

PART II: RESPONSE OF THE LICENSEE TO THE ADVICE RENDERED BY THE CHAIRMAN ON THE ISSUES RAISED BY THE GOVERNMENT
VIDE ITS COMMUNICATION DATED MAY 4, 2010

The Licensee submits that the Chairman in his **Advice** has made statements which are not only factually incorrect but are against the Commission's own Tariff Orders. The Licensee has, for the sake of convenience, tabulated its response against each head on which the advice was sought by the Government. In this regard, the Licensee has the following to submit:

(i) Re: Ability to Supply power contingent on cost reflective tariff-																								
S. No.	Chairman's advice	Licensee's Response																						
a	As mentioned earlier, Rs. 1,775 Crores has been given to the DISCOMs on account of purchases from bilateral sources even though they had claimed "zero" purchases or very insignificant purchases in their Petitions filed in December, 2009.	<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 considerably increase 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> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th rowspan="2" style="text-align: center;">Sl. No.</th> <th rowspan="2" style="text-align: center;">Plant</th> <th rowspan="2" style="text-align: center;">Owning Agency</th> <th colspan="2" style="text-align: center;">Expected Commissioning Schedule</th> </tr> <tr> <th style="text-align: center;">As on 30.09.2009</th> <th style="text-align: center;">As on 31.05.2010</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">Dadri Ext Stage –II (Unit 6)</td> <td rowspan="3" style="text-align: center;">NTPC</td> <td style="text-align: center;">May-10</td> <td style="text-align: center;">July-10</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">Aravali Power Corporation Ltd</td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">A</td> <td style="text-align: center;">Unit -2</td> <td style="text-align: center;">February-11</td> <td style="text-align: center;">April-11</td> </tr> </tbody> </table>			Sl. No.	Plant	Owning Agency	Expected 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
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			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

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.

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 so as to ensure that the Licensee had a buffer to meet the additional demand. However, the unprecedented increase in demand on account of extreme inclement 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.

d. The Plant Load Factor of generating stations in Delhi 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.

On account of the factors enumerated above, the Licensee was constrained to purchase power

		<p>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>								
b.	<p>Besides above, the cost per unit of power purchased from new plants have been allowed to them at Rs. 3.13 per unit, though claim made by BRPL and BYPL was Rs. 2.32 and by NDPL at Rs. 2.91 per unit only</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.</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> <table border="1" data-bbox="801 1182 1727 1385"> <thead> <tr> <th>Station</th> <th>Anticipated Tariff (Paise/ kWh)</th> </tr> </thead> <tbody> <tr> <td>SEWA-II (All Units)</td> <td>375.87</td> </tr> <tr> <td>Chamera-III</td> <td>239.04</td> </tr> <tr> <td>Parbati –II</td> <td>375.87</td> </tr> </tbody> </table>	Station	Anticipated Tariff (Paise/ kWh)	SEWA-II (All Units)	375.87	Chamera-III	239.04	Parbati –II	375.87
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c.	<p>The Commission has also left Rs. 1,200 Crores (at existing tariff) of surplus in their hands to meet all types of uncertainties including delay in likely commissioning of new power plants. The cost of power purchases has been projected on realistic basis and, therefore, the apprehensions of the DISCOMs in the representations are baseless and such apprehensions would not have arisen if the Tariff Orders had been issued on schedule.</p>	<p>Whilst the basis on which the surplus has been computed is not known to the Licensee as it has not been provided in the Advice of the Chairman, the same is completely insufficient. The same is evident from the fact that in FY 2009-10 the difference in the projections as per the Tariff Order and the actual for only the private DISCOMs of Delhi is Rs. 2177 Cr as tabulated below:</p> <table border="1"> <thead> <tr> <th rowspan="2">Sl. No.</th> <th rowspan="2">DISCOMs</th> <th colspan="2">Power Purchase cost (in Rs. cr.)</th> <th rowspan="2">Deficit (in Rs. Cr.)</th> </tr> <tr> <th>Tariff Order dated 28.05.2009</th> <th>As per audited accounts</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>BRPL</td> <td>2476</td> <td>3558</td> <td>1082</td> </tr> <tr> <td>2</td> <td>BYPL</td> <td>1471</td> <td>1819</td> <td>348</td> </tr> <tr> <td>3</td> <td>NDPL</td> <td>1811</td> <td>2559</td> <td>748</td> </tr> <tr> <td colspan="4">Total</td> <td>2177</td> </tr> </tbody> </table> <p>It may be noted that even as per the Commission, a surplus is required to meet the unforeseen circumstances in power purchase. However, the surplus of Rs. 1,200 Cr. as has been stated to be left by the Commission in its Tariff Order for the previous years is completely insufficient given the fact that in the previous year the deficit for the Licensee was so high (Rs. 1082 Cr) that it will eat into the surplus that the Commission has set up. In fact in the present case, the deficit will consume 90% of the total amount set aside by the Commission for the entire sector leaving only Rs. 118 crores for the DISCOMs in Delhi which, it is submitted is clearly insufficient.</p>	Sl. No.	DISCOMs	Power Purchase cost (in Rs. cr.)		Deficit (in Rs. Cr.)	Tariff Order dated 28.05.2009	As per audited accounts	1	BRPL	2476	3558	1082	2	BYPL	1471	1819	348	3	NDPL	1811	2559	748	Total				2177
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d.	The Commission has always adopted cost reflective approach in the Tariff Orders	<p>It is denied that the Commission has always adopted cost reflective approach in the Tariff Orders. The same is evident from the fact that year on year the Commission in its Tariff Orders has assumed surpluses for the DISCOMS in Delhi for the ensuing year i.e. the “year in question”. This surplus as assumed by the Commission in its Tariff Orders has never fructified to the DISCOMS. The fact that surplus has been assumed by the Commission year on year which has never fructified in the case of the Licensee is evident from the table below:</p> <p style="text-align: center;">Table 1: Estimates of DERC vis a vis actual as per audited accounts</p> <table border="1" data-bbox="705 486 1937 869"> <thead> <tr> <th>Particulars</th> <th>FY 05</th> <th>FY 06</th> <th>FY 07</th> <th>FY 08</th> <th>FY 09</th> <th>FY 10</th> </tr> </thead> <tbody> <tr> <td>Revenue Gap/(Surplus) determined by DERC in the Tariff Order (in Rs. Cr.)</td> <td>16</td> <td>31</td> <td>(225)</td> <td>(217)</td> <td>(331)</td> <td>(510)</td> </tr> <tr> <td>Revenue Gap/(Surplus) determined by DERC while Truing up in the next Tariff Order. (in Rs. Cr.)</td> <td>221</td> <td>75</td> <td>404</td> <td>129</td> <td>428[#]</td> <td>1326[#]</td> </tr> </tbody> </table> <p style="text-align: center;">(Note: # As per ARR filing)</p> <p>It is quite clear from the above that the actual recovery of revenue gap of a year in subsequent years has been non-existent. The Commission arrives at the said surplus figures for the DISCOMS on its own assumptions. Certain factors that are considered by the Commission whilst arriving at the said illusionary / incorrect surplus for the DISCOMS are as follows:</p> <ol style="list-style-type: none"> a. Higher Revenue for the DISCOMS estimated from Retail Sale of power. b. Higher Revenue estimated from Bulk Sale of Power. c. Anticipation of large quantum of power from existing / new generating stations. d. Anticipation of earlier Commercial operation date of new generating stations. e. Lower Power Purchase cost from existing / new generating stations. <p>In past, for the previous tariff years, completely contrary to the assumptions of the Commission, the Licensee has had a deficit of Rs. 1326 Cr leave alone a surplus of Rs. 510 Cr.as estimated by the</p>	Particulars	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	Revenue Gap/(Surplus) determined by DERC in the Tariff Order (in Rs. Cr.)	16	31	(225)	(217)	(331)	(510)	Revenue Gap/(Surplus) determined by DERC while Truing up in the next Tariff Order. (in Rs. Cr.)	221	75	404	129	428 [#]	1326 [#]
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		<p>Commission.</p> <p>The Commission in line with its past practice, for the present year also, is expected to assume an illusionary surplus for the DISCOMs in Delhi, as evident from the Advice, which may not only deprive the Licensee of its legal entitlement to recover its cost for the year in question but may also offset past, current and future gaps. The same is also evident from the fact that the Chairman in its advice to the Government has stated that there is a surplus of Rs. 3577 Cr. for the DISCOMs in Delhi. It is submitted that this will not only affect the ability of the Licensee to continue with its business of electricity distribution but may also adversely affect the future consumers in Delhi.</p> <p>It is noteworthy that the Hon'ble ATE in its judgment in the matter of Appeal 69 of 2009 has held that: <i>"it cannot be the case of the State Commission that burden/benefits of the past years be passed on to the consumers of the future. It has to be kept in mind that postponement will entail carrying cost to the consumers as also cash flow problems for the licensee. National Tariff Policy also requires that "uncontrollable costs should be recovered speedily to ensure that future consumers are not burdened with past costs....."</i></p> <p>Further, it may be noted that the Commission has continued to increase the Revenue Gap for the DISCOMs in Delhi on the ground that the same may be set off by the so called illusionary surpluses for the consecutive years. As explained above, as a result of this approach, the DISCOMs in Delhi including the Licensee are denied of their legal entitlements to recover the cost incurred by them. The said approach of the Commission is not only fallacious but is also contrary to Orders of the Hon'ble ATE, spirit of 2003 Act, the National Tariff Policy and National Electricity Policy.</p> <p>The fact that the approach adopted by the Commission whilst fixing the retail tariff is not cost reflective is also evident from the fact that the Retail Supply Tariff (hereinafter "RST") determined by the Commission for the previous years has been so insufficient that the Licensee has not been able to recover through tariff its expenses for the year, leave alone the Revenue Gap arising on account of the difference between the actual and projections as contained in the Tariff Order for the earlier years.</p>
e.	The claim of DISCOMs regarding ban on fresh lending by the lenders is a total fabrication. The DISCOMs had not	The contents of the corresponding paragraph are denied. It is submitted that nowhere has the Licensee stated that there is a complete ban on fresh lending by the lenders. It has always been the case of the Licensee that as result of the increasing Revenue Gap and the assumption of illusionary surpluses by the Commission, the financial position of the Licensee has been gravely prejudiced. This has adversely affected the ability of the Licensee to borrow money from the

given any evidence to this effect with their representations. The factual position was examined on the basis of their audited accounts, reports of Credit Rating Agencies and sanction letters of Banks. The position is as under:

(TABLE)

lenders which money is required by the Licensee to manage its operational expenses in the absence of a cost reflective tariff being fixed by the Commission. The same was brought to the knowledge of Commission by the Licensee vide its letter dated June 3, 2010 wherein the Licensee had clarified to the Commission about its financial position, which has not been considered by the Commission. A copy of the letter from the Licensee to the Commission dated June 3, 2010 is annexed herewith and marked as **Annexure “3”**.

It is submitted that the conclusions arrived by the Chairman in his personal advice have been arrived at after completely ignoring the contents of the letter dated June 3, 2010 from the Licensee to the Commission. The Chairman whilst arriving at his conclusions in the advice has ignored that the books of accounts of the Licensee reflect an “income recoverable from future tariffs” amounting to Rs. 827.79 crores which though is recoverable by the Licensee, has till date not materialized for the Licensee on account of the Commission deferring the same in its Tariff Orders. It is submitted that the Chairman has ignored the true import of Regulatory Asset of Rs. 827.79 crores. Although, the Licensee is entitled to recover the amount of Rs. 827.79 crores, it needs to be appreciated that it cannot be treated as readily available cash i.e. normal business receivable / accrued income which is realizable from defined parties in due course and the same is contingent upon the recovery permitted at the instance of the Commission through future tariffs. Till date, neither the Commission has prescribed any amortization schedule nor has the same materialized for the Licensee by way of an increase in the RST in the Tariff Orders.

Further, the financial position of the Licensee as reflected in the advice of the Chairman, provides an incomplete picture of the financial position of the Licensee. The same is evident from the fact that although the Licensee’s audited account shows a book profit (after tax) of Rs. 186.60 Crores, the same has been arrived at only after inclusion of Regulatory Assets of Rs. 827.79 Cr. The same is explained in the table below:

Particulars		FY 2009-10	
		Including Regulatory Assets	Excluding Regulatory Assets
Cash Profit/ (loss)	PAT	186.61	186.61
	Income recoverable from Future Tariff	-	(827.79)
	Depreciation	132.55	132.55
		319.16	(508.63)

It is amply clear that on exclusion of the Regulatory Asset, there would in fact be a cash loss of Rs.508.63 Crores for FY 2009-10.

The Licensee has set out the true and correct financial position of the Licensee i.e. after excluding the impact of the Regulatory Assets, as are reflected in the books of the Licensee, in the table below:

Sl. No.	Particulars	FY 2009-10	
		Including Regulatory Assets	Excluding Regulatory Assets
I	Cash Profit		
	Profit After Tax	186.61	186.61
	Income recoverable from Future Tariff	-	(827.79)
	Depreciation	132.55	132.55
		319.16	(508.63)
II	Tangible Net-Worth		
	Share Capital	460.00	460.00
	Contingency Reserve	23.45	23.45
	Profit & Loss A/c (Dr. Balance)	(306.87)	(306.87)
	Income recoverable from Future Tariff	-	(827.79)
	Consumer Contribution for Capital Works	386.49	
	Capital Grants	12.82	12.82

				575.89	(638.39)
	III	Current Ratio	A/B	2.25	1.27
		A	Current Asset	1897.89	1897.89
			Tariff Adjustment Account (Regulatory Asset)	-	(827.79)
				1,897.89	1,070.10
		B	Current Liabilities & Provisions	843.59	843.59
	IV	Net Cash Accrual	Cash & Cash Equivalent as per Cash Flow Statement as at 31.03.2010	102.52	102.52
	V	Debt Equity Ratio	A/B	4.93	(-)4.14*
		A	Debt		
			Secured loan as per Sch 3 of B/s	2,938.53	2,938.53
			Less: Cash Credit from Working Capital Consortium Banks	(294.67)	(294.67)
			Less: DPCL Loan	(100.00)	

			Less: APDRP Loan	(16.77)	
			Add: Consumer Security Deposits	311.12	
				2,838.21	2,643.86
		B	Equity		
			Share Capital	460.00	460.00
			Contingency Reserve	23.45	23.45
			Less: Profit & Loss A/c (Dr. Balance)	(306.87)	(306.87)
			Income recoverable from Future Tariff	-	(827.79)
			Consumer Contribution for Capital Works	386.49	
			Capital Grants	12.82	12.82
				575.89	(638.39)
VI	Debt Service Coverage Ratio		A/B	1.03	(-)0.40[^]
	A		Profit After Tax	186.61	186.61
			Depreciation	132.55	132.55
			Interest	275.46	275.46

			Tax		0.01
			Income recoverable from Future Tariff	-	(827.79)
			EBDIT	594.62	(233.16)
		B	Interest	275.46	275.46
			Loan Repayment	302.00	302.00
				577.46	577.46
	VII	Interest Service Coverage Ratio	A/B	2.16	(-)0.85[#]
		A	Profit After Tax	186.61	186.61
			Depreciation	132.55	132.55
			Interest	275.46	275.46
			Tax	0.01	0.01
			EBDIT	594.63	594.63
			Income recoverable from Future Tariff	-	(827.79)
				594.63	(233.16)
		B	Interest	275.46	275.46

		<p style="text-align: center;">(Note : * - Negative is due to negative equity (equity eroded fully) # - Negative is due to negative EBDIT for interest servicing ^ - Negative is due to negative EBDIT for debt servicing)</p> <p>It would be apparent from the above that the liquidity position as well as other financial parameters of the Licensee is correctly demonstrated only by excluding the Regulatory Assets. The table above brings forth the true financial position of the Licensee i.e. after excluding the Regulatory Asset which has merely accumulated in the books of the Licensee and has not materialized for the Licensee. The same also makes it evident that the Licensee is facing a cash crunch and is not earning cash profits as is wrongly projected in the Advice of the Chairman.</p> <p>Further, the Chairman has also not appreciated the correct DSCR of the Licensee. The Licensee submits that the Commission in its letter dated June 21, 2010 has made the same allegation that the DSCR of the Licensee is 3.55 and that the Licensee has misled the Government by stating that the DSCR of the Licensee is 1.18. The Licensee states that the Licensee has responded separately to the Commission's letter dated June 21, 2010 explaining in detail the fallacies in the Commission's approach whilst arriving at a DSCR of 3.55. A copy of the said response on behalf of the Licensee is annexed herewith and marked as Annexure "4". However, without elaborating on the fallacies on which the Commission's conclusions are premised, the Licensee states that the Commission has taken into consideration an amount of Rs. 828 crores as the cash generation of the Licensee whereas the same is clearly a non-cash item in the books and is shown in the Profit and Loss account as 'income recoverable from future tariff'. Therefore, the Commission has erred by taking an item as a cash receipt, which will be converted into cash only through future Tariff Orders and since the same is not readily available cash with the Licensee, it cannot be taken into consideration whilst calculating the DSCR of the Licensee.</p> <p>Therefore, in view of the above, the Licensee submits that the DSCR of the Licensee is 1.18 and not 3.55 as has been stated by the Chairman in his advice.</p>
f.	Apart from above, the Credit Rating Agency ICRA has given LAA (high credit quality) rating to NDPL and CARE has given BBB+ (moderate safety for	The Chairman in its advice has stated that credit standing of the Licensee is excellent. To arrive at such a conclusion, the Chairman has merely relied on BBB+ ratings given to the Licensee by its credit rating agency i.e. CARE. It may be noted that the Licensee's rating is much below the highest rating of AAA+ and does not truly fall within an acceptable investment grade and concern on safety and risk level is qualified. The Licensee's short term facilities are graded to have even higher risk. Moreover, a rating of BBB+ for a Licensee which is in a business where there is a statutorily promised RoCE of 14%, is clearly insufficient.

	<p>timely servicing of debt) ratings to BRPL and BYPL. These ratings are reflective of their excellent credit standing in the market</p>	<p>Further, the Licensee respectfully submits that the MYT framework is designed to provide predictability and to reduce regulatory risk. As per the terms of the Policy Directions and the MYT Regulations issued by the Commission, the Licensee has been assured a return of 16% RoE and 14% RoCE. Despite the above, large Regulatory Asset / Revenue Gap has accumulated in the books of accounts and the balance sheet for FY 2008-09 and FY 2009-10 of the Licensee which inter alia affects the financial position of the Licensee and the Licensee's ability to source financing from lenders as the lenders' express concern on the large uncovered Regulatory Asset / Revenue Gap of the Licensee. It may be noted that even from the report of the credit rating agency it is evident that the said rating has been given to the Licensee on an assumption that the Regulatory Asset / Revenue Gap will be realized / materialized by the Licensee over the period of time. The relevant extract of the report of the credit rating agency is extracted hereinbelow:</p> <p><i>“In December 2009 BRPL had filed the Aggregate Revenue Requirement (ARR) for FY 2010-11 with Delhi Electricity Regulatory Commission (DERC). BRPL has projected the net revenue gap (including revenue gap till FY 11) as Rs. 2,795.3 Cr. For recovering the revenue gap of Rs. 2,795.3 Cr, BRPL had proposed that tariff (fixed and energy charges) to be increased by 69.6% across all consumer categories. The decision for any revision in tariff is still awaited as the DERC is yet to issue the Tariff Order for FY 2010-11.”</i></p> <p>From the above, it is evident that the present rating which has been given by the credit rating agency is given on an assumption that the Licensee will be able to materialize its Regulatory Asset / Revenue Gap. Till date there is no suggested mechanism to amortize the Regulatory Asset / Revenue Gap and therefore the credit rating of the Licensee may further drop. This is evident from the rating agency's own understanding and limitations to the rating process. The rating rationale provided by CARE with their letter dated May 7, 2010 is reproduced below which is self-explanatory.</p> <p><i>“The rating revision takes into account the improvement in efficiency parameters including reduction in Aggregate Technical and Commercial (AT&C) losses coupled with wider and improved distribution network. The rating continues to derive strength from the strategic importance of the discom, as well as experience and resourcefulness of the promoters. <u>The rating strengths are partially offset by high exposure to regulatory risk in terms of revision in tariff and pass-through of cost items, debts – funded capital expenditure plans and low debt-servicing indicators. Going forward, the impact of increasing power purchase cost and tariff revision on the overall credit profile shall be the key rating sensitivities.</u>” (Emphasis Supplied)</i></p>
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		<p>Therefore, the rating presently given by credit rating agency is very clearly justified more on grounds of operational performance, infrastructure strengths, scale of operations and management strength. The rating agency has qualified its concerns on high regulatory risk and how important is recovery of cost and these sensitivities will impact future ratings.</p>
<p>(ii) Re: Precarious financial positions of DISCOMs</p>		
<p>a.</p>	<p>The actual Revenue Gap for F.Y. 2008-09, as projected by the DISCOMs, is Rs. 606 Crores and after prudence check the actual tried-up figures shows a revenue surplus of around Rs. 75 Crores. This establishes clearly the fallacy of arguments in the representations through which DISCOMs have misled the Government.</p>	<p>It is pertinent to note that while in the corresponding paragraph the Chairman has alleged that after the prudence check the actual tried up figures shows a revenue surplus of around Rs. 75 Crores as against a deficit of 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</p>

		<p>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 been projected by the Commission as being a surplus of 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. 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>
b.	<p>The figures of Regulatory Asset given by them are also entirely incorrect and baseless. There is no Regulatory Asset in the Tariff Orders issued by the Commission. Regulatory Asset has been defined in Clause 5.42 of MYT Regulations and has to be created by the Regulatory Commission</p>	<p>The Licensee denies that there are no Regulatory Assets which have been created by the Commission in the past. In fact the Commission has in its previous Tariff Orders indicated that entitlements of the Licensee though recoverable at the time of the Tariff Order(s) would be given through tariff in future/at the time of truing up.</p> <p>It is submitted that that the Commission in its order dated May 28, 2009 had clearly deferred the revenue requirement of the Licensee and had indicated that the same would be recoverable through tariff over a period for 2 years along with carrying cost of 9%. This is nothing but a Regulatory Asset as defined under the MYT Regulations as well as the NTP.</p> <p>The Licensee submits that Regulatory Asset is defined under Clause 8.2.2 of the NTP as follows:</p> <p><i>"8.2.2. The facility of a regulatory asset has been adopted by some Regulatory Commissions in the past to limit tariff impact in a particular year. This should be done only as exception, and subject to the following guidelines:</i></p>

	<p>in the Tariff Order, only if there is large variation on account of uncontrollable items, and if it is „not feasible to recover in one year alone, the Commission may take a view to create a Regulatory Asset, as per the guidelines provided in Clause 8.2.2 of the National Tariff Policy□. The Commission has not taken any such view in the case of any DISCOM. Therefore, the statement about Regulatory Asset is entirely untrue and misleading.</p>	<p>a. <i>The circumstances should be clearly defined through regulations, and should only include natural causes or force majeure conditions. Under business as usual conditions, the opening balances of uncovered gap must be covered through transition financing arrangement or capital restructuring;</i></p> <p>b. <i>Carrying cost of Regulatory Asset should be allowed to the utilities;</i></p> <p>c. <i>Recovery of Regulatory Asset should be time-bound and within a period not exceeding three years at the most and preferably within control period;</i></p> <p>d. <i>The use of the facility of Regulatory Asset should not be repetitive.</i></p> <p>e. <i>In cases where regulatory asset is proposed to be adopted, it should be ensured that the return on equity should not become unreasonably low in any year so that the capability of the licensee to borrow is not adversely affected.”</i></p> <p>Further, Clause 5.42 of the MYT Regulations recognizes the creation of Regulatory Assets in the following terms:</p> <p><i>“5.42 Variations on account of uncontrollable items like energy sales and power purchase cost shall be trued up. Truing-up shall be carried out for each year based on the actual/audited information and prudence check by the Commission;</i></p> <p><i>Provided that if such variations are large, and it is not feasible to recover in one year alone, the Commission may take a view to create a regulatory asset, as per the guidelines provided in clause 8.2.2 of the National Tariff Policy.”</i></p> <p>The Licensee submits that from a bare perusal of the above quoted provisions, it is amply clear that for the creation of a Regulatory Asset, the following conditions need to be necessarily satisfied:</p> <p>a. There exists a Revenue Gap, which being large in nature cannot be recovered in the year in question.</p> <p>b. In view of the above, the said gap is allowed to be recovered in two or more years.</p> <p>c. The licensee is allowed a carrying cost for recovering the said amount.</p> <p>The Licensee submits that the Commission has, in its past orders, done exactly the same, i.e., recognized the existence of a Revenue Gap which is to be recovered while deferring the recovery of the same over 2 or more tariff periods alongwith carrying costs. The Licensee submits that whilst the Commission might not have used the exact terminology to call the same as a ‘Regulatory Asset’</p>
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but nevertheless the Commission has allowed the creation of the same. It is also important to highlight as to how the said Regulatory Asset has accumulated over the past years and since the same has not been recovered, it has led to the dire financial situation which the Licensee finds itself today. The Licensee submits that Year on Year, the Commission has assumed surplus for the ensuing year i.e. the “year in question” in its Tariff Order, which has never fructified, as shown in the table below:

Table : Estimates of DERC vis a vis actual as per audited accounts

Particulars	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10
Revenue Gap/(Surplus) determined by DERC in the Tariff Order (in Rs. Cr.)	16	31	(225)	(217)	(331)	(510)
Revenue Gap/(Surplus) determined by DERC while Truing up in the next Tariff Order. (in Rs. Cr.)	221	75	404	129	428 [#]	1326 [#]

(Note: # As per ARR filing based on audited accounts)

Thus, the RST determined by the Commission for the ensuing year, failed to give the Licensee the ability to recover through tariff its expenses for the year, leave alone the Revenue Gap arising on account of the difference between the actual and projections as contained in the Tariff Order for the earlier years. The Tariff Orders arrived at such huge surpluses by a combination of one or more of the following:

- a. Higher Revenue estimated from Retail Sale of power.
- b. Higher Revenue estimated from Bulk Sale of Power.
- c. Anticipation of large quantum of power at lower rates from existing / new generating stations.
- d. Anticipation of earlier Commercial operation date of new generating stations.
- e. Lower Power Purchase cost from existing / new generating stations.

Further, inadequate RST has lead to accumulation of a large Revenue Gaps which essentially has to be funded through borrowings. The Licensee has therefore resorted to extensive borrowings not

		<p>only for its capital expenditure needs but for meeting revenue shortfalls on account of high power purchase cost and extraordinary expenses like 6th Pay Commission. The total borrowings stand at Rs. 2938 crores as on 31.03.10 as per the audited accounts of the Licensee. This has grown further to Rs. 3134 as on 31.05.10.</p> <p>It is also pertinent to note that the Revenue Gap recognized by the Commission as on 31.03.08 in its Tariff Order dated 28.05.2009 was Rs. 575 cr. The relevant portion of the Tariff Order is reproduced below:</p> <p><i>“The Commission observes that BRPL had an opening gap of Rs. 404.47 Crs at the beginning of the Control Period. Further, based on the Commission’s analysis undertaken for true up for FY 07-08 there is an additional revenue gap of Rs. 128.95 Crs for FY 07-08. Therefore, the total revenue gap along with the carrying cost of 9% amounts to Rs. 575.63 Crs at the beginning of FY 08-09 which needs to be adjusted”.</i></p> <p><i>(Para 4.135 at Page 125 of the Tariff Order dated 28.05.2009)</i></p> <p>Further, in the Tariff Order dated February 23, 2008 (i.e. the MYT Tariff Order), the Commission has observed the uncontrollable nature of the expenses incurred by the Licensee towards implementation of 6th Pay Commission recommendations along with carrying costs. The relevant portion of the Tariff Order is reproduced below:</p> <p><i>“4.108 During the privatization process, part of the employees of the erstwhile DVB were transferred to BRPL. As per the Transfer Scheme, the terms and conditions of service applicable to the erstwhile Board employees in the Transferee Licensee shall in no way be less favourable than or inferior to that applicable to them immediately before the Transfer. Further, their services shall continue to be governed by various rules and laws applicable to them prior to privatization. Thus the salary/ compensation and promotion of the erstwhile DVB employees in BRPL are still governed by the rules and pay scales as specified by the GoNCTD.</i></p> <p><i>4.109 In consideration of the above, the Commission has recognised the uncontrollable nature of the 6th Pay Commission recommendations in determination of employee expenses during the Control Period.”</i></p> <p><i>(Para 4.108 and 4.109 at Page 138 of the Tariff Order dated February 23,2008)</i></p>
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The Licensee submits that if the above two amounts are taken into account, the Revenue Gap approved by the Commission itself along with carrying cost @ 9% is Rs. 828 crore. Further, the Revenue Gap is estimated to increase to Rs. 2116 crores (as per ARR / audited accounts) at the end of 31.03.10 as shown in Table 2 below:

Table 2: Revenue Gap

Sl. No.	Particulars		Amount	
			Rs. Cr.	Rs. Cr.
Revenue Gap already recognized by DERC				
1	Revenue Gap recognized by DERC upto FY 07-08 (Page 130 of the Tariff Order dated 28.05.09)	A	576	
2	Due to implementation of 6th Pay Commission recommendations	B	145	
3	Carrying Cost on Item 1 and 2 above	C	108	
4	Income recoverable from future tariff and recognized by DERC	D = A+B+C		828
Revenue Gap yet to be considered by DERC				
5	Gap for the year FY 08-09 (as per ARR Petition)	E		353
	<i>Due to uncontrollable Expenses as per MYT Regulations</i>		93	
	<i>Expenses allowed by ATE (excl. due to disallowed Capex)</i>		259	

6	Gap for the year FY 09-10 (as per ARR Petition)	F		843
	<i>Due to uncontrollable Expenses as per MYT Regulations</i>		733	
	<i>Expenses allowed by ATE (excl. due to disallowed Capex)</i>		88	
	<i>Other Expenses</i>		22	
7	Carrying Cost of item 2, 5 and 6 as on 31.03.2010	G		92
8	Income recoverable from future tariff as on 31.03.2010	H = D+E+F+G		2,116
9	Estimated Revenue Gap for FY 2010-11	I		1,243
10	Disallowances in the Tariff order dated 28.05.2009 challenged before ATE	J		372
11	Capital Expenditure / EIC disallowances due to non implementation of ATE Orders (not stayed by the Supreme Court) on the pretext of appeal before Supreme Court.	K		480
	Total			4,210

Therefore, in view of the above, the Licensee denies that the figures provided by the Licensee relating to Regulatory Assets are incorrect. It is submitted that the allegations made by the Chairman in his advice that the statements made by the Licensee relating to Regulatory Assets is

		misleading and untrue, is clearly rebutted from the above explanation, which explanation is based solely on the Commission's own Tariff Orders.
c.	<p>In the representation, the DISCOMs have emphasized the critical financial health of their companies, mentioning that lenders' covenants have been severely breached. All three DISCOMs have been informed separately that in none of the cases lenders covenants have been breached. In fact based on their audited accounts and reports of the Credit Rating Agencies, the Debt Equity Ratio and Debt Service Coverage Ratio show very healthy figures and these ratios are different from that mentioned in the representations. This shows that they have given the incorrect ratios in the representations in Order to mislead the Government. This is again proved from the fact that the lenders have been continuously</p>	<p>The Licensee denies that the Licensee has either mislead the Government or the Commission with respect to the issue of its critical financial health. The Licensee submits that it has recently i.e. on June 3, 2010 filed a detailed response before the Commission clearly demonstrating the critical financial health of the Licensee. The Commission has in response again written to the Licensee on June 21, 2010. The said letter of June 21, 2010 has been separately responded to by the Licensee stating that there are no discrepancies in the position of the Licensee as reflected in the Audit Accounts and Credit Rating Agency's Report and that the Licensee has never mislead the Government.</p> <p>The cash flow statement which forms the part of the annual accounts clearly reflects the actual cash realization by the Licensee and indicates that the cash / liquidity position has been deteriorating on a year on year basis.</p> <p>Further, The Licensee submits that whilst applying the formulae prescribed by one of the Bank, the Licensee has calculated the adjusted DSCR which, as per the audited accounts for FY 2009-10 of the Licensee works out to 1.18. However, the Commission whilst calculating the DSCR for the Licensee has clearly erred as evident from the following tabular representation:</p>

sanctioning loans. Even by the formula mentioned in the sanction letters issued as recently as June, 2010 these financial ratios are excellent in cases of all three DISCOMs. The factual position has been apprised to all of them.				Rs. (In Crores)
	Particulars	Calculation as per the formula specified by one of the Company's Banks	DERC calculation as per letter dated 21.06.2010	Difference
Inflow				
PAT	186.61	186.61	-	
Depreciation	132.55	132.55	-	
Loss on sale / discarding of Assets	0.22	-	0.22	
Interest	275.46	276.46	(1.00)	
Income Recoverable from future tariff	(827.79)	-	(827.79)	
Debt drawdown	890.00	890.08	(0.08)	
Equity infusion	-	-	-	
Capex	(304.82)	(298.51)	(6.31)	
Decrease / (Increase) in WC	10.79	(153.49)	164.28	
Investments	0.48	-	0.48	
Opening cash balance	27.23	27.23	-	
Consumer contribution for capital works	92.37	386.49	(294.12)	
Consumer security deposits	44.84	311.12	(266.28)	
Proceeds from sale / discarding of assets	1.08	-	1.08	
Cash credit (WC loan)	153.49	294.67	(141.18)	
Movement in general reserve	-	(0.91)	0.91	
Movement in Service Line Deposits	(2.61)	-	(2.61)	
Total cash available (A)	679.90	2,052.30	(1,372.40)	
Outflow on account of Debt Servicing Obligations				
Interest	275.46	275.46		
Debt repayment	301.92	302.00		
Total Cash Outflow (B)	577.38	577.46		
Adjusted DSCR (A/B)	1.18	3.55		

		<p>The Licensee submits that the erroneous approach adopted by the Commission is self explanatory from the above table. A bare perusal of the above table would indicate that the Commission has not taken into consideration/erroneously considered the following:</p> <ol style="list-style-type: none"> a. The figure for Profit after Tax for the year 2009-10 of Rs. 186.61 includes an amount of Rs. 827.79 crores accrued by the licensee against 'Income Recoverable from future Tariff'. The Commission has taken the figure of Rs. 827.79 crores as the cash generation of the Licensee whereas the same is clearly a cash item yet to be realized from future tariffs as shown in Profit & Loss account. The recognition of this receivable is by means of an accounting entry only without any associated cash flows. Therefore, the Commission has clearly erred by taking an item as a cash receipt, which will be converted into cash through future tariff orders only and since the same is not readily available cash with the Licensee. Accordingly in the cash availability statement, since the figure of PAT is inclusive of this credit, a deduction has to be made in arriving at net cash inflow to reflect the fact that the aforesaid credit is a non-cash item. The cash flows resulting from the said receivables would be recognized in the cash availability statement only if and when they occur in future. b. The Commission has considered an increase in Working Capital at Rs. 153.49 crores whereas the same actually works out to a decrease of Rs. 10.79 crores. The Licensee is at a loss to understand as to how the Commission has arrived at the figure of Rs. (153.49) crores, which amount is actually Rs. 10.79 crores. The workings for the decrease in working capital is tabulated below:
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Movement in working capital				
	2008-09		2009-10	
Current Assets				
Inventories		137.42		127.23
Sundry Debtors	257.42		1,319.87	
Less: Tariff Adjustment Account	-	257.42	827.79	492.08
Sundry Debtors for bulk power sale		117.00		238.15
Other Current assets		0.57		0.57
Loans & Advances		119.54		109.55
		631.95		967.59
Current Liabilities				
Current Liabilities		485.98		812.84
Provisions		11.18		30.75
		497.16		843.59
Net Current Assets		134.79		124.00
Decrease in WC				(10.79)

c. Further, the Licensee submits that the Commission has erred whilst arriving at the following amounts:

- i. **Consumer Contribution for Capital Works:** The Commission has overstated the amount to the tune of Rs. 294.12 crores. It is submitted that the amount of consumer contribution for FY 2009-10 is actually the increase in consumer contribution for the relevant financial year. The Commission has erred by taking into consideration the accumulated figure, which is an accumulation of consumer contribution over a period time. For example, the Consumer Contribution for Capital Works as at the end of a year comprise the contributions received till the previous year end and contributions received during the year. The Commission has erred whilst taking this accumulated amount since the consumer contribution for a particular financial year is actually the contribution by consumers in that particular

		<p>financial year. Therefore, for FY 2009-10, the net increase in consumer contribution is actually Rs. 92.37 cr. whereas the Commission has taken a cumulative figure of Rs. 386.49 cr. thereby unduly accounting for Rs. 294.12 crores as cash accumulation for FY 2009-10.</p> <p>ii. Cash Credit/WC Loan: It is submitted that the similar erroneous approach has been adopted by the Commission for the head Cash Credit/WC loan, by taking the accumulated figure. The impact on account of such an erroneous calculation is to the tune of Rs. 141.18 crores.</p> <p>iii. Consumer security deposits: The Commission has once again adopted the same erroneous approach for the head Consumer security deposits of which the impact is to the tune of Rs. 266.28 crores.</p> <p>iv. Service Line Deposits: The Commission hasn't considered the amount of Rs. (-)2.61 crores on account of Service Line Deposit as is clear from the above tabular representation.</p> <p>d. Further, the Commission has taken the amount of Capex as Rs. 298.51 crores whereas the actual amount expended by the Company on Capex for FY 09-10 is Rs. 304.82 crores. The amount of Capex considered by the Commission is net of the value of assets sold / discarded during the year amounting to Rs. 6.31 crores whereas the actual amount spent by the Company on Capex needs to be considered without adjusting for the value of assets disposed off. The cash impact of disposal of assets has been considered separately in the table above as loss on disposal of assets amounting to Rs. 0.22 crores and proceeds from disposal of assets amounting to Rs. 1.08 crores.</p> <p>e. The Commission has taken the figure of Rs. (-)0.91 crores in the above table as the movement in general reserve. This amount of Rs. (-)0.91 crores is an adjustment of depreciation on assets created out of grant-in-aid and has already been reduced from the amount of depreciation on the assets for the year as shown in the Profit & Loss A/c for the FY 2009-10. As such the amount of Rs. 0.91 crore as movement in general reserve should not again be considered.</p> <p>The Licensee submits that the total difference in the Commission's calculation as compared to the Licensee's calculation with respect to the available cash accrual to service the debt obligations is Rs. 1372.38 crores. Hence, the adjusted DSCR, which is represented by total cash available divided by the total debt obligations for the financial year, is at variance from</p>
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		<p>what has been calculated by the Licensee with what has been considered by the Commission.</p> <p>In view of the above, the adjusted DSCR calculated by the Commission works out to 3.55 (2052.30 / 577.46), whereas rightly, the adjusted DSCR calculated by the Licensee works out to 1.18 (679.90/577.38).</p> <p>Therefore, the Licensee submits that the Licensee has in fact calculated its DSCR as per the formula suggested by one of our Bankers, which work out to 1.18 and not 3.55 as calculated by the Commission.</p> <p>It may also be mentioned that there are various ways in which DSCR is computed and the method adopted by the Licensee is one of those methods as specified by one of its bankers. However, no matter which method is adopted to calculate the DSCR, the resultant figure would reflect the same acute position that the Licensee is in with respect to its ability to service its debt obligations.</p> <p>It is submitted that a DSCR of 1.18, which is much lower than 3.55 and clearly reflects the inability of the Licensee to repay its debt obligations in a satisfactory manner. The DSCR for FY 2009-10 has not been significantly greater than 1, which means that the margin of safety available to lenders has been minimal. Further, the entire debt servicing during the FY 2009-10 has been out of fresh borrowings.</p> <p>In view of the above, the Licensee denies having misled either the GoNCTD or the Hon'ble Commission whilst calculating its DSCR</p>
<p>(iii) Re: Accumulation of revenue gap beyond sustainable levels</p>		
	<p>The DISCOMs have tried to mislead the Government by not mentioning the excessive claims made by them in the Tariff Petitions, year after year, which are ultimately reduced very substantially on</p>	<p>The contents of the corresponding paragraph are denied. It is denied that the Licensee has misled the Government or has made any excessive claim before the Commission. On the contrary, it is submitted that the claims made by the Licensee in its ARR Petition are based on legitimate expenses incurred by the Licensee. Even if the Commission recognizes the expenses incurred by the Licensee, the same are deferred by the Commission resulting in creation of Revenue Gaps in the books of the Licensee.</p> <p>The act of the Chairman to deny the existence of the Regulatory Asset despite having created the same in past in the form of Tariff Orders justifies the representation made by the Licensee to the Government.</p>

	<p>prudence check. As mentioned in earlier paras, even in the F.Y. 2008-09 they claimed a consolidated Revenue Gap of Rs. 606 Crores and the final True-up figure, after prudence check, shows a surplus of Rs. 75 Crores. Such misrepresentation of facts has created unnecessary avoidable controversy leading to directions under Section 108 by the Government.</p>	<p>With respect to the reduction in the Revenue Gap as claimed by the Licensee after the prudence check by the Commission, the contents of paragraph ii(a) are reiterated but not repeated for the sake of brevity.</p>
<p>(iv) Re: Continuation and practice of assuming higher surplus of tariff fixation</p>		
	<p>DISCOMs have apprehended that the actual Revenue Gap of F.Y. 2009-10 may be ignored by the Commission. The decision with respect to F.Y. 2009-10 has been explained in detail above. DISCOMs have been asked to file complete True-up Petitions showing both uncontrollable items, i.e. Energy Sales and</p>	<p>The contents of the corresponding paragraph of the advice are denied. The Licensee vide its letter dated June 21, 2010 to the Commission had clarified to the Commission that true up for 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 with the Commission an advertisement calling for a public hearing which would include the figures for FY 2009-10. 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. A copy of the letter from the Licensee to Commission dated June 21, 2010 is annexed herewith and marked as Annexure "7". A copy of the letter dated January 14, 2010 from the Commission to Licensee directing the Licensee to file an advertisement calling for public hearing which would include the figures for FY 2009-10, is annexed herewith and marked as Annexure "8". In view of the above, the Licensee has the following to submit with respect to the True up Petition for FY 2009-10:</p>

	<p>Power Purchase Cost, which was not filed with the intention to suppress the sales revenue. At the same time they keep on crying about the difference between projected Power Purchase Cost in the Tariff Order and the actual Power Purchase Cost. It has also been mentioned earlier that if complete True-up Petitions are filed, the Revenue Gap being claimed by them now would be either very significantly reduced or would turn into surplus in some cases, as we have seen in the F.Y. 2008-09</p>	<ol style="list-style-type: none"> a. The Commission itself had included in the present tariff proceedings the numbers and projections for FY 2009-10 vide its own acts during the tariff fixation process. This is evident from the fact that the Commission vide its letter dated January 14, 2010 had asked the Licensee to file with the Commission an advertisement calling for a public hearing which would include the figures for FY 2009-10. In accordance with the directions of the Commission, the Licensee duly published the advertisement which informed the public that the tariff fixation process instituted pursuant to Licensee's ARR Petition would include the figures and data of FY 09-10 and solicited response from the public on the same. b. 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. c. The inclusion of data and figures for actuals for FY09-10 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 by including the revenue shortfall upto FY 2009-10 inter alia on account of uncontrollable variations in the business of the Licensee. The Licensee had also sought time to submit additional audited information for FY 2009-10, if available, at a later date for truing 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. d. 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 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
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		<p>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>e. 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>f. 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 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</p>
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		<p>Regulations and the Orders of the Hon'ble ATE.</p> <p>g. Finally, the Licensee respectfully submits that in accordance with the Commission's direction that the energy sales be provided to the Commission, the Licensee had duly filed the same before the Commission such information vide its letter dated June 28, 2010 It may be noted that the data with respect to energy sales had already been submitted by the Licensee from time to time under the tariff fixation process in disburse as well as in consolidated form vide the following letters.</p> <ul style="list-style-type: none"> a. RA/2010-11/01/A/40 dated 9th June 2010 b. RA/2010-11/01/A/28 dated 17th May 2010 c. RCM/09-10/BRPL/824 dated 31st March 2010 d. RCM/09-10/BRPL/817 dated 25th March 2010 e. RCM/09-10/BRPL/750 dated 3rd February 2010 f. RCM/09-10/BRPL/732 dated 19th January 2010 g. RCM/09-10/BRPL/651 dated 14th December 2009 h. RCM/09-10/548 dated 5th October 2009 i. RCM/09-10/547 dated 30th September 2009 j. RCM/09-10/585 dated 26th October 2009 k. RCM/09-10/476 dated 17th August 2009 <p>Therefore, the information with respect to energy sales was available with the Commission and had also been submitted by the Licensee in the form of consolidated submissions when asked for by the Commission. Hence, it is completely incorrect and false to say that the Licensee had suppressed from the Commission information pertaining to energy sales.</p> <p>Further, the Licensee respectfully submits that when the complete information required by the Commission for true-up is available with the Commission, refusal by the Commission to exercise the discretion vested in it, is incorrect.</p>
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(v) Re: Power Purchase Cost / Quantum		
	<p>The Commission has unanimously decided to project the energy available from new plants on the basis of status shown by CEA. The notings of the Commission showing such unanimous decision are enclosed (Annexure IV). As regards the Power Purchase Cost, it has been mentioned earlier that the Commission has adopted such principles as are based on the latest available data because of which the per unit Power Purchase Cost approved by the Commission is higher than claimed by the DISCOMs in their Petitions</p>	<p>With reference to the contents of corresponding paragraph, the contents of paragraph i (b) of the present response are reiterated but not repeated for the sake of brevity.</p>
(vi) Re: Continuous recourse to additional debt to finance operations		
	<p>DISCOMs have lied completely in projecting incorrect figures of net worth, Debt Equity Ratio and Debt Service Coverage Ratio in their</p>	<p>The contents of the corresponding paragraph are denied. The Licensee takes strong objections to the false allegations made by the Chairman and to the use of the unpalatable language by the Chairman for the DISCOMs in Delhi including the Licensee.</p> <p>The Licensee further reiterates the contents of paragraph i(e), the contents of which are not</p>

	<p>representations. If such incorrect statements would have been made by them in the Tariff Petitions before the Commission, they would have been liable to be prosecuted. The factual position is entirely different, as reflected from their own audited books and accounts, reports of Credit Rating Agencies obtained by them only and sanction letters of different lenders issued from time to time. DISCOMs have been apprised about this. The letters sent to DISCOMs on the factual position are enclosed (Annexure VIII).</p>	<p>repeated herein for the sake of brevity.</p>
<p>(vii) Re: Critical need for additional financing.</p>		
	<p>DISCOMs have requested GNCTD for a bridge loan. It is for the Government to take a decision on this matter. However, as pointed out earlier the concerns of the Distribution Licensees are entirely</p>	<p>Whist it is true that DISCOMs have requested GNCTD for a bridge loan and that it is for the Government to take a decision on this matter, the contents of rest of the corresponding paragraph are denied. The Licensee states and submits that as explained above, the Commission has failed to appreciate the true and correct financial position of the Licensee and the financial constraints faced by it. In this regard, the Government may take an appropriate decision after considering the representation made by the Licensee.</p> <p>It is submitted and as has been explained above, as a result of non-realization of the increasing Revenue Gap, the Licensee is not even in a situation to fund its operational expenses and is</p>

	<p>artificial, not based on facts which have been manipulated by making false statements, so that the Government is misled.</p>	<p>therefore resorting to borrowing from lenders. Instead of bridging the gap through increase in RST , the Commission in the past has deferred the realization of these gaps by assuming surplus when there was none and has now even refused to acknowledge the Regulatory Asset which was created by it in its Tariff Orders.</p> <p>This gap can only be met by the DISCOMs through funds which can either come by way of an upward revision in tariff or by grant of funds by the Government. In the absence of such funds, the Licensee will not be in a position to meet its operational expenses leave alone the expenses required to perform in accordance with the standards prescribed by the Commission.</p> <p>Further, it is submitted that allegations made in the corresponding paragraph are unwarranted and unsustainable as explained above. The Licensee reiterates its request for funds to meet the gap to ensure uninterrupted power supply in Delhi including during the forthcoming Commonwealth Games. In the event such a loan is granted by the Government to the Licensee, the Licensee will not be compelled to resort to commercial borrowings at higher interest rates which will reduce burden on the consumers.</p>
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With respect to the conclusions arrived at by the Commission relating to the approach of tariff fixation principles, the Licensee's comments are annexed herewith and marked as **Annexure "9"**