CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 18/MP/2023

Coram:

Shri Jishnu Barua, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Date of Order: 18.07.2023

In the matter of:

Petition under Section 79(1)(c) and Section 79(1)(d) of the Electricity Act, 2003 read with Regulation 76 of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 seeking relaxation of operation and maintenance norms specified under Regulation 35(3) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019.

And in the matter of:

Teestavalley Power Transmission Limited,
B2/1A, Safdarjung Enclave,
Africa Avenue, New Delhi-110029. **…Petitioner**

Vs

1. PTC India Limited,
   2nd Floor, NBCC Tower,
   15, Bhikaji Cama Place, New Delhi-110066.

2. Energy and Power Department,
   Government of Sikkim,
   Kazi Road, Gangtok-737101, Sikkim.

3. Teesta Urja Limited,
   B2/1A, Safdarjung Enclave,
   Africa Avenue, New Delhi-110029.

4. Sneha Kinetic Power Projects Private Limited,
Sonam Complex, Jeevan Theng Marg Development Area,
Near Little Pixel International School,
Gangtok-737101, Sikkim.

5. Powergrid Corporation of India Limited,
Saudamini, Plot No.2, Sector 29,
Near IFFCO Chowk, Gurgaon-122001, Haryana.

6. Punjab State Power Corporation Limited,
The Mall, Patiala-147001, Punjab.

7. Uttar Haryana Bijli Vitran Nigam Limited,
Vidyut Sadan, Plot No. C16, Sector-6,
Panchkula-134109, Haryana.

8. Dakshin Haryana Bijli Vitran Nigam Limited,
Vidyut Sadan, Vidyut Nagar,
Hisar-125005, Haryana.

9. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula-134109, Haryana.

10. Ajmer Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer-305004, Rajasthan.

11. Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Janpath,
Jaipur-302005, Rajasthan.

12. Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Area,
Jodhpur-342003, Rajasthan.

13. Rajasthan Urja Vikas Nigam Limited,
Vidyut Bhawan, Janpath,
Jyoti Nagar Jaipur-302005, Rajasthan.

14. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226001, Uttar Pradesh. **…Respondents**

For Petitioner : Shri Tarun Johri, Advocate, TPTL
Shri Ankur Gupta, Advocate, TPTL

For Respondents : None

ORDER

Teestavalley Power Transmission Limited (TPTL) has filed the present petition under Section 79(1)(c) and Section 79(1)(d) of the Electricity Act, 2003, read with Regulation 76 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019, seeking relaxation of operation and maintenance norms specified under clause 3 of Regulation 35 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as 'the 2019 Tariff Regulations').

2. The Petitioner has made the following prayers:

"a) Admit the petition;
b) Relax the O&M norms specified under Regulation 35 (3) of the CERC (Terms and Conditions of Tariff) Regulations, 2019 and allow additional O&M charges based on the actual expenses incurred/to be incurred during the control period 2019-2024;
c) Pass such other order(s), as this Hon'ble Commission may deem appropriate in the facts and circumstances of the present case.
d) To condone any error/omission and to give opportunity to rectify the same."

Background

3. TPTL is a joint venture of Power Grid Corporation of India Limited (PGCIL), a Government of India Enterprise, and Teesta Urja Limited (TUL), a Government of Sikkim Enterprise.

4. The Petitioner has implemented and is operating the 400 kV D/C Teesta III-Kishanganj quad moose transmission line along with two number line bays and two number 63 MVAR Switchable Line Reactors at Kishanganj Switchyard (hereinafter referred to as 'the Project') as a part of the master plan for evacuation of power from 1200 MW Teesta III.

5. The Operation and Maintenance (O&M) of 400 kV Teesta III-Kishanganj D/C Quad Moose transmission line along with three number of stores is being carried out by the Petitioner, while the O&M of two number line bays along with two number 63 MVAR switchable line reactors at Kishanganj Sub-station of PGCIL is outsourced to PGCIL, and charges for the same are being paid by TPTL to PGCIL. However, Initial spares for maintaining the bays have been provided to PGCIL.

6. The Commission, vide orders in (i) Petition No.108/TT/2016 dated 15.5.2018, (ii) Petition No.368/TT/2018 dated 22.1.2020, and (iii) Petition No.96/TT/2019 dated 9.8.2020, allowed the following O&M charges in respect of the transmission assets of the Project for the 2014-19 tariff period:

(₹ in lakh)

Name of the Asset	Petition No.	2016-17	2017-18	2018-19
Section of 400 kV D/C Teesta-III HEP - Kishanganj Transmission Line from Dikchu to Teesta III HEP **(Ckt 1(a))**	108/TT/2016	-	7.905	8.47
Section of 400 kV D/C Teesta-III HEP - Kishanganj Transmission Line from Dikchu HEP to LILO Point at Rangpo **(Ckt 1(b))**	368/TT/2018	-	-	9.95
Section of 400 kV D/C Teesta-III HEP - Kishanganj	96/TT/2019	-	-	35.95

Name of the Asset	Petition No.	2016-17	2017-18	2018-19
Transmission Line from Rangpo LILO Point to Kishanganj **(Ckt 1(c))** along with 1 no. line bay and 1 no. of 63 MVAR switchable line reactor along with associated bay at Kishanganj Sub-station.				
Section of 400 kV D/C Teesta-III HEP-Kishanganj Transmission Line from Teesta III HEP to LILO Point at Rangpo **(Ckt 2)**	108/TT/2016	4.13	21.08	21.78
Section of 400 kV D/C Teesta-III HEP-Kishanganj Transmission Line from Rangpo LILO Point to Kishanganj **(Ckt 2(a))** along with 1 number line bay and 1 number 63 MVAR switchable line reactor at Kishanganj Sub-station.	96/TT/2019	-	-	65.65
Total		**4.13**	**28.99**	**141.8**

7. The Commission, vide order dated 22.3.2022 in Petition No. 35/TT/2021, trued-up the transmission tariff for the 2014-19 period and also determined the circuit-wise transmission tariff for the 2019-24 period in respect of the Combined Asset. The Commission, in the said order dated 22.3.2022, approved O&M Expenses of ₹374.25 lakh, ₹387.30 lakh and ₹400.90 lakh for FY 2019-20, FY 2020-21 and FY 2021-22 respectively. However, the actual O&M Expenses incurred by the Petitioner were ₹1465.16 lakh, ₹1548.51 lakh, and ₹1658.30 lakh for FY 2019-20, FY 2020-21, and FY 2021-22, respectively. The Petitioner, in Petition No.35/TT/2021, made a statement to the effect that it would file a separate petition for Additional O&M Expenses based on actuals, therefore, the present petition is filed.

8. The main submissions of the Petition are as follows:

a) The transmission assets are critical for the evacuation of power from hydro generating stations located in the State of Sikkim. The inter-State Transmission Line has been planned and constructed to evacuate power from various large hydro projects located in Sikkim with a capacity of 2900 MW. Teesta III–Kishanganj line is critical and is being utilized for evacuation of about 2100 MW power from Teesta-III HEP (1200 MW), Dikchu HEP (96 MW), Jorethang HEP (96 MW), Tashiding HEP (97 MW), and Chuzachen HEP (99 MW). The line also evacuates power from Teesta-V HEP (510 MW) under contingency.

b) The route of the transmission line falls in the most difficult hilly terrain of Sikkim and Darjeeling hills falling in the Great Himalayan Range, inner Himalayan Range, and Shivalik Range. About half of the total towers of the line are located on steep hilly slopes at 2600 metres high altitude. The towers in the hilly area are vulnerable as the terrain is highly prone to landslides, rockslides, shooting stones, rock mass failure, and overburden deposited along the steep hilly slope with rapid growth of creepers, bamboos in the deep, dense forest. The area is also highly earthquake-prone. The terrain in the portion of the route of the line that falls in Kishanganj District of Bihar, is prone to storms, cyclones, and high floods in the Mahananda River, which often changes its course.

c) Due to the unique and critical nature of the line, the Petitioner needs to maintain the transmission line with the minimum amount of break-down of components of the asset. The transmission assets have been maintained at an average 99.51% availability for the past three financial years, and at 99.99% availability for the current FY 2022-23 (up to October, 2022) which exceeds the operational norms specified by the Commission.

d) With the commencement of commercial operation of the last element, i.e. Circuit 1(c) on 13.2.2019, the entire project has achieved commercial operation and the Operation and Maintenance of the entire transmission line (except sub-station equipment installed at Kishanganj Sub-station of Powergrid) is being carried out by the Petitioner. The O&M charges that have been allowed by this Commission for FY 2019-20, 2020-21 and 2021-22 are around 26%, 25%, and 24% of the actual O&M Expenditure incurred by TPTL for the respective financial years, which are as follows:

(₹ in lakh)

Sl. No.	Financial Year	Total actual O&M expenditure incurred by TPTL	Total O&M Charges allowed by CERC
1	FY 2019-20	1465.18	374.25 (26% of actual)
2	FY 2020-21	1548.51	387.30 (25% of actual)
3	FY 2021-22	1658.30	400.90 (24% of actual)

e) The present norms for O&M Expenses for transmission systems, as specified by the Commission, recognize the types of transmission lines and sub-stations. However, it does not consider separate norms based on the topography of the line, terrain, i.e. whether hilly or plains, and altitude etc. The present O&M norms also do not distinguish between single asset and multiple asset transmission licensees while duly recognizing that single project transmission licensees are not comparable with other multiple asset licensees like PGCIL.

f) Initially, the O&M Expenditure of the transmission lines located in hilly areas and plain areas were notified separately, and the O&M Expenditure for hilly areas were considered 33% more/higher than the O&M Expenditure for the transmission lines located in plain areas. Subsequently, the Commission, vide notification dated 21.12.2000, notified separate O&M norms for different regions; thereafter, normative norms were notified on a pan India basis, i.e. common for all regions applicable w.e.f. tariff block 2004-09 onwards.

g) The Commission, under clauses 2 and 3 of Regulation 50 of the 2019 Tariff Regulations, while deciding Normative Annual Plant Availability Factor (NAPAF) in the North Eastern Region recognized the difficulties faced in the region by allowing a 5% margin on NAPAF to the Companies executing projects in the North Eastern Region.

h) While notifying O&M charges for transmission lines, the Commission had taken into consideration the O&M Expenditure of PGCIL, which has over 1.7 lakh circuit km of transmission line and a large portion of which falls in the plain area, therefore, the normative O&M Expenditures allowed by the Commission balance the expenditure of a large utility such as PGCIL. On the other hand, TPTL has only 430 circuit km of transmission line, more than 50% of which falls in extremely difficult hilly terrain. Therefore, the normative O&M expenditure notified by the Commission accounts for a mere 25% of the actual O&M Expenditure incurred by TPTL.

i) TPTL, being a single-asset company, is compelled to incur expenses in excess of the norms set by the Commission on account of the requirement of multiple site offices by reason of the fact that the transmission line passes through extremely difficult hilly terrain, as mentioned above. Besides this, there are geographical challenges such as the fact that half of the towers are located at a high-altitude of 2600 metres, inaccessible locations that can only be approached on foot due to dense forest and the non-availability of roads of any type up to the tower locations, and that the area is also prone to earthquakes, landslides, rockslides etc. As a considerable number of towers are located in such difficult terrain that it takes around 4 hours to reach these locations, to approach the tower locations expeditiously in case of any fault, the Petitioner is maintaining five site offices at Mangan and Singtam (Sikkim), Mirik (Darjeeling hills), Siliguri (West Bengal plain), and Kishanganj (Bihar).

j) The transmission line passes through dense forests and extremely difficult hilly terrain of Sikkim and Darjeeling Hills, therefore, in some cases, only one tower can be patrolled in a single day due to geographical constraints.

k) Due to rugged topography, high seismic vulnerability, and frequent rainfall, the terrain through which the 400 kV Teesta III–Kishanganj transmission line traverses is one of the most landslide--prone terrains. Therefore, various civil protection works, viz., removal of excess soil, construction of protection wall, are necessitated, which in turn leads to considerable expenditure.

l) There is an extended period of rainy season across the stretch of the transmission line, starting from April to the end of October, during which it is very difficult to enter deep jungle and steep hills to carry out t ground patrolling or climbing on towers. During the winter season the effective duration for carrying out the work is also very limited due to early sunset and foggy weather conditions. Continuous rain is also observed for several days (10 to 15 days) in the Sikkim and Darjeeling areas. So, the effective duration of line maintenance is lesser compared to transmission lines passing through plain terrains resulting in the deployment of more manpower and higher transportation and labour costs.

m) The stores of TPTL are on a lease basis as there is no land owned by it, and this expenditure falls under the total O&M expenditure. As against this, PGCIL generally has no leased stores, and the cost of purchasing land is also capitalized in the total cost. Therefore, the expenditure towards leased stores is not captured in the normative rate notified by the Commission for the current control period.

n) The Petitioner has paid an insurance premium of ₹124.66 lakh, ₹227.08 lakh and ₹298.83 lakh for FY 2019-20, FY 2020-21, and FY 2021-22, respectively, against which the percentage of O&M insurance premium allowed by the Commission is as follows:

(₹ in lakh)

Sl. No.	Year	Total Insurance Premium Expenditure	Insurance Premium as percentage of O&M Expenses allowed by the Commission
1	2019-20	124.66	33%
2	2020-21	227.08	59%
3	2021-22	298.83	75%

However, in the case of the Petitioner the actual insurance premium paid to the authorized insurance agency in FY 2022 in terms of gross block comes to 0.19%, which is much higher.

o) The Petitioner fulfils all compliances under the Companies Act, which requires a Board of Directors, Managing Director, Director (Projects), Chief Financial Officer, Company Secretary, and other key management personnel. The Petitioner is maintaining its Corporate Office in New Delhi to carry out the corporate works in addition to the operation and maintenance works.

p) The limitations of fixing the norms based on per ckt km/per bay were acknowledged by the Commission in its 'Discussion Paper' in June 2003, wherein it was felt that certain projects may require special consideration in respect of O&M due to hilly/difficult terrain, abnormal siltation, abnormal water charges, security charges, etc.

q) The detailed break up of O&M Expenses incurred during the 2019-24 tariff period by the Petitioner on account of O&M of the transmission line, including the work outsourced to PGCIL towards the maintenance of 02 number of 400 kV line bays along with 2 nos. 63 MVAR Line Reactor at PGCIL Kishanganj Sub-station is as follows:

(₹ in lakh)

Sl. No.	Particulars	2019-20	2020-21	2021-22
1	Salaries, Wages and Allowance	705.38	717.22	754.95
2	Expenses towards TL and S/s	139.61	97.13	76.97
3	Insurance Expenses	124.66	227.08	298.83
4	Office Rent	97.13	105.46	109.71
5	Repairs & Maintenance	87.99	62.01	79.42
6	Travelling & Conveyance	26.46	10.34	15.05
7	Other Expenses	39.59	37.16	45.11
8	Professional & Legal Expenses	170.38	218.76	216.11
9	Rates & Taxes	22.75	28.83	14.38
10	Vehicle Expenses	22.91	23.16	33.02
11	Audit Fee	28.32	21.36	14.75
	Total	**1465.18**	**1548.51**	**1658.30**

r) Despite the difficult terrain and difficulties, the Petitioner is maintaining availability above 99.5% only through its efforts.

s) The Commission had taken cognizance of the special circumstances in its order dated 29.9.2014 in Petition No. 164/MP/2014 and had exercised its 'Power to Relax' to approve the abnormal cost on security, which formed a component of O&M Expenses, in view of the circumstances of a case relating to the transmission system of PGCIL in the North Eastern Region.

t) The Appellate Tribunal for Electricity in 2007 ELR APTEL 7, in the case of NTPC Ltd. vs. Madhya Pradesh State Electricity Board, has held that the power comprised in Regulation 13 is essentially the "power to relax". In case any Regulation causes hardship to a party, or works injustice to him, or application thereof leads to an unjust result, the Regulation can be relaxed. The exercise of power under Regulation 13 of the Regulation is minimized by the requirement to record the reasons in writing by the Commission before any provision of the

Regulations is relaxed. Therefore, the Commission has the power to relax any provision of the Regulations.

u) APTEL in Appeal No 130 of 2009 dated 25.3.2011 in the case of Ratnagiri Gas & Power Pvt Ltd. observed that the Appellant may not be deprived of the relaxed norms merely because it has taken some time to enter into a Comprehensive Service Agreement with OEM, which may be due to the prevailing circumstances of forced outages of the gas turbines of Block II & III for prolonged periods. APTEL in the said judgment directed the Commission to consider relaxation of O&M norms in exercise of its power to relax under the Regulations, keeping in view the increased norms adopted in the 2009 Regulations and relaxation allowed subsequently for the Appellant's plant and Sugen Power Station of Torrent Power Ltd.

v) The Petitioner has prayed to the Commission to relax the O&M norms in view of the circumstances subsisting in the present matter, i.e. challenging terrain in terms of operation, reliability aspects, and the small transmission size of the Company, and to provide additional O&M Expenses on an actual basis for FY 2019-2024.

9. The matter was heard on 25.4.2023 and an order on the admissibility of the petition was reserved.

Analysis and Decision

10. We have considered the contentions of the Petitioner and have perused the record. The main contention of the Petitioner is that the O&M expenses incurred by the Petitioner

in respect of the Combined Asset are higher than what has been allowed by the Commission. The Petitioner has sought relaxation in O&M norms specified under clause 3 of Regulation 35 of the 2019 Tariff Regulations by exercising its 'Power to Relax' envisaged under Regulation 76 of the 2019 Tariff Regulations on account of rugged peculiar topography, difficult hilly terrain of Sikkim and Darjeeling hills falling in the Great Himalayan Range, inner Himalayan Range, and Shivalik Range, dense forest area through which the transmission line traverses, landslides due to higher and incessant rainfalls, high seismic vulnerability, etc. It is contended that due to these peculiar circumstances, the O&M Expenses of the Petitioner are quite high in comparison to other transmission licensees operating in plain areas. As such, the Petitioner has prayed for additional O&M charges to be allowed on actual expenses incurred/to be incurred during the control period 2019-24, as the existing norms do not take into consideration the peculiar nature of O&M expenses being incurred by the Petitioner. The Petitioner in support of his plea to relax the norms as envisaged under clause 3 of Regulation 35 of the 2019 Tariff Regulations by exercising the 'Power to Relax' the regulation as contemplated under Regulation 76 of the 2019 Tariff Regulations, has cited and placed reliance on the judgment of APTEL in the matter of NTPC Ltd. v. Madhya Pradesh State Electricity Board recorded in 2007 ELR APTEL 7, Central Commission's order dated 29.9.2014 in Petition No. 164/MP/2014, and the judgment of APTEL dated 25.3.2011 in Appeal No. 130 of 2009, in the matter of Ratnagari Gas & Power Pvt. Ltd., wherein after detailed deliberations with reference to O&M Expenses, norms of O&M Expenses were relaxed by the APTEL as well as the Commission. Since the prayer of the petitioner hinges around scope for our power to relax, *in order that the O&M norms specified under Regulation 35 (3) of the CERC (Terms and Conditions of Tariff) Regulations, 2019 and allow additional O&M charges based on the actual expenses incurred/to be incurred during the control period 2019-2024; we are required to discuss it diligently.*

11. Regulation 76 of the 2019 Tariff Regulations, in whose realm the Petitioner is claiming relaxation reads as follows:

> *"76. Power to Relax: The Commission, for reasons to be recorded in writing may relax any of the provisions of these regulations on its own motion or on an application made before it by an interest person."*

12. For relaxation in O&M norms, as discussed above, the Petitioner has relied on the judgments of APTEL in the matter of NTPC Ltd. v. Madhya Pradesh State Electricity Board recorded in 2007 ELR APTEL 7, and the judgment dated 25.3.2011 in Appeal No. 130 of 2009 in the matter of Ratnagri Gas and Power Pvt. Ltd. v. Central Electricity Regulatory Commission and ors.

13. We have gone through the above-mentioned judgments of APTEL. On perusal of APTEL's judgment dated 25.3.2011 in Appeal No. 130 of 2009, APTEL while examining the issues seeking relaxation in norms, i.e. (i) whether the forced outage of the machines after declaration of commercial operation should have been considered in view of the circumstances of the case to relax the norm for Target Availability, and (ii) whether Operation & Maintenance norms were required to be relaxed considering that advanced 'F' class machines were installed at the generating station of the Appellant, which pertain to exercise of power to relax, has referred to the judgment of APTEL recorded in 2007 ELR APTEL 7 in the case of NTPC Limited v. Madhya Pradesh State Electricity Board.

The tribunal in the said judgment, i.e. in 2007 ELR APTEL 7 recorded the following observations:

> *"It must be held, that the power comprised in Regulation 13 is essentially the "power to relax". In case any Regulation causes hardship to a party or works injustice to him or application thereof leads to unjust result, the Regulation can be relaxed. The exercise of power under Regulation 13 of the Regulation is minimized by the requirement to record the reasons in writing by the Commission before any provision of the Regulations is relaxed. Therefore, there is no doubt that the Commission has the power to relax any provision of the Regulations".*

14. While deciding the said Appeal No. 130 of 2009, the Tribunal, in paragraph 10.7 of its judgment dated 25.3.2011, observed that the power to relax regulation and the decision give judicial discretion to the Central Commission to relax norms based on the circumstances of the case. The Tribunal further observed that, however, such a case has to be one of those exceptions to the general rule. There has to be sufficient reason to justify relaxation. It has to be exercised only in exceptional cases and where non-exercise of the discretion would cause hardship and injustice to a party or lead to unjust result. In the case of relaxation of the Regulations, the reasons have to be recorded in writing. The Tribunal further observed that it has to be established by the party that the circumstances were not created due to an act of omission or commission attributable to the party claiming the relaxation.

15. In view of the above principle, let us examine whether the circumstances of the present case warrant the exercise of the power to relax the O&M norms as provided under clause 3 of Regulation 35 of the 2019 Tariff Regulations.

16. We would like to mention here the facts and observations relating to Appeal No.130 of 2009, in the matter of Ratnagiri Gas and Power Pvt. Ltd. v. Central Electricity Regulation

Commission and Anr. insofar as they narrate the case of relaxation. The matter in issue in Appeal before the APTEL in Appeal No. 130 of 2009 was that the Appellant's power project was not a normal green field or expansion project, the project was set up by Dabhol Power Company Limited, which closed down the project and abandoned it due to serious financial and other difficulties, and as such, the project remained closed down for about 4½ years under the control of the Court's Receiver. Thereafter, at the instance of the Government of India and the Government of Maharashtra, a Special Purpose Vehicle in the form of the Appellant Company was established, and the assets of the project were taken over by the Appellant on 'as is, where is' basis. No guarantees or warrantees were available for the various equipment installed in the project from the Original Equipment Manufacturers when the Appellant took it over after prolonged efforts made by all the stakeholders, including the Government of India and the Government of Maharashtra, to resolve a number of complex issues. The Gas Turbines installed at the project were advanced 'F' class machines not comparable with other gas turbines functioning in India at that time. On these facts, the Tribunal observed that when such a 'foreign' project is taken over by a Company not involved earlier with the execution of the project or a similar project, it takes some time to assess the health and functioning of various pieces of equipment which are complex machines. In such circumstances, one could also experience surprises. In this case also some of the Gas Turbines experienced serious failures after commissioning, which required detailed investigations and root cause analysis which were time-consuming in such complex machines, which operate at very high temperatures and speeds. Based on these circumstances, APTEL was convinced for 'Power to Relax' by the Central Commission in accordance with its Regulations for the initial years of operation of the Project to give it an opportunity to stabilize. The APTEL observed that in the given circumstances, it was a fit case for relaxation of the Plant Availability Factor norm for the period from 1.9.2007 to 31.3.2009 by the Central Commission under 'Power to Relax'.

17. The Appellant in Appeal No. 130 of 2009 also sought relaxation in O&M Expenses having been considered as per the 2004 Tariff Regulations, which were based on Gas Power Stations of NTPC using 'E' class Gas Turbines; the Central Commission should have considered O&M Expenses relevant to advanced 'F' class machines installed at the Appellant's Plant; 'F' class which is a new technologically advanced machine, gives substantial benefit in the form of higher efficiency but involves significantly increased operation and maintenance costs; and that the Central Commission has mechanically applied the 2004 Tariff Regulations without considering the special factors.

18. The APTEL, after examination of the issue, observed that in view of the circumstances of the case, the use of Advanced 'F' class machines at the project makes out that there exist sufficient grounds and reasonable justification for relaxation of O&M norms for Ratnagiri Power Station of the Appellant for the period from 1.9.2007 to 31.3.2009. The APTEL, in its judgment dated 25.3.2011, observed that the Appellant may not be deprived of the relaxed norms merely because it has taken some time to enter into a Comprehensive Service Agreement with OEM, which may be due to the prevailing

circumstances of forced outages of the gas turbines of Blocks II & III for prolonged periods.

19. On examination of the contentions of the Petitioner for relaxation of the O&M norm, we find that the facts and circumstances are distinguishable in the present case and in Appeal No. 130 of 2009 in the case of Ratnagiri Gas and Power Private Limited v. Central Electricity Regulatory Commission & Anr. It was a case that fell in exception to the general rule, and it was proved beyond a shadow of doubt by the Appellant that the circumstances in which it landed were not created by any omission or commission attributable to it in claiming the relaxation.

20. Coming to the facts of the present case, we note that the Commission, vide order dated 10.11.2017, in Petition No. L-1/225/2017/CERC, while formulating norms for the determination of tariff for the 2019-24 period, solicited information from the generating companies and transmission licensees, including the Petitioner to submit actual performance/operational data and O&M Expenses for the period from 2012-13 to 2016-17 by 15.12.2017. However, no operational data or actual O&M expenditure data was submitted by the Petitioner. Thus, the principle evolved by the APTEL in Appeal No. 130 of 2009 to the effect that the circumstances are not created due to an act of omission or commission attributable to the party claiming the relaxation is satisfied by the Petitioner in the present case as the Petitioner did not file any information on an actual basis pursuant to the Commission's order dated 10.11.2017 in Petition No. L-1/225/2017/CERC. Accordingly, we are of the view that the reliance placed by the

Petitioner on the judgments of APTEL in 2007 ELR APTEL 7 in the case of NTPC Limited v. Madhya Pradesh State Electricity Board and Appeal No. 130 of 2009 in the matter of Ratnagiri Gas and Power Private Limited and Central Electricity Regulatory Commission and Anr. to contend that the application of the regulation in question is causing hardship and leading to an unjust result and, therefore, the power to relax should be exercised is mis-conceived and misplaced. Accordingly, the same are rejected.

21. The Petitioner has also placed reliance on the order dated 29.9.2014, in Petition No. 164/MP/2014 to contend that the Commission considered the abnormal cost of security, which formed a component of O&M Expenses, and accordingly relaxed the O&M provisions. In order to examine the said contention of the Petitioner, the relevant portion of the order is extracted as follows:

> *"8. We have considered the submissions made. While laying down norms for O & M expenses in the 2009 Regulations, abnormal security expenses were excluded on the understanding that such expenses could be considered on case to-case basis. On consideration of the facts available on record, and taking cognizance of the general law and order situation prevailing in the North-eastern Region, we are satisfied that the petitioner was required to make special arrangements and take preventive measures, to ensure safety and security of its personnel and property, facilitating maintenance of continuous supply of electricity in the region. The normative O&M expenses for Eastern Region do not include such abnormal expenses. Therefore, in our view the petitioner is entitled to reimbursement of these additional expenses incurred.*
>
> *9. In exercise of power under Regulation 44 of the 2009 Regulations, we allow the expenses on CISF incurred by the petitioner in relaxation of Regulation 19 (g) of the 2009 Regulations and direct that the expenses for the year 2013-14 as claimed by the petitioner shall be reimbursed by the respondents."*

22. On examination, we find that the expenses claimed in the present petition do not relate to security expenses, and as such, the reliance placed on the above order is misconceived and is accordingly rejected.

23. We, however, add here that the Commission, vide order dated 27.1.2021 in Petition No.191/MP/2019, examined the similar issue of seeking relaxation of O&M norms specified under Regulation 29(4) of the 2014 Tariff Regulations in the matter of North East Transmission Company Limited (NETCL) v. Power Grid Corporation of India Limited, wherein the following was observed:

> *"17. We are not agreeable to the contention of the Petitioner that normative O&M charges specified in Regulation 29(4) of the 2014 Tariff Regulations are primarily based on aggregating O&M expenditure of PGCIL's transmission assets across various projects. The norms are finalized based on data collected for actual O&M Expenses for all the transmission licensees. Vide Order dated 10.11.2017 in Petition No. L-1/225/2017/CERC, the Commission sought the data for actual O&M expenditure from all generating companies and transmission licensees including the Petitioner. However, the Petitioner had failed to submit the data regarding O&M Expenses while formulation of norms for 2019-24 period. It is not correct on part of the Petitioner to suggest that the norms were finalized based on data of PGCIL only."*

24. On perusal of the above, we find that the Petitioner (NETCL) in the said petition had sought relaxation of O&M norms under Regulation 29(4) of the 2014 Tariff Regulations on the grounds of insurgency issues in NER requiring deployment of experienced agency for O&M, landslides due to higher rainfall, transmission towers being located in hilly regions, and hardship on account of river crossings and reserved forests. However, the Commission did not agree with the Petitioner and observed that it is incorrect on the part of NETCL to suggest that the norms were finalized based on data from PGCIL only.

25. For the reasons mentioned above in detail, we do not find the present petition to be a fit case for relaxation of O&M norms by use of 'Power to Relax' under Regulation 76 of the 2019 Tariff Regulations. Since the prayers in the instant petition are solely based on our power to relax and we are not inclined to exercise our such power, the Petition No.

18/MP/2023 is hereby dismissed, at the stage of admission itself, and disposed of accordingly.

sd/- (P.K. Singh) Member	sd/- (Arun Goyal) Member	sd/- (I.S. Jha) Member	sd/- (Jishnu Barua) Chairperson