Before the

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 112 of 2008

IN THE MATTER OF

The Tata Power Company Ltd.– Transmission Business' (TPC-T), for approval of truing up of Aggregate Revenue Requirement for FY 2007-08, Annual Performance Review for FY 2008-09 and Aggregate Revenue Requirement for FY 2009-10.

Shri V. P. Raja, Chairman
Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member

ORDER

Dated: May 28, 2009

In accordance with MERC Tariff Regulations and upon directions from the Maharashtra Electricity Regulatory Commission (hereinafter referred as MERC or the Commission), The Tata Power Company Limited's Transmission Business (TPC-T), submitted its application on affidavit for approval of truing up of Aggregate Revenue Requirement (ARR) for FY 2007-08, Annual Performance Review (APR) for FY 2008-09 and ARR for FY 2009-10. The Commission, in exercise of the 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 after taking into consideration all the submissions made by TPC-T, all the suggestions and objections of the public, responses of TPC-T, issues raised during the Public Hearing, and all other relevant material, and after review of Annual Performance for FY 2008-09 determines the ARR for the Transmission Business of TPC-T for FY 2009-10 as under.

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List of Abbreviations

A&G	Administrative and General
ARR	Aggregate Revenue Requirement
APR	Annual Performance Review
ATE	Appellate Tribunal for Electricity
CPI	Consumer Price Index
DPR	Detailed Project Report
ECAM	Electrical Contractors' Association of Maharashtra
FBT	Fringe Benefit Tax
GFA	Gross Fixed Assets
IWC	Interest on Working Capital
IBSM	Interim Balancing and Settlement Mechanism
InSTS	Intra-State Transmission System
LCC	Load Control Centre
MbPT	Mumbai Port Trust
MERC	Maharashtra Electricity Regulatory Commission
MSETCL	Maharashtra State Electricity Transmission Company Limited
MYT	Multi Year Tariff
O&M	Operation and Maintenance
ROE	Return On Equity
SBI-PLR	State Bank of India-Prime Lending Rate
SLDC	State Load Dispatch Centre
SHR	Station Heat Rate
REL/RInfra	Reliance Energy Limited/Reliance Infrastructure Limited
RoW	Right Of Way
TPC	The Tata Power Company Ltd.
TVS	Technical Validation Session
TTSC	Total Transmission System Cost
WPI	Wholesale Price Index
YTM	Yield-to-maturity

1 BACKGROUND AND BRIEF HISTORY

The Tata Power Company Limited (TPC) is a Company established in 1919. On April 1, 2000, the Tata Hydro-Electric Power Supply Company Limited (established in 1910) and The Andhra Valley Power Supply Company Limited (established in 1916), were merged into TPC to form one unified entity.

1.1 TARIFF REGULATIONS

The Commission, in exercise of the powers conferred by the EA 2003, notified the Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005, (hereinafter referred as the Tariff Regulations) on August 26, 2005. These Regulations superseded the MERC (Terms and Conditions of Tariff) Regulations, 2004.

1.2 MERC ORDER ON ARR AND TARIFF PETITION FOR FY 2005-06 AND FY 2006-07

TPC submitted its ARR and Tariff Petition for FY 2006-07 for its vertically integrated operations comprising Generation, Transmission and Distribution Businesses (Case No. 12 of 2005 and 56 of 2005) on February 9, 2006. After two Technical Validations Sessions (TVS), the Commission vide its letter dated May 4, 2006 directed TPC to submit its revised ARR and Tariff Petition for FY 2006-07 including a separate section on truing up of ARR for FY 2005-06. TPC submitted its revised ARR and Tariff Petition for FY 2006-07 on May 16, 2006. The Commission admitted the ARR Petition of TPC for FY 2005-06 (Case No. 12 of 2005) and ARR and Tariff Petition of TPC for FY 2006-07 (Case No. 56 of 2005) on May 18, 2006. The Commission issued the Order on the ARR Petition of TPC for FY 2005-06 and ARR and Tariff Petition of TPC for FY 2006-07 on October 3, 2006.

1.3 REVIEW PETITION ON TARIFF ORDER FOR FY 2006-07

TPC filed a Review Petition (numbered as Case No.47 of 2006) against the Commission’s Order dated October 3, 2006, in the matter of TPC’s ARR and Tariff Petition for FY 2005-06 and FY 2006-07 before the Commission. The Commission disposed of the Review Petition by issuing an Order dated March 22, 2007. TPC appealed (Appeal No.60 of 2007) against the Commission's Order on the Review Petition filed by TPC, before the Hon'ble Appellate Tribunal for Electricity (ATE). The Appellate Tribunal issued its Judgment on TPC's Appeal on May 12, 2008. The Appellate Tribunal remanded the matter back to the Commission and the Commission under its APR Order dated May 26, 2008 (Case 67 of 2007) observed that the ARR be revised in the light of the ATE's directions and that the impact shall be taken into account during the next truing-up exercise. Accordingly, the Commission directed TPC to submit the impact of the ATE's Judgment on the ARR of each business separately, viz., TPC-G, TPC-T and TPC-D, and also to propose the method of recovery of the impact through revision in tariffs, along with its Petition for Annual Performance Review for FY 2008-09. TPC-T has confirmed that the aforesaid Judgment delivered by the ATE has no bearing as far as TPC-T is concerned.

1.4 MERC ORDER ON MYT PETITION FOR TPC-T FOR FY 2007-08 TO FY 2009-10

TPC submitted its ARR and Multi Year Tariff (MYT) Petition for the first Control period from FY 2007-08 to FY 2009-10 for its Transmission Business on January 3, 2007 numbered as Case No. 71 of 2006. The Commission issued the MYT Order for TPC-T for the first Control Period, i.e., FY 2007-08 to FY 2009-10, on April 2, 2007, which came into effect from April 1, 2007, and the tariffs were valid upto March 31, 2008, which was later extended till the revised revenue requirement was determined for FY 2008-09, vide the Commission's Order dated April 1, 2008, in Case No. 102 of 2007.

1.5 MERC ORDER ON APR PETITION FOR TPC-T FOR FY 2007-08 AND DETERMINATION OF REVENUE REQUIREMENT FOR FY 2008-09

TPC-T submitted its Petition for Annual Performance Review (APR) for FY 2007-08 and Revenue Requirement for FY 2008-09 for its Transmission Business on November 30, 2007 numbered as Case No. 67 of 2007. The Commission issued the APR Order for TPC-T on May 26, 2008, which came into effect from June 1, 2008, and the tariffs were initially valid upto March 31, 2009, which was later extended till the revised revenue requirement is determined for FY 2009-10, vide the

Commission's Order dated April 15, 2009 in Case No. 152, 153 and 154 of 2008. TPC-T has appealed against the Commission's Order on the APR for FY 2007-08 and determination of tariff for FY 2008-09 before the ATE (numbered as Appeal No. 138 of 2008). The ATE's decision on TPC-T's Appeal is awaited.

1.6 REVIEW PETITION ON ORDER ON APR FOR FY 2007-08 AND DETERMINATION OF REVENUE REQUIREMENT FOR FY 2008-09

TPC-T filed a Review Petition against the Commission's Order on APR for FY 2007-08 and Revenue Requirement for FY 2008-09. The Commission vide Order dated January 21, 2009 (Case No. 43 of 2008) upheld TPC-T's Review Petition and clarified that any impact of the same shall be taken into account by the Commission in its Order on TPC-T's Petition for APR for FY 2008-09 and determination of ARR for FY 2009-10.

1.7 PETITION FOR ANNUAL PERFORMANCE REVIEW FOR FY 2008-09 AND DETERMINATION OF AGGREGATE REVENUE REQUIREMENT FOR FY 2009-10

In accordance with Regulation 9.1 of the MERC Tariff Regulations, an Application for the determination of tariff is required to be made to the Commission not less than 120 days before the date from when the tariff is intended to be made effective. Further, the first proviso to Regulation 9.1 of the MERC Tariff Regulations provides that the "*date of receipt of application for the purpose of this Regulation shall be the date of intimation about receipt of a complete application in accordance with Regulation 8.4 above*." The Commission had directed TPC-T to submit the Petition for APR latest by 30th November of each year in accordance with Regulation 9.1 of the MERC Tariff Regulations.

TPC-T submitted its Petition for truing up for FY 2007-08, APR for FY 2008-09 and determination of revenue requirement for FY 2009-10 for its Transmission Business on November 26, 2008, based on actual audited expenditure for FY 2007-08, actual expenditure for first half of FY 2008-09, i.e., from April to September 2008 and revised estimated expenses for October 2008 to March 2009, and projections for FY 2009-10. TPC-T, in its Petition, requested the Commission to:

- Accept the Annual Performance Review and Annual Revenue Requirement petition for TPC-T in accordance with the guidelines outlined in MERC Orders passed in various matters relating to TPC-T and the principles contained in Tariff Regulations;
- Include the impact of the Order, on the Review Petition filed by TPC-T in July 2008 on the Tariff Order dated May 26, 2008.

The Commission, vide its letter dated December 25, 2008, forwarded the preliminary data gaps and information required from TPC-T. TPC-T submitted its replies to preliminary data gaps and information requirement on January 5, 2009.

The Commission scheduled a Technical Validation Session (TVS) on TPC-T's APR for FY 2008-09 and Tariff Petition for FY 2009-10, on January 13, 2009 in the presence of Consumer Representatives authorised on a standing basis under Section 94(3) of the EA 2003 to represent the interest of consumers in the proceedings before the Commission. The list of individuals, who participated in the TVS, is provided at **Appendix-1**. During the TVS, the Commission directed TPC-T to provide additional information and clarifications on the issues raised during the TVS. The Commission also directed TPC-T to submit the draft Public Notice in English and Marathi in the format prescribed by the Commission.

1.8 ADMISSION OF PETITIONS AND PUBLIC PROCESS

TPC-T submitted its responses to the queries raised during the TVS, on February 18, 2009, and the Commission admitted the APR Petition of TPC-T on February 20, 2009.

In accordance with Section 64 of the EA 2003, the Commission directed TPC-T to publish its APR Petition in the prescribed abridged form and manner, to ensure public participation. The Commission also directed TPC-T to reply expeditiously to all the suggestions and objections received from stakeholders on its Petition. TPC-T issued the Public Notice in newspapers inviting suggestions and objections from stakeholders on its APR Petition. The Public Notice was published in The Times of India (English), Indian Express (English), Loksatta (Marathi) and Samana (Marathi) newspapers on February 24, 2009. The copies of TPC-T's Petitions and its summary were made available for inspection/purchase to members of the public at TPC's offices and on TPC's website (www.tatapower.com). The copy of Public Notice and Executive Summary of the Petition was also available on the website of the Commission (www.mercindia.org.in) in downloadable format. The Public Notice specified that the suggestions and objections, either in English or Marathi, may be filed in the form of affidavit along with proof of service on TPC.

The Commission received written suggestions and objections on various issues. The Public Hearing was held in Mumbai on March 24, 2009 at 11:00 hours at **Vista Hall, 30th Floor, Centre 1, World Trade Centre, Cuffe Parade, Mumbai-400 005**. The list of objectors, who participated in the Public Hearing, is provided in **Appendix- 2.**

The Commission has ensured that due process as contemplated under law to ensure transparency and public participation was followed at every stage meticulously and adequate opportunity was given to all the persons concerned to file their say in the matter.

Though a common Public Hearing was held for processing the APR Petitions for FY 2008-09 and determination ARR and tariff for FY 2009-10 filed by TPC-G (numbered as Case No. 111 of 2008), TPC-T (numbered as Case No. 112 of 2008) and TPC-D (numbered as Case No. 113 of 2008), the Commission is issuing separate Orders on the three Petitions filed by TPC. This Order deals with the truing up for FY 2007-08, Annual Performance Review of FY 2008-09 and determination of Aggregate Revenue Requirement of TPC-Transmission Business for FY 2009-10. Various suggestions and objections that were raised on TPC-T's Petition after issuance of the Public Notice both in writing as well as during the Public Hearing, along with TPC's response and the Commission's rulings have been detailed in Section 2 of this Order.

1.9 ORGANISATION OF THE ORDER

This Order is organised in the following six Sections:

- **Section 1** of the Order provides a brief history of the quasi-judicial regulatory process undertaken by the Commission. For the sake of convenience, a list of abbreviations with their expanded forms has been included.

- **Section 2** of the Order lists out the various suggestions and objections raised by the objectors in writing as well as during the Public Hearing before the Commission. The various suggestions and objections have been summarized, followed by the response of TPC and the rulings of the Commission on each of the issues.
- **Section 3** of the Order details the truing up of expenses and revenue of TPC-T for FY 2007-08, including sharing of efficiency gains/losses due to controllable factors.
- **Section 4** of the Order comprises the Review of Performance for FY 2008-09, covering both physical performance and expenditure heads. This Section also comprises the Commission's analysis on various components of revenue requirement of TPC-T for FY 2009-10.

2 OBJECTIONS RECEIVED, TPC's RESPONSE AND COMMISSION'S RULING

There were some objections that were common to TPC's different Business, and some objections and comments raised specifically in the context of the APR Petition filed by TPC-T, which have been summarised issue-wise in this Section.

2.1 PROCEDURAL ISSUES

Electrical Contractors' Association of Maharashtra (ECAM) submitted that the Commission should follow the principle laid down under Para 5.0 (h) (3) of the Tariff Policy (TP) notified on January 1, 2006 for determination of tariff. ECAM submitted that as per TP, under Multi Year Tariff (MYT) regime, the tariff should be revised only at the end of the Control Period.

TPC-T's Response

TPC has not responded to this objection.

Commission's Ruling

As regards determination of tariff on annual basis, the Commission in its MYT Order for TPC-T dated April 2, 2007 in Case No. 71 of 2006, has approved the Annual Revenue Requirement for TPC-T for the Control Period from FY 2007-08 to FY 2009-10. Regulation 20.1 of the MERC (Terms and Conditions of Tariff) Regulations, 2005, specifies that tariff will be determined on an annual basis. Accordingly, the Commission had approved the pooled transmission tariff for the State of Maharashtra, by combining the Revenue Requirement of TPC-T, RInfra-T and MSETCL for FY 2008-09, through its Order dated May 31, 2008 in Case No. 104 of 2007. Hence, the Commission in this Order is approving the revenue requirement of TPC-T for FY 2009-10.

As regards Para 5.0 (h) (3) of the Tariff Policy (TP), it stipulates as under:

> *"Once the revenue requirements are established at the beginning of the control period, the Regulatory Commission should focus on regulation of outputs and not*

the input cost elements. At the end of the control period, a comprehensive review of performance may be undertaken."

Hence, the Commission is of the view that the provisions of the Tariff Policy referred to by ECAM does not stipulate that the tariff cannot be determined on an annual basis.

2.2 INTEREST RATE

Millowner's Association (MA) submitted that TPC has raised a loan from IDBI at an interest rate of BPLR minus 2.76%, and from IDFC at an interest rate of benchmark rate plus 1.45%, subject to a minimum of 8.9%. MA submitted that the average interest rate was around 11.53% and 13% for IDBI and IDFC, respectively. MA suggested that TPC should borrow funds for capital expenditure from Financial Institutions, which would offer most favourable rates of interest.

Association of Hotels and Restaurants (AHAR) submitted that there should be no need to raise any loan from IDBI, IDFC or any other Financial Institution, when TPC has shown significant Reserves and Surplus in its Books of Accounts and also Rs. 2039 Crore has been lent as loans and advances. AHAR also submitted that seeking payment of interest on long-term funds and working capital funded by internal funds is illegal, as these are neither expenses recognised under the Income Tax Act, 1961 nor ethical as per Accounting Norms and are also against the public interest.

TPC-T's Response

TPC submitted that it has always endeavoured to contract for loans at the most optimum cost and has also passed on the benefit of such costs to the consumers.

TPC submitted that the need for raising any loan arises when there is a requirement of funds for capital expenditure. The actual reserves and surplus and the dividend payment in the past has no direct bearing on the loan that is required to be raised. TPC further submitted that if internal funds are used, it would amount to higher costs being passed on to the consumers. Similarly, the Interest on Working Capital has been claimed in accordance with the norms stipulated by the Commission. TPC further submitted that therefore, the claim of the objector that these expenses are disallowed by the Income Tax Act, 1961 and not ethical as per Accounting Norms is incorrect and baseless.

Commission's Ruling

The Commission has addressed the issues related to interest rate under Section 4 of the Order, while analysing the various components of the Annual Performance Review and Aggregate Revenue Requirement for FY 2008-09 and FY 2009-10 respectively. On the issue of utilising reserves and surplus for capital investments instead of availing loans from the market, the Commission would like to clarify that as per the provisions of MERC Tariff Regulations, the equity investment is permissible upto a maximum of 30% of Capital Investment. In case the Utility funds the entire investment from internal accruals (equity), the Commission considers the equity contribution in excess of 30% as normative debt and allow the interest on normative loans.

2.3 INCOME TAX

AHAR submitted that Income Tax is not a cost but a tax on income, and the Income Tax Act does not allow for Income Tax paid to be recovered from the public. The consumers of TPC are being made to pay Income Tax of TPC, which is an illegitimate cost and should be disallowed.

TPC-T's Response

TPC submitted that the Income Tax as claimed by TPC is in accordance with the Tariff Regulations notified by the Commission and it has not deviated from the Tariff Regulations for recovery of such amount.

Commission's Ruling

In this regard, the income tax shall be allowed as per MERC Tariff Regulations. Also no income tax on incentive earned, by the utility would be passed on to the consumers.

2.4 RETURN ON EQUITY

AHAR submitted that the total equity capital of TPC in the last 90 years of its existence is only Rs. 220 Crore, whereas in the last five years alone, the equity shareholders have been paid a dividend of more than Rs. 885 Crore. Further, the Commission has allowed recovery of Rs. 232 Crore as Return on Equity in FY 2009-10. This recovery is illegitimate, against all accounting norms and against the definition of Cost and Expense as per Income Tax Act.

TPC-T's Response

TPC submitted that AHAR has referred to the equity capital from the Balance Sheet of TPC, while completely disregarding the reserves and surplus shown there. TPC further submitted that in any case, Return on Equity is payable to TPC based on the Regulatory Equity as approved by the Commission, which in turn is determined in accordance with the various provisions of the Tariff Regulations, and therefore, the question of such recovery being illegitimate does not arise. TPC further clarified that the dividend has been paid to the shareholders not solely out of the profits generated from Licensed Area business, but also from the profits generated from the other business of TPC.

Commission's Ruling

The Return on Equity is being considered as a part of the ARR and has been computed in accordance with the MERC Tariff Regulations. As per the provisions of Tariff Regulations, Return on Equity is allowed on opening balance of equity invested in the Gross Fixed Assets and 50% of the equity portion of assets capitalised during the year.

2.5 ADVERTISEMENT EXPENSES

Western India Glass Manufacturers' Association submitted that the Advertisement (Public Notice) of more than 2 pages in newspapers is an avoidable expenditure and a quarter page advertisement with a note to contact TPC or visit its website for further details may also serve the purpose.

TPC-T's Response

TPC submitted that it is in agreement with the suggestion for reducing the size of the advertisement, thereby reducing the expenditure incurred on the 'Public Notice' Advertisement significantly. The MERC (Conduct of Business) Regulations, 2004, specify that the Public Notice may be printed in two English and two Marathi newspapers. However, the content can be reduced to optimize the cost while making available all the information stipulated by the Commission on TPC's website.

Commission's Ruling

The Commission does not agree with TPC-T's response; it should strive to economise on operational and other costs, which are more significant than this one time 'cost' where it has to communicate with its consumers and stakeholders. In accordance with the provisions of the MERC (Conduct of Business) Regulations 2004, the Public Notice has to be issued in a minimum two English and Marathi newspapers. The objective of issuing the Public Notice is that the affected stakeholders are put to notice that the Commission has admitted the APR Petition submitted by the Utility for its consideration, under which it has sought the Commission's approval for revision in the tariffs, and provide basic information about the Petition, to enable the stakeholders to submit their say in the matter, if desired.

2.6 SHARING OF GAIN/LOSSES

AHAR submitted that the Company benefits as it earns more revenue due to better efficiency in generation, transmission, operation, management and reduction in T&D losses and asked TPC to submit the reasons for passing on the impact of such efficiency and inefficiency to the consumers.

TPC-T's Response

TPC submitted that the sharing of gains and loss has been considered in accordance with the MERC Tariff Regulations and clarified that TPC-T has proposed to pass on the share of the gains to the consumers, in its Petition.

Commission's Ruling

In accordance with the MERC Tariff Regulations, the sharing of gains and losses is to be carried out at the end of the year based on the actual performance for the entire year. Accordingly, in this Order, the Commission has determined the sharing of gains and losses on account of controllable factors for FY 2007-08, under the truing up exercise, as detailed in Section 3.9. This will address the concerns expressed by AHAR within the boundaries of the Regulations.

2.7 Sharing of gains on account of O&M expenditure in FY 2007-08

RInfra submitted that, as per the APR Petition of TPC-T, the primary reason for lower employee expenses for FY 2007-08 against that approved in the previous APR Order of the Commission is higher attrition of employees, which is attributable to increasing demand of professionals and skilled persons in the industry, which has further resulted in deferment of planned activity under Repair and Maintenance expenses. In view of this, RInfra submitted that the reduction in employee cost and R&M costs should not be considered as efficiency gains.

TPC-T's Response

TPC submitted that it has claimed gains on account of O&M expenditure as per provisions of the MERC Tariff Regulations and as per the treatment given for sharing of gains by the Commission. TPC added that this claim was on the basis of actual expenditure and neither MERC Tariff Regulations nor the Commission's philosophy in other Orders preclude TPC-T from claiming such gains on the ground that such expenditure is deferred. TPC added that despite the lower O&M expenditure, the performance of the transmission system has not been compromised and thus, TPC-T is entitled to a share of the efficiency gains.

Commission's Ruling

O&M expenditure is being treated as a controllable expenditure under the Multi-Year Tariff (MYT) regime, unless any particular component can be considered as un-controllable, subject to prudence check. Thus, the sharing of such efficiency gains or losses on account of variation of such controllable parameters from the Order values will have to be treated in accordance with the MERC Tariff Regulations during annual performance review.

2.8 Expense on Load Control Centre (LCC)

RInfra submitted that the allocated cost for LCC is estimated to be the same for FY 2008-09 and FY 2009-10, despite the total O&M expenditure projected by TPC-T for FY 2009-10 reflecting an increase of 14% over FY 2008-09 levels. RInfra requested the Commission to aggregate the cost of Tata LCC, to the extent it is acting as an Area Load Dispatch Centre, with the State Load Dispatch Centre (SLDC) budget.

TPC-T's Response

TPC-T submitted that TPC-T has considered the same expenditure for LCC in FY 2009-10 and for FY 2008-09 due to materiality of difference in cost of LCC between the respective financial years. In this regard, TPC requested the Commission to take up the actual expenditure for FY 2009-10 at the time of truing up. As regards TPC LCC expense being considered as a part of SLDC budget, TPC submitted that TPC LCC will not be functioning for SLDC in FY 2009-10, since Area sub-SLDC has been already allowed by GOM for Mumbai.

Commission's Ruling

The Commission has not accepted TPC-T's apportioning of the TPC-LCC costs and the ruling in this regard has been elaborated in the relevant sub-Section in Section 4 of this Order.

2.9 Transmission Losses

RInfra submitted that TPC-T has not provided the details of Transmission Losses in the ARR formats and Petition and requested the Commission to seek information related to the same.

TPC-T's Response

TPC submitted that transmission losses for TPC-T alone may not be of any relevance in view of the composite transmission network for Maharashtra.

Commission's Ruling

Interface metering (G< >T and T< >D) over Intra-State Transmission System (InTS) of which TPC-Transmission system is part of, is yet to be accomplished. The

Commission has directed all transmission licensees to facilitate and co-operate with MSETCL to ensure that requisite special energy meters are put in place across all the interface points at the earliest. The energy accounting and ascertainment of transmission losses for Intra-State Transmission System as well as for various components/elements of the transmission system would be feasible only after establishment of such metering arrangement.

3 TRUING UP OF AGGREGATE REVENUE REQUIREMENT FOR FY 2007-08

TPC, in its Petition, has sought approval for the final truing up of expenditure and revenue for FY 2007-08 based on actual expenditure and revenue as per audited accounts. TPC provided the comparison of actual expenditure against each head with the expenditure approved by the Commission along with the reasons for deviations and also proposed the sharing of the efficiency gain/loss for each head of expenditure/revenue, as applicable.

Accordingly, the Commission in this Section has analysed all the elements of actual expenditure and revenue for TPC-T for FY 2007-08, and has undertaken the truing up of expenses and revenue after prudence check. Further, for FY 2007-08, the Commission has approved the sharing of gains and losses on account of controllable between TPC-T and the Distribution Licensees, in accordance with Regulation 19 of the MERC Tariff Regulations, in this Section.

3.1 O&M Expenses

Operation and Maintenance (O&M) expenditure comprises employee related costs, Administrative and General (A&G) Expenses, and Repair and Maintenance (R&M) expenditure. TPC-T's submissions on each of these expenditure heads, and the Commission's ruling on the truing up of the O&M expenditure heads are detailed below.

The actual O&M Expenditure for FY 2007-08 is Rs. 90.55 Crore as compared to Rs. 98.33 Crore approved in the APR Order. The various components of O&M Expenses are elaborated below:

3.1.1 Employee Expenses

TPC-T submitted that the total actual employee related expenses for FY 2007-08 was Rs 54.80 Crore against Rs 59.72 Crore approved by the Commission.

TPC submitted that the lower employee expense in FY 2007-08 is primarily on account of higher attrition of employees during the year due to the increasing demand for professionals and skilled persons in this industry. Further, the vacancies created on account of retirements in the previous years were yet to be filled up, which has resulted in further lowering of employee expenses by another Rs. 2 Crore. Additionally, employee expenses to the tune of Rs. 3 Crore have been capitalised in FY 2007-08.

The Commission is of the view that employee expense is a 'controllable' parameter and has accordingly, analysed the actual employee expenses for FY 2007-08 under various heads vis-à-vis the actual expenditure in FY 2006-07. No significant increase in head-wise expenses was observed. Further, there was only a nominal increase in the number of employees of TPC-T in FY 2007-08 compared to that in FY 2006-07. However, increase in the number of employees under the sub-head of 'Others' was significantly higher than that observed in the past, and TPC was asked to justify the same. TPC submitted that the increase under the head 'Others' is mainly due to restructuring/rationalisation of the work groups within the organisation. Accordingly, certain grades which were earlier grouped under 'Technical' were regrouped under 'Others'.

Further, the Commission observed that TPC-T has considered an amount of Rs. 1.05 Crore under Fringe Benefit Tax (FBT) under Income Tax head. However, FBT amounting to Rs. 1.05 Crore has been treated as an element of Employee Expenses and has been considered for truing up under this head.

Considering the details of actual employee expenses and reasons submitted by TPC-T for decrease in employee expenses, the Commission has allowed the actual employee expenses for FY 2007-08 under the truing up exercise as shown in the table below.

Table: Employee Expenses **(Rs Crore)**

Particular	APR Order	Actuals	Allowed after truing up
Employee Expenses	59.72	54.80	55.85*

* Also includes FBT of Rs. 1.05 Crore

The difference between the approved employee expenses and the employee expenses allowed after truing up for FY 2007-08 has been considered as a controllable gain and has been shared between TPC-T and the Distribution Licensees in accordance with Regulation 19 of the MERC Tariff Regulations, as explained later in this Section.

3.1.2 A & G Expenses

TPC submitted that the A&G expenses for FY 2007-08 were Rs. 28.67 Crore against Rs 26.22 Crore approved by the Commission. TPC submitted that the A&G expenses are almost equal to that approved by the Commission after excluding the disallowed expenditure for Brand Equity. As regards expenditure on Brand Equity, TPC-T submitted that it has appealed before the ATE against the Commission's decision to disallow expenditure on Brand Equity, and hence, reserves the right to claim the same in the event of delivery of a favourable Judgment from the ATE.

TPC-T, in response to queries raised by the Commission, submitted the sub-head wise expenditure under A&G expenses for first half and second half of FY 2007-08. TPC was asked about the exact nature of Contributions and Donations as claimed under A&G expenses and to justify the recovery of any donations through the Aggregate Revenue Requirement (ARR). In reply, TPC-T submitted the details of donations paid to various organisations/trusts such as Tata Medical centre trust, Manipal University, Smt Sitadevi Kathod foundation, National association for blind, etc. and submitted that such donations would help the Firm to earn the society's trust, which would facilitate better operation of the Company and which, ultimately would benefit the consumers. The Commission is of the view that if the Company or the shareholders of the Company wish to contribute/donate towards charitable causes, the same should be contributed from the return earned out of the business, rather than passing on such costs to the Utility's consumers. Hence, for truing up purposes for FY 2007-08, the Commission has not considered the expense of Rs 0.21 Crore towards donations as claimed by TPC-T.

The Commission directed TPC-T to provide justification for significant increase in expense towards Professional, Consultancy and Technical fees during FY 2007-08 as against the expenses under this head during FY 2006-07. TPC submitted that the increase during the year has been mainly in respect of Consultants who have been appointed for increased focus on Safety, Transmission planning, Enterprise Process Management, ROW issues, etc.

As regards the increase in expense towards VSAT, Internet and related charges to Rs. 1.27 Crore in FY 2007-08 as against Rs. 0.55 Crore in FY 2006-07, TPC-T submitted that such increase was on account of upgradation of ERP Version of TPC as a whole from R3 4.6C to ECC 6, which is done in order to mitigate the risk due to technology obsolescence.

Not withstanding TPC-T's submission, the Commission in accordance with the philosophy adopted in the APR Order dated May 26, 2008 in Case No. 67 of 2007 in respect of disallowance of Tata Brand Equity that :

> *"The Commission is of the opinion that this expense of Rs 3.18 Crore towards Tata Brand Equity is a sort of internal arrangement between the Group Companies and this amount is paid to the promoter of the Company, viz., Tata Sons. The kind of support provided by Tata Sons to TPC, as stated by TPC in above paragraphs is normal and usually in business, the promoter provides such support to its Group Companies as it also earns returns from its Group Companies. TPC itself is a 100 year old business and a brand name in its own right and with assured returns in a regulated business, has all the financial and other goodwill to conduct its business optimally. Therefore, the Commission is of the view that the amount paid by TPC to Tata Sons under Tata Brand Equity should not be separately allowed, as it would amount to provide the promoters additional return on equity. As per the MERC Tariff Regulations, a Transmission Licensee can only be provided a regulated Return on Equity of 14% on the regulatory equity as estimated by the Commission and if any expense towards the Tata Brand Equity is allowed, then it would tantamount to allowing a higher Return on Equity."*

the Commission has not considered the expense of Rs 3.51 Crore towards the payment to Tata Brand Equity.

The summary of A&G expenses approved in the Order, actual A&G expenses and A&G expenses approved after truing up for FY 2007-08 has been shown in the following Table:

Table: A & G Expenses ***(Rs Crore)***

Particular	APR Order	Actuals	Allowed after truing up
Net A&G Expenses		28.67	28.47
Less: Brand Equity		3.51	3.51
Net A&G Expense after deducting Brand Equity	26.22	25.16	24.96

The Commission has considered the difference between the allowed A&G expenses and actual A&G expenses under the sharing of gains and losses due to controllable factors, since R&M is a controllable expense

3.1.3 <u>R&M Expenses</u>

TPC submitted that the actual R&M expenses for FY 2007-08 was Rs 9.12 Crore as against Rs 12.39 Crore approved by the Commission in the APR Order, and the R&M expenses have thus, been maintained within the levels approved by the Commission. TPC restated the actual R&M expenditure towards transmission business for FY 2007-08 at Rs 8.98 Crore upon reconciliation of audited accounts between licensed business and Other Business. Accordingly, the Commission has considered the revised actual R&M expenses of Rs 8.98 Crore for FY 2007-08 under the truing-up process, and has considered the difference between the allowed R&M expenses and actual R&M expenses under the sharing of gains and losses due to controllable factors, since R&M is a controllable expense.

Table: R&M Expenses ***(Rs Crore)***

Particular	APR Order	Actuals	Allowed after truing up
Net R&M Expenses	12.39	8.98	8.98

3.2 Capital Expenditure and Capitalisation

The Commission has examined the depreciation and actual capitalisation claimed by TPC-T in detail as against the various capex schemes approved by the Commission. The Commission notes that as against permitted capital expenditure of Rs. 129.26 Crore and corresponding capitalisation of Rs. 93.89 Crore considered under its earlier APR Order dated May 26, 2008, actual capitalisation by TPC-T during FY 2007-08 amounted to Rs. 51.43 Crore. The Commission notes that out of the total capitalisation of Rs. 51.43 Crore for FY 2007-08, capitalisation of DPR schemes amounts to Rs. 26.34 Crore and the balance pertains to Non-DPR schemes. The Commission has verified the actual capitalisation claimed by TPC-T as against the capex schemes already approved by the Commission. Accordingly, for truing up for FY 2007-08, the Commission has considered the capitalisation of Rs. 51.43 Crore.

As regards whether projected benefits have actually accrued for the benefit of the consumers, the Commission directs TPC-T to submit the detailed report with established benefits vis-à-vis the benefits projected with the schemes within one month from the issuance of this Order.

3.3 Depreciation

The Commission, in its earlier Order dated May 26, 2008, had permitted depreciation to the extent of Rs 26.59 Crore for FY 2007-08, which amounts to 2.54% of Opening level of Gross Fixed Assets (GFA) of TPC-T for FY 2007-08, which was stated at Rs 1046.10 Crore. The depreciation rates were considered as prescribed under MERC (Terms and Conditions of Tariff) Regulations, 2005. TPC, in its APR Petition, submitted that the actual depreciation expenditure incurred in FY 2007-08 was Rs 26.71 Crore.

Further, against capitalisation of Rs 93.89 Crore considered under the APR Order, actual capitalisation by TPC-T during FY 2007-08 amounted to Rs 51.43 Crore. The Commission has verified the actual capitalisation claimed by TPC-T against the capex schemes already approved by the Commission. Further, TPC-T in its additional submissions, confirmed that depreciation has not been claimed beyond 90% of the asset value in line with the MERC Tariff Regulations. The depreciation expenditure approved by the Commission for FY 2007-08 has been summarised in the following Table:

Table: Depreciation ***(Rs Crore)***

Particulars	Tariff Order	Actuals	Allowed after truing up
Depreciation	26.59	26.71	26.71
Opening GFA	1046	1046	1046

3.4 Interest Expenses

The Commission, under its APR Order dated May 26, 2008, had approved interest expenditure of Rs 6.17 Crore, after considering the interest expenditure on normative debt and actual loan from IDFC Ltd. corresponding to capitalised assets only. The Commission had considered the normative interest rate of 10% p.a. for the assets put to use during FY 2004-05 and FY 2005-06, interest rate of 8.9% p.a. for assets put to use during FY 2006-07, and the interest rate of 8.9% p.a. for assets put to use during FY 2007-08 towards the IDFC loan, and accordingly considered the weighted average rate of interest as 9.3%.

TPC has estimated the interest expenses under the following three heads:

- Interest on Debt
- Interest on Working Capital
- Interest and Finance Charges

3.4.1 <u>Interest on Debt</u>

TPC-T submitted that interest on debt for FY 2007-08 has been computed based on interest on normative loans for previous years and actual loan for 70% of the expenditure to be capitalised in FY 2007-08. TPC has raised a loan of Rs. 450 Crore from IDFC to fund its current capital expenditure with the following terms:

- Tenor : 12 years with 3 year moratorium and 9 years repayment
- Interest Rate: 5 year G-Sec rate +1.45% p.a. subject to minimum of 8.90%.

TPC-T submitted that the interest on long-term debt for FY 2007-08 is estimated at Rs. 4.83 Crore as against Rs. 6.17 Crore approved by the Commission. TPC-T submitted that the variation in the interest expenditure is on account of lower capitalisation as compared to the approved capitalisation for the year.

The Commission has considered the interest expenditure on the normative debt corresponding to capitalised assets only and has considered the interest rate of 10% p.a. for the assets put to use during FY 2004-05 and FY 2005-06. As regards assets put to use during FY 2006-07 and FY 2007-08, the Commission has considered loan terms for the actual loan availed by TPC-G from IDFC. The Commission has verified yield-to-maturity (YTM) rate for 5 year G-sec which was around 7.45% to 7.55%. Thus, for the purpose of interest cost computation during FY 2006-07 and FY 2007-08 (on the loan portion of the approved capitalisation), the Commission has considered interest rate at minimum of 8.90% p.a. as submitted by TPC-T under its APR Petition. Accordingly, the weighted average rate of interest amounts to 9.30% p.a. for FY 2007-08. The summary of the interest expenses as approved in the APR Order, revised estimate by TPC-T and approved by the Commission after truing up is shown in the Table below:

Table: Interest Expenses ***(Rs Crore)***

Particulars	FY 2007-08		
	APR Order	Revised Estimate	Allowed after truing up
Op. Balance	35.45	35.15	35.15
Additions	65.72	36.00	36.00
Repayments	(2.50)	(2.50)	(2.50)
Cl. Balance	98.67	68.66	68.66
Interest	6.17	4.83	4.83
Effective Interest Rate	9.21%	9.30%	9.30%

3.4.2 Other Finance Charges

TPC submitted that there was an income of Rs. (0.19) Crore as against the approved other financial charges of Rs. 0.02 Crore estimated at the time of the filing and as approved by the Commission in the APR Order. The Commission has allowed the actual expenditure under this head, under the truing up exercise.

3.4.3 Interest on Working capital

TPC-T submitted that it has estimated the Interest on Working Capital (IWC) considering average interest rate @ 11.50% on the components of Working Capital specified in the MERC Tariff Regulations, with the revised Interest on Working Capital estimated at Rs 5.34 Crore as against Rs 5.32 Crore approved in the APR Order by the Commission.

As regards the actual working capital requirements, TPC-T submitted that such requirement is funded through a mix of actual borrowings and through funds provided by the Corporate through internal accruals. TPC-T submitted that the total interest paid by TPC for such short-term loan works out to Rs. 26 Crore for FY 2007-08. TPC allocated such actual interest paid for working capital to its Generation, Transmission and Distribution business on the basis of the normative working capital share in total normative working capital in TPC's Mumbai Operations and allocation to TPC-T works out to Rs. 1.41 Crore.

TPC-T submitted that the component of financing through Corporate funds (Internal accruals) is also entitled to interest as the Corporate incurs a carrying cost for such 'internal cash' or funds, as usage of this cash denies an opportunity to earn income through interest on deposits in the money markets. Accordingly, TPC-T submitted that it has effectively incurred a cost by blocking its money (cash) in such Working Capital. TPC-T submitted that it is well known that any ongoing Company requires working capital to run its operations, which may either be borrowed or funded from own funds. If the working capital is borrowed, the cost of such borrowed funds is the interest paid to the lender on this borrowed amount. However, if no loans are taken, the same would have to be provided by the Company from the funds it has accrued. Such internal funds are in effect provided by the shareholders, who expect some return on the funds. TPC-T submitted that hence, it would be legitimate to expect that there is a cost for such internally accrued funds that are used to finance the working capital, and the cost of such internally accrued funds which reflect the expectation of returns by the shareholders is generally higher than the cost of borrowing.

TPC-T added that even if no amount was actually borrowed, it would be incorrect to treat the entire normative interest on working capital as efficiency gain, which needs to be shared with the consumers. TPC-T submitted that the MERC Tariff Regulations stipulates the computation of Interest on Working Capital on "Normative Basis" and does not prescribe or stipulate any pre-condition for funding the working capital through actual loans. Further, the treatment given for normative loans for financing capital expenditure may be extended to the financing of Working Capital.

Accordingly, TPC-T submitted that the interest on actual working capital requirement at normative interest rates (SBI PLR) should be considered as part of interest expenses for the computation of gains and losses on account of interest on working capital. TPC-T requested the Commission to reconsider its stand adopted in its APR Order dated May 26, 2008 and approve the above methodology for computing gains and losses on account of working capital. As regards the sharing of gains and losses on account of actual and normative interest on working capital, TPC-G submitted that the Commission has considered the difference between actual working capital and that approved on normative basis as gains and hence, passed one-third of the gain to the Distribution Licensees. TPC-G submitted that it has appealed against the Commission's methodology in the ATE and reserves the right to seek appropriate adjustments for FY 2007-08 based on the decision of the ATE.

During the TVS, TPC reiterated its submission under its Petition regarding Interest on Working Capital and submitted that TPC has computed the Interest on Normative Working Capital in lieu of Actual Interest on Working Capital so as to correctly reflect the cost of Working Capital, while computing the sharing of gains and losses due to controllable factors. TPC further submitted that in FY 2007-08, the funds of Tata Group Company, viz., M/s Indian Hotels were utilised for working capital through the corporate Company, M/s Tata Sons. The Commission asked TPC to submit the details and documentary evidence of relevant Inter-Company transactions.

TPC, in its reply, submitted that the reference during the TVS to utilisation of funds for working capital from corporate funds within the same Company was with reference to utilisation of Corporate funds belonging to 'The Tata Power Company' for funding the working capital of a particular business like Generation, Transmission, Distribution, or any other business that the Company may have. TPC submitted that during the TVS it wanted to convey that the MERC Tariff Regulations also provide that any capital expenditure would be funded through a Debt (Loan) to Equity structure of 70:30 notwithstanding the actual quantum of loan in such financing. In effect, the debt quantum for financing the Capital Expenditure is considered on normative basis. The actual quantum of loan taken by the Company has no bearing on the tariff that is determined as it is only the normative loan that is considered. If the actual loan interest is less than the normative interest, it is not construed as savings. TPC further submitted that the reference to another Tata Group Company such as M/s

Indian Hotels was inadvertent and unintentional and hence, there was no need to produce documentary evidence to support the claim.

The Commission has estimated the normative working capital requirement and interest thereof for FY 2007-08 based on the revised expenses approved in this Order after truing up. However, the Commission considers this to be a controllable parameter and has therefore computed the sharing of gains/losses on the basis of normative working capital interest and the actual working capital interest incurred, which in this case is Rs. 1.41 Crore, since this is a controllable parameter. Further, the Tariff Regulations stipulate that rate of Interest on Working Capital shall be considered on normative basis and shall be equal to the short-term Prime Lending Rate of State Bank of India as on the date on which the application for determination of tariff is made. As the short-term Prime Lending Rate of State Bank of India at the time when TPC-T filed the Petition for tariff determination for FY 2007-08 was 11.50%, the Commission has considered the interest rate of 11.50% for estimating the normative Interest on Working Capital, which works out to Rs 5.16 Crore.

3.5 Return on Equity (RoE)

TPC submitted that based on the capital expenditure and capitalisation and debt:equity norm of 70:30, the return on equity on the equity portion has been considered at 14%. Further, TPC has computed RoE on the opening equity as well as on 50% of the equity portion of the capitalisation during the year.

In response to the Commission's query, TPC-T confirmed that no consumer contribution/grants/capital subsidy has been utilised for funding the schemes that have been capitalised.

As regards query on de-capitalisation/write-off of asset and corresponding equity portion thereof, TPC-T submitted that as per the practice followed by the Company, an asset is retired from the books when sale/disposal takes place either at or before the end of the asset's productive life. However, an asset is de-capitalised by the Company when it is transferred from one business area (when it is no longer used in the Operations of that area) and is capitalised elsewhere in a business area identified for better/more effective use of the asset. Accordingly, the assets are reviewed annually for their use in the respective area. TPC-T has further submitted that during FY 2007-08 and FY 2008-09, no such de-capitalisation has taken place in TPC-T.

Accordingly, the Commission has computed the RoE for FY 2007-08 at 14% on the opening balance of equity as well as on 50% of the equity portion of capitalisation during the year, in accordance with the MERC Tariff Regulations as applicable for the transmission business.

The RoE as projected by TPC and approved by the Commission for FY 2007-08 is summarised in the following Table:

Table: Return on Equity ***(Rs Crore)***

Particulars	**FY 2007-08**		
	APR Order	**Revised Estimate by TPC-T**	**Allowed after truing up**
Regulatory Equity at the beginning of the year	405.76	405.76	405.76
Equity portion of assets capitalised during year	28.17	15.43	15.43
Regulatory Equity at the end of the year	433.92	421.19	421.19
Return on Regulatory Equity at the beginning of the year	56.81	56.81	56.81
Return on Equity portion of capitalised asset value during year	1.97	1.08	1.08
Total Return on Regulatory Equity	**58.78**	**57.89**	**57.89**

3.6 Contribution to Contingency Reserves

TPC submitted that the contribution to contingency reserve for FY 2007-08 has been Rs. 2.43 Crore which is lower than Rs. 5.23 Crore (0.5% of GFA) as approved in the APR for FY 2007-08. In this context, Regulation 50.7.1 of MERC (Terms and Conditions of Tariff) Regulations, 2005 specifies that the appropriation towards contingency reserve shall not be less than 0.25% and shall not be greater than 0.5% of original cost of fixed assets, and when contingency reserve exceeds 5% of the original cost of fixed assets, no further provisioning towards contingency reserves is necessary. As highlighted under MYT Order and APR Order for FY 2007-08, the Commission has considered contribution to contingency reserve at 0.5% of Opening GFA for FY 2007-08. Accordingly, no change been made from approved philosophy under truing up exercise for FY 2007-08. Accordingly, the Commission has allowed provisioning towards contingency reserve for FY 2007-08 at Rs 5.23 Crore (i.e. 0.5% of Opening GFA), under the truing up exercise, in accordance with MERC Tariff Regulations and the Commission's philosophy outlined under earlier Orders.

3.7 Income Tax

TPC submitted that for FY 2007-08, the income tax is estimated at Rs 37.09 Crore as against the earlier estimate of Rs 33.33 Crore, which was approved by the Commission for FY 2007-08 in the APR Order.

TPC-T submitted that it has incorporated the Commission's ruling in Case No. 64, 65 and 66 of 2007, wherein, the Commission ruled that normative interest on loan and normative interest on working capital are not actual expenses and hence, will not be eligible as deductible expenses while computing the income tax. The Commission agrees with TPC-T's submission that normative interest on loan and normative Interest on Working Capital are not actual expenses and hence, will not be eligible as deductible expenses while computing the income tax. However, the issue of book depreciation and tax depreciation is relevant in case of TPC-T and accordingly, the Commission has considered the same while working out the income tax as well as other allowable expenditure and disallowances under various Sections of Income Tax Act, 1961 as submitted by TPC-T. The total income tax as per TPC-T, paid by TPC as a whole for FY 2007-08 is Rs. 116.44 Crore.

As regards tax on income arising out of incentive earned by TPC-T due to higher than normative availability of its transmission system, the Commission is of the view that the expenses incurred for achieving better performance for higher Availability have already been allowed as pass through by the Commission and allowing tax on income arising out of better performance will put additional burden to consumers. Moreover, the MERC Tariff Regulations stipulate that the Transmission Licensee is allowed to retain one-third of the efficiency gains, while one-third is added to a special reserve to be used to off-set efficiency losses in future, if required, and only the balance one-third is passed on to the consumers (distribution licensees, in this case) through reduction in tariff. If the income tax on the share retained by the Transmission Licensee is passed through as an expense in the ARR, it will amount to reducing the consumer's share, i.e., one-third of the efficiency gains. This clearly is not the intention of the MERC Tariff Regulations. In other words, income tax is to be allowed as a pass through in the ARR, only to the extent of normal profits, i.e., the RoE, and not on any additional returns that the licensee is able to earn. Hence, the Utility has to pay the Income Tax on efficiency gains out of its own profits, and this cannot be passed on to the consumers. Accordingly, the Commission has not considered the tax on income arising out of availability incentive.

TPC has estimated the income tax liability considering the Tax WDV (Written Down Value) of assets and other provisions of the Income Tax Act, 1961. The Commission has modified the tax computations submitted by TPC to account for the changes in RoE and regulatory depreciation, and found that there was a significant change in the income tax liability vis-à-vis the income tax considered in the APR Order. For the purpose of income tax computations, the Commission has considered the RoE as the regulatory profit before tax, in accordance with the approach suggested by TPC in the earlier APR Petition, and adopted by the Commission in the previous APR Order. Further, the Commission has not grossed up such RoE component for income tax, since the income tax is being allowed as an expense under the ARR, in accordance with the MERC Tariff Regulations. The summary of the income tax computations as approved by the Commission is shown in the following Table.

Table: Summary of approved Income Tax for FY 2007-08

Particulars	Rs. Crore
Return on Equity	57.89
Add: Normative Interest on Working Capital	5.16
Less: Actual Interest on working capital	-1.41
Interest on loan approved by Commission	4.83
Less: Actual Interest on Long Term loan (IDFC loan)	-2.95
Add: Regulatory Depreciation	26.71
Less: Tax depreciation	-31.25
Add: Other Disallowances for computing Income Tax	17.22
Less: Other Expenses allowed for computing income tax	-6.05
Less: Deductions under S. 80-G, 80 IA	-1.60
Total	**68.55**
Corporate Tax Rate (%)	33.99
Income Tax	23.30

Accordingly, the approved income tax liability for FY 2007-08 along with TPC's submission and as approved in the APR Order is given in the following Table.

Table: Income Tax for FY 2007-08 (Rs Crore)

Particulars	APR Order	Actuals	Allowed after truing up
Income Tax	33.33	37.09	23.30

3.8 Non Tariff Income

TPC submitted that the non-tariff income largely comprises non-recurring income, except for rental income. TPC submitted that the actual non-tariff income for FY 2007-08 is higher at Rs 12.56 Crore as against Rs 8.83 Crore approved in the Tariff Order. The Commission has considered the actual non-tariff income reported by TPC-T, under the truing up exercise, as shown in the Table below:

Table: Non-tariff income for FY 2007-08 (Rs Crore)

Particulars	APR Order	Actuals	Allowed after truing up
Non-tariff Income	8.83	12.56	12.56

3.9 True-up of Revenue from transmission charges

The Commission, in its Order on Transmission Pricing Framework in Case No. 58 of 2005, stipulated that the ARR of transmission licensees will be pooled together to form the Total Transmission System Cost (TTSC) for Intra-State Transmission System and each transmission licensee will be entitled to recover its approved ARR from the transmission tariff collected by STU from transmission system users (i.e., distribution licensees). Accordingly, for FY 2007-08, the Commission has issued the Transmission Tariff Order in Case No. 86 of 2006, determining the transmission charges applicable from April 1, 2007 to March 31, 2008. The approved ARR for TPC-T for FY 2007-08 was Rs 211.72 Crore and the monthly recovery approved was Rs 17.64 Crore as per the Order. Accordingly, TPC-T is entitled to recover only the amount as approved by the Commission. Hence, the Commission is of the view that there is no requirement of true up of revenue in the case of transmission. However, the revenue earned by TPC-T has been compared with the expenses incurred by TPC-T during FY 2007-08, to compute the net revenue gap/surplus for FY 2007-08.

3.10 Sharing of Gains and Losses for FY 2007-08

TPC-T categorised the various heads of expenditure as controllable and uncontrollable and computed the gains and losses for the controllable expenditure and shared the same with the distribution licensees in accordance with the MERC Tariff Regulations. The relevant provisions under the MERC Tariff Regulations stipulating sharing of gains/losses due to controllable factors are reproduced below:

> *"17.6.2 Some illustrative variations or expected variations in the performance of the applicant which may be attributed by the Commission to controllable factors include, but are not limited to, the following:*
>
> *(a) Variations in capital expenditure on account of time and/ or cost overruns/efficiencies in the implementation of a capital expenditure project not attributable to an approved change in scope of such project, change in statutory levies or force majeure events;*
>
> *(b) Variations in technical and commercial losses, including bad debts;*

(c) Variations in the number or mix of consumers or quantities of electricity supplied to consumers as specified in the first and second proviso to clause (b) of Regulation 17.6.1;

(d) Variations in working capital requirements;

(e) Failure to meet the standards specified in the Standards of Performance Regulations, except where exempted in accordance with those Regulations;

(f) Variations in labour productivity;

(g) Variations in any variable other than those stipulated by the Commission under Regulation 15.6 above, except where reviewed by the Commission under the second proviso to this Regulation 17.6.

…

19.1 The approved aggregate gain to the Generating Company or Licensee on account of controllable factors shall be dealt with in the following manner:

(a) One-third of the amount of such gain shall be passed on as a rebate in tariffs over such period as may be specified in the Order of the Commission under Regulation 17.10;

(b) In case of a Licensee, one-third of the amount of such gain shall be retained in a special reserve for the purpose of absorbing the impact of any future losses on account of controllable factors under clause (b) of Regulation 19.2; and

(c) The balance amount of gain may be utilized at the discretion of the Generating Company or Licensee.

19.2 The approved aggregate loss to the Generating Company or Licensee on account of controllable factors shall be dealt with in the following manner:

(a) One-third of the amount of such loss may be passed on as an additional charge in tariffs over such period as may be specified in the Order of the Commission under Regulation 17.10; and

(b) The balance amount of loss shall be absorbed by the Generating Company or Licensee."

The treatment (controllable or uncontrollable) proposed by TPC for variation in various heads of expenditure is given in the Table below:

Table Controllable and Uncontrollable factors proposed by TPC

Sr. No.	Particulars	Category	Remarks
1	O&M expenditure	Controllable	Uncontrollable to the extent they arise due to factors such as increase in statutory levies, taxes, changes due to requirements of other utilities and other bodies such as municipal authorities, MbPT, etc
2	Interest on Normative Loans	Uncontrollable	Controllable to the extent they arise due to delay in completion of the project thereby leading to increase in the completed project cost and such increase is not approved by the Commission.
3	Interest on Working Capital	Uncontrollable	Uncontrollable as worked out on normative basis at target availability.
4	Other Finance Charges	Controllable	__
5	Depreciation & Advance against Depreciation	Uncontrollable	Controllable to the extent they arise due to delay in completion of the project thereby leading to increase in the completed project cost and such increase is not approved by the Commission.
6	Income Tax	Uncontrollable	Controllable to the extent they arise due to controllable costs.
7	Return on Equity	Uncontrollable	Computed based on principles outlined by the Commission in the Tariff regulations.
8	Non-Tariff income	Uncontrollable	Controllable to the extent of the recurring portion of such non-tariff income.

The Commission has considered the various expenses for computing the sharing of gains/losses in accordance with the MERC Tariff Regulations, as elaborated below:

O&M Expenditure

TPC submitted that based on the above classification and the reasons given therein, most items of expenditure for FY 2007-08 are uncontrollable except for certain expenditure in the O&M expenditure. TPC-T has considered the actual O&M expenditure as Rs. 90.55 Crore, as compared to the approved O&M expenditure of Rs. 98.33 Crore. By comparing this approved O&M expenses of Rs 98.33 Crore with actual O&M expenses of Rs 90.55, TPC has considered a net gain of Rs 7.8 Crore in O&M expenses and has proposed to share 1/3rd of the same with the Distribution Licensees, as shown in the Table below:

Table: Gain and loss due to variation in O&M expenses as estimated by TPC

(Rs Crore)

S No.	Particulars	Amount
1	Approved O&M Expenditure for FY08	98.33
2	Actual O&M Expenditure for FY08	90.55
3	Gains / (Loss) (2-1)	7.78
	Sharing of Gain / (Loss)	
4	**Amount passed on to the Distribution Licensees (1/3rd of Gain/Loss) (1/3rd * 3)**	**2.59**
5	**Amount transferred to Special Reserve (1/3rd of Gain/Loss) (1/3rd * 3)**	**2.59**
6	**Amount retained by the Transmission Licensee (1/3rd of Gain/Loss) (1/3rd * 3)**	**2.59**

The actual O&M expense for FY 2007-08 as approved after final true-up by the Commission is Rs 89.79 Crore as against earlier approved expense of Rs 98.33 Crore and the efficiency gain on this account works out to Rs 8.54 Crore, of which 1/3rd has been considered to be passed on to Distribution Licensees, 1/3rd has been passed on to a special reserve to be created to offset future losses due to controllable factors, if any, and 1/3rd has been allowed to be retained by the Transmission Licensee, i.e., TPC-T, in accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005.

Interest on Working Capital

As discussed in the earlier paragraphs, the actual interest on working capital incurred by TPC-T during FY 2007-08 is Rs 1.41 Crore and the normative interest on working capital approved by the Commission considering other elements of expenses as approved after truing up, works out to Rs 5.16 Crore. The Commission has considered the difference between normative interest on working capital and actual interest on working capital as an efficiency gain and has considered sharing of 1/3rd of the same with the distribution licensees, 1/3rd has been passed on to a special reserve to be created to offset future losses due to controllable factors, if any, and 1/3rd has been allowed to be retained by the Transmission Licensee, i.e., TPC-T, in accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005.

Total Amount of Efficiency Gains

Based on the above computations, the Commission has estimated the total efficiency gain as Rs 12.29 Crore, as against the efficiency gain of Rs 11.47 Crore estimated by TPC-T for FY 2007-08. The Commission has considered this efficiency gain to be shared in accordance with the MERC Tariff Regulations, as stated above. The summary of the net ARR and efficiency gains as approved by the Commission for FY 2007-08 is given in the following Table:

Table: Summary of Truing up for FY 2007-08 including sharing of efficiency gains (Rs Crore)

Sr. No.	Particulars	Approved as per APR 2007-08	Actuals	Allowed after Truing Up	Total Efficiency Gain	1/3 rd of Efficiency Gain shared with TSU	2/3 rd of Efficiency Gain retained by TPC-T	Net Entitlement
(1)	(2)	(3)	(4)	(5)	(6)=(3)-(5)	(7)=(6)/3	(8)=(6)*2/3	(9)=(5)+(8)
A	Expenditure							
1	Operation & Maintenance Expenses	98.33	90.55	89.79	8.54	2.85	5.70	95.48
1.1	*Employee Expenses*	*59.72*	*55.07*	*55.85*				
1.2	*Administration & General Expenses*	*26.22*	*29.88*	*28.47*				
	Less; Brand Equity	*0*	*-3.51*	*-3.51*				
1.3	*Repair & Maintenance Expenses*	*12.39*	*9.12*	*8.98*				
2	Depreciation, including advance against depreciation	26.59	26.71	26.71	0.00	0.00	0.00	26.71
3	Interest on Long-term Loan Capital	6.17	4.83	4.83	0.00	0.00	0.00	4.83
4	Interest on Working Capital and on consumer security deposits	5.32	5.34	5.16	3.75	1.25	2.50	3.91
5	Other Finance Charges	0.02	-0.19	-0.19	0.00	0.00	0.00	-0.19
7	Income Tax	33.33	37.09	23.30	0.00	0.00	0.00	23.30
8	Contribution to contingency reserves	5.23	2.43	5.23	0.00	0.00	0.00	5.23
	Total Expenditure	174.99	166.77	154.82	12.29	4.10	8.20	159.27
B	Return on Equity	58.78	57.89	57.89	0.00	0.00	0.00	57.89
C	Incentive for Higher Availability		3.36	2.99	0.00	0.00	0.00	2.99
	Total Revenue Reqirement (including expenditure +RoE +Incentive)	233.77	228.02	215.70	12.29	4.10	8.20	220.15
E	Revenue							
1	Non Tariff Income	8.83	12.56	12.56	0.00	0.00	0.00	12.56
2	Tariff Income	211.72	211.72	211.72	0.00	0.00	0.00	211.72
	Total Revenue	220.55	224.28	224.28	0.00	0.00	0.00	224.28
F	Revenue Gap/(surplus)	13.22	3.73	-8.58	12.29	4.10	8.20	-4.14

Thus, the net revenue entitlement for TPC-T for FY 2007-08 including incentive for higher availability as elaborated under subsequent paragraph, works out to Rs. 220.15 Crore, as compared to the revenue requirement of Rs. 233.77 Crore allowed to TPC-T in the APR Order dated May 26, 2008. Further, total revenue, allowed after final true-up, for FY 2007-08 amounts to Rs 224.28 Crore comprising income from transmission tariff as Rs 211.72 Crore and Non-tariff income of Rs 12.56 Crore. Accordingly, revenue surplus of Rs 4.14 Crore for FY 2007-08 has been considered after final true-up for FY 2007-08.

3.11 Incentive on Transmission Availability

TPC-T submitted that in accordance with the Commission's Order dated June 27, 2006 in Case No.58 of 2005, TPC-T is entitled for incentive on transmission system availability greater than 98%. TPC submitted that the transmission system availability in FY 2007-08 was 99.46%, and the incentive works out to Rs. 3.36 Crore. TPC submitted that the above incentive would be billed separately to the pool and shall be payable by the Transmission System Users, and hence, the same has not been considered in the computation of Annual Transmission Charges.

In its Order in Case No.58 of 2005, the Commission had ruled as under:

> *"2.8.7 Accordingly, the Commission rules that the transmission licensee shall be entitled to incentive on achieving annual availability beyond the target availability as stipulated under MERC (Terms and Conditions for Tariff) Regulations 2005, in accordance with the following formula:*
>
> *Incentive = Annual Transmission Charges x [Annual availability achieved – Target Availability] / Target Availability;*
>
> *Where,*
>
> *Annual transmission Charges shall correspond to ARR for the particular transmission licensee within State, as the case may be.*
>
> *Provided that no incentive shall be payable above the availability of 99.75% for AC system and 98.5% for HVDC system."*

In this context, the transmission system availability of the transmission licensee needs to be certified by Maharashtra State Load Despatch Centre (MSLDC). Accordingly, the Commission directed TPC-T to arrange for requisite certification from MSLDC and also directed MSLDC to formulate appropriate procedure to monitor and certify the Transmission System Availability of various transmission licensees on regular basis. Pending finalisation of such procedure, the Commission has proceeded to consider the claims of TPC-T for incremental availability beyond threshold norm for FY 2007-08 and its claim for incentive thereof. TPC-T has submitted its transmission system availability computations for FY 2007-08, duly certified by MSLDC.

Accordingly, the Commission has computed the incentive for transmission system availability greater than 98% in accordance with the above formula and considering the approved ARR of Rs. 212.71 Crore, the incentive works out to Rs. 2.99 Crore amounting to total approved ARR of Rs 215.70 Crore. The Commission does not find any merit in TPC's suggestion that the incentive should be billed separately to the pool, rather than being considered under the Annual Transmission Charges. As incentive can be established only upon finalisation of the ARR with true-up requirements, if any, the claim for incentive can be ascertained along with Annual Performance Review exercise. The Commission has included the above incentive of Rs. 2.99 Crore in the Aggregate Revenue Requirement for FY 2009-10, which shall be payable by the Transmission System Users. The Commission has not considered income tax on this element of TPC-T's revenue earned for passing on to its consumers.

4 PERFORMANCE REVIEW OF FY 2008-09 AND DETERMINATION OF AGGREGATE REVENUE REQUIREMENT FOR FY 2009-10

4.1 PERFORMANCE PARAMETERS

Regulation 16.1 of the MERC (Terms and Conditions of Tariff) Regulations, 2005, stipulates,

> *"The Commission may stipulate a trajectory, which may cover one or more control periods, for certain variables having regard to the reorganization, restructuring and development of the electricity industry in the State.*
>
> *Provided that the variables for which a trajectory may be stipulated include, but are not limited to, generating station availability, station heat rate, transmission losses, distribution losses and collection efficiency."*

The Commission, in its MYT Order for TPC-T, had considered the trajectory of system availability. Regulation 49.1 of the MERC (Terms and Conditions of Tariff) Regulations, 2005, stipulates,

> *"Target availability for full recovery of annual transmission charges*
> *(a) AC system:- 98 per cent*
> *(b) HVDC bi-pole links and HVDC back-to-back stations:- 95 per cent"*

4.1.1 <u>System Availability</u>

TPC-T was directed to maintain the system availability at the levels stipulated in the MERC Tariff Regulations in order to be eligible to recover the full fixed charges, i.e., ARR, as determined by the Commission. Any reduction in system availability will lead to pro-rata reduction in recovery of the ARR. The Commission will true-up the actual availability of TPC-T's transmission system at the end of the year based on actuals, and the recovery of complete ARR will depend on the achievement of the normative availability levels.

In this context, the Commission directs TPC-T to arrange for requisite certification from MSLDC for FY 2008-09 and FY 2009-10 and also directs MSLDC to formulate appropriate procedure to monitor and certify the Transmission System Availability of various transmission licensees on regular basis.

TPC-T is entitled to incentive on transmission system availability greater than 98%, in accordance with the method of computation of the incentive as elaborated in Section 3, which will be determined for FY 2008-09 at the time of final true-up.

4.1.2 <u>Transmission Losses</u>

The Commission has considered the Intra-State Transmission System (InSTS) loss of 4.85% for the Control Period, in accordance with the principles outlined in the Transmission Pricing Framework Order dated June 27, 2006 and Transmission Tariff Order dated September 29, 2006.

Interface metering (G< >T and T< >D) over Intra-State Transmission System of which TPC-Transmission system is part of, is yet to be accomplished. The Commission has directed all transmission licensees to facilitate and co-operate with MSETCL to ensure that requisite special energy meters are put in place across all the interface points at the earliest. The energy accounting and ascertainment of transmission losses for Intra-State Transmission System as well as for various components/elements of the transmission system would be feasible only after establishment of such metering arrangement.

As per energy accounting undertaken by MSLDC under interim balancing and settlement mechanism (IBSM), the Intra-State Transmission losses have been assessed at 4.67% for FY 2007-08 and 4.87% for FY 2008-09 based on assessment upto Feb-2009 (11 months). Further, transmission loss for InSTS for FY 2009-10 has been projected as 4.85%.

4.2 PROVISIONAL TRUING-UP FOR FY 2008-09

TPC-T, in its APR Petition for FY 2008-09 and ARR Petition for FY 2009-10, submitted the performance for FY 2008-09 based on actual performance for the first half of the year, i.e., April to September 2008, and estimated performance for the second half of the year, i.e., October 2008 to March 2009. TPC-T submitted the comparison of each element of expenditure and revenue with that approved by the Commission in its Order dated May 26, 2008 on TPC's Annual Performance Review for FY 2007-08 and Aggregate Revenue Requirement for FY 2008-09.

TPC-T, in its Petition, along with the revised estimates of expenditure also provided the details of adjustments on account of sharing of gains and losses. The Commission will undertake the final truing up of the revenue requirement and Revenue for FY 2008-09 once the audited accounts of TPC for FY 2008-09 are available, i.e., during Annual Performance Review for the third year of the Control Period, viz., FY 2009-10. However, the Commission in this Order on APR for FY 2008-09 and determination of ARR for FY 2009-10 has considered provisional truing up of certain elements of the revenue requirement and revenue, in cases where the impact is very high, or there is a change in principles/methodology, and due to revision in capital expenditure/capitalisation figures. The revised estimate of performance of TPC-T during FY 2008-09 and FY 2009-10 as compared to the Commission's MYT/APR Order for TPC-T is discussed in the following paragraphs.

The Commission clarifies that the final truing up and the computation of sharing of gains and losses due to uncontrollable factors will be undertaken only after the audited expenses and revenue are available. Further, for computing sharing of efficiency gains/losses for FY 2008-09, the revised expenses approved for FY 2008-09 in this Order under the provisional truing up exercise will be considered as base expenses.

4.3 O&M EXPENSES FOR FY 2008-09 AND FY 2009-10

The O&M expenditure comprises employee expenditure, A&G expenditure and R&M expenditure, as discussed below.

Relevance of Multi-Year Tariff

In this context, the Commission observes that during the public regulatory process on the APR Petitions, several consumers have expressed their opinion that revising tariff on an annual basis is against the principles of MYT. While this is not incorrect if one goes by the pure concept of MYT, in Maharashtra, parameters like sales and power purchase have not been stipulated in the MYT Orders, due to the uncertainty on account of the prevailing supply shortages in the State and the respective licence area. Consequently, the tariff has been specified for only one year, rather than the Control Period, which is also in accordance with the MERC Tariff Regulations, which specifies that tariff will be determined annually.

Consequently, in the MYT Orders, the Commission has primarily stipulated the following parameters separately for each year of the Control Period, viz.

(a) Performance trajectory

i. Station Heat Rate (SHR), auxiliary consumption, transit losses and secondary oil consumption for Generating Companies;

ii. Availability for Transmission Licensees; and

iii. Distribution loss for Distribution Licensees

(b) Cost elements

i. Operation & Maintenance (O&M) expenses have been approved as a whole for Generating Companies, and for individual elements, viz., employee expenses, A&G expenses, and R&M expenses, for Transmission Licensees and Distribution Licensees

ii. Working capital interest

However, even though the O&M expenses have been approved by the Commission for each year of the Control Period, wherein, by and large, the Utility's projections have been accepted, most Utilities have projected significant further annual increase in the O&M expenses for each year in the Control Period. If this increase in O&M expenses is allowed as sought by the Utilities, then the MYT framework created by the MERC in its MYT Orders will have no sanctity. Hence, the Commission rules that for FY 2008-09 and FY 2009-10, the O&M expenses allowed by the Commission for FY 2007-08 under the final truing up for FY 2007-08, after considering the base as audited expenses for FY 2006-07, will be considered as the base and increase will be allowed strictly as per the CPI/WPI growth as applicable, which incidentally, is higher than the growth rate projected by the Utilities in their respective original Petitions. The variation between allowed expenses and actual expenses will be considered as a controllable gain/loss, and will be shared between the Utilities and the respective consumers, in accordance with Regulation 19 of the MERC (Terms and Conditions of Tariff) Regulations, 2005.

4.3.1 Employee Expenses

TPC submitted that the revised Employee Expenditure for FY 2008-09 is estimated at Rs 59.96 Crore as compared to Rs 56.41 Crore approved in the APR Order, based on the actual employee expenses for first half of FY 2008-09 and estimated employee expenses for the remaining half of the year. TPC-T submitted the following reasons for deviation in employee expenses vis-à-vis the approved expenses for FY 2008-09:
The deviation is primarily on account of higher retirement benefits being booked based on actuarial valuation as against the earlier estimated provisions. Further, the number of employees is expected to be higher as filling up of vacancies, which were pending in the previous year is in progress. TPC-T submitted that it has been grappling with the issue of increasing attrition due to huge demand for power sector professionals within the country and overseas. This has led to the need for correcting the compensation to employees in order to retain skilled personnel and maintain smooth operations, which has resulted in an increase in employee expenditure. In addition, TPC-T submitted that to meet the requirements of the new transmission project and also to restore the employee strength reduced on account of attrition, new employees are being recruited. Hence, TPC-T expects the employee expenses to be higher in FY 2008-09 and in FY 2009-10 than that incurred during FY 2007-08.

For FY 2009-10, TPC-T projected employee expenses to be higher than the approved employee expenses by around Rs. 19 Crore, on account of the following reasons:

- AS-15 R impact as discussed in the petition for APR of FY 2007-08, an impact which the Commission had included in revising the approved amount for FY 2007- 08 and FY 2008-09.
- The manpower was sub-optimal in the past 2 years. Hence, a marginal increase in employee expenses to the extent of Rs. 1.5 Crore has been considered on account of normalising of manpower.

TPC–T added that increase in Employee Expenditure is purely to meet the growing needs of the business and on account of increase sought to off-set the inflation.

The Commission considers employee costs as controllable and does not accept TPC-T's contention. Therefore for FY 2008-09, for each sub-head of employee expenditure, the Commission has considered an increase of around 7.31% p.a. on account of inflation factor corresponding to increase in Consumer Price Index (CPI) over the revised level of employee expenses as approved for FY 2007-08 under the truing up exercise in this Order. The Commission has considered the point to point inflation over CPI numbers for Industrial Workers (as per Labour Bureau, Government of India) for a period of 3 years, i.e., FY 2006-07 to FY 2008-09 (upto December 2008), to smoothen the inflation curve.

Further, TPC-T has considered an amount of Rs. 1.05 Crore under Fringe Benefit Tax (FBT) under Income Tax head for FY 2008-09, however FBT being part of employee costs, it has been treated as an element under Employee Expenses by the Commission and has been considered for provisional truing up under this head.

The capitalisation of employee expenses has been considered at the rate of 5% in accordance with the actual level of capitalisation in FY 2007-08. The Commission will undertake the final truing up of employee expenses for FY 2008-09 based on actual employee expenses for the entire year and prudence check, during the APR process for FY 2009-10.

Similarly, for FY 2009-10, for each sub-head of employee expenditure, the Commission has considered an increase of around 7.31% p.a. on account of inflation over the revised level of employee expenses as approved for FY 2008-09 under the provisional truing up exercise in this Order, based on the increase in Consumer Price Index (CPI). Like previous years, TPC-T has considered FBT under Income Tax head for FY 2009-10 also. However, the FBT amounting to Rs 1.20 Crore has been treated as an element of Employee Expenses by the Commission. The capitalisation of employee expenses has been considered at the rate of 5% in accordance with the actual level of capitalisation in FY 2007-08.

Accordingly, the approved employee expenses for FY 2008-09 and FY 2009-10 is summarised in the following Table:

Table: Employee Expenses for FY 2008-09 and FY 2009-10 (Rs. Crore)

Particulars	**FY 2008-09**			**FY 2009-10**		
	APR Order	**Revised Estimate by TPC**	**Approved After provisional truing up**	**MYT Order**	**Revised Estimate by TPC**	**Approved**
Gross employee expenses	60.07	63.28	64.24	47.74	68.35	68.94
Add: Fringe Benefit Tax	-	-	1.05	-	-	1.20
Less: Capitalisation	3.00	3.33	3.26	-	2.08	3.51
Less: TPC-LD cost transferred to MSLDC Budget	0.66	-	-	-	-	
Net employee expenses	**56.41**	**59.96**	**62.03**	**47.74**	**66.28**	**66.63**

4.3.2 <u>A&G Expenses</u>

TPC submitted that the revised A&G Expenditure for FY 2008-09 is estimated at Rs 32.26 Crore as compared to Rs 26.50 Crore approved in the APR Order, based on the actual A&G expenses for first half of FY 2008-09 and estimated A&G expenses for the remaining half of the year. TPC-T submitted that the deviation from the amount approved for FY 2008-09 in the APR Order are on account of various controllable/uncontrollable factors as under:

- Increase in Way leave fee rates by MbPT; TPC-T has appealed against the same and the matter is sub-judice. Hence, provision has been made for the same – Rs. 0.5 Crore (Uncontrollable)
- Increase in cost of security services on account of increase in rates as well as enhanced security for preventing thefts – Rs. 0.2 Crore (Uncontrollable)
- Increase in Insurance costs – Rs. 0.6 Crore (Uncontrollable)
- Provision for contingencies – Rs. 0.5 Crore

TPC-T submitted that after considering the uncontrollable expenditure given above and superimposing this on the expenditure approved by the Commission, the estimated expenditure would be within the sum so arrived at.

For FY 2009-10, TPC submitted that it had estimated the A&G expenses as Rs. 36.66 Crore as compared to Rs 27.77 Crore approved in the MYT Order. The main reasons for such deviation as submitted by TPC-T are as under:

- Increase in Way leave fees expenses charged by MbPT- Rs. 1 Crore
- Contingency provision – Rs. 0.5 Crore
- The estimated cost for FY 2008-09 is Rs. 29 Crore. Considering an inflation rate of about 6.5%, the rise of about Rs. 2 Crore is justified on this account.

For FY 2008-09, the Commission has considered an increase of around 6.04% p.a. on account of inflation factor corresponding to increase in Wholesale Price Index (WPI) and Consumer Price Index (CPI) over the revised level of A&G expenses as approved for FY 2007-08 in this Order. The Commission has considered the point to point inflation over WPI numbers (as per Office of Economic Advisor of Govt. of India) and CPI numbers for Industrial Workers (as per Labour Bureau, Government of India) for a period of 3 years, i.e., FY 2006-07 to FY 2008-09 (upto December 2008), to smoothen the inflation curve. The Commission has considered a weight of 60% to WPI and 40% to CPI, based on the expected relationship with the cost drivers. This also considers the deduction made by the Commission on account of disallowance of the expenditure towards Tata Brand Equity. Further, the Commission has not considered expenses towards contributions/donations incurred in FY 2008-09 in line with the philosophy adopted while truing up A&G expenses for FY 2007-08, which has been elaborated in this Order. The Commission will undertake the final truing up of A&G expenses for FY 2008-09 based on actual A&G expenses for the entire year and prudence check, during the APR process for FY 2009-10.

For FY 2009-10, for each sub-head of A&G expenditure, the Commission has considered an increase of around 6.04% p.a. on account of inflation over the revised level of A&G expenses as approved for FY 2008-09 under the provisional truing up exercise in this Order, based on the increase in Wholesale Price Index (WPI) and Consumer Price Index (CPI).

Accordingly, the approved A&G expenses for FY 2008-09 and FY 2009-10 are summarised in the following Table:

Table: A&G Expenses for FY 2008-09 and FY 2009-10 (Rs. Crore)

Particulars	FY 2008-09			FY 2009-10		
	APR Order	Revised Estimate by TPC	Approved After provisional truing up	MYT Order	Revised Estimate by TPC	Approved
Net A&G expenses	26.50	32.26	29.63	27.77	36.66	31.26
Less Brand Equity		(3.17)	(3.17)		(3.20)	(3.20)
Net A&G expenses (excluding Brand Equity)	**26.50**	**29.09**	**26.46**	**27.77**	**33.46**	**28.06**

Further, as regards appointment of consultants, the Commission directs TPC that in future, any appointment of consultants where the estimated cost for the engagement of the Consultants is more than Rs. 1 crore, it should ensure that the selection is made through a competitive bidding process, proper Terms of Reference are prepared, cost benefit analysis is stated upfront and the deliverables of the consultancy assignment are properly defined. TPC-T should submit the following details for all consultancy assignments of more than Rs 1 Crore in its APR and Tariff Petition:

- Process followed for appointment of Consultant including number of bids received along with bid documents
- Stated Cost-Benefit analysis and assessment of cost benefit analysis after completion of the assignment
- List of Deliverables submitted by Consultant

4.3.3 <u>R&M expenses</u>

TPC submitted that based on the actual R&M expenses for first half of FY 2008-09 and estimated R&M expenses for the remaining half of the year, the revised R&M expenditure for FY 2008-09 is estimated at Rs 11.63 Crore, which is well within the R&M expenditure of Rs 13 Crore approved in the APR Order. For FY 2009-10, TPC submitted that it had estimated the R&M expenses at the same levels as approved by the Commission in the MYT Order, i.e., Rs. 15 Crore.

For FY 2008-09, the Commission has considered an increase of around 5.19% p.a. on account of inflation factor corresponding to increase in Wholesale Price Index (WPI) over the revised level of R&M expenses as approved for FY 2007-08 under the truing up exercise in this Order. The Commission has considered the point to point inflation over WPI numbers (as per Office of Economic Advisor of Govt. of India) for a period of 3 years, i.e., FY 2006-07 to FY 2008-09 (upto December 2008), to smoothen the inflation curve. However, in case of store supplies and oil consumed, the Commission has considered expenses under this head as nil against TPC-T's revised estimates of Rs 1.36 Crore, since the actual expenditure in FY 2007-08 and FY 2006-07 reflected a credit entry. The Commission will undertake the final truing up of R&M expenses for FY 2008-09 based on actual R&M expenses for the entire year and prudence check, during the APR process for FY 2009-10.

For FY 2009-10, for each sub-head of R&M expenditure, the Commission has considered an increase of around 5.19% p.a. on account of inflation over the revised level of R&M expenses as approved for FY 2008-09 under the provisional truing up exercise in this Order, based on the increase in Wholesale Price Index (WPI), as detailed above. Accordingly, the approved R&M expenses for FY 2008-09 and FY 2009-10 is summarised in the following Table:

Table: R&M Expenses for FY 2008-09 & FY 2009-10 (Rs. Crore)

Particulars	FY 2008-09			FY 2009-10		
	APR Order	Revised Estimate by TPC	Approved After provisional truing up	MYT Order	Revised Estimate by TPC	Approved
Net R&M expenses	12.97	11.63	9.99	15.30	15.12	10.51

4.3.4 <u>O&M expenses</u>

The total O&M expenses approved by the Commission for FY 2008-09 and FY 2009-10 is summarised in the following Table:

Table: O&M Expenses for FY 2008-09 & FY 2009-10 (Rs. Crore)

Particulars	FY 2008-09	FY 2009-10

	APR Order	Revised Estimate by TPC	Approved After provisional truing up	MYT Order	Revised Estimate by TPC	Approved
Net employee expenses	56.41	59.96	62.03	47.74	66.28	66.63
Net A&G expenses	26.50	29.09	26.46	27.77	33.46	28.06
Net R&M expenses	12.97	11.63	9.99	15.30	15.12	10.51
Total O&M expenses	**95.88**	**100.68**	**98.48**	**90.81**	**114.86**	**105.19**

4.4 CAPITAL EXPENDITURE AND CAPITALISATION FOR FY 2008-09 AND FY 2009-10

Capital expenditure and capitalisation are two important variables that influence computation of various critical parameters such as depreciation, interest on long term debt and return on equity. Accordingly, variation between the approved values and actual performance during the Control Period needs to be evaluated carefully during Annual Performance Review. The capitalisation considered by the Commission in the APR Order and MYT Order, and the revised estimates submitted by TPC are given in the Table below:

Table: Capitalisation projected by TPC for FY 2008-09 & FY 2009-10

(Rs. Crore)

Particulars	FY 2008-09			FY 2009-10	
	MYT Order	APR Order	Revised Estimate by TPC	MYT Order	Revised Estimate by TPC
Capitalisation	73.74	122.59	174.73	117.56	344.86

TPC-T in its Petition submitted that higher capitalisation of Non-DPR schemes as compared to approved levels has been considered in the Petition due to advancement of some of the Non-DPR schemes, which were planned to be executed in the subsequent years to cater to the request of certain agencies for diversion of lines or conversions of O/H lines to underground cables.

TPC-T submitted that lower capitalisation against DPR schemes as compared to the approved levels of capitalisation of DPR schemes, are on account of the following reasons:

- Delay in obtaining approvals from concerned statutory authorities
- Delay in completion of planned rehabilitation of slum dwellers occupying land in the right of way of transmission lines
- Delay in finalisation of contractors due to unavailability of agencies with required expertise
- Delay in procurement of land and imported conductors (high ampere capacity conductors)

The major DPR schemes estimated to be capitalised in FY 2008-09 by TPC-T are:

- Expansion of 110 kV Mahalakshmi Receiving Station
- 220 kV interconnection with MSETCL at Borivali
- Uprating of 110 kV lines for System Strengthening (Khopoli-Mankhurd)
- 33 kV power supply to BEST from Parel Receiving Station
- Installation of new transformer at Malad
- 75 MVA , 110 kV/22kV Transformer at Vikhroli
- Land for New Receiving Station

The major DPR schemes estimated to be capitalised in FY 2009-10 by TPC-T are:

- 220 kV Mahalakshmi GIS
- 220 MVA ICT at Dharavi along with 33 kV Outlets
- 145 kV GIS at Versova
- 33 kV power supply to BEST from Parel Receiving Station
- Uprating of 110 KV lines for System Strengthening (Khopoli-Mankhurd)
- 220 kV / 110 kV Transmission line, GIS
- 220 kV interconnection with MSETCL at Borivli

The revision in ARR/tariff sought by different Utilities as a part of the Annual Performance Review (APR) process for FY 2008-09 can be attributed primarily to increase in power purchase cost of distribution licensees and the steep increase in capital expenditure and capitalisation being undertaken by the Utilities in recent years. The issue of increase in power purchase expenses is being dealt with in the Orders of the respective distribution licensees, since the reasons for the increase are different for different distribution licensees. However, the issue of steep increase in capital expenditure and capitalisation is a generic issue and relevant for all the Utilities.

While the Commission appreciates that the investment on capex schemes is an ongoing process for any Utility/Licensee. It is required for healthy system development with tangible and intangible benefits. The scope, objective and benefits are identified while formulating project reports. After implementation of the scheme, before capitalisation, the benefits are to be demonstrated by the Utility. Utility is required to execute the capex schemes in a phased manner so as to minimise tariff shock attributable to capex implementation. The Commission can permit capex in ARR only after prudence check as there is an impact on tariff.

To understand the significance of the capitalisation claimed by TPC-T, the actual capitalisation over the last four to five years vis-à-vis the opening GFA prevailing around 5 years ago have been compiled as under:

Particulars	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
	Actuals	Actuals	Actuals	Actuals-TPC submission	Revised Estimate	Projected
Opening GFA						
TPC-G	2452.00	2595.43	2679.88	2714.15	2738.62	3086.40
TPC-T	970.22	966.29	1032.97	1045.67	1088.51	1262.46
TPC-D	282.53	282.37	359.25	395.07	436.31	523.30
Total TPC	3704.74	3844.09	4072.10	4154.90	4263.43	4872.15
Asset addition during the year						
TPC-G	150.52	86.54	41.26	54.45	349.70	220.18
TPC-T	0.00	7.34	21.63	51.43	174.73	344.86
TPC-D	0.77	6.84	37.03	41.59	87.12	323.84
Total TPC	151.29	100.72	99.91	147.46	611.54	888.89
Asset write off/retirement during the year						
TPC-G	(7.09)	(3.51)	(6.99)	(29.98)	(1.92)	0.00

Particulars	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
	Actuals	Actuals	Actuals	Actuals-TPC submission	Revised Estimate	Projected
TPC-T	(3.92)	(0.19)	(8.93)	(8.60)	(0.78)	0.00
TPC-D	(0.93)	(0.61)	(1.32)	(0.35)	(0.13)	0.00
Total TPC	(11.94)	(4.31)	(17.24)	(38.93)	(2.82)	0.00
Closing GFA						
TPC-G	2595.43	2678.46	2714.15	2738.62	3086.40	3306.58
TPC-T	966.29	973.44	1045.67	1088.51	1262.46	1607.32
TPC-D	282.37	288.61	394.96	436.31	523.30	847.14
Total TPC	**3844.09**	**3940.51**	**4154.77**	**4263.43**	**4872.15**	**5761.04**

The above compilation has been done for TPC as a whole, to give a better picture of the overall increase in asset addition over the last five years, since TPC was earlier being regulated as an integrated Utility.

It is clear from the above Table that the Gross Fixed Assets have increased by around 35%, 66%, and 200% for the Generation, Transmission, and Distribution Business, respectively, over the last five years. The pace of asset addition has increased by leaps and bounds over the last five years. TPC-D has projected to almost treble its asset base (as in FY 2004-05) by the end of FY 2009-10, while TPC-G and TPC-T have also proposed to increase their asset base (as in FY 2004-05) to around 1.3 to 1.7 times. Further, when TPC was operating in an integrated manner during the period from FY 2004-05 to FY 2006-07, the total asset addition every year was only around Rs. 100 to 150 Crore, whereas in FY 2008-09 and FY 2009-10, each of the Businesses are individually adding assets of more than this amount every year on an average. The addition to the asset base is clearly not commensurate either with the increase in sales or increase in demand in MW served. Since the Utilities were able to serve the existing consumer base well enough with the existing assets, the rationale for this steep increase in the asset base needs to be examined further. The favourite argument of the Utilities that in the past, there was a backlog on this account and that they want to rake it up is also unconvincing to justify the 100% increase in the asset base in such a short period.

In the regulated business, the returns to the investors are linked to the equity invested in the business, which in turn is directly linked to the existing asset base and assets added every year. The steep increase in the asset base every year has been suggested by the consumers to be an attempt by the Utilities to increase the returns from the regulated business, as has been suggested by the consumers during the Public Hearing conducted by the Commission on the APR Petitions filed by the Utilities.

The Commission has conducted a Public Hearing on the Petitions filed by different Utilities to ascertain the views of the consumers and other stakeholders on the Petition and the tariff increase sought by the Utility. During the Public Hearings, there was a huge resistance to the proposed tariff increase and one of the common objections put forth by the consumers and the public have been that the increase in ARR/Tariff being sought by the Utilities is exorbitant and the capital expenditure should not be allowed to the extent sought by the Utilities, since there has not been any noticeable increase in the sales quantum or any significant improvement in some cases deterioration in the service quality over the period.

Further, as regards capital expenditure, the Commission has instituted a process of giving in-principle approval for the capital expenditure schemes costing above Rs. 10 Crore (together known as DPR Schemes), wherein the Utility has to submit Detailed Project Report (DPR) as well as the expected cost-benefit analysis, pay back period, etc., as per well laid out guidelines. Schemes costing less than Rs. 10 Crore are considered as non-DPR schemes and the Utilities are not required to submit any DPR for the approval of the same. It is often observed that at the time of obtaining in-principle approval of the Commission for the DPR schemes, the Utilities indicate several quantifiable benefits and a short payback period. However, the Utilities are not able to substantiate the benefits once the capital investment is actually undertaken and the assets are added to the Gross Fixed Assets (GFA). As a result, the costs and hence, the tariffs are increased, but the expected benefits to the system do not accrue.

In this regard, the in-principle approval given by the Commission to the DPR Schemes has certain standard covenants. One such in-principle approval given to a scheme submitted by MSETCL is reproduced below, for reference:

"…

> *2. Please **note that this in-principle clearance should not be construed as final approval for ARR purpose and the scheme will be open for scrutiny during the tariff determination process/ARR review, particularly in the context of actual cost incurred, scope and objective achieved etc. ex post after implementation of the scheme**. MSETCL will be required to submit the status of implementation of the scheme with cost incurred till date, likely completion date etc. along with their ARR petition or during the tariff determination process at the appropriate time.*
>
> *3. MSETCL should submit half yearly report giving the status of implementation of the scheme in terms of expenditure incurred and item wise physical progress achieved during the implementation of the scheme.*
>
> *4. Assets created after execution of the scheme should be maintained separately in the Asset register.*
>
> ***5. Immediately after completion / commissioning of the respective scheme, MSETCL should communicate to the Commission the date of completion of the scheme, actual cost incurred, escalation in cost, if any with reasons, the scope and objectives of the scheme and to what extent they have been achieved, etc. so as to facilitate a comparison between the in-principle clearance and the actual."(emphasis added)***

However, the Utilities have not been able to submit any evidence that the scope and objective of the scheme have been achieved.

In this context, the recent Report by Forum of Regulators on Multi-Year Framework has also emphasized that the capital expenditure plans of Utilities should clearly bring out cost benefit analysis and targeted reduction in technical losses.

Further, the Commission has observed that most of the Utilities have projected very high non-DPR schemes, and in some cases, the capital expenditure and capitalisation projected under non-DPR schemes is several times that projected under DPR schemes. This defeats the very purpose of classifying schemes costing above Rs. 10 Crore as DPR schemes and requiring regulatory scrutiny of the schemes.

In this regard, the Commission in its APR Order for Maharashtra State Electricity Transmission Company Limited (MSETCL) for FY 2007-08 as well as the MYT Orders for Utilities had observed as under:

> *"However, the Commission would like to reiterate that in-principle approval of the scheme does not absolve the senior management of MSETCL of their responsibility to prioritise various schemes and undertake cost benefit analysis and financial analysis to validate the commercial prudence of each scheme. MSETCL should ensure that the projected benefits actually accrue for the benefit of the stakeholders. It would be essential to monitor progress of each scheme as well as track expenditure and benefits accrued as per the scheme."*
>
> …
>
> *"The increase in quantum of Non-DPR schemes indicates an unhealthy trend, as the Commission feels that there is a tendency to split distribution scheme so that capital outlay of the scheme is below Rs. 10 Crore, to escape regulatory scrutiny. The Commission will take a review of the schemes being classified under Non-DPR category, and in case it is found that these schemes should have ideally been classified under DPR category, then that capex and the related capital charges will be disallowed till the DPR is submitted and the scheme is approved by the Commission."*

In view of the above, as a general rule, the Commission has decided that the total capital expenditure and capitalisation on non-DPR schemes in any year should not exceed 20% of that for DPR schemes during that year. To achieve the purpose, the purported non-DPR schemes should be packaged into larger schemes by combining similar or related non-DPR schemes together and converted to DPR schemes, so that the in-principle approval of the Commission can be sought in accordance with the guidelines specified by the Commission.

Further, in the absence of documentary evidence that the stated purpose and objective of the capex schemes have been achieved, MERC is restricting the capitalisation considered for the purposes of determination of ARR and tariff. Once the Utilities submit the necessary justification to prove that the scope and objective of the capex scheme has been achieved as projected in the DPR, the same may be considered in future Orders.

TPC is directed to prioritise the capex schemes based on importance and the schemes may be implemented in a phased manner to minimise the impact on transmission cost.

For the purpose of APR exercise for FY 2008-09 and determination of Revenue Requirement for FY 2009-10, the Commission has provisionally considered the capitalisation for the respective years same as that approved in MYT Order for TPC-T. Accordingly, revised estimate for capitalisation for FY 2008-09 and approved capitalisation for FY 2009-10 is summarised in the following Table:

Table: Approved Capitalisation for FY 2008-09 & FY 2009-10 (Rs. Crore)

Particulars	**FY 2008-09**				**FY 2009-10**		
	MYT Order	**APR Order**	**Revised Estimate by TPC**	**Approved after provisional truing up**	**MYT Order**	**Revised Estimate by TPC**	**Approved**
Capitalisation	73.74	122.59	174.73	73.74	117.56	344.86	117.56

4.5 DEPRECIATION

The Commission, in its APR Order, had considered depreciation expenditure of Rs 31.33 Crore for FY 2008-09 and in its MYT Order had considered depreciation of Rs 32.96 Crore for FY 2009-10, which amounts to 2.77% and 2.68% of Opening level of Gross Fixed Assets (GFA) of TPC-T for FY 2008-09 and FY 2009-10, respectively. The opening GFA was considered as Rs 1132.53 Crore and Rs 1230.91 Crore for FY 2008-09 and FY 2009-10, respectively, and the depreciation rates were considered as prescribed under MERC (Terms and Conditions of Tariff) Regulations, 2005.

TPC, under its APR Petition, submitted the revised estimate of depreciation expenditure for FY 2008-09 and FY 2009-10 as Rs 28.31 Crore and Rs 32.30 Crore, respectively. TPC-T in its Petition submitted that depreciation for FY 2008-09 does not include the depreciation on account of assets capitalised during the year. However, TPC–T has filed an appeal in the ATE in the matter and would seek appropriate adjustments in the approved cost in case a favourable Judgement is delivered by the ATE in the matter.

Table: Depreciation expenditure projected by TPC for FY 2008-09 & FY 2009-10

(Rs. Crore)

Particulars	**FY 2008-09**		**FY 2009-10**	
	APR Order	**Revised Estimate by TPC**	**MYT Order**	**Revised Estimate by TPC**
Depreciation	31.33	28.31	32.96	32.30
Opening GFA	1132.53	1088.51	1230.91	1262.46

Essentially, the revision in depreciation is on account of lower capitalisation actually achieved during FY 2007-08 resulting in lower level of opening GFA for FY 2008-09 as compared to that projected at the time of the APR Order.

TPC-T, in its additional submissions, confirmed that depreciation has not been claimed beyond 90% of the asset value in line with the Tariff Regulations. The Commission has considered the depreciation on the opening GFA only and not on the assets added during the year in line with the Tariff Regulations. In view of revised value of capitalisation as approved under previous paragraphs, the approved depreciation expenditure for FY 2008-09 and FY 2009-10 is summarised in the following Table:

Table: Approved Depreciation expenditure for FY 2008-09 & FY 2009-10

(Rs. Crore)

Particulars	**FY 2008-09**	**FY 2009-10**

	APR Order	Revised Estimate by TPC	Approved	MYT Order	Revised Estimate by TPC	Approved
Depreciation	31.33	28.31	28.31	32.96	32.30	29.77
Opening GFA	1132.53	1088.51	1088.51	1230.91	1262.46	1161.47

The Commission will undertake the truing up of Depreciation based on actual capitalisation during the entire year, subject to prudence check, during Performance Review for the second year of Control Period, i.e., FY 2009-10.

4.6 INTEREST EXPENSES

The Commission, in its APR Order, had allowed interest expenses of Rs 12.67 Crore for FY 2008-09 and in its MYT Order, allowed interest expenses of Rs 17.33 Crore FY 2009-10, with a weighted average interest rate of around 9.0% p.a. in each year respectively.

TPC, in its APR Petition, submitted revised estimate of interest expenses for FY 2008-09 and FY 2009-10 as Rs 14.28 Crore and Rs 36.02 Crore, respectively, at a weighted average interest rate of 11.1% and 11.57% for FY 2008-09 and FY 2009-10, respectively.

Table: Interest expenditure projected by TPC for FY 2008-09 and FY 2009-10

(Rs. Crore)

Particulars	FY 2008-09		FY 2009-10	
	APR Order	Revised Estimate by TPC	MYT Order	Revised Estimate by TPC
Op. balance of loan	98.67	68.66	153.34	188.47
Loan Addition	85.81	122.31	82.29	241.40
Loan Repayment	(2.50)	(2.50)	(2.97)	(1.96)
Closing Balance of loan	181.99	188.47	232.66	427.91
Interest expenses	**12.67**	**14.28**	**17.33**	**36.02**
Effective Interest rate	**9.0%**	**11.1%**	**9.0%**	**11.57%**

TPC submitted that interest on long-term debt for FY 2008-09 has been computed based on interest on normative loans for previous years, actual loans for FY 2006-07 and FY 2007-08 and interest on 70% of the expenditure to be capitalised in FY 2008-09. TPC has raised a loan of Rs. 450 Crore from IDFC to fund its current capital expenditure as per following terms:

- Tenor : 12 years with 3 year moratorium and 9 years repayment
- Interest Rate: 5 year G-Sec rate +1.45% p.a. subject to minimum of 8.90% (if the Company is not able to maintain a rating of AAA six (6) months prior to the interest rate reset date, then IDFC will have the right to revise the spread).

TPC submitted that based on the above mentioned terms, the interest rate is liable to vary over a period of time. TPC further submitted that IDFC, through its letter dated September 29, 2008, sought to reset the interest rate to 13% from September 29, 2008 for a period of one year and submitted the copy of the letter. Accordingly, TPC considered an average rate of 10.95% (i.e., average of 8.9% and 13%) for FY 2008-09.

TPC further submitted that it has also raised a loan of Rs. 400 Crore from IDBI to fund its current capital expenditure as per following terms:

- Tenor : 13 years with 3 year moratorium and 10 years repayment
- Repayment: 5% of the loan amount to be repaid every year for the first nine years and balance in 10^{th} year
- Interest Rate: BPLR (-) 1.45% p.a. payable monthly. The interest rate to be fixed on each date of disbursement.

TPC submitted the details of disbursement in FY 2008-09 towards IDBI loan as shown in the Table below:

(Rs. Crore)

Month of Disbursement	Quantum of Disbursement	Net Interest Rate
End Mar-08	200	10.49%
8-Aug	92	11.39%
8-Oct	84	14.00%
Total	**376**	**11.53%**

Accordingly, TPC submitted that it has considered an average rate of 11.53% for working out the interest liability on assets capitalized in FY 2008-09. TPC also submitted a copy of the letter from IDBI regarding change in the interest rate.

TPC submitted that the IDBI loan is being utilised for all the three functions, viz., Generation, Transmission and Distribution. Based on the capitalisation considered for the three functions, the quantum of Rs. 400 Crore of IDBI loan may not be sufficient. TPC-T submitted that it may have to borrow additionally (including other sources) to finance its Capital Expenditure in FY 2008–09. Pending finalisation of additional loans, for the purpose of estimation of interest for the year, TPC-T assumed that the additional loans would be available at the terms considered above. TPC-T further submitted that the impact of actual loans on the interest cost would be included during the truing up of FY 2008-09 and Annual Performance Review of FY 2009-10.

Further, in response to query, TPC-T confirmed that it has accepted the proposal of IDFC of resetting the interest rate. TPC-T further submitted that in accordance with the clauses of the Loan Agreement, the interest rate to be made applicable is determined by the following:

- Benchmark rate
- Credit Rating of TPC at the time of (6 months prior to) Reset Interest Date.

The rating of TPC was changed from ‘AAA’ to ‘AA’ from July 2007. Accordingly the premium of 1.45 % (the Spread) over the Benchmark rate was revisited at the time of Interest Reset Date. IDFC applied the interest rate of 13% to TPC from September 28, 2008. TPC considered the same appropriate as the cost of borrowing by TPC from other sources at the time of Interest Reset Date was around 13%.

Further, in response to the Commission’s query with respect to IDBI loan, TPC-T confirmed that it has accepted the proposal of IDBI of 14% interest rate on the disbursal of Rs. 86 Crore as during that period, the funds in the market had dried up and the interest cost had risen substantially. TPC-T further submitted that the cost of loans available to TPC at that point of time (around October 2008) was in the range of about 14%. TPC-G submitted that the same is evidenced by the rate of interest payable by TPC for a short-term loan of Rs. 500 Crore availed around October 2008 which worked out to 14.4 %.

TPC has contemplated that loan from IDFC and IDBI is to be used to fund capital expenditure for new generating station of 250 MW Unit-8 of Trombay Station apart from existing projects of TPC. In response to a query, TPC has submitted the allocation of IDBI and IDFC loans for Generation, Transmission and Distribution businesses as shown in the Table below:

Rs Crore

Year	Source	TPC-G Unit 4to 7	TPC-G Unit-8	TPC-T	TPC-D	Total
FY 2006-07	IDFC	28.86	-	15.14	26	70.01
FY 2007-08	IDFC	38.11	276.55	36	29.33	379.99
Sub-Total (IDFC)		**66.98**	**276.55**	**51.15**	**55.33**	**450**
FY 2008-09	IDBI	244.79	519.17	122.31	60.98	947.25
FY 2009-10	IDBI	154.13	13.74	241.4	226.68	635.95
Sub-Total (IDBI)		**398.92**	**532.91**	**363.71**	**287.67**	**1,583.20**
Total		**465.89**	**809.46**	**414.86**	**342.99**	**2,033.20**

As observed from the above submissions of TPC, against the sanctioned amount of loan of Rs. 400 Crore from IDBI, TPC-G has considered a loan drawal of Rs. 519.17 Crore for Unit-8 alone. Effectively, the other schemes have been funded by normative loan, since only Rs. 400 Crore has been sanctioned by IDBI till date. Accordingly, for working out the interest rate towards the loan portion of the approved capitalisation for the remaining schemes, the Commission has considered the normative debt:equity ratio, i.e., considered loan as 70% of capitalisation as approved in this Order. As the actual interest rate for IDFC loans during part of the last year was 8.9% and considering the normative interest rates allowed by the Commission in the previous Order with respect to interest rates prevailing at that time, the Commission has considered a normative interest rate of 9% for working out the interest expenses for FY 2008-09. Further, as against the proposed capital expenditure for FY 2009-10, TPC-T is yet to tie up the loans, therefore, the Commission is of the view that the proposed capital expenditure may be funded from internal accruals and in accordance with the provisions of the MERC Tariff Regulations, the Commission has considered the normative debt: equity ratio of 70:30 for the approved capitalisation for FY 2009-10. Since, TPC-T is yet to tie up for loan for the capital expenditure in FY 2009-10, the Commission has considered the interest rate of 9% on the normative loan on the capitalised amount as approved in this Order for FY 2009-10.

As regards the resetting of the interest rate from IDFC on account of change in rating of TPC from 'AAA' to 'AA', the Commission is of the view that the said change may have been on account of performance of other businesses of TPC, as the regulated business of electricity ensures a guaranteed return which it earns every year. As regards the regulated business of electricity for Mumbai region, the Commission does not observe any critical or significant factor that might have affected its business. On the one hand TPC-T talks of Tata Brand Equity, etc., while TPC credit rating has gone down due to other businesses and not TPC-T. Accordingly, the Commission does not agree with the contentions of TPC regarding the impact on interest rate on account of change in credit rating. Further, as regards the resetting of the interest rate, the letter from IDFC clearly mentions that the proposed reset in interest rate is for one year only. The Commission is of the view that TPC should have made adequate efforts to negotiate the interest rate. Even though the interest cost is a pass through in the ARR and subsequently to the consumers, it does not bar TPC from making adequate and sincere efforts in this regard. The Commission, while estimating the interest expense for FY 2008-09 has considered the average interest rate of 10.95% towards IDFC loan as submitted by TPC, however, for FY 2009-10, the Commission has considered the interest rate of 8.9% on the basis of earlier terms of the loan agreement.

The Commission under earlier Tariff Order dated October 3, 2006 (Case No. 12 and 56 of 2005) as well as under MYT Order in Case No. 72 of 2006 and APR Order in Case No. 68 of 2007 has considered interest expenditure on loans corresponding to capitalised assets at interest rate of 10% p.a. for assets put to use during FY 2004-05 and FY 2005-06 and loan repayment period of 10 years in respect of such loans. Further, for assets capitalised during FY 2006-07, the Commission had considered the interest rate in accordance with the loan terms.

Accordingly, the Commission has considered loan repayment and interest for existing loans (i.e., loans corresponding to assets put to use during FY 2004-05 and FY 2005-06) as per earlier terms.

The estimated interest expenditure for FY 2008-09 and approved interest expenditure for FY 2009-10 is summarised in the following Table:

Table: Approved Interest expenditure for FY 2008-09 and FY 2009-10

(Rs. Crore)

Particulars	FY 2008-09			FY 2009-10		
	APR Order	Revised Estimate by TPC	Approved After provisional truing up	MYT Order	Revised Estimate by TPC	Approved
Op. balance of loan	98.67	68.66	68.66	153.34	188.47	117.77
Loan Addition	85.81	122.31	51.62	82.29	241.40	82.29
Loan Repayment	(2.50)	(2.50)	(2.50)	(2.97)	(1.96)	(2.88)
Cl. Balance of loan	181.99	188.47	117.77	232.66	427.91	197.18
Interest expenses	**12.67**	**14.28**	**9.55**	**17.33**	**36.02**	**14.26**
Effective Interest rate	**9.0%**	**11.1%**	**10.2%**	**9.0%**	**11.7%**	**9.0%**

4.7 INTEREST ON WORKING CAPITAL FOR FY 2007-08 & FY 2008-09

As regards Interest on Working Capital, TPC submitted that the interest rate specified under the Tariff Regulations for Working Capital, i.e., Short Term PLR of SBI, has been varying through the year. TPC submitted variation in SBI PLR as under:

with effect from	PLR
20-02-2007	12.25%
09-04-2007	12.75%
16-02-2008	12.50%
27-02-2008	12.25%
27-06-2008	12.75%
12-08-2008	13.75%
11-11-2008	13.00%

For FY 2008-09, TPC estimated the Interest on Working Capital (IWC) considering interest rate @ 12.75% as per the components considered in the Tariff Regulations, with the revised Interest on Working Capital estimated at Rs 5.68 Crore as against Rs 6.09 Crore approved by the Commission for FY 2008-09. However the Commission notes that there is a computational error in TPC-T's submission in respect of working capital requirement for FY 2008-09 and the correct representation of IWC for FY 2008-09 should have been Rs. 6.49 Crore as against Rs. 5.68 Crore.

For FY 2009-10, TPC estimated the Interest on Working Capital (IWC) considering interest rate @ 13.00% as per the Tariff Regulations, with the revised Interest on Working Capital estimated at Rs 7.49 Crore as against Rs 6.12 Crore approved by the Commission for FY 2009-10.

The Commission has estimated the working capital requirement for TPC-T for FY 2008-09 and FY 2009-10, considering the provisional truing up of various elements of costs. The MERC Tariff Regulations stipulate that rate of interest on working capital shall be on normative basis and shall be equal to the short-term Prime Lending Rate of State Bank of India as on the date on which the application for determination of tariff is made. As the application for determination of revenue requirement for FY 2008-09 was made on November 30, 2007, the Commission has considered the short-term Prime Lending Rate of State Bank of India of 12.75% prevalent at that time, for estimating the interest on working capital. For FY 2008-09, the Commission has also considered the finance charges, commission and brokerage on long-term loans as Rs. 0.71 Crore as projected by TPC. For FY 2009-10, since the APR Petition was filed on November 26, 2008, the interest rate of 13.00% has been considered for estimating the working capital interest. The approved interest on working capital and other interest and finance charges for TPC-T for FY 2008-09 and FY 2009-10 is given in the following Table:

Table: Interest on Working Capital for FY 2008-09 & FY 2009-10 (Rs Crore)

Particulars	FY 2008-09			FY 2009-10		
	APR Order	Revised Estimate by TPC	Approved After provisional truing up	MYT Order	Revised Estimate by TPC	Approved

Particulars	FY 2008-09			FY 2009-10		
	APR Order	Revised Estimate by TPC	Approved After provisional truing up	MYT Order	Revised Estimate by TPC	Approved
Interest on working capital and other financing charges	**6.09**	**6.49***	**5.95**	**6.12**	**7.49**	**5.75**

***** TPC-T in its Petition submitted IWC as Rs. 5.68 Crore, however in the view of error in computation of IWC by TPC-T, the corrected IWC of Rs. 6.49 Crore has been considered by the Commission for representation purpose.

4.8 NON TARIFF INCOME FOR FY 2008-09 AND FY 2009-10

TPC submitted that the Non-Tariff Income for FY 2008-09 largely comprises non-recurring income except for rental income, and is estimated at Rs 9.47 Crore as against Rs 9.23 Crore approved by the Commission in the APR Order. For FY 2009-10, TPC projected the non-tariff income as Rs. 12.29 Crore, as compared to Rs. 9.15 Crore considered by the Commission in the MYT Order and submitted that the non-recurring items cannot be predicted.

For FY 2008-09, the difference between the approved amount of non-tariff income and the revised estimate of TPC-T is not significant. Under these circumstances, for FY 2008-09, the Commission has approved the estimate of Rs. 9.47 Crore as considered by TPC-T. The Commission will undertake the final truing up of Non Tariff Income based on audited accounts during Performance Review for the third year of Control Period, i.e., FY 2009-10. For FY 2009-10 also, the Commission has approved the amount of Rs 12.29 Crore as estimated by TPC-T. The non-tariff income projected for TPC-T for FY 2008-09 and FY 2009-10 is given in the following Table:

Table: Non-tariff Income for FY 2008-09 and FY 2009-10 ***(Rs Crore)***

Particulars	FY 2008-09	FY 2009-10

	APR Order	Revised Estimate by TPC	Approved After provisional truing up	MYT Order	Revised Estimate by TPC	Approved
Non-Tariff Income	**9.23**	**9.47**	**9.47**	**9.15**	**12.29**	**12.29**

4.9 INCOME TAX FOR FY 2008-09 AND FY 2009-10

TPC submitted that for FY 2008-09, the income tax is estimated at Rs 42.05 Crore as against the earlier estimate of Rs 30.37 Crore, which was approved by the Commission for FY 2008-09 in the APR Order. For FY 2009-10, TPC estimated the income tax as Rs. 36.86 Crore as against the earlier estimate of Rs 34.12 Crore, which was approved by the Commission for FY 2009-10 in the MYT Order.

TPC-T submitted that it has incorporated the Commission's ruling in Case No. 64, 65 and 66 of 2007, wherein, the Commission ruled that normative interest on loan and normative interest on working capital are not actual expenses and hence, will not be eligible as deductible expenses while computing the income tax. The Commission agrees with TPC-T's submission that normative interest on loan and normative interest on working capital are not actual expenses and hence, will not be eligible as deductible expenses while computing the income tax. However, while normative interest on long-term loans has been added to the RoE while computing the Income Tax for FY 2008-09, the normative interest on working capital loan has not been added to the RoE, since it is not possible to project the exact actual interest expense that will be incurred by TPC-T. Depending on the actual interest on working capital incurred by TPC-T, only the difference between the normative interest and actual interest, and that too, only if the actual interest is lower than the normative interest on working capital, will have to be added to the RoE, for computing the Income Tax. Hence, this can be considered at the time of final truing up. Moreover, the issue of book depreciation and tax depreciation is relevant in case of TPC-T and accordingly, the Commission has considered the same while working out the income tax as well as other allowable expenditure and disallowance under various Sections of Income Tax as submitted by TPC-T.

TPC has estimated the income tax liability considering the Tax WDV of assets and other provisions of the Income Tax Act, 1961. The Commission has modified the tax computations submitted by TPC to account for the changes in RoE and regulatory depreciation, and found that there was a significant change in the income tax liability vis-à-vis the income tax considered in the MYT Order. For the purpose of income tax computations, the Commission has considered the RoE as the regulatory profit before tax. Further, the Commission has not grossed up such RoE component for income tax, since the income tax is allowed as part of the ARR as an expense head, in accordance with the MERC Tariff Regulations.

The summary of income tax approved by the Commission in this APR Order for FY 2008-09 and FY 2009-10 is shown in the Table below.

Table: Income tax approved for FY 2008-09 and FY 2009-10

Particulars	**(Rs. Crore)**	
	FY 2008-09	**FY 2009-10**
Return on Equity	60.52	64.53
Add: Normative Interest on Working Capital	0.00	0.00
Less: Actual Interest on working capital	0.00	0.00
Interest on loan approved by Commission	9.55	14.26
Less: Actual Interest on Long Term loan (IDFC loan)	-5.60	-4.54
Add: Regulatory Depreciation	28.31	29.77
Less: Tax depreciation	-43.38	-70.41
Add: Other Disallowances for computing Income Tax	28.02	29.71
Less: Other Expenses allowed for computing income tax	-4.92	-4.34
Less: Deductions under S. 80-G, 80 IA	0.00	0.00
Total	**72.49**	**58.99**
Corporate Tax Rate	33.99%	33.99%
Income Tax	**24.64**	**20.05**

Accordingly, the approved income tax liability for FY 2008-09 and FY 2009-10 along with the revised estimates by TPC-T is given in the following Table. The Commission will however, true up the income tax, based on final truing up of revenue and expenditure of TPC-T for FY 2008-09 and FY 2009-10.

Table: Income Tax for FY 2008-09 and FY 2009-10 ***(Rs Crore)***

Particulars	FY 2008-09			FY 2009-10		
	APR Order	Revised Estimate by TPC	Approved After provisional truing up	MYT Order	Revised Estimate by TPC	Approved
Income Tax	30.37	42.05	24.64	34.12	36.86	20.05

4.10 CONTRIBUTION TO CONTINGENCY RESERVES FOR FY 2008-09 AND FY 2009-10

TPC projected the contribution to contingency reserves for FY 2008-09 and FY 2009-10 at 0.25% of opening GFA, as Rs. 2.83 Crore and Rs. 3.16 Crore, respectively, in accordance with the Commission's Tariff Regulations.

In this regard, the MERC (Terms and Conditions of Tariff) Regulations, 2005 stipulates,

"50.7.1 Where the Transmission Licensee has made an appropriation to the Contingencies Reserve, a sum not less than 0.25 per cent and not more than 0.5 per cent of the original cost of fixed assets shall be allowed towards such appropriation in the calculation of aggregate revenue requirement:

Provided that where the amount of such Contingencies Reserves exceeds five (5) per cent of the original cost of fixed assets, no such appropriation shall be allowed which would have the effect of increasing the reserve beyond the said maximum:

Provided further that the amount so appropriated shall be invested in securities authorized under the Indian Trusts Act, 1882 within a period of six months of the close of the financial year."

The ARR of the Transmission Licensees is eventually recovered from the retail consumers through the Distribution Licensees' ARR. Considering that the overall tariff increase at the retail level has been very steep, in view of various developments discussed in detail in the respective Tariff Orders, in the APR Orders for FY 2007-08, the Commission had provided for contingency reserves for FY 2008-09 for all transmission licensees and distribution licensees at the minimum rate of 0.25% of opening GFA, as permitted under the Commission's Tariff Regulations, rather than 0.5% of opening GFA as claimed by the licensees. The Regulation also stipulates that no such appropriation shall be allowed if the amount of such Contingencies Reserves exceeds five (5) per cent of the original cost of fixed assets. As elaborated in detail in the Commission's Order on the APR Petition filed by TPC-G in Case No. 111 of 2008, based on the treatment of the contingency reserves and the ATE Judgment in this regard, the contingency reserves with TPC-T have reached 5% of the opening GFA, as at the end of FY 2007-08. Thus, for FY 2008-09 and FY 2009-10, the Commission has considered the contribution to contingency reserves at 0.25% of only the incremental addition to GFA during the respective years. For this computation, the Commission has considered the actual capitalisation and revised estimate of capitalisation for these years, as discussed in earlier paragraphs.

The approved contribution to contingency reserves for TPC-T for FY 2007-08 and FY 2008-09 is given in the following Table:

Table: Contribution to Contingency Reserves for FY 2008-09 and FY 2009-10

(Rs Crore)

Particulars	**FY 2008-09**			**FY 2009-10**		
	APR Order	**Revised Estimate by TPC**	**Approved After provisional truing up**	**MYT Order**	**Revised Estimate by TPC**	**Approved**
Contribution to Contingency Reserves	2.83	2.72	0.13	6.15	3.16	0.31

4.11 RETURN ON EQUITY (ROE) FOR FY 2008-09 AND FY 2009-10

The Commission, in its APR Order, had permitted return on equity to the extent of Rs 63.32 Crore for FY 2008-09 and Rs 68.95 Crore for FY 2009-10 in its MYT Order, at a rate of return of 14% in accordance with Regulation 50.1 of MERC (Terms and Conditions of Tariff) Regulations, 2005.

TPC, in its APR Petition, submitted revised estimate for return on equity for FY 2008-09 and FY 2009-10 as Rs 62.64 Crore and Rs 73.55 Crore, respectively.

Table: RoE projected by TPC for FY 2008-09 & FY 2009-10

(Rs. Crore)

Particulars	**FY 2008-09**		**FY 2009-10**	
	APR Order	**Revised Estimate by TPC**	**MYT Order**	**Revised Estimate by TPC**
Regulatory Equity at the beginning of the year	433.92	421.19	473.00	473.61
Equity portion of assets capitalised	36.78	52.42	39.00	103.46
Regulatory Equity at the end of the year	470.70	473.61	512.00	577.07
Return on Regulatory Equity at the beginning of the year	60.75	58.97	66.22	66.31
Return on Equity portion of Capitalisation	2.57	3.67	2.73	7.24
Total Return on Regulatory Equity	**63.32**	**62.64**	**68.95**	**73.55**

TPC submitted that based on the capital expenditure and capitalisation and debt:equity norm of 70:30, the return on equity on the equity portion has been considered at 14%. Further, TPC has computed RoE on the opening equity as well as on the 50% of the equity portion of the capitalisation during the year.

The Commission has computed the RoE for FY 2008-09 and FY 2009-10 on the opening balance of equity as well as 50% of the equity component of the assets capitalised during the year in accordance with the MERC Tariff Regulations as applicable for the transmission business. Accordingly, approved Return on Equity for FY 2008-09 and FY 2009-10 is summarised in the following Table:

Table: Approved RoE for FY 2008-09 and FY 2009-10

(Rs. Crore)

Particulars	**FY 2008-09**			**FY 2009-10**		
	APR Order	**Revised Estimate by TPC**	**Approved After provisional truing up**	**MYT Order**	**Revised Estimate by TPC**	**Approved**
Regulatory Equity at the beginning of the year	433.92	421.19	421.19	473.00	473.61	443.31
Equity portion of assets capitalised	36.78	52.42	22.12	39.00	103.46	35.27
Regulatory Equity at the end of the year	470.70	473.61	443.31	512.00	577.07	478.58
Return on Regulatory Equity at the beginning of the year	60.75	58.97	58.97	66.22	66.31	62.06
Return on Equity portion of capitalisation	2.57	3.67	1.55	2.73	7.24	2.47
Total Return on Regulatory Equity	**63.32**	**62.64**	**60.52**	**68.95**	**73.55**	**64.53**

4.12 IMPACT OF RULING IN CASE NO. 43 OF 2008

TPC-T filed a Review Petition on the APR Order (Case No. 67 of 2007) on erroneous representation of sharing of efficiency gains on account of R&M expenditure in the Order. The Commission, vide Order dated January 21, 2009 in Case No 43 of 2008 upheld TPC-T's Review Petition and has clarified that any impact of the same shall be taken into account by the Commission in its Order on TPC-T's Petition for APR for FY 2008-09 and determination of ARR for FY 2009-10. However, since the final truing up for FY 2006-07 was done on a consolidated basis in TPC-D's APR Order, the impact of the Review Order in Case No. 43 of 2008 has already been considered by the Commission while issuing the Order on the Review Petition filed by TPC-D in Case No. 46 of 2008.

4.13 ALLOCATION OF LOAD CONTROL CENTRE COST OF TATA POWER GENERATION AND TATA POWER DISTRIBUTION

TPC-T in the Petition submitted as under:

a) The Tata Power Company, through its generating plants in Trombay, Khopoli, Bhira, and Bhivpuri (TPC–G) supplies power to the Distribution Licensees in Mumbai namely BEST, RInfra-D and Tata Power's Distribution business (TPC-D). Further, it also operates transmission assets (TPC-T) to transmit the energy generated as well as power purchased from various parts of the country. TPC-T network is interconnected with MSETCL and RInfra-T system at various points. TPC's Load Control Centre (LCC) is responsible for carrying out various activities for TPC-G, TPC-T and TPC-D.

b) Also, TPC's LCC acts as a single point contact for coordination between SLDC and other Utilities. TPC LCC is fully equipped with the required infrastructure. Currently, the expenditure incurred on account of LCC operation is part of TPC-T's ARR. TPC has outlined the methodology for allocation of the expenditure incurred for maintaining the LCC and its infrastructure amongst TPC-G, TPC-T and TPC-D.

c) In the APR Petition for FY 2007-08, it was submitted that about Rs 66 Lakh (a portion of the employee costs) was allocable for carrying out the SLDC function. As the SLDC is setting up the Sub-Load Despatch Centre for monitoring the operations of Mumbai, TPC has assumed that such portion of the employee cost and efforts would now be apportioned to the three functions of TPC, i.e., TPC-G, TPC-T and TPC-D.

TPC further submitted that, TPC's LCC has its own direct expenses such as:

a. Employee expenses
b. R&M expenses
c. A&G Expenses
d. Depreciation
e. Interest on Normative Loans
f. Return on Equity

g. Interest on Working Capital

Based on the nature of expenses above, TPC considered it appropriate:

- § To allocate the Employee Expenses to TPC-G, TPC-T and TPC-D on the basis of the time spent by the TPC–LCC personnel ,
- § To allocate the expense on account of related to 'Infrastructure Expense' on the basis of the data points monitored by the LDC for the three businesses.

Thus, the percentage allocation of LCC's expenses to TPC-G, TPC-T and TPC-D as proposed by TPC for FY 2008-09 and FY 2009-10 is summarised in the Table below:

Table: Percentage allocation of LCC's expenses to TPC-G, TPC-T and TPC-D

Expense Type	**Allocation to TPC-G**	**Allocation to TPC-T**	**Allocation to TPC-D**
Employee Expenses	30.63%	30.83%	38.53%
Infrastructure	27%	68%	5%

Based on the percentage allocation, the cost allocation of LCC's expenses to TPC-G, TPC-T and TPC-D as proposed by TPC is summarised in the Table below:

Table: Cost allocation of LCC to TPC-G, TPC-T and TPC-D for FY 2008-09 and FY 2009-10 each

LCC Expenditure item	**Total Amount**	**TPC-G Allocation**	**TPC-T Allocation**	**TPC-D Allocation**
Total O&M	4.66			
Employee Expenses	*3.73*	*1.14*	*1.15*	*1.44*
A&G	*0.32*	*0.09*	*0.22*	*0.02*
R&M	*0.61*	*0.17*	*0.42*	*0.03*
Interest on Normative Loans	0.37	0.10	0.25	0.02
Interest on Working Loans	0.14	0.04	0.10	0.01
Depreciation	0.78	0.21	0.53	0.04
Return on equity	0.64	0.17	0.43	0.03
Income Tax	0.41	0.11	0.28	0.02
Total	**7.00**	**2.03**	**3.37**	**1.60**

TPC was earlier undertaking the load despatch function for the Mumbai license area and had built up very costly infrastructure for the same. However, now the Mumbai area sub-LDC is to be operated by the MSLDC, hence, there is no need for TPC to be operating such an LDC. The Commission is of the view that the expense levels indicated by TPC on these heads as shown in the Table above, are very high, and reflect historical expenses, and which cannot be allowed to be recovered from the consumers, for a service that is no longer to be provided by TPC, since the same is being provided by MSLDC. It should be noted that the annual MSLDC Budget, which is approved separately by the Commission, ranges around Rs. 13 to 15 Crore, as compared to TPC's LCC expense of Rs. 7 Crore. Given that the MSLDC is charged with the load despatch functions for the State as a whole and is the statutory authority for the same, it does not appear to be reasonable to allow TPC LCC expense, which is around 50% of the MSLDC Budget, even though the functions expected to be performed by the LCC are far lesser as compared to the scope of activities of the MSLDC. If this amount is also allowed, it would amount to expenses being allowed twice for the same activity to a certain extent, since the MSLDC has the mandate to manage the load across the State and across all licence areas, including the Mumbai licence area, which was earlier managed by the TPC – LDC, which has not been converted to the LCC. MSLDC has to give despatch instructions to the generating stations as well as regulate the demand imposed on the system by giving load withdrawal instructions in case of a situation of demand-supply gap, over and above the planned demand-supply gap. As regards the Distribution Control Centre (TPC-D) share indicated as Rs. 1.60 Crore, the Commission is of the view that this is also very high, given TPC's very low retail consumer base, of only around 27,000 consumers.

The Commission is of the view that unless basis for accounting for LCC expenditure and the need for this expenditure is established, allowing LCC expenditure of Rs 7.00 Crore or any amount for FY 2008-09 and FY 2009-10 will not be appropriate. The Commission shall duly consider and allow LCC expenditure together with carrying cost at SBI PLR, as soon as such basis for accounting of LCC expenditure and the need for this level of expenditure is established by TPC.

The State load despatching functions are to be undertaken by SLDC. Through SLDC budget, the Commission approves the cost associated with MSLDC functions. The approved cost for the relevant period includes the cost associated with Mumbai load despatching activities also. In view of the above, TPC's claim of Rs. 7 Crore for the purpose of Load Control Centre functions cannot be granted, which may amount to duplication of function and associated expenditure. There is no justification for loading this avoidable cost on consumers. The Commission has made this observation to TPC during previous ARRs.

Pending ascertainment of LCC related expenditure and its revised apportionment thereof by TPC, the Commission has not considered LCC related expenditure of Rs 7.00 Crore as claimed by TPC, as part of ARR approval for FY2008-09 and FY 2009-10, under TPC-G, TPC-T or TPC-D.

4.14 AGGREGATE REVENUE REQUIREMENT FOR FY 2008-09 AND FY 2009-10

Based on analysis of each element discussed above, the Aggregate Revenue Requirement of TPC-T for FY 2008-09 and FY 2009-10 as approved by the Commission in its APR Order, MYT Order, as estimated by TPC in APR Petition and as approved by the Commission in this Order is given in the following Tables:

Table: Aggregate Revenue Requirement for FY 2008-09 (Rs Crore)

Sr. No.	Particulars	FY 2008-09		
		Approved (APR Order)	Revised Estimate	Allowed after provisional True-up
1	Operation & Maintenance Expenses	95.88	100.68	98.48
1.1	*Employee Expenses*	*56.41*	*59.96*	*62.03*
1.2	*Administration & General Expenses*	*26.50*	*32.26*	*29.63*
	Less: Brand Equity (as disallowed by the Commission)	*0.00*	*(3.17)*	*(3.17)*
1.3	*Repair & Maintenance Expenses*	*12.97*	*11.63*	*9.99*
2	Depreciation, including advance against depreciation	31.33	28.31	28.31
3	Interest on Long-term Loan Capital	12.67	14.28	9.55
4	Interest on Working Capital	6.09	5.68	5.95
5	Other Finance Charges	0.00	0.71	0.71
6	Other Expenses	0.00	0.00	0.00
7	Statutory Appropriations	2.83	2.72	0.13
8	Income Tax	30.37	42.05	24.64
11	**Total Revenue Expenditure**	**179.17**	**194.43**	**167.76**
12	Return on Capital Base / Equity Capital	63.32	62.64	60.52
13	**Aggregate Revenue Requirement**	**242.49**	**257.06**	**228.28**
14	Less: Non Tariff Income	9.23	9.47	9.47
15	Less: Load Control Cost Allocated to Tata Power - G and Tata Power - D	0.00	3.63	7.00
16	**Aggregate Revenue Requirement from Transmission Tariff**	**233.26**	**243.96**	**211.80**
17	Add: Incentive for Transmission System Availability for FY 2006-07	1.81	0.00	1.81
18	Add: Revenue Gap for FY 2007-08	13.22	0.00	(4.14)
19	**Total ARR including Incentive for FY 07 and Revenue Gap for FY 08**	**248.29**	**243.96**	**209.48**
20	Revenue from Transmission Tariff	248.34	242.24	242.24
21	**Revenue Gap / (Surplus)**	**(0.05)**	**1.72**	**(32.76)**

Based on provisional truing up of various elements for FY 2008-09 as discussed in above paragraphs, the Aggregate Revenue Requirement for FY 2008-09 works out to Rs 211.80 Crore, as against the amount of Rs 233.26 Crore approved in the APR Order for FY 2007-08. Further, considering incentive for FY 2006-07 and Revenue Surplus for FY 2007-08 (after final true-up), total revenue requirement for FY 2008-09 (for provisional true-up) amounts to Rs 209.48 Crore.

Further, during FY 2008-09, the approved transmission tariff for FY 2008-09 was applicable for 10 months (June 2008 to March 2009) whereas approved transmission tariff for FY 2007-08 was applicable for 2 months (April and May 2008). Hence, revenue from transmission tariff during FY 2008-09 amounts to Rs 242.24 Crore. Thus, there is a revenue surplus of Rs 32.76 Crore (i.e. Revenue of Rs 242.24 Crore as against revenue requirement of Rs 209.48 Crore) during FY 2008-09, which needs to be trued up provisionally, along with determination of ARR for FY 2009-10. The Aggregate Revenue Requirement for FY 2009-10, as shown below:

Table: Aggregate Revenue Requirement for FY 2009-10 (Rs Crore)

Sr. No.	Particulars	FY 2009-10		
		Approved (MYT Order)	Revised Estimate	Approved
1	Operation & Maintenance Expenses	90.81	114.86	105.19
1.1	*Employee Expenses*	*47.74*	*66.28*	*66.63*
1.2	*Administration & General Expenses*	*27.77*	*36.66*	*31.26*
	Less: Brand Equity (as disallowed by the Commission)	*0.00*	*(3.20)*	*(3.20)*
1.3	*Repair & Maintenance Expenses*	*15.30*	*15.12*	*10.51*
2	Depreciation, including advance against depreciation	32.96	32.30	29.77
3	Interest on Long-term Loan Capital	17.33	36.02	14.26
4	Interest on Working Capital	6.12	7.49	5.75
5	Other Finance Charges	0.00	0.00	0.00
6	Other Expenses	0.00	0.00	0.00
7	Statutory Appropriations	6.15	3.16	0.31
8	Income Tax	34.12	36.86	20.05
11	**Total Revenue Expenditure**	**187.49**	**230.69**	**175.34**
12	Return on Capital Base / Equity Capital	68.97	73.55	64.53
13	**Aggregate Revenue Requirement**	**256.46**	**304.24**	**239.87**
14	Less: Non Tariff Income	9.15	12.29	12.29
15	Less: Load Control Cost Allocated to Tata Power - G and Tata Power - D	0.00	3.63	7.00
16	**Aggregate Revenue Requirement from Transmission Tariff**	**247.31**	**288.31**	**220.58**
17	Add : Revenue Gap / (Surplus) for FY 2008-09 (Provisional true-up)			(32.76)
18	**Total Revenue to be recovered through Transmission Tariff (FY 2009-10)**	**247.31**	**288.31**	**187.82**

The Aggregate Revenue Requirement for FY 2009-10 is lower than that determined in the previous APR Order primarily due to reduction in proposed capitalisation and consequent reduction in interest costs and return on equity components, reduction in approved Income Tax for FY 2009-10, adjustments of revenue surplus due to final true-up of FY 2007-08 and provisional true-up of FY 2008-09.

Accordingly, the Commission approves Annual Revenue Requirement for FY 2009-10 as Rs 187.82 Crore, which is significant reduction from approved revenue requirement of Rs 247.31 Crore during past year for FY 2008-09.

4.15 TRANSMISSION TARIFF FOR FY 2009-10

The Commission has issued its Order in respect of the intra-State transmission pricing framework in Case No. 58 of 2005 on June 27, 2006. The ARR as approved by the Commission for TPC-T for FY 2009-10 in this Order, will be used to determine the composite ARR of the complete Intra-State Transmission System of all transmission licensees in the State for FY 2009-10. Hence, in this Order the Commission has only determined the ARR for TPC-T for FY 2009-10 and not determined any transmission tariff for TPC-T. Revenue for TPC-T for FY 2009-10 will be as per the tariff to be determined by the Commission separately under its Order on intra-State transmission pricing framework.

4.16 APPLICABILITY OF ORDER

This Order for the third year of the first Control Period, i.e., for FY 2009-10, shall come into force with effect from June 1, 2009 and shall be applicable with effect from June 1, 2009. The Commission will undertake the Annual Review of TPC-T performance during the last quarter of FY 2009-10 and determine the revised revenue requirement for FY 2010-11, if required. TPC-T is directed to submit its Petition for Annual Review of its performance during the first half of FY 2009-10, as well as truing up of revenue and expenses for FY 2008-09 based on audited accounts, with detailed reasons for deviation in performance, latest by November 30, 2009.

The Commission acknowledges the efforts taken by the Consumer Representatives and other individuals and organisations for their valuable contribution to the APR process for TPC-T for FY 2008-09 and determination of revised revenue requirement for FY 2009-10.

Sd/-	Sd/-	Sd/-
(S. B. Kulkarni)	(A. Velayutham)	(V.P. Raja)
Member	Member	Chairman

(P.B. Patil)
Secretary, MERC

APPENDIX 1

List of Persons who attended the Technical Validation Session held on January 13, 2009

S.No	Name
TPC Officials	
1	Shri V. H. Wagle
2	Shri T. N. Ramakrishnan
3	Shri Prashant Joshi
4	Shri Prashant K. Anvekar
5	Smt Swati Mehendale
6	Shri Ashok Sethi
7	Shri B. P. Mehta
8	Shri Rajesh L.Thakur
9	Shri Anand Dhavale
10	Shri Urmeet Kaur Anand
11	Shri M. Phentage
12	Shri Anshuh De
13	Shri Maynesh Shah
14	Shri D. Raina
15	Shri V. K. Choudhary
16	Shri C. G. H. Aranha
17	Shri V. H. Thakmai
18	Shri C. A. Narayanan
19	Shri S. Ramakrishnan
20	Shri R. Ranade
21	Shri Deepak Mahande
Consultants to Commission	
22	Shri Ajit Pandit
23	Shri Suresh Gehani
24	Shri Palaniappan M
25	Shri S. R. Karkhanis
26	Shri M. N. Bapat
27	Shri Anand Kulkarni

28	Shri Santosh Kumar Singh
29	Shri Krishnajith M U
30	Shri Saurabh Gupta

APPENDIX 2

List of Objectors

S.No	Name of Person / Official	Designation	Institution
1	Shri Mahesh I. K.		Excel Electric Industries
2	Shri Guruprasad Shetty		Association of Hotels & Restaurants
3	Shri R. K. Singh	Chief Electrical Distribution Engineer	Central Railway
4	Dr. Shatadru Sengupta	Director-Legal and Company Secretary	Hardcastle Restaurants Pvt. Ltd.
5	Shri Rajindar Singh	President	Western India Glass Manufacturers Association
6	Shri Vijay Y. Tamhane	Convenor	The Millowners' Association
7	Smt. Shweta A. Abrol	Chief Co-ordinator	Bharitya Udhami Avam Upbhokta Sangh
8	Shri N. Ponrathnam	Proprietor	Vel Induction Hardenings
9	Dr. Rajas A. Rane	Maharashtra State Working Committee Member	Shivsena Grahak Saurakshan Kaksh
10	Shri Rishikesh M. Kulkarni	Committee Head	Shivsena Grahak Saurakshan Kaksh
11	Shri Prasad P. Ayre	Sub-Committee Head	Shivsena Grahak Saurakshan Kaksh
12	Shri Sachin S. Nayak	Committee Head	Shivsena Grahak Saurakshan Kaksh
13	Shri Vijay B. Malwankar	Executive Committee Member	Shivsena Grahak Saurakshan Kaksh
14	Shri Mahesh Bharbhaya		Shop No. 5, Sagar Deep Darshan
15	Shri S. S. Seth	Dy. CE (SO) W.S.	Municipal Corporation of Greater Mumbai (MCGM)
16	Shri Pramod Ramesh Bhogte	Editior	Navsandesh Saptahik, Surabhi Publications
17	Shri Pankaj D. Muni	President	Electrical Contractors'

S.No	Name of Person / Official	Designation	Institution
			Association of Maharashtra
18	Shri Kapil Sharma	Regulatory Affairs	Reliance Infrastructure Ltd.
19	Shri Ramniklal Chedda	Chairman	The Retail Grain Dealers Co.Op. Society Ltd.
20	Shri P. E. Chandran	Proprietor	S.C. Electricals
21	Representative		The Tenants of Kalyan Bldg. Bldg. No. 1 & 3
22	Shri Apurva Patel	Secretary	MIDC Marol Industries Association
23	Shri D. V. Sawale	President	Dadar Merchant's Association
24	Representative		Indian Hotel & Restaurant Association
25	Shri Ravinder Kumar Seth	G.M. (E&M)	Mumbai International Airport Pvt. Ltd.

List of Objectors who attended the Public Hearing on March 24, 2009

S.No	Name of Person / Official	Institution
1	Shri Mahesh I. K.	Excel Electric Industries
2	Shri R. K. Singh	Central Railway
3	Shri G. K. Sarda	Western India Glass Mfrs. Association
4	Shri Vijay Y. Tamhane	The Millowners' Association
5	Shri Rakshpal Abrol	Bharitya Udhami Avam Upbhokta Sangh
6	Shri N. Ponrathnam	Vel Induction Hardenings
7	Shri Mahesh Bharbhaya	Shop No. 5, Sagar Deep Darshan
8	Shri Amit S. Gajaria	Kandivali Co-Op Ind. Estate
9	Shri Champalal Dloka	Kandivali Co-Op Ind. Estate
10	Shri B. G. Maheshwari	Empire Ind. Ltd.
11	Shri Karn Pallav	Reliance Infrastructure Ltd.
12	Shri Anil V. Kale	ICRA Management Consulting Services Limited
13	Shri Vivek Mishra	Reliance Infrastructure Ltd.
14	Shri Ajay Kumar	JSW Energy Ltd.

S.No	Name of Person / Official	Institution
15	Shri P. S. Ganguly	Mumbai International Airport Pvt. Ltd.
16	Shri Pravind Kumar	Mumbai International Airport Pvt. Ltd.
17	Shri J. D. Tayade	Maharashtra State Electricity Transmission Company Ltd.
18	Shri Shatadru Sengupta	Hardcastle Restaurants Pvt. Ltd.
19	Shri Shivprasad Bole	Hardcastle Restaurants Pvt. Ltd.
20	Shri Guruprasad Shetty	Association of Hotels & Restaurants
21	Shri Sunil Joglekar	Hiranandani Infrastructure and Real Estate Company (HIRCO), Powai
22	Shri Sumesh Mangle	Reliance Infrastructure Pvt Ltd.
23	Shri S. W. Deshmukh	Electrical Contractors' Association of Maharashtra
24	Shri Sunil Samy	Electrical Contractors' Association of Maharashtra
25	Shri Pavitran K.	Brihanmumbai Electric Supply and Transport Undertaking
26	Shri B. A. Shaikh	Brihanmumbai Electric Supply and Transport Undertaking
27	Shri S. A. Nikalje	Maharashtra State Power Generation Company Ltd.
28	Shri A. V. Shenoy	Maharashtra State Power Generation Company Ltd.
29	Shri N. J. Padalkar	Maharashtra State Power Generation Company Ltd.
30	Smt Sapna Desai	Mid-Day
31	Shri A. K. Balan	S.C. Electricals
32	Shri V. Thanumoorthy	Mumbai Citizens Welfare Forum
33	Shri Sachin Nayak	Shivsena Consumer Protection Cell
34	Shri Prasad Ayare	Shivsena Consumer Protection Cell
35	Shri P. G. Pokhmare	
36	Shri Sharad Nath	
37	Shri R. S. Verma	
38	Shri R. Mago	
39	Shri R. C. Rawat	
40	Shri R. U. Patil	
41	Shri G. P. Charmia	
42	Shri Lakshman Sawant	
43	Shri Rajan Kongaunkar	

S.No	**Name of Person / Official**	**Institution**
44	Shri Rakesh Reddy	
45	Shri Dilip Chawan	
46	Shri B. P. Bhutt	
47	Shri V. V. Devathosh	
48	Shri Gulal Dagu	
49	Shri M. N. Kothari	
50	Shri Mahesh Patankar	