of the licensee's year of account—

- (a) the maximum capacity of the station, that is to say, the maximum capacity (expressed in kilowatts available for supply to feeders) of such plant and works appertaining to the generation of electricity at the stations as were available for reliable and regular commercial operation on the first day of the month, including the capacity of such plant and works as were temporarily out of commission ;

- (b) the number and size of units of plant and works forming part of the aforesaid plant and works, which ought properly to be deemed to be standby if the station were not a controlled station ;
- (c) the standby capacity of the station, that is to say, the number of kilowatts (expressed in kilowatts available for supply to feeders) by which the maximum capacity of the station would be reduced if the standby plant and works referred to in clause (b) were to be left out of account ;
- (d) the actual effective capacity of the station, that is to say, the number of kilowatts by which the maximum capacity exceeds the standby capacity.

X. (1) The licensee shall be entitled to purchase from the station in each month at a price determined under paragraph XIII a number of kilowatts not exceeding the scheduled effective capacity of the station on the first day of that month as determined in sub-paragraph (2).

(2) The scheduled effective capacity of the station shall be agreed between the Board and the licensee in respect of each month of the year of account, and shall be computed in the same manner as the actual effective capacity under paragraph IX, except that there shall be left out of account such units of plant and works, if any, forming part of the plant and works referred to in clause (a) of the said paragraph, as the licensee declares to be surplus to his requirements for the time being :

Provided that the licensee shall not declare to be surplus to his requirements any such units of plant or works as were installed or were on order at the date of control or which were included in any previous computation of the scheduled effective capacity :

Provided further that if as a result of the licensee declaring as surplus to his requirements any units of plant or works, the scheduled effective capacity is in respect of any month computed to be less than the maximum demand of the licensee on the station for the purposes of his own undertaking, then such units of plant or works and all further additional units of plant or works shall thereafter always be deemed to be surplus to the requirements of the licensee as aforesaid unless the Board decides otherwise.

XI. Of the kilowatt-hours purchased by the licensee from the Board in each month, a number of kilowatt-hours not exceeding

the number which bears the same proportion to the total number purchased as the scheduled effective capacity for the month bears to the maximum demand of the licensee on the Board in that month shall be purchased at a price determined under paragraph XIII; the balance being purchased at a price determined under paragraph XIV:

Provided that if the station is a hydro-electric station or if any unit of a combined station is a hydro-electric unit, the number of kilowatt-hours which the licensee shall be entitled to purchase as aforesaid shall be reduced by such amount, if any, as may be agreed between the Board and the licensee, having regard to the number of kilowatt-hours actually supplied in the month from such hydro-electric station or unit.

XII. As soon as practicable after the end of a year of account—

- (a) there shall be ascertained in respect of that year the cost of production at the station in accordance with the provisions of the Eighth Schedule;
- (b) there shall be deducted from the total sum ascertained in respect of that year under clauses (b), (c), (d), (e), and (f) of paragraph I of the Eighth Schedule, such proportion of the charges referred to in the said clauses as are wholly attributable to so much of the plant and works, if any, as has been declared by the licensee under subparagraph (2) of paragraph X to be surplus to his requirements, and the balance remaining after such deduction shall for the purpose of this Schedule be referred to as the scheduled overhead charges:

Provided that in assessing the said proportion regard shall be had to the period during which any such plant or works were declared to be surplus as aforesaid;

- (c) there shall be allocated between fixed costs and running costs in accordance with the provisions of the Ninth Schedule the sum ascertained in respect of that year under clause (a) of paragraph I of the Eighth Schedule and the amount of running costs divided by the number of kilowatt-hours supplied from the station in that year shall for the purposes of this Schedule be referred to as the running charges component;

- (d) there shall be ascertained in respect of that year an amount (in this schedule referred to as the scheduled fixed works costs) calculated from the expression,

$$\frac{A}{2} + \frac{A}{2} \times \frac{B}{C} \text{ where}$$

A = the amount of fixed costs ascertained in respect of that year under clause (c) ;

B = the sum of the scheduled effective capacities for each month of that year ;

C = the sum of the actual effective capacities for each month of that year.

XIII. The licensee shall pay to the Board in respect of each month of the year of account for the electricity purchased under paragraphs X and XI—

- (a) in respect of kilowatts, an amount equal to one-twelfth of the sum of the scheduled overhead charges and the scheduled fixed works costs ;
- (b) in respect of kilowatt-hours, a sum found by multiplying the number of kilowatt-hours supplied by the running charges component :

Provided that if in any year of account the station for any reason ceases to generate electricity for one thousand hours or more, then for the purposes of ascertaining the running charges component and the scheduled fixed works costs under clauses (c) and (d) respectively of paragraph XII—

- (i) the said clause (c) shall be construed as if there were substituted for the words "that year" in both places where they occur, the words "the most recent year of account in which the station did not cease to generate electricity for one thousand hours or more" and as if to the said clause the following proviso were added, namely :

"provided that so much of the said sum as it represented by the cost of fuel shall be adjusted to take account of the cost which would have been incurred had that fuel

been consumed at the average prices prevailing in the actual year of account."

- (ii) in evaluating the expression contained in the said clause (d) the letter C shall be deemed to be equal to the sum of the actual effective capacity for each month of the most recent year of account in which the station did not cease to generate electricity for one thousand hours or more :

Provided further that if in any year of account there exist in the station any units of plant or works which have been declared by the licensee under sub-paragraph (2) of paragraph X to be surplus to his requirements in that year, there shall be added to the running charges component in respect of that year the amount, if any, by which that part of the said component attributable to the cost of fuel is less than ninety per centum of the corresponding part of the running charges component in respect of the year of account immediately proceeding that in which the earliest installed of the said units of plants or works first came into commercial operation in the station, and in ascertaining the corresponding part as aforesaid, the fuel consumed shall be deemed to be of the same average quality and to be consumed at the same average cost per ton as the fuel consumed in the year of account :

Provided further that if in respect of any month of the year of account any units of plant or works previously declared by the licensee as aforesaid to be surplus to his requirements are for the first time taken into account in assessing the scheduled effective capacity for that month, then in addition to the payment referred to in clause (a) the licensee shall pay to the Board a sum equal to any sums previously paid by the Board to the licensee on revenue account (in respect of any period prior to the date on which the said units of plant or works came into commission) by way of interest, depreciation, testing and tuning up expenses attributable to the said units of plant or works, and the sum to be paid as aforesaid shall become due in one or more instalments and at such time or times as the Board may direct.

XIV. The price payable by the licensee to the Board for all electricity supplied by the Board to him in excess of the quantities referred to in paragraphs X and XI shall be the Grid Tariff.

XV. The licensee shall have the right at any time, on giving to the Board prior notice in writing expiring at the end of any

year of account, to purchase from the Board at the Grid Tariff the whole of the electricity supplied to him by the Board thereafter :

Provided that the Board in those circumstances may make it a condition that the licensee shall, until the date on which the scheduled effective capacity of the station becomes nil, pay to the Board in respect of each month in addition to the Grid Tariff one-twelfth of such proportion as the Board may fix of the annual charges by way of interest and depreciation which would have been payable to the Board in respect of the year of account had the said notice not been given :

Provided further that in assessing the scheduled effective capacity for the purposes of the first proviso all units of plant or works which may have been under this Schedule declared or deemed to be surplus to the requirements of the licensee at the date of the expiration of the said notice and all additional units of plant or works shall after that date always be deemed to be surplus to the requirements of the licensee :

Provided further that after the expiration of the said notice the licensee shall not be entitled any time to purchase electricity from the Board at the price ascertained under paragraph XIII.

PART III.

PERMANENT CLOSING DOWN OF A CONTROLLED STATION.

XVI. The Board may give the licensee not less than six month's notice in writing expiring at the end of any year of account that from the first day of the next succeeding year of account it will not again direct the licensee to generate any electricity in the station, and upon that date (hereinafter in this Schedule referred to as the date of closing down) the station shall be permanently closed down.

XVII. From the date of closing down paragraphs I, IV and VIII shall, in relation to the station, cease to have effect, and on receipt of the notice under paragraph XVI the licensee shall have the option (to be exercised by a date not later than three months prior to the date of closing down) either—

- (a) (i) to sell the station at any time after the date of closing down, and

- (ii) to purchase the electricity supplied to him by the Board at the Grid Tariff, or
- (b) (i) to require the Board to purchase the station or at the option of the licensee the undertaking of the licensee at the date of closing down at a price determined under the Fourth Schedule, and
- (ii) to purchase the electricity supplied to him by the Board in accordance with the provisions of Part II as modified by paragraph XVIII:

Provided that where the station cannot be severed from the distributing system of the licensee or where the severance of the station from the distributing system of the licensee is likely to affect prejudicially the interests of the licensee, the licensee shall be entitled to demand that the Board shall purchase his entire undertaking and on such demand being made the Board shall purchase the entire undertaking of the licensee.

Any question arising under the proviso to this paragraph shall be referred to arbitration under section 72.

XVIII. Where a licensee exercises his option under paragraph XVII in terms of clause (b) thereof, the Board shall comply with the requirement to purchase the station under sub-clause (i) of that clause, and in applying the provisions of Part II to the purchase by the licensee of electricity supplied to him by the Board,

- (a) the station shall, notwithstanding that it has been permanently closed down, be deemed to remain a controlled station in operation but to be such a station which had ceased to generate electricity for one thousand hours or more during each year of account.

- (b) clause (a) of paragraph IX shall be construed as if the following were substituted therefor, namely:—

“(a) the maximum capacity of the station, that is to say, the maximum capacity (expressed in kilowatts available for supply to feeders) of such plant and works appertaining to the generation of electricity at the date of closing down as would have been available for reliable and regular commercial operation on the first day of each month, had the station not been closed down under Part III and had no replacement

month), the scheduled effective capacity of the station is computed under paragraph X to be less than one-half of the actual effective capacity of the station, the Board may give to the licensee six month's notice in writing that on the first day of the year of account next following the date of expiration of such notice the station will be purchased by the Board.

XX. Notwithstanding anything contained in paragraph X, in computing the scheduled effective capacity for purposes of paragraph XIX there shall be left out of account all such units of plant and works as would not reasonably have been required by the licensee for purposes other than supply to the Board had the station not been a controlled station.

XXI. Where a notice under paragraph XIX has been served by the Board on the licensee, the Board shall purchase the station or where a severance of the station from the distributing system of the licensee is not possible or is likely to affect prejudicially the interest of the licensee and the licensee so requires, the entire undertaking of the licensee at the date specified in the notice and at a price determined under the Fourth Schedule.

XXII. From the date of purchase of the station or at the option of the licensee the undertaking of the licensee under paragraph XXI the provisions of paragraphs I, IV and VIII shall, in relation to the station, cease to have effect, and the licensee shall be required to purchase the electricity supplied to him by the Board in accordance with the provisions of Part II as modified by paragraph XXIII.

XXIII. In applying the provisions of Part II to the purchase by a licensee whose station has been purchased under this part of electricity supplied to him by the Board,—

- (a) the station shall, notwithstanding that it has been purchased by the Board, be deemed to remain a controlled station ;
- (b) clause (a) of paragraph XII shall be construed as if the reference therein to the provisions of the Eighth Schedule excluded a reference to clauses (b), (c) and (d) of paragraph I of that Schedule and as if the following proviso were added to the said clause (a), namely :—

“Provided that the annual charges to be included in accordance with clauses (e) and (f) of paragraph I of the said

Schedule shall be such as would have resulted had the assets purchased by the Board under Part IV remained in the ownership of the licensee”;

- (c) Clause (b) of paragraph XII shall be construed as if the reference therein to clauses (b), (c) and (d) of paragraph I of the Eighth Schedule were omitted;
- (d) there shall be added to the sum payable by the licensee to the Board under clause (a) of paragraph XIII in each month of the year of account a sum equal to one twelfth of the amount calculated from the

“A × B
expression $\frac{\quad}{C}$ where—
C”

A = that part of the scheduled overhead charges payable by the licensee to the Board in respect of the last year of account in which the station was in ownership of the licensee which relates to the items referred to in clauses (b), (c) and (d) of paragraph I of the Eighth Schedule;

B = the sum of the scheduled effective capacities for each month of the year of account;

C = the sum of the scheduled effective capacities for each month of the said last year of account.

THE SECOND SCHEDULE.

SUPPLY BY BOARD TO LICENSEES OWNING STATIONS OTHER THAN CONTROLLED STATIONS.

I. Before the end of the year the Board shall declare to the licensee in respect of each of the two next succeeding years the maximum number of kilowatts which it will make available for the purpose of the licensee's undertaking.

II. Where the Board and the licensee agree that the number of kilowatts declared under paragraph I will be inadequate to meet the requirements of the licensee having regard to the capacity of the licensee's generating plant, the Board shall not refuse its consent under section 39, the provisions of that section notwithstanding, to the installation by the licensee of such generating

plant as he may reasonably require for the purposes of his undertaking, unless the Board is able appropriately to amend its declaration within a reasonable time.

III. The licensee shall be entitled to demand from the Board, and the Board shall, except where prevented by causes beyond its control, be under obligation to supply to the licensee, a maximum number of kilowatts in each year not exceeding, without the consent of the Board, the maximum number of kilowatts declared under this Schedule in respect of that year.

IV. The point at which the electricity to be supplied under this Schedule shall be delivered to the licensee shall, unless otherwise agreed between the Board and the licensee, be at the licensee's generating station, and the pressure of supply shall be such as may be agreed between the Board and the licensee.

V. The Board shall bear the whole of the cost of the service apparatus required for making the supply under this Schedule available to the licensee.

VI. The price to be paid by the licensee to the Board in respect of each year for electricity supplied under this Schedule shall be the Grid Tariff.

THE THIRD SCHEDULE

CLOSING DOWN OF GENERATING STATIONS OTHER THAN CONTROLLED STATIONS.

I. Where the Board proposes under section 31 permanently to close down a generating station other than a controlled station, it shall give the licensee owning the station not less than six months' notice in writing expiring at the end of any year of account that from the first day of the next succeeding year of account (hereafter in this Schedule referred to as the date of closing down) the station shall be permanently closed down.

II. From the date of closing down, the Board shall be under obligation to supply to the licensee, except where prevented by causes beyond its control, and the licensee shall be under obligation to take from the Board, the whole of the electricity required by the licensee for the purposes of his undertaking except such quantity of electricity as the licensee may for the time being be entitled under paragraph III to purchase from a source other than the Board or as he may be generating in another station, not being a controlled station.

III. Unless otherwise agreed between the Board and the licensee, the licensee shall not, where he has received a notice under paragraph I, purchase after the date of closing down, any quantity of electricity from a source other than the Board:

Provided that where on the date of the receipt of such notice the licensee is bound under any contract to purchase any quantity of electricity from some other source, he may, for a period not exceeding two years after the date of closing down or for such further period, if any, as the Board may allow, continue to purchase electricity under the said contract from such other source.

IV. (1) The point at which electricity to be supplied by the Board shall be delivered to the licensee shall be at the licensee's generating station and the pressure of supply shall be such as may be agreed between the Board and the licensee.

(2) The Board shall bear the whole of the cost of the service apparatus required for making the supply available to the licensee.

V. The licensee shall have options to be exercised by a date not later than three months prior to the date of closing down, either—

- (a) (i) to sell the station at any time after the date of closing down, and
- (ii) to purchase the whole of the electricity supplied to him by the Board at the Grid Tariff, or
- (b) (i) to require the Board to purchase the station or the entire undertaking at the date of closing down at a price determined under the Fourth Schedule, and
- (ii) to purchase the whole of the electricity supplied to him by the Board on the terms hereafter set out in this Schedule.

VI. Where a licensee exercises his option under paragraph V in terms of clause (b) thereof, the Board shall comply with the requirement to purchase under sub-clause (i) of that clause, and the following provisions of this Schedule shall apply.

VII. As soon as practicable after the licensee has exercised his option as aforesaid, there shall be ascertained and agreed between

him and the Board the following quantities in respect of each year of account subsequent to the date of closing down, namely :—

- (a) The maximum capacity of the station, that is to say, the maximum capacity (expressed in kilowatts available for supply to feeders) of such plant and works appertaining to generation of electricity at the date of closing down as would have been available for reliable and regular commercial operation on the first day of the year of account, had the station not been closed down under this Schedule and had no replacement of any major item of such plant or works been carried out subsequent to the date of closing down.
- (b) The number and size of units of plant and works forming part of the aforesaid plant and works, which would have represented reasonable standby in the station.
- (c) The standby capacity of the Station, that is to say, the number of kilowatts (expressed in kilowatts available for supply to feeders) by which the maximum capacity of the station would be reduced if the standby plant and works referred to in clause (b) were to be left out of account.
- (d) The agreed effective capacity of the station, that is to say, the number of kilowatts by which the maximum capacity exceeds the standby capacity.

VIII. As soon as practicable after the date of closing down there shall be ascertained in agreement between the Board and the licensee in respect of each of the three consecutive years of account immediately preceding the date of closing down (hereafter in this Schedule referred to as the basic years)—

- (a) the sums expended by the licensee and wholly attributable to the generation of electricity under the following heads, namely :—
 - (i) fuel ;
 - (ii) oil, water and stores consumed ;
 - (iii) salaries and wages and any contribution by the licensee for pensions, provident fund, superannuation and insurance of officers and servants ;

- (iv) repairs and maintenance and renewals not chargeable to capital account ;
 - (v) management, rents and taxes (including super-tax payable by the licensee as a company, but excluding other taxes on profits) insurance of plant and general establishment charges ;
 - (vi) any other expense on revenue account ;
- (b) the actual effective capacity of the station on the first day of each such year agreed in accordance with the principles set out in paragraph IX of the First Schedule.

IX. As soon as practicable after the beginning of each year of account there shall be ascertained in respect of that year such annual charges by way of interest and depreciation attributable to the assets purchased by the Board under this Schedule as would have resulted from the application of clauses (e) and (f) of paragraph I of the Eighth Schedule, had those assets remained in the ownership of the licensee.

X. The licensee shall be entitled to purchase from the Board in each year of account at a price determined under paragraph XI—

- (a) a number of kilowatts not exceeding the agreed effective capacity ascertained in respect of that year under paragraph VII, and
- (b) a number of kilowatt-hours not exceeding the number of kilowatt-hours which bears the same proportion to the total number of kilowatt-hours required by the licensee in that year for the purposes of his undertaking as the agreed effective capacity ascertained in respect of that year bears to the total maximum demand of the licensee in that year for the said purposes.

XI. The price payable by the licensee in respect of each year of account for the quantity of electricity specified in paragraph X shall be—

- (a) in respect of kilowatts, a fixed charge equal to the sum of—

- (i) an amount calculated from the expression

$$\frac{A}{2} + \frac{A}{2} \times \frac{B}{C}$$

- (ii) an amount calculated from the expression

$$\frac{B \times D}{C}$$

- (iii) the annual charges by way of interest and depreciation ascertained in respect of the year of account under paragraph IX, where—

A = one-third of the total costs during the basic years under heads (ii), (iii), (iv) and (vi) set out in clause (a) of paragraph VIII ;

B = the agreed effective capacity for the year of account ;

C = one-third of the sum of the actual effective capacities ascertained under clause (b) of paragraph VIII for each of the basic years ;

D = one-third of the total costs during the basic years under head (v) set out in clause (b) of paragraph VIII ;

- (b) in respect of kilowatt-hours, a running charge per kilowatt-hour ascertained—

(i) by multiplying the total number of tons of fuel consumed in the station in the basic years by the estimate agreed between the Board and the licensee of the cost per ton which would have been incurred in delivering and handling the same quantity of fuel of equivalent calorific value to the furnaces in the station during the year of account, had the station remained in the ownership of the licensee, and

(ii) by dividing the total cost so found by the total number of units sent out from the station in the basic years.

XII. The price payable by the licensee for all electricity supplied to him by the Board in excess of the quantity specified in paragraph X shall be the Grid Tariff.

XIII. The licensee shall have the right at any time on giving the Board prior notice in writing expiring at the end of a year of account of purchase at the Grid Tariff the whole of the electricity supplied to him by the Board :

Provided that the Board in those circumstances may make it a condition that the licensee shall, until the date on which the agreed effective capacity of the station becomes nil, pay to the Board in each year of account in addition to the Grid Tariff a sum equal to such proportion as the Board may fix of the annual charges by way of interest and depreciation ascertained in respect of the year under paragraph IX :

Provided further that after the expiration of the said notice, the licensee shall not be entitled any time to purchase electricity from the Board at the price ascertained under paragraph XI.

THE FOURTH SCHEDULE.

PRICE FOR UNDERTAKINGS, GENERATING STATIONS AND MAIN TRANSMISSION LINES PURCHASED BY THE BOARD.

I. For the purposes of this Schedule—

- (a) "date of vesting" means the date on which the undertaking, generating part of such station, main transmission line or asset forming part of such station, or line, as the case may be, vests in the Board ;
- (b) "original cost" of an asset means the amount of expenses certified or determined under paragraph II to have been properly incurred on and incidental to the provision of the asset for the purposes of the undertaking, generating station or main transmission line, as the case may be ;
- (c) "prescribed period" shall have the meaning assigned to it in the Sixth Schedule.

II. The price to be paid for any undertaking, generating station or main transmission line, as the case may be, purchased by the Board under this Act shall be such sum as may be certified by an auditor appointed by the Government in this behalf to have been the amount properly incurred on and incidental to the establishment of the undertaking, station or main transmission

line, as the case may be, less depreciation thereon on the scale set out in paragraph III :

Provided that there shall be added to such sum as aforesaid on account of such purchase of the generating station or main transmission line such reasonable compensation as may be determined by the Board having due regard to the fact that a portion of the undertaking is to be acquired :

Provided further that if the Board or the licensee is dissatisfied with the sum so certified, the matter shall, in default of agreement between them, be determined as provided in section 72.

III. The scale of depreciation referred to in paragraph II shall be in respect of the portion of the prescribed period prior to the date of vesting—

- (a) for land owned under [10] title, including the cost or clearing the site, nil ;
- (b) for other assets specified in the Table appended to the Seventh Schedule, the amount which would be produced by the end of the said portion of the prescribed period if during that portion an allowance were made annually on account of depreciation in accordance with the provisions of paragraph VI of the Sixth Schedule.

IV. The auditor's cost under this Schedule shall be shared equally by the Board and the licensee concerned.

THE FIFTH SCHEDULE.

CHARGES FOR USE BY BOARD OF TRANSMISSION LINES AND MAIN TRANSMISSION LINES.

I. The following charges and allowances shall be made in respect of a year of account for the use by the Board of main transmission lines or transmission lines (hereafter in this Schedule referred to as lines), namely :—

- (a) the actual cost of maintenance of the lines, including renewals thereof not chargeable to capital account ;
- (b) sums paid in respect of the lines for insurance and as rents, rates and taxes including all taxes payable on income and profits ;

- (c) the proportion of management and general establishment charges properly attributable to the lines ;
- (d) any other expenses on revenue account properly attributable to the lines ;
- (e) interest on the depreciated cost of the lines shown in the books of the undertaking and properly attributable to the lines (whether defrayed out of capital or revenue) and interest on such working capital as is properly attributable to the lines :

Provided that for the purpose of ascertaining the principal on which interest is payable within the meaning of this clause, there shall be left out of account any part of principal, interest on which is charged to capital ;

- (f) an allowance for depreciation of an amount determined in respect of the lines in accordance with the provisions of paragraph VI of the Sixth Schedule.

II. If the lines are used partly by the Board and partly by the licensee owning them, or if the arrangement for their use comes into force or determines otherwise than at the beginning or end of a year of account, the charges and allowances referred to in paragraph I shall be the proportion thereof having regard to the use made of the lines by the Board and the period of such use during the year and with the addition of the cost of such additional transmission losses as may have been incurred by the licensee as a result of the Board's user of the lines.

III. For the purposes of clause (e) of paragraph I the rate of interest shall be—

- (a) where the licensee owning the lines is a local authority, the average rate payable on the money raised by that authority for the purpose of constructing the lines ;
- (b) in any other case, the Reserve Bank rate ruling at the beginning of the year referred to in paragraph I plus two per centum.

THE SIXTH SCHEDULE.

FINANCIAL PRINCIPLES AND THEIR APPLICATION.

I. Notwithstanding anything contained in the Jammu and Kashmir Electricity Act, Svt. 1997, and the provisions in the

licence of a licensee, the licensee shall so adjust his rates for the sale of electricity whether by enhancing or reducing them that his clear profit in any year of account shall not, as far as possible, exceed the amount of reasonable return :

Provided that such rates shall not be enhanced more than once in any year of account :

Provided further that the licensee shall not be deemed to have failed so to adjust his rates if the clear profit in any year of account has not exceeded the amount of reasonable return by fifteen per centum of the amount of reasonable return :

Provided further that the licensee shall not enhance the rates for the supply of electricity until after the expiry of a notice in writing of not less than sixty clear days of his intention to so enhance the rates given by him to the Government and to the Board :

Provided further that if the rates of supply fixed in pursuance of the recommendations of a Rating Committee constituted under section 53 are lower than those notified by the licensee under and in accordance with the preceding proviso, the licensee shall refund to the consumers the excess amount recovered by him from them.

II. (1) If the clear profit of a licensee in any year of account is in excess of the amount of reasonable return, one-third of such excess, not exceeding five per cent of the amount of reasonable return, shall be at the disposal of the undertaking. Of the balance of the excess, one-half shall be appropriated to a reserve which shall be called the Tariffs and Dividends Control Reserve and the remaining half shall either be distributed in the form of a proportional rebate on the amounts collected from the sale of electricity and meter rentals or carried forward in the accounts of the licensee for distribution to the consumers in future, in such manner as the Government may direct.

(2) The Tariffs and Dividends Control Reserve shall be available for disposal by the licensee only to the extent by which the clear profit is less than the reasonable return in any year of account.

(3) On the purchase of the undertaking under the terms of its licence, any balance remaining in the Tariffs and Dividends Control Reserve shall be handed over to the purchaser and maintained as such Tariffs and Dividends Control Reserve.

III. There shall be created from existing reserves or from the revenues of the undertaking a reserve to be called "Contingencies Reserve".

IV. (1) The licensee shall appropriate to Contingencies Reserve from the revenues of each year of account a sum not less than one quarter of one per centum and not more than one-half of one per centum of the original cost of fixed assets; provided that if the said reserve exceeds or, would by such appropriation, be caused to exceed five per centum of the original cost of fixed assets, no appropriation shall be made which would have the effect of increasing the reserve beyond the said maximum.

(2) The amount of the Contingencies Reserve shall be invested in securities authorised under the Trusts Act, Samvat 1977.

V. (1) The Contingencies Reserve shall not be drawn upon during the currency of the licence except to meet such charges as the Government may approve as being—

- (a) expenses or loss of profits arising out of accidents, strikes or circumstances which the management could not have prevented;
- (b) expenses on replacement or removal of plant or works other than expenses requisite for normal maintenance or renewal;
- (c) compensation payable under any law for the time being in force and for which no other provision is made.

(2) On the purchase of the undertaking, the balance remaining in the Contingencies Reserve shall be handed over to the purchaser and maintained as such Contingencies Reserve.

VI. (1) There shall be created a reserve to be called the "Development Reserve" to which shall be appropriated in respect of each accounting year a sum equal to the amount of income tax and super tax calculated at rates applicable during the assessment year for which the accounting year of the licensee is the previous year, on the amount of development rebate to which the licensee is entitled for the accounting year under the Indian Income Tax Act, 1961 (43 of 1961):

Provided that if in any accounting year, the clear profit excluding the special appropriation to be made under item (iv) of clause

(e) of sub-paragraph (2) of paragraph XVIII together with the accumulations, if any, in the Tariffs and Dividends Control Reserve less the sum calculated as aforesaid falls short of the reasonable return, the sum to be appropriated to the Development Reserve in respect of such accounting year shall be reduced by the amount of the shortfall.

(2) Any sum to be appropriated towards the Development Reserve in respect of any accounting year under sub-paragraph (1), may be appropriated in annual instalments spread over a period not exceeding five years from the commencement of that accounting year.

(3) The Development Reserve shall be available only for investment in the business of electricity supply of the undertaking.

(4) On the purchase of the undertaking the Development Reserve shall be handed over to the purchaser and maintained as such Development Reserve.

VII. (1) There shall be allowed in each year in respect of depreciation of fixed assets employed in the business of electricity supply such as amount as would, if set aside annually throughout the prescribed period and accumulated at compound interest at 4 per centum per annum, produce by the end of the prescribed period an amount equal to 90 per cent of the original cost of the asset after taking into account the sums already written off or set aside in the books of the undertaking. Annual interest on the accumulated balance will be allowed as an expense from revenue as well as the annual incremental deposit :

Provided that within 3 months from the date upon which these principles are enacted, a licensee may elect to adopt the straight line method of depreciation accounting in lieu of the compound interest method above prescribed. Straight line method of depreciation accounting means the method whereby an allowance is made in each year in respect of depreciation of fixed assets employed in the business of such an amount as is arrived at by dividing ninety per cent of the original cost of the asset by the prescribed period in respect of such asset.

(2) The year in which any asset becomes available for use in the business and the relative cost thereof shall, in the absence of satisfactory record, be determined by the Government. All sums credited to depreciation account shall be invested only in the business of electricity supply of the undertaking or where it is not

practicable to so invest them in investments, approved by the Government.

(3) Any sums invested in investments approved by the Government under sub-paragraph (2) shall, as soon as practicable, be utilised in the business of electricity supply of the undertaking and if such sums are not so utilised, they shall not form part of the capital base under clause (d) of sub-paragraph (1) of paragraph XVIII.

VIII. (1) Where any fixed asset ceases to be available for use through obsolescence, inadequacy, superfluity or for any other reason, it shall be described in the books of the licensee as no longer in use and no further depreciation in respect thereof shall be allowed as a charge against revenue.

(2) The written down cost of such fixed asset shall be charged against the Contingencies Reserve :

Provided that where the accumulations in the Contingencies Reserve are not sufficient to permit the charging of the entire written down cost of the asset, the excess amount may be included in the capital base for the purpose of clause (a) of sub-paragraph (1) of paragraph XVIII.

(3) The amount for which any such fixed asset is sold or the amount of its scrap value when actually realised shall be credited to the Contingencies Reserve.

IX. When any fixed asset has been written down in the books of the undertaking to 10 per cent or less of its original cost, no further depreciation shall be allowed in respect of that asset.

X. When any fixed asset is sold for an amount exceeding its written down cost, the excess after deducting all taxes payable thereon shall be credited to the Contingencies Reserve.

XI. Except with the previous consent of the Government, no sums shall be carried forward to a reserve and no dividends in excess of 3 per cent shall be paid on share capital and no other distribution of profits shall be made to the share-holders in respect of any year of account so long as any of the following sums remain to be written off in the books of the undertaking, namely—

- (i) normal depreciation due for that year of account calculated in accordance with the provisions of paragraph VII.

- (ii) equated instalment in respect of arrears of depreciation, computed in accordance with the provisions of paragraph XII for that year of account ;
- (iii) arrears, if any, in respect of normal depreciation referred to in clause (i), accumulated after the date of application of the provisions of the Sixth Schedule to the licensee ;
- (iv) arrears, if any, in respect of equated instalments referred to in clause (ii).

XII. Arrears of depreciation calculated in accordance with the paragraph VII may be written off by equated payments over the remainder of prescribed period and the amount so set aside in the books of the undertaking may be taken into account in any year as a special appropriation for purposes of assessing the clear profit.

XIII. Where contributions are made by consumers towards the cost of construction of service lines constructed after the date on which this Act comes into force, only the net cost of such service lines after deducting such contributions shall be included in the cost of fixed assets for the purpose of arriving at the capital base :

Provided that for the purposes of depreciation under paragraph VII the total original cost of construction of service lines shall be taken into account.

XIV. (1) Subject to the provisions of sub-paragraph (2), the ordinary remuneration of a managing agent excluding the office allowance mentioned in sub-paragraph (3) but including purchasing commission, if any, shall be based on a percentage of net profits as determined in accordance with the provisions of section 349 of the Companies Act, 1956 (I of 1956) and shall not exceed :—

- (a) in respect of the first Rs. 5 lakhs of such net profit—
10 per cent, and
- (b) in respect of all net profits in excess of Rs. 5 lakhs—
7 per cent.

(2) The amount paid to a managing agent shall be subject to a minimum payment on account of ordinary remuneration not exceeding two rupees per annum for each complete thousand rupees of paid up share and debenture capital ; provided that for purposes of computing the minimum payment, should the share and

debenture capital be less than rupees five lakhs, it shall be taken as rupees five lakhs and should the said capital be greater than rupees one crore, it shall be taken as rupees one crore.

(3) An office allowance drawn by a managing agent which shall include the salaries and wages of all persons employed in the office of the managing agent, but not the salaries of the engineering staff employed for purposes of the undertaking, shall be a percentage of the operating expenditure and the expenditure during the year of account on capital works. The office allowance so drawn shall not exceed :—

- (a) In respect of the first Rs. 1 lakh of operating expenditure—8 per cent ;
In respect of the next Rs. 2 lakhs of operating expenditure—5 per cent ;
In respect of the next Rs. 7 lakhs of operating expenditure—2½ per cent ;
In respect of all operating expenditure in excess of Rs. 10 lakhs—1½ per cent ; and
- (b) In respect of the first Rs. 1 lakh of capital expenditure incurred during the year of account—4 per cent ;
In respect of the next Rs. 2 lakhs of capital expenditure incurred during the year of account—3 per cent ;
In respect of the next Rs. 7 lakhs of capital expenditure incurred during the year of account—1½ per cent ;
In respect of all capital expenditure in excess of Rs. 10 lakhs incurred during the year of account—1 per cent.

Operating expenditure for the purpose of sub-paragraph (3) (a) above shall mean the sum of the items of expenditure as defined in sub-paragraph (2) (b) of paragraph XVIII with the omission of those under clauses (i), (iv), (ix) and (x) thereof.

Explanation.—For the purposes of this paragraph, the expression “managing agent” shall include every person by whatever name called, who is incharge of the management of the whole, or substantially the whole, of the undertaking:] The total remuneration payable to all such persons shall not in the aggregate exceed the limits specified in this paragraph.

XV. The Board of Directors of an undertaking shall not contain more than ten directors.

XVI. (1) Where at any time within three years before the next option of purchase under the licence arises, the licensee proposes to make any capital expenditure which exceeds twenty-five thousand rupees or two per centum of the capital base, whichever is more, in respect of which any amount would in the event of purchase under the option be payable by the purchaser to the licensee, the licensee shall, before giving effect to such proposal, apply to the Board for its concurrence.

(2) If the Board does not, within one month from the receipt of such application, consent to such expenditure, the licensee may refer the matter to the arbitration of such person or authority as the Government may appoint.

XVII. Any dispute or difference as to the interpretation or any matter arising out of the provisions of this Schedule shall be referred to the arbitration of such person or authority as the Government may appoint :

Provided that where a rating committee has been constituted under section 53, no such dispute or difference shall be referred to the arbitration during the period between the date of the constitution of such committee and the date of the order of the Government made on the recommendations of the committee.

DEFINITIONS.

XVIII. For the purposes of this Schedule—

(1) "capital base" means the sum of—

- (a) the original cost of fixed assets available for use and necessary for the purpose of the undertaking subject to the provisions of paragraph XIII in respect of service lines, and the excess amount referred to in the proviso to sub-paragraph (2) of paragraph VIII in respect of any fixed asset which has ceased to be available for use ;
- (b) the cost of intangible assets ;
- (c) the original cost of works in progress ;
- (d) the amount of investments compulsorily made under paragraph IV of this Schedule together with the amount of such investments made after the commencement of this Act from the contributions towards depreciation as in the

opinion of the Authority could not be utilised for the purposes of the business of electricity supply of the undertaking ;

- (e) an amount on account of working capital equal to the sum of—
- (i) one-twelfth of the sum of the book cost of stores, materials and supplies including fuel on hand at the end of each month of the year of account ;
 - (ii) one-twelfth of the sum of cash and bank balances and call and short term deposits at the end of each month of the year of account, not exceeding in the aggregate an amount equal to one quarter of the expenditure under sub-paragraph (2) (b) of this paragraph excluding clauses (i), (iv) and (x) ;

less—

- (i) the amounts written off or set aside on account of depreciation of fixed assets and amounts written off in respect of intangible assets in the books of the undertaking before or after the commencement of this Act ;
- (ii) the amount of any loans advanced by the Board ;
- (iii) the amount of security deposits of consumers held in cash ;
- (iv) the amount standing to the credit of the Tariffs and Dividends Control Reserve ;
- (v) the amount set apart for the Development Reserve ;
- (vi) the amount carried forward in the accounts of the licensee for distribution to the consumers under paragraph II,

(2) "clear profit" means—the difference between the amount of income and the sum of expenditure plus specific appropriations made up in each case as follows :—

(a) income derived from—

- (i) gross receipts from sale of energy, less discounts applicable thereby ;
- (ii) rental of meters and other apparatus hired to consumers ;
- (iii) sale and repair of lamps and apparatus ;
- (iv) rents, less outgoings not otherwise provided for ;
- (v) transfer fees ;
- (vi) investments, fixed and call deposits and bank balances ;
- (vii) other general receipts accountable in the assessment of Indian Income-Tax and arising from and ancillary or incidental to the business of electricity supply ;

(b) expenditure properly incurred on—

- (i) generation and purchase of energy ;
- (ii) distribution and sale of energy ;
- (iii) rents, rates and taxes, other than all taxes on income and profits ;
- (iv) interests on loans advanced by the Board ;
- (v) interest on security deposits ;
- (vi) legal charges ;
- (vii) bad debts ;
- (viii) auditor's fees ;
- (ix) management including managing agents' remuneration as provided for in para XIV ;
- (x) depreciation, computed as hereinbefore set out ;
- (xi) other expenses (excluding interest on debentures and loans) admissible under the law for the time being in

force in the assessment of Indian Income-tax and arising from and ancillary or incidental to the business of electricity supply ;

- (xii) contributions to provident fund, staff pension gratuity and apprentice and other training schemes ;
- (xiii) bonus paid to the employees of the undertaking—
 - (a) where any dispute regarding such bonus has been referred to any tribunal or other authority under any law for the time being in force relating to industrial or labour disputes, in accordance with the decision of such tribunal or authority ;
 - (b) in any other case, with the approval of the Government ;
 - (c) special appropriation sufficient to cover—
 - (i) previous losses (that is to say excess of expenditure over income) which have arisen from the business of electricity supply to the extent in any year permitted by the Government ;
 - (ii) all taxes on income and profits ;
 - (iii) instalments of written down amounts in respect of intangible assets and new capital issue expenses to the extent in any year actually appropriated for the purpose in the books of the undertaking ; provided that the amounts so appropriated shall not exceed the amount found by dividing the written down cost of such assets by the number of complete years remaining before the next option of purchase under the licence arises ;
 - (iv) contributions to the Contingency Reserve, computed as hereinbefore set out ;
 - (v) contributions towards arrears of depreciation ;
 - (vi) contributions to the Development Reserve referred to in paragraph VI ;
 - (vii) other special appropriations permitted by the Government ;

(3) **“debenture capital”** means—capital raised against debentures or other instruments creating a charge or lien on the assets of the undertaking ;

(4) **“intangible assets”** means—underwriter’s commission and such preliminary and promotional expenditure shown as a debit in the capital account of the undertaking as has fairly arisen in promoting the business of electricity supply excluding any amount paid on account of good will ;

(5) **“ordinary capital”** means—in the case of a company, the amount of ordinary capital paid up and attributable to the undertaking of the licensee ;

in other cases, the net amount standing to the credit of the proprietor of proprietors’ account or accounts whether in capital, personal or any other account howsoever called and properly attributable to the business of electricity supply ;

(6) **“original cost”** means—in respect of any asset the sum of—

(a) the cost of the asset to the licensee, including the cost of delivery and all charges properly incurred in erecting and bringing the asset into beneficial use ;

(b) interest charges on capital expenditure incurred, during the period between the date of grant of the licence and the date when the undertaking commences supply, from borrowed money and properly attributable to the asset, accrued up to the date of such commencement of supply at a rate not exceeding the average Reserve Bank rate ruling at that time plus one per centum ;

(c) a proper addition on account of supervision not exceeding fifteen per centum of the cost referred to in sub-paragraph (a),

so however that the original cost of any asset shall not in any case exceed the original cost of attributed thereto in the books of the undertaking ;

(7) **“preference capital”** means—the amount of paid up capital attributable to the undertaking of the licensee, issued on such preferred terms as are sufficient to qualify it for such description.

(8) "prescribed period" means—in respect of each of the assets specified in the table appended to the Seventh Schedule, the number of years or period specified therein, in relation to such assets, running in each case from the beginning of the year of account next following that in which the particular asset became available for use in business :

Provided that on the application of the licensee, the Government may vary the prescribed period in respect of any assets in use on the date when this Schedule comes into force if, having regard to the physical condition of such assets, the application of the table to such assets would be unreasonable. Any question arising out of the decision of the Government on any such application shall be referred to arbitration.

(9) "reasonable return" means—in respect of any year of account, the sum of the following :—

- (a) the amount found by applying the standard rate to the capital base at the end of that year ;
- (b) the income derived from investments other than those included in the capital base under the provisions of clause (d) of sub-paragraph (1) ;
- (c) an amount equal to one-half of one per centum on any loans advanced by the Board ;
- (d) an amount equal to one-half of one per centum on the accumulations in the Development Reserve created under paragraph VI of this Schedule ;

(10) "standard rate" in respect of any year of account means the Reserve Bank rate ruling at the beginning of that year, plus two per centum ;

(11) "written down cost" means—original cost less the amounts set aside or written off on account of depreciation in the books of the undertaking.

THE SEVENTH SCHEDULE

TABLE

Description of asset	Number of years or period.
A. Land owned under full title	Infinity.
B. Land held under lease—	
(a) for investment in the land	The period of the lease, or the period remaining unexpired on the assignment of the lease.
(b) for cost of clearing site	The period of the lease remaining unexpired at the date of clearing the site.
C. Assets purchased new—	
(a) Plant and machinery in generating stations, including plant foundations—	
(i) hydro-electric	Thirty-five
(ii) steam-electric	Twenty-five
(iii) diesel-electric	Fifteen.
(b) Cooling towers and circulating water system.	Thirty
(c) Hydraulic works forming part of a hydro-electric system including—	
(i) dams, spillways, weirs, canals, reinforced concrete flumes and siphons	One hundred
(ii) reinforced, concrete pipe lines and surge tanks, steel pipelines, sluice gates, steel surge tanks, hydraulic control valves and other hydraulic works	Forty
(d) Buildings and civil engineering works of a permanent character, not mentioned above—	

Description of asset	Number of years or period
(i) offices and show rooms	.. Fifty
(ii) containing thermo - electric generating plant	.. Thirty
(iii) containing hydro - electric generating plant	.. Thirty-five
(iv) temporary erections such as wooden structures	.. Five
(v) roads other than kuccha roads	.. One hundred
(vi) others	.. Fifty
(e) Transformers, transformer kisks, sub-station equipment and other fixed apparatus (including plant foundations)—	
(i) transformers (including foundations) having a rating of 100 kilovolt amperes and over	.. Thirty-five.
(ii) Others	.. Twenty-five.
(f) Switchgear, including cable connections	
(g) Lightning-arrestors—	
(i) station type	.. Twenty.
(ii) pole type	.. Fifteen.
(iii) synchronics condussers	.. Thirty-five.
(h) Batteries.	.. Ten.
(i) (1) Underground cables including joint boxes and disconnecting boxes.	.. Forty.
(2) Cable dust system	.. Sixty.
(j) Overhead lines including supports	
(i) lines on fabricated steel— supports operating at nominal voltages higher than 66 kilovolts	.. Thirty-five.

Description of asset	Number of years or period.
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(ii) lines on supports operating at nominal voltages higher than 13.2 kilovolts but not exceeding 66 kilovolts.	.. Thirty
(iii) lines on steel or reinforced concrete supports	.. Twenty-five.
(iv) lines on treated wood support..	Twenty.
(k) Meters	.. Fifteen.
(l) Self-propelled vehicles	.. Seven.
(m) Static machine tools	.. Twenty.
(n) Air-conditioning plant—	
(i) Static	.. Fifteen
(ii) Portable	.. Seven.
(o) (i) office furniture and fitting	.. Twenty
(ii) office equipment	.. Ten
(p) Apparatus let on hire—	
(i) other than motors	.. Seven.
(ii) motors	.. Twenty
(iii) internal wiring including fittings and apparatus	.. Fifteen
(iv) street-light fitting	.. Fifteen.
(q) Communication equipment—	
(i) radio and high frequency carrier system	.. Fifteen
(ii) telephone lines and telephones	.. Twenty.
D. Assets purchased second hand and assets not otherwise provided for in this Table.	Such reasonable period as the Government determines in each case having regard to the nature, age and condition of the asset at the time of its acquisition by the owner.

THE EIGHTH SCHEDULE.

DETERMINATION OF COST OF PRODUCTION OF
ELECTRICITY AT GENERATING STATIONS.

I. For the purposes of the First and Third Schedules, the cost of production of electricity at a generating station shall be ascertained by calculating and taking into account the following costs, charges and allowances in respect of the year of account, namely:—

- (a) sums expended for fuel, oil, water and stores consumed, for salaries, and wages, and any contribution by the licensee for pensions, provident fund, superannuation and insurance of officers and servants, for repairs and maintenance and for renewals not chargeable to capital account ;
- (b) sums paid in respect of the station for insurance and as rents, rates and taxes including all taxes payable on income and profits ;
- (c) the proportion of management and general establishment charges properly attributable to the station ;
- (d) any other expenses on revenue account properly attributable to the station ;
- (e) interest on the depreciated cost of the station shown in the books of the undertaking and properly attributable to the station (whether defrayed out of capital or revenue) and interest on working capital properly attributable to the station and the production of electricity therein :

Provided that for the purpose of ascertaining the principal on which interest is payable within the meaning of this clause there shall be left out of accounts any part of principal on which interest is payable out of capital ;

- (f) an allowance for depreciation of an amount determined in respect of the station in accordance with the provisions of paragraph VII of the Sixth Schedule.

II. For the purposes of clause (e) of paragraph I the rate of interest shall be :—

- (a) on such part of the principal on which interest is payable within the meaning of the said clause as has been advanced on loan by the Board under paragraph I of the First Schedule, the actual rate charged by the Board plus one-half of one per centum per annum on the loan in year of account ;
- (b) on the balance of the said principal :—
 - (i) where the licensee owning the station is a local authority, the average rate payable in the year of account on the money raised by that authority for the purposes of the station ;
 - (ii) if any other case, the Reserve Bank rate ruling at the beginning of that year plus two per centum.

THE NINTH SCHEDULE.

ALLOCATION OF COSTS OF PRODUCTION AT GENERATING STATIONS.

I. For the purposes of this Schedule—

- (a) the average load factor of a station shall be expressed as a percentage and shall be ascertained by multiplying the number of kilowatt-hours supplied from the station during the year of account by 100, and dividing the product so obtained by the product of the average monthly maximum demand multiplied by the number of hours during which the station was in commission in the year of account ;
- (b) the average monthly maximum demand shall be the arithmetical average of the monthly maximum demands on the station in those calendar months during which the station was in commission in the year of account ;
- (c) a station shall be deemed to be in commission when the whole or any portion of the plant in the station is generating electricity or is in readiness to generate electricity upon demand ;

- (d) "cost of fuel" means the sums expended for fuel consumed plus the cost of any transport handling, preparation or treatment incurred in connection with the delivery of fuel to the boiler hoppers, furnaces or engines and in connection with the disposal of the products or residues of combustion, plus the proportion of salaries and wages and any contributions made by the owner of the station for pensions, provident fund properly attributable to such delivery or disposal, less any sums received from the sale of any products or residues of combustion ;
- (c) "cost of oil, water and stores" means the sums expended for oil, water and stores consumed ;
- (f) "cost of repairs, maintenance and renewals" means the sums expended for repairs and maintenance and for renewals not chargeable to capital account, together with the proportion of salaries and wages and any contributions made by the owner of the station for pensions, provident fund, superannuation and insurance of officers and servants properly attributable to repairs, maintenance and renewals ;
- (g) "salaries and wages" means the sums expended for salaries and wages and any contributions made by the owner of the station for pensions, provident fund, superannuation and insurance of officers and servants, less the proportion of such sums properly attributable to the cost of fuel under clause (d) and the cost of repairs, maintenance and renewals under clause (f).

II. Of the costs of production of electricity at a generating station ascertained in accordance with the Eighth Schedule, the following costs, charges and allowances in respect of the year of account shall be allocated as "fixed costs", namely :—

- (a) of the costs, charges and allowances set out in clause (a) of paragraph I of the said Schedule, portions calculated from the appropriate formulae set out in paragraph III ;
- (b) the whole of the costs, charges and allowances set out in the remaining clauses of paragraph I of the said Schedule.

III. The portion of the following costs, charges and allowances to be allocated as fixed costs shall be ascertained from the formulae hereinafter set out against each, namely:—

(a) cost of fuel	100
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	100+12.8 L
(b) cost of oil, water and stores	100
	<hr style="width: 50px; margin-left: auto; margin-right: 0;"/>
	100+9.66 L
(c) salaries and wages	100
	<hr style="width: 50px; margin-left: auto; margin-right: 0;"/>
	100+0.38 L
(d) cost of repairs, maintenance and renewals	100
	<hr style="width: 50px; margin-left: auto; margin-right: 0;"/>
	100+0.0001 NL

where—

L=the percentage average load factor of the station;

N=the numbers of hours during which the station was in commission in the year of account.

IV. The amount of the different between the costs of production at a generating station ascertained in accordance with the Eighth Schedule and the fixed costs in respect of the year of account determined in accordance with this Schedule shall be allocated as "running costs".

V. The foregoing provisions of this Schedule shall not apply in any case where it is agreed between the Board and the owner of the station that the circumstances or conditions of operation in the station, whether temporary or continuing, are such that the said provision sought not reasonably be applied; and in such case the allocation between fixed costs and running costs shall be made in such manner as the Board and the said owner may agree.