Before the

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

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Case No. 47 of 2006

In the matter of

Petition filed by The Tata Power Company Limited (TPC) for Review of the Tariff Order dated October 3, 2006 in Case No. 22 of 2005 and 56 of 2005

Dr Pramod Deo, Chairman

Shri A. Velayutham, Member

Shri S. B. Kulkarni, Member

ORDER

Dated: March 22, 2007

In exercise of powers vested in it under Section 61 and Section 62 of the Electricity Act, 2003 (EA 2003) and all other powers enabling it in this behalf, and upon detailed scrutiny of various responses, objections, suggestions, comments made by consumers, The Tata Power Company Ltd. (TPC) and other key stakeholders as part of their written submissions as well as during the public hearing, the Commission passed an Order in Case No. 22 of 2005 and 56 of 2005 on the Annual Revenue Requirement (ARR) Petition of The Tata Power Company Limited (TPC) for FY 2005-06 and ARR & Tariff Petition for FY 2006-07, on October 3, 2006.

2. TPC filed a Petition on November 15, 2006 under Regulations 85 and 92 to 97 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 seeking review of the Order dated October 3, 2006 passed by the Commission in Case No.s 12 and 56 of 2005. in its Review Petition, TPC raised the following issues:

ISSUES PERTAINING TO TRUING UP FOR FY 2004-05 AND FY 2005-06

i) **Disallowance of legitimate claims for depreciation:**

TPC submitted that under the Tariff Order dated October 3, 2006, the amount of depreciation to the tune of Rs. 45 Crore for FY 2004-05 and Rs. 4 Crore for FY 2005-06 has been disallowed. The Commission had observed that the projected amount of depreciation on

transmission assets was high. Primarily, the Foreign Exchange Rate Variation (FERV) has caused rise in depreciation. Had the rise in FERV been accounted as a forex loss, it would not have caused any rise in the amounts claimed/projected under depreciation. However, while complying with the directives issued under order dated June 11, 2004 in Case No. 30 of 2003 inasmuch as accounting FERV in line with Accounting Standard AS 11 from FY 2004-05 onwards, TPC was constrained to capitalize the original/old transmission assets, which has led to a rise in the depreciation amount. Secondly, an additional amount of Rs. 33 Crore was claimed by TPC on account of depreciation for insurance spares required to be capitalised and depreciated as per Accounting Standard AS 2. TPC also confirmed that it had submitted the Auditors certificate certifying that the accumulated deprecation for assets pertaining to the Mumbai license area has not exceeded 90% of the asset value. The Commission should consider granting admission to this present review petition and approving depreciation to the tune of Rs. 245 Crore with respect to FY 2004-05 and Rs. 157 Crore with respect to FY 2005-06.

ii) Disallowance of 25% of income tax for the licensed area business:

TPC submitted that under the Tariff Order dated October 3, 2006, the Commission has apportioned income tax with respect to the licensed area of TPC and income tax with respect to its other business in the ratio of 75:25, on an erroneous understanding that income tax claimed includes the revenues earned by TPC on its several other business. TPC clarified that it had not claimed any income tax on account of income earned by NDPL, transmission projects, power trading or any other businesses of TPC, together with income tax applicable for its licensed electricity business in Mumbai, as these businesses are carried out through separate Companies and TPC merely holds equity capital in these Companies. As regards other power businesses of TPC like Belgaum and Jojobera, separate accounts are maintained by TPC and taxable income is computed separately even for determining the benefit under Section 80 IA of the Income Tax Act. Hence, the question of Mumbai license area subsidising other business does not arise. The Commission should consider that the tax liability of TPC with respect to its other businesses is not loaded on to its consumers in the Mumbai licensed area. In fact, TPC has paid total tax of Rs. 175 Crore for FY 2004-05 and Rs. 157 Crore for FY 2005-06, which are much higher than the claims of TPC made before the Commission and the required proof of such tax payments is submitted with the Review Petition. The Commission should consider granting admission to this present review petition and approving the amount of income tax claimed by TPC in licensed area working to the tune of Rs. 138 Crore and Rs. 159 Crore for FY 2004-05 and FY 2005-06, respectively.

iii) Disallowance of employee expenditure:

TPC submitted that the actual employee expenditure incurred by TPC in FY 2004-05 is Rs. 148 Crore as compared to the Commission's approval of Rs. 146 Crore, in the Tariff Order dated June 11, 2004. Since an amount of Rs. 15 Crore was reversed in the accounts of TPC, TPC had claimed approval for Rs. 133 Crore (i.e. Rs. 148 Crore less Rs. 15 Crore) as its actual employee expenses for FY 2004-05. The Commission should consider the allowed amount of Rs. 146 Crore as the benchmark to determine employee expenditure pertaining to

ensuing years, and not the amount of Rs. 133 Crore owing to the exceptional adjustments made to the tune of Rs. 15 Crore, as aforesaid. TPC requested that the error in considering the actual employee expenditure for FY 2004-05 (Rs. 133 Crore) after adjustments, as a benchmark to approve employee expenditure for FY 2005-06 should be reviewed and the actual employee expenditures for FY 2005-06 being Rs. 152 Crore may be trued up keeping Rs. 146 Crore as the benchmark figure.

iv) Disallowance of R&M Expenditure:

TPC submitted that the approach of the Commission to allow R&M expenditure at a normative level of 3% of GFA is erroneous. Firstly, the units of TPC are very old requiring substantially high R&M expenditure and certain non-repetitive expenditure. Unit IV is functioning for about 40 years and most other units are functioning for upwards of 20 years. TPC submitted that the norm of 3% of GFA also does not provide for inflation, even if there is no increase in gross block of assets. Thus, the Order dated October 3, 2006 should be reviewed to re-consider approving an amount of Rs. 119 Crore towards R&M expenditure for FY 2005-06.

v) Disallowance of A&G Expenditure:

TPC submitted that the amount claimed by TPC under A&G expenditure for FY 2004-05 was inclusive of an amount of Rs. 21 Crore which TPC had incurred while engaging consultants in the implementation of cost saving exercises/initiatives. The savings in FY 2004-05 and FY 2005-06 to the tune of Rs. 99 Crore including the savings in fuel costs arising out of advice of consultants have been passed on in toto to consumers as the norms based performance were not applicable for these years. TPC submitted that due consideration in tariff should be given effect to by the Commission in this regard.

Further, the Commission has not considered the increase in service tax rates from 8% to 12.24% over last 2 years and the increase in Land Rents, Way Leave fees, etc. payable to the various statutory/semi Government bodies, while approving A&G expenditure. Thus, the Commission should admit the review petition and grant the truing up of Rs. 102 Crore for FY 2004-05 and Rs. 101 Crore for FY 2005-06 under the head A&G expenditure.

vi) Disallowance of 1/3rd retention of surplus under the Sixth Schedule:

TPC submitted that the Commission has utilised the entire surplus of Rs. 143 crore, as computed by the Commission, to meet the deficit of Rs. 313 crore determined for FY 2005-06. TPC submitted that as the Sixth Schedule of the erstwhile Electricity (Supply) Act, 1948 has been made applicable for FY 2004-05 and FY 2005-06, the Commission should have allowed TPC to retain 1/3rd of the surplus as determined by the Commission, which works out to Rs. 10.25 Crore for FY 2004-05, based on the various figures approved by the Commission in the impugned order dated October 3, 2006.

vii) Inappropriate drawal from various statutory reserves:

TPC submitted that the statutory reserves of TPC have been created for a particular purpose given either under the Sixth Schedule of the Electricity (Supply) Act, 1948 or under Governmental permission. The Contingency Reserve of TPC, amounting to Rs. 183 Crore has been created under Para IV of the Sixth Schedule to meet expenses prevailing under force majeure conditions, as it is intended to meet loss or profits arising out of '*circumstances which the management could not have prevented'*. TPC added that the gap as computed in the Tariff Order is mainly on account of un-recovered FAC for expenses that have already been incurred by TPC. While TPC had deliberated before the Commission earlier, the Commission did not remove the cap on FAC recovery. The approach of the Commission considering FAC as a force majeure condition is erroneous, as FAC is anticipated, and hence, the Commission should recall its findings with respect to drawal of such reserves to meet the gap.

viii) Ignoring the diminished value of investment while drawing from reserves:

TPC submitted that the contingency reserve amount collected from the consumers have been invested in specific securities like units of UTI, as directed by the Sixth Schedule of the ESA. However, over the period, there has been a diminution in the value of the investment to the extent of Rs. 39 crore, and hence, the contingency reserve of Rs. 183 crore is worth only Rs. 143.6 crore. TPC submitted that even if such drawal from such statutory reserve is possible, such appropriation should have been limited to only Rs. 187 crore, as against Rs. 226 crore considered by the Commission, and the Tariff Order dated October 3, 2006 be reviewed accordingly.

ix) Income tax adjustment in clear profit:

TPC submitted that if the expenditure disallowed by the Commission are considered, then the profit before tax would be higher and accordingly, the income tax liability would also be higher to the extent of Rs. 9.5 crore and Rs. 10.1 crore, in FY 2004-05 and FY 2005-06, respectively, which should have been considered by the Commission. The Commission should not have deviated from the approach adopted under its Order dated June 11, 2004 in Case No. 30 of 2003.

x) Disallowance of Capital Expenditure incurred within the approved limits:

TPC submitted that the Commission has approved only a portion of the capital expenditure sought by TPC, citing discrepancy between the data submitted under Form 5.3 and Form 5.4 of the submission, and pending submission of DPR. TPC regretted that there was no reconciliation between Form 5.3 and Form 5.4 and submitted the revised Forms along with the Review Petition. TPC added that it was under the impression that as per the Order dated June 11, 2004 in Case No. 30 of 2003, proof of network development was sufficient to obtain the Commission's approval for the capex, and submission of DPR was not essential. Moreover, prior submission of DPR for approval is required only in cases of capex upwards of Rs. 10 Crore. TPC had put up for approval total capex to the tune of Rs. 12 Crore for FY 2004-05 (for 238 schemes) and Rs. 37 Crore for FY 2005-06 (for 163 schemes). Capex for only one scheme is over Rs. 10 Crore, for which TPC would be submitting a DPR. The

Commission should have allowed the capex for such schemes which were targeted to further the network development. TPC is infact earning revenue from such consumers who are being supplied electricity pursuant to such schemes.

xi) Departure from Accrual/Mercantile System:

TPC submitted that while TPC has accounted its costs and revenue from power supply on accrual basis, the Commission has considered the actual billed revenues to rework the CP-RR gap. TPC submitted that by this approach, the amount to be trued up has been inflated by Rs. 356 crore, and the same has been adjusted from consumers' reserves. TPC stated that this defeats the matching costs concept whereby fuel and power purchase costs incurred and booked as expenditure should be matched with the revenue of the relevant year, FAC being a pass-through. TPC added that for FY 2004-05, the revenue reported by TPC on accrual basis (including adjustment for over-recovery of FAC) has been correctly considered by the Commission. This shift of approach of not adhering to Accounting Standard AS-1 has resulted in the denial of the recovery of FAC through tariff. TPC submitted that the FAC under-recovery should not be trued up but allowed to be billed to the consumers either by removing the cap or one-time bill raised for short-recovery at the end of each financial year.

ISSUES PERTAINING TO FY 2006-07

i) Payment of wheeling charges by MSEDCL:

TPC submitted that an amount of Rs. 24 Crore constituting the payment of wheeling charges by MSEDCL was included in its Petition for approval of the transmission charges for FY 2005-06. Pursuant to the Order of the Commission dated September 29, 2006 in Case No. 31 of 2006 on intra-State transmission, such wheeling income would not accrue to TPC. TPC requested the Commission to revise the ARR of TPC for FY 2006-07 upwards by Rs. 24 Crore.

ii) Provision for un-recovered FAC pertaining to the period from 1st April 2006 to 30th September 2006:

TPC submitted that the cap of 21 paise per unit on FAC under the Tariff Order dated June 11, 2004 in Case No. 30 of 2003 has resulted in TPC not being able to recover FAC amounting to about Rs. 308 Crore pertaining to the period from 1st April 2006 to 30th September 2006. TPC submitted that the MERC (Terms and Conditions of Tariff) Regulations, 2005, effective from 1st April 2006, do not envisage any cap on FAC arising out of fuel cost variation on sales from the Generating Company to the Distribution Licensee. Secondly, the said tariff regulations read with the EA 2003 envisage that the distribution licensee shall directly undertake procurement of power, and hence, FAC on account of variation in power purchase price need to be borne by the Distribution Licensees themselves. Thus, in review of the Order dated October 3, 2006, the Commission may grant permission to TPC to recover the un-recovered FAC from REL and BEST in proportion to sale of power to the said utilities, in the next power supply bill.

iii) Standby Charges already incurred during first six months of FY 2006-07:

TPC submitted that while the Commission has approved standby charges payable by TPC to MSEDCL to the tune of Rs. 72 Crore for FY 2006-07, TPC has paid the standby charges for the six month period from April to September 2006 on the basis of the earlier Order, i.e., TPC has paid 50% of the net liability of Rs. 305 crore. In addition, TPC is required to pay 50% of Rs. 72 crore, as its share of standby charges for the period October to March 2007. In all, TPC would be required to pay Rs. 189 Crore, against its liability of Rs. 72 crore determined in the Tariff Order. The Commission may consider the said amount while truing up the ARR of TPC for FY 2006-07.

iv) Applicability of Revised AS -15:

TPC submitted that though it had not included the impact of applicability of revised AS-15 (effective from FY 2006-07) in its ARR and Tariff Petition, revised AS-15 requires TPC to provide for inclusion of various employee benefits and to restate certain other employee benefits such as encashment of privilege leave and sick leave on a more conservative basis. TPC submitted that the applicability of revised AS-15 has two impacts, viz., increase in the employee expenses in FY 2006-07 by Rs. 4.67 crore, and reduction in the General Reserves by Rs. 55.5 crore. The reduction in General Reserve has eroded the Net Worth of shareholders to that extent, which has occurred on account of increase in employee expenses in the past period, had revised AS-15 applied. However, as revised AS-15 was not applicable to the past periods, the additional expenditure was not passed on to the consumers in the past. TPC submitted that the increase in liability due to applicability of revised AS-15 and the corresponding reduction in General Reserves need to be borne by the consumers and therefore need to be passed on in the ARRs of future years. The Commission should allow TPC to amortise this amount of Rs. 55.5 Crore over next three years, and include the same in the ARRs of the next three years. through tariff. The Commission should consider permitting the said additional employee expenditure while truing up the ARR of TPC for FY 2006-07.

v) Implementation of two-part TOD Tariff for LT- 2 consumers:

TPC submitted that it has already installed demand meters capable of recording ToD consumption as stipulated under Order dated June 11, 2004 passed in Case No. 30 of 2003, for LT-2 consumers with contract demand above 20 KW. However, TPC has to now install demand meters capable of recording ToD consumption for LT-2 consumers with load of 11 kW upto 20 kW, as stipulated in the Commission's Tariff Order dated October 3, 2006. TPC would need at least a month to install new meters to record the maximum demand for LT-2 consumers having a contract demand between 11 KW and 20 KW. Further, since the time-slots to record ToD has been revised under the Tariff Order dated October 3, 2006, TPC would be required to re-programme all the installed meters to record ToD accordingly. It would be possible for TPC to charge LT-2 consumers with load below 20 KW as per the Tariff Order dated October 3, 2006, only from January 1, 2007. For LT-2 consumers with load between 11 KW to 20 KW, TPC would be able to charge tariff as per the said tariff order only from March 1, 2007. Pending the above, consumers would be billed on the tariff

applicable to LT-1 category. Alternatively, the limit for MD based tariff needs to be revised from 11 kW to 20 kW.

vi) Levy of Load Management Charges (LMC) and Load Management Rebate (LMR):

In its Review Petition, TPC submitted that it would be in a position to start billing LMC/LMR from the month of November 2006, as the levy of these charges required changes in the billing software programme.

vii) Penal charges for consumers exceeding their contract demand:

TPC submitted that the Tariff Order does not specify any penalty for consumers recording maximum demand in excess of their Contract Demand. Hence, TPC proposed to continue to levy the same penalty as applicable through the Tariff Order dated June 11, 2004 passed in Case No. 30 of 2003.

viii) Separate categorization of CPPs:

TPC requested the Commission to clarify the tariff applicable for HT consumers having Captive Power Plant, which has been indicated as having demand charge of Rs. 374 per kVA per month and energy charge of Rs. 2.90 per kWh, as per the Appendix 3 to the Order dated October 3, 2006.

ix) Classification of BPL Category Consumers:

TPC requested the Commission to clarify regarding the applicability of BPL category tariff for residential consumers residing in affluent localities with locked houses and consumption below 30 units per month. TPC submitted that consumers may be categorised as BPL category consumers based on the connected load rather than as per monthly consumption. TPC proposed that BPL category tariffs could be applicable for consumers having a total connected load of 0.2 kW.

x) Levy of DPC and Interest:

TPC submitted that the Tariff Order does not specify any delayed payment charges (DPC) and interest for payment of bills by consumers after the expiry of the due date. Hence, TPC proposed to continue to apply DPC and interest as applicable through the Tariff Order dated June 11, 2004 passed in Case No. 30 of 2003.

xi) Removal of HP based tariff categorisation:

TPC submitted that it has interpreted the applicability of LT-2 tariff to consumers above 15 HP as applicable to consumers above 11 kW (as 15 HP translates to around 11 kW) as the meters are calibrated to measure kW or kVA. TPC requested the Commission to permit the same.

xii) Discount for Supply at High Voltage:

TPC submitted that the Tariff Order does not specify any discount in tariff for supply to consumers at high voltage. TPC requested the Commission to clarify regarding the discount applicable for consumers availing supply at higher voltage, viz., 100 kV and above.

3. The notice for the hearing on Case No. 47 of 2006 was issued on December 5, 2006, to the Petitioners, REL, BEST and authorised Consumer Representatives. The hearing held on December 27, 2006, at 11:00 hours in Centrum Hall, World Trade Centre, Centre – 1, Cuffe Parade, Mumbai 400005, was attended by representatives of TPC. No consumer representative was present for the hearing.

4. In the hearing held in the matter on December 27, 2006 the Commission enquired of TPC whether the Tariff Order dated October 3, 2006 has been implemented with regard to LMC and ToD tariff particularly in view of the application of TPC seeking extension of time for implementing the direction regarding imposition of LMC. The Commission observed that it would be a serious violation of the said Tariff Order if it has not been implemented by TPC.

5. Shri. J.D. Kulkarni of TPC submitted that the directions regarding LMC were initially not implemented by TPC in the month of October. In the month of November, however, when TPC were to implement the directions regarding LMC, it was under an impression that LMC need not need to be implemented for the time being in view of the anticipated order in the case of Reliance Energy Limited for withdrawal of direction to impose LMC. He submitted that with regard to TOD tariff, TPC have already started implementing the same. Shri. Kulkarni submitted that in their petition itself TPC had indicated that LMC shall be imposed from the 1st of November. The Commission observed that TPC has to implement the Commission's Orders on the stipulated date of implementation mentioned in the Orders. The date of implementation specified in the Order dated October 3, 2006 is 1st October 2006. As TPC has contravened the stipulation in the said order regarding the date of implementation, the Commission may consider issuing a notice under Section 142 of the EA 2003. It is improper that TPC has not implemented the Order of the Commission based on their own assumptions and anticipations.

6. Shri. Kulkarni submitted that the delay in implementing the Tariff Order was due to difficulty faced on account of implementation of necessary and requisite modification to the billing programmes. Shri. Ramakrishnan, Executive Director (Finance)-TPC, submitted that the reasons for non-implementation of the said Order was unintentional; one reason was the practicality of implementation for which TPC had sought additional time and the other reason was the anticipated order in the petition of Reliance Energy Limited for withdrawal of direction to impose LMC. It was clarified by the Commission that there been no such informal communication as contended by TPC and no contentions can be made on the ground that informal communications have been exchanged. Shri. Ramakrishnan fairly admitted that there has been a mistake on the part of TPC on account of the aforesaid contention.

7. It was enquired of TPC about the steps that have been taken by TPC with respect to the direction contained in the said Order dated October 3, 2006 with respect to sub-distribution through franchisee route. Shri. Kulkarni submitted that TPC has already appointed some franchisees. The Commission enquired whether TPC has informed the Commission of the franchisee arrangements entered into by TPC. Shri. Ramakrishnan clarified that franchisee arrangements have been formulated with respect to residential colonies belonging to TPC itself. The franchisee arrangement referred to by the Commission would be the formal franchisee agreement for which the draft would be submitted to the Commission and approval obtained. The Commission observed that the colonies referred to by TPC have offices and residences. Offices and residences cannot be combined. For offices, separate metering would be required for each office building and separate billing would be required to be done although there would be no such requirement for residences. The tariff would differ in such cases and if such an arrangement is undertaken through franchisee arrangement then the franchisee agreement would need to reflect the same. There cannot be a common tariff for residences and offices, although situated in the same location. Offices would be charged commercial tariff.

8. Shri. Ramakrishnan submitted that as far as the main supply was concerned it is on commercial basis. As far as supply to residences were concerned, it is on residential basis. The Commission enquired whether the supply was made at one point. Shri. Kulkarni submitted that under the franchisee arrangement separate meter reading is done. It was also submitted that the residential tariff as charged to consumers of TPC are also being charged to these residential colonies. The Commission asked TPC to explain the veracity of the submission made. Shri. Ramakrishnan submitted that the formalisation of the franchisee agreement would be complied with. In terms of practices, TPC will ensure that the residential occupants would be charged residential tariff which is different from commercial tariff. The Commission observed that bulk supply tariff should not be charged but the cumulative tariff should be applicable. Illustratively, if there are ten houses in a society/complex, then for the ten there would be residential tariff that should be charged and if there are five commercial/office occupants then the commercial tariff should be charged. This is required for the legal tenability and also for greater focus on energy saving. Even if there is a franchisee agreement, the distribution licensee is ultimately responsible for complying with the Standards of Performance regulations and other legal obligations of a licensee. The tariff category has already been decided by the Commission based on the usage. TPC submitted that tariff for housing society has not been decided in case of TPC, unlike the provision in case of REL. The Commission observed that there is a residential tariff which is applicable for TPC. TPC submitted that a separate tariff for housing complexes has not been indicated for TPC.

9. The Commission enquired whether TPC were billing consumers based on individual meter readings for each consumer category. TPC submitted that the same cannot be done as there is currently a restriction on TPC to supply to consumers below 1000 kVA. The Commission clarified that the question was with respect to existing consumers and not new

consumers. Illustratively, is TPC giving one bill to Phoenix Mills and Phoenix Mills is billing the occupants itself or is TPC billing the occupants of Phoenix Mills separately based on individual meter readings? It was clarified by TPC that one bill is issued to Phoenix Mills. The Commission observed that this cannot be done and the same would be in violation of the law. Issuance of a single combined bill also poses difficulty in monitoring energy consumption by the different occupants in such a situation. Billing cannot be done as is being done in the case of Phoenix Mills where the billing is done by Phoenix Mills itself. TPC should appoint franchisees in such a situation of existing consumers of TPC. If there is any difficulty, TPC should approach the Commission formally as there can be no informal approach in tariff or other regulatory proceedings.

10. Thereafter, the Commission observed that the grounds for review under Regulation 85 of the Commission's Conduct of Business Regulations are limited. TPC would be required to substantiate whether their review petition is maintainable or not. TPC submitted they would rely on a presentation to explain the grounds of review that are available to TPC. While submitting on the merits of the review petition filed, Shri. Ramakrishnan and Shri. J.D. Kulkarni made a power-point presentation in support of their submissions.

11. Having heard the parties at length and after considering the materials placed on record, the Commission is of the view as under:

ISSUES PERTAINING TO TRUING UP FOR FY 2004-05 AND FY 2005-06

i) **Depreciation:**

TPC has submitted that the higher depreciation claimed in FY 2004-05 was primarily on two accounts, viz., (a) depreciation charged on the capitalised amount of Foreign Exchange Rate Variation (FERV) in accordance with AS-11, amounting to Rs. 37 crore, as the remaining useful life of the asset was nil, and (b) depreciation on insurance spares in accordance with AS-2, amounting to Rs. 37 crore, leading to depreciation being higher than the allowed levels by Rs. 45 crore.

The relevant Accounting Standard –11 (Revised 2003) was made applicable from accounting year 2004-05. According to AS-11 (Revised 2003), forex variations on account of repayment of loan solely incurred for the purpose of acquiring the asset should no longer be capitalised and be charged to revenue.

However it may be noted that the Institute of Chartered Accountants of India (ICAI) has issued an Announcement in 2003 titled 'Treatment of exchange differences under Accounting Standard (AS) 11 (revised 2003), The Effects of Changes in Foreign Exchange Rates vis-à-vis Schedule VI to the Companies Act, 1956'. As per the Announcement,

> "*the requirement with regard to treatment of exchange differences contained in AS 11 (revised 2003), is different from Schedule VI to the Companies Act, 1956, since AS 11*

(revised 2003) does not require the adjustment of exchange differences in the carrying amount of the fixed assets, in the situations envisaged in Schedule VI. It has been clarified that pending the amendment, if any, to Schedule VI to the Companies Act, 1956, in respect of the matter, a company adopting the treatment described in Schedule VI will still be considered to be complying with AS 11 (revised 2003) for the purposes of section 211 of the Act. Accordingly, the auditor of the company should not assert non-compliance with AS 11 (2003) under section 227(3)(d) of the Act in such a case and should not qualify his report in this regard on the true and fair view of the state of the company's affairs and profit or loss of the company under section 227(2) of the Act." (Published in 'The Chartered Accountant', November, 2003, pp. 497.)

As a general practice, Companies have been following the policy of capitalizing forex variations in their financial statements while reporting the financial results in accordance to the provisions of Part I, Schedule VI to the Companies Act, 1956. Hence, the Commission has accepted TPC's submission that the capitalisation of forex variation has been done in accordance with AS-11, for the purposes of this Order.

In its submission, TPC has claimed that the remaining useful life of the asset was nil, the capitalised FERV has been depreciated fully in the year of capitalisation itself, viz., FY 2004-05. It appears that the useful life considered by TPC for this purpose refers to the useful life considered for the purposes of depreciation, and not the real useful life of the transmission asset, which is less than 15 years old, as the foreign exchange loan repayment was still being made on account of which the FERV has occurred. The useful life of such transmission assets as stipulated by the Commission's Tariff Regulations ranges between 25 to 35 years. However, since the truing up expenditure refers to FY 2004-05, wherein the Commission's Tariff Regulations were not applicable, the useful life of the asset as stipulated in the Ministry of Power (MoP) Notification of March 1994 on 'Depreciation Norms for licensees' would be applicable. The fair life of the transmission assets as stipulated under the MoP Notification also ranges between 25 to 35 years, depending on the voltage. Hence, TPC's submission that the remaining useful life of the asset is nil, is incorrect, and the balance useful life of the asset would be at least around 20 years. The capitalised FERV would have to be depreciated over the balance useful life of the asset, as provided in the AS-11. Since the actual age of the relevant asset is not known, the Commission is not in a position to determine the depreciation allowable in FY 2004-05 and subsequent years, on this account.

Moreover, the auditor's certificate submitted by TPC indicates that the FERV has been capitalised and depreciated to the extent of 100%, though the principal asset has been depreciated only 90% in accordance with the regulatory requirements. Hence, the depreciation on the capitalised FERV should also be limited to 90%, as a result of which, the extent of depreciation additionally allowable would reduce by Rs. 3.72 crore. TPC may submit the detailed description of the assets for which FERV was incurred, age of the asset

and the balance useful life of the asset, with reference to the MoP notification, to enable the computation of depreciation in future years, on this account.

As regards the capitalisation of insurance spares and the corresponding depreciation, this detail was not submitted earlier to the Commission, along with the Petition. Further, the impact in FY 2004-05 has arisen primarily because of change in accounting policy of the Company, as insurance spares were identified and depreciated in accordance with AS-2 in FY 2004-05. As this does not qualify under either "mistake or error apparent on the face of the record" or "discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the Petitioner's knowledge or could not be produced by him at the time when the direction, decision or order was passed", the Commission rejects review of depreciation expenditure allowed on the grounds of depreciation on account of capitalisation of insurance spares.

Hence, given the above reasons, the Commission does not grant review of the depreciation expenditure allowed for FY 2004-05.

ii) Disallowance of 25% of income tax for the licensed area business:

In its Tariff Order in Case No. 22 and 56 of 2005 dated October 3, 2006, in the context of the income tax expenditure being allowed to be recovered through tariff, the Commission had stated,

> *"TPC should submit documentary evidence of the actual income tax paid by TPC for its Mumbai license area business in FY 2004-05 and FY 2005-06, and the corresponding amount will be trued up in the next year."*

However, TPC has not submitted any documentary evidence of actual income tax paid for its Mumbai license area business, and has instead requested the Commission to allow "*the amount of tax claimed by TPC in licensed area working*". This submission does not meet the requirement specified by the Commission.

Moreover, TPC has requested the Commission to allow pass through of income tax to the extent of Rs. 159.4 crore in FY 2005-06, when the actual income tax for TPC as a whole, including other businesses, as per TPC's audited results is only Rs. 146.8 crore. This highlights the unreasonableness of this request, as the consumers are being expected to pay tariff to recover income taxes that have not been actually paid by TPC as a whole, leave alone for the licensed area.

Accordingly, the Commission does not grant any review of the income tax allowed to be recovered through the ARR for FY 2004-05 and FY 2005-06.

iii) Employee expenditure:

TPC has submitted that the amount of prior period adjustment of Rs. 15 crore should not be deducted from the expenditure in FY 2004-05, while projecting the amount of allowable employee expenditure in FY 2005-06. The Commission is of the opinion that TPC's rationale is flawed, as the prior period adjustment refers to amounts that have been booked as expenditure in some previous years, which have now been reversed. However, the growth in expenditure has been computed on the basis of the expenditure actually booked during these pervious years, rather than the lower level of expenditure which should have been actually booked, had the prior period expenditure been correctly accounted for in the respective years. If the Commission accepts TPC's request, it would amount to double accounting of this expenditure of Rs. 15 crore, resulting in inflating the allowable level of expenditure for FY 2005-06. Moreover, in the Tariff Order, the Commission had considered a growth rate of 5% for projecting allowable expenses in FY 2005-06, though the actual increase was around 3%, as stated below:

> *"While approving the employee expenses for FY 2005-06, the Commission has considered an increase of around 5% over the allowed level of expenses in FY 2004-05 (after truing-up), in accordance with the trend of increase in CPI, though the actual growth trend in case of TPC is around 3%"*

Hence, the Commission does not grant review of the employee expenditure allowed for FY 2005-06.

iv) Repair & Maintenance (R&M) Expenditure:

The Commission trued up the R&M expenses on the same basis as that allowed in the Order dated June 11, 2004, viz., at 3% of GFA, by considering the actual GFA value, which is consistent, as the truing up exercise has to primarily follow the principles laid down while originally allowing these expenses. Moreover, it is a fact that the GFA has been increasing steadily and newer assets have been regularly added to the system, especially in the distribution business. It is logical that newer assets will require negligible/lesser R&M expenditure, which will offset the higher R&M requirement for the older assets. Moreover, in FY 2005-06, the expenditure has been allowed for TPC as an integrated Utility.

Hence, the norm of 3% of GFA adopted by the Commission is appropriate and there is no need for reviewing the R&M expenditure allowed.

v) A&G Expenditure:

The Commission trued up the A&G expenses on the same basis as that allowed in the Order dated June 11, 2004, viz., on CAGR basis, which is consistent, as the truing up exercise has to primarily follow the principles laid down while originally allowing these expenses.

TPC has submitted that the amount claimed by TPC under A&G expenditure for FY 2004-05 was inclusive of an amount of Rs. 21 Crore which TPC had incurred while engaging

consultants in the implementation of cost saving exercises/initiatives, and which have resulted in savings to the tune of Rs. 99 Crore. Prima-facie, the Commission finds that payment of Rs. 21 crore to the consultant is disproportionate with the benefits indicated, as the consultant's fees are usually a specified percentage of the benefits realised. Moreover, TPC should be able to explain to the Commission how this benefit has been realised solely on account of the Consultant's recommendations.

Also, some of the benefits indicated either do not appear to have been realised, or could have been realised due to other factors, or are not to be considered while assessing the benefit of such a study. For instance, though TPC has indicated that network switching has been done for optimising load flow to reduce T&D losses, no such reduction in T&D losses has been considered by TPC. Similarly, though TPC has indicated that the generation has been increased in FY 2004-05, analysis reveals that the actual generation from Unit-4 has increased by 555 MU, whereas the overall generation has increased by only 260 MU, which indicates that the generation from Units primarily intended for the license area has in fact reduced by around 300 MU over the level in FY 2003-04. As regards the reduction in heat rate of Unit 6, the reduction in heat rate in FY 2003-04 (before Consultant was appointed) was 40 kcal/kWh, while the reduction in heat rate in FY 2004-05 (after Consultant was appointed) was only 10 kcal/kWh. TPC has also indicated that one of the benefits of the Consultant's recommendation was that TPC managed to increase its load to HPCL by 45 MW. The Commission is of the opinion that other consumers should not be made to pay for TPC's drive to increase the sales to selected consumers.

Accordingly, the Commission is of the opinion that no review of A&G expenses is required, and hence, does not grant the same.

vi) Retention of 1/3rd surplus under the Sixth Schedule:

The Commission accepts TPC's contention regarding retention of 1/3rd surplus earned in FY 2004-05 subject to a ceiling of 5% of the amount of reasonable return, as it is in line with the Sixth Schedule of the erstwhile Electricity (Supply) Act, 1948, which has been made applicable for FY 2004-05 and FY 2005-06. The amount of surplus in FY 2004-05, if any, will be recomputed based on the expenditure being additionally allowed under this Order, and TPC will be allowed to retain 1/3rd of the same, subject to a ceiling of 5% of the amount of reasonable return, while the balance 2/3rd will be distributed to the consumers by setting off against the revenue requirement of the subsequent years, in accordance with the Sixth Schedule of the erstwhile Electricity (Supply) Act, 1948.

Since, the amount trued up earlier was adjusted against the revenue requirement of the distribution business (TPC-D) in FY 2006-07; this adjustment of the reserves and subsequent treatment will also be done while truing up TPC-D's revenue gap in FY 2006-07.

vii) Drawal from various statutory reserves and value of investment while drawing from reserves:

TPC has contended that the contingency reserve should not have been appropriated by the Commission to meet the gap between Clear Profit and Reasonable Return, as the contingency reserve is intended to be appropriated primarily to meet loss of profits arising out of '*circumstances which the management could not have prevented'*, whereas the present revenue gap has arisen primarily because of un-recovered FAC on account of the cap on recovery of FAC imposed by the Commission. TPC has further contended that even if the contingency reserve has to be appropriated; only the diminished value of the investments should have been considered by the Commission as there has been a diminution in the value of the investments made using the Contingency Reserve. The diminution as stated by TPC amounts to Rs. 39 crore, or 21% of the contingency reserve of Rs. 183 crore.

The Commission rejects the contention of TPC that contingency reserve should not have been appropriated to meet the gap between Clear Profit and Reasonable Return, for the following reasons:

a. The fuel cost has varied because of price fluctuations in the international market and TPC was unable to levy FAC to the full extent because of the cap on recovery of FAC imposed by the Commission, which could qualify under 'circumstances which the management could not have prevented'.
b. More importantly, the Commission's Tariff Regulations have been made applicable from FY 2006-07 onwards, and Schedule VI of the erstwhile ESA was made applicable to FY 2004-05 and FY 2005-06. Accordingly, from FY 2006-07, TPC has ceased to be considered as an integrated business, and the Commission is determining the ARR and Tariff separately for the generation, transmission and distribution business.
c. The Commission's Tariff Regulations provide for contingency reserves only in the case of transmission business and distribution business, subject to a ceiling of 5% of the original cost of fixed assets. The maximum contingency reserve that could be created based on the existing levels of gross fixed assets works out to Rs. 48 crore and Rs. 14 crore for the transmission business and distribution business, respectively, totalling to Rs. 62 crore, as against the contingency reserves of Rs. 183 crore with TPC.
d. Moreover, as the earlier reserves have been appropriated by the Commission, the Commission has begun creating fresh contingency reserves, in accordance with the Commission's Tariff Regulations, from FY 2006-07 onwards.
e. Given the above rationale, the Commission decision to appropriate the contingency reserve to meet the gap between Clear Profit and Reasonable Return is correct and no review of the same is granted.

The Commission rejects TPC's contention that the diminished value of the contingency reserve should be considered, for the following reasons:

a. The objective behind creation of a contingency reserve is to ensure that a certain amount of funds would be available when needed and when it would be difficult to raise these funds within a short time from the consumers.
b. TPC should have invested the contingency reserve wisely and ensured that the consumer's interests vis-à-vis the fund created for the purpose, are safe and would be available when required. This is applicable even for the contingency reserves that have been newly created under the Commission's Tariff Regulations.
c. It is worrying that TPC is reporting a 21% diminution in the value of contingency reserve, as the funds would not have been available when required. It is in fact better that the Commission appropriated the reserves at this stage itself, before any further diminution takes place.
d. To expect the consumers to bear the burden of diminution in the value of the investment is unfair and not in public interest.
e. Given the above rationale, the Commission decision to appropriate the contingency reserve at the book value, to meet the gap between Clear Profit and Reasonable Return is correct and no review of the same is granted.

viii) Income tax adjustment in clear profit:

TPC has submitted that the Commission should recompute the income tax liability for FY 2004-05 and FY 2005-06 based on the expenditure and revenue allowed by the Commission in its Order. In this context, the Commission has clarified in its Tariff Order that only the actual Income tax liability on account of the license business in Mumbai will be considered, subject to actual payment. There is no justification for allowing Income Tax expenditure that has not really been incurred. Also, TPC's reference to the approach followed by the Commission in this regard in the earlier Tariff Order is incorrect, as at that time, the Commission was projecting the Income tax liability for FY 2004-05, by considering the expenses and revenue as projected by the Commission.

Accordingly, the Commission's rejects TPC's contention to recompute the income tax liability allowed for FY 2004-05 and FY 2005-06 based on the expenditure allowed by the Commission and the income earned by TPC.

ix) Capital Expenditure incurred:

The Commission notes that while TPC has regretted the error in reconciliation of Form 5.3 and Form 5.4 and now submitted revised information, there still continues to be a discrepancy between Form 5.3 across two successive years.

For example, during FY 2004-05, TPC has submitted that against approved capital expenditure towards distribution business of Rs 122 Crore, capital expenditure incurred till beginning of FY 2004-05 was Rs 2 Crore and actual incurred during FY 2004-05 was Rs 13

Crore, accordingly total capital expenditure till beginning of FY 2005-06 should have been Rs 15 Crore. However, TPC has submitted that capital expenditure incurred towards distribution business till beginning of FY 2005-06 has been only Rs 9 Crore.

Similarly, during FY 2004-05, TPC has submitted that against approved capital expenditure towards generation business of Rs 816 Crore, capital expenditure incurred till beginning of FY 2004-05 was Rs 255 Crore and actual incurred during FY 2004-05 was Rs 124 Crore, accordingly total till capital expenditure beginning of FY 2005-06 should have been Rs 379 Crore. However, TPC has submitted that capital expenditure incurred towards generation business till beginning of FY 2005-06 has been Rs 519 Crore.

As regards, network development activity, in its Tariff Order in Case No. 22 and 56 of 2005 issued on October 3, 2006 (Page 119), the Commission has observed that "*Commission has not considered any capital expenditure related to network development activity, as TPC has not submitted any capex scheme for approval as yet. The Commission hereby directs TPC to submit its capex scheme pertaining to network development activity along with DPR*." TPC has now submitted that the capital expenditure of Rs 70 Crore under 'Network Development Activity' did not require any submission of DPR as all the schemes except one major scheme extending 110 kV supply to HPCL, Trombay, involve capital outlay below Rs 10 Crore. TPC had clubbed various schemes such as HT cable laying, sub-station expenditure for provision of supply to consumers and other miscellaneous works related to consumer development, etc. Accordingly, TPC had requested to permit submission of DPR for one major scheme (FY2005-06) for approval and approve expenditure for rest of schemes under 'Network Development Activity' for FY 2004-05, FY 2005-06 and FY 2006-07.

For the purpose of approval of ARR, capitalisation is equally important apart from capital expenditure. Besides, the Commission is of the view that unless capital expenditure and capitalisation are reconciled and discrepancies as identified above are addressed, it is not possible to consider any capitalisation as a part of this review.

Moreover, the Commission expresses its displeasure with TPC for non-submission of the DPRs for these schemes. In fact, the Commission had directed TPC to submit the DPR for these schemes related to network development activity in its Order dated June 11, 2004, which was not done by TPC. Subsequently, in February 2005, the Commission issued guidelines for approval of capital expenditure schemes, wherein it was stipulated that all schemes above Rs. 10 crore would require DPR to be submitted. However, TPC did not make any submissions as regards network development activity after these guidelines were issued. In the Order dated October 3, 2006, the Commission reiterated that this capital expenditure was not being approved in the absence of DPRs. After almost two and a half years since the Commission's first Tariff Order, TPC has submitted in its Review Petition that these schemes are below Rs. 10 crore, and only one scheme is above Rs. 10 crore, for which the DPR will be submitted. However, till date, the DPR has not been submitted even for this scheme.

Given the repeated failure of TPC to comply with the Commission's directions in this regard and non-submission of DPRs till date, the Commission does not see any merit in approving this capital expenditure.

x) Departure from Accrual/Mercantile System:

TPC has submitted that the Commission's approach of considering the actual billed revenues to rework the CP-RR gap has resulted in inflating the amount of truing-up by Rs. 356 crore, which has been adjusted from consumers' reserves. TPC's contention is that the income should be booked based on the 'matching concept' wherein the revenue has to be matched with the expenditure, and hence the revenue should be considered based on amount that is due to TPC, on account of un-recovered FAC. TPC has added that for FY 2004-05, the revenue reported by TPC on accrual basis (including adjustment for over-recovery of FAC) has been correctly considered by the Commission. TPC has submitted that the FAC under-recovery should not be trued up but allowed to be billed to the consumers either by removing the cap or one-time bill raised for short-recovery at the end of each financial year.

The Commission is of the opinion that income accrues when it is billed. TPC's contention that the income is due to TPC may have been justified if TPC had the right to bill the consumers for the FAC under-recovery. However, this is not the case in this instance. TPC's right to bill the consumers for this component would exist only after the Commission removes the cap on recovery of the FCA. Moreover, TPC's FAC has to be approved by the Commission on a post-facto basis, and hence, there is no certainty that the entire amount claimed under FAC would be allowed to be passed on to the consumers through FAC. Moreover, once billed, there is also no certainty that the amount will be received, as it would depend on the collection efficiency. Given these uncertainties, there may not be a case for considering this as income until such time as it is actually billed.

As regards TPC's statement that fuel and power purchase costs incurred and booked as expenditure should be matched with the revenue of the relevant year, the same has been followed by the Commission, with the difference being that the Commission has considered billed amount as revenue, rather than the revenue considered by TPC, which includes amounts not billed. The Commission rejects TPC's contention that the Commission has deviated in the treatment of FAC accrued, as compared to the treatment in FY 2004-05. In fact, when TPC had over-recovered FAC of around Rs. 150 crore in FY 2004-05 (this was actually billed, and was hence, treated as over-recovery by the Commission) and was directed by the Commission to adjust the same against FAC due in future periods, TPC requested that the FAC over-recovery should be trued-up at the time of ARR and revenue gap truing up for FY 2004-05, after the completion of the year. The Commission accepted TPC's request and trued-up the FAC over-recovery at the time of truing up of the ARR and revenue gap for FY 2004-05. However, now that there is under-recovery of FAC, TPC is claiming that the under-

recovery should not be trued up while truing up the ARR, but should be allowed to be passed through separately to the consumers under the FAC mechanism itself.

Further, TPC has interpreted the Commission's Tariff Regulations to mean that FAC under-recovery has to be adjusted against FAC in future, which is incorrect. Firstly, the Commission's Tariff Regulations are not applicable for FY 2005-06. Moreover, the relevant provisions of the Tariff Regulations do not support TPC's interpretation, as the Tariff Regulations state that FAC under-recovery shall be carried forward and be recovered over such future period as may be directed by the Commission. This does not mean that the FAC under-recovery if any will be adjusted against FAC in future. Hence, the Commission has considered the FAC under-recovery while truing up for FY 2005-06, and the same has been adjusted against the available regulatory reserves.

The Commission also does not agree with TPC's statement that it would be forced to reverse the revenue booked in FY 2005-06 which would result in reduction of revenue and publishing such results would have serious business impact. TPC should be aware that Regulatory accounts may differ from the Company's audited accounts, which are prepared in accordance with the Companies Act, 1956, due to difference in treatment of certain expenses, allowance/disallowance of certain expenses, etc. TPC may deal with this matter internally, without linking the same with the treatment of expenses and revenue being done by the Commission in its Orders.

Hence, the Commission does not grant review of the treatment on account of un-recovered FAC and reserves.

ISSUES PERTAINING TO FY 2006-07

xiii) Payment of wheeling charges by MSEDCL:

Although TPC would not get any wheeling income from MSEDCL after implementation of the Commission's Order dated September 29, 2006 in Case No. 31 of 2006 on intra-State transmission, TPC would have received the wheeling charges during the first six months of the year. TPC has subsequently confirmed that it has received wheeling charges from MSEDCL over the first six months of the year.

Hence, the shortfall in non-tariff income, if any, would be trued up at the time of truing up of expenses and revenue for FY 2006-07, on the basis of the audited accounts, subject to prudence.

There is no ground for review of TPC's ARR on this account.

xiv) Provision for un-recovered FAC pertaining to the period from 1st April 2006 to 30th September 2006:

TPC has submitted that the cap on recovery of FAC has resulted in under-recovery of FAC amounting to about Rs. 308 Crore pertaining to the period from 1st April 2006 to 30th September 2006, which should be allowed to be recovered from the distribution licensees in the subsequent bill. TPC has submitted the statement of FAC incurred and charged to consumers over the first two quarters of the year, i.e., April to June 2006 and July to September 2006, for post-facto approval of the Commission.

The Commission is in the process of vetting the FAC submissions and the amount approved by the Commission for the first two quarters of the year, and extent of under-recovery of FAC, would be considered under the truing up for FY 2006-07, at the time of issuing the Order for TPC-G for the first Control Period, viz., FY 2007-08 to FY 2009-10.

xv) Standby Charges already incurred during first six months of FY 2006-07:

TPC has submitted that as the Commission's Order is applicable for FY 2006-07 but has been implemented on prospective basis with effect from October 1, 2006, TPC would end up paying more than its share of standby charges to MSEDCL. The Commission is of the opinion that this is not a correct representation of the facts. Before October 1, 2006, TPC was paying the entire standby charges to MSEDCL, and was recovering the same through a combination of (a) direct standby payment by REL to TPC in proportion to its share of the standby as determined by the Commission's Order in this regard, and (b) a component of the demand charges levied on REL and BEST, through the Bulk Supply Tariff applicable for this period. Hence, though TPC has paid higher standby charges, it would have also recovered the same through these charges.

Hence, **the revenue gap/surplus, if any, on this account, would be trued up at the time of truing up of expenses and revenue for FY 2006-07, on the basis of the audited accounts, subject to prudence**.

xvi) Applicability of Revised AS -15:

TPC has submitted that it had not included the impact of applicability of revised AS-15 (effective from FY 2006-07) in its ARR and Tariff Petition, which requires TPC to provide for inclusion of various employee benefits and to restate certain other employee benefits such as encashment of privilege leave and sick leave on a more conservative basis. TPC submitted that the applicability of revised AS-15 has two impacts, viz., increase in the employee expenses in FY 2006-07 by Rs. 4.67 crore, and reduction in the General Reserves by Rs. 55.5 crore. TPC has submitted that the increase in liability due to applicability of revised AS-15 and the corresponding reduction in General Reserves need to be borne by the consumers and therefore need to be passed on in the ARRs over the next three years, including FY 2006-07.

Firstly, this cannot qualify as 'new and important evidence which has come to light subsequently', which is one of the grounds for review. This aspect could have been submitted by TPC along with the Tariff Petition for FY 2006-07. Further, the actuarial valuation of the leave encashment appears to have increased primarily on account of the shift in Company Policy to considering employee salaries on 'cost to company' basis, rather than just the applicability of the Accounting Standards.

Moreover, recently, there has been a clarification by the ICAI that the applicability of AS-15 (revised) can be deferred upto FY 2007-08. Further, there could be differences in the treatment of the leave encashment, i.e., considering Basic plus DA or on a cost to company basis.

Hence, for FY 2006-07, the Commission has not considered any impact of revised AS-15, and does not grant any review of the ARR of TPC on this ground.

xvii) Implementation of two-part TOD Tariff for LT- 2 consumers:

The Commission does not grant any review on this ground, as TPC has had enough time to install the TOD meters and re-programme the time slots for consumers where TOD meters are already installed. The Commission is also unhappy with the amount of time taken by TPC to undertake these measures, given the small population of retail consumers with TPC. The Commission reprimands TPC for non-compliance of the Tariff Order in this regard under the cover of seeking clarifications from the Commission. TPC is hereby warned that such non-compliance of the Commission's Orders may attract strict action under the provisions of the EA 2003.

xviii) Levy of Load Management Charges (LMC) and Load Management Rebate (LMR):

The Commission reprimands TPC for non-compliance of the Tariff Order in this regard on the basis of 'informal communication' and under the cover of seeking clarifications from the Commission. As TPC has contravened the stipulation in the said order regarding the date of implementation, the Commission may consider issuing a notice under Section 142 of the EA 2003.

xix) Penal charges for consumers exceeding their contract demand:

The Commission has clarified this aspect while approving TPC's Tariff Schedule, as follows:

> *"In case a consumer exceeds his Contract Demand, he will be billed at the appropriate Demand Charges for the actual recorded demand and in addition, penalty will be charged at the rate of 150% of the prevailing Demand Charges for the demand recorded in excess of the Contract Demand".*

xx) Separate categorization of CPPs:

The Commission clarifies that TPC's interpretation of the Tariff Order in the context of tariff applicable to HT consumers having Captive Power Plant, is correct, i.e., demand charge of Rs. 374 per kVA per month and energy charge of Rs. 2.90 per kWh, with applicable FAC from time to time.

xxi) Classification of BPL Category Consumers:

In the Tariff Order dated October 3, 2006, the Commission had introduced a new consumer category, viz., Below Poverty Line (BPL) category, and has stated,

> *"The Commission directs TPC to gather data regarding the consumption of such consumers and identify consumers who consume lower than 30 units per month, who are the real life-line category of consumers, so that the Commission can target the real life-line consumers by specifying lower tariffs (i.e. BPL category tariffs). In case the consumption of BPL category consumers exceeds 30 units in any month, then such consumers will thereafter be automatically considered under 'residential' category LF-1, and will be charged accordingly."*

From the above, it is clear that the Commission intends to target the real life-line category of consumers, and had only considered consumers consuming less than 30 units per month as a benchmark. There is no question of levying BPL tariffs for residential consumers residing in affluent localities with locked houses and consumption below 30 units per month.

xxii) Levy of DPC and Interest:

The Commission has clarified these aspects while approving TPC's Tariff Schedule, as follows:

> *"If the payment of the energy bill is not made within the due date, a one-time Delayed Payment Charge of 2% of the amount of monthly Electricity bill (excluding statutory levies, Power Factor Penalty) will be payable by the consumer.*
>
> *The rate of interest chargeable on arrears will be as given below*

Sl	*Delay in Month (Span of months)*	*Interest Rate per annum (%)*
1	*Payment after due date up to 3 months (0 – 3)*	*12%*
2	*Payment made after 3 months and before 6 months (3 – 6)*	*15%*
3	*Payment made after 6 months*	*18%*

> *The interest will be payable from the second month after the due date of payment, on the amount of bill plus the one-time delayed payment charges."*

xxiii) Removal of HP based tariff categorisation:

The Commission clarifies that TPC's interpretation of the Tariff Order in the context of applicability of LT-2 tariff to consumers above 15 HP as applicable to consumers above 11 kW is correct.

xxiv) Discount for Supply at High Voltage:

The Commission has clarified these aspects while approving TPC's Tariff Schedule, as follows:

> *"In the event power is supplied at 100 kV, then the Consumer shall be allowed a rebate of 2% of the monthly energy charges, over the energy charges applicable for supply at 11 kV/22 kV/33 kV."*

SUPPLY TO COMMERCIAL CONSUMERS THROUGH A SINGLE POINT SUPPLY

In the Tariff Order dated October 3, 2006 in Case No. 12 and 56 of 2005, the Commission had directed in Para 7.2 (4) as under:

> "Any HT Industrial and Commercial category consumer, as well as HT-Public consumers, undertaking sub-distribution to mixed loads shall continue to be under this category for a period of six months from the date of this Order keeping in view the metering constraints and identification of consumers. In future, the consumers belonging to this Category requiring a single point supply will have to either operate through a franchise route or take individual connections under relevant category."

During the hearing, the Commission had queried TPC regarding the compliance with the above directive, to which TPC replied that it was unable to do so due to the restrictions placed by the Honourable Supreme Court on TPC. The relevant portion of the Order of the aforesaid Supreme Court's Order is reproduced below:

> *"In the meantime, so far as old consumers are concerned, to whom the supply is made by the appellant, they shall not be disturbed and the appellant shall continue the supply in their cases. Additionally those applicants who have applied to the appellant for electricity connection of 1000 KVA or more may be supplied electrical energy by the appellant.*
>
> *This however, is confined to the applicants whose names have been included in the list attached to the application for interim relief.*
>
> *The appellant however, will not be entitled to supply electrical energy to any consumer who is already getting his supply from Respondent No.1."*

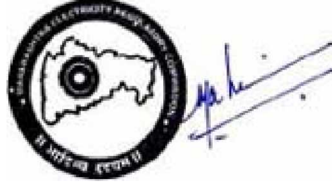
The first sentence of the aforesaid quoted portion from the Supreme Court's Order allows TPC to continue supply to all its own consumers (retail, less than 1000 kVA or more than 1000 kVA). This includes the HT Industrial and Commercial category consumers, as well as HT-Public consumers referred to in the above paragraph 7.2(4) of the Commission's Order dated October 3, 2006. Therefore, there is no prohibition on TPC to authorise these consumers as franchisees as defined in Section 2(27) of the EA 2003 read with the seventh proviso to Section 14 thereof. The last mile entities, to whom these consumers have been providing electricity (after availing the same at single point), will have to take individual connections from TPC. These last mile entities will become the consumers of TPC-D. The said HT Industrial and Commercial category consumers, as well as HT-Public consumers, should execute franchisee agreements with TPC.

As the aforesaid Supreme Court's Order does not disturb the supply at single point by TPC to its HT Industrial and Commercial category consumers, as well as HT-Public consumers, it implies therefore that there is no restriction for these consumers to become franchisees (through whom TPC will undertake distribution of power to the last mile entities) and also for their own load, take individual connections under relevant category. So far as the last mile entities (that is to whom HT Industrial and Commercial category consumer/ HT-Public consumers were undertaking sub-distribution of mixed loads) are not already getting supply from REL, there is no restriction in the aforesaid Supreme Court's order for these last mile entities to take connection from TPC for electricity supply through the aforesaid franchisees as the last mile entities necessarily under law should be the consumers of the distribution licensee and cannot be supplied by HT Industrial and Commercial category consumer/ HT-Public consumers by sub-distribution without formalizing franchisee arrangement as stipulated by the Commission in its Order dated October 3, 2006. Also, the last mile consumers to whom sub-distribution is undertaken would come within the ambit of the positive permission in the Supreme Court's Order, for effecting supply by TPC.

The words "shall not be disturbed" as appearing in the aforesaid Supreme Court's order implies that "so far as old consumers are concerned, to whom the supply is made by the appellant"………."the appellant shall continue the supply in their cases". Therefore, there is no restriction for TPC to continue to supply to their existing HT Industrial and Commercial category consumer/ HT-Public consumers for their own loads. There is no restriction for TPC to convert or authorize these existing HT Industrial and Commercial category consumer/ HT-Public consumers, as franchisees. There is also no restriction for TPC to supply directly to the last mile entities to whom it's HT Industrial and Commercial category consumer/ HT-Public consumers were undertaking sub-distribution of mixed loads. Needless to mention that the above arrangement of supply to HT Industrial and Commercial category consumer/ HT-Public consumers as well as the aforesaid last mile entities would be subject to the final result of civil appeal no. 2898 of 2006 filed by TPC before the Honourable Supreme Court.

With this order and for the reasons stated above, the Commission disposes the Review Petition filed in Case No. 47 of 2006.

Sd/-	Sd/-	Sd/-
(S.B. Kulkarni)	(A. Velayutham)	(Dr Pramod Deo)
Member	Member	Chairman, MERC



(Malini Shankar)
Secretary, MERC