In the Appellate Tribunal for Electricity at New Delhi
(Appellate Jurisdiction)

Appeal Nos. 108 of 2013, 149 of 2015, 171 of 2014 and 172 of 2014

Dated: 21st July , 2016

Present: Hon'ble Justice Mr. Surendra Kumar, Judicial Member
Hon'ble Mr.T Munikrishnaiah, Technical Member

Appeal No. 108 of 2013

IN THE MATTER OF:

Gujarat Energy Transmission Corporation Limited
Sardar Patel, Vidyut Bhhavan Race Course
Vadodara – 390 0007
Gujarat

Appellant/Petitioner

Versus

1. Gujarat Electricity Regulatory Commission
   First Floor, Neptune Tower,
   Opposite Nehru Bridge,
   Ashram Road,
   Ahmedabad – 380009

2. Gujarat Urja Vikas Nigam Limited
   Sardar Patel, Vidyut Bhavan Race Course,
   Vadodara – 390 0007
   Gujarat

3. Surajbari Vindram Development Pvt. Ltd.
   102, "EI Tara", Hiranandani Gardens
   Powai
   Mumbai-400 076

4. Utility Users Welfare Association
   Lakshmi Ginning Compound
   Opp. Union Co-Op Bank, Naroda
   Ahmedabad-382 330

……Respondents

Counsel for the Appellant(s) : Mr. M.G. Ramachandran
Mr. Anand K. Ganesan
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Ms. Anushree Bardhan
Mr. Shubham Arya

Counsel for the Respondent(s): Ms. Suparna Srivastava for R-1

Appeal No. 149 of 2015

IN THE MATTER OF:

Gujarat Energy Transmission Corporation Limited
Sardar Patel Vidyut Bhavan, Race Course,
Vadodara – 390 007 (Gujarat) **....Appellant/Petioner**

Versus

1. Gujarat Electricity Regulatory Commission
   6th Floor, GIFT ONE,
   Road 5C, Zone 5, GIFT City,
   Gandhinagar - 382355,
   Gujarat
2. Laghu Udhyog Bharti Gujarat,
   307, Ashram Avenue,
   Behind Kochrab Ashram Road,
   Ahmedabad-380 007
3. Federation of Gujarat Industries,
   FGI Business Centre,
   Gotri-Sevasi Road, Khanpur,
   Near Sevasi, Vadodara-391101
4. Indian Captive Power Producers Association (ICPPA),
   309- Mansarovar Building,
   90- Nehru Place.
   New Delhi-110019
5. Ahmedabad Textile Mills' Association
   The Millowner's Building (Of Le Courbusier)
   Ashram Road, Navrangpura,
   Ahmedabad-380009

6. Gujarat Wind Farms Ltd.
34 City Center,
Swastika Society, Navarangpura
Ahmedabad-380009

7. Utility Users Welfare Association,
Lakshmi Ginning Compound,
Opp. Union Co-Op Bank, Naroda
Ahmedabad-382330 **……Respondent(s)**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran
Mr. Anand K. Ganesan
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Ms. Anushree Bardhan
Mr. Shubham Arya

Counsel for the Respondent(s): Ms. Suparna Srivastava for R-1

Appeal No. 171 of 2014

IN THE MATTER OF:

Gujarat Energy Transmission Corporation Limited
Sardar Patel Vidyut Bhavan,
Race Course, Vadodara – 390 007
Gujarat **.....Appellant/Petitioner**

Versus

1. Gujarat Electricity Regulatory Commission
6th Floor, GIFT ONE,
Road 5C, Zone 5, GIFT City,
Gandhinagar - 382355,
Gujarat

2. M/s OPGS Power Gujarat Private Limited,
No. 6, Sardar Patel Road,
Guindy, Chennai-600032

3. Gujarat Vepari Mahamandal,
Sahakari Audyogik Vasahat Limited,
Odhav Road, Ahmedabad-382415

4. The Institute of Indian Foundrymen,
Ahmedabad Chapter (W.R),
The IIF-Inductotherm Centre,
The Korner Building, 2nd Floor,
Satellite Road, (S.M Road),
Ambawadi, Ahmedabad-380015

5. Shri Ganpatbhai Lallubhai Suthar,
38 Vijay laxmi Society,
Dethali Road at Sidhpur
Mehsana-384151 **……Respondents**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran
Mr. Anand K. Ganesan
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Ms. Anushree Bardhan
Mr. Shubham Arya

Counsel for the Respondent(s): Ms. Suparna Srivastava for R-1

Appeal No. 172 of 2014

IN THE MATTER OF:

Gujarat Energy Transmission Corporation Limited
Sardar Patel Vidyut Bhavan, Race Course,
Vadodara – 390 007 (Gujarat) **...Appellant/Petioner**

Versus

1. Gujarat Electricity Regulatory Commission
6th Floor, GIFT ONE
Road 5C, Zone 5, GIFT City
Gandhinagar – 382355, Gujarat

2. Laghu Udhyog Bharti Gujarat,
307, Ashram Avenue,
Behind Kochrab Ashram Road,
Ahmedabad-380 007

3. M/s UltraTech Cement Limited,
Unit: Narmada Cement Jafarabad Works,
Village- Babarkot, Taluka- Jafarabad,
Dist. Amreli, Gujarat-365540

4. Gujarat Vepari Mahamandal,
Sahakari Audyogik Vasahat Limited,
Odhav Road, Ahmedabad-382415

5. The Institute of Indian Foundrymen,
Ahmedabad Chapter (W.R),
The IIF-Inductotherm Centre,
The Korner Building, 2nd Floor, Satellite Road,
(S.M Road), Ambawadi, Ahmedabad-380015

6. Shri Ganpatbhai Lallubhai Suthar,
38 Vijay laxmi Society,
Dethali Road at Sidhpur
Mehsana-384151

7. M/s OPGS Power Gujarat Private Limited,
No. 6, Sardar Patel Road,
Guindy, Chennai-600032

8. Shri Amarsinh Chavda,
127, Heritage Banglow,
In Front of Science City,
Ahmedabad-380006 **……Respondents**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran
Mr. Anand K. Ganesan
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal

Ms. Anushree Bardhan
Mr. Shubham Arya

Counsel for the Respondent(s): Ms. Suparna Srivastava for R-1

JUDGMENT

Per Hon'ble T. Munikrishnaiah, Technical Member

Appeal No. 108 of 2013

1. This Appeal has been filed under Section 111 of the Electricity Act, 2003 against order dated 28.03.2013 passed by the Gujarat Electricity Regulatory Commission (hereinafter called the '**State Commission**') in Petition No. 1262 of 2012 whereby the State Commission has determined the transmission tariff for the year 2013-14. By the said Order, the State Commission has also trued up the financials of the Appellant for the year 2011-12.

Appeal No. 149 of 2015

2. This Appeal has been filed under Section 111 of the Electricity Act, 2003 against the order dated 31.03.2015 passed by the Gujarat Electricity Regulatory Commission (hereinafter called the '**State Commission**') in Petition No. 1461 of 2014 whereby the State Commission has *inter alia*, undertaken the true up of the financials of the transmission tariff for the year 2013-14 and has determined the tariff for the financial year 2015-16.

Appeal No. 172 of 2014

3. This Appeal has been filed under Section 111 of the Electricity Act, 2003 against the order dated 29.04.2014 passed by the Gujarat Electricity Regulatory Commission (hereinafter called the '**State Commission**') in Petition No. 1375 of 2013 whereby the State Commission has *inter alia*, undertaken the true up of the financials of the transmission tariff for the year 2012-13.

Appeal No. 171 of 2014

4. The Appeal has been filed under Section 111 of the Electricity Act, 2003 against the order dated 29.04.2014 passed by the Gujarat Electricity Regulatory Commission (hereinafter called the '**State Commission**') in Petition No. 1341 of 2013 whereby the State Commission has *inter alia*, undertaken the mid-term review of the revenues of the Appellant for the FY 2014-15 and 2015-16.

5. FACTS OF THE CASE

5.1 The Appellant, Gujarat Energy Transmission Corporation Limited, is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Sardar Patel, Vidyut Bhavan Race Course, Vadodara – 390 007.

5.2 The Appellant is engaged in the business of transmission of electricity in the State of Gujarat. The Appellant is also the State Transmission Utility

and performs the statutory functions of the State Load Dispatch Centre for the State of Gujarat. The Appellant has been vested with the functions of undertaking transmission of electricity from the erstwhile Gujarat Electricity Board pursuant to the reorganization of the Board.

5.3 The Respondent No. 1, the State Commission is the Electricity Regulatory Commission for the State of Gujarat and is discharging functions under the provisions of the Electricity Act, 2003 (hereinafter referred to as '**the Act**'). Respondents are beneficiaries of the Gujarat Energy Transmission Corporation Ltd.,

5.4 In exercise of the powers vested under the Act, on 22.03.2011 the State Commission has framed and notified the Gujarat Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011 (hereinafter called the '**MYT Regulations'**) as applicable for the control period from 01.04.2011 to 31.03.2016.

6. In all these Appeals, the Appellant raised similar issues against the aforesaid Impugned Orders passed by the State Commission, hence, we have heard them and are now deciding these Appeals simultaneously.

7. We have heard the arguments of Ld. Counsel Mr. M.G. Ramachandran for the Appellant and Ld. Counsel Ms. Suparna Srivastava for the Respondent and we have also gone through the submissions and Impugned Order. The following issues arise for our consideration:

Issue No. 1: Whether the State Commission erred in computation of depreciation on the basis of depreciation reserve while truing-up of the financials for FY 2011-12, 2012-13, 2013-14 and 2014-15 (Appeal Nos. 108 of 2013, 172 of 2014 & 149 of 2015)?

Issue No. 2: Whether the State Commission erred in considering the Government Grants, Subsidies and Consumer Contribution as deferred income on the basis of written down value method while depreciation has been allowed on straight line method (involved in all four appeals)?

Issue No. 3: Whether the State Commission erred in not considering the actual repayment of loan and considering only the normative loan repayment in equating depreciation as deemed repayment of loan?

Issue No. 4: Whether the State Commission erred in not considering the value of maintenance spares at 6% over the historical cost from the date of commercial operation (involved in all four appeals) while computing the interest on working capital?

Issue No. 5: Whether the State Commission erred in considering the contribution contingency reserve of Rs. 55.8 crores as against Rs. 60 crores invested by the Appellant in the approved security (Appeal No. 149 of 2015)?

Issue No. 6: Whether the State Commission erred in deduction of expenses of the capitalized assets from the O&M expenses?

Issue No. 7: Whether the State Commission erred in not considering an amount of Rs. 1.18 crores contributed by the Appellant under the corporate social responsibility as expenditure to be allowed in the revenue requirements (Appeal No. 149 of 2015 and 172 of 2014)?

8. **Issue No. 1 & 2 are inter-related and hence both the issues are being taken up together.**

9. The following are the submissions made by the Ld. Counsel of the Appellant:

9.1 that the depreciation, as per Regulation 40[1] of MYT Regulations ought to have been considered based on the value of Gross Fixed Assets

Value and not based on the depreciation reserve account. The consideration of the depreciation reserve account for the purpose is contrary to (a) what was being done in the previous years (b) Regulation 40(1) of MYT Regulations and (c) the purpose for which depreciation reserve fund is created as per well established principles.

9.2 that the depreciation reserve is for deriving the value of the net asset block to be adjusted on the recapitalization of the existing asset in the books of account. The depreciation reserve fund provides for the adjustment of depreciation for the past year and has no relation to the depreciation to be allowed as a tariff element. For this purpose the depreciation needs to be taken as an expense as per the profit and loss account.

9.3 that the methodology followed by the State Commission in the treatment of depreciation and deferred income of the grants, subsidies and consumer contributions are towards cost of capital asset.

9.4 that the depreciation should not be treated as equivalent to deferred income at 11.75% of such contribution. The depreciation is to be applied on straight line method while deferred income is considered on written down value method base. For the purpose of tariff determination, the provision of allowing depreciation amount as Rs. 59.40 crores and at the same time treating a deferred income of Rs. 128.69 crores needs to be included to avoid cash flow problem to the Appellant.

9.5 that the State Commission has not followed the same methodology which is followed at the time of tariff determination while truing-up of the financials of the respective financial years.

9.6 that the contribution made by the Government Grants, Subsidies and Consumer Contributions are adjusted in a progressive manner at 11.75% on the closing balance every year i.e. in a reduced manner instead of flat 11.75% of the total amount. The depreciation is calculated on a straight line method at the rate of only around 5.01%.

9.7 that the nature of the amount contributed, the same being utilized in creation of the fixed assets without GETCO being entitled to any return on investment or interest actually or notionally for repayment of such contribution (there is no repayment). For the purpose of tariff, neither the amount of contribution should be treated as a deferred income and correspondingly no depreciation need to be paid to GETCO. The State Commission ought not to have considered the deferred income at 11.75% and corresponding depreciation at 5.01%, particularly, as the amount is not a real income but a notional manner of treatment and similarly depreciation on an asset for which there is no equity or interest on loan need not be considered as a tariff element.

9.8 that the computation of Annual Revenue Requirements and tariff design under the Electricity Act is not necessarily required to be in accordance

with the Accounting Standards. The accounting for tariff purposes could be different.

10. **Per Contra,** the following are the submissions made by the Ld. Counsel of the Respondent No. 1:

10.1 that the Commission in the MYT Order worked out depreciation at the rate of 5.01% on the average gross block of the year for each year of the control period. The average the year was worked out considering opening gross block of the year and addition of fixed assets during the year as projected.

10.2 that the Commission has considered the depreciation reserve fund because some assets have been discarded from the gross block of asset with corresponding withdrawal of accumulated depreciation in respect of such discarded assets. Further, there is income from trading stores, scrap, etc. on account of loss of sale of fixed asset in FY 2011-12, 2012-13 & 2013-14. As per prudent account principles, no depreciation is to be allowed on the assets which are decommissioned and deleted, scrapped or sold out of the gross block of assets. Accordingly, since the assets have been withdrawn, net depreciation is considered while truing-up.

10.3. that the Commission while projecting the year-wise depreciation for the control period FY 2011-12 to 2015-16 adopted the methodology of allowing depreciation on the value of assets equivalent to the amount of

Govt. Grants, Subsidies & Consumer Contribution. The Commission considered deferred income on such Grants, Subsidies and Consumer Contribution as Non-Tariff Income. Accordingly, depreciation & non-tariff income for the control period were projected. While truing-up the Commission compares the actual depreciation & non-tariff income with the projected one. To make comparison meaningful, the items to be compared should be arrived at following the same methodology.

10.4 that the Commission is following the two adopted methodologies consistently since last many years. Any change in methodology shall amount to imbalance in the expenses allowed and income considered.

10.5 Looking to their own inability to show separately the assets financed through Grants, Subsidies, Consumers Contribution, etc, GETCO's argument in the present appeal need to be rejected.

11. Our Consideration and Conclusion on these issues

11.1 We have gone through the Impugned Order dated 31.03.2011 in Case No. 1062 of 2011 and noticed that GETCO has computed depreciation taking into consideration the opening GFA and proposed capitalization for the control period adopting the weighted average rate of depreciation of 5.06%. GETCO has applied this rate of 5.06% on gross block of assets, whereas the State Commission computed the depreciation charges applying the weighted average rate of depreciation at 5.01% for the control period from FY 2011-12 to 2015-16. The State Commission while computing the weighted average rate

of depreciation for the control period considered the actual weighted average rate of depreciation for 2009-10 which worked out to 5.01%.

The Commission taking into account of the approved opening block of assets and addition of assets on account of capitalization of capital expenditure computed depreciation for the control period FY 2011-12 to FY 2015-16. The details are shown in the following table:

Table 7.17: Approved Depreciation for FY 2011-12 to 2015-16

Particulars	**2011-12**	**2012-13**	**2013-14**	**2014-15**	**2015-16**
Gross block in the beginning of the year	8303.11	10437.40	12588.15	14879.70	17192.65
Additions during the year (Net)*	2134.29	2150.76	2291.55	2312.95	1611.73
Gross Block at the end of the year	10473.40	12588.16	14879.70	17192.65	18804.38
Average Gross Block	9370.25	11512.77	13733.93	16.36.18	17998.52
Depreciation for the year	**469.45**	**576.79**	**688.04**	**803.41**	**901.73**
Average rate of depreciation	5.01%	5.01%	5.01%	5.01%	5.01%

11.2 Let us examine the relevant Clause of the MYT Regulations, 2011, which deals with depreciation, which is as under:

Regulation *40.1:* *the value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission.*

Regulation 40.2 *The Generation Company or Transmission Licensee or Distribution Licensee shall be permitted to recover depreciation on the value of fixed assets used in their respective Business computed in the following manner:*

(a) The approved original cost of the project/fixed assets shall be the value base for calculation of depreciation;

*(b) Depreciation shall be computed annually based on the straight line method at the rates specified in the **Annexure I** to these Regulations:*

Provided that the remaining depreciable value as on 31st March of the year closing after a period of 12 years from date of commercial operation shall be spread over the balance useful life of the assets: Provided further that for a Generating Company or a Transmission Licensee or a Distribution Licensee formed as a result of a Transfer Scheme, the depreciation on assets transferred under the Transfer Scheme shall be charged as per rates specified in these Regulations for a period of 12 years from the date of the Transfer Scheme, and thereafter depreciation will be spread over the balance useful life of the assets: Provided further that the depreciation already charged after the date of the Transfer Scheme, shall not be restated: Provided further that the Generating Company or Transmission Licensee or Distribution Licensee, shall submit all such details or documentary evidence, as may be required under these Regulations and as stipulated by the Commission, from time to time, to substantiate the above claims;

(c) The salvage value of the asset shall be considered at 10 per cent of the allowable capital cost and depreciation shall be allowed upto a maximum of 90 per cent of the allowable capital cost of the asset:

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

***Regulation 40.4** In case of the existing projects, the balance depreciable value as on April 1, 2011, shall be worked out by deducting the cumulative depreciation as admitted by the Commission upto March 31, 2011, from the gross value of the assets.*

11.3 We have gone through the Impugned Orders passed by the State Commission regarding true-up of financials of the Appellant, GETCO. The details are abstracted in the following table:

Particulars	Approved in the MYT Order (Rs. In Cr.)	Claimed by the Appellant in True-up (Rs. In Cr.)	Approved by the Commission in the True-up (Rs. In Cr.)
FY 2011-12 true-up approved in the Impugned Order dated 28.03.2013 in Case No. 1262 of 2012 (Appeal No. 108 of 2013)			
1. Gross block in the beginning of the year	8303.11	8107.61	Commission approved as per the audited annual accounts was Rs. 442.97 crore. This includes depreciation of Rs. 0.66 crore relating to SLDC. The Commission approved depreciation for the year 2011-12 as Rs. 441.61 crore (442.97 – 0.66) crore.
2. Additions during the year (Net)	2134.29	1427.10	
3. Gross block at the end of the year	10473.40	-	
4. Average gross block	9370.25	-	
5. Average rate of depreciation	5.01%	5.16%	
6. Depreciation	469.45	454.94	
7. Less depreciation on assets funded by Government Grants/Consumer Contribution/Subsidies	0	(-) 59.40	
8. Depreciation for the year FY 2011-12	-	395.55	
FY 2012-13 1. Depreciation in MYT Order 2. Less depreciation on assets funded by Government Grants/Cnsumer Contribution/Subsidies, etc. 3. Depreciation for the year 2012-13.	576.79 (5.01%) 0 -	523.00 (5.05%) 75.00 448	Commission considered the depreciation amount as per Note 12 of the Audited Accounts was Rs. 507.03 crores excluding 0.49 crores of depreciation of SLDC
FY 2013-14 1. Depreciation in MYT Order 2. Less Depreciation 3. Depreciation for the year 2013-14 in True-up	688.07 0 -	608.22 94.87 513.35	Commission considered net depreciation as specified from the Note 12 of the audited annual accounts was Rs. 596.84crores exclude 0.44 crores relating to SLDC
Mid-term Review for FY 2014-15 & 2015-16: Appeal against the Order dt. 29.04.2014 passed by GERC in Petition No. 1341 of 2013 for Mid-term Review and Revision of Revenues for FY 2014-15 & 2015-16.			
FY 2014-15 1. Depreciation in Mid-term Review	803.00 (5.01%)	749.00 (projected by the Appellant in the MTR)	720.43 (5.05%)
FY 2015-16	902.00 (5.01%)	871.00 (-do-)	804.84 (5.05%)

Note:

1. During the mid-term review, the Appellant did not consider the depreciation pertains to Government Grants/Subsidies etc.

2. The Commission has taken the depreciation rate of 5.05% being the actual rate of depreciation worked out for FY 2012-13.

We have noticed in the Impugned Order that the Commission has computed the final depreciation during true-up for FY 2011-12 as verified from the audited annual accounts is Rs. 442.67 which includes 0.66 crores relating to SLDC and finally approved depreciation of Rs. 441.61 crores (442.27-0.66 crores) against the claim of Rs. 395 crores.

In our opinion, the State Commission has committed mistake by taking the depreciation reserve account as per the audited account. The Commission has computed the depreciation as per the MYT Regulations, 2011 during MYT Tariff Order dt. 30.03.2011. In the true-up, the Commission has followed different methodology by considering the depreciation shown in the audited accounts, thus deviating from the methodology specified in the MYT Regulations, 2011.

11.4 We have gone through the Impugned Order dated 29.04.2014 passed by GERC in Petition No. 1375 of 2013 for true-up of financials of FY 2012-13 and the similar methodology was followed for the true-up of financials for FY 2012-13 by considering the values as per audited accounts while computing the depreciation for FY 2012-13 in the true-up. The State Commission has approved Rs. 507.52 crores which includes 0.49 crores of SLDC as per audited accounts against 448 crores (523 crores – 75 crores) claimed by the Appellant.

11.5 The State Commission while computing the true-up for the FY 2013-14 in the Impugned Order dated 31.03.2015 in Petition No. 1461 of 2014 committed the same methodology in arriving at the depreciation on the basis of depreciation reserve fund against the procedure followed in the MYT Tariff Order dated 31.03.2011. Thus, the State Commission approved 596.84 crores against the claim of Rs. 513.35 crores by the Appellant GETCO.

11.6 Similarly, in the Impugned Order passed by the State Commission dated 29.04.2014 in Case No. 134 of 2013 regarding Mid-term Review of Business plan. The Appellant has computed the depreciation, taking into consideration the opening GFA and proposed capitalization in the Mid-term Review by adopting weighted average rate of depreciation of 5.07% on the Gross Block of assets.

The Commission has taken into consideration the depreciation rate of 5.05% being the actual rate of depreciation worked out for FY 2012-13 as per the audited annual accounts. Thus, we noticed that the Commission deviated from the methodology while computing the depreciation during true-up of financials.

11.7 Depreciation accounting is the recovery of the original cost of assets and not the economic market or any other non-original cost measures of value. The original cost of assets can be taken as its historic cost which represents the amount of cash or cash equivalents paid or the fair value

of the considerations given to acquire them at the time of their acquisition.

11.8 According to the accounting standard-6 of Institute of Charted Accounts, *inter alia,* provides as under:

"Depreciation is a measure of the wearing out consumption or other loss of value of a depreciable asset arising from use efflux of time or obsolescence through technology and market changes. Depreciation is allocated so as to charge a fair proportion of the depreciable amount in each accounting period during the expected useful life of the asset. Depreciation includes amortization of assets whose useful life is predetermined"

11.9 After going through the submissions, we observe that the methodology followed by the State Commission is different i.e. Commission considered the asset value as per the depreciation reserve account, whereas the Regulation says that the depreciation as per the original asset value has to be considered at the time of commissioning of the asset. Consequently, finding in the Impugned Order is liable to be quashed and is quashed and we direct the State Commission to re-compute the depreciation as per the MYT Tariff Regulations.

11.10 **Depreciation on Deferred Income:**

The contention of the Appellant GETCO in its additional submission made on 6th March, 2013 is as under:

"Government grants related to specific fixed assets should be presented in the balance sheet by showing the grant as a deduction from the gross value of the assets concerned in arriving at their book value. Where the grant related to a specific fixed asset equals the whole or virtually the whole of the cost of the

asset, the asset should be shown in the balance sheet at a nominal value. Alternatively government grants related to depreciable fixed assets may be treated as deferred income which should be recognized in the profit and loss statement on a systematic and rational basis over the useful life of the asset i.e. such grants should be allocated to income over the periods and in the proportions in which depreciation on those assets is charged".

Further, we have gone through the State Commission's Tariff Order dated 28.03.2013, 29.04.2014 and 31.03.2015 in Para 4.4 under Commission's analysis, is as under:

"The issue of considering a percentage of Consumer Contribution, Govt. Grants and Subsidies as non-tariff income is common to all the licensees and requires to be carefully examined. The Commission does not want to deliberate on the issue now in the truing-up for FY 2011-12. The Commission has followed the policy of considering portion of grants as non-tariff income consistently for all the licensees and any change in this behalf affects the parameters considered in the MYT Order for FY 2011-12 to FY 2015-16".

Thus, GETCO considered as per the suggestions of the CAG and Accounting Standard 12 of Indian Chartered Accounts.

11.11 This Tribunal in its Judgment dated 07.04.2011 in Appeal 134 of 2009 captioned as Power Grid Corporation of Indian Ltd. Vs. CERC and others, discussed at length and held as under:

"Accounting Standard 12 of Institute of Charted Accountants of India permits two alternative methods of presentation of grants in accounts. Whereas Central Commission (R-1) has adopted 1st method in the impugned order, Appellant adopts 2nd method in its accounting policy. Both Appellant as well as Respondent have admitted that net impact of both methods would be the same. We feel that having obtained the specific information about accounting policy of Appellant, Central Commission could have also adopted 2nd method in the impugned order, more so since it would not have any impact on transmission tariff. On other hand

POWERGRID, the Appellant could have accepted the impugned order as it is since it was not going to affect his profitability".

Thus, the Appellant considered in the Impugned Orders on 28.03.2013, 29.04.2014 and 31.03.2015, the views of the CAG and accounting standards, arrived the depreciation on deferred income amount and deducted the same from the depreciation arrived and worked out the net depreciation. Further, the Appellant compared this net depreciation with the depreciation computed by the Commission during the MYT Tariff Order as per the MYT Regulations, 2011.

The Commission has considered deferred income such as Government Grants, subsidies and Consumer Contribution under Non-Tariff Income and this procedure was followed by all the licensees and any change by this affects the parameters considered in MYT Order for FY 2011-12 to FY 2015-16. However, the Commission has expressed that it has to be carefully reexamined. Accordingly, the Commission has followed the same procedure in all the Tariff Orders regarding Government Grants. Etc.

We direct the State Commission to re-compute the depreciation and reexamine the deferred income utilized for creation of assets. Thus, in our opinion, the State Commission has not computed the depreciation for the FY 2011-12 to 2015-16, based on gross fixed assets value, the Commission has considered the asset value as per the depreciation reserve account. Thus, deviating methodology adopted in the MYT

Tariff Order dated 31.03.2011. Hence, we direct the State Commission to re-compute the depreciation based on the asset value as considered in the MYT Tariff Order while truing-up of the Tariff Orders. Further, we direct the State Commission to re-examine with respect to deferred income and portion of the grants as per the Accounting Standard and recommendation of CAG. If necessary, the MYT Regulation has to be suitably amended.

Thus, we decide these issues (Issue Nos. 1&2) in favour of the Appellant and the Impugned Orders are to be modified accordingly.

12. **Issue No. 3: Whether the State Commission erred in not considering the actual repayment of loan and considering only the normative loan repayment in equating depreciation as deemed repayment of loan?**

13. The following are the submissions made by the Ld. Counsel of the Appellant:

13.1 that the State Commission has considered depreciation as equivalent to loan repayment on the basis that depreciation amount will be available for servicing of such loan. Since the Appellant is required to service the actual term loan and payment of interest, the State Commission ought to have taken the deemed normative repayment of loan proportionate to the actual loan while equating the depreciation amount.

It was, therefore, necessary to consider the repayment of loan of GETCO in line with the actual loan taken and not as equivalent to

depreciation. The calculating repayment of loan as equivalent to depreciation results in substantial under-servicing of the loan.

13.2 that the State Commission has proceeded to consider the interest on loan based on normative repayment of loan, treating such normative repayment equivalent to the quantum of depreciation admissible under the Tariff Regulations. This has been done on account of the deeming provisions contained in Regulation 39.3 which reads as under:

> *"39.3 The repayment for the year during the tariff period from FY 2011-12 to FY 2015-16 shall be deemed to be equal to the depreciation allowed for that year."*

13.3 that the deemed application has resulted in a mismatch of interest being allowed on a lesser quantum of loan during the period from 2011-12 to 2015-16 and accordingly the total interest paid by GETCO has not been considered for the purpose of annual revenue requirements and tariff. If interest on loan is considered on the basis of normative repayment equivalent to depreciation based on the deeming provision it is a fiction created for the purpose of tariff determination.

13.4 that it is well settled principle of law that such fiction need to be given a logical end. Accordingly, at the end of the control period of 2011-12 to 2015-16 and as on 1.4.2016, the loan amount which is required to be serviced should be computed as the loan outstanding as on 1.4.2011 minus the normative repayment of loan allowed in the tariff for 2011-12 to 2015-16 plus the carrying cost for the actual loan repaid but not

considered during the said period on account of the deeming provision. GETCO will be entitled to claim the servicing of loan as on 1.4.2016 and at the next control period of the above amount.

14. **Per Contra,** the following are the submissions made by the Ld. Counsel of the Respondent No. 1:

14.1 that the repayment of loan for the year during the control period from FY 2011-12 to 2015-16 shall be deemed equal to the depreciation allowed for that year. While allowing interest and finance charge the Commission has followed its Regulations in its letter and spirit.

The core issue, which led to the suggestion of consideration of deemed normative repayment of loan proportionate to the actual loan, is the significant difference in actual loan v/s normative loan. As per Regulation 33 of GERC (MYT) Regulations, 2011, the normative loan is to be considered as per debt equity ratio of 70:30 on the amount of assets capitalized during the year i.e. the assets put to use during the year. The actual loan of the Appellant is higher than the normative loan because of non-completion of projects within time limit and significant amount of the availed loan remaining deployed under the head of capital work in progress. The said practice cannot be considered as a prudent practice and the consumers should not be burdened due to higher interest & finance charge.

15. Our consideration and Conclusion on this issue

15.1 Let us examine the relevant clause of the MYT Regulations, 2011. The relevant part of the Regulation is quoted below:

39.1 *The loans arrived at in the manner indicated in Regulation 34 shall be considered as gross normative loan for calculation of interest on loan:*

Provided that interest and finance charges on capital works in progress shall be excluded:

Provided further that in case of retirement or replacement of assets, the loan capital approved as mentioned above, shall be reduced to the extent of outstanding loan component of the original cost of the retired or replaced assets, based on documentary evidence.

39.3 *The repayment for the year during the tariff period from FY 2011-12 to FY 2015-16 shall be deemed to be equal to the depreciation allowed for that year.*

39.4 *Notwithstanding any moratorium period availed by the Generating Company or the Transmission Licensee or the Distribution 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 annual depreciation allowed.*

According to above clauses, it clearly specifies that the depreciation amount allowed for a particular year has to be utilized for repayment of the interest on loan for the respective year after reducing the loan capital approved to the extent of outstanding loan component of the original cost of the retired or replaced assets based on documentary evidence. The contention of the Appellant is that the actual loan of the Appellant is Rs. 6092.04 crores. The normative loans considered by the State Commission is only Rs. 3259.86 crores and the State Commission has considered depreciation as equivalent to loan repayment on the basis that depreciation amount will be available for servicing such loan and hence the Appellant has requested to consider the repayment of loan of GETCO in line with the actual loan taken and not as equivalent to depreciation.

Thus, in practice, depreciation is utilized to meet loan repayment liability of the utility arisen out of creation of an asset.

Further, the contention of the Appellant is that considering the depreciation amount for the payment of interest of debt will reduce the Annual Revenue Requirement (ARR) of the licensee by utilizing depreciation amount for repayment of loan but at the same time, the licensee will face a problem regarding financial crunch to meet the expenses because it creates mismatch of interest being allowed on a lesser quantum of loan during the period from 2011-12 to 2015-16.

15.2 We have gone through the Regulation. The Regulation clearly specifies that the payment of interest charges during the tariff period FY 2011-12 and FY 2015-16 shall be deemed to be equal to the depreciation allowed for that period. This Tribunal in Appeal No. 134 of 2009 held as under:

"33. *Thus in practice, depreciation is utilized to meet loan repayment liability of the utility arisen out of creation of an asset. When such an asset is required to be replaced after expiry of its useful life, fresh financial arrangements are made. POWERGRID, the Appellant, in its pleadings before the Central Commission has also accepted that it is utilizing depreciation amount to meet loan repayment liability. The statement made by Appellant on para 'P' on page 12 of the petition is as under:*

"POWERGRID utilized the depreciation component for servicing the debts as the amount of cash generation through operation is not sufficient to meet the debt servicing obligation because of poor revenue realization from SEB's. This does not mean that POWERGRID shall be deprived of depreciation as an element of tariff, as depreciation is a recognized cost element and has nothing to do with repayment of loan."

34. *In the light of above discussions it is clear that as per definition, depreciation is replacement cost of an asset but in practice it is utilized for repayment of loan".*

Further, the Central Commission also proposed to consider depreciation amount towards repayment of interest as loan in the Central Commission's Tariff Regulations, 2009.

Thus, after going through this Tribunal's Order and the Regulations, we do not find any infirmity or perversity on the decision of the State Commission on this issue and accordingly the issue is decided against the Appellant. The Impugned Order on this issue is upheld.

16. **Issue No. 4: Whether the State Commission erred in not considering the value of maintenance spares at 6% over the historical cost from the date of commercial operation (involved in all four appeals) while computing the interest on working capital?**

17. The following are the submissions made by the Ld. Counsel of the Appellant:

17.1 that In the impugned Order the State Commission has not calculated the interest on working capital consistent with the MYT Regulations.

17.2 that the State Commission has not allowed the computation on escalation on the historical cost of maintenance spares as per the above Regulation. The State Commission has restricted the computation to 1% the gross fixed assets whereas the MYT Regulations provides in addition thereto the escalation to be considered at 6% from the date of the commercial operation.

17.3 that the GETCO has given the table containing the calculation of maintenance spares from the opening block of capital assets for each

year, the addition made during the year and closing capital cost. This is taken note of by the State Commission in Para 4.33 of the impugned Order in Appeal No 149 of 2015. However effect has not been given.

17.4 that there cannot be any issue on the calculation of the working capital by factoring additions to the capital asset as well as applying escalation percentage provided in Regulation 41.2 of the MYT Regulations.

18. **Per contra,** the following are the submissions made by the Ld. Counsel of the Respondent No. 1:

18.1 that the State Commission has been considering the maintenance spares at 1% of the gross fixed assets for the respective year in view of the difficulty in keeping track of the dates of commercial operation of transmission lines and keeping watch on requirement of spares exclusively and hence the Commission had been consistently considering the maintenance spares at 1% of opening GFA as there has been substantial increase in GFA every year.

18.2 that the amount of GFA shown as opening GFA as on opening balance of GFA from FY 2005-06 is not the historical cost of the assets as the assets were vested in GETCO by Govt. of Gujarat on unbundling of erstwhile GEB. In view of the above, the Commission has considered 1% of the gross fixed assets for the respective year in computing the interest on working capital.

19. **Our Consideration and Conclusion on this issue**

19.1 The contention of the Appellant is that the State Commission has not allowed the computation on escalation on the historical cost of maintenance spares as per the 41.2(a) of MYT Regulations, 2011. Further, the State Commission has restricted the computation to 1% the gross fixed assets.

19.2 The Regulation 41 of MYT Regulations, 2011 dealing with interest on working capital. The Regulation 41.2 (a) (ii) specifies maintenance spares at 1% of the historical cost escalated at 6% from the date of commercial operation of the transmission lines and is one of the components in computation of the working capital. The State Commission in the Impugned Order stated that the Commission has been considering the maintenance of spares at 1% of the opening GFA for the respective year, since it is difficult to keep track of the dates of commercial operation of transmission lines and sub-stations and keep a watch on the requirement of spares escalation. The Commission has, therefore, been considering maintenance of spares at 1% of the opening GFA since there is substantial increase in GFA year on year.

19.3 In our opinion, it is not very difficult to obtain the information pertaining to commercial declaration of transmission lines and sub-stations of the Appellant, GETCO. Since, the information can be easily obtained from the Appellant as the transmission licensee deals with extra high voltage

lines i.e. above 33 KV lines and EHT sub-stations. Hence, it is not difficult to obtain the information. Further, the transmission licensee GETCO also informs to all the beneficiaries i.e. distribution licensees, consumers etc. regarding charging of new EHT transmission lines and sub-stations. Hence, we do not agree with the contention of the State Commission. Consequently, the finding in the Impugned Order are quashed being against law and perverse.

19.4 In view of the above, the State Commission is directed to follow their own regulations stating that maintenance spares at 1% of the historical cost escalated at 6% from the date of commercial operation while computing the interest on working capital for the transmission business. Thus, we do not agree with the decision of the State Commission and accordingly, the issue is decided in favour of the Appellant. The State Commission is directed to re-compute interest on working capital as per the MYT Regulations, 2011.

20. **Issue No. 5: Whether the State Commission erred in considering the contribution contingency reserve of Rs. 55.8 crores as against Rs. 60 crores invested by the Appellant in the approved security (Appeal No. 149 of 2015)?**

21. The following are the submissions made by the Ld. Counsel of the Appellant:

21.1 that the State Commission in the Impugned Order in Appeal No 149 of 2015 has considered only an amount of Rs 55.58 crores as contribution

to the contingency reserve as against Rs 60 crores invested by the Appellant in the approved security.

21.2 that the State Commission has considered the opening gross fixed assets instead of average gross fixed assets while computing the contingency reserve as per the regulation.

21.3 that the State Commission has considered average gross fixed assets for the purpose of depreciation in the tariff orders and failed to implement the same methodology for computing the contingency reserve.

22. **Per Contra,** the following are the submissions made by the Ld. Counsel of the Respondent No. 1:

22.1 that the State Commission's methodology for depreciation cannot not equated for calculation of contingency reserve as the methodology of calculation of two different elements is not appropriate because the purpose of allowing depreciation and contribution to contingency reserve is different. The depreciation is allowed to facilitate loan repayment whereas the contingency reserve is allowed to create a reserve to be utilized to meet a contingent situation. Such a situation is not a regular phenomenon like repayment of loan.

23. **Our consideration and conclusion on this issue**

23.1 Reserve for contingencies means a company's retained earnings that are not re-invested but are earmarked to protect against future losses. A

company may set up a reserve for contingencies when it is performing well to guard against the risk that it may eventually perform poorly. A reserve for contingencies allows a company to maintain its operation smoothly even when it has suffered an operating loss.

23.2 The State Commission specified certain guidelines regarding contingency reserve in the MYT Regulations, 2011. The relevant part of the Regulation is as under:

"71.7 Contribution to contingency reserve:
71.7.1 Where the Transmission Licensee has made an appropriation to the Contingency Reserve, a sum not more than 0.5 per cent of the original cost of fixed assets shall be allowed annually towards such appropriation in the calculation of aggregate revenue requirement:

Provided that where the amount of such Contingency Reserve exceeds five (5) per cent of the original cost of fixed assets, no such appropriation shall be allowed, which would have the effect of increasing the reserve beyond the said maximum:

Provided further that the amount so appropriated shall be invested in securities authorised under the Indian Trusts Act, 1882 within a period of six months of the close of the financial year".

23.3 that according to Regulation, the contribution to contingency reserve has to be computed not more than 0.5% of the original cost of the fixed assets. We have gone through the Impugned Order and submissions, the contention of the Appellant is that the State Commission has considered opening gross fixed assets for FY 2013-14 and the Appellant claims average gross fixed assets equivalent to average GFA taken for computation of depreciation.

23.4 In our opinion, the depreciation and contingency of reserve are not one and the same. The contingency is reserve in to meet any eventuality during the transmission business. Further, there is a restriction/sealing on contingency reserve in Regulations. If the allocation of contingency reserve is more, then there will be an increase in reserve.

Further, considering opening gross fixed asset (opening GFA), the computation contingency reserve is easy as the expenditure on additional capital assets is difficult to ascertain in a year, because some of the capital works may not be completed in a specified period.

Thus, in our view, the gross fixed assets at the beginning of the year represents the gross fixed asset of the closing of the previous year plus actual additional assets added during the year, this will be carried forward to the GFA of the subsequent year. Further, in a particular year, the quantity of CAPEX proposed in a year will vary depending upon the Appellant's ability to complete the works.

In view of the uncertainty of completing additional capital works in a year, the Commission considered the 0.5% of the GFA at the beginning of the year regarding contribution to contingency reserve.

Accordingly, the State Commission considered for the FY 2013-14, the gross fixed asset at the beginning of the year in the truing-up for 2013-14 is Rs. 11170.83 crores.

Thus, we do not find any infirmity or perversity in the decision of the State Commission. Thus, we uphold the Commission's decision with regard to contingency reserve. Accordingly, this issue is decided against the Appellant.

24 **Issue No. 6: Whether the State Commission erred in deduction of expenses of the capitalized assets from the O&M expenses?**

25 The following are the submission made by the Ld. Counsel of the Appellant/Petitioner:

25.1 that under the MYT Regulations, the operation and maintenance expenses are provided in Regulation 2(43). This Regulations reads as under:

"Operation and Maintenance expenses" or "O&M expenses":

a) In relation to a Generating Company, the expenditure incurred on operation and maintenance of the project of a Generating Company, or part thereof, and includes the expenditure on manpower, repairs, spares, consumables, insurance and overheads;

b) In relation to a Transmission Licensee or Distribution Licensee, the expenditure incurred on operation and maintenance of the system by the Transmission Licensee or Distribution Licensee, and includes the expenditure on manpower, repairs, spares, consumables, insurance and overheads;

By its very definition, the operation and maintenance expenses relating to the operation of the transmission assets and elements duly commissioned and put to use. It does not cover the transmission assets which are in the process of being constructed and completed. The operation and maintenance system comes into play only after the

commercial operation and not before. The expenditure incurred on employees, administrative and general expenditure etc. up to the date of the commercial operation is admittedly a part of the project cost. It is so treated in all applicable Regulations.

25.2 that in view of the above the employees cost and other administrative and general cost pertaining to transmission assets or elements under construction and pending completion will have to be added to the project capital cost and cannot said to be part of the O & M Expenses allowed in terms of Regulation 2 (43) read with Regulation 71.5.1.

25.3 that the expenses provided for in the above Regulation 71.5.1 is the normative for the purpose of operation and maintenance. Further, this Tribunal in the earlier judgments held that the normative or actual whichever is lower cannot be applied. The very purpose of normative fixation of O & M becomes redundant.

25.4 that accordingly, the expenses capitalized in regard to the transmission assets or element cannot be deducted from the normative O&M Expenses determined under Regulation 71.5.1 of the MYT Regulations.

25.5 that it is pertinent to mention that in the earlier Order dated 3.2.2011 passed in petition No. 1034 of 2010, the State Commission itself had specifically clarified the issue that there cannot be any such deduction. Para 8.4 of the said Order dated 3.2.2011 reads as under:

*"**8.4 Capital Expenditure & Capitalization (Capitalized Expenses)**:*

The Commission acknowledges the concern of GETCO, and decides that the practice followed by the Commission of deducting interest capitalized from the ARR is not appropriate, since capitalization expenses had been considered for estimating debt-equity levels."

25.6 that the reasoning given by the State Commission that addition to the capital assets increases various tariff elements is not justified. As mentioned herein above, the capital assets get serviced only after the commercial operation of the transmission asset. Prior to that it is well established principle that all the employees cost and administrative cost are added on to the project cost. The State Commission is, therefore, not correct in justifying the deduction of the expenses capitalized from the O & M Expenses.

25.7 that such an approach of the State Commission is contrary to MYT Regulations.

26 **Per Contra,** the following are the submissions made by the Ld. Counsel of the Respondent:

26.1 that the Commission works out normative O&M expenses while truing-up based on number of bays and ckt. Kms. applying rates of normative O&M expenses in terms of O&M expense for bay and O&M expense for ckt. Kms. While calculating the norms stipulated for FY 2011-12 to 2015-16 as per Clause 71.5.1 of the GERC, MYT Regulations, 2011, the Commission had considered the gross O&M expenses i.e. without deducting the O&M expenses capitalized and details of bays and ckt. Kms. operated by GETCO in the previous years. Thus, norms are decided based on the gross O&M expenses.

26.2 that the Commission while truing up, considers O&M expenses as per audited annual accounts and works out gain and loss on account of deviation in O&M expenses approved in the MYT Order as per Clause 71.5.1 of the Regulations. Thus, while truing-up the Commission also considers gross O&M expenses and not the O&M expenses capitalized.

26.3 that the Commission considered the O&M expenses as per audited accounts which is the gross O&M expenses consisting of employee cost and A&G expenses incurred by the company for creating new assets. The audited accounts of the company, shows the value of O&M expenses capitalized which is a part of the gross O&M expenses.

26.4 that the Commission has stipulated normative O&M expenses in Regulation 71.5.1 of the GERC Regulations, 2011. The norms of O&M expenses are stipulated in terms of O&M expenses/bay and O&M expenses/ckt.km. The sole purpose for giving normative O&M expenses as per the said provision is to keep margin for the utility to incur higher than normative O&M expenses that may occur due to expansion in the network. While deciding the norms for the entire control period, actual O&M expenses for FY 2007-08 to 2009-10 were considered and these O&M expenses were applied on the no. of bays and ckt. Kms. Of the respective year. The O&M expenses worked out in this manner for these three years were then averaged out and escalation factor was

applied on these average figures to arrive at normative O&M expense for the respective years of the control period.

From above it is clear that the norms of O&M expenses carry an element of escalation applied on the actual O&M expenses of previous years. It also reveals that the norms of O&M expenses also carry an element of escalation on the network growth of the utility. As per Regulation 23.2 (h) of the GERC (MYT) Regulations, 2011 variation in O&M expenses is a controllable factor.

Accordingly, it is the duty of the utility to control the O&M expenses as approved in the MYT order. However, as mentioned earlier, to protect utility from increase in O&M expenses due to network growth, which is not within the control of the utility, the Commission carries out calculation of gain and loss.

27 **Our consideration and conclusion on this issue**

27.1 The operation and maintenance expenses relating to the operation of transmission system and the assets duly commissioned and put to use and it does not cover the transmission assets which are in process of being constructed and completed.

27.2 Let us examine the definition of O&M expenses and relevant MYT Regulations, 2011 dealing with O&M expenses of transmission licensee.

"43. Operation and Maintenance expenses or O&M expenses

b) *In relation to a transmission licensee or distribution licensee, the expenditure incurred on operation and maintenance of the system by the transmission licensee or distribution licensee, and includes the expenditure on manpower, repairs, spares, consumables, insurance and overheads".*

Regulation 71.5.1 of GERC MYT Regulations, 2011 specifies the O&M expenses norms from FY 2011-12 to 2015-16 in Rs. Lakhs/bay, which is as under:

O&M Expense norms from FY 2011-12 to FY 2015-16 in Rs. Lakh/Bay and Rs. Lakh/ckt. Km.

Particulars	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
O&M expenses/bay	5.76	6.09	6.44	6.81	7.19
O&m Expenses/ckt. Km.	0.49	0.52	0.55	0.58	0.61

71.5.2 <u>For New Transmission Licensee:</u>

For the New transmission licensees, the year-wise O&M norms shall be determined on case to case basis:

Provided that the same shall not be applicable to those new projects, which are awarded on a competitive bidding basis.

Explanation 1: The term "New Transmission Licensee" shall mean the transmission licensee(s) for which transmission licensee is granted by the Commission after the date of effectiveness of these Regulations, and whose transmission project assets are commissioned after 31st March 2011.

Explanation 2: For the purpose of deriving normative O&M expenses under Regulation 71.5.1, 'Bay' shall mean a set of accessories that are required to connect an electrical equipment such as Transmission Line, Bus Section Breakers, Potential Transformers, Power Transformers, Capacitors and Transfer Breaker and the feeders emanating from the bus at Sub-station of Transmission Licensee. Further, the Bays referred herein shall include only the Bays at the Transmission substation and shall exclude any bays of the generating station switchyard whose maintenance is usually the responsibility of the generating company".

27.3 The contention of the Appellant GETCO is that the State Commission has erred in deduction of the expenses capitalized from the normative expenses is not justified. Further, the Appellant submits that the capitalized O&M expenses will go to the capital works in progress and then to the GFA through asset capitalization.

27.4 We have gone through the Impugned Order and observe that the actual O&M expenses capitalized as per audited accounts are Rs. 253.09 crores as detailed below:

O&M expenses capitalized during FY 2013-14

(Rs. Crore)

Sl. No.	**Particulars**	**Amount**
1.	Employee Cost	216.79
2.	R&M expenses	0.11
3.	A&G expenses	36.19
	Total	**253.09**

Thus, the Commission approved O&M expenses of Rs. 253.07 crore. Further, we have observed that the Commission while deciding the norms for the entire control period, the Commission considered the actual O&M expenses for the FY 2007-08 to 2009-10 and these expenses were applied for calculation of norms for arriving the cost per bay and ckt. Km. of respective years.

The Commission considered the average cost of per bay and ckt. KMs based on the actual O&M expenses of FY 2007-08 and 2009-10, while computing the O&M expenses for the respective years of the control

period with escalation factor. Accordingly, the norms are fixed as shown in Regulation 71.5.1 of MYT Regulations.

27.5 The views of the Commission in the Impugned Order dated 31.03.2015 in Petition No. 1461 of 2014 are as under:

Commission's Analysis

The capitalization of expenses consists of two elements: (i) capitalization of interest, and (ii) capitalization of O&M expenses. As far as capitalization of interest is concerned, the same is not deducted from the ARR, since the capitalization is considered for debt-equity and for normative computation of interest on loan. As far as capitalization of O&M expense is concerned, the same is required to be deducted from the ARR, since this amount has already been included in the approved capitalization of assets. The gross O&M expenses, as per audited accounts, are allowed in the ARR and, therefore, it is appropriate to consider the deduction of capitalization of O&M expenses from the ARR. The expenses capitalized during the control period were approved in the MYT Order as projected by the Petitioner and they need to be trued-up as per the audited accounts.

After going through the Impugned Order in detail, we do not find any infirmity or perversity in the decision of the Commission, thus this issue is decided against the Petitioner.

28 **Issue No. 7: Whether the State Commission erred in not considering an amount of Rs. 1.18 crores contributed by the Appellant under the corporate social responsibility as expenditure to be allowed in the revenue requirements (Appeal No. 149 of 2015 and 172 of 2014)?**

29 The following are the submissions made by the Ld. Counsel of the Appellant:

29.1 that the Appellant has contested that the corporate social responsibility is a mandatory expenses to be incurred by the Appellant and therefore it should not be allowed.

30 **Per Contra,** the following are the submission made by the Ld. Counsel of the Respondent.

30.1 that the word Corporate Social Responsibility cannot be construed as society's/socialization of responsibility. By allowing CSR as a separate expense under ARR, the same will be transferred on the society through tariff which cannot be allowed.

31 **Our consideration and conclusion on this issue**

31.1 It is clear from the submissions that the CSR expenses for FY 2013-14 is Rs. 1.18 crores out of total of Rs. 5.54 crores appearing in the annual account of FY 2013-14, rest of the amount of Rs. 4.36 crores pertains to previous years, which have already been deducted from the A&G expenses in the earlier years being the amount related to contribution and charity.

31.2 In our opinion, Corporate Social Responsibility expenses were meant for the welfare of the general public by providing education, health camps and other social activities, charities etc. The above expenses were meant for the welfare of the public at large. Hence, these expenses cannot be included in the ARR to pass on to the consumers of the licensee. The State Commission also deducted from the earlier years A&G expenses after prudence check. The amount of Rs. 1.18 crores incurred towards charity and contribution cannot be included in the ARR to pass on to the end consumers.

Thus, we do not find any infirmity or perversity in the decision of the State Commission. Accordingly, this issue is decided against the Appellant.

ORDER

The instant Appeal Nos. 149 of 2015, 108 of 2013, 171 of 2014 and 172 of 2014 captioned as Gujarat Energy Transmission Corporation Ltd. Vs. Gujarat Electricity Regulatory Commission & Ors. are hereby partly allowed to the extent indicated above. The Commission is directed to decide the remanded issues expeditiously within two months from the date of issue of this Judgment.

There shall be no order as to costs.

Pronounced in open Court on this **21st day of July, 2016.**

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

√ **REPORTABLE/~~NON-REPORTABLE~~**