

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 361/TT/2019

Coram:

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

Date of order: 21.05.2021

In the matter of:

Approval under Regulation 86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and revision of transmission tariff of 2004-09 and 2009-14 tariff periods, truing up of transmission tariff of 2014-19 period under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and determination of transmission tariff of 2019-24 tariff period under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for Special Protection Scheme for Rihand-Dadri HVDC Bi-pole and Gorakhpur-Muzzafarpur 400 kV line in the Northern Region.

And in the matter of:

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

.....Petitioner

Vs.

1. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.,
Vidyut Bhawan, Vidyut Marg, Jaipur - 302 005.
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-171 004.
6. Punjab State Electricity Board,
The Mall, Patiala - 147 001.
7. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula (Haryana) 134 109.
8. Power Development Department,
Government of Jammu & Kashmir,
Mini Secretariat, Jammu.
9. Uttar Pradesh Power Corporation Ltd.,
(Formerly Uttar Pradesh State Electricity Board),
Shakti Bhawan, 14, Ashok Marg,
Lucknow - 226 001.
10. Delhi Transco Ltd
Shakti Sadan, Kotla Road,
New Delhi-110 002
11. BSES Yamuna Power Ltd.,
BSES Bhawan, Nehru Place,
New Delhi.
12. BSES Rajdhani Power Ltd.,
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
Ms. Megha Bajpeyi, BRPL

ORDER

The instant petition has been filed by Power Grid Corporation of India Limited for revision of transmission tariff of the 2004-09 and 2009-14 tariff periods and truing of the capital expenditure of the 2014-19 tariff period under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “the 2014 Tariff Regulations”) and for determination of tariff under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as “the 2019 Tariff Regulations”) for 2019-24 period in respect of Special Protection Scheme for Rihand-Dadri HVDC Bi-pole and Gorakhpur-Muzzafarpur 400 kV Transmisison Line in Northern Region (hereinafter referred to as “the transmission asset”).

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

“1) Approve the revised Transmission Tariff for 2004-09 block and 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 materialized 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 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.

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

9) 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.”

Background

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



- a. The Investment Approval (IA) for execution of transmission asset associated with Special Protection Scheme for Rihand-Dadri HVDC Bi-pole and Gorakhpur-Muzzafarpur 400 kV Transmissin Line in the Northern Region was accorded by Board of Directors of the Petitioner Company vide letter dated 21.9.2006 at an estimated cost of ₹375.00 lakh which included IDC of ₹9.00 lakh. The date of commercial operation of the transmission asset is 1.8.2008.
- b. The tariff from COD to 31.3.2009 was allowed by the Commission vide order dated 26.4.2010 in Petition No. 249/2009 in accordance with the 2004 Traiff Regulations.
- c. The tariff of 2009-14 tariff period was allowed vide order dated 27.6.2011 in Petition No. 302/2010 based on admitted capital cost of ₹217.19 lakh in respect of the transmission asset as on 31.3.2009 in accordance with the 2009 Tariff Regulations.
- d. The tariff of 2009-14 period was trued up and tariff of the period from 1.4.2014 to 31.3.2019 was determined vide order dated 29.1.2016 in Petition No. 395/TT/2014.
- e. The Petitioner has sought revision of tariff of the 2004-09 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 Appellate Tribunal for Electricity (APTEL) judgments dated 22.1.2007 and dated 13.6.2007 in Appeal No. 81/2005 and batch matters and Appeal No. 139/2006 and batch cases respectively. The Petitioner has sought consequential revision of tariff allowed for 2009-14 period, truing up of tariff of



the 2014-19 period and determination of tariff for the 2019-24 tariff period in respect of the transmission asset.

f. APTEL vide judgements dated 22.1.2007 in Appeal No. 81/2005 and other related Appeals and judgement dated 13.6.2007 in Appeal No. 139/2006 pertaining to generating stations of NTPC decided mainly on the following issues:

- (a) Computation of interest on loan;
- (b) Consequences of refinancing of loan;
- (c) Depreciation as deemed repayment;
- (d) Admissibility of depreciation up to 90% of the value of the assets;
- (e) Consideration of maintenance of spares for working capital;
- (f) Depreciation of assets.

g. The Commission and certain beneficiaries filed Civil Appeals against the APTEL's judgments before the Hon'ble Supreme Court in 2007. These 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.

h. Based on the APTEL's judgments dated 22.1.2007 in Appeal No. 81/2005 and batch matters and dated 13.6.2007 in Appeal No. 139/2006 and batch cases, the Petitioner had sought revision of tariff of the transmission assets for 2001-04 and 2004-09 tariff periods in Petition No. 121/2007. The Commission after taking into consideration the pending Appeals before the Hon'ble Supreme Court adjourned the matter *sine die* and directed to revive the same after the disposal of the Civil Appeals by the Hon'ble Supreme Court.



- i. The Hon'ble Supreme Court vide its judgment dated 10.4.2018 in Civil Appeal No. 5622 of 2007 along with other Civil Appeals dismissed the said Civil Appeals thereby upholding the judgment under challenge. Thus the order has attained finality.
- j. Consequent to the Hon'ble Supreme Court's judgment dated 10.4.2018 in NTPC matters, Petition No. 121/2007 was listed for hearing 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.
- k. Instant petition was heard on 24.3.2021 and in view of APTEL's judgments dated 22.1.2007 in Appeal No. 81/2005 and batch cases, dated 13.6.2007 in Appeal No. 139/2006 and batch matters and the judgement of Hon'ble Supreme Court dated 10.4.2018 in Civil Appeal No. 5622 of 2007 along with other Civil Appeals, tariff is being revised. Tariff is being re-worked as per tariff blocks based on the Tariff Regulations applicable for the respective tariff periods. However, suitable assumptions at certain places, if needed, are being applied and the same have been indicated.
- l. The capital cost of ₹216.47 lakh in respect of the transmission asset was approved by the Commission vide its order dated 26.4.2010 in Petition No. 249/2009. The tariff from COD i.e. 1.8.2008 was worked out based on the admitted capital cost of ₹216.47 lakh. Accordingly, considering the admitted capital cost of ₹216.47 lakh, tariff is being revised for 2004-09 and 2009-14



periods in terms of the APTEL's judgements dated 22.1.2007 and dated 13.6.2007.

4. The Petitioner has submitted that as per I.A., all the transmission assets under the transmission project have been completed and are covered in the instant petition.

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

6. The Petitioner has served the petition on the Respondents and notice of this petition has been published in the newspaper in accordance with Section 64 of the Electricity Act, 2003. No comments/ objections have been received from the general public in response to the aforesaid notice published in the newspaper by the Petitioner. Uttar Pradesh Power Corporation Ltd. (UPPCL), Respondent No. 9, has filed its reply vide affidavit dated 18.10.2019. UPPCL has raised the issues of IoL, depreciation and Return on Equity (RoE). BSES Rajdhani Power Limited (BRPL), Respondent No. 12, has filed its reply vide affidavit dated 23.3.2021 in which it has objected to re-opening of tariff of 2001-04, 2004-09 and 2009-14 periods based on the APTEL's judgements. BRPL has also raised other issues of RoE, Deferred Tax Liability, adoption of Indian Accounting Standard, applicability and recovery of GST. The Petitioner vide affidavit dated 22.3.2021 has filed rejoinder to the reply of UPPCL. In the course of hearing the matter on 24.3.2021, learned counsel for BRPL requested that the arguments advanced by him in Petition No. 358/TT/2019 on the issues of revision of tariff, tax during 2009-14 tariff period, tax on transmission business during 2014-19 tariff period, Indian Accounting Standards, suggestions on procedural guidelines in truing up of tariff matters may also be considered in the present petition.



7. The hearing in this matter was held on 24.3.2021 and the Commission reserved order in the matter.

8. This order is being issued in view of the submissions made by the Petitioner vide affidavits dated 27.8.2019 and 20.7.2020, reply of UPPCL, rejoinder to the reply of UPPCL and reply filed of BRPL.

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

10. BRPL in its submission objected to the revision of tariff of 2004-09 and 2009-14 periods based on the APTEL's judgements. BRPL has submitted that the Petitioner claimed revision of tariff relying on the Commission's 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. BRPL further submitted that Commission's said order dated 6.11.2019 was based on judgment of 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, wherein the Commission referred to a portion of the judgment instead of referring the full judgement. BRPL has further submitted that the Hon'ble Supreme Court in its said judgment observed that the claim is permissible only when the tariff is in force and not afterwards. Hence, the Commission should re-examine this issue once again taking note of the full judgment of Hon'ble Supreme Court. BRPL has also submitted that Commission should re-visit its 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 as propounded by the said judgment of Hon'ble Supreme Court.



11. We have considered the above submissions of BRPL. Insofar as the submissions of BRPL, for revision of tariff for the earlier periods on account of judgements of APTEL and Hon'ble Supreme Court is concerned, the Commission vide its common 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 these submissions of BRPL. Relevant extract of the order dated 6.11.2019 is as under:

"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.”

12. In view of above, there is no need to re-visit the 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.

13. BRPL has submitted that the Petitioner has adopted Indian Accounting Standard due to which tariff of the transmission asset has increased. BRPL submitted that Indian Accounting Standard is for the purposes of the Companies Act, 2013 and it is not for the purposes of tariff determination. The present case is governed by provisions of the 2014 Tariff Regulations and the 2019 Tariff Regulations. BRPL has further submitted that it has explained in detail in Petition No. 470/TT/2020 as to how tariff is increasing on adoption of Indian Accounting Standards. BRPL has submitted that submissions of the Petitioner are against the established practice of the 2014 Tariff Regulations and are liable to be rejected.

14. We have considered the submissions of BRPL and have also gone through the record. BRPL has raised this issue in a number of other petitions including Petition No. 136/TT/2020. The Commission vide order dated 24.1.2021 in Petition No. 136/TT/2020 has recorded reasons while rejecting the submissions of BRPL on the issue of Indian Accounting Standards. The relevant portion of the order dated 24.1.2021 in Petition No.136/TT/2020 is 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.”

15. In view of above, there is no need to give a fresh finding on this issue again.

16. 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 of the instant petition and the same is also provided for in Section 94(3) of the Electricity Act, 2003.

17. We have considered the above submissions of the BRPL. In terms of 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 to publish the Notice of tariff in the newspapers. The Petitioner vide affidavit dated 27.9.2019 has submitted that it has carried out the publication of the present tariff application in the newspapers on 6.9.2019 in various languages. Further, the instant petition was also uploaded on the Petitioner’s website on 30.8.2019. 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 its Corporate Office within 30 days of publication of the notice”. No suggestions/objections with regard to the present tariff petition was received by the Commission before listing of the present petition for hearing. We are of the view that sufficient opportunity has been given to the general public and the Respondents to file their comments/ reply in the matter as per the provisions of the Electricity Act, 2003 and the tariff regulations. Therefore, we are of the view that there is no need to engage any entity as suggested by BRPL to represent the interest of consumers.

18. APTEL while dealing with the issue of computation of IoL, in judgement dated 22.1.2007, observed 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 basis of the actual repayment basis or normative repayment whichever is higher. The relevant portions of judgement dated 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.”*

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

20. APTEL in its judgement dated 13.6.2007 in Appeal No.139 of 2006 and batch matters held that Additional Capital Expenditure (ACE) after the date of commercial operation should also be considered for computation of maintenance spares as under:

“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.”

21. In view of above, the maintenance spares to be considered for computation of working capital for 2004-09 period are also required to be revised taking into consideration the ACE after the date of commercial operation. Further, ACE admitted after COD has been considered for computation of maintenance spares.

22. As regards the depreciation, APTEL in its judgement dated 13.6.2007 in Appeal No.139 of 2006 and batch matters observed 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 judgement 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.”

23. Accordingly, in view of above directions of APTEL, the outstanding loan allowed in respect of the transmission asset covered in the instant petition for 2004-09 tariff period is to be revised in the present order.

24. The revision of tariff allowed for the 2004-09 tariff period necessitates the revision of tariff allowed for 2009-14 tariff period, which is also allowed 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. Hence, 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 2004-09 and 2009-14 tariff periods. Therefore, the Petitioner is directed not to claim or pay any carrying cost from/to the beneficiaries for the difference, if any, in the tariff allowed earlier and that 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.



25. The issues raised by UPPCL and BRPL and response thereto by the Petitioner have been considered in the relevant portions of this order.

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

2004-09 Period

26. The Commission vide order dated 26.4.2010 in Petition No. 249/2009 approved the following transmission charges in respect of the transmission asset for the period from COD to 31.3.2009 period:

Particulars	(₹ in lakh)
	2008-09 (pro-rata 8 months)
Depreciation	8.05
Interest on Loan	8.62
Return on Equity	5.67
Advance against Depreciation	0.00
Interest on Working Capital	0.63
O&M Expenses	0.00
Total	22.97

27. The Petitioner has claimed the following revised transmission charges in respect of the transmission asset for the period from COD to 31.3.2009 period:

Particulars	(₹ in lakh)
	2008-09 (pro-rata 8 months)
Depreciation	8.05
Interest on Loan	8.87
Return on Equity	5.67
Advance against Depreciation	0.00
Interest on Working Capital	0.64
O&M Expenses	0.00
Total	23.23

28. UPPCL has submitted that the IoL claimed by the Petitioner does not match with IoL as approved by the Commission vide order dated 26.4.2010 in Petition No.



249/2009, the rate of interest considered by the Petitioner is not justified and clarification is not provided for the difference in IoL claimed. In response, the Petitioner has submitted that weighted average rate of interest allowed by the Commission vide order dated 26.4.2010 in Petition No. 249/2009 has been considered. The Petitioner has further submitted that the computations for IoL have been enclosed as part of the petition.

29. We have considered the submissions of the Petitioner and UPPCL. The tariff is allowed in respect of the transmission asset on the basis of the following:

a) Admitted capital cost as on 1.8.2008 of ₹216.47 lakh for the transmission asset.

b) Weighted Average Rate of Interest on actual loan adopted from order dated 26.4.2010 in Petition No. 249/2009.

c) With respect to calculation of IoL, during the year 2008-09 moratorium period was availed by the Petitioner and no actual repayment of loan was made. Therefore, depreciation provided during 2008-09 has been considered as loan repayment in accordance with Regulation 56(i)(f) of 2004 Tariff Regulations. The relevant extract of the Regulation 56(i)(f) of 2004 Tariff Regulations is reproduced below:

“27 (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) The Commission vide order dated 26.4.2010 in Petition No. 249/2009 considered depreciation provided during 2008-09 as loan repayment. Accordingly, in the instant petition the same treatment has been given for year 2008-09 wherein no actual repayment of loan was made by the Petitioner.



e) Weighted Average Rate of Depreciation, Rate of Interest for Working Capital and O&M Expenses as per order dated 26.4.2010 in Petition No. 249/2009.

30. There is ACE during 2004-09 tariff period and as such it is required to revise the maintenance spares component for calculating IWC.

31. In view of above, the revised transmission charges allowed in respect of the transmission asset for the period from COD to 31.3.2009 are as follows:

Particulars	(₹ in lakh)
	2008-09 (pro-rata 8 months)
Depreciation	8.05
Interest on Loan	8.62
Return on Equity	5.67
Advance against Depreciation	0.00
Interest on Working Capital	0.72
O&M Expenses	0.00
Total	23.06

32. The AFC allowed for 2004-09 tariff period vide order dated 26.4.2010 in Petition No. 249/2009, the revised AFC claimed in the instant petition and AFC allowed in the instant order are as follows:

Particulars	(₹ in lakh)
	2008-09 (pro-rata 8 months)
AFC approved vide order dated 26.4.2010 in Petition No. 249/2009	22.97
AFC claimed by the Petitioner in the instant petition	23.23
AFC allowed in the instant order	23.06

2009-14 Period

33. The Commission vide order dated 27.6.2011 in Petition No. 302/2010 approved the tariff of the transmission asset of 2009-14 period and tariff of 2009-14 period was trued up vide order dated 29.1.2016 in Petition No 395/TT/2014 as follows:

Particulars	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	14.90	16.35	16.58	16.58	16.58
Interest on Loan	13.99	14.02	12.73	11.18	9.64



Return on Equity	13.18	14.99	15.21	15.21	15.40
Interest on Working Capital	0.88	0.95	0.93	0.90	0.87
O&M Expenses	0.00	0.00	0.00	0.00	0.00
Total	42.94	46.31	45.45	43.87	42.49

34. The Petitioner has claimed the following revised transmission charges in respect of the transmission asset for 2009-14 tariff period in the instant petition:

Particulars	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	14.90	16.35	16.58	16.58	16.58
Interest on Loan	14.73	14.77	13.47	11.93	10.39
Return on Equity	13.18	14.99	15.21	15.21	15.40
Interest on Working Capital	0.89	0.96	0.94	0.91	0.88
O&M Expenses	0.00	0.00	0.00	0.00	0.00
Total	43.71	47.07	46.21	44.63	43.25

UPPCL has submitted that there is variation in AFC of 2013-14 of ₹7.76 lakh which is due to difference in figures of IOL (₹10.39 lakh-₹9.64 lakh). UPPCL has further submitted that the Petitioner is required to justify the rate of interest of 9.3016%.

35. We have considered the submissions of the Petitioner and UPPCL. The tariff is allowed for the transmission asset on the basis of the following:

- Admitted capital cost of ₹217.19 lakh as on 1.4.2009.
- Weighted Average Rate of Interest on actual loan derived/ adopted from order dated 29.1.2016 in Petition No. 395/TT/2014.
- Weighted Average Rate of Depreciation as per order dated 29.1.2016 in Petition No. 395/TT/2014.
- Actual ACE ₹38.54 lakh for 2009-10 and ₹7.22 lakh for 2010-11 was approved by the Commission vide order dated 29.1.2016 in Petition No. 395/TT/2014.

36. In view of above, the revised transmission charges allowed in respect of the transmission asset for 2009-14 tariff period are as follows:

Particulars	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	14.90	16.35	16.58	16.58	16.58



Interest on Loan	13.99	14.02	12.73	11.18	9.64
Return on Equity	13.18	14.99	15.21	15.21	15.40
Interest on Working Capital	0.88	0.95	0.93	0.90	0.87
O&M Expenses	0.00	0.00	0.00	0.00	0.00
Total	42.94	46.31	45.45	43.87	42.49

37. The AFC allowed for 2009-14 tariff period vide order dated 29.1.2016 in Petition No. 395/TT/2014, the revised AFC claimed in the instant petition and AFC allowed in the instant order are given as follows:

(₹ in lakh)					
Particulars	2009-10	2010-11	2011-12	2012-13	2013-14
AFC approved vide order dated 29.1.2016 in Petition No. 395/TT/2014	42.94	46.31	45.45	43.87	42.49
AFC claimed by the Petitioner in the instant petition	43.71	47.07	46.21	44.63	43.25
AFC allowed in the instant order	42.94	46.31	45.45	43.87	42.49

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

38. The details of the trued up annual fixed transmission charges claimed by the Petitioner in respect of the transmission asset for 2014-19 are as follows:

(₹ in lakh)					
Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Depreciation	16.58	16.58	16.58	16.58	16.58
Interest on Loan	8.85	7.31	5.77	4.22	2.68
Return on Equity	15.42	15.49	15.48	15.48	15.52
Interest on Working Capital	0.94	0.91	0.87	0.84	0.80
O&M Expenses	0.00	0.00	0.00	0.00	0.00
Total	41.79	40.29	38.70	37.12	35.58

39. The details of the IWC claimed by the Petitioner in respect of the transmission asset are as follows:

(₹ in lakh)					
Particular	2014-15	2015-16	2016-17	2017-18	2018-19
O&M Expenses	0.00	0.00	0.00	0.00	0.00
Maintenance Spares	0.00	0.00	0.00	0.00	0.00
Receivables	6.97	6.72	6.45	6.19	5.93
Total Working Capital	6.97	6.72	6.45	6.19	5.93



Rate of Interest (%)	13.50	13.50	13.50	13.50	13.50
Interest on Working Capital	0.94	0.91	0.87	0.84	0.80

Capital Cost

40. The Commission vide order dated 29.1.2016 in Petition No. 395/TT/2014 allowed capital cost as on 1.4.2014 of ₹262.95 lakh and the same capital cost was allowed as on 31.3.2019. The Petitioner has not claimed any ACE for determination of tariff during the 2014-19 tariff period for transmission assets. Accordingly the capital cost of ₹262.95 lakh has been considered to work out trued up of tariff for 2014-19 tariff period in accordance with Regulation 9(3) of the 2014 Tariff Regulations:

(₹ in lakh)		
Admitted Capital Cost as on 1.4.2014	ACE during 2014-19	Admitted Capital Cost as on 31.3.2019
262.95	0.00	262.95

Debt-Equity Ratio

41. The debt-equity ratio has been allowed in accordance with Regulation 19(3) of the 2014 Tariff Regulations. As per the said regulation, the debt:equity ratio allowed by the Commission for determination of tariff for the period ending on 31.3.2014 shall be considered. Accordingly, the debt-equity ratio considered for the purpose of determination of tariff of the 2014-19 tariff period, has been considered for the purpose of truing up of the tariff of the transmission asset for the 2014-19 tariff period and the same is as follows:

Particulars	Capital Cost as on 1.4.2014 (₹ in lakh)	(%)	Total Capital Cost as on 31.3.2019 (₹ in lakh)	(%)
Debt	184.43	70.14	184.43	70.14
Equity	78.52	29.86	78.52	29.86
Total	262.95	100.00	262.95	100.00

Depreciation

42. UPPCL has submitted that capital cost is ₹262.95 and therefore 90% of this value will be depreciable value which works out to ₹236.66 lakh. The rate of



depreciation is 6.305381 and therefore the depreciation for 2014-15 works out to ₹14.92 lakh against which the Petitioner has taken a figure of ₹16.58 lakh. UPPCL has submitted that the depreciation considered by the Petitioner is inconsistent.

43. In response, the Petitioner has submitted that depreciation has been computed as per the 2014 Tariff Regulations.

44. The submission of the Petitioner and UPPCL has been considered. The Gross Block during the tariff period 2014-19 has been depreciated at weighted average of depreciation (WAROD). The WAROD at Annexure-1 has been worked out after taking into account the depreciation rates of assets as prescribed in the 2014 Tariff Regulations and depreciation allowed is as under:

Particulars	(₹ in lakh)				
	2014-15	2015-16	2016-17	2017-18	2018-19
Depreciation					
Opening Gross Block	262.95	262.95	262.95	262.95	262.95
Additional Capitalisation	0.00	0.00	0.00	0.00	0.00
Closing Gross Block	262.95	262.95	262.95	262.95	262.95
Average Gross Block	262.95	262.95	262.95	262.95	262.95
Weighted Average Rate of Depreciation (%)	6.30%	6.30%	6.30%	6.30%	6.30%
Aggregate Depreciable Value	236.66	236.66	236.66	236.66	236.66
Balance useful life of the asset (Year)	20	19	18	17	16
Lapsed life (Year)	5	6	7	8	9
Depreciation during the year	16.58	16.58	16.58	16.58	16.58
Cumulative depreciation	105.61	122.19	138.77	155.34	171.92
Remaining Depreciable Value	131.04	114.46	97.89	81.31	64.73

45. Accordingly, depreciation approved vide order dated 29.1.2016 in Petition No. 395/TT/2014, depreciation claimed by the Petitioner and tried up in the instant order are as follows:

Particulars	(₹ in lakh)				
	2014-15	2015-16	2016-17	2017-18	2018-19
Approved vide order dated 29.1.2016 in Petition	16.58	16.58	16.58	16.58	16.58



No. 395/TT/2014					
Claimed by the Petitioner in the instant petition	16.58	16.58	16.58	16.58	16.58
Allowed after true-up in this order	16.58	16.58	16.58	16.58	16.58

Interest on Loan (IoL)

46. The Petitioner has claimed the weighted average rate of IoL, based on its actual loan portfolio and rate of interest.

47. UPPCL has submitted that gross normative opening loan has been considered as ₹184.43 lakh. The debt equity ratio is 70.84: 29.86 which means ₹187.28 lakh as debt difference is required to be explained by the Petitioner. UPPCL has further submitted that cumulative repayments of loans upto previous year must be the figures of cumulative depreciation. UPPCL in its reply has shown the difference and submitted that the Petitioner has taken the values of IOL as a consequence of which the total extra burden of ₹ 3.75 lakh will be on the beneficiaries.

48. In response, the Petitioner has submitted that debt-equity ratio is considered as 70.14:29.86 which is as per order dated 29.1.2016 in Petition No. 395/TT/2014. The Petitioner has further submitted that IoL has been computed as per the 2014 Tariff Regulations.

49. We have considered the submissions of the Petitioner and UPPCL. Accordingly, 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 transmission asset is as follows:

Particulars	(₹ in lakh)				
	2014-15	2015-16	2016-17	2017-18	2018-19
Interest on Loan					
Gross Normative Loan	184.43	184.43	184.43	184.43	184.43
Cumulative Repayments up to Previous Year	89.04	105.61	122.19	138.77	155.34



Net Loan-Opening	95.40	78.82	62.24	45.66	29.09
Additions due to ACE	0.00	0.00	0.00	0.00	0.00
Repayment during the year	16.58	16.58	16.58	16.58	16.58
Net Loan-Closing	78.82	62.24	45.66	29.09	12.51
Average Loan	87.11	70.53	53.95	37.38	20.80
Weighted Average Rate of Interest on Loan (%)	9.3000	9.3000	9.3000	9.3000	9.3000
Interest on Loan	8.10	6.56	5.02	3.48	1.93

50. Accordingly, IoL approved vide order dated 29.1.2016 in Petition No. 395/TT/2014, IoL claimed by the Petitioner in the instant petition and true up IoL in the instant order are as follows:

Particulars	(₹ in lakh)				
	2014-15	2015-16	2016-17	2017-18	2018-19
Approved vide order dated 29.1.2016 in Petition No. 395/TT/2014	8.10	6.56	5.02	3.48	1.93
Claimed by the Petitioner in the instant petition	8.85	7.31	5.77	4.22	2.68
Allowed after true-up in this order	8.10	6.56	5.02	3.48	1.93

Return on Equity (RoE)

51. The Petitioner has claimed RoE in respect of the transmission asset in terms of Regulations 24 and 25 of the 2014 Tariff Regulations. The Petitioner has submitted that they are liable to pay income tax at MAT rates and has claimed the following effective tax rates for the 2014-19 tariff period:

Year	Claimed effective tax rate (in %)	Grossed up RoE [Base Rate/(1-t)](in %)
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

52. UPPCL has submitted that capital cost for 2014-15 to 2018-19 is ₹262.95 lakh as per Commission's order dated 29.1.2016 in Petition No. 395/TT/2014. UPPCL has further submitted that applicable debt equity ratio is 70.14:29.86 which means ₹78.52



lakh is opening equity against which the Petitioner has taken opening equity of ₹78.55 lakh. UPPCL has further submitted that rate of return on equity has not been approved by the Income Tax Authorities and therefore the Petitioner should adopt the opening equity of ₹78.52 lakh.

53. In response, the Petitioner has submitted that debt-equity ratio is considered as 70.14:29.86 which is as per order dated 29.1.2016 in Petition No. 395/TT/2014 and as such equity should be ₹78.52 lakh. The Petitioner has submitted that inadvertently equity has been shown as ₹78.55 lakh instead of ₹78.52 lakh. Accordingly, equity should be considered as ₹78.52 lakh. The Petitioner has further submitted that the effective rate of tax considered for 2014-15 and 2015-16 are based on Assessment Orders issued by Income-Tax Authorities. For the purpose of grossing up of RoE rate, the effective rate of tax considered for 2016-17 and 2017-18 are based on the Income Tax returns filed, for the purpose of grossing up of RoE rate of respective years. Further, for 2018-19, pending filing of ITR during filing of instant petition, effective tax rate is calculated based the applicable MAT rate (i.e. MAT 18.50% + Surcharge 12.00% + Cess 4%) for the purpose of grossing up of rate of RoE. The Petitioner further submitted that so far it has been granted trued-up tariff for 2014-19 period by the Commission *vide* order dated 18.4.2020 in Petition No. 247/TT/2019, *vide* order dated 27.4.2020 in Petition No. 274/TT/2019, *vide* order dated 23.4.2020 in Petition No. 245/TT/2019 and *vide* order dated 16.4.2020 in Petition No. 307/TT/2019 for transmission assets under the respective petitions, whereas following effective tax rate based (for tariff block 2014-19) on notified MAT rates are considered for the purpose of grossing-up of RoE:



Year	Notified MAT rates (inclusive of surcharge & cess) (in %)	Effective tax (in %)	Grossed up RoE [Base Rate/(1-t)] (in %)
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

54. The Petitioner has submitted that tariff for each of year for tariff period 2014-19 is being determined by the Commission considering the above Effective Tax percentage to arrive at grossed up RoE. The Petitioner has further submitted that grossed up RoE (in %) and effective tax rate for 2014-19 tariff period has already been determined by the Commission and 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 provide1d in the 2014 Tariff Regulations.

55. BRPL has submitted that the actual tax rate applicable to the transmission licensee was to be trued up along with truing up of tariff to be determined in accordance with Regulation 6 of the 2009 Tariff Regulations. BRPL has further submitted that based on the truing up of tariff, if the recovered tariff exceeded the tariff approved, the Petitioner should have refunded to beneficiaries along with simple interest. BRPL has submitted that infrastructure transmission Companies have been allowed huge tax benefits under the Income Tax Act, 1961 (hereinafter referred to as "1961 Act") in the form of Tax Holiday for enterprises engaged in infrastructure development etc. as per Section 80 IA of the 1961 Act and other benefits like the higher depreciation allowed in initial years.



56. With regard to truing up of tariff of 2014-19 period on tax on transmission business, BRPL has submitted that the Petitioner has calculated the effective tax rate after grossing up the rate of return on equity at the end of every financial year which is not based on actual tax paid. BRPL has further submitted that the Petitioner is required to calculate the effective tax rate under Regulation 25(1) of the 2014 Tariff Regulations.

57. BRPL further submitted that the Petitioner has not carried out truing up of the grossed up rate of return on equity on annual basis. The Petitioner in respect of transmission asset in Form-3 has submitted that effective tax rate on the transmission business is nil. BRPL has also submitted that the Petitioner is claiming tax benefits of higher depreciation allowed in initial years under the 1961 Act and also the benefits of the Tax Holiday for enterprises engaged in infrastructure development etc. as per Section 80 IA of the 1961 Act. These benefits are only in respect of its core services related to the transmission business and not on other income like consultancy, planning, design, training etc. BRPL further submitted that the Petitioner has relied upon Petition No. 24/TT/2020 and other similar petitions for grossed up RoE, but has not filed any documents related to actual tax paid by them as per 2014 Tariff Regulations. BRPL submitted that the Petitioner under the 1961 Act have option either to pay the Corporate tax or the Minimum Alternate Tax (MAT) under the provision of Section 80 IA of the 1961 Act. It is submitted that Annexure-I to the reply of BRPL is reply of RTI application received by an electricity consumer of Delhi from the Petitioner which shows that the Petitioner is getting the benefits of Tax Holiday that is being calculated and claimed as per the provision of Section 80 IA of 1961 Act. BRPL has submitted that the Petitioner should be directed to file the complete details of the tax



benefits claimed in the particular assessment year and failing to do so, the amount already collected from beneficiaries on account of grossed up RoE is to be returned as per 2014 Tariff Regulations.

58. BRPL further submitted that the Petitioner has claimed deferred tax for the transmission business as per Regulation 49 of the 2014 Tariff Regulations and Regulation 39 of the 2009 Tariff Regulations. Both the Regulations restrict the claim of tax amount only to deferred tax liabilities up to 31.3.2009 whenever it will materialize. BRPL also submitted that the claims of deferred tax are required to be adjusted for the tariff period 2004-09.

59. We have considered the submissions of the Petitioner, UPPCL and BRPL. The Commission in order dated 24.1.2021 in Petition No. 136/TT/2020 has already dealt with the above issue raised by the Respondents. The relevant paragraphs 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."

60. The Commission vide 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:

Year	Notified MAT rates (inclusive of surcharge & cess)	Effective tax (in %)
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

"

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



2014-19 period, in terms of the provisions of the 2014 Tariff Regulations, is considered in the instant and it 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

62. The Petitioner has claimed RoE for the 2014-19 period after grossing up of RoE of 15.50% with Effective Tax rates (based on MAT rates) each year in terms of above said Regulation. The RoE is trued up on the basis of the MAT rate applicable in the respective years and is allowed for the transmission asset is as follows:

Particulars	(₹ in lakh)				
	2014-15	2015-16	2016-17	2017-18	2018-19
Opening Equity	78.52	78.52	78.52	78.52	78.52
Additions due to ACE	0.00	0.00	0.00	0.00	0.00
Closing Equity	78.52	78.52	78.52	78.52	78.52
Average Equity	78.52	78.52	78.52	78.52	78.52
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
Return on Equity	15.40	15.47	15.47	15.47	15.51

63. Accordingly, RoE approved vide order dated 29.1.2016 in Petition No. 395/TT/2014, RoE claimed by the Petitioner and trued up in the instant order are as follows:

Particulars	(₹ in lakh)				
	2014-15	2015-16	2016-17	2017-18	2018-19
Approved vide order dated 29.1.2016 in Petition No. 395/TT/2014	15.40	15.40	15.40	15.40	15.40
Claimed by the Petitioner in the instant petition	15.42	15.49	15.48	15.48	15.52
Allowed after true-up in this order	15.40	15.47	15.47	15.47	15.51



Operation & Maintenance Expenses (O&M Expenses)

64. The Petitioner has not claimed any O&M Expenses for 2014-19 tariff period. Accordingly no O&M Expenses have been allowed for 2014-19 period in the instant petition.

Interest on Working Capital (IWC)

65. The IWC has been worked out as per the methodology provided in Regulation 28 of the 2014 Tariff Regulations and is allowed for the transmission asset as follows:

(₹ in lakh)					
Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Interest on Working Capital					
O&M Expenses (O&M Expenses for 1 month)	0.00	0.00	0.00	0.00	0.00
Maintenance Spares (15% of O&M Expenses)	0.00	0.00	0.00	0.00	0.00
Receivables (Equivalent to 2 months of annual fixed cost)	6.83	6.58	6.32	6.06	5.80
Total Working Capital	6.83	6.58	6.32	6.06	5.80
Rate of Interest (%)	13.50	13.50	13.50	13.50	13.50
Interest of Working Capital	0.92	0.89	0.85	0.82	0.78

66. Accordingly, IWC approved vide order dated 29.1.2016 in Petition No. 395/TT/2014, IWC claimed by the Petitioner and trued up in the instant order are as follows:

(₹ in lakh)					
Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Approved vide order dated 29.1.2016 in Petition No. 395/TT/2014	0.92	0.89	0.85	0.82	0.78
Claimed by the Petitioner in the instant petition	0.94	0.91	0.87	0.84	0.80
Allowed after true-up in this order	0.92	0.89	0.85	0.82	0.78

Approved Annual Fixed Charges for 2014-19 Tariff Period

67. The trued up annual fixed charges in respect of the transmission asset for 2014-19 tariff period are as follows:



(₹ in lakh)

Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Depreciation	16.58	16.58	16.58	16.58	16.58
Interest on Loan	8.10	6.56	5.02	3.48	1.93
Return on Equity	15.40	15.47	15.47	15.47	15.51
Interest on Working Capital	0.92	0.89	0.85	0.82	0.78
O&M Expenses	0.00	0.00	0.00	0.00	0.00
Total	41.00	39.50	37.92	36.34	34.81

68. Accordingly, the Annual Transmission Charges approved vide order dated 29.1.2016 in Petition No. 395/TT/2014, claimed by the Petitioner and approved after true-up in the instant order are as follows:

(₹ in lakh)

Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Approved vide order dated 29.1.2016 in Petition No. 395/TT/2014	41.00	39.42	37.84	36.27	34.69
Claimed by the Petitioner in the instant petition	41.79	40.29	38.70	37.12	35.58
Allowed after true-up in this order	41.00	39.50	37.92	36.34	34.81

Determination of Annual Fixed Charges for 2019-24 Tariff Period

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

(₹ in lakh)

Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
Depreciation	16.58	16.58	2.43	2.43	2.42
Interest on Loan	1.14	0.18	0.00	0.00	0.00
Return on Equity	15.52	15.52	15.52	15.52	15.52
Interest on Working Capital	0.72	0.71	0.50	0.50	0.49
O&M Expenses	5.13	5.13	5.13	5.13	5.13
Total	39.09	38.12	23.58	23.58	23.56

70. The details of the IWC claimed by the Petitioner for 2019-24 period in respect of the transmission asset are as follows:



(₹ in lakh)

Particular	2019-20	2020-21	2021-22	2022-23	2023-24
O&M Expenses	0.43	0.43	0.43	0.43	0.43
Maintenance Spares	0.77	0.77	0.77	0.77	0.77
Receivables	4.81	4.70	2.91	2.91	2.90
Total Working Capital	6.01	5.90	4.11	4.11	4.10
Rate of Interest (%)	12.05	12.05	12.05	12.05	12.05
Interest on Working Capital	0.72	0.71	0.50	0.50	0.49

Capital Cost

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

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

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

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

- (a) The 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.”

72. The Petitioner has claimed capital cost of ₹262.95 lakh as on 31.3.2019 in respect of the transmission asset. The capital cost of ₹262.95 lakh 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.

73. The Petitioner has not projected any ACE during 2019-24 for the transmission asset.

74. Accordingly, the capital cost considered in respect of the 2019-24 tariff period is as follows:

(₹ in lakh)		
Capital Cost as on 1.4.2019	ACE for the 2019-24 period	Capital Cost as on 31.3.2024
262.95	0.00	262.95

Debt-Equity ratio

75. 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.”

76. The debt-equity considered for the purpose of computation of tariff for 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	184.43	70.14	184.43	70.14
Equity	78.52	29.86	78.52	29.86
Total	262.95	100.00	262.95	100.00



Depreciation

77. Regulations 33(1), 33(2) and 33(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*

(3) *The salvage value of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the capital cost of the asset:*

Provided that the salvage value for IT equipment and software shall be considered as NIL and 100% value of the assets shall be considered depreciable;

Provided further that in case of hydro generating stations, the salvage value shall be as provided in the agreement, if any, signed by the developers with the State Government for development of the generating station:

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

Provided also that any depreciation disallowed on account of lower availability of the generating station or unit or transmission system as the case may be, shall not be allowed to be recovered at a later stage during the useful life or the extended life.

(4) *Land other than the land held under lease and the land for reservoir in case of hydro generating station shall not be a depreciable asset and its cost shall be excluded from the capital cost while computing depreciable value of the asset.*



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

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

78. UPPCL submitted that the transmission asset has completed 12 years of useful life on 1.8.2020. Therefore, 90% of the capital cost will be the depreciable value and the balance weighted average life of the transmission asset in 2021-22 is 13 years.

79. We have considered the above submissions of UPPCL. The weighted average rate of depreciation (WAROD) has been worked out as Annexure-2 to this order and the same is based on as per the rates of depreciation prescribed in the 2019 Tariff Regulations. The transmission asset has completed 12 years of life as on 31.3.2021 and from 2021-22 onwards the remaining depreciable value has been spread across the balance useful life in accordance with Regulation 33(5) of the 2019 Tariff Regulations. The depreciation allowed in respect of the transmission asset for 2019-24 period is as follows:

Particulars	(₹ in lakh)				
	2019-20	2020-21	2021-22	2022-23	2023-24
Depreciation					
Opening Gross Block	262.95	262.95	262.95	262.95	262.95
Addition due to ACE	0.00	0.00	0.00	0.00	0.00
Closing Gross Block	262.95	262.95	262.95	262.95	262.95
Average Gross Block	262.95	262.95	262.95	262.95	262.95
Weighted average rate of Depreciation (WAROD) (%)	6.30	6.30	0.91	0.91	0.91
Balance useful life at the beginning of the year	15	14	13	12	11
Lapsed life of the asset (Year)	10	11	12	13	14
Aggregated Depreciable Value	236.66	236.66	236.66	236.66	236.66
Depreciation during the year	16.58	16.58	2.43	2.43	2.43
Cumulative Depreciation	188.50	205.08	207.51	209.93	212.36
Remaining Depreciable Value	48.16	31.58	29.15	26.72	24.29



Interest on Loan (IoL)

80. 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.”*

81. UPPCL has submitted that capital cost is ₹262.95 lakh and the debt equity ratio is of 78.14:29.86 which means that debt will be ₹184.43 lakh and the same is matching with the figures of gross normative opening loan given by the Petitioner.



82. We have considered the submission of the Petitioner and UPPCL. 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 change in interest rate due to floating rate of interest applicable, if any, during 2019-24 tariff period will be adjusted. Accordingly, the floating rate of interest, if any, shall be considered at the time of true up. Therefore, IoL has been allowed in accordance with Regulation 32 of the 2019 Tariff Regulations. The IoL has been allowed as follows:

Particulars	(₹ in lakh)				
	2019-20	2020-21	2021-22	2022-23	2023-24
Gross Normative Loan	184.43	184.43	184.43	184.43	184.43
Cumulative Repayments up to Previous Year	171.92	184.43	184.43	184.43	184.43
Net Loan-Opening	12.51	0.00	0.00	0.00	0.00
Additions due to ACE	0.00	0.00	0.00	0.00	0.00
Repayment during the year	12.51	0.00	0.00	0.00	0.00
Net Loan-Closing	0.00	0.00	0.00	0.00	0.00
Average Loan	6.26	0.00	0.00	0.00	0.00
Weighted Average Rate of Interest on Loan (%)	9.3000	9.3000	9.3000	9.3000	9.3000
Interest on Loan	0.58	0.00	0.00	0.00	0.00

Return on Equity (RoE)

83. Regulations 30 and 31 of the 2019 Tariff Regulations provides 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:

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

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

Illustration-

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

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



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

- (a) Estimated Gross Income from generation or transmission business for FY 2019-20 is 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.”

84. The Petitioner has submitted that MAT rate is applicable to the Petitioner's Company. UPPCL has submitted that opening equity considered by the Petitioner is not as per the approved debt-equity ratio. UPPCL has submitted that capital cost is ₹262.95 lakh and debt equity ratio is 70.14:29.86 which means the figures of equity will be ₹78.52 lakh against which the Petitioner has taken net opening equity of ₹78.55 lakh. UPPCL has further submitted that rate of return on equity is 19.758% which is the rate for 2018-19. UPPCL has submitted that as the Petitioner has not submitted the Income Tax Return for 2018-19, the figure of 19.758% is not authentic. UPPCL has further submitted that the Petitioner should consider the figures of net opening value of RoE on the basis of MAT rates approved by Income Tax Authorities.

85. In response, the Petitioner has submitted that in the absence of IT assessment order pertaining to 2019-24 period, the RoE has been 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 specified by the Commission as per illustration under Regulation 31(2)(ii) of the 2019 Tariff Regulations during the 2019-24 period. The



Petitioner has further submitted that as per Regulation 31(3) of the 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 IT authorities pertaining to the 2019-24 tariff period on actual gross income of any financial year.

86. BRPL has submitted that as per Form-3 submitted by the Petitioner, tax to be paid by the Petitioner for 2019-24 tariff period is NIL and as such the RoE may not be grossed up during 2019-24 tariff period.

87. We have considered the submissions of the Petitioner, UPPCL and BRPL. The 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. The RoE allowed in respect of the transmission asset is follows:

(₹ in lakh)					
Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
Opening Equity	78.52	78.52	78.52	78.52	78.52
Additions due to ACE	0.00	0.00	0.00	0.00	0.00
Closing Equity	78.52	78.52	78.52	78.52	78.52
Average Equity	78.52	78.52	78.52	78.52	78.52
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
Return on Equity	14.75	14.75	14.75	14.75	14.75

Operation & Maintenance Expenses (O&M Expenses)

88. The O&M Expenses claimed by the Petitioner in respect of the transmission asset for 2019-24 tariff period under Regulation 35(4) of the 2019 Tariff Regulations are as follows:

(₹ in lakh)					
Details	2019-20	2020-21	2021-22	2022-23	2023-24
Normative Rate of O&M	2.00	2.00	2.00	2.00	2.00



expenses as per 2019 Tariff Regulations (in %)					
Original project cost	256.51	256.51	256.51	256.51	256.51
PLCC	5.13	5.13	5.13	5.13	5.13
Total	5.13	5.13	5.13	5.13	5.13

89. Regulation 35(4) of the 2019 Tariff Regulations provides as follows:

“(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.”

90. UPPCL has submitted that normative rate of O&M in respect of communication system as provided in 2019 Tariff Regulations is 2% of the Original Project Cost/Asset related to the Communication System and the same is ₹256.51 lakh. UPPCL has submitted that as per the the said regulation O & M should be ₹5.13 lakh per year for the tariff block 2019-20 to 2023-24.

91. We have considered the submissions of the Petitioner and UPPCL. The transmission asset forms part of the communication system. The Petitioner has for the first time claimed O&M Expenses for the instant transmission asset, which is Special Protection Scheme, under Regulation 35(4) of the 2019 Tariff Regulations. The Commission in order dated 16.2.2021 in Petition No. 114/TT/2020 has already dealt with a similar claim of the Petitioner of O&M Expenses for Special Protection Scheme.

The relevant portion of the order dated 16.2.2021 is as follows:

“65. We have considered the Petitioner’s claim. The Petitioner has claimed O&M Expenses for the transmission assets, which is SPS, as part of the sub-station. Separate O&M norms are specified for sub-stations in the 2019 Tariff Regulations and accordingly O&M Expenses will be allowed/ have already been allowed for the substations in which the instant SPS are placed, the instant SPS are not eligible for separate O&M Expenses. Therefore, no O&M Expenses are allowed for the transmission asset for the 2019-24 tariff period.”

92. Special Protection Scheme form part of the sub-station and O&M Expenses has already been allowed for the sub-station where the instant assets are installed



Accordingly, no O&M Expenses are allowed for the transmission asset for the 2019-24 tariff period.

Interest on Working Capital (IWC)

93. Regulation 34(1)(c), Regulation 34(3), Regulation 34(4) and Regulation 3(7) of the 2019 Tariff Regulations specifies 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;”

94. 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%. The IWC is worked out in accordance with Regulation 34 of the 2019 Tariff Regulations. The 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 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)	0.00	0.00	0.00	0.00	0.00
Maintenance Spares (15% of O&M Expenses)	0.00	0.00	0.00	0.00	0.00
Receivables (Equivalent to 45 days of annual transmission charges)	3.98	3.92	2.15	2.15	2.14
Total Working Capital	3.98	3.92	2.15	2.15	2.14
Rate of Interest (%)	12.05	11.25	11.25	11.25	11.25
Interest on Working Capital	0.48	0.44	0.24	0.24	0.24

Annual Fixed Charges of the 2019-24 Tariff Period

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

(₹ in lakh)					
Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
Depreciation	16.58	16.58	2.43	2.43	2.43
Interest on Loan	0.58	0.00	0.00	0.00	0.00
Return on Equity	14.75	14.75	14.75	14.75	14.75
Interest on Working Capital	0.48	0.44	0.24	0.24	0.24
O & M Expenses	0.00	0.00	0.00	0.00	0.00
Total	32.39	31.76	17.42	17.42	17.42

Filing Fee and the Publication Expenses

96. 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 its 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 given 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.

97. 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 expenses paid by the Petitioner. We are of the view that 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

98. UPPCL has submitted that onus of licence fee is on the Petitioner. In response, the Petitioner has submitted that license fee may be allowed to be recovered separately from the Respondents in terms of Regulation 70 of the 2019 Tariff Regulations. The Petitioner has further submitted that 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 the 2019 Tariff Regulations.

99. We have considered the submission 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

100. 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.

101. BRPL has submitted that the prayer of the Petitioner for grant of GST at this juncture is not tenable.

102. 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

103. The Petitioner has submitted that security expenses for the transmission asset are not claimed in the instant petition and it would file a separate petition for claiming the overall security expenses and the consequential IWC. 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.

104. BRPL has submitted that the approach adopted by the Petitioner towards claim of security expenses does not warrant the need for IWC as the same is claimed in advance and the Petitioner may also clarify under which provisions of the 2019 Tariff Regulations it is seeking the relief.

105. We have considered the above 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

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

Sharing of Transmission Charges

107. The billing, collection and disbursement of the transmission charges approved in this order shall be governed by the provisions of 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 in respect of the 2014-19 tariff period and Regulation 57 of the 2019 Tariff Regulations in respect of the 2019-24 tariff period.

108. To summarise:

(a) The revised Annual Fixed Charges allowed in respect of the transmission asset as per APTEL's judgements from COD to 31.3.2009 are:

(₹ in lakh)	
2008-09 (pro-rata 8 months)	
23.06	

(b) The consequential revision of Annual Fixed Charges allowed in respect of the transmission asset for 2009-14 tariff period are:

(₹ in lakh)					
Particulars	2009-10	2010-11	2012-13	2013-14	2014-15
Annual Fixed Charges	42.94	46.31	45.45	43.87	42.49

(c) The trued-up Annual Fixed Charges allowed in respect of the transmission asset for 2014-19 tariff period are:

(₹ in lakh)					
Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Annual Fixed Charges	41.00	39.50	37.92	36.34	34.81

(d) The Annual Fixed Charges allowed in respect of the transmission asset for 2019-24 tariff period in this order are:

(₹ in lakh)					
Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
Annual Fixed Charges	32.39	31.76	17.42	17.42	17.42

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



110. This order disposes of Petition No. 361/TT/2019 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		ACE (₹ in lakh)		Depreciation as per Regulations					
Capital Cost	Capital Cost as on 1.4.2014 / COD (₹ in lakh)	2014-19	Capital Cost as on 31.3.2019 (₹ in lakh)	Rate of Depn.	2014-15	2015-16	2016-17	2017-18	2018-19
Land - Freehold	-	-	-	-	-	-	-	-	-
Land - Leasehold	-	-	-	3.34%	-	-	-	-	-
Building Civil Works & Colony	0.00	0.00	0.00	3.34%	0.00	0.00	0.00	0.00	0.00
Transmission Line	0.00	0.00	0.00	5.28%	0.00	0.00	0.00	0.00	0.00
Sub Station	6.44	0.00	6.44	5.28%	0.34	0.34	0.34	0.34	0.34
PLCC	256.51	0.00	256.51	6.33%	16.24	16.24	16.24	16.24	16.24
IT Equipment (Incl. Software)	0.00	0.00	0.00	15.00%	0.00	0.00	0.00	0.00	0.00
Total	262.95	0.00	262.95	Total	16.58	16.58	16.58	16.58	16.58
Average Gross Block (₹ in lakh)					262.95	262.95	262.95	262.95	262.95
Weighted Average Rate of Depreciation					6.30%	6.30%	6.30%	6.30%	6.30%



Annexure-2

2019-24 Capital Expenditure	Admitted Capital Cost as on 1.4.2019 (₹ in lakh)	Projected ACE (₹ in lakh)	Admitted Capital Cost as on 31.3.2024 (₹ in lakh)	Rate of Depreciation as per Regulations	Annual Depreciation as per Regulations (₹ in lakh)	
		2019-24			2019-20	2020-21
Land - Freehold	-	-	-	-	-	-
Land - Leasehold	-	-	-	3.34%	-	-
Building Civil Works & Colony	-	-	-	3.34%	-	-
Transmission Line	-	-	-	5.28%	-	-
Sub Station	6.44	-	6.44	5.28%	0.34	0.34
PLCC	256.51	-	256.51	6.33%	16.24	16.24
IT Equipment (Incl. Software)	-	-	-	15.00%	-	-
Total	262.95	-	262.95		16.58	16.58
Average Gross Block (₹ in lakh)					262.95	262.95
Weighted Average Rate of Depreciation					6.30%	6.30%

*Since the asset has completed 12 years of life as on 31.3.2021, the remaining depreciable value of ₹31.58 lakh as on 31.3.2021 has been spread across the balance useful life of 13 years in accordance with Regulation 33(5) of the 2019 Tariff Regulations. The annual depreciation from 2021-22 onwards is ₹2.43 lakh.

