

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**

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Case No. 104 of 2011

IN THE MATTER OF

**The Tata Power Company Limited- Distribution Business' (TPC-D) Petition for Truing Up
for FY 2009-10 and Annual Performance Review for FY 2010-11**

Shri V. P. Raja, Chairman

Shri Vijay L. Sonavane, Member

ORDER

Dated: February 15, 2012

In accordance with Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005 (hereinafter referred to as “THE MERC Tariff Regulations”) and upon directions from the Maharashtra Electricity Regulatory Commission (hereinafter referred to as “THE MERC” or “the Commission”), The Tata Power Company Limited’s Distribution Business (TPC-D), submitted its application on affidavit for approval of truing up for FY 2009-10 and Annual Performance Review 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-D, all the suggestions and objections of the public, responses of TPC-D, issues raised during the Public Hearing, and all other relevant material, issues the following Order.

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Abbreviations

A&G	Administrative and General
ACOS	Average Cost of Supply
APR	Annual Performance Review
ARR	Aggregate Revenue Requirement
ATE	Appellate Tribunal for Electricity
BEST	Brihanmumbai Electric Supply & Transport Undertaking
CAGR	Compound Annual Growth Rate
Capex	Capital Expenditure
CERC	Central Electricity Regulatory Commission
DPR	Detailed Project Report
DSM	Demand Side Management
EA 2003	Electricity Act, 2003
FAC	Fuel Cost Adjustment
FIT	Feed In Tariff
FY	Financial Year
GERC	Gujarat Electricity Regulatory Commission
GFA	Gross Fixed Assets
G, T & D	Generation, Transmission and Distribution
HO & SS	Head Office and Support Services
HT	High Tension
IBSM	Interim Balancing & Settlement Mechanism
IDC	Interest During Construction
IoWC	Interest on Working Capital
IPP	Independent Power Purchase
LT	Low Tension
kVA	Kilo-volt Ampere
kW	Kilo watt
kWh	Kilowatt hour
LCC	Load Control Centre
THE MERC	Maharashtra Electricity Regulatory Commission
THE MERC Tariff Regulations	THE MERC (Terms and Conditions of Tariff) Regulations, 2005
MIAL	Mumbai International Airport Pvt. Ltd.

MSEDCL	Maharashtra State Electricity Distribution company Limited
MSLDC	Maharashtra State Load Dispatch Centre
MU	Million Units
MW	Mega Watt
MYT	Multi Year Tariff
MYT Regulations, 2011	Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011
O&M	Operations and Maintenance
OLA	Outside License Area
PBT	Profit Before Tax
PLF	Plant Load Factor
PPA	Power Purchase Agreement
R&M	Repair and Maintenance
RE	Renewable Energy
RInfra	Reliance Infrastructure Limited
RoE	Return on Equity
RPO	Renewable Purchase Obligation
RPO Regulations	THE MERC (Renewable Purchase Obligation, its Compliance and implementation of REC framework) Regulations, 2010
RPS	Renewable Purchase Specification
SBI PLR	State Bank of India Prime Lending Rate
SLDC	State Load Despatch Centre
TOD	Time of Day
TOSE	Tax on Sale of Electricity
TPC	Tata Power Company Limited
TPC-D	The Tata Power Company-Distribution Business
TPC-G	The Tata Power Company-Generation Business
TPC-T	The Tata Power Company-Transmission Business
TVS	Technical Validation Session
VAT	Value Added Tax
WDV	Written Down Value

1 BACKGROUND AND BRIEF HISTORY

1.1 BACKGROUND

A Petition has been filed by The Tata Power Company Limited (TPC), for Truing up of Aggregate Revenue Requirement for FY 2009-10 and Annual Performance Review for FY 2010-11, for its Distribution 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 THE MERC TARIFF REGULATIONS

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

1.3 THE MERC ORDER ON MYT PETITION FOR TPC-D FOR FY 2007-08 TO FY 2009-10

TPC-D submitted its ARR and Multi Year Tariff (MYT) Petition for the first Control Period from FY 2007-08 to FY 2009-10 on January 15, 2007 numbered as Case No. 70 of 2006. The Commission issued the MYT Order for TPC-D for the first Control Period, on April 24, 2007, which came into effect from May 1, 2007, and the tariffs were valid up to March 31, 2008, which was later extended till the revised revenue requirement was determined for FY 2008-09, vide the Commission's Order dated April 1, 2008 in Case No. 102 of 2007.

1.4 THE MERC ORDER ON APR PETITION FOR TPC-D FOR FY 2007-08 AND TARIFF DETERMINATION FOR FY 2008-09

TPC-D submitted its Petition for Annual Performance Review (APR) for FY 2007-08 and Tariff Determination for FY 2008-09 on November 30, 2007 numbered as Case No. 69 of 2007. The Commission issued the APR Order for TPC-D on June 4, 2008, which came into effect from June 1, 2008, and the tariffs were 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.s 152, 153 and 154 of 2008.

1.5 REVIEW PETITION ON ORDER ON APR FOR FY 2007-08 AND TARIFF DETERMINATION FOR FY 2008-09

TPC-D filed a Review Petition against the Commission's Order on APR for FY 2007-08 and Tariff determination for FY 2008-09. The Commission vide Order dated February 2, 2009 (Case No. 46 of 2008) upheld most of the contentions raised in TPC-D's Review Petition and clarified that any impact of the same shall be taken into account by the Commission in its Order on TPC-D's Petition for APR for FY 2008-09 and tariff determination for FY 2009-10.

Further, TPC-D 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. 139 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 Transmission Business (TPC-T) (Appeal No. 138 of 2008).

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

In Appeal No. 139 of 2008, TPC-D preferred an appeal from this Order dated June 4, 2008 in Case No. 69 of 2007 of the Commission before the Hon'ble ATE under Section 111 of the EA 2003 on the issue pertaining to the following items:

- a) Disallowance of Brand Equity Component of A&G Expenses during true up for the period FY 2006-07.
- b) 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-D came to be allowed in terms of the Hon'ble ATE's Judgment dated July 15, 2009 in Appeal No. 139 of 2008 as follows:

- a) Hon'ble ATE held that TPC-D is entitled to Tata Brand Equity Expenses and directed the Commission to revise the ARR.
- b) 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 THE MERC ORDER ON APR FOR FY 2008-09 AND TARIFF DETERMINATION FOR FY 2009-10

TPC-D submitted its Petition for Annual Performance Review (APR) for FY 2008-09 and Tariff Determination for FY 2009-10 on December 4, 2008 numbered as Case No. 113 of 2008. The Commission issued the APR Order for TPC-D on June 15, 2009, which came into effect from June 1, 2009. TPC-D appealed against the Commission's Order on APR for FY 2008-09 and the Tariff determination for FY 2009-10 before the ATE (Appeal No. 175 of 2009).

1.8 ATE ORDER ON APR OF FY 2008-09 AND TARIFF DETERMINATION OF FY 2009-10

In Appeal No. 175 of 2009, TPC-D preferred an appeal from certain portions of the Order dated June 15, 2009 passed by THE MERC in Case No. 113 of 2008 in the matter of TPC-D-Distribution Business' Petition for APR for FY 2008-09 and Tariff Determination for FY 2009-10. TPC-D 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 interest on working capital as efficiency gains and sharing of 1/3rd amount with the distribution licensee.
- b) Disallowance of A&G expenses towards Tata Brand Equity payment; and
- c) Unjustified disallowance of actual Power Purchase cost pertaining to Demand Side Management Measures.

The appeals of TPC-D came to be allowed in terms of the Hon'ble ATE's Judgment dated February 14, 2011 in Appeal No. 175 of 2009 as follows:

- a) Hon'ble ATE held that the issues pertaining to (i) wrongful consideration of the difference between the normative interest on working capital and the actual interest on working capital as efficiency gains and sharing of 1/3rd amount with the distribution licensee; and (ii) Disallowance of A&G expenses towards Tata Brand Equity payment; have already been decided in favour of TPC – D by ATE in its judgment dated 15.07.2009 in Appeal No. 137/08, reported in 2009 ELR (APTEL) 622 and in the Judgment dated 28.05.2009 in Appeal No. 111/09 as reported in 2009 ELR (APTEL) 560. Hence, ATE held that TPC-D is entitled to both these claims. Accordingly, the Commission was directed to pass order on these issues in the light of the findings and observations made in the aforesaid judgments. The ATE held 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.

- b) Hon'ble ATE held that the deduction of Power Purchase cost of TPC-D on account of DSM/ end use efficiency, which is an uncontrollable factor, is not legally valid and TPC-D should be allowed the same.

1.9 THE MERC ORDER ON APR FOR FY 2009-10 AND TARIFF DETERMINATION FOR FY 2010-11

TPC-D submitted its Petition for Annual Performance Review (APR) for FY 2009-10 and Tariff Determination for FY 2010-11 on January 15, 2010 numbered as Case No. 98 of 2009. The Commission issued the APR Order for TPC-D on September 12, 2010, which came into effect from September 1, 2010. TPC-D has filed an appeal with the Hon'ble ATE on certain issues, numbered as Appeal No. 19 of 2011. The ATE's decision on TPC-D's appeal is awaited.

1.10 PETITION FOR TRUING-UP OF FY 2009-10 AND APR OF FY 2010-11

In view of the separate process being undertaken by the Commission for 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-D 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-D submitted its Petition for truing up for FY 2009-10 and APR for FY 2010-11 on July 25, 2011, based on actual audited expenditure for FY 2009-10 and FY 2010-11. TPC-D in its Petition, requested the Commission to:

- Accept the True-up and Annual Performance Review Petition for TPC-D in accordance with guidelines outlined in THE MERC Orders passed in various matters relating to TPC-D and the principles contained in THE MERC Tariff Regulations, 2005;
- Include the impact of the Judgment of Hon'ble ATE in respect of Appeal No. 175 of 2009 delivered on February 14, 2011 along with appropriate carrying cost at SBI PLR for any past or deferred recoveries/ entitlements as presented in this Petition;
- Condone any inadvertent omissions/errors/rounding off differences/ shortcomings and permit TPC-D 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 email dated August 5, 2011, forwarded the preliminary data gaps and the information required from TPC-D. TPC-D submitted its replies to preliminary data gaps and information requirement on August 12, 2011. The Commission scheduled a Technical Validation Session (TVS) on TPC-D's Petition for approval of APR for FY 2010-11 on August 16, 2011 in the presence of Consumer Representatives authorised under Section 94 (3) of EA 2003 to represent the interest of consumers in proceedings before the Commission. During the TVS, the Commission directed TPC-D to provide additional information and clarifications on the issues raised during the TVS. The reply to the queries raised during the TVS on August 16, 2011 was submitted by TPC-D on August 29, 2011. The Commission scheduled the second TVS on TPC-D's Petition for approval of APR for FY 2010-11 on September 3, 2011. The list of individuals, who participated in the first and second TVS, is provided at **Appendix -1**. The reply to the queries raised in second TVS dated September 3, 2011 was submitted by TPC-D on September 8, 2011. The Revised Petition was submitted by TPC-D under its letter dated September 16, 2011, The Commission also directed TPC-D to submit draft of Public Notice in English and Marathi in the format prescribed by the Commission.

1.11 ADMISSION OF PETITION AND PUBLIC PROCESS

The Commission admitted the Petition of TPC-D on October 20, 2011. In accordance with Section 64 of the EA 2003, the Commission directed TPC-D to publish its APR Petition in the prescribed abridged form and manner, to ensure public participation. The Commission also directed TPC-D to reply expeditiously to all the suggestions and objections received from stakeholders on its Petition. TPC-D 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-D'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-D. Various suggestions and objections that were raised on TPC-D's Petition after issuance of the Public Notice both in writing as well as orally 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-D and the rulings of the Commission on each of the issues.
- **Section 3** of the Order comprises the impact of the Judgment of Hon'ble ATE on previous years Truing- Up.
- **Section 4** of the Order details the Truing-Up of expenses and revenue of TPC-D 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-D for FY 2010-11, including sharing of efficiency gains/losses due to controllable factors, and the Total Recoveries pertaining to the past period.

2 OBJECTIONS RECEIVED

2.1 MAINTENANCE 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 THE MERC (General Conditions of Distribution Licensee) Regulations, 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 THE 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 account of the Licensed and Non Licensed Businesses 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 THE 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 codes. Hence, the allocation of such cost of 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 clarified that 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 businesses 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. TPC-D further clarified that it has presented in the APR Petition, the costs and revenues pertaining to the Distribution business only. 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 upon 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.

2.2 POWER PURCHASE

Shri Guruprasad Shetty and Shri Ashok Pendse submitted that TPC-D should explore the possibility of Power Purchase from some of the new capacities coming up or the short-term

market, to bring down the Power Purchase expense instead of imposing the cost of expensive fuel oil used by the Trombay Units of TPC-G consumers.

Shri Raksh Pal Abrol representing Bhartiya Udhami Avam Upbhokta Sangh, submitted that TPC-D should explore the possibility of further increasing the generation capacity at Trombay.

Shri Raksh Pal Abrol submitted factual and historical data regarding TPC's Distribution License and the Judgments of various Courts in this regard.

He submitted that TPC was permitted to supply energy directly to all consumers having demand below 1000 kVA after the Hon'ble Supreme Court's Judgment dated July 8, 2008. He added that under the provisions of the EA 2003 and THE MERC (Terms & Conditions of Tariff) Regulations, 2005, TPC-D is bound to procure power for meeting the evergrowing demand in Mumbai by entering into a PPA duly approved by the Commission. Further, TPC has the legal right to approach the Commission to levy additional FAC under the provisions of THE MERC (Terms & Conditions of Tariff) Amendment- Regulations, 2011.

TPC-D's Response

TPC has not replied to this objection.

Commission's Ruling

The detailed analysis of Power Purchase expenses for FY 2009-10 and FY 2010-11 is given in Sections 4.2 and 5.2, respectively, of this Order. TPC-D should take all measures to ensure that the Power Purchase expenses are optimised.

2.3 CAPITAL EXPENDITURE AND CAPITALISATION

Shri Rajesh Dabholkar, Parish Mehta & Co., Shri Ganesh Subramaniam and some others submitted that TPC has indicated that it has undertaken Capex of Rs. 124 Crore and capitalisation of Rs. 108 Crore in FY 2009-10 and Capex of Rs. 202 Crore and capitalisation of Rs. 139 Crore in FY 2010-11. They have asked TPC to submit the breakup of capital expenditure incurred, with details of capital expenditure incurred for network development, new connections and customer support and the grounds on which the Commission has approved this kind of capital expenditure.

TPC-D's Response

TPC replied that the necessary details of scheme-wise capital expenditure and capitalisation have already been submitted in Form F 5.3 and Form F 5.4 of the Petition.

Commission's Ruling

The scheme-wise details of capital expenditure and capitalisation have been submitted by TPC-D as part of the Formats submitted along with the APR Petition, with break-up into DPR and non-DPR schemes. Wherever required, the Commission has sought additional data and explanation from TPC and based on the replies and data submitted by TPC in the Petition, the Commission has considered the capitalisation for the purposes of determining the ARR. The detailed analysis of the same is discussed in Section 4.5 and Section 5.5 for FY 2009-10 and FY 2010-11, respectively.

2.4 CAPITAL EXPENDITURE ON NETWORK DEVELOPMENT

Shri Ganesh Kankhar, Secretary, Youth Wing, BJP, Maharashtra submitted that TPC should explain why it has incurred capital expenditure when RInfra has offered their network to supply power to changeover consumers. The consumers who are being shifted by TPC to their own network would be in loss because all these consumers have already paid to RInfra for creating the network and will again have to pay TPC for duplicating the network. He further asked TPC-D for the roll-out plan for setting up parallel network in RInfra's licence area.

Shri Rajesh Dabholkar, Parish Mehta & Co., Shri Collin Dmello and others asked TPC to clarify whether TPC has duplicated RInfra's network and whether the same has been approved by the Commission. They also submitted that by selectively laying network, TPC is increasing its profit.

Shri Ganesh Subramaniam also submitted that TPC should explain whether it has embarked upon creating its own network for electricity distribution in the suburbs or is it still relying on RInfra's network to supply to the changeover consumers. He also asked TPC to clarify the total length of operational network of TPC and out of which what was the length prior to March 2009- the time when RInfra's consumers started migrating to TPC and what is the length of the new network which has been laid by TPC post March 2009.

TPC's Response

As regards the objection regarding incurrence of capital expenditure despite the existence of RInfra's distribution network, TPC replied that the Capital Expenditure incurred by TPC-D in FY

2009-10 and FY 2010-11 was not towards servicing changeover consumers in these years, hence, these observations are incorrect.

TPC further submitted that as regards incurrence of Capital Expenditure for laying of network, TPC-D has been doing so in accordance with the application received from the consumers and as a distribution licensee TPC-D is entitled to lay its own network for serving their own consumers. TPC-D further submitted that the approval for such Capital Expenditure is being obtained after due scrutiny and prudence check by the Commission from time to time under the guidelines issued.

As regards the network roll out plan, TPC-D submitted that the query raised does not pertain to the APR Petition filed by TPC-D. TPC further submitted that the details sought by the Objector on Capital Expenditure and Network Roll-out plan are covered under the MYT Business Plan, which has been submitted to the Commission separately.

As regards the objections regarding selective laying of distribution network, TPC submitted that it strongly objects to the allegations made against it. TPC submitted that it has been operating under the EA 2003 as well as the Regulations framed by the Commission therein and performing the duties of distribution licensee as required by such rules and regulations. TPC further submitted that the profits earned by TPC-D pertaining to its distribution business are in accordance with the Return on Equity permitted under THE MERC Tariff Regulations.

Commission's Ruling

The Commission has already clarified on this issue in the following orders:-

(1) Order dated 22nd February, 2010 in Case Nos.60, 81, 83, 84, 85 and 86 of 2009, that *"incurring heavy capital expenditure for the network rollout is not the only option available"* was a recommendation. The Commission had clarified that the said recommendation does not dilute TPC-D's statutory duty under Section 42(1) of the EA 2003 to develop and maintain an efficient coordinated and economical distribution system in its area of supply and to supply electricity in accordance with the provisions of the said Act and hence TPC-D needs to make arrangement towards fulfilling its statutory duty on continuous basis.

(2) APR Order for RInfra issued on July 29, 2011 in Case No. 72 of 2010, as under:

"Section 2(17) of the EA 2003 defines a "distribution licensee" as a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his

area of supply, while the sixth proviso to Section 14 of the EA 2003 states that "...the Appropriate Commission may grant a license to two or more persons for distribution of electricity through their own distribution system within the same area..." Hence, each licensee has to have its own distribution system for supplying electricity to consumers in its area of supply. As a consequence, TPC also will have to set up its own distribution network in its area of supply, and the utilisation of the existing distribution network of RInfra-D for supplying to changeover consumers is only an interim solution, till such time TPC sets up its own network."

TPC-D has been directed to submit the detailed network roll-out plan as a part of its MYT Business Plan Petition, and the Commission will take a decision on the same while approving the MYT Business Plan.

2.5 USE OF RINFRA NETWORK

Shri N. Ponrathnam enquired of TPC if it is compulsory or optional for a consumer in Mumbai suburbs to use RInfra network for getting power supply from TPC. He also requested TPC to explain the reasons as to why whenever a changeover consumer applies to TPC, the changeover is recommended by utilising the RInfra network. Shri N. Ponrathnam also enquired of TPC whether RInfra has the rights to restrain the use of its network in future and whether the of RInfra's existing network is a temporary solution.

TPC's Response

TPC replied that giving supply to new consumers through its own distribution network depends upon the availability of TPC's network. TPC added that in the past, it was constrained from expanding its network on account of various litigations. TPC clarified that it is not compulsory for the consumer to opt for supply from TPC by using RInfra network and the consumer is well within his rights to opt for TPC's network as and when it becomes available within a reasonable time period.

Commission's Ruling

The Commission is of the view that this objection is not relevant to the present Petition, which is for trueing up of expenses and revenue for FY 2009-10 and FY 2010-11. Further, the Commission has already clarified that TPC will have to set up its own distribution network in its area of supply, and the utilisation of the existing distribution network of RInfra-D for supplying to changeover consumers is only an interim solution, till such time TPC sets up its own network.

This will be subject to the proceedings pertaining to grant of licence post expiry of licence of TPC.

2.6 DISTRIBUTION LICENCE

Shri Ganesh Kankhar, submitted that TPC's license will be expiring in August 2014 and enquired whether TPC is increasing its network as its licence is expiring.

TPC-D's Response

TPC has not replied to this objection.

Commission's Ruling

The Commission is of the view that this objection is not relevant to the present Petition, which is for trueing up of expenses and revenue for FY 2009-10 and FY 2010-11. Further, the Commission has already clarified that TPC-D will have to set up its own distribution network in its area of supply, and the utilisation of the existing distribution network of RInfra-D for supplying to changeover consumers is only an interim solution, till such time TPC sets up its own network.

2.7 DISTRIBUTION LOSSES

Shri Jayantilal M. Shah, Shri Jitendra Pawar, Ms. Rosy Pinto and Shri Anil V. Tharthare, residential consumers of TPC, submitted that the distribution loss has almost doubled from 0.59% in FY 2009-10 to 1.13% in FY 2010-11 and that TPC should explain the reasons for the above. TPC should also explain the component of losses which is increasing and what measures TPC is taking to curb the losses along with its impact on the consumer's tariff. The consumer representatives further requested the Commission to either reject the expenses incurred by TPC due to increasing distribution losses or penalize TPC for not meeting the distribution loss target set by the Commission.

Central Railways also submitted that for FY 2010-11, the distribution loss for TPC has increased from the revised estimate of 0.66% to 1.13%, due to increase in LT network and the Commission should not allow distribution losses more than 0.66%.

TPC's Response

TPC replied that as its LT network increases there would be increase in the distribution losses of TPC-D to a certain level. Further, the same has been recognised by the Commission in its Tariff Order for FY 2009-10 dated June 15, 2009.

TPC submitted that although the distribution loss level has increased from 0.66% to 1.13% for FY 2010-11, the loss levels are still very low and way below the loss levels of any developed distribution network (usually 8-10%). TPC added that the norm of 0.66% is not really representative and hence, the Commission should allow the actual distribution loss for FY 2010-11. Further, TPC added that as the base level of losses is low, the increase appears high, although, the overall loss levels are still very low.

Commission's Ruling

The Commission, in its Tariff Order for FY 2009-10 dated June 15, 2009 had stated as under:

“The Commission has considered the distribution loss of 0.66% for computing the energy input requirement of TPC-D for FY 2009-10, which is slightly higher than the actual losses reported by TPC-D in FY 2008-09. In case the actual distribution for FY 2009-10 are higher than the approved level of 0.66%, then the same will be considered at the time of truing up, subject to prudence check, and will not necessarily be considered as a controllable loss, since TPC-D has to meet the Universal Service Obligations, by giving supply to all consumers on request in its license area.”

The Commission clarifies that the distribution loss of 0.66% considered for TPC-D for FY 2009-10 was not a norm, since; it is very low and not representative of a typical distribution licensee. Earlier, since TPC-D's consumer and consumption profile was skewed in favour of HT consumers, with very low LT load, the loss levels were lower, and the loss levels are expected to increase with the increase in LT loads. However, TPC-D should ensure that the loss levels are controlled and not increased merely because of increase of LT loads. The Commission has accepted the actual loss level of 1.13 % for FY 2010-11.

2.8 CHANGEOVER CONSUMERS

Shri Rajesh Dabholkar, Parish Mehta & Co., Shri Collin Dmello, Shri Ganesh Kankhar and others asked TPC to clarify how many subsidizing consumers of RInfra have been connected by TPC on their network and the impact of the same on the cross subsidy surcharge and recovery of regulatory assets by RInfra and whether the burden would be on the residential consumers of RInfra who are not being connected by TPC on its network.

TPC's Response

TPC submitted that on the basis of Order dated October 15, 2009, TPC-D has supplied to about 2.5 lakh consumers using the wires of RInfra. TPC further submitted that during the years under consideration, i.e., FY 2009-10 and FY 2010-11, no consumer who was connected on RInfra wires earlier has been connected on TPC-D's wires.

TPC added that the consumer base of TPC-D on its own network for FY 2009-10 and FY 2010-11 has been provided in Form 13.1 of the APR Petition and as regards the tariff to new consumers, TPC-D are charging the same as that approved by the Commission.

TPC further submitted that it is unable to assess the impact on cross subsidy and regulatory assets based on the data of RInfra consumers available in the public domain and such an assessment can be best made by RInfra themselves.

Commission's Ruling

The Commission asked TPC-D to clarify regarding the number of changeover consumers who have been shifted to TPC-D's own distribution network. TPC-D clarified that no changeover consumer has been connected on Tata Power-D's network and the concept of changeover consumer has come into existence only after the Commission's Orders dated June 15, 2009 and October 15, 2009. TPC-D further submitted that prior to the Supreme Court Judgment dated July 8, 2008, TPC-D was restrained from extending its retail network on account of the litigation on the interpretation of its licence for retail distribution. TPC-D further clarified that before the aforesaid Supreme Court's Judgment, there were number of housing projects in different stages of construction, which had been availing Temporary Supply from RInfra. Subsequent to the Supreme Court Order in July 2008, TPC-D received applications from consumers intending to occupy such housing projects and requesting power supply from TPC-D. TPC-D considered these requests as altogether new connection requests and hence, power supply connections were granted to these consumers, while providing supply from TPC-D's own network directly. As these consumers were never permanent consumers of RInfra, hence they cannot be categorised as changeover consumers.

While, the Commission notes the above response of TPC, the Commission holds that it will not be in accordance with law if at all only subsidising consumers of RInfra are connected by TPC on their network. However, if that be not so, then there may be an upward impact on the cross subsidy surcharge and recovery of regulatory assets by RInfra, and there may be a burden on the residential consumers of RInfra who are not connected by TPC on its network. Hence, the law

would not allow any discrimination while effecting changeover. The Commission is hopeful that TPC will follow this mandate of law.

2.9 DISCRIMINATION AMONG CONSUMERS

Shri N Ponrathnam submitted that the minimum slab of consumption of 100 units is uniform for all the residential consumers except TPC's consumers connected to RInfra's network whose minimum consumption slab is 91 units, as the wheeling losses of 9% are added. Differentiation of consumers for minimum consumption of 100 units is in contravention of the provisions of Section 62(3) of EA 2003.

Popular Power Supply, Shree Laxmi Denim Clinic and Shri V.V. Shinde submitted that although TPC has been showing increasing Capital Expenditure, however, it has not invested in creating new Customer Care Centres and Bill Payment Centres for the convenience of its customers. Popular Power Supply further submitted that TPC is discriminating between the rich and the poor by only cherry picking malls and high end residential consumers and that TPC has declined to accept many applications from slums on one pretext or the other. It was further submitted by Popular Power Supply that TPC has not connected a single changeover consumer in BEST area but has done so in RInfra area and requested the Commission to delimit the license area of TPC to only RInfra area and force TPC to comply with these requirements of customers before any new Tariff Order is passed by the Commission.

TPC's Response

In reply to Shri Ponrathnam's objections, TPC submitted that the billing for Changeover consumers is in line with the Order dated October 15, 2009, issued by the Commission in Case No. 50 of 2009, enabling consumers to exercise their choice of supplier.

TPC further submitted that TPC has not been cherry picking its consumers and the contention that TPC is only choosing high end consumers is not true, since the contribution of residential consumers to the total consumer base has increased and is around 80% as against the commercial consumers which are around 15% of the total consumer base.

Commission's Ruling

It is clarified that the lowest consumption slab, i.e., monthly consumption of 1-100 units, is uniform for all distribution licensees. It is incorrect to deduct the wheeling losses payable to

RInfra for use of the distribution network for changeover consumers, to conclude that the lowest consumption slab is effectively 1-91 units. Also, it is clarified that even if the Commission had specified the lowest consumption slab for TPC-D as 1-91 units, it would have been in accordance with Section 62(3) of the EA 2003, as Section 62(3) provides for methods to differentiate for the purpose of tariff determination between consumers of the same distribution licensee and not across distribution licensees, as is being inferred by the objector.

Based on the growth of consumers and change in consumer mix of TPC-D over the last two years, it is seen that in terms of number of consumers, around 1,10,584 consumers are of the residential category, while 27,244 consumers are in the subsidising commercial and industrial category in FY 2010-11. However, in terms of consumption, the residential category consumes 7.37% of the total consumption, whereas commercial and industrial category consumes 73.34% of the total consumption. TPC-D should further facilitate changeover of all consumers who approach TPC-D for changeover, irrespective of the consumer category and consumption level. As regards the changeover of consumers in BEST licence area by connecting to TPC-D's network, the issue is sub-judice before the Hon'ble ATE.

2.10 CLASSIFICATION OF CONSUMERS

Shri Raksh Pal Abrol, representing Bhartiya Udhami Avam Upbhokta Sangh, submitted that after October 15, 2009, about 1,04,564 consumers of RInfra who migrated to TPC were not termed as LT consumers of TPC, as they were having no proof of sanctioned load or contract demand with RInfra. He further submitted that the consumers who were connected to TPC prior to July 3, 2003 were not allowed to have supply based on the conditions of supply agreed upon prior to the enactment of EA 2003 and Tariff Conditions of LT Consumer applicable up to 100 kW/ kVA on Single Part Tariff. Further, the sanctioned load conditions were not permitted as per The MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 and the fixed charges for these consumers have been hiked without giving any relief.

TPC's Response

TPC has not replied to this objection.

Commission's Ruling

The Commission is of the view that this objection is not relevant to the present Petition, which is for trueing up of expenses and revenue for FY 2009-10 and FY 2010-11.

2.11 CONSUMER RE-CLASSIFICATION AFTER CHANGEOVER

Shri Pankaj Prakash, representing Mumbai International Airport Pvt. Ltd. (MIAL), submitted that MIAL changed over to TPC-D in November 2009 for supply of electricity through RInfra-D's network. MIAL has referred to the Judgments of the Hon'ble ATE in Appeal No. 195 of 2009 and Appeal No. 144 of 2009 wherein the ATE has given Judgments in favour of MIAL with respect to the categorisation and tariff determination of MIAL. MIAL quoted the relevant paragraph of the judgment "... *once the categorization of the Appellant under HT-II commercial category is set aside by this Tribunal, it is not proper for the State Commission to put the Appellant in the same category by charging the commercial tariff from the Appellant.*" MIAL further submitted that it has already given detailed submissions in Case No. 82 of 2011 and Case No. 101 of 2011, wherein it has sought re-classification of its tariff category and consequential re-determination of tariff with respect to the Tariff Orders for FY 2008-09 and FY 2009-10 and the decision of the Commission on the same is awaited. MIAL further submitted that as stipulated by THE MERC in its Order dated October 15, 2009 in Case No. 50 of 2009, the category of a consumer before and after changeover has to be the same and accordingly, once MIAL is re-categorised into a separate category for the period prior to November 1, 2009 retrospectively, for continuity, the same category has to be applied after changeover. Hence, MIAL requested the Commission to re-classify the tariff category of MIAL and accordingly re-determine the applicable composite tariff for FY 2009-10 and FY 2010-11 and also consider the impact of such re-classification and re-determination in the current truing-up Petition of TPC-D.

TPC-D's Response

TPC has not replied to this objection.

Commission's Ruling

The Commission is of the view that 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. However, the Commission is taking appropriate steps to implement the Hon'ble ATE's Judgment.

2.12 CONSUMER SERVICE CENTRES

Smt. Virginia Dias and Shri S.R. Patil submitted that TPC should open more Consumer Centres and Payment Centres to provide better services to the consumers including changeover consumers and it should also focus on improving the services provided by the existing call centres, which are presently unsatisfactory.

Shri V.V Shinde also submitted that TPC has not yet established Customer Centres, Bill Payment Drop Boxes and other services like RInfra has done and is not providing satisfactory services to its customers.

Shree Laxmi Denim Clinic submitted that the call centres of TPC do not give proper response to the complaints of the customers. Shree Laxmi Denim Clinic added that TPC should invest funds in creating sufficient infrastructure that is easily accessible to consumers and should acquire good billing systems like RInfra to ensure accurate billing and also train their employees in a better way so that they can resolve consumer grievances more efficiently.

TPC's Response

TPC replied that it will try to improve its services to the consumers and solve the problems concerning inadequacy of facilities as early as possible.

Commission's Ruling

TPC should take heed of the suggestions given by the consumers in this regard and open sufficient number of Consumer Service Centres, and also provide alternate payment options to consumers such as payments through the internet, standing instructions through banks, etc., in case such facilities have not already been extended.

2.13 LOAD ENHANCEMENT FOR TPC CONSUMERS

Shri Raksh Pal Abrol, representing Bhartiya Udhmi Avam Upbhokta Sangh, submitted that consumers connected to TPC were not allowed to enhance the sanctioned load/ contract demand, if their demand was below 1000 kVA. He further submitted that tariffs of the consumers were modified but enhancement of load was not permitted.

TPC-D's Response

TPC has not replied to this objection.

Commission's Ruling

The Commission is of the view that 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.

2.14 STANDBY CHARGES

Shri Guruprasad Shetty submitted that TPC-D should not pay standby charges to MSEDCL as it is subsidizing MSEDCL by paying these charges.

TPC-D's Response

TPC has not replied to this objection.

Commission's Ruling

It is clarified that the standby charges are paid to MSEDCL to provide the power supply support in the event of shortage created due to outage of generation capacity in Mumbai area. The Commission has considered the standby charges in accordance with the philosophy adopted in the MYT Order and the APR Order and has accordingly allocated standby charges for FY 2009-10 and FY 2010-11 between TPC-D, BEST and RInfra-D.

2.15 WHEELING CHARGES

Shri N. Ponrathnam submitted that the wheeling charges have not been determined by the Commission nor has the Commission made any prudence check on the calculation of wheeling charges. For a distribution network laid on public property, the value of the network asset of RInfra should either be the depreciated cost or the salvageable cost, whichever is lower. TPC should segregate the cost for future expansion of TPC from the ARR of the consumers presently connected to TPC network.

TPC's Response

TPC replied that the Wheeling Charges have been determined by the Commission after prudence check in case of RInfra-D and TPC-D in its Clarificatory Order in Case No. 121 of 2008 dated July 22, 2009. TPC further submitted that the fixed costs on account of existing network as well as any other network laid by TPC-D are a part of total Revenue Requirement of TPC-D, based on which the average cost of supply is determined by the Commission. Thus, the old network as well as the new or future network will be a part of the entire network system of TPC-D. Hence, any expenditure on account of the same is recoverable from all the consumers of TPC-D at that point of time.

Commission's Ruling

The Commission is of the view that this objection is not relevant to the present Petition, which is for trueing up of expenses and revenue for FY 2009-10 and FY 2010-11. Further, the Commission

does not find any merit in the objection, as the wheeling charges for RInfra and TPC have been determined by the Commission in the respective Tariff Orders and Clarificatory Orders, after the necessary prudence check, and the mechanism of levy of wheeling charges has also been stipulated in the Commission's Order dated October 15, 2009 in Case No. 50 of 2009. The Commission also agrees with TPC-D's reply that any capital expenditure on network expansion is recoverable as part of the ARR from existing as well as new consumers, subject to prudence check, since electricity distribution is an ongoing business and capital expenditure is also an ongoing activity, not only to meet growth of consumers and consumption, but also for system strengthening and augmentation.

2.16 NON-COMPLIANCE OF REGULATIONS

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

TPC's Response

TPC replied that in line with Regulation 2(c) of the MERC (Uniform Recording, Maintenance and Reporting of Information) Regulations, 2009, TPC-D has enclosed from page 242 of the Petition, the Annual Report of TPC Ltd. for FY 2009-10, and from page 319 of the Petition, the Annual Report for FY 2010-11 has been enclosed. The said Annual Reports contain 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 the MERC (Uniform Recording, Maintenance and Reporting of Information) Regulations, 2009 has been provided to the Commission on periodic basis and no disallowance of expenses should be ordered, as TPC-D 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.

The Commission has notified the MERC (Uniform Recording, Maintenance and Reporting of Information) Regulations, 2009 on April 20, 2009 which are 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.

2.17 SCOPE OF REGULATION 17.3 OF THE 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 exercise 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 account amounts claimed by TPC-D 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 delivered by the Hon'ble ATE or the 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.

2.18 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 The 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 the 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-D 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

The Commission is of the view that 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. 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.

2.19 TARIFF PROPOSED BY TPC

It was submitted by Central Railways that TPC has not submitted the existing tariff and proposed tariff for recovery.

TPC's Response

TPC replied that the present Petition has been filed for the truing-up of FY 2009-10 and APR of FY 2010-11. The present petition does not include any tariff proposal for FY 2011-12 and TPC-

D has been billing consumers at the same tariff that was notified vide the Commission's Order issued in September 2010.

Commission's Ruling

The Commission is of the view that 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.

2.20 LEVY OF ENERGY CHARGES

Shri N. Ponrathnam enquired of TPC whether the energy charges:

- i. reflect the variable cost in the average cost of supply
- ii. are proportional to actual cost of supply
- iii. are the addition of actual variable cost of supply and the cross subsidy; or
- iv. are arbitrarily fixed.

TPC's Response

TPC replied that the tariff levied by the distribution licensee for any consumer is as notified by the Commission vide its Tariff Order for the respective year. The same is derived from the Aggregate Revenue Requirement of the distribution licensee as determined by the Commission. TPC submitted that the tariff determined by the Commission is split into a fixed charge (Demand Charge) and variable charge (Energy Charge) in such a manner so as to allow the distribution licensee to recover its revenue requirement for the quantum of sales projected by it and as approved by the Commission.

Commission's Ruling

The Commission is of the view that this comment is not relevant to the present Petition, which is for truing up of expenses and revenue for FY 2009-10 and FY 2010-11. Moreover, as explained by TPC, the fixed charges are determined in such a manner that a good portion of the fixed costs of the licensee are recovered through the fixed/demand charges, whereas the variable costs and the balance fixed costs are recovered through the variable energy charges. The cross-subsidy is computed as the difference between the Average Cost of Supply (ACOS) and the Average Billing Rate (ABR) for that consumer category, which includes the revenue from fixed charges as well as energy charges.

2.21 FUEL COST ADJUSTMENT (FCA)

Shri N. Ponrathnam enquired of TPC whether passing of the uncontrolled cost as FAC is in compliance with Section 62(4) of the EA 2003.

TPC's Response

In its reply, TPC relied on Section 62(4) of the EA 2003 which provides as follows:-

"No tariff or part of tariff may ordinarily be amended more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified".(emphasis added)

TPC added that the FAC levied by TPC to its consumers is in line with Section 62(4) of the EA, 2003 and is levied as per the formula for calculation of FAC notified by the Commission in THE MERC Tariff Regulations, 2005.

Commission's Ruling

The Commission is of the view that 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. Moreover, the distribution licensees are allowed to recover the variation in fuel costs through the FAC formula, which is specified in the MERC Tariff Regulations, 2005, which is in line with Section 62(4) of the EA 2003.

2.22 INCREASE IN TARIFF

Central Railways submitted that they have computed the average increase in tariff considering the actual total sales and revenue received shown by TPC and detailed recovery rate calculated based on Tariff Order dated October 31, 2011 in Case No. 100 of 2011, MA 4 of 2011 and Case No. 140 of 2011 in the matter of petition of MSEDCL seeking final truing –up for FY 2009-10 and APR for FY 2010-11. Central Railways computed the average energy charge as Rs. 5.20 per unit and the additional energy charge in case TPC-D's revenue gap is allowed as Rs. 1.63 per unit, thus showing 31.35% average increase. It submitted that if the revenue gap is allowed to be recovered in 1 year, it will lead to an extremely high and unreasonable hike in tariff hence, the same may be recovered over a period of 2-3 years instead of 1 year, and without any carrying cost.

TPC's Response

In this regard, TPC submitted as follows:

- The present Petition deals with truing up of FY 2009-10 and FY 2010-11 and hence, TPC has approached the Commission to approve the past revenue gaps.
- TPC is aware that if past revenue gaps are recovered in a one-year period, it will lead to substantial hike in tariff. However, the methodology followed by TPC for recovery of these accumulated amounts will be a part of the MYT petition to be filed by TPC-D and is outside the scope of the current Petition. The submission of Railways shall be considered in TPC's MYT Petition, which shall deal with determination/approval of tariff and plan for past recoveries.
- TPC further submitted that it does not agree with the submissions made by Railways that TPC-D should not be allowed any carrying cost on these deferred recoveries. As per the judgment of the Hon'ble ATE dated February 15, 2011 in Appeal No. 173 of 2009, carrying cost is a legitimate expenditure of the distribution Companies. The Hon'ble ATE has ruled that 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. Therefore, it would be unjust to deny the carrying cost on deferred recoveries of TPC-D.

Commission's Ruling

The Commission is of the view that 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. TPC has not proposed any method for recovery of the past revenue gaps, and hence, it is premature to comment on the resultant tariff increase. As regards the carrying cost on deferred recoveries, the same will have to be allowed in accordance with the principles laid down by the Hon'ble ATE.

2.23 VOLTAGE-WISE SEGREGATED WIRE COST COMPONENT OF ARR

Central Railways submitted that in the Tariff Order of TPC-D for FY 2008-09 (Case No. 60 of 2007), the Commission had directed TPC to submit voltage-wise, segregated wire cost component of ARR during the APR of FY 2008-09. Railways submitted that TPC has failed to provide any information on voltage-wise segregated wire cost component of ARR in its Petition, and hence, the proposed tariff for Railways do not reflect the actual cost of supply of power by TPC-D. During the public hearing, Central Railways submitted that it should be allowed to purchase power directly from TPC-G.

TPC's Response

TPC replied that in the Petition for determination of ARR and tariff for FY 2010-11, TPC has presented the methodology for computing the wheeling charges for its HT and LT network. The Commission has determined the currently applicable wheeling charges for TPC-D's HT and LT network in its Tariff Order issued in September 2010. Thus, there already exists a segregation of the network costs and wheeling charges based on whether the network is utilised for servicing a HT consumer or a LT consumer. Hence, the objection raised by Central Railways is not really relevant and is without merit.

TPC further replied that Central Railways cannot avail direct supply from TPC-G as the entire capacity of TPC-G is already tied up with TPC-D and BEST.

Commission's Ruling

The Commission does not find any merit in this objection, as the voltage-wise wheeling charges and losses have been determined by the Commission based on submissions made by TPC and appropriate assumptions, wherever necessary.

2.24 RETAIL SUPPLY TARIFF

Shri Ganesh Kankhar and Shri Chandrakant Mudras submitted that there should be a common Retail Supply Tariff throughout the city of Mumbai.

TPC's Response

TPC has not replied to this objection.

Commission's Ruling

The Commission is of the view that this suggestion is not relevant to the present Petition, which is for true up of expenses and revenue for FY 2009-10 and FY 2010-11. Moreover, this issue has been debated at length on other occasions also and the Commission has clearly stated that in view of the differential consumer and consumption mix as well as the Power Purchase costs and other expenses across different distribution licensees in the city of Mumbai, it is not feasible to have a uniform retail supply tariff, unless the State Government provides the necessary subsidy support, to offset the revenue loss due to the tariffs of different licensees being kept at the same level.

2.25 REGULATORY ASSET CHARGE

Shri N. Ponrathnam submitted that the expenses, which were not recovered from the Changeover consumers by RInfra in the past are being levied on the changeover consumers as Regulatory Asset Charge (as they would have paid this amount if they would have not changed over). At the same time, the expenses incurred by TPC in the previous years and not passed through to the consumers are being added to the present revenue gap of TPC. He asked TPC to justify the double levy of charges in the name of Regulatory Asset charge.

TPC's Response

TPC replied that the levy of Regulatory Asset Charge on changeover consumer switching from RInfra to TPC has been notified by the Commission in its Order dated July 29, 2011. However, the same is yet to be quantified and has not been levied by TPC-D. Further, the tariff for TPC-D has been arrived at, by considering the sales to Changeover consumers. As such, the recovery of revenue has to consider the recovery from changeover consumers as well.

Commission's Ruling

The Commission is of the view that this objection is not relevant to the present Petition, which is for trueing up of expenses and revenue for FY 2009-10 and FY 2010-11. Moreover, the levy of Regulatory Asset Charge on certain categories of changeover consumers has been stipulated by the Commission in its APR Order dated July 29, 2011 in Case No. 72 of 2010 on the APR Petition filed by RInfra-D but the same has yet not been quantified for recovery. Hence, the issue raised becomes irrelevant for the purposes of the present proceedings.

2.26 SUBSIDY AND MECHANISM OF ELECTRICITY DUTY

With reference to Section 61(g) of the EA 2003 and the Tariff Policy notified by the Government of India, Shri Ponrathnam submitted that the subsidies should be targeted effectively and in a transparent manner, and as a substitute of cross subsidy, the State Government has the option of raising resources through the mechanism of electricity duty and giving direct subsidies to only needy consumers.

Shri Ponrathnam enquired of TPC whether the Tariff Policy, as stated above, is being followed by TPC in consultation with the State Government and whether there is any accountability of the amount collected through levy of Electricity Duty and Tax on Sale of Electricity (TOSE).

Shri Raksh Pal Abrol, representing Bhartiya Udhami Avam Upbhokta Sangh, submitted that TOSE is separately paid by the domestic and non-domestic consumers. He further submitted that TPC is paid Rs. 10,000 per year and others at Rs.75 per 100 Consumers as Collection Charges under Electricity Duty Act, 1958.

TPC's Response

TPC replied that the cross subsidy referred to in this clause of the Tariff Policy is the cross subsidy inbuilt in the tariff structure of the distribution. TPC-D clarified that it does not get any subsidy from the State Government for providing cheaper power to its subsidized consumers. TPC added that it has not been able to appreciate the relevance of this query with respect to the submissions made in the present Petition.

TPC further submitted that any amount collected by way of Electricity Duty and TOSE is remitted to the State Government on a monthly basis and is validated by the Statutory Auditors as well as officials from the State Government from time to time.

Commission's Ruling

The Commission is of the view that this comment is not relevant to the present Petition, which is for trueing up of expenses and revenue for FY 2009-10 and FY 2010-11.

2.27 LEVY OF POWER FACTOR PENALTY

Shri N. Ponrathnam submitted that both RInfra and TPC adopt different methodology for calculation of power factor penalty charges. RInfra adopts the methodology of measuring inductive reactive energy (RkVAh) for levying power factor penalty while TPC considers apparent energy (kVAh) for the same and both the methodologies result into different penalty charges. He added that TPC should explain the advantages and disadvantages of the methodology of each system.

TPC's Response:

TPC replied that both the formulae give the same output. Further, TPC was not able to appreciate the relevance of this query with respect to the submissions made in the current Petition.

Commission's Ruling

The Commission is of the view that this objection is not relevant to the present Petition, which is for trueing up of expenses and revenue for FY 2009-10 and FY 2010-11.

2.28 CROSS-SUBSIDY

Shri N. Ponrathnam submitted that the Tariff Policy notified by the Government of India states “.... .. For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the SERC would notify would road map within six months with a target that latest by the end of year 2010-11 tariffs are within $\pm 20\%$ of the average cost of supply. The road map would also have intermediate milestones, based on the approach of a gradual reduction in cross subsidy.....”

Shri Ponrathnam enquired of TPC whether the Tariff Policy is being followed by TPC.

TPC’s Response

TPC replied that the present Petition is concerned only with true-up of FY 2009-10 and APR of FY 2010-11, and does not include the tariff proposal for FY 2011-12. However, TPC-D has been considering the above provisions of the Tariff Policy while submitting any Tariff Proposal as part of its Tariff Petition, to the extent possible for all major tariff categories.

Commission’s Ruling

The Commission is of the view that this comment is not relevant to the present Petition, which is for trueing up of expenses and revenue for FY 2009-10 and FY 2010-11. However, it may be noted that while determining the category-wise tariffs, the Commission always attempts to ensure that the cross-subsidy, which is computed as the difference between the Average Cost of Supply (ACOS) and the ABR for that consumer category, is within the limits specified under the Tariff Policy.

2.29 CROSS SUBSIDY SURCHARGE

Shri N. Ponrathnam submitted that the concept of Open Access enables a consumer to avail electricity from a generator/ licensee/ trader on commercial principles at market rate or mutually agreed rate. In addition, such Open Access consumer has to pay the cross subsidy surcharge. However, in case of changeover consumers, the rate levied by TPC is inclusive of cross subsidy in-built in its tariffs, over and above which a cross subsidy surcharge is being levied for passing on to RInfra and TPC should justify the double levy of charges in the name of cross-subsidy.

TPC’s Response

TPC replied that the tariff charged by TPC to consumers is as per the Tariff Order of the Commission. Also, the cross subsidy surcharge which is collected from the changeover

consumers and passed on to RInfra is also allowed by the Commission. Thus, TPC is only complying with the Orders of the Commission.

Commission's Ruling

The Commission is of the view that this objection is not relevant to the present Petition, which is for trueing up of expenses and revenue for FY 2009-10 and FY 2010-11. Moreover, the levy of cross-subsidy surcharge on certain categories of changeover consumers has been stipulated by the Commission in its APR Order dated July 29, 2011 in Case No. 72 of 2010 on the APR Petition filed by RInfra-D.

2.30 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.

2.31 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 in accordance with the Judgment of the Hon'ble ATE.

2.32 RETURN ON EQUITY

Shri Guruprasad Shetty submitted that Return on Equity should be given to new Units only while TPC-G has very old Units and since TPC has a small equity base and small number of shareholders, their contribution has already been repaid thousand times. He further submitted that the surpluses are of consumers and should be passed on to them.

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 and allowed in accordance with the MERC Tariff Regulations, 2005. In the previous APR Order dated September 12, 2010 in Case No. 98 of 2009, the Commission has already directed TPC to submit the relevant data to enable the Commission to ensure that in case any asset is being replaced or retired, then the corresponding equity contribution is also reduced, so that TPC does not earn return on equity that is no longer invested in the business.

TPC-D in its Petition has submitted that it is facing difficulty in retrieving such data and therefore, has not complied with the directive. The Commission hereby directs TPC-D to comply with the said directive at the earliest, and the impact of the same will be considered in the next Tariff Order for TPC-D.

2.33 BAD DEBTS

Central Railways submitted that the Commission should disallow the bad debts expenses of Rs. 5 Crore as against Rs. 2 Crore approved by the Commission.

TPC's Response

TPC replied that the provisioning of bad debts is based upon standard accounting practices based on estimated probability of recovery of outstanding amounts. As such, TPC-D needs to provide for any such doubtful recoveries and hence, the same should reasonably be part of revenue requirement projected for any financial year. In the event of any recovery materialising subsequently, the provisioning is reversed accordingly and the benefits are passed on to the consumers. Hence, submission of Railways in this regard may not be considered.

Commission's Ruling

The Commission has allowed provisioning for bad debts as 1.5% of the receivables, in accordance with the approach adopted in earlier Tariff Orders.

2.34 POSITIVE EFFECTS ON PERFORMANCE OF TPC-D

Shri Vinayak G. Joshi and Nagari Nivara Parishad submitted that there are various factors which will have a positive effect on the performance of TPC-D such that majority of the recoveries as contemplated in the Petition will be adjusted against the revenue surplus for FY 2011-12, and the Commission must examine all the aspects before passing on the recoveries to the consumers immediately in the form of additional charge.

TPC's Response

TPC replied that the observations made by the consumer are pertaining to FY 2011-12, which is not the subject year of the present Petition and that the petition pertains to FY 2009-10 and FY 2010-11. Secondly, in any case, the ARR of the Distribution Licensee is recovered as per the Tariff Regulations notified by the Commission and in case there are any savings in the uncontrollable expenditure such as Power Purchase, it will be passed on to the consumers.

Commission's Ruling

The Commission is of the view that this objection is not relevant to the present Petition, which is for trueing up of expenses and revenue for FY 2009-10 and FY 2010-11. 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.

2.35 REVENUE GAP

Shri Sandeep Ohri and Shri Ashok Pendse, Consumer Representatives, submitted that the Revenue Gap is mainly on account of the ATE Order and consequent carrying cost rather than Power Purchase Cost as claimed by TPC. The increase in Revenue Gap is due to the cascading effect of past adjustments and ATE's Judgments while TPC has claimed that the increasing Revenue Gap is a result of more than 80% increase in Power Purchase Cost though the actual increase is less than 20%. The consumers should not be made to pay for expenses claimed via appeals to Hon'ble ATE.

Shri Ohri added that all the costs incurred by TPC should be explained separately and clearly in the Tariff Order so that its impact is clear to the consumers.

Shri Raksh Pal Abrol, Consumer Representative, submitted that the Commission should approve TPC's ARR as projected by TPC in its Petition.

TPC's Response

TPC has not replied to this objection.

Commission's Ruling

Each of the heads of expense and revenue for FY 2009-10 and FY 2010-11 have been discussed in detail in Sections 4 and 5 of this Order, along with the Commission's rationale and decision.

As regards the submission that the consumers should not be made to pay for expenses claimed via appeals to Hon'ble ATE, the Commission finds no merit in the same, as 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.

3 IMPACT OF HON'BLE ATE'S JUDGMENT DATED FEBRUARY 14, 2011

As discussed in Section 1 of this Order, the Commission had issued its Tariff Order on TPC-D's ARR Petition for FY 2009-10 on June 15, 2009 in Case No. 113 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-D filed an Appeal (Appeal No. 175 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-D submitted that subsequently, it had filed its APR Petition for FY 2009-10 in January 2010, 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. 175 of 2009. TPC-D 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 June 15, 2009, stipulated as follows:

“TPC-D submitted that the actual interest on working capital incurred by TPC-D during FY 2007-08 is nil and the normative interest on working capital works out to Rs. 10.73 crore, and proposed to share the entire difference as a controllable gain. The normative interest on working capital as considered by the Commission is Rs. 10.75 crore, as explained in earlier sub-section. 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 consumers, 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 TPC-D, in accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005.”

As regards the above, TPC-D filed appeal (Appeal No. 175 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-D submitted that the Hon'ble ATE ruled on this issue in Appeal No. 175 of 2009 as follows:

“6. As pointed out by the Learned Counsel for both the parties, the first 2 issues have already been decided in favour of the Appellant by this Tribunal in its judgment dated 15.07.2009 in Appeal No. 137/08, reported in 2009 ELR (APTEL) 622 and in the judgment dated 28.05.2009 in Appeal No. 111/09 as reported in 2009 ELR (APTEL) 560. We have to hold that the Appellant is entitled to both these claims in respect of Issue No. 1 and (2). Accordingly, the State Commission is directed to pass order on these issues in the light of the findings and observations made in these judgments. Thus the first and second issues are answered in favour of the Appellant.” (Emphasis Supplied)

TPC-D submitted that the Hon'ble ATE has summarized its findings in Para 25 of the said Judgment, wherein it has reiterated that the issues in the Appeal filed by TPC-D are to be allowed in favour of TPC-D while directing the Commission to pass consequential orders in the light of the findings rendered by the ATE. TPC-D submitted extract of the ATE Judgment as under:

“25. SUMMARY OF FINDINGS

The first issue is wrongful consideration of difference between the normative interest on working capital and actual interest on working capital as gains and sharing of 1/3rd amount with the distribution licensee...

... These two issues have already been decided in favour of the Appellant by this Tribunal in its Judgment dated 15.07.2009 in Appeal No. 137/08, reported in 2009 ELR (APTEL) 622 and in the judgment dated 28.05.2009 in Appeal No. 111/09 as reported in 2009 ELR (APTEL) 560. Accordingly, these issues are decided in favour of the Appellant.” (Emphasis Supplied)

TPC-D submitted that the Hon'ble ATE has allowed TPC-D's Appeal and has ruled that interest on Working Capital shall not be treated as an efficiency gain. Further, the Hon'ble ATE has

categorically stated in Para 6 that TPC-D is entitled to the claims made under the issues raised in the said Appeal.

TPC-D further submitted that, the Hon'ble ATE while dealing with the same issue in its Judgment in Appeal No. 174 of 2009 had held as follows:

“6. On these issues, the following arguments have been advanced on behalf of the Appellant.

(i) The first issue is wrongful consideration of the difference between normative interest on working capital and actual interest on working capital as gains and sharing of 1/3rd amount with the distribution licensee. On the issue of denial of rightful retention of the difference between normative interest on working capital and actual interest on working capital, 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 1/3rd of such difference to the consumers. This has resulted in the denial of the cost of internal cash used for funding such additional working capital to the Appellant. Therefore, this Tribunal may direct the State Commission, reject this methodology and restore the said amount passed on to the consumers to the Appellant. On this point, this Tribunal held in favour of the Appellant in its judgment dated 28.05.2009 in Appeal No. 111/2008 and in the judgment dated 15.07.2009 in Appeal No. 138/08.” (Emphasis supplied)

TPC-D submitted that in the Tariff Order dated September 12, 2010, the Commission had asked TPC to provide clarity on whether the working capital requirement was met from the cash flows of TPC-D or cash flows from any other business. Further, the Commission also asked TPC-D to submit the cash flow statement indicating as to how the working capital requirement has been met for TPC-D. TPC-D submitted that finally, the Commission did not find any merit in clawing back the amount that was passed on to the consumers.

TPC-D submitted 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-D requested the Commission to restore the said amounts earlier passed on to consumers /distribution licensees for FY 2007-08.

TPC-D further submitted that in the previous Tariff Order in Case No. 98 of 2009 also, the Commission had shared the difference between normative and actual interest on working capital as an efficiency gain. Since, the Hon'ble ATE has established the principles for treatment in respect of the said issue, the same may be applied for FY 2008-09 also even though the current Petition does not cover the period FY 2008-09. TPC-D added that the Commission may consider applying the Hon'ble ATE's directive for similar disallowances on the issue for the trueing up order for FY 2008-09. TPC-D has claimed the following amount to be restored for FY 2007-08 and FY 2008-09:

Table: Entitlement of Interest on Working capital as submitted by TPC-D

Particulars	All figures in Rs. Crores	
	FY 2007-08	FY 2008-09
Normative Interest on Working capital approved by MERC	10.75	13.91
Actual Interest incurred by Tata Power-D	-	19
Amount treated as Efficiency Gain/(Loss) by MERC	3.58	(1.70)
Amount Passed on to Consumers	3.58	(1.70)
Entitlement restored due to ATE's judgment	3.58	(1.70)

Further in reply to the Commission's query in the above matter pertaining to FY 2009-10 and FY 2010-11, TPC-D 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-D would not be able to provide the cash flow statement for computing the financing of working capital. TPC-D 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-D added that it is willing to submit a Regulated Cash Flow Statement, if desired by the Commission. TPC-D further submitted that if the objective of the Commission in seeking the cash flow statements is to analyse sources of funds for meeting the working capital requirement and thereby arrive at the efficiency gains due to difference between normative interest entitlement on working capital and actual interest incurred on working capital (IoWC), then the issue had been elaborately discussed in the ATE Judgments dated February 14/15, 2011 in the matter of Appeal No. 173 of 2009 and Appeal No. 174 of 2009. The ATE, in the said Judgments had ruled that the Commission has wrongfully denied the cost of internal cash used for funding working capital by sharing 1/3rd of the difference between normative IoWC and Actual IoWC.

TPC-D submitted that the ATE has ruled that the same should not be treated as an efficiency gain and had directed that the amounts passed on to consumers on account of such difference should be restored to the Appellant.

TPC-D further 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 THE 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 line 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 has to be considered as efficiency gain, except in cases where TPC-D has submitted details of the actual working capital interest incurred.

As seen from the above Judgments quoted by TPC-D, 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-D 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-D business. In addition, the source and cost of such funds with appropriate justification was sought from TPC-D. 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-D 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 THE 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 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-D'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-D's claim that the entire amount of interest on working capital is allowable to TPC-D 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-D on the same issue in the context of the Tariff Order issued by the Commission for TPC-D dated September 12, 2010, which is presently pending before the Hon'ble Appellate Tribunal.

3.2 DISALLOWANCES 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 June 15, 2009, stipulated as follows:

“Notwithstanding TPC-D’s submission on allowance of expenses on Brand Equity, 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, which states:

“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 1.74 Crore towards the payment to Tata Brand Equity.”

TPC-D submitted that in this matter also, the Hon’ble ATE has allowed the Appeal in favour of TPC-D. 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 12, 2010 in Case No. 98 of 2009. Therefore, TPC-D 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. 139 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 12, 2010 in Case No. 98 of 2009.

3.3 DISALLOWANCE OF ACTUAL PURCHASE COSTS PERTAINING TO DSM MEASURES

On the issue of disallowance of actual purchase cost pertaining to DSM measures, the Commission, in its Order dated June 15, 2009, stipulated as follows:

“The Commission, in its MYT Order, had ruled that 2% of the costly Power Purchase requirement will have to be reduced by implementation of DSM as an initial step. This translated to reduction in Power Purchase cost by Rs. 10.42 crore for TPC-D for FY 2007-08. However, TPC-D did not consider any reduction in costly Power Purchase on this account under its truing up requirement, hence, the Commission asked TPC-D to submit the justification for the same.

...

...

The Commission does not agree with TPC-D's submission that it has not exceeded the Power Purchase quantum as approved by the Commission and therefore, there was a reduction in demand as desired. The reduction in Power Purchase quantum has been effected on account of the significant reduction in the energy sales as compared to the sales approved by the Commission for FY 2007-08, rather than DSM measures undertaken by TPC-D.

Further, as regards reduction in Power Purchase cost on account of benefit achieved through DSM activities, TPC-D has not provided the details of the same to establish or validate the claim. Therefore, the Commission has considered the reduction in Power Purchase cost by Rs. 10.44 crore for FY 2007-08 as approved in the APR Order for FY 2007-08 while undertaking the final truing up for FY 2007-08.”

TPC-D had challenged the above disallowance by the Commission before the Hon'ble ATE. The Hon'ble ATE's decision on this issue in Appeal No. 175 of 2009 is as follows:

“22. Thus, we hold that deduction in Power Purchase cost of the Appellant on account of DSM in end use is not in consonance with the Regulations of the State Commissions and provisions of the Electricity Act 2003, National Electricity Plan and the Tariff Policy. On

the other hand, the Tariff Policy under clause 8.2.1 stipulates that “all the Power Purchase costs need to be considered as legitimate unless it is established that the merit order principles have been violated or power has been purchased at unreasonable rates”. The Tariff Policy further states that the actual level of retail sales should be grossed up by normative level T&D losses as indicated in MYT trajectory for allowing Power Purchase cost. Thus deduction of Power Purchase cost of the Appellant on account of DSM which is an uncontrollable factor is not valid legally. The State Commission by all means could have disallowed the expenditure on DSM schemes partly or fully to the Appellant if such schemes had not been implemented as per the directions of the State Commission. Admittedly, in the ARR for 2007-08 no specific DSM scheme or finances were approved by the State Commission. Accordingly, this issue is also decided in favour of the Appellant.”

TPC-D submitted that based on the above, TPC-D is entitled for actual Power Purchase cost reduced on account of DSM, which has been worked out as follows:

Table: Power Purchase Cost (Rs. Crore)

Particulars	FY 2007-08
Actual Power Purchase Cost	1249.45
Power Purchase Cost After Truing Up	1239.49
Adjustment for OLA and Banking Return	-0.47
Disallowance on Account of Reduction due to DSM	10.44
Entitlement Restored due to ATE's Judgment	10.44

In view of the ATE Judgment in Appeal No. 175 of 2009 and TPC-D's submission in this regard, the Commission hereby allows the Power Purchase cost for FY 2007-08 without any deductions on account of DSM and accordingly approves the additional allowable expense of Rs 10.44 Crore on account of DSM for FY 2007-08 as submitted by TPC-D.

3.4 WRONGFUL TREATMENT OF INCOME TAX

TPC-D submitted that the Hon'ble ATE in its Judgment in Appeal No 173 of 2009 for TPC-G has ruled the following on the issue of wrongful treatment of Income Tax:

“ 37. In view of the above, the State Commission's conclusion, in our view, may not be correct and therefore, 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. This point is answered accordingly.

TPC-D submitted that the Hon'ble ATE has summarized its finding as extracted below, thereby allowing TPC-D to claim the difference between the income tax entitlement sought by TPC-D and that allowed by the Commission for the period FY 2007-08.

“43. SUMMARY OF OUR FINDINGS:

(5) The next issue is treatment of Income Tax. The State Commission instead of computing Profit Before Tax as comprising total revenue minus allowable expenditure has taken it as Return on Equity. In doing so it went against the principle of this Tribunal's judgment 2009 ELR (APTEL) 560. The State Commission did not consider that the allowed income tax would also be considered as revenue gain and the Appellant would have to pay income tax on the same. The State Commission should have included the income due to incentive and efficiency gains with Return on Equity and ought to have grossed up the tax computed by it. Accordingly, this issue is decided in favour of the Appellant and the State Commission is directed to compute income tax entitlement of the Appellant by replacing Return on Equity by regulating Profit Before Tax based on income less permissible expenses.”

TPC-D further submitted that the Hon'ble 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-D added that since the Hon'ble ATE has already laid down the principles for the above issue, the Commission may apply the principle laid down in the Hon'ble ATE's Judgment for FY 2007-08 and FY 2008-09.

TPC-D 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-D, 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) either 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 concluded that both the approaches would lead to the same results.

Table: Calculation of Income Tax as submitted by TPC-D

Parameter	Rs. Crores	
	FY 2007-08	FY 2008 -09
Regulated RoE (A)	21.49	22.14
Incentive (B)	-	-
Add: (C)	37.05	39.78
Depreciation as per APR	14.04	15.39
Normative Interest on Working capital	10.75	13.91
Normative Interest on Long Term Loan	4.67	5.44
Other Disallowances for computing Income tax	7.59	5.04
Less: (D)	20.66	23.00
Depreciation as per Income Tax	17.04	19.35
Other Expenses allowed for computing income tax	3.58	3.65
Deductions under S 80-G, 80 IA	0.04	-
Total E= (A+B+C-D)	37.88	38.92
Tax Rate (t)	33.99%	33.99%
Income Tax = E*t/(1-t)	20	20

TPC-D 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-D

Particulars	Rs. Crores	
	FY2007-08	FY2008-09
Revised Income Tax calculated based on Hon'ble ATE Judgement	20	20
Income Tax as approved by MERC	-	9
Amount Disallowed by MERC	20	11
Entitlement restored due to ATE's Judgement	20	11

From the various pronouncements of Hon'ble ATE, the principle that clearly emerges is that the income tax of a licensee that 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.

3.5 REVENUE GAP/ SURPLUS OF FY 2007-08 AND FY 2008-09

TPC-D 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)

TPC-D 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-D 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 below:

Table: Revenue Gap/ (Surplus) as submitted by TPC-D

Particulars	Rs. Crores	
	FY 2007-08	FY 2008-09
Approved Revenue Gap for various years	135	(36)

In this regard, TPC-D further submitted that in the past, the Commission had disallowed the entitlement of carrying costs on the amounts, which were earlier disallowed and subsequently restored by the Appellate Authority. TPC-D 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)

The interest computations on these amounts as submitted by TPC-D are given below. TPC-D further submitted that in such computations, it has been kept in mind that the above gap/(surplus) have been passed on in the tariffs of FY 2009-10 and FY 2010-11. Hence, as per TPC-D, the interest expenses beyond these years upto FY 2011-12 would be computed only on the gap/(surplus) upto the year in which these amounts have been passed on in the tariff. In other words, TPC-D has computed the carrying costs for FY 2010-11 and FY 201-12, on the carrying cost that was not allowed on the truing up amounts for FY 2007-08 and FY 2008-09.

Table: Interest Computations for Gap/ (Surplus) as submitted by TPC-D

				Rs. Crores		
				FY 2007-08	FY 2008-09	Total
Amount Eligible for Carrying Costs ---->				135	(36)	
Interest year	Rate of Interest (%)	Months of Interest for amounts due for the two years				
		FY 2007-08	FY 2008-09			
FY 2007-08	12.48%	0		0.00	0.00	
FY 2008-09	12.79%	12		17.32	0.00	
FY 2009-10	11.87%	6	12	8.04	-4.30	
FY 2010-11	12.24%		6	0.00	-2.22	
Carrying Cost				25	(7)	
Interest Upto FY 2011-12 for amounts given by Commission in FY 2009-10 (Rs Cr)						
Interest Rate FY 2010-11	12.24%	12		3		
Interest Rate FY 2011-12	13.23%	6		2		
Sub-Total				5	-	
Interest Upto FY 2011-12 for amounts given by Commission in FY 2010-11						
Interest Rate FY 2011-12	13.23%		6	-	(0)	
Sub-Total				-	(0)	
Carrying Cost with Interest				30	(7)	23

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 any carrying cost on the revenue gap/(surplus) for FY 2007-08 and FY 2008-09. Since, the carrying cost itself is not recoverable, there

is no basis for computing consequent carrying cost for FY 2010-11 and FY 2011-12, as computed by TPC-D. Hence, no additional amount is due to TPC-D under this head.

3.6 SUMMARY OF RECOVERABLE AMOUNT

TPC-D submitted that the Commission had disallowed these amounts for 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-D submitted that if these amounts are to be recovered in FY 2011-12, TPC-D would be entitled for interest/carrying costs on the above. TPC-D further submitted that as these items are largely revenue based, the interest has been calculated based on the short-term Prime Lending Rate of State Bank of India (SBI PLR) allowed by the Commission for computation of interest on working capital.

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

Table: Amount Recoverable as submitted by TPC-D

		<i>Rs. Crores</i>			
Sr. No.		FY 2007-08	FY 2008-09		
	<u>Issue</u>				
1	Normative Interest on Working Capital	3.58			(1.70)
2	Wrongful Treatment of Income Tax	19.50			11.43
3	Power Purchase Cost	10.44			
4	Total Recoverable Amount (1+2)	33.53			9.74
5	Total Interest on Recoverable Amount	14.59			3.61
	<i>Financial Year</i>	<i>Rate of Interest</i>	<i>Months of Recovery</i>		
			<i>FY 2007-08</i>	<i>FY 2008-09</i>	
5.a.	<i>FY 2007-08</i>	<i>12.48%</i>	0	-	0.00
5.b.	<i>FY 2008-09</i>	<i>12.79%</i>	12	6	4.29
5.c.	<i>FY 2009-10</i>	<i>11.87%</i>	12	12	3.98
5.d.	<i>FY 2010-11</i>	<i>12.24%</i>	12	12	4.11
5.e.	<i>FY 2011-12</i>	<i>13.23%</i>	6	6	2.22
6	Total Recovery including Interest (3+4)	48.12			13.35
6	Total Amount eligible for Recovery				61
7	Add: Interest on Gap/Surplus not allowed for FY 2007-08 and FY 2008-09				23
8	Total amount to be recovered				85

The Commission has given its ruling on the past period recoveries claimed by TPC-D 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 have now been allowed in

accordance with the ATE's Judgment, TPC-D 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.

The Commission has accordingly computed the carrying cost for the past period recoveries. For recoveries pertaining to FY 2007-08, the truing up Order was issued on June 15, 2009 therefore, the Commission has considered 10-months carrying cost for FY 2009-10 and 12 months for FY 2010-11. For recoveries pertaining to FY 2008-09, the truing up Order was issued on September 12, 2010. Therefore, the Commission has considered 7 months carrying cost for FY 2010-11.

In this Order, the Commission is approving expenses till FY 2010-11, i.e., March, 2011. Thus, the carrying cost for FY 2011-12 is not 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-D 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 2007-08		FY 2008-09	
		TPC-D	Approved	TPC-D	Approved
1	Normative Interest on Working Capital	3.58	-	-1.70	-
2	Wrongful treatment of income tax	19.50	-	11.43	-
3	Power Purchase cost - DSM	10.44	10.44	0.00	-
4	Total recoverable amount (1+2+3)	33.53	10.44	9.74	0.00
5	Total interest on recoverable amount	14.59	2.31	3.61	0.00
	<i>FY 2007-08</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>-</i>
	<i>FY 2008-09</i>	<i>4.29</i>	<i>0.00</i>	<i>0.62</i>	<i>-</i>
	<i>FY 2009-10</i>	<i>3.98</i>	<i>1.03</i>	<i>1.16</i>	<i>-</i>
	<i>FY 2010-11</i>	<i>4.10</i>	<i>1.28</i>	<i>1.19</i>	<i>-</i>
	<i>FY 2011-12</i>	<i>2.22</i>	<i>0.00</i>	<i>0.64</i>	<i>-</i>
6	Interest on Gap/Surplus not allowed for FY 2007-08 and FY 2008-09	30.36	0	-6.52	0
7	Total Impact of ATE Judgment (4+5+6)	78.47	12.75	6.83	0.00

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

TPC-D, 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 the audited accounts. TPC-D 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-D 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-D and the consumers, in accordance with Regulation 19 of the MERC Tariff Regulations, 2005 in this section.

4.1 SALES

TPC-D submitted the month-wise actual category-wise sales statistics in the formats annexed to the APR Petition. TPC-D submitted that the actual sales for consumers on TPC-D network was 2,553.72 MU and the actual sales for changeover consumers was 200.88 MU in FY 2009-10, which is in line with the sales approved by the Commission in its APR Order dated September 12, 2010, based on revised estimates.

Table: Energy Sales FY 2009-10 (MU)

Sr. No.	Category	TPC-D Network		Changeover Consumers	
		APR Order	Actual*	APR Order	Actual*
I	HIGH TENSION CATEGORIES				
1	<i>HT I- Industry & CPP</i>	778	713.57	24	23.68
2	<i>HT II- Commercial</i>	439	438.90	88	87.86
3	<i>HT III- Public & Govt.</i>	-	64.50^{\$}		-
	-22kV		13.83		-
	-100kV		50.67		-
	<i>HT IV- Temporary Supply</i>	1	1.24		0.35
4	<i>HT V- Railways</i>	826	823.93		-

Sr. No.	Category	TPC-D Network		Changeover Consumers	
		APR Order	Actual*	APR Order	Actual*
	-22/33 kV		543.99		-
	-100kV		279.93		-
5	<i>HT Group Housing</i>			1	2.07
II	LOW TENSION CATEGORIES				
1	<i>LT I- Residential</i>	90	89.53	12	11.73
	-S1(0-100 units)				3.04
	-S2(101-300 units)				4.02
	-S3(>301-500 units)				1.67
	-S4(Above 500 units (balance units))				3.00
2	<i>LT II- Commercial</i>	233	233.22	47	46.87
	-up to 20kW		18.65		9.88
	->20kW & < 50kW		15.50		3.41
	->50 kW		199.06		33.58
3	<i>LT III- Industry < 20kW</i>	21	21.44	3	2.86
4	<i>LT IV- Industry > 20kW</i>	160	159.94	25	25.45
5	<i>LT V- Advertisement & Hoardings, incl. Floodlights & neon signs</i>	-	0		-
	<i>LT VI- Streetlights</i>	-	-		-
	<i>LT VII- Temporary Supply</i>	7	7.45		0.01
	-TSR- Temporary Supply Religious		-		-
	-TSO- Temporary Supply Others		7.45		0.01
6	<i>LT VIII- Cremation and Burial Grounds</i>	-	-		-
7	GRAND TOTAL	2,555	2,553.72	200	200.88

*Excludes 15 days provisions

\$ - for first 3 months only, since this category was merged with HT I Industry in the APR Order

In reply to the Commission's query, TPC-D clarified that billing to the Changeover consumers is inclusive of the Wheeling Loss (MU), which is applicable to Changeover consumers as they are using RInfra's network for getting supply from TPC-D.

TPC-D also clarified that no changeover consumer has been connected on TPC-D's network and the concept of changeover consumer has come into existence only after the Commission's Orders dated June 15, 2009 and October 15, 2009. TPC-D further submitted that prior to the Supreme Court Order, TPC-D was restrained from extending its retail network on account of the litigation on the interpretation of its licence for retail distribution. TPC-D further clarified that before the Supreme Court Order there were number of housing projects in different stages of construction, which had been availing Temporary Supply from RInfra. Subsequent to the Supreme Court Order in July 2008, TPC-D received applications from consumers intending to occupy such housing projects and requesting power supply from TPC-D. Upon this, TPC-D considered these requests as all new connection requests and hence, power supply connections were granted to these consumers, while providing supply from TPC-D's own network directly. As these consumers were never permanent consumers of RInfra, hence, cannot be categorised as changeover consumers. TPC-D further submitted the breakup of consumers connected to TPC-D's network during FY 2008-09 and FY 2009-10, as shown in the following table:

Table: Number of Consumers on Tata Power-D's network (MU)

Year	No. of consumers connected to TPC-D's network		
	RInfra Area	BEST Area	Total
FY 2008-09	1800	136	1936
FY 2009-10	253	3144	3397
TOTAL	2053	3280	5333
Total consumers connected during FY 2008-09 and FY 2009-10			5333

The summary of the sales considered by the Commission in the APR Order and actual sales is given below:

Table: TPC-D Sales for FY 2009-10 (MU)

Sl.	Particulars	APR Order	Actuals
1	TPC-D Network	2555	2553.72
2	Changeover	200	200.88

The Commission has considered the actual sales under the trueing-up process.

4.2 POWER PURCHASE QUANTUM AND COST FOR FY 2009-10

The Commission, in its APR Order dated September 12, 2010 in Case No. 98 of 2009, approved the actual total quantum of Power Purchase of 2928 MU from The Tata Power Company-Generation Business (TPC-G), Renewable Energy (RE) sources and other sources including short-term Power Purchase from external sources and imbalance pool.

TPC-D submitted that in FY 2009-10, the total quantum of Power Purchase from TPC-G, Renewable Power Sources and Traders (short-term power) was 3139 MU, of which TPC-D sold 28 MU to Outside License Area of Mumbai and the energy sold into the Imbalance Pool was 175 MU. Hence, the net Power Purchase for TPC-D works out to 2928 MU.

The Commission, in its above-said APR Order dated September 12, 2010 had allowed total Power Purchase expenses of Rs. 1221.62 Crore including Transmission Charges, Maharashtra State Load Despatch Charges (MSLDC) charges, Standby Charges and Wheeling Charges of RInfra, while actual Power Purchase expense for FY 2009-10 as submitted by TPC-D in the present APR Petition is Rs. 1227.98 Crore. TPC-D submitted that the Power Purchase quantum and cost were in line with that approved by the Commission in its APR Order dated September 12, 2010, as the Commission had approved the costs based on actual expenses submitted by TPC-D except for Standby Charges and Transmission Charges, which were marginally different than that projected by TPC-D in its previous APR Petition.

TPC-D submitted that the average rate of Power Purchase for FY 2009-10 works out to Rs. 4.19 per unit including Transmission charges, MSLDC charges, Standby Charges and Wheeling Charges of RInfra.

4.2.1 Power Purchase from Tata Power- G

The Commission, in its APR Order dated September 12, 2010 in Case No. 98 of 2009 approved Power Purchase from TPC-G of 2,932 MU at the average rate of Rs. 3.82 per unit amounting to Rs. 1121.23 Crore. TPC-D submitted that it had purchased the same quantum of power and at the same cost as approved by the Commission in its APR Order. TPC-D further submitted that the Power Purchase cost includes incentive payable to TPC-G for higher PLF/Capacity Index along with the rebate paid by TPC-G on its hydro generation.

The Commission validated the actual expense on Power Purchase from TPC-G by two Distribution Licensees in Mumbai, i.e., TPC-D and BEST as submitted in their respective APR

Petitions, with the details of revenue submitted by TPC-G in its APR Petition and is of the view that the Power Purchase as submitted by TPC-G matches with the revenue considered by TPC-G from sale of energy to TPC-D in FY 2009-10. Accordingly, the Commission has approved the actual cost of Power Purchase by TPC-D from TPC-G. The summary of Power Purchase by TPC-D from TPC-G as approved in the APR Order, as submitted by TPC-D, and as approved after final truing up, is tabulated as under:

Table: Power Purchase from TPC-G for FY 2009-10

Particulars	APR Order		Actuals		Approved after Truing Up	
	Quantum (MU)	Cost (Rs Crore)	Quantum (MU)	Cost (Rs Crore)	Quantum (MU)	Cost (Rs Crore)
TPC-G: Existing Units	2932	1121.23	2932	1121.17	2932	1121.17

4.2.2 Renewable Purchase Specification

TPC-D submitted that it had purchased 87.12 MU from Renewable Energy Sources in FY 2009-10. The cost of Power Purchased from renewable sources was Rs 32.68 Crore. The cost and quantum of Power Purchased is equal to what have been provisionally approved by the Commission in the FY 2009-10 APR Order dated September 12, 2010.

in view of the above, for the purpose of truing up, the Commission has considered purchase of 87.12 MU from renewable sources at a Power Purchase cost of Rs 32.68 Crore.

4.2.3 Power Purchase from Short-term sources and sale to Imbalance pool

TPC-D submitted that the actual Power Purchased from the short-term power sources was 120 MU at a cost of Rs. 56.42 Crore and per unit cost for short-term power works out to Rs. 4.71 per unit. TPC-D also submitted that the actual power sale to imbalance pool was 175 MU, which had generated revenue of Rs. 87.47 Crore and therefore, had been removed from the total Power Purchase cost.

The Commission has approved the quantum and cost of Power Purchase from short-term sources and sale to imbalance pool as submitted by TPC-D for FY 2009-10, under the final truing up exercise. The summary of Power Purchase by TPC-D from other sources is given in the following table:

Table: Power Purchase from Short-term sources and Imbalance pool for FY 2009-10

Particulars	APR Order		Actuals		Allowed after truing up	
	Quantum (MU)	Cost (Rs. Crore)	Quantum (MU)	Cost (Rs. Crore)	Quantum (MU)	Cost (Rs. Crore)
Short Term External Power Purchase	120	56.42	120	56.42	120	56.42
Pool Purchase/ (Sales)	(183)	(92.56)	(175)	(87.47)	(175)	(87.47)

4.2.4 Reduction in Power Purchase cost

TPC-D submitted that out of the total Power Purchased, TPC-D sold 28 MU to Outside License Area of Mumbai and 7 MU to Lavasa.

The Commission asked TPC-D to explain the nature of transaction under which energy is being procured and sold to Lavasa for FY 2009-10. In reply to the above query, TPC-D submitted that Lavasa was a Transmission Open Access Consumer of TPC-D in FY 2009-10 and FY 2010-2011. For the purpose of energy accounting and settlement purposes, TPC-D considered Lavasa as an embedded consumer and had settled energy purchase through Interim Balancing Settlement Mechanism (IBSM). TPC-D further submitted that however, for the purpose of ARR, for FY 2009-10, TPC-D had removed the Power Purchase for Lavasa by considering the marginal cost of that month and presented only the net Power Purchase for the TPC-D consumers.

The Commission has accepted the submissions made by TPC-D in the above matter and has considered the same for final truing up process. The summary of reduction in Power Purchase is given in the following table:

Table: Reduction in Power Purchase for FY 2009-10

Particulars	APR Order		Actuals		Allowed after truing up	
	Quantum (MU)	Cost (Rs. Crore)	Quantum (MU)	Cost (Rs. Crore)	Quantum (MU)	Cost (Rs. Crore)
Outside License Area	(28)	(20.76)	(28)	(20.76)	(28)	(20.76)
Energy for Lavasa	-	-	(7)	(5.10)	(7)	(5.10)

4.2.5 MSLDC and Transmission Charges

As regards Transmission Charges and MSLDC Charges paid during FY 2009-10, TPC-D submitted that it had considered an amount of Rs. 49.87 Crore as against Rs. 51.36 Crore approved by the Commission in the APR Order. The Commission has considered Transmission charges and MSLDC Charges at Rs. 49.87 Crore as submitted by TPC-D under the truing up exercise.

4.2.6 Standby Charges

As regards Standby Charges being paid to the Maharashtra State Electricity Distribution company Limited (MSEDCL), TPC-D submitted that it has considered an amount of Rs. 61.85 Crore during FY 2009-10 against Rs. 60.37 Crore approved by the Commission in its last APR Order.

In reply to the Commission's query, TPC-D submitted that for FY 2008-09, the approved Standby Charges were Rs. 64.35 Crore. However, MSEDCL had raised bill of Rs. 62.34 Crore in FY 2008-09 and the differential amount was billed in FY 2009-10. The Commission had also approved Rs. 64.35 Crore during the truing up process of FY 2008-09. In the current Petition, TPC-D had inadvertently submitted the actual amount paid to MSEDCL, i.e., Rs. 61.85 Crore for FY 2009-10, instead of approved value of Rs 60.37 Crore. Rectifying the error, TPC-D has submitted that the Commission should consider Standby Charges as Rs. 60.37 Crore for FY 2009-10, instead of Rs. 61.85 Crore submitted by TPC-D in its Petition.

The Commission has accepted the above submissions made by TPC-D and has considered Standby Charges at Rs. 60.37 Crore for FY 2009-10 for final truing up purposes.

4.2.7 Wheeling Charges Payable to R-Infra

TPC-D submitted that the actual wheeling charges paid/payable to RInfra for FY 2009-10, for the purpose of supplying energy to Changeover consumers, were Rs. 12.89 Crore as against Rs 12.88 Crore approved by the Commission in APR Order dated September 12, 2010.

Table: Wheeling Charges payable to R-Infra- FY 2009-10

Sr. No	Category	Wheeling charges (Rs/kWh)	Changeover Sales (MU)	Wheeling charges payable to RInfra (Rs. Crore)
1	HT I- Industry	0.46	23.68	1.09
2	HT II- Commercial	0.46	87.86	4.04

Sr. No	Category	Wheeling charges (Rs/kWh)	Changeover Sales (MU)	Wheeling charges payable to RInfra (Rs. Crore)
3	HT III- Group Housing Society	0.46	2.07	0.10
4	HT IV- Temporary Supply	0.46	0.35	0.02
5	LT I- Residential	0.88	11.73	1.03
6	LTII- Commercial	0.88	46.87	4.12
7	LT III- Industry <20kW	0.88	2.86	0.25
8	LT IV- Industry>20 kW	0.88	25.45	2.24
9	LT V- Advertisements	0.88	0.00	0.00
10	LT VII- Temporary Supply	0.88	0.01	0.00
	Total		200.88	12.89

The Commission has approved the quantum and cost of wheeling as submitted by TPC-D under the final truing up process.

4.2.8 Summary of Power Purchase Quantum and Costs

The summary of Power Purchase quantum and costs, including Standby Charges and Transmission Charges for FY 2009-10 as approved by the Commission after final truing up, is given in the following table:

Table: Summary of Power Purchase Quantum and Costs for FY 2009-10

Particulars	APR Order		Actuals		Allowed after truing up	
	MU	Rs. Crore	MU	Rs. Crore	MU	Rs. Crore
TPC-G	2932	1121.23	2932	1121.17	2932	1121.17
RPS	87	32.68	87	32.68	87	32.68
Imbalance Pool (Additional PP/sale)	(183)	(92.56)	(175)	(87.47)	(175)	(87.47)
Short term external power	120	56.42	120	56.42	120	56.42
Outside license area sale & Banking return	(28)	(20.76)	(28)	(20.76)	(28)	(20.76)
Standby charges		60.37		61.85		60.37
Transmission charges		51.36		49.87		49.87

Particulars	APR Order		Actuals		Allowed after truing up	
	MU	Rs. Crore	MU	Rs. Crore	MU	Rs. Crore
Energy for Lavasa/Banking			(7)	(5.10)	(7)	(5.10)
Infirm power				6.43		6.43
Wheeling charges R-Infra		12.88		12.89		12.89
Total	2928	1222.62	2928	1227.98	2928	1226.50

4.3 DISTRIBUTION LOSSES AND ENERGY INPUT REQUIREMENT

The Commission in its Order dated June 15, 2009 in Case No. 113 of 2008 had approved distribution loss of 0.66% as extracted below:

“The Commission has considered the distribution loss of 0.66% for computing the energy input requirement of TPC-D for FY 2009-10, which is slightly higher than the actual losses reported by TPC-D for FY 2008-09. In case the actual distribution losses for FY 2009-10 are higher than the approved level of 0.66%, then the same will be considered at the time of truing up, subject to prudence check, and will not necessarily be considered as a controllable loss, since TPC-D has to meet its Universal Service Obligations, by giving supply to all consumers on request in its entire licence area.”

In the APR Order, the Commission had considered the distribution losses for FY 2009-10, based on provisional Interim Balancing & Settlement Mechanism (IBSM) statement submitted by TPC-D.

TPC-D submitted that the actual distribution loss on sales to direct consumers was 0.59% while the distribution loss to changeover consumers is not relevant, as these consumers are billed at normative loss. TPC-D submitted total energy requirement at G < > T interface for FY 2009-10 of 3140 MU, which included the energy requirement of 2794 MU at T < > D interface, sales to outside license area of 36 MU (including Open Access consumers to the extent of 7.11 MU) and sales to imbalance pool of 175 MU.

TPC-D submitted that the reconciliation between TPC-D and RInfra for sales of changeover consumers continues for some time even after the relevant month has ended. Hence, the sales as shown in the books of TPC-D may differ from that used for IBSM settlement in SLDC. The sales to changeover consumers submitted by TPC-D are as used for IBSM settlements.

The Energy Balance submitted by TPC-D based on actual data is given in the table below:

Table: Energy Balance for FY 2009-10

Particulars	Unit	APR Order	Actuals
TPC-D sales (Retail) with 15 days adjustments	MU	2,709	2,559
Distribution losses	%	0.40%	0.59%
Energy Requirement for TPC consumers at T < > D interface	MU	2,720	2,575
Sale to changeover consumer-as per IBSM	MU	-	219
Wheeling loss R-Infra D Network (incl in above sales)		-	-
Energy Requirement for Changeover Consumer	MU	-	219
Total energy Requirement at T < > D	MU	2,720	2,794
Transmission loss	%	4.70%	4.62%
Total energy requirement at G < > T	MU	2,854	2,929
Sale to Imbalance Pool	MU	-	175
Sale to Outside License Area and Other Adjustment	MU	-	36
Total Energy Requirement at G < > T Interface	MU	2,854	3,140

The Commission is of the view that the Energy Balance as submitted by TPC-D for FY 2009-10 is not in line with Maharashtra State Load Despatch Centre's (MSLDC) IBSM statement for FY 2009-10. TPC-D submitted that energy transaction of its consumer Hotel Leela, which is purchasing wind energy under Open Access transaction, and Lavasa, which is an Open Access customer of TPC-D, are shown in TPC-D's drawals in the IBSM statement. However, for the purpose of the APR Petition, such sale and corresponding Power Purchase has been removed.

The Commission observes that the sales of 219 MU to changeover consumers submitted by TPC-D in the Energy Balance, which is as per IBSM statement, is different from the sales considered by TPC-D for computation of Revenue and Wheeling Charges, viz., 201 MU. In reply to the Commission's query, TPC-D submitted that the changeover quantum of 219 MU considered for IBSM settlement is towards such quantum transferred from RInfra to TPC-D in FY 2009-10.

This is based on the monthly meter readings, as there are no identified T < > D feeders available to give the direct reading of changeover consumers as the changeover takes place at distribution end. However, Revenue is purely based on the sales from bills raised in the year and the two values, i.e., MU from IBSM and billed units will always be different.

In view of the above, the Commission has accepted TPC-D's submission of energy balance stating the energy requirement of 3140 MU at G < > T Interface considering the actual sales of 2559 MU in FY 2009-10 and the actual distribution loss of 0.59%, which is within the distribution loss level of 0.66% considered by the Commission in its Order dated June 15, 2009.

4.4 O&M EXPENSES

Operation and Maintenance (O&M) expenditure comprises of employee related expenditure, Administrative and General (A&G) expenditure, and Repair and Maintenance (R&M) expenditure. TPC-D's submissions on each of these expenditure heads, and the Commission's ruling on the truing up of the O&M expenditure heads are detailed below.

TPC-D submitted that the Commission in the APR Order for FY 2009-10 had approved O&M expenses based on the norms given in the following table:

Table: Approved O&M Norms for Tata Power-D - FY 2009-10

Particulars	Norm for FY 2009-10 (Ps/kWh)
Employee Expenses	8.00
A&G Expenses	7.00
R&M Expenses	5.00

TPC-D further submitted the comparison of actual expenditure and the normative expenditure as given in the table below:

Table: Normative O&M Expenses - FY 2009-10

Particulars	Norms for FY 2009-10 (Ps/kWh)	Applicable sales (MU)	Normative O&M for FY 2009-10 (Rs Crore)	Actual O&M for FY 2009-10 (Rs Crore)
Employee Expenses	8.00	2,781*	22.42	20.36
A&G Expenses	7.00	2,781*	19.57	19.11

Particulars	Norms for FY 2009-10 (Ps/kWh)	Applicable sales (MU)	Normative O&M for FY 2009-10 (Rs Crore)	Actual O&M for FY 2009-10 (Rs Crore)
R&M Expenses	5.00	2,559*	12.80	10.71
Total			54.79	50.18

* TPC-D sales with 15 days adjustments

TPC-D clarified that employee expenses and A&G expenses have been computed considering total sales including changeover sales, while for computing R&M expenses, only direct sales have been considered.

TPC-D submitted that subsequent to the Hon'ble Supreme Court's Order in May 2008 and the Commission's Order dated June 15, 2009, it was imperative for TPC-D to gear up for meeting the operational requirements of servicing additional new consumers. TPC-D added that the Commission's Order dated October 15, 2009, which had paved the way for consumers to changeover from RInfra to TPC-D, has significantly increased TPC-D's consumer base, requiring significantly higher additional expenditure compared to the similar expenditure in FY 2008-09.

4.4.1 Employee Expenses

Considering the concern of TPC-D regarding additional employee expenses due to increase in consumer base, the Commission had approved employee expenses linked to sales in the last APR Order. The approved employee cost per unit of sale for FY 2008-09 was 6.5 Paise/kWh and the Commission observes that the consumer mix of TPC-D was changing; hence, the Commission had considered an escalation factor of 25% on FY 2008-09 and approved the norm of 8 paise/kWh. The Commission had applied the norm of 8 Paise/kWh to approved sales and projected the employee expenses as Rs. 22.01 Crore for FY 2009-10.

TPC-D has submitted actual employee expenses of Rs. 20.36 Crore for FY 2009-10 as against Rs. 22.01 Crore approved by the Commission in the APR Order dated September 12, 2010.

The Commission asked TPC-D to submit the basis and assumptions for capitalising the employee expenses for FY 2009-10, in response to the same, TPC-D submitted that capitalisation of employee expense is computed based on the following::

- i. A time sheet sent by the concerned department to accounts for the time spent on various projects.
- ii. Calculation for per hour job done is based on the following:

$$\frac{\text{cost to company of the concerned employee}}{261 \text{ days} \times 8 \text{ hrs/day}} \times \text{no. of hours worked on the job}$$

TPC-D added that this amount is booked every month by transferring to the respective projects.

The Commission has considered the actual employee expenses submitted by TPC-D for truing up as it is within the norms approved by the Commission in the APR Order. The summary of employee expenses approved in the APR Order, actual employee expenses claimed by TPC-D, and employee expenses approved after truing up for FY 2009-10 has been shown in the following table:

Table: Employee Expenses

(Rs Crore)

Particulars	APR Order	Normative	Actuals	Allowed after truing up
Employee Expense	22.01	22.42	20.36	20.36

The Commission has considered the difference between the normative employee expenses and actual employee expenses under the sharing of gains and losses due to controllable factors, since employee expense is a controllable expense.

4.4.2 Administrative and General Expenditure

Considering the concern of TPC-D regarding higher A&G expenses due to increase in consumer base, the Commission had approved A&G expenses linked to sales in the last APR Order. The Commission had applied the norm of 7 Paise/kWh to approved sales and projected the A&G expenses as Rs. 19.00 Crore for FY 2009-10.

TPC-D has submitted actual A&G expenses of Rs. 19.11 Crore for FY 2009-10 as against Rs. 19.00 Crore approved by the Commission in the APR Order dated September 12, 2010.

As regards A&G expenses, the Commission asked TPC-D to submit the reasons for not considering any capitalisation of A&G expenses during FY 2009-10. In reply to the above query, TPC-D submitted that the A&G expenses that were related to the Capex schemes (consultant's

fees, travelling, etc) were directly debited to the concerned Capex scheme. TPC-D further submitted that unlike employee costs, they were not routed through the P&L, i.e., debited and then credited by capitalizing. Hence, capitalisation does not appear separately.

Further, the Commission asked TPC-D to submit the breakup of the cost included under the head “Others” under A&G expenses. In reply to the Commission’s query, TPC-D submitted the details as follows:

Table: “Other” Admin and General Expenses

Head of Expenses	Gen	Trans	Dist	Total
Tata Brand Equity	9.61	2.96	2.14	14.72
Community Welfare Expenses	6.55	0.13	0.07	6.75
Gifts	2.95	0.91	0.66	4.52
Other Fees	1.48	0.64	0.77	2.94
Provision -Doubtful Debts & Advances (Net)	1.68	0.73	-	2.75
TBEM Expenses	1.50	0.48	0.33	2.32
Transport Charges- Service Tax Not Payable	0.73	0.18	0.05	0.95
DSM Expenses	-	-	0.86	0.86
Scrapping of Materials	1.21	-	0.02	1.22
Ash Disposal expenses	0.61	-	-	0.61
Recruitment Expens	0.31	-	0.07	0.38
Entertainment Expenses	0.22	-	0.11	0.33
QMS Expenses :ISO 9000	0.24	-	0.00	0.25
Directors Fees	0.15	-	0.03	0.19
Fees for Conferences	0.20	-	0.05	0.25
Canteen Expenses -Guest	0.31	-	0.00	0.32
Misc Expenses	0.30	-	0.02	0.32
Grand Total	28.06	6.03	5.17	39.67

The Commission observes that TPC has spent an amount of Rs 6.75 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 programme/ rallies, training volunteers, afforestation, environment education, etc.

Further, in reply to the Commission's query, TPC clarified that commemorative gold coins were distributed to employees on the occasion of commissioning of Unit-8 and the expense on the same has been claimed under “Gifts” amounting to Rs. 4.52 Crore in A&G expenses.

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-D is free to incur such expenses from the returns earned out of the business. TPC-D's share against Community Welfare Expenses and Gifts is Rs. 0.07 Crore and Rs. 0.66 Crore, respectively, which has been disallowed from the A&G expenses, under the truing up exercise and for the purpose of sharing of gain and losses.

The Commission observes that TPC-D has also considered Rs 0.11 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:

“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 0.10 Crore towards donations as claimed by TPC-D.”

Hence, on similar lines, the Commission has not considered the expense of Rs 0.11 Crore towards Contributions/Donations as claimed by TPC-D, under the truing up exercise and for the purpose of sharing of gain and losses.

The Commission has accepted actual A&G expenses, except expenses towards donations, Community Welfare Expenses and Gifts, as submitted by TPC-D. 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)**

Particulars	APR Order	Normative	Actuals	Allowed after truing up
A&G expenses	19.00	19.57	19.11	18.27

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

4.4.3 Repairs and Maintenance Expenditure

Considering the concern of TPC-D regarding higher R&M expenses due to increase in consumer base, the Commission had approved R&M expenses linked to sales. The Commission had applied the norm of 5 Paise/kWh on the approved sales of FY 2009-10 and projected the R&M expenses as Rs. 8.07 Crore for FY 2009-10. TPC-D has submitted actual R&M expenses of Rs. 10.71 Crore for FY 2009-10 as against Rs. 8.07 Crore approved by the Commission in the APR Order dated September 12, 2010.

By applying the norm of 5 paise/kWh to the actual sales quantum in FY 2009-10, i.e., 2559 MU, the normative R&M expenses approved by the Commission for FY 2009-10 works out to Rs. 12.80 Crore. Hence, the Commission has considered the actual R&M expenses submitted by TPC-D for truing up as it is within the norms approved by the Commission in the APR Order. The summary of R&M expenses approved in the APR Order, actual R&M expenses and R&M expenses approved after truing up for FY 2009-10 is shown in the following table:

Table: R&M expenses

(Rs. Crore)

Particulars	APR Order	Normative	Actuals	Allowed after truing up
R&M Expenses	8.07	12.80	10.71	10.71

The Commission has considered the difference between the Normative 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.

4.5 CAPITAL EXPENDITURE AND CAPITALISATION

TPC-D submitted that during FY 2009-10, it had incurred capital expenditure and capitalisation of Rs. 123.56 Crore and Rs. 107.82 Crore, respectively. TPC-D submitted the capitalisation break-up for FY 2009-10 as shown in the following table:

Table: Capitalisation Break-up for FY 2009-10

(Rs. Crore)

Particulars	Actual Capitalisation
Non-DPR Schemes	
Schemes initiated up to FY 09	7
Schemes initiated in FY 10	3

Particulars	Actual Capitalisation
Sub total	10
DPR Cases	
Schemes initiated up to FY 09	21
Merged DPR of FY 2010	2
Power Supply to new Consumers	
Schemes initiated in FY 09	33
Schemes initiated in FY 10	40
Sub total	73
HO & SS Allocation Including Contingency Provision	1
Total Distribution	108

The Commission has examined the capital expenditure and actual capitalisation claimed by TPC-D as against the various capex schemes approved by the Commission. As against approved capitalisation of Rs. 84.20 Crore considered under the APR Order, actual capitalisation by TPC-D during FY 2009-10 amounted to Rs. 107.82 Crore as per TPC-D's revised submission, out of which, capitalisation of approved DPR schemes amounts to Rs. 96.60 Crore and the balance pertains to Non-DPR schemes.

The Commission is of the view that the total capitalisation submitted by TPC-D in Form 5.4 is in line with the Commission's records. However, segregation of total capitalisation into DPR and Non-DPR scheme did not tally with Form 5.4, though it tallies with the figures mentioned in text of the Petition.

TPC-D submitted that the difference in the data submitted in the format was primarily because of the following reasons:

- Subsequent to Hon'ble Supreme Court's Judgment on Interpretation of TPC-D's Distribution License in July 2008, TPC-D had started developing network for providing power supply to consumers and capex was also incurred to give power supply to consumers who had applied for the same. This capital expenditure is reflected under "Power supply to new consumers" in Form 5.4D and majority of them got reported under Non-DPR schemes. TPC-D further submitted that this expenditure was in line with the 3-year capital expenditure roll out plan for FY 2008-09 to FY 2010-11 submitted to the Commission for approval in December 2008. Further, TPC-D, on the Commission's

directions, submitted scheme-wise DPRs after applying suitable methodology to classify various individual schemes mentioned in the Roll out Plan into combined DPRs.

- TPC-D further submitted that to meet the consumer's power supply requirement as per the MERC Standards of Performance Regulations, TPC-D had initiated the necessary capital expenditure, which was recorded in its internal reporting system (SAP), against bulk amounts for "power supply to new consumers". TPC-D further submitted that even subsequent to the approvals received from the Commission, these expenses continued to get recorded under the bulk amounts for providing power supply to new consumers.
- TPC-D submitted that the difference in the break-up of DPR and Non DPR schemes is mainly because of the schemes related to power supply to new consumers and is the same as submitted by TPC-D in the Petition.
- TPC-D also submitted that the capitalisation shown under "Miscellaneous Procurement Budget" indicates capitalisation of auxiliary services related to procurement of various equipments required for supplying power supply to new consumers and the same had to be considered under the DPR scheme capitalisation.

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; hence there may not be any need for further break-up into regulated and non-regulated business. Not being satisfied with TPC-D'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's, 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 observes 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-D 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-D 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-D 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-D 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 License 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 phones, 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 License 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. 0.45 Crore as against Rs. 1.28 Crore submitted by TPC-D. These are included under non-DPR schemes for the purpose of further analysis.

The Commission has not considered the capitalisation of those DPR schemes, which have not received the in-principle approval of the Commission. 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 under.

*“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 capitalisation of Non-DPR Schemes is 10.74% of the capitalisation of DPR Schemes allowed under truing-up of FY 2009-10, which is within the 20% limit prescribed by the Commission, and is hence approved. Accordingly, for truing up for FY 2009-10, the Commission has considered the capitalisation of Rs. 106.98 Crore, as shown in the Table below:

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

Particulars	APR Order	Actuals	Allowed after truing up
Capitalisation	84.20	107.82	106.98

4.6 DEPRECIATION

The Commission, in its APR Order dated September 12, 2010, had permitted depreciation to the extent of Rs 17.30 Crore for FY 2009-10. The depreciation rates were considered as specified under the MERC (Terms & Conditions of Tariff), 2005. TPC-D, in its APR Petition submitted that the actual depreciation expenditure incurred in FY 2009-10 was Rs. 18.33 Crore.

Table: Depreciation Expenses (Rs Crore)

Particulars	APR Order	Actuals
Opening GFA	434.08	472.44
Depreciation	17.30	18.33
% Depreciation	3.99%	3.88%

TPC-D, in its additional submissions, confirmed that depreciation has not been claimed beyond 90% of the asset value in line with the MERC Tariff Regulations.

In reply to the query raised by the Commission regarding the addition of amount shown under retirement of asset in the cost of assets, TPC-D clarified that the figures under 'retirement' also included the transfer of assets (in and out) of the Business Area. TPC-D further submitted that the positive amounts shown were the transfer of assets to the licensed area which needed to be added to arrive at the correct closing gross block.

For the purpose of truing up, the Commission has approved depreciation on the Opening GFA for FY 2009-10 as well as on the assets added during the year, subject to the actual capitalisation approved for FY 2009-10 and the date of capitalisation of such assets. The Commission has also considered the 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 5.21 of this Order (under the heading "Recoveries pertaining to the past period"). 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 3.56 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 437.64 Crore as against Rs 434.08 Crore approved by the Commission in its previous APR Order.

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

Table: Depreciation (Rs Crore)

Particulars	APR Order	Actuals	Allowed after truing up
Depreciation	* 17.30	18.33	17.02
Opening GFA	434.08	472.44	**437.64
Asset Addition		107.82	106.98
Asset Retirement		2.92	2.92
Closing GFA	524.68	583.18	547.54

**Depreciation allowed on Opening GFA approved in previous APR Order*

***Considering the impact of re-instatement of de-capitalised assets of FY 2008-09*

4.7 INTEREST EXPENSES

The Commission, in its APR Order dated September 12, 2010 in Case No. 98 of 2009 had approved interest expenses of Rs. 27.81 Crore for FY 2009-10. The interest costs as submitted by TPC-D have been categorised under the following four heads:

- Interest on Debt
- Other Finance Charges
- Interest on Working Capital
- Interest on Security Deposit

4.7.1 INTEREST ON DEBT

TPC-D submitted that in addition to the normative loan for the previous years (70% of Capex of FY 2003-04 and 70% of capitalisation of FY 2004-05 and FY 2005-06), TPC had availed loans from IDFC-Loan 1 (Rs. 450 Crore), IDBI- Loan 1 (Rs. 400 Crore), IDBI- Loan 2 (Rs. 300 Crore) for funding of capital expenditure of FY 2006-07 to FY 2009-10. TPC-D further submitted that the details of the IDFC-1 and IDBI-1 loans had already been submitted in the previous Petitions.

TPC-D submitted that the Commission in its Tariff Order dated September 12, 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-D 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
(Rs. Crore)***

Year	Normative	IDBI 1	IDFC 1	Total
FY 2006-07	-	-	25.92	25.92
FY 2007-08	19.37	-	7.22	26.59
FY 2008-09	27.71	1.19	-	28.90
Total	47.08	1.19	33.14	81.41

TPC-D 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-D, 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 3 rd , 4 th , 5 th and 6 th year followed by 60% repayment in the 7 th 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-D 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

(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 for Capitalisation = 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-D, 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)

Distribution					
Year	Normative	IDBI-1	IDFC-1	IDBI-2	Total (Rs. Crore)
FY 2006-07	-	-	25.92	-	25.92
FY 2007-08	19.37	-	7.22	-	26.59
FY 2008-09	27.71	1.19	-	-	28.90
FY 2009-10	-	-	-	75.24	75.24
Total	47.08	1.19	33.14	75.24	156.65

TPC-D submitted that considering the above, the interest charges for FY 2009-10 worked out to Rs. 16.58 Crore as compared to TPC-D's estimate of Rs. 17.76 Crore and Rs. 10.80 Crore approved by the Commission in FY 2009-10 APR Order dated September 12, 2010.

TPC-D submitted that the difference in the actual interest expense and the approved interest expense 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-D 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.

Accordingly, for computation of interest on loan, the Commission has considered the closing balance of loan as approved for FY 2008-09 as the opening balance of loan for FY 2009-10, in addition to loan availed from IDBI 2 for funding approved capitalisation for FY 2009-10, which works out to be Rs. 60.40 Crore as against TPC-D's submission of Rs 75.25 Crore. The loan amounts considered for computing interest expenses for FY 2009-10 are as shown in the table below:

Table: Loan approved by the Commission after Capitalisation for FY 2009-10 (Rs. Crore)

Year	Distribution				Total
	Normative	IDBI Loan-1	IDFC Loan-1	IDBI Loan-2	
FY 2003-04	18.03				18.03
FY 2004-05	17.33				17.33
FY 2005-06	25.87				25.87
FY 2006-07			25.74		25.74

Year	Distribution				Total
	Normative	IDBI Loan-1	IDFC Loan-1	IDBI Loan-2	
FY 2007-08	19.37		7.22		26.59
FY 2008-09		0.31			0.31
FY 2009-10				60.38	60.38
Total	80.6	0.31	32.96	60.38	174.25

For computation of interest on loan on IDBI 2, TPC has submitted interest rate as 12.47%. However, the Commission in its Order dated September 12, 2011 in Case No. 98 of 2009 has already determined 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 loan on IDFC, TPC has submitted interest rate as 11.69%. However, the Commission has already determined 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 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 on normative loan as 8.90% for FY 2009-10 in the APR Order and the same has been considered by the Commission for computation of interest.

Accordingly the Commission has computed the interest expenses for FY 2009-10 and approved interest on loan as Rs. 12.18 Crore as against Rs 16.58 Crore submitted by TPC-D. The summary of loan and interest expenses approved by the Commission for FY 2009-10 is given in the following table:

Table: Interest Expense (Rs Crore)

Particulars	APR Order	Actuals	Allowed after truing up
Opening Balance of Loan	89.18	117.97	89.18
Loan Addition	43.06	75.25	60.38
Loan Repayment	(9.57)	(9.49)	(7.92)
Cl. Balance of Loan	122.67	183.73	141.65
Interest Expense	10.80	16.58	12.18

4.7.2 OTHER FINANCE CHARGES

TPC-D submitted that the finance charges including Commission and Brokerage on long-term loans for FY 2009-10 were Rs. 1.41 Crore as against Rs. 1.36 Crore approved by the Commission in the APR Order dated September 12, 2010.

TPC-D, in its APR Petition, has considered the extra expenditure incurred under this head as an efficiency loss and shared efficiency loss under sharing of gain and losses, discussed later in this section.

The Commission has considered the difference between the approved charges and actual charges under the sharing of gains and losses due to controllable factors, since Other Finance Charges is a controllable expense.

4.7.3 INTEREST ON WORKING CAPITAL AND CONSUMER'S SECURITY DEPOSIT

TPC-D submitted that the normative interest on working capital has been computed based on the elements specified in THE MERC Tariff Regulations, 2005. TPC-D submitted that for the purpose of estimating the interest on working capital for FY 2009-10, interest rate of 13.0% had been considered based on the Short Term SBI PLR prevailing at the time of filing of the Tariff Petition for FY 2009-10 and as approved by the Commission in the APR Order for FY 2009-10 and as specified in THE MERC Tariff Regulations. TPC-D thus, submitted that total interest on working capital requirement for FY 2009-10 was Rs.21.08 Crore as against Rs. 13.94 Crore approved by the Commission in APR Order.

TPC-D further submitted that in its previous APR Petition for FY 2009-10, while determining the working capital requirement, it had reduced only renewable sources and intra-State transmission charges and not reduced the cost of Power Purchase from TPC-G and other sources. However, the Commission in the APR Order for FY 2009-10 dated September 12, 2010 had deducted the Power Purchase cost for Tata Power-G and other sources while determining the working capital requirement. In this regard, TPC-D had filed an Appeal before the Hon'ble ATE against the stand taken by the Commission and the ATE Judgment on the same is pending.

TPC-D further quoted an extract of the ATE Judgment dated August 28, 2009 in Appeal No. 117 of 2008, wherein the Hon'ble ATE has dealt with the issue of 'wrongful deduction of one

month equivalent cost of Power Purchase in computation of interest on working capital for a distribution licensee', as under:

“23.The Commission in its order dated April 21, 2008 in the matter of Reliance Energy Ltd. (Generating Business) has stated that it has not considered the receivables from the sale of electricity while computing the interest on Working Capital. This implies that the distribution licensee will not have any credit facility and it will have to pay the bill for Power Purchase as soon as it is raised by the generating company. However, Regulation 76.8.1(e) assumes that the distribution licensee has availed credit facility of one month equivalent to cost of Power Purchased. It has also been contended by the appellant that the Commission has considered that the generation company will not extend credit facility to the distribution licensee. This has been inferred by the appellant because, in computation of Working Capital requirement for the generator, two months receivables have not been considered. If it be so, it is only logical that the computation of Working Capital requirement for the distribution licensee should not assume one month credit facility from the generating company. In view of this we allow the appeal in respect of issue (b) and direct the Commission to compute the Working Capital by adding cost of one month's Power Purchase as per our decision if this same approach has not been already followed by it.”

TPC-D submitted that TPC-G had claimed working capital interest excluding two month of receivables from sale of power to TPC-D. Hence, it was appropriate to consider the reduced payables for the estimation of working capital requirement for TPC-D. TPC-D, in its Petition, requested the Commission to approve interest on working capital at Rs. 21.08 Crore for FY 2009-10.

In view of the ATE Judgment in Appeal No, 117 of 2008, the Commission has considered (not deducted) one month equivalent Power Purchase cost from TPC-G for computation of working capital for FY 2009-10, and thus, normative interest on working capital amounts to Rs. 20.78 Crore.

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 trueing 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 SBI PLR at the time when TPC-D 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. 20.78 Crore.

TPC-D has submitted interest on security deposit as Rs. 2.13 Crore for FY 2009-10; the Commission has considered the same under the truing up exercise.

Table: Interest on Working Capital

(Rs. Crore)

Particulars	APR Order	TPC-D's Submission	Allowed after truing up
Interest on working capital and Consumer Security Deposit	15.65	23.21	22.91

4.8 RETURN ON EQUITY (ROE)

TPC-D submitted that based on the capitalised expenditure; the Debt: Equity norm of 70:30 and after considering RoE of 16% in accordance with Regulation 63.1 of THE MERC Tariff Regulations, the RoE works out to Rs. 26.97 Crore for FY 2009-10 as against the approved amount of Rs. 23.34 Crore.

The Commission, in its Order dated September 12, 2010 in Case No. 98 of 2009 had directed TPC-D to submit the impact of replacement schemes been implemented by Utilities, as extracted below:

“Further, it should be noted that TPC-D, 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-D 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 the same can be taken into consideration by the Commission in the next Order.”

TPC-D in its Petition has submitted that it is facing difficulty in retrieving such data and therefore, has not complied with the directive. However, very recently, TPC-D has submitted the data on assets retired from FY 2005-06 to FY 2010-11, however, the year-wise date of retirement of assets have not been submitted, which does not provide sufficient data to the Commission for doing the relevant calculations of related impact of RoE, etc.

Moreover, in this regard, the Commission observes that TPC-D has submitted data on ‘retirement of assets’ in Depreciation computation/formats submitted along with its Petition for FY 2009-10 and FY 2010-11, as given in the below table:

Table: Details of asset retirement

(Rs. Crore)

Sr. No.	Particulars	Retirement of assets during FY 2009-10	Retirement of assets during FY 2010-11
1	Land Freehold	0.31	-
2	Buildings	-	0.02
3	Railway Sidings, Crossings	0.04	-
4	Plant and Machinery	3.29	-
5	Vehicles	0.01	0.50
6	Furniture and Fixtures	0.13	0.05
	Total	3.79	0.57

In response to the Commission’s query, TPC-D submitted that these assets are either retired from active use or they have been transferred from Mumbai LA. Similar details have been submitted by TPC-D for previous years as well in the respective Tariff Petitions. In such a case, proportionate reduction should be carried out in Equity (to the extent of 30%) as these assets are no longer in use and do not appear in the books of the Mumbai LA.

Since, the data is easily available and has been submitted by TPC-D in the previous Petitions as well as in the present Petition, the Commission is unable to appreciate the difficulty expressed by TPC-D in submitting the data related to the impact of year-wise replacement schemes for TPC-D. However, in the absence of specific confirmation by TPC-D in this regard, the Commission has not reduced the equity portion pertaining to these assets at this stage. The Commission directs TPC-D to comply with the Commission's directions in this regard, and also to confirm whether the details of de-capitalisation appearing in Depreciation computation/formats can be considered for this purpose. TPC-D should also submit additional impact on equity or loans for the respective years on this account, if any. Such details have to be submitted by TPC-D as part of its Tariff/ARR filings of the next year.

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

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

Particulars	APR Order	Actuals	Allowed after truing up
Regulatory Equity at the beginning of the year	136.64	152.46	140.20*
Equity portion of expenditure on Capitalised Assets	18.45	32.25	25.88
Regulatory Equity at the end of the year	155.09	184.71	166.08
Return Computation			
Return on Regulatory Equity at the beginning of the year-16% for 1 year	21.86	24.39	22.436
Return on Equity portion of capital expenditure on Capitalised Assets- 16% for ½ Year.	1.48	2.58	2.07
Grand total	23.34	26.97	24.50

*Considering the impact of re-instatement of de-capitalised assets of FY 2008-09

4.9 PROVISION FOR BAD DEBTS

TPC-D submitted that for FY 2009-10, the actual bad debts written off was Rs. 5.64 crore, while the write-back of provision for bad debts amounted to Rs. 0.85 crore, thus, resulting in a net write off of bad debts of Rs. 4.79 Crore as against Rs. 1.83 Crore approved by the Commission in its APR Order dated September 12, 2010.

For FY 2009-10, as per TPC-D's submissions, the provisioning amounts to 3.48% of receivables. For the purposes of truing up for FY 2009-10, the Commission has considered actual provisioning for bad debts as 1.5% of the receivables, in accordance with the approach adopted in earlier Tariff Orders, which works out to Rs. 2.08 Crore as against Rs. 1.83 Crore allowed in previous APR Order.

4.10 CONTRIBUTION TO CONTINGENCY RESERVES

TPC-D submitted that the contribution to contingency reserve has been computed at 0.5% of GFA. TPC-D further submitted that the statutory appropriation for FY 2009-10 accordingly worked out to Rs. 2.36 Crore as compared to Rs. 1.09 Crore approved in the APR Order for FY 2009-10. The submission of TPC-D regarding computation of contingency reserves for FY 2009-10 is given below:

Table: Contingency Reserve (Rs. Crore)

Particulars	Actuals
Opening GFA of FY 2009-10	472.44
Maximum permissible (5% of Opening GFA)	23.62
Amount of Contingency Reserve up to March 31, 2009	15
Created in FY 2009-10	2.36
Amount of Contingency Reserve on March 31, 2010	17

In replies to the queries raised by the Commission, TPC-D submitted the documentary evidence for investment of contingency reserve in approved securities. In the last APR Order, the Commission considered contribution to contingency reserve to the extent of 0.25% of opening GFA for FY 2009-10, in accordance with the MERC Tariff Regulations, 2005. Accordingly, the Commission has allowed contribution to contingency reserve for FY 2009-10 at Rs 1.09 Crore which is 0.25% of opening GFA, i.e., Rs. 437.64 Crore under the truing up exercise, in accordance with the MERC Tariff Regulations.

4.11 EXPENSES TOWARDS DEMAND SIDE MANAGEMENT

TPC-D submitted that it has incurred an expense of Rs. 0.90 Crore on DSM activities as against approval of Rs. 1.08 Crore by the Commission in the previous APR Order. TPC-D in its Petition has submitted details of activities carried out by TPC-D, including the following:

- Load Research;
- Energy Audit Programme for Industrial and Commercial Commercial consumers;

- Energy Efficient T5 lighting;
- Training, Capacity Building and knowledge sharing programmes.

The Commission has accepted DSM expenses of Rs. 0.90 Crore for FY 2009-10 as submitted by TPC-D in the Petition.

4.12 INCOME TAX

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

“76.2 Income-tax

76.2.1 Income-tax on the income of the Distribution Licensee shall be allowed for inclusion in the aggregate revenue requirement.

76.2.2 The Distribution Licensee shall include an estimate of his income-tax liability 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 Distribution 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.

76.2.3 The benefits of any income-tax holiday, credit for unabsorbed losses or unabsorbed depreciation on the distribution system or any part thereof shall be taken into account in calculation of the income-tax liability of the Distribution Licensee.”

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 ory 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. 5.28 Crore which is being sanctioned against the claim of Rs. 29 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.

4.13 NON-TARIFF INCOME

TPC-D submitted that the actual non-tariff income for FY 2009-10 was Rs. 11.14 Crore, which is lower than the non-tariff income of Rs. 14.22 Crore approved by the Commission. TPC-D submitted that the Non Tariff Income comprised of the following elements:

- Recurring Items Rs. 5 Crore
- Non-Recurring Items Rs. 6 Crore

In reply to the query by the Commission regarding the VAT Refund, TPC-D submitted that the VAT refunds are accrued on the basis of monthly VAT Refund filed and that there is no assessment order available with TPC-D. TPC-D submitted the monthly acknowledgments as sample to the Commission.

Further replying to the query of the Commission regarding interest on income tax refund, TPC-D submitted that these refunds were related to items of retirement benefits like gratuity, leave encashment, etc. which was disallowed by the IT authorities but were challenged and favourable judgment was thus, obtained. TPC-D further submitted that these were accounted in the head office and were allocated to Generation, Transmission, Distribution Business areas.

The Commission observes 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-D under the truing up exercise, as shown in the table below:

Table: Non-Tariff Income**(Rs. Crore)**

Particulars	APR Order	Actuals	Allowed after truing up
Non-Tariff Income	14.22	11.14	12.85

4.14 ALLOCATION OF LOAD CONTROL CENTRE (LCC) COSTS

TPC-D submitted that as per the methodology approved by the Commission, TPC-D's share of LCC expense for FY 2009-10 works out to Rs.1.27 Crore, which is in line with the amount of LCC expense approved by the Commission in its APR Order dated September 12, 2010.

Considering that the LCC costs are largely O&M nature, the Commission has considered the entire cost as part of O&M expenses. For truing up purposes, the Commission has accepted the allocation of the LCC cost for its Generation, Transmission and Distribution businesses as submitted by TPC.

Accordingly, in the current truing up exercise, the Commission has considered TPC-D's share of LCC cost for FY 2009-10 as Rs. 1.27 Crore.

4.15 BRAND EQUITY EXPENSE

TPC-D submitted that the actual brand equity expense to be borne by TPC-D for FY 2009-10 is Rs. 2.14 Crore as against Rs. 1.78 Crore approved by the Commission in its APR Order dated September 12, 2010. TPC-D, in its Petition, has submitted the details of computation of Brand Equity expense and its allocation to TPC-D.

The Commission in Case No. 98 of 2009 in Order dated September 12, 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 for FY 2009-10

works out to be 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 last 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		FY 2008-09	FY 2009-10
Revenue from Mumbai Licenced 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: Delay Payment Charges pertaining to Mumbai LA Area	d	1.3	1.54
Total Revenue to be considered for Mumbai Licenced 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-D 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-D in Brand Equity expense for FY 2009-10 is Rs. 1.99 Crore.

4.16 REVENUE FROM SALE OF ELECTRICITY FOR FY 2009-10

TPC-D submitted that the revenue from retail consumers (sale of power to consumers in licensed area and changeover consumers) for FY 2009-10 has been determined on the basis of the tariffs approved by the Commission including the FAC billed, as limited by the cap imposed by the Commission. The detailed break-up of revenue from the sale of electricity, as submitted by TPC-D, is given in the following table:

Table: Revenue from Sale of Power FY 2009-10 (Rs. Crore)

Sr. No.	Particulars	FY 2009-10
1	Revenue from demand charges	109.10
2	Revenue from Energy Charges	1,183.54
3	Revenue from FAC billed	103.36
4	Power factor Rebate/penalty	(63.99)
5	Revenue from TOD Charges	6.51
6	Outside License Area Sales	20.761
7	Unrecovered/(Excess) Recovered FAC	-
8	Other Adjustments	(15.82)
9	Wheeling Charges- Changeover Consumer	12.89
10	Total Revenue	1,356.34

TPC-D also submitted the details of category-wise revenue from sale of electricity for FY 2009-10, under Form F13 along with its APR Petition.

Accordingly, the total revenue from sale of electricity for FY 2009-10 has been considered as Rs. 1356 Crore by the Commission.

4.17 SHARING OF GAINS AND LOSSES IN FY 2009-10

TPC-D 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 consumers 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.”

TPC-D submitted the actual expenditure on account of various heads and the reasons for the variations of the same. TPC-D categorised the various expenditure into two heads, viz., (i) controllable and (ii) uncontrollable, as given in the table below:

Table: Categorisation of Heads of Expenses- FY 2009-10

Sr. No.	Particulars	Category	Remarks
1	Power Purchase Expenditure	Uncontrollable	Controllable to the extent they arise due to number or mix of consumers or in the quantities of electricity supplied to consumers within the area served by two or more such Distribution licensees.

Sr. No.	Particulars	Category	Remarks
2	O&M expenditure	Controllable	Uncontrollable to the extent they arise due to factors such as increase in statutory levies, taxes, changes due to the requirements of other bodies such as municipal authorities, MBPT, etc
3	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
4	Interest on Working Capital	Uncontrollable	Uncontrollable as worked out on normative basis as target availability
5	Other Finance Charges	Controllable	
6	Provision for bad and doubtful debts	Controllable	Uncontrollable to the extent of legal outcome or to the extent they arise when the consumer is not traceable and hence the recovery is not possible
7	Depreciation and AAD	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
8	Income tax	Uncontrollable	Controllable to the extent they arise due to controllable costs
9	Return on Equity	Uncontrollable	Computed based on principles outlined by the Commission in the Tariff Regulations.
10	Non-Tariff Income	Uncontrollable	Controllable to the extent of the recurring portion of such non-tariff income.

Based on above classification and the reasons given, TPC-D submitted that most of the items of expenditure for FY 2009-10 were uncontrollable except for certain heads of expenditure such as (i) O&M expenditure (ii) Other finance charges and (iii) Provision for doubtful debts.

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

4.17.1 Operation & Maintenance Expenses

TPC-D submitted that the actual O&M expenditure in FY 2009-10 was lower as compared to the normative O&M expenditure approved by the Commission. TPC-D also requested the

Commission to accept the treatment of gains arising from lower expenditure on O&M as submitted by it and as shown in the following table:

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

Sr. No.	Particulars	Amount
1	Normative O&M Expenditure for FY 2009-10	55
2	Actual O&M Expenditure for FY 2009-10	50
3	Uncontrollable Expenditure out of actual expenses	-
4	Actual Controllable Expenditure (2-3)	50
5	(Losses)/ Gains (1-4)	4
6	Amount passed on to the consumers (1/3 rd of gain/loss)(1/3 rd *5)	1
7	Amount to be passed on to reserve (1/3 rd *5)	1

The O&M expenses for FY 2009-10 as approved by the Commission after final true-up is Rs 50.60 Crore as against the normative expense of Rs. 55.89 Crore including allocation of LCC and the actual expenditure of Rs. 51.44 Crore as submitted by TPC-D. The disallowed expenses have not been considered for computing sharing of gains/losses, since expenses that have been specifically disallowed cannot be allowed even partly, under the sharing mechanism.

The Commission has considered O&M expenses for the purpose of calculation of Sharing of Gain and Losses, as tabulated below:

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

Particulars	Approved/ Normative	Actual	Approved after true-up	Efficiency Gain/ (Loss)	Efficiency Gain/(Loss) shared with consumers	Net Entitlement before passing on to reserves
	1	2	3	4=1-3	5=4* 1/3 rd	6=3+4* 2/3 rd
Operation & Maintenance Expenses	55.89	51.44	50.60	5.45	1.82	54.24
Employee Expenses	22.42	20.36	20.36	2.06	0.69	21.73
Administration & General Expenses	19.57	19.11	18.27	1.30	0.43	19.14

Particulars	Approved/ Normative	Actual	Approved after true-up	Efficiency Gain/ (Loss)	Efficiency Gain/(Loss) shared with consumers	Net Entitlement before passing on to reserves
Repair & Maintenance Expenses	12.80	10.71	10.71	2.08	0.69	12.10
Allocation of Load Control Centre Charges	1.10	1.27	1.27			1.27

4.17.2 Other Finance Charges and Provision for Doubtful Debts

The sharing of gains and losses on account of "Other Finance Charges" and "Provision for Doubtful Debts" as submitted by TPC-D are given below:

Table: Gains and Losses due to variation in Finance Charges & Bad Debts (Rs. Crore)

Sr. No.	Particulars	Amount
	Finance Charges	
1	Approved Finance Charges for FY 2009-10	1.36
2	Actual Finance Charges	1.41
3	Uncontrollable Finance Charges	-
4	Actual Controllable Finance Charges (2-3)	1.41
5	Losses/(Gains) (4-1)	0.05
6	Amount passed on to the consumers (1/3 rd of gain/loss)(1/3 rd *5)	0.02
7	Net entitlement (1+3+6)	1.38
	Bad Debts	
1	Approved Bad Debts for FY 2009-10	1.83
2	Actual Bad Debts	4.79
3	Losses/(Gains) (2-1)	2.96
4	Amount passed on to the consumer (1/3 rd of gain/loss)(1/3 rd *5)	0.991
5	Net Entitlement (1+4)	2.82
	Net Entitlement for Finance Charges & Bad Debts	4.19

The Commission has accepted TPC-D's submissions for sharing of gain and losses for Finance Charges, and the Commission has considered provisioning of bad debts for the purpose of calculation of Sharing of Gain and Losses, as tabulated below:

Table: Approved Gains and Losses due to variation in Finance Charges & Bad Debts

(Rs. Crore)

Sr No.	Particulars	Amount
1	Allowable provisioning for bad debts for FY 2009-10	2.08
2	Actual provision for bad debts for FY 2009-10	4.79
3	Efficiency Gain/(Loss) (1)-(2)	(2.71)
4	Amount passed on to the Consumer (1/3rd of Gain/(Loss)) (1/3rd *(3))	(0.90)
5	Amount passed on to Reserve (1/3rd of Gain/(Loss)) (1/3rd *(3))	(0.90)
6	Net Entitlement of TPC-D	2.98

4.17.3 Interest on Working Capital

As discussed in the earlier paragraphs, TPC-D claimed interest on working capital of Rs 21.08 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 20.78 Crore. As discussed in Section 3 of this Order, TPC-D has been unable to provide the cash flow statements for different businesses on account of common balance sheet and common cash balance. However, TPC-D has submitted the actual interest on working capital for FY 2009-10 as Rs. 19.88 Crore and the allocation of TPC-D is Rs. 9.94 Crore in 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 is considered as Rs 9.94 Crore. The details of actual interest paid by TPC-D 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. 20.78 Crore as normative interest, with actual working capital interest being Rs. 9.94 Crore, and has considered sharing of 1/3rd of the

efficiency gains with the consumers, while 2/3rd is to be retained by the Licensee, i.e., TPC-D, in accordance with the MERC Tariff Regulations.

4.18 NET REVENUE GAP FOR FY 2009-10

TPC-D submitted that based on the above submissions, the final Gap/Surplus for FY 2009-10 is shown in the following table:

Table: Revenue (Gap)/ Surplus submitted by TPC-D (Rs. Crore)

Sr. No.	Particulars	Approved	Normative Expenses claimed	Actual	Efficiency Gains/(Loss) from controllable factors shared with consumers	Net Entitlement after impact of Gains/(loss) from controllable factors
		(a)	(b)	(c)	(d)=[*]	(e)
I	Revenue					
1	Revenue from Sale of power	1,357.10		1,322.70		1,322.70
2	Income from surplus power			20.76		20.76
3	Wheeling Charges-changeover consumers			12.89		12.89
II	Expenditure					
1	Power Purchase Expense	1117.77		1124.13		1124.13
2	Standby charges	60.37		61.85		61.85
3	Transmission Charges & MSLDC Charges	51.36		49.87		49.87
4	O&M expenses	50.18	55.73	51.44	1.45	54.34
4.1	Employee Expenses	22.01	22.25	20.36		22.25
4.2	A&G Expenses	19.00	19.47	19.11		19.47
4.3	R&M Expenses	8.07	12.80	10.71		12.80
4.4	Allocation of LCC Charges	1.10	1.27	1.27		1.27
5	Depreciation, including ADD	17.30		18.33		18.33
6	Interest on long term	10.80		16.58		16.38

Sr. No.	Particulars	Approved	Normative Expenses claimed	Actual	Efficiency Gains/(Loss) from controllable factors shared with consumers	Net Entitlement after impact of Gains/(loss) from controllable factors
		(a)	(b)	(c)	(d)=[*]	(e)
	loan capital					
7	Interest on working capital and on consumer security deposits	15.65		23.21		23.21
8	Other finance charges	1.36		1.41	0.02	1.38
9	Provisioning for Bad debts	1.83		4.79	1.00	2.63
10	Income Tax	9.71		28.79		28.79
11	Return on Equity	23.34		26.97		26.97
12	Contribution to contingency reserves	1.09		2.36		2.36
13	Brand Equity	1.78		2.14		2.14
14	Wheeling charges payable to R-Infra	12.88		12.89		12.89
15	DSM Expenses	1.08		0.90		0.90
16	Total Expenditure	1,376.50		1,425.69	2.46	1,426.57
III	Other Adjustments	14.22		11.14		11.14
17	Less Non-Tariff Income	14.22		11.14		11.14
IV	Revenue (Gap)/Surplus	(5.18)		(58.21)		(59.09)

The net revenue (gap)/Surplus for FY 2009-10, after considering the previous adjustments approved by the Commission in its APR Orders, as submitted by TPC-D is given in the following table:

Table: Net Revenue (Gap)/ Surplus for FY 2009-10 as submitted by TPC-D (Rs. Crore)

Particulars	APR Order	Actuals
ARR for FY 2009-10	1,009	1,415
Revenue from existing tariff	1,348	1,356
Revenue (gap)/surplus for FY 2009-10	339	(59)
Past Recoveries of TPC-D		

Particulars	APR Order	Actuals
Sharing of gains & losses for FY 2006-07	(11)	(11)
Impact of ATE Judgment for FY 2004-05 & FY 2005-06	(20)	(20)
Revenue (gap)/surplus for FY 2007-08	(135)	(135)
Revenue (gap)/surplus for FY 2008-09*	21	-
Impact of Review Order Case No. 46 of 2008	(7)	(7)
Sub Total –B	(153)	(174)
Total Revenue (Gap)/ Surplus C=A+B	186	(233)

*Truing-up impact of FY 2008-09 considered in (Gap)/Surplus of FY 2010-11

The Commission has approved a revenue gap of Rs 18.92 Crore for FY 2009-10 after final true-up for FY 2009-10, as shown in the Table below:

**Table: Revenue (Gap)/ Surplus approved by the Commission for FY 2009-10
(Rs. Crore)**

Particulars	Approved in APR Order /Normative	Actual	Approved after truing-up	Efficiency Gain/(Loss)	Efficiency Gain/(Loss) shared with consumers	Net Entitlement before passing on to reserves
Power Purchase Expenses	1,242.38	1,248.74	1,247.26			1,247.26
<i>Power Purchase Expenses (TPC - G)</i>	<i>1121.23</i>	<i>1121.17</i>	<i>1,121.17</i>			<i>1,121.17</i>
<i>Power Purchase Expenses (RPO)</i>	<i>32.68</i>	<i>32.68</i>	<i>32.68</i>			<i>32.68</i>
<i>Power Purchase Expenses (Contracted Power, MSEDCL, UI, Infirm & Other Sources)</i>	<i>-36.14</i>	<i>-29.72</i>	<i>-29.72</i>			<i>-29.72</i>
<i>Wheeling Charges Payable to R-Infra</i>	<i>12.88</i>	<i>12.89</i>	<i>12.89</i>			<i>12.89</i>
<i>Standby Charges Payable</i>	<i>60.37</i>	<i>61.85</i>	<i>60.37</i>			<i>60.37</i>
<i>Transmission & SLDC Charges Payable</i>	<i>51.36</i>	<i>49.87</i>	<i>49.87</i>			<i>49.87</i>
Operation & Maintenance Expenses*	55.89	51.44	50.60	5.45	1.82	54.24
<i>Employee Expenses*</i>	<i>22.42</i>	<i>20.36</i>	<i>20.36</i>	<i>2.06</i>	<i>0.69</i>	<i>21.73</i>
<i>Administration & General Expenses*</i>	<i>19.57</i>	<i>19.11</i>	<i>18.27</i>	<i>1.30</i>	<i>0.43</i>	<i>19.14</i>
<i>Repair & Maintenance Expenses*</i>	<i>12.80</i>	<i>10.71</i>	<i>10.71</i>	<i>2.08</i>	<i>0.69</i>	<i>12.10</i>
<i>Allocation of Load Control Centre Charges *</i>	<i>1.10</i>	<i>1.27</i>	<i>1.27</i>			<i>1.27</i>

Particulars	Approved in APR Order / Normative	Actual	Approved after true-up	Efficiency Gain/(Loss)	Efficiency Gain/(Loss) shared with consumers	Net Entitlement before passing on to reserves
Depreciation, including advance against depreciation	17.3	18.33	17.02			17.02
Interest and Other Financial Charges	27.81	41.2	36.50			32.85
<i>Interest on Long-term Loan Capital</i>	<i>10.8</i>	<i>16.58</i>	12.18			12.18
<i>Interest on Working Capital and on consumer security deposits</i>	<i>15.65</i>	<i>23.21</i>	22.91	10.84	3.61	19.30
<i>Other Finance Charges</i>	<i>1.36</i>	<i>1.41</i>	1.41	-0.05	-0.02	1.38
Bad Debts Written off	1.83	4.79	2.08	-2.71	-0.90	2.98
Income Tax	9.71	28.79	5.28			5.28
Contribution to contingency reserves	1.09	2.36	1.09			1.09
Other Expenses (DSM Budget)	1.08	0.9	0.90			0.90
Total Revenue Expenditure	1357.09	1396.56	1360.73			1361.63
Return on Equity Capital	23.34	26.97	24.50			24.50
Aggregate Revenue Requirement	1380.43	1423.53	1385.24			1386.13
Less: Non Tariff Income	14.22	11.14	12.85			12.85
Less: Income from Sale of Surplus Power	20.76	20.76	20.76			20.76
Aggregate Revenue Requirement from Retail Tariff	1345.45	1391.63	1351.63			1352.52
Add: Brand Equity Amount	1.78	2.14	1.99			1.99
Total Revenue Requirement	1347.23	1393.77	1353.61			1354.51
Revenue from sale of electricity	1,357.10	1,322.69	1,322.69			1,322.69
Revenue on account of wheeling charges collected from Changeover consumers		12.89	12.89			12.89
Revenue Gap/ (Surplus)		58.19	18.03			18.92

* Revised Normative Expenses considered

The Aggregate Revenue Requirement for FY 2009-10 is lower than that submitted by TPC-D, primarily due to the following reasons:

- Slight reduction in O&M expenses, as expenses towards donations, Community Welfare Expenses and Gifts have been disallowed 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.
- Reduction in provision for Bad Debts for FY 2009-10, as only 1.5% of receivables have been allowed.
- Computation of income tax in accordance with the Hon'ble ATE's Judgment as regards calculations of Income Tax.
- 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 inclusion of 'gain on exchange' on account of proportionate allocation of revenue earned from corporate treasury functions.

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

TPC-D, in its Petition, has sought review of the performance and provisional truing up of FY 2010-11. However, based on TPC-D'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-D 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-D 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-D and the consumers, in accordance with Regulation 19 of the MERC Tariff Regulations, 2005 in this Section.

5.1 SALES

TPC-D submitted the month-wise actual category-wise sales in the Formats annexed to the APR Petition. TPC-D submitted that the actual sales for consumers on TPC-D network were 2,746.44 MU and the actual sales for changeover consumers was 1654.63 MU in FY 2010-11, which are higher than the sales approved by the Commission in its APR Order dated September 12, 2010. TPC-D submitted the actual category wise sales for FY 2010-11 as given in the following table below:

Table: Direct and Changeover Retail Sales for FY 2010-11 (MU)

Sr. No.	Category	TPC-D Network		Changeover Consumers	
		APR Order	Actuals*	APR Order	Actuals*
I	HIGH TENSION CATEGORIES				
1	HT I- Industry & CPP	765	824.72	122	161.62
2	HT II- Commercial	540	550.74	400	448.73
3	HTIII Group Housing			10	9.26
4	HT IV- Temporary Supply	1	2.28	1	1.43
5	HT V- Railways	841	821.13		
	-22/33 kV		500.48	-	

Sr. No.	Category	TPC-D Network		Changeover Consumers	
		APR Order	Actuals*	APR Order	Actuals*
	-100 kV		320.65		
II	LOW TENSION CATEGORIES				
1	LT I- Residential	97	104.13	175	220.29
	-S1(0-100 units)		24.64		45.84
	-S2(101-300 units)		32.45		69.29
	-S3(>301-500 units)		13.54		33.91
	-S4(Above 500 units (balance units))		33.50		71.25
2	LT II- Commercial	249	243.79	395	492.04
	-up to 20kW		22.36		158.95
	->20kW & < 50kW		18.05		59.55
	->50 kW		203.38		273.54
3	LT III- Industry < 20kW	23	25.07	27	35.67
4	LT IV- Industry > 20kW	169	160.91	230	284.38
5	LT V- Advertisement & Hoardings, incl. Floodlights & neon signs	-	0.00		0.11
6	LT VI- Streetlights	-			
7	LT VII- Temporary Supply	7	13.66	1	1.11
	-TSR- Temporary Supply Religious		13.66		0.02
	-TSO- Temporary Supply Others				1.08
8	LT VIII- Cremation and Burial Grounds				
9	GRAND TOTAL	2,692	2,746.44	1,361	1,654.63

*Excludes 15 days provisions to the extent of 10 MU

The Commission has considered the actual sales under the trueing-up process.

5.2 POWER PURCHASE QUANTUM AND COST FOR FY 2010-11

The Commission, in its APR Order dated September 12, 2010 in Case No. 98 of 2009 approved the total quantum of Power Purchase of 4278.07 MU from TPC-G, RE sources and other sources including short-term Power Purchase from external sources.

TPC-D submitted that in FY 2010-11, the total quantum of Power Purchase from TPC-G, RE Sources and Traders (short-term power) was 4673.56 MU, of which TPC-D sold 53.65 MU to Outside License Area of Mumbai. Hence, the net Power Purchase for TPC-D works out to 4619.91 MU.

The Commission, in its above-said APR Order dated September 12, 2010 had allowed total Power Purchase expenses of Rs. 1892.40 Crore including Transmission Charges, MSLDC charges, Standby Charges and Wheeling Charges of RInfra, while actual Power Purchase expense for FY 2010-11 as submitted by TPC-D in the present APR Petition is Rs. 2072.66 Crore.

5.2.1 Procurement from TPC-G

TPC-D submitted that the quantum of Power Purchase from TPC-G was 3,132.06 MU as compared to the 3,715.13 MU approved by the Commission in the APR Order. TPC-D submitted that the Power Purchase from TPC-G was dependent upon the generation from the various Units of TPC-G. TPC-G, in its APR Petition in Case No. 105 of 2011, submitted that the hydro generation has been lower on account of constraints due to compliance requirements with KWDTA norms, which stipulate the maximum allowable quantum of water usage during the period of 5 years, TPC-G, in order to remain within the limits of KWDTA, had to reduce generation. TPC-G further submitted that the generation from Unit 4 has been lower as there was no standby requirement of Unit 4 to the extent projected in the APR Petition and that Unit 4 was not run at all in H2 of FY 2010-11. TPC-G further submitted that Unit 6 uses costly fuel (oil and RLNG) for generation so this Unit was backed down to minimise the impact of the high cost of generation for the consumers. TPC-G further submitted that at times the Unit was run at the technical minimum to accommodate cheaper power available in the market. Such backing down of the Unit has resulted in the PLF being lower than that approved by the Commission.

The Power Purchase by TPC-D was computed by multiplying the generation of TPC-G by a factor based on the share of TPC-D in that Unit of TPC-G. Hence, the variation between the

actual Power Purchase and the approved Power Purchase was on account of the variation in the generation of TPC-G for FY 2010-11 and therefore, was uncontrollable to that extent.

The Commission observes that the total generation by TPC-G was 3130 MU in FY 2010-11 as per IBSM statements. In reply to the Commission's query, TPC-D explained that from May 01, 2010, 28.14% share of Unit-4 capacity, which was earlier tied up with RInfra, had become free, and was not tied up by any Utility till date. Hence, in order to account for the auxiliary consumption required by Unit-4 for this untied capacity, TPC-D has considered this quantum in its accounts and later charged the same units to Unit-4 at UI rate. Similarly, the auxiliary consumption of Lodhivali is taken into TPC-D's account and later charged to Lodhivali at UI rate and deducted from the UI quantum and cost of TPC-D. TPC-D further submitted that these transactions serve the purpose of proper Energy Balance as well as ensure that TPC-D's consumers are insulated from the same.

The Commission validated the actual expense on Power Purchase from TPC-G by two Distribution Licensees in Mumbai, i.e., TPC-D and BEST as submitted in their respective APR Petitions, with the details of revenue submitted by TPC-G in its APR Petition. The Commission is of the view that the break-up of Annual Fixed Charge and Incentive paid to TPC-G is not in line with the revenue considered by TPC-G from sale of energy to TPC-D in FY 2010-11. However, the total cost of energy received from TPC-G matches with the revenue considered by TPC-G.

The details of the same are given in the below table:

Table: Power Purchase cost break-up for TPC-G (Rs. Crore)

Particulars	Actuals	Approved after Truing Up
Total Annual Fixed charges	225.90	224.35
Total Variable Charges	899.49	899.49
Incentive	8.73	10.28
Hydro Rebate	23.80	23.80
Total Cost of Energy Received	1110.32	1110.32

Accordingly, the Commission has approved the actual cost of Power Purchase by TPC-D from TPC-G. The summary of Power Purchase by TPC-D from TPC-G as approved in the APR Order, as submitted by TPC-D, and as approved after final truing up, is tabulated as under:

Table: Power Purchase from TPC-G for FY 2010-11

Particulars	APR Order			Actuals			Approved after Trueing Up		
	Quantum (MU)	Cost (Rs Crore)	Average Rate (Rs. Per unit)	Quantum (MU)	Cost (Rs Crore)	Average Rate (Rs. Per unit)	Quantum (MU)	Cost (Rs Crore)	Average Rate (Rs. Per unit)
TPC-G: Existing Units	3715.13	1396.34	3.76	3132.06	1110.32	3.55	3132.06	1110.32	3.55

5.2.2 Renewable Purchase Specification (RPS)

TPC-D submitted that as per the MERC (Renewable Purchase Obligation, its Compliance and implementation of REC framework) Regulations, 2010 (RPO Regulations) notified on June 7, 2010, each distribution licensee was required to meet 6% of its requirement through renewable sources for FY 2010-11.

The Regulations specify the following obligation for the various years:

Table: Renewable Purchase Obligation –THE MERC Regulations

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy equivalent (in kWh))		
	Solar	Non Solar (other RE)	Total
2010-11	0.25%	5.75%	6.0%
2011-12	0.25%	6.75%	7.0%
2012-13	0.25%	7.75%	8.0%
2013-14	0.50%	8.50%	9.0%
2014-15	0.50%	8.50%	9.0%
2015-16	0.50%	8.50%	9.0%

“Provided that Distribution Licensee(s) shall meet 0.1% per year of its Non-Solar (other RE) RPO obligation for the period from FY 2010-11 to FY 2012-13 and up to 0.2% of its Non-solar (other RE) RPO obligation for the period from FY 2013-14 to FY 2015-16 by way of purchase from Mini Hydro or Micro Hydro power project. “

TPC-D submitted that it could meet about 4.75% of the RPO as required by the Regulations and therefore, fell short by about 58 MU, as shown in the table below:

Table: Renewable Purchase Obligation for FY 2010-11

Renewable Source	Obligation (%)	Obligation (MU)	Actual Purchased (MU)	Shortfall (MU)	Obligation Met (%)
Non Solar	5.749%	265.62	219.17	46.45	4.744%
Mini Hydro	0.001%	0.03	0.00	0.03	0.000%
Solar	0.250%	11.55	0.05	11.50	0.001%
Total	6.00%	277.20	219.22	57.97	4.75%

Regulation 12 of the MERC RPO Regulations specifies:

“12 RPO Regulatory Charges

12.1 If the Obligated Entity fails to comply with the RPO target as provided in these Regulations during any year and fails to purchase the required quantum of RECs, the Commission may direct the Obligated Entity to deposit into a separate fund, to be created and maintained by such Obligated Entity, such amount as the Commission may determine on the basis of the shortfall in units of RPO, RPO Regulatory Charges and the Forbearance Price decided by the Central Commission; separately in respect of solar and non-solar RPO:

Provided that RPO Regulatory Charges shall be equivalent to the highest applicable preferential tariff during the year for solar or non-solar RE generating sources, as the case may be, or any other rate as may be stipulated by the State Commission;

Provided further that the fund so created shall be utilised, as may be directed by the State Commission.”

As regards the RPO Regulations, TPC-D submitted the following justification:

- a) The total energy requirement of TPC-D rose substantially in the last one year, due to the increase in sales, on account of the changeover of consumers from RInfra to TPC. The

increase in the total energy requirement at T<>D interface in FY 2010-11 over FY 2009-10 was 58%, a very high annual increase that has not been witnessed by any distribution licensee in Maharashtra or in other States in India. The availability of Renewable Power for TPC-D in the State did not go up by the same proportion to enable TPC-D to meet its obligation.

- b) The Regulations were notified in June 2010, i.e., after the passage of 2 months of FY 2010-11. Considering this period of 2 months, when the obligations were not applicable, the Renewable Purchase Obligation for the 10 months of FY 2010-11 on proportionate basis worked out to 231 MU. Further, considering the requirement as approved by the Commission in the Tariff Order for FY 2010-11, the total energy requirement for the 10-month period worked out to 3,565 MU and the corresponding RPO for FY 2010-11 at 6% worked out to 214 MU. Hence, considering this, TPC-D on an overall basis has been able to meet its RPO for FY 2010-11.
- c) TPC-D submitted that it made all efforts to meet its obligations and mopped up sources within the State as well as outside Maharashtra, such as:
- Floating of Bids for procuring Renewable Power from Bilateral Sources.
 - Commissioning of Solar PV Power Project.
 - Purchasing of Renewable Energy Certificates through Power Exchange.
- d) Out of the total purchase of 219 MU, about 50 MU were purchased from outside Maharashtra. The shortfall in meeting the RPO is despite this purchase.
- e) TPC has also invested in a 3 MW Solar Project in FY 2010-11. The plant was commissioned in Q4 of FY 2010-11 and all the power generated from this plant was sold to TPC-D.
- f) The operation of REC mechanism was one of the methods available for any distribution licensee to purchase the required REC and meet its obligations. TPC-D submitted that the REC mechanism became operational only as late as February 2011. Further, the volumes of REC traded were very low. Hence, TPC-D, in spite of making efforts to meet its RPO through REC Mechanism, was not able to purchase RECs from the Exchange.

- g) Further, the applicability of IEGC for Inter-State accounting of wind and solar power had been deferred by CERC for one year and is now scheduled to commence on January 1, 2012. This had delayed the purchase of Renewable Power from outside the State.
- h) Lastly, TPC-D submitted that there is an apprehension regarding the availability of the quantum of Renewable Power in the State and whether it would be sufficient to meet the RPO of all the distribution licensees.

TPC-D requested the Commission to approve the Power Purchase from the Renewable Sources and also exempt TPC-D from the applicability of the RPO Regulatory Charge for FY 2010-11.

The Commission observes that RE sources include bilateral non-solar Power Purchase, and asked TPC-D to submit the details of the same. TPC-D submitted the details as given in the below table:

Table : Renewable energy procured through Bilateral Sources for FY 2010-11

Month	Trader	Source	Contract	MUs	Energy rate	Rs Cr
Jan-11	TPTCL	USWL-B	Short term	1.26	5.14	0.65
	TPTCL	GFL	Short term	2.73	5.06	1.38
	TPTCL	GBL	Short term	11.73	5.04	5.91
	TPTCL	USWL-G	Short term	3.00	5.03	1.51
	TPTCL	KSL	Short term	6.94	5.02	3.48
	TPTCL	Wind	Short term	6.80	4.57	3.11
Feb-11	TPTCL	GFL	Short term	2.97	5.05	1.50
	TPTCL	GBL	Short term	12.77	5.05	6.44
	TPTCL	USWL-B	Short term	0.25	5.01	0.13
	TPTCL	USWL-G	Short term	0.63	4.98	0.31
	TPTCL	KSL	Short term	5.57	4.90	2.73
	TPTCL	Wind	Short term	7.46	4.57	3.41
Mar-11	GFL		Short term	2.28	5.09	1.16
	TPTCL	Wind	Short term	10.17	4.57	4.65
Total				74.57	4.88	36.38

In reply to the Commission's query relating to Power Purchase from RE sources at a rate other than the rate approved by the Commission vide Regulation 7.2 of RPO Regulations, TPC-D submitted that the Commission vide Order dated October 28, 2010 has relaxed the clause 7.2 for FY 2010-11 and allowed Utilities to purchase power from RE sources at rates other than that approved by the Commission for such purchases to qualify as RE for the purpose of meeting its RPO.

TPC-D submitted that in view of the above Order, it had floated a tender for up to 80 MU from non Solar sources and up to 11 MU from Solar projects during the period from January to March 2011 for the purchase of Renewable Energy through bidding, based on which it purchased 74 MU from bilateral sources for the above said period.

TPC-D further submitted the details of source-wise RE purchase from various bilateral sources and submitted that the difference between the tariff approved by the Commission and rate of Power Purchased from bilateral sources have to be compared at the same Maharashtra periphery. TPC-D added that the Feed in Tariffs (FIT) approved by the Commission are required to be grossed up for Wheeling losses of MSEDCL and the wheeling charges are required to be added. TPC-D further submitted that for the purpose of appropriate comparison of Wind Tariffs, it had considered the FIT as approved by the Commission for Zone 2 in the Order dated July 14, 2010.

Table: Source-wise Renewable Energy purchase Details submitted by TPC-D (Rs. /kWh)

Month	Generator name	RE technology	Landed cost	Approved tariff	Wheeling loss	Wheeling charge	Net applicable rate	Difference
			a	b	c	d	$e=b/(1-c)+d$	$f=a-e$
Jan-11	Ugar Sugar Works Ltd. Belgaon	bio mass	5.14	4.98	6%	0.04	5.34	-0.20
	Gujarat Flurochemicals Ltd. Sadia-Rajasthan	wind	5.06	4.41	6%	0.04	4.73	0.33
	Godavari Sugar Mill Ltd. Karnataka	biomass	5.04	4.98	6%	0.04	5.34	-0.30
	Ugar Sugar Works Ltd. Gulbarga	biomass	5.03	4.98	6%	0.04	5.34	-0.31
	Kedarnath Sugar Ltd. Karnataka	biomass	5.02	4.98	6%	0.04	5.34	-0.32
	Tata Power Company	wind	4.57	4.41	6%	0.04	4.73	-0.16
Feb-11	Gujarat Flurochemicals Ltd. Sadia-Rajasthan	wind	5.05	4.41	6%	0.04	4.73	0.32
	Godavari Sugar Mill Ltd. Karnataka	biomass	5.05	4.98	6%	0.04	5.34	-0.29
	Ugar Sugar Works Ltd. Belgaon	biomass	5.01	4.98	6%	0.04	5.34	-0.33
	Ugar Sugar Works Ltd. Gulbarga	biomass	4.98	4.98	6%	0.04	5.34	-0.36
	Kedarnath Sugar Ltd. Karnataka	biomass	4.9	4.98	6%	0.04	5.34	-0.44
	Tata Power Company	wind	4.57	4.41	6%	0.04	4.73	-0.16

Month	Generator name	RE technology	Landed cost	Approved tariff	Wheeling loss	Wheeling charge	Net applicable rate	Difference
			a	b	c	d	$e=b/(1-c)+d$	$f=a-e$
Mar-11	Gujarat Fluorochemicals Ltd. Sadia-Rajasthan	wind	5.09	4.41	6%	0.04	4.73	0.36
	Tata Power Company	wind	4.57	4.41	6%	0.04	4.73	-0.16

The Commission in its Order dated October 28, 2010 in Case No. 45 of 2010 has **relaxed the proviso of Regulation 7.2 for FY 2010-11**, the relevant extract of which is quoted below:

“The Commission has taken into account the difficulties in implementing the proviso to Regulation 7.2 because it has also been submitted in the present proceedings that some distribution licensees are already energy sufficient in terms of RPO target for FY 2010-11 through long term and short term renewable power arrangements through traders. BEST has requested that the Commission may relax Regulation 7.2 for at least one year. So when contracts had already been signed for such procurement even prior to the date of notification of the concerned Regulations it would be justifiable to relax the proviso to Regulation 7.2. The powers to relax is provided in Regulation 18.1 as follows –

“18.1 The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected may relax or may waive any of the provisions of these Regulations on its own motion or on an application made before it by an interested person.”

In exercise of the above powers the Commission hereby, by this order relaxes/ waives the requirements laid down in the proviso to Regulation 7.2 for F.Y 2010-11 only. This order shall be applicable to all distribution licensees in the State of Maharashtra.” (Emphasis added)

Regulation 7.2 of the RPO Regulations specifies as under:

“7.2 Every ‘Obligated Entity’ may meet its RPO target by way of own generation or procurement of power from RE developer or by way of purchase from other licensee or

by way of purchase of renewable energy certificate or by way of combination of any of the above options.

Provided further that procurement of RE power generated within the State by Distribution Licensee at rate other than rate approved by the State Commission directly from generator or from trader shall not be considered as eligible quantum for fulfilment of renewable purchase obligation of such distribution licensee.” (Emphasis added)

Thus, the Commission vide its Order dated October 28, 2010 in Case No. 45 of 2010 has relaxed the proviso of Regulation 7.2 stating that the RE Power Purchase at rate other than the rate approved by the Commission shall be considered as eligible quantum for fulfilment of RPO for FY 2010-11. Accordingly, in the present case, the Commission accepts TPC-D’s submission to the extent that the quantum of RE Power Purchased from bilateral sources to meet the RPO should be allowed for FY 2010-11.

Further, the Commission in its Order dated December 1, 2011 in Case No. 57 of 2011 has ruled as under:

“15.1 Issue no 1: Clarification of the proviso to Regulation 7.2 of THE MERC RPO Regulations, 2010 in respect of trading margin in case of RE procurement from traders.

...

...

Thus, a Distribution Licensee can meet its RPO by way of purchase from an intra-state or inter-state electricity trader. Obviously, the electricity trader will factor in a trading margin when it purchases RE power from a generator and resells the same to a Distribution Licensee.

The Commission is of the view that the spirit behind the words “rate approved by the State Commission” in Regulation 7.2 means that a Distribution Licensee is free to source RE power from an Electricity Trader so long as the mutually agreed price plus the trading margin does not exceed the “rate approved by the State Commission”.”

In view of the above Order, TPC-D may purchase from inter-State electricity traders as long as the cost of such inter-State purchase deliverable at Maharashtra InSTS, including the wheeling charges, wheeling losses and trading margin, would be within the rate approved by the Commission for RE power generated within Maharashtra. Thus, TPC-D’s approach of grossing

up preferential tariff approved by the Commission for wheeling losses of MSEDCL and wheeling charges, is incorrect.

The Commission has considered the preferential tariff as approved by the Commission and re-computed the allowable Power Purchase cost for bilateral RE Power Purchase as Rs. 35.28 Crore as against Rs. 36.38 Crore submitted by TPC-D, as shown in the detailed computation below:

Table: Source-wise Renewable Energy purchase cost approved

Month	Generator Name	RE technology	Quantum	Landed cost	Preferential tariff	Actual cost	Cost allowed after trueing up
			MU	Rs./kWh		Rs. Crore	
Jan-11	Ugar Sugar Works Ltd.	bio mass	1.26	5.14	4.98	0.65	0.63
	Gujarat Flurochemicals Ltd.	wind	2.73	5.06	4.41	1.38	1.20
	Godavari Sugar Mill Ltd.	biomass	11.73	5.04	4.98	5.91	5.84
	Ugar Sugar Works Ltd.	biomass	3.00	5.03	4.98	1.51	1.49
	Kedarnath Sugar Ltd.	biomass	6.94	5.02	4.98	3.48	3.46
	Tata Power Company	wind	6.80	4.57	4.41	3.11	3.00
Feb-11	Gujarat flurochemicals Ltd.	wind	2.97	5.05	4.41	1.50	1.31
	Godavari Sugar Mill Ltd.	biomass	12.77	5.05	4.98	6.45	6.36
	Ugar Sugar Works Ltd.	biomass	0.25	5.01	4.98	0.13	0.12
	Ugar Sugar Works Ltd.	biomass	0.63	4.98	4.98	0.31	0.31
	Kedarnath Sugar Ltd.	biomass	5.57	4.90	4.98	2.73	2.73
	Tata Power Company	wind	7.46	4.57	4.41	3.41	3.29
Mar-11	Gujarat Flurochemicals Ltd.	wind	2.28	5.09	4.41	1.16	1.01
	Tata Power Company	wind	10.17	4.57	4.41	4.65	4.48
	Total		74.56			36.38	35.24

As regards the RPO Regulatory Charge, the Commission has accepted the justification submitted by TPC-D for under-achievement vis-a-vis the 6% RPO obligation and considering the efforts made by TPC-D towards meeting the minimum purchase requirement, the Commission hereby

exercises its powers under Regulation 18 of the MERC RPO Regulations, 2010 to relax Regulation 12 of the MERC RPO Regulations, 2010.

Considering the above, for the purpose of truing up, the Commission has considered purchase of 219.22 MU from renewable sources at a Power Purchase cost of Rs. 88.75 Crore.

5.2.3 Power Purchase from Short-term sources and Imbalance pool

TPC-D submitted that the actual Power Purchased from the short-term sources was 875.30 MU at a cost of Rs. 378.73 Crore. The rate of short term power therefore, worked out to Rs. 4.33 per unit. Further, for FY 2010-11, TPC-D had to meet its growing demand and also purchased power from the Imbalance pool to the extent of 446.98 MU at a cost of Rs. 242.68 Crore, and the rate worked out to Rs. 5.43 per unit. The weighted average rate of Power Purchase from such external sources worked out to Rs. 4.70 per kWh, which was lesser than the rate of Rs. 4.75 per kWh approved by the Commission for FY 2010-11.

The Commission observed that the short-term Power Purchase has increased significantly as compared to the quantum approved by the Commission in the APR Order. During the Public Hearing, TPC justified the same and explained that the higher procurement from short-term sources and imbalance pool was on account of the increased sales to changeover consumers and lower generation from TPC-G during FY 2010-11. The increase in sales in FY 2010-11 vis-a-vis the sales projected in the APR Order amounted to 348 MU (increase in own sales - 54.4 MU, and increase in changeover sales - 293.6 MU), and the reduction in Power Purchase from TPC-G amounted to 583 MU. Thus, the total impact of these two developments amounts to additional requirement of 931 MU. As compared to this, the increase in Power Purchase from short-term sources and Imbalance Pool amounts to 1016 MU. The difference of 85 MU is explained by the shortfall in Power Purchase from RE sources vis-a-vis the projected purchase from RE sources (37.5 MU) and the sales by TPC-D outside the Licence Area as explained in subsequent paragraphs (53.7 MU), which had not been considered in the APR Order.

Hence, the Commission has approved the quantum and cost of Power Purchase from short-term sources and imbalance pool as submitted by TPC-D for FY 2010-11, under the final truing up exercise. The summary of Power Purchase by TPC-D from other sources is given in the following table:

Table: Power Purchase from Short-term sources and Imbalance pool for FY 2010-11

Particulars	APR Order			Actuals			Allowed after truing up		
	Quantum (MU)	Cost (Rs. Crore)	Average Rate (Rs. Per unit)	Quantum (MU)	Cost (Rs. Crore)	Average Rate (Rs. Per unit)	Quantum (MU)	Cost (Rs. Crore)	Average Rate (Rs. Per unit)
Short Term External Power Purchase	306.26	145.7	4.76	875.30	378.73	4.33	875.30	378.73	4.33
Pool Purchase/ (Sales)	-	-		446.98	242.68	5.43	446.98	242.68	5.43
Total	306.26	145.7	4.76	1322.28	621.41	4.70	1322.28	621.41	4.70

5.2.4 Reduction in Power Purchase cost

TPC-D submitted that out of the total Power Purchased in FY 2010-11, TPC-D sold 53.65 MU to Outside Licence Area of Mumbai and the revenue from such sale of power has been considered towards reduction in Power Purchase expenses.

As regards the Commission's query regarding the economical viability of the transaction related to Sale to Outside License Area, TPC-D submitted that the bilateral Power Purchased is utilised to meet its peak demand requirements, while the energy sold to Outside License Area is primarily during the Off peak period. Hence, comparison of the rates of peak power and off peak power would not be appropriate.

TPC-D submitted that whenever TPC-G has excess capacity available and there exists a demand outside License Area, the same is sold to outside license area thereby utilizing the extra available capacity for providing benefit to the consumers by way of additional revenue from such sale.

TPC-D further submitted that the total energy sold included 46.56 MU of actual energy sold to outside license area and 7.09 MU of banking sale, and the 7.09 MU can be purchased back at a later date at very minimal cost. Thus, the rate at which energy is sold to outside license area is Rs. 4.29/kWh and not at a rate of Rs. 3.72/kWh (which is the weighted average rate of banking plus OLA sale).

TPC-D submitted that the decision of OLA sale should be based on the difference between the selling price and the marginal cost (i.e., the variable cost) of such generation required from TPC-G for effecting such sale. TPC-D further submitted the selling price is net additional revenue to the Mumbai Licensed Area consumers while the marginal cost is the additional cost to the consumers. TPC-D further submitted the computation of benefit on account of OLA sales, to consumers amounting to Rs. 5.9 Crore based on the monthly rates rather than the weighted average rate for the year.

The Commission has accepted the submissions made by TPC-D in the above matter and has considered the same in the final truing up process. The summary of reduction in Power Purchase is given in the following table:

Table: Reduction in Power Purchase for FY 2010-11

Particulars	APR Order			Actuals			Allowed after truing up		
	Quantum (MU)	Cost (Rs. Crore)	Average Rate (Rs. Per unit)	Quantum (MU)	Cost (Rs. Crore)	Average Rate (Rs. Per unit)	Quantum (MU)	Cost (Rs. Crore)	Average Rate (Rs. Per unit)
Outside License Area	-	-	-	53.65	19.97	3.72	53.65	19.97	3.72

5.2.5 MSLDC and Transmission Charges

As regards Transmission Charges and MSLDC Charges, TPC-D submitted that it had considered the amount of Rs. 77.95 Crore paid during FY 2010-11, as against Rs. 77.98 Crore approved by the Commission in the APR Order.

The Commission has considered Transmission charges and MSLDC Charges at Rs. 77.95 Crore as submitted by TPC-D under the truing up exercise.

5.2.6 Stand-by Charges

TPC-D submitted that the Standby Charges for FY 2010-11 were Rs. 73.92 Crore as against Rs. 73.89 Crore approved by the Commission in the APR Order.

The Commission has accepted the submissions made by TPC-D above and has considered Standby Charges at Rs. 73.92 Crore for FY 2010-11 under the final truing up process.

5.2.7 Wheeling Charges Payable to R-Infra

TPC-D submitted that the wheeling charges payable to RInfra for supply to changeover consumers for FY 2010-11 were based on rates and losses approved by the Commission in the Order dated June 15, 2009 for RInfra, however, the Commission had approved the wheeling losses and wheeling charges in Rs/kWh in the Clarificatory Order dated July 22, 2009. The details of the wheeling charges, as submitted by TPC-D are given below:

Table: Wheeling Charges Payable for FY 2010-11

Sr. No.	Category	Wheeling Charges (Rs/kWh)	Changeover Sales (MU)	Wheeling Charges payable to R-Infra (Rs Crore)
1	HT I-Industry	0.46	161	7
2	HT II-Commercial	0.46	448	20
3	HT III-Group Housing Society	0.46	9	0
4	HT IV – Temporary Supply	0.46	1	0
5	LT I- Residential	0.88	220	19
6	LT II- Commercial	0.88	492	43
7	LT III- Industry <20kW	0.88	35	3
8	LT IV- Industry >20 kW	0.88	284	25
9	LT V- Advertising	0.88	0	0
10	LT VII- Temporary Supply	0.88	1	0
	Total		1,654	119

Considering the category-wise changeover sales (MU) as submitted by TPC-D for FY 2010-11 and the wheeling charges approved by the Commission in Order dated July 22, 2009, the wheeling charges payable to RInfra works out to Rs. 119.52 Crore, and the Commission has approved the same under the final truing up process.

5.2.8 Summary of Power Purchase related Costs

The summary of Power Purchase quantum and costs, including Standby Charges and Transmission Charges for FY 2010-11 as approved by the Commission after final truing up, is given in the following table:

Table: Summary of Power Purchase Quantum and Costs for FY 2010-11

Particulars	APR Order		Actuals		Approved after Truing Up	
	MU	Rs Crore	MU	Rs Crore	MU	Rs Crore
TPC-G	3,715.13	1,396.34	3,132.06	1,110.32	3,132.06	1,110.32
Renewable Sources	256.68	101.10	219.22	89.89	219.22	88.75
Imbalance Pool (Additional PP/Sale)	-	-	446.98	242.68	446.98	242.68
Short term external power	306.26	145.70	875.30	378.73	875.30	378.73
Outside License Area Sales	-	-	(53.65)	(19.97)	(53.65)	(19.97)
Standby Charges		73.89		73.92		73.92
Transmission Charges		77.98		77.95		77.95
Wheeling Charges payable to R-Infra		97.38		119.00		119.52
Total	4,278.07	1,892.39	4,619.56	2,072.66	4,619.91	2,071.90

5.3 DISTRIBUTION LOSSES AND ENERGY INPUT REQUIREMENT

TPC-D submitted that the consumers of TPC-D are connected to the system at various voltages. A large part of TPC-D's sales are to HT consumers, who are connected at voltage level of 22 kV and above. Hence, the present loss levels are low. TPC-D added that subsequent to the issuance of the Order by the Hon'ble Supreme Court regarding TPC's distribution license, distribution operations of TPC-D had increased significantly and the number of changeover consumers has increased to about one lakh in this financial year. Thus, the increase in customer base was largely due to increase in the changeover consumers. TPC submitted that since, these changeover consumers were billed on normative loss basis, the loss levels of TPC-D for FY 2010-11 for the purpose of performance review should not include the loss considered for changeover sales and distribution loss only depicted the loss in the network of TPC-D, i.e., on account of direct sales only.

TPC-D further submitted that the distribution loss approved by the Commission for consumers connected to TPC-D's network was 0.66%, while the actual distribution loss for sales to direct consumers was about 1.13%.

The Commission, in Para 4.1.1 of the Tariff Order for FY 2009-10 dated June 15, 2009, has mentioned that in case actual distribution losses are higher than the approved levels, the same will be considered at the time of true-up, subject to prudence check, as reproduced below:

“The Commission has considered the distribution loss of 0.66% for computing the energy input requirement of TPC-D for FY 2009-10, which is slightly higher than the actual losses reported by TPC-D for FY 2008-09. In case the actual distribution losses for FY 2009-10 are higher than the approved level of 0.66%, then the same will be considered at the time of true up, subject to prudence check, and will not necessarily be considered as a controllable loss, since TPC-D has to meet its Universal Service Obligations, by giving supply to all consumers on request in its entire licence area .”

TPC-D submitted that the Commission in the Tariff Order dated September 12, 2010 for FY 2010-11 had not explained in detail the reasoning for approving the loss level for FY 2010-11, but may have based the same in line with the observations given in the above paragraph of the Order passed on June 15, 2009. In view of this, the loss levels for FY 2010-11 are justified. TPC further submitted that as the loss levels were low for TPC-D, the increase appears magnified even with minor changes. The loss levels went from 0.66% to 1.13% due to increase in LT Network, and though the increase appears large, in terms of MU the same is not significant.

TPC-D submitted that the significant increase in the number of consumers in the LT segment has resulted in higher distribution losses. It was difficult for TPC-D to maintain the same loss level and hence, TPC-D requested the Commission to approve the loss level on the basis of actual performance.

TPC-D submitted that the transmission losses for FY 2010-11 had worked out to around 4.31% against 4.85% approved by the Commission. The energy balance for FY 2010-11 as submitted by TPC-D is given in the table below:

Table: Summary of Energy Balance for FY 2010-11 as submitted by TPC-D (MU)

Particulars	APR Order	Actuals
TPC-D sales (retail) with 15 days adjustment	2,692	2,736.27
Distribution losses	0.66%	1.13%
Energy requirement for TPC-D consumers at T < > D Interface	2,710	2,767.65
Sale to changeover consumers	-	1,653.30

Particulars	APR Order	Actuals
Wheeling loss R-Infra D Network	0.00%	
Energy Requirement for Changeover consumers	1,361	1,653.30
Total Energy Requirement at T < > D	4,071	4,420.95
Transmission loss	4.85%	4.31%
Total Energy Requirement at G < > T	4,278	4,619.91
Sale /(purchase) to imbalance Pool	-	-
Sale Outside License Area/Adjustments	-	53.65
Total Energy Requirement at G < > T Interface	4,278	4,673.56

TPC-D further submitted that the net energy input requirement for sale to retail consumers including changeover consumers would be 4674 MU.

The Commission clarifies that the distribution loss of 0.66% considered for TPC-D for FY 2010-11 was not a norm, since, it is very low and not representative of a typical distribution licensee. Earlier, since TPC-D's consumer and consumption profile was skewed in favour of HT consumers, with very low LT load, the loss levels were lower and the loss levels are expected to increase with the increase in LT loads. However, TPC-D should ensure that the loss levels are controlled and not increased merely because of increase of LT loads. The Commission has accepted the actual loss level of 1.13 % for FY 2010-11 under the truing up process.

The Commission is of the view that the Energy Balance as submitted by TPC-D for FY 2010-11 is not in line with the Maharashtra State Load Despatch Centre's (MSLDC) Energy Balancing & Settlement Statements for Maharashtra (IBSM) for FY 2010-11. TPC-D submitted that energy transaction of its consumer Hotel Leela, who is purchasing wind energy under Open Access transaction, and Lavasa, another Open Access consumer of TPC-D, are shown in TPC-D's drawals in the IBSM statement. However, for the purpose of Power Purchase in the Petition, such sale and corresponding purchase has not been considered.

In reply to the Commission's query, TPC-D submitted that changeover sales of 1653 MU have been considered for computing the total energy requirement at InSTS as per the actual energy transferred for FY 2010-11 and considered in IBSM settlement. However, changeover sales of 1655 MU has been considered for computing revenue, which is based on the bills raised by TPC-D to changeover consumers for FY 2010-11.

In view of the above, the Commission has accepted TPC-D's submission of energy balance stating the energy requirement of 4674 MU at G < > T Interface, considering the actual sales of 2736 MU to direct consumers and 1653 MU to changeover consumers in FY 2010-11, and the

actual distribution loss of 1.13% as against 0.66% considered by the Commission in its Order dated June 15, 2009.

5.4 O&M EXPENSES FOR FY 2010-11

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

TPC-D submitted that the actual O&M Expenditure of TPC-D for FY 2010-11 was Rs. 77.37 Crore, while the Commission in the Tariff Order dated September 12, 2010, had approved the norms for the Distribution business of TPC-D based on which the overall O&M expenditure worked out to Rs. 80.02 Crore. The details of the O&M Expenditure as submitted by TPC-D for FY 2010-11 are given in the table below:

Table: O&M Expenditure as per Norms

Particulars	APR Order (Rs Crore)	Norm for FY 2010-11 (Ps/kWh)	Applicable Sales for FY 2010-11 (MU)	Normative O&M for FY 2010-11 (Rs Crore)	Actual O&M Expenditure for FY 2010-11 (Rs Crore)
Employee Expense	20	8.00	4,393	35.42	25.38
A&G Expense	19	7.00	4,393	30.92	40.59
R&M Expense	11	5.00	2,736	13.68	11.40
Total	50			80.02	77.37

* TPC-D sales with 15 days adjustments

5.4.1 Employee Expenses

TPC-D submitted that the actual Employee Expense of TPC-D for FY 2010-11 was Rs. 25.38 Crore while the Commission in the Tariff Order dated September 12, 2010 has approved Rs 32.00 Crore as the employee expenses.

The Commission has considered the actual employee expenses submitted by TPC-D for trueing up as it is within the norms approved by the Commission in the APR Order. The summary of employee expenses approved in the APR Order, actual employee expenses claimed by TPC-D, and employee expenses approved after trueing up for FY 2010-11 have been shown in the following table:

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

Particulars	APR Order	Normative	Actuals	Allowed after truing up
Employee Expense	31.94	35.42	25.38	25.38

The Commission has considered the difference between the employee expenses allowed under truing up and normative employee expenses under the sharing of gains and losses due to controllable factors, since employee expense is a controllable expense.

5.4.2 Administrative & General (A&G) Expenses

TPC-D submitted that the actual A&G Expense of TPC-D for FY 2010-11 was Rs. 40.59 Crore, while the Commission in the Tariff Order dated September 12, 2010 has approved Rs. 27.57 Crore as the A&G expense. TPC-D, in its Petition, submitted the reasons for higher A&G Expenses as under:

- TPC had outsourced activities like application collection, application processing, Meter Reading, Billing, Revenue Collection, Bill Delivery, customer service, etc., instead of hiring permanent staff to ensure that the overall expenditure is optimized. Hence, while there was a saving in Permanent staff expenditure, the expenses of the above activities has increased the A&G expenses by Rs 5.0 Crore.
- To serve the increased customer base, enhanced IT support was essential. This included procurement of the following:
 - SAP licenses - Rs. 59 Lakh
 - ISU License - Rs. 85 Lakh
 - Application Software for New Employees - Rs. 8 Lakh
 - Improvement towards Customer Portal for improved customer convenience - Rs. 8 Lakh

Hence, additional expense towards IT was Rs. 1.60 Crore.

- Expenses towards Consumer Awareness: Rs. 4.0 Crore.
- Increased allocation from HO&SS A&G Expenses towards Distribution [Due to increase in primary (i.e. without allocation) A&G expenses for distribution].

In reply to the Commission's query regarding increase in A&G expenses, TPC submitted that it has incurred Legal Charges and Audit fees due to various endeavours to tie up the 500 MW power generation capacity, which it has withdrawn from RInfra, leading to Government intervention and several legal cases being fought before the Commission, CERC and Hon'ble ATE. TPC-D further claimed that the cost was incurred in the interest of consumers.

TPC submitted that the major expenditure under Professional, Consultancy and Technical fees was due to the appointment of individual consultants including from the field of medicine for the welfare of the employees. TPC further clarified that the consultants have been hired much before the Order dated May 28, 2009 and that such expenditure is booked under Head Office and only share is allocated to Mumbai Licenced Area. Hence, the net cost for Mumbai Licenced Area is less than Rs. 1 Crore.

HO & SS Allocation

- As regards the query raised by the Commission about the break-up of cost of services, TPC-D submitted that few guest houses are maintained by TPC-D for the benefit of guests of the Company. The cost involves maintenance and caretaker charges and though the expenses are booked under head office, a part is allocated to Mumbai Licence 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 Licenced Area.
- TPC further submitted that the amount paid to Taj Air represents the fees being paid to Taj for availing entitlement of 23 hrs flying of Taj Air, the benefits of which are availed by the management of TPC to optimally plan and utilize their time.
- TPC also submitted that it has entered into an agreement with M/s Team Lease to provide manpower for outsourced activities to supplement operations and support services such as secretarial services and customer service services. TPC further submitted that the personnel are hired for temporary period ranging from 6 months to 1 year.
- TPC further submitted the details of miscellaneous services related to Corporate Communication as follows:
 - Running Energy Conservation programme in Pan India schools.
 - Designing services for company collateral, display at customer care centres, and Exhibition Stalls.
 - Updation on Corporate Sangam, Energy Club. Customer/ Vendor portals.
 - Photography services for exhibitions, magazines, energy conservation programmes and others.
 - Service fees to ABC Ltd for managing the Registered Office's infrastructure.

TPC further clarified that the total expense under the head of 'Cost of Services' is booked under Head Office to the extent of Rs. 10 Crore out of which Rs. 8 Crore has been allocated to Mumbai Licence Area on the basis of Operating Income.

Advertisement Expenditure

Further, in reply to the Commission's query regarding the expense of Rs. 4 Crore on consumer awareness, TPC submitted that the same was included under the advertising expenses, and the substantial increase from Rs. 0.61 Crore to Rs. 5.05 Crore in the advertisement expenditure was on account of improving the visibility of TPC in Mumbai. TPC-D further submitted the Commission's ruling in the matter in the Tariff Order dated June 15, 2009, as reproduced below:

"2.8 KNOWLEDGE OF TPC'S RIGHT TO DISTRIBUTE POWER

Shri Prasad Ayare and others submitted that the consumers were not aware of TPC's right to distribute power in Mumbai city and hence, the consumers were not able to exercise their right to choose their electricity supplier.

TPC-D's Response

TPC-D submitted that the TPC's right to distribute power in the Mumbai city has been highlighted in the media quite significantly time and again and hence, the objection cannot be held as relevant.

Commission's Ruling

TPC-D should ensure wide publicity periodically to communicate to all categories of consumers in its entire license area that they can approach TPC-D for availing supply, detailing the procedure and contact addresses, ward-wise ,etc., for going about the process of submitting applications, etc."

TPC-D further submitted that in line with the above ruling, TPC had over the period increased its expenditure on advertisement for giving wide publicity. TPC-D had a comprehensive advertising campaign to educate the Mumbai consumers on its offerings and services. TPC-D further submitted that the target audience comprised of all the customers in Mumbai Licence Area and the advertisements highlighted its services to different segments such as residential, commercial, essential services and vital installations.

TPC-D further submitted that the campaign not only highlighted TPC as a responsive brand, that provides reliable, clean and quality power along with superior customer care and plays a vital role in life of Mumbaikars and also educated the customers on how to contact it for supply/changeover. TPC-D submitted that the contact numbers for availing power supply and

website details were widely publicised through mass media such as hoardings, print ads, branded BEST buses and trains. TPC-D submitted that the campaign also reinforced TPC's commitment to keep Mumbai energised.

Other Expenses

Further, the Commission asked TPC-D to submit the breakup of the cost included under the head "Others" under A&G expenses. In reply to the Commission's query, TPC-D 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 observes 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 programme/ rallies, training volunteers, afforestation, environment education, etc. The Commission has disallowed these expenses, because 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 distributed 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 observes that TPC-D has considered Rs 0.47 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.

"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 0.10 Crore towards donations as claimed by TPC-D."

Hence, on similar lines, the Commission has not considered the expense of Rs 0.47 Crore towards Contributions/Donations as claimed by TPC-D, under the truing up exercise and for the purpose of sharing of gain and losses.

TPC-D has submitted that while there was a saving in Permanent staff expenditure, the expenses due to outsourcing of certain activities has increased the A&G expenses by Rs 5.0 Crore. Since, TPC-D is being allowed to retain the efficiency gains on account of the reduction in employee expenses vis-a-vis the normative employee expenses, it will be unfair to the consumers, if TPC-D is also allowed to pass through the increase in A&G expenses due to outsourcing activities, which have resulted in saving certain employee expenses. Hence, the Commission has disallowed this additional expenditure of Rs. 5 crore, and the same will be allowed under the sharing mechanism, so that the effect of sharing of efficiency gains of employee expenses is offset by the sharing of efficiency losses on account of A&G expenses.

The Commission has accepted the actual A&G expenses, less the above deduction of Rs. 5 crore and less the expenses towards contributions/donations, Community Welfare Expenses, and Gifts. 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 2010-11 has been shown in the following table:

Table: A&G expenses**(Rs. Crore)**

Particulars	APR Order	Normative	Actuals	Allowed after truing up
A&G expenses	27.57	30.92	40.59	34.78

The Commission has considered the difference between the actual A&G expenses and A&G expenses allowed after truing up, under the sharing of gains and losses due to controllable factors, since A&G expense is a controllable expense. The disallowed expenses have not been considered for computing sharing of gains/losses, since expenses that have been specifically disallowed cannot be allowed even partly, under the sharing mechanism.

5.4.3 Repairs and Maintenance Expenditure

TPC-D submitted that the actual R&M Expense of TPC-D for FY 2010-11 was Rs. 11.40 Crore while the Commission in the Tariff Order dated September 12, 2010 has approved Rs. 11.71 Crore as the R&M expense.

By applying the norm of 5 paise/kWh to the actual sales quantum in FY 2010-11, i.e., 2736 MU, the normative R&M expenses approved by the Commission for FY 2010-11 works out to Rs. 13.68 Crore. Hence, the Commission has considered the actual R&M expenses submitted by TPC-D for truing up as it is within the norms approved by the Commission in the APR Order. The summary of R&M expenses approved in the APR Order, actual R&M expenses and R&M expenses approved after truing up for FY 2010-11 has been shown in the following table:

Table: R&M expenses**(Rs. Crore)**

Particulars	APR Order	Normative	Actuals	Allowed after truing up
R&M Expenses	11.71	13.68	11.40	11.40

The Commission has considered the difference between the Normative R&M expenses and R&M expenses allowed under truing up, under the sharing of gains and losses due to controllable factors, since R&M expense is a controllable expense.

5.5 CAPITAL EXPENDITURE AND CAPITALISATION

5.5.1 Capitalisation

TPC-D submitted that the actual capital expenditure for FY 2010-11 was Rs. 202 Crore as against the projection of Rs. 194 Crore made in the previous Petition. Similarly, the actual capitalisation during the year amounted to Rs. 138.57 Crore as against Rs. 112.46 Crore approved by the Commission for FY 2010-11. The capitalisation for FY 2010-11 under various categories as submitted by TPC-D is given in the table below:

Table: TPC-D's Capitalisation for FY 2010-11 (Rs. Crore)

Particulars	Actual Capitalisation
Non-DPR Schemes	
Schemes initiated up to FY 09	3
Schemes initiated in FY 10	7
Schemes initiated in FY 11	8
DPR Cases	
Schemes initiated up to FY 09	0
Merged DPR of FY 2010	5
Power Supply to new Consumers	
Schemes initiated in FY 09	4
Schemes initiated in FY 10	74
Merged DPR Schemes initiated in FY 11	36
HO & SS Allocation Including Contingency Provision	2
Total Distribution	139

TPC-D further submitted that even though the scheme value of DPR/Merged DPR Schemes was greater than Rs. 10 Crore, capitalisation in the financial year may be less due to part capitalisation.

TPC-D submitted that the capitalisation included the schemes under Power Supply to New consumers, which was given to the consumers to fulfil the obligations of a Distribution Licensee under the Electricity Act, 2003. Since, such schemes had already been approved by the Commission, the same may be categorised as a "DPR Scheme" for the purpose of presentation

and computations. Accordingly, the capitalisation under the “DPR Schemes” (including Power Supply to New consumers) worked out to Rs. 114 Crore. The capitalisation under the “Non DPR Schemes” worked out to Rs. 24 Crore, which is 17% of the capitalisation under “DPR Schemes” (actual working shows that as per TPC-D's submissions, the capitalisation of non-DPR schemes, i.e., Rs. 24 crore, works out to 21% of capitalisation under DPR schemes, i.e., Rs. 114 crore).

TPC-D submitted that the Commission, in the Tariff Order dated September 12, 2010, had considered the Non-DPR schemes only to the extent of 20% of the quantum of capitalisation under DPR schemes for the purpose of True-Up exercise. TPC-D had filed an appeal before the Hon'ble ATE against the disallowance arising out of this principle adopted by the Commission in the Tariff Order.

TPC-D submitted that as regards the Capital Expenditure and Capitalisation, the Commission had issued guidelines for ‘In Principle Approval’ for Capital Investment Schemes and these guidelines do not discuss any such limitations on the Non-DPR projects. Further, the Commission has introduced this principle in the Tariff Order dated June 15, 2009, i.e. in FY 2009-10 and actually implemented the same in the Tariff Order dated September 12, 2010 for FY 2010-11. TPC-D further submitted that the application of such principle is unfair to TPC for the following reasons:

- The import of this principle was known only through the Order dated September 12, 2010 i.e., after the completion of FY 2009-10 and after about six months of FY 2010-11. Hence, the application of this principle for FY 2010-11 would not be prospective in nature;
- At the time of passing of this Order dated September 12, 2010, there were some schemes, which had started and were Work in Progress under the Non-DPR category. Such schemes were required to be completed and capitalised and these could not have been left incomplete. Some of these schemes were completed and capitalised to the extent of Rs. 10 Crore in FY 2010-11 and as can be seen from the submission, some others would be capitalised in the years to follow. Accordingly, these schemes need to be excluded from the application of the said principle;
- The basic difference between a DPR Scheme and a Non-DPR Scheme is that the schemes with value greater than Rs. 10 Crore require a submission of DPR to the Commission for its approval. In the opinion of TPC-D, though the Non-DPR Schemes do not require a prior approval for execution, these are required to run the business. In other words, the Non-DPR Schemes are equally important as the DPR Schemes from the business point of view. Moreover the benefits of Non-DPR Schemes are also passed on to the consumers

through the implementation of such schemes. Hence, the DPR and Non-DPR Schemes may be treated on equal footing for evaluating for the benefits to the consumers from such schemes;

- TPC-D further, submitted that there cannot be a relation between the capitalisation of DPR and Non-DPR Schemes as implemented by the Commission in its Orders. For example, in an extreme case, if there was no capitalisation under the DPR-Schemes in a particular year, it does not mean that there will not be any Non-DPR Scheme that would get capitalised. Similarly, the DPR Schemes are long gestation schemes, whose capitalisation is lumpy in nature. This principle deprives the utility from the capitalisation of Non-DPR Schemes in the year they are capitalised. For example, consider a situation where the utility executes only one DPR Scheme of Rs. 200 Crore which is in Work-in-Progress for two years and capitalised in the third year. Further, assume that the Utility capitalises Non-DPR Schemes over the three-year period as shown in the table below:

Table: Illustration on Principle of Approval of Non-DPR Schemes (Rs. Crore)

Year	1	2	3	Total
DPR Scheme	-	-	200	200
Non-DPR Capitalisation	20	10	10	40
Allowed as per the Principle applied by the Commission	-	-	10	10

As can be seen from the above table, if the principle is applied on a three-year period basis, the Non-DPR Schemes are well within limits. However, as the principle is applied on an annual basis, the Utility is deprived of the capitalisation to the extent of Rs. 30 Crore.

Hence, notwithstanding the outcome of the Appeal filed by TPC-D before the Hon'ble ATE, TPC-D requested the Commission to review the principle for meting out a fair treatment to the Utility. Accordingly, TPC-D requested the Commission to approve the entire capitalisation of FY 2010-11.

TPC-D further submitted that though the DPR to Non-DPR ratio for new schemes commenced in FY 2010-11 was lower than 80:20; in case the Commission desired, TPC would submit a merged DPR for the Non-DPR schemes.

The Commission is of the view that the total capitalisation submitted by TPC-D in Form 5.4 is in line with the Commission's records. However, segregation of total capitalisation into DPR and

Non-DPR scheme did not tally the data submitted in Form 5.4 along with the Petition, though it tallies with the figures mentioned in the text of the Petition. TPC-D's explanation in this regard has been elaborated in Section 4 of this Order and is not being repeated here.

TPC-D submitted that for some schemes that were executed, the expenditure and subsequently the capitalisation had to be booked under more than one DPR because of the nature of that job (scope of job overlapping across DPRs). Capitalisation on account of such schemes totals to Rs. 5.15 Crore, which could not be segregated in line with the 6 DPRs approved by the Commission. Hence, TPC-D has shown as a separate line item and such capitalisation has to be considered under DPR scheme capitalisation.

It is observed that TPC-D in its initial submission in the Petition had submitted "DPR Schemes" (including power supply to new consumers) amounting to Rs. 114 Crore and "Non DPR Schemes" as Rs. 24 Crore. However, as per the justification submitted by TPC-D in reply to data gaps, "Schemes done through two DPRs" amounting to Rs. 5.15 Crore has to be considered under DPR scheme capitalisation. Thus, the DPR Schemes work out to Rs. 119.47 Crore including "Schemes done through two DPRs" and Non DPR Schemes work out to Rs. 19.09 Crore.

The Commission has considered the capitalisation of those DPR schemes, which have received the in-principle approval of the Commission. 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 under.

*"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)*

As regards TPC-D's request that the above rule should not be implemented in this Order, the Commission is of the view that since the matter is sub-judice before the Hon'ble ATE, the same can only be decided based on the decision of the Hon'ble ATE in the matter.

The Commission has examined the capital expenditure and actual capitalisation claimed by TPC-D as against the various capex schemes approved by the Commission. As against approved capitalisation of Rs. 112.46 Crore considered under the APR Order, actual capitalisation by TPC-D during FY 2010-11 amounted to Rs. 138.57 Crore as per TPC-D's revised submission, out of which, capitalisation of approved DPR schemes amounts to Rs. 119.47 Crore and the balance pertains to Non-DPR schemes.

The capitalisation of Non-DPR Schemes is 14.90% of the capitalisation of DPR Schemes allowed under true-up of FY 2010-11, which is within the 20% limit prescribed by the Commission, and is thus approved.

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 observes 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 do not pertain 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 3.05KW". 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 not pertain to Mumbai LA.

TPC-D 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
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. 0.61 Crore as against Rs. 1.90 Crore submitted by TPC-D. Thus, the Commission has considered the capitalisation of Rs. 137.27 Crore for FY 2010-11, as shown in the Table below:

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

Particulars	APR Order	Actuals	Allowed after truing up
Capitalisation	112.46	138.57	137.27

5.6 DEPRECIATION

TPC-D submitted that it has computed the depreciation by applying the rates specified under THE MERC (Terms & Conditions of Tariff), 2005. Accordingly, the depreciation for FY 2010-11 works out to Rs. 23.13 Crore as against Rs. 20.81 Crore approved by the Commission in the Tariff Order, as shown in the Table below:

Table: Depreciation for FY 2010-11 (Rs. Crore)

Particulars	APR Order	Actual
Opening GFA	524.68	582.86
Depreciation	20.81	23.13
% Depreciation	3.97%	3.97%

For the purpose of truing up, the Commission has approved 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 and the date of capitalisation of such assets. The depreciation expenditure approved by the Commission for FY 2010-11 has been summarised in the following table:

Table: Depreciation (Rs Crore)

Particulars	APR Order	Actuals	Allowed after truing up
Depreciation	20.81	23.13	21.76
Opening GFA	524.68	582.86	547.54
Asset Addition		138.75	137.27
Asset Retirement		(0.57)	(0.57)
Closing GFA	637.14	721.04	684.24

5.7 INTEREST EXPENSES

TPC-D submitted that in addition to loans considered for financing the capitalisation from FY 2003-04 to FY 2009-10, TPC-D 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-D are given below:

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

TPC-D submitted that TPC-D 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 <ul style="list-style-type: none"> • 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 37 th to 40 th 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-D 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-D are as follows:

HDFC LOAN	
Tenor	10 years
Repayment	The loan shall be repayable in 40 quarterly instalments commencing from 30 th June 2010 as under: <ul style="list-style-type: none"> • 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-D 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.

Table: Financing of Capitalisation- FY 2010-11**(Rs. Crore)**

Particulars	Generation	Transmission	Distribution	Total
Debt for capitalisation in FY 2010-11	72	90	97	259
IDFC-2 Rs. 150 Crore Loan	42	52	56	150
Balance loan to be financed	30	38	41	109
HDFC Bank Loan	30	38	41	109
Total HDFC Bank loan Available				541
Balance HDFC loan available				431
HDFC Loan Utilized for Unit-8				6
Balance loan from HDFC available				425

TPC-D further submitted that the loans, in addition to financing the capitalisation, have been utilised for the 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-D 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: <ul style="list-style-type: none"> • 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, 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 2010-11

	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 was Rs. 75.24 Crore. Considering the above, TPC submitted that the interest charges for FY 2010-11 were Rs. 23.90 Crore vis-à-vis Rs. 15.44 Crore approved by the Commission, as shown in the Table below:

Table: Interest Computation for FY 2010-11 (Rs. Crore)

Years	Opening balance	Drawal	Repayment	Closing balance	Average interest rate	Interest		
						Normative	Actual	Total
2003-04	-	18	-	18	10.0%	1	-	1
2004-05	18	17	2	34	10.0%	3	-	3
2005-06	34	26	4	56	10.0%	4	-	4
2006-07	56	26	6	76	9.78%	5	1	6
2007-08	76	27	6	96	9.51%	5	4	8
2008-09	96	29	7	118	10.13%	5	5	11
2009-10	118	75	9	184	10.99%	8	9	17
2010-11	184	234	148	270	10.54%	4	20	24

TPC-D further, submitted that the difference in the actual interest cost vis-à-vis the approved interest cost was mainly on account of the difference in capitalisation considered by the Commission for FY 2008-09 to FY 2010-11. TPC-D further requested the Commission to approve the interest amount based on capitalisation figures submitted by TPC-D.

The Commission has gone through the submissions made by TPC-D 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 trueing up exercise.

Further, as regards refinancing of the actual IDBI-2 Loan, the Commission in its Order dated September 12, 2010 in Case No. 98 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. 155.47 Crore as against TPC-D's submission of Rs. 234.31 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 trueing up
A	Funds Requirement for FY 2010-11	
	Total Capitalisation in FY 2010-11	137.27
	Less: Consumer contribution	1.43
	Net capitalisation to be considered for funding	135.84
	Equity portion of expenditure on Capitalised Assets	40.75
I	Debt portion of expenditure on Capitalised Assets	95.09
II	Loans to be Refinanced in FY 2010-11	60.38
	IDBI-2 loan of FY 2009-10	60.38
III	Total Fund Requirement (I+II)	155.47

Sr. No.	Particulars	Allowed after truing up
B	Sources of Loan during FY 2010-11	
I	IDFC 2	
	Capitalisation for FY 2010-11	56.20
II	HDFC Loan	
	Funding of rest of capitalisation of FY 2010-11 after accounting loan from IDFC 2	38.89
	Total funding for capitalisation for FY 2010-11	95.09
III	IDBI 2 – Refinanced	
	Refinancing loan corresponding to capitalisation of FY 2009-10	60.38
	Total Refinancing in FY 2010-11	60.38
	Total Loan Drawal	155.47

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 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. 18.93 Crore as against Rs. 23.90 Crore submitted by TPC-D. 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	122.67	183.73	141.65
Loan Addition	78.44	234.02	155.47
Loan Repayment	(11.75)	(148.07)	(73.50)
Cl. Balance of Loan	189.36	269.68	223.62
Interest Expense	15.44	23.90	18.93

5.8 OTHER FINANCE CHARGES

TPC-D submitted that the finance charges including Commission and Brokerage Charges for FY 2010-11 was Rs. 1.25 Crore as against Rs. 1.36 Crore approved by the Commission in the APR Order dated September 12, 2010.

The Commission has considered the difference between the approved charges and actual charges under the sharing of gains and losses due to controllable factors, since Other Finance Charges is a controllable expense.

5.9 INTEREST ON WORKING CAPITAL AND CONSUMER'S SECURITY DEPOSIT FOR FY 2010-11

TPC-D submitted that the working capital requirement was computed based on the elements specified in the MERC Tariff Regulations. TPC-D submitted that as the interest rate specified in the MERC Tariff Regulations (Short term Prime Lending Rate of the State Bank of India) was varying across the year, for the purpose of estimating the interest on Working Capital for FY 2010-11, an interest rate of 11.75% (SBI PLR), was considered which was the rate existing at the time of filing of the ARR Petition for FY 2010-11, and is in line with the provisions of the Regulations and as approved in previous Order.

TPC-D further submitted that the interest on working capital had been computed by applying the principles outlined in the MERC Tariff Regulations and after incorporating the findings of the Hon'ble ATE in this regard.

TPC-D further submitted that based on the normative principles, the total Interest on Working Capital of TPC-D for FY 2010-11 worked out to Rs. 26.45 Crore, as against Rs. 22.64 Crore approved by the Commission (which included interest on security deposit also).

TPC-D also submitted that the Interest on Security Deposits from retail consumers was considered on the basis of actual interest expense incurred during the year. Accordingly, the total interest on security deposit was Rs. 5.47 Crore for FY 2010-11.

In view of the ATE Judgment in Appeal No, 117 of 2008, the Commission has considered (not deducted) one month equivalent Power Purchase cost from TPC-G for computation of working capital for FY 2010-11. Further, 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 trueing 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 PLR) at the time when TPC-D 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. 22.53 Crore.

TPC-D has submitted interest on security deposit as Rs. 5.47 Crore for FY 2010-11, and the Commission has considered the same under the truing up exercise.

Table: Interest on Working Capital

(Rs. Crore)

Particulars	APR Order	Actuals	Allowed after truing up
Interest on working capital and Consumer Security Deposit	22.64	31.92	28.00

5.10 RETURN ON EQUITY (ROE)

TPC-D submitted that based on the capitalisation, the Debt: Equity norm of 70:30 and considering ROE of 16% in accordance with Regulation 63.1 of the MERC Tariff Regulations, the Return on Equity worked out to Rs. 32.88 Crore for FY 2010-11 as against the amount of Rs. 27.50 Crore approved by the Commission in the Order dated September 12, 2010.

TPC-D further submitted that the Return on Equity was higher at Rs. 32.88 Crore on account of actual higher capitalisation for the period from FY 2008-09 to FY 2010-11 as against the capitalisation approved by the Commission.

The Commission has computed the RoE for FY 2010-11 on the approved opening balance of equity as well as 50% of the equity component of the approved assets capitalisation during the year, in accordance with the MERC Tariff Regulations, as applicable for the Distribution business. Accordingly, approved Return on Equity for FY 2010-11 is summarised in the following Table:

Table: Return on Equity for FY 2010-11 (Rs. Crore)

Particulars	APR Order	Actuals	Allowed after truing up
Regulatory Equity at the beginning of the year	155.09	184.71	166.08
Capital Assets added during the year	112.46	138.76	137.27
Equity portion of the expenditure on Capital Assets added during the year	33.62	41.63	40.75
Regulatory Equity at the end of the year	188.71	226.33	206.83
Return Computation			
Return on Regulatory Equity at the beginning of the year-16% for 1year	24.82	29.55	26.57
Return on Equity portion of capital expenditure on Capital Assets added during the year -16% for ½ year	2.69	3.33	3.26
Grand Total	27.50	32.88	29.83

5.11 PROVISIONING FOR BAD DEBTS

TPC-D submitted that it has written back an amount of Rs. 7.79 Crore for FY 2010-11 as against an amount of Rs. 1.83 Crore approved by the Commission for FY 2010-11. As per TPC-D, the amount written back had arisen on account of an earlier provision being made by it and such provision being not required as on March 31, 2011.

The Commission has accepted the submission of TPC-D for provisioning of bad debts.

5.12 CONTRIBUTION TO CONTINGENCY RESERVES FOR FY 2010-11

TPC-D submitted that it has considered the appropriation towards contingency reserves as per the MERC Tariff Regulations, which allowed 0.5% of the original value of assets as Statutory Appropriation. Accordingly, TPC-D provided the Statutory Appropriation at Rs. 2.91 Crore against Rs. 1.28 Crore approved by the Commission for FY 2010-11. TPC-D further, submitted that the position of the Contingency Reserves after the appropriation for FY 2010-11 worked out as under:

Table: Contingency Reserves as on 31st March 2011 as submitted by TPC-D (Rs. Crore)

Particulars	Actuals
Opening GFA of FY 2010-11	582.86
Maximum permissible (5% of opening GFA)	29
Amount of contingency Reserve up to March 31, 2010	17
Created in FY 2010-11	2.91
Amount of Contingency Reserve on March 31, 2011	20

In replies to the queries raised by the Commission regarding the documentary evidence for investment of contingency reserve, TPC-D submitted that it would make the investment within six months of the year ending FY 2010-11, i.e., by September 30, 2011. In the last APR Order, the Commission considered contribution to contingency reserve to the extent of 0.25% of opening GFA for FY 2010-11, in accordance with THE MERC Tariff Regulations. Accordingly, the Commission has allowed provisioning towards contingency reserve for FY 2010-11 at Rs. 1.37 Crore, which is 0.25% of opening GFA, i.e., Rs. 547.54 Crore, in accordance with THE MERC Tariff Regulations.

5.13 EXPENSES TOWARDS DEMAND SIDE MANAGEMENT

TPC-D submitted that it has been taking various initiatives towards DSM and has submitted the details of the same in its Petition. TPC-D submitted that the expenses incurred for FY 2010-11 are Rs. 0.90 Crore towards Energy Audit at Consumer Premises, etc.

The Commission has accepted DSM expenses of Rs. 0.90 Crore for FY 2010-11 as submitted by TPC-D in the Petition.

5.14 INCOME TAX FOR FY 2010-11

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

“76.2 Income-tax

76.2.1 Income-tax on the income of the Distribution Licensee shall be allowed for inclusion in the aggregate revenue requirement.

76.2.2 The Distribution Licensee shall include an estimate of his income-tax liability 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 Distribution 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.

76.2.3 The benefits of any income-tax holiday, credit for unabsorbed losses or unabsorbed depreciation on the distribution system or any part thereof shall be taken into account in calculation of the income-tax liability of the Distribution Licensee.”

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. The Hon'ble APTEL has discarded 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, the 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 B; the tax allocable to segment under consideration of this order is Rs. 19.76 crore which is being sanctioned against the claim of Rs. 17 crores 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.

5.15 NON-TARIFF INCOME FOR FY 2010-11

TPC-D submitted that it has estimated Non-Tariff Income of Rs. 13.28 Crore for FY 2010-11, which is composed of the following:

Table: Non-Tariff Income for FY 2010-11 (Rs. Crore)

Particulars	Actuals
Recurring Items	5.37
Rent	3.72
Interest from Contingency Reserve	1.16
Non Recurring Items	7.92
Delayed Payment Charges	2.82
Sale of Scraps and Stores	0.90

Particulars	Actuals
VAT Refund	0.88
Interest on IT Refund	0.09
Interest on Delayed Payment Charges	0.77
Income from services rendered	0.21
Others	2.55
Total Non Tariff Income	13.28

The Commission observes that interest on contingency reserve investment has reduced from Rs. 1.52 Crore in FY 2009-10 to Rs. 1.16 Crore in FY 2010-11 whereas, contingency reserve has increased by Rs. 2.91 Crore in FY 2010-11 over the levels in FY 2009-10. In reply to the Commission's query in this regard, TPC-D explained that as per Annual Report for FY 2010-11, the contingency reserves have been reduced from Rs. 108.83 Crore in FY 2009-10 to Rs. 25.52 Crore in FY 2010-11, as such amounts were in excess of that required to be maintained for Transmission and Distribution Business. However, the Commission observes that the interest income of Rs. 1.52 Crore considered for FY 2009-10 corresponds to the interest income only on the regulated average contingency reserves of Rs.16.18 crore, at an effective interest rate of 9.38%. If TPC-D's submission were to be accepted, it would mean that the interest income of Rs. 1.52 crore considered for FY 2009-10 corresponds to the interest income on the entire contingency reserves of Rs. 108.83 crore available with TPC, at an effective interest rate of 1.39%, which is not logical. Since, the regulated contingency reserve has increased by Rs. 2.91 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-D) on the incremental contingency reserves, in addition to the interest on the contingency reserves existing during FY 2009-10, and the interest on contingency reserves for FY 2010-11 works out to Rs. 1.75 Crore.

The Commission observes 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 considered the actual non-tariff income reported by TPC-D, except interest on contingency reserve and gain from Corporate Treasury function, under the truing up exercise, as shown in the table below:

Table: Non-Tariff Income**(Rs. Crore)**

Particulars	APR Order	Actuals	Allowed after truing up
Non-Tariff Income	14.22	13.28	15.95

5.16 ALLOCATION OF LOAD CONTROL CENTRE (LCC) COSTS TO TPC-D

TPC-D further submitted that the share of LCC expense for TPC-D for FY 2010-11 was Rs. 1.17 Crore as against Rs. 1.49 Crore approved by the Commission in Order dated September 12, 2010 and has to be included in O&M expenses.

Considering that the LCC costs are largely in the nature of O&M expenses, the Commission has considered the entire LCC cost as part of O&M expenses. For truing up purposes, the Commission has accepted the allocation of the LCC cost for its Generation, Transmission and Distribution businesses as submitted by TPC.

Accordingly, in the current truing up exercise, the Commission has considered TPC-D's share of LCC cost for FY 2010-11 as Rs. 1.17 Crore.

5.17 BRAND EQUITY EXPENSE

TPC-D submitted that the brand equity expenses to be borne by TPC-D are Rs. 3.54 Crore as against Rs. 5.01 Crore approved by the Commission for FY 2010-11. The total brand equity amount 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-D, is given in the table below:

Table: Allocation of Brand Equity Amount as submitted by TPC-D 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-D 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-D, 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 Licenced 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

Particulars	Basis	Actuals	Allowed after truing up
Total Revenue to be considered for Mumbai Licenced 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	$g=\text{service tax}\%*f$	1.26	1.26
Total contribution to Brand Equity including service tax	$h=f+g$	13.47	13.47

TPC-D 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-D in Brand Equity expense for FY 2010-11 is Rs. 3.42 Crore.

5.18 REVENUE FROM SALE OF ELECTRICITY

TPC-D submitted that the tariffs approved by the Commission for FY 2010-11 were made applicable from September 1, 2010 through Tariff Order dated September 12, 2010. TPC-D further submitted the revenue computations as under:

- Revenue for the period from April 2010 to August 2010 are on actual basis as per Tariff Order dated June 15, 2009;
- Revenue for the period from September 2010 to March 2011 are on actual basis as per Tariff Order dated September 12, 2010;

Table: Revenue from Sale of Power for FY 2010-11 (Rs. Crore)

Sr. No.	Particulars	Actuals
1	Revenue from Demand Charges	164.79
2	Revenue from Energy Charges	2,020.26
3	Revenue from FAC Billed	204.62
4	Power Factor (Rebate)/Penalty	(103.43)
5	Revenue from TOD Charges	18.70
6	Outside License Area Sales	19.97
7	Unrecovered / (Excess) Recovered FAC	-
8	Other Adjustments	(73.25)

Sr. No.	Particulars	Actuals
9	Wheeling Charges- Changeover Consumers	119.14
10	Total Revenue	2,370.80

TPC-D also submitted the details of category-wise revenue from sale of electricity for FY 2010-11, under Form F13 along with its APR Petition.

Accordingly, the total revenue from sale of electricity for FY 2010-11 has been considered as Rs. 2371 Crore by the Commission.

5.19 SHARING OF GAINS AND LOSSES FOR FY 2010-11

TPC-D submitted that certain items of expenditure for FY 2010-11 have been classified as uncontrollable and hence considered for computation of sharing of gains and losses. These items of expenditure are (i) O&M expenditure (ii) other finance charges and (iii) Provision for doubtful debts.

5.19.1 O&M Expenditure

TPC-D submitted that certain increase in expenditure under this head was beyond the control of TPC-D. TPC-D further submitted that the expenditure due to uncontrollable factors was added to the approved Expenditure to arrive at the gains and losses, the details of which are provided in the table below:

Table: Gains/Losses on O&M Expenditure for FY 2010-11 (Rs. Crore)

Sr. No.	Particulars	Amount
1	Normative O&M Expenditure for FY 2010-11	80.01
2	Actual O&M Expenditure for FY 2010-11	77.37
3	Uncontrollable Expenditure out of actual expenses	-
4	Actual controllable expenditure (2-3)	77.37
5	(Losses)/Gains (1-4)	2
6	Amount passed on to the Consumers ($1/3^{\text{rd}}$ of Gain/Loss) ($1/3*5$)	1
7	Amount to be passed on to Reserve ($1/3*5$)	1
8	Net Entitlement	79

The actual O&M expense for FY 2010-11 as approved by the Commission after final true-up is Rs 72.73 Crore as against the normative expense of Rs. 81.51 crore including allocation of LCC costs and the actual expenditure of Rs. 78.54 Crore as submitted by TPC-D.

The Commission has considered O&M expenses for the purpose of calculation of Sharing of Gain and Losses, as tabulated below:

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

Particulars	Approved/ Normative	Actual	Approved after true-up	Efficiency Gain/ (Loss)	Efficiency Gain/(Loss) shared with consumers	Net Entitlement before passing on to reserves
	1	2	3	4=1-3	5=4* 1/3rd	6=3+4* 2/3 rd
Operation & Maintenance Expenses	81.51	78.54	72.73			82.83
Employee Expenses	35.42	25.38	25.38	10.04	3.35	32.07
Administration & General Expenses	30.92	40.59	34.78	(5.00)	(1.67)	36.45
Repair & Maintenance Expenses	13.68	11.40	11.40	2.28	0.76	12.92
Allocation of Load Control Centre Charges	1.49	1.17	1.17	0.32	0.11	1.38

5.19.2 Other Finance Charges and Provision for Doubtful Debts

TPC-D submitted that the sharing of gains and losses on account of "other finance charges" and "provisions for doubtful debt" was computed as given in the following table:

Table: Gains/Losses for Finance Charges and Bad-Debts for FY 2010-11 (Rs. Crore)

Sr. No.	Particulars	Amount
	Finance Charges	
1	Approved Finance Charges for FY 2010-11	1.36
2	Actual Finance Charges	1.25
3	Uncontrollable Finance Charges	-

Sr. No.	Particulars	Amount
4	Actual Controllable Finance Charges (2-3)	1.25
5	Losses /(Gains)	(0.11)
6	Amount passed on to the Consumers (1/3 rd of Gain/Loss)(1/3*5)	(0.04)
7	Net Entitlement (1+3+6)	1.32
	Provisioning for Bad Debts	
1	Approved Provisioning for Bad Debts for 2010-11	1.83
2	Actual Provisioning for Bad Debts	(7.79)
3	Losses/(Gains) (2-1)	(9.62)
4	Amount passed on to the Consumers (1/3 rd of Gain/Loss) (1/3*5)	(3.21)
5	Net Entitlement	(1.38)
6	Net Entitlement for finance charges & bad debts	(0.05)

The Commission has accepted TPC-D's submission for sharing of gains and losses for Finance Charges and Provision for Bad Debts.

5.19.3 Interest on Working Capital

As discussed in the earlier paragraphs, TPC-D claimed interest on working capital of Rs 26.45 Crore during FY 2010-11 and the normative interest on working capital approved by the Commission considering other elements of expenses as approved after trueing up, works out to Rs 22.53 Crore. As discussed in Section 3 of this Order, TPC-D 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 allocation of TPC-D is Nil, hence, actual interest is considered as zero. The details of actual interest paid submitted by TPC-D 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. 22.53 Crore as normative interest with actual working capital interest being zero, and has considered sharing of 1/3rd of the efficiency gains

with the consumers, while 2/3rd is to be retained by the Licensee, i.e., TPC-D, in accordance with the MERC Tariff Regulations.

5.20 AGGREGATE REVENUE REQUIREMENT (ARR) AND REVENUE GAP OF TPC-D FOR FY 2010-11

TPC-D submitted that the major difference between the estimated ARR and approved ARR is due to following elements:

- Lower quantum of purchase of power from Tata Power-G resulting into higher purchase from external sources at a marginally higher price than that approved by the Commission;
- Higher sales have also necessitated need for purchase of additional power;
- Due to increased operations, working capital requirement and interest thereon increased as compared to approved figures;
- The deviation in O&M expenses from that approved by the Commission has been explained in the Petition.

Based on the above, TPC-D submitted the distribution ARR for FY 2010-11 as follows:

Table: Aggregate Revenue Requirement submitted by TPC-D (Rs. Crore)

Sr. No.	Particulars	APR FY 2010-11	
		APR Order	Actual/Audited
1	Power Purchase Expenses	1892.31	2092.63
1.1	<i>Power Purchase Expenses (TPC-G)</i>	<i>1,396.34</i>	<i>1,110.32</i>
1.2	<i>Power Purchase Expenses (RPO)</i>	<i>101.10</i>	<i>89.89</i>
1.3	<i>Power Purchase Expenses (Contracted Power, MSEDCL, UI, Infirm & other sources)</i>	<i>145.70</i>	<i>621.41</i>
1.4	<i>Wheeling Charges payable to R-Infra</i>	<i>97.38</i>	<i>119.14</i>
1.5	<i>Standby Charges Payable</i>	<i>73.89</i>	<i>73.92</i>
1.6	<i>Transmission & SLDC charges payable</i>	<i>77.98</i>	<i>77.95</i>
2	O&M Expenses	72.71	78.54
2.1	<i>Employee Expenses</i>	<i>31.94</i>	<i>25.38</i>
2.2	<i>A&G Expenses</i>	<i>27.57</i>	<i>40.59</i>
2.3	<i>R&M Expenses</i>	<i>11.71</i>	<i>11.40</i>
2.4	<i>Allocation of LCC Charges</i>	<i>1.49</i>	<i>1.17</i>
3	Depreciation, including AAD	20.81	23.13

Sr. No.	Particulars	APR FY 2010-11	
		APR Order	Actual/Audited
4	Interest and other Financial charges	39.44	57.07
4.1	<i>Interest on long term loan Capital</i>	15.44	23.90
4.2	<i>Interest on working Capital and on Consumer security deposits</i>	22.64	31.92
4.3	<i>Other Finance Charges</i>	1.36	1.25
5	Provision for Bad debts	1.83	(7.75)
6	Income Tax	14.05	16.87
7	Contribution to Contingency Reserves	1.28	2.91
8	Adjustment for profit/loss on account of controllable/uncontrollable factors	-	-
9	Other expenses (DSM Budget)	9.80	0.90
10	Total Revenue Expenditure	2,052.31	2,264.31
11	Return on Equity Capital	27.50	32.88
12	Aggregate Revenue Requirement	2,079.81	2,297.19
13	Add: Unrecovered/(Excess) Recovered FAC	-	-
14	Less: Non Tariff Income	14.22	13.28
15	Less: Income from sale of Surplus Power	-	19.97
16	Brand Equity	5.01	3.54
17	Aggregate Revenue Requirement from Retail Tariff	2,070.60	2,267.48

TPC-D submitted that after considering the ARR Order dated September 12, 2010 which had approved the expenses for TPC-D, the revenue of TPC-D for FY 2010-11 taking into account the Revenue at Existing Tariffs, Non Tariff Income, approved expenditure, uncontrollable expenditure and sharing of efficiency gains and loss, the Net Aggregate Revenue Required is higher than the income; thereby creating a revenue (gap)/ surplus of Rs. 75.47 Crore. The computation of the (gap)/surplus is given in table below:

Table: Revenue (Gap)/Surplus submitted by TPC-D (Rs. Crore)

Sr. No.	Particulars	Approved	Normative Expenses claimed	Actual	Efficiency Gains/(Loss) from controllable factors shared with consumers	Net Entitlement after impact of Gains/(losses) from controllable factors
		(a)	(b)	(c)	(d)=[*]	(e)
I	Revenue					
1	Revenue from Sale of power	1833.59		2,231.69		2,231.69
2	Income from surplus power	-		19.97		19.97
3	Wheeling Charges-changeover consumers			119.14		119.14
	Total Revenue	1833.59		2370.80		2370.80
II	Expenditure					
1	Power Purchase Expense	1,643.14		1,821.62		1,821.62
2	Standby charges	73.89		73.92		73.92
3	Transmission Charges & MSLDC Charges	77.98		77.95		77.95
4	O&M expenses	54.21	80.75	78.54	0.74	80.01
4.1	<i>Employee Expenses</i>	<i>22.01</i>	<i>35.15</i>	<i>25.38</i>		<i>35.15</i>
4.2	<i>A&G Expenses</i>	<i>19.00</i>	<i>30.75</i>	<i>40.59</i>		<i>30.75</i>
4.3	<i>R&M Expenses</i>	<i>11.71</i>	<i>13.68</i>	<i>11.40</i>		<i>13.68</i>
4.4	<i>Allocation of LCC Charges</i>	<i>1.49</i>	<i>1.17</i>	<i>1.17</i>		<i>1.17</i>
5	Depreciation, including AAD	20.81		23.13		23.13
6	Interest on long term loan capital	15.44		23.90		23.90
7	Interest on working capital and on	22.64		31.92		31.92

Sr. No.	Particulars	Approved	Normative Expenses claimed	Actual	Efficiency Gains/(Loss) from controllable factors shared with consumers	Net Entitlement after impact of Gains/(losses) from controllable factors
		(a)	(b)	(c)	(d)=[*]	(e)
	consumer security deposits					
8	Other finance charges	1.36		1.25	(0.40)	1.29
9	Provisioning for Bad debts	1.83		(7.79)	3.21	(1.38)
10	Income Tax	14.05		16.87		16.87
11	Return on Equity	27.50		32.88		32.88
12	Contribution to contingency reserves	1.28		2.91		2.91
13	Brand Equity	5.01		3.54		3.54
14	Wheeling charges payable to R-Infra	97.38		119.14		119.14
15	DSM Expenses	9.80		0.90		0.90
16	Total Expenditure	2,066.32		2,300.70	3.91	2,308.62
III	Other Adjustments	14.22		13.28		13.28
17	Less Non-Tariff Income	14.22		13.28		13.28
IV	Revenue (Gap)/Surplus	(218.51)		83.39		75.47

The Commission has approved a revenue surplus of Rs. 96.03 Crore for FY 2010-11 after final true-up for FY 2010-11, as shown in the table below:

Table: Revenue (Gap)/ Surplus approved by the Commission (Rs. Crore)

Particulars	Approved in APR Order / Normative	Actual	Approved after true-up	Efficiency Gain/ (Loss)	Efficiency Gain/ (Loss) shared with consumers	Net Entitlement before passing on to reserves
Power Purchase Expenses	1,892.39	2,092.63	2,091.87			2,091.87
<i>Power Purchase Expenses (TPC - G)</i>	<i>1,396.34</i>	<i>1,110.32</i>	<i>1,110.32</i>			<i>1,110.32</i>
<i>Power Purchase Expenses (RPO)</i>	<i>101.10</i>	<i>89.89</i>	<i>88.75</i>			<i>88.75</i>
<i>Power Purchase Expenses (Contracted Power, MSEDCL, UI, Infirm & Other Sources)</i>	<i>145.70</i>	<i>621.41</i>	<i>621.41</i>			<i>621.41</i>
<i>Wheeling Charges Payable to R-Infra</i>	<i>97.38</i>	<i>119.14</i>	<i>119.52</i>			<i>119.52</i>
<i>Standby Charges Payable</i>	<i>73.89</i>	<i>73.92</i>	<i>73.92</i>			<i>73.92</i>
<i>Transmission & SLDC Charges Payable</i>	<i>77.98</i>	<i>77.95</i>	<i>77.95</i>			<i>77.95</i>
Operation & Maintenance Expenses*	81.51	78.54	72.73	7.64	2.55	82.83
<i>Employee Expenses*</i>	<i>35.42</i>	<i>25.38</i>	<i>25.38</i>	<i>10.04</i>	<i>3.35</i>	<i>32.07</i>
<i>Administration & General Expenses*</i>	<i>30.92</i>	<i>40.59</i>	<i>34.78</i>	<i>(5.00)</i>	<i>(1.67)</i>	<i>36.45</i>
<i>Repair & Maintenance Expenses*</i>	<i>13.68</i>	<i>11.40</i>	<i>11.40</i>	<i>2.28</i>	<i>0.76</i>	<i>12.92</i>
<i>Allocation of Load Control Centre Charges *</i>	<i>1.49</i>	<i>1.17</i>	<i>1.17</i>	<i>0.32</i>	<i>0.11</i>	<i>1.38</i>
Depreciation, including advance against depreciation	20.81	23.13	21.76			21.76
Interest and Other Financial Charges	39.44	57.07	48.19			40.75
<i>Interest on Long-term Loan Capital</i>	<i>15.44</i>	<i>23.90</i>	<i>18.93</i>			<i>18.93</i>
<i>Interest on Working Capital and on consumer security deposits</i>	<i>22.64</i>	<i>31.92</i>	<i>28.00</i>	<i>22.53</i>	<i>7.51</i>	<i>20.49</i>
<i>Other Finance Charges</i>	<i>1.36</i>	<i>1.25</i>	<i>1.25</i>	<i>0.11</i>	<i>0.04</i>	<i>1.32</i>
Provision for Bad Debts	1.83	(7.79)	(7.79)	9.62	3.21	(1.38)
Income Tax	14.05	16.87	19.76			19.76

Particulars	Approved in APR Order / Normative	Actual	Approved after true-up	Efficiency Gain/ (Loss)	Efficiency Gain/ (Loss) shared with consumers	Net Entitlement before passing on to reserves
Contribution to contingency reserves	1.28	2.91	1.37			1.37
Other Expenses (DSM Budget)	9.80	0.90	0.90			0.90
Total Revenue Expenditure	2061.11	2264.27	2248.80			2257.86
Return on Equity Capital	27.50	32.88	29.83			29.83
Aggregate Revenue Requirement	2088.61	2297.16	2278.63			2287.70
Less: Non Tariff Income	14.22	13.28	15.95			15.95
Less: Income from Sale of Surplus Power	0.00	19.97	19.97			19.97
Aggregate Revenue Requirement from Retail Tariff	2074.39	2263.90	2242.71			2251.77
Add: Brand Equity Amount	5.01	3.54	3.42			3.42
Total Revenue Requirement	2,079.40	2,267.44	2,246.12			2,255.19
Revenue from sale of electricity	1,833.59	2,231.69	2,231.69			2,231.69
Revenue on account of wheeling charges collected from Changeover consumers		119.14	119.52			119.52
Revenue Gap/ (Surplus)		(83.39)	(105.09)			(96.03)

* Revised Normative Expenses considered

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

- Slight 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 line 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 inclusion of 'gain on exchange' on account of proportionate allocation of revenue earned from corporate treasury functions.

5.21 RECOVERIES PERTAINING TO THE PAST PERIOD

5.21.1 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-D, an amount of Rs. 3.56 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 pertaining impact on Equity portion only. Accordingly, TPC-D claimed a reduction in Regulatory Equity for FY 2008-09 to the extent of Rs. 3.56 Crore on account of the entire asset de-capitalisation considered for the year. Based on the submissions made by TPC-D in the matter, the Commission allowed the impact of such asset de-capitalisation vide its Order dated September 12, 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, 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 Licensed 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 observes that Guest House Expenses have been claimed by TPC-D as HO & SS expense allocation to TPC-D, 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 the 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) Regulations 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-D submitted that as per their understanding no specific threshold 'book value' has been prescribed under Regulation 8.8.1 by the Commission. TPC-D further submitted that as a matter of abundant caution, TPC-D 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-D submitted that the Commission in its Order dated September 12, 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-D for FY 2008-09 is disallowed now, and the corresponding Equity disallowed, i.e., Rs. 3.56 Crore, has been re-

instated for the year (the same assets have been entirely funded by TPC-D through equity). Thus, TPC-D is entitled to additional RoE for FY 2008-09 to this extent which works out to Rs. 0.28 Crore. In addition, based on 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 12, 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 0.02 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. 0.31 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, as discussed in the relevant sub-sections of Section 4 and 5, respectively.

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.

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

TPC-D submitted the net revenue (gap)/surplus for FY 2009-10, as submitted in the previous sections of this Order and the previous adjustments as approved by the Commission in the previous ARR and APR Order.

The Commission is of the view that while carrying out true up for a particular year, whether provisional or final, all expenses and income for that year and previous years' (gap)/surplus, which were considered in the original Order, have to be considered during the provisional as well as the final true up exercises of that year, as submitted by TPC-D.

Thus, the net revenue (gap)/surplus for FY 2009-10 as submitted by TPC-D and the net revenue (gap)/surplus approved by the Commission in the previous sections of this Order, along with the previous adjustments as approved by the Commission in the ARR Order dated June 15, 2009 while determining the ARR for FY 2009-10, is summarised in the table below:

Table: Net Revenue (Gap)/Surplus for FY 2009-10 (Rs. Crore)

Particulars	ARR Order	Submitted by TPC-D	Allowed after truing up
ARR for FY 2009-10	1,009.42	1,415.43	1,375.26
Revenue from existing Tariff	1,348	1,356.34	1,356.34
Revenue (Gap)/Surplus for FY 2009-10 –A	339	(59.09)	(18.92)
Past Recoveries of TPC-D			
Sharing of Gains and Losses for FY 2006-07	(11.00)	(11.00)	(11.00)
Impact of ATE Judgment for FY 2004-05 and FY 2005-06	(20.00)	(20.00)	(20.00)
Revenue (Gap)/Surplus for FY 2008-09	(135.43)	(135.43)	(135.43)
Revenue (Gap)/Surplus for FY 2008-09*	20.92	-	
Impact of Review Order Case No.46 of 2008	(7.31)	(7.31)	(7.31)
Sub-total –B	(153)	(173.74)	(173.74)
Total Revenue (Gap)/Surplus C= A+B	(186)	(232.83)	(192.66)

*Truing up amount of FY 2008-09 considered in (Gap)/Surplus of FY 2010-11

5.21.3 Net (Gap)/Surplus for FY 2010-11

TPC-D further submitted that the revenue (gap)/surplus for FY 2010-11 submitted in the above sections of this Order is a “Pure (Gap)/Surplus” and does not account for the recoveries permitted by the Commission for the period prior to FY 2010-11, in the previous ARR Order dated September 12, 2010. TPC-D has further submitted the computation of revenue

(gap)/surplus for FY 2010-11 including past recoveries and impact of the Hon'ble ATE's Judgment.

In accordance with above-stated philosophy, the Commission has accepted TPC-D's submission that past recoveries and impact of the Hon'ble ATE's Judgment approved by the Commission for FY 2010-11, in the previous ARR Order dated September 12, 2010, should be considered during the final truing up of FY 2010-11.

Thus, the net revenue (gap)/surplus for FY 2010-11 as submitted by TPC-D and the net revenue (gap)/surplus approved by the Commission for FY 2010-11 in the previous Sections of this Order, along with the previous adjustments as approved by the Commission in the ARR Order while determining the ARR for FY 2010-11, is given in the table below:

Table: Net Revenue (Gap)/ Surplus for FY 2010-11 (Rs. Crore)

Particulars	ARR Order	Submitted by TPC-D	Allowed after truing up
ARR for FY 2010-11	2070.60	2,295.33	2,275.16
Revenue from existing Tariff	1833.59	2,370.80	2,371.19
Pure Revenue (Gap)/Surplus for FY 2010-11 (D)	(237.02)	75.47	96.03
Impact of ATE Judgment dated July 15, 2009	(3.39)	(3.39)	(3.39)
Revenue (Gap)/ Surplus for FY 2008-09	37.48	37.48	37.48
Revenue (Gap)/Surplus for FY 2009-10 *	15.60	-	-
Recoveries prior to FY 2008-09 (approved entirely but allowed to be recovered to the extent of 50% in FY 2009-10)	(166.00)	(166.00)	(166.00)
Past Recoveries pertaining to Tata Power-D (E)	(116.31)	(131.91)	(131.91)
Share of Past Recoveries of TPC-G (F)	(3.58)	(3.58)	(3.58)
Total Revenue (Gap)/ Surplus = D+E+F	(356.91)	(60.02)	(39.46)

*Truing up amount of FY 2009-10 considered in (Gap)/Surplus of FY 2010-11

5.21.4 Carrying Cost up to FY 2011-12

TPC-D submitted the summary of such (Gap)/Surplus along with the carrying cost up to FY 2011-12 as shown in the table below:

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

Particulars	Month	Rate	Recovery in FY 2010-11	Interest up to FY 2011-12	Total Recovery in FY 2011-12
Impact of ATE Judgment dated February 14, 2011			84.66		
Gap for FY 2009-10			232.83		
Gap for FY 2009-10			60.02		
Interest on Gap/(Surplus) for FY 2009-10					
For FY 2010-11	12	12.24%		28.51	
For FY 2011-12	6	13.23%		15.41	
Interest on Gap/(Surplus) for FY 2010-11					
For FY 2010-11	-	12.24%		-	
For FY 2011-12	6	13.23%		3.97	
Total			377.50	47.87	425.38

The Commission observes that TPC-D has computed the carrying cost on the revenue gap of FY 2009-10 for the period of 12 months for FY 2010-11, although the final truing up for FY 2009-10 has been sought in this Petition itself. However, as discussed in Section 3.6 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 of FY 2009-10 in FY 2010-11.

As regards the carrying cost claimed by TPC-D for FY 2011-12, the Commission is of the view that although TPC-D has included carrying cost on the revenue gap for FY 2010-11 for the period of 6 months of FY 2011-12, TPC-D 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 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-D 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.

5.21.5 Summary of Recoveries Pertaining to the Past Period

The summary of the revenue (gap)/surplus sought by TPC-D and as approved by the Commission after final truing up for FY 2009-10 and FY 2010-11, including 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-D related to the past period (Rs. Crore)

Sr. No.	Particulars	Submitted by TPC-D	Approved
	Final Gap of FY 2009-10		
	ARR for FY 2009-10	1,415.43	1,375.26
	Revenue from existing Tariff	1,356.34	1,356.34
	Revenue (Gap)/Surplus for FY 2009-10 - A	(59.09)	(18.92)
	Past Recoveries of TPC-D	-	-
	Sharing of gains & losses for FY 2006-07	(11.00)	(11.00)
	Impact of ATE Judgment for FY 2004-05 & FY 2005-06	(20.00)	(20.00)
	Revenue (Gap) / Surplus for FY 2007-08	(135.43)	(135.43)
	Impact of Review Order Case No. 46 of 2008	(7.31)	(7.31)
	Sub-total - B	(173.74)	(173.74)
I	Total Revenue (Gap)/Surplus: C = A+B	(232.83)	(192.66)
	Final Gap of FY 2010-11		
	ARR for FY 2010-11	2,295.33	2,275.16
	Revenue from existing Tariff	2,370.80	2,371.19
	Pure Revenue (Gap)/Surplus for FY 2010-11 (D)	75.47	96.03
	Impact of ATE Judgment dated July 15, 2009	(3.39)	(3.39)
	Revenue (Gap)/ Surplus for FY 2008-09	37.48	37.48
	Recoveries prior to FY 2008-09 (approved entirely but allowed to be recovered to the extent of 50% in FY 2009-10)	(166.00)	(166.00)
	Past Recoveries pertaining to Tata Power-D (E)	(131.91)	(131.91)
	Share of Past Recoveries of TPC-G (F)	(3.58)	(3.58)
II	Total Revenue (Gap)/ Surplus = D+E+F	(60.02)	(39.46)

Sr. No.	Particulars	Submitted by TPC-D	Approved
III	Impact of ATE Judgment dated February 14, 2011	(84.66)	(12.75)
IV	Carrying Cost till FY 2011-12	(47.87)	0
V	Impact of Re-instatement of asset De-capitalisation for FY 2008-09	0	0.31
VI	Total (Gap)/Surplus	(425.38)	(244.57)

TPC-D further submitted that in addition to the above, the share of TPC-D in the gap of TPC-G related to the past period has to also be recovered. TPC-D requested the Commission to pass on such recoveries to the consumers. The share of TPC-D in the gap of TPC-G related to the past period as submitted by TPC-D, and that approved by the Commission in a separate Order in Case No. 105 of 2011, is as given in the following table:

Table: Share of TPC-D in the (Gap)/Surplus of TPC-G for the past period (Rs. Crore)

Particulars	Submitted by TPC-D	Approved
Share of TPC in (Gap)/Surplus of TPC-G in FY 2009-10 along with interest Cost up to FY 2011-12	(79.67)	(15.76)
<i>Unit 4-7 & Hydro</i>	(77.36)	(20.61)
<i>Unit 8</i>	(2.31)	4.85
Share of TPC in (Gap)/Surplus of TPC-G in FY 2010-11 along with interest Cost up to FY 2011-12	(79.17)	(20.16)
<i>Unit 4-7 & Hydro</i>	(81.3)	(23.87)
<i>Unit 8</i>	2.13	3.70
Share of TPC-D in Amount Recoverable for the impact of ATE Judgment for TPC-G dated February 2011	(134.16)	(37.04)
Impact of De-capitalisation (Replacement Scheme) of Unit 4 to 7 & Hydro		0.23
Recovery for FY 2008-09 pertaining to the additional capitalization permitted in Order in Case No. 71 of 2010		(0.03)
Recovery for FY 2008-09 pertaining reinstatement of amount de-capitalised in FY 2008-09		(0.89)
Total	(293.00)	(73.66)

The Total (Gap)/Surplus as submitted by TPC-D and that approved by the Commission is summarised in the Table below:

Table: Total (Gap)/Surplus to be recovered in Second Control Period (Rs. Crore)

Particulars	Submitted by TPC-D	Approved
Recoveries on account of gap of TPC-D	(425.38)	(244.57)
Recoveries on account of share of TPC-D in the gap of TPC-G	(293.00)	(73.66)
Total	(718.38)	(318.23)

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V.P. Raja)
Chairman

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

Particulars	Total as per petitioner's computation	Generati on	Generatio n Unit – 8	Transmissi on	Distribut ion	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
<u>Add:</u>						
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	4.00	0.34	0.90	6.47	29.51
<u>Less:</u>						
Exempt Income	90.70					90.70
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.	186.90	60.78	6.00	22.14	5.28	92.71

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

Particulars	Total as per petitioner's computation	Generati on	Generatio n Unit - 8	Transmissi on	Distributi on	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
<u>Add:</u>						
Interest under IT Act	(27.32)	-	-	-	-	(27.32)
TOTAL ADDITIONS	(27.32)	-	-	-	-	(27.31)
<u>Less:</u>						
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

Sr. No.	Name of Person
6	Shri. Jayesh Chauhan
7	Shri. M. Shenbaga
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

APPENDIX 3**List of Objectors who attended Public Hearing on November 26, 2011**

Sr. No.	Name of the Objector	Institution/Individual
1	Shri Sanjiv Kumar Singh	ABPS Infra
2	Shri Milind A	Central Railway
3	Shri Pravind Kumar	Individual
4	Shri Sunil Parate	Individual
5	Shri Saji MOH.H	Individual
6	Shri A. P. Benale	Individual
7	Shri Vikas Nikumbh	May & Company
8	Shri Mohit Kumar	Individual
9	Shri Jayesh Chauhan	Feedback Infra
10	Shri S.S. Yadhav	Individual
11	Smt. Virginia Dias	Individual
12	Shri Mahesh K.	Individual
13	Shri A.V.P. Mirashi	Individual
14	Shri Kiran Karande	Individual
15	Shri A. G. Pendse	Individual
16	Shri Abhinav Sharma	Individual
17	Shri Amol Thakur	Individual
18	Shri S.R. Patil	Individual
19	Shri K.K. Chopra	Individual