

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.286/2009**

**Coram:**

1. **Shri V.S.Verma, Member**
2. **Shri M.Deena Dayalan, Member**

**DATE OF HEARING: 24.6.2010**

**DATE OF ORDER: 18.8.2010**

**In the matter of**

Approval of transmission tariff for 400 kV D/C Muzaffarpur-Gorakhpur transmission line in Eastern-Northern Inter-connector associated with Tala Hydro Electric Power, east-north interconnector and Northern Region transmission system for the period from 2009-14.

**And in the matter of**

Powerlinks Transmission Limited, New Delhi

**..Petitioner**

Vs

1. Power Grid Corporation of India Limited, Gurgaon
2. Rajasthan Rajya Vidyut Prasaran Nigam Limited, Jaipur
3. Ajmer Vidyut Vitaran Nigam Ltd., Ajmer
4. Jaipur Vidyut Vitaran Nigam Ltd, Jaipur
5. Jodhpur Vidyut Vitaran Nigam Ltd, Jodhpur
6. Punjab State Electricity Board, Patiala
7. Haryana Vidyut Prasaran Nigam Ltd, Panchkula
8. Uttar Pradesh Power Corporation Ltd, Lucknow
9. Power Development Department, Govt. of J & K, Jammu
10. Delhi Transco Ltd, New Delhi
11. Himachal Pradesh State Electricity Board, Shimla
12. Chief Engineer, Chandigarh Administration, Chandigarh
13. Uttarakhand Power Corporation Ltd, Dehradun
14. North Central Railway, Allahabad
15. BSES Yamuna Power Ltd., Delhi
16. BSES Rajdhani Power Ltd., New Delhi
17. North Delhi Power Ltd., New Delhi

**.... Respondents**

**The following were present:**

1. Shri Suresh Schedev, PTL
2. Shri B.A.Chaduhari, PTL
3. Shri Ajay Bagri, PTL

4. Ms. Nita Jha, PTL
5. Shri U.K.Tyagi, PGCIL
6. Shri Raghuveer Prasad Verma, RRVPNL

### **ORDER**

The petition has been filed for approval of tariff in respect of 400 kV D/C Muzaffarpur-Gorakhpur transmission line (the transmission line) in Eastern-Northern inter-connector associated with Tala Hydro Electric Project, East-North inter-connector and Northern Region transmission system (collectively referred to as the transmission system) for the period 1.4.2009 to 31.3.2014 based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as "the 2009 regulations"). The petitioner has also prayed that pending the decision in Petition No. 17/2010 in respect of grossing up ROE with MAT rate of 16.995%, to fix tariff after considering ROE grossing up @ 11.33% as per 2009 regulations. The petitioner has further prayed for the reimbursement of expenditure from the beneficiaries towards publishing of notices in newspapers and petition filing fee be approved. The petitioner has also prayed to allow to pass on the benefit or loss to the respondents in case of any decrease or increase in the interest rate directly on Respondent No. 1 on accounts of the respondents.

2. The administrative approval and expenditure sanction for the transmission system was accorded by Ministry of Power under letter dated 2.7.2003 at an estimated cost of Rs.198070 lakh, which included IDC of Rs.21792 lakh. Subsequently, the revised cost estimate for the transmission system was approved by Ministry of Power under its letter dated 29.9.2005, at

an estimated cost of Rs.161178 lakh, which included IDC of Rs.12170 lakh for the petitioner's scope of work. The transmission line was declared under commercial operation on 1.9.2006.

3. The annual transmission charges for the period from 1.9.2006 to 31.3.2009 were decided by the Commission in its order dated 29.7.2009 in Petition No. 66/2009 at a gross block of Rs. 41837.90 lakh as on 31.3.2009 and thereafter no additional capital expenditure is involved for the transmission asset.

4. The petitioner has claimed the transmission charges as under:

(Rs. in lakh)					
	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	2191.42	2191.42	2191.42	2191.42	2191.42
Interest on Loan	2166.51	1839.82	1607.45	1387.11	1166.76
Return on Equity	2194.05	2194.05	2194.05	2194.05	2194.05
Interest on Working Capital	148.78	142.68	138.57	134.76	130.99
O & M Expenses	244.40	258.44	273.26	288.86	305.24
<b>Total</b>	<b>6945.16</b>	<b>6626.41</b>	<b>6404.75</b>	<b>6196.20</b>	<b>5988.46</b>

5. The details submitted by the petitioner in support of its claim for interest on working capital are given hereunder:

(Rs. in lakh)					
	2009-10	2010-11	2011-12	2012-13	2013-14
Maintenance Spares	36.66	38.77	40.99	43.33	45.79
O & M expenses	20.37	21.54	22.77	24.07	25.44
Receivables	1157.53	1104.40	1067.46	1032.70	998.08
<b>Total</b>	<b>1214.56</b>	<b>1164.71</b>	<b>1131.22</b>	<b>1100.10</b>	<b>1069.31</b>
Rate of Interest	12.25%	12.25%	12.25%	12.25%	12.25%
<b>Interest</b>	<b>148.78</b>	<b>142.68</b>	<b>138.57</b>	<b>134.76</b>	<b>130.99</b>

6. Reply to the petition has been filed by Uttar Pradesh Power Corporation Ltd. (UPPCL). No comments or suggestions have been received from the

general public in response to the notices published by the petitioner under section 64 of the Electricity Act, 2003. UPPCL in its reply has prayed to disallow the TMF for the year 2009-14 in case of Muzaffarpur (New)-Gorkhpur(New) 400 kV D/C (Quad conductor) transmission line and direct the petitioner to file documentary proof in respect of MAT rate of 16.995%. UPPCL has also prayed to disallow the floating rate of interest and direct the petitioner to submit the certificate of C.A. in respect of total estimated cost, amount admitted by the Hon`ble by the Commission, present claim and balance amount. The UPPCL has further requested to direct the petitioner to submit the item-wise grouping and consolidation of expenditure in 2009-10. UPPCL has also raised issue of filing fee. The issues raised by the UPPCL have been dealt within the relevant paras of this order.

### **CAPITAL COST**

7. As per clause (2) of Regulation 7 of the 2009 regulations, the project cost admitted by the Commission for determination of tariff prior to 1.4.2009 shall form the basis for determination of tariff.

8. The petitioner has claimed the capital expenditure of Rs. 41837.90 lakh. The petitioner has not claimed any additional capitalization.

9. Accordingly, gross block of Rs. 41837.90 lakh as on 31.3.2009 has been considered by us for the purpose of tariff.

## DEBT- EQUITY RATIO

10. Clause (2) of Regulation 12 of the 2009 regulations *inter alia* provides that,-

“(2) In case of the generating station and the transmission system declared under commercial operation prior to 1.4.2009, debt-equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2009 shall be considered.”

11. The petitioner has claimed tariff based on debt-equity ratio of 70:30 as considered by the Commission in its order dated 29.7.2009 *ibid*. The same debt-equity ratio has been considered for the purpose of tariff.

## RETURN ON EQUITY

12. Regulation 15 of the 2009 regulations provides that,-

“15. (1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with regulation 12.

(2) Return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up as per clause (3) of this regulation:

Provided that in case of projects commissioned on or after 1st April, 2009, an additional return of 0.5% shall be allowed if such projects are completed within the timeline specified in **Appendix-II**:

Provided further that the additional return of 0.5% shall not be admissible if the project is not completed within the timeline specified above for reasons whatsoever.

(3) The rate of return on equity shall be computed by grossing up the base rate with the normal tax rate for the year 2008-09 applicable to the concerned generating company or the transmission licensee, as the case may be:

Provided that return on equity with respect to the actual tax rate applicable to the generating company or the transmission licensee, as the case may be, in line with the provisions of the relevant Finance Acts of the respective year during the tariff period shall be trued up separately for each year of the tariff period along with the tariff petition filed for the next tariff period.

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

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

Where t is the applicable tax rate in accordance with clause (3) of this regulation.

**Illustration.-**

(i) In case of the generating company or the transmission licensee paying Minimum Alternate Tax (MAT) @ 11.33% including surcharge and cess:

$$\text{Rate of return on equity} = 15.50 / (1-0.1133) = 17.481\%$$

(ii) In case of generating company or the transmission licensee paying normal corporate tax @ 33.99% including surcharge and cess:

$$\text{Rate of return on equity} = 15.50 / (1-0.3399) = 23.481\%."$$

13. It is noted that the MAT rate has changed from the rate of 10% to 15% for the year 2008-09 and 2009-10 and 15% to 18% for the year 2009-10 and 2010-11, respectively, the petitioner had workout the ROE considering MAT rate of 16.995% (15%+ surcharge education cess). The petitioner vide its affidavit dated 9.6.2010 has computed return on equity on pre-tax basis on 11.33% i.e. MAT in accordance with tax rate applicable for the year 2008-09 and claimed return on equity of Rs. 2194.10 lakh each year during the tariff period @ 17.481% on equity of Rs. 12551.37 lakh. This has been found to be in order. Therefore, return on equity has been computed as per Regulation 15 of the 2009 regulations on pre-tax ROE of 17.481% (at MAT rate of 11.33% including surcharge and cess). Accordingly, the petitioner shall be entitled to return on equity of Rs. 2194.10 lakh each year during the tariff period, as claimed. The petitioner has further submitted that it will comply with the order of Commission on the issue of MAT.

14. In regard to MAT, it is noted that after the notification of the 2009 regulation on 20.1.2009, the MAT rate which was 10% for the financial year 2008-09 has been increased to 15% for the Financial Year 2009-10 and 18% for the Financial Year 2010-11. This substantial change in the MAT rate has serious impact on the funds position of the generating company/ the transmission licensee and the beneficiaries. The generating companies/transmission licensees are required to pay income tax in the relevant financial year. If requisite fund is not made available to them for meeting this statutory obligation, they will face problem in cash flow as they will be able to get the under-recovered amount (along with simple interest at the rate equal to the short-term Prime Lending Rate of State Bank of India as on 1st April of the respective year) from the beneficiaries in just six instalments after the truing up exercise at the end of the tariff period. On the other hand, the beneficiaries and long term transmission customers will have to pay a huge amount of tax arrears in just six instalments and may result in tariff shock to the consumers. In order to address the situation, the Commission has already taken a decision vide its order dated 4.8.2010 in Petition No.17/2010 for amending the 2009 regulations. The relevant portion of the said order is extracted as under:

“We are of the view that this issue of ‘grossing up the base rate with the normal tax rate for the year 2008-09’ is generic in nature and therefore, it will be appropriate to make suitable provisions in the 2009 regulations to cater to any future changes in the tax rate. Accordingly, we direct the staff of the Commission to prepare and submit draft amendment to the 2009 regulations for allowing grossing up of base rate of return with the applicable tax rate as per the Finance Act for the relevant year and direct settlement of tax liability between the generating company/transmission licensee and the beneficiaries/long term transmission customers on year to year basis. Any

under/over recovery on account of direct settlement of tax liability shall be subject to the final adjustment at the time of true up exercise.”

### **INTEREST ON LOAN**

15. Regulation 16 of the 2009 regulations provides that,-

“16. (1) The loans arrived at in the manner indicated in regulation 12 shall be considered as gross normative loan for calculation of interest on loan.

(2) The normative loan outstanding as on 1.4.2009 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2009 from the gross normative loan.

(3) The repayment for the year of the tariff period 2009-14 shall be deemed to be equal to the depreciation allowed for that year:

(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 annual depreciation allowed,.

(5) The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio at the beginning of each year applicable to the project:

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.

(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 generating company or the transmission licensee, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 2:1.

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

(9) In case of dispute, any of the parties may make an application in accordance with the Central Electricity Regulatory Commission (Conduct of



Business) Regulations, 1999, as amended from time to time, including statutory re-enactment thereof for settlement of the dispute:

Provided that the beneficiary or the transmission customers shall not withhold any payment on account of the interest claimed by the generating company or the transmission licensee during the pendency of any dispute arising out of re-financing of loan."

16. In our calculation, the interest on loan has been worked out as detailed below:

- (i) The normative loan outstanding as on 1.4.2009 has been worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2009 from the gross normative loan. The rate of interest has been taken as weighted average rate of interest calculated on the basis of the actual average loan portfolio for each year of the tariff period.
- (ii) The repayment during each year of the period 2009-14 has been considered equal to the depreciation allowed for that year. Tariff has been worked out considering normative loan and normative repayments.
- (iii) Weighted average rate of interest on actual loan worked out as per (i) above is applied on the average loan during the year to arrive at the interest on loan.

17. It is noted that the petitioner has considered actual repayment of loan for calculation of interest on loan instead of considering depreciation as repayment. The repayment for the period 2009-14 shall be deemed to be

equal to the depreciation allowed for that period as per the 2009 regulations and same has been considered for the purpose of tariff.

18. The petitioner has vide its affidavit dated 9.6.2010 has submitted that the Company has taken loan from SBI and IDFC on floating rate basis, and requires to be reset every three years. The reset has/shall take place on the basis of prevailing G-Sec rate plus 250 basis point. The Interest for SBI has been reset on 12.5.2010 and next reset will be done on May 2013 and the Interest on loan has been recalculated on the basis of reset interest rates and the petitioner has also furnished the reset letter from SBI and IDFC.

19. The rates as on 1.4.2009 have been taken into consideration for calculating the interest on loan and any change subsequently, including any on account of reset, will be considered at the time of truing up.

20. Based on the above, the year-wise details of interest worked out are given hereunder:

Details of loan	(Rs. in lakh)					
	Up to 31.3.2009	2009-10	2010-11	2011-12	2012-13	2013-14
Gross Notional loan	29286.53					
Addition due to additional capitalisation	0.00					
Gross Normative Loan	29286.53	29286.53	29286.53	29286.53	29286.53	29286.53
Cumulative Repayment up to Previous Year		5381.26	7572.68	9764.10	11955.52	14146.94
Net Loan-Opening		23905.27	21713.85	19522.43	17331.01	15139.59
Addition due to Additional Capitalisation		0.00	0.00	0.00	0.00	0.00
Repayment during the year		2191.42	2191.42	2191.42	2191.42	2191.42
Net Loan-Closing		21713.85	19522.43	17331.01	15139.59	12948.16
Average Loan		22809.56	20618.14	18426.72	16235.30	14043.88
Weighted Average Rate of Interest on Loan		9.5504%	9.5500%	9.5495%	9.5488%	9.5479%
Interest		<b>2178.40</b>	<b>1969.03</b>	<b>1759.65</b>	<b>1550.28</b>	<b>1340.89</b>

21. The detailed calculations in support of the weighted revised average rate of interest are contained in Annexure attached.

## **DEPRECIATION**

22. Regulation 17 of the 2009 regulations provides for computation of depreciation in the following manner, namely:

“17. (1) The value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission.

(2) 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.

\* \* \*

\* \* \*

(3) 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.

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

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

(5) In case of the existing projects, the balance depreciable value as on 1.4.2009 shall be worked out by deducting the cumulative depreciation as admitted by the Commission up to 31.3.2009 from the gross depreciable value of the assets.

(6) 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.”

23. The deprecation has been worked out on the admitted capital expenditure of Rs. 41837.90 lakh as on 31.3.2009. Cumulative deprecation up

to 31.3.2009 has been taken as per order dated 29.7.2009 in Petition No. 66/2009.

24. For the period 1.4.2009 to 31.3.2014 the depreciation works out to Rs. 2191.42 lakh each year by applying rate of depreciation of 5.2379% as shown below:

		(Rs. in lakh)					
Details of Depreciation		Up to 31.3.2009	2009-10	2010-11	2011-12	2012-13	2013-14
As per order dated 7.8.2009		41837.90	41837.90	41837.90	41837.90	41837.90	41837.90
Addition during 2009-14 due to projected Additional Capitalisation			0.00	0.00	0.00	0.00	0.00
Gross block as on 31.3.2009			41837.90	41837.90	41837.90	41837.90	41837.90
Average gross block			41837.90	41837.90	41837.90	41837.90	41837.90
Rate of Depreciation			5.2379%	5.2379%	5.2379%	5.2379%	5.2379%
Depreciable Value	90%		37592.40	37592.40	37592.40	37592.40	37592.40
Elapsed Life			3	4	5	6	7
Balance Useful life of the asset			-	-	-	-	-
Remaining Depreciable Value			32211.14	30019.72	27828.29	25636.87	23445.45
<b>Depreciation</b>			<b>2191.42</b>	<b>2191.42</b>	<b>2191.42</b>	<b>2191.42</b>	<b>2191.42</b>

### **OPERATION & MAINTENANCE EXPENSES**

25. In accordance with clause (g) of Regulation 19 the 2009 regulations, the following norms for 400 kV D/C (four or more conductors) transmission line bay are prescribed for O & M expenses:

	Year				
	2009-10	2010-11	2011-12	2012-13	2013-14
O&M expenses (Rs in lakh per bay)	0.94	0.994	1.051	1.111	1.174

26. The petitioner has claimed O & M expenses for 260 Ckt km, which has been allowed. The details for the transmission assets are as under:

(Rs. in lakh)

	Year				
	2009-10	2010-11	2011-12	2012-13	2013-14
O&M expenses	0.94	0.994	1.051	1.111	1.174

27. Accordingly, the petitioner's entitlement to O & M expenses has been worked out as given hereunder:

(Rs. in lakh)

	Year				
	2009-10	2010-11	2011-12	2012-13	2013-14
O&M expenses for 260 Ckt km	244.40	258.44	273.26	288.86	305.24

### **INTEREST ON WORKING CAPITAL**

28. The components of the working capital and the interest thereon are discussed hereunder:

#### **(i) Receivables**

As per Regulation 18(1)(c)(i) of the 2009 regulations, receivables will be equivalent to two months average billing calculated on target availability level. The petitioner has claimed the receivables on the basis 2 months' transmission charges claimed in the petition. In the tariff being allowed, receivables have been worked out on the basis 2 months' transmission charges.

#### **(ii) Maintenance spares**

Regulation 18(1)(C)(ii) of the 2009 regulations provides for maintenance spares @ 15% per annum of the O & M expenses from 1.4.2009. The value of maintenance spares works out to Rs. 36.66 lakh as on 1.4.2009.

**(iii) O & M expenses**

Regulation 18(1) (c) (iii) of the 2009 regulations provides for operation and maintenance expenses for one month as a component of working capital. The petitioner has claimed O&M expenses for 1 month of O&M expenses of the respective year as claimed in the petition. This has been considered in the working capital.

**(iv) Rate of interest on working capital**

As per Regulation 18(3) of the 2009 regulations, rate of interest on working capital shall be on normative basis and shall be equal to the short-term Prime Lending Rate of State Bank of India as on 1.4.2009 or on 1st April of the year in which the project or part thereof (as the case may be) is declared under commercial operation, whichever is later. The interest on working capital is payable on normative basis notwithstanding that the transmission licensee has not taken working capital loan from any outside agency. The petitioner has claimed interest on working capital @ 12.25% based on SBI PLR as on 1.4.2009, which is in accordance with the 2009 regulations and has been allowed.

29. The necessary computations in support of interest on working capital are appended hereinbelow:

(Rs. in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Maintenance Spares	36.66	38.77	40.99	43.33	45.79
O & M expenses	20.37	21.54	22.77	24.07	25.44
Receivables	1159.56	1126.39	1093.36	1060.47	1027.71
Total	1,216.59	1,186.70	1,157.13	1,127.87	1,098.94
Rate of Interest	12.25%	12.25%	12.25%	12.25%	12.25%
<b>Interest</b>	<b>149.03</b>	<b>145.37</b>	<b>141.75</b>	<b>138.16</b>	<b>134.62</b>

## **TRANSMISSION CHARGES**

30. The transmission charges being allowed for the transmission asset are summarised below:

(Rs. in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	2191.42	2191.42	2191.42	2191.42	2191.42
Interest on Loan	2178.40	1969.03	1759.65	1550.28	1340.89
Return on Equity	2194.10	2194.10	2194.10	2194.10	2194.10
Interest on Working Capital	149.03	145.37	141.75	138.16	134.62
O & M Expenses	244.40	258.44	273.26	288.86	305.24
<b>Total</b>	<b>6957.35</b>	<b>6758.36</b>	<b>6560.19</b>	<b>6362.83</b>	<b>6166.28</b>

## **TRANSMISSION MAJORATION FACTOR**

31. The petitioner has claimed the @ 10% mark up on transmission charges as Transmission Majoration Factor (TMF) allowed by the Commission vide its orders dated 29.5.2001 and 28.4.2008 in Petitions No. 23/2001 and 147/2007, respectively. This has been opposed by the UPPCL. Commission vide the said orders dated 29.5.2001 and 28.4.2008 had allowed TMF @ of 10% (pre tax) mark up on transmission charges to new private entrepreneurs entering the transmission sector up to 31.3.2004. The benefit is available during entire life of the project.

32. For the tariff period 2004-09, return on equity was computed on the equity base determined in accordance with regulation 54 @ 14% per annum., as per clause (iii) of Regulation 56 of the 2004 regulations and tax was directly claimed by the generating company and the transmission licensee, as the case may be, from the beneficiaries as a pass through expense.

33. The Commission by its order dated 23.5.2001 in Petition No 23/2001 had decided to allow 10% mark up (pre-tax) on transmission charges as the Transmission Majoration factor (TMF) to new private entrepreneurs entering the transmission sector up to 31.4.2004. The relevant para of the said order dated 23.5.2001 is as under:

“24. The Commission would like to make it clear that the TMF is a one-time measure to encourage private entrepreneurs to promote investment in transmission sector. We expect that the serious entrepreneurs would seize this opportunity and we also expect that the PGCIL would also expedite urgent action to cover all the critical lines with a limited period in meaningful and constructive cooperation with private investors. Accordingly, the TMF would be available to new entrepreneurs only for the period up to 31<sup>st</sup> March 2004. This would, thus, be co-terminus with the Commission’s order dated 21.12.2000 on terms and conditions of tariff. However, the benefit of TMF would continue to be available during the entire life of the project in respect of the investors who enter the transmission sector up to the period ending 31.3.2004.”

34. This was notified as a part of terms and conditions of tariff as Regulation 4.10 A of the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2001 reproduced hereunder:

**“ 4.10A Transmission Majoration Factor**

In respect of the transmission projects executed through IPTC/JV routes, 10% (ten percent) mark up (pre-tax) on transmission charges shall be allowed as Transmission Majoration Factor.

Provided that Transmission Majoration Factor shall not be allowed on HVDC projects executed through IPTC/JV routes.

Provided further that the Transmission Majoration Factor shall be allowed during the entire life of the transmission project to the new investor entering the transmission sector through IPTC/JV routes and who has



been granted a transmission licence under Section 27C of the Indian Electricity Act, 1910, up to 31-3-2004.”

35. It is noticed from above that TMF is to be available during the entire life of the project. This position was reiterated by the Commission vide order dated 16.1.2004 in Petition No 67/2007 (suo motu) which is precursor to the framing of the 2004 regulations. The relevant part of the order is reproduced below:

“8.45 Akin to the Development Surcharge, the Commission had allowed Transmission Majoration Factor (TMF) in case of transmission licensees through the joint venture route, who obtain license on or before 31.3.2004 and the TMF shall be available to such licensees through out the license period. ”

36. The Commission vide its order dated 1.7.2004 in Petition No. 51/2004 has confirmed the entitlement of the petitioner to TMF, in the words reproduced below:

“6. The notification dated 26.3.2001 which provided for payment of Transmission Majoration Factor was valid up to 31.3.2004. Under these circumstances, the question arises as to whether with the expiry of the notification dated 26.3.2001, the provisions regarding the Transmission Majoration Factor as contained in Regulation 4.10A can still be enforced. The settled legal position is that the expiry of a temporary statute does not obliterate the rights or obligations under that statute. The nature of the right and obligations resulting from the provisions of the temporary statute and their character may have to be regarded in determining whether the said right or obligations endures beyond the life of the statute. The Hon’ble Supreme Court in State of Orissa Vs Bhupendra Kumar (AIR 1962 SC 945) has held that:

“.....in considering the effect of the expiration of a temporary statute, it would be unsafe to lay down any inflexible rule. If the right created by the statute is of enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired.....”

7. For an answer to the question raised, we consider the background leading to incorporation of Regulation 4.10A in the notification dated 26.3.2001. The Regulation 4.10A notified on 21.9.2001 was preceded by the Commission's order dated 29.5.2001 in Petition No.23/2001. The Commission recognised the fact that private investors in transmission had to incur additional liabilities in their efforts compared to long standing transmission utilities like Power Grid Corporation of India Limited. Accordingly, in respect of the projects executed by private investors, the Commission allowed 10% mark up (pre-tax) on transmission charges as Transmission Majoration Factor. The Commission directed that the Transmission Majoration Factor would be available to new entrepreneurs only for the period up to 31.3.2004, which implied that the benefit of Transmission Majoration Factor would continue to be available during the entire life of the project in respect of investors who entered the transmission sector up to the period 31.3.2004. The relevant extracts from the said order dated 29.5.2001 are reproduced below:

"22. In discussing the elements of "Insurance" and "Target Availability/incentive" for transmission lines, the Commission has mentioned a concept designated as "Transmission Majoration Factor". Introduction of this factor is in due consideration of the fact that the Commission recognises the need for expediting new investments in the transmission sector. It has also recognised the fact that the private investors, in transmission, have to incur additional liabilities in their pioneering efforts compared to long standing central transmission utility like PGCIL. Accordingly, in respect of such lines executed by private investors, the Commission proposes to allow 10% mark up (pre-tax) on transmission charges as Transmission Majoration Factor. This would be available only to the new private investors who would like to enter the field. Accordingly, there would be no need to provide for TMF in respect of projects executed by PGCIL. This will not also apply to the HVDC projects to be executed by private investors involving heavy capital investments and do not, hence, justify a special treatment by way of Transmission Majoration Factor. In respect of PGCIL, the development surcharge of 10% provided to it takes care of requirements of TMF allowed for private investors in respect of new investments.

23.....

24. Commission would like to make it clear that the TMF is a one-time measure to encourage private entrepreneurs to promote investments in transmission sector. We expect that the serious entrepreneurs would seize this opportunity and we also expect that the PGCIL would also expedite urgent action to cover all the critical lines within a limited period in meaningful

and constructive cooperation with private investors. Accordingly, the TMF would be available to new entrepreneurs only for the period up to 31<sup>st</sup> March 2004. This would, thus, be co-terminus with the Commission's order dated 21-12-2000 on terms and conditions of tariff. However, the benefit of TMF would continue to be available during the entire life of the project in respect of the investors who enter the transmission sector up to the period ending 31-3-2004."

8. When seen in the light of above background, in our considered opinion, Regulation 4.10A *ibid* has conferred a substantive right on the petitioner to claim Transmission Majoration Factor. Therefore, despite the fact that no provision for payment of Transmission Majoration Factor is made in the 2004 Regulations, the petitioner shall be entitled to claim the Transmission Majoration Factor throughout the period of licence, which is 25 years from the date of issue."

37. As per the 2009 regulations, return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up with the normal tax rate for the year 2008-09 applicable to the concerned generating company or the transmission licensee, as the case may be.

38. As the tax was earlier a pass through expense and entire tax was being recovered directly from the beneficiaries, therefore, the same shall be continued and TMF shall be computed on grossed up return on equity as per the claim of the beneficiary.

39. Therefore, 10% mark up on the transmission charges given under para 30 above shall be allowed as the Transmission Majoration Factor in the present petition since petitioner had entered the transmission sector before 31.3.2004 and was even granted licence before this date.

## **Application fee and the publication expenses**

40. The petitioner has sought approval for the reimbursement of fee paid by it for filing the petition. Regulation 42 of the 2009 regulations provides as under:

*" The application filing fee and the expense incurred on publication of notices in the application for approval of tariff, may in the discretion of the Commission, be allowed to be recovered by the generating company or the transmission licensee, as the case may be, directly from the beneficiaries or the transmission customers, as the case may be."*

41. The Commission vide its order dated 11.1.2010 in Petition No. 109/2009 (pertaining to approval of tariff for SUGEN power plant for the period from date of commercial operation to 31.3.2014) had decided that filing fees in respect of main petitions for determination of tariff and the expenses on publication of notices are to be reimbursed.

42. Accordingly, expenses incurred by the petitioner on application filing fees and publication of notices in connection with the present petition shall be directly recovered from the beneficiaries on pro rata basis.

43. In addition to the transmission charges, the petitioner shall be entitled to other charges like incentive as per regulation 23 and other cess and taxes, levied if any, in accordance with the 2009 regulations.

44. The decision on reimbursement of the licence fee shall be communicated separately.

45. In view of Transmission Service Agreement entered into between the petitioner and respondent No. 1 and also BPTAs entered into between respondent No. 1 and the beneficiaries respondents No. 2 to 23, respondent No. 1 shall raise bills for the charges, including the Transmission Majoration Factor approved in this order. The transmission charges allowed shall be recovered on monthly basis in accordance with Regulation 23 and shall be shared by the respondents in accordance with Regulation 33 of the 2009 regulations.

46. This order disposes of Petition No. 286/2009.

sd/-  
**(M.DEENA DAYALAN)**  
**MEMBER**

sd/-  
**(V.S.VERMA)**  
**MEMBER**

## Annexure

## CALCULATION OF WEIGHTED AVERAGE RATE OF INTEREST ON LOAN

(Rs. in lakh)

	Details of Loan	2009-10	2010-11	2011-12	2012-13	2013-14
<b>1</b>	<b>IFC</b>					
	Gross loan opening	8849.25	<b>8849.25</b>	<b>8849.25</b>	<b>8849.25</b>	<b>8849.25</b>
	Cumulative Repayment up to the date of commercial operation/previous year	1471.46	<b>2208.90</b>	<b>2946.34</b>	<b>3683.78</b>	<b>4421.22</b>
	Net Loan-Opening	7377.79	6640.35	5902.91	5165.47	4428.03
	Additions during the year	0.00	0.00	0.00	0.00	0.00
	Repayment during the year	737.44	737.44	737.44	737.44	737.44
	Net Loan-Closing	6640.35	5902.91	5165.47	4428.03	3690.59
	Average Loan	7009.07	6271.63	5534.19	4796.75	4059.31
	Rate of Interest	8.80%	8.80%	8.80%	8.80%	8.80%
	Interest	616.80	551.90	487.01	422.11	357.22
	Rep Schedule	24 equal half yearly installments from 15.7.2007				
<b>2</b>	<b>ADB</b>					
	Gross loan opening	7868.47	<b>7868.47</b>	<b>7868.47</b>	<b>7868.47</b>	<b>7868.47</b>
	Cumulative Repayment up to the date of commercial operation /previous year	1308.38	<b>1964.09</b>	<b>2619.80</b>	<b>3275.51</b>	<b>3931.22</b>
	Net Loan-Opening	6560.09	5904.38	5248.67	4592.96	3937.25
	Additions during the year	0.00	0.00	0.00	0.00	0.00
	Repayment during the year	655.71	655.71	655.71	655.71	655.71
	Net Loan-Closing	5904.38	5248.67	4592.96	3937.25	3281.54
	Average Loan	6232.24	5576.53	4920.82	4265.11	3609.40
	Rate of Interest	9.14%	9.14%	9.14%	9.14%	9.14%
	Interest	569.63	509.69	449.76	389.83	329.90
	Rep Schedule	24 semi annual equal installments from 15.7.2007				
<b>3</b>	<b>IDFC</b>					
	Gross loan opening	6648.49	<b>6648.49</b>	<b>6648.49</b>	<b>6648.49</b>	<b>6648.49</b>
	Cumulative Repayment up to the date of commercial operation /previous year	1105.51	<b>1659.55</b>	<b>2213.59</b>	<b>2767.63</b>	<b>3321.67</b>
	Net Loan-Opening	5542.98	4988.94	4434.90	3880.86	3326.82
	Additions during the year	0.00	0.00	0.00	0.00	0.00
	Repayment during the year	554.04	554.04	554.04	554.04	554.04
	Net Loan-Closing	4988.94	4434.90	3880.86	3326.82	2772.78
	Average Loan	5265.96	4711.92	4157.88	3603.84	3049.80
	Rate of Interest	10.48%	10.48%	10.48%	10.48%	10.48%
	Interest	551.87	493.81	435.75	377.68	319.62
	Rep Schedule	48 quarterly installments from 15.4.2007				
<b>4</b>	<b>SBI</b>					
	Gross loan opening	5920.33	<b>5920.33</b>	<b>5920.33</b>	<b>5920.33</b>	<b>5920.33</b>
	Cumulative Repayment up to the date of commercial operation /previous year	1106.39	<b>1599.75</b>	<b>2093.11</b>	<b>2586.47</b>	<b>3079.83</b>
	Net Loan-Opening	4813.94	4320.58	3827.22	3333.86	2840.50
	Additions during the year	0.00	0.00	0.00	0.00	0.00
	Repayment during the year	493.36	493.36	493.36	493.36	493.36

Net Loan-Closing	4320.58	3827.22	3333.86	2840.50	2347.14
Average Loan	4567.26	4073.90	3580.54	3087.18	2593.82
Rate of Interest	10.19%	10.19%	10.19%	10.19%	10.19%
Interest	465.40	415.13	364.86	314.58	264.31
Rep Schedule	48 quarterly installments from 31.3.2007				
<b>Total Loan</b>					
Gross loan opening	29286.54	29286.54	29286.54	29286.54	29286.54
Cumulative Repayment up to the date of commercial operation /previous year	4991.74	7432.29	9872.84	12313.39	14753.94
Net Loan-Opening	24294.80	21854.25	19413.70	16973.15	14532.60
Additions during the year	0.00	0.00	0.00	0.00	0.00
Repayment during the year	2440.55	2440.55	2440.55	2440.55	2440.55
Net Loan-Closing	21854.25	19413.70	16973.15	14532.60	12092.05
Average Loan	23074.53	20633.98	18193.43	15752.88	13312.33
Rate of Interest	9.5504%	9.5500%	9.5495%	9.5488%	9.5479%
<b>Interest</b>	2203.70	1970.54	1737.37	1504.21	1271.05