

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

PETITION NO.18/TT/2014

Coram:

**Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member**

Date of Hearing : 20.08.2015

Date of Order : 06.05.2016

In the Matter of:

Truing up of transmission tariff for period 2009-13 and revised tariff for 2013-14 in tariff block 2009-14 for 400 kV Double Circuit Muzaffarpur-Gorakhpur Transmission line in Eastern-Northern Inter-region associated with Tala Hydro Electric Project, East-North Inter Connector and Northern Region Transmission system of Powerlinks Transmission Limited under Regulation 86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2009.

And in the Matter of:

Powerlinks Transmission Limited,
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110 016

.....Petitioner

Vs

1. Power Grid Corporation of India Limited,
Saudamini, Plot No.-2, Sector-29,
Gurgaon-122001 (Haryana)
2. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Vidyut Marg,
Jaipur-302 005
3. Ajmer Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur



4. Jaipur Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur
5. Jodhpur Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur
6. Punjab State Electricity Board,
The Mall, Patiala-147 001
7. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6, IInd Floor,
Panchkula, Haryana-134 109
8. Uttar Pradesh Power Corporation Limited,
(Formerly Uttar Pradesh State Electricity Board),
10th Floor, Shakti Bhawan Extn.-14, Ashok Marg,
Lucknow-226 001
9. Power Development Department,
Government of Jammu & Kashmir,
Mini Secretariat, Jammu
10. Delhi Transco Limited,
Shakti Sadan, Kotla Road (Near ITO),
New Delhi-110 002
11. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House Complex Building II,
Shimla-171 004 (HP)
12. Chandigarh Administration,
Sector -9, Chandigarh
13. Uttarakhand Power Corporation Limited,
Urja Bhawan, Kanwali Road, Dehradun
14. Northern Central Railway,
Allahabad
15. BSES Yamuna Power Limited,
BSES Bhawan, Building No.-20,
Nehru Place, New Delhi.
16. BSES Rajdhani Power Limited,
BSES Bhawan, Building No.-20,
Nehru Place, New Delhi



17. North Delhi Power Limited,
Grid Substation Building, Hudson Line,
Near Kingsway Camp,
New Delhi-110 088

18. New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-110 002

....Respondent(s)

For Petitioner: Shri Amit Kapur, Advocate for Powerlinks
Shri Vishal Anand, Advocate for Powerlinks
Shri Janmali Manikala, Advocate for Powerlinks
Shri Gajendra Bhardwaj, Powerlinks
Ms. Nita Jha, Powerlinks
Shri Jayant Tiku, Powerlinks

For Respondents: Shri R.B. Sharma, Advocate for BRPL

ORDER

The petition has been filed by Powerlinks Transmission Limited (hereinafter referred to as "the petitioner"), a transmission licensee within the meaning of Section 2(73) of the Electricity Act, 2003, for revision of tariff under Regulation 6 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as "the 2009 Tariff Regulations") based on truing up of capital expenditure for the period 1.4.2009 to 31.3.2013 and revised tariff for 2013-14 in respect of 400 kV Double Circuit Muzaffarpur-Gorakhpur Transmission line (hereinafter referred to as "the transmission asset") in Eastern-Northern Inter-region associated with Tala Hydro Electric Project, East-North Inter Connector and Northern Region Transmission system in Northern Region.

2. The respondents are distribution licensees, who are procuring transmission service from the petitioner, mainly beneficiaries of Northern Region.



3. In the instant petition, the petitioner has requested for Reconciliation of Capital Cost of Inter-connector Transmission Lines and the Additional Capital Expenditure incurred/projected to be incurred during 2009-14. The petitioner has also sought the following:-

- i. Approval of revised capital cost as on COD;
- ii. Approval of capital expenditure (after cut-off date) incurred and projected to be incurred during 2009-14;
- iii. Approval of additional capital expenditure (after cut-off date) projected to be incurred after 2013-14;
- iv. Truing up of Annual Transmission Charges (ATC) for 2009-13; and
- v. Revised estimates of ATC for 2013-14.

4. This order has been issued after considering petitioner's affidavits dated 25.7.2014, 13.8.2014, 12.8.2015 and 10.9.2015.

5. The brief facts of the case are as follows:-

a. The petitioner was granted license vide order dated 13.11.2003 to transmit electricity as a transmission licensee and for that purpose to construct, maintain and operate Inter-state transmission system associated with the Tala Hydro Electric Project (HEP) East-north Inter Connector and Northern Region Transmission System.

b. The COD of the instant asset was 1.9.2006. The Commission vide its order dated 28.4.2008 in Petition No. 147/2007, had approved the capital cost



of ₹38834.37 lakh as on COD and additional capitalisation of ₹1321.58 lakh for the period from COD to 31.3.2007 and the ATC for the period 2006-09.

c. Subsequently, vide order dated 29.7.2009 in Petition No.66/2009, additional capital expenditure for 2007-08 and 2008-09 were approved for the instant asset.

d. In order dated 18.8.2010 in Petition No.286/2009, the ATC for the control period 2009-14 was approved for the instant asset. The petitioner did not claim any additional capital expenditure for the 2009-14 period.

6. The petitioner has served the petition on the respondents and notice of this application has been published in the newspaper in accordance with Section 64 of the Electricity Act, 2003 (the "Act"). No comments/objections have been received from the public in response to the notice in newspaper. Jaipur Vidyut Vitran Nigam Limited (JVVNL), Respondent No. 4 and U.P. Power Corporation Limited (UPPCL), Respondent No. 8 have filed replies vide affidavit dated 27.5.2014 and 17.6.2014 respectively. The respondents have submitted that the Transmission Majoration Factor should not be allowed to the petitioner both for 2006-2009 and 2009-14 tariff blocks and have given various reasons for the same. It has been also submitted that as there is no provision in the 2009 Tariff Regulations to allow additional capital expenditure incurred after cut-off date, the same should not be allowed. The petitioner's claim for compensation paid towards plantation of trees, additional incentive on account of revision of various components of annual fixed cost should also be disallowed as these are beyond the norms. The respondents have further submitted that the claim of the petitioner for sales tax is in the nature of a penal



amount due to default in payment of Sales Tax and should not be allowed. The petitioner has submitted rejoinders dated 4.7.2014 and 12.7.2014 to the replies of JVVNL and UPPCL respectively. BSES Rajdhani Power Limited (BRPL), Respondent No. 16 has filed reply vide affidavit dated 10.6.2015. The petitioner has submitted rejoinder dated 13.8.2015 to the reply of BRPL, wherein it has been submitted that issues raised by BRPL are in relation to its claims in Petition No. 515/TT/2014 and have no relevance to the instant petition. Having heard the representatives of the parties and perused the material on record, we proceed to dispose of the petition.

Reconciliation of capital cost For 2006-09

7. The petitioner in the instant petition has submitted that as per para-8 of Transmission License dated 13.11.2003, it had paid license fee of ₹84.59 lakh at the rate of ₹25 lakh per year from the date of issue of license to 31.3.2007 and the same was capitalized in the Books of Account and subsequently tariff was determined based on this capital cost vide order dated 28.4.2008 in Petition No.147/2007. The petitioner in response to query for confirmation about capitalization of license fee, has submitted vide affidavit dated 13.8.2014 that the license fee paid had been apportioned in the ratio of length of the transmission lines of different regions and such apportioned license fee till COD was included in the capital cost of the project under the head "Incidental Expenditure during Construction (IEDC)" wherein tariff was approved vide order dated 28.4.2008 in Petition No.147/2007. However, as per the Central Electricity Regulatory Commission (Payment of Fee) Regulations 2008, the petitioner received a refund of



₹56.71 lakh on 4.1.2008 for excess license fee paid for the period starting from the date of issue of transmission license to the date of commercial operation. The petitioner in response to another query about the reasons for not bringing out these facts regarding refund of excess license fee, in earlier Petition No. 286/2009 has submitted that it inadvertently accounted the refund under “Miscellaneous Income” in 2007-08 instead of de-capitalizing the amount from the approved capital cost of the project. Hence, the issue could not be brought out earlier in Petition No.286/2009. The petitioner has submitted that refund of ₹12.65 lakh pertains to the instant asset and has prayed to de-capitalize the refund amount from the Gross Block as on COD.

8. The petitioner in response to another query about segregated value of the aforesaid license fee of ₹84.59 lakh for the period from 13.11.2003 to 31.3.2007, which was capitalized as on COD vide order dated 28.4.2008 in Petition No.147/2007 and the refunded license fee of ₹56.71 lakh for the period from 13.11.2003 to COD for all the assets has submitted the following details, vide email dated 4.12.2015:-

(₹ in lakh)							
Petition No.	Region	Line Name	COD	Ckt km	% age	Capitalized license fee (13.11.2003 to 31.3.2007)	Refunded license fee (13.11.2003 to COD)
18/TT/2014	ER-NR	Muzaffarpur-Gorakhpur	1-9-2006	520	22.30	18.86	12.65
19/TT/2014	ER	Siliguri-Purnea	1-9-2006	320	13.72	11.61	7.78
	ER	Purnea-Muzaffarpur	1-9-2006	478	20.50	17.34	11.62
	ER	Muzaffarpur-Muzaffarpur	1-9-2006	48	2.06	1.74	1.17



20/TT/2014	NR	Gorakhpur-Lucknow	1-8-2006	492	21.10	17.85	11.97
	NR	Bareilly-Mandola	1-5-2006	474	20.33	17.19	11.53
Total				2,332	100	84.59	56.71

9. The Regulation 4(2) of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2008, specifies as below:-

“4. License Fee

xxxxx

(2) The transmission licensee granted a licence for the inter-State transmission of electricity shall pay licence fee at the rate of Rs. Two lakh (Rs.2,00,000/-) per annum from the date of grant of licence and up to the date preceding the date of commercial operation of the inter-State transmission system or an element thereof.

Xxxxxx”

10. We have considered the submission of the petitioner. It appears that license fee calculated at the time of capitalization, as well as, in the information regarding de-capitalization of excess license fee up to COD, the date of 1.5.2006 has been considered (the earliest COD amongst six assets of the project as indicated in Table above) for all the assets by the petitioner. We have adopted the same concept to re-work the license fee to be capitalized as on COD. In view of the above, the excess license fee, to be de-capitalized as on COD, comprises of two parts as under:-

a. Excess license fee of ₹56.71 lakh capitalized earlier at the rate of ₹23 lakh (₹25 lakh-₹2.00 lakh) per year from the date of issue of license on 13.11.2003 to COD, the details of which have been submitted by the petitioner as discussed at para-8 above, and

b. License fee at the rate of ₹25 lakh per year from COD to 31.3.2007, which was capitalized and included in IEDC in the Capital Cost earlier, as



submitted vide affidavit dated 14.8.2014. This amount is required to be recovered from the beneficiary states in line with Regulation 42A of the 2009 Tariff Regulations.

11. Accordingly, the license fee to be capitalized as on COD has been worked out as under:-

(₹ in lakh)

Petition No.	COD considered for license fee only	Ckt Km	% age	Licence fee upto COD (To be retained by the Commission)				
				13.11.2003 (Date of TL) to 31-3-2004	1.4.2004 to 31.3.2005	1.4.2005 to 31.3.2006	1.4.2006 to COD	License fee to be Capitalized as on COD
18/TT/2014	1-5-2006	520	22.30	0.17	0.45	0.45	0.04	1.10
19/TT/2014		320	13.72	0.11	0.27	0.27	0.02	0.68
		478	20.50	0.16	0.41	0.41	0.03	1.01
		48	2.06	0.02	0.04	0.04	0.00	0.10
20/TT/2014		492	21.10	0.16	0.42	0.42	0.03	1.04
		474	20.33	0.16	0.41	0.41	0.03	1.00
Total		100		0.77	2.00	2.00	0.16	4.93

12. Thus, the admitted capital cost of ₹38834.37 lakh as on COD has been revised to the extent of the excess license fee to be de-capitalized for the concerned asset/s in different petitions. The details are as follows:-

(₹ in lakh)

Petition No.	Line Name	Actual COD	COD considered for license fee only	License fee to be capitalized as on COD (a)	Refund of excess license fee (From 13.11.2003 to COD) (b)	Excess capitalized license fee (From COD to 31.3.2007) (c)	License fee capitalized Earlier (From 13.11.2003 to 31.3.2007) (d)=(a)+(b)+(c)
18/TT/2014	Muzaffarpur - Gorakhpur	1-9-2006	1-5-2006	1.10	12.65	5.12	18.86
19/TT/2014	Siliguri-Purnea	1-9-2006	1-5-2006	0.68	7.78	3.15	11.61
	Purnea-Muzaffarpur	1-9-2006		1.01	11.62	4.70	17.34
	Muzaffarpur-Muzaffarpur	1-9-2006		0.10	1.17	0.47	1.74
20/TT/2014	Gorakhpur-Lucknow	1-8-2006	1-5-2006	1.04	11.97	4.84	17.85
	Bareilly- Mandola	1-5-2006		1.00	11.53	4.66	17.19
TOTAL				4.93	56.71	22.95	84.59



13. Hence, the capital cost of ₹38834.37 lakh as on COD approved vide order dated 28.4.2008 in Petition No.147/2007, after reducing it by the amount of de-capitalized license fee of ₹17.76 lakh (column (b)+(c)), is revised to ₹38816.61 lakh. The additional capitalization of ₹1321.58 lakh approved vide order dated 28.4.2008 in Petition No.147/2007 for the period from COD to 31.3.2007, remains the same. The ATC was subsequently revised by admitting additional capitalization of ₹1487.36 lakh and ₹194.59 lakh for 2007-08 and 2008-09 respectively, vide order dated 29.07.2009 in Petition No.66/2009 as under:-

Particulars	(₹ in lakh)		
	COD to 31.3.2007	2007-08	2008-09
Depreciation	591.65	1047.44	1066.16
Interest on Loan	1354.51	2526.23	2391.22
Return on Equity	967.63	1717.78	1753.11
Advance against Depreciation	-	1340.99	1335.03
Interest on Working Capital	76.21	160.64	161.80
O & M Expenses	74.62	132.60	138.32
Sub-Total	3064.62	6925.68	6845.64
10% Majoration Factor	306.46	692.57	684.56
Total	3371.08	7618.25	7530.20

14. Consequently, the ATC for 2006-09 period worked out on the basis of the revised capital cost as on COD as at para-13 above, are as follows:-

Particulars	(₹ in lakh)		
	COD to 31.3.2007	2007-08	2008-09
Depreciation	591.38	1046.98	1065.71
Interest on Loan	1353.90	2525.11	2390.13
Return on Equity	967.20	1717.04	1752.36
Advance against Depreciation	-	1340.99	1335.03
Interest on Working Capital	76.18	160.59	161.74
O & M Expenses	74.62	132.60	138.32
Sub-Total	3063.27	6923.30	6843.28
10% Majoration Factor	306.33	692.33	684.33
Total	3369.60	7615.63	7527.60



15. The petitioner was not allowed to recover the license fee vide order dated 28.4.2008 in Petition No. 147/2007 for 2004-09 period. The petitioner has submitted that the transmission license fee is allowed to be recovered directly from the beneficiaries also after COD for 2007-09. The petitioner has submitted that recovery of such fee has been allowed to PGCIL in Petition Nos. 21 and 22 of 2011 vide order dated 25.10.2011. The petitioner has claimed license fee as per Regulation 42A of the 2009 Tariff Regulations. As such, the petitioner has claimed ₹5.12 lakh, ₹5.57 lakh and ₹4.46 lakh from COD to 31.3.2007, 2007-08 and 2008-09 respectively.

16. Regulation 42A of the 2009 Tariff Regulations, specify as under:-

“42A. Reimbursement of Fees, Charges and Expenses

(1) The following fees and charges shall be reimbursed directly by the beneficiaries in proportion of their allocation in the generating stations or by the transmission customers in proportion to their share in the inter-State transmission systems determined in accordance with Regulation 33 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 upto 30.6.2011 and thereafter, in accordance with the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time;

(a) Fees and charges paid by the generating companies and inter-State transmission licensees (including deemed inter-State transmission licensee) under Central Electricity Regulatory Commission (Fees and Charges of Regional Load Despatch Centre and other related matters) Regulations, 2009, as amended from time to time;

(b) Licence fees paid by the inter-State transmission licensees (including the deemed inter-State transmission licensee) in terms of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2008 and Central Electricity Regulatory Commission (Payment of Fees) Regulations 2012 or any subsequent amendment or re-enactment thereof;

(c) Licence fees paid by NHPC Ltd to the State Water Resources Development Authority, Jammu in accordance with the provisions of Jammu & Kashmir Water Resources (Regulations and Management) Act, 2010.



(2) The generating companies and inter-State transmission licensees (including deemed inter-State transmission licensee) shall be entitled to recover the fees and charges as mentioned in clause (1) of this regulation which have been paid till the notification of these regulations.

(3) The Commission may, in its discretion and for the reasons to be recorded in writing and after hearing the affected parties, allow reimbursement of any fee or expenses as may be considered necessary.”

17. The petitioner is allowed to recover the excess capitalized license fee of ₹5.12 lakh, (@ ₹25 lakh per year), from COD to 31.3.2007, as indicated in column (c) of table at para-12, as well as ₹5.57 lakh and ₹4.46 lakh for 2007-08 and 2008-09 respectively for the instant asset directly from the beneficiaries.

Capital Expenditure as on 31.3.2009

18. Regulation 7(2) of the 2009 Tariff Regulations specifies as under:-

“The capital cost admitted by the Commission after prudence check shall form the basis for determination of tariff:

Provided that in case of the thermal generating station and the transmission system, prudence check of capital cost may be carried out based on the benchmark norms to be specified by the Commission from time to time:

Provided further that in cases where benchmark norms have not been specified, prudence check may include scrutiny of the reasonableness of the capital expenditure, financing plan, interest during construction, use of efficient technology, cost over-run and time over-run, and such other matters as may be considered appropriate by the Commission for determination of tariff:

xxxxxxx

xxxxxxx

xxxxxxx

Provided also that in case of the existing projects, the capital cost admitted by the Commission prior to 1.4.2009 and the additional capital expenditure projected to be incurred for the respective year of the tariff period 2009-14, as may be admitted by the Commission, shall form the basis for determination of tariff.”



19. The capital cost of ₹38834.37 lakh, as on date of commercial operation, approved vide order dated 28.4.2008 in Petition No.147/2007, has been revised to ₹38816.61 lakh and there is no change in the additional capitalization of ₹1321.58 lakh for the period from COD to 31.3.2007, as well as of ₹1487.36 lakh and ₹194.59 lakh for 2007-08 and 2008-09 respectively, approved vide order dated 29.7.2009 in Petition No.66/2009. Therefore, the revised capital cost as on 31.3.2009 works out to ₹41820.14 lakh.

20. Except for the above, all other terms contained in order dated 29.7.2009 in Petition No. 66/2009 remain unchanged.

Truing-up of Annual Fixed Charges For 2009-14 Tariff Period

21. Clause (3) of the Regulation 6 of the 2009 Tariff Regulations provides as under:-

“(3) The generating company or the transmission licensee, as the case may be, shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred for the period from 1.4.2009 to 31.3.2014, duly audited and certified by the auditors”.

22. As per Regulation 6 of the 2009 Tariff Regulations, the Commission shall carry out truing-up exercise along with the tariff petition filed for the next tariff period, with respect to the capital expenditure including additional capital expenditure incurred up to 31.3.2014, as admitted by the Commission after prudence check at the time of truing up. Further, as per Regulation 15 of the 2009 Tariff Regulations, the petitioner



is required to adjust the yearly impact of MAT rate in the truing up petition for 2009-14 tariff period.

23. In this context, the petitioner has filed the instant petition, for truing-up of ATC for 2009-13 in 2009-14 tariff period and revision of tariff for 2013-14 in accordance with Regulation 6 of the 2009 Tariff Regulations. Accordingly, the petitioner has submitted the information as required under the 2009 Tariff Regulations for truing-up of annual fixed charges for 2009-14 tariff period. The tariff for 2009-13 has been trued up and tariff for 2013-14 has been revised in the subsequent paragraphs.

24. The petitioner had not claimed additional capital expenditure in Petition No. 286/2009. The Commission had determined the transmission charges for the instant asset for tariff period 2009-14, based on admitted capital cost of ₹41837.90 lakh as on 31.3.2009 and 31.3.2014 in its order dated 18.8.2010 in Petition No. 286/2009. Further, in addition to transmission charges the petitioner was allowed 10% mark up on the transmission charges as the Transmission Majoration Factor. The details of transmission charges allowed vide order dated 18.8.2010 in Petition No. 286/2009 are as given below:-

Particulars	(₹ 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
Total	6957.35	6758.36	6560.19	6362.83	6166.28



25. The details of the transmission charges claimed by the petitioner in the instant petition are as follows:-

(₹ in lakh)					
Particulars	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	2190.75	2192.10	2193.44	2193.44	2193.44
Interest on Loan	2177.69	1874.77	1666.34	1468.30	1329.23
Return on Equity	2343.08	2430.46	2434.28	2434.28	2463.63
Interest on Working Capital	152.11	150.31	144.85	141.50	140.04
O & M Expenses	244.40	297.71	273.26	288.86	305.24
Sub-Total	7108.03	6945.34	6712.17	6526.38	6431.57
Transmission Majoration Factor	710.80	694.53	671.22	652.64	643.16
Total	7818.83	7639.87	7383.39	7179.02	7074.73

26. The details submitted by the petitioner in support of its claim for Interest on Working Capital are as below:-

(₹ in lakh)					
Particulars	2009-10	2010-11	2011-12	2012-13	2013-14
Maintenance Spares	36.66	44.66	40.99	43.33	45.79
O & M expenses	20.37	24.81	22.77	24.07	25.44
Receivables	1184.67	1157.56	1118.70	1087.73	1071.93
Total	1241.70	1227.03	1182.46	1155.13	1143.16
Rate of Interest	12.25%	12.25%	12.25%	12.25%	12.25%
Interest	152.11	150.31	144.85	141.50	140.04

Capital Cost

27. The last proviso to Regulation 7(2) of the 2009 Tariff Regulations provides that:-

“Provided also that in case of the existing projects, the capital cost admitted by the Commission prior to 1.4.2009 duly trued up by excluding un-discharged liability, if any, as on 1.4.2009 and the additional capital expenditure projected to be incurred for the respective year of the tariff period 2009-14, as may be admitted by the Commission, shall form the basis for determination of tariff”.



28. The petitioner has claimed revised capital cost of ₹41825.25 lakh as on 31.3.2009, as against admitted capital cost of ₹41837.90 lakh as on 31.3.2009 in order dated 18.8.2010 in Petition No. 286/2009, for the purpose of tariff determination. However, the revised capital cost of ₹41820.14 lakh now determined, has been considered as opening capital cost as on 1.4.2009 for truing up of tariff in accordance with Regulation 7 of the 2009 Tariff Regulations.

Additional Capital Expenditure

29. The petitioner has claimed additional capital expenditure of ₹90.10 lakh in 2010-11 under Regulation 44 "Power to Relax" of the 2009 Tariff Regulations. An amount of ₹50.83 lakh has been claimed towards consultancy fee paid to Power Grid Corporation of India Limited (PGCIL) and ₹39.27 lakh on account of cost of forest land and compensation for plantation and protection.

30. The petitioner was directed vide letter dated 27.6.2014 to submit the following information:-

i. The Auditor Certificate for claiming additional capital expenditure for the period 2009-14 does not include major heads, such as date of commissioning of the assets, cost as on DOCO and Expenditure incurred/to be incurred during the period 2009-14. The additional capital expenditure amounts being claimed in the petition should match with the Auditor's certificate.

ii. Under which Regulations the petitioner has claimed ₹50.83 lakh towards consultancy fees paid to PGCIL during 2010-11;

iii. The petitioner has paid ₹39.27 lakh for compensation of Forest Land as per directive of MoEF and has mentioned that the cost are recoverable from the beneficiaries u/s 68(5) & (6) of the Act. However, as per the Act, the compensation may be recovered from the licensee. The petitioner is directed to submit the justification to recover such compensation from the beneficiaries;"



31. In response to it, the petitioner vide affidavit dated 25.7.2014 has submitted as under:-

- i. The add-cap of consultancy fees of ₹50.83 lakh paid to PGCIL has only been claimed for the East-North Inter-connector for tariff period 2009-14.
- ii. Allow the consultancy fees of ₹50.83 lakh paid to PGCIL during 2010-11 under the provisions of "Power to Relax" as per Regulation 44 of the 2009 Tariff Regulations.
- iii. The compensation of ₹39.27 lakh for using forest land with the consent from the Forest Department and has been paid under a directive of the MoEF and therefore an unavoidable expense made under section 68 (5) and (6) of the Act.

32. The petitioner had not projected any additional capitalization during the period 2009-14 and accordingly additional capitalization was not considered while approving the ATC for the above period vide order dated 18.8.2010 in Petition No. 286/2009. However, the petitioner has now claimed the revised additional capital expenditure on account of consultancy fee paid to PGCIL. The petitioner during hearing on 21.7.2015 submitted that as per the agreement signed with PGCIL, it had paid 90% of the consultancy fees to PGCIL and capitalized the entire amount in project cost before 31.3.2009. The petitioner subsequently had paid ₹227.97 lakh to PGCIL on 4.12.2010, which has been capitalized in the transmission system in the ratio of the respective transmission line length. Accordingly, ₹50.83 lakh has been capitalized for the instant asset by the petitioner and the Certificate of the Statutory Auditors' pertaining to such additional capitalization has been submitted. The



petitioner has further submitted that as the nature of expenditure does not fall under specific norms of the 2009 Tariff Regulations, this amount has been claimed under Regulation 44 "Power to Relax", as a part of additional capital expenditure for the purpose of computing the ATC.

33. The petitioner, as regards payment of compensation for forest land, has submitted that it has used a part of the forest land for construction of the 400 kV Muzaffarpur-Gorakhpur Transmission Line. During construction, a total of 1.644 hectare of forest land located in the Kushinagar district of Uttar Pradesh was used. The Muzaffarpur-Gorakhpur Transmission line was commissioned in September 2006. It had applied for forest clearance and the Forest Department through their letter dated 3.3.2010 gave the consent for the usage of the above land subject to petitioner providing equivalent land of 1.6444 hectares and compensation for plantation and protection of 869 trees. The petitioner also submitted that all such compensation shall be computed at Net Present Value as per the order passed in Interlocutory Application No. 566 in Writ Petition No. 202/1995 by the Hon'ble Supreme Court of India. The petitioner further submitted that as per the conditions of Forest Land acquisition, it had already paid ₹39.27 lakh on 8.2.2011 to Forest Department as compensation for plantation and protection of 869 trees as per notification of the forest department against the plantation of trees. This compensation has been made under directive of Ministry of Environment and Forest (MoEF) and as such the cost is recoverable from the beneficiaries' under section 68 (5) and (6) of the Act, which provides as under:-

"68 (5).....Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead lines



subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit...."

"(6).....When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable and such person may recover the same from the licensee...."

Explanation: ..For the purpose of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle growth or other plant. "

34. Accordingly, it has considered this expense as a part of O&M Expenses and has proposed for the approval of such compensation amount over and above the normative O&M Expenses for the year in which such expense have been incurred under Regulation 44 "Power to Relax" of the 2009 Tariff Regulations. Further, it is required to purchase equivalent land elsewhere and is liable to transfer the same to the Forest Department at the earliest. However, such land as demanded by the Forest Department is yet to be identified and it has not incurred any cost towards purchase of such land till date. A liability is necessary to be incurred by it as and when the requisite land is purchased and transferred to Forest Department. However, any provision for the liability towards cost in the books of account has been deferred on account of delay in identification and purchase of land, a condition which has not been waived off. The estimated cost of land is ₹80 lakh but the actual liability may vary depending on the location and the market rates of the land identified for the transaction finally. The petitioner has sought liberty to approach the



Commission for capitalization of the cost of the above land as soon as such liability is incurred and the land is transferred to the Forest Department.

35. JVVNL has submitted that the capitalization of payment of consultancy fees as additional capitalization after the cut-off date is not provided in the Regulation 9(1) of the 2009 Tariff Regulations. Therefore, any consultancy charges paid after the cut-off date should be considered a part of A&G expenses and be allowed on normative basis as per the 2009 Tariff Regulations. The beneficiaries should not bear the burden of delay of invoicing and payment of consultancy charges. JVVNL has submitted that if the Commission allows additional capitalization of the consultancy fees, the carrying cost on account of such add-cap should not be allowed to be claimed as delay in invoicing and payment of consultancy fees is a controllable factor and as such passing on this inefficiency to the beneficiaries would be unfair and also shall send the wrong signal with respect to efficiency norms. As regards the claim for compensation towards plantation of trees as additional O&M Expenses, JVVNL has further submitted that the cost of reasonable compensation has to be recovered from licensee, such cost should not be passed on to the beneficiaries as the licensee has already been allowed O&M Expenses under the regulation 19(g) of the 2009 Tariff Regulations. Normative O&M cost determined as per regulation provide adequate coverage of O&M cost of the licensee and as such no additional burden should be passed on to the beneficiaries.

36. In response to reply of JVVNL, the petitioner in its rejoinder has submitted as under:-



“Further, PGCIL has raised the claim of consultancy fees for the consultancy support provided during the project commissioning of the transmission lines of the petitioner. Therefore, such claim is valid and relevant for the service provided by PGCIL to the petitioner as per the original scope of work. However, since such payments had been made after cut-off date as stipulated under CERC Tariff Regulations, 2004 and the nature of expenditure does not falls under specific norms of the CERC Tariff Regulations, 2009, therefore, it is humbly requested that the Hon’ble Commission may kindly approve the same under Regulation 44 “Power to Relax” as a part of Additional Capital Expenditure for the purpose of computation of truing-up of the Annual Transmission Charges for FY 2009-14-----.”

“-----The above compensation has been paid as per the condition precedent for using the Forest Land with the consent from the Forest Department. This compensation has been made under a directive of Ministry of Environment and Forest and is therefore unavoidable expense made u/s 68(5) & (6) of the Electricity Act, 2003-----.”

37. UPPCL has submitted that the payment for consultancy fee was made on 4.12 2010 after the cut-off date. Further, the petitioner had not claimed even an estimated additional capital expenditure in its Petition No 286/2009. As such it should not be allowed.

38. The petitioner, in response to reply of UPPCL has submitted same as against the reply of JVVNL and has further submitted as under:-

“------(i) Deferred liabilities relating to works/services within the original scope of work; It is evident from the above provision of CERC Tariff Regulations 2004 that the deferred liabilities pertaining to services within the original scope of work was allowable subject to prudence check by the Hon’ble Commission. However, CERC Tariff Regulations 2009 do not include such provisions and as such the Respondent No. 8 has relied on such omission of the above provision in CERC Tariff Regulations 2009 to raise its objection. It is humbly submitted that payment towards such deferred liabilities like Consultancy Fees which is a part of the Original Scope of Work had been envisaged based on the above provision of the CERC Tariff Regulations 2004. It is further submitted that the above payment of Consultancy Fees was a part of the



Original Scope of Work which is evident from the Agreement between the Petitioner and PGCIL dated 21.2.2004 which defines the Scope of Work of PGCIL and the Terms of Payment of the Consultancy Fees.”

“-----However, the payment of Consultancy Fees could not be discharged before 31.03.2009 since PGCIL raised the invoice only on 29.09.2010. Since the above payment of Consultancy Fees is the final disbursement, it includes all the adjustments on account of the Final Project Cost as approved by the Hon’ble Commission as per -----“

39. Regulation 9(2)(viii) of the 2009 Tariff Regulations provides as under:-

“.... (viii) any un-discharged liability towards final payment/withheld payment due to contractual exigencies for works executed within the cut-off date, after prudence check of the details of such deferred liability, total estimated cost of package, reason for such with-holding of payment and release of such payments etc.....”

40. We have considered the submissions of the respondents and the petitioner. The consultancy fee was paid by the petitioner after the cut-off date for the services rendered by PGCIL before the cut-off date. We are of the view that the petitioner is eligible for consultancy charges under Regulation 9(2)(viii) of the 2009 Tariff Regulations. As regards, compensation of plantation and maintenance of trees, the petitioner has claimed this expense as a part of O&M Expenses and has proposed for approval of such compensation amount over and above the normative O&M expenses under Regulation 44 (Power to Relax) of the 2009 Tariff Regulations. The petitioner has submitted that the approval was obtained from the Forest Department for the acquisition of 1.644 hectares of forest land in Kushinagar district of UP and a total of 869 trees were also cut for the construction of the transmission line. The consent for the forest land acquisition was conditional and provided that the petitioner would compensate for the trees through plantation and would provide equivalent land to the Forest Department. The petitioner has submitted that



payment of ₹39.27 lakh has been made against plantation and maintenance of trees but no proof of such payment made by the petitioner has been submitted. The petitioner has submitted only a copy of the letter dated 17.11.2011 from the Forest Department, wherein it has been stated that no payment towards compensation of ₹39.27 lakh has been made by the petitioner, as was informed by the Forest Department vide their earlier letter dated 3.3.2010. The petitioner has also not submitted any reasons as to why the payment was made after a long gap of four years and half years approximately on 8.2.2011, when the date of commercial operation of the line was 1.9.2006. Further, the equivalent land is yet to be identified and purchased by petitioner, as such the matter has not yet attained finality. The petitioner has considered these expenses as a part of O&M Expenses. In our considered view, there is no separate provision of allowing any compensation for cutting, plantation and maintenance of trees over and above normative O&M Expenses. We also find that the instant asset was declared under commercial operation in 2006 but no provision of this liability was created and claimed by the petitioner, although the petitioner was well aware of such conditions imposed by the Forest Department. The petitioner has claimed the expenditure during 2010-11, even though the issue is yet to reach finality as no land has been indentified to be handed over to the Forest Department. Therefore, on attaining finality, the petitioner may approach the Commission in this regard.

41. Thus, the capital cost as on 31.3.2009/1.4.2009 and 31.3.2014 allowed earlier vide order dated 18.8.2010 in Petition No. 286/2009 and considered now after revision of capital cost of the instant asset as on COD, for truing-up is as under:-



(₹ in lakh)

Capital cost as on 1.4.2009	Claimed/ Approved	Additional capital expenditure during 2009-14					Total cost as on 31.3.2014
		2009-10	2010-11	2011-12	2012-13	2013-14	
41837.90	vide order dated 18.8.2010	-	-	-	-	-	41837.90
41820.14	Incurred during 2009-14	-	50.83	-	-	-	41870.97

Debt: Equity Ratio

42. Clause (2) of Regulation 12 of the 2009 Tariff Regulations provides that:-

“12. Debt-Equity Ratio. (1) For a project declared under commercial operation on or after 1.4.2009, 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 where equity actually deployed is less than 30% of the capital cost, the actual equity shall be considered for determination of tariff:

(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.

(3) Any expenditure incurred or projected to be incurred on or after 1.4.2009 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.”

43. The debt: equity ratio of 70:30 for additional capital expenditure as claimed by the petitioner is in accordance with the Regulation 12 (2) of the 2009 Tariff Regulations and hence, same has been considered towards financing of the additional capital expenditure.

44. The admitted debt: equity ratio of 70:30 as on 31.3.2009 was also considered by the Commission in order dated 18.8.2010 in Petition No. 286/2009 in line with the Regulation 12 of the 2009 Tariff Regulations. In respect of the additional



capitalization, debt: equity ratio of 70:30 has been considered in line with the 2009 Tariff Regulations.

45. The details of the debt: equity considered for the purpose of tariff for 2009-14 tariff period is as follows:-

(₹ in lakh)

Particulars	Cost as on 1.4.2009		Cost as on 31.3.2014	
	Amount	%	Amount	%
Debt	29274.10	70.00	29309.68	70.00
Equity	12546.04	30.00	12561.29	30.00
Total	41820.14	100.00	41870.97	100.00

Return on Equity ("RoE")

46. Regulation 15 of the 2009 Tariff Regulations provide 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% for thermal generating stations, transmission system and run of the river generating station, and 16.5% for the storage type generating stations including pumped storage hydro generating stations and run of river generating station with pondage and shall 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 Minimum Alternate/Corporate Income Tax Rate for the year 2008-09, as per the Income Tax Act, 1961, as applicable to the concerned generating company or the transmission licensee, as the case may be:

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

Rate of pre-tax return on equity = Base rate / (1-t)

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



(5) The generating company or the transmission licensee as the case may be, shall recover the shortfall or refund the excess Annual Fixed charge 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;

Provided further that Annual Fixed charge with respect to the 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 financial year during the tariff period shall be trued up in accordance with Regulation 6 of these regulations".

47. The variation in the tax rate during the 2009-14 tariff period applicable to the petitioner as per the Finance Act of the relevant year for the purpose of grossing up of return on equity (RoE) has been furnished as follows:-

Year	MAT Rate claimed in the current petition (in % age)	Grossed up ROE (Base Rate/(1-t)) claimed in the current petition (in % age)
2009-10	16.995	18.674
2010-11	19.931	19.358
2011-12	20.008	19.377
2012-13	20.008	19.377
2013-14	20.961	19.610

48. The details of return on equity calculated are as given under:-

Particulars	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Opening Equity	12546.04	12546.04	12561.29	12561.29	12561.29
Addition due to Additional Capitalisation	-	15.25	-	-	-
Closing Equity	12546.04	12561.29	12561.29	12561.29	12561.29
Average Equity	12546.04	12553.67	12561.29	12561.29	12561.29
Return on Equity (Base Rate)	15.50%	15.50%	15.50%	15.50%	15.50%
MAT rate for the respective year	16.995%	19.931%	20.008%	20.008%	20.961%
Rate of Return on Equity (Pre-Tax)	18.674%	19.358%	19.377%	19.377%	19.610%
Return on Equity (Pre-Tax)	2342.85	2430.14	2434.00	2434.00	2463.27



49. The difference in the approved RoE and that allowed after truing up is on account of actual grossed up RoE based on actual MAT rate. The RoE as trued up and allowed is as follows:-

	(₹ in lakh)				
Return on Equity	2009-10	2010-11	2011-12	2012-13	2013-14
As approved vide Order dated 18.8.2010	2194.10	2194.10	2194.10	2194.10	2194.10
Claimed by the petitioner	2343.08	2430.46	2434.28	2434.28	2463.63
Allowed after true up in this order	2342.85	2430.14	2434.00	2434.00	2463.27

Interest on Loan (“IoL”)

50. Regulation 16 of the 2009 Tariff 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.”

51. Regulation 16 of the 2009 Tariff Regulations provide the methodology for working out weighted average rate of IoL. The petitioner has claimed actual repayment of loan for calculation of interest on loan instead of considering depreciation as repayment. As per the 2009 Tariff Regulations repayment for the tariff period 2009-14 shall be deemed to be equal to the depreciation allowed for that period and same has been considered for the purpose of truing-up of tariff calculations in this order. The interest rates as submitted by the petitioner vide affidavit dated 12.8.2015 have been considered for calculating the IoL.

52. In these calculations, interest on loan has been worked out as under:-

(a) The normative loan outstanding as on 1.4.2009 has been worked out by deducting the cumulative repayment as admitted upto 31.3.2009 from the gross normative loan. The rate of interest is taken as weighted average rate of



interest calculated on the basis of the actual average loan portfolio for each year of the tariff period;

(b) The repayment during each year of the tariff period 2009-14 has been considered to be equal to the depreciation allowed for that period. Tariff is worked out considering normative loan and normative repayments; and

(c) Weighted average rate of interest on actual loan worked out as per (a) above is applied on the notional average loan during the year to arrive at the interest on loan.

53. Detailed calculations of the weighted average rate of interest have been given at Annexure to this order.

54. The details of Interest on Loan calculated are as follows:-

(₹ in lakh)					
Particulars	2009-10	2010-11	2011-12	2012-13	2013-14
Gross Normative Loan	29274.10	29274.10	29309.68	29309.68	29309.68
Cumulative Repayment upto Previous Year	5380.08	7570.57	9762.39	11955.56	14148.73
Net Loan-Opening	23894.01	21703.53	19547.28	17354.12	15160.95
Addition due to Additional Capitalisation	-	35.58	-	-	-
Repayment during the year	2190.48	2191.83	2193.17	2193.17	2193.17
Net Loan-Closing	21703.53	19547.28	17354.12	15160.95	12967.78
Average Loan	22798.77	20625.41	18450.70	16257.53	14064.37
Weighted Average Rate of Interest on Loan	9.5504%	9.0861%	9.0284%	9.0284%	9.4474%
Interest	2177.37	1874.05	1665.81	1467.79	1328.72

55. The difference in the approved IoL and that allowed after truing-up is on account of change in the weighted average rate of interest, which is computed



based on actual average loan portfolio and rate of interest. The details of IoL allowed are as follows:-

	(₹ in lakh)				
Interest on Loan	2009-10	2010-11	2011-12	2012-13	2013-14
As approved vide Order dated 18.8.2010	2178.40	1969.03	1759.65	1550.28	1340.89
Claimed by the petitioner	2177.69	1874.77	1666.34	1468.30	1329.23
Allowed after true up in this order	2177.37	1874.05	1665.81	1467.79	1328.72

Depreciation

56. Regulation 17 of the 2009 Tariff Regulations provides for computation of depreciation in the following manner, namely:-

“17. **Depreciation** (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.

Provided that in case of hydro generating stations, the salvage value shall be as provided in the agreement signed by the developers with the State Government for creation of the site;

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

(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.”



57. The date of commercial operation of assets covered in the petition fall in the year 2006-07. Accordingly, the asset will complete 12 years beyond 2013-14 and thus depreciation has been calculated annually based on Straight Line Method on the admitted capital expenditure upto 31.3.2009 as per revised calculations.

58. The details of the depreciation calculated are as under:-

(₹ in lakh)					
Particulars	2009-10	2010-11	2011-12	2012-13	2013-14
Opening Gross Block (Revised)	41820.14	41820.14	41870.97	41870.97	41870.97
Additional Capital expenditure	-	50.83	-	-	-
Closing Gross Block	41820.14	41870.97	41870.97	41870.97	41870.97
Average Gross Block	41820.14	41845.55	41870.97	41870.97	41870.97
Rate of Depreciation	5.2379%	5.2379%	5.2379%	5.2379%	5.2379%
Depreciable Value	37576.41	37599.28	37622.16	37622.16	37622.16
Elapsed life	3	4	5	6	7
Remaining Depreciable Value	32196.33	30028.72	27859.77	25666.60	23473.43
Depreciation	2190.48	2191.83	2193.17	2193.17	2193.17

59. The difference in the approved depreciation and that allowed after truing-up is on account of revision in opening gross block and change in gross block during the 2009-14 tariff period. The depreciation allowed is as follows:-

(₹ in lakh)					
Depreciation	2009-10	2010-11	2011-12	2012-13	2013-14
As approved vide Order dated 18.8.2010	2191.42	2191.42	2191.42	2191.42	2191.42
Claimed by the petitioner	2190.75	2192.10	2193.44	2193.44	2193.44
Allowed after true-up in this order	2190.48	2191.83	2193.17	2193.17	2193.17

Operation & Maintenance Expenses (O&M Expenses)

60. Clause (g) of Regulation 19 of the 2009 Tariff Regulations specifies the norms for O&M Expenses for the transmission system. The normative O&M Expenses are



not required to be trued up. However, the petitioner's claim of ₹39.27 lakh as O&M Expenses beyond the norms has not been allowed as discussed at para-40. Accordingly, the total allowable O&M Expenses for the instant assets have been worked out based on norms of O&M Expenses and the details are as follows:-

(₹ in lakh)					
O&M Expenses	2009-10	2010-11	2011-12	2012-13	2013-14
As approved vide Order dated 18.8.2010	244.40	258.44	273.26	288.86	305.24
Claimed by the petitioner	244.40	297.71	273.26	288.86	305.24
Allowed after true up in this order	244.40	258.44	273.26	288.86	305.24

Interest on Working Capital (IWC)

61. As per the 2009 Tariff Regulations the components of the working capital and the interest thereon are discussed as follows:-

(i) Receivables

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

(ii) Maintenance spares

Regulation 18(1)(c)(ii) of the 2009 Tariff Regulations provides for maintenance spares @ 15% per annum of the O & M Expenses from 1.4.2009. The value of maintenance spares has accordingly been worked out.



(iii) O & M Expenses

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

(iv) Rate of interest on working capital

As provided under 18(3) of the 2009 Tariff Regulations, SBI PLR rate of 12.25% as on 1.4.2009 has been considered for the purpose of working out the interest on working capital.

62. Necessary calculations in support of interest on working capital are as under:-

(₹ in lakh)					
Particulars	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	1184.53	1150.46	1118.51	1087.55	1071.73
Total	1241.56	1210.77	1182.27	1154.95	1142.96
Rate of Interest	12.25%	12.25%	12.25%	12.25%	12.25%
Interest	152.09	148.32	144.83	141.48	140.01

63. The difference in the approved IWC and that allowed after truing up is on account of change in the receivables during the 2009-14 tariff period. The IWC allowed are as follows:-

(₹ in lakh)					
Interest on Working Capital	2009-10	2010-11	2011-12	2012-13	2013-14
As approved vide Order dated 18.8.2010	149.03	145.37	141.75	138.16	134.62
Claimed by the petitioner	152.11	150.31	144.85	141.50	140.04
Allowed after true up in this order	152.09	148.32	144.83	141.48	140.01



Transmission Majoration Factor (TMF)

64. The petitioner has submitted that Transmission Majoration Factor (TMF) was allowed vide order dated 1.7.2004 in Petition No. 51 of 2004. Thus, the petitioner has claimed Transmission Majoration Factor for 2009-14 and included the same in the proposed true-up of Annual Transmission Charges.

65. UPPCL has submitted that 2004 Tariff Regulations and the 2009 Tariff Regulations are silent about TMF and should not be allowed. UPPCL has also submitted that TMF was prescribed in 2001 when adequate provision was not made in the corresponding regulations in respect of insurance charges and O&M Expenses. UPPCL has further submitted that the rate of TMF at 10% is high compared to the margin of traders at 1% and the petitioner is getting ATC on the entire investment with adequate RoE alongwith O&M Expenses. As such the Commission has to maintain a balance between the need of private investment in the power sector and the consumer and allowing TMF to the petitioner would not be rational. BRPL has also raised the similar issue, though the reply as submitted by the petitioner relates to the true-up petition of 2013-14. However, during the hearing on 20.8.2015, the learned counsel for BRPL submitted that the introduction of TMF was based on the assumption that the private investors in transmission have to incur additional liabilities in their pioneering efforts compared to long standing Central Transmission Utility. Subsequent to the 2001- 04 period, no such facility was extended in the 2004 Tariff Regulations or 2009 or 2014 Tariff Regulations. Moreover, the asset in question was commissioned in September, 2006. This being so, TMF may not be allowed to the petitioner.



66. Regulation 4.10A was inserted vide first amendment to CERC (T&C) of Tariff Regulation 2001. TMF @10% mark up (pre-tax) on the Transmission Charges had been approved in earlier orders, vide order dated 29.7.2009 in Petition No.66/2009 and order dated 18.8.2010 in Petition No.286/2009. This has been considered for the purpose of computation of tariff for 2009-14 period.

Incentive

67. The petitioner has claimed the 'Incentive' (pre-tax) based on the actual availability during 2009-13 and estimated availability during 2013-14 on Annual Fixed Charges (including Majoration Charges).

68. JVVNL has submitted that the petitioner's claim of additional incentive on account of revision of various components of AFC should not be allowed as the beneficiaries have been paying the bills on a timely basis wherein the beneficiaries are already under severe financial stress. The petitioner in its rejoinder has submitted that its claim is as per the 2009 Tariff Regulations and the prayer of JVVNL is baseless and therefore be dismissed.

69. We have considered the submissions of both JVVNL and the petitioner. Regulation-23 of the 2009 Tariff Regulations-2009 specifies as under:-

"23. Computation and Payment of Transmission Charge for Inter-State Transmission System

(1) The fixed cost of the transmission system shall be computed on annual basis, in accordance with norms contained in these regulations, aggregated as appropriate, and recovered on monthly basis as transmission charge from the users, who shall share these charges in the manner specified in Regulation 33.

(2) The transmission charge (inclusive of incentive) payable for a calendar month for a transmission system or part thereof shall be



xxxx

xxxx

(3) The transmission charges shall be calculated separately for part of the transmission system having differing NATAF, and aggregated thereafter, according to their sharing by the beneficiaries.

(4) The transmission licensee shall raise the bill for the transmission charge (inclusive of incentive) for a month based on its estimate of TAFM. Adjustments, if any, shall be made on the basis of the TAFM to be certified by the Member-Secretary of the Regional Power Committee of the concerned region within 30 days from the last day of the relevant month.”

70. Accordingly, the petitioner is allowed to calculate and bill incentive as per Regulation 23 of the 2009 Tariff Regulations for recovery.

Sales Tax Liability

71. The petitioner has submitted that it had applied for registration under U.P. Sales Tax Act in the State of Lucknow and was granted certificates of Registration on 3.3.2004 and had mentioned its business as “Transmission of Electricity and Power” in the Application form under the heading “Business of the Company”. However, the U.P. Sales Tax Department had issued a notice dated 14.9.2011, under Section 7(4) of the Central Sales Tax Act, 1956 for cancellation of registration stating that the Registration can be issued only for the business of generation or distribution of electricity, whereas the Company is into transmission of electricity. The Department had issued a show-cause notice under Section 10(A) of the Central Sales Tax Act 1956 on 2.5.2012, as to why penalty should not be levied for purchase of goods against issue of Form C. The Department had stated that as the company is in the transmission business. It is not entitled for Form C. Accordingly,



the Department had levied a penalty equivalent to the Differential Tax, i.e. 12% Tax to be paid less 4% Concessional Tax paid by way of issuance of Form C, as under:-

(₹ in lakh)	
Financial Year	Amount of penalty
2004-05	1173.00
2005-06	1256.00
2006-07	63.00
2007-08	3.00
Total	2497.00

72. The petitioner has further submitted that they have not yet made payment of such penal amount to Central Sales Tax Department. Accordingly, the above penal amount has been treated as a Contingent Liability in its books of Account and an Appeal has been filed before the Hon'ble Allahabad High Court. The petitioner has submitted that the instant petition has been filed without prejudice to this Appeal and has sought liberty to request approval of the Commission for capitalization of such penal sales tax amount and the transmission charges pertaining to the corresponding capitalization once the above liability is actually incurred by it.

73. UPPCL has submitted that the amount is a penal amount and has been treated as contingent liability by the petitioner. UPPCL has further submitted that as the matter is sub-judice it will be premature to allow the amount to be capitalised. It is clear from the petitioner's submission that the said liability is penal in nature and in any case the case is sub-judice. Further, such liabilities are covered under O&M Expenses. Hence, we are not inclined to allow it.



Annual Fixed Charges (AFC) For 2009-13 and Revised AFC for 2013-14

74. The detailed computation of the various components of the trued up annual fixed charges for the instant transmission asset for 2009-13 and revised AFC for 2013-14 in the tariff period 2009-14 allowed are as under:-

Particulars	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	2190.48	2191.83	2193.17	2193.17	2193.17
Interest on Loan	2177.37	1874.05	1665.81	1467.79	1328.72
Return on Equity	2342.85	2430.14	2434.00	2434.00	2463.27
Interest on Working Capital	152.09	148.32	144.83	141.48	140.01
O & M Expenses	244.40	258.44	273.26	288.86	305.24
Sub-Total	7107.19	6902.78	6711.06	6525.30	6430.40
Transmission Majoration Factor	710.72	690.28	671.11	652.53	643.04
Total	7817.91	7593.05	7382.17	7177.83	7073.44

Filing Fee and the Publication Expenses

75. 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 42 of the 2009 Tariff Regulations.

Licence Fee

76. The petitioner has submitted that in O&M norms for tariff block 2009-14 the cost associated with license fees had not been captured and the license fee may be allowed to be recovered separately from the respondents. The petitioner shall be entitled for reimbursement of licence fee in accordance with Regulation 42 A (1) (b) of the 2009 Tariff Regulations.



Sharing of Transmission Charges

77. 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 18, 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 Tariff Regulations up to 30.6.2011. With effect from 1.7.2011, the billing, collection and disbursement of the transmission charges shall be governed by the provision of Central Electricity Regulatory Commission (Sharing of Inter-state Transmission Charges and Losses) Regulations, 2010 as amended from time to time.

78. The petitioner has been availing promotional scheme of Transmission Majoration Factor (TMF) since COD, in accordance with Regulation 4.10A introduced vide Central Electricity Regulatory Commission (Terms & Conditions of Tariff) (First Amendment) Regulations, 2001, dated 21.9.2001 which were to remain in force for the entire life of the transmission project unless reviewed earlier or extended by the Commission. It is pertinent to mention that TMF was introduced to encourage private sector participation in transmission sector, however, subsequently a number of private players/JVs have entered into the area of transmission on or after 1st April 2004. The Commission is of the view that there is a need to review the impact of the promotional scheme of TMF and its continuation.



Accordingly, Commission directs the staff to examine the issue and submit to the Commission.

79. This order disposes of Petition No.18/TT/2014.

sd/-
(M.K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson



Annexure

(₹ in lakh)

CALCULATION OF WEIGHTED AVERAGE RATE OF INTEREST ON LOAN						
	Details of Loan	2009-10	2010-11	2011-12	2012-13	2013-14
1	IFC					
	Gross loan opening	8849.25	8849.25	8860.08	8860.08	8860.08
	Cumulative Repayment upto DOCO/previous year	1471.46	2208.90	2946.79	3685.13	4423.47
	Net Loan-Opening	7377.79	6640.35	5913.29	5174.95	4436.61
	Additions during the year	0.00	10.83	0.00	0.00	0.00
	Repayment during the year	737.44	737.89	738.34	738.34	738.34
	Net Loan-Closing	6640.35	5913.29	5174.95	4436.61	3698.27
	Average Loan	7009.07	6276.82	5544.12	4805.78	4067.44
	Rate of Interest	8.80%	8.80%	8.80%	8.80%	8.80%
	Interest	616.80	552.36	487.88	422.91	357.94
	Rep Schedule	24 semi annual equal instalments from 15.07.2007				
2	ADB					
	Gross loan opening	7868.47	7868.47	7878.10	7878.10	7878.10
	Cumulative Repayment upto DOCO/previous year	1308.38	1964.09	2620.19	3276.70	3933.21
	Net Loan-Opening	6560.09	5904.38	5257.91	4601.40	3944.89
	Additions during the year	0.00	9.63	0.00	0.00	0.00
	Repayment during the year	655.71	656.11	656.51	656.51	656.51
	Net Loan-Closing	5904.38	5257.91	4601.40	3944.89	3288.38
	Average Loan	6232.24	5581.15	4929.65	4273.14	3616.64
	Rate of Interest	9.14%	9.14%	9.14%	9.14%	9.14%
	Interest	569.63	510.12	450.57	390.57	330.56
	Rep Schedule	24 semi annual equal instalments from 15.07.2007				
3	IDFC					
	Gross loan opening	6648.49	6648.49	6656.51	6656.51	6656.51
	Cumulative Repayment upto DOCO/previous year	1105.51	1659.55	2236.68	2791.38	3346.09
	Net Loan-Opening	5542.98	4988.94	4419.84	3865.13	3310.42
	Additions during the year	0.00	8.02	0.00	0.00	0.00
	Repayment during the year	554.04	577.13	554.71	554.71	554.71
	Net Loan-Closing	4988.94	4419.84	3865.13	3310.42	2755.71
	Average Loan	5265.96	4704.39	4142.48	3587.77	3033.06
	Rate of Interest	10.48%	9.34%	9.20%	9.20%	10.08%
	Interest	551.87	439.39	381.11	330.08	305.73
	Rep Schedule	48 quarterly instalments from 15.04.2007				
4	SBI					
	Gross loan opening	5920.33	5920.33	5927.44	5927.44	5927.44
	Cumulative Repayment upto DOCO/previous year	1106.39	1599.75	2093.41	2587.36	3081.31
	Net Loan-Opening	4813.94	4320.58	3834.03	3340.08	2846.13
	Additions during the year	0.00	7.11	0.00	0.00	0.00
	Repayment during the year	493.36	493.66	493.95	493.95	493.95
	Net Loan-Closing	4320.58	3834.03	3340.08	2846.13	2352.18
	Average Loan	4567.26	4077.31	3587.06	3093.11	2599.15
	Rate of Interest	10.19%	9.16%	9.03%	9.03%	10.15%



	Interest	465.40	373.48	323.91	279.31	263.81
	Rep Schedule	48 quarterly instalments from 31.03.2007				
	Total Loan					
	Gross loan opening	29286.54	29286.54	29322.13	29322.13	29322.13
	Cumulative Repayment upto DOCO/previous year	4991.74	7432.28	9897.06	12340.57	14784.08
	Net Loan-Opening	24294.80	21854.26	19425.07	16981.56	14538.05
	Additions during the year	0.00	35.59	0.00	0.00	0.00
	Repayment during the year	2440.54	2464.78	2443.51	2443.51	2443.51
	Net Loan-Closing	21854.26	19425.07	16981.56	14538.05	12094.54
	Average Loan	23074.53	20639.66	18203.32	15759.81	13316.30
	Rate of Interest	9.5504%	9.0861%	9.0284%	9.0284%	9.4474%
	Interest	2203.70	1875.35	1643.47	1422.86	1258.04

