

BEFORE THE HON'BLE UTTAR PRADESH ELECTRICITY REGULATORY

COMMISSION, LUCKNOW, U.P.

PETITION NO. 1804 OF 2021

IN THE MATTER OF

FIXATION OF TRANSMISSION TARIFF FOR 7.2 KM 400 KV DEDICATED TRANSMISSION LINE, CONSTRUCTED TO CONNECT ROSA TPP TO CENTRAL TRANSMISSION UTILITY (CTU) NETWORK AS PER MEMORANDUM OF UNDERSTANDING (MoU) SIGNED BETWEEN THE PETITIONER AND THE RESPONDENT, FOR FY 2020-21 to FY 2024-25

AND IN THE MATTER OF

Rosa Power Supply Company Limited

Regd. Office:

19, Walchand Hirachand Marg,

Ballard Estate, Mumbai - 400001

...Petitioner

AND

Uttar Pradesh Power Corporation Limited

(Through Chief Engineer,PPA)

Shakti Bhawan

14, Ashok Marg, Lucknow 226 001

...Respondent

MOST RESPECTFULLY SHEWETH:

I. CONSPECTUS

1. The Petitioner, i.e., Rosa Power Supply Company Limited ("RPSCL"/"Petitioner") is a generating company within the meaning of Section 2 (28) of the Electricity Act, 2003 ("**the Act**") and operates within the Regulatory supervision of this Hon'ble Commission. The Petitioner has set up a 1200 MW coal fired thermal generating station as an Independent Power Producer ("**IPP**") at Rosa in District Shahjahanpur, Uttar Pradesh

consisting of four units of 300 MW each. The Petitioner is filing the present petition for:-

- (a) Truing -up of Transmission Tariff for the period FY 2017-18 to FY 2019-20 under Uttar Pradesh Electricity Regulatory Commission ("Multi Year Tariff for Distribution and Transmission") Regulations 2019 ("**UPERC MYT Regulations 2019**") for its 7.2 KM 400 KV dedicated Transmission Line constructed for connecting Rosa Thermal Power Plant ("**TRP**") to Central Transmission Utility ("**CTU**") Network.
 - (b) Approval of Multi Year Tariff for the period FY 2020-21 to FY 2024-25 determined in accordance with the UPERC MYT Regulations 2019
2. The present Petition was filed before this Hon'ble Commission on 20.12.2021. However, owing to certain deficiencies in the present Petition a request for rectification was made before this Hon'ble Commission on 22.03.2022.
3. Pursuant to the above, this Hon'ble Commission *vide* its Order dated 25.03.2022, was pleased to grant liberty to the Petitioner to remove the deficiencies in the present Petition and file a revised Petition. Hence, the present Petition is being filed on behalf of the Petitioner.
4. The details of the Petition and justifications along with relevant supporting documents are given in the following Sections. For ease of reference, the present Petition has been bifurcated into the following parts:
 - (a) Factual Background and the MoU dated 19.08.2019 executed between the Petitioner and PGCIL
 - (b) The overall approach to present filings
 - (c) Truing-up of Transmission Tariff for the period FY 2017-18 to FY 2019-20
 - (d) Approval of Multi-Year Tariff for the period FY 2020-21 to FY 2024-25
 - (e) Prayer

II. FACTUAL BACKGROUND

Re Overview of the Project

5. Petitioner's Plant was set up as Special Power Project initiated by the Government of Uttar Pradesh ('GoUP') for catering to the demands of power supply in the State of Uttar Pradesh. In fact, when in the year 2006, M/s Reliance Power Limited acquired the Petitioner and decided to set up thermal based power plant project, the State of Uttar Pradesh was facing severe power deficit of over 17.4% in 2006 and no developer was willing to set up power projects within the State of Uttar Pradesh, considering the multiple construction, operational, regulatory risks and extremely high financial/ payment risk involved in the State of Uttar Pradesh.
 - 5.1 On 12.11.2006, the Petitioner and UPPCL executed a PPA for Stage I of the Power Plant (2 x 300 MW) which was duly approved by this Hon'ble Commission *vide* its Orders dated 02.02.2006 and 01.11.2006 in Petition No. 306 of 2006 respectively. A True Copy of the PPA dated 12.11.2006 is hereby annexed and marked as **ANNEXURE P/1**.
 - 5.2 On 30.05.2009, 27th Meeting of standing committee on Transmission System Planning of Northern Region was convened by CEA, wherein it was decided that the Petitioner will connect to Power Grid Corporation of India Limited ("PGCIL") network through a LILO and subsequently to the PGCIL substation at Shahjahanpur as and when it is commissioned. A True Copy of the minutes of meeting of the 27TH Standing Committee is hereby annexed and marked as **ANNEXURE P/2**.
 - 5.3 Subsequently, on 11.09.2009, UPPCL and the Petitioner also signed a Supplementary PPA ("**SPPA**") for 300 MW Stage II. The SPPA got the approval of this Hon'ble Commission *vide* its Order dated 15.06.2009 in Petition No. 610 of 2009. A True Copy of the SPPA dated 11.09.2009 is hereby annexed and marked as **ANNEXURE P/3**.
 - 5.4 On 12.03.2010, Unit 1 (Stage I) achieved the Commercial Operation Date ("**COD**") and on 30.06.2010, Unit 2 (Stage I) achieved COD.

- 5.5 On 29.12.2010, 29th Meeting of the Standing Committee was convened, wherein it was decided that to avoid bypassing of series compensation of Unnao-Bareilly 400 KV UPPTCL Line, a dedicated 400 KV Double Circuit line of 7.2 Km will be constructed by RPSCL to connect to PGCIL substation at Shahjahanpur. A True Copy of the minutes of 29th meeting is hereby annexed and marked as **ANNEXURE P/4**.
- 5.6 On 31.05.2011, the Petitioner issued a letter to UPPCL thereby offering remaining 300 MW capacity of the Rosa TPP Stage II and in effect dedicating entire capacity of 1200 MW to UPPCL.
- 5.7 On 19.11.2011, Amendment to Supplemental PPA ("**ASPPA**") was executed between RPSCL and UPPCL for supply of remaining 300 MW capacity from Rosa TPP Stage II.
- 5.8 On 20.01.2012 a Memorandum of Understanding ("**MoU**") was signed between Petitioner and UPPCL. In terms of the said MoU, the transmission tariff for the 400 kV dedicated transmission line constructed by the Petitioner is to be determined by the Hon'ble Commission. Relevant extract of MoU dated 20.01.2012 mentioned below:

"2. UPPCL shall bear all applicable connectivity and transmission charges inclusive of all applicable taxes and duties and transmission losses for ISTS network including all the charges payable under the BPTA including charges for applicable Bank Guarantees by reimbursing the same to RPSCL.

4. UPPCL shall bear all transmission charges for 400 kV dedicated transmission line as determined by U.P. Electricity Regulatory Commission (UPERC) on a petition to be filed by RPSCL excluding the transmission losses for 400 kV dedicated line which shall be to RPSCL's account."

A true copy of the MoU dated 20.01.2012 is hereby annexed and marked as **ANNEXURE P/5**.

- 5.9 Further as per Clause 1 of the MoU dated 20.01.2012, both Petitioner and UPPCL agreed that Petitioner shall operate and maintain 400 kV dedicated transmission line connecting Stage – II switchyard of Petitioner with PGCIL network.

5.10 On 15.03.2012, the 400 KV DC Transmission Line of 7.2 Km was commissioned and on 01.04.2012, the 4th Unit of the Petitioner also commissioned. Transmission network details of Petitioner is as follows:

Table 1: Rosa Transmission network details

| Particulars | UoM | Value |
|--|----------|-------|
| Total length of 400 kV line | Ckt Kms. | 7.2 |
| Total no. of 400 kV bays at PGCIL's Shajahanpur Substation | Nos. | 4 |

5.11 On 16.05.2012, in the petition filed by Petitioner for approval of additional capex incurred in Stage-II, this Hon'ble Commission directed Petitioner to file separate petition for 400 kV transmission line and associated works. The relevant extracts of this Commission order dated 16.05.2012 mentioned below:

"3. One the preliminary examination of RPSCL's petition on additional capital costs, the Commission discovered that the petition also includes capital cost on 400 KV transmission line and associated works. As the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2009 neither covers the capital cost nor the O&M expenditure of transmission line, it cannot be taken into consideration in this petition. Hence, the Petitioner is directed to file the cost on 400 KV transmission line and associated works through a separate petition."

5.12 On 18.08.2017, Petitioner and PGCIL executed a MoU for operation and maintenance of terminal equipment installed in switchyard of PGCIL, 400/220 KV Substation for Two nos. 400 kV Rosa Main Bays and Two nos. 400 kV Rosa Tie bays, from the date of commissioning of 400 KV Rosa – Shahjahanpur line 1 & 2 (Commissioning of SPN-Rosa Ckt-I and SPN-Rosa Ckt-II on 22.03.2017 and 04.03.2017 respectively) till 31.03.2019. The relevant terms of the MoU are as follows:-

"2.1 BAY UNDER CONSIDERATION

POWERGRID will be carrying out the operation and maintenance of all indoor and outdoor terminal equipment installed in the following RPSCL bays at POWERGRID switchyard

At 400/220 kV Shahjahanpur Substation Switchyard:

Two nos. 400 kV Rosa Main Bays and two nos. 400kV Rosa Tie bays of Rosa Power for connecting 400 kV D/C Shahjahanpur – Rosa Line at 400/220 kV Shahjahanpur Substation.

4. Compensation

4.1. RPSCL has 04 No. of Bays at Shahjahanpur substation, RPSCL will pay POWERGRID for each bay charges as per O&M of bays, which at present is Rs 24.46 Lakh/year/bay with year escalation @3.32% of O&M Charges, fixed for the previous year, thereafter till the validity period of this MoU or mutually agreed period after the expiry of the validity period. To elaborate, the year wise compensation is attached at **Annexure – I**. However, in case of any change of CERC norms in future, the revised charges for O&M of bays shall be paid by M/s. RPSCL to POWERGRID.

11.0 This MOU shall be valid up to 31.03.2019 i.e., for tariff block 2014-19. After expiry of above MoU, fresh agreement may be signed for new tariff block 2019-24, as per latest CERC norms/POWERGRID uniform rates.”

5.13 On 19.08.2019, Petitioner and PGCIL executed a subsequent MoU for the operation and maintenance of terminal equipment in the switchyard of PGCIL, 400/220 KV Shahjahanpur Substation for Two nos. 400 kV Rosa Main Bays and Two nos. 400 kV Rosa Tie bays. The relevant terms of the MoU are as follows:-

2.1 BAY UNDER CONSIDERATION

POWERGRID will be carrying out the operation and maintenance of all indoor and outdoor terminal equipment installed in the following RPSCL bays at POWERGRID switchyard

At 400/220 kV Shahjahanpur Substation Switchyard:

Two nos. 400 kV Rosa Main Bays and two nos. 400kV Rosa Tie bays of Rosa Power for connecting 400 kV D/C Shahjahanpur – Rosa Line at 400/220 kV Shahjahanpur Substation.

4. Compensation

4.1. RPSCL has 04 No. of Bays at Shahjahanpur substation, RPSCL will pay POWERGRID for each bay charges as per O&M of bays, which at present is Rs 32.15 Lakh/year/bay with year escalation @3.51% of O&M Charges, fixed for the previous year, thereafter till the validity period of this MoU or mutually agreed period after the expiry of the validity period. To elaborate, the year wise compensation is attached at **Annexure – I**. However, in case of any change of CERC norms in future, the revised charges for O&M of bays shall be paid by M/s. RPSCL to POWERGRID.

11.0 This MOU shall be valid up to 31.03.2024 i.e., for tariff block 2019-24. After expiry of above MoU, fresh agreement may be

signed for new tariff block 2024-29, as per latest CERC norms/POWERGRID uniform rates.

5.14 It is apposite to state that as per the terms of the MoU dated 18.08.2017 and 19.08.2019, PGCIL shall be responsible for maintenance of all internal and outdoor terminal equipment installed in bays at PGCIL's Shajahanpur Substation and Petitioner will pay PGCIL for each bay charges as per Annexure - I of the said MoU. A true copy of MoU dated 18.08.2017 and 19.08.2019 are hereby annexed and marked as **ANNEXURE P/6 (Colly.)**.

Re History of filings

A. Orders of this Hon'ble Commission with respect to fixation of Tariff of 7.2 KM 400 KV DC Dedicated Transmission Line

5.15 In 2012, the Petitioner filed Petition No. 786 of 2012 for approval of additional cost incurred on Balance of Plant ("**BoP**") and 400 KV transmission line and associated works of 2 x 300 MW Stage II of Rosa TPP.

5.16 On 16.05.2012 and 25.06.2012, this Hon'ble Commission passed its Order in Petition No. 786 of 2012 and provisionally approved the additional capital of Rs. 550.02 Cr. on the BoP of the Project. Further, vide the same Order, this Hon'ble Commission also directed to file a separate petition for 400 KV transmission line. For ease of reference, the relevant extracts of the same is reproduced hereunder:

(a) This Hon'ble Commission's order dated 16.05.2012:

"3. On the preliminary examination of RPSCL's petition on additional capital costs, the Commission discovered that the petition also includes capital cost on 400 KV transmission line and associated works. As the UPERC (Terms and Conditions of Generation Tariff) Regulations, 2009 neither covers the capital cost nor the O&M expenditure of transmission line, it cannot be taken into consideration in this petition. Hence, the Petitioner is directed to file the cost on 400 KV

(b) This Hon'ble Commission's order dated 25.06.2012:

"1. M/s Rosa Power Supply Company Limited has filed the petition for approval of additional capital cost of Rs. 595.09 Crs incurred on Balance of Plant (BoP) and 400 kv transmission line and associated works of Rosa Thermal Power Station. In the matter, vide order dated 16.05 2012,

the Petitioner was directed to file the cost incurred by them on 400 KV transmission line and associated works through a separate petition and the Respondent in response to their request was given additional time for submission of their reply. The reply has not been filed by the Respondent so far.

2. Hence, the Hon'ble Commission is requested to approve provisionally, the additional capital of Rs. 550.02 Cr. (after reducing the cost of transmission system) subject to prudence check and final approval of the Commission.

3. In view of above; the Commission deems it appropriate to provisionally approve the additional capital cost of Rs. 550.02 Cr. on the BoP of the project subject to prudence check and final approval of the Commission under the provisions of PPA, Regulations and earlier orders of the Commission."

A True copy of Order dated 16.05.2012 and 25.06.2012 passed by the Hon'ble Commission in Petition No. 786 of 2012 is hereby annexed and marked as **ANNEXURE -P/7 (Colly.)**.

5.17 On 03.10.2012, after commissioning of 400 kV Double Circuit dedicated transmission line of 7.2 km connecting the Petitioner to CTU network and in accordance with the directions of this Hon'ble Commission, the Petitioner filed a separate Petition being **Petition No. 837 of 2012 for fixation of tariff for the transmission line**. By way of the said Petition, the Petitioner sought approval of capital cost capitalized till 31.03.2015 and tariff for construction of 400 kV transmission line and associated facilities; after considering the fact that this line would be used permanently for evacuation of power from Stage II of Rosa TPP and will be injected into CTU grid which will, in turn, be supplied to UPPCL.

5.18 This Hon'ble Commission *vide* order dated 29.06.2016 ("**Transmission Tariff Order 1**") as well as corrigendum dated 20.10.2016 approved Transmission Charges for the period from FY 2011-12 to FY 2016-17. Against the capitalized cost of Rs 28.79 Crore till 31.03.2013, the Hon'ble Commission has approved Rs. 21.82 Crores and approved Transmission Charges for the period from FY 2011-12 to FY 2016-17. A true Copy of Order dated 29.06.2016 is hereby annexed and marked as **ANNEXURE -P/8**

- 5.19 On 25.05.2017, the Petitioner filed Petition No. 1197 of 2017 for fixation of Transmission Tariff for FY 2017-18 to FY 2019-20.
- 5.20 Thereafter, on 29.01.2018 this Hon'ble Commission *vide* order in Petition No. 1197 of 2017 ("**Transmission Tariff Order 2**") approved a capital cost of Rs. 33.31 Crs. and Transmission tariff for FY 2017-18 to FY 2019-20 was determined by the Hon'ble Commission as per MoU dated 20.01.2012 executed between Petitioner and UPPCL. This Hon'ble Commission in the said Order did not allow True Up for FY 2014-15, 2015-16, 2016-17 since tariff for these years was determined by the Hon'ble UPERC *vide* Order dated 29.06.2016. A true Copy of Order dated 29.01.2018 is hereby annexed and marked as **ANNEXURE -P/9**
- 5.21 Further, after the commissioning of bays at PGCIL Shajahanpur Substation on 22.03.2017 (Circuit 1) & 04.03.2017 (Circuit 2), the Hon'ble Commission by way of Order dated 29.01.2018 in Petition No, 1197 of 2017 while determining the Tariff for the control period i.e., FY 2017-18 to FY 2019-20 approved as follows:
- (a) additional capital cost of Rs. 11.49 Crs.,
 - (b) Bay maintenance charge under O&M Expenses as per MoU between RPSCL and PGCIL dated 18.08.2017
 - (c) 70% of the O&M Expenses as claimed at the time by the Petitioner.
- 5.22 As the Tariff approved by the Hon'ble Commission in the aforesaid Order was till FY 2019-20, Petitioner is filing the present Petition for True-up of tariff for the period FY 2017-18 to FY 2019-20 and the approval of Multi Year Tariff for the period FY 2020-21 to FY 2024-25 to be determined in accordance with the UPERC MYT Regulations 2019.
- 5.23 Taking into consideration, the commissioning of bays at PGCIL sub-station at Shahjahanpur 30.03.2017 and revision of bay maintenance charges in new control period 2019-24, the Hon'ble Commission may allow recovery of actual bay maintenance charges incurred by Petitioner on account of MoU dated 19.08.2019 for true up of period from FY 2017-18 to FY 2019-20 as the

bay maintenance charges for FY 2019-20 and FY 2020-21 mentioned in PGCIL MoU dated 18.08.2017 were subsequently revised considering new CERC Tariff norms for control period 2019-24. Summary of bay maintenance charges as per respective MoU between Petitioner and PGCIL mentioned below:

| Financial Year | As per MoU with PGCIL dated 18.08.2017 (Rs Lakh/bay/year) | As per MoU with PGCIL dated 19.08.2019 (Rs Lakh/bay/year) |
|-----------------------|--|--|
| 2016-17 | 24.460 | |
| 2017-18 | 25.272 | |
| 2018-19 | 26.111 | |
| 2019-20 | 26.978 | 32.150 |
| 2020-21 | 27.874 | 33.280 |
| 2021-22 | | 34.450 |
| 2022-23 | | 35.660 |
| 2023-24 | | 36.910 |

5.24 In addition to the above, looking into the history of filings of the Petitioner, in relation to determination of tariff for its project, the following emerges:

- (a) Cost of 400 kV Transmission line originally included in Petition No. 786 of 2012 was removed as per the direction of this Hon'ble Commission *vide* order dated 16.05.2012 and 25.06.2012.
- (b) Accordingly, the Petitioner filed a separate petition for approval of Transmission Tariff, i.e., Petition No. 837 of 2012 wherein this Hon'ble Commission *vide* orders dated 29.06.2016 and 29.01.2018 approved Transmission Tariff for the period from FY 12 to FY 17 (Petition No 837 of 2012) and FY 18 to FY 20 (Petition No 1197 of 2017) respectively.
- (c) Further, the cost of 400 kV transmission line was not included in the Additional Capex approval petition filed by Petitioner in 2017 in Petition No. 1197 of 2017.
- (d) Therefore, the Petitioner is constrained to file the present petition in light orders passed by the Hon'ble Commission on 28.03.2011, 21.05.2012, 22.08.2017 & 24.04.2018 wherein only Generation Tariff

of the Petitioner's plant was approved, and cost of transmission line is not taken into consideration.

III. OVERALL APPROACH TO PRESENT FILING

A. Provisions from Act and MYT Regulations

6. The Act provides for approval of tariff of Transmission Assets within the State

“Section 86 Functions of State Commission -

(1) the State Commission shall discharge the following functions namely:-

*(a) **determine the tariff for generation, supply, transmission, and wheeling of electricity, wholesale, bulk, or retail, as the case may be, within the State:***

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or other sources through agreements for the purchase of power for distribution and supply within the State;

*(c) **facilitate intra-State transmission and wheeling of electricity;***”

- 6.1. Further, Regulation 6 of the UPERC MYT Regulations 2019 states that:

“6 True-Up:

6.1 The Licensee shall file Petition for True-Up as provided in Regulation 4.1 of these Regulations: Provided that the Petition shall include information in such form as may be stipulated by the Commission, together with the Accounting Statements, extracts of books of account and such other details, etc., as per the Guidelines and Formats as may be prescribed by the Commission.

6.2 The Commission shall carry out the Truing-Up exercise stipulated in the provisions of these Regulations. True-Up of Expenses and Revenue shall be on the basis of approved and actual expenses, revenue, etc., based on prudence check of Accounting Statements of the Licensee for the Financial Year.

6.3 The Distribution Licensee shall ensure that the Category/ Sub-category-wise billed revenue as per the Rate Schedule is included in its Accounting Statements.”

- 6.2. Further, Regulation 11 of MYT Regulations 2019 provides for Application for determination of Tariff for the Control Period FY 2017-18 to FY 2019-20. The relevant extract of the Regulations is reproduced below for the ready reference of the Hon'ble Commission.

11 Determination of Tariff or Licensee:

11.1 The Commission shall determine the ARR and Tariff or the Licensee, upon consideration of a Petition filed by the Licensee in accordance with the procedure contained in these Regulations.

11.2 The Commission shall determine the ARR/Tariff or the Licensee for:

(a) Transmission Licensees, in accordance with the terms and conditions contained in Part E of these Regulations;

(b) Distribution Licensee, in accordance with the terms and conditions. Contained in Part F of these Regulations; and

6.3. Based on the above, the Petitioner is filing the present Tariff Petition. In terms of Regulation 6 & 11 quoted above, the Petitioner is filing the present Tariff Petition for True up and computation of Tariff based on actual capital expenditure incurred by the Petitioner.

IV. KEY ISSUES

Re MoU dated 19.08.2019 executed between the Petitioner and PGCIL

6.4. It is humbly submitted that Petitioner commenced operation and supply of power to UPPCL as per PPA dated 12.11.2006. In accordance with the terms of the PPA, UPPCL agreed to construct, own, and operate the External Interconnection Facilities. In this regard, relevant provisions of the PPA are reproduced below :-

“Section 9.2 Switchyard and Transmission Lines

...

(b) UPPCL shall design, construct, install, test , commission, operate, own, and maintain at no cost to Rosa, the 220 kV Transmission Line and the other External interconnection Facilities described in Schedule 5 and the UPPCL System.

(c) Ownership of facilities and the responsibility between Rosa and UPPCL shall be as described in Schedule 5 and in Section 6.13.

(d) Rosa will specify the requirements for protection, control and metering of the Internal Interconnection Facilities and External Interconnection Facilities to protect the station.

(e) UPPCL and ROSA shall use its reasonable efforts to ensure that power flows into the ROSA substation and/or the Switchyard do not result in metering inaccuracy.”

Schedule – 5

Transmission and Interconnection Facilities

PART A –UPPCL’s RESPONSIBILITY

The UPPCL Transmission System which will be used to evacuate Available Energy from the Station shall include the following power system hardware.

- 1. 2- Double Circuit 220 kV Rosa – Shahjahanpur Line***
- 2. 1- Double Circuit 220 kV Rosa – Hardoi line***
- 3. 1- Single Circuit 220 kV Rosa – Badaun line***
- 4. 220/132 kV, 2 x 100 MVA Hardoi Sub – Station***
- 5. Necessary 132 kV Inter – connectors between 220 kV and 132 kV Hardoi sub-station***

UPPCL Shall build the above 7 nos, transmission lines and tie into the Station's 220 kV Switchyard Outgoing Gantry....

- 6.5. Further the above understanding also continued in the SPPA dated 11.09.2009 and the MoU dated 20.01.2012, same is evident from the relevant terms of the SPPA which are herein reproduced below :-

“7. Interconnection and Transmission

7.1. UPPCL shall at its own expense complete external interconnection facilities in accordance with the specifications as outlined in Schedule IIA, including connections to the 400 kV Systems of UPPCL in order to evacuate the contracted capacity under this Agreement.

7.2. UPPCL shall complete construction of external interconnection facilities Ninety (90) days before scheduled synchronization date of Unit II or any extension thereto due to any Force Majeure event in accordance with the construction Schedule of Unit – II...”

- 6.6. Thus, it is discernable from the above-stated clauses that the construction of the External Interconnection Facilities for evacuation of the power from Phase II of the project was the responsibility of UPPCL for which a LILO was planned on Unnao-Bareilly 400 KV Uttar Pradesh Power Transmission Corporation Limited (“UPPTCL”) Line.
- 6.7. However, subsequently, it was decided in the 29th Meeting of the Standing Committee held on 29.12.2010 that to avoid bypassing of series, compensation of Unnao-Bareilly 400 KV UPPTCL Line, a dedicated 400 KV Double Circuit line of 7.2 KM will be constructed by Petitioner to connect to PGCIL substation at Shahjahanpur.
- 6.8. Considering the above, Petitioner entered into an agreement with PGCIL for construction of 400 kV bays at the substation of PGCIL at Shahjahanpur for interconnection to Network of PGCIL. However, to service the bays at the PGCIL Sub- station, Petitioner executed a subsequent MoU dated 19.08.2019, wherein PGCIL shall be responsible for maintenance of all internal and outdoor terminal equipment installed in bays at PGCIL’s Shajahanpur Substation. However, for such services, the Petitioner shall be liable to make requisite payment to PGCIL.
- 6.9. Thus, basis the current situation and the need for Petitioner to operate and maintain 400 kV dedicated transmission line connecting Phase II switchyard

with PGCIL network, Petitioner was constrained to pay revised bay maintenance charges as per the terms of MoU dated 19.08.2019, which were derived as per Regulation 35 (3) Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2019 ("**CERC Tariff Regulations 2019**") and were uniform PGCIL rates for bay maintenance.

- 6.10. It is humbly submitted that the payment to PGCIL is beyond the scope of tariff determined by the Hon'ble Commission and qualify within the meaning of Uncontrollable Factors under Tariff Order dated 29.01.2018 and itself is an uncontrollable factor and is beyond the control of the Petitioner and such expense hence needs to be trued up. In this regard it is apposite to state Regulation 8.1 (d) of MYT Regulation 2019 which provide for uncontrollable factors which cannot be mitigated by the Petitioner and should be adjusted in the ARR or Tariff of the Petitioner. The relevant excerpts of the Regulation are reproduced below.

8 Controllable and Uncontrollable Factors:

8.1 The "Uncontrollable Factors" shall comprise the following factors, which were beyond the control of, and could not be mitigated by the Licensee, as determined by the Commission:

(a) Force Majeure events;

(b) Change in Law;

(c) Taxes, Duties and Statutory levies;

(d) Variation in the approved cost of power purchase from approved sources, subject to clauses in the power purchase agreement or arrangement approved by the Commission;

(e) Variation in interest rates for long-term loans; and

*(f) Other expenses- It will cover expenses like salary revision effected because of Pay Commissions or **any other expenses allowed by the Commission after prudence check....***

- 6.11. Further, Hon'ble Commission while approving the recovery of bay maintenance charges as per MoU with PGCIL dated 18.08.2017 has allowed recovery of 70% of O&M Charges only while approving Transmission Tariff for the period from FY 2017-18 to FY 2019-20. Thus, in the present matter excess bay maintenance charges paid by the Petitioner on account of MoU dated 18.08.2017 and 19.08.2019 to be treated as an uncontrollable factor. In this regard reliance is placed on the judgment passed by the Hon'ble Tribunal

titled as *Torrent Power Limited v GERC* (Appeal no. 256 of 2016). The relevant excerpts of the judgment are reproduced below

“8.2 Admittedly, the variation in O&M expense on account of the cost of Rs. 4.54 Crore was incurred towards the network augmentation charge as required by the State Transmission Utility (STU) for laying connectivity to source power to cater to the demand of the consumers. This expense is, therefore, beyond the control of the Appellant and has been incurred at the instance of STU and therefore, we find force in the submissions made by the learned counsel for the Appellant that this expense is uncontrollable as being beyond the control of the Appellant.

8.3 We agree that O&M expense is to be treated as controllable & normative in normal circumstances but when Statutory Regulations provides for exception, the Statutory Regulations are to be followed to deal with those exceptions. Reference to this Tribunal’s judgment in NTPC Ltd Vs Uttar Pradesh Power Corporation Limited in Appeal No. 148 of 2015, it is important to note that order is in relation to additional cost incurred for a tariff item and does not deal with exceptional situation which results in increase of O & M cost which falls within the third proviso of Regulation 23.1. Thus, this judgment is not applicable to the present case when seen in its entirety.

8.6 From the above, it is noticed that the estimated network growth and rise in demand in the Dahej SEZ did not arise as expected which resulted into severe mismatch between the scope of works and procurement of materials. It is not in dispute that the planning for 220 kV double circuit line for connectivity East to West sub-station was kept on hold by STU itself and later on, it directed the Appellant to construct part of the said 220 kV network on behalf of STU (GETCO). In execution of the said work, the materials which were available or procured were utilized to the maximum extent possible. However, certain items could not be used due to very distinct technical specifications. The part of materials which could be put to future use were transferred to stores and some items were scrapped. This written off materials valued at Rs.2.48 crores were part of the O& M expenses. We thus opine that the variation in O&M expenses which have arisen due to uncontrollable / extra ordinary reasons, ought to have been treated as uncontrollable. We are unable to accept the observations of the State Commission that “the same cannot be considered as efficient planning and the consumers cannot be burdened with such losses.” In such a circumstances, when STU was closely involved for planning and execution of the said lines and substation, the Appellant cannot be penalized on account of the factors which were beyond its control and entirely uncontrollable. We are, therefore, of the considered opinion that the State Commission has not adopted judicious approach in dealing with the issue and has taken a decision of legal infirmity.”

[Emphasis Supplied]

V. True-up for the period from FY 2017-18 to FY 2019-20

- 6.12. The Petitioner in the present petition is submitting the actual expenses for the purpose of True-up. In this regard, Petitioner humbly submits that the actual O&M Expenses of Transmission line incurred by Petitioner is more than what was approved by Hon'ble Commission under Tariff Order dated 29.01.2018. This Hon'ble Commission while approving tariff had only allowed 70% of claimed O&M expenses and difference of O&M Expenses in the year 2019-20 is on account of the "Uncontrollable Factors" as explained in Para 6.10 above. Details of the same are mentioned hereunder and the Petitioner consequently prays the Hon'ble Commission to allow recovery of the same and its impact on Working Capital from UPPCL.
- 6.13. **True-up of O&M Expenses:** Petitioner is maintaining combined account for O&M expenses of Generating Station and Transmission Line together. Considering this fact, Hon'ble Commission has approved normative O&M Charges of 2% of capital cost of transmission line *vide* its order dated 29.06.2016. Taking into consideration, the commissioning of bays at PGCIL sub-station at Shahjahanpur, the Hon'ble Commission allowed recovery of bay maintenance charges of PGCIL @ Rs. 24.46 Lakh/year/bay with 3.32% escalation in FY 2016-17 in addition to normative O&M expenses of 2% of capital cost as per MoU between Petitioner and PGCIL dated 18.08.2017.
- 6.14. Further, the Bay maintenance charges of PGCIL got revised w.e.f. 01.04.2019 as per MoU between the Petitioner and PGCIL dated 19.08.2019. Summary of the same mentioned below for ready reference.

Table 2: PGCIL Bay Maintenance Charges

| | As per UPERC Order dated 29.01.2018 and MoU with PGCIL dated 18.08.2017 | As per MoU with PGCIL dated 19.08.2019 |
|--|---|--|
| Bay Maintenance Charges for FY 2019-20 | Rs. 26.978 Lakh/bay | Rs. 32.150 Lakh/bay |

6.15. Based on the above facts, please find below summary of O&M Charges approved by Hon'ble Commission and actual incurred by the Petitioner on account of Uncontrollable Factors during FY 2017-18 to FY 2019-20 as follows:-

Table 3: O&M Charges - Approved in T02 Vs Actual

| Year | FY 2017-18 | FY 2018-19 | FY 2019-20 |
|---|-------------|-------------|-------------|
| O&M Charges - Approved in Tariff Order 2) or T02 (Rs. Crs) | 1.17 | 1.19 | 1.21 |
| Actual O&M Charges incurred: | | | |
| O&M Charges - PGCIL Bay maintenance cost (Rs. Lakh/Bay) | 25.27 | 26.11 | 32.15 |
| O&M Charges - PGCIL Bay maintenance cost for 4 bays (Rs. Crs) | 1.01 | 1.04 | 1.29 |
| Capital Cost of Transmission Line (Rs Crs) | 33.31 | 33.31 | 33.31 |
| O&M Charges @ 2% of capital cost (Rs Crs) | 0.67 | 0.67 | 0.67 |
| Total Actual O&M Charges (B) | 1.68 | 1.71 | 1.95 |
| True-up amount to be recovered from Procurers (B-A) | 0.51 | 0.52 | 0.74 |

6.16. **True-up of Interest on Working Capital:** Working capital requirement has been calculated based on actual O&M Expenses which is in variance on account of uncontrollable factors and summary of the same is as follows:

Table 4: Interest on Working Capital - Approved in T02 Vs Actual

| Particulars | FY 2017-18 | | FY 2018-19 | | FY 2019-20 | |
|-----------------------------|-------------------|---------|-------------------|---------|-------------------|---------|
| | Approved (in T02) | Claimed | Approved (in T02) | Claimed | Approved (in T02) | Claimed |
| Interest on Working Capital | 0.15 | 0.17 | 0.15 | 0.17 | 0.14 | 0.17 |

6.17. It is humbly submitted that the working capital requirement is computed as per Regulation 25.1 of the MYT Regulations 2019. Thus, the Hon'ble Commission is requested to approve the above-mentioned interest on

working capital from FY 2017-18 to FY 2019-20 and allow the same to be recovered from UPPCL.

- 6.18. **Revenue Gap / Surplus for FY 2017-18 to FY 2019-20:** Basis the submissions made above, the Revenue gap / surplus for FY 2017-18 to FY 2019-20 calculated and summary of the same is follows:

Table 5: Summary of Transmission Charges: Approved in T02 Vs Actual

| S. No | Particulars | True- Up / APR | | | | | |
|-------|---|-------------------|-------------|-------------------|-------------|-------------------|-------------|
| | | FY 2017-18 | | FY 2018-19 | | FY 2019-20 | |
| | | Approved (in T02) | Claimed | Approved (in T02) | Claimed | Approved (in T02) | Claimed |
| a | O&M expenses | 1.17 | 1.68 | 1.19 | 1.71 | 1.21 | 1.95 |
| b | Depreciation | 1.39 | 1.39 | 1.32 | 1.32 | 1.25 | 1.25 |
| c | Interest on Loan | 1.79 | 1.79 | 1.64 | 1.64 | 1.49 | 1.49 |
| d | Interest on Working Capital | 0.15 | 0.17 | 0.15 | 0.17 | 0.14 | 0.17 |
| e | Return on Equity | 1.55 | 1.55 | 1.55 | 1.55 | 1.55 | 1.55 |
| f | Income Tax | 0 | | | | 0.00 | 0.00 |
| g | Total | 6.05 | 6.58 | 5.85 | 6.38 | 5.64 | 6.41 |
| h | Revenue Gap/Shortfall w.r.t. approved Tariff | 0.00 | 0.53 | 0.00 | 0.53 | 0.00 | 0.77 |

- 6.19. The Hon'ble Commission is requested to approve the above-mentioned revenue gap from FY 2017-18 to FY 2019-20 and allow the same to be recovered from UPPCL.

Capital Cost

- 6.20. The Hon'ble Commission *vide* order dated 29.06.2016 approved the transmission line Capital Cost of Rs 21.82 Crore out of Capitalized cost of Rs 28.79 Crore which does not include the cost of dedicated bays at the PGCIL's substation at Shahjahanpur. Further, Hon'ble Commission *vide* order dated 29.01.2018 approved additional capital cost of Rs. 11.49 Crs towards bays at 400/220 KV Switchyard at PGCIL, Shahjahanpur Substation and the work has been undertaken by PGCIL on deposit work basis.

6.21. Summary of Capital Cost (in Rs Cr) is given in the table below:

TABLE 6: Capital Cost(Rs Crs)

| Description | FY 2020- 21 | FY 2021- 22 | FY 2022- 23 | FY 2023- 24 | FY 2024- 25 |
|--------------------|------------------------|------------------------|------------------------|------------------------|------------------------|
| Total Cost | 33.31 | 33.31 | 33.31 | 33.31 | 33.31 |
| Debt (70%) | 23.32 | 23.32 | 23.32 | 23.32 | 23.32 |
| Equity (30%) | 9.99 | 9.99 | 9.99 | 9.99 | 9.99 |

VI. Approval of Multi Year Tariff for the period FY 2020-21 to FY 2024-25

6.22. It is submitted that as per the MoU signed between Petitioner and UPPCL on 20.01.2012, the transmission tariff for the 400 kV dedicated transmission line constructed by the Petitioner is to be determined by this Hon'ble Commission.

6.23. The transmission tariff has been calculated based on the UPERC (Multi Year Tariff for Distribution and Transmission) Regulations, 2019 ("**MYT Regulations, 2019**"). The components of tariff are as follows:

- (a) Return on equity;
- (b) Interest on loan capital;
- (c) Depreciation;
- (d) Interest on working capital;
- (e) Operation and maintenance expenses;
- (f) Income Tax;
- (g) Contribution to Contingency Reserves;**

6.24. **Return on Equity** is taken as 14.5% as per MYT Regulations 2019. The Petitioner submits that based on the Capital Cost and debt equity ratio approved by the Hon'ble Commission *vide* order in case No 1197 of 2017, Normative opening Equity has been calculated for FY 2020-21. The Return on Equity ("**RoE**") has been computed based on Regulation 22 of the MYT Regulations, 2019 i.e., at the rate of 14.5% and request the Hon'ble Commission to approve the same.

The workings of return on equity are given in the table below:

Table 7: Return on Equity FY 21 to FY 25(Rs Crs)

| S.No. | Particulars | Control Period | | | | |
|-------|-------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| | | FY 2020- 21 | FY 2021- 22 | FY 2022- 23 | FY 2023- 24 | FY 2024- 25 |
| 1 | Equity (Opening Balance) | 9.99 | 9.99 | 9.99 | 9.99 | 9.99 |
| 2 | Net additions during the year | | | | | |
| 3 | Equity (Closing Balance) | 9.99 | 9.99 | 9.99 | 9.99 | 9.99 |
| 4 | Average Equity | 9.99 | 9.99 | 9.99 | 9.99 | 9.99 |
| 5 | Rate of Return on Equity | 14.50% | 14.50% | 14.50% | 14.50% | 14.50% |
| 6 | Return on Equity | 1.45 | 1.45 | 1.45 | 1.45 | 1.45 |

6.25. **Interest on Loan Capital:** The Petitioner is operating both Generating and Transmission assets in an integrated way and no separate loan account is maintained. Hence as per clause 23.5 UPERC MYT Regulations, 2019, weighted average rate of interest of Generation Business is to be considered. Relevant extract of UPERC MYT Regulations, 2019 mentioned below for ready reference:

“23.5 The rate of interest shall be weighted average rate of interest computed on the basis of the actual long-term loan portfolio at the beginning of each year:

Provided that at the time of Truing-up, the weighted average rate of interest of the actual long-term loan portfolio during the concerned year shall be considered as the rate of interest:

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

Provided also that if the Licensee, does not have actual long-term loan even in past, the weighted average rate of interest of its other Businesses regulated by the Commission shall be considered:

Provided also that if the Licensee does not have actual long-term loan, and its other Businesses regulated by the Commission also do not have actual loan even in the past, then the weighted average rate of interest of the entity as a whole shall be considered:

Provided also that if the entity as a whole does not have actual long term loan because of which interest rate is not available, then the rate of interest for the purpose of allowing the interest on the normative

long-term loan should be the weighted average SBI MCLR (1 year) prevailing during the concerned year.”

6.26. It is humbly submitted that this approach is completely in line with the provisions of the MYT Regulations, 2019 and requests the Hon'ble Commission to approve the same. A working of Interest on loan capital is shown in the table below.

Table 8: Interest Expenses FY 21 to FY 25(Rs Crs.)

| Sr. No. | Source of Loan | MYT Control Period | | | | |
|---------|--|--------------------|-------------------|-------------------|-------------------|-------------------|
| | | FY 2020 -21 | FY 2021- 22 | FY 2022- 23 | FY 2023- 24 | FY 2024- 25 |
| 1. | Opening Balance of Normative Loan | 12.43 | 10.85 | 9.27 | 7.68 | 6.10 |
| 2. | Less: Reduction of Normative Loan due to retirement or replacement of assets | | | | | |
| 3. | Addition of Normative Loan due to capitalisation during the year | | | | | |
| 4. | Repayment of Normative loan during the year (Depreciation) | 1.58 | 1.58 | 1.58 | 1.58 | 1.58 |
| 5. | Closing Balance of Normative Loan | 10.85 | 9.27 | 7.68 | 6.10 | 4.52 |
| 6. | Average Balance of Normative Loan | 11.64 | 10.06 | 8.48 | 6.89 | 5.31 |
| 7. | Weighted average Rate of Interest on actual Loans (%)* | 11.01 % | 11.67 % | 11.06% | 7.44% | 7.44% |
| 8. | Interest Expenses | 1.28 | 1.17 | 0.94 | 0.51 | 0.40 |
| 9. | Interest on Security Deposit from Consumers and Distribution system Users | | | | | |
| 10. | Total Interest Expenses | 1.28 | 1.17 | 0.94 | 0.51 | 0.40 |

*As per RPSCL Generation MYT Petition (1578 of 2020) for 2019-24 Control Period

6.27. **Debt and Equity** component in the transmission line cost is as per table6 mentioned above as is claimed under Regulation 20 of the MYT Regulations 2019 which provides as under :-

20. Debt-Equity Ratio

20.1 For a capital investment Scheme declared under commercial operation on or after April 1, 2020, debt - equity ratio as on the date of commercial operation shall be 70:30 of the amount of capital cost approved by the Commission under Regulation 18, after making appropriate adjustment of Assets . funded by Consumer Contribution/ Deposit Works/ Capital Subsidies/ Grant subject to prudence check for determination of Tariff

Provided that if the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan for the Licensee for determination of Tariff

Provided further that the Licensee shall submit documentary evidence for the actual deployment of equity and explain the source of funds for the equity

Provided also that where equity actually deployed is less than 30% of the capital cost of the capitalized asset, the actual equity shall be considered for determination of Tariff.

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

6.28. It is humbly submitted that this approach to claim debt and equity is completely in line with the provisions of the MYT Regulations, 2019 and Petitioner requests the Hon'ble Commission to approve the same.

6.29. **Depreciation:** The Petitioner submits that based on the capital cost approved by the Hon'ble Commission and considering the depreciation rates notified under MYT Regulations, 2019, the details of depreciation for Current Control Period is claimed under Regulation 21 of the MYT Regulation as follows:

Table 9: Depreciation FY 21 to FY 25

(Rs Crs)

| Particulars | Control Period | | | | |
|--------------------------------------|----------------|-------------|-------------|-------------|-------------|
| | FY | FY | FY | FY | FY |
| | 2020- 21 | 2021- 22 | 2022- 23 | 2023- 24 | 2024- 25 |
| Capital Cost | 33.31 | 33.31 | 33.31 | 33.31 | 33.31 |
| Less: Value of Non Depreciable Asset | | | | | |
| Value of Depreciable Asset | 33.31 | 33.31 | 33.31 | 33.31 | 33.31 |

| Particulars | Control Period | | | | |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|
| | FY 2020- 21 | FY 2021- 22 | FY 2022- 23 | FY 2023- 24 | FY 2024- 25 |
| Less: Residual Value (10%) | 3.33 | 3.33 | 3.33 | 3.33 | 3.33 |
| Depreciable Value | 29.98 | 29.98 | 29.98 | 29.98 | 29.98 |
| Depreciation recovered upto Previous Year | 10.88 | 12.47 | 14.05 | 15.63 | 17.22 |
| Remaining Depreciable Value | 19.09 | 17.51 | 15.93 | 14.35 | 12.76 |
| Depreciation recovered/ to be recovered during the year (upto maximum of remaining depreciable value) (5.28%) | 1.58 | 1.58 | 1.58 | 1.58 | 1.58 |
| Advance Against Depreciation | | | | | |
| Balance Depreciable Value | 17.51 | 15.93 | 14.35 | 12.76 | 11.18 |

6.30. **Interest on Working Capital:** Working capital requirement has been calculated as per Regulation 25 of the MYT Regulations, 2019.

Table 10: Interest on Working Capital FY 21 to FY 25

(Rs Crs)

| S.No | Particulars | Control Period | | | | |
|------|--|-------------------|-------------------|-------------------|-------------------|-------------------|
| | | FY 2020- 21 | FY 2021 -22 | FY 2022 -23 | FY 2023 -24 | FY 2024 -25 |
| 1 | O&M expenses for 1 month | 0.17 | 0.17 | 0.18 | 0.18 | 0.19 |
| 2 | One and a half month equivalent of expected revenue from transmission charges at the prevailing Tariff | 0.86 | 0.85 | 0.83 | 0.78 | 0.78 |
| 3 | Maintenance spares at 40% of the R&M Expenses for two months | 0.13 | 0.14 | 0.14 | 0.15 | 0.15 |
| 4 | Less: Security deposits from consumers, if any | | | | | |
| | Total Working Capital | 1.16 | 1.16 | 1.15 | 1.11 | 1.12 |
| | Interest Rate (%) (SBI MCLR – 1 years as on 1 st Oct 2019 + 250 basis points) | 10.65 % | 10.65 % | 10.65 % | 10.65 % | 10.65 % |
| | Interest on Working Capital | 0.12 | 0.12 | 0.12 | 0.12 | 0.12 |

6.31. **Operation and maintenance expenses:** It is humbly submitted that O&M Expense are derived under Regulation 34 of MYT Regulations 2019 passed by the Hon'ble Commission which prescribes as follows

“34. Operation and Maintenance Expenses

a) The Operation and Maintenance expenses for the Transmission Business shall be computed as stipulated in with these Regulations.

b) The Operation and Maintenance expenses shall be derived on the basis of the average of the Trued-Up values (without efficiency gain/loss) for the last five (5) financial years ending March 31, 2019, subject to prudence check by the Commission. However, if Trued-Up values (without efficiency gain/ loss) are not available for FY 2018-19, then last five (5) available Trued-Up values (without efficiency gain/ loss) will be considered and subsequently when the same are available the base year value (i.e., FY 2019-20) will be recomputed.

c) The average of such operation and maintenance expenses shall be considered as Operation and Maintenance expenses for the middle year and shall be escalated year on year with the escalation factor considering CPI and WPI of respective years in the ratio of 60:40, for subsequent years up to FY 2019-20.

d) The One-time expenses such as expense due to change in accounting policy, wage arrears paid due to Pay Commissions, etc., and the expenses beyond the control of the Transmission Licensee such as dearness allowance, terminal benefits, etc., in Employee cost, may be allowed by the Commission over and above normative Operation & Maintenance Expenses after prudence check.

e) At the time of Truing-up of the O&M expenses, the actual point to point inflation over Wholesale Price Index numbers as per Office of Economic Advisor of Government of India and the actual Consumer Price Index for Industrial Workers (all India) as per Labour Bureau, Government of India, in the concerned year shall be considered...”

6.32. Thus, considering the above Regulation, the O&M expenses shall be derived on the basis of the average of the Trued-Up values for last 5 financial years. In the present case there are no trued up value for last 5 financial years, thus the Hon'ble Commission may determine O&M expenses using the past O&M determined by Hon'ble Commission in its earlier orders dated 29.06.2016 & 29.01.2018 and escalating base O&M Charges of 2% of capital cost with WPI / CPI and fixing it as norm for the current control period for FY 2021 to FY 2025, incorporating the cost on PGCIL substation charges (bay maintenance charges) as explained in Para 6.4 – 6.11 of the present Petition.

6.33. It is humbly submitted that Petitioner in the present case is not a transmission licensee and tariff for transmission line is being determined

basis the directions of the Hon'ble Commission *vide* Order dated 29.06.2016. Thus, the O&M Expense being determined by the Hon'ble Commission is not a transmission business centric O&M expense. Hence the Hon'ble Commission in exercise of its powers under Section 86 of the Act and Regulation 55 of MYT Regulation may consider determining O&M expense for the current control period as detailed above and in light of the previous orders passed by this Hon'ble Commission. The relevant excerpts of the MYT Regulation are reproduced below for ease of convenience of this Hon'ble Tribunal

“55. Savings

55.1 Nothing in these Regulations shall be deemed to limit or otherwise affect the power of the Commission to make such orders as may be necessary to meet the ends of justice.

55.2 Nothing in these Regulations shall bar the Commission from adopting in conformity with provisions of the Act, a procedure which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or a class of matters, deems it just or expedient for deciding such matter or class of matters.

55.3 Nothing in these Regulations shall, expressly or implied, bar the Commission dealing with any matter or exercising any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner, as it considers just and appropriate.”

- 6.34. Further, no separate break-up is maintained in terms of Employee Expenses, Repairs and Maintenance Expenses and Administrative and General Expenses for transmission line, as O&M expenses maintained by the Petitioner is combined for both generation and transmission business and approved by Hon'ble Commission in its earlier orders dated 29.06.2016 and 29.01.2018 are considered as Repairs and Maintenance Expenses.
- 6.35. In addition to above, PGCIL is charging around Rs 1.33 Crore at the rate of Rs. 32.15 Lakh / year / bay from FY 2019-20 with yearly escalation @ 3.51% till FY 2023-24 as O&M charges for the Operation & Maintenance of bays including routine testing of protection and PLCC as per PGCIL norms. Relevant provision of the MoU dated 19.08.2019 signed with PGCIL is reproduced below for ready reference:

“COMPENSATION as per MoU dated 19.08.2019

4.1 RPSCL has 04 No of Bays at Shahjahanpur Substation. RPSCL will pay POWERGRID for each bay charges as per O&M of bays, which at present is Rs. 32.15 Lakh / year / bay with yearly escalation @ 3.51% of O&M charges, fixed for the previous year, thereafter till the validity period of this MOU or mutually agreed period after the expiry of the validity period. To elaborate, the year wise compensation is attached at Annexure-I. However, in case of any charge of CERC norms in future, the revised charges for O&M of bays shall be paid by M/s RPSCL to POWERGRID.

4.2 Taxes GST (As per GST ACT 2017 applicable with effect from 01/07/2017), during this contractual period shall be paid additionally by RPSCL.”

6.36. Summary of O&M Expenses is as follows:

Table 11: O&M Expenses FY21 to FY25

(Rs Crs)

| S.No. | Particulars | MYT Control Period | | | | |
|-------|---|--------------------|------------|------------|------------|------------|
| | | FY 2020-21 | FY 2021-22 | FY 2022-23 | FY 2023-24 | FY 2024-25 |
| 1 | Employee Expenses | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 2 | A&G Expenses | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 3a | R & M Expenses | 0.67 | 0.68 | 0.70 | 0.72 | 0.74 |
| 3b | O&M Charges for bays constructed by PGCIL ^ | 1.33 | 1.38 | 1.43 | 1.48 | 1.53 |
| 4 | Gross O&M Expenses | 2.00 | 2.06 | 2.13 | 2.20 | 2.27 |
| 5 | Expenses Capitalised | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| a. | Employee Expenses Capitalised | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| b. | A&G Expenses Capitalised | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 6 | Net O&M Expenses | 2.00 | 2.06 | 2.13 | 2.20 | 2.27 |

- 6.37. **Income tax** has been computed as per the mechanism defined in Regulation 26 of the MYT Regulations, 2019 which prescribes as follows:-

26. Income Tax

26.1 Income Tax, if any, on the licensed business of the Licensee shall be treated as expense and shall be recoverable from consumers through Tariff. However, tax on any income other than that through its Licensed business shall not be a pass through, and it shall be payable by the Licensee itself.

26.2 Notwithstanding anything contained in Regulation 26.1, total Income Tax payable by the Licensee, in any year, shall be lowest of the following.

(a) Actual payment made;

(b) ROE allowed in that year x MAT (%) or ROE allowed in that year x Corporate tax (%), whichever is applicable.

26.3 Any under recoveries or over recoveries of Tax on income shall be adjusted every year on the basis of Income Tax assessment under the Income Tax Act 1961, subject to Regulation 26.2 above, as certified by the Statutory Auditors.

- 6.38. It is humbly submitted that Petitioner is a corporate legal entity and hence is liable to pay tax. In the present matter, Petitioner is claiming Return on Equity by grossing up with MAT.
- 6.39. It is further submitted that MAT was introduced under Section 115JB of the Income Tax Act, w.e.f 01.04.2001. The intention behind the introduction of MAT was that where the income tax payable by a company on its total income, as computed under the Income Tax Act, for any financial year is less than a specified percentage of the book profit of the Company for that year, the book profit of the Company is deemed to be the total income of the Company for that year and income tax is payable at the specified rate on such total income which is known as the MAT.
- 6.40. Considering, the above reasons Petitioner is eligible to pay MAT and for this reason, the payment towards MAT for FY 2020-21 to FY 2024 -25 has been considered by the Petitioner which is as follows:-

Table 12: Income Tax FY 21 to FY 25

(Rs Crs)

| S. N o. | Particulars | Control Period | | | | |
|---------------|---|-------------------|-------------------|-------------------|-------------------|-------------------|
| | | FY 2020- 21 | FY 2021- 22 | FY 2022- 23 | FY 2023- 24 | FY 2024- 25 |
| A | Income of FY | 6.85 | 6.81 | 6.63 | 6.28 | 6.23 |
| | Less: | | | | | |
| | Income exempt from taxation | | | | | |
| | Credits for carry forward of losses | | | | | |
| | Income from Incentives | | | | | |
| | Net Taxable Income | 6.85 | 6.81 | 6.63 | 6.28 | 6.23 |
| | Tax Rate (MAT Rate) | 17.16% | 17.16% | 17.16% | 17.16% | 17.16 % |
| | Tax Amount | 1.17 | 1.17 | 1.14 | 1.08 | 1.07 |
| | Sub-total | | | | | |
| B | Return on Equity | 1.45 | 1.45 | 1.45 | 1.45 | 1.45 |
| | Tax Rate | 17.16% | 17.16% | 17.16% | 17.16% | 17.16 % |
| | Tax Amount | 0.25 | 0.25 | 0.25 | 0.25 | 0.25 |
| | Tax Recoverable from Consumers (Lower of A or B) | 0.25 | 0.25 | 0.25 | 0.25 | 0.25 |

6.41. **Contribution towards Contingency Fund** has been computed as per the mechanism defined in Regulation 27 of MYT Regulations, 2019.

Table 13: Contribution towards Contingency Fund FY 21 to FY 25

(Rs Crs)

| S.No. | Particulars | Control Period | | | | |
|----------|---|-------------------|-------------------|-------------------|-------------------|-------------------|
| | | FY 2020- 21 | FY 2021- 22 | FY 2022- 23 | FY 2023- 24 | FY 2024- 25 |
| 1 | Contribution towards Contingency Fund (0.50% of the original cost of asset) | 0.17 | 0.17 | 0.17 | 0.17 | 0.17 |

6.42. Fixed Charges (in Rs Cr) for the Transmission line are as follows:

TABLE 14 Fixed Charges for FY 21 to FY 25

(Rs Crs)

| S No | Particulars | FY | FY | FY | FY | FY |
|------|---------------------------------------|-------------|-------------|-------------|-------------|-------------|
| | | 2020-21 | 2021-22 | 2022-23 | 2023-24 | 2024-25 |
| | | 1 | 2 | 3 | 4 | 5 |
| 1 | Depreciation | 1.58 | 1.58 | 1.58 | 1.58 | 1.58 |
| 2 | Interest on Loan | 1.28 | 1.17 | 0.94 | 0.51 | 0.40 |
| 4 | Interest on Working Capital | 0.12 | 0.12 | 0.12 | 0.12 | 0.12 |
| 3 | Return on Equity | 1.45 | 1.45 | 1.45 | 1.45 | 1.45 |
| 5 | O & M Expenses | 2.00 | 2.06 | 2.13 | 2.20 | 2.27 |
| 6 | Income Tax | 0.25 | 0.25 | 0.25 | 0.25 | 0.25 |
| 7 | Contribution towards Contingency Fund | 0.17 | 0.17 | 0.17 | 0.17 | 0.17 |
| | Total | 6.85 | 6.81 | 6.63 | 6.28 | 6.23 |

7. Further, this Hon'ble Commission vide order dated 25.03.2022 also directed the Petitioner to submit a Single Line Diagram of the switchyard. Accordingly, the same is annexed hereto and marked as **ANNEXURE P/10**.
8. It is submitted that the Petitioner is not a transmission licensee and is not engaged in the business of transmission of power. However, considering the peculiarity of facts of the Petitioner's case, the Petitioner for the purposes of seeking determination of tariff needs to comply with the Hon'ble Commission's MYT Regulations for which Petitioner requires certain clarifications. Hence, considerable time was taken by the Petitioner to understand and evaluate the contours of the Hon'ble Commission MYT Regulations. In addition to above delay on account of limited functioning of workspaces including Hon'ble Commission due to COVID-19.

9. In addition to above, it is noteworthy that the Hon'ble Supreme Court after considering the difficulties posed by Covid -19 Pandemic, passed an Order on 10.01.2022 in Suo Motu WP (c) No. 03 of 2020, extending the limitation period to 28.02.2022 meaning thereby that the clock for computing limitation would only start after 28.02.2022. The relevant extract of the Order is reproduced as under:-

5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

- i. The Order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021. It is directed that the period from 15.03.2020 till 28.02.2020 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
- ii. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- iii. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining. All persons have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*

[Emphasis Supplied]

10. Thus, from the above directions, following can be deduced:-
- (a) The balance period of limitation remaining from 03.10.2021, if any, shall become available with effect from 01.03.2022.
 - (b) In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.
 - (c) Thus, the aforesaid directions are also applicable on quasi - judicial bodies such as this Hon'ble Commission. Therefore, the present Petition should be allowed in the interest of justice and equity.

11. It is submitted that in view of the direction passed by the Hon'ble Supreme Court of India, the instant Petition is filed well within the extended period of limitation.
12. It is submitted that grave prejudice would be caused to Petitioner if the present Petition is not allowed.

PRAYER

13. In view of the above, facts and circumstances, Petitioner prays to the Hon'ble Commission to:
 - (a) Admit and condone the delay in submission of the petition;
 - (b) Approve and allow the recovery of revenue gap for FY 2017-18 to FY 2019-20 on account of O&M Charges and Interest on Working Capital.
 - (c) Approve Fixed Charges for the transmission line as per Table 14 of this petition, calculated on the basis of approved Capital Cost as per Table 6.
 - (d) Approve recovery of revenue gap pertaining to the period from FY 2020-21 to FY 2024-25
 - (e) Direct UPPCL to admit and pay bills for the aforementioned Fixed Charges for the respective years as per provision of UPERC MYT Regulations 2019 and in the interim till disposal of current Petition,
 - (f) Direct UPPCL to pay 90% of transmission charges as per earlier order of Hon'ble Commission dated 29.01.2018 for the year FY 2019-20 to FY 2021-22.
 - (g) Allow additions / alterations / modifications / changes to this Revised Petition at a future date;
 - (h) Condone any inadvertent errors / inconsistencies / omissions / rounding off differences, etc. as may be there in this Petition
 - (i) Allow any other relief, order, or direction, as the Hon'ble Commission may deem fit

For Rosa Power Supply Company Limited

Place: Lucknow

Date: 19.05.2022

(Sumeet Notani)
Authorized Signatory

