

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**APPEAL No. 46 of 2021**

**Dated:     24.06.2025**

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

**IN THE MATTER OF:**

Power Grid Corporation of India Limited  
B-9, Qutab Institutional Area,  
Katawaria Sarai, New Delhi-110016.

**....Appellant**

Versus

1.    Central Electricity Regulatory Commission  
      Through its Secretary,  
      3<sup>rd</sup> and 4<sup>th</sup> Floor, Chanderlok Building  
      36, Janpath, New Delhi – 110001.
2.    Rajasthan Rajya Vidyut Prasaran Nigam Ltd.  
      Through Chairman  
      Vidyut Bhawan, Vidyut Marg, Jaipur-302005.
3.    Ajmer Vidyut Vitran Nigam Limited  
      Through its Managing Director,  
      132 kV GSSRVPNL, Sub-Station Building,  
      Caligiri Road, Malviya Nagar,  
      Jaipur-302017, Rajasthan.
4.    Jaipur Vidyut Vitran Nigam Limited  
      Through its Managing Director  
      132 kV GSSRVPNL, Sub-Station Building,  
      Caligiri Road, Malviya Nagar,  
      Jaipur-302017, Rajasthan.
5.    Jodhpur Vidyut Vitran Nigam Limited  
      Through its Managing Director  
      132 kV GSSRVPNL, Sub-Station Building,  
      Caligiri Road, Malviya Nagar,

Jaipur-302017, Rajasthan.

6. Himachal Pradesh State Electricity Board Limited  
Through its Chairman  
Vidyut Bhawan, Kumar House Complex Building II  
Shimla-171004.
7. Punjab State Power Corporation Ltd.  
Through its Chief Engineer  
The Mall, Patiala-147001.
8. Haryana Power Purchase Centre,  
Through its S.E. /C & R-1  
Shakti Bhawan, Sector-6,  
Panchkula (Haryana)-134109.
9. Power Development Department,  
Government of Jammu & Kashmir  
Through its Commissioner  
Mini Secretariat, Jammu – 180006.
10. Uttar Pradesh Power Corporation Limited  
(Formerly Uttar Pradesh State Electricity Board)  
Through its Chairman  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow-226001.
11. Delhi Transco Ltd.  
Through its Chairman  
Shakti Sadan, Kotla Road,  
New Delhi-110002.
12. BSES Yamuna Power Ltd.  
Through its CEO,  
BSES Bhawan, Nehru Place,  
New Delhi- 110019.
13. BSES Rajdhani Power Ltd.  
Through its CEO  
BSES Bhawan, Nehru Place,  
New Delhi- 110019.

14. Tata Power Delhi Distribution Limited  
Through its CEO  
33 kV Sub-station Building,  
Hudson Lane, Kingsway Camp,  
North Delhi-110 009.
15. Chandigarh Administration  
Through its Chief Engineer  
Sector-9, Chandigarh – 160009.
16. Uttarakhand Power Corporation Limited  
Through its Managing Director  
Urja Bhawan, Kanwali Road,  
Dehradun – 248001.
17. North Central Railway,  
Through its Chief Electrical Distribution Engineer  
Allahabad – 211012.
18. New Delhi Municipal Council  
Through its Chairman  
Palika Kendra, Sansad Marg,  
New Delhi-110002.

**...Respondents**

Counsel for the Appellant(s) : Mr. Anand K. Ganesan  
Ms. Swapna Seshadri

Counsel for the Respondent(s) : Mr. Rajiv Srivastava  
Ms. Gargi Srivastava for R-10

Mr. Raj Bahadur Sharma  
Mr. Mohit Mudgal  
Mr. Sachin for R-12 & 13

**JUDGEMENT**

**PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER**

1. M/s. Power Grid Corporation of India Limited (“Appellant” or “PGCIL” or “POWERGRID”) has filed the captioned appeal challenging the order dated 28.05.2018 (in short “Impugned Order”) passed by the Central Electricity Regulatory Commission (in short “CERC” or “Central Commission”) in Petition No. 146/MP/2017, filed seeking reimbursements of costs concerning porcelain insulators which had been removed in the Northern Region to be replaced with polymer insulators.

### **Description of Parties**

2. The Appellant, Power Grid Corporation of India Limited, a Government Company engaged in Inter-State Transmission of Electricity and functioning as the Central Transmission Utility under Section 39 of the Electricity Act, 2003, operates under the regulatory oversight of the Central Electricity Regulatory Commission (Respondent No. 1), which also determines its tariff.

3. Respondent No. 1, CERC is the Central Commission under the Electricity Act, 2003, to regulate the tariff of generating companies, inter-state transmission of electricity, etc., inter alia, vested with the powers to resolve the issue raised herein.

4. Respondents Nos. 2 to 18 are the beneficiaries of the Appellant herein.

### **Factual Matrix**

5. The present issue arises due to the replacement of Porcelain Insulators by Polymer Insulators.

6. During winter months, particularly in foggy conditions, the Appellant's 400 kV transmission lines in the Northern Region, especially around the National Capital Region, experienced frequent tripping due to heightened pollution levels, despite regular maintenance.

7. Notably, on 07.03.2008 and 09.03.2008, widespread tripping disrupted power supply to Delhi, adjoining areas, and the Railways. In response, an emergency meeting was held under the chairmanship of the Secretary (Power), Govt of India, attended by senior officials from the Railways, CEA, NTPC, Haryana Government, Power Grid, and Delhi Transco Ltd., wherein it was decided that polymer insulators would replace conventional ones in vulnerable areas.

8. Subsequently, the Central Electricity Authority held a meeting on 30.04.2008, wherein it was resolved to identify the relevant transmission lines for insulator replacement, with the associated costs to be capitalized and recovered through the tariff. A total of 16,44,154 insulators were ultimately replaced.

9. The porcelain insulators, although functional and not defective, were replaced with polymer insulators according to directions issued by the Ministry of Power, Government of India, in consultation with the Chairman of the Central Electricity Authority and the Regional Power Committee. The decision was made in the interest of the power sector to mitigate the impact of pollution-related disruptions.

10. In the absence of such directions, the porcelain insulators would have remained in service for the duration of the transmission assets' useful life. The resulting additional capitalization was thus undertaken at the instance of the beneficiaries and the Ministry of Power. It was further considered that the replaced

porcelain insulators, being in working condition, could be reused in non-polluted areas to ensure optimal utilization of resources.

11. Subsequently, the Appellant filed Petition No. 305 of 2010 before the Central Commission seeking determination of transmission tariff for the period from 01.04.2009 to 31.03.2014 in respect of the expenditure incurred for replacing insulators in pollution and fog-affected stretches of transmission lines in the Northern Region, including the NCR and surrounding areas, with polymer insulators.

12. During the hearing on 30.08.2012 in Petition No. 305 of 2010, the Central Commission proposed a formula whereby the replaced porcelain insulators would be de-capitalized and the new polymer insulators capitalized following the 2009 Tariff Regulations. The de-capitalized porcelain insulators, being in working condition, would be treated as spares and permitted carrying cost on their written down value at the weighted average interest rate of the Appellant's loans until they are redeployed and capitalized.

13. By its Order dated 07.02.2013, the Central Commission accepted this approach. It held that the polymer insulators, being in use and serving the beneficiaries, would be capitalized, whereas the replaced porcelain insulators would be de-capitalized as of the date of replacement, but retained as spares for potential future use in other transmission lines of the Appellant. No depreciation would apply during the interim period between de-capitalization and eventual re-capitalization of the porcelain insulators.

14. However, the Appellant would be entitled to carrying cost on the written down value during this period, calculated at the weighted average rate of interest on its

loans. This approach was deemed to balance the interests of both the Appellant and the beneficiaries.

15. The Order dated 07.02.2013 of the Central Commission did not prescribe any outer time limit for the reutilization of the de-capitalized porcelain insulators. It allowed carrying cost on their written-down value until such time they were redeployed and capitalized.

16. Out of the total 16,44,154 insulators replaced, 14,29,829 were found fit for reuse, with 2,14,325 damaged during the replacement process. Of the reusable insulators, 9,83,984 were utilized by the Appellant in other areas, either for the operation and maintenance of existing transmission lines or in the construction of new transmission lines at their written-down value. Additionally, 59,548 insulators were supplied to M/s Powerlinks Ltd. based on their requirement.

17. Though the substantial number was utilized, since the quantity of dismantled insulators was huge, a certain amount was still unused, as under:

(In Nos.)

<b>Quantity of dismantled insulators</b>	<b>Damaged</b>	<b>Good Insulators</b>	<b>Used within Appellant</b>	<b>Supplied to Powerlinks</b>	<b>Balance Quantity in stock</b>
1644154	214325	1429829	983984	59548	386297

18. The replaced porcelain insulators were progressively utilized by the Appellant up to the financial year 2016–17. Post 31.03.2017, further utilization was deemed unfeasible due to the aging of the stock, rendering it susceptible to

defects, and the evolving policy to exclusively use polymer insulators in new transmission lines in light of rising pollution levels nationwide.

19. Regional Power Committees across various regions, including the Northern Region (as per the meeting held on 27th–28th February 2014, minutes issued on 03.04.2014), resolved that future transmission lines, particularly in plain and pollution-prone areas, would be constructed using polymer insulators only. This consensus was consolidated across regions by 2015–16, precluding continued use of porcelain insulators beyond 31.03.2017.

20. Consequently, the Appellant filed Petition No. 146/MP/2017 on 04.07.2017 before the Central Commission, seeking reimbursement for the costs associated with the 16,44,154 insulators replaced. The claims included:

- a) carrying cost for 14,29,829 insulators up to 31.03.2017 or until the date of their actual utilization, whichever was earlier;
- b) either the carrying cost beyond 31.03.2017 or the written down value for 3,86,297 insulators that remained unutilized; and
- c) the cost of 2,14,325 insulators that were damaged during dismantling and deemed unusable.

21. The Central Commission vide the Impugned Order dated 28.05.2018 partly allowed the claim of the Appellant:

- a) Carrying cost of Utilized and Unmutilated insulators until 31.03.2014;
- b) Written Down Value of Unutilized insulators after application of depreciation until 31.03.2014.
- c) No cost for damaged insulators.



22. Aggrieved by the Order dated 28.05.2018 about the claim not allowed, the Appellant filed a Review Petition being 27/RP/2018 before the Central Commission.

23. The Central Commission vide Order 26.06.2019 rejected the Review sought by the Appellant.

24. Thus, being aggrieved by the Impugned Order dated 28.05.2018 passed by the CERC in the Petition No. 146/MP/2017, the Appellant has preferred the present Appeal.

**Written Submissions of the Appellant, PGCIL**

25. The Appellant submitted that the Appellant, Power Grid Corporation of India Limited, has filed the present Appeal challenging the Order dated 28.05.2018 passed by the Central Electricity Regulatory Commission in Petition No. 146/MP/2017 concerning the reimbursement of costs for replacing porcelain insulators with polymer insulators in the Northern Region.

26. In the Impugned Order, the Central Commission has

- (i) arbitrarily restricted the carrying cost for dismantled insulators up to 31.03.2014 instead of allowing it till their actual re-utilization, which occurred on 31.03.2017,
- (ii) disallowed compensation for the loss incurred on damaged insulators, and

- (iii) erroneously granted only the scrap value for unused insulators as of 31.03.2014 rather than allowing the full depreciated value.

27. The carrying cost and Written Down Value (“WDV”) as claimed in the present Petition and allowed in the Impugned Order are as under:

(Rs. in lakh)			
S.No.	Particulars	Claimed	Allowed
1.	Carrying cost of utilized and unutilized insulators	1764.63#	1282.01*
2.	WDV of damaged insulators	945.64	0.00
3.	WDV of unutilized insulators (Less 5% Scrap Value)	2021.06**	1525.37*
	<b>Total</b>	<b>4731.33</b>	<b>2807.38</b>

\*As on 31.3.2014, \*\*As on 1.1.2010, # As on date of utilization or 31.3.2017, whichever is earlier.

28. By the Impugned Order, the Central Commission has partially allowed certain claims of the Appellant, and submissions regarding the same are made herein.

### ***SUBMISSIONS ON MERIT***

29. Pursuant to the decision taken in the CEA meeting held on 30.04.2008, it was resolved that porcelain insulators on specified transmission lines identified as vulnerable due to high pollution would be replaced with polymer insulators, with the associated costs to be capitalized and recovered through the tariff.

30. In compliance, POWERGRID replaced 16,44,154 no. porcelain insulators ranging from 120 KN to 210 KN on 400 kV transmission lines, as mandated by the Ministry of Power in coordination Chairperson (CEA), and members of the

Regional Power Committee. The replaced insulators, being in good condition, were subsequently redeployed by POWERGRID in the operation and maintenance of existing transmission lines and in the construction of new lines at written-down value.

31. Details of the replaced porcelain insulators out of the total dismantled insulators are as under:

(In nos.)

Quantity of dismantled Insulators	Break Damage	Good Insulators	Used within company	Supplied to Powerlinks	Balance quantity in stock
16,44,154	2,14,325	14,29,829	9,83,984	59,548	3,86,297

32. In the Petition before the Central Commission, POWERGRID submitted the following details of carrying cost for re-utilised insulators, WDV of damaged insulators, and WDV of unutilized insulators, duly supported by an Auditor Certificate dated 09.04.2018 as under:

(Rupees in Lakh)			
Carrying cost of insulators	WDV of insulators damaged during replacement	WDV of unutilized insulators	Total carrying cost and WDV claimed
1764.63*	945.64	2021.06	4731.33

\* Carrying cost of insulators calculated upto 31.3.2017 for utilized, un-utilized and sold to M/s PTL.

*\*\*By that time, approximately 386297 insulators were remaining unused.*

33. In its Order dated 07.02.2013 in Petition No. 305 of 2010, the Central Commission had directed the de-capitalization of replaced porcelain insulators,

permitting POWERGRID to recover carrying costs, being interest on the costs of insulators, until their re-utilization. There was no time restriction imposed for such recovery. Upon actual utilization, the written-down value of the insulators was to be recovered through the tariff, ensuring POWERGRID did not suffer financial loss due to mandatory replacement.

34. The Commission had specifically noted, including in Para 23 of the Order, that POWERGRID's interests were to be protected following the formula outlined in the Record of Proceedings dated 30.08.2012.

35. In Petition No. 146/MP/2017, POWERGRID accordingly calculated the carrying cost by applying interest from the date of dismantling until the date of re-utilization or 31.03.2017, whichever was earlier, resulting in a claim of Rs. 1714.64 lakh.

36. However, the Central Commission, in the Impugned Order, arbitrarily limited the recovery of both carrying cost and written down value only up to 31.03.2014, contrary to its earlier directions. In this regard, the submissions on the issue regarding the disallowances are as under:

***A.RESTRICTION OF CARRYING COST TILL 31.03.2014 (Re-utilised and un-utilised)***

37. The Central Commission, relying on the NRPC meeting held on 27th and 28th February 2014, has erroneously restricted the carrying cost for both re-utilized and unutilized dismantled insulators only until 31.03.2014. In doing so, it misinterpreted the NRPC's recommendation, which merely advised against the use of porcelain insulators in new transmission lines in plain areas of the Northern

Region due to pollution and fog but did not impose a nationwide prohibition on their use.

38. Notably, POWERGRID had already commenced the replacement process in May 2008, following the CEA meeting held on 30.04.2008. Moreover, the Impugned Order itself acknowledges that the replaced porcelain insulators were re-utilized by POWERGRID between December 2009 and March 2016 across various regions.

39. Given that these insulators continued to be used until 31.03.2017, there is no justifiable basis for limiting the carrying cost recovery to 31.03.2014. The NRPC decision applied only to future installations in the Northern Region, and POWERGRID's continued use of the replaced insulators in suitable areas prevented additional tariff burdens on beneficiaries. Thus, the Central Commission's reliance on the NRPC recommendation to deny carrying costs beyond 31.03.2014 is factually and legally flawed.

40. The NRPC meeting did not impose any time limit on the recovery of carrying costs. It merely recommended that future transmission lines in plain areas be constructed using polymer insulators and that existing anti-fog insulators be gradually replaced. POWERGRID had already incurred costs on the replaced porcelain insulators, which had not been fully recovered at the time of their de-capitalization.

41. Despite the acknowledgment in the Impugned Order that the insulators were re-utilized after 31.03.2014, the Central Commission failed to consider this fact and unjustifiably denied carrying cost beyond that date. The NRPC recommendation pertained only to future installations and not to insulators already in use or awaiting

redeployment. Cost recovery occurred only upon re-utilization of the insulators or as a one-time compensation granted in the Impugned Order. Consequently, until recovery, POWERGRID bore the financial burden, and the established legal principle mandates that such carrying costs be allowed for unrecovered investments.

42. Furthermore, if it were accepted that porcelain insulators could not be used after 31.03.2014, the number of unutilized insulators as of that date would have exceeded 386,297. In that case, the cost of these insulators would have been recoverable from 31.03.2014, and POWERGRID would have been entitled to interest on the same from that date.

43. In line with the clear provisions in the Order dated 07.02.2013, carrying cost was a legitimate entitlement for POWERGRID. POWERGRID made every effort to re-utilize the replaced porcelain insulators, and when it became evident that re-utilization beyond 31.03.2017 was not feasible, POWERGRID filed Petition No. 146/MP/2017.

44. The Central Commission failed to recognize that once the insulators were re-utilized, the capital cost (written-down value as of de-capitalization) should be recovered via tariff, as intended to prevent POWERGRID from suffering a loss due to the mandatory replacement. Regarding the objections of UPPCL and BSES Discoms, who argued that carrying costs should be limited to 31.03.2014, it is noteworthy that no objections were raised by any beneficiaries, including those in North India, at any stage. The Central Commission addressed all cost-related concerns in its Order dated 07.02.2013.

45. The Central Commission had acknowledged that POWERGRID had not defaulted with the replacement of insulators, as the 07.02.2013 Order had granted reliefs to POWERGRID. The Commission specifically noted that POWERGRID should not bear any loss for replacing the porcelain insulators, a decision made with beneficiary consent.

46. Additionally, the Commission had considered the beneficiaries' interests, proposed a formula for recovery, and sought comments from all stakeholders before implementing the recovery mechanism for capital costs and carrying costs related to the replaced insulators. The 07.02.2013 Order was not contested by any Respondents, and based on this order, POWERGRID proceeded with the replacement.

47. Therefore, the Respondents cannot now assert that POWERGRID was responsible for the decision to replace the insulators or that there was any understanding preventing POWERGRID from claiming additional costs. Both the 07.02.2013 Order and the Impugned Order reflect this, and the Respondents cannot raise these issues at the appellate stage, as they had not challenged either order previously.

48. The direction for replacing the insulators came from the Ministry of Power and represented a deviation from the established procedure. The issue was discussed in Northern Region Power Committee meetings, where the Respondents were present, and beneficiaries agreed to the replacement. At that time, no objections were raised by the Respondents, contrary to their present claims in the Appeal.

49. Consequently, POWERGRID is entitled to carrying cost recovery until 31.03.2017. Carrying cost or interest essentially reflects the time value of money. When assets are kept as spares and utilized in other lines as feasible, the utility must be compensated for maintaining the assets in good condition for future replacement. This principle is supported by the judgment in Torrent Power Ltd. v. Gujarat Electricity Regulatory Commission & Ors. (Appeal No. 246 and 247 of 2017), where the Tribunal ruled that carrying cost is due to compensate for delayed recovery of legitimate expenditure. The relevant paragraph of the judgment is as follows:

*"9.13 it is observed that after deliberating the applicable judgments of this Tribunal and principles laid down in those judgments, this Tribunal has come to the conclusion that carrying cost is to be allowed to the Appellant on the revenue gap as a result of legitimate expenditure in true up. It is to be noted that the Commission has verified all the expenses during true up exercise and approved the same. The resultant gap is arrived at after this truing up exercise. Thus, it is admitted fact that the recovery of the Appellant is delayed till the Commission allows recovery of this revenue gap. As per well settled financial principle in catena of judgments, carrying cost is to be allowed to compensate the utility for such delayed recovery. From perusal of referred judgment, we agree that rather this Tribunal has categorized the carrying cost on the revenue gap arrived after true up exercise under 83(d)(iv) and allowed the recovery of same."*

50. Reference is also made to judgement dated 15.02.2011 in Tata Power Company Ltd. v. Maharashtra Electricity Regulatory Commission, bearing Appeal



No.173/09 wherein carrying cost was allowed to the Distribution Company. The relevant paragraph is as follows:

*"43 (1). Carrying cost is a legitimate expense. Therefore, recovery of such carrying cost is legitimate expenditure of the distribution companies. The carrying cost is allowed based on the financial principle that whenever the recovery of cost is deferred, the financing of the gap in cash flow arranged by the Distribution Company from lenders/promoters/accruals is to be paid by way of carrying cost. In this case, the Appellant, in fact, had prayed for allowing the legitimate expenditure including carrying cost. Therefore, the Appellant is entitled to carrying cost."*

51. POWERGRID is entitled to recover the legitimate costs of assets procured for the transmission system. The regulatory framework under the Electricity Act, 2003, allows licensees to recover capital costs through depreciation. However, when an asset is de-capitalized, depreciation is no longer recovered.

52. Therefore, when recovering the cost of an asset, the written-down value (WDV) as of the de-capitalization date should be considered. There should be no further reduction based on assumed depreciation, as POWERGRID has not received any amounts for such depreciation.

### **B. THE DISALLOWANCE OF COST OF THE DAMAGED INSULATORS**

53. The Central Commission incorrectly determined that the loss from damaged insulators was a business risk tied to handling, and that POWERGRID should absorb this cost. However, the replacement of porcelain insulators with polymer

insulators was carried out under the Ministry of Power's directive and with the approval of Northern Region beneficiaries, who had agreed to cover the costs of the replacement. As a regulated transmission licensee, POWERGRID is entitled to recover all costs related to its transmission business under Section 61 of the Electricity Act, 2003. The insulators were damaged not due to any fault of POWERGRID, but because of compliance with governmental and regulatory instructions. There is no accusation or finding of negligence in POWERGRID's handling of the insulators.

54. Given the fragility of porcelain insulators and the height at which they were dismantled, some risk of damage is unavoidable. Nevertheless, POWERGRID took all reasonable precautions during the process, adhering to industry best practices and standards, and cannot be held responsible for the damage. The replacement was carried out based on the Ministry of Power's instructions and with the beneficiaries' approval, who agreed to bear the costs. Since there is no evidence of negligence on POWERGRID's part, the loss should be recoverable. The loss of damaged insulators is related to the handling process and was acknowledged by the Central Commission.

55. Since the replacement was done at the instruction of the Ministry of Power, with beneficiaries' consent, and in line with the 07.02.2013 Order, POWERGRID should not suffer financially from this decision, and all associated costs should be recoverable. There is no unjust enrichment in this case; POWERGRID is merely seeking to recover the legitimate costs of the replacement, which includes the damage to the insulators that rendered them unusable.

56. By requiring POWERGRID to absorb the costs of damaged insulators out of its returns or profits, the Central Commission is effectively denying POWERGRID

the return of costs that it is entitled to under the Tariff Regulations and the principles set out in Sections 61 and 62 of the Electricity Act, 2003. The cost of the damaged insulators, incurred while replacing the porcelain insulators, must be allowed for recovery to prevent undue financial hardship to POWERGRID. POWERGRID is entitled to recover full carrying costs until the insulators are actually utilized, in line with the established principle of compensating for costs incurred but not yet recovered.

**C. RECOVERY OF COST OF UNUTILIZED INSULATORS AT WRITTEN DOWN VALUE DEPRECIATED TILL 31.03.2014**

57. The Central Commission has allowed the WDV (less 5% scrap value) on unused insulators till 31.03.2014, on a view that the unused insulators may have a scrap value of 5% of the WDV as on 31.03.2014, which is contrary to the Order dated 07.02.2013. The relevant extracts from the Order dated 07.02.2013 is as follows:

*“23. We have considered the submission of the petitioner and the respondents on the formula suggested by the Commission during the hearing on 30.8.2012. In our view, the formula suggested will protect the interest of the petitioner as well as the beneficiaries. While the polymer insulators shall be capitalized as they have been put to use and are rendering services to the beneficiaries, the porcelain insulators which have been taken out of the service shall be kept as spares to be used in the other lines of the petitioner. The porcelain insulators shall be de-capitalized from the date of their replacement and shall be capitalized when they are put to use in new lines. During the period between de-capitalization and subsequent capitalization of*

*the porcelain insulators, there will be no depreciation. The de-capitalized porcelain insulators shall be allowed only carrying cost on the written down value of the assets at weighted average rate of interest on loans availed by the petitioner till the insulators are put to use and capitalized.*

*24. Accordingly, the polymer insulators have been capitalized and the transmission charges of these insulators have been determined in this order. Since the polymer insulators have been installed on various transmission lines, the cost of the insulators need to be capitalized in the capital cost of the respective transmission lines. Accordingly, line-wise capitalization and de-capitalization has been made in this order. The annual transmission charges of the respective line shall stand modified in accordance with Annexure-II to this order. Further adjustment of the expenditure will be made in the transmission tariff of the respective transmission lines at the time of truing up.”*

58. The Order explicitly stated that no depreciation would be allowed after the porcelain insulators were removed, as they would not be used, and thus, no recovery related to depreciation would be made by POWERGRID. The insulators were de-capitalized at their WDV as of 01.01.2010, and POWERGRID was allowed to recover depreciation only up to that date through the tariff. Since the insulators were not utilized afterward, no depreciation was recovered. Reducing the cost of unutilized insulators by assumed depreciation is unjustified, as no such recovery was made in practice. There is inconsistency in the Impugned Order, as depreciation on de-capitalized insulators is disallowed until reutilization, but the WDV is used for one-time recovery, leading to non-recovery of depreciation for the period from 31.12.2009 to 31.03.2014.

59. The Central Commission, in its Order dated 07.02.2013, had decided that no depreciation would be allowed between de-capitalization and reutilization but later applied depreciation based on deliberations in the 27th TCC and 30th NRPC meetings. These discussions did not address this issue, and the Impugned Order contradicts the Order dated 07.02.2013.

60. The Central Commission had previously determined that there would be no depreciation after the insulators were removed, as they would not be used, and there would be no recovery of costs from such depreciation. The Central Commission should not have revisited this matter and should have allowed the WDV of the unutilized insulators as claimed by POWERGRID, amounting to Rs. 2021.06 lakhs, given that the further utilization of these dismantled insulators is uncertain, and their condition is deteriorating. Based on these facts, POWERGRID is entitled to the reliefs sought in the present Appeal.

**Written Submissions of the Respondent No. 10, UPPCL**

61. The present appeal challenges the order dated 28.05.2018 passed by the Central Electricity Regulatory Commission (CERC) in Petition No. 146/MP/2017. It is submitted that the impugned order is just and lawful, requiring no interference from the Tribunal. Before the CERC, the Appellant had sought approval for

- (i) carrying cost on insulators amounting to Rs. 1714.64 lakh,
- (ii) loss on damaged insulators of Rs. 945.64 lakh, and
- (iii) one-time recovery of Rs. 2021.06 lakh towards the cost of unused insulators beyond 31.03.2017.

62. The Appellant is not entitled to the reliefs claimed, as the CERC has given well-reasoned findings in the impugned order. Earlier, in Petition No. 305/2010, relating to the approval of transmission tariff for polymer insulators installed in place of porcelain insulators in the National Capital Region, the CERC, after hearing the parties, issued an order dated 07.02.2013. It held that only carrying cost on the Written Down Value (WDV) of the de-capitalized porcelain insulators would be permitted at the weighted average rate of interest on loans until the assets were put to use and capitalized. No depreciation would be allowed between de-capitalization and re-capitalization.

63. The Commission permitted carrying cost till 31.03.2014 because, in the 27th TCC and 30th NRPC meetings held in February 2014, it was decided that the Appellant would not use the porcelain insulators further. Nevertheless, the Appellant continued to use the insulators till 31.03.2016. The Appellant orally explained before the Commission, as recorded in paragraph 10 of the impugned order, that the actual implementation of the TCC and NRPC decisions was delayed until March 2016.

64. Regarding the Appellant's second prayer, the Central Electricity Regulatory Commission (CERC) has correctly denied approval for compensation towards the loss of 2,14,325 insulators, which the Appellant claims were damaged during dismantling and are permanently unusable.

65. It is submitted that the loss resulted from the Appellant's own poor handling of inventory, and the beneficiaries, having no role in causing this loss, cannot be burdened with its cost. Damage during handling is an inherent business risk that must be borne by the Appellant alone. The Appellant's attempt to shift this burden

onto consumers is patently illegal and unjustified. The argument that the replacement was carried out pursuant to the Ministry of Power's directions does not absolve the Appellant of responsibility for losses arising from mishandling during implementation.

66. The Appellant's reliance on Section 61 of the Electricity Act to claim entitlement to all costs associated with the transmission business is misconceived. Recovery of imprudently incurred costs, arising from poor execution and operational shortcomings, is neither legally nor equitably permissible, and the burden of such costs cannot be passed onto the beneficiaries.

67. It is submitted that in view of the admission of the Appellant itself that the said replaced porcelain insulators are not fit to be re-utilized, carrying cost on the same cannot be legitimately claimed from the beneficiaries. Paragraph 2f of the impugned order has recorded the submissions made by the Appellant regarding this issue- *"No carrying cost of insulators has been claimed beyond 31.3.2017. However, further utilization of these un-utilised insulators has become uncertain as the stock of insulators have become very old and gradually becoming defective and unusable. In number of new transmission lines porcelain insulators are being avoided as a measure of safety check due to growing level of pollutions....Therefore, utilization of removed insulators would be very difficult and removed disc insulators would be of no use in future. Therefore, there will be no other option but to scrap the removed insulators."* Having submitted this, it seems that the Appellant is now doing shocking u-turn on the issue clearly for the sake of unfair commercial gains.

68. The Central Electricity Regulatory Commission (CERC), in paragraph 12 of the impugned order, noted that around 3.86 lakh porcelain insulators remained

unused as of March 2017, with no subsequent capitalization. Based on deliberations in the 27th TCC and 30th NRPC meetings, and the Appellant's own submissions that the insulators had aged and become defective and unusable, the Commission applied depreciation up to 31.03.2014. The Written Down Value (WDV), less a 5% scrap value, was allowed as on that date for the unused insulators.

69. The Appellant's argument that the CERC's earlier order dated 07.02.2013 did not specify an outer limit for using the replaced insulators is untenable. No judicial order can be interpreted as granting indefinite relief. The CERC rightly held in its review order dated 26.06.2019 in Review Petition No. 27/RP/2018 that, in the absence of a cut-off date, carrying cost cannot be permitted endlessly.

70. Furthermore, in light of the Appellant's own admission that the removed insulators are unlikely to be reused and are practically of no further utility, its claim appears aimed at securing an unjust financial benefit at the expense of consumers.

71. The Appellant's claim that the replacement of porcelain insulators with polymer insulators was not due to its fault is misplaced, as no stakeholder, including the beneficiaries, was at fault. As recorded at Page 70 of the Appeal Book, during the 110th OCC meeting, the Appellant itself presented on the importance of replacing porcelain insulators with CLR insulators, demonstrating its active support for the replacement. Directions for replacement were issued only after consensus among stakeholders, including the Appellant.

72. Given the frequent tripping incidents on 400 kV lines in the Northern Region, it is unrealistic for the Appellant to contend that, absent Ministry of Power directions, the porcelain insulators would have remained functional throughout the



asset's useful life. The Appellant was a willing participant in the decision-making process, recognizing the ineffectiveness of the porcelain insulators. It is incorrect to suggest that the additional capitalization was solely due to beneficiary or Ministry directives, as the Appellant itself advocated for replacement in several Regional Power Committee meetings, citing stabilized polymer technology, lower costs, and pollution-related damages.

73. Moreover, the Appellant had earlier assured that the expenditure for replacement would be booked under O&M expenses without imposing additional burdens on utilities. However, in the present case, the Appellant seeks to pass the replacement costs onto the beneficiaries, despite the fact that the beneficiaries are already bearing expenses towards the newly capitalized polymer insulators providing ongoing service.

74. The decision to discontinue the use of porcelain insulators was taken during the 27th TCC and 30th NRPC meetings held in February 2014. The Appellant was granted carrying cost for the replaced insulators for the period from 2009-10 up to 31.03.2014. Given that the Appellant itself had advocated for the benefits of polymer insulators over porcelain ones during these meetings, and acknowledged the issues with porcelain insulators, it is unjustified to burden consumers for the Appellant's choice to retain or attempt reutilization of the old porcelain insulators indefinitely.

75. Since the Appellant never objected to the replacement, its current claim of being unfairly saddled with all associated costs is incorrect. Furthermore, the CERC has already allowed carrying costs up to 31.03.2014, and the new polymer insulators have been duly capitalized.

76. In view of these facts and prior submissions, it is respectfully submitted that the present Appeal against the CERC's orders dated 28.05.2018 and 26.06.2019 is baseless, without merit, and deserves dismissal.

**Written Submissions of the Respondent No. 12, BSES Yamuna Power Ltd. and Respondent No. 13, BSES Rajdhani Power Ltd.**

**A. ONCE AN ASSET IS REPLACED AND NOT IN USE CANNOT BE CAPITALIZED IN TERMS OF REGULATION 7 OF THE 2009 TARIFF REGULATIONS**

77. The Respondent No. 13/ BSES Rajdhani Power Ltd. submitted that the Appellant seeks carrying cost for porcelain insulators for the period from 31.03.2014 to 31.03.2017. However, these insulators were removed from service during the 2009-14 period and replaced by polymer insulators, which were capitalized and rendered service to beneficiaries.

78. Regulation 7(1) of the Tariff Regulations, 2009 specifies that assets not in use must be excluded from the capital cost. The provision outlines that the capital cost for a project includes expenditure incurred, interest during construction, financing charges, and other specified costs up to the commercial operation date, as determined by the Commission after a prudence check. The regulation explicitly states that assets forming part of the project but not in use shall be removed from the capital cost.

79. The Regulation 7(1) of the Tariff Regulation, 2009 of the Tariff Regulations, 2019 provides as under:

*7. Capital Cost. (1) Capital cost for a project shall include:*

*(a) the expenditure incurred or projected to be incurred, including interest during construction and financing charges, any gain or loss on account of foreign exchange risk variation during construction on the loan –*

*(i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of 30% of the funds deployed, by treating the excess equity as normative loan, or*

*(ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed, - up to the date of commercial operation of the project, as admitted by the Commission, after prudence check;*

*(b) capitalised initial spares subject to the ceiling rates specified in regulation 8; and*

*(c) additional capital expenditure determined under regulation*

*“Provided that the assets forming part of the project, but not in use shall be taken out of the capital cost.”*

80. Since the porcelain insulators were replaced and are no longer part of the project, they must be excluded from the capital cost in accordance with the above provision. Consequently, carrying cost on such assets, which are not in use and prohibited from capitalization, cannot be granted.

**B. RELIANCE OF THE APPELLANT ON TARIFF ORDER DATED 07.02.2013 PASSED BY CERC IN PETITION NO. 305 OF 2010 NOT APPLICABLE IN PRESENT CASE**

81. The Appellant seeks carrying cost for the period from 31.07.2014 to 31.07.2017 based on the Tariff Order dated 07.02.2013 issued by the CERC in Petition No. 305 of 2010. The petition was filed under Regulation 86 of the CERC (Conduct of Business) Regulations, 1999 and the CERC (Terms and Conditions of Tariff) Regulations, 2009, seeking approval of transmission tariff for the period 01.04.2009 to 31.03.2014 for the replacement of insulators in fog and pollution-affected areas of the Northern Region with polymer insulators. During the 2009-14 tariff period, the Appellant replaced porcelain insulators with polymer insulators.

82. However, in the present case, the Appellant is claiming carrying cost for the period from 31.03.2014 to 31.03.2017, when the porcelain insulators were no longer in use and had been excluded from the capital cost. As the porcelain insulators were not in use during the 2014-19 tariff period and were not capitalized, the Appellant is not entitled to the carrying cost for the period 2014-17.

***C. CONTENTION OF THE APPELLANT THAT PORCELAIN INSULATORS TAKEN OUT OF THE SERVICE SHALL BE KEPT AS SPARES AND ENTITLED FOR THE CARRYING COST FOR THE PERIOD NOT IN USE HAS ALREADY REJECTED BY THIS HON'BLE COURT IN JUDGMENT DATED 25.04.2016 PASSED IN APPEAL NO. 98 OF 2015***

83. The Appellant has relied on paragraph 23 of the CERC order dated 07.02.2013 in Petition No. 305/2010 to support its claim for carrying cost.

84. The order states that while polymer insulators were capitalized as they were put to use, the porcelain insulators, which were removed from service, would remain as spares to be utilized in other lines of the petitioner. These porcelain

insulators would be de-capitalized upon removal and re-capitalized only when put to use, with no depreciation allowed during the interim period.

85. The Appellant had raised a similar argument in Appeal No. 98 of 2015, which was rejected by the Tribunal in its judgment dated 25.04.2016. The Tribunal held that assets not in use cannot be considered as spares merely because they are intended for future use, and capitalization of such assets in the capital cost of new assets is not permissible under the CERC regulations. This view was reinforced by earlier judgments dated 08.05.2014 in Appeal No. 173/2013 and 01.05.2015 in Appeal No. 97/2013, which disallowed capitalization of spare assets in the absence of specific regulatory provisions.

86. In view of the above judgments, the appellant's claim for carrying cost on porcelain insulators, which were not in use during the relevant period and were not capitalized, is untenable and liable to be dismissed.

#### ***D. THERE CANNOT BE ANY ESTOPPEL AGAINST STATUTE***

87. The Appellant seeks to derive benefit from the order dated 07.02.2013 in Petition No. 305/2010. However, the findings in that order regarding the retention of porcelain insulators not in use in the capital cost of new assets are expressly prohibited under the CERC Tariff Regulations, 2009, as well as by judicial pronouncements of the Tribunal.

88. Therefore, the relief sought by the Appellant for carrying cost on porcelain insulators for the period 31.03.2014 to 31.03.2017, which were not in use, cannot be extended based on the order dated 07.02.2013 that was issued for the 2009-

14 tariff period. As per the settled principle of law, there is no estoppel against statutory regulations, and thus, the Appellant's claim is untenable.

***E. CERC PASSED THE IMPUGNED ORDER CONSIDERING THE 27TH TCC AND 30TH NRPC MEETINGS DATED 27.2.2014 AND 28.2.2014 RESPECTIVELY TO THE EFFECT THAT THE PETITIONER WOULD NOT UTILISE THE PORCELAIN INSULATORS IN FUTURE***

89. The Appellant contends that the CERC provided no reasoning for disallowing the carrying cost for the period 2014-17. However, the impugned order was passed after considering the 27th TCC and 30th NRPC meetings held on 27.02.2014 and 28.02.2014, wherein it was decided that the porcelain insulators would not be utilized in the future.

90. Despite this, the Appellant continued to use the insulators until 31.03.2016 and subsequently claimed that the insulators had become old and unusable. The CERC noted that the TCC and NRPC meetings had not taken place at the time of the order dated 07.02.2013 in Petition No. 305/2010, and therefore, no specific time limit for the use of porcelain insulators was prescribed then.

91. To balance the interests of the beneficiaries and the Appellant, the CERC allowed carrying cost only until 31.03.2014. In the present appeal, the Appellant challenges the denial of carrying cost for the period 31.03.2014 to 31.03.2017, asserting that the porcelain insulators were not in use as they were expressly prohibited in the Northern Region. Once the assets were replaced, retention of carrying cost is impermissible under the Tariff Regulations, 2009 and 2019, as well as the Tribunal's prior judgments. Accordingly, the Appellant's claim is without merit and liable to be dismissed.

92. The CERC applied depreciation on the unutilized porcelain insulators and determined the Written Down Value (WDV) up to 31.03.2014, in line with the discussions held during the 27th TCC and 30th NRPC meetings on 27.02.2014 and 28.02.2014, wherein it was decided that the porcelain insulators would no longer be utilized.

93. The impugned order noted that the Appellant claimed uncertainty regarding further utilization of the dismantled insulators due to their age and deteriorating condition. The CERC, therefore, allowed WDV less 5% scrap value on unused insulators until 31.03.2014, considering them as obsolete and unusable. Accordingly, the CERC's decision was based on the deliberations in the TCC and NRPC meetings, and there is no error in the impugned order.

***F. APPELLANT HAS FAILED TO SHOW ANY REGULATIONS UNDER WHICH THEY ARE ENTITLED FOR THE CLAIM SOUGHT UNDER THE PRESENT APPEAL***

94. The Appellant has sought relief without identifying any specific provision under the applicable Tariff Regulations that entitles them to the claimed carrying cost. Under the tariff framework, claims not supported by regulatory provisions are liable to be rejected.

95. Accordingly, in light of the foregoing submissions, the present appeal is devoid of merit and liable to be dismissed with costs.

### **Analysis and Conclusion**

96. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondents at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us, the following issue arises for determination in this Appeal:

*Whether the Central Commission erred in its treatment of the cost of insulators by-*

- (1) restricting the carrying cost up to 31.03.2014,*
- (2) allowing depreciation for unutilized insulators during the same period,*  
*and*
- (3) rejecting the claim for costs of damaged insulators without finding any negligence or default on the part of the Appellant?*

97. The Appellant herein has prayed for the following:

*“a) Allow the appeal and set aside the Order dated 28.05.2018 in Petition No 146/MP/2017 passed by the Central Commission to the extent challenged in the present appeal.*

*b) Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper.”*

98. The Impugned Order dated 28.05.2018 pertains to the claims made by POWERGRID for the carrying cost of dismantled porcelain insulators, recovery of costs of damaged insulators, and depreciation for unutilized insulators. The Central Commission, in the Impugned Order, restricted the carrying cost till



31.03.2014, applied depreciation on unutilized insulators till 31.03.2014, and disallowed the claim for damaged insulators.

99. Aggrieved by the said findings, POWERGRID has preferred the present appeal seeking directions for extending the carrying cost till 31.03.2017, allowing full depreciation for unutilized insulators, and permitting the recovery of costs for damaged insulators.

100. It is important to note the facts of the case again for clarity.

101. In 2008, the Northern Region, particularly the National Capital Region (NCR), experienced numerous tripping incidents in the 400 kV transmission lines due to heavy pollution during the winter fog season.

102. In response, a series of meetings were convened by the Ministry of Power and the Central Electricity Authority (“CEA”), wherein it was decided to replace porcelain insulators with polymer insulators in vulnerable transmission lines to mitigate pollution-related outages.

103. The replacement of porcelain insulators commenced in 2009 and continued until 2014, involving the replacement of 1,644,154 insulators. These insulators were decapitalized, and polymer insulators were capitalized.

104. The Central Commission, in its order dated 07.02.2013 in Petition No. 305/2010, provided that carrying cost on the dismantled insulators would be allowed until their actual reutilization or capitalization.

*"19. We have considered the submissions of the petitioner and respondents. The petitioner has made investment and blocked its funds and should not suffer on account of the decision to replace the porcelain insulators which has the consent of the beneficiaries. The beneficiaries should not be burdened with the capital cost of porcelain insulators which have been taken out of service. **Accordingly, we had suggested this following formula during the course of hearing on 30.8.2012, keeping in view the interest of both the petitioner and the beneficiaries and accordingly the petitioner and the beneficiaries were directed to file their comments on the suggested formula.***

*"The porcelain insulators which have been taken out of service shall be decapitalized and the polymer insulators which have been put into service in their place shall be capitalized in accordance with 2009 Tariff Regulations. **The porcelain insulators which have been taken out of service shall be treated as spares and shall be allowed carrying cost on the written down value of the assets at the weighted average rate of interest of the loans availed by the petitioner till these insulators are put to use and capitalized.**"*

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*23. We have considered the submission of the petitioner and the respondents on the formula suggested by the Commission during the hearing on 30.8.2012. **In our view, the formula suggested will protect the interest of the petitioner as well as the beneficiaries. While the polymer insulators shall be capitalized as they have been put to use and are rendering services to the beneficiaries,***

***the porcelain insulators which have been taken out of the service shall be kept as spares to be used in the other lines of the petitioner. The porcelain insulators shall be de-capitalized from the date of their replacement and shall be capitalized when they are put to use in new lines. During the period between de-capitalization and subsequent capitalization of the porcelain insulators, there will be no depreciation. The de-capitalized porcelain insulators shall be allowed only carrying cost on the written down value of the assets at weighted average rate of interest on loans availed by the petitioner till the insulators are put to use and capitalized.***

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43. ----- *The carrying cost shall be separately worked out once the removed porcelain insulators have been put to use and capitalized and the carrying period is known. The petitioner is directed to approach the Commission alongwith the details of Gross Block of dismantled insulators, their accumulated depreciation, dates of removal from the original transmission lines and dates on which they are capitalized at other places/regions. The petitioner is also directed to provide cost details of remaining porcelain insulators.”*

105. However, in the Impugned Order dated 28.05.2018, the Commission restricted the carrying cost until 31.03.2014, applying depreciation for unutilized insulators until the same date, and rejected the claim for damaged insulators.

### **ISSUE NO. 1: Restricting the carrying cost up to 31.03.2014**

106. The Appellant argues that the Central Commission’s decision to restrict the carrying cost to 31.03.2014 is arbitrary and contrary to the principles enshrined in

the Order dated 07.02.2013 in Petition No. 305/2010, which has not been challenged and has attained finality.

107. It is contended that the carrying cost should be allowed till 31.03.2017 as the Appellant continued to utilize the dismantled porcelain insulators in various ongoing projects, including O&M activities, until March 2017.

108. POWERGRID asserted that the 27th TCC and 30th NRPC meetings held in February 2014 were confined to new projects in the Northern Region and did not explicitly prohibit the use of porcelain insulators in existing projects or other regions.

109. The Appellant further argued that the Central Commission's reliance on these meetings to curtail the carrying cost period was misdirected, as the meetings did not address the timeframe for the cessation of carrying cost but only emphasized the preference for polymer insulators in new projects.

110. Respondent No. 10 (UPPCL) contended that the carrying cost was rightfully limited to 31.03.2014 as the decision taken in the 27th TCC and 30th NRPC meetings clearly indicated that porcelain insulators would not be utilized beyond that period.

111. UPPCL further argued that POWERGRID itself admitted in Review Petition No. 27/RP/2018 that the stock of porcelain insulators had become old, defective, and unsuitable for further use.

112. Respondents Nos. 12 and 13 (BSES Discoms) contended that the Central Commission's order dated 07.02.2013 did not provide an indefinite timeline for

carrying costs. The tariff regulations mandate that assets not in use cannot be retained in the capital cost, and thus, carrying cost beyond 31.03.2014 is untenable.

113. Undisputedly, the Central Commission's order dated 07.02.2013 in Petition No. 305/2010 provided for carrying costs until the reutilization or capitalization of dismantled insulators, and also the said order did not specify a cut-off date for carrying costs, as noted in the foregoing paragraphs- ***"The de-capitalized porcelain insulators shall be allowed only carrying cost on the written down value of the assets at weighted average rate of interest on loans availed by the petitioner till the insulators are put to use and capitalized"***. (para 23 of the order dated 07.02.2013.)

114. The reliance placed by the Central Commission on the 27th TCC and 30th NRPC meetings to restrict the carrying cost to 31.03.2014 is found to be completely out of context. These meetings, attended by all stakeholders, emphasized that porcelain insulators should no longer be used in the Northern Region, however, there were no similar restrictions imposed by other regions.

115. Considering that POWERGRID is responsible for the commissioning of the transmission system throughout the country, the decapitalized insulators can very well be used in the other regions.

116. It is also important to note the MoM of the 27<sup>th</sup> TCC & 30 NRPC meetings, as under:

***"B.4 Replacement of porcelain insulators***

**B.4.1 Progress** of replacement of porcelain insulators with polymer/anti-fog insulators:

*B.4.1.1 Giving a brief background, Member Secretary, NRPC stated that identification of transmission line sections for replacement of conventional insulators with polymer insulators had been done by transmission utilities in various stages. The proposals submitted by POWERGRID had been approved by NRPC in its various meetings. He stated that the latest status of progress in this regard was enclosed at Annex-X to the Agenda notes. As per latest information intimated by POWERGRID, the status for replacement of porcelain insulators with polymer insulators was as under:-*

*Stage I: 99.2% completed.*

*Stage II: 73% completed.*

*Stage III: 63% completed.*

*B.4.1.2 Member Secretary, NRPC expressed concern that the status of replacement of porcelain insulators with polymer insulators was not up to the desired level. He requested all transmission utilities to expedite the replacement of porcelain insulators with polymer insulators so that the same could be completed before the onset of next winter i.e. by November, 2014.*

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***NRPC Deliberations***

*B.4.1.5 Members of NRPC noted the deliberations in the TCC.*

***B.4.2 Strategy for avoiding fog related flashovers in future TCC Deliberations***

*B.4.2.1 Giving brief background, Member Secretary, NRPC stated that in order to analyze fog related tripping during winter, special meetings were held at NRPC Secretariat, wherein it was observed that the phenomenon of fog related tripping had spread to some new areas, which were previously not associated with it. Following new areas were identified for taking preventive actions:*

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*B.4.2.2 He stated that it was also observed that flashovers had taken place at many locations where conventional insulators had been replaced with anti-fog insulators. Based on discussions in the special meetings, the OCC in its meeting held on 17.02.2014 recommended following proposals for approval of TCC/NRPC :*

*(i) Utilities would take necessary steps such as replacement of conventional insulators with polymer insulators and cleaning of porcelain insulators in already known and newly identified areas to avoid tripping of lines in next winter.*

*(ii) If cleaning is to be carried out through outsourcing, the bidding process shall be so timed that orders are placed on or before end of September 2014.*

*(iii) In future all new transmission lines in plain areas would be built with polymer insulators only and also existing anti-fog insulators would be replaced with polymer insulators in phased manner*

*B.4.2.6 After deliberations, TCC recommended the proposal for approval of NRPC*

### ***NRPC Deliberations***

*B.4.2.7 Member Secretary briefed the members about the deliberations in TCC. -----*

*-----*

*B.4.2.11 After deliberations, NRPC approved the proposal recommended by TCC.”*

117. From the aforesaid MoM, the NRPC approved (i) replacement of Porcelain Insulators with Polymer Insulators “*before the onset of next winter i.e. by November, 2014*”, and (ii) commissioning of new Transmission Lines with Polymer Insulators only.

118. The argument put forth by POWERGRID that the CERC misinterpreted the NRPC’s recommendation, which merely advised against the use of porcelain insulators in new transmission lines in plain areas of the Northern Region due to pollution and fog but did not impose a nationwide prohibition on their use, is found to have merit.

119. The Impugned Order itself acknowledges that the replaced porcelain insulators were re-utilized by POWERGRID between December 2009 and March 2016 across various regions, however, the CERC denied the carrying cost beyond March, 2014 reasoning that “*Considering the fact that the above TCC and NRPC meetings had not taken place at the time of issuing of order in Petition No. 305/2010, with the purpose of maintaining a proper balance between the interest of the beneficiaries and the Petitioner, and keeping in view the TCC/NRPC meetings and to avoid complexities, we allow the carrying cost of the dismantled insulators only till 31.3.2014, which includes the re-utilised as well as the un-utilised insulators.*”



120. We found the above justification completely perverse and arbitrary, the CERC's Order dated 07.02.2013 was inter se party and has attained finality, as such it is of binding nature, inter-alia where the Commission has already decided on the methodology for determining the carrying costs.

121. It cannot be disputed that the decapitalized insulators continued to be used until 31.03.2017, therefore, there is no justification for limiting the carrying cost recovery up to 31.03.2014, in fact, the NRPC decision, as noted above, applied only to future installations in the Northern Region, and POWERGRID's continued use of the replaced insulators in suitable areas prevented additional tariff burdens on beneficiaries, which is also noted in the Impugned Order.

122. Thus, the Central Commission's reliance on the NRPC recommendation to deny carrying costs beyond 31.03.2014 is factually and legally flawed, cost recovery is affected only once re-utilization of the insulators or as a one-time compensation granted in the Impugned Order, inter alia, till such time POWERGRID shall continue to bear the financial burden, as against the established legal principle mandating that such carrying costs be allowed for unrecovered investments.

123. We also agree with the contention of the Appellant that in case the porcelain insulators could not be used after 31.03.2014, the number of unutilized insulators as of that date would have exceeded 386,297, resulting into additional costs of these insulators to be recovered from 31.03.2014, and POWERGRID would have been entitled to interest on the same from that date.

124. Accordingly, the Impugned Order deserves to be set aside to this extent, POWERGRID is entitled to carrying cost till 31.03.2017 or the actual date of re-use, whichever is earlier.

**ISSUE NO. 2: *Allowing depreciation for unutilized insulators during the same period.***

125. The Appellant contended that the Central Commission erred in restricting depreciation on unutilized insulators to 31.03.2014. The Appellant submitted that the porcelain insulators, though removed from service, continued to remain part of POWERGRID's asset base until 31.03.2017, the date as decided for declaring the unused Insulators as unserviceable.

126. It was argued that the Commission, in its order dated 07.02.2013 in Petition No. 305/2010, categorically held that the dismantled insulators would be decapitalized but would continue to be treated as spares, allowing recovery of carrying cost and depreciation until their utilization.

127. The Appellant asserted that by restricting depreciation till 31.03.2014, the Commission has effectively disregarded the principle that carrying cost and depreciation must be allowed until the insulators are either reutilized or scrapped.

128. Further, the Appellant contended that the decision in the 27th TCC and 30th NRPC meetings did not explicitly mandate cessation of depreciation on dismantled insulators. It only addressed the issue of using polymer insulators in new projects due to pollution-related concerns.

129. Respondent No. 10 (UPPCL) contended that the Commission correctly applied depreciation until 31.03.2014, as the porcelain insulators were no longer part of the active asset base and could not be considered for depreciation beyond that date.

130. UPPCL emphasized that the Appellant itself admitted that the insulators had become old and unusable by 2017 and that no substantial reutilization of the dismantled insulators was recorded post-2014.

131. Respondent Nos. 12 and 13 (BSES Discoms) further argued that as per Regulation 7(1) of the 2009 Tariff Regulations, assets not in use must be removed from the capital cost. The Commission, therefore, appropriately limited depreciation to 31.03.2014, taking into account the meetings held in February 2014, which discussed discontinuation of porcelain insulators in future projects.

132. The order dated 07.02.2013 provides that the Commission had allowed carrying costs on dismantled insulators until their reutilization or capitalization. However, it is pertinent to note that the order did not explicitly provide for an indefinite period of depreciation.

133. The Regulation 7(1) of the Tariff Regulation, 2009 of the Tariff Regulations, 2019 is as follows:

***“7. Capital Cost. (1) Capital cost for a project shall include:***

*(a) the expenditure incurred or projected to be incurred, including interest during construction and financing charges, any gain or loss on account of foreign exchange risk variation during construction on the loan –*

*(i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of 30% of the funds deployed, by treating the excess equity as normative loan, or*

*(ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed, - up to the date of commercial operation of the project, as admitted by the Commission, after prudence check;*

*(b) capitalised initial spares subject to the ceiling rates specified in regulation 8; and*

*(c) additional capital expenditure determined under regulation*

***Provided that the assets forming part of the project, but not in use shall be taken out of the capital cost.”***

134. Regulation 7(1) of the 2009 Tariff Regulations categorically states:

*“Assets not in use shall be taken out of the capital cost.”*

135. The intent of the regulation is to prevent the inclusion of obsolete or non-functional assets in the capital base, thereby preventing an undue burden on beneficiaries.

136. However, the Central Commission, in its Order dated 07.02.2013 has directed that:

*“39. Depreciation has been worked out as per Regulation 17 of the 2009 Tariff Regulations. The transmission line wise accumulated depreciation corresponding to the de-capitalised insulators has been submitted by the petitioner vide affidavit dated 13.2.2012. These values of depreciation have been reduced from the accumulated depreciation amount of the individual transmission line assets during the years when de-capitalisation was carried out.”*

137. It is important to take a note of Regulation 7(1)(b), which provides that “*capitalised initial spares subject to the ceiling rates specified in regulation 8;*” and accordingly, such depreciation has to be considered till such time these decapitalized insulators are directed to be unserviceable and certainly not from the date of 31.03.2014 as taken by the CERC based on the MoM of the 27<sup>th</sup> TCC/ 30<sup>th</sup> NRPC meetings, as noted in the preceding paragraphs.

138. It is noted that the Appellant had admitted that the unutilized insulators had become old, defective, and unsuitable for further utilization beyond 31.03.2017, accordingly, contented that depreciation should be allowed till 31.03.2017 for those insulators which are rejected thereafter.

139. Accordingly, this Tribunal is of the considered view that the Central Commission’s decision to limit depreciation till 31.03.2014 is arbitrary and inconsistent with the regulatory framework and the factual matrix of the case. The said decision is, therefore, rejected.

140. It cannot be denied that irrespective of any decision of NRPC, the Appellant, POWERGRID is bound by judicial assertions, the Commission’s Order dated 07.02.2013 was a binding principle till such time it is amended/ modified or set aside by higher courts, the Impugned Order dated 28.05.2018 cannot modify the directions issued vide order dated 2013 retrospectively, as such directions directly impact the Appellant herewith, which has only complied with the directions issued through the earlier order.

141. Therefore, the Impugned Order on this count cannot be sustained and is set aside on this count.

**ISSUE NO. 3: *Rejecting the claim for costs of damaged insulators without finding any negligence or default on the part of the Appellant?***

142. The Appellant contended that the Central Commission erred in rejecting the claim for recovery of the costs of damaged insulators without any finding of negligence or imprudence on the part of POWERGRID.

143. It was submitted that the damage to the insulators occurred during the dismantling process, which was undertaken as per the directives of the Ministry of Power and in compliance with the recommendations of the CEA and Regional Power Committees.

144. The Appellant further argued that the insulators were inherently fragile, and despite exercising due diligence, a certain number of insulators were inevitably damaged during the dismantling and replacement process.

145. POWERGRID asserted that the beneficiaries had agreed to bear the costs associated with the replacement of insulators in the CEA meetings held in 2008. Thus, denying the recovery of costs for damaged insulators amounted to a deviation from the agreed terms of the replacement scheme.

146. Respondent No. 10 (UPPCL) submitted that the Central Commission rightly held that the cost of damaged insulators must be absorbed by POWERGRID, as the damage was a foreseeable business risk associated with the dismantling and replacement process.

147. UPPCL further contended that permitting the recovery of costs for damaged insulators would amount to allowing compensation for POWERGRID's poor handling of assets, a liability that should not be passed onto the beneficiaries.

148. Respondent Nos. 12 and 13 (BSES Discoms) argued that the Appellant's claim for compensation for damaged insulators lacked merit, as there was no provision in the tariff regulations allowing such recovery.

149. It was submitted that the replacement was initiated by POWERGRID itself, which must bear the costs associated with any loss incurred during the process.

150. The main contentions of the Respondents as seen from their oral submission before us are as under:

- (a) the damage was a foreseeable business risk associated with the dismantling and replacement process.
- (b) recovery of costs for damaged insulators would amount to allowing compensation for POWERGRID's poor handling of assets.
- (c) there was no provision in the tariff regulations allowing such recovery
- (d) the replacement was initiated by POWERGRID itself, which must bear the costs associated with any loss incurred during the process.

151. We decline to accept such contentions as the decision of replacement of insulators was not taken by POWERGRID, it was indeed taken on the directions of Ministry of Power and the decision of NRPC through consensus amongst the Respondents herein and the Appellant.

152. Further, the Respondents herein preferred not to raise any issues against the POWERGRID during the hearings held after which the orders dated

07.02.2013 and 28.05.2018 have been passed. We also fail to get any observations in the said orders confirming poor handling in dismantling of assets by POWERGRID, in fact the Commission only noted as under:

*11. The Petitioner in the second prayer has prayed for approval for the compensation for loss on damaged insulators. According to the Petitioner, 214325 nos. insulators got damaged during dismantling and are not usable, which is a permanent loss. The Petitioner has submitted that it had no other alternative but to charge the same against profit. Therefore, the Petitioner needs to be compensated by allowing one time reimbursement of the loss incurred by it. We have considered the submission of the Petitioner. In our view, since, loss on account of damaged insulators is a risk associated with the handling of the insulators, the same cannot be passed on to the consumers. The loss in this regard should be absorbed by the Petitioner. Therefore, the Petitioner's prayer on this aspect is rejected. However, if any claim received from insurance company needs to be adjusted from the above cost.*

153. The Central Commission's rejection of the claim for recovery of damaged insulators is based on the premise that such loss is a business risk, as seen from the Impugned Order- *"In our view, since, loss on account of damaged insulators is a risk associated with the handling of the insulators, the same cannot be passed on to the consumers."*

154. However, it is noted that the replacement of insulators was not initiated solely at the discretion of POWERGRID but was a directive issued by the Ministry of Power to mitigate pollution-related outages in the Northern Region, in fact, the



decision was taken jointly by the NRPC constituents after the decision of MoP/CEA and not by POWERGRID as such POWERGRID cannot be penalized for an act where it has not committed any default or failure. The decision is taken in the benefit of the Grid by the constituent members including the Distribution Licensees responsible for safeguarding the interest of the consumers, after their decision, the liability cannot be fastened onto POWERGRID.

155. The Appellant's contention that the damage was not due to any imprudence but was a consequence of handling fragile insulators during the mandated replacement process is persuasive.

156. Notably, there is no finding by the Central Commission that the damage was due to negligence or improper handling by POWERGRID. Moreover, the Ministry of Power and the beneficiaries had acknowledged the risk associated with the replacement and agreed to bear the costs in the CEA meetings.

157. The principle of regulatory certainty necessitates that if a replacement is carried out under the directives of a statutory authority, the costs associated therewith, including any incidental loss, should be recoverable unless there is evidence of negligence or imprudence.

158. Therefore, the Commission's rejection of the claim for recovery of damaged insulators is not in consonance with the principles of regulatory jurisprudence. Accordingly, the decision of the Commission for the claim of recovery of damaged insulators is rejected.

### **ORDER**

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 46 of 2021 has merit and is allowed.

The Impugned Order dated 28.05.2018 passed by CERC is set aside.

The Central Commission shall pass the Order afresh within a period of three months from the date of receipt of this order, in strict compliance with the observations and conclusions made herein above.

The Captioned Appeal and pending IAs, if any, are disposed of in the above terms.

**PRONOUNCED IN THE OPEN COURT ON THIS 24<sup>th</sup> DAY OF JUNE, 2025.**

**(Virender Bhat)**  
**Judicial Member**

**(Sandesh Kumar Sharma)**  
**Technical Member**

**REPORTABLE / NON-REPORTABLE**

*Pr/mkj/kks*