

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 4/TT/2023

Coram:

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

Date of Order: 03.09.2025

In the matter of:

Approval under Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2019 for the determination of transmission tariff from the date of commercial operation (COD) to 31.3.2024 for the transmission assets under "POWERGRID works associated with immediate evacuation for North Karanpura (3x660 MW) generation project of NTPC" in the Eastern Region.

And in the matter of:

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

.....Petitioner

Versus

1. **Bihar State Power (Holding) Company Limited,**
Vidyut Bhawan, Bailey Road,
Patna - 800001.
2. **West Bengal State Electricity Distribution Company Limited,**
Bidyut Bhawan, Bidhan Nagar,
Block DJ, Sector-II, Salt Lake City,
Calcutta – 700091.
3. **Grid Corporation of Orissa Limited.**
Shahid Nagar, Bhubaneswar - 751007.
4. **Damodar Valley Corporation.**
DVC Tower, Maniktala,
Civic Centre, VIP Road, Calcutta - 700054.



5. **Power Department,**
Government of Sikkim,
Gangtok - 737101.
6. **Jharkhand Bijli Vitran Nigam Limited,**
Engineering Building, H.E.C., Dhurwa,
Ranchi – 834004.
7. **North Karanpura Transmission Limited**
Adani Corporate House,
Shantigram Near Vaishno Devi Circle,
Khodiya, Gandhinagar, Gujarat – 382028.
8. **NTPC Limited,**
NTPC Bhawan,
Core-7, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi – 110003.

...Respondent(s)

Parties Present: Ms. Swapna Seshadri, Advocate, PGCIL
Ms. Sneha, Advocate, PGCIL
Shri Utkarsh Singh, Advocate, PGCIL
Ms. Rohini Prasad, Advocate, BSPHCL
Shri Anup Kashyap, Advocate, BSPHCL
Shri Bharath Gangadharan, Advocate, NTPC
Shri Venkatesh, Advocate, NTPC
Shri Hemant Singh, Advocate, NKTL
Ms. Ankita Bafna, Advocate, NKTL
Shri Sanjeev S. Thakur, NKTL
Shri Fazl Azkari, Advocate, NKTL
Shri Jay Lal, Advocate, NKTL
Shri Gyanendra, Advocate, NKTL
Shri Virendra Singh, NTPC

ORDER

The instant Petition has been filed by Power Grid Corporation of India Limited, a deemed transmission licensee, for determination of transmission tariff under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as “the 2019 Tariff Regulations”) from the date of commercial operation (COD) to 31.3.2024 in respect of the following assets



under "the Powergrid works associated with immediate evacuation for North Karanpura (3x660 MW) generation project of NTPC " in the Eastern Region (hereinafter referred to as 'the transmission project') :

Asset-1: 2 Nos. 400 kV line bays at Gaya sub-station for termination 400 kV D/C (Quad) North Karanpura – Gaya line under TBCB.

Asset-2: 2 Nos. 400 kV line bays at Chandwa GIS for termination of 400 kV D/C (Quad) North Karanpura – Chandwa (Jharkhand) line under TBCB.

Assets -1 and 2 have been jointly referred to as the "transmission assets" in this order.

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

- "1) Approve the Transmission Tariff for the tariff block 2019-24 block for the assets covered under this Petition, as per para 8.3 above..*
- 2) Admit the capital cost as claimed in the Petition and approve the Additional Capitalisation incurred/ projected to be incurred.*
- 3) Approve the DOCO for the subject Assets as claimed and allow full tariff as claimed under instant Petition.*
- 4) Approve the initial spares as claimed in the instant Petition.*
- 5) Allow the Petitioner to claim the overall security expenses and consequential IOWC on that security expenses separately.*
- 6) 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 8.3 above for respective block. .*
- 7) 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.*
- 8) 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.*
- 9) 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.*



- 10) *Allow the Petitioner to bill and recover GST on Transmission Charges separately from the respondents, if GST on transmission is levied at any rate in future. Further, any taxes including GST and duties including cess etc. imposed by any statutory/Govt./municipal authorities shall be allowed to be recovered from the beneficiaries.*
- 11) *Allow interim tariff in accordance with Regulation 10(3) of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for purpose of inclusion in the PoC charges.*
- and pass such other relief as the Commission deems fit and appropriate under the circumstances of the case and in the interest of justice.”*

Background

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

- a. The Board of Directors of the Petitioner accorded the Investment Approval (IA) for the transmission project at their 337th meeting held on 9th February 2017, as circulated vide Memorandum No. C/CP/PA1617-02-0S-IA017, dated 23rd February 2017, for ₹5424 lakh, including an Interest During Construction (IDC) of ₹254 lakh based on the October 2016 price level.
- b. The scope of work covered under the transmission project broadly includes:

Sub-Station extensions:

- (i). Gaya Substation: 2 Nos. 400 kV line bays for termination of North Karanpura – Gaya 400 kV D/C (Quad Moose) line (line under Tariff Based Competitive Bidding (TBCB)].
- (ii). Chandwa (Jharkhand) Pool GIS Substation: 2 Nos. 400 kV line bays for termination of North Karanpura – Chandwa (Jharkhand) Pool 400 kV D/C (Quad Moose) line (line under TBCB).
- c. As per IA dated 23.2.2017, the transmission assets were scheduled to be commissioned, matching the schedules of respective TBCB lines:
- i. September 2017, for line bays associated with 400 kV D/C Chandwa GIS Sub-station.
- ii. September 2019 for line bays associated with 400 kV D/C Gaya Sub-station.



d. The details of COD (invoked) and the time overrun with respect to the Scheduled Date of Commercial Operation (SCOD) of the transmission assets submitted by the Petitioner are as follows:

Assets	SCOD	COD claimed under 5(2) of the 2019 Tariff Regulations	Time Over-run
Asset-1	30.9.2019	6.10.2019	7 days
Asset-2	30.9.2017	9.9.2021	1441 days

4. The Respondents are distribution licensees and power departments, which are procuring transmission service from the Petitioner, mainly beneficiaries of the Eastern Region.

5. The Petitioner has served a copy of the Petition upon the Respondents, and notice regarding the filing of the present Petition has also been published in newspapers, in compliance with Section 64 of the Electricity Act, 2003 ('the Act'). No comments or suggestions have been received from the general public pursuant to the aforesaid public notice as published by the Petitioner.

6. The Respondents, namely, Bihar State Power (Holding) Company Limited (BSPHCL), North Karanpura Transmission Limited (NKTL), and National Thermal Power Corporation Limited (NTPC) have filed their replies vide affidavits dated 20.4.2023, 4.12.2023 and 1.12.2023, respectively. The Petitioner has filed its separate rejoinder affidavits dated 19.12.2023, in response to the replies received from the said Respondents.

7. The order in this matter was reserved on 20.12.2023. However, the order could not be issued prior to the demission of office by Shri P.K. Singh, Member and Shri Arun Goyal, Member, both of whom formed part of the coram. Accordingly, the matter was again listed for hearing on 16.7.2024, and the order was reserved.



8. This order is issued considering the submissions made by the Petitioner in its Petition vide affidavit dated 1.12.2022 and Petitioner's affidavits dated 3.3.2023, 19.9.2023; BSPHCL reply affidavit dated 20.4.2023; NKTL's reply affidavit dated 4.12.2023, and NTPC reply affidavit dated 1.12.2023; Petitioner's rejoinders dated 19.12.2023; Written Submissions of the Petitioner, BSPHCL and NKTL dated 9.1.2024, 8.1.2024 and 9.1.2024, respectively.

9. Having heard the learned counsels for the parties and perused the material on record, we proceed to dispose of the Petition.

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

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

Asset-1

(₹ in lakh)

Particulars	2019-20 (pro-rata 178 days)	2020-21	2021-22	2022-23	2023-24
Depreciation	27.66	63.55	69.15	71.35	73.55
Interest on Loan	28.27	60.18	59.72	56.47	53.02
Return on Equity	29.07	66.78	72.64	74.90	77.15
Interest on Working Capital	2.64	5.78	6.04	6.17	6.28
O&M Expenses	31.27	66.56	68.90	71.32	73.82
Total	118.91	262.85	276.45	280.21	283.82

Asset-2

(₹ in lakh)

Particulars	2021-22 (pro-rata 204 days)	2022-23	2023-24
Depreciation	71.85	140.62	165.46
Interest on Loan	59.89	110.34	121.45
Return on Equity	76.09	148.95	175.26
Interest on Working Capital	3.75	7.14	8.00
O&M Expenses	26.96	49.92	51.67
Total	238.54	456.97	521.84



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

Asset-1

(₹ in lakh)

Particulars	2019-20 (pro-rata 178 days)	2020-21	2021-22	2022-23	2023-24
O&M Expenses	5.36	5.55	5.74	5.94	6.15
Maintenance Spares	9.65	9.98	10.34	10.70	11.07
Receivables	30.06	32.40	34.08	34.55	34.90
Total Working Capital	45.07	47.93	50.16	51.19	52.12
Rate of Interest (in %)	12.05	12.05	12.05	12.05	12.05
Interest on Working Capital	2.64	5.78	6.04	6.17	6.28

Asset-2

(₹ in lakh)

Particulars	2021-22 (pro-rata 204 days)	2022-23	2023-24
O&M Expenses	4.02	4.16	4.31
Maintenance Spares	7.23	7.49	7.75
Receivables	52.62	56.34	64.16
Total Working Capital	63.87	67.99	76.22
Rate of Interest (in %)	10.50	10.50	10.50
Interest on Working Capital	3.75	7.14	8.00

Data of Commercial Operation

12. The Petitioner has claimed the COD in respect of Assets -1 and 2 as 6.10.2019 and 9.9.2021, respectively, as per Regulation 5(2) of the 2019 Tariff Regulations, as the associated transmission lines under the scope of work of NKTL were not ready.

13. The Petitioner has submitted the following documents in support of the COD of the transmission assets covered under the instant Petition:

Asset	COD claimed under 5(2) of the 2019 Tariff Regulations	Document Submitted
Asset-1	6.10.2019	CEA Approval of Energization vide letter dated 20.7.2019, Eastern Regional Load Despatch



		Centre (ERLDC) Certificate dated 6.12.219 and CMD Certificate dated 5.10.2019.
Asset-2	9.9.2021	CEA Approval of Energization vide letter dated 9.9.2019, ERLDC Certificate dated 28.9.2021 and CMD Certificate dated 7.9.2021.

14. The Respondent No.1, BSPHCL, in its reply, has raised objections with respect to the approval of the COD of the Petitioner's transmission assets and has submitted as follows:

- a. The first proviso to Regulation 5(2) of the 2019 Tariff Regulations mandatorily requires the transmission licensee seeking approval for the date of commercial operation under this clause of the Regulation to give at least one month's prior notice to the long-term transmission customers of its transmission system, including details of the commercial operation date. The present Petition does not mention whether such notice has been given to the long-term transmission customers (LTTCS) as required above. According to BSPHCL, Regulation 5(2) of the 2019 Tariff Regulations is applicable 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 subject to furnishing certain documents including the implementation agreement, if any, executed by the parties, minutes of coordination meetings or related correspondences regarding monitoring of the progress of the generating station and transmission systems.



b. The Petitioner has proposed the COD of Asset-1 as 6.10.2019, as against the anticipated date of the associated TBCB line, which is July 2024. Regarding Asset-2, the Petitioner has attempted to justify the delay in commissioning by citing the delay reasons of the related TBCB line and for matching its commissioning schedule, and eventually proposing the COD on 9.9.2021 under Regulation 5(2) of the 2019 Tariff Regulations, citing an alleged contractual obligation when the associated TBCB line is said to be commissioned w.e.f. 15.10.2022.

15. Respondent No. 7, NTKL, in its reply and written submissions, has made the following submissions:

a. According to the Petitioner, the power flow in Assets 1 and 2 was not carried out allegedly due to the non-readiness or non-commissioning of the following associated transmission lines being implemented by NKTL:

- (i) North Karanpura– Gaya 400 kV D/C transmission line with quad moose conductor (hereinafter referred to as the “**NK-G line**”);
- (ii) North Karanpura- Chandwa (Jharkhand) 400 kV Pooling Station D/C line with quad moose conductor (hereinafter referred to as the “**NK-C line**”);

b. As per the Transmission Services Agreement (TSA) dated 14.3.2016, the scheduled commercial operation dates (SCOD) of the NK-G and NK-C lines were September 2019 and September 2017, respectively. These dates were subsequently revised to March 2021 and June 2020, respectively, pursuant to an order dated 10.3.2019 passed by the Commission in Petition No. 194/MP/2017 and CEA Meeting dated 23.4.2019. Notably, NKTL agreed to the revised SCOD and scope of work subject to the grant of forest clearance within the stipulated timeframe. The delay in implementing the NK-C and NK-G lines was entirely due to force majeure events beyond NKTL’s reasonable



control, which was also recognised by the Commission in its order dated 20.3.2019 in Petition No. 194/MP/2017.

- c. Regulation 5 of the 2019 Tariff Regulations provides that there existed a requirement of execution of an implementation agreement between the parties for the successful approval of the date of commercial operation, which the Petitioner and NKTL did not do in the present case. Since no implementation agreement was executed, the above regulations were not adhered to in this regard .
- d. Regulation 5(2) of the 2019 Tariff Regulations holds that a licensee may seek COD approval if its system is ready, but the interconnected system of another licensee is not. Furthermore, a petition cannot be filed without one month's prior notice to the other licensee, i.e., NTKL, for COD. However, no such notice has been placed on record. In the absence of compliance with this mandatory requirement, the present petition is not maintainable.
- e. Reliance is placed on the judgment of the Municipality, through the Municipal Officer, Raghogarh Vs. Gas Authority of India Ltd. and others 2005 SCC online MP 262, wherein the Hon'ble Madhya Pradesh High Court upheld the dismissal of the suit in the absence of service of statutory notice by the Appellant.

16. In response, the Petitioner, through its rejoinder and written submissions regarding the submissions of BSPHCL, has submitted that a notice was issued by the Petitioner on 30.6.2021 to both NKTL and NTPC. In the present matter, BSPHCL has failed to provide any instance wherein any prejudice has been caused to it in the absence of providing any such notice. The Petitioner has further submitted that it cannot be the case that even after energisation of the transmission assets, the



Petitioner shall continue to wait for the uncertainty surrounding NKTL's project to be resolved. Further, with respect to the submissions of NKTL, the Petitioner has submitted that it had issued this notice on 30.6.2021 to both NKTL and NTPC. Even prior to this, the readiness was informed by the Petitioner vide letter dated 15.11.2019. The Petitioner has also submitted that it is also now settled by the judgment dated 2.5.2023 in Appeal No. 352 of 2022 of the Appellate Tribunal for Electricity (APTEL) in the matter of Fateghgarh Badhala Transmission Limited v. Central Electricity Regulatory Commission and ors. (hereinafter referred to as the "FBTL Judgment") that there is no mandatory requirement to give notice, unless NKTL can show that some prejudice has been caused to it by not giving the notice.

17. Further, regarding the statutory implementation agreement under Regulation 3(33) of the 2019 Tariff Regulations, the Petitioner has submitted that a definition clause cannot be interpreted as a mandate to enter into an agreement. The implementation agreement is required to be produced under the 2nd proviso of Regulation 5(2) of the 2019 Tariff Regulations, while claiming a deemed COD declaration. However, this does not mean that there is a mandate to enter into an implementation agreement between the Petitioner and NKTL.

18. The Petitioner has relied upon the judgment of the Hon'ble Supreme Court in PTC India Ltd. versus CERC (2010) 4 SCC 603, wherein it was held that by way of regulation, which has the force of law, such situations can also be governed where there exists no contractual relationship. Any argument contrary to the same cannot be accepted.

19. Furthermore, the Petitioner has submitted that NKTL has relied on the order dated 15.1.2021, passed by the Ministry of Power ("MoP"), Government of India (GoI) to contend that a transmission licensee which has delayed the commissioning due to



force majeure should not be penalised by being burdened with the transmission charges of another licensee. Apart from this, there is no provision under the Act permitting the MoP to issue any order even if it is assumed that such an order could have been issued under Section 107 of the Act, the Appellate Tribunal for Electricity (Tribunal /APTEL), in a plethora of cases has held that the directives of the Central Government even under Section 107 of the Act can only be of assistance to this Commission and the Commission is not bound by the same. In fact, the Tribunal has found the directives in the letter dated 15.1.2021, issued by the MoP, to be beyond the scope of Section 107 of the Act.

Analysis and Decision on COD

20. Regulation 5(2) of the 2019 Tariff Regulations provides as follows:

“5. Date of Commercial Operation: (2) In case the transmission system or element thereof executed by a transmission licensee is ready for commercial operation but the interconnected generating station or the transmission system of other transmission licensee as per the agreed project implementation schedule is not ready for commercial operation, the transmission

licensee may file Petition before the Commission for approval of the date of commercial operation of such transmission system or element thereof:

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

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

Energisation certificate issued by the Regional Electrical Inspector under Central Electricity Authority;

Trial operation certificate issued by the concerned RLDC for charging element with or without electrical load;

Implementation Agreement, if any, executed by the parties;

Minutes of the coordination meetings or related correspondences regarding the monitoring of the progress of the generating station and transmission systems;

Notice issued by the transmission licensee as per the first proviso under this clause and the response;



Certificate of the CEO or MD of the company regarding the completion of the transmission system including associated communication system in all respects.”

21. The Petitioner has claimed the COD of the Assets-1 and 2, as 6.10.2019 and 9.9.2021, respectively, under Regulation 5(2) of the 2019 Tariff Regulations, as the associated TBCB lines under the control of NKTL are not ready.

22. The Respondents, BSPHCL and NKTL, have contended that the Petitioner did not issue a notice at least one month prior to the commissioning of the transmission assets in terms of the first proviso to Regulation 5(2) of the 2019 Tariff Regulations. The Petitioner, in its response, has submitted that prior intimation and notice were issued by it on 15.11.2019 and 30.6.2021, respectively, to both NKTL and NTPC. The Petitioner has also submitted that there is no mandatory requirement to give notice, unless NKTL and BSPHCL can show that some prejudice has been caused to them by not giving the notice.

23. It is noted that the TBCB lines, specifically the 400 kV D/C North Karanpura-Gaya (NK-G) and North Karanpura-Chandwa (NK-C) transmission lines, fall within the scope of work of NKTL. As per the Transmission Services Agreement (TSA) dated 14.3.2016, the SCOD for the NK-G and NK-C lines were September 2019 and September 2017, respectively.

24. The Respondent, NKTL, filed Petition No. 194/MP/2017, seeking relief under TSA dated 14.3.2016, concerning the implementation of the transmission project elements. The Commission, in its order dated 20.3.2019 in Petition No. 194/MP/2017, has held as under:

“29. The summary of our decision in the present order are as under:-

(a) The Petitioner is affected by force majeure on account of non-issue/delay in issue of NOC by MoC/CCL. Since the Petitioner is willing to execute the transmission system, subject to the issue of NOC by MoC/CCL in a compressed timeframe, the



execution schedule of the transmission lines shall be decided by CEA in consultation with NTPC and the Petitioner.

(b) MoC/CCL shall issue the NOC to the Petitioner as early as possible but not later than one week after the issue of this Order.

(c) SCOD of the transmission system shall be considered for extension after the grant of NOC by MoC/CCL and the revised time schedule for execution of the transmission system is decided by CEA.

(d) Since the Petitioner is executing the North Karanpura-Chandwa transmission line, NTPC is advised not to proceed with the execution of the said line as dedicated transmission line.

(e) The Petitioner is granted liberty to approach the Commission with change in scope of work along with its impact on cost and time overrun which shall be dealt in accordance with law.

(f) LTTCs are directed not to take any coercive measures in terms of the TSA till the SCODs are revised taking into account the force majeure events. The CEA shall decide the revised time schedule in consultation with NTPC and the Petitioner.

(g) Shifting of the transmission lines at the behest of MoC/CCL with 24 months" notice shall be considered as a part of terms and conditions of the licence of the Petitioner.

(h) MoC shall be required to provide an alternate route for shifting of the transmission line.

The Petitioner is at liberty to approach the Commission for compensation on account of the dismantling/shifting of the transmission line which shall be dealt in accordance with law"

25. A perusal of the aforesaid order dated 20.3.2019, shows that based on the above direction of the Commission, the SCOD of the TBCB transmission system shall be considered for extension after obtaining the No Objection Certificate (NOC) from MoC/CCL. The revised schedule for constructing the transmission system was to be decided by the Central Electricity Authority (CEA). The CEA, in its Minutes of Meeting (MoM) regarding the evacuation system for the North Karanpura (3x660 MW) generation project of NTPC, held on 23.4.2019 at CEA, New Delhi, the following was decided:

"12. After the deliberations, following were decided:

i. Revised scope of the project:

a. NKSTPP- Common point would be 13 km multi circuit 400kV line (quad moose conductor).

b. Common point – Chandwa would be 25 km 400 kV D/c line(quad moose conductor)..

c. Common point – Gaya would be 98 km 400 kV D/c line(quad moose conductor).

d. New 400 kV Dhanbad Substation.

e. 1.2 km D/c LILO of Ranchi-Maithon 400kV D/c line.



ii. NKSTPP-Chandwa 400 kV D/c line would be completed in 14 months, i.e. by June 2020 and NKSTPP-Gaya 400 kV D/c line would be completed in 23 months, i.e. by March 2021. New 400 kV Dhanbad S/s with 1.2 km D/c LILO of Ranchi-Maithon 400kV D/c line would be completed in about 18 months, i.e. by October 2020.

iii. Representative of NKTL agreed for the above time lines, subject to getting forest clearance for NKSTPP-Chandwa 400kV D/c line within 200 days and for NKSTPP-Gaya 400kV D/c line within 300 days.

Meeting ended with vote of thanks to chair.”

26. The revised scope of the project and revised COD of the project were discussed in the 7th SSCM 2nd ERSCT and 42nd ERPC.

“(a) MINUTES OF 7th MEETING OF STANDING COMMITTEE ON TRANSMISSION PLANNING FOR STATE SECTORS HELD ON 01.07.2019 (MONDAY) AT 11:00 HOURS AT ERPC, KOLKATA

15. Modification in transmission system associated with North Karanpura (3x660MW) generation project of NTPC The evacuation system for North Karanpura (3x660MW) generation project of NTPC is under implementation through TBCB route by M/s NKTL (subsidiary of Adani). The scope of works inter alia includes construction of following two transmission lines: (a) North Karanpura – Gaya 400kV D/c (Quad) line (b) North Karanpura – Chandwa 400kV D/c (Quad) line In a meeting held at CEA on 23-04-2019, wherein the status of above mentioned transmission system was reviewed and following was agreed

. i. Revised scope of the project:

a. NKSTPP- Common point would be 13 km multi circuit 400kV line (quad moose conductor). b. Common point – Chandwa would be 25 km 400kV D/c line(quad moose conductor)..

c. Common point – Gaya would be 98 km 400kV D/c line(quad moose conductor).

d. New 400kV Dhanbad Substation.

e. 1.2 km D/c LILO of Ranchi-Maithon 400kV D/c line.

ii. NKSTPP-Chandwa 400kV D/c line would be completed in 14 months, i.e. by June 2020 and NKSTPP-Gaya 400kV D/c line would be completed in 23 months, i.e. by March 2021. New 400kV Dhanbad S/s with 1.2 km D/c LILO of Ranchi-Maithon 400kV D/c line would be completed in about 18 months, i.e. by October 2020.

iii. Representative of NKTL agreed for the above time lines subject to getting forest clearance for NKSTPP-Chandwa 400kV D/c line within 200 days and for NKSTPP-Gaya 400kV D/c line within 300 days.

Members may discuss & agree the revised scope of NKTL

Deliberation in the meeting

Members noted.

(b) Minutes of the the 2nd Eastern Region Standing Committee on Transmission (ERSCT) was held on 5th July 2019 at Siliguri, West Bengal

22. Modification in transmission system associated with North Karanpura (3x660 MW) generation project of NTPC



22.1 Director (PSPA-II), CEA informed that the evacuation system for North Karanpura (3x660MW) generation project (of NTPC) and ERSS-XIX schemes together was to be implemented by M/s NKTL (subsidiary of Adani) under TBCB route with following scope of works:

(a) North Karanpura – Gaya 400kV D/c (Quad) line

(b) North Karanpura – Chandwa 400kV D/c (Quad) line

(c) Establishment of 400/220 kV, 2x500 MVA sub-station at Dhanbad (d) LILO of both circuits of Ranchi-MaithonRB 400 kV D/c line at Dhanbad

22.2 However, the work was not progressed. CERC, in its order dated 20.03.2019 in Petition no. 194/MP/2017 has directed CEA to decide revised 23 Scheduled Commercial Date of Operation (SCoD) for execution of the transmission system in consultation with NTPC and the Petitioner.

22.3 Accordingly, a meeting was held at CEA on 23-04-2019, wherein the status of transmission system of NKTL was reviewed and following was agreed. i. Revised scope of the project:

a. NKSTPP – Common point would be 13 km multi circuit 400kV line (quad moose conductor). b. Common point – Chandwa would be 25 km 400kV D/c line (quad moose conductor).

c. Common point – Gaya would be 98 km 400kV D/c line (quad moose conductor).

d. New 400/220kV, 2x500MVA Dhanbad Substation. e. 1.2 km D/c LILO of Ranchi-Maithon RB 400kV D/c line at Dhanbad. ii. NKSTPP-Chandwa 400kV D/c line would be completed in 14 months, i.e. by June 2020 and NKSTPP-Gaya 400kV D/c line would be completed in 23 months, i.e. by March 2021. New 400kV Dhanbad S/s with 1.2 km D/c LILO of Ranchi-Maithon 400kV D/c line would be completed in about 18 months, i.e. by October 2020. iii. Representative of NKTL agreed for the above time lines subject to getting forest clearance for NKSTPP-Chandwa 400kV D/c line within 200 days and for NKSTPP-Gaya 400kV D/c line within 300 days.

22.4 Members agreed to the revised scope of works mentioned above at para 22.2, which is to be implemented by M/s NKTL within above mentioned revised Scheduled Commercial Date of Operation (SCoD).

(c) The minutes of the 42nd TCC& ERPC meetings held on 12th & 13th December, 2019

Item no. 3.10

Schemes approved in the 2nd meeting of Standing Committee on Transmission of Eastern Region held on 0507-2019:

4. Modification in transmission system associated with North Karanpura (3x660MW) generation project of NTPC

4.3 Accordingly, a meeting was held at CEA on 23-04-2019, wherein the status of transmission system of NKTL was reviewed and following was agreed.

i. Revised scope of the project:

a. NKSTPP – Common point would be 13 km multi circuit 400kV line (quad moose conductor). b. Common point – Chandwa would be 25 km 400kV D/c line (quad moose conductor).



c. Common point – Gaya would be 98 km 400kV D/c line (quad moose conductor).

d. New 400/220kV, 2x500MVA Dhanbad Substation. e. 1.2 km D/c LILO of Ranchi-Maithon RB 400kV D/c line at Dhanbad. ii. NKSTPP-Chandwa 400kV D/c line would be completed in 14 months, i.e. by June 2020 and NKSTPP-Gaya 400kV D/c line would be completed in 23 months, i.e. by March 2021. New 400kV Dhanbad S/s with 1.2 km D/c LILO of RanchiMaithon 400kV D/c line would be completed in about 18 months, i.e. by October 2020.

iii. Representative of NKTL agreed for the above time lines subject to getting forest clearance for NKSTPP-Chandwa 400kV D/c line within 200 days and for NKSTPP-Gaya 400kV D/c line within 300 days.

Members may approve the revised scope of works mentioned above at para 4.3, which is to be implemented by M/s NKTL within above mentioned revised Scheduled Commercial Date of Operation (SCoD).

Deliberation in the TCC Meeting

It was informed that the projects of the ER have been approved in 2nd ERSCT meeting held on 5th July 2019 in consultation with ER constituents. So TCC recommended ERPC for acceptance of the same. Further, TCC advised the concerned constituents to obtain any further clarification needed from the Standing Committee in its meeting scheduled to be held on 24th December 2019. ERPC may concur.

Deliberation in the ERPC Meeting

ERPC accorded approval for the projects of the Eastern Region finalised in the 2nd ERSCT Meeting held on 05.07.2019 in consultation with the ER Constituents.

As advised by TCC, the concerned constituents may approach the Standing Committee for any further clarification in this regard.”

27. Upon careful reading of the above-mentioned minutes, it is noted that as per the revised scheduled commercial date of operation of the NKSTPP-Chandwa 400 kV D/C line would be completed in 14 months, i.e. by June 2020, and the NKSTPP-Gaya 400 kV D/C line would be completed in 23 months, i.e. by March 2021.

28. It is noted that the SCOD of the bays under the scope of the Petitioner was not discussed, and the Commission, vide its order dated 20.3.2019 in Petition No. 194/MP/2017, also did not mention the SCOD of the bays. The Petitioner has claimed the Scheduled COD of Asset-1 as per the original Investment Approval (IA) and the Scheduled COD of Asset-2 as per the revised SCOD of the TBCB line.



29. It is observed that as per the IA dated 9.2.2017, Assets-1 and 2 were scheduled to be commissioned, matching with the schedules of respective TBCB lines, i.e. September 2019 and September 2017, respectively. The relevant extract of the IA dated 9.2.2017 is extracted as under:

3. कार्यान्वयन कार्यक्रम / Commissioning Schedule

The project is scheduled to be commissioned matching with the schedules of respective TBCB lines:

- (i) Sept. 2017 for line bays associated with 400kV D/c Chandwa GIS S/s, and
- (ii) Sept. 2019 for line bays associated with 400kV D/c Gaya S/s

30. In the instant case, the scheduled commissioning of the TBCB lines under the control of NKTL has been revised. Therefore, the line bays under the control of the Petitioner also need to be aligned with the revised SCOD of the TBCB lines. Accordingly, the revised SCOD of the lines' bays under the control of the Petitioner are as follows:

Asset	SCOD as per IA dated 23.2.2017	Revised SCOD considered
Asset-1: 2 Nos. 400 kV line bays at Gaya Substation for termination of North Karanpura – Gaya 400 kV D/C (Quad Moose) line (line under TBCB).	30.9.2019	31.3.2021
Asset-2: 2 Nos. 400 kV line bays at Chandwa for termination of North Karanpura– Chandwa (Jharkhand) Pool 400 kV D/C (Quad Moose) line (line under TBCB).	30.9.2017	30.6.2020

31. The Petitioner has claimed the COD of Asset-1 as 6.10.2019, in terms of Regulation 5(2) of the 2019 Tariff Regulations, as the associated transmission line under the control of the NKTL was not ready. However, as discussed above, since the revised SCOD of North Karanpura–Gaya 400 kV D/C (Quad Moose) line is considered as 31.3.2021, the Petitioner's claim of COD as per the original SCOD is not approved as of 6.10.2019. North Karanpura–Gaya 400 kV D/C (Quad Moose) line was not commissioned on the revised SCOD of Asset-1, i.e. on 31.3.2021, whereas



the 2 Nos. 400 kV line bays at Gaya Substation for termination of North Karanpura–Gaya 400 kV D/C (Quad Moose) line were ready on the revised SCOD of Asset-1, i.e. on 31.3.2021. Accordingly, the COD of Asset-1 is approved as 31.3.2021, under Regulation 5(2) of the 2019 Tariff Regulations. The treatment of transmission charges and the requirements of the Implementation Agreement have been addressed under the heading of ‘Sharing of Transmission Charges’ in this order.

32. The Petitioner has claimed the COD of Asset-2 as 9.9.2021, which is beyond the revised SCOD of North Karanpura – Chandwa (Jharkhand) Pool 400 kV D/C (Quad Moose) line, i.e. 30.6.2020, and the associated transmission line NK-Chandwa had achieved COD on 19.10.2022. Accordingly, COD of Asset-2 is hereby approved as 9.9.2021, under Regulation 5(2) of the 2019 Tariff Regulations for the determination of transmission tariff for the 2019-24 tariff period in the present order.

33. As per the first proviso to Regulation 5(2) of the 2019 Tariff Regulations, a “notice” is required to be given by the Petitioner to the associated transmission licensee one month before the COD is claimed. Thus, “issue of notice” is a statutory requirement as per Regulation 5(2) of the 2019 Tariff Regulations. It is observed that intimation of completion of work has been issued by the Petitioner vide letter dated 15.11.2019 and 30.6.2021, to M/s NKTL and NTPC, respectively.

34. In the present case, the SCOD of Assets-1 and 2 has been revised, and the approved COD for Assets-1 and 2 are 31.3.2021 and 9.9.2021, respectively. Based on the revised COD, the condition of giving at least one month's prior notice is satisfied.

35. Further, reliance is placed on the FBTL Judgment, wherein it was held that prejudice has to be shown to have been caused by non-observance of such notice



under Regulation 5(2) of the 2019 Tariff Regulations. The relevant extracts of the said judgment are as follows:

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

.....

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

36. For the reasons mentioned above, we are of the view that there was an intimation to NKTL and NTPC regarding the Petitioner’s COD for the transmission assets in this Petition. Additionally, BSPHCL has not shown any prejudice caused to it due to the absence of notice under Regulation 5(2) of the 2019 Tariff Regulation.

Capital Cost

37. The Petitioner vide Management Certificate dated 23.6.2022, has claimed the capital cost incurred as on the COD and Additional Capital Expenditure (ACE) projected to be incurred in respect of the transmission assets, and the same are as follows:

(₹ in lakh)

Assets	Apportioned Approved Cost as per FR	Cost as on COD	Projected* Add-Cap						Estimated Completion Cost up to 31.3.2025
			2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	
Asset-1	1621.19	1048.63	33.88	206.72		80.06			1369.29



Asset-2	3802.42	2349.30			140.22	310.17	621.64	105.00	3526.33
Total	5423.61	3397.93	33.88	206.72	140.22	390.23	621.64	105.00	4895.62

* The Petitioner is directed to submit the Auditor's certificate at the time of truing up.

Cost Overrun

38. The Petitioner has submitted that the total apportioned approved cost as per FR is ₹1621.19 lakh and ₹3802.42 lakh, and the estimated completion cost is ₹1369.29 lakh and ₹3526.33 lakh, respectively, for Assets-1 and 2. Thus, there is no cost overrun for the transmission assets.

39. The reasons for item-wise cost variation between the approved FR cost and the estimated completion cost are attributable to a decrease in the cost of substation equipment, based on the awarded/ executed cost with respect to FR cost, a decrease in Incidental Expenditure During Construction (IEDC) based on actuals and a reduction in IDC.

40. We have considered the Petitioner's submissions. Considering the FR apportioned approved cost as ₹1621.19 lakh and ₹3802.42 lakh, the estimated completion costs of ₹1369.29 lakh and ₹3526.33 lakh, respectively, for Assets-1 and 2, are within the FR apportioned approved cost. Therefore, there is no cost overrun in Assets-1 and 2.

Time Overrun

41. The Petitioner has submitted that, as per the IA dated 23.2.2017, Assets-1 and 2 were scheduled to be commissioned in accordance with the schedule of the respective TBCB lines, i.e., by September 2019 for the line bays associated with the 400 kV D/C Gaya Substation and by September 2017 for the line bays associated with the 400 kV D/C Chandwa GIS Substation. The details of SCOD, COD, and the time



delay concerning the transmission assets, as submitted by the Petitioner, are as follows:

Asset	Asset's Name	SCOD	COD	Time delay
Asset - 1	2 Nos 400 kV line bays at Gaya Sub-station (for Termination of 400 kV D/C {quad} North Karanpura - Gaya line under TBCB)	30.09.2019	6.10.2019 (Invoked)	7 days
Asset - 2	2 Nos 400 kV line bays at Chandwa GIS Sub-station (for termination of 400 kV D/C {quad} North Karanpura -Chandwa line under TBCB)	30.09.2017	9.9.2021 (Invoked)	1441 days

42. The Petitioner has provided the following detailed reasons for the time overrun of the transmission assets considered in this Petition:

Asset -I

A. Delay due to the Imposition of Section 144 CrPC in Gaya in June 2019:

43. The Petitioner has submitted that Section 144 of the Criminal Procedure Code (Cr PC), 1973, was imposed from 16.6.2019 to 22.6.2019, i.e., (7 days), in the district of Gaya and the adjacent areas by the Government of Bihar, which resulted in hampering the works of the line bays at Gaya Sub-station.

44. The Section 144 was imposed due to a severe and unprecedented heatwave with extreme temperatures in the sub-50-degree Celsius range. When the temperature suddenly rose during June 2019, the surge, accompanied by “loo”, came as a shock. The works were entirely halted for these 7 days, affecting the subsequent charging of line bays and pushing the same beyond the scheduled COD of 30.9.2019. In support of the time delay, the Petitioner has submitted a letter from the District Magistrate dated 16.6.2019, imposing Section 144 Cr.P.C. in Gaya district and nearby areas, along with a newspaper clipping.



B. Delay Due to Unprecedented Rainfall during Lean:

45. The Petitioner has submitted that there was unprecedented rainfall during September 2019, the final month of the scheduled completion timeline, which was critical as major testing and charging procedures had to be completed in that month. Furthermore, despite a setback of a few days due to the imposition of Section 144 Cr.P.C. in June 2019, the Petitioner was on its way to complete the testing and charging works by September 2019, i.e., within the period of SCOD.

46. However, continuous heavy rainfall and thunderstorms in Gaya disrupted testing and commissioning activities, as conditions became unsafe in the charged switchyard. Waterlogging and limited movement of personnel and equipment further slowed progress, with rainfall during this period being considerably above the Long Period Average (LPA).

47. The Petitioner has claimed Force Majeure under clause 14.2.1 of the Model TSA, contending that the delay was caused by exceptional adverse weather conditions, namely rainfall exceeding the statistical average of the past 100 years. In support, the Petitioner furnished rainfall data from the Indian Meteorological Department, claiming that the scheduled execution period was impacted for approximately one month (30 days) from September 2019.

Asset-2

A. SCOD Extension of Associated TBCB line

48. The Petitioner has submitted that, as per the IA dated 9.2.2017, the SCOD of Asset-2 was September 2017, matching the schedule of respective TBCB lines. As per the TSA of the executing agency, i.e., M/s. NKTL, the SCOD of the associated transmission system under the scope of the TBCB line, was September 2017.



49. The Petitioner has further submitted that the SCOD of the associated transmission system under the scope of TBCB was revised due to various issues that had put the entire project in jeopardy for a long time and subsequently delayed its execution owing to the revision of the scope of work. This, in turn, affected the associated line bay works at Chandwa Sub-station, causing delays in execution and ultimately in commissioning. These issues had been discussed in detail at the CEA, during hearings before the Commission, JCCs, ERPC, SCMs, and involving various parties such as MoCL, CCL, MoP, NTPC, CEA, and others. The details are as follows:

Date	Remarks
23.2.2017	Investment Approval accorded by the Petitioner's Board of Directors (with completion schedule matching the SCOD of TBCB line as per TSA, i.e. September 2017).
February 2017	Works awarded for Asset-2, i.e., bays at Chandwa (also updated by the Petitioner in the 35 th ERPC held on 25.2.2017).
27.3.2017	Joint Coordination Committee (JCC) meeting (12 th) held with developers/ generators/TBCB entities, wherein the schedule of Chandwa line bays along with associated TBCB line is reaffirmed as September '2017 and matches with each other.
30.4.2017	According to the status of the TBCB line monitored by CEA, it was recorded that the NOC for the North Karanpura – Chandwa line route had not been t accorded by Central Coal Fields Ltd. (CCL under the aegis of the Ministry of Coal). Thus, the TBCB line work had to be stopped till receipt of the route NOC.
Force majeure situation, i.e., non-receipt of NOC, led to the stoppage of works on the TBCB lines, which directly affected the survey, finalisation of route, forest proposal, construction works, etc.	
12.5.2017	Meeting held in CEA with NKTL and CCL regarding NOC of route, re-alignment, etc. (reference in June 2017 TBCB report).
21.7.2017	Meeting held in CEA with NKTL, wherein CEA advised NKTL to go ahead with the submission of the Forest Clearance proposal pending NOC from the Ministry of Coal. (Reference in September 2017 TBCB report)
Force majeure situation continued, NOC not received.	
28.8.2017	Petition (194/MP/2017) seeking extension of SCOD due to force majeure, i.e., non-receipt of NOC filed in CERC by NKTL.
7.9.2017	1 st hearing held in CERC in Petition No. 194/MP/2017. CERC directed that other parties attend the next hearing.
27.9.2017	2 nd hearing held in CERC in Petition No. 194/MP/2017.



Date	Remarks
	CERC directed LTTCs not to take any coercive measures owing to a force majeure issue.
	From above, it became evident to the Petitioner that the works of the associated TBCB line were seemingly getting inordinately delayed owing to pending NOC, route finalisation, Forest Clearance, etc.
13.12.2017	CEA requested CCL to expedite and grant the requisite NOC to NKTL. (Reference in CERC RoP for the hearing dated 31.5.2018).
20.12.2017	Joint Coordination Committee (JCC) meeting (12 th) held with developers/ generators/TBCB entities, wherein the schedule of Chandwa line bays along with associated TBCB line is reaffirmed as September 2017 and matches with each other.
Force majeure situation continued, NOC not received.	
13.4.2018	NKTL issued a letter dated 13.4.2018, regarding Notice of Termination of the TSA dated 14.3.2016 due to non-issuance of NOC from the Ministry of Coal (MoC), CCL and CMPDI, as the transmission project could not be implemented, which is beyond the control of NKTL and thus falls under the force majeure events under Article 11 of the TSA. (Reference in RoP for the hearing dated 31.5.2018).
31.5.2018	Next hearing held before the Commission in Petition No. 194/MP/2017, on 31.5.2018. NKTL submitted that it has filed an IA 24/2018 in Petition No. 194/MP/2017, seeking an amendment to the Petition and submitted to CERC that, due to the continuation of the force majeure events, it has issued a letter regarding Notice of Termination of the TSA dated 14.3.2016. CERC directed LTTCs not to take any coercive measures owing to the force majeure issue and also directed them to convene a meeting between CEA, CCL, NTPC, BPC and MoCL to find a feasible solution to the force majeure situation.
29.6.2018	Meeting held between MoC, MoP (Ministry of Power), CCL, CIL, REC, CEA, NTPC and CMPDIL wherein all agreed in-principle to revise line routes suggested by CCL & CMPDIL. (Rural Electrification Corporation Ltd. (REC) as BPC, Coal India Ltd. (CIL), Central Mine Planning & Design Institute Ltd. [CMPDIL]). (With reference to the ROP for the hearing dated 26.7.2018).
26.7.2018	In the RoP dated 26.7.2018, The Commission directed as follows: CEA to facilitate the survey and submit its recommendations on the revised routes.
Force majeure situation continued, NOC not received.	
9.10.2018	In the RoP for the hearing dated 9.10.2018, NKTL submitted NOC, but it was not received. NTPC submitted its generation stranded for the need of immediate start-up power since June 2018 The Commission directed as follows: For expediting the issuance of the required NOC.



Date	Remarks
28.11.2018	Meeting held in MoP wherein, in view of the Termination Notice issued by NKTL, NTPC's proposal was agreed upon regarding the construction of this 400 kV D/C North Karanpura – Chandwa line on a priority basis through the Petitioner. (Reference in CERC RoP for the hearing dated 12.12.2018).
10.12.2018	NKTL's letter to LTTCs dated 10.12.2018, withdrawing the earlier Notice of Termination (dated 13.4.2018) of TSA. (Reference in CERC RoP for the hearing dated 12.12.2018).
12.12.2018	In the RoP for the hearing dated 12.12.2018: NTPC submitted: In the meeting in MoP dated 28.11.2018, it was decided to construct the 400 kV D/C North Karanpura – Chandwa line on a priority basis through the Petitioner. NKTL submitted: There is a likelihood of revision of the scope of works for which the Commission's approval shall be required. Notice of Termination of TSA withdrawn and permission to withdraw associated IA 24/2018. NKTL is willing to take steps to complete the project within a compressed schedule matching the requirements of NTPC's generation. CERC observation and direction: The Petitioner also does not have the required NOC for line construction, IA 24/2018, disposed. MoC to submit its view on the survey report at the earliest.
27.2.2019	In the ROP for the hearing dated 27.2.2019, NKTL submitted: For quashing of the proposal of NTPC regarding the construction of the 400 kV D/C North Karanpura – Chandwa line through the Petitioner.
19.3.2019	The Commission vide its order dated 19.3.2019 issued in Petition No.194/MP/2017 held as follows: <ul style="list-style-type: none"> • NKTL affected by Force Majeure due to non-issue/delay in NOC by MoC/CCL. • MoC/CCL to expedite the issuance of NOC. • NKTL is willing to execute the transmission system; NTPC advised not to proceed with the execution of the 400 kV D/C North Karanpura – Chandwa line. • Extension of SCOD of transmission system to be considered after grant of NOC, and revised time schedule to be decided by CEA in consultation with NKTL and NTPC.

Date	Remarks
	<ul style="list-style-type: none"> NKTL granted liberty to approach the Commission with a change/ revised scope of works and also approval of extension of SCOD after execution of the transmission system. LTTCS are directed not to take coercive actions in view of the force majeure situation till NOC issuance.
23.4.2019	<p>Meeting held at CEA as per the direction of the Commission, in the aforementioned order in Petition No.194/MP/2017, attended by CEA, NTPC and NKTL.</p> <p>Highlights and decisions of the MoM of the above meeting dated 23.4.2019:</p> <ul style="list-style-type: none"> Revised scope in-principally agreed. Revised scope as below: <ul style="list-style-type: none"> a. NKSTPP (North Karapura STPP) – Common point would be 13 km Multi Ckt. 400 kV line. b. Common Point – Chandwa would be 25 km D/C 400 kV line. c. Common Point – Gaya would be 98 km D/C 400 kV line. d. New 400 kV Dhanbad S/S e. 1.2 km D/C LILO of Ranchi – Maithon 400 kV D/C line at Dhanbad. Revised time schedule: <ul style="list-style-type: none"> 400 kV D/C North Karapura – Chandwa line to be completed in 14 months, i.e., by June 2020. 400 kV D/C North Karapura – Gaya line to be completed in 23 months, i.e., by March 2021. <p>(NKTL agreed for the above timelines, subject to getting Forest Clearances of North Karapura – Chandwa line within 200 days and for North Karapura – Gaya line within 300 days.)</p>
1.7.2019	<p>7th SSCM (Standing Committee Meeting on Transmission Planning for state sectors) held on 1.7.2019.</p> <p>7th SSCM discussed and noted the approval and decisions made in the meeting dated 23.4.2019, regarding the revised scope of works and revised SCOD.</p> <p>Revised SCOD for North Karapura–Chandwa being June 2020.</p>
5.7.2019	<p>2nd ERSCT (Eastern Region Standing Committee on Transmission) held on 5.7.2019, wherein members agreed (in the presence of regional constituents) to the decisions of the meeting dated 23.4.2019 regarding the revised scope of works and revised SCOD.</p> <p>Revised SCOD for North Karapura–Chandwa as of June 2020.</p>
13.12.2019	<p>42nd ERPC (Eastern Regional Power Committee) held on 13.12.2019, wherein the approval and decisions made in the meeting dated 23.4.2019 and 2nd ERSCT were discussed and approved in consultation with regional constituents regarding the revised scope of works and revised SCOD.</p> <p>Revised SCOD for North Karapura – Chandwa, as of June 2020.</p>



50. The Petitioner has submitted that the Force Majeure issue was acknowledged by the Commission in its order dated 19.3.2019 in Petition No. 194/MP/2017, and further discussed and ratified in a meeting held by CEA, ERSCT, SSCM and ERPC. Ultimately, the scope of revision was approved following these deliberations, along with the SCOD extension, and the revised completion schedule for the 400 kV D/C North – Karanpura line was June 2020. Since the Petitioner’s scope, namely the line bays at Chandwa, was to be executed in conjunction with the associated TBCB line, the scope revision/modification and SCOD extension also impacted the execution of Asset-2, resulting in a delay.

51. The Petitioner has submitted that the said time overrun from the original SCOD, i.e., September 2017 (30.9.2017) to June 2020 (30.6.2020), is evident in nature and has requested that the Commission may consider this period as part of the extended schedule for Asset-2. The revised details of the schedule completion vis-à-vis time delay, as submitted by the Petitioner, are as follows:

Asset	SCOD of transmission system as per IA (Matching with original SCOD of TBCB Line)	Revised SCOD of transmission system (Matching with Revised SCOD of TBCB Line)	COD	Delay vis-à-vis revised SCOD
Asset-2	30.9.2017	30.6.2020	9.9.2021 (invoked)	436 days

52. Thus, there is an effective delay of 436 days (~14 months) in the commissioning of Asset-2 vis-à-vis the revised schedule date of commissioning. The Petitioner has also submitted that the work related to Asset-2 was completed by September 2019, as evident from the CEA charging approval dated 9.9.2019. However, the Petitioner has considered the priority of matching Asset-2 with its associated TBCB line, both of



which have a revised SCOD of September 2020. Further, invoking COD before the SCOD (revised) would have been inefficacious.

B. Delay due to restrictions from the COVID-19 Pandemic

53. The Petitioner has submitted that COVID-19 was recognised by the WHO as a global pandemic and a force majeure event across all sectors of the global business and industry. This situation, by its very nature, was unforeseen and unplanned. As a result, the global business and production faced a multitude of setbacks. The projects undertaken by the Petitioner were no different, encountering numerous challenges as they navigated largely uncharted territory. Projects and supply lines had experienced highly unique and increasing risks, leading to delays in execution due to the effects of COVID-19.

Wave-1:

Nationwide lockdown in India in various phases owing to the COVID-19 pandemic:

- Phase 1: 25.3.2020 – 14.4.2020 (21 days)
- Phase 2: 15.4.2020 – 3.5.2020 (19 days)
- Phase 3: 4.5.2020 – 17.5.2020 (14 days)
- Phase 4: 18.5.2020 – 31.5.2020 (14 days)

Unlock:

- Unlock 1: 1.7.2020 – 30.6.2020 (30 days)
- Unlock 2.: 1.7.2020 – 31.7.2020 (31 days)
- Unlock 2: 1.8.2020 – 31.8.2020 (31 days)

54. The nationwide lockdown restricted people's movement and halted transport services, except for essentials and emergency services. This caused issues with



supplier deliveries, worker absenteeism, permit delays, travel restrictions, and lowered efficiency due to social distancing on site, all of which negatively affected the project timetable. Additionally, sites were either closed or access was limited mainly in response to measures to control the COVID-19 outbreak. A lack of engineering expertise, inadequate technical support, and disruptions in the supply chain worsened the situation, significantly affecting the project schedule and implementation. As a result, the commissioning of various projects, including the subject project, experienced delays due to disruptions in supply lines and construction activities.

55. The Petitioner has submitted that even after resumption, construction faced delays due to supply chain disruptions and inefficiencies. Further, if any worker was infected on site, the area was sealed and the workforce quarantined for 14–28 days, resulting in prolonged halts. As a result, line construction activities remained at a standstill for nearly 4–5 months (from end-March to July 2020) and only gradually resumed in accordance with Government directives.

56. The Petitioner has relied on the Ministry of Power, Government of India, vide letter dated 27.7.2020, which provided a 5-month extension regarding the SCOD for the Inter-State Transmission Project due to unforeseen circumstances caused by the Covid-19 pandemic. Consequently, the execution period was affected by Wave-1 of Covid-19 by approximately 5 months (150 days).

57. The Petitioner, vide affidavit dated 16.11.2023, has submitted the status of the transmission project as on 25.3.2020, including details of work before the COVID-19 pandemic and the impact of COVID-19 on the project.

Asset-1	SCOD: 30.9.2019	COD: 6.10.2019
Activity	Work completed prior to the COVID-19 pandemic (i.e., before March 2020)	Balance work affected due to the onset of



Asset-1	SCOD: 30.9.2019	COD: 6.10.2019
		COVID-19 (i.e., after March 2020)
LOA	Completed	-
Supply	Completed	-
Foundation & civil Works	Completed	-
Erection	Completed	-
Testing & Commissioning	Completed CEA dated 20.7.2019 & RLDC (No-Load) dated 5.10.2019	-

*Status is broadly indicative and not quantitative.

Asset-2	SCOD: 30.9.2017	COD: 9.9.2021
Activity	Work completed prior to the COVID-19 pandemic (i.e. before March 2020)	Balance work affected due to the onset of COVID-19 (i.e. after March 2020)
LOA	Completed	-
Supply	Completed	-
Foundation & civil Works	Completed	-
Erection	Completed	
Testing & Commissioning	Completed as CEA energization certificate was received on 9.9.2019	Only the trial run charging was left, which was carried out (No-Load) in September 2021

58. Furthermore, the Petitioner has stated that they had given due importance to Project Implementation & Monitoring in view of achieving the time-bound execution. These include various facets, such as communication channels, optimal manpower, decentralisation of activities, monitoring and control through the Integrated Project Management and Control System (IPMCS), and multi-tier planning and review. Implementation features through the Master Network assist in comparing the actual progress of the project with the scheduled progress. This provides an indication of the likely critical areas and helps prevent similar issues, resulting in smoother execution and managing detailed schedules, along with weekly or monthly rolling plans for engineering, supply (as applicable), and field activities. These serve as the foundation for monitoring by different functions. The Petitioner has submitted that their system



includes regular reviews at multiple levels wherein project completion trend, salient achievements, and obstacles are examined. Based on this feedback, and in pursuit of cost savings and shorter implementation timelines, the organisation and its personnel were actively working towards completing the project within the stipulated schedule.

C. Matching with completion of the TBCB line beyond the revised SCOD

59. The Petitioner has submitted that the COVID-19 pandemic caused a major disruption from March 2020 onwards, with several issues that stalled and seriously affected the TBCB works. Further, they mentioned that considering these unforeseen and uncontrollable circumstances, they took conscious efforts to consider matching the commissioning of the Asset-2 with the completion of the related TBCB line, which are listed below:

Date	Remarks
29.6.2020	24 th JCC (Joint Coordination Committee) meeting held on 29.6.2020. NKTL updated that the project was affected due to the COVID-19 pandemic. Forest clearance was then awaited. Revised anticipated completion of 400 kV North Karanpura – Chandwa line by June 2021.
28.9.2020	25 th JCC meeting held on 28.9.2020. NKTL updated that the project was affected due to the COVID-19 pandemic. Forest clearance was then awaited and expected by October 2020. Revised anticipated completion of 400 kV North Karanpura – Chandwa line by August 2021.
29.12.2020	26 th JCC meeting held on 29.12.2020. NKTL updated that Forest clearance is taking an inordinate time. The revised anticipated completion will be after receipt of Forest Clearance.
25.0.2021	27 th JCC meeting held on 25.3.2021. NKTL updated that forest clearance is still awaited. Revised anticipated completion of 400 kV North Karanpura – Chandwa line by January 2022.
25.6.2021	28 th JCC meeting held on 25.6.2021. NKTL updated that forest clearance was then awaited. Revised anticipated completion of 400 kV North Karanpura – Chandwa line by January-May 2022.



60. The Petitioner has submitted that efforts were made to align the transmission works under its scope with those of the related TBCB line. However, as shown in the table, even after one year of the revised SCOD, the TBCB transmission line continued to experience significant delays. Accordingly, the Petitioner invoked COD of its bays at Chandwa (Asset-2) with effect from 9.9.2021, aiming to synchronise the Chandwa line bays with the TBCB line according to the implementation schedule under the IA. However, due to inordinate delays in completing the TBCB line, and considering its contractual obligations, the Petitioner invoked COD of Asset-2 on 9.9.2021, despite being ready since September 2019 (as evidenced by CEA charging clearance). The time gap between the completion of Asset-2 on 9.9.2019 and the invocation of COD on 9.9.2021, is therefore clear. The Petitioner has prayed that the Commission should appreciate these circumstances and consider condoning the delay on the merits.

61. BSPHCL, in its reply filed vide affidavit dated 19.4.2023, has submitted as follows:

- a. With regard to Asset-1, the Petitioner should provide reasons supported by evidence explaining how various restrictions imposed by Section 144 Cr.P.C caused disruption and affected ongoing works. Without such proof, the delay cannot be condoned.
- b. The Petitioner's claim of Force Majeure, if any, must be examined strictly according to the 2019 Tariff Regulations. The definition of force majeure in Regulation 3(25) of the 2019 Tariff Regulations includes, among other things, exceptionally adverse weather conditions exceeding the statistical measures of the past 100 years. However, in this Petition, the Petitioner has sought to consider the average rainfall over a 50-year period rather than the last 100 years. It is the Petitioner's responsibility to provide IMD records to support the



claim of unprecedented rainfall; without such evidence, delays on this ground cannot be condoned. Moreover, the Petitioner was expected to plan for monsoon contingencies, and failure to do so indicates inefficiency in project implementation.

- c. For Asset-2, to explain the delay, the Petitioner has relied on reasons related to the delay of the associated transmission system under the scope of the TBCB entity (i.e., M/s NKTL), and no other reasons affecting Asset-2 have been provided.
- d. Any submissions inconsistent with the operative portion of the Commission's order dated 19.3.2019 in Petition No. 194/MP/2017, should be denied, and submitted to note Point (f) of para 29 of the said order dated 19.3.2019 wherein LTTCs were directed not to take any coercive measures in terms of TSA till the SCODs were revised considering a force majeure event. The delay from revised SCOD (30.6.2020) to invoked COD (9.9.2021) has not been condoned by any competent authority.
- e. The submission of the Petitioner shows that it has accepted the reasons for delay on the part of the TBCB entity and is relying upon it, but is now seeking to invoke COD before the actual date of commissioning of the associated transmission system owing to alleged contractual obligations. Thus, the Petitioner ought to explain that, after having accepted the reason for delay as to why it is seeking to invoke COD under Regulation 5(2) of the 2019 Tariff Regulations, the statement in this regard in the Petition is cryptic.
- f. Further, in respect of the delay claimed by the Petitioner due to COVID-19, the Courts in India have clarified that the pandemic does not provide a blanket



justification, and the impact on the work or concerned project on this account ought not to be condoned.

62. BSPHCL, in its Written Submissions dated 8.1.2024, has made the following submissions:

- a) For the delay, the Petitioner has relied on reasons related to the delay of the associated transmission system under the scope of the TBCB entity (i.e., M/s NKTL). No other reason affecting the said Asset-2 has been provided.
- b) Asset-2 was to be commissioned within a little over seven months from the date of IA on 9.2.2017, i.e., by 30.9.2017. However, the work associated with Asset-2 was completed by September 2019, and the date of no-load charging is stated to be September 2021. The Petitioner has thus failed to satisfactorily explain the delay.
- c) The Petitioner has also sought to rely on delays in the associated transmission system due to the outbreak of COVID-19. The Courts have held that the pandemic does not offer a blanket justification, and the impact on the work or relevant project must be demonstrated; otherwise, delays on this ground should not be condoned. The Petitioner has not demonstrated how Covid-19 affected the instant asset and project in question, and the failure to work despite relaxations granted by various government notifications over time indicates more of an issue with inefficiency in execution, which ought not to be condoned.

63. The Respondent No.7, NKTL, in its written submissions dated 9.1.2024, has submitted as follows:



- a. Before referring to the allegations made by the Petitioner regarding the readiness of the associated transmission line, namely the North Karanpura-Chandwa line by the revised SCOD, it is pertinent to state that, as per the Transmission Services Agreement (TSA) dated 14.3.2016, the SCOD of North Karanpura– Gaya and North Karanpura-Chandwa (Jharkhand) lines were September 2019 and September 2017 respectively, which were extended pursuant to the CEA MoM dated 23.4.2019, read with this Commission's order dated 20.3.2019 in Petition No. 194/MP/2017.
- b. Regarding the CEA meeting dated 23.4.2019, the Petitioner was required/ bound to match the commissioning of its project with that of NKTL. Furthermore, it is reiterated that NKTL's project was delayed due to force majeure events entirely beyond its control, which was also acknowledged by the Commission in its order dated 20.3.2019 in Petition No.194/MP/2017. As a result, there remains no legal basis for NKTL to make payment of bilateral transmission charges.

64. The Respondent No. 8, NTPC, in its affidavit dated 1.12.2023, has submitted that there was a cumulative delay of more than 46 months in declaring the commercial operation of Unit-1, and all the reasons for the delay were beyond the reasonable control of the Respondent, posing major hurdles to project execution. Furthermore, the Commission, by its order dated 5.4.2019 in Petition No. 142/GT/2016, condoned the delay in the COD of the unit due to the non-readiness of the Associated Transmission System (ATS).

65. The Petitioner, in its rejoinder to the reply of BSPHCL, has mainly submitted as follows:



- a. The delay from 16.6.2019 to 22.6.2019 was solely due to Section 144 Cr.P.C. restrictions and severe heatwave conditions at Gaya, which hampered the works of the line bays at Gaya Sub-station. The delay was neither intentional nor requested by the Petitioner, who has provided detailed daily and hourly temperatures at Gaya, Bihar, during June 2019, indicating the severity of the continuous heatwave.
- b. The Petitioner has provided proper data explaining the delay in execution, which was caused by the excessive and unprecedented rainfall in Gaya, leading to the delay in completing the project. Further, the Petitioner has submitted detailed IMD data demonstrating the above-average rainfall. The Commission, through its various orders, has condoned the delay caused by unforeseen circumstances such as unprecedented rainfall, which is beyond the Petitioner's control.
- c. For Asset-2, the Petitioner has already explained the reasons for the delay regarding NKTL and how the inordinate delay by NKTL ultimately led the Petitioner to consider invoking the COD of its bays at Chandwa, i.e., Asset-2, w.e.f. 9.9.2021.
- d. Further, in respect of the time delay claimed due to COVID-19, the Petitioner has provided valid reasoning along with documentary evidence explaining the delay in execution, which was mainly caused by lockdown restrictions imposed due to the worldwide spread of COVID-19, resulting in the delay in completing the project vis-à-vis Asset-2. The Petitioner has also submitted that it has already supplied detailed data and letters from the Ministry of Power acknowledging the pandemic situation and extending the SCOD of the inter-state transmission.



e. The reliance placed by BSPHCL on the case of Halliburton Offshore Services Inc. v. Vedanta Ltd. & Anr. 2020 SCC online Del 2068 is incorrect and misplaced. In the said judgment, the Hon'ble Delhi High Court issued an ad-interim injunction order, preventing Vedanta Ltd. (Respondent) from invoking and encashing bank guarantees provided by Halliburton Offshore Service Inc (Petitioner). While issuing this order, the Hon'ble Delhi High Court noted that the country-wide lockdown, which commenced from 24.3.2020, appeared prima facie to be a force majeure event.

66. The Petitioner, in its rejoinder to NKTL's reply, has mainly submitted as follows:

- a. Due to the non-readiness of the NK-C Line of NKTL, the COD of Asset-2 of the Petitioner was delayed. NKTL's claim regarding the filing of a new Petition for the delay of 1846 days, following the contentions of the Petitioner in the current Petition, is an independent claim and has no relation to the payment of transmission charges for the mismatch period or the prayers sought by the Petitioner in the present Petition.
- b. The transmission assets in the present Petition should be considered independently by this Commission and not in connection with any other proceedings. Although there was a delay on the part of NKTL, the Petitioner's transmission assets were on time. Furthermore, the subject matter of Petition No. 194/MP/2017 differs from that of the present Petition.
- c. The grant of NOC and the change in routes are separate issues and are not the subject matter of the present Petition. The Petitioner achieved its COD for Asset-1 on 9.9.2021 and for Asset-II on 6.10.2019, and the same were not able to provide regular service due to the non-readiness of the interconnecting transmission line of NKTL. NKTL is attempting to blame various authorities for



the delay caused by it and is trying to shift away from the liability for the delay which prevented the Petitioner's transmission assets from being put into regular use. The Petitioner cannot be penalised simply because it achieved its COD on time.

- d. NKTL can only seek declarations concerning events classified as Force majeure under the TSA, as per the agreement signed with the LTTCs. The reliefs for a Force Majeure event can solely be sought from the LTTCs in accordance with the provisions of the TSA, and these cannot be claimed against the Petitioner. The Petitioner's right and regulatory entitlement to get its COD approved and recover tariffs from the COD are governed by the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 (hereafter referred to as the "2020 Sharing Regulations"), read with the 2019 Tariff Regulations, and are not subject to any additional conditions. There is no valid reason to claim a Force Majeure event concerning the Petitioner in the present Petition.
- e. Any relief due to force majeure for NKTL should be granted according to the TSA signed between NKTL and its beneficiary LTTCs. Such claims relating to the force majeure event cannot be taken against the Petitioner, whose transmission assets remain stranded and could not be put to regular service during the delay period. The transmission charges should be payable to the Petitioner in accordance with the 2019 Tariff Regulations and the 2020 Sharing Regulations. Reliefs for the Force Majeure event cannot be claimed against the Petitioner. NKTL can only seek declarations regarding the events claimed as Force Majeure under the TSA, as per the agreement with the LTTCs.



67. The Petitioner, in its rejoinder to the reply of NTPC, has mainly submitted as follows:

- a. The issue of matching between NTPC and NKTL is independent of the claim made by the Petitioner for seeking COD for the subject assets under the 2019 Tariff Regulations and the Petitioner's right to transmission charges for the mismatch period under the 2020 Sharing Regulations.
- b. The reasons for the delay of Unit-1 at NTPC and any subsequent liability of NKTL (if applicable) should be based on the terms of the TSA signed between NKTL and NTPC, and should not be combined with the issues and prayers as sought by Petitioner in the present Petition.
- c. Further, the Petitioner, in its written submissions dated 9.1.2024, has addressed the issues raised by NKTL, NTPC, and BSPHCL. The Petitioner has reaffirmed its right to have its COD approved or to recover the tariff from the COD in accordance with the 2020 Sharing Regulations and the 2019 Tariff Regulations, and this cannot be made subject to any further conditions.

Analysis and Decision:

68. As per the IA dated 23.2.2017, Assets-1 and 2 were scheduled to be commissioned, matching with the schedule of the respective TBCB lines, i.e., by September 2019 for line bays associated with 400 kV D/C Gaya Substation and September 2017 for line bays associated with 400 kV D/C Chandwa GIS Substation.

69. The Petitioner has claimed the COD of Assets-1 and 2 as 6.10.2019 and 9.9.2021, respectively, under Regulation 5(2) of the 2019 Tariff Regulations. As discussed under commercial operation, the SCOD of Assets-1 and 2 is revised to 31.3.2021 and 30.6.2020, respectively, and the COD of these Assets is approved as 31.3.2021 and 9.9.2021, respectively.



70. Therefore, the details of SCOD, revised SCOD, and COD approved, as well as the time delays related to the transmission assets, are as follows:

Asset	Asset Name	SCOD as per IA	Revised SCOD	COD claimed by the Petitioner	COD approved	Time delay with respect to Revised SCOD (days)
Asset - 1	2 Nos. 400 kV line bays at Gaya Sub-station (for termination of 400 kV D/C {quad} North Karanpura - Gaya line under TBCB)	30.9.2019	31.3.2021	6.10.2019	31.3.2021	Nil
Asset - 2	2 Nos 400 kV line bays at Chandwa GIS Sub-station (for termination of 400 kV D/C {quad} North Karanpura - Chandwa line under TBCB)	30.9.2017	30.6.2020	9.9.2021 (Invoked)	9.09.2021	436

Asset-1:

71. According to the revised SCOD, there is no time overrun in the commissioning of Asset-1.

Asset-2:

72. As per the revised SCOD, there is a delay of 436 days in the commissioning of Asset-2. The Petitioner did not commission the 2 Nos. 400 kV line bays by 30.6.2020, the revised SCOD, and commissioned Asset-2 on 9.9.2021 with a delay of 436 days.

73. The Petitioner has submitted that Asset-2 was delayed due to the impact of the COVID-19 pandemic, including nationwide lockdowns, supplier-delivery issues,



worker absenteeism, delayed permits, and operational inefficiencies caused by social distancing norms. It is noted that the Petitioner completed the supply, foundation, and civil works, with erection completed before 31.03.2020, and also obtained the CEA Energisation Certificate on 9.9.2019. Considering the CEA charging approval dated 9.9.2019, we conclude that Asset-2 was not affected by the national lockdown beginning on 25.3.2020 due to the COVID-19 pandemic, and therefore, the pandemic did not significantly impact the project's execution. As a result, it cannot be deemed a valid reason for delay, and the delay is not condoned.

74. The Petitioner further submitted that it made efforts to match transmission works under its scope with the scope under the TBCB. The Petitioner has stated that the works of Asset-2 were completed by September 2019, which is prior to the revised SCOD of 30.6.2020. However, the delay is from 9.9.2019 until the invoking of the COD, i.e., on 9.9.2021. We have gone through the Petitioner's submissions and have perused the documents available on record. In the present circumstances, we would like to refer to Regulations 3(10) and 3(25) of the 2019 Tariff Regulations, which are as follows:

“(10) ‘Change in Law’ means occurrence of any of the following events:

(a) enactment, bringing into effect or promulgation of any new Indian law; or

(b) adoption, amendment, modification, repeal or re-enactment of any existing Indian law; or

(c) change in interpretation or application of any Indian law by a competent court, Tribunal or Indian Governmental Instrumentality which is the final authority under law for such interpretation or application; or

(d) change by any competent statutory authority in any condition or covenant of any consent or clearances or approval or licence available or obtained for the project; or

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

(25) ‘Force Majeure’ for the purpose of these regulations means the events or circumstances or combination of events or circumstances including those stated below which partly or fully prevents the generating company or transmission licensee to complete the project within the time specified in the Investment Approval, and only if



such events or circumstances are not within the control of the generating company or transmission licensee and could not have been avoided, had the generating company or transmission licensee taken reasonable care or complied with prudent utility practices:

(a) Act of God including lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, geological surprises, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred years; or

(b) Any act of war, invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or

(c) Industry wide strikes and labour disturbances having a nationwide impact in India; or

(d) Delay in obtaining statutory approval for the project except where the delay is attributable to project developer;”

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

“22. Controllable and Uncontrollable factors:

The following shall be considered as controllable and uncontrollable factors for deciding time over-run, cost 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.

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

a. Force Majeure events;

b. Change in law; and

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

76. On perusal of the record, we note that regarding the time overrun beyond 9.9.2019, the Petitioner itself agreed that CEA, vide letter dated 9.9.2019, had granted permission for the energisation of the electrical installation for the electrical apparatus. The relevant CEA Energisation Certificate is as follows:





ASSET-II

भारत सरकार
GOVERNMENT OF INDIA
विद्युत मंत्रालय, केन्द्रीय विद्युत प्राधिकरण
MINISTRY OF POWER, CENTRAL ELECTRICITY AUTHORITY
क्षेत्रीय निरीक्षण संगठन
REGIONAL INSPECTORIAL ORGANISATION

No. RIO/ER/PGCIL/Chandwa/2019/358

Dated: 09.09.2019

To,
Shri. J.D.Jha, Chief Manager,
Powergrid 400 kV GIS Pooling Station,
Chandwa, District-Latehar,
Jharkhand-829203

Subject: Approval for energization of 400 kV GIS North Karanpura Bays (Bay No-403, 406) at Powergrid 400 kV GIS Pooling Station, Chandwa under regulation 43 of CEA (Measures Relating to Safety and Electric Supply), Regulations, 2010.

Ref:

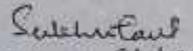
- (1) Application No-A/2019/05511 Dated 20.08.2019
- (2) Inspection Report vide No- RIO/ER/PGCIL/Chandwa/2019/356 Dated-09.09.2019

Whereas the inspection of electrical installations mentioned in the subject was carried out by the undersigned on 06.09.2019 and inspection report was issued vide letter at ref (2).

Approval is hereby granted to energize the 400 kV GIS North Karanpura Line Bays (Bay No-403, 406) at PGCIL Chandwa Pooling station.

This approval is strictly subject to your consistent full compliance with the relevant provisions of CEA (Measures Relating to Safety and Electric Supply), Regulations, 2010 in every respect.

This approval shall remain valid for a period of two years from the date of issue.


(Subhro Paul) 09/09/19
Director

Based on the above CEA Energisation Certificate, it is observed that the Petitioner was ready to charge its transmission asset on 9.9.2019.

77. Perusal of the CEA Energisation Certificate, as mentioned above, reveals that from 9.9.2019 to the COD of the transmission asset, no force majeure events occurred. Therefore, the time overrun between the revised SCOD, i.e., 30.6.2020, and the COD of the transmission asset/Asset-2 does not fall under uncontrollable factors.



The condonation of the time overrun for Asset-2 can only be considered if it is affected by a Change in Law or Force Majeure events. Therefore, we are of the view that the Petitioner was not impacted by any Change in Law or Force Majeure events from 9.9.2019 until the COD of Asset-2, i.e., 9.9.2021.

78. We have considered the submissions made by the parties, and the summary of the time overrun considered for tariff calculation is as follows:

Asset	Revised SCOD considered	COD approved	Time Overrun (in days)	Time overrun condoned (in days)	Time overrun not condoned
Asset-1	31.03.2021	31.03.2021	Nil	Nil	N.A.
Asset-2	30.6.2020	9.9.2021	436	Nil	436 days

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

79. The Petitioner has claimed IDC for the transmission assets covered in the instant Petition and has submitted a statement showing the IDC claim, discharge of the IDC liability as on COD, and thereafter as follows:

Asset-1

(₹ in lakh)

Assets	IDC as per Management Certificate	IDC Discharged up to COD	IDC Discharged during 2019-20	IDC Discharged during 2020-21
Asset-1	53.63	45.79	6.37	1.48

Asset-2

(₹ in lakh)

Assets	IDC as per Management Certificate	IDC Discharged up to COD	IDC Discharged during 2021-22	IDC Discharged during 2022-23
Asset-2	230.70	226.74	1.85	2.11

80. We have considered the submissions of the Petitioner. As discussed above in this order, there is no time overrun in respect of Asset-1, and the time overrun in the commissioning of Asset-2, as per the revised SCOD, is not condoned. Accordingly,



the IDC on a cash basis up to the COD has been calculated based on the loan details provided in the statement showing the discharge of IDC and Form-9C for the transmission assets. The IDC claimed and considered as on COD, and summary of discharge of IDC liability up to COD and thereafter for the purpose of tariff determination subject to its revision at the time of truing-up and is as follows:

Asset-1

(₹ in lakh)

Assets	IDC as per Management Certificate	IDC Disallowed Due to computational /Time overrun error not condoned	IDC Allowed	IDC Discharged up to COD
Asset-1	53.63	0.00	53.63	53.63

Asset-2

(₹ in lakh)

Assets	IDC as per the Management Certificate	IDC Disallowed Due to computational /Time overrun error not condoned	IDC Allowed	IDC Discharged up to COD	IDC discharged during 2021-22	IDC discharge d during 2022-23
Asset-2	230.70	107.52	123.18	123.18	0.00	0.00

81. Further, the Petitioner has claimed IEDC for the transmission assets based on the Management Certificates. The Petitioner has also submitted that the entire amount of IEDC for the transmission assets has been discharged up to COD. Since the time overrun for Asset-2 has not been condoned, IEDC has been disallowed on a pro-rata basis. The IEDC claimed as per the Management Certificate, the disallowed IEDC, and the amount discharged up to COD are as follows:

(₹ in lakh)

Assets	IEDC claimed as per Management certificate (A)	IEDC disallowed due to time over-run not condoned (B)	IEDC Allowed (C)=(A-B)
Asset-1	125.53	0.00	125.53
Asset-2	320.49	83.52	236.97



Initial Spares

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

“(d) Transmission System

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

83. The Initial Spares as claimed by the Petitioner are as under:

(₹ in lakh)

Asset Name	P&M Cost (A)	Spare Limit (B)	Spares Claimed (C)	Spares Permissible $D=\{(A-C)*B/(100-B)\}$
	Sub-station	Sub-station	Sub-station	Sub-station
Asset-1	1081.34	6%	60.35	65.17
Asset-2	2865.14	7%	7.81	215.07
Total			67.16	280.24

84. The Petitioner has submitted the details of the discharge of Initial Spares as follows:

(₹ in lakh)

Asset Name	Total Initial Spares in Management's Certificate			Spares Discharge (Rs. In Lakhs)											
				COD			2020-21			2021-22			2022-23		
	TL	SS	PLC C	TL	SS	PL CC	TL	SS	PLC C	TL	SS	PLCC	TL	SS	PLCC
Asset-1	-	60.35	-	-	44.09	-	-	16.26	-	-	-	-	-	-	-
Asset-2	-	7.81	-	-	4.72	-	-	-	-	-	-	-	-	3.09	-

85. We have considered the Petitioner's submissions. As per the above Regulation, the Initial Spares for the transmission assets are allowed according to the respective



percentage of the Plant and Machinery Cost as on the cut-off date for each individual case. As per Regulation 23(d) of the 2019 Tariff Regulation, the Initial Spares allowed for the transmission assets are as follows:

(₹ in lakh)						
Assets	Particulars	Plant and machinery cost	Initial Spares claimed	Ceiling limit mentioned as per Regulation (in %)	Allowable Initial Spares	Excess Initial Spares Claimed
		A	B	C	$D=(A-B)*C/(100-C)$	$E=D-B$, if $D>B$, otherwise 0
Asset-1	Sub-station	1081.34	60.35	6.00	65.17	0.00
Asset-2	Sub-station	2865.14	7.81	7.00	215.06	0.00

86. The capital cost allowed for the transmission assets as on COD is as follows:

(₹ in lakh)					
Assets	Capital Cost claimed as on COD Certificate (A)	(Management IDC Disallowed (B))	IEDC Disallowed (C)	Capital Cost as on COD (E) = (A-B-C)	
Asset-1	1289.23*	0.00	0.00	1289.23	
Asset-2	2349.30	107.52	83.52	2158.26	

*Since the COD has been postponed to 31.3.2021, the Additional Capital Expenditure claimed in FYs 2019-20 and 2020-21 has been added to the capital cost as on COD.

Additional Capital Expenditure (ACE)

87. Regulation 24 of the 2019 Tariff Regulations provide as under:

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

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

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



- (e) Change in law or compliance of any existing law; and
(f) Force Majeure events:

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

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

88. The Petitioner has claimed that the ACE incurred or projected to be incurred is mainly due to balance or retention payments, and therefore, the same is claimed under Regulations 24(1)(a) and 24(1)(b) of the 2019 Tariff Regulations. The Petitioner has claimed ACE for the transmission assets during the 2019-24 period in accordance with Management’s Certificates as follows:

(₹ in lakh)

Assets	Actual/ Projected Additional Capital Expenditure					Total Additional Capital Expenditure
	2019-20	2020-21	2021-22	2022-23	2023-24	
Asset-1	33.88	206.72		80.06		320.66
Asset-2			140.22	310.17	621.64	1072.03
Total	33.88	206.72	140.22	390.23	621.64	1392.69

89. The vendor-wise details of ACE claimed by the Petitioner for the transmission assets are as follows:

Asset-1:

(₹ in lakh)

Party	Particulars	Outstanding Liability as on COD	Discharge					Total	Outstanding liability as on 31.3.2024
			19-20	20-21	21-22	22-23	23-24		
GE T&D India Limited	Sub-station	320.66	33.88	206.72		80.06		320.66	0.00



Asset-2:

(₹ in lakh)

Party	Particulars	Outstanding Liability as on COD	Discharge				Outstanding liability as on 31.3.2024
			21-22	22-23	23-24	Total	
Hyosung Corporation Siemens Limited	Sub-station	1177.03	140.22	310.17	621.64	1072.03	105.00

90. BSPHCL has submitted that the claim of ACE is subject to a prudence check, and therefore the Petitioner should provide the necessary information to enable a prudence check like details of the contractor, information regarding undischarged liabilities and deferred works, liabilities and amounts already paid, the relevant time period, and so on.

91. In response, the Petitioner has submitted that it has provided all the necessary information required for the prudence check to substantiate its claims for ACE. The Petitioner has also submitted that it has claimed ACE for the transmission assets under Regulation 24(1)(a) of the 2019 Tariff Regulations and under Regulation 25(1)(b) of the 2019 Tariff Regulations.

92. Further, the Petitioner has submitted that it has given proper justifications and valid reasoning with respect to its claim for ACE, and accordingly, the same may be allowed.

93. We have considered the submissions of the parties. We observe that ACE claims concerning balance and retention payments, as well as unexecuted works within the cut-off date, have been allowed under Regulation 24(1)(a) and Regulation 24(1)(b) of the 2019 Tariff Regulations. Further, the ACE claimed up to 31.3.2021 in



respect of Asset-1 has been included in the claimed capital cost as on COD, i.e., on 31.3.2021.

94. Accordingly, the projected ACE allowed subject to its truing up in respect of the transmission assets is as follows:

Asset-1

(₹ in lakh)

Particular	Regulation	ACE Allowed				
		2019-20	2020-21	2021-22	2022-23	2023-24
Balance and retention payments for liabilities other than IDC	24(1)(1) and 24(1)(b) of the 2019 Tariff Regulations				80.06	
IDC Discharged after COD						
Total ACE					80.06	

Asset-2

(₹ in lakh)

Particular	Regulation	ACE Allowed				
		2019-20	2020-21	2021-22	2022-23	2023-24
Balance and retention payments for liabilities other than IDC	24(1)(a) and 24(1)(b) 2019 Tariff Regulations			140.22	310.17	621.64
Total ACE				140.22	310.17	621.64

95. Therefore, the total capital cost allowed in respect of transmission assets is as follows:

(₹ in lakh)

Assets	Apportio ned Approved Cost as per FR	Cost as on COD	Actual/ Projected ACE					Estimated Capital Cost up to 31.3.2024
			2019-20	2020-21	2021-22	2022-23	2023-24	
Asset-1	1621.19	1289.23				80.06		1369.29
Asset-2	3802.42	2158.26			140.22	310.17	621.64	3230.29
Total	5423.61	3447.49			140.22	390.23	621.64	4599.58



Debt-Equity ratio

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

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

Provided that:

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

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

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

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

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

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

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

(5) Any expenditure incurred or projected to be incurred on or after 1.4.2019 as may be admitted by the Commission as additional capital expenditure for determination of



tariff, and renovation and modernisation expenditure for life extension shall be serviced in the manner specified in clause (1) of this Regulation.”

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

97. The debt-equity considered for the purpose of computation of tariff for the 2019-24 tariff period for the transmission assets is as follows:

Asset-1

Particulars	Capital Cost as on COD (₹ in lakh)	(In %)	ACE during 2019-24 (₹ in lakh)	(In %)	Capital Cost as on 31.3.2024 (₹ in lakh)	(In %)
Debt	902.46	70.00	56.04	70.00	958.50	70.00
Equity	386.77	30.00	24.02	30.00	410.79	30.00
Total	1289.23	100.00	80.06	100.00	1369.29	100.00

Asset-2

Particulars	Capital Cost as on COD (₹ in lakh)	(In %)	ACE during 2019-24 (₹ in lakh)	(In %)	Capital Cost as on 31.3.2024 (₹ in lakh)	(In %)
Debt	1510.78	70.00	750.42	70.00	2261.20	70.00
Equity	647.48	30.00	321.61	30.00	969.09	30.00
Total	2158.26	100.00	1072.03	100.00	3230.29	100.00

Depreciation

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

(9) Where the emission control system is implemented within the original scope of the generating station and the date of commercial operation of the generating station



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

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

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

99. The depreciation has been worked out considering the ACE as on COD and thereafter up to 31.3.2024. The Weighted Average Rate of Depreciation (WAROD), at Annexure-I, has been worked out as per the rates of depreciation specified in the 2019 Tariff Regulations. The depreciation allowed for the transmission assets is as follows:

Asset-1

(₹ in lakh)

	Particulars	2020-21 (pro-rata 1 day)	2021-22	2022-23	2023-24
	Depreciation				
A	Opening Gross Block	1289.23	1289.23	1289.23	1369.29
B	ACE	0.00	0.00	80.06	0.00
C	Closing Gross Block (A+B)	1289.23	1289.23	1369.29	1369.29
D	Average Gross Block (A+C)/2	1289.23	1289.23	1329.26	1369.29
E	Weighted average rate of Depreciation (WAROD) (in %)	5.36	5.36	5.37	5.37
F	Balance useful life of the asset at the beginning of the year	24	24	23	22
G	Lapsed useful life of the asset at the beginning of the year	0	0	1	2
H	Aggregate Depreciable Value	1160.31	1160.31	1196.33	1232.36
I	Depreciation during the year (D*E)	0.19	69.15	71.35	73.54



	Particulars	2020-21 (pro-rata 1 day)	2021-22	2022-23	2023-24
J	Cumulative Depreciation at the end of the year	0.19	69.34	140.68	214.23
K	Remaining Depreciable Value at the end of the year (H-J)	1160.12	1090.97	1055.65	1018.14

Asset-2

(₹ in lakh)

	Particulars	2021-22 (pro-rata 204 days)	2022-23	2023-24
	Depreciation			
A	Opening Gross Block	2158.26	2298.48	2608.65
B	ACE	140.22	310.17	621.64
C	Closing Gross Block (A+B)	2298.48	2608.65	3230.29
D	Average Gross Block (A+C)/2	2228.37	2453.56	2919.47
E	Weighted average rate of Depreciation (WAROD) (in %)	5.32	5.32	5.32
F	Balance useful life of the asset at the beginning of the year	25	25	24
G	Lapsed useful life of the asset at the beginning of the year	0	0	1
H	Aggregate Depreciable Value	2005.53	2208.20	2627.52
I	Depreciation during the year (D*E)	66.26	130.51	155.30
J	Cumulative Depreciation at the end of the year	66.26	196.77	352.07
K	Remaining Depreciable Value at the end of the year (H-J)	1939.27	2011.43	2275.45

Interest on Loan (IoL)

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

“32. Interest on loan capital: (1) The loans arrived at in the manner indicated in Regulation 18 of these regulations shall be considered as gross normative loan for calculation of interest on loan.

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

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



cumulative depreciation recovered upto the date of de-capitalisation of such asset.

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

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

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

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

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

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

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

101. BSPHCL has submitted that the IoL may be calculated as contemplated by Regulation 32 of the 2019 Tariff Regulations, and nothing in the 2019 Tariff Regulations permits the change in interest rate due to floating rate of interest applicable, if any, to be adjusted or claimed over the tariff block of five years directly from or with the beneficiaries.

102. The Petitioner, through an affidavit dated 19.4.2023 has submitted that for Fixed Interest Loan(s), the interest rate mentioned in Form-9C may be considered, and for loans with floating interest rates, the compendium of floating interest rates (which was submitted along with truing-up Petition No. 244/TT/2019 for the 2014-19 tariff period and Petition No. 177/TT/2023 for the 2019-24 tariff period) may be referred to for rates of interest during different periods.



103. Further, the Petitioner, in its rejoinder affidavit dated 19.12.2023 in response to BSPHCL, has submitted that the IoL needs to be calculated in terms of 'actual' rate of interest of various loans deployed for each year. In the tariff calculation for the 2019-24 tariff period, the IoL has been calculated according to the interest rates prevailing on 1.4.2019 for each respective loan. Any change in interest rate due to floating rate of interest applicable and claimed by the financial institutions, if any, for the project needs to be claimed or adjusted over the five-year tariff period directly with the beneficiaries.

104. We have considered the submissions of the Petitioner and BSPHCL.

105. The Weighted Average Rate of IoL (WAROI) has been considered on the basis of the rate prevailing as on COD. The Petitioner has prayed that the change in interest rate due to the floating rate of interest applicable, if any, during the 2019-24 tariff period will be adjusted. Accordingly, the floating rate of interest, if any, shall be considered at the time of true-up. Therefore, the IoL has been allowed in accordance with Regulation 32 of the 2019 Tariff Regulations for the transmission assets and is as under:

Asset-1

(₹ in lakh)					
	Particulars	2020-21 (pro-rata 1 day)	2021-22	2022-23	2023-24
A	Gross Normative Loan	902.46	902.46	902.46	958.50
B	Cumulative Repayments up to the Previous Year	0.00	0.19	69.34	140.68
C	Net Loan-Opening (A-B)	902.46	902.27	833.12	817.82
D	Additions due to ACE	0.00	0.00	56.04	0.00
E	Repayment during the year	0.19	69.15	71.35	73.54
F	Net Loan-Closing (C+D-E)	902.27	833.12	817.82	744.28
G	Average Loan (C+F)/2	902.37	867.70	825.47	781.05
H	Weighted Average Rate of Interest on Loan (in %)	7.8140	7.6892	7.6889	7.6839
I	Interest on Loan (G*H)	0.19	66.72	63.47	60.01



Asset-2

(₹ in lakh)

	Particulars	2021-22 (pro-rata 204 days)	2022-23	2023-24
A	Gross Normative Loan	1510.78	1608.94	1826.06
B	Cumulative Repayments up to the Previous Year	0.00	66.26	196.77
C	Net Loan-Opening (A-B)	1510.78	1542.68	1629.28
D	Additions due to ACE	98.15	217.12	435.15
E	Repayment during the year	66.26	130.51	155.30
F	Net Loan-Closing (C+D- E)	1542.68	1629.28	1909.13
G	Average Loan (C+F)/2	1526.73	1585.98	1769.21
H	Weighted Average Rate of Interest on Loan (in %)	6.4729	6.4589	6.4524
I	Interest on Loan (G*H)	55.23	102.44	114.16

Return on Equity (RoE)

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

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

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

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

Provided further that:

- i. In case of a new project, the rate of return on equity shall be reduced by 1.00% for such period as may be decided by the Commission, if the generating station or transmission system is found to be declared under commercial operation without commissioning of any of the Restricted Governor Mode Operation (RGMO) or Free Governor Mode Operation (FGMO), data telemetry, communication system up to load dispatch centre or protection system based on the report submitted by the respective RLDC;*
- ii. in case of existing generating station, as and when any of the requirements under (i) above of this Regulation are found lacking based on the report submitted by the concerned RLDC, rate of return*



- on equity shall be reduced by 1.00% for the period for which the deficiency continues;
- iii. in case of a thermal generating station, with effect from 1.4.2020:
- a) rate of return on equity shall be reduced by 0.25% in case of failure to achieve the ramp rate of 1% per minute;
 - b) an additional rate of return on equity of 0.25% shall be allowed for every incremental ramp rate of 1% per minute achieved over and above the ramp rate of 1% per minute, subject to ceiling of additional rate of return on equity of 1.00%:

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

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

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

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

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

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

Illustration-

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

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

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

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



(d) Rate of return on equity = $15.50 / (1 - 0.24) = 20.395\%$.

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

107. BSPHCL has submitted that RoE and Tax on RoE may be considered as per Regulations 30 and 31 of the 2019 Tariff Regulations.

108. We have considered the Petitioner’s and BSPHCL’s submissions. The Petitioner has submitted that the MAT rate applies to it. Accordingly, the MAT rate applicable for 2019-24 has been considered for the purpose of RoE, which will be trued up with the actual tax rate in accordance with Regulation 31(3) of the 2019 Tariff Regulations. The RoE for the transmission assets has been worked out and allowed as follows:

Asset-1

(₹ in lakh)					
	Particulars	2020-21 (pro-rata 1 day)	2021-22	2022-23	2023-24
A	Opening Equity (A)	386.77	386.77	386.77	410.79
B	Additions (B)	0.00	0.00	24.02	0.00
C	Closing Equity (C) = (A+B)	386.77	386.77	410.79	410.79
D	Average Equity (D) = (A+C)/2	386.77	386.77	398.78	410.79
E	Return on Equity (Base Rate) (in %)	15.500	15.500	15.500	15.500
F	MAT Rate for respective year (in %)	17.472	17.472	17.472	17.472
G	Rate of Return on Equity (in %)	18.782	18.782	18.782	18.782
H	Return on Equity (D*G)	0.20	72.64	74.90	77.15



Asset-2

(₹ in lakh)

	Particulars	2021-22 (pro-rata 204 days)	2022-23	2023-24
A	Opening Equity (A)	647.48	689.54	782.59
B	Additions (B)	42.07	93.05	186.49
C	Closing Equity (C) = (A+B)	689.54	782.59	969.09
D	Average Equity (D) = (A+C)/2	668.51	736.07	875.84
E	Return on Equity (Base Rate) (in %)	15.500	15.500	15.500
F	MAT Rate for respective year (in %)	17.472	17.472	17.472
G	Rate of Return on Equity (in %)	18.782	18.782	18.782
H	Return on Equity (D*G)	70.18	138.25	164.50

Operation & Maintenance Expenses (O&M Expenses)

109. The O&M Expenses claimed by the Petitioner for the transmission assets for the 2019-24 period are as under:

Asset-1

(₹ in lakh)

Particulars	2019-20 (pro-rata 178 days)	2020-21	2021-22	2022-23	2023-24
Bay(s):					
400 kV					
i. 2 Nos. 400 kV Sub-station					
Norms (₹ lakh/bay)	32.15	33.28	34.45	35.66	36.91
Total O&M Expenses	31.27	66.56	68.90	71.32	73.82

Asset-2

(₹ in lakh)

Particulars	2021-22 (pro-rata 204 days)	2022-23	2023-24
Bay(s):			
400 kV GIS Sub-station			
i. 2 Nos. 400 kV GIS Sub-station			
Norms (₹ lakh/bay)	24.115	24.962	25.837
Total O&M Expenses	26.96	49.92	51.67

110. The norms specified under Regulation 35(3)(a) of the 2019 Tariff Regulations provide as follows:

“35. Operation and Maintenance Expenses:

(3) Transmission system: (a) The following normative operation and



maintenance expenses shall be admissible for the transmission system:

Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
Norms for sub-station Bays (₹ Lakh per bay)					
765 kV	45.01	46.60	48.23	49.93	51.68
400 kV	32.15	33.28	34.45	35.66	36.91
220 kV	22.51	23.30	24.12	24.96	25.84
132 kV and below	16.08	16.64	17.23	17.83	18.46
Norms for Transformers (₹ Lakh per MVA)					
765 kV	0.491	0.508	0.526	0.545	0.564
400 kV	0.358	0.371	0.384	0.398	0.411
220 kV	0.245	0.254	0.263	0.272	0.282
132 kV and below	0.245	0.254	0.263	0.272	0.282
Norms for AC and HVDC lines (₹ Lakh per km)					
Single Circuit (Bundled Conductor with six or more sub-conductors)	0.881	0.912	0.944	0.977	1.011
Single Circuit (Bundled conductor with four sub-conductors)	0.755	0.781	0.809	0.837	0.867
Single Circuit (Twin & Triple Conductor)	0.503	0.521	0.539	0.558	0.578
Single Circuit (Single Conductor)	0.252	0.260	0.270	0.279	0.289
Double Circuit (Bundled conductor with four or more sub-conductors)	1.322	1.368	1.416	1.466	1.517
Double Circuit (Twin & Triple Conductor)	0.881	0.912	0.944	0.977	1.011
Double Circuit (Single Conductor)	0.377	0.391	0.404	0.419	0.433
Multi Circuit (Bundled Conductor with four or more sub-conductor)	2.319	2.401	2.485	2.572	2.662
Multi Circuit (Twin & Triple Conductor)	1.544	1.598	1.654	1.713	1.773
Norms for HVDC stations					
HVDC Back-to-Back stations (₹ Lakh per 500 MW) (Except Gazuwaka BTB)	834	864	894	925	958
Gazuwaka HVDC Back-to-Back station (₹ Lakh per 500 MW)	1,666	1,725	1,785	1,848	1,913
500 kV Rihand-Dadri HVDC bipole scheme (₹ Lakh) (1500 MW)	2,252	2,331	2,413	2,498	2,586
±500 kV Talcher- Kolar HVDC bipole scheme (₹ Lakh) (2000 MW)	2,468	2,555	2,645	2,738	2,834
±500 kV Bhiwadi-Balia HVDC bipole scheme (₹ Lakh) (2500 MW)	1,696	1,756	1,817	1,881	1,947



Particulars	2019-20	2020-21	2021-22	2022-23	2023-24
<i>±800 kV, Bishwanath-Agra HVDC bipole scheme (₹ Lakh)(3000 MW)</i>	2,563	2,653	2,746	2,842	2,942

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

Provided further that:

- (i) the operation and maintenance expenses for new HVDC bi-pole schemes commissioned after 1.4.2019 for a particular year shall be allowed pro-rata on the basis of normative rate of operation and maintenance expenses of similar HVDC bi-pole scheme for the corresponding year of the tariff period;*
- (ii) the O&M expenses norms for HVDC bi-pole line shall be considered as Double Circuit quad AC line;*
- (iii) the O&M expenses of ±500 kV Mundra-Mohindergarh HVDC bipole scheme (2500 MW) shall be allowed as worked out by multiplying 0.80 of the normative O&M expenses for ±500 kV Talchar-Kolar HVDC bi-pole scheme (2000 MW);*
- (iv) the O&M expenses of ±800 kV Champa-Kurukshetra HVDC bi-pole scheme (3000 MW) shall be on the basis of the normative O&M expenses for ±800 kV, Bishwanath-Agra HVDC bi-pole scheme;*
- (v) the O&M expenses of ±800 kV, Alipurduar-Agra HVDC bi-pole scheme (3000 MW) shall be allowed as worked out by multiplying 0.80 of the normative O&M expenses for ±800 kV, Bishwanath-Agra HVDC bi-pole scheme; and*
- (vi) the O&M expenses of Static Synchronous Compensator and Static Var Compensator shall be worked at 1.5% of original project cost as on commercial operation which shall be escalated at the rate of 3.51% to work out the O&M expenses during the tariff period. The O&M expenses of Static Synchronous Compensator and Static Var Compensator, if required, may be reviewed after three years.*

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

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

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

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



111. BSPHCL has submitted that O&M Expenses may only be considered in accordance with Regulation 35(3)(a) of the 2019 Tariff Regulations.

112. We have considered the submissions of the Petitioner and BSPHCL. As mentioned above in this order under the heading of 'COD,' the CODs of Assets-1 and 2 for the purpose of tariff determination are being considered as 31.3.2021 and 9.9.2021, respectively. The O&M Expenses are worked out accordingly for various elements of the transmission assets as per the norms specified in the 2019 Tariff Regulations, and they are as follows:

Asset-1

(₹ in lakh)

Particulars	2019-20	2020-21 (pro-rata 1 day)	2021-22	2022-23	2023-24
Bay(s): 400 kV					
i. 2 Nos. 400 kV Bays at Gaya Substation					
Norms (₹ lakh/bay)	32.15	33.28	34.45	35.66	36.91
Total O&M Expenses	0.00[#]	0.18	68.90	71.32	73.82

[#] 31.3.2021 has been considered for the determination of tariff instead of 6.10.2019 (invoked COD)

Asset-2

(₹ in lakh)

Particulars	2021-22 (pro-rata 204 days)	2022-23	2023-24
Sub-station:			
400 kV GIS Sub-station			
i. 2 Nos. 400 kV GIS bays at Chandwa Sub-station			
Norms (₹ lakh/bay) *	24.12	24.96	25.84
Total O&M Expenses	26.96	49.92	51.67

* 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.

Interest on Working Capital (IWC)

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

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

(a) For Coal-based/lignite-fired thermal generating stations:



- (i) Cost of coal or lignite and limestone towards stock, if applicable, for 10 days for pit-head generating stations and 20 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal/lignite stock storage capacity whichever is lower;
- (ii) Advance payment for 30 days towards cost of coal or lignite and limestone for generation corresponding to the normative annual plant availability factor;
- (iii) Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary fuel oil;
- (iv) Maintenance spares @ 20% of operation and maintenance expenses including water charges and security expenses;
- (v) Receivables equivalent to 45 days of capacity charge and energy charge for sale of electricity calculated on the normative annual plant availability factor; and
- (vi) Operation and maintenance expenses, including water charges and security expenses, for one month.

(aa) For emission control system of coal or lignite based thermal generating stations:

- (i) Cost of limestone or reagent towards stock for 20 days corresponding to the normative annual plant availability factor;
- (ii) Advance payment for 30 days towards cost of reagent for generation corresponding to the normative annual plant availability factor;
- (iii) Receivables equivalent to 45 days of supplementary capacity charge and supplementary energy charge for sale of electricity calculated on the normative annual plant availability factor;
- (iv) Operation and maintenance expenses in respect of emission control system for one month;
- (v) Maintenance spares @20% of operation and maintenance expenses in respect of emission control system.

(b) For Open-cycle Gas Turbine/Combined Cycle thermal generating stations:

- (i) Fuel cost for 30 days corresponding to the normative annual plant availability factor, duly taking into account mode of operation of the generating station on gas fuel and liquid fuel;
- (ii) Liquid fuel stock for 15 days corresponding to the normative annual plant availability factor, and in case of use of more than one liquid fuel, cost of main liquid fuel duly taking into account mode of operation of the generating stations of gas fuel and liquid fuel;
- (iii) Maintenance spares @ 30% of operation and maintenance expenses including water charges and security expenses;
- (iv) Receivables equivalent to 45 days of capacity charge and energy charge for sale of electricity calculated on normative plant availability factor, duly taking into account mode of operation of the generating station on gas fuel and liquid fuel; and
- (v) Operation and maintenance expenses, including water charges and security expenses, for one month.

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

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



- (ii) Maintenance spares @ 15% of operation and maintenance expenses including security expenses; and
- (iii) Operation and maintenance expenses, including security expenses for one month.

(2) The cost of fuel in cases covered under sub-clauses (a) and (b) of clause (1) of this Regulation shall be based on the landed fuel cost (taking into account normative transit and handling losses in terms of Regulation 39 of these regulations) by the generating station and gross calorific value of the fuel as per actual weighted average for the third quarter of preceding financial year in case of each financial year for which tariff is to be determined:

Provided that in case of new generating station, the cost of fuel for the first financial year shall be considered based on landed fuel cost (taking into account normative transit and handling losses in terms of Regulation 39 of these regulations) and gross calorific value of the fuel as per actual weighted average for three months, as used for infirm power, preceding date of commercial operation for which tariff is to be determined.

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

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

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

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

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

114. The Petitioner has submitted that it has computed the IWC for the 2019-2024 tariff period, considering the SBI Base Rate plus 350 basis points as on 1.4.2019. The Petitioner has considered the IWC rate of 10.50%.

115. The IWC is worked out in accordance with Regulation 34 of the 2019 Tariff Regulations. The Rate of Interest (ROI) is considered as 11.25% (SBI 1-year MCLR applicable as on 1.4.2020 of 7.75% plus 350 basis points) for 2020-21, 10.50% (SBI 1-year MCLR applicable as on 1.4.2021 of 7.00% plus 350 basis points) for 2021-22 and 2022-23, and 12.00% (SBI 1-year MCLR applicable as on 1.4.2023 of 8.50% plus



350 basis points) for 2023-24. The components of the working capital and interest allowed thereon for the transmission assets are as follows:

Asset-1

(₹ in lakh)					
	Particulars	2020-21 (pro-rata 1 day)	2021-22	2022-23	2023-24
A	Working Capital for O&M Expenses (O&M Expenses for 1 month)	5.55	5.74	5.94	6.15
B	Working Capital for Maintenance Spares (15% of O&M Expenses)	9.98	10.34	10.70	11.07
C	WC for Receivables (Equivalent to 45 days of annual transmission charges)	35.08	34.86	35.32	35.77
D	Total Working Capital	50.61	50.94	51.96	52.99
E	Rate of Interest (in %)	11.25	10.50	10.50	12.00
F	Interest on Working Capital (D*E)	0.02	5.35	5.46	6.36

Asset-2

(₹ in lakh)				
	Particulars	2021-22 (pro-rata 204 days)	2022-23	2023-24
A	Working Capital for O&M Expenses (O&M Expenses for 1 month).	4.02	4.16	4.31
B	Working Capital for Maintenance Spares (15% of O&M Expenses).	7.23	7.49	7.75
C	Working Capital for Receivables (Equivalent to 45 days of annual transmission charges)	49.01	52.75	60.78
D	Total Working Capital	60.26	64.40	72.84
E	Rate of Interest (in %)	10.50	10.50	12.00
F	Interest on Working Capital (D*E)	3.54	6.76	8.74

Annual Fixed Charges for the 2019-24 Tariff Period

116. BSPHCL has submitted that various components of the Annual Fixed Cost can be determined in terms of the relevant 2019 Tariff Regulations only, as detailed in Chapter 8, which provides for the computation of the Annual Fixed Cost. Furthermore, the capital cost of the transmission system is to be determined in accordance with



Regulation 19 of the 2019 Tariff Regulations and is subject to a prudence check as contemplated by Regulation 20 of the 2019 Tariff Regulations.

117. In response, the Petitioner has submitted that it has calculated the tariff for the 2019-2024 tariff period in accordance with Regulation 10 of the 2019 Tariff Regulations and has provided the calculations for determining the tariff as Annexure-1, Part-III of the Tariff Regulations for the 2019-24 period, along with supporting documents.

118. We have considered the submissions made by the Petitioner and BSPHCL. The transmission charges allowed for the transmission assets after due prudence check for the 2019-24 tariff period are as follows:

Asset-1

(₹ in lakh)					
	Particulars	2020-21 (pro-rata 1 day)	2021-22	2022-23	2023-24
A	Depreciation	0.19	69.15	71.35	73.54
B	Interest on Loan	0.19	66.72	63.47	60.01
C	Return on Equity	0.20	72.64	74.90	77.15
D	O & M Expenses	0.18	68.90	71.32	73.82
E	Interest on Working Capital	0.02	5.35	5.46	6.36
F	Total	0.78	282.76	286.50	290.88

Asset-2

(₹ in lakh)				
	Particulars	2021-22 (pro-rata 204 days)	2022-23	2023-24
A	Depreciation	66.26	130.51	155.30
B	Interest on Loan	55.23	102.44	114.16
C	Return on Equity	70.18	138.25	164.50
D	O & M Expenses	26.96	49.92	51.67
E	Interest on Working Capital	3.54	6.76	8.74
F	Total	222.17	427.88	494.37



Filing Fee and the Publication Expenses

119. The Petitioner has sought reimbursement of the fee paid for filing the Petition and the publication expenses.

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

Licence Fee & RLDC Fees and Charges

121. The Petitioner has sought 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 be entitled to reimbursement of the licence fee under Regulation 70(4) of the 2019 Tariff Regulations for the 2019-24 tariff period. Additionally, the Petitioner shall be entitled to recover RLDC fees and charges in accordance with Regulations 70(3) of the 2019 Tariff Regulations for the 2019-24 tariff period.

122. BSPHCL has submitted that the granting of filing fees and expenses incurred is at the discretion of the Commission and need not necessarily be allowed in all cases; nothing beyond what is contemplated in the 2019 Tariff Regulations may be granted.

123. In response, the Petitioner has submitted that the fees for application filing and expenses may be allowed separately from the Respondent(s) under the discretionary power of Regulation 70(1) of the 2019 Tariff Regulations. The fees and charges payable by the Petitioner as an ISTS licensee (deemed ISTS licensee) under the Central Electricity Regulatory Commission (Fees and Charges of RLDC and other matters) Regulations, as amended from time to time, shall also be recoverable from the DICs as provided under Regulation 70(3) of the 2019 Tariff Regulations.



124. We have considered the submissions of the Petitioner and BSPHCL. The Petitioner shall be entitled to reimbursement of the licence fee in accordance with Regulation 70(4) of the 2019 Tariff Regulations for the 2019-24 tariff period. The Petitioner shall also be entitled to recovery of RLDC fees and charges in accordance with Regulations 70(3) of the 2019 Tariff Regulations for the 2019-24 tariff period.

Goods and Services Tax

125. The Petitioner has submitted that if GST is levied at any rate and at any time in the future on charges for the transmission of electricity, the same shall be borne and additionally paid by the Respondent(s) to the Petitioner, and it shall be charged and billed separately by the Petitioner. Further additional taxes, if applicable, arising from demands by the Government or statutory authorities, may be permitted to be recovered from the beneficiaries.

126. BSPHCL has submitted that Regulation 56 of the 2019 Tariff Regulations contemplates recovery of statutory charges by the generating company and not by the transmission licensee; thus, the Petitioner's claim is liable to be rejected, and in any case, such a claim is premature.

127. In response, the Petitioner has submitted that GST is a Change in Law event and any costs incurred towards it are permitted to the transmission licensee. Further, the Commission, in its various order(s), has categorically held that any expenses borne by the transmission licensee due to GST are allowable.

128. We have considered the submissions of the Petitioner and BSPHCL. On perusal of Regulation 56 of the 2019 Tariff Regulations, we find the submission of BSPHCL as misconceived and untenable, as GST is not levied on transmission service at present. We are of the view that the Petitioner's prayer in this regard is premature.



Security Expenses

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

130. The Petitioner has submitted that, as per Regulation 35(3)(c) of the 2019 Tariff Regulations, security expenses and capital spares for the transmission system will be allowed separately after a prudence check, and the Petitioner will file a separate Petition for the same. Therefore, in the absence of the above, the Commission may not allow any ad-hoc expenditure on account of security expenses by escalating the actual amount of 2018-19 by 3.5% per annum, which will be against the stipulation of Regulation 35(3)(c) of the 2019 Tariff Regulations and outside the scope of the present Petition as well.

131. BSPHCL has submitted that the claim made in the Petition should only be considered in accordance with Regulation 35(3)(c) of the 2019 Tariff Regulations.

132. In response, the Petitioner has reiterated its submissions as made in the Petition.

133. We have considered the Petitioner's submissions. The Petitioner has claimed consolidated security expenses on a projected basis for the 2019-2024 tariff period, based on the actual security expenses incurred during the 2018-19 period in Petition No. 260/MP/2020. The Commission, by order dated 3.8.2021 in Petition No. 260/MP/2020, approved security expenses from 1.4.2019 to 31.3.2024. Consequently, the security expenses will be shared in accordance with the order dated 3.8.2021 in Petition No. 260/MP/2020. Therefore, the Petitioner's prayer in the instant Petition to file a separate Petition for claiming the overall security expenses and consequential IWC has become infructuous.



Capital Spares

134. The Petitioner has sought reimbursement for capital spares at the end of the tariff period. Any claim made by the Petitioner shall be addressed in accordance with the provisions of the 2019 Tariff Regulations.

135. The Petitioner in this Petition has prayed for an interim tariff in accordance with Regulation 10(3) of the 2019 Tariff Regulations. Since we have already determined the tariff in this Petitioner, the prayer of the Petitioner's request is redundant.

Sharing of Transmission Charges

136. The Petitioner has submitted that the transmission charges for the 2019-24 period may be recovered on a monthly basis in accordance with Regulation 57 of the 2019 Tariff Regulations and shall be shared by the beneficiaries and long-term transmission customers as per Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 (2010 Sharing Regulations) as amended from time to time. Further, w.e.f. 1.11.2020, sharing of transmission charges is governed by the 2020 Sharing Regulations.

137. BSPHCL has contended that the Commission's consistent view is that in the event that the transmission line is not operational, the beneficiaries cannot be made liable to pay the transmission charges. Further, BSPHCL cannot be made liable to pay any transmission charges before the transmission line is made operational, and the payment of charges of the transmission assets before the operationalisation is a matter between the Petitioner and the associated TBCB entity, i.e., M/s NKTL

138. NKTL has mainly made the following submissions:

- a) Despite there being a mismatch in the COD of Assets-1 and 2 of the Petitioner (i.e., 6.10.2019 and 9.9.2021 respectively) and the COD of the



North Karanpura-Gaya line (NK-G Line) and North Karanpura-Chandwa line (NK-C Line) (i.e., 19.10.2022), NKTL cannot be held liable for such a mismatch or for any alleged liability to pay bilateral transmission charges for the period of the mismatch, as the delay in COD of the NK-C and NK-G lines was caused due to subsistence of Force Majeure events which were unforeseeable and beyond the reasonable control of NKTL.

b) The period of delay/ mis-match in achieving COD of North NK-C line and NK-G line is completely attributable to the force majeure events, which were acknowledged by the Commission in its order dated 20.3.2019 in Petition No. 194/MP/2017. In that case, the associated transmission licensee, i.e., NKTL, is not liable for a mismatch in COD of transmission assets (NK-C and NK-G lines) with that of the transmission assets of the Petitioner. Consequently, there remains no legal basis for NKTL to make payment of bilateral transmission charges. Although the 2020 Sharing Regulations [Regulation 13(12)] contains a provision for the imposition of transmission charges upon an associate transmission licensee on account of a mismatch in the commercial operation date of transmission assets. However, the said provision is not applicable to NKTL on account of the following:

(i) The Letter of Intent was issued on 24.5.2016, and TSA was executed with the beneficiaries/LTTCs on 14.3.2016. NKTL had factored in all the risks associated with the implementation of the transmission lines, which did not include payment of transmission charges for any mismatch with the COD of the transmission assets of the Petitioner.

(ii) The TSA, which deals with the rights and liabilities of NKTL regarding the development of its transmission project, including



NK-C and NK-G lines, does not have any provision under which transmission charges can be imposed in the event of a mismatch in the commissioning of the associated transmission systems.

- (iii) The 2019 Tariff Regulations provide that an Implementation Agreement has to be executed between the parties for the execution of the project in a coordinated manner. As a matter of fact, no such agreement has ever been entered into between the Petitioner and NKTL. Therefore, in the absence of any contractual relationship between the parties, transmission charges cannot be imposed on NKTL for the period of mismatch in the commissioning of associated transmission systems. NKTL has relied on the judgment of the Hon'ble Supreme Court in the case of Mackinnon Mackenzie and Company Ltd. Vs Mackinnon Employees Union, reported in AIR 2015 SC 1373, which established the legal principle that when a statute requires a particular manner for doing something, it must be done in that manner alone.
- (iv) The requirement to execute an Implementation Agreement under the 2019 Tariff Regulations makes the imposition of transmission charges for the mismatch in the commissioning of transmission assets conditional or contingent. Therefore, it is clear that the imposition of transmission charges on the associated transmission licensee depends on the parties signing the necessary Implementation Agreement that includes a provision for such charges.
- (v) The 2019 Tariff Regulations and the 2020 Sharing Regulations were notified much after NKTL submitted the bid for the subject



transmission project. Therefore, these Regulations are not applicable, and/ or in the alternative are required to be ignored, as the liability under Regulation 13 (12) of the 2020 Sharing Regulations for payment of transmission charges during the period of mismatch in COD of associated transmission systems was not envisaged at the time of the bid. Further, the said Regulation 13 (12) of the 2020 Sharing Regulations was amended through the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Second Amendment) Regulations, 2023, which stipulates that the defaulting ISTS licensee shall be liable to pay 50% of the Yearly Transmission Charges to the ISTS licensee until the delayed inter-State transmission system achieves COD. Since this liability was envisaged post-submission of the bid by carrying out an amendment of the Sharing Regulations, it is not applicable to NKTL.

- (vi) Furthermore, NKTL has submitted that for imposing the liability of the bilateral transmission charges, an Implementation Agreement is a sine qua non as per Regulation 3 (33) of the 2019 Tariff Regulations read with Regulation 5 of the 2019 Tariff Regulations, which has not been entered into between the Petitioner and NKTL.
- (vii) The Notification dated 15.1.2021 issued by the Ministry of Power (MOP) clarifies and affirms that there should be no levy of transmission charges on a TBCB Licensee for delays in achieving SCOD, except for liquidated damages imposed by the Long-Term Transmission Customers, which are provided under the TSA. This



clarification was issued for the purpose that there should not be any unexpected charges, including imposition of any transmission charges after the bid process is over, and that such liability was not made aware to the bidders. The notification issued by the MOP is statutory and must be interpreted as part of the scheme under Section 63 of the Act. Therefore, it is binding. Furthermore, the current transmission projects—NK-C and NK-G lines of NKTL—were allocated through TBCB conducted in accordance with Section 63 of the Act, making NKTL bound by the rights and obligations therein. No additional liabilities or charges not covered in the bidding documents or guidelines have been further clarified by the above Notification.

- (viii) The bid was conducted based on statutory guidelines issued by the Central Government under Section 63 of the Act. Since these guidelines do not envisage any payment of transmission charges to another transmission licensee in case of a mismatch, a transmission licensee cannot be held liable for paying transmission charges to another transmission licensee when it has never applied for open access under Section 38 (2) (d) of the Act.
- (ix) In the absence of specific provisions in the Sharing Regulations to address delays in SCOD due to force majeure and the consequent liability, if any, for payment of bilateral transmission charges, the Commission, through the exercise of its regulatory power, is empowered to adjudicate on the present issue without imposing any transmission charges on the associated transmission licensee whose transmission assets was delayed in commissioning due to



force majeure events. Further, the said regulatory power is also traceable under Section 79 (1) (c) and (d) of the Act, which vests power in the Commission to “regulate inter-State transmission of electricity”. Further, while invoking the regulatory powers, the Commission ought to follow Section 63 of the Act regime, which would include the above MOP notification, and this must be read into the Bidding Guidelines as it seeks to fill a lacuna in the said Guidelines. Therefore, the regulatory powers should be used to exempt NKTL from the levying of any bilateral transmission charges, and such exemption would prevail over regulations.

(x) TSA entered into between the parties prior to the notification of the 2019 Tariff Regulations and the 2020 Sharing Regulations would not be affected by the terms of those subsequent Regulations. Reliance is placed on *GUVNL vs. Renew Wind Energy (Rajkot) Private Ltd.*, reported in 2023 SCC Online SC 41 (3 J bench – judgment dated 13.4.2023), which holds that pre-existing contracts concluded before the amendments or Regulations cannot be governed by the amended provisions. NKTL has further submitted that, unless any amendment or Regulations expressly override such existing contracts, the terms of those contracts will bind the parties. In the present case, NKTL has submitted that:

(xi) Even otherwise, as per Sections 38(2)(d) and 40(c) of the Act, transmission charges can be levied only for providing ‘open access’ and for no other purpose. This means that “transmission charges” are to be paid only by open access customers (i.e., those customers who have been granted open access) and not by



associated transmission licensee such as NKTL in the present case, who has not availed open access, nor can it undertake the activities of distribution or trading to opt for open access services of other transmission licensee.

- (xii) Once the delay in commissioning of a transmission system is on account of force majeure events which were unforeseeable and beyond the reasonable control of NKTL, then the associated transmission licensee i.e., NKTL cannot be held responsible for allegedly causing a mismatch in the commissioning of North-Karanpura-Chandwa line (i.e., 19.10.2022) with that of commissioning of Asset-2 of the Petitioner (i.e., 9.9.2021). Similarly, on account of ongoing force majeure events, NKTL cannot be held liable for a mismatch in the commissioning of Asset-1 of the Petitioner and North-Karanpura-Gaya line as well. NKTL has submitted that no transmission charges can be recovered from the associated transmission licensee, such as NKTL. Further, NKTL has submitted that it is also clear that imposition of transmission charges on other transmission licensee who has not availed open access and implemented the transmission project under the regime of Section 63 of the Act read with the TBCB guidelines and TSA executed thereunder which do not contemplate such liability, is not justified under the law including within the framework of Electricity Act, 2003.

139. NKTL, in its written submissions, reiterated the points made in its reply, and as such, they are not being repeated here for the sake of brevity.



140. Regarding the sharing of transmission charges, NTPC has submitted that Unit 1 of North Karanpura STPS achieved COD on 1.3.2023, and ATS, which is under the scope of NKTL as admitted in the present Petition, has yet to achieve COD. The transmission assets, which are part of the ATS and under the scope of NTPC, have already been completed. Out of the 4-line bays to be constructed by the NTPLC, 2-line bays have been commissioned/charged, while the remaining two bays are complete but yet to be charged.

141. In response to the submissions of BSPHCL, the Petitioner has stated that the recovery of transmission charges for the mismatch period is to be adjudicated and paid in terms of the 2010 Sharing Regulations and the 2020 Sharing Regulations with respect to the CODs of Assets-1 and 2.

142. In response to the submissions of NTPC, the Petitioner has submitted that the issue of matching between NTPC and NKTL is independent of the claim of the Petitioner for seeking COD for the subject assets under the 2019 Tariff Regulations and the right of the Petitioner towards transmission charges for the mismatch period in terms of the 2020 Sharing Regulations.

143. Further, in response to the submissions of NKTL, the Petitioner has mainly made the following submissions:

- i) If the Petitioner's transmission assets are ready, on or after SCOD, but are prevented from achieving commercial operation due to non-readiness/default of either the interconnected transmission system of other transmission licensee or generating station, the Petitioner would be entitled to seek the declaration of deemed COD in terms of second proviso to Regulation 5(2) of the 2019 Tariff Regulations.

- ii) Once the deemed COD is recognised by the Commission, the Petitioner would be entitled to recover its tariff from the transmission licensee or generating station that delayed the interconnecting transmission assets. The regulatory intent and provisions clearly indicate that an entity which has implemented its assets within the stipulated timelines should not be penalised for the fault of another entity. The Regulations safeguard the interests of the entity that has made its asset ready and made a huge investment to complete the project. Regarding the readiness of the Petitioner's transmission assets, there is no dispute, and NKTL has not disputed the readiness of the Petitioner's assets.
- iii) The manner of determination of tariff of either licensee (either under Section 62 of the Act or Section 63 of the Act) is not relevant for purposes of recovery of transmission charges inter se the two licensees. In other words, the treatment of mismatch provided in Regulation 6 of the 2019 regulations can be either between a generating company and a transmission licensee or between two interconnected transmission licensees, and it cannot be made subject to how either of these parties recovers their own tariff for their respective assets.
- iv) The aforesaid regulatory provisions, i.e., the 2020 Sharing Regulations, the 2019 Tariff Regulations, it is evident that wherever there is an issue of mismatch between two transmission licensees, then from the date of the deemed COD to the actual COD of the associated transmission line, the party which has delayed in achieving the COD has to pay the transmission charges for the said mismatch period. The said provisions are aimed at safeguarding the financial interests of the transmission licensee, which has achieved COD on time, and the asset has been kept stranded due to no fault of theirs.
- v) NKTL's contentions that it is not liable to pay the transmission charges for the mismatch period due to the impact of a force majeure event are liable to be



rejected in light of the FBTL Judgment (supra). Any relief granted to NKTL due to force majeure should be based on the TSA signed between NKTL and its beneficiaries, LTTCs. Such claims concerning force majeure events cannot be held against the Petitioner, whose transmission assets remained stranded and could not be brought into regular service during the mismatch period. NKTL can only seek declarations regarding events claimed as force majeure under the TSA in accordance with the Agreement signed with the LTTCs. The issues raised in Petition No. 194/MP/2017 are independent of those raised in the present petition.

- vi) It is trite law that the Regulations made under Section 178 of the Act, will override existing contracts [PTC India Ltd. v. CERC (2010) 4 SCC 603], and the same were made to protect the interest of the transmission licensees, involved in commissioning the transmission assets as part of an integrated transmission system, who had no contractual relationship with the delaying transmission licensee or the generating unit. These Regulations are statutory in character and have the force of law; they govern even in situations where no contractual relationship exists between the regulated entities, as these regulations are binding on all of them, irrespective of whether or not they are parties to a contract.
- vii) Moreover, at the time of the bidding process, NKTL was aware of its obligations under the TSA, which clearly stated that prevailing regulations, rules, standards, and subsequent amendments would apply to the project. Therefore, the Commission's Regulations and orders are directly applicable to NKTL. NKTL could not have been unaware that any delay in meeting the SCOD would cause the other commissioned transmission asset to become stranded and that such a transmission licensee would be forced to suffer



losses as a result of the same. In the case of PTC India v. CERC supra (page 21) Para 30, the Hon'ble Appellate Tribunal confirmed that all existing contracts must be aligned with the regulations framed by the Commission.

- viii) Therefore, at this stage, since the Petitioner has achieved COD and there has been a delay on the part of NKTL to achieve COD for NK-C and NK-G lines, it is clear that NKTL is merely trying to wriggle out of its obligation to compensate the Petitioner for the delay during the mismatch period, which falls under the Regulations framed under the Act. Further, reliance on Mackinnon Mackenzie and Company Ltd. vs. Mackinnon Employees Union, reported in AIR 2015 SC 1373, is incorrect and misplaced because, in the present Petition, the Petitioner has followed the statutory procedure under the 2019 Tariff Regulations in a particular manner.
- ix) There is no mandate on the Commission to follow any advisories issued by the MOP under Sections 107/108 of the Act. Moreover, Section 107 of the Act only requires this Commission, in the discharge of its functions, to be guided by such directives. The meaning of the words "guided by" is to be "assisted by in reaching a conclusion." The directives issued by the Central Government under Section 107 of the Act can only be of assistance to the Commission in taking a decision, and while the Commission should take such directives into consideration while discharging its functions, it is not bound by such guidance.
- x) Accepting the contention of NKTL would also set a dangerous precedent since statutory Regulations and functions of the Commission will be controlled by directives under Sections 107/108 of the Act. The entire purpose of distancing the Government from the tariff fixation exercise and constituting an independent Commission under the Electricity Regulatory Commission Act, 1998, for framing such regulations, and the Act will be rendered a futility.



- xi) Further, this contention of NKTL is mutually destructive to the pleas taken by it earlier. If indeed the contention of the NKTL that the 2019 Tariff Regulations and the 2020 Sharing Regulations are not applicable to it, there would be no need for the Central Government to issue the Section 107 directive at all.
- xii) Accordingly, in the present case, TSA only contains provisions inter-alia regarding liability towards LTTCs in case of delay in achieving COD by scheduled date as it is an Agreement signed with LTTCs but licensee's mismatch liability towards other licensees due to delay in commissioning has not been provided and same is governed in terms of the 2019 Tariff Regulations and the 2020 Sharing Regulations made by the Commission in exercise of its power for making regulation under Section 178 of the Act.
- xiii) Existing Regulations make an inroad into even existing contracts; on the making of Regulations, even existing PPAs/Agreements should be modified and aligned with the said Regulations. All contracts, coming into existence after the making of the Regulations, should also factor in the provisions of the Regulations. Regulatory intervention into existing contracts across the board can only be made by enacting Regulations under Section 178 of the Act.
- xiv) Regulation 13(12) of the 2020 Sharing Regulations does not distinguish between a transmission project under the RTM route and the TBCB route and is independent of force majeure events encountered by the transmission licensee or generators. Therefore, the contention raised by NKTL that it is not liable to bear transmission charges under the 2019 Tariff Regulations and the 2020 Sharing Regulations as per MOP is misconceived and baseless.
- xv) NKTL has misconstrued the charges towards the usage of the 'open access' and levy of the transmission charges due to the mismatch, i.e. delay in achieving the COD by NKTL under Regulation 6(2) of the 2019 Tariff



Regulations and Regulation 13(12) of the 2020 Sharing Regulations. The Petitioner has submitted that there is a lack of conceptual clarity on the part of NKTL in assuming that it has been asked to pay charges towards open access, such as Long Term Access Charges, Medium Term Open Access Charges or Short Term Open Access Charges. In this regard, the following are relevant:

- xvi) The obligation to pay open access transmission charges is only applicable to those seeking or being granted open access, such as Long-Term Access, Medium-Term Open Access or Short-Term Open Access. The transmission charges for open access are distinct from transmission charges imposed on a transmission licensee, towards capital cost recovery of the transmission asset of another transmission licensee, due to the delay on the part of the former in commissioning its transmission asset.
- xvii) NKTL has placed reliance on *GUVNL vs. Renew Wind Energy (Rajkot) Private Ltd.* reported in 2023 SCC Online SC 41 (3 Judges bench – judgment dated 13.4.2023), and the same is wrong and misplaced, as both Section 62 and Section 63 of the Act provide only for the manner for determination/adoption of the tariff. Merely because the Regulations were framed after the date of signing the TSA of NKTL would not render them inapplicable. It was already mentioned in the TSA that prevailing regulations, rules, standards and subsequent amendments thereof shall be applicable for the project. Hence, the Commission's Regulations and orders are squarely applicable to NKTL.
- xviii) Both the Petitioner and NKTL were to make their transmission assets ready in a matching timeframe to facilitate power evacuation to beneficiaries and recover their transmission charges from the POC pool. However, if there is a mismatch between the two transmission licensees, the prevailing regulations



require the defaulting licensee to pay charges of the other licensee, whose assets have been commissioned, as the intended purpose could not be achieved due to the defaulting licensee, which in this case is NKTL.

144. The Petitioner, in its written submissions, has reiterated the submissions made in its rejoinder affidavit dated 19.12.2023, and as such, we are not recording the same here once again.

Analysis and decision on the Sharing of transmission Charges

145. We have considered the submissions of the Petitioner, BSP(H)CL, NKTL and NTPC.

146. Based on the contentions of NKTL and NTPC, the following issues arise for our consideration:

- i. Whether the requirement to execute an implementation agreement is compulsory for imposing the mismatch charges under the 2019 Tariff Regulations?
- ii. Whether the transmission charges for the mismatch period will be levied on a TBCB licensee as per the Notification dated 15.1.2021 issued by the Ministry of Power (MOP) or not?
- iii. Whether NKTL is liable to pay the transmission charges for the mismatch period, as North-Karanpura-Chandwa and North-Karanpura-Gaya transmission lines were delayed due to force majeure events, which were acknowledged by the Commission via order dated 20.3.2019 in Petition No. 194/MP/2017?
- iv. Whether the NTPC is liable to pay the transmission charges for the delay in commissioning of generation under its control?

Issue-I:

Whether the requirement to execute an implementation agreement is compulsory for imposing the mismatch charges under the 2019 Tariff Regulations?

147. NKTL has contended that, according to the 2019 Tariff Regulations, an Implementation Agreement has to be executed between the parties to facilitate the



coordinated execution of the project. In this case, no such agreement was ever signed between the Petitioner and NKTL. Therefore, in the absence of any contractual relationship existing between the parties, transmission charges cannot be imposed on NKTL for the period of mismatch in commissioning of associated transmission systems.

148. The Petitioner has contended that the Hon'ble Supreme Court in the matter of PTC India Limited v. CERC [(2010) 4 SCC 603], observed that by way of regulation which has the force of law, such situations can also be governed where there exists no contractual relation.

149. We have considered the submissions of NKTL and the Petitioner. To address this issue, we would like to refer to APTEL's judgment dated 2.5.2023 in Appeal No.352 of 2022, wherein the tribunal held that the entities are bound by the regulations even if there is no contract between them. The relevant portion of the said judgment is as follows:

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

150. The transmission assets of the Petitioner are being implemented under the RTM route and are covered under Section 62 of the Act. The COD of Assets-1 and 2 has been approved as 31.3.2021 and 9.9.2021, respectively. Accordingly, the 2019 Tariff Regulations are applicable in the case of the transmission assets. As per Regulation 2(1) of the 2019 Tariff Regulations, framed under Section 178 of the Act, read with Section 61 of the Act, the 2019 Tariff Regulations apply to the transmission system or element thereof implemented under Section 62 of the Act. As per Regulation



57 of the 2019 Tariff Regulations, the sharing of transmission charges shall be governed by the Sharing Regulations.

151. As regards the contention of NKTL that, without any Implementation Agreement between the Petitioner and NKTL, the recovery of transmission charges from the defaulting entity in the case of a mismatch in COD does not arise, we are of the view that Regulation 13(12) of the 2020 Sharing Regulations provides for the treatment of a mismatch in the COD of the inter-connected transmission system. In the instant case, as stated above, the CODs of Assets-1 and 2 are approved as 31.3.2021 and 9.9.2021, respectively, under Regulation 5(2) of the 2019 Tariff Regulations. As per Regulation 13(12) of the 2020 Sharing 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 is 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.

152. Therefore, in view of the above, the contention of NKTL regarding the non-applicability of transmission charges to the period of mismatch in the absence of implementation of the agreement is hereby rejected.

Issue-II:

Whether the transmission charges for the mismatch period will be levied on a TBCB licensee as per the Notification dated 15.1.2021 issued by the Ministry of Power (MOP) or not?

153. The NKTL has submitted that, as per the MoP Notification dated 15.1.2021, transmission charges should not be levied on a TBCB licensee due to delay in achieving the SCOD, except for liquidated damages to be imposed by the Long-Term



Transmission Customers. The notification issued by the MOP is statutory in nature and has to be construed as part of the scheme of Section 63 of the Act. Therefore, the said notification is binding.

154. *Per contra*, the Petitioner has contended that the APTEL, in a plethora of cases, including in the FBTL judgment, has observed that the directions in the letter dated 15.1.2021 are beyond the scope of Section 107 of the Act.

155. We have carefully considered the rival contentions of the Petitioner and NKTL and have perused the record. In this regard, we would like to refer to the APTEL judgment dated 2.5.2023 in Appeal No. 352 of 2022, which held that the Commission, being a statutory body, need not be bound by any such directions of the Government, as the power to declare subordinate legislation as ultra vires lies with the Hon'ble High Courts or the Hon'ble Supreme Court. The relevant portion of the said judgment dated 2.5.2023 in Appeal No. 352 of 2022 is as follows:

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

156. Therefore, in view of the above facts, the contention of the NKTL that the directions given by the MoP vide Notification dated 15.1.2021 are statutory and binding in nature is hereby rejected.

Issue-III: Whether NKTL is liable to pay the transmission charges for the mismatch period, as North-Karanpura-Chandwa and North-Karanpura-Gaya transmission lines were delayed due to force majeure events, which were acknowledged by the Commission via order dated 20.3.2019 in Petition No. 194/MP/2017?

And

Issue-IV : Whether NTPC is liable to pay the transmission charges for the delay in commissioning of the generation under its control?



157. Issue Nos. III and IV being interconnected, are considered together. The NKTL has contended that the delay in commissioning a transmission system, i.e., North Karanpura-Chandwa (NK-C) and North Karanpura-Gaya (NK-G) transmission lines, is due to force majeure events which were unforeseeable and beyond the reasonable control of NKTL; therefore, NKTL cannot be held responsible for allegedly causing a mismatch in the commissioning of North Karanpura-Gaya and North Karanpura-Chandwa lines with that of Assets-1 and 2 of the Petitioner.

158. NTPC has contended that Unit 1 of North Karanpura STPS achieved COD on 1.3.2023, and ATS, which falls within the scope of NKTL as acknowledged in the current Petition, has yet to achieve COD. The transmission assets, which are part of the ATS and under NTPC's scope, have already been completed. Out of the 4 line bays to be constructed by NTPC, 2 bays have been commissioned/charged, while the remaining two bays are complete but yet to be charged. NTPC has urged the Commission to decide the matter based on its contention.

159. BSPHCL has contended that it cannot be held responsible for paying any transmission charges before the transmission line becomes operational, and the payment of charges for the transmission assets prior to their commissioning is a matter between the Petitioner and the associated TBCB entity, i.e., NKTL.

160. In response to the contentions of NKTL, the Petitioner has contended that once the deemed COD is recognised by the Commission, the Petitioner would be entitled to recover its tariff from the transmission licensee or the generating station that delayed the interconnecting transmission assets. The regulatory intent and provisions clearly indicate that an entity which has implemented its assets within the stipulated timelines should not be penalised for the fault of another entity. The Regulations



safeguard the interests of the entity that has made its asset ready and made a huge investment to complete the project. Regarding the readiness of the Petitioner's transmission assets, there is no dispute, and NKTL has not disputed the readiness of the Petitioner's assets.

161. The Petitioner has contended that the 2020 Sharing Regulations and the 2019 Tariff Regulations, make it evident that wherever there is an issue of mismatch between two transmission licensees, then from the date of the deemed COD to the actual COD of the associated transmission line, the party which has delayed in achieving the COD has to pay the transmission charges for the said mismatch period. The said provisions are aimed at safeguarding the financial interests of the transmission licensee, which has achieved COD on time, and the asset has been kept stranded due to no fault of theirs.

162. The Petitioner has submitted that force majeure events experienced by NKTL cannot be held against the Petitioner, whose transmission assets remained stranded and could not be brought into regular service during the mismatch period. NKTL can only seek declarations regarding events claimed as force majeure under the TSA in accordance with the Agreement signed with the LTTCs. The issues raised in Petition No. 194/MP/2017 are independent of those raised in the present petition. Further, as regards the NKTL's contentions that it is not liable to pay the transmission charges for the mismatch period due to the impact of a force majeure event, these contentions are liable to be rejected in light of the FBTL Judgment (*supra*). Any relief granted to NKTL due to *force majeure* should be based on the TSA signed between NKTL and its beneficiaries, LTTCs.



163. As against the contentions of NTPC, the Petitioner has contended that the issue of matching between NTPC and NKTL is independent of the claim of the Petitioner for seeking COD for the transmission assets under the 2019 Tariff Regulations and the right of the Petitioner towards transmission charges for the mismatch period in terms of the 2020 Sharing Regulations.

164. As against the contentions of BSPHCL, the Petitioner has contended that it has furnished details with regard to the readiness of the transmission assets, stating that it was deferring its COD due to the delay in the implementation of NKTL. The details of such JCC Meetings and the corresponding submissions have been detailed in the Petition.

165. We have carefully considered the submissions of the parties above. As per the FBTL Judgment (supra) [APTEL's dated 2.5.2023 in Appeal No. 352 of 2022], even if the time overrun is condoned due to force majeure events, the entity responsible for the delay in implementation of the associated upstream/downstream elements is liable to bear the transmission charges for the period of mismatch as per applicable Regulations.

166. In view of the above, we are of the opinion that NKTL is liable to bear the transmission charges for the period of mismatch in the COD of the transmission assets, regardless of whether the transmission assets are affected by force majeure conditions or not. The contentions of NKTL regarding the delay in commissioning the transmission lines due to *force majeure* events shall be dealt with in the Petition, if any, filed by NKTL in the future.

167. In the instant case, the CODs of Assets-1 and 2 have been approved as 31.3.2021 and 9.9.2021, respectively, under Regulation 5(2) of the 2019 Tariff Regulations. The North Karanpura-Gaya line is yet to be commissioned, and the North-Karanpura Chandwa line was commissioned on 19.10.2022. The mismatch



period for Asset-1 is 31.3.2021 to the COD of North Karanpura – Gaya 400 kV line, and the mismatch period for Asset-2 is 9.9.2021 to 18.10.2022.

168. With regard to the recovery of transmission charges, we are of the opinion that Regulation 13(12) of the 2020 Sharing Regulations shall be applicable in this case, and the same are extracted as under:

“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.”*

169. Further, Regulation 13(12) of the 2020 Sharing Regulations was amended vide second amendment to the 2020 Sharing Regulation, which is effective from 1.11.2023 and is as given below:

“

- (1) For the cases other than those covered under Clauses (3), (6) or (9) of Regulation 13 of these regulations, the YTC for the inter-State transmission system or element thereof approved or declared as deemed COD shall be treated as follows:
 - (a) The inter-State transmission licensee shall be paid 50% of YTC of its inter-State transmission system for a period of six (6) months from the date of deemed COD or till the commencement of actual power flow, whichever is earlier.*
 - (b) The inter-State transmission licensee shall be paid 100% of YTC of its inter-State transmission system from the seventh (7th) month till commencement of actual power flow, in case actual power flow does not commence within a period of 6 months from the date of deemed COD.*
 - (c) The charges under sub-clauses (a) and (b) of this Clause shall be disbursed from charges collected in terms of Clause (3) of Regulation 12 of these regulations:**

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

Provided further that in case of shortfall in charges collected under T-GNA and TGNA_{RE} to meet the requirement of payment under sub-clauses (a)



and (b) of this Regulation, the balance shall be paid from Deviation and Ancillary Service Pool Account under DSM Regulations.

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

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

Provided further that if the delayed inter-State transmission licensee is levied liquidated damages for delay in completion of the transmission system in terms of the Transmission Service Agreement entered into with CTUIL, the amount of liquidated damages paid by such inter-State transmission licensee to CTU shall be offset to the extent of liability of the delayed inter-State transmission licensees in terms of this Clause and the balance amount, if any, shall be credited into Regional Transmission Deviation account under Clause (3) of Regulation 12 of these regulations.

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

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

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

- (g) The billing and collection of the charges in terms of sub-clauses (e) and (f) of this Clause shall be made in accordance with Clause (3) of Regulation 15 of these regulations.



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

A. Mismatch Period and Recovery for Asset -1 i.e. 2 nos. of 400 kV bays Associated with the NK-Gaya 400 kV line at Gaya

170. The COD of the Asset-1 is approved as 31.03.2021 under Regulation 5(2) of the 2019 Tariff Regulations, as the associated transmission line of M/s NKTL was not ready. Therefore, the transmission charges from the COD of the Asset-1, i.e. 31.03.2021 up to 31.10.2023, are to be recovered as per Regulation 13(12) of the 2020 Sharing Regulations. The second amendment to the 2020 Sharing Regulations is effective from 1.11.2023; therefore, the transmission charges from 1.11.2023 shall be recovered as per the second amendment of the 2020 Sharing Regulations. The details of the recovery of transmission charges of Asset-1 are as under:

Period	31.03.2021 to 31.10.2023	1.11.2023 till COD of the North Karanpura-Gaya line	From the date of COD of the North Karanpura-Gaya line
Recovery of YTC of Asset-1 of the Petitioner	100% from M/s NKTL	100% YTC as per Regulation 13(12) of the 2020 Sharing Regulations.	In accordance with Regulations 5 to 8 of the 2020 Sharing Regulations
Recovery from M/s NKTL	100% YTC of Asset 1	50% YTC of Asset 1 or 50 % YTC of the North Karanpura-Gaya line, whichever is lower	NIL

B. Mismatch Period and Recovery for Asset -2 , 2 Nos. of 400 kV bays associated with North Karanpura-Chandwa 400 kV line at Chandwa

171. The COD of Asset-2 is approved as 9.9.2021 under Regulation 5(2) of the 2019 Tariff Regulations, as the associated transmission line of M/s NKTL achieved COD on 19.10.2022. As on 19.10.2022, both the North Karanpura-Chandwa 400 kV transmission line of M/s NKTL and the associated line bays of the Petitioner were



ready, but none of the generating units at North Karanpura had achieved COD. NTPC synchronised Unit#1 of NKTPP-I on 21.10.2022. After synchronisation of the unit on 21.10.2022, commissioning activities, including testing, could commence. The unit achieved COD on 01.03.2023, i.e., within six months after the first synchronisation as provided in the Connectivity Regulations. Therefore, during the period from 19.10.2022 to 28.2.2023, NTPC utilised the North Karanpura-Chandwa line along with its associated bays at Chandwa for commissioning activities following the synchronisation of Unit-1 on 21.10.2022 until 28.2.2023. Consequently, the transmission charges for Asset-2 from 19.10.2022 to 28.2.2023 shall be borne by NTPC. From 1.3.2023, transmission charges shall be recovered in accordance with Regulations 5 to 8 of the 2020 Sharing Regulations. The details of the recovery of transmission charges for Asset-2 are as follows.

Period	09.09.2021 to 18.10.2022	19.10.2022 28.02.2023	to	01.03.2023 onwards
Recovery of YTC of Asset 2 of the Petitioner	100% from M/s NKTL	100% from NTPC		In accordance with Regulations 5 to 8 of the 2020 Sharing Regulations
Recovery from NKTL	100% YTC of Asset 2	NIL		NIL
Recovery from NTPC	-	100% of YTC Asset 2		NIL

172. To summarise:

- a. AFC allowed for the 2019-24 tariff period of the transmission assets are as follows:

Asset-1

(₹ in lakh)

2020-21 (pro-rata 1 day)	2021-22	2022-23	2023-24
0.78	282.76	286.50	290.88

Asset-2

(₹ in lakh)

2021-22 (pro-rata 204 days)	2022-23	2023-24
222.17	427.88	494.37

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

174. This order disposes of Petition No. 4/TT/2023 in terms of the above findings and discussions.

sd/-
(Ramesh Babu V)
Member

sd/-
(Jishnu Barua)
Chairperson



Annexure-1:

Asset-1:

2019-24 Capital Expenditure	Admitted Capital Cost as on COD (₹ in lakh)	Projected ACE (₹ in lakh)					Admitted Capital Cost as on 31.3.2024 (₹ in lakh)	Rate of Depreciation as per Regulations (%)	Annual Depreciation as per Regulations (₹ in lakh)			
		20- 21	21- 22	22-23	23- 24	Total			20-21	21-22	22-23	23-24
Sub Station	1186.55	-	-	64.33	-	64.33	1250.88	5.28	62.65	62.65	64.35	66.05
PLCC	102.68	-	-	15.73	-	15.73	118.41	6.33	6.50	6.50	7.00	7.50
Total	1289.23	-	-	80.06	-	80.06	1369.29		69.15	69.15	71.35	73.54
								Average Gross Block (₹ in lakh)	1289.23	1289.23	1329.26	1369.29
								Weighted Average Rate of Depreciation %	5.36	5.36	5.37	5.37



Asset-2:

2019-24 Capital Expenditure	Admitted Capital Cost as on COD (₹ in lakh)	Projected ACE (₹ in lakh)				Admitted Capital Cost as on 31.3.2024 (₹ in lakh)	Rate of Depreciation as per Regulations (%)	Annual Depreciation as per Regulations (₹ in lakh)		
		21-22	22-23	23-24	Total			21-22	22-23	23-24
Sub Station	2076.07	134.83	301.23	595.00	1031.06	3107.13	5.28	113.18	124.69	148.35
PLCC	82.19	5.39	8.94	26.64	40.97	123.16	6.33	5.37	5.83	6.95
Total	2158.26	140.22	310.17	621.64	1072.03	3230.29		118.55	130.51	155.30
							Average Gross Block (₹ in lakh)	2228.37	2453.56	2919.47
							Weighted Average Rate of Depreciation%	5.32	5.32	5.32

