

LOK SABHA

**THE SELECT COMMITTEE ON THE
ELECTRICITY (SUPPLY) AMEND-
MENT BILL, 1955**

EVIDENCE



सत्यमेव जयते

**LOK SABHA SECRETARIAT
NEW DELHI
*October, 1956***

WITNESSES EXAMINED

Name of the Association and their Spokesman	Date	Pages
<p>I. The Federation of Electricity Undertakings of India, Bombay.</p> <p><i>Spokesmen :</i></p> <ol style="list-style-type: none"> 1. Shri J. D. Choksi 2. Shri N. C. Javeri 3. Shri R. P. Aiyer. 	19-10-1956	1—23
<p>II. The Association of Electrical Undertakings, Southern India, Madras.</p> <p><i>Spokesmen :</i></p> <ol style="list-style-type: none"> 1. Shri H. K. Ramaswamy 2. Shri R. Venkataraman. 	20-10-1956	24—32
<p>III. The East India Electric Supply & Traction Co. Ltd., Calcutta.</p> <p><i>Spokesmen :</i></p> <ol style="list-style-type: none"> 1. Shri S. K. Kapur 2. Shri N. C. Bhattacharjee 3. Shri A. K. Datta 4. Shri N. P. Ghosh. 	20-10-1956	32—51

**SELECT COMMITTEE ON THE ELECTRICITY (SUPPLY) AMENDMENT
BILL, 1955**

**Minutes of Evidence taken before the Select Committee on the Electricity
(Supply) Amendment Bill, 1955**

Friday, the 19th October, 1956

at 4 P.M.

PRESENT

Shri N. C. Chatterjee—Chairman

MEMBERS

Shri N. C. Kasliwal

Swami Ramanand Shastri

Shri Bishwa Nath Roy

Dr. M. C. Jatav-vir.

Shri W. S. Kirolikar

Shri Ahmed Mohiuddin

Shri G. H. Deshpande

Shri S. R. Rane

Shri T. Sanganna

Shri Subodh Hasda

Shri Rajeshwar Patel

Shri Naval Prabhakar

Shri K. G. Wodeyar

Shri N. P. Damodaran

Shri I. Eacharan

Shri S. K. Kandasamy

Shri Bijoy Chandra Das

Shri Sadhan Chandra Gupta

Shri K. Kelappan

Shri Kandala Subrahmanyam

Shri Gulzarilal Nanda.

Shri Jai Sukh Lal Hathi, Deputy Minister of Irrigation and Power, was also present.

DRAFTSMAN

Shri S. K. Hiranandani, Additional Draftsman, Ministry of Law.

REPRESENTATIVES OF MINISTRY AND OTHER OFFICERS

Shri S. S. Kumar, Utilisation Member, Central Water & Power Commission.

Shri N. S. Vasant, Officer on Special Duty, Ministry of Irrigation and Power.

SECRETARIAT

Shri P. K. Patnaik, Under Secretary.

WITNESSES EXAMINED

I. The Federation of Electricity Undertakings of India, Bombay:

Shri J. D. Choksi

Shri N. C. Javeri

Shri R. P. Aiyer

**I. The Federation of Electricity Under-
takings of India.**

*(Witnesses were called in and they
took their seats)*

Spokesmen:

- 1. Shri J. D. Choksi**
- 2. Shri N. C. Javeri**
- 3. Shri R. P. Aiyer**

Chairman: I have to tell you and your colleagues that we have got a rule which says that the evidence tendered before the Select Committee

shall be taken down verbatim and published. I don't think there would be anything which you want us to keep confidential.

Shri J. D. Choksi: I don't think it is necessary.

Chairman: We are thankful to you for your memorandum. It is rather a technical matter and you have covered a large number of grounds. But we would like to have a general statement from you, as the leader of the delegation, on the particular aspects which you want to emphasise and there are certain clauses, I take it, which you want to elucidate, apart from what you have stated in your memorandum. You can give a general picture of the more important and salient points you want to put forward here.

Shri J. D. Choksi: If you will permit me, I will make a few introductory remarks. Since 1951 the industry has complained that the return which is provided under the Electricity Supply Act of 1948 was not sufficient to enable the industry to obtain the much needed capital for expansion. At that time we estimated that the requirements of the industry for expansion would be in the neighbourhood of Rs. 50 crores. Today, a realistic estimate shows that it would be Rs. 75 crores or more. The Act came in 1948. In 1951 we represented that the return of 5 per cent provided in the law was too little. I may say that when the Act came into force in 1948, the original Bill, I think, provided that there should be a return which was linked up with the Reserve Bank rate. I think the hon. Minister will remember....

Shri Nanda: Yes, I remember.

Shri J. D. Choksi: But we decided ultimately, the Select Committee decided ultimately, that it should be deleted and gave a return of 5 per cent. But, at that time, the bank rate was 3 per cent. Subsequently, the bank rate was increased to 3½ per cent, and since 1951 the industry has found the pressure for funds very

very grave. We have not been able to meet our demands. Although this Committee, if I may say so, are not concerned with individual groups and taking my own group as an example we require funds very badly—that is, the Tata Electric group—for the expansion of the electricity supply in the city of Bombay and in the neighbourhood. Although we were paying a return of 7½ per cent. free of tax, as dividend, we were unable to raise the funds and ultimately with the Government of India's backing, we were able to get the major portion of our requirements from the World Bank. We got about Rs. 8 crores out of a total expenditure of about Rs. 13 to 14 crores from the World Bank.

Chairman: You got the balance locally. Is it so?

Shri J. D. Choksi: Yes. We have been at the door-step of the Ministry for an increase in the rate of return because without that we could not get the funds required for carrying out the objectives provided in the Second Five Year Plan for the electricity industry in the private sector. Today the financial position is substantially worse. I represent the industry here. I am sorry to say that the introduction of the Bill in the final form that it has taken plus the statement or the industrial policy resolution of the Government placing the Electricity industry in the first schedule of industries, namely, that in which the State will be responsible for further expansion; and thirdly, the introductory remarks of the honourable Minister in introducing the bill have presented a picture in which, though ostensibly the industry are given half a per cent. more in return, in fact, as per the analysis of 600 and odd cases indicated by the Hon'ble Ministry under the present Bill except for 3 units all the others will get less.

Chairman: Excepting three units. Is it so?

Shri J. D. Choksi: Yes. All the others will get less than they were getting previously. I am not the one to say that wherever there were deficiencies in the old law you should

not rectify them. There is one patent lacuna in respect of interest on loan capital. That position has been.....

Chairman: That is in the Sixth Schedule.

Shri J. D. Choksi: Yes. That position is sought to be rectified and rightly rectified.

Shri Nanda: I don't want to raise the question whether the money will be given back.

Shri J. D. Choksi: Please don't raise it. With great respect I would like to say that there are a number of psychological factors which react on the financial market which sometimes escape the attention of the Ministry sitting in the sublime heights of Delhi. To tell you frankly, the position has worsened. The quotations of shares on the Stock Exchange in respect of Electrical Undertakings have fallen precipitously since the introduction of the Bill. A Bill which was proposed to afford relief to the industry has resulted in making the investing public think that a share in the industry is not a good buy in the Stock Exchange. I am telling this to you because I would like you the point of view of the industrial or to appreciate the commercial classes of the country. The Bill is comparatively a small bill and I don't think I will take much time on the points with which we are concerned—In addition to the written representation. I would like to say something and I will confine myself to what I consider to be the important features of the Bill. The first point I would take up is about the commencement of the new law. In the Electricity Bill the first provision is in regard to the time when the law should apply. Under the Indian Electricity Rules 1956, every Electricity company must make up its accounts corresponding to the official year, that is, 31st March. Some of our companies are in the process of switching over our accounts to the new basis namely, to make them end on the 31st March. In my own group of companies the year for the present

commences from 1st July. So, I would make a suggestion that the financial principles on the basis of which accounts are prepared may become effective from 1st April, 1957.

Chairman: Under Clause 2, according to the Bill introduced, in Parliament, Sections 2, 3, 4, 57, 57A, 57B, 58, 76 and certain other sections on the provisions of Sixth and Seventh Schedules shall come into force at once. Your objection is to the word 'at once' and you suggest that it should fit in with the next financial year.

Shri J. D. Choksi: I say that the amendment to the Sixth Schedule should come into force from the 1st April, 1957.

Chairman: You have really no objection to some other sections.

Shri J. D. Choksi: No, not the substantial provisions of the law which are fair.

Chairman: You refer to the accounting and financial provisions that should come into operation next year.

Shri J. D. Choksi: Under section 55, today, the Government—the State Electricity Board—has the right to issue directions regarding the operation of generating stations. Now, it is proposed to amend this by seeking to make it applicable to the whole undertaking, under clause 13. My point is this. I do not think it is intended that our electricity undertakings should operate under the supervision of the Electricity Board. In the way it is framed, even if a company wanted to appoint consulting engineers, we have to come to the Electricity Board and get their approval. Otherwise, they may say, No. The Electricity Board has the right to direct me whom I will appoint as consulting engineer and whether I should at all appoint a consulting engineer. If I am a licensee and I have a valid right to supply electricity over

a stated area, I should be free to run my undertaking with a fair amount of discretion. The reason for the earlier section was quite clear. In the case of generating stations, the State wanted to pool the supply of electricity available in the territory and they put in a clause to enable the Board to give directions regarding the operation of generating stations. My humble submission is that this power should not be extended because it is going to raise a number of disputes. If I have followed the present law, it gives the Board power to give direction with regard to the operation of the station. The present Bill wants to extend it to the undertaking or any part thereof. It is much too wide.

Chairman: What is your constructive suggestion?

Shri J. D. Choksi: My suggestion is that you should retain the clause as at present. It serves a definite purpose. The expanded clause is far too wide and indefinite. It enables the Electricity Board to go into the whole working of the company. Apart from the financial principle, it enables them to tell the company, look here, you can't appoint consulting engineers. It does not allow them, if they want, to manage their own undertaking. This is a thing, which, frankly is not in the interests of the undertaking or of the consumers or of the consuming public. We would like to have a certain degree of autonomy.

Chairman: This may cripple your initiative and create complications.

Shri J. D. Choksi: My next point is about the rating committee: I refer to clause 14 of the Bill, section 57. That has got to be read with para 1 of Schedule VI. Under para 1 of the Sixth Schedule, under the present law, as we understand it, the under-

taking is entitled to change its rates so long as it keeps within the return which it is entitled to. Under the Electricity Law, it is entitled to a standard return, which is called the reasonable return, of 5 per cent. on the capital base. So long as its total clear profits, as it is called under the Act, do not exceed that reasonable limit, it can vary the rates as it likes. Individual companies very often made alterations in their rate structure—not necessarily increases, but alternations. Today, under the provisions of clause 57 which is introduced, a company cannot increase its rates even though the increased rates will still be within the financial principles. First you have to give two months' notice to the State Government, and when the two months' notice is given, Government is entitled with the period to appoint a rating committee to go into the rate structure of the undertaking and it is only when all this is carried out and the committee has made its report to the Government and the Government has published its orders on that, can a company go ahead. With the result that it can very well happen that a year's interval may lapse. The increase may be necessary due to factors entirely beyond the control of the electricity undertaking. For instance, the price of coal may go up or the railway freight may be increased. The price of electricity depends on these. Our suggestion is this. We do not want the clause to remain unaltered. We are prepared to accept the alteration in this way. The company should be free to increase the rates. If the Government is not satisfied with the increase, and if there is a violation of financial principle it can refer the matter to a rating committee and if ultimately the rating committee validly finds that the increase brings return to the company beyond the reasonable return, the company should refund the excess to the consumer. That would enable the companies to develop their tariff policy in the way they want to develop. If ultimately they are found to have exceeded the reasonable return, they would have to refund the money to the consumer.

There should be no difficulty in accepting it.

Chairman: Under the present law, you can increase it provided you do not exceed the reasonable return.

Shri J. D. Choksi: Not only increase, but no right is given to any authority to appoint a rating committee unless there is a breach of the provisions of the Sixth Schedule.

Chairman: Suppose we decide to have a rating committee, you say that it should not be a condition precedent that their approval is absolutely essential before you increase.

Shri J. D. Choksi: All that they can do is to go into the whole structure and if they find that we have exceeded the return to which we are entitled, the company will be bound to refund the money.

Chairman: Will the refund procedure be difficult?

Shri J. D. Choksi: Not at all. You give them a rebate in the next Bill and adjust. That is all.

Chairman: Is that all in regard to section 57?

Shri J. D. Choksi: There are two more points. One is a matter of clarification and another a matter of substance. The constitution of the rating committee is a matter of substance. I am sure rating committees have operated in some of the States. They have taken a very long time over it. This has actually resulted in giving increases to the electricity undertakings and the electricity undertakings could not carry out the decisions of the rating committee. The consumers could not pay. Very often an artificially long time has been taken, serving no purpose. I suggest that the rating committee should be independent of the Electricity Board. Today, it is proposed to have two representatives of the Board, one representative of the Licencees' Associations. We propose that there should be one from both these and the third should be an independent member appointed by the State Government.

He may be a judicial man, it may be an administrator or an electrical engineer, or most likely, an accountant.

Chairman: You want some provision for an appeal or revision from the decision of the rating committee.

Shri J. D. Choksi: We want any question of interpretation of the Schedule or other provisions of the Act to come to the Central Electricity Authority.

Before coming to section 57A, there is a minor point. That is a matter of construction of the law as it stands today. A certain amount of confusion has been caused and we would like some clarification to be introduced in the law. Para 1 of the Sixth Schedule has to be read with section 57. Today, all electricity undertakings have interpreted para 1 to mean that, notwithstanding any provision in their licence which contains a maximum rate fixed probably 30 years ago, they were entitled to vary their rates including an excess over the maximum so long as they keep within the reasonable return provided by the law. That view has been accepted by the Central Electricity Authority. There has been one case in a High Court which has proceeded, we consider, on an erroneous interpretation of the law which says that notwithstanding that an increase in the rate will still keep the return to the undertaking below the reasonable return, nonetheless, if an increase in the rates above the maximum rate fixed in the licence issued, not under this Act, but under the Electricity Act of 1910, is made, you cannot put that increase into force without first getting the licence amended. That view, we want to contest.

Chairman: That is the Bombay High Court. I had a talk with the Attorney-General. I was considering this Schedule with the Attorney-General in connection with the Baroda Municipality case. You know it has an electricity undertaking. An industrial tribunal has ordered them to pay bonus. You are not interested in bonus. We discussed in connection

with a comparable provision which we discussed in the Supreme Court. The Attorney-General was critical of the view which has been expressed by the Bombay High Court. Have you got a copy of the judgment?

Shri J. D. Choksi: We have annexed it.

Chairman: What do you want the Select Committee to do?

Shri J. D. Choksi: I want the introduction of a clarification in the Sixth Schedule para 1 upholding the view of the Central Electricity Authority, namely, that the licensee would be free to alter the rates above the maximum so long as... etc., and shall always be deemed to have had the right.

Chairman: Look at para 1 on page 13. It is said:

"1. Notwithstanding anything contained in the Indian Electricity Act, 1910 and the provisions in the licence of a licensee, the licensee shall be entitled to so adjust his rates for the sale of electricity whether by enhancing or reducing them (not more than once in each year) that his clear profit in any year of account shall, as far as possible, exceed the amount of reasonable return."

Shri J. D. Choksi: I think that is very clear for the future. There are a few cases of the past which are still pending as a result of the Bombay judgment.

Chairman: This is meant really to clarify that very point.

Shri J. D. Choksi: Only for the future. It could not have retrospective effect, as you know. It should be stated that it shall always be deemed to have been entitled.

Chairman: You say that it is all right for the future and to make it retrospective, some additional words should be added.

Shri J. D. Choksi: Otherwise, there are a few cases outstanding and it will mean unnecessary litigation.

Chairman: I think Government has been all along working on this principle.

Shri J. D. Choksi: The Bombay judgment, with due respect, has not been accepted by the Central Government. But, it has been accepted in some of the States.

Then, we come to clause 26 of the Bill, Sixth Schedule.

Chairman: Please explain fairly in detail what is the difficulty and what you want us to do.

Shri J. D. Choksi: I say on behalf of the industry that we accept the reduction which has been proposed in the excess over clear profit from 30 to 15 per cent. Taking up in the order of priority, we consider, if we may say so with respect, that the limitation of the return to 2 per cent. over the Reserve Bank rate....

Chairman: That is, definition of reasonable rate.

You will now get two per cent. above the bank rate. Formerly, it was three per cent, and you got five per cent.

Shri J. D. Choksi: Under the law as it stands, even today, it is a straight fixed return of 5 per cent.

Chairman: That was on the basis of the bank rate of 3 per cent.

Shri J. D. Choksi: It was on no basis.

Chairman: That was the statutory limit, but that was the background.

If you will kindly see lines 24 to 26 on page 17, you will find:

"'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."

Shri J. D. Choksi: My suggestion is that it should be plus 2½ per cent. and subject to a minimum.

Chairman: Could you give us some cogent grounds as to why you want it like that?

Shri J. D. Choksi: Yes.

Chairman: The Minister tells me that it was with great difficulty that he could induce the Cabinet to accept even this.

Shri Nanda: It was as a result of these calculations which I made that could show that we got something for the consumer by the removal of those anomalies. Let me explain the position.

About a year ago, there was some kind of an award or something of that sort, as a result of which a loophole in the Act was exploited for the purpose of getting interest on loans, debentures etc., and also at the same time including these as part of the capital base and getting five per cent. there also. Thus, they were exploiting the consumer; but the interpretation was in their favour.

When I was handling this, after listening to everybody, I thought that it was but proper and reasonable that we give them half a per cent. more. Then, I was asked, what the effect on the consumers will be, and whether if it was half a per cent. more, it would not increase the rates that the consumers will have to pay. Then, I had a very extensive study made of all those units, and found that what we gain by plugging this loophole would offset the effect of that increase.

As regards what Mr. Choksi has pointed out, I would like to state that this exploitation started only a year ago. So, if we compare it with what the companies were getting before they started taking double the amount, we shall find that all of them will be getting half a per cent. more. It is only recently that they got double, which we are now taking away from them. If you forget that period of a few months, when they started taking advantage of this loophole and increasing their returns by both the

means, and compare it with the position that obtained before, you will find that all of them are going to have half a per cent. more; all of them are going to benefit.

Shri J. D. Choksi: May I make a suggestion? Would you be prepared to place a floor to this rate? You said that it would be two per cent. above the bank rate. Would the Minister be prepared to accept not a ceiling, but a floor, that is to say, that the rate should not go lower than a certain figure?

Shri Nanda: That means not less than four per cent.; or what exactly is it?

Shri J. D. Choksi: Today, we are getting five per cent. Could you give us a floor of $5\frac{1}{2}$ per cent.?

Shri Nanda: We are giving a ceiling of $5\frac{1}{2}$ per cent.

Shri J. D. Choksi: You are giving a standard rate, not a ceiling.

Shri Nanda: Today, this is the ceiling.

Chairman: If you are suggesting a floor, then you are also thinking of a ceiling. Otherwise, what is the point in having a floor? What exactly do you want here?

Shri J. D. Choksi: The point is this. Today, the bank rate is $3\frac{1}{2}$ per cent. So, two per cent. added to it makes $5\frac{1}{2}$ per cent. as the operating rate. Suppose, three years hence—of course, it would not happen, but still—when we have got capital on the basis of $5\frac{1}{2}$ per cent. return, suddenly the bank rate goes down—because, as you know, the bank rate is not due entirely to economic factors, but due to Government pegging it at that level—then, what will happen?

Shri Nanda: The economic evaluation of events in the future is that there is no likelihood of the bank rate going down. It may go up, but

not go down. Every country is developing at such a tempo that the rate is bound to go up. If the rate goes down, then you can get cheaper money, and you can repay your obligations.

Shri J. D. Choksi: That is quite true. If the bank rate goes down, then money would be a little cheaper, but our past commitments are there, on which we have built up our block.

Shri Nanda: But the commitments in terms of debentures or loans cannot be for such a long term.

Shri J. D. Choksi: With great respect, I would submit that it is not only in respect of debentures and loans, but also in respect of preference capital. Today, I have in my company, preference capital on which I pay 8 per cent. return. I have to pay it, because that is what I bargained to pay in 1926-27, when the bank rate went to five per cent.

Shri Nanda: But preference capital would be a small proportion of the total capital.

Shri J. D. Choksi: I am only mentioning it. I do suggest—and that is at least the Federation's view—....

Chairman: But the bulk of the capital must be equity shares.

Shri J. D. Choksi: I agree. But equity capital has also been bought at a certain time, when interest rates were at a certain figure.

Shri Nanda: But there fluctuations apply to everyone. Anybody who goes in for enterprise knows that there are risks, and there would be fluctuations.

Shri J. D. Choksi: It may be that the Committee feels that there is not much substance in this. But I should like to point out that the psychological factor is considerable.

Chairman: I would like to tell you that we are not unsympathetic, but we want you to give us something more than mere sentimental or psychological grounds, when you ask us to fix those rates. After all, it means taxing the consumers.

Shri J. D. Choksi: May I say this? Today, when we have to attract capital, we go and say, well, we can attract capital on the basis of two per cent. over the bank rate. So, the investor knows that he is going to get two per cent. over the bank rate, whatever that may be. If I can give an assurance to the investor that in no case will the investor get less than a certain percentage, it will enable me to get more capital. That is all that I am pointing out. It is not going to give me more money. It is not going to make it cheaper for me. But it gives me a feeling that I can convey some degree of assurance to the man who is going to put money into my undertaking. That is all. And if I may say so with great respect, Parliament loses nothing; if it takes the view, as the hon. Minister has just expressed, that the chances are—and I entirely agree with him—that in the future, the bank rate will go up and not down, if it is going to move in any direction at all, then there is no difficulty.

Shri Nanda: Then, there is no need.

Shri J. D. Choksi: There, I differ from you, with great respect. The need is a factor of assurance, that is to say, a stabilising factor.

Shri Nanda: Is this not an assurance enough that we are practically guaranteeing a certain profit, whereas in the other case, there may be a person who may lose even the three per cent.?

Shri J. D. Choksi: I do not want to be laconical, but the industry as such would prefer that there was no guarantee at all, and they could charge economic rates. Let us not have it both ways.

Chairman: After all, it is a monopoly.

Shri J. D. Choksi: It is not a monopoly. We have got the electricity boards operating all over. It is not a monopoly.

Shri Nanda: In the same area, you do not have people operating.

Chairman: You cannot have competition.

Shri J. D. Choksi: There is.

I now come to the development rebate.

Chairman: Where have you dealt with this in your memorandum?

Shri J. D. Choksi: At page xi.

Chairman: You want this, instead of 5½ per cent.?

Shri J. D. Choksi: For, it is vitally necessary to fix a floor.

Chairman: According to the latest statistics, Rs. 36 crores is equity capital; preference share capital is only Rs. 389 lakhs. And debentures are only 1528. That means, practically 10 per cent. of the equity capital is preference capital.

Shri J. D. Choksi: Are you talking of the whole industry?

Chairman: Yes.

Shri J. D. Choksi: I now come to clause 26 (e) which begins at line 14 at page 14.

There are quite a number of problems regarding this clause. The points that arise are these. First of all, the clause says:

“There shall be created a reserve to be called the Development Reserve to which shall be periodically appropriated the amount of the difference between the income-tax and super-tax which would have been payable by the licensee, if the Development Rebate referred to... had not been allowed and the income-tax and super-tax actually paid by the licensee after making an allowance for such Development Rebate.”

The first point is a minor one, that is to say, that the words ‘actually paid’ should be really ‘actually payable’,

because the assessments are completed only long after.

Shri Nanda: We are revising that.

Shri J. D. Choksi: But there are two other points of substance there.

The first provision is mandatory. The objection I have to a mandatory provision is this, and it is a rather difficult income-tax question that is involved. But, with your permission, I shall deal with it, and it is this. Many companies in a period of development do not pay tax at all. Today, in my group of companies, we are undertaking very heavy expansions, and as a result of the high depreciation allowances we get for income-tax purposes,—which are different from the depreciation allowances fixed under the Electricity Act; tax depreciation allowances are much higher—no taxes are paid or are payable for a long period of time. If we are not paying any taxes, the consumer gets the benefit, because we are only debiting the taxes when they are actually payable.

The amendment I propose is this, that while the provision should be mandatory, there should be two exceptions.

Shri J. D. Choksi: One is that if in any accounting year the clear profits fall below the reasonable return, the amount to be appropriated to the Development Reserve shall be reduced by that amount—we have dealt with this at page 5. In fact, I take the liberty of simplifying the matter by this proposed draft, copies of which I am just giving you for perusal and examination. For the benefit of members, let me read it out—this is the way how we would like to have sub-clause (1) of paragraph VA:

“(1) There shall be created a reserve to be called ‘the Development Reserve’ to which shall be appropriated in each accounting year a sum equal to the amount of income-tax and super-tax at rates applicable to the assessment year for which the accounting

year of the licensee is the previous year calculated on the amount of the development rebate to which the licensee would be entitled for that year under the provisions of section 10(2) (vi) (b) of the Indian Income-tax Act, 1922. Provided—

(i) If in any such accounting year the clear profits fall below the reasonable return, the amount to be appropriated to the Development Reserve shall be reduced by that amount;

(ii) If in respect of any such accounting year no tax is payable or estimated to be payable by the licensee for the corresponding assessment year, then no such contribution to the Development Reserve shall be made in respect of such accounting year but shall only be made in respect of any subsequent accounting year or years in respect of which taxes shall become or be estimated to become payable for the corresponding assessment year or years;

(iii) Notwithstanding anything in this sub-clause or provisos (i) and (ii) contained, a licensee shall be entitled to spread any contribution to the Development Reserve applicable to any accounting year over a period not exceeding five accounting years (including such accounting year)."

I shall just explain the need for this very briefly.

On the first one, the alteration in the body is alteration in language. We feel that this is a little more accurate because we deal with accounting years—that is the unit provided under the law. The first proviso merely says that if our clear profits are below the reasonable return, then we shall reduce the contribution to the Development Reserve by the amount of that difference so that in a year when we cannot get even our

reasonable return, we should not be called upon to make a contribution to the Development Reserve.

The second proviso is in some way a more important amendment; it arises in this way. For years when a company expands its plant, and supposing we are doubling the capacity of the plant, for the first two or three years of construction of that capacity and its operation, the depreciation allowances for income-tax purposes are so high that it is conceivable that no tax will be payable at all. Obviously if no tax is payable, there is no point in creating a Development Reserve, because a Development Reserve represents a tax-saving on the amount which we are allowed in the Development Reserve, namely, we are allowed 25 per cent. on new plants in a year and the tax-saving on that may be 7 annas in the rupee. We are allowed to deduct that as an expense of the year and to set it up in the Development Reserve. All we ask is that if there is no tax payable, there is no question of setting up a Development Reserve.

Shri Nanda: Does it not flow from the clause itself?

Shri J. D. Choksi: It ought to flow. It has not been provided. All I ask is that we should not be compelled to charge it as an expense and to set it up in that year where there is no tax payable.

Chairman: You have no objection to VA(1) as it stands, printed at page 14, line 14 of the Bill, I think.

Shri J. D. Choksi: I have no objection in substance at all. The only thing that we are objecting to is what I have already told you.

Chairman: Supposing I make it like this, subject to further discussion, would you consider and let me know your views:

"There shall be created a reserve to be called 'the Development Reserve' to which shall be appropriated annually an amount

calculated at the rates of income-tax and super-tax applicable for the assessment year, for which the accounting year of the licensee is the previous year, on the amount of the development rebate to which the licensee is entitled for that assessment year under the provisions of clause (vi) (b) of sub-section (2), section 10 of the Indian Income-tax Act, 1922."

We shall give you a copy of this.

Shri J. D. Choksi: That is exactly what we have put in in the body except that the words are slightly re-oriented.

Shri Nanda: We accept your suggestion; we are going to give a proper form to it.

Chairman: Shri Tulsidas Kilachand sent us the amendment, and we practically accept it.

Shri J. D. Choksi: The first proviso, as I said, deals with the position where the clear profits fall below the reasonable return.

Chairman: You are opening your mouth too wide.

Shri Nanda: That means that you get that amount; because you have not made good enough profits, you get the advantage. Supposing there is no Development Reserve, nothing of this kind would come in. You would have in any case made less than the reasonable return.

Shri J. D. Choksi: I want to be put in exactly the same position as I would be put today. That is all that I want in proviso (i). I do not want to claim an item of expense for the Development Reserve unless I set it up. I want to have the option not to claim it as an item of expense if my clear profits are less than the reasonable return.

Shri Nanda: That is quite reasonable.

Shri J. D. Choksi: Proviso (ii) is even more important from my point

of view. All I say here is that in a year in which there is a loss for Income-tax purposes, as a result of the operation of the Income-tax Act under which I get very high allowances for depreciation which are different from the depreciation under this Act, I should not be compelled to set up a Development Reserve. But as and when my profits are sufficient for the purpose and I can do it, I should do it. That is all what I am asking—a postponement of the creation of the Development Reserve.

Shri Nanda: All we are concerned with is that the concession that is being given should not be utilised for the purpose of distribution or creating assets. If that is secured, then we do not want to create difficulties in your way.

Shri J. D. Choksi: When you have not got the money, how can you set up a Development Reserve? When there is no profit for income-tax purposes, there is no Development Reserve.

Shri Nanda: If there is no profit, there is no taxation.

Shri J. D. Choksi: If there is no taxation, then there is no Development Reserve. In the Income-tax Law, what happens is....

Chairman: Your point is that there should be no question of your making contribution to the Development Reserve in that case.

Shri J. D. Choksi: Yes. In the third proviso, we ask for option to spread it over five years. Suppose in this year I am entitled to a Development Reserve of a crore of rupees, I should be able not to claim the whole of it this year because it may affect my tariff, because my consumers are dependent on the tariff. So, I should like to spread it over a period of five years. To that there could be no exception.

Chairman: That is all right. Next item.

Shri J. D. Choksi: On this Development Reserve, as we are dealing with it, there are two points. Under the Bill as it stands, the Development Reserve is allowed as an expense, it is set up as a Reserve, but any investments that you make from it do not belong to the licensee. You are entitled under the Bill to claim it as an expense for your accounts. Therefore you get the benefit of it for that purpose. When you claim it, you have to set it up as a Reserve and you have got to invest that Reserve in your business, but you will not be entitled to earn any return on it. You have to hand over the fund together with the investments you make on it to the purchaser free. It means, therefore, that today in many companies one-third of their assets are going to consist of Development Reserves. They have to take the risk. You probably are in a far better position than myself. I consider that quite unconstitutional, because one industry is deprived of the benefits of the Development Reserve while every other industry has got it. I am concerned with a number of industries, steel industry, etc., and we get a Development Reserve which we can invest.

Chairman: What you say is that this is not fair. But don't you think that if you are assured of a reasonable return according to this scheme, you should not utilise it for the purpose of making more profit.

Shri Nanda: Would you rather do without this development reserve? Supposing we neither give you that rebate nor ask you to create the reserve if you do not earn anything would that be better?

Shri J. D. Choksi: It may be so.

Shri Nanda: Please consider that.

Shri J. D. Choksi: Here we are asked to handle certain assets which belong to the State and on which we can earn no profit at all.

Shri Mohiuddin: How does it stand on a different footing from other industries?

Shri Nanda: This is the one industry which has been treated under legislation in a particular way. We have not got legislation for other industries which says that they will be given a return of 5½ per cent. income-tax free. It comes to nearly 7½ per cent. to 8 per cent. Here is an industry which can charge any amount subject to the capacity of the consumer to pay. It is in a monopolistic position and we are regulating that. They can charge the consumer up to 8 per cent. or so. In the terms of the legislation it is 5½ per cent. plus income-tax exemption. To other industries which we want to develop and which may be exposed to these risks, where we have to encourage the expansion with a certain incentive, this does not apply. As a matter of fact, the decision that we were going to take was that we need not give the development rebate to this industry at all. Then we thought that they wanted some money for expansion and, therefore, why not give them. And, see the advantages they will have. They say that they have to raise money at 6½ per cent. and get 5½ per cent. That means they will lose one per cent. or more which they will have to make up out of their reasonable return. Here they will be getting money on which they run no risks at all. So it is an advantage from the point of view of industrial expansion and it does not tax the community in any way which is not justified.

Chairman: Mr. Choksi, do you follow my friend's question? You just let slip one word "unconstitutional". I take it that you meant "discrimination" and wanted to point out that it was not fair.

Shri J. D. Choksi: Yes. The hon. Minister has taken the view that this industry stands on a different footing by legislation. He says that we get a

virtual return guaranteed to us and therefore we are entitled to do this. I may point out, Sir, that many industries are subject to control. The steel industry is as much controlled as this industry is. We have to charge controlled prices. For steel it is fixed by the Tariff Commission to the extent the Tariff Commission's recommendations are accepted by Government. That control works in exactly the same way as the control on this industry. It is a return on the capital base.

Shri Nanda: Do we control the profits on steel?

Shri J. D. Choksi: Yes. You take the costs of the steel companies in making steel. You also take their capital base and then say what you will give. It happens to be 8 per cent. of the Gross Block. You agree to give them 8 per cent. as their profit on their capital base. You calculate the price of steel on that basis. Therefore, the companies can make no more than 8 per cent. on their capital base as their profit. That is exactly in the same position as our industry. Instead of supplying steel we are supplying electricity. The price to be charged is left to ourselves under the Electricity Bill. In the steel industry Government fix the actual price also. In that case it is a further control. Not merely do you control their profit, you also control the price of every article that they make. You only give them a fixed return. From that point of view, if anything, steel industry is more fully controlled than electricity. Nonetheless the development rebate was intended, according to the ex-Finance Minister when he introduced this measure, as a measure of relief to the industry, to give relief to the industry in view of the high costs of plants etc. He said: "We give you some *bakshish*, tax relief on this 25 per cent. is a gift which you can invest in new plants". That is all that is there. So I say, do not take away that gift from the electric supply industry. We are badly hit as any other industry. Do not take away the gift from us.

Shri Nanda: The simple answer to that is, here the intention of the legislature is to protect the consumer in a certain way. It lays down certain limits. The law says that the industry should not charge from the consumers rates which will yield profits higher than a fixed percentage. The limitation on profit is for the purpose of protecting the consumers. If we change our ideas about the nature and measure of protection that the consumer deserves, then we may allow the industry to charge higher rates from the consumer. If our ideas remain the same, then we do not want that the consumer should pay anything more. That is one thing.

The other thing is, it is not the consumer who is paying but it is the Exchequer paying. You referred to the ex-Finance Minister. When this Bill was before the Parliament we discussed it fully with him and he was in entire agreement with our views. He agreed that it was not necessarily intended to be applied in every case of industry. He agreed with us that in this particular case whatever was being done through this legislation entirely harmonised with his view point.

Chairman: I have not myself applied my mind to the constitutional aspect of it, but I am told that the Law Ministry has gone into this aspect and they are definitely of opinion that there is nothing unconstitutional. There cannot be any charge of inequity unless the conditions are comparable. Here you are a special class by yourself and, therefore, there is no discrimination.

Shri J. D. Choksi: I am not taking a legalistic view. I am only asking you to take a broad view. I appeal to the hon. Minister to give us some measure of relief. If he does not want to give us full return, I request him to give us some of it, otherwise, is it not rather unfair? Take the case of my own group. I am going to invest out of the development reserve about Rs. 4 crores over the

next five years. It is unfair that I should handle the whole thing free of cost and hand it over to the purchaser. I must get something for it.

Chairman: You mean, otherwise it will be practically confiscation or misappropriation.

What is all this at pages 6 and 7 of your memorandum?

Shri J. D. Choksi: They are calculations to show how the development rebate works. We have simplified it by the amendment we have put up.

We have also proposed another amendment, adding a new clause, in respect of Deferred Tax Reserve.

Chairman: What is this reference you have made to the Taxation Enquiry Commission?

Shri J. D. Choksi: They have recommended Deferred Tax Reserve. Just to simplify I have made the proposal to add a new clause after paragraph V. The original Bill had a clause for Deferred Tax Reserve. The proposal is like this:

"There shall be created a reserve to be called 'the Deferred Tax Reserve' to which may be appropriated in each accounting year such sum as the licensee shall decide, but not exceeding the amount of income-tax and super-tax at rates applicable to the assessment year for which such accounting year of the licensee is the previous year calculated on the excess if any of the clear profits of the licensee over the income profits and gains (hereinafter called 'the income-tax profits') of the licensee computed for income-tax purposes in respect of such assessment year:

Provided that if and when the income-tax profits of any assessment year shall exceed the clear profits of the licensee for the corresponding accounting year, then the licensee shall transfer from the Deferred Tax Reserve

(up to the extent of the funds therein) to the clear profits and as part of such clear profits an amount equal to the income-tax and super-tax at rates applicable to such assessment year calculated on the amount of such excess."

It simply means this. Today due to the fact that the income-tax profits of a company are different from the clear profits of the company. As I explained depreciation allowances under income-tax are much higher. It can happen that the profits on which we are assessed are very much smaller than the clear profits which we earn in accordance with the financial principles. All we say is, when that happens, let us calculate the tax on the difference between the two and put it into a balancing reserve, so that later on when a stage comes where the income-tax profits are more than the clear profits, we can transfer it back. The idea is to stabilise the rate structure over a period. Today, whenever you have an expansion programme, your taxes go down. When your taxes go down you have no tax to charge on the consumer. Therefore you give a certain tariff to the consumer. Immediately the depreciation which you are allowed on the income-tax falls the taxes go up. When you have finished half the life of the asset you will find that the income-tax profits of the company are much more than the clear profits under the electricity law. Then at that stage you have to put up the rates. What we want to do is to provide a cushion so that we may use that cushion as a balancing factor for the tariffs over a given period. That is all that we are proposing.

Today, for instance, in my group in the next five years we have to pay no taxes. But that does not mean that we are not going to pay those taxes. It only means that they are postponed.

Shri Nanda: The only fact is that as development proceeds, your profits

also will increase and there will be no difficulty; otherwise, the rates will be increased today and we do not want it to happen. Later on larger profits will enable you to meet the situation...

Shri J. D. Choksi: We have made a calculation and it makes a difference of 25 per cent.

Shri Nanda: I have told you the view we have taken. Otherwise, immediately the rates will increase and the consumers will get upset, whereas later on your profits will rise and therefore you will have greater capacity to pay. If the rates are increased today, it will be difficult for the consumers.

Shri J. D. Choksi: If profits increase, it can only be because of the increase in the capital base; otherwise, the profits are not going to increase, because the experience of well-established undertakings is that the profits will become diluted.

Shri Nanda: Your earnings will be more and therefore your capacity to pay the taxes and depreciation will have increased. As far as the need for reserve is concerned, today you are in a better capacity to lay by something; tomorrow you may not be able to do it.

Shri J. D. Choksi: If profits go up, the taxes go up.

Shri Nanda: Tax is part of the profit; not the whole.

Shri Mohiuddin: He said he has made some calculations; let us know what it is.

Shri J. D. Choksi: We have addressed a letter to the Government of Bombay on that topic in which we have shown that it will make a difference of 25 per cent.

Chairman: What is worrying me is that there should be no burden on the consumer.

Shri J. D. Choksi: There is no intention to increase the rates today. All that we want is this. Simply because no tax is payable now, we do

not want to reduce the rates prematurely and then later on pay it.

Shri Nanda: I want to know one thing. If a reserve is created, you will not expect again a return on that reserve. It will facilitate our consideration if that point is made clear. You may consider it over and tell us.

Shri J. D. Choksi: The next point is depreciation and dividend. I think we have discussed this matter with the Ministry. My suggestion is to keep the law as it stands today and I believe the Ministry is agreeable to it.

The next point is the definition of managing agents. There is a new definition given in the Bill. I may respectfully suggest that we may just adopt the definition given in the new Companies Act. If you look at page 15 of your Bill, it is said:

“(i) to paragraph XIII, the following Explanation will be added at the end, namely:—

“Explanation: For the purposes of this paragraph, the expression ‘managing agent’ shall include every person, by whatever name called, who is in charge of the management of the undertaking and where more persons than one are placed in charge of the management of the undertaking, the total remuneration payable to all such persons shall not in the aggregate exceed the limits specified in this paragraph”.

If I may venture to criticise this clause, the definition is far too wide and vague. My suggestion is that the definition given in the new Companies Act may be adopted.

Shri Nanda: We will re-examine it.

Shri J. D. Choksi: The next point is about obsolescent plants. Under the law as it stands today, when an asset becomes obsolescent, you are not allowed any further depreciation charges on it and you are not allowed

to incur any expenditure on it. Paragraph VII of Schedule Six of your present law reads as follows:

"VII(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 carried to a special account in the books of the licensee and the amount for which the asset is sold or the amount of its scrap value when actually realised shall be set off against the amount so carried.

(3) The written down cost which still remains to be written off in respect of such fixed asset shall be charged against the Contingencies Reserve by equal annual instalments from the year of account in which the asset ceases to be available for use as aforesaid up to the date of the next option of purchase of the undertaking under the license or up to the expiration of the prescribed period, whichever is earlier."

This itself greatly reduces the rights of a licensee, and now if you propose to do something further, it will affect the licence in regard to a plant which is half way through its life and which for some reason becomes obsolescent and is replaced by a new plant. Today we are entitled to claim a return on this, but we must take it out of our capital base over a period of years by writing down the cost. What is proposed by the Bill is that the burden of that cost should be on us, although it is known that as time goes on, certain plants become obsolescent and require to be replaced with new modern equipment. You must have it one way. When you have fixed the return, you must give us that return

on the capital we employ. It is not fair to adopt a different procedure midway in the life of a plant. If a plant is discarded after the tenth year, to say that we should no longer treat it as part of our capital base is not fair. I would suggest that there is no need to make changes in the existing provision.

Chairman: What is the amendment contemplated?

Shri J. D. Choksi: The amendment contemplated is given at page 17 of your Bill.

Shri Nanda: There is some substance in what he says; we will examine it.

Shri J. D. Choksi: I have nearly finished. I have only one more point on the interest paid out of share capital. I have a note here. I will pass it on to you.

Chairman: This note may be cyclostyled and copies may be supplied to members.

Shri J. D. Choksi: I will briefly explain what is contained in it. In the case of new undertakings, sometimes it will take three years before the new undertaking begins to supply electricity.

Chairman: May be more.

Shri J. D. Choksi: Yes; may be more. All that we want to provide is that the interest incurred on the capital which we have borrowed during that period could be added as part of the asset.

Shri Nanda: I think we should consider this.

Shri J. D. Choksi: I have put it in a clear form in this note. It may be considered.

Shri J. D. Choksi: There is just one point. If we incur a loss in any year, we are entitled to carry it forward to the next year and consider it as part of the expenditure. Supposing we are unable to supply electricity at a profit, under the law as it stands today, we incur a loss because it may be that when you start an undertak-

ing, the quantity of electricity you supply is so small, that the cost possibly is much and you cannot fix an economic rate. So you charge a lower rate. Now, under the law as it stands today, we can carry forward the loss to the next year and absorb them as part of the expenditure of the next year. We want that position to continue. The Bill provides that such losses cannot be brought forward except to the extent that the Government allows them. We do not see why this is necessary.

Chairman: We will look into it.

Shri Sadhan Gupta: Your complaint is that the regulations imposed by the Sixth Schedule do not enable you to expand your undertakings. Do you mean to say that your depreciation allowances, which are permitted under the Sixth Schedule, namely, the depreciation allowance allowed by the income-tax law, plus the contingency reserves plus the new development reserves that are being created, all that together will be insufficient for undertaking any work of expansion?

Shri J. D. Choksi: Yes, Sir. My answer to that is let us be clear as to what we actually mean. What is money? We have got to see what is the money coming to the undertaking. It is true that the depreciation allowance which we gain under the financial principles come to us and that is a saving. But the accepted theory of all depreciation allowance is this, that these allowances are given to you to enable your plant to be maintained over a period of years at the original capacity. In other words, large blocks of the plant get old and we have to replace them. I have not heard of depreciation allowance ever been considered sufficient for expansion of an undertaking, particularly in the modern world when the cost of a new plant is several times the cost of similar plants previously. That in my humble opinion is the answer to that question. Today if we take all the depreciation allowances, we cannot, at the end of the life of the existing unit, replace that unit by a unit of the same

capacity except with additional funds for, as you know, the total depreciation allowance cannot exceed hundred per cent. except that the development rebate gives a further 25 per cent. So, it can never by any stretch of imagination be argued that the depreciation allowance is sufficient to enable you not merely to replace but expand. I have never heard that. If the hon. Member would say that we can get the funds, we will be too happy to utilize them.

Shri Sadhan Gupta: I put to you three items—depreciation allowance, contingency reserves and the development reserve.

Shri J. D. Choksi: First of all, we are not entitled to utilize the contingency reserve in that manner and further it is a very small amount. It will not be more than 5 per cent. of the capital basic and that contingency reserve you are not allowed to invest in the business under the financial principles.

Shri Sadhan Gupta: "expenses on replacement or removal of a plant other than the expenses required for normal maintenance or renewal", those are the items for which the contingency reserve can be used, isn't it?

Shri J. D. Choksi: Yes, Sir.

Shri Sadhan Gupta: I am not very much familiar with these things naturally. I am asking you for a clarification.

Shri J. D. Choksi: Then the answer is very simple. The whole of the contingency reserve can only come up to 5 per cent. of the capital base, over the whole life of your plant. So, naturally, the total amount of the fund at any given moment in the life is perhaps 2 to 2½ per cent. This is completely inadequate for any purpose and as the section itself says it can only be used for expenses on replacement or removal of a plant or works other than expenses requisite for normal maintenance or renewal,

for which no other provision is made. I can assure Mr. Gupta that this contingency reserve can never be utilized at all because normally these conditions are never fulfilled.

Chairman: I find that the total fixed capital of undertakings is Rs. 17,389 lakhs and the contingency reserve is only Rs. 135 lakhs.

Shri Sadhan Gupta: What is the amount of your development reserve?

Shri J. D. Choksi: It is very small.

Shri Sadhan Gupta: Under the scheme of clear profits, you would agree that the return allowed to you as reasonable return would really amount to about 8 per cent. of the capital base subject to payment of income-tax, is it not?

Shri J. D. Choksi: That is correct

Shri Sadhan Gupta: Usually, in big compaines the capital base is about perhaps three times the paid-up capital which is being invested in the business, is it not?

Shri J. D. Choksi: No. The reason is that you have to take the cost of depreciation. It is true that for a company which is in existence for 25 years the capital base would probably be about double. But that depends upon how you finance it. You may finance it through debentures and that is also equally capital. If this committee is good enough to allow us 8 per cent., subject to tax we would prefer that because very often we get only 5 per cent.

Shri Sadhan Gupta: So, in many cases you would be unable to pay a dividend of anything between 16 to 25 per cent. of the paid-up capital?

Shri J. D. Choksi: I can only answer from my own example. We are supposed to be a most prosperous unit in the whole industry and we pay 7½ per cent.

Shri Sadhan Gupta: It is not a question of what you pay, but what you are able to pay.

Shri J. D. Choksi: I am not able to pay more. I have to dip into my reserves if I am to pay more.

Shri Sadhan Gupta: I am not concerned with the proportion of your paid-up capital to the capital base. I am speaking from the experience of the Calcutta Electricity Supply Corporation which I had been able to gather for conducting a case on behalf of the workers of that company. Their capital base seems to be about three times the paid-up capital.

Shri J. D. Choksi: If I may say so, that can be easily tested by study of the statistics of the industry as a whole. You will see from a study of the statistics of the industry as a whole that the average reutrn could not be more than 6 per cent. of the original capital, some of which was subscribed as far back as 1920 or 1931. So, I don't think your point holds good. It may be that occasionally you come across a small company with a very prosperous environment, which is able to build up a large capital base and give a very good return to the shareholders because they carried out most of their expansion before the hon. Minister came with the Electricity Bill.

Shri Nanda: We have got the figures of a few concerns; they are 10 per cent., 7½ per cent., 6 per cent., 5 per cent., etc. of the paid-up capital.

Shri J. D. Choksi: Where you get 10 per cent. or more, you will find that that undertaking has not expanded or was set up a long time ago.

Shri Nanda: That is, they have built up reserves of a much bigger size....

Shri J. D. Choksi:and which have no expansion.

Shri Nanda: They have no recent expansion.

Shri Sadhan Gupta: Expansion ultimately goes to the capital base.

Shri Mohiuddin: You have suggested that the companies may be allowed to raise the tariffs and then the rating committee be appointed and if the rating committee finds that the rise proposed by them and actually enforced by them is not reasonable, the excess amount will be refunded. Now, that refunding business is not liked by the consumers, as far as I understand myself as the consumer of electricity in a small way. So, is it not reasonable that Government should make it a condition by appointing a rating committee that they should submit the report within a reasonable period? What objection you have got to that reasonable period? Of course, reasonable period may be different according to the size of the undertaking.

Shri J. D. Choksi: My view on that is simply this. With the best will in the world and even with co-operation between the company and the rating authority and Government and the electricity board, there will be a delay of approximately a year and it is unfair to expect the companies which have to pay the extra cost to wait for a year before they can increase the rate. They have no right to increase the rate retrospectively. They can only increase the rate prospectively. So, it may be that we have to wait for a whole year or possibly more. So, all I would say is, after all, the only increase we can make is the increase permitted by the law. We can only increase so that our reasonable return is maintained at 5 per cent. We cannot increase beyond that.

Shri Mohiuddin: If the rating committee finds that the rate was unreasonable, what is the remedy?

Shri J. D. Choksi: We have to refund the money and pay the cost of the whole enquiry. I think that would be fair enough.

Shri Mohiuddin: About the deferred tax proposal you have promised to give us a note.

Shri J. D. Choksi: Yes, I will.

Shri Mohiuddin: I would like one point to be clarified. As the hon. Minister has stated, if deferred tax is allowed, the rates will go up and the consumer will suffer. But you asserted that if this proposal for deferred tax is allowed, the rates will not go up. Now, that is rather confusing to us in many ways. You have simply stated that the rates will remain as they are at the present moment. But this will only enable you to set aside a certain amount to accumulate certain reserves for the payment of higher taxes that will come later on, when the profits are more. That is, if, at the present moment, on account of the expenses that are allowed by the schedule for the cost of production and if one more item is added to the cost side of the account, it will naturally add to the cost and will raise the tariffs. Don't you really think that it would raise the tariffs?

Shri J. D. Choksi: I think there has been a slight misunderstanding. Maybe, I have not made the position clear. I thought I said so when I was dealing with development reserve. But I am prepared to discuss it on both fronts.

Shri Nanda: We are on deferred tax.

Shri J. D. Choksi: About deferred tax, I say that I never made any such remark. I made it about development fund. I do not maintain that position. But I am in fact confident that even with regard to deferred tax, the rates will not go up.

Shri Nanda: The question arises: Will you charge more?

Shri J. D. Choksi: I won't charge more.

Shri Nanda: You will take out more for the purpose of.....

Shri J. D. Choksi: May I say this? When we collect our clear profit, we know that we have to pay tax on it one day. The income tax profit may

be very much less than clear profits and we want that tax saving, not to be lost but to be put in a reserve. We are going to pay it out some day, though not today or tomorrow. Therefore, we call it reserve.

Shri Nanda: This is a new modification of that thing and we have to understand its implication.

Shri J. D. Choksi: I thought I said that in my remarks.

Shri Nanda: That was not clear. We have to examine this.

Shri J. D. Choksi: In fact we can give an assurance to the Ministry that we will not increase the tariff.

Shri Nanda: It changes the whole aspect.

Shri Rane: You say that as soon as the Bill was introduced, the shares have fallen. Do you want to say that the shares of only these concerns have fallen, and not others?

Shri J. D. Choksi: I want to say this. On the contrary, shares of other undertakings have gone up and the prices have gone down only in respect of electricity undertakings. Electricity shares had a steady decline in the last one year.

Shri Rane: What is the percentage?

Shri J. D. Choksi: It is 20 per cent. That makes a big difference. After all electricity share is considered next to Government paper gilt-edged because the return here is stabilised. There has been no large increase and no reduction. The dividend has been steady.

Shri Nanda: That situation is not altered now.

Shri J. D. Choksi: You are an optimist. I am probably, constitutionally, a pessimist.

Chairman: Are they now going up?

Shri J. D. Choksi: The shares of my own company which were Rs. 1,600 are now quoted at Rs. 1,295.

Chairman: What is the trend now?

Shri J. D. Choksi: It is still down. Perhaps, after the Select Committee's report, it may go up.

Shri Nanda: We will see that the Select Committee does a good job in the interests of the companies. I will say that.

Shri Rane: You have also said that the undertaking is unable to raise funds.

Shri J. D. Choksi: That is true.

Shri Rane: May I know how many concerns have gone to the market for raising funds at least during the last five or ten years?

Shri J. D. Choksi: I can talk only from my personal experience. When we undertook Trombay expansion scheme—it is a part of Bombay—the total aggregate cost, including a new distribution system, was about Rs. 13 to 14 crores. We approached the stock exchange and stock brokers to find out how much money they could give us by issues of capital particularly as we were paying 7½ and representing about 20 per cent. of the total electricity industry in the country. All the brokers have advised us that we would fail if we invited more than about 1/5 of the total amount. What we did was this: We borrowed the bulk of it and after we were able to confirm our borrowing, we went to the stock exchange and borrowed 1/5 of the total cost which came to about Rs. 3 crores.

Shri Rane: I can understand about the Tatas. That is a big amount. May I know of other concerns?

Shri J. D. Choksi: I think the Ministry has got the necessary data. I believe that particulars in respect of 75 companies have been given to the Ministry.

Shri Nanda: Does this difficulty apply to others?

Shri J. D. Choksi: Quite as much.

Shri Rane: From the statistics, it appears that out of 290 companies or concerns, about 50 per cent. are getting profits. The Hon. Minister has stated that some concerns pay actually upto 10 per cent. dividend, on the share capital. So, don't you think this is reasonable?

Shri J. D. Choksi: I think 10 per cent. is a reasonable dividend. But I should like to add that 10 per cent. is being paid in respect of long-established companies as a result of their not distributing profits in the old days and reinvesting it in the business.

Shri Rane: You mean companies which have not expanded?

Shri J. D. Choksi: Companies which have not substantially expanded in recent years.

Shri Bishwa Nath Roy: May I know the proportion of your paid-up capital in relation to the authorised capital?

Shri J. D. Choksi: May I say that this would not give you a fair picture. Many companies start with a large authorised capital. It is only a paper entry. There is no intention to raise that capital. So, the real capital you should look at is the subscribed capital.

Shri Bishwa Nath Roy: In spite of the fact that your industry has less risks in comparison with other industries, even then you said that your shares are coming down. What is the reason for that?

Shri J. D. Choksi: I tried to give the reason. The reason is partly real and partly psychological. There is a feeling that this industry will not be allowed to make large profits. When people think of investing some money in an industry, they hope the shares will appreciate in value. But when returns are fully controlled and returns are not allowed to increase and rates of interest are going up, the tendency for these shares is to depreciate. When the provisions of the Bill are published as reducing the profits of the company and, therefore, reducing the cost

to the consumer, it naturally has some dampening effect on the investment in this group of shares.

Shri Bishwa Nath Roy: Don't you think that you have good security in the industry while other industries have not so much?

Shri J. D. Choksi: In this socialist pattern, there is no feeling of security.

Shri Kasliwal: You have said here that your main objection is to the VI Schedule. What is your objection to the VI Schedule coming into force immediately?

Shri J. D. Choksi: If you want these financial principles to operate from now, they will be operating over a broken period of a year and it will be difficult to work any such financial principles. I may say that when the Electricity Bill of 1948 was first introduced, the financial principles were applied to the next succeeding year of each licensee.

Shri Kasliwal: With regard to clause 13, about undertaking, you have said that the original position should continue. But at the same time in your memorandum you have given an exception with regard to transmission lines.

Shri J. D. Choksi: We will stand by that.

Shri Kasliwal: When we were discussing clause 14 and when certain questions were put to you, there was a reference to refund. Can you give any instance where any company has given any refund?

Shri J. D. Choksi: Many companies have done it.

Shri Kasliwal: Can't you give one just now?

Shri J. D. Choksi: If you want we can give you a list.

Shri Kasiwal: You were talking about deferred tax. I understand from your memorandum as well as from what you said that this is altogether a new decision you have taken, because it does not appear at all in your memorandum. Is that so?

Shri J. D. Choksi: This Electricity Bill was first published in 1954 in a different form. In that Bill there was a provision for this deferred tax. Then later due to some difficulty—mainly technical—it was taken out by the Ministry. All we seek is to keep it to enable us to balance our tariff over a period of years.....

Shri Kasiwal: What I say is that it does not appear in the memorandum.

Shri J. D. Choksi: If you see page No. viii of our memorandum, somewhat in the middle of the page you will find this. It is stated there:—

“The Federation must also express its disappointment at the Bill taking no notice of the Industry’s previous proposal that Undertakings should be given the option to take account of the Deferred Taxation liability arising from different rates of depreciation under the Electricity (Supply) Act and the Income Tax Act—a point which has also been discussed by the Taxation Enquiry Commission in its Report. The Taxation Enquiry Commission has suggested that the Electricity (Supply) Act should be amended so as to permit undertakings “to put into reserve any extra surplus that they get as a tax relief on account of the initial extra depreciation allowances”.

Shri Kasiwal: I have drawn your attention to the new clause you propose to add.

Shri J. D. Choksi: I have given a separate clause.

Shri Kasiwal: I do not find it here. Similarly, with regard to your replacement of sub-clause (1) of clause 5(a), I do not find it in your memorandum—the proviso that you have given.

Shri J. D. Choksi: All the ideas which we have embodied in the proviso are argued out in the memorandum. We have provided deferred taxation reserve in our own companies. We had appealed to the Central Government to allow us to do so; and the Central Government accept that it is perfectly within the sphere of the State Governments under the clause dealing with special appropriations to allow special appropriations of this character. We have actually endeavoured in practice to provide for these deferred taxation reserve. But the State Governments have now taken the view that we must have an express provision in the Act before we can allow it.

Shri T. Sanganna: What will be your opinion in case the consumer’s price of electricity is made uniform throughout India as in the case of steel, sugar and cement?

Shri J. D. Choksi: Well, Sir, I would like to say that obviously we can’t have uniformity in different categories of consumption. For instance you can’t ask the company which manufactures cloth and which uses a very large quantity of electricity to pay the same rate as the person who uses electricity in his home for lighting purposes. It could not be done.

Shri T. Sanganna: Why is it possible in case of cement, sugar and steel?

Shri J. D. Choksi: The only answer I can give is this: there is no such disproportionate consumption of cement and other things as there is in electricity. A single textile mill can take up the load of 1/10th of the whole city. As a matter of fact, in our case a single textile mill takes up the whole of the consumption load of electricity lights in the city of Bombay.

Shri Nanda: May I know what kind of uniformity is being referred to.

Shri T. Sanganna: It is uniformity of the Consumers as well as the regions.

Shri J. D. Choksi: It will be impossible to devise a system which is the same for every type of consumer. It is recognised that there are two main types: one is what is called power consumers that use it for manufacturing and industrial purposes and the other which uses it for lighting purposes and it is always recognised that domestic charges are higher.

Chairman: I thank you on behalf of the members and on my own behalf for the very clear exposition that you have given. You may also please give us any memoranda to supplement what you have said.

Shri Nanda: For example, about the deferred taxation reserve.

Shri J. D. Choksi: Yes, I am much obliged to you and the Committee for the patient and friendly hearing given.

(Witnesses then withdrew)

(The Committee then adjourned)

THE SELECT COMMITTEE ON THE ELECTRICITY (SUPPLY) AMENDMENT BILL, 1955.

Minutes of Evidence taken before the Select Committee on the Electricity (Supply) Amendment Bill, 1955.

Saturday, the 20th October, 1956 at 10 A.M.

PRESENT

Shri N. C. Chatterjee—*Chairman*

MEMBERS

Shri N. C. Kasliwal
Shri Rup Narain
Shri Bishwa Nath Roy
Dr. M. C. Jatav-vir
Shri W. S. Kirolikar
Shri Ahmed Mohiuddin
Shri G. H. Deshpande
Shri S. R. Rane
Shri T. Sanganna
Shri Subodh Hasda

Shri Rajeshwar Patel
Shri Naval Prabhakar
Shri N. P. Damodaran
Shri I. Eacharan
Shri Ranbir Singh Chaudhuri
Shri S. K. Kandasamy
Shri Bijoy Chandra Das
Shri Sadhan Chandra Gupta
Shri K. Kelappan
Shri Kandala Subrahmanyam
Shri Gulzarilal Nanda.

Shri Jai Sukh Lal Hathi, *Deputy Minister of Irrigation & Power* was also present.

DRAFTSMAN

Shri S. K. Hiranandani, *Additional Draftsman, Ministry of Law.*

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

Shri S. S. Kumar, *Utilisation Member, Central Water and Power Commission.*

Shri N. S. Vasant, *O.S.D., Ministry of Irrigation and Power.*

SECRETARIAT

Shri P. K. Patnaik, *Under Secretary.*

WITNESSES EXAMINED

II. *The Association of Electrical Undertakings, Southern India, Madras. Spokesmen.*

Shri H. K. Ramaswamy
Shri S. Venkataraman.

III. *The East India Electric Supply & Traction Co., Ltd., Calcutta.*

Spokesmen:

Shri S. K. Kapur
Shri N. C. Bhattacharjee
Shri A. K. Datta
Shri N. P. Ghose.

II. *The Association of Electrical Undertakings, Southern India, Madras*

(Witnesses were called in and they took their Seats)

Spokesmen:

1. Shri H. K. Ramaswamy
2. Shri S. Venkataraman

Chairman: We have just gone through your memorandum but before I take up the matter it is my duty

to read out to you one rule which governs all select committees on Bills. It reads like this:

"When witnesses appear before a Select Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence is to be treated as public and is liable to be published unless it is specifically desired that all or any part of the evidence tendered by them is to be treated as confidential. It should be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidences will be made available to the Members of Parliament."

I think there is no question of any portion of your evidence being required to be treated as confidential.

Witnesses: No.

Chairman: Now, kindly elucidate your points, the points on which you want to draw the attention of the Committee. You have raised only two points. One is about your difficulty to raise capital.

Shri Venkataraman: As we have stated in our example, the difficulty is this. The interest rate that we give out is higher than the standard rate which is given to us.

Chairman: You are pointing out the difficulty in smaller undertakings. Do you admit that in the bigger undertakings they can raise capital at 4½ per cent.

Shri Venkataraman: This is in the Madras State.

Chairman: Can you give us an idea as to how many bigger undertakings are there and how many are smaller undertakings? Can you tell us as to what percentage it will be? It will be difficult for us to say that simply because a few small undertakings cannot raise capital.....

Shri Venkataraman: What I say applies to bigger undertakings in Madras State or even down in South India. There is only one South Madras Electric Supply Corporation whose total

capital as well as paid-up capital comes to about Rs. 1 crore. All the other companies in the south are smaller. At the most, the total capital employed will be between Rs. 30 lakhs and Rs. 40 lakhs.

Chairman: And, they cannot raise money even at 4½ per cent.

Shri Venkataraman: Even the bigger undertakings are paying a higher interest rate—6 to 6½ per cent. We have got preference shares which is 6½ per cent. tax free and also debentures at 6 per cent. tax free. Those things will be affected by the Act restricting the interest rates paid out of capital by disallowing it as expenditure. We have also stated that in the case of preference shares where we are paying fixed dividends, that should also be treated as expenditure for purposes of excess over reasonable return because we issued those preference shares a long time back and the legislation has come today restricting the dividend.

Chairman: What is the proportion? How much is your preference share capital?

Shri Venkataraman: The preference share capital will come to about 25 per cent. of the whole industry.

Shri Nanda: It won't be so for the whole industry.

Chairman: The All India average is only 10 per cent. or even less than that.

Shri Nanda: For the industry in Madras as a whole, what will be the position.

Shri Venkataraman: It is less than 10 per cent. if you take the capital. If you also take the loans,....

Shri Nanda: I am taking out the loans.

Shri Venkataraman: Preference shares must be about 20 to 25 per cent. I do not have the actual records here; we shall be able to confirm it later on.

Chairman: You want us to consider deletion of loan capital from the capital base, is that so?

Shri Venkataraman: Yes.

Chairman: You also want the Interest to be paid on any loan or debenture to be treated as an item of expenditure.

Shri Venkataraman: With the stipulation that the interest rate must be one approved by the State Government. I agree that it will be really difficult to distinguish in law between a small company and a big company. If we propose a general procedure which will be applicable to all companies then such a difficulty can be overcome. What I say is, supposing there is a higher standard reasonable return for the first 10 lakhs to 15 lakhs at 6 per cent. or 6½ per cent. over the standard rate which you are going to fix now, if that is given to the first 15 lakhs, whether it be Tatas or any other bigger undertaking, the first slab is availed of by every undertaking and you will be able to overcome the difficulty and also allow the smaller undertakings to have their share.

Shri Nanda: In every case where there is a preference capital, there is the calculation of profit subject to tax. Supposing you are paid an interest at the rate of 6½ per cent. then you derive a certain surplus and that is subject to tax. In this case this surplus is not subject to tax. Therefore, a person in any other industry who is borrowing at the rate of 6½ per cent. he is in a much more disadvantageous position than a person in the electrical industry, where a similar borrower of capital is going to earn 5½ per cent. free of tax which means that he will have a gross earning of 6½ per cent.

Chairman: Ordinarily, he is subject to two liabilities, a higher rate of interest and taxation imposed by the State. You are exempted from one.

Shri Venkataraman: The other industries, however, are not regulated by an Act like this.

Shri Nanda: It may not be, but the thing is, you will not borrow at this

rate. It is not going to pay anything at the expense of the company, if you consider the fact that the surplus will not be liable to be taxed. In the other case, it could be.

Shri Venkataraman: Actually, the tax payment is notional. Suppose, 6½ per cent. preference shares is issued tax-free, hitherto, from the inception of the company say, from 1935-36 up to 1956. The shareholders have been receiving this all right.

Shri Nanda: That is a different point.

Shri Venkataraman: Therefore, to overcome that, if the standard rate is fixed at half per cent. over the rate which you are going to fix here for the first Rs. 15 lakhs of the capital base, it will tide over the difficulty of the smaller undertakings.

Shri Nanda: Are you a member of the Federation?

Shri Venkataraman: Yes; we are.

Shri Nanda: They have not accepted this point of view.

Shri Venkataraman: Not that. Actually, the Federation has given all the points. Wherever they have failed in the smaller undertakings, I thought it better to reinforce it here. That is why we have restricted our points only to those two. There again, I wanted to make a distinction between the loan capital availed of from the Board and the loan availed of from other sources. We wish to have one per cent. as reasonable return on loan capital employed, because, so far as my knowledge goes, I do not think any Board has yet advanced money to any electrical undertaking as yet.

Chairman: Only in four States, as far as I remember, the Boards are functioning.

Shri Venkataraman: Yes, it is 5½ per cent.

Shri Nanda: We know of States where it is 4½ per cent. on loan capital.

Shri Venkatarman: In Madras State, the rate of Government advance is $5\frac{1}{2}$ per cent. and mostly, nowadays, the Madras Government simply says, "You go to the State Finance Corporation". They insist on $6\frac{1}{2}$ per cent. less half percent. Not only that. The Finance Corporation insists, if there is a managing agent, on a personal guarantee of the directors or the managing agents, and all those formalities have to be gone through. But the managing agents are not given anything extra for the guarantee and all that.

What I say is, at least when the industry gets half a per cent. more than the loan which is given by the Board, the outside loan may be one per cent. As you all know, we do not have any other source where capital could be tapped, because, whatever capital is invested, we get a reasonable return which goes to supply the demand of the shareholder by a reasonable dividend. Beyond that we do not have enough to plough back except the depreciation fund which is actually needed for our own use for the connected sundry expenses which we incur on capital expenses. Therefore, there is no other source of capital. There is no ploughing back.

Shri Nanda: There is a development reserve.

Shri Venkataraman: If it is granted, that will serve the purpose.

Shri Nanda: For any new construction, that will be available.

Shri Venkataraman: It will be available hereafter. As matters stand, I may tell you that there may be an apprehension that if the rate of interest is allowed as an expenditure, it will lead to abuses.

Shri Nanda: That is the fear.

Shri Venkataraman: You can put a stipulation by saying that the State Governments concerned must approve the rates before availing of the loans, because each State is different, as you yourself have said. Some of the

States are lending $4\frac{1}{2}$ per cent. and some others at $5\frac{1}{2}$ per cent.

Chairman: It is 4 per cent. also.

Shri Venkataraman: In Madras, it is $5\frac{1}{2}$ per cent. Therefore, if the State Government is given the power saying that they must agree to the rates or they must stipulate at what rates it could be given, it will be good.

Shri Nanda: Actually, what is the position of those concerns? For a major part of the borrowings, what is the rate now that is being paid as per the books of the undertakings?

Shri Venkataraman: $6\frac{1}{2}$ per cent.

Shri Nanda: Supposing all these concerns together have got, say, a crore of rupees, can you give me a rough idea as to what will be the rate charged?

Shri Venkatarman: Mr. Ramaswami will let you know the thing, in respect of his own case.

Shri Ramaswami: In the South Madras Electricity Corporation which I represent, the debenture capital is Rs. 24 lakhs, that is, just about 20 per cent. of the total share capital, and all the money is borrowed at $5\frac{1}{2}$ per cent. The debentures are not taxed.

Shri Nanda: What are you paying on the debentures?

Shri Ramaswami: $5\frac{1}{2}$ per cent. Then, recently, during the last three years, the Government of Madras have advanced us about Rs. 40 lakhs for rural extension only at the same rate *viz.*, $5\frac{1}{2}$ per cent. They have recommended the application to the Government of India for further loan, but it also comes to the same rate— $5\frac{1}{2}$ per cent.

Chairman: Have you got anything more to say, Mr. Venkataraman?

Shri Venkataraman: I have got only one point to make. That is in regard to the increase of the standard rate in smaller companies, *viz.*, $5\frac{1}{2}$ per cent. $5\frac{1}{2}$ per cent. is the rate where the Government is lending money. Therefore,

6½ per cent or even higher will be the return for the shareholder who risks the money.

Chairman: Please repeat it.

Shri Venkataraman: The rate at which the Madras Government advances money is 5½ per cent. Therefore, my request is that the standard rate may be fixed at something higher, say, at 6½ per cent or even more.

Shri Nanda: I want to know this. You may be able to give the information. How much do you really want in the second Five Year Plan? What are your programmes? What expansion programmes have you got, because they have got to be related to our Plan. We are visualising only a very small expansion in the private sector. What is going to be your part in it in the second Five Year Plan? Have you any idea about it?

Shri Ramaswami: Is it enough if I tell you of my own concern? It is fairly related to the five or six licences in Madras State. Roughly, it will be the same thing as in the Plan. We are taking South Madras as an example. It is a composite rural licence. We are practically working on rural electrification schemes, and on the same pace on which the Madras Government is developing, we require about Rs. 20 lakhs to Rs. 24 lakhs every year to complete our programmes of rural electrification, on the same pace.

Shri Nanda: Rs. 20 lakhs to Rs. 24 lakhs every year outside your own internal resources?

Shri Ramaswami: Yes. Our internal resources are limited. The depreciation comes to Rs. 8 lakhs a year.

Shri Nanda: You have no other old reserves?

Shri Ramaswami: No; actually nothing. Our depreciation has been working at the rates, from the beginning of the operation of the Electricity (Supply) Act. Our general revenues are practically nothing. It is probably Rs. 1.5 lakhs or Rs. 2 lakhs. It is nothing. The only resource that we have got internally, is the depreciation fund.

Shri Nanda: Is it an expansion programme?

Shri Ramaswami: Yes.

Shri Nanda: Is it part of the second Five Year Plan?

Shri Ramaswami: We have submitted a scheme through the Federation. It is part of the Plan.

Shri Nanda: For the rural electricity programme, there is a special consideration. The State should necessarily give at a rate which is not excessive, because we give grants for the rural programmes.

Shri Ramaswami: This was pointed out.

Shri Nanda: These are all rural programmes.

Shri Ramaswami: So far as the rural programmes are concerned, what we understand from the State is this. They are borrowing from the Government of India at 4½ per cent., reserving one per cent. extra for their expenses. So, it comes to 5½ per cent.

Shri Nanda: In any case, why should they give like that? Can you give an idea of the industry? Perhaps you may not have that information.

Shri Ramaswami: In the Madras State for the industry as a whole, as Mr. Venkataraman pointed out, some people are borrowing from the State Finance Corporation, because the schemes are not entirely rural. The Government loans are restricted strictly to rural undertakings. There it is 6½ per cent.

Shri Nanda: The policy of the Government of Madras is, more and more taking over of the private concerns and nationalising the industry. They are not encouraging any fresh expansion in the private sector.

Shri Ramaswami: They have already taken a number of private concerns and they want to take over still.

Shri Nanda: It seems to be a live issue.

Shri Ramaswami: Yes, otherwise, it is stagnation of work for the next five years and we are operating in a major portion of the State.

Shri Nanda: We must secure the implementation of the programmes which have been included in the second Plan—both rural and urban. Whatever happens, every industry has its set targets and for that capital must be found at rates which are not excessive. That was why I was arguing that you may not have information about that figures of the Madras Government. I will of course get them from our own Planning division. We will get that information.

Shri Venkataraman: Regarding Government loan, the percentage of the loan which they will give is in relation to the total paid-up capital or the value of the undertaking. Personally, if the second Five Year Plan is to succeed completely, I request the Government to view it more liberally and see that the Government loans are given to licensees equal to their paid-up capital or equal to their value, because, every expansion made with the fund is being supervised by the Government Electrical Inspector on the inspection side, and it is all being subject to Government audit. Therefore, there cannot be any risk in advancing the full value equal to the total of the paid-up value of the company. Instead, they give only 60 per cent. of the value of the undertaking, as advance.

Shri Nanda: We shall take note of that and see what can be done about that.

Chairman: What is your point about rating committees?

Shri Venkataraman: Regarding rating committees, the delay is inevitable when it comes to going

through certain formalities. It could not be helped. That means loss of revenue for a particular period. That could not be recouped for the simple reason that whatever tariff we impose cannot be retrospective.

Chairman: So, you want power for immediate levy, pending the decision of the Rating Committee.

Shri Venkataraman: Suppose the Committee decides it otherwise. Even there, I would like a stipulation to be made.

Shri Nanda: The Federation has already made it.

Shri Venkataraman: Yes, I want to make one point clear. Even the Rating Committee must sit and finish their judgment before a particular time, because the companies are subject to taxation unnecessarily. Suppose, after the official year is over and after the income-tax assessment is over, if the Rating Committee comes and says that "this must be done, that you have not replied to it, that you must adjust it in the coming year's account," we have to pay tax on that income. Therefore, the sittings of the Rating Committee must be prompt.

Chairman: Therefore, you support the Federation's recommendation.

Shri Venkataraman: Yes.

Chairman: Do you want to say anything about the composition of the Committee?

Shri Venkataraman: We are in agreement with the Federation in this respect. We have only to reinforce their points.

Shri Sadhan Gupta: You have asked for an increased standard rate for the first slab of 15 lakhs in all

cases. In the case of bigger undertakings, is there any justification for granting a higher standard rate for the first slab?

Shri Venkataraman: The increase in the standard rate which you give to the bigger undertakings for the first portion of the capital—whether it is Rs. 10 lakhs or Rs. 15 lakhs—will not be appreciable. It may come to 1/16 or 1/20 per cent. Therefore, I do not think it is a matter which should be looked into so minutely. If you want to give something extra to that smaller undertakings, that means discrimination and we want to avoid discrimination. The only way would be to give a weightage to the smaller undertakings and the same thing will apply to the bigger undertakings also.

Shri Sadhan Gupta: Under article 14 of the Constitution, it is permissible to discriminate between parties who are not absolutely on an equal footing. Therefore, if the smaller undertakings are in a particular kind of difficulty, there is no discrimination in treating them separately. Under these circumstances, would you agree that the smaller undertakings may be treated separately from the bigger ones?

Shri Venkataraman: If it is permissible under the law, I have no objection.

Chairman: Article 14 allows reasonable classifications and he says that the smaller undertakings may be put into one class, thereby avoiding repugnancy to article 14.

Shri Venkataraman: Apart from undertakings which are actually big, there may be medium-sized undertakings. Suppose we say that any undertaking with a capital base exceeding Rs. 25 lakhs is big, what about an undertaking with a capital base of Rs. 30 lakhs? How are you going to provide for such marginal cases? They must be considered too.

Shri Nanda: Yours is the biggest programme in the State. In the

whole of Madras, there is no programme in the public sector to supply electricity?

Shri Ramaswami: No, Sir.

Shri Nanda: Yours is the biggest programme and the rest are small. In your case, Government will be giving at about 5½ per cent.

Shri Ramaswami: That is only for rural electrification.

Shri Nanda: What about urban operations?

Shri Ramaswami: We have not been able to give as much attention as we should to urban operation. We are mainly concerned with the rural electrification network emanating from certain existing transmission systems which should be reinforced.

Chairman: Is your licence expiring in 1962?

Shri Ramaswami: Yes; in July, 1962.

Chairman: So, there is no question of capital expansion beyond 1960.

Shri Ramaswami: The Madras Electricity Nationalisation Act envisages taking over any concern by giving four months notice. So they might take over our concern by giving notice any time. So, we are not actually able to plan our programmes.

Shri Mohiuddin: For purposes of reasonable return, do you propose to differentiate between companies supplying electricity to the rural area and to the urban area?

Shri Ramaswami: It is a bit difficult to distinguish like that. There is no such proposal; it is not feasible.

Shri Mohiuddin: What have been your dividends during the last five years?

Shri Ramaswami: In south Madras, the rates have been varying from 7½ to 9 per cent. in the last five years. Earlier than that, it was between 5½ and 6½ per cent.

Shri Mohiuddin: In the last five years, you have been getting between 7½ and 9 per cent, in spite of the fact that you have been borrowing money from Government and other sources at 5½ and 6½ per cent.

Shri Ramaswami: We have not borrowed at 6½ per cent. We have been taking advantage of the existing lacuna in the Act.

Shri Nanda: For how long? One year or more?

Shri Ramaswami: The problem is more acute in Madras now for the reason that though we get 7½ to 9 per cent., the shareholder does not get the income tax benefit. We are not paying income tax for the reason that we keep up an expansion programme of about Rs. 15 lakhs to Rs. 20 lakhs. That wipes off the tax liability so far as the company is concerned. It all gets deferred to a later date. Therefore, when the shareholder receives 7½ to 9 per cent. dividend, he has to pay income tax. So, it effectively comes down to 6 or 7 per cent probably.

Shri Nanda: In the calculations, there is an expenditure and therefore that surplus is very small. Since it is small, they have not earned anything.

Shri Ramaswami: Though you allow us an income tax expenditure, we have no expenditure. So, the surplus goes over to the shareholder extra over the reasonable return. With this disallowance of the debenture interest, the position will be that the untaxed dividend will come down to 5½ to 6 per cent. and the shareholder will have to pay tax on that. So, effectively it will come down to 4 or 3½ to the shareholder. So, we cannot raise any money from the public source.

Shri Nanda: In any case, you will not raise money because your licence is expiring.

Shri Ramaswami: That is one problem; but, for the next five years at least we must keep up our development programmes. The Government must give us money liberally at least for the urban development.

Shri Kasliwal: What is a small undertaking in your industry in south Madras?

Shri Venkataraman: Small undertakings are electric companies with a capital of Rs. 20 or Rs. 25 lakhs.

Shri Kasliwal: What is the average dividend they declare?

Shri Venkataraman: It will be between 5½ to 7½ per cent.

Shri Kasliwal: Your friend just now said that they give 7½ to 9 per cent.

Shri Venkataraman: That was only in the case of one bigger concern. But if the amendments go through, the dividends which we have been declaring will not be applicable for comparison. It will be only 50 per cent. of what we have been declaring previously.

Shri Kasliwal: Do you agree that a rating committee should be appointed always whenever there is a breach of the Fifth Schedule?

Shri Venkataraman: I agree.

Shri Kelappan: You say you are working on rural electrification schemes. At what rate are you supplying electricity for cottage industries and irrigation purposes?

Shri Ramaswami: At present we are supplying electricity for cottage industries and irrigation at one anna per unit.

Shri Kelappan: Is it not really more expensive to conduct your affairs through managing agents than directly by your own people?

Shri Ramaswami: By the passing of the Companies Act, I presume whatever defects were there before have been overcome.

Shri Kelappan: Even then, will it not be cheaper to conduct your affairs directly?

Shri Ramaswami: I am unable to answer that question, not being a managing agent myself.

Shri Sanganna: Mr. Ramaswami stated that they had applied for financial assistance to the Government of Madras as well as the Central Government. In case such help is denied to them, is there any difficulty for the company to develop in future?

Shri Ramaswami: In that case the company will not be able to proceed with the rural electrification work. It will have to restrict its activities to the urban operation with Rs. 6 or Rs. 7 lakhs depreciation and just keep it going. That is all. The rural electrification programme takes up about Rs. 25 lakhs per year. Financed for that has to be given either by the State Government or the Central Government unless conditions are made convenient to borrow from the public.

Shri Sanganna: Have you any programme coinciding with the Second Five Year Plan?

Shri Ramaswami: We have drawn up a very detailed programme which will cost a crore of rupees.

Shri Sanganna: What are the salient features?

Shri Ramaswami: It is entirely a rural electrification programme. There is no new generating station.

Chairman: There is no question of expansion. They are winding up practically in a short time.

Shri Kasthal: A question arises out of the question of Mr. Sanganna. There seems to be a contradiction in what Mr. Ramaswami has stated. He has just now stated that he is not interested in the urban electrification

and he now says that if he cannot get sufficient funds in the rural areas, he will confine the activities to the urban side. I cannot understand that.

Shri Ramaswami: In the urban areas, in our licences, that is towns like Trichinopoly and Tanjore, the development at present is confined to the money that we have on hand, that is, six or seven depreciation accruals that we have built up every year. The nature of development there will be just to improve the systems and cater to the needs of the additional consumers. But this cannot go on for ever. With the rural distribution going apace, there is a certain amount of additional work to be done in the urban area itself to increase the capacity of the systems. There are also other technical features which have to be attended to. That will mean more capital. Now the scheme of financial assistance either from the Madras State or from the Centre through the States is confined only to rural electrification. They are not giving any money for urban development or improvement of system. That is where the whole stalling comes in. We are limited for urban work with 6 or 7 crores of rupees, which is very inadequate. For rural electrification of course, we do receive aid. But between these two, there is a big scheme of necessary expansion on the urban areas for which we will have to find finance from other sources unless the Government extends the help that is being given to the rural electrification to the urban development also.

(Witnesses then withdrew)

III. The East India Electric Supply and Traction Co., Ltd., Calcutta.

Spokesmen:

1. Shri S. K. Kapur.
2. Shri N. C. Bhattacharjee
3. Shri A. K. Datta.
4. Shri N. P. Ghosh.

(Witnesses were called in and they took their Seats)

Chairman: Before we begin, I want to know whether you want any portion of your evidence to be treated as confidential?

Shri S. K. Kapur: No, we don't want it.

Chairman: You have given us a very big memorandum. Will you please state the salient points which you want to explain or on which you want to draw the attention of the Committee?

Shri S. K. Kapur: I will try to confine myself, as far as possible on important aspects. Of course, I want to tell you that really I am representing the small groups of industry, small companies with a capital of about Rs. 5 lakhs. My attempt would be to show that some of the provisions in the new Act will hit the smaller industries more than the bigger ones.

Chairman: What do you mean by the Act?

Shri S. K. Kapur: I mean the proposed Bill. As I was submitting, our company is really a small one with a capital of about Rs. 5 lakhs. We are holding two licences, one in Hooghly and one in Banswaria. The paid-up capital is Rs. 5,60,000.

Shri Kasliwal: May I just mention that we are dealing with the memorandum of the East India Electric Supply & Traction Co., Ltd.? Mr. Kapur is presenting the views of some smaller concerns. Would it not be better for the representative of the East India Electric Supply and Traction Co. to give evidence first and then ask Mr. Kapur to give his views?

Shri S. K. Kapur: What I really meant was that I am representing the point of view of small companies. But I am here as a representative of the East India Electric Supply and Traction Co.

Chairman: You are the spokesman of that company?

Shri S. K. Kapur: Yes.

Shri Mohiuddin: What is your capital?

Shri S. K. Kapur: Rs. 5,60,000.

Chairman: They supply electricity to all the important areas in West Bengal. Now, you may be wanting to elucidate some of the important points.

Shri S. K. Kapur: I will really start with page 10 of the memorandum.

Chairman: What is your objection to paragraph (1) of the Sixth Schedule?

Shri S. K. Kapur: So far as paragraph (1) is concerned, in the proposed amendment, the hon. Members will find, two things are introduced. I am reading the proposed amendment:

"Notwithstanding anything contained in the Electricity Act, 1910

and the provisions in the licence of the licensee, the licensee shall be entitled to so adjust his rates that the scale of electricity whether by enhancing or reducing them (not more than once in each year) that is clear profit in any year of account shall not, as far as possible, exceed the amount of reasonable return."

I am submitting that the expansion "shall be entitled" should be substituted by the word "shall" because under the Act we are not entitled to earn more than a reasonable return.

Chairman: Really we do not want to make it an obligation. That is our intention, so far as I can make out. It is a ceiling and it is for you to avail or not to avail of it

Shri S. K. Kapur: My submission is that you may make it clear not only that we are not entitled but this is an obligation on us that we shall so adjust our rates that they do not exceed the reasonable return.

Shri Nanda: You are entitled to adjust in a manner that does not lead to rise beyond a clear profit.

Shri S. K. Kapur: Regarding the second suggestion that not more than once in each year it can be fixed, there will be a slight difficulty in the actual working. The tolerance, as hon. Members will notice, is being reduced from 30 to 15 per cent in the Act. We are entitled to make adjustments only once in a year. The result would be that right from the beginning we will have to keep ourselves within such a margin that in no case we exceed 15 per cent of the 5 per cent. Ultimately, the result would be that we may get far less than the 15 per cent. tolerance that is being given to us. Really, we are not entitled to go beyond a particular rate. I was submitting that there would be no justification in limiting us to adjust the rates only once a year. The result is that we have to earn a certain return and we cannot exceed that and the tolerance also is being brought down from 30 per cent to 15 per cent. So, we have got to be very very careful from the very beginning because we can only adjust once in a year.

Chairman: The general principle is all right. What do you want?

Shri S. K. Kapur: My submission is that 5 per cent will not be enough.

Chairman: That is a different issue.

Shri S. K. Kapur: On principle I agree there should be a limit.

Chairman: The question is whether you should have power to re-fix more than once within the year.

Shri S. K. Kapur: The present position is there is no limitation so far as the period is concerned.

Shri Nanda: So far under the law there was no such restriction. But there is no evidence that any concern had to use the latitude in the sense of making changes more than once in a year.

Shri S. K. Kapur: I was submitting that the necessity may arise.

Chairman: Has there ever been any occasion when you had to revise the rate more than once a year?

Shri N. C. Bhattacharjee: It is not necessary in all cases because we are not earning this return. We are earning less.

Chairman: Do you think that it would be necessary to change it more than once?

Shri N. C. Bhattacharjee: I think it would be necessary.

Chairman: Could you explain?

Shri N. C. Bhattacharjee: We cannot expect to reach the upper limit. We will try to earn as much near as possible to 5 per cent. which is the reasonable return. We must have the power to revise it. Sometimes it may be exceeded. In the beginning of the year we fix a rate. Then, after six months' working, we find that it is going to exceed that limit. We can reduce it.

Chairman: You mean exceeding the 5 per cent limit?

Shri N. C. Bhattacharjee: Yes. Or it may be much less than 5 per cent. We will have to revise it. At the beginning if there is a rate, that will give us less than 5 per cent.

Chairman: I do not think that this kind of revision will be necessary more than once a year.

Shri Bhattacharjee: There is the obligation on us to keep it within a specified limit.

Chairman: The Hon. Minister points out to me that you can have a reduction in the form of a rebate.

Shri Bhattacharjee: Not according to this.

Chairman: For that we can make arrangements by a suitable amendment. What about increasing the rates?

Shri Bhattacharjee: We can increase once or twice.

Chairman: Now, please take the notes on clauses on page 24 of the Bill. Under clause 26, it is stated:

"Paragraph I of the Sixth Schedule has been redrafted so as to make the intention clear. A licensee is required to give notice to the State Government and the Board before increasing his rates. The excess of clear profit over the amount of "reasonable return" which would warrant revision of rates by the licensee has been reduced from 30 per cent to 15 per cent of the reasonable return."

So, every time when you want to increase the rate, you have got to give notice to the State Government and the Board. These things will take some time. You cannot make it very effective. What I am saying is if you increase the rate thrice or four times a year, it will.....

Shri Bhattacharjee: We can increase at least once a year and reduce it once or twice.

Shri Nanda: No other concern has ever exercised that power and actually in practice they are not in a position to know what is the state of business till about the end of the year or till seven or eight months have passed. This is the experience also looking at the way in which this business is done. You see, this is not such an uncertain business. You know the number of consumers. Therefore, one change is quite enough.

Chairman: The Hon. Minister pointed out to me that this would require the approval of the State Governments.

Shri Nanda: That would lead to further scrutiny and even administrative consequences. We look at it from the consumers' point of view. One rebate is sufficient.

Shri S. K. Kapur: If I am right in my submission, some laxity should be given to us in this, because the proviso says that a reference has to be made to the State Government and the Board. Both these provisos will really hamper us. When there is a limit placed on us, what is the necessity of our going to the Board and the State Government? This will involve much time.

Chairman: Your point is that you do not like this compulsory reference to the State Government, etc. If we stick to our Bill as it is drafted now, then there is no objection.

Shri S. K. Kapur: Even then there is this difficulty. Suppose during the last three months, our rates were high. Then within that period I cannot bring it down to the limit because it will take three months for....

Shri Mohindas: May I suggest to him to explain about raising the rates rather than reducing them?

Chairman: He is doing it in a strategic manner. He is pleading for the right to reduce. What I am pointing out is that this is not operative in the case of reduction....

Shri S. K. Kapur: In the case of increase, so far as this proviso is concerned, it will be found that the rates are not enough and we are not likely to earn. In that case reference has to be made to the State Government and the Board. This reference will take a long time with the result the year may be out by that time.

Chairman: What is your suggestion?

Shri S. K. Kapur: My suggestion is that both of these provisos should be deleted. So long as a limit is already fixed, why should we refer it to the State Government and the Board.

Chairman: Should there be some machinery to see that you are actually conforming to the limit prescribed?

Shri S. K. Kapur: The machinery is already provided for in the 1948 Act, in paragraph 2, page 45.

Shri Kasliwal: In your memorandum, you have yourself agreed to the provisos except the variation of certain words. For instance, in the place of the word 'deemed', you have suggested 'considered' and in the place of '15 per centum' you have suggested 'more than thirty per centum'.

Chairman: He is accepting our basic recommendation. The only point is that they do not want to restrict it to one revision.

Shri Nanda: He wants to be free from this obligation. He does not want to wait for the approval from the Government.

Chairman: I think we shall think over it and you will have a sympathetic treatment.

Now, you give us some fundamental points in order to help us to understand more about this.

Shri S. K. Kapur: The next important point is what I have submitted on page 15 of our memorandum.

Chairman: Is it about depreciation fund?

Shri S. K. Kapur: I am inviting your attention to sub-clause (3) in column 4 which is proposed to be added. It reads:—

"Any sums invested in investments approved by the State 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

utilised they shall not form part of the capital base under clause (d) of sub-paragraph (1) of paragraph XVII."

In the old Act, it is noticed that this provision was not there.

Chairman: Sub-paragraph (2) requires that all sums credited to depreciation account must be invested back into the business.

Shri S. K. Kapur: If it could not be invested under the old Act to the satisfaction of the State Government, then that formed part of the capital base. By this paragraph (3), it is being provided that even if I have some funds with me and if it cannot be invested in an undertaking, that amount will not form part of the capital base.

Shri Mohiuddin: May I ask a point only for clarification? Depreciation fund will be required to be invested as approved by the State Government.

Shri S. K. Kapur: It has to be invested in the undertaking so far as it is practicable....

Shri Mohiuddin: There are two alternatives. One is to invest it in the undertaking itself as working capital. If you are not using it, it will be invested in the security approved by the State Government. On the approved security, you will be earning interest. Then, why should it be allowed as a capital base. That cannot be allowed twice to be included in the capital base.

Chairman: Now, please sub-clause (d) of the first paragraph in paragraph XVII which reads as follows:

"the amount of investments compulsorily made under paragraph IV of this Schedule, together with such investments made before or after the commencement of this Act from contributions towards depreciation as may be shown to the reasonable satisfaction....." etc.

This is what clause (d) says. Now, look at page 48 of the present Act. There 'capital base' has been defined thus: I am reading Paragraph XVII.

"For the purposes of this Schedule—

(i) 'capital base' means the sum of—

(a) the original cost of fixed assets, subject to the provision of para. XII in respect of service lines;

(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 such investments made before or after the commencement of this Act...." etc.

We are now making a change there.

Shri S. K. Kapur: 'Before' is taken out.

Chairman: Yes....."The amount of investment compulsorily made under paragraph 4 together with the amount of such investment made after the commencement of the Act....."

Shri S. K. Kapur: My submission is that the amount of investment made before an Act has to form part of the capital.....

Chairman: Do you know of any case where investments were made before the Act and they wanted it and it was not allowed? I will tell you what the difficulty of the Ministry is. Even the big concerns like Tatas could not satisfy that the investment made before actually came under the conditions prescribed here.

Shri Nanda: This came into force in 1948. Nothing would have been compulsorily invested before that.

Chairman: Mr. Kapur: I think it is not necessary.

Shri S. K. Kapur: I agree:

I was making out that that part which cannot be invested does not form part of the capital base. What I would like to point out here is that this clause would be really contradictory to the clause at page 20 of my memorandum column 4(d) at the top:

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

These two cannot go together.

Shri Nanda: This does not stand by itself. It is subject to the other change.

Chairman: Just look at the Electricity Supply Act, page 48. We are defining the meaning of capital base there.

Shri S. K. Kapur: While defining the 'capital base' we are retaining clause (d) here. Kindly look at page 49 of the old Act. Here, the amount of investment compulsorily made under paragraph 4 of the Schedule together with such investments made after the commencement of the Act from contributions towards depreciation, as in the opinion of the authority, would not be utilised for the purpose of the Electricity Supply undertaking. This is, therefore, coming under clause (d). It will continue to form part of the capital base.

Chairman: That is right.

Shri S. K. Kapur: In my memorandum it is said that if such sums could not be invested in the undertaking that will not form part of the capital base.

Chairman: Do you say one is repugnant to the other?

Shri S. K. Kapur: Yes.

Chairman: They shall not form part of the capital base under clause (d) of sub-para (1). We are allowing it as part of the capital base.

Shri S. K. Kapur: Yes.

Shri Nanda: If there is any technical difficulty, we shall look into it.

Shri S. K. Kapur: Yes. I am pointing it out.

Shri Nanda: This investment is allowed only if the authority is satisfied. There is another provision coming in.

Chairman: We shall put it in order.

Shri S. K. Kapur: My next submission is with respect to clause 3. I have made a submission at page 16. In respect of the capital base it is provided that the amount which cannot be invested—even that will not form part of the capital base while a deduction is made in deducting the total depreciation. Kindly see page 16 of my memorandum 5th paragraph—remarks column. This refers to 17 of the Sixth Schedule.

Chairman: It is page 14 of the Bill. Yes.

Shri S. K. Kapur: For the definition of 'capital base' clause (i) sub-clause (d) is being amended so as to exclude from capital base that part of the capital which has not been invested in the undertaking but still at page 49 of the old Act there is deduction of amount written off on account of depreciation of fixed assets. If that capital which cannot be invested in the undertaking does not form part of the capital base, then, the depreciation on that part should also not be deducted.

Shri Nanda: We allow what is invested under (d) and we also allow what is not invested, after approval.

Shri S. K. Kapur: Two cases may arise; one case where permission is given and another case where that permission is not given. If it is given, then it forms part of the base and

total depreciation will be rightly deducted. But take the case where that permission is not given.

Chairman: It means that they are properly rejected.

Shri S. K. Kapur: If they reject it, the depreciation to be deducted is the depreciation on the entire amount. Kindly look at page 16 of my memorandum—fifth paragraph in the remarks column.

Shri Nanda: Either you invest it for the purpose of expansion etc. or you are permitted otherwise. If you are permitted then the return is allowed, and if you are not permitted, that means that you are doing something which is not in the interest of the industry. If you have invested it well and good. If you have not, you should show reasons. If you show good reasons, then you get the return.

Shri S. K. Kapur: If it is not allowed then that goes out of capital base. But depreciation on the entire amount is deducted.

Shri Nanda: You are circumventing the whole intention.

Shri S. K. Kapur: If you are not allowing to earn something on that amount which cannot be invested in the undertaking, then do not force me. Because, if that does not go to the capital base what is the depreciation that will have to be deducted will be for the purpose of calculation of capital base and depreciation will be on the amount that has actually been invested as well as on the amount which has not been allowed in the capital base.

Chairman: Suppose you have 5 lakhs and they allow you to invest 2½ lakhs you are satisfied with that. With regard to the balance 2½ lakhs what is the objection?

Shri S. K. Kapur: That does not go to the capital base. When you are deducting depreciation you are deducting it on the entire 5 lakhs.

Chairman: You suggest that it is not fair.

Shri S. K. Kapur: If the amount does not go to capital base I am not earning anything on that. The depreciation that is being deducted on the capital base will be further reduced by.....

Shri Nanda: It should be reduced to that extent—that portion which you have not invested.

Shri S. K. Kapur: Out of 5 lakhs, 3 lakhs have been invested and 2 lakhs is disallowed. Therefore it is reduced by 2 lakhs. It is to be further reduced by deductions.

Chairman: Our intention is to make this a deterrent and we will not allow you to put that surplus money you have got to Depreciation fund for it may be brought back in the business. Therefore, what we are trying to achieve is that you should not utilise that in any other way.

I hope you are accepting that position.

Shri S. K. Kapur: I am accepting that position.

Chairman: Supposing you have 5 lakhs and we are allowed to deduct 3 lakhs, two lakhs are not allowed. What does that mean?

Shri S. K. Kapur: Instead of the capital being 5 lakhs it shall be 3 lakhs because 2 lakhs have not been allowed.

Chairman: Does it not mean that you ought to have utilised that two lakhs and due to some short-comings in your organisation you have not been able to use it up?

Shri S. K. Kapur: It may also mean that there is no scope for further investment in the undertaking. What I am submitting is, you are taking away 2 lakhs from my capital base. I am not objecting to your having that power. But then, you are further reducing it by deducting depreciation. That depreciation should also be deducted on 3 lakhs and not on the

entire amount of 5 lakhs, because permission is not given to me to put in 2 lakhs.

Chairman: What you are saying is this. If permission is refused on the ground of shortcomings or deficiency in your organisation, then it is all right; but, if the authority is of the opinion that it is due to the fact that the scope for development does not permit you to use all the 5 lakhs and for the present you use only 3 lakhs, then you should not be penalised.

Shri S. K. Kapur: Yes.

Shri Nanda: Then it is allowed to be treated as capital base. Then it will not be subject to depreciation.

Chairman: I think there is some misunderstanding. The Minister is pointing out that if it is not due to any deficiency or defect in your organisation and it is only because your expansion programme does not permit you to use the whole amount in that particular year, then you are quite safe.

Shri S. K. Kapur: My submission was this. If I am to be penalised I am penalised by the disallowance of 2 lakhs out of my capital of 5 lakhs.

Shri Hathi: If you do not utilise it even though there was scope for it, then only it will be disallowed.

Chairman: That penalty will incur only if it is due to your misconduct.

Shri S. K. Kapur: I accept that penalty and that may be legitimate. What I am objecting to is that you are penalising me again by deducting depreciation on the whole amount.

Shri Hathi: The position I think is clear. If out of 5 lakhs 3 lakhs are allowed, two lakhs are not allowed on the ground that they could not be utilised because there was no scope for expansion, then these two lakhs will be allowed to form part of the capital base. There is no objection to that. These two lakhs will not be allowed to form part of the capital base only if these two lakhs are not

allowed on the ground that there was some default on your part to utilise that amount even though there was scope for expansion but you failed to invest. Therefore, all the 5 lakhs will be considered for the purposes of this.

Shri S. K. Kapur: Quite right. I may submit that that penalty of 2 lakhs should be enough. You are further reducing the capital base by deduction of depreciation. You are deducting depreciation on the entire 5 lakhs.

Chairman: We will allow the depreciation to be deducted on the entire amount only when the finding is that your misconduct or deficiency in your organisation was responsible for 2 lakhs being not utilised.

Shri S. K. Kapur: Therefore, I really suffer a double penalty. One is that 2 lakhs is not allowed to form part of the capital base and then there is a further deduction on the entire amount.

Shri Nanda: I personally feel doubtful about this point. I am not quite satisfied. Let me look into it. Now here is a depreciation fund of 5 lakhs. Supposing he had invested 5 lakhs in the concern and 5 lakhs are added to the capital base, 5 lakhs go out here. If he invests only 3 lakhs. This non-investment of 2 lakhs is not approved of. Then it will mean 5 lakhs here and 5 lakhs there. He earns on 5 lakhs. That means the position is the same—5 lakhs cancels 5 lakhs. Where he invests only 3 lakhs we are deducting depreciation out of 5 lakhs. He says, make it minus three lakhs. Your view is that you are losing both ways. Let us say that the original cost of fixed assets was 100 lakhs out of which you take away a depreciation of 5 lakhs. Therefore, you are getting in 100 lakhs the full amount. We are taking out 5 lakhs in depreciation. Then you are investing it again. So it becomes 5 lakhs here. It actually is 100 lakhs and therefore you are getting the full amount. This device was only for the purpose of making the distinction whether an investment is proper or not. That distinction

made us bring in here a plus and a minus there. If we again make it equal, then the distinction disappears. I have gone into the matter fully. I first thought that there was some point. I have closely examined and I find that what we have done is correct.

Shri S. K. Kapur: I will only take one minute more on this.

Chairman: If we accept your submission then the deterrent becomes illusory.

Shri S. K. Kapur: Taking the illustration given by the hon. Minister, if there is a capital of 10 lakhs and 60,000 depreciation fund, if that 60,000 is invested in the undertaking then the asset becomes 10,60,000. Then for the purpose of arriving at the capital base figure 600,000 is taken out and 10 lakhs remain. If on the other hand—that is the principle on which this Act is passed—60,000 is not invested in the business, then it does not go to the capital base, while it will be deducted out of 10 lakhs and the capital base will become 9,40,000. That, I submit would amount to a double penalty.

Shri Nanda: That is true.

Shri S. K. Kapur: My next submission is with regard to Paragraph X of Sixth Schedule—page 17 of my memorandum. Here it is said:

“no dividends in excess of three per cent. shall be paid on share capital and no other distribution of profits shall be made to the shareholders so long as any sums allowed in respect of depreciation for the year of account or any arrears of depreciation or any previous losses remain to be written off in the books of the undertaking.”

Chairman: I think we shall do something in regard to that.

Shri S. K. Kapur: I have one more suggestion with regard to this. You will find that in the original Act it is like this:

"Except with the consent of the State Government no sums shall be carried to a reserve, and no dividends in excess of three per cent on share capital and no other distribution of profits shall be made to shareholders while any sum allowed in respect of depreciation for the year of account or any instalments due in respect of any arrears of depreciation as provided in paragraph XI remains to be written off in the books of the undertaking."

You will find that I am allowed to pay arrears of depreciation in equated instalments. The intention was that if there was any arrears of depreciation due.....

Chairman: We are re-drafting this clause.

Shri S. K. Kapur: The third suggestion in respect of this clause is regarding the use of the words "written off". In actual working that creates some difficulty. I am, therefore, suggesting the use of the word "appropriated", because as the hon. Minister pointed out giving an illustration earlier, unlike the other undertakings there is actually no writing off of assets here till 90 per cent. is depreciated.

Chairman: That means for the first 18 years there will be no writing off of assets.

Shri S. K. Kapur: Writing off comes only when an asset worth Rs. 100 has been depreciated to Rs. 10.

Then you write off and put it to another fund. If the words "written off" are retained here, it may be interpreted that because you write off only at the end, when it has depreciated up to 90 per cent, no dividend can be paid at more than three per cent.

Chairman: We shall consider that point.

Shri S. K. Kapur: Connected with this is another thing. I will just finish with my memorandum—page 22.

Chairman: You have given too many figures. I am only saying that you are trying to put out something like a budget. We are obliged to you for that.

Shri S. K. Kapur: I will come to that later. I shall now resume the points made in connection with No. XVII (2)(c)(i) at page 22.

Chairman: It deals with special appropriation to cover previous losses.

Shri S. K. Kapur: Yes.

Chairman: You are saying:

"Special appropriation sufficient to cover previous losses which have arisen from the business of electricity supply to the extent in any year permitted by the State Government".

How do you fit this in—this actual appropriation—with the permission of the Government? We can understand your amendment proposing the deletion of the reference to the State Government. I thought you have told the hon. Minister that you are not objecting to the State Government coming in.

Shri S. K. Kapur: I am objecting to the form. I am saying that some guiding principle should be laid down.

Chairman: Your suggestion does not fit in with what you have said. You are suggesting the restoration of the old clause. Supposing, we allow the State Government to intervene and give some kind of voting power, how does it fit in here?

Shri S. K. Kapur: Before I come to that, I would like to place my point of view on this special appropriation. May I just pass on this chart? It might make the position clear.

Chairman: Oh, it is printed. Then kindly give us 30 copies.

Shri S. K. Kapur: Yes. Now, I will explain it. The chart shows the statement giving previous losses, etc. Special appropriation is shown in column 8 while loss after appropriation is shown in column 5.

Chairman: According to this scheme, for the first six years, there was a loss. Then there is a loss after appropriation.

Shri S. K. Kapur: Really, that would not have been necessary at this stage. I am only trying to explain what special appropriation is from my point of view. Column 7 shows appropriation in the books. Column 8 shows special appropriation. You will notice that in the 8th year, there is a provision of Rs. 5,000. It is the profit.

Chairman: There is difference between Nos. 2 and 3.

Shri S. K. Kapur: Yes. That profit entirely goes out towards appropriating previous losses. In the next year, this Rs. 5,000 is not distributed. So, the shareholders get nothing although there was a profit, because they put it as previous losses. In the next year, the appropriation is Rs. 10,000. The entire profit is also Rs. 10,000. Therefore, this year, shareholders forego their dividend, though they were entitled to it. They say, "let it go to the previous losses". In the 11th year, the appropriation is Rs. 5,000. Then again, it is nil. There is nothing in the 5th and the succeeding years, till we come to the 15th year. In the 15th year, there is a special appropriation of Rs. 10,000. What it means is this. I have, during the previous years, appropriated towards previous losses, a sum of Rs. 40,000.

Chairman: Up to that date.

Shri S. K. Kapur: Yes. Therefore, in the 15th year, if I earn Rs. 60,000, then, although the return is 6 per cent. which I am not entitled to under the law, still, I am entitled to deduct the special appropriation for the purpose of arriving at a clear

profit. Therefore, I can bring back out of the previous appropriations, Rs. 10,000, and still bring the profit within the five per cent. limit, that is, Rs. 50,000. This Rs. 10,000 is the special appropriation. What the Act does is, as the position stands today, under the proposed amendment, that, if I have, up to the 15th year, appropriated Rs. 40,000 towards previous losses, then, in the 15th year, it would be open to me to distribute the entire Rs. 60,000 if I earn Rs. 60,000. Rs. 40,000 is appropriated towards previous losses. Therefore, all that amount I will bring towards special appropriation, and therefore, I will be entitled to distribute the entire Rs. 60,000.

The object of the proposed amendment is that there should be a restriction on this bringing back of Rs. 40,000. Supposing in the 15th year, I earned a lakh of rupees, I can say under the present Act that in the previous years I have paid Rs. 40,000 towards appropriation of previous losses, and that therefore my profit, although it is Rs. 1 lakh by special appropriation of that amount and taking back the amount of Rs. 40,000, would come to Rs. 60,000. Therefore, I am entitled to distribute the whole of it. The object of the proposed amendment is that although in the 15th year, I am entitled under the present law to take back Rs. 40,000, for the purpose of calculation, there should be some limit on it. Therefore, the State Government may say, "You have earned a lakh of rupees. Special appropriation will not be allowed for more than Rs. 10,000. Therefore, your profit is Rs. 70,000 and it exceeds the five per cent limit by so much, and that excess must be distributed in accordance with the Act".

Chairman: Supposing, in that year your profit is Rs. 50,000 and your previous losses are Rs. 50,000 as entered in the books, you can wipe out the entire Rs. 50,000. The Government could step in and say, "you should not do that this year."

Shri S. K. Kapur: Yes.

Chairman: They may say, "distribute the balance among the shareholders. Take it like that, for the purpose of the dividend".

Shri S. K. Kapur: Really, the object was to avoid giving more to the shareholders. What may happen is this. Special appropriation is made use of when I have earned Rs. 5,000. If I have earned a lakh of rupees and up to the 14th year I have paid Rs. 40,000 towards previous losses, and then, when I earn a lakh of rupees

Shri Nanda: If I may interrupt you; before you earn anything, you must first consider the profits. "Clear profit" means the income derived from, and then "expenditure incurred on". It is the difference between the two that matters. Therefore, this appropriation comes under the expenditure. Then there is special appropriation to cover it. Clear profit is "the difference between the amount of income and the sum of expenditure plus specific appropriations, made up in each case as", etc. So, whatever we give you as special appropriation becomes your clear profit. Therefore, if you allow anything more, it adds to the clear profits.

Shri S. K. Kapur: That is all right.

Shri Nanda: To the extent it adds to the clear profit, in the calculation for the reasonable returns you have to use the figure and that figure should not be more than five per cent.

Shri S. K. Kapur: I may make the point clear. Therefore, if, in the 15th year, according to my chart, I have earned a lakhs of rupees, then out of that, Rs. 40,000 is set apart towards previous losses, that will come under (c), and for the purpose of arriving at clear profits, I will be entitled to deduct up to Rs. 40,000 out of that amount.

Shri Nanda: You have already appropriated that amount. It has been covered. The outstanding losses are only Rs. 20,00,000. You have already got Rs. 40 lakhs appropriated.

Shri S. K. Kapur: But if in the 15th year I can earn only five per cent and if I earn more—more than 5 per cent—that is to say, instead of Rs. 50,000, I earn Rs. 60,000, what happens? This clause says:

"(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 actually appropriated for the purpose in the books of the undertaking;"

Therefore, under clause (c), the Electricity Supply Corporation can come and say that up to the 14th year they have appropriated Rs. 40,000 towards previous losses. In the 15th year, you cannot say, "I have earned more than five per cent, "because, although I have earned Rs. 1 lakh, I am entitled to deduct the special appropriations, namely, the amount that I appropriated in the previous losses.

Shri Nanda: I do not see it in that light. Why do you bring that again? You have already appropriated Rs. 40,000 and so, why are you mentioning it again?

Shri S. K. Kapur: When you are arriving at a figure in any year, the special appropriation is taken into account.

Shri Nanda: I do not think there could be scope for that. That is over now. Rs. 20 lakhs remains. Rs. 40 lakhs have already been covered in the previous year. "Any year" does not mean any year before; it only refers to that particular year.

The whole point is this. We want to come at the figure of clear profits. There are three elements in it— income, expenditure and surplus. Out of the surplus certain appropriations

have to be made. If you have incurred a loss beforehand, it should be made up whenever you make reasonable profits. Out of the balance of loss, you cannot choose any figure, but a figure which is acceptable to the Government. If they put Rs. 15 lakhs, we will accept say only Rs. 10 lakhs. Supposing Rs. 20 lakhs is the outstanding loss in that year and they have actually put Rs. 15 lakhs. Actually in the books they must appropriate Rs. 15 lakhs not in any year in the past, but in that particular year. Now according to the new Bill, you on your own cannot appropriate anything. The Government have the right to say that Rs. 10 lakhs only should be appropriated this year and the outstanding loss only next year. I am not concerned with any electricity undertaking, but I see the intention of the legislation. We have also understood you; we need not spend too much time on that.

Shri S. K. Kapur: I may submit that this point may be made clear. There is another aspect. The words "permitted by the State Government" are now sought to be added. I only want to submit that the permission of the State Government should be in such a manner that we are allowed to earn up to 5 per cent.

Shri Nanda: We are trusting the State Government for doing so many things; here also you can leave it to them.

Shri S. K. Kapur: That creates so many difficulties. According to this clause, it will be absolutely at the discretion of the State Government to do anything.

Chairman: I can quite understand the desirability of prescribing standards; but what standard do you suggest?

Shri S. K. Kapur: My standard is that the appropriation allowed should be such that I earn at least 5 per cent in that year.

Shri Nanda: If you want to appropriate the losses, your purpose is served. I think your fears are unfounded.

Regarding the previous point, if they allow too much to be appropriated in a particular year and that increases the figure of clear profits, that means the rates will have to be increased in order to enable you to get a clear profit at that rate. The Government, being interested in the consumer, may feel that in one year it should not allow so much losses to be appropriated, because it will lead to a rise in the rates. That is the sum and substance of it.

Shri S. K. Kapur: At page 21 of my memorandum, I have mentioned an amendment regarding interest on loans advanced by the Board. This is with reference to clause 17(k) (b) (ii) of your Bill. Previously, interest on loans advanced by the Board under sub-paragraph (2) of paragraph 1 of the First Schedule was the only item which was allowed as an expenditure. That was when the Board directed some extensions to be made. But under the proposed amendment now, interest on all the loans advanced by the Board is being allowed. Our suggestion is that interest on loans and debentures should be allowed as expenditure.

Shri Nanda: All these figures in the capital base already, because you are allowed the full amount you have invested, part of which is loan; we are allowing you 5½ per cent. on that and again you want interest.

Shri S. K. Kapur: So far as the representation in the capital base is concerned, you will appreciate that in the small companies large parts of the loans are really taken for financing the losses. Because the people cannot have assets or cash available for financing losses, loans are taken. Those loans which are taken for financing losses do not go to form part of the capital base. The loans represented in the capital base are loans taken either for extension or replacement.

Shri Nanda: But you are enabled to make up the losses from the increased profits you will be making. You should not bring them in in another way and make a special point of it. You are asking for interest on loans to be also allowed as an item of expenditure although it has already gone into the capital structure, the fixed assets, on which you are getting a reasonable return. You were getting this before; now we have detected it and we are stopping it.

Chairman: The Federation of Electricity Undertakings in India were giving evidence yesterday and they said, "What you are suggesting is quite fair; you are merely plugging a loophole in the previous Act".

So, unless you convince us that even the Federation is wrong, your point of view will not be correct.

Shri S. K. Kapur: The Federation may not be wrong, because it may be representing most of the big companies. But there are also the small companies.

Chairman: It is not a question of big or small; the question is one of principle.

Shri S. K. Kapur: Most of the small companies have to raise loans for financing their losses. So far as that aspect is concerned, those loans are not even represented in the capital base on which a return of 5 per cent. is allowed.

Every company is bound to run at a loss for the first four or five years. In the English Act, there is a special provision that you do not set apart any depreciation for the first five years on the principle that the company is bound to run at a loss during those five years. So, my only point is that the loans raised for financing losses is not represented in the capital base.

Shri Nanda: You are enabled to recover your losses from increased profits. When you recoup your position the entire losses are recovered.

Shri S. K. Kapur: If you look at the balance sheet of my company, you will find that the position is that even the average of 5 per cent. has not been reached even now

Shri Nanda: We cannot start legislating on that basis. If you have got special difficulties, we cannot legislate for that. Whatever loss you incur, it becomes appropriable. You have paid some interest which you are not being allowed as an item of expenditure. To that extent your losses increase. But they can be recovered from subsequent profits.

Shri S. K. Kapur: In the first few years we are not getting any return on the investment.

Shri Nanda: We are not supposing that it will be a normal situation. The losses, interest and all that becomes available for recovery. But you are not in a position to recover it.

Shri S. K. Kapur: Yes, of course, on paper it does. But practically it is not so.

Shri Nanda: That depends on your capacity to work and on your capacity to make profits. We allow you all items of expenditure. If you have no capacity to make profits, even if we allow you a little more, it will not help you.

Chairman: One point has impressed me. Especially in small concerns we have got to finance the loans. But once you accept that, then the Act has to be torpedoed or circumvented.

Shri S. K. Kapur: Unless there is a loss.

Shri Nanda: Does the State Government admit it as an admissible item of expenditure?

Shri S. K. Kapur: We can raise.

Shri Nanda: Certainly you cannot raise for writing off loss.

Shri S. K. Kapur: There is no bar.

Shri Nanda: Now it is not a question of writing off loss. It is a question of giving them help. An undertaking has no working capital because it has incurred losses before. Then they must recoup themselves with some funds in order to enable them to run.

Even if we allow you that as an item of expenditure, then also you can earn it only if you are able to make sufficient revenues by charging certain rates. Now we allow you to increase the rates within certain limits to make up your losses. Therefore, whatever that you lose there, you are allowed to make up under a different procedure.

Shri S. K. Kapur: There are companies in small villages where there is not much scope for development. There the saturation point is really reached.

Shri Nanda: I am telling you, if it is a method of recovery, the recovery of the item of expenditure will be only from your realisation. You can increase this realisation in order to recover all the losses under this clause. Therefore, your item of expenditure or interest on loan also becomes your loss.

Shri S. K. Kapur: I may draw your attention to page 22. The position is that we cannot straightway make profits. The licence is generally for a period of 20 years. Out of the 20 years, the first 2-3 years are taken for construction. So far as making up the previous losses is concerned, as the hon. Minister just now observed, it is made up later on from out of their earnings. What I am trying to make out is this. The period of the licence is 20 years. The first 2-3 years are the construction period. Then, as can be seen from the balance sheets of smaller companies, it will take five years for the companies to start earning profits. Therefore, eight years are gone. Then, during the next five years also the profit will be less than 5 per cent. So, only after

the 13th year you will get the reasonable return.

Shri Nanda: For 13 years there are no profits? I cannot accept that position at all. Companies start making profits from the third or fourth year.

Shri Mohiuddin: No one would invest any pie unless he can earn something within five years. Otherwise, nobody will give you any money, not even as a loan.

Shri Nanda: All the money that is invested is taken into account for calculating the capital base. Interest is allowed. Then you start earning in a year or two.

Shri Mohiuddin: If there is any argument that there will be loss for five years, we can consider it but not for 13 years.

Chairman: You have to take a rational view. We are prepared to agree that for the first few years it will be so.

Shri S. K. Kapur: Leaving the first six years, there will be fourteen years left. The intention in allowing me 5 per cent every year is that in a period of 20 years I should be allowed to earn the full value. If in the first five years I make nothing and then I start making profits gradually for the next few years, hardly reaching the limit of 4 per cent all the time, if I am to make up my previous losses I have got to earn much more than 5 per cent, for over and above that amount I have to meet production losses.

Shri Nanda: There are no losses. All the interest charges are allowed as part of the cost.

Shri S. K. Kapur: Yes, during the period of construction.

Shri Nanda: After that, in a year or two you begin earning.

Shri Mohiuddin: There is confusion about the relation of earning with paid-up capital and capital base. The 5 per cent is on the capital base and

it will really amount to 7½ per cent. or so on paid-up capital.

Chairman: What is your point?

Shri S. K. Kapur: The normal period of the licence is 20 years and the object of the Act is that I should be able to earn 5 per cent. or 5½ per cent on an average each year.

Chairman: So, your point is that all previous interests, all debentures and loans should be allowed as items of expenditure.

Shri S. K. Kapur: So far as loss for financing the loan is concerned, I am not reimbursed. The loans do not come to the capital base. That is my point.

Shri Nanda: You bring in loans to run the concern and you get an interest on that.

Chairman: You are not raising money for financing loans.

Shri N. C. Bhattacharjee: The working capital is limited and, therefore, every year we suffer loss. We cannot meet it out of the working capital. We have got to borrow money in order to pay taxes. We have to pay our men. So, for the first four years we have to borrow money and interest on that is not allowed.

Shri Nanda: That is right.

Shri N. C. Bhattacharjee: We have actually to borrow money because the working capital is limited. The amount that we lose for the first five or six years is in excess of the working capital. That capital is not represented in the capital base. So, we do not get a reasonable return on that amount. Our view is that it should be allowed on the amount that is expended for the purpose of financing the loan.

Shri Nanda: Supposing you are allowed this, what will be the increase in the rates?

Chairman: How far it will affect the consumers? How much will it add to their burden?

Shri N. C. Bhattacharjee: We now allow 5 per cent on the capital base. We are saying that we are not getting 5 per cent.

Chairman: Supposing we allow you interest on debentures and loans, what will be the effect of it on the structure?

Shri N. C. Bhattacharjee: We will never reach 5 per cent.

Chairman: If you don't allow, you cannot even make up this 5 per cent.

Shri N. C. Bhattacharjee: Yes. The desire was to earn 5 per cent return. But our average is not 5 per cent. It is much less than that.

Shri Nanda: Before that, was it 5 per cent?

Shri N. C. Bhattacharjee: No.

Shri Nanda: So, it is independently of this.

Shri S. K. Kapur: Before that interest was allowed as expenditure under clause 11.

Shri Nanda: Even having been allowed that, would you still earn more than 5 per cent. You could not earn more than the limit that is set because you could not raise the rates beyond a certain limit. Therefore, if we allow you to earn 20 per cent instead of 5 per cent, you would not be able to do anything because you cannot raise the rates.

Shri N. C. Bhattacharjee: It is not possible.

Shri Nanda: So, it is only of academic interest.

Shri N. C. Bhattacharjee: We don't want more than 5 per cent. But we are not getting even this 5 per cent.

Chairman: You want to utilize it for the purpose of getting the maximum?

Shri S. K. Kapur: We cannot earn more than 5 per cent. If we make more, certainly we have to revise the rates.

Shri Nanda: There is some capital which has not gone into the assets. Anything that has gone into the assets will earn. Anything that has not gone into the assets will not earn. That is the whole scheme. We pay for the capital employed in the interest of doing some service to the consumer. We do not pay for anything else.

Shri N. C. Bhattacharjee: We want 5 per cent on the capital base. We don't want to be allowed anything else. But we are not actually getting 5 per cent return. I think that none of the small companies will get that. It is possible to get nearly 5 per cent if the licence is granted for a long period. At present in Bengal the licence is granted only for 20 years. During these 20 years it is impossible to earn the average of 5 per cent for the small companies. In the case of bulk licence it may be possible. In the case of small companies in small villages, it is impossible to earn the average of 5 per cent.

Shri Nanda: It is because your costs are so high and you cannot raise the charges. If we allow you to charge higher rates, your revenues will decline. Nobody will purchase power. That is a different issue altogether. A small diesel engine cannot earn 5 per cent because even if I am allowing you to charge more how are you going to earn more when the costs are high? That is an economic proposition.

Shri N. C. Bhattacharjee: It appears that West Bengal Government are really not allowing new licensees to make their own arrangements to generate power. There is a clause in every licence that whenever energy is available with bulk licensees or Government, they must take it from them so that there is no question of generating power by small licensees by installing diesel plant. It is not really possible to make 5 per cent out of the small villages or small towns. In Calcutta the Electricity Supply Corporation has been there for the last 60 years. Now, they are in a position to earn more than 5 per cent.

But at the beginning they themselves were suffering losses for a very long time.

Chairman: Any other point?

Shri S. K. Kapur: My other submission is in regard to paragraph XI on page 19 of my memorandum. In this case, no amendment is proposed in the Bill. Paragraph XI reads as follows:—

“Arrears of depreciation calculated in accordance with paragraph VI may be written off by equated payments over the remainder of the 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.”

My submission in regard to this paragraph is that instead of writing off these arrears of depreciation by equated payments over the remainder of the prescribed period, a provision may be made that I would be entitled to pay back the depreciation within the period of my licence. The difficulty arises this way. Arrears of depreciation may arise really because in some cases of old companies, there might be no depreciation set apart previously, and while for the purpose of calculating the prescribed period.

Chairman: Is no depreciation fund started in the case of old companies?

Shri S. K. Kapur: It was not required to be started.

Chairman: The arrears of depreciation have now to be calculated....

Shri Mohiuddin: May I interrupt? They must have started depreciation but probably it may not be upto the maximum required. Depreciation must be provided in all cases.

Shri S. K. Kapur: That is one of the features. In the case of new companies, the period starts when the assets become available for use and it

has to be in accordance with this VI Schedule. It has to be set apart when it is actually employed in the business. Assets may become available for use much earlier....

Chairman: In actual practice, was not depreciation being written off every year from the commercial point of view? Maybe there is no statutory obligation. Could you tell us, Mr. Bhattacharjee, what is the practice?

Shri N. C. Bhattacharjee: There are cases where it is not started. There are cases where depreciation was set aside at much lower rate than prescribed. There are also cases where it is set aside at higher rate.

Shri Nanda: Depreciation comes back to you, that is, it may be at the expense of dividend.

Shri S. K. Kapur: It may be at the expense of the dividend or at the company's expense. It may not be possible to set apart depreciation within the prescribed period because it may be very short; it may have already expired. If I cannot set apart depreciation the result will be that when the undertaking is taken over, I will not take advantage of the depreciation. Therefore, all that we submit is that we should be allowed to set apart arrears of depreciation within the period of licence. We cannot set apart after the prescribed period is over, in this case, whereas the period of licence may be 20 years and we may be able to set apart depreciation within this period.

Shri Nanda: You want to take out the depreciation arrears from the use of some other assets of the company. If we wind up the company, then the question does not arise.

Shri S. K. Kapur: That is only one point. The second point is this. If depreciation has to be set apart within the prescribed period, the position is this. Supposing there is one unit. For that unit, I have to set apart certain depreciation. Paragraph XI says that we should set apart depreciation within the prescribed period. Prescribed period may be two years or

three years. If there are arrears, I have to pay it within this time. If I cannot pay those arrears within the prescribed year, the difficulty will be that I will not be given any benefit of the depreciation, because when the Government takes over my company, I will be paid for that unit.

Shri Nanda: Your point is that you have worked the thing without getting any profit.

Shri S. K. Kapur: Therefore, we should be given benefit of depreciation by allowing us to set apart depreciation within the licence period. Prescribed period may be just one or two years. Licence period means, while the company is still going on.

Shri Nanda: Although the prescribed period is over, the actual asset is still there and is still earning. Now, your point is that it should, therefore, be allowed to be depreciated. Or it may mean this: Taking out this depreciation from any other directions. Asset is still in use and therefore you should be allowed to depreciate it.

Chairman: There is a proviso here that a licensee can apply to the State Government.

Shri Nanda: It is already provided for that when the physical assets remain, you can still make an application to the State Government.

Chairman: His point is that prescribed period will be too short. That is their difficulty. Any other point?

Shri S. K. Kapur: My next point is in regard to paragraph XIII relating to managing agents.

Chairman: The Federation has also argued this point. We shall pay sympathetic attention to this point.

Shri S. K. Kapur: Under the Companies Act, no office allowance is payable to the managing agents.

Representative of the Ministry: There is a specific provision saying that provisions of the Electricity

(Supply) Act will override the provisions of the Companies Act.

Chairman: Any other point?

Shri S. K. Kapur: The words of section 616 are inconsistent.

Shri S. K. Kapur: Kindly go to page 20. This refers to the amount of loans advanced by the Board.

Chairman: Formerly the amounts of loans were advanced by the Board in connection with the Generating stations, certain extensions etc. That was to be taken into account. Now all loans are advanced by the Board.

Shri S. K. Kapur: My submission is that when the loan is taken from the Board my responsibility and liability is increased; and I am being allowed no return whatsoever on that amount.

Shri Nanda: It is half-a-per cent.

Shri S. K. Kapur: On the loan for extensions only.

Chairman: Is it a reasonable return?

Shri S. K. Kapur: That is right.

Half a per cent is too small, while on the other we get 5 1/2 per cent.

Next, I would like to refer to the security deposit of the consumers held in cash. This is not, in the scheme of things, a nature of trust. We may be entitled to use that in the business. Because of this deduction the consumer is having advantage of reduced rate as well. Therefore, by this deduction the consumer is getting double advantage.

Chairman: You say that it should be taken into account.

Shri S. K. Kapur: That should not be deducted for the purpose of capital base.

Chairman: You say that it should not be taken into account.

Shri Nanda: It is being allowed as a part of expenditure.

Shri S. K. Kapur: Please see 17(1) that is, capital base. Under 'deductions', another item is being added,

namely, the amount of security deposit of the consumers held in cash.

Chairman: Where is it coming in?

Shri S. K. Kapur: It is at page 20 of the memorandum.

Shri Nanda: How can you earn on this also and the expenditure? Under expenditure you are earning interest.

Shri S. K. Kapur: We are paying interest to the consumer.

Shri Nanda: Therefore you cannot add it to the capital base.

Shri S. K. Kapur: This amount is utilised in the business.

Shri Nanda: Therefore it is taken out of the capital base. In deductions it is taken out.

Shri S. K. Kapur: This should not be taken out.

Shri Hathi: It is an item of expenditure.

Shri S. K. Kapur: For the amount I have invested I get no return!

Shri Nanda: For interest on the whole amount, you are getting it here. Having got that why should you calculate as capital base and all that for a further 5 1/2 per cent? It is again a double calculation. You have charged it to expenditure. Why should you take it as capital base? I think it is very clear.

Chairman: The total amount of Consumers' deposits figures come to 6,11,00,000. This is an all-India figure. You are getting full credit for your money. It is something like a loan. You are using other people's fund. You are trusty for the money. You are the beneficiary. You have got to refund it.

Shri S. K. Kapur: So far as the consumer is concerned, he gets interest as well as his money.

Shri Nanda: We have not allowed you to increase the rates for him unless as a reserve.

Chairman: Do you want to say anything more?

Shri S. K. Kapur: Kindly refer to page 6 to the constitution of the Rating committee. The Rating Committee, under the Bill, is proposed to consist of three members; and it is a point when the Board is to come to the conclusion that we have been guilty of some default.

Shri Nanda: We are examining that point.

Shri S. K. Kapur: It is to be provided that there should be appeal to some High Court against the decision of the arbitrators.

Chairman: I thank you on my behalf and on behalf of the members for all the assistance and the clarification you have given.

(Witnesses then withdrew)

(The Committee then adjourned.)