

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 9 OF 2023

Dated: 18.11.2024

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

ADANI TRANSMISSION (INDIA) LIMITED (ATIL)

(earlier Adani Power Limited),
Shikhar, Near Adani House,
Mithakhali Six Roads, Navrangpura,
Ahmedabad, Gujarat – 389009

Email: tanmay.vyas@adani.com

... Appellant

Versus

1. CENTRAL ELECTRICITY REGULATORY COMMISSION

Through its Secretary,
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001
Email: secy@cercind.gov.in

2. POWER GRID CORPORATION OF INDIA LIMITED

Through its Chairman and Managing Director
Saudamini, Plot-2, Sector-29,
Near IFFCO Chowk,
Gurgaon, Haryana-122001
Email: commercialcc@powergrid.co.in

3. NATIONAL LOAD DISPATCH CENTRE

*Through its Chairman and Managing Director,
B-9, Qutab Industrial Area,
Katwaria Sarai, New Delhi-110016
Email: srnarasimhan@posoco.in*

4. NORTHERN REGIONAL LOAD DESPATCH CENTRE

*Through its Chairman and Managing Director,
18-A, Shaheed Jeet Singh Sansanwal Marg,
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5. WESTERN REGIONAL POWER COMMITTEE

*Through its Member Secretary,
F-3, MIDC Area, Marol, Opposite SEEPZ,
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6. CENTRAL ELECTRICITY AUTHORITY

*Through its Member Secretary,
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New Delhi-110066
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7. GUJARAT ENERGY TRANSMISSION COMPANY LIMITED

*Through its Chairman,
Sardar Patel Vidyut Bhavan,
Race Course, Vadodra, Gujarat-390007
Email: getco@gebmail.com*

8. HARYANA VIDYUT PRASARAN NIGAM LIMITED

*Through its Director,
1st Floor, Shakti Bhawan, C-4*

Sector-6, Panchkula, Haryana-134109
Email: md@hvpn.gov.in

9. GUJARAT URJA VIKAS NIGAM LIMITED

Through its Managing Director,
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**10. MAHARASHTRA STATE ELECTRICITY DISTRIBUTION
COMPANY LIMITED**

Through its Chairman and Managing Director,
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Mumbai, Maharashtra-400051
Email: ceppmsedcl@gmail.com

**11. MADHYA PRADESH POWER MANAGEMENT
COMPANY LIMITED**

Through its Managing Director,
Block No. – 11, Ground Floor,
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Jabalpur, Madhya Pradesh -482008
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12. M.P. AUDYOKIK KENDRA VIKAS NIGAM LIMITED

Through its Secretary,
Free Press House, 1st Floor,
3/54-Press Complex, A.B. Road,
Indore, Madhya Pradesh-452008
Email: ed.roind@mpidc.co.in

**13. CHHATTISGARH STATE POWER DISTRIBUTION
COMPANY LIMITED**

Through its Managing Director,

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Dangania, Raipur, Chhattisgarh-492013
Email: cecomcseb@rediffmail.com

14. GOA STATE ELECTRICITY DEPARTMENT

Through its Executive Engineer,
Vidyut Bhawan, Panaji, Goa-403001
Email: cee-elec.goa@nic.in

15. DAMAN AND DIU ELECTRICITY DEPARTMENT

Through its Executive Engineer,
Administration of Daman & Diu,
Near Satya Narayan Temple, Nani Daman-396210
Email: elec-dmn-dd@nic.in

**16. ELECTRICITY DEPARTMENT,
ADMINISTRATION OF DADRA NAGAR HAVELI**

Through its Secretary,
Dadra Nagar Haveli, UT, Silvassa-396230
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17. HEAVY WATER PROJECTS, DEPARTMENT OF ATOMIC ENERGY

Through its Chairman
Heavy Water Board, Vikram Sarabhai Bhawan,
Anushakti Nagar, Mumbai, Maharashtra-400094
Email: webmaster@mum.hwb.gov.in

18. JINDAL POWER LIMITED

Through its Chairman
Tamnar, Raigarh, Chattisgarh-496001
Email: kk.agarwal@jindalsteel.com

19. TORRENT POWER LIMITED

Through its Chairman

Torrent House, Opposite Ashram Road,
Ahmedabad, Gujarat-380009
Email: nareshjoshi@torrentpower.com

20. PTC INDIA LIMITED

Through its Chairman and Managing Director
2nd Floor, NBCC Tower,
15, Bhikaji Complex, New Delhi-110066
Email: rajiv@ptcindia.com

21. HARYANA POWER PURCHASE CENTRE

Through its Chief Engineer
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22. RAJASTHAN POWER PROCUREMENT CENTRE

Through its Chief Engineer,
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Janpath, Jyoti Nagar, Jaipur, Rajasthan-302005
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23. JODHPUR VIDYUT VITRAN NIGAM LIMITED

Through its Director,
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Jodhpur, Rajasthan-342003
Email: md.jdvvn1@rajasthan.gov.in

24. JAIPUR VIDYUT VITRAN NIGAM LIMITED

Through its Director,
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Jyoti Nagar, Jyoti Marg,
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25. AJMER VIDYUT VITRAN NIGAM LIMITED

Through its Director,
Old Power House, Hathi Bhatta,
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Email: avvnl0145@yahoo.com

26. BSES YAMUNA POWER LIMITED

Through its Director,
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27. BSES RAJDHANI POWER LIMITED

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28. TATA POWER DELHI DISTRIBUTION LIMITED

Through its Director,
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29. NEW DELHI MUNICIPAL COUNCIL

Through its Chairman,
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30. UTTARAKHAND POWER CORPORATION LIMITED

Through its Director,
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31. UTTAR PRADESH POWER CORPORATION LIMITED

Through its Director,
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32. NORTH CENTRAL RAILWAY

Through its Secretary and General Manager,
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33. PUNJAB STATE POWER CORPORATION LIMITED

Through its Director,
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34. POWER DEVELOPMENT DEPARTMENT

Through its Secretary,
Jammu and Kashmir, Civil Secretariat,
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35. HIMACHAL PRADESH STATE ELECTRICITY BOARD

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36. ELECTRICITY DEPARTMENT, UT CHANDIGARH

Through its Executive Engineer
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37. NORTHERN REGIONAL POWER COMMITTEE

Through its Secretary,
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Email: somara.lakra@posoco.in

38. WESTERN REGIONAL POWER COMMITTEE

Through its Secretary,
F-3, M.I.D.C. Area,
Marol, Andheri (East),
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Email: ms-wrpc@nic.in

39. KANPUR ELECTRICITY SUPPLY COMPANY LIMITED

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40. RAJASTHAN RAJYA VIDYUT PRASARAN NIGAM LIMITED

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41. DELHI TRANSCO LIMITED

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... Respondents

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Vyom Chaturvedi
Prachi Gupta for Res. 10

Ravi Sharma for Res. 11

Pradeep Misra
Manoj Kumar Sharma
for Res. 31

Vandana for Res. 41

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The appellant Adani Transmission (India) Limited (in short "ATIL") has preferred this appeal against the order dated 21.01.2022 passed by the Central Electricity Regulatory Commission (hereinafter referred to as "the Commission" or "the Central Commission") in petition No.216/TT/2020 of the appellant for truing up of transmission tariff for the tariff block i.e. Financial Year (FY) 2014-15 to FY 2018-19 under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter

referred to as “2014 Tariff Regulations”) and for determination of tariff for the period of next tariff block i.e. FY 2019-20 to FY 2023-24 under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as “2019 Tariff Regulations”).

2. The appellant is a transmission licensee and had sought truing up of transmission tariff / determination of transmission tariff, as noted hereinabove, in respect of its two transmission assets which are described below: -

(a) 500kV bipole Mundra – Mohindergarh HVDC Transmission Line including associated 400kV lines, terminal sub-stations and bays used to evacuate power from Mundra Power Project to Northern region (hereinafter referred to as “Asset-I”); and

(b) 400kV D/C Mundra – Dehgam Transmission Line, including the associated system used to evacuate power from Mundra Power Project to Western region (hereinafter referred to as “Asset-II”).

3. The respondent No.2 is the Power Grid Corporation of India, which is the Central Transmission Utility as per Section 38 of the Electricity Act, 2003. The respondent Nos.3 to 5 are the authorities which are engaged with

optimum functioning of the inter-state grid. The respondent No.6 is the authority which is involved in planning, construction and coordination of the inter-state transmission system (ISTS).

4. The respondent Nos.7 to 41 are the stakeholders in the ISTS which have to share the cost of transmission system of the appellant.

5. We find it appropriate to note the brief background of the case which has given rise to this appeal.

- (a) M/s Adani Power Limited (hereinafter referred to as “APL”) had set up a 4620MW power plant at Mundra, District Kutch, Gujarat comprising of four sub-critical units of 330MW and 5 super critical units of 660 MW. It had implemented the above noted two transmission systems in order to evacuate power from the said Mundra Power Project to northern region and western region. It filed an application before the Central Commission on 21.02.2012 seeking transmission license for these two transmission lines alongwith associated system, which was granted on 29.07.2013. Vide the said order the Central Commission also held that these transmission assets will be considered as part of ISTS from the date

of said order. The transmission license was thereafter assigned from APL to the appellant herein vide order dated 08.01.2015 passed by the Central Commission in petition No.421/MP/2014.

- (b) The scope of the work as per order dated 29.7.2013 in Petition No. 44/TL/2012 is as follows:

“

Particulars of Assets
AC system
Transmission line
(i) 400 kV D/C Mohindergarh-Dhanonda
(ii) 400 kV D/C Mohindergarh-Bhiwani
(iii) 400 kV D/C Mundra-Sami-Dehgam
Sub-stations
(i) Sub-stations at Mundra & Mohindergarh
(ii) Bays at Bhiwani (PG) Sub-station
(iii) Sub-stations at Mundra & Sami
(iv) Bays at Dehgam (PG) Sub-station
HVDC System
Transmission Line
(i) ± 500 kV Bipole Mundra-Mohindergarh HVDC line
(ii) 33 kV D/C Electrode lines for HVDC Mundra and Mohindergarh Terminal Stations
Sub-station
(i) HVDC Terminal Stations at Mundra & Mohindergarh

”

- (c) The entire scope of work under the transmission project has been completed and is covered in the instant petition, the particulars of the assets under scope of the work is as follows:

“

AC system	Asset details
Transmission line	
(i) 400 kV D/C Mohindergarh Dhanonda	Asset-I
(ii) 400 kV D/C Mohindergarh-Bhiwani	Asset-I
(iii) 400 kV D/C Mundra – Sami – Dehgam	Asset-II
Sub-stations	
(i) Sub-stations at Mundra & Mohindergarh	Asset-I
(ii) Bays at Bhiwani (PG) Substation	Asset-I
(iii) Sub-stations at Mundra & Sami	Asset-II
(iv) Bays at Dehgam (PG) Sub-station	Asset-II
HVDC System	
Transmission line	
+ 500 kV Bipole Mundra-Mohindergarh HVDC line	Asset-I
33 kV D/C Electrode lines for HVDC Mundra and Mohindergarh Terminal Terminal Stations	Asset-I
Sub-station	
HVDC Terminal Stations at Mundra & Mohindergarh	Asset-I

”

- (d) The transmission project was executed in two sets for evacuation of power from Mundra Power Project namely, Asset-I (for evacuation of power to NR) and Asset-II (for evacuation of power to WR) as detailed hereunder:

“

Asset	Name of Asset	Actual COD
Asset-I	HVDC Pole-I along with HVDC line	12.07.2012
	HVDC Pole-II along with HVDC line	09.10.2012
	400 kV D/C Mohindergarh-Dhanonda AC line	12.07.2012
	400 kV D/C Mohindergarh-Bhiwani AC line	09.08.2012
	400 kV D/C Mundra-Sami-Dehgam	13.07.2009

Asset-II	<i>400 kV D/C Sami-Dehgam along with Switching Station</i>	<i>13.07.2009</i>
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”

- (e) The tariff for the transmission assets was allowed by the Central Commission for the period from 1.10.2013 to 31.3.2014 vide order dated 18.3.2016 in Petition No.184/TT/2013, considering the deemed COD as 1.10.2013.
- (f) Aggrieved with the Commission’s order dated 18.3.2016 in Petition No.184/TT/2013, the appellant filed Appeal No. 226 of 2016 before this Tribunal contesting decision of the Commission to approve COD as 1.10.2013 instead of 29.7.2013 and against reduction of capital cost of sub-stations.
- (g) This Tribunal, vide judgment dated 8.11.2017 partly allowed the Appeal. It was held that there is no infirmity in Commission’s decision to consider the opening loan as on the date of commencement of tariff after reducing it by cumulative depreciation. However, this Tribunal remanded the matter back to the Commission for considering the date of grant of transmission licence, i.e. 29.7.2013, as COD of the transmission assets and also to consider the actual cost paid by the Petitioner to PGCIL towards

construction of sub-station on deposit work basis while determining the capital cost of the transmission assets.

- (h) The relevant portion of the judgment dated 8.11.2017 of APTEL in Appeal No. 226/2016 regarding COD is extracted hereunder:

“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.”

- (i) As regards the capital cost of the sub-station, it was held in the said judgement dated 8.11.2017 as follows:

“Reduction of Capital Cost of AC Substation Portion

1) 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 substation of the Appellant and there is no infirmity in the decision of the Central Commission. (Ref: 16 (c) v)

2) 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. (Ref: 16 (h) ii)

3) 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. (Ref: 16 (h) iii)

Reduction of Loan Outstanding by Cumulative Depreciation till the Date of Transmission License

1) 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. (Ref: 16 (j) v)

2) 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. (Ref: 16 (j) vi)

3) 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. (Ref: 16 (j) vii)”

- (j) Aggrieved with the decision of APTEL on the issue of amount of opening loan, the Petitioner has filed a Review Petition No. 3 of 2018 in said Appeal No. 226/2016 before this Tribunal and same is pending. The appellant has also filed a Civil Appeal against the said judgment of this Tribunal in Appeal No. 226/2016 before the Hon'ble Supreme court and the same is also pending.
- (k) In the meanwhile, the Petitioner filed Petition No. 146/TT/2016 for truing up of tariff for 2013-14 period and for determination of transmission tariff for the 2014-19 tariff period. The trued-up tariff determined vide order dated 3.11.2017 in Petition No.146/TT/2016 was based on admitted capital cost of ₹364539.06 lakh and ₹54089.69 lakh as on 1.10.2013 and ₹370083.06 lakh and ₹54089.69. lakh as on 31.3.2014, in case of Asset-I and Asset-II respectively. The trued-up additional capital expenditure (ACE) considered for Asset-I and Asset-II during 2013-14 period was ₹5544.00 lakh and 'nil', respectively.

6. Subsequently, the appellant filed petition No.216/TT/2020 seeking truing up of the transmission tariff for the period of the tariff block 2014-15 to 2018-19 and for determination of tariff for the period from 2019-20 to 2023-24, which has been decided by the Commission vide the impugned order dated 21.01.2022. The appellant had prayed in the petition as under: -

“1) Approve the Trued-up Transmission Tariff for the Period of FY 2014-15 to FY 2018-19 for the assets covered under this petition.

2) Approve the Additional Capitalisation actually incurred during the tariff block FY 2014-15 to FY 2018-19 as claimed in the petition.

3) Approve the transmission tariff for the tariff block FY 2019-20 to FY 2023-24 for the assets covered under this petition, claimed in this petition.

4) Approve the Additional capitalisation projected to be incurred during the tariff block of FY 2019-20 to FY 2023-24 as claimed in the petition.

5) Approve the reimbursement of expenditure by the beneficiaries towards Petition filing fee, and expenditure on publishing of notices in newspapers in terms of Tariff Regulations and other expenditure (if any) in relation to the filing of petition.

6) Allow the Petitioner to bill and recover the Licence fee and RLDC fees and charges, separately from the respondents in terms of Tariff Regulations: and

7) Pass such other relief as Hon'ble Commission deems fit and appropriate under the circumstances of the case and in the interest of justice.”

7. This appeal is limited to following issues only: -

- a. Disallowance of Additional Capital Expenditure for FY 2016-17 to FY 2018-19;
- b. Disallowance of Additional Capital Expenditure for FY 2019-20 to FY 2023-24;
- c. Disallowance of actual rate of interest on long-term loan;

- d. Disallowance of Depreciation for FY 2021-22 to FY 2023-24 for Asset-II;
- e. Disallowance of Operations and Maintenance (“O&M”) expenses for the communication system for FY 2019-20 to FY 2023-24.
- f. Disallowance of O&M expenses for Fixed Series Compensator (“FSC”) for FY 2019-20 to FY 2023-24.

8. We have heard learned senior counsel appearing on behalf of the appellant and learned counsels appearing for respondent Nos.10,11 and 31. No other respondent has contested the appeal. We have also perused the impugned order, entire material on record and the written submissions filed on behalf of the appellant and respondent Nos.10 & 11.

Issue No.1 &2 :- Disallowance of additional capital expenditure for the FY 2016-17 to FY 2018-19 and FY 2019-20 to FY 2023-24.

9. Both these issues relate to the additional capital expenditure claimed by the appellant and therefore, are taken up together for disposal.

10. The below given table illustrates the findings and the reasons which persuaded the Commission to disallow the additional capital expenditure for these Financial Years: -

“

Issues	Held
True up for the annual period for 2014-2019	
<p><i>Additional Capital Expenditure</i></p>	<p><i>Additional Capital Expenditure claimed in regard to FY 2016-2017 to FY 2018-2019 in both Asset I and Asset II was disallowed.</i></p> <p><i>The details are as under:</i></p> <p><u>Asset I</u></p> <p><i>i. Truck mounted hot line washing machine for insulators: Disallowed as O&M in nature and not allowable under Regulation 14(3)(ix) of the 2014 Tariff Regulations.</i></p> <p><i>ii. Silicon Paint Coating on High voltage Insulators:</i></p>

	<p>Disallowed as O&M in nature and not allowable under Regulation 14(3)(ix) of the 2014 Tariff Regulations.</p> <p>iii. Replacement of Porcelain insulator: Disallowed as Consent of the beneficiaries not taken, and not submitted any approval of RPC for replacement of the existing insulators.</p> <p>iv. Expenses for installation of security system: Disallowed as O&M in nature and not allowable under Regulation 14(3)(ix) of the 2014 Tariff Regulations.</p> <p>v. Automatic Power Factor Control (APFC) panel:</p>
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	<p>Disallowed as Appellant did not submit any test reports or any OEM certificate.</p> <p>vi. <i>Emergency Restoration System: Disallowed as O&M in nature and not allowable under Regulation 14(3)(ix) of the 2014 Tariff Regulations.</i></p> <p><u>Asset II</u></p> <p>i. <i>Expenses for installation of security system for efficient operation of transmission system: Disallowed as O&M in nature and not allowable under Regulation 14(3)(ix) of the 2014 Tariff Regulations</i></p> <p>ii. <i>Replacement of Battery Bank: Disallowed as Appellant did not submit any</i></p>
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	<p>test reports or any OEM certificate.</p> <p>iii. Upgradation of Power Line Carrier Communication (PLCC): Disallowed as Appellant did not submit RPC/SCM approval.</p> <p>iv. Liabilities to meet award of arbitration for Land at Sami: Disallowed as Appellant did not submit any documentary evidence.</p> <p>v. Change of possession of Land: Disallowed as Appellant did not submit RPC/SCM approval.</p> <p>vi. Emergency restoration system: Disallowed as O&M in nature and not allowable</p>
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	<i>under Regulation 14(3)(ix) of the 2014 Tariff.</i>
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11. Before discussing the rival submissions made on behalf of the parties, we find it necessary to take note of the relevant provisions of the Tariff Regulations, 2014. Regulation 3 is the definition clause. Regulation 3(2) defines “additional capitalization” as under: -

“ ‘Additional Capitalisation’ means the capital expenditure incurred, or projected to be incurred after the date of commercial operation of the project and admitted by the Commission after prudence check, in accordance with provisions of Regulation 14 of these regulations;”

12. Regulation 3(8) provides that the capital cost has to be determined in accordance with Regulation 9 of these regulations.

13. As per Regulation 3(13), ‘Cut-off Date’ means “*31st March of the year closing after two years of the year of commercial operation of whole or part of the project, and in case the whole or part of the project is declared under commercial operation in the last quarter of a year, the cutoff date shall be 31st*

March of the year closing after three years of the year of commercial operation". The proviso attached to the said regulation states that the cut-off date may be extended by the Commission if it is proved on the basis of documentary evidence that the capitalisation could not be made within the cutoff date for reasons beyond the control of the project developer.

14. According to regulation 3(42) 'Operation and Maintenance Expenses' or 'O&M expenses' means the expenditure incurred for operation and maintenance of the project, or part thereof, and includes the expenditure on manpower, repairs, maintenance spares, consumables, insurance and overheads but excludes fuel expenses and water charges.

15. Regulation 3(48) defines 'Prudence Check' and is quoted as under:-

“Prudence Check’ means scrutiny of reasonableness of capital expenditure incurred or proposed to be incurred, financing plan, use of efficient technology, cost and time over-run and such other factors as may be considered appropriate by the Commission for determination of tariff. While carrying out the Prudence Check, the Commission shall look into whether the generating company or

transmission licensee has been careful in its judgments and decisions for executing the project or has been careful and vigilant in executing the project.”

16. The principles to be adopted for prudence check of capital cost of the existing or new projects have been stated in Regulation 10, which is extracted hereunder:-

“10. Prudence Check of Capital Expenditure:

The following principles shall be adopted for prudence check of capital cost of the existing or new projects:

(1) In case of the thermal generating station and the transmission system, prudence check of capital cost may be carried out taking into consideration the benchmark norms specified/to be specified by the Commission from time to time: Provided that in cases where benchmark norms have not been specified, prudence check may include scrutiny of the capital expenditure, financing plan, interest during construction, incidental expenditure during construction for its reasonableness, use of efficient

technology, cost over-run and time over-run, competitive bidding for procurement and such other matters as may be considered appropriate by the Commission for determination of tariff: Provided further that in cases where benchmark norms have been specified, the generating company or transmission licensee shall submit the reasons for exceeding the capital cost from benchmark norms to the satisfaction of the Commission for allowing cost above benchmark norms.

(2) The Commission may issue new guidelines or revise the existing guidelines for vetting of capital cost of hydro-electric projects by an independent agency or an expert and in that event the capital cost as vetted by such agency or expert may be considered by the Commission while determining the tariff for the hydro generating station.

(3) The Commission may issue new guidelines or revise the existing guidelines for scrutiny and approval of commissioning schedule of the hydro-electric projects in accordance with the tariff policy issued by the Central

Government under section 3 of the Act from time to time which shall be considered for prudence check.

(4) Where the power purchase agreement entered into between the generating company and the beneficiaries provides for ceiling of actual capital expenditure, the Commission shall take into consideration such ceiling for determination of tariff for prudence check of capital cost.”

17. Regulation 14 is with regards to additional capitalization and de-capitalization. Sub-Regulations 3(i), (vii) and (ix) are relevant to this appeal and are extracted hereinbelow: -

“(3) The capital expenditure, in respect of existing generating station or the transmission system including communication system, incurred or projected to be incurred on the following counts after the cut-off date, may be admitted by the Commission, subject to prudence check:

(i) Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law;

...

(vii) Any additional capital expenditure which has become necessary for efficient operation of generating station other than coal/lignite based stations or transmission system as the case may be. The claim shall be substantiated with the technical justification duly supported by the documentary evidence like test results carried out by an independent agency in case of deterioration of assets, report of an independent agency in case of damage caused by natural calamities, obsolescence of technology, up-gradation of capacity for the technical reason such as increase in fault level;

...

(ix) In case of transmission system, any additional expenditure on items such as relays, control and instrumentation, computer system, power line carrier communication, DC batteries, replacement due to obsolescence of technology, replacement of switchyard equipment due to increase of fault level, tower strengthening, communication equipment, emergency restoration system, insulators cleaning infrastructure,

replacement of porcelain insulator with polymer insulators, replacement of damaged equipment not covered by insurance and any other expenditure which has become necessary for successful and efficient operation of transmission system;”

18. It is not in dispute that the cut-off date in the instant case was 31.03.2016. Therefore, the capital expenditure incurred by the appellant after 31.03.2016 is covered under Regulation 14(3) of these 2014 Tariff Regulations.

19. Now, we will take the claims of the appellant with regards to the additional capital expenditure for FY 2016-17 to FY 2018-19 asset-wise.

Asset-I

- (i) Truck mounted hotline washing machine for insulators
- (ii) Silicon Paint Coating on High Voltage Insulators
- (iii) Installation of Security System
- (iv) Emergency restoration system
- (v) Replacement of porcelain insulators

(vi) Expenditure towards installation of Automatic Power Factor Correction (APCF) Panel

20. The appellant had claimed additional capital expenditure on above counts for the FY 2016-17 and 2017-18 under Regulation 14(3)(ix) but the same has been denied by the Commission on the ground that these expenditures are in the nature of O&M (Operation and Maintenance) and thus not allowable under said regulation 14(3)(ix) of 2014 Tariff Regulations.

(i) Truck mounted hotline washing machine for insulators:

21. On behalf of the appellant, it is contended that the insulators and the equipment get contaminated due to various factors and the contaminated insulators are susceptible to flashovers during humid atmospheres, dew or foggy weather, etc., and hence, there is a need to clean them periodically. It is further contended that the appellant was facing frequent failures and disturbances in the HVDC line, and in order to minimize the same, the Appellant decided to develop an insulator cleaning infrastructure. Accordingly, the appellant purchased the truck-mounted hotline washing machine for insulators which had become necessary and therefore, the Commission has erred in rejecting the claim of the Appellant under this head.

22. It is argued on behalf of the respondents that expenditure incurred by the appellant towards truck-mounted hotline washing machine for insulators is not an expenditure but is a part of O&M expenses already allowed on normative basis to the appellant vide order dated 03.11.2017 in petition No.146/TT/2016. It is further argued that the said expenditure is not of the nature of necessary or genuine expenditure which could not be avoided and prior approval for the for the same should have been sought from the Commission.

23. We have already noted sub-regulation 3(ix) of Regulation 14 of 2014 Tariff Regulations hereinabove. It specifically mentions that in case of a transmission system, capital expenditure incurred after the cut-off date towards insulators cleaning infrastructure may be admitted by the Commission subject to the prudence check. Therefore, reasoning of the Commission that expenditure under this head is not allowable as it is in the nature of O&M, is patently erroneous and not sustainable. We find the reasons given by the appellant for installing the truck-mounted hotline washing machine for insulators absolutely justified.

24. In view thereof, we allow the claim of the appellant under this head subject to the prudence check as to the admissibility as per the documents

submitted / to be submitted by the appellant. This exercise shall be completed by the Commission within one month from the date of this judgment.

(ii) Silicon Paint Coating on High Voltage Insulators:

25. With regards to the expenditure incurred by the appellant on silicon paint coating on high voltage insulators, it is submitted by the appellant's counsel that the corrosion and pollution of outdoors high voltage insulators is a common problem for utilities, with a considerable impact on the power system reliability which may result in possible outage in the high voltage system. It is submitted that to prevent possible flashovers due to corrosion and pollution, high voltage insulation quoting is done with an aim to improve the insulation performance, either by suppressing the formation of surface conductivity or by increasing the possible insulation level. It is further pointed out that since the appellant's HVDC lines are in a coastal area, it has been facing the issues of corrosion and subsequent failures of insulators, and therefore the appellant carried out the silicon painting in HVDC sub-station equipment to avoid tripping due to dust and corrosion which was essential for maintaining the operational reliability and efficiency of transmission system. It is submitted that this expenditure is permissible under Regulation 14(3)(ix) of

2014 Tariff Regulations, and has been erroneously disallowed by the Commission on the ground that it is in the nature of O&M.

26. On behalf of the respondents, it is contended that the prior approval of the Commission and the consent of beneficiaries was not obtained by the appellant before incurring such expenditure and even otherwise also, the appellant would get compensated by saving in O&M expenditure and repairs after getting the said work done. It is argued that said expenditure is not covered under Regulation 14 of 2014 Tariff Regulations and has been rightly disallowed by the Commission.

27. A bare reading of Regulation 14(3)(ix) of 2014 Tariff Regulations reveals that any expenditure incurred by a transmission licensee after the cutoff date which had become necessary for successful and efficient operation of transmission system may be allowed by the Commission subject to prudence check. In the instant case, it is the contention of the appellant that silicon quoting of high voltage insulators had become essential for maintaining the operational reliability and efficiency of the transmission system particularly in the corrosive coastal environment where the appellant's HVDC lines are located. Therefore, it was incumbent upon the Commission to conduct a

prudence check to ascertain whether such expenditure had become actually essential for the appellant for efficient operation of the transmission system. Ironically, no such exercise appears to have been conducted by the Commission. We are unable to countenance the view of the Commission that such an expenditure is squarely within the ambit of O&M expenses. We have already extracted hereinabove Regulation 3(42) of 2014 Tariff Regulations which define O&M expenses. The expenditure on silicon paint coating on high voltage insulators cannot be taken to be expenditure towards normal / regular operation and maintenance of the transmission line or any part thereof. It is manifest that the appellant was constrained to carryout silicon painting in its HVDC sub-station equipment as it has been facing issues of corrosion and consequent failures of insulators which was impeding the efficient operation of the transmission system. Therefore, we set aside the findings of the Commission on this issue and allow the claim of the appellant in this regard. However, it would be subject to the prudence check as to the admissibility as per the documents submitted / to be submitted by the appellant. This exercise shall be completed by the Commission within one month from the date of this judgment.

(iii) Installation of Security System and (iv) Emergency restoration system:

28. So far as the expenditure incurred by the appellant for installation of security system and emergency restoration system is concerned, we are unable to accept the view of the Commission that these are in the nature of O&M expenses. The contention on behalf of the appellant that these expenditures had become necessary for efficient operation of the transmission system in view of regular incidents of thefts that led to frequent outages / tripping of transmission lines, appears to be plausible and can not be rejected, outrightly. It is also contended that appellant's efforts to maintain the security and integrity of the transmission lines through conventional means such as deployment of security personnel proved ineffective and system's credibility as well as efficiency was continuously compromised. We do not find any reason to disbelieve these contentions of the appellant. Therefore, we are of the considered opinion that expenditure under these two heads had become essential for the appellant to maintain continuous and efficient operation of the transmission systems. The Commission has grossly erred in disallowing the expenditure under these two heads and therefore, we set aside the findings of the Commission in this regard. We allow the claims of the appellant under these two heads subject to prudence check to be

conducted by the Commission within one month from the date of this judgment.

29. We may also note that an argument was raised on behalf of the respondents to the effect that the appellant had not taken prior approval of the Commission / Regional power Committee (RPC) and the consent of the beneficiaries before incurring the expenditure under these heads and therefore, same have been rightly disallowed by the Commission. The argument has been noted only to be rejected. It is for the reason that there is nothing in the entire regulation 14 or in any other regulation / sub-regulation of 2014 Tariff Regulations to show that the appellant was required to obtain such prior approval of Commission / RPC or consent of beneficiaries before implementing these works. What Regulation 14 envisages is that the Commission is authorized to approve any capital expenditure incurred by a generating station or a transmission system after cutoff date under the heads enumerated therein, subject to prudence check. Therefore, there are only two conditions upon fulfilment of which any capital expenditure incurred after the cutoff date can be allowed by the Commission and these are: -

- (i) The expenditure shall be on any count as enumerated in sub-regulation 3 of Regulation 14; and

- (ii) It should pass the prudence check to be conducted by the Commission.

30. Therefore, once any capital expenditure incurred by a transmission system after the cutoff date falls within the heads enumerated in sub-regulation 3 of Regulation 14 and passes the prudence check conducted by the Commission, same has to be allowed. There is no requirement for any prior approval of the Commission / RPC or prior consent from the beneficiaries for approval of such additional capital expenditure.

(v) Replacement of porcelain insulators:

31. The claim of the appellant under this head also has been rejected by the Commission on the ground that the appellant had not sought approval of RPC and consent of the beneficiaries for replacement of existing insulators. We have already noted hereinabove that Regulation 14 of 2014 Tariff Regulation nowhere stipulates that the consent of beneficiaries or the approval of RPC is required prior to carrying out any additional expenditure after the cutoff date. Therefore, we set aside the findings of the Commission on this count and allow the claim of the appellant under this head subject to the prudence check as to the admissibility as per the documents submitted /

to be submitted by the appellant. This exercise shall be completed by the Commission within one month from the date of this judgment.

(vi) Expenditure towards installation of Automatic Power Factor Correction (APCF) Panel

32. The claim of the appellant under this head has been rejected by the Commission on the ground that the appellant did not submit test reports or certificate from the Original Equipment Manufacturer (OEM) to support its claim.

33. It is submitted on behalf of the appellant that there is no such requirement under Regulation 14(3)(ix) of 2014 Tariff Regulations to submit test reports or OEM recommendations in cases where the technology has become obsolete and equipment upgrades are necessary for successful operation of the transmission system. It is argued that the appellant was facing issue of low power factor which gave rise to higher current and excessive heat generation thereby damaging the equipment or shortening its life. It is submitted that in order to improve the power factor, it was decided to install APFC system which had become very essential to mitigate. Operational inefficiency caused by low power factor.

34. Even though we tend to agree with the contentions of the appellant that installation of APFC system had become essential for smooth functioning of the transmission system yet we find that in view of sub regulation (vii) of Regulation 14, it was incumbent upon the appellant to substantiate its claim under this count with documentary evidence like test report or OEM certificate. Further, the Commission was within its right and competence during prudence check to call for test reports as well as OEM certificate from appellant. Nothing has been brought to our knowledge on behalf of the appellant which prevented the appellant from submitting the test reports and OEM certificate to the Commission. Hence, we do not find any good ground to interfere in the findings of the Commission on this issue and hereby affirm the same.

Asset-II

(i) Expenses for Installation of Security System

35. We have already held in Paragraph No.28 hereinabove that the expenditure under the said head had become essential for the appellant to maintain continuous and efficient operation of the transmission system and it

does not come within the ambit of O&M expenses. Therefore, we set aside the findings of the Commission under this head and allow the claim of the appellant subject to the prudence check as to the admissibility as per the documents submitted / to be submitted by the appellant. This exercise shall be completed by the Commission within one month from the date of this judgment.

(II) Replacement of Battery Bank

36. The commission has disallowed the claim of the appellant on the count citing the absence of test reports or recommendation from OEM.

37. It is argued on behalf of the appellant that replacement of the Battery Bank had become essential to maintain the reliability of the transmission system as the existing Battery Bank had completed its operational life and had started exhibiting failures. It is argued that the expenditure on replacement of Battery Bank is fully justified and covered under Regulation 14(3)(ix) of 2014 Tariff Regulations and its disallowance by the Commission on the ground of non-submission of test reports or OEM recommendations is unfounded.

38. Even though the replacement of existing Battery Bank had become essential for smooth operation of the transmission system, as contended by the appellant, yet in view of sub-regulation (vii) of Regulation 14, it was incumbent upon the appellant to substantiate its claim under this head with documentary evidence like test report or OEM recommendation. Further, the Commission was within its right and competence during the prudence check to call for such test reports as well as OEM recommendation from them. Since the appellant has not provided test reports or OEM recommendations to the Commission, we do not find any ground to interfere in the findings of the Commission on this issue and hereby affirm the same.

(iii) Upgradation of Power Line Carrier Communication (PLCC)

39. The Commission has rejected the claim of the appellant under this head as the appellant did not submit the approval of RPC. We have already head in Para Nos.29 & 30 hereinabove that 2014 Tariff Regulations nowhere stipulate that approval of RPC is required prior to carrying out any additional expenditure after the cutoff date. Therefore, we set aside the findings of the Commission on this issue and allow the claim of the appellant subject to

prudence check as to the admissibility as per the documents submitted / to be submitted by the appellant. This exercise shall be completed by the Commission within one month from the date of this judgment.

(iv) Liabilities to meet award of arbitration for Land at Sami.

40. It is argued on behalf of the appellant that it had paid Rs. 27,00,000/- (Rupees Twenty-Seven Lakhs) as part of settlement charges for purchase of land measuring 1580 sq. meters for 400 kV Switching Station, Sami. It is submitted that the payment was made in compliance with the order of court as it was a court-mandated settlement and, therefore, such payment is squarely covered under Regulation 14(3)(i) of 2014 Tariff Regulations.

41. The Commission has rejected the appellants claim under this head on the ground that the appellant did not submit any documents in support thereof. However, it is submitted on behalf of the appellant that the Commission never asked for any document from the appellant in support of such claim.

42. In this view of the matter, we remand the claim of the appellant under this head to the Commission to be decided afresh after directing the appellant to submit requisite documents in support of the claim. We direct that the

Commission shall pass a fresh decision on this claim of the appellant within two months from the date of this judgment.

(v) Expenditure towards change of possession of Land.

43. The appellant had claimed additional capital expenditure in the amount of Rs.22,00,000/- (Rupees twenty-two lakh) towards change of ownership of some portion of the land which was earlier not in its possession. The claim has been disallowed by the Commission citing non-submission of any documentary evidence in support thereof.

44. It is argued on behalf of the appellant that the documentary evidence regarding change of ownership of the land and the expenditure incurred thereupon are not available with the appellant and therefore the same could not be submitted to the Commission. This appears to be a bald assertion by the appellant which is not only vague but also unbelievable. It is nowhere explained by the appellant as to what happened to the documents prepared regarding the change of ownership of the portion of land in question and the payment made by it for the same. We do not find any infirmity in the decision of the Commission on this claim of the appellant. However, we grant one more opportunity to the appellant to submit documents in support of this claim

to the Commission within two weeks from the date of this judgment after which the Commission shall decide such claim afresh within four weeks.

(vi) Expenditure towards emergency restoration system.

45. The Commission has rejected the claim of the appellant under this head on the ground that it is in the nature of O&M and not allowable under Regulation 14(3)(ix). We have already held in Para No.28 hereinabove that expenditure towards emergency restoration system had become necessary for the appellant for efficient operation of the transmission system and expenditure towards the same is not in the nature of O&M. Therefore, we allow the claim of the appellant under this head subject to prudence check as to the admissibility as per the documents submitted / to be submitted by the appellant. This exercise shall be completed by the Commission within one month from the date of this judgment.

Issue No.3: Disallowance of actual rate of interest on long-term loan for 2014-2019 & 2019-2024 control period.

46. The issue relates to the disallowance of interest rate by the Commission on the Inter-Corporate Deposit (“ICD”) loan availed by the appellant for the

calculation of the Weighted Average Rate of Interest (“WAROI”) on the actual loan portfolio for FY 2015-16 to FY 2018-19 and the 2019-2024 control period. The disallowance has been on the ground that the appellant should have disclosed the ICD loan agreement in previous Petition No. 146/TT/2016, which was filed for tariff determination for the 2014-19 tariff period. The Commission also found the justification given by the appellant for securing ICD loan from a group company rather than from a bank or financial institution unconvincing. We extract the findings of the Commission on this issue as contained in the impugned order, hereinbelow: -

“51. We have considered the submissions of the Petitioner and observe that the Weighted Average Rate of Interest (WAROI) claimed by the Petitioner for computing IOL for transmission assets for the period 2015-16 to 2018-19 is in the range of 12.22% to 14.20%. It is also observed that the Petitioner has availed ICD from its group company instead of taking loan from bank or any other financial institutions. The Petitioner has furnished the copy of ICD loan agreement executed with group company which reveals that the said agreement was executed on

31.7.2015. Further, the Petitioner had filed Petition No. 146/TT/2016 for determination of tariff for 2014-19 tariff period for the transmission assets on 9.8.2016. However, the Petitioner had not disclosed this arrangement of availing ICD loan from group company viz. Adani Transmission Limited while claiming the tariff for 2014-19 tariff period in Petition No. 146/TT/2016. The Petitioner now in the instant true-up petition has disclosed this ICD loan agreement executed on 31.7.2015. The Petitioner should have brought to the notice of the Commission this ICD loan agreement in Petition No. 146/TT/2016, filed for determination of tariff for 2014-19 tariff period for the instant assets. Further, the submissions/justifications made for availing ICD loan from group company viz. Adani Transmission Limited instead of any bank or any other financial institutions in the instant true-up petition by the Petitioner does not appear convincing. Therefore, WAROI of 12.22% (the lowest WAROI claimed among the 5 years of 2014-19 tariff period) has been considered for trueing up

of IOL for the period 2015-16 to 2018-19 for the transmission assets.

....

105. We have considered the submission of the Petitioner. As discussed earlier in this order, WAROI of 12.22% has been considered for truing up of tariff from 2015-16 to 2018-19. The same has been considered as WAROI for computing IOL for 2019-24 tariff period for the transmission assets. IOL considered for the transmission assets is as follows:

...”

47. Learned counsel for the appellant submitted that the Commission has erred in calculating the interest on the loan using the lowest WAROI among the 5 years of the 2014-19 tariff period and adopting the same principle for 2019-24 control period. This is not the requirement under the applicable regulations i.e. Regulation 26(5) of 2014 Tariff Regulations and Regulation 32(5) of 2019 Tariff Regulations. He would submit that these regulations clearly provide for WAROI is to be computed on the basis of actual loan portfolio during the concerned year and nowhere is there a stipulation

requiring the consideration of lowest WAROI for the entire tariff period. It is argued that the appellant had calculated the interest on the loan for 2014-19 tariff period according to Regulation 26 read with Regulation 19(1) of 2014 Tariff Regulations and for the 2019-24 tariff period as per Regulation 32 of 2019 Tariff Regulations. A table has been given in the Written Submissions filed on behalf of the appellant showcasing the details of the WAROI of actual claim made by appellant as contrasted with the loan as allowed by the Commission. The table is reproduced hereinbelow: -

“Control Period 2014-19:

<i>Particulars</i>	<i>FY 2016-17</i>		<i>FY 2017-18</i>		<i>FY 2018-19</i>	
	<i>Claimed</i>	<i>Approved</i>	<i>Claimed</i>	<i>Approved</i>	<i>Claimed</i>	<i>Approved</i>
<i>WAROI</i>	14.20%	12.22%	13.25%	12.22%	13.25%	12.22%

Control Period 2019-24:

<i>Particulars</i>	<i>FY 2019-20</i>		<i>FY 2020-21</i>		<i>FY 2021-22</i>		<i>FY 2022-23</i>		<i>FY 2023-24</i>	
	<i>Claimed</i>	<i>Approved</i>	<i>Claimed</i>	<i>Approved</i>	<i>Claimed</i>	<i>Approved</i>	<i>Claimed</i>	<i>Approved</i>	<i>Claimed</i>	<i>Approved</i>
<i>WAROI</i>	13.25%	12.22%	13.25%	12.22%	13.25%	12.22%	13.25%	12.22%	13.25%	12.22%

”

48. It is further argued that the petition No.146/TT/2016 was filed for the determination of tariff for the period from FY 2014-15 to FY 2018-19 and at

the time of filing of the same, the appellant was required to submit the details on provisional basis and accordingly the appellant had submitted details of WAROI loan portfolio in the said petition on provisional basis for these Financial Years. It is submitted that as per 2014 Tariff Regulations appellant was required to submit the details of actuals for truing-up for these FYs and therefore the actual details were submitted in the instant petition filed for truing-up.

49. The learned counsel would further argue that the 2014 and 2019 Tariff Regulations only provide for consideration of WAROI of actual loan portfolio which would include ICD and these regulations do not differentiate as to whether the loan is taken from public sector financial institutions or private sector financial institutions or group companies. It is further pointed out by the learned counsel that ICD loan was carrying interest of 12.5% which was increased to 13.25% and was availed from the holding company for the purpose of refinancing the existing loan carrying higher interest rate of 13.5% and thus resulted in net savings which is permissible under 2014 and 2019 Tariff Regulations. It is submitted that appellant had explored the possibility of availing loan through various other lenders but they were not willing to make finances available for replacement of loan at better rates. Thus, according to

learned counsel, the Commission has erred in observing that the justification given by the appellant for availing ICD loan from group company namely Adani Transmission Limited does not appear convincing.

50. In support of his submissions, the learned counsel cited judgment of this Tribunal dated 28.11.2022 in Maharashtra Eastern Grid Power Transmission Company Limited v. Maharashtra Electricity Regulatory Commission (2022) SCC OnLine APTEL 121, in which it has been held that the interest on the basis of the actual loan portfolio also includes loan availed through ICD agreement.

51. On behalf of respondent No.10 there is no serious contest to the claims of the appellant under this head as well as to the applicability of judgment dated 28.11.2022 of this Tribunal in the case of Maharashtra Eastern Grid Power Transmission Company Limited (supra). However, on behalf of respondent No.11, it is argued that the said judgment is not applicable for the reason that same was rendered in the context of provisional tariff whereas the present case relates to truing up of the tariff. It is submitted that truing-up exercise is not an opportunity for the Central Commission or State Commission to rethink de-novo the basic principles and issues involved in the

initial projection of the revenue requirement of the licensee. It is further argued that the Inter Corporate Deposit is not a loan and hence the parameters set forth for taking and availing loan in the tariff regulations cannot be applied to such deposits.

52. We have considered the rival submissions of the learned counsels on this issue.

53. Regulations 19(1) and 26 of 2014 Tariff Regulations are relevant for our discussion on this issue and are extracted hereinbelow: -

*“19. **Debt-Equity Ratio:** (1) For a project declared under commercial operation on or after 1.4.2014, the debt equity ratio would be considered as 70:30 as on COD. If the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan:*

Provided that:

(i) where equity actually deployed is less than 30% of the capital cost, actual equity shall be considered for determination of tariff:

(ii) the equity invested in foreign currency shall be designated in Indian rupees on the date of each investment:

(iii) any grant obtained for the execution of the project shall not be considered as a part of capital structure for the purpose of debt : equity ratio.

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

...

26. Interest on loan capital: *(1) The loans arrived at in the manner indicated in regulation 19 shall be considered as gross normative loan for calculation of interest on loan.*

(2) The normative loan outstanding as on 1.4.2014 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2014 from the gross normative loan.

(3) The repayment for each of the year of the tariff period 2014-19 shall be deemed to be equal to the depreciation allowed for the corresponding year/period. In case of decapitalization of assets, the repayment shall be adjusted by taking into account cumulative repayment on a pro rata basis and the adjustment should not exceed cumulative depreciation recovered upto the date of decapitalisation of such asset.

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

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

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

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

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

(7) The generating company or the transmission licensee, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in

that event the costs associated with such re-financing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 2:1.

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

(9) In case of dispute, any of the parties may make an application in accordance with the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, as amended from time to time, including statutory re-enactment thereof for settlement of the dispute:

Provided that the beneficiaries or the long term transmission customers /DICs shall not withhold any payment on account of the interest claimed by the generating company or the transmission licensee during the pendency of any dispute arising out of re-financing of loan.”

54. Similarly, Regulation 32 of 2019 Tariff Regulations is also material for our consideration and is quoted hereinbelow: -

“32. Interest on loan capital:

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

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

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

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

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

Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered; Provided further that if the generating station or the transmission system, as the case may be, does not have actual loan, then the weighted average rate of interest of the generating company or the transmission licensee as a whole shall be considered.

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

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

55. Regulation 26(1) read along with Regulation 19(1) of 2014 Tariff Regulations provides that 70% of capital cost of project is to be considered as normative loan for calculation of interest on loan. Regulation 26(2) of these Regulations provides that normative loan outstanding as on 01.04.2014 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.03.2014 from the gross normative loan. Regulation 26(3) of the 2014 Tariff Regulations states that the repayment during each year of the Control Period shall be deemed to be equal to the depreciation allowed for that year. Regulation 26(5) states that the rate of interest shall be the WAROI calculated on the basis of the actual loan portfolio after providing appropriate accounting adjustment for the interest capitalized.

56. Regulation 32(1), (2), (3), (4) and (5) of 2019 Tariff Regulations is also on the same lines.

57. We do not find anything in any of these Regulations to support the calculation of the interest on loan by the Commission using the lowest WAROI amongst the 5 years of 2014-2019 tariff period and 2019-2024 control period. These Regulations clearly provide that Weighted Average Rate should be calculated on the basis of actual loan portfolio which implies that the existing loan portfolio needs to be considered. We find that ironically the Central Commission in subsequent order dated 08.01.2022 passed in petition No.408/GT/2020 titled Maithon Power Ltd. v. Tata Power Delhi Distribution Limited & Ors. has itself held that WAROI should be calculated on the basis of actual loan portfolio. We reproduce the relevant portion of the said order hereinbelow:

“124. The Petitioner has re-financed the long-term loan to reduce the interest burden on the beneficiaries. For the purpose of calculation of interest on normative loan, the Petitioner has considered interest rate of original loan, and not the new rate after refinancing. The Petitioner has submitted that in case of refinancing, the application of Regulation 26(5) of the 2014 Tariff Regulations would require the computation of ‘weighted average rate of

interest' using the actual loan portfolio/ schedule, along with interest rate that would have been applicable for original loan term. In our view, Regulation 26(5) of the 2014 Tariff Regulations provides that the weighted average rate should be calculated on the basis of actual loan portfolio, which implies the consideration of the 'existing loan' portfolio. As such, the applicable rate is the rate after such refinancing of loan. This was decided by the Commission while working out the interest on normative loan in order dated 26.12.2017 in Petition No.152/GT/2015 and subsequently in Commission's order dated 25.4.2019 in Petition No.16/RP/2018 filed by the Petitioner. ...

(Emphasis supplied)

58. We also find that this Tribunal was confronted with an identical issue in appeal Nos.18/2019 and 173/2022 titled Maharashtra Eastern Grid Power Transmission Company Limited v. Maharashtra Electricity Regulatory Commission (2022) SCC OnLine APTEL 121 decided on 28.11.2022 and it was held as under: -

“50. As seen from the above, there is no requirement for a transmission licensee to get its loan agreements approved by MERC before availing a loan facility, as such, there was no occasion for the Appellant to approach MERC for seeking approval to the conditions prescribed in the ICD Agreement.

51. Accordingly, are not convinced with the contention of MERC that the Appellant ought to have informed MERC regarding the terms of the ICD Agreement.

52. The observation of MERC that the Appellant has not acted diligently in its efforts to refinance its loan from the open market, we observe that ICD interest rate was lesser than refinancing rate of interest in open market from the documents as placed before us.

53. The Appellant placed before us the letter dated 04.02.2016 received from SBI wherein the rate of refinancing of debt is claimed as 13.5% to 14%, also as per PFC rate schedule dated 07.11.2013, the rate of interest for

finance to Private Sector Borrowings to Transmission Sector entities for 3 years was 13.50%. Additionally, advanced Rs. 100 Crore sanctioned by HDFC Bank vide its letter dated 07.10.2017 indicted the applicable rate of interest as 13.25%.

54. As submitted by the Appellant, the interest rate for ICD as taken from ATL was initially fixed at 12.50% p.a., which was later increased to 13.25% p.a., in terms of ICD Agreement as there was delay in obtaining regulatory approvals which resulted into increased risk, the rate of interest would have remained at 12.50% p.a. if MERC would have approved the capital cost etc. Even otherwise, when the interest rate for the ICD was enhanced to 13.25%, the same was still less than 13.50% p.a. which was the earlier rate of interest for the loan availed from SBI.

55. As above, we cannot agree with the observation recorded by MERC that the Appellant made no efforts to refinance its loan from the open market as the arguments

made and the documents placed before us, it is clear that the rate of interest offered in the ICD Agreement was lesser than the rate of interest being offered by other lenders.

...

58. In the present case, the relevant Regulations provide for considering the actual weightage average rate of interest computed on the basis of actual loan portfolio at the time of trying-up and is applicable for all types of long term loans as the Regulations do not differentiate loans obtained from public sector or private sector or ICDs, also there is no restriction upon the licensee under the regulatory framework to obtain long term finance from group entity.

59. Therefore, the claim of the Appellant that the interest on the basis of the actual loan portfolio of the Appellant which also includes the loan availed through ICD Agreement at the rate of 13.25% p.a. in line with the relevant Regulations has merit and is allowed.”

59. The legal principle enunciated by this Tribunal in the above noted judgment is squarely applicable to the instant case also. We do not find any

force in the argument put forward on behalf of the 11th respondent that the said judgment is not applicable for the reason that the same was rendered in the context of provisional tariff whereas the present case relates to the truing up of the tariff. Law laid down by this Tribunal is applicable and binding upon the Commission not only in the petitions relating to provisional tariff but also has to be applied in all the petitions where the situation demands and the issue regarding the treatment to be given to Inter Corporate Deposit loan arises. It would be preposterous to say that a legal principle laid down by this Tribunal in a judgment related to provisional tariff petition has to be applied only to the petitions for provisional tariff and cannot be applied to the petitions for truing up of the tariff.

60. Another argument raised on behalf of respondent No.11 that the principles applied at the time of disposing off provisional tariff petition have to be applied at the time of truing up of the tariff also and the truing up exercise does not permit the Commission to rethink de-novo the basic principles as well as issues involved in the initial revenue requirement projections of the licensee, is also found devoid of any merit. In case the Commission, at the time of truing up exercise, finds that any legal principle laid down by this Tribunal or by the Hon'ble Supreme Court has been ignored at the time of

determining Annual Revenue Requirement projection of the licensee, the Commission is duty bound to rectify the error by applying correct legal principle at the time of truing up stage. Any patent error in the provisional tariff order cannot be perpetuated and it is bounden duty of the Commission to rectify the error by applying correct legal principle at the truing up stage.

61. Further, we are unable to accept the findings of the Commission that the justification given by the appellant for securing ICD loan from a group company rather than from a bank or financial institution is unconvincing. Undisputably, the ICD loan was carrying interest @12.5% and it was later on increased to 13.25% which was less than the interest rate of 13.5% payable on the existing loan. Manifestly, the rate of interest on the ICD loan was lower than the rate of interest payable on the existing loan by the appellant and therefore, we cannot agree to the observation of the Commission that the justification given by appellant for securing ICD loan from a group company is not convincing.

62. Hence, we set aside the findings of the Commission on this issue and allow the claim of the appellant by holding that the Weighted Average Rate of Interest (WAROI) shall be calculated on the basis of actual loan portfolio of the appellant which also includes the loan availed through ICD.

**Issue No.4: Disallowance of Depreciation for FY 2021-22 to FY 2023-24
for Asset-II.**

63. It is fairly submitted on behalf of the appellant that the issue regarding reduction of loan outstanding by cumulative depreciation till the date of license is pending adjudication before this Tribunal in RP No.3/2018 as well as before the Hon'ble Supreme Court in Civil Appeal with Diary No.4551/2018. Accordingly, we find it appropriate not to record any findings on this issue and leave it for adjudication in the above noted petition as well as civil appeal which decision shall be binding upon the parties.

**Issue No.5: Disallowance of Operations and Maintenance ("O&M")
expenses for the communication system for FY 2019-20 to FY 2023-24.**

64. The claim of the appellant under this head has been disallowed by the Commission vide impugned order on the ground that Power Line Carrier Communication (PLCC) equipment is a part of sub-station and since O&M for the sub-station has already been provided, separate O&M expenses cannot be granted for PLCC equipment.

65. Regulation 35(4) of 2019 Regulations is material on this aspect and is extracted hereinbelow: -

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

66. This regulation clearly provides for separate O&M expenses for communication to be calculated at 2% of the original projected cost related to such communication system. However, the transmission licensee is required to submit the actual O&M expenses for truing up. The observation of the Commission that PLCC equipment has been considered as part of sub-station for which O&M expenses have already been granted, runs in the teeth of these regulations and thus, cannot be accepted. Therefore, we set aside the findings of the Commission with the direction that the O&M expenses for communication system be calculated separately in terms of the above noted Regulation 35(4) of 2019 Tariff Regulations. This exercise shall be completed by the Commission within one month from the date of this judgment.

Issue No.6: Disallowance of O&M expenses for Fixed Series Compensator (FSC) for FY 2019-20 to FY 2023-24.

67. Proviso(v) attached to Regulation 35(3)(a) of 2019 Tariff Regulations is relevant in this regard and is quoted hereinbelow: -

“Provided further that:

(i) the operation and maintenance expenses for new HVDC bi-pole schemes commissioned after 1.4.2019 for a particular year shall be allowed pro-rata on the basis of normative rate of operation and maintenance expenses of similar HVDC bi-pole scheme for the corresponding year of the tariff period;

(ii) the O&M expenses norms for HVDC bi-pole line shall be considered as Double Circuit quad AC line;

(iii) the O&M expenses of ± 500 kV Mundra-Mohindergarh HVDC bipole scheme (2000 MW) shall be allowed as worked out by multiplying 0.80 of the normative O&M expenses for ± 500 kV Talchar-Kolar HVDC bi-pole scheme (2000 MW);

(iv) the O&M expenses of ± 800 kV Champa-Kurukshetra HVDC bi-pole scheme (3000 MW) shall be on the basis of the normative O&M expenses for ± 800 kV, Bishwanath-Agra HVDC bi-pole scheme;

(v) the O&M expenses of ± 800 kV, Alipurduar-Agra HVDC bi-pole scheme (3000 MW) shall be allowed as worked out by multiplying 0.80 of the normative O&M expenses for ± 800 kV, Bishwanath-Agra HVDC bi-pole scheme; and

(v) the O&M expenses of Static Synchronous Compensator and Static Var Compensator shall be worked at 1.5% of original project cost as on commercial operation which shall be escalated at the rate of 3.51% to work out the O&M expenses during the tariff period. The O&M expenses of Static Synchronous Compensator and Static Var Compensator, if required, may be reviewed after three years.

(b) The total allowable operation and maintenance expenses for the transmission system shall be calculated by multiplying the number of sub-station bays, transformer

capacity of the transformer (in MVA) and km of line length with the applicable norms for the operation and maintenance expenses per bay, per MVA and per km respectively.

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

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

68. As per these regulations, O&M expenses for Static Synchronous Compensator and Static Var Compensator have to be worked at 1.5% of the original project cost as on the commercial operation date of the project which shall be enhanced to 3.51% to work out the O&M expenses during the tariff period.

69. The Commission has disallowed the claim of the appellant under this head on the ground that the appellant did not submit the details of capital cost as on commercial operation date of the project.

70. It is argued by the learned counsel for the appellant that during the pendency of the petition, the Commission had been asking additional information from it from time to time which was duly furnished by the appellant but the Commission never asked any details pertaining to capital cost of the project.

71. We feel that demand of justice would be met in case one opportunity is granted to the appellant to furnish the requisite details to the Commission for calculating O&M expenses for Fixed Series Compensator. Therefore, the issue is remanded back to the Commission for fresh consideration. The appellant shall furnish the requisite details of the capital cost of the project as on commercial operation date to the Commission within two weeks from the date of this judgment, and the Commission shall decide the issue within two weeks thereafter.

Conclusion:

72. To sum-up, we reiterate our findings in brief on all the six issues hereunder: -

Sl. No.	Issue No. / Issue	Sub-issues	Our decision
1.	<p><u>Issue Nos.1&2: -</u></p> <p>Disallowance of additional capital expenditure for the FY 2016-17 to FY 2018-19 and FY 2019-20 to FY 2023-24.</p>	<p><u>Asset-I</u></p> <p>Truck mounted hotline washing machine for insulators</p> <hr/> <p>Silicon Paint Coating on High Voltage Insulators</p> <hr/> <p>Installation of Security System</p> <hr/> <p>Emergency restoration system</p> <hr/> <p>Replacement of porcelain insulators</p> <hr/> <p>Expenditure towards installation of Automatic Power Factor Correction (APCF) Panel</p> <hr/> <p><u>Asset-II</u></p> <p>Expenses for Installation of Security System</p>	<p>The claim of the appellant is allowed subject to the prudence check as to the admissibility as per the documents submitted / to be submitted by the appellant. This exercise shall be completed by the Commission within one month from the date of this judgment.</p> <hr/> <p>The findings of the Commission on this issue are affirmed.</p> <hr/> <p>The claim of the appellant is allowed subject to the prudence check as to the admissibility as per the documents submitted / to be submitted by the appellant.</p>

			This exercise shall be completed by the Commission within one month from the date of this judgment.
		Replacement of Battery Bank	The findings of the Commission on this issue are affirmed.
		Upgradation of Power Line Carrier Communication (PLCC)	The claim of the appellant is allowed subject to the prudence check as to the admissibility as per the documents submitted / to be submitted by the appellant. This exercise shall be completed by the Commission within one month from the date of this judgment.
		Liabilities to meet award of arbitration for Land at Sami.	We remand the claim of the appellant to be decided afresh within two months from the date of this judgment, after directing the appellant to submit requisite documents in support of the claim.

		Expenditure towards change of possession of Land.	We grant one more opportunity to the appellant to submit documents in support of this claim to the Commission within two weeks from the date of this judgment after which the Commission shall decide such claim afresh within four weeks.
		Expenditure towards emergency restoration system.	We allow the claim of the appellant under this head subject to prudence check as to the admissibility as per the documents submitted / to be submitted by the appellant. This exercise shall be completed by the Commission within one month from the date of this judgment.
2.	<u>Issue No.3:-</u> Disallowance of actual rate of interest on long-term loan for 2014-	---	We set aside the findings of the Commission and allow the claim of the appellant by holding that the Weighted Average Rate of Interest (WAROI) shall be calculated on the basis of actual loan portfolio of the appellant which

	2019 & 2019-2024 control period.		also includes the loan availed through ICD.
3.	<u>Issue No.4:-</u> Disallowance of Depreciation for FY 2021-22 to FY 2023-24 for Asset-II.	---	We do not record any findings on this issue since the same is pending adjudication before this Tribunal in review proceeding and Hon'ble Supreme Court in a Civil Appeal. The decision therein shall be binding upon the parties.
4.	<u>Issue No.5:-</u> Disallowance of Operations and Maintenance ("O&M") expenses for the communication system for FY 2019-20 to FY 2023-24.	---	We set aside the findings of the Commission with the direction that the O&M expenses for communication system be calculated separately in terms of the Regulation 35(4) of 2019 Tariff Regulations within one month from the date of this judgment.

5.	<p><u>Issue No.6:-</u></p> <p>Disallowance of O&M expenses for Fixed Series Compensator (FSC) for FY 2019-20 to FY 2023-24.</p>	---	<p>The issue is remanded back to the Commission for fresh consideration. The appellant shall furnish the requisite details of the capital cost of the project as on commercial operation date to the Commission within two weeks from the date of this judgment, and the Commission shall decide the issue within two weeks thereafter.</p>
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73. Needless to add here that the timelines given hereinabove shall be followed by the Commission.

74. The appeal stands disposed in above terms.

Pronounced in the open court on this the 18th day of November, 2024.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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REPORTABLE / NON-REPORTABLE

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