

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 327/TT/2023

Coram:

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

Date of Order: 29.10.2025

In the matter of:

Approval under Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for determination of the transmission tariff from the proposed COD to 31.3.2024 for Asset-1: 2 Nos. 400 kV GIS line bays at Koteswar Sub-station under “Line bays associated with Northern Region System Strengthening Scheme-XXXVI” in the Northern Region.

And in the matter of:

**Power Grid Corporation of India Limited,
Saudamini, Plot No-2,
Sector-29, Gurgaon-122001 (Haryana).**

.....Petitioner

Versus

- 1. Ajmer Vidyut Vitran Nigam Limited,**
Corporate Office, Vidyut Bhawan,
Panchsheel Nagar, Makarwali Road,
Ajmer-305004 (Rajasthan).
- 2. Jaipur Vidyut Vitran Nigam Limited,**
132 kV, GSS RVPNL Sub- station building,
Caligiri Road, Malviya Nagar, Jaipur-302017 (Rajasthan).
- 3. Jodhpur Vidyut Vitran Nigam Limited,**
New Power House, Industrial Area,
Jodhpur-342003 (Rajasthan).



4. **Himachal Pradesh State Electricity Board Limited,**
Vidyut Bhawan, Kumar House Complex Building II,
Shimla-171004.
5. **Punjab State Power Corporation Limited,**
The Mall, PSEB Head Office,
Patiala-147001.
6. **Haryana Power Purchase Centre,**
Shakti Bhawan, Sector-6,
Panchkula-134109.
7. **Jammu Kashmir Power Corporation Limited,**
220/66/33 kV Gladni Sub-station SLDC Building,
Narwal, Jammu.
8. **Uttar Pradesh Power Corporation Limited,**
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226001.
9. **BSES Yamuna Power Limited,**
B-Block, Shakti Kiran, Building (Near Karkadooma Court),
Karkadooma 2nd Floor, New Delhi-110092.
10. **BSES Rajdhani Power Limited,**
BSES Bhawan, Nehru Place,
New Delhi.
11. **Tata Power Delhi Distribution Limited,**
33 kV Sub-station Building,
Hudson Lane, Kingsway Camp, North Delhi-110009
12. **Uttarakhand Power Corporation Limited,**
Urja Bhawan, Kanwali Road,
Dehradun.
13. **North Central Railway,**
Allahabad.
14. **New Delhi Municipal Council,**
Palika Kendra, Sansad Marg,
New Delhi-110002.



15. Chandigarh Electricity Department,
UT-Chandigarh, Div-11, Opposite Transport Nagar,
Industrial Area Phase - I, Chandigarh.

16. NRSS XXXVI Transmission Limited,
(Resurgent Power, a joint venture of Tata Power Company Limited)
Shatabdi Bhawan, B-12 & 13,
Sector 4, Noida-201301 (Uttar Pradesh).

...Respondent(s)

Parties Present: Ms. Swapna Seshadri, Advocate, PGCIL
Shri Utkarsh Singh, Advocate, PGCIL
Ms. Sneha, Advocate, PGCIL
Shri Shryeshth R. Sharma, Advocate, NRSS
Shri Vedant Choudhary, Advocate, NRSS
Shri Anant Singh Ubeja, Advocate, NRSS
Shri V.C. Sekhar, PGCIL
Shri Jatin Mahani, NRSS

ORDER

The instant Petition has been filed by the Power Grid Corporation of India Limited for the determination of the transmission tariff under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as “the 2019 Tariff Regulations”) from the COD to 31.3.2024 in respect of the transmission asset, namely, 2 Nos. 400 kV GIS line bays at Koteswar Sub-station (hereinafter referred to as “the transmission asset”) under “Line bays associated with Northern Region System Strengthening Scheme-XXXVI” (hereinafter referred to as “the transmission project”) in the Northern Region.

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

- “1) Admit the capital cost as claimed in the Petition and approve the Additional Capitalisation incurred/projected to be incurred.*
- 2) Approve the Transmission Tariff for the tariff block 2019-24 block for the asset covered under this petition, as per para – 9.3 above.*
- 3) Approve the DOCO of the asset under clause 5 (2) of Tariff Regulation’2019.*
- 4) Condone the delay and allow IDC/IEDC as claimed in the petition.*



- 5) *Allow the petitioner to recover the shortfall or refund the excess Annual Fixed Charges, on account of Return on Equity due to change in applicable Minimum Alternate/Corporate Income Tax rate as per the Income Tax Act, 1961 (as amended from time to time) of the respective financial year directly without making any application before the Commission as provided in Tariff Regulation 2019 as per para 8 above for respective block.*
- 6) *Approve the reimbursement of expenditure by the beneficiaries towards petition filing fee, and expenditure on publishing of notices in newspapers in terms of Regulation 70 (1) Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019, and other expenditure (if any) in relation to the filing of petition.*
- 7) *Allow the petitioner to bill and recover Licensee fee and RLDC fees and charges, separately from the respondents in terms of Regulation 70 (3) and (4) Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019.*
- 8) *Allow the Petitioner to claim the overall security expenses and consequential IOWC on that security expenses separately.*
- 9) *Allow the petitioner to claim the capital spares at the end of tariff block as per actual.*
- 10) *Allow the Petitioner to bill and recover GST on Transmission Charges separately from the respondents, if GST on transmission is levied at any rate in future. Further, any taxes including GST and duties including cess etc. imposed by any statutory/Govt./municipal authorities shall be allowed to be recovered from the beneficiaries.*
- 11) *Allow interim tariff in accordance with Regulation 10 (3) of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for purpose of inclusion in the PoC charges.*

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

Background

3. The brief facts of the case are as under:
 - a. The Investment Approval (the IA) for the transmission project was accorded by the Board of Directors (BoD) of the Petitioner's Company in its 339th meeting held on 29.3.2017 and circulated vide the Memorandum Ref.: C/CP/Line Bays-XXXVI dated 30.3.2017, at an estimated cost of ₹3558.00 lakh including an IDC of ₹228.00 lakh based on October 2016 price level.



- b. As per the IA, the scope of the work covered under the transmission project is as under:

Sub-station

- i Extension of 400/220 kV Koteswar Pooling Station

400 kV

GIS Line Bays: 2 Nos.

- ii Extension of 400/220 kV Roorkee Sub-station

220 kV

Line Bay: 1 No.

- c. The Petitioner has submitted that the scope of the transmission project was discussed and agreed upon in the 35th Standing Committee Meeting for Power System Planning for Northern Region held on 3.11.2014, and in the 33rd meeting of NRPC held on 11.11.2014. The transmission project has also been discussed and agreed upon in the 34th Empowered Committee on Transmission held on 13.4.2015.
- d. The details of the transmission assets covered under the transmission project are as under:

Sr. No.	Assets	COD	Petition
1	2 Nos. 400 kV GIS line bays at Koteswar Sub-station	5.3.2023 (Proposed)	Instant Petition
2	1 No. 220 kV line bay at 400/220 kV Roorkee Sub-station	28.9.2019	17/TT/2022 (Order dated 31.7.2023)

- e. As per the IA, the transmission project was scheduled to be commissioned within 18 to 30 months progressively from the IA date, i.e., 29.3.2017, matching with the completion schedule of the TBCB line. Since the TBCB line has not yet been commissioned, the maximum of 30 months is taken



as the completion timeframe, and, hence, the SCOD comes to be 28.9.2019, against which the transmission asset was ready to be commissioned on 5.3.2023 resulting in a time overrun of 41 months and 5 days.

- f. As per the latest monthly progress report as on 30.6.2023 issued by the Central Electricity Authority (CEA), the TBCB transmission line is anticipated to be commissioned by December 2024 and, since, the transmission asset could not be charged due to the non-readiness of associated transmission line, the Petitioner has claimed the date of commercial operation (COD) of the transmission asset under Regulation 5(2) of the 2019 Tariff Regulations, which stipulates as under:

“5. Date of Commercial Operation:

(2) In case the transmission system or element thereof executed by a transmission licensee is ready for commercial operation but the interconnected generating station or the transmission system of other transmission licensee as per the agreed project implementation schedule is not ready for commercial operation, the transmission licensee may file petition before the Commission for approval of the date of commercial operation of such transmission system or element thereof”

- g. In accordance with the above, the Petitioner has requested to approve the COD of the transmission asset as 5.3.2023.
- h. The details of the transmission asset, including the scheduled commercial operation date (SCOD), date of commercial operation (COD), and time overrun are as under:

SCOD	COD	Time over-run
28.9.2019	5.3.2023 (Proposed)	1254 days



4. The Respondents are distribution licensees, transmission licensees and power departments, mainly beneficiaries of the Northern Region, which are using the transmission network of the Petitioner.

5. The Petitioner has served the Petition on the Respondents, and notice regarding the filing of this Petition has been published in the newspapers in accordance with Section 64 of the Electricity Act, 2003 (the Act). No comments or suggestions have been received from the general public in response to the aforesaid notices published in the newspapers by the Petitioner. NRSS XXXVI Transmission Limited (NRSS), Respondent No. 16, vide affidavit dated 15.1.2023 has filed its reply and has raised the issue of levy of the transmission charges, non-applicability of the 2019 Tariff Regulations, and the Central Electricity Regulatory Commission (Sharing of Interstate Transmission Charges and Losses) Regulation, 2020 (hereinafter referred to as the 2020 Sharing Regulations), liberty to seek extension of SCOD due to '*force majeure*' event, no privity of contract between the Petitioner and NRSS. The Petitioner, vide affidavits dated 29.1.2024 and 16.5.2024, has filed its rejoinder to NRSS' reply . The issues raised by NRSS and the clarification given by the Petitioner are considered in the relevant portions of this order.

6. The hearings in the matter were held on 20.12.2023, 27.2.2024, 16.7.2024, 9.9.2024, 23.10.2024 and 8.11.2024, and the order was reserved.

7. This order is passed considering the submissions made by the Petitioner in the Petition vide affidavit dated 25.8.2023 and subsequent affidavits dated 24.11.2023, 18.3.2024, 6.8.2024, and 6.11.2024, reply filed by NRSS vide affidavits dated



15.1.2023 and 2.5.2024 and the respective written submissions by the Petitioner and NRSS dated 6.11.2024.

8. Having heard the learned counsels of the Petitioner and NRSS, and perused the material on record, we proceed to dispose of the Petition.

Determination of Annual Fixed Charges for 2019-24 Tariff Period

9. The Petitioner has claimed the following transmission charges in respect of the transmission asset for the 2019-24 tariff period:

(₹ in lakh)		
Particulars	2022-23 (Pro-rata 27 days)	2023-24
Depreciation	6.32	95.62
Interest on Loan	5.53	79.65
Return on Equity	6.50	97.59
Interest on Working Capital	0.38	5.53
O&M Expenses	3.69	51.67
Total	22.42	330.06

10. The details of the Interest on Working Capital (IWC) claimed by the Petitioner in respect of the transmission asset are as under:

(₹ in lakh)		
Particulars	2022-23 (Pro-rata 27 days)	2023-24
O&M Expenses	4.16	4.31
Maintenance Spares	7.49	7.75
Receivables	37.37	40.58
Total Working Capital	49.02	52.64
Rate of Interest (in %)	10.50	10.50
Interest on Working Capital	0.38	5.53

Data of Commercial Operation ("COD")

11. The Petitioner has proposed/claimed the COD in respect of the transmission asset as 5.3.2023 under Regulation 5(2) of the 2019 Tariff Regulations, as the



associated transmission line “*Koteshwar Pooling Station - Rishikesh 400 kV D/C line*”, being constructed under TBCB route by NRSS, is not yet ready.

12. In support of the proposed COD of the transmission asset, the Petitioner has submitted the copy of the CEA Energization Certificate dated 27.1.2023 issued under Regulation 43 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations 2010; Northern Regional Load Despatch Centre (NRLDC) ‘No-load’ charging letter dated 12.4.2023, advance notice to NRSS for intimation of the anticipated charging of the transmission asset vide letter dated 6.2.2023 and CMD Certificate as required under the provisions of the Grid Code.

13. The Petitioner has submitted that, as per the IA dated 29.3.2017, the transmission asset was scheduled to be commissioned within 18 to 30 months progressively from the date of the IA, matching the completion schedule of the TBCB line. Considering the maximum schedule of 30 months, the TBCB line has not yet been commissioned till the SCOD, i.e., 28.9.2019. The transmission asset of the Petitioner has been proposed to be put under commercial operation on 5.3.2023. The associated transmission line, i.e., “*Koteshwar Pooling Station-Rishikesh 400 kV D/C line*”, is being constructed under the TBCB route by NRSS, which was earlier a subsidiary of Essel Group and later transferred to the Resurgent Power Ventures Private Limited, a joint venture with TATA Power. As per the latest Central Electricity Authority (CEA) monthly progress report as on 30.4.2023, the TBCB transmission line under the scope of NRSS is anticipated to be commissioned by December 2024. Since the transmission asset of the Petitioner could not be charged due to the non-readiness of the associated transmission line of the NRSS, the Petitioner has claimed



the COD of its transmission asset as 5.3.2023 under Regulation 5(2) of the 2019 Tariff Regulations.

14. NRSS in its reply dated 15.1.2023 and 2.5.2024 and written submission dated 6.11.2024 has submitted that Regulation 5(2) of the 2019 Tariff Regulations and the 2020 Sharing Regulations are not applicable on NRSS as NRSS is developing the associated transmission line under the TBCB route, i.e., the project is set-up under Section 63 of the Act and the 2019 Tariff Regulations are only applicable on the projects which are set up under Section 62 of the Act. NRSS has further submitted that when Regulation 5(2) of the 2019 Tariff Regulations has been invoked by the Petitioner, the onus to prove 'ready for commercial operation' or deemed COD under the said Regulation will be upon the Petitioner to showcase its readiness for being '*put to use*'. The Petitioner is attempting to mislead the Commission by claiming readiness for commercial operation. However, the Petitioner has not placed on record the 'Minutes of coordination meetings or related correspondences' regarding monitoring of the progress of its transmission asset during FY 2017 to FY 2023. Therefore, the entire purpose of Regulation 5(2) of the 2019 Tariff Regulations has been defeated by the Petitioner, when the Petitioner has not been able to comply with '*In case the transmission system or element thereof executed by a transmission licensee is ready for commercial operation*'. The Petitioner has misled the Commission by asserting readiness for the commercial operation without providing the required documentation. No evidence has been submitted to prove that the transmission asset was ready for use before the claimed COD as on 5.3.2023, thereby undermining the purpose of Regulation 5(2) of the 2019 Tariff Regulations.



15. In response, the Petitioner vide affidavits dated 29.1.2024 & 16.5.2024 and written submission dated 6.11.2024 has submitted that if the Petitioner's assets are ready on 5.3.2023, but prevented from achieving the COD due to the default of either the inter-connected transmission system of the other transmission licensee or the generating station, it is entitled to seek the declaration of the deemed COD under proviso 2 of Regulation 5(2) of the 2019 Tariff Regulations. The Petitioner has further submitted that the parent company of NRSS, i.e., Essel Group, has participated in the bidding process and was selected as a successful bidder under Section 63 of the Act for establishing the transmission project, and now, at this stage, NRSS cannot wriggle away from the obligation of timely completion of the work under their scope. The Petitioner has achieved its COD on 5.3.2023 and is entitled to the deemed COD under Regulation 5 of the 2019 Tariff Regulations. The Petitioner has further submitted as under:

- (a) The Petitioner has relied upon the progress of NRSS's transmission line from FY 2017 till FY 2023, and the correspondence that took place between the Petitioner and NRSS from June 2022 till March 2023 and the Petitioner has not submitted any minutes of meetings or any correspondence with NRSS before June 2022. The claim for the COD is a statutory mandate given under Regulation 5(2) of the Tariff Regulations 2019. NRSS needs to appreciate that Regulation 5(2) of the 2019 Tariff Regulations, provides that if a transmission system or element thereof executed by a transmission licensee (the Petitioner in the present case) is ready for commercial operation but the inter-connected transmission system of other transmission licensee (i.e., NRSS here) is not ready for the commercial operation as per the agreed implementation schedule, the transmission licensee may file a Petition before the Commission for the approval of the COD of such transmission system or element in terms of Regulation 5(2) of the 2019 Tariff Regulations



(b) “Proviso 2(d) to Regulation 5(2) of the 2019 Tariff Regulations gives an option to the licensee to demonstrate either the Minutes of the Coordination Meetings or related correspondence regarding the monitoring of the progress of the transmission systems. Further, the Petitioner has provided the following correspondence that took place between the Petitioner and NRSS regarding the intimation of charging and the scheduled commissioning of the transmission asset:

Sr. No.	Date	Particulars
1	30.6.2022	Commissioning schedule of 2 nos. 400 kV bays at 765/400 kV GIS Koteshwar of the Petitioner under NRSS-XXXVI.
2	20.12.2022	Commissioning schedule of 2 nos. 400 kV bays at 765/400 kV GIS Koteshwar of the Petitioner under NRSS-XXXVI.
3	6.2.2023	Intimation for anticipated charging of 2 nos. 400 kV GIS Line bays at 400/220 kV Koteshwar Pooling Station.
4	11.3.2023	Intimation for anticipated charging of 2 nos. 400 kV GIS Line bays at 400/220 kV Koteshwar Pooling Station.

(c) Proviso 2(d) of Regulation 5(2) of the 2019 Tariff Regulations provides an option to either provide the (a) 'Minutes of Coordination Meetings or related correspondences regarding monitoring of the progress of its transmission asset' or (b) related correspondences regarding the monitoring of the progress of the transmission systems. Therefore, there is no hard and fast rule that only the Minutes of the Coordination Committee Meetings have to be provided; rather, any sort of communication given to the associated transmission licensee regarding the commissioning is permitted and will suffice the requirement for Regulation 5(2) of the 2019 Tariff Regulations.

(d) Further, NRSS ought not to take hyper-technical objections to wriggle out of its obligations to pay the transmission charges for the mismatch period under Regulation 13(12)(a) of the 2020 Sharing Regulations. In this regard, the Petitioner vide email dated 9.3.2018 enquired about the location of the dead-end tower and the details regarding the conductor, which were replied to by NRSS vide letter dated 16.3.2018. Therefore, the claim of NRSS that the Petitioner has not fulfilled the statutory requirement under Regulation 5(2) of the 2019 Tariff



Regulations is misleading and denied. Further, the Petitioner was continuously keeping a track of the TBCB line through the CEA monthly progress report, and, since the associated NRSS transmission line was getting delayed, the Petitioner had to slow down the progress to match the commissioning of its transmission asset as on that date. Since, the CEA monthly report caters to the status of progress for the NRSS assets and to promote the timely completion of the transmission projects for improving and augmenting the electricity system as envisaged under Section 73(f) of the Act, it cannot be said that no such knowledge or intimation was provided to NRSS prior to June 2022, regarding the progress report of the transmission asset.

(e) Regarding the documents placed on record for the COD submissions, the Petitioner has placed on record a copy of the certificate for the completion of Idle Charging Operation of the transmission asset, wherein, the date of energization for commencement of successful Idle Charging Operation and date of completion of successful Idle Charging Operation has been mentioned as 3.3.2023 and 4.3.2023, respectively, and Certificate declaring that the transmission asset is capable of operation to their full capacity as per the requirements for the declaration of the COD from 4.3.2023.

(e) The transmission asset was charged at no load as the NRSS' asset was not ready as on the said date. Therefore, the claim of NRSS that the Petitioner has not placed on record any document to prove that the transmission asset was ready and could have been put to use before the COD, i.e., 5.3.2023, is wrong and denied.

(f) Regarding the NRSS's claim that the Petitioner intimated NRSS for the first time qua charging of the transmission asset on 30.6.2022, and the Petitioner ought to have been ready for charging the transmission asset by the next month, i.e., 31.7.2022, there is no incident reported by NRSS wherein any prejudice has been caused to them in the absence of the prior intimation. It has been held by the Appellate Tribunal for Electricity (the APTEL) judgment in Fatehgarh Bhadla Transmission Company Limited v. Central Electricity Regulatory Commission &



Ors (2023 SCC Online APTEL 16) (“FBTL Judgment”), that prejudice has to be shown to have been caused by the non-observance of such prior intimation under Regulation 5(2) of the 2019 Tariff Regulations.

(g) In view of the above, it is pertinent to mention that NRSS has failed to showcase any prejudice in the absence of such notice. NRSS has taken no steps to communicate with the Petitioner regarding its transmission line or the status of the transmission asset. Therefore, NRSS cannot take the position that no communication was given, or that they had no knowledge of the commissioning of the transmission asset.

16. We have considered the Petitioner’s and NRSS’s submissions. As per the IA dated 29.3.2017, the transmission asset was scheduled to be commissioned within 18 to 30 months progressively from the IA date matching with the completion schedule of the TBCB line, i.e., at the latest by 28.9.2019, against which the transmission asset was ready to be commissioned on 5.3.2023. However, due to the non-readiness of the associated transmission line, the Petitioner has claimed COD of the transmission asset as 5.3.2023 under Regulation 5 (2) of the 2019 Tariff Regulations.

17. Regulation 5(2) of the 2019 Tariff Regulation provides as under:

5. Date of Commercial Operation:

“ (2) In case the transmission system or element thereof executed by a transmission licensee is ready for commercial operation but the interconnected generating station or the transmission system of other transmission licensee as per the agreed project implementation schedule is not ready for commercial operation, the transmission licensee may file petition before the Commission for approval of the date of commercial operation of such transmission system or element thereof ..”

Provided that the transmission licensee seeking the approval of the date of commercial operation under this clause shall give prior notice of at least one month, to the generating company or the other transmission licensee and the long term customers of its transmission system, as the case may be, regarding the date of commercial operation:

Provided further that the transmission licensee seeking the approval of the date of commercial operation of the transmission system under this clause shall be required to submit the following documents along with the petition:



- (a) *Energisation certificate issued by the Regional Electrical Inspector under Central Electricity Authority;*
- (b) *Trial operation certificate issued by the concerned RLDC for charging element with or without electrical load;*
- (c) *Implementation Agreement, if any, executed by the parties;*
- (d) **Minutes of the coordination meetings or related correspondences regarding the monitoring of the progress of the generating station and transmission systems;**
- (e) *Notice issued by the transmission licensee as per the first proviso under this clause and the response;*
- (f) *Certificate of the CEO or MD of the company regarding the completion of the transmission system including associated communication system in all respects.”*

18. NRSS has contended that the Petitioner has failed to submit the minutes or correspondence, a statutory requirement under Regulation 5(2) of the 2019 Tariff Regulations, relying instead on the progress of NRSS's transmission line from FY 2017 to FY 2023, while omitting details on the progress of its own transmission assets for the same period. The Petitioner has provided only communications with NRSS from June 2022 to March 2023, neglecting to submit any prior correspondence.

19. The Petitioner has submitted that there is no hard and fast rule that only the Minutes of the Coordination Committee Meetings have to be provided, rather any sort of communication given to the associated transmission licensee regarding the commissioning is permitted and will suffice for the requirements of Regulation 5(2) of the 2019 Tariff Regulations.

20. On perusal of the documents submitted by the Petitioner, we are of the view that Regulation 5(2) of the 2019 Tariff Regulations provides an option of Minutes of the Coordination Meetings or related correspondence regarding the monitoring of the progress of the generating station and transmission system, and the Petitioner had made the correspondence with NRSS on 30.6.2022 and 20.12.2022. Therefore, there



is no merit in the contention raised by NRSS. Therefore, taking into consideration of CEA Energisation Certificate dated 27.1.2023, NRLDC's Certificate dated 12.4.2023 certifying the completion of idle charging operation on 4.3.2023, one-month notice/intimation for anticipating charging vide letter dated 6.2.2023 and the CMD Certificate, the proposed COD of the transmission asset is approved as 5.3.2023 under Regulation 5(2) of the 2019 Tariff Regulations.

Capital Cost

21. Regulation 19 of the 2019 Tariff Regulations provides as under:

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

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

- (a) *The expenditure incurred or projected to be incurred up to the date of commercial operation of the project;*
- (b) *Interest during construction and financing charges, on the loans (i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of 30% of the funds deployed, by treating the excess equity as normative loan, or (ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed;*
- (c) *Any gain or loss on account of foreign exchange risk variation pertaining to the loan amount availed during the construction period;*
- (d) *Interest during construction and incidental expenditure during construction as computed in accordance with these regulations;*
- (e) *Capitalised initial spares subject to the ceiling rates in accordance with these regulations;*
- (f) *Expenditure on account of additional capitalization and de-capitalisation determined in accordance with these regulations;*
- (g) *Adjustment of revenue due to sale of infirm power in excess of fuel cost prior to the date of commercial operation as specified under Regulation 7 of these regulations;*
- (h) *Adjustment of revenue earned by the transmission licensee by using the assets before the date of commercial operation;*
- (i) *Capital expenditure on account of ash disposal and utilization including handling and transportation facility;*
- (j) *Capital expenditure incurred towards railway infrastructure and its augmentation for transportation of coal upto the receiving end of the generating station but does not include the transportation cost and any other appurtenant cost paid to the railway;*



- (k) Capital expenditure on account of biomass handling equipment and facilities, for co-firing;
- (l) Capital expenditure on account of emission control system necessary to meet the revised emission standards and sewage treatment plant;
- (m) Expenditure on account of fulfilment of any conditions for obtaining environment clearance for the project;
- (n) Expenditure on account of change in law and force majeure events; and
- (o) Capital cost incurred or projected to be incurred by a thermal generating station, on account of implementation of the norms under Perform, Achieve and Trade (PAT) scheme of Government of India shall be considered by the Commission subject to sharing of benefits accrued under the PAT scheme with the beneficiaries.

(3) The Capital cost of an existing project shall include the following:

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

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

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

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

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

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



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

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

22. The Petitioner, vide Auditor's Certificate dated 31.5.2023, has claimed the capital cost incurred as on the COD and the Additional Capital Expenditure (ACE) projected to be incurred in respect of the transmission asset and the same are as under:

FR Apportioned Approved Cost	Expenditure up to Actual COD	Projected ACE				Estimated completion cost
		2022-23	2023-24	2024-25	2025-26	
2892.25	1534.46	67.74	263.39	63.01	3 b1.49	1960.09

Cost Overrun

23. The details of the estimated completion cost vis-à-vis the FR apportioned approved cost for the transmission asset covered under the instant Petition are as under:

(₹ in lakh)		
Approved Cost	Estimated Completion Cost	Cost Variation
2892.25	1960.09	(932.16)

24. The Petitioner has submitted that the estimated completion cost of the transmission asset is within the FR approved apportioned cost. There is no cost overrun in the case of the instant transmission project. The major reasons for the cost variation with respect to the FR for transmission assets are due to the bid price



received through the open competitive bidding, actual site condition and decrease in the IDC/IEDC.

25. NRSS has submitted that there was a cost reduction in the completion of the instant transmission asset by 32%, and the same is beyond the considerable decrease. It appears that the Petitioner failed to assess the correct estimate of the FR cost of the transmission asset in FY 2016-2017. In fact, the Petitioner had over-budgeted the completion cost of the transmission asset without following the appropriate estimation process.

26. In response, the Petitioner has submitted that the Petitioner, being a government enterprise, has an obligation for indigenous development of manufacturers as well as to adhere to the Government of India guidelines in vogue. Accordingly, the Petitioner has been following a well-laid-down procurement policy which ensures both transparency and competitiveness in the bidding process. The route of the competitive bidding process has been followed to award this project. Through this process, the lowest possible market prices for required services, as per the detailed designing, were obtained and the contracts were awarded based on the lowest evaluated eligible bidder. The best competitive bid prices against tenders may vary as compared to the cost estimate, depending upon the prevailing market conditions, design and site requirements. Whereas the Petitioner prepares the estimates as per well-defined procedures for cost estimation. The FR cost estimate is a broad, indicative cost worked out generally based on the average unit rates of recently awarded contracts/general practice.



27. We have considered the Petitioner's and NRSS's submissions. The major reasons for the cost variation with respect to the FR are due to the bid price received through open competitive bidding, actual site conditions, and a decrease in IDC/IEDC. Therefore, taking into account the estimated completion cost, the cost of the transmission asset is within the FR-apportioned approved cost, and there is no cost overrun.

Time overrun

28. The details of SCOD, COD, and time overrun in respect of the transmission asset are as under:

SCOD*	COD	Time overrun
28.9.2019	5.3.2023 (Proposed)	1254 days

**Considering 30 months as the time schedule for completion of the project.*

29. As per the IA dated 29.3.2017, the transmission asset was scheduled to be put into commercial operation by 28.9.2019, against which the transmission asset was ready for commercial operation on 5.3.2023. Thus, there is a time overrun of 1254 days in the commissioning of the transmission asset.

30. The detailed reasons submitted by the Petitioner for the time overrun in the case of the transmission asset are as under:

A. Delay in commissioning of the associated TBCB line

31. The Petitioner has submitted that the LOA (Letter of Award) for the transmission asset was issued on 31.3.2017, i.e., immediately after the IA date, i.e., 29.3.2017 and the team was mobilised to achieve the scheduled completion target. However, the construction of the TBCB line was stalled and, thus, considering the delay in



construction of the TBCB line, the pace of the construction of the transmission asset was also slowed down, and various construction activities were postponed so that the commissioning of the transmission asset would match the commissioning of the transmission line. The transmission project progress report is published every month by the CEA on their website, and the chronology of the status of the TBCB line in the progress report at intervals of every three months as under:

CEA Report	Status of the associated TBCB Line
January 2019	NOC from Indian Drugs and Pharmaceuticals Limited (IDPL), Rishikesh is pending, Route Diversion at the instruction of DFO (Tehri) and severe RoW issues.
April 2019	NOC from Indian Drugs and Pharmaceuticals Limited (IDPL), Rishikesh is pending, Route Diversion at the instruction of DFO (Tehri), Forest approval pending and severe RoW issues.
July 2019	NOC from Indian Drugs and Pharmaceuticals Limited (IDPL), Rishikesh is pending, Route Diversion at the instruction of DFO (Tehri), Forest approval pending and severe RoW issues
October 2019	NOC from Indian Drugs and Pharmaceuticals Limited (IDPL), Rishikesh is pending, Route Diversion at the instruction of DFO (Tehri), Forest approval pending and severe RoW issues
January 2020	Project stalled because of an unexpected delay in obtaining NOC from IDPL.
April 2020	Project stalled because of an unexpected delay in obtaining NOC from IDPL.
July 2020	Project stalled because of an unexpected delay in obtaining IDPL - NOC from the Uttarakhand State Government
October 2020	Project stalled because of an unexpected delay in obtaining IDPL - NOC from the Uttarakhand State Government
January 2021	Minimum 27 nos. of working months required from the date of resolution of CERC Petitions, IDPL - NOC from Uttarakhand State Government, DFO (Tehri), DFO (Dehradun), Court proceedings etc.
April 2021	Minimum 27 nos. of working months required from the date of resolution of CERC Petitions, IDPL - NOC from Uttarakhand State Government, DFO (Tehri), DFO (Dehradun), Court proceedings etc.
July 2021	Minimum 27 nos. of working months required from the date of resolution of CERC Petitions, IDPL - NOC from Uttarakhand State Government, DFO (Tehri), DFO (Dehradun), Court proceedings etc.
October 2021	Minimum 27 nos. of working months required from the date of resolution of CERC Petitions, IDPL - NOC from Uttarakhand State Government, DFO (Tehri), DFO (Dehradun), Court proceedings etc.



CEA Report	Status of the associated TBCB Line
January 2022	Minimum 27 nos. of working months required from the date of resolution of CERC Petitions, IDPL - NOC from Uttarakhand State Government, DFO (Tehri), DFO (Dehradun), Court proceedings etc.
April 2022	Minimum 27 nos. of working months required from the date of resolution of CERC Petitions, IDPL - NOC from Uttarakhand State Government, DFO (Tehri), DFO (Dehradun), Court proceedings etc.
July 2022	Minimum 27 nos. of working months required from the date of resolution of CERC Petitions, IDPL - NOC from Uttarakhand State Government, DFO (Tehri), DFO (Dehradun), Court proceedings etc.
October 2022	Minimum 27 nos. of working months required from the date of resolution of CERC Petitions, IDPL - NOC from Uttarakhand State Government, DFO (Tehri), DFO (Dehradun), Court proceedings etc.
January 2023	Minimum 27 nos. of working months required from the date of resolution of CERC Petitions, IDPL - NOC from Uttarakhand State Government, DFO (Tehri), DFO (Dehradun), Court proceedings etc.
April 2023	Minimum 27 nos. of working months required from the date of resolution of CERC Petitions, IDPL - NOC from Uttarakhand State Government, DFO (Tehri), DFO (Dehradun), Court proceedings, etc.

32. The Petitioner has submitted that based on the above chronology, the construction of the TBCB line was stalled and, thus, considering the delay in construction of the TBCB line, the pace of the construction of the transmission asset was also slowed down, and various construction activities were postponed, to commission the transmission asset matching with the commissioning of the transmission line. Further, the fourth amendment to Regulation 4(iii) of the 2010 IEGC Regulations also states that the matching shall be as far as practicable. The relevant extract of Regulation 4(iii) of the 2010 IEGC Regulations is as under:

“4.

(iii) Where the transmission system executed by a transmission licensee is required to be connected to the transmission system executed by any other transmission licensee and both transmission systems are executed in a manner other than through tariff based competitive bidding, the transmission licensee shall endeavor to match the commissioning of its transmission system with the transmission system of the other licensee as far as practicable and shall ensure the same through an appropriate Implementation Agreement. Where either of the transmission systems or both are implemented through tariff based competitive bidding, the progress of implementation of



the transmission systems in a matching time schedule shall be monitored by the Central Electricity Authority.”

33. The Petitioner has further submitted that since it had already been awarded the contract and it was not possible to stretch the timeline beyond a certain limit, due to contractual implications regarding the additional claims on idle charges by the contractor, etc., the transmission asset has been proposed to be put under commercial operation w.e.f. 5.3.2023.

B. Delay on account of the COVID-19 Pandemic in 2020 and 2021

34. COVID-19 was identified by the WHO as a Global pandemic and a *Force Majeure* event across all segments/ verticals of the global business/ industry. This situation, by definition(s), was of an unforeseen/unplanned nature. The projects undertaken by the Petitioner were no exception, facing a multitude of challenges as they navigate through largely uncharted territory, with projects and supply lines experiencing highly unique and mounting risks, leading to delays in the execution of the projects due to the effects of the COVID-19 pandemic. The movement restriction affected the critical supply chain, transportation, and worker/labour absenteeism due to illness/quarantine/migration, etc., resulting in the complete halt of ongoing projects. Specific COVID-19-related challenges: supplier-delivery issues, worker absenteeism due to illness, delayed issuance of permits, travel restrictions, and loss of time or inefficiencies due to the need to practice social distancing on the job site are just a few of the issues that had schedule consequences. Construction could not start immediately. The biggest hurdle is that the supply chain has not fully restored. Besides considering the scenario that if anybody gets infected on the construction site after the



start of the work, the area would be sealed and all the related persons would be quarantined for 14-28 days. Construction pace plummeted or came to a grinding halt.

35. Further, the COVID-19 pandemic was recognised by the Ministry of Power (MoP) and the MoP vide letters dated 27.7.2020 and 12.6.2021 provided an extension of 5 months and 3 months, respectively, in respect of the SCOD due to the nationwide lockdown restrictions for containment of the spread of the COVID-19 pandemic.

C. Delay on account of strike by local labourers and villagers:

36. The work was halted for two months, i.e., from 1.10.2021 to 30.11.2021, due to a strike by the local labourers and villagers at Koteswar Sub-station on account of the non-payment of the dues to them by the contractor. The Petitioner, with the help of the local administration, tried to explain to the locals that they have no connection with the contractor and the dues that needed to be paid. However, the locals did not want to understand and were creating problems; therefore, police protection was sought to resolve the issue. The details of the communications on different dates regarding the delay on account of the strike by the local villagers and labourers are as under:

S. No	Letter / e-mail Date	Addressed to	Addressed from	Brief Description of Letter / e-mail
1	21.9.2021	The Petitioner	Gram Pradhan	If the dues are not paid by 30.9.2021, all work will be stopped at Koteswar Sub-station
2	1.10.2021	Contractor	The Petitioner	To clear the dues of the locals urgently.
3	1.10.2021	Gram Pradhan	The Petitioner	Explained that the Petitioner has no connection with the dues. However, a request was made to the contractor to clear the dues which are under NCLT.
4	9.10.2021	District Officer	The Petitioner	Requested to resolve the issue and provide security.
5	30.10.2021	Senior Superintendent of Police	District Officer	To deploy police and resolve the issue has the strike has continued since 1.10.2021.



37. NRSS, in its reply vide affidavit dated 15.1.2023, has submitted that the Petitioner has commissioned the transmission asset with a delay of around 41 months with respect to the SCOD of 28.9.2019. Further, the delay in commissioning of the transmission asset cannot be put on NRSS, as the Petitioner could have made the transmission asset ready for energisation in January 2023. Further, the time extension for completion of the transmission project was granted by the MoP vide circulars dated 27.7.2020 and 12.6.2021, which were applicable to those projects whose SCOD was after 25.3.2020 and 1.4.2021, respectively. Therefore, in the instant case, the Petitioner's SCOD was 28.9.2019 and, accordingly, the delay in commissioning of the Petitioner's transmission asset due to the COVID-19 period should not be allowed.

38. In response, the Petitioner has submitted that in the instant case, the Petitioner has given detailed reasoning regarding the delay caused on account of the commissioning of the associated TBCB Line, the COVID-19 pandemic in 2020 and 2021, and the strike by local labourers and villagers. Accordingly, the Petitioner has sought liberty to rely upon the same.

39. In addition to its reply, NRSS vide affidavit dated 2.5.2024 and written submissions dated 6.11.2024 have submitted as under:

- (a) The Petitioner, while justifying the delay of 41 months and 5 days, has failed to provide its own progress in the implementation of the transmission asset. The Petitioner's schedule for completion was 18 to 30 months progressively from the date of the IA, i.e., 30.3.2017, which brings the SCOD to be 28.9.2019, i.e., 30 months from 30.3.2017, which is the maximum period allowed to the Petitioner to commission the 2 Nos. bays at Koteshwar Sub-station. However, the Petitioner was not able to commission the transmission asset by 28.9.2019 and



put the blame on NRSS for the delay in commissioning of the Petitioner's bays. The Commission vide TV letter dated 7.11.2023, raised the queries with respect to the progress details of the work done towards the transmission asset and directed the Petitioner to submit the reasons for time overrun, along with the chronology of the time overrun and duly filled Form-12. However, the Petitioner has failed to furnish the information sought and Form-12, wherein each activity-wise delay could have been described along with its proper justification and the agency responsible for the delay/delay beyond the licensee's control. The Petitioner has failed to explain the delay in the start of the activities, such as 'Supplies' and 'Civil works and Erection', with respect to the planned start date of the said activities. The Petitioner has only provided the planned start date for the implementation of the transmission asset, along with the actual start date of the works, without any justification. The Petitioner has also failed to provide any appropriate reason and timeline of delay caused due to the COVID-19 pandemic and its impact on the progress of the transmission asset.

- (b) The Petitioner is merely attempting to shadow its own delay from the SCOD, i.e., 28.9.2019, to the proposed COD, i.e., 5.3.2023, in the garb of a mismatch in the commissioning of the interconnecting transmission system by NRSS. The Petitioner is conveniently hiding its own delay not only by disclosing it before the Commission, but also by not answering the Commission's queries.
 - (c) In addition to the above, the Petitioner, vide affidavit dated 18.3.2024, has submitted the PERT chart along with the L2 network, in response to the Commission's RoP dated 27.2.2024. It has been observed that in the L2 network, as shared by the Petitioner, the *'Testing and Commissioning' schedule was planned from 1.5.2019 to 30.8.2019*, which means 4 months were the scheduled timeline for the completion of this activity. However, in the PERT Chart shared by the Petitioner for the same activity, i.e., *'Testing and Commissioning' activity*, was scheduled from 4.9.2018 to 28.9.2019, which means approximately 12 months was the scheduled timeline for the completion of the transmission asset. Therefore, it appears that there is a discrepancy between the scheduled timelines in the PERT Chart and the L2 network as submitted by the Petitioner.
-



Further, it has been observed that while perusing the L2 network, the “*Testing and Commissioning*” activity was planned to start after completion of the ‘*Civil works and Erection*’, however, while perusing the PERT chart, the ‘*Testing and Commissioning*’ activity was planned to start in between and parallel to ‘*Civil works and Erection*’ activity but actually the Petitioner waited for the ‘*Civil works and Erection*’ activity get completed then it started with ‘*Testing and Commissioning*’ activity. Therefore, it seems that there is a mismatch in the scheduled timelines mentioned in the PERT chart and L2 network, along with the actual schedule followed by the Petitioner.

(d) The Petitioner’s transmission asset does not fall under the MoP’s notifications dated 27.7.2020 and 12.6.2021 due to the fact that the MoP notifications were meant for those transmission projects whose SCOD were not before 25.3.2020 and 1.4.2021. Thus, the Petitioner cannot justify its delay of 8 months by placing reliance on the MoP notifications.

(e) The Petitioner has claimed allowance of delay under Regulation 22(c) of the 2019 Tariff Regulations on account of the strike by the local labourers and villagers at Koteswar Sub-station due to the non-payment of dues by the contractor for the period 21.9.2021 to 30.10.2021. The delay in execution of the project on account of the contractor or supplier or agency of the transmission licensee is a ‘controllable event’, and not an ‘uncontrollable event’ as claimed by the Petitioner. Therefore, delay due to a ‘controllable event’ cannot be condoned under Regulations 21 and 22 of the 2019 Tariff Regulations. Accordingly, IDC and IEDC for the aforesaid period cannot be allowed to be capitalised.

40. In response, the Petitioner vide affidavit dated 16.5.2024 and written submission dated 6.11.2024, has submitted as under:

(a) The Petitioner has enquired about the location of the dead-end tower and as well as the details regarding the conductor vide an e-mail dated 9.3.2018, after which the Petitioner realised that the NRSS’s associated 400 kV D/C line was



way behind the scheduled timeline of the transmission project. Further, there was no communication from the NRSS end to inquire about the progress report of the transmission asset.

- (b) The Petitioner has provided the Form-12 in its TV reply dated 24.11.2023 wherein the Petitioner has given detailed reasons regarding the delay caused on account of the commissioning of the associated TBCB line, the COVID-19 pandemic in 2020 and 2021, and the strike by the local labourers and villagers.
- (c) The Petitioner was updated with the CEA report, regarding the work progress of the NRSS-associated 400 kV D/C line, which was behind schedule and taking that into consideration, the above-mentioned activities were delayed for proper phasing of funds. The Petitioner has provided a brief timeline along with reasons to justify the delay caused by the TBCB licensee, NRSS.
- (d) The scheduled timeline for "*Testing and commissioning Activities*" mismatch between L2 network and PERT chart is due to the safety bracket kept as agreed by the contractor to commission the asset within the timeline, and in both L2 and PERT chart '*Testing and Commissioning*' activity was in parallel to '*Civil works and Erection*' activity. Further, the claim by NRSS that the Petitioner waited for the '*Civil works and Erection*' activity to be completed before starting the '*Testing and Commissioning*' activity is wrong and misleading. The '*Civil works and Erection*' activity was completed on 30.4.2022, and the '*Testing and Commissioning*' activity was started on 15.4.2022, i.e., before the completion of the '*Civil works and Erection*' activity. However, all the activities, including '*Testing and commissioning*', were slowed down due to the delay of the NRSS associated 400 kV D/C line.
- (e) The delay in the present case was *inter alia* due to the associated TBCB lines and RoW issues, which were magnified by the COVID-19 pandemic. This does not negate the fact that COVID-19 affected project execution after March 2020 and was a Force Majeure event affecting the project's completion.



- (f) Further, the work of the transmission asset was delayed for two months due to the strike by the local labourers and villagers at Koteshwar Sub-station due to the non-payment by the contractors to the local villagers which was beyond the control of the Petitioner. The Petitioner tried to mitigate the said delay; however, it went beyond their control, and the Police got involved to resolve the issue.

41. In response to the TV letter dated 7.11.2023, the Petitioner, vide affidavit dated 24.11.2023, has also submitted the following:

a. Status of the project as on 25.3.2020 and 1.4.2021 in accordance with MoP letters dated 27.7.2020 and 12.6.2021

Asset	Description	Progress as on 25.3.2020 (in %)	Progress as on 1.4.2021 (in %)	COD
	Supply	30	30	5.3.2023 (Proposed)
	Civil Works	10	80	
	Erection	0	0	
	Testing and Commissioning	0	0	

b. Impact caused on account of COVID-19 with respect to the progress of the works

- Complete stoppage of works in several periods since the COVID-19 outbreak due to national/local lockdown and high intensity of COVID-19 cases occurrence in phases.
- Restriction in the movement of men, material, and equipment.
- Delayed production of material in China. Delay in the supply of equipment/machinery due to the impact of COVID-19 on the manufacturing sector and logistics.
- Contractor (NHVS) also vide letter dated 18.5.2021 raised the issue being faced in supply due to COVID-19 and the Sino-India Border issue.
- Restrictions on entry of manpower from other States.
- Local manpower shortage due to the high number of COVID-19 cases.
- Strict social distancing measures lead to reduced labour productivity.

The projects undertaken by the Petitioner were no exception, facing a multitude of challenges as they navigate through largely uncharted territory, with projects and supply lines experiencing highly unique and mounting risks, leading to delays in execution from the effects of the COVID-19 pandemic.



c. **FORM-12 (Details of Time Overrun):** The activity-wise break-up, i.e., Form -12 is as under:

Activity	As per planned		As per Actual		Delay (In days)
	Start	Finish	Start	Finish	
NOA	30.5.2017	30.5.2017	31.3.2017	31.3.2017	Nil
Supplies	19.9.2017	26.4.2019	29.5.2018	6.12.2021	956
Civil works and Erection	12.7.2017	12.8.2019	6.10.2018	30.4.2022	993
Testing and Commissioning	4.9.2018	28.9.2019	15.4.2022	28.2.2023	1250

42. In response to the Commission's query vide RoP for the hearing dated 27.2.2024 regarding the details of Liquidated Damages (LD) recovered / to be recovered / to be adjusted from each of the vendors on account of delay in execution of works and the action taken as per the award of contract, the Petitioner vide affidavit dated 18.3.2024 has submitted that the LD is yet to be finalized.

43. In response to the Commission's query vide RoP to hearing dated 16.7.2024, the Petitioner vide affidavit dated 6.8.2024 has submitted a clear copy of the L2 network details as under:

Activity	As per planned based on L2		As per Actual		Delay (in days)
	Start	Finish	Start	Finish	
Supplies	30.5.2017	25.3.2019	29.5.2018	6.12.2021	988
Civil works and Erection	15.9.2017	30.6.2019	6.10.2018	30.4.2022	1036
Testing and Commissioning	1.5.2019	30.8.2019	15.4.2022	28.2.2023	1279

44. The Petitioner has further submitted that the scheduled timeline mismatch between the L2 network and the PERT chart was due to the safety margin kept as agreed by the contractor to commission the transmission asset in time.



Analysis and decision:

45. As per the IA dated 29.3.2017, the transmission asset was scheduled to be commissioned within 18 to 30 months progressively from the date of the IA matching with the completion schedule of the associated line, i.e., maximum timeline by 28.9.2019 (considering 30 months from the date of the IA), against which the transmission asset was ready for the commercial operation on 5.3.2023. Thus, there is a time overrun of 1254 days.

46. The Petitioner has submitted that the entire delay of 1254 days in the case of the transmission asset is mainly due to the delay in commissioning of the associated TBCB line, the COVID-19 pandemic in 2020 and 2021 and the strike by the local labourers and villagers. The item-wise detailed analysis of the time overrun is as under:

A. Delay in commissioning of the associated TBCB line

47. The Petitioner has submitted that the LOA (Letter of Award) for transmission asset was issued on 31.3.2017 immediately after the IA date, i.e., 29.3.2017, and the working gangs were mobilised immediately to achieve the scheduled completion target. The progress of the associated transmission line was regularly being monitored from the CEA website, and it was noticed that there was a continuous delay in the commissioning of the same. The construction of the TBCB line was stalled, and the pace of the construction of the transmission asset was also slowed down, and various construction activities were postponed to match the commissioning of the transmission line. The contracts were already awarded, and it was not possible to stretch the timeline beyond a certain limit, due to contractual implications regarding



additional claims on idle charges by the contractor, etc. The COD of the transmission asset has been proposed w.e.f. 5.3.2023.

48. NRSS has submitted that as per the IA dated 30.3.2017, a maximum of 30 months' time was allowed to the Petitioner to commission the 2 Nos. 400 kV bays at Koteswar Sub-station. However, the Petitioner was unable to commission the transmission asset by 28.9.2019 and put the blame on NRSS for the delay in commissioning of the Petitioner's bays. The Petitioner, for the purpose of condoning its delay, cannot raise a plea that since the associated transmission line was not ready, the Petitioner has delayed the commissioning to match the commissioning with NRSS's associated line.

49. We have considered the Petitioner's and NRSS's submissions and have gone through the documents placed on record. It has been observed that, as per the DPR, the implementation timeframe of 18 to 30 months from the date of the IA matches the completion schedule of the associated TBCB line in respect of the transmission asset which has been considered on the assumption that the commissioning of 400 kV D/C Koteswar Pooling Station-Rishikesh HTLS transmission line would be completed by December, 2019. Accordingly, the IA dated 29.3.2017 was accorded by the Board of Directors of Petitioner's company with the aforementioned schedule time period for commissioning of the transmission asset under the NRSS transmission scheme.

50. The Petitioner stated that it regularly monitored the progress of the associated TBCB line through the CEA monthly reports and, accordingly, the execution work of the transmission asset was slowed down/postponed to match the commissioning of the said associated TBCB line. We have perused Form-12 submitted by the Petitioner



and observed that originally, the ‘Supply and Civil & Erection’ activities were scheduled to be commenced w.e.f. 19.9.2017 and 12.7.2017 with completion times of 582 days and 761 days, respectively. However, the aforementioned activities commenced on 29.5.2018 and 6.10.2018 with a time overrun of 252 days and 451 days as compared to the original time schedule and completed in 1287 days and 1302 days, respectively. The Petitioner has failed to substantiate with the supporting documents, like correspondence with the contractual agency to defer/delay the supply of material and subsequently erection works from original time schedule as per the LOA etc. that the aforementioned construction activities were got delayed/postponed by the Petitioner intentionally to match the commissioning of the transmission asset in line with completion of associated TBCB transmission line. The details of the Form-12 as submitted by the Petitioner are as follows:

Activity	As per Planned		As per Actual		Delay (in days)
	Start	Finish	Start	Finish	
NOA	30.5.2017	30.5.2017	31.3.2017	31.3.2017	NIL
Supplies	19.9.2017	26.4.2019	29.5.2018	6.12.2021	956
Civil and erection works	12.7.2017	12.8.2019	6.10.2018	30.4.2022	993
Testing and Commissioning	4.9.2018	28.9.2019	15.4.2022	28.2.2023	1250

51. Also, as per Form-12, submitted by the Petitioner, originally the erection activities were planned to be commenced on 12.7.2017, i.e., after 43 days from the date of issue of NOA (30.5.2017), whereas, as per actual, the said activity commenced on 6.10.2018, i.e., after 554 days from the date of issue of NOA on 31.3.2017. Therefore, it is contrary to the contention of the Petitioner that the working gangs were deployed immediately after the issuance of the NOA as on 31.3.2017 to complete the project within the scheduled time. Therefore, taking into consideration the Form-12, we are not inclined to consider that at the initial stage, the Petitioner has carried out



the work in full swing to complete it within original commissioning schedule and later on, the Petitioner slowed down the pace of construction in accordance with the progress of the associated 400 kV D/C Koteshwar Pooling Station-Rishikesh HTLS transmission line under the TBCB scheme. Thus, the Petitioner's contention of time overrun occurring from the SCOD, i.e., 28.9.2019 (considering 30 months from the date of IA) to the proposed COD as on 5.3.2023 due to slowdown/postponement of the construction activities for commissioning of the transmission asset to match the completion of the associated TBCB line is not sustainable.

52. The relevant extracts of the Regulation 22(2) of the 2019 Tariff Regulations are as under:

"22. Controllable and Uncontrollable factors

(2) The "uncontrollable factors" shall include but shall not be limited to the following:

a. Force Majeure events;

b. Change in law; and

c. Land acquisition except where the delay is attributable to the generating company or the transmission licensee.

53. It has been observed that the slowdown of the pace of construction of the transmission asset on account of the delay in the TBCB line, postponement of the commissioning of the transmission asset matching with the commissioning of the TBCB line does not fall under any of the above-mentioned uncontrollable factors. Accordingly, the time overrun on account of the delay in matching with the commissioning of the TBCB line is not condoned.



B. Delay on account of the COVID-19 Pandemic in 2020 and 2021:

54. The Petitioner has submitted that COVID-19 was identified by the WHO as a Global pandemic and a *Force Majeure* event across all segments/ verticals of the global business/ industry. The movement restriction affected the critical supply chain, transportation, worker/ labour absenteeism due to illness/quarantine/ migration, etc., which resulted in the complete halting of ongoing projects. The biggest hurdle is that the supply chain was not fully restored. The Petitioner has also relied upon the MoP letters dated 27.7.2020 and 12.6.2021, vide which the extension of 5 months and 3 months, respectively, has been granted in respect of the SCODs due to the COVID-19 pandemic.

55. Further, the Petitioner has submitted the indicative status of the project as on 25.3.2020 and 1.4.2021 in accordance with the MoP letters dated 27.7.2020 and 12.6.2021 as under:

Asset	Description	Progress as on 25.3.2020 (in %)	Progress as on 1.4.2021 (in %)	COD
	Supply	30	30	5.3.2023 (Proposed)
	Civil Works	10	80	
	Erection	0	0	
	Testing and Commissioning	0	0	

56. NRSS has submitted that the Petitioner's transmission asset does not fall under the MoP notifications dated 27.7.2020 and 12.6.2021 due to the fact that the MoP notifications were meant for those transmission projects, the SCOD of which was not before 25.3.2020 and 1.4.2021.

57. We have considered the Petitioner's and NRSS submissions and also gone through the documents placed on record. The MoP vide letter dated 27.7.2020 and



12.6.2021 had extended the SCOD in respect of the inter-State transmission project by 5 months and 3 months, respectively, due to the COVID-19 pandemic. The relevant portion of the said letters is as under:

Letter Dated 27.7.2020

“Sub: Extension to TSP/Transmission Licensees for completion of under construction inter- State transmission projects

Sir,

I am directed to state that transmission utilities have pointed out that construction activities at various transmission project sites have been severely affected by the nationwide lockdown measures announced since 25th march, 2020 to contain outbreak of COVID-19 and have requested for extension of Scheduled Commercial Operation (SCOD) to mitigate the issues of disruption in supply chains and manpower, caused due to outbreak of COVID- 19 pandemic.

2. It has been, therefore, decided that;

- i. All inter-state transmission projects, which were under construction as on date of lock down i.e., 25th March 2020, shall get an extension of five months in respect of SCOD.*
- ii. This order shall not apply to those projects, whose SCOD date was prior to 25th March 2020*
- iii. Start date of Long-Term Access granted to a generator by CTU based on completion of a transmission line, whose SCOD is extended by 5 months due to COVID-19 as mentioned above at point (i), shall also be extended by 5 months.”*

Letter Dated 12.6.2021

“Sub: Extension to TSP/Transmission Licensees for completion of under construction inter-State transmission projects – reg.

Sir,

I am directed to state that transmission utilities have approached this Ministry stating that construction activity at various transmission projects sites have been severely affected by the current second wave of COVID-19 pandemic and various measures taken by State/UT Governments to contain the pandemic; such as night curfew, imposition of section 144, weekend lockdown and complete lockdown. In this regard they have requested for extension of Scheduled Commercial Operation Date (SCOD) for the undergoing Transmission projects to mitigate the issues of disruption in supply chains and manpower, caused due to COVID-19 pandemic.

2. The matter has been examined in the Ministry and it has been noted that unlike last year complete lock-down in the entire country, this time different States/UTs have



ordered lock-down in their State/UTs as per their own assessments. Therefore, after due consideration, it has been decided that;

i. All inter-state transmission projects, which are under construction with SCOD coming after 01 April 2021 shall get an extension of three (3) months in respect of their SCOD;

ii. The commencement date of Long Term Access (LTA) to a generator by CTU based on completion of a transmission line, whose SCOD is extended by three (3) months due to COVID19 as mentioned above at point(i), shall also be extended by three (3) months.

3. This issue with the approval of Competent Authority.”

58. It has been observed that, as per the status of the project as on 25.3.2020, the project was in the construction stage. However, as per the MoP letter dated 27.7.2020, the five (5) months extension shall not apply to those projects, the SCOD of which was prior to 25.3.2020. As the SCOD of the transmission asset is 28.9.2019 (considering the 30 months from the date of IA dated 27.3.2017), which is before 25.3.2020, the 5-month extension in SCOD as per the MoP letter dated 27.7.2020 is not applicable for the instant transmission asset.

59. Similarly, as per the status of the project, the project was also under construction as on 1.4.2021. However, as per the MoP letter dated 12.6.2021, the under construction projects whose SCOD comes after 1.4.2021 shall get an extension of three (03) months in respect of their SCOD only. Therefore, as the SCOD of the transmission asset is 28.9.2019, i.e., before 1.4.2021, the extension of 03 months in SCOD as per the MoP letter dated 12.6.2021, is also not applicable for the instant transmission asset.

60. Therefore, as discussed above, the extension of 5 months and 3 months in the SCOD as per the MoP letter dated 27.7.2020 and 12.6.2021 is not applicable for the instant transmission asset.



C. Delay on account of strike by local labourers and villagers:

61. The Petitioner has submitted that the execution of the transmission asset was hampered and halted for two months from 1.10.2021 to 30.11.2021 due to the strike by the local labourers and villagers at Koteswar Sub-station on account of non-payment of dues to them by the contractor. The Petitioner has further submitted that the issue was resolved only after the Police intervention. The Petitioner has also submitted the details of the communications from 21.9.2021 to 30.10.2021 regarding the delay on account of the strike by the local villagers and labourers.

62. NRSS has submitted that the delay in execution of the project on account of the contractor or supplier or agency of the transmission licensee is a '*controllable event*', and not an '*uncontrollable event*' as claimed by the Petitioner. Therefore, the delay due to a '*controllable event*' cannot be condoned under Regulations 21 and 22 of the 2019 Tariff Regulations.

63. We have considered the Petitioner's and NRSS submissions and gone through the documents placed on record. It has been observed that vide letter dated 21.9.2021, the representative of the labourers requested the Petitioner to ensure the disbursement of wages and dues, failing which they will protest and stop the work accordingly. The Petitioner, vide letter dated 1.10.2021, tried to convince the labourers and informed them that Coastal Projects Limited had stopped work since 21.4.2021, and the process of cancellation of the tender is in progress. Also, it was intimated that the matter against the Coastal Projects Limited is under the NCLT, and they were not in a position to release the dues and wages, if any, from the security deposited against the contract, as the LD & other recovery, if any, shall be recovered from that security.



However, the directions to release the dues at the earliest had been given to the liquidator appointed in the matter of Coastal Projects Limited. The Petitioner had also requested the local administration to intervene in the matter, resolve the issue, and provide security vide letter dated 9.10.2021.

64. Regulation 22 of the 2019 Tariff Regulations provides as follows:

*“22. **Controllable and uncontrollable Factors:** The following shall be considered as controllable and uncontrollable factors for deciding time over-run , cost over-run , IDC and IEDC of the project:*

(1) The “Controllable factor” shall include but shall not be limited to the following
a. Efficiency in the implementation of the project not involving approved change in scope of such project, change in statutory lives or change in law or force majeure events; and
b. Delay in execution of the project on account of contractor or supplier or agency of the generating company or transmission licensee.

(2) The “uncontrollable factor” shall include but shall not be limited to the following:
a. Force Majeure events;
b. Change in Law; and
c. Land acquisition except where the delay is attributed to the generating company or the transmission licensee.”

65. As above, we are of the view that the strike from 1.10.2021 to 30.11.2021, called by the labourers, was due to the non-payment of their wages or dues, which was ultimately the liability of the contractual agency of the Petitioner. Moreover, if the contractor fails to complete its obligation, the principal employer (which is the Petitioner in the instant case) has a responsibility to complete the liability in any way to avoid any disputes and hurdles in the construction activities. As per Regulation 22(1)(b) of the 2019 Tariff Regulations, the delay in execution of the project on account of the contractor or supplier or agency of the generating company or transmission licensee falls under the ‘Controllable Factor’. Therefore, considering the above and in accordance with Regulation 22(1)(b) of the 2019 Tariff Regulations, we are not



inclined to condone the time overrun of 61 days from 1.10.2021 to 30.11.2021, as claimed by the Petitioner on account of the strike by the local labourers and villagers.

66. The summary of the SCOD, COD, time overrun claimed, and time overrun condoned/ not condoned in respect of the transmission asset is as under:

Asset	SCOD*	COD	Time Overrun Claimed	Time Overrun Condoned	Time Overrun not Condoned
	28.9.2019	5.3.2023 (Proposed)	1254 days	Nil	1254 days

**Considering 30 months from the date of IA as time schedule for completion of the project.*

Interest During Construction (IDC) / Incidental Expenditure During Construction (IEDC)

67. The Petitioner has submitted the statement showing IDC claim, discharge of IDC liability as on the COD and, thereafter, as under:

Asset	IDC as per Auditor's Certificate	IDC Discharged up to COD	(₹ in lakh)	
			IDC discharged during 2022-23	IDC discharged during 2023-24
	108.46	92.98	11.44	4.04

68. NRSS has submitted that NRSS never stopped the Petitioner from commissioning its bays on its SCOD, i.e., on 28.9.2019. The Petitioner itself is responsible for the delay in commissioning of its bays for the entire period from the SCOD till the claimed COD and not NRSS. The delay in execution of the project on account of the contractor or supplier or agency of the transmission licensee is a 'controllable event', and not an 'uncontrollable event' as claimed by the Petitioner. Therefore, the IDC and IEDC for the aforesaid period cannot be allowed to be capitalised. NRSS has further requested that while adjudicating the present Petition, the Petitioner should not be allowed the IDC and IEDC for the entire period, i.e., from the SCOD till the claimed COD.



69. In response, the Petitioner has submitted that IDC has been claimed on account of the actual expenditure incurred based on the proper planning and decrease in overall plant and machinery cost. The Petitioner further submitted that the instant transmission asset was charged at no load as the NRSS Asset (associated line) was not ready as of the said date. There is no rule that the Petitioner cannot recover its IDC / IEDC when it attempts to match its COD with that of the upstream or downstream asset. In any case, the Petitioner is seeking a deemed COD declaration in this case to claim its full tariff and not merely the IDC / IEDC.

70. We have considered the Petitioner's and NRSS's submissions. Since the time over-run has not been condoned, the IDC on cash basis up to the SCOD has been worked out based on the loan details given in the statement showing the discharge of IDC and Form-9C for the transmission asset. The IDC claimed and considered as on the COD and summary of discharge of IDC liability up to the COD and, thereafter, for the purpose of tariff determination, subject to its revision at the time of truing up, is as under:

(₹ in lakh)						
Asset	IDC as per Auditor's Certificate	IDC Disallowed due to Time Overrun not allowed / Computational error	IDC Allowed	IDC Discharged up to COD	IDC discharged during 2022-23	IDC discharged during 2023-24
	108.46	95.04	13.42	13.42	0.00	0.00

71. The Petitioner has claimed IEDC for the transmission asset as per the Auditor's Certificate. Since the time overrun has not been condoned, the IEDC amounting to ₹33.73 lakh has been disallowed proportionately. Accordingly, the details of the IEDC claimed as per the Auditor's Certificate, IEDC allowed and disallowed are as under:



(₹ in lakh)

Asset	IEDC claimed as per Auditor certificate (A)	IEDC disallowed due to time overrun not condoned (B)	IEDC Allowed (A-B)
	58.29	33.73	24.56

Initial Spares

72. Regulation 23(d) of the 2019 Tariff Regulations provides that the Initial Spares shall be capitalised as a percentage of the plant and machinery cost up to the cut-off date, subject to the following ceiling norms:

“23. Initial Spares: Initial spares shall be capitalised as a percentage of the Plant and Machinery cost, subject to following ceiling norms:

....

(d) Transmission System

- i. Transmission line: 1.00%
- ii. Transmission sub-station
 - Green Field: 4.00%
 - Brown Field: 6.00%
- iii. Series Compensation devices and HVDC Station: 4.00%
- iv. Gas Insulated Sub-station (GIS)
 - Green Field: 5.00%
 - Brown Field: 7.00%
- v. Communication System: 3.50%
- vi. Static Synchronous Compensator: 6.00%

73. The Initial Spares as claimed by the Petitioner in the instant Petition for the transmission asset are as under:

(₹ in lakh)

Particulars	Plant and machinery cost	Initial spares claimed	Ceiling limit as per Regulations (%)	Initial Spares Worked Out
		Amount (₹)		
	A	B	C	$D = [(A-B)*C / (100-C)]$
GIS Brownfield Sub-station (Including PLCC)	1688.14	259.52	7.00	107.53



Initial Spares Discharge

74. The Petitioner has further submitted that the expenditure on the Initial Spares included in the Auditor's Certificate are as per the actual cash expenditure incurred (means the Initial Spares discharged up to the COD are included in the COD cost of the Auditor's Certificate and discharged after the COD has been included in the respective year's Additional Capital Expenditure (ACE) in the Auditor's Certificate). The discharge of the Initial Spares, as included in the Auditor's Certificate, is as under:

(₹ in lakh)						
Particulars	Total spares Claimed	Expenditure on Initial Spares Up to COD	Expenditure on initial spares in 2022-23	Expenditure on initial spares in 2023-24	Expenditure on initial spares in 2024-25	Expenditure on initial spares in 2025-26
GIS Brownfield Sub-station (Including PLCC)	259.52	71.64	13.02	137.16	32.29	5.41

75. NRSS has submitted that the Petitioner has claimed to allow the excess Initial Spares under Regulation 76 of the 2019 Tariff Regulations. However, in this regard, the excess Initial Spares claimed by the Petitioner ought to be restricted as per Regulation 23 of the 2019 Tariff Regulations, which specifically deals with the Initial Spares. The said claim is not maintainable under 'Power to Relax', when a specific regulation under the Tariff Regulations is available. It is a settled law that general provisions ought not to be relied upon when a special provision under the law exists. In this regard, reliance has been placed on the order passed by the Commission in Petition No. 193/TT/2023.

76. In response, the Petitioner, vide affidavit dated 6.11.2024, has submitted that the excess Initial Spares amount is not covered under Regulation 23 of the 2019 Tariff



Regulations. The spares had to be procured since the existing spares were insufficient to serve the bays. This are the reasons for seeking relaxation of the Initial Spares claimed in the instant Petition. These are clearly admissible under Regulation 76 of the 2019 Tariff Regulations. These cannot be compared to Petition No. 193/TT/2023, where the Commission was not satisfied with the reasons and, hence, refused the relaxation.

77. We have considered the Petitioner's and NRSS's submissions. Based on the information available on record, the Initial Spares in respect of the transmission assets are allowed as per the respective percentage of the plant and machinery cost as on the cut-off date on an individual basis. The Initial Spares allowed as per Regulation 23(d) of the 2019 Tariff Regulations for the transmission assets are as under:

(₹ in lakh)						
Particulars	Plant and Machinery cost (excluding IDC/IEDC, Land cost & Cost of Civil Works) (₹ in lakh)	Initial Spares claimed (₹ in lakh)	Norms as per 2019 Tariff Regulations (in %)	Initial Spares allowable (₹ in lakh)	Excess Initial Spares disallowed (₹ in lakh)	Initial Spares Allowed (₹ in lakh)
	A	B	C	$D = \frac{(A-B) \times C}{(100-C)}$	E=B-D	F=D
GIS Brownfield Sub-station (Including PLCC) (Brownfield)	1688.14	259.52	7.00	107.53	151.99	107.53

Capital Cost allowed as on the COD

78. The capital cost allowed as on the COD for the transmission asset is as under:



(₹ in lakh)

Capital Cost claimed as on COD (Auditor Certificate) (A)	IDC Disallowed (B)	IEDC Disallowed (C)	Capital Cost considered as on COD (A-B-C)
1534.46	95.04	33.73	1405.69

Additional Capital Expenditure (ACE)

79. Regulations 24 and 25 of the 2019 Tariff Regulations provide as under:

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

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

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

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

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

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

(1) *The 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:*

- (a) *Liabilities to meet award of arbitration or for compliance of the directions or order of any statutory authority, or order or decree of any court of law;*
- (b) *Change in law or compliance of any existing law;*
- (c) *Deferred works relating to ash pond or ash handling system in the original scope of work;*
- (d) *Liability for works executed prior to the cut-off date;*
- (e) *Force Majeure events;*
- (f) *Liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments;*



(g) *Raising of ash dyke as a part of ash disposal system.”*

80. The Petitioner has claimed that the ACE incurred/ projected to be incurred is mainly on account of the balance/ retention payments and, hence, the same has been claimed under Regulation 24(1)(a) and 24(1)(b) of the 2019 Tariff Regulations. The Petitioner has claimed the following capital cost as per the cash IDC discharge:

Projected ACE				(₹ in lakh)
2022-23	2023-24	2024-25	2025-26	Total Projected ACE
67.74	263.39	63.01	31.49	425.63

81. Since, the Petitioner has also claimed the ACE for FY 2024-25 and 2025-26, the ACE claimed by the Petitioner for FY 2024-25 and 2025-26 shall be dealt with as per the 2024 Tariff Regulations in the future Petition.

82. Further, the Petitioner has submitted the liability flow statement for the ACE claimed under Regulation 24 (1)(a) of the 2024 Tariff Regulations, and the same is as under:

Party wise	Particulars	Outstanding Liability as on COD	Discharge		Outstanding Liability as on 31.3.2024
			2022-23	2023-24	
M/s. KEC, M/s. NHVS	Civil and Building	1.00	0.00	1.00	0.00
	Sub-station	150.89	4.01	105.24	41.64
	PLCC	13.74	0.00	0.98	12.76
	IT	2.06	0.00	1.55	0.51
Total		167.69	4.01	108.77	54.91

83. The Petitioner has further submitted the ACE in respect of the transmission asset during the 2019-24 period for the works deferred for execution and claimed the same under Regulation 24(1)(b) of the 2024 Tariff Regulations:



(₹ in lakh)

Party wise	Particulars	Works deferred for execution	
		2022-23	2023-24
M/s. KEC, M/s. NHVS	Civil and Building	0.00	41.89
	Sub-station	61.41	6.74
	PLCC	2.32	89.62
	IT	0.00	16.37
Total		63.73	154.62

84. We have considered the Petitioner's submissions. The ACE is allowed under the balance and retention payments for liabilities, works deferred for execution and liability for works executed prior to the cut-off date under Regulations 24(1)(a) and 24(1)(b) of the 2019 Tariff Regulations. The ACE allowed in respect of the transmission asset for the 2019-24 period is as under:

(₹ in lakh)

Particulars	Regulation	ACE allowed	
		2022-23	2023-24
Opening Liability Discharge	24(1)(a)	4.01	108.77
Unexecuted works	24(1)(b)	63.73	154.62
Excess Initial Spares Disallowed		(0.00)	(114.29)
Total ACE		67.74	149.10

85. The balance excess Initial Spares claimed by the Petitioner, which were discharged in the subsequent tariff period, shall be disallowed from the ACE as per the 2024 Tariff Regulation, in the future Petition.

86. Accordingly, the ACE allowed in respect of the transmission assets is subject to truing up, and the same is as under:

(₹ in lakh)

Assets	Capital Cost as on COD	ACE 2019-24		Capital Cost as on 31.3.2024
		2022-23	2023-24	
Asset-1	1405.69	67.74	149.10	1622.53

Debt-Equity ratio

87. Regulation 18 of the 2019 Tariff Regulations provides as under:



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

Provided that:

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

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

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

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

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

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

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

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



(6) Any expenditure incurred for the emission control system during the tariff period as may be admitted by the Commission as additional capital expenditure for determination of supplementary tariff, shall be serviced in the manner specified in clause (1) of this Regulation.”

88. The debt-equity ratio considered for the purpose of computation of tariff for the 2019-24 tariff period is as under:

Funding	Capital Cost as on COD (₹ in lakh)	(in %)	ACE during 2019-24 (₹ in lakh)	(in %)	Capital Cost as on 31.3.2024 (₹ in lakh)	(in %)
Debt	983.98	70.00	151.79	70.00	1135.77	70.00
Equity	421.71	30.00	65.05	30.00	486.76	30.00
Total	1405.69	100.00	216.84	100.00	1622.53	100.00

Depreciation

89. Regulation 33 of the 2019 Tariff Regulations provides as under:

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

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

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

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

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



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

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

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

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

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

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

(6) In case of the existing projects, the balance depreciable value as on 1.4.2019 shall be worked out by deducting the cumulative depreciation as admitted by the Commission upto 31.3.2019 from the gross depreciable value of the assets.

(7) The generating company or the transmission licensee, as the case may be, shall submit the details of proposed capital expenditure five years before the completion of useful life of the project along with justification and proposed life extension. The Commission based on prudence check of such submissions shall approve the depreciation on capital expenditure.

(8) In case of de-capitalization of assets in respect of generating station or unit thereof or transmission system or element thereof, the cumulative depreciation shall be adjusted by taking into account the depreciation recovered in tariff by the de-capitalized asset during its useful services.

(9) Where the emission control system is implemented within the original scope of the generating station and the date of commercial operation of the generating station or unit thereof and the date of operation of the emission control system are the same, depreciation of the generating station or unit thereof including the emission control system shall be computed in accordance with Clauses (1) to (8) of this Regulation.

(10) Depreciation of the emission control system of an existing or a new generating station or unit thereof where the date of operation of the emission control system is subsequent to the date of commercial operation of the generating station or unit thereof, shall be computed annually from the date of operation of such emission



control system based on straight line method, with salvage value of 10%, over a period of-

- a) twenty five years, in case the generating station or unit thereof is in operation for fifteen years or less as on the date of operation of the emission control system; or
- b) balance useful life of the generating station or unit thereof plus fifteen years, in case the generating station or unit thereof is in operation for more than fifteen years as on the date of operation of the emission control system; or
- c) ten years or a period mutually agreed by the generating company and the beneficiaries, whichever is higher, in case the generating station or unit thereof has completed its useful life.”

90. The weighted average rate of depreciation (WAROD) at Annexure has been worked as per the rates of depreciation specified in the 2019 Tariff Regulations. The depreciation allowed for the transmission asset is as under:

(₹ in lakh)			
	Particulars	2022-23 (Pro-rata 27 days)	2023-24
	Depreciation		
A	Opening Gross Block	1405.69	1473.43
B	ACE	67.74	149.10
C	Closing Gross Block	1473.43	1622.53
D	Average Gross Block (A+C)/2	1439.56	1547.98
E	Average Capital Cost (90% depreciable assets)	1416.70	1516.16
F	Average Capital Cost (100% depreciable assets)	22.86	31.82
G	Depreciable Value (excluding IT equipment and software)	1275.03	1364.55
H	Depreciable Value of IT equipment and software	22.86	31.82
I	Total Depreciable Value (G+H)	1297.89	1396.36
J	Weighted average rate of Depreciation (WAROD) (in %)	5.49	5.53
K	Lapsed Life (At the beginning of the year) (Year)	0	0
L	Balance Useful life of the asset (At the beginning of the year) (Year)	23	23
M	Depreciation during the year (D*J)	5.84	85.57
N	Cumulative Depreciation (At the end of the year)	5.84	91.41
O	Remaining Depreciable Value (At the end of the year) (I-N)	1292.05	1304.95

Interest on Loan (IoL)

91. Regulation 32 of the 2019 Tariff Regulations provides as under:

“32. Interest on loan capital: (1) The loans arrived at in the manner indicated in



Regulation 18 of these regulations shall be considered as gross normative loan for calculation of interest on loan.

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

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

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

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

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

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

(5a) The rate of interest on loan for installation of emission control system shall be the weighted average rate of interest of actual loan portfolio of the emission control system or in the absence of actual loan portfolio, the weighted average rate of interest of the generating company as a whole shall be considered.

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

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

92. The Petitioner has claimed the Weighted Average Rate of Interest (WAROI) on loans based on its actual loan portfolio and rates of interest. Accordingly, IoL has been calculated based on the actual interest rates submitted by the Petitioner in the instant Petition, in accordance with Regulation 32 of the 2019 Tariff Regulations. The IoL allowed for the transmission asset is as under:



(₹ in lakh)

	Particulars	2022-23 (Pro-rata 27 days)	2023-24
A	Gross Normative Loan	983.98	1031.40
B	Cumulative Repayments upto Previous Year	0.00	5.84
C	Net Loan-Opening (A-B)	983.98	1025.56
D	Additions	47.42	104.37
E	Repayment during the year	5.84	85.57
F	Net Loan-Closing (C+D-E)	1025.56	1044.36
G	Average Loan (C+F)/2	1004.77	1034.96
H	Weighted Average Rate of Interest on Loan (in %)	6.8723	6.8769
I	Interest on Loan (G*H)	5.11	71.17

Return on Equity (RoE)

93. Regulations 30 and 31 of the 2019 Tariff Regulations provide as under:

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

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

Provided that return on equity in respect of additional capitalization after cut-off date beyond the original scope, excluding additional capitalization on 7 account of emission control system, shall be computed at the weighted average rate of interest on actual loan portfolio of the generating station or the transmission system or in the absence of actual loan portfolio of the generating station or the transmission system, the weighted average rate of interest of the generating company or the transmission licensee, as the case may be, as a whole shall be considered, subject to ceiling of 14%.

Provided further that:

- i. *In case of a new project, the rate of return on equity shall be reduced by 1.00% for such period as may be decided by the Commission, if the generating station or transmission system is found to be declared under commercial operation without commissioning of any of the Restricted Governor Mode Operation (RGMO) or Free Governor Mode Operation*



- (FGMO), data telemetry, communication system up to load dispatch centre or protection system based on the report submitted by the respective RLDC;
- ii. in case of existing generating station, as and when any of the requirements under (i) above of this Regulation are found lacking based on the report submitted by the concerned RLDC, rate of return on equity shall be reduced by 1.00% for the period for which the deficiency continues;
 - iii. in case of a thermal generating station, with effect from 1.4.2020:
 - a) rate of return on equity shall be reduced by 0.25% in case of failure to achieve the ramp rate of 1% per minute;
 - b) an additional rate of return on equity of 0.25% shall be allowed for every incremental ramp rate of 1% per minute achieved over and above the ramp rate of 1% per minute, subject to ceiling of additional rate of return on equity of 1.00%:

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

(3) The return on equity in respect of additional capitalization on account of emission control system shall be computed at the base rate of one year marginal cost of lending rate (MCLR) of the State Bank of India as on 1st April of the year in which the date of operation (ODE) occurs plus 350 basis point, subject to ceiling of 14%;

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

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

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

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

Illustration-

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



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

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

- (a) Estimated Gross Income from generation or transmission business for FY 2019-20 is ₹ 1,000 crore;
- (b) Estimated Advance Tax for the year on above is ₹ 240 crore;
- (c) Effective Tax Rate for the year 2019-20 = ₹ 240 Crore/₹ 1000 Crore = 24%;
- (d) Rate of return on equity = $15.50/(1-0.24) = 20.395\%$.

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

94. The Petitioner has submitted that the MAT rate is applicable to the Petitioner's company. Accordingly, the MAT rate applicable in FY 2019-20 has been considered for the purpose of RoE, which shall be trued up in accordance with Regulation 31(3) of the 2019 Tariff Regulations. The RoE has been worked out and allowed based on the Petitioner's submission as under:

(₹ in lakh)			
	Particulars	2022-23 (Pro-rata 27 days)	2023-24
A	Opening Equity	421.71	442.03
B	Additions	20.32	44.73
C	Closing Equity (A+B)	442.03	486.76
D	Average Equity (A+C)/2	431.87	464.39
E	Return on Equity (Base Rate) (in %)	15.500	15.500
F	MAT Rate for respective year (in %)	17.472	17.472
G	Rate of Return on Equity (in %)	18.782	18.782
H	Return on Equity (D*G)	6.00	87.22



Operation & Maintenance Expenses (O&M Expenses)

95. The O&M Expenses claimed by the Petitioner for the transmission asset in the instant Petition for the 2019-24 tariff period are as under:

(₹ in lakh)		
Particulars	2022-23 (Pro-rata 27 days)	2023-24
400 kV Sub-station		
No. of Units	2	2
Norms (₹ lakh/bay)	24.962	25.837
O&M Expenses	49.92	51.67
Total O&M Expenses	3.69	51.67

96. The norms specified under Regulation 35(3)(a) of the 2019 Tariff Regulations provides as under:

“35. Operation and Maintenance Expenses:

(3) Transmission system: (a) The following normative operation and maintenance expenses shall be admissible for the transmission system:

Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
Norms for sub-station Bays (₹ Lakh per bay)					
765 kV	45.01	46.60	48.23	49.93	51.68
400 kV	32.15	33.28	34.45	35.66	36.91
220 kV	22.51	23.30	24.12	24.96	25.84
132 kV and below	16.08	16.64	17.23	17.83	18.46
Norms for Transformers (₹ Lakh per MVA)					
765 kV	0.491	0.508	0.526	0.545	0.564
400 kV	0.358	0.371	0.384	0.398	0.411
220 kV	0.245	0.254	0.263	0.272	0.282
132 kV and below	0.245	0.254	0.263	0.272	0.282
Norms for AC and HVDC lines (₹ Lakh per km)					
Single Circuit (Bundled Conductor with six or more sub-conductors)	0.881	0.912	0.944	0.977	1.011
Single Circuit (Bundled conductor with four sub-conductors)	0.755	0.781	0.809	0.837	0.867
Single Circuit (Twin & Triple Conductor)	0.503	0.521	0.539	0.558	0.578



Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
Single Circuit (Single Conductor)	0.252	0.260	0.270	0.279	0.289
Double Circuit (Bundled conductor with four or more sub-conductors)	1.322	1.368	1.416	1.466	1.517
Double Circuit (Twin & Triple Conductor)	0.881	0.912	0.944	0.977	1.011
Double Circuit (Single Conductor)	0.377	0.391	0.404	0.419	0.433
Multi Circuit (Bundled Conductor with four or more sub-conductor)	2.319	2.401	2.485	2.572	2.662
Multi Circuit (Twin & Triple Conductor)	1.544	1.598	1.654	1.713	1.773
Norms for HVDC stations					
HVDC Back-to-Back stations (₹ Lakh per 500 MW) (Except Gazuwaka BTB)	834	864	894	925	958
Gazuwaka HVDC Back-to-Back station (₹ Lakh per 500 MW)	1,666	1,725	1,785	1,848	1,913
500 kV Rihand-Dadri HVDC bipole scheme (₹ Lakh) (1500 MW)	2,252	2,331	2,413	2,498	2,586
±500 kV Talcher- Kolar HVDC bipole scheme (₹ Lakh) (2000 MW)	2,468	2,555	2,645	2,738	2,834
±500 kV Bhiwadi-Balia HVDC bipole scheme (₹ Lakh) (2500 MW)	1,696	1,756	1,817	1,881	1,947
±800 kV, Bishwanath-Agra HVDC bipole scheme (₹ Lakh)(3000 MW)	2,563	2,653	2,746	2,842	2,942

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

Provided further that:

- (i) the operation and maintenance expenses for new HVDC bi-pole schemes commissioned after 1.4.2019 for a particular year shall be allowed pro-rata on the basis of normative rate of operation and maintenance expenses of similar HVDC bi-pole scheme for the corresponding year of the tariff period;
- (ii) the O&M expenses norms for HVDC bi-pole line shall be considered as Double Circuit quad AC line;
- (iii) the O&M expenses of ±500 kV Mundra-Mohindergarh HVDC bipole scheme (2500 MW) shall be allowed as worked out by multiplying 0.80 of the normative O&M expenses for ±500 kV Talchar-Kolar HVDC bi-pole scheme



(2000 MW);

(iv) the O&M expenses of ± 800 kV Champa-Kurukshetra HVDC bi-pole scheme (3000 MW) shall be on the basis of the normative O&M expenses for ± 800 kV, Bishwanath-Agra HVDC bi-pole scheme;

(v) the O&M expenses of ± 800 kV, Alipurduar-Agra HVDC bi-pole scheme (3000 MW) shall be allowed as worked out by multiplying 0.80 of the normative O&M expenses for ± 800 kV, Bishwanath-Agra HVDC bi-pole scheme; and

(vi) the O&M expenses of Static Synchronous Compensator and Static Var Compensator shall be worked at 1.5% of original project cost as on commercial operation which shall be escalated at the rate of 3.51% to work out the O&M expenses during the tariff period. The O&M expenses of Static Synchronous Compensator and Static Var Compensator, if required, may be reviewed after three years.

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

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

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

97. We have considered the Petitioner's submissions. The O&M Expenses allowed for the transmission asset for the 2019-24 tariff period are as under:

(₹ in lakh)		
Particulars	2022-23 (Pro-rata 27 days)	2023-24
Sub-station: 2 Nos., 400 kV Bays (GIS)		
Norms as per Regulation (₹ lakh/bay)	24.962*	25.837*
O&M Expenses	49.92	51.67
Total O&M Expenses	3.69	51.67

*The O&M Expenses for the GIS bays shall be worked out by multiplying 0.70 of the O&M Expenses of the normative O&M Expenses for the bays;

Interest on Working Capital (IWC)

98. Regulations 34(1)(c), 34(3), 34(4), and 3(7) of the 2019 Tariff Regulations specify as under:



“34. Interest on Working Capital: (1) *The working capital shall cover:*

.....

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

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

.....

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

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

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

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

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

99. The Petitioner has claimed the rate of IWC as 10.50% (SBI 1-year MCLR applicable as on 1.4.2022 of 7.00% plus 350 basis points) for the 2019-24 tariff period.

100. The IWC has been worked out in accordance with Regulation 34 of the 2019 Tariff Regulations. The rate of IWC considered is 10.50% (SBI 1-year MCLR applicable as on 1.4.2022 of 7.00% plus 350 basis points) for the 2022-23 period. Similarly, the rate of IWC considered is 12.00% (SBI 1-year MCLR applicable as on 1.4.2023 of 8.50% plus 350 basis points) for the 2023-24 period.

101. The components of the working capital and interest allowed thereon for the transmission asset are as under:



(₹ in lakh)

	Particulars	2022-23 (Pro-rata 27 days)	2023-24
A	Working Capital for O&M Expenses (O&M Expenses for one month)	4.16	4.31
B	Working Capital for Maintenance Spares (15% of O&M Expenses)	7.49	7.75
C	Working Capital for Receivables (Equivalent to 45 days of annual transmission charges)	35.01	37.07
D	Total Working Capital (A+B+C)	46.66	49.13
E	Rate of Interest (in %)	10.50	12.00
F	Interest on Working Capital (D*E)	0.36	5.90

Annual Fixed Charges for the 2019-24 Tariff Period

102. The transmission charges allowed for the transmission asset for the 2019-24 tariff period are as under:

(₹ in lakh)

Particulars	2022-23 (Pro-rata 27 days)	2023-24
Depreciation	5.84	85.57
Interest on Loan	5.11	71.17
Return on Equity	6.00	87.22
O&M Expenses	3.69	51.67
Interest on Working Capital	0.36	5.90
Total	21.00	301.53

Filing Fee and the Publication Expenses

103. The Petitioner has sought reimbursement of the fees it paid for filing the Petition and for publication expenses. The Petitioner shall be entitled to reimbursement of the filing fees and publication expenses in connection with the present Petition, directly from the beneficiaries on a pro-rata basis in accordance with Regulation 70(1) of the 2019 Tariff Regulations.

Licence Fee & RLDC Fees and Charges

104. The Petitioner shall be entitled to reimbursement of the licence fee in accordance with Regulation 70(4) of the 2019 Tariff Regulations for the 2019-24 tariff



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

Goods and Services Tax

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

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

Security Expenses

107. The Petitioner has submitted that security expenses related to the transmission asset are not claimed in the instant Petition. It will file a separate Petition to claim the overall security expenses and the consequential IWC as per Regulation 35(3)(c) of the 2019 Tariff Regulations.

108. We have considered the Petitioner's submissions. The Petitioner has claimed consolidated security expenses for the transmission asset owned by it on a projected basis for the 2019-24 tariff period based on actual security expenses incurred in FY 2018-19 in Petition No. 260/MP/2020. The Commission vide order dated 3.8.2021 has already disposed of the said Petition. Therefore, the Petitioner's prayer in the instant



Petition for allowing it to file a separate Petition for claiming the overall security expenses and consequential IWC has become infructuous.

Capital Spares

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

Sharing of Transmission Charges

110. The Petitioner has submitted that the tariff for transmission of electricity for the 2019-24 tariff period shall be recovered on a monthly basis in accordance with Regulation 57 of the 2019 Tariff Regulations and shall be shared by the beneficiaries and long-term transmission customers as per the 2020 Sharing Regulations or as amended from time to time.

111. NRSS has made the following submissions:

(a) The 2019 Tariff Regulations and the 2020 Sharing Regulations are not applicable to NRSS:

(i) The 2019 Tariff Regulations are only applicable to the projects which are set up under Section 62 of the Act and do not apply to the projects which are set up under Section 63 of the Act. Therefore, the transmission system of one licensee and its inter-connected transmission system of another licensee both have to be under Section 62 of the Act, to attract the applicability of the 2019 Tariff Regulations. Further, Regulation 2(2) of the 2019 Tariff Regulations is noteworthy, as it restricts the application of the 2019 Tariff Regulations only to Section 62 projects and specifically excludes Section 63 projects.

(ii) The liability of transmission charges due to a mismatch in commissioning of the 400 kV D/C Line with Petitioner's bays cannot be put on NRSS, due to the fact that, as per the applicable Regulation 57 of the 2019 Tariff Regulations and 2010 Sharing Regulations does not mention about mismatch issue. However,



the Commission has issued the 2020 Sharing Regulations with effect from 1.11.2020, which introduces for the first time, the liability of transmission charges upon the delaying entity during the period of mismatch in commissioning of its transmission system.

(iii) The Letter of Intent (“LOI”) for the NRSS Project was issued only on 28.3.2016, and at that period the 2010 Sharing Regulations were in force. Pertinently, the 2010 Sharing Regulations do not provide for recovery of transmission charges from the defaulting entity in the event of a mismatch in the COD of the transmission elements of two transmission licensees. NRSS has submitted that the 2010 Sharing Regulations do not contain any provision equivalent to Regulation 13(12) of the 2020 Sharing Regulations. Further, NRSS was not aware at the time of bidding for this project that it would be required to make payment of ‘transmission charges’ over and above the liquidated damages as contemplated under the bid and the TSA. Such a mechanism was introduced by the Commission in Regulation 13(12) of the 2020 Sharing Regulations, which came into effect on 1.11.2020.

(iv) W.e.f. 1.11.2023, the Commission has notified the 2nd Amendment to the 2020 Sharing Regulations (2023 Sharing Regulations). Sub clause (e) of Regulation 13(12) of the 2023 Sharing Regulation states that in case of a mismatch, the inter-State transmission licensee of the delayed inter-State transmission system shall pay 50% of Yearly Transmission Charges (YTC) of its transmission system or 50% of YTC of the transmission system which has achieved the deemed COD, whichever is lower, till its delayed inter-State transmission system achieve the COD. Reliance has been placed upon the Explanatory Memorandum of the 2023 Sharing Regulations. The Commission, while issuing the Explanatory Memorandum of the 2023 Sharing Regulations, had itself noted that the licensee, which is facing a delay due to *Force Majeure* events, should not be levied full transmission charges. Therefore, the annual transmission charges claimed by Petitioner are not in accordance with the 2023 Sharing Regulations and should not be allowed.

(b) The Commission vide order dated 14.11.2022 in Petition No. 266/MP/2022 has granted liberty to seek extension of SCOD due to Force Majeure:



(v) The Commission, vide order dated 14.11.2022, passed in Petition No. 266/MP/2022, has taken note of the surrounding *Force Majeure* events faced by NRSS and further observed that Resurgent had taken over a stressed asset. Further, the Commission granted time to Resurgent to complete the project which has been taken over from Essel. In addition to the same, the Commission also passed an order restraining Long Term Transmission Customers (“LTTCs”) from taking any coercive steps regarding the pending completion of the project under the TSA. The Commission, in deciding Petition No. 266/MP/2022, has most graciously given impetus to an ailing stranded asset. However, for reasons explained above, if the liability for transmission charges is now imposed on NRSS by exercising Regulations 13(12) of the 2020 Sharing Regulations, then the purpose of the order dated 14.11.2022 would stand defeated. NRSS has further submitted that if the Commission imposes any liability upon NRSS in terms of the 2020 Sharing Regulations and allows the prayers as sought by the Petitioner in terms of Regulation 5(2) of the 2019 Tariff Regulations, that will ultimately defeat the purpose of the order passed by the Commission in Petition No. 266/MP/2022.

(c) No privity of contract between the Petitioner and NRSS:

(vi) There is no contractual relationship between the Petitioner and NRSS in the present case, which governed the rights and obligations inter se parties. NRSS had executed the TSA with the beneficiaries of the transmission system, which governs the relationship between NRSS and it provides for *inter-se* rights, duties, liabilities, and responsibilities of NRSS and LTTCs. The said TSA provides a mechanism for payment of liquidated damages on account of failure of NRSS to achieve the COD by the SCOD. Therefore, all the liabilities qua delayed in commissioning of the NRSS transmission asset shall be governed through TSA only. Further, the 2020 Sharing Regulations, which for the first time introduced the concept of liability for the associated transmission line, did not expressly amend the TSA executed between NRSS and its LTTCs. TSA executed between NRSS and its LTTCs is a complete contract, and the liability upon the delayed transmission line will only be applicable to those TSAs which are executed post 1.11.2020 (i.e., when the 2020 Sharing Regulations were introduced) or have



factored in the changes brought through the 2020 Sharing Regulations. NRSS's TSA was executed on 13.1.2016, and no amendments to the TSA were brought to factor in the changes which were introduced through the Sharing Regulations 2020. Reliance has been placed upon the judgment passed by the Hon'ble Supreme Court of India in the case of '*Gujarat Urja Vikas Nigam Limited and Ors. vs. Renew Wind Energy (Rajkot) Pvt. Ltd. and Ors.* [2023 SCC OnLine SC 411], wherein the Hon'ble Supreme Court, while examining the scope and extent of PTC India Ltd. vs. CERC and Ors. [AIR 2010 SC 1338] held that "if any later amendment expressly overrides existing contracts, then the terms of such agreement bind the parties".

112. In response, the Petitioner has submitted as under:

(a) Regarding the NRSS's claim that the 2019 Tariff Regulations and the 2020 Sharing Regulations are not applicable to NRSS

(i) It is evident from the 2020 Sharing Regulations and 2019 Tariff Regulations, that wherever there is an issue of mismatch between the two transmission licensees, then from the date of the deemed COD to the actual COD of the associated transmission line (the party which has delayed in achieving the COD) has to pay the transmission charges for the said mismatch period. The said provisions are aimed at safeguarding the financial interests of the transmission licensee, which achieved COD on time, and the asset has been stranded for no fault of theirs. The APTEL in the FBTL Judgment has acknowledged the fact that the Regulations do not make any difference between the transmission project and the routes under Section 62 and Section 63 .

(ii) Further, NRSS issues are in contravention of the statutory mandate given under the 2019 Tariff Regulations and the 2020 Sharing Regulations. The Petitioner cannot be penalised or not allowed the transmission charges for the mismatch period merely because NRSS was at fault and not able to complete the 400 kV D/C line within the given timeline. The Petitioner has submitted that the inability of NRSS to factor in risk/ cost allocation, towards future liability of transmission charges being imposed for the delay in commissioning its transmission asset, at the time of bid submission, does not absolve it to avoid



the liability imposed on it by law (i.e., the 2019 Tariff Regulations and the 2020 Sharing Regulations are subordinate legislation having the force of law).

113. The Petitioner, vide affidavit dated 6.11.2024, has further submitted that in the present case, the 2019 Tariff Regulations and the 2020 Sharing Regulations read with the judgment dated 2.5.2023 of the Fatehgarh Bhadla Transmission Company Limited v. Central Electricity Regulatory Commission & Ors. (2023 SCC Online APTEL 16) (FBTL Judgment) pronounced by the APTEL provide a clear basis for the Petitioner's position with regard to the declaration of the deemed COD under Regulation 5(2) of the 2019 Tariff Regulations as well as recovery of the transmission charges during the mismatch period due to the delays caused by another transmission licensee, i.e., NRSS, in the present case. The statutory provisions as well as the judgment of the APTEL are summarised as under:

i. Regulation 5(2) of the 2019 Tariff Regulations specifically provides for the deemed COD declaration when a transmission system is ready, but an interconnected licensee or generating company delays. This regulation ensures that the licensee, having completed the work, is entitled to seek recovery of its charges even if the interconnected assets are delayed.

ii. Regulation 6 of the 2019 Tariff Regulations addresses the treatment of mismatches in COD between interconnected transmission assets. It mandates that the party responsible for the delay bears the transmission charges, protecting the interest of the licensee that completed its asset on time. This regulation applies equally to projects completed under Section 62 and Section 63 of the Act, as established in the FBTL Judgment, which emphasises that the delaying licensee's obligation to pay for the mismatch charges is independent of the tariff determination route.



iii.Regulation 13(12) of the 2020 Sharing Regulations further reinforces the above, stating that for the assets with a deemed COD, transmission charges are payable by the delayed licensee.

iv.FBTL Judgment: The judgment noted that the 2019 Tariff Regulations, as well as the 2020 Sharing Regulations, address situations of delay by mandating compensation from the defaulting licensee, securing the investment and financial interests of the licensee, which completed its scope in time. Further, the readiness of the transmission assets entitles the completing licensee to recover the transmission charges from the delayed party, even if the power has not yet flowed to the beneficiaries. These provisions apply regardless of any separate provisions for liquidated damages under the TSA. The Judgment rules that all obligations arising under law remain binding even if the delayed party did not account for these in its bid.

(b) Regarding the NRSS's claim that the Commission vide order dated 14.11.2022 in Petition No. 266/MP/2022 has granted liberty to seek extension of SCOD due to Force Majeure Events

(v)The transmission asset in the instant Petition should be treated independently by the Commission and not in relation to any other proceedings. Further, the subject matter of Petition No. 266/MP/2022 is different from the subject matter in the instant petition. The extension of SCOD as allowed by the Commission is independent of the Petitioner's claims, and the same should be relied upon by NRSS qua the LTTCs and not the Petitioner. The Petitioner has further submitted that it is also relevant to note that the Commission in the *Force Majeure* extension Petition, i.e., vide its order dated 14.11.2022 for Petition No. 266/MP/2022, had directed NRSS to approach the Commission seeking *Force Majeure* relief after the completion of the project. Further, the Petitioner has submitted that the above-mentioned Petition and the result of the same are independent and ought not to



affect the rights of the Petitioner under Regulation 5 of the 2019 Tariff Regulations and Regulations 13(12)(a) of the Sharing Regulations 2020.

(c) Regarding the NRSS's claim that there was no privity of contract between the Petitioner and NRSS

(vi) It is trite law that the Regulations made under Section 178 of the Act will override existing contracts [PTC India Ltd. v. CERC [(2010) 4 SCC 603 (PTC Judgment)] and the same were made to protect the interest of the transmission licensees, involved in commissioning of the transmission asset as a part of an integrated transmission system who had no contractual relationship with the delaying transmission licensee or the generating unit. These regulations are statutory in character and have the force of law; they would govern even in situations where there is no contractual relationship between the regulated entities, as they are binding on all of them, irrespective of whether they are parties to a contract. In this regard, the following are relevant:

- The right of the Petitioner to recover transmission charges from the beneficiaries/consumers, and the latter's liability for payment of transmission charges, would arise only when they start receiving power through the commissioned interconnected 400 kV D/C Line.
- Failure to pay transmission charges to the transmission licensee, whose asset has achieved the COD, would require them to bear the loss for this period, for no fault of theirs, either. As there is no contractual arrangement between the two transmission licensees, there is no contractual mode of compensation for the loss suffered. Accordingly, to resolve this issue, the provisions, i.e., Regulation 5(2) and 6(2) of the 2019 Tariff Regulations, and Regulation 13(12) of the 2020 Sharing



Regulations, make the delaying licensee liable to compensate the other licensee for their delay in commissioning their transmission asset.

- The Petitioner has nothing to do with the TSA of NRSS with its beneficiaries and cannot be governed by the TSA.
- At Para 58 of the FBTL Judgment, the APTEL has specifically held that even if there is no contract between the parties, the provisions of the 2019 Tariff Regulations and the 2020 Sharing Regulations will govern the relationship between the parties.

(d) Further, in response to the contentions by NRSS during the hearing dated 23.10.2024

(vii) The principles decided in the PTC Judgment have somehow been diluted by the Gujarat Urja Vikas Nigam Limited v. Renew Wind Energy (Rajkot) Private Limited and Others (2023 SCC OnLine SC 411) (Gujarat Urja). Apart from this being impossible since the PTC Judgment is decided by a Constitutional Bench of the Hon'ble Supreme Court, in any event, the Hon'ble Supreme Court in Gujarat Urja has not deviated from the principles decided in the PTC Judgment. Both in the SOR to the 2019 Tariff Regulations and the 2020 Sharing Regulations, the Commission has held that the aim is to remedy the situation of a mismatch in two transmission assets.

114. The APTEL finds that the objective and purpose of notifying the 2019 Tariff Regulations was to remedy the situation of a mismatch between two licensees. This also supports the view taken by the Hon'ble Supreme Court of India in Gujarat Urja, namely, that a new Regulation or an amendment to the Regulation must be enacted with the objective of dealing with a particular situation.



Analysis and Decision

115. We have considered the Petitioner's and NRSS submissions and have also gone through the documents on record. In the instant Petition, we have approved the COD of the transmission asset as 5.3.2023 under Regulation 5(2) of the 2019 Tariff Regulations, as the associated transmission asset of NRSS was not ready. The Petitioner has submitted that the tariff for the transmission of electricity for the 2019-24 tariff period will be recovered on a monthly basis in accordance with Regulation 57 of the 2019 Tariff Regulations and will be shared by the beneficiaries and long-term transmission customers as per the 2020 Sharing Regulations or as amended from time to time. With effect from 1.11.2020, the sharing of the transmission charges shall be governed by the 2020 Sharing Regulations. Regulation 13(12) of the 2020 Sharing Regulations provides as under:

"13. Treatment of transmission charges and losses in specific cases

.....

(12) in case of a transmission system where COD has been approved in terms of provision (ii) of Clause (3) of Regulation 4 of the Tariff Regulation 2014 or Clause (2) of Regulation 5 of the Tariff Regulation, 2019 or where deemed COD has been declared in terms of Transmission Service Agreement under Tariff Based Competitive Bidding, the Yearly Transmission Charges for the transmission system shall be:

- (a) paid by the inter-state transmission licensee whose transmission system is delayed till its transmission system achieves COD, or*
- (b) paid by the generating station or units thereof is delayed, till the generating station of unit thereof, achieves COD, or*
- (c) shared in manner as decided by the commission on case to case basis, where more than one inter-state transmission licensee is involved or both transmission system and generating station are delayed.*

116. Regulation 13(12) of the 2020 Sharing Regulations was amended and substituted vide the second amendment to the 2020 Sharing Regulations, and the same has been extracted as under:

"(12) For the cases other than those covered under Clauses (3), (6) or (9) of Regulation 13 of these regulations, the YTC for the inter-State transmission system



or element thereof approved or declared as deemed COD shall be treated as follows:

- (a) The inter-State transmission licensee shall be paid 50% of YTC of its inter-State transmission system for a period of six (6) months from the date of deemed COD or till the commencement of actual power flow, whichever is earlier.
- (b) The inter-State transmission licensee shall be paid 100% of YTC of its inter-State transmission system from the seventh (7th) month till commencement of actual power flow, in case actual power flow does not commence within a period of 6 months from the date of deemed COD.
- (c) The charges under sub-clauses (a) and (b) of this Clause shall be disbursed from charges collected in terms of Clause (3) of Regulation 12 of these regulations:

Provided that in case of shortfall in the collection in terms of Clause (3) of Regulation 12 of these regulations, to meet the requirement of payment under sub-clauses (a) and (b) of this Regulation, the balance shall be paid from charges collected under T-GNA and TGNA_{RE} in terms of Clause (3) of Regulation 11 of these regulations:

Provided further that in case of shortfall in charges collected under T-GNA and TGNA_{RE} to meet the requirement of payment under sub-clauses (a) and (b) of this Regulation, the balance shall be paid from Deviation and Ancillary Service Pool Account under DSM Regulations.

- (d) Sub-clause (a), (b) and (c) of this Clause shall not be applicable for transmission elements covered under Transformer component (as defined under Regulation 7 of these regulations) which shall be billed to respective drawee DIC of the State from the date of deemed COD. In case of non-availability of separate Yearly Transmission Charges of such transmission elements covered under transformer component, the same shall be worked out by CTU in terms of Regulation 7(1) of these regulations.
- (e) In case an inter-State transmission licensee is responsible for the delay in commencement of power flow in the inter-State transmission system of another inter-State transmission licensee which has achieved deemed COD, inter-State transmission licensee of the delayed inter-State transmission system shall pay 50% of YTC of its transmission system **OR** 50% of YTC of the transmission system which has achieved deemed COD, whichever is lower, till its delayed inter-State transmission system achieves COD:

Provided that the liability of the delayed inter-State transmission licensee under this Clause shall not be affected, notwithstanding any provisions to the contrary in the Transmission Service Agreement or any other Agreement in force between the parties:

Provided further that if the delayed inter-State transmission licensee is levied liquidated damages for delay in completion of the transmission system in terms of the Transmission Service Agreement entered into with CTUIL, the amount of liquidated damages paid by such inter-State



transmission licensee to CTU shall be offset to the extent of liability of the delayed inter-State transmission licensees in terms of this Clause and the balance amount, if any, shall be credited into Regional Transmission Deviation account under Clause (3) of Regulation 12 of these regulations.

- (f) *In case an intra-State transmission licensee is responsible for the delay in commencement of power flow in the inter-State transmission system which has achieved deemed COD, such intra-State transmission licensee of the delayed intra-State transmission system shall pay 50% of YTC of the delayed intra-State transmission system **OR** 50% of YTC of the inter-State transmission system which has achieved deemed COD (excluding transmission elements covered under sub-clause (d) of this Clause), whichever is lower, till the delayed intra-State transmission system achieves COD:*

Provided that in case of transmission elements covered under sub-clause (d) of this Clause, charges under this sub-clause shall not be levied on the intra-State transmission licensee:

Provided further that where YTC of the delayed intra-State transmission system is not available, CTU shall work out the YTC for such intra-State transmission system, for the purpose of this clause, based on the indicative capital cost of similar configuration in the inter-State transmission system.

- (g) *The billing and collection of the charges in terms of sub-clauses (e) and (f) of this Clause shall be made in accordance with Clause (3) of Regulation 15 of these regulations.*
- (h) *The charges collected as per sub-clause (g) of this Clause shall be reimbursed in terms of Clause (3) of Regulation 12 of these regulations.*
- (i) *In case of inter-State transmission system under Tariff based Competitive Bidding, the first contract year shall commence from the date when such transmission licensee starts receiving 100% of YTC under sub-clause (b) of this Clause or under Regulations 5 to 8 of these regulations.”*

117. The 2020 Sharing Regulations do not distinguish between a transmission project implemented under the RTM route and the TBCB route, and they apply evenly to all transmission projects. Further, in the instant Petition, the COD of the transmission asset has been approved as 5.3.2023 under Regulation 5(2) of the 2019 Tariff Regulations and, therefore, as per Regulation 13(12) of the 2020 Sharing Regulations, the YTC of the transmission system shall be paid by the inter-State transmission licensee, whose transmission system is delayed till its transmission



system achieves the COD. The mismatch period for the instant transmission asset is 5.3.2023 till the COD of the Koteswar Pooling Station-Rishikesh 400 kV D/C (HTLS) line. As per the provisions of the 2020 Sharing Regulations, the mismatch period can be divided into period 1, i.e., from 5.3.2023 to 31.10.2023 and period 2, i.e, from 1.11.2023 till the COD of the Koteswar Pooling Station-Rishikesh 400 kV D/C (HTLS) line. The YTC of the transmission asset shall be recovered in a manner as depicted below:

Period	5.3.2023 to 31.10.2023	1.11.2023 to till COD of Koteswar Pooling Station-Rishikesh 400 kV D/C (HTLS) line	From the date of the COD of Koteswar Pooling Station-Rishikesh 400 kV D/C (HTLS) line
Recovery of YTC of the transmission asset of the Petitioner	100% from NRSS	100% YTC as per Regulation 13(12) of the 2020 Sharing Regulations	In accordance with Regulations 5 to 8 of the 2020 Sharing Regulations
Recovery from NRSS	100% YTC of the transmission asset	50% YTC of the transmission asset or 50 % YTC of Koteswar Pooling Station-Rishikesh 400 kV D/C (HTLS) line, whichever is lower	NIL

118. Further, NRSS had filed Petition No. 266/MP/2022 for extension of the SCOD on account of '*Force Majeure Events and Change in Law*' with respect to Element-1 to Element-3 of the transmission system for "*System Strengthening Scheme in Northern Region (NRSS-XXXVI) along with LILO of Sikar-Neemrana 400 kV D/C line at Babai (RRVPL)*". The part of Element-3, i.e., Koteswar Pooling Station-Rishikesh 400 kV D/C (HTLS) line, is the downstream network of the transmission asset considered under the instant Petition. In Petition No. 266/MP/2022, NRSS had sought extension of the SCOD on account of delay due to non-issuance of NOC by the instrumentalities of Uttarakhand as required for processing the forest clearance, change in line route as per the instruction of the concerned Forest Department, due



to the change in connection arrangement at Power Transmission Corporation of Uttarakhand Limited Rishikesh Sub-station and owing to demonetization causing considerable reduction in the number of labours at the site and affecting execution of work at the site. The Commission, in order dated 14.11.2022 in Petition No. 266/MP/2022, regarding the extension on account of the *Force Majeure* events observed as under:

“14. It is observed that the events cited above are still continuing and the Petitioner has approached the commission for declaration of these events as force majeure events and requested for extension of SCOD of the project in advance. Only Element -1 has been completed. Therefore, we are of the view that since the project has not been completed by the Petitioner till date and is still under implementation, it would not be appropriate to take a view at this stage on the claimed force majeure, Change in Law issues and extension of SCOD. Accordingly, the Petitioner is granted liberty to approach the commission to seek the appropriate relief for force majeure events, after completion of the project”.

119. Therefore, in view of the above, the Commission had not approved the extension of the SCOD due to *Force Majeure* events. However, as the transmission system has not yet been completed, the NRSS is granted the liberty to approach the Commission and seek the appropriate relief for *force majeure* events, after the completion of the project, as per law. Further, the Commission, in an order dated 26.4.2022, in Petition No. 60/TT/2017, with respect to the mismatch arising due to the *force majeure* events observed as under:

“67. Hence the principle has been followed consistently that even if under Force Majeure delay is condoned or SCOD is extended by the Commission, the Liability of upstream/downstream system remains on such delayed transmission licensee.”

120. The Commission is of the consistent view that even if the time overrun in the case of the associated upstream/downstream elements is condoned due to force majeure events, the entity responsible for the delay in implementation of the associated upstream/downstream element is liable to bear the transmission charges



for the period of mismatch. Accordingly, the Commission did not provide for any exemption from the payment of transmission charges, even in the event of *force majeure* conditions.

121. The downstream transmission system of NRSS associated with the instant transmission asset has clearly not yet achieved the COD. Considering the aforementioned facts, we are of the view that NRSS shall bear the transmission charges for the delayed period. Thereafter, it will be shared as per Regulations 5 to 8 of the 2020 Sharing Regulations. After the COD of the associated downstream transmission line, the billing, collection, and disbursement of the transmission charges shall be governed by the provisions of the 2020 Sharing Regulations and subsequent amendments, time to time, as provided in Regulation 57 of the 2019 Tariff Regulations.

122. To summarise, the AFC claimed and allowed for the transmission asset for the 2019-24 tariff period in this order is as under:

Particulars	(₹ in lakh)	
	2022-23 (Pro-rata 27 days)	2023-24
AFC Claimed	22.42	330.06
AFC Allowed	21.00	301.53

123. The Annexure to this order form part of the order.

124. This order disposes of Petition No. 327/TT/2023 in terms of the above findings and discussions.

sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V.)
Member

sd/-
(Jishnu Barua)
Chairperson



ANNEXURE

2019-24	Admitted Capital Cost as on 1.4.2019 (₹ in lakh)	ACE (in lakh)			Admitted Capital Cost as on 31.3.2024 (₹ in lakh)	Rate of Depreciation as per Regulations (in %)	Annual Depreciation as per Regulations (₹ in lakh)	
Capital Expenditure		2022-23	2023-24	Total			2022-23	2023-24
Building Civil Works & Colony	64.04	-	42.89	42.89	106.93	3.34	2.14	2.86
Sub-station	1129.99	65.42	14.05	79.47	1209.46	5.28	61.39	63.49
PLCC	188.80	2.32	74.24	76.56	265.36	6.33	12.02	14.45
IT Equipment (Incl. Software)	22.86	-	17.92	17.92	40.78	15.00	3.43	4.77
Total	1405.69	67.74	149.10	216.84	1622.53		78.98	85.56
Average Gross Block (₹ in lakh)							1439.56	1547.98
Weighted Average Rate of Depreciation (in %)							5.49	5.53

