

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 14/TT/2020**

**Coram:**

**Shri P. K. Pujari, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri Pravas Kumar Singh, Member**

**Date of order: 20.05.2021**

**In the matter of:**

Approval under Regulation 86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999 and revision of transmission tariff of the 2004-09 and 2009-14 tariff periods, truing up of transmission tariff of the 2014-19 tariff period under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2014, and determination of transmission tariff of the 2019-24 tariff period under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2019 for Combined Asset consisting of **Asset-a:** 50 MVAR Bus reactor at Hisar Sub-station; **Asset-b:** LILO of 400 kV Moga-Hissar line, ICT-I at Fatehabad Sub-station, 4 nos. 220 kV line bays (feeders from Fatehabad-1 and Fatehabad-2) and 50 MVAR bus reactor bay along with associated bays at Fatehabad Sub-station; **Asset-c:** Total upstream system including Malerkotla-Ludhiana-Jalandhar transmission line along with associated bays at Ludhiana Sub-station and Malerkotla Sub-station; **Asset-d:** ICT-I along with associated bays at Ludhiana Sub-station; **Asset-e:** ICT-II along with associated bays at Ludhiana Sub-station; **Asset-f:** 315 MVA, 400/220 kV ICT-II along with associated bays at 400/220 kV Fatehabad Sub-station under Northern Region System Strengthening Scheme-III (NRSSS-III) in Northern Region.

**And in the matter of:**

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

**.....Petitioner**

**Versus**

1. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.  
Vidyut Bhawan, Vidyut Marg, Jaipur-302005.
2. Ajmer Vidyut Vitran Nigam Ltd.  
132 kV, GSS RVPNL Sub-station Building,  
Caligiri Road, Malviya Nagar, Jaipur-302017 (Rajasthan).



3. Jaipur Vidyut Vitran Nigam Ltd.  
132 kV, GSS RVPNL Sub-station Building,  
Caligiri Road, Malviya Nagar, Jaipur-302017 (Rajasthan).
4. Jodhpur Vidyut Vitran Nigam Ltd.  
132 kV, GSS RVPNL Sub-station Building,  
Caligiri Road, Malviya Nagar, Jaipur-302017 (Rajasthan).
5. Himachal Pradesh State Electricity Board  
Vidyut Bhawan, Kumar House Complex Building II  
Shimla-171004.
6. Punjab State Electricity Board  
The Mall, Patiala-147001.
7. Haryana Power Purchase Centre  
Shakti Bhawan, Sector-6,  
Panchkula-134109 (Haryana).
8. Power Development Deptt.  
Government of Jammu & Kashmir,  
Mini Secretariat, Jammu.
9. Uttar Pradesh Power Corporation Ltd. (UPPCL)  
(Formerly Uttar Pradesh State Electricity Board)  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow-226001.
10. Delhi Transco Ltd.  
Shakti Sadan, Kotla Road,  
New Delhi-110002.
11. BSES Yamuna Power Ltd. (BYPL)  
BSES Bhawan, Nehru Place,  
New Delhi.
12. BSES Rajdhani Power Ltd. (BRPL)  
BSES Bhawan, Nehru Place,  
New Delhi.
13. Tata Power Delhi Distribution Ltd.  
33 kV Sub-station Building,  
Hudson Lane, Kingsway Camp,  
North Delhi-110009.



14. Chandigarh Administration  
Sector-9, Chandigarh.

15. Uttarakhand Power Corporation Ltd.,  
Urja Bhawan, Kanwali Road,  
Dehradun.

16. North Central Railway  
Allahabad.

17. New Delhi Municipal Council  
Palika Kendra, Sansad Marg,  
New Delhi-110002.

.....Respondent(s)

**For Petitioner:** Shri S. S. Raju, PGCIL  
Shri B. Dash, PGCIL  
Shri V. P. Rastogi, PGCIL  
Shri A. K. Verma, PGCIL

**For Respondent:** Shri R. B. Sharma, Advocate, BRPL  
Shri Mohit Mudgal, Advocate, BYPL  
Ms. Megha Bajpeyi, BRPL

### **ORDER**

The instant petition has been filed by Power Grid Corporation of India Ltd., a deemed transmission licensee for revision of transmission tariff for the 2004-09 and 2009-14 tariff periods, truing up of transmission tariff of the period from 1.4.2014 to 31.3.2019 under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2014 (hereinafter referred to as “the 2014 Tariff Regulations”) and for determination of transmission tariff of the 2019-24 tariff period under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2019 (hereinafter referred to as “the 2019 Tariff Regulations”) of the following assets under NRSSS-III in the Northern Region (hereinafter referred to as the “transmission project”):

- i) **Asset-a:** 50 MVAR Bus reactor at Hisar Sub-station;



- ii) **Asset-b:** LILO of 400 kV Moga-Hissar line, ICT-I at Fatehabad Sub-station, 4 nos. 220 kV line bays (feeders from Fatehabad-1 and Fatehabad-2) and 50 MVAR bus reactor bay along with associated bays at Fatehabad Sub-station;
- iii) **Asset-c:** Total upstream system including Malerkotla-Ludhiana-Jalandhar transmission line along with associated bays at Ludhiana Sub-station Malerkotla Sub-station;
- iv) **Asset-d:** ICT-I along with associated bays at Ludhiana Sub-station;
- v) **Asset-e:** ICT-II along with associated bays at Ludhiana Sub-station;
- vi) **Asset-f:** 315 MVA, 400/220 kV ICT-II along with associated bays at 400/220 kV Fatehabad Sub-station (hereinafter collectively referred to as "the transmission assets/ Combined Asset").

2. The Petitioner has made the following prayers in this Petition:

*"1) Approve the revised Transmission Tariff for 2004-09 block and transmission tariff for 2009-14 block for the assets covered under this petition, as per para 8 above.*

*2) Approve the trued up Transmission Tariff for 2014-19 block and transmission tariff for 2019-24 block for the assets covered under this petition, as per para 9 and 10 above.*

*3) Allow the petitioner to recover the shortfall or refund the excess Annual Fixed Charges, on account of Return on Equity due to change in applicable Minimum Alternate/Corporate Income Tax rate as per the Income Tax Act, 1961 (as amended from time to time) of the respective financial year directly without making any application before the Commission as provided in Tariff regulations 2014 and tariff regulation'19 as per para 9.0 & 10 above for respective block.*

*Further it is submitted that deferred tax liability before 01.04.2009 shall be recoverable from the beneficiaries or long term customers / DIC as the case may be, as and when the same is materialized as per regulation 49 of 2014 and regulation 67 of 2019 tariff regulation. The petitioner may be allow to recover the deferred tax liability materialised directly without making any application before the commission as provided in the regulation.*

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

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

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



7) Allow the petitioner to recover FERV on the foreign loans deployed as provided under clause 68 of the Tariff Regulations,2019

8) Allow the petitioner to file a separate petition before Hon'ble Commission for claiming the overall security expenses and consequential IOWC on that security expenses as mentioned at para 10.5 above.

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

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

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

### **Backdrop**

3. The brief facts of the case are as follows:

- a. The Investment Approval for the transmission project was accorded by Board of Directors (BOD) of the Petitioner company vide Memorandum dated 13.7.2004 at an estimated cost of ₹23052 lakh, including IDC of ₹1477 lakh. Subsequently, the approval for Revised Cost Estimate (RCE) was accorded by BOD vide Memorandum dated 26.2.2008 at an estimated cost of ₹32690 lakh, including IDC of ₹1826 lakh.
- b. The transmission tariff upto the Date of Commercial Operation (COD) and Additional Capital Expenditure (ACE) from COD to 31.3.2008 for Asset-a, Asset-b and Asset-f was determined vide order dated 20.4.2009 in Petition No. 134/2008; the transmission tariff for Asset-a, Asset-b and Asset-f was revised vide order dated 18.6.2010 in Petition No. 65/2010 due to ACE during 2008-09 period. The transmission tariff and ACE from COD to 31.3.2009 for Asset-c, Asset-d and Asset-e was determined vide order dated 15.2.2010 in Petition No. 163/2009. The transmission tariff for the transmission assets for the period from 1.4.2009 to 31.3.2014 was determined vide order dated 4.4.2011 in Petition No. 268/2010. The transmission tariff of the 2009-14 tariff period was trued-up and transmission tariff of the 2014-19 tariff period was determined vide order dated 29.2.2016 in Petition No. 2/TT/2015.



- c. The Petitioner has sought revision of transmission tariff approved for the 2004-09 tariff period on account of change in Interest on Loan (IoL) and Interest on Working Capital (IWC) to the extent of revision in IoL and in Maintenance Spares in terms of the judgments of the Appellate Tribunal for Electricity (APTEL) dated 22.1.2007 and 13.6.2007 in Appeal Nos. 81/2005 and 139/2006 respectively. The Petitioner has also sought consequential revision of tariff allowed for the 2009-14 tariff period, truing up of transmission tariff of the 2014-19 transmission tariff period and determination of transmission tariff of the 2019-24 transmission tariff period for the transmission assets.
- d. APTEL vide judgments dated 22.1.2007 in Appeal No.81/2005 and batch matters, and judgment dated 13.6.2007 in Appeal No. 139/2006 pertaining to generating stations of NTPC decided, inter alia, the following issues:
- (i) Computation of interest on loan;
  - (ii) Consequences of refinancing of loan;
  - (iii) Depreciation as deemed repayment;
  - (iv) Admissibility of depreciation up to 90% of the value of the assets;
  - (v) Consideration of maintenance of spares for working capital;
  - (vi) Depreciation of assets.
- e. The Commission and certain interested parties preferred Civil Appeals against the APTEL's judgments before the Hon'ble Supreme Court in 2007. The Appeals were admitted and initially stay was granted by the Hon'ble Supreme Court. Subsequently, on an assurance by NTPC that the issues under Appeal would not be pressed for implementation during the pendency of the Appeals, the stay was vacated by the Hon'ble Supreme Court.
- f. Based on APTEL's judgments dated 22.1.2007 in Appeal No. 81/2005 and 13.6.2007 in Appeal No. 139/2007 and the Commission's order dated 18.1.2019 in Petition No. 121/2007, the Petitioner had sought re-determination of transmission tariff of its transmission assets of the 2001-04 and 2004-09 tariff periods in Petition No. 121/2007. The Commission, after taking into consideration the pendency of Appeals before the Hon'ble Supreme Court, adjourned the said petition *sine die* and directed that the same be revived after the disposal of the Civil Appeals by the Hon'ble Supreme Court.



- g. The Hon'ble Supreme Court vide order dated 10.4.2018, dismissed the said Civil Appeals. Thus, the said order of the APTEL has attained finality.
- h. Consequent to the Hon'ble Supreme Court's order dated 10.4.2018, Petition No. 121/2007 was listed for hearing before the Commission on 8.1.2019. The Commission, vide order dated 18.1.2019 in Petition No. 121/2007, directed the Petitioner to submit its claim separately for the assets at the time of filing of truing up of the petitions for the 2014-19 tariff period in respect of concerned transmission assets.
- i. The instant petition was heard on 3.3.2021 and subsequently on 31.3.2021 and in view of APTEL's judgments dated 22.1.2007 in Appeal No. 81/2005 and batch cases along with order dated 13.6.2007 in Appeal No. 139/2006 and batch matters and the order of Hon'ble Supreme Court dated 10.4.2018, transmission tariff is being revised. Although, period-wise transmission tariff is being re-worked based on the Tariff Regulations applicable for the respective tariff periods, suitable assumptions at certain places, if required, are being applied which are indicated.
- j. The details of transmission assets, their COD and nomenclature is as follows:

Particulars	Asset Details	Nomenclature in order dated 20.4.2009 and 18.6.2010 in Petition No. 134/2008 and 65/2010	Nomenclature in order dated 15.2.2010 in Petition No. 163/2009	Nomenclature* in order dated 29.2.2016 in Petition No. 2/TT/2015	COD	Effective COD
Asset-a	50 MVAR Bus Reactor at Hissar sub-station	Asset-I	-		1.7.2007	
Asset-b	LILo of 400 kV Moga-Hissar line, ICT-I at Fatehabad sub-station, 4 Nos. 220 kV line bays (feeders from Fatehabad-1 and Fatehabad-2) and 50 MVAR Bus Reactor bay along with associated bays at Fatehabad sub-station	Asset-II	-	Asset-I	1.2.2008	1.6.2008
Asset-c	Total Upstream System including Malerkotla-Ludhiana-Jalandhar transmission line along with associated bays at Ludhiana sub-station,	-	Asset-II		1.6.2008	





	Malerkotla sub-station					
Asset-d	ICT-I along with associated bays at Ludhiana sub-station	-	Asset-I	Asset-II	1.6.2008	1.7.2008
Asset-e	ICT-II along with associated bays at Ludhiana sub-station	-	Asset-III		1.7.2008	
Asset-f	315 MVA, 400/220 kV ICT-II along with associated bays at 400/220 kV Fatehabad sub-station	Asset-III	-	Asset-III	1.4.2008	1.4.2008

(\*Asset-a, Asset-b and Asset-c were combined into Asset-I; Asset-d and Asset-e were combined into Asset-II; and Asset-f was re-named as Asset-III for determination of transmission tariff for the period from 1.4.2009 to 31.3.2014 vide order dated 4.4.2011 in Petition No. 268/2010.)

- k. The entire scope of the transmission project is covered in the instant petition.
- l. The capital cost of ₹118.74 lakh, ₹9227.36 lakh and ₹1001.53 lakh as on COD for Asset-a, Asset-b and Asset-f respectively has been approved by the Commission vide order dated 20.4.2009 in Petition No. 134/2008. The capital cost of ₹9740.51 lakh, ₹2648.14 lakh and ₹2675.32 lakh as on COD for Asset-c, Asset-d and Asset-e respectively was approved by the Commission vide order dated 15.2.2010 in Petition No. 163/2009. The transmission tariff from COD was worked out based on the admitted capital cost as stated above. Accordingly, transmission tariff of the 2004-09 and 2009-14 tariff periods is being revised in terms of the APTEL's judgment dated 22.1.2007 and 13.6.2007.

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

5. The Petitioner has served the petition on the Respondents and notice regarding filing of this petition has been published in the newspapers in accordance with Section 64 of the Electricity Act 2003 (Act of 2003). No comments or objections have been received from the general public in response to the aforesaid notices published in the newspapers. UPPCL, Respondent No.9, vide affidavit dated 1.6.2020 has filed reply and has raised issue of rate of interest on loan for 2004-09 and 2009-14 periods,





rectification of cumulative depreciation, recalculation of Interest on Loan (IoL), Return on Equity (RoE) based on Minimum Alternate Tax (MAT), rectification of O&M Expenses figures for the 2014-19 period, rectification of IoL figures based on revised figures of cumulative depreciation; license fee, and apprehension of the Petitioner regarding imposition of floating rate of interest. BRPL, Respondent No.12 vide affidavit dated 17.3.2021 has filed reply in which it has objected to reopening of the transmission tariff of 2004-09 and 2009-14 tariff periods based on the APTEL's judgments stating that the Commission has become "*functus officio*". Further, BRPL has raised issue of truing up of tariff for the 2009-14 tariff period, grossing up of RoE, deferred tax liability, recovery of tax on truing-up exercise of RoE, adoption of Indian Accounting Standards (IAS), laying down of procedure for annual truing up by the transmission licensee, security expenses and capital spares, GST , IWC, application filing fee, and engagement of outside agency to represent the interest of consumer. The Petitioner vide affidavit dated 23.12.2020 and 25.3.2021 has filed rejoinder to the reply of UPPCL and BRPL, respectively.

6. BRPL has objected to the reopening of the transmission tariff of the 2004-09 and 2009-14 tariff periods based on the APTEL's judgements contending that the Commission had only referred to a portion of the judgement of the Hon'ble Supreme Court in the matter of U.P. Power Corporation Limited Vs. National Thermal Power Corporation Limited reported in (2009) 6 SCC 235 and not the entire judgment. The Commission may re-examine the whole issue after considering the entirety of the judgement of the Hon'ble Supreme Court and decide if the same is applicable to the facts of this case. BRPL has contended that the claim to revise the transmission tariff is permissible only when the tariff is in force and not afterwards. Further, BRPL has submitted that the Commission may revisit order dated 6.11.2019 in Petition No.



288/TT/2019, Petition No. 300/TT/2019, Petition No. 301/TT/2019 and Petition No. 305/TT/2019 in view of the facts and legal position and the judgement of the Hon'ble Supreme Court.

7. In response, the Petitioner has submitted that similar objections were raised by BRPL in Petition No. 288/TT/2019 and in Petition No. 290/TT/2020 which were rejected by the Commission and the Commission allowed the revision of transmission tariff of the 2001-04, 2004-09 and 2009-14 periods.

8. We have considered the submissions of the Petitioner and BRPL. As regards the submission of BRPL contending that for revision of transmission tariff for the earlier periods on account of judgment of APTEL and that of the Hon'ble Supreme Court, the Commission has become *functus officio*, it was placed before us that the Commission, by a combined order dated 6.11.2019 in Petition No. 288/TT/2019, Petition No. 300/TT/2019, Petition No. 301/TT/2019 and Petition No. 305/TT/2019, has already rejected the contentions of BRPL. Relevant extract of the order dated 6.11.2019 is as follows:

*"11. We have examined the above contentions of the parties. It is apparent from the record that the Central Commission and other beneficiaries filed Civil Appeal No. 5622 of 2007 and batch before the Hon'ble Supreme Court against the judgment dated 22.1.2007 in Appeal No. 81 of 2005 and other related appeals and judgment dated 13.6.2007 in Appeal No. 139 of 2006 of Appellate Tribunal for Electricity. In the meantime, the Petitioner filed a Petition No. 121 of 2007 in the year 2007 for extending the benefit of judgements dated 22.1.2007 and 13.6.2007 of the Appellate Tribunal in the case of appeals filed by NTPC, on the issue of (a) Computation of Interest on Loan, (b) Consequence of Refinancing of Loan, (c) Depreciation as Deemed Repayment, (d) Admissibility of Depreciation with specific reference to the interpretation of Tariff Regulations as propounded in Appellate Tribunal's Judgments. As the said appeals against the Appellate Tribunal's Judgments were then pending adjudication before Hon'ble Supreme Court, the Commission adjourned the proceedings sine die in Petition No. 121 of 2007 vide RoP dated 12.8.2008. The relevant portion of the ROP dated 12.8.2008 is extracted hereunder:-*

*"4. Request made by the learned counsel was allowed by the Commission. The application was adjourned sine die. The applicant may get the application revived after decision of the Hon'ble Supreme Court in the appeals pending"*

*This was done for the reason that the regulations as interpreted by Appellate Tribunal were under challenge before the Hon'ble Supreme Court. The Hon'ble Supreme Court*



*vide order dated 10.4.2018 dismissed Civil Appeal No. 5622 of 2007 and batch filed by the Commission and other beneficiaries. Thus, the Appellate Tribunal's Judgments attained finality. As the spirit of the regulations in question has authoritatively been interpreted in the Appellate Tribunal's Judgments, the Commission is duty bound to apply the regulations uniformly to all without any discrimination. Accordingly, on dismissal of the said appeals by the Hon'ble Supreme Court, the Commission disposed of Petition No. 121 of 2007 vide order dated 18.1.2019 permitting the Petitioner to submit their claims, wherever applicable, along with truing up petitions for the 2014-19 period.*

*"6. Considering the submissions of the learned counsel for the petitioner, we dispose of the present petition with the direction that the petitioner shall separately submit its claim in the light of the APTEL's judgments dated 22.1.2007 and 13.6.2007 along with the truing up petitions wherever applicable to be filed for the period 2014-19 in respect of concerned transmission assets."*

*It is well settled law that an order or judgment from which review and/or appeal is allowed but not preferred by the aggrieved party attains finality. The said principle cannot be applied to the instant petitions as during the pendency of Petition No. 121 of 2007, the Petitioner was not in a position to take up other legal remedies available to it under the law. Thus, we do not agree with the contentions of learned counsel for BRPL and BSPHCL that the present petitions cannot be entertained as the final orders passed therein have attained finality. In our opinion, the present matter significantly differs with the settled law wherein uniform treatment based regulations as interpreted by higher Courts is required to be given effect to without any discrimination to meet the ends of justice. For these reasons, we reject the said contentions of BRPL and BSPHCL and hold that in the facts and circumstances of this case, the general law that an order or judgment from which review and/or appeal is allowed but not preferred by the aggrieved party attains finality is not applicable here."*

9. We are of the view that there is no necessity to revisit the above order dated 6.11.2019 and accordingly, the preliminary objection of BRPL is rejected.

10. This order is issued in view of the submissions made by the Petitioner in the Petition, UPPCL's and BRPL's replies filed vide affidavit dated 1.6.2020 and 17.3.2021, respectively, the Petitioner's rejoinders, the Petitioner's affidavits dated 23.7.2020 and 17.11.2020 filed in response to technical validation letters and the Petitioner's revised Form 3 filed vide affidavit dated 30.3.2021.

11. The other issues raised by BRPL and UPPCL and the clarifications given by the Petitioner are considered in the relevant portions of this order.

12. The hearing in this matter was held on 3.3.2021 and subsequently on 31.3.2021 through video conference wherein BYPL submitted that BYPL is adopting the submissions made by the learned counsel for BRPL and the order was reserved.



## **Re: Representation of consumer's interest**

13. BRPL has submitted that representation of consumer's interest and their participation in the tariff determination proceedings is an integral part of the hearing. Referring to Regulation 18 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999, BRPL has submitted that some association, forum or body corporate have been recognized by the Commission. BRPL has further submitted that one of the said entities may be instructed to represent the consumer's interest in the instant case during hearings and the same is also provided for in Section 94(3) of the Act of 2003.

14. We have considered the submissions of BRPL. In terms of Section 64(2) of the 2003 Act and Regulation 3(6) and (8) of Central Electricity Regulatory Commission (Procedure for Making of Application for Determination of Tariff, Publication of Application and Other Related Matters) Regulations, 2004, the Petitioner has published Notice in the newspapers. Vide affidavit dated 5.3.2020, the Petitioner has submitted that it has published Notice regarding the the filing of the present tariff application in the newspapers dated 24.1.2020 in various languages. Further, the instant petition has been uploaded on the Petitioner's website. The Notice published in newspaper contained a statement that the application made by the Petitioner for determination of tariff is posted on the website of the Petitioner and the address of the website has also been given. The said Notice contained a statement that "suggestions or objections, if any, on the tariff proposals for determination of tariff may be filed by any person including the beneficiary in the office of the Secretary, Central Electricity Regulatory Commission with a copy to the applicant at is Corporate Office within 30 days of publication of the notice". No suggestions/objections with regard to the present tariff petitions were received by the Commission before listing of the present petition



for hearing. As sufficient opportunity has been given to the general public to submit their comments as provided under the 2003 Act, we are of the view that there is no need to engage any entity as suggested by BRPL to represent the interest of consumers. The above objection is answered accordingly.

15. Having heard the representatives of the Petitioner and learned counsel for BRPL and perused the materials on record, we proceed to dispose of the petition.

**Re: Interest on Loan (IOL)**

16. APTEL while dealing with the issue of computation of IoL, in judgement dated 22.1.2007, held that IoL for the period from 1.4.1998 to 31.3.2001 shall be computed only on normative loan repayment as per its judgement dated 14.11.2006 in Appeal No. 94 of 2005 and Appeal No. 96 of 2005. APTEL in its judgement dated 14.11.2006 set aside the Commission's methodology of computation of loan on the actual repayment basis or normative repayment whichever is higher. The relevant portions of the judgment of 14.11.2006 is as follows:

- “12. We have heard the arguments of the Senior Counsel(s) of appellant and respondents. We notice that the appellant has not challenged the formula for computing the annual repayment amount as provided in Appeal No. 96 of 2005 & IA No.117 of 2006 in Appeal No. 94 of 2005 para-22 of the impugned order and has only challenged the provisions at para 23 specifying that the amount of annual repayment for calculation of interest on loan is chosen higher of the normative debt and actual debt.*
- 13. As mentioned earlier the servicing of the capital (equity or debt) is financed by the recovery of interest on debt capital and through earning of return on equity capital. The actual loan repayment has been normalized to 50% of the total capital by the formula in para 22 of the impugned order given in para 11 above. Once it has been decided and agreed that the financing plan would be based on normative debt–equity ratio of 50:50 and not the actual debt-equity ratio, the same normative basis should be adopted for recovery of cost of servicing the capital.*
- 14. In the instant case since the normative debt-equity ratio of 50:50 has been adopted in the financing plan, the loan repayment should be computed based on normative debt. This is to ensure that whatever normative debt has been considered, tariff should ensure the recovery of the same normative debt and interest thereon.”*
- “18. In its Tariff Regulation of 2004 the Central Commission perhaps recognizing the aforesaid anomaly has dispensed with the practice of adopting higher of actual or normative repayment and has corrected the method of determination of quantum*



*of debt repayment only on the basis of the normative debt with effect from 01.04.2004*

19. *In view of the above, the Central Commission is required to adopt normative debt repayment methodology for working out the interest on loan liability for the period 01.04.1998 to 31.03.2001.”*

In view of the above, the interest allowed for the 2004-09 period is to be revised on the basis of the normative debt repayment methodology.

### **Re: Additional Capital Expenditure (ACE)**

17. APTEL in judgment dated 13.6.2007 in Appeal No.139 of 2006 and others held that ACE after COD should also be considered for computation of maintenance spares. The relevant portion of the judgement dated 13.6.2007 is as follows:

*“We are not inclined to agree with the contention of the respondents that escalation of 6% will take care of the additional capitalization. Escalation is meant to factor inflation and is allowed as per CERC Regulations whether or not additional capitalization takes place. Question before us is that: can the historical cost be frozen with the Commissioning of the station. It is quite normal and prudent to ensure earliest operation of the plant without necessarily 100% completion of plants and works, of course not at the cost of safety of the plant. Adding some of the plants and works after the commercial operation will reduce interest during construction. If technically it is possible to delay some of the plants or works, it is only prudent to do so. For example it is common to build redundancies in the plant at a little later stage. CERC’s own regulations rightly recognized additional capitalization. It is pertinent to set out excerpts pertaining to additional capitalization from CERC (Terms & Conditions of Tariff) Regulation, 2004 Clause 18 as below:-*

*“Additional capitalization (1) The following capital expenditure within the original scope of work actually incurred after the date of commercial operation and up to the cut off date may be admitted by the Commission, subject to prudence check:*

- (i) Deferred liabilities*
- (ii) Works deferred for execution*
- (iii) Procurement of initial capital spares in the original scope of work, subject to ceiling specified in regulation 17.*
- (iv) Liabilities to meet award of arbitration or for compliance of the order or decree of a court; and*
- (v) On account of change in law.*

*Provided that original scope of work along with estimates of expenditure shall be submitted along with the application for provisional tariff.*

*Provided further that a list of the deferred liabilities and works deferred for execution shall be submitted along with the application for final tariff after the date of commercial operation of the generating station.”*

*It is clear from the abovementioned Clause 18 of the CERC Regulations that additional capitalization after the date of commercial operation is recognized as part of*





*the capital expenditure Historical cost does not literally mean that the cost on the date of the commercial operation. The term historical cost is used so as to distinguish it from 'book value' or 'the replacement cost'. The cost of maintenance spares limited to 1% of the historical cost corresponds to the plant and equipment and installations which are required to be maintained. If the cost of additional equipment is not included in the historical cost, how spares for the additional equipment be procured for maintenance of the additional equipment. In this view of the matter, the CERC needs to examine afresh in the light of the aforesaid observations."*

18. In view of the above, the maintenance spares to be considered for computation of working capital for the 2004-09 tariff period is also required to be revised taking into consideration ACE after COD.

### **Re: Depreciation**

19. As regards depreciation, APTEL in its judgement dated 13.6.2007 in Appeal No.139 of 2006 held that depreciation is an expense and it cannot be deployed for deemed repayment of loan and accordingly directed the Commission to compute the outstanding loan afresh. The relevant portion of the judgment is as follows:

*"In the orders of this Tribunal dated November 14, 2006 and January 24, 2007 it has been laid down that the computation of outstanding loan will be on normative basis only (instead of normative or actual whichever is higher). In view of this there is no question of any adjustment of the depreciation amount as deemed repayment of loan.*

*It is to be understood that the depreciation is an expense and not an item allowed for repayment of loan. If a corporation does not borrow, it would not mean that the corporation will not be allowed any depreciation. Depreciation is an expense it represents a decline in the value of asset because of use, wear or obsolescence. The Accounting Principles Board of USA defines depreciation as under:-*

*"The cost of a productive facility is one of the costs of the service it renders during its useful economic life. Generally accepted accounting principles require that this cost be spread over the expected useful life of the facility in such a way as to allocate it as equitably as possible to the periods during which services are obtained from the use of the facility. This procedure is known as depreciation accounting, a system of accounting which aims to distribute the cost or other basic value of tangible capital assets, less salvage (if any), over the estimated useful life of the unit (which may be a group of assets) in a systematic and rational manner. It is a process of allocation, not of valuation"*

*It is well established that the depreciation is an expense and therefore, it cannot be deployed for deemed repayment of loan. In this view of the matter the CERC shall need to make a fresh computation of outstanding loan in the light of the aforesaid observations."*





20. In view of the above directions of APTEL, the outstanding loan allowed for the transmission assets for the 2004-09 tariff period is to be revised in the present order.

21. We have considered the submissions. The revision of transmission tariff allowed for the 2004-09 tariff period necessitates the revision of transmission tariff allowed for the 2009-14 tariff period, which is also being done in the present order. The implementation of the directions of APTEL in case of the Petitioner was kept pending awaiting for the outcome of the Civil Appeals filed before the Hon'ble Supreme Court. Taking into consideration the facts of the case and keeping in view the interest of the consumers, we are of the view that the beneficiaries should not be burdened with the carrying cost for the difference in the tariff allowed earlier and allowed in the instant order for the 2001-04, 2004-09 and 2009-14 tariff periods. Therefore, we direct that the Petitioner will neither claim nor pay any carrying cost from or to the beneficiaries for the difference, if any, in the tariff allowed earlier and the tariff being allowed in the instant order. Further, the said difference in tariff shall be recovered/ paid over a period of six months from the date of issue of this order.

**Revision of Transmission Charges Allowed for the 2004-09 and 2009-14 Tariff Periods**

**2004-09 Period**

22. The transmission charges approved for Asset-a, Asset-b, Asset-c, Asset-d, Asset-e and Asset-f for the 2004-09 period is as follows:

**Asset-a**

Particulars	(₹ in lakh)	
	2007-08 (Pro-rata for 9 months)	2008-09
Depreciation	3.64	5.53
Interest on Loan	6.02	8.91
Return on Equity	4.04	6.16
Advance against Depreciation	0.00	0.00
Interest on Working Capital	1.14	1.61
O&M Expenses	23.72	32.90



<b>Total</b>	<b>38.57</b>	<b>55.11</b>
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**Asset-b**

(₹ in lakh)

<b>Particulars</b>	<b>2007-08 (Pro-rata for 2 months)</b>	<b>2008-09</b>
Depreciation	50.60	315.37
Interest on Loan	101.69	617.43
Return on Equity	65.35	407.51
Advance against Depreciation	0.00	0.00
Interest on Working Capital	8.02	49.33
O&M Expenses	49.93	311.65
<b>Total</b>	<b>275.59</b>	<b>1701.29</b>

**Asset-c**

(₹ in lakh)

<b>Particulars</b>	<b>2008-09 (Pro-rata for 10 months)</b>
Depreciation	241.70
Interest on Loan	542.95
Return on Equity	355.84
Advance against Depreciation	0.00
Interest on Working Capital	39.04
O&M Expenses	163.80
<b>Total</b>	<b>1343.31</b>

**Asset-d**

(₹ in lakh)

<b>Particulars</b>	<b>2008-09 (Pro-rata for 10 months)</b>
Depreciation	75.36
Interest on Loan	153.23
Return on Equity	99.86
Advance against Depreciation	0.00
Interest on Working Capital	11.32
O&M Expenses	54.83
<b>Total</b>	<b>394.60</b>

**Asset-e**

(₹ in lakh)

<b>Particulars</b>	<b>2008-09 (Pro-rata for 9 months)</b>
Depreciation	68.22
Interest on Loan	147.61
Return on Equity	90.34
Advance against Depreciation	0.00
Interest on Working Capital	13.52



O&M Expenses	148.05
<b>Total</b>	<b>467.74</b>

**Asset-f**

(₹ in lakh)	
Particulars	2008-09
Depreciation	36.16
Interest on Loan	63.28
Return on Equity	42.19
Advance against Depreciation	0.00
Interest on Working Capital	6.26
O&M Expenses	65.80
<b>Total</b>	<b>213.69</b>

23. The Petitioner has claimed the following revised transmission charges for the transmission assets for the 2004-09 tariff period in the instant Petition:

**Asset-a**

(₹ in lakh)		
Particulars	2007-08 (Pro-rata For 9 months)	2008-09
Depreciation	3.64	5.53
Interest on Loan	6.15	9.50
Return on Equity	4.04	6.16
Advance against Depreciation	0.00	0.00
Interest on Working Capital	1.15	1.66
O&M Expenses	23.72	32.90
<b>Total</b>	<b>38.70</b>	<b>55.75</b>

**Asset-b**

(₹ in lakh)		
Particulars	2007-08 (Pro-rata for 2 months)	2008-09
Depreciation	50.60	315.37
Interest on Loan	102.05	637.08
Return on Equity	65.35	407.51
Advance against Depreciation	0.00	0.00
Interest on Working Capital	9.02	50.93
O&M Expenses	49.93	311.65
<b>Total</b>	<b>276.96</b>	<b>1722.54</b>

**Asset-c**

(₹ in lakh)	
Particulars	2008-09 (Pro-rata for 10 months)
Depreciation	241.70



Interest on Loan	552.14
Return on Equity	355.84
Advance against Depreciation	0.00
Interest on Working Capital	39.68
O&M Expenses	163.80
<b>Total</b>	<b>1353.16</b>

#### **Asset-d**

(₹ in lakh)

<b>Particulars</b>	<b>2008-09 (Pro-rata for 10 months)</b>
Depreciation	75.36
Interest on Loan	156.19
Return on Equity	99.86
Advance against Depreciation	0.00
Interest on Working Capital	11.60
O&M Expenses	54.83
<b>Total</b>	<b>397.84</b>

#### **Asset-e**

(₹ in lakh)

<b>Particulars</b>	<b>2008-09 (Pro-rata for 9 months)</b>
Depreciation	68.22
Interest on Loan	150.19
Return on Equity	90.34
Advance against Depreciation	0.00
Interest on Working Capital	13.75
O&M Expenses	148.05
<b>Total</b>	<b>470.55</b>

#### **Asset-f**

(₹ in lakh)

<b>Particulars</b>	<b>2008-09</b>
Depreciation	36.16
Interest on Loan	64.97
Return on Equity	42.19
Advance against Depreciation	0.00
Interest on Working Capital	6.30
O&M Expenses	65.80
<b>Total</b>	<b>215.42</b>

24. UPPCL has submitted that the Commission may direct the Petitioner to submit details of calculation of rate of IoL for the 2004-09 and 2009-14 tariff periods. In response, the Petitioner vide affidavit dated 23.12.2020 submitted that actual loan



details as given in transmission tariff orders of 2004-09 and 2009-14 tariff period may be considered for calculation of WAROI.

25. We have considered the Petitioner's claim and UPPCL's submission. The transmission tariff is allowed for the transmission assets on the basis of the following:

- a) The admitted capital costs for the transmission assets as on COD approved by the Commission vide earlier orders.
- b) Weighted Average Rate of Interest (WAROI) on actual loan adopted from order dated 20.4.2009, 18.6.2010 and 15.2.2010 in Petition No. 134/2008, Petition No. 65/2010 and Petition No. 163/2009 respectively.
- c) With respect to calculation of IoL, for Asset-a and Asset-b during 2007-08 to 2008-09 and for Asset-c to Asset-f during 2008-09, moratorium period was availed by the Petitioner and no actual repayment of loan was done. Earlier, the Commission vide order dated 20.4.2009 in the Petition No. 134/2008 for Asset-a, Asset-b and Asset-f and vide order dated 15.2.2010 in Petition No. 163/2009 for Asset-c, Asset-d and Asset-e had considered depreciation provided during 2007-08 and 2008-09 as loan repayment. Therefore, depreciation provided during 2007-08 and 2008-09 as loan repayment has been considered as loan repayment in accordance with Regulation 56(i)(f) of the 2004 Tariff Regulations which is reproduced as below:

*"56 (i) Interest on Loan Capital*

*(f) In case any moratorium period is availed of by the transmission licensee, depreciation provided for in the tariff during the years of moratorium shall be treated as repayment during those years and interest on loan capital shall be calculated accordingly;"*

- d) Weighted Average Rate of Depreciation (WAROD), rate of IWC and O&M Expenses as per order dated 20.4.2009, 18.6.2010 and 15.2.2010 in Petition No. 134/2008, Petition No. 65/2010 and Petition No. 163/2009, respectively.
- e) Actual ACE of ₹19.09 lakh for Asset-a, ₹216.62 lakh for Asset-b in 2007-08 that had been approved by the Commission vide order dated 20.4.2009 in Petition No. 134/2008; Actual ACE of ₹17.44 lakh for Asset-a, ₹517.33 lakh for Asset-b and ₹5.89 lakh for Asset-f in 2008-09 that had been approved by the Commission vide order dated 18.6.2010 in Petition No. 65/2010; Actual ACE of ₹852.50 lakh for Asset-c, ₹411.99 lakh for Asset-d and ₹387.13 lakh for Asset-e



in 2008-09 that was approved by the Commission *vide* order dated 15.2.2010 in Petition No. 163/2009.

26. In the view of the above, the revised transmission charges allowed for the transmission assets for the 2004-09 tariff period is as follows:

**Asset-a**

Particulars	(₹ in lakh)	
	2007-08 (Pro-rata for 9 months)	2008-09
Depreciation	3.64	5.53
Interest on Loan	6.02	8.91
Return on Equity	4.04	6.16
Advance against Depreciation	0.00	0.00
Interest on Working Capital	1.15	1.65
O&M Expenses	23.72	32.90
<b>Total</b>	<b>38.57</b>	<b>55.14</b>

**Asset-b**

Particulars	(₹ in lakh)	
	2007-08 (Pro-rata for 2 months)	2008-09
Depreciation	50.60	315.37
Interest on Loan	101.69	617.43
Return on Equity	65.35	407.51
Advance against Depreciation	0.00	0.00
Interest on Working Capital	8.04	49.94
O&M Expenses	49.93	311.65
<b>Total</b>	<b>275.62</b>	<b>1701.90</b>

**Asset-c**

Particulars	(₹ in lakh)	
	2008-09 (Pro-rata for 10 months)	
Depreciation	241.70	
Interest on Loan	542.95	
Return on Equity	355.84	
Advance against Depreciation	0.00	
Interest on Working Capital	39.49	
O&M Expenses	163.80	
<b>Total</b>	<b>1343.77</b>	



**Asset-d**

(₹ in lakh)

Particulars	2008-09 (Pro-rata for 10 months)
Depreciation	75.36
Interest on Loan	153.23
Return on Equity	99.86
Advance against Depreciation	0.00
Interest on Working Capital	11.53
O&M Expenses	54.83
<b>Total</b>	<b>394.81</b>

**Asset-e**

(₹ in lakh)

Particulars	2008-09 (Pro-rata for 9 months)
Depreciation	68.22
Interest on Loan	147.61
Return on Equity	90.34
Advance against Depreciation	0.00
Interest on Working Capital	13.70
O&M Expenses	148.05
<b>Total</b>	<b>467.92</b>

**Asset-f**

(₹ in lakh)

Particulars	2008-09
Depreciation	36.16
Interest on Loan	63.28
Return on Equity	42.19
Advance against Depreciation	0.00
Interest on Working Capital	6.27
O&M Expenses	65.80
<b>Total</b>	<b>213.69</b>

27. AFC allowed earlier for the 2004-09 tariff period vide order dated 20.4.2009, 18.6.2010 and 15.2.2010 in Petition No. 134/2008, Petition No. 65/2010 and Petition No. 163/2009 respectively, the revised AFC claimed in the instant petition and AFC allowed in the instant order is as follows:





**Asset-a**

Particulars	(₹ in lakh)	
	2007-08 (Pro-rata for 9 months)	2008-09
AFC approved <i>vide</i> order dated 20.4.2009 in Petition No. 134/2008, and revision of transmission tariff due to ACE <i>vide</i> order dated 18.6.2010 in Petition No. 65/2010	38.57	55.11
AFC claimed by the Petitioner in the instant petition	38.70	55.75
AFC allowed in the instant order	38.57	55.14

**Asset-b**

Particulars	(₹ in lakh)	
	2007-08 (Pro-rata for 2 months)	2008-09
AFC approved <i>vide</i> order dated 20.4.2009 in Petition No. 134/2008, and revision of transmission tariff due to ACE <i>vide</i> order dated 18.6.2010 in Petition No. 65/2010	275.59	1701.29
AFC claimed by the Petitioner in the instant petition	276.96	1722.54
AFC allowed in the instant order	275.62	1701.90

**Asset-c**

Particulars	(₹ in lakh)
	2008-09 (Pro-rata for 10 months)
AFC approved <i>vide</i> order dated 15.2.2010 in Petition No. 163/2009	1343.31
AFC claimed by the Petitioner in the instant petition	1353.16
AFC allowed in the instant order	1343.77

**Asset-d**

Particulars	(₹ in lakh)
	2008-09 (Pro-rata for 10 months)
AFC approved <i>vide</i> order dated 15.2.2010 in Petition No. 163/2009	394.60
AFC claimed by the Petitioner in the instant petition	397.84
AFC allowed in the instant order	394.81

**Asset-e**

Particulars	(₹ in lakh)
	2008-09 (Pro-rata for 9 months)
AFC approved <i>vide</i> order dated 15.2.2010 in Petition No. 163/2009	467.74
AFC claimed by the Petitioner in the instant petition	470.55
AFC allowed in the instant order	467.92



## Asset-f

Particulars	(₹ in lakh)
	2008-09
AFC approved <i>vide</i> order dated 20.4.2009 in Petition No. 134/2008, and revision of transmission tariff due to ACE <i>vide</i> order dated 18.6.2010 in Petition No. 65/2010	213.69
AFC claimed by the Petitioner in the instant petition	215.42
AFC allowed in the instant order	213.69

## 2009-14 Period

28. The Commission *vide* order dated 4.4.2011 in Petition No. 268/2010 had approved the transmission tariff for Asset-I (comprising of Asset-a, Asset-b and Asset-c), Asset-II (comprising of Asset-d and Asset-e) and Asset-III (Asset-f) for the 2009-14 tariff period. The same was *trued* *vide* order dated 29.2.2016 in Petition No. 2/TT/2015 which is as follows:

## Asset-I

(₹ in lakh)

Particulars	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	1084.21	1102.64	1113.98	1123.29	1125.68
Interest on Loan	1278.59	1218.94	1130.75	1037.78	936.10
Return on Equity	1193.62	1274.84	1289.18	1299.43	1317.73
Interest on Working Capital	112.58	115.62	116.64	117.57	118.48
O&M Expenses	768.87	812.83	859.39	908.53	960.45
<b>Total</b>	<b>4437.87</b>	<b>4524.86</b>	<b>4509.95</b>	<b>4486.60</b>	<b>4458.44</b>

## Asset-II

(₹ in lakh)

Particulars	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	290.33	297.59	308.80	317.35	319.70
Interest on Loan	377.79	360.28	346.03	327.14	300.32
Return on Equity	348.37	370.18	383.33	392.75	400.09
Interest on Working Capital	37.44	38.61	39.80	40.82	41.56
O&M Expenses	324.88	343.48	363.14	383.88	405.84
<b>Total</b>	<b>1378.81</b>	<b>1410.14</b>	<b>1441.11</b>	<b>1461.94</b>	<b>1467.51</b>



### **Asset-III**

(₹ in lakh)

<b>Particulars</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>
Depreciation	60.02	67.52	70.75	73.32	73.32
Interest on Loan	67.00	69.97	67.47	63.89	57.17
Return on Equity	63.69	74.26	77.89	80.72	81.69
Interest on Working Capital	8.43	9.12	9.48	9.81	9.99
O&M Expenses	89.08	94.18	99.57	105.26	111.28
<b>Total</b>	<b>288.22</b>	<b>315.05</b>	<b>325.16</b>	<b>332.99</b>	<b>333.45</b>

29. The Petitioner has claimed the following revised transmission charges for the Asset-I, Asset-II and Asset-III for the 2009-14 period in this petition:

### **Asset-I**

(₹ in lakh)

<b>Particulars</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>
Depreciation	1084.21	1102.64	1113.98	1123.29	1125.68
Interest on Loan	1335.92	1276.27	1188.10	1095.10	993.42
Return on Equity	1193.62	1274.84	1289.18	1299.43	1317.73
Interest on Working Capital	113.78	116.81	117.84	118.76	119.67
O&M Expenses	768.87	812.83	859.39	908.53	960.45
<b>Total</b>	<b>4496.40</b>	<b>4583.39</b>	<b>4568.49</b>	<b>4545.12</b>	<b>4516.95</b>

### **Asset-II**

(₹ in lakh)

<b>Particulars</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>
Depreciation	290.33	297.59	308.80	317.35	319.70
Interest on Loan	391.12	373.61	359.35	340.44	313.61
Return on Equity	348.37	370.18	383.33	392.75	400.09
Interest on Working Capital	37.71	38.89	40.08	41.10	41.84
O&M Expenses	324.88	343.48	363.14	383.88	405.84
<b>Total</b>	<b>1392.42</b>	<b>1423.74</b>	<b>1454.70</b>	<b>1475.51</b>	<b>1481.08</b>

### **Asset-III**

(₹ in lakh)

<b>Particulars</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>
Depreciation	60.02	67.52	70.75	73.32	73.32
Interest on Loan	70.32	73.27	70.77	67.18	60.47
Return on Equity	63.69	74.26	77.89	80.72	81.69
Interest on Working Capital	8.50	9.19	9.55	9.88	10.06
O&M Expenses	89.08	94.18	99.57	105.26	111.28
<b>Total</b>	<b>291.61</b>	<b>318.43</b>	<b>328.53</b>	<b>336.36</b>	<b>336.81</b>



30. BRPL has submitted that true up has to be done based on actual tax rate applicable to the company and based on the truing up of tariff, if the recovered tariff exceeds the tariff approved, the company shall refund to beneficiaries along with simple interest. BRPL alleged that the transmission licensees have been allowed huge tax benefits under the Income Tax Act 1961 (“1961 Act”) in the form of Tax Holiday for enterprises engaged in infrastructure development etc. as per Section 80 IA of the 1961 Act as well as the other benefits like the higher depreciation allowed in initial years. Further, BRPL has submitted that the Petitioner was allowed the grossing up of RoE in the order dated 29.2.2016 in Petition No. 2/TT/2015 but the claim for grossing up can be allowed only if the Petitioner can submit any document indicating payment of tax on its transmission business. Therefore, the Commission may revisit the order to correct any incorrect decision in accordance with the Hon’ble APTEL’s judgment dated 12.5.2015 in Appeal No. 129 and batch.

31. In response, the Petitioner has submitted that in accordance with Regulation 15(3) of the 2009 Tariff Regulations, RoE shall be grossed up with MAT/Corporate Income tax rate of the transmission licensee and not the tax rate of the assets or region. The tax liability of a person is determined considering total income of that person, and not different segment wise income, unless otherwise provided in the 1961 Act. The Petitioner has further submitted that the treatment and impact of benefits under Section 80IA of the 1961 Act and higher depreciation, availed by the Petitioner has also been explained. As regards the objection of BRPL that the Commission has not given due consideration to various aspects while determining the gross up rate for RoE vide order dated 29.2.2016 in Petition No. 2/TT/2015 has no merit and hence should be rejected.



32. We have considered the submissions of the Petitioner and BRPL. The transmission tariff is allowed for the transmission assets on the basis of the following:

- a) Admitted capital cost of ₹20709.59 lakh, ₹6122.58 lakh and ₹1007.42 lakh as on 1.4.2009 for Asset-I, Asset-II and Asset-III respectively.
- b) WAROI on actual loan derived/ adopted from order dated 29.2.2016 in Petition No. 2/TT/2015.
- c) WAROD as per order dated 29.2.2016 in Petition No. 2/TT/2015.
- d) Actual ACE of ₹1734.69 lakh, ₹724.54 lakh and ₹381.14 lakh for Asset-I, Asset-II and Asset-III respectively approved by the Commission vide order dated 29.2.2016 in Petition No. 2/TT/2015.

33. In view of the above, the revised transmission charges allowed for the transmission assets for the 2009-14 tariff period is as follows:

**Asset-I**

(₹ in lakh)

Particulars	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	1084.21	1102.64	1113.98	1123.29	1125.68
Interest on Loan	1278.59	1218.94	1130.75	1037.78	936.10
Return on Equity	1193.62	1274.84	1289.18	1299.43	1317.73
Interest on Working Capital	112.58	115.62	116.64	117.57	118.48
O&M Expenses	768.87	812.83	859.39	908.53	960.45
<b>Total</b>	<b>4437.87</b>	<b>4524.86</b>	<b>4509.95</b>	<b>4486.60</b>	<b>4458.44</b>

**Asset-II**

(₹ in lakh)

Particulars	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	290.33	297.59	308.80	317.35	319.70
Interest on Loan	377.79	360.28	346.03	327.14	300.32
Return on Equity	348.37	370.18	383.33	392.75	400.09
Interest on Working Capital	37.44	38.61	39.80	40.82	41.56
O&M Expenses	324.88	343.48	363.14	383.88	405.84
<b>Total</b>	<b>1378.81</b>	<b>1410.14</b>	<b>1441.11</b>	<b>1461.94</b>	<b>1467.51</b>

**Asset-III**

(₹ in lakh)

Particulars	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	60.02	67.52	70.75	73.32	73.32
Interest on Loan	67.00	69.97	67.47	63.89	57.17
Return on Equity	63.69	74.26	77.89	80.72	81.69



Interest on Working Capital	8.43	9.12	9.48	9.81	9.99
O&M Expenses	89.08	94.18	99.57	105.26	111.28
<b>Total</b>	<b>288.22</b>	<b>315.05</b>	<b>325.16</b>	<b>332.99</b>	<b>333.45</b>

34. The trued up AFC allowed for 2009-14 tariff period vide order dated 29.2.2016 in Petition No. 2/TT/2015, the revised AFC claimed in the instant petition and AFC allowed in the instant order is as follows:

#### **Asset-I**

Particulars	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
AFC trued up vide order dated 29.2.2016 in Petition No. 02/TT/2015	4437.87	4524.86	4509.95	4486.60	4458.44
AFC claimed by the Petitioner in the instant petition	4496.40	4583.39	4568.49	4545.12	4516.95
AFC allowed in the instant order	4437.87	4524.86	4509.95	4486.60	4458.44

#### **Asset-II**

Particulars	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
AFC trued up owed vide order dated 29.2.2016 in Petition No. 02/TT/2015	1378.81	1410.14	1441.11	1461.94	1467.51
AFC claimed by the Petitioner in the instant petition	1392.42	1423.74	1454.70	1475.51	1481.08
AFC allowed in the instant order	1378.81	1410.14	1441.11	1461.94	1467.51

#### **Asset-III**

Particulars	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
AFC trued up vide order dated 29.2.2016 in Petition No. 02/TT/2015	288.22	315.05	325.16	332.99	333.45
AFC claimed by the Petitioner in the instant petition	291.61	318.43	328.53	336.36	336.81
AFC allowed in the instant order	288.22	315.05	325.16	332.99	333.45

#### **Truing up of Annual Fixed Charges for the 2014-19 Tariff Period**

35. The Petitioner has combined, Asset-I, Asset-II and Asset-III into one single asset, i.e., "Combined Asset". Accordingly, as per Regulation 6(1)(i) of the 2014 Tariff Regulations, single tariff for the Combined Asset is approved for the 2014-19 tariff



period. The details of the trued up transmission charges claimed by the Petitioner in respect of the Combined Asset is as follows:

(₹ in lakh)

Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Depreciation	1523.45	1523.45	1523.45	1523.45	1523.45
Interest on Loan	1256.30	1145.15	1009.50	868.59	727.86
Return on Equity	1828.23	1864.21	1868.68	1869.21	1874.76
Interest on Working Capital	181.18	181.95	181.51	180.94	180.57
O&M Expenses	1359.77	1404.95	1451.66	1499.78	1549.54
<b>Total</b>	<b>6148.93</b>	<b>6119.71</b>	<b>6034.80</b>	<b>5941.97</b>	<b>5856.18</b>

36. The details of the trued up IWC claimed by the Petitioner in respect of the Combined Asset is as follows:

(₹ in lakh)

Particular	2014-15	2015-16	2016-17	2017-18	2018-19
O & M Expenses	113.31	117.08	120.97	124.98	129.13
Maintenance Spares	203.97	210.74	217.75	224.97	232.43
Receivables	1024.82	1019.95	1005.80	990.33	976.03
Total Working Capital	1342.10	1347.77	1344.52	1340.28	1337.59
Rate of Interest (%)	13.50	13.50	13.50	13.50	13.50
<b>Interest on Working Capital</b>	<b>181.18</b>	<b>181.95</b>	<b>181.51</b>	<b>180.94</b>	<b>180.57</b>

### Effective Date of Commercial Operation (E-COD)

37. The Petitioner has stated that E-COD of the Combined Asset works out to be 1.6.2008. However, based on the trued-up capital cost and COD of these assets, the E-COD has been worked out as 4.6.2008 and is as follows:

Particulars	Admitted Capital Cost as on COD (₹ in lakh)	COD	Number of days of COD from the last COD	Weightage of cost (%)	Weighted days	Effective COD (latest COD – total weighted days)
Asset-I	22444.28	1.6.2008	30	73.16	21.95	<b>4.6.2008</b>
Asset-II	6847.12	1.7.2008	0	22.32	0	
Asset-III	1388.56	1.4.2008	91	4.53	4.12	
<b>Total</b>	<b>30679.97</b>			<b>100</b>	<b>26.07</b>	





### **Weighted Average Life (WAL)**

38. The life as defined in Regulation 27 of the 2014 Tariff Regulations has been considered for determination of WAL.

39. The Combined Asset may have multiple elements such as land, building, transmission line, sub-station and PLCC and each element may have different span of life. Therefore, the concept of WAL has been used as the useful life of the project as a whole.

40. WAL has been determined based on the admitted capital cost of individual elements as on 31.3.2014 and their respective life as specified in the 2014 Tariff Regulations. The element-wise life as defined in the 2004 Tariff Regulations prevailing at the time of actual COD of individual assets has been ignored for this purpose. The life as defined in the 2014 Tariff Regulations has been considered for determination of WAL. Accordingly, WAL of all the Combined Asset put into commercial operation during 2004-09 period has been worked out as 28 years as shown hereunder:

<b>Particulars</b>	<b>Life (in years) (1)</b>	<b>Capital Cost as on 31.3.2019 (₹ in lakh) (2)</b>	<b>Weighted Cost (₹ in lakh) (3) = (1) * (2)</b>	<b>Weighted Average Life of Asset (in years) (4) = (3) / (2)</b>
Building, Civil Works & Colony	25	1132.03	28300.75	<b>28.21 years (rounded off to 28 years)</b>
Transmission Line	35	9818.95	343663.25	
Sub Station	25	17774.26	444356.50	
PLCC	15	453.68	6805.20	
<b>Total</b>		<b>29178.92</b>	<b>823125.70</b>	

\* Total capital cost as on 31.3.2014 is ₹30679.97 lakh which includes capital cost of land of ₹1501.05 lakh which is not considered for computing weighted average life of the assets.

41. WAL as on 1.4.2014 as determined above is applicable prospectively (i.e. for 2014-19 tariff period onwards) and no retrospective adjustment of depreciation in previous tariff period is required to be done. As discussed above, the E-COD of the assets is 4.6.2008 and the lapsed life of the project as a whole works out as 5 years as on 1.4.2014 (i.e. the number of completed years as on 1.4.2014 from E-COD).



Accordingly, WAL has been used to determine the remaining useful life as on 31.3.2014 to be 23 years.

### **Capital Cost**

42. BRPL has submitted that the Petitioner has opted for deemed cost exemption as per para D7 AA of IND AS 101 'First time Adoption' of IND AS which is resulting in increase of tariff. The adoption of IND AS is for the purposes of the Companies Act, 2013 and not for the purposes of the Tariff Regulations which provides its own procedure for computation of tariff. In response, the Petitioner vide affidavit dated 25.3.2021 has submitted that the Ministry of Corporate Affairs, in 2015, had notified the Companies (Indian Accounting Standards (IND AS)) Rules 2015, which stipulated mandatory adoption and applicability of IND AS beginning from the accounting period 2016-17 for companies having net worth more than ₹500 crore. As the Petitioner adopted IND AS from 2015-16 onwards, the Gross Block less Accumulated Depreciation as on 1.4.2015 is considered as deemed cost as on the date of transition i.e. 1.4.2015 in the books of accounts. As such, in case of assets which achieved COD before 1.4.2015, the gross block of the assets reflects gross block less accumulated depreciation as on 31.3.2015 in the books of accounts. There has been no change in the capital cost or ACE considered for claiming transmission tariff on account of adoption of IND AS. For the purpose of computation of tariff, the actual capital cost and ACE has been claimed/ considered. Thus, there is no impact in tariff on account of adoption of IND AS at any point of time. The said treatment only relates to the "Gross Block amount as per Books" which is required to be reported in certain Tariff Forms (Eg: Form 4A, Form 5) as per the formats prescribed by the Commission. The Petitioner has submitted that the Original Gross Block amount as per books is



required to be disclosed in the tariff forms. However, it has no impact on the tariff being claimed.

43. We have considered the submissions of the Petitioner and BRPL. The Commission vide order dated 24.1.2021 in Petition No. 136/TT/2020 has already dealt with the concerns of BRPL. The relevant paragraph of the order is extracted as follows:

*“35. We have considered the submissions of the Petitioner and BRPL. BRPL has contended that the new accounting standards adopted would result in higher tariffs. The Petitioner in response has clarified that the new standards adopted by it would not have any impact on the tariff to be determined by the Commission. The new accounting standards have been adopted by the Petitioner as per the requirement under the Companies Act, 2013. BRPL has merely stated adoption of new accounting standards would lead to higher tariff and has not stated how it would lead to higher tariff. The tariff is determined for the transmission assets owned by the Petitioner on the basis of the applicable tariff regulations, in the instant case the 2014 Tariff Regulations and 2019 Tariff Regulations. As the tariff is determined on the basis of the tariff regulations, we are of the view that the adoption of the new accounting standards by the Petitioner would not have any impact on the tariff that is determined purely on the basis of the applicable tariff regulations.”*

44. In view of the above, the contention of has not merit and hence rejected.

45. The Commission vide order 29.2.2016 in Petition No. 2/TT/2015 had allowed the following capital cost as on 1.4.2014 of ₹30679.97 lakh and capital cost cost as on 1.4.2019 of ₹31841.20 lakh including projected net ACE of ₹1161.23 lakh for determination of tariff for the 2014-19 period for the Combined:

<b>Admitted vide order dated 29.2.2016 in Petition No. 2/TT/2015</b>		<b>ACE admitted during 2014-19 period</b>	<b>Admitted Capital Cost as on 31.03.2019</b>
<b>Approved Cost</b>	<b>Admitted Capital Cost as on 31.3.2014</b>		
32690.33	30679.97	1161.23	31841.20

46. The capital cost of the existing project has been calculated in accordance with Regulation 9(3) of the 2014 Tariff Regulation. Accordingly, the admitted capital cost of ₹30679.97 lakh for the Combined Asset as on 31.3.2014 has been considered for working out the true up transmission tariff of the 2014-19 tariff period.



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

47. The Commission had allowed ACE of ₹1161.23 lakh for Combined Asset in 2014-19 towards balance and retention payments *vide* order dated 29.2.2016 in Petition No. 2/TT/2015.

48. The Petitioner has claimed ACE of ₹950.67 lakh for 2014-19 tariff period and has submitted that ACE claimed during 2014-15, 2015-16, 2017-18 for Asset-I and Asset-II is beyond the cut-off date and pertains to enhanced land payment on account of court order already admitted by the Commission *vide* order dated 29.2.2016 in Petition No. 2/TT/2015 and is being claimed under Regulation 14(3)(i) of the 2014 Tariff Regulations. The Petitioner has claimed following ACE based on actual expenditure:

Admitted Capital Cost as on 1.4.2014	ACE				Total Capital Cost claimed as on 31.3.2019
	2014-15	2015-16	2016-17	2017-18	
30679.97	749.47	183.44	0.00	17.76	31630.64

49. We have considered the submissions made by the Petitioner. ACE claimed by the Petitioner has been allowed under Regulation 14(3)(i) of the 2014 Tariff Regulations. ACE allowed for the Combined Asset from 1.4.2014 to 31.3.2019 is as follows:

Capital Cost as on 1.4.2014	ACE				Capital Cost as on 31.3.2019
	2014-15	2015-16	2016-17	2017-18	
30679.97	749.47	183.44	0.00	17.76	31630.64

### **Debt-Equity Ratio**

50. The debt-equity ratio has been allowed in accordance with Regulation 19(3) of the 2014 Tariff Regulations. As per Regulation 19(3) of the 2014 Tariff Regulations, the debt:equity ratio allowed by the Commission for determination of transmission tariff for the period ending on 31.3.2014 shall be considered. Accordingly, already admitted debt-equity ratio for the period ending on 31.3.2014 has been considered for the



purpose of truing up of the tariff of the Combined Asset for the 2014-19 tariff period. The details of the debt-equity ratio as on 1.4.2014 and 31.3.2019 of the Combined Asset is as follows:

Particulars	Capital Cost as on 1.4.2014 (₹ in lakh)	(%)	Capital Cost as on 31.3.2019 (₹ in lakh)	(%)
Debt	21476.54	70.00	22142.01	70.00
Equity	9203.42	30.00	9488.62	30.00
<b>Total</b>	<b>30679.97</b>	<b>100.00</b>	<b>31630.64</b>	<b>100.00</b>

### **Depreciation**

51. UPPCL submitted that the capital cost as on 1.4.2014 is ₹30679.97 lakh and is ₹31630.64 lakh as on 31.3.2019 and the COD is 1.7.2008. Therefore, twelve years lapsed on 1.7.2020. The last day of life is 1.7.2036. The cumulative depreciation up to previous year as adopted by the Petitioner is ₹8225.01 lakh as on 1.4.2014 which should be ₹8195.58 lakh. UPPCL submitted that the Commission may direct the Petitioner to rectify the figures of cumulative depreciation. In response, the Petitioner vide affidavit dated 23.12.2020 has submitted that the opening cumulative depreciation as on 1.4.2014 is ₹8225.09 lakh and the same may be referred from calculation submitted in the Petition and depreciation is computed as per the 2014 Tariff Regulations.

52. We have considered the submissions of the Petitioner and UPPCL. The Gross Block during the tariff period 2014-19 has been depreciated at WAROD. WAROD at Annexure-1 has been worked out after taking into account the depreciation rates of assets as specified in the 2014 Tariff Regulations and depreciation allowed is as follows:

Particulars	(₹ in lakh)				
	2014-15	2015-16	2016-17	2017-18	2018-19
<b>Depreciation</b>					
Opening Gross Block	30679.97	31429.44	31612.88	31612.88	31630.64
ACE	749.47	183.44	0.00	17.76	0.00



Closing Gross Block	31429.44	31612.88	31612.88	31630.64	31630.64
Average Gross Block	31054.71	31521.16	31612.88	31621.76	31630.64
Freehold Land	1875.79	2342.24	2433.96	2442.84	2451.72
Weighted Average Rate of Depreciation (WAROD) (%)	4.91	4.83	4.82	4.82	4.82
Balance useful life of the asset (Year)	23.00	22.00	21.00	20.00	19.00
Lapsed Life of the asset (Year)	5.00	6.00	7.00	8.00	9.00
Depreciable Value	26261.03	26261.03	26261.03	26261.03	26261.03
<b>Depreciation during the year</b>	<b>1523.45</b>	<b>1523.45</b>	<b>1523.45</b>	<b>1523.45</b>	<b>1523.45</b>
Cumulative Depreciation at the end of the year	9748.52	11271.97	12795.42	14318.87	15842.32
Remaining Depreciable Value at the end of the year	16512.51	14989.06	13465.61	11942.16	10418.71

53. The details of depreciation approved vide order dated 29.2.2016 in Petition No. 2/TT/2015, depreciation claimed by the Petitioner in the instant Petition and true-up depreciation allowed in this order is as follows:

Particulars	(₹ in lakh)				
	2014-15	2015-16	2016-17	2017-18	2018-19
Approved vide order dated 29.2.2016 in Petition No. 2/TT/2015	1523.45	1523.45	1523.45	1523.45	1523.45
Claimed by the Petitioner in the instant petition	1523.45	1523.45	1523.45	1523.45	1523.45
Allowed after true-up in this order	1523.45	1523.45	1523.45	1523.45	1523.45

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

54. UPPCL has submitted that the capital cost is ₹30679.97 lakh as on 1.4.2014 and the debt-equity ratio is 70:30 therefore the debt works out to be ₹21475.98 lakh. However, the calculation of normative loan is wrong because the figure of cumulative depreciation taken for cumulative repayment of normative loans up to previous year taken by the petitioner is ₹7428.50 lakh which is wrong. In response, the Petitioner vide affidavit dated 23.12.2020 submitted that the cumulative repayment as on 1.4.2014 is ₹7428.50 lakh and the same can be derived from tariff calculation submitted in the petition and IoL is computed as per the 2014 Tariff Regulations.



55. We have considered the submissions of the Petitioner and UPPCL. IoL has been calculated based on actual interest rate submitted by the Petitioner, in accordance with Regulation 26 of the 2014 Tariff Regulations. Trued-up IoL allowed in respect of the Combined Asset is as follows:

(₹ in lakh)					
Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
<b>Interest on Loan</b>					
Gross Normative Loan	21476.54	22001.17	22129.58	22129.58	22142.01
Cumulative Repayments up to Previous Year	8225.07	9748.52	11271.97	12795.42	14318.87
Net Loan-Opening	13251.47	12252.65	10857.61	9334.16	7823.14
Additions due to ACE	524.63	128.41	0.00	12.43	0.00
Repayment during the year	1523.45	1523.45	1523.45	1523.45	1523.45
Net Loan-Closing	12252.65	10857.61	9334.16	7823.14	6299.69
Average Loan	12752.06	11555.13	10095.88	8578.65	7061.41
Weighted Average Rate of Interest on Loan (%)	9.2725	9.2712	9.2679	9.2647	9.2625
<b>Interest on Loan</b>	<b>1182.44</b>	<b>1071.30</b>	<b>935.67</b>	<b>794.79</b>	<b>654.06</b>

56. The details of IoL approved vide order dated 29.2.2016 in Petition No. 2/TT/2015, claimed by the Petitioner in the instant petition and trued-up IoL allowed in the instant order is shown in the table below:

(₹ in lakh)					
Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Approved vide order dated 29.2.2016 in Petition No. 2/TT/2015	1195.74	1092.26	951.10	809.95	668.80
Claimed by the Petitioner in the instant petition	1256.30	1145.15	1009.50	868.59	727.86
Allowed after true-up in this order	1182.44	1071.30	935.67	794.79	654.06

### **Return on Equity (RoE)**

57. The Petitioner has claimed RoE for the Combined Asset in terms of Regulation 24 and 25 of the 2014 Tariff Regulations. The Petitioner has submitted that it is liable to pay Income Tax at MAT rates and has claimed following effective tax rates for the 2014-19 tariff period:





<b>Year</b>	<b>Claimed effective tax rate (in %)</b>	<b>Grossed up RoE [Base Rate/(1-t)] (in %)</b>
2014-15	21.018	19.624
2015-16	21.382	19.716
2016-17	21.338	19.705
2017-18	21.337	19.704
2018-19	21.549	19.758

58. UPPCL has submitted that the grossed up rate of rate of interest on RoE for the years 2016-17 to 2018-19 has been worked out by the Petitioner based on presumptive value of MAT rate and therefore, the Petitioner be directed to submit the figures of RoE derived on the basis of MAT rates approved by the I.T. Authorities.

59. In response, the Petitioner has submitted that effective rate of tax considered for the years 2014-15, 2015-16 and 2016-17 are based on Assessment Order issued by I.T. Authorities, for the purpose of grossing up of RoE rate. Further, the effective rate of tax considered for the years 2017-18 and 2018-19 are based on the IT returns filed, for the purpose of grossing up of RoE rates of respective years. The Petitioner has further submitted that the Commission has granted trued-up transmission tariff of 2014-19 tariff period vide order dated 18.4.2020, 27.4.2020, 23.4.2020 and 16.4.2020 in Petition No. 247/TT/2019, Petition No. 274/TT/2019, Petition No. 245/TT/2019 and Petition No. 307/TT/2019 respectively for transmission assets under the respective petitions, whereas following effective tax rate based (for 2014-19 tariff period) on notified MAT rates are considered for the purpose of grossing-up of RoE:

<b>Year</b>	<b>Notified MAT rates (inclusive of surcharge &amp; cess)</b>	<b>Effective tax (in %)</b>	<b>Grossed up RoE [Base Rate/(1-t)] (in %)</b>
2014-15	20.961	20.961	19.611
2015-16	21.342	21.342	19.706
2016-17	21.342	21.342	19.706
2017-18	21.342	21.342	19.706
2018-19	21.549	21.549	19.758



60. The Petitioner has submitted that accordingly the tariff for each year of the 2014-19 tariff period is being determined by the Commission considering the above Effective Tax percentage to arrive at grossed up RoE. The grossed up RoE and effective tax rate for 2014-19 tariff period has already been determined by the Commission. The Petitioner has requested to allow the differential tariff on account of the trued-up RoE based on effective tax rate calculated on completion of IT assessment/ re-assessment for the years 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 on receipt of the respective assessment orders, directly from the beneficiaries, on year to year basis as provided in the 2014 Tariff Regulations.

61. BRPL has submitted that the information regarding Income Tax Assessment submitted by the Petitioner is in respect of the Petitioner company as a whole and not in respect of the tax on the transmission business in respect of the Northern Region. Accordingly, the said information is not the relevant information for the purposes of effective tax rate. BRPL has submitted that infrastructure transmission companies have been allowed huge tax benefits under the Income Tax Act, 1961 (1961 Act) in the form of Tax Holiday for enterprises engaged in infrastructure development etc. as per Section 80IA of the 1961 Act and other benefits like the higher depreciation allowed in initial years. BRPL has submitted that the Petitioner has already stated on affidavit that the effective tax rate is zero and accordingly the effective tax rate for the earlier tariff period (2009-14) would also be zero since the benefits of the tax holiday under Section 80IA of the 1961 Act and other benefits like the higher depreciation etc. were also applicable during earlier tariff period. Regulation 49 of the 2014 Tariff Regulations restricts the claim of tax amount only to deferred tax liabilities up to 31.3.2009 whenever it will materialize. BRPL has also submitted that the claims of deferred tax are required to be adjusted for the 2004-09 tariff period.



62. In response, the Petitioner has submitted that that it does not file income tax return on transmission business in respect of a particular region as the company has a single PAN and there is no provision in the 1961 Act to file separate returns on the basis of nature of business being undertaken by any entity. All the documents in support of income tax (either returns or assessment orders) are for the Petitioner's company as a whole. The Auditor's Certificate clearly showing income from transmission business and income from other segments along with copy of assessment order/ income return which are relevant to derive the effective tax rate has already been submitted in Petition No. 24/TT/2020. Further, the region wise Balance Sheet and Profit and Loss Accounts for Northern Region-1 for 2014-19, Northern Region-2 for 2014-19 and Northern Region-3 for 2016-19 and Cost Audit Report for 2017-18, 2018-19 are enclosed as Enclosure-2A, Enclosure-2B, Enclosure-2C & Enclosure-2D in affidavit dated 10.8.2020 in Petition No. 24/TT/2020. The Petitioner has submitted that it has computed effective tax rate based on actual tax paid pursuant to assessment orders for the years 2014-15, 2015-16 and 2016-17. The income tax due for 2017-18 and 2018-19 has been deposited and tax returns have already been filled, however assessment orders are yet to be received. The Petitioner has further submitted that after deducting depreciation and tax holiday benefit under normal provision, the income tax for the respective year has been calculated along with surcharge and cess, which works out to be in the range of 33.99% to 34.944% during 2014-15 to 2018-19. In case, the tax computed under normal provision is less than the tax calculated on book profit at the percentage prescribed under Section 115 JB (Minimum Alternate Tax) then the Company has to pay tax computed as per the provisions of section 115JB of the 1961 Act which works out between 20.96% to 21.5488%. The Petitioner has submitted that Form-3 is a system generated form and



due to a system error/constraint the header in Form-3 displays 0.00 instead of blank and the actual effective tax rate used for grossing up RoE is provided in Form 8. The aforementioned error has now been rectified. The Petitioner has submitted that it is eligible for claiming the deferred tax liabilities for the period up to 31.3.2009 on materialization on subsequent period i.e. financial year 2009-10 onwards. The Petitioner is only claiming the reimbursement of Income tax liability, discharged as per the provisions of the 1961 Act.

63. We have considered the submissions made by the Petitioner and BRPL and UPPCL. The Commission vide order dated 24.1.2021 in Petition No. 136/TT/2020 has already dealt with the concerns of the Respondents. The relevant paragraph of the order are extracted as follows:

*“52. We have considered the contentions of BRPL and UPPCL and the clarifications given by the Petitioner. BRPL has contended that details of the income tax submitted by the Petitioner are in respect of the Petitioner’s company as a whole and it does not pertain to the transmission business in Northern Region. The Petitioner has clarified that every registered company has only one single PAN and it has to file one single return and the Petitioner cannot file income tax separately for each region. BRPL has contended that as per the information available in public domain, the Petitioner has to pay the effective tax rate for 2014-15 @8.70% and for the period 2015-19, it is zero and that the excess recovery made by the Petitioner should be returned to the beneficiaries along with simple interest as provided in Regulation 6 of the 2009 Tariff Regulations. The Petitioner has clarified that the effective tax rate was shown as zero for the period 2015-19 inadvertently due to technical reasons and the Petitioner has paid income tax for the said period. The Petitioner has also clarified that as per the provisions of the 1961 Act, tax has to be computed under normal provisions of Income Tax Rules, 1962 and as per MAT provisions under the section 115JB of the 1961 Act and the assessee will have to pay tax higher of the two. As per the submission, during the tariff period 2014-19, the Petitioner calculated the income tax under regular provisions of the 1961 Act (with tax rates of 33.99% to 34.944%) and the tax was worked out to be lower than the tax payable under MAT rates due to deductions under section 80IA and availability of accelerated depreciation under Income Tax. Thus, the Petitioner has been assessed and paid tax under MAT. We are satisfied with the clarifications given by the Petitioner and convinced that the Petitioner has acted prudently and has complied with the provisions of the 1961 Act and the provisions of the tariff regulations.*

*53. As regards UPPCL’s contention that the grossed up rate of RoE for the period 2016-17 to 2018-19 is not based on the MAT rates approved by the Income Tax Authorities, it is observed that the effective rate of tax considered by the Petitioner for 2014-15, 2015-16 and 2016-17 are based on Assessment Orders issued by Income Tax authorities and the effective rate of tax considered for 2017-18 and 2018-19 are based on the Income Tax returns filed for the purpose of grossing up the RoE rate of*



respective years. In view of the clarification given by the Petitioner, we are of the view that there is no merit in the contention of UPPCL.”

64. In view of the above, the contentions of UPPCL and BRPL has not merit and hence rejected.

65. The Commission in order dated 27.4.2020 in Petition No. 274/TT/2019 has arrived at the effective tax rate for the Petitioner based on the notified MAT rates and the same is given in the table below. The relevant portion of the order dated 27.4.2020 is as follows:

*“26. We are conscious that the entities covered under MAT regime are paying Income Tax as per MAT rate notified for respective financial year under IT Act, 1961, which is levied on the book profit of the entity computed as per the Section 115JB of the IT Act, 1961. The Section 115JB(2) defines book profit as net profit in the statement of Profit & Loss prepared in accordance with Schedule-III of the Companies Act, 2013, subject to some additions and deductions as mentioned in the IT Act, 1961. Since the Petitioner has been paying income tax on income computed under Section 115JB of the IT Act, 1961 as per the MAT rates of the respective financial year, the notified MAT rate for respective financial year shall be considered as effective tax rate for the purpose of grossing up of RoE for truing up of the tariff of the 2014-19 tariff period in terms of the provisions of the 2014 Tariff Regulations. Interest imposed on any additional income tax demand as per the Assessment Order of the Income Tax authorities shall be considered on actual payment. However, penalty (for default on the part of the Assessee) if any imposed shall not be taken into account for the purpose of grossing up of rate of return on equity. Any under-recovery or over-recovery of grossed up rate on return on equity after truing up, shall be recovered or refunded to beneficiaries or the long-term transmission customers / DICs as the case may be on year to year basis.*

*27. Accordingly, following effective tax rates based on notified MAT rates are considered for the purpose of grossing up of rate of return on equity:*

<b>Year</b>	<b>Notified MAT rates (inclusive of surcharge &amp; cess)</b>	<b>Effective tax (in %)</b>
2014-15	20.961	20.961
2015-16	21.342	21.342
2016-17	21.342	21.342
2017-18	21.342	21.342
2018-19	21.549	21.549

”

66. The MAT rates considered in order dated 27.4.2020 in Petition No. 274/TT/2019 are considered for the purpose of grossing up of rate of RoE for truing up



of the tariff of the 2014-19 tariff period in terms of the provisions of the 2014 Tariff Regulations, which is as follows:

Year	Notified MAT rates (inclusive of surcharge & cess) (in %)	Base rate of RoE (in %)	Grossed up RoE [Base Rate/(1-t)] (in %)
2014-15	20.961	15.50	19.610
2015-16	21.342	15.50	19.705
2016-17	21.342	15.50	19.705
2017-18	21.342	15.50	19.705
2018-19	21.549	15.50	19.758

67. The Petitioner has claimed RoE for the 2014-19 period after grossing up the RoE of 15.50% with effective tax rates (based on MAT rates) each year as per the above said Regulation. RoE is trued-up on the basis of the MAT rate applicable in the respective years and is allowed for the Combined Asset as follows:

Particulars	(₹ in lakh)				
	2014-15	2015-16	2016-17	2017-18	2018-19
Opening Equity	9203.42	9428.26	9483.29	9483.29	9488.62
Additions	224.84	55.03	0.00	5.33	0.00
Closing Equity	9428.26	9483.29	9483.29	9488.62	9488.62
Average Equity	9315.84	9455.78	9483.29	9485.96	9488.62
Return on Equity (Base Rate) (%)	15.500	15.500	15.500	15.500	15.500
MAT Rate for respective year (%)	20.961	21.342	21.342	21.342	21.549
Rate of Return on Equity (%)	19.610	19.705	19.705	19.705	19.758
<b>Return on Equity</b>	<b>1826.84</b>	<b>1863.26</b>	<b>1868.68</b>	<b>1869.21</b>	<b>1874.76</b>

68. The details of RoE approved vide order dated 29.2.2016 in Petition No. 2/TT/2015, claimed by the Petitioner in the instant petition and trued-up RoE allowed in the instant order is as follows:

Particulars	(₹ in lakh)				
	2014-15	2015-16	2016-17	2017-18	2018-19
Approved vide order dated 29.2.2016 in Petition No. 02/TT/2015	1838.95	1873.11	1873.11	1873.11	1873.11
Claimed by the Petitioner in the instant petition	1828.23	1864.21	1868.68	1869.21	1874.76
Allowed after true-up in this order	1826.84	1863.26	1868.68	1869.21	1874.76



## Operation & Maintenance Expenses (O&M Expenses)

69. The O&M Expenses claimed by the Petitioner for the 2014-19 tariff period are as follows:

(₹ in lakh)					
Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
13 Numbers 400 kV Sub-station Bays (Fatehbad, Jalandhar, Ludhiana and Malerkotla)					
12 Numbers 220 kV Sub-station Bays (Fatehbad and Ludhiana)					
120.505 km S/C (Twin/Triple Conductor) (Jalandhar-Ludhiana, Ludhiana-Malerkotla)					
29.226 km D/C (Twin/Triple Conductor) (Moga Hissar Line at Fatehbad)					
<b>Total O&amp;M Expenses claimed</b>	<b>1359.77</b>	<b>1404.96</b>	<b>1451.65</b>	<b>1499.77</b>	<b>1549.54</b>

70. Regulation 29(3) of the 2014 Tariff Regulations specifies the norms for O&M Expenses for the transmission system. The norms specified in respect of the elements covered in the Combined Asset are as follows:

Element	Norms for 2014-15	Norms for 2015-16	Norms for 2016-17	Norms for 2017-18	Norms for 2018-19
S/C (Twin/Triple Conductor)	₹0.404 lakh/km	₹0.418 lakh/km	₹0.432 lakh/km	₹0.446 lakh/km	₹0.461 lakh/km
D/C (Twin/Triple Conductor)	₹0.707 lakh/km	₹0.731 lakh/km	₹0.755 lakh/km	₹0.780 lakh/km	₹0.806 lakh/km
400 kV Sub-station	₹60.30 lakh/ bay	₹ 62.30 lakh/ bay	₹64.37 lakh/ bay	₹66.51 lakh/ bay	₹68.71 lakh/ bay
220 kV Sub-station	₹42.21 lakh/ bay	₹43.61 lakh/ bay	₹45.06 lakh/ bay	₹46.55 lakh/ bay	₹48.10 lakh/ bay

71. We have considered the submissions of the Petitioner. The O&M Expenses allowed under Regulation 29(3) of the 2014 Tariff Regulations are as follows:

(₹ in lakh)					
Details	2014-15	2015-16	2016-17	2017-18	2018-19
13 number of 400 kV Sub-station Bays	783.90	809.90	836.81	864.63	893.23
12 number of 220 kV Sub-station Bays	506.52	523.32	540.72	558.60	577.20
120.505 km S/C (Twin/Triple Conductor)	48.68	50.37	52.06	53.75	55.55
29.226 km D/C (Twin/Triple Conductor)	20.66	21.36	22.07	22.80	23.56
<b>Total</b>	<b>1359.77</b>	<b>1404.96</b>	<b>1451.65</b>	<b>1499.77</b>	<b>1549.54</b>

72. The details of O&M Expenses approved vide order dated 29.2.2016 in Petition No. 2/TT/2015, claimed by the Petitioner in the instant petition and trued-up O&M Expenses allowed in the instant order is as follows:





(₹ in lakh)

Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Approved <i>vide</i> order dated 29.2.2016 in Petition No. 02/TT/2015	1359.77	1404.96	1451.65	1499.77	1549.54
Claimed by the Petitioner in the instant petition	1359.77	1404.96	1451.65	1499.77	1549.54
Allowed after true-up in this order	1359.77	1404.96	1451.65	1499.77	1549.54

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

73. IWC has been worked out as per the methodology provided in Regulation 28 of the 2014 Tariff Regulations and is allowed for the Combined Asset as follows:

(₹ in lakh)

Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
O&M Expenses (O&M Expenses for 1 month)	113.31	117.08	120.97	124.98	129.13
Maintenance Spares (15% of O&M Expenses)	203.97	210.74	217.75	224.97	232.43
Receivables (Equivalent to 2 months of annual fixed cost)	1011.99	1007.20	993.21	977.74	963.45
<b>Total Working Capital</b>	<b>1329.27</b>	<b>1335.02</b>	<b>1331.93</b>	<b>1327.69</b>	<b>1325.01</b>
Rate of Interest (%)	13.50	13.50	13.50	13.50	13.50
<b>Interest of Working Capital</b>	<b>179.45</b>	<b>180.23</b>	<b>179.81</b>	<b>179.24</b>	<b>178.88</b>

74. The details of IWC approved *vide* order dated 29.2.2016 in Petition No. 2/TT/2015, claimed by the Petitioner in the instant petition and trued-up IWC allowed in the instant order is as follows:

(₹ in lakh)

Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Approved <i>vide</i> order dated 29.2.2016 in Petition No. 2/TT/2015	180.04	180.94	180.27	179.68	179.18
Claimed by the Petitioner in the instant petition	181.18	181.95	181.51	180.94	180.57
Allowed after true-up in this order	179.45	180.23	179.81	179.24	178.88

### **Approved Annual Fixed Charges for the 2014-19 Tariff Period**

75. The trued-up annual fixed charges approved for the Combined Asset for the 2014-19 tariff period are as follows:





(₹ in lakh)

Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Depreciation	1523.45	1523.45	1523.45	1523.45	1523.45
Interest on Loan	1182.44	1071.30	935.67	794.79	654.06
Return on Equity	1826.84	1863.26	1868.68	1869.21	1874.76
Interest on Working Capital	179.45	180.23	179.81	179.24	178.88
O & M Expenses	1359.77	1404.96	1451.65	1499.77	1549.54
<b>Total</b>	<b>6071.94</b>	<b>6043.19</b>	<b>5959.27</b>	<b>5866.46</b>	<b>5780.69</b>

76. Accordingly, the Annual Transmission Charges approved vide order dated 29.2.2016 in Petition No. 2/TT/2015, claimed by the Petitioner and approved after truing up in the instant order is as follows:

(₹ in lakh)

Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Approved vide order dated 29.2.2016 in Petition No. 02/TT/2015	6097.94	6074.41	5979.58	5885.95	5794.07
Claimed by the Petitioner in the instant petition	6148.93	6119.71	6034.80	5941.97	5856.18
Allowed after true-up in this order	6071.94	6043.19	5959.27	5866.46	5780.69

### **Determination of Annual Fixed Charges for the 2019-24 Tariff Period**

77. The Petitioner has claimed the following transmission charges for the 2019-24 tariff period:

(₹ in lakh)

Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
Depreciation	1523.45	1523.45	460.73	460.73	460.73
Interest on Loan	601.98	476.08	384.26	339.45	292.57
Return on Equity	1795.36	1808.56	1808.56	1808.56	1808.56
Interest on Working Capital	112.76	113.18	97.71	99.08	100.23
O&M Expenses	1234.58	1278.21	1322.74	1369.44	1416.04
<b>Total</b>	<b>5268.13</b>	<b>5199.48</b>	<b>4074.00</b>	<b>4077.26</b>	<b>4078.13</b>

78. The details of IWC claimed by the Petitioner for the 2019-24 period are as follows:



(₹ in lakh)

Particular	2019-20	2020-21	2021-22	2022-23	2023-24
O&M Expenses	102.88	106.52	110.23	114.12	118.00
Maintenance Spares	185.19	191.73	198.41	205.42	212.41
Receivables	647.72	641.03	502.27	502.67	501.41
Total Working Capital	935.79	939.28	810.91	822.21	831.82
Rate of Interest (%)	12.05	12.05	12.05	12.05	12.05
<b>Interest on Working Capital</b>	<b>112.76</b>	<b>113.18</b>	<b>97.71</b>	<b>99.08</b>	<b>100.23</b>

### **Capital Cost as on 1.4.2019**

79. Regulation 19 of the 2019 Tariff Regulations provide as follows:

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

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

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



*Trade (PAT) scheme of Government of India shall be considered by the Commission subject to sharing of benefits accrued under the PAT scheme with the beneficiaries.*

- (3) *The Capital cost of an existing project shall include the following:*
- (a) *Capital cost admitted by the Commission prior to 1.4.2019 duly trued up by excluding liability, if any, as on 1.4.2019;*
  - (b) *Additional capitalization and de-capitalization for the respective year of tariff as determined in accordance with these regulations;*
  - (c) *Capital expenditure on account of ash disposal and utilization including handling and transportation facility;*
  - (d) *Capital expenditure on account of ash disposal and utilization including handling and transportation facility;*
  - (e) *Capital expenditure incurred towards railway infrastructure and its augmentation for transportation of coal up to the receiving end of generating station but does not include the transportation cost and any other appurtenant cost paid to the railway; and*
  - (f) *Capital cost incurred or projected to be incurred by a thermal generating station, on account of implementation of the norms under Perform, Achieve and Trade (PAT) scheme of Government of India shall be considered by the Commission subject to sharing of benefits accrued under the PAT scheme with the beneficiaries.”*

- (4) *The capital cost in case of existing or new hydro generating station shall also include:*

- (a) *cost of approved rehabilitation and resettlement (R&R) plan of the project in conformity with National R&R Policy and R&R package as approved; and*
- (b) *cost of the developer's 10% contribution towards Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY) and Deendayal Upadhyaya Gram Jyoti Yojana (DDUGJY) project in the affected area.*

- (5) *The following shall be excluded from the capital cost of the existing and new projects:*

- (a) *The assets forming part of the project, but not in use, as declared in the tariff petition;*
- (b) *De-capitalised Assets after the date of commercial operation on account of replacement or removal on account of obsolescence or shifting from one project to another project:*

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

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

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



80. The Petitioner has claimed capital cost of ₹31630.64 lakh as on 31.3.2019 for the Combined Asset. The same has been worked out by the Commission as on 31.3.2019 and considered as the opening capital cost as on 1.4.2019 for determination of tariff in accordance with Regulation 19 of the 2019 Tariff Regulations.

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

81. Regulation 24 and Regulation 25 of the 2019 Tariff Regulations provides as follows:

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

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

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

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

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

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

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

- (a) Liabilities to meet award of arbitration or for compliance of the directions or order of any statutory authority, or order or decree of any court of law;*
- (b) Change in law or compliance of any existing law;*
- (c) Deferred works relating to ash pond or ash handling system in the original scope of work;*



- (d) Liability for works executed prior to the cut-off date;  
(e) Force Majeure events;  
(f) Liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments; and  
Raising of ash dyke as a part of ash disposal system.

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

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

82. The Petitioner has claimed ACE of ₹468.70 lakh during 2019-24 for the Combined Asset under Regulation 25(1)(a) of the 2019 Tariff Regulations. The Petitioner has submitted that the ACE claimed during 2019-20 for the single Combined Asset is beyond the cut-off date and is due to enhanced land payment on account of court order already admitted by the commission *vide* order dated 29.2.2016 and is covered under Regulation 25(1)(a) of the 2019 Tariff regulations. The Petitioner has claimed capital cost as on 31.3.2024 as follows:

Total Capital Cost as on 1.4.2019	Projected ACE	Total Capital Cost as on 31.3.2024
	2019-20	
31630.64	468.70	32099.34

83. We have considered the submission made by the Petitioner. ACE claimed by the Petitioner has been allowed under Regulation 25(1)(a) of the 2019 Tariff Regulations as it pertains to enhanced land payment on account of court order already admitted *vide* order dated 29.2.2016 in Petition No. 2/TT/2015. Accordingly, the capital cost considered for the 2019-24 tariff period is as follows:



(₹ in lakh)

Total Capital Cost as on 1.4.2019	Projected ACE	Total Capital Cost as on 31.3.2024
	2019-20	
31630.64	468.70	32099.34

### Debt-Equity Ratio

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

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

Provided that:

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

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

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

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

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

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





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

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

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

Particulars	Capital Cost as on 1.4.2019 (₹ in lakh)	%	Capital Cost as on 31.3.2024 (₹ in lakh)	%
Debt	22142.01	70.00	22470.10	70.00
Equity	9488.62	30.00	9629.23	30.00
<b>Total</b>	<b>31630.64</b>	<b>100.00</b>	<b>32099.34</b>	<b>100.00</b>

### **Depreciation**

86. Regulation 33(1), (2) and (5) of the 2019 Tariff Regulations provide as follows:

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

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

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

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



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

87. UPPCL has submitted that the capital cost is ₹31630.64 lakh for 2019-20 and ACE during 2019-20 is ₹468.70 lakh and de-capitalisation is NIL, therefore closing capital cost of 2020-21 is ₹32099.34 lakh and on that basis the Petitioner has worked out depreciation. There is no ACE from 2021-22 to 2023-24. The cumulative depreciation in the beginning of the period for 2019-20 is ₹13562.57 lakh as against which the Petitioner has taken a wrong figure of ₹15842.32 lakh. The uniform rate of depreciation per year from 2021-22 to ending the life should be ₹603.22 lakh instead of ₹460.73 lakh taken by the Petitioner. UPPCL has submitted that the Petitioner may be directed to revise the figures of depreciation. In response, Petitioner vide affidavit dated 23.12.2020 submitted that depreciation computed is as per the 2019 Tariff Regulations.

88. We have considered the Petitioner’s claim and UPPCL’s submission. The depreciation has been worked out considering ACE as on 31.3.2019 and accumulated depreciation up to 31.3.2019. WAROD has been worked (Annexure-2) as per the rates of depreciation prescribed in 2019 Tariff Regulations. The Combined Asset has completed 12 years of life as on 31.3.2021, the remaining depreciable value as on 31.3.2021 has been spread across the balance useful life of 16 years in accordance with Regulation 33(5) of the 2019 Tariff Regulations. The annual depreciation from the year 2021-22 and onwards is ₹460.74 lakh. The depreciation allowed for the Combined Asset for the 2019-24 period is as follows:

	(₹ in lakh)				
Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
<b>Depreciation</b>					
Opening Gross Block	31630.64	32099.34	32099.34	32099.34	32099.34
ACE	468.70	0.00	0.00	0.00	0.00
Closing Gross Block	32099.34	32099.34	32099.34	32099.34	32099.34





Average Gross Block	31864.99	32099.34	32099.34	32099.34	32099.34
Freehold Land	2686.07	2920.42	2920.42	2920.42	2920.42
Weighted average rate of Depreciation (WAROD) (%)	4.78	4.75	1.58	1.58	1.58
Balance useful life at the beginning of the year (Year)	18.00	17.00	16.00	15.00	14.00
Lapsed life of the asset (Year)	10.00	11.00	12.00	13.00	14.00
Depreciable Value	26261.03	26261.03	26261.03	26261.03	26261.03
<b>Depreciation during the year</b>	<b>1523.45</b>	<b>1523.45</b>	<b>460.74</b>	<b>460.74</b>	<b>460.74</b>
Aggregate Cumulative Depreciation	17365.77	18889.22	19349.95	19810.69	20271.43
Remaining Depreciable Value	8895.26	7371.81	6911.07	6450.33	5989.60

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

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

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

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

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

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

(5) *The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio after providing appropriate accounting adjustment for interest capitalized:*

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

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

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



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

90. UPPCL has submitted that the capital cost is ₹31630.64 lakh for 2019-20 and the debt-equity ratio is 70:30. The debt is ₹22141.448 lakh. The cumulative depreciation is ₹13562.57 lakh instead of which the Petitioner has taken a wrong value of ₹15045.74 lakh. In response, the Petitioner vide affidavit dated 23.12.2020 has submitted that depreciation computed is as per the 2019 Tariff Regulations.

91. We have considered the Petitioner’s claim and UPPCL’s submissions. The weighted average rate of IoL has been considered on the basis of rate prevailing as on 1.4.2019. The Petitioner has prayed that the change in interest rate due to floating rate of interest applicable, if any, during 2019-24 tariff period will be adjusted. The floating rate of interest, if any, shall be considered at the time of true up. Therefore, IoL has been allowed in accordance with Regulation 32 of the 2019 Tariff Regulations. The IoL allowed for the Combined Asset for the 2019-24 tariff period are as follows:

Particulars	(₹ in lakh)				
	2019-20	2020-21	2021-22	2022-23	2023-24
Gross Normative Loan	22142.01	22470.10	22470.10	22470.10	22470.10
Cumulative Repayments up to Previous Year	15842.32	17365.77	18889.22	19349.95	19810.69
Net Loan-Opening	6299.69	5104.33	3580.88	3120.14	2659.40
Additions due to ACE	328.09	0.00	0.00	0.00	0.00
Repayment during the year	1523.45	1523.45	460.74	460.74	460.74
Net Loan-Closing	5104.33	3580.88	3120.14	2659.40	2198.67
Average Loan	5702.01	4342.61	3350.51	2889.77	2429.04
Weighted Average Rate of Interest on Loan (%)	9.2633	9.2637	9.2658	9.2082	9.0702
<b>Interest on Loan</b>	<b>528.19</b>	<b>402.29</b>	<b>310.45</b>	<b>266.10</b>	<b>220.32</b>

### **Return on Equity (RoE)**

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

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



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

Provided that return on equity in respect of additional capitalization after cut-off date beyond the original scope excluding additional capitalization due to Change in Law, shall be computed at the weighted average rate of interest on actual loan portfolio of the generating station or the transmission system;

Provided further that:

i. In case of a new project, the rate of return on equity shall be reduced by 1.00% for such period as may be decided by the Commission, if the generating station or transmission system is found to be declared under commercial operation without commissioning of any of the Restricted Governor Mode Operation (RGMO) or Free Governor Mode Operation (FGMO), data telemetry, communication system up to load dispatch centre or protection system based on the report submitted by the respective RLDC;

ii. in case of existing generating station, as and when any of the requirements under (i) above of this Regulation are found lacking based on the report submitted by the concerned RLDC, rate of return on equity shall be reduced by 1.00% for the period for which the deficiency continues;

iii. in case of a thermal generating station, with effect from 1.4.2020:

a) rate of return on equity shall be reduced by 0.25% in case of failure to achieve the ramp rate of 1% per minute;

b) an additional rate of return on equity of 0.25% shall be allowed for every incremental ramp rate of 1% per minute achieved over and above the ramp rate of 1% per minute, subject to ceiling of additional rate of return on equity of 1.00%:

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

**“31. Tax on Return on Equity:**(1) The base rate of return on equity as allowed by the Commission under Regulation 30 of these regulations shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid in respect of the financial year in line with the provisions of the relevant Finance Acts by the concerned generating company or the transmission licensee, as the case may be. The actual tax paid on income from other businesses including deferred tax liability (i.e. income from business other than business of generation or transmission, as the case may be) shall be excluded for the calculation of effective tax rate.

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

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



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

**Illustration-**

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

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

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

(a) Estimated Gross Income from generation or transmission business for FY 2019-20 is Rs 1,000 crore;

(b) Estimated Advance Tax for the year on above is Rs 240 crore;

(c) Effective Tax Rate for the year 2019-20 = Rs 240 Crore / Rs 1000 Crore = 24%;

(d) Rate of return on equity =  $15.50 / (1 - 0.24) = 20.395\%$ .

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

93. The Petitioner has submitted that MAT rate is applicable to the Petitioner's company. BRPL has submitted that as per Regulation 31(3) of the 2019 Tariff Regulations, the Petitioner has a statutory duty to undertake the true up of the grossed-up rate of RoE at the end of every financial year based on actual tax paid. The above statutory function delegated to the transmission licensee cannot be exercised unilaterally but required to be conducted in most impartial manner by summoning all the Respondent-beneficiaries.



94. In response, the Petitioner vide affidavit dated 25.3.2021 has submitted that the Petitioner pays the income tax and files income tax returns in a timely manner. The final tax demand including additional tax, interest, penalty and adjustment for refunds if any is decided by the Income Tax Authority through its assessment orders, which are beyond the Petitioner's control. The Petitioner has further submitted that for the 2014-19 tariff period, the Commission vide order dated 27.4.2020 in Petition No. 274/TT/2019 has approved effective tax rate as notified MAT rates and for 2019-24 tariff period, tariff has been admitted with grossing of rate of RoE at 18.782% considering MAT rate of 17.472%. Further, any under-recovery or over-recovery of grossed up rate on RoE is taken up at the time of true up for the 2019-24 period.

95. BRPL has submitted that the Petitioner should clarify whether it is grossing up deferred tax amount while billing to beneficiaries and, if so, the same is required to be refunded to beneficiaries. In response, the Petitioner vide affidavit dated 25.3.2021 has submitted that it has claimed deferred tax liability during the period 2009-14 only for the deferred tax liability upto 31.3.2009 and those that have materialized. Further, the claim of deferred tax liability pertaining to transmission system on materialisation is supported with Auditor Certificate. The Petitioner has submitted that deferred tax liability amount billed/ materialized is not considered while grossing up the RoE. Further, the deferred tax liability materialized only up to 31.3.2014 is claimed till date and the claim for deferred tax materialized for 2014-19 period is under process.

96. UPPCL submitted that the capital cost is ₹316301.64 lakh and the debt-equity ratio is 70:30. Therefore, the equity for 2019-20 is ₹9489.19 lakh. The discrepancy in RoE is that the grossed up rate of interest on equity is on presumptive value of MAT rates. Therefore, the values of RoE for the entire 2019-24 tariff period has to be



revised. UPPCL submitted that the Petitioner may be directed to rectify the figures of RoE on the basis of MAT rates approved by the I.T. Authorities.

97. In response, the Petitioner submitted that in the absence of IT assessment order pertaining to 2019-24 period, the RoE should be calculated @ 18.782% after grossing up the RoE with MAT rate of 17.472% ( Base Rate 15% + Surcharge 12% + Cess 4%) based on the rate prescribed by the Commission as per illustration under Regulation 31(2) (ii) of the 2019 Tariff Regulations during the 2019-24 period. As per Regulation 31(3) of 2019 Tariff Regulations, the grossed up rate of RoE at the end of every financial year shall be trued up based on actual tax paid together with any additional tax demand including interest thereon duly adjusted for any refund of tax including interest received from the I.T. Authorities pertaining to the tariff period 2019-24 on actual gross income of any financial year.

98. We have considered the submissions of the Petitioner, UPPCL and BRPL. One of the contentions of BRPL is that the true up of the grossed-up rate of RoE at the end of every financial year based on actual tax paid under Regulation 31(3) of the 2019 Tariff Regulations should be done in consultation with the Respondents. It is observed that Regulation 31(3) of the 2019 Tariff Regulations do not provide for any such consultation with the Respondents.

99. The Petitioner has submitted that MAT rate is applicable to the Petitioner's company. Accordingly, MAT rate applicable in 2019-20 has been considered for the purpose of RoE, which shall be trued-up with actual tax rate in accordance with Regulation 31(3) of the 2019 Tariff Regulations. RoE allowed for the Combined Asset as follows:

	(₹ in lakh)				
Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
Opening Equity	9488.62	9629.23	9629.23	9629.23	9629.23
Additions	140.61	0.00	0.00	0.00	0.00





Closing Equity	9629.23	9629.23	9629.23	9629.23	9629.23
Average Equity	9558.93	9629.23	9629.23	9629.23	9629.23
Return on Equity (Base Rate) (%)	15.500	15.500	15.500	15.500	15.500
MAT Rate for respective year (%)	17.472	17.472	17.472	17.472	17.472
Rate of Return on Equity (%)	18.782	18.782	18.782	18.782	18.782
<b>Return on Equity</b>	<b>1795.36</b>	<b>1808.56</b>	<b>1808.56</b>	<b>1808.56</b>	<b>1808.56</b>

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

100. The O&M Expenses claimed by the Petitioner for the Combined Asset for the 2019-24 tariff period are as follows:

Details	(₹ in lakh)				
	2019-20	2020-21	2021-22	2022-23	2023-24
13 Number of 400 kV Sub-station Bays	417.95	432.64	447.85	463.58	479.83
12 Number of 220 kV Sub-station Bays	270.12	279.60	289.44	299.52	310.08
4 Numbers 400 Kv Sub-station ICT ( 315 MVA ICT-I and II at Fatehabad, 315 MVA ICT-I and II at Ludhiana)	451.08	467.46	483.84	501.48	517.86
120.505 km S/C (Twin/Triple Conductor)	60.61	62.78	64.95	67.24	69.65
29.226 km D/C (Twin/Triple Conductor)	25.75	26.65	27.59	28.55	29.55
PLCC (2% of ₹453.68 lakh)	9.07	9.07	9.07	9.07	9.07
<b>Total</b>	<b>1234.58</b>	<b>1278.21</b>	<b>1322.74</b>	<b>1369.44</b>	<b>1416.04</b>

101. The norms specified under Regulation 35(3)(a) and 33(4) of the 2019 Tariff Regulations provides as follows:

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

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



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





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

*Provided further that:*

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

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

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

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

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

102. We have considered the submission of the Petitioner. The Petitioner has claimed O&M Expenses separately for PLCC under Regulation 35(4) of the 2019 Tariff Regulations @2% of its original project cost in the instant petition. The Petitioner



has made similar claim in other petitions as well. Though PLCC is a communication system, it has been considered as part of the sub-station in the 2014 Tariff Regulations and the 2019 Tariff Regulations and the norms for sub-station have been specified accordingly. Accordingly, the Commission vide order dated 24.1.2021 in Petition No. 126/TT/2020 has already concluded that no separate O&M Expenses can be allowed for PLCC under Regulation 35(4) of the 2019 Tariff Regulations even though PLCC is a communication system. Therefore, the Petitioner's claim for separate O&M Expenses for PLCC @2% is not allowed. The relevant portions of the order dated 24.1.2021 in Petition No. 126/TT/2020 are extracted hereunder:

*"103. Thus, although PLCC equipment is a communication system, it has been considered as a part of sub-station, as it is used both for protection and communication. Therefore, we are of the considered view that rightly, it was not considered for separate O&M Expenses while framing norms of O&M for 2019-24 tariff period. While specifying norms for bays and transformers, O&M Expenses for PLCC have been included within norms for O&M Expenses for sub-station. Norms of O&M Expenses @2% of the capital cost in terms of Regulation 35(4) of the 2019 Tariff Regulations have been specified for communication system such as PMU, RMU, OPGW etc. and not for PLCC equipment."*

*"105. In our view, granting of O&M Expenses for PLCC equipment @2% of its capital cost under Regulation 35(4) of the 2014 Tariff Regulations under the communication system head would tantamount to granting O&M Expenses twice for PLCC equipment as PLCC equipment has already been considered as part of the sub-station. Therefore, the Petitioner's prayer for grant of O&M Expenses for the PLCC equipment @2% of its capital cost under Regulation 35(4) of the 2014 Tariff Regulations is rejected.*

*106. The principle adopted in this petition that PLCC is part of sub-station and accordingly no separate O&M Expenses is admissible for PLCC equipment in the 2019-24 tariff period under Regulation 35(4) of the 2019 Tariff Regulations shall be applicable in case of all petitions where similar claim is made by the Petitioner. As already mentioned, the Commission, however, on the basis of the claim made by the Petitioner has inadvertently allowed O&M Expenses for PLCC equipment @2% of its original project cost, which is applicable for other "communication system", for 2019-24 period in 31 petitions given in Annexure-3 of this order. Therefore, the decision in this order shall also be applicable to all the petitions given in Annexure-3. Therefore, PGCIL is directed to bring this decision to the notice of all the stakeholders in the 31 petitions given in Annexure-3 and also make revised claim of O&M Expenses for PLCC as part of the sub-station at the time of truing up of the tariff allowed for 2019-24 period in respective petitions."*

Therefore, the Petitioner's claim for separate O&M Expenses for PLCC @ 2% is not allowed.



103. The O&M Expenses allowed for the Combined Asset is as follows:

	(₹ in lakh)				
	2019-20	2020-21	2021-22	2022-23	2023-24
<b>O&amp;M Expenses</b>					
13 number of 400 kV Sub-station bays					
Norms (₹ lakh/Bay)	32.15	33.28	34.45	35.66	36.91
Total	417.95	432.64	447.85	463.58	479.83
12 number of 220 kV Sub-station bays					
Norms (₹ lakh/Bay)	22.51	23.30	24.12	24.96	25.84
Total	270.12	279.60	289.44	299.52	310.08
120.505 km S/C (Twin/Triple Conductor)					
Norms (₹ lakh/km)	0.503	0.521	0.539	0.558	0.578
Total	60.61	62.78	64.95	67.24	69.65
29.226 km D/C (Twin/Triple Conductor)					
Norms (₹ lakh/km)	0.881	0.912	0.944	0.977	1.011
Total	25.75	26.65	27.59	28.55	29.55
4 number of 400 kV Sub-station ICT (315 MVA ICT-I and II at Fatehabad, 315 MVA ICT-I and II at Ludhiana)					
Norms (₹ lakh/MVA)	0.358	0.371	0.384	0.398	0.411
Total	451.08	467.46	483.84	501.48	517.86
<b>Total O&amp;M Expenses allowed (₹ in lakh)</b>	<b>1225.51</b>	<b>1269.14</b>	<b>1313.67</b>	<b>1360.38</b>	<b>1406.97</b>

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

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

#### ***“34. Interest on Working Capital***

*(1)...*

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

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

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



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

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

“3.Definitions ...

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

105. The Petitioner has submitted that it has computed IWC for the 2019-24 period considering the SBI Base Rate plus 350 basis points as on 1.4.2019. The Petitioner has considered the rate of IWC as 12.05%. IWC is worked out in accordance with Regulation 34 of the 2019 Tariff Regulations. RoI considered is 12.05% (SBI 1 year MCLR applicable as on 1.4.2019 of 8.55% plus 350 basis points) for 2019-20, whereas, ROI for 2020-21 onwards has been considered as 11.25% (SBI 1 year MCLR applicable as on 1.4.2020 of 7.75% plus 350 basis points). The components of the working capital and interest thereon allowed for the Combined Asset is as follows:

(₹ in lakh)					
Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
O&M Expenses (O&M Expenses for 1 month)	102.13	105.76	109.47	113.36	117.25
Maintenance Spares (15% of O&M Expenses)	183.83	190.37	197.05	204.06	211.05
Receivables (Equivalent to 45 days of annual transmission charges)	637.35	629.70	491.07	491.52	490.41
<b>Total Working Capital</b>	<b>923.30</b>	<b>925.84</b>	<b>797.60</b>	<b>808.94</b>	<b>818.71</b>
Rate of Interest (%)	12.05	11.25	11.25	11.25	11.25
<b>Interest on Working Capital</b>	<b>111.26</b>	<b>104.16</b>	<b>89.73</b>	<b>91.01</b>	<b>92.10</b>

### Annual Fixed Charges of the 2019-24 Tariff Period

106. The transmission charges allowed for the Combined Asset for the 2019-24 tariff period are as follows:

(₹ in lakh)					
Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
Depreciation	1523.45	1523.45	460.74	460.74	460.74
Interest on Loan	528.19	402.29	310.45	266.10	220.32



Return on Equity	1795.36	1808.56	1808.56	1808.56	1808.56
Interest on Working Capital	111.26	104.16	89.73	91.01	92.10
O&M Expenses	1225.51	1269.14	1313.67	1360.38	1406.97
<b>Total</b>	<b>5183.77</b>	<b>5107.59</b>	<b>3983.15</b>	<b>3986.78</b>	<b>3988.69</b>

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

107. The Petitioner has sought reimbursement of fee paid by it for filing the Petition and publication expenses. BRPL has submitted that though the Commission can allow filing fee and publication expenses at discretion under Regulation 70(1) of the 2019 Tariff Regulations, but the exercise of such discretion is a judicial discretion in the adjudication of tariff for which no justification has been filed by the Petitioner. BRPL also referred to the Commission's order dated 11.9.2008 in Petition No. 129 of 2005 where it declined the claim of Central Power Sector undertakings for allowing the reimbursement of the application filing fee. In response, the Petitioner vide affidavit dated 25.3.2021 has submitted that it has requested for reimbursement of expenditure by the beneficiaries towards petition filing fee and publication expense, in terms of Regulation 70(1) of the 2019 Tariff Regulations. Further, the Petitioner also placed reliance on the Commission's order dated 28.3.2016 in Petition No. 137/TT/2015 where it allowed the recovery of petition filing fee and expenditure for publication of notices from beneficiaries on pro-rata basis.

108. We have considered the submissions of the Petitioner and BRPL. Regulation 70(1) of the 2019 Tariff Regulations provides for reimbursement of filing fees and publication paid by the Petitioner. Accordingly, the Petitioner is entitled for reimbursement of the filing fees and publication expenses in connection with the present petition, directly from the beneficiaries on pro-rata basis in accordance with Regulation 70(1) of the 2019 Tariff Regulations.



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

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

110. UPPCL has submitted that the license fee is the onus of the Petitioner. In response, the Petitioner submitted that Regulation 70 of 2019 Tariff Regulation authorizes to recover Licensee fee separately from the respondents. The fees and charges to be paid by the Petitioner as ISTS licensee (deemed ISTS licensee) under Central Electricity Regulatory Commission (Fees and Charges of RLDC and other matters) Regulations as amended from time to time shall also be recoverable from the DICs as provided under Regulation 70(3) of 2019 Tariff Regulations.

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

### **Goods and Services Tax**

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



113. BRPL has submitted that the demand of the Petitioner is premature and need not be considered at this juncture. In response, the Petitioner vide affidavit dated 25.3.2021 submitted that currently transmission of electricity by an electric transmission utility is exempt from GST. Hence, the transmission charges currently charged are exclusive of GST. Further, if GST is levied at any rate and at any point of time in future, the same shall be borne and additionally paid by the Respondent(s) to the Petitioner and the same shall be charged and billed separately.

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

### **Security Expenses**

115. The Petitioner has submitted that security expenses for the transmission assets are not claimed in the instant petition and it would file a separate petition for claiming the overall security expenses and the consequential IWC. The Petitioner has requested to consider the actual security expenses incurred during 2018-19 for claiming estimated security expenses for 2019-20 which shall be subject to true up at the end of the year based on the actuals. The Petitioner has submitted that similar petition for security expenses for 2020-21, 2021-22, 2022-23 and 2023-24 shall be filed on a yearly basis on the basis of the actual expenses of previous year subject to true up at the end of the year on actual expenses. The Petitioner has submitted that the difference, if any, between the estimated security expenses and actual security expenses as per the audited accounts may be allowed to be recovered from the beneficiaries on a yearly basis.

116. BRPL has submitted that the approach adopted by the Petitioner towards claim of security expenses does not warrant the need for revision in IWC as the same is





claimed in advance. The Petitioner, in response has submitted that the expenses are not claimed in the instant petition and shall be claimed separately in a separate petition along with other assets.

117. We have considered the submissions of the Petitioner and BRPL. We are of the view that the Petitioner should claim security expenses for all the transmission assets in one petition. It is observed that the Petitioner has already filed the Petition No.260/MP/2020 claiming consolidated security expenses on projected basis for the 2019-24 tariff period on the basis of actual security expenses incurred in 2018-19. Therefore, security expenses will be dealt with in Petition No. 260/MP/2020 in accordance with the applicable provisions of the 2019 Tariff Regulations.

### **Capital Spares**

118. The Petitioner has sought reimbursement of capital spares at the end of tariff period. UPPCL has submitted that the claim of capital spares at the end of the tariff period is permissible only to the extent of the provision of the concerned tariff regulation which is the ceiling value and therefore anything over and above the same may not be allowed. In response, the Petitioner has submitted that the capital spares shall be claimed at the end of tariff period as per actual. Accordingly, the Petitioner has not claimed capital spares in the instant petition and has informed that the same shall be claimed in a separate petition along with all other assets in accordance with the 2019 Tariff Regulations.

119. We have considered the submissions of the Petitioner and UPPCL. The Petitioner's claim, if any, shall be dealt with in accordance with the provisions of the 2019 Tariff Regulations.





## Sharing of Transmission Charges

120. The billing, collection and disbursement of the transmission charges approved shall be governed by the provisions of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 or the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020, as applicable, as provided in Regulation 43 of the 2014 Tariff Regulations for the 2014-19 tariff period and Regulation 57 of the 2019 Tariff Regulations for the 2019-24 tariff period.

121. To summarise:

- (a) Revised Annual Fixed Charges allowed for the Combined Asset as per the APTEL's judgments are:

(₹ in lakh)		
Asset	2007-08	2008-09
Asset-a	38.57	55.14
Asset-b	275.62	1701.90
Asset-c		1343.77
Asset-d		394.81
Asset-e		467.92
Asset-f		213.69

- (b) The consequential revision of Annual Fixed Charges allowed for the Asset-I, Asset-II and Asset-III for the 2009-14 tariff period are:

(₹ in lakh)					
Asset-I					
Particulars	2009-10	2010-11	2012-13	2013-14	2014-15
Annual Fixed Charges	4437.87	4524.86	4509.95	4486.60	4458.44

(₹ in lakh)					
Asset-II					
Particulars	2009-10	2010-11	2012-13	2013-14	2014-15
Annual Fixed Charges	1378.81	1410.14	1441.11	1461.94	1467.51



(₹ in lakh)

Asset-III					
Particulars	2009-10	2010-11	2012-13	2013-14	2014-15
Annual Fixed Charges	288.22	315.05	325.16	332.99	333.45

(c) Trued-up Annual Fixed Charges allowed for the single Combined Asset for the 2014-19 tariff period are:

(₹ in lakh)

Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Annual Fixed Charges	6071.94	6043.19	5959.27	5866.46	5780.69

(d) Annual Fixed Charges allowed for the single Combined Asset for the 2019-24 tariff period are:

(₹ in lakh)

Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
Annual Fixed Charges	5183.77	5107.59	3983.15	3986.78	3988.69

122. Annexure-1 and Annexure-2 given hereinafter form part of the order.

123. This order disposes of Petition No. 14/TT/2020 in terms of the above discussion and findings.

sd/  
(Pravas Kumar Singh)  
Member

sd/  
(Arun Goyal)  
Member

sd/  
(I. S. Jha)  
Member

sd/  
(P. K. Pujari)  
Chairperson



**ANNEXURE-1**

2014-19 Capital Expenditure	Admitted Capital Cost as on COD (₹ in lakh)	ACE (₹ in lakh)			Admitted Capital Cost as on 31.3.2019 (₹ in lakh)	Rate of Depreciation as per Regulations	Annual Depreciation as per Regulations (₹ in lakh)				
		2014-15	2015-16	Allowed			2014-15	2015-16	2016-17	2017-18	2018-19
Land - Freehold	1501.05	749.47	183.44	0.00	2451.72	0.00%	0.00	0.00	0.00	0.00	0.00
Building Civil Works & Colony	1132.03	0.00	0.00	1132.03	1132.03	3.34%	37.81	37.81	37.81	37.81	37.81
Transmission Line	9818.95	0.00	0.00	9818.95	9818.95	5.28%	518.44	518.44	518.44	518.44	518.44
Sub Station	17774.26	0.00	0.00	17774.26	17774.26	5.28%	938.48	938.48	938.48	938.48	938.48
PLCC	453.68	0.00	0.00	453.68	453.68	6.33%	28.72	28.72	28.72	28.72	28.72
<b>Total</b>	<b>30679.97</b>	<b>749.47</b>	<b>183.44</b>	<b>29178.92</b>	<b>31630.64</b>	<b>Total</b>	<b>1523.45</b>	<b>1523.45</b>	<b>1523.45</b>	<b>1523.45</b>	<b>1523.45</b>
<b>Average Gross Block (₹ in lakh)</b>							<b>31054.71</b>	<b>31521.16</b>	<b>31612.88</b>	<b>31621.76</b>	<b>31630.64</b>
<b>Weighted Average Rate of Depreciation</b>							<b>4.91%</b>	<b>4.83%</b>	<b>4.82%</b>	<b>4.82%</b>	<b>4.82%</b>



**ANNEXURE-2**

2019-24  Capital Expenditure	Combined Admitted Capital Cost as on 1.4.2019 (₹ in lakh)	Projected ACE (₹ in lakh)	Admitted Capital Cost as on 31.3.2024 (₹ in lakh)	Rate of Depreciation as per Regulations	Annual Depreciation as per Regulations (₹ in lakh)	
		2019-20			2019-20	2020-21
Land - Freehold	2451.72	468.70	2920.42	0.00%	0.00	0.00
Building Civil Works & Colony	1132.03	0.00	1132.03	3.34%	37.81	37.81
Transmission Line	9818.95	0.00	9818.95	5.28%	518.44	518.44
Sub Station	17774.26	0.00	17774.26	5.28%	938.48	938.48
PLCC	453.68	0.00	453.68	6.33%	28.72	28.72
IT Equipment (Incl. Software)	0.00	0.00	0.00	15.00%	0.00	0.00
<b>Total</b>	<b>31630.64</b>	<b>468.70</b>	<b>32099.34</b>	<b>Total</b>	<b>1523.45</b>	<b>1523.45</b>
<b>Average Gross Block (₹ in lakh)</b>					<b>31864.99</b>	<b>32099.34</b>
<b>Weighted Average Rate of Depreciation</b>					<b>4.78%</b>	<b>4.75%</b>

\*The transmission project has completed 12 years of useful life as on 31.3.2021. Accordingly, for the computation of depreciation the remaining depreciable value at the beginning of the year is spread over the balance useful life of the asset during 2021-24 period as specified in Regulation 33(5) of the 2019 Tariff Regulations.

