

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 173/TT/2013
Petition No. 111/TT/2015
and
Review Petition No. 33/RP/2016
(On Remand)**

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member**

Date of Order: 22nd September, 2025

In the matter of:

(Petition No. 173/TT/2013)

Approval of transmission tariff of Combined Asset of LILO of 400 kV S/C Vindhyachal-Korba Transmission Line and 400 kV D/C Gandhar-Hazira Transmission line and 400/220 kV GIS Sub-station at Hazira and associated bays and 400 kV D/C Quad Moose Transmission Line from Mahan Thermal Power Plant-Sipat Pooling Sub-station and associated bays for the years 2012-13 and 2013-14 in the 2009-14 tariff period under Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009.

(Petition No. 111/TT/2015)

Truing up of Annual Fixed Cost of capital cost of Combined Asset of LILO of 400 kV S/C Vindhyachal-Korba transmission line and 400 kV D/C Gandhar-Hazira transmission line and 400/220 kV GIS Sub-station at Hazira and associated bays (actual date of commercial operation 1.4.2013) referred as Stage-I (Asset-1) for 2013-14 under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 and Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

And

(Petition No. 33/RP/2016)

Petition for Review of order dated 15.6.2016 in Petition No. 173/TT/2013 and 11/TT/2015 under Section 94(1)(f) of the Electricity Act, 2003 with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

And in the matter of:



Essar Power Transmission Company Limited (EPTCL),
Tower-2, 5th Floor, Equinox Business Park,
Off Bandra Kurla Complex, LBS Marg,
Kurla (W), Mumbai-400070.

...Petitioner

Versus

- 1. Essar Power MP Limited,**
Prakash Deep Building, 10th Floor,
7 Tolstoy Marg, New Delhi-110001.
- 2. Power Grid Corporation of India Limited,**
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110016.
- 3. National Load Despatch Centre,**
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110016.
- 4. Western Region Power Committee,**
F-3, MIDC Area, Marol, Opp. SEEPZ,
Central Road, Andheri (East),
Mumbai-400093.
- 5. Essar Steel India Limited,**
27th KM on Surat-Hazira Road,
Hazira-394270.
- 6. Government of Madhya Pradesh,**
Energy Department, Mantralaya,
Vallabh Bhawan, Bhopal-462004.

.Respondent(s)

Parties Present : Ms. Swapna Seshadri, Advocate, EPTCL
Shri Amal Nair, Advocate, EPTCL
Ms. Shivani Verma, Advocate, EPTCL
Ms. Devyani Prasad, Advocate, EPTCL
Ms. Jyotsnaa Agnihotri Rathore, MPPMCL

ORDER

The Appellate Tribunal for Electricity (hereinafter referred to as 'APTEL') has remanded Petition Nos. 173/TT/2013 & 111/TT/2015, and 33/RP/2016 vide order dated 11.12.2024 in Appeal No. 397 of 2018, filed by Essar Power Transmission Company Limited (EPTCL), for reconsideration of the order dated 15.6.2016, 19.12.2018, and 28.2.2018 in Petition Nos. 173/TT/2013 & 111/TT/2015 and 33/RP/2016 to the limited



extent, namely, delay in grant of approval under Section 164 of the Electricity Act, delay in grant of Forest Clearance, delay on account of Right of Way issues, Compensation paid to landowners for Right of Way and consequential disallowance of IDC and IEDC.

The relevant portions of the order dated 11.12.2024 are as under:

“(a) Delay in grant of approval under Section 164 of the Electricity Act, 2003

174. Even though no time lines are prescribed for exercise of power under Section 164, a reasonable period would invariably be taken in considering the application submitted by the appellant, and in conferring on them the powers under Section 164 of the Electricity Act. We are of the view that a reasonable period, for the Appropriate Government to consider the application, and confer the powers under Section 164 on any applicant (such as the appellant in the present case), should be taken as two months.

175. Apart from the time taken from 14.07.2008 till 23.09.2008 for publication of the scheme, an additional period of two months, from the date of submission of application till conferment of power under Section 164 shall be taken as the reasonable period for conferment of such powers. The delay in granting approval under Section 164 beyond two months, shall be taken as the period of delay which cannot be attributed to the Appellant.

(b) Delay in grant of Forest Clearance

191. It is erroneous to assume the start date as the date of Investment Approval of a private entity such as the Appellant, the Appellant argued that nowhere in the Impugned Tariff Order nor the Impugned Review Order suggested that the Appellant was not diligent pursuant to making its application for Forest Clearance, therefore, CERC's refusal to condone the delay on the ground that the Appellant should have made the application for Forest Clearance within 6 months of Investment Approval is unreasonable and deserves to be set aside.

192. It is noteworthy that MOEF prescribes a time period of 10 months for a grant of Forest Clearance, however, the Appellant received its Forest Clearance only on 06.02.2013 i.e., after 47 months of making the application, undisputedly, this delay is completely beyond EPTCL's reasonable control.

197. In the light of above, we find the decision of CERC as arbitrary and unacceptable, accordingly, the time taken for obtaining the Forest Clearance is beyond the control of the Appellant and the period from March 2009 to February 2013 is condoned.

(c) & (d) delay on account of Right of Way issues and Compensation paid to landowners for Right of Way

219. We find the contention of the Appellant as satisfactory, the CERC failed to consider the numerous court cases filed against the Appellant seeking enhancement of compensation. The fact that such cases were filed is writ large that the payments made by the Appellant were not only prudent but also reasonable.

220. The Appellant submitted that it had paid an amount of ₹ 7.25 Crores towards RoW compensation in approx. 200 matters that were pending in the District Courts and other



fora for enhancement of compensation. It is pertinent to highlight that in the group of 70 farmers, 7 farmers had made a cumulative demand for ₹ 51 Crores, as the enhanced compensation.

221. We are satisfied that the deduction of Rs. 30.8 Crores made by the CERC is incorrect and without any reasoning, actual payments made by the Appellant within the 'Jantri rates' or the orders of the State Authorities have to be paid to the Appellant.

(e) Consequential disallowance of IDC and IEDC

222. The IDC/IEDC has to be determined on the basis of the time over run and the increased compensation paid to the farm owners, accordingly, the Central Commission is directed to re-determine the IDC/IEDC subject to time over run allowed and the actual compensation paid as concluded in the foregoing paragraphs.

ORDER

In the light of above, the captioned Appeal No. 397 of 2018 has merit and is allowed, the Impugned Order dated 15.06.2016 passed by Central Electricity Regulatory Commission in Petition No. 173/TT/2013 and 111/TT/2015, as modified by order dated 28.02.2018 in Review Petition 33/RP/2016, is set aside to the extent as concluded herein above."

2. Accordingly, Petition No. 173/TT/2013 & 111/TT/2015 and 33/RP/2016 were reopened and heard.

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

a) EPTCL was incorporated under the Indian Companies Act, 1956, on 4.1.2006. EPTCL was granted a transmission licence vide order dated 10.4.2008 in Petition No. 157/2007 to develop the transmission system associated with Mahan Thermal Power Plant. The Commission authorised EPTCL to build, own and operate the following transmission assets:

Transmission Lines

- i. 400 kV (triple conductor) D/C transmission line from Mahan to Sipat Pooling Sub-station: Approximate line length 315 km;
- ii. LILO of existing 400 kV S/C Vindhyachal-Korba Transmission Line of POWERGRID at Mahan: Approximate line length 20 km;
- iii. 400 kV (twin conductor) D/C transmission line from Gandhar (NTPC) Switch-yard to Hazira: Approximate line length 97 km.



Sub-stations

- i. 3X500 MVA, 400/220 kV Sub-station at Hazira;
- ii. 2X50 MVAR line reactors at Sipat pooling Sub-station;
- iii. 2X50 MVAR line reactors at Mahan;
- iv. 1X80 MVAR, 420 kV switchable bus reactor at Mahan TPS, along with its associated 400 kV bay;
- v. 2 Nos. 400 kV line bays at Sipat Pooling station;
- vi. 2 Nos. 400 kV line bays at Gandhar (NTPC) Switchyard;
- vii. 4 Nos. 400 kV line bays at Mahan TPS.

b) The Petitioner had filed Petition No. 173/TT/2013 for the determination of transmission tariff/provisional transmission tariff for the Period from 2012-13 to 2013-14 in r/o the following assets under Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009.

i. **Asset-1**: Combined Asset of LILO of 400 kV S/C Vindhyachal-Korba Transmission Line and 400 kV D/C Gandhar-Hazira Transmission line, and 400/220 kV GIS sub-station at Hazira and associated bays.

ii. **Asset-2**: 400 kV D/C Quad Moose Transmission line from Mahan Thermal Power Plant-Sipat Pooling Sub-station and associated bays.

c) The Commission, vide its order dated 12.9.2013 in Petition No. 173/TT/2013, had allowed the provisional tariff for Asset-1 as Asset-2 had not been commissioned. Subsequently, the Petitioner had filed Petition No. 111/TT/2015 for truing up of the Capital Cost of the Stage-I (Asset-1) for the period 1.4.2013 to 31.3.2014. Accordingly, the Commission, vide its order dated 15.6.2016, had disposed of both the Petitions, i.e., 173/TT/2013 and 111/TT/2015 and approved the capital cost of ₹29291.02 lakh as on 31.3.2014 and allowed the transmission charges for the 2013-14 period with respect to the Asset-1.



d) The transmission charges for Asset-2, commissioned on 22.09.2018, were allowed vide order dated 14.03.2022 in Petition No. 145/TT/2018 for the period from its COD to 31.03.2019.

e) The provisional tariff for Asset-1 was granted vide order dated 12.9.2013 in Petition No. 173/TT/2013 under Regulation 5(4) of the 2009 Tariff Regulations, subject to adjustment as provided under Regulation 5(3) of the 2009 Tariff Regulations.

f) The transmission charges claimed by the Petitioner with respect to the transmission asset in Petition No. 111/TT/2015 are as under:

(₹ In lakh)	
Particulars	2013-14
Depreciation	2596.52
Interest on Loan	4439.21
Return on Equity	2917.27
Interest on working capital	299.44
O & M Expenses	1018.87
Total	11271.30

g) The details submitted by the Petitioner in support of its claim for interest on working capital were as under:

(₹ In lakh)	
Particulars	2013-14
Maintenance Spares	305.00
O & M Expenses	84.91
Receivables	1878.55
Total	2268.46
Rate of Interest	13.20%
Interest	299.44

h) Further, the Petitioner had filed the Review Petition No. 33/RP/2016 seeking the review of the order dated 15.6.2016 in Petition Nos. 173/TT/2013 and 111/TT/2015. The said Review Petition was disposed of by the Commission vide order dated 28.2.2018 and reviewed certain decisions as under:



i. **Regarding the delay in getting approval under Section 164 of the Electricity Act, 2003:**

The delay in the grant of approval under Section 164 of the Electricity Act, 2003 (hereinafter referred to as “the Act”) is not condoned.

ii. **Regarding the delay in getting Forest Clearance and due to ROW issues:**

The Delay of 5 months, starting from November 2010 to 31.3.2011 out of 29 months, is not attributable to the Review Petitioner and is, therefore, condoned.

iii. **Regarding Disallowance of Interest During Construction (IDC) and Incidental Expenditure During Construction (IEDC):**

Consequent to the condonation of the time overrun of 5 months as above, the IDC and IEDC shall be worked out and allowed in due course by a separate order.

iv. **Regarding Reduction in capital cost on account of appointment of EPC contractor:**

Did not find any merit for reviewing the reduction in capital cost on account of the EPC contractor appointment and accordingly rejected.

v. **Regarding Disallowance of administrative and specialist expenses:**

The cost of the expenditure of ₹1800 lakh related to creek piling and Narmada River crossing is allowed for the purpose of tariff.

vi. **Regarding Disallowance of certain O&M Expenses:**

The O&M Expenses are allowed for the LILO of 400 kV S/C Vindhya-Chal-Korba Transmission Line, considering it as the D/C line as per the 2009 Tariff Regulations.

i) Accordingly, in light of the order dated 28.2.2018 in Review Petition 33/RP/2016, the Commission, vide its order dated 19.12.2018, has revised the order dated 15.6.2016 in Petition Nos. 173/TT/2013 and 111/TT/2015 and allowed the revised capital cost of



₹36623.65 lakh as on 31.3.2014 and approved the revised annual fixed charges for Asset-1 (hereinafter referred to as the transmission asset) for the 2013-14 period.

j) Aggrieved by the Commission's Order dated 15.6.2016, 19.12.2018 and 28.2.2018 in Petition No. 173/TT/2013 & 111/TT/2015 and 33/RP/2016 respectively, the Petitioner had filed Appeal No. 397 of 2018 before the Appellate Tribunal for Electricity (The APTEL) on the following grounds:

- i. Delay in grant of approval under Section 164 of the Electricity Act;
- ii. Delay in grant of Forest Clearance;
- iii. Delay on account of Right of Way Issues;
- iv. Compensation Paid to Landowners for Right of Way;
- v. Consequential disallowance of IDC and IEDC.

k) The APTEL, vide its judgment dated 11.12.2024 in Appeal No. 397 of 2018, has allowed the Appeal and remanded the matter to the Commission and directed it to pass the consequential order expeditiously.

l) Having heard the learned counsel of the Petitioner and perused the material on record, we proceed to dispose of the Petition.

Proceedings before the Commission after Remand:

4. Pursuant to the APTEL's judgment dated 11.12.2024 in Appeal No. 397 of 2018, the Commission heard the matter on 6.1.2025 and 6.2.2025, and the order was reserved. None of the Respondents has filed their replies despite sufficient opportunities. Further, no new submissions have been made/filed/uploaded either by the Petitioner or the Respondents after the matter was remanded by the APTEL vide its judgment dated 11.12.2024 in Appeal No. 397 of 2018.



Analysis and Decision:

5. We have carefully perused the Commission's order dated 15.6.2016 in Petition No. 173/TT/2013, along with I.A. No.38/IA/2015 & Petition No. 111/TT/2015 and have also perused the documents on record.

6. The APTEL, vide its judgment dated 11.12.2024 in Appeal No. 397 of 2018, has remanded the aforesaid matters, limited to certain issues, which were decided by the Commission in its order dated 28.2.2018 in Petition No. 33/RP/2016. The issue-wise detailed analysis is as follows:

A. Delay in the grant of approval under Section 164 of the Electricity Act

7. The Commission, vide its order dated 28.2.2018 in Petition No. 33/RP/2016, held that Section 68 of the Act provides for executing a transmission project and Section 164 of the Act does not require approval. If approved, this provision permits an individual to execute a line with payment of compensation without obtaining the express 'consent' of the parties involved under the Works of Licensees Rules, 2007. The Commission further held that after the grant of the transmission licence in April 2008, the Review Petitioner applied for an approval under Section 164 of the Act on 26.5.2008. However, within two months of the line route being finalized and communicated to the CEA on 6.4.2009, MoP issued the approval under Section 164. Therefore, the delay in the grant of approval under Section 164 is attributable to the delay in route finalization by the Review Petitioner. In light of the above, delay in the grant of approval under Section 164 is not condonable. The relevant extract of the order dated 28.2.2018 in Review Petition No. 33/RP/2016 is as under:

"48. With regard to Section 164 approval, the Review Petitioner applied to MoP on 10.3.2008. The Review Petitioner vide letters dated 21.4.2008 and 30.4.2008 informed MoP that it was granted transmission licence and requested to accord Section 164 approval. The Review Petitioner has obtained approval in July, 2009 and entire process



took about 16 months in getting approval under Section 164 of the Act. The Review Petitioner has taken plea that the EPC Contract was delayed due to delay in obtaining approval under Sections 68 and 164 of the Act. The EPC Contract was awarded on 15.7.2009. It is observed that the Review Petitioner has awarded EPC Contract after obtaining approval under Section 164 of the Act

49. The Review Petitioner's main contention is that the delay in getting approval under Section 164 of the Act is force majeure and as per position of law that grant of Section 164 approval is a sine qua non for the execution of a transmission project. The Review Petitioner has cited the precedence of the Appellate Tribunal for Electricity in North Karanpura Transmission co. Ltd. Vs. Central Electricity Regulatory Commission and Ors. Appeal No. 139 of 2013 dated 2.12.2013 where the Tribunal has categorically held that a delay in grant of Section 164 approval is to be considered as a force majeure event and cannot be attributed to the project developer. The Review Petitioner has stated that the approval under Section 164 of the Act is necessary for execution of the project as it authorizes the Review Petitioner to enter into the premise for the installation of the lines. It is observed that although Section 68 is necessary for execution of a line, Section 164 approval is not a mandatory requirement. Section 164 approval authorizes a person to execute a line with payment of compensation but without obtaining express „consent“ of affected parties under Works of Licensees Rules, 2007.

50. It is observed that there is a process of approval under Section 164 of the Act as per establishment procedure and which requires time for detailed survey by the Review Petitioner, examination of the proposal by Government instrumentality (CEA) and compliance of queries by the Review Petitioner. Hence, the entire time taken in approval under Section 164 cannot be considered as a „delay“. Therefore, while deciding the timeline of the project, as prudent practice, any developer will build in the certain time required for such approval/clearance. It may be pertinent to note that as per the tariff based competitive bidding guidelines, the timeline given for obtaining clearance/permission, is six months. Therefore, we are of the view that as prudent practice, the timeline for about 6 months is to be reasonably factored in by the Review Petitioner towards obtaining approvals. The time required to obtain approval upto 6 months cannot be considered as delay. After grant of transmission licence in April, 2008, the Review Petitioner applied for approval under Section 164 of the Act on 26.5.2008. But after finalization of the line route and communicating of same to CEA on 6.4.2009, MoP issued the approval under Section 164 within 2 months. Thus, the delay in grant of approval under Section 164 is attributable to the delay in route finalization by the Review Petitioner. In the light of above, delay in grant of approval under Section 164 is not condonable.”

8. The APTEL, vide its judgment dated 11.12.2024 in Appeal No. 397 of 2018, held that the Commission has failed to comply with the principle laid by the APTEL. The finding of the CERC in North Karanpura Transmission Co. Ltd v. Secretary, Central Electricity Regulatory Commission, 2013 [SCC Online APTEL 149: (2013) APTEL 142] that the approval under Section 164 is not required and cannot be covered by the force majeure event. The Commission is bound to follow the principle as laid down by the APTEL, which has achieved finality. It is a settled principle of law that the orders of the



higher appellate authorities should be followed unreservedly by the subordinate authorities. The relevant extract of the APTEL judgment is as under:

“149. We find the observations of the Commission erroneous, unacceptable, and unjustified; the Commission has recorded its findings without ascertaining the facts.

150. The finding of the CERC that the approval under section 164 is not mandatory and cannot be covered under the force majeure event is in the teeth of this Tribunal’s judgment in North Karanpura Transmission Co. Ltd v. Secretary, Central Electricity Regulatory Commission, 2013 SCC On Line APTEL 149: [2013] APTEL 142, the relevant extract is quoted as under:

“36. To sum up: In the light of above discussion, we are of the view that the power of Telegraph Authority under 164 of the 2003 Act is essential for laying transmission line both from prior consent of land owner as well as from telephonic or telegraph message point of views. Hence, the delay in obtaining the Central Government’s approval in conferring power of the Telegraph Authority is to be construed to be a force majeure.”

151. The Central Commission has failed to comply with the principle laid by this Tribunal, the Impugned Order passed by the Central Commission is unjust and perverse.

152. It is a settled principle of law that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities.”

9. The APTEL also held that the observation of the Commission that there is an approval process under Section 164 of the Act in accordance with the establishment procedure was also termed by the APTEL to be based on an invalid premise that a procedure exists, and rejected the Commission’s observation. The relevant extract of the APTEL’s judgment is as under:

“155. Further, the Appellant applied for section 164 approval on 10.03.2008, whereas MoP notified the “Standard Procedure” for obtaining the authorization under section 164 of the Act on 16.03.2009 for the first time, after more than a year from the date of the Appellant’s application, therefore, the observation of the Commission “that there is a process of approval under Section 164 of the Act as per establishment procedure--” is based on wrong assumption that there exist a procedure, which is incorrect, and has to be rejected.”

10. The APTEL further held that the finding of the Commission regarding the MoP granted approval within two months of the date on which the route was finalized by CEA on 06.04.2009, and that the Appellant was responsible for the delay in route finalization (wrongly noted by the Commission as 26.05.2008 instead of 10.03.2008) is entirely



arbitrary and unjustified and should be rejected outright. The APTEL further held that the Commission has disregarded the procedure that must be followed in order to obtain approval under section 164. There was no delay in obtaining the approval as per the procedure followed at that time. The route finalization of a transmission line is completed after consultation with various stakeholders (including CEA, Forest Authorities, etc.), and it is not the sole prerogative of the developer. Apart from the time required for publication of the scheme from 14.07.2008 to 23.09.2008. The delay in granting approval under Section 164 beyond two months shall be taken as the period of delay which cannot be attributed to the Appellant. The relevant extract of the APTEL's judgment is as under:

"173. Section 164 of the Electricity Act, which relates to exercise of powers of the Telegraph Authority in certain cases, enables the Appropriate Government by order in writing, for placing of electric lines or electrical plant for the transmission of electricity, to confer upon a licensee, and subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose, any of the powers which the telegraph authority possesses under the Indian Telegraph Act with respect to the placing of telegraph lines and posts.

174. Even though no time lines are prescribed for exercise of power under Section 164, a reasonable period would invariably be taken in considering the application submitted by the appellant, and in conferring on them the powers under Section 164 of the Electricity Act. We are of the view that a reasonable period, for the Appropriate Government to consider the application, and confer the powers under Section 164 on any applicant (such as the appellant in the present case), should be taken as two months.

175. Apart from the time taken from 14.07.2008 till 23.09.2008 for publication of the scheme, an additional period of two months, from the date of submission of application till conferment of power under Section 164 shall be taken as the reasonable period for conferment of such powers. The delay in granting approval under Section 164 beyond two months, shall be taken as the period of delay which cannot be attributed to the Appellant."

11. In terms of the order dated 10.4.2008 in Petition No. 157/2007, the project was scheduled to be commissioned by 1.11.2010, against which the project was put into commercial operation on 1.4.2013 with a time delay of 29 months. Further, it is observed that the Petitioner, EPTCL, vide the affidavit dated 3.6.2014, has submitted that it took



around 14 months (from April 2008 to June 2009) to get the approval under Section 164 of the Act from the MoP, which authorizes it to erect and construct towers without actually acquiring the land.

12. The Commission, vide its order dated 15.6.2016 in Petition No. 173/TT/2013 (along with I.A. No.38/IA/2015) and Petition No. 111/TT/2015, did not condone the delay of 29 months on various counts. The details of SCOD, COD, and the time delay with respect to the transmission asset is as under:

Asset	Date of LoA	SCOD as per LoA	SCOD Considered in order dated 10.4.2008 in Petition No. 157/2007	Actual COD	Time Over-run w.r.t SCOD Considered in Order dated 10.4.2008 in Petition No. 157/2007 (in months)
1	15.7.2009	15.7.2011	1.11.2010	1.4.2013	29

13. Further the Petitioner had filed the Review Petition No. 33/RP/2016 in Petition Nos.173/TT/2013 and 111/TT/2015, wherein, the Commission, vide its order dated 28.02.2018 held that the delay of 5 months (from November, 2010 to 31.3.2011) out of 29 months was not attributable to the Review Petitioner and condoned the delay of 5 months.

14. The APTEL, vide its judgment dated 11.12.2024 in Appeal No. 397 of 2018, set aside the findings of the Commission (passed in Review order dated 28.2.2018 in Petition No. 33/RP/2016) and decided that the appellant cannot be held responsible for the delay in granting approval beyond two months by the authorities. Therefore, in pursuance of the APTEL's judgment dated 11.12.2024, the time period from 14.07.2008 to 23.09.2008 was beyond the control of the Petitioner, and the same stands condoned.



B. Delay in the grant of Forest Clearance

15. The Commission, vide its order dated 28.2.2018 in Petition No. 33/RP/2016, held that the line might have been put into service by April 2011, if the Petitioner had applied for forest clearance in December 2007. This would have taken the Petitioner just two months to commission the line after receiving the forest clearance. The Commission further held that the major delay of 24 months is attributable to the delay in application of forest clearance and if the said delay had not occurred, the ROW problems due to court cases would have occurred earlier and the line could have commissioned by April 2011 and accordingly, the delay of 5 months (from November 2010 to April 2011) out of 29 months had been condoned. The Relevant extract of the order is as follows:

“46. We have examined the impact of delay in application for forest clearance after about two years and three months of initial investment approval in December, 2006. The Review Petitioner has submitted that the route alignment including acquiring maps, walk over survey route etc. after the grant of transmission licence was started in May, 2008. The transmission line under consideration was part of a dedicated line of Essar and therefore, the grant of transmission licence was not a necessary condition for applying for forest clearance. We observe that the Review Petitioner could have applied for forest clearance on obtaining Section 68 approval but it did not apply for same in May, 2008 and applied for forest clearance only in 23.3.2009. The Review Petitioner made application for approval under Section 68 to MoP in December, 2007 i.e. after one year of initial Investment Approval in December, 2006. In our view, such an application should have been made earlier, i.e. maximum within six months of initial Board approval. Considering that in the instant case, it took 37 months for forest clearance, if the Review Petitioner would have applied for forest clearance in December, 2007, the forest clearance would have been obtained by February, 2011 and line could have been commissioned by April, 2011 as the Review Petitioner has taken only two months to commission line after obtaining forest clearance

.....

51. As discussed above in preceding paragraph, the delay in grant of approval under Section 164 of the Act is not condoned. Further, it is observed that the major delay of 24 months (out of 29 months) is attributable to the delay in application of forest clearance. If this delay had not occurred, the ROW problem due to court cases would have occurred earlier and as such the line could have commissioned by April, 2011. In the light of the above, the delay of 5 months starting from November, 2010 to 31.3.2011 out of 29 months is not attributable to the Review Petitioner and is therefore condoned.”

16. The APTEL vide its judgment dated 11.12.2024 held that since the EPC contract is predicated on the final route that has been approved for the laying of the transmission line, it cannot be awarded prior to the final route's approval and forest clearance.



Additionally, it was decided that the transmission route must be determined and tentatively finalized once all the required procedures have been completed before the application for the grant of forest clearance may start. Furthermore, no significant work can be started prior to receiving the transmission license; therefore, any timeframe consideration can only start after the Commission grants the transmission licence, i.e., 10.4.2008. The APTEL viewed that the time taken for obtaining the Forest Clearance was beyond the control of the Petitioner and thus the period from March 2009 to February 2013 is condoned. The Relevant extract of the APTEL's judgment is as under:

"186. Undisputedly, the EPC contract is based on the final route as approved for the laying of the transmission line and, as such cannot be awarded before the forest clearance and the final route is approved.

187. As already noted, the elements of the impugned scheme were identified only on 27.08.2007 i.e., 8 months after the Investment Approval date, therefore, the CERC's finding that the Appellant should have applied for forest approval within 6 months of Investment Approval is without facts.

188. Further, the impugned transmission line is an ISTS line and not a dedicated line, even if we agree with CERC that it was conceived as a transmission line, the route alignment is required to be finalized before carrying out the pre-commissioning activities.

189. Also, the applications for a grant of Forest Clearance can only begin once the transmission route has been identified and tentatively finalized, after completing all necessary steps, the Appellant applied for Forest Clearance on 25.03.2009.

190. We agree with the Appellant that no significant work can be started by a private entity such as the Appellant before obtaining a transmission licence, the Appellant had no prior licence before beginning on the project and any consideration of timeline can only begin after the grant of Transmission Licence by CERC (i.e., 10.04.2008).

.....
192. It is noteworthy that MOEF prescribes a time period of 10 months for a grant of Forest Clearance, however, the Appellant received its Forest Clearance only on 06.02.2013 i.e., after 47 months of making the application, undisputedly, this delay is completely beyond EPTCL's reasonable control.

193. The argument of the Appellant is justified that the CERC has erred in considering 12.01.2010 (date of Revised Application) as the date on which the Appellant made its another application for Forest Clearance,.....

.....

197. In the light of above, we find the decision of CERC as arbitrary and unacceptable, accordingly, the time taken for obtaining the Forest Clearance is beyond the control of the Appellant and the period from March 2009 to February 2013 is condoned.



17. We have already condoned the total time delay of 5 months from November 2010 to 31.3.2011 vide Review Order dated 28.2.2018 in Petition No. 33/RP/2016. In pursuance of the APTEL's judgment dated 11.12.2024, the time delay from , March 2009 to February 2013 (including 5 months from November 2010 to 31.3.2011, already condoned vide Review Order dated 28.2.2018) is hereby condoned on account of delay in obtaining the forest clearance with respect to the instant transmission asset.

C. Delay on account of Right of Way Issues

18. The Commission, vide its order dated 28.2.2018 in Petition No. 33/RP/2016, held that the line might have been put into service by April 2011, and the 5 months delay from 1.11.2010 to 31.3.2011 would have been condoned if the Petitioner had not delayed in applying for forest clearance, which would have caused ROW issues earlier due to court cases. The Relevant extract of the order is as under:

"51. As discussed above in preceding paragraph, the delay in grant of approval under Section 164 of the Act is not condoned. Further, it is observed that the major delay of 24 months (out of 29 months) is attributable to the delay in application of forest clearance. If this delay had not occurred, the ROW problem due to court cases would have occurred earlier and as such the line could have commissioned by April, 2011. In the light of the above, the delay of 5 months starting from November, 2010 to 31.3.2011 out of 29 months is not attributable to the Review Petitioner and is therefore condoned."

19. The APTEL, in its judgment dated 11.12.2024, has combined the issues of the time delay due to RoW issues and the disallowance of compensation paid by the Petitioner due to RoW issues. However, it is observed that nothing has been mentioned/notified by the APTEL regarding the delay on account of RoW issues in said findings. Therefore, the APTEL was not inclined to review our findings in the Commission's order dated 28.2.2018 in Petition No. 33/RP/2016 regarding the time delay due to RoW problems pertaining to the instant transmission asset.

20. Based on the above, we observe that the forest clearance covers the time excess that is permitted due to RoW issues. The time overrun on account of forest clearance



is 47 months, whereas the effective delay on account of the Forest Clearance is from SCOD of the transmission asset, i.e., 1.11.2010 to 28.02.2013 (27 months 27 days), which is condoned due to the delay in obtaining the forest clearance. It has also been noted that the two-month, nine-day time overrun is acceptable due to the delay in receiving Section 164 permission. Therefore, the total time overrun of (27 months 27 days + 2 months 9 days) has been condoned.

21. Accordingly, in view of the above facts and in pursuance of the APTEL's judgment dated 11.12.2024, the entire delay of 29-month delay in getting the Forest Clearance stands condoned.

22. Based on the above judgment of the APTEL, the time overrun condoned is as under:

Particulars	Time overrun condoned
Section 164 Approval	14.07.2008 to 23.09.2008
Delay in Grant of Forest Clearance	March 2009 to February 2013 (47 months)
RoW Problems	November 2010 to 31.03.2011 (5 months)

D. Compensation Paid to Land Owners for Right of Way

23. The Commission, vide its order dated 28.2.2018 in Petition No. 33/RP/2016, held that Section 10 of the Telegraphic Act does not allow the person exercising the powers of the Telegraphic Act to fix any amount of compensation through a mutual consultation with the land owners. The Compensation should be reasonable and should be related to the circle rate fixed by the District Magistrate (DM) in exercise of the Power under the Land Compensation Act. Since the Petitioner has not provided the DM certificate or any other authority or the State Government for a prudence check of compensation paid, the Commission considered the following information for a prudence check for admissibility of the compensation:



- a) Auditor Certificate for compensation payment;
- b) Payment verifications along with the land records;
- c) Government values Report with regard to:
 - Valuation of the land based on applicable market rates;
 - Valuation of the land based on relevant 'Jantri Rates'; and
 - Compensation towards damage to the corps,
- d) MoP guidelines for compensation;
- e) Consideration of agricultural land as per the report of the Government values;
- f) Consideration of the situation of the land as follows by MSECT, and
- g) An escalation/appreciation of the land price due to delay;

Accordingly, after consideration of the revised 'Jantri Rate' of 17.30% escalation rate, the aggregate compensation of ₹45.94 lakh had been worked out with respect to the instant transmission asset. The relevant extract of the order is as under:

“

....., it emerges that the person exercising the power of the Telegraph Authority is required to pay full compensation to the persons for the damage suffered by them in exercise of these powers. Further, Clause (3) of Section 16 of the Telegraph Act empowers the District Judge to deal with dispute with regard to sufficiency of the compensation. The Review Petitioner has claimed a total amount of ₹7673 lakh as costs incurred towards RoW for Stage-I of the Project and some of the cases are yet to be settled pending litigation. In our view, the „full compensation“ provided in Section 10 of the Telegraph Act do not allow the persons exercising the power of telegraph authority to fix any amount of compensation through mutual consultation with the land owners. The compensation has to be reasonable, keeping in view the fact that the expenditure incurred has to be recovered in tariff from the consumers. Since the public interest is involved, the compensation agreed by the Review Petitioner should be reasonable and should be relatable to the circle rates fixed by the District Magistrate in exercise of the power under Land Compensation Act. Therefore, it was the responsibility of the Review Petitioner to ensure the reasonableness of the compensation with reference to the circle rates fixed by the concerned District Magistrate. Since the Review Petitioner has accepted the claim of the land owners, the responsibility lies with the Review Petitioner to demonstrate the reasonableness of the compensation paid. The Commission's direction in order dated 15.6.2016 to produce the orders of the District Magistrate or any other authority or the State Government was to examine the reasonableness of compensation paid for the purpose of tariff determination. Therefore, we do not find any merit on the submission of the Review Petitioner on this ground and there is no error apparent in the order on this account.

18. The Review Petitioner is a licensee authorized by the Commission to implement the inter-State transmission system. Further, the tariff of the transmission system shall be determined in accordance with the 2009 Tariff Regulations. In accordance with the Regulation 7 of the 2009 Tariff Regulations, the Commission is mandated to determine the capital cost of the project after prudence check. While carrying out the prudence



check, the Commission has to keep in mind the reasonableness of the cost and the consumer interest. Since the Review Petitioner has not produced the certificate of District Magistrate or any other authority or the State Government, the admissibility of compensation has been considered after prudence check of the following:-

- 1) Auditor Certificate for compensation payment.
- 2) Verification of payment with land records.
- 3) Report of Government valuer with regard to:
 - a. Valuation of the land based on applicable market rates,
 - b. Valuation of the land based on relevant Jantri Rates; and
 - c. Compensation towards damage to the crops.
- 4) Guidelines of the MoP for compensation.
- 5) Consideration of agricultural land as per report of Government valuer.
- 6) Consideration of situation of land (tower and line area) as followed by MSETCL.
- 7) Escalation/appreciation of the land price due to delay.

19. The Review Petitioner has submitted the Auditors' Certificate in support of the compensation paid, Report of valuer and details of the land owners i.e. 7/12 and 8-A certificate of the affected land. Further, the Review Petitioner has submitted the computation of compensation for diminution of land as per the guidelines of MoP, Government of India. The claim as per the Auditors' Certificate dated 25.7.2016 is as under:-

(₹ in Lakh)	
Particulars	Capital Cost
Cost due to ROW of LILO line	77
Cost due to ROW of Gandhar-Hazira line	7340
Additional Capitalization of ROW	256
Total	7673

Verification of the payment with land records

.....

22. We have made a random check of the compensation paid in different talukas as a matter of prudence. The recipients of the compensation have been verified with the land documents 7/12 and 8/A certificates. The type of land/crop for which the compensation claimed by the Review Petitioner has been reconciled with the land documents (7/12 and 8/A). Further, name of the land owner as per receipt has been verified with name indicated in land documents. It is noted that the documentary proof submitted by the Review Petitioner in support of the amount paid as per payment receipt are matching with the land documents submitted by the land owners mentioned in the 7/12 and 8/A documents.

.....

25. It is observed that the valuer has considered the compensation on two counts i.e. land compensation and crop compensation. The crop compensation is quantifiable and measurable which can be ascertained based on the rates of district agriculture officer. With regard to land compensation, it is observed that the valuer has worked out the cost of land and affected area and then applied the formula specified by MoP. MoP, in its guidelines dated 15.10.2015, provide a methodology for compensation towards "damages". This methodology provides for working out the compensation against diminution of land based on 85% land value for tower base area and 15% of land value in the width of Right of Way corridor.



26. On perusal of the guidelines, it is noticed that the guidelines provides same formula for tower base, for all towers irrespective of the situation of land. However, the situation of land plays an important role in deciding damages. MoP guidelines provides for consideration of categorization/type of land in different places for RoW. We have to consider the categorization based on the situation/location of land. We observe that above said guideline have to be adopted by States/UTs

Computation of compensation

.....

28. We have noticed that the Maharashtra Transmission Corporation Limited (MTCL) has submitted the practice followed by them as part of suggestion to MoP. The compensation of land on tower location has been adopted commensurate with the use of land. In this regard, MSETCL's letter, as given in the appendix to above said MoP guidelines has been perused. The relevant portion of the letter regarding type of land is as under:-

Land Classification	Type of Land	Compensation to be paid
A	Non-cultivable agriculture land	25%
B	Cultivable agriculture land	50%
C	Fruit bearing agriculture land	60%
D	Non-agriculture land	65%

29. In view of above, the amount claimed by the Review Petitioner has been further rationalized. The Review Petitioner's claim of `7673 lakh is within the value as per Jantri Rate i.e. `8615 lakh. Therefore, we have also considered the Review Petitioner's claim for the purpose of the further rationalization by considering the following aspects:-

- Consideration of agricultural land
- Situation of land (tower and line area)
- Escalation/appreciation of the land price.

.....
.....

32. The schedule COD of the transmission system was 15.7.2011 as per the investment approval. As per affidavit dated 1.8.2013 (as submitted in the impugned order), the Review Petitioner has submitted that Letter of Award was issued on 15.7.2009. However, the Review Petitioner has considered Jantri rate of 2011. If the Review Petitioner had executed the transmission as per the timeline envisaged in the license, the Review Petitioner would have saved escalation in land price. Therefore, due to delay in addressing the RoW issues, the Review Petitioner is not entitled for reimbursement of expenditure which is attributable to the negligence/inefficiency of the Review Petitioner.

33. The Resolution dated 18.4.2011 issued by the Government of Gujarat provides for the following:-

"(1) Before implementation of New Jantri 2011, Jantri (ASR) 2006 dated 1.4.2008 was in implementation. In that reference in new Jantri 2011, the assessment of land and immovable property are increased and it is held that 50% reduction relief will be given in it."



From the above stipulation, it can be inferred that there is increase in Jantri rate by 50% over a period from 1.4.2008 to 31.3.2011 (3 years), which works out to escalation of 17.3% per annum in Jantri rate.

34. We have considered the revised Jantri rate of 17.30% escalation rate after taking into account all practical aspects. The compensation granted has been worked out as under:-

(Amount in ₹)				
Taluka	(Tower land compensation) 65% Land value of tower area	(Land beneath the tower line) 15% land value for stringing area*	Crop Compensation	Total
Olpad	14446361	189135383	4,02,97,248	243878992
Hansot	259017	0	88,52,654	9111671
Ankleshwar	3099675	43242970	67612156	113954801
Bharuch	2742382	40772246	15935040	9668
Jhagadiya	1231300	7256450	2,45,51,368	33039118
	21778735	280407050	157248466	459434250

35. The crop compensation worked out by the Government valuer based on market rate of the relevant year as specified by District Agriculture Officer is in order. Therefore, ₹157248467 have been considered as crop compensation. Accordingly, aggregate compensation has been worked out as under:-

(Amount in ₹)		
Compensation against damage to land	Compensation against damage to crop	Total
302185784	157248466	459434250

24. The APTEL, vide its judgment dated 11.12.2024, held that since the Gandhar-Hazira Transmission Line is a part of the instant State transmission system that passes through the State of Gujarat and nowhere else through the State of Maharashtra, the Commission's decision to apply the rates and methodology recommended by MSETCL to the MoP is flawed and must be rejected. The APTEL also held that the Commission neglected to take into account the numerous court cases filed against the Petitioner seeking enhancement of compensation and finally concluded that the deduction of ₹30.80 crores made by the Commission was erroneous and illogical. The Petitioner must receive the actual amount made by the Appellant within the 'Jantri rate' or in accordance with the State Authorities' orders. The Relevant extract of the judgment is as under:



“217. Further, the Appellant’s Gandhar – Hazira transmission line is part of the Inter-State Transmission System passing through the State of Gujarat, and in no place is passing through the State of Maharashtra, the decision of CERC is flawed in applying the rates/ methodology suggested by MSETCL to MoP.

218. We are satisfied that the decision of the CERC placing reliance on MSETCL’s suggestion is incorrect and has to be rejected.

219. We find the contention of the Appellant as satisfactory, the CERC failed to consider the numerous court cases filed against the Appellant seeking enhancement of compensation. The fact that such cases were filed is writ large that the payments made by the Appellant were not only prudent but also reasonable.

220. The Appellant submitted that it had paid an amount of ₹ 7.25 Crores towards RoW compensation in approx. 200 matters that were pending in the District Courts and other fora for enhancement of compensation. It is pertinent to highlight that in the group of 70 farmers, 7 farmers had made a cumulative demand for ₹ 51 Crores, as the enhanced compensation.

221. We are satisfied that the deduction of Rs. 30.8 Crores made by the CERC is incorrect and without any reasoning, actual payments made by the Appellant within the ‘Jantri rates’ or the orders of the State Authorities have to be paid to the Appellant.”

25. After a careful perusal of the APTEL’s judgment dated 11.12.2024, we observe that the Petitioner, vide the affidavit dated 19.10.2016, had submitted the assessment made by the Government values which provides the valuation of the land based on the applicable market rates, valuation of the land based on the relevant ‘Jantri Rate’ and compensation towards damage to the crops. The Review Petitioner had submitted the compensation based on land value and as per the guidelines of the MoP letter dated 15.10.2015 as under:

Taluka	Tower Land Area (Sq.mtr)	Stringing Land Area (Sq.mtr)	Jantri Rate (₹/ Sq.mtr)	85% Land Value of Tower Area (in ₹)	15% Land Value of Stringing Area (in ₹)
Olpad	19907	1613408	1350	22843283.00	392058144.00
Hansot	3101	387924	202	532442.00	14104917.00
Ankleshwar	19221	1659967	300	4901355.00	89638218.00
Bharuch	6252	575413	816	4336387.00	84516661.00
Jhagadiya	7765	283274.44	295	1946991.00	15041873.00
Total				34560457.00	595359813.00



Taluka	No. of Towers	Area of crop Damaged (tower+ Stringing) (Hectare)	Crop Damaged	Production (ton/ hectare)	Rate/ Ton (in ₹)	Value of Crop Damaged (tower+ Stringing) (in ₹)
Olpad	97	195.6	Sugarcane	93.645	2200	40297248.00
Hansot	20	42.97	Sugarcane	93.645	2200	8852654.00
Ankleshwar	50	104.61	Sugarcane	93.645	2200	21551779.00
Ankleshwar	32	65.23	Banana	70.61	10000	46060377.00
Bharuch	-	0.63	Sugarcane	93.65	2200	128805.00
Bharuch	9	21.23	Banana	70.612	10000	14990844.00
Bharuch	17	37.56	Cotton	70.612	40500	815391.00
Jhagadiya	19	34.77	Banana	0.536	10000	24551368.00
Total of compensation towards cost of crop damaged by installation of tower and stringing						157248467.00

26. With regard to the land compensation, we observed that the value has worked out the cost of land and affected area and then applied the formula specified by MoP in its Guidelines dated 15.10.2015, providing a methodology for compensation towards 'damages'. This methodology provides for working out the compensation against diminution of land using 85% land value for the tower base area and 15% of the land value for the width of the Right of Way corridor. The extract of the said guideline is as under:

"2. The Recommendations made by the Committee are hereby formulated in the form of following guidelines for determining the compensation towards "damages" as stipulated in section 67 and 68 of the Electricity Act, 2003 read with Section 10 and 16 of Indian Telegraph Act, 1885 which will be in addition to the compensation towards normal crop and tree damages. This amount will be payable only for transmission lines supported by a tower base of 66 kV and above, and not for subtransmission and distribution lines below 66 kV:-

(i) Compensation @ 85% of land value as determined by District Magistrate or any other authority based on Circle rate/ Guideline value/ Stamp Act rates for tower base area (between four legs) impacted severely due to installation of tower/pylon structure;

(ii) Compensation towards diminution of land value in the width of Right of Way (RoW) Corridor due to laying of transmission line and imposing certain restriction would be decided by the States as per categorization/type of land in different places of States, subject to a maximum of 15% of land value as determined based on Circle rate Guideline value Stamp Act rates;

(iii) In areas where land owner/owners have been offered accepted alternate mode of compensation by concerned corporation Municipality under Transfer Development Rights (TDR) policy of State, the licensee Utility shall deposit compensation amount



as per (i) & (ii) above with the concerned Corporation/ Municipality/Local Body or the State Government.

(iv) For this purpose, the width of RoW corridor shall not be more than that prescribed in the table at Annex-2 and shall not be less than the width directly below the conductors.

3. Necessary action may kindly be taken accordingly. These guidelines may not only facilitate an early resolution of RoW issues and also facilitate completion of the vital transmission lines through active support of State/UT administration.

4. All the States/UTs etc. are requested to take suitable decision regarding adoption of the guidelines considering that acquisition of land is a State subject.”

27. We have considered the Petitioner’s submissions and gone through the actual payments paid towards the compensation paid to the land owners qua RoW. It is noted that the Petitioner has claimed the ₹76.73 crores, out of which ₹0.77 crores towards the LILO line, ₹73.40 crores are towards the Gandhar-Hazira Transmission Line, and ₹2.56 crores are towards additional capitalization of RoW. The APTEL vide its judgment dated 11.12.2024 in Appeal No. 397 of 2018 has held as under:

“221. We are satisfied that the deduction of Rs. 30.8 Crores made by the CERC is incorrect and without any reasoning, actual payments made by the Appellant within the ‘Jantri rates’ or the orders of the State Authorities have to be paid to the Appellant.”

28. Based on the above decision of the APTEL, we have carried out a prudence check of the payment made towards compensation paid to the land owners qua RoW. We have verified the expenditure made towards payments to approximately 2,500 land farmers for the Right of Way (RoW). Therefore, considering the assessment of the Government values as submitted by the Petitioner vide affidavit dated 19.10.2016, the assessment of compensation is worked out.

29. The aggregate compensation paid by the Petitioner against RoW is as under:

(₹ In Lakh)		
Compensation Against Damage to Land	Compensation Against Damage to Crop	Total
595359813.00	157248467.00	752608280.00



30. In view of the above, an aggregate compensation of ₹2931.74 lakh (₹7526.08 Lakh (-) ₹4594.34 Lakh) is hereby allowed, in addition to the compensation of ₹4594.34 lakh allowed by the Commission vide its order dated 28.2.2018 in Petition No. 33/RP/2016.

TRUING UP OF ANNUAL FIXED CHARGES FOR THE 2009-14 TARIFF PERIOD

Capital Cost:

31. Regulation 7 of the 2009 Tariff Regulations provides as under:

“(1) Capital cost for a project shall include:

(a) The expenditure incurred or projected to be incurred, including interest during construction and financing charges, any gain or loss on account of foreign exchange risk variation during construction on the loan – (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 fund deployed, -up to the date of commercial operation of the project, as admitted by the Commission, after prudence check.

(b) capitalised initial spares subject to the ceiling rates specified in regulation 8; and

(c) additional capital expenditure determined under regulation 9:

Provided that the assets forming part of the project, but not in use shall be taken out of the capital cost.

(2) The capital cost admitted by the Commission after prudence check shall form the basis for determination of tariff.

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

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

32. The Commission, vide its order dated 15.06.2016 in Petition No. 173/TT/2013 and 111/TT/2015, had allowed the hard cost of ₹ 29222.00 lakh and capital cost of



₹29291.02 lakh as on 31.03.2014. Relevant extract of the order dated 15.06.2016 is as under:

“57. The capital cost as on 31.3.2014, taking into consideration the capital cost as on COD, works out as follows:

Particulars	Capital Cost	(₹ In lakh)
		Capital Cost Allowed
<i>LILO of 400 kV Vindhyachal-Korba S/C Transmission Line of POWERGRID at Mahan;</i>	3089.00	2650.00
<i>400 kV (twin conductor) D/C transmission line from Gandhar NTPC switch yard at Hazira</i>	30051.00	18402.00
<i>400/220 kV GIS S/S at Hazira</i>	9450.00	8170.00
Total Hard Cost	42590.00	29222.00
<i>IEDC</i>	459.00	69.02
<i>IDC</i>	6282.00	00.00
<i>Total Cost as on CoD</i>	49331.00	29291.02
<i>Add Cap</i>	256.00	0.00
Total Cost as on 31-3-2014	49587.00	29291.02

33. Thereafter, the Commission, vide its orders dated 19.12.2018 and 28.02.2018 in Petition Nos. 173/TT/2013 and 111/TT/2015 in Review Petition No. 33/RP/2016 had allowed the revised hard cost of ₹ 35616.34 lakh as on the COD and capital cost of ₹ 36623.65 lakh as on 31.03.2014 with respect to the transmission asset. Relevant extracts of the order dated 19.12.2018 are as under:

“5. The petitioner has claimed Rs. 42590 lakh towards Hard Cost for the Stage I. The Commission in order dated 15.6.2016 allowed Rs. 29222 lakh of hard cost as on COD. However, the Commission revised the hard cost of the Stage-I assets in order dated 28.2.2018 in Review Petition No.33/RP/2016 by allowing additional capital cost of Rs. 6394.34 lakh (i.e. Rs. 4594.34 towards compensation paid to land owners + Rs. 1800 lakh towards administrative and specialist expense). As a result, the hard cost of the Stage-I assets works out to Rs. 35616.34 lakh (i.e. Rs. 29222+ Rs. 6394.34). The relevant portions of the order dated 28.2.2018 is extracted hereunder:-

.....

8. The apportioned approved cost, capital cost claimed, capital cost allowed in the order dated 15.6.2016 and the revised capital cost considered for tariff based on the order dated 28.2.2018 in Review Petition No. 33/RP/2016 are as follows:-



(₹ In lakh)

Particulars	Apportionment of project cost as per para 25(b) of order dated 15.6.2016 in Petition Nos. 173/TT/2013 and 111/TT/2015	Capital cost claimed in Petition Nos. 173/TT/2013 and 111/TT/2015	Capital cost allowed in order dated 15.6.2016 in Petition Nos. 173/TT/2013 and 111/TT/2015	Additional capital cost allowed vide order dated 28.2.2018 in Petition No.33/RP/2016	Revised capital cost pursuant to order dated 28.2.2018 in Petition 33/RP/2016
1	2	3	4	5	6=4+5
LILO of 400 kV Vidhyanchal-Korba S/C Transmission Line of POWERGRID at Mahan	2373.00	3089.00	2650.00	0.00	2650.00
400 kV (twin conductor) D/C transmission line from Gandhar (NTPC) switchyard to Hazira, including two additional typical foundations in the Narmada river crossing, and the cost of pile foundation near the Hazira plant	14633.00	30051.00	18402.00	6394.34	24796.34
400/220 kV GIS S/S at Hazira	10000.00	9450.00	8170.00	0.00	8170.00
Total Hard Cost	<i>Included above</i>	42590.00	29222.00	6394.34	35616.34
IEDC	<i>Included above</i>	459.00	69.02	107.77	176.79
IDC	<i>Included above</i>	6282.00	0.00	830.51	830.51
Total cost as on COD	---	49331.00	29291.02	7332.63	36623.65
Additional Capital Exp. for 2013-14	---	256.00	0.00	0.00	0.00
Capital cost as on 31.3.2014 for Stage I	27006.00	49587.00	29291.02	7332.63	36623.65

34. In the light of the APTEL's judgment dated 11.12.2024, additional capital cost of ₹ 2931.74 lakh towards the additional compensation paid to the land owners has been allowed. Accordingly, the revised hard cost as on COD with respect to the transmission



asset considered as ₹ 38548.08 lakh (₹ 35616.34 lakh + ₹ 2931.74 lakh) as on COD.

The details of the same are as under:

(₹ In lakh)			
Particulars	Hard cost as on COD allowed in Order dated 19.12.2018	Additional Compensation paid to Land Owners allowed in the instant Order pursuant to the APTEL judgment dated 11.12.2024	Hard Cost as on COD allowed as on COD
1	2	3	4=2+3
LILO of 400 kV Vidhyanchal-Korba S/C Transmission Line of POWERGRID at Mahan	2650.00	0.00	2650.00
400 kV (twin conductor) D/C transmission line from Gandhar (NTPC) switchyard to Hazira, including two additional typical foundations in the Narmada river crossing and the cost of pile foundation near the Hazira plant	24796.34	2931.74	27728.08
400/220 kV GIS S/S at Hazira	8170.00	0.00	8170.00
Total Hard Cost	35616.34	2931.74	38548.08

Interest During Construction (IDC) / Incidental Expenses During Construction (IEDC):

35. The APTEL, vide its judgment dated 11.12.2024, has directed the Commission to re-determine the IDC and IEDC on the basis of time overrun and actual compensation paid to the farm owners allowed by the APTEL in the said judgment.

Relevant extracts of the APTEL judgment dated 11.12.2024 are as under:

“The IDC/IEDC has to be determined on the basis of the time over run and the increased compensation paid to the farm owners, accordingly, the Central Commission is directed to re-determine the IDC/IEDC subject to time over run allowed and the actual compensation paid as concluded in the foregoing paragraphs”

36. The Petitioner, vide the Auditors Certificate dated 3.7.2015, has claimed ₹ 6281.41 lakh of IDC along with ₹ 607.51 lakh towards Finance Charges (FC) for the transmission asset, including the date of loan draws and interest payment, applicable



interest rates, the amount of actual interest rate paid, etc., with respect to the Combined Asset comprising Asset-I and Asset-II. Accordingly, the Petitioner has furnished the computation of the combined IDC for Asset-1 and Asset-2, and has allocated 45.63% of the total IDC to the instant transmission asset and has claimed IDC of ₹ 6281.41 lakh.

37. In light of the APTEL's judgment dated 11.12.2024, the time overrun of 29 months in commissioning the transmission asset stands condoned. Furthermore, an additional capital cost of ₹ 2931.74 lakh towards the additional compensation paid to the landowners has been allowed. Accordingly, the amount of allowable IDC up to COD, including FC works out to ₹ 6214.44 lakh and the same has been considered based on the information available on records for both the assets.

38. The Petitioner, vide the Auditors Certificate dated 3.7.2015, has claimed IEDC as under:

(₹ In lakh)		
Other Incidental/auxiliary set of phase-I		
9.0	Construction and pre-commissioning expenses	Amount in lakh
9.1	Site supervision & site admin, etc., excluding salaries	
9.2	Tools and Plants	
9.3	Construction Insurance	102.81
A	Total Construction and Pre-commissioning Expenses	102.81
10	Overheads	-
10.1	Establishment Including Salaries	334.09
10.2	Audit & Accounts	-
10.3	Contingency, legal, others	434.30
10.4	Less Preoperative Income	-411.80
B	Total Overheads	356.59
Grand Total A+B		459.39

39. The Petitioner has also submitted the detailed IEDC calculation wherein interest expenses and finance charges have been included. After excluding the interest expenses and finance charges from the detailed calculation as submitted by the Petitioner, the same has been summarised as under:



(₹ in lakh)	
Particulars	Amount Capitalized for Phase 1
Expenditure during the construction period	871.19
Less: Income during construction	411.80
Grand Total	459.39

40. As the claimed amount of ₹ 459.39 lakh vide the Auditor's Certificate dated 3.7.2015 and the claimed IEDC calculation are the same, we proceed with the claimed amount of ₹ 459.39 lakh towards IEDC. However, the time overrun of 29 months in commissioning the asset is condoned. Therefore, IEDC is required to be allowed up to the actual COD. Accordingly, IEDC has been considered on a pro-rata basis of hard cost claimed vis-à-vis the hard cost allowed. The allowable IEDC up to the actual COD works out to ₹ 415.80 lakh, and the same has been considered.

Capital Cost approved as on COD

41. Accordingly, the capital cost approved as on COD is as follows:

Hard Cost allowed (A)	IDC and FC allowed (B)	IEDC allowed (C)	Capital cost Considered as on COD (A)+(B)+(C)
38548.08	6214.44	415.80	45178.32

Additional Capital Expenditure (ACE):

42. No ACE has been allowed with respect to the transmission asset vide the orders dated 28.02.2018 and 19.12.2018 in Petition Nos. 173/TT/2013 and 111/TT/2015 in Review Petition No. 33/RP/2016. Accordingly, the capital cost as on COD of ₹ 45179.82 lakh has been considered as the capital cost as on 31.03.2014.

Debt-Equity Ratio:

43. Regulation 12 of the 2009 Tariff Regulations provides as under:

"12. Debt-Equity Ratio (1) For a project declared under commercial operation on or after 1.4.2009, if the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan:



Provided that where equity actually deployed is less than 30% of the capital cost, the actual equity shall be considered for determination of tariff: Provided further that the equity invested in foreign currency shall be designated in Indian rupees on the date of each investment.

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, provided such premium amount and internal resources are actually utilised for meeting the capital expenditure of the generating station or the transmission system.*

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

(3) Any expenditure incurred or projected to be incurred on or after 1.4.2009 as may be admitted by the Commission as additional capital expenditure for determination of tariff, and renovation and modernization expenditure for life extension shall be serviced in the manner specified in clause (1) of this regulation.”

44. The debt-equity ratio of 70:30 as approved vide the order dated 19.12.2018 in Petition Nos. 173/TT/2013 and 111/TT/2015 in Review Petition No. 33/RP/2016 have been considered, and the same is as follows:

Funding	Capital Cost as on COD		Capital Cost as on 31.3.2014	
	₹ (in lakh)	%	₹ (in lakh)	%
Debt	31624.83	70.00%	31624.83	70.00%
Equity	13553.50	30.00%	13553.50	30.00%
Total	45178.32	100.00%	45178.32	100.00%

Depreciation:

45. Regulation 17 of the 2009 Tariff Regulations provides as under:

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

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

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

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



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

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

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

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

(6) Depreciation shall be chargeable from the first year of commercial operation. In case of commercial operation of the asset for part of the year, depreciation shall be charged on pro rata basis.”

46. The depreciation has been calculated annually for the transmission asset based on the Straight-Line Method and at rates specified in Appendix-III of the 2009 Tariff Regulations, as per the following details:

(₹ In lakh)

Particulars	2013-14
Opening Gross Block	45178.32
Addition during the year 2013-14 due to ACE	0.00
Closing Gross Block	45178.32
Average Gross Block	45178.32
Depreciable Value	40660.49
Weighted average rate of Depreciation (WAROD) (in %)	5.2322%
Depreciation	2363.81
Cumulative Depreciation at the end of the year	2363.81

Interest on Loan (IoL):

47. Regulation 16 of the 2009 Tariff Regulation Provides for Interest on Loan as under:

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



- (2) *The normative loan outstanding as on 1.4.2009 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2009 from the gross normative loan.*
- (3) *The repayment for the year of the tariff period 2009-14 shall be deemed to be equal to the depreciation allowed for that year.*
- (4) *Notwithstanding any moratorium period availed by the generating company or the transmission licensee, as the case may be the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the annual depreciation allowed.*
- (5) *The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio at the beginning of each year applicable to the project.*

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

Provided further that if the generating station or the transmission system, as the case maybe, 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 369 Tariff Regulations 2009-14 applying the weighted average rate of interest.*
- (7) *The generating company or the transmission licensee, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 2:1.*
- (8) *The changes to the terms and conditions of the loans shall be reflected from the date of such re-financing.*
- (9) *In case of dispute, any of the parties may make an application in accordance with the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, as amended from time to time, including statutory re-enactment thereof for settlement of the dispute.*

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

48. With regard to the provisions of Regulation 16 of the 2009 Tariff Regulations, the Petitioner's entitlement to the interest on the loan has been calculated on the following basis:



- a) Gross amount of loan, rate of interest and weighted average rate of interest on actual average loan have been considered as per the Petition;
- b) The actual loan repayment has been considered as per the amortization schedule (schedule-III) submitted in the loan agreement for working out the weighted rate of interest;
- c) The repayment for the 2009-14 tariff period shall be deemed to be equal to the depreciation allowed for that period;
- d) Notwithstanding the moratorium period availed by the Petitioner, the repayment of the normative loan shall be considered from the first year of commercial operation of the project and shall be equal to the annual depreciation allowed;
- e) Weighted average rate of interest on actual average loan worked out as per (a) above is applied on the notional average loan during the year to arrive at the interest on loan;
- f) As per Regulation 16(5), actual loans have been considered for the computation of the weighted average rate of interest.

49. Based on the above weighted average rates of interest as approved vide the order dated 19.12.2018 in Petition Nos. 173/TT/2013 and 111/TT/2015 in Review Petition No. 33/RP/2016 have been considered for computing the IoL. Accordingly, the IoL has been allowed as under:

(₹ In lakh)		
Sl.	Particulars	2013-14
A	Gross Normative Loan	31624.83
B	Cumulative Repayments up to the Previous Year	0.00
C	Net Loan-Opening (A-B)	31624.83
D	Addition, due to ACE	0.00
E	Repayment during the year	2363.81
F	Net Loan-Closing (C+D-E)	29261.02
G	Average Loan (C+F)/2	30442.92
H	Weighted Average Rate of Interest on Loan (in %)	13.286
I	Interest on Loan (G*H)	4044.75



Return on Equity (RoE):

50. Regulation 15 of the 2009 Tariff Regulations provides as under:

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

(2) Return on equity shall be computed on pre-tax basis at the base rate of 15.5% for thermal generating stations, transmission system and run of the river generating station, and 16.5% for the storage type generating stations including pumped storage hydro generating stations and run of river generating station with pondage and shall be grossed up as per clause (3) of this regulation:

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

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

(3) The rate of return on equity shall be computed by grossing up the base rate with the Minimum Alternate/Corporate Income Tax Rate for the year 2008-09, as per the Income Tax Act, 1961, as applicable to the concerned generating company or the transmission licensee, as the case may be:

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

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

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

(5) The generating company or the transmission licensee as the case may be, shall recover the shortfall or refund the excess Annual Fixed charge on account of Return on Equity due to change in applicable Minimum Alternate/ Corporate Income Tax Rate as per the Income Tax Act, 1961 (as amended from time to time) of the respective financial year directly without making any application before the Commission;

Provided further that Annual Fixed charge with respect to the tax rate applicable to the generating company or the transmission licensee, as the case may be, in line with the provisions of the relevant Finance Acts of the respective financial year during the tariff period shall be trued up in accordance with Regulation 6 of these regulations".

51. The RoE has been computed @ 19.610% p.a. based on the tax rate (MAT) for the year 2013-14 on average equity as per Regulation 15(5) of the 2009 Tariff Regulations. The details are as follows:

Sl. No.	Particulars	2013-14
A	Opening Equity	13553.50
B	Addition due to ACE	0.00



C	Closing Equity (A+B)	13553.50
D	Average Equity (A+C)/2	13553.50
E	Return on Equity (Base Rate) (%)	15.50%
F	Tax Rate applicable (%)	20.961%
G	Rate of Return on Equity (%)	19.610%
H	Return on Equity (D*G)	2657.84

Operation & Maintenance Expenses (O&M Expenses):

52. The Commission, vide its order dated 19.12.2018 in Petition Nos. 173/TT/2013 and 111/TT/2015 in Review Petition no. 33/RP/2016 had allowed the O&M Expenses of ₹ 452.92 lakh for the 2013-14 tariff period. The same O&M Expenses of ₹ 452.92 lakh have been allowed for the 2013-14 tariff period.

Interest on Working Capital (IWC):

53. The Petitioner is entitled to claim the interest on working capital as per the 2009 Tariff Regulations. The components of the working capital and the Petitioner's entitlement to interest thereon are discussed hereunder:

i. Receivables:

As per Regulation 18(1) (c) (i) of the 2009 Tariff Regulations, receivables as a component of working capital will be equivalent to two months of fixed cost. The Petitioner has claimed the receivables based on 2 months of annual transmission charges claimed in the Petition. In the tariff being allowed, receivables have been worked out on the basis of 2 months' transmission charges.

ii. Maintenance Spares:

Regulation 18 (1) (c) (ii) of the 2009 Tariff Regulations provides for maintenance spares @ 15% per annum of the O & M Expenses as part of the working capital from 1.4.2009. O & M expenses have been claimed in the instant Petition. Accordingly, the value of maintenance spares has been worked out as 15% of O & M expenses.



iii. **O & M Expenses:**

Regulation 18(1) (c) (iii) of the 2009 Tariff Regulations provides for O&M Expenses for one month to be included in the working capital. The Petitioner has claimed O&M Expenses. As such, working capital has been worked out by considering 1 month's O & M Expenses.

iv. **Rate of Interest on Working Capital:**

In accordance with clause (3) of Regulation 18 of the 2009 Tariff Regulations, as amended, the rate of interest on working capital shall be on a normative basis and shall be equal to the State Bank of India Base Rate @ 13.20% (Base rate of 9.70% as on 1.4.2013 and 350 basis points). The interest on working capital for the transmission asset covered in the instant Petition has been worked out accordingly.

54. Considering the above, the allowed IWC is as follows:

(₹ In lakh)

Particulars	2013-14
O&M Expenses	37.74
Maintenance Spares	67.94
Receivables	1624.62
Total Working Capital	1730.30
Rate of Interest (in %)	13.20
Interest on Working Capital	228.40

Annual Fixed Charges for 2009-14 Tariff Period

55. The transmission charges allowed for the transmission asset for the year 2013-14 tariff period are as follows:

(₹ In lakh)

Particulars	2013-14
Depreciation	2363.81
Interest on Loan	4044.75
Return on Equity	2657.84
Interest on Working Capital	228.40
O&M Expenses	452.92
Total	9747.72



56. To summarise:

The details of AFC claimed by the Petitioner and AFC allowed in the instant order with respect to the transmission asset for the 2013-14 tariff period are as follows:

(₹ In lakh)	
Asset	2013-14
Claimed	11271.30
Allowed	9747.72

57. With the above, the directions contained in the APTEL judgment dated 11.12.2024 in Appeal No. 397 of 2018 stand implemented.

58. The transmission tariff with respect to the 2009-14 tariff period stands trued-up and the Petitioner will file a consolidated Petition for the 2014-19, 2019-24 and 2024-29 tariff periods in terms of the relevant regulations.

59. This order disposes of Petition Nos. 173/TT/2013 and 111/TT/2015, along with Review Petition No. 33/RP/2016, in terms of the above findings and discussions to the extent of remand.

Sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V.)
Member

sd/-
(Jishnu Barua)
Chairperson

