Before the

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai – 400 005

Email: mercindia@mercindia.org.in

Website: www.mercindia.org.in

Case No. 106 of 2011

IN THE MATTER OF

Petition filed by The Tata Power Company Ltd.'s Transmission Business' (TPC-T), for approval of truing up of Aggregate Revenue Requirement for FY 2009-10 and Annual Performance Review for FY 2010-11

Shri V. P. Raja, Chairman

Shri Vijay L. Sonavane, Member

Date: February 14, 2012

O R D E R

In accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005 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 2009-10 and Annual Performance Review (APR) for FY 2010-11. 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, issues the following Order.

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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
CERC	Central Electricity Regulatory Commission
CPI	Consumer Price Index
DPR	Detailed Project Report
FBSM	Final Balancing and Settlement Mechanism
FBT	Fringe Benefit Tax
GFA	Gross Fixed Assets
IWC	Interest on Working Capital
IBSM	Interim Balancing and Settlement Mechanism
IDBI	Industrial Development Bank of India Limited
IDFC	Infrastructure Development Finance Company Limited
InSTS	Intra-State Transmission System
LCC	Load Control Centre
MERC	Maharashtra Electricity Regulatory Commission
MIS	Management Information System
MSETCL	Maharashtra State Electricity Transmission Company Limited
MSLDC	Maharashtra State Load Despatch Centre
MYT	Multi Year Tariff
O&M	Operation and Maintenance
ROE	Return On Equity
R&M	Repair and Maintenance
SBI-PLR	State Bank of India-Prime Lending Rate
SLDC	State Load Despatch Centre
STU	State Transmission Utility
REL/RInfra	Reliance Energy Limited/Reliance Infrastructure Limited
RoW	Right Of Way
RTL	Rupee Term Loan
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

1.1 BACKGROUND

A Petition has been filed by The Tata Power Company Ltd (TPC), for Truing up of Aggregate Revenue Requirement for FY 2009-10 and Annual Performance Review for FY 2010-11, for its Transmission Business. This Order disposes off the said Petition.

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.

1.2 MERC 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 MERC Tariff Regulations) on August 26, 2005. These Regulations superseded the MERC (Terms and Conditions of Tariff) Regulations, 2004.

1.3 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 on April 2, 2007, which came into effect from April 1, 2007, and which was valid up to March 31, 2010.

1.4 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 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, which was initially valid up to 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.

1.5 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.

Further, TPC-T appealed against the Commission's Order on the APR for FY 2007-08 and determination of ARR for FY 2008-09 before the ATE (numbered as Appeal No. 138 of 2008). Along similar lines, TPC also appealed before the ATE against the Commission's APR Order for FY 2007-08 in respect of TPC's Generation Business (TPC-G) (Appeal No. 137 of 2008) and Distribution Business (TPC-D) (Appeal No. 139 of 2008).

1.6 ATE ORDER ON APR OF FY 2007-08 AND TARIFF DETERMINATION OF FY 2008-09

In Appeal No. 138 of 2008, TPC-T preferred an appeal from this Order of the Commission before the Hon'ble ATE under Section 111 of the EA 2003 on the following issues:

a) Disallowance of A&G Expenses towards Tata Brand Equity Expenses.
b) Denial of rightful retention of the difference between the Normative Interest on Working Capital and Actual Interest on Working Capital on account of the cost of its internal funds utilized for funding working capital
c) Disallowance of Depreciation Expenditure projected for FY 2007-08 and FY 2008-09 for the assets expected to be capitalised during the year.

The appeals of TPC-T came to be allowed in terms of the Hon'ble ATE Judgment dated July 15, 2009 in Appeal No. 138 of 2008 as follows:

a) Hon'ble ATE held that TPC-T is entitled to Tata Brand Equity Expenses and directed the Commission to revise the ARR
b) Hon'ble ATE upheld its earlier Judgments issued in Appeal 111 of 2008 on May 28, 2009 and Appeal No.137 of 2008 on July 15, 2009 in the matter, stating that the Commission should look into the source of internal accruals and the cost of generating such accruals while arriving at the gains or losses..

c) Hon'ble ATE directed the Commission to revise the ARR and allow Depreciation Expenditure projected for FY 2007-08 and FY 2008-09 for the assets expected to be capitalised during the year.

1.7 MERC ORDER ON APR FOR FY 2008-09 AND REVENUE REQUIREMENT FOR FY 2009-10

TPC-T submitted its Petition for Annual Performance Review (APR) for FY 2008-09 and Revenue Requirement for FY 2009-10 on November 26, 2008 numbered as Case No. 112 of 2008. The Commission issued the APR Order for TPC-T on May 28, 2009, which came into effect from June 1, 2009. TPC-T appealed against the Commission's Order on APR for FY 2008-09 and Tariff determination for FY 2009-10 before the ATE (numbered as Appeal No. 174 of 2009).

1.8 ATE ORDER ON APR OF FY 2008-09 AND REVENUE REQUIREMENT OF FY 2009-10

In Appeal No. 174 of 2009, TPC-T preferred an appeal from certain portions of the Order dated May 28, 2009 passed by MERC in Case No. 112 of 2008 in the matter of TPC-T's Petition for APR for FY 2008-09 and Tariff Determination for FY 2009-10. TPC-T preferred an appeal from this Order on the following issues:

a) Wrongful consideration of the difference between the normative interest on working capital and the actual working capital as gains and sharing of 1/3rd amount with the distribution licensee.
b) Disallowance of A&G expenses towards Tata Brand Equity payment; and
c) Wrongful treatment of Income Tax.

The appeals of TPC-T came to be allowed in terms of the Hon'ble ATE's Judgment dated February 14, 2011 in Appeal No. 174 of 2009 as follows:

a) Hon'ble ATE upheld its earlier Judgments issued in Appeal 111 of 2008 on May 28, 2009 and Appeal No.138 of 2008 on July 15, 2009 in the matter, stating that Commission should look into the source of internal accruals and the cost of generating such accruals while arriving at the gains or losses.
b) Hon'ble ATE held that TPC-T is entitled to Tata Brand Equity Expenses and directed the Commission to revise the ARR
c) Hon'ble ATE directed the Commission to compute Income Tax entitlement of TPC-T by replacing Return on Equity by Regulatory Profit Before Tax based on income less permissible expenses.

1.9 MERC ORDER ON APR FOR FY 2009-10 AND DETERMINATION OF AGGREGATE REVENUE REQUIREMENT FOR FY 2010-11

TPC-T submitted its Petition for Annual Performance Review (APR) for FY 2009-10 and Revenue Requirement for FY 2010-11 on December 29, 2009 numbered as Case No. 97 of 2009. The Commission issued the APR Order for TPC-T on September 3, 2010, which came into effect from September 1, 2010. TPC-T has filed an appeal with the Hon'ble ATE on certain issues as Appeal No. 17 of 2011. The ATE's decision on TPC-T's appeal is awaited.

1.10 PETITION FOR TRUING UP FOR FY 2009-10 AND ANNUAL PERFORMANCE REVIEW FOR FY 2010-11

In view of the separate process being undertaken by the Commission for formulation and implementation of the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011 (hereinafter referred as MYT Regulations, 2011) for the Control Period from FY 2011-12 to FY 2015-16, the Commission directed TPC-T to submit its Petition for Truing up for FY 2009-10 and APR for FY 2010-11, in accordance with the MERC Tariff Regulations, 2005.

TPC-T submitted its Petition for truing up for FY2009-10 and APR for FY 2010-11 on July 22, 2011, based on actual audited expenditure for FY 2009-10 and FY 2010-11. TPC-T, in its Petition, requested the Commission to:

- Accept the True-up and Annual Performance Review Petition for TPC-T in accordance with guidelines outlined in MERC Orders passed in various matters relating to TPC-T and the principles contained in MERC Tariff Regulations, 2005
- Include the impact of the ATE Judgment in respect of Appeal No.174 of 2009 received on February 14, 2011along with appropriate carrying cost at SBI PLR for any past or deferred recoveries/entitlement as presented in the Petition.
- Condone any inadvertent omissions/errors/rounding off differences/ shortcomings and permit TPC-T to add/ change/ modify/ alter this filing and make further submissions as may be required at a future date;
- Pass such further and other orders, as the Commission may deem fit and proper, keeping in view the facts and circumstances of the case.

The Commission, vide its letter dated August 8, 2011, forwarded the preliminary data gaps and information required from TPC-T. TPC-T submitted its replies to preliminary data gaps and information requirement on August 13, 2011. The

Commission scheduled a Technical Validation Session (TVS) on TPC-T's Petition for approval of APR for FY 2010-11on August 16, 2011 in the presence of Consumer Representatives authorised under Section 94(3) of the EA 2003 to represent the interest of consumers in the proceedings before the Commission. During the TVS, the Commission directed TPC-T to provide additional information and clarifications on the issues raised during the TVS. The reply to the queries raised during the Technical Validation Session (TVS) on August 16, 2011 was submitted by TPC-T vide its submissions dated August 29, August 30 and September 9, 2011. The Commission scheduled the second TVS on TPC-T's Petition for approval of APR for FY 2010-11 on September 3, 2011. The list of individuals, who participated in the TVS held on August 16, 2011 and September 9, 2011, is provided at **Appendix-1**. The reply to the queries raised in the second Technical Validation Session (TVS) dated September 3, 2011 was submitted by TPC-T on September 9, 2011. The Revised Petition was submitted by TPC-T vide its letter dated September 16, 2011.The Commission also directed TPC-T to submit the draft Public Notice in English and Marathi in the format prescribed by the Commission.

1.11 ADMISSION OF PETITIONS AND PUBLIC PROCESS

The Commission admitted the Petition of TPC-T on October 21, 2011. In accordance with Section 64 of the EA 2003, the Commission directed TPC-T to publish its APR Petition in the prescribed abridged from 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 Maharashtra Times (Marathi) newspapers on October 25, 2011. 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 the 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 the proof of service on TPC.

The Commission received written suggestions and objections on various issues. The Public Hearing was held on November 26, 2011 at 10:00 hours at Rangsharda Natya Mandir, Bandra Reclamation, Bandra (W), Mumbai 400 050.

The list of objectors who participated in the Public hearing is provided in **Appendix – 2.**

The Commission has ensured that the due process as contemplated under the 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 2010-11 file by TPC-G (numbered as Case No. 105 of 2011), TPC-T (numbered as Case No. 106 of 2011) and TPC-D (numbered as Case No. 104 of 2011), the Commission is issuing separate Orders on the three Petitions filed by TPC. This Order deals with the Truing Up for FY 2009-10 and APR of FY 2010-11 for TPC-T. 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.

1.12 ORGANISATION OF THE ORDER

This Order is organised in the following five 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-T and the rulings of the Commission on each of the issues.
- **Section 3** of the Order comprises the impact of the Judgment of ATE on previous years Truing- Up.
- **Section 4** of the Order details the Truing-Up of expenses and revenue of TPC-T for FY 2009-10, including sharing of efficiency gains/losses due to controllable factors.
- **Section 5** of the Order details the Truing-Up of expenses and revenue of TPC-T for FY 2010-11, including sharing of efficiency gains/losses due to controllable factors and recoveries of expenses pertaining to past period.

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

2.1 MULTI YEAR TARIFF REGIME

Shri. Vinayak G. Joshi and Nagari Nivara Parishad submitted that Multi Year Tariff Regime is important not only to ascertain the current year ARR but to look beyond and develop forecast for ARR as envisaged in Regulation 15.2 of MERC (Terms and Conditions of Tariff) Regulations, 2005 and also develop forecast of expected revenue from the tariff and charges as envisaged in Regulation 15.3 of MERC (Terms and Conditions of Tariff) Regulations, 2005. They requested the Commission to take into account estimated revenue surplus for FY 2011-12 of TPC before arriving at any decision regarding the passing on of revenue gaps to the consumers immediately, in the form of additional charge.

TPC's Response

TPC replied that the present Petition is for only truing up and for determination of past period recoveries and it does not envisage any increase in the form of additional charge.

Commission's Ruling

Since, TPC has not proposed any method for recovery of the past revenue gaps, and no such relief in the form of levy of additional charge is being approved through this Order, this objection is not relevant to the present Petition, which is for truing up of expenses and revenue for FY 2009-10 and FY 2010-11.

2.2 SCOPE OF REGULATION 17.3 OF MERC TARIFF REGULATIONS, 2005

Shri. Vinayak G. Joshi and Nagari Nivara Parishad submitted that as per Regulation 17.3 of the MERC Tariff Regulations, 2005, the scope of Annual Performance Review (APR) is only to compare audited performance for the previous year with the approved forecast. The scope of the Commission was to deal with the amounts of claims related to FY 2009-10 and FY 2010-11 only and the Commission should have not taken into accounts claimed by TPC for the years not under consideration for the present exercise and restrict itself from acting beyond the scope of the said Regulations while dealing with recoveries from past years prior to FY 2009-10.

TPC's Response

TPC replied that the tariff for any ensuing year is determined by the Commission considering the allowable recovery of the approved expenditure entitlements for that particular year as well as recovery of any past year gaps/ surpluses and disallowances in expenditures which are subsequently allowed through the ATE Judgments for any ensuing year. This Petition deals with past recoveries for FY 2009-10, FY 2010-11 and recoveries due to Judgments of the ATE. TPC further clarified that such gaps have never been recovered in the past and if not allowed to be recovered now will remain unrecovered.

Commission's Ruling

While determining the revenue requirement for any year, the Commission has to consider the prudent level of expenses and revenue for that year, as well as unrecovered or surplus amounts from the previous years, resulting either through the truing up process or as a result of Judgments given by the Hon'ble ATE or Hon'ble Supreme Court. The objectors will appreciate that the Hon'ble ATE is the appellate authority and its Judgments have to be implemented by the Commission unless the same have been set aside by the higher Court, i.e., the Hon'ble Supreme Court of India. It is clarified that the present exercise is within the scope of the said Regulations while dealing with recoveries from past years.

2.3 MAINTAINANCE OF SEPARATE ACCOUNTS

Shri. Vinayak G. Joshi and Nagari Nivara Parishad submitted that TPC is not maintaining separate Accounts for its licensed business and other businesses as contemplated under Section 51 of the EA 2003 and Regulation 8.4.2 of MERC (General Conditions of Distribution Licensee) Regulation, 2006.

Shri. Vinayak G. Joshi submitted that TPC has not submitted Allocation Statement and Accounting Statement as defined in Regulation 2.1 (c) and Regulation 2.1 (a), respectively of MERC (Terms and Conditions of Tariff) Regulations, 2005.

Shri. Vinayak G. Joshi and Nagari Nivara Parishad submitted that the Commission should stop accepting and solely relying upon a 'Reconciliation Statement' in lieu of various mandatory provisions regarding separate accounts, allocation statements and accounting statements of licensed business. They also submitted that the Commission should disallow certain expenses as TPC has not complied with the statutory provisions regarding maintenance of separate accounts as envisaged in the EA 2003 and various other Regulations of the Commission.

TPC's Response

TPC replied that they have been maintaining the Revenue and Expenditure of the Licensed and Non Licensed Business separately and the expenditure provided in the Petition pertains only to the Licensed Business and includes allocation of expenditure from Head Office and Support Services (HO & SS) on a certain basis.

TPC submitted that Regulations 2.1(c), 7.3 and 27.2 of MERC (Terms and Conditions of Tariff) Regulations, 2005 indicate that an allocation statement or a methodology of allocation is required to be submitted for the allocation of certain costs and although TPC carries on with various businesses on its balance sheet, the cost and the assets of all such businesses are maintained separately under separate division code. Hence, the allocation of such cost of the different businesses does not arise.

It was submitted by TPC that there are certain departments under the head "HO & SS" that require allocation between the various businesses including the business of Mumbai Licensed Area. TPC submitted that the cost of HO & SS is divided in two parts viz (i) cost centres that are dedicated to Mumbai Licensed Area called "LA services" and (ii) cost centres (HO Services) that are being used by both Mumbai Licensed Area and other Businesses, i.e., Non Licensed Businesses. The cost allocated to Mumbai Licensed Area is in turn allocated to the Generation, Transmission, and Distribution businesses on the basis of methodology explained in the Petition. Hence, the observations of the objector that TPC is not maintaining separate accounts for Licensed and Non Licensed Business is incorrect.

TPC submitted it has submitted Reconciliation Statement in Annexure 2. As far as penalty for not complying with various Regulations of the Commission is concerned, TPC submitted that they have been capturing the costs and revenue separately for each of the licensed business including the Distribution business. Further, expenses of a common nature belonging to shared services at corporate level are allocated to all businesses based on the operating income of each business. As such, TPC requested the Commission to reject the request for any dis-allowance of expenses on account of the above reasons.

Commission's Ruling

The relevant Regulations quoted by the objectors require the submission of audited accounts of the Licensee in accordance with the Accounting Standards, and an Allocation Statement for segregating the expenses and revenue of the regulated businesses from the non-regulated businesses. The Commission has relied on the Audited Accounts as well as the Reconciliation Statement, duly audited by the

Statutory Auditor, which reconciles the expenses and revenue indicated in the Audited Accounts with the values indicated in the APR Petition.

At the same time, the Commission appreciates the concern of the objectors that only those expenses that are incurred for the regulated business should be passed on to the consumers of the regulated business. In order to ensure this, the Commission has analysed the submissions and accounts of TPC in detail and asked TPC to submit explanation and justification for the HO & SS expenses as well as capital expenditure allocated to the regulated business. The expenses have been allowed on the basis of replies submitted by TPC to these detailed queries, and the Commission's analysis and disallowances in this regard are discussed in Sections 4 and 5 of this Order.

2.4 NON-COMPLIANCE WITH REGULATIONS

Shri. Vinayak G. Joshi and Nagari Nivara Parishad submitted that as per the provisions of MERC (Uniform Recording, Maintenance and Reporting of Information) Regulations, 2009, TPC has failed to submit separate Audited Accounts and Accounting statements of TPC-T in the Petition. They desired to know whether TPC has been submitting the formats as prescribed in the above said provisions on quarterly basis to the Commission, and in case TPC has not submitted the relevant formats, then the Commission may disallow certain expenses (fixed percentage of total administration and other expenses) of TPC for non-adherence of the above Regulations.

TPC's Response

TPC replied that in line with Regulation 2(c) of MERC (Uniform Recording, Maintenance and Reporting of Information) Regulations, 2009, TPC has enclosed in its Petition, the Annual Report of TPC Ltd. for FY 2009-10, and the Annual Report for FY 2010-11. The said Annual Reports contains all the financial and non-financial information, including the Audited Accounts of the Company.TPC has also submitted Reconciliation Statements for FY 2009-10 and FY 2010-11, duly certified by a Chartered Accountant providing the allocation of major revenue and expense items between the Generation, Transmission, Distribution businesses of Mumbai Licensed Area and other businesses of TPC. TPC further submitted that the information as stipulated in MERC (Uniform Recording, Maintenance and Reporting of Information) Regulations, 2009 has been provided to the Commission on periodic basis and no disallowance of expense should be done, as TPC has complied with the said Regulations.

Commission's Ruling

The Commission has obtained the Reconciliation Statement towards reconciliation of expenses and revenue submitted in the APR Petition with the expenses and revenue allocated to TPC's various businesses as per the Audited Accounts, and the Reconciliation Statement has been made part of the Petition that was published for inviting comments from the stakeholders. Further, the Audited Accounts of the Petitioner as well as the Allocation Statements for allocating the expenses and revenue to its various businesses are submitted by the Petitioner on affidavit and are duly certified by the Auditor. Hence, the Commission has relied on the Reconciliation Statement duly certified by the Statutory Auditor, for the purpose of determining the ARR.

The Commission has notified the MERC (Uniform Recording, Maintenance and Reporting of Information) Regulations, 2009 on April 20, 2009 which is designed to show more clear segment-wise information for each of the Businesses regulated by the Commission. TPC has been submitting the required formats, however, it has been observed that the formats relating to Cash Flow of the regulated business are not being submitted by TPC. TPC is directed to submit all the Formats specified under the above-referred Regulations, and ensure completeness of the submissions, in accordance with the Regulations.

2.5 INTEREST ON WORKING CAPITAL

Shri. Guruprasad Shetty submitted that TPC is generating substantial surplus and investing the same in securities and other investments or distributing the same as dividend. He further submitted that TPC can conserve the surplus and repay the loans taken from the banks and eliminate the Interest on Working Capital and other finance charges.

TPC's Response

TPC has not replied to this objection.

Commission's Ruling

The Commission does not find any merit in this suggestion. The Commission is concerned only with the regulated business of TPC and the surplus allowed is equal to the Return on Equity, which is regulated by the Commission. Any surplus that TPC earns in any other business is outside the purview of the Commission and this regulatory process. Further, interest on Working Capital is allowed on a normative basis, and in fact, in most years, TPC does not incur any actual interest on working

capital, and the Commission shares the efficiency gains in accordance with the MERC Tariff Regulations, 2005, as explained in detail in Sections 3, 4 and 5.

2.6 BRAND EQUITY

Shri. Guruprasad Shetty submitted that electricity, being a scarce resource, will be sold irrespective of the brand name, and hence, the brand name does not matter. Shri. Shetty suggested that hence, the brand equity expenses claimed by TPC, as payable to Tata Sons Limited, the holding Company of TPC, should be disallowed.

TPC's Response

TPC has not replied to this objection.

Commission's Ruling

The Commission had initially disallowed the brand equity expenses payable by TPC to Tata Sons Limited for the use of the 'Tata' brand name. However, TPC appealed against this disallowance before the Hon'ble ATE, and the ATE has allowed this expense to be claimed through the ARR and tariffs. Hence, this amount is being allowed as a pass through expense in the ARR.

3 IMPACT OF JUDGMENT OF APPELLATE TRIBUNAL FOR ELECTRICITY (ATE) ON PREVIOUS YEARS TRUING UP

As discussed in Section 1 of this Order, the Commission had issued its Order on TPC-T's ARR Petition for FY 2009-10 on May 28, 2009 in Case No. 112 of 2008. In the said Order, the Commission had carried out the final truing up of expenditure and revenue for FY 2007-08, Provisional Truing up for FY 2008-09 and approved the Aggregate Revenue Requirement for FY 2009-10. TPC-T filed an Appeal (Appeal No. 174 of 2009) before the Hon'ble Appellate Tribunal for Electricity (ATE) against the said Tariff Order claiming the expenditure disallowed by the Commission under different heads for the three years.

TPC-T submitted that subsequently, it had filed its APR Petition for FY 2009-10 in December 2009, wherein it had reserved its right to claim the disallowed expenditure subject to receiving a favourable Judgment from the Hon'ble ATE. The ATE issued its Judgment on February 14, 2011 in Appeal No. 174 of 2009. TPC-T has claimed the amount entitled to be recovered consequent to the ATE Judgment in its Petition, which has been discussed along with the Commission's analysis and decisions, in this Section.

3.1 ENTITLEMENT OF NORMATIVE INTEREST ON WORKING CAPITAL

On the issue of entitlement of normative interest on working capital, the Commission in its above said Order dated May 28, 2009, stipulated as follows:

> ***"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."*

As regards the above, TPC-T filed appeal (Appeal No. 174 of 2009) before the Hon'ble ATE wherein it had contended that Interest on Working Capital is a normative expense entitlement similar to the interest expense incurred on the normative debt for funding capital expenditure, and any difference between the normative interest on working capital and actual interest on working capital should not be treated as efficiency gains to be shared with consumers.

TPC-T submitted that the Hon'ble ATE ruled on this issue in Appeal No. 174 of 2009 as following:

> *"8. After hearing the Learned Counsel for the parties and also on perusal of its earlier judgments cited by the Appellant, there is no difficulty in deciding about the first 2 issues. With regard to the difference between normative interest on working capital and actual interest on working capital and also denial of Tata Brand Equity Expenditure, we conclude that on these two issues, the Tribunal has already passed orders in Appeal No. 138/08 dated 15.07.2009 and Appeal No. 111/08 dated 28.05.2009 in favour of the Appellant. Further the State Commission itself has filed a counter affidavit admitting that the said issues have already been decided by this Tribunal in the judgments referred to above in favour of the Appellant and, therefore, suitable directions may be issued to the State Commission for reconsideration. Under those circumstances the findings rendered by the State Commission on these 2 issues are set aside. Consequently, the State Commission is directed to consider these issues and pass an order in line with the findings rendered by this Tribunal earlier. Thus, the first and second issues are answered accordingly."*

TPC-T stated that the Hon'ble ATE has further clearly held that the difference between normative interest on working capital and actual interest on working capital shall not be treated as an efficiency gain and hence submitted that the Commission should restore the said amount, which has been passed on to consumers/licensees, to TPC-T. TPC-T further reproduced the Summary of Findings of the Hon'ble ATE from the said Judgment as below:

"19. SUMMARY OF OUR FINDINGS:

*(**i**) The State Commission had used the difference between the Normative Interest on working capital and actual interest on working capital for computing the gains and loss and passed on 1/3rd amount of such difference to the consumers. <u>This has resulted in the denial of the cost of internal cash used for funding such additional working capital to the Appellant. Hence the State Commission is directed to rectify</u>*

this and restore the said amount, passed on to the consumers, to the Appellant." (emphasis supplied)

TPC-T submitted that in the Order dated September 3, 2010, the Commission had asked TPC to provide clarity on whether the working capital requirement was met from the cash flows of TPC-T or cash flows from any other business. Further, the Commission also asked TPC-T to submit the cash flow statement indicating as to how the working capital requirement has been met for TPC-T. TPC-T submitted that finally, the Commission did not find any merit in clawing back the amount that was passed on to the consumers.

TPC-T contended that Hon'ble ATE in its above Judgment has clearly stated that the Commission should restore the amount of difference between the normative interest on working capital and actual interest on working capital that was passed on to the consumers as efficiency gains. The Hon'ble ATE has not put any condition or any requirement of further scrutiny on the amounts that have been claimed. Since, the Hon'ble ATE has established the principle clearly, TPC-T requested the Commission to restore the said amounts earlier passed on to consumers / licensees.

Further, TPC-T in its submission stated that, since, the Hon'ble ATE has established the principles for treatment in respect of the said issue, the same may be applied for the year FY 2006-07, FY 2007-08 and FY 2008-09 also even though the recent Hon'ble ATE judgment does not cover the said periods. TPC-T submitted that the Hon'ble ATE's judgment in Appeal 137 of 2008 and Appeal 174 of 2009 cover the same issue and therefore, the Commission may consider applying the Hon'ble ATE's directive for these dis-allowances on the issue for the truing up order for FY 2006-07, FY 2007-08 and FY 2008-09 together. TPC-T under the following table, summarised the amount to be restored for FY 2006-07, FY 2007-08 and FY 2008-09 pertaining to interest on working capital of the respective years.

Table: Entitlement of Interest on Working capital as submitted by TPC-T (Rs. crore)

Particulars	FY 2006-07	FY 2007-08	FY2008-09	Total
Normative Interest on Working capital approved by MERC	3.91	5.16	6.54	15.61
Actual Interest incurred by Tata Power-T	0.00	1.41	2.20	3.61
Amount treated as Efficiency Gain by MERC	3.91	3.75	4.34	12.00
Amount Passed on to Distribution Licensees	*1.30*	*1.25*	*1.45*	*4.00*
Entitlement restored due to ATE's judgment	**1.30**	**1.25**	**1.45**	**4.00**

Further, in reply to the Commission's query in the above matter pertaining to FY 2009-10 and FY 2010-11, TPC-T submitted that since last year it has been indicating to the Commission about the difficulty in computing cash flow statement for different businesses on account of common balance sheet and common cash balance. Therefore, TPC-T submitted that it would not be able to provide the cash flow statement for computing the financing of working capital. TPC-T further submitted that working capital is an item of Balance Sheet, while cash flow is worked out for a period of time such as one year. In other words, the cash flow statement can at most determine the cash that may be available to meet the change in the Net Working Capital (i.e., CA less CL) and not for the working capital.

TPC-T added that it is willing to submit a Regulated Cash Flow Statement, if desired by the Commission. TPC-T further submitted that similar queries were raised by the Commission in the previous Petition filing, i.e., for APR of FY 2009-10, which was recorded and was subsequently used for computation of gains/losses on IoWC by the Commission. In this context, TPC felt it pertinent to again draw the attention of the Commission to the Judgment of the ATE in the matter and submitted that TPC's Appeal in the matter has been upheld by the ATE and ATE further does not put any condition of scrutiny in terms of determining various sources to fund the working capital including the cash flows. TPC submitted that the Commission may decide in this matter based on the Judgment of the ATE.

As part of reply to queries raised by the Commission to TPC-D (Case No. 104 of 2011) on the same matter, TPC-D submitted the following extract from the Judgment dated February 15, 2011 in the matter of Appeal No. 173 of 2009:

> *"23. The next issue is wrongful consideration of the difference between normative interest on working capital and the actual interest of working capital. In respect of this issue, according to the Learned Counsel for the Appellant, the judgment rendered by this Tribunal in Appeal No. 137/08, this point has been referred in favour of the Appellant. The relevant observation in the said judgment is as follows.*
>
> ***Analysis and decision***
>
> *"20. in Appeal No. 111/08, in the matter of Reliance Infrastructure V/s MERC and Ors., this Tribunal has dealt the same issue of full admissibility of the normative interest on Working Capital where the Working Capital has been*

deployed from the internal accruals. Our decision is set out in the following paras of our judgment dated May 28, 2008 in Appeal No. 111 of 2008

"7. The Commission observed that in actual fact no amount has been paid towards interest. Therefore, the entire interest on Working Capital granted as pass through in tariff has been treated as efficiency gain. It is true that internal funds also deserve interest in as much as the internal fund when employed on Working Capital loses the interest it could have earned by investment elsewhere. Further, the licensee can never have any fund which has no cost. The internal accruals are not like some reserve which does not carry any cost. Internal accruals could have been inter corporate deposits, as suggested on behalf of the appellant. In that case the same would also carry the cost of interest. When the Commission observed that the REL, had actually not incurred any expenditure towards interest on Working Capital it should have also considered if the internal accruals had to bear some costs themselves. The Commission could have looked into the source of such internal accruals and the cost of generating such accruals. The cost of such accruals or funds could be less or more than the normative interest. In arriving at whether there was a gain or loss, the Commission was required to take the total picture into consideration which the Commission has not done. It cannot be said that simply because internal accruals were used and there was no outflow of funds by way of interest on Working Capital and hence the entire interest on working capital was gain which could be shared as per Regulation No. 19. Accordingly, the claim of the appellant that it has wrongly been made to share the interest on Working Capital as per Regulation 19 has merit.

15 b): The interest on Working Capital for the year in question, shall not be treated as efficiency gain."

21. In view of our earlier decision on the same issue we allow the appeal in this regard also."

24. In view of the law laid down by his Tribunal in the aforesaid judgment which covers the issue in hand, the State Commission is directed to restore the actual amounts considered as part of the gains on account of saving in interest expenditure in working capital. (Emphasis supplied)

TPC's contention that any difference between the normative interest on working capital and actual interest on working capital should not be treated as efficiency gains to be shared with consumers is not in accordance with the MERC Tariff Regulations,

2005. As per Regulation 17.6.2 (d) of the MERC (Terms and Conditions of Tariff) Regulations, 2005, variation in working capital requirement is a controllable factor, and the sharing of gains has to be computed in accordance with Regulation 19.1 of the MERC (Terms and Conditions of Tariff) Regulations, 2005. In its previous Orders, the Commission has considered the entire normative working capital interest as efficiency gain, except in cases where TPC-T has submitted details of the actual working capital interest incurred.

As seen from the above Judgments quoted by TPC, while ruling on the matter, the ATE has observed that the Commission should have assessed whether the internal accruals had to bear some costs themselves, and that the Commission could have looked into the source of such internal accruals or funds, and the cost of these funds could be higher or lower than the normative interest. The ATE had also observed that in the original Appeal filed by RInfra in this regard, based on which all subsequent Judgments in this regard have been given, the Appellant had contended that the internal accruals could have been inter-corporate deposits, which would carry a certain interest cost. The ATE has observed that the Commission was required to take the total picture into consideration while arriving at whether there was an efficiency gain or loss.

The Commission has been insisting on Utilities to maintain separate accounts for the Regulated Business. Further, in accordance with the ATE's Judgments in this regard, the Commission has been consistently asking TPC to provide clarity regarding whether the working capital requirement has been met from the cash flows of TPC-T and/or cash flows from any other business. Further, TPC was also asked to submit the cash flow statement indicating as to how the working capital requirement has been met for TPC-T business. In addition, the source and cost of such funds with appropriate justification was sought from TPC-T. However, no such details have been submitted by TPC for the concerned years. Thus, the Commission is unable to identify the actual source of funding the working capital requirement and hence, the actual interest expense incurred on working capital. The Commission is of the view that by implication, TPC-T has managed to meet its working capital requirements by its own operational efficiency, and has minimised the working capital requirement itself, and not actually relied on any funds to meet its working capital requirement. The Commission has hence, considered normative interest on working capital and has allowed the difference between actual and normative working capital under the mechanism of sharing of efficiency gains and losses in accordance with MERC Tariff Regulations, since interest on working capital is a controllable factor as per the MERC Tariff Regulations.

Moreover, the Commission has been consistent in its approach, and for FY 2008-09, when TPC-D (Case No. 98 of 2009) submitted that the actual interest on working capital was higher than the normative interest in working capital, then the same was considered as an efficiency loss and shared between the distribution licensee and the consumers in accordance with the MERC Tariff Regulations, 2005. Thus, both efficiency gains as well as efficiency losses have been shared in accordance with the MERC Tariff Regulations, 2005. In case TPC's argument were to be accepted, then even the efficiency losses should not have been shared with the consumers, and only the normative interest on working capital should have been allowed, without any consideration of the actual interest on working capital, which clearly is not in accordance with the MERC Tariff Regulations, 2005.

In view of the above, the Commission finds that there is no merit in TPC-T's claim that the entire amount of interest on working capital is allowable to TPC-T without any sharing, and no amount has been 'restored' on this account. However, the same is subject to the Judgment of the Hon'ble Appellate Tribunal on the Appeal filed by TPC-T on the same issue in the context of the Tariff Order issued by the Commission for TPC-T dated September 3, 2010, which is presently pending before the Hon'ble Appellate Tribunal.

3.2 DISALLOWANCE OF ADMINISTRATIVE AND GENERAL EXPENSES TOWARDS TATA BRAND EQUITY EXPENSES

On the issue of disallowance of the expenses on Brand Equity, the Commission, in its Order dated May 28, 2009, stipulated as follows:

> *“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."

TPC-T submitted that in this matter also, the Hon'ble ATE has allowed the Appeal in favour of TPC-T. However, the Commission has already allowed Brand Equity for FY 2007-08, FY 2008-09 and FY 2009-10 in its Tariff Order dated September 3, 2010 in Case No. 97 of 2009. Therefore, TPC-T has not proposed any additional recovery on account of Brand Equity expenditure for the said years.

In accordance with the ATE Judgment in Appeal No. 138 of 2008 on this issue, the Commission has already considered the additional allowable expenses on account of Brand Equity from FY 2006-07 onwards in the Commission's Order dated September 3, 2010 in Case No. 97 of 2009.

3.3 WRONGFUL TREATMENT OF INCOME TAX

TPC-T submitted that the Hon'ble ATE in its Judgment in Appeal No 174 of 2009, has ruled as under on the issue of wrongful treatment of Income Tax:

"18. While the State Commission has computed the tax by considering the Return on Equity equal to profit before tax, it has ignored the fact that such allowed income tax would also be considered as revenue gains and the Appellant would have to pay tax on the same. In order to rectify the same, the State Commission ought to have grossed up the tax computed by it and pass the same to the Appellant. Thus the claim of the State Commission that it has reimbursed the actual tax and hence there is no case for allowing post tax Return on Equity is not correct. Therefore, it would be appropriate to direct the State Commission to compute income tax entitlement of the Appellant by replacing Return on Equity by regulatory profit before tax on the basis of income less permissible expenses. Accordingly ordered"

TPC further submitted that ATE has summarised its findings on the pertinent issue, thereby allowing TPC-T to claim the difference between the Income tax entitlement sought by TPC-T and that allowed by the Commission for FY 2007-08. The relevant portion of the ATE Judgment as submitted by TPC-T is reproduced below.

> *"19. SUMMARY OF OUR FINDINGS:*
> *(iii) In the claim towards payment of Income Tax, the Appellant computed the income tax as Rs. 37.09 crores as against Rs. 33.33 crores approved by the State Commission in its earlier order in respect of FY 2007-08. The income tax liability was computed by the Appellant by considering the actual Profit Before Tax in its transmission business and then adjusting the same. Regulation 50.2 has provided that the actual income shall form the basis for computation of income tax. The State Commission has computed the entitlement of income tax claim recovery from its consumers as Rs. 23.30 crores only. In the present case, instead of computing the Profit Before Tax method as comprising of total revenue minus allowable expenditure, the State Commission has taken the Return on Equity as the start point, thereby wrongfully reducing the taxable income by Rs. 38 crores and consequently the tax entitlement worked out has dropped by Rs. 13 crores. As provided in the Regulations 50.1 and 50.2, 14% Return on Equity is provided after giving the pass through of income tax effect on the income of the transmission business in the Annual Fixed Charges. The State Commission ought to have included incentives and efficiency gains with ROE and grossed up the tax computed by it and passed on the same to the Appellant. Therefore, the State Commission is directed to pass the income tax entitlement of Appellant by replacing Return on Equity by regulatory Profit Before Tax based on income less permissible expenses."(Emphasis Supplied)*

TPC-T highlighted that ATE has directed the Commission to consider incentive as well as efficiency gains along with Return on Equity as a part of Regulatory profit before tax and not Return on Equity alone while also directing that tax computation should be grossed up for tax.

TPC further submitted that since ATE has already laid down the principles on the above issue, the Commission may apply the principle laid down in the ATE's Judgment for FY 2008-09 also. According to TPC-T, the same is relevant on account of the fact that the Income Tax entitlement for FY 2008-09 was computed by the Commission based on the same approach it had adopted for computing Income Tax entitlement for FY 2007-08.

TPC-T further submitted that as per the ATE's Judgment, Return on Equity needs to be replaced by Regulated Profit Before Tax, based on the income less permissible expenses. TPC-T, in Annexure to its Petition, submitted the Income Tax computation methodology for FY 2009-10 demonstrating that the tax reimbursement may be either computed by (i) Grossing up the RoE (as shown in the table that is following) or (ii) by first computing the Regulated Profit Before Tax and then computing the tax, and submitted that both the approaches would lead to the same results.

Table: Table: Calculation of Income Tax as submitted by TPC-T (Rs. crore)

Particulars	FY 2007-08	FY 2008-09
Return on Equity - A	**57.89**	**59.85**
Incentive - B	**-**	**2.85**
Add: - C	**53.92**	**58.48**
Normative Interest on Working Capital	5.16	6.54
Normative Interest on loan	4.83	9.57
Regulatory Depreciation	26.71	28.20
Other disallowances for computing Income tax	17.22	14.17
Less: - D	**38.90**	**43.96**
Tax depreciation	31.25	39.59
Other Expenses allowed for computing Income tax	6.05	4.37
Deduction under S. 80-G,80 IA	1.60	-
Total - E = (A+B+C-D)	**72.91**	**77.22**
Corporate Tax Rate - t	33.99%	33.99%
Income Tax = (E)x t/(1-t)	**37.54**	**39.76**

TPC-T submitted that in light of the aforementioned Order of the Hon'ble ATE, the Commission is requested to consider the same as given in the table below:

Table: Additional Entitlement of Income Tax as submitted by TPC-T (Rs crore)

Particulars	FY2007-08	FY2008-09
Revised Income Tax calculated based on Hon'ble ATE Judgement	37.54	39.76
Income Tax as approved by MERC	23.30	25.10
Amount Disallowed by MERC	14.24	14.66
Entitlement restored due to ATE's Judgement	**14.24**	**14.66**

The principle that income tax of a licensee should be passed through in the tariff is to be based on the actual tax impact. For working out actual tax impact working out the

segmental income is necessary. Income tax emerges from segmental working and that leads to segmental calculations. Segmental calculations should be based on regulated income if tax is actually paid on regulated income. If income tax is actually calculated and paid by the Licensee Company on book profits under MAT method then the segmental division has to be based on book profit and not on regulated profit; because regulated profit is not what has suffered actual tax but book profit has suffered the actual tax.

It is clear from the licensee's own submissions before Hon. APTEL and various observations made by Hon. APTEL, that income tax has to be considered at actuals as pass through expense. Further in case of true up applications the claim has to be sanctioned on the basis of actual tax payments because all the details are available by that time. Commission accordingly sought the information related to actual tax payments made by the licensee to determine the correct claim. The information sought was basic information such as copy of income tax return filed; the statement of computation of income which is invariably submitted along with the returns along with some other relevant information like break of various additions and deductions claimed in tax computation in G-T-D and other segments. Further it was noted that the licensee had claimed credit for tax paid by it under MAT mechanism in earlier year; which being tax already recovered in tariff of earlier years should now be reversed in the appropriate proportion from G-T-D and other segments.

The Commission is of the view that appropriate claim for actual income tax paid by the company cannot be found out without these very basic documents viz. copy of income tax return filed; the statement of computation of income which is invariably submitted along with the returns along with some other relevant information like break of various additions and deductions claimed in tax computation in G-T-D and other segments. The licensee responded with partial information and in some case information which was submitted proved to be incorrect. For example initially incorrect computation statement was furnished which did not match with figures appearing in income tax return filed. Thereafter on pointing out the fact the further information provided as computation of income contained calculations of income taxable under head "Business and Profession" only and was not total computation statement. Till date licensee has not submitted complete and correct statement of computation of income as matching with the income tax return filed. Licensee has also not submitted underlying break-up of allowances / disallowances for tax purposes into G-T-D and other segments. Licensee has also not submitted break up of MAT paid in earlier year, the part of which has been claimed as credit in current year into G-T-D and other segments. There has been fair amount of follow up on this issue

with the licensee and ultimately vide mail dated 8th February, 2012 the licensee has communicated that they do not have the relevant information. Considering the fact that out of information sought; statement of computation of tax is really mandatory statutory filings and the segmental breakup is obviously the base on which licensees would have staked their claim for reimbursement, inability of the licensee to produce these evidentiary documents is incomprehensible. However to be just and fair to the licensee considering that they may have some issues in record retrieving, the Commission is of the opinion that the licensee should claim income tax during the next year after the licensee is able to produce the information sought for, because the present orders cannot be held back on this account.

3.4 REVENUE GAP/SURPLUS FOR FY 2007-08 AND FY 2008-09

TPC-T submitted that the Hon'ble ATE in its Judgment dated February 15, 2011 (in Appeal No 173 of 2009) established the principle of claiming interest on deferred recovery. The Hon'ble ATE has held as follows:

> *"43. Summary of Our Findings*
>
> *(1) Carrying cost is a legitimate expense. Therefore, recovery of such carrying cost is legitimate expenditure of the distribution companies. The carrying cost is allowed based on the financial principle that whenever the recovery of cost is deferred, the financing of the gap in cash flow arranged by the Distribution Company from lenders/promoters/accruals is to be paid by way of carrying cost. In this case, the Appellant, in fact, had prayed for allowing the legitimate expenditure including carrying cost. Therefore, the Appellant is entitled to carrying cost. (Emphasis Supplied)*

In this regard, TPC-T further submitted that in the past, the Commission had dis-allowed the entitlement of carrying costs on the amounts, which were earlier dis-allowed and subsequently restored by the Appellate Authority. TPC-T submitted that it had sought to establish its entitlement on carrying costs on deferred recoveries as a general principle by way of its Appeal in the Hon'ble ATE (Appeal No. 173 of 2009) and the Hon'ble ATE in its Judgment dated February 15, 2011 on the said Appeal has ruled as under:

> *"42.The above judgments of the Tribunal lay down the dictum regarding entitlement of carrying cost for deferred recoveries. However, in the present*

appeal the Appellant has raised carrying cost as a general issue without reference to any finding of the State Commission in the impugned order or specific claim of interest on deferred recovery. Therefore, while holding the principle of carrying cost on deferred recovery, we are not in a position to give any specific direction to the State Commission in this regard except to take decision on the claim of the Appellant on carrying cost keeping in view the above judgments of the Tribunal. However, we would like to add that ***the Appellant is entitled to carrying cost on his claim of legitimate expenditure if the expenditure is:***
(a) accepted but recovery is deferred, e.g. interest on regulatory assets;
(b) claim not approved within a reasonable time; and
(c)disallowed by the State Commission but subsequently allowed by the superior authority*."(****emphasis added****)*

TPC-T submitted that the Commission has not considered any interest on Gap/Surplus after truing up for passing it on to the consumer in the subsequent years. TPC-T further submitted that in view the Hon'ble ATE's Judgment, it is necessary to compute the carrying cost on Gap/(Surplus) from the respective years till these are recovered. The summary of the Gap/(Surplus) approved by the Commission after truing up of FY 2007-08 and FY 2008-09 is as submitted by TPC is given in the table below:

Table: Revenue Gap/ (Surplus) as submitted by TPC-T ***(Rs crore)***

Particulars	FY 2007-08	FY 2008-09
Approved Revenue Gap/ (Surplus) for various years	(4.14)	(25.28)

The interest computations on these amounts as submitted by TPC-T are as given below.

(Rs crore)

				FY 2007-08	**FY 2008-09**	**Total**
Amount Eligible for Carrying Costs ---->				**(4.14)**	**(25.28)**	
Interest year	*Rate of Interest (%)*	*Months of Interest for*				
		FY 2007-08	*FY 2008-09*			
FY 2007-08	*12.48%*	*0*		*0.00*	*0.00*	
FY 2008-09	*12.79%*	*12*		*(0.53)*	*0.00*	
FY 2009-10	*11.87%*	*12*	*12*	*(0.49)*	*(3.00)*	
FY 2010-11	*12.24%*	*12*	*12*	*(0.51)*	*(3.10)*	
FY 2011-12	*13.23%*	*6*	*6*	*(0.27)*	*(1.67)*	
Total Interest				**(1.80)**	**(7.77)**	**(9.57)**

In the above quoted ATE Judgment (Appeal No. 173 of 2009), the Hon'ble ATE has ruled that carrying cost is allowable in case claim is accepted but recovery is deferred by the Commission (interest on regulatory assets) or the claim is not approved within reasonable time or expenses disallowed by the Commission are subsequently allowed by the superior authority.

However, in the present case, revenue gap/(surplus) is determined by the Commission within reasonable time frame as per the MYT framework. In accordance with the present MYT framework, the truing up of the revenue and revenue requirement of any financial year is done during the determination of Tariff/Aggregate Revenue Requirement for the second subsequent year and thus, the actual revenue gap/(surplus) derived out of the truing up exercise for a financial year is passed on to the consumer at the end of the second subsequent year, to be recovered through the tariffs of the next year. Thus, by design itself, the truing up process takes two years, and the amount of revenue gap/(surplus) after truing up gets crystallised only after the final truing up is done. Thus, the Commission is of the view that the same cannot be treated either as a deferred allowance/disallowance on which carrying cost has to be permitted as the expenses are allowed in reasonable time frame, or as an accepted claim on which recovery is deferred, since the amount gets crystallised only after the truing up process. Hence, the carrying cost can be considered only if the recovery of the trued up amount is deferred beyond the normal time period. Thus, the Commission has not considered carrying cost on the revenue gap/ (surplus) for FY 2007-08 and FY 2008-09. Hence, no additional amount is due to / recoverable from TPC-T under this head.

3.5 SUMMARY OF RECOVERABLE AMOUNT

TPC-T submitted that the Commission had disallowed these amounts for FY 2006-07, FY 2007-08 and FY 2008-09 and had factored these dis-allowances while determining the tariff for FY 2009-10 and FY 2010-11. TPC-T submitted that if these amounts are to be recovered in FY 2011-12, TPC-T would be entitled for interest/carrying costs on the above. TPC-T further submitted that as these items are largely revenue based, the interest has been calculated based on the SBI PLR allowed by the Commission for computation of interest on working capital.

Hence, TPC-T requested the Commission to consider restoration of these earlier dis-allowed entitlements along with the carrying costs as indicated in the table below:

Table: Amount Recoverable as submitted by TPC-T (Rs crore)

S. No	Particulars/issue						FY 2006-07	FY 2007-08	FY 2008-09
1	Sharing of gains on Interest on Working Capital						1	1	1
2	Wrongful Treatment of Income Tax							14	15
3	**Total Recoverable Amount (1+2)**						**1**	**15**	**16**
4	**Total Interest on Recoverable Amount (as worked out below)**						**1**	**7**	**5**
	Interest year	*Rate of Interest (%)*	*Months of Interest for the amounts due in the following four years*						
			FY 2006-07	*FY 2007-08*	*FY 2008-09*	*FY 2009-10*			
4.a.	*FY 2006-07*			*-*	*-*	*-*	*-*	*-*	*-*
4.b.	*FY 2007-08*	*12.48%*	*12*		*-*	*-*	*0.16*	*-*	*-*
4.c.	*FY 2008-09*	*12.79%*	*12*	*12*		*-*	*0.17*	*1.98*	*-*
4.d.	*FY 2009-10*	*11.87%*	*12*	*12*	*12*		*0.15*	*1.84*	*1.91*
4.e.	*FY 2010-11*	*12.24%*	*12*	*12*	*12*	*12*	*0.16*	*1.90*	*1.97*
4.f.	*FY 2011-12*	*13.23%*	*6*	*6*	*6*	*6*	*0.09*	*1.03*	*1.07*
5	**Total Recovery including Interest (3+4)**						**2.03**	**22.23**	**21.06**
6	**Total Amount eligible for Recovery**								**45.33**
7	**Add: Interest on Gap/Surplus not allowed for FY 2007-08 and FY 2008-09**								**(9.57)**
8	**Total amount to be recovered**								**35.75**

The Commission has given its ruling on the past period recoveries claimed by TPC-T in the preceding paragraphs, considering the Hon’ble ATE's Judgment and the submissions by TPC.

As regards carrying cost on approved past period recovery, the Commission is of the view that these expenses were liable to be approved during the truing up process for the respective years. As these expenses were disallowed during the truing up process and if allowed at a later point in time, TPC-T is entitled to recover carrying cost on the same. However, the carrying cost is applicable only for the period when the recovery was deferred, i.e., from the issuance of the original Truing up Order to the actual date of recovery of the said expenses. Accordingly, TPC-T shall be allowed carrying cost as and when such deferred costs are allowed to be recovered.

However, in this Order, the Commission has not allowed any amount towards ‘impact of ATE Judgment’ for FY 2006-07, FY 2007-08 and FY 2008-09, and hence, the issue of allowance of carrying cost in this regard does not arise.

Further, in this Order, the Commission is approving expenses till FY 2010-11, i.e., March, 2011, thus the carrying cost for FY 2011-12 has not been considered in the current Order. The Commission shall consider the carrying cost for FY 2011-12 when recovery of these expenses is sought for by TPC-T and allowed by the Commission,

depending upon the year of accrual and up to year of recovery at SBI PLR for the respective years.

The summary of past period expenses approved by the Commission in view of the Hon'ble ATE Judgment for FY 2007-08 and FY 2008-09, is given in the following table:

Table: Impact of ATE Judgment ***(Rs. crore)***

Sr. No.	Particulars	FY 2006-07		FY 2007-08		FY 2008-09	
		TPC-T	Approved	TPC-T	Approved	TPC-T	Approved
1	Normative Interest on Working Capital	1.30	0.00	1.25	0.00	1.45	0.00
2	Wrongful treatment of income tax	-	0.00	14.24	0.00	14.66	0.00
3	**Total recoverable amount (1+2)**	**1.30**	**0.00**	**15.49**	**0.00**	16.11	0.00
4	Total interest on recoverable amount	0.73	0.00	6.74	0.00	4.95	0.00
5	Interest on Gap/Surplus not allowed for FY 2007-08 and FY 2008-09	0.00	0.00	(1.80)	-	(7.77)	-
6	**Total Impact of ATE Judgment (3+4+5)**	**2.03**	**0.00**	**20.43**	**0.00**	**13.29**	**0.00**
		TPC-T			**Approved**		
	Total amount to be recovered of all three years (FY 07, FY08 & FY 09)	**35.75**			**0.00**		

4 TRUING UP OF AGGREGATE REVENUE REQUIREMENT FOR FY 2009-10

TPC, in its Petition, has sought approval for the final truing up of expenditure and revenue for FY 2009-10 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 gains/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 2009-10, and has undertaken the truing up of expenses and revenue after prudence check. Further, for FY 2009-10, the Commission has approved the sharing of gains and losses on account of controllable factors between TPC-T and the Distribution Licensees, in accordance with Regulation 19 of the MERC Tariff Regulations, in this Section.

4.1 OPERATION & MAINTENACE (O&M) EXPENSES

Operation and Maintenance (O&M) expenditure comprises of 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 for FY 2009-10 are detailed below.

The actual O&M Expenditure for FY 2009-10 is Rs. 95.55 crore as compared to Rs. 100.72 crore approved in the APR Order of FY 2009-10. The various components of O&M Expenses are elaborated below:

4.1.1 Employee Expenses

TPC-T submitted that the total actual employee related expenses for FY 2008-09 was Rs. 54.95 crore against Rs. 56.52 crore approved by the Commission.

Considering the details of actual employee expenses submitted by TPC-T and the fact that the actual employee expense is lower than the approved employee expenses, the Commission has allowed the actual employee expenses for FY 2009-10 under the truing up exercise as shown in the following table:

Table: Employee Expenses (Rs crore)

Particular	APR Order	Actuals	Allowed after truing up
Employee Expenses	56.52	54.95	54.95

The difference between the approved employee expenses and the employee expenses allowed after truing up for FY 2009-10 has been considered as a controllable efficiency 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.

4.1.2 Administrative & General (A&G) Expenses

TPC submitted that the A&G expenses for FY 2009-10 were Rs. 29.44 crore against Rs 32.45 crore approved by the Commission. TPC submitted that the main reason for decrease in A&G expenses is on account of lower allocation of corporate A&G expenses allocable to TPC-T in FY 2009-10.

TPC-T, in response to the queries raised by the Commission, submitted detail breakup of the head "Others" under A&G expenses for FY 2009-10 for TPC-T, as under:

Table: Submission by TPC-T on breakup of the head "Others" under A&G expenses

Head of Expenses	Rs. Crs
Tata Brand Equity	2.96
Community Welfare Expenses	0.13
Gifts	0.91
Others Fess	0.64
Provision -Doubtful Debts & Advances (Net)	0.73
TBEM Expenses	0.48
Transport Charges- Service Tax Not Payable	0.18
Grand Total	**6.03**

As part of additional queries raised by the Commission, TPC was asked to submit justification for expense heads like Community welfare expenses, Gifts, Provision for doubtful Debts and TBEM expenses, which formed part of A&G expenses of FY 2009-10. TPC provided the following head-wise explanation for the same:

a) As regards the Community welfare expenses, TPC submitted that the same mainly pertains to expenses towards educational/Vocational training, healthcare, environment, School and training infrastructure and other social welfare initiatives.

b) Regarding TBEM (Tata Business Excellence Model), TPC submitted that it is a business Model in use in the Tata Group of Companies since 1995. It is being used by Tata Companies to pursue improving standards of business excellence. The TBEM framework (based on Malcolm Bridge model), helps Tata Companies including Tata Power in developing attributes that leads to becoming globally competitive and a role model for other Companies while upholding values and ethics. TPC submitted that TBEM requires a Company-wide assessment to be carried out every year and the expenditure incurred is largely towards this assessment.

c) The gifts paid in FY 2009-10 mainly constitute the commemorative gold coins paid to employees on the occasion of commissioning of Unit-8 of TPC-G. According to TPC, such gifts have been paid to the employees of the Company (and may have been included in the Salary to employee expenses) to commemorate an important milestone in Mumbai Licensed area.

d) TPC-Generation business and TPC-Transmission business had paid Deposits to outside agencies like Mumbai Port Trust, Municipal Corporation of Greater Mumbai for various jobs. As these deposits have been due for refund for more than 1 year, TPC in line with its policy had made provisions for doubtful debts in the books of account. In case the Company recovers the doubtful provisions made in the books, the benefit of the same is being passed on to the consumers as Non-tariff income.

Upon perusing the above submissions by TPC, the Commission observes that the actual A&G expenses submitted by TPC-T for FY 2009-10 is lower than the corresponding approved expenses for the respective year. However, as regards the expenses such as expenses towards community welfare and expenses towards Gifts, the Commission is of the view that these costs are towards TPC’s Corporate Social Responsibility and are not necessary for the functioning of any Utility. In any case, these expenses should not be passed on to the consumers of TPC, as the consumers are not benefiting from the same and thus, these expenses should be borne by TPC. TPC-T is free to incur such expenses from the returns earned out of the business. Thus, for the purpose of truing up of FY 2009-10, expenses under such heads have been disallowed.

The Commission observed that TPC-T has considered Rs 0.15 crore towards Contribution/Donations under the A&G expenses for FY 2009-10. As regards such expenses, the Commission has ruled in the APR Order for FY 2008-09 as under.

> *"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."*

Hence, on similar lines, the Commission has not considered the expense of Rs 0.15 crore towards Contributions/Donations as claimed by TPC-T, under the truing up exercise and for the purpose of sharing of gain and losses.

The A&G expense has been further revised based on the revision in expense towards Brand Equity submitted by TPC as reworked by the Commission. The impact is a reduction in Rs 0.21 crore under the head compared to the claim of TPC-T. The details of the computation have been elaborated in subsequent sections of this Order.

The summary of A&G expenses approved in the APR Order, actual A&G expenses and A&G expenses approved after truing up for FY 2009-10 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	32.45	29.44	28.04

The Commission has considered the difference between the allowed A&G expenses and A&G expenses approved in the APR Order, under the sharing of gains and losses due to controllable factors, since O&M is a controllable expense.

4.1.3 Repair & Maintenance (R&M) Expenses

TPC submitted that the actual R&M expenses for FY 2009-10 were Rs. 11.16 crore as against Rs 11.75 crore approved by the Commission in the APR Order.

The Commission observes that the actual R&M expenses are lower than that approved by the Commission for FY 2009-10 and the same has been considered for the purpose of truing up of FY 2009-10.

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

Particular	APR Order	Actuals	Allowed after truing up
Net R&M Expenses	11.75	11.16	11.16

The Commission has considered the difference between the allowed R&M expenses and R&M expenses approved in the APR Order, under the sharing of gains and losses due to controllable factors, since O&M is a controllable expense.

4.2 CAPITAL EXPENDITURE AND CAPITALISATION

The Commission has examined the capital expenditure and actual capitalisation claimed by TPC-T against the various capex schemes approved by the Commission. As against approved capitalisation of Rs. 189.37 crore considered under its earlier APR Order dated September 3, 2010, actual capitalisation by TPC-T during FY 2009-10 amounted to Rs. 167.49 crore , out of which, capitalisation of DPR schemes amounts to Rs. 129.34 crore and the balance pertains to Non-DPR schemes.

TPC –T submitted that the Commission in its Tariff Order dated September 3, 2010 had considered Non-DPR only to the extent of 20 % of the quantum of capitalisation under DPR schemes for the purpose of truing up for FY 2008-09. TPC-T further submitted that application of this principle is unfair to TPC-T owing to the following reasons provided by TPC-T:

- The import of this principle was known only through the Order dated September 3, 2010. Hence, the application of this principle in effect has been retrospective rather than prospective.
- Non-DPR schemes classified as work in progress in the Order dated May 28, 2009 should be excluded from application of this principle since these schemes are required to be completed and capitalised and cannot be left incomplete.
- Non-DPR schemes are equally important as DPR schemes and hence, should be treated on equal footing.

TPC-T requested the Commission to review the principle and also submitted that it has appealed against the said principle before the Hon’ble ATE. The Judgment of ATE is awaited in this matter. However, not-withstanding the outcome of the appeal, TPC has requested the Commission to approve the entire capitalisation for FY 2009-10.

As regards approval of capitalisation towards DPR schemes in FY 2009-10, the Commission has not considered capitalisation against the following schemes. The specific reason for disallowance is mentioned alongside.

a) The scheme 'Extension of 03 Nos. 22 kV Indoor Breaker' appearing among the DPR schemes, has a total capital expenditure mentioned as 0.70 crore , which is less than Rs. 10.00 crore and thus, does not qualify to be a DPR scheme. Hence, the capitalisation claimed by TPC under the scheme has not been considered under DPR scheme capitalisation for FY 2009-10.
b) The capitalisation towards the schemes '145 kV GIS at BKC' for amount of Rs 1.98 Lakh (FY 2009-10) has not been allowed as it was observed that only preparatory/preliminary activities including soil testing has been undertaken.

In reply to the Commission's query regarding additional capitalisation for HO & SS, TPC has submitted that most of the additional capitalisation for HO & SS is meant for regulated business and based on materiality concept, there may not be any need for further break-up into regulated and non-regulated business. Not being satisfied with TPC's response, the Commission asked further details from TPC regarding the assets capitalised under HO & SS and whether the same was incurred for Mumbai LA operations, since the names of some of the assets referred to Belgaum, Noida, etc.

The Commission observes that an expenditure of Rs. 8.09 Lakh was incurred in FY 2009-10 towards 'Ambulance Van - Tata Motor', which has been clarified to be Corporate Social Responsibility expenditure under 'HO and SS' asset additions. As regards such expenses, if TPC as a Company or the shareholders of the Company wish to contribute towards Corporate Social Responsibility expenditure, the same should be contributed from the return earned out of the business, rather than passing on such costs to the Utility's consumers. On similar grounds, the Commission has also disallowed the revenue expenditure towards CSR. Hence, for truing up purposes for FY 2009-10, the Commission has not considered this capital expense of Rs. 8.09 Lakh.

The Commission further observed that expenses incurred towards projects located in Belgaum and Noida, amounting to Rs. 15.60 Lakh were included under HO & SS. TPC clarified that although these assets are under the HO books, they are not pertaining to Mumbai LA. Hence, the Commission has not included these assets under additional capitalisation for HO & SS.

The Commission queried TPC about Rs. 44.29 Lakh shown as expense towards 'Bridge in front of Walwan Dam', which was capitalised on September 30, 2009. TPC replied that these assets were transferred to Khopoli division in September 2009 itself. As these expenses have already been transferred to Khopoli Division, the Commission has not considered the same under HO & SS to avoid double accounting of the same in the books of Khopoli Division as well as HO & SS. Similarly, TPC submitted that HO & SS expenses amounting to Rs. 50.37 Lakh, including solar panels amounting to Rs. 6.56 Lakh towards Transmission Business, were transferred to Transmission Division in FY 2010-11. Hence, the Commission has not included these expenses in HO & SS to avoid double accounting as these have been transferred to Transmission Business.

Further, TPC submitted in its reply that Cisco Routers and Cisco Switches amounting to Rs. 1.47 crore were located at Dharavi Receiving Station although capitalised in the HO & SS books. TPC also submitted the details of vehicles procured for employees who are a part of Mumbai LA, adding up to Rs. 1.25 crore . The Commission has considered these assets relating to Mumbai LA and approved the same.

Thus, based on TPC's reply, the Commission has classified additional capitalisation for HO & SS into three groups, as given below:

(a) **Assets under HO & SS not approved by the Commission** - These assets include Corporate Social Responsibility expenditure, expenses relating to Noida and Belgaum, and expenses already capitalised under generation and transmission business of TPC, for which capitalisation has not been approved by the Commission, as explained in the above paras.

(b) **Assets Identified for Mumbai Licensed Area** - The Commission has accepted TPC's submission relating to assets at Dharavi Receiving Station and vehicles of Mumbai LA employees capitalised under HO & SS.

(c) **Balance capitalisation under HO & SS** - For the remaining assets capitalised under HO & SS, the Commission is of the view that HO & SS assets would be common and used by all business segments. Moreover, the details of the assets added in HO & SS include several computers, printers, mobile, etc., which are common assets and it will not be appropriate to assume that these assets are exclusively meant for the use of the regulated business. Hence, the Commission does not agree with TPC's rationale that based on 'materiality concept', there may not be any need for further break-up into regulated and non-regulated business. The Commission has allocated these HO & SS assets in proportion of the GFA of regulated business (G, T & D) to Total Assets of

TPC, which is further allocated to G, T and D in the ratio of GFA, as shown in the Table below:

Table: HO & SS Capitalisation for FY 2009-10

Category	**Capitalisation (Rs.)**
Assets under HO & SS not approved by the Commission	
Ambulance Van CSR	809500
Belgaum	1396122
Khopoli Division	4429835
Noida	162966
Solar	656463
Transmission	4380973
Vehicle	29227077
Total	**41062937**
Assets Identified for Mumbai Licensed Area (allowed 100%)	
Cisco routers, etc.	14650337
Vehicle	12498247
Total	27148584
Balance capitalisation under HO & SS (allowed 44.07%)	
Other Expenses	64984469
Total	64984469
HO & SS Approved	**55784980**

Table: Approved HO & SS Capitalisation for FY 2009-10 (Rs crore)

Particulars	**TPC-G**	**TPC-T**	**TPC-D**
HO & SS allocation	3.92	1.21	0.45

Accordingly, the HO & SS allocation considered by the Commission for truing up for FY 2009-10 is Rs. 1.21 crore as against Rs. 3.45 crore submitted by TPC-T. These are included under non-DPR schemes for the purpose of further analysis.

As regards Non-DPR Schemes, the Commission had issued a directive in the previous APR Orders, restricting the capitalisation of such schemes to 20% of the capitalisation of DPR schemes during the year. The relevant extract of the Order is reproduced as following.

> *"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."* ***(Emphasis added)***

The Commission has provided detailed rationale for applying such a principle for allowing capitalisation of Utilities in its previous Orders and on the same basis continues to apply the principle for the current truing up exercise also.

The capitalisation of Non-DPR Schemes claimed by TPC-T is about 30% of the capitalisation of DPR Schemes allowed under truing-up of FY 2009-10. Therefore, based on the above principle set by the Commission for approval of capitalisation, the capitalisation of Non-DPR schemes has been limited within 20% limit prescribed by the Commission. Accordingly, for truing up for FY 2009-10, the Commission has considered a total capitalisation of Rs. 155.05 crore , as shown in the Table below:

Table: Approved Capitalisation for FY 2009-10 (Rs crore)

Particulars	APR Order	Actuals	Allowed after truing up
DPR Capitalisation	157.81	129.33	129.21
Non-DPR Capitalisation	31.56	38.16	25.84
Total Capitalisation	189.37	167.49	155.05

4.3 DEPRECIATION

The Commission, in its earlier Order dated September 3, 2010 had permitted depreciation to the extent of Rs 32.15 crore for FY 2009-10, which amounts to 2.74% of the approved Opening level of Gross Fixed Asset (GFA) of Rs 1174.24 crore of TPC-T for FY 2009-10. TPC-T, in the current Petition, submitted that the actual depreciation expenditure incurred in FY 2009-10 was Rs 32.02 crore . TPC has restated the Opening GFA for FY 2009-10 as Rs 1272.67 crore considering actual capitalisation in FY 2008-09 compared to the approved level, and submitted that the depreciation for FY 2009-10 amounts to 2.52% of the Opening GFA. TPC further

submitted that the depreciation rates were considered as specified under the MERC Tariff Regulations.

Further, TPC-T submitted that against capitalisation of Rs 189.37 crore considered under the APR Order, actual capitalisation achieved by TPC-T during FY 2009-10 amounted to Rs. 167.49 crore . Further, TPC-T in its additional submissions, confirmed that depreciation has not been claimed beyond 90 % of the asset value in line with MERC Tariff Regulations.

For the purpose of truing up, the Commission has considered the Opening GFA of FY 2009-10 as the sum of approved Opening GFA of FY 2009-10 in the previous APR Order and additional impact on Opening GFA of FY 2009-10 due to impact of disallowance of de-capitalisation of certain assets such as Guest houses etc., in FY 2008-09, as discussed in detail in Section 5.14 of this Order (under the heading "past period recoveries"). The impact of disallowance of de-capitalisation results in revision of closing GFA of FY 2008-09 and hence the Opening GFA of FY 2009-10 to the extent of Rs 8.84 crore . Thus, for the purpose of truing up of FY 2009-10, the Commission has considered revised Opening GFA of FY 2009-10 of Rs 1183.08 crore as against Rs 1174.24 crore approved by the Commission in its previous APR Order.

As regards computation of depreciation for FY 2009-10, the Commission has considered depreciation on the Opening GFA for FY 2009-10, after due revisions as mentioned above, as well as on the assets added during the year, subject to the actual capitalisation approved for FY 2009-10. This is in consonance with the ATE’s Judgment dated July 15, 2009 in Appeal No.137 of 2008, 138 of 2008 and 139 of 2008.

The depreciation expenditure approved by the Commission for FY 2009-10 has been summarised in the following Table:

Table: Depreciation ***(Rs crore)***

Particulars	Tariff Order	Actuals	Allowed after truing up
Depreciation	32.15	32.02	30.17
Opening GFA	1174.24	1272.67	1183.08
Closing GFA	1355.76	1436.34	1334.31

4.4 INTEREST EXPENSES

The Commission, in its APR Order dated September 3, 2010 in Case No. 97 of 2009, had approved interest expenditure of Rs. 19.85 crore , after considering the interest expenditure on normative debt and actual loan from Infrastructure Development Finance Company Limited (IDFC) corresponding to capitalised assets only.

TPC has submitted the interest expenses for FY 2009-10 under the following heads:

- Interest on long-term debt;
- Interest and Finance Charges.

TPC submitted that in addition to interest on normative loans for the previous years (70 % of Capital expenditure of FY 2003-04 and capitalisation of FY 2004-05 and FY 2005-06), it has availed loans from IDFC- 1(Rs 450 crore), IDBI-1 (Rs 400 crore) and IDBI -2 (Rs 300 crore) for funding the capital expenditure for the period from FY 2006-07 to FY 2009-10.

TPC-T submitted that the Commission, in its Order dated September 3, 2010, had discussed in detail the allocation of these loans and had also considered part of the financing through normative loans. The position of loans on the basis of the stand of the Commission is given in the following table. TPC-T further submitted that as the funding from debt and equity depended upon the actual capitalisation rather than the approved capitalisation, for the loan position given below, it had considered the entire capitalisation for FY 2009-10.

Table: Position (Drawals) of Loans based on Capitalisation for FY 2006-07 to FY 2008-09, as submitted by TPC-T (Rs. crore)

Year	Normative	IDBI 1	IDFC 1	Total
FY 2006-07	-	-	15.14	**15.14**
FY 2007-08	27.26	-	8.74	**36.00**
FY 2008-09	133.88	5.73	-	**139.61**
Total	**161.14**	**5.73**	**23.88**	**190.75**

TPC-T further submitted that in addition to the above, TPC had taken a new loan (“IDBI Loan 2”) for financing the capitalisation for FY 2009-10. The details of the new loans taken for funding the capitalisation for 2009-10 are as given below:

- **IDBI-2 Loan**

As submitted by TPC-T, it had raised a loan of Rs. 300 crore from IDBI to fund its current capital expenditure on the following terms:

IDBI LOAN-2	
Tenor	2 year moratorium+5 years
Repayment	4 yearly instalments of 10% in the 3rd, 4th , 5th and 6th year followed by 60% repayment in the 7th year
Interest rate	12.5% for the first year; Subsequent reset on annual basis to an interest rate linked to IDBI's BPLR with a maturity agreeable spread.

TPC-T further submitted that this loan was refinanced on different terms in FY 2010-11. Based on the capitalisation of FY 2009-10, the drawal of the IDBI loan 2 is given in the following table. In the computation given in the table, the IDBI Loan 2 has been allocated to different business areas (Generation, Transmission and Distribution) based on the ratio of capitalisation of these business areas in FY 2009-10.

Table: Financing of Capitalisation for FY 2009-10, as submitted by TPC
(Rs crore)

Particulars	Business Areas (Excluding Unit-8)				Interest rate (%)
	Gen.	Trans.	Dist.	Total	
Capitalisation during FY 2009-10	153.65	167.49	107.50	428.64	
Debt Portion = 70% of capitalisation	107.56	117.24	75.25	300.05	
Financed through IDBI Loan 2	107.54	117.22	75.24	300.00	12.47%
Financed through Normative Loan	0.02	0.02	0.01	0.05	10.00%

As submitted by TPC-T, the drawal of the various loans after considering the IDBI Loan-2 for FY 2009-10 is given in the following table:

Table: Loan Position (Drawal) after Capitalisation for FY 2009-10 (Rs. crore)

Transmission					
Year	**Normative**	**IDBI-1**	**IDFC-1**	**IDBI-2**	**Total (Rs. crore)**
FY 2006-07	-	-	15.14	-	15.14
FY 2007-08	27.26	-	8.74	-	36.00
FY 2008-09	133.88	5.73	-	-	139.61
FY 2009-10	0.02	-	-	117.22	117.24
Total	**161.16**	**5.73**	**23.88**	**117.22**	**307.99**

TPC-T submitted that considering the above, the interest expenses for FY 2009-10 were Rs 27.68 crore as against Rs 19.85 crore approved by the Commission in the APR Order dated September 3, 2010.

TPC-T submitted that the difference between the actual interest expenses and the approved interest expenses is mainly on account of the difference in capitalisation considered by the Commission for FY 2008-09 and FY 2009-10.

The Commission has gone through the submissions made by TPC-T and is of the view that interest expenses should be allowed only on the loan corresponding to approved capitalisation and has hence, re-computed interest expenses corresponding to approved capitalisation. The Commission notes that approved loan drawal during FY 2008-09 is Rs 70.73 crore (i.e., normative loan drawal of Rs 65.00 crore + loan drawal of Rs 5.73 crore from IDBI Loan-1) as against TPC-T's claim for loan drawal of Rs 139.61 crore during FY 2008-09 (i.e., normative loan drawal of Rs 133.88 crore + loan drawal of Rs 5.73 crore from IDBI Loan-1).

Accordingly, for computation of interest on loans, the Commission has considered the closing balance of loans as approved for FY 2008-09 as the opening balance of loans for FY 2009-10. In addition, loan drawal from IDBI Loan-2 during FY 2009-10 as approved by Commission amounts to Rs 106.56 crore as against Rs 117.24 crore claimed by TPC-T on account of reduction in approved capitalisation during FY 2009-10 to Rs 155.05 crore (Net capitalisation of Rs 152.26 crore has been considered for loan funding in FY 2009-10 after deducting capitalisation of the consumer funded scheme - 110 kV Single phase supply to Railways - in FY 2009-10) as considered by Commission in this Order as against capitalisation of Rs 167.49 crore claimed by TPC-T for FY 2009-10. The loan amounts considered for computing interest expenses for FY 2009-10 are as shown in the table below:

Table: Loans approved by the Commission against Capitalisation for FY 2009-10

(Rs. crore)

Year	Transmission				Total
	Normative	IDBI Loan-1	IDFC Loan-1	IDBI Loan-2	
FY 2003-04	9.14				9.14
FY 2004-05	6.65				6.65
FY 2005-06	9.21				9.21
FY 2006-07			15.14		15.14
FY 2007-08	27.14	-	8.86	-	36.00

Year	Transmission				Total
	Normative	IDBI Loan-1	IDFC Loan-1	IDBI Loan-2	
FY 2008-09	64.98	5.73	-	-	70.71
FY 2009-10	0.02	-	-	106.56	106.58
Total	**117.14**	**5.73**	**24.00**	**106.56**	**253.43**

For computation of interest on IDBI 2 loan, TPC has submitted interest rate as 12.47%. However, the Commission, in its Order dated September 3, 2010 in Case No. 97 of 2009 has already provided the rationale for considering the interest rate as 11.48% for IDBI-2 loan for FY 2009-10 and the same has been considered by the Commission for computation of interest. For computation of interest on IDFC loan, TPC has submitted interest rate as 11.69%. However, the Commission has already provided the rationale for considering the interest rate as 10.25% for IDFC loan for FY 2009-10 in the APR Order and the same has been considered by the Commission for computation of interest.

Further, for the normative loan drawn in FY 2007-08, TPC has submitted the interest rate as 10%. However, the Commission has already determined the interest rate on normative loan as 8.90% for FY 2009-10 in the APR Order and the same has been considered by the Commission for the present interest computations.

Accordingly the Commission has computed the interest expenses for FY 2009-10 and approved interest on loan as Rs. 18.65 crore as against Rs 27.68 crore submitted by TPC-T. The summary of loan and interest expenses approved by the Commission for FY 2009-10 is given in the following table:

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

Particulars	FY 2009-10		
	APR Order	TPC-T	Allowed after truing up
Op. Balance of Loan	136.87	204.41	**136.87**
Addition of Loan	132.56	117.24	**106.58**
Repayment of Loan	(7.49)	(11.16)	**(7.49)**
Cl. Balance of Loan	261.94	310.49	235.96
Interest	**19.85**	**27.68**	**18.65**
Effective Interest Rate	**9.95%**	**10.75%**	**10.00%**

4.4.1 Other Finance Charges

TPC submitted that the actual expense towards other finance charges was Rs. 0.35 crore as against the approved amount of Rs. 0.12 crore . In reply to the Commission's query regarding the reasoning behind a threefold increase in other finance charges, TPC submitted that this head includes expenditure towards the foreign exchange variation difference. TPC further submitted that the foreign exchange variation arising between the date of invoice and date of receipt of goods is added to the cost of fixed assets. However, TPC also stated that such exchange variation is charged off to P&L account as per Accounting Standards 2 and 11. Based on the above submissions of TPC-T, the Commission has considered actual expense towards other finance charges of Rs. 0.35 crore for the purpose of truing up of FY 2009-10.

4.4.2 Interest on Working capital

TPC submitted that interest on working capital for FY 2009-10 was computed at an interest rate of 13.00% based on the short term PLR of SBI prevailing at the time of filing the APR Petition for FY 2009-10. TPC further stated that total interest on working capital for FY 2009-10 works out to Rs.7.19 crore as against Rs.5.46 crore approved by the Commission in APR Order.

In response to the Commission's query regarding the usage of cashflows of TPC-T business and or cash flows of any other business to meet the working capital requirement, TPC referred to its submissions in this respect made during the previous year's ARR process and reiterated its difficulty to prepare separate balance sheet for generation, transmission and distribution business since it has been operating under a common balance sheet. Further, TPC stated that Working capital is an item of Balance sheet while cash flow is worked out for a period of time such as one year and thus, cash flow statement can at most determine the cash that may be available to meet the change in Net Working Capital (i.e., CA less CL) and not for the Working Capital. TPC also referred that ATE has upheld its appeal in the matter of computation of gains/ losses on Interest on Working Capital and submitted that the Commission may decide on this issue based on the Judgment of the Hon'ble Tribunal.

The Commission has estimated the normative working capital requirement and interest thereof for FY 2009-10 based on the revised expenses approved in this Order after truing up. However, interest on working capital is a controllable parameter as defined under the MERC Tariff Regulations, and the Commission has therefore, computed the sharing of gains/losses on the basis of normative working capital interest and the actual working capital interest incurred, since this is a controllable parameter. The detailed rationale for such a treatment is provided in Section 3 of this Order. Further, the MERC 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 (SBI) at the time when TPC-T filed the Petition for tariff determination for FY 2009-10 was 13%, the Commission has considered the interest rate of 13% for estimating the normative Interest on Working Capital, which works out to Rs. 6.08 crore .

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

Particulars	APR Order	TPC-T	Allowed after truing up
Interest on Working Capital	5.35	7.19	6.08

As stated in the above paragraph, the Commission has computed the sharing of gains on account of the normative working capital interest and the actual working capital interest incurred, since this is a controllable parameter.

4.5 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 basis of opening equity, and 50% of the equity portion of the capitalisation during the year and reduction in equity on account of de-capitalisation of certain assets. Accordingly, TPC-T estimated the RoE as Rs. 69.62 crore as against the approved RoE of Rs. 65.95 crore for FY 2009-10.

In reply to the Commission's query regarding de-capitalisation of assets, TPC-T submitted that it has not de-capitalised any asset in FY 2009-10.

For the purpose of truing up, the Commission has considered the Opening Equity of FY 2009-10 as the sum of approved Opening Equity of FY 2009-10 in the previous APR Order and additional impact on Opening Equity of FY 2009-10 due to impact of disallowance of de-capitalisation of certain assets such as Guest houses etc., in FY 2008-09 and consequent re-instatement of equity in the year. The details of impact of disallowance of de-capitalisation and consequent re-instatement of equity of the year FY 2008-09 are provided in Section 5 of this Order (under the head "past period recoveries"). The impact of disallowance of de-capitalisation results in revision of

closing equity of FY 2008-09 and hence, the opening equity of FY 2009-10 to the extent of Rs 8.84 crore . Thus, for the purpose of truing up for FY 2009-10, the Commission has considered revised Opening Equity of FY 2009-10 of Rs 451.50 crore as against Rs 442.65 crore approved by the Commission in its previous APR Order.

The RoE as projected by TPC-T and approved by the Commission for FY 2009-10 is summarised in the following Table:

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

Particulars	FY 2009-10		
	APR Order	Revised Estimate by TPC-T	Allowed after truing up
Regulatory Equity at the beginning of the year	442.65	472.18	451.50
Equity de-capitalized during the year	-	-	-
Equity portion of assets capitalized during the year	56.81	50.25	45.68
Regulatory Equity at the end of the year	499.46	522.43	497.17
Return on Regulatory Equity at the beginning of the year	61.97	66.11	63.21
Return on 50% of the Equity portion of asset value capitalized during the year	3.98	3.52	3.20
Total Return on Regulatory Equity	**65.95**	**69.62**	**66.41**

4.6 CONTRIBUTION TO CONTINGENCY RESERVE

TPC submitted that the contribution to contingency reserve for FY 2009-10 was Rs. 6.36 crore as compared to Rs. 2.94 crore approved in the APR Order for FY 2009-10. In this context, TPC submitted that contribution of Contingency Reserves has been computed at 0.50% of Gross Fixed Assets in line with the stand taken by the Commission in the APR Order for FY 2009-10.

For the purpose of truing up of FY 2009-10, the Commission has computed contribution to contingency reserve as 0.25% of the revised approved Opening GFA for FY 2009-10 in accordance with the provisions of MERC Tariff Regulations, and the original ARR Order for FY 2009-10. The reason for revision of opening GFA as compared to GFA submitted by TPC-T for FY 2009-10 has been explained in earlier Sections of this Order. The approved contribution to contingency reserves for TPC-T for FY 2009-10 is given in the following table:

Table: Contribution to Contingency Reserves for FY 2009-10

Particulars	FY 2009-10		
	APR Order	Revised Estimate by TPC-T	Allowed after truing up
Contribution to Contingency Reserves	2.94	6.36	2.96

4.7 INCOME TAX

The Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005 provides as follows:-

"50.2 Income-tax:

50.2.1 Income-tax on the income of the Transmission Business of the Transmission Licensee shall be allowed for inclusion in the aggregate revenue requirement.

50.2.2 The Transmission Licensee shall include an estimate of the income-tax liability of his Transmission Business along with the application for determination of tariff, based on the provisions of the Income-Tax Act, 1961:

Provided that any change in such income-tax liability on account of assessment under the Income-tax Act, 1961 shall be dealt with as being on account of uncontrollable factors:

Provided further that any change in such income-tax liability on account of changes in the provisions of the Income-Tax Act, 1961 shall be dealt with as being on account of uncontrollable factors:

Provided further that any change in such income-tax liability on account of change in income of the Transmission Licensee from the approved forecast shall be attributed to the same controllable or uncontrollable factors as have resulted in the change in income and shall be dealt with accordingly.

50.2.3 The benefits of any income-tax holiday, credit for unabsorbed losses or unabsorbed depreciation on the intra-State transmission system or any part thereof shall be taken into account in calculation of the income-tax liability of the Transmission Business.

The Petitioner is a company under the Companies Act and carries out several businesses including G, T and D in an integrated manner. Allocation of tax liability to the regulated businesses in Mumbai, viz., G, T and D, particularly the method of income tax calculations, has in the past been a complex issue. The key issue was to arrive at the correct base.

Judgments of the Hon'ble Appellate Tribunal for Electricity ("APTEL") –

(1) Appeal No. 173/2009 and 174/2009

Treatment of Income Tax came to be analysed in Appeal No. 173/2009 and 174/2009 before Hon'ble APTEL In its Judgment dated 15th February, 2011 in Appeal No. 173/2009, Hon'ble APTEL examined the following issue:-

> "*Whether the State Commission is justified in computing the entitlement of income tax to be recovered from the consumers considering the return on equity as the regulatory profit before tax and disallowing tax on incentives on the ground that the expenses incurred for achieving better performance has already been allowed?*"

Hon'ble APTEL held as folows:-

> *"…the State Commission is directed to compute the income tax entitlement of the Appellant by replacing Return on Equity by Regulatory Profit Before Tax i.e. income less permissible expenses."*

Since, Hon'ble APTEL *inter alia* held that the actual income shall form the basis for computation of income tax, hypothetical bases cannot be considered. Hon'ble APTEL has discarded the theory of any treatment on notional basis. The Commission is of the view that every base tried earlier, whether Normative ROE or hypothetical PBT was presumptive in nature and did not indisputably demonstrate the relation with actual tax liability. Normative ROE was clearly not the only income that would constitute taxable profits of the licensees, it would also include incentives etc. Further hypothetical PBT was by very nature hypothetical. The income allocation and expense allocation has to be as per actual taxable incomes and expenses calculated as per the Income Tax Act. The approach has to be actual taxable income of regulated business minus actual sanctioned tax deductible expenses of regulated business as directed by Hon. APTEL.

(2) Appeal No. 111/2008

Further, an issue was dealt with in Hon'ble APTEL's Judgment dated 28th May, 2009 in Appeal no. 111/2008 in case of R-Infra which related to non-inclusion of PLF incentive in regulated business segment in the taxable income and therefore non-inclusion of income tax on the incentive on the ground that it would be a burden on consumers. Hon'ble APTEL directed that the actual and factual income tax impact had to be considered and it was no case that such actual impact would be a burden on the consumers.

(3) Appeal No. 251/2006

Furthermore, on issue raised before Hon'ble APTEL in Appeal No. 251/2006 in case of R-Infra. Hon'ble APTEL *inter alia* held in its Judgment dated April 4, 2007 that "*The consumers in the licensee's area must be kept in a water tight compartment from the risks of other business of the licensee and the Income Tax payable thereon. Under no circumstance, consumers of the licensee should be made to bear the Income Tax accrued in other businesses of the licensee. Income Tax assessment has to be made on stand alone basis for the licensed business so that consumers are fully insulated and protected from the Income Tax payable from other businesses.*"

COMMISSION'S RULING:-

Taking into account the aforesaid Judgments of the Hon'ble APTEL, the Commission is of the opinion that Hon'ble APTEL has held that the base should be the factual tax liability and there is no scope for presumptive disallowances / hypothetical calculations.

At paragraph 14 of Hon'ble APTEL's judgment dated 14th February 2011 in the matter of TPC-T, Hon'ble APTEL has clarified inter alia as follows:-

"Thus the intent of the Regulations is that the actual income tax paid by the transmission licensee in the business of transmission is included in the ARR and the licensee does not gain or lose on account of income tax which is a pass through in tariff."

Thus, principles have been laid down by Hon'ble APTEL on the subject.

Hence, it was incumbent upon the Commission to examine this issue in consultation with professional consultants. Having so examined this subject matter, the Commission proposes to adopt the actual tax computation statement of the Petitioners and supporting Returns of Income filed i.e., the documentary evidence as submitted by them as the base for true-up petitions. The segmental allocation of taxable income

and tax thereon is being done on line by line basis based on segmental allocation of income and expenses as approved.

The method is based in actual tax computation statement and segmental break up will be always the one that is used for approval of tariff / plan. The weighted income tax deductions / accelerated depreciation / income tax exemptions will be allocated to underlying segment to which they pertain as is clearly mandated by regulation. Cross tally of every line item in the computation of income statement is key demonstrative strength of methodology and would preclude the unwarranted disputes on the issue.

Accordingly computation of income statement was sought from Petitioners and income tax reimbursement claim is sanctioned on the basis of the same. It was observed from computation statement that in the year under consideration the Petitioner was liable to pay the tax based on Minimum Alternate Tax (MAT) mechanism under the Income Tax Act, which is higher than the normal tax on taxable income. In view of Hon'ble APTEL's pronouncements as aforesaid, this higher impact is being considered for sanctioning of the claim and this higher tax impact under MAT which has been actually suffered by the Petitioner is allocated to various segments as per Annexure A hereto. In case of MAT the same is charged on the book profits. Book Profits are always calculated as income minus expenses as per books and accordingly book income minus book expenses of various regulated business segments have been considered as base as per audited allocation statements submitted by Licensee. This clearly is in conformity with the directives of Hon. APTEL which has directed income minus expenses approach to be used vide its Judgment in case of Appeal No. 173/2009 as referred to hereinabove. Further since the actual tax suffering in case of MAT happens on the basis of book profits without any consideration to any other figures, the same base of book profits of the relevant regulated segment has to be adopted. Accordingly the allocation of book profit statement was sought from Licensee duly audited by their auditors. This audited statement submitted by Licensee themselves has been considered as for arriving at book profits attributable to concerned regulated segment. As will be apparent from Annexure A; the MAT tax has been calculated on all the segments in accordance with this audited statement submitted by Licensee themselves. The total MAT liability of company is duly reconciled with the total tax liability of all the segments taken together thereby the correctness of tax calculations stands duly demonstrated. In short following the Hon. APTEL verdicts the actual tax payment of Licensee has been allocated to various segments. Further in this case since the tax suffering is on MAT; which is based solely on book profits irrespective of any other considerations, the same base of book

profits on which Licensee has actually paid the tax has been used to ensure that base remains the same base on which the Licensee has actually suffered the tax.

As would be apparent from the Annexure A; the tax allocable to segment under consideration of this order is Rs. 22.14 crore which is being sanctioned against the claim of Rs. 41 crore under this petition. Further the MAT paid is not actual expenditure because credit of such tax paid is available to Licensee in subsequent years. Needless to add that the credit of this tax paid under MAT mechanism as permissible to be taken by the Petitioner in the subsequent years under the provisions of the Income Tax Act, 1961 will be adjusted on proportionate basis of allowance made by this order, in subsequent year/s in which the Petitioner actually takes such credit at total company level.

4.8 NON TARIFF INCOME

TPC submitted that the actual non-tariff income for FY 2009-10 was 12.28 crore as against Rs 10.50 crore approved in the FY 2009-10 APR Order. TPC submitted the detailed breakup of the Non Tariff Income for FY 2009-10.

The Commission observed that though the expenses pertaining to Corporate Treasury have been allocated to Mumbai Licence Area (in the ratio of operating revenue of Mumbai Licence Area (LA) to total operating revenue), the 'gain on exchange' amounting to Rs. 50.61 crore for FY 2009-10 has not been allocated to Mumbai LA. The Commission is of the view that since, the expenses related to Corporate Treasury function have been allocated to the regulated business in Mumbai, the income earned from the Corporate Treasury function should also be allocated to the regulated business in Mumbai in the same proportion. If this is not done, it will amount to undue enrichment of the unregulated business of TPC, since the consumers of the regulated business are bearing the costs, but are being deprived of the benefits of the income earned from the Corporate Treasury function. Accordingly, the Commission has allocated this gain from the Corporate Treasury function to Mumbai LA on the basis of operating revenue of Mumbai LA to total operating revenue, and further allocated the same to the regulated business of Generation, Transmission and Distribution on the basis of operating revenue.

Table: Allocation of Gain on Exchange ***(Rs. crore)***

Particulars	Total Income	Allocated Income to other than Mumbai LA	Income allocated to Mumbai LA	Generation	Transmission	Distribution
Gain on exchange	50.61	15.18	35.42	24.70	9.01	1.71

The Commission has added the gain from Corporate Treasury function in addition to 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 2009-10 allowed by Commission (Rs crore)

Particulars	APR Order	Actuals	Allowed after truing up
Non-Tariff Income	10.50	12.28	21.29

4.9 ALLOCATION OF LOAD CONTROL CENTRE COST TO TPC-G, TPC-T AND TPC-D

TPC-T, in its Petition, submitted that it had given a detailed description of activities carried out by TPC- Load Control Centre (LCC) in the APR Petition of FY 2009-10. The Commission had accepted the allocation methodology proposed by TPC and included the LCC cost allocation to TPC-G and TPC-D in O&M expenses and reduced the same from ARR of TPC-T. TPC stated that it has followed the same methodology in this Petition. TPC submitted the following allocation of LCC cost to its Generation, Transmission and Distribution Businesses. Accordingly, the share of LCC Expenditure, which is now included in O&M cost of TPC-T, was stated as Rs 3.00 crore, as given in Table below:

Table: Sharing of LCC Costs for FY 2009-10 (Rs crore)

Particulars (Business Area)	FY 2009-10
Generation	1.72
Transmission	3.00
Distribution	1.27
Total	**5.99**

4.10 BRAND EQUITY EXPENSES

TPC-T submitted that the actual brand equity expenses to be borne by TPC-T for FY 2009-10 is Rs. 2.96 crore as against Rs. 4.09 crore approved by the Commission in its APR Order dated September 3, 2010. TPC-T, in its Petition, has submitted the details of computation of Brand Equity expense and its allocation to TPC-T.

The Commission in Case No. 97 of 2009 in Order dated September 3, 2010, has stated the following:

> *"The Commission does not find any merit in TPC's above explanation. The Brand Equity Agreement states that the payment towards Brand Equity has to be computed on the basis of Annual Net income of the financial year immediately preceding the year in which the use occurs. In other words, Brand Equity payment in FY 2007-08 would be linked to the annual net income of FY 2006-07 and so on, whereas TPC has considered Brand Equity payment in FY 2007-08 based on the annual net income of FY 2007-08 itself. TPC's explanation regarding actual payment happening in the next year is of no consequence, since the expenses and revenue are being considered on "accrual basis" rather than cash basis. As a result of TPC's method of computing the Brand Equity expenses, the same have effectively been advanced by one year, i.e., the Brand Equity amount that was payable in FY 2007-08 has actually been paid in the earlier year, i.e., FY 2006-07, and this shift of one year has continued. At the same time, it is not that the Brand Equity payment was not due at all, and it is only a question of timing. Since, all these expenses are now being allowed due to the ATE Judgment and are for past years, the Commission is of the view that there would be not much merit in shifting the Brand Equity expenses allowable by one year. Hence, for the purpose of truing up for previous years, the Commission has not disallowed any part of the Brand Equity expenses, on the above account. However,* ***TPC should ensure that henceforth, the Brand Equity expenses are computed exactly as provided for in the Brand Equity & Brand Promotion Agreement, on the Annual Net income of the financial year immediately preceding the year in which the use occurs."(emphasis added)***

As per the Commission's ruling in the previous APR Order, the Commission directed TPC to submit the revised computation of Brand Equity, in line with the methodology approved by the Commission in the last APR Order. Further, as seen in the above extract, the Commission had directed TPC to compute Brand Equity expense on the Annual Net income of the financial year immediately preceding the year in which the

use occurs. However, TPC submitted the Brand Equity expense considering the Annual Net income of the same financial year. This is highly irregular and the Commission does not see any merit in TPC's continued approach to compute the Brand Equity on the same year's revenue, merely because the actual cash payment is being made in the subsequent year. However, the Commission observes that considering the Annual Net income of the preceding year, i.e., FY 2008-09, the brand equity expense of the regulated business of TPC as a whole for FY 2009-10 works out to Rs. 16.38 crore as against Rs. 13.66 crore considering the Annual Net income for FY 2009-10. The Commission has already allowed the higher brand equity expense of Rs. 16.38 crore in FY 2008-09 in the previous APR Order. Thus, in the interest of the consumers, the Commission has computed brand equity expense at the Annual Net income of the same year, i.e., FY 2009-10, at Rs. 13.66 crore, the detailed computation of which is given in the table below:

Table: Computation of Brand Equity Amount for FY 2009-10 (Rs. crore)

Particulars	Formula	FY 2008-09	FY 2009-10
Revenue from Mumbai Licence Area Business based on allocation statement	a	5786	4916.81
Add: Cash Discount pertaining to Mumbai LA Area	b	39.33	34.91
Add: Income in respect of services rendered pertaining to Mumbai LA Area	c	5.26	0.91
Add: Delayed Payment Charges pertaining to Mumbai LA Area	d	1.30	1.54
Total Revenue to be considered for Mumbai Licence Area	e=a+b+c+d	5831.89	4954.17
Contribution to Tata Brand Equity	f=0.25%*e	14.58	12.39
Service Tax	g=service tax%*f	1.80	1.28
Total contribution to Brand Equity including service tax	**h=f+g**	**16.38**	**13.66**

TPC submitted that as the expenditure under this head is a part of A&G expenditure, the same has been allocated to the business of generation, transmission and distribution on the basis of the A&G expenses of these business areas. The Commission has allocated the brand equity expense based on A&G expenses, and accordingly the share of TPC-T in Brand Equity expense for FY 2009-10 is Rs. 2.75 crore. The summary of share of TPC-T's Brand Equity expense for FY 2009-10 as approved by the Commission is given in the table below. For the purpose of truing up

of A&G expense for FY 2009-10, the same has been disallowed to the extent of reduction in Brand Equity expenses approved.

Table: Brand Equity Amount for FY 2009-10 (Rs. crore)

Particulars	TPC	Approved by Commission	Difference
Brand Equity	2.96	2.75	0.21

4.11 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 the State Transmission Utility (STU) from transmission system users (i.e., distribution licensees). Accordingly, for FY 2009-10, the Commission has issued the Transmission Tariff Order in Case No 104 of 2007 (applicable in April and May 2009) and Transmission Tariff Order in Case No. 155 of 2008 (applicable from June 2009 to March 2010), determining the transmission charges applicable from April 1, 2009 to March 31, 2010. The approved monthly recovery was Rs 20.69 crore for April and May 2009 and Rs 15.65 crore from June 2009 to March 2010 as per the aforesaid Transmission Tariff Orders. Accordingly, TPC-T is entitled to recover only the amount as approved by the Commission. However, the revenue earned by TPC-T has been compared against the expenses incurred by TPC-T during FY 2009-10, to compute the net revenue gap/surplus for FY 2009-10.

4.12 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 2009-10 was 98.85%, and the incentive works out to Rs. 2.31 crore.

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 through APR Order for FY 2009-10, 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. TPC-T has submitted its transmission system availability computations for FY 2009-10, 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. 216.62 crore, the incentive works out to Rs. 1.88 crore amounting to total approved ARR of Rs 218.50 crore for FY 2009-10.

4.13 SHARING OF GAINS AND LOSSES FOR FY 2009-10

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	.
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 2009-10 are uncontrollable except for certain expenditure in the O&M expenditure. TPC-T has considered the actual O&M expenditure as Rs. 92.56 crore as compared to the approved O&M expenditure of Rs. 98.09 crore, and has considered a net gain of Rs 5.53 crore in O&M expenses and proposed to share 1/3rd of the same with the Distribution Licensees, as shown in the Table below:

Table: Gains and losses due to variation in O&M Costs (Rs. crore)

Sr. No.	Particulars	Amount
1	Approved O&M Expenditure for FY 2009-10	98
2	Actual O&M Expenditure for FY 2009-10	93
3	Uncontrollable Expenditure out of actual expenses	-
4	Actual Controllable Expenditure (2-3)	93
5	Amount passed on to the distribution Licensee (1/3rd of gain/loss)(1/3rd*(1-4))	2
6	Net Entitlement (1-5)	96

The actual O&M expense for FY 2009-10 as approved after final true-up by the Commission is Rs 91.16 crore as against earlier approved expense of Rs 98.09 crore. Thus, the efficiency gain on this account works out to Rs 6.93 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 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 Tariff Regulations.

Interest on Working Capital

As discussed in the earlier paragraphs, TPC-T claimed interest on working capital of Rs 7.19 crore during FY 2009-10 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 6.08 crore . As discussed in Section 3 of this Order, TPC-T has been unable to provide the cash flow statements for different businesses on account of common balance sheet and common cash balance. However, TPC has submitted the actual interest on working capital for FY 2009-10 in reply dated August 22, 2011 to the Commission's query for TPC-G in Case No. 105 of 2011 dated August 8, 2011, as Rs. 19.88 crore and the allocation of TPC-T is Rs. 0.58 crore , hence, actual interest on working capital is considered as Rs 0.58 crore . The details of actual interest paid by TPC as submitted by TPC are given in the following table:

Table: Details of Actual Interest Paid (Rs. crore)

	TPC-G	TPC-T	TPC-D	Total
FY 2009-10	**9.36**	**0.58**	**9.94**	**19.88**
FY 2010-11	**3.18**			**3.18**

Hence, the Commission has considered Rs. 6.08 crore as normative interest on working capital, with actual working capital interest being Rs. 0.58 crore, and has considered sharing of 1/3rd of the efficiency gains of Rs. 5.50 crore with the consumers, while 1/3rd is to be retained by the Licensee, i.e., TPC-T, and the rest 1/3rd is to be retained in a special reserve in accordance with the MERC Tariff Regulations.

Total Amount of Efficiency Gains

The breakup of expenses for FY 2009-10 along with the adjustments on account of sharing of gains and losses as submitted by TPC-T is given in the following table.

Table: Summary of Truing up for FY 2009-10 including sharing of efficiency gains as submitted by TPC-T (Rs crore)

Sr. No.	Particulars	FY 2009-10 (Actuals)			
		Approved	Entitlement as per the Regulations	Efficiency Gains / (Loss) from Controllable factors shared with Consumers	Net Entitlement (Including Transfer to Reserves) after Impact of Gains / (Loss) from Controllable factors
I	**Revenue**				**210**
	-Transmission Charges				198
	- Other Income	11			12
II	**Expenditure**				
1	Operation & Maintenance Expenses (After apportioning LCC Expenses to Generation and Distribution)	98	98	2	96
2	Depreciation, including advance against depreciation	32	32		32
3	Interest on Long-term Loan Capital	20	28		28
4	Interest on Working Capital	5	7		7
5	Other Finance Charges	0	0		0
6	Incentive	-	2		2
7	Statutory Appropriations/ Contingency Reserve	3	6		6
8	Income Tax	24	41		41
9	Return on Equity	66	70		70
10	**Total Expenditure**	**249**	**285**		**283**
III	**Pure (Gap) / Surplus for FY 2009-10 (I - II)**				**(73)**

TPC-T, thus worked out a pure revenue gap of Rs. 73 crore of FY 2009-10. TPC-T further adjusted this gap with the revenue surplus of Rs 25 crore , which was allowed after truing up of FY 2008-09 by the Commission vide APR Order dated September 3, 2010 so as to arrive at the resultant net revenue gap of Rs. 47 crore for FY 2009-10. The comparison of such net revenue gap submitted by TPC-T and that approved

by the Commission for FY 2009-10 has been detailed in the subsequent paragraphs of this Order, where the Commission has approved the Past Period Recoveries for TPC-T.

The Commission has estimated the total efficiency gain as Rs 12.43 crore for FY 2009-10. The Commission has considered this efficiency gain to be shared in accordance with the MERC Tariff Regulations, as stated above. The summary of the trued up ARR and efficiency gains as approved by the Commission for FY 2009-10 is given in the following Table:

Table: Summary of Truing up for FY 2009-10 including sharing of efficiency gains approved by Commission (Rs crore)

Sr. No.	Particulars	Approved as per APR 2009-10	Actuals/ Normative	Allowed after Truing Up	Total Efficiency Gain / (Loss)	1/3 rd of Efficiency Gain shared with TSU	Net Entitlement approved by Commission
A	**Expenditure**						
1	Operation & Maintenance Expenses (after deducting the LCC cost allocated to TPC-G and TPC-D)	98.09	92.56	91.16	6.93	2.31	95.78
2	Depreciation, including advance against depreciation	32.15	32.02	30.17			30.17
3	Interest on Long-term Loan Capital	19.85	27.68	18.65			18.65
4	Interest on Working Capital and on consumer security deposits*	5.35	7.19	6.08	5.50	1.83	4.25
5	Other Finance Charges	0.12	0.35	0.35			0.35
6	Other Expenses	0.00	0.00	0.00			0.00
7	Contribution to contingency reserves	2.94	6.36	2.96			2.96
8	Income Tax	24.10	40.96	22.14			22.14
	Total Expenditure	**182.59**	**207.13**	**171.51**			**174.30**
B	**Return on Equity**	65.95	69.62	66.41			66.41
C	**Incentive for higher Availability**	0.00	2.31	1.88			1.88
D	**Total Revenue Reqirement (including expenditure +RoE +Incentive)**	**248.54**	**279.07**	**239.79**			**242.58**
	Add: Revenue (Gap)/surplus for FY 2008-09	**25.28**	**25.28**	**25.28**			**25.28**
	Total Revenue Reqirement for FY 2009-10	**223.25**	**253.79**	**214.51**			**217.30**
E	**Revenue**						
1	Non Tariff Income	10.50	12.28	21.29			21.29
2	Tariff Income	197.90	197.90	197.90			197.90
	Total Revenue	**208.40**	**210.19**	**219.20**			**219.20**
F	**(Gap)/Surplus= [D] - [E]**	**(14.85)**					**1.90**

Thus, the net revenue entitlement for TPC-T for FY 2009-10 including incentive for higher availability as elaborated under subsequent paragraph, works out to Rs.217.30 crore, as compared to the approved revenue requirement of Rs. 223.25 crore allowed in the APR Order dated September 3, 2010. Further, total revenue after final true-up for FY 2009-10 amounts to Rs 219.20 crore comprising of income from transmission tariff as Rs 197.90 crore and Non-tariff income of Rs 21.29 crore. Accordingly, revenue surplus of Rs 1.90 crore for FY 2009-10 has been considered after final true-up for FY 2009-10, as against the earlier approved revenue gap of Rs 14.85 crore under APR Order for FY 2009-10 dated September 3, 2010.

5 TRUING UP OF AGGREGATE REVENUE REQUIREMENT OF FY 2010-11

TPC-T, in its Petition, has sought review of the performance and provisional truing up of FY 2010-11. However, based on TPC-T's further submission for final truing up and availability of actual expenditure and revenue as per the audited accounts, the Commission has undertaken the final truing up for FY 2010-11 in this Order.

TPC-T provided the comparison of actual expenditure against each head with the expenditure approved by the Commission, along with the reasons for deviations. Accordingly, in this Section, the Commission has analysed all the elements of actual expenditure and revenue for TPC-T for FY 2010-11 and has undertaken the truing up of expenses and revenue after prudence check. Further, for FY 2010-11, the Commission has approved the sharing of gains and losses on account of controllable factors between TPC-T and the Distribution Licensees, in accordance with Regulation 19 of the MERC Tariff Regulations, 2005 in this Section.

5.1 O&M EXPENSES

The O&M expenditure comprises of employee expenditure, A&G expenditure and 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 for FY 2010-11 are detailed below.

The actual O&M Expenditure for FY 2010-11 is Rs.105.31 crore as compared to Rs. 107.09 crore approved in the ARR Order of FY 2010-11. The various components of O&M Expenses are elaborated below:

5.1.1 Employee Expenses

TPC-T submitted that the total actual employee related expenditure for FY 2010-11 was Rs 59.25 crore as compared to Rs 61.32 crore approved in the ARR Order.

The Commission has considered the actual employee expenses submitted by TPC-T for truing up as it is within the amount approved by the Commission in the APR Order.

Accordingly, the employee expenses allowed for FY 2010-11 after truing up, is summarised in the following Table:

Table: Employee Expenses for FY 2010-11 (Rs. crore)

Particulars	FY 2010-11		
	ARR Order	Actuals	Allowed After truing up
Employee expenses	61.32	59.25	59.25

The difference between the approved employee expenses and the employee expenses allowed after truing up for FY 2010-11 has been considered as a controllable efficiency 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.

5.1.2 A&G Expenses

TPC submitted that the actual A&G Expenditure for FY 2010-11 was Rs 31.35 crore as compared to Rs 33.31 crore approved in the ARR Order. TPC-T submitted that the A&G expenses that relate to Capex schemes (such as consultant's fees, travelling etc.), are directly debited to the WBS in SAP. It was further submitted that unlike employee expenses, capitalisation of A&G expenses are not routed through P&L account but are credited directly, and hence, they does not separately appear as Capitalised amount.

TPC-T, in response to the queries raised by the Commission regarding the head "Cost of Services procured" amounting to Rs 4.13 crore under A&G expenses for FY 2010-11, submitted details for the same. TPC submitted that various services procured by TPC are classified under the following heads:

- Cost of security services rendered- Rs 1.43 crore
- DuPont services rendered- Rs 1.35 crore
- Transport services- Rs 0.40 crore
- Other Miscellaneous services- Rs 0.95 crore

Further, the Commission asked TPC-T to submit the breakup of the cost included under the head "Others" under A&G expenses. In reply to the Commission's query, TPC-T submitted the details as follows:

THE TATA POWER COMPANY LIMITED
Breakup of 'Other Expenses' under A&G Expenses for FY 2010-11

Head of Expenses	Gen	Trans	Dist	Total
Tata Brand Equity	7.89	2.51	3.54	13.95
Community Welfare Expenses	4.89	0.13	0.23	5.25
Scrapping of Materials	3.20	(0.03)	0.10	3.28
Other Fees	1.36	0.62	0.88	2.86
Commission to Non Executive Directors	1.22	0.39	0.55	2.15
TBEM Expenses	0.99	0.34	0.44	1.78
Transport Charges- Service Tax Not Payable	0.90	0.20	0.20	1.31
Recruitment Expenses	0.48	0.14	0.27	0.88
Gifts	0.45	0.17	0.11	0.74
Ash Disposal expenses	0.36	0.00	0.00	0.36
Canteen Expenses -Guest	0.25	0.00	0.00	0.26
Claims & Compensation	0.08	-	-	0.08
Directors Fees	0.12	0.04	0.06	0.22
Provision -Doubtful Debts & Advances (Net)	(1.09)	(0.54)	-	(1.62)
Entertainment Expenses	0.25	0.07	0.15	0.47
Fees for Conferences	0.05	0.01	0.02	0.08
QMS Expenses :ISO 9000	0.21	0.00	0.00	0.21
Misc Expenses	0.72	0.15	-	0.87
Grand Total	**22.35**	**4.23**	**6.55**	**33.14**

The Commission observed that TPC has spent an amount of Rs 5.25 crore (combined for Generation, Transmission and Distribution businesses) towards Community Welfare Expenses. In reply to the Commission’s query, TPC clarified that the community welfare expenses are mainly for Educational/vocational training, health care, environment, infrastructure and other social welfare initiatives. Further, the main activities include training to youth, medical camps, HIV AIDS awareness programs/ rallies, training volunteers, afforestation, environment education, etc. The Commission has disallowed these expenses, as if the Company or the shareholders of the Company wish to contribute/donate towards community welfare expenses, the same should be contributed from the return earned out of the business, rather than passing on such costs to the Utility’s consumers.

Further, in reply to the Commission's query, TPC clarified that commemorative gold coins were paid to employees on the occasion of commissioning of Unit-8, and the expense on the same has been claimed under “Gifts” amounting to Rs. 0.74 crore under A&G expenses. As discussed in Section 4 of this Order, the Commission has disallowed these expenses from the A&G expenses, under the truing up exercise and for the purpose of sharing of gain and losses.

The Commission observed that TPC-T has considered Rs 0.33 crore towards Contribution/Donations under the A&G expenses for FY 2010-11. As regards such expenses, the Commission has ruled in the APR Order for FY 2008-09 as under:

> *"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."*

Hence, on similar lines, the Commission has not considered the expense of Rs 0.33 crore towards Contributions/Donations as claimed by TPC-T, under the truing up exercise and for the purpose of sharing of gain and losses.

Besides the above, the Commission has considered the revised quantum of Brand Equity, which forms part of Other Expenses under A&G expenses for truing up purposes. The detailed rationale for the same is provided in the subsequent paragraphs of this Order. The approved amount towards Brand Equity for TPC-T is Rs 2.43 crore, as compared to Rs 2.51 crore claimed by TPC-T.

The summary of A&G expenses approved in the Order, actual A&G expenses and A&G expenses approved after truing up for FY 2010-11 has been shown in the following Table:

Table: A&G Expenses for FY 2010-11 (Rs. crore)

Particulars	FY 2010-11		
	ARR Order	Actuals	Approved After truing up
Net A&G expenses	33.31	31.35	30.64

The Commission has considered the difference between the approved A&G expenses and the A&G expenses allowed after truing up, under the sharing of efficiency gains and losses due to controllable factors, since A&G expense is a controllable expense.

5.1.3 R&M expenses

TPC submitted that the actual R&M expenses for FY 2010-11 were Rs 14.71 crore as compared to Rs 12.46 crore approved in the ARR Order. TPC submitted the following reasons for increase in R&M expenses:

- Repairs to Transformers (ICT-1) at Salsette - Rs 1.64 crore ; on account of core insulation failure;
- Repairs to Transmission Line Towers- Rs 0.41 crore; on account of cracks in the foundation of the Transmission line towers thereby exposing the reinforced steel and therefore, needing urgent repairs.

Further, in response of the Commission's query regarding the rationale behind increase in the balance amount of Rs 0.20 crore , TPC-T submitted that it is on account of further security measures as necessitated due to finding of security Audits/ rounds and time to time advise from Intelligence Bureau (IB).

The Commission observes that the factors responsible for increase in R&M expenses of TPC-T for FY 2010-11 over the R&M expenses approved in APR Order are controllable in nature and thus, for the purpose of truing up, the Commission has considered the R&M expenses for FY 2010-11 same as approved by the Commission in its APR Order. The same is summarised in the following Table:

Table: R&M Expenses for FY 2010-11 (Rs. crore)

Particulars	FY 2010-11		
	APR Order	Actuals	Allowed After truing up
Net R&M expenses	12.46	14.71	12.46

The Commission 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 expense is a controllable expense.

5.2 CAPITALISATION

The Commission has examined the capital expenditure and actual capitalisation claimed by TPC-T as against the various capex schemes approved by the Commission. As against approved capitalisation of Rs. 149.49 crore considered under its earlier ARR Order dated September 3, 2010, actual capitalisation by TPC-T during FY 2010-11 amounted to Rs. 129.02 crore , out of which, capitalisation of DPR

schemes amounts to Rs. 102.09 crore . TPC- T submitted that some Non-DPR Schemes have been combined into merged DPR Schemes and have been submitted to the Commission for in-principle approval, accounting for Rs 0.83 crore . Thus, the total capitalisation under DPR schemes amounts to Rs 102.92 crore and the balance pertains to Non-DPR schemes.

As regards approval of capitalisation towards DPR schemes in FY 2010-11, the Commission has not considered capitalisation for the following schemes. The specific reason for disallowance is mentioned alongside.

a) Cumulative capitalisation (Rs 19.93 crore) towards the completed scheme '220 kV interconnection with MSETCL' is higher than the in-principle approved capital expenditure for the scheme (Rs 19.50 crore). The capitalisation claimed for FY 2009-10 under the scheme has been allowed. However, the capitalisation of FY 2010-11 has been limited to the extent that the cumulative capitalisation claimed by TPC for the scheme matches the in-principle approved capital expenditure for the scheme. However, in case TPC-T seeks approval for additional capitalisation exceeding the original approved cost as per in-principle approval along with adequate justification and supporting along with cost-benefit analysis, the same could be considered in future in accordance with Regulation 46.3 of MERC Tariff Regulations.
b) The capitalisation towards the schemes '145 kV GIS at BKC' for amount of Rs 1.44 Lakh and 145 kV and 33 kV GIS S/S at Hiranandani' for amount of Rs 40.74 Lakh has not been allowed as it was observed that only preparatory/ preliminary activities including soil testing has been undertaken.

In reply to the Commission's query regarding additional capitalisation for HO & SS, TPC has submitted that most of the additional capitalisation for HO & SS is meant for regulated business and based on materiality concept, there may not be any need for further break-up into regulated and non-regulated business.

The Commission further asked TPC to submit details of the assets capitalised under HO & SS and whether the same was incurred for Mumbai LA operations.

The Commission observed that asset additions made for locations other than Mumbai LA (Jojobera and Haldia) were included under 'HO & SS' asset additions, amounting to Rs. 60 Lakh. TPC clarified that although these assets are under the HO books they are not pertaining to Mumbai LA. Thus, the Commission has not included these assets under additional capitalisation for HO & SS.

The Commission asked TPC about Rs. 11.75 Lakh shown as expense towards "Windmill turbine along with solar panel 3.05 kW". TPC-D replied that these windmill turbine/ solar panel were initially capitalised in HO books and later transferred to XXXX division. The Commission has not considered the same under HO & SS as these assets do nor pertain to Mumbai LA.

TPC-T also submitted the details of vehicles procured for employees who are a part of Mumbai LA summing to Rs. 49.60 Lakh. The Commission has considered these assets relating to Mumbai LA and approved the same.

Thus based on TPC's reply, the Commission has classified additional capitalisation for HO & SS in three groups as given below:

(a) **Assets under HO & SS not approved by the Commission** - These assets include expenses relating to Jojobera and Haldia, and windmill turbine/ solar panel, for which capitalisation has not been approved by the Commission as explained in the above paras.

(b) **Assets Identified for Mumbai License Area** - The Commission has accepted TPC's submission relating vehicles of Mumbai LA employees capitalised under HO & SS.

(c) **Balances capitalisation under HO & SS** - For the remaining assets capitalised under HO & SS, the Commission is of the view that HO & SS assets would be common and used by all business segments. Moreover, the details of the assets added in HO & SS include several computers, printers, mobile, etc., which are common assets and it will not be appropriate to assume that these assets are exclusively meant for the use of the regulated business. Hence, the Commission does not agree with TPC's rationale that based on 'materiality concept', there may not be any need for further break-up into regulated and non-regulated business. The Commission has allocated these HO & SS assets in proportion of the GFA of regulated business (G, T & D) to Total Assets of TPC, which is further allocated to G, T & D in ratio of GFA.

Table: HO & SS Capitalisation for FY 2010-11

Category	Capitalisation (Rs.)
Assets under HO & SS not approved by the Commission	
Haldia	1228946
Jojobera	3240485
Vehicle	13591663
Wind & Solar	1175150

Category	Capitalisation (Rs.)
Total	**19236244**
Assets Identified for Mumbai License Area (allowed 100%)	
Vehicle	4270228
Total	**4270228**
Balances capitalisation under HO & SS (allowed 41.55%)	
Other Expenses	149502721
Total	**149502721**
HO & SS Approved	**66383144**

Table: Approved HO & SS Capitalisation for FY 2010-11 (Rs crore)

Particulars	TPC-G	TPC-T	TPC-D
HO & SS allocation	4.54	1.50	0.61

Accordingly, the HO & SS allocation considered by the Commission for truing up for FY 2010-11 is Rs. 1.50 crore as against Rs. 4.67 crore submitted by TPC-T. These are included under Non-DPR schemes for the purpose of further analysis.

As regards Non-DPR Schemes, the Commission had issued a directive in the previous APR Orders, restricting the capitalisation of such schemes to 20% of the capitalisation of DPR schemes during the year. The relevant extract of the Order is reproduced as following.

> *"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."* ***(Emphasis added)***

The Commission has provided the detailed rationale for applying such a principle for allowing capitalisation of Utilities in its previous Orders and on the same basis has applied the same principles for the current truing up exercise also.

The capitalisation of Non-DPR Schemes claimed by TPC-T is about 26% of the capitalisation of DPR Schemes allowed under truing-up of FY 2010-11. Therefore, based on the above principle set by the Commission for approval of capitalisation, the capitalisation of Non-DPR schemes has been limited within 20% limit prescribed by the Commission. Accordingly, for truing up for FY 2010-11, the Commission has considered a total capitalisation of Rs. 122.49 crore, as shown in the Table below:

Table: Approved Capitalisation for FY 2010-11 (Rs crore)

Particulars	ARR Order	Actuals	Allowed after truing up
DPR Capitalisation	124.58	102.92	102.07
Non-DPR Capitalisation	24.92	26.10	20.41
Total Capitalisation	149.49	129.02	122.49

5.3 DEPRECIATION

The Commission, in its earlier Order dated September 3, 2010, had permitted depreciation to the extent of Rs 38.34 crore for FY 2010-11, which amounts to 2.83% of the Opening level of Gross Fixed Assets (GFA) of TPC-T for FY 2010-11, which was stated as Rs 1355.76 crore. The depreciation rates were considered as prescribed under the MERC Tariff Regulations. TPC-T, in its APR Petition, submitted that the actual depreciation expenditure incurred in FY 2010-11 was Rs 37.72 crore.

TPC-T submitted that, against capitalisation of Rs 149.49 crore considered under the APR Order, actual capitalisation achieved by TPC-T during FY 2010-11 amounted to Rs. 129.02 crore. TPC-T further submitted that, a part of depreciation of about Rs 1 crore per annum is on account of the non-consideration of the capitalisation in FY 2008-09 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 MERC Tariff Regulations. For the purpose of truing up, the commission has considered depreciation on the opening GFA for FY 2010-11 as well as on the assets added during the year, subject to the actual capitalisation approved for FY 2010-11. This is in consonance with the

ATE's Judgment dated July 15, 2009 in Appeal No.137 of 2008, 138 of 2008 and 139 of 2008.

The depreciation expenditure approved by the Commission for FY 2010-11 has been summarised in the following table:

Table: Approved Depreciation for FY 2010-11 ***(Rs. crore)***

Particulars	**FY 2010-11**		
	ARR Order	**Actuals**	**Allowed after truing up**
Depreciation	38.34	37.72	35.51
Opening GFA	1355.76	1436.34	1334.31
Closing GFA	1505.25	1564.43	1455.86

5.4 INTEREST EXPENSES

The Commission, in its APR Order dated September 3, 2010, had allowed interest expenses of Rs 30.08 crore for FY 2010-11. TPC-T, in its APR Petition, submitted the actual interest expenses for FY 2010-11 as Rs 36.59 crore.

TPC-T submitted that in addition to loans considered for financing the capitalisation from FY 2003-04 to FY 2009-10, TPC-T has taken new loans for (i) financing the capitalisation in FY 2010-11, (ii) re-financing the normative loans taken in the previous years, and (iii) refinancing the IDBI-2 loan at improved terms. The details of the new loans taken for funding the capitalisation for FY 2010-11 as submitted by TPC-T are given below:

IDBI-2 LOAN (Refinancing of IDBI-2 loan taken in FY 2009-10)

TPC-T submitted that TPC had re-financed a loan of Rs. 300 crore from IDBI to fund its current capital expenditure on the following terms:-

IDBI LOAN-2	
Tenor	12 years
Repayment	The loan shall be repayable in 47 quarterly instalments, commencing from October 1, 2010 • First 46 instalments would be of Rs. 3.75 crore each (1.25 % of the loan amount) each.

	• 47th instalment would be of Rs. 127.5 crore (42.50% of the loan)
Interest Rate	10.75%; IDBI Bank Rate plus Spread of 275 bps p.a. on the date of each reset

IDFC-2 LOAN

TPC submitted that TPC had raised a loan of Rs. 150 crore from IDFC for additional funding for its capital expenditure on the following terms:

IDFC LOAN-2	
Tenor	10 years
Repayment	First 36 quarterly instalments of Rs. 1.875 Cr each, and 37th to 40th instalments of Rs. 20.625 crore each
Interest rate	IDFC 3-year benchmark rate plus 2% for FY 2010-11; the interest rate was 10.37%

HDFC LOAN

TPC-T submitted that TPC had raised a loan of Rs. 600 crore from HDFC to fund its current capital expenditure and refinance the normative loans on the following terms. However, out of the total sanctioned amount of Rs. 600 crore, drawal in FY 2010-11 was to the extent of Rs. 540.5 crore. The terms of the Loan as submitted by TPC-T are as follows:

HDFC LOAN	
Tenor	10 years
Repayment	The loan shall be repayable in 40 quarterly instalments commencing from 30th June 2010 as under: • First 36 instalments each would be of 1.25 % of the loan amount. • 37th to 40th instalment each would be of 13.75% of the loan amount.
Interest rate	10.95% for the first year; subsequent reset every 3 years from the first disbursement to interest rate linked to 5 year G-Sec+3.33% (average of last 15 days prior to reset date)

TPC-T submitted that the loans had been allocated to different business areas (Generation, Transmission and Distribution) based on the ratio of capitalisation of these business areas in FY 2010-11, as shown in the Table below:

Table: Financing of Capitalisation- FY 2010-11 as submitted by TPC (Rs. crore)

Particulars	Generation	Transmission	Distribution	Total
Debt for capitalisation in FY 2010-11 (a)	**72**	**90**	**97**	**259**
- IDFC-2 Rs. 150 crore Loan (b)	42	52	56	150
Balance loan to be financed (c)=(a) – (b)	30	38	41	109
HDFC Bank Loan (d) = (c)	30	38	41	109
Total HDFC Bank loan Available (e)				**541**
Balance HDFC loan available (f)=(e)-(d)				431
HDFC Loan Utilized for Unit-8 (g)				6
Balance loan from HDFC available for re-financing of normative loan (h) = (f) – (g)				425

TPC-T further submitted that the loans, in addition to financing the capitalisation, have been utilised for re-financing of Normative Loans taken in the past. The normative loan has been re-financed through the above remaining balance of HDFC Loan and additional ICICI Bank Loan. The details of the ICICI Bank Loan as submitted by TPC-T are as follows:

ICICI LOAN

ICICI LOAN	
Tenor	6 years
Repayment	The loan shall be repayable in 24 quarterly instalments commencing from October 31, 2011 as under: • First 16 instalments each would be of 5.17% of the loan amount. • Next 4 instalments each would be 3.33% of the loan amount • 21st to 24th instalment each would be of 1% of the loan amount.
Interest rate	10.00% for the first year; subsequent reset every year from the first disbursement to an interest rate linked to ICICI Bank base rate+2.5%

TPC-T, in its Petition, submitted the normative loan balance as on March 31, 2010 as shown in the table below:

Table: Financing of Normative Loan for FY 2010-11as submitted by TPC-T

Rs. Crores

	Generation	Transmission	Distribution	Total
Balance Repayment of Normative Loans of FY 2003-04	32	4	7	43
Balance Repayment of Normative Loans of FY 2004-05	61	3	9	73
Balance Repayment of Normative Loans of FY 2005-06	13	6	16	34
Balance Repayment of Normative Loans of FY 2007-08	26	25	17	68
Balance Repayment of Normative Loans of FY 2008-09	300	127	26	454
(the above balances as on 1st April 2010)				
Balance Repayment of Normative Loans of FY 2008-09	300	127	26	454
Ratio of Loans	66%	28%	6%	
Refinancing through ICICI Bank Loan	99	42	9	150
Balance to be refinanced	201	85	18	304
Ratio of Balance Normative Loans	66%	28%	6%	
Refinancing through HDFC Bank Loan	201	85	18	304
Balance to be refinanced	-	-	-	-
Balance Repayment of Normative Loans of FY 2007-08	26	25	17	68
Ratio of Loans	38%	36%	26%	
Refinancing through HDFC Bank Loan	26	25	17	68
Balance to be refinanced	-	-	-	-
Balance Repayment of Normative Loans of FY 2005-06	13	6	16	34
Ratio of Loans	37%	16%	46%	
Refinancing through HDFC Bank Loan	13	6	16	34
Balance to be refinanced	-	-	-	-
Balance Repayment of Normative Loans of FY 2004-05	61	3	9	73
Ratio of Loans	84%	5%	12%	
Refinancing through HDFC Bank Loan	17	1	2	20
Balance to be refinanced	44	2	6	53
Balance Repayment of Normative Loans of FY 2003-04	32	4	7	43
Ratio of Loans	75%	8%	17%	
Refinancing through HDFC Bank Loan				
Balance to be refinanced	32.4	3.7	7.2	
Total to be Refinanced in FY 2010-11				
ICICI Bank Loan	99	42	9	150
HDFC Bank Loan	256	116	53	425

Further, the quantum of refinancing of IDBI-2 Loan in FY 2010-11 utilised for TPC-T was Rs. 117.22 crore. Considering the above, TPC-T submitted that the interest charges for FY 2010-11 were Rs. 36.59 crore vis-à-vis Rs. 30.08 crore approved by the Commission, as shown in the Table below:

Table: Interest Computation for FY 2010-11 as submitted by TPC-T (Rs. crore)

Years	Opening balance	Drawal	Repayment	Closing balance	Average interest rate	Interest		
						Normative	Actual	Total
2003-04	-	9	-	9	10.0%	0	-	**0**
2004-05	9	7	1	15	10.0%	1	-	**1**
2005-06	15	9	2	23	10.0%	2	-	**2**
2006-07	23	15	3	35	9.71%	2	1	**3**
2007-08	35	36	3	69	9.51%	2	4	**6**
2008-09	69	140	4	204	10.13%	8	7	**15**
2009-10	204	117	11	310	10.99%	17	11	**28**
2010-11	310	366	292	384	10.54%	8	28	**37**

The Commission has gone through the submissions made by TPC-T and is of the view that interest expenses should be allowed only on the loan corresponding to approved capitalisation and has hence, reworked interest expenses corresponding to approved capitalisation.

Further, as regards the refinancing of the normative loans as proposed by TPC, the Commission is well aware that in the past, the entire capitalisation undertaken by TPC was funded by its own funds (equity) and the Commission was considering the equity in excess of 30% of capital cost as normative loan (considering the normative Debt: Equity ratio as 70:30) and allowing normative interest expense on the normative loan component. Only recently (from FY 2006-07 onwards), TPC has started taking actual loans to part fund its capitalisation. TPC has now proposed to refinance the 'normative loans' used for funding capitalisation (from FY 2004-05 to FY 2008-09). In other words, TPC has proposed to withdraw its own funds that have been used to fund capitalisation, but are in excess of the 30% equity ceiling.

Since, the normative loans were considered at lower interest rates and the actual interest rates at present are higher, the refinancing of normative loans by actual loans has the effect of increasing the interest expenses and hence, the ARR and tariff. Had the actual loans been taken in the respective years for which such refinancing is proposed, the interest rates would have been lower (same as that considered for the normative loans). However, since, the refinancing is being proposed now, at a time when the interest rates are higher, the consumers will be adversely affected by this transaction. TPC has also not submitted any justification for this transaction. Further, there is no such provision in the MERC Tariff Regulations, 2005 for refinancing of

normative loans. In view of all the above, and keeping in mind the consumer interest and welfare, the Commission has not allowed the refinancing of the normative loans proposed by TPC and thus, the corresponding part of HDFC Bank loan and ICICI Bank loans have not been considered under the current truing up exercise.

Further, as regards refinancing of the actual IDBI-2 Loan, the Commission in its Order dated September 8, 2010 in Case No. 96 of 2009 has already approved the interest rate for FY 2010-11 for IDBI-2 loan as 10.75%, which is same as that proposed by TPC after refinancing of the loan, and the same has been considered for computing the interest expenses for FY 2010-11. However, as the new terms of repayment of refinanced IDBI-2 loan are in the interest of the consumers, the Commission has allowed such refinancing of the actual IDBI-2 loan.

The Commission, for computation of interest on loan, has considered the closing balance of loan as approved for FY 2009-10 as opening balance of loan for FY 2010-11 in addition to loans approved for FY 2010-11, i.e., IDFC Loan -2 and HDFC Bank loan for additional funding and has reworked interest expenses corresponding to approved capitalisation.

Accordingly, the loan drawal during FY 2010-11 works out to Rs. 192.30 crore as against TPC-T's submission of Rs. 365.71 crore . The financing of these loans have been done as follows:

Table: Refinancing of Loan and funding of capitalisation for FY 2010-11 (Rs crore)

Sr. No.	Particulars	Allowed after truing up
A	**Funds Requirement for FY 2010-11**	
	Total Capitalisation in FY 2010-11	122.49
	Less: Consumer contribution	0.00
	Net capitalisation to be considered for funding	122.49
	Equity portion of expenditure on Capitalised Assets	36.75
I	**Debt portion of expenditure on Capitalised Assets**	**85.74**
II	**Loans to be Refinanced in FY 2010-11**	**106.56**
	IDBI-2 loan of FY 2009-10	106.56
III	**Total Fund Requirement (I+II)**	**192.30**
B	**Sources of Loan during FY 2010-11**	

Sr. No.	Particulars	Allowed after truing up
I	**IDFC 2**	
	Capitalisation for FY 2010-11	52.26
II	**HDFC Loan**	
	Funding of rest of capitalisation of FY 2010-11 after accounting loan from IDFC 2	33.48
	Total funding for capitalisation for FY 2010-11	**85.74**
III	**IDBI 2 – Refinanced**	
	Refinancing loan corresponding to capitalisation of FY 2009-10	106.56
IV	**ICICI Bank**	
	Refinancing normative loan	0.00
V	**HDFC Loan**	
	Refinancing normative loans	0.00
	Total Refinancing in FY 2010-11 (III+IV+V)	**106.56**
	Total Loan Drawal (I+II+III+IV+V)	**192.30**

Further, for the interest on normative loan drawn in FY 2007-08, TPC has submitted interest rate as 10%. However, the Commission has already determined the interest rate as 8.9% for FY 2010-11 in the APR Order dated September 3, 2010 in Case No. 97 of 2009 and the same has been considered by the Commission for computation of interest.

Accordingly, the Commission has determined the interest expenses for FY 2010-11 and has approved interest on loan as Rs. 27.55 crore as against Rs. 36.59 crore submitted by TPC-T. The summary of loan and interest expenses approved by the Commission for FY 2010-11 is given in the following table:

Table: Approved Interest Expenses for FY 2010-11 (Rs crore)

Particulars	APR Order	Actuals	Allowed after truing up
Opening Balance of Loan	261.94	310.49	235.96
Loan Addition	104.64	365.71	192.30
Loan Repayment	(13.91)	(277.50)	(114.65)
Cl. Balance of Loan	364.79	398.70	313.61
Interest Expense	**30.08**	**36.59**	**27.55**

5.4.1 OTHER FINANCE CHARGES

TPC submitted that the actual expense towards other finance charges for FY 2010-11 was Rs. 0.46 crore as against no amount approved by the Commission towards this expense. In reply to the Commission’s query regarding the reasoning for increase in

other finance charges, TPC submitted that this head includes expenditure towards the foreign exchange variation difference. The foreign exchange variation arising between the date of invoice and date of receipt of goods is added to the cost of fixed assets. However, such exchange variation is charged off to P&L account as per Accounting Standards 2 and 11. Based on the above submissions of TPC-T, the Commission has considered actual expense towards other finance charges of Rs. 0.46 crore for the purpose of truing up of FY 2010-11.

5.4.2 INTEREST ON WORKING CAPITAL FOR FY 2010-11

TPC-T submitted that the interest on working capital had been computed by applying the principles outlined in the MERC Tariff Regulations. TPC further submitted that interest on working capital for FY 2010-11 was computed at an interest rate of 11.75% based on the short term PLR of SBI prevailing at the time of filing the APR Petition for FY 2010-11. TPC-T further stated that total interest on working capital for FY 2010-11 works out to Rs.6.77 crore as against Rs.5.68 crore approved by the Commission in the ARR Order.

The Commission has estimated the normative working capital requirement and interest thereof for FY 2010-11 based on the revised expenses approved in this Order after truing up. However, interest on working capital is a controllable parameter as defined under the MERC Tariff Regulations, and the Commission 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 zero, since this is a controllable parameter. The detailed rationale for such a treatment is provided in Section 3 of this Order. Further, the MERC 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 (SBI) at the time when TPC-T filed the Petition for tariff determination for FY 2010-11 was 11.75%, the Commission has considered the interest rate of 11.75% for estimating the normative Interest on Working Capital, which works out to Rs. 6.21 crore .

Table: Interest on Working Capital approved by the Commission (Rs. crore)

Particulars	APR Order	TPC submission	Allowed after truing up
Interest on working capital	5.68	6.77	6.21

5.5 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 basis of opening equity, 50% of the equity portion of the capitalisation during the year and reduction in equity on account of de-capitalisation of certain assets. Accordingly, TPC-T estimated the RoE as Rs.75.85 Crore as against the approved RoE of Rs. 73.06 Crore for FY 2010-11.

The Commission in its ARR Order for FY 2010-11 (Case No. 97 of 2009), had directed TPC to submit all the relevant details as regards replacement/de-capitalisation of assets and corresponding reduction in equity for all years from FY 2005-06 onwards for the Commission to ensure that the impact of such asset replacement is passed on in the desired manner to the consumers, and take the same into consideration by the Commission in the next Order. The relevant extract of the Order is reproduced for ready reference.

> *"...Further, it should be noted that TPC-T, as well as other Utilities, have been proposing asset replacement schemes with certain cost-benefit analysis, which have been approved by the Commission in the past, and such replacement schemes have been implemented by the Utilities. However, the impact of the replacement of the asset has not been clearly shown by the Utilities in terms of reduction in GFA, outstanding loan, if any, accumulated depreciation, as well as equity contribution, to the extent of the old asset that has been replaced. This needs to be done, as the old asset is no longer part of the books of accounts, and all the related components that have a bearing on the tariff also need to be modified correspondingly, since the new asset gets added to the asset base as well as equity base in its entirety. Not deducting all these components of the replaced asset leads to double-accounting of the assets and the related revenue expenses.* ***Hence, the Commission directs TPC-T to submit all the relevant details in this regard for all years from FY 2005-06 onwards for the Commission to ensure that the impact of such asset replacement is passed on in the desired manner to the consumers, and take the same into consideration by the Commission in the next Order." (Emphasis added)***

In compliance with the above direction of the Commission, TPC-T submitted the relevant details vide its letter dated June 14, 2011 to the Commission. In the said submission, TPC-T presented the details of original cost of the assets which have been

replaced under DPR schemes from FY 2005-06 onwards after approval from the Commission. TPC further submitted that the so replaced assets are very old and they have been depreciated to 90% of their actual capitalisation value and have no outstanding loan against them. Further, TPC in its submission highlighted that the details provided are only of DPR schemes, which are replaced and not for the Non-DPR schemes replaced owing to Non-DPR schemes being large in number and difficulty in retrieving such details from their system. In view of the above, TPC requested the Commission to exempt impact of replacement of Non-DPR schemes from the current exercise. TPC submitted that the total cost of equipments replaced under DPR schemes amounts to Rs 4.36 Crore. In this regard, TPC further submitted that the amount to be knocked off in this regard from Equity Base is Rs. 1.31 Core. Upon perusal of the submission made by the TPC-T, the Commission observed that all the replacement schemes submitted by TPC have been granted in-principle approval in FY 2010-11. In view of the above, the Commission has reduced the regulatory equity of TPC-T in FY 2010-11 by Rs. 1.31 Crore.

In addition to the above details submitted by TPC-T regarding de-capitalisation due to asset replacement, the Commission also observes that TPC-T has submitted details of asset retirement for respective years as part of computation of depreciation for the respective years under relevant Formats submitted along with the Petition. Ideally, such asset retirements should tally with the asset replacement/de-capitalisation as submitted vide above responses to directives of the Commission for the respective years, barring any differences on account of non-inclusion of retirements of Non-DPR assets. However, in the present case, it is observed that there exists significant difference in the asset retirement data submitted by TPC-T under its depreciation computation for respective years and under the separate submissions made in response to the Commission’s directive. The below table highlights the aforesaid difference for TPC-T for FY 2009-10 and FY 2010-11.

Table: Variation in submissions of details by TPC-T ***Rs Crore***

Particulars	FY 2009-10	FY 2010-11
Year-wise Asset retirement as appearing in Depreciation computation/formats	(3.82)	(0.94)
De-capitalisation due to asset replacement as submitted by TPC-T separately in current Petition	0.00	(4.36)

Similar differences in this regard are also observed in TPC-T's submissions for the past years as well. Despite this difference observed in this regard, the Commission, for the purpose of current Order has considered the details of year-wise de-capitalisation due to asset replacement amounting to Rs 4.36 Crore in FY 2010-11 and the corresponding regulatory equity of Rs 1.31 Crore, as submitted by TPC-T, and has reduced the regulatory equity of TPC-T in FY 2010-11 to this extent. However, the Commission directs TPC-T to provide sufficient justification as regards the above observed discrepancy in terms of details of asset retirement as appearing in Depreciation computation/formats and the details of de-capitalisation due to asset replacement as submitted by TPC-T, for past years and for FY 2009-10 and FY 2010-11. TPC-T also should submit additional impact on equity or loans for the respective years on this account, if any. Such details have to be submitted by TPC-T as part of its Tariff/ARR filings of the next year.

The issues related to de-capitalisation of assets such as Guest Houses at book value rather than market value have been discussed in subsequent paragraphs of this Order, and the same treatment is relevant for FY 2010-11 as well.

The Commission has computed the RoE for FY 2010-11 on the opening balance of equity as well as 50% of the equity component of the assets capitalised during the year (after considering the reduction to the extent of impact of asset replacement) in accordance with the MERC Tariff Regulations, as applicable for the transmission business. Accordingly, approved Return on Equity for FY 2010-11 is summarised in the following Table:

Table: Return on Equity

Rs crore

Particulars	**FY 2010-11**		
	ARR Order	**Actual**	**Allowed after truing up**
Regulatory Equity at the beginning of the year	499.46	522.43	497.17
Less: Equity portion of replacement schemes to be considered in FY 2010-11	-	-	1.31
Add: Equity portion of assets capitalised during the year	48.45	38.71	36.75
Net Equity addition during the year	48.45	38.71	35.44
Regulatory Equity at the end of the year	544.31	561.14	532.61

Particulars	**FY 2010-11**		
	ARR Order	**Actual**	**Allowed after truing up**
Return on Regulatory Equity at the beginning of the year	69.93	73.14	69.60
Return on Equity portion of capitalised asset value during year	3.14	2.71	2.48
Total Return on Regulatory Equity	**73.06**	**75.85**	**72.08**

5.6 CONTRIBUTION TO CONTINGENCY RESERVE

TPC submitted that the contribution to contingency reserve for FY 2010-11 has been Rs. 7.18 crore as compared to Rs. 3.39 crore approved in the ARR Order for FY 2010-11. In this context, TPC had submitted that contribution of Contingency Reserves has been computed at 0.50% of Gross fixed asset as allowed under MERC Tariff Regulations, 2005.

For the purpose of truing up, the Commission has computed the contribution to contingency reserve at 0.25% of GFA for FY 2010-11, in accordance with the provisions of MERC Tariff Regulations, 2005 and in line with the approach followed in the ARR Order for FY 2010-11. The approved contribution to contingency reserves for TPC-T for FY 2009-10 is given in the following table:

Table: Contribution to Contingency Reserves for FY 2010-11 (Rs. crore)

Particulars	**FY 2010-11**		
	ARR Order	**Actuals**	**Allowed after truing up**
Contribution to Contingency Reserves	3.39	7.18	3.34

5.7 INCOME TAX

The Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005 provides as follows:-

"50.2 Income-tax:

50.2.1 Income-tax on the income of the Transmission Business of the Transmission Licensee shall be allowed for inclusion in the aggregate revenue requirement.

50.2.2 The Transmission Licensee shall include an estimate of the income-tax liability of his Transmission Business along with the application for determination of tariff, based on the provisions of the Income-Tax Act, 1961:

Provided that any change in such income-tax liability on account of assessment under the Income-tax Act, 1961 shall be dealt with as being on account of uncontrollable factors:

Provided further that any change in such income-tax liability on account of changes in the provisions of the Income-Tax Act, 1961 shall be dealt with as being on account of uncontrollable factors:

Provided further that any change in such income-tax liability on account of change in income of the Transmission Licensee from the approved forecast shall be attributed to the same controllable or uncontrollable factors as have resulted in the change in income and shall be dealt with accordingly.

50.2.3 The benefits of any income-tax holiday, credit for unabsorbed losses or unabsorbed depreciation on the intra-State transmission system or any part thereof shall be taken into account in calculation of the income-tax liability of the Transmission Business.

The Petitioner is a company under the Companies Act and carries out several businesses including G, T and D in an integrated manner. Allocation of tax liability to the regulated businesses in Mumbai, viz., G, T and D, particularly the method of income tax calculations, has in the past been a complex issue. The key issue was to arrive at the correct base.

Judgments of the Hon'ble Appellate Tribunal for Electricity ("APTEL") –

(1) Appeal No. 173/2009 and 174/2009

Treatment of Income Tax came to be analysed in Appeal No. 173/2009 and 174/2009 before Hon'ble APTEL In its Judgment dated 15th February, 2011 in Appeal No. 173/2009, Hon'ble APTEL examined the following issue:-

"*Whether the State Commission is justified in computing the entitlement of income tax to be recovered from the consumers considering the return on equity as the regulatory profit before tax and disallowing tax on incentives on the ground that*

the expenses incurred for achieving better performance has already been allowed?"

Hon'ble APTEL held as follows:-

"…the State Commission is directed to compute the income tax entitlement of the Appellant by replacing Return on Equity by Regulatory Profit Before Tax i.e. income less permissible expenses."

Since, Hon'ble APTEL *inter alia* held that the actual income shall form the basis for computation of income tax, hypothetical bases cannot be considered. Hon'ble APTEL has discarded the theory of any treatment on notional basis. The Commission is of the view that every base tried earlier, whether Normative ROE or hypothetical PBT was presumptive in nature and did not indisputably demonstrate the relation with actual tax liability. Normative ROE was clearly not the only income that would constitute taxable profits of the licensees, it would also include incentives etc. Further hypothetical PBT was by very nature hypothetical. The income allocation and expense allocation has to be as per actual taxable incomes and expenses calculated as per the Income Tax Act. The approach has to be actual taxable income of regulated business minus actual sanctioned tax deductible expenses of regulated business as directed by Hon. APTEL.

(2) Appeal No. 111/2008

Further, an issue was dealt with in Hon'ble APTEL's Judgment dated 28th May, 2009 in Appeal no. 111/2008 in case of R-Infra which related to non-inclusion of PLF incentive in regulated business segment in the taxable income and therefore non-inclusion of income tax on the incentive on the ground that it would be a burden on consumers. Hon'ble APTEL directed that the actual and factual income tax impact had to be considered and it was no case that such actual impact would be a burden on the consumers.

(3) Appeal No. 251/2006

Furthermore, on issue raised before Hon'ble APTEL in Appeal No. 251/2006 in case of R-Infra. Hon'ble APTEL *inter alia* held in its Judgment dated April 4, 2007 that "*The consumers in the licensee's area must be kept in a water tight compartment from the risks of other business of the licensee and the Income Tax payable thereon. Under no circumstance, consumers of the licensee should be made to bear the Income Tax accrued in other businesses of the licensee. Income Tax assessment has to be*

made on stand alone basis for the licensed business so that consumers are fully insulated and protected from the Income Tax payable from other businesses."

Taking into account the aforesaid Judgments of the Hon'ble APTEL, the Commission is of the opinion that Hon'ble APTEL has held that the base should be the factual tax liability and there is no scope for presumptive disallowances / hypothetical calculations.

At paragraph 14 of Hon'ble APTEL's judgment dated 14th February 2011 in the matter of TPC-T, Hon'ble APTEL has clarified inter alia as follows:-

> *"Thus the intent of the Regulations is that the actual income tax paid by the transmission licensee in the business of transmission is included in the ARR and the licensee does not gain or lose on account of income tax which is a pass through in tariff."*

Thus, principles have been laid down by Hon'ble APTEL on the subject.

Hence, it was incumbent upon the Commission to examine this issue in consultation with professional consultants. Having so examined this subject matter, the Commission proposes to adopt the actual tax computation statement of the Petitioners and supporting Returns of Income filed i.e., the documentary evidence as submitted by them as the base for true-up petitions. The segmental allocation of taxable income and tax thereon is being done on line by line basis based on segmental allocation of income and expenses as approved.

The method is based in actual tax computation statement and segmental break up will be always the one that is used for approval of tariff / plan. The weighted income tax deductions / accelerated depreciation / income tax exemptions will be allocated to underlying segment to which they pertain as is clearly mandated by regulation. Cross tally of every line item in the computation of income statement is key demonstrative strength of methodology and would preclude the unwarranted disputes on the issue.

Accordingly computation of income statement was sought from Petitioners and income tax reimbursement claim is sanctioned on the basis of the same. It was observed from computation statement that in the year under consideration the Petitioner was liable to pay the tax based on Minimum Alternate Tax (MAT) mechanism under the Income Tax Act, which is higher than the normal tax on taxable income. In view of Hon'ble APTEL's pronouncements as aforesaid, this higher impact is being considered for sanctioning of the claim and this higher tax impact under MAT which has been actually suffered by the Petitioner is allocated to various segments as per Annexure A hereto. In case of MAT the same is charged on the book

profits. Book Profits are always calculated as income minus expenses as per books and accordingly book income minus book expenses of various regulated business segments have been considered as base as per audited allocation statements submitted by Licensee. This clearly is in conformity with the directives of Hon. APTEL which has directed income minus expenses approach to be used vide its Judgment in case of Appeal No. 173/2009 as referred to hereinabove. Further since the actual tax suffering in case of MAT happens on the basis of book profits without any consideration to any other figures, the same base of book profits of the relevant regulated segment has to be adopted. Accordingly the allocation of book profit statement was sought from Licensee duly audited by their auditors. This audited statement submitted by Licensee themselves has been considered as for arriving at book profits attributable to concerned regulated segment. As will be apparent from Annexure A; the MAT tax has been calculated on all the segments in accordance with this audited statement submitted by Licensee themselves. The total MAT liability of company is duly reconciled with the total tax liability of all the segments taken together thereby the correctness of tax calculations stands duly demonstrated. In short following the Hon. APTEL verdicts the actual tax payment of Licensee has been allocated to various segments. Further in this case since the tax suffering is on MAT; which is based solely on book profits irrespective of any other considerations, the same base of book profits on which Licensee has actually paid the tax has been used to ensure that base remains the same base on which the Licensee has actually suffered the tax.

As would be apparent from the Annexure B; the tax allocable to segment under consideration (TPC-T) of this order is Rs. 19.78 crore which is being sanctioned against the claim of Rs. 30 crore under this petition. Further the MAT paid is not actual expenditure because credit of such tax paid is available to Licensee in subsequent years. Needless to add that the credit of this tax paid under MAT mechanism as permissible to be taken by the Petitioner in the subsequent years under the provisions of the Income Tax Act, 1961 will be adjusted on proportionate basis of allowance made by this order, in subsequent year/s in which the Petitioner actually takes such credit at total company level.

5.8 NON TARIFF INCOME

TPC submitted that the Non-Tariff Income was Rs. 12.79 crore for FY 2010-11 as against Rs. 10.50 crore approved by the Commission in the ARR Order. TPC further submitted that the Non-Tariff Income for FY 2010-11 comprises of recurring income items such as Rent and Interest on contingency reserve investments, which amounts to

Rs 6 crore and the rest of the Non-Tariff Income is estimated from Non-Recurring income items.

The Commission observed that interest on contingency reserve investment has reduced from Rs. 4.25 crore in FY 2009-10 to Rs. 3.21 crore in FY 2010-11 whereas, contingency reserve as such has increased by Rs. 3.31 crore in FY 2010-11 over the levels in FY 2009-10. Since, the regulated contingency reserve has increased by Rs. 3.31 crore in FY 2010-11, the Commission has considered additional interest at 7.92% (effective yield on incremental investments in contingency reserves, based on documentary evidence submitted by TPC-T) on the incremental contingency reserves, in addition to the interest on the contingency reserves existing during FY 2009-10, and accordingly the interest on contingency reserves for FY 2010-11 works out to Rs. 4.51 crore.

The Commission further observed that though the expenses pertaining to Corporate Treasury have been allocated to Mumbai Licence Area (in the ratio of operating revenue of Mumbai Licence Area (LA) to total operating revenue), the 'gain on exchange' amounting to Rs. 51.98 crore for FY 2010-11 has not been allocated to Mumbai LA. The Commission is of the view that since, the expenses related to Corporate Treasury function have been allocated to the regulated business in Mumbai, the income earned from the Corporate Treasury function should also be allocated to the regulated business in Mumbai in the same proportion. If this is not done, it will amount to undue enrichment of the unregulated business of TPC, since the consumers of the regulated business are bearing the costs, but are being deprived of the benefits of the income earned from the Corporate Treasury function. Accordingly, the Commission has allocated this gain from the Corporate Treasury function to Mumbai LA on the basis of operating revenue of Mumbai LA to total operating revenue, and further allocated the same to the regulated business of Generation, Transmission and Distribution on the basis of operating revenue.

Table: Allocation of Gain on Exchange ***(Rs. crore)***

Particulars	Total Income	Allocated Income to other than Mumbai LA	Income allocated to Mumbai LA	Generation	Transmission	Distribution
Gain on exchange	51.98	15.07	36.91	19.22	15.60	2.08

The Commission has reworked the non-tariff income reported by TPC-T and revised the same to the extent of higher interest on contingency reserve and on account of

gain from Corporate Treasury function, under the truing up exercise for FY 2010-11. The non-tariff income for FY 2010-11 approved by the Commission is given in the following Table:

Table: Non-tariff Income for FY 2010-11 as approved by Commission (Rs crore)

Particulars	**FY 2010-11**		
	ARR Order	**Actuals**	**Approved After truing up**
Non-Tariff Income	**10.50**	**12.79**	**29.69**

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

TPC-T, in its Petition, submitted that it had given a detailed description of activities carried out by TPC- Load Control Centre (LCC) in the APR Petition of FY 2009-10. The Commission had accepted the allocation methodology proposed by TPC and included the LCC cost allocation to TPC-G and TPC-D in O&M expenses and reduced the same from ARR of TPC-T. TPC stated that it has followed the same methodology in this Petition.

TPC submitted that total share of TPC-G and TPC-D works out to be Rs 2.71 crore and thus, TPC-T's share of LCC Expenditure included in O&M is Rs 2.65 crore as given in Table below:

Table: Allocation of LCC cost by TPC for FY 2010-11 (Rs crore)

Particulars	**FY 2010-11**		
	TPC-G	**TPC-T**	**TPC-D**
LCC cost	**1.55**	**2.65**	**1.17**

The Commission has considered the same quantum as submitted by TPC towards expenses of LCC and has considered the same as part of O&M expenditure of TPC-T. Further, the amount of Rs. 2.71 crore has been deducted from the total O&M of TPC-T towards the cost allocation to TPC-G and TPC-D.

5.10 BRAND EQUITY EXPENSE

TPC submitted that the total brand equity amount for regulated business of TPC for FY 2010-11 is Rs 13.95 crore and the allocation to Generation, Transmission, and

Distribution functions based on ratio of actual A&G expenses as submitted by TPC, is given in the table below:

Table: Allocation of Brand Equity Amount as submitted by TPC for FY 2010-11

Functions	Allocation of A&G (%)	Allocation of Brand Equity Expenses (Rs. crore)
Generation	57%	7.90
Transmission	18%	2.51
Distribution	6%	0.86
Supply	19%	2.68
Total	100%	13.95

As discussed in Section 4 of this Order, TPC has submitted revised computation of Brand Equity in the format provided by the Commission. The Commission has computed the Brand Equity expenses for FY 2010-11 considering the revenue of FY 2010-11, as explained in Section 4 of this Order. The brand equity expense submitted by TPC and the brand equity expenses computed by the Commission for FY 2010-11 is shown in the table below:

Table: Computation of Brand Equity Expenses for FY 2010-11 (Rs. crore)

Particulars	Basis	Actuals	Allowed after truing up
Revenue from Mumbai Licence Area Business based on allocation statement	a	4837.07	4837.07
Add: Cash Discount pertaining to Mumbai LA Area	b	43.09	43.07
Add: Income in respect of services rendered pertaining to Mumbai LA Area	c	3.26	0.51
Add: Delayed Payment Charges pertaining to Mumbai LA Area	d	2.49	2.82
Total Revenue to be considered for Mumbai Licence Area	e=a+b+c+d	4885.91	4883.47
Contribution to Tata Brand Equity	f=0.25%*e	12.21	12.21
Service Tax	g=service tax%*f	1.26	1.26
Total contribution to Brand Equity including service tax	**h=f+g**	**13.47**	**13.47**

TPC submitted that as the expenditure under this head is a part of A&G expenditure, the same has been allocated to the business of generation, transmission and distribution on the basis of the A&G expenses of these business areas. The Commission has allocated the brand equity expense based on A&G expenses, and accordingly the share of TPC-T in Brand Equity expense for FY 2010-11 is Rs. 2.43 crore.

5.11 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 the State Transmission Utility (STU) from transmission system users (i.e., distribution licensees). Accordingly, for FY 2010-11, the transmission charges applicable from April 1, 2010 are in accordance with the Transmission Tariff Order in Case No 155 of 2008 (applicable from April to August 2010) and Transmission Tariff Order in Case No. 120 of 2009 (applicable from September 2010). The approved monthly recovery was Rs 15.65 crore from April 2010 to August 2010 and Rs 24.73 crore from August 2010 to March 2011 as per the aforesaid Transmission Tariff Orders. TPC-T has recovered only the amount approved by the Commission. However, the revenue earned by TPC-T has been compared with the expenses incurred by TPC-T during FY 2010-11, to compute the net revenue gap/surplus for FY 2010-11.

5.12 INCENTIVE OF 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 2010-11 was 98.71%, and the incentive works out to Rs. 2.08 crore.

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, TPC-T has submitted its transmission system availability computations for FY 2010-11, 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 234.87 crore, the incentive works out to Rs 1.70 crore amounting to total approved ARR of Rs 236.57 crore.

5.13 SHARING OF GAINS AND LOSSES FOR FY 2010-11

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, 2005. The relevant provisions under the MERC Tariff Regulations, 2005 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	.
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 2010-11 are uncontrollable except for certain expenditure within the O&M expenditure. TPC-T has considered the actual O&M expenditure as Rs. 105.27 crore as compared to the approved O&M expenditure of Rs. 107.09 crore , and has considered a net efficiency gain of Rs 1.82 crore in O&M expenses and 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 FY11	107.09
2	Actual O&M Expenditure for FY11	105.27
3	Uncontrollable Expenditure	-
4	**Actual without Uncontrollable Expenditure (2-3)**	105.27
5	**Efficiency Gain/(Loss) (1)-(4)**	**1.82**
6	**Amount passed on to the Distribution Licensees (1/3rd of Gain/Loss) (1/3rd *(5))**	**0.61**
7	**Transfer to Reserve (1/3rd of Gain/Loss) (1/3rd *(5))**	**0.61**
8	**Net Entitlement (3)+(4)+ {2/3rd * (5)}**	**106.48**

The O&M expenses for FY 2010-11 as approved after final true-up by the Commission is Rs 99.63 crore, which is excluding LCC cost allocation to TPC-G and TPC-D, as against earlier approved expense of Rs 103.71 crore excluding LCC cost (*Approved O&M expenditure for TPC-T for FY 2010-11, including LCC cost allocated to TPC-G and TPC-D is Rs 107.09 crore*). Thus, 1/3rd of the efficiency gains on account of O&M expenses have 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 Tariff Regulations, 2005.

Interest on Working Capital

As discussed in the earlier paragraphs, TPC-T claimed interest on working capital of Rs 6.77 crore during FY 2010-11 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 6.21 crore . As discussed in Section 3 of this Order, TPC-T has been unable to provide the cash flow statements for different businesses on account of common balance sheet and common cash balance. However, TPC has submitted the actual interest on working capital for FY 2010-11 as Rs. 3.18 crore and the same has been accounted wholly under TPC-G (*Reply dated August 22, 2011 to the Commission's query for TPC-G in Case No. 105 of 2011 dated August 8, 2011*) Hence, actual interest on working capital pertaining to TPC-T is considered as nil. The details of actual interest paid by TPC as submitted by TPC are given in the following table:

Table: Details of Actual Interest Paid (Rs. crore)

	TPC-G	TPC-T	TPC-D	Total
FY 2009-10	9.36	0.58	9.94	19.88
FY 2010-11	3.18			3.18

Hence, the Commission has considered the total approved normative interest on working capital of Rs. 6.21 crore as efficiency gain and has considered sharing of 1/3rd of the efficiency gains with the consumers, while 1/3rd has been considered towards the reserve, and the balance 1/3rd is to be retained by the Licensee, i.e., TPC-T, in accordance with the MERC Tariff Regulations.

Total Efficiency Gains/Losses

The breakup of expenses for FY 2010-11 along with the adjustments on account of sharing of gains and losses as submitted by TPC-T is given in the following table.

Table: Summary of Truing up for FY 2010-11 including sharing of efficiency gains as submitted by TPC-T (Rs crore)

Sr. No.	Particulars	Approved	Entitlement as per the Regulations	Efficiency Gains / (Loss) from Controllable factors shared with consumers	Net Entitlement after impact of Gains / (Losses) from Controllable factors
I	**Revenue**				**264**
	Transmission Charges				251
	Other Income (Non Tariff)	11	13		12.79
II	**Expenditure**				
1	Operation & Maintenance Expenses (After apportioning LCC Expenditure to Generation and Distribution)	104	104	1	103
2	Depreciation, including advance against depreciation	38	38		38
3	Interest on Long-term Loan Capital	30	37		37
4	Interest on Working Capital	6	7		7
5	Other Finance Charges	-	0.46		0.46
6	Incentives	-	2		2
7	Statutory Appropriations/ Contingency Reserve	3	7		7
8	Income Tax	31	30		30
9	Return on Equity	73	76		76
10	**Total Expenditure**	**286**	**301**	**1**	**300**
IV	**Pure Surplus/ (Gap) - (I - II)**				**(36)**

TPC-T, thus worked out a pure revenue gap of Rs. 36 crore for FY 2010-11. TPC further adjusted this revenue gap with the expenses allowed to TPC-T on account of

'Impact of ATE's Judgment' by the Commission vide APR Order dated September 3, 2010 so as to arrive at the resultant net revenue gap of Rs. 43 crore for FY 2010-11. The comparison of such net revenue gap submitted by TPC-T and that approved by the Commission for FY 2010-11 has been detailed in the subsequent paragraphs of this Order, where the Commission has approved the Past Period Recoveries for TPC-T.

The Commission has estimated the efficiency gain and efficiency losses for FY 2010-11. The Commission has considered this efficiency gain and efficiency losses to be shared in accordance with the MERC Tariff Regulations, as stated above. The summary of the net ARR and efficiency gains/losses as approved by the Commission for FY 2010-11 is given in the following Table:

Table: Summary of Truing up for FY 2010-11 including sharing of efficiency gains approved by Commission (Rs crore)

Sr. No.	Particulars	Approved as per ARR Order 2011	Actuals/ Normative	Allowed after Truing Up	Total Efficiency Gain / (Loss)	1/3 rd of Efficiency Gain shared with TSU	2/3 rd of Efficiency Gain retained by TPC-T	Net Entitlement
A	**Expenditure**							
1	Operation & Maintenance Expenses (after deducting the LCC cost allocated to TPC-G and TPC-D)	103.71	102.60	99.63	4.08	1.36	2.72	102.35
2	Depreciation, including advance against depreciation	38.34	37.72	35.51				35.51
3	Interest on Long-term Loan Capital	30.08	36.59	27.55				27.55
4	Interest on Working Capital and on consumer security deposits	5.68	6.77	6.21	6.21	2.07	4.14	4.14
5	Other Finance Charges	0.00	0.46	0.46				0.46
6	Other Expenses	0.00	0.00	0.00				0.00
7	Contribution to contingency reserves	3.39	7.18	3.34				3.34
8	Income Tax	30.97	30.19	19.78				19.78
	Total Expenditure	**212.17**	**221.50**	**192.48**				**193.13**
B	**Return on Equity**	73.06	75.85	72.08				72.08
C	**Incentive for higher Availability**	0.00	2.08	1.70				1.70
D	**Impact of ATE Judgment allowed vide ARR Order for FY 2010-11**	7.14	7.14	7.14				7.14
D	**Total Revenue Reqirement for FY 2010-11(including expenditure +RoE +Incentive)**	**292.37**	**306.56**	**273.40**				**274.05**
E	**Revenue**							
1	Non Tariff Income	10.50	12.79	29.69				29.69
2	Tariff Income	281.88	251.36	251.36				251.36
	Total Revenue	**292.37**	**264.15**	**281.05**				**281.05**
F	**(Gap)/Surplus= [D] - [E]**	**0.0**						**7.00**

Thus, the net revenue entitlement for TPC-T for FY 2010-11 including incentive for higher availability, works out to Rs 274.05 crore. Further, total revenue after final true-up for FY 2010-11 amounts to Rs 281.05 crore comprising of income from transmission tariff as Rs 251.36 crore and Non-tariff income of Rs 29.69 crore. Accordingly, revenue surplus of Rs 7.00 crore for FY 2010-11 has been considered after final true-up for FY 2010-11.

The Aggregate Revenue Requirement for FY 2010-11 is lower than that projected by TPC-T, primarily due to the following reasons:

- Reduction in O&M expenses, as expenses towards donations, Community Welfare Expenses and Gifts have not been allowed by the Commission.
- Reduction in Interest on long-term loan due to consideration of funding requirement based on approved capitalisation.
- Reduction in interest on working capital in accordance with the Commission's philosophy as regards allowance based on normative basis.
- Change in income tax in accordance with the Commission's philosophy as regards calculations of Income Tax in accordance with the Hon'ble ATE's Judgment in this regard.
- Reduction in Asset related costs (Depreciation and RoE) due to reduction in capitalisation in FY 2008-09, and hence, lower opening gross fixed assets.
- Increase in Non Tariff Income due to consideration of higher income from investment of contingency reserve and corporate treasury gains.

5.14 RECOVERIES PERTAINING TO THE PAST PERIOD

5.14.1 Impact of ATE Judgment

TPC-T in the current Petition has claimed an amount of Rs 35.75 crore to be recovered consequent to the ATE Judgment on February 14, 2011 in Appeal No. 174 of 2009. The detailed submission of TPC along with the Commission's analysis and decisions has been discussed in Section 3 of this Order. The summary of the net impact of the said ATE Judgment as claimed by TPC-T for the past years FY 2006-07 to FY 2008-09 and the corresponding amount allowed by the Commission is given in the following table.

Table: Impact of ATE Judgment ***(Rs. crore)***

Particulars	TPC	Approved
Impact of ATE Judgment dated February 14, 2011	(36)	0.00

5.14.2 Impact of disallowance of Asset De-capitalisation in FY 2008-09

TPC, in its Truing up Petitions for FY 2008-09 in Case No. 96 of 2009, Case No. 97 of 2009 and Case No. 98 of 2009 for its Generation, Transmission and Distribution businesses, respectively, had submitted details of certain assets, which were de-capitalised during FY 2008-09. As regards the nature of the assets, TPC had stated that the de-capitalised assets were corporate assets, which were being used as facilities meant for outside Mumbai Licensed Area operations, which amounted to a total of Rs. 34.62 crore. The same was further allocated to TPC-G, TPC-T and TPC-D

businesses on the basis of the ratio of their respective GFA. Accordingly, for TPC-T, an amount of Rs. 8.84 crore was considered as the net asset de-capitalisation in FY 2008-09. However, since there were no loans that were outstanding against such assets de-capitalised, TPC had considered the corresponding impact on Equity portion only. Accordingly, TPC-T claimed a reduction in Regulatory Equity for FY 2008-09 to the extent of Rs. 8.84 crore on account of the entire asset de-capitalisation considered for the year. Based on the submissions made by TPC-T in the matter, the Commission allowed the impact of such asset de-capitalisation vide its Order dated September 3, 2010. However, during the TVS for the current Petition, the Commission raised a few related queries to TPC in this regard. TPC's replies to such queries and the Commission's decision in the matter are given in the following paragraphs:

In response to the Commission's specific query regarding de-capitalisation of assets such as Guest Houses at book value, rather than market value, even though the market value of such assets would be many times the book value, TPC submitted that the assets, which have been de-capitalized were secretarial and administrative in nature and have been capitalised in the Corporate Office and that these assets were not in the exclusive use of any licensed business of the Company. TPC submitted that the assets were further allocated to the two licensed businesses, namely TPC-T and TPC-D and the power generation business (which is de-licensed) as per the allocation methodology filed with the Commission. TPC further submitted that the allocation between TPC-G, TPC-T, and TPC-D was done on the basis of the Opening GFA for FY 2008-09 of the respective business.

In reply to the Commission's query regarding whether the de-capitalisation or asset transfer from one Division to another should be done at book value or market value, TPC submitted that the subject assets were corporate assets, which are no longer used in Mumbai Licence area operations. TPC submitted that the de-capitalisation also ensured that no burden was passed on to the consumers of the licensed area on account of assets, which are no longer used in Mumbai License area. Further, the Commission observed that Guest House Expenses have been claimed by TPC-T as HO & SS expense allocation to TPC-T, under the head 'Cost of services' under A&G expenses for FY 2010-11. The Commission asked TPC to give details of services at various Guest Houses and also confirm whether these Guest House expenses pertain to the assets transferred from Regulated Business to Other Business in past years. TPC submitted that few Guest Houses are maintained by TPC for the benefit of guests of the Company. The cost involves maintenance and care-taker charges and though the expenses are booked under head office, a part is allocated to Mumbai License

Area as the Guest Houses are mostly located in and around Mumbai. TPC also clarified that the expenses included in the ARR do not pertain to the Guest Houses that have been transferred out of Licensed Area.

TPC further submitted that de-capitalisation had to be done at Book Value as there was no transfer of the assets in question and were merely stopped from being allocated to Mumbai activities.

TPC further submitted that since there is no specific dispensation under MERC Tariff Regulations, 2005 or guidelines of the Central Electricity Regulatory Commission (CERC) on appropriate regulatory treatment to deal with such de-capitalisation within the Company, hence, the same has been recognized as per the standard accounting practice. TPC further clarified that since the assets were not marked to the market, the consumers continue to pay tariff worked out based on book value and not market value. Hence, the de-capitalisation was also needed to be done at the book value.

TPC submitted that as per the Accounting Standards, the transfer of assets from one division to another division of the same Company can only be done at book value. TPC further submitted that under Regulation 8.8.1 of the MERC (General Conditions of Distribution License) Regulation 2006, the Commission may specify a certain threshold ‘book value’ of assets, and any transfer of assets over and above such book value can be done only with the approval of the Commission. TPC-T submitted that as per their understanding no specific threshold ‘book value’ has been prescribed under Regulation 8.8.1 by the Commission. TPC-T further submitted that as a matter of abundant caution, TPC-T had appealed to the Commission in the APR Petition for FY 2008-09 seeking its consent for de-allocation and consequent de-capitalisation of the assets giving full details and proper justification. TPC-T submitted that the Commission in its Order dated September 3, 2010, has duly considered the proposal and had approved the same.

In this regard, the Commission has re-considered the issue, since it has larger implications, and there is a possibility that the consumers, who have contributed towards creation of certain assets, may be deprived of realising the benefits in case of realisation from sale of the assets. The issue of de-capitalisation of assets such as Guest Houses, etc., without any replacement of asset, should be considered differently from asset replacement exercises, where the Commission has rightly ruled that the equity component of the GFA of the replaced asset, should be reduced from the equity base, so that the Utility does not continue to earn RoE on an asset which no longer exists in its books of accounts, and also earns RoE on the new asset that has replaced

the old asset. In case of de-capitalisation of assets such as Guest Houses, etc., where no replacement of asset is involved, the Commission is of the view that TPC's contention that any transfer of assets within the same Company can only be done at book value, and market valuation would be relevant only if the assets were being sold, is correct, on a stand-alone basis. However, the issue is not so simple. Consider an instance, wherein, today, the assets are being transferred at book value to an unregulated business under the same Balance Sheet, and the asset is sold say, two years later, then the sale transaction will be valued at market value, however, all the benefits of the market valuation will be realised by the other unregulated business to whom the asset has been transferred, and the regulated business, which has contributed towards creation of the assets will not benefit in any manner.

Hence, the Commission is of the view that the assets should continue to remain in the books of the regulated business, since consumers have paid for it at some point in time. If the guest houses are used by other Group Companies or other Business under the same Balance Sheet, appropriate rentals at market rates, may be paid for use of the guest houses, and such rental will be considered under the non-tariff income of the regulated business. Since, TPC should be indifferent as to where the assets appear, since they will continue to appear under the same Balance Sheet. However, this will ensure that as and when such assets are sold, then the benefit of market valuation will be realised by the regulated business. It is understood that the same principle would be applicable, irrespective of whether the asset has appreciated in value or depreciated in value. Hence, the Commission disallows the de-capitalisation of the guest houses and other administrative assets as proposed by TPC.

In view of the above, the asset de-capitalisation approved earlier for TPC-T for FY 2008-09 is disallowed now, and the corresponding Equity disallowed, i.e., Rs 8.84 crore , has been re-instated for the year (the same assets have been entirely funded by TPC-T through equity). Thus, TPC-T is entitled to additional RoE for FY 2008-09 to this extent which works out to Rs 1.24 crore. In addition, based on the rationale explained in the above paragraphs of this Order, carrying cost is allowable for the period when the recovery was deferred, i.e., from the issuance of the original Truing up Order to the actual date of recovery of the said expenses. Thus, for recoveries pertaining to FY 2008-09, the truing up Order was issued on September 3, 2010 therefore, the Commission has considered 7-months carrying cost for FY 2010-11 (at an interest rate of 12.24% based on SBI PLR). Thus, the carrying cost on the additional ROE for FY 2008-09 currently allowed, works out to Rs 0.09 crore . The carrying cost for FY 2011-12 will have to be considered at the time of considering the carrying cost for FY 2011-12 for all the heads of deferred recovery. Accordingly, the

net impact of disallowance of Asset De-capitalisation in FY 2008-09, i.e., additional RoE allowed due to equity re-instatement for FY 2008-09 and the corresponding carrying cost allowed works out to Rs. 1.33 crore.

The impact of this disallowance of de-capitalisation of guest houses, etc., in FY 2009-10 and FY 2010-11 has been considered by changing the opening asset values correspondingly for FY 2009-10 and FY 2010-11.

Further to the above, the Commission directs TPC to consider appropriate market rates and determine the rental receivable by its Regulated business (Generation, Transmission and Distribution) for its assets referred above, which are currently being used by other Group Companies or other Business, from such date of start of use of the said assets. The same should be determined on a financial year basis and have to be considered under Non Tariff Income of TPC for respective financial years. TPC should submit such details for the past years till FY 2010-11 and should continue considering the income from such rentals for its submissions in the subsequent years until such assets are owned by TPC. Further, in this regard, the Commission also directs TPC to intimate the Commission upon disposal/sale of such assets at market value and include the impact of the same in the Tariff Filings for the respective years to ensure that the associated benefits are passed on to the consumers of the regulated business of TPC.

5.14.3 Net (Gap)/Surplus for FY 2009-10

TPC-T, in its Petition, submitted a Net Revenue Gap of Rs 47 crore for FY 2009-10. For computing the same, TPC-T has considered the pure gap (Stand alone gap) for FY 2009-10 as Rs 73 crore , and the revenue surplus for FY 2008-09 after truing up for the year vide Order dated September 3, 2010, of Rs 25 crore . In comparison to the submissions of TPC-T in this regard, the Commission, under Section 4 of this Order has trued up expenses of FY 2009-10 and has arrived at a Net Revenue Surplus of Rs 1.90 crore for FY 2009-10. The tabulation of the same has been provided as under.

Table: Net (Gap)/Surplus for FY 2009-10 as estimated by TPC and as approved by Commission

(Rs crore)

S No.	Particulars	TPC	Approved
1	Pure (Gap)/ Surplus for 2009-10	(73)	(23.39)
2	Revenue (Gap)/Surplus for FY 2008-09 [after truing up of the year]- Tariff Order dated Sep 3, 2010	25.28	25.28
3	**Net (Gap)/Surplus for FY 2009-10**	**(47)**	**1.90***

**(Note: This consolidated figure appearing in truing up table of FY 2009-10 in Section 4 of this Order already captures the impact of Revenue Surplus for FY 2008-09 of Rs 25.28 crore and hence approved pure Gap for 2009-10 of Rs23.39 crore is not shown separately in the truing up table for FY 2009-10)*

5.14.4 <u>Net (Gap)/Surplus for FY 2010-11</u>

TPC-T, in its Petition, submitted a Net Revenue Gap of Rs 43 crore for FY 2010-11. For computing the same, TPC-T has considered the pure gap (Stand alone gap) for FY 2010-11 as Rs 36 crore , and the additional impact of ATE Order as approved in ARR Order for FY 2010-11 dated September 3, 2010, of Rs 7 crore . In comparison to the submissions of TPC-T in this regard, the Commission, under the present Section of this Order, has trued up expenses of FY 2010-11 and has arrived at a Net Revenue Surplus of Rs 7.00 crore for FY 2010-11. The tabulation of the same has been provided as under.

Table: Net (Gap)/Surplus for FY 2010-11 as estimated by TPC and as approved by Commission

(Rs crore)

S No.	Particulars	TPC	Approved
1	Pure (Gap)/ Surplus for 2010-11	(36)	14.14
2	Add: Impact of ATE's Judgment allowed vide ARR Order dated September 3, 2010	(7.14)	(7.14)
3	**Net (Gap)/Surplus for FY 2010-11**	**(43)**	**7.00***

**(Note: This consolidated figure appearing in truing up table of FY 2010-11 in Section 5 of this Order already captures the impact of ATE's judgment of Rs 7.14 crore and hence, the approved pure Surplus for 2010-11 of Rs 14.14 crore not shown separately in the truing up table for FY 2010-11)*

5.14.5 **Recoveries of Past Period**

TPC-T, in its Petition, has computed the total recoveries of the past period along with carrying cost up to FY 2011-12. According to TPC-T, the same works out to Rs 138 crore, as shown in the Table below:

Table: (Gap)/Surplus for TPC-T related to the past period as submitted by TPC-T (Rs. crore)

Particulars	Months	Rate	Recovery in FY 2010-11	Interest up to FY 2012	Total Recovery in FY 2011-12
Impact of ATE Judgment dated February 14, 2011			(36)		
Gap for FY 2009-10			(47)		
Gap for FY 2009-10			(43)		
Interest on (Gap)/Surplus for FY 2009-10					
For FY 2010-11	12	12.24%		(6)	
For FY 2011-12	6	13.23%		(3)	
Interest on (Gap)/Surplus for FY 2010-11					
For FY 2010-11	-	12.24%		-	
For FY 2011-12	6	13.23%		(3)	
Total (Gap)/Surplus			**(126)**	**(12)**	**(138)**

The Commission observed that TPC-T has computed carrying cost on the revenue gap of FY 2009-10 for a period of 12 months of FY 2010-11, although TPC-T has sought the final truing up for FY 2009-10 vide the current Petition. However, as discussed in Section 3 of this Order, the carrying cost is applicable only for the period when the recovery was deferred, i.e., from the issuance of the original Truing up Order to the actual date of recovery of the said expenses. Thus, the Commission has not allowed the carrying cost on the revenue (gap)/surplus of FY 2009-10 in FY 2010-11.

As regards the carrying cost claimed for FY 2011-12 by TPC-T on the revenue gap of FY 2009-10 and the revenue gap for FY 2010-11, the Commission is of the view that although TPC-T has included carrying cost for the period in FY 2011-12 (6 months of

carrying cost on the revenue gap for FY 2009-10 and FY 2010-11), TPC-T has not proposed any methodology for recovery of these costs in FY 2011-12. Therefore, the Commission has not considered the carrying cost for FY 2011-12 in the current Order.

Further, the Commission is of the view that these unrecovered revenue (gaps)/surpluses would attract carrying cost when allowed for recovery from tariffs, depending upon the year of accrual and up to year of recovery. The Commission has not included carrying cost for FY 2011-12 in this Order, as TPC-T has not proposed to recover these costs in FY 2011-12. The carrying cost will be considered when recovery from tariffs is sought and allowed by the Commission, depending upon the year of accrual and up to year of recovery at SBI PLR, for the respective years.

The summary of the revenue (gap)/surplus sought by TPC-T and as approved by the Commission after final truing up for FY 2009-10 and FY 2010-11, including the impact of re-instatement of equity in FY 2008-09 discussed above and the impact of ATE Judgment for FY 2007-08 and FY 2008-09 as discussed in Section 3 of this Order, is summarised in the table below:

Table: (Gap)/Surplus for TPC-T related to the past period (Rs. crore)

Particulars	TPC	Approved
Impact of ATE Order dated February 14, 2011	(36)	0.00
Additional recovery of ROE for FY 2008-09 due to impact of re-instatement of Equity in the year	-	(1.33)
(Gap)/Surplus of 2009-10	(47)	1.90
(Gap)/Surplus of 2010-11	(43)	7.00
Interest Up to FY 2012	(12)	0.00
Total (Gap)/Surplus to be considered for recovery	**(138)**	**7.57**

5.15 TRANSMISSION TARIFF AND RECOVERY OF NET REVENUE (GAP)/SURPLUS

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 for FY 2011-12, when determined for all transmission licensees in the State shall be used to determine the Total Transmission System Cost (TTSC) for the entire Intra-State Transmission System of the State for FY 2011-12, which shall form the basis of determination of the Intra State Transmission Tariff and ARR recovery mechanism for each transmission licensee. The net revenue gap/surplus as approved by the Commission for TPC-T in this Order, will be allowed/recovered vide the said Intra-State

Transmission Tariff to be determined for FY 2011-12. Hence, in this Order, the Commission has only determined the net revenue gap/surplus for TPC-T and not determined any transmission tariff for TPC-T.

Sd/-	Sd/-
(Vijay L. Sonavane)	(V.P. Raja)
Member	Chairman

ANNEXURE A: INCOME TAX: AS PER MAT WORKING 2009-2010

Particulars	Total as per petitioner's computation	Generation	Generation Unit - 8	Transmission	Distribution	Others
Net profit before Taxes and Statutory Appropriations and provisions as per P & L A/c	**1,259.27**	353.53	34.97	129.31	24.59	716.87
Add:						
Fringe Benefit Tax	**4.73**	2.32		0.17	0.83	1.42
Prov. For doubtful assets	**8.55**	1.69	0.34	0.73	5.64	0.16
Prov. In respect of current assets held for disposal	**26.91**					26.91
Interest under IT Act	**1.02**					1.02
TOTAL ADDITIONS	**41.22**	**4**	**0.34**	**0.9**	**6.47**	**29.51**
Less:						
Exempt Income	**90.7**					90.7
Withdrawal from Contingencies and DTLF	**108.83**					108.83
Prov. For wealth tax	**1.51**					1.51
Others	**0.01**	-		-	-	0.01
TOTAL DEDUCTIONS	**201.05**	-	-	-	-	**201.05**
Amt. Taxable as per MAT	**1,099.44**	**357.53**	**35.31**	**130.21**	**31.06**	**545.33**
MAT Liability (@ 17%) allocation.	**186.9**	**60.78**	**6**	**22.14**	**5.28**	**92.71**

ANNEXURE B: INCOME TAX: AS PER MAT WORKING 2010-2011

Particulars	Total as per petitioner's computation	Generation	Generation Unit - 8	Transmission	Distribution	Others
Net profit before Taxes and Statutory Appropriations and provisions as per P & L A/c	**1112.36**	290.06	52.49	99.23	104.26	566.31
Add:						
Interest under IT Act	**-27.32**	-	-	-	-	-27.32
TOTAL ADDITIONS	**-27.32**	**-**	**-**	**-**	**-**	**-27.31**
Less:						
Exempt Income	**202.32**	-	-	-	-	202.32
Prov. For doubtful debts	**5.28**	-	-	-	5.12	0.16
Prov. For wealth tax	**0.53**	-	-	-	-	0.53
TOTAL DEDUCTIONS	**208.14**	-	-	-	5.12	**203.02**
Amt. Taxable as per MAT	**876.89**	**290.06**	**52.49**	**99.23**	**99.14**	**335.96**
MAT Liability (@ 19.9305%) allocation.	**174.77**	**57.81**	**10.46**	**19.78**	**19.76**	**66.96**

APPENDIX 1 (A)

List of people who attended the Technical Validation Session held on August 16, 2011

Sr. No.	Name of Person
1	Shri. T. N. Ramakrishnan
2	Shri. Terence Lewis
3	Shri. Amol Apte
4	Shri. Prashant V. Joshi
5	Shri. D.S. Kudalkar
6	Shri. Jayesh Chauhan
7	Shri. M. Shenbaga
8	Shri. S. M. Joshi
9	Shri. Krishnajith M.U.
10	Shri. Sanjiv Kumar Singh
11	Smt. Puja Gupta
12	Shri. A.B. Bhat
13	Shri. V. Srinivasan
14	Shri. Amey S. Mhapsekar
15	Shri. Ashok Pendse
16	Shri. Madan
17	Shri. Kiran Budhlani

APPENDIX 1 (B)

List of people who attended the Technical Validation Session held on September 3, 2011

Sr. No.	Name of Person
1	Shri. T. N. Ramakrishnan
2	Shri. Rahul M. Ranade
3	Shri. V. H. Wagle
4	Shri. Prashant V. Joshi
5	Shri. D.S. Kudalkar
6	Shri. Jayesh Chauhan
7	Shri. M. Shenbagam

Sr. No.	Name of Person
8	Shri. S. M. Joshi
9	Shri. Karthik Krishnan
10	Shri. Sanjiv Kumar Singh
11	Smt. Puja Gupta
12	Shri. S. Suresh
13	Shri. V. Srinivasan
14	Shri. Amey S. Mhapsekar
15	Shri. Raksh Pal Abrol
16	Shri. Amey Naik
17	Smt. Swati Mehendale
18	Shri. Kailash Mali
19	Shri. Sandeep N. Ohri
20	Shri. A. Sethi
21	Shri. Anand Gurav
22	Shri. Pillai Ramachandran
23	Shri. N. Ponrathnam
24	Shri. V.R.
25	Shri. T.K. Bhaskaran

APPENDIX 2

List of Objectors

Sr. No.	Name of the Objector	Institution/ Individual
1	Shri. Sandeep Ohri	Individual
2	Shri. Rakshpal Abrol	Bhartiya Udhami Avam Upbhokta Sangh
3	Shri. Ponarathanam	Vel Induction Hardenings
4	Shri Vinayak Joshi	Individual
5	Representative	Nagari Nivara Parishad
6	Representative	Central Railways
7	Shri Chandrakant Mudras	Individual
8	Shri Ashokbhai Pandya	Individual
9	Shri Vijaya Vaidya	Individual
10	Shri Ganesh Khankar	BJP
11	Shri Collin Dmello	Individual
12	Smt Rosy Pinto	Individual
13	Shri Rajesh Dabholkar	Individual
14	Shri Ganesh Subramaniam	Individual
15	Representative	Parish Mehta & Co.
16	Sri Jesu Roy Avroor	Individual
17	Shri Jayantilal Shah	Individual
18	Shri Anil V. Tharthare	Individual
19	Representative	Popular Power Supply
20	Shri Guruprasad Shetty	Individual
21	Shri Jitendra Pawar	Individual
22	Representative	Mumbai International Airport Pvt Ltd
23	Representative	Shree Laxmi Denim Clinic
24	Shri V.V. Shinde	Individual
25	Shri Tarak Oza	Individual
26	Shri. M. K. Sawant	Individual
27	Smt. Virginia Dias	Individual
28	Shri. S. R. Patil	Individual

APPENDIX 3

List of Objectors who attended Public Hearing on November 26, 2011

Sr. No.	Name of the Objector	Institution/ Individual
1	Shri. Sandeep Ohri	Individual
2	Shri. Rakshpal Abrol	Bhartiya Udhami Avam Upbhokta Sangh
3	Shri. Ponarathanam	Vel Induction Hardenings
4	Miliwa pakhar	Central Railways
5	Shri Chandrakant Mudras	Individual
6	Shri Ganesh Khankar	BJP
7	Representative	Parish Mehta & Co.
8	Representative	Popular Power Supply
9	Shri Guruprasad Shetty	Individual
10	Shri Jitendra Pawar	Individual
11	Representative	Mumbai International Airport Pvt Ltd
12	Representative	Shree Laxmi Denim Clinic
13	Shri V.V. Shinde	Individual
14	Shri. Pravind Kumar	Individual
15	Shri. Sunil Parate	Individual
16	Shri. Saji Morlh	Individual
17	Shri S. Narl	Individual
18	Shri. A. P. Benale	Individual
19	Shri. Vikas Nikum	Individual
20	Shri. Mohit kumar	Individual
21	Shri. Jayesh Chauhan	Individual
22	Shri. S. S. Yadav	Individual
23	Smt. Virginia Dias	Individual
24	Shri. Mahesh K.	Individual
25	Shri. AVP Mirashi	Individual
26	Smt. Kiran Karande	Individual
27	Shri. Jay Lalaghela	Individual
28	Shri. A. G. Pendse	Individual
29	Shri. Abhinav Sharma	Individual
30	Shri. Atul Thakkur	Individual
31	Shri. S. R Patil	Individual
32	Shri K. K Chopra	Individual
33	Shri Nishant Bhargaur	Individual
34	Shri. Ramesh Khalat	Individual

Sr. No.	Name of the Objector	Institution/ Individual
35	Shri Prashant V. Joshi	Individual
36	Shri Amey Naik	Individual
37	Shri Rahul M Ranade	Individual
38	Shri V. H. Wagle	Individual
39	Shri Kailash Mall	Individual
40	Shri R M Kasar Patil	Individual
41	Shri Pillai Ramachandran	Individual
42	Shri S M Javed	Individual
43	Shri T. N. Ramakrishnan	Individual
44	Shri J. N. Joshi	Individual
45	Smt. Shetal Khiraiya	Individual
46	Shri D S Kudalkar	Individual
47	Shri V.K. Chourey	Individual
48	Shri S.C. Dhapave	Individual
49	Shri V. B. Patil	Individual
50	Shri Ranjit Ganguly	Individual
51	Shri Roopesh Srivastava	Individual
52	Shri M Shenbagune	Individual
53	Shri Manish Vashnya	Individual
54	Shri A.A Bhat	Individual
55	Shri Jitendra D. Pawar	Individual
56	Shri Deepak Mahendra	Individual
57	Shri K R Cooper	Individual
58	Shri M. D. Joshi	Individual
59	Shri C.V. Niranjan	Individual
60	Shri M.C. Putphode	Individual
61	Shri Hitesh Gokhani	Individual