

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 113/TT/2021

Coram:

**Shri I. S. Jha, Member
Shri Arun Goyal, Member**

Date of Order: 29.08.2023

In the matter of:

Approval under Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for determination of transmission tariff from COD to 31.3.2024 for Assets (03 nos.) under “Powergrid works associated with Transmission System Strengthening in Indian System for transfer of power from new HEPs in Bhutan” in the Eastern Region.

And in the matter of:

Power Grid Corporation of India Limited,
SAUDAMINI, Plot No-2,
Sector-29, Gurgaon-122 001 (Haryana).

.....**Petitioner**

Versus

1. Bihar State Power (Holding) Company Limited,
Vidyut Bhawan, Bailey Road,
Patna-800001.
2. West Bengal State Electricity Distribution Company Limited,
Bidyut Bhawan, Bidhan Nagar,
Block DJ, Sector-II, Salt Lake City,
Calcutta-700091.
3. Grid Corporation of Orissa Limited,
Shahid Nagar, Bhubaneswar-751007.
4. Damodar Valley Corporation,
DVC Tower, Maniktala,



Civic Centre, VIP Road, Calcutta-700054.

5. Power Department,
Government of Sikkim, Gangtok-737101.
6. Jharkhand State Electricity Board,
In Front of Main Secretariat,
Doranda, Ranchi-834002.
7. Alipurduar Transmission Company Limited,
(A subsidiary of Adani Transmission Limited),
Adani Corp House, Shantigram near Vaishno Devi Circle,
Khodiya, Gandhinagar,
Gujarat-382028.

...Respondent(s)

For Petitioner: Ms. Swapna Sheshadri, Advocate, PGCIL
Ms. Ritu Apurna, Advocate, PGCIL
Shri Amit Yadav, PGCIL
Shri D.K. Biswal, PGCIL
Shri Ashish Alankar, PGCIL
Shri V. Chandrasekhar, PGCIL
Shri Mohd. Mohsin, PGCIL

For Respondent: Ms. Rohini Prasad, Advocate, BSPHCL
Ms. Poonam Verma, Advocate, ATL
Ms. Aparajita Upadhyay, Advocate, ATL
Ms. Gayatri Aryan, Advocate, ATL
Ms. Priyakshi Bhatnagar, Advocate, ATL
Shri Amitanshu Saxena, Advocate, Bihar Utilities
Shri Shashwat Kumar, Advocate, Bihar Utilities
Shri Rahul Chouhan, Advocate, Bihar Utilities
Ms. Suparna Srivastava, Advocate, CTUIL
Ms. Aastha Jain, Advocate, CTUIL
Shri Yogesh Dalal, ATL
Shri Amit Kumar, ATL
Shri Siddarth Sharma, CTUIL
Ms. Kavya Bhardwaj, CTUIL

ORDER

The instant petition has been filed by Power Grid Corporation of India Limited for determination of tariff under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as "the 2019 Tariff



Regulations”) for the period from COD to 31.3.2024 in respect of the following transmission assets (hereinafter referred to as the “transmission assets”) under Powergrid works associated with “Transmission System Strengthening in Indian System for transfer of power from new HEPs in Bhutan” (hereinafter referred to as “transmission project”) in the Eastern Region:

Asset I: 01 number 1X80 MVAR Switchable Line Reactor (SLR with 400-ohm NGR) along-with associated bays at Kishanganj GIS (for Ckt-II of 400 kV D/C Kishanganj-Dharbhanga line under TBCB);

Asset II: 02 numbers 400 kV line bays at Siliguri Sub-station (for 400 kV D/C Alipurduar-Siliguri line under TBCB); and

Asset III: 02 numbers 400 kV line bays at Alipurduar Sub-station (for 400 kV D/C Alipurduar-Siliguri line under TBCB)

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

- “1) Approve the Transmission Tariff for the tariff block 2019-24 block for the assets covered under this petition, as per para –8.3 above.
- 2) Admit the capital cost as claimed in the Petition and approve the Additional Capitalisation incurred / projected to be incurred.
- 3) Approve the DOCO as invoked for the subject Asset-II & III as 01.08.2019 and allow full tariff as claimed under instant petition.
- 4) Approve the initial spares claimed against PLCC head for subject asset-II considering the total PLCC cost as claimed under the subject project inclusive of all the elements/ assets.
- 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 8.3 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 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.*
- 10) *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 brief facts of the case are as follows:

- a. The Investment Approval (IA) of the transmission project was accorded by Board of Directors (BoD) of the Petitioner in its meeting held on 10.3.2017 vide Memorandum No. C/CP/PA1617-03-0U-IA019 with an estimated cost of ₹11952 lakh including an IDC of ₹720 lakh based on October, 2016 price level.
- b. The scope of work covered under the transmission project broadly includes:

A. Sub-station extension at Alipurduar:

- 02 numbers 400 kV line bays at Alipurduar Sub-station for termination of Alipurduar-Siliguri 400 kV D/C (Quad) line **(line under TBCB)**

B. Sub-station extension at Siliguri:

- 02 numbers 400 kV line bays at Siliguri Sub-station for termination of Alipurduar-Siliguri 400 kV D/C (Quad) line **(line under TBCB)**



C. Sub-station extension at Kishanganj:

- 02 numbers 400 kV GIS line bays at Kishanganj Sub-station for termination of Kishnagnaj-Darbhanga 400 kV D/C (Quad) line **(line under TBCB)**
- 02 numbers Switchable line reactor bay for 80 MVAR switchable line reactor (with 400 ohm NGR) on each circuit of Kishanganj-Darbhanga 400 kV D/C (Quad) line at Kishanganj end.

Note: 02 numbers 400 kV line bays at Darbhanga for termination of Kishanganj-Darbhanga 400 kV (Quad) line and 80 MVAR switchable line reactors (with 400 Ohm NGR) in each circuit of Darbhanga end of Kishanganj-Darbhanga 400 kV D/C (Quad) line is being implemented through TBCB.

- c. The transmission assets in the transmission project have been completed. The asset-wise petition details of the transmission assets under the subject project are as follows:

S. No.	Name of Asset	COD	Remarks
1	02 numbers 400 kV GIS line bays along-with 01 numbers 80 MVAR switchable line reactor (with 400 ohm NGR) alongwith associated bay at Kishanganj GIS Sub-station associated with 400 kV D/C (Quad) Kishanganj - Dharbhanga 400 kV D/C line (line under TBCB).	14.3.2019 (actual)	Covered under Petition No. 677/TT/2020
2	Asset-I: 01 numbers 1X80 MVAR Switchable Line Reactor (SLR with 400 ohm NGR) along-with associated bays at Kishanganj GIS (for Ckt-II of 400 kV D/C Kishanganj - Dharbhanga line under TBCB)	22.6.2019 (actual)	Covered under instant Petition No. 113/TT/2021
3	Asset-II: 02 numbers 400 kV line bays at Siliguri Sub-station (for 400 kV D/C Alipurduar-Siligur line under TBCB)	1.8.2019 (invoked)	



4	Asset-III: 02 numbers 400 kV line bays at Alipurduar Sub-station (for 400 kV D/C Alipurduar-Siligur line under TBCB)	1.8.2019 (invoked)	
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4. The Respondents are distribution licensees and power departments which are procuring transmission service from the Petitioner, mainly beneficiaries of the Eastern Region.

5. The Petitioner has served the petition on the Respondents and notice regarding filing of this petition has also been published in 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. Bihar State Power (Holding) Company Limited (BSPHCL), Respondent No. 1, vide affidavit dated 27.10.2021 has filed its reply and has raised issues of COD, initial spares, ACE and security expenses. Alipurduar Transmission Limited (ATL), Respondent No. 7, vide affidavit dated 12.11.2021 has filed its reply and has raised issues of COD and sharing of transmission charges. The issues raised by BSPHCL and ATL, and the clarifications given by the Petitioner in response to reply of BSPHCL are considered in the relevant portions of this order.

6. This order is issued considering the submissions made by the Petitioner vide affidavits dated 5.1.2021, 12.6.2021, 22.10.2021, 10.1.2021 and 11.11.2021 replies filed by BSPHCL and ATL vide affidavits dated 27.10.2021 and 12.11.2021 respectively.

7. The hearing in this matter was held on 27.10.2022 and the order was reserved.

8. Having heard the learned counsel and representatives of the Petitioner, and after perusing the material on record, we proceed to dispose of the petition.



DETERMINATION OF ANNUAL FIXED CHARGES FOR 2019-24 TARIFF PERIOD

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

Asset-I

(₹ in lakh)

Particulars	2019-20 (pro-rata 284 days)	2020-21	2021-22	2022-23	2023-24
Depreciation	41.00	56.56	58.72	60.08	60.35
Interest on Loan	42.10	54.16	51.86	48.56	44.03
Return on Equity	43.76	60.36	62.67	64.11	64.40
O&M Expenses	2.67	3.60	3.67	3.69	3.66
Interest on Working Capital	17.46	23.30	24.12	24.96	25.84
Total	146.99	197.98	201.04	201.40	198.28

Asset-II

(₹ in lakh)

Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
Depreciation	34.11	58.92	61.56	61.56	61.56
Interest on Loan	34.58	56.12	54.10	49.16	44.20
Return on Equity	35.45	61.44	64.25	64.25	64.25
O&M Expenses	3.51	5.68	5.83	5.86	5.89
Interest on Working Capital	44.59	69.14	71.48	73.90	76.40
Total	152.24	251.30	257.22	254.73	252.30

Asset-III

(₹ in lakh)

Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
Depreciation	55.85	83.88	85.58	87.29	87.29
Interest on Loan	57.89	81.25	76.17	70.93	63.78
Return on Equity	59.01	88.63	90.44	92.26	92.26
O&M Expenses	4.53	6.82	6.90	6.98	6.96
Interest on Working Capital	44.25	68.63	70.97	73.39	75.89
Total	221.53	329.21	330.06	330.85	326.18

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



Asset-I

(₹ in lakh)

Particulars	2019-20 (pro-rata 284 days)	2020-21	2021-22	2022-23	2023-24
O&M Expenses	1.88	1.94	2.01	2.08	2.15
Maintenance Spares	3.38	3.50	3.62	3.74	3.88
Receivables	23.29	24.41	24.79	24.83	24.38
Total Working Capital	28.55	29.85	30.42	30.65	30.41
Rate of Interest (in %)	12.05	12.05	12.05	12.05	12.05
Interest on Working Capital	2.67	3.60	3.67	3.69	3.66

Asset-II

(₹ in lakh)

Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
O&M Expenses	5.57	5.76	5.96	6.16	6.37
Maintenance Spares	10.03	10.37	10.72	11.09	11.46
Receivables	28.08	30.98	31.71	31.41	31.02
Total Working Capital	43.68	47.11	48.39	48.66	48.85
Rate of Interest (in %)	12.05	12.05	12.05	12.05	12.05
Interest on Working Capital	3.51	5.68	5.83	5.86	5.89

Asset-III

(₹ in lakh)

Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
O&M Expenses	5.53	5.72	5.91	6.12	6.32
Maintenance Spares	9.96	10.29	10.65	11.01	11.38
Receivables	40.86	40.59	40.69	40.79	40.10
Total Working Capital	56.35	56.60	57.25	57.92	57.80
Rate of Interest (in %)	12.05	12.05	12.05	12.05	12.05
Interest on Working Capital	4.53	6.82	6.90	6.98	6.96

Date of Commercial Operation (“COD”)

11. The Petitioner has claimed the COD of Asset-I as 22.6.2019.
12. In support of the COD of Asset-I, the Petitioner has submitted CEA Energisation Certificates dated 20.5.2019 under Regulation 43 of Central Electricity Authority (CEA)



(Measures relating to Safety and Electric Supply) Regulations, 2010, RLDC Charging Certificate dated 20.5.2019, self-declaration COD letter dated 30.1.2020 and Petitioner's CMD Certificate as required under the Grid Code.

13. The Petitioner has sought the COD of Asset-II and Asset-III as 1.8.2019 in terms of Regulation 5(2) of the 2019 Tariff Regulations, as the Petitioner was not able to put the transmission assets into use since the associated transmission line under the scope of ATL was not ready in time.

14. The Petitioner has made the following submissions in respect of the associated transmission lines being executed by Alipurduar Transmission Company Ltd., a wholly owned subsidiary of Kalpataru Power Transmission Ltd. (KPTL), under the TBCB route. Ownership of Alipurduar Transmission Company Ltd. was subsequently transferred to Adani Transmission Ltd. (ATL).

Asset-I:

Asset-I is associated with the 400 kV D/C (Quad) Kishanganj (PG)-Darbhanga transmission line being constructed by KPTL under TBCB route and the line was declared under deemed COD w.e.f. 6.3.2019 by KPTL. Thus, there is mismatch in COD of Asset-I w.r.t. to the associated TBCB line. Asset-I was put into commercial operation after the COD of associated TBCB line.

Asset-II and Asset-III:

Asset-II and Asset-III are associated with 400 kV D/C (Quad) Alipurduar (PG)-Siliguri (PG) transmission line being constructed by KPTL under TBCB route and the COD of the transmission line was declared w.e.f. 17.1.2020. There is mismatch in execution of Asset-II and Asset-III w.r.t. the associated TBCB line.



Asset-II and Asset-III were completed before the COD of the associated TBCB line. Therefore, the Petitioner has sought approval of Asset-II and Asset-III as 1.8.2019 under Regulation 5(2) of the 2019 Tariff Regulations.

COD for Asset-II and Asset-III:

15. The Petitioner has submitted that the power flow in Asset-II and Asset-III, i.e. 02 numbers 220 kV lines bays each at Siliguri Sub-station and Alipurduar Sub-station, could not be achieved due to non-readiness of corresponding TBCB transmission lines. The Petitioner coordinated with KPTL but it could not complete their corresponding TBCB line, i.e. 400 kV D/C Siliguri-Alipurduar Transmission Line matching with the associated line bays at Siliguri & Alipurduar Sub-stations under the scope of the Petitioner. Further, the Petitioner has submitted that the Petitioner in accordance with the 2019 Tariff Regulations had given one month notice to KPTL prior to completion/ no-load charging of Asset- II and Asset-III vide letter dated 29.5.2019 and only after one month notice, the COD is being invoked w.e.f. 1.8.2019 in accordance with Regulation 5(2) of the 2019 Tariff Regulations. The TBCB line was eventually completed by KPTL by 16.1.2020 which was declared under commercial operation w.e.f. 17.1.2020. The Petitioner has submitted the CEA Energization Certificate, no-load RLDC Charging Certificate and the Petitioner's CMD Certificate as per relevant Grid Code to establish that the Asset-II and Asset-III was complete in all respects, except the power flow by 1.8.2019.

16. Regulation 5 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.*

(3) The date of commercial operation in case of integrated mine(s), shall mean the earliest of —

- a) the first date of the year succeeding the year in which 25% of the Peak Rated Capacity as per the Mining Plan is achieved; or*
- b) the first date of the year succeeding the year in which the value of production estimated in accordance with Regulation 7A of these regulations, exceeds total expenditure in that year; or*
- c) the date of two years from the date of commencement of production:*

Provided that on earliest occurrence of any of the events under sub-clauses (a) to (c) of Clause (3) of this Regulation, the generating company shall declare the date of commercial operation of the integrated mine(s) under the relevant sub-clause with one week prior intimation to the beneficiaries of the end-use or associated generating station(s);

Provided further that in case the integrated mine(s) is ready for commercial operation but is prevented from declaration of the date of commercial operation for reasons not attributable to the generating company or its suppliers or contractors or the Mine Developer and Operator, the Commission, on an application made by the generating



company, may approve such other date as the date of commercial operation as may be considered appropriate after considering the relevant reasons that prevented the declaration of the date of commercial operation under any of the sub-clauses of Clause (3) of this Regulation;

Provided also that the generating company seeking the approval of the date of commercial operation under the preceding proviso shall give prior notice of one month to the beneficiaries of the end-use or associated generating station(s) of the integrated mine(s) regarding the date of commercial operation.”

17. We have considered the submissions of the Petitioner. 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. As per Regulation 5(2) of 2019 Tariff Regulations, the Petitioner shall have to give prior notice of at least one month, to the transmission licensee regarding the date of commercial operation.

18. The Petitioner has sought declaration of COD for the Asset-II and Asset-III as 1.8.2019 under the Regulation 5(2) of the 2019 Tariff Regulations. In support of COD of Asset-II and Asset-III, the Petitioner has submitted the CEA Energisation Certificates dated 27.3.2019, 6.10.2017 and 1.7.2019 under Regulation 43 of Central Electricity Authority (CEA) (Measures relating to Safety and Electric Supply) Regulations, 2010, 'No-load' RLDC Charging Certificate dated 24.5.2018, 4.9.2019 and 30.12.2019, self-declaration COD letter and their CMD Certificate as required under the Grid Code. The Petitioner, vide letter dated 29.5.2019, has issued prior notice of one month as required under Regulation 5(2) of the 2019 Tariff Regulations, to ATL and informed that the transmission assets will be ready for charging.



19. Taking into consideration the CEA Energisation Certificate, 'No load' RLDC Charging Certificate, the Petitioner's CMD Certificate, COD of Asset-II and Asset-III is approved as 1.8.2019 under Regulation 5(2) of the 2019 Tariff Regulations.

Capital Cost

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

“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 Certificates dated 20.3.2020, 21.10.2020 and 27.10.2020 has claimed capital cost incurred as on COD and Additional Capital Expenditure (ACE) projected to be incurred in respect of the transmission assets as follows:

Assets	FR Apportioned approved cost	Expenditure up to COD	Projected ACE				Estimated Completion Cost
			2019-20	2020-21	2021-22	2022-23	
Asset-I	1239.11	951.43	99.25	41.01	41.01	10.25	1142.95
Asset-II	1425.76	847.18	193.18	100.00	-	-	1140.36
Asset-III	1821.37	1573.04	-	-	64.34	-	1637.38

Cost over-run

22. The Petitioner has submitted that the total apportioned approved cost as per IA is ₹4486.24 lakh and the estimated completion cost is ₹3920.69 lakh. Thus, there is no cost over-run with regard to the instant assets.

Time over-run

23. As per IA letter dated 10.3.2017, the scheduled COD of the transmission project was 24 months from the date of IA matching with the schedules of respective TBCB lines. Accordingly, the SCOD of the bays is 5.3.2019, against which the subject assets have been put under commercial operation as follows:



Asset	SCOD	COD	Time over-run
Asset-I	5.3.2019	22.6.2019	109 days
Asset-II		1.8.2019	149 days
Asset-III		1.8.2019	149 days

24. There is a delay of 109 days, 149 days and 149 days in execution of Asset-I, Asset-II and Asset-III respectively.

25. The reasons submitted by the Petitioner vide affidavit dated 8.8.2022 for time over-run in case of the transmission assets is as follows:

26. The Petitioner has submitted that the main reason for time over-run in case of Asset-I was unsatisfactory mobilization by the contractor(s). The Petitioner has attributed the time over-run in case of Asset-II and Asset-III to Right of Way (RoW) issue in the associated Multi-circuit portion. The Alipurduar Sub-station (PG) lies in the chicken neck area where there is acute issue of space constraint for transmission corridor due to international border and geographical constraints resulting in a narrow strip of land connecting North-East with the mainland of India.

27. The Petitioner has submitted that apart from the said TBCB line, various other lines were also executed/ planned in this region connecting Alipurduar Sub-station with the other concerned Sub-stations/ generators. One such line is 400 kV D/C Jigmeling (BHUTAN)-Alipurduar (PG), the Indian portion of which was being executed by the Petitioner under a separate project namely "Requirement of additional system strengthening in Indian Portion" for evacuation of power from hydro projects in Bhutan. The Petitioner's proposal addressing the space constraint around Alipurduar Sub-station was discussed and deliberated in the 04th SSCM of ER held on 10.6.2016 and the extract of the deliberation is as follows:



“.....POWERGRID has informed that severe right of way problems is being faced for line entry at Alipurduar S/s and POWERGRID had proposed to construct the Jigmeling – Alipurduar and Alipurduar – Siliguri 400 kV (Quad) lines on Multi-Circuit (M/c) tower for about 5 km at Alipurduar end. The M/c portion would be built (along with conductor stringing in all four circuits), owned, operated and maintained by POWERGRID. The Alipurduar – Siliguri line being built under TBCB would be terminated at start of the M/c portion. Accordingly, the coordinates of starting point of M/c portion has been provided in RfP document for termination of Alipurduar – Siliguri line.

Members noted the above and approved the construction, operation and maintenance of Jigmeling – Alipurduar 400 kV D/c line and Alipurduar – Siliguri 400 kV D/c (Quad) line on Multi-Circuit (M/c) tower for about 5 km at Alipurduar end by POWERGRID along with stringing of conductors in all four circuits.”

28. The Petitioner has submitted that a Multi-circuit (M/C) Portion had to be constructed by the Petitioner to accommodate the last leg at Alipurduar Sub-station of TBCB line 400 kV D/C Alipurduar-Siliguri as well as of 400 kV Jigmeling-Alipurduar (Indian Portion). Therefore, Asset-II and Asset-III of the associated TBCB line were to be terminated at start of M/C portion at Alipurduar end. The issue was further ratified in the 18th SCM of ER held on 13.6.2016 and also in the 33rd ERPC and TCC held on 25.6.2016. The Petitioner had identified the upcoming projects related to Alipurduar Sub-station and had foreseen the issue related to space constraint of transmission corridor will come during the execution. The deliberations took place in 2016 i.e. well before the IA of the transmission project (dated 10.3.2017). Thus, the Petitioner took proactive steps in discussing the said matter in various forums and obtained a viable solution with consent of beneficiaries and power committees. The execution of Multi-circuit portion was planned to be concurrent to the scheduled COD of the transmission project i.e. by 5.3.2019. However, due to RoW issues in the M/C portion, it was delayed and eventually completed in July, 2019.

29. The Petitioner has submitted that the transmission assets covered under the transmission project were completed well before the M/C Portion. However, as the M/C



portion was to be completed by the Petitioner to facilitate the termination of associated TBCB line at Alipurduar-end, the COD of the Asset-II and Asset-III has been claimed as 1.8.2019, i.e. after completion of the M/C portion.

30. The Petitioner has submitted the following chronology of events related to execution of the Petitioner's scope:

Date	Remarks
10.6.2016/ 13.6.2016	Date of Approval for M/C portion
10.3.2017 (Date of IA)	
21.8.2017	Application for CEA clearance (Asset-III: Completion of 02 numbers 400 kV bays at Alipurduar Sub-station)
6.10.2017	CEA Energization Certificate (Asset-III)
8.3.2018	RLDC (no-load) charging date (Asset-III) (vide certificated letter dated 4.9.2019)
16.2.2019	Application for CEA clearance (Asset-II: Completion of 02 numbers 400 kV bays at Siliguri Sub-station)
5.3.2019 (SCOD)	
27.3.2019	CEA Energization Certificate (Asset-II)
4.4.2019	RLDC (no-load) charging date (Asset-II) (vide certificated letter dated 24.5.2019)
29.5.2019	Notice to KPTL giving one month notice in compliance of proviso 5(2)(e) of the 2019 Tariff Regulations.
13.6.2019	Application for CEA clearance (Multi-circuit completion)
1.7.2019	CEA energization certificate (Multi-circuit Portion)
1.8.2019	RLDC (no-load) charging date (M/C portion) (vide certificated letter dated 30.12.2019)
1.8.2019	COD (invoked) for Asset-II & Asset-III
17.1.2020	COD of associated TBCB line (KPTL) 400kV D/C Alipurduar – Siliguri

Multi Ckt. Portion, even though executed by POWERGRID as mentioned above, is not under the scope of subject project. It forms part of a separate project.

31. The Petitioner has submitted that the Petitioner completed Asset-II, i.e. 02 numbers 400 kV line bays at Siliguri end prior to 5.3.2019 i.e. the SCOD, which is evident from CEA application dated 16.2.2019, which was made before the SCOD.



- › Applied for CEA clearance on 16.2.2019
- › Approval of CEA charging received on 27.3.2019
- › RLDC (no-load) charging certificate dated 4.4.2019

32. The Petitioner has further submitted that the Petitioner completed Asset-III, i.e. 02 numbers 400 kV line bays at Alipurduar-end prior to SCOD.

- › Applied for CEA clearance on 21.8.2017
- › Approval of charging received on 6.10.2017
- › RLDC (no-load) charging certificate dated 8.3.2018

Thus, it is evident that the scope of work corresponding to the transmission assets were completed before the SCOD.

33. The Petitioner has submitted that there is no time over-run in completion of the transmission assets. However, even after completion of the transmission assets before the SCOD, the COD has been invoked as 1.8.2019 i.e. after the completion of the Multi-circuit portion which is providing front to the TBCB line for termination at Alipurduar Sub-station. The Petitioner has submitted that since the multi-circuit portion was to be executed by the Petitioner to facilitate the termination of the associated TBCB line, the delay from SCOD to 1.8.2019 is due to delay in completion of the Multi-circuit portion. The Petitioner has submitted that there were severe RoW issues from December, 2018 to April, 2019 due to which the works of M/C portion were severely affected. For about 120 days (from 20.2.2018 to 17.4.2019) no progress in works at Loc. Nos. 1/0 to 8/0 could be achieved. The RoW issues came up in early December, 2018 and the Petitioner pursued the matter with the villagers but to no avail and later on the district administration was involved w.e.f. 20.12.2018 onwards. The letter dated 17.4.2019 recorded incidents of RoW and the matter could be resolved only on police intervention



after couple of days, thereby leading to hampering of the pace of execution as the work gangs had to be demobilized and remobilized many times.

34. The BSPHCL has submitted that the reason for delay with respect to Asset-I has been stated as “unsatisfactory mobilization by the contractor(s)”, which is a “controllable factor” as provided for in Regulation 22 of the 2019 Tariff Regulations. Therefore, the delay with respect to Asset-I may not be condoned. The Petitioner has attributed the time over-run in case of Asset-II and Asset-III to RoW issues in the associated M/C portion. The M/C portion is not under the scope of the transmission project, hence, submissions with respect to it may not be considered in the present petition. Further, it is the Petitioner’s own case that it had foreseen the issue related to space constraint of transmission corridor during execution, prior to the Investment Approval dated 10.3.2017 of the transmission project. Therefore, the RoW issue was not an unforeseen circumstance and the delay cannot be said to be on account of uncontrollable factors and may not be condoned.

35. In response, the Petitioner has submitted that the time over-run in case of M/C portion is due to RoW issues, which are classified as unforeseen delay for the purpose of condonation of delay.

36. We have considered the submissions of the Petitioner and BSPHCL and have perused the record. As per the IA dated 10.3.2017, the transmission assets were scheduled to be put under commercial operation within 24 months i.e. 5.3.2019, against which Asset-I, Asset-II and Asset-III are executed with a time over-run of 109 days, 149 days and 149 days respectively.



Asset-I:

37. The Petitioner has submitted that the time over-run in case of Asset-I is mainly on account of unsatisfactory mobilization by the contractor(s). Regulation 22 of the 2019 Tariff Regulations provides as follows:

“22. Controllable and Uncontrollable factors: The following shall be considered as controllable and uncontrollable factors for deciding time over-run, cost escalation, IDC and IEDC of the new projects:

(1) The “controllable factors” shall include but shall not be limited to the following:

a. Efficiency in the implementation of the new projects not involving approved change in scope of such new projects, change in statutory levies or change in law or force majeure events; and

b. Delay in execution of the new projects on account of contractor or supplier or agency of the generating company or transmission licensee.

(2) The “uncontrollable factors” shall include but shall not be limited to the following: a. Force Majeure events.

b. Change in law; and

c. Land acquisition except where the delay is attributable to the generating company or the transmission licensee.”

38. As per Regulation 22(1) (b) of the 2019 Tariff Regulations, the reasons for time over-run in case of Asset-I falls under the category of “contractual issues” and, therefore, controllable. Accordingly, we are not inclined to condone the time over-run in case of the Asset-I.

Asset-II & Asset-III:

39. The Petitioner has attributed the time over-run to RoW issue in the associated M/C portion of 400 kV Alipurduar-Jigmeling Transmission Line which is also being used by 400 kV Alipurduar-Siliguri TBCB line. The Petitioner had to implement 2 numbers of 400 kV line bays at Siliguri end and Alipurduar end for termination of 400 kV D/C Alipurduar-Siliguri Line. It is observed that the Petitioner has completed the 2 numbers of 400 kV line bays at Siliguri and Alipurduar Sub-station before SCOD i.e. 5.3.2019. However, due to severe RoW problems faced for line entry at Alipurduar Sub-station,



the Petitioner proposed to construct the Jigmeling-Alipurduar and Alipurduar-Siliguri 400 kV (quad) lines on M/C tower for about 5 km at Alipurduar end. As per Rfp document, the Alipurduar-Siliguri Line would be terminated at start of the M/C portion, therefore, it was the responsibility of the Petitioner to provide front for termination of TBCB line. Accordingly, the Petitioner completed M/C portion and provided front for termination of TBCB line. As time over-run of the instant 400 kV bays is concerned, the implementation of M/C circuit portion and consequent RoW issues in implementation of this is impacted the commissioning of the Asset-II and Asset-III. The Petitioner has filed separate tariff petition No. 45/TT/2023 wherein claiming tariff for 5 km M/C line along with Jigmeling-Alipurduar D/C, so the time over-run with respect to M/C alongwith D/C line will be dealt in that petition. Based on the outcome of the decision of the Commission in Petition No.45/TT/2023, the time overrun in case of Asset-II and Asset-III will be reviewed at the time of truing-up. Pending the decision of the Commission in Petition No.45/TT/2023 regarding time-over run with respect to M/C portion, time-over run with respect to Asset-1 and Asset-2 in the instant petition is ~~considered~~ not condoned.

40. As such, the details of time over-run considered in case of the instant assets are as follows:

Asset	SCOD	COD	Time over-run	Time over-run condoned	Time over-run not condoned
Asset-I	5.3.2019	22.6.2019	109 days	-	109 days
Asset-II		1.8.2019	149 days		149 days
Asset-III		1.8.2019	149 days		149 days



Interest During Construction (IDC) / Incidental Expenditure During Construction (IEDC)

41. The Petitioner has claimed IDC of the transmission assets covered in the instant petition and has submitted the statement showing IDC claim, discharge of IDC liability as on COD and thereafter as follows:

(₹ in lakh)

Asset	IDC as per Auditor Certificate	IDC discharged upto COD	IDC discharged during 2019-20	IDC discharged during 2020-21
Asset-I	1.91	1.24	0.67	0.00
Asset-II	42.29	41.97	0.32	0.00
Asset-III	175.92	171.78	4.01	0.13

42. We have considered the submissions of the Petitioner. As discussed above in this order, the time over-run in declaring the commercial operation of the transmission assets has been disallowed for Asset-I, Asset-II and Asset-III. Accordingly, the IDC on cash basis up to the COD has been worked out based on the loan details given in the Statement showing discharge of IDC and Form-9C for the transmission assets. The 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)

Asset	IDC as per Auditor Certificate	IDC disallowed due to time over-run not condoned	IDC allowed	IDC discharged upto COD	IDC discharged during 2019-20	IDC discharged during 2020-21
Asset-I	1.91	1.91	0.00	-	-	-
Asset-II	42.29	36.23	6.06	6.06	0.00	-
Asset-III	175.92	31.96	143.96	142.89	1.07	-



43. Further, the Petitioner has claimed IEDC for the transmission assets as per the Auditor Certificate. The Petitioner has further submitted that the entire amount of IEDC for the transmission assets has been discharged up to COD. As the time over-run for Asset-I, Asset-II and Asset-III has been disallowed, there is dis-allowance of IEDC in the transmission assets. The IEDC claimed as per Auditor's Certificate, IEDC considered and discharged up to COD is as follows:

(₹ in lakh)

Asset	IEDC claimed as per Auditor certificate (A)	IEDC disallowed due to time over-run not condoned (B)	IEDC allowed (C)=(A-B)
Asset-I	124.44	16.26	108.18
Asset-II	1.92	0.01	1.91
Asset-III	189.81	0.65	189.16

Initial Spares

44. 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) *Transmission line- 1.00%*
- (ii) *Transmission sub-station*
 - *Green Field- 4.00%*
 - *Brown Field- 6.00%*
- (iii) *Series Compensation devices and HVDC Station- 4.00%*
- (iv) *Gas Insulated Sub-station (GIS)*
 - *Green Field- 5.00%*
 - *Brown Field- 7.00%*
- (v) *Communication System- 3.50%*
- (vi) *Static Synchronous Compensator- 6.00%”*

45. The Initial Spares as claimed by the Petitioner are as follows:



(₹ in lakh)

Asset	Components of the asset	Plant and Machinery cost for calculation of initial spares	Initial spares claimed		Ceiling limit as per Regulations (in %)
			Amount	Percentage (in %)	
Asset-I	Transmission Line	-	-	-	1.00
	Sub-station	917.51	33.27	3.63	5.00
	PLCC	-	-	-	3.50
Asset-II	Transmission Line	-	-	-	1.00
	Sub-station	967.37	57.08	5.90	6.00
	PLCC	128.78	18.94	14.71	3.50
Asset-III	Transmission Line	-	-	-	1.00
	Sub-station	1261.24	16.39	1.30	6.00
	PLCC	-	-	-	3.50

46. BSPHCL has submitted that Initial Spares may be considered only as per the applicable Regulation 23 of the 2019 Tariff Regulations. The proviso (i) to Regulation 23 provides that “Plant and Machinery cost shall be considered as the original project cost excluding IDC, IEDC, Land Cost and Cost of Civil Works. The generating company and the transmission licensee for the purpose of estimating Plant and Machinery Cost, shall submit the break-up of head-wise IDC and IEDC in its tariff application;” Further, as the PLCC spares claimed, admittedly, exceeds the permissible limit, the same may not be allowed.

47. We have considered the submissions of Petitioner and the Respondent. Based on the information available on record, the Initial Spares for the transmission assets are allowed as per respective percentage of the Plant and Machinery Cost as on the cut-off date. The Initial Spares allowed for the transmission assets are as follows:



(₹ in lakh)

Asset	Components of the asset	Plant and Machinery cost for calculation of Initial Spares	Initial Spares claimed	Ceiling limit as per Regulations (in %)	Initial Spares allowable	Excess Initial Spares	Initial Spares allowed
Asset-I	Sub-station	917.51	33.27	5.00	46.54	-	33.27
Asset-II	Sub-station and PLCC	1096.15	76.02	6.00	65.11	10.91	65.11
Asset-III	Sub-station	1261.24	16.39	6.00	79.46	-	16.39

48. Since there is excess Initial Spares claimed in respect of Asset-II, the same is restricted to the norm of 6% and Initial Spares claimed with respect to Asset-I and Asset-III are within the norms. The capital cost allowed as on COD is as follows:

(₹ in lakh)

Asset	Capital cost claimed as on COD (Auditor Certificate) (A)	IDC disallowed due to time over-run not condoned (B)	Undischarged IDC as on COD (C)	IEDC disallowed (D)	Excess Initial Spares (E)	Capital cost as on COD (F) = (A-B-C-D-E)
Asset-I	951.43	1.91	0.00	16.26	-	933.26
Asset-II	847.18	36.23	0.00	0.01	10.91	800.04
Asset-III	1573.04	31.96	1.07	0.65	-	1539.36

Additional Capital Expenditure (ACE)

49. Regulation 24 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.”

50. The Petitioner has claimed that the ACE incurred/ projected to be incurred is mainly on account of balance/ retention payments and, hence, the same is claimed under Regulation 24(1)(a) and Regulation 24(1)(b) of the 2019 Tariff Regulations. The Petitioner has claimed capital cost as per the cash IDC discharge as on 31.3.2024 as follows:

(₹ in lakh)

Asset	Apportioned approved cost	Expenditure up to COD	Projected ACE				Estimated Completion Cost
			2019-20	2020-21	2021-22	2022-23	
Asset-I	1239.11	951.43	99.25	41.01	41.01	10.25	1142.95
Asset-II	1425.76	847.18	193.18	100.00	-	-	1140.36
Asset-III	1821.37	1573.04	-	-	64.34	-	1637.38

51. BSPHCL has submitted that ACE may only be considered as contemplated by and under the heads provided for in Regulation 24 of the 2019 Tariff Regulations.

52. The Petitioner vide affidavit dated 22.10.2021 has submitted the following details with respect to discharged and deferred payments:

(₹ in lakh)

Asset	Party	Particulars	2019-20	2020-21	2021-22	2022-23
Asset-I	GE T&D India Limited, Techno Electric and Engg. Co. Ltd., Xian XD Switchgear Electric Co. Ltd. (Associated with Techno Electric and Engg. Co. Ltd.)	Sub-station	99.25 (Discharge)	41.01 (Discharge)	41.01 (Discharge)	10.25 (Discharge)



Asset	Party	Particulars	2019-20	2020-21	2021-22	2022-23
Asset-II	GE T&D & etc	Sub-station & PLCC	193.18 (173.18 - Works deferred for execution & 20.00 - discharge)	100.00 (Discharge)		
Asset-III	BHAEI, ABB India and ABB AB etc.	Sub-station & PLCC	20.00 (Works deferred for execution)		64.34 (Discharge)	

53. We have considered the submissions of the Petitioner and BSPHCL. The projected ACE allowed under Regulation 24(1)(a) of the 2019 Tariff Regulations on account of of Balance/Retention Payments and under Regulation 24(1)(b) of the 2019 Tariff Regulations on account of works deferred for execution:

Asset-I:

Particulars	(₹ in lakh)			
	2019-20	2020-21	2021-22	2022-23
ACE as per Auditor's Certificate	99.25	41.01	41.01	10.25
Add: IDC Discharged	0.00	0.00	0.00	0.00
ACE allowed in the instant order	99.25	41.01	41.01	10.25

Asset-II:

Particulars	(₹ in lakh)			
	2019-20	2020-21	2021-22	2022-23
ACE as per Auditor's Certificate	193.18	100.00	0.00	0.00
Add: IDC Discharged	0.00	0.00	0.00	0.00
ACE allowed in the instant order	193.18	100.00	0.00	0.00

Asset-III:

Particulars	(₹ in lakh)			
	2019-20	2020-21	2021-22	2022-23
ACE as per Auditor's Certificate	0.00	0.00	64.34	0.00
Add: IDC Discharged	1.07	0.00	0.00	0.00
ACE allowed in the instant order	1.07	0.00	64.34	0.00



54. The capital cost considered for the transmission assets for the 2019-24 tariff period is as follows:

Asset	Capital Cost as on COD	Projected ACE				Capital Cost as on 31.3.2024
		2019-20	2020-21	2021-22	2022-23	
Asset-I	933.26	99.25	41.01	41.01	10.25	1124.78
Asset-II	800.04	193.18	100.00	0.00	0.00	1093.22
Asset-III	1539.36	1.07	0.00	64.34	0.00	1604.77

(₹ in lakh)

Debt-Equity ratio

55. 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.”

56. The debt-equity considered for the purpose of computation of tariff for the transmission assets for 2019-24 tariff period is as follows:

Asset-I

Funding	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	653.28	70.00	134.06	70.00	787.34	70.00
Equity	279.98	30.00	57.46	30.00	337.44	30.00
Total	933.26	100.00	191.52	100.00	1124.78	100.00

Asset-II

Funding	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	560.03	70.00	205.23	70.00	765.26	70.00
Equity	240.01	30.00	87.95	30.00	327.96	30.00
Total	800.04	100.00	293.18	100.00	1093.22	100.00



Asset-III

Funding	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	1077.55	70.00	45.78	70.00	1123.33	70.00
Equity	461.81	30.00	19.62	30.00	481.43	30.00
Total	1539.36	100.00	65.41	100.00	1604.77	100.00

Depreciation

57. 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.”

58. We have considered the submissions of the Petitioner. The depreciation has been worked out considering the admitted capital expenditure as on COD. The weighted average rate of depreciation (WAROD) has been worked out and placed as Annexure for Asset-I, Asset-II and Asset-III as per the rates of depreciation specified in the 2019 Tariff Regulations. Depreciation allowed in respect of the transmission assets for 2019-24 tariff period is as follows:

Asset-I

(₹ in lakh)						
	Particulars	2019-20 (pro-rata 284 days)	2020-21	2021-22	2022-23	2023-24
	Depreciation					
A	Opening Gross Block	933.26	1032.51	1073.52	1114.53	1124.78
B	ACE	99.25	41.01	41.01	10.25	0.00
C	Closing Gross Block (A+B)	1032.51	1073.52	1114.53	1124.78	1124.78
D	Average Gross Block (A+C)/2	982.88	1053.01	1094.02	1119.65	1124.78
E	Weighted average rate of Depreciation (WAROD) (in %)	5.28	5.28	5.28	5.28	5.28
F	Balance useful life of the asset (Year)	25	25	24	23	22
G	Elapsed life at the beginning of the year (Year)	0	0	1	2	3
H	Aggregate Depreciable Value	884.59	947.71	984.62	1007.69	1012.30
I	Combined Depreciation during the year	40.27	55.60	57.76	59.12	59.39
J	Aggregate Cumulative Depreciation	40.27	55.60	113.36	172.48	231.87
K	Remaining Aggregate Depreciable Value	844.32	892.11	871.26	835.21	780.43



Asset-II

(₹ in lakh)

	Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
	Depreciation					
A	Opening Gross Block	800.04	993.22	1093.22	1093.22	1093.22
B	ACE	193.18	100.00	0.00	0.00	0.00
C	Closing Gross Block (A+B)	993.22	1093.22	1093.22	1093.22	1093.22
D	Average Gross Block (A+C)/2	896.63	1043.22	1093.22	1093.22	1093.22
E	Weighted average rate of Depreciation (WAROD) (in %)	5.42	5.40	5.40	5.40	5.40
F	Balance useful life of the asset (Year)	25	25	24	23	22
G	Elapsed life at the beginning of the year (Year)	0	0	1	2	3
H	Aggregate Depreciable Value	806.96	938.89	983.89	983.89	983.89
I	Combined Depreciation during the year	32.42	56.38	59.02	59.02	59.02
J	Aggregate Cumulative Depreciation	32.42	56.38	115.39	174.41	233.42
K	Remaining Aggregate Depreciable Value	774.54	882.52	868.50	809.49	750.47

Asset-III

(₹ in lakh)

	Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
	Depreciation					
A	Opening Gross Block	1539.36	1540.43	1540.43	1604.77	1604.77
B	ACE	1.07	0.00	64.34	0.00	0.00
C	Closing Gross Block (A+B)	1540.43	1540.43	1604.77	1604.77	1604.77
D	Average Gross Block (A+C)/2	1539.90	1540.43	1572.60	1604.77	1604.77
E	Weighted average rate of Depreciation (WAROD) (in %)	5.33	5.33	5.33	5.33	5.33
F	Balance useful life of the asset (Year)	25	25	24	23	22
G	Elapsed life at the beginning of the year (Year)	0	0	1	2	3
H	Aggregate Depreciable Value	1385.91	1386.39	1415.34	1444.29	1444.29
I	Combined Depreciation during the year	54.74	82.14	83.84	85.54	85.54
J	Aggregate Cumulative Depreciation	54.74	82.14	165.98	251.52	337.07



	Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
K	Remaining Aggregate Depreciable Value	1331.17	1304.25	1249.36	1192.77	1107.23

Interest on Loan (IoL)

59. 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.”*

60. The Weighted Average Rate of Interest on Loan (WAROI) has been considered on the basis of rate prevailing as on COD. The Petitioner has prayed that the change in interest rate due to floating rate of interest applicable, if any, during the 2019-24 tariff period will be adjusted. Accordingly, the floating rate of interest, if any, will be considered at the time of true-up. Therefore, the IoL has been allowed in accordance with Regulation 32 of the 2019 Tariff Regulations for the transmission assets and is as follows:

Asset-I

(₹ in lakh)						
	Particulars	2019-20 (pro-rata 284 days)	2020-21	2021-22	2022-23	2023-24
A	Gross Normative Loan	653.28	722.76	751.46	780.17	787.34
B	Cumulative Repayments upto Previous Year	0.00	40.27	95.87	153.63	212.75
C	Net Loan-Opening (A-B)	653.28	682.49	655.59	626.54	574.59
D	Additions due to ACE	69.48	28.71	28.71	7.18	0.00
E	Repayment during the year	40.27	55.60	57.76	59.12	59.39
F	Net Loan-Closing (C+D-E)	682.49	655.59	626.54	574.59	515.21
G	Average Loan (C+F)/2	667.88	669.04	641.07	600.57	544.90
H	Weighted Average Rate of Interest on Loan (%)	7.9801	7.9590	7.9590	7.9590	7.9540
I	Interest on Loan	41.36	53.25	51.02	47.80	43.34



Asset-II

(₹ in lakh)

	Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
A	Gross Normative Loan	560.03	695.26	765.26	765.26	765.26
B	Cumulative Repayments upto Previous Year	0.00	32.42	88.80	147.82	206.83
C	Net Loan-Opening (A-B)	560.03	662.83	676.46	617.44	558.42
D	Additions due to ACE	135.23	70.00	0.00	0.00	0.00
E	Repayment during the year	32.42	56.38	59.02	59.02	59.02
F	Net Loan-Closing (C+D-E)	662.83	676.46	617.44	558.42	499.41
G	Average Loan (C+F)/2	611.43	669.64	646.95	587.93	528.92
H	Weighted Average Rate of Interest on Loan (in %)	8.0609	8.0208	8.0208	8.0208	8.0165
I	Interest on Loan	32.86	53.71	51.89	47.16	42.40

Asset-III

(₹ in lakh)

	Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
A	Gross Normative Loan	1077.55	1078.30	1078.30	1123.33	1123.33
B	Cumulative Repayments upto Previous Year	0.00	54.74	136.88	220.72	306.27
C	Net Loan-Opening (A-B)	1077.55	1023.55	941.41	902.61	817.07
D	Additions due to ACE	0.75	0.00	45.04	0.00	0.00
E	Repayment during the year	54.74	82.14	83.84	85.54	85.54
F	Net Loan-Closing (C+D-E)	1023.55	941.41	902.61	817.07	731.53
G	Average Loan (C+F)/2	1050.55	982.48	922.01	859.84	774.30
H	Weighted Average Rate of Interest on Loan (in %)	8.1017	8.0979	8.0934	8.0860	8.0742
I	Interest on Loan	56.74	79.56	74.62	69.53	62.52

Return on Equity (RoE)

61. Regulation 30 and Regulation 31 of the 2019 Tariff Regulations provide as follows:

“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 ₹ 1,000 crore;
- (b) Estimated Advance Tax for the year on above is ₹ 240 crore;
- (c) Effective Tax Rate for the year 2019-20 = ₹ 240 Crore / ₹ 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."

62. The Petitioner has submitted that MAT rate is applicable to the Petitioner's company. Accordingly, the MAT rate applicable in 2019-20 has been considered for the



purpose of RoE, which will be trued-up with actual tax rate in accordance with Regulation 31(3) of the 2019 Tariff Regulations. The RoE allowed for the transmission assets is as follows:

Asset-I

(₹ in lakh)						
	Particulars	2019-20 (pro-rata 284 days)	2020-21	2021-22	2022-23	2023-24
A	Opening Equity (A)	279.98	309.76	322.06	334.36	337.44
B	Additions (B)	29.78	12.30	12.30	3.08	0.00
C	Closing Equity (C) = (A+B)	309.76	322.06	334.36	337.44	337.44
D	Average Equity (D) = (A+C)/2	294.87	315.91	328.21	335.90	337.44
E	Return on Equity (Base Rate) (in %)	15.500	15.500	15.500	15.500	15.500
F	MAT Rate for respective year (in %)	17.472	17.472	17.472	17.472	17.472
G	Rate of Return on Equity (in %)	18.782	18.782	18.782	18.782	18.782
H	Return on Equity	42.97	59.33	61.64	63.09	63.38

Asset-II

(₹ in lakh)						
	Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
A	Opening Equity (A)	240.01	297.96	327.96	327.96	327.96
B	Additions (B)	57.95	30.00	0.00	0.00	0.00
C	Closing Equity (C) = (A+B)	297.96	327.96	327.96	327.96	327.96
D	Average Equity (D) = (A+C)/2	268.99	312.96	327.96	327.96	327.96
E	Return on Equity (Base Rate) (in %)	15.500	15.500	15.500	15.500	15.500
F	MAT Rate for respective year (in %)	17.472	17.472	17.472	17.472	17.472
G	Rate of Return on Equity (in %)	18.782	18.782	18.782	18.782	18.782
H	Return on Equity	33.68	58.78	61.60	61.60	61.60



Asset-III

(₹ in lakh)

	Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
A	Opening Equity (A)	461.81	462.13	462.13	481.43	481.43
B	Additions (B)	0.32	0.00	19.30	0.00	0.00
C	Closing Equity (C) = (A+B)	462.13	462.13	481.43	481.43	481.43
D	Average Equity (D) = (A+C)/2	461.97	462.13	471.78	481.43	481.43
E	Return on Equity (Base Rate) (in %)	15.500	15.500	15.500	15.500	15.500
F	MAT Rate for respective year (in %)	17.472	17.472	17.472	17.472	17.472
G	Rate of Return on Equity (in %)	18.782	18.782	18.782	18.782	18.782
H	Return on Equity	57.84	86.80	88.61	90.42	90.42

Operation & Maintenance Expenses (O&M Expenses)

63. The O&M Expenses claimed by the Petitioner for the transmission assets for the 2019-24 period are as follows:

Asset-I (1 number 80 MVAR SLR for Kishnaganj-Dharbanga Line)

(₹ in lakh)

Particulars	2019-20 (pro-rata 284 days)	2020-21	2021-22	2022-23	2023-24
400 kV GIS Kishnaganj Sub-station					
Number of line reactor bay	1	1	1	1	1
Norms	22.505	23.296	24,115	24.962	25.837
Total O&M Expenses	17.46	23.30	24.12	24.96	25.84

Asset-II (2 number of 400 kV line bays at Siliguri Sub-station)

(₹ in lakh)

Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
400 kV Siliguri Sub-station					
Number of line bays	2	2	2	2	2
Norms	32.15	33.28	34.45	35.66	36.91
PLCC					
Original Project Cost	103.56	103.56	103.56	103.56	103.56
Norms (in %)	2.00	2.00	2.00	2.00	2.00
Total O&M Expenses	44.25	68.63	70.97	73.39	75.89



Asset-III (2 number of 400 kV line bays at Alipurduar Sub-station)

(₹ in lakh)

Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
400 kV Alipurduar Sub-station					
Number of line bays	2	2	2	2	2
Norms	32.15	33.28	34.45	35.66	36.91
PLCC					
Original Project Cost	103.56	103.56	103.56	103.56	103.56
Norms (in %)	2.00	2.00	2.00	2.00	2.00
Total O&M Expenses	44.25	68.63	70.97	73.39	75.89

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

“35. Operation and Maintenance Expenses:

....
 (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.”

65. We have considered the submissions of the Petitioner. The Petitioner has claimed O&M Expenses separately for PLCC under Regulation 35(4) of the 2019 Tariff Regulations for Asset-II and Asset-III @ 2% of its cost. The Petitioner has made similar claim in other petitions as well. Though PLCC is a communication system, it has been considered as part of the sub-station in the 2019 Tariff Regulations and accordingly the norms for sub-station have been specified. The Commission vide order dated 24.1.2021 in Petition No. 126/TT/2020 has already held that no separate O&M Expenses can be allowed for PLCC under Regulation 35(4) of the 2019 Tariff Regulations even though PLCC is a communication system. Therefore, the Petitioner’s claim for separate O&M Expenses for PLCC @ 2% for Asset-II and Asset-III is not allowed. The O&M Expenses



have been worked out as per the norms specified in the 2019 Tariff Regulations are as follows:

Asset-I

(₹ in lakh)

Particulars	2019-20 (pro-rata 284 days)	2020-21	2021-22	2022-23	2023-24
400 kV Kishanganj GIS Sub-station					
Number of line reactor bay	1	1	1	1	1
Norms	22.505	23.296	24,115	24.962	25.837
Total O&M Expenses	17.46	23.30	24.12	24.96	25.84

Asset-II

(₹ in lakh)

Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
400 kV Siliguri Sub-station					
Number of line bays	2	2	2	2	2
Norms	32.15	33.28	34.45	35.66	36.91
Total O&M Expenses	42.87	66.56	68.90	71.32	73.82

Asset-III

(₹ in lakh)

Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
400 kV Alipurduar Sub-station					
Number of line bays	2	2	2	2	2
Norms	32.15	33.28	34.45	35.66	36.91
Total O&M Expenses	42.87	66.56	68.90	71.32	73.82

Interest on Working Capital (IWC)

66. 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:

(a) **For Coal-based/lignite-fired thermal generating stations:**

- (i) Cost of coal or lignite and limestone towards stock, if applicable, for 10 days for pit-head generating stations and 20 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal/lignite stock storage capacity whichever is lower;
- (ii) Advance payment for 30 days towards cost of coal or lignite and



limestone for generation corresponding to the normative annual plant availability factor;

(iii) Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary fuel oil;

(iv) Maintenance spares @ 20% of operation and maintenance expenses including water charges and security expenses;

(v) Receivables equivalent to 45 days of capacity charge and energy charge for sale of electricity calculated on the normative annual plant availability factor; and

(vi) Operation and maintenance expenses, including water charges and security expenses, for one month.

(aa) For emission control system of coal or lignite based thermal generating stations:

(i) Cost of limestone or reagent towards stock for 20 days corresponding to the normative annual plant availability factor;

(ii) Advance payment for 30 days towards cost of reagent for generation corresponding to the normative annual plant availability factor;

(iii) Receivables equivalent to 45 days of supplementary capacity charge and supplementary energy charge for sale of electricity calculated on the normative annual plant availability factor;

(iv) Operation and maintenance expenses in respect of emission control system for one month;

(v) Maintenance spares @20% of operation and maintenance expenses in respect of emission control system.

(b) For Open-cycle Gas Turbine/Combined Cycle thermal generating stations:

(i) Fuel cost for 30 days corresponding to the normative annual plant availability factor, duly taking into account mode of operation of the generating station on gas fuel and liquid fuel;

(ii) Liquid fuel stock for 15 days corresponding to the normative annual plant availability factor, and in case of use of more than one liquid fuel, cost of main liquid fuel duly taking into account mode of operation of the generating stations of gas fuel and liquid fuel;

(iii) Maintenance spares @ 30% of operation and maintenance expenses including water charges and security expenses;

(iv) Receivables equivalent to 45 days of capacity charge and energy charge for sale of electricity calculated on normative plant availability factor, duly taking into account mode of operation of the generating station on gas fuel and liquid fuel; and

(v) Operation and maintenance expenses, including water charges and security expenses, for one month.

(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.*

(2) *The cost of fuel in cases covered under sub-clauses (a) and (b) of clause (1) of this Regulation shall be based on the landed fuel cost (taking into account normative transit and handling losses in terms of Regulation 39 of these regulations) by the generating station and gross calorific value of the fuel as per actual weighted average for the third quarter of preceding financial year in case of each financial year for which tariff is to be determined:*

Provided that in case of new generating station, the cost of fuel for the first financial year shall be considered based on landed fuel cost (taking into account normative transit and handling losses in terms of Regulation 39 of these regulations) and gross calorific value of the fuel as per actual weighted average for three months, as used for infirm power, preceding date of commercial operation for which tariff is to be determined.

(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:-*

‘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;”*

67. The Petitioner has submitted that it has computed IWC for the 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 10.50%.

68. The 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, 11.25% (SBI 1-year MCLR applicable as on 1.4.2020 of 7.75% plus 350 basis points) for 2020-21,



10.50% (SBI 1 year MCLR applicable as on 1.4.2021 of 7.00% plus 350 basis points) for 2021-22 and 10.50% (SBI 1 year MCLR applicable as on 1.4.2022 of 7.00% plus 350 basis points) for 2022-24.

69. The components of the working capital and interest thereon allowed are as follows:

Asset-I

(₹ in lakh)						
	Particulars	2019-20 (pro-rata 284 days)	2020-21	2021-22	2022-23	2023-24
A	Working Capital for O&M Expenses (O&M Expenses for 1 month)	1.88	1.94	2.01	2.08	2.15
B	Working Capital for Maintenance Spares (15% of O&M Expenses)	3.38	3.49	3.62	3.74	3.88
C	Working Capital for Receivables (Equivalent to 45 days of annual transmission charges)	22.93	24.02	24.37	24.43	23.99
D	Total Working Capital	28.18	29.45	30.00	30.25	30.02
E	Rate of Interest (in %)	12.05	11.25	10.50	10.50	10.50
F	Interest on Working Capital	2.63	3.31	3.15	3.18	3.15

Asset-II

(₹ in lakh)						
	Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
A	Working Capital for O&M Expenses (O&M Expenses for 1 month)	5.36	5.55	5.74	5.94	6.15
B	Working Capital for Maintenance Spares (15% of O&M Expenses)	9.65	9.98	10.34	10.70	11.07
C	Working Capital for Receivables (Equivalent to 45 days of annual transmission charges)	26.78	29.65	30.36	30.08	29.73
D	Total Working Capital	41.78	45.18	46.44	46.72	46.95
E	Rate of Interest (in %)	12.05	11.25	10.50	10.50	10.50
F	Interest on Working Capital	3.36	5.08	4.88	4.91	4.93



Asset-III

(₹ in lakh)

	Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
A	Working Capital for O&M Expenses (O&M Expenses for 1 month)	5.36	5.55	5.74	5.94	6.15
B	Working Capital for Maintenance Spares (15% of O&M Expenses)	9.65	9.98	10.34	10.70	11.07
C	Working Capital for Receivables (Equivalent to 45 days of annual transmission charges)	39.95	39.61	39.68	39.79	39.13
D	Total Working Capital	54.95	55.14	55.75	56.43	56.35
E	Rate of Interest (in %)	12.05	11.25	10.50	10.50	10.50
F	Interest on Working Capital	4.41	6.20	5.85	5.93	5.92

Annual Fixed Charges for the 2019-24 Tariff Period

70. The transmission charges allowed for the transmission assets for the 2019-24 tariff period is as follows:

Asset-I

(₹ in lakh)

	Particulars	2019-20 (pro-rata 284 days)	2020-21	2021-22	2022-23	2023-24
A	Depreciation	40.27	55.60	57.76	59.12	59.39
B	Interest on Loan	41.36	53.25	51.02	47.80	43.34
C	Return on Equity	42.97	59.33	61.64	63.09	63.38
D	O & M Expenses	17.46	23.30	24.12	24.96	25.84
E	Interest on Working Capital	2.63	3.31	3.15	3.18	3.15
F	Total	144.70	194.79	197.70	198.14	195.10

Asset-II

(₹ in lakh)

	Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
A	Depreciation	32.42	56.38	59.02	59.02	59.02
B	Interest on Loan	32.86	53.71	51.89	47.16	42.40
C	Return on Equity	33.68	58.78	61.60	61.60	61.60
D	O & M Expenses	42.87	66.56	68.90	71.32	73.82
E	Interest on Working Capital	3.36	5.08	4.88	4.91	4.93
F	Total	145.19	240.51	246.28	244.00	241.76



Asset-III

(₹ in lakh)

	Particulars	2019-20 (pro-rata 244 days)	2020-21	2021-22	2022-23	2023-24
A	Depreciation	54.74	82.14	83.84	85.54	85.54
B	Interest on Loan	56.74	79.56	74.62	69.53	62.52
C	Return on Equity	57.84	86.80	88.61	90.42	90.42
D	O & M Expenses	42.87	66.56	68.90	71.32	73.82
E	Interest on Working Capital	4.41	6.20	5.85	5.93	5.92
F	Total	216.61	321.26	321.83	322.74	318.22

Filing Fee and the Publication Expenses

71. 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 & RLDC Fees and Charges

72. The Petitioner has sought reimbursement of licensee fee in accordance with Regulation 70(4) of the 2019 Tariff Regulations for 2019-24 tariff period. The Petitioner shall be entitled for reimbursement of licence fee in accordance with Regulation 70(4) of the 2019 Tariff Regulations for 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 the 2019-24 tariff period.

Goods and Services Tax

73. 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.

74. 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.

Security Expenses

75. The Petitioner has submitted that security expenses in respect of transmission asset are not claimed in the instant petition, and it would file a separate petition for claiming the overall security expenses and the consequential IWC as per Regulation 35(3)(c) of the 2019 Tariff Regulations. BSPHCL has submitted that claim may be allowed as per Regulation 35(3)(c) of the 2019 Tariff Regulations.

76. We have considered the submissions of the Petitioner and BSPHCL. The Petitioner has claimed consolidated security expenses on projected basis for 2019-24 tariff period on the basis of actual security expenses incurred in 2018-19 in Petition No. 260/MP/2020. The Commission vide order dated 3.8.2021 in Petition No. 260/MP/2020 approved security expenses from 1.4.2019 to 31.3.2024. Therefore, the Petitioner's prayer in the instant petition for allowing it to file a separate petition for claiming the overall security expenses and consequential IWC has become infructuous.

Sharing of Transmission Charges

77. The Petitioner has submitted that the tariff of the transmission assets will be recovered on monthly basis in accordance with Regulation 57 of the 2019 Tariff Regulations and will be shared by the beneficiaries and long transmission customers as per the Central Electricity Regulatory Commission (Sharing of Transmission Charges



and Losses) Regulations, 2010 (2010 Sharing Regulations) for the different Assets , as given below.

Asset-I:

78. The COD of the Asset-I has been approved as 22.6.2019 and accordingly, the transmission charges approved for Asset-I in this order shall be recovered as per the applicable Sharing Regulations as provided in Regulation 57 of the 2019 Tariff Regulations.

Asset-II & Asset-III:

79. The Petitioner has claimed the COD of the Asset-II and Asset-III as 1.8.2019 under Regulation 5(2) of the 2019 tariff Regulations as the associated transmission line 400 kV D/C Alipurduar-Siliguri Transmission Line under the scope of ATL was not ready on that date.

80. ATL has made the following submissions with respect to Asset-II and Asset-III:

- (a) No specific claim has been made against ATL in the instant petition, however, as the Petitioner has claimed full recovery of tariff from the date of invoked COD of Asset-II and Asset-III, it may lead to imposition of the transmission charges with respect to Asset-II and Asset-III from 1.8.2019 till 17.1.2020, i.e., for around 169 days on ATL, in terms of Regulation 6(2)(b) of the 2019 Tariff Regulations and Regulation 13(12)(a) of the Sharing Regulations, 2020, as Alipurduar-Siliguri Transmission Line associated transmission system with Asset-II and Asset-III was put into commercial operation on 17.1.2020



(b) Petition No. 470/MP/2019 was filed on 15/16.11.2019 before the Commission (i.e., approximately 14 months prior to Petitioner's present petition dated 22.1.2021) seeking extension of SCOD of Alipurduar-Siliguri Transmission Line on account of various force majeure events such as delay in grant of statutory clearances/approval, severe RoW issues/constraints etc., it suffered during the execution of the said Alipurduar-Siliguri Transmission Line, which is pending for adjudication before this Commission. ATL in the aforesaid petition has specifically prayed that it should be exempted from any financial liabilities due to delay in achieving SCOD due to force majeure events such as delay in grant of statutory clearances/approval, severe RoW issues/constraints etc. Therefore, ATL's Petition No. 470/MP/2019 may be adjudicated first before imposing any financial liability on ATL.

(c) The transmission charges w.e.f. 1.8.2019 till 17.1.2020 cannot be imposed on ATL, as the delay in commissioning of Alipurduar-Siliguri Transmission Line is not attributable to ATL. The delay is on account of force majeure events such as delay in grant of statutory clearances/approval, severe RoW issues/constraints etc.

(d) APTEL vide judgment dated 14.9.2020 in Appeal No. 17 of 2019, NRSS XXXI (B) Transmission Ltd. v. Central Electricity Regulatory Commission and Ors.' ("NRSS Judgment") has observed that if the Commission allows extension of COD of the transmission elements/system in terms of the TSA, it revokes all tacit or explicit agreement made by the parties or system planning authorities regarding scheduled commercial operation dates of transmission elements and imposition



of any liability towards delay in commissioning of such transmission system will be in contrast to the relief granted to such transmission licensee and will defeat the objective of introducing the provision of force majeure in the TSA, i.e. to save a party from the consequences of anything over which such affected party has no control. It is settled proposition of laws rendered by the Hon'ble Supreme Court of India dealing with non-imposition of liability on a party having suffered force majeure events.

(e) ATL cannot be made liable to pay transmission charges for the delay on account of force majeure event in terms of the Ministry of Power's direction dated 15.1.2021 issued under Section 107 of the Electricity Act, 2003 which stipulates that no additional penalties through the 2020 Sharing Regulations will be levied for delay in COD of an element of ISTS as the delay itself causes hefty losses to the transmission licensees in the form of realization of revenues, increased financial costs, etc.

81. BSPHCL has submitted that Regulation 6 of the 2019 Tariff Regulations deals with treatment of mismatch in COD of the associated transmission lines and mismatch in the COD of the transmission assets of the Petitioner and ATL may be dealt as per the regulations. Therefore, no liability for the period of mis-match in COD has to be borne by BSPHCL or any of its subsidiaries.

82. We have considered the submissions of the Petitioner, ATL and BSPHCL with respect to sharing of transmission tariff of the transmission assets. The main plea of ATL is that transmission charges of the Asset-II and Asset-III w.e.f. 1.8.2019 till COD of the transmission line under the scope of ATL on 17.1.2020, cannot be imposed on ATL,



as the delay in execution of Alipurduar-Siliguri Transmission Line, is not attributable to it. ATL has pleaded that the transmission line was delayed due to force majeure events such as delay in grant of statutory clearances/approval, severe RoW issues/constraints etc., in respect of which it has already filed Petition No. 470/MP/2019, before the Commission seeking extension of SCOD of Alipurduar-Siliguri Transmission Line in terms of Article 11 (force majeure) of the TSA. ATL in the aforesaid petition has specifically prayed that it should be exempted from payment of any financial liabilities on account of delay in achieving SCOD due to force majeure.

83. The Commission vide order dated 23.6.2023 in Petition No. 470/MP/2019, has allowed the delays caused due to stays/injunctions by various Courts and Court proceedings arising of the RoW issues as force majeure event and resultantly considered the period of only 308 days as against the actual delay of 320 days to be condoned under the force majeure events. As a result of this, the SCOD Alipurduar-Siliguri Transmission Line of ATL was revised to 20.1.2020. As regards the plea of the ATL that it should be exempted from payment of any financial liabilities in achieving COD due to delay on account of force majeure does not appeal to us for the simple reason that we have already granted relief of force majeure to ATL as available under the law in Petition No. 470/MP/2019, whereby SCOD of the transmission line was extended upto 20.1.2020 by invoking Article 4.4.2 and Article 4.4.3 of the TSA on account of force majeure event as per Article 11 of the TSA.

84. As regards ATL's reliance on the NRSS case with regard to its stand on absence of contract, we would like to refer to APTEL's judgement dated 2.5.2023 in Appeal No.352 of 2022, wherein the tribunal has held that notwithstanding the contract between



the parties, the entities are bound by the regulations even if there is no contract between them. The relevant portion of the said judgement 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.”

85. As regards the ATL’s reliance on MoP’s directions dated 15.1.2021 that bilateral liability ought not to be imposed on an individual licensee and that the Commission may make suitable amendments in the Sharing Regulations so that no additional penalties are levied on such licensees in case of a mismatch, APTEL in judgement dated 2.5.2023 in Appeal No. 352 of 2022 goes on to hold that the Commission, being a statutory body need not be bound by the any such direction of the Government as the power to declare the subordinate legislations as ultra vires lies on the High Courts or Supreme Court. The relevant portion of the said judgement dated 2.5.2023 is as follows:

“59. Viewed from any angle, we are satisfied that the directives in the letter dated 15.01.2021 do not bind the CERC, and it could not have been directed to amend the regulations. The power to declare subordinate legislation ultra vires, lies only with the Supreme Court and the High Courts exercising the power of judicial review, and is not within the province of the Central Govt or even this Tribunal. In any event, as the 2019 and the 2020 Regulations continue to remain in force, it is unnecessary for us to consider whether, even if it were to be amended, the amended provision would have any application to the present case.”

86. ATL has submitted that its transmission system is affected by force majeure conditions and that the Respondent has filed the Petition No. 480/MP/2019. In this regard, the Commission in its order dated 26.4.2022 in Petition No. 60/TT/2017 has



aptly summed up the issue with regard to mismatch arising out of force majeure as follows:

“67. Hence, the principle has been followed consistently that even if under Force majeure, delay is condoned or SCOD is extended by the Commission, the liability of upstream/downstream system remains on such delayed transmission licensee.”

87. Further, the Commission in the said order dated 26.4.2022 observed as follows:

“68. Further, there is clear fallacy in NTL’s contentions. Suppose, for the sake of argument, it is assumed that NTL is not liable to pay IDC and IEDC. Then the question arises as to who will bear such charges due to Powergrid. This liability of IDC and IEDC cannot be capitalized as the transmission assets have not been put to use and the beneficiaries have not reaped any benefits. At the same time, PGCIL cannot be denied IDC and IEDC as it has done its part and made the transmission assets ready for use and, therefore, cannot be made to suffer on account of delay on the part of NTL. The IDC and IEDC payable by NTL to PGCIL cannot be passed on and loaded on the LTTCs/beneficiaries as there is no provision in TSA under which such recoveries can be made. In fact, the Commission in its order dated 21.9.2016 in the RAPP Case and order dated 4.1.2017 in the Patran Case has laid down the principle that the LTTCs/beneficiaries are liable to pay transmission charges only when transmission system is being used or put to use. The APTEL in its judgement dated 27.3.2018 in Appeal No.390 of 2017 (the Patran Case) and judgement dated 18.1.2019 in Appeal No. 332 of 2016 (the RAPP Case) has upheld the same principles enunciated by the Commission. These principles flow from the principles enunciated by the Hon’ble Supreme Court vide judgment dated 3.3.2016 in Civil Appeal No. 9193 and Civil Appeal No. 9302 of 2012, wherein the Hon’ble Supreme Court observed as under:

“11. Xxx As such the appellant might have suffered due to delay on the part of NTPC in completing the transmission lines for some period. But beneficiaries, including respondent No. 1, cannot be made liable to pay for this delay w.e.f. 01.07.2010 as the energy supply line had not started on said date.

12. Xxx

13. Since we are in agreement with the Tribunal that in the present case, respondent No. 1 and the beneficiaries could not have been made liable to pay the tariff before transmission line was operational, we find no infirmity in the impugned order.....”

88. The Commission is of the consistent view that even if the time over-run is condoned due to force majeure events, the entity responsible for the delay in implementation of the associated upstream/downstream elements is liable to bear the transmission charges for the period of mismatch. Accordingly, the Commission did not



provide for any exemption from payment of transmission charges even in case of force majeure conditions in the 2020 Sharing Regulations

89. In the instant case, the COD of Asset-II and Asset-III has been approved as 1.8.2019 under Regulation 5(2) of the 2019 Tariff Regulations and the COD of the associated Alipurduar-Siliguri Transmission Line under the scope of ATL was 17.1.2020. Thus, there is a mismatch in the COD of the associated transmission elements. Regulation 6(2)(a) of the 2019 Tariff Regulations provides for treatment of mismatch in COD of two transmission licensees of a connected transmission system. The Regulation 6(2)(a) of the 2019 Tariff Regulations provides as follows:

“6. Treatment of mismatch in date of 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.”

90. As per Regulation 6(2)(a) of the 2019 Tariff Regulations, if an inter-connected transmission system of other transmission licensee is not ready on the COD of the transmission asset and if the COD of the transmission asset has been approved under Regulation 5(2) of the 2019 Tariff Regulations, the transmission licensee has to bear the transmission charges of the transmission asset of the other transmission licensee till the COD of the inter-connected transmission system under its scope. The said



provision does not distinguish between a transmission project under the RTM route and the TBCB route.

91. Further, the entity responsible for execution of the downstream or upstream transmission licensee or a generating station, irrespective of the fact that it is affected by force majeure events, has to bear the transmission charges for the period of mismatch from the transmission asset to the COD of transmission asset/ scheme under its scope. In the instant case, the associated transmission line was ready on 20.1.2020. Therefore, we are of the view that the transmission charges of the Asset-II and Asset-III should be borne by ATL from COD of the transmission asset, i.e. from 1.8.2019 upto 20.1.2020 and thereafter the transmission charges of the Asset-II and Asset-III shall be recovered as per the provisions of the 2020 Sharing Regulations as provided in Regulation 57 of the 2019 Tariff Regulations.

92. ATL has contended that even if the transmission charges are imposed on the basis of Regulation 6(2)(b) of the 2019 Tariff Regulations read with Regulations 13(12)(a) of the 2020 Tariff Regulations, the same would amount to 'Change in Law' under the TSA and the burden of the same would have to be passed on to the LTTCs under the TSA in terms of Article 12 of the TSA.

93. We have considered the above contention of ATL. We are of the view that the ATL's plea to construe the levy of transmission charges under of Regulation 6(2)(b) of the 2019 Tariff Regulations read with Regulation 13(12)(a) of the 2020 Sharing Regulations as an event of 'Change in Law', cannot be considered in the instant petition filed by Petitioner, PGCIL.



94. The billing, collection and disbursement of the transmission charges approved in this order shall be governed by the provisions of the applicable Sharing Regulations as provided in Regulation 57 of the 2019 Tariff Regulations.

95. To summarise:

a. AFC allowed for the 2019-24 tariff period is as follows:

Particulars	(₹ in lakh)				
	2019-20	2020-21	2021-22	2022-23	2023-24
Asset-I	144.70	194.79	197.70	198.14	195.10
Asset-II	145.19	240.51	246.28	244.00	241.76
Asset-III	216.61	321.26	321.83	322.74	318.22

96. The Annexure to this order form part of the order.

97. This order disposes of Petition No. 113/TT/2021 in terms of the above findings and discussions.

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member



ANNEXURE

Asset-I

2019-24	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)					
		2019-20	2020-21	2021-22	2022-23	Total			2019-20	2020-21	2021-22	2022-23	2023-24	
Capital Expenditure														
Sub Station	933.26	99.25	41.01	41.01	10.25	191.52	1124.78	5.28%	51.90	55.60	57.76	59.12	59.39	
Total	933.26	99.25	41.01	41.01	10.25	191.52	1124.78		51.90	55.60	57.76	59.12	59.39	
									Average Gross Block (₹ in lakh)	982.88	1053.01	1094.02	1119.65	1124.78
									Weighted Average Rate of Depreciation	5.28%	5.28%	5.28%	5.28%	5.28%



Asset-II

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)				
		2019-20	2020-21	Total			2019-20	2020-21	2021-22	2022-23	2023-24
Sub Station	676.76	193.18	100.00	293.18	969.94	5.28%	40.83	48.57	51.21	51.21	51.21
PLCC	123.27	-	-	-	123.27	6.33%	7.80	7.80	7.80	7.80	7.80
Total	800.04	193.18	100.00	293.18	1093.22		48.64	56.38	59.02	59.02	59.02
Average Gross Block (₹ in lakh)							896.63	1043.22	1093.22	1093.22	1093.22
Weighted Average Rate of Depreciation							5.42%	5.40%	5.40%	5.40%	5.40%



Asset-III

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)				
		2019-20	2020-21	2021-22	Total			2019-20	2020-21	2021-22	2022-23	2023-24
Building Civil Works & Colony	13.12	0.01	-	-	0.01	13.13	3.34%	0.44	0.44	0.44	0.44	0.44
Sub Station	1425.26	0.99	-	63.97	64.96	1490.22	5.28%	75.28	75.31	76.99	78.68	78.68
PLCC	100.98	0.07	-	0.37	0.44	101.42	6.33%	6.39	6.40	6.41	6.42	6.42
Total	1539.36	1.07	-	64.34	65.41	1604.77		82.11	82.14	83.84	85.54	85.54
Average Gross Block (₹ in lakh)								1539.90	1540.43	1572.60	1604.77	1604.77
Weighted Average Rate of Depreciation								5.33%	5.33%	5.33%	5.33%	5.33%

