

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 694/TT/2020**

**Coram:**

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

**Date of Order: 04.07.2023**

**In the matter of:**

Approval under Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for determination of transmission tariff from COD to 31.3.2024 under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for 2 Nos 765 kV line bays at 765/400 kV Indore Sub-station of POWERGRID (for Khandwa PS(TBCB)-Indore 765 kV D/C line) & 240 MVAR, 765 kV Switchable Line Reactors along with 700 Ohms NGR at 765/400 kV Indore Sub-station end of each ckt of Khandwa Pool- Indore 765 kV D/C line (line being implemented under TBCB) under "POWERGRID Works associated with Transmission system Strengthening in WR associated with Khargone TPS" in Western Region.

**And in the matter of:**

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

**.... Petitioner**

**Vs.**

1. Madhya Pradesh Power Management Company Limited,  
Shakti Bhawan, Rampur,  
Jabalpur-482008.
2. Madhya Pradesh Power Transmission Company Limited,  
Shakti Bhawan, Rampur, Jabalpur-482008.
3. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Limited,  
3/54, Press Complex, Agra-Bombay Road,  
Indore-452008.
4. Maharashtra State Electricity Distribution Company Limited,  
Hong Kong Bank Building, 3rd floor,  
M. G. Road, Fort, Mumbai-400001.



5. Maharashtra State Electricity Transmission Company Limited,  
Prakashganga, 6th floor, Plot No. C-19, E-block,  
Bandra Kurla Complex,  
Bandra (East) Mumbai-400051.
6. Gujarat Urja Vikas Nigam Limited,  
Sardar Patel Vidyut Bhawan,  
Race-course road, Vadodara-390007.
7. Electricity Department,  
Government of Goa, Vidyut Bhawan, Panaji,  
Near Mandvi Hotel,  
Goa-403001.
8. Electricity Department,  
Administration of Daman & Diu,  
Daman-396210.
9. DNH Power Distribution Corporation Limited,  
Vidyut Bhawan, 66kV Road, near Secretariat Amli,  
Silvassa-396230.
10. Chhattisgarh State Power Transmission Company Limited,  
Office of the Executive Director (C&P),  
State Load Despatch Building,  
Dangania, Raipur-492013.
11. Chhattisgarh State Power Distribution Company Limited,  
P.O. Sunder Nagar, Dangania,  
Raipur, Chhattisgarh-492013.
12. NTPC Limited,  
NTPC Bhawan, Core-7, Scope Complex,  
7, Institutional Area, Lodhi Road,  
New Delhi-110003.
13. Khargone Transmission Limited,  
F-1 Mira Corporate Suits, 1 & 2 Floor,  
Mathura Road, Ishwar Nagar,  
New Delhi-110065.

...Respondent(s)

**For Petitioner** : Ms. Swapna Seshadri, Advocate, PGCIL  
Ms. Neha Garg, Advocate, PGCIL  
Shri Jai Dhanani, Advocate, PGCIL  
Shri Pankaj, PGCIL  
Shri S.S. Raju, PGCIL  
Shri Mukesh Khanna, PGCIL  
Shri D.K. Biswal, PGCIL



**For Respondents :** Shri Deep Rao Palepu, Advocate, KTL  
Shri Saahil Kaul, Advocate, KTL

### **ORDER**

Power Grid Corporation of India Limited (PGCIL) has filed the instant petition for determination of transmission tariff for the period from COD to 31.3.2024 under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as “the 2019 Tariff Regulations”) in respect of 2 numbers 765 kV line bays at 765/400 kV Indore Sub-station of POWERGRID (for Khandwa PS(TBCB)-Indore 765 kV D/C line) & 240 MVAR, 765 kV Switchable Line Reactors along with 700 Ohms NGR at 765/400 kV Indore Sub-station end of each ckt. of Khandwa Pool-Indore 765 kV D/C line (hereinafter referred to as the “transmission asset”) under “POWERGRID Works associated with Transmission system Strengthening in WR associated with Khargone TPS” (hereinafter referred to as the “transmission project”) in Western Region.

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

*“1) Kindly Approve the proposed DOCO as 01.08.2019 as claimed.*

*2) Approve the Transmission Tariff for the tariff block 2019-24 block for the assets covered under this petition, as per para –8.0 above.*

*3) Admit the capital cost as claimed in the Petition and approve the Additional Capitalization incurred / projected to be incurred.*

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

*5) 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.*

*6) 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.*

*7) 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.*

*8) Allow the Petitioner to bill and recover GST on Transmission Charges separately from the respondents, if GST on transmission is levied any time 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.*

*9) 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's Company vide Memorandum No. C/CP/PA1617-03-0Z-IA024 dated 9.2.2017, at an estimated cost of ₹10953 lakh including IDC of ₹584 lakh, at October, 2016 price level.

(b) The transmission project was initially proposed and discussed in the 38<sup>th</sup> and 39<sup>th</sup> Standing Committee Meeting (SCM) held on 17.7.2015 and then approved in the 39<sup>th</sup> SCM dated 30.11.2015. Further, the said transmission system was discussed and agreed in the 35<sup>th</sup> meeting of Empowered Committee on Transmission held on 14.9.2015. The proposal was also discussed and agreed in 31<sup>st</sup> WRPC meeting held on 30.3.2016 / 31.3.2016.

(c) The scope of work covered under the transmission project is as follows:



- i) 765 kV line bays at 765/400 kV Indore Sub-station of POWERGRID: 2 numbers for Khandwa PS (TBCB) Indore 765 kV D/C)
- ii) 240 MVAR, 765 kV Switchable Line Reactors along with 700 Ohms NGR at 765/400 kV Indore Sub-station end of each ckt of Khandwa Pool- Indore 765 kV D/C line (line being implemented under TBCB)
- iii) 63 MVAR, 400 kV Switchable Line Reactor along with 500 Ohms NGR at Rajgarh (POWERGRID) end of Khargone TPS-Rajgarhk (POWERGRID) 400 kV line (Formed after LILO of one circuit of Khandwa-Rajgarh 400 kV D/C line at Khargone TPS, being implemented under TBCB).

(d) The scope of the work as per IA is completed and the details of the transmission assets covered under transmission project is as follows:

Sl. No.	Asset	COD	Petition No.
1	63 MVAR, 400 kV Switchable Line Reactor along with 500 Ohms NGR at Rajgarh (POWERGRID) end of Khargone TPS-Rajgarh (POWERGRID) 400 kV line	1.3.2018 (Actual)	Tariff for 2014-2019 has been granted vide order dated 19.3.2020 in Petition No. 362/TT/2019
2	2 numbers 765 kV line bays at 765/400 kV Indore Sub-station of POWERGRID (for Khandwa PS(TBCB)-Indore 765 kV D/C line) & 240 MVAR, 765 kV Switchable Line Reactors along with 700 Ohms NGR at 765/400 kV Indore Sub-station end of each ckt. of Khandwa Pool-Indore 765 kV D/C line	1.8.2019 Proposed under Regulation 5(2) of the 2019 Tariff Regulations	Covered under instant petition.

(e) As per IA dated 9.2.2017, the transmission asset was scheduled to be put into commercial operation from February 2018 to July 2019, matching with the commissioning schedule of transmission lines to be implemented through TBCB route.

4. The Respondents, mainly beneficiaries of the Western Region, are distribution licensees, power departments and transmission licensees, who are procuring transmission services from the Petitioner.



5. The Petitioner has served the petition on the Respondents and notice regarding filing of this petition has also been published in the newspapers in accordance with Section 64 of the Electricity Act, 2003. No comments or suggestions have been received from the general public in response to the aforesaid notices published in the newspapers by the Petitioner. Madhya Pradesh Power Management Company Limited (MPPMCL) i.e. Respondent No. 1 has filed its reply to the present petition vide affidavit dated 16.1.2021 and has raised contentions regarding RLDC certificate, IDC, IEDC and ACE. Khargone Transmission Limited (KTL) i.e. Respondent No. 13 has also filed a reply vide affidavit dated 27.11.2021 and has raised the issue of *force majeure*, mismatch of the line and pending adjudication of Petition No. 237/MP/2021. In response to the reply filed by MPPMCL, the Petitioner has filed rejoinder vide affidavit dated 20.10.2021. During the hearing dated 14.9.2022, the Petitioner submitted that the rejoinder filed by the Petitioner in Petition No. 237/MP/2021 may be treated as rejoinder to the reply filed by KTL. The Petitioner and KTL have also filed written submissions on 6.10.2022 and 1.11.2022 respectively.

6. The hearing in this matter was held on 14.9.2022 and order was reserved.

7. This order is issued considering the submissions made by the Petitioner in the petition, the Petitioner's affidavit dated 15.9.2021, MPPMCL and KTL reply, the Petitioner's rejoinder thereto and the Written Submissions filed by the parties.

8. Having heard the representatives of the Petitioner and KTL and having perused the material on record, we proceed to dispose of the petition.



**DETERMINATION OF ANNUAL FIXED CHARGES FROM COD TO 31.3.2024**  
**FOR THE 2019- 24 TARIFF PERIOD**

9. The Annual Fixed Charges (AFC) claimed by the Petitioner in respect of the transmission asset for 2019-24 tariff period are as follows:

Particulars	(₹ in lakh)				
	2019-20 (Pro-rata for 244 days)	2020-21	2021-22	2022-23	2023-24
Depreciation	275.88	446.22	455.91	455.91	455.91
Interest on Loan	285.07	432.70	406.46	369.37	332.19
Return on Equity	289.63	468.53	478.86	478.86	478.86
Interest on working capital	18.07	28.52	28.71	28.45	28.13
O&M Expenses	121.03	187.92	194.44	201.24	208.24
Total	989.68	1563.89	1564.38	1533.83	1503.33

10. The details of the Interest on Working Capital (IWC) claimed by the Petitioner in respect of the transmission asset are as follows:

Particulars	(₹ in lakh)				
	2019-20 (Pro-rata for 244 days)	2020-21	2021-22	2022-23	2023-24
O&M Expenses	15.13	15.66	16.20	16.77	17.35
Maintenance Spares	27.23	28.19	29.17	30.19	31.24
Receivables	182.52	192.81	192.87	189.10	184.84
Total	224.88	236.66	238.24	236.06	233.43
Rate of Interest (in %)	12.05	12.05	12.05	12.05	12.05
Interest on Working Capital	18.07	28.52	28.71	28.45	28.13

**Date of Commercial Operation (“COD”)**

11. The Petitioner has claimed the COD of the transmission asset as 1.8.2019 in terms of Regulation 5(2) of the 2019 Tariff Regulations, as the associated transmission line i.e. Khandwa PS (TBCB)-Indore 765 kV D/C line being implemented by KTL under TBCB was not ready and the Petitioner was not able to provide services due to non-readiness of inter-connecting transmission line of KTL.

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

“5. Date of Commercial Operation:

Xxx



*(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.”*

13. MPPMCL has submitted that as per Regulation 5(2) of the 2019 Tariff Regulations, if the transmission licensee is seeking the approval of COD of the transmission system under this clause, the licensee should submit the Trial Operation Certificate issued by the concern RLDC for charging elements with or without electrical load, which has not been submitted by the Petitioner. Hence, the prayer for deemed COD is liable to be rejected.

14. In response, the Petitioner has submitted that the CEA approval of energization, WRLDC certificate of trial operation (No load) and CMD certificate has been submitted for the transmission asset which shows the readiness of the asset on SCOD. The commercial operation of the bays could not be declared due to non-commissioning of the associated transmission line in spite of a lot of coordination





with KTL.

15. We have considered the rival submissions. As per Regulation 5(2) of the 2019 Tariff Regulations, the COD of a transmission system or an element thereof may be declared if the said system has been prevented from being put to regular service for reasons not attributable to the transmission licensee. In terms of Regulation 5(2) of the 2019 Tariff Regulations, the date of commercial operation of the transmission system shall be the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service. The Petitioner has sought declaration of COD for the transmission asset as 1.8.2019 under the Regulation 5(2) of the 2019 Tariff Regulations as the associated transmission line under the scope of KTL was not ready. In support of COD of the transmission asset, the Petitioner has submitted CEA approval of Energization Certificate dated 10.5.2019, idle charged on 19.6.2019 for which certificate of completion of idle charging operation have been issued by POSOCO vide letter dated 10.7.2019 and the Petitioner's CMD certificate. As per Regulation 5(2) of the 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. The Petitioner vide letter dated 10.7.2019 issued a notice to KTL and informed that the transmission asset will be ready for charging. Taking into consideration CEA's approval of energization certificate dated 10.5.2019, certificate issued by POSOCO vide letter dated 10.7.2019 regarding completion of idle charging 19.6.2019 as required under the Grid Code and the Petitioner's CMD certificate, COD of the transmission asset is approved as 1.8.2019 under Regulation 5(2) of the 2019 Tariff Regulations.

### **Capital Cost**

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



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

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

- (a) The expenditure incurred or projected to be incurred up to the date of commercial operation of the project;*
- (b) Interest during construction and financing charges, on the loans (i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of 30% of the funds deployed, by treating the excess equity as normative loan, or (ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed;*
- (c) Any gain or loss on account of foreign exchange risk variation pertaining to the loan amount availed during the construction period;*
- (d) Interest during construction and incidental expenditure during construction as computed in accordance with these regulations;*
- (e) Capitalised Initial Spares subject to the ceiling rates in accordance with these regulations;*
- (f) Expenditure on account of additional capitalization and de-capitalisation determined in accordance with these regulations;*
- (g) Adjustment of revenue due to sale of infirm power in excess of fuel cost prior to the date of commercial operation as specified under Regulation 7 of these regulations;*
- (h) Adjustment of revenue earned by the transmission licensee by using the Asset-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 tried 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 ash disposal and utilization including handling and transportation facility;*
- (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 up to 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 Asset-forming part of the project, but not in use, as declared in the tariff petition;*

*(b) De-capitalised Asset-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 decapitalised 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 asset.*

*(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.”*

17. The Petitioner vide Auditor’s Certificate dated 7.11.2019 has claimed the following capital cost incurred as on COD and Additional Capital Expenditure (ACE) projected to be incurred, in respect of the transmission asset:



FR approved Cost	Capital cost claimed as on COD	Projected ACE		Total capital cost as on 31.3 2024
		2019-20	2020-21	
9722.40	7288.27	843.78	366.51	8498.56

18. The Petitioner has submitted that the estimated completion cost of the transmission asset for ₹8498.56 lakh is within the apportioned approved cost of ₹9722.40 lakh. Therefore, there is no cost over-run.

19. As mentioned above, the Petitioner has submitted the following reasons for this cost variation:

**i. Civil works (decrease of ₹253 lakh):**

The FR estimation under the subject head was done as per preliminary assessment. However, during detailed engineering, the quantity of RCC and Steel reinforcement has decreased as per the site requirement. Further, the awarded/executed rates for RCC, PCC and Steel reinforcement is comparatively lower w.r.t. FR. The said factors have resulted into decrease in cost.

**ii. Sub-station equipment including Line Reactor (increase of ₹144 lakh):**

The cost variation was also due to the variation in awarded/executed cost of 240 MVAR switchable line reactor along with NGR and sub-station equipment based on competitive bidding. For procurement, open competitive bidding route was followed by providing equal opportunity to all eligible firms after which lowest possible market prices for required product/services was obtained and contracts were awarded on the basis of lowest evaluated eligible bidder. The best competitive bid prices against tenders may have happen to be lower or higher than the cost estimate depending upon prevailing market conditions. Similarly, regarding cost of individual item in sub-station packages, the packages comprised of a large number of items and the same were awarded through open competitive



bidding wherein lowest bidder could be arrived at/ evaluated on overall basis only. Hence, item-wise unit prices in contracts and its variation over unit rate considered in FR estimates are beyond the control of the Petitioner.

**iii. Decrease in IDC and IEDC (Decrease of ₹836 lakh):**

In FR, IDC was calculated considering rate of interest for domestic loans @10.5%. However, in actual, the weighted average rate of interest of loans is around 8.27%. The actual IDC accrued up to COD has been considered in the Auditor's Certificate. Further, in IA, 10.75% and 3% of Equipment cost and Civil Works has been considered for IEDC and contingency respectively, whereas based on the actual expenditure under the subject head, IEDC has been considered in the Auditor's Certificate.

20. MPPMCL, however, submitted that the actual IDC is nearly 64% of the estimated value and actual contingency is below 1% of the estimated value. In these two heads alone, therefore, an over estimation cost of ₹436.70 lakh has been done by the Petitioner. Thus, the Petitioner has admitted that the cost estimate was prepared in a casual manner. If the claim of the Petitioner is accepted for a while that IDC has reduced due to change in interest rates, then it is evident that the Petitioner has not practiced due diligence and market study before provisioning of such high rate of interest. The intention behind it is to increase the cost of original estimate so as to show in future that there is no cost over-run, owing to the fact that the actual expenditure in any case would fall below the original estimate

21. As per the submissions of the MPPMCL, the actual establishment expenditure is around 49.9% of the estimated cost. The large difference in estimated and actual expenditure is not acceptable and it is gross negligence and deliberate over



estimation on part of the Petitioner. The Petitioner has stated that IEDC has been considered as 10.75% and 3% of the equipment cost and civil works respectively while framing the estimate, while the claim is made for actual expenditure. The Petitioner is hiding its inefficiency and carelessness under the cover of estimation. The excess amount of IEDC together with IDC comes to ₹873.47 lakh while the difference between approved cost and actual completion cost as stated by the Petitioner is ₹1223.84 lakh.

22. We have considered the rival submissions. The estimated completion cost is lesser than the FR estimated cost by ₹1223.84 lakh. Thus, there is a significant variation in the cost of the transmission asset as pointed out by MPPMCL. The Petitioner is directed to be more diligent while estimating the cost.

#### **Time over-run**

23. As per IA dated 9.2.2017, the transmission asset was scheduled to be put into commercial operation from February 2018 to July 2019, matching with the commissioning schedule of transmission lines to be implemented through TBCB route. Accordingly, the SCOD of the transmission asset is 1.8.2019. We have approved the COD of the transmission asset as 1.8.2019 under Regulation 5(2) of the 2019 Tariff Regulations. There is no time over-run in case of the transmission asset.

#### **Interest During Construction (IDC) and Incidental Expenditure During Construction (IEDC)**

24. The Petitioner has claimed IDC in respect of the transmission asset and has submitted the Auditor's Certificate dated 7.11.2019 in support of the same. The



Petitioner has not submitted the computation of IDC along with year-wise details of the IDC discharged.

25. Further, the Petitioner has submitted that the transmission asset covered in the instant petition could not be put to use due to non-availability of associated transmission line (being implemented under TBCB route) and COD has been claimed under Regulation 5(2) of the 2019 Tariff Regulations. As the COD of the transmission asset was under consideration, hence, furnishing of IDC statement could not be possible and will be submitted only after approval of COD.

26. MPPMCL has submitted that if the claim of the Petitioner is accepted that IDC has reduced due to change in interest rates, then it is evident that the Petitioner was not diligent and did not conduct a market study before provisioning for such high rate of interest. The Petitioner routinely arranges loans for its projects. Hence, such variation is unacceptable. The excess amount of IEDC together with IDC comes to ₹873.47 lakh while the difference between approved cost and actual completion cost as stated by the Petitioner is ₹1223.84 lakh. The large difference in estimated and actual expenditure is not acceptable and is negligence and deliberate over estimation on the part of the Petitioner

27. In response, the Petitioner has submitted that detailed justification of cost variation has already been submitted in the petition indicating major reasons for cost variation include civil works, sub-station equipment including line reactor and decrease in IDC and IEDC.

28. We have considered the rival submissions. It is observed that there is over-estimation of the IDC at the stage of FR as pointed out by MPPMCL. We are of the view that the Petitioner should be more prudent while preparing the FR. It is further



observed that the Petitioner has not submitted the computation of IDC along with year-wise details of the IDC discharged. The Petitioner is directed to submit the IDC computation statement along with details of year-wise discharge of IDC at the time of truing-up.

29. Accordingly, based on the information furnished by the Petitioner, IDC considered, is as follows:

(₹ in lakh)

IDC as per Auditor's Certificate	IDC Admissible	IDC disallowed	IDC Discharged as on COD
A	B	C=A-B	D
341.79	341.79	0.00	341.79

30. The Petitioner has claimed IEDC of ₹431.22 lakh and has submitted Auditor's Certificate in support of the same. The Petitioner has also submitted that entire IEDC has been discharged as on COD in respect of the transmission asset. Accordingly, IEDC of ₹431.22 lakh is allowed.

### **Initial Spares**

31. Regulation 23(d) of the 2019 Tariff Regulations provides 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%*”

32. The Petitioner has claimed the following Initial Spares:





Particulars	Plant & Machinery Cost up to cut-off date (₹ in lakh) (excluding IDC and IEDC)	Initial spares claimed (₹ in lakh)	Norm (in %)
Sub-station	7619.86	180.48	6

33. We have considered the submissions of the Petitioner. The initial spares claimed by the Petitioner is within the norm of 6%. The initial spares allowed are as follows:

Particulars	Plant & Machinery Cost up to cut-off date (₹ in lakh) (excluding IDC and IEDC) (A)	Initial Spares Claimed (₹ in lakh) (B)	Norms (in %) (C)	Allowable Initial Spares (₹ in lakh) $D = (A - B) * C / (100 - C)$	Initial Spares allowed (₹ in lakh)
Sub-station	7619.86	180.48	6	474.85	180.48

#### **Capital cost allowed as on COD**

34. Accordingly, capital cost allowed in respect of the transmission asset as on COD is as follows:

(₹ in lakh)		
Capital cost claimed in Auditor's Certificate as on COD (A)	Un-discharged IDC as on COD (B)	Capital cost allowed as on COD (C) = (A-B)
7288.27	0.00	7288.27

#### **Additional Capital Expenditure ("ACE")**

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

***"24. Additional Capitalization within the original scope and up to the cut-off date:***

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



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

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

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

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

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

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

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

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



(d) The replacement of such asset or equipment has otherwise been allowed by the Commission.”

36. The Petitioner has claimed projected ACE for 2019-24 tariff period on account of balance and retention payments under Regulation 24(1)(a) and Regulation 24(1)(b) of the 2019 Tariff Regulations for works executed within the cut-off date.

The details are as follows:

(₹ in lakh)

Projected ACE	
2019-2020	2020-2021
843.78	366.51

37. The Petitioner vide affidavit dated 15.9.2021 has submitted the liability flow statement. The details are as follows:

(₹ in lakh)

Head wise/ Party wise	Particulars	Discharge		Unexecuted Works	
		2019-20	2020-21	2019-20	2020-21
Techno Electric & Engg Company Limited	Sub-station	151.20	200.00	329.69	65.53
GE T&D	Sub-station	196.06	97.41	158.10	0.00
Techno Electric & Engg Company Limited	PLCC	0.00	3.57	7.50	0.00
Civil	Building and Civil	1.23	0.00	0.00	0.00
<b>Total</b>		<b>348.49</b>	<b>300.98</b>	<b>495.29</b>	<b>65.53</b>

38. MPPMCL has submitted that the Petitioner has claimed ACE under Regulation 24 (1) of the 2019 Tariff Regulations under the head Balance/Retention payment. However, no proper details and justification is given. Hence, the claim of the Petitioner may only be allowed at the time of true-up when the details of actual expenditure is submitted.

39. In response, the Petitioner has submitted that the head-wise and contractor-wise details of ACE claimed has already been submitted. The ACE claimed is in line with the 2019 Tariff Regulations.

40. We have considered the rival submissions. ACE claimed is on account of balance and retention payments and is allowed under Regulations 24(1)(a) and



24(1)(b) of the 2019 Tariff Regulations. The projected ACE allowed is subject to truing up in respect of the transmission asset and it is as follows:

Particulars	Proposed ACE	
	2019-2020	2020-2021
Proposed ACE allowed under Regulations 24(1)(a) and 24(1)(b) of the 2019 Tariff Regulations	843.78	366.51
Add: IDC discharge	0.00	0.00
Total	843.78	366.51

### **Capital cost as on 31.3.2024**

41. Accordingly, capital cost allowed in respect of the transmission asset as on 31.3.2024 is as follows:

Capital Cost allowed as on COD	Projected ACE		Total Capital Cost as on 31.3 2024
	2019-20	2020-21	
7288.27	843.78	366.51	8498.56

### **Debt-Equity Ratio**

42. Regulations 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.”

43. The details of debt-equity considered for the purpose of computation of tariff for 2019-24 period in respect of the transmission asset is as follows:

Particulars	Capital cost as on COD (₹ in lakh)	(in %)	Total capital cost as on 31.3.2024 (₹ in lakh)	(in %)
Debt	5101.79	70.00	5948.99	70.00
Equity	2186.48	30.00	2549.57	30.00
Total	7288.27	100.00	8498.56	100.00

### **Depreciation**

44. 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 Asset-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 asset*

*(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.”*

45. We have considered the submissions of the Petitioner. The IT equipment has been considered as part of the Gross Block and depreciated using Weighted Average Rate of Depreciation (WAROD). WAROD has been worked out and placed as Annexure after considering the depreciation rates of IT and non-IT assets as prescribed in the 2019 Tariff Regulations. The salvage value of IT equipment has been considered nil, i.e. IT asset has been considered as 100% depreciable. Depreciation allowed in respect of the transmission asset for the 2019-24 tariff period is as follows:



(₹ in lakh)

	Particulars	2019-20 (Pro-rata for 244 days)	2020-21	2021-22	2022-23	2023-24
A	Opening Gross Block	7288.27	8132.05	8498.56	8498.56	8498.56
B	Addition during the year 2019-24 due to projected ACE	843.78	366.51	0.00	0.00	0.00
C	Closing Gross Block (A+B)	8132.05	8498.56	8498.56	8498.56	8498.56
D	Average Gross Block (A+C)/2	7710.16	8315.31	8498.56	8498.56	8498.56
E	Average Gross Block (90% depreciable assets)	7640.41	8241.52	8424.77	8424.77	8424.77
F	Average Gross Block (100% depreciable assets)	69.75	73.79	73.79	73.79	73.79
G	Depreciable value (excluding IT equipment and software) (E*90%)	6876.37	7417.36	7582.29	7582.29	7582.29
H	Depreciable value of IT equipment and software (F*100%)	69.75	73.79	73.79	73.79	73.79
I	Total Depreciable Value (G+H)	6946.12	7491.15	7656.08	7656.08	7656.08
J	Weighted average rate of Depreciation (WAROD) (in %)	5.37	5.37	5.36	5.36	5.36
K	Elapsed useful life at the beginning of the year (Year)	0.00	0.00	1.00	2.00	3.00
L	Balance useful life at the beginning of the year (Year)	25.00	25.00	24.00	23.00	22.00
M	Depreciation during the year (D*J)	275.89	446.22	455.91	455.91	455.91
N	Cumulative Depreciation at the end of the year	275.89	722.10	1178.02	1633.93	2089.85
O	Remaining Aggregate Depreciable Value at the end of the year	6670.23	6769.05	6478.06	6022.15	5566.24

### **Interest on Loan ("IoL")**

46. 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 asset, 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”.

47. The weighted average rate of interest of IoL has been considered on the basis of the rates prevailing as on COD for respective loans. The Petitioner has prayed that the change in interest rate due to floating rate of interest applicable, if any, during 2019-24 tariff period will be adjusted. Accordingly, the floating rate of interest, if any, shall be considered at the time of true-up.

48. In view of the above, IoL has been worked out in accordance with Regulation 32 of the 2019 Tariff Regulations. IoL allowed in respect of the transmission asset is as follows:

(₹ in lakh)						
	Particulars	2019-20 (Pro-rata for 244 days)	2020-21	2021-22	2022-23	2023-24
A	Gross Normative Loan	5101.79	5692.44	5948.99	5948.99	5948.99
B	Cumulative Repayments up to Previous Year	0.00	275.89	722.10	1178.02	1633.93
C	Net Loan-Opening (A-B)	5101.79	5416.55	5226.89	4770.97	4315.06
D	Addition due to ACE	590.65	256.56	0.00	0.00	0.00
E	Repayment during the year	275.89	446.22	455.91	455.91	455.91
F	Net Loan-Closing (C+D-E)	5416.55	5226.89	4770.97	4315.06	3859.15



	Particulars	2019-20 (Pro-rata for 244 days)	2020-21	2021-22	2022-23	2023-24
G	Average Loan (C+F)/2	5259.17	5321.72	4998.93	4543.02	4087.10
H	Weighted Average Rate of Interest on Loan (in %)	8.13	8.13	8.13	8.13	8.13
I	Interest on Loan (G*H)	285.08	432.70	406.45	369.37	332.18

### **Return on Equity (“RoE”)**

49. 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 cut-off date beyond the original scope excluding Additional Capitalization due to Change in Law, 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:

Rate of pre-tax return on equity = 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:

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

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

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

(3) The generating company or the transmission licensee, as the case may be, shall true up the grossed up rate of return on equity at the end of every financial year based



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

50. The Petitioner has submitted that MAT rate is applicable to it. MAT rate applicable in the year 2019-20 has been considered for the purpose of RoE which shall be trued up with actual tax rate in accordance with Regulation 31(3) of the 2019 Tariff Regulations. RoE allowed in respect of the transmission asset is as follows:

(₹ in lakh)						
	Particulars	2019-20 (Pro-rata for 244 days)	2020-21	2021-22	2022-23	2023-24
A	Opening Equity	2186.48	2439.62	2549.57	2549.57	2549.57
B	Addition due to ACE	253.13	109.95	0.00	0.00	0.00
C	Closing Equity (A+B)	2439.62	2549.57	2549.57	2549.57	2549.57
D	Average Equity (A+C)/2	2313.05	2494.59	2549.57	2549.57	2549.57
E	Return on Equity (Base Rate) (in %)	15.500	15.500	15.500	15.500	15.500
F	Tax Rate applicable (in %)	17.472	17.472	17.472	17.472	17.472
G	Rate of Return on Equity (Pre-tax)	18.782	18.782	18.782	18.782	18.782
H	Return on Equity (Pre-tax) (D*G)	289.62	468.53	478.86	478.86	478.86

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

51. Regulation 35(3)(a) and Regulation 35(4) of the 2019 Tariff Regulations provide as follows:

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

Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
<b>Norms for sub-station Bays (₹ Lakh per bay)</b>					
765 Kv	45.01	46.60	48.23	49.93	51.68
400 kV	32.15	33.28	34.45	35.66	36.91
220 kV	22.51	23.30	24.12	24.96	25.84
132 kV and below	16.08	16.64	17.23	17.83	18.46
<b>Norms for Transformers (₹ Lakh per MVA)</b>					
765 kV	0.491	0.508	0.526	0.545	0.564
400 kV	0.358	0.371	0.384	0.398	0.411
220 kV	0.245	0.254	0.263	0.272	0.282
132 kV and below	0.245	0.254	0.263	0.272	0.282



<b>Particulars</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>	<b>2023-24</b>
<b>Norms for AC and HVDC lines (₹ Lakh per km)</b>					
Single Circuit (Bundled Conductor with six or more sub-conductors)	0.881	0.912	0.944	0.977	1.011
Single Circuit (Bundled conductor with four sub-conductors)	0.755	0.781	0.809	0.837	0.867
Single Circuit (Twin & Triple Conductor)	0.503	0.521	0.539	0.558	0.578
Single Circuit (Single Conductor)	0.252	0.260	0.270	0.279	0.289
Double Circuit (Bundled conductor with four or more sub-conductors)	1.322	1.368	1.416	1.466	1.517
Double Circuit (Twin & Triple Conductor)	0.881	0.912	0.944	0.977	1.011
Double Circuit (Single Conductor)	0.377	0.391	0.404	0.419	0.433
Multi Circuit (Bundled Conductor with four or more sub-conductor)	2.319	2.401	2.485	2.572	2.662
Multi Circuit (Twin & Triple Conductor)	1.544	1.598	1.654	1.713	1.773
<b>Norms for HVDC stations</b>					
HVDC Back-to-Back stations (Rs Lakh per 500 MW) (Except Gazuwaka BTB)	834	864	894	925	958
Gazuwaka HVDC Back-to-Back station (₹ Lakh per 500 MW)	1,666	1,725	1,785	1,848	1,913
500 kV Rihand-Dadri HVDC bipole scheme (Rs Lakh) (1500 MW)	2,252	2,331	2,413	2,498	2,586
±500 kV Talcher- Kolar HVDC bipole scheme (Rs Lakh) (2000 MW)	2,468	2,555	2,645	2,738	2,834
±500 kV Bhiwadi-Balia HVDC bipole scheme (Rs Lakh) (2500 MW)	1,696	1,756	1,817	1,881	1,947
±800 kV, Bishwanath-Agra HVDC bipole scheme (Rs Lakh) (3000 MW)	2,563	2,653	2,746	2,842	2,942

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

*Provided further that:*

- i. the operation and maintenance expenses for new HVDC bi-pole schemes commissioned after 1.4.2019 for a particular year shall be allowed pro-rata on the basis of normative rate of operation and maintenance expenses of similar HVDC bi-pole scheme for the corresponding year of the tariff period;*
- ii. the O&M expenses norms for HVDC bi-pole line shall be considered as Double Circuit quad AC line;*
- iii. the O&M expenses of ±500 kV Mundra-Mohindergarh HVDC bipole scheme*



(2000 MW) shall be allowed as worked out by multiplying 0.80 of the normative O&M expenses for  $\pm 500$  kV Talchar-Kolar HVDC bi-pole scheme (2000 MW);

- iv. the O&M expenses of  $\pm 800$  kV Champa-Kurukshetra HVDC bi-pole scheme (3000 MW) shall be on the basis of the normative O&M expenses for  $\pm 800$  kV, Bishwanath-Agra HVDC bi-pole scheme;
- v. the O&M expenses of  $\pm 800$  kV, Alipurduar-Agra HVDC bi-pole scheme (3000 MW) shall be allowed as worked out by multiplying 0.80 of the normative O&M expenses for  $\pm 800$  kV, Bishwanath-Agra HVDC bi-pole scheme; and
- vi. the O&M expenses of Static Synchronous Compensator and Static Var Compensator shall be worked at 1.5% of original project cost as on commercial operation which shall be escalated at the rate of 3.51% to work out the O&M expenses during the tariff period. The O&M expenses of Static Synchronous Compensator and Static Var Compensator, if required, may be reviewed after three years.

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

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

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

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

52. The O&M Expenses claimed by the Petitioner are as follows:

Particulars	(₹ in lakh)				
	2019-20 (Pro-rata for 244 days)	2020-21	2021-22	2022-23	2023-24
Sub-station Bays (Number)					
765 kV: Indore: Line Bays for D/C Khandwa PS (TBCB) – Indore TL	2	2	2	2	2
765 kV: Indore: Bays for 2X240 MVAR Reactor	2	2	2	2	2
<b>Total</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>
<b>Norm (₹ lakh/bay)</b>					
765 kV AIS	45.01	46.60	48.23	49.93	51.68
<b>Total Sub-station Bays (A)</b>	<b>180.04</b>	<b>186.40</b>	<b>192.92</b>	<b>199.72</b>	<b>206.72</b>
<b>Communication System</b>					
PLCC	75.97	75.97	75.97	75.97	75.97



Particulars	2019-20 (Pro-rata for 244 days)	2020-21	2021-22	2022-23	2023-24
<b>Norms (%)</b>	2	2	2	2	2
<b>Total Communication System (B)</b>	1.52	1.52	1.52	1.52	1.52
<b>Total O&amp;M Expenses (A+B) (₹ in lakh)</b>	121.04	187.92	194.44	201.24	208.24

53. The Petitioner has claimed O&M Expenses separately for the PLCC under Regulation 35(4) of the 2019 @2% of its original project cost in the instant petition and 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 2014 and 2019 Tariff Regulations and the norms for sub-station has been specified accordingly. Accordingly, the Commission vide order dated 24.1.2021 in Petition No.126/TT/2020 has already concluded 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% is not allowed.

54. The O&M Expenses allowed for the transmission asset for the 2019-24 tariff period are as follows:

Particulars	(₹ in lakh)				
	2019-20 (Pro-rata for 244 days)	2020-21	2021-22	2022-23	2023-24
<b>Sub-station Bays (Number)</b>					
765kV: Indore: Line Bays for D/C Khandwa PS (TBCB) – Indore transmission line	2	2	2	2	2
765kV: Indore: Bays for 2X240 MVAR Reactor	2	2	2	2	2
<b>Total</b>	4	4	4	4	4
<b>Norm (₹ lakh/bay)</b>					
765kV AIS	45.01	46.60	48.23	49.93	51.68
<b>Total Sub-station Bays</b>	180.04	186.40	192.92	199.72	206.72
<b>Total O&amp;M Expenses (₹ in lakh)</b>	120.03	186.40	192.92	199.72	206.72



## **Interest on Working Capital (“IWC”)**

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

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

.....

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

(i) *Receivables equivalent to 45 days of annual fixed cost;*

(ii) *Maintenance spares @ 15% of operation and maintenance expenses including security expenses; and*

(iii) *Operation and maintenance expenses, including security expenses for one month.”*

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

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

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

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

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

56. 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 12.05%. IWC is worked out in accordance with Regulation 34 of the 2019 Tariff Regulations. The Rate of Interest 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 from 2022-23 onwards has been considered as 10.50% (SBI 1 year MCLR applicable as on 1.4.2022 of 7.00% plus 350 basis points).

57. We have considered the submissions of the Petitioner and, accordingly, IWC is worked out in accordance with Regulation 34 of the 2019 Tariff Regulations and the components of the working capital and interest allowed thereon for the transmission asset for the 2019-24 tariff period are as follows:

Particulars	(₹ in lakh)				
	2019-20 (Pro-rata for 244 days)	2020-21	2021-22	2022-23	2023-24
Working Capital for O&M Expenses (O&M expenses for one month)	15.00	15.53	16.08	16.64	17.23
Working Capital for Maintenance Spares (15% of O&M expenses)	27.01	27.96	28.94	29.96	31.01
Working Capital for Receivables (Equivalent to 45 days of annual fixed cost /annual transmission charges)	182.33	192.38	192.21	188.45	184.19
Total Working Capital	224.34	235.87	237.23	235.05	232.43
Rate of Interest for working capital (in %)	12.05	11.25	10.50	10.50	10.50
Interest of working capital	18.02	26.54	24.91	24.68	24.40

#### **Annual Fixed Charges for 2019-24 Tariff Period**

58. The transmission charges allowed in respect of the transmission asset for 2019-24 tariff period are as follows:

Particulars	(₹ in lakh)				
	2019-20 (Pro-rata for 244 days)	2020-21	2021-22	2022-23	2023-24
Depreciation	275.89	446.22	455.91	455.91	455.91
Interest on Loan	285.08	432.70	406.45	369.37	332.18
Return on Equity	289.62	468.53	478.86	478.86	478.86
Operation and Maintenance Expenses	120.03	186.40	192.92	199.72	206.72
Interest on Working Capital	18.02	26.54	24.91	24.68	24.40
Total	988.64	1560.39	1559.05	1528.54	1498.07



### **Filing Fee and Publication Expenses**

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

### **Licence Fee and RLDC Fees and Charges**

60. 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 2019-24 tariff period.

### **Goods and Services Tax**

61. 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.

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

### **Security Expenses**

63. The Petitioner has submitted that security expenses in respect of



transmission assets is not claimed in the instant petition and it would file a separate petition for claiming the overall security expenses and consequential IWC.

64. We have considered the above submissions of Petitioner. The Petitioner has claimed consolidated security expenses for all the transmission assets owned by it 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 said petition has already been disposed of by the Commission vide order dated 3.8.2021. 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.

#### **Capital Spares**

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

#### **Sharing of Transmission Charges**

66. KTL vide its reply has made the following submissions:

- a. The Petitioner has claimed the COD of the transmission asset as 1.8.2019 in terms of Regulation 5(2) of the 2019 Tariff Regulations, as the associated transmission line i.e. Khandwa PS (TBCB)-Indore 765 kV D/C line being implemented by KTL under TBCB is not ready. Therefore, the Petitioner was not able to provide service due to non-readiness of interconnecting transmission of KTL. This submission is without any basis and liable to be rejected.



b. In terms of the Transmission Services Agreement (“TSA”) dated 14.3.2016 executed by KTL with its long-term transmission customers, the KI Line was scheduled to be completed by July 2019. However, the said line could not be commissioned within the stipulated timelines due to *force majeure* events that impacted the development and commissioning of the KI Line. The KI Line has been commissioned on 19.3.2020. The Petitioner in its petition seems to have obfuscated the fact that the KI Line developed by KTL was impacted by *force majeure* events and thus the purported mismatch between the commissioning of the Petitioner’s transmission asset and the KI Line is not attributable to KTL.

c. The *force majeure* events that affected the KI line qualify for relief under Article 11 of its TSA. Notably, KTL has filed Petition No. 237/MP/2021 claiming *inter alia* an extension in the SCOD of the KI Line on account of the *force majeure* events. Therefore, it is imperative that the Petitioner’s case on the issue of mismatch in commissioning, ought to be considered in light of the facts and circumstances which have affected the implementation and commissioning of the KI Line. Pending adjudication of KTL’s petition, it ought not to be penalised to incur any additional cost by way of transmission charges or Interest During Construction (“IDC”) and Incidental Expenditure During Construction (“IEDC”) to be paid to the Petitioner pursuant to any directions issued in the present petition

d. The said *force majeure* events mainly were due to unanticipated imposition of the H+6 criteria for laying of transmission lines by MPPTCL and delay in receiving highway crossing approvals from NHAI.

e. The principles laid down in the Judgment of the APTEL in the Appeal



No. 17 of 2019 dated 14.9.2020, *NRSS XXXI (B) Transmission Ltd. v. Central Electricity Regulatory Commission & Ors.* (“NRSS Judgment”) which was filed against the Commission’s order dated 30.11.2017 in Petition No. 60/TT/2017 ought to be considered before any orders are passed in the present matter.

f. As per the NRSS judgment, no liability can be imposed on a delaying entity if the appropriate commission has condoned the delay in commissioning transmission asset and extended the COD on account of legitimate *force majeure* events. It is further submitted that the *ratio decidendi* of the NRSS Judgment applies to transmission licensees implementing projects under the Tarif Based Competitive Bidding (TBCB) regime under Section 63 of the Electricity Act, such as KTL.

g. KTL has kept the Petitioner apprised of the *force majeure* issues being faced by it in the implementation of the KI Line at all times. As such, there is no purported lack of coordination attributable to KTL.

h. Ministry of Power had issued a direction under Section 107 of the Electricity Act vide Letter No. 23/12/2016-R&R dated 15.1.2021, *inter alia* holding that in cases where there was a mismatch of the COD, the bilateral liability ought not to be imposed on an individual licensee. Accordingly, the MoP had advised the Commission to make suitable amendments in the Sharing Regulations so that no additional penalties are levied on such licensees in case of a mismatch. The liability for any purported mismatch due to uncontrollable events ought to be recovered by the Petitioner from the beneficiaries of the relevant transmission asset.

i. Therefore, the petition filed by KTL seeking condonation of delay ought to be decided before adjudicating the present tariff petition filed by the



Petitioner. It is submitted that KTL has a *bona fide* case for seeking extension in the SCOD of the KI Line for the reasons discussed above. Accordingly, no liability ought to be fastened upon KTL in the present proceedings until its petition for claiming extension of SCOD of its transmission assets is adjudicated upon by the Commission.

67. In response, the Petitioner has made the following submissions:
- a. It is not disputed that the transmission asset, achieved COD on 1.8.2019 and the associated line within the scope of KTL achieved COD on 19.3.2020.
  - b. The primary issue to be decided is that tariff for the transmission asset should commence after the deemed COD as it has completed work in time and associated work under the scope of KTL got delayed. The Petitioner has complied with all the provisions of COD approval under Regulation 5(2) of the 2019 Tariff Regulations.
  - c. The substantive right of the Petitioner to claim COD under Regulation 5(2) of the 2019 Tariff Regulations cannot be taken away. KTL's claim that it ought not to be made liable in any manner for the delays caused in its Project's implementation due to the *force majeure* events is not a correct as the tariff recovery of associated Petitioner's transmission asset is to be decided by the Commission based on merits. The implication of KTL being allowed on account of *force majeure* events in Petition No. 237/MP/2021 will have to be considered along with the recovery mechanism of tariff of the transmission asset in Petition No. 694/TT/2020.
  - d. KTL has relied on several judgments of the APTEL rendered on the



issue of payment of transmission charges in the case of mismatch. Though in the matter of PSPCL vs. Patran Transmission Company Limited Judgement dated 27.3.2018 in Appeal No. 390 of 2017 (hereinafter referred to as the “Patran Judgement”), Nuclear Power Corp of India Limited vs. CERC and Ors. Judgment dated 18.1.2019 in Appeal No. 332 of 2016 (hereinafter referred to as the “RAPP Judgement”) & Batch; and Jindal India thermal Power Limited v. CERC and Ors. Judgment dated 1.9.2020 in Appeal No. 159 of 2018 (hereinafter referred to as “JITPL Judgement”), the APTEL has held that since the beneficiaries cannot be made liable to pay the PoC charges, the transmission charges have to be paid by the defaulting party, this principle has been deviated from and explained by the Tribunal in its recent judgements.

e. In the NRSS Judgement (Appeal No. 17 of 2019), the specific issue raised was whether a TBCB licensee can be asked to pay IDC and IEDC to another licensee when time over-run is condoned by the Commission. The APTEL has carefully worded its decision and has referred to its earlier judgements- the Patran Judgement and the RAPP Judgement. The Tribunal had held that no liability can be imposed on a delaying entity if the appropriate commission has condoned the delay in commissioning transmission asset and extended the COD on account of legitimate *force majeure* events. KTL is relying on the NRSS Judgement in its petition to contend that it cannot be penalised in any manner due to purported delay in commissioning of its assets on account of uncontrollable *force majeure* events.

f. KTL has also relied on the APTEL’s judgment dated 15.9.2022 in Appeal No.109 of 2021 (PSTCL vs. CERC & Ors.) wherein it has held that in the absence of any contract, the liability towards transmission charges



cannot be fastened on the transmission utility.

g. In light of various judgments of the APTEL, the Commission may take a view on the issue of deemed COD since there is no precedent that the declaration of deemed COD can be refused if the substantive requirements of Regulation 5(2) of the 2019 Tariff Regulations are fulfilled.

68. We have considered the submissions of the Petitioner and KTL. KTL has contended that there was no contract between the Petitioner and KTL for payment of transmission charges for the transmission asset covered in the instant petition. KTL has contended that the tariff of the transmission asset of the Petitioner cannot be recovered from KTL because KTL's transmission system is developed through TBCB route under Section 63 of the Act and not under Section 62 of the Act. The Petitioner has also contended that the 2010 Sharing Regulations do not provide for recovery of transmission charges from the defaulting entity in case of mismatch in COD.

69. KTL referring to the APTEL's judgment dated 15.9.2022 in Appeal No.109 of 2021 (PSTCL vs. CERC & Ors.), wherein it has held that in the absence of any contract, the liability towards transmission charges cannot be fastened on the transmission utility. KTL has submitted that it never explicitly or implicitly agreed to bear any liability qua PGCIL's assets and therefore never could have budgeted or accounted for the possibility of such liability.

70. As regards KTL'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.”*

71. As regards the KTL’s reliance on MoP’s directions dated 15.1.2021 that bilateral liability ought not to be imposed on an individual licensee and that 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.”*

72. KTL has submitted that its transmission system is affected by *force majeure* conditions and that the Respondent has filed the Petition No. 237/MP/2021. 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.”*

73. In the said order, the Commission goes on to reason their stand on the issue on the stipulation 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.....”*

74. 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.



75. In view of the above, we are of the view that KTL is liable to bear the transmission charges for the period of mismatch in the COD of instant asset whether the transmission assets are affected by *force majeure* conditions or not. It is further observed that the Petitioner filed Petition No.237/MP/2021 for extension of SCOD due to *force majeure* conditions and the same has been reserved for the order. The contentions of KTL regarding delay in commissioning of the transmission line due to *force majeure* events shall be dealt in Petition No. 237/MP/2021 filed by KTL.

76. The transmission asset of the Petitioner is being implemented under the RTM route and it is covered under section 62 of the Act. The COD of the transmission asset has been approved as 1.8.2019. Accordingly, the 2019 Tariff Regulations are applicable in case of the transmission asset. As per Regulation 2(1) of the 2019 Tariff Regulations, framed under section 178 read with section 61 of the Act, the 2019 Tariff Regulations are applicable for the transmission system or element thereof implemented under section 62 of the Act. As per Regulation 57 of the 2019 Tariff Regulations, sharing of transmission charges shall be governed by the Sharing Regulations.

77. As regards the contention of KTL that the 2010 Sharing Regulations do not provide for recovery of transmission charges from the defaulting entity in case of mismatch in COD, we are of the view that Regulation 6(2) of the 2019 Tariff Regulations provided for treatment of mismatch in the COD of the inter-connected transmission systems till 19.2.2021, when the said provision was deleted vide second amendment to the 2019 Tariff Regulations dated 19.2.2021. However, a similar provision has been made in Regulation 13(12) of the 2020 Sharing



Regulations. As we have already approved the COD of the transmission asset as 1.8.2019 under Regulation 5(2) of the 2019 Tariff Regulations as the associated transmission asset of KTL was not ready on that day, Regulation 6(2) of the 2019 Tariff Regulations which contains detailed provisions with regard to liability for mismatch of the COD between generating station and transmission system or between two transmission licensees of a connected transmission system is applicable in case of the transmission asset. The Regulation 6(2) of the 2019 Tariff Regulations provides as follows:

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

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

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

*(b) Where the associated transmission system has not achieved the commercial operation as on the date of commercial operation of the concerned generating station or unit thereof (which is not before the SCOD of the transmission system), the transmission licensee shall make alternate arrangement for the evacuation from the generating station at its own cost, failing which, the transmission licensee shall be liable to pay the transmission charges to the generating company as determined by the Commission, in accordance with clause (5) of Regulation 14 of these regulations, till the transmission system achieves the commercial operation.*

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

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

*(b) Where the transmission system has not achieved the commercial operation as on the date of commercial operation of the interconnected transmission system of other transmission licensee (which is not before the SCOD of the transmission*



*system), the transmission licensee shall be liable to pay the transmission charges of such interconnected transmission system to the other transmission licensee or as may be determined by the Commission, in accordance with clause (5) of Regulation 14 of these regulations, till the transmission system achieves the commercial operation.”*

78. In the instant case, as stated above, the COD of the transmission asset has been approved as 1.8.2019 under Regulation 5(2) of the 2019 Tariff Regulations. As per Regulation 6(2)(a) and Regulation 6(2)(b) 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.

79. 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 19.3.2020. Therefore, we are of the view that the transmission charges of the transmission asset should be borne by KTL from COD of the transmission asset, i.e. from 1.8.2019 upto 18.3.2020 and thereafter the transmission charges of the 765 kV line bays shall be recovered as per the provisions of the 2020 Sharing Regulations as provided in Regulation 57 of the 2019 Tariff Regulations.



80. To summarise,

(a) AFC allowed in respect of the transmission assets for 2019-24 tariff period in the instant order are as follows:

(₹ in lakh)

2019-20 (Pro-rata for 244 days)	2020-21	2021-22	2022-23	2023-24
988.64	1560.39	1559.05	1528.54	1498.07

81. Annexure given hereinafter form part of the order.

82. This order disposes of Petition No. 694/TT/2020 in terms of the above discussions and findings.

sd/-  
(P.K. Singh)  
Member

sd/-  
(Arun Goyal)  
Member

sd/-  
(I. S. Jha)  
Member



**Annexure**

2019-24 Capital Expenditure as on COD	Admitted Capital Cost as on COD (₹ in lakh)	ACE		Admitted Capital Cost as on 31.3.2024 (₹ in lakh)	Rate of Depreciatio n (in %)	Annual Depreciation as per Regulations				
		2019-20 (₹ in lakh)	2020-21 (₹ in lakh)			2019-20 (₹ in lakh)	2020-21 (₹ in lakh)	2021-22 (₹ in lakh)	2022-23 (₹ in lakh)	2023-24 (₹ in lakh)
Building	38.99	1.23	0.00	40.22	3.34	1.32	1.34	1.34	1.34	1.34
Sub-Station	7118.67	826.97	362.94	8308.58	5.28	397.70	429.11	438.69	438.69	438.69
PLCC	64.90	7.50	3.57	75.97	6.33	4.35	4.70	4.81	4.81	4.81
IT Equipment and software	65.71	8.08	0.00	73.79	15.00	10.46	11.07	11.07	11.07	11.07
<b>Total</b>	<b>7288.27</b>	<b>843.78</b>	<b>366.51</b>	<b>8498.56</b>		<b>413.83</b>	<b>446.22</b>	<b>455.91</b>	<b>455.91</b>	<b>455.91</b>
				<b>Average Gross Block (₹ in lakh)</b>		7710.16	8315.31	8498.56	8498.56	8498.56
				<b>Weighted Average Rate of Depreciation (%)</b>		5.37	5.37	5.36	5.36	5.36

