

**In the Appellate Tribunal for Electricity,
New Delhi
(Appellate Jurisdiction)**

Appeal No. 226 of 2016

Dated: 8th November, 2017

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I. J. Kapoor, Technical Member**

In the matter of :-

**Adani Transmission (India) Limited
Adani House, Nr. Mithakhali Circle,
Navarangpura, Ahmedabad – 380 009** ... Appellant

Versus

- 1. Central Electricity Regulatory Commission
(CERC)
Chanderlok Building, Janpath
New Delhi – 110 001** ...Respondent No.1
- 2. Power Grid Corporation of India Limited
(PGCIL/Powergrid/CTU)
Saudamini, Plot -2, Sector -29,
Near IFFCO Chowk
Gurgaon – 122 001, Haryana** ...Respondent No.2
- 3. National Load Despatch Centre (NLDC)
B-9, Qutab Industrial Area, Katwaria Sarai
New Delhi – 110 016** ...Respondent No.3
- 4. Northern Regional Load Despatch Centre
(NRLDC)
18-A, Shaheed Jeet Singh Sansanwal Marg
Katwaria Sarai, New Delhi – 110 016** ...Respondent No.4
- 5. Western Regional Power Committee**

- (WRPC)
F-3, MIDC Area, Marol, Opp. SEEPZ
Central Road, Andheri (East),
Mumbai – 400 093 ...Respondent No.5
6. Central Electricity Authority (CEA)
Sewa Bhawan, Sector – 1,
R.K. Puram, New Delhi – 110 066 ...Respondent No.6
7. Gujarat Energy Transmission Company
Limited (GETCL)
Sardar Patel Vidyut Bhawan, Race Course
Vadodra – 390 007 ...Respondent No.7
8. Haryana Vidyut Prasaran Nigam Limited
(HVPNL)
1st Floor, Shakti Bhawan, Sector – 6,
Panchkula – 134 109, Haryana ...Respondent No.8
9. Gujarat Urja Vikas Nigam Limited (GUVNL)
Sardar Patel Vidyut Bhawan, Race Course
Vadodra – 390 007 ...Respondent No.9
10. Maharashtra State Electricity Distribution
Co. Limited (MSEDCL)
“Prakashgarh”, Bandra (East),
Mumbai – 400 051, Maharashtra ...Respondent No.10
11. Madhya Pradesh Power Management
Co. Limited (MPPMCL)
Shakti Bhawan, Vidyut Nagar, Rampur
Jabalpur (MP) – 482 008 ...Respondent No.11
12. M.P. Audyokik Kendra Vikas Nigam Limited
(MPAKVNL)
Free Press House, 1st Floor, 3/54 – Press
Complex, A.B. Road, Indore – 452 008
Madhya Pradesh ...Respondent No.12
13. Chhattisgarh State Power Distribution
Company Limited (CSPDCL)
Vidyut Seva Bhawan Parisar, Dangania
Raipur – 492 013, Chhattisgarh ...Respondent No.13

14. **Goa State Electricity Department (GSED)
Vidyut Bhawan, Panaji, Goa – 403 001** ...Respondent No.14
15. **Daman and Diu Electricity Department
Administration of Daman & Diu
Near Satya Narayan Temple
Nani Daman – 396 210** ...Respondent No.15
16. **Electricity Department
Administration of Dadra Nagar Haveli
Dadra Nagar Haveli UT, Silvassa – 396 230** ...Respondent No.16
17. **Heavy Water Projects
Department of Atomic Energy
Heavy Water Board,
Vikram Sarabhai Bhawan, Anushakti Nagar,
Mumbai – 400 094** ...Respondent No.17
18. **Jindal Power Limited (JPL)
Tamnar, Raigarh
Chhattisgarh – 496 001** ...Respondent No.18
19. **Torrent Power Limited
Torrent House, Opp. Ashram Road
Ahmedabad – 380 009** ...Respondent No.19
20. **PTC India Ltd.
2nd Floor, NBCC Tower
15, Bhikaji Complex,
New Delhi – 110 066** ...Respondent No.20
21. **Haryana Power Purchase Centre
Shakti Bhawan, Sector – 6
Panchkula, (Haryana) – 134 109** ...Respondent No.21
22. **Rajasthan Power Procurement Centre,
Room No. 24, Vidyut Bhawan, Janpath
Jyoti Nagar, Jaipur – 302 005
Rajasthan** ...Respondent No.22

23. **Jodhpur Vidyut Vitaran Nigam Limited**
New Power House, Industrial Area
Jodhpur – 342 003, Rajasthan ...Respondent No.23
24. **Jaipur Vidyut Vitaran Nigam Limited**
Vidyut Bhawan, Janpath, Jyoti Nagar,
Jyoti Marg, Jaipur – 302 005, Rajasthan ...Respondent No.24
25. **Ajmer Vidyut Vitaran Nigam Limited**
Old Power House, Hathi Bhatta ,
Jaipur Road, Ajmer – 305 001, Rajasthan ...Respondent No.25
26. **BSES Yamuna Power Limited**
Shakti Kiran Building, Karkardooma
Delhi – 110 092 ...Respondent No.26
27. **BSES Rajdhani Power Limited**
BSES Bhavan, Nehru Place
New Delhi- 110 019 ...Respondent No.27
28. **Tata Power Delhi Distribution Ltd.**
Cennet Building, 33 kV Sub-station Building
Hudson Lines, Kingsway Camp
Delhi – 110 009 ...Respondent No.28
29. **New Delhi Municipal Council**
Palika Kendra Building, Opp. Jantar Mantra
Parliament Street, New Delhi – 110 001 ...Respondent No.29
30. **Uttarakhand Power Corporation Limited**
Urja Bhawan, Kanwali Road
Dehradun – 248 001 ...Respondent No.30
31. **Uttar Pradesh Power Corporation Limited**
(UPPCL)
Shakti Bhawan, 14, Ashok Marg
Lucknow – 226 001, UP ...Respondent No.31
32. **North Central Railway**
Allahabad, Uttar Pradesh – 211 012 ...Respondent No.32
33. **Punjab State Power Corporation Limited**

- (PSPCL)
The Mall, Ablowal, Patiala – 147 001 ...Respondent No.33
34. Power Development Department
Jammu and Kashmir
Civil Secretariat, Jammu – 180 001 ...Respondent No.34
35. Himachal Pradesh State Electricity Board
Vidyut Bhawan, Shimla – 171 004 ...Respondent No.35
36. Electricity Department UT Chandigarh
Sector – 9, Chandigarh – 160 009 ...Respondent No.36
37. Northern Regional Power Committee
18-A, Qutab Institutional Area
Shaheed Jeet Singh Marg
Katwaria Sarai
New Delhi – 110 016 ...Respondent No.37
38. Western Regional Power Committee
F-3, M.I.D.C. Area, Marol,
Andheri (East), Mumbai – 400 093 ...Respondent No.38
39. Kanpur Electricity Supply Company
Limited
14/71, Civil Lines, Kanpur – 208 001 ...Respondent No.39
40. Rajasthan Rajya Vidyut Prasaran
Nigam Limited
Vidyut Bhawan, Vidyut Marg
Jaipur – 302 005 ...Respondent No.40
41. Delhi Transco Limited (DTL)
Shakti Sadan, Kotla Road
New Delhi – 110 002 ...Respondent No.41

Counsel for the Appellant(s): Mr. Sanjay Sen, Sr. Adv.
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Mr. Rishabh Donnel Singh for R – 11

Mr. Sandeep Bhuraria for R-17

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Ms. Garima Srivastava
Ms. Gargi Srivastava
Mr. Shridar Prasad for R – 31

Mr. S. K. Chaturvedi for R – 41

JUDGMENT

PER HON'BLE MR. I.J. KAPOOR, TECHNICAL MEMBER

1. The present Appeal is being filed by M/s Adani Transmission (India) Limited (hereinafter referred to as the “**Appellant**”) under Section 111 of the Electricity Act, 2003 (hereinafter referred to as the “**Act**”) against the Order dated 18.03.2016 (“**Impugned Order**”) passed by the Central Electricity Regulatory Commission (hereinafter referred to as the “**Central Commission**”) in Petition No. 184/TT/2013 regarding

reduction of tariff claimed by the Appellant on account of date for commencement of tariff, reduction of capital cost of AC Substation Portion and reduction of loan outstanding by cumulative depreciation till the date of transmission license.

2. The Appellant, i.e. Adani Transmission (India) Limited is a company incorporated under the provisions of the Companies Act, 1956 is engaged in the business of transmission of power in the country.
3. The Respondent No.1, Central Electricity Regulatory Commission is exercising jurisdiction and discharging functions in terms of the Act.
4. The Respondent No. 2, Power Grid Corporation of India Ltd. (PGCIL/ Powergrid) is the Govt. Company within the meaning of Companies Act, 1956 and also functions as the Central Transmission Utility (CTU) under Section 38 to the Act.
5. The Respondent Nos. 3, 4 & 5 i.e. NLDC, NRLDC & WRPC respectively are the authorities engaged in the optimum functioning of the Inter-State Grid.
6. The Respondent No.6, CEA is the Authority involved in planning, construction and coordination of the Inter-State Transmission System (ISTS).

7. Other Respondents are the beneficiaries in the ISTS, which have to share the cost of the transmission system of the Appellant.

8. Facts of the present Appeal:

a) The Appellant has set up a 4620 MW power plant (4 x 330 MW + 5x 660 MW) at Mundra, Kutch District, Gujarat (hereinafter referred to as the "Mundra Power Project"). For evacuation of power from the Mundra Power Project under Power Purchase Agreements (PPAs) with Uttar Haryana Bijli Vitaran Nigam Limited ("UHBVNL") and Dakshin Haryana Bijli Vitaran Nigam Limited ("DHBVNL") to Northern Region ("NR"), M/s Adani Power Ltd. ("APL") implemented transmission system consisting of (i) ± 500 kV bipole Mundra – Mohindergarh HVDC Transmission Line including associated 400 kV lines, terminal substations & bays. For long term access of 200 MW to Maharashtra at Dehgam substation of PGCIL, 400 kV Mundra-Sami-Dehgam D/C transmission line was constructed by APL. Further, APL was granted long term access for supply of 342 MW power to Punjab and Rajasthan in Northern Region on 17.07.2009 with connectivity at Bhiwani substation of PGCIL through Mundra - Mohindergarh HVDC bi-pole transmission line. For availing connectivity, the Appellant constructed the dedicated 400 kV Mohindergarh - Bhiwani transmission line.

b) APL filed Petition No. 44/TL/2012 under Regulation 6(c) of the Central Electricity Regulatory Commission (Terms and Conditions for grant of transmission licence and other related matters)

Regulations, 2009 (**hereinafter referred to as “TL Regulations, 2009”**) for grant of transmission licence for the dedicated transmission lines along with associated bays. The Central Commission after examination of the power flows on these dedicated transmission lines came to the conclusion that these dedicated transmission lines constructed by the Appellant are inter-regional in nature and cannot be left unregulated.

- c) On 08.06.2013, the Central Commission issued order in Petition No. 44/TL/2012 conveying intention to grant the transmission license and also stated that once the dedicated transmission lines are converted into licensed lines, the Appellant shall be treated as a long-term customer for the quantum to be supplied under PPAs with UHBVNL & DHBVNL. On application by APL, the Central Commission on 29.07.2013 granted Transmission Licence (“TL”) for the said transmission system of the Appellant. Subsequent to approval of various authorities including the Central Commission the TL was assigned to the Appellant.
- d) Subsequent to grant of TL, the Appellant filed Petition No. 184/TT/2013 before the Central Commission on 05.09.2013 for determination of annual transmission charges under Section 62 of the Act claiming tariff from the date of grant of TL i.e. 29.07.2013 for the following assets in accordance with the provisions of the Tariff Regulations, 2009:
- i. Asset-1: consisting of \pm 500 kV Mundra - Mohindergarh HVDC bipole transmission line with associated substations, bays, electrode lines and associated 400 kV lines; and

- ii. Asset-2: consisting of 400 kV D/C Mundra-Dehgam transmission line with associated system.

Particulars	Asset 1	Asset 2
AC System		
Transmission Line	400 kV M/c Mohindergarh – Dhanonda 400 kV D/c Mohindergarh – Bhiwani	400 kV D/C Mundra – Sami – Dehgam Transmission Line
Substations	Substations at Mundra and Mohindergarh Substation Bays at Bhiwani (PGCIL) Substation	Substations at Mundra and Sami Bays at Dehgam (PGCIL) Substation
HVDC System		
Transmission Line	+/- 500 kV Bipole Mundra - Mohindergarh HVDC Line 33 kV D/C Electrode line at Mundra Station and at Mohindergarh Station	
Substations	HVDC Terminal Stations at Mundra and Mohindergarh	

- e) The Central Commission vide order dated 18.12.2013 granted provisional tariff to the Appellant for the said assets. The Central Commission sought details from the Appellant pertaining to capital cost segregation, soft cost, statutory auditor certificates, additional capital cost, funding, Single Line Diagram (SLD) and other

technical/commercial details vide communications dated 01.11.2013, 03.04.2014, 17.04.2014, 17.07.2014 and 13.11.2014 and vide the interim Order dated 18.12.2013. The Appellant submitted the details sought to the Central Commission vide affidavits dated 01.11.2013, 27.11.2013, 23.05.2014, 17.07.2014 and 5.12.2014.

- f) The Central Commission vide Impugned Order dated 18.3.2016 reduced the tariff claimed by the Appellant on account of date for commencement of tariff, reduction of capital cost of AC Substation Portion and reduction of loan outstanding by cumulative depreciation till the date of license.
- g) Aggrieved by the Impugned Order the Appellant has preferred the present Appeal before this Tribunal.

9. Questions of law

The Appellant has raised the following questions of law in the present Appeal:

I. Reduction in capital cost

- a) Whether the Central Commission has the ability to determine capital cost based on the benchmarking orders dated 27.04.2010 and 16.06.2010, when the same could only have been done through regulations?

- b) Whether the Central Commission could have invoked the Benchmarking orders dated 27.04.2010 and 16.06.2010 for determination of capital cost, when the proviso to Regulation 7(2) of the Tariff Regulations, 2009 stipulate that the same has to be only through regulations, as the word used is “specified”?
- c) Whether laws/regulations relating to financial implications (which includes tariff determination) have to be strictly constructed, and as such the Benchmarking orders could not have been used by the Central Commission instead of regulations?
- d) Whether as per Section 61 of the Electricity Act, 2003 the actual expenditure incurred by the Appellant in constructing the transmission lines ought to have been allowed, subject to prudence of such expenditure, instead of comparing the said expenditure with Benchmarking orders which have not been determined keeping in mind the project/system of the Appellant?
- e) Whether the Central Commission is justified in reducing capital cost for AC Substation portion of the Licensed Asset based on random benchmarking?
- f) Can the Central Commission consider the Benchmarking norms discriminatively for the Appellant considering the fact that it is not using the said details for granting capital cost of Powergrid/other licensees?
- g) Whether the Central Commission has acted subjectively by considering benchmarking norms for part of transmission system

while considering indicative capital cost of Powergrid for other portion for reduction of capital cost?

- h) Without prejudice to the ground that benchmarking cannot be taken as a basis for capital cost reduction, is it fair to consider result of benchmarking on standalone basis for each substation and not on aggregate basis?

II. Date of tariff commencement:

- a) Can the Central Commission consider any other date than the license date for commencement of tariff?
- b) Whether the Central Commission was correct in not deciding the issue of reasons beyond the control of the Appellant for getting the transmission assets into regular use, as per the second proviso of Regulation 3 (12) (c) of the CERC Tariff Regulations, 2009?
- c) Can the Central Commission take a contrary stand from its earlier decision in the order dated 08.06.2013 in Petition 44/TL/2012 wherein transmission license was granted to the Appellant as neither the Central Commission nor the Respondent No.2 made any observation/submission that the tariff of the Appellant would not be granted from the date of license and instead would be granted from the date the ISTS network of the Respondent No.2 would be ready for putting to use the asset of the Appellant?

- d) Whether the Central Commission has acted discriminative and contradictory to the principles of determination of tariff from the date of license?
- e) Was the Central Commission justified in relying upon the Minutes of Meeting dated 05.09.2013 conducted by the CEA in deciding the date for commencement of tariff when the same issue, being regulatory, could only have been decided by the Central Commission?
- f) Whether the Central Commission failed to distinguish as to how can dedicated power of the Appellant flow from 29.07.2013 to 30.09.2013 on a transmission line which has been declared to be an ISTS line from 29.07.2013?

III. Reduction of loan outstanding by cumulative depreciation:

- a) Whether the Central Commission has failed to appreciate that the Appellant is not subjected to reduction of loan outstanding by cumulative depreciation till the date of license?
- b) Whether the Central Commission has failed to appreciate that norms related to depreciation in CERC (Terms and Condition of Tariff) Regulations, 2009 is applicable only to licensed transmission system and not beforehand?
- c) Without prejudice to the ground that there is no depreciation to be considered till the date of license, the Central Commission ought to

have considered physical depreciation and not as per CERC (Terms and Conditions of Tariff) Regulations, 2009?

10. We have heard at length the learned counsel for the rival parties and considered carefully their written submissions, arguments putforth during the hearings etc. Gist of the same is discussed hereunder.

11. The learned senior counsel for the Appellant has made following arguments/submissions for our consideration on the issues raised by it:

I. Reduction in capital cost:

a) The Appellant in the tariff petition 184/TT/2013 before the Central Commission has claimed capital cost of Rs. 4362.73 Cr. as on TL date. The Appellant has claimed capital cost of Rs. 3789.44 Cr. for Asset 1 and Rs. 573.29 Cr. for Asset 2.

b) On a query from the Central Commission, the Appellant on 23.05.2014 submitted details of benchmarking for AC systems. The Appellant has not submitted benchmarking details for HVDC system as the Central Commission's benchmarking orders did not provide HVDC models. The Appellant submitted the benchmarking details of AC portion as below:

(Rs. Cr.)			
Benchmarking output	Asset 1	Asset 2	Total
Transmission Lines	78.79	425.00	503.79

Sub-station/bays	138.06	179.99	318.05
Total – AC System	216.84	604.99	821.84

- c) Vide the Impugned Order the Central Commission has allowed Rs. 181.31 Cr. out of total hard cost of Rs. 285.04 Cr. for AC Sub-stations as per the details below.

Name of Substation	Asset 1		Basis of Reduction
	Claimed	Allowed	
Mundra	114.27	41.23	Benchmarking Norms
Bhiwani	11.79	10.80	Indicative costs of PGCIL
Total – Asset 1	126.06	52.03	
	Asset 2		
Mundra	41.45	41.45	Benchmarking Norms
Sami	102.54	78.83	Benchmarking Norms
Dehgam	14.99	9.00	Indicative costs of PGCIL
Total – Asset 2	158.98	129.28	
Grand Total	258.04	181.31	

- d) The benchmark norms are not applicable to the Appellant as they are not in the form of Regulations. As per the Tariff Regulations, 2009 the benchmark norms are to be 'specified' by the Central Commission. The term 'specified' is not defined in the said Regulations and has to be taken in terms of the Act wherein this word means as specified by regulations made by the appropriate commission. The Appellant was also not a party to the benchmark norms issued by the Central Commission vide orders dated 27.04.2010 and 16.06.2010. Further, the benchmark norms cannot be applied retrospectively as the Mundra-Sami-Dehgam assets were commissioned in 2009. In this regard the Appellant has also submitted the judgements of Hon'ble Supreme Court in case of Kusumam Hotel Pvt. Ltd. Vs. KSEB & Ors. (2008) 13 SCC 213 and Accountant General and Anr. Vs. S. Doraiswamy & Ors. (1981) 4 SCC 93.
- e) The Central Commission has erred in comparing the expenditure incurred by the Appellant with the benchmark norms and ignoring the prudent practices. This is against the mandate of Section 61 of the Act. The order on benchmarking of capital cost of substation states that it is to be used only as a guiding principle and not for taking its result as a capital cost for tariff determination. The Central Commission has not used the benchmarking orders for determination of tariff of the PGCIL, which constitutes of more than 90% of ISTS assets in the country. The capital cost of the assets of the Appellant had to be considered on the basis of prudence of the expenditure and not on the basis of norms which are not binding and also on the principle of parity with respect to PGCIL.

- f) The Central Commission has not done any analysis for the reasons behind the variation in capital cost vis -a- vis benchmark norms as per the benchmarking order. This is contrary to the said order itself. In case the reasons were found to be bonafide the Appellant is entitled for approval of such variation in capital cost.
- g) Benchmarking orders issued by the Central Commission do not specify that whether they will be used only for system implemented by developers in their own premises or for the system implemented in premises of PGCIL. The transmission assets of the Appellant at Bhiwani and Dehgam are at the substation of the PGCIL and were developed by PGCIL on deposit works basis. The cost of these assets was not under the control of the Appellant. Even if the benchmarking norms are applied for Bhiwani and Dehgam substations, the costing of the transmission assets comes to Rs. 17.36 Cr. and Rs. 15.35 Cr. as against actual claim of Rs. 11.79 Cr. and Rs. 14.99 Cr. The Central Commission has taken into consideration the indicative cost of Rs. 10.80 Cr. and Rs. 9.0 Cr. for Bhiwani and Dehgam respectively on the basis of indicative cost of PGCIL instead of the actual cost incurred. It is unjust and subjective on part of the Central Commission to disallow the cost incurred by the Appellant in getting the assets developed by PGCIL at Bhiwani and Dehgam substations.
- h) As per the benchmarking results the aggregate capital hard cost for substation and transmission lines is almost equivalent (Rs. 706.86 Cr.) as against actual hard cost (Rs. 706.71 Cr.) claimed by the Appellant. The Central Commission has allowed only Rs. 603.14 Cr. The Appellant ought to have been allowed project

specific tariff as tariff determination is a statutory exercise done in accordance with Section 62 read with Section 61 of the Act. This has also been held by Hon'ble Supreme Court in its judgement in case of PTC India Ltd. V. CERC (2010) 4 SCC 603.

II. Date of Tariff Commencement

- a) The Central Commission on the issue of deciding the date of tariff commencement as 1.10.2013 has erred in relying on minutes of meeting dated 5.9.2013 chaired by Chairperson, CEA wherein PGCIL, CTU, NRPC, WRPC, NRLDC, WRLDC, Haryana SLDC, Gujarat SLDC and the Appellant participated. This meeting was convened only to discuss the issues related to operationalization of the HVDC system of the Appellant and not to decide the date of tariff commencement.

- b) In the said meeting it was proposed that the transmission charges would be payable to the Appellant w.e.f. 01.10.2013 and the Appellant would also start making the payment of the Long Term Access ("LTA") charges to PGCIL w.e.f. 01.10.2013 for 1424 MW, LTA granted to the Appellant for delivery of power to UHBVNL & DHBVNL. The said meeting did not decide the issue of commencement of tariff, as it was a regulatory issue to be decided by the Central Commission. Accordingly, NLDC/Respondent No.3 sought the approval of the Central Commission vide its letter dated 12.09.2013 and was left open to the Central Commission to take a decision on the date of commencement of tariff.

- c) There was no reason for deferring the date of commencement of tariff from the date of grant of TL to 1.10.2013 as there was no material physical change to the transmission network of PGCIL and the Appellant's assets were commissioned much prior to the date of grant of TL. The reasons given by the Central Commission for tariff commencement date are not convincing in view of the provisions of the Act, Tariff Regulations, 2009 and circumstances of the case.
- d) The Central Commission erred in recognizing the fact that when the TL is granted under Section 14 of the Act, the transmission system of the Appellant ceases to be dedicated, it becomes an ISTS and the licensee is duty bound to provide non-discriminatory open access on the said asset/system from such date. Transmission being licensed activity, any power flowing on licensed system including that of the Appellant has to be through open access. Accordingly, the tariff has to be determined from the date of the TL.
- e) The Act or any Regulation framed there under does not provide any other date for commencement of tariff other than TL date. The TL granted also did not specify any general or license specific terms and condition for commencement of tariff from any other date than date of TL. The Central Commission, in its order dated 8.06.2013 has specified that once the dedicated line is converted into the licensed lines, the Appellant shall be treated as a long term customer for the quantum to be supplied under PPAs with UHBVNL & DHBVNL.

- f) As per Section 38 (2) (b) (iv) of the Act, PGCIL had to develop transmission system of the Appellant according to the generation capacity of an area and for this purpose, coordination meetings were held by it with all the regional stakeholders. In the present case the evacuation infrastructure of the generating stations owned by APL ought to have been deemed to be put to regular use from the date of grant of TL as PGCIL was always aware of the status of transmission assets being developed by the Appellant. PGCIL was required to facilitate the ISTS of the Appellant for evacuation of power downstream.
- g) During the proceedings before the Central Commission regarding petition related to grant of TL neither the Central Commission nor the CTU made any observation/submission that the tariff for the Appellant would not be determined from TL date and that the tariff would be determined only from the date the CTU would be in a position to put to regular use the transmission assets of the Appellant. The Appellant has made the case that the transmission assets of the Appellant could not be put to regular use on account of reasons beyond control of the Appellant.
- h) The Central Commission in earlier cases has always determined transmission tariff from the date of grant of TL. This has been done by the Central Commission vide order dated 26.09.2012 passed in Petition No. 135/TT/2012 in case of Jindal Power Limited (JPL) and order dated 13.05.2014 passed in Petition No. 239 of 2010 in case of Aravali Power Company Pvt. Limited (APCPL).

- i) As per Regulation 3 (12) (c) of the Tariff Regulations, 2009, in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, its suppliers or contractors, the Central Commission is empowered to approve the date of commercial operation prior to the element coming into such regular service. Accordingly, the date of commercial operation of the transmission asset of the Appellant ought to be considered from the date of grant of TL. Further, in the light of the provisions of Section 38(2)(b)(iv) of the Act read with the intent of proviso to Regulation 8 (8) of the CERC Connectivity Regulations, 2009, the ISTS developed by PGCIL ought to have been ready for putting in regular service the asset of the Appellant the moment the Appellant was granted TL.
- j) The Appellant also submitted that upon grant of Transmission Tariff, from the TL date i.e. 29.07.2013, the tariff applicable for the period 29.07.2013 to 30.09.2013 ought to be merged with the tariff from 01.10.2013 to 31.03.2014 after adjusting the transmission charges payable by APL for the LTA corresponding to Haryana PPAs. The loss to the Appellant for 64 days tariff is to the tune of Rs. 116.6 Cr. calculated based on annual transmission charges determined in the Impugned Order.
- k) The contention of the Central Commission that the assets of APCPL and JPL were not HVDC and are differentiated with respect to present case is not tenable as the Act provides one law

for ISTS irrespective of the fact whether the said ISTS is HVDC or non-HVDC.

III. Reduction of loan outstanding by cumulative depreciation

- a) Vide the Impugned Order the Central Commission has reduced loan outstanding by depreciation till 01.10.2013 for computation of the tariff. Accordingly, the Appellant is subjected to a perpetual loss of revenue in terms of unrecovered depreciation of Rs. 204.69 Cr. in case of Asset 1 and 101.92 Cr. in case of Asset 2 as well as reduced opening balance as on TL date affecting revenue over the period of useful life of the assets. The Appellant cannot be subjected to reduced revenue on account of reduction of cumulative depreciation till date of TL, in view of long term PPAs with Haryana discoms, 342 MW long term access in NR from Mundra TPS and HVDC transmission system being executed by APL.
- b) In the meeting held on 09.09.2011 which was attended by representatives from CEA, CTU, POSOCO, WRPC, NRPC, NLDC, NRLDC, WRLDC, SLDC Gujarat, SLDC Haryana, HVPNL and APL the issue of integrating the Appellant's transmission system with the regional grid was raised by the system operators. While addressing operational difficulties by NRLDC/NLDC/WRLDC, views emerged that it would be in the interest of the power system if the dedicated system built by the Appellant is made a part of integrated grid. Accordingly, the Appellant applied for TL before commissioning of the HVDC system considering adequate time period of 90 days as specified under Section 15(6) of the Act.

- c) Pending grant of TL, the system operators placed restrictions on flow of power through the HVDC line. The Appellant was not able to utilize its transmission system for supply of 1424 MW power under Haryana PPAs and also could not evacuate the quantum of 342 MW for which LTA was granted. On 24.04.2012, APL filed an Interlocutory Application (IA) No. 19 of 2012 seeking approval for testing, commissioning and operation of \pm 500 kV Mundra – Mohindergarh HVDC transmission system. The Central Commission vide Order dated 28.06.2012 allowed the prayers raised in the said IA.
- d) Operationalisation of HVDC was granted by the Central Commission but the utilization of the HVDC capacity was restricted by the System Operators. Permission was granted allowing the flow of power in a phased manner which include 1500 MW from 3.5.2013 till 1.12.2013. It was increased to 1700 MW from 2.12.2013 and to 2000 MW from 7.1.2014.
- e) The Appellant was not at fault for not being able to put its transmission system to 'Regular Usage' (Regular Service) by PGCIL. The Appellant was not only impacted due to non-recovery of the transmission charges but also impacted by non-recovery of the capacity charges and penalty with reference to Haryana PPAs. M/s. APL had to bear financial losses due to inability to fully utilize the system for supply of 1424 MW power under Haryana PPAs and as such could not achieve normative availability under the said PPAs. This resulted into loss of capacity charges under the PPAs

with Haryana Utilities and inability to evacuate the quantum of 342 MW for which LTA was granted.

- f) The Appellant's transmission system was put to regular use only after grant of TL. The definition of Date of Commercial Operation in Tariff Regulations, 2009 & 2014 and Indian Electricity Grid Code, 2010 provides that in the event of the transmission constraints, the actual injection shall be considered as deemed schedule in order to protect the generator from UI Charges and declared availability would remain unchanged. The principle followed behind the above philosophy is that transmission constraint during grid operation is not attributable to the generator or the transmission licensee protecting their commercial interests. Accordingly, the Appellant is entitled for consideration of depreciation from date of licensee considering it as deemed Date of Commercial Operation (DOCO).
- g) The Central Commission has also ignored the following financial principles related to depreciation:
- i. Tariff Regulations, 2009 is applicable to the licensed system. Therefore, depreciation rates specified under the said regulations are not directly applicable to the Appellant's transmission system before the date of grant of TL.
 - ii. Depreciation in the books of Accounts as per the Companies Act, 1956 is considered at a constant rate (5.28% for Plant and Machinery) for entire tenure whereas the Central Commission considers one rate up to 12 years and different rate thereafter, i.e. 5.28% for first 12 years and 1.16% and

2.05% from 13th year onward for transmission lines and substation respectively. Therefore, it is not so that the Central Commission considers depreciation as per books for the purpose of tariff determination.

- h) Depreciation before date of grant of TL ought to reflect actual (physical) depreciation and not as per Regulation 17(4) of the Tariff Regulations, 2009. If done so, it deprives the Appellant from legible recovery of depreciation over the useful life of the assets.
- i) This Tribunal vide judgment dated 13.06.2007 passed in Appeal No. 139 of 2006 in case of NTPC Vs, CERC & Ors. has set out the principle that depreciation should be fully recovered during its useful life and balance depreciation can even be charged during extended life of the power station.
- j) As per definition of Depreciation in Mandatory Accounting Standard 6, *“Depreciation is allocated so as to charge a fair proportion of the depreciable amount in each accounting period during the useful life of the asset. Depreciation includes amortization of asset whose useful life is predetermined.”*
- k) The Accounting Principles Board of USA defines depreciation as:-

“Generally accepted accounting principles require that this cost be spread over the expected useful life of the facility in such a way as to allocate it as equitably as possible to the periods during which services are obtained from the use of the facility.”

l) In CERC (Terms and Conditions of Tariff) Regulations, 2004, depreciation rates for transmission lines and substations were linked with useful life and distributed equally i.e. 2.57% and 3.60% respectively for transmission lines and substations up to 90%, over the period of useful life of assets. In the said regulations, Advance Against Depreciation (AAD) was allowed to cover up the balance portion of repayment of loan. Subsequently, under Tariff Regulations, 2009, depreciation rate was changed in order to link the same with repayment of loan. AAD was discontinued in view of higher depreciation allowed to cover up entire repayment of loan. Under Tariff Regulations, 2009, depreciation has been delinked with the useful life of the assets which is evident from Statement of Reasons for Tariff Regulations, 2009, as under:-

“The depreciation rates as given in Appendix-III of the regulation have no bearing on the useful life of the projects as defined in regulation 3(42).”

m) In case of absence of applicable norms, the Central Commission ought to have taken the most prudent view so that the Appellant is not subjected to hardship. Without prejudice to the Appellant's request to consider date of grant of TL as deemed DOCO and no depreciation till then, the Appellant submitted that the Central Commission ought to have considered cumulative depreciation till the date of grant of TL at the rates which reflects useful life of the assets i.e. as per CERC (Terms and Conditions of Tariff) Regulations, 2004.

n) The Central Commission may be directed to invoke power under Regulation 44 to relax Regulation 17 (4) of Tariff Regulations, 2009

and consider the deemed date of commercial operation as date of grant of TL and consider depreciation till date of grant of TL as Zero while computing normative outstanding loan for the purpose of interest on loan.

12. The learned counsel for the Central Commission has made following arguments/submissions for our consideration on the issues raised in the Appeal:

a) Capital Cost reduction for AC substation portion:

- i. These assets being dedicated in nature were developed by the Appellant as a part of the generating station. This distinguishes it from the transmission assets of PGCIL. For purpose of prudence check the Appellant was unable to provide the cost details considered at the time of the conception stage. To overcome this difficulty the Central Commission directed the Appellant to submit comparison of the capital cost with benchmark capital cost. The Appellant has submitted the details as sought by the Central Commission. However, the Appellant did not make any objection for consideration of benchmark cost for determination of its capital cost. Accordingly, the Appellant is estopped from questioning the methodology adopted by the Central Commission to which it was a party. The benchmark model made by the Appellant contained errors and when the errors were removed by the Central Commission the capital cost aspired by the Appellant was not forthcoming. Thereafter, the Appellant

has started questioning the basis of relying on benchmark capital cost by the Central Commission.

- ii. On the issue of comparison of capital cost with the indicative cost of PGCIL, the Central Commission has submitted that PGCIL as public utility followed prudent practise of cost estimates and bidding. The indicative cost considered based on cost of PGCIL reflect more prudent and realistic cost data compared to the stray instances or standalone projects. The Appellant has also relied on the cost estimates of HVDC Bhiwani line of PGCIL for estimation of cost of its HVDC line. The consideration of indicative cost instead of benchmark cost reflects the prudent and realistic cost for assets constructed by PGCIL on behalf of the Appellant. The Central Commission has adopted a fair and balance approach while determining the tariff of PGCIL and all other transmission licensees including Appellant.

b) Date of commencement of tariff i.e. whether from date of grant of TL i.e. 29.7.2013 or from 1.10.2013 as per Impugned Order:

- i. The Appellant had filed the tariff petition No. 184/TT/2013 on 5.9.2013. On the same day POSOCO (NLDC) convened a meeting under the Chairmanship of Chairperson, CEA to sort out operational issues regarding conversion of dedicated HVDC transmission line into ISTS. In this meeting it was decided that Point of Connection (PoC) Charges & losses would be computed

in line with Regulations of the Central Commission from the date of operationalisation of ISTS i.e. from 1.10.2013. The CEO of APL was signatory to the said minutes. Once the Appellant has agreed to 1.10.2013 as date of operationalisation of its assets to be used as ISTS, cannot be allowed to claim the tariff from the date of grant of TL i.e. 29.7.2013.

- ii. Determination of tariff from 29.7.2013 to 30.9.2013 would have resulted in difficulties in the recovery of transmission charges from the designated ISTS customers as the assets of the Appellant were not put to use as ISTS prior to 1.10.2013 and therefore could not have been included in Yearly Transmission Charges (YTC) for inclusion in PoC mechanism. In case of PGCIL also, the Central Commission has allowed tariff with effect from the date assets are put into service even though the assets were ready for commercial operation but could not be put to use due to non-readiness of upstream/ downstream assets.
- iii. Fixing of determination of YTC from 1.10.2013 will balance the interests of the Appellant and beneficiaries as the assets were put to use as ISTS after taking into account of all the requirements of the system operator as decided in the meeting taken by Chairperson, CEA, capital expenses during 29.7.2013 to 30.9.2013 would be taken into account and transmission charges could have

been recovered from the beneficiaries (Haryana discoms) of dedicated transmission line as were being done earlier.

- iv. The reliance of the Appellant on Regulation 6 (3) of the CERC (Terms and Conditions of Tariff), 2014 governing the applicability of tariff from the date of grant of TL or the date as specified in the TL, which is for the period 2014-19 is misplaced. The said regulations are not applicable in case of the Appellant as TL was granted to the Appellant on 29.7.2013 being in 2009-14 period.
 - v. The reliance of the Appellant on the orders of the Central Commission in case of APCPL and JPL is misplaced as the Appellant's lines are HVDC lines where power flow can be controlled and the lines of APCPL and JPL are AC lines where the power flow cannot be controlled. Further, in case of the Appellant more than one control area viz. WRLDC, NRLDC, SLDC Gujarat and SLDC Haryana were involved while in case of APCPL and JPL only one control area was involved.
- c) Reduction of loan outstanding by cumulative depreciation till the date of TL:
- i. Regarding pruning of the capital cost, as per the affidavits submitted by the Appellant with regard to capital cost as on 29.7.2013 and 1.10.2013 there was a variation in capital cost to the tune of Rs. 177.7 Cr. in respect of Asset I and Rs. 0.12 Cr. in respect of Asset II. As there

was lack of justification for such variations in capital cost, the Central Commission disallowed the said variation while granting liberty to the Appellant to submit the detailed reasons for variations at the time of truing up. Accordingly, the interest of the Appellant is protected regarding expenditure incurred between 29.7.2013 and 30.9.2013.

- ii. The Appellant has submitted that the cumulative depreciation submitted by it up to 30.9.2013 and 1.10.2013 are based on claimed capital cost and cumulative depreciation also includes pruned capital cost. On this issue the Central Commission has identified the concerned assets for which the capital cost has been pruned. The rate of depreciation is different for different assets. The adjustments between the estimated depreciation and actual depreciation shall be carried out at the time of truing up for which the Appellant shall have to provide the cumulative depreciation corresponding to pruned capital cost.
- iii. On the issue of adjustment of loan amount by cumulative depreciation as on 1.10.2013, the Central Commission has pointed out that if the loan amount limited to cumulative depreciation as on 1.10.2013 is not adjusted against the gross loan then the loan which the Appellant has serviced prior to 1.10.2013 shall have to be serviced in tariff by all DICs. This would be unfair to the DICs. As per the Tariff Regulations, 2009, the tariff component,

interest on loan is worked out on net outstanding loan. Net outstanding loan is worked out by adjusting cumulative repayment of loan prior to the date from which tariff is to be determined. This is a settled financial principle. The Central Commission in the Impugned Order has worked out interest on loan accordingly. The averments of the Appellant that the provisions of Tariff Regulations, 2009 have been applied prior to the date of grant of TL are misconceived and denied.

- iv. On the issue of depreciation equivalent to full capacity of HVDC line due to grid restrictions imposed by the System Operator, the Central Commission has submitted that in terms of Section 10 (1) of the Act read with Removal of Difficulty (Fifth) Order, 2005, a generating company executing dedicated transmission line is required to comply with the directions of the RLDC regarding operation of the dedicated transmission line. For compliance to such requirement the Appellant cannot claim that for meeting such operational requirement it needs to be compensated as it has resulted in loss of transmission charges. It is business risk taken by the Appellant by constructing dedicated transmission line. It cannot claim compensation from the beneficiaries for the losses on account of load restriction imposed by RLDC in view of grid security in terms of Section 29 (1) & (2) of the Act. Similar restrictions were also imposed by RLDC after grant of TL to the Appellant.

13. The learned counsel for the Respondent 10 has made following arguments/submissions for our consideration on the issues raised in the Appeal:

- a) Tariff claimed by the Appellant is clearly defined in the definition clause of the Tariff Regulations, 2009 at Regulation 3 sub-regulation 24 as – “long-term transmission customer means a person having a long-term contractual right to use inter-State transmission system by paying transmission charges.” So it has to be considered in accordance with the provisions contained in this Regulation of the Tariff Regulations, 2009 and as amended from time to time. The assets were put to use as ISTS after accounting for all the requirement of system operator decided in a meeting of Chairperson, CEA in which Appellant agreed that transmission charges are to be received through PoC mechanism w.e.f. 01.10.2013. Hence recovery of transmission charges prior to this date is no longer a matter of consideration.

- b) The Central Commission in Impugned Order has rightly allowed the capital cost for transmission assets. This Tribunal vide its Order dated 10.05.2012 in R.P. No. 8 of 2011 in Appeal No. 193 of 2010 filed by PGCIL related to the Ramagundam Transmission System has also dealt the issue of linking depreciation with repayment of loan.

- c) This Tribunal in its Order dated 23.11.2015 in Appeal No. 237 of 2014 filed by West Bengal State Electricity Transmission

Company Limited, has held that depreciation is repayment to loan. As evident from this judgment the Central Commission has done prudence check while deciding the issue of depreciation.

14. The learned counsel for the Respondent No. 41 has made following arguments/submissions for our consideration on the issues raised in the Appeal:

- a) The Appellant has erroneously impleaded the Respondent No. 41, (DTL) contrary to the functions assigned to DTL in terms of the directions of Department of Power, GNCTD vide letter No. F.11(24)/2005/Power/Vol.II/1532 dated 28.06.2006. Consequent to the directions issued vide this letter, the Power Purchase Agreements/Contracts so signed by the Answering Respondent No. 41 prior to 01.04.2007 were in terms of provisions of the DERA, the Act and the directions issued by GNCTD from time to time prior to 01.04.2007 and the Answering Respondent No. 41 was acting only as nodal agency to purchase power for the Discoms i.e. BRPL, BYPL and NDPL, etc. which were the actual beneficiaries. After 01.04.2007, the Power Purchase Agreements were directed to be re-assigned to the concerned Discoms functioning in the NCT of Delhi and consequently the Discoms are taking part in the related proceedings arising out thereof and therefore the answering respondent is neither the beneficiary nor liable in any manner whatsoever and as such the subject of appeal does not pertain to DTL.

15. The Respondent No. 31 has also made submissions to defend the Impugned Order of the Central Commission.

16. After having a careful examination of all the arguments and submissions of the rival parties on various issues raised in the present Appeal, our observations are as follows:-

a) The main issues raised by the Appellant in the present Appeal are related to reduction of tariff claimed by the Appellant on account of date for commencement of tariff, reduction of capital cost of AC Substation Portion and reduction of loan outstanding by cumulative depreciation till the date of TL.

b) First, we deal with the questions of law raised by the Appellant at S. No. 9. II. above, regarding date of tariff commencement. Since all the questions of law on this issue are related to each other, we take them all together and address the fundamental issue i.e. what should be the date of tariff commencement for the transmission assets in question of the Appellant i.e. whether date of grant of TL (29.7.2013) or 1.10.2013 the date as decided in the meeting dated 5.9.2013 taken by Chairperson, CEA? Our observations on this issue are as enumerated hereinafter.

i. The Appellant has pleaded that the Central Commission previously in the case of APCPL and JPL has allowed transmission license for their dedicated transmission system as per the TL Regulations, 2009. The Appellant

further pointed out that in both the cases the Central Commission has allowed Transmission Tariff from the date of grant of Transmission License to the said companies. The relevant portion of the said orders are reproduced below:

In case of APCPL the relevant portion of the order, dated 13.5.2014 in Petition No. 239 of 2010 is reproduced below:

“9. The actual date of commercial operation of the line was 1.3.2011 and the transmission line was being utilized as a dedicated line. Subsequently after issue of transmission licence on 7.11.2013, the line is a part of Inter-State Transmission Line (ISTS). Therefore, the provisional tariff allowed herein for the period starting from 7.11.2013 to 31.3.2014 shall only be included in the POC charges. Accordingly, the billing, collection and disbursement of the transmission charges after 7.11.2013 shall be governed by the provisions of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010, as amended from time to time.”

In case of JPL the relevant portion of the order, dated 18.12.2015 in Petition No. 135/TT/2012 is reproduced below:

“Effective date for fixation of tariff

9. The transmission assets were part of the generating station prior to 9.5.2011 and were used by the petitioner for evacuation of power from the generating station and were serviced through the revenue stream of generation tariff. The tariff of the generating station including transmission assets was not regulated by the Commission. The petitioner has submitted the balance sheets from 2008-09 to 2010-11 to show that the revenue recovered from the generation business included the cost of transmission of electricity through dedicated line. As the investment in the transmission assets has been serviced and used by the petitioner for their own purpose prior to 9.5.2011, we are of the view that there is no requirement now to determine tariff for transmission assets prior to 9.5.2011. The tariff of the transmission assets will be determined from the date it was granted licence and the said date is taken as the effective date for determination of tariff.”

From the above orders of the Central Commission, it is clear that both the companies were granted transmission tariff from the date of grant of transmission license for their dedicated transmission lines when they were converted to ISTS lines. Thereafter the transmission tariff of the said companies was suitably included in PoC charges.

- ii. We have also gone through the Tariff Regulations, 2009 but could not find any relevant regulation according to which the date of commencement of tariff for line converted to ISTS from

dedicated line could be established. The TL Regulations, 2009 also do not provide any particular date for commencement of transmission tariff in case a line is converted to ISTS from a dedicated line. We have also gone through the order dated 8.6.2013 and 29.7.2013 of the Central Commission in Petition No. 44/TL/2012.

The relevant portion of the order dated 8.6.2013 is reproduced below:

“61. In the light of the above discussion, we are prima facie satisfied that the petitioner fulfils the conditions for grant of transmission licence for the dedicated transmission lines and the associated bays. Accordingly, we direct that a notice of our proposal to grant transmission licence to the petitioner be published in two daily newspapers inviting suggestion/objections from the public in terms of sub-section (5) of Section 15 of the Act.”

The Central Commission was prima facie satisfied for grant of TL to the dedicated transmission lines and the associated bays of the Appellant and further directed publication of notice in the newspapers in terms of the Act.

The relevant portion of the order dated 29.7.2013 is reproduced below:

“13. As regards prayer at (d) for consideration for inclusion in the PoC charges, it is clarified that the transmission lines on

being treated as a part of ISTS after grant of transmission licensee shall be included in the basic network for computation of PoC charges.....

From the above it is clear that after grant of transmission license the transmission lines of the Appellant were to be treated as ISTS and were to be included in basic network for computation of PoC charges.

- iii. The Central Commission while deciding the date of commencement of tariff of the Appellant has relied on the minutes of meeting dated 5.9.2013 taken by Chairperson, CEA wherein it was decided that the operationalisation of line of the Appellant as ISTS has been agreed from 1.10.2013. The Central Commission has also relied on the reply filed by NLDC suggesting tariff commencement date as 1.10.2013 in view of removal of operationalisation difficulties for line to be used as ISTS till that date. The relevant portion of the Impugned Order is reproduced below:

“26

.....

The second option is to determine the tariff by taking the date of grant of licence as the reference date. In fact, the petitioner is pleading for the same and has placed on record the capital cost and other relevant details as on that date. The limitation of this option is that on the basis of the broad agreement reached in the meeting taken by Chairperson

CEA in which the petitioner participated, the transmission assets have been treated for use as ISTS with effect from 1.10.2013. Accordingly, the transmission charges are being serviced through PoC mechanism with effect from that date. Determining the tariff from 29.7.2013 would mean that the tariff for the period 29.7.2013 till 30.9.2013 will have to be recovered directly from the beneficiaries of the transmission system. The petitioner in para 38 of its affidavit dated 11.4.2013 has submitted that once the tariff is determined from 29.7.2013, the petitioner shall bear the charges for the LTA for supply of power under PPA to Haryana for the period between licence date and 1.10.2013. Further, in para 31 of the said affidavit, the petitioner has submitted that the tariff applicable for the period 29.7.2013 to 30.9.2013 may be merged with the tariff for 1.10.2013 to 31.3.2014 after adjusting the transmission charges payable by the petitioner for the LTA corresponding to Haryana PPAs. The petitioner has an agreement with Haryana Utilities for 1424 MW and after considering the losses, it will be 1495 MW and the petitioner will pay the proportionate transmission charges for this capacity. According to the petitioner, transmission charges for about 1000 MW in respect of Mundra-Mohindergarh transmission line for the period 29.7.2013 to 30.9.2013 will have to be recovered from the DICs through the PoC mechanism during next months. In our view, the tariff for the period 29.7.2013 to 30.9.2013 cannot be recovered through PoC mechanism as the assets were not put into use as ISTS till 30.9.2013 and accordingly, transmission charges for this period were not included in the

YTC. Therefore, this option is also not feasible. The third option is to determine the tariff from 1.10.2013. Though the petitioner has strongly argued against this date, the petitioner in para 46 of the affidavit dated 11.4.2014 has submitted that in the event the Commission decides 1.10.2013 as the reference date for determination of tariff, the unrecovered depreciation and pre-operative cost till the date of licence may be allowed to the petitioner. In our view, the reference date of 1.10.2013 can be taken for determination of tariff for the following reasons. Firstly, the assets were put into use as ISTS after taking into account all the requirements of the system operator like control area jurisdiction, scheduling, metering location, transmission charges and losses under PoC mechanism etc. which were decided in a meeting taken by Chairperson CEA with the attendance of all stakeholders including the representative of the petitioner. Secondly, the transmission charges will be serviced through PoC mechanism with effect from 1.10.2013 as decided in the said meeting. Thirdly, recovery of the transmission charges from the date of grant of licence till 30.9.2013 will no more remain an issue. Fourthly, since the transmission systems of the petitioner were effectively used as dedicated transmission system between 29.7.2013 till 30.9.2013, the petitioner shall continue to recover the charges for the said period in the same manner it was recovering from the date of actual commissioning till 29.7.2013. Finally, taking 1.10.2013 as the date for determination of tariff will balance the interests of the petitioner and beneficiaries. In view of the above discussion,

we decide that the deemed CoD for the purpose of determination of tariff shall be considered as 1.10.2013.”

The Central Commission while disallowing 29.7.2013 as tariff commencement date has observed that this option is not possible due to limitation of broad agreement reached for 1.10.2013 as tariff commencement date in the meeting taken by Chairperson, CEA on 5.9.2013. The Central Commission justified its decision of 1.10.2013 as deemed COD (tariff commencement date) of the Appellant's assets by placing reliance on assets put to use after fulfilling requirements of system operator, service of transmission charges through PoC mechanism from 1.10.2013 as decided in the said meeting, recovery of transmission charges from 29.7.2013 to 30.9.2013 will not be an issue and the transmission charges for the said period (29.7.2013 to 30.9.2013) can be recovered as were done for dedicated line previously.

- iv. From the discussions in the foregoing paragraphs, it can be seen that the Central Commission rejected the plea of the Appellant to consider grant of TL date i.e. 29.7.2013 as tariff commencement date on the premise that broad agreement has been reached in the meeting taken by Chairperson, CEA in which the Appellant participated and the transmission assets have been agreed to be treated for use as ISTS with effect from 1.10.2013. It is observed that the Central Commission prima facie agreed to grant TL to the Appellant vide order dated 8.6.2013 and finally granted TL vide its order dated 29.7.2013. The Central Commission in its order dated 29.7.2013 has

clearly observed that after grant of transmission license the transmission lines of the Appellant will be treated as ISTS and shall be included in basic network for computation of PoC charges. To our mind as per this order the transmission lines of the Appellant were to be included in basic network for inclusion in PoC charges from the date of Transmission License. As discussed above, the Central Commission vide its orders in case of APCPL and JPL on earlier occasions has allowed transmission charges from the date of grant of TL. The situation in case of the Appellant and that of APCPL and JPL would not have been different with respect to issues related to fulfil the requirements of the system operator. Further, there was an opportunity during the hearings before the Central Commission before issuance of the order dated 29.7.2013 to bring out operationalisation issues by the stakeholders, which was not done. We also observe that there was enough time for the stakeholders to bring out the said operationalisation issues before the Central Commission from 8.6.2013 i.e. date of order of the Central Commission intending to grant TL to the Appellant till the order dated 29.7.2013 of the Central Commission granting TL to the Appellant.

- v. Further, we do not find any specific regulation, which clearly deals with the date of commencement of tariff in such a situation. In such a case, the Regulatory Commissions have been dealing such issues by a way of judicial orders as has been done in case of APCPL and JPL. The Central Commission has already taken a view in such circumstances to allow transmission tariff/PoC charges from the date of grant of TL and

has set precedent for the same by a way of judicial order. Hence, the Central Commission was not bound to take decision solely on premise that the Appellant has been party since its CEO participated in a meeting taken by Chairperson, CEA where it was decided a deferred date for commencement of tariff. The same was in Central Commission's regulatory domain and should have taken a prudent decision keeping in view of its earlier orders on similar issue and not merely on the premise that it was stated in the minutes of meeting chaired by Chairperson, CEA.

- vi. The Central Commission in the Impugned Order has also observed that the tariff for the period 29.7.2013 to 30.9.2013 cannot be recovered through PoC mechanism as the assets were not put into use as ISTS till 30.9.2013 after taking into account all the requirements of the system operator and accordingly, transmission charges for this period were not included in the PoC Charges. This aspect of putting system into use has been limited to meet the requirements of the system operator by the Central Commission and is not limited to actual use of the transmission assets as ISTS. The said transmission assets of the Appellant were already charged and were restricted by the system operator to utilize to their full potential, the Appellant was not at fault. In our view the date of tariff commencement and requirement of system operator should not have been linked, as the system of the Appellant was ready and the requirements of the system operator that were mostly commercial/accounting in nature could have been managed in interim till such time full-fledged system requirements were in

place or the same could have been decided while issuing order dated 29.7.2013 as discussed in the paragraph 16. b) iv. above. We also do not agree with the view of the Central Commission made in its submissions that all the transmission assets of PGCIL were declared under commercial operation when they were put to use. At many occasions, the transmission assets of PGCIL were declared to be deemed under commercial operation under the provisions of the Tariff Regulations, 2009 when the upstream/downstream transmission asset was not ready. Further, if the Central Commission has meant that requirements of the system operator were not in place then also for the interim period, the Appellant should not be denied PoC charges.

vii. In view of our discussions as above, we are of the considered opinion that the tariff commencement date for the said transmission assets of the Appellant is to be taken as the date of grant of TL i.e. 29.7.2013. The Central Commission is hereby directed to revise the tariff of the Appellant considering 29.7.2013 as deemed DOCO/ tariff commencement date and pass consequential orders.

viii. In view of the above, this issue is decided in favour of the Appellant.

c) First we take Question No. 9. I. e) i.e. Whether the Central Commission is justified in reducing capital cost for AC Substation portion of the Licensed Asset based on random benchmarking?, we observe as below:

- i. The main contention of the Appellant in this question is that the Central Commission should not have used benchmarking norms for comparison and reduction of the capital cost of its AC substation. In this regard, let us examine the impugned findings of the Central Commission related to all the transmission assets in question. The relevant extract from the Impugned Order is reproduced below:

“ 36. Based on the information placed on record by the petitioner, the capital cost of the petitioner’s assets has been verified and determined by using benchmark capital cost model of the Commission. The petitioner in the Asset-I has claimed construction of 400 kV Bays at existing Bhiwani substation of Powergrid and similarly in Asset-II, the petitioner has claimed construction of 400 kV Bays at existing Dehgam substation of Powergrid. In view of this, wherever the petitioner has constructed the 400 kV bays at existing substation of Powergrid, we have considered indicative costs of Powergrid transmission system for prudence check.

.....

38. The hard cost of 400 kV D/C transmission lines has been analysed with the benchmark capital cost based on the benchmark model specified by the Commission. It is observed that the claimed cost of 400 kV D/C Mohindergarh- Dhanonda line is exceeding the benchmark cost; however, it being a very short line,

claimed cost is allowed. The petitioner's claim of capital cost in remaining transmission lines is within the benchmark capital cost as given below:-

.....

39. In the case of capital cost of sub-stations, the petitioner in its submission dated 23.5.2014 has submitted justification based on the benchmark cost model of CERC. However, it is noted that the petitioner has incorrectly considered the benchmarking model for sub-station while justifying the capital cost of these assets. The petitioner, in all models of sub-stations has considered higher number of bays which has led to incorrect benchmark cost. The petitioner has considered one bay for each circuit breaker in one and half breaker bus scheme under the model. However, after correcting the number of bays, the model output provides as under:-

i) Benchmark cost for 2x315 MVA ICTs, 2x400 kV line bays and one bus reactor at Mundra switching station under Asset-II works out to Rs. 5614 lakh, as against the claim of Rs. 4145 lakh and as such, the amount claimed is allowed.

ii) Benchmark cost for 4x400 kV line bays, 2 line reactors and one bus reactor at Sami Switching sub-stations and for FSC for double circuit line at Sami Switching stations works out to Rs.4200 lakh and Rs. 2957 lakh respectively against the total claim of Rs.10254 lakh, which is restricted to Rs. 7157 lakh

plus land cost of Rs. 726 lakh. Thus, a total amount of Rs.7883 lakh for Sami switching station is allowed against claimed amount of Rs.10254 lakh.

iii) The petitioner has claimed construction of 2 nos. 400 kV Bays at existing Dehgam S/S of POWERGRID. Indicative cost of POWERGRID has been considered for cost of 2 nos. 400 kV bays, which was Rs. 900 lakh in July, 2009. As such, the cost of Rs. 900 lakh 2 nos. of bays is allowed as against the claim of Rs.1499 lakh by the petitioner.

Thus, the total cost allowed for the substations under Asset 2 is Rs. 12928 lakh against the claim of Rs.15898 lakh.

40. Similarly, the cost of substations under Asset-I has been considered as below:-

i) Benchmark cost for 9x400 kV line bays under stage-IV and stage-III works out as Rs. 3902 lakh.

ii) The petitioner has claimed construction of 2 nos. 400 kV Bays at existing Bhiwani S/S of Powergrid. Indicative cost of Powergrid has been considered for cost of 2 nos. 400 kV bays, which was Rs.1080 lakh in July, 2012.As such, the cost of 2 nos. bay allowed is Rs.1080 lakh, against the claim of Rs. 1179 lakh by the petitioner.

Thus, the total cost allowed for substations under Asset 1 allowed is Rs. 5203 lakh (i.e. Rs. 3902 lakh

plus Rs.1080 lakh plus land cost of Rs. 221 lakh) against the claimed cost of Rs.12606 lakh.

41. Further, in the case of HVDC system, the petitioner has compared its HVDC system with Balia-Bhiwadi HVDC system of Powergrid. The petitioner has submitted that the capital cost of HVDC transmission line was compared on per km basis with HVDC transmission line of Balia-Bhiwadi line. The petitioner has further submitted that as its electrode line is 149 km longer than Balia-Bhiwadi electrode line, proportionate electrode line cost is adjusted in its line cost at the rate of Rs.25 lakh per km to arrive at per km cost for HVDC transmission line. The petitioner has claimed an amount of Rs.100300 lakh as the hard cost of Mundra-Mohindergarh line against the cost of Rs.78500 lakh for Balia-Bhiwadi line (790 km) and has stated that the cost per km of its HVDC line is Rs.98 lakh per km in 2012 against the cost of Rs.103 lakh per km for Balia-Bhiwadi line and after escalating it at the rate of 5.26% from the date of COD (2010) to 2012, it would work out to be Rs. 112 lakh/km. The petitioner has claimed hard cost of Rs.159800 lakh for HVDC terminals excluding the cost of Mundra AC switch yard and has submitted that the said cost is less than the cost of HVDC Balia-Bhiwadi line which was Rs. 170500 lakh.

42.....
 The per km cost of both HVDC lines are comparable i.e. Rs. 101.11 lakh per km for the system of Powergrid as against Rs.101.30 lakh per km for system of the petitioner. In view of the above discussion, the cost of HVDC line as claimed by the petitioner is allowed.

43.....
Although, an exact comparison would not be possible as the time horizon for both the systems as well as the mode of execution of two projects were different. The petitioner awarded the work through turnkey basis to Siemens, whereas, in the case of Balia-Bhiwadi, one pole was executed by Siemens and other by BHEL. Mundra-Mohindergarh HVDC poles were commissioned on 12.7.2012 and 9.10.2012 respectively whereas Balia- Bhiwadi systems were commissioned on 1.9.2010 and 1.7.2012 respectively. If escalation factor of 5.26% is used to escalate the hard cost of petitioner's HVDC terminals, it works out to Rs. 176300 lakh [Rs.116900 lakh*(1.0526)*(1.0526)+Rs.46782 lakh] and as such the cost of Rs.159753 lakh claimed by the petitioner is allowed."

From the above, it can be seen that the Central Commission while deciding the capital cost of transmission assets of the Appellant has used benchmark

norms for the assets where indicative cost of Powergrid was not available, indicative cost of Powergrid where works were carried out in the existing sub-stations of Powergrid and in absence of benchmark norms for HVDC system compared the cost with similarly placed Balia-Bhiwadi HVDC line of Powergrid. The Central Commission has also found certain errors in the use of benchmark norm model by the Appellant in case of AC substations as reproduced above. In such case the Central Commission after corrections allowed either the cost claimed by the Appellant or reduced it wherever required.

- ii. The Central Commission in the Impugned Order regarding cost estimates of the transmission assets of the Appellant has observed as below:

“ 35. MSEDCL has contended that while segregating the assets of licensed business from the other businesses, prudence check should be carried out to ensure that common cost or cost not pertaining to transmission business is not loaded in the capitalisation of transmission assets. The petitioner is stated to have considered the cost of those assets in the capital cost which are identified as transmission assets based on specific contracts and expenditure carried out for transmission activities and the common assets have been considered as per prudent utility practice. As regards the Feasibility Report estimates,

the petitioner has submitted that the transmission assets under consideration were envisaged as part of the generation project and not as a separate project and therefore it is difficult to provide the feasibility report of estimates of the transmission assets. The petitioner has further submitted that the petitioner prepared the preliminary first estimates based on them market information and best available resources such as Balia-Bhiwadi HVDC line of Powergrid in terms of transmission capacity, HVDC voltage as well as line length and timing of the award of the project. The petitioner has also submitted that the petitioner had invited offers from Siemens, ABB and AREVA (who are the leading HVDC system specialist) through competitive bidding and based on the offers received from these companies, the offer received from Siemens was found to be most competitive and accordingly order was placed in April, 2009 for execution of the transmission assets.”

From the above it can be seen that the Appellant has submitted that the Feasibility Report (FR) estimates of generation and transmission assets were prepared together as one project and as such it is difficult to provide the feasibility report estimates of the transmission assets separately. As such the capital cost of the transmission assets were claimed by the Appellant based on contract costs related to transmission assets considering prudent utility practices for separation of

generation & transmission assets and estimates based on market information/ comparison with Powergrid assets including Balia-Bhiwadi HVDC line.

- iii. From the above, it is clear that the Appellant before the Central Commission has not provided the FR cost estimates related to the transmission assets in question. We are of the view that it is not possible having a project FR without separate estimates for the transmission assets even though the project is planned to be a combined generating and transmission project. The Central Commission in absence of such estimates was forced to apply prudence check based on the circumstances of the case and the nature of the assets for which the capital cost can be compared to either benchmark norms or indicative costs of similar projects as per the Tariff Regulations, 2009. The Central Commission has used benchmark norms where indicative costs were not available and that too based on the submissions made by the Appellant. In case where model was wrongly used by the Appellant, the Central Commission applied correction to that for arriving at a fair cost of the assets. Wherever the indicative costs were available for comparison, the Central Commission has used them with appropriate escalations as required. The counsel for the Central Commission has submitted that the Appellant has submitted the benchmark norms model for some assets considering that it is beneficial to it, landed with submitting

it with wrong assumptions. We agree to this argument of the Central Commission.

- iv. On this issue the Appellant has also made reference to the judgements of Hon'ble Supreme Court in case of Kusumam Hotel Pvt. Ltd. Vs. KSEB & Ors. (2008) 13 SCC 213 and Accountant General and Anr. Vs. S. Doraiswamy & Ors. (1981) 4 SCC 93 regarding retrospective application of benchmark norms. Since the tariff of the Appellant is determined in 2013 and the said benchmark norms were issued in 2010, the contention of the Appellant fails on this count. In present case there is no link between commissioning of the assets and date of issue of the benchmark norms by the Central Commission.
 - v. In view of the above we are of the considered opinion that the Central Commission is justified in using benchmark capital cost while deciding capital cost of the AC sub station of the Appellant and there is no infirmity in the decision of the Central Commission.
- d) On Question No. 9.I. a) i.e. Whether the Central Commission has the ability to determine capital cost based on the benchmarking orders dated 27.04.2010 and 16.06.2010, when the same could only have been done through regulations? and on Question No. 9.I. b) i.e. Whether the Central Commission could have invoked the Benchmarking orders dated 27.04.2010 and 16.06.2010 for determination of capital cost, when the

proviso to Regulation 7(2) of the Tariff Regulations, 2009 stipulate that the same has to be only through regulations, as the word used is “specified”?, we observe as below:

- i. To find the answer of these questions we need to analyse the provisions of determination of capital cost as per the Tariff Regulations, 2009. This aspect has been dealt at Regulation 7 (2) of the Tariff Regulations, 2009. The relevant extract of the same is reproduced below:

“7. Capital Cost

.....
(2)The capital cost admitted by the Commission after prudence check shall form the basis for determination of tariff:

Provided that in case of the thermal generating station and the transmission system, prudence check of capital cost may be carried out based on the benchmark norms to be specified by the Commission from time to time:

Provided further that in cases where benchmark norms have not been specified, prudence check may include scrutiny of the reasonableness of the capital expenditure, financing plan, interest during construction, use of efficient technology, cost over-run and time over-run, and such other matters as may be

considered appropriate by the Commission for determination of tariff:

From the above, it can be seen that the Central Commission for determination of tariff shall admit the capital cost after prudence check. Prudence check of capital cost for the transmission system may be carried out by the Central Commission based on benchmark norms to be specified by it from time to time.

Further, in cases where benchmark norms have not been specified, the Central Commission may carry out prudence check based on the parameters/matters as per the Regulations.

- ii. From the above, it is clear that the Tariff Regulations, 2009 provide for prudence check of the capital cost of the transmission assets. While doing so, as per the Regulations, the Central Commission may carry out prudence check of capital cost based on benchmark norms. This becomes more important in cases where detailed break up of capital cost and their proper justifications are not provided by the project developer. Thus, the answer to the Question No. 9. I. a) is yes, the Central Commission may determine capital cost based on benchmark norms if the situation so warrants. Further, in case benchmark norms are not available the Central Commission need to consider reasonableness of capital cost etc. for prudence check of capital cost as per second

proviso to the Regulation 7 (2) reproduced above. In case of the Appellant the benchmark norms were available with the Central Commission except for that of HVDC line where it has carried out prudence check of the capital cost based on comparison with similar line of the Powergrid. The Central Commission while carrying out the prudence check of the capital cost has followed benchmark norms to the extent but for HVDC line in absence of benchmark norms/model they have determined the capital cost considering the cost of similar line of PGCIL .

- iii. The issues raised above are decided accordingly.

- e) On Question No. 9.I. c) i.e. Whether laws/regulations relating to financial implications (which includes tariff determination) have to be strictly constructed, and as such the Benchmarking orders could not have been used by the Central Commission instead of regulations?, we observe as below:
 - i. This seems to be a theoretical question as it is not directly related to the determination of capital cost/ determination of tariff of the Appellant in the present case. There is a set procedure for formulation of regulations by the appropriate commission. The Tariff Regulations, 2009 have been framed accordingly after considering the views of all the stakeholders at that point of time. The Central Commission has issued the benchmarking norms' order based on the requirement of the Tariff Regulations, 2009

and the same may be used by it for prudence check of the capital cost claimed by the project developers.

Hence, this issue is decided accordingly.

f) On Question No. 9. I. d) i.e. Whether as per Section 61 of the Electricity Act, 2003 the actual expenditure incurred by the Appellant in constructing the transmission lines ought to have been allowed, subject to prudence of such expenditure, instead of comparing the said expenditure with Benchmarking orders which have not been determined keeping in mind the project/system of the Appellant?, we observe as below:

i. The relevant extract from Section 61 of the Act is reproduced below:

“Section 61. (Tariff regulations): The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

.....”

Section 61 of the Act empowers the Appropriate Commission to formulate tariff regulations and once the tariff regulations

are notified the Appropriate Commission is bound to follow it. This has been held by the judgement dated 15.3.2010 by the Constitutional Bench of Hon'ble Supreme Court in case of PTC India Ltd. Vs. CERC. Thus, the Appellant cannot escape from the clutches of the Tariff Regulations, 2009 under which the Central Commission has determined its tariff upto 31.3.2014. The Tariff Regulations, 2009 also envisage carrying out prudence check of capital cost by comparing it with benchmark norms. The Central Commission in absence of the requisite cost estimates/ details of the present case has decided the capital cost of some assets of the Appellant based on the benchmark norms.

This issue is also decided accordingly.

g) On Question No. 9. I. f) i.e. Can the Central Commission consider the Benchmarking norms discriminatively for the Appellant considering the fact that it is not using the said details for granting capital cost of Powergrid/other licensees?, we observe as below:

- i. We have already discussed that as per Tariff Regulations, 2009 the Central Commission based on the circumstances and details as provided by the petitioner may use or may not use the benchmark norms model for carrying out prudence check of the capital cost incurred by them. Thus, it can't be assumed that the Central Commission has used benchmarking norms discriminatively for the Appellant.

Thus, this issue is decided against the Appellant.

- h) On Question No. 9. I. g) i.e. Whether the Central Commission has acted subjectively by considering benchmarking norms for part of transmission system while considering indicative capital cost of Powergrid for other portion for reduction of capital cost?, we observe as below:
- i. The Central Commission while comparing the capital cost of the sub stations have gone into by comparing it with the indicative capital cost of similar works of Powergrid and while deciding other cost elements has used benchmark cost model as the details were provided by the Appellant itself. The Central Commission in its wisdom while doing prudence check in absence of FR cost estimates of the transmission assets has compared capital cost of the Appellant based on various available options and concluded the capital cost based on the options available before it.
 - ii. We observe that in case of the sub stations (Bhiwani & Dehgam) where Powergrid has carried out the works of the Appellant on deposit works basis in the premises of its existing sub stations, the Central Commission has compared the capital cost of the Appellant with that of the indicative cost of similar works carried out by Powergrid. The Appellant has submitted that the actual cost of the works was much lower as calculated based on the benchmark models. The claim of the Appellant was higher than the indicative cost of

Powergrid. The Central Commission has approved the capital cost of the said sub stations based on the indicative cost of the Powergrid. Here it is important to note that the works were carried out by Powergrid on deposit works basis and the payments were made by the Appellant on the demands raised by the Powergrid from time to time. Powergrid being a public sector company must have adopted prudent utility practices for carrying out the works at its premises. The Central Commission also holds similar opinion about the Powergrid. The Central Commission has also not refuted the claim of the Appellant that the cost of the said sub stations was lesser than as derived based on the benchmark model.

- iii. We see some merit in the claim of the Appellant that the Central Commission has subjectively used indicative cost or benchmark cost as prudence check for arriving at the capital cost of the Appellant. In view of our discussions as above, the deposit works carried out by the Powergrid on behalf of the Appellant and the cost of those works being less than as derived from the benchmark model, we are of the considered opinion that the Appellant is entitled to recover the cost for the said sub stations where Powergrid has executed the works on behalf of the Appellant. The Central Commission is hereby directed to consider the actual capital cost considering the deposit work executed by Powergrid for the said transmission assets. Here we would like to clarify that the capital cost in this case for the said assets is to be considered as on date of grant of TL as we have decided the

date of tariff commencement as the date of grant of TL to the Appellant.

- iv. Accordingly, this issue is decided accordingly.
- i) On Question No. 9. I. h) i.e. Without prejudice to the ground that benchmarking cannot be taken as a basis for capital cost reduction, is it fair to consider result of benchmarking on standalone basis for each substation and not on aggregate basis?, we observe as below:
- i. In view of our decision at 16. c) above, the Central Commission is justified to consider result of benchmarking on standalone basis and not on aggregate basis as discussed in the Impugned Order.
- ii. Accordingly, this issue is decided against the Appellant.
- j) Now we take questions of law raised by the Appellant on the issue related to depreciation. On Question No. 9. III. a) i.e. Whether the Central Commission has failed to appreciate that the Appellant is not subjected to reduction of loan outstanding by cumulative depreciation till the date of license?, on Question No. 9. III. b) i.e. Whether the Central Commission has failed to appreciate that norms related to depreciation in CERC (Terms and Condition of Tariff) Regulations, 2009 is applicable only to licensed transmission system and not beforehand? and on Question No. 9. III. c) i.e. Without prejudice to the ground that there is no depreciation to be considered till the date of license,

the Central Commission ought to have considered physical depreciation and not as per CERC (Terms and Conditions of Tariff) Regulations, 2009?, we observe as below:

- i. The Appellant has submitted that the Central Commission ought not to have considered the cumulative depreciation figure corresponding to the pruned capital cost and reduce the same from the opening normative loan. The cumulative depreciation submitted by it upto 30.9.2013 and 1.10.2013 are based on claimed capital cost and cumulative depreciation also includes pruned capital cost.
- ii. The counsel for the Central Commission has submitted that it has identified the concerned assets for which capital cost has been pruned. The rate of depreciation is different for different assets. The learned counsel further submitted that the adjustments between the estimated depreciation and actual depreciation shall be carried out at the time of truing up for which the Appellant shall have to provide the cumulative depreciation corresponding to pruned capital cost.

The learned counsel for the Central Commission further submitted that if the loan amount limited to cumulative depreciation as on 1.10.2013 is not adjusted against the gross loan, then the loan which the Appellant has serviced prior to 1.10.2013 shall have to be serviced in tariff by all DICs. As per the Tariff Regulations, 2009 Interest on Loan as a component of tariff is worked out on net outstanding loan and net outstanding loan is worked out by adjusting

cumulative repayment of loan prior to the date from which tariff is to be determined.

- iii. Let us now examine the Regulations 12 & 16 of the Tariff Regulations, 2009 which provides provisions related to Interest on Loan. The same is reproduced below:

“12. Debt-Equity Ratio. (1) For a project declared under commercial operation on or after 1.4.2009, 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 where equity actually deployed is less than 30% of the capital cost, the actual equity shall be considered for determination of tariff:

Provided further that the equity invested in foreign currency shall be designated in Indian rupees on the date of each investment.

.....

16. Interest on loan capital. (1) The loans arrived at in the manner indicated in regulation 12 shall be considered as gross normative loan for calculation of interest on loan.

(2) The normative loan outstanding as on 1.4.2009 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2009 from the gross normative loan.

(3) The repayment for the year of the tariff period 2009-14 shall be deemed to be equal to the depreciation allowed for that year:

.....”

From the above it is clear that for the purpose of computation of interest on normative loan the net outstanding loan prior to the date from which tariff is determined is to be considered which is worked out after adjusting cumulative repayment of loan prior to such date. Further, repayment of loan during tariff period 2009-14 has been considered equal to the depreciation for a particular year.

Since repayment of loan is considered as equal to the depreciation as per the Tariff Regulations, 2009, accordingly the Central Commission has reduced the outstanding loan by cumulative depreciation before the tariff commencement date i.e. 1.10.2013.

- iv. On the contention of the Appellant that depreciation should have been computed pro-rata based on actual usage or actual wear and tear of the transmission system, the Central Commission has submitted that as per the Removal of Difficulty (Fifth) Order, 2005, the dedicated transmission line executed by a generating company is required to comply with the directions of RLDC regarding its operation. As per the Central Commission, to meet such operational requirements there is no need for the Appellant to be compensated. The Appellant has taken a business risk while constructing

dedicated transmission line and it cannot claim compensation for losses from beneficiaries on account of load restrictions imposed by RLDC from point of view of grid security. Similar load restrictions were also imposed by RLDC for ensuring grid security even after grant of TL to the Appellant. On this issue we tend to agree with the arguments put forth by the counsel for the Central Commission. We also observe that prior to the grant of TL for the said transmission assets of the Appellant, their tariff (combined for generation and transmission assets) was serviced based on competitive bidding as per Section 63 of the Act. Accordingly, the tariff of the generating station including the transmission assets of the Appellant was not regulated by the Central Commission or the State Commission of Haryana State. We are not sure of the treatment of depreciation taken by the Appellant in its tariff bid. In view of this the approach taken by the Central Commission to reduce opening loan by cumulative book depreciation is appropriate which is in line with the financial principles adopted in the Tariff Regulations, 2009. Further, the contention of the Appellant to consider the impact of unrecovered depreciation (if any) for the period prior to the date of grant of TL while determining the tariff cannot be considered as tariff determination under Section 62 of the Act and adoption of tariff under 63 of the Act cannot be compared. Accordingly, the reliance of the Appellant on this Tribunal's judgment dated 13.06.2007 passed in Appeal No. 139 of 2006 in case of NTPC Vs. CERC & Ors. is misplaced.

- v. Accordingly as per the foregoing discussions, we decide that the opening loan as on date of tariff commencement date is to be considered after reducing it by cumulative depreciation as done by the Central Commission and there is no infirmity in the decision of the Central Commission in this regard.
- vi. We have already decided that the tariff commencement date is to be considered as date of grant of TL i.e. 29.7.2013 therefore, the Central Commission is directed to work out the capital cost as on 28.7.2013 and the other tariff components including interest on loan as per the provisions of the Tariff Regulations, 2009.
- vii. On the issue of depreciation on pruned capital cost as on date of tariff determination, the Central Commission has submitted that this issue is being dealt in true up petition filed by the Appellant. Accordingly, with the consent of the parties this issue is not dealt in the present Appeal. However, it is clarified that the date of tariff commencement is to be taken as 29.7.2013 as decided in this judgement.
- viii. Hence, the issues related to depreciation are decided as discussed above.

ORDER

We are of the considered opinion that some issues raised in the present Appeal have merit as discussed above. The Appeal is hereby partially allowed.

The Impugned Order dated 18.3.2016 passed by the Central Commission is hereby remanded to the Central Commission for allowing the date of grant of Transmission License i.e. 29.7.2013 as the date of tariff commencement for the transmission assets of the Appellant & to determine the capital cost of the said transmission assets including Bhiwani & Dehgam sub stations as on date of grant of Transmission License as decided above including consequential reliefs to the Appellant.

No order as to costs.

Pronounced in the Open Court on this **8th day of November, 2017.**

(I. J. Kapoor)
Technical Member

√

REPORTABLE/NON-REPORTABLE

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(Mrs. Justice Ranjana P. Desai)
Chairperson