

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 11/TT/2022

Coram:

**Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of Order: 18.09.2023

In the matter of:

Approval under Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and determination of transmission tariff of 2019-24 tariff period under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 in respect of 400 kV line bays at Bhiwani Sub-station for termination of 400 kV Babai-Bhiwani D/C Line under "Provision of 400 kV Line bays at Bhiwani (PG)" in the Northern Region.

And in the matter of:

Power Grid Corporation of India Limited,
SAUDAMINI, Plot No-2,
Sector-29, Gurgaon-122001 (Haryana).

.....Petitioner

Versus

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Vidyut Marg, Jaipur-302005.
2. Ajmer Vidyut Vitran Nigam Limited,
132 kV, Gss RVPNL sub-Station Building,
Caligiri Road, Malviya Nagar, Jaipur-302017 (Rajasthan).
3. Jaipur Vidyut Vitran Nigam Limited,
132 kV, GSS RVPNL sub- Station Building,
Caligiri Road, Malviya Nagar, Jaipur-302017 (Rajasthan).
4. Jodhpur Vidyut Vitran Nigam Limited,
132 kV, GSS RVPNL sub-Station Building,
Caligiri Road, Malviya Nagar, Jaipur-302017 (Rajasthan).
5. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House Complex Building,
Shimla-171004.



6. Punjab State Electricity Board,
The Mall, Patiala-147001.
7. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula (Haryana) 134109.
8. Power Development Department,
Government of Jammu & Kashmir,
Mini Secretariat, Jammu.
9. Uttar Pradesh Power Corporation Limited,
(Formerly Uttar Pradesh State Electricity Board),
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226001.
10. Delhi Transco Limited,
Shakti Sadan, Kotla Road,
New Delhi-110002.
11. BSES Yamuna Power Limited,
BSES Bhawan, Nehru Place,
New Delhi.
12. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi.
13. Tata Power Delhi Distribution Limited,
33 kV Sub-station, Building,
Hudson Lane, Kingsway Camp,
North Delhi-110009.
14. Chandigarh Administration,
Sector -9, Chandigarh.
15. Uttarakhand Power Corporation Limited,
Urja Bhawan,
Kanwali Road,
Dehradun.
16. North Central Railway,
Allahabad.
17. New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-110 002.



18. NRSS XXXVI Transmission Limited,
(The Tata Power Company Limited),
Shatabdi Bhawan, B-12 & 13,
Sector-4, Noida, UP-201301.

19. Resurgent Power Ventures Pte. Limited,
9, Raffles Place, 26-01 Republic Plaza,
Singapore-048 619.

...Respondent(s)

For Petitioner: Shri S.S. Raju, PGCIL
Shri D.K. Biswal, PGCIL
Shri V.P. Rastogi, PGCIL
Shri Zafrul Hassan, PGCIL
Shri Amit Yadav, PGCIL

For Respondent: Shri Venkatesh, Advocate, NRSS XXXVI
Shri Rishabh Sehgal, Advocate, NRSS XXXVI
Shri Anant Singh Ubeja, Advocate, NRSS XXXVI

ORDER

The instant petition has been filed by Power Grid Corporation of India Limited, for determination of tariff under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as “the 2019 Tariff Regulations”) of the period from COD to 31.3.2024 in respect of 400 kV line bays at Bhiwani Sub-station for termination of 400 kV Babai-Bhiwani D/C Line (hereinafter referred to as the “transmission asset”) under “Provision of 400 kV Line bays at Bhiwani (PG)” (hereinafter referred to as the “transmission project”) in the Northern Region.

2. The Petitioner has made the following prayers in the instant petition:

“1) Admit the capital cost as claimed in the Petition and approve the Additional Capitalisation incurred / projected to be incurred.

2) Approve the Transmission Tariff for the tariff block 2019-24 block for the asset covered under this petition, as per para –9 above.

3) Approve the DOCO of the asset under clause 5 (2) of Tariff Regulation’2019

4) Condone the delay and allow IDC/IEDC as claimed in the petition.



5) Allow the petitioner to recover the shortfall or refund the excess Annual Fixed Charges, on account of Return on Equity due to change in applicable Minimum Alternate/Corporate Income Tax rate as per the Income Tax Act, 1961 (as amended from time to time) of the respective financial year directly without making any application before the Commission as provided in Tariff Regulation 2019 as per para 8 above for respective block.

6) Approve the reimbursement of expenditure by the beneficiaries towards petition filing fee, and expenditure on publishing of notices in newspapers in terms of Regulation 70 (1) Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019, and other expenditure (if any) in relation to the filing of petition.

7) Allow the petitioner to bill and recover Licensee fee and RLDC fees and charges, separately from the respondents in terms of Regulation 70 (3) and (4) Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019.

8) Allow the petitioner to bill and adjust impact on Interest on Loan due to change in Interest rate on account of floating rate of interest applicable during 2019-24 period, if any, from the beneficiaries.

9) Allow the Petitioner to claim the overall security expenses and consequential IOWC on that security expenses separately.

10) Allow the petitioner to claim the capital spares at the end of tariff block as per actual.

11) Allow the Petitioner to bill and recover GST on Transmission Charges separately from the respondents, if GST on transmission is levied at any rate in future. Further, any taxes including GST and duties including cess etc. imposed by any statutory/Govt./municipal authorities shall be allowed to be recovered from the beneficiaries.

12) Allow interim tariff in accordance with Regulation 10 (3) of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for purpose of inclusion in the PoC charges.

and pass such other relief as Hon'ble Commission deems fit and appropriate under the circumstances of the case and in the interest of justice.”

Background

3. The facts of the case succinctly stated are as follows:

- (a) The Petitioner has been entrusted with the implementation of transmission project associated with “Provision of 400 kV Line bays at Bhiwani (PG)”. The Investment Approval (IA) and expenditure sanction of the transmission



project was accorded by Board of Directors (BOD) of the Petitioner's Company in meeting dated 30.6.2017 as communicated vide Memorandum No. C/CP/IA/PA1718-04-0A-IA004 dated 4.7.2017 at an estimated cost of ₹1752 lakh including an IDC ₹93 lakh based on April, 2017 price level.

(b) The scope of the transmission project was discussed and agreed in 35th Standing Committee Meeting for Power System Planning for Northern Region held on 3.11.2014, in 33rd meeting of NRPC held on 11.11.2014 and in 34th meeting of empowered committee on transmission held on 13.4.2015, respectively. The scope of work covered under the transmission project is as follows:

Sub-station

Extension of 400/220 kV Bhiwani (POWERGRID) Sub-station

- 400 kV Line Bays: 2 numbers

(c) As per IA dated 30.6.2017, the transmission asset was scheduled to be commissioned within 21 months from the date of IA i.e. by 30.3.2019. The details of the transmission asset including scheduled commercial operation date (SCOD), date of commercial operation (COD) and time over-run are as follows:

SCOD	COD	Time over-run
30.3.2019	23.8.2019	146 days

4. The Respondents, mainly beneficiaries of the Northern Region, are distribution licensees, transmission licensees and power departments which are procuring transmission service from the Petitioner.



5. The Petitioner has served the petition on the Respondents and notice regarding filing of this petition has been published in the newspapers in accordance with Section 64 of the Electricity Act, 2003. No comments or suggestions have been received from the general public in response to the aforesaid notice published in the newspapers by the Petitioner. NRSS XXXVI Transmission Limited (NRSS), Respondent No. 18, has filed a reply vide affidavit dated 25.11.2022 and has raised issue of time over-run. The issue raised by NRSS and clarifications given by the Petitioner thereto have been dealt in the relevant portions of this order.

6. The hearing in this matter was held on 12.1.2023 through video conference and the order was reserved.

7. NRSS has submitted that NRSS XXXVI Transmission Limited had been taken over by Resurgent Power Ventures Pte. Limited (RPVPL) w.e.f. 4.4.2022. NRSS XXXVI Transmission Limited was earlier a wholly owned subsidiary of Essel Infraprojects Limited which had emerged as the successful bidder under Section 63 of the Electricity Act, 2003 ("the Act"), to establish the transmission system for "System Strengthening Scheme in Northern Region (NRSS-XXXVI) along with LILO of Sikar-Neemrana 400 kV D/C line at Babai (RRVPL)".

8. NRSS has further submitted that due to the continued *force majeure* events, there is time over-run in case of the work allotted to NRSS (including the Babai-Bhiwani 400 kV D/C line) leading to cost over-run and it was unable to arrange requisite financial resources. Due to the continuous default by NRSS to repay the debt to its lender, the debt was classified as Non Performing Asset ("NPA") by PTC India Financial Services Limited ("PIFSL"). In view of the above, the lenders exercised 'Lenders Substitution



Rights' in terms of the TSA. Accordingly, the Commission allowed RPVPL to be substituted in the place of NRSS and RPVPL acquired 100% shareholding of NRSS on 14.3.2022. PIFSL and RPVPL had jointly filed Petition No. 267/MP/2021 under Section 17(3) and (4) of the Act, read with Regulation 12 of the 2009 Tariff Regulations, seeking prior approval of the Commission to transfer the equity shareholding and management control of NRSS in favour of the RPVPL. The same was allowed by the Commission vide order dated 8.3.2022 in Petition No. 267/MP/2021. The process of transferring of shares and management has been recently done, thus, RPVPL is in the process of taking control of all the ongoing projects of NRSS including the one involved in the present petition.

9. This order is issued considering the submissions made by the Petitioner vide affidavit dated 27.9.2021 in the main petition and the Petitioners subsequent affidavits dated 31.3.2022 and 11.11.2022, NRSS's reply vide affidavit dated 25.11.2022, and the Petitioner's rejoinder vide affidavit dated 12.12.2022 in the matter.

10. Having heard the learned counsels for the Petitioner, Respondents and perused the material on record, we proceed to dispose of the petition.

DETERMINATION OF ANNUAL FIXED CHARGES FOR 2019-24 TARIFF PERIOD

11. The Petitioner has claimed the following transmission charges in respect of the transmission asset for 2019-24 tariff period:

Particulars	(₹ in lakh)				
	2019-20 (Pro-rata for 222 days)	2020-21	2021-22	2022-23	2023-24
Depreciation	51.03	90.29	90.46	90.46	90.46
Interest on Loan	49.18	81.05	73.85	66.72	59.56
Return on Equity	50.94	90.21	90.39	90.39	90.39
Interest on Working Capital	3.97	6.85	6.85	6.84	6.83



Particulars	2019-20 (Pro-rata for 222 days)	2020-21	2021-22	2022-23	2023-24
O&M Expenses	39.00	66.56	68.90	71.32	73.82
Total	194.12	334.96	330.45	325.73	321.06

12. The Petitioner has claimed the following Interest on Working Capital (IWC) in respect of the transmission asset for 2019-24 tariff period:

(₹ in lakh)					
Particulars	2019-20 (Pro-rata for 222 days)	2020-21	2021-22	2022-23	2023-24
O&M Expenses	5.36	5.55	5.74	5.94	6.15
Maintenance Spares	9.65	9.98	10.34	10.70	11.07
Receivables	39.35	41.30	40.74	40.16	39.48
Total Working Capital	54.36	56.83	56.82	56.80	56.70
Rate of Interest (in %)	12.05	12.05	12.05	12.05	12.05
Interest on Working Capital	3.97	6.85	6.85	6.84	6.83

Date of Commercial Operation (“COD”)

13. The SCOD of the transmission asset was 30.3.2019 against which the Petitioner has claimed the COD of the transmission asset as 23.8.2019 under Regulation 5(2) of the 2019 Tariff Regulations, as the associated transmission line i.e. Babai (RRVPL)-Bhiwani (PG) D/C line, being implemented by NRSS/ RPVPL under TBCB route was not ready on 23.8.2019.

14. Regulation 5(2) of the 2019 Tariff Regulations provides as follows:

“5. Date of Commercial Operation: (1) *The date of commercial operation of a generating station or unit thereof or a transmission system or element thereof and associated communication system shall be determined in accordance with the provisions of the Grid Code.*

(2) *In case the transmission system or element thereof executed by a transmission licensee is ready for commercial operation but the interconnected generating station or the transmission system of other transmission licensee as per the agreed project implementation schedule is not ready for commercial operation, the transmission licensee may file petition before the Commission for approval of the date of commercial operation of such transmission system or element thereof:*

Provided that the transmission licensee seeking the approval of the date of commercial operation under this clause shall give prior notice of at least one month, to the generating



company or the other transmission licensee and the long term customers of its transmission system, as the case may be, regarding the date of commercial operation:

Provided further that the transmission licensee seeking the approval of the date of commercial operation of the transmission system under this clause shall be required to submit the following documents along with the petition:

- (a) Energisation certificate issued by the Regional Electrical Inspector under Central Electricity Authority;*
- (b) Trial operation certificate issued by the concerned RLDC for charging element with or without electrical load;*
- (c) Implementation Agreement, if any, executed by the parties;*
- (d) Minutes of the coordination meetings or related correspondences regarding the monitoring of the progress of the generating station and transmission systems;*
- (e) Notice issued by the transmission licensee as per the first proviso under this clause and the response;*
- (f) Certificate of the CEO or MD of the company regarding the completion of the transmission system including associated communication system in all respects.”*

15. The NRSS/ RPVPL vide affidavits dated 25.11.2022 and 16.1.2023 has submitted as follows:

- (a) The Petitioner in the instant Petition has not placed on record any document/letter/MoM wherein, the Petitioner and NRSS/ RPVPL were coordinating for the development of the transmission asset. As per the proviso to Regulation 5(2) of the 2019 Tariff Regulations, the transmission licensee (the Petitioner) is required to give a notice one month before it achieves commercial operation. However, the Petitioner issued a notice 22 months i.e. on 19.6.2021 after its claim to have achieved commercial operation.
- (b) The Commission vide its RoP dated 27.10.2022 observed that the Petitioner has neither shown any readiness nor has communicated with the beneficiaries, CEA or the CTU. Accordingly, the Commission had directed the Petitioner to place on record any communication made with the beneficiaries regarding progress of work and COD of the instant transmission asset.



- (c) The Petitioner has contended that NRSS/ RPVPL was well aware of the development made towards the transmission asset at all relevant point of time. In order to support the said contention, the Petitioner has placed on record a letter dated 19.6.2021 intimating that the Petitioner had charged and commissioned its 2 number 400 kV Line Bays at Bhiwani on 21.8.2019, which has been constructed for 400 kV D/C Babai-Bhiwani Line. In addition to the aforesaid letter, the Petitioner has also relied upon Monthly Progress Reports issued by CEA. The letter dated 19.6.2021 issued by the Petitioner purported final intimation for declaration of commercial operation under the 2019 Tariff Regulations. As per the notice, the Petitioner claimed that the transmission asset had achieved the commercial operation on 21.8.2019 i.e. almost 22 months prior to the date of issuance of the said letter.
- (d) The Petitioner has not complied with the 2019 Tariff Regulations notified by the Commission. Moreover, retrospective commissioning is not permissible under the provisions of the 2019 Tariff Regulations.

16. In response, the Petitioner vide affidavits dated 12.12.2022 and 17.2.2023 has submitted that the scheduled COD of the transmission asset was 30.3.2019. NRSS/ RPVPL, vide letter dated 15.1.2018, requested CEA to prepone SCOD of “400 kV Babai-Bhiwani D/C Line” from June, 2019 to 31.3.2019. Further, CEA vide letter dated 6.2.2018, scheduled a meeting to discuss the request of NRSS for early commissioning of “400 kV Babai-Bhiwani D/C Line” from June, 2019 to 31.3.2019. Accordingly, meeting was held on 13.2.2018 (Minutes issued on 23.2.2018) wherein CTU informed that the works associated with bays at Bhiwani has been awarded and it would be commissioned in matching timeframe of 400 kV Babai-Bhiwani D/C Line. NRSS/



RPVPL was well aware that the work associated with transmission asset has already been awarded and it would be put into commercial operation in matching timeframe i.e. by 31.3.2019 as requested by them vide letter dated 15.1.2018 and meeting held on 13.2.2018.

17. The Petitioner has further submitted that it continuously provided the status of progress/ COD of the transmission asset to CEA as per the 2010 IEGC Regulations, and as per the order dated 7.12.2016 in Petition No. 161/TL/2016 for grant of transmission license to NRSS/ RPVPL. However, although the COD of associated line was delayed, it was not possible to stretch the COD of the transmission asset as the scope of work was completed. Further, postponing would have led to additional claims for idle charges by the contractor and increase in IDC and IEDC. Thus, the Petitioner has sought approval of the COD of the transmission asset as 23.8.2019 under Regulation 5(2) of the 2019 Tariff Regulations.

18. We have considered the submissions of the Petitioner and NRSS/ RPVPL. As per Regulation 5(2) of the 2019 Tariff Regulations, the COD of a transmission system or an element thereof may be approved if the said system has been prevented from being put to regular service for reasons not attributable to the transmission licensee. In the instant case, the Petitioner has claimed approval of the COD of transmission asset as 23.8.2019 under Regulation 5(2) of the 2019 Tariff Regulations as the associated transmission line under the scope of the NRSS/ RPVPL was not ready on 23.8.2019. In support of the proposed COD of 23.8.2019, the Petitioner has submitted (a) CEA certificate dated 14.8.2019 for Energizing Electrical Installations under Regulation 43 of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010 (b) NRLDC idle charging Certificate dated 20.5.2021 for successful



completion of trial operation, issued by Power System Operation Corporation Limited; (c) the Petitioner's CMD Certificate and (d) notice dated 19.6.2021 issued to NRSS regarding readiness of the transmission asset in accordance with Regulation 5(2) of the 2019 Tariff Regulations and the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2016.

19. The Petitioner has complied with all the requirements for approving the COD as provided under Regulation 5(2) of the 2019 Tariff Regulations like CEA energisation certificate, RLDC idle Charging Certificate and CMD Certificate regarding readiness of the transmission asset, except for issue of "notice" to the associated transmission licensee. As per the first proviso of Regulation 5(2) of the 2019 Tariff Regulations, a "notice" was to be issued by the Petitioner to the associated transmission licensee one month before the COD claimed. Thus, "issue of notice" is a statutory requirement as per the regulations. Further, it is a well settled principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that particular manner and not in any other manner. In the instant case, admittedly it was issued only on 19.6.2021, i.e. after more than 21 months from the COD claimed. This delay in issue of notice has also not been explained by the Petitioner. As the notice regarding the COD of the transmission asset was issued to the Respondents only on 19.6.2021, we approved the COD of the transmission asset as 19.6.2021. However, the IDC and IEDC from the date of COD claimed by the Petitioner, i.e. 23.8.2019 to 19.6.2021 will not capitalised as the Petitioner has not complied with the requirement of "issue of notice" as mandated under the first proviso of Regulation 5(2) of the 2019 Tariff Regulations.

Capital Cost

20. Regulation 19 of the 2019 Tariff Regulations provides as follows:



“19. Capital Cost: (1) *The Capital cost of the generating station or the transmission system, as the case may be, as determined by the Commission after prudence check in accordance with these regulations shall form the basis for determination of tariff for existing and new projects.*

(2) *The Capital Cost of a new project shall include the following:*

- (a) *The expenditure incurred or projected to be incurred up to the date of commercial operation of the project;*
- (b) *Interest during construction and financing charges, on the loans (i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of 30% of the funds deployed, by treating the excess equity as normative loan, or (ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed;*
- (c) *Any gain or loss on account of foreign exchange risk variation pertaining to the loan amount availed during the construction period;*
- (d) *Interest during construction and incidental expenditure during construction as computed in accordance with these regulations;*
- (e) *Capitalised initial spares subject to the ceiling rates in accordance with these regulations;*
- (f) *Expenditure on account of additional capitalization and de-capitalisation determined in accordance with these regulations;*
- (g) *Adjustment of revenue due to sale of infirm power in excess of fuel cost prior to the date of commercial operation as specified under Regulation 7 of these regulations;*
- (h) *Adjustment of revenue earned by the transmission licensee by using the assets before the date of commercial operation;*
- (i) *Capital expenditure on account of ash disposal and utilization including handling and transportation facility;*
- (j) *Capital expenditure incurred towards railway infrastructure and its augmentation for transportation of coal upto the receiving end of the generating station but does not include the transportation cost and any other appurtenant cost paid to the railway;*
- (k) *Capital expenditure on account of biomass handling equipment and facilities, for co-firing;*
- (l) *Capital expenditure on account of emission control system necessary to meet the revised emission standards and sewage treatment plant;*
- (m) *Expenditure on account of fulfilment of any conditions for obtaining environment clearance for the project;*
- (n) *Expenditure on account of change in law and force majeure events; and*
- (o) *Capital cost incurred or projected to be incurred by a thermal generating station, on account of implementation of the norms under Perform, Achieve and Trade (PAT) scheme of Government of India shall be considered by the Commission subject to sharing of benefits accrued under the PAT scheme with the beneficiaries.*

(3) *The Capital cost of an existing project shall include the following:*

- (a) *Capital cost admitted by the Commission prior to 1.4.2019 duly trued up by excluding liability, if any, as on 1.4.2019;*
- (b) *Additional capitalization and de-capitalization for the respective year of tariff as determined in accordance with these regulations;*
- (c) *Capital expenditure on account of renovation and modernisation as admitted*



- by this Commission in accordance with these regulations;
- (d) Capital expenditure on account of ash disposal and utilization including handling and transportation facility;
 - (e) Capital expenditure incurred towards railway infrastructure and its augmentation for transportation of coal upto the receiving end of generating station but does not include the transportation cost and any other appurtenant cost paid to the railway; and
 - (f) Capital cost incurred or projected to be incurred by a thermal generating station, on account of implementation of the norms under Perform, Achieve and Trade (PAT) scheme of Government of India shall be considered by the Commission subject to sharing of benefits accrued under the PAT scheme with the beneficiaries.
- (4) The capital cost in case of existing or new hydro generating station shall also include:
- (a) cost of approved rehabilitation and resettlement (R&R) plan of the project in conformity with National R&R Policy and R&R package as approved; and
 - (b) cost of the developer's 10% contribution towards Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY) and Deendayal Upadhyaya Gram Jyoti Yojana (DDUGJY) project in the affected area.
- (5) The following shall be excluded from the capital cost of the existing and new projects:
- (a) The assets forming part of the project, but not in use, as declared in the tariff petition;
 - (b) De-capitalised Assets after the date of commercial operation on account of replacement or removal on account of obsolescence or shifting from one project to another project:

Provided that in case replacement of transmission asset is recommended by Regional Power Committee, such asset shall be de-capitalised only after its redeployment;

Provided further that unless shifting of an asset from one project to another is of permanent nature, there shall be no de-capitalization of the concerned assets.

- (c) *In case of hydro generating stations, any expenditure incurred or committed to be incurred by a project developer for getting the project site allotted by the State Government by following a transparent process;*
- (d) *Proportionate cost of land of the existing project which is being used for generating power from generating station based on renewable energy; and*
- (e) *Any grant received from the Central or State Government or any statutory body or authority for the execution of the project which does not carry any liability of repayment."*

21. The Petitioner vide Auditor's Certificate dated 22.6.2021 has claimed capital cost incurred as on COD and Additional Capital Expenditure (ACE) projected to be incurred in respect of the transmission asset and the same are as follows:



FR Approved Cost	Expenditure up to COD	Projected ACE				Estimated completion cost
		2019-20	2020-21	2021-22	2022-23	
1752.00	1387.96	0.00	210.40	5.83	0.00	1604.19

(₹ in lakh)

22. We have considered the submissions of the Petitioner regarding capital cost and have given our findings on the same in the relevant portions of this order.

23. Against the total apportioned approved cost of ₹1752.00 lakh, the estimated completion cost is ₹1604.19 lakh, hence, there is no cost over-run with respect to approved cost.

Time over-run

24. As per the IA dated 30.6.2017, the transmission project is scheduled to be commissioned within 21 months from the date of IA. Hence, the SCOD is 30.3.2019 against which the transmission asset is proposed to be under commercial operation on 23.8.2019. The COD of the transmission asset is approved as 19.6.2021 i.e. the date on which the Petitioner intimated NRSS XXXVI about the readiness of the asset. Thus, there is a time over-run of 812 days.

25. The Petitioner has submitted that Babai (RRVPL)-Bhiwani (PG) D/C line along with Babai bay is being made by NRSS/ RPVPL and bays at Bhiwani station for inter-connection of the said transmission line is being made by the Petitioner. The LOA (Letter of Award) was issued on 16.10.2017 and the working gangs were mobilized timely to achieve the scheduled completion target. Considering the delay in construction of the TBCB line, the construction speed of Bhiwani bays was slowed down and various construction activities were postponed. However, since the Petitioner had already awarded the contract and it was not possible to stretch the timeline beyond a certain



limit, due to contractual implications regarding additional claims on idle charges by the contractor etc., the transmission asset is proposed to be put on commercial operation w.e.f. 23.8.2019.

26. We have considered the submissions of the Petitioner. As per the IA dated 30.6.2017, the instant transmission asset was scheduled to be put into commercial operation within 21 months i.e. by 30.3.2019. We have already approved the COD of the transmission asset as 19.6.2021. Thus, there is a time over-run of 812 days, i.e. 146 days from the SCOD (of 30.3.2019) to the COD claimed by the Petitioner (23.8.2019) and 696 days from the date of COD claimed to the date of issue of notice on 19.6.2021. While approving the COD of the transmission asset as 19.6.2021, we have already held that the IDC and IEDC from the date of COD claimed, i.e. 23.8.2019 to 19.6.2021 shall be not capitalised. Therefore, we examine the time over-run of 146 days from the SCOD to the COD claimed by the Petitioner. The Petitioner has submitted that the transmission asset was ready to be put under commercial operation on 23.8.2019 but could not be put to use as the associated transmission line under the scope of NRSS/ RPVPL was not ready. The Petitioner has submitted that it has informed NRSS/ RPVPL through letter dated 19.6.2021 about the proposed charging of the transmission asset and to schedule the TBCB line accordingly. The Petitioner has stated that the time over-run is on account of the delay of the associated lines by NRSS/ RPVPL. In view of delay of associated transmission line, the Petitioner tried to re-schedule the construction activities. However, due to contractual constraints and to avoid any additional liability towards asset, the bays were made ready on 23.8.2019.

27. We have considered the submissions of the Petitioner in respect of time over-run of 146 days. The Petitioner has attributed the time over-run of 146 days to the time



taken to match the COD of the transmission asset with the COD of the transmission line under the scope of the NRSS/ RPVPL. The decision to delay the COD of the transmission asset and to match the same with the COD of the transmission line of NRSS/ RPVPL is the decision of the Petitioner. In a similar case, the Commission in order dated 31.8.2021 in Petition No. 105/TT/2020 did not condone the time over-run for the same reason of the Petitioner’s decision to match with the associated downstream assets. The relevant portion of the order dated 31.8.2021 is as follows:

“47. The Petitioner has attributed the time over-run of 123 days and 143 days in case of Asset-III and Asset-IV respectively to time taken to match their COD with the associated downstream transmission system under the scope of HVPNL. The Petitioner took the decision to wait and match Asset-III and Asset-IV with COD of the associated downstream assets and finally, claim the COD of Asset-III and Asset-IV on 4.11.2017 and 24.11.2017, respectively. As it was the decision of the Petitioner itself to delay the COD of the Asset-III and Asset-IV to match with the associated downstream transmission system under the scope of HVPNL, we are not inclined to condone the time over-run of 123 days and 143 days in case of Asset-III and Asset-IV, respectively.”

28. Accordingly, the time over-run of 146 days in case of the transmission asset is due to the Petitioner’s decision to match the COD of the transmission asset with the transmission line of NRSS/ RPVPL, i.e. upto 23.8.2019 is not condoned.

Interest During Construction (IDC)

29. The Petitioner has claimed following IDC in respect of the transmission asset covered in the instant petition and has submitted the statement showing IDC claim, discharge of IDC liability as on COD and thereafter:

(₹ in lakh)			
IDC as per Auditor’s Certificate	IDC discharged upto COD	IDC discharged during 2020-21	IDC discharged during 2021-22
26.34	21.43	4.35	0.56



30. We have considered the submissions of the Petitioner. As discussed above in this order, time over-run with respect to the transmission asset has not been condoned. Accordingly, IDC on cash basis up to the COD has been worked out on the basis of the loan details given in the statement showing discharge of IDC and Form-9C of the transmission asset. IDC claimed and considered as on COD and summary of discharge of IDC liability up to COD and thereafter for the purpose of tariff determination subject to revision at the time of truing-up is as follows:

(₹ in lakh)

IDC as per Auditor's Certificate	IDC disallowed due to time over-run not condoned	IDC allowed on accrual basis	Undischarged IDC liability as on COD	IDC allowed on cash basis as on COD	Discharge of IDC liability allowed as ACE	
					2022-23	2023-24
26.34	26.19	0.15	0.00	0.15	0.00	0.00

Incidental Expenditure During Construction (IEDC)

31. The Petitioner has claimed IEDC in respect of the transmission asset as per the Auditor's Certificate. The Petitioner vide Auditor Certificate dated 22.6.2021 has claimed the IEDC as on COD was ₹-6.56 lakh. The summary of the same is as follows:

(₹ in lakh)

Particulars	Amount
IEDC upto 31.3.2019	-7.93
IEDC from 1.4.2019 to 22.8.2019 (proposed COD: 23.8.2019)	1.37
Total	-6.56

32. The Petitioner has submitted that IEDC of ₹-7.93 lakh upto 31.3.2019 has been recovered from contractors as indicated vide Form-12A. The Petitioner has claimed IEDC of ₹1.37 lakh from 1.4.2019 to 22.8.2019 and net IEDC claimed is ₹-6.56 lakh. As the time over-run from 1.4.2019 to 22.8.2019 in respect of the transmission asset has not been condoned, the Petitioner's claim of IEDC of ₹1.37 lakh for the said period is disallowed and not capitalised.



Initial Spares

33. Regulation 23(d) of the 2019 Tariff Regulations provides that Initial Spares shall be capitalised as a percentage of plant and machinery cost up to cut-off date, subject to the following ceiling norms:

“(d) Transmission System

<i>(i) Transmission line:</i>	1.00%
<i>(ii) Transmission sub-station</i>	
- <i>(Green Field):</i>	4.00%
- <i>(Brown Field):</i>	6.00%
<i>(iii) Series Compensation devices and HVDC Station:</i>	4.00%
<i>(iv) GIS Insulated Sub-station</i>	
- <i>(Green Field):</i>	5.00%
- <i>(Brown Field):</i>	7.00%
<i>(v) Communication System:</i>	3.50%
<i>(vi) Static Synchronous Compensator:</i>	6.00%

34. Initial Spares as claimed by the Petitioner is as follows:

Particulars	Plant and machinery cost	Initial Spares claimed	Ceiling limit as mentioned as per Regulation (in %)	Initial spares allowable as per Regulation	Excess Initial Spares
	A	B	C	D	E
Sub-station	1384.98	51.36	6.00	80.02	-
PLCC	199.43	18.81	3.50	6.32	12.49

35. The Petitioner has further submitted that in case of PLCC under Communication system, the excess Initial Spare is procured on account of system requirement for smooth operation of the grid and has prayed to allow the excess initial spares towards PLCC under Regulation 76 the 2019 Tariff Regulations.

36. We have considered the submissions of Petitioner. The Petitioner has claimed Initial Spares on PLCC under communication system separately. This issue has been dealt in order dated 26.5.2022 in Petition No. 203/TT/2021. A relevant portion of the order dated 26.5.2022 is as follows:



“61. We have considered the submissions of the Petitioner and MPPMCL. Though PLCC is a communication system, it has been considered as part of the sub-station in the 2014 Tariff Regulations and the 2019 Tariff Regulations and the norms for sub-station have been specified accordingly. Form-5 under Part-III of the 2019 Tariff Regulations requires a transmission licensee to provide “Elementwise Break-up of Project/ Asset/ Element Cost for Transmission System or Communication System”. The details which are required to be furnished with regard to (a) transmission line are: preliminary works, transmission lines material, taxes and duties; (b) for Sub-stations: preliminary works & land, civil works, substation equipment, spares, taxes and duties; and for (c) communication system: preliminary works, communication system equipment, taxes and duties. PLCC is a part of sub-station equipment at Sl. No. 6.5 of Form-5 under the head “Sub- station equipment” and there is no mention of PLCC under communication system.”

37. Therefore, as discussed above we are not inclined to grant Initial Spares separately towards PLCC under communication system since Initial Spares claimed towards PLCC are included in sub-station. Based on the information available on record, the Initial Spares in respect of the transmission asset are allowed as per respective percentage of the plant and machinery cost as on the cut-off date on individual basis. Initial Spares allowed in respect of the transmission asset is as follows:

Particulars	Plant and Machinery cost (excluding IDC and IEDC, land cost & cost of civil works) (₹ in lakh)	Initial Spares claimed (₹ in lakh)	Ceiling limit (in %)	Initial Spares allowable (₹ in lakh)	Initial Spares dis-allowed (₹ in lakh)	Initial Spares allowed (₹ in lakh)
	A	B	C	$D=(A-B)*C/(100-C)$	E	F
Sub-station	1584.41	70.17	6.00%	96.65	NIL	70.17

38. The details of capital cost approved as on claimed COD (23.8.2019) in respect of the transmission asset is as follows:

(₹ in lakh)

Capital cost claimed as on COD (A)	Less: IDC disallowed due to time over-run not condoned (B)	Less: IDC undischarged after COD (C)	Less: IEDC disallowed due to time over-run not condoned (D)	Capital cost allowed as on COD on cash basis (D)=(A-B-C-D)
1387.96	26.19	0.00	1.37	1360.40



39. The approved COD is 19.6.2021 instead of the COD claimed by the Petitioner i.e. 23.8.2019, hence the approved capital cost as on COD takes into account the capital cost as on claimed COD and ACE for 2020-21 and 2021-22. Thus, the approved capital cost as on COD is calculated as follows:

(₹ in lakh)

Approved Capital Cost						
Capital Cost as on 23.8.2019	2019-20	2020-21	2021-22	2022-23	2023-24	Capital Cost as on 19.6.2021
1360.40	0.00	210.40	5.83	0.00	0.00	1576.63

40. The approved capital cost as on COD is therefore ₹1576.63 lakh and the same has been considered for computation of tariff for the transmission asset.

Additional Capital Expenditure (“ACE”)

41. Regulation 24 and Regulation 25 of the 2019 Tariff Regulations provide as follows:

“24. Additional Capitalisation within the original scope and upto the cut-off date

(1) The additional capital expenditure in respect of a new project or an existing project incurred or projected to be incurred, on the following counts within the original scope of work, after the date of commercial operation and up to the cut-off date may be admitted by the Commission, subject to prudence check:

- (a) Undischarged liabilities recognized to be payable at a future date;*
- (b) Works deferred for execution;*
- (c) Procurement of initial capital spares within the original scope of work, in accordance with the provisions of Regulation 23 of these regulations;*
- (d) Liabilities to meet award of arbitration or for compliance of the directions or order of any statutory authority or order or decree of any court of law;*
- (e) Change in law or compliance of any existing law; and*
- (f) Force Majeure events:*

Provided that in case of any replacement of the assets, the additional capitalization shall be worked out after adjusting the gross fixed assets and cumulative depreciation of the assets replaced on account of de-capitalization.

(2) The generating company or the transmission licensee, as the case may be shall submit the details of works asset wise/work wise included in the original scope of work along with estimates of expenditure, liabilities recognized to be payable at a future date and the works deferred for execution.



25. Additional Capitalisation within the original scope and after the cut-off date:

(1) *The ACE incurred or projected to be incurred in respect of an existing project or a new project on the following counts within the original scope of work and after the cut-off date may be admitted by the Commission, subject to prudence check:*

- (a) *Liabilities to meet award of arbitration or for compliance of the directions or order of any statutory authority, or order or decree of any court of law;*
- (b) *Change in law or compliance of any existing law;*
- (c) *Deferred works relating to ash pond or ash handling system in the original scope of work;*
- (d) *Liability for works executed prior to the cut-off date;*
- (e) *Force Majeure events;*
- (f) *Liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments; and*
- (g) *Raising of ash dyke as a part of ash disposal system.*

(2) *In case of replacement of assets deployed under the original scope of the existing project after cut-off date, the additional capitalization may be admitted by the Commission, after making necessary adjustments in the gross fixed assets and the cumulative depreciation, subject to prudence check on the following grounds:*

- (a) *The useful life of the assets is not commensurate with the useful life of the project and such assets have been fully depreciated in accordance with the provisions of these regulations;*
- (b) *The replacement of the asset or equipment is necessary on account of change in law or Force Majeure conditions;*
- (c) *The replacement of such asset or equipment is necessary on account of obsolescence of technology; and*
- (d) *The replacement of such asset or equipment has otherwise been allowed by the Commission.”*

42. The Petitioner, vide affidavit dated 27.9.2021, has claimed ACE for 2019-24 tariff period, which is as follows:

(₹ in lakh)

ACE claimed				
2019-20	2020-21	2021-22	2022-23	2023-24
0.00	210.40	5.83	0.00	0.00

43. The Petitioner vide affidavit dated 31.3.2022 has submitted the liability flow statement wherein the Petitioner has provided the ACE details. The Petitioner has submitted that ACE has been claimed under Regulations 24(1)(a) and 24(1)(b) of the 2019 Tariff Regulations. The Petitioner has confirmed that as on date no ACE is expected beyond 2023-24. The Petitioner has submitted the contractor-wise details of



ACE (Liabilities Flow Statement) claimed including details of balance and retention payments which is as follows:

(₹ in lakh)

Party	Package	Discharge		Unexecuted work for which works have been completed before COD/Cut-off date
		2019-20	2020-21	2019-20
GE T&D India Ltd.	Sub-station	134.48	5.83	41.03
GE T&D India Ltd.	PLCC	9.49	0.00	22.33
GE T&D India Ltd.	I.T.	3.04	0.00	0.03
Total		147.01	5.83	63.39

44. We have considered the submissions made by the Petitioner. Since, the approved COD for the transmission asset is 19.6.2021 and the capital cost as on COD has taken into account the ACE for 2020-21 and 2021-22 and there is no ACE in 2022-23 and 2023-24, no ACE has been allowed for 2019-24 tariff period.

Capital Cost allowed as on 31.3.2024

45. Capital cost as on 31.3.2024 in respect of the transmission asset subject to true-up is as follows:

(₹ in lakh)

Capital Cost allowed as on COD	ACE	Capital Cost as on 31.3.2024
	2019-24	
1576.63	0.00	1576.63

Debt-Equity ratio

46. Regulation 18 of the 2019 Tariff Regulations provides as follows:

“18. Debt-Equity Ratio: (1) For new projects, the debt-equity ratio of 70:30 as on date of commercial operation shall be considered. If the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan:

Provided that:

- i. where equity actually deployed is less than 30% of the capital cost, actual equity shall be considered for determination of tariff:*
- ii. the equity invested in foreign currency shall be designated in Indian rupees on the date of each investment:*
- iii. any grant obtained for the execution of the project shall not be considered as a part of capital structure for the purpose of debt: equity ratio.*



Explanation-*The premium, if any, raised by the generating company or the transmission licensee, as the case may be, while issuing share capital and investment of internal resources created out of its free reserve, for the funding of the project, shall be reckoned as paid up capital for the purpose of computing return on equity, only if such premium amount and internal resources are actually utilised for meeting the capital expenditure of the generating station or the transmission system.*

(2) The generating company or the transmission licensee, as the case may be, shall submit the resolution of the Board of the company or approval of the competent authority in other cases regarding infusion of funds from internal resources in support of the utilization made or proposed to be made to meet the capital expenditure of the generating station or the transmission system including communication system, as the case may be.

(3) In case of the generating station and the transmission system including communication system declared under commercial operation prior to 1.4.2019, debt: equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2019 shall be considered:

Provided that in case of a generating station or a transmission system including communication system which has completed its useful life as on or after 1.4.2019, if the equity actually deployed as on 1.4.2019 is more than 30% of the capital cost, equity in excess of 30% shall not be taken into account for tariff computation;

Provided further that in case of projects owned by Damodar Valley Corporation, the debt: equity ratio shall be governed as per sub-clause (ii) of clause (2) of Regulation 72 of these regulations.

(4) In case of the generating station and the transmission system including communication system declared under commercial operation prior to 1.4.2019, but where debt: equity ratio has not been determined by the Commission for determination of tariff for the period ending 31.3.2019, the Commission shall approve the debt: equity ratio in accordance with clause (1) of this Regulation.

(5) Any expenditure incurred or projected to be incurred on or after 1.4.2019 as may be admitted by the Commission as additional capital expenditure for determination of tariff, and renovation and modernisation expenditure for life extension shall be serviced in the manner specified in clause (1) of this Regulation.

(6) Any expenditure incurred for the emission control system during the tariff period as may be admitted by the Commission as additional capital expenditure for determination of supplementary tariff, shall be serviced in the manner specified in clause (1) of this Regulation.”

47. Debt-equity ratio considered for the purpose of computation of tariff for 2019-24 tariff period is as follows:



Particulars	Capital Cost as on COD (₹ in lakh)	(in %)	ACE during 2019-24 (₹ in lakh)	(in %)	Capital cost as on 31.3.2024 (₹ in lakh)	(in %)
Debt	1103.64	70.00	0.00	70.00	1103.64	70.00
Equity	472.99	30.00	0.00	30.00	472.99	30.00
Total	1576.63	100.00	0.00	100.00	1576.63	100.00

Depreciation

48. Regulation 33 of the 2019 Tariff Regulations provides as follows:

“33. Depreciation: (1) Depreciation shall be computed from the date of commercial operation of a generating station or unit thereof or a transmission system or element thereof including communication system. In case of the tariff of all the units of a generating station or all elements of a transmission system including communication system for which a single tariff needs to be determined, the depreciation shall be computed from the effective date of commercial operation of the generating station or the transmission system taking into consideration the depreciation of individual units:

Provided that effective date of commercial operation shall be worked out by considering the actual date of commercial operation and installed capacity of all the units of the generating station or capital cost of all elements of the transmission system, for which single tariff needs to be determined.

(2) The value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission. In case of multiple units of a generating station or multiple elements of a transmission system, weighted average life for the generating station of the transmission system shall be applied. Depreciation shall be chargeable from the first year of commercial operation. In case of commercial operation of the asset for part of the year, depreciation shall be charged on pro rata basis.

(3) The salvage value of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the capital cost of the asset:

Provided that the salvage value for IT equipment and software shall be considered as NIL and 100% value of the assets shall be considered depreciable;

Provided further that in case of hydro generating stations, the salvage value shall be as provided in the agreement, if any, signed by the developers with the State Government for development of the generating station:

Provided also that the capital cost of the assets of the hydro generating station for the purpose of computation of depreciated value shall correspond to the percentage of sale of electricity under long-term power purchase agreement at regulated tariff:

Provided also that any depreciation disallowed on account of lower availability of the generating station or unit or transmission system as the case may be, shall not be allowed to be recovered at a later stage during the useful life or the extended life.

(4) Land other than the land held under lease and the land for reservoir in case of hydro generating station shall not be a depreciable asset and its cost shall be excluded from the capital cost while computing depreciable value of the asset.



(5) Depreciation shall be calculated annually based on Straight Line Method and at rates specified in **Appendix-I** to these regulations for the assets of the generating station and transmission system:

Provided that the remaining depreciable value as on 31st March of the year closing after a period of 12 years from the effective date of commercial operation of the station shall be spread over the balance useful life of the assets.

(6) In case of the existing projects, the balance depreciable value as on 1.4.2019 shall be worked out by deducting the cumulative depreciation as admitted by the Commission upto 31.3.2019 from the gross depreciable value of the assets.

(7) The generating company or the transmission licensee, as the case may be, shall submit the details of proposed capital expenditure five years before the completion of useful life of the project along with justification and proposed life extension. The Commission based on prudence check of such submissions shall approve the depreciation on capital expenditure.

(8) In case of de-capitalization of assets in respect of generating station or unit thereof or transmission system or element thereof, the cumulative depreciation shall be adjusted by taking into account the depreciation recovered in tariff by the de-capitalized asset during its useful services.

(9) Where the emission control system is implemented within the original scope of the generating station and the date of commercial operation of the generating station or unit thereof and the date of operation of the emission control system are the same, depreciation of the generating station or unit thereof including the emission control system shall be computed in accordance with Clauses (1) to (8) of this Regulation.

(10) Depreciation of the emission control system of an existing or a new generating station or unit thereof where the date of operation of the emission control system is subsequent to the date of commercial operation of the generating station or unit thereof, shall be computed annually from the date of operation of such emission control system based on straight line method, with salvage value of 10%, over a period of-

- a) twenty five years, in case the generating station or unit thereof is in operation for fifteen years or less as on the date of operation of the emission control system; or
- b) balance useful life of the generating station or unit thereof plus fifteen years, in case the generating station or unit thereof is in operation for more than fifteen years as on the date of operation of the emission control system; or
- c) ten years or a period mutually agreed by the generating company and the beneficiaries, whichever is higher, in case the generating station or unit thereof has completed its useful life.”

49. Depreciation has been worked out considering the admitted capital expenditure as on approved COD i.e. 19.6.2021 The weighted average rate of depreciation (WAROD) at Annexure has been worked as per the rates of depreciation prescribed in



the 2019 Tariff Regulations. Depreciation allowed in respect of the transmission asset is as follows:

(₹ in lakh)				
	Particulars	2021-22 (pro-rata 286 days)	2022-23	2023-24
	Depreciation			
A	Opening Gross Block	1576.63	1576.63	1576.63
B	ACE	0.00	0.00	0.00
C	Closing Gross Block (A+B)	1576.63	1576.63	1576.63
D	Average Gross Block (A+C)/2	1576.63	1576.63	1576.63
E	Weighted average rate of Depreciation (WAROD) (in %)	5.64	5.64	5.64
F	Balance useful life of the asset (Year)	23	23	22
G	Lapsed life at the beginning of the year (Year)	0	0	1
H	Aggregate Depreciable Value	1422.65	1422.65	1422.65
I	Combined Depreciation during the year	69.66	88.91	88.91
J	Aggregate Cumulative Depreciation	69.66	158.57	247.47
K	Remaining Aggregate Depreciable Value (H-J)	1352.99	1264.08	1175.18

Interest on Loan (“IoL”)

50. Regulation 32 of the 2019 Tariff Regulations provides as follows:

“32. Interest on loan capital: (1) *The loans arrived at in the manner indicated in Regulation 18 of these regulations shall be considered as gross normative loan for calculation of interest on loan.*

(2) *The normative loan outstanding as on 1.4.2019 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2019 from the gross normative loan.*

(3) *The repayment for each of the year of the tariff period 2019-24 shall be deemed to be equal to the depreciation allowed for the corresponding year/period. In case of de-capitalization of assets, the repayment shall be adjusted by taking into account cumulative repayment on a pro rata basis and the adjustment should not exceed cumulative depreciation recovered upto the date of de-capitalisation of such asset.*

(4) *Notwithstanding any moratorium period availed by the generating company or the transmission licensee, as the case may be, the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the depreciation allowed for the year or part of the year.*

(5) *The rate of interest shall be the weighted average rate of interest calculated on the*



basis of the actual loan portfolio after providing appropriate accounting adjustment for interest capitalized:

Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered;

Provided further that if the generating station or the transmission system, as the case may be, does not have actual loan, then the weighted average rate of interest of the generating company or the transmission licensee as a whole shall be considered.

(5a) The rate of interest on loan for installation of emission control system shall be the weighted average rate of interest of actual loan portfolio of the emission control system or in the absence of actual loan portfolio, the weighted average rate of interest of the generating company as a whole shall be considered.

(6) The interest on loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.

(7) The changes to the terms and conditions of the loans shall be reflected from the date of such re-financing.”

51. The Petitioner has claimed the weighted average rate of IoL, based on its actual loan portfolio and rate of interest. Accordingly, IoL has been calculated based on actual interest rate submitted by the Petitioner, in accordance with Regulation 32 of the 2019 Tariff Regulations. Since, the approved COD is 19.6.2021, IoL allowed in respect of the transmission asset, subject to true-up is as follows:

(₹ in lakh)				
	Particulars	2021-22 (pro-rata 286 days)	2022-23	2023-24
	Interest on Loan			
A	Gross Normative Loan	1103.64	1103.64	1103.64
B	Cumulative Repayments upto Previous Year	0.00	69.66	158.57
C	Net Loan-Opening (A-B)	1103.64	1033.98	945.07
D	Additions	0.00	0.00	0.00
E	Repayment during the year	69.66	88.91	88.91
F	Net Loan-Closing (C+D-E)	1033.98	945.07	856.17
G	Average Loan (C+F)/2	1068.81	989.52	900.62
H	Weighted Average Rate of Interest on Loan (in %)	7.8872	7.8872	7.8839
I	Interest on Loan (G*H)	66.05	78.05	71.00

Return on Equity (“RoE”)

52. Regulation 30 and Regulation 31 of the 2019 Tariff Regulations provide as under:



“30. Return on Equity: (1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with Regulation 18 of these regulations.

(2) Return on equity shall be computed at the base rate of 15.50% for thermal generating station, transmission system including communication system and run-of-river hydro generating station, and at the base rate of 16.50% for the storage type hydro generating stations including pumped storage hydro generating stations and run-of-river generating station with pondage:

Provided that return on equity in respect of additional capitalization after cutoff date beyond the original scope, excluding additional capitalization on account of emission control system, shall be computed at the weighted average rate of interest on actual loan portfolio of the generating station or the transmission system or in the absence of actual loan portfolio of the generating station or the transmission system, the weighted average rate of interest of the generating company or the transmission licensee, as the case may be, as a whole shall be considered, subject to ceiling of 14%.

Provided further that:

- i. In case of a new project, the rate of return on equity shall be reduced by 1.00% for such period as may be decided by the Commission, if the generating station or transmission system is found to be declared under commercial operation without commissioning of any of the Restricted Governor Mode Operation (RGMO) or Free Governor Mode Operation (FGMO), data telemetry, communication system up to load dispatch centre or protection system based on the report submitted by the respective RLDC;*
- ii. in case of existing generating station, as and when any of the requirements under (i) above of this Regulation are found lacking based on the report submitted by the concerned RLDC, rate of return on equity shall be reduced by 1.00% for the period for which the deficiency continues;*
- iii. in case of a thermal generating station, with effect from 1.4.2020:*
 - a) rate of return on equity shall be reduced by 0.25% in case of failure to achieve the ramp rate of 1% per minute;*
 - b) an additional rate of return on equity of 0.25% shall be allowed for every incremental ramp rate of 1% per minute achieved over and above the ramp rate of 1% per minute, subject to ceiling of additional rate of return on equity of 1.00%:*

Provided that the detailed guidelines in this regard shall be issued by National Load Dispatch Centre by 30.6.2019.

(3) *The return on equity in respect of additional capitalization on account of emission control system shall be computed at the base rate of one year marginal cost of lending rate (MCLR) of the State Bank of India as on 1st April of the year in which the date of operation (ODe) occurs plus 350 basis point, subject to ceiling of 14%.”*

“31. Tax on Return on Equity. (1) *The base rate of return on equity as allowed by the Commission under Regulation 30 of these regulations shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid in respect of the financial year in line with the provisions of the relevant Finance Acts by the concerned generating company or*



the transmission licensee, as the case may be. The actual tax paid on income from other businesses including deferred tax liability (i.e. income from business other than business of generation or transmission, as the case may be) shall be excluded for the calculation of effective tax rate.

(2) Rate of return on equity shall be rounded off to three decimal places and shall be computed as per the formula given below:

$$\text{Rate of pre-tax return on equity} = \text{Base rate} / (1-t)$$

Where “t” is the effective tax rate in accordance with clause (1) of this Regulation and shall be calculated at the beginning of every financial year based on the estimated profit and tax to be paid estimated in line with the provisions of the relevant Finance Act applicable for that financial year to the company on pro-rata basis by excluding the income of non-generation or non-transmission business, as the case may be, and the corresponding tax thereon. In case of generating company or transmission licensee paying Minimum Alternate Tax (MAT), “t” shall be considered as MAT rate including surcharge and cess.

Illustration-

(i) In case of a generating company or a transmission licensee paying Minimum Alternate Tax (MAT) @ 21.55% including surcharge and cess:

$$\text{Rate of return on equity} = 15.50 / (1 - 0.2155) = 19.758\%$$

(ii) In case of a generating company or a transmission licensee paying normal corporate tax including surcharge and cess:

- (a) Estimated Gross Income from generation or transmission business for FY 2019-20 is Rs 1,000 crore;
- (b) Estimated Advance Tax for the year on above is Rs 240 crore;
- (c) Effective Tax Rate for the year 2019-20 = Rs 240 Crore / Rs 1000 Crore = 24%;
- (d) Rate of return on equity = $15.50 / (1 - 0.24) = 20.395\%$.

(3) The generating company or the transmission licensee, as the case may be, shall true up the grossed up rate of return on equity at the end of every financial year based on actual tax paid together with any additional tax demand including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the tariff period 2019-24 on actual gross income of any financial year. However, penalty, if any, arising on account of delay in deposit or short deposit of tax amount shall not be claimed by the generating company or the transmission licensee, as the case may be. Any under-recovery or over-recovery of grossed up rate on return on equity after truing up, shall be recovered or refunded to beneficiaries or the long term customers, as the case may be, on year to year basis.”

53. The Petitioner has submitted that MAT rate is applicable to it. Accordingly, MAT rate applicable in 2019-20 has been considered for the purpose of RoE, which shall be trued up with actual tax rate in accordance with Regulation 31(3) of the 2019 Tariff



Regulations. Since, the approved COD is 19.6.2021, RoE allowed in respect of the transmission asset has been worked out and allowed as follows:

(₹ in lakh)

	Particulars	2021-22 (pro-rata 286 days)	2022-23	2023-24
	Return on Equity			
A	Opening Equity	472.99	472.99	472.99
B	Additions	0.00	0.00	0.00
C	Closing Equity (A+B)	472.99	472.99	472.99
D	Average Equity (A+C)/2	472.99	472.99	472.99
E	Return on Equity (Base Rate) (in %)	15.500	15.500	15.500
F	MAT Rate for respective year (in %)	17.472	17.472	17.472
G	Rate of Return on Equity (in %)	18.782	18.782	18.782
H	Return on Equity (D*G)	69.61	88.84	88.84

Operation & Maintenance Expenses (“O&M Expenses”)

54. The Petitioner has claimed O&M Expenses in respect of the transmission asset for 2019-24 period as follows:

Particulars	2019-20 (Pro-rata for 222 days)	2020-21	2021-22	2022-23	2023-24
Bays:					
400 kV					
Bhiwani: Line Bays for Babai-Bhiwani (2 numbers)					
400 kV (numbers)	2	2	2	2	2
Norms (₹ lakh/bay)	32.15	33.28	34.45	35.66	36.91
O&M Expenses claimed (400 kV bays)	39.00	66.56	68.90	71.32	73.82

55. The norms specified under Regulation 35(3)(a) of the 2019 Tariff Regulations provide as follows:

“35. Operation and Maintenance Expenses:

...

(3) Transmission system: (a) The following normative operation and maintenance expenses shall be admissible for the transmission system:

Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
<i>Norms for sub-station Bays (₹ Lakh per bay)</i>					
765 kV	45.01	46.60	48.23	49.93	51.68
400 kV	32.15	33.28	34.45	35.66	36.91



Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
220 kV	22.51	23.30	24.12	24.96	25.84
132 kV and below	16.08	16.64	17.23	17.83	18.46
Norms for Transformers (₹ Lakh per MVA)					
765 kV	0.491	0.508	0.526	0.545	0.564
400 kV	0.358	0.371	0.384	0.398	0.411
220 kV	0.245	0.254	0.263	0.272	0.282
132 kV and below	0.245	0.254	0.263	0.272	0.282
Norms for AC and HVDC lines (₹ Lakh per km)					
Single Circuit (Bundled Conductor with six or more sub-conductors)	0.881	0.912	0.944	0.977	1.011
Single Circuit (Bundled conductor with four sub-conductors)	0.755	0.781	0.809	0.837	0.867
Single Circuit (Twin & Triple Conductor)	0.503	0.521	0.539	0.558	0.578
Single Circuit (Single Conductor)	0.252	0.260	0.270	0.279	0.289
Double Circuit (Bundled conductor with four or more sub-conductors)	1.322	1.368	1.416	1.466	1.517
Double Circuit (Twin & Triple Conductor)	0.881	0.912	0.944	0.977	1.011
Double Circuit (Single Conductor)	0.377	0.391	0.404	0.419	0.433
Multi Circuit (Bundled Conductor with four or more sub-conductor)	2.319	2.401	2.485	2.572	2.662
Multi Circuit (Twin & Triple Conductor)	1.544	1.598	1.654	1.713	1.773
Norms for HVDC stations					
HVDC Back-to-Back stations (Rs Lakh per 500 MW) (Except Gazuwaka BTB)	834	864	894	925	958
Gazuwaka HVDC Back-to-Back station (₹ Lakh per 500 MW)	1,666	1,725	1,785	1,848	1,913
500 kV Rihand-Dadri HVDC bipole scheme (Rs Lakh) (1500 MW)	2,252	2,331	2,413	2,498	2,586
±500 kV Talcher- Kolar HVDC bipole scheme (Rs Lakh) (2000 MW)	2,468	2,555	2,645	2,738	2,834
±500 kV Bhiwadi-Balia HVDC bipole scheme (Rs Lakh) (2500 MW)	1,696	1,756	1,817	1,881	1,947
±800 kV, Bishwanath-Agra HVDC bipole scheme (Rs Lakh) (3000 MW)	2,563	2,653	2,746	2,842	2,942

Provided that the O&M expenses for the GIS bays shall be allowed as worked out by multiplying 0.70 of the O&M expenses of the normative O&M expenses for bays;

Provided further that:



- i. *the operation and maintenance expenses for new HVDC bi-pole schemes commissioned after 1.4.2019 for a particular year shall be allowed pro-rata on the basis of normative rate of operation and maintenance expenses of similar HVDC bi-pole scheme for the corresponding year of the tariff period;*
- ii. *the O&M expenses norms for HVDC bi-pole line shall be considered as Double Circuit quad AC line;*
- iii. *the O&M expenses of ± 500 kV Mundra-Mohindergarh HVDC bipole scheme (2000 MW) shall be allowed as worked out by multiplying 0.80 of the normative O&M expenses for ± 500 kV Talchar-Kolar HVDC bi-pole scheme (2000 MW);*
- iv. *the O&M expenses of ± 800 kV Champa-Kurukshetra HVDC bi-pole scheme (3000 MW) shall be on the basis of the normative O&M expenses for ± 800 kV, Bishwanath-Agra HVDC bi-pole scheme;*
- v. *the O&M expenses of ± 800 kV, Alipurduar-Agra HVDC bi-pole scheme (3000 MW) shall be allowed as worked out by multiplying 0.80 of the normative O&M expenses for ± 800 kV, Bishwanath-Agra HVDC bi-pole scheme; and*
- vi. *the O&M expenses of Static Synchronous Compensator and Static Var Compensator shall be worked at 1.5% of original project cost as on commercial operation which shall be escalated at the rate of 3.51% to work out the O&M expenses during the tariff period. The O&M expenses of Static Synchronous Compensator and Static Var Compensator, if required, may be reviewed after three years.*

(b) *The total allowable operation and maintenance expenses for the transmission system shall be calculated by multiplying the number of sub-station bays, transformer capacity of the transformer (in MVA) and km of line length with the applicable norms for the operation and maintenance expenses per bay, per MVA and per km respectively.*

(c) *The Security Expenses and Capital Spares for transmission system shall be allowed separately after prudence check:*

Provided that the transmission licensee shall submit the assessment of the security requirement and estimated security expenses, the details of year-wise actual capital spares consumed at the time of truing up with appropriate justification.

(4) Communication system: *The operation and maintenance expenses for the communication system shall be worked out at 2.0% of the original project cost related to such communication system. The transmission licensee shall submit the actual operation and maintenance expenses for truing up."*

56. We have considered the submission of the Petitioner. Since, the approved COD is 19.6.2021, the O&M Expenses allowed for 2019-24 tariff period are as follows:



Particulars	2021-22 (pro-rata 286 days)	2022-23	2023-24
Bays:			
400 kV			
Bhiwani: Line Bays for Babai-Bhiwani (2 numbers)			
400 kV (numbers)	2	2	2
Norms (₹ lakh/bay)	34.45	35.66	36.91
O&M Expenses claimed (400 kV bays)	53.99	71.32	73.82

Interest on Working Capital (“IWC”)

57. Regulation 34(1)(c), Regulation 34(3), Regulation 34(4) and Regulation 3(7) of the 2019 Tariff Regulations specify as follows:

“34. Interest on Working Capital: (1) *The working capital shall cover:*

.....

(c) For Hydro Generating Station (including Pumped Storage Hydro Generating Station) and Transmission System:

- (i) *Receivables equivalent to 45 days of annual fixed cost;*
- (ii) *Maintenance spares @ 15% of operation and maintenance expenses including security expenses; and*
- (iii) *Operation and maintenance expenses, including security expenses for one month.*

(3) *Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.4.2019 or as on 1st April of the year during the tariff period 2019-24 in which the generating station or a unit thereof or the transmission system including communication system or element thereof, as the case may be, is declared under commercial operation, whichever is later:*

Provided that in case of truing-up, the rate of interest on working capital shall be considered at bank rate as on 1st April of each of the financial year during the tariff period 2019-24.

(4) *Interest on working capital shall be payable on normative basis notwithstanding that the generating company or the transmission licensee has not taken loan for working capital from any outside agency.”*

“3. Definitions. - *In these regulations, unless the context otherwise requires:-*

(7) **‘Bank Rate’** *means the one year marginal cost of lending rate (MCLR) of the State Bank of India issued from time to time plus 350 basis points;”*

58. The Petitioner has submitted that it has computed IWC for 2019-24 period considering the SBI Base Rate plus 350 basis points as on 1.4.2019. The Petitioner has considered the rate of IWC as 12.05%.



59. IWC is worked out in accordance with Regulation 34 of the 2019 Tariff Regulations. The Rate of Interest (RoI) considered is 12.05% (SBI 1-year MCLR applicable as on 1.4.2019 of 8.55% plus 350 basis points) for 2019-20, RoI for 2021-22 has been considered as 10.50% (SBI 1-year MCLR applicable as on 1.4.2021 of 7.00% plus 350 basis points) whereas RoI for 2022-23 onwards has been considered as 10.50% (SBI 1-year MCLR applicable as on 1.4.2022 of 7.00% plus 350 basis points). The components of the working capital and interest allowed thereon are as follows:

(₹ in lakh)				
	Particulars	2021-22 (pro-rata 286 days)	2022-23	2023-24
	Interest on Working Capital			
A	Working Capital for O&M Expenses (O&M Expenses for one month)	5.74	5.94	6.15
B	Working Capital for Maintenance Spares (15% of O&M Expenses)	10.34	10.70	11.07
C	Working Capital for Receivables (Equivalent to 45 days of annual fixed cost/ annual transmission charges)	41.55	41.08	40.40
D	Total Working Capital (A+B+C)	57.62	57.72	57.63
E	Rate of Interest (in %)	10.50	10.50	10.50
F	Interest on working capital (D*E)	4.74	6.06	6.05

Annual Fixed Charges for 2019-24 Tariff Period

60. The transmission charges allowed for the years post the approved COD allowed in respect of the transmission asset for 2019-24 tariff period is as follows:

(₹ in lakh)				
	Particulars	2021-22 (pro-rata 286 days)	2022-23	2023-24
	Annual Transmission Charges			
A	Depreciation	69.66	88.91	88.91
B	Interest on Loan	66.05	78.05	71.00
C	Return on Equity	69.61	88.84	88.84
D	O&M Expenses	53.99	71.32	73.82



E	Interest on Working Capital	4.74	6.06	6.05
F	Total (A+B+C+D+E)	264.05	333.17	328.62

Filing Fee and the Publication Expenses

61. The Petitioner has sought reimbursement of fee paid by it for filing the Petition and publication expenses. The Petitioner shall be entitled for reimbursement of the filing fees and publication expenses in connection with the present Petition, directly from the beneficiaries on pro-rata basis in accordance with Regulation 70(1) of the 2019 Tariff Regulations.

Licence Fee and RLDC Fees and Charges

62. The Petitioner shall be entitled for reimbursement of licence fee in accordance with Regulation 70(4) of the 2019 Tariff Regulations for the 2019-24 tariff period. The Petitioner shall also be entitled for recovery of RLDC fee and charges in accordance with Regulations 70(3) of the 2019 Tariff Regulations for 2019-24 tariff period.

Security Expenses

63. The Petitioner has submitted that security expenses in respect of transmission assets are not claimed in the instant petition and it would file a separate petition for claiming the overall security expenses and the consequential IWC. The Petitioner has submitted further that the Petition No. 260/MP/2020 was filed before the Commission for claiming the overall Security Expenses. The Commission vide order dated 3.8.2021 allowed the petitioner to recover the estimated security expenses from beneficiaries as per provisions of the 2020 Sharing Regulations. The difference, if any, between the estimated security expenses and actual security expenses calculated as per audited accounts, on year to year basis may be allowed to recover/refund from beneficiaries.



64. We have considered the above submissions of Petitioner. The Petitioner has prayed to allow it to recover the difference in the estimated security expenses approved vide order dated 3.8.2021 in Petition No.260/MP/2020 and the actual security expenses on a year to year basis from the beneficiaries. The 2019 Tariff Regulations do not provide for such an arrangement. Therefore, the Petitioner is directed to make a claim for the same after the 2019-24 tariff period.

Goods and Services Tax

65. The Petitioner has submitted that, if GST is levied at any rate and at any point of time in future on charges of transmission of electricity, the same shall be borne and additionally paid by the Respondent(s) to the Petitioner and the same shall be charged and billed separately by the Petitioner. Further additional taxes, if any, are to be paid by the Petitioner on account of demand from Government/ Statutory authorities, the same may be allowed to be recovered from the beneficiaries.

66. We have considered the submissions of the Petitioner. Since GST is not levied on transmission service at present, we are of the view that the Petitioner's prayer is premature.

Capital Spares

67. The Petitioner has sought reimbursement of capital spares at the end of tariff period. The Petitioner's claim, if any, shall be dealt with in accordance with the provisions of the 2019 Tariff Regulations.



Sharing of Transmission Charges

68. The Petitioner has submitted that tariff for AFC will be recovered on monthly basis in accordance with Regulation 57 of 2019 Tariff Regulations and will be shared by the beneficiaries and long-term transmission customers in Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2020.

69. NRSS/ RPVPL, vide affidavits dated 25.11.2022 and 16.1.2023 has made the following submissions:

- a. There is no contract between the Petitioner and NRSS/ RPVPL. Therefore, no fault can be attributed to NRSS/ RPVPL and no liability can be imposed on it.
- b. The transmission line under the scope of NRSS/ RPVPL was affected by *force majeure* events leading to time and cost over-run. The time over-run faced by NRSS/ RPVPL is for reasons beyond its control. The delay occurred at the time when the original promoter was at the helm of affairs of the licensee. RPVPL has been selected to commission a stranded asset. Therefore, RPVPL may not be made liable under Regulation 13(12) of the 2020 Sharing Regulations.
- c. The Commission vide order dated 14.11.2022 in Petition No. 266/MP/2022 taking note that NRSS has been taken over by RPVPL, granted time to RPVPL to complete and passed an order restraining LTTCs from taking any precipitative/ coercive steps pending completion of the project under the TSA. If any liability of transmission asset is now imposed upon NRSS/ RPVPL then the purpose of the order dated 14.11.2022 would be defeated.



d. The Petitioner was aware of the severe RoW issues/ *force majeure* events faced by NRSS. The said *force majeure* delays being faced by NRSS/ RPVPL have been recorded and noted by CEA in various annual progress reports as well as the monthly progress report as on 30.6.2021. The same was also recognized by the Commission while adjudicating Petition No. 266/MP/2022.

70. In response, the Petitioner vide affidavits dated 12.12.2022 and 17.2.2023 has submitted that the scope of the Petitioner was to construct 2 number 400 kV bays at Bhiwani for termination of 400 kV Babai-Bhiwani D/C Line being constructed by NRSS. As per the IA, the schedule completion was 21 months from the date of IA which is 30.6.2017. Hence, the scheduled COD was 29.3.2019. NRSS vide letter dated 15.1.2018 requested CEA to prepone SCOD of “400 kV Babai-Bhiwani D/C Line” from June 2019 to 31.3.2019. Further, CEA vide letter dated 6.2.2018, scheduled a meeting to discuss the request of NRSS for preponement of SCOD of “400 kV Babai-Bhiwani D/C Line” from June 2019 to 31.3.2019. Accordingly, meeting was held 13.2.2018 (Minutes issued on 23.2.2018) wherein CTUIL informed that the works associated with bays at Bhiwani is awarded and it would be put to commercial operation in matching timeframe of 400 kV Babai-Bhiwani D/C Line. NRSS/ RPVPL was well aware that the work associated with the transmission asset has already been awarded and it will be commissioned in matching timeframe i.e. by 31.3.2019 as requested by them vide letter dated 15.1.2018 and meeting held on 13.2.2018.

71. The Petitioner has further submitted that it continuously provided the status of progress/ commissioning of instant asset to CEA as per 2010 IEGC Regulations and as per order dated 7.12.2016 in Petition No. 161/TL/2016 for grant of transmission license to NRSS. Postponing the COD of the asset would lead to additional claims on idle



charges by the contractor and increase in IDC and IEDC. Thus, the transmission asset is proposed to be deemed commissioned w.e.f. 23.8.2019 and approval of COD is claimed as per Regulation 5(2) of the 2019 Tariff Regulations.

72. We have considered the objections raised by NRSS/ RPVPL and the clarifications given by the Petitioner. As regards the submission made by NRSS/ RPVPL that its transmission system is affected by *force majeure* conditions, the Commission vide order dated 14.11.2022 has already held that an appropriate view on the claims made by NRSS/ RPVPL due to *force majeure* events would be taken after the completion of the transmission system by NRSS/ RPVPL. As such, we are not inclined to go into the *force majeure* events raised by NRSS/ RPVPL in this petition. The relevant portion of the order dated 7.2.2021 in Petition No. 161/TL/2016 is as follows:

“4. It is observed that events cited above are still continuing and the Petitioner has approached the Commission for declaration of these events as force majeure events and requested for extension of SCOD of the Project, in advance. Only Element-I has been completed. Therefore, we are of the view that since the project has not been completed by the Petitioner till date and is still under implementation, it would not be appropriate to take a view at this stage on the claimed force majeure, Change in Law issues and extension of SCOD. Accordingly, the Petitioner is granted liberty to approach the Commission to seek the appropriate relief for force majeure events, after completion of the Project.”

73. Therefore, any claims due to *force majeure* events will be dealt as per law when the Petitioner files petition after the completion of project.

74. NRSS/ RPVPL has contended that there is no contract between the Petitioner and NRSS/ RPVPL. Therefore, no fault can be attributed to NRSS/ RPVPL and no liability can be imposed on it. In this regard, we would like to refer to the recent APTEL’s judgement on 2.5.2023 in Appeal No. 352/2022 in the matter of Fatehgarh Bhadla Transmission Company Limited vs. CERC & Ors., wherein it was held that in the



absence of any contract between the parties, the parties would be governed by the 2019 Tariff Regulations and 2020 Sharing Regulations framed under Section 178 of the 2003 Act. The relevant portion of the said judgement dated 2.5.2023 is as follows:

“58. Both the 2019 and the 2020 Regulations, made by the CERC in the exercise of the powers conferred on it under Section 178 of the Act, must be treated, for all purposes of construction or obligations, exactly as if they were in the Electricity Act and are to the same effect as if they were contained in the said Act. These Regulations are statutory in character, constitute law, and are binding on all the regulated entities including the appellant herein (as well as the CERC and even this Tribunal). Consequently, even in the absence of a contract between them and PGCIL, the Appellant would nonetheless be governed by these 2019 and 2020 statutory regulations. Reliance placed on behalf of the Appellant, on NRSS XXXI (B) Transmission Ltd, is therefore misplaced.”

75. In view of the above, the Petitioner and NRSS/ RPVPL shall be governed by the 2019 Tariff Regulations and 2020 Sharing Regulations notified under Section 178 of the 2003 Act.

76. RPVPL has contended that RPVPL cannot be made liable under Regulation 13(12) of the 2020 Sharing Regulations for the delay that occurred at the time when the NRSS was at the helm of affairs of the licensee, especially when it was selected for execution of a stranded asset/project. The Commission in order dated 8.3.2022 in Petition No. 267/MP/2021 while permitting the transfer of 100% shareholding held by Essel to RPVPL observed that RPVPL should ensure that NRTL complies with all its obligations under the various Agreements in force and that RPVPL shall ensure that such transfer does not contravene any provisions of the applicable laws. The relevant portion of the order is as follows:

“27. In light of the above, the Commission allows transfer of shareholding of NRTL from Essel Infra to RPVPL under Article 15.3.2 of the TSA read with Section 17(3) of the Act subject to the following conditions:

(a) On transfer of entire shareholdings of Essel Infra in NRTL to RPVPL, NRTL shall become fully owned subsidiary of RPVPL. It is directed that RPVPL shall ensure that such transfer does not contravene any provisions of the applicable laws.



(b) Since after the transfer, NRTL shall become wholly owned subsidiary of RPVPL, the transmission licence held by NRTL shall not be assigned or transferred in any manner in favour of RPVPL without approval of the Commission.

(c) RPVPL shall ensure that NRTL complies with all its obligations under the various Agreements in force and Agreements to be entered including the obligations towards its lenders and LTTCs.

(d) RPVPL shall not divest any of its interest in NRTL or otherwise part with this company without the prior approval of this Commission.

(e) As committed by RPVPL, there shall be no change in the transmission charges being paid/to be paid by the beneficiaries of NRTL pursuant to this process which shall continue to be governed as per the TSA.”

77. The Commission in order dated order dated 8.3.2022, while permitting the transfer of 100% shareholding of NRSS to RPVPL made it clear that RPVPL and its subsidiary NRTL are obliged to comply with the various Agreements and the applicable laws, which include the 2019 Tariff Regulations and the 2020 Sharing Regulations. Accordingly, we are of the view that NRTL i.e. subsidiary of RPVPL is required to meet all the liabilities under the applicable regulations.

78. The transmission asset of the Petitioner is being implemented under the RTM route and it is covered under section 62 of the 2003 Act. As per Regulation 2(1) of the 2019 Tariff Regulations, framed under section 178 read with section 61 of the 2003 Act, the 2019 Tariff Regulations are applicable for the transmission system or element thereof implemented under section 62 of the Act. Accordingly, the 2019 Tariff Regulations are applicable in case of the transmission asset of the Petitioner covered under section 62 of the 2003 Act. As per Regulation 57 of the 2019 Tariff Regulations, sharing of transmission charges shall be governed by the Sharing regulations.

79. Further, as per the scheme of Regulation 5(2) of the 2019 Tariff Regulations, if a transmission licensee is prevented from putting its transmission asset into regular use due to non-readiness of the downstream or upstream transmission licensee or a generating station, the transmission licensee can approach the Commission for



declaration of COD of such transmission asset. In the instant case, non-utilization of transmission asset of the Petitioner was on account of delay in completion of the transmission line under the scope of NRSS/ RPVPL. Accordingly, we have already approved COD of the transmission asset as 23.8.2019 under Regulation 5(2) of the 2019 Tariff Regulations as the associated transmission line of NRSS/ RPVPL was not ready on 23.8.219 (and is still not completed).

80. The Regulation 6(2) of the 2019 Tariff Regulations provide for treatment of mismatch in the COD of the inter-connected transmission systems till 19.2.2021, when the said provision was deleted vide second amendment dated 19.2.2021 to the 2019 Tariff Regulations and was included in the 2020 Sharing Regulations. As we have already approved the COD of the transmission asset as 23.8.2019, Regulation 6(2) of the 2019 Tariff Regulations which contains detailed provisions with regard to liability for mismatch of the COD between generating station and transmission system or between two transmission licensees of a connected transmission system is applicable in case of the instant transmission asset. The Regulation 6 of the 2019 Tariff Regulations provides as follows:

“6. Treatment of mismatch in date of commercial operation:

(1) In case of mismatch of the date of commercial operation of the generating station and the transmission system, the liability for the transmission charges shall be determined as under:

(a) Where the generating station has not achieved the commercial operation as on the date of commercial operation of the associated transmission system (which is not before the SCOD of the generating station) and the Commission has approved the date of commercial operation of such transmission system in terms of clause (2) of the Regulation 5 of these regulations, the generating company shall be liable to pay the transmission charges of the associated transmission system in accordance with clause (5) of Regulation 14 of these regulations to the transmission licensee till the generating station or unit thereof achieves commercial operation:

(b) Where the associated transmission system has not achieved the commercial operation as on the date of commercial operation of the concerned generating station or unit thereof (which is not before the SCOD of the transmission system), the transmission licensee shall make alternate arrangement for the evacuation from the generating station at its own cost, failing which, the transmission licensee shall be liable to pay the transmission charges to the generating company as determined by the Commission, in



accordance with clause (5) of Regulation 14 of these regulations, till the transmission system achieves the commercial operation.

(2) In case of mismatch of the date of commercial operation of the transmission system and the transmission system of other transmission licensee, the liability for the transmission charges shall be determined as under:

(a) Where an interconnected transmission system of other transmission licensee has not achieved the commercial operation as on the date of commercial operation of the transmission system (which is not before the SCOD of the interconnected transmission system) and the Commission has approved the date of commercial operation of such transmission system in terms of clause (2) of Regulation 5 of these regulations, the other transmission licensee shall be liable to pay the transmission charges of the transmission system in accordance with clause (5) of Regulation 14 of these regulations to the transmission licensee till the interconnected transmission system achieves commercial operation:

(b) Where the transmission system has not achieved the commercial operation as on the date of commercial operation of the interconnected transmission system of other transmission licensee (which is not before the SCOD of the transmission system), the transmission licensee shall be liable to pay the transmission charges of such interconnected transmission system to the other transmission licensee or as may be determined by the Commission, in accordance with clause (5) of Regulation 14 of these regulations, till the transmission system achieves the commercial operation.”

81. In the instant case, the COD of the transmission asset has been approved as 19.6.2021.

82. As observed in paragraph 20 above, as the notice was not issued by Petitioner within one month as required under the first proviso of Regulation 5(2) of the 2019 Tariff Regulations. Therefore, NRSS/ RPVPL shall bear the transmission charges approved in this order from the date of issue of “notice” by the Petitioner on 19.6.2021 to the COD of the associated transmission line under its scope. Accordingly, the transmission charges from 19.6.2021 till COD of the transmission line shall be borne by NRSS/RRVPL.

83. Thereafter, the billing, collection, and disbursement of transmission charges approved in this order for the transmission asset shall be in accordance with the 2020 Sharing Regulations as provided in Regulation 57 of the 2019 Tariff Regulations.



84. To summarise, AFC allowed in respect of the transmission asset for 2019-24 tariff period in this order are as follows:

(₹in lakh)			
Particulars	2021-22	2022-23	2023-24
AFC	264.05	333.17	328.62

85. The Annexure to this order forms part of the order.

86. This order disposes of Petition No. 11/TT/2022 in terms of the above findings and discussions.

sd/-
(P. K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member



ANNEXURE

2019-24 Capital Expenditure	Admitted Capital Cost as on 1.4.2019 (₹ in lakh)	Projected ACE (₹ in lakh)	Admitted Capital Cost as on 31.3.2024 (₹ in lakh)	Rate of Depreciation as per Regulations	Annual Depreciation as per Regulations (₹ in lakh)		
		Total			2021-22	2022-23	2023-24
Building Civil Works & Colony	-	-	-	3.34%	-	-	-
Sub Station	1341.45	0.00	1341.45	5.28%	70.83	70.83	70.83
PLCC	198.39	0.00	198.39	6.33%	12.56	12.56	12.56
IT Equipment (Incl. Software)	36.79	0.00	36.79	15.00%	5.52	5.52	5.52
Total	1576.63	-	1576.63		88.91	88.91	88.91
Average Gross Block (₹ in lakh)					1576.63	1576.63	1576.63
Weighted Average Rate of Depreciation					5.64%	5.64%	5.64%

