

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 254/MP/2023

Coram:

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

Date of order: 26.11.2025

In the matter of:

Petition under Section 79(1)(d) of the Electricity Act, 2003 read with Regulation 3(9)(a) and 8(5)(ii) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and Regulation 3(10)(a) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019.

And in the matter of:

Powerlinks Transmission Limited
10th Floor, DLF Tower A,
District Centre Jasola, New Delhi – 110025.

...Petitioner

Versus

1. Powergrid Corporation of India Ltd
Saudamini', Plot No.-2, Sector- 29,
Gurgaon, Haryana – 122 001.
2. Rajasthan Rajya Vidhyut Prasaran Nigam Ltd
Vidyut Bhavan, Vidhyut Marg,
Jaipur, Rajasthan – 302005.
3. Ajmer Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur-302017.
4. Jaipur Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor)
Ajmer Road, Heerapura, Jaipur -302017.



5. Jodhpur Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur -302017.
6. Punjab State Electricity Board,
The Mall, Patiala-147 001.
7. Haryana Power Purchase Centre
(Joint Forum of UHBVNL and DHBVNL)
Vidyut Sadan, Plot No. IP - 3 & 4, 4th floor, Sector – 14
Panchkula, Haryana – 134113.
8. Uttar Pradesh Power Corporation Limited,
Shakti Bhavan, 14, Ashok Marg,
Lucknow - 226 001 (Uttar Pradesh).
9. Power Development Department,
Government of Jammu & Kashmir
Room No. 1/27, Mini Block
Civil Secretariat Sirinager-190 009.
10. Himachal Pradesh State Electricity Board
Vidyut Bhawan, Kumar House Complex Building II,
Shimla – 171004, Himachal Pradesh.
11. Chandigarh Administration,
Sector-9, Chandigarh.
12. Uttarakhand Power Corporation Limited,
Victoria Cross Vijeyta Gabar Singh
Urja Bhawan, Kanwali Road,
Balliwala Chowk, Dehradun-248001,
Uttarakhand
13. North Central Railway-Allahabad (NCR-ALD)
DRM Office, Nawab Yusaf Road,
North Central Railway,
Prayagraj, Uttar Pradesh-211001.
14. BSES Yamuna Power Limited,
BSES Bhawan, Building No.-20,
Nehru Place, New Delhi.
15. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi – 110019.



16. Tata Power Delhi Distribution Limited
(Formerly North Delhi Power Limited,)
Grid Substation Building, Hudson Line,
Near Kingsway Camp,
New Delhi-110 088.
17. New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-110 002.
18. Bihar State Power (Holding) Company Ltd
(Formerly Bihar State Electricity Board -BSEB)
Vidyut Bhavan, Bailey Road, Patna – 800 001.
19. West Bengal State Electricity Distribution Company Limited
Garia 33/11 K.v. Sub Station, Garia Main Rd, Kolkata,
West Bengal 700084.
20. Grid Corporation of Orissa Ltd.
Shahid Nagar, Bhubaneswar - 751 007.
21. Jharkhand State Electricity Board
Doranda, Ranchi – 834002.
22. Damodar Valley Corporation
DVC headquarters, DVC Towers, VIP Road,
Kolkata – 700054DVC Tower, Maniktala
Civic Centre, VIP road, Calcutta - 700 054.
23. Power Department
Government of Sikkim,
Gangtok – 737101.

...Respondent(s)

Parties Present: Shri Shri Venkatesh, Advocate, PTL
Shri Ashutosh Srivastava, Advocate, PTL
Shri Nihal Bhardwaj, PTL
Shri V. M. Kannan, Advocate, DTL
Ms. Harimohana N., Advocate, DTL
Ms. Nita Jha, PTL
Shri Jatin Mahani, PTL
Shri Anup Pitale, PTL



ORDER

The instant petition is filed by Powerlinks Transmission Limited under Section 79(1)(d) of the Electricity Act, 2003 (hereinafter referred to as the “Act”) read with Regulation 3(9)(a) and Regulation 8(5)(ii) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and Regulation 3(10)(a) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for (a) declaring Goods and Services Tax (GST) laws as a Change in Law event (CIL event) for the Petitioner and allow consequential impact of GST in its transmission tariff, (b) declaring amendment of Section 115JB of the Income Tax Act by Finance Act, 2017 read with Companies (Indian Accounting Standards) Rules, 2015 (“Ind AS Rules”) as CIL event and allow consequential relief to compensate for additional cost due to Amendment of Income Tax Act read with Ind AS Rules, and (c) clarification regarding period of applicability of Transmission Majoration Factor (“TMF”) in exercise of Commission’s powers under Power to Relax and Power to Remove Difficulty.

2. The Petitioner has made the following prayers in the instant petition:

“(a) Admit the present Petition;

(b) Hold and declare that introduction/ enactment of GST Laws and Amendment of Income Tax Act by Finance Act 2017 read with Ind AS Rules, which has resulted in increased/ additional expenditure of the Petitioner, amount to Change in Law;

(c) Hold and declare that the Petitioner is entitled to the claims for amounts mentioned in this Petition towards compensation for above Change in Law events along with carrying cost as per applicable Tariff Regulations;

(d) Exercise its ‘Power to Relax’ and ‘Power to remove Difficulty’ and clarify the applicability of TMF for the entire life of the Project i.e. 35 years in terms of Tariff Regulations, 2001 and also in line with the Electricity (Amendment) Rules, 2023; AND/OR

(e) Pass any such other and further reliefs as this Hon'ble Commission deems just



and proper in the nature and circumstances of the present case.”

3. The Petitioner is a transmission licensee and was granted a transmission licence on 13.11.2003 under Section 14 of the Act to transmit electricity and for that purpose to construct, maintain and operate the Inter-State Transmission System associated with the Tala HEP Eastern Region, East-North Inter-connector and Northern Region Transmission System. Power Grid Corporation of India (“PGCIL”), Respondent No. 1, is a Government Company within the meaning of the Companies Act, 1956 and is undertaking Inter-State Transmission of Electricity in India. The Respondents Nos. 2 to 24 are the Long-Term Transmission Customers of the Petitioner.

4. The Petitioner is a JV of Tata Power Company Limited and PGCIL with an equity holding of 51% and 49% respectively. The Petitioner has constructed the Tala ISTS to transmit power generated by the Tala HEP in Bhutan to the constituents of the Eastern and Northern Regions. The Petitioner was granted a transmission licence by the Commission vide order dated 22.10.2003 in Petition No.40/2003 for a period of 25 years to transmit electricity and, for that purpose, to construct, maintain, and operate the Tala ISTS associated with the Tala HEP. The Petitioner’s transmission assets were put into commercial operation in 2006. The Commission vide order dated 2.11.2021, tried up the tariff for the 2014-19 tariff period and approved the tariff for the 2019-24 tariff period of the transmission assets of the Petitioner. The Petitioner claimed the impact of GST and the additional tax liability arising from the amendment to the Income Tax Act, 1961, as a CIL event, and the Commission granted liberty to the Petitioner to approach the Commission by a separate petition. Accordingly, the Petitioner has filed the instant petition. However, in addition to the two issues stated



above, the petitioner is also seeking clarification regarding the TMF in the instant petition.

5. The instant petition was admitted on 19.1.2024, and notices were issued to the Respondents. None of the Respondents has filed any reply other than Delhi Transco Limited (DTL). The Petitioner has filed the “Summary of the Arguments on behalf of the Petitioner” and a “Note on behalf of the Petitioner” on 18.2.2025.

6. DTL, Respondent No.10, in its reply vide affidavit dated 1.7.2024, has stated that the Government of NCT of Delhi, on 28.6.2006, issued a set of Policy Directions to Delhi Electricity Regulatory Commission (DERC). One of the directions was that the responsibility for arranging the power supply in the NCT of Delhi shall rest with the Distribution Companies. DTL submitted that, accordingly, DERC issued an order on 31.3.2007, reassigning the existing PPAs from DTL to the Distribution Licensees in NCT of Delhi. DTL submitted that it has already been relieved of its power purchase responsibilities, and so no cause of action lies against DTL. DTL submitted that the Discoms in Delhi have already been impleaded as respondents in the matter, and therefore DTL is neither a necessary nor a proper party. Accordingly, it may be deleted from the array of parties in the matter. The same was allowed by the Commission on 8.5.2025, and the Petitioner was directed to file the amended Memo of Parties. The Petitioner filed the revised Memo of Parties on 20.5.2025, deleting DTL.

7. We have heard the Petitioner and the submissions made by the Petitioner. The Petitioner has made the following three claims, which we address in the subsequent paragraphs.

A. The introduction/ enactment of GST has resulted in additional expenditure to the Petitioner, and it amounts to a CIL event. Therefore,



allow the additional expenditure along with the carrying cost.

- B. The amendment of the Income Tax Act by the Finance Act 2017, read with Ind AS Rules, has resulted in increased/ additional expenditure to the Petitioner, and it amounts to a CIL event. Therefore, allow the additional tax paid along with the carrying cost.
- C. Clarify that TMF is applicable for the entire life of the Project, i.e. 35 years in terms of the 2001 Tariff Regulations.

A. Impact of GST

8. The Petitioner has made the following submissions in support of its prayer to hold and declare the introduction of GST as a CIL event and to accordingly allow the additional O&M expenses incurred by the Petitioner:

- a. Declare that the enactment and implementation of the GST laws constitutes a CIL event and allow the consequential impact of GST on the transmission tariff payable to the Petitioner.
- b. Under the erstwhile indirect tax regime, each individual tax was triggered by a distinct taxable event. For instance, the provision of services attracted service tax, while the manufacture of goods attracted excise duty. In contrast, under the GST framework, the taxable event is uniformly defined as 'Supply' of goods and/ or services. The term 'supply', as defined under the GST, is of wide and inclusive import and encompasses all forms of transfer, including sale, barter, exchange, license, rental, lease, or disposal made or agreed to be made for a consideration. Further, the GST Act deems certain transactions to constitute 'supply' even in the absence of consideration, such as those involving related parties. Accordingly, the shift in the taxable event from specific transactional triggers to the overarching concept of 'supply' represents a substantial departure from the previous regime, thereby constituting a CIL event.
- c. Under the GST regime, an entity operating across multiple States is mandatorily required to obtain separate registrations in each such State, with a distinct Goods and Services Tax Identification Number ("GSTIN") allotted for every State in which it carries on business. In terms of Schedule 1 read with



Section 7 of the Central Goods and Services Tax Act, 2017, which came into effect on 1.7.2017, the supply of goods or services between distinct persons, including branches or units of the same legal entity having separate GSTINs, is deemed to constitute a 'supply', even in the absence of consideration. Consequently, the inter-State movement of goods, materials, or assets between units of the same legal entity registered in different States attracts the levy of GST.

d. This marks a material departure from the pre-GST regime, under which such stock transfers or movements within the same company across State boundaries were not subject to Excise Duty, Service Tax, or Value Added Tax (VAT), provided no consideration was involved. The shift in tax treatment of intra-company transactions due to deeming provisions under GST, thus, has direct cost implications and is sought to be recognised as a CIL event.

e. The GST constitutes as a CIL event in terms of Regulations 3(9)(a) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 ("2014 Tariff Regulations,") and Regulation 3(10)(a) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 ("2019 Tariff Regulations").

f. Regulation 8(5)(ii) of the 2014 Tariff Regulations permits a transmission licensee to seek an adjustment of tariff on account of the impact of uncontrollable factors, including CIL events. The said provision entitles the transmission licensee to a true-up of the tariff based on the actual performance of such uncontrollable parameters.

g. As per the National Tariff Policy, 2016, issued by the Ministry of Power, Government of India, under Section 3 of the Electricity Act, 2003, any change in tax or change in the rate of tax, duties, or cess is to be treated as a CIL event in respect of projects awarded under Section 63 of the Act. The Petitioner respectfully contends that a similar treatment should be extended to projects regulated under Section 62, to maintain parity and ensure consistency in the regulatory framework. Accordingly, the impact arising out of any change in tax or in the rate thereof, including duties and cess, shall be allowed as a pass-through in the transmission tariff.



h. In exercise of the powers under Section 107 of the Act, the Government of India, on 27.8.2018, issued a direction that the change in tax is to be treated as a CIL event.

i. The basic principle of CIL is the principle of restitution, i.e. to bring back the affected party to the same economic position as if the CIL event had not taken place. The Hon'ble Supreme Court described this principle in its judgement dated 25.2.2019 in Civil Appeal No.5865 of 2015 in the case of UHVVN Ltd vs Adani Power Limited & Ors. (Adani case).

j. The APTEL, in its judgement dated 27.4.2021 in Appeal No.172 of 2017 & Batch, decided the scope of CIL event and the role of the Commission in deciding the compensation due to CIL event during the operation period.

k. The principle of restitution is that the affected party must be brought back to the same economic position as if the CIL event had not occurred. Accordingly, the party that has incurred any additional cost should be compensated for the additional cost to reconstitute it to the same economic position as if the CIL event had not taken place.

l. The Petitioner is registered under VAT in Delhi, West Bengal, Bihar, and Uttar Pradesh on the day GST came into effect. The Petitioner is automatically designated as a taxable person under GST and was required to be registered under GST in each of the aforementioned States. For O&M of transmission lines, the Petitioner has different site offices in three States and one Corporate office in Delhi, as well as seven stores in these three States, where various transmission line inventory, tools, plants, and capital inventory/equipment are kept, which are required for O&M. Movement of materials (line inventory, T&P and capital inventory/equipment) happen within the State or inter-State as per the requirement.

m. The movement of goods or services within the same company from one State to another State with different GSTNs is deemed as a supply even if there is no consideration. This movement of assets/material attracts GST. The Petitioner, by virtue of the movement of materials, has incurred costs termed additional Operation and Maintenance ("O&M") expenses on account of the introduction of GST. Earlier, VAT/Service tax was not applicable to such



transactions. This is the additional cost, i.e. over and above the normal cost that Petitioner has to bear after implementation of the GST Act.

n. The Petitioner has a corporate office in Delhi, and the Petitioner has to incur expenditure on common services, which are in the nature of audit fees, software expenses, legal expenses, etc. The Delhi office is also required to cross-charge such common services to all other distinct persons, which now attract GST and are covered under the CIL event as per the 2014 and 2019 Tariff Regulations.

o. The GST paid for such additional tax expenses shall be considered as Additional Operation and Maintenance (O&M) Expenses, separate from normative O&M expenses. The total additional O&M expenses attributed to GST are ₹10.96 lakh in 2017-18, ₹22.22 lakh in 2018-19, totaling ₹33.18 lakh, and the Management Certificate has been submitted in support of the claim.

p. The Commission in paragraph 49.6 of the SOR of the 2014 Tariff Regulations has noted that variations, if any, in any existing indirect tax components shall not be considered separately and must be covered within the O&M norms, as appropriate escalation has been considered while fixing norms for the subsequent years and because such expenses were already included in the base norms. However, the Commission finding does not apply to the Petitioner, as the tax on a new component never existed and could not have been included in the 2014 norms.

q. The Commission disallowed NTPC's claim for GST impact in O&M expenses vide order dated 15.4.2023 in Petition No. 295/GT/2020 as the variation in taxes and duties have been captured while specifying the O&M norms in the 2014 Tariff Regulations. The premise for disallowance was that GST was a replacement for all the existing taxes on materials and services with a single tax. Consequently, if certain items of goods or services were charged at a different rate before GST and are now charged at a different rate under GST, such a change in rates was built into the escalation rates derived from historical changes in erstwhile taxes. This decision of the Commission may apply to goods or services that were charged at different rates prior to the GST coming into effect. The Petitioner's case is that the peculiar requirement of registration in different States under GST brought the movement of tools/tackles across



States, even within the same company, taxable under GST. This particular service was never part of the existing indirect tax component in O&M expenses when they considered it, which determines the O&M norms and cannot be subsumed under the escalation provided for existing components. The Petitioner is not claiming any additional impact due to items that were part of the erstwhile tax regime, which the Commission disallowed in the NTPC case. r. In view of the above submissions and the principle of restitution enunciated by the Hon'ble Supreme Court in the Adani case, the additional component of tax is solely due to the promulgation of GST, which would not have been there if this CIL event had not taken place. The Petitioner needs to be compensated for this additional cost.

Analysis and Decision

9. We have considered the submissions made by the Petitioner in the petition and the submissions made on 18.2.2025 and 20.2.2025. The Petitioner has been granted a transmission licence on 13.11.2003 vide order dated 22.10.2003 in Petition No.40/2003 under Section 14 of the Act for a period of 25 years under the cost-plus regime under Section 62 of the Act. The Petitioner is an inter-State transmission licensee under Section 2(73) of the Act, and the tariff is determined under Section 62 read with Section 79(1)(d) of the Act. Accordingly, the transmission charges for the transmission assets of the Petitioner are approved by the Commission in accordance with the applicable tariff periods. The Commission, vide order dated 2.11.2021 in Petition No.588/TT/2020, trued up the tariff for the 2014-19 tariff period and approved the tariff for the 2019-24 tariff period in accordance with the applicable tariff periods.

10. The Petitioner has seven stores in West Bengal, Bihar and Uttar Pradesh and one corporate office in Delhi. As per the GST Act, the Petitioner has registered in each State with a Unique GST number and has a GSTIN in all three States. The Petitioner



has submitted that, as per Section 7 of Schedule 1 of the GST Act, the movement of goods or services within the same company with a different GSTIN is considered a supply even if there is no consideration. The Petitioner has submitted that the transmission line inventory, tools and plants, and capital inventory/equipment are kept in the stores for O&M of the transmission line, and are moved within the State or inter-State as per requirement. This movement of material and services of the company from one State to another with different GSTINs is considered as 'supply' and is brought under the purview of GST and accordingly taxed. The Petitioner has submitted that the present treatment of the movement of materials and services of the company from one State to another differs from the pre-GST regime and amounts to a CIL event. As a result, the Petitioner incurred ₹10.96 lakh in 2017-18 and ₹ 22.22 lakh in 2018-19, amounting to ₹33.18 lakh. The additional O&M expenses incurred by the Petitioner on account of the imposition of GST are on account of a CIL event, and the same may be reimbursed to the Petitioner as part of the transmission charges, along with the carrying cost. The Petitioner has submitted the Management Certificate in support of the claim made.

11. In this regard, the Petitioner has submitted that the National Electricity Tariff Policy, 2016 issued by the Ministry of Power on 28.1.2016 has clarified that the change in tax/ change in rate of taxes etc. is required to be treated as CIL event in case of Section 63 projects and should be allowed as a pass through and the same treatment should be extended to Section 62 projects. In this regard, the Petitioner has also referred to the directions issued by the Ministry of Power, Government of India on 27.8.2018 under Section 107 of the Act to pass through any change in domestic duties, levies, cess and taxes imposed by Central Government, State Government, Union



Territories or by any Governmental Instrumentality leading to corresponding changes in the cost, after the award of bids, under CIL event unless otherwise provided in the PPA. The Petitioner has submitted that in case of CIL event, the party affected by the CIL event has to be brought back to the same economic position as if the CIL event had not taken place, as per the principle of restitution as laid down by the Hon'ble Supreme Court in judgement dated 25.2.2019 in Civil Appeal No.5865 of 2018 in the Adani case. The Petitioner has also submitted that in case of a change in operating period, the Commission is required to see whether there is a CIL event and whether such an event affected the party concerned and to provide restitutive compensation as held by the APTEL in the judgement dated 27.4.2021 in Appeal No.172 of 2017 & Batch. The Petitioner has further contended that GST constitutes a CIL event in terms of Regulation 3(9)(a) of the 2014 Tariff Regulations and should be trued up as provided under Regulation 8(5)(ii) of the 2014 Tariff Regulations.

12. We have considered the submissions. The projects under Section 63 of the Act (Section 63 projects) are distinct from the projects under Section 62 of the Act (Section 62 projects). In case of Section 63 projects, the tariff is adopted by the Commission, if the tariff has been determined through a transparent bidding process in accordance with the guidelines issued by the Central Government as specified in Section 63 of the Act, whereas the tariff is determined in accordance with the tariff regulations specified by the Commission in case of Section 62 projects as specified in Section 62 of the Act. Therefore, we are of the view that the dispensation given to Section 63 projects cannot be extended to Section 62 projects. Moreover, the Petitioner's reliance on the National Electricity Policy, 2016, and the Section 107 directions issued by the Ministry of Power to the Commission are with respect to Section 63 projects and are not applicable to



Section 62 projects. Further, the reliance placed by the Petitioner on the judgement of the Hon'ble Supreme Court dated 25.2.2019 in Civil Appeal No.5865 of 2015 is also in respect of Section 63 projects.

As has been decided by this Commission that the dispensation granted to Section 63 projects cannot be extended to Section 62 projects, the Petitioner's prayer for applying the principle of restitution laid down by the Hon'ble Supreme Court in the above-mentioned judgement dated 25.2.2019 has no merit.

13. The Petitioner has further contended that the additional tax imposed on the Petitioner under the GST Act should be considered as a CIL event as provided under Regulation 3(9)(a) of the 2014 Tariff Regulations and the same should be trued up as provided under Regulation 8(5)(ii) of the 2014 Tariff Regulations. The Regulation 3(9)(a) and Regulation 8(5)(ii) of the 2014 Tariff Regulations provide as follows:

*"3 (9) "Change In Law" means occurrence of any of the following events:
(a) **enactment, bringing into effect or promulgation of any new Indian law**; or
(b) adoption, amendment, modification, repeal or re-enactment of any existing Indian law; or
(c) change in interpretation or application of any Indian law by a competent court, Tribunal or Indian Governmental Instrumentality which is the final authority under law for such interpretation or application; or
(d) change by any competent statutory authority in any condition or covenant of any consent or clearances or approval or licence available or obtained for the project; or
(e) coming into force or change in any bilateral or multilateral agreement/treaty between the Government of India and any other Sovereign Government having implication for the generating station or the transmission system regulated under these Regulations."*

"8. Truing up

...

*(5) **The Commission shall carry out truing up of tariff of transmission licensee based on the performance of following Uncontrollable parameters:**
(i) Force Majeure; and
(ii) **Change in Law.**"*

14. Regulation 3(9)(a) of the 2014 Tariff Regulations defines the CIL event, which is related to Regulation 12(2)(ii) and Regulation 14 of the 2014 Tariff Regulations. The



CIL event is specified in the 2014 Tariff Regulations to deal only with the CIL event leading to escalation of Contract Prices, IDC and IEDC as provided for in Regulation 12(2)(ii) of the 2014 Tariff Regulations and the additional capitalisation on account of the CIL event as provided for in Regulation 14 of the 2014 Tariff Regulations. Further, Regulation 8(5)(ii) of the 2014 Tariff Regulations provides for truing up of the tariff on account of the CIL event. Regulations 12 and 14 of the 2014 Tariff Regulations provide as follows:

“12. Controllable and Uncontrollable factors: The following shall be considered as controllable and uncontrollable factors leading to cost escalation impacting Contract Prices, IDC and IEDC of the project:

- (1) The “controllable factors” shall include but shall not be limited to the following:*
- a) Variations in capital expenditure on account of time and/or cost overruns on account of land acquisition issues;*
 - b) Efficiency in the implementation of the project not involving approved change in scope of such project, change in statutory levies or force majeure events; and*
 - c) Delay in execution of the project on account of contractor, supplier or agency of the generating company or transmission licensee.*
- (2) The “uncontrollable factors” shall include but shall not be limited to the following:*
- i. Force Majeure events.; and*
 - ii. Change in law.*

Provided that no additional impact of time overrun or cost over-run shall be allowed on account of non-commissioning of the generating station or associated transmission system by SCOD, as the same should be recovered through Implementation Agreement between the generating company and the transmission licensee:

Provided further that if the generating station is not commissioned on the SCOD of the associated transmission system, the generating company shall bear the IDC and IEDC or transmission charges if the transmission system is declared under commercial operation by the Commission in accordance with second proviso of Clause 3 of Regulation 4 of these regulations till the generating station is commissioned:

Provided also that if the transmission system is not commissioned on SCOD of the generating station, the transmission licensee shall arrange the evacuation from the generating station at its own arrangement and cost till the associated transmission system is commissioned.”



“14. Additional Capitalisation and De-capitalisation:

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

- (i) Undischarged liabilities recognized to be payable at a future date;*
- (ii) Works deferred for execution;*
- (iii) Procurement of initial capital spares within the original scope of work, in accordance with the provisions of Regulation 13;*
- (iv) Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law; and*
- (v) Change in law or compliance of any existing law:*

Provided that the details of works asset wise/work wise included in the original scope of work along with estimates of expenditure, liabilities recognized to be payable at a future date and the works deferred for execution shall be submitted along with the application for determination of tariff.

(2) The capital expenditure incurred or projected to be incurred in respect of the new project on the following counts within the original scope of work after the cut-off date may be admitted by the Commission, subject to prudence check:

- (i) Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law;*
- (ii) Change in law or compliance of any existing law;*
- (iii) Deferred works relating to ash pond or ash handling system in the original scope of work; and*
- (iv) Any liability for works executed prior to the cut-off date, after prudence check of the details of such undischarged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments etc.*

(3) The capital expenditure, in respect of existing generating station or the transmission system including communication system, incurred or projected to be incurred on the following counts after the cut-off date, may be admitted by the Commission, subject to prudence check:

- (i) Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law;*
- (ii) Change in law or compliance of any existing law;*
- (iii) Any expenses to be incurred on account of need for higher security and safety of the plant as advised or directed by appropriate Government Agencies of statutory authorities responsible for national security/internal security;*
- (iv) Deferred works relating to ash pond or ash handling system in the original scope of work;*
- (v) Any liability for works executed prior to the cut-off date, after prudence check of the details of such undischarged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments etc.;*
- (vi) Any liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments;*



(vii) Any additional capital expenditure which has become necessary for efficient operation of generating station other than coal/ lignite based stations or transmission system as the case may be. The claim shall be substantiated with the technical justification duly supported by the documentary evidence like test results carried out by an independent agency in case of deterioration of assets, report of an independent agency in case of damage caused by natural calamities, obsolescence of technology, up-gradation of capacity for the technical reason such as increase in fault level;

(viii) In case of hydro generating stations, any expenditure which has become necessary on account of damage caused by natural calamities (but not due to flooding of power house attributable to the negligence of the generating company) and due to geological reasons after adjusting the proceeds from any insurance scheme, and expenditure incurred due to any additional work which has become necessary for successful and efficient plant operation;

(ix) In case of transmission system, any additional expenditure on items such as relays, control and instrumentation, computer system, power line carrier communication, DC batteries, replacement due to obsolesce of technology, replacement of switchyard equipment due to increase of fault level, tower strengthening, communication equipment, emergency restoration system, insulators cleaning infrastructure, replacement of porcelain insulator with polymer insulators, replacement of damaged equipment not covered by insurance and any other expenditure which has become necessary for successful and efficient operation of transmission system; and

(x) Any capital expenditure found justified after prudence check necessitated on account of modifications required or done in fuel receiving system arising due to non-materialisation of coal supply corresponding to full coal linkage in respect of thermal generating station as result of circumstances not within the control of the generating station:

xxx”

15. The 2014 Tariff Regulations do not provide for allowing the additional O&M Expenses on account of the CIL event. We are of the view that Regulation 3(9)(a) of the 2014 Tariff Regulations cannot be extended to allow the additional O&M Expenses. Therefore, the Petitioner’s claim for allowing the additional O&M expenses in accordance with Regulation 3(9)(a) and truing up of the same under Regulation 8(5)(ii) of the 2014 Tariff Regulations is rejected.

16. The Petitioner has contended that the Commission could not have envisaged that the movement of transmission line material from one State to another by the Petitioner would attract GST at the time of framing of the 2014 Tariff Regulations, as earlier under the VAT/ Service Tax was not applicable on such transactions.



Therefore, the levy of GST on the movement of transmission line material from one State to another should be treated as a CIL event and be reimbursed as additional O&M expenses. The Petitioner has also contended that the Commission's order dated 15.4.2023 in Petition No. 295/GT/2020 in the case of NTPC is not applicable in the present case.

17. The Commission specifies that the O&M norms for a particular tariff control period are based on actual cost incurred, escalations, historical expenditure trends and past movements in the Wholesale Price Index (WPI) and Consumer Price Index (CPI). The adjustment for inflation is also duly factored into the norms through an escalation rate derived from a prudent weighted average of WPI and CPI. Further, the Commission, while approving the O&M norms for the tariff period 2014-19, has considered the taxes as part of the O&M norms. The excerpts from para 49.6 of Statement of Reasons (SOR) to the 2014 Tariff Regulations are extracted hereunder:

"49.6 With regards to suggestion received on other taxes to be allowed, the Commission while approving the norms of O&M expenses has considered the taxes as part of O&M expenses while working out the norms and therefore the same has already been factored in. With regards to allowing these taxes on retrospective basis, the Commission is of the view that such recovery cannot be allowed on retrospective basis as such expenses were already included in the base norms."

18. These normative O&M expenses are admissible even when the actual O&M expenses incurred by a licensee during a tariff period are lower than the norms specified for that period, thereby resulting in net savings. This embedded incentive mechanism within the regulatory framework is designed to encourage operational efficiency and prudent cost management. On the contrary, if the actual expenditure exceeds the specified O&M norms, no reimbursement of the excess amount is admissible under the regulatory framework.



19. Moreover, the Commission, in an order dated 19.5.2020 in the Petition No. 387/GT/2020, observed that the taxes are considered as part of the O&M Expenses while framing the O&M norms and held that the additional O&M Expenses on account of GST are not admissible separately. The relevant portion of the order is extracted hereunder:

“99. The submissions have been considered. It is observed that the Commission, while specifying the O&M expense norms for the period 2014-19, had considered taxes to form part of the O&M expense calculations and, accordingly, had factored the same in the said norms. This is evident from paragraph 49.6 of the SOR (Statement of Objects and Reasons) issued with the 2014 Tariff Regulations, which is extracted hereunder:

“49.6 With regards to suggestion received on other taxes to be allowed, the Commission while approving the norms of O&M expenses has considered the taxes as part of O&M expenses while working out the norms and therefore the same has already been factored in...”

100. Further, the escalation rates considered in the normative O&M expenses were finalized only after the consideration of the variations during the past five years, which also, takes care of any variation in taxes also. It may be noted that in case of reduction of taxes or duties, the Petitioner is not required to reimburse any taxes in tariff. As such, additional O&M expenses on account of GST are not admissible separately.”

Therefore, the Petitioner’s contention that the levy of tax on movement of material and services is a new tax under the GST and was not envisaged while framing the norms under the 2014 Tariff Regulations does not hold good.

20. We are also of the view that movement of materials and services between the depots of the Petitioner in different States is a logistical issue, which the Petitioner should take care.

21. In view of the above discussion, the Petitioner’s prayer to declare the additional GST paid on movement of transmission line material from one State to another as a CIL event on the enactment of the GST Act and accordingly allow the same as additional O&M expenses, is not allowed.



B. Impact of the amendment of Income Tax, 1961 by Finance Act, 2017

22. The Petitioner has made the following submissions in support of its prayer to hold and declare the amendment of the Income Tax Act, 1961, by the Finance Act, 2017, read with Ind AS Rules, as a CIL event and to accordingly allow the additional income tax incurred by the Petitioner.

a. The Central Government, through its powers under the Companies Act, 2013 and the Companies Act, 1956, notified Ind AS Rules, effective from April 1, 2015. Subsequently, the Central Board of Direct Taxes (CBDT) formed a Committee in June 2015 to propose a framework for computing Minimum Alternate Tax (MAT) liability under Section 115JB of the Income Tax Act, 1961, for Ind AS-compliant companies. The Committee's final report, submitted on December 22, 2016, led to the amendment of Section 115JB through the Finance Act, 2017.

b. In terms of Clause (ii) of sub-rule (1) of Rule 4 of Ind AS Rules, the companies falling within the scope of the said Rules, including the Petitioner, are mandatorily required to comply with the Ind AS specified in the Annexure to the said Rules while preparing and auditing their financial statements.

c. The Finance Act, 2017, has amended Section 115JB of the Income Tax Act, 1961, in order to incorporate provisions with respect to Ind AS-compliant companies. In addition to the existing provisions governing the computation of book profit under the Income-tax Act, specific provisions were introduced for companies complying with Ind AS and liable to MAT, including the Petitioner. In this regard, sub-sections (2A), (2B), and (2C) were inserted into Section 115JB of the Income-tax Act, 1961, whereby such Ind AS-compliant companies were required to increase or reduce the book profit by the following adjustments:

- i. Items recognised in Other Comprehensive Income (OCI); and
 - ii. One-fifth of the 'Transition Amount' during the year of Ind AS convergence (i.e., Financial Year 2016–17) and in each of the subsequent four financial years, i.e., FY 2017–18 to FY 2020–21.
- d. The term 'Transition Amount' has been defined to mean the amount, or



aggregate of amounts, adjusted in other equity (excluding capital reserve and securities premium reserve) as on the convergence date. The Transition Amount shall not include items recognised under Other Comprehensive Income (OCI).

e. The present mechanism for tax recovery under the applicable Tariff Regulations does not adequately compensate for the increased tax liability arising from the higher book profits computed in accordance with the amended provisions of Section 115JB of the Income-tax Act, 1961. For Ind AS-compliant companies like the Petitioner, additional provisions (Sub-Sections 2A, 2B, and 2C) were introduced to calculate book profit for MAT purposes. These provisions involved adjustments related to OCI and one-fifth of the transition amount for the year of convergence (FY 2016-17) and the subsequent four years (FY 2017-18 to FY 2020-21). Notably, the transition amount excluded other comprehensive income.

f. Despite the additional tax recovery contributing to book profit and attracting further tax, the net recovery does not fully compensate for the increased tax burden.

g. The above enactments/amendments in the Income Tax Act, 1961 fall under the ambit of CIL event as per Regulation 3(9)(a) and (b) and is required to be factored in the true-up of ATC for the tariff period 2014-19 as per Regulation 3(9)(a) read with Regulation 8(5)(ii) of the 2014 Tariff Regulations as the same is an uncontrollable factor and beyond the control of the Petitioner. Further, in terms of Regulation 3(10)(a) of the 2019 Tariff Regulations, similar relief may be allowed to the Petitioner during the period 2019-24.

h. The MAT under Section 115JB has been applicable during the control period 2014-19 and was also applicable during 2019-20 & 2020-21; therefore, the book profit and tax liability thereon has increased from 2016-17 due to the amendment in Section 115JB of the Income Tax Act, 1961. Thus, the Petitioner is entitled to recover additional tax payable due to the amendment in Section 115JB for the applicable years 2016-17, 2017-18, 2018-19 in the control period 2014-19 and for 2019-20 and 2020-21 in the tariff period 2019-24.



i. Further, as per the principle of restitution, the Petitioner proposes to recover this additional tax separately over and above the ATC. However, this additional tax recovery itself adds to the book profit and attracts further tax. Therefore, to fully compensate the Petitioner, the recovery must be grossed up by the applicable MAT rate for the relevant year and allowed to be recovered from the beneficiaries.

j. Subsequently, CBDT issued Circular No. 24/2017 dated 25.7.2017 clarifying the computation of book profit for levy of MAT under Section 115JB for Ind AS compliant companies. As clarified under Q3, companies adopting Ind AS are required to make all Ind AS adjustments as of the opening date of the comparative year. For adoption from 1.4.2016, the first-time adoption adjustments as on 31.3.2016 are to be considered for computation of MAT liability from 2016-17 onwards. As per Q4, the proposed dividend (including dividend distribution taxes) shall not form part of the transition amount. As per Q5, deferred tax adjustments on the transition date shall also be ignored for the computation of the transition amount. Accordingly, the Petitioner has prepared its comparative statement for 2016-17, reflecting the first-time Ind AS adoption reconciliation.

k. Based on the reconciliation, the increase in Other Equity worked out to ₹19797.47 lakh, being the difference between net increase in Total Assets of ₹18158.75 lakh and net increase in Liabilities of ₹1638.72 lakh. However, in terms of CBDT clarifications, proposed dividend (₹1126.55 lakh) and deferred tax liabilities (₹9423.63 lakh) shall not form a part of the Transition Amount. After such adjustment, the Transition Amount worked out to ₹28094.55 lakh. As per Section 115JB (2C), the Petitioner had to increase its book profits for the year of convergence i.e. FY 2016-17 and four subsequent years i.e. FY 2017-18, 2018- 19, 2019-20 and 2020-21 by 1/5th of the transition amount of ₹28094.55 lakh i.e. by ₹5618.91 lakh each year and has to pay additional MAT on the same. This additional tax is required to be recovered separately over and above ATC, in line with the principle of restitution. However, since recovery itself increases book profit and attracts further tax, grossing up by the applicable MAT rate is necessary to ensure full compensation.



l. The Principle of Grossing Up has been recognised by the Commission in its SOR dated 24.4.2014 for the 2014 Tariff Regulations. The SOR notes that, upon reimbursement of tax as income in the hands of the licensee, a pre-tax return must be grossed up with the MAT/effective tax rate to avoid under-recovery. As the claim for recovery of five years of liability spans both control periods of 2014-19 and 2019-24, the recovery may be allowed under the 2014 and 2019 Tariff Regulations. Approve the recovery of the additional tax liability to be recovered along with and over and above ATC for the control periods 2014-19 and 2019-24.

m. Regulation 8(5)(ii) of 2014 Tariff Regulations, relating to true-up of tariff based on CIL event, is independent and operates irrespective of whether a claim under Regulation 25 is made. It is to be given effect to de hors Regulation 25 or Regulation 31 on Return on Equity. Its purpose is to address unforeseen CIL events beyond the generating company's control. The provision ensures the generator can recover additional costs arising from such unforeseen events from its beneficiaries. Since it caters to CIL event situations not envisaged at the time of framing Regulation 25, its impact is to be reflected in the tariff irrespective of admissibility under Regulation 25. As stated by the Hon'ble Supreme Court in the Adani Case and Energy Watchdog Case, under Section 63 projects, the CIL event may have an impact on Capital Cost during Construction of the project, for which impact in tariff is pre-specified for each ₹1 crore of additional Cost and during Operation period, the same is to be determined and made effective from the day the Commission determines.

n. In Section 62 projects, certain CIL events, like meeting revised Emission Norms, have been envisaged in the 2019 Tariff Regulations, affecting both Capital and Operating Costs. While the Capital Cost impact is determined as per AFC components (including RoE), the Operating Cost impact is allowed as a pass-through in the year it occurs. This does not preclude claims for other unforeseen CIL events. Provisions such as Additional Capitalisation also allow for CIL event or compliance impacts. Since the present case relates to a CIL event not specifically captured in the Tariff Regulations, its impact must be reflected in the tariff now, when it is precisely known.



o. In view of settled cases of CIL event, like Adani Case, Energy Watchdog Case and GMR Warora Case, the two steps required before granting relief for CIL event are (a) Whether the event qualifies as a CIL event, (b) if yes, what is its impact on tariff. Increase in book profit as per the amendment in Finance Act 2017, is mainly due to an increase in “Other Equity” that was required to be adjusted in terms of the Circular dated 25.7.2017 and is a major part of the Transition Amount of about ₹280 crore that is added in book profit in 5 equal instalments of about ₹56 crore each. The primary reason for such a large amount of increase in Other Equity is the mandatory transition of PTL to the Service Concession Arrangement (SCA) model under Ind AS, which required Plant, Property and Equipment (PPE) to be decapitalised from the books and to be replaced with an amount representing the present value of future revenues under SCA. The present value of future revenues was more than the PPE deleted, which had to be adjusted in Other Equity, apart from other minor adjustments in other heads.

p. The Petitioner has computed the impact of this CIL event as per the principle laid down by the Hon’ble Supreme Court, i.e. the tax actually paid after CIL event as per ITRs/Assessment Orders (except AO for FY 2020-21 onwards) and the tax that would have been paid if CIL event had not occurred.

q. Before CIL event becoming effective i.e. till FY 2015-16, the impact was zero and is about ₹12 crore for 2016-17 to 2018-19 (3 years) and about ₹9 crore for 2019-20 to 2020-21 (2 years) primarily due to tax on 1/5th of Transition Amount i.e. on ₹56 crore at different MAT rates of 21.34%/ 21.55% and 17.45% for the two respective periods. Further, this higher tax payment, if allowed in the tariff, would result in additional tax liability and, hence, needs to be grossed up with the applicable MAT rate to fully reimburse the additional tax.

r. The tax on income is treated as a component of the tariff. While Regulation 25, read with Regulation 24 of the 2014 Tariff Regulations, and Regulation 30, read with Regulation 31 of the 2019 Tariff Regulations, deal with pre-tax Return on Equity (RoE) and Tax on Income, the objective remains to ensure actual tax on regulated business is recoverable while excluding non-tariff income. The concept of grossing up the base post-tax RoE with the tax rate was first



introduced by the Commission in the 2009 Tariff Regulations, and the objective was to ensure that the post-tax RoE is equal to the specified level of return. The principle followed by the Commission was to allow actual tax on the income of regulated business, excluding any tax on non-tariff income on a no profit no loss basis by grossing up the post-tax base rate of RoE as a component of the tariff. The Regulation has considered only pre-tax RoE as taxable income as before these Regulations, Profit Before Tax i.e. pre-tax RoE and non-tariff income was considered for computation of taxable income or Book Profit for companies under MAT regime and to exclude non-tariff income from taxable income or Book Profit, it has restricted the tax to be allowable only on part of taxable income/ Book profit equal to pre-tax RoE on regulated business.

s. However, post-amendment of Section 115JB, the notional addition to Book Profit that is only due to regulated business was not and could not be captured in the 2009 and 2014 Tariff Regulations, which talked about grossing-up of only the rate of post-tax RoE, as this notional addition in tax laws was not known. While the Commission has retained pre-tax RoE approach, it modified the rate used for grossing up as effective tax rate, which is the ratio of Estimated Tax Liability to Estimated Profit Before Tax (PBT) on regulated business (In regulated business where RoE is assured, MAT would be applicable only when Section 80IA benefit is availed and, in such cases, PBT for regulated business is generally same as Book Profit except for minor adjustments). This has been embodied in Regulation 25(1) as the ratio of Actual Tax liability to Actual profit Before Tax (PBT) on regulated business. Further, it has restricted the Tax Liability to only that part of Book Profit equal to the grossed-up pre-tax RoE. Notably, the basic object of assured post-tax return and the principle that actual tax is payable on regulated businesses, excluding any non-tariff income, are not disturbed but are fine-tuned.

t. Further, in the SOR issued with the 2014 Tariff Regulations, it is stated that the Effective Tax Rate is expected to be lower than the Corporate Tax Rate, which is only an expectation and may not be true in all cases. Particularly, in the case of the Petitioner, where pre-tax RoE notional income is considered as part of Taxable Income for regulated business under changed applicable laws



for Income Tax, and, hence, actual tax liability goes up without affecting the PBT or applicable tax rate. However, since the basic intent of allowing assured post-tax return on equity is maintained, it is necessary that other relevant Regulations, in particular Regulation 8(5)(ii) of the 2014 Tariff Regulations, may be invoked to ensure that guaranteed post-tax return is earned by the Petitioner every year. The 2019 Tariff Regulations carry forward the same Regulations regarding tax on income as in the 2014 Tariff Regulations and, hence, follow the same object and principles. Accordingly, the Petitioner has computed the actual post-tax return available to it from FY 2016-17 (i.e., the first year of the CIL event) on its regulated business, excluding non-tariff/ other income, and has also computed the actual post-tax return rate available to it.

u. The Additional Tax liability claimed is actually paid by the Petitioner. Further, it has arisen due to the addition of new provisions (2A), (2B) and (2C) in section 115JB of the Income Tax Act. In particular, Section (2C) adds notional income equivalent to 1/5th of the Transition Amount computed from Books of Account as defined in the said section, without there being any change in actual or real income during the year. Therefore, the said provision creates a deemed/ fictional income that does not actually exist. Therefore, the Commission may give effect to the legislative mandate of considering “Deemed total income” after addition of items in Section (2A), (2B) and (2C) under Section 115JB of the Income Tax Act, 1961, to the Book Profit.

v. Even de hors or without CIL event provision, the legal interpretation of Regulation 25 of the 2014 Tariff Regulations and Regulation 31 of the 2019 Tariff Regulations on the basis of Rules of Interpretation of statutes settled by the Hon’ble Supreme Court leads to a conclusion that “Effective Tax Rate” is to be used for grossing up of post-tax RoE at the time of true-up.

w. If the Commission concludes that the Petitioner’s claim of additional tax liability does not fall under CIL event or Regulatory Principles or relevant RoE/ Tax on Income Regulations of the 2014 and 2019 Tariff Regulations, the Commission may exercise its Power under Regulation 54 i.e. Power to Relax and provide relief to the Petitioner by allowing such additional tax as incurred/ to be incurred by the Petitioner, in the interest of justice and equity.



Analysis and Decision

23. The basic contention of the Petitioner is that the Finance Act, 2017, has amended Section 115JB of the Income Tax Act, 1961, and it is a CIL event as provided under Regulation 3(9)(a) and Regulation 3(10)(a) under the 2014 and 2019 Tariff Regulations, respectively. The Petitioner has also submitted that Regulation 8(5)(ii) of the 2014 Tariff Regulations permits a transmission licensee to seek adjustment of tariff on account of the impact of uncontrollable factors, including CIL event and truing of the tariff based on the actual performance of such uncontrollable factors. The Petitioner has submitted that as a result, the Petitioner paid additional tax of ₹15.29 crore, ₹15.18 crore, ₹15.40 crore, ₹11.89 crore, ₹11.93 crore, and ₹0.11 crore during the period starting from 2016-17 to 2021-22 period, i.e. during the 2014-19 and 2019-24 tariff periods. The Petitioner has submitted that the present mechanism for tax recovery under the applicable Tariff Regulations does not adequately compensate for the increased tax liability arising from the higher book profits computed in accordance with the amended provisions of Section 115JB of the Income-tax Act, 1961. Therefore, this additional tax is required to be recovered separately over and above ATC, in line with the principle of restitution as laid by the Hon'ble Supreme Court in the Adani case. The Petitioner has also submitted that if the Commission concludes that the Petitioner's case does not fall under the CIL event, the additional tax paid by the Petitioner may be allowed under the Power to Relax in Regulation 54 of the 2014 Tariff Regulations.

24. We have already observed (in paragraph 15 above) that Regulation 3(9)(a) of the 2014 Tariff Regulations is to deal with the CIL event leading escalation of Contract Prices, IDC and IEDC as provided for in Regulation 12(2)(ii) of the 2014 Tariff



Regulations and to deal with the additional capitalization on account of CIL event events as provided for in Regulation 14 of the 2014 Tariff Regulations. Similarly, Regulation 3(10)(a) of the 2019 Tariff Regulations, which defines the CIL event, is related to Regulation 22(2)(b) and Regulations 24(1)(e), 25(1)(b) and 26(1)(b) of the 2019 Tariff Regulations. It is to deal with the time over-run, cost escalation, IDC and IEDC and the Additional Capitalisation within the original scope and upto the cut-off date, Additional Capitalisation with the original scope and after the cut-off date and the Additional Capitalisation beyond the original scope due to CIL event as provided in Regulation 22(2)(b) and 24(1)(e), 25(1)(b) and 26(1)(b) of the 2019 Tariff Regulations respectively. The Regulations 3(10)(a), 24(1)(e), 25(1)(b) and 26(1)(b) of the 2019 Tariff Regulations provide as follows:

"3. Definitions. - In these regulations, unless the context otherwise requires:-

.....

(10) 'Change in Law' means occurrence of any of the following events:

.....

(e) coming into force or change in any bilateral or multilateral agreement or treaty between the Government of India and any other Sovereign Government having implication for the generating station or the transmission system regulated under these regulations."

"24. Additional Capitalisation within the original scope and upto the cut-off date

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

....

(e) Change in law or compliance of any existing law; and"

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

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



....

(b) Change in law or compliance of any existing law; ”

“26. Additional Capitalisation beyond the original scope

(1) The capital expenditure, in respect of existing generating station or the transmission system including communication system, incurred or projected to be incurred on the following counts beyond the original scope, may be admitted by the Commission, subject to prudence check:

....

(b) Change in law or compliance of any existing law;”

25. The 2014 Tariff Regulations do not provide for allowing the additional O&M Expenses on account of the CIL event. We are of the view that Regulation 3(9)(a) of the 2014 Tariff Regulations cannot be extended to allow the additional O&M Expenses.

26. Regulation 25 of the 2014 Tariff Regulations and Regulation 30 of the 2019 Tariff Regulations, which provide for the Tax on Return on Equity, do not make any mention of a CIL event. Therefore, we are of the view that Regulation 3(9)(a) of the 2014 Tariff Regulations and Regulation 3(10)(a) of the 2019 Tariff Regulations, which define CIL events, are not applicable to the Petitioner.

27. Moreover, in the case of the Section 62 projects, the tariff is approved on the basis of the Capital Cost. The Return on Equity (RoE) is allowed at the rate of 15.50% of the capital cost, as specified in the applicable Tariff Regulations, and the RoE is grossed up by the applicable corporate tax rate or Minimum Alternate Tax (MAT) rate, as the case may be. The entire tariff determination process remains independent, irrespective of the accounting treatments adopted by the beneficiaries or the Petitioner under the Regulated Tariff Mechanism (RTM). In the instant case, the Petitioner's taxable income has increased due to the introduction of Section 115JB(2C) of the



Income-tax Act, 1961, which mandates the inclusion of specified adjustments in 'Other Equity' (arising from the first-time adoption of Ind AS) in the computation of book profit for MAT purposes, over a period of five years. While it is acknowledged that such income is notional in nature and does not reflect actual earnings, but rather arises from the fair valuation of financial assets pursuant to the Ind AS transition, and that such accounting and tax provisions have no bearing on the tariff determined by the Commission under the Tariff Regulations. The additional notional income resulting from Ind AS-related accounting adjustments does not constitute income from regulated transmission activities and therefore cannot be recovered through tariffs.

28. In a similar matter, the Commission in order dated 8.1.2022 in Petition No. 408/GT/2020 in case of Maithon Power Limited held that the 2014 Tariff Regulations permit tax recovery through the grossing up of the Return on Equity (RoE) by the applicable effective tax rate or Minimum Alternate Tax (MAT) rate, as the case may be, for generating companies and transmission licensees. However, such tax recovery is strictly limited to the income derived from generation or transmission business activities governed by the regulated tariff framework. The Commission further observed that while the adoption of Indian Accounting Standards (Ind AS) may have implications on accounting and financial reporting, it does not result in additional income attributable to the generation or transmission business operations. Accordingly, the Commission declined the Petitioner's prayer for recovery of additional tax liability arising solely on account of the implementation of Ind AS. The relevant portion of the order dated 8.1.2022 is as follows:

"120. We have examined the matter. As regards the recovery of additional tax liability due to implementation of Ind-AS, it is observed that the 2014 Tariff Regulations provide for tax recovery by way of grossing up of Return on Equity with the effective tax rate or



Minimum Alternate Tax (MAT) in case of a generating company or a transmission licensee, as the case may be, paying MAT of the respective financial year. Further, no income, other than generation/ transmission activities is considered for the purpose of tax recovery. In the present case, ROE is being allowed for grossing up with the MAT rate, as envisaged under the provisions of the 2014 Tariff Regulations. It is further observed that the implementation of IndAS has an accounting treatment implication and does not result in income from generation business activity. Accordingly, the prayer of the Petitioner to allow the recovery of additional tax liability on the increased income, due to implementation of Ind-AS is not permitted.”

29. The Commission held a similar view in an order dated 18.8.2023 in Petition No 44/RP/2022 in Petition No 143/GT/2020. The relevant portion of the order is extracted hereunder:

“It is noticed that tax on ROE, has been defined in Regulation 25 of the 2014 Tariff Regulations. It is also noticed that in case the generating station is paying MAT, the rate of ROE is required to be grossed up with MAT rate only and the MAT rate does include surcharge and cess. Further, as per observations in the SOR to the 2014 Tariff Regulations (as quoted above), it is evident that in order to pass on the benefits and concessions available in income tax, the income tax rate to be considered for the purpose of grossing up shall be the MAT rate, if the generating company, generating station or the transmission licensee is paying MAT. On perusal of the documents and the submissions of the Review Petitioner, it is observed that the Review Petitioner was covered under MAT regime and since the Review Petitioner was paying MAT (Minimum Alternate Tax), the grossing up of ROE is required to be done based on the MAT rate. Since the provisions of the aforesaid regulations, mandates the grossing up ROE with the MAT rate, if the generating company is paying MAT, the Commission in impugned order dated 29.8.2022 had considered the same, while working out the ROE and grossing up the ROE based on MAT rate. As the ROE had been worked out and allowed in terms of the aforesaid regulations read with the SOR to the said regulations, we find no force in the submissions of the Review Petitioner, to review the impugned order. Accordingly, we hold that there is no error apparent on the face of the impugned order dated 29.8.2022 and review on this ground is not maintainable. It is pertinent to mention that similar issue raised by the Review Petitioner in Petition No. 19/RP/2022 and Petition No. 42/RP/2022, were rejected by the Commission vide orders dated 5.1.2023 and 16.7.2023 respectively. In the above background, the prayer of the Review Petitioner, for review of the impugned order dated 29.8.2022 is rejected.”

30. The Petitioner has requested to exercise the Power to Relax under the 2014 and the 2019 Tariff Regulations, and provide relief by allowing the additional tax incurred/ to be incurred by the Petitioner. The Petitioner has submitted that it is settled law that the Power to Relax may be invoked if the Regulations cause hardship to a party. In this regard, the Petitioner has placed reliance on the APTEL’s judgements



dated 21.3.2018 in Appeal No. 107 & 117 of 2015 in HPPC vs HERC, 20.9.2012 in Appeal No.189 of 2011 in TPCL v JSERC & Anr. and 24.3.2015 in Appeal No.55 of 2013 & Batch in BSES Yamuna Power Limited v. CERC & Ors.

31. We have perused the judgements relied upon by the Petitioner. APTEL in its judgement dated 21.3.2018 in Appeal Nos. 107 & 117 of 2015 in HPPC vs HERC concluded that the State Commission should have allowed O&M Expenses to Lanco by relaxing the provisions of Regulation No.33 to maintain parity between the State Generating companies and the private generating companies. APTEL in the judgement dated 20.9.2012 in Appeal No.189 of 2011, held that norms can be relaxed on the basis of the circumstances of the case and in exceptional cases. APTEL in the judgement dated 24.3.2015 in Appeal No.55 of 2013 observed that if any Regulation causes hardship to a party or works injustice or application thereof leads to an unjust result, the Regulation can be relaxed. In the instant case, the Petitioner is seeking allowance of additional taxes due to the amendment to the Income Tax, 1961, as it constitutes a CIL event. The amendment to Section 115JB of the Income Tax, 1961, is applicable to all the IND AS compliant entities. We are of the view that all the IND AS-compliant entities should be treated at par and no separate dispensation can be carved out for the Petitioner. In this regard, we refer to the APTEL's judgement dated 20.09.2012 in Appeal No. 189 of 2011, which has also been referred to by the Petitioner, wherein it is held that the power to relax a regulation must be exercised only in exceptional cases and cannot be exercised to favour some party. In the instant case, the amendment to Section 115JB of the Income Tax Act, 1961, is applicable to all Ind AS-compliant companies, and the Petitioner has not made out any case for carving out an exception for it. Further, the Petitioner's case does not fall under the



category of exceptional cases. The relevant portion of the judgement dated 20.9.2012 is as follows:

“29. The principles relating to the exercise of power of relaxation laid down in the above decisions referred to above are as follows:

*(a) The Regulation gives judicial discretion to the Commissions to relax norms based on the circumstances of the case. Such a case has to be one of those exceptions to the general rule. There has to be sufficient reason to justify **relaxation which has to be exercised only in the exceptional case** where non-exercise of the discretion would cause hardship and injustice to a party.*

(b) If there is a power to relax the regulation, the power must be exercised reasonably and fairly. It cannot be exercised arbitrarily to favour some party and to disfavour some other party...”

32. Moreover, the Petitioner has not specified the provisions of the 2014 and the 2019 Regulations, of which the Petitioner wants relaxation. In view of the above discussion, the Petitioner's request to allow the additional tax as incurred/ to be incurred by the Petitioner under the Power to Relax provision of the 2014 and 2019 Tariff Regulations is rejected.

C. CLARIFICATION AND RELAXATION ON THE PERIOD OF APPLICATION OF TMF

33. The Petitioner has sought clarification on the applicability of the TMF for the entire life of the transmission project, i.e. 35 years as against 25 years from the date of the issue of the licence, as provided under Regulation 75 of the 2019 Tariff Regulations. The gist of the submissions made by the Petitioner in this regard is as follows:

a. The TMF was assured for the entire life of the project *vide* order dated 29.5.2001 in Petition No. 23/2001. Further, the said understanding was crystallised in Regulation 4.10A of the 2001 Tariff Regulations. Therefore, the Commission may relax Regulation 75 and clarify the period of applicability of TMF on the Petitioner's Project for its entire life, i.e. 35 years.

b. The Ministry of Power has issued an amendment to the Electricity Rules,



2005 on 30.6.2023 by inserting Rules (4A), (4B) and (4C), which read as follows:

*“3. In the said rules, after rule 4, the following rules shall be inserted, namely:-
(4A) Where any entity has been granted licence under section 14 of the Act, the period of the licence shall be in accordance with the terms and conditions of the licence granted by the Appropriate Commission;
(4B) Where an entity is a deemed licensee under the first, second and fifth proviso to section 14 of the Act, the period of the licence shall be twenty five years from the date of the coming into force of the Act;
(4C) The licence granted by the Appropriate Commission under section 14 of the Act and the deemed licence under first, second and fifth proviso to said section 14 shall be deemed to be renewed unless the same is revoked:
Provided that such renewal, shall be for a period of twenty five years at a time or for a lesser period, if requested by the licensee:
Provided further that where the Appropriate Commission has renewed the licence for a particular period before the notification of these rules, the licence shall be deemed to be renewed for that particular period under these rules.
Provided also that this rule shall not apply to the licence granted to transmission developers, selected through tariff based bidding, under section 63 of the Act.”*

c. Rule (4C) read with its first proviso makes the life of the licence virtually perpetual with renewal after every 25 years unless revoked or requested for a shorter period by the licensee. Therefore, Regulation 75 of the 2019 Tariff Regulations, which stipulates that TMF is applicable for 25 years from the date of licence, needs to be read in the light of the said Rule. Accordingly, TMF shall apply for the period of validity of the licence or the transmission service agreement, which may be valid up to the life of the assets.

d. As per Appendix II to the 2001 Tariff Regulations, the ‘Useful Life’ of Assets, including ‘Lines on fabricated steel operating at nominal voltage higher than 66 kV’ (i.e. the transmission line of the Petitioner) is 35 years. The Petitioner’s assets include only 400 kV and 220 kV AC transmission lines.

e. The concept of TMF was recognised by the Commission in an order dated 29.5.2001 in Petition No. 23/2001, wherein an incentive scheme to attract private investors in the field of transmission was devised. The scheme was conceptualised to expedite private investment in the transmission business.

f. The Commission, while proposing the TMF, examined all the aspects of the transmission business, including the adequacy of return on the investment and the interest of the consumers over the entire life of the Project. The Commission had envisaged an additional Internal Rate of Return in the directions for this



scheme, which was considered adequate to attract necessary private investments in the Sector.

g. The Commission had proposed TMF after due scrutiny of the investment requirement in the transmission sector and the interest of the consumers, and considering its impact over the entire life of the Project. It had been explicitly mentioned in the order dated 29.5.2001, that Regulation 4.10A of the 2001 Tariff Regulations would be available to new entrepreneurs who enter the sector up to 31.3.2004 for the entire life of the Project. This was an unconditional assurance, specifically provided not only to attract immediate investments in the Sector but also to ensure the availability of such an incentive scheme throughout the entire life of the Project, thereby providing additional IRR to investors.

h. The criteria for qualifying for TMF are, namely-

- (a) Should be a new transmission project;
- (b) The new transmission project should be executed through the IPTC/JV route; and
- (c) The transmission licence (under Section 27C of the Indian Electricity Act, 1910) should be obtained up to 31.03.2004.

i. The Petitioner has satisfied the qualifying criteria and is the only company in the JV route that became eligible to avail the TMF.

j. The Commission carried out various amendments in the Tariff Regulations, but the useful life of 35 years for transmission lines specified in the 2001 Tariff Regulations was not altered. Therefore, the Petitioner proceeded with the assurance that its Project would be entitled to TMF for the entire useful life of 35 years.

k. The 2004 Tariff Regulations did not contain the provision in respect of TMF. Hence, the Petitioner moved a petition before the Commission seeking clarification on the availability of the TMF for the life of the Project as envisaged earlier. The Commission vide order dated 1.7.2004 in Petition No. 51/2004 clarified that the TMF is available for the entire life of the project and also noted the settled legal position that the expiry of a temporary statute does not obliterate the rights or obligations under that statute. It was made clear to the Petitioner that, even if there is no provision in the 2004 Tariff Regulations, it is



eligible to claim TMF under Regulation 4.10A of the 2001 Tariff Regulations for the entire life of the project.

l. The assurance of availability of the TMF for the entire life of the Project was a key factor which attracted the Petitioner to invest in a project extending for a life of 35 years. The IRR of the Project, as envisaged, initially considered the TMF for the entire lifetime of 35 years for the project, and the decision to invest lay entirely on expected returns based on such assurance.

m. The objection with respect to allowance and continuation of TMF has been taken by the Petitioner right from the first tariff. In this respect, the Commission has consistently relied upon Regulation 4.10A of the 2001 Tariff Regulations, under which the Petitioner was entitled to recover TMF for the entire life of the Project of 35 years.

n. Despite there being a clear understanding regarding the applicability of the TMF throughout the entire life of the Project, the 2014 Tariff Regulations were amended by inserting Regulation 49A, restricting the applicability of the TMF to a period of 25 years from the date of issue of the transmission licence.

o. The same provision has been retained as Regulation 75 in the 2019 Tariff Regulations. The premise under which the above amendment was introduced has been explained in the SOR to the Second Amendment to the 2014 Tariff Regulations, which is as follows:

“6.0. Regulation 4.10A in the 2001 Tariff Regulations specifies that the TMF will be available for the entire life of the transmission project. The life of a transmission line was specified as 25 years in the 2001 Tariff Regulations and accordingly, transmission licence was granted vide order dated 22.10.2003 in Petition No. 40/2013 to Powerlinks for a period 25 years. However, the useful life of the transmission line has been specified as 35 years in 2009 and 2014 Tariff Regulations. In our view, the promotional scheme of TMF should be confined to the useful life specified in the 2001 Tariff Regulations and the transmission licence granted to Powerlinks. Accordingly, the incentive of TMF granted to Powerlinks shall be available only for a period of 25 years from the date of issue of licence. This aspect needs to be clarified as the useful life of the transmission assets has been subsequently enhanced from 25 years to 35 years. The Commission has decided to issue second amendment to the 2014 Tariff Regulations clarifying the period for which TMF would be available.”

p. The Commission had inadvertently considered the useful life of the transmission line as 25 years under the 2001 Tariff Regulations. Whereas, the useful life of a transmission line under the said 2001 Tariff Regulations is 35



years. The Commission, in an order dated 12.12.2002, in Petition No. 25/2002 in PGCIL v. BSEB & Ors. observed that the useful life of a transmission line, as per the 2001 Tariff Regulations, is 35 years.

q. The observation that since the useful life specified under the 2001 Tariff Regulations was 25 years, and hence the transmission licence was granted for 25 years to the Petitioner, is erroneous, and the same is evident from the following:

- i. In order dated 14.6.2001 in Petition Nos 111/2000 and 118/2008 in the matter of grant of Transmission Licence – Procedure, Terms and Conditions of License, etc., *inter alia*, while deliberating on the issue of term of transmission licence, the Commission observed that the transmission licence should be consistent with the useful life of the transmission asset.
- ii. The Petitioner was granted a licence for 25 years only on 13.11.2003 (i.e. after promulgation of the Act) in terms of the order dated 22.10.2003. The term of 25 years is in accordance with Section 15(8) of the Act, which prescribes that ‘*a licence shall continue to be in force for a period of twenty-five years unless such licence is revoked.*’.
- iii. The Commission recognised this aspect in the Explanatory Memorandum to Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) (Amendment) Regulations, 2010, wherein it was observed as follows:

“The Central Commission while considering the applications by various project developers for grant of transmission licence have observed that while the useful life of the transmission asset is normally considered as 35 years, transmission licences are issued for a period of 25 years under the provisions of Section 15 (8) of the Electricity Act, 2003 (the Act).”

r. Accordingly, the useful life of a transmission line under the 2001 Tariff Regulations is 35 years, and the term of licence granted to the Petitioner for 25 years was not on account of the useful life being 25 years but rather it was in accordance with Section 15(8) of the Act.

s. Allow TMF for 35 years by exercising the power under ‘Power to Relax’ and



‘Power to Remove Difficulty’ under Regulations 76 and 77 of the 2019 Tariff Regulations.

t. The Commission recognised that the Petitioner’s entitlement to TMF is a vested right which has been granted under the 2001 Tariff Regulations, and it ought not to be revoked. Accordingly, TMF is allowed to the Petitioner in subsequent tariff periods. However, the difficulty arose when the Commission, instead of allowing the TMF for the entire useful life of the Project, i.e., 35 years, restricted to 25 years for the period of the licence.

u. The above restriction to 25 years was done on the basis that the 2001 Tariff Regulations prescribe a useful life for the Petitioner’s Project as 25 years. Whereas the useful life under the 2001 Tariff Regulations is 35 years. Further, it was incorrectly inferred that the licence was granted for 25 years on the basis of life being 25 years.

v. The clarification becomes all the more necessary after notification of the Electricity (Amendment) Rules, 2005, which make the licence renewal automatic after 25 years.

w. In case the instant petition is not allowed, then grave prejudice would be caused to the Petitioner, which will have a direct bearing on the viability and feasibility of the Project.

Analysis and Decision

34. The Commission, in an order dated 29.5.2001 in Petition No.23/2001, introduced the concept of TMF as an incentive scheme to attract private investments in the transmission sector. Accordingly, a provision for the grant of TMF was introduced by the insertion of Regulation 4.10A by way of amendment dated 21.9.2001 into the 2001 Tariff Regulations. This provision provided for TMF of 10% of the transmission charges to the transmission projects executed through IPTC/JV routes, which were granted transmission licence up to 31.3.2004 under Section 27C of the Indian Electricity Act, 1910. The said Regulation is extracted hereunder:

“4.10A Transmission Majoration Factor In respect of the transmission projects



executed through IPTC/JV routes, 10% (Ten percent) markup (pre-tax) on transmission charges shall be allowed as Transmission Majoration Factor. Provided that Transmission Majoration Factor shall be allowed on HVDC projects executed through IPTC/JV routes.

Provided further that the Transmission Majoration Factor shall be allowed during the entire life of the transmission project to the new investor entering the transmission sector through IPTC/JV routes and who has been granted a transmission license under Section 27C of the Indian Electricity Act, 1910, upto 31.3.2004.”

35. The Petitioner was granted a transmission licence under Section 27C of the Indian Electricity Act, 1910, on 13.11.2003 (pursuant to the Commission’s order dated 22.10.2003 in Petition No.40/2003) for a period of 25 years. The Petitioner was the only company in the JV route which was granted a transmission licence during the 2001-04 tariff period. Although the Petitioner executed the transmission project during the 2004-09 period, it was granted TMF, because it held a transmission licence before 31.3.2004. It was clearly stated in the order dated 22.10.2003 in Petition No.40/2003 and in the transmission licence granted on 13.11.2003 that the transmission licence shall be valid for a period of 25 years, unless revoked earlier.

36. As the 2004 Tariff Regulations did not provide for allowing TMF, the Petitioner filed Petition No.51/2004 seeking clarification on the allowance of TMF for the Petitioner’s project, wherein the Petitioner pleaded that TMF should be available for the entire life of the project. The Commission, in an order dated 24.6.2004, also observed that the TMF will be available for the Petitioner for the period of the licence, which is 25 years from the date of issue. Accordingly, the Petitioner was granted TMF for subsequent tariff periods. The relevant portion of the order dated 24.6.2004 is extracted hereunder:

“8. When seen in the light of above background, in our considered opinion, Regulation 4.10A ibid has conferred a substantive right on the petitioner to claim Transmission Majoration Factor. Therefore, despite the fact that no provision for payment of Transmission Majoration Factor is made in the 2004 Regulations, the petitioner shall be entitled to claim the Transmission Majoration Factor throughout the period of



licence, which is 25 years from the date of issue”

37. BRPL and UPPCL objected to the continuation of TMF in addition to the transmission charges to the Petitioner in Petition Nos. 18/TT/2014 and 20/TT/2014. Thereafter, the Commission proposed to withdraw the TMF allowed for the transmission project executed through the JV route by introducing a new provision in the 2014 Tariff Regulations. However, the Commission decided to drop the proposed amendment, withdrawing the TMF and accordingly, in the SOR dated 31.1.2019, to the proposed amendment to the 2014 Tariff Regulations observed that the withdrawal of TMF would affect the sanctity of the regulations and the solemn promise made by the Commission through the regulations would be lost and creating regulatory uncertainty in the minds of the investors. Therefore, the Commission observed that the TMF should be continued to its logical end and not terminated midway. Further, taking into consideration that the useful life of the transmission lines has been specified as 35 years in the 2001 Tariff Regulations and the transmission licence was granted for a period of 25 years, the Commission took a considered decision that the TMF will be admissible for the transmission projects executed through JV route in terms of Regulation 4.10A of the 2001 Tariff Regulations for a period of 25 years from the date of issue of the transmission licence. Accordingly, the Commission introduced Regulation 49A in the 2014 Tariff Regulations, providing for TMF for a period of 25 years from the date of issue of a licence for the transmission licensees under the IPTV/JV route. The relevant portion of the SOR dated 31.1.2019 is extracted hereunder:

“Analysis & Commission’s decision

5.0 We have considered the submissions of Powerlinks, REC, BRPL, GRIDCO and Shri N.K. Jain. Powerlinks sought to implement the transmission project through JV route and applied for and was granted transmission licence on 13.11.2003 i.e. within



the specified period of 31.3.2004. There was a possibility that other JVs and IPTCs might have expressed interest and applied for and might have been granted transmission licence before 31.3.2004. In all these cases, the transmission projects would have been implemented during 2004-09 and all of them would have been eligible for TMF. Simply because other JVs and IPTCs did not come forward to implement the transmission projects in terms of Regulation 4.10A of 2001 Tariff Regulations, this cannot be held against the lone JV, namely, Powerlinks who took the risk and came forward to implement the task. Even if there is only one beneficiary of the promotional scheme under the regulations, the benefits of the regulations should be fully extended to the said lone beneficiary. Otherwise the sanctity of the regulations and the solemn promise made by the Commission through the regulations will be lost. This will create regulatory uncertainty in the mind of the investors. There is a legitimate expectation on the part of Powerlinks when it applied for and was granted transmission licence under the said provision. Even the legitimate expectation was further strengthened when the Commission unambiguously reiterated its commitment vide orders dated 24.6.2004 and 28.4.2008 in Petition Nos. 51/2004 and 147/2007 respectively that TMF would be available to Powerlinks throughout its useful life. The objections of the beneficiaries and Shri N K Jain cannot be sustained for the reason that TMF is the result of the policy decision of the Commission to extend promotional benefits for JVs and IPTCs to enter the transmission sector when the selection of Transmission Service Providers through competitive bidding was not even envisaged in the Act and the said policy decision cannot be sacrificed because subsequently, transmission tariff is being determined at competitive price through competitive bidding without any promotional scheme. When TMF was conceived, it was conceived in public interest in order to draw capital and expertise from the private sector in transmission. Therefore, we are of the view that the implementation of said policy decision should be continued till its logical end and should not be terminated midway. The Commission has therefore decided not to go ahead with the amendment as proposed in the draft regulations.

6.0. Regulation 4.10A in the 2001 Tariff Regulations specifies that the TMF will be available for the entire life of the transmission project. The life of a transmission line was specified as 25 years in the 2001 Tariff Regulations and accordingly, transmission licence was granted vide order dated 22.10.2003 in Petition No. 40/2013 to Powerlinks for a period 25 years. However, the useful life of the transmission line has been specified as 35 years in 2009 and 2014 Tariff Regulations. In our view, the promotional scheme of TMF should be confined to the useful life specified in the 2001 Tariff Regulations and the transmission licence granted to Powerlinks. Accordingly, the incentive of TMF granted to Powerlinks shall be available only for a period of 25 years from the date of issue of licence. This aspect needs to be clarified as the useful life of the transmission assets has been subsequently enhanced from 25 years to 35 years. The Commission has decided to issue second amendment to the 2014 Tariff Regulations clarifying the period for which TMF would be available.

7.0 Accordingly, the following provision is inserted by way of second amendment to the 2014 Tariff Regulations:-

"49A Transmission Majoration Factor: Transmission Majoration Factor admissible for the transmission projects executed through JV route in terms of Regulation 4.10A of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2001 shall be available for a period of 25 years from the date of issue of the transmission licence."



38. Further, Regulation 75 of the 2019 Tariff Regulations provided for the grant of TMF for a period of 25 years from the date of issue of the transmission licence for the transmission projects executed through the JV route in terms of Regulation 4.10A of the 2001 Tariff Regulations. Regulation 75 of the 2019 Tariff Regulations provides as follows:

“75. Transmission Majoration Factor: Transmission Majoration Factor admissible for the transmission projects executed through JV route in terms of Regulation 4.10A of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2001 shall be available for a period of 25 years from the date of issue of the transmission licence.”

39. It is clear from the above that the Commission, since the issue of the transmission licence to the Petitioner on 13.11.2003, has consistently held that the TMF is admissible for the transmission projects through the IPTC/JV route, as the Petitioner is entitled to TMF through the period of licence, which is 25 years from the date of issue. The Commission, after having taken into consideration all the facts like (a) Regulation 4.10A of 2001 Tariff Regulations provided for TMF for the entire life of the transmission project, (b) the useful life of the transmission line is 35 years as per the 2001 Tariff Regulations and (c) the transmission licence was granted for a period of 25 years from the date of issue of licence as provided in Section 15(8) of the Act, held that the TMF will be admissible for 25 years from the date of issue of licence to the transmission projects under the IPTC/JV route. Accordingly, the Commission provided for Regulations 49A, 75 and 100 of the 2014, 2019 and 2024 Tariff Regulations, respectively, allowing TMF a period of 25 years from the date of issue of the licence. As the Commission's decision to allow TMF was arrived at taking into consideration all the material facts, we do not find any reason to revisit the Commission's decision in this regard. Further, we do not find any ground for allowing



the TMF for the Petitioner's project for a period of 35 years by exercising the 'Power to Relax' and "Power to Remove Difficulty' under Regulations 76 and 77 of the 2019 Tariff Regulations as prayed by the Petitioner.

41. Accordingly, the Petitioner's prayer to allow TMF for 35 years is disallowed.

42. In terms of the above discussions and findings, Petition No.254/MP/2023 is disposed of.

sd/-
(Ravinder Singh Dhillon)
Member

sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V.)
Member

sd/-
(Jishnu Barua)
Chairperson

