

**Central Electricity Regulatory Commission
New Delhi**

Petition No. 329/TT/2023

Coram:

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

Date of Order: 17.02.2025

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 the determination of transmission tariff from COD to 31.3.2024 for a transmission asset, namely, 2 Nos. 132 kV GIS line bays at Nirjuli Sub-station for termination of LILO of one circuit of Pare HEP – North Lakhimpur (AEGCL) 132 kV D/C line (Line works under TBCB) under “North Eastern Region Strengthening Scheme-IX”.

And in the matter of:

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

...Petitioner

Vs.

- 1. Assam Electricity Grid Corporation Limited,**
Bijulee Bhawan, Paltan Bazar,
Guwahati – 781001, Assam.
- 2. Meghalaya Energy Corporation Limited,**
Short Round Road, “Lumjingshai”
Shillong – 793001, Meghalaya.
- 3. Government of Arunachal Pradesh,**
Itanagar, Arunachal Pradesh.
- 4. Power and Electricity Department,**
Government of Mizoram,
Aizawl, Mizoram.
- 5. Manipur State Power Distribution Corporation Limited,**
Keishampat, Imphal.
- 6. Department of Power,**
Government of Nagaland,
Kohima, Nagaland.



7. Tripura State Electricity Corporation Limited,
Vidyut Bhawan, North Banamalipur,
Agartala, Tripura (W) – 799001, Tripura.

8. Mumbai Urja Marg Limited (MUML),
(Formerly Vapi-II North Lakhimpur Transmission Limited)
DLF Cyber Park, Block B 09th Floor,
Udhog Vihar, Phase -III, Sector-20,
Gurugram- 122001.

...Respondents

Parties Present : Mrs. Swapna Seshadri, Advocate, PGCIL
Shri Utkarsh Singh, Advocate, PGCIL
Ms. Sneha, Advocate, PGCIL
Shri Gaurav Dudeja, Advocate, MUML
Shri Dhruval Singh, Advocate, MUML
Shri Mohd. Mohsin, PGCIL
Shri Zafrul Hasan, PGCIL
Shri Arjun Malhotra, PGCIL

ORDER

The instant Petition has been filed by Power Grid Corporation of India Limited (hereinafter referred to as “the Petitioner”), a deemed transmission licensee, for the determination of 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 date of commercial operation (COD) to 31.3.2024 in respect of a transmission asset, namely, 2 Nos. 132 kV GIS line bays at Nirjuli Sub-station for termination of LILO of one circuit of Pare HEP - North Lakhimpur (AEGCL) 132 kV D/C line (Line works under TBCB) (hereinafter referred to as “the transmission asset”) under “North Eastern Region Strengthening Scheme-IX” (hereinafter referred to as “the transmission scheme”).

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

- 1) *“Approve the proposed DOCO under clause 5(2) of Tariff Regulation, 2019 as explained at para 6.20.*
- 2) *Admit the capital cost as claimed in the Petition and approve the Additional Capitalization incurred / projected to be incurred.*



- 3) *Approve the Transmission Tariff for the tariff block 2019-24 block for the assets covered under this petition, as para -8.4 above.*
- 4) *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 8.40 above for respective block.*
- 5) *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.*
- 6) *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.*
- 7) *Allow the petitioner to bill and adjust impact on Interest on Loan due to change in Interest rate on account of floating rate of interest applicable during 2019-24 period, if any, from the beneficiaries.*
- 8) *Allow the petitioner to file a separate petition before Hon'ble Commission for claiming the overall security expenses and consequential IOWC on that security expenses as mentioned at para 8.9 above.*
- 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 the 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) of the transmission scheme was accorded by the competent authority of the Petitioner, vide Memorandum No. C/CP/PA2021-12-0AI-IA015 dated 30.3.2021, at an estimated cost of ₹742



lakh, including an Interest During Construction (IDC) of ₹36 lakh based on the September 2020 price level. The scope of the transmission scheme was discussed and agreed upon in the 6th Standing Committee Meeting on Power System Planning in the North Eastern Region held on 3.10.2016. The same was also approved in the 17th TCC & 17th North Eastern Region Power Committee (NERPC) meetings held on 4.10.2016. Further, in the 2nd meeting of NERPC-Transmission Planning (TP) held on 25.9.2020, it was decided that the 2 Nos. 132 kV line bays at Nirjuli (POWERGRID) Sub-station under the transmission scheme for termination of the LILO of one circuit of Pare HEP-North Lakhimpur (AEGCL) 132 kV D/C line (with ACSR Zebra) at Nirjuli Sub-station (line works under TBCB) needs to be implemented as GIS bays.

b. The scope of work covered under the transmission scheme broadly includes:

Sub-station Extension

i) Extension works at Nirjuli 132/33 kV (POWERGRID) Sub-station

2 Nos. 132 kV GIS line bays at Nirjuli Sub-station for the termination of LILO of one circuit of Pare HEP-North Lakhimpur (AEGCL) 132 kV D/C line (with ACSR Zebra) as Nirjuli Sub-station- line works under TBCB.

c. The Petitioner has submitted that the transmission scheme is being implemented by the Petitioner, which comprises Sub-station extension works associated with Transmission Lines being executed by M/s Mumbai Urja Marg Limited (MUML), a subsidiary of M/s Sterlite Power Transmission Limited under the TBCB route. As per the IA, the extension works at Nirjuli GIS were scheduled to be commissioned within 26 months from the date of the IA, matching with the schedule of the respective TBCB line (i.e., by



30.5.2023). The details of the transmission asset, including scheduled commercial operation date (SCOD), COD, and time overrun, are as follows:

Asset Name	SCOD	COD	Time overrun
2 Nos. 132 kV GIS line bays at Nirjuli Sub-station for termination of LILO of one circuit of Pare HEP - North Lakhimpur (AEGCL) 132 kV D/C line (line works under TBCB)	30.5.2023	1.4.2023	Nil

4. The entire scope of the transmission scheme is completed and covered under the instant Petition.

5. The Respondents, mainly beneficiaries of the North-Eastern Region, are Distribution Licensees and Power Departments, which are procuring transmission services from the Petitioner.

6. The Petitioner has served a copy of the Petition on the Respondents, and notice regarding the filing of this Petition has also been published in newspapers in accordance with Section 64 of the Electricity Act, 2003. No comments or suggestions have been received from the general public in response to the aforesaid notice published in the newspapers by the Petitioner. Respondent No. 8, Mumbai Urja Marg Limited (MUML), vide affidavit dated 31.1.2024, has filed its reply and has *inter alia* raised the issues of COD and sharing of the transmission charges. The Petitioner has filed a rejoinder, vide affidavit dated 23.4.2024, in response to the reply filed by MUML. The Petitioner and MUML have also filed their respective written submissions on 16.5.2024 and 17.5.2024. The issues raised by MUML and the clarifications given by the Petitioner are considered in the relevant portions of this order.

7. The hearings in this matter were held on 20.12.2023 and 31.1.2024, and the final hearing was held on 29.4.2024, and the order was reserved. However, the order could not be issued before a Member of the Commission, who formed part of the Coram,



demitted office. The matter was re-listed for the hearing on 30.9.2024, and the order was reserved.

8. This order is being issued considering the submissions made by the Petitioner in the Petition dated 18.8.2023, the Petitioner’s affidavit dated 20.11.2023, the reply filed by MUML vide affidavit dated 31.1.2024, the Petitioner’s rejoinder vide affidavit dated 23.4.2024, the written submissions filed by the Petitioner and MUML on 16.5.2024 and 17.5.2024 respectively.

9. Having heard the Petitioner’s representatives and the learned counsels for the Petitioner and MUML and having perused the material on record, we proceed to dispose of the Petition.

DETERMINATION OF ANNUAL FIXED CHARGES FOR THE 2019-24 TARIFF PERIOD

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

(₹ in lakh)	
Particulars	2023-24
Depreciation	27.48
Interest on Loan	25.51
Return on Equity	29.33
Interest on Working Capital	2.35
O&M Expenses	25.84
Total	110.51

11. The Petitioner has claimed the following Interest on Working Capital (IWC) in respect of the transmission asset for the 2019-24 tariff period:

(₹ in lakh)	
Particulars	2023-24
O&M Expenses	2.15
Maintenance Spares	3.88
Receivables	13.59
Total Working Capital	19.62



Particulars	2023-24
Rate of Interest (In %)	12.00
Interest on Working Capital	2.35

Date of Commercial Operation (COD)

12. As per the IA dated 30.3.2021, the transmission scheme was scheduled to be commissioned within 26 months from the date of the IA, i.e., by 30.5.2023. The Petitioner, vide affidavit dated 20.11.2023, has submitted that the scope of works was completed by 31.3.2023 and has claimed the COD of the transmission asset as 1.4.2023 under Regulation 5(2) of the 2019 Tariff Regulations.

13. Regulation 5 of the 2019 Tariff Regulations provides as follows:

“5. Date of Commercial Operation: (1) *The date of commercial operation of a generating station or unit thereof or a transmission system or element thereof and associated communication system shall be determined in accordance with the provisions of the Grid Code.*

(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.”*



14. The Petitioner has submitted the Central Electricity Authority (CEA) approval letter dated 29.3.2023, the North Eastern Regional Load Despatch Centre (NERLDC) Certificate of Completion of Idle Charging dated 2.6.2023, and CMD's Certificate in support of the COD of the transmission asset.

Early Commissioning

15. The Petitioner has submitted that as per the agenda proposed by Mumbai Urja Marg Limited (MUML), a subsidiary of Sterlite Power Transmission Limited, in the 199th OCC meeting dated 22.2.2023, the following was agreed:

“---SCOD of the project is June 2023, but it is well poised to be commissioned by March, 2023. System studies revealed that this line will help in reducing overloading on some lines and improving voltage profile on the lines. Hence a request was made to NERLDC to undertake system studies and verify the requirement of these new lines to be operational before high hydro season (June'23). NERLDC stated that early commissioning of the system will certainly have positive effects on the grid as the low voltage issue at and around Dhemaji S/s of Assam is expected to be resolved after commissioning of 132 kV Pare- N. Lakhimpur D/c with one ckt LILO at Nirjuli. Also, connectivity at Nirjuli will increase leading to increased reliability at Nirjuli.”

16. Accordingly, the Petitioner has completed the scope of works by 31.3.2023 and proposed the COD with effect from 1.4.2023. However, the associated TBCB transmission line (LILO of one circuit of Pare HEP- North Lakhimpur (AEGCL) 132 kV D/C line at Nirjuli Sub-station), which was being implemented by MUML was not charged by March 2023. The Petitioner, vide affidavit dated 20.11.2023, has further submitted that as per the minutes of the 19th Joint Co-ordination Committee Meeting dated 11.10.2023 held on 22.9.2023, the associated TBCB line, i.e., LILO of one circuit of Pare HEP – North Lakhimpur (AEGCL) 132 kV D/C line (with ACSR Zebra) at Nirjuli (POWERGRID) Sub-station was commissioned with COD on 5.8.2023.

17. The Petitioner has submitted that the power flow in the Petitioner's scope of work could not be achieved due to the non-readiness of inter-connected transmission lines



of TBCB. Accordingly, approval of COD has been invoked under Regulation 5(2) of the 2019 Tariff Regulations.

18. MUML, in its reply, vide affidavit dated 31.1.2024, has submitted that in terms of the Transmission Services Agreement (TSA) dated 7.12.2018 executed by MUML with its Long-term Transmission Customers (LTTC), SCOD of the MUML's asset was 22.12.2023 and pertinently, the original SCOD of Part D of MUML's asset was 22.6.2023. The TSA was further amended by the parties by amendments to the TSA on 7.2.2019, 15.3.2019, and 9.4.2019. MUML has further submitted that the progress of its assets was hindered on account of the emergency measures imposed to curb the spread of the COVID-19 pandemic. In view of the same, the Ministry of Power (MoP), vide letters dated 27.7.2020 and 12.6.2021, granted a blanket 8-month extension to all the transmission projects. In view thereof, the SCOD of MUML's asset, including Part D of MUML's asset, stands extended and revised. MUML has further submitted that it duly commissioned Part D of MUML's asset on 5.8.2023 as per the MoP letters. MUML has further submitted that it (vide its letter dated 17.8.2023) informed the Petitioner, the LTTCs, and the coordinating agencies that Part D of MUML's asset was declared to be under commercial operation on 5.8.2023. MUML has further submitted that although the original SCOD of Part D of MUML's asset was 22.6.2023, which stood extended by the MoP letters, MUML made its best efforts to commission Part D of MUML's asset earlier. Despite the best efforts of MUML, there existed force majeure events/events beyond the control of MUML due to which MUML could not commission Part D of MUML's asset by March 2023, but the same was commissioned within revised SCOD as per the MoP letters. According to the MUML, the following uncontrollable events/force majeure events (in addition to the Covid-19 pandemic) affected Part D of MUML's assets:

- a. Right of Way (ROW) issue in 132 kV D/C LILO of one circuit of Pare HEP – North Lakhimpur (AEGCL) at Nirjuli (PGCIL):
 - i. The stringing activity was held up due to higher demand for compensation in the corridor of 48/0 to 48A/0 in Lekhi village;
 - ii. The stringing activity was held up due to higher demand for compensation in Tumru Village; and
 - iii. The stringing activity was held up due to higher demand for compensation at locations 34/0-35/0 (0.411 km).
- b. Severe ROW issues and unprecedented earth cutting near the tower at location 28/0 resulted in shifting of the tower; and
- c. Hindrances by local villagers in Tumro village.

19. MUML has submitted that it had informed the Petitioner and the LTTCs about the status of Part D of MUML's asset and above-stated uncontrollable issues/ force majeure events vide the Monthly Progress Reports (MPRs) to ensure that they are aware of the status of the transmission system. The MPRs are intended to help LTTCs/Petitioner identify any potential mismatches between their downstream assets. The purpose of the MPRs is to monitor the information the LTTCs/Petitioner can take appropriate measures to address any mismatches between their transmission asset and interconnection facilities to avoid any potential issues related to the transmission asset. Accordingly, MUML, vide its MPR for the month of March 2023, updated the Petitioner, the LTTCs, and the concerned authorities regarding the status of Part D and the occurrence of the aforesaid uncontrollable events/ force majeure events.

20. MUML, vide affidavit dated 31.1.2024 and written submissions dated 17.5.2024, has further *inter alia* raised the objections with respect to the approval of the COD of the Petitioner's asset and has submitted as under:

- a. In terms of Regulation 5(2) of the 2019 Tariff Regulations, a transmission licensee is only entitled to declare the COD when its transmission system/element is ready but the interconnected transmission system is not



ready as per its agreed project implementation schedule. In Regulation 5(2) of the 2019 Tariff Regulations, the reference to the agreed project implementation schedule of the other transmission licensee makes it clear that the COD of the transmission licensee cannot be before the SCOD of the other transmission licensee. As per Regulation 5(2) of the 2019 Tariff Regulations, the impacted transmission licensee has no locus to declare its deemed COD as a date before the SCOD of the interconnected transmission system.

- b. MUML has submitted that the first proviso to Regulation 5(2) of the 2019 Tariff Regulations requires the transmission licensee to provide a notice of at least one month to its DICs/ beneficiaries and other transmission licensees (including MUML) before the declaration of the COD. In the instant case, the Petitioner has failed to comply with this notice requirement for its asset. MUML has further submitted that the Petitioner had given the notice under the first proviso of Regulation 5(2) of the 2019 Tariff Regulations on 30.3.2023. However, the claimed COD of the Petitioner is 1.4.2023. Notably, the Petitioner failed to fulfil the complete notice period as stipulated in the 2019 Tariff Regulations, which is a mandatory requirement under the said Regulations.

21. The Petitioner, in response, vide affidavit dated 23.4.2024 and written submissions dated 16.5.2024, has submitted as follows:

- a. MUML's contention that the impacted transmission licensee has no locus to declare its deemed COD as a date before the SCOD of the inter-connected transmission system, as per Regulation 5(2) of the 2019 Tariff Regulations, is incorrect. Further, the Petitioner expedited the works in its scope and



declared COD as 1.4.2023 only after the representations and deliberations in the meetings and CEA monthly progress reports. The interpretation of Regulation 5(2) of the 2019 Tariff Regulations given by MUML is incorrect and has been done in order to wriggle out of the liability from the payment of transmission charges.

- b. The 2019 Tariff Regulations recognize a situation where the assets of one licensee may be ready while the interconnecting system of the other licensee may not be ready. A licensee, that comes in time, is entitled to seek a declaration of deemed COD under Regulation 5 of the 2019 Tariff Regulations. In the instant case, the assets were scheduled to be commissioned on 30.5.2023. However, in view of the deliberations and representation made in the 199th OCC meeting dated 22.2.2023 and MUML's representation made through various CEA monthly reports, the Petitioner commissioned its scope of work on 1.4.2023. The Petitioner has achieved the COD whereas the transmission asset under the scope of MUML was not commissioned on the claimed COD of the Petitioner. Accordingly, the Petitioner's asset could not be utilized despite its commissioning due to a delay in the completion/ commissioning of the asset under the scope of MUML. As a result, it was unable to provide services for reasons not attributable to itself.
- c. MUML's contention regarding the non-compliance of the first proviso to Regulation 5(2) of the 2019 Tariff Regulations by the Petitioner is hyper-technical in nature. Since it was MUML, which had asked Petitioner for an early commissioning in February 2023, stating that it would be ready in March 2022. If so, giving notice is an exercise in futility since the NERLDC sub-



committee, which has the presence of all parties, has taken this decision for early commissioning.

- d. Further, MUML has failed to showcase any prejudice that has been caused to MUML in the absence of the purported notice. The APTEL, in its judgment dated 2.5.2023 in Appeal No. 352 of 2022 titled Fatehghar Bhadla Transmission Company Limited v Central Electricity Regulatory Commission and Ors. ("FBTL judgment") has held that prejudice has to be shown to have been caused by non-observance of such notice under Regulation 5(2) of the 2019 Tariff Regulations.
- e. Alternatively, it cannot be said that there was no intimation or notice regarding COD. The deliberations for early commissioning for March 2023 happened on 22.2.2023 in the 199th OCC meetings, which is 36 days before the proposed pre-commissioning date. Further, MUML, through various CEA progress reports, had provided the anticipated COD date as March 2023. Considering the same, the Petitioner has aligned the COD of subject bays. In this regard, a letter dated 16.2.2023 was also written to CEA with a copy to MUML informing the anticipated implementation schedule of March 2023. The Petitioner has also sent the notice to MUML on 30.3.2023 under Regulation 5(2) for intimation of the COD for the transmission asset. Therefore, it cannot be said that there was no intimation or knowledge to MUML for COD for the transmission asset in the present case; rather, MUML had sent a constructive notice of the same.

Analysis and Decision on COD

22. The Petitioner is claiming the approval of its COD under Regulation 5(2) of the 2019 Tariff Regulations. MUML, in response, has contended that the Petitioner has not issued a notice of at least one month for the commissioning of the transmission asset in terms of the first proviso to Regulation 5(2) of the 2019 Tariff Regulations. The Petitioner in response, has submitted that MUML is raising hyper-technical objections since MUML had asked the Petitioner for an early commissioning in February 2023, stating that it would be ready in March 2023. If so, giving notice is an exercise in futility since the NERLDC sub-committee, which has the presence of all parties, has taken this decision for early commissioning.

23. We have considered the submissions of the Petitioner and MUML and have perused the record. As per Regulation 5(2) of the 2019 Tariff Regulations, the COD of a transmission system or an element thereof may be approved if the said system has been prevented from being put into regular service for reasons not attributable to the transmission licensee. In the instant case, the Petitioner has claimed approval of the COD of the transmission asset as 1.4.2023 under Regulation 5(2) of the 2019 Tariff Regulations as the associated transmission line under the scope of MUML was not ready on 1.4.2023. In support of the claimed COD of 1.4.2023, the Petitioner has placed on record copies of the CEA Energization Certificate, NERLDC Certificate of Completion of Trial Operation, self-declared COD letter, and CMD's certificate.

24. We are of the view that the Petitioner has complied with all the requirements for approving the COD as provided under Regulation 5(2) of the 2019 Tariff Regulations, like the CEA approval letter and CMD Certificate regarding the readiness of the transmission asset, except for the issue of "notice" to the associated transmission licensee. As per the first proviso of Regulation 5(2) of the 2019 Tariff Regulations, a



“notice” is required to be issued by the Petitioner to the associated transmission licensee one month before the COD is claimed. Thus, “issue of notice” is a statutory requirement as per the regulations. Further, it is a well-settled principle that if a statute provides for an act to be done in a particular manner, then it has to be done in that particular manner and not in any other manner. In the instant case, admittedly, it was issued only on 30.3.2023. Hence, the Petitioner is directed to ensure the compliance of statutory requirements as provided by the Regulations in future instances.

25. We are of the further view that since MUML has failed to show any prejudice that has been caused to MUML in the absence of the purported notice and the deliberations for the early commissioning happened on 22.2.2023 in the 199th OCC meetings held 36 days before the proposed pre-commissioning date. In this regard, a letter (Reference No. NESH/PESM/466/295) dated 16.2.2023 was also written to CEA with a copy to MUML. Further, we would like to refer to the APTEL’s FBTL judgement dated 2.5.2023 in Appeal No. 352 of 2022, wherein APTEL held that prejudice has to be shown to have been caused by non-observance of such notice under Regulation 5(2) of the 2019 Tariff Regulations. The relevant extract from the FBTL judgment is as under:

“B. Prejudice must be shown to have been caused by non-observance with the rules of natural justice:

117. *To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him by its non-observance. (Syndicate Bank v. Venkatesh Gururao Kurati, (2006) 3 SCC 150 : AIR 2006 SC 3542 and State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364 : AIR 1996 SC 1669). All that the courts have to see is whether non-observance of any of these principles in a given case is likely to have resulted in deflecting the course of justice. (State of U.P. v. Om Prakash Gupta, (1969) 3 SCC 775 : AIR 1970 SC 679; Gudimetla Venkata Reddy v. State of A.P., 2009 SCC OnLine AP 942)*

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120. *Except to claim that a notice, in terms of the first proviso to Regulation 5(1), has not been issued, the Appellant has not even contended that they had suffered prejudice thereby either before the CERC or even before this Tribunal. Even otherwise the Appellant, despite being given an opportunity of being heard before the CERC, has not even disputed the claim of PGCIL regarding commissioning of the transmission asset. We see no reason, in such circumstances, to interfere with the impugned Order on this score.”*



26. For the reasons cited above, we are of the view that there was enough intimation or knowledge to MUML with respect to the Petitioner's COD for the transmission asset in the instant Petition. Therefore, based on the detailed discussion above and taking into consideration the CEA approval letter dated 29.3.2023, NERLDC Certificate of Completion of Trial Operation dated 2.6.2023, and CMD Certificate, the COD of the transmission asset is approved as 1.4.2023 for the purpose of tariff determination in the instant Petition. The contentions of MUML regarding its liability for the payment of transmission charges have been dealt with in the relevant paragraphs of this order.

Capital Cost

27. 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 up to 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 up to the receiving end of generating station but does not include the transportation cost and any other appurtenant cost paid to the railway; and*
 - (f) *Capital cost incurred or projected to be incurred by a thermal generating station, on account of implementation of the norms under Perform, Achieve and Trade (PAT) scheme of Government of India shall be considered by the Commission subject to sharing of benefits accrued under the PAT scheme with the beneficiaries.*
- (4) *The capital cost in case of existing or new hydro generating station shall also include:*
- (a) *cost of approved rehabilitation and resettlement (R&R) plan of the project in conformity with National R&R Policy and R&R package as approved; and*
 - (b) *cost of the developer's 10% contribution towards Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY) and Deendayal Upadhyaya Gram Jyoti Yojana (DDUGJY) project in the affected area.*
- (5) *The following shall be excluded from the capital cost of the existing and new projects:*
- (a) *The assets forming part of the project, but not in use, as declared in the tariff petition;*
 - (b) *De-capitalised Assets after the date of commercial operation on account of replacement or removal on account of obsolescence or shifting from one project to another project:*

Provided that in case replacement of transmission asset is recommended by Regional Power Committee, such asset shall be 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.”*

28. The Petitioner, vide Auditor’s Certificate dated 26.7.2023, has claimed capital cost incurred as on the COD and Additional Capital Expenditure (ACE) projected to be incurred in respect of the transmission asset and the same are as follows:

Apportioned Approved Cost (As per FR)	Expenditure up to COD	Projected ACE			Estimated Completion Cost
		2023-24	2024-25	2025-26	
742.00	497.62	47.07	47.07	23.53	615.29

Cost Overrun

29. The Petitioner has submitted that the total apportioned approved cost as per the Feasibility Report (FR) is ₹742 lakh, and the estimated completion cost is ₹615.29 lakh. Thus, there is no cost overrun with regard to the transmission asset.

30. The Petitioner has submitted that there is an expected ACE of ₹47.07 lakh and ₹23.53 lakh in 2024-25 and 2025-26 respectively.

31. The Petitioner has submitted the item-wise reasons for cost variation between the approved cost (FR) and the estimated completion cost in Form-5, and the same are as under:

a. Cost variation in the Equipment Cost, including civil works (₹62.00 lakh):

The Petitioner has submitted that through an open competitive bidding process, the lowest possible market prices for required product/services/as per detailed designing is obtained, and contracts are awarded on the basis of the lowest evaluated eligible bidder on an overall basis. The best competitive



bid prices against tenders may vary as compared to the cost estimate depending upon prevailing market conditions, design, and site requirements. Whereas the estimates are prepared by the Petitioner as per well-defined procedures for cost estimate. The FR cost estimate is a broad indicative cost worked out generally on the basis of average unit rates of recently awarded contracts as a general practice. According to the Petitioner, the cost estimate of the project is on the basis of September, 2020 price level. Further, regarding variation in the cost of individual items in Sub-station packages, the packages under the subject scope of works comprise a large number of items, and the same are awarded through open competitive bidding. In the said bidding process, bids are received from multiple parties quoting different rates for various BOQ items under the said package. Further, the lowest bidder can be arrived at / evaluated on an overall basis only. Hence, item-wise unit prices in contracts and their variation over unit rate considered in FR estimates are beyond the control of the Petitioner.

b. IDC (₹32.00 lakh):

The Petitioner has submitted that the decrease in overall capital cost with respect to FR is due to a decrease in IDC and the decrease in IDC is attributable to variation in the rate of interest considered in FR v/s Actuals and deployment of funds based on actuals. It may be mentioned that in FR, IDC was calculated considering the rate of interest for domestic loans @9.75%. However, in actuality, the weighted average rate of interest of deployed loans is considered. The actual IDC accrued up to COD has been considered at the time of the claim of Tariff.



c. IEDC (₹33.00 lakh):

In the IA, IEDC, and contingency of 10.75% and 3% have been considered respectively, whereas based on the actual expenditure under the subject head, IEDC has been considered in the Auditor's Certificate.

32. We have considered the Petitioner's submissions. As compared to the apportioned FR-approved cost of ₹742 lakh, the estimated completion cost is ₹615.29 lakh, which is within the apportioned FR-approved capital cost. Therefore, there is no cost overrun with regard to the transmission asset.

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

33. The Petitioner has claimed IDC of the transmission asset covered in the instant Petition and has submitted the statement showing IDC claim, discharge of IDC liability in respect of the transmission asset as on COD and thereafter as under:

(₹ in lakh)		
IDC as per Auditor's Certificate	IDC discharged up to COD	IDC discharged during 2023-24
4.32	3.02	1.30

34. We have considered the Petitioner's submissions. As discussed above in this order, there is no time overrun in the commissioning of the transmission asset. Accordingly, the IDC on a cash basis up to the COD 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 the IDC liability up to COD and thereafter for the purpose of tariff determination in respect of the transmission asset subject to revision at the time of true-up is as follows:

(₹ in lakh)

IDC as per Auditor Certificate	IDC Disallowed Due to computational error	IDC Allowed	IDC Discharged up to COD	IDC discharged during 2023-24
4.32	0.00	4.32	3.02	1.30

35. Further, the Petitioner has claimed IEDC for the transmission asset as per the Auditor's Certificate. The Petitioner has further submitted that the entire amount of IEDC for the transmission asset has been discharged up to COD. We have considered the Petitioner's submissions. Accordingly, the IEDC claimed as per the Auditor's Certificate, the IEDC considered and discharged up to COD are as under:

(₹ in lakh)

IEDC as per Auditor Certificate (A)	IEDC Disallowed due to time over-run not condoned (B)	IEDC Allowed (C)=(A-B)
44.39	0.00	44.39

Initial Spares

36. Regulation 23(d) of the 2019 Tariff Regulations provides that Initial Spares shall be capitalised as a percentage of plant and machinery cost up to the cut-off date, subject to the 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%”*

37. The Initial Spares as claimed by the Petitioner in respect of the transmission asset as per the Auditor's Certificate are as under:



(₹ in lakh)

Particulars	Plant and machinery cost	Initial Spares claimed	Allowable Initial Spares	Ceiling as per the Regulation (In %)
Sub-station (GIS – Brownfield)	566.59	4.76	29.98	7.00

38. We have considered the Petitioner's submissions. The Initial Spares claimed by the Petitioner are within the ceiling of 7% as specified under the 2019 Tariff Regulations. Hence, there is no excess Initial Spares which has been claimed by the Petitioner for the transmission asset. The Initial Spares allowed in respect of the transmission asset, as per Regulation 23(d) of the 2019 Tariff Regulations, are as follows:

(₹ in lakh)

Particulars	Plant and Machinery Cost	Initial Spares claimed	Ceiling (In %)	Allowable Initial Spares	Allowed Initial Spares
	(A)	(B)	(C)	$D = [(A - B) * C / (100 - C)]$	[B-D], If B>D
Sub-station (GIS – Brownfield)	566.59	4.76	7.00	42.29	4.76

39. Accordingly, the capital cost as on the COD, considered for tariff computation in respect of the transmission asset, is as follows:

(₹ in lakh)

Capital Cost claimed as on COD (Auditor's Certificate) (A)	IDC disallowed due to time over-run not condoned (B)	Undischarged IDC as on COD (C)	IEDC disallowed (D)	Excess Initial Spares disallowed as on COD (E)	Capital Cost as on COD (F) = (A-B-C-D-E)
497.62	0.00	1.30	0.00	0.00	496.32

Additional Capital Expenditure (ACE)

40. Regulation 24 of the 2019 Tariff Regulations provides as under:

“24. Additional Capitalisation within the original scope and up to 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.”

41. The Petitioner has claimed that the ACE incurred/ projected to be incurred is mainly on account of balance/ retention payments and unexecuted work, and hence the same is claimed under Regulations 24(1)(a) and 24(1)(b) of the 2019 Tariff Regulations. The ACE claimed by the Petitioner in respect of the transmission asset up to 31.3.2024 is as under:

(₹ in lakh)

Projected ACE 2019-24	
2023-24	
Asset	47.07

42. The Petitioner has submitted the following liability flow statement in respect of the transmission asset:

(₹ in lakh)

Head-wise / Party-wise	Particulars	Out-standing liability as on COD	Liability Discharge Regulation 24(1)(a)				Addition to Gross Block (Unexecuted Work) Regulation 24(1)(b)				Out-standing Liability as on COD
			2023-24	2024-25	2025-26	Total (23-26)	2023-24	2024-25	2025-26	Total (23-26)	
M/S Siddhartha Engineering Limited	Sub-station/ Bays	117.67	17.65	17.65	8.83	44.13	29.42	29.42	14.71	73.54	117.67
Total		117.67	17.65	17.65	8.83	44.13	29.42	29.42	14.71	73.54	117.67



43. We have considered the Petitioner's submissions. The projected ACE claimed by the Petitioner for the FY 2023-24 towards unexecuted work and discharge of liability is allowed in terms of Regulations 24(1)(a) and 24(1)(b) of the 2019 Tariff Regulations.

(₹ in lakh)		
Particulars	Regulations	ACE Allowed
		2023-24
Balance and Retention Payments other than IDC	Regulation 24(1)(a) of the 2019 Tariff Regulations	17.65
Addition in Gross Block	Regulation 24(1)(b) of the 2019 Tariff Regulations	29.42
IDC Discharged after COD		1.30
Total		48.37

44. Since the COD of the transmission asset is 1.4.2023, and the cut-off date of the transmission scheme is 30.4.2026, the projected ACE in 2024-25 and 2025-26 is not allowed, and the same will be dealt with in the 2024-29 tariff period as per the applicable tariff regulations.

45. We have considered the Petitioner's submissions. The ACE claimed by the Petitioner has been allowed in terms of Regulation 24(1)(a) and 24(1)(b) of the 2019 Tariff Regulations on account of balance and retention payments for works already executed. Accordingly, the capital cost allowed in respect of the transmission asset for the 2019-24 tariff period is as follows:

(₹ in lakh)			
Apportioned Approved Cost (FR)	Cost as on COD	Projected ACE 2019-24	Capital Cost as on 31.3.2024
		2023-24	
742.00	496.32	48.37	544.69

Debt-Equity ratio

46. 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.”*

47. The debt-equity considered for the purpose of computation of tariff for the 2019-24 tariff period in respect of the transmission asset is as follows:



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	347.42	70.00	33.86	70.00	381.28	70.00
Equity	148.90	30.00	14.51	30.00	163.41	30.00
Total	496.32	100.00	48.37	100.00	544.69	100.00

Depreciation

48. 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 up to 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.”

49. The depreciation has been worked out considering the admitted capital expenditure as on the COD and thereafter up to 31.3.2024. The Weighted Average Rate of Depreciation (WAROD) at Annexure has been worked out for the transmission asset



as per the rates of depreciation specified in the 2019 Tariff Regulations. The depreciation allowed for the transmission asset is as follows:

		(₹ in lakh)
	Particulars	2023-24
	Depreciation	
A	Opening Gross Block	496.32
B	ACE	48.37
C	Closing Gross Block (A+B)	544.69
D	Average Gross Block (A+C)/2	520.51
E	Weighted average rate of Depreciation (WAROD) (In %)	5.28
F	Balance useful life of the asset	25
G	Elapsed life at the beginning of the year	0
H	Aggregate Depreciable Value	468.45
I	Depreciation during the year	27.48
J	Aggregate Cumulative Depreciation	27.48
K	Remaining Aggregate Depreciable Value	440.97

Interest on Loan (IoL)

50. 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.”

51. The Weighted Average Rate of Interest (WAROI) on Loan has been considered as claimed by the Petitioner. The Petitioner has prayed that the change in interest rate due to the floating rate of interest applicable, if any, during the 2019-24 tariff period will be adjusted. Accordingly, the floating interest rate, if any, will be considered at the time of truing-up. The IoL is allowed in accordance with Regulation 32 of the 2019 Tariff Regulations for the transmission asset as follows:

		(₹ in lakh)
	Particulars	2023-24
A	Gross Normative Loan	347.42
B	Cumulative Repayments upto Previous Year	0.00
C	Net Loan-Opening (A-B)	347.42
D	Additions due to ACE	33.86
E	Repayment during the year	27.48
F	Net Loan-Closing (C+D-E)	353.80
G	Average Loan (C+F)/2	350.61
H	Weighted Average Rate of Interest on Loan (In %)	7.2743
I	Interest on Loan	25.50

Return on Equity (RoE)

52. 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 cutoff 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.”

53. The Petitioner has submitted that the MAT rate applies to it. The applicable MAT rate has been considered for RoE, which will be trued-up in accordance with Regulation 31(3) of the 2019 Tariff Regulations. The RoE allowed in respect of the transmission asset is as follows:

		(₹ in lakh)
	Particulars	2023-24
A	Opening Equity (A)	148.90
B	Additions (B)	14.51
C	Closing Equity (C) = (A+B)	163.41
D	Average Equity (D) = (A+C)/2	156.16
E	Return on Equity (Base Rate) (In %)	15.500
F	MAT Rate for respective year (In %)	17.472
G	Rate of Return on Equity (In %)	18.782
H	Return on Equity	29.33



Operation & Maintenance Expenses (O&M Expenses)

54. The O&M Expenses claimed by the Petitioner in respect of the transmission asset for the 2019-24 tariff period are as under:

(₹ in lakh)	
Particulars	2023-24
Bays:	
(i) Nirjuli: Bays at Nirjuli Sub-station for Pare and North – Lakhimpur Transmission Line	
132 kV GIS	2
Norms (₹ lakh/bay)	12.92
Total O&M Expenses	25.84

55. The norms specified under Regulation 35(3)(a) of the 2019 Tariff Regulations provide that:

“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
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



Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
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.

(4) Communication system: The operation and maintenance expenses for the communication system shall be worked out at 2.0% of the original project cost related to such communication system. The transmission licensee shall submit the actual operation and maintenance expenses for truing up.”

56. We have considered the Petitioner’s submissions. The O&M Expenses in respect of the transmission asset are worked out as per the norms specified in the 2019 Tariff Regulations, and the same are as follows:

(₹ in lakh)	
Particulars	2023-24
Bays:	
(i) Nirjuli: Bays at Nirjuli Sub-station for Pare and North – Lakhimpur Transmission Line	
132 kV GIS	2
Norms (₹ lakh/bay)	12.92
Total O&M Expenses	25.84

Interest on Working Capital (IWC)

57. 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.

(2)



(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:-

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

58. The IWC has been worked out in accordance with Regulation 34 of the 2019 Tariff Regulations. The Rate of Interest (ROI) is considered as 12.00% (SBI 1-year MCLR applicable as on 1.4.2023 of 8.50% plus 350 basis points) for the FY 2023-24. The components of the working capital and interest allowed thereon with respect to the transmission asset are as follows:

		(₹ in lakh)
	Particulars	2023-24
A	Working Capital for O&M Expenses (O&M Expenses for 1 month)	2.15
B	Working Capital for Maintenance Spares (15% of O&M Expenses)	3.88
C	Working Capital for Receivables (Equivalent to 45 days of annual transmission charges)	13.59
D	Total Working Capital	19.62
E	Rate of Interest (In %)	12.00
F	Interest on Working Capital	2.35

Annual Fixed Charges for the 2019-24 Tariff Period

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

		(₹ in lakh)
	Particulars	2023-24
A	Depreciation	27.48
B	Interest on Loan	25.50
C	Return on Equity	29.33
D	O&M Expenses	25.84



	Particulars	2023-24
E	Interest on Working Capital	2.35
F	Total	110.50

Filing Fee and the Publication Expenses

60. The Petitioner has sought reimbursement of the fee paid by it for filing the Petition and 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 terms of Regulation 70(1) of the 2019 Tariff Regulations.

Licence Fee & RLDC Fees and Charges

61. The Petitioner has sought reimbursement of licensee fee in accordance with Regulation 70(4) of the 2019 Tariff Regulations for the 2019-24 tariff period. The Petitioner shall be entitled to reimbursement of 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 the recovery of RLDC fees and charges in accordance with Regulations 70(3) of the 2019 Tariff Regulations for the 2019-24 tariff period.

Goods and Services Tax

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

63. We have considered the Petitioner's submissions. Since GST is not currently levied on transmission services, we are of the view that the Petitioner's prayer in this regard is premature.

Security Expenses

64. The Petitioner has submitted that security expenses in respect of the transmission asset are not claimed in the instant Petition, and it would file a separate Petition for claiming the overall security expenses and the consequential IWC.

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

66. The Petitioner has sought reimbursement of 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

67. The Petitioner has prayed that the transmission charges for the 2019-24 tariff period may 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 in accordance with the Central Electricity Regulatory

Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 as amended from to time.

68. MUML, in its reply vide affidavit dated 31.1.2024 and written submissions dated 17.5.2024, has submitted as under:

- a. The approval of the COD, as claimed by the Petitioner, cannot be accepted by the Commission as same is in contravention to provisions Regulation 6 of the 2019 Tariff Regulations and, therefore, no transmission charges can be allowed on account of any alleged mismatch in commissioning of the Petitioner's asset and MUML asset as Regulation 6(2) of the 2019 Tariff Regulations.
- b. Further, the Statement of Reasons issued for the 2019 Tariff Regulations also clearly states that the words "which is not before the SCOD of the transmission system" were included to clarify that the liability for transmission charges on account of mismatch after the COD of the transmission system, will not commence before the SCOD of the transmission system.
- c. In view of the above, it is amply clear from Regulation 6(2) of the 2019 Tariff Regulations and the Statement of Reasons that the objective of the Commission has never been to penalize a transmission licensee for the delay in commissioning of its asset as per the MoP letters. Accordingly, no liability can be imposed on MUML for payment of the transmission charges on account of the early commissioning of the Petitioner's asset, as any such imposition of liability will be contrary to the express terms of Regulation 6(2) of the 2019 Tariff Regulations.

69. Besides the above, MUML has submitted detailed reasons against the imposition of transmission charges as under:



A. There was an inherent mismatch in the scheduled commissioning of the Petitioner's asset and Part D of MUML's asset

i. MUML is not liable to pay the transmission charges for the Petitioner's asset for the purported mismatch period because, in the present case, there was an inherent mismatch of 23 days in the SCODs of the Petitioner's asset and Part D of MUML's asset, which is not attributable to MUML. Notably, as per the IA, the SCOD for the Petitioner's asset was 30.5.2023, which did not match the timeframe with the original SCOD of Part D of MUML's asset, i.e., 23.6.2023. ii. This inherent mismatch was neither addressed nor taken care of by the concerned planning agencies the Petitioner, or the LTTCS. The LTTCS, the Petitioner, and the coordinating agencies, such as the CEA, had full knowledge of the commissioning status of the MUML's asset and the Petitioner's asset. Moreover, the Petitioner's assets are standalone assets that are proposed to be constructed on existing green-field sub-stations of the Petitioner and are not associated with any other upstream/downstream assets under the TSA. Therefore, it was both feasible and possible for the Petitioner, along with other planning agencies, to align the commissioning of its assets with the commissioning of MUML's assets. Accordingly, MUML cannot be penalised for any purported mismatch in CODs of the Petitioner's asset and the MUML's asset.

B. No delay on the part of MUML in commissioning Part D of MUML's asset

i. The SCOD of MUML asset, including Part D of MUML's asset, stands extended and revised on account of the MoP letters. MUML duly commissioned Part D of its asset on 5.8.2023, i.e., within the revised SCOD as per the MoP letters. Therefore, there is no delay by MUML in commissioning Part D of the MUML's asset. Imposition of liability will be contrary to the Commission's own Regulations which are binding. The SCOD extension referred to hereinabove is only on



account of the MoP letters. As per Regulation 13(12) of the 2020 Sharing Regulations, the liability, if any, can be imposed only in case of delay by the transmission licensee. However, in the present case, there is no delay on the part of MUML in commissioning Part D of MUML's asset.

ii. Any imposition of such liability upon MUML will be contrary to the law laid down by the Hon'ble Supreme Court in the matter of ACME Deoghar Solar Power Pvt Ltd & Ors. vs. Central Electricity Regulatory Commission & Ors. in Civil Appeal No. Nos 3873-3874 of 2024 & Batch Matters.

iii. Further, vide its order dated 25.2.2023 in Petition No. 164/MP/2021, the Commission has allowed an extension of the SCOD to the concerned transmission licensee.

iv. The Commission, by its various orders, including the order dated 18.5.2023 in Petition No. 334/TT/2022 and order dated 15.2.2023 in Petition No. 301/TT/2022, has given effect to the said MoP letters and extended the SCOD of the assets of the Petitioner in the said orders. Any liability on MUML would be in direct contravention to the benefit of extension granted by the MoP orders.

v. Since the original SCOD of MUML's asset was revised by the MoP letters in clear recognition of the unavoidable delay caused by the Covid-19 pandemic in the implementation of the transmission projects and MUML commissioned the Part D as per the MoP letters, there is no obligation on MUML seeking extension of its SCOD, through a separate Petition, from the Commission.

C. SCOD of Part D of MUML's asset was not preponed to March 2023

i. The Petitioner is trying to mislead the Commission by referring to the selective portion of the 199th OCC Meeting held on 22.2.2023. In the 199th OCC Meeting, MUML had only indicated that it shall endeavour to complete Part D of MUML's

asset by the end of March 2023 on a best-effort basis. It was further stated by MUML that getting the shutdown of the Ranganadi - Nararlunga/ Nirjuli line for the completion of work under the MUML's scope would be difficult in the months of June and July. MUML had never preponed the SCOD by that statement, and the said statement was only to expedite the commissioning of Part D of MUML's asset 'on best effort basis'. Pertinently, MUML did not make a statement that it is seeking preponement of the SCOD of Part D of MUML's asset, which can only be done through a written amendment to the TSA between MUML and all the LTTCs. Alternatively, in the said meeting, MUML was not aware of the uncontrollable issues/ force majeure events it would face which would further delay the project.

ii. Any statement given by MUML in the 199th OCC Meeting does not amount to an amendment in the TSA. Therefore, any statement given by MUML cannot be treated as an amendment to the terms of the TSA, which otherwise requires an express amendment with the consent of the parties of the TSA and the approval of the Commission. It is pertinent to note that as per Article 18.17 of the TSA, the agreement can only be amended or supplemented by a written agreement between the parties after obtaining the approval of the appropriate Commission.

iii. It is settled law that the statements given or any resolutions adopted by the parties in such meetings cannot constitute an agreement that is binding on the parties. In this regard, reliance has been placed on the APTEL's judgment in Appeal No. 109 of 2021 in the matter of Punjab State Transmission Corporation Limited vs. Central Electricity Regulatory Commission and Others. Accordingly, the Petitioner cannot place any reliance on the comments given by MUML in the 199th OCC meeting regarding the progress of the Project, and such comments



cannot be read in isolation from the overall facts and circumstances of the case and do not tantamount to any change in the terms of the TSA.

D. Part D of MUML asset was prevented from commissioning on account of uncontrollable/ force majeure events

i. It was prevented from commissioning the Part D of MUML's asset due to the uncontrollable/ force majeure events which were not attributable to MUML.

ii. It is a well-settled law that the APTEL, in the NRSS XXXI (B) Transmission Limited vs. Central Electricity Regulatory Commission & Ors. ("NRSS judgment"), which was subsequently affirmed in the judgment dated 3.12.2021 in Appeal Nos. 129 of 2020 and 276 of 2021 made it clear beyond doubt that when a transmission licensee (such as the MUML) is affected by force majeure events, such licensee cannot be made liable to pay any charges to an inter-connecting entity that incidentally got delayed, like the Petitioner in the present case. It was categorically noted by the APTEL that any direction to the licensee, who was impacted by uncontrollable events, to pay IDC and IEDC to the incidentally delayed entity would be contradictory to the relief granted to the delayed entity and the extension of the COD granted to it. The *ratio decidendi* of the NRSS judgment applies to transmission licensees implementing projects under the TBCB regime under Section 63 of the Act and, therefore, is squarely applicable to the MUML's case.

iii. Further, MUML is entitled to appropriate relief on the basis of the uncontrollable/ force majeure events and any liability imposed on MUML for the purported mismatch period will be contradictory to such reliefs.

E. The TSA casts a responsibility on the LTTCs to perform their substantive obligations

- i. Article 6.1.2 of the TSA casts a responsibility upon the lead LTTC to coordinate with the Petitioner for arranging the associated inter-connection facility matching with the commissioning of MUML's asset. As per the terms of the TSA, the LTTCs are mandated to arrange the interconnection facilities. Further, Article 4.3, read with Article 5.1 of the TSA, provides that the LTTCs should monitor and coordinate the development of interconnection facilities associated with the MUML's asset in a matching timeframe.
 - ii. In this regard, the provisions of the TSA mandate MUML to provide the MPRs to LTTCs and CEA, capturing various details on the month-by-month progress of the MUML's asset along with its SCOD and anticipated COD. Further, MUML, being a prudent utility, has provided such copies of its MPRs, which are also published by CEA in its MPRs on TBCB ISTS assets. MPRs provided a clear, unambiguous, and detailed report on the status of the MUML's asset along with various issues faced by MUML during the implementation of the MUML's asset. The LTTCs and the coordinating agencies, such as CEA, had full knowledge of the status of the commissioning of Part D. Further, the MUML, through various of its MPRs, had also apprised its LTTCs about the uncontrollable delay due to the issues faced by MUML. Therefore, the Petitioner and the LTTCs were kept apprised, informed, and duly aligned with the progress of Part D.
 - iii. MUML has performed its obligations under the TSA in its entirety. On the other hand, the LTTCs have failed to perform their function of monitoring the commissioning of the Petitioner's assets. Further, the LTTCs have signed a Model Transmission Service Agreement ("MTSA") with the Petitioner for
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implementing transmission projects under the RTM and, therefore, have an existing contractual relationship with the Petitioner. Therefore, the LTTCs have failed to ensure the commissioning of the 2 Nos. 132 kV GIS line bays at Nirjuli Sub-station for termination of LILO of one circuit of Pare HEP- North Lakhimpur (AEGCL) 132 kV D/C line with the MUML's asset despite being aware of the issues faced by MUML as well as the expected date of SCOD of that MUML's asset.

F. The Commission cannot saddle MUML with a liability under the provisions of the 2020 Sharing Regulations

- i. In the present case, the 2020 Sharing Regulations cannot be made applicable between a line and interconnecting facility forming part of one and the same transmission system as the regulations mentioned above clearly contemplate a mismatch between two separate transmission systems for applicability of the aforesaid Regulations.

Regulation 13(12) of the 2020 Sharing Regulations provides for the treatment of mismatch of the dates of commercial operation.

- ii. Pertinently, the Indian Electricity Grid Code, 2010 ("IEGC 2010") provides that any system for the conveyance of electricity by means of a main transmission line from the territory of one State to another State (il) The conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-state transmission of energy, (il) the transmission of electricity within the territory of a state on a system built, owned, operated, maintained or controlled by CTU.
- iii. Similarly, as per the TSA, 'Transmission System' shall mean a line with associated sub-stations or a group of lines interconnected together along with

associated substations and, in terms, includes the equipment associated with transmission lines and substations.

- iv. It is clear that the MUML's asset and the Petitioner's asset consist of one single transmission system. In accordance with the 2019 Tariff Regulations, 2020 Sharing Regulations, and the 2010 Indian Electricity Grid Code, it is clear that only a mismatch between two separate transmission systems can be billed bilaterally. Therefore, the Commission cannot apply the 2020 Sharing Regulations to saddle MUML with bilateral liability for the period of purported mismatch.

G. MUML is not liable to pay the transmission charges as there is no contractual relationship or commitment between the two parties

- i. No liability can be imposed on the MUML as there is no relationship whatsoever between the MUML and the Petitioner, either statutory, contractual, or regulatory, based on which MUML can be bilaterally made liable to the Petitioner for payment of transmission charges.
- ii. The APTEL, vide its recent order dated 15.9.2022 in Appeal Nos. 109 of 2021 in the matter of Punjab State Transmission Corporation Ltd. vs. CERC & Ors. ("PSPCL order"), has made it categorically clear that in the absence of a formal contract between interconnecting entities, no liability for payment of transmission charges can be imposed on the delaying entity in case of a mismatch in commissioning.
- iii. Therefore, the Commission ought to apply the principles reiterated above as there is no agreement whatsoever between MUML and the Petitioner, and therefore, there exists no basis on which MUML can be made liable for payment of transmission charges.



H. The proposed liability on MUML is contrary to the object and purpose of the Electricity Act, 2003, as well as the provisions of the TSA

- i. The proposed liability on MUML is contrary to the object and purpose of the Act and the relevant provisions of the TSA. The Commission cannot import a liability that is outside the purview and ambit of the agreement under which MUML is executing its asset. The Commission cannot tinker with the agreed terms of the contract and the tariff decided pursuant to a bidding process conducted under the Tariff Based Competitive Bidding Guidelines ("TBCB Guidelines") under Section 63 of the Act by imposing a liability on MUML. Regulation 13(12) of the 2020 Sharing Regulations makes the defaulting party liable to pay the transmission charges. However, in the present case, there is no default on the part of the MUML. Since the assets have been duly commissioned before the Revised SCOD, the invocation of Regulation 13(12) of the 2020 Sharing Regulations is totally misconceived and baseless.

I. No liability to pay transmission charges can be imposed in view of the MoP directions dated 15.1.2021

- i. The MoP had issued a direction under Section 107 of the Electricity Act, 2003, vide letter No. 23/12/2016-R&R dated 15.1.2021, *inter alia*, holding that in cases where there was a mismatch of the COD, the bilateral liability ought not to be imposed on an individual licensee. The MoP, in the said letter, while issuing the directions to the Commission under Section 107 of the Act, recognised the issues arising out of the fastening of liability on the transmission licensee whose transmission system is delayed. The MoP's direction observed that there is no contractual or direct relationship between the defaulting party and the aggrieved. Therefore, it is not proper to require a third entity, not party to a contract, to compensate either party to a contract.

Further, as per the abovementioned letter, these clauses are also not proper for the following reasons:

- a. The penalties are uncapped. This puts a lot of risk on the licensee and will lead to inflated bids, which will not be in the public interest;
 - b. The penalties for mismatch are not linked to the project cost of the defaulting party;
 - c. In the case of the projects implemented under the TBCB Guidelines:
 - i. The defaulting licensee is already required to pay liquidated damages as per the TSA.
 - ii. The above-mentioned additional amount is not specified in the TSA, and the required additional payments through CERC Regulations are not in the spirit of Section 63 of the Act, according to which the Commission is required to adopt the tariff.
 - iii. There is no provision in the TSA for payment by the generating company to the transmission licensee in case of delay of COD of the generating station.
 - d. It changes the payer from the Central Transmission Utility [on behalf of the Designated ISTS Customers ("DICs")] to the defaulting party.
- ii. The sum and substance of the MoP direction is that there is no direct relationship between the transmission licensees and the users. The relationship of the licensees, as well as users of the ISTS, should be with the Central Transmission Utility. As there is no contract or direct relationship between the defaulting party and the aggrieved, it is not proper to require a third entity, not a party to a contract, to compensate either party to the contract. The clauses in the 2019 Tariff Regulations are not proper, as the penalties are uncapped, which would lead to inflated bids. In the case of a project executed under the TBCB Guidelines, the defaulting licensee is already required to pay the liquidated damages as per the TSA, and the additional amount is not specified therein. The directions issued by the MoP under Section 107 of the



Act are binding on the Commission. The bidding process for the MUML's asset was completely governed by the TBCB Guidelines issued by the Central Government. Therefore, the aforementioned direction can be considered as a 'clarification' of the TBCB Guidelines, thereby having a force of law and not merely a request to be implemented in the future.

J. Levy of transmission charges for the purported mismatch period amounts to a change in law event for MUML

- i. Any liability towards payment of the transmission charges, if levied upon MUML by the Commission, shall be tantamount to a change in law for MUML under the provisions of Article 12 of the MUML's TSA on account of notification of new regulations in the form of the 2020 Sharing Regulations and enforcement of such regulations by the Commission. The imposition of liability on MUML would amount to a change in law event under Article 12 of TSA and would indirectly amount to imposing liability on beneficiaries of ISTS. Therefore, MUML reserves its right to raise change in law claims in the event any liability to pay the transmission charges is fastened upon MUML.

K. Regulatory treatment of force majeure events affecting MUML

- i. There is a material difference between the position of a transmission licensee implementing a project under the TBCB regime and a transmission licensee operating under the RTM regime when it is impacted by a mismatch situation. Under the RTM regime, which is the Petitioner's case, it is open for a transmission licensee to claim compensation for financial losses incurred on account of uncontrollable parameters such as force majeure events through an increase in tariff payable to it by its DICs. Such financial loss includes any loss in transmission charges incurred due to delay caused by force majeure events impacting an inter-connecting transmission licensee. However, the



same option is not available to a TBCB transmission licensee, such as the MUML.

Regulations 3 and 22 of the 2019 Tariff Regulations deal with the terms of truing up transmission projects. Therefore, any liability of bilateral payment of the transmission charges on account of uncontrollable issues/ force majeure events affecting an inter-connecting TBCB licensee (such as the MUML), which, in turn, delay the utilisation of assets belonging to the RTM licensee (such as the Petitioner's) can be considered as an adverse impact of *Force Majeure* event qua the RTM licensee (the Petitioner). Accordingly, any adverse impact on MUML on account of force majeure events affecting the Petitioner's assets may be passed through as a tariff to the Petitioner's DICs (through the PoC pool). In contrast, under the extant regulatory regime, a TBCB licensee does not have the same option, i.e., to socialize the costs of the adverse impact of Force Majeure events impacting a TBCB licensee by recovering the same from its DICs. In other words, a TBCB licensee cannot pass through the adverse impact of its bilateral liability towards another transmission licensee. In view of this clear difference between the regulatory treatment of bilateral liability arising out of force majeure delays for RTM and TBCB licensees, it is imperative that the case of a TBCB licensee and an RTM licensee are treated differently. Further, the force majeure events being a finding of fact are equally applicable to the Petitioner as much as on MUML. Therefore, any purported delay in putting the Petitioner's asset to use on account of force majeure events affecting MUML should be treated as force majeure events affecting the Petitioner. Pertinently, the Petitioner's asset has also been delayed due to the outbreak of the COVID-19 pandemic.



Accordingly, any mismatch in COD on account of force majeure events ought to be treated as force majeure events for the Petitioner under the 2019 Tariff Regulations.

- ii. When statutory regulations on a particular subject hold the field, such regulations bind the Commission as regards such subject [Ref PTC India Limited vs. CERC, (2010) 4 SCC 603, para. 56]. In the present case as well, the Commission should apply the applicable regulations as extracted and discussed above.

L. Notwithstanding the above, the Yearly Transmission charges for the alleged mismatch period are payable as per the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Second Amendment) Regulations, 2023

- i. Alternatively, Regulation 13(12) of the 2020 Sharing Regulations has been amended by the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Second Amendment) Regulations, 2023 ("2nd Amendment"). The amended Regulation 13(12) provides that the Yearly Transmission Charges ("YTC") for the inter-State transmission system or an element for which the deemed COD has been approved or declared shall be paid 50% of the 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 the actual power flow. Further, in case an inter-State transmission licensee is responsible for the delay in the commencement of power from the inter-State transmission system of another inter-State transmission licensee that has achieved deemed COD, the inter-State transmission licensee of the delayed inter-State Transmission system shall pay 50% of YTC of its transmission system or 50% of the YTC of transmission system which has achieved deemed COD, whichever is lower, till its delayed inter-State transmission



system achieves COD. In view of the 2nd Amendment, YTC, if any, shall be payable to the Petitioner only as per amended Regulation 13(12). Further, the said amendment has come into effect on 1.11.2023. Hence, any approval of the COD proposed by the Petitioner, which may be granted by the Commission, would be post 1.11.2023, i.e., after the date the said amendment has come into effect. Therefore, the liability on MUML, if any, would be in accordance with the 2nd Amendment to the 2020 Sharing Regulations for the period after the said amendment has come into effect, i.e., 1.11.2023.

M. No liability can be fastened on MUML on the basis of the judgment of the APTEL dated 2.5.2023 in Appeal No. 352 of 2022

- i. The reliance placed by the Petitioner on the FBTL judgment, is erroneous and misplaced. No reliance can be placed on the said judgment of the APTEL as the same is *per incuriam*. FBTL judgment is *per incuriam* being contrary to provisions of the Electricity Act, 2003 and/or binding letter of the MoP (Letter No. 23/12/2016-R&R) dated 15.1.2021 and/or the provisions of the TSA. The FBTL judgment is also *per incuriam* for the reason that it does not consider binding provisions of the TSA by which the responsibility of arranging an interconnecting transmission facility has been fastened upon the LTTCs. It is pertinent to note that the FBTL judgment has also been challenged before the Hon'ble Supreme Court in Civil Appeal No. 4388/2023 and has not attained finality.
- ii. Assuming that the said judgment is not *per incuriam*, the FBTL judgment is not applicable to facts of the present case since, in the present case, there was an inherent mismatch between SCODs, which were further extended by a period of 8 months due to the MoP letters. Therefore, no reliance can be placed on the same.



70. The Petitioner, in response, vide affidavit dated 23.4.2024, has submitted the following:

- a. As a transmission licensee, the Petitioner is required to be paid for the assets that it is being set-up. A tariff recovery is not akin to a claim for damages but goes towards servicing of the capital cost invested by the Petitioner in the construction of the transmission assets. Under Sections 61, 62, and 64 of the Act, there is a provision for cost plus tariff determination, which means that all the reasonable costs and expenses incurred by the utilities like the Petitioner, along with a reasonable RoE should be paid to it. The 2019 Tariff Regulations recognize a situation where the assets of one licensee may be ready while the interconnecting system of the other licensee may not be ready. A licensee that comes in time is entitled to seek a declaration of deemed COD under Regulation 5 of the 2019 Tariff Regulations. Further, the Commission provided a regulatory framework qua mismatch in Regulation 13(12) of the 2020 Sharing Regulations with effect from 1.11.2020.
- b. In the instant case, the assets were scheduled to be commissioned on 30.5.2023. However, in view of the deliberations and representation made in the 199th OCC meeting dated 22.2.2023 and MUML's representation made through various CEA monthly reports. The Petitioner commissioned its scope of work on 1.4.2023. The Petitioner has achieved the COD whereas the transmission asset under the scope of MUML was not commissioned on the claimed COD of the Petitioner. Accordingly, the Petitioner's asset could not be utilized despite its commissioning due to a delay in the completion/ commissioning of the asset under the scope of MUML. As a result, it was unable to provide service for reasons not attributable to itself.



- c. Further, in view of the 2020 Sharing Regulations and the 2019 Tariff Regulations, it is evident that wherever there is an issue of mismatch between two transmission licensees, then from the date of the deemed COD (as allowed by the Commission) 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 interest of the transmission licensee, which has achieved its COD on time, and the asset has been kept stranded for no fault of theirs.
- d. Any liability that may be imposed by the Commission due to a mismatch in terms of the applicable 2020 Sharing Regulations, which have been notified after due public consultative process. Further, the contention that the proposed liability is contrary to the letter and spirit of the Electricity Act, 2003. is wrong. In this regard, the Petitioner has placed reliance on the FBTL judgment. In the FBTL judgment, the APTEL observed the object sought to be achieved by the Commission in introducing these provisions of mismatch in the 2019 Tariff Regulations and the 2020 Sharing Regulations.

Early Commissioning by the Petitioner

- a. It is the case of the Petitioner that the transmission asset was commissioned prior to its SCOD as per the request made by MUML in the 199th OCC Meeting held on 22.2.2023 (“199th OCC Meeting”). In the said Meeting, MUML stated that the SCOD of its Project is June 2023 but is well poised to be commissioned by March 2023.
- b. Further, in the deliberations and agenda discussed in the said 199th OCC Meeting, there were explicit discussions regarding the early commissioning of



Part D of the MUML project, considering the usefulness of the transmission system for decongesting the network prior to the peak generation period during the monsoon sessions.

- c. Pursuant to the above discussions and deliberations, the Petitioner expedited the implementation of the transmission asset and achieved the COD on 1.4.2023. However, the asset of MUML was not ready and MUML finally achieved the COD on 5.8.2023. Further, in the monthly progress report of the TBCB Projects available on CEA's website (from 31.7.2022-- 28.2.2023), the anticipated COD for the MUML's asset was given as March 2023
 - d. MUML, at all times before the COD of its assets, indicated the anticipated SCOD as 31.3.2023, and, therefore, the Petitioner achieved the COD of the transmission asset on 1.4.2023. The Petitioner cannot be penalized in the present situation when the Petitioner has achieved its COD as per the deliberation and discussion made in the 19⁹th OCC meeting as per the request of MUML.
 - e. The delay in achieving the COD by MUML on account of force majeure event cannot disentitle the Petitioner to claim transmission charges in terms of Regulation 13(12) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 ("2020 Sharing Regulations") read with Regulation 5(2) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 ("2019 Tariff Regulations").
 - f. The whole defence of MUML is that in the said 199th OCC meeting, it was stated that MUML intended to complete its scope of work by March 2023 on a "best effort basis." The same is baseless since it was MUML who had
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requested early commissioning and time and again gave the progress report till February 2023 that the anticipated COD for the transmission asset is March 2023. Further, in the operative part of the deliberations of the Sub Committee, there is no “best effort basis,” which has been the sole defence of MUML, as against the opening portion of the 199th OCC Meeting in which it is stated that the SCOD of the project is June 2023, but it is well poised to be commissioned by March 2023.

- g. Now, at this stage, acting upon the same, the Petitioner has achieved the early COD and is entitled to receive the transmission charges for the mismatch period in terms of the 2020 Sharing Regulations. MUML has delayed achieving the COD after causing the Petitioner to early commission its asset. MUML cannot wriggle out of the obligations to pay the transmission charges for the mismatch period. Allowing the submission of MUML will be in the teeth of the said Regulations.
- h. It is settled law that wherever there is a delay in achieving COD/mismatch between two transmission licensees, then from the date of the deemed COD to the actual COD of the associated transmission licensee, the party which has delayed in achieving the COD has to pay the transmission charges. The same is to safeguard the financial interest of the transmission licensee, which has achieved COD on time, and their asset has been kept stranded.
- i. MUML has contested that the delay on the part of MUML to achieve its COD is on account of force majeure events that were not attributable to MUML. In this regard, the claim of MUML on account of force majeure is independent of its liability to pay the transmission charges to the Petitioner in terms of the 2020 Sharing Regulations. The reliefs for the Force Majeure event (if any) can



only be sought qua its LTTCs in terms of provisions of the TSA signed between them, and the same cannot be claimed against the Petitioner. The right and regulatory entitlement of the Petitioner to get its COD approved and recover tariff from the COD is in terms of the 2019 Tariff Regulations read with the 2020 Sharing Regulations, and the same cannot be made subject to any further conditions.

- j. The APTEL in the FBTL judgment has categorically held that the reliefs arising out of force majeure event by the associated Transmission Licensee cannot disentitle the Petitioner (associated transmission line) from seeking the transmission charges for the mismatch period.
- k. The right of the Petitioner to get its COD approved in terms of Regulation 5(2) of the 2019 Tariff Regulations and recover tariff is in terms of the 2020 Sharing Regulations read with the 2019 Tariff Regulations and cannot be made subject to any further conditions.

71. The Petitioner has submitted a point-wise response to the submissions made by MUML as under:

Re: There was an inherent mismatch in the scheduled commissioning of the Petitioner's asset and Part D of MUML's asset

- a. The MUML's contention regarding the inherent mismatch in the SCODs of the assets of the Petitioner and MUML is without any merit, as MUML has proposed for early commissioning of assets to March 2023. Pursuant to this, the Petitioner has also aligned the implementation of subject bays as of March 2023. Whereas, MUML has achieved the COD only on 5.8.2023 which is after the MUML's proposed early commissioning of March 2023. Considering the



aforementioned factual matrix, the issue of any inherent mismatch does not even arise.

Re: No delay on the part of MUML in commissioning Part D of MUML's asset, and MUML's asset was prevented from commissioning on account of uncontrollable/force majeure events

- a. MUML cannot thrust its force majeure events on the Petitioner, as force majeure events are in context to its TSA with its LTTCs. The Petitioner, as a transmission licensee, is required to be paid for the asset that it is setting up. A tariff recovery is not similar to a claim for damage, but it goes towards servicing of the capital cost invested by the Petitioner in the construction of transmission assets. Under Sections 61, 62, and 64 of the Act, there is a provision for cost plus tariff determination, which means that all the reasonable costs and expenses incurred by the Petitioner, along with a reasonable RoE should be paid to it. Further, the extension of the SCOD by the MoP letters and other force majeure events and its financial implications, if any, will be within the four corners of the TSA, i.e., contractual obligations between TSP and its LTTCs. The extension in SCOD due to force majeure and the MoP letters will not absolve the Petitioner from the payment of the transmission charges in terms of the 2020 Sharing Regulations in vogue. Further reliance placed by MUML on the APTEL's judgment in the NRSSXXXI-B Transmission Limited is erroneous. The said judgment was passed in different sets of operating Regulations, viz., the 2014 Tariff Regulations and the 2010 Sharing Regulations. The regulatory regime, which is the subject matter of the present Petition (the 2019 Tariff Regulations and the 2020 Sharing Regulations), does provide for treatment in case of a mismatch between the COD of two different transmission licensees. Further, the APTEL, vide its judgment dated 2.5.2022



passed in Appeal No. 352 of 2022, has held that force majeure event does not absolve from the payment of mismatch charges as same were levied in terms of the 2019 Tariff Regulations and the 2020 Sharing Regulations.

- b. Further, the MUML's plea of force majeure is distinct from the independent right available to the Petitioner against the defaulting entity in the event of a mismatch as envisaged under the 2019 Tariff Regulations and the 2020 Sharing Regulations. The Petitioner's associated asset was ready on 31.3.2024. As such, COD was claimed as 1.4.2023 under Regulation 5(2) of the 2019 Tariff Regulations, which is in line with the implementation schedule proposed for early commissioning by MUML of March 2023 in the 199th OCC meeting. The aforementioned contentions have been made by MUML in order to wriggle out of the liability of payment of the transmission charges and the same ought to be dismissed.

Re: SCOD of Part D of MUML's asset was not preponed to March 2023

- a. As regards the contention of MUML regarding preponing the SCOD of its asset, considering various monthly progress reports of the CEA and proposal of MUML in the 199th OCC meeting, it is clear that MUML has sought early commissioning of the transmission asset. The present issue has arisen because of MUML's action and proposal for early commissioning.

Re: The TSA casts a responsibility on the LTTCs to perform their substantive obligations

- a. MUML is largely seeking to blame the LTTCs, which are the beneficiaries of the system being developed by MUML. MUML is taking a strange argument and trying to shift all its liability towards LTTCs, for the reason which is completely attributable to MUML. Alternatively, the Petitioner, as a



transmission licensee, is not privy to the terms and conditions of the TSA between MUML and its LTTCs. Further, the rights and liabilities of the MUML qua its LTTCs are governed under the provisions of the TSA, and the MUML ought to raise issues against the LTTCs under the four pillars of the TSA and not in tariff proceedings initiated by the Petitioner for its transmission assets. Further, the Commission, while granting the transmission licence to MUML, directed to coordinate with the licensee (including the deemed licensee) executing the upstream or downstream transmission projects and the Central Electricity Authority to ensure execution of the project in a matching timeline. It is also the responsibility of the MUML to implement the transmission line in a matching time frame with the Petitioner Assets in the present case. It was on the proposal of MUML in the 199th OCC meeting for early commissioning and various representations by MUML made through various reports of the CEA regarding monthly progress wherein MUML has provided that the anticipated COD is March 2023.

Re: The Commission cannot saddle MUML with a liability under the provisions of the 2020 Sharing Regulations

- a. Since the MUML's contention regarding the non-applicability of the 2020 Sharing Regulations is hyper technical, it is liable to be dismissed. The concept of defaulter pays principle has been adopted by the Commission in various orders and later incorporated in the Sharing Regulations in order to ensure tariff recovery to a transmission licensee that has commissioned its scope of the work and the assets are not put to commercial use due to default of another transmission licensee which has not commissioned the asset in matching timeframe. The Letter and spirit of Regulation 13(12) of the 2020 Sharing Regulations is very clear. The said provision has been incorporated



in the 2020 Sharing Regulations to provide the transmission tariff to the transmission licensee, which has commissioned its scope. In view of the same, the said contention is liable to be dismissed, and the Commission may apply Regulation 13(12) of the 2020 Sharing Regulations in the instant case.

Re: MUML is not liable to pay the transmission charges as there is no contractual relationship or commitment between the two parties

- a. MUML had to implement a transmission line in its scope, and the Petitioner had to implement bays as per the scheme agreed in various planning forums. MUML cannot contend that there is no relation between Appellant and Petitioner as the above-mentioned regulatory framework envisaged under Regulation 5(2) of the 2019 Tariff Regulations and 13(12) of the 2020 Sharing Regulations provides for payment of the transmission charges in the event of the mismatch. It may be pertinent to mention that the Commission has notified the said Regulation under Section 178 of the Act. MUML relied on the APTEL order dated 15.6.2022 in APL No. 109/2021, Punjab State Transmission Corporation Ltd vs. CERC & Ors., to contend that in the absence of a formal contract, no liability for payment of the transmission charges can be imposed on the delaying entity in case of mismatch in commissioning. The reliance on the said judgment is erroneous, wrong, and misplaced in the context of the facts and circumstances in the present case. The payment of transmission charges does not flow from the contract but from the Regulations. These Regulations are statutory in character and have the force of law; they would govern even in situations where there exists no contractual relationship between the regulated entities as these regulations are binding on all of them, irrespective of whether or not they are parties to a contract. Consequently, even in the absence of a contract between them and Petitioner, the MUML



would nonetheless be governed by the 2019 Tariff Regulations and the 2020 Sharing Regulations. Neither the 2020 Sharing Regulations nor the 2019 Tariff Regulations provide for contractual obligations as a prerequisite for the levy of mismatch liability. Further, the APTEL, in the FBTL judgment, has held that no contractual obligation is required in case of imposition of liability of the mismatch.

Re: No liability to pay the transmission charges can be imposed in view of the MoP directions dated 15.1.2021:

- a. The MUMML has placed reliance on the MoP directive under Section 107 of the Act, vide letter No. 23/12/2016-R&R dated 15.1.2021, to contest that in cases where there was a mismatch of the COD, the bilateral liability ought not to be imposed on an individual licensee. In this regard, the APTEL in the FBTL judgment has dealt with the aforementioned MoP directive.

Re: Applicability of Regulation 6(2) of the 2019 Tariff Regulations to the present case

- a. The contention of MUMML that COD is contrary to Regulation 6(2) of the 2019 Tariff Regulations is frivolous and liable to be dismissed as Regulation 6 has been deleted vide the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2021 with effect from 19.2.2021. The right to receive the transmission shares for the mismatch period, i.e., from 1.4.2023 to 5.8.2023, is envisaged under the statutory mandate of Regulation 13(12) of the 2020 Sharing Regulations, and the Petitioner is entitled to the same for the transmission asset.
- b. The Petitioner cannot be penalized as it has achieved its COD on time as per the deliberation and discussion made in the 199th OCC meeting and has all the right to approach the Commission for approval of the COD as the



Petitioner followed the timeline of the project whereas MUML has caused the delay in achieving its commissioning and is at fault.

Analysis and Decision on Sharing of Transmission Charges

72. We have considered the submissions of the Petitioner and MUML. The following issues arise for our consideration:

- I. Applicability of Regulation 6(2) of the 2019 Tariff Regulations and the APTEL's judgement dated 2.5.2023 in Appeal No. 352 of 2022.
- II. Whether the SCOD of Part-D of MUML's asset preponed to March 2023? whether the statements made in the meetings binding contracts, since there was no revision in the TSA; will loading MUML with the liability to pay the transmission charges amount to a change in law event and require beneficiaries to pay for the liability?
- III. Whether there is an inherent mismatch in the SCOD of the Petitioner's asset and Part-D of MUML's asset, along with the delay condoned due to the force majeure event?

Issue-I: Applicability of Regulation 6(2) of the 2019 Tariff Regulations and the APTEL's judgement dated 2.5.2023 in Appeal No. 352 of 2022

73. As regards the contention of MUML that the 2020 Sharing Regulations do not provide for recovery of transmission charges from the defaulting entity in case of mismatch in COD, we are of the view that Regulation 6(2) of the 2019 Tariff Regulations provided for treatment of mismatch in the COD of the inter-connected transmission systems till 19.2.2021, when the said provision was deleted vide second amendment to the 2019 Tariff Regulations dated 19.2.2021. The Petitioner has submitted that the contention of MUML that COD is contrary to Regulation 6(2) of the 2019 Tariff



Regulations is frivolous and liable to be dismissed as Regulation 6 has been deleted vide the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Second Amendment) Regulations, 2021 with effect from 19.2.2021. The right to receive the transmission shares for the mismatch period, i.e., from 1.4.2023 to 5.8.2023, is envisaged under the statutory mandate of Regulation 13(12) of the 2020 Sharing Regulations, and the Petitioner is entitled to the same for the transmission asset. The Petitioner has further submitted that the Petitioner cannot be penalized as it has achieved its COD on time as per the deliberation and discussion made in the 199th OCC meeting and has all the right to approach the Commission for approval of the COD as the Petitioner followed the timeline of the project whereas MUMML has caused the delay in achieving its commissioning and is at fault. However, a similar provision has been made in Regulation 13(12) of the 2020 Sharing Regulations. As the instant asset was commissioned on 1.4.2023, i.e., well after the deletion of Regulation 6(2), the reliance placed by MUMML on the same lacks merit, and in our view, the same is not applicable in the instant case.

74. MUMML has submitted that no liability can be fastened on MUMML based on the judgment of the APTEL dated 2.5.2023 in Appeal No. 352 of 2022 (Fatehgarh Bhadla Transmission Company Limited v. Central Electricity Regulatory Commission & Ors.) as the same is *per incuriam* and it is pertinent to note that the said judgment has also been challenged before the Hon'ble Supreme Court in Civil Appeal No. 4388/2023 and has not attained finality.

75. We have considered the submissions of the Petitioner and of MUMML. With regard to the submission of MUMML regarding judgement in Appeal No. 352 of 2022 being *per incuriam*, we would like to state that this Commission is bound by order of the APTEL, and until the judgement in Civil Appeal No. 4388/2023 before the Hon'ble Supreme



Court overturns the APTEL's judgement dated 2.5.2023, in Appeal No. 352 of 2022, wherein the tribunal has held that *force majeure* event does not absolve payment of mismatch charges and the same will be binding and applicable.

76. Appellate Tribunal vide judgement dated 2.5.2023, has also observed:

"75. Section 62(1)(b) of the Act requires the Appropriate Commission to determine the tariff in accordance with the provisions of the Act for transmission of Electricity. Under the said provision, the CERC approves the capital cost, incurred by the transmission licensee with respect to the subject project, up to the date of its commissioning (its commercial operation date or COD), which the transmission licensee is entitled to recover through its tariff, along with return on equity. PGCIL had filed tariff Petition No. 9/TT/2021 before the CERC, invoking its jurisdiction under Section 62(1)(b), seeking determination of transmission tariff / charges for its transmission project, including Asset-6, under Section 62 of the Act read with the 2019 Regulations. Its yearly transmission tariff was determined by the CERC for the five-year block period 2019 to 2024. The liability for payment of transmission charges could have been fastened upon the beneficiaries/consumers only after they start receiving power through the commissioned inter-connected transmission assets. The delay on the Appellant's part in commissioning its transmission asset had left the transmission asset of PGCIL stranded resulting in no power being transmitted to the consumers. As PGCIL could not be denied yearly transmission charges after their transmission asset had been commissioned, and as consumers could not be called upon to pay such charges as they had not been supplied power, the Appellant was fastened with the liability to pay transmission charges to PGCIL for the mismatch period i.e., from 27.09.2019 when the transmission asset of PGCIL was deemed to have been commissioned, till 30.07.2021 when the transmission asset of the Appellant was actually commissioned, i.e. the period of delay in commissioning the Appellant's transmission asset.

76. Section 61 of the Act relates to tariff regulations, and thereunder the Appropriate Commission shall, subject to the provisions of the Act, specify the terms and conditions for the determination of tariff, and in doing so to be guided by clauses (a) to (i) thereunder. Clause (d) of Section 61 requires the Commission to be guided by the requirement of safeguarding consumers interest and, at the same time, ensure recovery of the cost of electricity in a reasonable manner. Regulation 6(2) of the 2019 Regulations and Regulation 13(2) of the 2020 Regulations seek to achieve this object. Thereby, PGCIL has been permitted to avoid suffering losses on its transmission asset being commissioned, and to recover the yearly transmission charges from the Appellant which had delayed commissioning of its transmission asset. Since the beneficiaries/consumers would receive electricity only after the Appellant's transmission asset is commissioned and ARPRL commissions its generating asset and evacuates power, the aforesaid Regulations safeguard their interests also, in not fastening liability on them for the Appellant's delay in commissioning its transmission asset."

77. In light of the above, we do not find merit in the submissions of MUML and, therefore, reject the same and proceed with a prudence check of further issues.



Issue-II: Was the SCOD of Part-D of MUML's asset preponed to March 2023? whether the statements made in the meetings binding contracts since there was no revision in the TSA; will loading MUML with the liability to pay transmission charges amount to a change in law event and require beneficiaries to pay for the liability?

78. The Petitioner has submitted that considering the various monthly progress reports of CEA and the proposal of MUML in the 199th OCC meeting, it is clear that MUML has sought to early commission the subject asset. The present issue arose because of MUML's action and proposal for early commissioning.

79. As per the MUML's reliance on the judgment of the APTEL in the case of Punjab State Transmission Corporation Limited vs. Central Electricity Regulatory Commission and Others (Appeal No. 109 of 2021) with regard to its stand on absence of binding agreement, we would like to refer to the APTEL's judgement dated 2.5.2023 in Appeal No. 352 of 2022, wherein the tribunal has held that notwithstanding the contract between the parties, the entities are bound by the Regulations even if there is no contract between them. The relevant portion of the said judgement is as follows:

"58. Both the 2019 and the 2020 Regulations, made by the CERC in the exercise of the powers conferred on it under Section 178 of the Act, must be treated, for all purposes of construction or obligations, exactly as if they were in the Electricity Act and are to the same effect as if they were contained in the said Act. These Regulations are statutory in character, constitute law, and are binding on all the regulated entities including the appellant herein (as well as the CERC and even this Tribunal). Consequently, even in the absence of a contract between them and PGCIL, the Appellant would nonetheless be governed by these 2019 and 2020 statutory regulations. Reliance placed on behalf of the Appellant, on NRSS XXXI (B) Transmission Ltd, is therefore misplaced."

80. Further, on perusal of record, it has been observed in various monthly progress reports of Transmission Projects awarded through TBCB Route (Under Construction Projects) published by CEA as on 31.7.2022, 31.1.2023 and 28.2.2023, MUML had informed that the assets have an SCOD of June 2023 whereas the anticipated COD is March 2023. Since, MUML had ample time to revise the anticipated COD and communicate to the Petitioner regarding the delays instead of providing the anticipated

COD on March 2023 on a “best effort basis”, in our view, the contentions of MUML hold no merit as MUML had enough time to revise the anticipated COD. Further, MUML, in the 199th OCC meeting held on 22.2.2023, has stated as follows:

“2) SCOD of the above transmission system is June 2023, that said, we are intended to complete by end of March 2023 with best effort basis. Getting shutdown of Ranganadi- Naharlagun/ Nirjuli line for completion of work under scope of MUML in the Month of May and June is difficult due to peak generation period. To avoid the delay in readiness of the asset due to peak generation months in May and June 2023 we have requested NEEPCO for shutdown of Pare HEP and Ranganadi-Naharlagun/ Nirjuli line in the month of March-April 2023.”

81. MUML has contended that even if the transmission charges are imposed on the basis of Regulation 13(12) of the 2020 Tariff Regulations, the same would amount to a ‘change in law’ under the TSA, and the burden of the same would have to be passed on to the LTTCs. Hence, MUML has sought its rights to raise change in law claims. We have considered the above contention of MUML. We are of the view that the MUML’s plea to construe the levy of transmission charges under Regulation 13(12) of the 2020 Sharing Regulations as an event of ‘change in law’ cannot be considered in the instant Petition filed by the Petitioner, PGCIL, and the same does not fall under the purview of the instant petition as the instant petition under Regulation 86 of CERC (Conduct of Business) Regulations, 1999 and CERC (Terms and Conditions of Tariff) Regulations, 2019 has been filed on behalf of the Petitioner seeking a determination of Transmission Tariff. In view of the above, the submissions made by MUML do not hold good and are, accordingly, rejected.

Issue-III: Is there an inherent mismatch in the SCOD of the Petitioner’s asset and Part-D of MUML’s asset, along with the delay condoned due to the force majeure event?

82. MUML has submitted that from the initial stage of planning itself, there was an inherent mismatch between SCODs of Asset-I and Part D of MUML assets. This inherent mismatch was neither addressed nor taken care of by the concerned planning



agencies the Petitioner, or the LTTCs. However, clearly, there was an inherent mismatch between SCODs of the 02 Nos. of 132 kV GIS line bays at Nirjuli sub-station for termination of LILO of one circuit of Pare HEP – North Lakhimpur (AEGCL) 132 kV D/C line and MUMML asset, at the planning stage itself. The Petitioner in response, has submitted that said contention is without any merit as MUMML has proposed for early commissioning of assets to March 2023. Pursuant to this, the Petitioner has also aligned the implementation of subject bays as of March 2023. Whereas MUMML has achieved the COD only on 5.8.2023 which is after MUMML's proposed early commissioning of March 2023. Considering the aforementioned factual matrix, the issue of any inherent mismatch does not even arise.

83. We have considered the submissions of the Petitioner and MUMML with respect to the sharing of transmission tariff of the transmission assets. The main plea of MUMML is that transmission charges of the transmission asset with effect from 1.4.2023 till COD of the transmission line under the scope of MUMML on 5.8.2023, cannot be imposed on MUMML, as the delay in execution of LILO of one circuit of Pare HEP – North Lakhimpur (AEGCL) 132 kV D/C line at Nirjuli Sub-station line, is not attributable to it. MUMML has pleaded that the transmission line was delayed due to RoW and force majeure events such as a delay due to Covid-19, etc., in respect of which, in terms of TSA dated 7.12.2018 executed by MUMML with its LTTCs, the SCOD of the MUMML's asset was 22.12.2023 and pertinently, the original SCOD of Part D of MUMML's asset was 22.6.2023. The TSA was further amended by the parties by amendments to the TSA dated 7.2.2019, 15.3.2019, and 9.4.2019. In view of the same, the MoP, vide Letter No. 3/1/2020-Trans dated 27.7.2020 and vide Letter No. 3/1/2020-Trans dated 12.6.2021, granted a blanket 8-month extension to all transmission projects due to COVID-19. In



view thereof, the SCOD of MUML's asset, including Part D of MUML's asset, stands extended and revised.

84. The Petitioner has submitted that MUML has placed reliance on the MOP directive under Section 107 of the Electricity Act, 2003, vide letter No. 23/12/2016-R&R dated 15.01.2021, to contest that in cases where there was a mismatch of the COD, the bilateral liability ought not to be imposed on an individual licensee. With regard to the above, it is submitted that the APTEL, in the aforementioned FBTL judgment has dealt with the aforementioned MOP directive.

85. As regards the MUML's reliance on the MoP's directions dated 15.1.2021 that bilateral liability ought not to be imposed on an individual licensee and that the Commission may make suitable amendments in the Sharing Regulations so that no additional penalties are levied on such licensees in case of a mismatch, the APTEL in the judgement dated 2.5.2023 in Appeal No. 352 of 2022 goes on to hold that the Commission, being a statutory body need not be bound by any such direction of the Government as the power to declare the subordinate legislations as ultra vires lie on the High Courts or the Supreme Court. The relevant portion of the said judgement dated 2.5.2023 is as follows:

"59. Viewed from any angle, we are satisfied that the directives in the letter dated 15.01.2021 do not bind the CERC, and it could not have been directed to amend the regulations. The power to declare subordinate legislation ultra vires, lies only with the Supreme Court and the High Courts exercising the power of judicial review, and is not within the province of the Central Govt or even this Tribunal. In any event, as the 2019 and the 2020 Regulations continue to remain in force, it is unnecessary for us to consider whether, even if it were to be amended, the amended provision would have any application to the present case."

86. MUML has further submitted that its transmission system is affected by force majeure conditions. In this regard, the Commission, in its order dated 26.4.2022 in Petition No. 60/TT/2017, has aptly summed up the issue with regard to the mismatch arising out of force majeure 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.”

87. Besides the above, the Commission, in the aforementioned order dated 26.4.2022, further observed as follows:

“68. Further, there is clear fallacy in NTL’s contentions. Suppose, for the sake of argument, it is assumed that NTL is not liable to pay IDC and IEDC. Then the question arises as to who will bear such charges due to Powergrid. This liability of IDC and IEDC cannot be capitalized as the transmission assets have not been put to use and the beneficiaries have not reaped any benefits. At the same time, PGCIL cannot be denied IDC and IEDC as it has done its part and made the transmission assets ready for use and, therefore, cannot be made to suffer on account of delay on the part of NTL. The IDC and IEDC payable by NTL to PGCIL cannot be passed on and loaded on the LTTCs/beneficiaries as there is no provision in TSA under which such recoveries can be made. In fact, the Commission in its order dated 21.9.2016 in the RAPP Case and order dated 4.1.2017 in the Patran Case has laid down the principle that the LTTCs/ beneficiaries are liable to pay transmission charges only when transmission system is being used or put to use. The APTEL in its judgement dated 27.3.2018 in Appeal No.390 of 2017 (the Patran Case) and judgement dated 18.1.2019 in Appeal No. 332 of 2016 (the RAPP Case) has upheld the same principles enunciated by the Commission. These principles flow from the principles enunciated by the Hon’ble Supreme Court vide judgment dated 3.3.2016 in Civil Appeal No. 9193 and Civil Appeal No. 9302 of 2012, wherein the Hon’ble Supreme Court observed as under:

“11. Xxx As such the appellant might have suffered due to delay on the part of NTPC in completing the transmission lines for some period. But beneficiaries, including respondent No. 1, cannot be made liable to pay for this delay w.e.f. 01.07.2010 as the energy supply line had not started on said date.

12. Xxx

13. Since we are in agreement with the Tribunal that in the present case, respondent No. 1 and the beneficiaries could not have been made liable to pay the tariff before transmission line was operational, we find no infirmity in the impugned order....”

88. Normally, the SCOD of the interconnected associated transmission systems should be on the same date for smooth integration of the new transmission assets into the Grid, and this aspect should have been taken into consideration by the responsible planning and coordination entity and the concerned licensees. In the instant case, the SCOD of the Petitioner’s asset was 30.5.2023, and the SCOD of the associated Part-D of MUML line under the scope of MUML was 22.6.2023; therefore, a mismatch of 23 days. Thus, there is a mismatch in the SCOD of the associated transmission systems



of the Petitioner and MUML from the beginning, which could have been avoided by proper planning and coordination by the planning agencies with the Petitioner and MUML. To avoid such peculiar situations in the future, the CTUIL is directed to review the mismatch in SCODs of such interconnected transmission systems of different transmission licensees and find a suitable solution in case of any such mismatch in the COD of the transmission systems.

89. We are of the consistent view that even if the time overrun is condoned due to *force majeure* events, the entity responsible for the delay in implementation of the associated upstream/downstream elements is liable to bear the transmission charges for the period of mismatch. The Respondent, MUML, has sought relief from payment of transmission charges for the period of delay in the project on the grounds of delay in the commissioning of the project due to *force majeure* events. Accordingly, the Commission did not provide for any exemption from the payment of transmission charges even in case of *force majeure* conditions under Regulation 13(12) in the 2020 Sharing Regulations.

90. Further, the entity responsible for the execution of the downstream or upstream transmission licensee or a generating station, irrespective of the fact that it is affected by *force majeure* events, has to bear the transmission charges for the period of a mismatch from the transmission asset to the COD of transmission asset/ scheme under its scope. In the instant case, the associated transmission line was ready on 5.8.2023. Therefore, we are of the view that the transmission charges of the transmission asset should be borne by MUML from COD of the transmission asset, i.e., from 1.4.2023 up to 5.8.2023 and thereafter, the transmission charges of the transmission asset shall be recovered as per the provisions of the 2020 Sharing Regulations as provided in Regulation 57 of the 2019 Tariff Regulations.



Interim Tariff

91. The Petitioner has prayed to allow an interim tariff, in accordance with Regulation 10(3) of the 2019 Tariff Regulations, to be included in the point-of-connection charges.

92. We have considered the Petitioner's submissions. Since we have determined the transmission tariff in respect of the transmission asset in this order, the prayer for the interim tariff becomes redundant. Therefore, we have not considered it in this order.

93. To summarise, AFC allowed in respect of the transmission asset for the 2019-24 tariff period are as follows:

		(₹ in lakh)
Particulars	2023-24	
AFC Claimed	110.51	
AFC Allowed	110.50	

94. The Annexure to this order forms part of the order.

95. This order disposes of Petition No. 329/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 Capital Expenditure	Admitted Capital Cost as on 1.4.2019 (₹ in lakh)	Projected ACE (₹ in lakh)		Admitted Capital Cost as on 31.3.2024 (₹ in lakh)	Rate of Depreciation as per Regulations	Annual Depreciation as per Regulations (₹ in lakh)
		2023-24	Total			2023-24
Sub-station	496.32	48.37	48.37	544.69	5.28%	27.48
Total	496.32	48.37	48.37	544.69		27.48
Average Gross Block (₹ in lakh)						520.51
Weighted Average Rate of Depreciation						5.28%

