

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 44 of 2009**

**In the matter of**  
**BEST Undertaking's Petition seeking review of APR**  
**Order dated June 15, 2009 in Case No. 118 of 2009**

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

**ORDER**

**15<sup>th</sup> December, 2009**

The Brihanmumbai Electric Supply and Transport Undertaking (BEST) filed a Review Petition on July 29, 2009 seeking review of the Commission's Order dated June 15, 2009 in Case No. 118 of 2008 in respect of Truing up for FY 2007-08, Annual Performance Review for FY 2008-09 and Aggregate Revenue Requirement (ARR) and Tariff for FY 2009-10 under Regulation 85 of the Maharashtra Electricity Regulatory Commission (MERC) (Conduct of Business) Regulations, 2004.

2. In the Petition, BEST prayed as under:
- a. *“Correct the power purchase cost for FY 2009-10*
  - b. *Correct the revenue from retail tariff for FY 2007-08 after considering the power factor incentive of Rs. 8.16 crores paid to the consumers.*
  - c. *Correct the sharing of gains under A & G expenses for FY 2007-08.*
  - d. *Review the matter of interest on long term loan or in the alternative consider 30% normative equity under ROE calculation for F.Y. 2007-2008.*

- e. *Review the matter of actual interest on working capital by relaxing the Regulation No. 17.6.2. since BEST is a local authority.*
- f. *Review the matter of calculation of interest on average balance of contingency reserved investment.”*

3. BEST submitted that it was procuring power from the Tata Power Company – Generation Business (TPC-G) with whom BEST has a long term Power Purchase Agreement (PPA). BEST submitted that the Commission had issued separate Tariff Orders for BEST and TPC-G. BEST added that there were certain defects/errors in the APR Order for BEST in Case No. 118 of 2008, as summarised below:

**Energy availability and power purchase cost for purchase from Unit 8 of TPC-G**

4. BEST submitted that the Commission, in its Order dated June 15, 2009 (Case No. 118 of 2008) stipulated as under:

*“As regards the purchase from TPC-G for FY 2009-10, the Commission observed that though BEST has considered the cost as projected by TPC-G in its APR Petition in Case No.111 of 2008, however, it has not considered the energy generation as projected by TPC-G from existing stations. Moreover, BEST has also not considered the energy availability from Unit-8 as well as the cost of the same during FY 2009-10. Considering the fact that Unit 8 has been commissioned on March 31, 2009, the Commission has also considered the impact of the energy availability from Unit 8 considering the capacity share of BEST.*

*For estimating the quantum and cost of power purchase from TPC-G’s existing stations and Unit 8 during FY 2009-10, the Commission has considered the net generation and tariff approved by the Commission in its Order dated May 28, 2009 in Case No.111 of 2008 on TPC-G’s APR Petition for FY 2008-09. Considering the fact that the tariff for FY 2009-10 for generating stations of TPC-G is applicable from June 1, 2009, the Commission has considered the fixed and energy charges for 10 months on the basis of charges approved in the Order dated May 28, 2009 in Case No. 111 of 2008, and considered the fixed charges and energy charges for 2 months on the basis of charges approved for FY 2008-09 in the Order dated April 02, 2008 in Case No.68 of 2007.*

The summary of the approved quantum and cost of power purchase by BEST from TPC-G for FY 2009-10 is given in the following Table:

**Quantum & Variable Cost for Purchase of Power from TPC-G in FY 2009-10:**

<i>Particulars</i>	<i>Quantum</i>	<i>Variable Cost</i>
	<i>MU</i>	<i>Rs. Crore</i>
<i>Unit-5, 6 &amp; 7</i>	<i>4,002.99</i>	<i>1353.17</i>
<i>Unit-4</i>	<i>32.47</i>	<i>17.64</i>
<i>Hydel</i>	<i>671.69</i>	<i>122.58</i>
<i>Unit-8</i>	<i>725.55</i>	<i>76.18</i>
<b><i>Total</i></b>	<b><i>5,432.72</i></b>	<b><i>1,569.57</i></b>

BEST submitted that as observed from the above Table, total variable cost of Rs. 1569.57 Crore has been approved for a total purchase of 5432 MU for from TPC-G. BEST submitted that out of above variable cost, Rs. 76.18 Crore has been approved for 725.55 MU for power purchase from Unit 8 and the average variable cost of purchase from Unit 8 works out to Rs.1.05 /kWh.

5. BEST further submitted that the Commission, in its Order dated May 28, 2009 (Case No. 111 of 2008) in the matter of APR Petition of TPC-G, approved the variable cost for Unit 8 as Rs.1.75/kWh. BEST added that normally, the variable cost per unit approved in TPC-G's APR Order in Case No. 111 of 2008 and the variable cost of energy approved in BEST's APR Order (Case No. 118 of 2008) towards power purchase from TPC-G by BEST should be same. Accordingly, BEST submitted that there appears to be an error in either of the Tariff Orders.

6. BEST submitted that the difference of 70 Paise/kWh in power purchase from Unit 8 (i.e., Rs. 1.75/kWh – Rs. 1.05/ kWh) for the approved purchase of 725.55 MU has resulted in understatement of the Aggregate Revenue Requirement of BEST for FY 2009-10 by Rs. 50.79 Crore.

7. BEST further submitted that the Commission, in BEST's APR Order, has stipulated the energy availability in MU from Unit 8 of TPC-G by considering the capacity share of BEST. However, net generation from Unit 8 has not been mentioned in the Commission's APR Order for TPC-G. As a result, BEST was unable to reconcile the quantum of units allocated to BEST from Unit 8 based on the

Commission's Order vis-à-vis the power purchase agreement between BEST and TPC-G.

8. BEST further submitted that in BEST's APR Order, the Commission has stipulated as under:

*“The existing FAC Charge has been brought to zero, on account of the adoption of the existing fuel costs for projection of the fuel expenses. In case of any variation in the fuel prices with respect to these levels, BEST will be able to pass on the **corresponding** increase to the consumers through the existing FAC mechanism, subject to the stipulated ceiling of 10% of average energy charges, which works out to 59.6 paise/kWh.”(emphasis added)*

BEST stated that on account of difference between the approved variable cost for Unit 8 in TPC-G's APR Order and BEST's APR Order, there would be a component of Fuel Adjustment Cost (FAC) charge in the tariff to be levied to its consumers, which is contrary to the above statement of the Commission that that FAC had been set to zero.

**Inclusion of power factor incentive in Revenue from retail tariff for FY 2007-08**

9. BEST submitted that in BEST's APR Order, the Commission has stated,

*“The net revenue entitlement for BEST for FY 2007-08 works out to Rs. 2554.73 Crore, as compared to the revenue requirement of Rs. 2600.67 Crore allowed to BEST in the APR Order dated June 6, 2008.*

*Further, total revenue from retail tariff after final true-up for FY 2007-08 amounts to Rs 2328.94 Crore. Accordingly, there is a revenue gap of Rs 225.79 Crore for FY 2007-08 after final true-up for FY 2007-08...”*

BEST submitted that the Commission has considered revenue from retail tariff for FY 2007-08 as Rs. 2328.94 Crore, after including the power factor incentive of Rs. 8.16 Crore, which has been paid to consumers, instead of Rs. 2320.78 Crore as mentioned by BEST under Section 7 'Revenue Gap' of BEST's APR Petition (refer page 111 of the Petition). BEST added that there was an oversight on BEST's part while submitting the APR Formats, wherein the figure shown under the column 'Total

Revenue (in Rs Crore)' in the Format F13 (for FY 2007-08) was Rs. 2320.78 Crore, which was actually the revenue after deducting the power factor incentive from the total revenue of Rs. 2328.94 Crore (i.e., Rs. 2328.94 Crore - Rs. 8.16 Crore), however the corresponding remark was not mentioned in the Format. BEST submitted that actual net revenue from retail tariff to be considered while computing revenue gap for FY 2007-08, was Rs. 2320.78 Crore as against Rs. 2328.94 Crore considered by the Commission.

### **Computation of gains in respect of A&G expenses**

10. BEST submitted that in BEST's APR Order, the Commission has stipulated that

*“In case of A&G expenses, since the Commission has considered the contribution to contingency reserves separately, though it was included under the A&G expenses in the APR Order, the difference has been computed after accounting for the separation of this head of the ARR. The total efficiency gain on account of A&G expenses works out to Rs. 2.09 crore.”*

However, the Commission in its above Order had allowed the Administration and General (A&G) expense of Rs. 68.38 Crore after truing up as against Rs. 81.91 Crore approved by the Commission in its Order (Case No. 73 of 2007) dated June 6, 2008. BEST submitted that even after effecting the removal of sub-head of contribution to contingency reserve (Rs. 5.76 Crore) from the approved A&G expense, the net amount to be considered while computing gains is Rs. 76.15 Crore (i.e., Rs. 81.91 Crore – Rs. 5.76 Crore) and the difference between the values of A&G expense approved and allowed after truing up, i.e., the net amount to be considered for sharing of gains due to controllable factors was Rs. 7.77 Crore (i.e., Rs. 76.15 Crore – Rs. 68.38 Crore). However, the Commission had considered Rs. 2.09 Crore as the total efficiency gain on account of A&G expense.

### **Interest expense on actual long term loan and 30% normative equity**

11. BEST submitted that in BEST's APR, the Commission has stipulated that

*“In this context, the Commission observes that the capitalization during FY 2007-08 as claimed by BEST amounting to Rs. 156.15 Crore (a higher amount as*

*compared to Rs. 150 crore of additional loan considered by BEST) and as per BEST's submissions under Form-8; the same is funded by way of contributions from consumers (Rs.8.78 Crore), grant from Government (Rs. 0.12 Crore), additional equity capital on normative basis at 30% (Rs.44.18 Crore), and normative debt component at 70% (Rs. 103.08 Cr.) In case additional loan of Rs. 150 Crore as claimed by BEST is admitted along with above sources of funding, total capitalization will amount to Rs. 203.08 Crore, which is much higher than capitalization of Rs. 156.15 Crore as proposed by BEST and capitalization of Rs. 91.43 Crore as admitted by the Commission as per earlier paragraphs.*

*Accordingly, for the purposes of truing-up exercise for FY 2007-08, the Commission has considered the capitalization during FY 2007-08 of Rs. 91.43 Cr. (including IDC of Rs.1.55 Crore) and considered the funding as contributions from consumer (Rs. 8.78 Crore), grant from Government (Rs. 0.12 Crore) and actual loan of Rs. 82.53 Crore.”*

12. BEST submitted that in BEST's APR Order, the Commission had provisionally approved capitalisation of Rs.91.43 Crore for FY 2007-08 and directed BEST to submit detailed report on benefits accrued vis-à-vis benefits projected. BEST submitted that accordingly, based on the provisional capitalisation of Rs. 91.43 Crore, the Commission had approved loan drawal of Rs. 82.53 Crore for FY 2007-08. BEST added that assuming BEST has to justify the benefits and submit the report on benefits as desired, then in that case, the Commission may have to compute the interest expenses on loan of Rs. 141.11 Crore (corresponding to actual capitalisation of Rs. 156.15 Crore) based on the same principle as considered by the Commission in BEST's APR Order. BEST further submitted that as an alternative, the Commission may consider equity of 30% on total capitalisation of Rs. 156.15 Crore.

### **Actual interest expense to meet working capital requirements**

13. BEST submitted that in BEST's APR Order, the Commission has stipulated, *“The Commission has estimated the normative working capital interest for FY 2007-08 in accordance with the MERC Tariff Regulations and based on expenses approved in this Order after truing up. However, the Commission has not directly allowed the actual interest on working capital incurred by BEST, but has computed the sharing of losses on the difference between normative working capital interest and the actual working capital interest incurred, since this is a*

*controllable parameter, as clearly stipulated in the MERC Tariff Regulations as 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:*

...

*(d) Variations in working capital requirements;...*

*By virtue of the above provision in the MERC Tariff Regulations, it follows that if the actual working capital requirement is higher/lower than the normative level of working capital, then the difference between the actual working capital requirement and the normative working capital requirement will have to be treated as a loss/gain as the case may be. Thus, in case the actual working capital requirement and hence, actual working capital interest incurred is zero, then the entire normative working capital interest is considered as a controllable efficiency gain and shared between the licensee and the consumers. Similarly, in the case of BEST, the actual interest on working capital is significantly higher than the normative interest on working capital, and hence, the difference between actual and normative working capital interest has been considered as a controllable efficiency loss, and hence, shared between BEST and the consumers.”*

14. BEST submitted that the Commission in its Order dated April 3, 2007 in Case No. 66 of 2006 had approved power purchase cost amounting to Rs. 1488.60 Crore; however, the cost of power purchase had increased to Rs.1885.15 Crore as submitted by BEST in its APR Petition on February 16, 2009. BEST added that the increase in power purchase cost was attributable to various factors such as lower allocation from TPC-G and increase in the external power purchase expenses. Further, as against approved power purchase rate of Rs. 3.44 / kWh, BEST had to pay Rs. 3.62 / kWh for purchase of power from TPC-G, and in case of short-term power purchase, BEST had to pay Rs. 7.80/kWh as against approved rate of Rs. 5.50/kWh. This was in addition to the Fuel Adjustment Cost (FAC) charge levied by TPC-G, which increased to Rs. 1.85/kWh during the first half of FY 2008-09, while BEST was able to recover only 53.6 paise/kWh as a part of FAC charges from the consumer on account of the cap on FAC imposed by the Commission.



15. BEST further submitted that although the Commission in its Order dated December 1, 2008 in Case No. 59 of 2008 had increased the cap on FAC up to 64.3 paise/kWh, there was blockage of funds till that period, which resulted in short-term borrowing by BEST in order to meet the cash crunch. Thus, BEST had no option but to avail overdraft facility and to borrow short-term funds to the tune of Rs. 242 Crore till the end of FY 2007-08, which had further increased to Rs. 342 Crore till the first half of FY 2008-09, on account of increase in FAC payment to TPC-G. The recovery of the additional cost was started in FY 2008-09 after the issue of Commission's Order dated June 6, 2008 in Case No. 73 of 2007., which provided for the recovery of FAC charges from its consumers over the period of 10 months (i.e., Applicability period from June 1, 2008 to March 31, 2009).

16. BEST submitted that under such circumstances, it is not justified to deprive BEST of the interest on working capital, since BEST is a Local Authority. BEST has the obligation to provide uninterrupted power supply to its consumers in the island city of Mumbai, which is also the financial centre of India and any disruption in power supply would have had its natural consequences throughout India, as a number of core activities in the fields of commerce and trade are being carried out in the city of Mumbai. Thus, BEST reiterated that under such circumstances, not allowing the actual interest on working capital only because the Tariff Regulations do not provide for the same, is not justified. BEST added that there was a great urgency for review of Regulation 17.6.2(d) of the MERC (Terms and Conditions of Tariff) Regulations, 2005, so as to allow the actual interest on working capital of Rs.18.22 Crore for FY 2007-08 and provisionally approve interest on working capital of Rs 33.38 Crore for FY 2008-09, after adjusting interest on normative working capital as per MERC Tariff Regulations.

#### **Interest on Contingency Reserve as a part of Non-Tariff Income**

17. BEST submitted that in BEST's APR Order , the Commission had considered the interest on contingency reserve investment @7% on average balance of contingency reserve during the year, as a part of Non-Tariff Income, as against nil as considered by BEST. The Commission has approved the Non-Tariff Income of Rs. 55.53 Crore as against Rs. 51.66 Crore petitioned by BEST.



18. BEST submitted that the balance under the Contingency Reserve was not invested by BEST and the said amount was utilized for acquiring the assets for its supply division. The Commission in its Order dated March 9, 2006 in Case No. 4 of 2004, in the matter of determination of Aggregate Revenue Requirement and Tariff for FY 2004-05 and FY 2005-06 for BEST, has determined the notional equity, since BEST does not have equity capital in the traditional sense. BEST further submitted that the funding for capitalization is mainly done through internal sources with the approval of BEST Committee and Municipal Corporation as per Section 460 II of Mumbai Municipal Corporation (MMC) Act, 1888. The contingency reserve was one of the internal sources used for funding the capital expenditure. Taking into account this historical background, the Commission had calculated the notional equity by taking into account the Gross Fixed Asset (GFA) for FY 2004-05 including works in progress (WIP) and thereafter, deducted contributions made by the consumer, Government assistance and accumulated depreciation till the end of FY 2004-05 and actual debt/loan, which give the equity balance at the end of the year. Thereafter, after considering the annual allowable capital cost for the year, 30% normative equity was deducted and thereby the opening equity for FY 2004-05 was determined.

19. BEST submitted that till FY 2006-07, the Commission allowed the provisioning towards contingency reserves under A&G Expenses, as BEST was not being governed by the Companies Act, 1956. BEST further submitted that the Appellate Tribunal for Electricity (ATE) vide its Judgment dated August 18, 2006 had also mentioned that it was not absolutely essential to maintain the accounts in the format prescribed for entities governed by the Companies Act, 1956, but BEST has to comply with the requirement as per the Regulations for the purposes of approval of ARR and for tariff by the Regulatory Commission.

20. BEST requested the Commission to review the matter in the above context, and submitted that BEST will invest the amount provided under the contingency reserve from FY 2008-09.

21. BEST submitted that under Regulation 95 of the MERC (Conduct of Business) Regulations, 2004, the Commission has powers to amend any defect or error in any proceedings before it (including any clerical error in any order passed by the Commission) and requested the Commission to look into the errors explained in the above paragraphs.

22. The Commission, vide its letter dated August 4, 2009, scheduled the admissibility hearing in the presence of Consumer Representatives authorized on a standing basis, on August 14, 2009, which was subsequently rescheduled to August 27, 2009.

23. During the admissibility hearing, Shri. Harinder Toor, counsel for BEST, cited case laws to justify the admissibility of BEST's Review Petition. Counsel for BEST further submitted that there were certain apparent errors in the Commission's APR Order for BEST in Case No. 118 of 2008. He submitted that the Commission should exercise its powers under Section 94 1(f) of the EA 2003, read with Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, and review the Commission's above stated Order. Shri. A.G. Patil, Chief Engineer, Regulatory Cell, BEST reiterated the points made in the Petition.

24. Having heard BEST and after considering the materials placed on record, the Commission rules as under:

25. A review of any Order, direction or decision is permitted under the MERC (Conduct of Business) Regulations, 2004, only upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by the applicant at the time when the direction, decision or order was issued or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons. Keeping this in view, the Commission's analysis and decision on each of the aspects pointed out by BEST, is as follows-

**Energy availability and power purchase cost for purchase from Unit 8 of TPC-G**

26. BEST has contended that there is an error in BEST's APR Order, as the per unit variable cost for power purchase from Unit 8 has been effectively specified as Rs. 1.05 per kWh, whereas the rate for sale from Unit 8 has been determined as Rs. 1.75 per kWh in TPC-G's APR Order.

27. In TPC-G's APR Order, the Commission has stipulated as under:

*"The Commission reiterates its direction to file a separate Petition for approval of Final Tariff for Unit-8 within one month from the date of this Order. The Commission will carry out the detailed analysis of the elements of Annual Fixed Charge and Energy Charge for Unit-8. In the interim, the Commission has*

approved the provisional tariff as approved in the APR Order for FY 2007-08 in Case No. 68 of 2007. The relevant paragraph of the said Order is reproduced below:

“Based on above components, the provisional tariff for Unit 8 as approved by the Commission for FY 2008-09 is given in Table below:

<b>Unit</b>	<b>Fixed Charge for 6 months (Rs Crore)</b>	<b>Fixed Charge per month (Rs Crore)</b>	<b>Energy Charge per unit (Rs/kWh)</b>
Unit 8	104.11	17.35	1.75

Accordingly, the tariff considered by the Commission for Unit-8 on ad-hoc basis is as follows:

**Table: Tariff for Unit 8**

<b>Unit</b>	<b>Fixed Charge per month (Rs Crore)</b>	<b>Energy Charge per unit (Rs/kWh)</b>
Unit 8	17.35	1.75

*\*Note: The above should not be treated as interim or provisional tariff approval of the Commission”*

28. However, in BEST’s APR Order, the Commission has considered purchase of 725.55 MU by BEST from TPC-G in FY 2009-10, at a variable cost of Rs. 76.18 Crore, which effectively translates to a power purchase rate of Rs. 1.05/kWh. Therefore, BEST’s contention that the rate for power purchase from Unit-8 has been incorrectly considered in BEST’s APR Order, is correct.

29. Since this variation in the variable cost is related to the fuel cost, the Commission rules that in the present case, BEST should consider the approved power purchase rate of Rs. 1.05/kWh for FAC computations, and recover the variation through the FAC mechanism, subject to the ceiling on FAC charge. Any under/over-recovery on this account will be adjusted at the time of truing up at the end of the year.

**Inclusion of power factor incentive in Revenue from retail tariff for FY 2007-08**

30. BEST has contended that the revenue from retail tariff for FY 2007-08 should have been considered as Rs. 2320.78 crore, after deducting power factor incentive of Rs. 8.16 Crore, rather than Rs. 2328.94 crore as considered by the Commission in the APR Order, since the power factor incentive had been considered as an expense under A&G expenses.

31. In this regard, it is observed that in the soft copy of the APR formats submitted by BEST along with its APR Petition, under Form 3.2 on A&G expenses, BEST had considered 'other expenses' as Rs. 9.29 crore and inserted a comment that "*This included Rs 8.16 crore on account of Power Factor Incentive which are now deducted from here and are now deducted from Revenue from power sale as it is more logical*". At the same time, under Form 13, BEST had indicated Total Revenue in FY 2007-08 as Rs. 2320.78 crore, and inserted a comment "*Rs 8.16 Cr deducted for power factor incentive*". The Commission interpreted these comments to mean that Rs. 8.16 crore had been considered as an expense under A&G expenses, and accordingly increased the revenue by a corresponding amount, so that the entries were balanced.

32. A closer look at the computations done by BEST in this regard and the comments made by BEST in the model, however, show that the 'other expenses' shown under A&G expenses had already been reduced to the extent of Rs. 8.16 crore by BEST in the Formats, and hence, the Commission's approach of considering the total revenue from sale of electricity as Rs. 2328.94 crore instead of Rs. 2320.78 crore, has resulted in understating the revenue gap in FY 2007-08 to the extent of Rs. 8.16 crore. Therefore, BEST's contention in this regard is correct and is accepted by the Commission.

33. The Commission shall consider the impact of Rs. 8.16 Crore in BEST's APR Order for FY 2009-10, provided BEST includes the impact in its APR Petition.

#### **Computation of gains in respect of A&G expenses**

34. BEST has contended that the Commission has incorrectly computed the efficiency gains in A&G expenses for FY 2007-08.

35. In this regard, it is observed that the actual A&G expense as submitted by BEST in its Petition in Case No. 118 of 2008 was Rs. 76.26 Crore, inclusive of contribution to contingency reserves. In BEST's APR Order, the Commission allowed A&G expense of Rs. 68.38 Crore after truing up, excluding contribution to contingency reserve (Rs. 5.76 crore), which was considered separately, and Renewable Purchase Obligation (RPO) charges (Rs. 2.12 crore) payable to Maharashtra Energy Development Agency (MEDA), which was considered under power purchase expenses. Further, the Commission has computed the efficiency gains on account of A&G expense as the difference between the actual A&G expense submitted by BEST and A&G expense allowed plus contribution to contingency reserve [i.e., Rs. 76.26 Crore – (Rs. 68.38 Crore + Rs. 5.76 Crore) = Rs. 2.09 Crore].

36. However, the efficiency gains on account of A&G expenses needs to be computed as the difference between the value approved in the preceding APR Order and the value allowed after truing-up in the present APR Order. Further, the efficiency gains need to be permitted only for actual efficiency rather than mere shifting of certain sub-heads of expense items. Here, for the purpose of computation of efficiency gains on account of A&G expense, certain expense items need to be grouped together in order to have like-to-like comparison. The Table below gives the revised computation of efficiency gains on account of A&G expenses:

**(Rs. Crore)**

Particulars	Approved	Actual	Allowed after Truing up	Total [Gains]/Losses
(1)	(2)	(3)	(4)	(5)=(2)-(4)
A&G Expenses	81.91	76.26	68.38	-
Contribution to contingency Reserve	(included)	(included)	5.76	-
Total (for the sake of computation of efficiency gains)	81.91	76.26	74.14	(7.77)

Thus, the efficiency gains on account of A&G expense works out to Rs. 7.77 Crore, as against Rs. 2.09 crore considered by the Commission in the APR Order. Thus, BEST's contentions in this regard are correct.

37. Out of the above additional efficiency gains on account of A&G expenses (Rs. 5.68 Crore), 1/3<sup>rd</sup> shall be shared with the consumers as rebate in tariffs and balance 2/3<sup>rd</sup> (i.e., Rs. 3.79 Crore) shall be passed on to the consumers through increase in tariffs in BEST's APR Order for FY 2009-10, provided BEST includes the impact in its APR Petition.

**Interest expense on actual long term loan and 30% normative equity**

38. BEST has contended that in case BEST is able to justify the benefits for the actual capitalisation of Rs. 156.15 Crore for FY 2007-08, then the Commission may have to approve corresponding loan drawal of Rs. 141.11 Crore as against Rs. 82.53 Crore presently approved by the Commission in BEST's APR Order.

39. The Commission is of the view that any view on approval of actual capitalisation of Rs. 156.15 Crore for FY 2007-08 can be taken *only* when BEST is able to submit the justification for the capex schemes as desired by the Commission. Based on BEST's submissions, the Commission shall consider the total debt and equity for the capitalisation thus approved, as appropriate. Thus, BEST's contentions in this regard in the Review Petition are not relevant at this point in time.

**Actual interest expense to meet working capital requirements**

40. BEST has contended that BEST had to resort to taking short-term loan to the extent of Rs. 242 Crore in FY 2007-08, on account of underestimation of the power purchase expenses by the Commission for FY 2007-08, and hence, the actual interest on working capital requirement should be allowed rather than allowing only the interest on normative working capital, especially since BEST is a Local Authority.

41. In this regard, it is observed that the power purchase expenses have been allowed in the original Order based on the projections made by BEST in its Petition, and generation cost allowed for TPC-G in TPC-G's Order, as well as other assumptions, which have been clearly detailed in the respective Order. Any variation in fuel cost of power purchase is allowed to be recovered from the consumers through the FAC mechanism, and any under/over-recovered amount is adjusted at the time of truing up. Further, in BEST's APR Order, the Commission has allowed the interest on working capital on normative basis, in accordance with the provisions of the MERC (Terms and Conditions of Tariff) Regulations, 2005 [kindly quote the specific portion] in this regard. Accordingly, the Commission is of the view that BEST's contentions in this regard have no merit.

42. As regards BEST's prayer for relaxation of Regulation 17.6.2 (d) of MERC Tariff Regulations on the basis that BEST is a Local Authority, the Commission is of the view that Regulations cannot be different on the basis of ownership. Moreover, any amendment to the Tariff Regulations cannot be dealt with under the present Review Petition on BEST's APR Order.

### **Regarding interest on Contingency Reserve as a part of Non-Tariff Income**

43. BEST has contended that the notional interest on contingency reserve should not be included as a part of non-tariff income, since BEST has not invested the funds under contingency reserves, which have been used to fund capital investment.

44. The Commission is of the view that BEST's contentions in this regard are contradictory. On the one hand, BEST has submitted that the Commission should not consider notional interest on contingency reserves under non-tariff income because BEST has failed to invest funds under contingency reserve and has instead utilised the same as equity for funding capital expenditure, thereby contravening Regulation 63.7.1 and 63.7.2 of the MERC Tariff Regulations. On the other hand, BEST has also sought and received returns on the equity investments on the assets, which are capitalised in such a manner.

45. In accordance with Regulation 63.7.1 of MERC Tariff Regulations, the contribution to contingency reserve needs to be invested in approved securities. Further, Regulation 63.7.2 of MERC Tariff Regulations provides for situations wherein the reserve fund can be utilised. If the contingency reserves are not invested as specified, then the basic purpose of creating the reserve is defeated, since the funds will not be available in situations, wherein these funds are intended to be utilised. Moreover, since the Commission has granted return on equity on the notional equity of BEST, it will be unfair to the consumers if the notional interest on contingency reserves is not considered. Accordingly, the Commission rejects BEST's contentions in this regard, as there is no error in the Commission's Order that is sought to be reviewed by BEST.

### **Impact of Commission's Order in Case No. 46 of 2008 on ARR of BEST**

46. In addition to the issues raised by BEST in its Review Petition, the Commission would like to deliberate on the impact of the Commission's Order dated February 2, 2009 in Case No. 46 of 2008 [Review Petition filed by M/s. The Tata Power Company Limited-Distribution business (TPC-D) on TPC-D's Tariff Order for FY 2008-09 dated June 4, 2008 in Case No. 69 of 2007] on the ARR of BEST, as under.



47. BEST, in its letter dated August 12, 2009, submitted in this regard that the Commission in its Order in Case No. 46 of 2008 had restated the paragraph on revenue gap/(surplus) for FY 2006-07, efficiency gains and losses, and sharing of surplus, which were previously mentioned in the Commission's Order in Case No. 69 of 2007. BEST further submitted that the Commission has accounted for the above impact in its Order in Case No. 113 of 2008 for TPC-D, and has computed the net impact of sharing of surplus of Rs. 7.86 Crore to be recovered by TPC-G from BEST in ten (10) equal monthly instalments. BEST submitted that the Commission has however, not considered the above recovery of Rs. 7.86 Crore in BEST's ARR for FY 2009-10, and requested the Commission to issue suitable directions in this regard.

48. The Commission, in its Orders in Case No. 46 of 2008 and Case No. 113 of 2008, has elaborated on the amount pertaining to sharing of surplus, to be recovered from each Mumbai distribution licensee along with the methodology for the same. However, the Commission has inadvertently not considered the same in BEST's APR Order for FY 2009-10, and to that extent, BEST's revenue requirement for FY 2009-10 has been understated. The Commission shall consider this impact of Rs. 7.86 Crore in BEST's APR Order for FY 2009-10, provided BEST includes the impact in its APR Petition.

With this Order, the Commission disposes of BEST's Petition in Case No. 44 of 2009.

Sd/-  
(V. L. Sonavane)  
Member

Sd/-  
(S. B. Kulkarni)  
Member

Sd/-  
(V .P. Raja)  
Chairman



(Sanjay Sethi)  
Secretary, MERC