

**Central Electricity Regulatory Commission
New Delhi**

Petition No. 33/TT/2023

Coram:

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

Date of Order: 30.6.2025

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 the COD to 31.3.2024 for Asset-I: 1x500 MVA, 400/220 kV ICT (3rd) along with the associated bays and 2 Nos. 220 kV Bus Sectionalizer Bay (Hybrid/MTS) at Indore (POWERGRID) Sub-station, and Asset-II: 1 No. 220 kV Hybrid/MTS Line Bay at Indore Sub-station under "Connectivity and LTA for 325 MW Wind Project of M/s SBESS Services Projects Private Limited" in Western Region.

And in the matter of:

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

... Petitioner

Vs.

- 1. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Rampur
Jabalpur - 482 008**
- 2. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Limited,
3/54, Press Complex, Agra-Bombay Road,
Indore - 452 008**
- 3. Maharashtra State Electricity Distribution Co. Limited,
Hongkong Bank Building, 3rd Floor
M.G. Road, Fort, Mumbai - 400 001**
- 4. Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhawan,
Race Course Road, Vadodara - 390 007**
- 5. Electricity Department,**



Govt. of Goa, Vidyut Bhawan, Panaji,
Near Mandvi Hotel, Goa - 403 001

- 6. Electricity Department,**
Administration of Daman & Diu
Daman - 396 210
- 7. DNH Power Distribution Corporation Limited,**
Vidyut Bhawan, 66kV Road, Near Secretariat Amli,
Silvassa - 396 230
- 8. Chhattisgarh State Power Distribution Co. Limited,**
P.O. Sunder Nagar, Dangania, Raipur
Chhattisgarh - 492 013
- 9. SBESS Services Projectco Two Private Limited,**
1st Floor World Mark-2, Asset Area 8,
Hospitality District Aerocity, NH-8,
New Delhi - 110037
- 10. M/s Adani Wind Energy MP One Private Limited,**
(Formerly M/s SBESS Services Projectco Two Private Limited)
4th Floor, South Wing, Adani Corporate House, Shanti gram,
Nr Vaishno Devi Circle S.G. Highway,
Khodiya, Ahmedabad - 382421
- 11. Uttar Pradesh Power Corporation Limited,**
Shakti Bhawan, 14, Ashok Marg,
Lucknow - 226 001
- 12. Ajmer Vidyut Vitran Nigam Limited,**
Corporate Office, Vidyut Bhawan,
Panchsheel Nagar, Makarwali Road
Ajmer - 305004 (Rajasthan)
- 13. Jaipur Vidyut Vitran Nigam Limited,**
132 Kv, GSS RVPNL Sub- Station Building,
Caligiri Road, Malviya Nagar, Jaipur - 302017 (Rajasthan)
- 14. Jodhpur Vidyut Vitran Nigam Limited,**
New Power House, Industrial Area,
Jodhpur - 342 003(Rajasthan)
- 15. Himachal Pradesh State Electricity Board Limited,**
Vidyut Bhawan, Kumar House Complex Building II
Shimla - 171 004
- 16. Punjab State Power Corporation Limited,**



The Mall, PSEB Head Office, Patiala - 147 001

- 17. Haryana Power Purchase Centre,**
Shakti Bhawan, Sector-6,
Panchkula-134 109 (Haryana)
- 18. Jammu Kashmir Power Corporation Limited,**
220/66/33 kV Gladni Ss SLDC Building,
Narwal, Jammu
- 19. BSES Yamuna Power Limited,**
B-Block, Shakti Kiran, Bldg. (Near Karkadooma Court),
Karkadooma 2nd Floor, New Delhi - 110092
- 20. BSES Rajdhani Power Limited,**
BSES Bhawan, Nehru Place,
New Delhi
- 21. Tata Power Delhi Distribution Limited,**
33 kV Substation, Building
Hudson Lane, Kingsway Camp, North Delhi - 110009
- 22. Uttarakhand Power Corporation Limited,**
Urja Bhawan, Kanwali Road, Dehradun,
- 23. North Central Railway,**
Allahabad
- 24. New Delhi Municipal Council,**
Palika Kendra, Sansad Marg,
New Delhi - 110002
- 25. Chandigarh Electricity Department,**
UT-Chandigarh, Div-11, Opposite, Transport Nagar,
Industrial Area Phase - I, Chandigarh
- 26. Central Transmission Utility of India Limited,**
Saudamini, Plot No. 02, Sector 29
Gurugram - 122001

... Respondents

Parties Present : Ms. Swapna Seshadari, Advocate, PGCIL
Shri Utkarsh Singh, Advocate, PGCIL
Ms. Sneha, Advocate, PGCIL
Shri Ravi Sharma, Advocate, MPPMCL
Shri Anup Jain, Advocate, MSEDCL
Shri Hemant Singh, Advocate, Adani Wind



Shri Sanjeev S. Thakur, Advocate, Adani Wind
Shri Gandharv Garg, Advocate, Adani Wind
Shri Pawan Singh, Advocate, Adani Wind
Shri Lakshyajit Singh Bagdwal, Advocate, Adani Wind
Shri Mohd. Mohsin, PGCIL
Shri Zafrul Hassan, PGCIL
Shri Divyanshu Mishra, PGCIL

ORDER

The Petitioner, Power Grid Corporation of India Limited, has filed the instant Petition 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 commercial operation date (COD) to 31.3.2024 for Asset-I: 1x500 MVA, 400/220 kV ICT (3rd) along with the associated bays and 2 Nos. 220 kV Bus Sectionalizer Bay (Hybrid/MTS) at Indore (POWERGRID) Sub-station, and Asset-II: 1 No. 220 kV Hybrid/MTS Line Bay at Indore Sub-station (hereinafter referred to as “the transmission assets”) under the “Connectivity and LTA for 325 MW Wind Project of M/s SBESS Services Projects Private Limited” (hereinafter referred to as “the transmission project”) in the Western Region.

2. The Petitioner has made the following prayers:

- “1) Condone the delay in the commissioning of assets covered under this petition.*
- 2) Approve DOCO of Asset-2 as 30.04.2022 and allow to recover the tariff of the mismatch period from SBESSPTPL.*
- 3) Approve the Transmission Tariff for the tariff block 2019-24 block for the assets covered under this petition, as per **para –8.0** above.*
- 4) Admit the capital cost as claimed in the Petition and approve the Additional Capitalization incurred / projected to be incurred.*
- 5) Allow the petitioner to recover the shortfall or refund the excess Annual Fixed Charges, on account of Return on Equity due to change in applicable Minimum Alternate/Corporate Income Tax rate as per the Income Tax Act, 1961 (as amended from time to time) of the respective financial year directly without making any application before the Commission as provided in Tariff Regulation 2019 as per para 8 above for respective block.*



6) Approve the reimbursement of expenditure by the beneficiaries towards petition filing fee, and expenditure on publishing of notices in newspapers in terms of Regulation 70 (1) Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019, and other expenditure (if any) in relation to the filing of petition.

7) Allow the petitioner to bill and recover Licensee fee and RLDC fees and charges, separately from the respondents in terms of Regulation 70 (3) and (4) Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019.

8) Allow the petitioner to 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.

9) 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.

10) Allow interim tariff in accordance with Regulation 10(3) of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for purpose of inclusion in the PoC charges.

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

Background

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

a. The Investment Approval (IA) of the project was accorded by the competent authority of the Petitioner on 10.7.2021, vide Memorandum No. C/CP/PA2122-04-01-IA008 dated 12.7.2021, with an estimated cost of ₹4465 lakh, including Interest During Construction (IDC) of ₹99 lakh based on the December 2020 price level.

b. The transmission project was approved in the 2nd meeting of the Western Regional Power Committee on Transmission Planning (WRPCTP) held on 4.9.2020, and the 4th meeting of the National Committee on Transmission (NCT) held on 20.1.2020 and 28.1.2020.

c. The Long Term Access (LTA) was granted to Respondent No. 9, M/s SBESS Services Project Two Private Limited (hereinafter referred to as "SBESSSPTPL" and now known as "M/s Adani Wind Energy MP One Private Limited" or "AWEMPOPL"),



vide Central Transmission Utility of India's (CTUIL) letter dated 12.11.2020. The LTA Agreement was entered into on 3.12.2020 between CTUIL and SBESSPTPL.

d. The Ministry of Power, vide letter dated 13.4.2021, approved the Petitioner's implementation of the transmission project under the Regulated Tariff Mechanism (RTM).

4. The scope of work covered under the transmission project is as follows:

Sub-stations:

a. Extension at Indore 765/400/220 kV Sub-station (POWERGRID) along with 220 kV Hybrid /MTS line bay

220 kV

- Bus Extension for accommodating 2 Nos. 220 kV Hybrid /MTS line bays (1 for M/s SBESS and the other for future)
- 1 No. 220 kV Hybrid /MTS line bay
- 2 Nos. 220 kV Bus Sectionalizer bay (Hybrid/MTS)

b. Establishment of 1X500 MVA, 400/220 kV ICT (3rd) at Indore (POWERGRID) Sub-station

- 1X500 MVA, 400/220 kV ICT
- 400 kV side: 1 No. ICT bay (AIS)
- 220 kV side: 1 No. Hybrid/MTS ICT bay (to be implemented on extended bus)

5. The scope of the transmission project has been completed.

6. The Respondents, mainly beneficiaries of the Western and Northern Regions, are Distribution Licensees, Transmission Licensees, Power Utilities, and Power Departments that procure transmission services from the Petitioner.

7. 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 the newspapers in accordance with Section 64 of the Electricity Act, 2003 (hereinafter referred to as 'the Act'). 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. 1, Madhya Pradesh Power Management Company Limited (MPPMCL), has filed its reply vide affidavit dated 18.10.2023 and written submissions dated 5.1.2024. Respondent No. 10, M/s Adani Wind Energy MP One Private Limited (AWEMPOPL) (formerly, SBESSPTPL), has filed its reply vide affidavit dated 11.12.2023 and written submissions dated 11.1.2024, respectively. The Petitioner has filed its rejoinders vide affidavits dated 25.10.2023 and 19.12.2023, in response to the replies of MPPMCL and AWEMPOPL, respectively. The Petitioner has filed the requisite information vide affidavit dated 10.11.2023 as directed by the Commission in the Record of Proceedings (RoP) for the hearing dated 30.10.2023. The Petitioner has also filed its written submissions dated 12.1.2024. Respondent No. 3, Maharashtra State Electricity Distribution Co. Limited (MSEDCL), has filed its written submissions dated 11.3.2024. The issues raised by the Respondents and clarifications given by the Petitioner have been dealt with in the relevant portions of this order.

8. The hearings in this matter were held on 27.9.2023, 30.10.2023, and 20.12.2023. The matter was reserved for order on 20.12.2023. However, the order could not be issued prior to the former Members, who formed part of the coram, demitting the office. Accordingly, the matter was heard again on 16.7.2024, and the order was reserved.

9. This order is issued considering the submissions made by the Petitioner, vide affidavit dated 30.9.2022, in the main Petition and the Petitioner's subsequent affidavits dated 16.10.2023, 25.10.2023, 7.11.2023, 10.11.2023 and 19.12.2023 and written submissions dated 12.1.2024, MPPMCL's reply vide affidavit dated 18.10.2023 and written submissions dated 5.1.2024, AWEMPOPL's reply vide affidavit dated 11.12.2023 and written submissions dated 11.1.2024, and MSEDCL's written submissions dated 11.3.2024 in the matter.



10. Having heard the Petitioner's representatives, the learned counsels for the Petitioner, MPPMCL, MSEDCL, and AWEMPOPL, and having perused the material on record, we proceed to dispose of the Petition.

Maintainability of the Petition

11. At the outset, MPPMCL has objected to the maintainability of the instant Petition for non-joinder of the necessary party(ies) and misjoinder of constituents of the Western Region, including MPPMCL. To substantiate its argument, MPPMCL has cited a judgment of the Hon'ble Supreme Court in the case of *Kasturi v. Iyyamperumal* [AIR 2005 SC 2813]. The said judgment has laid down a test with two conditions for determining the question, whether a particular party is a necessary party to a proceeding or not; namely, there must be a right to some relief against such party in respect of the matter involved in the proceedings in question; and it should not be possible to pass an effective decree in the absence of such a party.

12. MPPMCL has submitted that both the transmission assets, i.e., Assets I and II, were planned, executed, and implemented for the sale and supply of power to Respondent No. 11, Uttar Pradesh Power Corporation Limited (UPPCL), and the beneficiaries of the Northern Regions. However, the Petitioner has not made UPPCL (in the Northern Region) a party to the Petition, which is the only beneficiary, and instead has arrayed constituents of the Western Region as Respondents in this Petition. MPPMCL has further submitted that the Petitioner has not defined who is/are the beneficiary(ies) of the transmission assets covered in the instant Petition; instead, it has repeatedly used Respondents and the beneficiaries interchangeably. The constituents of the Western Region, including MPPMCL, have nothing to do with the transmission assets covered under the instant Petition and are not beneficiaries of those assets. MPPMCL has, therefore, submitted that the instant Petition is liable to be



dismissed for want of non-joinder of the necessary party(ies) and misjoinder of constituents of the Western Region, including MPPMCL.

13. The Petitioner has submitted that after several meetings and discussions between the Western Region constituents, Central Electricity Authority (CEA), Power System Operation Cooperation Limited (POSOCO, now known as Grid Controller of India Limited - GCIL), and CTUIL, it has been decided that implementing the transmission assets under ISTS is the most feasible option, considering various alternatives. Furthermore, the project was approved in the 2nd meeting of WRPCTP held on 4.9.2020. The Petitioner has further submitted that as a matter of practice, constituents of a region wherein the scheme is planned, conceived, agreed upon, and approved in the RPC / SCM forums are impleaded as Respondents. The transmission assets were planned in WRPC, and as such, the constituents of the Western Region are arrayed as Respondents in the instant Petition. The Petitioner has also submitted that the LTA applicant/grantee, i.e., SBESSSPTPL, has also been arrayed as Respondent No. 9 in the instant Petition. In view of these facts and circumstances relating to the planning of the subject transmission assets, the Petitioner has submitted that the constituents from the Western Region, along with the LTA applicant, are necessary and proper parties for adjudication of the instant Petition and, therefore, the contentions of MPPMCL qua maintainability are liable to be rejected.

14. We have considered the submissions of the Petitioner and MPPMCL on the issue of non-joinder and misjoinder of the necessary party(ies) to the instant Petition.

15. On perusal of the judgment of the Hon'ble Supreme Court in the case of Kasturi v. Iyamperumal recorded in 2005 6 SCC 733, in the context of Order I Rule 9 and Order I Rule 10 (2) of the Code of Civil Procedure, 1908, has laid down a test for determining whether a particular party is a necessary party to a proceeding. The two conditions laid down by the



Hon'ble Supreme Court include the existence of a right to some relief against such party in respect of the controversies involved in the proceedings, and no effective decree can be passed in the absence of such party.

16. On perusal of the record, we note that the Petitioner filed the instant Petition before the Commission, impleading the constituents of the Western Region, including MPPMCL and SBESSPTPL (now AWEMPOPL) as Respondents. Later, the Petitioner, vide affidavit dated 16.10.2023, submitted a revised Memo of Parties wherein it impleaded AWEMPOPL (formerly SBESSPTPL) as Respondent No. 10, which is a constituent of the Northern Region. Thereafter, MPPMCL, in its response filed vide affidavit dated 18.10.2023, raised the issue of the instant Petition's maintainability. The issue was also raised before us during the hearing on 30.10.2023. Pursuant to the hearing on 30.10.2023, the Commission directed the Petitioner to implead the constituents of the Northern Region and CTUIL as Respondents and file the amended 'Memo of Parties'. The directions of the Commission were complied with by the Petitioner, vide its affidavit dated 7.11.2023, wherein it impleaded the constituents of the Northern Region as well as the CTUIL as Respondent Nos. 11 to 25 and 26, respectively, in the amended Memo of Parties. As the necessary parties have been added to the present Petition, there is nothing left to decide regarding the issue of maintainability. The contentions of MPPMCL regarding the sharing of transmission charges have been dealt with in the relevant portion of this order. Therefore, we now proceed to dispose of the Petition on merits.

Determination of Annual Fixed Charges for the 2019-24 Tariff Period

17. The Petitioner has claimed the following transmission charges in respect of the transmission assets from their COD to 31.3.2024:



(₹ in lakh)

Asset-I			
S. No.	Particulars	2022-23 (pro-rata for 337 days)	2023-24
1	Depreciation	136.32	172.12
2	Interest on loan	102.20	120.84
3	Return on equity	143.22	181.24
4	Interest on working capital	15.85	18.33
5	O&M expenses	285.79	319.93
	Total AFC	683.38	812.46

(₹ in lakh)

Asset-II			
S. No.	Particulars	2022-23 (pro-rata for 336 days)	2023-24
1	Depreciation	16.57	19.70
2	Interest on loan	11.66	12.80
3	Return on equity	16.39	19.44
4	Interest on working capital	1.45	1.66
5	O&M expenses	22.98	25.84
	Total AFC	69.05	79.44

18. The Petitioner has claimed the following Interest on Working Capital (IWC) in respect of the transmission assets from their COD to 31.3.2024:

(₹ in lakh)

Asset-I		
Particulars	2022-23 (pro-rata for 337 days)	2023-24
O&M Expenses - one month	25.80	26.66
Maintenance Spares 15% of O&M Expenses	46.43	47.99
Receivables equivalent to 45 days of AFC	91.25	99.89
Total Working Capital	163.48	174.54
Bank rate as on 1.4.2019 or as on 1st April of the COD year, whichever is later.	10.50%	10.50%
Interest on Working Capital	15.85	18.33

(₹ in lakh)

Asset-II		
Particulars	2022-23 (pro-rata for 336 days)	2023-24
O&M Expenses - one month	2.08	2.15
Maintenance Spares 15% of O&M Expenses	3.74	3.88
Receivables equivalent to 45 days of AFC	9.25	9.77
Total Working Capital	15.07	15.80
Bank rate as on 1.4.2019 or as on 1st April of the COD year, whichever is later.	10.50%	10.50%
Interest on Working Capital	1.45	1.66



Date of Commercial Operation (COD)

19. As per the IA dated 10.7.2021, the transmission assets were scheduled to be commissioned (SCOD) within nine months from the date of IA, i.e., by 10.4.2022. As against the SCOD, the COD claimed by the Petitioner in respect of the transmission assets is as follows:

Asset	Asset Name	SCOD	COD
Asset-I	1x500 MVA, 400/220 kV ICT (3 rd) along with the associated bays and 2 Nos. 220 kV Bus Sectionalizer Bay (Hybrid/MTS) at Indore (POWERGRID) Sub-station	10.4.2022	29.4.2022
Asset-II	1 No. 220 kV Hybrid/MTS Line Bay at Indore Sub-station	10.4.2022	30.4.2022

20. Before deciding on the COD, we find it apposite to quote Regulation 5 of the 2019 Tariff Regulations, which is material. The same is as under:

“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.*



(3) *The date of commercial operation in case of integrated mine(s), shall mean the earliest of*

—
(a) *the first date of the year succeeding the year in which 25% of the Peak Rated Capacity as per the Mining Plan is achieved; or*

(b) *the first date of the year succeeding the year in which the value of production estimated in accordance with Regulation 7A of these regulations, exceeds total expenditure in that year; or*

(c) *the date of two years from the date of commencement of production:*

Provided that on earliest occurrence of any of the events under sub-clauses (a) to (c) of Clause (3) of this Regulation, the generating company shall declare the date of commercial operation of the integrated mine(s) under the relevant sub-clause with one week prior intimation to the beneficiaries of the end-use or associated generating station(s);

Provided further that in case the integrated mine(s) is ready for commercial operation but is prevented from declaration of the date of commercial operation for reasons not attributable to the generating company or its suppliers or contractors or the Mine Developer and Operator, the Commission, on an application made by the generating company, may approve such other date as the date of commercial operation as may be considered appropriate after considering the relevant reasons that prevented the declaration of the date of commercial operation under any of the sub-clauses of Clause (3) of this Regulation;

Provided also that the generating company seeking the approval of the date of commercial operation under the preceding proviso shall give prior notice of one month to the beneficiaries of the end-use or associated generating station(s) of the integrated mine(s) regarding the date of commercial operation.”

21. In support of the COD of the transmission assets, the Petitioner has submitted a copy of the CEA Energisation Certificates dated 29.3.2022 and 22.4.2022 under Regulation 43 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010, WRLDC Certificates dated 11.5.2022 and 12.5.2022 for successful completion of trial operations of the transmission assets on 28.4.2022 and 29.4.2022, CMD Certificates and the notification of COD thereof.

22. With regard to Asset-II, the Petitioner has submitted that Asset-II could not be utilized after its commissioning due to the delay in the commissioning of the associated generating system being developed by AWEMPOPL, which was beyond the control of the Petitioner. The Petitioner has submitted that due to the non-readiness of the interconnected generating system, it has prayed for the COD under Regulation 5(2) of the 2019 Tariff Regulations. The Petitioner has further submitted that since AWEMPOPL failed to connect its downstream network at the Indore Sub-station, it could not provide the service for reasons not attributable



to itself, its suppliers, or its contractors. The Petitioner has requested that its prayer regarding COD under Regulation 5(2) of the 2019 Tariff Regulations be considered by the Commission before the system is put into regular service. The Petitioner has submitted that it has complied with all the requirements for declaring the COD as provided under Regulation 5(2) of the 2019 Tariff Regulations. The Petitioner has submitted the CEA Energization Certificate, RLDC Charging Certificate, and CMD Certificate regarding the readiness of the transmission assets and the issuance of prior notice to the associated generation licensee as per Regulation 5(2) of the 2019 Tariff Regulations.

23. In view of the Petitioner's submissions, we think it appropriate to discuss the asset-wise issues in the succeeding paragraphs to decide the COD under the 2019 Tariff Regulations.

Asset-I:

24. With respect to the COD of Asset-I, it is noted that as per minutes of the 2nd WRPCTP meeting, the 500 MVA ICT is also to be used for drawl purposes by MPPTCL. The power flow started in the ICT along with associated bays with effect from 23:03 hrs. of 27.4.2022, and ICT was put into use. Taking into consideration the CEA Energisation Certificate dated 22.4.2022 under Regulation 43 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010, RLDC Charging Certificate dated 12.5.2022 indicating completion of trial operations by 28.4.2022, and CMD Certificate as required under Grid Code, the COD of the Asset-I is approved as 29.4.2022.

Asset-II:

25. In terms of 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.



Further, in terms of Regulation 5(2) of the 2019 Tariff Regulations, the Petitioner is required to give prior notice of at least one month to the transmission licensee regarding the date of commercial operation.

26. The Petitioner has prayed for the declaration of COD of Asset-II as 30.4.2022 under Regulation 5(2) of the 2019 Tariff Regulations, as the associated generator under the scope of AWEMPOPL was not ready. In support of the COD of Asset-II, the Petitioner has placed on record the copies of the CEA Energization Certificate dated 29.3.2022 under Regulation 43 of Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010, 'No-load' RLDC Charging Certificate dated 11.5.2022 and the CMD Certificate as required under the Grid Code. The Petitioner, vide letter dated 25.3.2022, has issued a prior notice of one month, as required under Regulation 5(2) of the 2019 Tariff Regulations, to AWEMPOPL, informing them that the transmission assets would be ready for charging in March 2022.

27. The Respondent, vide affidavit dated 11.12.2023, has stated that in the present case, since the SCOD of the Respondent No. 9, AWEMPOPL, was extended by SECI till 26.8.2022, the Power Purchase Agreement (PPA) dated 16.12.2019 stood modified. Accordingly, the delay in execution of the asset under its scope for the period from 30.04.2022 to 26.08.2022 is not attributable to it.

28. Furthermore, AWEMPOPL, vide letter dated 5.4.2022, had requested the Petitioner to match the time schedule for charging the LTA elements along with the readiness of the project, i.e., till the end of June 2022. However, AWEMPOPL commissioned its downstream system on 17.9.2022.

29. We have considered the submissions of the Petitioner and AWEMPOPL. On perusal of the record, we find that the CEA Energisation Certificate, 'No load' RLDC Charging



Certificate, and the CMD Certificate have been placed on record by the Petitioner for the approval of the COD of Asset-II under Regulation 5(2) of the 2019 Tariff Regulations. Further, we observed that as per the mandatory requirement of Regulation 5(2) of the 2019 Tariff Regulations, the Petitioner has also placed on record a mandatory notice of one month, which was sent to AWEMPOPL on 25.3.2022, informing that Asset-II would be ready for charging in March 2022. However, Asset-II was commissioned on 30.4.2022, which is one month after the date of the mandatory notice, i.e., 25.3.2022. Considering the fact that all the mandatory requirements of Regulation 5(2) of the 2019 Tariff Regulations have been fulfilled by the Petitioner for the approval of COD of Asset-II, we deem it appropriate to approve the COD of Asset-II as of 30.4.2022. As far as the contentions of AWEMPOPL regarding the extension granted by SECI in SCOD, we have duly considered the same under the heading 'Sharing of Transmission Charges'.

Capital Cost

30. Regulation 19 of the 2019 Tariff Regulations provides as follows:

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

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

(a) The expenditure incurred or projected to be incurred up to the date of commercial operation of the project;

(b) Interest during construction and financing charges, on the loans (i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of 30% of the funds deployed, by treating the excess equity as normative loan, or (ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed;

(c) Any gain or loss on account of foreign exchange risk variation pertaining to the loan amount availed during the construction period;

(d) Interest during construction and incidental expenditure during construction as computed in accordance with these regulations;

(e) Capitalised Initial Spares subject to the ceiling rates in accordance with these regulations;

(f) Expenditure on account of additional capitalization and de-capitalisation determined in accordance with these regulations;

(g) Adjustment of revenue due to sale of infirm power in excess of fuel cost prior to the date of commercial operation as specified under Regulation 7 of these regulations;



- (h) Adjustment of revenue earned by the transmission licensee by using the assets before the date of commercial operation;
- (i) Capital expenditure on account of ash disposal and utilization including handling and transportation facility;
- (j) Capital expenditure incurred towards railway infrastructure and its augmentation for transportation of coal upto the receiving end of the generating station but does not include the transportation cost and any other appurtenant cost paid to the railway.
- (k) Capital expenditure on account of biomass handling equipment and facilities, for co-firing;
- (l) Capital expenditure on account of emission control system necessary to meet the revised emission standards and sewage treatment plant;
- (m) Expenditure on account of fulfilment of any conditions for obtaining environment clearance for the project;
- (n) Expenditure on account of change in law and force majeure events; and
- (o) Capital cost incurred or projected to be incurred by a thermal generating station, on account of implementation of the norms under Perform, Achieve and Trade (PAT) scheme of Government of India shall be considered by the Commission subject to sharing of benefits accrued under the PAT scheme with the beneficiaries.
- (3) The Capital cost of an existing project shall include the following:
- (a) Capital cost admitted by the Commission prior to 1.4.2019 duly trued up by excluding liability, if any, as on 1.4.2019;
- (b) Additional capitalization and de-capitalization for the respective year of tariff as determined in accordance with these regulations;
- (c) Capital expenditure on account of ash disposal and utilization including handling and transportation facility;
- (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 decapitalised 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 asset.
- (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.”

31. The Petitioner has submitted the Auditor’s Certificate and has claimed the following capital costs incurred as on COD and Additional Capital Expenditure (ACE) projected to be incurred in respect of the transmission assets:

(₹ in lakh)					
Asset	Apportioned Approved Cost (as per FR)	Cost up to COD	Additional Capitalization		Estimated Completion Cost
			2022-23	2023-24	
Asset-I	3890.51	2413.36	682.72	241.03	3337.11
Asset-II	574.46	292.6	47.79	9.17	349.56
Total	4464.97	2705.96	730.51	250.2	3686.67

Cost overrun

32. The Petitioner has submitted that against the total apportioned approved cost of ₹4464.97 lakh as per the feasibility report (FR), the estimated completion cost is ₹3686.67 lakh. Therefore, there is no cost overrun in any of the transmission assets, individually or combined, with respect to the FR-approved cost. The Petitioner has further submitted that the cost variation between the apportioned approved cost and the estimated completion cost is mainly due to the following reasons:

Asset-I:

i. Sub-station (Decrease of ₹553 lakh)

a. Preliminary works, land and civil works (Increase of ₹36 lakh)

The cost under this head was increased as per the actual site conditions.

b. Sub-station equipment, including Initial Spares (Decrease of ₹99 lakh)

For procurement, an open competitive bidding route was followed, providing equal opportunity to all eligible firms. The lowest possible market prices for the required products/services were obtained in the procurement process, and



contracts were awarded based on the lowest evaluated eligible bidder. The best competitive bid prices against tenders may be lower or higher than the cost estimates, depending on the prevailing market conditions. Further, regarding variations in the cost of individual items in sub-station packages, the packages under the scope of work comprise many items, and the same items were awarded through open competitive bidding. In the said bidding process, the bids were received from multiple parties quoting different rates for various BOQ items under the said package. Furthermore, the lowest bidder was to be arrived at/evaluated on an overall basis only. Hence, item-wise unit prices in contracts and their variation over the unit rate considered in FR estimates were beyond the control of the Petitioner.

c. IDC (Decrease of ₹82 lakh)

The decrease in IDC was attributable to variations in the rate of interest considered in the FR as against the actuals, a decrease in overall capital cost with respect to the FR, and deployment of funds based on actuals. Further in FR, the IDC was calculated assuming the loans would be available from domestic sources. In FR, the interest rate on loans was considered @10.5% of domestic loans subject to actuals. The actual IDC accrued up to the COD has been considered in the Auditor's Certificate.

d. IEDC (Decrease of ₹407 lakh)

In IA, 10.75% and 3% of the equipment cost and civil works were considered for IEDC and contingency, respectively. In contrast, the IEDC has been considered based on the actual expenditure under the subject head as per the Auditor's Certificate.



Asset-II:

i. Sub-station (Decrease of ₹215 lakh)

a. Sub-station equipment including Initial Spares (Decrease of ₹120 lakh)

For procurement, an open competitive bidding route was followed, providing equal opportunity to all eligible firms. In the procurement process, the lowest possible market prices for the required products/services were obtained, and contracts were awarded based on the lowest evaluated eligible bidder. The best competitive bid prices against tenders may happen to be lower or higher than the cost estimate, depending on the prevailing market conditions. Further, regarding variations in the cost of individual items in sub-station packages, the packages under the scope of work comprise a large number of items, and the same items were awarded through open competitive bidding. In the said bidding process, the bids were received from multiple parties quoting different rates for various BOQ items under the said package. Furthermore, the lowest bidder was to be arrived at/ evaluated on an overall basis only. Hence, the item-wise unit prices in contracts and their variation over the unit rate considered in FR estimates were beyond the control of the Petitioner.

b. IDC (Decrease of ₹11 lakh)

The decrease in IDC was attributable to variation in the rate of interest considered in the FR against the actuals, a decrease in overall capital cost with respect to the FR, and the deployment of funds based on actuals. Further, in FR, IDC was calculated assuming that the loans would be available from domestic sources. In FR, the interest rate on loans has been considered @ 10.5% for



domestic loans subject to actuals. The actual IDC accrued up to COD has been considered in the Auditor's Certificate.

c. IEDC (Decrease of ₹84 lakh)

In IA, 10.75% and 3% of the equipment cost and civil works were considered for IEDC and contingency, respectively. In contrast, the IEDC has been considered based on the actual expenditure under the subject head as per the Auditor's Certificate.

33. We have considered the Petitioner's submissions. The estimated completion cost of the transmission assets is within the FR cost. Therefore, the capital cost claimed by the Petitioner is allowed. However, the petitioner is advised to be more prudent in estimation while arriving at the FR cost.

Time overrun

34. The Petitioner has submitted that as per the IA dated 10.7.2021, the SCOD of the transmission assets was 10.4.2022, against which Assets I and II were put into commercial operation on 29.4.2022 and 30.4.2022, respectively. The details of the time overrun claimed by the Petitioner are as follows:

Asset	Asset Name	SCOD	COD	Delay
Asset-I	1x500 MVA, 400/220 kV ICT (3rd) along with the associated bays and 2 Nos. 220 kV Bus Sectionalizer Bay (Hybrid/MTS) at Indore (POWERGRID) Sub-station	10.4.2022	29.4.2022	19 days
Asset-II	1 No. 220 kV Hybrid/MTS Line Bay at Indore Sub-station	10.4.2022	30.4.2022	20 days



Reasons for time overrun:

35. The Petitioner has submitted that the delay in commissioning of the transmission assets was mainly due to the outbreak of the COVID-19 pandemic, which completely stalled the work. The Petitioner has submitted the following in this regard:

Delay due to the COVID-19 pandemic

36. COVID-19 was identified by the World Health Organization (WHO) as a global pandemic and a force majeure event impacting all segments/verticals of the global business/industry. This situation was unforeseen/ unplanned in nature. As such, global business and production took a multiple-fold hit. The Petitioner has submitted that the projects undertaken by the Petitioner were no exception, facing many challenges as they navigated through largely uncharted territory, with projects and supply lines experiencing highly unique and mounting risks, leading to delay in the execution of its projects. Specific COVID-19-related challenges, i.e., supplier-delivery issues, worker absenteeism due to illness, delayed issuance of permits, travel restrictions, and loss of time or inefficiencies resulting from the need to practice social distancing on the job site, further delayed the execution. Also, a lack of engineering and technical support, as well as supply chain disruptions, were significant factors impacting the project schedule and its implementation. Thus, the commissioning of various projects, including the project that was the subject matter of the instant Petition, faced delays. The IA of the project was accorded amidst the raging 2nd wave of the COVID-19 pandemic with a compressed schedule of 9 months, considering the commissioning of the associated generating projects. Despite the COVID-19 restrictions, the Petitioner made the best effort to commission the transmission assets as per the SCOD. A supplier of the Petitioner, vide letter dated 7.4.2022, informed that due to the 3rd wave of the COVID-19



pandemic in January 2022, its supply chain management was severely affected. Hence, it was unable to dispatch the 2 Nos. HGIS- Bus Sectionalizer Bay as per the contract schedule. Further, due to the onset of war between Russia and Ukraine from 24.2.2022 onwards, the Petitioner was unable to obtain the relay accessories parts and raw materials. Therefore, the supply of the materials, namely, 7SS5251-5FA01-0AA1/GG bus bar protection relays and Raw materials of conductor, was delayed due to global restrictions on the processing of raw materials.

37. Based on the aforementioned reasons, the Petitioner has prayed the Commission to acknowledge the force majeure event that led to the disruption in the commissioning of the transmission assets and allow the time overrun of 19 and 20 days in the commissioning of Assets I and II, respectively.

38. MSEDCL, in its written submissions, vide affidavit dated 11.3.2024, has submitted that the lackadaisical approach adopted by the Petitioner in planning, follow-ups, and accumulating the raw materials and accessories/parts for the project caused the delay in the commissioning of the transmission assets. MSEDCL has stated that the Petitioner's claim of delay due to the COVID-19 pandemic has not been supported with relevant documents and details explaining the events that caused the delay. Therefore, MSEDCL has submitted that the Petitioner's request for an extension of the deadline should not be granted.

39. We have considered the submissions of the Petitioner and MSEDCL. As per the IA dated 10.7.2021, the SCOD of the transmission assets was 10.4.2022. Assets I and II were put into commercial operation on 29.4.2022 and 30.4.2022, respectively. Thus, there is a time overrun of 19 days and 20 days in the commissioning of Assets I and II, respectively.



40. One of the reasons attributed to the time overrun by the Petitioner is the compressed timeline stipulated for executing the transmission project. The timeline of 9 months for the transmission project must have been approved by the Petitioner's Board of Directors, considering the urgent need for ICT and other factors. Further, having undertaken the execution as per the approved timeline, the Petitioner cannot thereafter claim that the timeline for the execution is insufficient. Therefore, the submissions of the Petitioner regarding the compressed timeline are rejected.

41. The Petitioner has further attributed the time overrun of 19 days and 20 days to the outbreak of the COVID-19 pandemic and the Russia-Ukraine war, which resulted in the Petitioner being unable to get relay accessories parts and raw materials. The Petitioner has claimed these events as *force majeure* events. The Petitioner has submitted the CEA energisation certificate for both the assets, and the same is as follows:



Amend-1 and 2

(ICT and
Line bay)



Government of India
Central Electricity Authority
Regional Inspectorial Organisation (West)
Ground Floor, WRPC Building, F-3, MIDC Area
Marol, Andheri (East), Mumbai 400 093



ISO: 9001:2015

Telefax: 022 - 28211003

riowestcea@gmail.com

No.: WRIO/MP/Indore/PGCIL/A-9496/SE/2022/ 4.100-10)

Date: 29 MAR 2022

Approval for Energisation

(under Regulation 32 & 43 of CEA(Measures relating to Safety and Electric Supply), Regulations,2010)

Kind Attn: Sh A K Khare GM
M/s Powergrid Corporation Of India Ltd
765/400 Kv Indore Ss, Village Hatuniya
Post Office Guran Tahsil Sanwer
Dist Indore MP -453551

Subject: Approval for Energisation of Electrical Installation of M/s Powergrid Corporation Of India Ltd at 765/400 KV Indore SS, Village Hatuniya Post Office Guran Tahsil Sanwer Dist Indore MP under regulation 43 of Central Electricity Authority (Measures relating to Safety and Electric Supply), Regulations 2010 (As amended till date).

Reference:

1. Your online application No: A/2022/09496 dated 17/03/2022
2. Inspection Report letter No.: No.: WRIO/MP/Indore/PGCIL/A-9496/SE/2022/ 4096-97 dated 28/03/2022
3. Your compliance letter Dated 29/03/2022

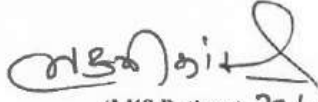
Whereas the inspection of Electrical Installations M/s Powergrid Corporation Of India Ltd at 765/400 KV Indore SS, Village Hatuniya Post Office Guran Tahsil Sanwer Dist Indore MP was carried out on 28th March, 2022 by the undersigned.

The non-compliances of certain provisions/stipulations of the regulations were conveyed to you vide our office letter under reference at Sl.No.(2) above(Inspection Report) and the compliance of the same has since been received vide your letter under reference at Sl.No. (3) above.

The Approval for energisation of Electrical Installations M/s Powergrid Corporation Of India Ltd at 765/400 KV Indore SS, Village Hatuniya Post Office Guran Tahsil Sanwer Dist Indore MP is here by accorded subject to consistent compliance of relevant provisions of CEA (Measures relating to Safety and Electric Supply) Regulations, 2010 (as amended till date) by M/s Powergrid Corporation Of India Ltd at 765/400 KV Indore SS, Village Hatuniya Post Office Guran Tahsil Sanwer Dist Indore MP

The above apparatus /Installations shall be due for periodical inspection under regulation 30 within two years from the date of inspection. This periodicity is subject to change by government notification.




(LKS Rathore) 29/3/22
Director/SE
For Chief Electrical Inspector
to the Govt. of India

42. As per the CEA energisation certificate referenced above, it is noted that the petitioner submitted an online application on 17.03.2022. The Central Electricity Authority (CEA), vide



its letter dated 29.03.2022, approved the energisation of the electrical installation at the 765/400 kV Indore Substation. Based on this, it is concluded that the Petitioner was ready for charging prior to the Scheduled Commercial Operation Date (SCOD) of the asset, i.e., 10.04.2022. The Petitioner successfully completed the trial operation on 28.04.2022, which indicates that approximately 30 days were taken for testing and commissioning of the assets. The petitioner has sought a time overrun of 19 days and 20 days from the SCOD (10.04.2022) to the Commercial Operation Date (COD) of Asset-1 and Asset-2, respectively. However, based on the CEA energisation certificate and the RLDC charging certificate, it is concluded that the justifications provided by the petitioner—citing the Covid-19 pandemic and the Russia-Ukraine war— are devoid of merit. Accordingly, the delay is not condoned.

43. The Petitioner has also submitted that its supplier, vide letter dated 7.4.2022, informed that on account of the 3rd wave of the COVID-19 pandemic, they were not able to dispatch the 2 Nos. HGIS-Bus Sectionalizer Bay as per the schedule of the contract, and it was received by the Petitioner at the site in April 2022.

44. We have considered the Petitioner's submissions. We think it proper to refer here to Regulation 22(1) of the 2019 Tariff Regulations, and the same is as under:

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

(1) The "controllable factors" shall include but shall not be limited to the following:

a. Efficiency in the implementation of the project not involving approved change in scope of such project, change in statutory levies or change in law or force majeure events; and

b. Delay in execution of the project on account of contractor or supplier or agency of the generating company or transmission licensee".



45. In view of Regulation 22(1) of the 2019 Tariff Regulations, we are of the view that delay in the commissioning of the transmission assets falls under the category of controllable factors. The prayer for condonation of a time overrun of 19 days for Asset-I and 20 days for Asset-II is not condoned and hence rejected.

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

46. The Petitioner has submitted the variation between the IDC and IEDC as per the IA and as per actuals for Assets I and II.

47. MSEDCL has submitted that IDC and IEDC should not be levied beyond SCOD, and the beneficiaries, including MSEDCL, should not be made liable for the same. MSEDCL has further submitted that the 2019 Tariff Regulations are specific in nature and do not provide for the capitalization of IDC in the case of existing projects. The methodology of adjusting IDC while working out the Weighted Average Rate of Interest (WAROI) has been consistently adopted by the Commission in its various orders.

48. We have considered the contentions of the Petitioner and MSEDCL. Since we have not condoned the delay in the commissioning of the transmission assets, the IDC and IEDC allowed in proportion to the transmission assets are summarized as follows:

(₹ in lakh)

Asset	IDC claimed, as per the Auditor's Certificate	IDC Disallowed	IEDC claimed, as per the Auditor's Certificate	IEDC Disallowed
Asset-I	4.56	2.22	52.50	3.40
Asset-II	1.34	0.67	4.08	0.28



Initial Spares

49. Regulation 23(d) of the 2019 Tariff Regulations provides that the 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) GIS Insulated Sub-station

- (Green Field): 5.00%

- (Brown Field): 7.00%

(v) Communication System: 3.50%

(vi) Static Synchronous Compensator: 6.00%”

50. The Initial Spares, as claimed by the Petitioner in respect of the transmission assets, are as follows:

(₹ in lakh)						
Asset	Head	Plant and Machinery cost	Ceiling norms as per Regulations (%)	Allowable Initial Spares	Initial Spares claimed	Excess Initial Spares
Asset-I	SS	3224.53	6	196.39	147.74	0
Asset-II	SS	344.14	6	20.64	20.85	0.21
Total	SS	3568.67	6	217.03	168.59	0.21

51. We have considered the Petitioner's submissions. It is observed that the Initial Spares claimed by the Petitioner in respect of Asset-II exceed the ceiling norms as specified in the 2019 Tariff Regulations by ₹0.21 lakh. Hence, the Initial Spares for Asset-II are restricted to the ceiling of 6%. The Initial Spares in respect of Asset-I are approved as claimed by the Petitioner, as they fall within the ceiling norms specified in the 2019 Tariff Regulations.

Capital Cost allowed as on COD

52. Accordingly, the capital cost allowed in respect of the transmission assets as on COD is as follows:



(₹ in lakh)

Asset	Capital Cost claimed as on COD	Less: IDC Disallowed	Less: IDC Undischarged as on COD	Less: IEDC Disallowed	Less: Initial Spares Disallowed	Capital Cost Approved as on COD
Asset-I	2413.36	2.22	1.07	3.43	0.00	2406.67
Asset-II	292.60	0.67	0.30	0.28	0.21	291.15

Additional Capital Expenditure (ACE)

53. The Petitioner has claimed the following ACE for the 2019-24 tariff period:

(₹ in lakh)

Asset	Projected ACE		Total ACE
	2022-23	2023-24	
Asset-I	682.72	241.03	923.75
Asset-II	47.79	9.17	56.96

54. The Petitioner has submitted that the admissibility of ACE incurred after COD is to be dealt with in accordance with the provisions of Regulation 24 of the 2019 Tariff Regulations.

55. Regulation 24 of the 2019 Tariff Regulations provides as follows:

“24. Additional Capitalization

(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:

- Un discharged liabilities recognized to be payable at a future date;*
- Works deferred for execution;*
- Procurement of initial capital spares within the original scope of work, in accordance with the provisions of Regulation 23 of these regulations;*
- 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; and*
- Change in law or compliance of any existing law; and*
- 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.”



56. The Petitioner has submitted that since the ACE incurred/projected to be incurred in respect of the transmission assets is mainly on account of the balance/ retention payments and works deferred for execution, the same may be allowed under Regulations 24(1)(a) and 24(1)(b) of the 2019 Tariff Regulations. The Petitioner has further submitted the details of the underlying reasons for the ACE incurred concerning the transmission assets in Form-7. The breakup of ACE claimed by the Petitioner for the transmission assets is as follows:

Asset-I

(₹ in lakh)

ACE Claimed	FY 2022-23	FY 2023-24
Land - Freehold	0.00	0.00
Land - Leasehold	0.00	0.00
Building Civil Works and Colony	33.31	22.21
Transmission Line	0.00	0.00
Sub Station	638.20	218.82
PLCC	0.00	0.00
IT Equipment (Incl. Software)	11.21	0.00
Total	682.72	241.03

Asset-II

(₹ in lakh)

ACE Claimed	FY 2022-23	FY 2023-24
Land - Freehold	0.00	0.00
Land - Leasehold	0.00	0.00
Building Civil Works and Colony	0.00	0.00
Transmission Line	0.00	0.00
Sub Station	16.87	9.17
PLCC	30.92	0.00
IT Equipment (Incl. Software)	0.00	0.00
Total	47.79	9.17

57. We have considered the submissions of the Petitioner and approved the ACE under Regulations 24(1)(a) and 24(1)(b) of the 2019 Tariff Regulations as envisaged in the original scope of work. We have also considered the undischarged IDC of ₹1.07 lakh to be discharged in FY 2022-23. Accordingly, the capital cost, including ACE allowed in respect of the transmission assets, is as follows:



(₹ in lakh)

Asset	As on COD	2022-23	2023-24	Total
Asset-I	2406.67	683.79	241.03	3331.49
Asset-II	291.15	48.09	9.17	348.41

Debt-Equity Ratio

58. Regulation 18 of the 2019 Tariff Regulations provides as follows:

“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.”

59. The debt-equity ratio of 70:30 has been considered in accordance with Regulation 18 of the 2019 Tariff Regulations. The details of the debt-equity ratio as on COD and as on 31.3.2024 in respect of the transmission assets are as follows:

(₹ in lakh)

Asset-I				
Funding	As on COD		As on 31.3.2024	
Debt	70%	1684.67	70%	2332.04
Equity	30%	722.00	30%	999.45
Total		2406.67		3331.49

(₹ in lakh)

Asset-II				
Funding	As on COD		As on 31.3.2024	
Debt	70%	203.80	70%	243.89
Equity	30%	87.34	30%	104.52
Total		291.15		348.41

Depreciation

60. Regulation 33 of the 2019 Tariff Regulations provides as follows:

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

(10) Depreciation of the emission control system of an existing or a new generating station or unit thereof where the date of operation of the emission control system is subsequent to the date of commercial operation of the generating station or unit thereof, shall be computed annually from the date of operation of such emission control system based on straight line method, with salvage value of 10%, over a period of

a) twenty-five years, in case the generating station or unit thereof is in operation for fifteen years or less as on the date of operation of the emission control system; or

b) balance useful life of the generating station or unit thereof plus fifteen years, in case the generating station or unit thereof is in operation for more than fifteen years as on the date of operation of the emission control system; or

c) ten years or a period mutually agreed by the generating company and the beneficiaries, whichever is higher, in case the generating station or unit thereof has completed its useful life."



61. The depreciation has been worked out considering the admitted capital expenditure as on COD, subject to truing-up. The Weighted Average Rate of Depreciation (WAROD) has been worked out after considering the depreciation rates of IT and non-IT assets as specified in the 2019 Tariff Regulations and is annexed to this order. The depreciation allowed in respect of the transmission assets for the 2019-24 tariff period is as follows:

(₹ in lakh)

Asset-I			
	Particulars	2022-23 (pro-rata for 337 days)	2023-24
A	Opening Gross Block	2406.67	3090.46
B	Addition during the year 2019-24 due to projected ACE	683.79	241.03
C	Closing Gross Block (A+B)	3090.46	3331.49
D	Average Gross Block (A+C)/2	2748.57	3210.97
E	Average Gross Block (90% depreciable assets)	2721.77	3178.57
F	Average Gross Block (100% depreciable assets)	26.80	32.40
G	Depreciable value (excluding IT equipment and software) (E*90%)	2449.59	2860.71
H	Depreciable value of IT equipment and software (F*100%)	26.80	32.40
I	Total Depreciable Value (G+H)	2476.39	2893.11
J	Weighted average rate of Depreciation (WAROD) (in %)	5.36%	5.35%
K	Lapsed useful life at the beginning of the year (Year)	0	0
L	Balance useful life at the beginning of the year (Year)	25	25
M	Depreciation during the year (D*J)	136.10	171.83
N	Cumulative Depreciation at the end of the year	136.10	307.92
O	Remaining Aggregate Depreciable Value at the end of the year	2340.29	2585.19

(₹ in lakh)

Asset-II			
	Particulars	2022-23 (pro-rata for 336 days)	2023-24
A	Opening Gross Block	291.15	339.24
B	Addition during the year 2019-24 due to projected ACE	48.09	9.17
C	Closing Gross Block (A+B)	339.24	348.41
D	Average Gross Block (A+C)/2	315.19	343.82
E	Average Gross Block (90% depreciable assets)	310.01	338.64
F	Average Gross Block (100% depreciable assets)	5.18	5.18
G	Depreciable value (excluding IT equipment and software) (E*90%)	279.01	304.78
H	Depreciable value of IT equipment and software (F*100%)	5.18	5.18
I	Total Depreciable Value (G+H)	284.19	309.96
J	Weighted average rate of Depreciation (WAROD) (in %)	5.70%	5.71%
K	Lapsed useful life at the beginning of the year (Year)	0	0
L	Balance useful life at the beginning of the year (Year)	25	25



Asset-II			
	Particulars	2022-23 (pro-rata for 336 days)	2023-24
M	Depreciation during the year (D*J)	16.53	19.63
N	Cumulative Depreciation at the end of the year	16.53	36.16
O	Remaining Aggregate Depreciable Value at the end of the year	267.66	273.80

Interest on Loan (IoL)

62. Regulation 32 of the 2019 Tariff Regulations provides as follows:

“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 decapitalization of asset, 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”.

63. The Petitioner has claimed the Weighted Average Rate of Interest on loan (WAROI)

based on its actual loan portfolio and rate of interest. 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 be adjusted. Accordingly, the floating rate of interest, if any, will be considered at the time of truing-up. Therefore, the IoL is allowed subject to the truing-up of the transmission assets in accordance with Regulation 32 of the 2019 Tariff Regulations, and the same is as follows:

(₹ in lakh)

Asset-I			
	Particulars	2022-23 (pro-rata for 337 days)	2023-24
A	Gross Normative Loan	1684.67	2163.32
B	Cumulative Repayments up to the Previous Year	0.00	136.10
C	Net Loan-Opening (A-B)	1684.67	2027.22
D	Addition due to ACE	478.65	168.72
E	Repayment during the year	136.10	171.83
F	Net Loan-Closing (C+D-E)	2027.22	2024.12
G	Average Loan (C+F)/2	1855.94	2025.67
H	Weighted Average Rate of Interest on Loan (in %)	5.95%	5.95%
I	Interest on Loan (G*H)	102.04	120.63

(₹ in lakh)

Asset-II			
	Particulars	2022-23 (pro-rata for 336 days)	2023-24
A	Gross Normative Loan	203.80	237.47
B	Cumulative Repayments up to the Previous Year	0.00	16.53
C	Net Loan-Opening (A-B)	203.80	220.94
D	Addition due to ACE	33.66	6.42
E	Repayment during the year	16.53	19.63
F	Net Loan-Closing (C+D-E)	220.94	207.73
G	Average Loan (C+F)/2	212.37	214.33
H	Weighted Average Rate of Interest on Loan (in %)	5.95%	5.95%
I	Interest on Loan (G*H)	11.63	12.75

Return on Equity (RoE)

64. Regulations 30 and 31 of the 2019 Tariff Regulations provide as follows:

“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 due to Change in Law, 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:

Rate of pre-tax return on equity = 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:



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 Rs 1,000 crore;

(b) Estimated Advance Tax for the year on above is Rs 240 crore;

(c) Effective Tax Rate for the year 2019-20 = Rs 240 Crore/Rs 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."

65. The Petitioner has submitted that the MAT rate is applicable to it. Accordingly, the MAT rate applicable in FY 2019-20 has been considered for the purpose of grossing up of RoE subject to truing-up in accordance with Regulation 31(3) of the 2019 Tariff Regulations.

The RoE allowed in respect of the transmission assets is as follows:

(₹ in lakh)

Asset-I			
	Particulars	2022-23 (pro-rata for 337 days)	2023-24
A	Opening Equity	722.00	927.14
B	Addition due to ACE	205.14	72.31
C	Closing Equity (A+B)	927.14	999.45
D	Average Equity (A+C)/2	824.57	963.29
E	Return on Equity (Base Rate)	15.50%	15.50%
F	Tax Rate applicable	17.472%	17.472%
G	Rate of Return on Equity (Pre-tax)	18.782%	18.782%
H	Return on Equity (Pre-tax) (D*G)	142.99	180.92

(₹ in lakh)

Asset-II			
	Particulars	2022-23 (pro-rata for 336 days)	2023-24
A	Opening Equity	87.34	101.77
B	Addition due to ACE	14.43	2.75
C	Closing Equity (A+B)	101.77	104.52
D	Average Equity (A+C)/2	94.56	103.15
E	Return on Equity (Base Rate)	15.50%	15.50%



F	Tax Rate applicable	17.472%	17.472%
G	Rate of Return on Equity (Pre-tax)	18.782%	18.782%
H	Return on Equity (Pre-tax) (D*G)	16.35	19.37

Operation & Maintenance Expenses (O&M Expenses)

66. The O&M Expenses claimed by the Petitioner in respect of the transmission assets for the 2019-24 tariff period are as follows:

(₹ in lakh)

Asset-I		
Particulars	2022-23	2023-24
Sub-station Bays		
400 kV Indore ICT Bay (AIS)	1	1
220 kV Indore ICT Bay (AIS)	1	1
220 kV Indore Bus Sectionalizer Bay (MTS)	2	2
Norms		
400 kV	35.66	36.91
220 kV	24.96	25.84
Total Sub-station Bays	102.06	114.43
Transformer in MVA		
400 kV Indore ICT	500	500
Norms		
400 kV	0.40	0.41
Total Transformers	183.73	205.50

(₹ in lakh)

Asset-II		
Particulars	2022-23	2023-24
Sub-station Bays		
220 kV Indore- Indore SBESS Bay (MTS)	1	1
Norms		
220 kV	24.96	25.84
Total Sub-station Bays	22.98	25.84

67. Regulation 35(3)(a) of the 2019 Tariff Regulations provides norms for O&M Expenses in respect of the transmission system as follows:

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



Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
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	0.26	0.27	0.279	0.289
Double Circuit (Bundled conductor with four or more sub-conductors)	1.322	1.368	1.416	1.466	1.517
Double Circuit (Twin & Triple Conductor)	0.881	0.912	0.944	0.977	1.011
Double Circuit (Single Conductor)	0.377	0.391	0.404	0.419	0.433
Multi Circuit (Bundled Conductor with four or more sub-conductor)	2.319	2.401	2.485	2.572	2.662
Multi Circuit (Twin & Triple Conductor)	1.544	1.598	1.654	1.713	1.773
Norms for HVDC stations					
HVDC Back-to-Back stations (Rs 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 (Rs Lakh) (1500 MW)	2,252	2,331	2,413	2,498	2,586
±500 kV Talcher- Kolar HVDC bipole scheme (Rs Lakh) (2000 MW)	2,468	2,555	2,645	2,738	2,834
±500 kV Bhiwadi-Balia HVDC bipole scheme (Rs Lakh) (2500 MW)	1,696	1,756	1,817	1,881	1,947
±800 kV, Bishwanath-Agra HVDC bipole scheme (Rs 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:

- 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;
- 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 (2000 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.”

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

(₹ in lakh)

O&M Expenses	2022-23	2023-24
Asset-I 1 No. 400 kV ICT Bay, 1 No. 220 kV ICT Bay, 2 Nos. of 220 kV Indore Bus Sectionalizer Bay (MTS and 500 MVA ICT at Indore Sub-station)	285.79*	319.93
Asset-II 1 No. 220 kV line bay at Indore	22.98#	25.84

* pro-rata for 337 days

pro-rata for 336 days

Interest on Working Capital (IWC)

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

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



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

(i) Receivables equivalent to 45 days of annual fixed cost;

(ii) Maintenance spares @ 15% of operation and maintenance expenses including security expenses; and

(iii) Operation and maintenance expenses, including security expenses for one month.

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

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

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

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

(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;”

70. IWC is worked out in accordance with Regulation 34 of the 2019 Tariff Regulations, subject to truing-up. The Rate of Interest (RoI) considered is 10.50% (SBI 1-year MCLR applicable as on 1.4.2022 of 7.00% plus 350 basis points) for the FY 2022-23 and 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 in respect of the transmission assets are as follows:

(₹ in lakh)

Asset-I		
Particulars	2022-23 (pro-rata for 337 days)	2023-24
Working Capital for O&M Expenses (O&M expenses for one month)	25.79	26.66
Working Capital for Maintenance Spares (15% of O&M expenses)	46.43	47.99
Working Capital for Receivables (Equivalent to 45 days of annual fixed cost /annual transmission charges)	91.17	100.12
Total Working Capital	163.39	174.77
Rate of Interest for working capital	10.50%	12.00%
Interest on working capital	15.84	20.97

(₹ in lakh)

Asset-II		
Particulars	2022-23 (pro-rata for 336 days)	2023-24
Working Capital for O&M Expenses (O&M expenses for one month)	2.08	2.15



Asset-II		
Particulars	2022-23 (pro-rata for 336 days)	2023-24
Working Capital for Maintenance Spares (15% of O&M expenses)	3.74	3.88
Working Capital for Receivables (Equivalent to 45 days of annual fixed cost /annual transmission charges)	9.23	9.77
Total Working Capital	15.06	15.80
Rate of Interest for working capital	10.50%	12.00%
Interest on working capital	1.46	1.90

Annual Fixed Charges for the 2019-24 Tariff Period

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

(₹ in lakh)

Asset-I		
Particulars	2022-23 (pro-rata for 337 days)	2023-24
Depreciation	136.10	171.83
Interest on Loan	102.04	120.63
Return on Equity	142.99	180.92
Operation & Maintenance Expenses	285.79	319.93
Interest on Working Capital	15.84	20.97
Total	682.75	814.28

(₹ in lakh)

Asset-II		
Particulars	2022-23 (pro-rata for 336 days)	2023-24
Depreciation	16.53	19.63
Interest on Loan	11.63	12.75
Return on Equity	16.35	19.37
Operation & Maintenance Expenses	22.98	25.84
Interest on Working Capital	1.46	1.90
Total	68.94	79.49

Filing Fee and Publication Expenses

72. 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 instant Petition directly from the beneficiaries on a pro-rata basis in accordance with Regulation 70(1) of the 2019 Tariff Regulations.



Licence Fee and RLDC Fees and Charges

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

74. The Petitioner has submitted that if GST is levied at any rate and at any point in the future on charges of transmission of electricity, the Respondent(s) shall bear and additionally pay the same 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 the demand from the Government/ statutory authorities, and these may be recovered from the beneficiaries.

75. MSEDCL has submitted that the Petitioner's prayer qua GST is premature and need not be considered at this juncture as it is not applicable to the transmission of electricity.

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

Security Expenses

77. The Petitioner has submitted that security expenses in respect of the transmission assets are not claimed in the instant Petition and that it would file a separate Petition to claim the overall security expenses and consequential IWC.

78. We have considered the submissions of the Petitioner. The Petitioner has claimed consolidated security expenses for all the transmission assets owned by it on a projected



basis for the 2019-24 tariff period, based on actual security expenses incurred in FY 2018-19 in Petition No. 260/MP/2020. The Commission, vide its order dated 3.8.2021 in Petition No. 260/MP/2020, has approved the security expenses from 1.4.2019 to 31.3.2024. Therefore, the Petitioner's prayer in the instant Petition to allow it to file a separate Petition for claiming overall security expenses and consequential IWC has become infructuous.

Sharing of Transmission Charges

79. The Petitioner has made the following submissions on the issue of sharing of transmission charges of the transmission assets:

- a. The transmission charges in respect of Asset-I for the 2019-24 tariff period will be recovered on a monthly basis in accordance with Regulation 57 of the 2019 Tariff Regulations and will be shared by the beneficiaries as per the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses), Regulations, 2020 (hereinafter referred to as "the 2020 Sharing Regulations") read with its subsequent amendments.
- b. AWEMPOPL will bear the transmission charges in respect of Asset-II from its COD, 30.4.2022, to the COD of the associated generating system under the scope of AWEMPOPL. Thereafter, the transmission charges for the 2019-24 tariff period will be recovered on a monthly basis in accordance with Regulation 57 of the 2019 Tariff Regulations and will be shared by the beneficiaries as per the 2020 Sharing Regulations, along with their subsequent amendments.

80. MPPMCL, in its reply and written submissions, has mainly submitted as follows:

- a. As per sub-clause (12) of Regulation 3(1) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023 (hereinafter referred to as 'the 2023 IEGC Regulations'), 'beneficiary' has been defined as



someone who has a share in an inter-State generating station (ISGS) in terms of sub-clause (117) of Regulation 3(1) of the 2023 IEGC Regulations. However, MPPMCL has neither signed any Power Purchase Agreement (PPA) with SBESSSPTPL or AWEMPOPL nor signed a Power Sale Agreement (PSA) with SECI, which is the nodal agency for renewable energy purchase and sale. Therefore, MPPMCL does not fall under the definition of 'beneficiary'. As a matter of fact, the Petitioner has not defined who is/are the beneficiary(ies) of the transmission assets covered in the instant Petition. Further, as per sub-clause (17) of Regulation 3(1) of the 2023 IEGC Regulations, 'buyer' means a person purchasing electricity through a transaction scheduled through ISTS in accordance with the 2023 IEGC Regulations. However, MPPMCL has not purchased any power from AWEMPOPL's owned 324.4 MW wind-based power plant, and, therefore, MPPMCL does not fall under the definition of 'buyer' either.

- b. The Agreement for Long Term Access with System Strengthening, executed on 3.12.2020 between the Petitioner and AWEMPOPL, reveals that the sole beneficiary of the 324.4 MW Wind Power Station is UPPCL, which is a 'firm beneficiary', availing full power generated by the 324.4 MW Wind Power Station of AWEMPOPL, situated in Dhar District of MP. The constituents of the Western Region have nothing to do with the transmission assets covered under the instant Petition and are not beneficiaries of these assets.
- c. Further, as per the letter dated 12.11.2020 sent by the Petitioner to SBESSSPTPL, the LTA grantee, i.e., SBESSSPTPL, was required to sign the Transmission Service Agreement (TSA) with the Petitioner for sharing of the



transmission charges as applicable under the relevant Central Electricity Regulatory Commission Regulations.

- d. As per Regulation 3(42) of the 2019 Tariff Regulations and Regulation 2(m) of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (hereinafter referred to as “the 2009 Connectivity Regulations”), ‘long-term customer’ (LTC) is a person who has been granted LTA. Since MPPMCL has not been granted any LTA, it cannot be considered as an LTC. Further, Regulation 3(67) of the 2019 Tariff Regulations defines TSA as an agreement entered into between the transmission licensee (the Petitioner in the instant Petition) and the Designated ISTS Customers (DIC) in accordance with the Sharing Regulations. As per Regulation 2(j) of the 2020 Sharing Regulations, DIC is a user of any transmission element(s) of the ISTS. Since MPPMCL is not a user of any of the transmission assets, it cannot fall under the definition of a DIC either.
- e. In terms of the 2020 Sharing Regulations, the transmission charges shall be payable by the buyer who uses the transmission system to evacuate the power from the generator and receive it at its receiving nodes/end. So, from the conjoint reading of the aforesaid Regulations, the transmission charges will be paid by the buyer/beneficiary of the power generated by the power plant using a transmission system to evacuate the power to its receiving end.
- f. In view of the above submissions, MPPMCL is not liable to pay the transmission charges in terms of the transmission tariff to be determined under the instant



Petition, and prays that the Commission may not burden MPPMCL with the liability of the transmission charges in respect of Assets I and II of the Petitioner.

81. In response, the Petitioner has submitted that the transmission charges will be recovered monthly in accordance with Regulation 57 of the 2019 Tariff Regulations and shared by the beneficiaries in accordance with the applicable 2020 Sharing Regulations, as amended from time to time.

82. The Petitioner vide affidavit dated 10.11.2023 has also submitted that at the time of signing the LTA agreement between CTUIL and SBESSPTPL on 3.12.2020, the 2020 Sharing Regulations were in force, which do not stipulate entering into a TSA with the DICs. Therefore, the signing of a TSA between the Petitioner and SBESSPTPL (now, AWEMPOPL) was not required.

83. AWEMPOPL, in its reply and written submissions, has submitted as follows:

- a. The transmission charges that are to be imposed by CTUIL regarding the mismatch/ delay in the commissioning of its Wind Power project with the operationalization of LTA are not at all attributable to it.
- b. The SECI, vide its letter dated 27.7.2022, revised the original SCOD of 15.3.2021 to 26.8.2022 on account of the Ministry of New and Renewable Energy (MNRE) Notification, which granted the extension to all renewable generating plants affected by the Covid-19 pandemic. Pursuant to this, its projects were commissioned on 10.9.2022 and 17.9.2022, respectively, and the delay attributable to it is only 15 and 22 days for 251.1 MW and 73.3 MW, respectively.
- c. In terms of the PPA, the transmission charges are attributable only to the extent of delay caused by the Wind Project Developer (WPD), and that it has made



payments to SECI qua levy of the liquidated damages because of the delay beyond the extended SCOD. Therefore, any further liability for such delay would constitute a double charging of penalty, which is against the settled principles of the law, and this would further have a great impact on the project's economics and viability because due to a competitive tariff. In case the transmission charges are to be recovered from AWEMPOPL, the Commission may allow such recovery to be set off from the liquidated damages already paid by it to SECI in order to avoid double jeopardy/charging. This principle has also been recognised by the Second Amendment to the 2020 Sharing Regulations, according to which, if the delayed inter-State transmission licensee is levied liquidated damages for the delay in completion of the transmission system in terms of the TSA entered into with CTUIL, the amount of liquidated damages paid by such an inter-State transmission licensee to CTUIL shall be offset to the extent of liability of the delayed inter-State transmission licensees in terms of sub-clause (e) of clause 12 of Regulation 13 of the 2020 Sharing Regulations and the balance amount, if any, shall be credited into the Regional Transmission Deviation account under clause (3) of Regulation 12 of the 2020 Sharing Regulations.

- d. MoP has issued directions vide orders dated 15.1.2021 and 30.11.2021 and has framed the Electricity (Transmission System Planning, Development and Recovery of Inter-State Transmission Charges) Rules, 2021 [hereinafter referred to as “the 2021 ISTS Charges Rules”] on 1.10.2021 wherein the inter-State transmission charges have been waived.



- e. The project's LTA became effective on 26.5.2022, and as such, in terms of Rule 7 of the 2021 ISTS Charges Rules, no liability can be fastened upon it prior to 26.5.2022.

84. In response, the Petitioner has made the following submissions:

Revision/Extension of SCOD and Directions of the Ministry of Power (MoP)

- a. Any extension provided to AWEMPOPL by SECI and MoP is in terms of the PPA, and nowhere does it absolve AWEMPOPL from paying transmission charges for the mismatch period, which is in terms of the 2019 Tariff Regulations and the 2020 Sharing Regulations.
- b. The LTA stipulates that if AWEMPOPL fails to construct the generating station on time, the Petitioner shall have the right to collect the transmission charges in accordance with the Regulations framed by the Commission.
- c. Claims qua force majeure event/waiver of ISTS charges in accordance with the MoP orders cannot be taken against the Petitioner, wherein the transmission assets of the Petitioner, despite being ready, could not be put to regular service during the mismatch period.
- d. The Petitioner cannot be penalized or disallowed the transmission charges for the mismatch period merely because there is an extension in the SCOD of associated generators under the scope of AWEMPOPL. The proposed levy of mismatch liability is based on the 2019 Tariff Regulations and the 2020 Sharing Regulations. Therefore, the issues/ contentions raised by the AWEMPOPL are in contravention of the statutory mandate provided under the 2019 Tariff Regulations and the 2020 Sharing Regulations. Such contentions of AWEMPOPL amount to challenging the vires of the 2019 Tariff Regulations and



the 2020 Sharing Regulations, which are not permissible under Section 111 of the Act.

- e. The Petitioner, as a transmission licensee, must be paid for the commissioned assets. Accordingly, the transmission assets of the Petitioner could not be utilized despite being commissioned on time due to AWEMPOPL's delay in commissioning the associated generating system. As a result, the Petitioner could not provide service for reasons not attributable to it.
- f. As submitted by AWEMPOPL, even before the notification of the 2019 Tariff Regulations, the Commission, through the exercise of its regulatory power provided under Sections 79 and 178 of the Act, specified a methodology for sharing of transmission charges of the entity whose transmission system had been commissioned and associated upstream/downstream network was delayed. The Appellate Tribunal for Electricity (the APTEL) upheld such orders of the Commission. The Commission, in its order dated 21.9.2016 in Petition No. 43/MP/2016, titled RAPP Transmission Company Limited v. Power Grid Corporation of India Limited & Ors. held as under:

“24. A related issue arises as to how recovery of transmission charges of transmission licensee shall be made when the transmission system under TBCB is ready as on its scheduled COD as per the provisions of the TSA but cannot be made operational or put to use due to non-availability/ delay in upstream/ downstream system. In our view, ISTS licensee executing the project under TBCB should enter into Implementation Agreement with CTU, STU, inter-State transmission licensee, or the concerned LTTC, as the case may be, who are responsible for executing the upstream/ downstream transmission system and clearly provide the liability for payment of transmission charges in case of the transmission line or upstream/downstream transmission assets. In the absence of Implementation Agreement, the payment liability should fall on the entity on whose account an element is not put to use. For example, if the transmission line is ready but terminal bays belonging to other licensees are not ready, the owners of upstream and downstream terminal bays shall be liable to pay the charges to the owner of transmission line in the ratio of 50:50 till the bays are commissioned. In case one end bays are commissioned, the owner of other end bays shall be liable to pay the entire transmission charges of the



transmission line till its bays are commissioned. The above principle shall be followed by CTU in all cases of similar nature in future.”

- g. The Commission followed the same ratio decidendi as laid down in earlier orders after introducing the 2020 Sharing Regulations and, through numerous orders, has adopted a similar methodology to pay the transmission charges for the mismatch period. AWEMPOPL ought to make itself aware of the liability of the transmission charges of the associated upstream/downstream assets/systems in the event of its asset line getting delayed. At this stage, it is not open to AWEMPOPL to deny the Petitioner’s legitimate entitlement to transmission charges. Therefore, there is no requirement to exercise the provisions of ‘Power to Relax’ or ‘Power to Remove Difficulties’ when there is a categorical statutory provision dealing with the issue of mismatch framed by the Commission under its powers given under Section 178 of the Act. In this regard, the judgments cited by AWEMPOPL, i.e., Cellular Operators Assn. of India v. Union of India, [(2003) 3 SCC 186]; U.P. Power Corpn. Ltd. v. NTPC Ltd., [(2009) 6 SCC 235]; and U.P. Coop. Cane Unions Federations v. West U.P. Sugar Mills Assn., [(2004) 5 SCC 430] has no application in the facts and circumstances of the instant Petition.

Applicable Regulatory Regime

- h. The provisions of the 2019 Tariff Regulations and the 2020 Sharing Regulations are aimed at safeguarding the financial interests of the transmission licensee, which has achieved its COD on time, and the asset has been kept stranded for no fault of the transmission licensee.

There is no vacuum, as contended by AWEMPOPL, on the issue of mismatch, as the same is covered under the ambit of the 2019 Tariff Regulations and the 2020 Sharing Regulations. The principle of mismatch has been upheld by the APTEL, in its judgment dated 2.5.2023, in the matter of Fatehgarh Bhadla



Transmission Company Limited v. Central Electricity Regulatory Commission & Ors (2023 SCC Online APTEL 16).

Claim for Transmission Charges for the period prior to the Revised SCOD of the Generating Station

- i. AWEMPOPL could not have been unaware that any delay on its part in adhering to the SCOD would result in the other commissioned transmission asset being stranded, and such a transmission licensee would be forced to suffer a loss as a result of the same. In the matter of PTC India Ltd. v. Central Electricity Regulatory Commission [(2010) 4 SCC 603], the Hon'ble Supreme Court has held that all existing contracts have to be aligned with the Regulations framed by the Commission.
- j. The inability of AWEMPOPL to factor in risk/ cost allocation towards the liability of transmission charges being imposed for the delay in commissioning of its generating station does not absolve it to avoid the liability imposed on it by law (i.e., the order passed by the Commission, under 2019 Tariff Regulations and the 2020 Sharing Regulations)

85. The Petitioner in its written submissions dated 12.1.2024, has reiterated the submissions and additionally submitted as follows:

Scope of the MoP orders dated 15.1.2021, 23.11.2021, and 30.11.2021

- a. The reliance placed by AWEMPOPL on the MoP orders is erroneous. In all the MoP orders, the policy of granting a waiver to the RE-based generators from the payment of ISTS charges and losses is applicable in those cases where the generating station has been commissioned. The said orders do not envisage granting a waiver to the RE-based generating companies from the payment of



ISTS charges and losses in case of a mismatch, as is the position in the instant Petition.

- b. The MoP order dated 30.11.2021 cannot be read against the 2019 Tariff Regulations or the 2020 Sharing Regulations for payment of the transmission charges. Further, the COD of Asset-II is claimed in terms of Regulation 5(2) of the 2019 Tariff Regulations and transmission charges cannot be denied from the said date.

Reliance placed on the Electricity (Transmission System Planning, Development and Recovery of Inter-State Transmission Charges) Rules, 2021

- a. The 2021 ISTS Charges Rules do not mandate the Commission ignore its 2019 Tariff Regulations or the 2020 Sharing Regulations. The Rules were notified on 1.10.2021 and issued in the context of the Commission's General Network Access (GNA) regime.
- b. AWEMPOPL cannot selectively rely on Rules 5(7) and (10) of the 2021 Rules. In any event, both the sub-rules support that the entire Rule 5 deals with the recovery of charges in the GNA regime. It is unclear how these Rules would aid AWEMPOPL to claim the non-application of the 2019 Tariff Regulations or the 2020 Sharing Regulations in the instant matter.

No contractual relationship between AWEMPOPL and the Petitioner

- a. The Hon'ble Supreme Court in PTC India Limited v. Central Electricity Regulatory Commission, [(2010) 4 SCC 603], has held that by framing Regulations, the Commission can override existing contractual relationships or create contractual relationships between the entities being regulated. For this reason, the question of the absence of a contract cannot be raised by AWEMPOPL as a defence in the instant matter. Further, the APTEL, in its interim order dated 14.12.2023 in IA No.



751 of 2023 in Appeal No. 261 of 2022 and IA No. 752 of 2023 in Appeal No. 260 of 2022, has categorically rejected a similar contention regarding the absence of a contract.

- b. There is an LTA dated 3.12.2020, which stipulates that if AWEMPOPL fails to construct the generating station on time, the Petitioner will have the right to collect the transmission charges in accordance with the Regulations framed by the Commission.

Purpose of the construction of a 500 MVA ICT at Indore Sub-station

- a. The 500 MVA, 400/220 kV ICT at Indore (POWERGRID) substation was agreed upon after detailed deliberations in the 2nd meeting of WRPC(TP) held on 4.9.2020, with the consent of all the Western Region beneficiaries, to enable the grant of the LTA to AWEMPOPL (324.4MW).
- b. As per the information gathered from CTUIL, granting connectivity to SBESSSPTPL at 220 kV level of Indore Sub-station and the LTA with the implementation of an additional 400/220 kV ICT under ISTS at Indore Sub-station (on sectionalized/extended 220 kV bus) was found to be a most feasible and prudent option on account of the following:
 - i. As per the RE procedure, providing connectivity at the 400 kV level (through the 400 kV line) for a 325 MW injection was not justified.
 - ii. Injection directly at the 220 kV level of Indore Substation was leading to overloading of the 220 kV downstream system of MPPTCL, so injection at the 400 kV level through a 400/220 kV ICT (terminated on an extended 220 kV bus, where SBESSSPTPL would also be connected) was planned.



- iii. The proposed connectivity at the 220 kV level with an additional ICT under ISTS, had been agreed upon after weighing other alternatives. As agreed in earlier meetings held in this regard, if the developer was granted connectivity at 220 kV voltage level without ICT, it would have been necessary to implement the 220 kV downstream system strengthening by MPPTCL or under ISTS. The cost for such strengthening would have been even higher on account of right-of-way issues in the area compared to implementing an additional ICT under ISTS.
 - iv. This ICT could also be used for drawl purposes by MPPTCL by closing the 220 kV Bus Sectionalizer when required, depending on the loading of the outgoing 220 kV lines.
 - v. Already, there are space constraints at the Indore (POWERGRID) Substation. With the implementation of the ICT under ISTS, additional RE injection of about 150 MW would be possible from any other RE developers, for which space for 1 No. additional 220 kV bay is also available on sectionalized/extended 220 kV bus. In the case of the implementation of ICT as a dedicated 400/220 kV ICT by the RE developer, the available space would not be optimally utilized.
- c. Thus, the ICT had a dual purpose, and even in the absence of generation from AWEMPOPL, power was flowing through it.
86. MSEDCL, in its written submissions dated 11.3.2024, has submitted as follows:
- a. Asset-II was put to use only after the generator, AWEMPOPL, commissioned the associated network. However, the Petitioner claimed that Asset-II was



commissioned on 30.4.2022, allegedly citing a delay in AWEMPOPL's associated network's commissioning that was not attributable to MSEDCL.

- b. Since the transmission assets were not in regular service before the commissioning of the associated network of AWEMPOPL, the levy of transmission charges for the period before the commissioning of the associated network under the guise of COD, to the detriment of the beneficiaries, including MSEDCL, would be contrary to the law as settled by the Hon'ble Supreme Court in the case of Power Grid Corporation of India Ltd. v. Punjab State Power Corporation Ltd. and Others, [(2016) 4 SCC 797], wherein the following three prerequisite conditions were laid down to levy the transmission charges:

- i. The line has been charged successfully;
- ii. Its trial operation has been successfully carried out; and
- iii. It is in regular service.

87. We have considered the submissions of the Petitioner, MPPMCL, AWEMPOPL, and MSEDCL. The issues raised by the parties with respect to the sharing of transmission charges for the transmission assets have been discussed and dealt with as follows:

Asset-I:

Issue: Are the transmission charges for Asset-I, i.e., 500 MVA ICT, part of the Regional component and shared by MPPMCL?

88. The Petitioner has contended that the transmission charges of Asset-I for the 2019-24 period, will be recovered as per Regulation 57 of the 2019 Tariff Regulations and will be shared by the beneficiaries as per the 2020 Sharing Regulations. *Per contra*, MPPMCL has contended that Asset-I is intended to benefit the Northern Region (NR) constituents. Therefore, NR beneficiaries are liable to bear the Asset-I transmission charges.



89. We have gone through the minutes of the 2nd meeting of WRPC (TP) wherein 500 MVA ICT at Indore Sub-station was agreed upon to enable the grant of the LTA to SBESSSPTPL. The relevant extracts of the 2nd meeting of WRPC (TP) are as follows:

“9. Connectivity to 325 MW Wind Project of M/s SBESS Services Projectco Pvt Ltd at 220 kV level of existing Indore (PG) S/s:

...

9.9 CTU stated that the scheme includes a bus sectionaliser (Hybrid/MTS) between the extended and existing 220 kV bus at Indore S/s. Depending on the loading of the outgoing lines the bus sectionaliser could be kept in closed or open conditions.

9.10. After detailed deliberations, the following proposed Stage-II connectivity/LTA for M/ s SBESS Services Projectco Pvt Ltd was agreed:

S. No.	RE developer	Connectivity point	LTA system
	<i>M/s SBESS Services Projectco Pvt Ltd: Stage-II Connectivity for 324.4 MW already granted at the existing 220 kV bus of Indore.</i> <i>LTA for 324.4 already applied</i>	<i>220 kV level of existing Indore (PG) 765/400/220 kV S/s.</i> <i>Connectivity system under ISTS scope:</i> <i>i) 220 kV bus extension of Indore 765/400/220 kV substation.</i> <i>ii) 220 kV Hybrid /MTS line bay</i>	<i>i) 1x500 MVA, 400/220 kV ICT (3rd) at Indore S/s along with associated ICT bays (400 kV AIS & 220 kV Hybrid/MTS) with 220 kV ICT bay on extended bus.</i> <i>ii) Bus sectionaliser (Hybrid/MTS) between extended and existing 220 kV bus at Indore S/s [so that the 220 kV bus section with dedicated line of SBESS as well as 3rd ICT may be segregated from the existing 220 kV bus at Indore S/s, whenever required, in order to control the overloading of 220 kV outlets from Indore S/s depending on the injection of power from SBESS]</i>

”

90. On perusing the above minutes, we note that the 500 MVA ICT is not planned for MPPMCL's drawl of power, and the 500 MVA ICT at Indore Substation is planned for injection of power from SBESSSPTPL along with the provision of 150 MW RE injection in the future.



Therefore, we are of the view that the transmission charges of Asset-I, i.e., the 500 MVA ICT at Indore Substation, are not part of the Regional Component.

91. The relevant portions of Regulation 5 of the 2020 Sharing Regulations are extracted as under:

“5. Components and sharing of National Component (NC)

(1) National Component shall be sum of the following components:

(a) National Component-Renewable Energy (NC-RE); and

(2) National Component-Renewable Energy shall comprise of the Yearly Transmission Charges for transmission systems developed for renewable energy projects as identified by the Central Transmission Utility.”

92. Perusal of the record shows that CTUIL vide letter dated 12.11.2020 granted the LTA, and the LTA agreement was executed between CTUIL and SBESSPTPL on 3.12.2020 for the following system:

Transmission system for LTA (under ISTS)

- i) 1X500 MVA, 400/220 kV ICT (3rd) at Indore S/s [400 kV AIS & 220 kV Hybrid/MTS ICT bays (220 kV ICT bay shall be on extended bus)]
- ii) Bus sectionaliser (Hybrid/MTS) between extended and existing 220 kV Bus sections at Indore S/s.

93. The relevant extracts of the LTA agreement signed between CTUIL and SBESSPTPL on 3.12.2020, necessary for deciding the present controversy, are as follows:

“1.0

...

d) LTC shall share and pay all applicable Transmission charges and losses as per CERC (Sharing of Inter State Transmission Charges and Losses) Regulations, 2020 and its amendment thereof.”

94. On consideration of the aforesaid facts, we are of the view that in the instant Petition, the CTUIL has granted connectivity to SBESSPTPL at 220 kV level and the LTA with an additional 400/220 kV ICT implementation under ISTS. Accordingly, the transmission charges in the case of Asset-I shall be part of the National Component-Renewable Energy (NC-RE). This issue is accordingly decided.

Asset-II:



95. The COD of Asset-II is approved as 30.4.2022 under Regulation 5(2) of the 2019 Tariff Regulations as the Petitioner could not utilize its asset due to the delay caused in the completion of the associated generating system by SBESSSPTPL (now AWEMPOPL). The issues raised by the AWEMPOPL have been dealt with in the succeeding paragraphs.

Issue: Is AWEMPOPL eligible for a waiver of transmission charges due to the mismatch resulting from an extension provided by SECI?

96. The Petitioner has contended that the transmission charges in respect of Asset-II from the mismatch period, i.e., from the COD of Asset-II, i.e., 30.4.2022, to the COD of the associated generating system under the scope of AWEMPOPL, will be borne by AWEMPOPL as the generator (AWEMPOPL) was not ready. The Petitioner has further contended that thereafter, the transmission charges for the 2019-24 tariff period will be recovered on a monthly basis in accordance with Regulation 57 of the 2019 Tariff Regulations and will be shared by the beneficiaries as per the 2020 Sharing Regulations.

97. Per contra, AWEMPOPL has contended that it should be granted a waiver in payment of transmission charges till its COD due to the extension given by SECI for the project's implementation.

98. In response, the Petitioner has contended that any extension granted to AWEMPOPL by SECI or MoP is in terms of the PPA, and nowhere does it absolve AWEMPOPL from the payment of transmission charges for the mismatch period, which is in terms of the 2019 Tariff Regulations and the 2020 Sharing Regulations.

99. We have considered the above contentions of the parties and have perused the record. To deal with the contention of waiver in payment of the transmission charges for the mismatch period in the COD of Petitioner's Asset-II and the COD of the associated generator,



namely, AWEMPOPL, we think it appropriate to refer to the order dated 29.8.2023 in Petition No. 113/TT/2021, wherein the Commission has observed that the delay due to force-majeure events does not exempt the associated upstream/downstream elements from bearing transmission charges for the period of mismatch. The relevant extracts of the said order are as follows:

“86. ATL has submitted that its transmission system is affected by force majeure conditions and that the Respondent has filed the Petition No. 480/MP/2019. 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 mismatch arising out of force majeure as follows:

“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. Further, the Commission in the said order dated 26.4.2022 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. The Commission is of the consistent view that even if the time over-run 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. Accordingly, the Commission did not provide for any exemption from payment of transmission charges even in case of force majeure conditions in the 2020 Sharing Regulations

89. In the instant case, the COD of Asset-II and Asset-III has been approved as 1.8.2019 under Regulation 5(2) of the 2019 Tariff Regulations and the COD of the associated Alipurduar-Siliguri Transmission Line under the scope of ATL was 17.1.2020. Thus, there is a mismatch in the COD of the associated transmission elements. Regulation 6(2)(a) of the 2019 Tariff Regulations provides for treatment of mismatch in COD of two transmission licensees of a connected transmission system. The Regulation 6(2)(a) of the 2019 Tariff Regulations provides as follows:

“6. Treatment of mismatch in date of commercial operation:

(2) In case of mismatch of the date of commercial operation of the transmission system and the transmission system of other transmission licensee, the liability for the transmission charges shall be determined as under:

(a) Where an interconnected transmission system of other transmission licensee has not achieved the commercial operation as on the date of commercial operation of the transmission system (which is not before the SCOD of the interconnected transmission system) and the Commission has approved the date of commercial operation of such transmission system in terms of clause (2) of Regulation 5 of these regulations, the other transmission licensee shall be liable to pay the transmission charges of the transmission system in accordance with clause (5) of Regulation 14 of these regulations to the transmission licensee till the interconnected transmission system achieves commercial operation.”

90. As per Regulation 6(2)(a) of the 2019 Tariff Regulations, if an inter-connected transmission system of other transmission licensee is not ready on the COD of the transmission asset and if the COD of the transmission asset has been approved under Regulation 5(2) of the 2019 Tariff Regulations, the transmission licensee has to bear the transmission charges of the transmission asset of the other transmission licensee till the COD of the inter-connected transmission system under its scope. The said provision does not distinguish between a transmission project under the RTM route and the TBCB route.

91. Further, the entity responsible for 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 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 20.1.2020. Therefore, we are of the view that the transmission charges of the Asset-II and Asset III should be borne by ATL from COD of the transmission asset, i.e. from 1.8.2019 upto 20.1.2020 and thereafter the transmission charges of the Asset-II and Asset-III shall be recovered as per the provisions of the 2020 Sharing Regulations as provided in Regulation 57 of the 2019 Tariff Regulations.”

100. We do not find any force in the contention of AWEMPOPL that any grant of extension in SCOD to it by SECI entitles AWEMPOPL to waiver from the payment of transmission charges for the mismatch period in the COD of Asset-II, as the transmission charges are



imposed in terms of the 2019 Tariff Regulations and the 2020 Sharing Regulations. Accordingly, the contention of AWEMPOPL for a waiver from transmission charges on account of the extension granted by SECI is misconceived and is, therefore, rejected.

Issue: Whether AWEMPOPL is entitled to exemption from the payment of transmission charges in terms of the MoP order dated 15.01.2021, 23.11.2021 and 30.11.2021 based on which SECI granted it extension in SCOD?

101. AWEMPOPL has contended that in terms of the orders of the Ministry of Power (MoP) dated 15.1.2021, SECI granted it an extension in SCOD and as such, AWEMPOPL is exempted from the payment of transmission charges under the 2020 Sharing Regulations.

102. As against this, the Petitioner has contended that the reliance placed by AWEMPOPL on the MoP order is erroneous, as the policy of granting a waiver to RE-based Generators from the payment of ISTS charges and losses is applicable in those cases where the generating station has been commissioned.

103. We have considered the submissions of the Petitioner and AWEMPOPL and have gone through the record. We observe that the Order dated 15.1.2021, 23.11.2021 and 30.11.2021 has been issued under the Tariff Policy, where waiver is for the sale of power and for the electricity generated from identified sources satisfying specified conditions. The Order provides that for an entity that is provided with an extension of COD by the competent authority, LTA under waiver shall start from such COD date (i.e., when the generator starts generating power) and waiver shall be applicable for the period as specified (such as 25 years). Thus, the entire provision is for the waiver of transmission charges after COD of the generating station. Nowhere is it provided that a generator that has not declared COD would not be levied transmission charges. Accordingly, the contention of AWEMPOPL being misconceived is hereby rejected.



104. AWEMPOPL has contended that MoP vide its letter dated 15.1.2021 has issued directions under Section 107 of the Act regarding sharing of the transmission charges under force majeure condition to the Commission to amend the 2020 Sharing Regulations to the effect that on COD of an element of ISTS, its transmission charges shall be determined including the transmission charges of DICs in accordance with Regulations 5 to 8 of the 2020 Sharing Regulations. Contending thus, AWEMPOPL stated that the transmission charges of the Petitioner have to be necessarily included in the PoC pool, irrespective of the commissioning of AWEMPOPL's generation project.

105. In response, the Petitioner has contended that APTEL in its judgment dated 2.5.2023 in the matter of Fatehgarh Bhadla Transmission Company Limited v. CERC and Ors., (FBTL judgment) has dealt with the issue of directions issued by the Central Government under Section 107 of the Act and the same should be taken note of.

106. We have considered the contentions of the Petitioner and AWEMPOPL and have perused the record. To answer whether the directions issued under Section 107 of the Act are binding on the Central Commission, we are of the view that Section 107 of the Act is on equivalent footing with Section 108 of the Act with only one difference that Section 108 of the Act deals with 'Direction by the State Government' to the 'State Commission' while Section 107 of the Act deals with the 'Direction by the Central Government' to the 'Central Commission'. In this regard, we think it appropriate to refer to the judgment dated 30.9.2024 of the Hon'ble Supreme Court in Civil Appeal Nos. 10046-10047 of 2024 titled Kerala State Electricity Board v. Jhabua Power Limited and Others. In this judgment, the apex Court, with regard to Section 108 of the Act, observed as follows:

"17. That the state regulatory commissions are not 'bound' by the directions of the state government, or the Central Government is also evident from the text of Section 108. The provision reads: "In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy ...". This indicates that the state commission shall only be



'guided' by the directions issued by the state government and is not automatically bound by them. This interpretation is strengthened by the divergence in the language used in other provisions of the Act, such as Section 11 of the Act which reads as follows:

"Section 11. (Directions to generating companies): --- (1) Appropriate Government may specify that a generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the directions of that Government.

Explanation. - For the purposes of this section, the expression "extraordinary circumstances" means circumstances arising out of threat to security of the State, public order or a natural calamity or such other circumstances arising in the public interest. ..."

18. The above provision uses mandatory language and provides that the generating company "shall ... operate and maintain any generating station in accordance with the directions of that Government" in extraordinary circumstances. This can be distinguished from the language in Section 108, which merely requires that the state commission "be guided by" the directions of the State Government. The provision, in no manner, seeks to control the exercise of quasi-judicial power by the state commissions based on directions issued by the state government."

107. Directions issued under section 107 of the Act and they are advisory in nature, and the commission may therefore consider them while framing/amending the Regulations. In the instant case, the petitioner is liable to pay transmission charges as per the 2020 sharing Regulations. In view of the above-mentioned judgment, the contention of AWEMPOPL that the directions issued under Section 107 of the Act are binding on the Commission is found to be devoid of merit.

Issue: Is AWEMPOPL not liable to pay the transmission charges as per Rule 5(12) of the 2021 ISTS Charges Rules pursuant to which orders dated 23.11.2021 and 30.11.2021 were issued by the Ministry of Power on waiver of inter-State transmission charges on the transmission of the electricity generated from solar and wind sources of energy under Para 6.4 (6) of the Tariff Policy 2016?

108. Referring to the directions of the MoP dated 30.11.2021 issued under Rule 5(12) of the 2021 ISTS Charges Rules, the AWEMPOPL has contended that the Commission is bound to follow the said Rules. Contending such, it is stated that AWEMPOPL cannot be held



liable for payment of transmission charges till 26.8.2022 (the date until which its SCOD was extended).

109. AWEMPOPL has also contended that Rule 5(7) of the 2021 ISTS Charges Rules provides that the liability to pay transmission charges shall be effective from the date the General Network Access becomes operational. The project's LTA became effective on 26.5.2022; therefore, no such liability can be fastened upon AWEMPOPL prior to 26.5.2022.

110. AWEMPOPL has also contended that the MoP has issued the 2021 ISTS Charges Rules under Section 176 of the Act, which stands on a higher pedestal than Section 178 of the Act and, therefore, binds the Commission.

111. In response, the Petitioner contended that AWEMPOPL's specific contention is that the Commission's regulations have to be read down in view of the MoP Rules. The Petitioner has further contended that this requires the Commission to exercise the power of judicial review that is only vested with the Hon'ble High Courts and the Hon'ble Supreme Court, and such a power is not even available to APTEL in terms of the FBTL Judgment.

112. We have considered the above contentions of the Petitioner and AWEMPOPL and have perused the record. On perusal of the record, we note that on 1.10.2021 the MoP notified 2021 ISTS Charges Rules which has no provision regarding the payment of mismatch charges and pursuant thereto, orders dated 23.11.2021 and 30.11.2021 were issued by MoP on waiver of inter-State transmission charges on the transmission of the electricity generated from solar and wind sources of energy under Para 6.4 (6) of the Tariff Policy 2016.

113. Sub-rule 12 of Rule 5 of the 2021 Electricity (Transmission System Planning, Development and Recovery of Inter-State Transmission Charges) provides as follows:



5. Recovery of inter-State transmission charges. -

“(7) The liability to pay transmission charges, shall be effective from the date the General Network Access gets operationalised.

(12). The Central Government may if it is satisfied waiver Inter-State Transmission System Charges and losses for notified sources of energy for a specified duration.”

114. Upon careful consideration of the MoP orders dated 23.11.2021, 30.11.2021 and Rule 5(12) of the 2021 ISTS Charges Rules coupled with the 2019 Tariff Regulations and 2020 Sharing Regulations, we are of the view that the Commission has made specific provisions to address the issues of approval of COD in the case of mismatch under Regulation 5 of the 2019 Tariff Regulations and sharing of transmission charges under Regulation 13(12) of the 2020 Sharing Regulations. We think it proper here to reproduce Regulation 13(12) of the 2020 Sharing Regulations, which is as under:

“13. Treatment of transmission charges and losses in specific cases:

.....

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

(a) paid by the inter-state transmission licensee whose transmission system is delayed till its transmission system achieves COD, or

b) paid by the generating company whose generating station or unit(s) thereof is delayed, till the generating station or unit thereof, achieves COD, or

(c) shared in the manner as decided by the Commission on case to case basis, where more than one inter-State transmission licensee is involved or both transmission system and generating station are delayed.”

115. A perusal of Regulation 13(12) of the 2020 Sharing Regulations, as extracted above, shows that it specifically deals with a situation for payment of transmission charges arising out of a mismatch under the 2014 Tariff Regulations and the 2019 Tariff Regulations. The



Commission has to follow a regulation framed by it, and this is also affirmed by the Hon'ble Supreme Court in the matter of PTC India Limited v. Central Electricity Regulatory Commission, (2010) 4 SCC 603. In the instant case, 251.1 MW was commissioned on 10.09.2022, and 75.6 MW was commissioned on 17.09.2022, whereas the transmission system was commissioned on 30.04.2022. We are of the view that the defaulting party, i.e., AWEMPOPL, is liable to pay transmission charges as per Regulation 13(12) of the 2020 Sharing Regulations. This issue is accordingly decided.

Issue: Whether the Commission, in the facts and circumstances of the case, can exercise its power to regulate inter-State transmission of electricity under Section 79(1) (c) of the Act?

116. AWEMPOPL has contended that the 2020 Sharing Regulations are silent and do not provide for a provision in relation to the MoP directions contained in its orders dated 15.1.2021 and 30.11.2021, including wherein SCOD is extended by competent authorities on account of force majeure events. AWEMPOPL has contended that the Commission in the present case should invoke its power to regulate as per Section 79(1)(c) of the Act and, in its support, referred to the various judgments of the Hon'ble Supreme Court, namely, (i) Cellular Operators Assn. of India. v. Union of India, reported in (2003) 3 SCC 186, (ii) U.P. Power Corporation Limited v. NTPC Limited, reported in (2009) 6 SCC 235, and (iii) U.P. Coop. Cane Unions Federations v. West U.P. Sugar Mills Assn., reported in (2004) 5 SCC 430. AWEMPOPL, referring to the judgment of the Hon'ble Supreme Court in the matter of Energy Watchdog recorded in [(2017) 14 SCC 80], contended that in this judgment, the Hon'ble Supreme Court has observed that where regulations are silent on a particular issue, the Commission must exercise regulatory powers.

117. We have considered the contention of AWEMPOPL and have gone through the said judgments of the Hon'ble Supreme Court. We have already observed above in this order



that the issue of mismatch in the COD is covered by the 2019 Tariff Regulations and the 2020 Sharing Regulations; therefore, we hold that the present case is not a fit for the exercise of regulatory power. This issue is accordingly decided against AWEMPOPL and in favour of the Petitioner.

Issue: Whether in the facts and circumstances of the present case, the Commission should exercise its ‘Power to Remove Difficulties’ and ‘Power to Relax’ under Regulations 27 and 28 of the 2020 Sharing Regulations?

118. AWEMPOPL has contended that the Commission should invoke its power to ‘Power to Relax’ and ‘Power to Remove Difficulties’ as per Regulations 27 and 28 of the 2020 Sharing Regulations, respectively to relax the provisions of Regulation 13(3) of the 2020 Sharing Regulations, and to extend the provisions of Regulation 13(12)(e) as amended vide Second Amendment to the 2020 Sharing Regulations, to the instant Petition as well while allowing recovery of transmission charges to be adjusted from the liquidated damages already paid by it on account of a delay.

119. We have considered the above contentions of AWEMPOPL and have gone through the record.

120. We note that AWEMPOPL has submitted that it has made payments to SECI qua levy of liquidated damages due to delay beyond the extended SCOD, and as such, further liability for such delay will act as double charging of penalty, which is against the settled principles of the law and would cause great impact on the viability of the project. AWEMPOPL, referring to the 2nd Amendment of the 2020 Sharing Regulations (particularly Regulation 13(12) (e) of the 2020 Sharing Regulations), has submitted that in case transmission charges for the mismatch period in the CODs of the Petitioner and AWEMPOPL are to be recovered from it, the Commission should allow such recovery to be set-off from the liquidated damages already paid by it to SECI.



121. The second amendment of the 2020 Sharing Regulation was effective from 1.11.2023 whereas the period of dispute in the instant case is 30.04.2022 to 17.09.2022. Furthermore, Regulation 13(12) (e) of the 2020 Sharing Regulations, speaks about a situation wherein a delayed inter-State transmission licensee is levied liquidated damages for the delay in completion of the transmission system in terms of the TSA entered into with CTUIL and as such, the amount of liquidated damages paid by such inter-State transmission licensee to CTUIL is required to be offset to the extent of liability of the delayed inter-State transmission licensee and the balance amount, if any, is required to be credited into Regional Transmission Deviation account under clause (3) of Regulation 12 of the 2020 Sharing Regulations. Therefore, Regulation 13(12) is not applicable to M/s SBESSSPTPL.

122. Coming to the facts of the present case, AWEMPOPL has referred to Article 4.2.2 of the PPA dated 16.12.2019 entered into between SECI and SBESSSPTPL (AWEMPOPL), which provides for penalties, fines, and charges imposed by the CTU/STU under any statute or regulation in relation to delay in commissioning of the Project shall be payable by the WPD to the extent the delay is attributable to the WPD.

We have considered the above contentions of AWEMPOPL and have gone through the PPA dated 16.12.2019 entered into between SECI and AWEMPOPL. In our view, the liquidated damages whose reference have been made in the present Petition in Article 4.2.2 of the PPA is a bilateral contract between the SECI and AWEMPOPL and the same has no connection with the transmission charges for the mismatch period in the COD of the Petitioner and accordingly, AWEMPOPL in the present case has been levied transmission charges in accordance with the 2020 Sharing Regulations.

Issue: Whether the CTUIL in the present case has discharged its duties as per Section 38(2) (b) and (c) of the Act?



123. AWEMPOPL has contended that Section 38(2)(b) and (c) of the Act mandates the CTUIL under the law to discharge the functions of planning and co-ordination qua the inter-state transmission system, inter-alia, with the generating companies, which means that any transmission system developed by CTUIL has to be strictly coordinated in a manner that the same is in tandem with the progress/ commissioning of the power plant of a generating company. AWEMPOPL has further contended that by unilaterally operationalizing the LTA w.e.f. 26.5.2022, despite notifying the 2021 ISTS Charges Rules and consequent directions of MoP and extension of SCOD by SECI, CTUIL has ignored the provisions of the Act. Contending so, AWEMPOPL has stated that force majeure has been recognized by the Act, and CTUIL ought to plan and coordinate with the generating companies and intrinsically honour any force majeure situation. In support of its contentions, AWEMPOPL has relied upon the judgment dated 19.5.2020 in Appeal No. 266 of 2016 in the matter of PEL Power Limited v. CERC & Anr., the judgment of Hon'ble Supreme Court in the matter of K.S. Venkataraman & Co. Pvt. Ltd. v. State of Madras reported in (1966) 2 SCR 229.

124. We have considered the above contentions of AWEMPOPL and perused the record. With regard to the 2021 ISTS Charges Rules, directions of MoP, and the extension of SCOD by SECI, we have already provided our findings above in this order. Therefore, no fresh findings are required to be presented here again on these issues. AWEMPOPL has not pointed out any specific instance(s) where CTUIL has failed to discharge its functions as contemplated under Section 38(2) (b) and (c) of the Act. For want of any material on record regarding the failure of the CTUIL on planning and coordination in the present case, we find the contentions of AWEMPOPL without any merit. Accordingly, this contention of the Petitioner is rejected.



Issue: Whether the provisions of the 2019 Tariff Regulations and the 2020 Sharing Regulations would apply even if there is no contract between the parties?

125. The Petitioner has contended that even in the absence of any legal contract between the Petitioner and AWEMPOPL, AWEMPOPL is liable to make payment of transmission charges to the Petitioner. Contending so, the Petitioner has placed reliance on the APTEL's judgement dated 2.5.2023 in the matter of Fatehgarh Bhadla Transmission Company Limited v. Central Electricity Regulatory Commission & Ors recorded in 2023 SCC Online APTEL 16 (FBTL Judgment) wherein APTEL has held that even in the absence of a contract between the parties, the entities are bound by the Regulations even if there is no contract between them.

126. We have considered the contention of the Petitioner and perused the FBTL Judgment. To address this contention of the Petitioner, we think it necessary to refer to the relevant extract of the said FBTL Judgment, and the same is as under:

"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."

127. On perusal of the above excerpt of the FBTL Judgment, we are of the view that the APTEL has interpreted it clearly that both the 2019 Tariff Regulations and 2020 Sharing Regulations made by the Commission under Section 178 of the Act are law and are binding on all the regulated entities. The APTEL, in the said judgment, further observed that even in the absence of a contract between the PGCIL and the Appellant in the said case, the Appellant would be governed by the 2019 Tariff Regulations and the 2020 Sharing Regulations. Accordingly, we agree with the Petitioner that in the absence of a contract



between the parties, the 2019 Tariff Regulations and the 2020 Sharing Regulations would apply.

128. In the instant matter, the COD of Asset-II has been approved as 30.4.2022 under Regulation 5(2) of the 2019 Tariff Regulations as the associated generator under AWEMPOPL was not ready. Thus, there is a mismatch in the COD of Asset-II and the associated generating system.

129. Regulation 13(3) of the 2020 Sharing Regulations, as amended from time to time, provides as follows:

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

...

(3) Where COD of a Connectivity grantee other than Renewable Power Park Developer has not been achieved on or before start date of Connectivity in terms of GNA Regulations, and the Associated Transmission System has achieved COD, which is not earlier than start date of Connectivity, the Connectivity grantee shall pay Yearly Transmission Charges for the Associated Transmission System corresponding to Connectivity capacity which has not achieved COD:

Provided that where a Connectivity grantee is Renewable Power Park Developer and the generation capacity within the Renewable Power Park has not declared COD on or before start date of Connectivity in terms of GNA Regulations, and the Associated Transmission System has achieved COD, which is not earlier than start date of Connectivity, the Renewable Power Park Developer shall pay Yearly Transmission Charges for the Associated Transmission System corresponding to generation capacity which has not achieved COD:

Provided that Yearly Transmission Charges in respect of Associated Transmission System corresponding to the Connectivity capacity which have achieved COD shall be included for determination of transmission charges of DICs in accordance with Regulations 5 to 8 of these regulations.”

130. The Petitioner has constructed Asset-II, i.e., 1 No. 220 kV Hybrid/MTS line bay at the Indore Sub-station for the evacuation of 325 MW of wind generation from SBESSSPTPL. Out of the total LTA of 325 MW granted to AWEMPOPL, the wind generation of 251.1 MW achieved its COD on 10.9.2022, and the balance of 73.3 MW achieved its COD on 17.9.2022.

131. In view of the above discussions and relevant Regulations under the 2020 Sharing Regulations, we are of the considered view that the transmission charges shall be borne by



the generating company from the COD of Asset-II till the COD of the associated generating system.

132. To summarize, the transmission charges for Asset-II shall be borne/shared as follows:

COD of Asset-II	Wind generation capacity (MW) commissioned	COD of Wind generation capacity	Liability of transmission charges
30.4.2022	NIL	-	From 30.4.2022 to 9.9.2022: the transmission charges shall be borne by AWEMPOPL
	251.1 MW	10.9.2022	From 10.9.2022 to 17.9.2022: the transmission charges proportionate to 251.1 MW out of 325 MW shall be included in the common pool (National Component) and the balance 73.3 MW shall be borne by AWEMPOPL
	73.3 MW	17.9.2022	From 18.9.2022, the transmission charges shall be included in common pool (National Component).

133. The billing, collection, and disbursement of transmission charges shall be recovered in terms of the provisions of the 2020 Sharing Regulations as provided in Regulation 57 of the 2019 Tariff Regulations.

Interim Tariff

134. The Petitioner has prayed to allow interim tariff in accordance with Regulation 10(3) of the 2019 Tariff Regulations for the purpose of inclusion in the point of connection charges.

135. We have considered the submission of the Petitioner. Since we have determined the transmission tariff in respect of the transmission assets in this order, the prayer for the allowance of interim tariff becomes redundant. Therefore, we have not considered the same in this order.

136. To summarise, AFC claimed and allowed in respect of the transmission assets for the 2019-24 tariff period are as follows:



(₹ in lakh)

AFC Claimed	2022-23	2023-24
Asset-I	683.38	812.46
Asset-II	69.05	79.44

(₹ in lakh)

AFC Allowed	2022-23	2023-24
Asset-I	682.75	814.28
Asset-II	68.94	79.49

137. The Annexure to this order forms a part of the order.

138. This order disposes of Petition No. 33/TT/2023 in terms of the above findings and discussions.

Sd/-
(Ramesh Babu V.)
Member

Sd/-
(Jishnu Barua)
Chairperson



Annexure**Asset-I**

(₹ in lakh)

Capex	Admitted Capital Cost as on COD	Projected ACE		Admitted Capital Cost as on 31.3.2024	Dep Rate	Annual Depreciation	
		2022-23	2023-24			2022-23	2023-24
Building	0.00	33.31	22.21	55.52	3.34%	0.56	1.48
Sub-station	2385.48	639.27	218.82	3243.57	5.28%	142.83	165.48
PLCC	0.00	0.00	0.00	0.00	6.33%	0.00	0.00
IT Equipment	21.19	11.21	0.00	32.40	15.00%	4.02	4.86
Total	2406.67	683.79	241.03	3331.49		147.41	171.83
						Avg. Gross Block	2748.56
						WAROD	5.35%

Asset-II

(₹ in lakh)

Capex	Admitted Capital Cost as on COD	Projected ACE		Admitted Capital Cost as on 31.3.2024	Dep Rate	Annual Depreciation	
		2022-23	2023-24			2022-23	2023-24
Building	0.00	0.00	0.00	0.00	3.34%	0.00	0.00
Sub-station	224.35	17.17	9.17	250.69	5.28%	12.30	12.99
PLCC	61.62	30.92	0.00	92.54	6.33%	4.88	5.86
IT Equipment	5.18	0.00	0.00	5.18	15.00%	0.78	0.78
Total	291.15	48.09	9.17	348.41		17.96	19.63
						Avg. Gross Block	315.19
						WAROD	5.71%

