

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

APPEAL No. 223 of 2022

Dated: 04.09.2025

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

IN THE MATTER OF:

Delhi Transco Limited
Shakti Sadan, Kotla Raod,
New Delhi – 110002.

...Appellant(s)

Vs.

1. Central Electricity Regulatory Commission,
Through its Secretary,
3rd and 4th Floor, Chanderlok Building
36, Janpath, New Delhi – 110001.
2. Central Transmission Utility of India Limited,
Shram Shakti Bhawan, Rafi Marg,
New Delhi – 110001.
3. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Through its Chairman,
Vidyut Bhawan, Vidyut Marg, Janpath,
Jaipur – 302005 (Rajasthan)
4. Ajmer Vidyut Vitran Nigam Limited,
Through its Chairman,
132 KV GSS RVPNL Sub-Station Building,
Caligiri Road, Malviya Nagar,
Jaipur – 300017 (Rajasthan)
5. Jaipur Vidyut Vitran Nigam Limited
Through its Chairman,
132 KV GSS RVPNL Sub-Station Building,
Caligiri Road, Malviya Nagar,

Jaipur – 300017 (Rajasthan)

6. Jodhpur Vidyut Vitran Nigam Limited
Through its Chairman,
132 KV GSS RVPNL Sub-Station Building,
Caligiri Road, Malviya Nagar,
Jaipur - 300017 (Rajasthan)
7. Himachal Pradesh Electricity Board Limited
Through its Chief Engineer
Vidyut Bhawan,
Kumar House, Complex Building II,
Shimla - 171004 (Himachal Pradesh)
8. Punjab State Power Corporation Limited
Through its Chairman & Managing Director,
PSEB Head Office, The Mall,
Patiala - 147001 (Punjab)
9. Haryana Power Purchase Centre
Through its Chief Engineer
Shakti Bhawan, Sector-6,
Panchkula - 134109 (Haryana)
10. Power Development Department
Through its Commissioner/Secretary,
Government of Jammu & Kashmir,
Civil Secretariat,
Jammu - 180001 (Jammu and Kashmir)
11. Uttar Pradesh Power Corporation Limited
Through its Chairman,
Shakti Bhawan, 14, Ashok Marg,
Lucknow - 226001 (Uttar Pradesh)
12. BSES Yamuna Power Limited
Through its Chief Executive Officer,
B-Block, Shakti Kiran Building,
Near Karkardooma Court, 2nd Floor
New Delhi – 110092.
13. BSES Rajdhani Power Limited

Through its Chief Executive Officer,
BSES Bhawan, Nehru Place,
New Delhi – 110019.

14. Tata Power Delhi Distribution Limited
Through its Chief Executive Officer,
NDPL House, Hudson Lines,
Kingsway Camp, New Delhi – 110009.

15. Chandigarh Electricity Department,
Chandigarh Administration
Through its Superintending Engineer
Electricity 'OP' Circle, UT Secretariat,
Sector 9, Chandigarh – 160009.

16. Uttarakhand Power Corporation Limited
Through its Chairperson
Victoria Cross Vijeyta Gabar Singh Urja Bhawan ,
Kanwali Road, Balliwala Chowk,
Dehradun - 248001 (Uttarakhand).

17. North Central Railway
Through its General Manager
Subedar Ganj Road, Subedarganj,
Prayagaraj - 211015 (Uttar Pradesh)

18. New Delhi Municipal Council
Through its Chairman
Palika Kendra, Parliament Street,
New Delhi – 110001.

...Respondent(s)

Counsel for the Appellant(s) : Mr. Pradeep Misra
Mr. Manoj Kumar Sharma

Counsel for the Respondent(s) : Ms. Poorva Saigal
Mr. Shubham Arya
Ms. Pallavi Saigal
Ms. Reeha Singh
Mr. Rishabh Saxena
Mr. Harshvardhan Singh
Ms. Tanya Singh
Mr. Shirin Gupta for-2

Mr. Raj Bahadur Sharma
Mr. Mohit Mudgal
Ms. Sanya Sud for R-12 & 13

JUDGEMENT

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

1. M/s. Delhi Transco Limited has filed the present appeal challenging the Impugned Order dated 29.06.2018 in Petition No. 175/TT/2017 passed by Central Electricity Regulatory Commission (in short "Respondent No. 1"/ "CERC").

Description of the Parties

2. The Appellant, Delhi Transco Limited, is a Company incorporated under the Companies Act, 1956, and is engaged in the business of transmission of electricity in Delhi.

3. Respondent No. 1 is the Central Electricity Regulatory Commission, established under section 76 of the Electricity Act, 2003, having been vested with the powers under section 79 of the Electricity Act, 2003, inter alia, to resolve the dispute herein.

4. Respondent No. 2 is the Central Transmission Utility of India Limited (CTUIL) and has been assigned the responsibility of undertaking transmission of electricity through the inter-state transmission system and discharging all functions of planning and coordination relating to ISTS.

5. Respondent Nos. 2 to 18 are the Distribution Licensees, Electricity Departments, or Power Procurement Companies of the States receiving the Transmission Services from the Appellant in the Northern Region and paying the tariff for the same.

Factual Matrix of the Case (as submitted by the Appellant)

6. By the Impugned Order, the Central Commission determined the transmission tariff of the Appellant by applying the methodology earlier laid down in the Commission's common Order dated 19.12.2017 in Petition Nos. 88/TT/2017, 173/TT/2016, and 168/TT/2016. In the said Order, the Commission had devised a methodology for the determination of tariff of State Transmission Utilities ("STUs") where details of their respective Inter-State Transmission System (ISTS) lines were not made available.

7. In the Impugned Order, the Central Commission applied the aforesaid methodology to the Appellant's case and also recorded that audited capital cost certificates had not been furnished. The Commission did not allow certain claims relating to interest on loans and grossing up of income tax.

8. The Appellant thereafter filed Review Petition No. 40/RP/2018 before the Central Commission. The Review Petition was dismissed by Order dated 29.11.2019.

9. Prior to the Impugned Order, the capital cost/ acquisition cost of the relevant transmission lines had been considered by the Central Commission in its Order dated 21.03.2016 in Petition No. 218/TT/2013 for the tariff period

2011-14. In that proceeding, the Commission had accepted the audited acquisition cost in terms of Regulation 9 (3) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014, for the 400 kV D/C Mandaula-Bawana Transmission Line and the 400 kV D/C Bamnauli-Ballabgarh Transmission Line.

10. Thus, being aggrieved by the Impugned Order dated 29.06.2018 passed by the CERC in Petition No. 175/TT/2017, the Appellant has preferred the present Appeal.

Our Observations and Analysis

11. The Appellant has prayed for the following relief before us:

“(a) Allow the appeal and set aside the Impugned Order dated 29.6.2018 passed by the Central Commission in Petition No. 175/TT/2017 to the extent challenged in the present appeal;

(b) Direct the Central Commission to modify the Tariff Order dated 29.6.2018 on the aspects of calculation of capital cost, rate of interest on loan and grossing up of return on equity;

(c) Direct the Central Commission to recompute the tariff of Appellant's ISTS line - 400 KV D/C Mandaula-Bawana Line and 400 KV D/C Bamnauli-Ballabgarh Line for the period 01.04.2014 till 31.03.2019.

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

12. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondent 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 issues arise for determination in this Appeal:

Issue No. 1: Whether the Central Electricity Regulatory Commission erred in refusing to consider the audited capital cost submitted by Delhi Transco Limited and instead applied a normative benchmark methodology for tariff determination contrary to Regulation 9 of the CERC (Terms and Conditions of Tariff) Regulations, 2014?

Issue No. 2: Whether the CERC was correct in determining the useful life of the subject transmission assets as 25 years instead of 35 years as prescribed under the relevant regulations and affirmed by APTEL's judgment, thereby affecting the tariff computation?

Issue No. 3: Whether the CERC erred in computing the interest on the normative loan using the weighted average rate from the PGCIL balance sheet instead of the actual weighted average interest rate on the loan that DTL obtained from government and financial institutions, contrary to Regulation 26 of the CERC (Terms and Conditions of Tariff) Regulations, 2014?

Issue No. 4: Whether the CERC was justified in not allowing grossing up of return on equity with the applicable tax rate, disregarding the tax

benefits and obligations specific to DTL, contrary to the provisions of Regulation 25 of the CERC (Terms and Conditions of Tariff) Regulations, 2014?

13. The four issues are dealt with in the succeeding paragraphs on an issue-wise basis.

Issue No. 1: Whether the Central Electricity Regulatory Commission erred in refusing to consider the audited capital cost submitted by Delhi Transco Limited and instead applied a normative benchmark methodology for tariff determination contrary to Regulation 9 of the CERC (Terms and Conditions of Tariff) Regulations, 2014?

14. The dispute in this issue lies in the treatment of the capital cost of the two interstate transmission lines: 400 kV D/C Mandaula-Bawana and 400 kV D/C Bamnauti-Ballabgarh owned by Delhi Transco Limited. The Appellant contends that it duly submitted the audited capital cost certificates in Form 4A to the Commission, which ought to have been accepted for tariff determination as per Regulation 9 (3) of the CERC (Terms and Conditions of Tariff) Regulations, 2014.

15. Regulation 9 of CERC (Terms and Conditions of Tariff) Regulations, 2014 prescribes the capital cost as follows:

“9. Capital Cost:

.....

(3) The Capital cost of an existing project shall include the following:

- (a) *the capital cost admitted by the Commission prior to 1.4.2014 duly trued up by excluding liability, if any, as on 1.4.2014;*
- (b) *additional capitalization and de-capitalization for the respective year of tariff as determined in accordance with Regulation 14; and*
- (c) *expenditure on account of renovation and modernization as admitted by this Commission in accordance with Regulation 15.”*

16. The said regulation prescribes that the capital cost of an existing project shall include the capital cost admitted by the Commission prior to 01.04.2014, duly trued up by excluding liabilities along with additional capitalization or de-capitalization as applicable.

17. The Respondent No. 13 submitted that the Commission, however, in its Impugned Order dated 29.06.2018, did not accept the audited capital cost submitted by DTL. It distinguished between acquisition cost and book value, noting that the Appellant submitted only the audited acquisition cost, which is invariably higher than the book value (capital cost net of accumulated depreciation). Since the Appellant did not submit the capital cost based on the book value, the Commission proceeded to apply a normative benchmark methodology evolved in earlier orders, particularly in Petition No. 112/TT/2017 decided on 04.05.2018 to determine the tariff.

18. This normative methodology uses PGCIL's Annual Report data to derive benchmark costs and assumes a useful life of 25 years for transmission lines, allowing only Operation & Maintenance expenses and Interest on Working Capital for lines older than or equal to 25 years.

19. The Appellant challenges this approach on the grounds that the Commission ignored the duly submitted audited capital cost certificate (Form 4A), which complies with the Regulation 9 requirements.

20. The Commission's distinction between acquisition cost and book value should not have led to the rejection of actual capital cost data duly certified by auditors. The normative benchmark methodology was developed for cases where audited capital cost data is not available or incomplete. In the instant case, such data was available and therefore normative tariff determination is not applicable.

21. The Respondent No. 13, however, supports the Commission's approach stating that many States have similarly not furnished detailed asset-wise audited capital cost data. Given the absence of uniform and reliable capital cost data across State utilities, the Commission had no option but to establish a fair and reasonable benchmark methodology to avoid skewed tariff computations.

22. Further, the Commission and Respondent No. 13 contends that the Appellant failed to provide capital cost based on book value as acquisition cost includes additional costs not allowable under capital cost for tariff determination. The Commission's methodology is consistent and non-discriminatory having been applied to other States facing similar data inadequacies.

23. The Appellant also relies on judgment of this Tribunal in ***Appeal No. 274 of 2018*** where the CERC methodology in Petition No. 112/TT/2017 was set

aside reinforcing that Regulation 9 mandates reliance on admitted capital costs.

24. Hon'ble Supreme Court in ***PTC Ltd. vs. CERC (2010) 4 SCC 603***, underscore that tariff determination must be in consonance with the Regulations framed under Section 178 of the Electricity Act, 2003 and that measures taken by the Commission must conform to such regulations.

25. Considering the above, the issue is clear that whether the Commission was justified in declining to accept the Appellant's audited capital cost and instead applying a normative benchmark methodology.

26. Upon perusal of the above, we find merit in the Appellant's contention that the Appellant did submit the audited acquisition cost duly certified by its auditors. The normative benchmark methodology is intended for instances where audited capital cost details are unavailable or unreliable. Since audited cost data was provided, the Commission ought to have considered it in tariff determination in accordance with Regulation 9. It is a prudent methodology that where an actual cost data is available, that should be considered as against assumptions based methodology, i.e., normative based determination.

27. The Capital Cost submitted by the Appellant in Form 4A (Page Nos. 108 and 109 of the Appeal Paperbook):

PART-III
FORM - 4A**STATEMENT OF CAPITAL COST**

(To be given for relevant dates and year wise)

Name of the Petitioner
Name of Region
Name of Project
Name of Transmission Element
Communication System

: DELHI TRANSCO LIMITED
: NORTHERN REGION
:
: 400kV D/C BAWANA-MANDAULA TRANSMISSION LINE
:

(Amount in Rs. Lakh)

	As on relevant date. ¹	Existing FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
A	a) Opening Gross Block Amount as per books	3743.00	3743.00	3743.00	3743.00	3743.00	3743.00
	b) Amount of capital liabilities in A(a) above						
	c) Amount of (i) IDC (ii) FC (iii) FERV & (iv) Hedging cost included in A(a) above						
	d) Amount of IEDC (excluding IDC, FC, FERV & Hedging cost) included in A(a) above						
B	a) Addition in Gross Block Amount during the period	0.00	0.00	0.00	0.00	0.00	0.00
	b) Amount of capital liabilities in B(a) above						
	c) Amount of (i) IDC (ii) FC (iii) FERV & (iv) Hedging cost included in B(a) above						
	d) Amount of IEDC (excluding IDC, FC, FERV & Hedging cost) included in B(a) above						
C	a) Closing Gross Block Amount as per books	3743.00	3743.00	3743.00	3743.00	3743.00	3743.00
	b) Amount of capital liabilities in C(a) above						
	c) Amount of (i) IDC (ii) FC (iii) FERV & (iv) Hedging cost included in C(a) above						
	d) Amount of IEDC (excluding IDC, FC, FERV & Hedging cost) included in C(a) above						

Note :

1. Relevant date/s means date of COD of transmission element/s or Communication System and financial year start date and end date.

PART-III
FORM - 4A**STATEMENT OF CAPITAL COST**

(To be given for relevant dates and year wise)

Name of the Petitioner
Name of Region
Name of Project
Name of Transmission Element
Communication System

: DELHI TRANSCO LIMITED
: NORTHERN REGION
:
: 400kV D/C BAMNAULI-BALLABHGARH TRANSMISSION
:

(Amount in Rs. Lakh)

	As on relevant date. ¹	Existing FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
A	a) Opening Gross Block Amount as per books	5904.00	5904.00	5904.00	5904.00	5904.00	5904.00
	b) Amount of capital liabilities in A(a) above						
	c) Amount of (i) IDC (ii) FC (iii) FERV & (iv) Hedging cost included in A(a) above						
	d) Amount of IEDC (excluding IDC, FC, FERV & Hedging cost) included in A(a) above						
B	a) Addition in Gross Block Amount during the period	0.00	0.00	0.00	0.00	0.00	0.00
	b) Amount of capital liabilities in B(a) above						
	c) Amount of (i) IDC (ii) FC (iii) FERV & (iv) Hedging cost included in B(a) above						
	d) Amount of IEDC (excluding IDC, FC, FERV & Hedging cost) included in B(a) above						
C	a) Closing Gross Block Amount as per books	5904.00	5904.00	5904.00	5904.00	5904.00	5904.00
	b) Amount of capital liabilities in C(a) above						
	c) Amount of (i) IDC (ii) FC (iii) FERV & (iv) Hedging cost included in C(a) above						
	d) Amount of IEDC (excluding IDC, FC, FERV & Hedging cost) included in C(a) above						

Note :

1. Relevant date/s means date of COD of transmission element/s or Communication System and financial year start date and end date.

28. The Commission's strict reliance on book value as opposed to acquisition cost without allowing the Appellant an opportunity to reconcile or furnish the book value figures resulted in rejection of admissible data.

29. Further, this Tribunal's earlier decision in *Rajasthan Rajya Vidyut Prasaran Limited (RRVPNL's case)* approving 35 years' useful life and ordering remand to the Commission for recalculation of tariff based on admitted costs further strengthen the view that the Commission's methodology is erroneous and needs reconsideration.

30. Relevant paragraph in ***Rajasthan Rajya Vidyut Prasaran Limited vs. PGCIL & Ors.***, **Appeal No. 267 OF 2018, 274 of 2018 & Appeal No. 415 of 2019** & IA Nos. 1226 & 347 of 2021 dated 14.11.2022 is as follows:

"30. Accordingly, as observed above, it is opined that the decision of the Central Commission for considering the useful life of the State owned Deemed ISTS lines as 25 years is not correct. The useful life of the subject transmission lines shall be the same as for the ISTS lines as specified in the Tariff Regulations 2014 and the Sharing Regulations, 2010 which is 35 years."

31. Further, the relevant paragraphs in ***Rajasthan Rajya Vidyut Prasaran Nigam Limited vs. PGCIL & Ors.***, **R.P No. 12 of 2022 and R.P No. 13 of 2022**, dated 06.07.2023 are as follows:

"13. From the CERC Regulations, it is seen that there is no mandate to maintain the asset wise or Line wise detail in respect of the Transmission assets in question and in case, the tariff for such

assets/ lines was determined by the State Commission in terms of the Tariff Regulations notified by the State Commission, wherein the methodology specified tariff determination for the Transmission system as a whole, on the basis of the cumulative data provided by the Review Petitioner and not an Element wise tariff determination, before the tariff determination is brought under the jurisdiction of CERC, the tariff ought to be determined on the basis of ARR of the Review Petitioner as determined by the State Commission.

14. It was also pleaded by the Review Petitioner that it has succeeded to the Transmission function and assets of the erstwhile Rajasthan State Electricity Board which was an integrated entity undertaking all electricity activities in the State for a long time prior to its re-organization in the year 1999 and therefore, no individual Asset wise details are available, accordingly, to deal with such contingencies, the Central Commission had notified the aforesaid CERC Regulations which provides that in the absence of the asset wise tariff, the tariff as computed by the State Commission in the respective ARRs shall be considered.”

15. The Constitutional Bench Judgment of the Hon’ble Supreme Court in PTC India Limited V CERC & Ors.(2010) 4 SCC 603 has held as under:-

“56. Similarly, while exercising power to frame the terms and conditions for determination of tariff under Section 178, the commission has been guided with the factors specified in Section 61. It is open for the Central Commission to specify terms and conditions for determination of tariff even in the absence of Regulation under Section 178. However, if a Regulation is made under Section 178, then, in that event,

framing of terms and conditions for determination of tariff under Section 61 has to be in consonance with the Regulations under Section 178.

16. As seen from above, that the CERC Sharing Regulations evidently specify the methodology to be adopted in case asset wise details of the transmission system are not available, the Central Commission is bound to pass the orders in strict compliance to its Regulations.”

32. Accordingly, the Commission’s refusal to consider the audited capital cost submitted by DTL and adoption of the normative benchmark methodology is found to be contrary to Regulation 9, the principles of natural justice and fairness in tariff determination.

33. This issue is answered in favour of the Appellant and against the Commission with a direction to reconsider the capital cost on the basis of the audited data submitted and determine the tariff accordingly.

Issue No. 2: *Whether the CERC was correct in determining the useful life of the subject transmission assets as 25 years instead of 35 years as prescribed under the relevant regulations and affirmed by APTEL’s judgment thereby affecting the tariff computation?*

34. The Appellant submits that as per the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 the useful life of interstate transmission assets is fixed at 35 years. This is explicitly stated in the Regulation and is binding on the Commission.

35. The Appellant further relies on the decision of this Tribunal in the aforementioned case of Rajasthan Rajya Vidyut Prasaran Limited (RRVPSNL) which was challenged on similar grounds. In Appeal No. 274 of 2018, this Tribunal held that the Commission's approach of adopting a 25-year useful life instead of 35 years was contrary to the Regulations. This Tribunal affirmed that interstate transmission assets are entitled to a 35-year useful life as per the Regulations and ordered the remand of the matter to the Commission for appropriate revision.

36. Following the above, the Commission itself passed a fresh order in Petition No. 112 of 2017 on remand where it categorised assets into groups based on age and accepted the 35-year useful life for assets falling under Group-B which includes the Appellant's assets.

37. The Appellant contends that following these developments, the Commission erred in the Impugned Order in persisting with the 25-year useful life for the subject assets without giving due consideration to the binding Regulations and the Tribunal's judgment.

38. The Commission defend the 25-year useful life on grounds of pragmatic necessity. Given that many interstate transmission assets are old and that data on cost, funding, and depreciation is either unavailable or unreliable, the Commission framed a normative methodology. This was aimed at computing tariffs fairly and consistently across similarly situated assets.

39. The useful life of a transmission asset is a fundamental parameter under the tariff regime. It governs the depreciation schedule, return on investment, cost recovery period and affects the tariff payable by beneficiaries.

40. Regulation 3 (67) of the 2014 CERC Tariff Regulations expressly define the useful life of transmission assets at 35 years. The Regulations are framed under the statutory powers vested in the Commission under the Electricity Act, 2003. It is well settled that the Commission's tariffs must align with such duly notified regulations, absent any contrary statutory or factual grounds.

41. The Commission's attempts to address inconsistencies across various state transmission utilities with incomplete data through normative benchmarking is understandable. However, normative methods cannot override explicit regulatory mandates. They can only be applied in the absence of adequate data or in exceptional circumstances where adherence to the regulations may yield unjust results.

42. This Tribunal in the RRVPNL case (Appeal No. 274 of 2018) expressly held that the Commission's adoption of a 25 year useful life for interstate transmission lines deviates from the explicit regulatory framework prescribing a 35 year life. The Tribunal reinforced that such fundamental parameters must strictly conform to the regulations. Further, the Tribunal mandated reconsideration of tariffs on this basis.

43. The Commission itself revisited its methodology in Petition No. 112 of 2017 upon remand categorizing interstate lines into groups and recognizing the 35-year useful life for assets like those of the Appellant in the present case.

44. Using a 25 year life significantly reduces the asset's value for tariff purposes as it accelerates depreciation and limits the recovery period. In effect, this leads to lower tariff allowance to the transmission licensee. Such a practice

undermines the financial viability of transmission utilities and contradicts the objective of ensuring reasonable returns on investment mandated under the Electricity Act, 2003.

45. In view of the above, it is concluded that the Commission erred in overriding the statutory and regulatory provision of a 35 year useful life by adopting a 25 year norm. The adoption of 25 years as useful life adversely impacts the tariff and is inconsistent with the regulatory framework. The useful life of the subject interstate transmission assets shall be treated as 35 years for tariff determination.

46. Commission is thus directed to revisit and recalculate the tariff of the Appellant's interstate transmission assets based on the 35 year useful life ensuring fairness and regulatory compliance.

Issue No. 3: Whether the CERC erred in computing the interest on the normative loan using the weighted average rate from the PGCIL balance sheet instead of the actual weighted average interest rate on loan that DTL obtained from government and financial institutions contrary to Regulation 26 of the CERC (Terms and Conditions of Tariff) Regulations, 2014?

47. Appellant submitted that the Regulation 26(5) of the CERC (Terms and Conditions of Tariff) Regulations, 2014, clearly prescribes that 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 and in the absence of actual loans the last available weighted average rate may be considered as fallback.

48. The Appellant in Form 9 at Pages 145 to 152 of the Appeal Paperbook has given the rate of interest for 2014-15 as 9.87%, 2015-16 as 10.25%, 2016-17 as 10.19%, 2017-18 as 10.19% and 2018-19 as 10.19%. The Appellant also provided Form 9E wherein interest has been calculated for aforesaid years i.e., 2014-19 on the same rate.

49. The Commission, however, disregarded these actual interest rates furnished by the Appellant and instead applied a normative rate derived from PGCIL's balance sheet. This blanket application of PGCIL's weighted interest rate which might not correspond to the Appellant's actual borrowing costs resulted in a lower rate applied to normative loans thus adversely impacting the interest component allowable in tariff.

50. The Appellant contends that this practice violates the explicit mandate of the Regulation 26 (5) of the 2014 Tariff Regulations which requires that the actual loan portfolio and corresponding interest rates be considered consistent with principles of fair and reasonable cost recovery.

51. It was submitted that the Commission's action effectively amounts to tariff suppression by not allowing the cost actually incurred by DTL, and thus results in financial prejudice to the licensee.

52. Respondent No. 13 submitted that the Commission while determining the interest on loan has reduced the weighted average rate of interest on loan despite the fact that the Appellant is drawing loans from State Government/ Government Agencies i.e., Government of National Capital Territory of Delhi and Commercial Banks on overall requirement basis. This is derogatory to

Regulation 26 of the Tariff Regulations, 2014. This issue was also taken by the Appellant in Review Petition No. 40/RP/2018 in Petition No. 175/TT/2017 on the ground of error apparent on the face of the record which was also dismissed by the Commission vide its Order dated 29.11.2019 and the relevant para on the issue is as follows:

“17. On re-examination of the weighted average rate of interest on loan allowed by us in the order dated 29.6.2018 in line with the benchmarks as discussed above in the methodology, we find that the rate of interest on normative loan shall be the weighted average rate of interest as derived on the basis of PGCIL’s balance sheet. Thus, we find no error apparent on record requiring us to review the impugned order on this ground.”

53. The Commission on re-examination found no error apparent in the determination of the interest on loan on the basis of the methodology and accordingly, the contention raised on this issue is liable to be rejected.

54. The determination of interest on normative loan is a crucial component of tariff which affects the financial sustainability of transmission licensees. The regulatory intent behind Regulation 26(5) is to allow transmission licensees to recover financing costs incurred on actual borrowings for capital expenditure.

55. Regulation 26 (5) is as follows:

“26. Interest on loan capital:

.....

(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.

.....”

56. The language of Regulation 26(5) is mandatory; it specifies that the weighted average rate of interest calculated on the basis of the actual loan portfolio must be used. Normative rates are only to be considered where there are no actual loans or if loans are outstanding but actual data is unavailable.

57. The Appellant furnished audited and statutory financial data evidencing its actual loans and the interest rates paid thereon during the relevant tariff period. These submissions comply with the regulatory requirements and provide a transparent basis for determining the cost of debt.

58. The Appellant has provided Form 9E wherein interest has been calculated for 2014- 2019 (Page Nos. 163 and 164 of the Appeal Paperbook):

PART-III
FORM - 9E

CALCULATION OF INTEREST ON NORMATIVE LOAN

Name of the Petitioner : DELHI TRANSCO LIMITED
Name of Region : NORTHERN REGION
Name of Project :
Name of Transmission Element : 400kV D/C BAWANA-MANDAULA
Communication System : TRANSMISSION LINE

(Amount in Rs. Lakh)

Particulars	Existing 2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
1	2	3	4	5	6	7
Gross Normative loan - Opening	2620.10	2620.10	2620.10	2620.10	2620.10	2620.10
Cumulative repayment of Normative Loan upto previous year	1440.80	1638.43	1836.06	1902.70	1969.33	2035.97
Net Normative loan - Opening	1179.30	981.67	784.04	717.40	650.77	584.13
Increase/Decrease due to ACE/de-capitalization during the Year						
Repayments of Normative Loan during the year	197.63	197.63	66.64	66.64	66.64	66.64
Net Normative loan - Closing	981.67	784.04	717.40	650.77	584.13	517.49
Average Normative Loan	1080.49	882.85	750.72	684.08	617.45	550.81
Weighted average Rate of Interest of actual Loans	9.70%	9.87%	10.25%	10.19%	10.19%	10.19%
Interest on Normative loan	104.81	87.14	76.95	69.71	62.92	56.13

Note:

1. At the time of true-up net savings as a result of refinancing of loans may be provided along with adjustments of sharing.

PART-III
FORM - 9E

CALCULATION OF INTEREST ON NORMATIVE LOAN

Name of the Petitioner : DELHI TRANSCO LIMITED
 Name of Region : NORTHERN REGION
 Name of Project :
 Name of Transmission Element : 400kV D/C BAMNAULI-BALLABHGARH
 Communication System : TRANSMISSION LINE

(Amount in Rs. Lakh)

Particulars	Existing 2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
1	2	3	4	5	6	7
Gross Normative loan - Opening	4132.80	4132.80	4132.80	4132.80	4132.80	4132.80
Cumulative repayment of Normative Loan upto previous year	2014.28	2326.01	2637.74	2949.47	3261.20	3350.44
Net Normative loan - Opening	2118.52	1806.79	1495.06	1183.33	871.60	782.36
Increase/Decrease due to ACE/de-capitalization during the Year						
Repayments of Normative Loan during the year	311.73	311.73	311.73	311.73	89.23	89.23
Net Normative loan - Closing	1806.79	1495.06	1183.33	871.60	782.36	693.13
Average Normative Loan	1962.66	1650.92	1339.19	1027.46	826.98	737.74
Weighted average Rate of Interest of actual Loans	9.70%	9.87%	10.25%	10.19%	10.19%	10.19%
Interest on Normative loan	190.38	162.95	137.27	104.70	84.27	75.18

Note:

1. At the time of true-up net savings as a result of refinancing of loans may be provided along with adjustments of sharing.

59. While normative rates provide benchmarking, they must not override the requirement to reflect actual financing costs where valid data is available. Using PGCIL's industry benchmark in disregard of Appellant's actual loans and interest rates amounts to deviation from Regulation 26(5).

60. Applying a normative lower rate can result in substantial revenue loss to the transmission licensee for borrowing costs actually incurred. This is contrary to the principle of ensuring financial viability and cost-reflective tariff determination embedded in the Electricity Act, 2003 and CERC Regulations.

61. The Commission's role is to ensure tariff is determined in accordance with the Regulations. Deviation from Regulation 26(5) without adequate justification contravenes statutory mandate and undermines the regulatory framework's credibility.

62. In view of the above, it is concluded that the Commission erred in departing from the explicit mandate of Regulation 26(5) by disregarding the actual weighted average interest rates on loans taken by the Appellant and instead applying a normative rate estimated from PGCIL's balance sheet.

63. The weighted average rate of interest on normative loans for the Appellant must be computed on the basis of the Appellant's actual loan portfolio and corresponding weighted average interest rates as submitted and supported by documentary evidence.

64. The Commission is directed to rehear the interest on loan component and determine the interest on normative loan based on the actual weighted average interest rate applicable to the Appellant's borrowings for the relevant tariff period ensuring compliance with the 2014 Tariff Regulations.

Issue No. 4: *Whether the CERC was justified in not allowing grossing up of return on equity with the applicable tax rate disregarding the tax benefits and obligations specific to DTL contrary to the provisions of Regulation 25 of the CERC (Terms and Conditions of Tariff) Regulations, 2014?*

65. The issue concerning the grossing up of Return on Equity (ROE) under Regulation 25 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 is pivotal to ensuring the financial viability and equitable treatment of the Appellant as a transmission licensee.

66. Regulation 25 of CERC Regulation 2014 is as follows:

“25. Tax on Return on Equity:

(1) The base rate of return on equity as allowed by the Commission under Regulation 24 shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid in the respect of the financial year in line with the provisions of the relevant Finance Acts by the concerned generating company or the transmission licensee, as the case may be. The actual tax on income from other business streams including deferred tax liability

(i.e. income on business other than business of generation or transmission, as the case may be) shall not be considered for the calculation of effective tax rate”.

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

Rate of pre-tax return on equity = Base rate / (1-t)

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

Illustration:-

(i) In case of the **generating** company or the transmission licensee paying Minimum Alternate Tax (MAT) @ 20.96% including surcharge and cess:

Rate of return on equity = $15.50 / (1 - 0.2096) = 19.610\%$

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

(a) Estimated Gross Income from generation or transmission business for FY 2014-15 is Rs 1000 crore.

(b) Estimated Advance Tax for the year on above is Rs 240 crore.

(c) Effective Tax Rate for the year 2014-15 = Rs 240 Crore / Rs 1000 Crore = 24%.

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

(3) The generating company or the transmission licensee, as the case may be, shall true up the grossed up rate of return on equity at the end of every financial year based on actual tax paid together with any additional tax demand including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the tariff period 2014-15 to 2018-19 on actual gross income of any financial year. However, penalty, if any, arising on account of delay in deposit or short deposit of tax amount shall not be claimed by the generating company or the transmission licensee as the case may be. Any under-recovery or over-recovery of grossed up rate on return on equity after truing up, shall be recovered or refunded to beneficiaries or the long term transmission customers/DICs as the case may be on year to year basis."

67. Regulation 25 expressly mandates that the base rate of ROE allowed to a licensee must be grossed up with the effective tax rate applicable for the respective financial year. This grossing up is critical because ROE is intended to represent a pre-tax return on capital employed enabling the licensee to recover not only its cost of capital but also the taxes it incurs on the income arising from equity investment.

68. The Regulation further clarifies that the effective tax rate used for grossing up must be computed based on the actual taxes paid by the licensee with respect to its transmission business income expressly excluding income and taxes related to non-transmission activities. This provision acknowledges the varied tax benefits and obligations applicable specifically to transmission

licensees including tax holidays and higher initial depreciation allowances under income tax laws which can materially affect their actual tax liability and consequently the true pre-tax return on equity.

69. Respondent No. 13 submitted that the Appellant is entitled and claiming tax benefits of higher depreciation during initial period under the Income Tax Act and also the benefits of the Tax Holiday as per Section 80 IA of the Income Tax Act, 1961. These benefits under the Income Tax Act are permissible only in respect of its core services related to the transmission business and accordingly the Appellant was required to calculate the effective tax rate under Regulation 25(1) of the Tariff Regulations, 2014.

70. The Appellant is claiming grossing up of the return on equity even without furnishing any document indicating the actual tax paid. The Appellant was required to file the documents related to actual tax paid by them which is the statutorily required to submit the 'Region wise and Corporate audited Balance Sheet and Profit & Loss Accounts with all the Schedules & annexures for the new Transmission System & Communication System for the relevant years' which is a statutory requirement required to be submitted as per Tariff Regulations, 2014.

71. Profit & Loss Accounts gives the details of actual tax paid. The Appellant has not elaborated as to why the grossing up of ROE was denied to them as such no further views on the issue are submitted.

72. By not grossing up the ROE the Commission effectively denied the Appellant recovery of the true pre-tax return thereby financially prejudicing it and contravening the principles of the Regulations aimed at fair cost recovery.

The Commission in the Impugned Order dispensed with grossing up to avoid complexity despite clear regulatory requirements and the Appellant's entitlement which amounted to a denial of the statutory benefit guaranteed to the licensee.

73. From the Commission's perspective, disallowing grossing up was justified on the grounds that the Appellant did not furnish requisite documents clearly evidencing the actual tax paid or the effective tax rate and that grossing up adds layers of complexity to tariff determination. While the Commission's aim to maintain uniformity and simplicity is understandable such an approach cannot override the regulatory mandate when the licensee has statutory obligations to submit necessary information and when grossing up is explicitly required by the 2014 Tariff Regulations.

74. Furthermore, the Commission's rationale overlooks that non-compliance with Regulation 25 results in under-recovery of the licensee's cost of capital adversely impacting the licensee's financial health and discouraging investment. Tax benefits such as those under Section 80 IA are established provisions of tax law intended to promote infrastructure investments and failure to reflect them in tariff undermines the regulatory framework's integrity which seeks to ensure cost-reflective tariffs.

75. Avoidance of complexity is not a sufficient justification for regulatory deviation especially when the licensee has statutory rights and obligations in tariff calculation. The Commission's failure to assist the licensee in furnishing the relevant tax data or to factor in such benefits equates to procedural inadequacy or abdication of its duty. It imposes a financial penalty on the

licensee contrary to the overarching objective of transparent and fair tariff regulation.

76. To sum up, the Commission's decision not to allow grossing up of ROE in accordance with the effective tax rate disregarding the Appellant's specific tax obligations and benefits runs contrary to the letter and spirit of Regulation 25 of the 2014 Tariff Regulations. The Appellant is entitled to have its return on equity grossed up with the actual effective tax rate computed with full consideration of tax benefits like higher depreciation and tax holidays under the Income Tax Act.

77. The correct course is for the Commission to direct the Appellant to furnish all necessary audited financial documents that enable a precise calculation of the effective tax rate for the tariff period. Subsequently, the Commission must recompute the tariff incorporating grossing up of ROE accordingly ensuring compliance with the Regulations and fairness in tariff recovery.

78. This measure safeguards the financial sustainability of the transmission licensee and maintains the integrity of the regulatory framework by upholding statutory mandate without ignoring the licensee's lawful tax position and legitimate entitlement to recover its pre-tax cost of equity capital.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 223 of 2022 has merit and is allowed.

The Impugned Order dated 29.06.2018 passed by Central Electricity Regulatory Commission in Petition No. 175/TT/2017 is set aside.

The matter is remanded to the Central Electricity Regulatory Commission to pass order afresh in accordance with this judgment and the applicable regulatory framework. The Commission shall ensure that the tariff determination reflects the actual capital cost, legitimate weighted average interest on loan, grossed-up return on equity based on true effective tax rates and correct useful life of assets.

The Commission is further directed to give the Appellant adequate opportunity to submit requisite data and documents relevant for these determinations.

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

PRONOUNCED IN THE OPEN COURT ON THIS 04TH DAY OF SEPTEMBER, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

REPORTABLE / NON-REPORTABLE

pr/mkj/kks