

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai – 400 005**

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**Case No. 7 of 2010**

**In the matter of**

**Petition of RInfra seeking relief on account of certain critical issues affecting the  
petitioner's consumers and its financial viability**

**Shri V. P. Raja, Chairman  
Shri S. B. Kulkarni, Member  
Shri. V. L. Sonavane, Member**

**Dated: September 10, 2010**

**ORDER**

Reliance Infrastructure Limited (Distribution) (hereinafter referred as 'RInfra-D') submitted a petition under affidavit before the Commission on of Electricity Act 2003 on April 27, 2010 seeking relief as under:

- “1. The Hon'ble Commission may please specify an appropriate mechanism for recovery of loss of cross subsidy from consumers who choose to migrate to the other distribution licensee, to avoid tariff shock on balance subsidised consumers left with RInfra-D*
- 2. The Hon'ble Commission may please specify an appropriate mechanism for recovery of past year's revenue gaps from consumers choosing to migrate to the other distribution licensee, to avoid tariff shock on balance consumers left with RInfra-D.*
- 3. Pending determination of appropriate mechanism/charges to loss of cross-subsidy a recover loss of cross-subsidy and past regulatory assets/revenue gaps, the Hon'ble Commission may please stay the change-over of consumers.*



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4. *Pass any order as may be appropriate under the circumstances.*

5. *The Hon'ble Commission condone any inadvertent Omissions/errors/shortcomings*

6. *The Hon'ble Commission may please permit the petitioner to add or modify this petition with additional information, if so required during the course of hearings."*

The hearing was scheduled on 24<sup>th</sup> June 2010 at 11.00 hrs at Vista Hall, World Trade Centre ,Cuffe Parade, Colaba in the presence of the authorised Consumer Representatives, and several stakeholders attended the hearing. The list of persons who attended the hearing is given at **Annexure 1**.

**1. Contention of RInfra-D:** In the petition filed by RInfra-D, the contentions were in regard to loss of cross-subsidy due to migration of consumers and recovery of regulatory assets and past revenue gaps. These contentions by RInfra-D are described in the sections below.

- a. **Loss of Cross-subsidy:** The Hon'ble Supreme Court, in its judgment dated 8<sup>th</sup> July 2008, held that Tata Power Company - Distribution (TPC-D) has a license to supply electricity in retail to all consumers in its license area. Further, in order to meet its obligations to supply power to any consumer on demand, it could explore the facility of wheeling power on the existing distribution licensee's network (which obviates the need for creation of a parallel distribution network and thereby prevents passing on the cost of stranded assets on the consumers).
- b. In line with the aforesaid Supreme Court Judgment, the Commission also in the TPC-D tariff order dated 15<sup>th</sup> June 2009 clarified that incurrence of capital expenditure cannot be a pre-condition to supply power on the request of consumers and TPC-D could explore the possibility of the usage of the existing licensee's network. Capital expenditure should be incurred only when no better optimal solution is available to supply power to an applicant.
- c. Subsequently, according to the order issued by the Commission on 15<sup>th</sup> October 2009 on Case No. 50 of 2009, the protocol for consumer changeover from one licensee to another for supply of power using the Wire Distribution Licensee's (WDL) network was specified. RInfra-D highlighted that there is a higher migration of cross-subsidizing consumers which include Mumbai International Airport Limited (MIAL), hotels, malls, multiplexes, and large commercial and industrial establishments.



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- d. In the order dated 22<sup>nd</sup> July 2009 in Case 121 of 2008, APR & Tariff determination order of RInfra-D, the Commission illustrated the savings to consumer belonging to different categories by calculation of effective tariff and wheeling charges in cases of consumers migrating to TPC-D supply and staying back with RInfra-D. The savings were also shown in the low-end consumers/subsidized consumers in addition to the high-end consumers/cross-subsidized consumers. But due to the stay by the Commission on the tariff applicable as per the 15<sup>th</sup> June 2009 APR order issued and restoration of the tariff as per the 4<sup>th</sup> June 2008 Tariff Order for the consumer categories for which tariff had risen, the savings accruing to the low-end consumers diminished. RInfra-D has highlighted the same in the calculation given in Section 6 of the petition.
- e. RInfra-D has highlighted that 77% residential consumers of its total customer base consume below 300 units and these consumers are being subsidized by its high-end commercial and industrial consumers. The actual trend of consumer migration as observed till the date of the petition was filed showed that 30% of the total HT consumers have already migrated due to the huge savings they earn.
- f. RInfra-D has highlighted that retail tariffs assume a certain level of consumer mix and consumption mix based on which cross-subsidy is built into the tariff structure. While normal changes in consumer mix can be taken care of through the true-up mechanism, in the case of changeover, substantial changes resulting from migration driven by large disparity in cost of supply and tariff between licensees causes an large imbalance in the revenue recovery & consequential revenue gap. As migration is mostly of subsidizing category of consumers, low-end consumers who are subsidized will be subjected to tariff shock to recoup the cross-subsidy loss. Therefore, RInfra-D has prayed for a mechanism for the recovery of the lost cross-subsidy in the interest of its 21.6 lakh low-end residential consumers.
- g. **Recovery of Regulatory Assets and Past Revenue Gaps:** In the past Tariff Orders/APR Orders, the Commission has approved regulatory assets to be recovered in the future years. The regulatory asset approved amounts to Rs. 554 crore, attributable primarily to the power purchase cost of FY 08-09 and an additional revenue shortfall of Rs. 1000 crore as per the RInfra-D estimates due to the stay of tariff vide the Commission's order dated 15<sup>th</sup> July 2009. In addition, an inclusion of Rs. 178 crore out of Rs. 356 crore would become due for inclusion in the retail tariffs of FY 2010-11. Further, there has been a Judgment of the Hon'ble Appellate Tribunal in RInfra-D's appeal against the MERC Tariff Order FY 09 – Appeal No. 117 of 2008, which permits additional cost allowances to RInfra-D, estimated to be Rs. 217 crore. In addition to all the costs to be recovered, carrying costs pertaining to



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the true-ups, regulatory assets, and recovery allowable as per the ATE Judgment will also become allowable at an interest rate equivalent to short-term SBI PLR.

- h. The regulatory assets are to be recovered in the future years from the RInfra-D consumers. However, due to huge migration of consumers to TPC-D, the consumer base to recover these costs would become smaller though such costs are also on account of the costs incurred for the migrated consumers. Unless an appropriate mechanism is devised by the Commission for recovery of total past gaps/regulatory assets from all consumers (including those who have migrated), the burden of the migrated consumers also would have to be borne and would get passed on to the balance consumers, which include 21.6 lakh small residential consumers (with consumption of less than 300 units).
- i. Due to this, there would be a tariff shock on the balance consumers who have not migrated. Therefore, RInfra-D has requested the Commission to prescribe a charge that can be levied on all consumers whether they stay with RInfra-D or migrate to TPC-D for recovery of these regulatory assets and past years' (including FY 2009-10) revenue gap.
- j. RInfra-D has also brought to the notice of the Commission that RInfra-D is only praying for recovery of regulatory assets and past revenue gaps crystallized for the period ending FY 2009-10. Any further accretion to regulatory assets beyond FY 2009-10 truing-up should not be included for recovery from migrated consumers because for FY 2010-11 and beyond, the financials and business forecasts of the licensee would factor in anticipation of consumer migration and ARR and tariffs of the licensee would be decided accordingly.

## **Objections/Suggestions of Consumers and other Stakeholders**

### **2. Reply/Objection filed by TPC**

Tata Power has filed a reply/objection to this petition vide an affidavit dated 21<sup>st</sup> June 2010 denying all averments made by the petitioner and made submissions on the issues, namely, loss of cross-subsidy, recovery of regulatory assets and past revenue gaps, and ad-interim stay upon change-over of consumers. Some of the key reply/objections by TPC are as under:

- a. The recovery of loss of cross-subsidy from the change-over consumers who are now lawful consumers of another distribution licensee, i.e., TPC-D is unprecedented and has no foundation under the Electricity Act 2003.



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- b. The existing legal regime, Electricity Act 2003, National Electricity Policy, 2005 (“NEP 2005”) and Tariff Policy 2006, does not legally entitle a distribution licensee to claim subsidy in any form or manner as a matter of right from any of its consumers. The continuance of cross-subsidy in the present system is acknowledged in the Electricity Act 2003 and NEP 2005. However, no statutory sanctity has been lent to the levying of subsidies inter se various categories of consumers of a distribution licensee. The Electricity Act 2003, NEP 2005, and Tariff Policy 2006 mandate the state government to provide direct subsidies, projecting it as a better way to support the needy and poorer categories of consumers.
- c. Section 42 (2) of the Electricity Act 2003, permits a distribution licensee to collect cross-subsidy surcharge from a consumer whose premises are situated within such a distribution licensee’s area of supply and who chooses to obtain supply from a generating company or a licensee other than such distribution licensee. Therefore, cross-subsidy surcharge can be collected by the distribution licensee only from those of its consumers who receive supply from a person other than the distribution licensee in whose area of supply such consumers are located.
- d. The order, dated 15<sup>th</sup> October 2009, issued by the Commission for interim arrangement/procedure of change-over has not been challenged or questioned by RInfra-D and also the wheeling charges with respect to change-over consumers are duly paid by TPC-D.
- e. RInfra-D has failed to provide sufficient data and computation to show that there has been any revenue gap in their ARR for FY 2009-10. The loss of cross-subsidy cannot be seen only from the loss of revenue perspective. It should be examined from three aspects, i.e., revenue loss due to lower sales, reduced power purchase cost (expensive power @ Rs 7 per unit) and revenue from wheeling.
- f. If any suggestion made by RInfra-D is accepted, it would eliminate competition in retail electricity supply under the assumption that consumers are “captive property” of a distribution licensee, which cannot migrate to any other distribution licensee despite better services and/or economic tariff.
- g. RInfra-D cannot have a perpetual right for recovery of its cross-subsidy losses from the change-over consumers as suggested in the petition. The cross-subsidization is a tariff design issue and not a cost element. As also, suggested in the Approach paper on cross-subsidy titled “Road Map for reduction of cross-subsidy in Maharashtra” the issue of losing a significant subsidizing category of consumers can be taken care of while designing the cross-subsidy reduction roadmap for such a licensee.



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- h. The recovery of regulatory assets and past revenue gaps from the change-over consumers is based on the assumption that the consumers are RInfrac-D's 'captive' consumers and shall forever remain tied to its business, which is contrary to the scheme of the Electricity Act 2003, whereby a consumer is at liberty to choose and thus change his distribution licensee.
- i. The regulatory asset should be seen as a part and parcel of the business of electricity distribution, which is of an ongoing nature, with consumers opting for and out, and even distribution license changing hands from time to time. This has also been observed by the Commission in the case of RInfrac-D's Tariff Order dated 15<sup>th</sup> June 2009.
- j. The Electricity Act 2003 does not have any provision which entitles a distribution licensee to claim its past revenue gaps from a person who is no longer its consumer or is receiving electricity supply from it. The distribution licensee is granted an earmarked area of supply and not any specific consumer mix or load because this would always be changing in nature. Therefore, the tariff designing and tariff setting needs to be based and guided by this philosophy that consumer mix and load would not be static.
- k. TPC-D is unconvinced about RInfrac-D's claim that change-over consumers have benefited from the creation of regulatory assets by way of reduced tariff in the past. It was contended that the regulatory asset is recovered by a licensee through increase in tariffs of all its then existing consumers, irrespective of whether such consumers had contributed to the creation of the regulatory asset in the respective past years. Therefore, if a new consumer can be charged towards recovery of past revenue gap by reason of his being the consumer of the distribution licensee at the time of recovery, then, by the same logic, a consumer cannot be called upon to pay towards past revenue gaps of the distribution licensee after he has ceased to be a consumer of the concerned licensee.
- l. On the issue of request of ad interim stay upon change-over consumers, TPC-D has viewed that the interim change-over protocol prescribed vide the 15<sup>th</sup> October 2009 order was a non-adversarial proceeding and is not a res integra matter as has been projected by the Commission, after wide discussions and deliberations and which has also been accepted fully by RInfrac-D.

### 3. Reply of BEST Undertaking



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- a. BEST Undertaking vide an affidavit dated 23<sup>rd</sup> June 2010, submitted that the issues raised by the petitioner need to be considered by the Commission because another retail supply licensee in the same area can cause a change in the consumer mix of the distribution licensee and also reduce the revenue from the subsidizing category, leading to a substantial imbalance and revenue which cannot be forecasted by the licensee.
  - b. BEST Undertaking has stated that as raised by the petitioner, a specific mechanism to recover lost cross-subsidy and regulatory asset from migrating consumers should be specified by the Commission in order to avoid cherry-picking by the licensee.

#### **4. Representations by Consumers Representative and Stakeholders**

The representations and submissions by consumer representatives have been summarized hereunder:

- a. Several consumers' representatives have represented that a consumer has the right to choose his distribution licensee and in case cross-subsidy surcharge is made applicable on change-over consumers, it would be contrary to the competition introduced in the electricity distribution business. Levy of any surcharge will create exit barriers and discourage consumers from migrating to a second licensee. The Electricity Act 2003, the National Electricity Policy 2005, and the Tariff Policy 2006 has focused on reduction of cross-subsidy and not its promotion.
- b. The consumer representatives also highlighted that RInfra-D should have been aware of the issue of cross-subsidy and migration when accepting the interim order dated 15<sup>th</sup> October 2009 on Case No. 50 of 2009. Also, it was stated that this issue is an aspect of tariff design and cannot be a source of revenue for the distribution licensee. It was also suggested that this issue needs to be addressed at the time of the final order on Case 50 of 2009.
- c. As for the recovery of past revenue gaps and regulatory assets, it was stated that these amounts have got accumulated due to the inefficiency and inability of RInfra-D to source cheaper power and cannot be recovered from consumers who have already migrated to TPC-D. A regulatory asset has to be created only under exceptional circumstances, but in the current scenario, it was created due to the recalcitrant and inefficient attitude of RInfra-D. A large part of the regulatory asset formed is due to the power purchase practices followed by RInfra-D which has failed in its primary responsibility of planning and procuring economical power which cannot be passed on to the consumers.



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- d. The levy of any surcharge or burdening of the migrated consumers with past gaps/regulatory assets would only discourage competition and the consumers would have no choice. Therefore, the consumer representatives have requested the Commission to not accept RInfra-D's claim.

### **Response of the Petitioner**

Subsequent to the filing and hearing of the objections/representation by TPC-D, BEST undertaking, various consumer representatives and stakeholders, RInfra-D responded to some of these objections/representations during the hearing held on 24<sup>th</sup> June 2010. The gist of the petitioners' response is given below.

### **5. Quantum of Loss of Cross-subsidy Incurred by RInfra-D**

- a. RInfra-D responded to TPC-D's contention of not providing sufficient data and computation of the revenue gap on APR FY 2009-10 on account of loss of cross-subsidy. The response covered the computation methodology of avoided cost of power, the quantum of revenue lost and the consequent loss of cross-subsidy.
- b. The detailed calculation of loss of cross-subsidy provided by RInfra-D has taken into account not only the loss of revenue but also considered savings resulting from the avoided cost of power purchase, revenue received from wheeling charges levied on energy wheeled for sales to migrated consumers and savings due to lower fixed cost on account of retail ARR, transmission charges, standby charges, etc.
- c. RInfra-D highlighted that in the last one year, there has been a stay on tariffs and consumers have migrated; and under different scenarios of stay and migration, RInfra-D has estimated a loss of cross-subsidy of around Rs. 212 crore to Rs. 264 crore.
- d. RInfra-D in its submission on loss of cross-subsidy has considered avoided power purchase cost at Rs. 4.80 per unit after taking into account "must-absorb" obligations. RInfra-D has submitted that these "must absorb" obligations are either technical, minimum level of operations for power plants or commercial bindings on account of short term contracts entered into with various suppliers. It was highlighted by RInfra-D that the savings in power purchase cost due to must-absorb obligations will accrue at Rs 4.80 per unit and not at the marginal rate of power purchase, i.e., at Rs 7 per unit.

### **6. Legal Standing for recovery of loss of Cross-subsidy and regulatory asset**



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- a. RInfrac-D informed that while deciding on Case 50 of 2009 for protocol for changeover of consumers and the corresponding proceedings, it had raised the issues of loss of cross-subsidy from switching of cross-subsidizing consumers from RInfrac-D to TPC-D, the recovery of regulatory asset, and the likely under-recovery of its revenue requirement due to stay on tariffs as per the Tariff Order dated 15<sup>th</sup> June 2009. In response to these issues, the Commission has taken a view that they have wider implications, require more examination, and will be considered separately in appropriate proceedings.
  - b. RInfrac-D highlighted that TPC-D as per the reply filed through an affidavit in this case under para 5 sub-para "g," accepted the non-adversarial nature of the proceedings in Case 50 of 2009 and also accepted that the order issued in this regard was for smooth change-over of consumers and supply of electricity through open access arrangement between the two licensees. But contrarily, TPC-D under para 6 claimed that the change-over consumers cannot be the open access consumers contemplated under Section 42 (2) of the Electricity Act 2003 and hence no cross-subsidy surcharge can be levied upon them.
  - c. RInfrac-D questioned about who these consumers were, if they were not open access consumers. It was also highlighted that these contentions had not been raised by the parties during the order dated 15<sup>th</sup> October 2009 on Case 50 of 2009, when the Commission had outlined that these issues should be considered separately. If these contentions would have been raised at that time, the Commission would have either accepted or rejected the contentions. There was a possibility for the Commission to reject the contention, and in that case, the contention may have not granted the change-over of consumers.
  - d. Further, the Commission has clearly indicated in the said order for consideration of these issues separately. Therefore, even if the provisions for change-over made were contrary to the provisions of law, RInfrac-D accepted the order and consequent change-over in the interest of the consumers.

## **7. Recovery of Past Revenue Gaps and Regulatory Asset**

RInfrac-D highlighted that recovery of regulatory assets and past dues amount to approx. Rs. 2000 crore, which lead to an increase of -- (i) Rs. 2.20 per unit if recovered from all consumers, including the migrated consumers, assuming energy sales of 9150 MUs; or (ii) Rs. 2.60 per unit, if recovered from consumers remaining with RInfrac-D (excluding change-over consumers), thereby assuming an energy sales of 7710 MUs.



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## **8. Stay of Order on Change-over Protocol**

With regard to objections on proposed stay of order of change-over, RInfra-D responded that the issues raised on loss of cross-subsidy and recovery of past revenue gaps and regulatory assets have been pending for decision by the Commission as per the interim order dated 15<sup>th</sup> October 2009 on Case 50 of 2009. However, these issues have a huge impact on RInfra-D and the decision should be taken expeditiously, failing which the order dated 15<sup>th</sup> October 2009 on Case 50 of 2009 should be stayed.

### **Analysis & Decision of The Commission**

## **9. Mechanism for recovery of loss of cross-subsidy from change-over consumers**

- a. The issue of loss of cross-subsidy emanates from – (a) the existence of a certain level of cross-subsidy between various categories of consumers; and (b) migration of consumers pursuant to implementation of change-over protocol as per the Interim Order dated 15<sup>th</sup> October 2009.

The reduction of cross-subsidy is already under public consultation by the Commission through an approach paper titled “Roadmap for reduction of Cross-subsidy in Maharashtra” floated along with draft Regulations titled “(Principle for determination of Road Map for reduction of Cross-subsidies for the distribution licensee), Draft Regulation, 2010. Reduction of cross-subsidy between various categories as per the road map shall also reduce loss of cross-subsidy in a situation of switching over of consumers from one distribution licensee to another distribution licensee. As such the ‘loss’ of cross-subsidy due to migration of consumers will have to be addressed keeping in view the philosophy of overall reduction of cross-subsidy.

- b. While a certain consumer mix and consumption mix is estimated at the time of the determination of retail tariffs, the mechanism of true-up is expected to take care of changes in consumer mix and consumption mix of the licensee from the level estimated at the time of the determination of revised tariffs. The distribution licensee will have to submit the detailed computations of the impact of the change in consumer mix, as well as propose the methodology for mitigating the financial impact, in its Tariff Petition. It may also be kept in mind that the averments made by some consumers, and estimation of reduction in high cost of power purchase due to migration of high end consumers who also generally have high consumption, should also be taken into account while doing the computation. Accordingly, the Commission will address the financial impact on RInfra-D resulting from change in consumer mix and consumption mix pursuant to the migration of



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consumers, at the time of determining ARR/true-up for the respective years, based on RInfra-D's Petition in this regard.

- c. RInfra-D's contention has been that substantial changes have resulted from the migration, mainly a large imbalance in revenue recovery and a consequential revenue gap. It is to be noted that the higher level of migration during the year is due to the change-over enabled from October 2009 onwards through the Interim Order issued by the Commission. Further, as mentioned by RInfra-D, for the period from FY 2010-11 and beyond, the financials and business forecasts of the licensee would factor in anticipation of consumer migration and the ARR and tariffs of the licensee would be decided accordingly.
- d. As far as the issue of loss of cross-subsidy and its impact on low-end consumers due to migration (being predominantly from the subsidizing category of consumers) is concerned, the Commission agrees with the view of consumer representatives and stakeholders that to a large extent this is a tariff design related issue. Accordingly, at the time of the issuance of the Tariff Order for RInfra-D, the Commission will suitably design a tariff structure, duly taking into account the proposals submitted by RInfra-D, the eligible costs of the utility, the ability to pass on increase in costs to various categories of consumers, and other related aspects.
- e. Apart from the above, the Commission has already noted this issue in the interim order on change-over dated 15<sup>th</sup> October 2009. As stated in the Interim Order, this and other such points that have wider implications need more examination. They are already under wider stakeholder consultation through the discussion paper floated by the Commission titled "Operationalization of Parallel Distribution Licensees in the State of Maharashtra". The Commission will conduct due regulatory process before finalizing its view. The final order / regulations on change-over protocol and/or changes in the existing regulation/separate regulation, created for the operationalization of parallel distribution licensees shall incorporate the final views of the Commission on the subject.

#### **10. Mechanism for recovery of past years' revenue gaps from change-over consumers**

- a. RInfra-D has highlighted various amounts, pertaining to regulatory assets/past revenue gaps, crystallized for the period ending FY 09-10, which have yet to be recovered. According to RInfra-D, these amounts are as under:
  - i. Approved revenue gap of Rs. 554 crores as regulatory asset as per Tariff Order dated June 15<sup>th</sup> 2009. This is to be recovered



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over the next two financial years, i.e., FY 2010-11 and FY 2011-12.

- ii. Regulatory assets permitted by the Commission in previous financial years, includes Rs. 178 crores permitted out of Rs. 356 crores deferred recovery allowed in the Tariff Order of FY 09.
- iii. Recovery pursuant to the Hon'ble ATE judgment in RInfra-D's appeal against MERC Tariff Order FY 09 – Appeal No. 117 of 2008, which permits additional cost allowances to RInfra-D and consequently results in additional revenue required to be allowed by the Commission for recovery in FY 2010-11. This is estimated to be approx. Rs. 217 crores.
- iv. Impact due to stay on tariff increase for certain categories of consumers vide the Commission's Order dated 15<sup>th</sup> July, 2009. RInfra-D has estimated this impact to be approx. Rs. 1000 crores.
- v. In addition to all the cost to be recovered, carrying costs pertaining to the true-ups, regulatory assets and recovery allowable as per the ATE judgment, will also become allowable at an interest rate equivalent to the short-term SBI PLR.

Out of the amounts at point no i to v above, the exact amount pertaining to the stay on tariff increase as mentioned in point no iv above is yet to be established. The stay on tariff increase for certain categories was implemented under the directive issued by the Government of Maharashtra under Section 108 read with Section 86 (2) of the Electricity Act 2003. The Commission was also directed to investigate as to whether RInfra-D has discharged its duties as envisaged in the Act in the most economical manner. Accordingly, the Commission had appointed M/s ASCI to investigate various matters which would effect the quantum of the past revenue gaps and the corresponding amount to be recovered. Since, the final report by ASCI has been submitted recently; a view on the exact recovery amount as well as the mechanism will be taken up once RInfra-D submits a proposal and its plan for recovery of the same. Similarly, the amount mentioned in point no iii above pertaining to the ATE judgment is to be finalized based on the ARR petition for that year by RInfra-D and shall be dealt with during the issuance of the Tariff Order for the respective year.

Similarly, the other amounts that have already been established for recovery, i.e., point no i and ii, the Commission will consider the recovery of the same during issuance of the Tariff Orders for the



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respective years on submission of RInfra-D proposals/ARR petitions in this regard, after following due Regulatory process.

- b. Also, the issue regarding the recovery of regulatory assets and past dues from the existing consumers in a scenario wherein cross-subsidizing consumers of RInfra-D have migrated and the balance consumer base of RInfra-D consists mostly of low-end residential consumers leading to them suffering from tariff shock, is a tariff design issue and would be dealt with at the time of issuance of Tariff Order of RInfra-D taking into account the proposal submitted by RInfra-D in its Tariff Petition.

### **11. Stay of Order on Change-over Protocol**

- a. The interim order dated 15<sup>th</sup> October 2009 was issued pursuant to rounds of discussion leading up to finalization of the change-over procedure between RInfra-D and TPC-D. Further, the evolution of a mechanism for facilitating changeover by the consumers from an existing distribution licensee to another distribution licensee was taken up after a large number of consumers approached the Commission as well as RInfra-D and TPC-D for changeover from RInfra-D to TPC-D. The implementation of the interim order has not only given consumers the freedom to choose their preferred supplier of electricity but also created an enabling environment to promote competition in the electricity sector.
- b. At the time of the issuance of the interim order, it was recognized that certain points/aspects of the change-over have wider implications and require more examination. Those points / aspects are under examination and under wider stakeholder consultation through the discussion paper floated by the Commission titled “Operationalization of Parallel Distribution Licensees in the State of Maharashtra.” The final order on change-over protocol and/or changes in the existing regulation/separate regulation created for the operationalization of parallel distribution licensees shall be issued after due regulatory procedures and shall incorporate the final views of the Commission on the subject.
- c. The interim order dated 15<sup>th</sup> October 2009 laying down an interim arrangement for switchover of all consumers (at their own option) of RInfra to TPC also stated that the interim arrangement will also apply to a reverse situation. The relevant portion of the interim order dated 15<sup>th</sup> October 2009 is as follows -



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*“14. This interim arrangement shall be applied mutatis mutandis in scenarios where RInfra-D is the Supply Distribution Licensee and TPC-D is the Wheeling Distribution License in Mumbai area.”*

The order dated 15<sup>th</sup> October 2009 was an interim order laying down an interim arrangement as provided in the following portion of the said order –

*“15. The interim arrangement as above shall stay in effect until formulation of the final scheme in the form of regulations or otherwise dealing with all the relevant aspects of changeover are issued by the Commission.”*

In view of the above and also that the Commission would address the issues raised in the present petition in the ARR / Tariff filings exercise as also in the studies under way on “Operationalization of Parallel Distribution Licensees in the State of Maharashtra”; “Roadmap for reduction of Cross-subsidy in Maharashtra” along with draft regulation titled “(Principle for determination of Road Map for reduction of Cross-subsidies for the distribution licensee), Draft Regulation, 2010, as stated above, the Commission is not inclined to stay its interim order on change-over and further directs the licensees to continue their compliance with the protocol to enable consumers make a smooth change-over.

This order disposes of the petition in Case No. 7 of 2010.

(Vijay.L.Sonavane)  
Member

(S.B. Kulkarni)  
Member

(V.P.Raja)  
Chairman

(K.N.Khawarey)  
Secretary, MERC

### **Annexure 1**

#### **List of Participants present at the hearing held on 24<sup>th</sup> June 2010**

<b>Sr.No.</b>	<b>Name</b>	<b>Designation</b>	<b>Organization/Firm</b>
1.	Mr. Satyajit Suklabaidya	Manager	Crisil Limited
2.	Mr. Kunal Purohit	Director	Chemvalve Industries Private Limited
3.	Mr. Rahul Bafna		Okay Industries
4.	Mr Parag Desai		Despaints
5.	Ms Nandini Pathak		



6.	Mr. Rahul M Ranade		Tata Power
7.	Ms. Swati Mehendale		Tata Power
8.	Mr. Prashant Joshi		Tata Power
9.	Mr S R Nargolkar	Advocate	On behalf of Mumbai International Airport Private Limited
10.	Mr. Partha Sarathi Ganguly	GM – Legal	Mumbai International Airport Private Limited
11.	Mr. Abhinav Sharma		
12.	Mr. Amey Naik	Manager	Tata Power
13.	Mr Ashok Pendse		Thane Belapur Industries Association
14.	Mr. G S Trimukhe		Maharashtra State Electricity Distribution Company Limited
15.	Mr. B H Gujrati		Maharashtra State Load Despatch Centre
16.	Mr. P B Hote		Maharashtra State Load Despatch Centre
17.	Mr. P M Buradkar		Maharashtra State Load Despatch Centre
18.	Mr. N V Bhandari		BEST Undertaking
19.	Mr. S D Pawar		BEST Undertaking
20.	Mr. Ashok Sethi		Tata Power
21.	Mr D S Kudalkar		Tata Power
22.	Mr K Vinodraj		BEST Undertaking
23.	Mr. S B Mali		BEST Undertaking
24.	Mr. V R Shrikhande		Tata Power
25.	Mr A V Deo		Maharashtra State Electricity Transmission Company Limited
26.	Mr. T K Bhaskaran		Tata Power
27.	Mr. Manoj M Davne		BEST Undertaking
28.	Mr Rajiv Pradhan		BEST Undertaking
29.	Mr Sanjeev Voradkar		BEST Undertaking
30.	Mr Y A Shaikh		BEST Undertaking
31.	Mr. S G Kelkar	Chief Engineer – Load Despatch	Maharashtra State Electricity Transmission Company Limited
32.	Adv. Gautami Bala	Advocate	M/s M V Kini & Co on behalf of Maharashtra State Electricity



			Transmission Company Limited
33.	_____		-----
34.	Mr. Surendra Khot		Reliance Infrastructure Limited (Distribution)
35.	Mr. J J Bhatt	Senior Counsel	Reliance Infrastructure Limited (Distribution)
36.	Ms Anjali Chanderkar	Counsel	Reliance Infrastructure Limited (Distribution)
37.	Mr. R R Mehta		Reliance Infrastructure Limited (Distribution)
38.	Mr Kapil Sharma		Reliance Infrastructure Limited (Distribution)
39.	Mr Razak Khatri	Head	Crisil Risk & Infrastructure Solutions Limited
40.	Mr. Vivek Mishra	DGM	Reliance Infrastructure Limited (Distribution)
41.	Ms. Sentrupta Padhi	Senior Consultant	KPMG
42.	Mr. Surendra Sharma		Manpower Consultants
43.	Mr. S D Mathur		H R Construct
44.	Mr. Kartikey		
45.	Mr. Jayanand Salgaokar	Director	_____
46.	Mr. Apurva R Patel	Honorary Secretary/ Managing Director	MIDC Marol Industries Association/Zenith Chemical Works Pvt. Ltd.
47.	Mr. Kishor Gandhi	Treasurer	MIDC Marol Industries Association
48.	Adv. Onkar Chandurkar	Advocate Assistant	Mulla & Mulla -----
49.	Mr Dishan Kukreja	Assistant	Mulla & Mulla
50.	Mr. Sharad Nath		Reliance Infrastructure Limited
51.	Mr. S N Rao		Reliance Infrastructure Limited
52.	Mr Abaji Naralkar		Reliance Infrastructure Limited
53.	Mr. Sunil Jogkkar		MIRCO
54.	Mr. Mahesh Patankar	-----	Customized Energy Solutions
55.	Mr. Amit C Chilwe	-----	Staff
56.	Mr. V H Wagle		Tata Power Company



57.	Mr. Karthik Krishnan		Tata Power Company
58.	Mr. Pravind Kumar		Mumbai International Airport Limited
59.	Mr. Arijit Maitra	Advocate	
60.	Mr. Dipayan Das	Advocate	
61.	Mr. G J Thakkar		IPTPL
62.	Mr. Ganesh Balasubramanian		Reliance Infrastructure Limited
63.	Mr Amit Mittal		ABPS Infra
64.	Mr. Krishnajith M U		ABPS Infra
65.	Mr. Prakash Rao		Symbiosis Institute of International Business, Pune
66.	Mr. A A Khanolkar		Maharashtra Electricity Regulatory Commission
67.	Mr. JVS N Mo-----		ASCI
68.	Mr. K Balaram Reddi		ASCI
69.	Mr. Sagar A Rane	Intern	Mulla & Mulla
70.	Mr C H Shinde		BEST Undertaking
71.	Mr. Binoy Parol		Tata Power Trading
72.	Mr. S H Parihar		BEST Undertaking
73.	Mr. Saurabh Gupta		Maharashtra Electricity Regulatory Commission
74.	Mr. Ghanashyam Patil		Maharashtra Electricity Regulatory Commission
75.	Mr. J D Kulkarni	COO	TPTCL
76.	Mr. Bhaskar Kulkarni		MERC
77.	Mr. Kundan Pimple		MERC
78.	Mr. Vivek Mishra		Mercados
79.	Mr. Devendra Phadtre		Prayas
80.	Mr. Shantanu Dixit		Prayas
81.	Mr. Ashwini Chitnis		Prayas
82.	Mr. V K Rokade		BEST
83.	Mr. G K Gorde	SO	IE & L Dept., Mantralaya
84.	Mr. Sitesh Mukherjee		
85.	Mr. A R Waghambar		Reliance Infrastructure Limited
86.	Mr. Anup Monda		Reliance Infrastructure Limited
87.	Mr. P H Hurdiwale		Reliance Infrastructure Limited
88.	Mr. S Parkodi		For N Ponrathnam,



			Consumer Representative
89.	Mr. B S Gosavi	AE	BEST
90.	Mr. B L Ugale	AE	BEST
91.	Mr. Bilal Shaikh	SE	BEST
92.	Mr. S S Gawde	AE	BEST
93.	Mr. S T Shinde	Chief Engineer (SP)	MSETCL
94.	Mr. P S Kirtikar	Legal	BEST
95.	Mr S P Goswami		CGRF, BEST
96.	Mr. V S Dabade	SE	BEST
97.	Mr. R G Gandhi	SE	-----
98.	Mr. V M Kamat	SE	BEST
99.	Mr. D M Indolikar	SE	BEST
100.	Ms. Priya Bhargava	Senior Analyst	IMACS
101.	Mr Rakesh R		Tata Power Company
102.	Mr. Dilip C		Tata Power Company
103.	Mr. S D Shetty	Advocate	MSLDC
104.	Mr. V P Shirale	-----	MVVN
105.	Mr. Shrikanth Kulkarni	Director	Crisil Infrastructure Advisory
106.	Mr. Rakspal Abrol		
107.	Mr. Pratap Hogade	Prseident	MRVAS

