

ANNEXURE 9: LICENSEE’S COMMENTS ON TARIFF FIXATION PRINCIPLES MENTIONED IN THE ADVICE

S.No.	Paragraph of the advice	Licensee’s Response
1.	<p>Paragraph B:</p> <p><i>The process and practice in respect of tariff determination</i></p>	<p>The Licensee vide its letter dated June 21, 2010, to the Commission, had clarified to the Commission that true up for FY 2009-10 was a part of the Licensee’s ARR Petition pending before the Commission. In fact, that Commission vide its letter dated January 14, 2010 had asked the Licensee to file an advertisement informing the public about its tariff petition calling for a public hearing which would include the figures for FY 2009-10. The Commission in its said letter had indicated that the <i>public notice should truthfully reflect the contents of the petition therewith</i>. In fact, in the said letter of the Commission, it had also attached a draft advertisement, which contained a column for figures for FY 2009-10.</p> <p>In accordance with the directives of the Commission, the Licensee duly published the advertisement which informed the general public that the tariff fixation process instituted pursuant to Licensee’s ARR Petition would include the figures and data for FY 2009-10 and solicited responses from the public. In fact, some of the stakeholders have provided their comments to the figures for FY 2009-10.</p> <p>The Petition, on the basis of which these responses were sought also captured the figures for FY 2009-10 which were present in, not only the text of the Petition but also the formats approved by the Commission with respect to filing such information and data. This can be seen from a bare reading of page 95 to 107 of the ARR Petition, wherein, the Licensee had split the estimates and uncontrollable factors for FY 2009-10 and 2010-11 for the due consideration of the Commission.</p> <p>The inclusion of data and figures for actuals for FY 2009-10 by way of limited true up of power purchase cost was also contemplated and prayed for by the Licensee in the ARR Petition, including for FY 2009-10 in terms of Prayer (b) of the ARR Petition where the Licensee had actually prayed for the same in express terms i.e. had expressly asked the Hon’ble Commission to approve the Aggregate Revenue Requirement upto FY 2010-11. The Licensee had also sought time to submit additional audited information for FY 2009-10, if available, at a later date for trueing up of the same in the present Petition as spelt out in paragraph (V) of its ARR Petition. Further, in its ARR Petition the Licensee had also sought allowance to make alterations / changes / modifications to the same at a future date.</p> <p>Further, it is submitted that the figures as indicated in the ARR Petition with respect to FY 2009-10 were mixtures of actual upto September 2009 and reasonable projections for the period from October 2009 to March 2010 based on the actual data available with the Licensee as of</p>

	<p>September 2009. These projections were made by the Licensee after considering the realities of its distribution area, the latest available information and comparison of the information with the data of the previous year for the corresponding period. Subsequent to filing of ARR Petition and coupled with the passage of time since filing, the audited information / audited accounts were finalized by the Licensee in or around April 2010. These accounts were also promptly filed by the Licensee with the Commission vide its letter dated May 3, 2010 to ensure that the Commission had on its record the data / information, required to ensure that the Licensee's prayer for seeking a determination of Annual Revenue Requirement for FY 2010-11 with the accurate quantification of shortfall upto FY 2009-10, could be granted by the Commission based on the actual data for the said financial year. However, the Licensee subsequently realized that it would be in better order, if the data is put into a tangible form so as to bring to the attention of the Commission the specific issue of variation between actual for FY 2009-10 and the projections of same so as to ensure due consideration of its prayer for grant of a true-up of the differences between the actual and the projections on uncontrollable items such as power purchase and the impact of the implementation of the Sixth Pay Commission's recommendations on the business of the Licensee. Accordingly, the Licensee for the sake of convenience of the Commission put its data and figures with respect to uncontrollable items such as power purchase cost and the impact of the implementation of the Sixth Pay Commission in a consolidated filing.</p> <p>In view of the above, the Licensee submits that the approach of the Commission to disallow the legal entitlements of the Licensee for FY 2009-10, is inconsistent with the provisions of MYT Regulations. MYT Regulations at Clause 11.1 mandate that in order to ensure smooth implementation of the Multi Year Tariff framework, the Commission may undertake periodic review of the performance of the licensees during the control period to address any practical issue, concerns or unexpected outcome that may arise. Further, Clause 11.2 of the MYT Regulations also mandates that the distribution licensees should submit actual accounts for the tariff to be worked out in accordance with the Regulations. Finally, Clause 11.4 of the MYT Regulations empowers the Commission to not only modify the forecast of a distribution licensee for the remainder of the control period but also makes it obligatory upon the Commission to do so when the facts justifying such a modification are available in terms of the audited figures before issuing any Tariff Order. Therefore, the claim of the Licensee for true up of power purchase expenditure for FY 2009-10 is consistent with the MYT Regulations which expressly provides for the same.</p> <p>The prayer made by the Licensee is also consistent with the ATE's order wherein the ATE has held that once a utility has given its own statement of expenditure, the Commission has to accept the same unless the Commission has strong reasons to differ with the statement, which can be only done by recording reasons for the same. However, the process of restricting a claim of the</p>
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	<p>utility by not allowing reasonably incurred expenditure and/or offering to do so only in a true up exercise is not prudent and is inconsistent with the MYT Regulations and the Orders of the Hon'ble ATE.</p> <p>Thus, in view of the above, the Licensee submits that the Commission having itself approved the inclusion of the figures for FY 2009-10 in the Licensee's tariff petition; the Commission is retracting from the same to hold that the benefits out of the same cannot be accorded to the Licensee. It is submitted that the same is an arbitrary exercise of power on behalf of the Commission.</p> <p>This arbitrary exercise of power on behalf of the Commission also brings to the fore the fact that whilst the Commission itself asked the Licensee to invite comments to its tariff petition by stating that <i>public notice should truthfully reflect the contents of the petition therewith</i>, which petition included the figures for FY 2009-10, the Commission is now denying the Licensee the benefit of the same. It is submitted that either the Commission was trying to mislead the consumers by inviting comments on the figures for FY 2009-10 or is now trying to mislead the Government by stating that the same cannot be a part of the present Tariff Order. In any event, the approach adopted by the Commission is unreasonable and warrants interference by the Government.</p> <p>With respect to the statement made by the Chairman that once a public hearing is concluded, order is reserved and that no further changes can be made to the same, the Licensee submits that the same is not only factually incorrect but is also against the past practice of the Commission itself. It is submitted that after the public hearing is concluded, there is a technical validation session which is conducted to ensure that the Commission is appraised of the latest available information and that the Commission passes an informed order. Therefore, it is entirely incorrect for the Chairman to state that once the public hearing was concluded, the Commission could not have considered the true up petition filed by the Licensee for FY 2009-10. In fact, the Commission while trueing up the expenses for FY 2003-04 in its Tariff Order dated 09.06.2004 had followed the following sequence of events:-</p> <ul style="list-style-type: none">(a) Annual Revenue Requirement filed on 23.12.2003.(b) Public Hearing held on 07.04.2004 to 10.04.2004.(c) Audited accounts submitted on 07.05.2005. <p>Thus, it is evident from the above sequence that the Commission did not consult all the stakeholders while trueing up the expenses for FY 2003-04, as the audited accounts were submitted after the Public hearing was held. Despite this, the Commission had trueed up the</p>
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		expenses for FY 2003-04 in its Tariff Order issued on 09.06.2004, thus establishing that it is not mandatory to consult the stakeholder In view of the above, the Licensee submits that the in principle approach adopted by the Commission with respect to the entire process of tariff fixation, is based on an incorrect understanding of the process.
2.	<p>Paragraph C</p> <p><i>Nature of Petitions</i></p> <p>Paragraph D</p> <p><i>Approach on Petitions in respect of FY 2008-09, 2009-10 and 2010-11</i></p>	With respect to the paragraphs under reply, the Licensee reiterates the contents of the paragraph above and further submits that the Commission had itself asked the Licensee to include the figures for FY 2009-10 and had asked the Licensee to include the same in the public advertisement. Therefore, the assertion made by the Commission that the Petition is not required to contain figures for the current year, is contrary to the Commission's own representation, which representation was held out not only to the Licensee but also to the general public. This assertion only indicates that either at the time of the publishing of the advertisement the Commission mislead the general public or the Commission is attempting to mislead the Government through the present advice by stating that the petition was not required to contain the figures for the present year.
3.	<p>Paragraph E(i)</p> <p>The True-up entitlement available pursuant to the Order by the Hon. Appellate Tribunal for Electricity (ATE) on the MYT Order in the case of BRPL and BYPL has been given. In the case of NDPL the Order has not yet come. The Orders passed by ATE in case of NDPL on limited issues have been remanded back to ATE by the Hon'ble</p>	<p>With respect to the paragraph under reply, the Licensee submits that the Commission is reluctant in giving appeal effect to the ATE Order dated October 6, 2009 on the pretext that the same has been appealed against before the Supreme Court of India. The Licensee submits that admittedly the said ATE Order has been appealed against by the Commission but the Hon'ble Supreme Court, till date has not stayed the operation of the said ATE Order. Therefore, it is submitted that till such time the ATE Order is stayed or is reversed by the Hon'ble Supreme Court, the Commission is legally bound to give effect to the same and cannot deny the Licensee its legitimate entitlements on the ground that the same has been appealed against by the Commission. The Licensee submits that the Commission is selectively choosing parts of the ATE Order which it would give effect to, which approach is legally untenable.</p> <p>With respect to the issue of R&M and A&G expenses, the allegation made that the Licensee has not been able to satisfy the Commission of the prudence of its expenditure, the Licensee vehemently denies the same as being factually incorrect and submits that the same is a clear attempt to mislead the Government. The true and correct factual situation with respect to the issue of establishing the prudence of expenditure for R&M and A&G expenses is explained below:</p>

	<p>Supreme Court. However, in case of BRPL and BYPL appeal effects on the Reactive Energy charges, SVRS payments, Employees expenses (non DVB) etc. have been provided (along with carrying cost). As regards R&M and A&G expenses, the ATE had directed that the Commission should conduct prudence check and then grant approval for such expenses, if properly incurred. BRPL and BYPL could not provide evidence of having incurred any additional expenses as claimed by them and, therefore, the expenses claimed over and above those already allowed earlier, have not been allowed.</p>	<ol style="list-style-type: none"> a. The Licensee submits that the Commission had vide its letter dated February 19, 2010 asked the Licensee to submit the details of its R&M and A&G expenditure along with supporting documentation. The Licensee duly replied to the said letter of the Commission vide its letter dated February 22, 2010 stating that the information which was sought by the Commission was already available with the Commission having being provided by the Licensee on previous occasions. However, by way of abundant caution, the Licensee once again provided the Commission with the requisite information in a consolidated format. Copies of letters dated February 19, 2010 by the Commission and the Licensee's response dated February 22, 2010 is annexed herewith and marked as Annexure "10" (Colly). b. Thereafter, on February 26, 2010, the Commission once again wrote to the Licensee asking for information with respect to its R&M and A&G expenses. This time the Commission sought for the item wise break-up of the expenses. In addition, the Commission also sought for the entire set of vouchers justifying the expenses and also for the details of the payments made in respect of such expenses. The Commission gave time to the Licensee till only March 2, 2010, i.e. the next working day, to provide the said details. The Licensee responded to the Commission's said letter on the very same day, i.e., February 26, 2010 stating that the Licensee was willing to provide the Commission with the said information. However, since the Commission had sought for the entire set of vouchers, the Licensee made it clear to the Commission that the same would comprise of around 4-5 truck load of documents and consequently prayed that the Commission should make appropriate arrangements to store the same. Thereafter, on the very same day itself, the Commission responded stating that whilst it appreciated the Licensee's willingness to provide the Commission with the requisite information, it was ready to do a prudence check on a sample basis. Accordingly, the Commission sought for vouchers for first three major items exceeding Rs. 10,000 for the months of April 2004 and March 2005. The Commission sought this information on the very next working day viz. March 2, 2010. It is also pertinent to note that this request of the Commission was received by the Licensee at around 1700 hours on February 26, 2010 and the said information was required by the Commission on the next working day at 1100 hours. A copy of the Commission's letter dated February 26, 2010; the Licensee's letter dated February 26, 2010 and the Commission's reply thereto dated February 26, 2010 is annexed herewith and marked as Annexure "11" (Colly). c. Despite the paucity of time and the arduous process of sorting vouchers which the Commission had demanded, the Licensee managed to sort them out and approached the Commission with the same on the stipulated date, i.e., March 2, 2010. However, to the surprise of the Licensee, the Commission denied to accept the same and advised the
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		<p>Licensee's representative to take them back and resubmit the same at a later date to be communicated by the Commission.</p> <p>d. Further, continuing with its unreasonable conduct, the Commission sent a letter dated March 3, 2010 at 1800 hours to the Licensee seeking for vouchers for not only April 2004 and March 2005 (as was the case previously) but the vouchers for April and March for all the three financial years in question. The said letter also indicated that the Licensee was required to submit the same to the Commission on the very next day, i.e., March 4, 2010 at 1030 hours. The Licensee responded to the same vide its letter dated March 4, 2010 stating that the Commission's letter dated March 3, 2010 received by the Licensee at 1800 hours practically gave no time to the Licensee to compile the required information and that in any event the said information was already made available to the Commission on previous occasions. However, the Licensee by way of abundant caution, stated that it would supply the required information but prayed for sometime to compile the requisite information. Further, on March 8, 2010, the Licensee wrote to the Commission stating that it would be in a position to provide the Commission with the required information at any date after March 10, 2010 and requested the Commission to provide the Licensee with a convenient time and date. Copies of letters dated March 3, 2010 by the Commission and the Licensee's responses dated March 4, 2010 and March 8, 2010, are annexed herewith and marked as Annexure "12".</p> <p>e. After the Licensee wrote to the Commission on March 8, 2010, requesting for a suitable time and date to provide the information sought, the Commission did not respond to the Licensee's request. The Licensee even sent a reminder letter to the Commission dated March 16, 2010, which letter was also not responded to by the Commission. A copy of the Licensee's letter dated March 16, 2010 is annexed herewith and marked as Annexure "13".</p> <p>In view of the above, the Licensee submits that the following facts clearly emerge:</p> <ol style="list-style-type: none"> 1. The Commission has been repeatedly asking for information, which information is already available with the Commission. 2. Despite the Licensee showing its willingness to provide the Commission with the requisite information, the Commission has been unreasonable to change at the very last moment the nature of information sought. 3. There have also been occasions where the Commission has even refused to take on record the information which has been provided by the Licensee. <p>The Licensee submits that despite the above, the Commission is now alleging that the Licensee <i>could not provide evidence of having incurred any additional expenses</i>, which allegation is not</p>
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		only against the documentation but is a complete fabrication and distortion of facts.															
4.	<p>Paragraph E(vii)</p> <p>AT&C: As regards giving benefits on over achievement on AT&C loss targets, as provided in MYT Regulations, prudence check is done during the course of which validation of data submitted by them to the Commission, either in the Petitions or in various prescribed formats submitted periodically, is done. If the DISCOMs are not able to substantiate the authenticity of the information furnished by them, such benefits are not allowed. As regards F.Y. 2008-09, BRPL and BYPL were not able to substantiate the information furnished by them and, therefore, such benefits have not been allowed in their case.</p>	<p>With respect to the allegation of the Licensee not being able to substantiate the information furnished by it for claiming benefits of overachievement, the Licensee denies the same and submits that the Commission has adopted a similar unreasonable approach as it had adopted for the issue of R&M and A&G expenses. In this regard, the Licensee submits that the correct factual position is as follows:</p> <p>a. For determination of AT&C losses of the Licensee, the information required and its source are tabulated below:</p> <table border="1"> <thead> <tr> <th>Sl. No.</th> <th>Particulars</th> <th>Source</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Power Purchase – Input units</td> <td>Delhi SLDC website</td> </tr> <tr> <td>2</td> <td>Units Billed</td> <td>Audited Accounts</td> </tr> <tr> <td>3</td> <td>Amount Billed</td> <td>Audited Accounts</td> </tr> <tr> <td>4</td> <td>Amount Collected</td> <td>Audited Accounts</td> </tr> </tbody> </table> <p>It is noteworthy that the sources of information for computation of AT&C losses are either from a third party or have been audited by the statutory auditors. Despite that the figures are audited and verified by a third party, the Licensee in order to completely satisfy the Commission of the genuineness of its data/information, has also submitted a cash collection certificate from its auditors and have also reconciled the billing units and amount from its consumer database.</p> <p>b. However, the Commission vide its letter dated February 19, 2010 (annexed supra) had sought for information pertaining its billing and collection. The Licensee was also required to submit the information in Form 2.1a for Quarter 4 of FY 2008-09. The Licensee was also required to furnish its daily collection register for FY 2008-09. The Licensee duly responded to the Commission vide its letter dated February 22, 2010 stating that the Licensee had already submitted the Form 2.1a information for the first three quarters and had also submitted the Form 2.1a information for the entire year. Therefore, Quarter 4 information, which information is nothing but the information for the entire year minus the information for the first three quarters, was already available with the Commission. The Licensee also submitted that submitting information in this manner was also consistent with the past 7 years of the Licensee providing Form 2.1a information. With respect to the other information sought, the Licensee informed the Commission that the Licensee had already addressed the concerns of the Commission through its previous communication.</p>	Sl. No.	Particulars	Source	1	Power Purchase – Input units	Delhi SLDC website	2	Units Billed	Audited Accounts	3	Amount Billed	Audited Accounts	4	Amount Collected	Audited Accounts
Sl. No.	Particulars	Source															
1	Power Purchase – Input units	Delhi SLDC website															
2	Units Billed	Audited Accounts															
3	Amount Billed	Audited Accounts															
4	Amount Collected	Audited Accounts															

		<p>c. The Commission responded to the Licensee's letter dated February 22, 2010 stating that the Licensee's earlier response was unsatisfactory and that the Form 2.1a information for Quarter 4 should be provided separately. A copy of the Commission's letter dated February 24, 2010 is annexed herewith and marked as Annexure "14". Thereafter, the Licensee responded to the same vide its letter dated February 26, 2010 reiterating that information for Quarter 4 was nothing but a mathematical derivation, i.e., the difference between the information for the entire year and the information for the first three quarters. However, the Licensee for the sake of convenience, mathematically derived the same for the Commission and provided the same. A copy of the Licensee's letter dated February 26, 2010 is annexed herewith and marked as Annexure "15".</p> <p>d. The Commission responded to the Licensee's response dated February 26, 2010 vide its letter dated February 26, 2010 stating that the Commission was unable to appreciate that the information for Quarter 4 was a mathematical derivation and stated that if the said information was not available with the Licensee, the same should be communicated to the Commission. The Licensee once again responded vide its letter dated March 5, 2010 stating that the term mathematical derivation did not imply that the Licensee had provided hypothetical figures. It merely meant that Q4 information was the difference between the information for the entire year and the first three quarters. It was also clarified that the said information was also made available by the Licensee through its billing software, which software was verified and approved by STQC, Ministry of Information and Technology. It was also brought to the knowledge of the Commission that the billing software was also verified by the auditors of the Licensee and no fault was found. The Licensee also reiterated that the Licensee had satisfied the Commission about this information at the technical validation session held on March 2, 2010 and that providing information in the format as provided by the Licensee was also in consonance with the past practice of the Commission. A copy of the Licensee's letter dated March 5, 2010 is annexed herewith and marked as Annexure "16".</p> <p>e. Further, the Licensee in order to completely satisfy the Commission of the genuineness of its data/information, vide its letter dated March 9, 2010, also invited the Commission to its Nehru Place office to verify with the software/system used by the Licensee to generate the information sought. In the alternative, the Licensee also proposed that it would be willing to even set up a temporary terminal at the Commission's office which terminal would be connected to the Licensee's database so that the Commission may completely satisfy itself about the veracity of the Licensee's claim. A copy of the Licensee's letter dated March 9, 2010 is annexed herewith and marked as Annexure "17".</p> <p>f. The Commission once again vide its letter dated March 22, 2010 written to the Licensee stated that there were certain discrepancies in the data submitted by the Licensee in</p>
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		<p>Form 2.1a with that of the Licensee's Petition and sought clarifications thereof. The Licensee responded vide its letter dated March 29, 2010 explaining that the alleged discrepancy wasn't a discrepancy but was on account of the Licensee taking into account a sum of Rs. 185.5 crores (an amount provided by the GoNCTD as subsidy to consumers) for the calculation of its AT&C losses for FY 2008-09. It was also clarified that the Licensee had also made this clear to the Commission during the technical validation sessions and also found mention in the Licensee's ARR Petition at page 207. A copy of the Licensee's letter dated March 29, 2010 is annexed herewith and marked as Annexure "18".</p> <p>g. Further, to ensure that the Commission was completely satisfied with the information that was provided by the Licensee, the Licensee, despite it not being required to do so, provided the Commission with a computer which contained the entire details of the consumer wise billing database for FY 2008-09 to validate the information provided by the Licensee. A copy of the Licensee's letter dated March 29, 2010 providing the Commission with a personal computer, is annexed herewith and marked as Annexure "19".</p> <p>h. Further, pursuant to a technical validation session held on April 1, 2010, the Commission sought certain information, which information was provided to the Commission vide the Licensee's letter dated April 6, 2010, a copy of which is annexed herewith and marked as Annexure "20."</p> <p>In view of the above documentation and submissions, the following facts clearly emerge:</p> <ol style="list-style-type: none"> 1. The Licensee has always cooperated with the Commission and whenever data/information was sought, the Licensee has timely provided the same. 2. The Licensee has time and again validated the information/data provided by it to the Commission, including providing the Commission with a personal computer and inviting the Commission to even physically verify its systems. Even at the technical validation sessions held by the Commission, the Licensee has successfully managed to validate its information/data. <p>Therefore, given the above facts, the allegation made that the Licensee has not been able <i>substantiate the information furnished by them</i>, is an allegation which is shocking to say the least. It is most respectfully submitted that the Licensee has done more than what is expected of a licensee to satisfy the Commission of the veracity of the information provided by the Licensee. However, it seems that the Commission has made up his mind in not considering the same for no valid reasons.</p> <p>Thus, the Licensee vehemently denies the allegation that the Licensee has not been able to</p>
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		<i>substantiate the information furnished by them.</i>
5.	<p>Paragraph E(viii)</p> <p>The above mentioned approach followed in True-up has significantly reduced or has shown surplus instead of revenue gap claimed by the DISCOMs for F.Y. 2008-09. The three DISCOMs had claimed a consolidated gap of Rs. 606 crores and after prudence check, the Commission has arrived at a consolidated surplus of about Rs. 25 Crores. In one case Rs. 173 Crores of revenue gap was claimed but it was found to be surplus of Rs. 90 Crores. In the second case the revenue gap claimed has come down from Rs. 364 Crores to Rs. 19 Crores only and in the third case it has come down from Rs. 68 Crores to Rs. 46 Crores only.</p>	<p>It is pertinent to note that while in the corresponding paragraph the Chairman has alleged that after the prudence check the actual trued up figures shows a revenue surplus of around Rs. 75 Crores as against a deficit of Rs. 606 Crores claimed by the DISCOMS, on the other hand at paragraph G (ix) at page 12 of the advice, the Chairman has stated that the DISCOMs had claimed a gap of Rs. 606 Crores which, after the prudence check was found to be a surplus of Rs. 25 Crores. This inconsistency in the figures provided in the advice further puts to question the veracity of the statement made in the advice and the conclusions arrived therefrom.</p> <p>Without prejudice to the above, assuming but not admitting that the said figures are correct, it is submitted that the Chairman in his advice has expressly admitted that Commission is not giving effect to the ATE Order dated October 6, 2009 for FY 2008-09 with respect to the issues which have been challenged by the Commission before the Supreme Court, even though no stay of the ATE Order has been granted by the Hon'ble Supreme Court. Such an approach of the Commission to deny the legal entitlements of the DISCOMs and to completely ignore the ATE Order merely on filing an appeal before the Supreme Court, despite there being no stay of the ATE Order by the Supreme Court, is an approach which is not known to law and ends up denying legal entitlements of the DISCOMs in Delhi including the Licensee and will burden the future consumer with carrying costs arising on account of the delay in recovery.</p> <p>It is pertinent to note that one of the Members of the Commission, Mr. Shyam Wadhwa has, repeatedly, in the internal notings of the Commission observed that effect should be given to the Order of the ATE and mere filing of Appeal before Supreme Court does not justify non-implementation of the ATE's Order. The relevant extract of his notings is produced hereinbelow:</p> <p style="text-align: center;"><i>“Wherever the Appellate Tribunal has already passed orders on appeals filed against the Commission's Orders, the orders of the Appellate Tribunal would need to be given effect to. The mere fact that the Commission or in certain cases the utilities file appeals in the Supreme Court, is not sufficient to justify non-implementation of the Appellate Tribunal Orders, unless the same are stayed by the Supreme Court.”</i></p> <p>The above view of the learned Member of the Commission is the legally correct approach which the Commission should follow. Further, the Licensee submits that even in the past the Commission has ignored the ATE's Orders thereby denying the legal entitlements of the DISCOMs.</p> <p>It may be noted that amount of Rs. 606 Crores of deficit as projected by the DISCOMs which has</p>

		<p>been projected by the Commission as being a surplus of Rs. 75 Crores, gives an incorrect picture of the entitlements of the Licensee for FY 2008-09. The same is on account of the fact that as per the ATE's Order dated October 6, 2009, the Licensee was entitled to an additional amount incurred by the Licensee whilst procuring capital equipments from its sister concern, which amount had been disallowed by the Commission in its MYT Tariff Order. The said disallowance was challenged before ATE wherein the ATE was pleased to hold that the expenditure may be allowed after comparing the rates at which the Licensee had procured these capital equipments from its sister concern with the rates at which the same / similar equipments were bought by other DISCOMs in Delhi. In view of the fact that the said information was not available with the Licensee and was available with the Commission, the Licensee has repeatedly written to the Commission to do a comparative analysis of the rates as was directed by the ATE. Copies of the letters written by the Licensee to the Commission is annexed herewith and marked as Annexure "5". The Licensee had also provided the Commission with the limited information that the Licensee could compile after best of its efforts to enable the Commission to give effect to the ATE's directive. A copy of the letter of the Licensee submitted to the Commission the information gathered by it is annexed herewith and marked as Annexure "6". However, the Commission has neither provided the Licensee with the information available with it nor has done any comparative analysis till date. Pending such an analysis by the Commission, the Licensee has not claimed its entitlement under the head of related party transaction in the present ARR, which amount the Licensee is in fact entitled to in law.</p>
<p>6.</p>	<p>Paragraph F(ii) Based on the experience on load shedding in the year 2009 the summer preparedness by the Distribution licensees for Delhi was reviewed. It was noted that the Distribution licensees, in their Petitions filed in December 2009, had either projected zero or very insignificant amount in purchases from the bilateral sales during the summer</p>	<p>It is denied that the Licensee had claimed "zero" purchases in its Petition filed in December 2009. In fact, the Licensee had claimed Rs. 290 Crores for short term purchases in the ARR Petition, which is also not "insignificant" as claimed by the Chairman in the purported Statutory Advice. It is pertinent to note that the ARR Petition filed by the Licensee was based on information available (actual) upto September 2009 and the CEA Report available as on September 30, 2009. However, subsequent to the filing of ARR Petition by the Licensee, there have been certain significant material developments which would have an impact on the power purchase costs of the Licensee. These developments, post filing of the ARR Petition, were duly brought to the knowledge of the Commission by the Licensee and it is only in view of these developments that the Commission has approved an amount of Rs. 1,775 Crores to the DISCOMs. A copy of the letters from the Licensee to the Commission bringing to the knowledge of the Commission the developments post filing of the ARR is annexed herewith and marked as Annexure "1". The developments post filing of the ARR Petition that will have impact on the purchase costs for the Licensee are as follows:</p> <p>a. Revision of projections by CEA on commissioning date of new power plants are given in the table below:</p>

<p>months of F.Y. 2010-11. The commission felt that with a view to ensure that in the F.Y. 2010-11 there is no load shedding due to lack of adequate power arrangements and to provide sufficient comfort to the licensees to borrow funds for meeting their power purchase requirements, it was unanimously decided by the Commission that after obtaining details of all contracts for bilateral arrangements made by all three DISCOMs, the entire cost may be allowed in the Tariff Order even though no such claims were made by them in their Petitions. Accordingly, an amount of Rs. 1775 crores has been allowed on this count only for all three DISCOMs. Such approach of the Commission will enable the Distribution licensees to procure sufficient power to ensure uninterrupted</p>	<p>b. Despite having entered into an agreement with DVC, receipt of power at the Delhi periphery has not materialized on account of DVC having sought to resile from the Agreement in particular the price therein. The Licensee has actively pursued the matter in courts and despite having succeeded at the two levels of adjudicatory processes, DVC has not supplied power under the Agreement on account of it having filed an appeal before the Supreme Court of India.</p> <p>c. In compliance with the Commissions orders dated March 31, 2007 and October 2009, as well as the performance standards specified by the Commission in the Supply Code, the Licensee has had to procure additional power to ensure continued supply within its distribution area. The said supply was arranged in a manner to ensure that the Licensee had a buffer to meet the additional demand. However, the unprecedented increase in demand on account of extreme weather conditions had to be met by further buying through short term bilateral purchases, which was duly informed to the Commission from time to time. Given the short term bilateral purchase, the said power was purchased at the prevailing market rates which rates are relatively higher than the long term purchase and the same was done with notice to the Commission.</p>	<table border="1"> <thead> <tr> <th rowspan="2">Sl. No.</th> <th rowspan="2">Plant</th> <th rowspan="2">Owning Agency</th> <th colspan="2">Commissioning Schedule</th> </tr> <tr> <th>As on 30.09.2009</th> <th>As on 31.05.2010</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Dadri Ext Stage –II (Unit 6)</td> <td rowspan="4">NTPC</td> <td>May-10</td> <td>July-10</td> </tr> <tr> <td>2</td> <td>Aravali Power Corporation Ltd</td> <td></td> <td></td> </tr> <tr> <td>A</td> <td>Unit -2</td> <td>February-11</td> <td>April-11</td> </tr> <tr> <td>B</td> <td>Unit -3</td> <td>June-11</td> <td>September-11</td> </tr> <tr> <td>3</td> <td>Chamera-III</td> <td rowspan="7">NHPC</td> <td>2010-11</td> <td>2011-12</td> </tr> <tr> <td>4</td> <td>Parbati -III</td> <td>2010-11</td> <td>2011-12</td> </tr> <tr> <td>5</td> <td>Uri -II</td> <td>2010-11</td> <td>2011-12</td> </tr> <tr> <td>6</td> <td>Sewa -II</td> <td></td> <td></td> </tr> <tr> <td>A</td> <td>Unit -1</td> <td>January-10</td> <td>June-10</td> </tr> <tr> <td>B</td> <td>Unit -2</td> <td>February-10</td> <td>July-10</td> </tr> <tr> <td>C</td> <td>Unit -3</td> <td>March-10</td> <td>July-10</td> </tr> <tr> <td>7</td> <td>Pragati -III, Bawana</td> <td rowspan="2">SGS</td> <td></td> <td></td> </tr> <tr> <td></td> <td>Block-I</td> <td>August-10</td> <td>September-10</td> </tr> </tbody> </table>	Sl. No.	Plant	Owning Agency	Commissioning Schedule		As on 30.09.2009	As on 31.05.2010	1	Dadri Ext Stage –II (Unit 6)	NTPC	May-10	July-10	2	Aravali Power Corporation Ltd			A	Unit -2	February-11	April-11	B	Unit -3	June-11	September-11	3	Chamera-III	NHPC	2010-11	2011-12	4	Parbati -III	2010-11	2011-12	5	Uri -II	2010-11	2011-12	6	Sewa -II			A	Unit -1	January-10	June-10	B	Unit -2	February-10	July-10	C	Unit -3	March-10	July-10	7	Pragati -III, Bawana	SGS				Block-I	August-10	September-10
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	<p>supply and meet its obligation to supply power under Section 42 of the Electricity Act.</p>	<p>d. The Plant Load Factor of generating stations in Delhi and as has been assumed in the ARR (in line with the previous Tariff Order), has not materialized. Consequently, the Licensee had to arrange for the shortfall through bilateral inter state purchases at rates which are not only higher on account of being short term in nature but also have higher wheeling and transmission charges as well as loss on transmission given the distance of transmission.</p> <p>On account of the factors enumerated above, the Licensee was constrained to purchase power from bilateral sources as a result of which the purchase cost for the Licensee increased substantially after the filing of the ARR in December.</p> <p>In view of the above, even the approved amount of Rs. 1,775 Crores (for the entire financial year and for all DISCOMs) may not be sufficient as is evident from the actual costs already incurred by the Licensee alone in the first quarter i.e. Rs. 522 Cr, which is 29% of total approved amount for all DISCOMs.</p>
<p>7.</p>	<p>Paragraph F(iv)</p> <p>The cost of power from new Bawana –II plant proposed by the DISCOMs was at Rs. 2.65 per unit only. The Commission decided to project it on the realistic basis with the result that it was taken at Rs. 3.17 per unit, i.e. at a much higher rate.</p> <p>Paragraph F(v)</p> <p>The rate of power from the Dadri and Arawli plants was also projected by the BRPL and BYPL at Rs. 2.35 and by NDPL at Rs. 2.91 but it was decided</p>	<p>Whilst it is not denied that the Licensee had claimed the cost per unit of power purchased from new plants at Rs. 2.32 per unit, the same was projected by the Licensee in its ARR Petition on the basis of the cost per unit for the existing stations at the rates prevailing at the time of filing of ARR Petition. However, subsequent to the filing of ARR Petition there has been an upward revision in the Fuel costs which has impacted the per unit cost of power for the existing stations. As a result of such increase in prevailing rates of power for the existing stations, the per unit cost of power for the new generating stations is also expected to be higher than the cost projected in the ARR Petition.</p> <p>The Licensee has repeatedly appraised the Commission through its letters about the revision in prices of power for the existing stations. In fact, in the technical session held on April 28, 2010 and April 29, 2010, the matter was deliberated and explained to the Commission. It was also stated that the rates were expected to increase significantly in view of the rising fuel costs. The above was communicated by the Licensee to the Commission vide its letter dated May 31, 2010 being letter number CEO(BRPL)/10-11/878, a copy of which is annexed herewith and marked as Annexure “2”. Therefore, it is not a case that the Commission has approved cost per unit of power for new plants over and above the projections made by the Licensee. It is on account of increase in fuel prices that a higher per unit cost has been approved by the Commission. This is thankfully acknowledged.</p> <p>The recent increase in Coal and Gas prices is likely to further increase the cost of power from the new generating plants. In fact, the average power purchase cost from new station is anticipated to be more than Rs. 3.13 / unit as tabulated below:</p>

to take the rate on the basis of 10 month bills of F.Y. 2009-10 of existing 840 MW plants, after reducing the heat rate on 500 MW plus fixed cost and, accordingly, the cost was given at a much higher rate than claimed by the DISCOMs.

Paragraph F(vii)

The impact of above mentioned principles in respect of Power Purchase Cost from future stations was that the per unit cost was given to DISCOMs at a much higher than claimed by them in their Petitions. For example, in BRPL and BYPL the per unit rate claimed was Rs. 2.32 only against which the Commission has allowed Rs. 3.17. Similarly, for CSGS stations also, the rate allowed is Rs. 2.91 against rates claimed by DISCOMs at Rs. 2.67-2.76 only.

Station	Anticipated Tariff (Paise/ kWh)
SEWA-II (All Units)	375.87
Chamera-III	239.04
Parbati –II	375.87
Uri –II	375.87
Koteshwar (All Units)	375.87
NPCIL – RAPS (All Units)	347.00
Aravali Power Corporation Ltd	403.00
Pragati -III, Bawana	450.00

From the above it is clearly evident that the cost of power for new generation plants even at Rs. 3.13 per unit is not sufficient and is much below than the expected price of power for the new generating plants.

8.	<p>Paragraph F(vi) Similarly, variable cost was taken as 10 months average for 2009-10 and fixed cost was taken as approved by CERC on which 7% escalation was provided.</p>	<p>With respect to the corresponding paragraph of the advice, the Licensee submits that the 7% escalation provided by the Commission has no reasonable basis whatsoever. The figure of 7% arrived at by the Commission, is arbitrary to say the least. There is no basis, either in law or in facts for the Commission to arrive at the same.</p>
	<p>Paragraph F(viii) The Commission has projected the energy sales in F.Y. 2010-11 on the basis of the past growth trends in each consumer category of each Licensee. In Order to do so, the Commission has adopted the statistical tool of Compounded Annual Growth Rate (CAGR) which is used to calculate the smoothed annualized growth rate for a parameter in Order to capture fluctuations in</p>	<p>The Licensee submits that it is a settled position of law and has been time and again upheld by the ATE including in the Licensee's own appeal, being Appeal No. 36 of 2008, that the Commission is bound to accept the projections of the licensee unless the Commission has strong reasons to differ. It is submitted that the said principle is premised on the fact that a licensee is the best judge of its business and is therefore in the best position to make projections. However, the Commission may deviate from the projections of the licensee in the event it has strong reasons to differ.</p> <p>In view of the above, the Licensee submits that adoption by the Commission of the Compounded Annual Growth Rate (hereinafter "CAGR") for projecting energy sales for FY 2010-11, is clearly against the mandate of the ATE Orders. It is submitted that the Commission is not allowed to supplant the Licensee's projections with that of its own on the ground that it feels the same would result in better projections. The Commission is allowed to deviate from the projections of the licensee in the event the same are unreasonable and unrealistic. Merely because of the fact that the Commission feels that one mechanism of projections is superior than the other, does not entitle the Commission to supplant the projections of the licensee with its own.</p> <p>Therefore, the reliance by the Commission on CAGR in disregard of the Licensee's projections, is yet another instance which not only establishes that the Commission has no regard for the ATE</p>

	<p>the value of that parameter over a period of time. Subject to the specific characteristics of each consumer category, a particular CAGR has been chosen as the basis of sales projection for that category. The basis for choosing a CAGR corresponding to a particular period is the relative importance of the most recent trends in making projections for that category. For instance, if it is judged that the pattern of consumption of a consumer category has changed immensely over the years, it renders older historical trends irrelevant for the purpose of making projections for that category. In such a scenario, the 1-year growth rate or the 2-year CAGR would make a much sounder basis of projection for F.Y. 2010-11 compared to the 5-year CAGR which includes data</p>	<p>Orders but also establishes the utter failure on part of the Commission to appreciate the fundamentals of tariff fixation process.</p>
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	<p>from much older periods. Hence, using CAGR, the Commission has projected the annual sales, number of consumers and connected load in each consumer category for F.Y. 2010-11 for the three Licensees.</p>	
<p>9.</p>	<p>Paragraph G <i>True up for FY 2009-10</i></p>	<p>With respect to the paragraph under reply, the Licensee reiterates its submissions above in contained in paragraph 1, the contents of which are not being repeated herein for the sake of brevity.</p> <p>Further, with respect to the allegation that the Licensee has withdrawn its prayer for recovery of Revenue Gap for FY 2009-10, the Licensee vehemently denies the same. The Licensee submits that post the filing of its Petition, the Licensee had filed a corrigendum dated January 14, 2010 to its Petition, which corrigendum has been misconstrued by the Commission to arrive at the conclusion that the Licensee had withdrawn its prayed for recovery of Revenue Gap for FY 2009-10. The Licensee submits that the prayer made at paragraph (b) of the Licensee's Petition before filing of the said corrigendum read as follows:</p> <p><i>“(b) To approve Aggregate Revenue Requirement upto the year FY 2010-11 under the MYT Regime including the revenue shortfall upto FY 2010-11 on account of uncontrollable variations, profit sharing mechanism for exceeding the targets, and implementation of performance framework for quality of supply targets.”</i></p> <p>However, post the corrigendum, the prayer of the Licensee read as follows:</p> <p><i>“(b) To approve Aggregate Revenue Requirement upto the year FY 2010-11 under the MYT Regime including the revenue shortfall upto FY 2008-09 on account of uncontrollable variations, profit sharing mechanism for exceeding the targets, and implementation of performance framework for quality of supply targets, apart from variations of the Distribution Licensees upto FY 2006-07.”</i></p> <p>The Commission has construed the replacement of the term “revenue shortfall upto FY 2010-11” with “revenue shortfall upto FY 2008-09” to mean that the same amounts to a withdrawal of the</p>

	<p>prayer of the Licensee for recovery of Revenue Gap of FY 2009-10. It is submitted that the same is an incorrect understanding since the Commission could not have approved the revenue shortfall upto FY 2009-10 since the complete audited accounts were not available with the Commission. However, this does not amount to a withdrawal of the prayer for considering the Revenue Gap for the FY 2009-10 in the event the audited accounts were in fact made available before the passing of the Tariff Order, which prayer was made separately by the Licensee at paragraph (V) which read as follows:</p> <p style="text-align: center;"><i>“...Moreover, the Petitioner reserves its right to submit additional audited information for FY 2009-10, if available at a later date for truing up before the issuance of the Tariff Order.”</i></p> <p>The Licensee submits that since the audited accounts for FY 2009-10 were in fact available with the Licensee before the issuance of the Tariff Order, the Licensee provided the same to the Commission and the Commission is under an obligation to true up the same in light of the observations of the ATE and the mandate of the NTP.</p> <p>In any event and without prejudice to the above, the Licensee submits that the prayer on which the Commission is presumable placing its reliance upon, clearly states that the Licensee has prayed for FY 2009-10 wherein the prayer reads that <i>“To approve Aggregate Revenue Requirement upto the year FY 2010-11 under the MYT Regime...”</i>. The Licensee submits that the term ‘upto FY 2010-11’ would clearly include within its ambit the FY 2009-10 and hence it is incorrect for the Commission to allege that the Licensee had withdrawn its prayer.</p> <p>With respect to the allegation that the DISCOMs had not sought for a tariff hike on the basis of true up for FY 2009-10, the Licensee submits that the public advertisement issued by the Commission itself stated that the DISCOMs had sought a tariff hike of 69%, which advertisement clearly included within its ambit the figures available for FY 2009-10. Therefore, it is completely incorrect for the Commission to allege that the DISCOMs had not sought for a tariff hike on the basis of true up for FY 2009-10.</p> <p>Further, with respect to the allegation that the DISCOMs have filed incomplete true up petitions and that they have suppressed the revenue earned from the sale of energy, the Licensee submits that the same is incorrect and is completely against the documentation available with the Commission itself. It is submitted that the Licensee had vide its letter dated June 21, 2010 provided the Commission with a revised true up Petition containing all the necessary details. Therefore, it is incorrect for the Commission to allege that the Licensee has suppressed any information with respect to providing details for seeking truing up for FY 2009-10. A copy of the</p>
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		<p>Licensee's letter dated June 21, 2010 is annexed herewith and marked as Annexure "21".</p> <p>With respect to the allegation made that the DISCOMs may have a surplus of around Rs. 507 crores, the Licensee submits that the same is a hypothetical figure arrived at by the Commission without considering the increased cost of power purchase and without truing up. The Licensee fails to understand how the Commission could have possibly reached to a conclusion that there would be a surplus of about Rs. 507 crores.</p> <p>Finally, the Licensee submits that the audited accounts for FY 2009-10 are available with the Commission and the Commission should take them into consideration. It is submitted that in past there have been instances where this has rightly been done. For instance, the Commission while truing up the expenses for FY 2003-04 in its Tariff Order dated 09.06.2004 had followed the following sequence of events:-</p> <ul style="list-style-type: none">(a) Annual Revenue Requirement filed on 23.12.2003.(b) Public Hearing held on 07.04.2004 to 10.04.2004.(c) Audited accounts submitted on 07.05.2004. <p>The relevant extract from the Tariff Order dated 09.06.2004 is reproduced below: <i>"Commission has considered various submissions made by the Petitioner over the course of the ARR and tariff determination process and has carefully analyzed the different heads of expenditure to true up the ARR for FY 2003-04 and to project the realistic level of allowable expenditure during FY 2004 –05. The process of ARR determination for FY 2004-05 got extended beyond March 31, 2004, and therefore the Commission obtained the details of actual expenses and revenue for FY 2003-04. As the actual details of expenses and revenue for FY 2003-04 are available based on Audited Accounts, the Commission has trued up all the elements of ARR based on the actual expenses and income of BRPL after ensuring that the expenses satisfy the test of reasonable prudence."</i></p> <p>Thus, it is evident from the above sequence that the Commission did not consult all the stakeholders while truing up the expenses for FY 2003-04, as the audited accounts were submitted after the Public hearing was held. Despite this, the Commission had trued up the expenses for FY 2003-04 in its Tariff Order issued on 09.06.2004, thus setting the precedent that it is not mandatory to consult the stakeholder.</p>
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		<p>Therefore, this practice of considering the audited accounts even after the public hearing is concluded is a practice which if not followed will result in increased cost burden on consumers due to carrying cost of the deferred amount. In fact it has been followed by the Commission in the past.</p>
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