Before the

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

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Case No. 115 of 2011

IN THE MATTER OF

Reliance Infrastructure Limited's Transmission Business (RInfra-T) Petition for Truing Up of FY 2009-10 and Provisional Truing-Up of FY 2010-11 under the provisions of MERC (Terms and Conditions of Tariff) Regulations, 2005

Shri. V.P. Raja, Chairman

Shri Vijay L. Sonavane, Member

Reliance Infrastructure Limited ....Petitioner

ORDER

February 27, 2012

In accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005 of the Maharashtra Electricity Regulatory Commission (The Commission), Reliance Infrastructure Limited's Transmission Business (herein referred as RInfra-T for the sake of brevity), submitted its Petition for Truing Up for FY 2009-10 and Provisional Truing-Up for FY 2010-11, on affidavit. The Commission, in exercise of the powers vested in it under Section 61 and Section 62 of the Electricity Act 2003 (EA 2003) and all other powers enabling it in this behalf, and after taking into consideration all the submissions made by RInfra-T, all the objections and comments of the public, responses of RInfra-T, issues raised during the Public

Hearing, and all other relevant material, carried out Truing Up of the Annual Revenue Requirement of FY 2009-10 and Annual Performance Review of FY 2010-11, in this Order.

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List of Abbreviations

A&G	Administrative and General
APR	Annual Performance Review
ARR	Annual Revenue Requirement
ATE	Appellate Tribunal for Electricity
BSES	BSES Limited (now known as Reliance Infrastructure Limited)
Commission/MERC	Maharashtra Electricity Regulatory Commission
CPI	Consumer Price Index
Capex	Capital Expenditure
CTC	Cost to Company
DPR	Detailed Project Report
EA 2003	Electricity Act, 2003
EHV	Extra High Voltage
GET	Graduate Engineer Trainee
GFA	Gross Fixed Assets
IMS	Integrated Management System
InSTS	Intra-State Transmission System
IWC	Interest on Working Capital
IT	Income Tax
kV	Kilo Volt
kW	Kilo Watt

LILO	Loop In Loop Out
MSETCL	Maharashtra State Electricity Transmission Company Limited
MYT	Multi Year Tariff
O&M	Operation & Maintenance
PLR	Prime Lending Rate
PBT	Profit Before Tax
R&M	Repair & Maintenance
REL	Reliance Energy Limited
RInfra	Reliance Infrastructure Limited
RInfra-D	Reliance Infrastructure Limited Distribution Business
RInfra-T	Reliance Infrastructure Limited Transmission Business
RoE	Return on Equity
SBI	State Bank of India
STU	State Transmission Utility
TSU	Transmission System Utility
TVS	Technical Validation Session
WPI	Wholesale Price Index

1. INTRODUCTION

1.1. Background

1.1.1. This Order disposes of the Petition filed by Reliance Infrastructure Limited for its Transmission Business (RInfra-T) for Truing up of expenses and revenue for FY 2009-10 and Annual Performance Review(APR) for FY 2010-11.

1.1.2. RInfra (formerly known as BSES Ltd and Reliance Energy Limited [REL]) is a vertically integrated utility carrying out the functions of generation, transmission, wheeling and retail supply of electricity in the suburbs of Mumbai. RInfra's present transmission network consists of around 491.27 ckt-kms of 220 kV lines, six 220 kV EHV stations and associated infrastructure at Aarey, Goregaon, Gorai, Ghodbunder, Saki and Versova.

1.1.3. RInfra-T has been granted a transmission licence in Maharashtra vide the Commission's Order dated August 11, 2011 in case no. 70 of 2011 and Transmission Licence No. 1 of 2011.

1.1.4. As per the above referred licence, RInfra-T is a Transmission Licensee under Alternative 2, in accordance with the Transmission Licence Conditions Regulations for a period of 25 years w.e.f. August 16, 2011.

1.2. Tariff Regulations

1.2.1. The Commission, in exercise of the powers conferred upon it by the Electricity Act, 2003 (EA 2003) notified the Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2005 on August 26, 2005.

1.2.2. Commission's Order dated October 3, 2006 on ARR and Tariff Petition for FY 2005-06 and FY 2006-07.

1.2.3. Reliance Energy Limited (REL) filed its ARR Petition for FY 2005-06 on March 1, 2005, based on the draft Tariff Regulations. In compliance with the Commission's directions issued vide letter dated October 10, 2005, REL submitted its revised ARR Petition for FY 2005-06 providing the break-up of ARR of generation, transmission and distribution function on November 22, 2005.

1.2.4. Subsequently, REL submitted its ARR and Tariff Petition for FY 2006-07 on February 24, 2006. After two Technical Validations sessions, the Commission vide its letter dated May 3, 2006 directed REL to submit a revised ARR and Tariff Petition for FY 2006-07 including a separate section on Truing up of ARR for FY 2005-06. REL submitted its revised ARR and Tariff Petition for FY 2006-07 on May 10, 2006. The Commission admitted the ARR Petition of REL for FY 2005-06 (case no. 25 of 2005) and ARR and Tariff Petition of REL for FY 2006-07 (case no. 53 of 2005) on May 18, 2006. The Commission issued its Order on the said Petitions of REL on October 3, 2006.Hon'ble ATE's Judgment dated April 4, 2007 on appeal of REL in appeal no. 251 of 2006.

1.2.5. The Commission's, Tariff Order dated October 3, 2006, also dealt with the Truing up of cost and revenues for FY 2004–05 and FY 2005–06 based on actuals, subject to prudence check. REL challenged this Order before the Hon'ble Appellate Tribunal for Electricity (ATE) on the following issues :

a. Disallowance of actual employee expenditure and A&G expenditure for FY 2004-05, FY 2005-06 and FY 2006-07,

b. Disallowance of actual R&M expenditure for FY 2006-07,

c. Disallowance of higher Income Tax for FY 2004-05 and FY 2005-06,

d. Direction to reduce distribution loss level in FY 2006-07,

e. Deviation in the operating norms of station heat rate, auxiliary consumption and secondary oil consumption for generation vis-à-vis the norms stipulated in the MERC Tariff Regulations, and

f. Reversal of treatment on rebate given by REL to its consumers on account of the Hon'ble ATE's ruling dated May 22, 2006 by including it in the ARR of REL as a distribution licensee in the manner set out in paragraph 7.16 and 7.17 of the Tariff Order for FY 2006-07. This issue was subsequently not pressed by REL, since the matter was sub-judice before the Hon'ble Supreme Court.

1.2.6. The Hon'ble ATE upheld the appeal of REL in its Judgment dated April 4, 2007 in Appeal No. 251 of 2006 as given below:

a. The Hon'ble ATE upheld REL's appeal regarding the allowance of the actual employee expenditure, A&G expenditure and income tax of Rs 207.34 crore, Rs 102.02 crore and Rs 101 crore, respectively, as claimed by REL as against the Commission approved figures of Rs 161.85 crore, Rs 74.05 crore and Rs 7.64 crore, respectively, for FY 2004-05.

b. The Hon'ble ATE also upheld REL's appeal regarding the allowance of the actual employee expenditure, A&G expenditure and income tax of Rs 207.26 crore, Rs 101.64 crore and Rs 74 crore, respectively, as against the Commission approved Rs 182.76 crore, Rs 77.48 crore and Rs 26.96 crore, respectively, for FY 2005-06.

c. The Hon'ble ATE upheld REL's appeal in the context of applicability of norms stipulated under the Tariff Regulations, and ruled that the Commission should not deviate from the operating norms for station heat rate, auxiliary consumption and specific consumption of secondary fuel as specified in the MERC Tariff Regulations, 2005, even though REL's performance was better than the norms.

1.3. Commission's Order dated April 2, 2007 on MYT Petition of REL-T for FY 2007-08 to FY 2009-10

1.3.1. REL submitted its ARR and Multi Year Tariff (MYT) Petition for its Transmission Business for the first Control Period from FY 2007-08 to FY 2009-10 on January 16, 2007. The Commission issued the MYT Order for REL-T on April 2, 2007, which came into effect from April 1, 2007. As the APR for FY 2007-08 and Tariff determination for FY 2008-09 were under process, the various utilities filed Petitions for continuation of revenue requirement determined for FY 2007-08 till the time of issuance of the respective Orders for each utility.

1.3.2. Accordingly, the Commission vide Order dated April 1, 2008 in Case No. 102 of 2007 extended the applicability of the aforesaid Tariff Orders for the utilities till the revised Tariffs are determined for FY 2008-09 under the APR framework and Orders issued there under.

1.4. Commission's Order dated May 26, 2008 on APR Petition for REL-T for FY 2007-08 and Determination of Revenue Requirement for FY 2008-09

1.4.1. REL-T submitted its Petition for APR for FY 2007-08 and determination of Tariff for FY 2008-09 on November 30, 2007. The Commission issued the Order on May 26, 2008, which came into effect from June 1, 2008, and the tariffs were initially valid up to March 31, 2009, which was later extended till the revised tariff was determined for FY 2009-10 vide the Commission's Order dated April 15, 2009 in Case Nos. 152, 153 and 154 of 2008.

1.4.2. REL-T appealed against the said Order on the issue of sharing of efficiency gains and losses, income tax computation and computation of transmission system availability, before the Hon'ble ATE (Appeal No. 115 of 2008). The Hon'ble ATE upheld the appeal in Judgment dated May 28, 2009. REL-T (renamed as RInfra-T) has presented the impact of the ATE Judgment on Truing up of FY 2006-07 and FY 2007-08 in this Petition.

1.5. Commission's Order dated May 28, 2009 on APR Petition for FY 2008-09 and Determination of Revenue Requirement for FY 2009-10

1.5.1. RInfra-T submitted its Petition for APR for FY 2008-09 and annual revenue requirement for FY 2009-10 on December 10, 2008 Case No. 119 of 2008. The Commission issued the APR Order for RInfra-T on May 28, 2009, which came into effect from June 1, 2009.

1.5.2. RInfra-T has appealed against the said Order before the Hon'ble ATE (Appeal No. 149 of 2009). The Hon'ble ATE's decision on the appeal is awaited.

1.6. Commission's Order dated September 3, 2010 on RInfra-T's Petition on Truing up of FY 2008-09, APR of FY 2009-10 and Determination of Revenue Requirement for FY 2010-11

1.6.1. RInfra-T submitted its Petition for Truing up for FY 2008-09, APR for FY 2009-10 and ARR for FY 2010-11 on December 23, 2009, based on actual audited expenditure for FY 2008-09, actual expenditure for first half of FY 2009-10, i.e., from April to September 2009, and revised estimated expenses for October 2009 to March 2010, and projections for FY 2010-11.

1.6.2. The Commission issued an Order dated September 3, 2010 on the above matter with in Case No. 100 of 2009, which came into effect from September 1, 2010.

1.7. RInfra-T's Petition for Truing up of FY 2009-10 and Provisional Truing up of FY 2010-11

1.7.1. As per the MERC (Terms and Conditions of Tariff) Regulations, 2005, RInfra-T submitted its Petition to the Commission for Truing Up for FY 2009-10 and Annual Performance Review for FY 2010-11 on August 8, 2011 based on actual audited expenditure for FY 2009-10 and FY 2010-11. The prayers of the RInfra-T in the Petition were as follows:-

a. Admit the application/Petition as submitted herewith.

b. True-up the expenses and revenues for FY 2009-10.

c. Provisionally true-up the expenses and revenues for FY 2010-11;

d. Allow additions/alterations/modifications/changes to the Petition at a future date;

e. Allow any other relief, Order or direction, which the Hon'ble Commission deems fit to be issued;

f. Condone any inadvertent errors/inconsistencies/omissions/rounding off differences, etc. as may be there in the Petition.

1.7.2. The Commission vide email/letter dated September 6, 2011 forwarded the data gaps and information required in regard to the Petition filed by RInfra-T. Subsequently, the Commission scheduled the first Technical Validation Session (TVS) on RInfra-T's Petition for Truing up for FY 2009-10 and Provisional Truing up FY 2010-11, on September 7, 2010. The list of individuals, who participated in the TVS, is provided at Appendix-1. The queries raised on September 6, 2011 were partly answered by RInfra-T during the first TVS. RInfra-T requested the Commission to allow them to reply to all the queries in few more days. The Commission during the first TVS also instructed RInfra-T to discuss and satisfy all the queries of the staff of the Commission through a meeting at the Commission's office.

1.7.3. The meeting held between RInfra-T and the Commission's staff on September 20, 2011 and subsequently RInfra-T gave written replies to queries vide letter dated September 22, 2011 and letter dated September 27, 2011.

1.7.4. The Commission scheduled the second TVS on September 28, 2011 to obtain a confirmation that the data gaps have been replied to satisfactorily. However, the Commission found that the replies to the data gaps were provided by RInfra-T only a day before the second TVS. Therefore, the Commission rescheduled the TVS on October 5, 2011.

1.7.5. However, at RInfra-T's request, the third TVS to be held on October 5, 2011 was cancelled. The Commission re-scheduled the third TVS on October 31, 2011 to obtain a confirmation that the data gaps have been replied to satisfactorily. The list of individuals, who participated in the TVS, is provided at Appendix-1. Thereafter, RInfra-T filed the amended Petition along with replies to the balance queries on November 4, 2011.

1.8. Admission of Petition and Public Process

1.8.1. The Commission admitted the petition vide letter dated November 11, 2011 and directed RInfra-T to publish its application in accordance with Section 64 of the EA 2003, in the prescribed abridged form and manner, to ensure adequate public participation. The Commission also directed RInfra-T to reply expeditiously to all the suggestions and comments received from stakeholders on its Petition.

1.8.2. RInfra-T issued a Public Notice in newspapers inviting comments/suggestions from stakeholders on its Petition. The Public Notice was published in English in *The Times of India* and *The Indian Express* on November 16, 2011 and in Marathi in *Loksatta* and *Saamna* on November17, 2011. The Copies of the Petition and its summary were made available for inspection/purchase to members of the public at RInfra-T's offices and website (www.rinfra.com). The Public Notice and executive summary of the Petition were also made available on the website of the Commission (www.mercindia.org.in) in a downloadable format.

1.8.3. The Public Notice specified that the suggestions/objections, either in English or Marathi, may be filed in the form of affidavit along with proof of service on RInfra-T latest by December 5, 2011. The notice also specified that the replies by RInfra-T needs to be provided latest by December 8, 2011 to which the stakeholders can submit rejoinders latest by December 19, 2011.

1.8.4. The Commission received written objections regarding transmission capacity, incentive on transmission system availability, transmission losses, capital expenditure, etc. The Commission held a Public Hearing on December 14, 2011 at 10:00 hours at Rangsharda Natya Mandir, Bandra Reclamation, Bandra (W), Mumbai – 400050. The list of objectors, who participated in the Public Hearing, is provided in Appendix 2**.**

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

1.9. Organization of the Order

1.9.1. This Order is organized in the following four sections

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

b. **Section 2** lists out various objections raised in writing as well as during the Public Hearing before the Commission. The objections have been summarized, followed by the response of RInfra-T and the rulings of the Commission on each of the issues.

c. **Section 3** details the Truing up of expenses and revenue for RInfra-T for FY 2009-10, including sharing of efficiency gains/losses due to controllable factors.

d. **Section 4** details the Truing up of expenses and revenue for RInfra-T for FY 2010-11, including sharing of efficiency gains/ losses due to controllable factors.

2. OBJECTIONS RECEIVED, RINFRA-T'S RESPONSE AND COMMISSION'S RULING

2.1. Incentive for Transmission System Availability & Transmission Losses

Suggestion/ Objection

2.1.1. Shri. George John provided an excel sheet computation wherein for FY 2010-11, rate of 0.15 Rs/ kWh is derived by dividing ARR of Rs 98 crore with energy transmitted of 6654 MUs. The objector arrived at an incentive of Rs 2.66 Crore by considering 2% as benchmark loss and 20% of savings as incentive for reduction in loss. He then added this incentive to the ARR sought of Rs 97.99 Crore to arrive at an ARR of Rs 100. 66 crore.

2.1.2. Shri. John also has made a comparison of Transmission losses and rate in Rs/ kWh of RInfra-T with that of MSETCL for reference. During the public hearing Shri. John complemented RInfra-T for reduction of transmission losses and highlighted that 1% reduction in transmission loss amounts to 65 MU available for use. He further stressed that incentive given to the transmission utility should be viewed as investment rather than as expense. He proposed to offer an incentive to RInfra-T for reduction in transmission loss of Rs 2.6 crore and Rs 2.66 crore in FY 2009-10 and FY 2010-11 respectively.

RInfra-T's Response

2.1.3. RInfra- T submitted that the standalone ARR for FY 2010-11 (excluding revenue through InSTS and non-Tariff income) is Rs 88.32 crore and not Rs 98 crore as has been mentioned in the objector's calculations.

2.1.4. RInfra-T further submitted that the objector has arrived at the rate in Rs/kWh on the basis of the ARR being divided by the energy transmitted in MUs. The net transmission cost in Rs/kWh as has been sought for by the objector cannot be determined merely by dividing the ARR with the net MUs transmitted. RInfra-T further stated that the Commission had issued an Order dated June 27, 2006 in the matter of development of transmission pricing framework for the state of Maharashtra (Case No. 58 of 2005). The Order states that Intra-State transmission system shall comprise the transmission networks of MSETCL, TPC, REL and any other transmission licensee, in future. The Order further states that aggregate of annual revenue requirement of all the licensees, as approved by the Commission, shall form “pooled cost” (hereinafter termed as “Total Transmission System Cost or TTSC) of the intra-state transmission system, to be recovered from the transmission system users (TSUs). RInfra-T being an integral part of the InSTS (Intra State Transmission System), the ARR of RInfra-T is a part of the TTSC. The transmission tariff is arrived at for the entire InSTS. As such, there is no transmission Tariff determined for a particular transmission utility in the InSTS.

2.1.5. The objector has provided a working for the incentive for reduction in loss. As the ‘average loss’ methodology is adopted for InSTS, there is no bearing of the transmission loss of each transmission licensee on its ARR. RInfra-T further submitted that Tariff Regulations, 2005/ Orders of the Commission do not provide for the incentive for loss reduction. The incentive available to a transmission licensee is the availability incentive as has been specified by the Commission in case no. 58 of 2005. Thus, the incentive worked out by the Objector cannot be added to the ARR as it is not supported by any Regulation/ Order.

2.1.6. RInfra-T further submitted that based on the explanation provided above, the individual loss of the transmission licensee is not considered for the purpose of InSTS Tariff. The Hon’ble Commission in case no. 58 of 2005 has stated that the adoption of average loss methodology is appropriate. Thus, comparison of the same is not practicable.

Commission’s Ruling

2.1.7. The Commission’s Order in case no. 58 of 2005 deals with the development of transmission pricing framework for the State of Maharashtra. Accordingly, the TTSC of the intra-state transmission system, is to be recovered from the TSUs. Also, the incentive on transmission system availability is to be determined as per MERC (Terms & Conditions of Tariff) Regulations, 2005.

2.2. Transmission Network Capacity

Suggestion/ Objection

2.2.1. Shri N Ponrathnam submitted that the petitioner has transmission network to evacuate the power generated at Dahanu to its receiving station at Mumbai. The capacity is stated as 2350 MVA and energy wheeled is 6653MUs at 220kV. Energy sent to lower network is 5844 MUs. Considering the capacity of 2350 MVA at unity power factor, 100% availability factor and 100% load factor maximum energy transmitted should be 2350 X 1000 kW (energy transmitted in an hour) X 24 (Hrs) X 365 (days in a year) = 20,586 MUs.

2.2.2. He stated that it meant that RInfra-T's transmission system is 200% over capacity and still Mumbai had a black out day. The objector further requested the Petitioner to give an explanation along with the load flow of each line and quantum of power injected and/ or drawn from each node.

RInfra-T's Response

2.2.3. RInfra-T submitted that the transformation capacity of RInfra-T's system, as installed, is 2350 MVA. However, the firm capacity considering (n-1) criterion is only 1410 MVA. The details of each EHV station's installed transformation capacity and actual firm capacity is given in table below:-

Table 1: Installed Transformation Capacity and Actual Firm Capacity of RInfra-T

Name of EHV Station	Transformation capacity in MVA	Firm capacity in MVA
Aarey	525	315
Versova	525	315
Ghodbunder	425	280
Goregaon	250	125
Saki	375	250

Gorai	250	125
Total	**2350**	**1410**

2.2.4. RInfra-T submitted that for planning the capacity of the EHV stations, the requirement of peak load, expected future loads, and the contingencies occurring in the system has to be considered. The peak load may occur at any point of time and depends upon weather conditions, development of a given area, etc. The remaining capacity, if any would be utilized in case of contingencies.

2.2.5. In case of RInfra-T's system, peak demand reached during FY 2010-11 was 1283 MVA, which demonstrates amply that the firm transformation capacity of RInfra-T's system of 1410 MVA is just sufficient to cater to demand, with a little redundancy to allow for future load growth.

Commission's Ruling

2.2.6. The assets created by a licensee to meet its demand are based on the capital expenditure approved by the Commission from time to time. The licensee, in the State, approaches the Commission with DPR of schemes, they intend to execute, prior to executing any capital projects for increasing the transmission capacity. The licensees in the DPR provide information related to implementation phasing, investment requirement, funding requirement, cost benefit analysis, etc.

2.2.7. The Commission scrutinises DPR based on the capacity required to be handled and contingency requirements of the transmission system.

2.2.8. Additionally, the capacity to be created and maintained by each of the transmission licensee in the state is as per the transmission planning done by the State Transmission Utility (STU). Therefore, the transmission capacity maintained by RInfra-T is in accordance with the transmission plan for the state prepared by the STU.

2.3. Licensee's Transmission Network

Suggestion/ Objection

2.3.1. Shri Rakshpal Abrol submitted that RInfra had been directed to set up their own transmission lines between the Dahanu Thermal Power Station and distribution system up to the consumers in their Licensed area on the commencement of generation as per the amendment dated May 30,1992 vide Notification No. LBY.1390/CR-1609/NRG-2 issued by the Government of Maharashtra (Industries, Energy and Labour Department.).

RInfra-T's Response

2.3.2. RInfra-T submitted that the transmission lines for evacuating power from DTPS have been set up in response to the notification issued by the state government. The transmission system is an integral part of the InSTS as per the Commission's Order in case no. 58 of 2005.

Commission's Ruling

2.3.3. The transmission system along with the necessary lines and substations are as per the licence granted by the Commission to the licensee. In case of RInfra-T, it has been granted a transmission licence vide the Commission's Order dated August 11, 2011 in case no. 70 of 2011 and Transmission Licence No. 1 of 2011.

2.3.4. As per the above reference, RInfra-T is a transmission licensee under Alternative 2, in accordance with the Transmission Licence Conditions Regulations for a period of 25 years w.e.f. August 16, 2011. Details of the transmission network along with associated lines and substations approved for RInfra-T are provided in the licence issued by the Commission.

2.4. Capital expenditure pertaining to receiving stations

Suggestion/ Objection

2.4.1. Shri Rakshpal Abrol submitted a list of receiving stations that RInfra-T has set up for transmission purposes. These are at:

a. Borivali (East).

b. Versova,

c. Aarey Road, Goregaon (East),

2.4.2. The 'Bombay Suburban Electric License, 1926' was extended further till August 15, 2011 as to complete the obligation for supply of electricity to the consumers located in their licensed area.

2.4.3. RInfra-T has commissioned three more receiving stations at Saki, Gorai and Nagari Niwara Goregaon in FY 2010-11 and has claimed the Truing up in FY 2009-10 and Provisional Truing up of FY 2010-11.

RInfra-T's Response

2.4.4. RInfra-T submitted that the capital expenditure has been incurred considering the Transmission System Utility (TSU) requirement and has been approved by the Commission. Capital expenditure schemes being undertaken by RInfra are in accordance with the overall plan approved by STU. DPR for each of the scheme is submitted to the STU and the Hon'ble Commission for their approval and then executed by RInfra-T.

Commission's Ruling

2.4.5. The Commission accepts the response of RInfra-T that the assets created are in line with overall plan approved by the STU.

2.4.6. The capacity to be created and maintained by each of the transmission licensees in the state is as per the transmission planning done by the STU. Therefore, the transmission capacity maintained by RInfra-T is in line with the transmission plan for the State prepared by the STU.

2.5. Electricity Supply Provisions to HT Consumers

Suggestion/ Objection

2.5.1. Shri Rakshpal Abrol submitted that RInfra-T did not lay down the Transmission arrangement and Distribution System to supply to consumers defined as HT (high tension) consumers vide the MERC (Electricity Supply Code and other Conditions of Supply) Regulations, 2005. According to the Regulation the consumers with voltage of supply above 650 volts and up to 33,000 volts are high tension consumers. Consumers of 650 volts or less are defined as LT (low tension) consumers. This issue has not been fulfilled by RInfra-T. He stated that RInfra-T has not completed the DPR as claimed.

RInfra-T's Response

2.5.2. RInfra- T submitted that the power generated from various sources including RInfra-G is transmitted to the Mumbai suburban consumers through RInfra-T network. Power received at 220 kV level at the EHV stations is stepped down to 33 kV level and is supplied to the TSU. The distribution network is developed to tap the outlets from the transmission assets. The distribution network of the TSU forms part of the asset base of the distribution business of RInfra and not the transmission business. Thus, the transmission assets are not engaged in distributing power directly to the HT and LT consumers.

Commission's Ruling

2.5.3. Certain provisions of the EA 2003 are to be noted, as follows:-

"Section 12. (Authorised persons to transmit, supply, etc., electricity):

No person shall

(a) transmit electricity; or

(b) distribute electricity; or

(c) undertake trading in electricity,

unless he is authorised to do so by a licence issued under section 14, or is exempt under section 13"

2.5.4. The above provision of the EA 2003 clearly envisions that the duty of a transmission licensee is only to transmit electricity to its beneficiaries, which in this case is the TSU.

2.5.5. Further, the classification of consumer installations has to be strictly in accordance with the Regulation 5.3 of MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005.

3. TRUING UP OF AGGREGATE REVENUE REQUIREMENT FOR FY 2009-10

3.1. Background

3.1.1. RInfra-T has sought for final Truing up of expenditure and revenue for FY 2009-10 based on the actual annual expenditure and revenue as per the audited annual accounts. RInfra-T submitted the reasons for variation in the actual expenses for FY 2009-10, as compared with the approved expenses after provisional Truing up for FY 2009-10 in its APR Order dated September 3, 2010 in case no. 100 of 2009.

3.1.2. In its Petition for Truing up for FY 2009-10, RInfra-T has not proposed sharing of gains/loss for any of the elements of ARR. Instead, it prayed for approval of the entire actual expenses for FY 2009-10. However, RInfra-T has made separate submissions regarding the sharing of gains/losses on account of interest on working capital praying that the normative interest on working capital ought to be allowed in totality instead of treating it as a efficiency gain as per Regulation 17.10 (b) read with Regulation 19.1 of MERC (Terms and Conditions of Tariff) Regulations, 2005. The above stand has also been maintained before the Hon'ble ATE in appeal no. 203 of 2010 on which Judgment is awaited.

3.1.3. The Commission had directed RInfra-T to submit reconciliation statements for each of the regulated businesses under the Commission, i.e., RInfra-G, RInfra-T & RInfra-D and other non-regulated business. RInfra-T has submitted the reconciliation statement as directed.

3.1.4. The detailed approval by the Commission pertaining to FY 2009-10 is provided in the following sections.

3.2. Truing up of O&M expenses for FY 2009-10

3.2.1. Operation and Maintenance (O&M) expenditure comprises Employee expenses, Administrative & General (A&G) expenses and Repair & Maintenance (R&M) expenses. RInfra-T in its Petition submitted that the O&M expenses are those expenses that are essential for maintaining the transmission network for power evacuation and to ensure supply of reliable and quality power to distribution utilities.

3.2.2. RInfra-T also submitted the detailed reasoning for the deviation in each of these expenses and prayed to the Commission to approve the actual expenditure. RInfra-T's submissions on each of these expenditure heads, and the Commission's ruling on the Truing up of the O&M expenditure heads are detailed in the following sections.

3.3. Employee expenses for FY 2009-10

3.3.1. RInfra-T submitted that it has incurred a total amount of Rs. 13.33 crore towards gross employee expenses vis-à-vis actual gross employee expenses of Rs 11.04 crore for FY 2008-09. RInfra-T has submitted that the increase is primarily attributed to the recruitment of fresh graduates. It was stated that most of these employees have been inducted for executing various projects, currently and in future to be undertaken.

3.3.2. RInfra-T further submitted that Graduate Engineer Trainees were recruited in the first half of FY 2009-10 and the increase in salary had a consequential increase in allowances also. It was stated that the impact of this was also reflected in the entire second half of FY 2009-10. The increase in expenses in H2 of FY 2009-10 includes the impact of these additional recruits as also the normal increase in salaries of other employees as per industry practices. It was stated that, the normal increase would result in an increase in Basic Salary, HRA, Conveyance allowance and other allowance. Due to this, as against actual expenditure of Rs 6.10 crore in H1 of FY 2009-10. H2 actuals for FY 2009-10 are Rs 7.23 crore, thus adding up to Rs 13.33 crore.

3.3.3. RInfra-T submitted that after considering the employee expenses capitalized of Rs 4.23 crore, the net employee expenses for FY 2009-10 amounts to Rs 9.10 crore vis-à-vis Rs 8.71 crore for FY 2008-09, i.e., an approximate increase of 4.48%. It was submitted that the Commission had approved employee expenses at Rs 11.04 crore for FY 2008-09 after final Truing up in case no. 100 of 2009. The number of employees during FY 2008-09 was 145; consequently, per employee cost amounted to Rs 0.076 crore. Similarly for FY 2009-10, per employee cost amounts to Rs 0.078 crore, considering gross employee expenses of Rs 13.33 crore and number of employees as 172. Thus, RInfra-T submitted that there has been no significant change in the employee expenses per employee in FY 2009-10 vis-à-vis employee expenses per employee in FY 2008-09.

3.3.4. The Commission scrutinised the submissions of RInfra-T on employee expenses and raised various queries which are discussed as follows. The Commission raised a query with regard to the employees transferred from Mumbai licensed area to other than Mumbai licensed area and also break up of other allowances of these employees. RInfra-T responded to this query and said that two employees have been transferred from its licensed transmission business to Western Region Transmission Maharashtra Pvt. Ltd during FY 2009-10. RInfra-T also said that from the date of transfer of these employees, the associated costs are not considered in the transmission license business.

3.3.5. The Commission also required details of "other allowances" as claimed by RInfra-T. RInfra submitted the details under each of the heads/items in the other allowances which are as follows:-

a. Shift allowance: shift allowance is payable to employees (staff and officers) working in evening & night shifts for maintenance.

b. Special personal allowance (SPA): The employees at the time of joining are provided various options from which they can decide on the break-up of their cost to company (CTC). HRA, conveyance (owned vehicle), LTA, etc. are some of the few options available to the employees for them to choose from. However, there are maximum permissible limits under such allowances. The portion of CTC declared under these heads is non-taxable (subject to submission of proof of expenditure at the end of year). Balance portion of CTC automatically becomes SPA, which is taxable.

c. Long service award: In the career span of an employee, this award is disbursed twice i.e. on completion of 25 and 30 years of service.

d. Variable Pay: This is paid to executives depending on their performance for the year. The variable pay as a % of CTC would vary from year to year depending on company policy.

e. Annual PLI: Performance Linked Incentive forms part of CTC for executives, but is payable after completion of the year and depends on performance of the employee for that year.

f. Retention bonus: This also forms part of CTC of the employees. This is provided to GETs confirmed after a year of probation.

3.3.6. Break-up of expenses under other allowances is provided below.

Table 2: Break-up for "Other Allowances" head for FY 2009-10 (in Rs crore)

Particulars	Amount
Shift Allowance	0.02
Special Personal Allowance	2.51
Long Service Award	0.01
Variable Pay	0.11
Annual PLI	1.31
Retention Bonus	0.29
Total	**4.25**

3.3.7. The Commission further enquired about staff welfare expenses increasing from Rs 0.21 crore in FY 2008-09 to Rs 0.40 crore in FY 2009-10. The Commission enquired about the reasons for this increase of around 90% and also reasons justifying the claim.

3.3.8. RInfra-T in reply to the above query informed that it is carrying out related O&M activities at Versova & Ghodbunder EHV stations and maintenance staff associated with the stations and lines, are working in shifts and even during holidays at these locations. These EHV stations are in places without access to basic amenities in the immediate vicinity due to which canteen facilities at these locations were introduced since August 2009. The expense incurred towards this facility was approx. Rs 0.20

crore and the same is included in the staff welfare expenses. RInfra-T stated that apart from this, staff welfare expense for FY 2009-10 was on the same level as that for FY 2008-09.

3.3.9. The Commission also enquired about the increase of about 75% in terminal benefits amounting Rs 1.17 crore in FY 2009-10 compared to Rs 0.67 crore in FY 2008-09. RInfra-T replied that earlier, due to smaller workforce, gratuity provisions were made centrally for all employees at the corporate level. However, with the increasing scale of projects and operations of RInfra-T, it was decided to make the provisions directly under RInfra-T. Accordingly, the provision of Rs 0.44 crore was made in FY 2009-10. Form 2.1 provides the break-up of the terminal benefits. It was stated that on perusal of these forms for FY 2008-09 (Case no. 100 of 2009) and FY 2009-10 (Case no. 115 of 2011), a nominal increase of approximately 9%, excluding the gratuity provision made in FY 2009-10 can be observed.

3.3.10. The Commission found that the deviation in employee expenses of Rs 1.32 crore has occurred mainly due to the increase in number of employees from 145 in FY 2008-09 to 172 in FY 2009-10 and the increase in incidental expenses on terminal benefits. The Commission opines that these expenses can be allowed in employee's expenses for FY 2009-10. The employee expenses approved by the Commission for FY 2009-10 is provided in the table below:-

Table 3: Employee expenses for FY 2009-10 (In Rs crore)

Sr. No.	Particulars	APR Order	Actuals	Approved After Truing Up
1	Gross employee expenses	11.83	13.33	13.33
2	Less: expenses capitalised	4.05	4.23	4.23
3	**Net employee expenses**	**7.78**	**9.10**	**9.10**

3.4. A&G expenses for FY 2009-10

3.4.1. RInfra-T stated that it has incurred a total of Rs 3.04 crore towards A&G expenses for FY 2009-10 vis-à-vis actuals of Rs 2.51 crore for FY 2008-09. RInfra-T stated that in the earlier Petition submitted before the Commission in relation to APR for

FY 2009-10, the reasons for increase in the expenses in FY 2009-10 vis-à-vis FY 2008-09 were submitted, and reiterated in the present Petition as under:

3.4.2. RInfra-T stated that the increase is attributed mainly due to the following reasons:

a. Increase in security charges due to enhanced security provided to protect the transmission assets at Aarey, Ghodbunder and Versova. The beefing up of security at transmission establishments was done due to intimation from the Mumbai Police in July 2009 regarding the increased security threat to vital installations of RInfra. It was submitted that Commission may take note that transmission installations, though fewer in number, present a much greater need of protection as the cost of replacement of equipment, if any, due to damage is very high. RInfra-T further stated that the letter of intimation from Mumbai Police on beefing up of security at transmission establishments of RInfra-T has been submitted to the Commission in its earlier Petition as part of the APR exercise for FY 2009-10.

b. Re-grouping of certain expense heads of A&G is another important reason for increase in these expenses. Some of the expenses related to transmission were being booked under distribution business earlier, due to locational and legacy reasons. With the implementation of a more systemic approach to identification, analysis and charging of expenses within the whole of RInfra, these expenses have been identified and charged appropriately to RInfra-T. RInfra-T further submitted that there has been an increase in the telephone and communication expenses as well as property taxes due to such regrouping.

c. Incurrence of expenses pertaining to Legal charges (Petition charges); technical fees (Integrated Management System certification charges).

3.4.3. The Commission on scrutiny of the expenses found that the major deviations were under the heads of security arrangements and rent, rates & taxes. As far as the increased expenses due to enhanced security arrangements at RInfra-T's establishments are concerned, the Commission opines that there has to be appropriate security arrangements in order to safeguard the high cost assets. RInfra-T has incurred expenses in this regard due to existing threat perceptions. The

Commission approves these expenses for Truing up.

3.4.4. Further, the Commission observed the expenses on Rent, Rates & Taxes have increased from Rs 0.01 crore in FY 2008-09 to Rs 0.43 crore in FY 2009-10. RInfra-T stated that this was due to re-grouping of certain expense heads of A&G expenses; the details of these expenses were sought by the Commission.

3.4.5. RInfra-T submitted that the reason for regrouping had already been elaborated in the earlier ARR Petition (in case no. 100 of 2009) wherein the heads of “rent, rates & taxes” and “telephone & postage” were submitted as the expense heads where regrouping had occurred. It was stated that the same has also been reiterated in the present Petition. It was submitted that the impact due to re-grouping in RInfra-T in FY 2009-10 is Rs 0.42 crore towards “rent, rates & taxes” and Rs 0.06 Crore towards “telephone & postage”. RInfra-T submitted that the same has been reduced from the expenses of RInfra-D.

3.4.6. The Commission allows the A&G expenses as claimed by RInfra-T. Details of A&G expenses approved are provided in the table below:

Table 4: A&G Expenses for FY 2009-10 (in Rs crore)

Sr. No.	Particulars	APR Order	Actuals	Approved After Truing Up
1	Net A&G Expenses	2.64	3.04	3.04

3.5. R&M expenses for FY 2009-10

3.5.1. RInfra-T has stated that it has incurred Rs 3.26 crore towards R&M expenses in FY 2009-10 vis-à-vis Rs 3.25 crore in FY 2008-09. This is less than Rs 3.40 crore which the Commission had approved in the previous APR Petition for FY 09 -10.

3.5.2. RInfra-T stated in FY 2009-10 consisting of the following:-

a. Installation of additional isolators connecting to main bus 1 and main bus 2 were carried out which involved laying control cable through switchyards. This resulted in a major excavation in the switchyard. The excavation disturbed the layers of crush metal and additional crush metal had to be laid evenly to attain Step Resistance Uniformity in the switchyard.

b. RInfra-T also stated that major civil activities in the switchyard such as water proofing of control rooms and painting of switch equipments were also carried out.

c. Transformer and associated equipment maintenance activities were carried out.

3.5.3. The Commission observed that there is a marginal reduction of expenses in the plant & machinery head which has resulted in lower R&M expenses as compared to the approved expenditure. Based on the details provided the Commission approves the actual R&M expenses.

Table 5: R&M expenses for FY 2009-10 (in Rs crore)

Sr. No.	Particulars	APR Order	Actuals	Approved After Truing Up
1	Net R&M expenses	3.40	3.26	3.26

3.6. Summary of Operation and Maintenance (O&M) expenses for FY 2009-10

3.6.1. The Commission, apart from the above observations and approvals, had also enquired the methodology adopted and detailed quantification for allocation of corporate, i.e., HO expenses or any other shared support service centre costs. RInfra-T in reply submitted that the HO expenses at corporate level are allocated among various businesses including the regulated businesses in the proportion of their turnover.

3.6.2. RInfra submitted that the methodology of allocation of corporate expenses forms part of the reconciliation statement, which is certified by company's statutory auditor. It also stated that as per the company's accounting policy, revenue from transmission charges are set off against power purchase cost of distribution. On the basis described herein, since no separate turnover of transmission licensed business is considered, no corporate / HO or any other shared support service centre costs have been allocated to RInfra-T.

3.6.3. RInfra-T further submitted that the basis of apportionment of HO expenses certified by a chartered accountant has been notified to the Commission as part of the Tariff determination process for FY 2006-07 and has been followed consistently since then.

3.6.4. RInfra-T stated that M/s ASCI were appointed as investigators by the Commission under Section 128 of the EA 2003 to audit the expenses, accounts, capital investments, etc. of RInfra for the period FY 2004-05 to FY 2008-09. M/s ASCI, as part of their terms of reference, also reviewed the methodology for accounting corporate/HO expenses and their allocation, if any, on the regulated businesses of generation, transmission and distribution. M/s ASCI stated in their report as follows:

"The common expenses are allocated based on revenue earned by each division. The allocation is found reasonable after verification of allocation for the years 2007-08 and 2008-09".

3.6.5. The Commission considers the above submission and summarises the approved O&M expenses for FY 2009-10 as below:-

Table 6: Operation & Maintenance expenses for FY 2009-10 (in Rs crore)

Sr. No.	Particulars	APR Order	Actuals	Approved After Truing Up
1	Net employee expenses	7.78	9.10	9.10
2	Net A&G expenses	2.64	3.04	3.04
3	Net R&M expenses	3.40	3.26	3.26
4	**Total O&M expenses**	**13.82**	**15.40**	**15.40**

3.7. Capital expenditure and Capitalization for FY 2009-10

3.7.1. RInfra-T has submitted that it incurred an amount of Rs 40.46 crore towards capital expenditure, out of which Rs 34.02 crore has been capitalized, including interest and expenses capitalized. RInfra-T has considered a rate of 9% for estimating the interest capitalised as approved by the Commission in case no. 100 of 2009. The

Total Capitalization included DPR and non-DPR schemes.

3.7.2. RInfra-T also submitted that out of the total capitalization, Rs 23.52 crore is towards the installation of the 5th 220/33kV 125MVA Transformer at Versova EHV station and the balance amount is towards spill over of schemes which were partly capitalized during previous year(s). RInfra-T submitted that the spill over schemes included the following:

a. Installation of 4th 220/33kV 125MVA Transformer at Ghodbunder EHV station

b. Installation of 5th 220/33kV 125MVA Transformer at Aarey EHV station

c. 33kV 13panels GIS boards at Aarey, Versova and Ghodbunder

3.7.3. Benefits of the assets commissioned during FY 2009-10 are given below:-

Table 7: Benefits of Capitalisation during FY 2009-10

Name of the Scheme	Scheme Code No.	Capitalisation amount (Rs Crore)	Benefits
Installation of 4th 220/33kV 125MVA Transformer at Ghodbunder EHV station	RELT/ FY08/01	1.61	Flexibility of the network is increased. The scheme is completed & closed
Installation of 5th 220/33kV 125MVA Transformer at Aarey EHV station	RELT/ FY08/02	1.04	Flexibility of the network is increased. The scheme is completed & closed
Installation of 5th 220/33kV 125MVA Transformer at Versova EHV station	RELT/ FY08/03	23.52	Additional outlets help in creating adequate redundancy. Flexibility of the network is increased. The scheme is completed & closed

Name of the Scheme	Scheme Code No.	Capitalisation amount (Rs Crore)	Benefits
33kV 13panels GIS boards at Aarey, Versova, Ghodbunder	RELT/ FY08/09	1.44	Flexibility of the network is increased. The scheme is completed & closed

3.7.4. RInfra-T submitted that a comprehensive report on the benefits accruing out of these schemes for FY 2009-10 has also been submitted to the Commission.

3.7.5. RInfra-T submitted that apart from expenditure on the aforesaid DPR schemes, there were other capital works carried out during the year under non-DPR schemes. A brief description of the same is given below:

Security measures at Aarey/Versova/Ghodbunder

3.7.6. To protect the sub-stations from possible terror attacks and ensure a safe and secure environment in the sub-station campus all over, various modifications and improvements towards security have been adopted at all the three sub-stations, which includes modification of security control room.

Procurement of testing equipments and maintenance tools

3.7.7. In order to ensure and maintain the health and protection of the system against faults, contemporary equipments like inverter modules, relays, power quality meters etc. have been procured. Installation of equipments such as relays has ensured fast clearance of fault on critical lines, resulting in increasing availability of the system. Multimeters & clamp meters were also procured which facilitates expediting the commissioning activities for the upcoming EHV stations for identification of control circuitry mechanism.

Procurement of spare equipment

3.7.8. RInfra-T submitted that it ensures adequate availability of spares in its system to reduce outage time during emergency conditions. Towards this, spares for 220 kV switchyard and line equipments including spare SF6 gas cylinders have been procured during FY 2009-10.

Additional protection for 220kV towers

3.7.9. The foundations of the transmission towers are under duress due to the vibrations created by the movement of the vehicular traffic on the adjoining road and other construction activities. The towers also face the danger of possible impact of the vehicles plying on the adjoining roads. As the tower is one of the most important elements of a transmission system, it was imperative that its foundations be strengthened and accordingly, activities including slope stabilization were carried out giving them more structural stability. Some of the towers were also coated with anticorrosion paint given their proximity to the sea. Strengthening of the earthing was undertaken for enhancement of protection of towers and building transient stability during any incident such as lightening and faults on the transmission towers and transmission lines respectively.

Up gradation and addition of capacitor banks

3.7.10. In order to maintain system power factor, up-gradation of the existing capacitor banks was carried out along with the addition of the capacitor banks at Aarey, Versova and Ghodbunder.

220kV additional isolator sets and civil works at all stations

3.7.11. Additional isolator was installed at Versova and Aarey, which helped in increasing the redundancy of the system. Due to the additional isolator, the load of one bus can be transferred to another without affecting the availability of station equipments i.e. lines and transformers. It results in increased availability during bus outages, which increases the reliability of the system. Civil works such as construction of platform for transmission lines stores were also carried out.

Interconnection of RInfra system with MSETCL

3.7.12. RInfra-T transmission network is connected to the MSETCL system, providing grid connectivity for better security and robustness of the system and leading to the strengthening of the network. Erection of bus post insulators and summation of CT’s for Boisar forms a part of this process of strengthening the network. An ICCP link was also provided between RInfra and MSETCL.

3.7.13. The total capital expenditure and capitalization for FY2009-10 as submitted by RInfra-T is provided in the table below:-

Table 8: Capital Expenditure and Capitalisation for FY 2009-10 submitted by RInfra-T (in Rs crore)

Particulars	Classification	APR Order	Actuals
Capital Expenditure	DPR	NA	33.44
	Non-DPR	NA	7.02
	Total	**NA**	**40.46**
Capitalisation	DPR	NA	27.60
	Non-DPR	NA	6.42
	Total	**41.40**	**34.02**

3.7.14. The Commission scrutinised the detailed submissions on capital expenditure and capitalisation. Each of the DPR schemes approved DPR schemes by the Commission were scrutinised for cost benefit analysis, cost and time over-runs and the respective reasons for delay.

3.7.15. The Commission observed that there were time over-run on six of the schemes, the details of which is provided in the table below:-

Table 9: Capital expenditure schemes of RInfra-T with time over-run (In Rs crore)

Scheme Particulars	Scheme Code	Approved / Actual Project Cost	Estimated Completion Year	Actual Completion Year	Reason for Delay
Installation of 5th 220/33kV 125MVA transformer at Versova EHV station	REL-T/FY08/03	26.27	March 2008	March 2010	220 kV GIS received in damaged condition in transit, replacement formalities of the same resulted in delay
220kV GIS at Saki EHV station	REL-T/FY08/04	186.41	February 2009	March 2011	• Delay in outages of the desired lines during commissioning stage • Heavy monsoon impeded civil activity • Progressive CC delayed from MCGM • Non availability of river sand stalled civil activity • As per new norms work could not be taken in night hours • Compliance to Airport Authority of India requirement
220kV GIS Borivali	REL-	179.53	March 2010	Incomplete	• Collector NOC

Scheme Particulars	Scheme Code	Approved / Actual Project Cost	Estimated Completion Year	Actual Completion Year	Reason for Delay
	T/FY08/06			scheme	• Debris management plan • Tree cutting NOC • PWD clearance • Progressive CC above plinth • Set back issue raised by MCGM • Forest clearance for cable laying from Sanjay Gandhi National park
220kV GIS Gorai EHV station	REL-T/FY08/12	262.36	March 2008	September 2009	• Manufacturers over booked, delaying major equipment delivery • Statutory clearances from MCGM & MMRDA • CRZ issues • Heavy monsoon • Outages of desired line delay commissioning stage • Non availability of overseas expert jointing team & commissioning teams

Scheme Particulars	Scheme Code	Approved / Actual Project Cost	Estimated Completion Year	Actual Completion Year	Reason for Delay
220kV GIS Goregaon EHV station	REL-T/FY08/11	107.44	March 2010	March 2011	• Heavy monsoon impeded civil activity • Progressive CC above plinth delayed from MCGM • Non availability of river sand stalled civil works • As per new norms, work could not be undertaken in night hours
220 kV Dahisar housing EHV station	REL-T/FY09/01	195.94	March 2010	Incomplete scheme	• Legal vetting failed for identified plot • Plot in NDZ • Under exploration of the space for 220 kV Station from Developers • Project related works to be initiated on procurement of land. Land location finalised. Negotiations taking place with land owners • Owners are asking higher rates than ready reckoner rates approved by Commission

3.7.16. The Commission has taken note of the reasons provided by RInfra-T for the delay in the schemes and also observes that there is no change in the approved project cost on account of these delays. The Commission observes that apart from the above other schemes didn't have any time or cost over-run and hence approves the capitalisation of DPR schemes for FY 2009-10 as claimed by RInfra-T.

3.7.17. As regards, capitalisation of non-DPR schemes for FY 2009-10, the Commission in case no. 100 of 2009 had specified a general rule of approval of 20% of the capitalisation allowed against DPR schemes in a given year.

3.7.18. Subsequent to the above mentioned Order, the Hon'ble ATE in Judgment dated August 4, 2011 in appeal no. 199 of 2010 held that the direction of the Commission cannot be applied retrospectively. The Hon'ble ATE also held that for FY 2010-11, the direction of the Commission was binding on the appellant. Therefore, for FY 2009-10 the Commission approves non-DPR schemes as sought by RInfra-T without restricting it to 20% of the approved DPR schemes.

3.7.19. Further, the Commission scrutinised the interest and expense capitalised claim for FY 2009-10. On scrutiny, it was found that RInfra-T computed the interest expense by considering 70% of the works capitalised to be funded through normative debt at an interest rate of 9% and computed the interest expenses for the full year. The Commission opines that the interest expense capitalisation cannot be allowed for the full year as in practical conditions debt is drawn at different times of the financial year instead of the starting of the financial year. Therefore, the Commission allows 50% of the capitalisation claimed of total interest expenses.

3.7.20. The table below provides the methodology adopted for approval of the interest expenses capitalised for each of the schemes.

Table 10: Methodology for Interest expenses capitalised

Particulars	Methodology
RInfra-T methodology	Interest Expense Capitalised = Total works capitalised * 70%*9%

Particulars	Methodology
MERC methodology	Interest Expense Capitalised = (Total works capitalised * 70%*9%)/2

3.7.21. The Commission based on the above analysis approves the capitalisation of Rs 33.01 crore against the claim of Rs 34.02 crore. Details are provided in the table below:-

Table 11: Capitalisation for FY 2009-10 (in Rs crore)

Particulars	APR Order	Actuals	Approved After Truing Up
DPR Schemes	NA	27.60	26.78
Non-DPR Schemes	NA	6.42	6.23
Total Capitalisation	41.40	34.02	33.01

3.8. Depreciation for FY 2009-10

3.8.1. RInfra-T submitted the depreciation claim based on the Opening GFA and assets added during the year. The difference between the permitted depreciation of Rs 10.09 crore for FY 2009-10 and the actual depreciation of Rs 10.02 crore is on account of less than allowed capitalization during FY 2009-10 as well as due to actual date of capitalization being different from the mid-point estimation of capitalization in H2 of 2009-10 considered by RInfra-T in the APR Petition and permitted by the Commission in its Order on the same.

3.8.2. RInfra-T further submitted that the depreciation for FY 2009-10 has been calculated as per the rates in the Regulation and no claim for advance against depreciation for FY 2009-10 is being made. RInfra-T also confirmed that depreciation has not been claimed beyond 90% of the asset value. The detailed schedule of fixed assets and depreciation for FY 2009-10 was provided in Form 3 of the financial model.

3.8.3. In response to the query raised by the Commission on assets retired/sold/ scrapped, RInfra-T submitted that there is no retirement of assets in FY 2009-10.

3.8.4. The Commission after analysing the above submissions, considered asset addition of Rs 33.01 crore, equivalent to the approved capitalisation for FY 2009-10 provided in Table 11 above. The Commission adopted the same methodology as was adopted in case no. 100 of 2009.

3.8.5. Depreciation was allowed on the opening GFA as well on assets added during the year based on a depreciation rate of 2.38% as adopted by RInfra-T in the Petition. The depreciation rate was applied on the average of opening balance and closing balance of GFA for FY 2009-10 to arrive at the approved depreciation. Depreciation approved as per the above methodology is provided in the table below:

Table 12: Depreciation Expenses Including AAD for FY 2009-10 (in Rs crore)

Sr. No.	Particulars	APR Order	Actuals	Approved After Truing Up
1	Opening GFA	403.43	403.43	403.43
2	Depreciation	10.02	10.02	10.01
3	Depreciation Rate	2.38%	2.38%	2.38%
4	Closing GFA	444.83	437.45	436.44
5	AAD	-	-	-
6	**Depreciation including AAD**	**10.02**	**10.02**	**10.01**

3.9. Interest expenses for FY 2009-10

3.9.1. RInfra-T for the purpose of claim for interest expense for FY 2009-10, considered a normative Debt: Equity ratio of 70:30 in accordance with MERC (Terms and Conditions of Tariff) Regulations, 2005 with normative loan repayment tenure of 10 years for loans drawn prior to FY 2006-07 and 20 years for loans drawn during FY

2007-08 & onwards.

3.9.2. RInfra-T also submitted that the methodology adopted for normative loan capital is 70% of the total capitalisation for the respective year equivalent to the summation of work capitalised, interest capitalised and expenses capitalised. It was also submitted that a normative interest rate of 10% per annum was considered towards the interest expenses for projects initiated during FY 2004-05 and FY 2005-06. Further, normative interest rate of 8% per annum has been considered towards the interest expense for projects initiated during FY 2006-07 and FY 2007-08 and 9% per annum for projects initiated during FY 2008-09. RInfra-T also submitted that for FY 2009-10, the Commission had permitted a normative interest rate of 9% in case no. 100 of 2009 and same has been considered by RInfra- for interest expenses for works capitalised for FY 2009-10.

3.9.3. Computation of interest expenses and normative repayments was provided in Form 4, Form 4.1 and Form 4.2 of the financial model submitted by RInfra-T. The Commission scrutinised these forms and found that there were differences in the outstanding balances at the beginning of the year for loans prior to FY 2006-07 and loans during FY 2008-09 as submitted by RInfra-T and the Commission's computation. The Commission removed the shortcoming and recomputed the interest expenses based on the revised outstanding loans at the beginning of the year and outstanding loans at the end of the year for the loans drawn till FY 2008-09. The interest expenses pertaining to these loans were computed with interest rates and loan tenor approved by the Commission in previous Orders.

3.9.4. The Commission considered addition in loans amounting to Rs 23.11 crore drawn during FY 2009-10 as 70% of the total capitalisation approved for FY 2009-10 as per the Table 11 above. Interest expenses for these loans were computed based on the approved interest rates in the previous Order of 9% with loan tenor of 20 years.

3.9.5. Further, MERC (Terms and Conditions of Tariff) Regulations, 2005 provides for normative repayment for the respective year to be equal to the amount of depreciation on the fixed asset to which such loan relates. The relevant extract of the referred Regulations is provided below:

"48.2 The loan capital calculated using the normative debt: equity ratio under

Regulation 47 above shall be assumed to be repaid each year based on a normative repayment schedule:

Provided that the amount of such normative repayment for a year shall be equal to the amount of depreciation on the fixed asset to which such loan relates:

Provided further that where the outstanding normative loan balance is less than the amount of normative loan repayment calculated as above, the repayment shall be assumed to be equal to the outstanding normative loan balance and no further amount shall be permitted on account of such loan:

*Provided also that all normative repayments are assumed to be made on September 30th of each financial year."{**Emphasis added**}*

3.9.6. Therefore, the repayments for the loans have been considered in accordance with the above cited Regulations and the outstanding loans as well as interest expense computed. The interest expenses approved for FY 2009-10 is provided in the table below:-

Table 13: Interest Expense on Term loans for FY 2009-10 (in Rs crore)

Sr. No.	Particulars	APR Order	Actuals	Approved After Truing Up
1	Opening balance of loan	75.14	75.14	75.14
2	Additions	28.98	23.81	23.11
3	Repayment	(5.83)	(5.69)	(10.01)
4	Closing balance of loan	98.28	104.64	108.25
4	Net Interest expenses	7.8	7.58	7.30
5	Overall Interest rate	9.00%	8.43%	7.96%

3.10. Interest on working capital for FY 2009-10

3.10.1. RInfra-T submitted that the working capital requirement has been calculated as per regulation 50.6.1 of MERC (Terms and Conditions of Tariff) Regulations, 2005. The Commission in its Order dated September 3, 2010 in para 5.7 has stated as follows with regard to interest on working capital:

"As the application for determination of tariff for FY 2009-10 was made on December 10, 2008, the Commission has considered the short-term Prime Lending Rate of State Bank of India of 13.00% prevalent at that time for estimating the interest on working capital."

3.10.2. RInfra-T has considered the same for calculation of interest on working capital. The sum of book value of stores has been considered based on the month wise inventory and averaged out for the full financial year. Based on the norms provided in MERC (Terms and Conditions of Tariff) Regulations, 2005 the interest on working capital for FY 2009-10 is computed by RInfra-T and the detailed computation is provided in Form 4 of the financial model.

3.10.3. The Commission has scrutinised the above referred submission of RInfra-T in regard to the computation of interest on working capital and found that it was in accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005. The normative working capital requirement was estimated as the summation of the following items:-

a. One-twelfth of the amount of operation and maintenance expenses for such financial year,

b. One-twelfth of the sum of the book value of stores, materials and supplies including fuel on hand at the end of each month of such financial year,

c. One and a half months equivalent of the expected revenue from transmission charges at the prevailing tariffs,

d. Amount, if any, held as security deposits from Transmission System Users

3.10.4. Further, in accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005 the interest rate as on the date of application for determination of tariff is to be considered for approval of the interest on working capital. RInfra-T has reproduced the relevant para of the Order in case no. 100 of 2009 which is provided in para 3.10.1 above. The Commission accepts the interest rate of 13% as stated in the referred para for approval of the normative interest on working capital.

3.10.5. The approved normative interest on working capital is provided in the table below:-

Table 14: Interest on Working Capital for FY 2009-10 (in Rs crore)

Sr. No.	Particulars	APR Order	Actuals	Approved After Truing Up
1	Interest on Working Capital	1.15	1.59	1.59

3.10.6. Further subsequent to Hon'ble ATE's Judgment in Appeal No. 115 of 2008, the Commission, in Order dated September 3, 2010, viewed as below:-

"From the above responses of RInfra-T, it is observed that RInfra-T has not been able to satisfactorily address the Commission's queries in this matter for FY 2006-07 and FY 2007-08, and that there is no substantiation of the actual working capital interest on funds used for meeting working capital requirement, for FY 2008-09 as well. The Commission is of the view that by implication, RInfra has managed to meet its working capital requirements by its own operational efficiency, and has minimised the working capital requirement itself, and not actually relied on any funds to meet its working capital requirement. Hence, the Commission has allowed the entire working capital interest on normative basis in accordance with the MERC Tariff Regulations. Further, as per Regulation 17.6.2 (d) of the MERC (Terms and Conditions of Tariff) Regulations, 2005, variation in working capital requirement is a controllable factor, and hence, the Commission rules that the entire normative working capital interest has to be considered as an efficiency gain, and the sharing of gains has to be computed in accordance with Regulation 19.1 of the MERC (Terms and Conditions of Tariff) Regulations, 2005"

3.10.7. The Commission allowed the entire normative interest on working capital as efficiency gains as RInfra-T could not establish that it had relied on any funds to meet its working capital requirement. However, RInfra-T being aggrieved on the decision of the Commission approached the Hon'ble ATE in the Appeal No. 203 of 2010 claiming that the formula for working capital in the Regulations, if substituted for actual values of the parameters therein, itself results in a cash flow deficit that should be considered as actual working capital requirement. Consequently, interest on the same at SBI PLR needs to be permitted. RInfra-T in the present Petition has maintained the same position as the Hon'ble ATE has not yet pronounced in its judgment.

3.10.8. The Commission's decision in the present matter to treat the entire interest on working capital as efficiency gains is subject to the outcome of Appeal No. 203 of 2010 pending before the Hon'ble ATE. The details of sharing of gains and losses have been worked out in the respective sections in this Order.

3.11. Contribution to contingency reserves for FY 2009-10

3.11.1. RInfra-T submitted that the Regulation 50.7.1 provides that the contribution to contingency reserve shall be a sum not less than 0.25 per cent and not more than 0.5 per cent of the original cost of fixed assets. In view of above, RInfra-T has considered the contribution to contingency reserve at 0.25% of the original cost of fixed assets as on 01.04.2009, which amounts to Rs 1.01 crore for FY 2009-10, being the same as approved by the Commission. RInfra-T submitted that the same may be permitted for Truing up also.

3.11.2. The Commission approves the claims as they are in line with the MERC (Terms and Conditions of Tariff) Regulations, 2005.

Table 15: Contribution to contingency reserve for FY 2009-10 (in Rs crore)

Sr. No.	Particulars	APR Order	Actuals	Approved After Truing Up
1	Contribution to Contingency Reserve	1.01	1.01	1.01

3.12. Return on Equity (RoE) for FY 2009-10

3.12.1. RInfra-T submitted that return at the rate of 14% is allowed on the amount of approved equity capital at the beginning of the year plus 50% of the normative equity portion for the assets capitalized during the year as per the MERC (Terms and Conditions of Tariff) Regulations, 2005. It was submitted that following the same principle, a Return on Equity of Rs 23.43 crore has been considered for FY 2009-10 by RInfra-T. It was submitted that this is lower than that approved by the Commission during APR of FY 2009-10, due to lower than approved capitalization.

3.12.2. The Commission adopted the same principle provided above which is also in accordance with the principles specified by the MERC (Terms and Conditions of Tariff) Regulations, 2005. The Commission while computing RoE considered the approved equity at the beginning of the years as Rs 162.29 crore as claimed by RInfra-T and normative equity added during the year based on 30% of the approved capitalisation provided in Table 11 above, during the year of Rs 9.90 crore.

3.12.3. The Commission computed RoE for FY 2009-10 at 14% on the opening equity and 50% of the equity added during the year. The approval of RoE for FY 2009-10 is provided in the table below:-

Table 16: Return on Equity (RoE) for FY 2009-10 (in Rs crore)

S. No.	Particulars	APR Order	Actuals	Approved After Truing Up
1	Regulatory Equity at the beginning of the year	162.29	162.29	162.29
2	Equity portion of assets capitalised during year	12.42	10.21	9.90
3	Regulatory Equity at the end of the year	174.71	172.49	172.19
4	Return on Regulatory Equity at the beginning of the year	22.72	22.72	22.72
5	Return on 50% of Equity portion of capital expenditure capitalised during the year	0.87	0.71	0.69
6	Total Return on Regulatory Equity	23.59	23.43	23.41

3.13. Non-Tariff income & Other Business income for FY 2009-10

3.13.1. RInfra-T has submitted that it has earned an amount of Rs 0.67 crore under non-Tariff Income in FY 2009-10, which included the following:

a. Rs 0.42 crore pertaining to liquidated damages received from the vendors on delay in the scheduled delivery date.

b. RInfra-T in its earlier Petition had submitted that the opening balance of contingency reserve as on April 1, 2008 is Rs 2.97 Crore and the same has been invested in 5.87% Central Government of India, 2010 (G-Sec). In case no. 100 of 2009 during the Truing up for FY 2008-09, the Commission had approved contribution to the contingency reserve at Rs 0.76 crore, being 0.25% of the opening GFA. Thus the opening balance of contingency reserve as on April 1, 2009 is Rs 3.73 crore, while Rs 0.22 crore pertains to interest on contingency reserve investment for FY 2009-10.

3.13.2. RInfra-T further submitted that it has not undertaken any “Other Business” during the year in question and consequently there is no Income from Other Business.

3.13.3. The Commission accepts the above details provided by RInfra-T on Non-Tariff Income for FY 2009-10 and approves on actual basis.

Table 17: Non-Tariff income for FY 2009-10 (in Rs crore)

Sr. No.	Particulars	APR Order	Actuals	Approved After Truing Up
1	Non-tariff income	0.30	0.67	0.67

3.14. Income Tax for FY 2009-10

3.14.1. RInfra-T in its petition submitted that the Commission had followed the approach advocated by the Hon’ble ATE in its judgment in Appeal No.174 of 2009 for determination of Income tax in its Order in case no. 72 of 2011 dated July 29, 2011.

3.14.2. Accordingly, RInfra-T has submitted the working of allowable Income tax based on the actual revenues earned and expenses incurred. The same is provided in the following table:

Table 18: Income Tax for FY 2009-10 as submitted by RInfra-T (in Rs crore)

Sr. No.	Particulars	Actual
1	O&M Expenses	15.4
2	Depreciation	10.02
3	Interest on long-term loan	7.58
4	Interest on working capital	1.59
5	Contribution to Contingency Reserve	1.01
A	**Total Expenditure**	**35.60**
6	Revenue from InSTS	58.83
7	Non Tariff Income	0.67
B	**Total Revenue**	**59.50**
C	**Profit Before Tax (PBT) (B-A)**	**23.90**
8	Add: Depreciation as per ARR	10.02
9	Less: Depreciation as per Income Tax	(20.98)
10	Add: Normative Interest on long term loan	7.58
11	Add: Normative Interest on working capital	1.59
D	**Total Profit**	**22.11**
12	Income Tax rate	33.99%
E	**Income Tax on total profit**	**7.52**

3.14.3. However, in this respect it is pertinent to refer the Regulation 50 of the MERC (Terms and Conditions of Tariff) Regulations, 2005, which deals with the income tax matter. The above said Regulation is quoted below:

"50.2 Income-tax

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

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

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

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

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

3.14.4. As mentioned before, RInfra is a company under the Companies Act and it is engaged in several businesses including Generation (G), Transmission (T) and Distribution (D) of electricity in an integrated manner. Allocation of tax liability to the regulated businesses in Mumbai, viz., G, T and D, particularly the method of income tax calculations, has in the past been a complex issue. The key issue was to arrive at the correct base.

3.14.5. The treatment of income tax came to be analysed in **Appeals No. 173 of 2009 and 174 of 2009** before Hon'ble ATE. In its Judgment dated February 15, 2011 in Appeal No. 173/2009, Hon'ble ATE examined the following issue:-

"Whether the State Commission is justified in computing the entitlement of income

tax to be recovered from the consumers considering the return on equity as the regulatory profit before tax and disallowing tax on incentives on the ground that the expenses incurred for achieving better performance has already been allowed?"

3.14.6. Hon'ble ATE held as follows:-

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

3.14.7. Since, the Hon'ble ATE inter alia held that the actual income shall form the basis for computation of income tax, hypothetical bases cannot be considered. The Hon'ble ATE has discarded the theory of any treatment on notional basis.

3.14.8. The Commission is of the view that every base tried earlier, whether normative RoE or hypothetical Profit Before Tax (PBT) was presumptive in nature and did not indisputably demonstrate the relation with actual tax liability. Normative RoE was clearly not the only income that would constitute taxable profits of the utilities; it would also include incentives etc. Further hypothetical PBT was by very nature hypothetical. The income allocation and expense allocation has to be as per actual taxable incomes and expenses calculated as per the Income Tax Act, 1961. The approach has to be actual taxable income of regulated business minus actual sanctioned tax deductible expenses of regulated business as directed by the Hon'ble ATE.

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

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

3.14.11. At paragraph 14 of Hon'ble ATE's Judgement dated February 14, 2011 in the matter of TPC-T, Hon'ble ATE has clarified inter alia as follows:-

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

3.14.12. Thus, principles have been laid down by the Hon'ble ATE on the subject. Thus, from the various pronouncements of the Hon'ble ATE, the principle that clearly emerges is that the income tax of a utility that should be passed through in the tariff is to be based on the actual tax impact. For working out actual tax impact, working out the segmental income is necessary. Income tax emerges from segmental working and that leads to segmental calculations. Segmental calculations should be based on regulated income if tax is actually paid on regulated income. If income tax is actually calculated and paid by the utility company on book profits under MAT method then the segmental division has to be based on book profit and not on regulated profit; because regulated profit is not what has suffered actual tax but book profit has suffered the actual tax.

3.14.13. In case of true up applications the claim has to be sanctioned on the basis of actual tax payments because all the details are available by that time. The Commission accordingly sought the information related to actual tax payments made by the licensee to determine the correct claim. The information sought was basic information such as copy of income tax return filed; the statement of computation of income and other relevant information like break up of various additions and deductions claimed in tax computation in G-T-D and other segments.

3.14.14. The Commission is of the view that appropriate claim for actual income tax paid by the company cannot be found out without these very basic documents viz. copy of income tax return filed; the statement of computation of along with some other relevant information like break up of various additions and deductions claimed in tax computation in G-T-D and other segments.

3.14.15. Till date RInfra has not submitted the above basic documents asked for, RInfra has also not submitted underlying break-up of allowances/ disallowances for tax purposes into G-T-D and other segments.

3.14.16. In fact, the above basic information was sought from the petitioner during the TVS for RInfra-T dated September 27, 2011. In reply to this requirement, the petitioner had provided the following explanation:

"RInfra-T submits that for the FY 2009-10, Income Tax Return was filed considering the scheme of de-merger dated May 9, 2009 envisaging transfer of various operating division of the company as wholly owned subsidiaries, subject to the requisite approvals. However, the scheme was withdrawn due to changes in the business environment and the scheme is thus no longer relevant. In view, for FY 2009-10, revised income tax return for RInfra as whole is yet to be filed. RInfra-T submits that for the FY 2010-11, the income tax return shall be filed by Sept 30, 2011."

……

"RInfra-T submits that the Income Tax paid by the company as a whole is of no relevance to regulatory allowances where Income Tax allowance is determined separately for regulated businesses as explained in response to query 16 above…."

3.14.17. Thereafter, the Commission had followed up with the petitioner on several occasions seeking the required information for determining the claim for income tax reimbursement. However, the said information was never provided. The detailed chronological sequence in which the information was sought and the responses obtained is as under:

I. Computation of income and income tax return sought in 'direct meeting' held on October 8, 2011.

Response obtained: *Will be provided soon.*

II. Computation of income and income tax return sought in 'direct meeting' held on October 25, 2011.

Response obtained: *Will be provided soon.*

III. Detailed computation of income for the year 2009-2010 and 2010-2011:

Reply dated October 14, 2011,

"The tax returns of FY 09-10 are being filed again due to withdrawal of de-merger scheme. Also, our auditors are travelling and consequently not available at present. We request more time for submission of Tax Audit Reports.

IV. Reply dated October 25, 2011 – Information sought:

a) Copy of income tax return filed for the year 2009-2010 and 2010-2011.

b) Computation of Income for the year 2009-2010 and 2010-2011.

Response: *"It has been stated in our responses filed on October 4, 2011 and on October 14, 2011 that Income Tax Return for FY 2009-2010 was filed for de-merged entities –generation, transmission and distribution, anticipating the de-merger of RInfra. However, as the de-merger scheme was later withdrawn, the revised Tax returns for FY 2009-10 for RInfra as a whole are yet to be filed with the IT department."*

V. Reply dated November 4, 2011

Same as reply dated October 25, 2011.

VI. Additional Clarification sought letter dated January 22, 2012:

a) Computation of Income for the year 2009-2010:

RInfra Response: *"With reference to the response sent earlier, RInfra-D would like to re-iterate that revised Income Tax Returns for FY 2009-10 due to withdrawal of demerger scheme is yet to be filed. The relevant documents shall be furnished to the Hon'ble Commission, as and when the returns are filed."*

b) Even if the revised return is not yet filed, the separate return filed for de-merged entities –generation, transmission and distribution should be submitted.

RInfra Response: *Not responded*.

c) Copy of income tax assessment order for the financial year 2007-2008 and 2009-2010 should be submitted.

RInfra Response: *Refer to response for clause a)*

d) The petitioner had provided the 'Computation of Income' for the year 2010-2011 for the company as a whole.

In this regard, please provide the breakup of the 'Computation of total Income' and 'MAT working'

- Mumbai Licensed area operations (G-T-D segment wise – including HO/SS allocation),

- Other than Mumbai license area operations,

- Total operations.

RInfra Response:

The book profit of the Company is arrived at after considering all the business activities as a whole. The book profit cannot be computed separately for Generation or Transmission or Distribution for the purpose of Income Tax Returns, as per section 115 JB of the Income Tax Act. The relevant extracts are reproduced herein below for ready reference:

VII. Additional Clarification sought letter dated February 7, 2012.

No response.

VIII. Additional Clarification sought letter dated February 10, 2012.

Required Information not provided.

IX. E-mail received on February 11, 2012.

"As I understand we have given answers to all the queries of Mr nikumbh on Income tax. As you can see from our responses that we are following ATE Judgement and MERC Orders of the past which is well settled position. However it appears from the repeating queries of Mr nikumbh that he wants to deviate from ATE Judgement and MERC Orders. In my view he is unable to distinguish company's financial accounting (for all businesses) and regulatory accounting for licensed business which is adequately addressed by ATE Judgement and adopted by MERC in toto. In such a circumstance we hope that Hon'ble commission may guide him on the issue."

3.14.18. It is apparent that the entire focus of RInfra's contentions is on the method, which as per RInfra, "has been established" for calculating tax, and based on that the contention that the data on actual should not be insisted upon. It is critical to note the basic principle as laid by the Hon'ble ATE is at paragraph 14 of the Hon'ble ATE's Judgement dated February 14, 2011 in the matter of TPC-T, which reads as under:-

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

3.14.19. The Commission is of the view that the objective of the Commission in getting details is to determine the actual tax impact on the business of a utility and allow that as expense. RInfra's insistence on assuming that the methodology is end goal is misplaced and denial of information based on such self presumption is unwarranted.

3.14.20. From the limited records submitted prima-facie there are carried forward losses in some segments, MAT payments and MAT credit utilization all of which have tax impact which cannot be calculated without details called for. It is relevant to note here that if losses in any regulated segment have been used as tax shield in the other segments there will be in fact tax recovery from the company for that regulated business following converse of Hon'ble ATE Judgement wherein tax shield of non-regulated business was mandated to be added as tax impact of regulated business.

3.14.21. As can be seen there has been fair amount of follow up on this issue with RInfra. Considering the fact that out of information sought; statement of computation of tax, income tax return filed is really mandatory statutory filings and the segmental break up is obviously the base on which utilities would have staked their claim for reimbursement. Inability of RInfra to produce these evidentiary documents is incomprehensible. Further from the mail dated February 11, 2012, as quoted above, it is apparent that the RInfra has gone to the extent of advising the Commission on the course of action rather than to take efforts for submission of the information sought. The approach of RInfra clearly appears to be stonewalling the fact finding on tax issue and therefore prima-facie presumption is against RInfra on that count.

3.14.22. However in spite of this apparently defiant attitude, to be just and fair to RInfra-T, considering that it may have some issues in retrieving records, the Commission is of the opinion that RInfra-T should claim income tax after it is able to produce the information sought for, because the present Orders cannot be held back on this account.

3.14.23. The income tax approved by the Commission for FY 09-10 is shown in the Table below.

Table 19: Income Tax for FY 2009-10 (in Rs. crore)

Sr. No.	Particulars	APR Order	Actuals	Approved After Truing Up
1	Income Tax	6.75	7.52	-

3.15. Revenue from Transmission charges

3.15.1. RInfra-T submitted that the Commission had approved the transmission tariff for InSTS for FY 2008-09 in case no. 104 of 2007 on May 31, 2008, effective from June 1, 2008. RInfra-T submitted that the revenue was determined at Rs 5.66 crore per month. RInfra-T submitted that the Commission had approved the transmission tariff for InSTS for FY 2009-10 in Case no. 155 of 2008 on May 28, 2009, effective from June 1, 2009 onwards. RInfra- T revenue was determined at Rs 4.75 crore per month. Since the InSTS Tariff for FY 2009-10 was made effective from June 1, 2009 onwards, RInfra-T continued to receive transmission charges for April and May 2009, as per earlier order. Thus, the revenue of RInfra-T is as follows:

a. For April and May 2009: Rs 5,65,58,333 per month, for 2 months i.e. Rs 11.31 crore.

b. From June 2009 till March 2010: Rs 4,75,16,666 per month, for 10 months i.e. Rs 47.52 crore.

3.15.2. Thus, RInfra-T submitted that the total revenue for RInfra-T for FY 2009-10 is Rs 58.83 crore.

3.15.3. The Commission accepts the submission of RInfra-T and approves the revenue from transmission charges as provided in the table below:-

Table 20: Revenue from Transmission Charges for FY 2009-10 (in Rs crore)

Sr. No.	Particulars	APR Order	Actuals	Approved After Truing Up
1	Revenue from Transmission Charges	58.82	58.83	58.83

3.16. Incentive for higher system availability for FY 2009-10

3.16.1. RInfra-T submitted that as per the Commission's Order dated June 27, 2006 in case no. 58 of 2005, transmission licensee is entitled to incentive on achieving annual Availability beyond the Target Availability (i.e. 98%) as stipulated under the Tariff Regulations.

3.16.2. The incentive computation formula as per the above referred Order was provided in the Petition as follows:-

Incentive = Annual Transmission Charges * ((Annual Availability Achieved - Target Availability)/ Target Availability)

3.16.3. RInfra-T submitted that based on the above formula it is entitled to an incentive of Rs 1.07 crore for achieving the System Availability of 99.62% during FY 2009-10.

3.16.4. Based on the certification of SLDC the Commission has accepted an availability of 99.62% for FY 2009-10 and computed the incentive as per the approved formulae based on the approved Annual Transmission Charges of Rs 65.82 Crore for FY 2009-10. Thus incentive approved for FY 2009-10 is Rs 0.96 crore which is added to the recoverable from the Tariff of TSUs.

3.17. Sharing of gains & losses for FY 2009-10

3.17.1. RInfra-T categorised all expenditure as uncontrollable and hence, did not compute gains and losses for controllable expenditure. The relevant provisions under MERC (Terms and Conditions of Tariff) Regulations, 2005 stipulating sharing of gains/ losses due to controllable factors are reproduced below:

"17.6.2 Some illustrative variations or expected variations in the performance of the applicant which may be attributed by the Commission to controllable factors include, but are not limited to, the following:

(a) Variations in capital expenditure on account of time and/ or cost overruns/efficiencies in the implementation of a capital expenditure project not attributable to an approved change in scope of such project, change in statutory levies or force majeure events;

(b) Variations in technical and commercial losses, including bad debts;

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

(d) Variations in working capital requirements;

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

(f) Variations in labour productivity;

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

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

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

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

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

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

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

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

3.17.2. The Commission has considered the performance parameters and expenses for computing the sharing of gains/ losses in accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005 as elaborated below:

Sharing of gains & losses on account of interest on working capital

3.17.3. As described in the sections 3.10.7 & 3.10.8 above, the Commission has considered the entire normative interest on working capital of Rs 1.59 crore as efficiency gains to compute the sharing of gains and losses. Since, this is a controllable parameter, 1/3rd of the efficiency gains on account of interest on working capital, i.e., difference between normative IWC and actual IWC, amounting to Rs 0.53 crore will have to be shared between RInfra-T and TSUs, in accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005. Further, 2/3rd of the efficiency gains on account of interest on working capital amounting to Rs 1.06 Crore will be passed on as additional charge in the tariffs of TSUs.

3.17.4. The summary of ARR and efficiency gains as approved by the Commission for FY 2009-10 is given in the following table:-

Table 21: Summary of Truing Up for FY 2009-10 (in Rs crore)

S.No.	Particulars	FY 2009-10						
		Order	Actuals	Approved after Truing Up	Total Efficiency Gain/ (Loss)	1/3rd Efficiency Gain/ (losses) Shared with TSUs	2/3rd of Gain/losses retained by RInfra-T	Net Entitlement of RInfra-T
1	Operation & Maintenance Expenses	13.83	15.40	15.40	-	-	-	15.40
1.1	*Employee Expenses*	7.78	9.10	9.10	-	-	-	
1.2	*Administration & General Expenses*	2.64	3.04	3.04	-	-	-	
1.3	*Repair & Maintenance Expenses*	3.40	3.26	3.26	-	-	-	
2	Depreciation, including advance against depreciation	10.09	10.02	10.01		-	-	10.01
3	Interest on Long-term Loan Capital	7.80	7.58	7.30		-	-	7.30
4	Interest on Working Capital and on consumer security deposits	1.15	1.59	1.59	1.59	0.53	1.06	1.06
5	Other Expenses	-	-	-	-	-	-	0.00
6	Income Tax	6.75	7.52	0.00				0.00
7	Contribution to contingency reserves	1.01	1.01	1.01	-	-	-	1.01

S.No.	Particulars	FY 2009-10						
		Order	**Actuals**	**Approved after Truing Up**	**Total Efficiency Gain/ (Loss)**	**1/3rd Efficiency Gain/ (losses) Shared with TSUs**	**2/3rd of Gain/losses retained by RInfra-T**	**Net Entitlement of RInfra-T**
A	**Total Expenditure**	**40.63**	**43.11**	**35.31**	**1.59**	**0.53**	**1.06**	**34.78**
B	Return on Equity	23.59	23.43	23.41	-	-	-	23.41
C	**Aggregate Revenue Requirement**	**64.22**	**66.55**	**58.72**	-	-	-	**58.19**
	Add: Incentive for higher availability in FY 2007-08	0.71	0.71	0.71	-	-	-	0.71
	Add: Revenue gap / (surplus) for FY 2008-09	1.91	1.91	1.91	-	-	-	1.91
D	**Aggregate Revenue Requirement from Transmission Tariff**	**66.84**	**69.17**	**61.34**	**-**	**-**	**-**	**61.34**
	Revenue							
	Revenue from transmission charges	58.82	58.83	58.83	-	-	-	58.83
	Other Income	0.30	0.67	0.67	-	-	-	0.67
E	**Total Revenue**	**59.12**	**59.50**	**59.50**	-	-	-	**59.50**
E1	**Revenue Gap / (Surplus)**	**-**	**-**	**-**	-	-	-	**1.85**

S.No.	Particulars	FY 2009-10						
		Order	Actuals	Approved after Truing Up	Total Efficiency Gain/ (Loss)	1/3rd Efficiency Gain/ (losses) Shared with TSUs	2/3rd of Gain/losses retained by RInfra-T	Net Entitlement of RInfra-T
E2	Incentive on higher availability of Transmission System for FY 2009-10	-	-	-	-	-	-	0.96
E3	Tax on Incentive on higher availability of Transmission System for FY 2009-10	-	-	-	-	-	-	0.00
F	**Total Revenue Gap / (Surplus) including Incentive & tax on incentive(E1 + E2+E3)**	**-**	**-**	**-**	**-**	**-**	**-**	**2.81**

3.18. Revenue gap for FY 2009-10

3.18.1. RInfra-T submitted that the Aggregate Revenue Requirement (net of NTI) is Rs 68.50 crore for FY 2009-10, including income tax as compared to Rs 66.54 crore approved by the Commission based on APR after considering non-Tariff income. RInfra-T submitted that considering the Net ARR of Rs 68.50 crore and revenue of Rs 58.83 crore, there is a gap of Rs 9.67 crore for FY 2009-10 against the Commission's approved provisional gap of Rs 7.72 crore in the Order dated September 3, 2010. The difference was on account of increase in O&M expenses by Rs 1.57 crore.

3.18.2. The Commission has recomputed the revenue gap/ (surplus), by considering the approved ARR and net entitlement upon sharing of gains/ losses pursuant to final Truing up for FY 2009-10 as Rs 61.34 crore, approved revenue from transmission charges of Rs 58.83 crore and Other Income of Rs 0.67 crore. Further, the incentive income of Rs 0.96 crore on account of higher system availability in FY 2009-10 has been considered in the Truing up for FY 2009-10. Thus, the net revenue gap for FY 2009-10 works out to Rs 2.81 crore which would be carried forward for recovery in the subsequent years.

4. ANNUAL PERFORMANCE REVIEW FOR FY 2010-11

4.1. Background

4.1.1. RInfra-T, in this Petition has sought Annual Performance Review of FY 2010-11 with provisional Truing up of expenditure and revenue for FY 2010-11 based on the actual annual expenditure and revenue as per the audited annual accounts. RInfra-T also submitted reasons for variation in the actual expenses for FY 2010-11, compared with approved expenses for FY 2010-11 in its ARR Order dated September 3, 2010 in Case No. 100 of 2009.

4.1.2. In this Petition provisional Truing up for FY 2010-11, RInfra-T has not proposed sharing of gains/ loss for any of the elements of ARR. Instead, it prayed for approval of the entire actual expenses for FY 2010-11. However, RInfra-T has made separate submissions in regard to the sharing of gains/ losses on account of Interest on Working Capital, praying that the normative interest on working capital ought to be allowed in totality instead of treating it as a efficiency gain as per the Regulation 17.10 (b) read with Regulation 19.1 of the MERC (Terms and Conditions of Tariff) Regulations, 2005. The above stand has also been maintained before the Hon’ble ATE in Appeal No. 203 of 2010 for which Judgment is yet to be pronounced.

4.1.3. The Commission had during the proceedings of the Petition directed RInfra-T to submit the reconciliation statements showing the financial statements of each of the regulated businesses, i.e., RInfra-G, RInfra-T & RInfra-D and other non-regulated business. RInfra-T has submitted the reconciliation statement in above manner which has been referred for approval of APR for FY 2010-11.

4.1.4. The detailed approval by the Commission pertaining to FY 2010-11 is provided in the following sections.

4.2. Provisional Truing Up of O&M expenses for FY 2010-11

4.2.1. Operation and Maintenance (O&M) expenditure comprises Employee expenses, Administrative & General (A&G) expenses and Repair & Maintenance (R&M) expenses. RInfra-T in its Petition submitted that the O&M expenses are those expenses that are essential for maintaining the Transmission network for power evacuation and to ensure supply of reliable and quality power to distribution utilities.

4.2.2. RInfra-T also submitted the detailed reasoning for the deviation in each of these expenses and prayed to the Commission to approve the actual expenditure. RInfra-T's submissions on each of these expenditure heads, and the Commission's ruling on the provisional Truing up of the O&M expenditure heads are detailed in the following sections.

4.3. Employee expenses for FY 2010-11

4.3.1. RInfra-T submitted that after considering the employee expenses capitalized of Rs 5.05 crore, the net actual employee expenses for FY 2010-11 was Rs 10.31 crore against Rs 8.53 crore approved by the Commission in case no. 100 of 2009. R-Infra-T submitted that the increase in employee expenditure with gross employee expenditure of Rs 15.36 crore for FY 2010-11 as against the gross employee expenditure of Rs 13.33 crore for FY 2009-10 was due to following reasons:

a. Increase in number of employees from 172 to 208, net of retirement and resignations. 14 new employees were inducted in the management cadre, while 25 staff level employees for regular maintenance jobs were inducted under employment promotion. Program for educated unemployed training scheme of the Government of Maharashtra.

b. Normal increase in salaries in line with industry standards has resulted in increase in basic salary, HRA, conveyance and other allowances.

c. The wage revision agreement was under consideration and discussion with the employees' union. The same would be effective from FY 2010-11 onwards. Thus, the employee expense also includes a provision of Rs 0.36 crore towards the same.

4.3.2. RInfra-T further submitted that per employee cost amounts to Rs 0.078 crore for FY 2009-10, whereas per employee cost amounts to Rs 0.074 crore (gross employee expenses of Rs 15.36 crore over 208 employees) for FY 2010-11. Thus, on a per employee level, there has actually been a decrease in gross employee expenses in FY 2010-11 vis-à-vis FY 2009-10.

4.3.3. Further, the Commission queried the increase in the staff welfare expenses during

FY 2010-11 against FY 2009-10, RInfra-T replied. that an expenditure of Rs 0.14 crore was incurred as a part of the staff welfare expenses, the details of which are as follows:-

a. Club expenses: New option of club membership was introduced in the CTC structure and the CTC is restructured to get a tax benefit associated with it from the employee perspective. Thus, these costs form part of the staff welfare expenses on the same being preferred by the employees.

b. Diwali gift coupons and uniforms purchased: These were earlier procured centrally for all employees across RInfra. However, with the increasing scale of projects and operations of RInfra-T resulting in the increasing manpower requirement, the same is now procured by RInfra-T for prompt service delivery to its employees.

4.3.4. RInfra-T submitted that apart from the above there was only a nominal increase of 8% in expenditure over FY 2009-10.

4.3.5. Further, in line with the query raised by the Commission in regard to "other allowances in FY 2009-10 as described in the respective section above, RInfra-T provided the break-up for FY 2010-11. The break-up of the other allowances are provided in the table below:-

Table 22: Break-up for "Other Allowances" head for FY 2009-10 (in Rs crore)

Particulars	Amount
Shift Allowance	0.02
Special Personal Allowance	2.67
Long Service Award	0.01
Variable Pay	0.22
Annual PLI	1.39
Retention Bonus	0.36
Total	**4.67**

4.3.6. While the reasons for deviations in the actual employee expenses vis-à-vis approved employee expenses as per the Order in case no. 100 of 2009, the Commission has in the present exercise has approved provisional employee expenses based on the inflationary rate of 8.82% over FY 2009-10 employee expenses approved for FY 2010-11. The truing up of expenses for FY 2010-11 will be undertaken by the Commission subject to prudence check.

4.3.7. The Commission has considered the point to point inflation over CPI numbers for industrial workers (as per Labour Bureau, Government of India) for the period April 2010 to March 2011 to arrive at the inflationary rate of 8.82% for provisional approval of employee expenses. The capitalisation of employee expenses FY 2010-11 has been approved as was submitted by RInfra-T in its Petition. The provisionally approved employee expenses for FY 2010-11 are provided in the table below:-

Table 23: Employee Expenses for FY 2010-11 (in Rs crore)

Sr. No.	Particulars	ARR Order	Actuals	Approved after provisional True Up
1	Gross employee expenses	12.82	15.36	14.51
2	Less: expenses capitalised	4.29	5.05	5.05
3	**Net employee expenses**	**8.53**	**10.31**	**9.46**

4.4. A&G expenses for FY 2010-11

4.4.1. RInfra-T submitted that the actual A&G expenses in FY 2010-11 were Rs 3.48 crore as against Rs 2.83 crore approved by the Commission. R-Infra-T submitted that the increase in the expenditure on account of A&G expenses in FY 2010-11 as against the actual expenditure of Rs 3.04 crore for FY 2009-10 was due to following reasons:

a. Increase in security charges by approx. Rs 0.06 crore. There was an increase in salary of the Guard Board, which is under the control of the Government. The private security agencies are also registered with the Guard Board. Due to the increase in salary of the Guard Board, there was consequential increase in salary of the private security guards, the agencies having been registered with the Guard Board. Thus, salary of the private security guards was also increased which contributed to increase in the security charges for RInfra-T. RInfra-T also attached a sample letter from the private agency for the increase in wages and allowance of guarding personnel to support the claim.

b. Increase in insurance charges of Rs 0.21 crore. This was due to the insurance of the assets capitalized during the FY 2008-09 and FY 2009-10 and the resultant increase in the insurance premium charged by the insurance company.

c. Increase in fees and subscription of Rs 0.04 crore. The same was towards the procuring membership of Doble (Institute specializing in diagnostic test instruments and knowledge service for electric power). RInfra-T explained that Doble Engineering is also helping the electric power industry in improving operations and optimizing system performance.

d. Increase in printing and stationary of Rs 0.03 Crore. The same was necessitated because of the documentation process of IMS and ISO certification undertaken by RInfra-T. IMS and ISO certification was for the improvement of the existing processes and institutionalization of the processes, which has benefited in documentation, enhancement of safety and quality, etc.

e. Increase in vehicle hiring expenses of Rs 0.03 crore was on account of the increase in the fuel rates.

4.4.2. The Commission in the present exercise has approved provisional A&G expenses based on the inflationary rate of 9.34% over FY 2009-10 Truing up A&G expenses. The Truing up of expenses for FY 2010-11 will be undertaken by the Commission subject to prudence check.

4.4.3. The Commission has considered the point to point inflation over CPI for Industrial

Workers and WPI numbers from April 2010 to March 2011 to arrive at 9.34% inflation rate for provisional approval of A&G expenses for FY 2010-11. The Commission has considered a weight of 60% to WPI and 40% to CPI, based on the expected relationship with the cost drivers. The Commission will undertake the final Truing up of A&G expenses for FY 2010-11 based on actual A&G expenses for the entire year subject to prudence check.

4.4.4. The provisionally approved A&G expenses for FY 2010-11 is provided in the table below:

Table 24: A&G expenses for FY 2010-11 (in Rs crore)

Sr. No.	Particulars	ARR Order	Actuals	Approved after provisional True Up
1	Net A&G Expenses	2.83	3.48	3.32

4.5. R&M expenses for FY 2010-11

4.5.1. RInfra-T submitted that the actual R&M expenses in FY 2010-11 was Rs 3.78 crore as against Rs 3.60 crore approved by the Commission. R-Infra-T submitted that the increase in the expenditure on account of R&M expenses in FY 2010-11 as against the actual expenditure of Rs3.26 crore for FY 2009-10 was due to following reasons:

a. Repair work (refurbishment) of NGT -2 at Versova EHV station amounting to Rs 0.20 Crore.

b. Water proofing work was carried out at Aarey & Versova EHV stations to stop water leakage during the monsoon, amounting to approx. Rs 0.10 crore.

c. In keeping with safety norms, emergency exit were created route at offices, amounting to approx. Rs 0.02 crore.

d. In order to cater to the increasing number of employees, basic amenities including sanitation provisions were created, amounting to Rs 0.10 crore.

e. Balance was towards spill over works of FY 2009-10 now carried out in FY 2010-11.

4.5.2. The Commission in the present exercise has approved provisional R&M expenses based on the inflationary rate of 9.68% over FY 2009-10 Truing up R&M expenses.

4.5.3. The Commission has considered an inflation rate of 9.68% for provisional approval of R&M expenses for FY 2010-11.

4.5.4. The Commission will undertake final Truing up for the mentioned expense heads for FY 2010-11 subject to prudence check.

4.5.5. The provisionally approved R&M expenses for FY 2010-11 is provided in the table below:

Table 25: R&M Expenses for FY 2010-11 (in Rs crore)

Sr. No.	Particulars	ARR Order	Actuals	Approved after provisional True Up
1	Net R&M expenses	3.60	3.78	3.58

4.6. Summary of Operation and Maintenance (O&M) expenses

4.6.1. The summary of O&M expenses approved for FY 2010-11 is provided in the table below:

Table 26: O&M expenses for FY 2010-11 (in Rs crore)

Sr. No.	Particulars	ARR Order	Actuals	Approved after provisional True Up
1	Employee expenses	8.53	10.31	9.46
2	A&G expenses	2.83	3.48	3.32
3	R&M expenses	3.60	3.78	3.58

4	**O&M expenses**	**14.96**	**17.57**	**16.36**

4.7. Capital expenditure and Capitalisation for FY 2010-11

4.7.1. RInfra-T submitted that it has incurred an amount of Rs 423.63 crore towards capital expenditure, out of which Rs 230.33 crore was capitalized. Capitalization includes interest & expenses capitalized where interest is capitalized @ 9% as approved by the Commission earlier. The total capitalization included DPR and non-DPR schemes.

4.7.2. RInfra-T provided a brief of the benefits accrued from the assets commissioned under DPR schemes which is provided in the table below:

Table 27: Benefits of Capitalisation during FY 2010-11

Name of the Scheme	Scheme Code No.	Capitalisation amount (Rs crore)	Benefits
220 kV EHV sub-station at Goregaon	RELT/ FY08/11	66.06	Station charged and 33 kV outlets ready to be availed. Enhancement in system flexibility. Transformation capacity increased by 250 MVA
220kV EHV sub-station at Gorai	RELT/ FY08/12	40.40	Station charged and 33 kV outlets ready to be availed. Enhancement in system flexibility. Transformation capacity increased by 250 MVA
220kV EHV sub-station at Saki	RELT/FY08/04	104.82	Station charged and 33 kV outlets ready to be availed. Enhancement in system flexibility. Transformation

Name of the Scheme	Scheme Code No.	Capitalisation amount (Rs crore)	Benefits
			capacity increased by 375 MVA.
Refurbishment of 220kV Transmission lines	RELT/ FY09/04	7.62	Tower foundation stability was increased, Reduction of insulator chattering. Increase in the transmission stability & reliability of the system.

4.7.3. RInfra-T also submitted that it has submitted a comprehensive cost benefit report to the Commission, highlighting present benefits from capex schemes, as shown above for FY 2010-11. It was submitted in the Petition that apart from the aforesaid DPR schemes, there are certain other DPR schemes for which the works are in progress. A brief description of these schemes were provided in the Petition which is provided below:

220 kV EHV sub-station at Borivali

4.7.4. All the statutory permissions including forest approval (being most critical) obtained. GIS building work being done in tandem with MCGM norms of progressive CC. Balance civil work is in full swing at the site. All major equipment orders placed with critical equipments such as 125 MVA transformers received at site are placed on the foundation. Erection work is in progress. 220 kV bays have been installed at MSETCL Borivali.

LILO of MSETCL Boisar – Borivali lines at RInfra-T Ghodbunder EHV station

4.7.5. 220kV cable laying completed between MSETCL tower no. 257 and 220kV RInfra-T Ghodbunder sub-station. GIS foundation work completed and GIS bays received at site.

220kV EHV sub-station at Chembur

4.7.6. Various statutory clearances are received. Civil work is in full swing at Chembur and near completion at Trombay. Major equipment orders have been placed and equipment received. The cable route is through the traffic prone Mahul Road (refinery area) which is primarily utilized for container movement involving crude oil. Also, it is in the proximity of gas and oil pipelines of HPCL and IOC etc. A No Objection Certificate (NOC) for excavation along these utilities for laying 220 kV cables is being pursued.

Land for constructing 220kV EHV Stations

4.7.7. Land DPR was submitted to MERC considering the future requirements of land for various schemes of RInfra taking into cognizance the spiralling nature of land prices and the paucity of land in a city like Mumbai. Land owners with clear titles are demanding prices way beyond the ready reckoner rates. Further negotiation and legal vetting is in process.

220 kV EHV sub-station at Nagari Niwara

4.7.8. The Nagari Niwara EHV scheme would relieve Aarey - Borivali Connectivity and fulfil the supply requirement of shopping malls, residential complexes, etc coming up in the vicinity. Most of the land identified at Nagari-Niwara is with Adivasis or is in Recreation Zone delaying acquisition. Alternative options for substation installation are being explored. Survey for laying the cable between MSETCL Borivali and Nagari Niwara is completed.

4.7.9. The project is scheduled to be commissioned in 2 phases:

a. Cable laying between MSETCL Borivali and RInfra Aarey EHV sub-station.

b. Construction of 220 kV EHV sub-station at Nagari Niwara.

220kV EHV sub-station at Dahisar housing

4.7.10. In western suburbs, especially the area adjoining Dahisar (E), lately the area has registered a very high growth load. To meet the load growth in Dahisar area, 220/ 33 kV GIS station at Dahisar (E) with 220kV connection to Ghodbunder EHV Station is being constructed. Cable survey for this connectivity is completed. The activities regarding the land procurement are in progress.

Security improvement – civil works

4.7.11. In-principle clearance from MERC for the scheme has been obtained on August 23, 2010. Various related activities such as CCTV cameras, raising of compound wall height, installation of motorized gate, etc, is in progress and would be capitalized accordingly.

4.7.12. RInfra-T submitted that apart from the above DPR schemes, there is other miscellaneous capital expenditure under non-DPR carried out in FY 2010-11. Details of these schemes are as follows:

Security measures at Aarey/Versova/Ghodbunder EHV stations

4.7.13. Different steps were taken to upgrade the security of the substations and other assets. These included preliminary works for construction of the compound wall, procurement and placing of concertina coils, systems to increase the monitoring of the security guards' movements and portable cabins for the guards at the sub-stations. To maintain high system reliability and improve it further, numerous miscellaneous activities were undertaken. As a part of this, repair of transformers, refurbishment of 33 kV gantries, procurement of LT energy meters, procurement of spares for the battery set, refurbishment of the existing earthing systems, spares for NGT bushings, storage facilities for oil, etc. was done.

Procurement of testing equipments and maintenance tools

4.7.14. In order to maintain the healthy transmission system, it is required to have adequate testing facilities in place. Old analog meters were replaced with sophisticated digital meters. Equipments with advanced technology such as hotline testers, offline fault detectors, water content measurement meter was procured. Other equipments procured included crimping machine to reduce the hotspots in the system, procurement of binoculars, etc.

Procurement of capital spares

4.7.15. In order to avoid delays in system recovery in case of failure of any equipment, spares of equipment such as relays for 33kV GIS board, spares for circuit breaker, and cooling fans for 100MVA transformer were procured.

Up gradation and addition of capacitor banks

4.7.16. Some of the existing sub-stations of RInfra are located at remote locations where there is high probability of the equipment being damaged by wild animals. Cages at the existing capacitor banks being old and worn out were replaced with newly procured ones.

220kV additional Isolator sets and civil works at EHV stations

4.7.17. To increase the redundancy in the system, an additional isolator was installed. This has facilitated flexibility in transferring loads from one main bus to other main bus and significantly enhances the availability of lines and transformers. Further, miscellaneous civil works were also carried out at various EHV stations.

Interconnection of RInfra system with MSETCL

4.7.18. RInfra-T is connected to the grid at MSETCL Boisar. The prevalent protection system at MSETCL Boisar needed up-gradation for protection of the RInfra-T's Ghodbunder- Versova line. In order to provide the desired level of protection to the lines, installation of constant voltage transformers (CVT) was undertaken at MSETCL-Boisar for which civil works were carried out.

Improvement in communication system (SCADA)

4.7.19. To augment the existing communication system and incorporate additional elements of the RInfra-T network within the purview of SCADA, additional equipment was procured. These included spare transducers for SCADA, SCADA for double isolators, spare MFMs for SCADA, SCADA FOTE switch and GECOD Communication interface.

4.7.20. Further, RInfra-T submitted that the detailed break-up of the capital expenditure and capitalisation is provided in Form 4.4 of the financial model and prayed to the Commission to approve the capital expenditure & capitalisation as submitted.

4.7.21. The total capital expenditure and capitalization for FY2010-11 as submitted by RInfra-T is provided in the table below:

Table 28: Capital expenditure and Capitalisation for FY 2010-11 submitted by RInfra-T (in Rs crore)

Particulars	Classification	ARR Order	Actuals
Capital Expenditure	DPR	NA	417.65
	Non-DPR	NA	5.98
	Total	NA	423.63
Capitalisation	DPR	NA	223.81
	Non-DPR	NA	6.52
	Total	**258.99**	**230.33**

4.7.22. The Commission scrutinised the submissions made by RInfra-T for cost benefit analysis, cost over-run, time over-run and respective reasons for delay.

4.7.23. The details of few of the schemes which had time over run were analysed by the Commission, the details of which are provided in the section 3.7.15 above. However, there was no cost over-run claimed for these schemes by RInfra-T.

4.7.24. Further, as regards approval of capitalisation during a year, the Commission in its previous APR Order had made following observations:

a. The Commission has held that the total capital expenditure and capitalization on Non-DPR schemes in any year should not exceed 20% of that for DPR schemes during that year.

b. In the absence of documentary evidence that the stated purpose and objective of the Capex schemes have been achieved, the Commission had instituted a principle for restriction of the capitalization considered for the purposes of determination of ARR and tariff. Once the utilities submitted the necessary justification to prove that the scope and objective of the Capex scheme had been achieved as projected in the DPR, the same were required to be considered in the future Orders.

4.7.25. But the Commission observed that the capitalisation for Non-DPR schemes vis-à-vis DPR schemes for FY 2010-11, the capitalisation for Non DPR schemes did not cross the limit of 20% of that for DPR schemes. Additionally, in regard to the established benefits vis-à-vis the benefits projected and achievement of the scheme's purpose and objective, RInfra-T had already submitted a comprehensive cost benefit report, highlighting present benefits from Capex schemes to the Commission.

4.7.26. Based on the above submissions made by RInfra-T, the Commission has analysed the actual benefits accrued and the benefits projected of various schemes capitalised and the same has been considered while approving the capitalisation for FY 2010-11. Accordingly, approved capitalisation for FY 2010-11 is summarised in the following table:

Table 29: Capitalisation for FY 2010-11 (in Rs crore)

Particulars	ARR Order	Actuals	Approved after provisional True Up
DPR Schemes	NA	223.81	223.81
Non-DPR Schemes	NA	6.52	6.52
Total Capitalisation	**258.99**	**230.33**	**230.33**

4.8. Depreciation for FY 2010-11

4.8.1. The Commission in its earlier Order had permitted depreciation to the extent of Rs 15.66 crore for FY 2010-11, which amounted to 2.73% of average of opening GFA of Rs 444.83 crore and closing GFA of Rs 703.82 crore for FY 2010-11. The depreciation rates were considered as specified under MERC (Terms and Conditions of Tariff) Regulations, 2005.

4.8.2. RInfra-T submitted that depreciation has been claimed on opening GFA and also on the assets added during the year (proportionate on actual date of addition). It was submitted that the Commission in its order on RInfra-T's APR Petition for FY

2009-10, permitted depreciation on assets projected to be added during the financial year 2010- 11, in addition to the opening balance. Hence, the difference between the depreciation permitted by the Commission for FY 2010-11 in the referred order of Rs 15.66 crore versus the actual depreciation of Rs 10.83 crore is on account of lesser than allowed capitalization during FY 2010-11 as well as due to actual date of capitalization being different from the mid-point estimation of capitalization in FY 2010-11 considered by RInfra-T in the APR Petition and permitted by the Commission.

4.8.3. Further, RInfra-T submitted that the depreciation for FY 2010-11 has been calculated as per the rates provided in the regulations and also submitted that it has not claimed any advance against depreciation for FY 2010-11. It was also confirmed that the depreciation has not been claimed beyond 90% of the asset value. The detailed schedule of fixed assets and depreciation for FY 2010-11 was provided in Form 3 of the financial model.

4.8.4. RInfra-T submitted that the actual depreciation in FY 2010-11 was Rs 10.83 crore, at an overall depreciation rate of 1.96 % corresponding to the average of opening and closing GFA of Rs 552.61 crore, and requested the Commission to allow the actual depreciation expenses after Truing up.

4.8.5. The Commission after analysing the above submissions considered asset addition of Rs 230.33 crore for FY 2010-11, equivalent to the approved capitalisation for FY 2010-11 provided in table 29 above. The Commission, for provisional Truing up of the depreciation for RInfra- T for FY 2010-11, adopted the same methodology as was adopted in case no. 100 of 2009.

4.8.6. Depreciation was allowed on opening GFA as well on the assets added during the year based on a depreciation rate of 1.96% as was adopted by RInfra-T in the Petition. The depreciation rate was applied on the average of opening balance and closing balance of GFA for FY 2010-11 to arrive at the approved depreciation. The Commission points out that the opening & closing balances of GFA considered were different from RInfra-T's claim. The reason for the difference was due to the revision in approved capitalisation for FY 2009-10, its consequent impact on the closing balance of GFA of FY 2009-10 and consequently, a cascading effect for the following year. Hence, the variation between approved Depreciation and RInfra-T's claim. Depreciation approved by the Commission as per the above methodology is provided in the table below:

Table 30: Depreciation for FY 2010-11 (in Rs crore)

Sr. No.	Particulars	ARR Order	Actuals	Approved after provisional True Up
1	Opening GFA	444.83	437.45	436.44
2	Depreciation	15.66	10.83	10.81
3	Depreciation Rate	2.73%	1.96%	1.96%
4	Closing GFA	703.82	667.77	666.77
5	AAD	-	-	-
6	**Depreciation including AAD**	**15.66**	**10.83**	**10.81**

4.9. Interest expense for FY 2010-11

4.9.1. RInfra-T submitted that for the purpose of calculating interest on loan and return on equity, a normative debt equity ratio of 70:30 is considered in accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005. It was submitted that a normative loan repayment tenor of 10 years has been considered for loans drawn prior to FY 2006-07 and 20 years for loans drawn during FY 2007-08 and onwards.

4.9.2. RInfra-T submitted that interest is computed considering 70% of total capitalization (works capitalized + interest capitalized + expenses capitalized) as normative loan capital. It was submitted that during FY 2010-11, total capitalization was Rs 230.33 crore and a normative interest rate of 10% per annum was considered towards interest expenses for projects initiated during FY 2004-05 and FY 2005-06. Further, a normative interest rate of 8% per annum has been considered towards interest expense for projects initiated during FY 2006-07 and FY 2007-08 and 9% per annum for projects initiated during FY 2008-09 and FY 2009-10. RInfra-T submitted that for FY 2010-11, the Commission has permitted a normative interest rate of 9% and the same has been considered. RInfra-T submitted that details of interest calculation and normative repayments are shown in Form 4, Form 4.1 and Form 4.2 of financial model.

4.9.3. The Commission scrutinised the above referred forms to analyse the interest expense submissions of RInfra-T. The Commission observed that due to the variation in the outstanding loan, for loans drawn prior to FY 2006-07, drawn during FY 2008-09 and loans corresponding to approved capitalisation for FY 2009-10 as against RInfra-T's claims, there were variations for loan schedules in FY 2010-11. The Commission approved the revised loan schedule as per the methodology specified by RInfra-T and adopted by the Commission in the previous years.

4.9.4. The opening balance of loans at the beginning of the year (FY 2010-11) is taken as the closing balance of the previous year (FY 2009-10) and additional loans considered as 70% of the approved capitalisation as specified in Table 29 above. Normative loans assumed to be drawn during FY 2010-11 have been considered with interest rate of 9% and a loan tenor of 20 years.

4.9.5. Further, the MERC (Terms and Conditions of Tariff) Regulations, 2005 provides for normative repayment for the respective year to be equal to the amount of depreciation on the fixed asset to which such loan relates. The relevant extract of the referred Regulations is provided below:

"48.2 The loan capital calculated using the normative debt: equity ratio under Regulation 47 above shall be assumed to be repaid each year based on a normative repayment schedule:

Provided that the amount of such normative repayment for a year shall be equal to the amount of depreciation on the fixed asset to which such loan relates:

Provided further that where the outstanding normative loan balance is less than the amount of normative loan repayment calculated as above, the repayment shall be assumed to be equal to the outstanding normative loan balance and no further amount shall be permitted on account of such loan:

Provided also that all normative repayments are assumed to be made on

***September 30th of each financial year.**"{Emphasis added}*

4.9.6. Therefore, the repayments for the loans have been considered in accordance with the above cited Regulations and the outstanding loans as well as interest expense computed. The interest expenses approved for FY 2010-11 is provided in the following table:

Table 31: Interest expense for FY 2010-11 (in Rs Crore)

Sr. No.	Particulars	APR Order	Actuals	Approved after provisional Truing Up
1	Opening balance of loan	98.28	93.27	87.25
2	Additions	181.29	161.23	161.23
3	Repayment	(14.90)	(5.69)	(10.81)
4	Closing balance of loan	264.68	260.19	259.29
5	**Net Interest expenses**	**16.33**	**15.02**	**14.26**
6	Overall Interest rate	9.00%	8.50%	8.23%

4.10. Interest on working capital for FY 2010-11

4.10.1. RInfra-T submitted that the working capital requirement has been calculated as per regulation 50.6.1 of MERC (Terms and Conditions of Tariff) Regulations, 2005. It submitted that the Commission in its order dated 3 September , 2010 in para 5.7 has stated as follows:

"The Commission has considered the interest rate as 11.75% in accordance with the short-term Prime Lending Rate of State Bank of India prevalent at the time of filing the APR Petition for FY 2009-10 viz. December 23, 2009……"

4.10.2. RInfra-T submitted that the same has been considered for calculation of interest on working capital. The sum of book value of stores has been considered based on month wise inventory and averaged out for the full financial year. Based on the norms provided in MERC (Terms and Conditions of Tariff) Regulations, 2005, the interest on working capital for FY 2010-11 is computed. RInfra-T provided the computation in Form 4 of the financial model.

4.10.3. The Commission adopted the interest rate of 11.75% while approving the ARR for FY 2010-11 and computed working capital requirements based on the norms specified in the MERC (Terms and Conditions of Tariff) Regulations, 2005. However, efficiency gains and losses would be computed as per the principles enunciated in section 3.10 above during the Truing Up exercise for FY 2009-10. Interest on working capital thus approved by the Commission is provided in the table below:

Table: 32 Interest on working capital for FY 2010-11 (in Rs crore)

Sr. No.	Particulars	ARR Order	Normative	Approved after provisional True Up
1	Interest on Working Capital	1.33	1.65	1.64

4.11. Contribution to contingency reserves for FY 2010-11

4.11.1. RInfra-T submitted that the contribution to contingency reserves for FY 2010-11 has been computed at 0.25% of opening GFA in accordance with the MERC (Terms & Conditions of Tariff) Regulations, 2005. The contribution to contingency reserves submitted by RInfra-T is Rs 1.09 crore, which is lower than the amount of Rs 1.11 crore as approved by the Commission in the APR Order.

4.11.2. In response to the query raised by the Commission, RInfra-T submitted that the opening balance of Contingency reserve as on April 1, 2009 was Rs 3.73 crore. The Commission observes that the same along with addition of contingency reserves for FY 2009-10 and 0.25% of Opening GFA claimed by RInfra-T is within the limit of 5% of the original cost of fixed asset in FY 2010-11 as required under Regulation 50.7.1 of the MERC (Terms and Conditions of Tariff) Regulations, 2005.

4.11.3. The Commission has also considered the contribution to contingency reserves at

0.25% of opening GFA for FY 2010-11. Accordingly, for the purpose of provisional Truing up of expenses for FY 2010-11, the Commission has considered contribution to contingency reserve of Rs 1.09 crore as shown in the following table.

Table 33: Contribution to contingency reserve for FY 2010-11 (in Rs crore)

Sr. No.	Particulars	ARR Order	Actuals	Approved after provisional True Up
1	Contribution to contingency reserve	1.11	1.09	1.09

4.12. Return on Equity (RoE) for FY 2010-11

4.12.1. RInfra-T submitted that return at the rate of 14% is allowed on the amount of approved equity capital at the beginning of the year plus 50% of the normative equity portion for the assets capitalized during the year as per the MERC (Terms and Conditions of Tariff) Regulations, 2005. It was submitted that following the same principle, a return on equity of Rs 28.99 crore has been considered for FY 2010-11 by RInfra-T against the approved RoE of Rs 29.90 crore. It was submitted that this is lower than that approved by the Commission during APR of FY 2009-10, due to lower than approved capitalization.

4.12.2. The Commission adopted the same principle provided above which is also in accordance with the principles specified by MERC (Terms and Conditions of Tariff) Regulations, 2005. The Commission while computing RoE considered approved equity at the beginning of the year as Rs 172.19 crore as against claim of Rs 172.49 crore. This variation was due to a variation in capitalisation for FY 2009-10 and its consequent cascading effect on the subsequent year’s opening balance. Apart from this, the addition to equity was approved as Rs 69.10 crore for FY 2010-11 as claimed by RInfra-T.

4.12.3. The Commission computed the RoE for FY 2010-11 as 14% on the approved opening equity and 50% of the equity added during the year. Approved RoE for FY 2010-11 is provided in the table below:

Table 34: Return on Equity (RoE) for FY 2010-11 (in Rs crore)

S. No.	Particulars	ARR Order	Actuals	Approved after provisional True Up
1	Regulatory Equity at the beginning of the year	174.71	172.49	172.19
2	Equity portion of assets capitalised during year	77.70	69.10	69.10
3	Regulatory Equity at the end of the year	252.41	241.59	241.29
4	Return on Regulatory Equity at the beginning of the year	24.46	24.15	24.11
5	Return on 50% of Equity portion of capital expenditure capitalised during the year	5.44	4.84	4.84
6	**Total Return on Regulatory Equity**	**29.90**	**28.99**	**28.94**

4.13. Non-Tariff income & Other Business income for FY 2010-11

4.13.1. RInfra-T submitted that the actual non-tariff income for FY 2010-11 was Rs 2.96 crore as against Rs 0.36 crore approved by the Commission, which was attributable to the following reasons:

a. Rs 1.71 crore pertains to liquidated damages received from the vendors on account of delay in the scheduled delivery date of various equipment.

b. Rs 0.68 crore pertains to realization of exchange gain arising from the difference in exchange rate at the time of booking of the material and the date on which the actual payment is made.

c. Rs 0.26 crore pertains to sale of scrap i.e. packing materials used in received goods. The amount of such packing material is not capitalized and hence the revenue from sale of such scrap has been considered as non-Tariff income.

d. The opening balance of Contingency reserve as on April 1, 2010 was Rs 4.74 crore and Rs 0.28 crore pertains to interest on contingency reserve investment for FY 2010-11.

4.13.2. In reply to queries raised by the Commission regarding details of Rs 0.26 crore from sale of scrap RInfra-T provided a breakup of various components that contributed to income. Further, in reply to the Commission's query regarding realisation of exchange gain of Rs 0.68 crore, RInfra-T provided following details:

Table 35: Details of realisation of exchange gain for FY 2010-11 (in Rs crore)

Description	Amount	Remark
Forex fluctuations in settlement of Creditors	0.09	Forex Gain / (Loss) due to rate difference in material receipt date and actual payment date
Forex fluctuations on revaluation of Advance paid to Foreign Suppliers	(0.47)	Forex Gain / (Loss) due to rate difference in advance paid date and year end date
Forex fluctuations on revaluation of Foreign Creditors	1.05	Forex Gain / (Loss) due to rate difference in material receipt date and year end date.
TOTAL	**0.68**	

4.13.3. RInfra-T further submitted that it has not undertaken any "other business" during the year in question and consequently there is no income from other business

4.13.4. The Commission after scrutinising the details of the various components of the non-tariff income & other business income approved as claimed by RInfra-T. The approved non-Tariff income is provided in the following table.

Table 36: Non-Tariff income for FY 2010-11 (in Rs crore)

Sr. No.	Particulars	ARR Order	Actuals	Approved after provisional True Up
1	Non-tariff Income	0.36	2.96	2.96

4.14. Income Tax for FY 2010-11

4.14.1. RInfra-T submitted that the Income Tax allowance has been determined after grossing up allowable Return on Equity by corporate tax rate. The income tax calculation as submitted by RInfra-T is as follows:

Table 37: Income Tax for FY 2010-11 (in Rs crore)

S. No.	Particulars	Tariff Order dated 03.09.2010	Petitioned
1	Return on Equity	29.90	28.99
2	Income Tax rate in %	-	33.22%
3	**Profit Before Tax (PBT)**	**29.9**	**43.41**
4	Add: Depreciation as per ARR	15.66	10.83
5	Less: Depreciation as per Income Tax	(48.43)	(36.17)
6	Add: Normative Interest on long term loans	16.33	15.02
7	Add: Normative Interest on working capital	-	1.65
8	**Total Profit**	**13.45**	**34.73**
9	Income Tax Rate	33.22%	33.22%
10	**Income tax on total profit**	**4.47**	**11.54**

4.14.2. Further, RInfra-T drew reference to the Hon'ble ATE's Judgment dated February 14, 2011 in appeal no. 174 of 2009. The relevant extract is provided below:

"The issue of income tax relates to the fact that the State Commission deals with regulatory accounts of each licensed business. The State Commission is required to adjust the regulatory accounts' income to the taxation accounts. This could be done in 2 alternative methods. One by Profit Before Tax method and second by the method of Return on Equity. Profit before Tax method is followed while truing up as details of all the elements are available by then. The second method is followed while submitting the details for APR or for tariff determination, as all adjustment details are not available at the point of submission....."

4.14.3. For the purpose of estimating the income tax for FY 2010-11, as discussed in Section 3.14, the Commission is of the opinion that it is not an objective of any of the authorities to establish method but the objective is to determine the actual tax impact on the business of petitioner and allow that as expense. The method comes in play only to determine this actual tax impact as means to achieve the said fundamental goal and method itself is not the end goal in itself. From the limited records submitted prima-facie there are carried forward losses in some segments, MAT payments and MAT credit utilization all of which have tax impact which cannot be calculated without details called for.

4.14.4. The objective at the APR stage is to assess the gap between actual and provisional revenue sanctioned at ARR stage based on unaudited/ un-adopted results. APR is an interim stage where the petitioner is supposed to submit all the data available with them on actuals but it is still recognized that the final figures may vary on audit/ final adoption. The mechanism does not absolve petitioner from furnishing actual data at APR stage on an unaudited/ un-adopted basis. In fact there is clear presumption that only those aspects where petitioner can demonstrate the variations from ARR stage based on actual data available would form part of APR and all other aspects where actual data is yet to be frozen would be considered at final Truing up stage which is in fact meant for those aspects. From the limited records submitted prima-facie there are carried forward losses in some segments, MAT payments and MAT credit utilization all of which have tax impact which cannot be calculated without details called for.

4.14.5. It is clear that Licensee's insistence on assuming that the methodology is end goal is misplaced and denial of information based on such self presumption is unwarranted.

4.14.6. As can be seen from Section 3.14 of this Order, there has been fair amount of follow up on the issue of income tax with the licensee. Considering the fact that out of information sought; statement of computation of tax and income tax return are really mandatory statutory filings and the segmental break up is obviously the base on which petitioner would have staked their claim for reimbursement; inability of the licensee to produce these evidentiary documents is incomprehensible.

4.14.7. Further from the mail dated 11th February, 2012 as quoted in paragraph 3.14.17 above, it is apparent that the petitioner has gone to the extent of advising the Commission on course of action rather than to take efforts for submission of the relevant information sought. The approach of petitioner clearly appears to be stonewalling the fact finding on tax issue and thereby prima-facie presumption is against the petitioner on that count. However in spite of this apparently defiant attitude, to be just and fair to the petitioner considering that they may have some issues in record retrieving, the Commission is of the opinion that the licensee should claim relevant income tax during the final Truing up stage after the licensee is able to produce the information sought for.

4.14.8. The summary of income tax approved for FY 2010-11 by the Commission is provided below:

Table 38: Income Tax for FY 2010-11 (in Rs crore)

Sr. No.	Particulars	APR Order	Actuals	Approved after provisional Truing Up
1	Income Tax	4.47	11.60	-

4.15. Revenue from Transmission charges

4.15.1. RInfra-T submitted that the Commission had approved the transmission tariff for InSTS for FY 2009-10 in case no. 155 of 2008 on May 28, 2009, effective from June 1, 2009 onwards. Accordingly, RInfra-T's revenue requirement was approved at Rs 4.75 crore per month. The Commission had approved the transmission tariff for InSTS for FY 2010-11 in case no. 120 of 2009 on September 10, 2010, effective from September 1, 2010 onwards. Since the InSTS Tariff for FY 2010-11 was made effective from September 1, 2010 onwards, RInfra-T continued to receive Tariff, from April to August 2010, as per the May 28, 2009 Order.

4.15.2. Therefore, RInfra-T submitted that the revenue earned for FY 2010-11 is as follows:

a. From April to August 2010: Rs 4, 75, 16, 666 per month, for 5 months i.e. Rs 23.75 crore.

b. From September 2010 till March 2011: Rs 7, 72, 91, 666 per month, for 7 months i.e. Rs 54.11 crore.

4.15.3. Thus, RInfra-T submitted that the total revenue earned for FY 2010-11 is Rs 77.86 crore.

4.15.4. The Commission, for the purpose of provisional Truing up for FY 2010-11, has considered the actual revenue as submitted by RInfra-T. The approved revenue from transmission charges for FY 2010-11 is provided in the table below:

Table 39: Revenue from Transmission charges for FY 2010-11 (in Rs crore)

Sr. No.	Particulars	ARR Order	Actuals	Approved after provisional True Up
1	Revenue from Transmission Charges	92.75	77.86	77.86

4.16. Incentive for Higher system availability for FY 2010-11

4.16.1. RInfra-T has claimed an incentive for achieving annual availability beyond target availability of 98% as stipulated under MERC (Terms and Conditions of Tariff) Regulations, 2005. RInfra-T provided the computation for incentive in the Petition and requested recovery of the same from InSTS charges for FY 2011-12.

4.16.2. In the Commission’s view, since the present exercise is for APR for FY 2010-11, the incentive for higher system availability cannot be considered at this stage.

However, incentive for higher system availability would be considered during the Truing up exercise for FY 2010-11.

4.17. Aggregate Revenue Requirement for FY 2010-11

4.17.1. Based on analysis of each element discussed above, the Aggregate Revenue Requirement of RInfra-T for FY 2010-11 as approved by the Commission vis-à-vis claimed by RInfra-T in the Petition is given in the following table.

Table 40: Summary of Aggregate Revenue Requirement for FY 2010-11 (in Rs crore)

Sl. No.	Particulars	ARR Order	Claimed by RInfra-T	Approved after provisional True Up
A	**Expenditure**			
1	Operations & Maintenance Expenses	14.96	17.57	16.36
1.1	Employee Expenses	8.53	10.31	9.46
1.2	Administration & General Expenses	2.83	3.48	3.32
1.3	Repair & Maintenance Expenses	3.60	3.78	3.58
2	Depreciation including advance against depreciation	15.66	10.83	10.81
3	Interest on long term loan capital	16.33	15.02	14.26
4	Interest on Working Capital	1.33	1.65	1.64
5	Other Expenses	-	-	-
6	Income Tax	4.47	11.54	-
7	Contribution to contingency reserves	1.11	1.09	1.09
	Total Expenditure	**53.86**	**57.70**	**44.16**

Sl. No.	Particulars	ARR Order	Claimed by RInfra-T	Approved after provisional True Up
B	**Return on Equity**	**29.90**	**28.99**	**28.94**
C	**Aggregate Revenue Requirement**	**83.76**	**86.69**	**73.10**
	Add: Incentive on transmission availability in FY 2008-09	0.88	0.88	0.88
	Add: Tax on availability Incentive	0.30	0.30	-
	Add: Impact of Hon‘ble ATE judgement in FY 2006-07	0.18	0.18	0.18
	Add: Impact of Hon’ble ATE judgement in FY 2007-08	0.27	0.27	0.27
D	**Aggregate Revenue Requirement from Transmission Tariff**	**85.39**	**88.32**	**74.43**
	Add: Revenue Gap from FY 2009-10	**7.72**	**9.67**	**2.81**
	Total ARR	**93.11**	**97.99**	**77.24**
E	**Revenue**			
	Revenue from Transmission Charges	92.75	77.86	77.86
	Non Tariff Income	0.36	2.96	2.96
	Total Revenue	**93.11**	**80.82**	**80.82**
F	**Cumulative Revenue Gap/ (Surplus)**	**-**	**17.17**	**(3.58)**

4.17.2. Based on provisional truing up of various elements for FY 2010-11 as discussed in above paragraphs, the Aggregate Revenue Requirement for FY 2010-11 works out to Rs 74.43 crore. The cumulative revenue gap for FY 2009-10 of Rs 2.81 crore is added to this ARR for FY 2010-11. Considering the revenue from transmission charges of Rs 77.86 crore and Non-Tariff Income of Rs 2.96 crore, the Commission approved a cumulative revenue surplus of Rs 3.58 crore to be adjusted in the subsequent years from TSUs.

4.18. Transmission Tariff for FY 2010-11

4.18.1. The Commission has issued its Order in respect of the Intra-state transmission pricing framework in case no. 58 of 2005 on June 27, 2006. The ARR and the resultant revenue surplus as approved by the Commission for RInfra-T for FY 2010-11 in this Order will be used to determine the adjustment to the ARR of the complete Intra-State Transmission System of all transmission licensees in the State for FY 2010- 11. Hence, in this Order, the Commission has only determined the ARR and revenue gap/ surplus for RInfra-T for FY 2010-11 and not determined any transmission Tariff for RInfra-T. Revenue gap/ surplus of RInfra-T for FY 2010-11 will be as per the Tariff to be determined by the Commission, separately under its Order in the matter of intra-state transmission pricing framework.

4.19. Applicability of Order

4.19.1. Subject to the Section 4.18 above, this Order shall come into force with immediate effect.

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

Appendix 1

List of Persons who attended the Technical Validation Session on 7th September 2011

S. No.	Name
1	Shri R. R. Mehta
2	Shri Kapil Sharma
3	Shri Vivek Mishra
4	Shri Vikas Sonar
5	Shri Pravin G. Phokmare
6	Shri Rohan Kale
7	Shri M. S. Rao
8	Shri Amirkumar Samant
9	Shri P. S. Pandey
10	Shri Himanshu Mishra
11	Shri Bhuvanesh Mehta
12	Shri Ganesh B.
13	Shri Rakshpal Abrol

List of Persons who attended the Technical Validation Session on 28th September 2011

S. No.	Name
1	Shri R.R.Mehta, R Infra
2	Shri P.S.Pandya, R Infra
3	Shri Kapil Sharma, R Infra
4	Shri Vivek Mishra, R Infra
5	Shri Narendra Manja, R Infra
6	Shri Dinesh Mantri, R Infra
7	Shri Anup Ghosh, R Infra
8	Shri Sharad Nath, R Infra
9	Shri A.Vijay, R Infra
10	Shri Anvesh Jain, R Infra
11	Shri Ganesh. B, R Infra
12	Shri P.G.Phokmare, R Infra
13	Shri Bhuvanesh Mehta,R Infra
14	Shri Amirkumar Samant, R Infra
15	Shri Rohan Kale, R Infra
16	Shri Vikas Sonar, R Infra
17	Dr. S.L.Patil,TBIA, Consumer Representative
18	Dr. Ashok Pendse,TBIA, Consumer Representative

S. No.	Name
19	Shri Rakshpal Abrol, Consumer Representative
20	Shri K. Sridhar, R Infra
21	Smt Varsha Nijsure, R Infra
22	Smt Vijaya Bhatwadkar, R Infra

List of Persons who attended the Technical Validation Session on 31st October 2011

S. No.	Name
1	Shri R.R. Mehta
2	Shri P.S. Pandya
3	Shri Vivek Mishra
4	Shri Mohan Limaye
5	Shri Arunabha Saha
6	Shri Rakshpal Abrol
7	Shri Amirkumar Samant
8	Shri S.G. Huprikar
9	Shri P.G.Phokmare
10	Shri N. Ponrathnam

Appendix 2

Appendix 2A: List of Objectors who participated in the Public Hearing held on 14th December 2011

S. No.	Name of Objector
1	Shri Rakshpal Abrol
2	Shri N. Ponrathanam
3	Shri George John

Appendix 2 B: List of persons who participated in the Public Hearing held on 14th December 2011

S. No.	Name of Person
1	Shri Vivek Mishra (RInfra)
2	Shri Ashok Pendse, CR
3	Shri Raksh Pal Abrol, CR
4	Shri Sandeep N. Ohri, CR
5	Shri N. Ponarathanam, CR
6	Shri Shujaulhad
7	Shri George John
8	Shri Jude G. Tandon
9	Shri Sachin H. Parab