

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 32 of 2006**

**In the matter of**  
**Determination of Annual Revenue Requirement (ARR) and Tariff for**  
**FY 2004-05 and FY 2005-06 for**  
**Brihan-Mumbai Electric Supply & Transport Undertaking (BEST)**

**Dr. Pramod Deo, Chairman**  
**Shri A. Velayutham, Member**  
**Shri S. B. Kulkarni, Member**

**Dated: 8<sup>th</sup> November, 2006**

**ORDER**

Upon directions from the Maharashtra Electricity Regulatory Commission (Commission), Brihan-Mumbai Electric Supply & Transport Undertaking (BEST), for the first time submitted its application for approval of Annual Revenue Requirement and Tariff Proposal for FY 2004-05 and FY 2005-06, under affidavit. The Commission, in exercise of the powers vested in it under Section 61 and Section 62 of the Electricity Act, 2003 and all other powers enabling it in this behalf, and after taking into consideration all the submissions made by BEST, all the objections, responses of the BEST, issues raised during the Public Hearing, and all other relevant material, determined the ARR and tariff for retail supply of electricity by the BEST vide its Operative Order dated 25<sup>th</sup> February 2006 and subsequent Detailed Order dated 9<sup>th</sup> March 2006.

Subsequently, BEST filed a Petition with the Appellate Tribunal (AT) for Electricity at Delhi on 18<sup>th</sup> April 2006 (Appeal No. 61 of April 2006), challenging the operative order and detailed order of the Commission.

The Appellate Tribunal for Electricity pronounced its Judgement in this Appeal No. 61 on 18<sup>th</sup> August 2006, giving specific relief on certain points of the detailed order of the Commission dated 9<sup>th</sup> March 2006.

In compliance, the Commission re-determined the ARR for FY 2004-05 and FY 2005-06 and Tariff for FY 2005-06 for BEST through its Supplementary Order dated 26<sup>th</sup> September 2006, in line with the various directives issued/ relief granted by the Appellate Tribunal in its judgment.



Subsequently, BEST submitted a Review Petition under Affidavit to the Commission vide its letter dated 11<sup>th</sup> October 2006 seeking a review of the Supplementary Order of the Commission under Section 94(1)(f) of the Electricity Act, 2003 read with regulation 85 of MERC (Conduct of Business Regulations) 2004.

BEST's Review Petition was heard for admission on 1<sup>st</sup> November, 2006 at 11.00 hours in the office of the Commission. The Authorised Consumer Representatives were called for the hearing, however none of them remained present for the hearing. In the admissibility hearing BEST was also permitted to make a presentation on the issue/s on which it sought a review.

The main issue before the Commission for consideration under this Review Petition is the allowance of Interest on Internal Funds and Government Assistance in lieu of Return on Regulatory Equity.

### **BEST's Submission**

BEST submitted in its Review Petition that the Supplementary Order of the Commission suffers from a mistake or error apparent from the face of the record as the Commission had allowed Interest on internal Funds and on government assistance but only in lieu of Return on Regulatory Equity, which was patently beyond the ambit and/ or contrary to the Judgement of the Appellate Tribunal dated 18/8/2006.

BEST submitted that the Supplementary Order of the Commission was based on a misinterpretation and misunderstanding of the Order of the Appellate Tribunal for Electricity as regards the issue of allowing interest on Internal Funds in lieu of Regulatory Equity. BEST further submitted that Return on Regulatory Equity was not even considered as an issue by the Appellate Tribunal since it only confined itself to the denial by the Commission of interest on Internal Funds to BEST.

BEST also submitted that the Appellate Tribunal in its Judgement dated 18/8/2006, nowhere had directed or permitted the Commission to allow interest on Internal Funds in lieu of Regulatory Equity or disallow return on regulatory equity and also disallow normative interest on working capital. In its Review Petition, BEST therefore, submitted that the Supplementary Order of the Commission dated 26/09/2006 had therefore to be reviewed in the light of the correct interpretation of the Order of the Appellate Tribunal.

BEST further submitted that as per the working in the detailed order of the Commission dated 9<sup>th</sup> March 2006, the normative debt of the capex of the financial year had necessarily to be considered for a 6% Interest on Internal Funds. Also, the Return on Regulatory Equity and Interest on Internal Funds were independent of each other and one could not be a substitute for the other.

BEST also submitted that it was not heard by and before the Commission on allowing Interest on Internal Funds and on Government Assistance but only in lieu of Return on Regulatory Equity before passing the Supplementary Order dated 26<sup>th</sup> September 2006.



With the above submissions BEST claimed under point no. 18 of the review petition that it was entitled to the following:

- (i) *“claim of 16% return on the regulatory equity.*
- (ii) *claim the actual interest cost incurred in the year on the outstanding loan.*
- (iii) *claim interest @6% on the total amount of capital expenditure for the particular year after apportionment of 30% of the total capital expenditure for the purpose of return on equity.*
- (iv) *To claim the interest on working capital and consumer deposits as per the MERC Regulations, which is already worked out by the Commission in its Order dated 9<sup>th</sup> March 2006.”*

### **Commission’s Observations and Ruling**

The main guiding factor for the Commission to assess the Review Petition of BEST are the BEST Appeal to the Appellate Tribunal challenging the detailed Order of the Commission and the Appellate Tribunal Judgement in the case (Case No. 61 of April 06), as the detailed Order of the Commission is superceded by Appellate Tribunal Judgement.

BEST during the ARR and Tariff Determination process for FY 2004-05 and FY 2005-06, as well as its appeal before the Appellate Tribunal for Electricity (ATE), had claimed interest on Internal Funds. In its Appeal, it has very lucidly explained under point no. 43 of its Appeal before the Appellate Tribunal dated 18<sup>th</sup> April 2006, as to how its claim of Interest on Internal Funds of Rs. 46.42 Crore for 2003-04 and Rs. 70.82 Crore in 2004-05 was the least cost solution and was also most beneficial to it’s consumers out of the options namely (a) Return on Regulatory Equity, (b) Interest on Internal Funds and (c) return computed in line with the Schedule VI of the erstwhile Electricity Supply Act 1948.

The ATE has appreciated the above submission and argument of the least cost option and directed that interest on Internal Funds as well as Government Grant be allowed at 6% p.a.

As regards Government Grants, neither BEST nor MERC (under its Regulations), have considered the cost of interest to be borne by the consumers as there is no such interest element in the MERC (Terms and Conditions of Tariff) Regulations, 2005. However, the Appellate Tribunal has allowed 6% interest on the Government grants utilised in the electricity Business of BEST and the same has now been allowed by the Commission apart from the actual amounts received from the Internal Funds.

The Appellate Tribunal Judgement dated 18<sup>th</sup> August 2006 under point No. X, Paragraph No. 74 in this regard is extracted below:

*“..... Internal fund has been drawn and utilized in the electricity distribution business and this is not being disputed by the respondent. So also, a substantial sum has been received by way of grant and utilized by the appellant in the electricity*



*distribution business. In terms of Regulation pointed out by the MERC, the appellant could be denied of return on such internal funds as well as the grant but there is neither justification nor there is any reason to deny interest since those funds have been utilized by the appellant in the electricity business. Internal funds though is drawn from the coffers of the Corporation for all purposes of this business, viz., electricity distribution, it is from the Corporation though it is the owner of the electricity distribution business yet funds have been drawn and utilized. When the appellant is expected to maintain the entire revenues and expenditure in respect of electricity business in an air tight compartment for the purpose of approval of ARR as well as determination of tariff, we do not find any justification to deny interest on the internal funds drawn by the appellant from sections other than electricity as well as the grant from the Government. There is no provision in the Tariff Regulations with respect to payment of interest on the internal funds received and utilized by the appellant in the electricity business, so also with respect to the grant. It is a grant to the Corporation by the Government and it is not a grant to the consumers. This position is fairly admitted by the learned counsel for MERC. Therefore, it is a flow of funds from sources outside the electricity business. Hence even in respect of grant also, be it a free grant or refundable without interest, in our considered view MERC should have allowed interest. The denial of interest cannot be sustained. When the funds have been utilized it follows that at least interest has to be allowed apart from the fund being returned when sufficient cash/ credit is available. When there is no dispute with respect to the internal flow of funds and the Government grant which were actually utilized on the distribution business, the claim of interest at 7% per annum, which is the minimum, is fair and we do not find any reason for the Commission to reject the same. This point is answered in favour of the appellant holding that for the actual amounts received from internal funds as well as the grant utilised in the Electricity distribution business, the Commission is directed to allow 6% interest, which would be the minimum by all standards.”*

The principle enunciated by the ATE states that since internal funds have been received and utilised for the electricity business and hence be allowed to earn interest and cost thereof. However, instead of 7% p.a. rate interest claimed by BEST the ATE has allowed 6% interest on the actual amounts received from the Internal Funds as well as grant utilised in the electricity distribution business.

The Capital Expenditure and the Capital Base of BEST is funded by Internal Funds, Government grants, Government loans and other loans. BEST's contention now before the MERC is that while allowing interest on Internal Funds it should be further broken up into (notional) equity and return at 16% allowed thereon by applying MERC Regulations, is against the principle set out by the ATE and also inconsistent with its own petition before the ATE.

Accordingly, in compliance, of the Appellate Tribunal Judgement, the Commission has allowed interest at the rate of 6% p.a. (as shown in the table below) on the Net Internal Funds (excluding amount invested outside the electricity business), Government Grant/ Assistance, Consumer Security Deposit, and Other Funds (GEF and BEST Staff Benefit Fund).

The Commission has allowed interest at “actuals” on all Loan funds of BEST (which include APDRP, DPDC, Public loan, Mega City loan) as these are to be serviced at specific interest rates.



The summary of workings for Interest on Internal Funds and other Funds of BEST is shown below.

**Table: Interest on Internal Funds and other Funds of BEST Electricity Supply Business**

Particulars/ Funds	FY 2004-05		FY 2005-06	
	Rs. Crore	Interest	Rs. Crore	Interest
Net Internal Funds	846.22	50.77	728.62	43.72
Govt Grant	27.57	1.65	45.63	2.74
Consumer deposits	261.3	15.68	194.92	11.70
Other deposits	18.78	1.13	91.87	5.51
Other funds (GEF, BEST Staff)	159.94	9.60	175.04	10.50
<b>Sub-total: Interest @ 6%</b>		<b>78.83</b>		<b>74.16</b>
Other Liabilities	141.81	0	217.82	0
Loan funds (interest at actuals)	36.61	3.80	50.07	6.29
<b>Total Rs. Crore</b>	<b>1492.23</b>	<b>82.62</b>	<b>1503.97</b>	<b>80.45</b>

*Source: BEST ARR and Tariff Petition dated 27<sup>th</sup> September 2005; Additional Data submitted vide letter dated 25<sup>th</sup> January 2006 and Data presented during Hearing on 1<sup>st</sup> November 2006*

The Commission earlier in its Supplementary Order (Case No. 4 of 2004 dated 26<sup>th</sup> September 2006) had not allowed any interest on Other Deposits (as per BEST these are interest free). The Commission has now allowed interest at 6% on these Other Deposits. The Commission has not allowed interest on Other Liabilities.

As regards interest on Working Capital claimed by BEST in its Review Petition before the Commission, since BEST meets all its business fund needs including working capital, capital expenditure, renovation and modernisation expenditure, etc. from its internal funds, government grants and other loans and the interest on these all have been allowed in the above computation, no additional interest on Working Capital is warranted nor justified. The ATE order is also therefore silent on it as all the interest cost on all types of funds utilised by BEST in its electricity business have been allowed.

With the above workings of the interest on funds, the revised ARR for BEST for FY 2004-05 and FY 2005-06 works out to Rs. 1313.70 Crore and Rs. 1399.50 Crore, respectively as shown in the table below:



**Revised Annual Revenue Requirement of BEST for FY 04-05 and FY 05-06 (Rs. Crore)**

Particulars	FY 2004-05		FY 2005-06	
	As per MERC Supplementary Order dated 26/9/06	Revised MERC Approval after Review Petition dtd. 11/10/06	As per MERC Supplementary Order dated 26/9/06	Revised MERC Approval after Review Petition dtd. 11/10/06
Power Purchase Cost	1088.50	1088.50	1119.93	1119.93
Employee Expenses	88.26	88.26	136.41	136.41
Repairs & Maintenance	10.19	10.19	11.83	11.83
Share of General Administration Expenses	37.74	37.74	41.80	41.80
Other Expenses (Insurance, Transport, etc.)	44.67	44.67	49.76	49.76
Depreciation	34.51	34.51	37.57	37.57
Interest on Loans**	3.80	3.80	6.29	6.29
Interest on Consumer Security Deposits *	7.55	15.68	9.00	11.70
Interest on other Deposits	0.00	1.13	0.00	5.51
Tax on Sale of Electricity (paid to State Government)	-	0	0.00	0.00
Interest on Internal Funds	50.77	50.77	43.72	43.72
Interest on Government Grants at 6% p.a.	1.65	1.65	2.74	2.74
Interest at 6% on Other Funds (GEF, BEST Staff Fund)	0.00	9.60	0.00	10.5
<b>Total Revenue Requirement</b>	<b>1367.64</b>	<b>1386.50</b>	<b>1459.05</b>	<b>1477.76</b>
Less Non-Tariff Income	72.79	72.79	78.26	78.26
<b>Annual Revenue Requirement</b>	<b>1,294.84</b>	<b>1,313.70</b>	<b>1,380.79</b>	<b>1,399.50</b>

Note: 1) \* Consumer Security deposit is as per BEST additional data submission vide letter dated 25.01.2006 and data submitted during the hearing before the Commission on Review petition dated 1.11.06. 2) \*\* Interest on Loans for FY2004-05 and FY 2005-06 is at actuals.

As regards the contention of BEST that it was not heard by and before the Commission, it will be clear from the above that while passing the Supplementary Order in the case, the Commission was only taking necessary action in terms of the Appellate Tribunal Judgement dated 18<sup>th</sup> August 2006 and the relief granted therein on various aspects. Hence, the question of hearing BEST and / or any other stakeholder did not arise.

The Tariff Schedule as per the Supplementary Order (Case No. 4 of 2004, dated 26<sup>th</sup> September 2006) of the Commission dated 26<sup>th</sup> September 2006 as notified by BEST from 1<sup>st</sup> October 2006 should be continued till further revision.

This Order should be read with the Supplementary Order dated 26<sup>th</sup> September 2006, Detailed Order dated 9<sup>th</sup> March 2006 and the Operative Order of the Commission dated 25<sup>th</sup> February 2006 in Case No. 4 of 2004 and the Judgement of the Appellate Tribunal for Electricity, dated 18<sup>th</sup> August 2006 in Case No. 61 of April 2006.

BEST is directed to submit its ARR and Tariff Petition for future years as brought out and also in line with principles as set out through the Appellate Tribunal Judgement in Case No. 61 dated 18<sup>th</sup> August, 2006.



With the above rulings on the points submitted by BEST for review, the Commission hereby disposes of the Review Petition.

Sd/-  
(S. B. Kulkarni)  
Member

Sd/-  
(A. Velayutham)  
Member

Sd/-  
(Dr. Pramod Deo)  
Chairman



(Malini Shankar)  
Secretary, MERC