Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 99 of 2020

Case of The Tata Power Company Limited (Transmission) to modify/amend/ relax certain provisions of the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019

Coram
I.M. Bohari, Member
Mukesh Khullar, Member

The Tata Power Company Limited (Transmission) ..... Petitioner

Appearance

For the Petitioner : Adv. Anand Shrivastava
: Shri Piyush Tandon (Rep.)

ORDER

Date: 26 June, 2020

1. The Tata Power Company Limited (Transmission) (**TPC-T**) has filed a Petition on 22 May, 2020 under Regulation 104 (Power to amend) read with Regulation 105 (Power to relax) and Regulation 106 (Power to remove difficulties) of the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019 (**MYT Regulations 2019**).

2. **TPC-T's main prayers are as follows:**

   a) "*To modify/amend/ relax the norms for O&M Expenses for transmission businesses in the manner prayed for and / or remove the difficulty in implementing the MYT Regulations 2019 to the extent pleaded in this Petition;*

   b) *To modify/amend/ relax the norms for capitalization of assets in the manner prayed for and / or remove the difficulty in implementing the MYT Regulations 2019 to the extent pleaded in this Petition;*

   c) *In furtherance of prayer (b) above, to re-determine the O&M Expenses allowed to the Petitioner for the Fourth Control Period under the order dated 30.03.2020 passed in Case No. 299 of 2019; --".*

3. TPC-T, vide its letter dated 23 May, 2020, requested the Commission to conduct an urgent hearing in the matter. TPC-T justified the urgency by stating that the existing O&M norms determined in the MYT Regulations, 2019 for TPC-T were not cost reflective and TPC-T was unable to recover its legitimate costs, resulting in substantial financial burden and consequent cash flow issues.

4. The Commission scheduled the e-hearing on 19 June, 2020. At the e-hearing, TPC-T reiterated the issues raised in the Petition as under:

   a) While determining the O&M norms for the 4th MYT Control Period, the Commission did not exclude the one-time abnormal expenses of **Rs. 15.28 Crore** towards reversal of Mumbai Port Trust (MbPT) wayleave provision in FY 2017-18. Hence, O&M norms determined by the Commission under MYT Regulations 2019 are lower and are not cost reflective.

   b) While determining the O&M norms for GIS and AIS Bays under MYT Regulations , inherent error has occurred and it needs to be corrected as explained in the Petition.

   c) On the issue of approval of capitalisation at depreciated cost based on the assets put to use, TPC-T has stated that the Transmission Licensee constructs the transmission network as per the requirement of Transmission System User (**TSU**)/ Distribution Licensee post approval from the State Transmission Utility (STU) and the Commission. Hence, it is the responsibility of the TSU/ Distribution Licensee to utilise the constructed transmission network. Allowing the capitalisation at depreciated cost as an when the asset is put to use will penalise TPC-T and reward the TSU/ Distribution Licensees.

   d) Hence, TPC-T has requested the Commission to suitably modify/ amend/ relax the norms for O&M Expenses, the approach for approval of capitalization of assets as set out in MYT Regulations 2019, and to redetermine the O&M expenses for the 4th MYT Control Period for its Transmission Business.

5. The Commission notes that the Petition has been filed under Regulation 104 (Power to amend) read with Regulation 105 (Power to relax) and Regulation 106 (Power to remove difficulties) of the MYT Regulations, 2019, and all the enabling powers in this regard including the inherent powers of the Commission.

6. TPC-T has sought to modify/ amend/ relax certain provisions of MYT Regulations, 2019 regarding O&M norms and capitalisation of assets. The grounds on which submissions of TPC-T have been made and the Commission’s analysis and ruling thereon are elaborated in the following paragraphs.

7. **Issue 1: Methodology for computation of normative O&M expenses for TPC-T for the 4th MYT Control Period:**

TPC-T’s submission

7.1. The methodology prescribed under Regulation 60 and Regulation 61 of the MYT Regulations, 2019 for computation of normative O&M expenses for Transmission Business is inadequate and flawed primarily for the following reasons:

a) Exclusion of abnormal / exceptional expenses; and

b) Non-consideration of GIS impact for computation of O&M norms of bays.

a) <u>Exclusion of abnormal / exceptional expenses</u>

7.2. The normative O&M expenses are specified under Regulation 61 of the MYT Regulations, 2019. The relevant provisions of Regulation 61 of the MYT Regulations, 2019 read as follows:

> "*61.1 The norms for O&M expenses for existing and new Transmission Licensees have been specified on the basis of circuit kilometre of transmission lines and number of Bays in the substation of the Transmission Licensee, as given below:*
>
> *.....*
>
> *Provided further that at the time of Truing up along with the Mid-term Review or at the end of the Control Period, the allowable O&M expenses for any Year shall be based on the norms for O&M expenses specified by the Commission in this Regulation and documentary evidence of assets capitalized by the Petitioner, subject to the prudence check of the Commission:*
>
> *Provided also that the number of Bays considered for allowing O&M expenses shall exclude the unutilised Bays:*
> *.....*
>
> *61.3 The norms for O&M expenses for The Tata Power Company Ltd. - Transmission (TPC-T) shall be*:

Voltage Level	***FY 2020-21***	***FY 2021-22***	***FY 2022-23***	***FY 2023-24***	***FY 2024-25***
Rs Lakh/ckt km					
>66kV&<400 kV	*1.24*	*1.29*	*1.33*	*1.39*	*1.44*
Rs Lakh/Bay					
>66kV&<400 kV	*32.38*	*33.63*	*34.92*	*36.26*	*37.66*
66 kV and less	*6.77*	*7.03*	*7.30*	*7.58*	*7.87*

> *........*
>
> *61.7 The O&M expenses for the GIS bays shall be allowed as worked out by multiplying 0.70 to the normative O&M expenses for bays as allowed in Regulation 61.2 to 61.6."*

7.3. TPC-T has submitted that it had objected to the proposed methodology for calculation of normative O&M expenses in the draft MYT Regulations, 2019. TPC-T had categorically suggested that the base year O&M expenditure for FY 2019-20 should be considered after excluding the abnormal expenses and on the basis of trued up O&M expenses for FY 2019-20 for Transmission Licensees as has been considered for the O&M expenses to be allowed for Generation Business in the MYT Regulations, 2019. The Commission has also excluded abnormal operational expenses for tariff determination of Distribution Business under Regulation 75.2 of the MYT Regulations, 2019.

7.4. TPC-T has submitted that in the MYT Order in Case No. 299 of 2019 dated 30 March, 2020, the Commission has observed that TPC-T had not objected to the O&M norms proposed in the Draft MYT Regulations, 2019 and therefore, the Commission disallowed the revision of O&M norms proposed by TPC-T in the MYT Petition. TPC-T has submitted that any disallowance on this basis is incorrect as it had submitted a detailed suggestion/ objection to the O&M norms specified in the Draft MYT Regulations, 2019. The relevant portion of TPC-T's submission is as under:

Sr. No.	*Regulation No.*	*Clause in Draft MERC Regulation 2019*	*Suggestion by TPC with reason*	*Proposed amendment*
51	*60.1*	*60.1 The norms for O&M expenses for existing and new Transmission Licensees have been specified on the basis of circuit kilometer of transmission lines and number of Bays in the substation of the Transmission Licensee, as given below:* *----* *Provided also that at the time of Truing up along with the Mid-term Review or at the end of the Control Period , the allowable O&M expenses for any year shall be based on the norms for O&M expenses specified by the Commission in this Regulation and documentary evidence of assets capitalized by the Petitioner , subject to the prudence check of the Commission:*	*It is submitted that the base year O&M expenditure for FY 2019-20 should be considered after excluding the abnormal expenses and on the basis of trued up O&M expenses for FY 2019-20 should be considered on the basis of trued up O&M expenses for FY 2019-20 for transmission licensee as has been considered for the O&M expenses to be allowed for generation business as follows :* *"48.1* *---* *Provided also that at the time of Truing up for each year of this control Period , the O&M expenses , including insurance , shall be derived on the basis of the Final True-up O&M expenses , after adding /deducting the sharing of efficiency gains / losses , for the year ending March31,2020 , excluding abnormal expenses , if any , subject to prudence check by the Commission , and shall be considered as the Base Year O&M expenses"*	*Hon'ble Commission is requested to appropriately modify the Regulation 60.1 in line with the proviso in regulation 48.1 of the draft MYT Regulations, 2019*

7.5. TPC-T vide above submission had suggested to revise Regulation 60.1 of the Draft MYT Regulations, 2019 (Regulation 61 of the notified MYT Regulation, 2019) in line with Regulation 48.1 applicable for Generation Business. This shall ensure that abnormal O&M expenses are removed from the final computation and the Transmission Licensees will be able to recover their legitimate dues. TPC-T has submitted that the Commission did not make suggested changes which is leading to regulatory uncertainty and affecting smooth operations of Transmission Licensees, including TPC-T.

7.6. TPC-T has submitted that the Commission has specified the O&M norms in the MYT Regulations, 2019 considering the base years as FY 2016-17, FY 2017-18, and FY 2018-19. The Commission has considered average of O&M expenses for these years, however, it included an abnormal reversal of Rs.15.28 Crore in FY 2017-18 towards MbPT wayleave provision being accumulated in the books of TPC-T since FY 2006-07. The Commission did not consider the submissions of TPC-T and specified the O&M norms for the 4th MYT Control Period without excluding this MbPT abnormal one-time reversal amount of FY 2017-18.

7.7. While framing the MYT Regulations 2019, the Commission had directed TPC-T to submit preliminary data requirement vide its email dated 23 January, 2019. In response, vide letter No. CREG/MUM/MERC/2019/40 dated 05 March, 2019, TPC-T had submitted that the reason for lower A&G expenditure for FY 2017-18 was primarily due to an exceptional item due to reversal of MbPT wayleave provision. Wayleave charges reversed in the books of TPC-T were on account of provisioning made since FY 2006-07. After several communications by TPC-T, MbPT, vide letter dated 23 October, 2017 had informed about the arrears of Rs. 19.16 Crore. As against these arrears of Rs. 19.16 Crore, there was an open provision of Rs. 34.44 Crore in the books of TPC-T. Therefore, considering MbPT letter, TPC-T had done a one-time reversal of Rs. 15.28 Crore in FY2017-18, although charges had actually been accrued over a period of 11 years. TPC-T has submitted that inclusion of such significant amount of one-time reversal while setting the O&M norms has resulted in undue hardship and disallowance of legitimate expenses to TPC-T.

7.8. TPC-T has submitted that O&M norms specified under Regulation 60 read with Regulation 61 of the MYT Regulations, 2019 are flawed as they do not exclude the exceptional expenses for Transmission Business, while the same have been excluded for both Distribution and Generation Businesses. Moreover, no reasoning has been given by the Commission for differential treatment for the Transmission Business. TPC-T has submitted that the Table below shows that in the MYT Regulations, 2019, the Commission had missed excluding abnormal/ exceptional expenses only for the Transmission Business:

Table No. 1: MYT Regulations for Generation, Transmission and Distribution, as submitted by TPC-T

Distribution (Regulation 75.2)	**Generation (Regulation 49.1)**	**Transmission (Regulation 60.1)**
"75.2 The O&M expenses shall be derived on the basis of the average of the Trued-up Operation and Maintenance expenses after adding/ deducting the share of efficiency gains/losses, for the three Years ending March 31, 2019, excluding abnormal	*"a) The O&M expenses shall be derived on the basis of the average of the Trued-up O&M expenses after adding/ deducting the share of efficiency gains/losses, for the three Years ending March 31, 2019, excluding abnormal O&M expenses, if any, subject*	*"The norms for O&M expenses for existing and new Transmission Licensees have been specified on the basis of circuit kilometer of transmission lines and number of Bays in the substation of the Transmission Licensee, as given below:*

Distribution (Regulation 75.2)	Generation (Regulation 49.1)	Transmission (Regulation 60.1)
O&M expenses, if any, subject to prudence check by the Commission: …..”	*to prudence check by the Commission: ….”*	*…..”*

b) Non-consideration of GIS impact for computation of O&M norms of bays.

7.9. TPC-T has submitted that in the MYT Regulations, 2019, the Commission has arrived at the quantification of the O&M expenses for AIS bays on the basis of the combined past average expenses incurred on AIS and GIS bays and has not segregated the expenses as per the type of bays. The relevant extract of the Explanatory Memorandum issued by the Commission is reproduced below:

> "*The methodology for formulation of O&M norms for MSETCL, TPC-T, AEML-T and JPTL is elaborated as under:*
>
> *(a) It is proposed to compute the norms for O&M Expenses for MSETCL, TPC-T, AEML-T and JPTL.*
>
> *(b) The actual O&M expenses of Transmission Licensees, subject to prudence check by the Commission, have been considered for FY 2015-16 to FY 2017-18. The transmission line length and number of bays have been considered based on such parameters considered at time of the respective true-up and based on data submitted by the Licensees.*
>
> *(c) The year-wise O&M expenses (from FY 2015-16 to FY 2017-18) have been allocated amongst bays and transmission line length (ckt km) in the ratio of normative O&M expenses derived for bays and transmission lines, with existing asset base for transmission lines and bays. The allocation ratio for allocating O&M expense between bays and transmission lines has been assumed separately for each year for each Transmission Licensee, based on their assets for respective year. The allocation ratio considered for each Transmission Licensee is summarised in the following Table:*

Table 18: Allocation Ratio for Transmission Licensees (Rs. Crore)

Licensee		*FY 2015-16*	*FY 2016-17*	*FY 2017-18*
MSETCL	*Transmission Lines*	*10.1%*	*10.0%*	*9.8%*
	Bays	*89.9%*	*90.0%*	*90.2%*
TPC-T	*Transmission Lines*	*8.2%*	*8.0%*	*8.0%*
	Bays	*91.8%*	*92.0%*	*92.0%*
AEML-T	*Transmission Lines*	*6.0%*	*6.0%*	*5.9%*
	Bays	*94.0%*	*94.0%*	*94.1%*
JPTL	*Transmission Lines*	*31.7%*	*31.9%*	*31.8%*

Licensee		*FY 2015-16*	*FY 2016-17*	*FY 2017-18*
	Bays	*68.3%*	*68.1%*	*68.2 %*

(d) Based on the above allocation to bays and transmission lines, O&M expenses per circuit-km (Rs. Lakh/ckt-km) and O&M expenses per bay (Rs. Lakh/bay) have been computed for each year by dividing the O&M expenses for lines/bays with the total line length in km/total number of bays in respective years.

(e) Secondly, actual O&M expenses per ckt-km and per bay as computed above have been further allocated voltage-wise by assigning appropriate weightage, based on normative O&M expenses and the asset base constituting bays and transmission lines at various voltage classes.

(f) The norm for the next Control Period for various voltage classes has been derived based on average of actual O&M expenses per ckt-km and per bay for the period from FY 2015-16 to FY 2017-18 in terms of Rs. Lakh/ckt-km and Rs. Lakh/bay for each Transmission Licensee.

(g) The average norm so derived has been escalated by inflation factor as discussed above, i.e., 3.68% for FY 2017-18, 3.10% for FY 2018-19 and 3.78% for FY 2019-20, considering the trend of actual norm.

(h) Further, inflation factor of 3.78% has been applied to derive applicable O&M norm for respective years of the next Control Period.

……………

TPC-Norms

Voltage Level	*Actual FY 2015-16*	*Actual FY 2016-17*	*Actual FY 2017-18*	*3 years Average*	*Derived for FY 2019-20*	*FY 2020-21*	*FY 2021-22*	*FY 2022-23*	*FY 2023-24*	*FY 2024-25*
Rs Lakh/ ckt km										
>66kV&<400 kV	*1.09*	*1.12*	*1.02*	*1.08*	*1.19*	*1.24*	*1.29*	*1.33*	*1.39*	*1.44*
Rs Lakh/Bay										
>66kV&<400 kV	*28.31*	*29.32*	*26.63*	*28.09*	*31.16*	*32.34*	*33.56*	*34.83*	*36.15*	*37.51*
66 kV and less	*5.92*	*6.13*	*5.87*	*5.87*	*6.51*	*6.76*	*7.02*	*7.28*	*7.56*	*7.84*

….”

7.10. However, while determining the O&M expenses for the 4th MYT Control Period, i.e., for FY 2020-21 to FY 2024-25, the Commission has applied the combined past average O&M expenses of the AIS and GIS bays and applied it to only AIS bays and further reduced the O&M expense for GIS bays by 30%.

7.11. The Commission has considered the following formula for arriving at the average O&M expenses for AIS bays as provided in the MYT Regulations, 2019 as under:

Average O&M Expenses for AIS bays for base years = Total O&M Expense for AIS & GIS bays combined / Total nos. of AIS & GIS bays combined

7.12. TPC-T has submitted that there is a flaw in the above formula. The mathematical correct way to arrive at the average O&M expense for AIS bays should be as follows**:**

Average O&M Expenses for AIS bays for base years = Total O&M Expense for AIS bays / Total nos. of AIS bays

7.13. If the average O&M expense of AIS bays is to be calculated, then the same can be achieved by determining the average O&M expense for AIS bays. Such average expense should then be used to apply the escalation rate. This is suggested keeping in mind that the O&M expense of GIS bays was assumed to be 30% lesser than that for AIS bays.

7.14. TPC-T provided an example on assumptive numbers as shown below for the sake of convenience:

Table No. 2: Example for O&M expenses as submitted by TPC-T

Sr. No.	Particulars	Unit	Value
1	O&M expenses	Rs.	100
2	No. of AIS Bays	No.	60
3	No of GIS Bays	No.	40
4	Total no. of Bays	No.	100
5	O&M expenses per Bay (GIS +AIS)	Rs.	1

<u>Now, if it is assumed that expenditure on GIS is 30% lesser than AIS bays, then</u>

i) O&M expenses per AIS bay will be Rs. 1.136 [(Total exp./ (no. of AIS bays + no. of GIS bays *70%)) = (100/88)];

ii) O&M expenses per GIS bay will be Rs. 0.795 [(Total expenses / {no. of AIS bays +(no. of GIS bays *70%)} *.70%) = (100/88 x 70%)]

Therefore, allocation of expenses for AIS and GIS will be as under:

- AIS bays 60*1.136 = Rs. 68.2
- GIS bays 40*0.795 = Rs. 31.8

Total expenses (AIS +GIS) = Rs. 100.00

7.15. However, if the methodology adopted under the MYT Regulations, 2019 is applied to compute the base year O&M expenses, it will result in a disallowance of legitimate expenses. TPC-T has submitted that the below mentioned computation shows that there is under recovery of O&M expenses because of the approach adopted while specifying the O&M norms under the MYT Regulations, 2019:

Table No. 3: Sample computations for O&M expenses as submitted by TPC-T

Sr. No.	Particulars	Unit	Value
1	O&M expenses	Rs.	100
2	No. of AIS Bays	No.	60
3	No. of GIS Bays	No.	40
4	Total no. of Bays	No.	100
5	O&M expenses per Bay (GIS +AIS)	Rs.	1
6	O&M of AIS Bays (60 x 1)	Rs.	60
7	O&M of GIS Bays (40 x 0.7)	Rs.	28
8	Total O&M recovered (6+7)	Rs.	88
9	Disallowance of O&M (1-8)	Rs.	12

7.16. O&M norms specified under Regulation 61 of the MYT Regulations, 2019 are arrived at by averaging the expenses of AIS bays and GIS bays cumulatively based on the data submitted by TPC-T for the period from FY 2016-17 to FY 2018-19. The data relating to segregated expenses for the AIS and GIS bays was never sought from TPC-T.

7.17. TPC-T has submitted that there is an inherent computation error while finalizing O&M norms for the 4th MYT Control Period. The norms were computed on the basis of the data for past period, which was based on combined quantification of the expenses on AIS and GIS bays. The norms should have been computed by segregating the expenses of AIS bays and GIS bays wherein the O&M expenses for GIS bays should be computed by multiplying the norm derived for AIS bays with a factor of 0.70 as explained above. However, the Commission has computed the norms based on the average O&M expenses of AIS and GIS bays combined and then used such data for AIS bays only. For GIS bays, 70% of norms of AIS bays is considered.

7.18. TPC-T has further explained the above issue in the following tables to demonstrate the error in actual figures for O&M expenses:

A. Details submitted by TPC-T based on actual / audited books of accounts

Table No. 4. Actual O&M Expenses, as submitted by TPC-T (Rs. Crore)

S. No.	Particulars	FY 2015-16	FY 2016 -17	FY 2017-18
1	Actual O&M Expenses	156.87	165.75	151.32
2	Extraordinary expenses /provisions	-	-	-
3	Normalised O&M expenses	156.87	165.75	151.32

Table No. 5: Network Details of TPC-T as per respective Tariff Orders and letter dated 30 May, 2019, as submitted by TPC-T

Sr. No.	Particulars	FY 2015-16	FY 2016 -17	FY 2017-18
1	CKM	1,181	1,181	1,188
2	<66 kV Bay	828	857	864
3	>66 kV Bay	336	341	342
4	Total Bays	**1164**	**1198**	**1206**

Table No. 6: Classification of bays as submitted by TPC-T vide letter dated 30 May, 2019

Sr. No.	Particulars	Details of bays
1	No. of AIS Bays	**565**
2	No. of GIS Bays	**695**
3	Total (1+2) Bays	**1260**
4	% AIS Bays	44.84%
5	% GIS bays	55.16%

Table No. 7: Classification for AIS and GIS Bay for FY 2015-16 to FY 2018-19, as submitted by TPC-T

Sr. No.	Particulars	FY 2015-16	FY 2016 -17	FY 2017-18
1	AIS Bays >66 kV	151	153	153
2	GIS Bays >66 kV	185	188	189
3	**Total (1+2)**	**336**	**341**	**342**
4	AIS Bays <66 kV	371	384	387
5	GIS Bays <66 kV	457	473	477
6	**Total (4+5)**	**828**	**857**	**864**
7	**Total Bays (3+6)**	**1164**	**1198**	**1206**

B. Norms for O&M Expense for the past period as computed by the Commission by dividing the total combined O&M expense for AIS & GIS bays by the total number of AIS and GIS bays – (As per draft MYT Regulations, 2019)

Table No. 8: Allocation of O&M expenses per Bay & CKM, as submitted by TPC-T (Rs. Lakh)

Sr. No	Particulars	FY 2015-16	FY 2016 -17	FY 2017-18	Average
1	Normalised O&M Expense per ckm	1.09	1.12	1.02	1.08
2	Normalised O&M Expense per AIS Bays >66 kV	28.31	29.31	26.63	28.09
3	Normalised O&M Expense per AIS Bays <66 kV	5.92	6.13	5.57	5.87

C. Norms for O&M Expenses for the 4th Control Period as computed by the Commission by applying escalation rate to the norms computed for the past period [As per Draft MYT Regulations, 2019 (Similar to the norms notified in MYT Regulations, 2019)]

Table No. 9: Allocation of O&M expenses per Bay & CKM, as submitted by TPC-T (Rs. Lakh)

Sr. No.	Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
1	Normalised O&M Expense per CKM	1.19	1.24	1.29	1.34	1.39	1.44
2	Normalised O&M Expense per AIS Bays >66 kV	31.16	32.34	33.56	34.83	36.14	37.51
3	Normalised O&M Expense per AIS Bays <66 kV	6.52	6.76	7.02	7.28	7.56	7.84

7.19. TPC-T has submitted that although the past period data was taken for calculating average expense of O&M for AIS and GIS bays, such data was utilised for computation of O&M expenses for AIS bays only and escalation rate was applied accordingly.

7.20. If the methodology adopted by the Commission was correct and had suffered no inherent computation error then upon re-application of the norms to the past period data , final amount for the past periods ought to have been the same as the amount on which the norms were based. When the norms as determined in the MYT Regulations, 2019 are re-applied to the past period (FY 2016-17, 2017-18 and 2018-19), keeping the other factors constant (such as numbers of AIS & GIS bays), there is a substantive gap in recovery of legitimate expenses. The following tables demonstrate that application of the O&M norms specified in the MYT Regulations, 2019 (apparently determined on the basis of past data) to the same past years and its comparison with actual/ admitted expenses for such years:

Table No. 10: O&M Expenses based on norms specified in MYT Regulations, 2019, as submitted by TPC-T (Rs. Crore)

Particulars	FY 2015-16	FY 2016 -17	FY 2017-18
CKM	12.86	13.26	12.11
AIS Bays >66 kV	42.59	44.82	40.84

Particulars	FY 2015-16	FY 2016 -17	FY 2017-18
GIS Bays >66 kV	36.68	38.60	35.17
AIS Bays <66 kV	21.98	23.55	21.58
GIS Bays <66 kV	18.93	20.28	18.58
Total O&M Expenses	**133.04**	**140.51**	**128.28**

Table No. 11: Comparison of actual/ admitted O&M expenses *vis-à-vis* O&M expenses arrived at on the basis of the norms specified in MYT Regulations, 2019, as submitted by TPC-T (Rs. Crore)

Particulars	FY 2015-16	FY 2016 -17	FY 2017-18
Actual O&M Expenses	156.87	165.75	151.32
O&M Expenses as per revised norms	133.04	140.51	128.28
Under-recovery due to computational errors in setting the norms	(23.83)	(25.23)	(23.04)

7.21. The above computation shows that because of the methodology adopted by the Commission of average of AIS and GIS bays to arrive at the O&M norms for AIS and GIS bays, TPC-T is unable to recover its legitimate expenses.

7.22. TPC-T has submitted that it had submitted revised O&M norms in its MYT Petition in Case No. 299 of 2019 for computation of O&M expenses for the 4th Control Period. However, in the MYT Order, the Commission has noted that the TPC-T should have provided its comments to the Draft MYT Regulations, 2019 and since no such comments were provided, the Commission is not inclined to allow any relaxation to the O&M norms.

7.23. TPC-T has submitted that such observation of the Commission is erroneous as TPC-T had categorically submitted its comments on Regulation 60 (Regulation 61 of notified MYT Regulations) of draft MYT Regulations, 2019 for setting O&M norms. Further, without prejudice, even if it is assumed that TPC-T had not submitted its comments to the Draft MYT Regulations, 2019, then also the Regulations framed by the Commission are required to comply with the provisions of the Tariff Policy and the EA, 2003.

7.24. Over and above, TPC-T has submitted that the Section 61 of the EA, 2003 provides that while laying down the terms and conditions for determination of tariff, the Appropriate Commission shall be guided *inter-alia* by the following:

(i) The Generation, Transmission and Distribution has to be conducted on commercial principles;

(ii) The tariff should enable recovery of the cost of electricity in a reasonable manner and progressively reflect the cost of supply;

(iii) Economical use of resources, good performance and optimum investments should be encouraged and efficiency in performance of business should be rewarded;

(iv) Terms and conditions for determination of tariff should be in accordance with MYT principles; and

(v) Terms and conditions for determination of tariff should be in accordance with the National Electricity Policy and National Tariff Policy, 2006.

7.25. Certain provisions of the MYT Regulations, 2019 are contrary to the principles of tariff determination provided under Section 61 of the Act read with the Clause 5.11 (f) of the Tariff Policy.

7.26. TPC-T has submitted that the Commission has exercised its 'power to relax' in Order in Case No. 123 of 2016 filed by Maharashtra State Electricity Distribution Company Limited (**MSEDCL**), wherein MSEDCL had sought relaxation of O&M norms as stipulated under MYT Regulations, 2015. Also, R-Infra-Distribution and TPC- Distribution in their Petitions in Case No. 9 of 2017 and Case No. 49 of 2017, respectively, had sought relaxation of O&M norms as stipulated under MYT Regulations, 2015. Similar Order was passed by the Commission in the said matters as well. Therefore, it is evident that the Commission in the earlier instances has adopted an approach in line with the Tariff Policy and Section 61 of the EA, 2003 and has held that reasonable O&M expenses should be allowed.

7.27. Therefore, in light of the aforementioned submissions, TPC-T has requested the Commission to appropriately revise the O&M norms to the extent pleaded in this Petition.

Commission's Analysis and Ruling

7.28. The contention of TPC-T is that while deciding the O&M norms for TPC-T in the MYT Regulations, 2019, the Commission did not exclude the one-time adjustment of Rs.15.28 Crore towards the MbPT reversal in spite of TPC-T submitting the related information and raising the suggestion/objection to do so. TPC-T has also contended that there is an inherent error while determining the normative O&M cost for AIS and GIS bays, leading to under-recovery of O&M expenses. Hence, TPC-T has requested to modify/ amend/ relax O&M norms set out for 4th Control Period under MYT Regulations 2019 and re-determine the O&M expenses for the 4th Control Period approved in the MYT Order in Case No. 299 of 2019 dated 30 March, 2020.

7.29. The Commission notes that TPC-T had raised the same issue in the MYT Petition in Case No. 299 of 2019, wherein TPC-T had submitted as under:

" 5.2.5 TPC-T submitted that while finalizing the norms for O&M expenses in the MYT Regulations, 2019 for TPC-T for the Control Period from FY 2020-21 to FY 2024-25, the Commission had not considered the following submissions made by TPC-T, which has

resulted into specifying of lower norms for O&M entitlement during the MYT Control Period:

• *Lower A*&G expenses for FY 2017-18 due to an exceptional item of reversal of MBPT wayleave provision of Rs. 14.94 Crore.

• *Non-consideration of GIS impact for computation of O&M norms of bays."*

7.30. In this regard, the Commission has ruled in the MYT Order dated 30 March, 2020 as under:

*"**Commission's Analysis and Ruling***

5.2.8 The Commission notes that TPC-T has proposed revision of O&M norms for the Control Period on account of non-consideration of lower A&G expenses for FY 2017-18 (due to an exceptional item of reversal of MBPT wayleave provision of Rs. 14.94 Crore) and impact of GIS Bays. However, the norms specified in MYT Regulations, 2019 were finalized after following due procedure of prior publication, inviting comments on the draft MYT Regulations, 2019 and the Explanatory Memorandum, and consideration of the comments received on the draft MYT Regulations, 2019. Further, TPC-T had not submitted any comments on the draft MYT Regulations, seeking revision of the O&M norms for TPC-T. The Commission has retained the same O&M norms, as proposed in the draft MYT Regulations, in the final notified MYT Regulations, 2019. The Commission is of the view that if the O&M norms are revised in the manner proposed by TPC-T, based on certain rationale, then there would be no sanctity to the process of framing of the MYT Regulations, 2019. In view of the above, the Commission has considered O&M norms specified for TPC-*T in the MYT Regulations 2019, for computation of normative O&M expenses."*

7.31. The Commission notes that TPC-T, in its comments on the draft MYT Regulations, 2019 had requested to modify Regulation 60.1 in line with the Regulation 48.1, which is applicable for Generation Business. The Commission has appropriately addressed this comment in the Statement of Reasons, issued along with the MYT Regulations, 2019, as reproduced below:

"The request to consider the base year O&M expenses for FY 2019-20 on the basis of trued up O&M expenses for FY 2019-20 as being considered for allowing O&M expenses for the Generation Business, cannot be considered, as the O&M norms are being specified for the Transmission Licensees based on the past actual data available at this point of time and due escalation, whereas, principles have been specified for allowing O&M expenses for the Generation Business. As a result, the actual trued-up O&M expenses for FY 2019-20 shall be available at the time of true-up of the O&M expenses for the initial years of the next Control Period"

7.32. TPC-T's reference to the O&M expenses allowed for Distribution Business also suffers from the same lacunae, as the principles for O&M expenses have been specified for Generation Business as well as Distribution Business.

7.33. It is worthwhile to note that TPC-T itself has submitted that the issue of MbPT reversal is accrued over last 11 years, i.e., since FY 2006-07. Also, MbPT vide letter dated 23 October, 2017 had indicated the pending arrears of Rs. 19.16 Crore. TPC-T in its submission while framing the MYT Regulations 2019 had not mentioned specific amount towards MbPT as explained in the MYT Petition and also in the present Petition. Also, Table No. 4 above, as part of submission of TPC-T showing the actual O&M expenses incurred shows that there is no extra ordinary amount incurred by TPC-T from FY 2015-16 to FY 2017-18. Further, TPC-T on account of reversal of MbPT amount has never asked for revision in O&M norms while framing the MYT Regulations 2019, which is clear from TPC-T's submission. Hence, the contention of TPC-T that it has the raised the objection while framing MYT Regulations, but the Commission has not considered it, does not hold any merit.

7.34. Further, it is worthwhile to note that the MbPT issue is from FY 2006-07. That means the amount has been locked with MbPT, and TPC-T has treated this as A&G expenses in the past. Thus, O&M norms specified by the Commission from the MYT Regulations, 2011 onwards have incorporated these expenses. In other words, TPC-T has benefited from the higher O&M norms since 2011 onwards on account of this provisioning, which has not been paid to MbPT. Now, when such provisioning has been reversed, TPC-T desires O&M norms to be restated upwards, by considering this reversal as an exceptional entry. TPC-T should not be claiming such expenses, ignoring the fact that it has benefited from the higher norms for all these years. Hence, such a selective approach of TPC-T is not acceptable.

7.35. It is worth noting that vide an email dated 25 March, 2019, the Commission had sought the following additional information from TPC-T. Information was submitted by TPC-T vide its letter No. CREG/MUM/M ERC/2019/114 dated 30 May, 2019 (Annexure P-7 of the Petition). The extract of the queries and TPC-T's response are reproduced under:

"1) Kindly submit number of GIS bays and AIS bays existing in the transmission system of the Transmission Company in the following format.

Response: *The number of GIS and AIS bays operational at various transmission receiving stations of Tata Power-T is shown in Table 1 below. These bay counts is subjected to the commissioning of new bays, decapitalization & removal of old bays and bays those were in use during transit period of the project (e.g. AIS bays replacement by GIS bays). However, while claiming ROE and O & M entitlement count of duplication of bay is avoided.*

Table 1: Number of GIS and AIS bay in Transmission System of Tata Power-T

Particulars	*FY 15-16*	*FY 16-17*	*FY 17-18*
No of GIS Bays	*565*	*649*	*717*
No of AIS Bays	*695*	*660*	*662*
Total Number of Bays	*1260*	*1309*	*1379*

2) ***Also submit the average voltage-wise R&M cost for servicing of GIS bays and AIS bays.***

Response: *At Tata Power-T business the O&M expenditure of the transmission receiving station is maintained at* location/divisional level but not at GIS/AIS bays level: Hence, the voltage wise R&M cost for servicing of GIS and AIS bays is not available.

3) Kindly submit the OEM recommendations/industry benchmarks based on technical/managerial requirement for R&M expenses and O&M expenses voltage wise for Sub-station, Transmission lines and Transmission bays with documentary proof.

Response: *We wish to apprise that in our understanding, OEM manuals do not specify voltage wise technical/managerial requirement for R&M expenses and O&M expenses for any equipment neither provide industry benchmarks in their manuals. The recommendations provided in the manual typically pertain to technical requirements related to the equipment manufactured by them. In addition, similar equipment supplied by different manufacturers may not have same periodicity and maintenance schedule. Hence, it may be difficult to arrive at a common cost structure for any equipment though they may be in a similar category.---"*

7.36. Hence, TPC-T's contention that data relating to segregated expenses for the AIS and GIS bays was never sought by the Commission while framing the MYT Regulations, 2019 is not true. TPC-T expressed its inability to submit such segregated expense data, while framing of MYT Regulations was in process. It is a fact that even now, such details have not been submitted by TPC-T, and TPC-T has merely recalculated the O&M expenses against AIS bays and GIS bays, by considering the O&M expenses of GIS bays to be 0.7 times that of AIS bays, as specified in the MYT Regulations, 2019. Hence, the calculations done by TPC-T in Table 3 and 11 above showing under-recovery because of the norms specified in the MYT Regulations, 2019, are without any actual facts. Hence, TPC-T's claim that there is inherent error in computation of O&M norms while framing the MYT Regulations, 2019 is baseless and not tenable.

7.37. It should be noted that in the MYT Regulations, 2011 as well as MYT Regulations, 2015, the Commission has not differentiated between AIS Bays for the purpose of O&M expenses, and both AIS Bays and GIS Bays have been allowed the same level of O&M expenses up to FY 2019-20. Hence, it is only appropriate that both AIS Bays and GIS Bays be considered equal, for the purpose of determining the O&M expenses per Bay, based on the total number of Bays and O&M expenses during this period. TPC-T, as well as other Transmission Licensees, have been granted the same level of O&M expenses, till FY 2019-20, irrespective of whether they were AIS Bays or GIS Bays. Though the Transmission Licensees have been steadily replacing AIS Bays with GIS Bays over the years, no Licensee has come forward to state that the O&M expenses should be reduced, as the Licensees incur lower O&M expenses for GIS Bays. In fact, AEML-T and MEGPTCL, in their comments on the draft MYT Regulations, 2019 had stated that there is no significant difference in the O&M expenses for AIS Bays and GIS Bays, and the norms should be same. The comments and Commission's ruling in the Statement of Reasons (SOR) on this aspect are reproduced below, for reference:

“***6.***7 Regulation 60.7: O&M expenses for GIS Bays

6.7.1 Proposed in Draft MYT Regulations, 2019

60.7 The O&M expenses for the GIS bays shall be allowed as worked out by multiplying 0.70 to the normative O&M expenses for bays as allowed in Regulation 60.2 to 60.5.

6.7.2 Comments Received

MEGPTCL and AEML proposed to amend Clause 60.7, which discriminates in O&M expenses between GIS and AIS bays. ***AEML submitted that, if the reduction factor in O&M expenses for GIS Bays is considered, it should be worked out after considering the likely reduction only in the R&M costs****. However, there is no effect of the same on Employee and A&G costs, because the common in-house manpower undertakes O&M of the EHV station (inclusive of Transformers, AIS/ GIS bays, etc., within the station). Also,* ***there is no segregation of the man-hours for the activities being undertaken in the Transmission system and the associated man-power cost thereon****. Similarly, A&G expenses are mainly the security charges, water charges, electricity charges, etc., which do not vary based on the type of Bays.*

MEGPTCL submitted that transformers at GIS are similar to AIS and hence, there should not be any discrimination in O&M norms between GIS and AIS*.*

6.7.3 Analysis and Commission’s Decision

The Commission has considered lower O&M Expenses for GIS bays in line with CERC Tariff Regulations, 2019. Also, Transmission Licensees, while seeking approval for installation of GIS Sub-stations, which have high capital cost compared to regular AIS Substation, justify the capital expenditure by stating that reduction in O&M Expenses would be one of the benefits accruing after implementation of such scheme. After anticipating such benefits, the same has been approved. Hence, it is appropriate to consider the reduction in O&M Expenses for GIS bays. Hence, the Commission has retained Regulation 61.7.”

7.38. As regards TPC-T’s request for revising the O&M norms upwards on account of the presence of GIS Bays, this issue was well known to TPC-T at the time of pre-publication of the draft MYT Regulations, 2019. TPC-T has not offered any comments on the draft MYT Regulations, 2019 on the impact of GIS Bays on O&M expenses, and such computations as are being submitted now, should have been submitted by TPC-T at that time. Else, the whole purpose of pre-publication and finalising of the Regulations is defeated. Further, the same approach has been adopted for specifying the O&M norms for AEML-T, MSETCL and VIPLT, etc. also. These Transmission Licensees, who also have GIS Bays, have not raised this issue at any level. The Commission has retained the O&M norms specified in the draft MYT Regulations, 2019 in the final MYT Regulations, 2019.

7.39. In the MYT Petition in Case No. 299 of 2020 also, TPC-T had not submitted any explanation regarding the impact of GIS bays, and had simply proposed revised O&M norms. The relevant part of the MYT Petition is reproduced below for reference:

> *"366. Further, it is also submitted that further in response to an email dated 23rd January 2019, Tata Power-T has submitted a response vide letter reference CREG/MUM/MERC/2019/114 dated 30th May 2019. The copy of this letter is submitted as Annexure 28 to this petition. In this response Tata Power-T has submitted breakup of AIS and GIS bays of for FY 2015-16, FY 2016-17, and FY 2017-18 in its transmission system. However, for computation of O&M norms of bays, no GIS impact has been considered."*

7.40. As can be seen from the above extract, TPC-T expects that merely because it has submitted the data on number of AIS bays and GIS bays at the time of framing of the MYT Regulations, 2019, the Commission should have specified higher O&M norms for AIS and GIS Bays, even though TPC-T did not find it necessary or appropriate to comment on this aspect at the time of filing its submissions on the draft MYT Regulations, 2019.

7.41. Regarding computation of O&M expenses of GIS bays for the 4th Control Period, the Commission has ruled in the MYT Order dated 30 March, 2020 as under:

> *"5.2.11 As per the provision of the Regulation 61.7 of the MYT Regulations 2019, the O&M expenses for the GIS bays are worked out by multiplying 0.70 to the norms approved for TPC-T.*
>
> *5.2.12 The Commission has additionally considered the energy charges towards auxiliary consumption of the Transmission Receiving Stations, same as energy charges approved for FY 2019-20 in this Order."*

7.42. From the above rulings, it is clear that the Commission has calculated the O&M expenses as per MYT Regulations, 2019 and also considered the legitimate expenses over and above norms as claimed by TPC-T.

7.43. Further, TPC-T had filed the Petition in Case No. 95 of 2020, seeking the review of the Commission's MYT Order in Case No. 299 of 2020, wherein the issue of O&M expenses was not raised by TPC-T. Further, vide the Order dated 17 June, 2020 in Case No. 95 of 2020, while dealing with the issue of R&M expenses, which is part of O&M expenses, the Commission has observed that the rate of increase of R&M expenses of TPC-T is substantially higher. The relevant portion of ruling of the Commission is reproduced as under:

> *"14.13. Further, the Commission notes that TPC-T's R&M expenses have increased steeply over the last few years as under:*

Table 8: Increase in R&M expenses for TPC-T (Rs. Crore)

Sr. No.	***Period***	***R&M Expenses***	***Remark***
1	*FY 2014-15*	*18.73*	*CAGR of approved R&M Expenses works out to 12.75%.*
2	*FY 2015-16*	*23.59*	
3	*FY 2016-17*	*19.67*	
4	*FY 2017-18*	*25.99*	
5	*FY 2018-19*	*34.13*	

14.14. The above Table shows that R&M expenditure of TPC-T has increased substantially in the last few years, despite utilisation of high cost advanced network such as GIS, Underground Cable, SCADA, etc. Even after considering the disallowance of Rs. 3.06 Crore for FY 2018-19, CAGR of R&M expenses of TPC-T is around 13% as shown in the Table above, which is very high."

7.44. Regarding the claim of TPC-T that its actual O&M expenses are higher than the normative O&M expenses and hence, revision of norms is necessary, it is a fact that normative O&M expenses are calculated based on norms and number of Bays and Ckt. km of transmission lines. Further, it is observed that there are many Bays at different voltage levels, which are constructed by TPC-T but not put to use, thereby not benefiting the consumers. Hence, the Commission had disallowed the normative O&M for such Bays. This is one of the important reasons for deviation in normative and actual expenses. However, TPC-T is silent on the issue of disallowed bays because of assets not being put to use. Also, the Commission had disallowed only normative O&M expenses of unutilised bays. Hence, to that extent it is beneficial to TPC-T. Had the Commission disallowed actual incurred O&M expenses towards unutilised bays in proportion, the allowed actual O&M expenses would have been lower and the deviation between actual and normative expenses would have been reduced. Hence, the claim of TPC-T to revise the norms because of difference in actual and normative O&M is not tenable. Eventually, TPC-T, by making such a prayer, is trying to promote its operational inefficiency, and deviating from the provisions of Section 61 of the EA, 2003, which provides that economical use of resources, good performance and optimum investments should be encouraged and efficiency in performance of business should be rewarded. The difference between the bays claimed by TPC-T and approved by the Commission from FY 2014-15 to FY 2019-20 is summarised as under:

Table No. 12: Number of bays claimed vs. bays approved

Sr. No.	**Year**	**No of Bays (AIS + GIS) claimed by TPC-T**	**No of Bays (AIS + GIS) Approved**	**Difference**
1	2015-16	1163	1163	0
2	2016-17	1218	1198	20
3	2017-18	1240	1232	08
4	2018-19	1286	1263	23
5	2019-20	1418	1285	133

Sr. No.	Year	No of Bays (AIS + GIS) claimed by TPC-T	No of Bays (AIS + GIS) Approved	Difference
	(Provisional True up)			

7.45. The sole reason for disallowance of normative O&M expenses for such bays is the non-utilisation of these bays, thereby not benefiting the consumers and system. Further, from the above Table, it is clear that unutilised bays of TPC-T shows upward trend year on year.

7.46. Further, the prudent O&M expenses have been averaged by the Commission, while deriving the normative O&M expenses in the MYT Regulations ,2019 , hence, re-application of norms for past period will not necessarily result in the same level of O&M expenses. Also, actual O&M expenses of TPC-T have been lower than normative O&M expenses, and TPC-T has been allowed sharing of efficiency gains in the past years.

7.47. The intention of considering lower norms for GIS bays in the MYT Regulations, 2019 was to optimise the cost. The capital cost of GIS bays is around twice that of AIS Bays. Hence, its Aggregate Revenue Requirement (ARR) impact in terms of Return on Equity, Depreciation, interest on loan, etc., is higher. Also, as GIS Bays are Gas insulated and in closed chamber, they require lower footprint and are less affected by external faults such as bird faults, tree faults, rain, storm, wear, and tear, etc., unlike AIS bays. Utilities prefer GIS bays over AIS bays, and justify the same based on the lower O&M cost and operational feasibility of GIS bays, though they have higher capital cost. That being the case, TPC-T's methodology to arrive at the revised O&M norms, first by increasing the allocation cost to AIS bays and applying 70% for GIS bays on such increased norms is merely a mathematical calculation based on their own assumptions. The same is without merit and hence, is not tenable.

7.48. The provision in the MYT Regulations, 2019 for O&M norms of GIS bays as 70% of the AIS bays is in line with the Regulation 35(3) of the CERC (Terms and Conditions of Tariff) Regulations, 2019 notified on 7 March, 2019, which provides as under:

> *"Provided that the O&M expenses for the GIS bays shall be allowed as worked out by multiplying .70 of the O&M expenses of the normative O&M expenses for bays;"*

7.49. Further, the Hon'ble Appellate Tribunal for Electricity (APTEL) in Appeal No. 250 of 2016 (*M/s Adani Transmission (India) Limited v/s MERC*) while deciding on the issue of O&M expenses, has ruled as under:

> *"Regarding allowance of actual O&M expenses, we are of the considered opinion that the State Commission is to follow regulations on all aspects including O&M expenses and need not adopt divergent methodology on case to case basis. Accordingly, we hold that the Respondent Commission has taken a just and right decision in accordance with law and its own regulations. Therefore, this issue is decided against the Appellant."*

7.50. TPC-T has not submitted any new facts and has merely repeated its submissions made in the MYT Petition in Case No. 299 of 2019, wherein the Commission has given its ruling in the MYT Order based on merit. Hence, the prayer of TPC-T to modify/amend/relax the norms for O&M Expenses in the MYT Regulations, 2019 is not based on merit and is hence, rejected. Also, the prayer of TPC-T to re-determine the O&M expenses approved for the 4th Control Period in the MYT Order dated 30 March, 2020 in Case No. 299 of 2019 is of no relevance, given that the norms are not being revised.

8. ***Issue No. 2: 'Put to Use' Criteria for Approving Capital Cost***

TPC-T's Submission

8.1. Regulation 24 of the MYT Regulations, 2019 specifies the capital cost and structure to be approved by the Commission while taking into account various components and related considerations for according such approval. The provisions of Regulation 24.4 of the MYT Regulations, 2019 read as under:

> *"24.4* The capital cost of the concerned asset/s shall be considered after deducting the amount of accumulated depreciation computed till the period of asset utilisation for unregulated business or for the period *the assets remain unutilised, for the purpose of tariff determination, in the following instances:*
>
> *a) The asset/s have been used for a period of time for unregulated business or the asset/s have become part of the asset base of the regulated business after lapse of time with respect to the COD of the asset;*
>
> *b) If the asset has not been put to use for the regulated business after COD."*

8.2. TPC-T has submitted that from the above provisions, it is clear that if the transmission assets are not 'put to use' by a Transmission Licensee, the Commission will allow capitalization of assets after deducting the amount of accumulated depreciation computed till the period such assets remain unutilised. The said provision is not cohesive with other provisions of the MYT Regulations, 2019. Further, the provision to allow capitalization of transmission assets at a depreciated value was not stipulated under the MYT Regulations previously notified by the Commission. Inclusion of the said provision denies recovery of legitimate expenses being incurred by a Transmission Licensee.

8.3. Transmission Business requires long-term planning. The development and the augmentation of the transmission system is based on future projections of load growth provided by the Distribution Licensees and on the five-year plans prepared by the State Transmission Utility (STU). The transmission system is required to be developed much before the distribution system so that when the actual growth happens, and the Distribution Licensee requires bays/outlets, the same are ready. Moreover, all transmission bays have been developed after 'In-Principle' approval from the STU and the Commission. Utilization of the asset is not dependent on the performance/execution of the Transmission Licensee but on the growth of the downstream network, such as the Distribution Licensee. Any delay arising pursuant to operationalizing an asset as per STU plan and due in-principle approvals, on account of delay on the part of the downstream asset or decreased demand growth cannot be fastened on the Transmission Licensee, as such delays are not in the control of the Transmission Licensee. Hence, after obtaining 'in-principle' approval from the STU and the Commission, Transmission Licensees ought to be allowed capitalization of assets from the date of their commissioning rather than from the date of their being 'put to use' and that too by deducting depreciation of the asset till that period. Allowing the ARR after reducing the depreciated cost from the date of put to use will reward the downstream beneficiary for its delayed execution and/or in-efficient planning, in the form of reduced Transmission Charges, and burden the Transmission Licensee who is executing the new assets.

8.4. As per provisions of Regulation 5(6) of the CERC Tariff Regulations, 2019, CERC has envisaged a scenario wherein the transmission assets that are constructed, implemented, and achieve commercial operation, are not disincentivised for acting diligently and the downstream beneficiaries are not unduly benefitted for their inefficiency. Further, as per Clause 7.1 (8) of the Tariff Policy, the State Commissions have to necessarily adopt similar approach as adopted by CERC while formulation of norms for transmission pricing. Hence, the Commission should allow capitalization of transmission assets from Commercial Operation Date (COD) without deducting depreciation irrespective of whether such an asset is being 'put to use' or not**.**

8.5. TPC-T has submitted that the Commission is required to specify norms under Section 61 of the EA, 2003 and determine the tariff under Section 64 of the EA as per the principles provided under the EA, 2003. It is required to ensure that the Tariff is cost reflective. The Hon'ble APTEL, vide Judgment dated 11 November, 2011 in OP 1 of 2011, held that:

> *"Procedures as provided under Section 64 of the Act are to be considered as handmaid of justice which cannot be read in a manner to frustrate the letter and spirit of the underlying statutory provisions and substantive rights related to regular, cost reflective Tariff determination and the statements of objects and reasons read with Section 62 of the Act."*

Accordingly, the provisions as detailed in the present Petition ought to be relaxed to allow TPC-T to recover the legitimate expenses/ cost in line with the Act and the Tariff Policy.

8.6. In view of the submissions, TPC-T has requested the Commission to reconsider the methodology for approval of capitalisation of transmission assets for the 4th Control Period as specified under the MYT Regulations, 2019, and suitably relax / modify the same.

Commission's Analysis and Ruling

8.7. The claim of TPC-T is that the Commission should allow the capitalisation against the transmission assets from the COD without deducting the depreciated cost, irrespective of whether the asset is put to use or not, as the utilisation of Transmission Asset is the responsibility of TSUs/Distribution Licensee.

8.8. The Commission in the past had observed that the Transmission Licensees (including TPC-T) constructed various assets such as Sub-stations, Lines, Bays, etc., which are not utilised for years together, thereby not benefiting the consumers. However, these Transmission Licensees were recovering the ARR against such unutilised assets for this period, thereby burdening the consumers unfairly. Hence, the Commission, in the MTR Orders in the year 2018, had ruled that if assets are not put to use within specified time period, ARR will be allowed at depreciated cost. The said ruling of the Commission is for all the Transmission Licensees for assets constructed but not put to use even after couple of years from the date of construction.

8.9. Also, Transmission Licensees including TPC-T have filed Appeals before the Hon'ble APTEL on the issue of approval of capitalisation at depreciated cost, challenging the Commission's Order. The Commission has also filed the counter reply and maintained its earlier stand (TPC-T's Appeal No. 88 of 2018). The matter is pending before the Hon'ble APTEL.

8.10. Further, TPC-T, in its submission, has asked to allow the capitalisation of the scheme from the COD. It is worthwhile to note that the definition of COD as per Regulation 2(25) of the MYT Regulations, 2019 for Transmission assets is as under:

> *"(25) "Date of Commercial Operation" or "COD" means* ----
>
> *in case of a transmission system, the date declared by the Transmission Licensee from 0000 hour of which an element of the transmission system is in regular service after successful trial operation for transmitting electricity and communication signal:*
>
> *Provided that, in case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the Transmission Licensee or its suppliers or contractors but on account of the delay in commissioning of the concerned generating Station or the upstream or downstream transmission system or distribution system, the Transmission Licensee may seek approval of the Commission of the date of commercial operation of such transmission system or an element thereof:*
>
> *Provided further that, in case of an existing Transmission Licensee, such request may be included as part of its Multi Year Tariff (MYT) Petition or Mid-Term Review Petition or True-up Petition to be filed under these Regulations"*

8.11. From the above provisions of the Regulation, it is clear that if the delay in operation of system is not because of Transmission Licensee, then it is free to approach the Commission to seek approval of the date of commercial operation of such transmission system or an element thereof. Per se, the prayer of TPC-T and arguments are already well answered in the MYT Regulations, 2019 and nothing survives in the matter.

8.12. The intention to allow ARR only after the assets are put to use is to extend the benefits of the constructed assets to the consumers/system, which was the basic purpose of the scheme. Also, as per the provisions of Section 40 of the EA, 2003, it is the duty of Transmission Licensees to construct efficient, effective, and economical coordinated network for benefits to the consumers. Further, as per Section 61 of EA, 2003, the Commission while framing the Tariff Regulations, needs to consider factors encouraging Competition, Efficiency, Economical use of the resources, good performance and optimum investments, etc. Accordingly, the Commission has made the provisions in the MYT Regulations 2019 regarding the capitalisation of the assets.

8.13. In the following Judgments, the Hon'ble APTEL has held that the Utilities are entitled for recovery of the ARR only when the assets are put to use and benefiting the consumers:

a) Judgment dated 31 August, 2012 in Appeal No. 17 of 2011, Appeal No. 18 of 2011 & Appeal No. 19 of 2011 in which the Commission's decision was upheld regarding the disallowance of capitalization in respect of Land procured for TPC-T's 145 kV BKC Substation scheme, on the ground of assets not put to use and not benefitting the consumers. The Hon'ble APTEL's rulings in Appeal Nos. 17 of 2011, 18 of 2011 and 19 of 2011 on the above issue are as follows:

> *"Issue No.5- -------. The land is a part of the sub-station and its cost has been included in the sub-station cost. The land would be put to use only after the commissioning of the sub-station. Therefore, we do not find any infirmity in the order and the State Commission in disallowing the capitalization of the land procured for construction of the 145 kV sub-station at Bandra Kurla complex pending commissioning of the sub-station."*

b) Judgment dated 10 September, 2015 in Appeal No. 250 of 2013 (NTPC vs CERC & others):

> *"10.8 On deep analysis of the material on record and, after due consideration of the rival contentions, we find that the Central Commission has rightly and legally disallowed the claim of the additional capitalization on Energy Management System claimed by the Appellant on the ground that the benefit of reduction in Auxiliary Power Consumption due to the implementation of Energy Management System is not being passed on to the beneficiaries by the Appellant.---"*

c) Judgment dated 27 May, 2016 in Appeal No. 48 of 2014 (NTPC vs CERC & others):

> *"Since, the same issue is covered by our earlier judgment, dated 10.9.2015, in Appeal No 250 of 2013 (supra), accordingly, this issue, being Issue (A), regarding deferment of additional expenditure on assets put to use, is decided against the Appellant. We do not find any merit or substance in the contentions of the Appellant. The same view, we have taken in our recent judgment, dated 22.3.2016, in Appeal No. 47 of 2014 in the matter NTPC Ltd. vs. Central Electricity Regulatory Commission & Ors. in respect of the same Badarpur Thermal Power Station of the Appellant.---"*

8.14. From the above Judgments of the Hon'ble APTEL and the provisions of the MYT Regulations, 2019, it is amply clear that the Utilities shall not be entitled to recover the ARR against the asset if such assets are not put to use benefiting the consumers.

8.15. Transmission Licensees submit the schemes for in-principle approval of the Commission as per the study carried out by the Licensee and STU. Transmission Licensee gives a detailed justification along with plan for phasing of the capital expenditure, capitalization and utilization of the proposed assets. On this basis, the Commission gives in-principle approval to the scheme after technical and financial due diligence. It is worth noting that the execution timeline of the scheme remains as proposed by Transmission Licensee. Hence, it is the responsibility of the Transmission Licensee to implement the scheme by adhering to the plan submitted by it and approved by the Commission. Hence, the argument of TPC-T that as the schemes are approved by the STU and the Commission and hence, capitalisation should be approved, irrespective of whether the asset is put to use or not, is based on false footing. Recovery of costs for assets can start only after the asset is commissioned and put to use, thereby benefiting the consumers. Merely because the scheme is approved by STU / the Commission, it does not mean that TPC-T can evade its responsibility. Also, it is not tenable to state that transmission planning is long-term and asset utilisation depends on growth of system and TSUs, and hence, Transmission Licensee is not responsible for non-utilisation of assets. It is the responsibility of the Transmission Licensee to co-ordinate with the Generating Companies or Distribution Licensees, as the case may be, for execution of the scheme and its efficient utilisation.

8.16. The provisions of MYT Regulations are same for all the Transmission Licences and there is no discrimination against TPC-T. It should be noted that the same dispensation was proposed in the draft MYT Regulations, 2019 also, and comments were invited. The Commission, after analysis of all the comments, took a considered decision to retain the same provisions in the MYT Regulations, 2019. The relevant extracts of the SOR are reproduced below:

"4.6.2 Comments received

…

B. Exclusion of unutilized assets from Capital Cost

TPC submitted that the phrase "put to use" in second and third proviso may be replaced with "ready to use", as the Transmission Licensee should not be penalized for the inability of the Distribution Licensee to use the assets, since the assets were constructed based on the requirement of the Distribution Licensee and after due approval from the State Transmission Utility (STU).

Rattan India Power Limited, MEGPTCL and APTCL submitted that the sixth proviso should be modified in such a way that if the asset is not put to use on account of delay due to beneficiary events, then the Licensee should be suitably compensated for the delay and shall be entitled for full recovery. They submitted that development of downstream system falls under the purview of other Licensees in terms of load management, which is beyond the control of the Transmission Licensees, therefore, impact of non-readiness of other Utilities should not be passed on to Transmission Licensees. They added that putting the asset to use is not in the control of the Transmission Licensee, and that no distinction can be drawn *between a connected bay and a bay waiting to be connected as far as maintenance practice and expenditure is concerned.*

…

4.6.3 Analysis and Commission's Decision

…

As regards the issue of non-consideration of unutilised assets under Capital Cost, the MERC MYT Regulations, 2015 as well as the draft MERC MYT Regulations, 2019 specify in the proviso to Regulation 2.1 (25) c. as under:

> *"Provided that, in case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the Transmission Licensee or its suppliers or contractors but on account of the delay in commissioning of the concerned generating Station or the upstream or downstream transmission system or distribution system, the Transmission Licensee may seek approval of the Commission of the date of commercial operation of such transmission system or an element thereof:*
>
> *Provided further that, in case of an existing Transmission Licensee, such request may be included as part of its Multi Year Tariff (MYT) Petition or Mid-Term Review Petition or True-up Petition to be filed under these Regulations;"*

Thus, the draft MERC MYT Regulations, 2019 provides for situations where the Transmission Licensee is unable to put its asset to use on account of delay in commissioning of the concerned generating station or downstream transmission system or distribution system. The Transmission Licensee has to approach the Commission for necessary relief in terms of declaring the COD, despite the assets not being put to use in the conventional sense. However, as each such instance will have to be dealt with case-by-case, the Commission is of the view that the above dispensation is appropriate and sufficient."

8.17. Thus, the Commission had dealt with the issue of asset put to use and COD in detail while framing the MYT Regulations, 2019 and there is nothing new in the submission of TPC-T and there is no case to re-open this aspect at this stage. Further, the reference to Clause 7.1(8) of the Tariff Policy is irrelevant, as the same is in the context of Transmission Pricing, whereas the present issue relates to approval of costs and ARR. Also, the reference to the Hon'ble APTEL Judgment in OP No. 1 of 2011 is of no relevance, as the Commission is determining tariff regularly, in accordance with the applicable MYT Regulations.

8.18. On the issue of utilisation of the assets, the Commission's rulings in the recent Orders are summarised as under:

I) The Commission vide its Order dated 12 September, 2018 in Case No. 204 (A Case filed by TPC-T for truing up of ARR for FY 2015-16 and FY 2016-17, provisional truing up of ARR for FY 2017-18 and Revised Forecast of ARR for FY 2018-19 & FY 2019-20) has ruled as under:

"**b)** ***Capitalisation of schemes allowed at depreciated cost***

3.3.12 The Commission observed that there is substantial time and cost overrun in the schemes, viz. substation at Ixora, Panvel, 145 kV GIS at Versova, Construction of line bays at Trombay, 145 kV GIS at Mankhurd. In these schemes, assets are constructed which are benefiting neither the consumers nor the transmission system. However, TPC-T claims the capitalisation stating that the asset is ready to use. The Commission is of the opinion that TPC-T is not committed to put assets to use expeditiously and continues to claim capitalisation and O&M expenses by constructing assets that remain idle for considerable time. Useful life of such assets is not fully utilized for benefit of the consumers because assets remain idle. Even during the time asset is idle, TPC-T is claiming IDC, and which burdens the consumer further. Therefore, the Commission observes that there is no real dis-incentive to TPC-T to not expeditiously execute and put the assets created under these schemes to use. This is corroborated by the fact that TPC-T has been claiming capitalisation along with IDC against such assets. Hence, the Commission is of the view that prima facie this is a fit case to create some dis-incentive that will induce discipline in the TPC-T to undertake proper planning, execution, and commissioning of capital expenditure projects. ----"

II) The Commission in its MYT Order dated 30 March, 2020 in Case No.299 of 2019 has ruled as under :

" 3.3.66 ----- The Commission is of the view that only completion of erection of asset or asset being ready to use does not mean that the asset is put to use even without benefiting the consumers. The intention of the EA 2003 or the MYT Regulations is to allow the recovery of the ARR from the assets which are benefiting the consumers or the system by any means. Thus, allowing capitalisation for unutilised GIS Bays is against the basic intent of the Capex Guidelines and MYT Regulations as mentioned above to put the asset to use and provide benefits to consumers. It is worth noting that the trend of unutilised GIS Bays in Case of TPC-T is increasing over the years instead of decreasing. It seems that as the cost is being recovered irrespective of utilisation of GIS assets, planners and TPC-T management is tacit on this issue and over and above defending their claim of ARR towards unutilised assets stating one or the other reason. On one hand TPC-T is proposing the GIS on the pretext that it requires less space and time for construction and on other hand the said asset is being kept idle years together, which is not in the interest of consumers. If such trend of unutilized bays continues, there is possibility that some bays even get retired without any utilisation during their regulated life. It is a fact that load on the EHV substations do not get diverted at a time. It takes time to reorient the existing load and feed the upcoming load gradually. Hence, it is imperative to develop the Bays and installed capacity of the EHV substations and lines in the phased manner considering the trend of load growth and the system requirement to avoid the non utilisation of Bays like in the

present case. Further, if there is no plan to utilise these Bays in the near future, TPC-T may explore the option of utilising these Bays/assets for other proposed projects, so that the assets are put to use. Therefore, though the Commission has not considered disallowance against unutilised GIS Bays for FY 2017-18 to FY 2019-20, disallowance shall be considered for unutilised GIS Bays, in addition to AIS Bays, from FY 2020-21 onwards".

III) Further, the Commission, in its InSTS Order dated 30 March, 2020 in Case No. 327 of 2019, has observed that the Distribution Licensees have objected to the non-utilisation / underutilisation of assets of the Transmission Licensees and its financial impact on the consumers. Hence, the Commission has ruled as under :

"2.2.9 The Commission notes the submission of BEST regarding the increase in cost of the transmission project because of delay in execution and its impact on the end consumers. Hence, the Commission has approved the capitalization after due diligence and take an appropriate view on time over and cost run of the transmission project. It is worth to note that the Commission approves the capitalization against the scheme only if the assets are put to use benefiting the consumers or the Transmission System improvement. Also, the Commission has disallowed the capital cost for the project of all the transmission licensees if the asset is erected but not put to use. Also, the Commission approves the capital cost at depreciated cost if the assets is put to use beyond the approved dated as a disincentive to the Transmission Licenses for delay in execution of the scheme.----- .

4.3 Optimum Utilisation of Transmission Capacity---

4.3.6 In view of the above, the STU is directed to submit a status report on the extent of infrastructure created so far in the State and its utilization at present and as envisaged when approval was accorded to the plan. The report should cover reasons for any under-utilisation, possibility of optimisation of the transmission network, alternate transmission pricing framework to balance the tendency of over capitalisation without its optimal utilisation while complying with the provisions of the new MEGC, 2020 which will be duly notified shortly. The report shall be submitted to the Commission within 3 months from the date of notification of MEGC, 2020."

8.19. From the above provisions of the MYT Regulations 2019, Judgments of the Hon'ble APTEL and Commission's Orders, it is clear that the Transmission Licensees shall be entitled for recovery of the ARR only if the assets are put to use benefiting the consumers.

8.20. It could never be the intention of the EA 2003, CERC Regulations or Tariff Policy to allow the recovery of the ARR from the assets, which are not benefitting the consumers or the system in any manner. Hence, TPC-T's prayer to approve the capitalisation against the assets which are not put to use is akin to promoting inefficiency and financially burden the consumers without any benefit to them. Hence, TPC-T's prayer to modify/amend/ relax certain provisions of the MYT Regulations, 2019 related to norms for capitalisation of assets and O&M norms is devoid of merit and hence, rejected.

8.21. Hence the following Order.

ORDER

The Case No. 99 of 2020 is dismissed.

Sd/-	**Sd/-**
(Mukesh Khullar)	**(I.M. Bohari)**
Member	**Member**

(Abhijit Deshpande)
Secretary

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
॥ आदित्य हृदयम ॥