Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 62 of 2012

Suo-motu Petition for the implementation of the Judgment dated 22 March, 2012 given by the Hon'ble ATE in Appeal No. 8 of 2011 filed by BEST Undertaking

Shri. V.P. Raja, Chairman
Shri. Vijay L. Sonavane, Member

Represented by: Shri. O. P. Gupta, Gen. Manager, BEST Undertaking

ORDER

Dated: 26 August, 2012

The Brihan-Mumbai Electric Supply & Transport Undertaking **(**hereinafter referred to as "BEST") is a Distribution Licensee under the Electricity Act, 2003. In view of the Judgment of the Hon'ble Appellate Tribunal for Electricity (ATE) dated 22 March, 2012 in Appeal No. 8 of 2011 filed by BEST and subsequent to the Commission's Notice initiating the suo-motu hearing in the matter, BEST submitted a Petition under affidavit before the Commission on 17 May, 2012, for implementation of the above said Judgment with the following prayer:

> *"In the circumstances and for reason aforestated, BEST humbly submits that the above issues be decided and disposed of by MERC, in favour of BEST. Hon'ble Commission may appropriately allow the expenditure figures for FY 2008-09, FY 2009-10 and FY 2010-11."*

BACKGROUND

2. BEST is an Undertaking of the Municipal Corporation of Greater Mumbai, which is a Local Authority, and provides two essential services in Mumbai, namely, (i) mass public

transport in the city of Mumbai as well as its extended suburbs, and (ii) supply of electricity in the island city of Mumbai, i.e., the area from Colaba upto Mahim and Sion.

3. BEST had filed a Petition before the Commission for approval of Truing Up for FY 2008-09, Annual Performance Review for FY 2009-10, and determination of ARR and Tariff for FY 2010-11 in Case No. 95 of 2009. The Commission, vide its Order dated 12 September, 2010 had disposed off the said Petition in Case No. 95 of 2009.

4. Being partly aggrieved and dissatisfied with the Commission's Order dated 12 September, 2010, BEST had filed the Appeal No. 8 of 2011 before the Hon'ble Appellate Tribunal of Electricity (ATE).

5. The ATE framed the following points for consideration in the said appeal:

"A. Whether the State Commission was justified in its treatment on employees' expenses in course of truing up of the aggregate revenue requirement of the BEST for the FY 2008-09?

B. Whether the State Commission was justified in reducing the A & G Expenses in course of truing up for the FY 2008-09 to Rs. 72.51 Crore as against Rs. 74.80 Crore as was claimed by the appellant?

C. Whether in truing up for the FY 2008-09 the Commission was justified in reducing the amount of capitalisation to Rs. 122.20 Crore as against Rs. 131.99 Crore?

D. Whether the Commission was justified in its treatment on Interest Expenses for the FY 2008-09?

E. Whether return on equity in true up for the FY 2008-09 was justifiably reduced by the Commission against the claim of the BEST?

F. Whether interest on working capital in true up for FY 2008-09 should be a sum of Rs. 10.89 Crore as was fixed by the Commission as against the claim of the appellant at Rs. 23.23Crore?

G .Whether there was any justification on the part of the Commission in reducing contribution to contingency reserve by Rs. 3.18 Crore?

H. Whether there was any justification in fixing non-tariff income in true up for the FY 2008-09 at Rs. 74.78 Crore as against Rs. 70.83 Crore claimed by the appellant?

I. Whether the Commission was justified in its treatment on sharing on gains and losses in course of true up for the FY 2008-09?
J. Whether the Commission was justified in its computation of the Aggregate Revenue Requirement and Revenue Gap in the true up exercise for the FY 2008-09?

K. Whether the Commission was justified in taking into account the discount given by TPC-G amounting to Rs. 22.26 Crore while considering power purchase cost in APR for the FY 2009-10?

L. Whether the Commission was justified in its treatment on APR for the FY 2009-10 and ARR for the FY 2010-11 with regard to the employees' expenses?

M. Whether the Commission was justified in its treatment on APR for the FY 2009-10 and ARR for the FY 2010-11 with regard to the A & G Expenses?

N. Whether the Commission was justified in its treatment on APR for the FY 2009-10 and ARR for the FY 2010-11 with respect to the repair and maintenance expenses?

O. Whether the Commission committed error in deciding in the APR of FY 2009-10 and determination of ARR for the FY 2010-11 that the interest expenses for FY 2009-10 should be Rs. 14.68 Crore as against Rs. 19.17Crore and for the FY 2010-11at Rs. 16.71 Crore as against Rs. 30.12 Crore estimated by the appellant?

P. Whether the Commission's treatment on return on equity in respect of the APR for 2009-10 and ARR for FY 2010-11 was justified?

Q. Whether the Commission's treatment on contribution to contingency reserve in respect of the APR for FY 2009-10 and ARR for FY 2010-11 was justified?

R. Whether the Commission's treatment on non-tariff income in respect of the APR for FY 2009-10 and ARR for the FY 2010-11 was justified?

S. Whether the Commission was justified in its treatment on distribution loss and energy input requirement in respect of the APR for the FY 2009-10 and the ARR for the FY 2010-11 justified?

T. Whether the Commission was correct in determining the amount of sales at 4390 MU for the FY 2010- 2011 in course of deciding the APR for the FY 2009-10 and ARR for the FY 2010-11?

U. Whether the Commission was justified in its treatment on energy availability and power purchase cost in course of deciding APR for FY 2009-10 and ARR for FY 2010-11?

V. Whether the Commission was justified in repeating the deduction of the sum of Rs. 1.34 Crore for impact due to truing up for FY 2007-08 after cost benefit analysis in computation of the ARR and Revenue Gap for FY 2010-11 ?

W. Whether the Commission was justified in its treatment in deciding the APR for FY 2009-10 and ARR for FY 2010-11 with respect to the retail tariff?"

6. The ATE, vide its Judgment dated 22 March, 2012, disposed off the Appeal No. 8 of 2011, wherein the ATE upheld the decisions of the Commission on Issues F, G, H, J, K, N, Q, R, S, W. However, Issues A, B, C, D, E, I, L, M, O, P, T, U and V were remanded back to the Commission for re-examination. The relevant extract of the above said Judgment is as follows:

"31. Summarily stated, ***the Commission will re-examine the issues A to E, I, L, M, O, P, T, U and V.***

32. In the result the appeal is allowed in part and ***on the issues mentioned in paragraph no. 31 the case is remanded back to the Commission for re-examination of the said issues*** *upon hearing the parties and on perusal of documents as were made available when the order was passed and as may further be produced subject to relevancy and for necessary order according to law. No cost."* ***(Emphasis Added)***

7. The Commission, vide its Notice dated 8 May, 2012, scheduled a suo-motu hearing in the matter on 17 May, 2012 and directed BEST to file its submissions on affidavit, if any,

with a copy served to the authorised Consumer Representatives. BEST filed its Petition on 17 May, 2012 in Case No. 62 of 2012 for implementation of the above said Judgment.

8. During the hearing on 17 May, 2012, BEST made a presentation on the issues raised in its Petition, and requested the Commission to allow the expenses sought by BEST, in accordance with the ATE Judgment. During the hearing, the Commission directed BEST to submit the impact of the ATE Judgment dated 22 March, 2012on BEST's Aggregate Revenue Requirement (ARR). BEST submitted the same for three years, viz., FY 2008-09, FY 2009-10 and FY 2010-11, vide its submission dated 29 May, 2012. The Commission also raised certain additional data gaps vide its mail dated 5 June, 2012, replies to which were submitted by BEST vide its submission dated 15 June, 2012. The Commission also directed its officers to discuss the submissions with BEST after the first hearing, to clarify any ambiguities.

9. The Commission vide its Notice dated 4 July, 2012, 2012, scheduled a hearing in the matter on 8 August, 2012. During the hearing, BEST made a presentation on the additional submissions.

10. BEST's submissions in its Petition on each Issue remanded by the ATE for re-examination and the Commission's decisions thereon after hearing the Petitioner, and after considering all the materials placed on record, are as follows:

ISSUES RELATING TO TRUING-UP OF FY 2008-09

<u>Issue A: Employee Expenses for FY 2008-09</u>

11. BEST submitted that while Truing Up the ARR for FY 2008-09, the Commission had approved employee expenses of only Rs. 143.34 Crore as compared to the actual expenditure of Rs. 158.65 Crore claimed by BEST, merely and mechanically on the basis that employee expense is a controllable parameter and without substantiating or clarifying the said reduction. BEST submitted that the Commission, in its Order dated 12 September, 2010, has stated that the need for benchmarking of employee expenses with other comparable Distribution Licensees would be decided in the second MYT Control Period starting from FY 2011-12 onwards, which shows that the Commission has in-principle accepted BEST's submissions in its APR Petition regarding the need for benchmarking with other entities, keeping in view the Reliability Index, Standards of Performance, Number of Consumers, Geographical Area, Consumer Mix, Type of Locality, Distribution System, HT/LT ratio, etc.

12. BEST submitted that it is significant that the Dearness Allowance paid to the employees is actually an uncontrollable factor which varies as per the Consumer Price Index (CPI). BEST submitted data on 'Variations in Price Indices (year on year)' issued by the Office of the Economic Advisor, Ministry of Commerce and Industry, Government of India, to justify its contention that there was an increase of 9.08% in CPI during FY 2008-09.

13. BEST submitted that in its Petition under Case No. 95 of 2009, BEST had claimed employee expense of Rs. 158.65 Crore, which was an increase of Rs. 8.30 Crore over the amount claimed for FY 2008-09 in the APR Petition (Case No. 118 of 2008). BEST submitted that the major component of the increase to the tune of Rs. 5.30 Crore was on account of increase in Dearness Allowance. BEST further submitted that the computation of Dearness Allowance is based on Consumer Price Index. BEST submitted that the increase in Dearness Allowance also has a direct impact on Overtime payments and Provident Fund contributions to its employees.

14. BEST further submitted that the Commission has erred in appreciation or interpretation of Regulation No. 17.6.2 of MERC (Terms and Conditions of Tariff) Regulations, 2005. BEST submitted that the Commission had not analysed the reasons for the increase in the Employee Expense submitted by it, even though the same was a duly audited figure. BEST added that it had already submitted additional information as regards the calculation of Dearness Allowance under Case No. 95 of 2009, wherein it had clarified to the Commission that for every grade, the fixed DA and Variable DA varies.

15. BEST submitted that though the Commission has undertaken sharing of efficiency losses and one-third of the difference in employee expenses and has added it to its Aggregate Revenue Requirement (ARR) which has been recovered by BEST, the same has no relevance since the employee expense claimed by BEST was duly audited expenses. BEST submitted that the Commission while approving the employee expenses, had merely considered the employee expenses provisionally approved under Case No. 118 of 2008 and added the impact of the Pay Revision Committee, however, there would definitely be a difference between the provisional amount and actual audited amount for which BEST had already submitted the item-wise increase along with due reasoning. BEST further submitted the following:

- BEST's employee remuneration is governed by BIR Act, where Basic Pay and allowances are based on the rates agreed as per the settlement between the management and employee union.

- DA for BEST employees is governed by all-India CPI for industrial workers and hence, is not in BEST's control. The percentage variation considered on the basis of CPI by the Commission in employee cost does not at all compensate for the variation in the DA seen even in the case of Central Government.
- As per approved ARR, the employee cost for the neighbouring Utility is Rs. 0.41/ unit and Rs. 0.50/unit for FY 2009-10 and FY 2010-11, respectively, as compared to BEST's Rs. 0.37/unit and Rs. 0.39/ unit, respectively. BEST added that in spite of lower employee cost, BEST maintains the Standards of Performance and reliability etc., at the highest levels.
- BEST has been performing better than other Utilities as per the Standards of Performance. BEST has been awarded the Gold Shield by Ministry of Power in FY 2009-10 and Silver Shield in FY 2010-11 for its exceptional performance in electricity. However, the Commission has been penalizing BEST by disallowing employee expenses considering it to be a controllable parameter.
- BEST's area of supply consists of VVIP areas of Mumbai region, important government establishments such as Mantralaya, Defence Head Quarters, Reserve Bank of India Head Quarters, major hotels where VVIPs are frequently accommodated and major commercial establishments where uninterrupted supply is essential. Besides, there are many high-rise buildings where uninterrupted supply is a necessity. Hence, BEST cannot afford to restore supply as per the SOP Regulations notified by the Commission, and has to ensure reliable supply and also restore the supply immediately in case of any break-down. For this, BEST has to create and maintain sufficient redundancy of the system along with required manpower for its operations.
- Being a Local Authority Undertaking and governed under MMC Act, 1888 and also BIR Act, BEST cannot resort to contract labour or outsource its core activities.
- The Commission has been using the inflation index for computing employee cost, which does not consider vacant positions filled in the year.
- Moreover, while undertaking the Truing Up for FY 2008-09 for MSEDCL in Case No. 119 of 2009 and TPC-D in Case No. 98 of 2009, the Commission has allowed actual employee expenses based on the audited accounts.
- The ATE, in its Judgments in Appeal No. 109 of 2007 (Judgment dated 17 December, 2008 in the matter of MSEDCL vs MERC) and Appeal No. 251 of 2006 (Judgment dated 4 April, 2007 in the matter of REL vs MERC), has ruled that the employee expenses should be allowed at actuals.

16. As regards the impact of the ATE's Judgment dated 22 March, 2012 on the employee expenses, BEST submitted that the said Judgment will have an impact of Rs. 15.31 Crore for FY 2008-09, as shown in the following Table:

Table: Impact of revised Employee Expenses for FY 2008-09 submitted by BEST

(Rs. Crore)

Particulars	**BEST submission**	**Allowed by the Commission**	**Difference**
Employee Expenses	158.65	143.34	(15.31)

Commission's Analysis and Ruling

17. As regards the employee expenses for FY 2008-09, the relevant extract of the ATE Judgment, is as follows:

> *"… It is true, the Commission has not fixed any benchmarking, but it is good and proper that the Commission undertakes such an exercise in future for the benefit of all concerned and for simplification too. Accordingly, we are of the opinion that this issue needs re -visit and re-look and we accordingly direct so…"*

18. In view of the ATE's directions in this regard, the Commission has re-visited the issue of employee expenses to be allowed for FY 2008-09 and has undertaken the prudence check of the employee expenses incurred by BEST. While doing the prudence check, the Commission has also referred to the ATE Judgments in Appeal No.94 of 2008 and Appeal No. 37 of 2010, wherein the ATE has ruled that the Commission is not bound to allow the expenses recorded in the audited accounts. The ATE has ruled that the audited accounts are only to verify as to whether the expenditure has been actually incurred or not and the Commission is bound to apply its mind to make a prudence check in order to verify whether the expenditure is to be allowed or not. The relevant extracts of the above-said ATE Judgments are as follows:

Appeal No. 94 of 2008 (KSEB vs. KERC)

"...In the truing up process the actual expenditures are examined and the expenditures with various heads are trued up. ***So far as the effect of audit is concerned, it establishes the genuineness of accounts and expenditure incurred. The audit does not certify the wisdom of expenditure incurred. The Commission has to allow only as much expenditure as pass through as meets the targets set by it or is found to be prudent and necessary****…*

…His case is that on the submissions made by the appellant the Commission should have accepted the expenditures incurred and should have allowed the entire revenue gap as pass through. ***It will be worthwhile to mention the observations of the Supreme Court made in West Bengal Electricity Regulatory Commission Vs. CESC Ltd. (2002) (8) SCC 715 which is extracted below****. The judgment relates to the Electricity Regulatory Commissions Act 1998 but deals with the question at hand.*

"The 1998 Act mandates the Commission to take into consideration of the efficient management by the licensee of its Company, as also the interests of consumers while determining the tariff, therefore, if these two factors which go in favour the consumers are in conflict with the definition of expenditure 'properly incurred' in Schedule VI to the 1948 Act then it is for the Commission to reconcile this conflict and decide whether to accept the expenditure reflected in the accounts of the company or not. ***In this process the Commission in our opinion is not bound by the Auditors' report.***

...

... There may be any number of instances where an account may be genuine and may not be questioned, yet the same not reflect good performance of the Company or may not be in the interest of the consumers. Therefore there is an obligation on the Commission to examine the accounts of the Company, which maybe genuine and unchallenged on that count still in the light of the above requirements of Section 29(2) (g) to (h). In the said view of the matter admitting that there is no challenge to the genuineness of the accounts, ***we think on this score also the accounts of the Company are not ipso facto binding on the Commission****."*" ***(emphasis added)***

Appeal No. 37 of 2010 (Meghalaya Electricity Board vs. Meghalaya Electricity Regulatory Commission)

"…The audited account is only to verify as to whether the expenditure has been actually incurred or not. ***The auditor does not deal with the prudence of the***

expenditure. The question whether the said expenditure is to be allowed or not has to be considered only by the State Commission after prudence check.

The auditor will only verify and certify whether the expenditure on such account had been actually incurred or not. On the other hand, ***the State Commission is bound to apply its mind to make a prudence check in order to verify whether the expenditure is to be allowed or not and the State Commission is not bound by the opinion of the auditors as laid down by the Hon'ble Supreme Court in AIR 2002 SC 358 = AIR 2002 (8) SCC 70…"(emphasis added)***

19. In its Petition under Case No. 95 of 2009, BEST had submitted the following reasons for increase in the employee expenses:

- The increase in the Basic Salary was mainly due to miscalculation of Basic Salary during APR Order in Case No. 118 of 2009 and also due to regularisation of 100 employees.
- As regards Bonus and ex-gratia expenses, BEST submitted that in FY 2007-08, it had paid ex-gratia amounting to Rs. 5000/- and Rs. 2500/- as an advance towards Diwali festival, which was subsequently recovered in equal instalments. However, for FY 2008-09, the ex-gratia payment was Rs. 9,000/-. BEST further submitted that the ex-gratia amount is generally fixed considering the amount paid in similar organizations and since, Mumbai Municipal Corporation fixed Rs. 9000/- as the ex-gratia, BEST also decided to pay the same amount of ex-gratia to its employees.
- As regards the special benefits, BEST submitted that in the APR Petition of FY 2008-09 (Case No. 118 of 2008), BEST has mentioned under employee expenses that Special benefit of Rs. 500/- per month per employee was started as per the approved Wage Agreement for the period from FY 2006-07 to FY 2008-09 as a token amount and the same has been discontinued from FY 2009-10, hence, it has been considered as zero for FY 2009-10 and 2010-11.

20. Based on the head-wise prudence check, the Commission has accepted the justification submitted by BEST and has allowed the actual employee expenses for FY 2008-09 as claimed by BEST. The revised employee expenses approved by the Commission for FY 2008-09 are as follows:

Table: Revised Employee Expenses approved by the Commission for FY 2008-09

(Rs. Crore)

Particulars	BEST Submission	Approved by the Commission earlier	Revised Approval
Employee Expenses	158.65	143.34*	158.65

Note: * - 1/3rd of the difference between actual and approved expenses had been allowed under the mechanism of sharing of efficiency losses, hence, employee expenses approved earlier, after considering sharing of efficiency losses, were Rs. 148.44 crore

21. As regards the bench-marking with other Distribution Licensees, the Commission has notified the MERC MYT Regulations, 2011, wherein benchmarking has been attempted, and normative O&M expenses have been specified for all Distribution Licensees for the second Control Period from FY 2011-12 to FY 2015-16.

Issue B: A&G Expenses for FY 2008-09

22. BEST submitted that the Commission erred in reducing the A&G expenses for FY 2008-09 from Rs. 74.80 Crore claimed by BEST to only Rs. 72.51 Crore, while Truing Up the ARR for FY 2008-09, on the basis that A&G expenses is a controllable parameter, without substantiating or clarifying the said reduction.

23. BEST submitted that A&G expenditure comprised of total 15 items, out of which expenditure had increased in 7 items and reduced in 8 items. However, the Commission has neither taken into account the reduced A&G expenses for the 8 items, viz., Rent Rates and Taxes, Telephone and Postage, Professional Consultancy Technical fee, Printing and Stationery, License fee and other related fee, Vehicle Running Expenses, Property Insurance Fund, and Share of General Administration expenses, nor the increase in the 7 items, viz., Insurance, Legal Charges and Audit Fee, Electricity Charges, Security arrangement, Advertisement, Bank Charges, and Other Cost.

24. BEST further submitted that the Commission has also erred in appreciation or interpretation of Regulation No. 17.6.2 of MERC (Terms and Conditions of Tariff) Regulations, 2005. BEST submitted that the Commission had not analysed the reasons for the increase in the A&G expenses submitted by BEST even though the same was a duly audited figure. BEST added that it had clarified the issue in respect of A&G expenses when the Commission had called for additional information under the Technical Validation Session, in respect of A&G expenses.

25. BEST submitted that though the Commission has undertaken sharing of efficiency losses and one-third of the difference in A&G expenses has been added it to BEST's Aggregate Revenue Requirement (ARR), however, the same has no relevance since the A&G expenses claimed by BEST were duly audited figures. BEST submitted that the Commission, while approving the A&G expenses, had merely considered the A&G expenses provisionally approved under Case No. 118 of 2008, which does not have any merit since, there would definitely be a difference between provisional amount and actual audited amount for which BEST had already submitted the item-wise increase/reduction in the A&G expenses in its Petition.

26. BEST referred to the ATE Judgments in the matter of Appeal No. 109 of 2007 and Appeal No. 251 of 2006 wherein it has ruled that the A&G expenses should be allowed at actuals. BEST requested the Commission to approve the A&G expenses submitted by BEST in the light of these ATE Judgments.

27. BEST submitted that the Commission, in its Order in Case No. 95 of 2009, had disallowed Rs. 2.29 Crore out of the total A&G expenses of Rs.74.80 Crore, which the Commission should consider and allow under this Petition.

Table: Impact of revised A&G Expenses for FY 2008-09 submitted by BEST (Rs. Crore)

Particulars	BEST Submission	Allowed by the Commission earlier	Difference
A&G Expenses	74.80	72.51	(2.29)

Commission's Analysis and Ruling

28. The relevant extract of the ATE's Judgment dated 22 March, 2012 in Appeal No. 8 of 2011 is as follows:

> *"...If the Commission upon prudence check and examination and analysis of the point would have dismissed the issue it would have been a different matter, but when there has not been any examination of the matter it is therefore necessary that the Commission should look into the matter and then pass appropriate order as it would deem fit and proper..."*

29. In view of the ATE's directions in this regard, the Commission has re-visited the issue of A&G expenses to be allowed for FY 2008-09 and has undertaken the head-wise prudence

check of the A&G expenses incurred by BEST. While doing the prudence check, the Commission has also referred to the ATE Judgments in Appeal No.94 of 2008 and Appeal No. 37 of 2010, wherein the ATE has ruled that the Commission is not bound to allow the expenses recorded in the audited accounts.

30. The expenses heads of insurance, rent rates and taxes, legal and audit fees, Professional consultancy technical fees, license fee and other related fees, Vehicle running expense/ Truck/delivery Van, Other expenses, and Share of General Administration Expenses have been allowed by the Commission as claimed by BEST in its Petition in Case No. 95 of 2009.

31. As regards the electricity charges, it is observed that though there was a decline in the electricity tariff in the year, BEST has reported an increase of 36.4% in the electricity charges in FY 2008-09. Further, BEST has not given any adequate explanation for such an increase. While the Commission has not disallowed any part of the expenses on electricity charges, it is expected that being a Distribution Licensee, BEST should implement methods to reduce such expenses which are controllable in nature.

32. The Commission has observed that BEST has incurred a higher year-on-year increase for expenses such as Security Charges, Telephone and postage, advertisements, and printing and stationery (as high as 70% for certain heads). The Commission is of the view that such expenses are entirely controllable and the increase in such expenses should be limited to the general level of inflation, hence, the increase in these sub-heads has been capped to the extent of the escalation factor of 6.04% corresponding to increase in WPI and CPI over the A&G expenses approved for FY 2007-08. The Commission finds no adequate reason for allowing such additional expenses over and above the A&G expenses approved in the APR Order as these expenses are within the control of BEST. The Commission has adopted the same methodology for other Utilities also, wherein controllable expenses listed above have been limited on similar grounds.

33. The Commission has referred to the Judgment given by the ATE in Appeal No. 150 of 2009 (RInfra vs. MERC), wherein the Hon'ble ATE has ruled as under:

"7. Through the impugned order, the State Commission has considered the performance parameters and expenses for computing the sharing of gain/losses in accordance with the provisions of Tariff Regulations. Accordingly, the State Commission, in the impugned order treated the increase in expenses over the

approved level and shared the difference in accordance with the tariff Regulation since such expenditures are controllable in nature. The State Commission, as a Regulator is required to set certainty in application of its Regulations when the same is applied for verifying the reasonableness of expenses incurred by a regulated entity. Accordingly, the principle laid down in the Tariff Regulations notified by it on how to interpret the term "uncontrollable factors" and the factors which are beyond the control of the utility are to be applied without exception to any expense head.

8. While the Appellant has sought to treat all such expenditure as "uncontrollable", the Appellant has admittedly not been able to give any justification as to why such expenditure are beyond the control of the Appellant or what steps the Appellant has taken to mitigate the increase in such expenses.

9. The Appellant merely contended that those expenses are uncontrollable. This approach is wrong. In this regard, it is pointed out that this Tribunal in Full Bench Appeal No.139 of 2009 titled Maharashtra State Electricity Transmission Company Vs. MERC dated 23.3.2011 has specifically held that the Administrative and General expenses and also the Repair and Maintenance Expenses are generally controllable in nature. The relevant extract of the judgment is hereunder:

"8.4. The relevant part of the Regulation 19 of the Tariff Regulations is extracted here under:-

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 on additional charge in tariffs over such period as may be specified in the order of the Commission under Regulation 17.10: and

(b) The balance amount of loss shall be absorbed by the Generating Company or Licensee The above Regulations indicate that 1/3rd of loss on account of controllable factors has to be passed on as an additional charge in the tariffs and the balance 2/3rd has to be absorbed by the licensee. ***A&G and R&M expenses are controllable factors.*** *The State Commission has compared the actual audited expenses with the figures projected for the Multi Year Tariff Period for the purpose of sharing the efficiency loss/gain as per Regulation 19.*

8.5. ***Thus, we find that the State Commission has determined the A&G and R&M expenses according to its Regulations and MYT tariff order****.*

*10. So, this issue has already been decided by this Tribunal. However, in the present case, **the Appellant not only has also not been able to establish that such expenses were uncontrollable but the Appellant has not been able to place any material to show that as to what steps it has taken to mitigate such increase**. In the absence of the same, the said expenses are obviously controllable and have been accordingly treated in accordance with the Tariff Regulations in the impugned order. Therefore, there is no merit in the contention urged by the Learned Counsel for the Appellant. Accordingly this contention would fail."(**emphasis added**)*

34. Accordingly, the revised A&G expenses approved by the Commission are as follows:

Table: Revised A&G expenses approved by the Commission for FY 2008-09 (Rs. Crore)

Particulars	BEST Submission	Approved by the Commission earlier	Revised Approval
A&G Expense	74.8	72.51*	73.94

Note: * - 1/3rd of the difference between actual and approved expenses had been allowed under the mechanism of sharing of efficiency losses, hence, A&G expenses approved earlier, after considering sharing of efficiency losses, were Rs. 73.27 crore

35. The Commission has considered the difference between the actual A&G expenses and revised A&G expenses approved in this Order, under the sharing of efficiency gains and losses due to controllable factors, since A&G expenses are controllable expenses.

36. Thus, the revised O&M expenses approved by the Commission is as follows:

Table: Revised O&M Expenses approved by the Commission for FY 2008-09 (Rs. Crore)

Particulars	BEST submission	Approved by the Commission	Revised Approval
Employee Expenses	158.65	142.94	158.65
A&G Expenses	74.8	72.51	73.94
R&M Expenses	25.32	25.32	25.32
Total O&M Expenses	**258.77**	**240.77**	**257.91**

<u>Interest on Working Capital</u>

37. Further, though allowing the revised Interest on Working Capital is not strictly within the scope of the ATE remand, the Commission has re-computed the normative Interest on Working Capital to allow pass through of the consequential impact of allowing higher O&M expenses, as discussed above. The revised normative Interest on Working Capital is as follows:

Table: Revised Normative Interest on Working Capital ***(Rs. Crore)***

Particulars	Revised Approval
Computation of Working Capital	
One-twelfth of the amount of Operations and Maintenance Expenses	21.49
One-twelfth of the sum of the book value of stores, materials and supplies	1.85
One-sixth of the expected revenue from sale of electricity at the prevailing tariffs	475.39
Less:	
Amount of Security Deposit	
From Consumers	207.63
From Distribution System users	
One-Twelfth of the cost of power purchased	205.78
Total Working Capital = (1.1 + 1.2 + 1.3) - (1.4 + 1.5)	85.32
Computation of working capital interest	
12.75% for FY2008-09	
Interest on Working Capital	**10.88**

Issue C: Capitalisation for FY 2008-09

38. BEST submitted that the Commission has duly accepted and admitted that Capitalisation to the extent of Rs. 9.44 Crore has to be added for FY 2008-09 and the same would also affect the computation of subsequent years, since the opening balance of the Assets will change. BEST did not make any further submissions, and stated that it has already

provided the detailed reconciliation of the opening Gross Fixed Assets (GFA) from FY 2006-07 to FY 2010-11 under the reply to data gaps in Case No. 125 of 2011 vide its letter dated April 4, 2012.

39. BEST submitted that a total capitalisation amount of Rs. 9.44 Crore has to be additionally considered by the Commission for FY 2008-09.

Commission's Analysis and Ruling

40. As regards the capitalisation to be considered for FY 2008-09, the ATE ruled as under in its Judgment:

> *"...since capitalisation has been subsequently approved by the Commission the corresponding Interest during Construction should have been considered and has not been inadvertently been considered and the Commission accepts the same. Accordingly, the Commission would pass appropriate order on this issue and revised the approved capitalisation..."*

41. While reconciling the GFA in Case No. 171 of 2011, the Commission had observed that IDC of Rs. 9.43 Crore pertaining to FY 2008-09 had not been considered while truing up for FY 2008-09, and IDC of Rs. 1.55 Crore pertaining to FY 2006-07 had been added again in the capitalisation for FY 2008-09, hence, the capitalised amount for FY 2008-09 was revised to Rs. 130.08 Crore, as shown in the Table below:

Table: Revised Capitalisation approved by the Commission for FY 2008-09 (Rs. Crore)

Particulars	BEST Submission	Approved by the Commission	Revised Approval
Capitalisation	131.99	122.20	130.08

42. Further, the Commission has already included IDC of Rs. 9.43 Crore pertaining to FY 2008-09 while computing the capitalisation for FY 2009-10 and FY 2010-11 in Case No. 125 of 2011. However, the Commission has considered the revised capitalisation approved above for FY 2008-09, while computing the Depreciation expenses, Interest Expenses, and Return on Equity (RoE) pertaining to FY 2008-09.

43. As regards Depreciation, since, depreciation has been computed on the opening level of the Gross Fixed Assets for FY 2008-09, there is no impact on account of the revised capitalisation for FY 2008-09.

Issue D: Interest Expenses for FY 2008-09

44. BEST submitted that the Commission erred in reducing the interest expenses for FY 2008-09 to Rs. 22.76 Crore as against Rs. 32.44 Crore claimed by BEST, without elucidating or explaining the computation of the interest expenses approved by the Commission. BEST submitted that it had incurred a capital expenditure of Rs. 131.43 Crore, out of which Rs. 122.56 Crore had been capitalised and the balance part of Rs. 8.87 Crore was the Capital Work in Progress (i.e., CWIP).

45. BEST submitted that during H1 and H2 of FY 2008-09, BEST had availed loan amounts of (i) Rs. 25 Crore from Vijaya Bank at 10% interest per annum, (ii) Rs. 25 Crore from Canara Bank at 10% interest per annum, and (iii) Rs. 85 Crore from Vijaya Bank at 10.50% interest per annum.

46. BEST further submitted that the effective loan raised by BEST in FY 2008-09 was Rs. 85 crore, which has been computed by adding (i) loan amount of Rs. 25 Crore from Vijaya Bank at 10% interest per annum availed during H1, with (ii) loan amount of Rs. 85 Crore from Vijaya Bank at 10.50% interest per annum, and subtracting (iii) loan of Rs. 50 Crore from Vijaya Bank at 10% interest per annum to service and pay the interest and principal amounts on earlier loan of Rs. 50 Crore obtained in FY 2007-08. BEST submitted that the Commission in the Order dated 12 September, 2010 had observed that the capitalisation during FY 2008-09 amounted to Rs. 131.99 Crore. BEST submitted that this amount of Rs. 131.99 Crore comprises of Rs. 9.72 Crore through contribution from consumers, Rs. 4.78 Crore through Government Grant, Rs. 32.42 Crore through additional equity capital on normative basis and debt component of Rs. 85.07 Crore. BEST further submitted that the Commission had observed that in case additional loan of Rs. 135 Crore comprising of debt component of Rs. 85.07 Crore and additional loan of Rs. 50 Crore from Vijaya Bank (to service and repay the earlier loan) is admitted, then the total funding of Rs. 181.92 Crore would be much higher than the capitalisation of Rs. 131.99 Crore approved by the Commission. BEST further submitted that accordingly, the Commission in the Order dated 12 September, 2010 considered the sources of capitalisation as Rs. 9.72 Crore through contributions from consumers, Rs. 4.78 Crore through grant from Government and actual loan of Rs. 107.70 Crore. BEST added that the Commission had derived the actual loan

amount of Rs. 107.70 Crore by subtracting from the approved capitalisation amount of Rs. 122.20 Crore, the contributions from consumers (Rs. 9.72 Crore) and grant from the Government (Rs. 4.78 Crore). BEST submitted that the Commission erred in failing to consider and /or appreciate the applicability of normative debt: equity ratio of 70:30 under Regulation 73.1 of MERC (Terms and Conditions of Tariff) Regulation 2005, to the said actual loan amount of Rs. 107.70 Crore. BEST added that the Commission erred in failing to apply the normative debt: equity ratio of 70:30 to the actual loan amount of Rs. 117.49 Crore (131.99 - 9.72 - 4.78), which worked out to Rs. 82.24 Crore (i.e., about Rs. 85 Crore).

47. BEST submitted that the Commission erred in considering and increasing the loan amount to Rs. 107.70 Crore instead of the actual loan amount of Rs. 82.24 Crore (i.e., about Rs. 85 Crore) in computation of interest expenses and also the Commission failed to consider and/or appreciate the interest component on the loan shown in opening balance of short-term finance facility amounting to Rs. 100 Crore availed from Canara Bank at the rate of interest of 11.50% per annum, in computation of the interest expenses.

48. BEST submitted that it had requested the Commission that it plans to roll over short-term loans and utilise them effectively as a long-term fund till the time approval for raising long-term debts is taken from the State Government. BEST submitted that in this regard, the Commission had directed it to take up the issue of approval for raising long term debts with the State Government and take exemption from seeking permission for raising such long-term loans. Accordingly, BEST has already initiated the steps to get the exemption from the State Government.

49. BEST submitted that the Commission had not considered the fact that out of total loan of Rs. 135 Crore raised during FY 2008-09, Rs. 50 Crore was repaid against the earlier loan taken in FY 2007-08, and instead re-computed the loan amount for FY 2008-09 as Rs. 107 Crore instead of Rs. 85 Crore as submitted by BEST. BEST added that the Commission has considered the figure of repayment as submitted by it but erroneously recalculated the loan amount. BEST submitted that the Commission had failed to appreciate that it had claimed the actual audited Interest Expenses wherein the earlier loan interest component was also included.

50. BEST submitted that the Commission, while applying Regulation 73.1, had failed to appreciate that BEST had not raised equity through the market, but that the normative equity has been funded through internal sources only, and as such the Commission's contention that

BEST cannot consider or use its loan component as normative equity was fundamentally erroneous.

51. BEST submitted that the ATE has directed the Commission to re-examine the issue in accordance with the Regulations, which provide for normative loan at the rate of 70% on the capitalisation allowed after April 1, 2005. As regards the interest expenses, BEST submitted that the said Judgment will have an impact of Rs. 9.68 Crore for FY 2008-09 shown as follows:

Table: Interest expenses submitted by BEST for FY 2008-09 ***(Rs. Crore)***

Particulars	BEST submission	Approved by the Commission	Difference
Interest Expense	32.44	22.76	(9.68)

Commission's Analysis and Ruling

52. In this context, the ATE has ruled as under in its Judgment dated 22 March, 2012 in Appeal No. 8 of 2011:

> *"10.…The amount capitalised has to be in the ratio of 70:30. The appellant claims Rs. 32.42 Crore as normative equity which is utilisable with Rs. 85.07 Crore claimed to be raised through loan. This point does require re-examination in accordance with the Regulations which provide for normative loan @ 70% on the capitalisation allowed after 1.4.2005."*
>
> *22.…**Interest on Loan capital will have to be provided corresponding to the assets put to use and not on capital expenditure as assumed by the appellant…"(emphasis added)***

53. In the light of the above ruling of the ATE in Appeal No. 8 of 2011, the Commission has considered a normative debt: equity ratio of 70:30, for computing the interest expenses and Return on Equity, in this Order.

54. Accordingly, the Commission has considered loan amount equal to 70% of the allowable net capital cost, after deducting Consumer Contribution and Government Grants.

Accordingly, the sources of capitalisation considered by the Commission are Consumer Contribution (Rs. 9.72 Crore), Grant from Government (Rs. 4.78 Crore), Normative Equity (Rs. 34.67 Crore), and actual loan of Rs. 80.91 Crore.

55. The Commission has considered the interest expenditure on the existing loans (public loans, MMRDA loans for Mega City project, DPDC loans, and APDRP loans) at Rs 4.37 Crore as claimed by BEST, and re-computed the interest expenses for the actual loan of Rs. 80.91 Crore.

56. In its reply to data gaps dated 15 June, 2012 regarding the amount of depreciation used for repayment of loans; BEST submitted that it has not used depreciation for repayment of loans. However, as per MERC Tariff Regulations, 2005, depreciation is intended to be used as a source of funds for repayment of loans, and there is also a provision for Advance against Depreciation to match the repayment obligations. Hence, the Commission is of the view that the actual loans taken by BEST for funding the repayment have to be adjusted against the depreciation allowed. Moreover, the MERC Tariff Regulations and also the ATE Judgment quoted above clearly provide that the loans can be allowed only against assets put to use and not against capital expenditure or other purposes such as repayment of loan. The above-said ATE Judgment has not given a ruling that the loans have to be allowed against the repayment obligations, and have ruled that loans have to be allowed by considering the normative debt:equity ratio of 70:30 against the assets capitalised. Hence, the Commission has disallowed the additional loans taken for the purpose of repayment of earlier loans as claimed by BEST, as the same has to be adjusted against depreciation. The interest expenditure now approved by the Commission is tabulated under:

Table: Revised Interest expenses approved by the Commission for FY 2008-09 (Rs. Crore)

Particulars	BEST Submission	Approved by the Commission earlier	Revised Approval
Opening Balance of loan	195.50	192.75	192.75
Additions	135.00	107.70	80.91
Repayment	(52.29)	(51.37)	(52.29)
Closing Balance	278.21	249.08	221.37
Interest Expenses	32.44	22.76	21.00

Issue E: Return on Equity (RoE) for FY 2008-09

57. As regards the RoE, BEST submitted that the ATE has directed the Commission to re-examine the issue in accordance with Regulation 73.1 of the MERC Tariff Regulations, which provide for normative equity at 30% of the capitalisation allowed after April 1, 2005. BEST submitted that the Commission had erred in reducing the Return of Equity for FY 2008-09 from Rs. 108.83 Crore claimed by BEST to Rs. 100.53 Crore, by not considering and including normative equity (30%) of (i) Rs. 46.85 Crore for FY 2007-08 and/or (ii) Rs. 32.42 Crore for FY 2008-09 on net capitalisation amount, in computation of RoE.

58. BEST submitted that the Commission has erred in not considering any equity for funding of capitalisation during FY 2008-09, rather the Commission has considered the entire funding during FY 2008-09 through Consumer Contribution, Government Grants, and actual loan drawal during FY 2008-09. BEST submitted that the Commission did not appreciate that BEST had contributed normative equity (30%) amounting to Rs. 32.42 Crore and balance debt (70%) amounting to Rs. 82.84 Crore (i.e., about Rs. 85 Crore). BEST further submitted that the Commission has acknowledged that the capitalisation approved for FY 2008-09 was Rs. 129.20 Crore, further, the Commission has also accepted that the capitalisation to the extent of Rs. 9.44 Crore was required to be considered for FY 2008-09 and thus, the Commission has to consider a capitalisation amount of Rs. 131.64 Crore (i.e., 122.30 Crore + Rs. 9.44 Crore) for calculation of RoE.

59. BEST submitted that since Issue D and Issue E are inter-related, the Commission should consider the averments submitted by it under Issue D in this case also. BEST further submitted that the Commission has failed to appreciate that BEST has not raised equity through the market and that the normative equity has been funded through internal sources only. BEST added that the Commission’s contention that BEST cannot use the loan component as normative equity is fundamentally erroneous.

60. BEST recomputed the RoE and submitted a revised claim of Rs. 101.97 Crore for FY 2008-09. BEST submitted that the Commission, in its Order in Case No. 95 of 2009 had approved a RoE of Rs. 99.16 Crore for FY 2008-09 resulting in a deficit of Rs. 2.81 Crore which the Commission will have to consider for approval under this Petition.

Table: RoE submitted by BEST for FY 2008-09 ***(Rs. Crore)***

Particulars	Revised BEST Submission	Allowed by the Commission	Difference
RoE	101.97	99.16	(2.81)

Commission's Analysis and Ruling

61. As regards RoE, the ATE has remanded the issue to the Commission for re-examining the same in accordance with the MERC Tariff Regulations, as reproduced below:

> *"…We find that this issue E is linked with the issues C and D, more particularly D because return on equity is with respect to the capitalisation and once the Commission's finding on the amount of debt is subject to scrutiny then the amount of return on equity would vary. This issue like the Issue D needs re-look and re-examination in accordance with the Regulations which provide for normative equity of 30% on the capitalisation allowed after 1.4.2005…"*

62. In view of the above ruling of the ATE in its Judgment dated 22 March, 2012, the Commission has considered normative equity equivalent to 30% of the approved net capitalisation, and ROE has been allowed on the normative equity of Rs. 34.67 Crore. The revised RoE approved by the Commission is as follows:

Table: Revised RoE approved by the Commission for FY 2008-09 (Rs. Crore)

Sl. No.	Particulars	Formula	Revised BEST Submission	Approved by the Commission	Revised Approval
1	Regulatory Equity at the beginning of the year		619.76	619.76	619.76
2	Allowable Capital Expenditure including IDC		117.14	107.70	115.58
3	Equity portion of capital expenditure		35.14	0.00	34.67
4	Regulatory Equity at the end of the year		654.90	619.76	654.43
5	Return on Regulatory Equity at the beginning of the year	16%*(1)	99.16	99.16	99.16
6	Return on Equity portion of capital expenditure	16%*(3) /2	2.81	0.00	2.77
7	Total Return on Regulatory Equity	(5)+(6)	101.97	99.16	101.94
	Additional Impact		**2.81**		**2.77**

<u>Issue I: Sharing of Gains and Losses for FY 2008-09</u>

63. BEST submitted that the Commission has accepted that it was inadvertent error and the amount of Rs. 13.29 Crore as computed by BEST and would be added to the ARR of the subsequent year. BEST added that in case the Commission approves the employee expenses and A&G expenses as per actual figures of FY 2008-09, the calculation of the sharing of efficiency gains and losses would also change.

Commission's Analysis and Ruling

64. As regards the sharing of efficiency gains and losses for FY 2008-09, the relevant extract of the ATE Judgment, is as follows:

> *"Regarding issue I, that is, computation of sharing of gains and losses for FY 2008-09 the Commission has accepted that it was an inadvertent error and the amount of Rs13.29 crore will be added to the ARR of the subsequent year."*

65. The Commission has accepted the error in computation of sharing of gains and losses as regards to efficiency gains on account of distribution loss of Rs. 12.64 Crore and gains on account of R&M expenses of Rs. 0.65 Crore. Hence, the the additional share of efficiency gains of Rs. 13.29 Crore has been allowed in this Order.

66. Further, in the present Order, since the Commission has recomputed the O&M expenses and its consequential impact on Interest on Working Capital and ARR, the efficiency gain/loss has also been re-computed as stated below:

i. O&M Expenses

The Commission has approved the actual employee expenses, hence, no sharing is required to be done for this head. The efficiency loss due to A&G expenses works out to Rs.0.86 Crore out of which 1/3rd has been considered to be shared by the consumers by adding the amount of Rs. 0.29 crore to the ARR, and 2/3rd has been considered to be absorbed by BEST. Since there has been no change in the R&M expenses as approved in the Order dated 12 September, 2010 in Case No. 95 of 2009, efficiency gains due to R&M expenses remains the same out of which 2/3rd share is to be passed on to BEST. However, since the Commission has already allowed Rs. 0.65 Crore in Order dated 12 September, 2010 in Case No. 95 of 2009, the

Commission has considered additional sharing of only Rs. 0.65 Crore in this Order, as discussed above.

ii. Interest on Working Capital

67. Since, the actual Interest on Working Capital for BEST as submitted in Case No. 95 of 2009 is higher than the revised Interest on Normative Working Capital, the Commission has considered the difference between the revised normative Interest on Working Capital and actual Interest on Working Capital as an efficiency loss and has accordingly shared 1/3rd of the same with the consumers, and 2/3rd is considered to be absorbed by BEST, in accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005. However, since, the revised amount of share of efficiency losses on account of Interest on Working Capital works out to Rs. 4.12 crore, which is the same amount as allowed earlier, there is no additional impact on this account.

68. The total impact on sharing of gains and losses is given in the Table below:

Table: Total Impact on sharing of gains and losses (Rs. Crore)

Particulars	Efficiency Gain/(Loss) shared with consumers
Administration & General Expenses	0.29
Repair & Maintenance Expenses	0.65
Incentive for reduction of distribution loss	12.64
Total Impact on sharing of gains and losses	**13.58**

<u>Summary of Impact for FY 2008-09</u>

69. The Overall impact for FY 2008-09 is as follows:

Table: Total impact for FY 2008-09 approved by the Commission (Rs. Crore)

Particulars	Approved in Case No. 95 of 2009	Revised Approval (Case 62 of 2012)	Additional Impact submitted by BEST	Additional Impact being allowed
Operation & Maintenance Expenses	241.17	257.91	18.25	10.88$
Employee Expenses	*143.34*	*158.65*	*15.31*	10.21$

Particulars	Approved in Case No. 95 of 2009	Revised Approval (Case 62 of 2012)	Additional Impact submitted by BEST	Additional Impact being allowed
Administration & General Expenses	*72.51*	*73.94*	*2.29*	0.66
Repair & Maintenance Expenses	*25.32*	*25.32*		
Interest on Long-term Loan Capital & Short Term Finance	22.76	21.00	9.68	-1.76
Total Interest on Working Capital (Normative)	10.89	10.88	0.00	-0.01
Return on Equity Capital	99.16	101.94	2.81	2.78
Total Impact on sharing of gains and losses			4.62	13.58
Total			**34.71**	**25.48**

Note: $ - Additional impact has been computed after considering the impact of the efficiency losses shared with the consumers earlier, and hence, will not tally with the difference between amount approved earlier and amount approved now.

70. The additional impact is lower than that claimed by BEST, for the following reasons:

i. BEST has ignored the fact that the Commission has already allowed 1/3rd of the efficiency losses against employee expenses and A&G expenses, while computing the additional impact; however, the Commission has correctly computed the additional amount being allowed now in accordance with the ATE Judgment, after considering the efficiency losses that have already been passed through, hence, the impact computed by the Commission appears lower, even in cases where the amount as sought by BEST has been allowed (e.g.: employee expenses).

ii. Reduction in A&G expenses due to part disallowance of Security Charges, Telephone and postage, Printing and Stationery, and Advertisement expenses.

iii. Reduction in Interest Expenses due to consideration of only 70% as debt component as compared to 100% earlier, and disallowance of additional loan considered by BEST for repayment purposes.

iv. Sharing of efficiency gains allowed by the Commission appears higher than that sought by BEST, however, BEST had incorrectly computed the impact due to sharing of efficiency gains, and in effect, the sharing of efficiency gains has been allowed as sought by BEST.

ISSUES RELATING TO FY 2009-10 AND FY 2010-11

Issue L: Employee Expenses for FY 2009-10 and FY 2010-11

71. BEST submitted that the Commission has erred in reducing the employee expenses from Rs. 170.45 Crore and Rs. 182.84 Crore estimated by BEST to only Rs. 152.44 Crore and Rs. 165.388 Crore for FY 2009-10 and FY 2010-11, respectively. The Commission has stated that it has considered an increase of around 6.35% per annum on account of inflation factor corresponding to increase in Consumer Price Index (CPI) over the employee expenses approved for FY 2008-09 in the Order in Case No. 95 of 2009. BEST submitted that the Commission has mentioned that it has considered the point to point inflation over CPI numbers for industrial workers (as per the Labour Bureau, Government of India) for a period of 5 years, i.e., FY 2004-05 to FY 2008-09 to smoothen the inflation curve.

72. BEST submitted that the revised estimate of employee expenses for FY 2009-10 was based on an escalation rate of 7.31% as per the Commission's Order dated 15 June, 2009 in Case No. 118 of 2008. BEST submitted that the Commission had already allowed the actual employee expenses for FY 2004-05, FY 2005-06, and FY 2006-07 in its Orders in Case No. 4 of 2004, Case No. 50 of 2005, and Case No. 73 of 2007, respectively. BEST further submitted that if at all the inflation curve was required to be smoothened; the same has to be considered from FY 2006-07 to FY 2008-09. BEST submitted that a perusal of yearly CPI shows an increment from 6.69% in FY 2006-07 to 9.08% during FY 2008-09 and hence, the average increment in these years worked out to 7.33%. BEST submitted that the Commission has itself considered an inflation factor of 7.31% under its Order in Case No. 118 of 2008. However, the Commission has erred in reducing the employee expenses by changing the inflation factor from 7.31% to 6.35% per annum over the revised level of employee expenses approved for FY 2008-09.

73. BEST submitted that similarly under the ARR for FY 2010-11, the Commission has considered an increase on account of inflation rate of around 8.49% per annum by considering the point to point inflation over CPI numbers for industrial workers (as per the Labour Bureau, Government of India) for a period of 5 years, i.e., FY 2005-06 to FY 2009-10 to smoothen the inflation curve. BEST submitted that if at all the inflation curve was required to be smoothened; the same has to be considered from FY 2007-08 to FY 2009-10. BEST submitted that a perusal of yearly CPI shows an increment from 6.22% in FY 2007-08 to 12.31% during FY 2009-10 and hence, the average increment of these three years worked out to 9.20%. However, the Commission has considered the inflation rate of around 8.49% per annum on account of inflation factor corresponding to increase in CPI over the revised level

of employee expenses approved for FY 2009-10. Therefore, the Commission has erred in reducing the employee expenses by adopting lower inflation factor, i.e., 8.49% per annum and reduced the revised estimated employee expenses for FY 2010-11 from Rs. 182.84 Crore to Rs. 165.38 Crore.

74. BEST submitted that in case the grievance/ground (under Issue A) regarding the disallowance of employee expenses for FY 2008-09 is found meritorious, then in that event, the growth rate indicated by BEST for FY 2009-10 and FY 2010-11 should necessarily be applied on the audited figures of employee expenses of FY 2008-09. BEST requested the Commission to approve the employee expenses as submitted by BEST in light of the Judgments issued by the ATE.

75. As regards the impact of the ATE's Judgment dated 22 March, 2012, BEST submitted that the said Judgment will have an impact of Rs. 22.32 Crore and Rs. 32.76 Crore for FY 2009-10 and FY 2010-11, respectively, as shown in the Table below:

Table: Revised Employee Expenses submitted by BEST for FY 2009-10 and FY 2010-11

(Rs. Crore)

Particulars	BEST Submission	Allowed by the Commission	Difference
FY 2009-10	174.76	152.44	(22.32)
FY 2010-11	199.32	166.56	(32.76)

Commission's Analysis and Ruling

76. In this regard, the ATE has ruled as under:

"However, the employees expenses for the FY 2009-2010 and FY 2010- 2011 derived from the base figure for 2008-2009 will have to be revised if the employees expenses for the FY 2008-2009 are revised corresponding to our findings in issue A above."

77. As regards BEST's contentions that the growth rate considered by the Commission for allowing the employee expenses for FY 2009-10 and FY 2010-11 is incorrect, the Commission is of the view that the ATE has already ruled on the matter as reproduced below:

"…There is merit in the Commission's submission that the Tariff Regulations,2005 do not specify any growth rate , while the CERC Regulations,2009 specifies a growth

rate of 5.72% for five year control period which was arrived at after considering the WPI and CPI, as against 6.35% and 8.49% considered by the Commission in the impugned order and that if the growth rates indicated by the appellant are considered the employees expenses work out to Rs153.85crore and Rs168crore for FY 2009-10 and FY 2010-11, which are found to be marginally higher than the employees expenses allowed by the Commission in the impugned Order…"

78. Thus, the ATE has upheld the Commission's approach in this regard and there is no ground for revising the growth rates considered by the Commission. However, the Commission has already undertaken the final truing up for FY 2009-10 and provisional truing up for FY 2010-11 in its Order in Case No. 125 of 2011. Hence, in order to adopt a consistent approach, the Commission has done the prudence check of each sub-head of employee expenses for FY 2009-10 in order to determine the allowable employee expenses for FY 2009-10, rather than applying the growth rate of 6.35% over the revised level of employee expenses approved for FY 2008-09 in this Order. Based on the prudence check, the Commission has allowed the employee expenses as per actuals submitted by BEST.

79. For FY 2010-11, the Commission has approved the employee expenses by considering the escalation factor of 8.49% over the revised level of employee expenses approved for FY 2009-10 in this Order, which will be subject to prudence check while undertaking the Truing Up process for FY 2010-11.

Table: Revised Employee Expense approved by the Commission for FY 2009-10 and FY 2010-11 ***(Rs. Crore)***

Particulars	BEST Submission	Allowed by the Commission	Revised Approval
FY 2009-10	174.76	152.44*	174.76
FY 2010-11	199.32	166.56	189.93

Note: * - 1/3rd of the difference between actual and approved expenses had been allowed under the mechanism of sharing of efficiency losses, hence, employee expenses approved earlier, after considering sharing of efficiency losses, were Rs. 159.88 crore

Issue M: A&G Expenses for FY 2009-10 and FY 2010-11

80. BEST submitted that the Commission has erred in reducing the A&G expenses from Rs. 79.39 Crore and Rs. 84.15 Crore estimated by BEST to only Rs. 76.48 Crore and Rs. 81.85 Crore for FY 2009-10 and FY 2010-11, respectively. The Commission has considered an increase of around 5.48% per annum on account of inflation factor corresponding to

increase in the Wholesale Price Index (WPI) and Consumer Price Index (CPI) over the level of A&G expenses approved for FY 2008-09 in the Order in Case No. 95 of 2009. BEST submitted that the Commission has considered the point to point inflation over WPI numbers (as per the Office of Economic Advisor of Government of India) and CPI numbers for industrial workers (as per the Labour Bureau, Government of India) for a period of 5 years, i.e., FY 2005-06 to FY 2009-10 to smoothen the inflation curve. BEST added that the Commission has considered a weight of 60% to WPI and 40% of CPI based on expected relationship with the cost drivers.

81. BEST submitted that the Commission had escalated the A&G expenses at the rate of 6.04% as per the APR Order dated 15 June, 2009 in Case No. 118 of 2008. However, the Commission has reduced the growth rate from 6.04% to 5.48% in the Order in Case No. 95 of 2009. BEST submitted that major increase has occurred in security arrangement for receiving substation and other vital installations of the Distribution System, as continuous threat is perceived in Mumbai region, as well as electricity charges and insurance expenses, which are uncontrollable factors.

82. BEST submitted that the Commission had already allowed the actual A&G expenses for FY 2005-06, FY 2006-07 and FY 2007-08 in its Orders in Case No. 50 of 2005, Case No. 73 of 2007, and Case No.118 of 2008. BEST further submitted that if at all the inflation curve was required to be smoothened; the same has to be considered from FY 2007-08 to FY 2008-09 for approving the expenses for FY 2009-10.

83. BEST submitted that similarly under the ARR for FY 2010-11, the Commission has considered an increase on account of inflation rate of around 7.02% per annum on account of inflation factor corresponding to increase in the Wholesale Price Index (WPI) and Consumer Price Index (CPI) over the level of A&G expenses approved for FY 2009-10 in the Order in Case No. 95 of 2009. BEST submitted that the Commission has considered the point to point inflation over WPI numbers (as per the Office of Economic Advisor of Government of India) and CPI numbers for industrial workers (as per the Labour Bureau, Government of India) for a period of 5 years, i.e., FY 2005-06 to FY 2009-10 to smoothen the inflation curve. BEST added that the Commission has considered a weight of 60% to WPI and 40% of CPI based on expected relationship with the cost drivers. BEST submitted that if at all the inflation curve was required to be smoothened; the same has to be considered from FY 2007-08 to FY 2009-10.

84. BEST submitted that the Commission has estimated a trend in increase in expenses over a longer period of time and merely because the actual expenses have been allowed in previous years, is no reason for not considering the CPI in these years to establish a longer term trend. However, the Commission in its Orders in Case No. 73 of 2007 and Case No. 118 of 2008 has not adopted the said philosophy correctly and the trend of longer term with growth of CPI was introduced only in the Order dated 12 September, 2010.

85. BEST submitted that in case the grievance/ground (under Issue B) regarding the disallowance of A&G expenses for FY 2008-09 is found meritorious, then the growth rate indicated by BEST for FY 2009-10 and FY 2010-11 should necessarily be applied on the audited figures of A&G expenses of FY 2008-09. BEST submitted that the Commission has not verified with reasons as to the difference in the actual A&G expenses from the estimated expenditure claimed by BEST, but has merely stuck to the statistics under its provisional Orders. BEST referred to the Judgments of the Hon'ble ATE in the matter of Appeal No. 109 of 2007 and Appeal No. 251 of 2006 wherein it has ruled that A&G Expenses should be approved at actuals incurred during the year.

86. BEST submitted that the Commission in its Order in Case No. 125 of 2011 has allowed A&G expenses of Rs. 76.48 Crore and Rs. 82.63 Crore as compared to BEST's estimates of Rs. 77.39 Crore and Rs. 82.75 Crore for FY 2009-10 and FY 2010-11, respectively, leaving a deficit of Rs. 0.91 Crore and Rs. 0.12 Crore as shown in the Table below, which the Commission should consider and allow under this Petition.

Table: A&G expenses submitted by BEST for FY 2009-10 and FY 2010-11 (Rs. Crore)

Particulars	BEST submission	Allowed by the Commission	Difference
FY 2009-10	77.39	76.48	(0.91)
FY 2010-11	82.75	82.63	(0.12)

87. BEST requested the Commission to approve the A&G expenses submitted by BEST in light of the Judgments issued by the ATE.

Commission's Analysis and Ruling

88. In this context, the ATE in its Judgment dated 22 March, 2012 in Appeal No. 8 of 2011 ruled as under:

"20. Concerning the issue M namely, disallowance of A&G expenses for FY 2009-10 and FY 2010-11 the same reasoning as was given by the Commission on issue L is verily applicable. Even if 6.04% growth rate for the FY 2009-10 is considered the A & G Expenses would work out to Rs. 76.98 crore which will be almost equal to the A & G Expenses approved for FY 2008-09 after truing up. However, in the A & G expenses for the FY 2009-2010 and FY 2010-2011 derived from the base figure for the FY 2008-2009 may have to be revised if the A & G expenses are revised by the State Commission consequent upon our directions in issue B above."

89. As regards BEST's contentions that the growth rate considered by the Commission for allowing the A&G expenses for FY 2009-10 and FY 2010-11 is incorrect, the Commission is of the view that the ATE has already ruled on the matter as reproduced above.

90. Thus, the ATE has upheld the Commission's approach in this regard and there is no ground for revising the growth rates considered by the Commission. However, the Commission has already undertaken the final truing up for FY 2009-10 and provisional truing up for FY 2010-11 in its Order in Case No. 125 of 2011. Hence, in order to adopt a consistent approach, the Commission has done the prudence check of each sub-head of A&G expenses for FY 2009-10 in order to determine the allowable A&G expenses for FY 2009-10, rather than applying the growth rate of 5.48%% over the revised level of A&G expenses approved for FY 2008-09 in this Order. However, based on the prudence check, it is observed that the actual expenses in FY 2009-10 against the sub-heads of A&G expenses where the Commission has allowed the actual expenses for FY 2008-09, has reduced overall, and if the expenses against the sub-heads of Security Charges, Telephone and postage, advertisements, and printing and stationery are limited to the overall growth rate of 5.48%, then it results in a situation where the overall A&G expenses approved by the Commission for FY 2009-10 will be lower than that allowed for FY 2008-09 as well as that allowed by the Commission for FY 2009-10 in the earlier Truing Up Order in Case No. 125 of 2011. Hence, the Commission has allowed the A&G expenses for FY 2009-10 as per actuals submitted by BEST, however, this should not be construed to imply that the higher expenses on the specific sub-heads mentioned above are appropriate.

91. For FY 2010-11, the Commission has approved the A&G expenses by considering the escalation factor of 7.22% over the revised level of A&G expenses approved for FY 2009-10 in this Order, which will be subject to prudence check while undertaking the Truing Up process for FY 2010-11. The revised A&G expenses approved by the Commission is given in the table below:

Table: Revised A&G expenses approved by the Commission for FY 2009-10 and FY 2010-11 ***(Rs. Crore)***

Particulars	BEST Submission	Allowed by the Commission	Revised Approval
FY 2009-10	77.39	76.48*	77.39
FY 2010-11	82.75	82.63	83.61

Note: * - 1/3rd of the difference between actual and approved expenses had been allowed under the mechanism of sharing of efficiency losses, hence, A&G expenses approved earlier, after considering sharing of efficiency losses, were Rs. 76.78 crore

<u>Issue N: R&M Expenses for FY 2009-10 and FY 2010-11</u>

92. In its Petition, BEST has not requested the Commission to re-consider the R&M expenses allowed for FY 2009-10 and FY 2010-11. However, while submitting the impact of the ATE Judgment on BEST's ARR for the relevant years, vide its submission dated 29 May, 2012, BEST submitted that though the ATE has not remanded this Issue to the Commission, the Commission may review the matter and allow the balance R&M expenses to the extent of Rs. 2.33 Crore and Rs. 6.11 Crore for FY 2009-10 and FY 2010-11, respectively. No additional submissions were made by BEST in this regard.

Commission's Analysis and Ruling

93. In this context, the ATE in its Judgment dated 22 March, 2012 in Appeal No. 8 of 2011 ruled as under:

> *"With respect the issue N the approach should be the same as was correctly taken in the preceding two issues and the basic logic needs no repetition. Merely because in the previous years the CPI was considered in case no 73 of 2007 and case no 118 of 2008 is no ground to adopt the same line of reasoning, the fact of the matter being that growth rate was taken to be 4.91% and 6.05% for FY 2009-10 and 2010-11 against CERC' adoption of growth rate at 5.72% for over a period of five years. There is no fundamental flaw in the Commission's approach."*

94. Accordingly, the Commission has not revised the R&M expenses approved earlier for FY 2009-10 and FY 2010-11.

95. The revised O&M expenses approved by the Commission in this Order for FY 2009-10 and FY 2010-11 are as follows:

Table: Revised O&M Expenses approved by the Commission for FY 2009-10 (Rs. Crore)

Particulars	BEST submission	Approved by the Commission earlier	Revised Approval
Employee Expenses	174.76	152.44	174.76
A&G Expenses	77.39	76.48	77.39
R&M Expenses	29.01	26.68	26.68
Total	**281.16**	**255.60**	**278.83**

Table: Revised O&M Expenses approved by the Commission for FY 2010-11 (Rs. Crore)

Particulars	BEST submission	Approved by the Commission earlier	Revised Approval
Employee Expenses	199.32	166.56	189.93
A&G Expenses	82.75	82.63	83.61
R&M Expenses	34.72	28.61	28.61
Total	**316.79**	**277.80**	**302.16**

Interest on Working Capital

96. Further, though allowing the revised Interest on Working Capital is not strictly within the scope of the ATE remand, the Commission has re-computed the normative Interest on Working Capital to allow pass through of the consequential impact of allowing higher O&M expenses, as discussed above. The revised normative Interest on Working Capital is as follows:

Table: Revised Normative Interest on Working Capital for FY 2009-10 (Rs. Crore)

No.	Particulars	Revised Approval
1	**Computation of Working Capital**	
1.1	One-twelfth of the amount of Operations and Maintenance Expenses	23.24
1.2	One-twelfth of the sum of the book value of stores, materials and supplies	1.96

No.	Particulars	Revised Approval
1.3	One-sixth of the expected revenue from sale of electricity at the prevailing tariffs	482.76
	Less:	
1.4	**Amount of Security Deposit**	
a	From Consumers	218.29
b	From Distribution System users	
1.5	One-Twelfth of the cost of power purchased	156.01
	Total Working Capital = (1.1 + 1.2 + 1.3) - (1.4 + 1.5)	133.66
2	**Computation of working capital interest**	
2.1	Rate of working capital interest	13%
2.2	**Interest on Working Capital**	**17.38**

Table: Revised Normative Interest on Working Capital for FY 2010-11 (Rs. Crore)

No.	Particulars	Revised Approval
1	**Computation of Working Capital**	
1.1	One-twelfth of the amount of Operations and Maintenance Expenses	25.18
1.2	One-twelfth of the sum of the book value of stores, materials and supplies	1.08
1.3	One-sixth of the expected revenue from sale of electricity at the prevailing tariffs	446.26
	Less:	
1.4	**Amount of Security Deposit**	
a	From Consumers	240.12
b	From Distribution System users	0.00
1.5	One-Twelfth of the cost of power purchased	155.72
	Total Working Capital = (1.1 + 1.2 + 1.3) - (1.4 + 1.5)	76.68
2	**Computation of working capital interest**	
2.1	Rate of working capital interest	11.75%
2.2	**Interest on Working Capital**	**9.01**

<u>Issue O: Interest Expenses for FY 2009-10 and FY 2010-11</u>

97. BEST submitted that the Commission had erred in reducing the interest expenses from Rs. 19.17 Crore Rs. 30.12 Crore estimated by BEST to Rs. 14.68 Crore and Rs. 16.71 Crore for FY 2009-10 and FY 2010-11, respectively, without elucidating or explaining the computation off the interest expenses approved by the Commission.

98. BEST submitted that in FY 2009-10, it had incurred a capital expenditure of Rs. 181.87 Crore, which was funded through Consumer Contribution of Rs. 10 Crore, 'Nil' Government Grants, and thereafter applying the normative debt:equity ratio of 70:30, BEST had proposed to raise Rs. 120 Crore as a short term finance from bank and balance Rs. 51.87 Crore through internal sources, i.e., normative equity of 30%. Similarly for FY 2010-11, BEST had projected to incur capital expenditure of Rs. 218.07 Crore to be funded through Consumer Contribution of Rs. 10 Crore, 'Nil' Government Grant, and thereafter applying a normative debt equity ratio of 70:30, BEST had proposed to raise Rs. 145.64 Crore as a short term finance from bank and balance Rs. 58.07 Crore through internal sources, i.e., normative equity of 30%.

99. BEST submitted that the Commission is of the view that the Interest on loan capital should be provided corresponding to the assets put in used (capitalised) and not the capital expenditure. BEST submitted that the sources of capitalisation considered by the Commission for FY 2009-10 were Consumer Contribution of Rs. 10 Crore, Government Grant of Rs. 1.46 Crore, and balance towards actual 100% loan as Rs. 123.54 Crore, and no funding from equity. Similarly, for FY 2010-11, the sources of capitalisation considered by the Commission were Consumer Contribution of Rs. 10 Crore, 'Nil' Government Grant, and actual loan of Rs. 140 Crore. BEST submitted that the Commission erred in failing to consider/appreciate that the applicability of normative debt equity ratio of 70:30 under Regulation 73.1 of the MERC Tariff Regulations, to consider the loan amount of Rs. 123.54 crore instead of Rs. 120 crore proposed by BEST for FY 2009-10. BEST submitted that the Commission erred in failing to consider and/or appreciate that loan capital will have to be provided corresponding to the asset put in use and not on capital expenditure. BEST further submitted that fund is required to be considered for the Capital Expenditure incurred by the BEST during that particular year and not only for the assets put in use (i.e., capitalised).

100. BEST submitted that the Commission had erroneously held that BEST's contention regarding interest on loan to be allowed corresponding to the capital expenditure rather than

assets put to use, is not in accordance with well accepted financial principles, as any interest expenditure incurred prior to capitalisation of the asset has to be capitalised along with the base asset rather than being recovered as a revenue expenditure in the year in which it is incurred. BEST further submitted that BEST had adopted the policy of capitalisation of interest amount (i.e. IDC) only after the approval of the Commission, to avoid discrepancy in respect of the opening gross fixed asset figure under the books of account of BEST. BEST added that in the Order in Case No. 118 of 2008, the Commission had not allowed the capitalisation of Rs. 156.15 Crore for FY 2007-08 and thereafter in its Order dated 12 September, 2010, the Commission had allowed the said capitalisation, without considering or taking into account the IDC of Rs. 9.44 Crore and said capitalisation to that extent was reduced. BEST submitted that in the circumstances, the interest on loan has to be allowed corresponding to the capital expenditure rather than asset put to use.

101. BEST submitted that the ATE has directed the Commission to re-examine the issue in accordance with the MERC Tariff Regulations, which provides for normative loan at the rate of 70% on the capitalisation allowed after April 1, 2005. As regards the interest expenses, BEST submitted that the said Judgment will have an impact of Rs. 3.41 Crore for FY 2009-10 and Rs. 1.87 Crore for FY 2010-11 shown as follows:

Table: Interest Expenses submitted by BEST for FY 2009-10 and FY 2010-11 (Rs. Crore)

Particulars	**BEST submission**	**Allowed by the Commission**	**Difference**
FY 2009-10	23.31	19.90	(3.41)
FY 2010-11	13.15	11.28	(1.87)

Commission's Analysis and Ruling

102. In this context, the ATE has ruled as under in its Judgment:

"22...*It appear that the Commission did not consider funding from equity as according to the Commission capitalisation was made through consumer contribution, grants and loan. There is one point on which Commission is correct.* ***Interest on loan capital will have to be provided corresponding to the assets put to use or capitalised and not on the capital expenditure as is assumed by the appellant****. Again, interest on capital expenditure is treated as interest during construction.* ***Regulation 73 dealing with debt–equity ratio in 73.1 provides that capital***

expenditure incurred on capital expenditure project or on purchase of fixed assets shall be 'assumed' to be financed at a normative debt –equity ratio of 70:30 to be applied on the annual allowable capital cost for such year*...The regulation 73 does not deal with any situation as to what will happen in case where actual equity invested is lower than the normative equity. Commission is found to have allowed interest expenses treating for both the years the entire amount as loan except the government grant and contributions from consumers with no provision for normative equity. This is exactly the point agitated by the appellant. In our view this issue needs re-examination."(****emphasis added****)*

103. In the light of the above ruling of the ATE in Appeal No. 8 of 2011, the Commission has considered a normative debt: equity ratio of 70:30, for computing the interest expenses and RoE for FY 2009-10 and FY 2010-11 in this Order. Accordingly, the Commission has considered the loan amount equal to 70% of the allowable net capital cost, after deducting Consumer Contribution and Government Grants. Accordingly, the sources of capitalisation considered by the Commission for FY 2009-10 are Consumer Contribution (Rs. 11.09 Crore), Grant from Government (Rs. 1.46 Crore), Equity (Rs. 40.19 Crore) and actual loan of Rs. 93.79 Crore, and for FY 2010-11, the sources considered are Capital Connection Fees (Rs. 9.59 Crore), Equity (Rs. 52.83 Crore) and actual loan of Rs. 123.26 Crore. Further, as already stated in this Order, the Commission has considered the normative debt: equity ratio and the interest expenses on loans only against the assets put to use, in accordance with the MERC Tariff Regulations as well as the ATE's ruling in this regard.

104. The Commission has considered the interest expenditure on the existing loans (public loans, MMRDA loans for Mega City project, DPDC loans, APDRP loan at Rs 421 Crore and Rs. 5.97Crore as claimed by BEST for FY 2009-10 and FY 2010-11, respectively, and re-computed the interest on the actual loans. In its reply to data gaps dated 15 June, 2012 regarding the amount of depreciation used for repayment of loans; BEST submitted that it has not used depreciation for repayment of loans. As explained by the Commission in this Order against Issue D, additional loans claimed by BEST for repayment of earlier loans has been disallowed, as the same has to be adjusted against depreciation. Moreover, the MERC Tariff Regulations and also the ATE Judgment dated 22 March, 2012 in Appeal No. 8 of 2011 quoted above clearly provide that the loans can be allowed only against assets put to use and not against capital expenditure or other purposes such as repayment of loan. The above-said ATE Judgment has not given a ruling that the loans have to be allowed against the repayment obligations, and have ruled that loans have to be allowed by considering the normative

debt:equity ratio of 70:30 against the assets capitalised. The interest expenditure now approved by the Commission for FY 2009-10 and FY 2010-11 is given in the Tables below:

Table: Revised Interest Expenses approved by the Commission for FY 2009-10 (Rs. Crore)

Particulars	BEST Submission	Approved by the Commission	Revised Approval
Opening Balance of loan	287.20	249.08	221.37
Additions	225.00	133.98	93.79
Repayment	(243.92)	(183.06)	(183.06)
Closing Balance	259.28	200.00	132.09
Interest Expenses	23.31	19.90	18.37

Table: Revised Interest Expenses approved by the Commission for FY 2010-11(Rs. Crore)

Particulars	BEST Submission	Approved by the Commission	Revised Approval
Opening Balance of loan	259.28	200.00	132.09
Additions	180.00	176.09	123.26
Repayment	(256.98)	(196.87)	(37.78)
Closing Balance	182.3	179.21	130.53
Interest Expenses	13.15	11.28	9.65

Issue P: RoE for FY 2009-10 and FY 2010-11

105. BEST submitted that the Commission had erred in reducing the Return on Equity from Rs. 114.66 crore and Rs. 121.50 Crore claimed by BEST for FY 2009-10 and FY 2010-11, respectively, to Rs. 99.16 Crore for both FY 2009-10 and FY 2010-11, by not considering and including normative equity (30%) on net capitalisation amount in computation of RoE.

106. BEST submitted that the Commission has erred in not considering any equity for funding of capital expenditure during FY 2009-10 and FY 2010-11, and considering the entire funding during FY 2009-10 and FY 2010-11 through Consumer Contribution, Government Grants and actual loan drawal. BEST submitted that the Commission failed to consider and/or appreciate that BEST had contributed normative equity (30%) amounting to Rs. 40.50 Crore and balance debt (70%) amounting to Rs. 94.50 Crore for FY 2009-10, and normative equity (30%) amounting to Rs. 45 Crore and balance debt (70%) amounting to Rs. 150 Crore for FY 2010-11. BEST further submitted that the same is significant in light of the fact that the Commission has not applied the normative debt:equity ratio of 70:30 under

Regulation 73.1 of MERC (Terms and Conditions of Tariff) Regulations, 2005, on the net capitalisation amount.

107. BEST submitted that the Commission, in its Order in Case No. 95 of 2009, had approved RoE of Rs. 99.16 Crore for FY 2009-10 and FY 2010-11 resulting in a deficit of Rs. 8.84 Crore and Rs. 16.28 Crore for FY 2009-10 and FY 2010-11, respectively, which the Commission will have to consider for approval under this Petition.

Table: RoE submitted by BEST for FY 2009-10 and FY 2010-11 (Rs. Crore)

Particulars	Revised BEST submission	Approved by the Commission	Difference
FY 2009-10	108.00	99.16	(8.84)
FY 2010-11	115.44	99.16	(16.28)

Commission's Analysis and Ruling

108. As regards RoE, the ATE ruled as under in its Judgment:

"The regulation 73.1 speaks of 'assumption' in financing capital expenditure at normative debt- equity ratio of 70:30. It is the appellant's case that it is not the case of the appellant that the entire capitalisation expenditure would be through loan. We think that the matter needs re-examination in the light of the facts presented and the legal provision obtaining in a given situation."

109. In view of the above ruling of the ATE, the Commission has considered normative equity equivalent to 30% of the approved net capitalisation, after reducing Consumer Contribution and Government Grants, amounting to normative equity of Rs. 40.19 Crore and Rs. 52.83 Crore for FY 2009-10 and FY 2010-11, respectively. The revised RoE approved by the Commission for FY 2009-10 and FY 2010-11 are given in the Table below:

Table: Revised RoE approved by the Commission for FY 2009-10 (Rs. Crore)

No.	Particulars	Ref	BEST Submission	Approved By the Commission	Revised BEST Submission	Revised Approval
1	Regulatory Equity at the beginning of the year		696.35	619.76	654.90	654.43

No.	Particulars	Ref	BEST Submission	Approved By the Commission	Revised BEST Submission	Revised Approval
2	Allowable Capital Expenditure including IDC		123.49	133.98	133.98	133.98
3	Equity portion of capital expenditure		37.05	0.00	40.19	40.19
4	Regulatory Equity at the end of the year		733.40	619.76	695.09	694.63
	Return Computation					
5	Return on Regulatory Equity at the beginning of the year	16%*(1)	111.42	99.16	104.78	104.71
6	Return on Equity portion of capital expenditure	16%*(3)/2	2.96	0.00	3.22	3.22
7	Total Return on Regulatory Equity	(5)+(6)	114.38	99.16	108.00	107.92

Table: Revised RoE approved by the Commission for FY 2010-11 ***(Rs. Crore)***

No.	Particulars	Ref	BEST Submission	Approved by the Commission	Revised BEST Submission	Revised Approval
1	Regulatory Equity at the beginning of the year		733.40	619.76	695.09	694.63
2	Allowable Capital Expenditure including IDC		169.68	176.09	176.09	176.09
3	Equity portion of capital expenditure		50.90	0.00	52.83	52.83
4	Regulatory Equity at the end of the year		784.30	619.76	747.92	747.45
	Return Computation					

No.	Particulars	Ref	BEST Submission	Approved by the Commission	Revised BEST Submission	Revised Approval
5	Return on Regulatory Equity at the beginning of the year	16%*(1)	117.34	99.16	111.21	111.14
6	Return on Equity portion of capital expenditure	16%*(3)/2	4.07	0.00	4.23	4.23
7	**Total Return on Regulatory Equity**	**(5)+(6)**	**121.42**	**99.16**	**115.44**	**115.37**

110. However, as ruled by the Commission in its Order in Case No. 125 of 2011, the RoE allowed to BEST for FY 2009-10 and FY 2010-11 has been adjusted against the transport deficit incurred in the respective years, and the balance amount has been allowed to be recovered in the ARR of the respective years. Hence, the additional RoE being allowed now also has to be adjusted against the Transport Deficit claimed by BEST, and in effect, BEST will not get any additional amount on this account for FY 2009-10 and FY 2010-11. Hence, there is no net additional impact due to the additional RoE allowed by the Commission in this Order for FY 2009-10 and FY 2010-11.

<u>Sharing of Gains and Losses for FY 2009-10</u>

111. Since the final truing up for FY 2009-10 and the sharing of efficiency gains and losses has already been done by the Commission in its Order in Case No. 125 of 2011, and some of the allowable expenses have been revised in this Order, the computation of sharing of efficiency gains and losses will also undergo a change. In this Section, only the additional net impact on this account has been considered.

112. The Commission has approved the actual employee expenses and A&G expenses. Also, the R&M expenses have not been revised and are same as allowed in Order dated 16 March, 2012 in Case No. 125 of 2012 hence, no sharing has been done for this head.

113. BEST, in its Petition under Case No. 125 of 2011 has claimed Interest on Working Capital of Rs. 19.61 Crore during FY 2009-10 based on actuals and the normative Interest on Working Capital. The normative Interest on Working Capital on account of modified O&M expenses works out as Rs. 17.38 Crore. Since, the actual Interest on Working Capital for BEST as submitted in Case No. 125 of 2011 is higher than the Interest on normative Working

Capital, the Commission has considered the difference between normative Interest on Working Capital and actual Interest on Working Capital as an efficiency loss and has accordingly shared 1/3rd of the same with the consumers, and 2/3rd is considered to be absorbed by BEST, in accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005. Thus, the efficiency loss passed on to the consumers on this account works out to Rs. 0.74 Crore, and the total Interest on Working Capital allowed thus, works out to Rs. 18.12 crore (17.38 + 0.74).

<u>Issue T: Sales Projected for FY 2010-11</u>

114. BEST submitted that the Commission has erred in inflating the sales for FY 2010-11 to 4390 MU as against 4321 MU projected by BEST in its said Petition in the absence of substantiation or clarification of such inflation. BEST submitted that the Commission has approved sales of 4390 MU for FY 2010-11, with a CAGR of 6.57% over the actual sales of FY 2009-10. BEST further submitted that this increase of 6.57% was grossly excessive compared to its projection of 4321 MU at a CAGR of 3.77% over the period from FY 2003-04 to FY 2008-09 along with the fact that the CAGR for five years considering the actual sales of FY 2009-10 was only 3.18%.

115. BEST submitted that the Commission has not considered the overall CAGR for the past five years, rather it has overestimated the sales of LT-II (A) category (more than 1000 units slab) by 50.34% more than the actual sales of 221.5 MU for FY 2009-10. BEST submitted that since FY 2010-11 is over, the actual sales for FY 2010-11 are available, and that it is clear that the actual sales for FY 2010-11 are 4267.05 MU as compared to 4390 MU approved by the Commission. BEST added that the Commission has accepted BEST's submission of energy sales of 4267.11 MU for FY 2010-11 in its Order dated 16 March, 2012 in Case No. 125 of 2011.

Commission's Analysis and Ruling

116. As regards the sales projected for FY 2010-11, the ATE has ruled as under in its Judgment:

> *"According to the Commission, it had undertaken a category -wise sale projection for the 5-year CAGR. Further, appellant’s own projection of overall sales for FY 2010-11 is 4.85% higher than the actual overall sale in FY 2009-10. The sales to LT-II category in FY 2010 -11 worked out to 877 MU, as compared to the appellant’s*

projection of 922 MU. The category-wise sales were further allocated to different consumption slabs in the proportion of average share of different slabs over the past five year (FY 2003-04 to FY 2008-09). The proportion of the slab 'above 1000 unit' worked out to 38% and hence, the projected sales to this consumption slab were considered as 333 MU. The fact is that the financial year 2010-11 is now over and actual sales for FY 2010-11, according to appellant come to 4267.05 MU as against 4390 MU. A table has been given in the rejoinder affidavit but it could not be clear whether these facts were presented before the Commission. The Commission may now consider the new figure and may pass appropriate order upon examination."

117. For FY 2009-10 Truing-Up has been done in Case No. 125 of 2011, wherein the actual sales has already been allowed. Similarly, for FY 2010-11, provisional Truing Up has been done in Case No. 125 of 2011, wherein the actual sales have been provisionally approved, as submitted by BEST. Hence, no further relief is required to be given on this issue.

Issue U: Power Purchase Expenses for FY 2010-11

118. BEST submitted that the Commission has accepted and admitted that the amount of Rs. 6.24 Crore due to TPC-G, as determined by the Commission in the Tariff Order for TPC-G in Case No. 96 of 2009, should have been included in the ARR of BEST for FY 2010-11, and therefore, BEST has made no further submissions in this regard.

Commission's Analysis and Ruling

119. In this regard, the ATE has ruled as under in its Judgment:

"28. Regarding issue U namely, energy availability and power purchase cost for FY 2010-11 the Commission as at page 57 of the counter affidavit has averred that upon verification the Commission finds that there has been an inadvertent error in the computation, and the appellant's ARR should have included this amount of Rs 6.24 Crore."

120. In this context, the Commission has already included the amount of Rs. 6.24 Crore as claimed by BEST, while determining the ARR for FY 2010-11 in its Order in Case No. 125 of 2011. Hence, no further relief is required to be given on this issue.

<u>Issue V: ARR for FY 2010-11</u>

121. BEST submitted that the Commission has duly accepted and admitted that the ARR of FY 2010-11 should not have been reduced by the amount of Rs. 1.34 Crore, since the same has already been considered while Truing Up for FY 2008-09. However, while submitting the Petition for Truing Up for FY 2009-10 and provisional Truing Up for FY 2010-11, BEST inadvertently subtracted the amount of Rs. 1.34 Crore from the total ARR of FY 2010-11 instead of adding the amount of Rs. 1.34 Crore. BEST submitted that the Commission while provisionally approving the ARR of FY 2010-11 deducted Rs. 1.34 Crore. BEST requested the Commission to rectify the error by adding Rs. 2.68 Crore in the ARR of FY 2010-11.

Commission's Analysis and Ruling

122. In this regard, the ATE has ruled as under in its Judgment:

> *"29. Regarding issue V the Commission at page 58 of the counter affidavit has averred that there has been an inadvertent error in the computation, and the appellant's ARR should not have been reduced by this amount of Rs1.34 crore in FY 2010-11, since the same has already been considered while truing up for FY 2008-09."*

123. The Commission has already accepted that there was an inadvertent error in its Order in Case No. 95 of 2009, and hence, the amount of Rs. 1.34 crore needs to be added back to the ARR of FY 2010-11, as claimed by BEST in its Appeal and as ruled accordingly by the ATE. However, BEST has now claimed that Rs. 2.68 crore because of the submissions made by BEST in its Petition in Case No. 125 of 2011. The Commission has analysed BEST's submission in this regard, and finds that no further additional amount of Rs. 1.34 crore needs to be given, as claimed by BEST now, since while truing up for any year, the entries that have appeared in the original Order have to be retained and the prudently incurred actuals have to be compared, which has been done correctly by the Commission in the Order in Case No. 125 of 2011. Hence, the Commission is of the view that BEST's claim is correct only for the additional amount of Rs. 1.34 crore, and the same has been allowed in this Order, while computing the ARR of FY 2010-11.

Summary of Additional Impact for FY 2009-10 and FY 2010-11

124. The total impact for FY 2009-10 and FY 2010-11 is given in the Tables below:

Table: Total impact for FY 2009-10 approved by the Commission (Rs. Crore)

Particulars	**Approved in Case No. 95 of 2009**	**Revised Approval (Case 62 of 2012)**	**Additional Impact submitted by BEST**	**Additional Impact being allowed**
Operation & Maintenance Expenses	255.66	278.83	25.56	15.49
Employee Expenses	*152.44*	*174.76*	*22.32*	14.88
Administration & General Expenses	*76.48*	*77.39*	*0.91*	0.61$
Repair & Maintenance Expenses	*26.68*	*26.68*	*2.33*	0.00
Depreciation, including advance against depreciation*	47.17	47.29		0.12
Interest on Long-term Loan Capital & Short Term Finance	19.90	18.37	3.41	-1.53
Total Interest on Working Capital (Normative)	17.12	17.38		0.26
Return on Equity Capital	99.16	107.92	8.84	8.76
Less: RoE adjusted against Transport Division Deficit	99.16	107.92		-8.76
Total Impact on sharing of gains and losses				0.74
Total			**37.81**	**15.08**

**** Based on revised Opening GFA as reconciled in Case No. 171 of 2012***

Note: $ - Additional impact has been computed after considering the impact of the efficiency losses shared with the consumers earlier, and hence, will not tally with the difference between amount approved earlier and amount approved now.

125. The additional impact is lower than that claimed by BEST, for the following reasons:

i. BEST has ignored the fact that the Commission has already allowed 1/3rd of the efficiency losses against employee expenses and A&G expenses, while computing the additional impact; however, the Commission has correctly computed the additional amount being allowed now in accordance with the ATE Judgment, hence, the impact computed by the Commission appears lower, even in both the cases where the amount as sought by BEST has been allowed (employee expenses and A&G expense).

ii. The R&M expenses have not been revised in accordance with the ATE Judgment on this Issue, and hence, the additional impact claimed by BEST on R&M expenses has not been allowed in this Order.

iii. Reduction in Interest Expenses due to considering only 70% as debt component, as compared to 100% earlier, and disallowance of additional loan considered by BEST for repayment purposes.

iv. The Commission in its Order dated 16 March, 2012 in Case No. 125 of 2011 has already directed BEST to adjust the transport deficit against the additional RoE. However, while submitting the impact BEST has not considered the same and therefore, the impact submitted by BEST appears higher than the impact computed by the Commission.

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

Particulars	**Approved in Case No. 125 of 2011**	**Revised Approval (Case No. 62 of 2012)**	**Additional Impact submitted by BEST**	**Additional Impact being allowed**
Operation & Maintenance Expenses	277.80	302.03	38.99	24.23
Employee Expenses	166.56	189.93	32.76	23.37
Administration & General Expenses	82.63	83.61	0.12	0.98
Repair & Maintenance Expenses	28.61	28.61	6.11	0.00
Depreciation, including advance against depreciation*	52.20	52.32	0.00	0.12
Interest on Long-term Loan Capital & Short Term Finance	11.28	9.65	1.87	-1.63
Normative Interest on Working Capital	8.77	9.01	0.00	0.24
Return on Equity Capital	99.16	115.37	16.28	16.21
Less: RoE adjusted against Transport Division Deficit	99.16	115.37	0.00	-16.21
Add: Impact due to Truing Up for FY 2007-08, after cost benefit analysis		1.34	2.68	1.34
Total Impact			**57.14**	**24.43**

**** Based on revised Opening GFA as reconciled in Case No. 171 of 2012***

126. The additional impact is lower than that claimed by BEST, for the following reasons:

i. For FY 2010-11, the Commission has approved the employee expenses and A&G expenses by considering the escalation factor over the revised level of employee expenses approved for FY 2009-10 in this Order, which will be subject to prudence check while undertaking the Truing Up process for FY 2010-11. However, BEST has computed the impact against the numbers approved in the Order dated 16 March, 2012 in Case No. 125 of 2011.

ii. The R&M expenses have not been revised in accordance with the ATE Judgment on this Issue, and hence, the additional impact claimed by BEST on R&M expenses has not been allowed in this Order.

iii. Reduction in Interest Expenses due to considering only 70% as debt component, as compared to 100% earlier, and disallowance of additional loan considered by BEST for repayment purposes.

iv. The Commission in its Order dated 16 March, 2012 in Case No. 125 of 2011 has already directed BEST to adjust the transport deficit against the additional RoE. However, while submitting the impact BEST has not considered the same and therefore, the impact submitted by BEST appears higher than the impact computed by the Commission.

Summary of Additional Impact for FY 2008-09, FY 2009-10 and FY 2010-11

127. The total additional amount to be allowed to be recovered by BEST on account of the additional amounts allowed by the Commission in this Order, consequent to the ATE remand in Appeal No. 8 of 2011, is summarised in the Table below:

Table: Total Additional Impact (Rs. Crore)

Sl.	Year	Additional Amount
1	FY 2008-09	25.48
2	FY 2009-10	15.08

3	FY 2010-11	24.43
	TOTAL	**64.99**

128. The above additional amount of Rs. 64.99 crore may be claimed by BEST in its subsequent Tariff Petition.

With the above ruling and directions, the suo-motu Petition in Case No. 62 of 2012 is disposed off.

Sd/-

(Vijay L. Sonavane)
Member

Sd/-

(V.P. Raja)
Chairman