Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 50 of 2016

In the matter of

Case of Maharashtra Eastern Grid Power Transmission Co. Ltd. pursuant to Commission's interim Order dated 18 October, 2020 for approval of capital cost as on Commercial Operation Date of the Project, and re-determination of Aggregate Revenue Requirement from FY 2013-14 to FY 2019-20 as per Judgment of the Hon'ble Appellate Tribunal of Electricity dated 24 July, 2020 in Appeal No. 260 of 2016

Coram

Shri Sanjay Kumar, Chairperson

Shri I. M. Bohari, Member

Shri Mukesh Khullar, Member

Maharashtra Eastern Grid Power Transmission Co. Ltd (MEGPTCL) **....** Petitioner

V/s

(i) State Transmission Utility (STU)

(ii) Maharashtra State Electricity Distribution Co. Ltd (MSEDCL)

(iii) The Brihanmumbai Electric Supply & Transport Undertaking (BEST)

(iv) Tata Power Company Limited - Distribution (TPC-D)

(v) Adani Electricity Mumbai Limited - Distribution (AEML-D)

(vi) Mindspace Business Parks Private Limited (MBPPL)

(vii) Gigaplex Estate Private Limited (GEPL)

(viii) KRC Infrastructure and Projects Private Limited (KRCIPPL)

(ix) Maharashtra Airport Development Company Ltd.(MADC)

(x) Indian Railways

(xi) Nidar Utilities Panvel LLP (NUPLLP) **....** Respondents

Appearance:

For MEGPTCL (Petitioner)	…….	Adv. Deepa Chawan
For Respondent:		
(i) STU:	…….	Shri Shrikant S. Rajurkar, Rep.
(ii) MSEDCL:	…….	Adv. Harinder Toor
(iii) BEST:	…….	Shri N. N. Chougule, Representative
(iv) TPC-D:	…….	Shri Prashant Kumar, Representative
(v) AEML-D:	…….	Shri Abaji Naralkar, Representative
(vi to viii) MBPPL/GEPL/KRCIPPL:	…….	None
(ix) MADC:	…….	Shri Vasant Pande, Representative
(x and xi) Indian Railways/ NUPLLP:	…….	None

ORDER

Date: 3 June, 2021

1. Maharashtra Eastern Grid Power Transmission Co. Limited (**MEGPTCL**) has filed a Case on 29 October,2020 pursuant to the interim Order of the Commission dated 18 October 2020 in Case No 50 of 2016 for approval of capital cost as on Commercial Operation Date (**COD**) of the project, and True-up of Aggregate Revenue Requirement (**ARR**) from FY 2013-14 to FY 2015-16 and determination of ARR for FY 2016-17 to FY 2019-20 as per Judgment of the Hon'ble Appellate Tribunal of Electricity (**ATE**) dated 24 July, 2020 in Appeal No. 260 of 2016. MEGPTCL requested the Commission to pass Orders for approving recovery of the differential tariff along with the carrying cost as claimed, in compliance of the Hon'ble ATE Judgment dated 24 July, 2020.

2. INTRODUCTION

2.1 Background of the Case:

2.1.1 MEGPTCL had filed a Petition on 9 March, 2016 in Case No. 50 of 2016 for Truing up for FY 2013-14 and FY 2014-15, Provisional Truing up of FY 2015-16 and, approval of ARR for the 3rd Multi Year Tariff (**MYT**) Control Period from FY 2016-17 to FY 2019-20.

2.1.2 The Commission vide its Order dated 5 July, 2016 in Case No. 50 of 2016 disallowed a part of the ARR of MEGPTCL on account of the following issues:

(i) COD was approved as 20 May, 2015 and 27 May, 2016 (2 Bays at 765 kV Aurangabad (Ektuni) Sub-station) as recommended by STU instead of 31

March, 2015 claimed by MEGPTCL for the third set of Transmission Assets of MEGPTCL for ARR recovery.

(ii) Disallowance of Foreign Exchange Rate Variation (**FERV**) on Material Import and Price Variation.

(iii) Disallowance of various capital cost components.

(iv) Considering outstanding Delayed Payment Charges (**DPC**) as Non-Tariff Income (**NTI**) for reduction of allowed ARR.

(v) Non-allowance of actual Operation & Maintenance (**O&M**) expenses.

(vi) Approval of lesser Interest on Long-Term Loan.

(vii) Income from Interest and profit from sale of investment considered as NTI.

(viii) Holding cost of interest on contingency reserve reduced from approved ARR.

2.1.3 Aggrieved by the Commission's Order dated 5 July, 2016 in Case No. 50 of 2016 (**Impugned Order**), MEGPTCL had filed the Appeal No. 260 of 2016 before the Hon'ble ATE.

2.1.4 Hon'ble ATE vide its Judgment dated 24 July, 2020 in Appeal No. 260 of 2016 has set aside the Impugned Order. The issue-wise decision of Hon'ble ATE is as follows:

Issue No. 1: **COD of Assets-** ATE decided that COD of Third set of Transmission Assets shall be 31 March, 2015 and MEGPTCL shall be entitled to tariff from 31 March, 2015 onwards as per the MYT Regulations, 2011 (Regulation 2.1 (29) read with Regulation 12 & 13).

Issue No. 2: **FERV on Material Import and Price Variation:** - ATE decided to allow FERV on the material import as well as variation of prices of raw materials during the period of delay considering that the delay is not attributable to MEGPTCL.

Issue No. 3: **Disallowance of Various capital components**

(i) *Additional bays at Akola -II sub-station and additional towers for charging the Bays*:- These additional bays and additional towers are not only out of scope of work but also not in use and are spare assets. Therefore, cost of these assets cannot be passed on to the consumers and hence the claims of MEGPTCL on account of additional bays and additional towers are rejected.

(ii) *Claim for damaged items, demurrage charges and idling charges*:- ATE found substance in findings of the Commission on these issues and decided to reject these claims of MEGPTCL in the overall interest of consumers.

(iii) *Interest During Construction*:- The Commission has already approved provisional IDC which is required to be finalised considering the contentions raised by MEGPTCL.

Issue No. 4: **DPC as Non-Tariff Income (NTI):-** In light of the judgment of ATE dated 29 May, 2019 in Appeal No. 250 of 2016 (ATIL v/s MERC), DPC cannot be considered as NTI. Accordingly, this issue was decided in favour of MEGPTCL. In Appeal No. 250 of 2016, the Hon'ble ATE has ruled on the same issue that DPC is a compensation in the nature of reimbursement and must not be treated as NTI. In case it is treated as NTI for deduction from ARR, the licensee must be compensated for interest on delayed payment separately. Further, the MYT Regulations, 2011 do not specifically provide that DPC shall be NTI in the case of Transmission Business.

Issue No. 5: **Non-allowance of actual O& M Cost: -** ATE had considered similar contentions raised by Adani Transmission (India) Ltd. (**ATIL**) and MERC in regard to actual O&M cost in Appeal No. 250 of 2016 and decided in the judgment dated 29 May, 2019. In light of the aforesaid judgment, this issue was decided against MEGPTCL. In Appeal No. 250 of 2016 on the issue of O&M, the Hon'ble ATE has ruled that the Commission has to follow its Regulations on all aspects including the O&M expenses. Further, if the O&M expenses are allowed on actual basis, the whole purpose of specifying norms after following due process of public consultation shall be defeated. Accordingly, the Hon'ble ATE opined that the Commission on this issue was just and right in accordance with law and the Commission's Regulations. Therefore, this issue was decided against the Appellant.

Issue No. 6: **Approval of less interest on long term loan: -** ATE did not find any reason to intervene on this issue decided by the Commission. However, the issue could be taken up by MEGPTCL with the Commission during next tariff proceedings for clarity on computation of interest and correction of error, if any.

Issue No. 7: **Income from interest & profit from sale of investment considered as non-tariff income:-** ATE decided to remand this issue to the Commission to reconsider as per the appropriate regulation after seeking necessary details and justification from MEGPTCL.

Issue No. 8: **Holding cost of Interest on contingency reserves:-** ATE did not find any infirmity in the decision of the Commission on this issue. However, holding cost shall be applicable only on the amount that was recovered from the consumers and not invested as contribution to contingency reserves.

2.1.5 The Hon'ble ATE through aforesaid judgment remanded the matter to the Commission to pass the consequential Order within 3 months. The final summary of the rulings of the Hon'ble ATE is as under:

" ORDER

In the light of the above, we are of the considered view that some of the issues raised in the Appeal No. 260 of 2016 have merits and hence the appeal is partly allowed. The impugned order dated 05.07.2016 passed by Maharashtra Electricity Regulatory Commission in Case No. 50 of 2016 is hereby set aside to the extent of our findings under Para 12.1 to 12.8, stated supra.

***The matter stands remitted back to the State Commission with a direction to pass consequential orders as expeditiously as possible within a period of three months from the date of pronouncement of this judgment /order*."**

2.1.6 Post Hon'ble ATE's Judgment, MEGPTCL, vide its letter dated 28 July, 2020 requested the Commission to issue the consequential Order as per the Hon'ble ATE's Judgment dated 24 July, 2020 in Appeal No. 260 of 2016.

2.1.7 The Commission by its suo-motu notice dated 12 August, 2020 decided to conduct hearing in the matter to pass consequential Order and impleaded State Transmission Utility (**STU**) as Respondent. The Commission directed STU to submit its say in the matter within two weeks.

2.1.8 The Commission by its notice dated 14 September, 2020, held e-hearing of the matter on 9 October, 2020.

2.1.9 Pursuant to hearing the parties, as per the directives of the Hon'ble ATE, the Commission vide its Order dated 18 October, 2020 in Case No. 50 of 2016 issued the following directives to MEGPTCL:

> *"21. Hence, the Commission deems it fit and proper to direct MEGPTCL to submit the necessary documents such as Excel sheets, accounting statements, computations of revised components of the ARR including Carrying Cost, etc., as envisaged in the applicable MYT Regulations, EA, 2003 and the Hon'ble ATE Judgment, by 10 November, 2020.* ***Also, MEGPTCL shall serve the copies of the documents on the STU and all Distribution Licensees in the State of Maharashtra who are sharing the TTSC, being TSUs. The STU's and the DL's shall submit their reply (in any within 15 days thereafter****.*
>
> *22. After submission of the documents and necessary information by MEGPTCL, the Commission will analyse it and conduct the hearing giving opportunity to the affected Parties to have their say. After hearing the Parties, the Commission shall issue the Order determining the revised ARR and its recovery."*

2.2 Present Petition

2.2.1 In compliance of the directions of the Commission vide Order dated 18 October, 2020, MEGPTCL, on 28 October, 2020 and 14 December, 2020 has submitted Excel Sheet working of revised ARR of MEGPTCL from FY 2013-14 onwards till date along with carrying cost computed till 31 October, 2020, praying that MEGPTCL shall be allowed recovery of differential tariff w.e.f. 1 November, 2020. MEGPTCL has served copy of its submissions to STU and all the Distribution Licensees.

2.2.2 E-hearing held on 16 February, 2021 was adjourned as MSEDCL requested for additional time to submit its reply on MEGPTCL's Petition.

2.2.3 On 3 March, 2021, MSEDCL submitted its reply and in response to this, MEGPTCL submitted its rejoinder on 12 March, 2021. MADC also submitted its comments on 5 March, 2021.

2.3 At the E-hearing held on 16 April, 2021:

2.3.1 The Advocate of the MEGPTCL reiterated its submission as made out in the Petition. She also clarified that MEGPTCL has submitted the required information as sought by the office of the Commission and also submitted the rejoinder to the submissions of MSEDCL.

2.3.2 The Advocate of MSEDCL stated that:

(i) Delay in the COD is because of the MSETCL. Hence, the recovery of transmission charges as per the Hon'ble ATE Judgment shall be recovered from MSETCL.

(ii) He referred to the provisions of the CERC (Sharing of inter-State Transmission charges and losses), Regulations, 2010 and submitted that transmission charges in case of delay in execution of the scheme should be borne by defaulting entity and not by the beneficiaries.

(iii) Impact of FERV & price variation should be treated as controllable as they were based on the decision of MEGPTCL to delay the material import in view of delay in implementation of the project and hence only to the extent of 1/3rd of such amount of loss may be passed on as part of Tariff and rest should be recovered from MSETCL.

(iv) Carrying cost should be allowed at actuals or IoWC approved by the Commission, whichever is lower.

2.3.3 In its counter reply, the Advocate of MEGPTCL stated that MSEDCL is seeking to re-open and re-agitate issues which are already decided by the Hon'ble ATE. In terms of Judgment of Hon'ble ATE, present proceeding has limited scope. The same cannot be converted into a review of the said decision of the Hon'ble ATE. She also stated that reliance on the CERC Regulations is not correct as these are not applicable for State of Maharashtra. On FERV issue, she stated that scope of current proceedings is not a review of the Judgment of Hon'ble ATE but limited to deciding approval of consequential impact.

2.3.4 Representative of BEST stated that they have no specific submission in the matter.

2.3.5 Representatives of TPC-D and AEML-D stated that they have no submission in the matter and will abide by the Commission's Order.

2.3.6 The representative of MADC stated that the recovery in the present matter is of past period and MADC is not affected party.

2.3.7 The Representative of STU stated that MSETCL was not a party to the Petition. Considering that MSEDCL is demanding recovery of the impact of the Hon'ble ATE Judgment from MSETCL, hence MSETCL should be impleaded as a party to the Petition.

2.3.8 The Commission directed representative of STU to file the written submission, if any.

2.4 As directed in the hearing, STU has filed its submission on 16 April, 2021.

3. The Commission notes that there are multiple issues to be decided as per the Hon'ble ATE's Judgment. Further, there are submissions from stakeholders like MSEDCL, STU and MADC on various issues. Hence, to avoid the repetition and for brevity, issue wise MEGPTCL submission, stakeholders replies/objections, and the Commission's rulings on stakeholders objections/comments are discussed in the subsequent Section of the Order which also outlines the issue wise approach for approval of cost elements adopted by the Commission in line with the Hon'ble ATE Judgment.

4. Issue wise approach for approval of cost elements in line with the Hon'ble ATE Judgment:

4.1 Based on the submissions by MEGPTCL and the Commission's approvals in the past Orders, the approach adopted by the Commission for approval of the cost elements in line with the directions of the Hon'ble ATE has been outlined in the subsequent Paragraphs. The Commission has also considered the replies / objections submitted by stakeholders on the issues and the response submitted by MEGPTCL while finalising its approach for approval of various cost elements.

4.2 Further, the applicability of the various MYT Regulations for re-determination of ARR for the period envisaged in the Impugned Order is as under:

Sr. No.	Period for re-determination of ARR	Applicable MYT Regulations
1	FY 2013-14 to FY 2015-16	MYT Regulations, 2011
2	FY 2016-17 to FY 2019-20	MYT Regulations, 2015
3	FY 2020-21 to FY 2024-25	MYT Regulations, 2019

4.3 **Issue 1:** Disallowance of Commercial Operation Date (COD), as proposed by MEGPTCL, of the third set of Transmission Lines and commencement of Revenue:

Hon'ble ATE Judgment

"It is decided that COD of Third set of Transmission Assets shall be 31.03.2015 and the Appellant shall be entitled to tariff from 31.03.2015 onwards as per MYT Regulations, 2011 (2.1 (29) read with Regulation 12 & 13)."

MEGPTCL's submission

4.3.1 MEGPTCL has claimed the COD for third set of assets including the bays at 765 kV Ektuni sub-station (Set 3A and 3B) as 31 March, 2015 along with its consequential impact on the ARR elements including the applicable carrying cost in the present petition.

MSEDCL's submission

4.3.2 The Hon'ble ATE has recognised the contractual relationship between MEGPTCL and MSETCL/STU for construction of the 2 × 765 kV Bays at MSETCL's Ektuni Sub-station on deposit work basis. Further, it is also apparent that MSETCL in its capacity as the STU had undertaken the work of construction of 765 kV Ektuni Sub-station and failed to complete it before the SCOD of MEGPTCL system. Accordingly, Hon'ble ATE has also acknowledged that MSETCL has failed to complete the contractual work sub-contracted by MEGPTCL in a timely manner and hence is completely at default in the matter.

4.3.3 MSEDCL has quoted various Orders / Judgment of Hon. Supreme Court, Hon'ble ATE and CERC Regulations to establish that the transmission charges in case of delay have to be borne by the defaulting entity and not by the beneficiaries. Further, MSEDCL has submitted that considering that the delay is on account of MSETCL, impact on the transmission charges on account of the cost-over run due to delay has to be borne by the defaulting entity i.e., MSETCL/STU and not to be passed on to beneficiaries.

4.3.4 MEGPTCL has not invoked any contractual provisions, nor any penal action has been initiated against MSETCL for delay in commissioning of the bays at 765 kV Substation at Aurangabad (Ektuni) which has also been noted by the Commission in its Order in Case No. 50 of 2016.

4.3.5 In view of the above, MSEDCL has submitted that the claims towards cost over-run and transmission charges due to the delay on account of MSETCL should not be passed on to the beneficiaries and in turn to their consumers and should be recovered from the defaulting entity, MSETCL.

MEGPTCL's Reply to MSEDCL submission

4.3.6 MSEDCL has failed to appreciate the scope and ambit of the present proceedings. MSEDCL in effect seeks to re-open and re-agitate issues which have been finally decided by the Hon'ble ATE in its Judgment dated 24 July, 2020 in Appeal No. 260 Of 2016. Additionally, the Judgment dated 24 July, 2020 (supra) has not been challenged in any Appeal proceedings and has therefore attained finality.

4.3.7 As regards MSETCL taking up the work of construction of Ektuni Sub-station in the capacity of STU and the Hon'ble ATE's observations thereon regarding the delay in completing the work of construction of Ektuni Sub-station before the SCOD of MEGPTCL system, MEGPTCL has submitted that this aspect has already been adjudicated by the Hon'ble ATE and hence this settled issue is not open to re-agitation by MSEDCL.

4.3.8 Reliance of MSEDCL on the provisions of the CERC Tariff Regulations 2014 is misplaced as these Regulations are not applicable in the State of Maharashtra.

4.3.9 MSEDCL's reliance on the provisions of CERC (Sharing of inter-State Transmission charges and losses), Regulations, 2010 issued by CERC is not appropriate as CERC Regulations are not applicable to Intra-State Transmission project of MEGPTCL. Further Order of the Hon'ble Supreme Court and that of the Hon'ble ATE has decided the liability for payment of Transmission charges, when upstream or downstream transmission system are not ready, and transmission system is not put to use which is in line with the Hon'ble ATE Judgment deciding the entitlement of MEGPTCL to recover Tariff with effect from 31 March, 2015. MEGPTCL further submitted that in the State of Maharashtra, the Regulations issued by the Commission are applicable and Regulations from other jurisdictions are not applicable.

4.3.10 With reference to MSEDCL submission regarding MEGPTCL not invoking contractual provision against MSETCL for delay in commissioning of the bays, MEGPTCL submitted that the Hon’ble ATE has decided the issue in favour of MEGPTCL after reviewing the MYT Order passed by the Commission.

4.3.11 Further, with reference to MSEDCL submission regarding the impact to be recovered from the defaulting entity i.e. MSETCL/ STU, MEGPTCL has submitted that the Hon’ble ATE has not held that MSETCL should bear impact of tariff. Considering that the Order of the Hon’ble ATE has not been challenged by any party, it is deemed to be final, and the present Petition is only to decide the consequential impact and therefore, the issue being raised by MSEDCL deserves to be disregarded.

Commission’s Analysis and Ruling

4.3.12 The Commission has noted the Hon’ble ATE Judgment, MSEDCL’s submission regarding not passing on the consequential impact of the implementation of the Hon’ble ATE Order to the beneficiaries and MEGPTCL’s response thereon.

4.3.13 The Hon’ble ATE in its Judgment has noted that while MEGPTCL system (excluding 2 bays at Ektuni sub-station) was put to use on 20 May, 2015, the reason for the delay in commissioning according to the submissions of MEGPTCL was unavailability of MSETCL’s transmission sub-station at Ektuni, Aurangabad. MEGPTCL had to temporarily divert and connect its 765 kV S/C Akola-II to Aurangabad Line-2 with MSETCL’s 400 kV Sub-station at Taptitanda, Aurangabad. So while MEGPTCL line was ready for commissioning on 31 March, 2015, however, the bay for onward transmission of power from Taptitanda Sub-station was completed by MSETCL subsequently and power flow in Akola-II SS to Aurangabad Line-2 commenced from 20 May, 2015.

4.3.14 Similarly, the Hon’ble ATE also noted that STU further delayed the commissioning of the MEGPTCL system by delaying the construction of the bays at Taptitanda despite the proposal being in existence since year, 2011.

4.3.15 Accordingly, the Hon’ble ATE concluded that the delay in commissioning of the MEGPTCL system is attributable to delays caused by reasons beyond the reasonable control of MEGPTCL and are considered as events of Force Majeure as per the Regulation 2.1 (29) of MYT Regulations, 2011. The delay is attributable primarily on account of delay in commissioning of the Ektuni Sub-station by the STU and delay in construction of the 2 bays at Ektuni by MSETCL under a contractual arrangement. The relevant portion of the Hon’ble ATE Judgment is reproduced below for reference:

> *4.4 It is evident that* ***there was a contractual relationship between MEGPTCL and MSETCL for construction 2 bays at Ektuni Substation on deposit work basis.*** *However, it is also apparent that* ***MSETCL in the capacity of STU had undertaken the work for construction of Ektuni Sub-station and failed to complete it before SCOD of MEGPTCL system****. Further, MSETCL vide its letter dated 14.11.2011 had communicated to MEGPTCL that, as an interim arrangement, the Akola-II to Aurangabad line may be terminated at 400 kV level at Taptitanda sub-station. However,* ***when the Appellant sought to terminate the line at Taptitanda Sub-station, MSETCL could not make it available for commissioning of line until 20.5.2015****. MEGPTCL had also brought to the notice of the Commission about the delay being caused by STU from time to time. We notice from order dated 15.01.2014 in Case No 128 of*

2013 that the Commission had also revised the scheduled commissioning dates to January 2014 (for Set 1 & 2) and July 2014 (for Set 3a and 3b). Accordingly, ***we opine that delay in commissioning of Ektuni substation by STU was beyond the reasonable control of the Appellant and is an event of Force Majeure as per Regulation 2.1(29) of the MYT Regulations, 2011.*** *The* ***STU further delayed the commissioning of the Appellant's system by delaying the construction of bays at Taptitanda*** *despite there being such proposal existing since 2011.* ***The Appellant cannot be made to suffer on account of the delay by STU when the MEGPTCL has completed the construction of transmission system and admittedly charged it on 31.3.2015.***

4.5 In light of the above, we set aside the findings of Maharashtra Commission qua the date of commercial operation i.e. 20.5.2015 for Set 3 of its transmission assets and allow COD of the transmission line on 31.3.2015. ***The Appellant shall be entitled to tariff from 31.3.2015 onwards as per Regulation 2.1(29) of the MYT Regulations, 2011 read with Regulation 12 and Regulation 13 of MYT Regulations, 2011****."*

4.3.16 Based on the above analysis, the Hon'ble ATE concluded the following:

(i) There was a contractual relationship between MEGPTCL and MSETCL for construction 2 bays at Ektuni Substation on deposit work basis.

(ii) MSETCL in capacity of STU had undertaken the work for construction of Ektuni Sub-station and failed to complete it before SCOD of MEGPTCL system.

(iii) Accordingly, the delay in commissioning of MEGPTCL system was attributable to reasons beyond the reasonable control of MEGPTCL and hence qualify to be considered as force majeure events as per the Regulation 2.1 (29) of the MYT Regulations, 2011.

(iv) Considering the above, MEGPTCL shall be entitled to tariff from 31 March, 2015 onwards as per Regulation 2.1 (29) of the MYT Regulations, 2011 read with Regulation 12 and Regulation 13 of MYT Regulations, 2011.

4.3.17 Based on the above, it is evident that the Hon'ble ATE has considered the delay in commissioning of the MEGPTCL system as an "uncontrollable factor" as defined under Regulation 12.1 (a) of the MYT Regulations and allowed recovery under Regulations 13 which deals with the mechanism for passing gains/losses on account of "uncontrollable factors" for recovery through the beneficiaries who in turn will pass on the impact to the consumers. Though the Hon'ble ATE has concluded that the delay in implementation of the MEGPTCL system is attributable to delays on the part of STU and MSETCL, it has not indicated in its Judgement that the recovery of the impact of the implementation of the Hon'ble ATE Order has to be made through MSETCL. Accordingly, it is deemed that the recovery by MEGPTCL will be made from the beneficiaries of MEGPTCL system.

4.3.18 Further, the Commission also notes that the Hon'ble ATE has examined all the relevant aspects of the Commission's MYT Order in Case No. 50 of 2016 and has remanded the matter back to the Commission with a direction to pass consequential orders considering the issues which have been ruled in favour of MEGPTCL. Accordingly, the ambit of the present proceedings is limited to the extent of implementation of the Hon'ble ATE Judgment dated 24 July, 2020 in Appeal No. 260 of 2016, in terms of the issues decided in favour of MEGPTCL and not re-examining any other issues which have already been decided by the Commission in its Order in Case No. 50 of 2016 and other subsequent Orders as applicable. Accordingly, as the issue relating to the manner of recovery of the costs allowed by the Hon'ble ATE or the parties from whom these costs have to be recovered by MEGPTCL was not a part of the proceedings in Appeal No. 260 of 2016, the recovery would be in line with the approach decided by the Commission in its Order in Case No. 50 of 2016 i.e. from the beneficiaries of the InSTS which is in line with the InSTS tariff framework and Regulations applicable therein.

4.3.19 Further, considering that the Order of the Hon'ble ATE dated 24 July, 2020 in Appeal No. 260 of 2016 has not been challenged by any party in any Higher Court of Law, this Order is deemed to have attained finality. Considering the same, it may not be appropriate to re-examine the issue pertaining to recovery of the costs from STU/MSETCL instead of InSTS beneficiaries as requested by MSEDCL. Further, MSEDCL had also not agitated this issue during the proceedings in Case No. 50 of 2016 which was decided after the Public Consultation process even when it was a pertinent matter from the perspective of the beneficiaries including MSEDCL.

4.3.20 Accordingly, the Commission shall consider the COD of the third set including the bays at 765 kV Ektuni sub-station (Set 3A and 3B) as 31 March, 2015 and the consequential impact on various components of the ARR elements in line with Hon'ble ATE Judgment.

4.3.21 Further, the commissioning of the Transmission system of MEGPTCL was expected to happen in different phases and accordingly, the system was bifurcated into various sets and each set having a different COD.

4.3.22 The Commission has considered the COD of the third set including the bays at 765 kV Ektuni sub-station (Set 3A and 3B) as 31 March, 2015 and the consequential impact on various components of the ARR elements including the applicable holding cost has been computed in the present Order. Accordingly, the COD considered in present Order is as shown in the following Table:

Table 4-1: Commissioning dates of Transmission Project Elements – Original & Revised

Components	Original COD (As allowed in Case No. 50 of 2016)	Revised COD (As per Hon'ble ATE Judgment)
Set 1: Akola-II – Akola-I 400 kV Quad Double Circuit (D/C) Line with Bays	23-Feb-14	23-Feb-14 (Same - No Change)
Set 2a: • Tiroda – Koradi-III 765 kV Single Circuit (S/C) Line-1 • Koradi-III – Akola-II 765 kV S/C Line-1 • 765/400 kV switchyard at Tiroda	23-Feb-14	23-Feb-14 (Same - No Change)

Components	Original COD (As allowed in Case No. 50 of 2016)	Revised COD (As per Hon'ble ATE Judgment)
• 765/400 kV Sub-stations at Akola - II		
Set 2b: • Akola-II – Aurangabad 765 kV S/C Line-1	8-Apr-14	8-Apr-14 (Same - No Change)
Set 3 (excluding 2 Bays at 765 kV Aurangabad (Ektuni) Sub-station): • Tiroda – Koradi-III 765 kV S/C Line-2 • Koradi-III– Akola-II 765 kV S/C Line-2 • Akola-II– Aurangabad 765 kV S/C Line-2 • 765/400 kV Sub-stations at Koradi - III	20-May-2015	31-Mar-2015 (Changed as per Hon'ble ATE Judgment)
2 Bays at 765 kV Aurangabad (Ektuni) Sub-station	27-May-2016	31-Mar-2015 (Changed as per Hon'ble ATE Judgment)

4.4 **Issue 2:** Disallowance of Foreign Exchange Rate Variation (FERV) on Material Import and Price Variation

Hon'ble ATE Judgment

"It is decided to allow FERV on the material import as well as variation of prices of raw materials during the period of delay considering that the delay is not attributable to the Appellant."

MEGPTCL's submission

4.4.1 MEGPTCL has submitted a claim of Rs. 384.04 Crore on account of FERV-Material Import and Price Variation as part of the Capital Cost along with its consequential impact on the ARR components including the applicable carrying cost in the present petition.

MSEDCL's submission

4.4.2 The Hon'ble ATE has acknowledged the prudence of MEGPTCL in delaying importing of material in view of the delay in implementation of the project to reduce incidence of IDC and thus, set aside the decision of Commission disallowing MEGPTCL from claiming costs pertaining to FERV on material import and price variation on raw materials.

4.4.3 MSEDCL has quoted the provisions of the Regulation 12.2 of the MERC MYT Regulations, 2011 which states the following:

"12.2 Some illustrative variations or expected variations in the performance of the applicant, which may be attributed by the Commission to controllable factors include, but are not limited to the following:

(a) Variations in capital expenditure on account of time and/or cost overruns/ efficiencies in the implementation of a capital expenditure project not attributable to an approved change in scope of such project, change in statutory levies or force majeure events;"

4.4.4 MSEDCL has also quoted the provisions of the Regulation 14.2 of the MERC MYT Regulations, 2011 which states the following:

14.2 The approved aggregate loss to the Generating Company or Transmission Licensee or Distribution Licensee on account of controllable factors shall be dealt with in the following manner:

(a) One-third of the amount of such loss may be passed on as an additional charge in tariff over such period as may be stipulated in the Order of the Commission under Regulation 11.6; and

(b) The balance amount of loss shall be absorbed by the Generating Company or Transmission Licensee or Distribution Licensee.

4.4.5 In view of above Para, MSEDCL has submitted that the decision to delay material import in view of delay in implementation of the project to reduce incidence of IDC was purely MEGPTCL's choice which comes under controllable factors.

4.4.6 MSEDCL has also requested the Commission to consider this fact/provision while deciding the matter of allowing the FERV with prudent check.

4.4.7 In case the Commission decides to pass on the claims, it is submitted that the lower of the IDC so saved on account of the decision of MEGPTCL or the impact of FERV & price variation, may be considered for pass through and that too only to the extent of one-third of such amount of loss may be passed on as an additional charge in tariff and further the defaulting entity i.e. MSETCL should bear the same. Balance 2/3rd part as per Regulation 14.2 of' MERC MYT Regulations, 2011, MEGPTCL should bear.

MEGTPCL's Reply to MSEDCL submission:

4.4.8 MEGPTCL has denied the contentions of MSEDCL regarding FERV on material wherein MSEDCL has quoted the Regulation 12.2 of MERC MYT Regulation, 2011 which defines the incidence of IDC as a controllable factor, due to delay in project implementation.

4.4.9 Regarding MSEDCL's request for doing prudence check for allowing FERV on material, MEGPTCL has submitted that the present proceeding is not a review of the Judgment of the Hon'ble ATE and the scope is limited to deciding consequential impact for implementing Judgment of the Hon'ble ATE. MSEDCL under the guise of prudence check cannot agitate issues which have been duly adjudicated and decided by the Hon'ble ATE. Attempt of MSEDCL to suggest carrying out prudence check of FERV on material by the Commission is beyond the scope of present proceedings, as the Hon'ble ATE has decided that FERV on material, taken as a ground in Appeal due to the MYT Order in Case No. 50 off 2016 dated 5 July, 2016 passed by the Commission, has been duly allowed.

4.4.10 Judgment of the Hon'ble ATE in the Appeal No. 260 of 2016 has attained finality and the present proceedings before the Commission are limited and consequential in nature.

The proceedings are for working out impact and passing the same to consumers and the decision of the Hon'ble ATE cannot be examined / reviewed or questioned.

Commission's Analysis and Ruling:

4.4.11 The Commission has noted the Hon'ble ATE Judgement, MSEDCL's submission regarding considering the decision of MEGPTCL to delay the import of material as a controllable factor and passing on the impact (lower of the IDC saved on account of the delay in import of material and impact of FERV and price variation) considering the provision of the MYT Regulations, 2011 pertaining to the sharing of gains/losses on account of controllable factors and MEGPTCL's response thereon.

4.4.12 The Hon'ble ATE while allowing recovery of the FERV on material import and price variation on raw material has also taken cognisance of the fact that the project faced delays due to delay in (i) obtaining forest clearance (ii) obtaining RoW permission for laying of transmission line (iii) availability of land for Akola II substation and (iv) delay in obtaining land for Koradi-III sub-station. Further, Hon'ble ATE noted that MEGPTCL had deferred import of material beyond the scheduled delivery/completion period of the contract on account of non-availability of space for storage of imported material and to prevent incidence of IDC. Thus, Hon'ble ATE ruled that MEGPTCL has acted in a prudent manner in delaying the import of material.

4.4.13 The Hon'ble ATE noted that the Regulation 27 of the MYT Regulations, 2011 which deals with the definition of "Capital Cost" allows expenditure incurred including cost over-run subject to prudence check by the Commission. It is also provided that if sufficient justification is provided for any escalation in the Project Cost, the same may also be considered for determination of tariff. The Hon'ble ATE in its Judgement has clearly concluded that MEGPTCL has provided sufficient justification for the increase in the capital cost. The relevant paragraph is reproduced below for reference:

> *"5.11 The aforesaid definition of* ***capital cost allows expenditure incurred including cost over-run subject to prudence check by the Commission****. It is also provided that* ***if sufficient justification is provided for any escalation in the Project Cost the same may also be considered for determination of tariff****. We feel that the* ***Appellant acted in prudent manner to delay material import*** *in view of delay in implementation of the project to reduce incidence of IDC. In the present case, the Appellant also saved IDC by delaying the payment for the material imported before the scheduled completion date.* ***The increase in impact due to FERV cannot be attributed to any negligence or imprudent practice by Appellant since it is beyond reasonable control of Appellant.*** *In our view the Appellant has also acted prudently by deferring the import of material to prevent its damage in the absence of land for storage facility. The intent of Appellant is to prevent a bigger financial impact on the project. Moreover, in case of reduction in exchange rate, the Appellant could have benefited the project from both reduction in IDC as well as low cost of imported material on account of FERV.* ***Therefore, sufficient justification has been provided by the Appellant for increase in capital cost on account of increase in FERV****."*

4.4.14 The Hon’ble ATE also noted that the Commission had concluded in its Order that the delays in the project were not attributable to MEGPTCL and hence, had allowed the consequential increase in the ROW costs and IDC in its impugned Order. Accordingly, the Hon’ble ATE has ruled that two different treatments cannot be given for the same cause of action and hence the cost towards FERV on material import ought to be allowed by the Commission. The relevant para of the Hon’ble ATE’s Order is reproduced below for reference:

> *“5.12 We notice that the Commission has also acknowledged this aspect and accordingly allowed consequential impact of increase in IDC and FERV on loan.* ***Once the MERC has come to the conclusion that the delays are not attributable to the Appellant and the Appellant is allowed the consequential increase in ROW costs and IDC****, we do not agree with the conclusion of MERC that delays in transmission projects generally occur and hence FERV on material import cannot be allowed. As observed by us supra, it is not feasible to build safeguards into any contract for the events that may take place post contract period. Further,* ***since two different treatments cannot be given for the same cause of action, the cost towards FERV on material import ought to be allowed by the Commission****. Accordingly, we set aside the decision of Maharashtra Commission and allow FERV on import of material after the scheduled completion of contract.”*

4.4.15 The Hon’ble ATE in the same judgment took a similar stand on the issue of price variation on material and allowed the recovery stating the following:

> *“5.15 We have held that after acknowledging the delay in implementation of the project and allowing consequential impact of increase in IDC and FERV on loan, the Commission ought to have allowed FERV on material import also. For the aforesaid reasons,* ***the impact of price variation on raw materials is also allowed considering that the delay is not attributable to the Appellant****.”*

4.4.16 It is evident from above rulings that the Hon’ble ATE has concluded that the delay in execution of the project is not attributable to MEGPTCL and beyond its reasonable control delays caused by reasons beyond the reasonable control of MEGPTCL. Accordingly, the consequential impact on the capital cost is also beyond the reasonable control of MEGPTCL and hence allowed for recovery by the Hon’ble ATE. The Hon’ble ATE has also ruled that MEGPTCL has provided adequate justification for the delay along with the consequent cost escalation. Accordingly, it has complied with the requirements of Regulation 27 of the MYT Regulations, 2011 which allows capital expenditure incurred including cost over-run to be considered for determination of tariff subject to prudence check by the Commission and sufficient justification provided for any escalation in the Project Cost. Accordingly, the increase in cost in the present case is deemed to be uncontrollable and hence, entirely recoverable from the beneficiaries without any sharing of gains/losses.

4.4.17 The Commission in its Order in Case No. 50 of 2016 had also approved escalation in certain elements of the capital cost (e.g. Impact on Capital Cost of additional compensation paid in RoW cases) based on justifications provided by the MEGPTCL and which were primarily on account of reasons beyond the reasonable control of

MEGPTCL. The recovery of the entire consequential impact of such cost elements was allowed from the beneficiaries without any sharing of the gains/losses. The rulings of the Commission in one such instance is reproduced below for reference.

"(i) Impact on Capital Cost of additional compensation paid in RoW cases

MEGPTCL's submission

………

Commission's Analysis and Ruling

The Commission acknowledges the RoW related issues faced by MEGPTCL during project execution which led to delay in project implementation, and notes the position submitted by MEGPTCL regarding the higher compensation demanded by land owners*. MEGPTCL has also submitted that, due to the delay in obtaining RoW clearances, the land valuation has increased, driving up the RoW and crop compensation amounts substantially.*

Accordingly, the Commission provisionally approves the RoW cost of Rs. 128.28 Crore over and above Rs. 30.75 Crore envisaged initially*."*

4.4.18 Accordingly, considering the Hon'ble ATE Judgement, impact of FERV on material import and price variation in raw material is deemed to be entirely uncontrollable and hence no sharing of the gains/losses is considered as argued by MSEDCL. Further, considering that the Hon'ble ATE in para 5.12 and 5.15 of its Judgment (as reproduced in Paras 4.4.14 and 4.4.15 above) has allowed MEGPTCL to recover the cost associated with the FERV on material import and price variation in raw material considering it to be on account of reasons not attributable to MEGPTCL, hence it would not be appropriate to revisit the direction of Hon'ble ATE. Hence, the Commission has not considered MSEDCL's submission of allowing claim, if any, equivalent to lower of the IDC saved on account of the decision of MEGPTCL to delay the import of equipment or the impact of FERV and price variation.

4.4.19 Accordingly, as discussed earlier in the Order, scope of the present proceedings undertaken by the Commission is limited to the extent of implementation of the Hon'ble ATE Judgment dated 24 July, 2020 in Appeal No. 260 of 2016, to the extent of the issues decided in favour of MEGPTCL. The Hon'ble ATE has examined all the relevant aspects of the Commission's MYT Order in Case No. 50 of 2016 based on the merit considering the submission/argument of the Commission and has remanded the matter to the Commission with a direction to pass consequential orders considering the issues which have been ruled in favour of MEGPTCL.

4.4.20 Considering the above, the ambit of the present proceedings is limited to passing consequential Orders on the matters decided in favour of the Petitioner (MEGPTCL) and not re-examining any other issues which have been already decided by the Commission in its Order in Case No. 50 of 2016 and other subsequent Orders as applicable. Further, the issue related to the manner of recovery of the costs allowed by the Hon'ble ATE through its Order dated 24 July 2020 or the parties from whom these costs have to be recovered by MEGPTCL were not a part of the proceedings in Appeal No. 260 of 2016, the recovery would be in line with the approach decided by the Commission in its Order in Case No. 50 of 2016 i.e. from the beneficiaries of the InSTS.

4.4.21 Further, considering that the Order of the Hon'ble ATE dated 24 July, 2020 in Appeal No. 260 of 2016 was not challenged by any party in any Higher Court of Law, this Order is deemed to have attained finality. Considering the same, it may not be appropriate to re-examine the issue pertaining to recovery of the costs from STU/MSETCL in place of the beneficiaries as argued by MSEDCL. Further, MSEDCL had also not agitated this issue during the proceedings in Case No. 50 of 2016 even when it was a pertinent matter from the perspective of the beneficiaries including MSEDCL.

4.4.22 The Commission in its Order in Case No. 50 of 2016 had disallowed the FERV on material import to the extent of Rs. 326.78 Crore (Rs. 54.64 Crore for Transmission Lines and Rs. 272.14 Crore for Sub-station) and price variation on raw material to the extent of Rs. 57.25 Crore (Rs. 38.26 for Transmission Lines and Rs. 18.99 Crore for Sub-station). Further, the Commission while approving the final capital cost of MEGPTCL system in its Order in Case No. 169 of 2017 had retained the stand taken in the earlier Order in Case No. 50 of 2016 and disallowed FERV on material import and price variation on raw material to the extent of Rs. 384.04 Crore.

4.4.23 Considering the above and the Hon'ble ATE Judgment to allow the impact of FERV on material import and price variation on raw materials considering that the delay is not attributable to the MEGPTCL, the Commission has revised the Capital Cost to include the cost related to FERV on material import and price variation of raw materials to the extent of Rs. 384.04 Crore to pass on the consequential impact on various components of the ARR elements including the applicable holding cost in the present Order.

Table 4-2: Approved Capital Cost Elements related to FERV on material import and Price Variation of raw Materials (Rs. Crore)

Particulars	Set 1	Set 2A	Set 2B	Set 3	Total Cost
Transmission lines					
Supply Order (EPC)					
Price escalation	1.75	8.60	2.38	25.53	**38.26**
Foreign Exchange Rate Variation - Material	0.71	13.74	8.15	32.04	**54.64**
Substation works					
Supply Order					
Price escalation	-	-	-	18.82	**18.82**
Foreign Exchange Rate Variation - Material	-	111.74	-	160.40	**272.14**
Service Order					
Price escalation	-	-	-	0.17	**0.17**
TOTAL COST	**2.46**	**134.08**	**10.53**	**236.97**	**384.04**

4.5 **Issue 3:** Disallowance of various capital cost components

Hon'ble ATE Judgment:

The Hon'ble ATE has not allowed the claims of MEGPTCL regarding allowing capital cost towards (i) Additional Bays at Akola II Substation; (ii) Damaged Items; (iii) Additional towers - Charging at 400 kV level; (iv) Idling Charge; (v) Demurrage Charges. The only claim admitted is pertaining to the IDC as given below:

"The State Commission has already approved provisional IDC which is required to be finalised considering the contentions raised by the Appellant."

MEGPTCL's submission:

4.5.1 MEGPTCL has submitted an additional claim of Rs. 45.50 Crore on account of IDC as a consequential impact of the changes in the Capital Cost approvals pursuant to the approvals given in the Hon'ble ATE Judgment.

Commission's Analysis and Ruling:

4.5.2 Based on the scrutiny of the revised Capital Cost approval sought by MEGPTCL, it is observed that MEGPTCL has also claimed certain capital cost elements which were disallowed by the Commission in its Order in Case No. 169 of 2017 based on the recommendations of the independent expert/institution appointed by the Commission for detailed scrutiny, physical and financial verification of the completed capital cost of the transmission project of MEGPTCL. The disallowed cost pertained to the following elements:

Table 4-3: Capital Cost elements proposed for disallowance (Rs. Crore)

Particulars	Set 1	Set 2A	Set 2B	Set 3	Total Cost
Transmission lines					
Service Order (EPC)					
Approach Road at various locations	-	-	-	4.72	**4.72**
Substation works					
Supply Order					
DG Set and Fuel Charges	-	-	-	0.12	**0.12**
TOTAL COST	**-**	**-**	**-**	**4.84**	**4.84**

4.5.3 The query related to claim of disallowed capital cost was raised by the Commission as part of the data gaps to the present Petition. MEGPTCL in response to the query submitted that the disallowances by the Commission in Case No. 169 of 2017 are pending before Hon'ble ATE in Appeal No. 18 of 2019 and since the matter is sub-judice, MEGPTCL has submitted for allowing the claimed capital cost. Since the matter is pending adjudication before the Hon'ble ATE, the Commission has continued with the stand taken in Order in Case No. 169 of 2017 and the disallowed cost elements have not been considered for approval.

4.5.4 Barring the above, the Commission is allowing the implication of the other additional capital cost approval relating to impact of FERV on material import and price variations on IDC and accordingly approves an additional impact of Rs. 44.79 Crores as part of the Capital cost and pass on the consequential impact on various components of the ARR elements including the applicable holding cost in the present Order.

4.5.5 In addition to the above, the Commission in its Order in Case No. 169 of 2017 had also allowed the impact of FERV on loan incurred till the CoD of Set 3 (i.e. of 20 May, 2015) and for Ektuni bays till 27 May, 2016 to the extent of Rs. 12.21 Crores in FY 2015-16 and Rs. 1.42 Crore in FY 2016-17. MEGPTCL had earlier (in Case No. 50 of 2016) claimed impact of FERV on loan only up to 31 March, 2015, as per their original claim of CoD. However, considering that the Commission had approved different COD for the Set 3 and Ektuni Bays, MEGPTCL had sought the impact of FERV on loan till the COD approved by the Commission during the proceedings in Case No. 169 of 2017.

The relevant Paragraphs from the Order in Case No. 169 of 2017 are reproduced below for reference:

> *"2.2.39. **MEGPTCL had earlier claimed FERV only upto 31-Mar-2015, as per their claim of CoD. However, the Commission in MYT Order had approved CoD date for Set-3 as 20-May-2015 and for Ektuni bays as 27-May-16, which is different from MEGPTCL's claim of 31-Mar-2015. Hence, MEGPTCL has now claimed FERV upto approved CoD.***
>
> *2.2.40. Further, MEGPTCL as part of MTR Petition has submitted detailed working of FERV on loan upto approved CoDs (viz. Rs 12.21 for FY15-16 and Rs 1.42 Cr for FY16-17) duly certified by the Auditor. The Commission has examined the same. In line with the provisions of the Regulations and necessary certificates in the matter, the Commission allows the additional interest cost on account of FERV on loan amounting to Rs. 12.21 Crore and Rs. 1.42 Crore for FY 2015-16 and FY 2016-17, respectively. **Since, this cost is duly certified by the Auditor and pertains to the period prior to the approved CoD, the same has been considered under the total Capital Cost** and not under the Additional Capitalisation, as per the provisions set out in the relevant MYT Regulations. The same has been considered as part of the revised Capital Cost approved in the present MTR Order.*
>
> *2.2.41. **Accordingly, the Commission approves the additional interest cost of Rs. 12.21 Crore and Rs. 1.42 Crore, towards the FERV on loan upto to the approved CoD, as a part of the overall project capital cost approved in this MTR Order."***

4.5.6 Similarly, MEGPTCL has also sought approval of FERV on loan of Rs. 20.40 Crore for FY 2016-17 and Rs. 5.82 Crore for FY 2017-18 i.e. for period beyond the COD. The Commission in its Order in Case No. 169 of 2017 did not approve this cost and hence MEGPTCL, aggrieved by this decision, sought review of the Commission's Order in Case No. 169 of 2017. The Commission vide its Order in Case No. 303 of 2018 pertaining to review of its Order in Case No. 169 of 2017, allowed the impact of the FERV on Loan beyond the CoD for the FY 2015-16 stating the following:

> *"7.9 **In the impugned Order, the Commission has allowed FERV on Loan upto COD (i.e., up to 20-May 2015 for FY 2015-16) and (upto 27-May 2016 for FY 2016-17),** which is in line with respective MYT Regulations 2011 and MYT Regulations 2015.*
>
> *7.10 **Claim for FERV on loan beyond CoD in respective years (i.e., Rs 20.40 Cr in FY 2015-16) and (Rs 5.28 Cr in FY 2016-17) for respective assets,** will have to be seen in the context of Governing provisions of the applicable MYT Regulations for respective years.*
>
> *7.11 As regards FY 2015-16, MYT Regulations 2011 (Regulation 27.1 (a)) allow FERV gain/loss (only upto COD) as part of capital Cost. It has not specified any provision in the said Regulations for FERV on debt service (interest and repayment) beyond COD. Thus, the Commission notes that, MYT Regulations, 2011 is silent on the treatment of FERV and consequent gains or losses in determination of the Transmission Tariff post-CoD. It is further noted that the **Commission in its Order in Case No. 91 of 2015 dated 30 November, 2015, in the matter of approval of Multi Year Tariff for VIPL-G for the third Control Period has dealt with similar issue wherein FERV cost post-CoD was allowed**. <u>**The Commission observes that the case of MEGPTCL highlighted in the present Petition is also similar in nature and therefore deems it fit to**</u>*

adopt same approach in this case. *Further, this is a new fact that has come up while dealing with this review Petition and thus qualifies for review under Regulations 85 of the MERC (Conduct of Business) Regulations, 2004. Hence,* ***claim of MEGPTCL for FERV on loan beyond COD during FY 2015-16, is allowed through this review****. However the financial implication on account of allowing this expense shall be allowed at the time of next ARR proceedings."*

4.5.7 However, as regards the claim of MEGPTCL for FY 2016-17, the Commission stated the following and disallowed its claim:

> *"7.12 As regards FY 2016-17, MYT Regulations 2015 (Regulation 30.1 to 30.3), allow MEGPTCL to hedge such FERV costs and claim cost of hedging subject to prudence check and also allow to recover FERV on debt service (beyond COD) only to the extent such exposure is not hedged. Hence, MEGTPCL would have been entitled to claim this Rs 5.28 Cr (beyond CoD) in FY 2016-17 as per MYT Regulations 2015. However,* ***MEGPTCL themselves have claimed that there was refinancing of entire loan portfolio through ICDs (domestic loan); which took place in February-2016 and thus no foreign borrowings was in existence during FY 2016-17.*** *The Commission notes that, MEGPTCL has provided a copy of agreement in respect of aforesaid refinancing of loan in reply to the queries during proceeding of the MTR Petition. The relevant extract of the said agreement is reproduced as under:*
>
>> *"A. The borrower requires funding to repay its existing debt. Further to the aforesaid, the borrower had entered into a loan agreement dated February 2, 2016, executed between the Lender and the Borrower ("Previous Loan Agreement"). Under the Previous Loan Agreement, the Borrower has availed loans..." (Emphasis added)*
>
> *Further, relevant submission of MEGPTCL in the impugned Order regarding refinancing of loan, is reproduced as under:*
>
>> *"4.4.6.* ***In order to achieve stable funding arrangement and have stable cost structure, the Petitioner stated that it availed funding through Inter Corporate Deposit (ICD) facility to repay existing loans****.*
>>
>> *4.4.12. MEGPTCL stated that in view of above adverse regulatory developments, ICD providers had reset the rate of Interest. Subsequent to filing of MTR Petition, the ICD provider (ATL) has raised a claim on the Petitioner citing provisions of the ICD agreement with regards to actual regulatory development, that the rate of Interest has to be considered as 13.25% p.a. for the year 2015-16.* ***The Petitioner has considered such claim and accordingly revised its claim for interest on ICD loan for FY 2015-16 and similar impact in FY 2016-17****."*
>
> *7.13* ***In the above context of MEGPTCL having availed ICD loan since February, 2016 for repaying its existing debt including the ECB, the submissions by MEGPTCL showing ECB loan computation till August 2016 is not acceptable. Hence, the claim for FERV on this count in FY 2016-17 cannot be allowed****.*

7.14 The Commission notes that FERV on loan (upto CoD) in both years for which MEGPTCL was entitled has been allowed in line with respective MYT Regulations, 2011 and MYT Regulations 2015. ***The Commission has not considered the FERV beyond COD in FY 2016-17 as MEGPTCL was not entitled for such amount to recover from the consumers through ARR****.”*

4.5.8 Considering that the COD for Set 3 including Ektuni bays has now been restated to 31 March, 2015 as per the Hon’ble ATE Judgment, the impact of FERV on loan beyond the restated COD cannot be considered for the purpose of capitalisation. Accordingly, the amount of Rs. 13.63 Crore (Rs. 12.21 Crore (For period 1 April 2015 to 20 May 2015) + Rs. 1.42 Crore (For period 1 April 2015 to 27 May 2016)) which was earlier considered by the Commission as part of the capital cost of the project till the project COD will now have to be treated as a revenue expenditure for recovery through the tariff. This is in line with the approach adopted by the Commission in its Review Order in Case No. 303 of 2018 wherein the FERV on loan amounting to Rs. 20.40 Crore for FY 2015-16 (for period post COD from 21.05.2015 to 31.03.2016) was allowed to be recovered as a revenue expenditure through the tariff. Accordingly, the amount of Rs. 13.63 Crore is allowed as part of the revised ARR in FY 2015-16 and FY 2016-17 as revenue expenditure along with the applicable carrying cost. The year wise break-up of this cost is given in the table below:

Table 4-4: Approved FERV on Loan for post CoD period (Rs. Crore)

Particulars	FY 2015-16		FY 2016-17	
	Upto 20.05.2015	21.05.2015 to 31.03.2016	01.04.2016 to 27.05.2016	28.05.2016 to 04.08.2016
FERV on Loan to be claimed for Set 3 (except Ektuni)	12.21	20.40	5.85	
FERV on Loan to be claimed for Bays at Ektuni Sub-station	1.42			-0.03
Total FERV Impact	34.03			5.82
Status	Approved			Not Approved

Note:
(i) Rs. 20.40 Crore (Post-CoD) was approved in Review Order in Case No. 303 of 2018 (Review of Order in Case No. 169 of 2017) and the impact passed on in MYT Order in Case No. 290 of 2019.
(ii) Rs. 5.82 Crore (5.85 -0.03) (Post-CoD) was disallowed in Review Order in Case No. 303 of 2018 (Review of Order in Case No. 169 of 2017).
(iii) Rs. 12.21 Crore (FY 2015-16) and Rs. 1.42 Crore (Rs. 1.18 Crore in FY 2015-16 & Rs. 0.24 Crore in FY 2016-17) (earlier considered as Pre-CoD) are proposed to be approved in preset Order as Post-CoD FERV impact.

4.5.9 MEGPTCL has not claimed this part of the cost for recovery in the Petition. They had also not accepted the disallowances in capital cost (based on recommendations of third-party institution) considered by the Commission in its Order in Case No. 169 of 2017 stating that the matter in under Appeal with the Hon’ble ATE and awaiting adjudication. However, these disallowances are considered by the Commission in the present Order along with the impact of FERV for period beyond CoD.

4.6 **Issue 4:** DPC not to be considered as Non-Tariff Income

Hon'ble ATE Judgment:

> *"In light of the judgment of this Tribunal dated 29.05.2019 in Appeal No. 250 of 2016, DPC cannot be considered as non-tariff income."*

MEGPTCL's Submission:

4.6.1 MEGPTCL has submitted a claim of Rs. 31.57 Crore in FY 2015-16 to be excluded as Non-tariff Income in the present petition. It has also submitted a claim of Rs. 18.10 Crore on account of Carrying Cost till 31 October, 2020 and other consequential impact on the ARR components.

Commission's Analysis and Ruling:

4.6.2 The Commission considers the submission of exclusion of DPC amount from the Non-Tariff Income in FY 2015-16 in line with the Hon'ble ATE Judgment. As regards the amount of DPC to be considered, the Commission had considered Rs. 31.57 Crore in FY 2015-16 (provisional truing up) which was based on the information submitted by the STU. This is also in line with the claim by MEGPTCL in the present Petition. However, the Commission in its Order in Case No. 169 of 2017 which included the final truing up of FY 2015-16 has considered an amount of Rs. 32.13 Crores as income from DPC. The relevant Para from the Order in Case No. 169 of 2017 is reproduced below:

> *"3.9.12. **Further, for FY 2015-16, the income from DPC of Rs. 32.13 Crore is considered by the Commission, booked under Other Income of Annual Audited Accounts for FY 2015-16, which has also been confirmed by Petitioner in its replies to Data Gaps**. Transmission Licensees are entitled to DPC for delay in payment by the TSUs as per Regulation 68 of the MYT Regulation, 2011, and the Commission has consistently treated such DPC as part of Non-Tariff Income in all its recent Orders under the MYT Regulation, 2011. **The data furnished by the STU regarding the DPC due to Transmission Licensees as on 31 March, 2016, shows that DPC of Rs. 31.57 Crore is to be recovered by MEGPTCL from the TSUs**."*

4.6.3 Considering the above, the Commission excludes an amount of Rs. 32.13 Crore against DPC as considered by the Commission in its Order in Case No. 169 of 2017 which involved the final truing up of the FY 2015-16 instead of Rs. 31.57 Crore as claimed by MEGPTCL in line with the Order in Case No. 50 of 2016 which included the provisional truing up of FY 2015-16.

4.6.4 The exclusion of the said amount from the non-tariff income along with its consequential impact on the ARR components including the carrying cost is passed on in the present Order.

4.7 **Issue 5:** Approval of less interest on long-term loan:

Hon'ble ATE Judgment:

> *"We do not find any reason to intervene on this issue decided by the State Commission. However, the issue may be taken up by the Appellant with the*

Commission during next tariff proceedings for clarity on computation of interest and correction of error, if any."

MEGPTCL's submission:

4.7.1 MGEPTCL has submitted that in terms of the Hon'ble ATE Judgement, Capital Cost and COD of MEGPTCL project is revised and accordingly an additional claim of Rs. 231.95 Crore for the period FY 2013-14 to FY 2024-25 has been submitted in the present petition along with other consequential impact on the ARR elements including the applicable carrying cost.

MSEDCL's submission:

4.7.2 The Hon'ble ATE vide its Judgment dated 24 July, 2020 in Appeal No. 260 of 2016, regarding the issue of less interest approved on long term loan for FY 2015-16 and FY 2016-17 has denied its intervention and ruled that MEGPTCL may take up the issues with the Commission during next tariff proceedings for clarity on computation of interest and correction of error, if any.

4.7.3 In view of above, issue of less interest approved on long term loan for FY 2015-16 and FY 2016-17 should not be considered in present Petition.

MEGPTCL's response to MSEDCL submission:

4.7.4 MEGPTCL has submitted that there is nothing more to add and the submissions made by MEGPTCL are sufficient.

Commission's Analysis and Ruling:

4.7.5 The Commission has noted the rulings in the Hon'ble ATE's Judgement, MSEDCL's submission regarding not considering the issue pertaining to lower approval of interest cost on long term loans for FY 2015-16 and FY 2016-17 in the present proceedings and MEGPTCL's response thereon.

4.7.6 The Hon'ble ATE Judgment in Appeal No. 260 of 2016 – Issue No 5: Approval of less Interest on Long term Loan, had stated the following:

> *"9.1 As regards Interest on Long Term Loan, the senior counsel for the Appellant has submitted that the Commission has allowed interest on long term loan, being Rs 6.29 Cr & Rs 8.21 Cr lower than the actual allowable for FY 2015-16 & FY 2016-17 respectively.* ***As per allowed opening and closing balance mentioned in the impugned order for FY 2015-16, interest on long term loan has worked out as Rs 382.47 whereas the Commission has considered Rs 376.18 Cr for FY 2015-16. Similarly, For FY 2016-17, Interest on long term loan needs to be corrected to Rs 372.16 from Rs 363.95 Cr****. Accordingly, the Appellant has sought correction of above errors in the present proceedings."*

4.7.7 In this regard, the Commission had sought clarification from MEGPTCL and directed it to submit the calculation of Interest on long term Loan for Rs 382.47 Crore for FY 2015-16 and Rs. 372.16 Crore for FY 2016-17 and support its claim regarding error in calculation. MEGPTCL was also directed to clarify how the purported error has been corrected by MEGPTCL in its present submissions and also directed to submit the necessary documents supporting its computing methodology and the basis.

4.7.8 In response to data gap, MEGPTCL has not submitted any clarification in the above matter and submitted the following:

> *"**In terms of Hon'ble APTEL order, Capital Cost and CoD of MEGPTCL project is revised.** In view of revision in Capital Cost and CoD, revised Interest on long term loan is being determined through present proceedings. The revised interest based on APTEL order are Rs 435 Cr for FY 2015-16 and Rs 400.05 Cr for FY 2016-17. **The detailed calculation for the revised interest amount is enclosed herewith since the interest amount in the impugned order have no relevance now.**"*

4.7.9 Accordingly, the MEGPTCL has recalculated the interest amount considering the revised capital cost and the impact of revision in the COD and submitted the same for consideration for the Commission. MEGPTCL also stated that the interest amount in the earlier MYT Order has no relevance as COD and capital cost has undergone revisions.

4.7.10 Further, as regards MSEDCL submission regarding non consideration of issue relating to less interest approved on long term loans for FY2015-16 and FY2016-17, the Commission opines that the re-computation of the interest cost is necessary on account of the change in the approved COD of assets and capital cost for passing the consequent impact of the Hon'ble ATE Judgment.

4.7.11 In view of the above, the Commission has followed the methodology adopted for computation of the interest cost in its Order in Case No. 50 of 2016 which in line with the present submission of MEGPTCL. Accordingly, the additional impact of the revised interest cost (based on revised approved capital cost) along with its consequential impact on the ARR components including the carrying cost is passed on in the present Order.

4.8 **<u>Issue 6:</u>** Income from interest and profit from sale of investment considered as Non-Tariff Income:

<u>Hon'ble ATE Judgment:</u>

> *"We decide to remand this issue to the State Commission to reconsider as per the appropriate regulation after seeking necessary details and justification from the Appellant."*

<u>MEGPTCL's Submission:</u>

4.8.1 The Commission in Order in Case No. 50 of 2016 dated 5 July, 2016 had disallowed Rs. 0.33 Crore pertaining to the income earned by MEGPTCL considering the same as Non-Tariff Income. The said income was earned from the investment made from RoE. Hence in terms of Regulations, such income cannot be treated as NTI and requests to not consider it as NTI in the present petition.

<u>MSEDCL's submission:</u>

4.8.2 The Commission after receipt of required details, may take appropriate decision after prudence check.

MEGPTCL’s response on MSEDCL submission:

4.8.3 There is nothing more to add and the submissions made by MEGPTCL in the Petition are sufficient.

Commission’s Analysis and Ruling:

4.8.4 The Commission notes the rulings in the Hon’ble ATE’s Judgment, MSEDCL’s submission regarding consideration of the costs by the Commission based on receipt of the necessary details from MEGPTCL in the present proceedings and MEGPTCL’s response thereon.

4.8.5 In line with the Judgement of the Hon’ble ATE, the Commission had sought supporting documents for the claim of Rs. 0.33 Crore pertaining to the income earned by MEGPTCL considering the same as NTI. In response to the data gap, MEGPTCL submitted Statutory Auditors Certificate dated 14 December, 2020 certifying that Rs. 0.33 Crore earned by it during the FY 2014-15 has been out of its Return on Equity. The Commission accordingly allows the exclusion of this cost from NTI for FY 2014-15 along with its consequential impact on the ARR components including the carrying cost to be passed on in the present Order.

4.9 **Issue 7:** Holding cost on interest on Contingency Reserve:

Hon’ble ATE Judgment:

“We do not find any infirmity in the decision of the State Commission on this issue. However, holding cost shall be applicable only on the amount that was recovered from the consumers and not invested as contribution to contingency reserves.”

MEGPTCL’s Submission:

4.9.1 As the plea of MEGPTCL in its Appeal No. 260 of 2016 before the Hon’ble ATE regarding the holding cost charged by the Commission on the Contingency Reserve was not accepted, MEGPTCL has re-computed the contribution to contingency reserve based on the revised approved capital cost in line with the Hon’ble ATE Judgement and the applicable carrying cost thereon as a consequential impact of the implementation of the Hon’ble ATE Judgment.

MSEDCL’s submission:

4.9.2 Regarding the issue of holding cost of interest on contingency reserve, the Commission vide its Order dated 5 July, 2016 in Case No. 50 of 2016 has rightly held that as carrying cost is allowed for under recovery of tariff, same rate of carrying cost needs to be considered to determine holding cost. Hence, the Holding cost as decided by the Commission vide the aforementioned Order should not be changed to lower side.

MEGPTCL’s response on MSEDCL submission:

4.9.3 MEGPTCL has submitted that there is nothing more to add and the submissions made by MEGPTCL are sufficient.

Commission's Analysis and Ruling:

4.9.4 The Commission notes the Hon'ble ATE Judgment, MSEDCL's submission regarding not changing the Holding Cost as decided by the Commission in its Order in Case No. 50 of 2016 to lower side and MEGPTCL's response thereon.

4.9.5 The computation of the carrying / holding cost is governed by the provisions of the applicable Regulations (discussed subsequently in para 5.16.2 of the Order) of the relevant MYT Regulations in force during the period under consideration. Further, as regards the specific issue pertaining to the computation of holding cost on contingency reserve by the Commission in its Order in Case No. 50 of 2016, the Commission has continued with the same approach as the Hon'ble ATE has not ruled otherwise in this matter and the Order of the Commission is in force. Accordingly, the computation of the carrying / holding cost on contingency reserve will be governed by the provisions of the applicable Regulations and the approach adopted by the Commission in the past Orders.

4.10 Other issues raised by various Stakeholders:

4.10.1 The Commission notes that the stakeholders like MSEDCL, STU and MADC have also made submission on issues which are more generic in nature or not directly pertaining to any specific Judgment of the Hon'ble ATE (8 issues covered in the Hon'ble ATE Judgement). All such generic submissions of the stakeholders which impact the re-determination of the ARR components or relate to impact of implementation of the Hon'ble ATE Order are discussed in the subsequent paragraphs.

4.11 Carrying cost

Hon'ble ATE Judgment

4.11.1 The Hon'ble ATE Judgment does not have any specific ruling regarding carrying/holding cost computation.

MSEDCL's submission:

4.11.2 MSEDCL has requested the Commission that as the delay in COD is considered due to the events coming under Force majeure, carrying cost at actuals or IoWC approved by the Commission from time-to-time in MYT whichever is lower to be considered as the said project is purely under cost plus regime (at actuals).

MEGPTCL's response on MSEDCL submissions:

4.11.3 MEGPTCL has submitted that it is not appropriate to deviate from the applicable provisions of the MERC MYT Regulations.

Commission's Ruling:

4.11.4 The Commission notes that Hon'ble ATE Judgment does not have any specific ruling regarding carrying/holding cost computation. The computation of the allowable IoWC and carrying cost is governed by the provisions of the applicable Regulations. Accordingly, the approvals for these cost elements will be given in line with the applicable Regulations and as per the approach adopted by the Commission in its Order in Case No. 50 of 2016 and for other Transmission Licensees.

4.12 Issues raised by MADC:

MADC's submission:

4.12.1 MADC submitted that the present case is for implementation of the Hon'ble ATE directions in case of Appeal by MEGPTCL for Truing up of ARR for FY 2013-14 and FY 2014-15, Provisional Truing up of ARR for FY 2015-16 and, approval of ARR for the 3rd MYT Control Period from FY 2016- 17 to FY 2019-20.

4.12.2 The Commission vide its Order dated 30 March,2020 in Case No. 327 of 2020, has included MADC as Transmission System User (TSU) and pool member of STU transmission pool account. MADC started paying Transmission Charges to STU Transmission Pool account from April 2020. Prior to April, 2020, MADC's load demand was embedded in demand of MSEDCL, and transmission charges was part of MSEDCL's Transmission Charges.

4.12.3 Considering the above fact, MADC is not affected party in present matter for MYT 3rd Control period from FY 2016-17 to FY 2019-20.

MEGPTCL's response:

4.12.4 MEGTPCL has not responded to the submissions made by MADC.

Commission's Ruling:

4.12.5 The Commission notes that MADC was notified as a TSU and pool participants of STU Transmission Pool account from April, 2020 and prior to that MADC's demand was subsumed in the demand of MSEDCL. MADC's transmission charges were payable as part of MSEDCL Transmission Charges. Accordingly, following aspects need to be noted:

a. Period prior to April, 2020:

As the demand of MADC was subsumed in the demand of MSEDCL and the transmission charges were part of MSEDCL transmission charges, the impact of MEGPTCL ARR was passed on to MADC through MSEDCL and not directly as a TSU.

b. Period from April, 2020 onwards:

As MADC has been notified as a pool participant of STU's pool account, increment in the InSTS charges will be applicable to MADC as well. In case of present proceedings, any approval of past period ARR for MEGPTCL will be recovered from all TSUs in line with the principles already outlined by the Commission. Whether a particular TSU was part of STU's InSTS charges Pool in the past or not does not in any way impact its obligation to pay transmission charges notified by the Commission through the InSTS Order for the upcoming period including impact of past recoveries if any.

4.12.6 The Commission in the past in the matter of allowing recovery of the Regulatory Asset Charges for the R-Infra (D) in Case No. 9 of 2013 dated 22 August, 2013 has also taken a similar stand pertaining to recovery of such charges from new or changeover consumers. The relevant ruling of the Order is reproduced below:

> *"4.3.2.8 The Commission has approved RAC as a separate charge, as this liability pertaining to the past period needs to be borne by consumers who are connected to the Rinfra-D distribution network, i.e., the direct retail sale consumers and changeover consumers. For levying the RAC to the changeover consumers, it should be a separate charge and not merged with the retail tariff."*

> *"4.3.2.10 As regards to creation of a liability on a consumer, if consumers decides to terminate its contract, the Commission is also of the opinion that a distribution licensee should be considered to be operating on a 'Going concern basis', which is one of the fundamental assumptions in accounting on the basis of which financial statements are prepared. The* ***Commission also notes that there would be new consumers being added to the consumers who will also be paying Regulatory Asset Charge****. Hence,* ***the consumers will be paying Regulatory Asset Charge till they are connected to the RInfra-D distribution network as Direct or Changeover consumers and the day consumer terminates its contract, the recovery of RAC from such consumers shall stop****. Further, the Regulatory Asset Charge approved by the Commission shall be levied on energy consumption of the direct consumers and changeover consumers connected to the RInfra-D network on a monthly basis and not after termination of contract with RInfra-D."*

4.12.7 Similarly, the Hon'ble ATE in its Order in Appeal No. 250 of 2016 in matter of Adani Transmission (India) Limited (ATL) v/s MERC had ruled in the favour of ATL and allowed certain costs pertaining to past period (prior to April 2020) for recovery through Tariff. Accordingly, the Commission has allowed recovery of these costs through the InSTS Order dated 30 March, 2020 in Case No. 327 of 2019. Since MADC is a Transmission Pool participant since April 2020, these costs are also recoverable from MADC.

4.12.8 Accordingly, it is evident that the impact of the present Order will affect MADC and so it may not be correct to say that MADC is not an affected party in the present proceedings.

4.13 STU's request to implead MSETCL as a party to the Petition.

4.13.1 STU in its post hearing submission dated 16 April,2021 has submitted that MSEDCL has suggested to recover the claims towards cost overrun and transmission charges from MSETCL as delay in commissioning of the scheme was because of MSETCL. Considering the claim of MSEDCL, MSETCL should be impleaded as a party to the Petition before issuing the final Order.

<u>MEGPTCL's response:</u>

4.13.2 MEGTPCL has not responded to the submissions made by STU.

Commission's Ruling:

4.13.3 The issues being dealt in the present Petition are as per the directives of the Judgment of the Hon'ble ATE in Appeal No. 260 of 2016. The relevant rulings of the Hon'ble ATE are as under :

" ORDER

In the light of the above, we are of the considered view that some of the issues raised in the Appeal No. 260 of 2016 have merits and hence the appeal is partly allowed. The impugned order dated 05.07.2016 passed by Maharashtra Electricity Regulatory Commission in Case No. 50 of 2016 is hereby set aside to the extent of our findings under Para 12.1 to 12.8, stated supra.

***The matter stands remitted back to the State Commission with a direction to pass consequential orders as expeditiously as possible within a period of three months from the date of pronouncement of this judgment /order*."**

4.13.4 It is noted that STU has been party to the present Petition and has been aware of all the developments relating to the present proceedings including the suggestions/objections submitted by various stakeholders. MSEDCL had submitted its response to MEGPTCL's Petition vide letter dated 3 March, 2021 and it was also served to all parties involved in the matter. Accordingly, STU was aware of the contentions of MSEDCL. Further, STU was also party to the interim Order issued on 18 October, 2020. STU had made the submission that it will consider the impact of Hon'ble ATE Judgment in its upcoming InSTS Tariff Petition. Further, as MSETCL itself is acting as STU, it was aware of the issue and if it was felt that MSETCL should be given an opportunity to submit its comments on the issue, the request to implead MSETCL as party to this Petition should have been sent immediately after receipt of the comments from MSEDCL and not on the day of the second e-hearing i.e. 16 April, 2021.

4.13.5 The STU needs to appreciate that these proceedings are to be completed in a time bound manner considering that the matter has been remanded to the Commission by the Hon'ble ATE for passing consequential Order. The first e-hearing conducted on 16 February, 2021 was adjourned on the request of MSEDCL who sought additional time to submit its response. STU was part of this hearing and was aware that MSEDCL would be submitting its response.

4.13.6 Accordingly, it was expected that STU should have acted promptly after receiving the objections and firmed up its view regarding the need for impleading MSETCL as a party to these proceedings and the request should have been submitted to the Commission in a timely manner.

4.13.7 Having stated as above, the Commission has also discussed the contentions of MSEDCL regarding passing on the impact of implementation of the Hon'ble ATE Judgement to MSETCL instead of the beneficiaries, based on its merits, in detail at relevant places in the Order. The key contentions raised by MSEDCL and the Commission's ruling regarding the same are summarised below:

(i) Impact of the revision of the CoD of the third set of MEGPTCL System:

a. MSEDCL has contended that the delay in commissioning of the MEGPTCL system is entirely attributable to STU and MSETCL. Accordingly, financial impact of the implementation of the revised CoD should be recovered from MSETCL and not from the beneficiaries.

b. The Commission has examined the matter and has concluded in Paras 4.3.17 to 4.3.20 that though the delay was attributable to STU and MSETCL, the recovery will be from the beneficiaries of the MEGTPCL system in line with the Judgment of the Hon'ble ATE allowing recovery of tariff as per Regulation 2.1 (29) of the MYT Regulations, 2011 read with Regulation 12 and Regulation 13 of MYT Regulations, 2011. The Hon'ble ATE has also not ruled that the recovery is to be made from MSETCL.

(ii) Impact of allowing recovery of FERV on Material Import and Price Variation on raw material.

a. MSEDCL has contended that the decision of delaying import of the equipments was entirely MEGPTCL's and hence it is to be considered as an "controllable" factor and consequently, impact of allowing the FERV on material and price variation should be shared in line with the provision of Regulation 14.2 of the MYT Regulations, 2011 relating to sharing of gains/losses on account of controllable factors.

b. Further, the impact to be passed should be limited to the amount equivalent to IDC so saved on account of the decision of MEGPTCL or the impact of FERV & price variation, whichever is lower. 1/3rd of this impact should then be passed on to the defaulting entity (MSETCL) and remaining to be borne by MEGPTCL.

c. The Commission examined the matter and has concluded in the Paras 4.4.12 to 4.4.21 that the Hon'ble ATE has attributed the delay to reasons beyond the reasonable control of MEGPTCL and also stated that adequate justification has been provided by MEGPTCL for the delay along with the consequent cost escalation. Hence, the increase in cost is eligible to be considered as part of the Capital Cost as per the provisions of Regulation 27 of MYT Regulations, 2011. Accordingly, the increase in cost in the present case is deemed to be uncontrollable and hence, entirely recoverable from the beneficiaries without any sharing of gains/losses.

4.13.8 Further, the Commission has also stated that the scope of the present proceedings is limited to the extent of implementation of the Hon'ble ATE Judgment dated 24 July, 2020 in Appeal No. 260 of 2016, to the extent of the issues decided in favour of MEGPTCL. The Hon'ble ATE has already examined all the issues on merit. The ambit of the present proceedings is limited to passing consequential Orders on the matters decided and not re-examining the approvals of the Hon'ble ATE or any other issues which have been already decided by the Commission in its Order in Case No. 50 of 2016 and other subsequent Orders as applicable.

4.13.9 Accordingly, based on the analysis undertaken by the Commission, it has been concluded that the recovery of the impact of implementation of the Hon'ble ATE

Judgement needs to be done through the beneficiaries and not from MSETCL alone. Hence, impleading MSETCL as a party to the proceedings at this stage would not serve any purpose.

4.13.10 In view of the foregoing discussion the Commission declines the request of STU to implead MSETCL as a party to these proceedings and passes the Order in accordance with Hon'ble ATE Judgment.

5. Re-Determination of ARR to pass on the consequential impact of the Hon'ble ATE Judgment.

5.1 The Commission has re-determined the ARR as per the prevalent MYT Regulations considering the issues decided in favour of MEGPTCL, with effect from FY 2013-14 till FY 2024-25. The Commission has reassessed the various components of the ARR such as Operation and Maintenance, Interest on Loan, Depreciation, Interest on Working Capital (IoWC), Return on Equity (RoE), Income Tax, Availability Incentive, Sharing of Losses and Gains, Carrying Cost, etc. Hence, a major part of the ARR of MEGPTCL has been re-computed from FY 2013-14 onwards till FY 2024-25, to allow the recovery of cumulative Revenue Gap based on supporting data and documents.

5.2 The re-determination of ARR covers a period from FY 2013-14 to FY 2024-25 and as discussed in Para 4.2 of this Order, three different Tariff Regulations are applicable for determination of the ARR for these years. For the period FY 2013-14 to FY 2015-16, the MYT Regulations, 2011 are applicable. Similarly, for the period FY 2016-17 to FY 2019-20, the MYT Regulations, 2015 are applicable and for the period FY 2020-21 to FY 2024-25, the MYT Regulations, 2019 are applicable. The re-determination of the ARR has been undertaken by the Commission in line with the provisions of the relevant applicable Regulations and considering the approach adopted in the past Tariff Order for this period. The relevant Truing up / MYT / Review Orders considered for the purpose of the re-determination of the ARR are:

(i) Truing up of FY 2013-14 & FY 2014-15 – Order in Case No. 50 of 2016 dated 5 July, 2016.

(ii) Truing up of FY 2015-16 & FY 2016-17 and Final Capital Cost approval – Order in Case No. 169 of 2017 dated 12 September, 2018.

(iii) Review Order in Case No. 303 of 2018 (Review of Order in Case No. 169 of 2017) dated 18 December, 2018.

(iv) Truing up of FY 2017-18 & FY 2018-19, provisional truing up of FY 2019-20 and MYT projections for FY 2020-21 to FY 2024-25 – Order in Case No. 290 of 2019 dated 30 March, 2020.

5.3 The redetermination of the ARR for the period FY 2013-14 to FY 2018-19 will be of finalised nature as the truing up of ARRs for these years has already been completed as per relevant MYT Regulations. For the period FY 2019-20 to FY 2024-25, the redetermination of ARR will be provisional subject to change during the truing up of ARRs for the relevant years.

5.4 Similarly, carrying cost computation for the period FY 2019-20 to the year of recovery i.e. FY 2023-24 will also be provisional as the rate of interest considered for carrying cost computation is provisional and subject to change during the truing up process for the relevant years.

5.5 The following sections deal with the re-determination of the ARR for the period FY 2013-14 to FY 2024-25 along with the applicable carrying cost and other impacts recoverable by MEGPTCL as a consequential impact of the issues decided in favour of MEGPTCL.

5.6 Operation & Maintenance (O&M)

Commission's past approval

5.6.1 The Commission in its past Orders had approved the normative O&M expenses based on the provisions of the applicable MYT Regulations and the actual O&M expenses based on the audited Financial Statements considered for working out the gains / (losses) for various financial years. Further, considering that the O&M expenses are controllable expenses, the sharing of gains/(losses) to work out net entitlement of the O&M expenses recoverable through tariff was done in line with the provisions of the applicable MYT Regulations.

5.6.2 As discussed in Para 5.2 of the Order, three different Tariff Regulations were applicable during the period FY 2013-14 to FY 2024-25 for which the O&M expenses were approved by the Commission through three different Orders. The applicable provisions of the Tariff Regulations for different periods based on which the Commission approved the normative O&M expenses and mechanism for sharing of gains or losses on account of controllable factors are as follows:

(iii) FY 2013-14 to FY 2015-16:

Normative O&M expenses - Regulation 61.5, 61.7 and sharing of gains/(losses) – Regulation 14.1 and 14.2 of the MYT Regulations, 2011

(iv) FY 2016-17 to FY 2019-20:

Normative O&M expenses - Regulation 58.7 and sharing of gains/(losses) – Regulation 11.1 and 11.2 of the MYT Regulations, 2015

(v) FY 2020-21 to FY 2024-25:

Normative O&M expenses - Regulation 61.6 and sharing of gains/(losses) – Regulation 11.1 and 11.2 of the MYT Regulations, 2019

5.6.3 While approving the O&M expenses for various sets of MEGPTCL network, the CoD of individual sets was also considered to approve the O&M expenses proportionate to the number of days of operations in the first year of operation of the assets. The CoD as approved in the Order in Case No. 50 of 2016 (Set 1 & Set 2a – 23 February, 2014, Set 2b – 8 April, 2014, Set 3 (excluding 2 bays at Ektuni S/s) – 20 May, 2015 and 2 bays at Ektuni S/s – 27 May, 2016) had been considered by the Commission for approval.

5.6.4 In addition to the O&M expenses, expenses on account of Lease Rent of Akola II 765 kV substation have also been allowed for recovery through tariff by MEGPTCL. The land for Akola-II substation was initially to be purchased and handed over by MSETCL to MEGPTCL. However, subsequently MSETCL revisited its decision and later decided to lease out this land to MEGPTCL instead of handing over the ownership of the land to MEGPTCL. Accordingly, the cost of this land was reduced from the overall capital cost of the project. However, the lease rental payable to MSETCL by MEGPTCL has been factored in as additional O&M in the ARR.

5.6.5 Accordingly, the O&M expenses approved for recovery through tariff for the period FY 2013-14 to FY 2024-25 are included in the Table 5-2 below.

<u>Directions of Hon'ble ATE</u>

5.6.6 The Hon'ble ATE has rejected the claim of MEGPTCL for approval of actual O&M expenses in the Appeal No. 260 of 2016. The ruling of the Hon'ble ATE is reproduced below:

> *"**12.5 Issue No.5: Non-allowance of actual O& M Cost***
>
> *This Tribunal had considered similar contentions raised by Adani Transmission (India) Ltd. and MERC in regard to actual O&M cost in Appeal NO. 250 of 2016 and decided in the judgment dated 29.05.2019. In light of the above judgment, this issue is decided against the Appellant."*

5.6.7 The Hon'ble ATE in Appeal No. 250 of 2016 (ATIL v/s MERC) has denied the actual claim of O&M expenses of ATIL ruling that the Commission has approved the O&M expenses as per the provisions of the MERC MYT Regulations.

5.6.8 Accordingly, the impact of the Hon'ble ATE Judgment on the O&M expenses is only on account of the revised set-wise CoD approved by the Hon'ble ATE which is discussed in Para 4.3 of the Order. The change in the approval of O&M expenses is only for two years i.e. FY 2015-16 and FY 2016-17 as the COD for Set 3 (excluding bays at Ektuni Sub-station) and 2 bays at Ektuni Sub-station has been revised from 20 May, 2015 and 27 May, 2016 respectively to 31 March, 2015 by the Hon'ble ATE.

<u>MEGPTCL's Submission:</u>

5.6.9 MEGPTCL has recomputed the normative O&M expenses considering the norms prescribed in the Regulations and the revised COD for Set 3 in line with the Hon'ble ATE Judgment. Further, the revised normative O&M expenses have been compared with the actual approved O&M expenses to work out the revised O&M entitlement for the trued up years. For other years (FY 2019-20 onwards), the revised O&M expenses which are same as that approved by the Commission in earlier Orders has been considered.

<u>Commission's Analysis and Ruling:</u>

5.6.10 The submissions of MEGPTCL have been examined to ensure that O&M expenses are computed in line with the provisions of the applicable Regulations and methodology adopted in the past Orders.

5.6.11 The Commission has re-computed the O&M expenses for the period FY 2013-14 to FY 2024-25 considering the relevant provisions of the applicable Regulations as discussed in Para 5.6.2 of this Order which is also in line with the approach adopted in the previous Orders.

5.6.12 The Commission has re-determined the normative O&M to factor in the impact due to change in COD for Set 3 (excluding bays at Ektuni Sub-station) and 2 bays at 765 kV Ektuni Sub-station from 20 May, 2015 and 27 May, 2016 respectively to 31 March, 2015 as per Hon'ble ATE Judgment considering the provisions of the applicable MYT Regulations. The MEGPTCL submission and approval of normative O&M is as shown below:

Table 5-1: Normative O&M from FY 2013-14 to FY 2024-25 (Rs. Crore)

Particulars		FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
MEGPTCL Submission	Set 1	0.25	2.60	2.75	1.74	1.83	1.92
	Set 2a	3.98	39.43	43.87	42.01	44.12	46.32
	Set 2b	0.00	1.82	2.04	2.12	2.23	2.34
	Set 3 (Incl Ektuni)	0.00	0.00	44.93	42.14	44.25	46.46
	Sub Total	4.23	43.85	93.58	88.01	92.43	97.03
	Lease Rent at Akola II	0.27	4.92	5.02	5.88	5.02	5.02
	Total	**4.50**	**48.77**	**98.60**	**93.89**	**97.45**	**102.05**
Approved in the present Order	Set 1	0.25	2.60	2.75	1.74	1.83	1.92
	Set 2a	3.98	41.50	43.87	42.01	44.12	46.32
	Set 2b	0.00	1.89	2.04	2.12	2.23	2.34
	Set 3 (Incl Ektuni)	0.00	0.00	44.93	42.14	44.25	46.46
	Sub Total	4.23	45.99	93.58	88.01	92.43	97.03
	Lease Rent at Akola II	0.27	4.92	5.02	5.88	5.02	5.02
	Total	**4.50**	**50.91**	**98.60**	**93.89**	**97.45**	**102.05**

Particulars		FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
MEGPTCL Submission	Set 1	2.01	3.38	3.51	3.65	3.79	3.93
	Set 2a	48.66	46.45	48.21	50.07	52.00	53.99
	Set 2b	2.47	3.20	3.30	3.44	3.57	3.70
	Set 3 (Incl Ektuni)	48.82	49.30	51.17	53.15	55.19	57.30
	Sub Total	101.96	102.32	106.20	110.30	114.54	118.92
	Lease Rent at Akola II	5.27	5.79	6.15	6.54	6.95	7.39
	Total	**107.23**	**108.11**	**112.35**	**116.84**	**121.49**	**126.31**
Approved in the present Order	Set 1	2.01	3.38	3.51	3.65	3.79	3.93
	Set 2a	48.66	46.45	48.21	50.07	52.00	53.99
	Set 2b	2.47	3.20	3.30	3.44	3.57	3.70
	Set 3 (Incl Ektuni)	48.82	49.30	51.17	53.15	55.19	57.30
	Sub Total	101.96	102.32	106.20	110.30	114.54	118.92
	Lease Rent at Akola II	5.27	5.79	6.15	6.54	6.95	7.39
	Total	**107.23**	**108.11**	**112.35**	**116.84**	**121.49**	**126.31**

5.6.13 As evident from the above table, the approved normative O&M expenses for FY 2014-15 are higher than the MEGPTCL submission. The MEGPTCL submission in Set 2a and Set 2b for the year FY 2014-15 has error in linkage to norms and number of days of operation. The Commission in its computation has rectified the errors and computed revised normative O&M from FY 2013-14 to FY 2024-25.

5.6.14 In addition to the O&M expenses, the expenses on account of Lease Rent of Akola II are also allowed for recovery through tariff in line with the discussion in Para 5.6.4 of this Order. This lease rent is added to the actual O&M expenses and the revised normative O&M expenses to work out the variation and the consequent gains / (losses) to be shared with the beneficiaries. The gains / (losses) to be shared are computed only for the years for which the truing up has been completed (FY 2013-14 to FY 2018-19) and for the remaining period, i.e. FY 2019-20 to FY 2024-25, the normative O&M expenses are allowed for recovery.

5.6.15 One-third of the variation computed as mentioned in earlier Paragraph is allowed for recovery by MEGPTCL in accordance with the relevant Regulations and methodology adopted in the past Orders. The revised Trued-up O&M from FY 2013-14 to FY 2024-25 after considering the sharing of gains/(losses) is shown below:

Table 5-2: Revised O&M including Lease Rent expenses after sharing of Gains/(Losses) from FY 2013-14 to FY 2024-25 (Rs. Crore)

Particular	Lease Rent of Akola II	Other Actual O&M expenses	Total O&M Expenses - Actual	Revised Normative O&M (Incuding Lease rent)	Variation	Gain/(loss) to be shared with the Beneficiary	Revised True Up/ Estimated O&M expenses as per ATE Judgement	Originally approved O&M expenses in relevant Orders	Variation
	a	b	c = a + b	d	e = d - c	f = e × 1/3	g = d - f	h	I = g - h
FY 2013-14	0.27	4.76	5.03	4.50	-0.54	-0.18	**4.68**	**4.68**	-
FY 2014-15	4.92	53.49	58.41	50.91	-7.50	-2.50	**53.41**	**53.41**	-
FY 2015-16	5.02	113.69	118.71	98.60	-20.11	-6.70	**105.30**	**99.40**	**5.90**
FY 2016-17	5.88	102.12	108.00	93.89	-14.11	-4.70	**98.59**	**98.24**	**0.35**
FY 2017-18	5.02	108.22	108.00	97.45	-15.79	-5.26	**102.71**	**102.71**	-
FY 2018-19	5.02	115.00	120.02	102.05	-17.96	-5.99	**108.04**	**108.04**	-
FY 2019-20	0.00	0.00	0.00	107.23	107.23	0.00	**107.23**	**107.23**	-
FY 2020-21	0.00	0.00	0.00	108.11	108.11	0.00	**108.11**	**108.11**	-
FY 2021-22	0.00	0.00	0.00	112.35	112.35	0.00	**112.35**	**112.35**	-
FY 2022-23	0.00	0.00	0.00	116.84	116.84	0.00	**116.84**	**116.84**	-
FY 2023-24	0.00	0.00	0.00	121.49	121.49	0.00	**121.49**	**121.49**	-
FY 2024-25	0.00	0.00	0.00	126.31	126.31	0.00	**126.31**	**126.31**	-

5.6.16 As discussed in Para 5.6.6 above, the variation in the recomputed O&M expenses as compared to the previously approved expenses is visible only in two years and is a consequent impact of the revision in the COD of assets approved by the Hon'ble ATE in its Judgment.

5.7 Capital Cost and Asset Class wise Allocation.

<u>Commission's past approval</u>

Order in Case No. 50 of 2016

5.7.1 The Commission had approved the Capital Cost of various Sets of MEGPTCL System after undertaking necessary due diligence based on the information made available by MEGPTCL.

5.7.2 The Commission was guided by the Regulations 27.2, 27.3 and 27.4 of the MYT Regulation 2011 while approving the Capital Cost.

5.7.3 In its Petition in Case No. 50 of 2016, MEGPTCL had provided Statutory Auditor's certificates dated 26 May, 2015 for the cost of Set 1, Set 2a, Set 2b and Set 3. According to MEGPTCL, the entire project has been commissioned on 31 March, 2015. However, the Commission had considered different commissioning dates for Set 3 based on the information submitted by the STU vide letter dated 3 June, 2016. It was also seen that Set 3 was partly commissioned in FY 2015-16 under the interim arrangement recognised by the Commission, and partly in FY 2016-17 when the 2 Bays at MSETCL's 765 kV Aurangabad (Ektuni) Sub-station were commissioned (on 27 May, 2016). Thus, the project was expected to be completely commissioned only in FY 2016-17 for the purpose of the final capital cost approval and related tariff determination process. Accordingly, since the audited financial statement for the year in which the CoD would be achieved was not available, the Commission decided to undertake the final approval of capital cost for the Transmission project during the subsequent proceedings.

5.7.4 Further the Commission in its Order in Case No. 50 of 2016 had referred to the rulings of the Commission's previous MYT Order in Case No. 66 of 2014 wherein the Commission had ruled the following:

> *"3.4.1.24 The Commission shall appoint an independent expert/ institution for detailed scrutiny, physical and financial verification of the completed capital cost and all other relevant documents for the project as and when submitted by the Petitioner upon commissioning of the Project. Based on the report to be submitted by such expert/ institution, the Commission shall carry out the prudence check for approving the final completed cost of the project."*

5.7.5 MEGPTCL had not submitted the necessary documentation required for verifying the reasonableness of the costs and also considering that the project was likely to be fully commissioned only in FY 2016-17 as discussed at Para 5.7.3 of this Order. The Commission in line with the decision taken in the MYT Order in Case No. 66 of 2014 decided to appoint an independent expert/ institution for detailed scrutiny, physical and financial verification of the completed capital cost and all other relevant documents for the project upon its commissioning. Based on the report, the Commission carried out prudence check for approving the final completed cost of the project.

5.7.6 The Commission scrutinised the Capital cost based on the available documents and provisionally approved the Capital Cost in its Order. The key disallowances in the capital cost by the Commission pertained to the following elements:

(i) Impact of FERV on material import component of capital cost:

The Commission in its rulings had noted that the provision for pass through of the impact of FERV on material imports beyond the scheduled completion period was not part of the original contract between MEGPTCL and the EPC contractor, and was agreed to as a mechanism to address the cost implications on the EPC contractor on account of delays in completion of the work. The reasons for delay stated by MEGPTCL include RoW issues, delayed Forest clearances, land availability for Sub-stations, non-availability of shut downs to carry out the construction work, etc.

The Commission had also noted that the amendments to the original Agreement for EPC work providing for cost revision were made subsequent to the filing of the previous MYT Petition and during those proceedings for the 2nd Control Period.

The Commission in the impugned Order had noted that the power transmission and other infrastructure projects are generally faced with issues relating environmental / forest clearances, land acquisition and RoW leading to delay. Accordingly, necessary safeguards could have been built into the contract by MEGPTCL so as to protect itself from rate fluctuations due to delay. Further, as the EPC contractor was importing material from outside the country, it would have been known that the contractor would be subject to foreign exchange rate variations and would, accordingly, have built in the necessary mechanisms to protect its interest in a fixed price contract. Accordingly, the Commission did not view this as an event which could not have been foreseen by EPC contractor or MEGPTCL and the contracting parties should have included necessary provisions/ mechanism in the contract to protect them from such risks as part of prudent contracting practises. The Commission concluded that such shortcomings or imprudence in the contracting process cannot be allowed as a pass through in the capital cost which has a long-term cost impact on consumers and accordingly disallowed amount of Rs. 326.78 Crore towards FERV on material imports in the Order.

(ii) Impact of Price Variation on the Capital Cost:

The Commission noted the issue of increase in cost due to price variation of raw materials is similar to that of the impact of FERV on imported material. The Commission observed that it was clear that the original EPC contract did not have any provision for pass-through of the price variations in raw material cost as the contract was a fixed price Rupee denominated contract. Further, in the absence of any such provision for pass through of price escalation in the original EPC contract, MEGPTCL would not have been entitled to any price escalation irrespective of whether or not the project was completed in time or delayed for any reason. Accordingly, in line with the stand taken in the case of FERV on material import, the Commission also disallowed the impact of price variation of Rs. 57.25 Crore on the Capital Cost.

(iii) Additional Bays at Akola II Sub-station

The Commission had analysed the issue and concluded that with both the circuits from Akola II to Ektuni Sub-station having been charged at 765 kV, the additional 400 kV Bays created by MEGPTCL as an interim arrangement are now spare Bays and would no longer be in service till the requirement for additional Bays comes up at the Akola II Sub-station. Hence, the Commission concluded that it would not be appropriate to pass on the cost of such redundant assets to the consumers and accordingly disallowed the cost of Rs. 6.00 Crore towards additional Bays at Akola II Sub-station. MEGPTCL was given the option to approach the Commission for necessary approvals as and when the requirement of putting these assets to use arose.

(iv) Additional Bays at Akola II Sub-station:

Due to delay in the commissioning of 765 kV Sub-station at Aurangabad (Ektuni) by MSETCL, the Transmission Line from Akola to Aurangabad, originally envisaged at 765 kV, had to be charged at 400 kV level as an interim arrangement by terminating the Line at 400 kV MSETCL Aurangabad (Taptitanda) Sub-station. MEGPTCL has claimed that this arrangement required procurement of two additional 400 kV towers with accessories. The Commission had examine the matter in detail and had concluded that as in the case of approval of the cost towards additional 400 kV Bays created at Akola II Sub-station, it was the responsibility of MEGPTCL to ensure that the necessary infrastructure required to commission its lines should have been available, and there should have been no requirement for any interim arrangement. Moreover, the interim arrangement inter-alia helped MEGPTCL to commission the line and enable early recovery of the cost associated with it. Accordingly, the

Commission concluded that it would not be prudent to allow recovery of the cost of these additional towers (as claimed by MEGPTCL) through its ARR and disapproved the cost of Rs. 1.72 Crore towards the additional towers in the Order.

(v) Other components of capital cost:

MEGPTCL had sought approval of other components of capital cost as well which were examined in detail by the Commission and based on the examination the Commission had concluded that these should not be allowed to be passed on for recovery through the tariff. These cost elements included (i) Idling charges – Rs. 3.03 Crore; (ii) Demurrage charges – Rs. 1.99 Crore; (iii) Damaged Equipment – Rs. 0.31 Crore; The consequential disallowance of financing & IDC cost was Rs. 46.62 Crore.

5.7.7 Considering the above, the Commission had provisionally approved a total capital cost of Rs. 5,330.12 Crore for the MEGPTCL System in the impugned Order. Additionally, the Commission had also provisionally approved additional capitalisation for FY 2015-16 and FY 2016-17 comprising of various elements like the land costs of Akola II Sub-station, additional initial spares and cost towards Emergency Restoration System (ERS) system. Accordingly, the total capital cost (including additional capitalisation) provisionally approved by the Commission for the period FY 2013-14 to FY 2016-17 is Rs. 5,353.43 Crore.

Table 5-3: Capital Cost and additional Capitalisation till 31 March, 2017 approved by the Commission (Rs. Crore)

Sr. No.	Particulars	Set 1	Set 2a	Set 2b	Set 3	Total
1	Capital Cost	105.37	1,990.50	501.21	2,733.04	**5,330.12**
2	Additional Capitalisation		1.13		22.18	**23.31**
3	**Total**					**5,353.43**

5.7.8 The Commission also approved the COD of Set 1 and Set 2a as 23 February, 2014, Set 2b as 8 April, 2014, Set 3 (excluding 2 bays at 765 kV Ektuni Sub-station) as 20 May, 2015 and 2 bays at 765 kV Ektuni Sub-station as 27 May, 2016 based on the information made available by STU vide its letter dated 3 June, 2016.

Order in Case No. 169 of 2017

5.7.9 Subsequently, the Commission had appointed M/s Arcturus Business Solutions LLP (ABSL) through competitive bidding for detailed scrutiny, physical and financial verification of the completed capital cost of the transmission project of MEGPTCL. ABSL carried out the verification and submitted its report dated 25 October, 2017 in which ABSL recommended a final Capital Cost of Rs. 5,323.82 Crore as against provisionally approved Capital Cost of Rs. 5,330.12 Crore vide Commission's Order dated 5 July, 2016 in Case No. 50 of 2016.

5.7.10 The main disallowances recommended by ABSL were pertaining to the following:

(i) DG Set and Fuel charges – Rs. 0.12 Crore,

(ii) Construction of an Approach roads to tower locations – Rs. 4.72 Crore

(iii)Consequential reduction in IDC charges.

5.7.11 The Commission considered the report submitted by ABSL and accepted the recommendations while undertaking the final truing up of the capital cost in the Order in Case No. 169 of 2017 dated 12 September, 2018.

5.7.12 Further, in its Petition in Case No. 169 of 2017, MEGPTCL had also submitted that it had funded its Capital Cost by availing ECB loan and claimed FERV to be part of Capital Cost upto 31 March, 2015. The Commission has approved FERV on ECB to be part of provisionally approved Capital Cost upto 31 March, 2015. MEGPTCL had not claimed FERV beyond claimed CoD dated of 31 March, 2015 and therefore MEGPTCL claimed additional FERV upto approved CoD (Set 3 excluding 2 bays at Ektuni S/s – 20 May 2015 and 2 bays at Ektuni S/s – 27 May, 2016) to be part of Capital Cost and FERV arising after CoD along with Payment of Tariff.

5.7.13 The Commission examined the working submitted by MEGPTCL along with the auditor certificate in support of its claim and accordingly, approved the additional interest cost of Rs. 12.21 Crore and Rs. 1.42 Crore, towards the FERV on loan upto to the approved CoD, as a part of the overall project capital cost approved in the MTR Order in Case No. 169 of 2017.

5.7.14 Further, the IDC cost previously approved was also revised proportionately to the extent of revision in the capital cost components allowed the MTR Order in Case No. 169 of 2017. The Commission did not deviate from the stand taken for disapproval of other capital cost components in its Order in Case No. 50 of 2016.

5.7.15 Considering the above, the Commission approved the final capital cost of Rs. 5,340.19 Crore as on CoD as against MEGPTCL's petition of Rs. 5,773.85 Crore in Case No. 169 of 2017.

5.7.16 The Commission also approved additional capitalisation of Rs. 10.24 Crore for FY 2015-16, Rs. 0.38 Crore for FY 2016-17 and Rs. 13.64 Crore (provisional) for FY 2017-18 in Order in Case No. 169 of 2017.

Table 5-4: Capital Cost and additional Capitalisation till 31 March, 2018 approved by the Commission (Rs. Crore)

Sr. No.	Particulars	Set 1	Set 2a	Set 2b	Set 3	Total
1	Capital Cost	105.37	1,990.50	501.21	2,743.11	**5,340.19**
2	Additional Capitalisation		1.13		23.12	**24.25**
3	**Total**					**5,364.45**

<u>Order in Case No. 303 of 2018</u>

5.7.17 Aggrieved by the Order in Case No. 169 of 2017, MEGPTCL filed a review Petition in Case No. 303 of 2018 seeking review of the Commission's MTR Order on the following issues:

(i) **Issue 1**: Erroneous Calculation for working out Interest on Long Term loan (For Set 3) for the year 2015-16.

(ii) **Issue 2**: Arithmetic error while working out amount of Maintenance Spares as part of Working Capital requirement for the year 2015-16.

(iii) **Issue 3**: Non consideration of claim of reimbursement of FERV (Foreign Exchange Rate Variation) cost beyond CoD.

5.7.18 The Commission examined the issued and rejected the first two issues. As regards, the third issue, as the MYT Regulations, 2011 are silent on the treatment of FERV and consequent gains or losses in determination of the Transmission Tariff post-CoD. The Commission referred to its Order in Case No. 91 of 2015 dated 30 November, 2015, in the matter of approval of Multi Year Tariff for VIPL-G for the third Control Period has dealt with similar issue wherein FERV cost post-CoD was allowed. Accordingly, the Commission allowed the impact of FERV on loan post CoD to the extent of Rs. 20.40 Crore for FY 2015-16. The impact was allowed to be passed on in the subsequent MYT Order.

5.7.19 As regards post CoD FERV sought for FY 2016-17, the Commission has noted that as regards FY 2016-17, MYT Regulations 2015 (Regulation 30.1 to 30.3), allow MEGPTCL to hedge such FERV costs and claim cost of hedging subject to prudence check and also allow to recover FERV on debt service (beyond COD) only to the extent such exposure is not hedged. Hence, MEGTPCL would have been entitled to claim Rs. 5.28 Crore (beyond CoD) in FY 2016-17 as per MYT Regulations 2015. However, MEGPTCL itself have claimed that there was refinancing of entire loan portfolio through ICDs (domestic loan); which took place in February-2016 and thus no foreign borrowings was in existence during FY 2016-17. MEGPTCL had provided a copy of agreement in respect of aforesaid refinancing of loan in reply to the queries during proceeding of the MTR Petition. The Commission had concluded that in view of MEGPTCL having availed ICD loan since February, 2016 for repaying its existing debt including the ECB, the submissions by MEGPTCL showing ECB loan computation till August 2016 was not acceptable and hence, the claim for FERV on loans post CoD to the extent of Rs. 5.28 Crore on this count in FY 2016-17 was allowed by the Commission.

<u>Order in Case No. 290 of 2019</u>

5.7.20 The Commission in its Order in Case No. 290 of 2019 examined the submissions of MEGPTCL and approved additional capitalisation of Rs.7.55 Crore and Rs. 6.23 Crore on truing up of FY 2017-18 and FY 2018-19, respectively. This additional capitalisation includes costs towards building, furniture & fixtures, office equipment, ERS, spares & other items and vehicle.

5.7.21 MEGPTCL had requested for additional capitalisation for FY 2019-20 on account of additional claim raised by MSETCL pertaining to construction of 2×765 kV bays at Ektuni Sub-station. The Commission had examined the submission and stated that the differential cost of Rs. 18.67 Crore claimed by MEGPTCL may be considered under the deferred project cost in FY 2019-20, subject to carrying out necessary prudence check. The Commission also expresses its concern on the working of MSETCL where work is undertaken without following the procedures. The Commission stated that it will have to revisit the entire Capital Cost of Ektuni Bays incurred by MSETCL and such exercise will be taken up at the time of truing up of FY 2019-20 as part of the subsequent MTR proceedings. For the same, MEGPTCL and MSETCL will have to jointly submit all the necessary details supporting the cost overrun in comparison with the estimated capital cost along with cost audit certificates against the claim. The extra amount spent by MSETCL for completion of this project needs to be justified from the point of view of costs as well as the processes and procedures. Pending detailed scrutiny of such documents, the Commission did not consider any Additional Capital Cost against the Ektuni Bays in FY 2019-20 and also stated that decision regarding the carrying cost, if any, will be taken at the time of the MTR proceedings.

5.7.22 No additional capitalisation was sought by MEGPTCL for the control period FY 2020-21 to FY 2024-25. Accordingly, the additional capitalisation approved by the Commission in the Order in Case No. 290 of 2019 is as follows:

Table 5-5: Additional Capital approved by the Commission (Rs. Crore)

Particulars	FY 2017-18	FY 2018-19	Total
Additional Capitalisation	7.55	6.23	**13.78**

<u>Directions of the Hon'ble ATE:</u>

5.7.23 As regards the approval of the Capital Cost of the project and related matters, the Hon'ble ATE Judgment dealt with 3 main issues as given below:

(i) **Issue 1**: Disallowance of Commercial Operation Date (COD), as proposed by MEGPTCL, of the third set of Transmission Lines and commencement of Revenue.

(ii) **Issue 2**: Disallowance of FERV on Material Import and Price Variation.

(iii) **Issue 3**: Disallowance of various capital cost components.

5.7.24 As regards the **Issue 1 (COD)**, the Hon'ble ATE made the following key observations:

(i) The delay in commissioning of Ektuni substation by STU was beyond the reasonable control of MEGPTCL and is an event of Force Majeure as per Regulation 2.1(29) of the MYT Regulations, 2011. The STU further delayed the commissioning of MEGPTCL's system by delaying the construction of bays at Taptitanda and accordingly MEGPTCL cannot be made to suffer on account of the delay by STU when the MEGPTCL has completed the construction of transmission system and admittedly charged it on 31 March, 2015.

(ii) The ruling of the Hon'ble ATE in the matter are as given below:

"12.1 Issue No.1 :- Commercial Operation Date (COD)

It is decided that COD of Third set of Transmission Assets shall be 31.03.2015 and the Appellant shall be entitled to tariff from 31.03.2015 onwards as per MYT Regulations, 2011 (2.1 (29) read with Regulation 12 & 13)."

5.7.25 As regards the **Issue 2 (FERV)**, the Hon'ble ATE made the following key observations:

(i) MEGPTCL had entered into an EPC contract dated 27 September, 2010 on a unit rate fixed price basis during the currency of the contract. Admittedly, the benefit of the fixed price was to remain available up to delivery/completion period i.e. up to 22 March, 2012 for 765 kV Line-1, 22 June, 2012 for 765 kV Line-2 and 22 February, 2012 for the sub-station package as per the EPC contract.

(ii) MEGPTCL project got delayed on account of various factors including delay in obtaining land and environment related clearances viz. forest clearance, Right of Way, land acquisition issues etc. As per MEGPTCL's own admission, import of offshore material was delayed for the non-availability of storage space and to prevent incidence of IDC. However, the delay in procurement led to increase in capital cost on account of higher impact of FERV through an amendment in EPC contract.

(iii) The Commission in its impugned Order held that transmission projects generally face issues related to forest clearance, land acquisition, right of way etc. hence necessary safeguards could have been built into the contract by MEGPTCL to protect itself from such rate fluctuations as prudent contracting practise. The Commission had also observed that it would have been known to the contractor that import of material would be subject to foreign exchange rate fluctuations. The contractor therefore would have built in necessary mechanism to safeguard its interest in the contract. The Commission did not view this as an event which could not be foreseen by both MEGPTCL and EPC contractor and disallowed FERV on import of material observing that such shortcomings or imprudence in the contracting process cannot be allowed as a pass through in the capital cost which has a long-term cost impact on consumers.

(iv) The Hon'ble ATE disagreed with the conclusion of the Commission and opined that inclusion of any additional conditions in the contract to safeguard against eventualities beyond contract period would have only increased the contract value.

(v) MEGPTCL had submitted that the project faced delays on account of delay in 1) Obtaining forest clearance 2) Obtaining RoW permission for laying of transmission line 3) Availability of land for Akola II substation and 4) Delay in obtaining land for Koradi-III sub-station. MEGPTCL deferred import of material beyond the scheduled delivery/completion period of the contract on account of non-availability of space for storage of imported material and also to prevent incidence of IDC.

(vi) The Hon'ble ATE noted that the Commission had already accepted the submissions of MEGPTCL with regard to the delay in project implementation and approved various costs increases relating to RoW & crop compensation, increase in capital cost on account of FERV applicable on the loan component and IDC.

(vii) The Hon'ble ATE also observed that MEGPTCL acted in prudent manner to delay material import in view of delay in implementation of the project to reduce incidence of IDC. Hence, increase in impact due to FERV cannot be attributed to any negligence or imprudent practice by MEGPTCL since it is beyond its reasonable control. In case of reduction in the exchange rates, the project could have been benefitted.

(viii) The Hon'ble ATE ruled that once the Commission has come to the conclusion that the delays are not attributable to MEGPTCL and MEGPTCL is allowed the consequential increase in ROW costs and IDC, it did not agree with the conclusion of the Commission that delays in transmission projects generally occur and hence FERV on material import cannot be allowed. Considering that since two different treatments cannot be given for the same cause of action, the cost towards FERV on material import ought to be allowed by the Commission. Accordingly, the Hon'ble ATE set aside the decision of the Commission and allowed FERV on import of material after the scheduled completion of contract.

(ix) MEGPTCL had also claimed impact of price variation in the raw material on account of delay in implementation of the project as part of the capital cost.

(x) The Hon'ble ATE after examining the details of the matter held that after acknowledging the delay in implementation of the project and allowing consequential impact of increase in IDC and FERV on loan, the Commission ought to have allowed FERV on material import also. For the aforesaid reasons, the impact of price variation on raw materials was also allowed considering that the delay is not attributable to MEGPTCL.

(xi) The ruling of the Hon'ble ATE in this matter is given below:

> ***"12.2 Issue No.2 :- FERV on Material Import and Price Variation It is decided to allow FERV on the material import as well as variation of prices of raw materials during the period of delay considering that the delay is not attributable to the Appellant."***

5.7.26 As regards the **Issue 3 (disallowance of capital cost)**:

(i) The Hon'ble ATE has not allowed the claims of MEGPTCL regarding allowing capital cost towards (i) Additional Bays at Akola II Substation; (ii) Damaged Items; (iii) Additional towers - Charging at 400 kV level; (iv) Idling Charge; (v) Demurrage Charges.

(ii) As regards IDC, the ruling of the Hon'ble ATE is as given below:

> *"12.3 Issue No.3 :- Disallowance of Various capital components*
>
> *………*
>
> *iii) Interest During Construction:*
>
> *The State Commission has already approved provisional IDC which is required to be finalised considering the contentions raised by the Appellant."*

5.7.27 The Hon'ble ATE Judgment in the matter of capital cost and CoD approval will primarily impact the following:

(i) The revised CoD will mean that there will be additional recovery on account of various ARR components like O&M expenses, interest on loan, depreciation, Return on Equity, IoWC, transmission availability incentive , etc. for the period between the earlier approved COD and the now revised CoD.

(ii) The revised capital cost will impact various ARR components like O&M expenses, interest on loan, depreciation, Return on Equity, IoWC, incentive, etc. for the entire period from the CoD of the assets till FY 2024-25.

MEGPTCL's Submission:

5.7.28 MEGPTCL has submitted the revised Capital Cost considering the COD of the Transmission lines of Set 3 and 2 Bays at 765 kV Aurangabad (Ektuni) Sub-station as 31 March, 2015 along with associated IDC. MEGPTCL has also claimed FERV on the material import as well as variation of prices of raw materials during the period of delay. The revised capital cost claimed by MEGPTCL is Rs. 5,759.66 Crore as against Rs. 5,330.12 Crore approved by the Commission in Case No. 50 of 2016. The revised capital cost as submitted by MEGPTCL is as shown below:

Table 5-6: Capital Cost submitted by MEGPTCL (Rs. Crore)

Sr. No.	Particulars	Set-1	Set-2a	Set-2b	Set-3	Total
1	**Preliminaries**	0.02	0.45	-	0.28	0.75
2	**Transmission lines**	**79.80**	**688.26**	**436.83**	**1,225.89**	**2,430.78**
2.1	**Supply Order (EPC)**	61.70	550.88	363.02	956.73	1,932.33
2.1.1	Original Contract value	60.33	559.17	343.46	902.63	1,865.59
2.1.2	Quantity Variation in EPC order	(1.09)	(30.63)	9.03	(3.47)	(26.16)
2.1.3	Price escalation	1.75	8.60	2.38	25.53	38.26
2.1.4	Foreign Exchange Rate Variation*	0.71	13.74	8.15	32.04	54.64
2.1.5	Additional Towers–400 kV Charging	-	-	-	-	-
2.2	**Service Order (EPC)**	18.00	134.74	73.81	269.16	495.71
2.2.1	Original Contract value	14.09	102.46	63.05	165.52	345.12
2.2.2	Quantity Variation in EPC order	3.12	9.86	(6.60)	5.17	11.55
2.2.3	Additional RoW	0.79	20.99	16.87	89.63	128.28
2.2.4	Price escalation	-	-	-	-	-
2.2.5	Idling Charges	-	-	-	-	-
2.2.6	Erection All Risk (EAR) Insurance Policy for the delayed period.	-	1.43	0.49	2.64	4.56
2.2.7	Approach Road at various locations	-	-	-	4.72	4.72
2.2.8	Hot Line Stringing	-	-	-	1.48	1.48
2.3	**Non-EPC Cost in Transmission Line**	0.10	2.64	-	-	2.74
2.3.1	Supply of additional Initial spares	0.10	2.52	-	-	2.62

Sr. No.	Particulars	Set-1	Set-2a	Set-2b	Set-3	Total
2.3.2	Supply order for Additional Items	-	0.12	-	-	0.12
3	**Substation works**	**10.37**	**1,144.90**	**-**	**1,119.80**	**2,275.07**
3.1	**Supply Order**	9.69	996.09	-	981.89	1,987.67
3.1.1	Original Contract value	9.69	877.73	-	806.53	1,693.95
3.1.2	Quantity Variation / additional Items in EPC order	-	6.35	-	(4.60)	1.76
3.1.3	Additional Bays at Akola II	-	-	-	-	-
3.1.4	Price escalation	-	-	-	18.82	18.82
3.1.5	Foreign Exchange Rate Variation*	-	111.74	-	160.40	272.14
3.1.6	Supply and Installation for Neutral Bus Formation at Aurangabad (Ektuni) Substation	-	-	-	0.24	0.24
3.1.7	DG Set and Fuel Charges	-	-	-	0.12	0.12
3.1.8	Office Furniture	-	0.27	-	0.37	0.64
3.1.9	Claim towards damage of equipment	-	-	-	-	-
3.2	**Service Order**	**0.11**	**108.34**	**-**	**110.04**	**218.49**
3..2.1	Original Contract value	0.11	96.69	-	105.14	201.94
3.2.2	Quantity Variation in EPC order	-	0.24	-	0.07	0.31
3.2.3	Price escalation	-	-	-	0.17	0.17
3.2.4	Demurrage/ Detention/ Ground Rent charges	-	-	-	-	-
3.2.5	Quantity Variation in Civil works at Akola II SS	-	10.74	-	-	10.74
3.2.6	Supply and Installation for Neutral Bus Formation at Aurangabad (Ektuni) Substation	-	-	-	0.22	0.22
3.2.7	Temporary Road Development at Akola-II Substation	-	0.67	-	-	0.67
3.2.8	Re-transportation of Equipment from Storage Location to actual site	-	-	-	4.44	4.44
3.3	**Non-EPC Cost**	**0.57**	**24.77**	**-**	**10.33**	**35.67**
3.3.1	Metering for Akola II & Koradi III Substation	0.09	8.43	-	7.77	16.29
3.3.2	Supply of additional Initial spares	0.48	11.77	-	-	12.25
3.3.3	Supply orders for additional items	-	4.01	-	1.84	5.85
3.3.4	Service orders for additional items	-	0.56	-	0.72	1.28
3.4	**Land for S/S**	-	15.70	-	17.54	33.24

Sr. No.	Particulars	Set-1	Set-2a	Set-2b	Set-3	Total
4	**Revised Taxes and Duties**	4.47	16.40	3.90	19.58	44.35
	SUB TOTAL 1+2+3+4	**94.66**	**1,850.01**	**440.73**	**2,365.55**	**4,750.95**
5	**Overheads**	3.89	80.11	21.50	120.62	226.12
5.1	Project Management Consultancy Services	3.84	78.71	18.89	100.02	201.46
5.2	Other Overheads	0.05	1.13	0.41	6.47	8.06
5.3	Contingency	-	-	-	-	-
5.4	Pre-operative expenses	-	0.27	2.20	14.13	16.60
6	**Deposit Work for bays at Aurangabad substation + Civil work**	-	-	-	28.89	28.89
7	**Financing & IDC**	**6.79**	**146.64**	**36.54**	**383.17**	**573.13**
8	**Impact of Foreign Exchange Rate Variations**	**2.66**	**57.71**	**13.78**	**106.41**	**180.56**
9	**Total (1 to 8)**	**108.00**	**2,134.47**	**512.55**	**3,004.65**	**5,759.66**

5.7.29 The revised Capital Cost submitted by MEGPTCL for approval was allocated asset class-wise for computing the applicable depreciation. While allocating the capital cost, the value of assets against the asset classes such as Land Free Hold, Land Lease Hold, Office Equipment and Furniture, Building and Civil Works and Computer Equipment is directly available from the Auditor Certificate. Further, the disallowances are only against the asset classes of Sub-Station and Transmission Line. Accordingly, the allocation of common cost elements excluding the above-mentioned asset classes have been allocated by MEGPTCL between the Sub-station and Transmission Line in proportion to value of the assets clearly identifiable under these two heads. The resultant allocation of asset class wise capital cost as submitted by MEGPTCL is given below:

Table 5-7: Allocation of Asset Class wise Capital Cost as submitted by MEGPTCL (Rs. Crore)

Particulars	Set 1	Set 2A	Set 2B	Set 3	Total
Land Free Hold	-	-	-	17.54	**17.54**
Land Lease Hold	-	15.70	-	-	**15.70**
Office Equipment and Furniture	-	2.52	-	0.76	**3.28**
Building and Civil Works	-	3.52	-	3.57	**7.09**
Substation	12.42	1,319.48	512.55	1,439.03	**3,283.48**
Transmission Line	95.58	793.21	-	1,543.74	**2,432.53**
Computer Equipment	-	0.04	-	-	**0.04**
Total	**108.00**	**2,134.47**	**512.55**	**3,004.65**	**5,759.66**

Commission's Analysis and Ruling:

5.7.30 The Commission had allowed the Capital Cost in the past Order in line with the provisions of the applicable Regulations as discussed in Para 5.7.2 of this Order. The

Hon'ble ATE has examined the decisions of the Commission in its Order in Case No. 50 of 2016 and given directions to allow certain cost elements which were disallowed by the Commission in its Order in Case No. 50 of 2016 and has also revised the CoD of Set 3 including 2 bays in 765 kV Ektuni Sub-station to 31 March, 2015. The Hon'ble ATE has also directed to pass on the consequential impact of these changes in the ARR of MEGPTCL.

5.7.31 In view of the above, the Commission has examined the claim of MEGPTCL to give effect to the Hon'ble ATE Judgment of allowance of revised COD for Third set of Transmission asset from 31 March, 2015. The Commission has also examined the MEGPTCL's submission of FERV on Material Import and Price escalation to be allowed as per the Hon'ble ATE Judgment along with the consequential impact on the IDC.

5.7.32 The allowances of capital cost elements as per the Hon'ble ATE Judgment are as follows:

(i) FERV on Material Import : Rs. 326.78 Crore

(ii) Price escalation on material : Rs. 57.25 Crore

5.7.33 The Commission has observed that along with change in COD, IDC, FERV and Price escalation, MEGPTCL has also claimed capital cost under Set-3 of certain capital cost elements (e.g. Approach road, DG set, fuel charges, etc.) which were disallowed by the Commission in Case No. 169 of 2017 based on the recommendation of the Third-Party Verification Report appointed by the Commission for detailed scrutiny, physical and financial verification of the completed capital cost of the transmission project of MEGPTCL. As part of data gap, MEGPTCL has replied that it has contended the disallowance of those elements and the matter is pending before Hon'ble ATE in Appeal No. 18 of 2019. Considering that the matter is pending adjudication and the Order of the Commission has not been stayed by the Hon'ble ATE, the Commission has continued the stand taken in its Order in Case No. 169 of 2017 which has also been discussed in Paras 5.7.9 to 5.7.11 of this Order and disallowed the claim of MEGPTCL under capital cost elements like construction of an approach road to tower locations, DG Set and Fuel charges.

5.7.34 The Commission has accordingly allowed the IDC in proportion to the Set wise total Capital Cost (Rs. 43.51 Crore over and above IDC approved in the Order in Case No. 169 of 2017 attributable to capital cost approval as per Hon'ble ATE Judgment). The Commission has also allowed FERV on Material Import and Price Escalation as claimed by MEGPTCL. The revised Capital Cost as approved by the Commission is as follows:

Table 5-8: Capital Cost approved by the Commission (Rs. Crore)

Sr. No.	Particulars	Set-1	Set-2a	Set-2b	Set-3	Total Approved in Present Order	Approved in Order in Case No. 50 of 2016	Approved in Order in Case No. 169 of 2017[1]	Variation
	a	b	c	d	e	f = b+c+d+e	g	h	i = f-h
1	**Preliminaries**	0.02	0.45	-	0.28	0.75	0.75	0.75	-
2	**Transmission lines**	**79.80**	**688.26**	**436.83**	**1,221.17**	**2,426.06**	**2,337.88**	**2,333.16**	**92.90**
2.1	**Supply Order (EPC)**	**61.70**	**550.88**	**363.02**	**956.73**	**1,932.33**	**1,839.43**	**1,839.43**	**92.90**
2.1.1	Original Contract value	60.33	559.17	343.46	902.63	1,865.59	1,865.59	1,865.59	-
2.1.2	Quantity Variation in EPC order	(1.09)	(30.63)	9.03	(3.47)	(26.16)	(26.16)	(26.16)	-
2.1.3	Price escalation	1.75	8.60	2.38	25.53	38.26	-	-	38.26
2.1.4	Foreign Exchange Rate Variation	0.71	13.74	8.15	32.04	54.64	-	-	54.64
2.1.5	Additional Towers–400 kV Charging	-	-	-	-	-	-	-	-
2.2	**Service Order (EPC)**	**18.00**	**134.74**	**73.81**	**264.44**	**490.99**	**495.71**	**490.99**	**-**
2.2.1	Original Contract value	14.09	102.46	63.05	165.52	345.12	345.12	345.12	-
2.2.2	Quantity Variation in EPC order	3.12	9.86	-6.60	5.17	11.55	11.55	11.55	-
2.2.3	Additional RoW	0.79	20.99	16.87	89.63	128.28	128.28	128.28	-
2.2.4	Price escalation	-	-	-	-	-	-	-	-
2.2.5	Idling Charges	-	-	-	-	-	-	-	-
2.2.6	Erection All Risk (EAR) Insurance Policy for the delayed period.	-	1.43	0.49	2.64	4.56	4.56	4.56	-
2.2.7	Approach Road at various locations	-	-	-	-	-	4.72	-	-

[1] Final Capital Cost approval for MEGPTCL system was done in the Order in Case No. 169 of 2017

Sr. No.	Particulars	Set-1	Set-2a	Set-2b	Set-3	Total Approved in Present Order	Approved in Order in Case No. 50 of 2016	Approved in Order in Case No. 169 of 2017[1]	Variation
	a	b	c	d	e	f = b+c+d+e	g	h	i = f-h
2.2.8	Hot Line Stringing	-	-	-	1.48	1.48	1.48	1.48	-
2.3	**Non-EPC Cost in Transmission Line**	0.10	2.64	-	-	2.74	2.74	2.74	-
2.3.1	Supply of additional Initial spares	0.10	2.52	-	-	2.62	2.62	2.62	-
2.3.2	Supply order for Additional Items	-	0.12	-	-	0.12	0.12	0.12	-
3	**Substation works**	**10.37**	**1,144.90**	**-**	**1,119.68**	**2,274.95**	**1,983.94**	**1,983.81**	**291.14**
3.1	**Supply Order**	**9.69**	**996.09**	**-**	**981.77**	**1,987.55**	**1,696.71**	**1,696.58**	**290.97**
3.1.1	Original Contract value	9.69	877.73	-	806.53	1,693.95	1,693.95	1,693.95	-
3.1.2	Quantity Variation / additional Items in EPC order	-	6.35	-	(4.60)	1.76	1.76	1.76	-
3.1.3	Additional Bays at Akola II	-	-	-	-	-	-	-	-
3.1.4	Price escalation	-	-	-	18.82	18.82	-	-	18.82
3.1.5	Foreign Exchange Rate Variation	-	111.74	-	160.40	272.14	-	-	272.14
3.1.6	Supply and Installation for Neutral Bus Formation at Aurangabad (Ektuni) Substation	-	-	-	0.24	0.24	0.24	0.24	-
3.1.7	DG Set and Fuel Charges	-	-	-	-	-	0.12	-	-
3.1.8	Office Furniture	-	0.27	-	0.37	0.64	0.64	0.64	-
3.1.9	Claim towards damage of equipment	-	-	-	-	-	-	-	-
3.2	**Service Order**	**0.11**	**108.34**	**-**	**110.04**	**218.49**	**218.32**	**218.32**	**0.17**
3..2.1	Original Contract value	0.11	96.69	-	105.14	201.94	201.94	201.94	-
3.2.2	Quantity Variation in EPC order	-	0.24	-	0.07	0.31	0.31	0.31	-

Sr. No.	Particulars	Set-1	Set-2a	Set-2b	Set-3	Total Approved in Present Order	Approved in Order in Case No. 50 of 2016	Approved in Order in Case No. 169 of 2017[1]	Variation
	a	**b**	**c**	**d**	**e**	**f = b+c+d+e**	**g**	**h**	**i = f-h**
3.2.3	Price escalation	-	-	-	0.17	0.17	-	-	0.17
3.2.4	Demurrage/ Detention/ Ground Rent charges	-	-	-	-	-	-	-	-
3.2.5	Quantity Variation in Civil works at Akola II SS	-	10.74	-	-	10.74	10.74	10.74	-
3.2.6	Supply and Installation for Neutral Bus Formation at Aurangabad (Ektuni) Substation	-	-	-	0.22	0.22	0.22	0.22	-
3.2.7	Temporary Road Development at Akola-II Substation	-	0.67	-	-	0.67	0.67	0.67	-
3.2.8	Re-transportation of Equipment from Storage Location to actual site	-	-	-	4.44	4.44	4.44	4.44	-
3.3	**Non-EPC Cost**	**0.57**	**24.77**	**-**	**10.33**	**35.67**	**35.67**	**35.67**	**-**
3.3.1	Metering for Akola II & Koradi III Substation	0.09	8.43	-	7.77	16.29	16.29	16.29	-
3.3.2	Supply of additional Initial spares	0.48	11.77	-	-	12.25	12.25	12.25	-
3.3.3	Supply orders for additional items	-	4.01	-	1.84	5.85	5.85	5.85	-
3.3.4	Service orders for additional items	-	0.56	-	0.72	1.28	1.28	1.28	-
3.4	**Land for S/S**	**-**	**15.70**	**-**	**17.54**	**33.24**	**33.24**	**33.24**	**-**
4	**Revised Taxes and Duties**	**4.47**	**16.40**	**3.90**	**19.58**	**44.35**	**44.35**	**44.35**	**-**
	SUB TOTAL 1+2+3+4	**94.66**	**1,850.01**	**440.73**	**2,360.71**	**4,746.11**	**4,366.92**	**4,362.07**	**384.04**
5	**Overheads**	**3.89**	**80.11**	**21.50**	**120.62**	**226.12**	**226.12**	**226.12**	**-**
5.1	Project Management Consultancy Services	3.84	78.71	18.89	100.02	201.46	201.46	201.46	-

Sr. No.	Particulars	Set-1	Set-2a	Set-2b	Set-3	Total Approved in Present Order	Approved in Order in Case No. 50 of 2016	Approved in Order in Case No. 169 of 2017[1]	Variation
	a	b	c	d	e	f = b+c+d+e	g	h	i = f-h
5.2	Other Overheads	0.05	1.13	0.41	6.47	8.06	8.06	8.06	-
5.3	Contingency	-	-	-	-	-	-	-	-
5.4	Pre-operative expenses	-	0.27	2.20	14.13	16.60	16.60	16.60	-
6	**Deposit Work for bays at Aurangabad substation + Civil work**	**-**	**-**	**-**	**28.89**	**28.89**	**28.89**	**28.89**	**-**
7	**Financing & IDC**	**6.79**	**146.64**	**36.54**	**382.46**	**572.42**	**527.63**	**528.91**	**43.51**
8	**Impact of Foreign Exchange Rate Variations**	**2.66**	**57.71**	**13.78**	**106.41**	**180.56**	**180.56**	**194.19**	**(13.63)**
9	**Total (1 to 8)**	**108.00**	**2,134.47**	**512.55**	**2,999.10**	**5,754.11**	**5,330.12**	**5,340.19**	**413.92**

Note:

(i) The decrease of Rs. (13.63) Crore in the impact of FERV on loan is on account of the revision in the CoD approved by the Hon'ble ATE due to which this cost is considered as post CoD FERV on loan and passed on through the ARR instead of considering it as part of the approved Capital Cost as discussed in Paras 4.5.5 to 4.5.8 of this Order.

(ii) The variation on the Financing & IDC cost is the impact of the proportionate increase in the approved capital cost vis-à-vis originally approved capital cost.

5.7.35 MEGPTCL has submitted the asset class wise allocation based on the revised capital cost details as shown in Table 5-7 of this Order.

5.7.36 However, the asset class wise allocation of capital cost submitted by MEGPTCL when compared with the allocation in the CA certificate highlights an issue wherein the allocated cost under the asset Class Sub-station in Set 2a and Set 3 is higher than the cost as per Auditor Certificate which is without considering any disallowances. The same is reproduced below for reference.

Table 5-9: Details of Asset Class Capital Cost as submitted by MEGPTCL and as per Auditor Certificate (Rs. Crore)

Particulars	Set 1	Set 2a	Set 2b	Set 3	Total
MEGPTCL Submission					
Land Free Hold	-	-	-	17.54	**17.54**
Land Lease Hold	-	15.70	-	-	**15.70**
Office Equipment and Furniture	-	2.52	-	0.76	**3.28**
Building and Civil Works	-	3.52	-	3.57	**7.09**
Substation	12.42	1,319.48	512.55	1,439.03	**3,283.48**
Transmission Line	95.58	793.21	-	1,543.74	**2,432.53**
Computer Equipment	-	0.04	-	-	**0.04**
Total	**108.00**	**2,134.47**	**512.55**	**3,004.65**	**5,759.66**
As per Auditor Certificate					
Land Free Hold				17.54	**17.54**
Land Lease Hold		15.70			**15.70**
Office Equipment and Furniture		2.52		0.76	**3.28**
Building and Civil Works		3.52		3.57	**7.09**
Substation	12.42	1,316.78		1,429.31	**2,758.51**
Transmission Line	95.76	806.59	513.44	1,555.91	**2,971.70**
Computer Equipment		0.04			**0.04**
TOTAL	**108.18**	**2,145.15**	**513.44**	**3,007.09**	**5,773.86**

5.7.37 The Commission in its Order in Case No. 50 of 2016 had disallowed certain cost elements from the overall capital cost approval sought by MEGPTCL. From the allowed capital cost, the details of allocation into specific asset classes (e.g. Land freehold, land lease hold, office furniture, building & civil works & computer equipment) was available from the auditor certificate. Further, the details of approved capital cost elements directly attributable to sub-station or transmission line asset classes is also available from the cost break-up provided by MEGPTCL. However, beyond these details, there is certain portion of the approved capital cost which is not directly attributable to identified asset classes. Hence, the Commission in its Order in Case No. 50 of 2016 had proportionately allocated such cost elements to the sub-station & transmission line asset classes proportionate to the value of the assets cost directly identifiable with these asset classes (sub-station & transmission line).

5.7.38 However, the issue identified in Para 5.7.36 was not faced in the earlier Order in Case No. 50 of 2016 as there were significant disallowances in the capital cost in the said

Order. Accordingly, the allocated asset class wise cost was lower than that available in the auditor certificate. However, as the capital cost disallowance are now relatively lower considering the Hon'ble ATE Judgment, continuing with the similar method of allocation of asset class wise capital cost in the present Order will mean that the value of the assets allocated under the asset class Sub-station will appear to be higher than that certified by the Auditor.

5.7.39 Notwithstanding the above, it is to be noted that the above issue will not have any impact on the computation of depreciation cost as the rate of deprecation for both the asset classes (sub-station & transmission line) is same.

5.7.40 In view of the above, an alternative methodology for allocation of the asset wise capital cost for the asset classes sub-station and transmission line has been adopted by the Commission as outlined below:

(i) Set-wise disallowance of IDC is identified (Difference between original MEGPTCL submission of set wise IDC in Case No. 50 of 2016 without any disallowance and the IDC now approved based on Hon'ble ATE Judgment)

(ii) Other disallowances attributable to Transmission and Sub-station asset class identified.

(iii) IDC disallowance allocated to Transmission and Sub-station in the proportion of the disallowances in these two assets classes.

(iv) The assets class wise capital cost disallowance including the allocated IDC disallowance is then subtracted from the asset class wise values available in the auditor certificate.

5.7.41 The methodology described above, and the resultant asset class wise allocation is shown in the table below:

Table 5-10: Methodology for asset class wise capital cost allocation and the resultant allocation (Rs. Crore)

Particulars	Set 1	Set 2A	Set 2B	Set 3	Total	Class
Total Diallowance Reconcillitation	**0.18**	**10.66**	**0.89**	**7.98**	**19.72**	
Element wise Disallowance details						
Financing & IDC	0.01	0.73	0.06	1.02	1.83	Common
Idling Charges	0.17	2.03	0.83	-	3.03	Transmission
Additional Towers–400 kV Charging	-	-	-	1.72	1.72	Transmission
Approach Road at various locations	-	-	-	4.72	4.72	Transmission
Demurrage/ Detention/ Ground Rent charges	-	1.90	-	0.09	1.99	Sub-Station
Additional Bays at Akola II	-	6.00	-	-	6.00	Sub-Station
DG Set and Fuel Charges	-	-	-	0.12	0.12	Sub-Station
Claim towards damage of equipment	-	-	-	0.31	0.31	Sub-Station
Class wise disallowance						
Transmission Disallowance	0.17	2.03	0.83	6.44	**9.47**	
Sub-Station Disallowance	-	7.90	-	0.52	**8.42**	
Class wise disallowance including IDC allocation in proportion to class wise disallowance						
Sub-Station Capital Cost With Financing Cost & IDC Allocation	-	8.48	-	0.60	**9.08**	
Transmission Capital Cost With Financing Cost & IDC Allocation	0.18	2.18	0.89	7.38	**10.64**	
Resultant Asset Class wise Allocation (Auditor Certfied values minus Class wise disallowance)						
Sub-Station Capital Cost	12.42	1,308.28	-	1,428.70	**2,749.41**	
Transmission Capital Cost	95.58	804.40	512.55	1,548.52	**2,961.05**	

5.7.42 The variation between the asset class wise allocation as per the Auditor's Certificate with the proportionate allocation method adopted by the Commission in the past Orders and also as submitted by MEGPTCL and the resultant allocation using the revised method is given in the table below:

Table 5-11: Comparison between asset class wise allocation as per (i) Auditor Certificate, (ii) Proportionate allocation method (Past Order), and (iii) Revised allocation methodology in present Order (Rs. Crore)

Particulars	Set-1	Set-2a	Set-2b	Set-3	Total
As per Auditor Certificate					
Substation	12.42	1,316.78	-	1,429.31	**2,758.51**
Transmission Line	95.76	806.59	513.44	1,555.91	**2,971.70**
Total	**108.18**	**2,123.37**	**513.44**	**2,985.22**	**5,730.21**
Proportionate Allocation Method (Adopted in past Orders)					
Substation	12.42	1,319.48	-	1,439.15	**2,771.04**
Transmission Line	95.58	793.21	512.55	1,538.08	**2,939.42**
Total	**108.00**	**2,112.68**	**512.55**	**2,977.23**	**5,710.46**
Allocation as per revised methodology in present Order					
Substation	12.42	1,308.28	-	1,428.70	**2,749.41**
Transmission Line	95.58	804.40	512.55	1,548.52	**2,961.05**
	108.00	**2,112.68**	**512.55**	**2,977.23**	**5,710.46**

5.7.43 Further, as regards the year wise addition of assets for Set 2A, MEGPTCL has considered Rs. 1318.81 Crores as addition to GFA in case of sub-stations during the FY 2013-14 and Rs. 0.67 Crores addition in FY 2014-15. However, as per the Auditor Certificate for capital cost of Set 2A, the addition to GFA is Rs. 1287.11 Crores in FY 2013-14 and Rs. 29.67 Crore in FY 2014-15. The amount of Rs. 29.00 Crores (out of Rs. 29.67 Crore) proposed by MEGPTCL against additional capitalisation for Set 2A in FY 2014-15 was pertaining FERV on material and hence was not allowed by the Commission in its Order in Case No. 50 of 2016. However, in view of the Hon'ble ATE Judgment, the same is approved in FY 2014-15 instead of FY 2013-14 as considered by MEGPTCL in its submission.

5.7.44 The above approved asset class wise allocation is only used for the purpose of computation of the allowable depreciation on the assets.

5.8 Depreciation

<u>Commission's past approval</u>

5.8.1 The Commission in the past Orders recomputed the depreciation allowable for various classes of assets based on the approved capital cost for relevant years considering the depreciation rates specified in the applicable Regulations and the approved Set-wise commissioning dates.

5.8.2 As discussed in Para 5.2 of the Order, three different Tariff Regulations were applicable during the period FY 2013-14 to FY 2024-25 for which the depreciation expenses were approved by the Commission through three different Orders. The applicable provisions of the Tariff Regulations for different periods based on which the Commission approved the depreciation expenses are as follows:

(i) FY 2013-14 to FY 2015-16:

Depreciation expenses - Regulation 31 of the MYT Regulations, 2011

(ii) FY 2016-17 to FY 2019-20:

Depreciation expenses - Regulation 27 of the MYT Regulations, 2015

(iii) FY 2020-21 to FY 2024-25:

Depreciation expenses - Regulation 28 of the MYT Regulations, 2019

5.8.3 The depreciation expenses approved by the Commission in the past Orders is included in the Table 5-13 of this Order.

<u>Directions of the Hon'ble ATE:</u>

5.8.4 The Hon'ble ATE Judgment does not have any specific ruling regarding depreciation expenses. Accordingly, the impact of the Hon'ble ATE Judgment on the Depreciation expenses is primarily on account of the revised set-wise CoD approved by the Hon'ble ATE which is discussed at Para 4.3 above of the Order and also on account of the revised Capital Cost approved by the Commission to implement the Hon'ble ATE Judgment.

5.8.5 The revised CoD will mean earlier start of recovery of the depreciation expenses and upward revision of Capital Cost will mean higher amount of allowable depreciation expenses.

<u>MEGPTCL's Submission:</u>

5.8.6 MEGPTCL has submitted the revised depreciation due to change in GFA on account of the revised capital cost and revised COD in line with the Hon'ble ATE Judgment. The revised depreciation as submitted by MEGPTCL is as shown below:

Table 5-12: Depreciation as submitted by MEGPTCL (Rs. Crore)

Year	GFA Balance at the beginning of the year	GFA Additions during the year	Retirement of assets during the year	GFA Balance at the end of the year	Revised Depreciation
FY 2013-14	-	2,231.81	-	2,231.81	11.93
FY 2014-15	2,231.81	3,527.85	-	5,759.66	144.41
FY 2015-16	5,759.66	10.24	-	5,769.90	303.04
FY 2016-17	5,769.90	0.37	-	5,770.27	303.30
FY 2017-18	5,770.27	7.55	-	5,777.82	303.51
FY 2018-19	5,777.82	6.23	-	5,784.05	303.87
FY 2019-20	5,784.05	-	-	5,784.05	304.04
FY 2020-21	5,784.05	-	-	5,784.05	304.04
FY 2021-22	5,784.05	-	-	5,784.05	304.04
FY 2022-23	5,784.05	-	-	5,784.05	304.04
FY 2023-24	5,784.05	-	-	5,784.05	304.04
FY 2024-25	5,784.05	-	-	5,784.05	304.04

Commission's Analysis and Ruling:

5.8.7 The Commission has examined the submission of MEGPTCL, and disallowed certain capital cost elements as claimed by MEGPTCL as discussed in the preceding sections and the same has been considered for approval of the depreciation expenses.

5.8.8 The Commission has re-computed the revised depreciation expenses in line with the provisions of the applicable MYT Regulations as mentioned in Para 5.8.2 of this Order and the approach adopted by the Commission in the past Orders as shown in the table below:

Table 5-13: Depreciation approved by the Commission (Rs. Crore)

Year	GFA Balance at the beginning of the year	Additions during the year	Retirement of assets during the year	GFA Balance at the end of the year	Revised Depreciation Expenses as per Hon'ble ATE Judgement	Originally approved Depreciation in relevant Orders	Variation
	a	b	c	d = a-b-c	e	f	g=e-f
FY 2013-14	-	2,202.81	-	2,202.81	11.77	11.14	0.63
FY 2014-15	2,202.81	3,551.31	-	5,754.11	143.65	136.09	7.56
FY 2015-16	5,754.11	10.24	-	5,764.35	302.75	260.49	42.25
FY 2016-17	5,764.35	0.37	-	5,764.73	303.01	280.91	22.10
FY 2017-18	5,764.73	7.55	-	5,772.28	303.22	281.35	21.87
FY 2018-19	5,772.28	6.23	-	5,778.51	303.58	281.71	21.87
FY 2019-20	5,778.51	-	-	5,778.51	303.75	281.87	21.87
FY 2020-21	5,778.51	-	-	5,778.51	303.75	281.87	21.87
FY 2021-22	5,778.51	-	-	5,778.51	303.75	281.87	21.87
FY 2022-23	5,778.51	-	-	5,778.51	303.75	281.87	21.87
FY 2023-24	5,778.51	-	-	5,778.51	303.75	281.87	21.87
FY 2024-25	5,778.51	-	-	5,778.51	303.75	281.87	21.87

5.8.9 The higher variation observed in FY 2015-16 and FY 2016-17 is on attributable to the revised approved set-wise COD from 20 May, 2015 (Set 3 excluding 2 bays at 765 kV Ektuni Sub-station) and 27 May, 2016 (2 bays at 765 kV Ektuni Sub-station) to 31 March, 2015 leading to early and higher recovery in the two years. The variation in other years is attributable only to the revised approved capital cost.

5.9 Interest on Long-term Loan

Commission's past approval

5.9.1 The Commission in the past Orders has considered 70:30 debt: equity ratio for the calculation of the interest on long term loans. The weighted average interest rate details submitted by MEGPTCL were examined and appropriately considered for the purpose of approval of the interest on loans.

5.9.2 The Commission had also considered the set-wise date of commissioning for computation of the interest cost proportionate to the numbers of days of commercial operations of the individual sets in the year of commissioning.

5.9.3 As discussed in Para 5.2 of the Order, three different Tariff Regulations were applicable during the period FY 2013-14 to FY 2024-25 for which the interest on loan expenses were approved by the Commission through three different Orders. The applicable provisions of the Tariff Regulations for different periods based on which the Commission approved the interest on loan expenses are as follows:

(i) FY 2013-14 to FY 2015-16:

Interest on loan expenses - Regulation 33 of the MYT Regulations, 2011

(ii) FY 2016-17 to FY 2019-20:

Interest on loan expenses - Regulation 29 of the MYT Regulations, 2015

(iii) FY 2020-21 to FY 2024-25:

Interest on loan expenses - Regulation 30 of the MYT Regulations, 2019

5.9.4 As regards the rate of interest considered for the purpose of the interest computation, the Regulation 33.5 of the MYT Regulation, 2011 specify that the rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio at the beginning of each year applicable to the Distribution Licensee. Accordingly, the Commission has considered the weighted average interest rate at the beginning of the year for the period FY 2013-14 to FY 2015-16 for computation of the interest cost.

5.9.5 The MYT Regulations, 2015 and MYT Regulations, 2019 specify that at the time of Truing-up, the weighted average rate of interest computed on the basis of the actual loan portfolio during the concerned year shall be considered as the rate of interest. However, the Commission on review of the information submitted by MEGPTCL in its Petition in Case No. 169 of 2017 has concluded that the Commission cannot consider allowing the interest rate claims of MEGPTCL as per ATL ICD loan and to allow interest costs arising from the 'refinancing' exercise carried out by MEGPTCL. The reason in brief for not allowing the refinancing cost was that the refinancing should result in benefit to the consumers in terms of reduction in interest expense which was not the case.

5.9.6 Accordingly, the interest rate claim by MEGPTCL was disallowed and for truing up for FY 2016-17, the Commission continued to approved rate of interest of 11.67% p.a as approved for FY 2015-16 during truing up process.

5.9.7 The Commission for the truing up of FY 2017-18 and FY 2018-19, provisional truing up of FY 2019-20 and projections for the period FY 2020-21 to FY 2024-25 in Case No. 290 of 2019 has continued with the same rate of interest i.e. 11.67%. The Commission had noted that MEGPTCL has preferred an appeal in matter of such disapproval in the MTR Order in Case No. 169 of 2017, and the matter is still pending before the Hon'ble ATE.

5.9.8 The repayment of loan has been considered as equivalent to the approved depreciation expense during the year in line with provisions of all the three MYT Regulations relevant in the present proceedings.

5.9.9 The year-on-year interest on loan approved by the Commission for the period FY 2013-14 to FY 2014-25 is given in the

Year	Opening Balance of Loan	Addition during the year	Loan Repayment during the year	Closing Balance of Loan	Applicable Interest Rate (%)	Avg. Balance of Loan during the year	Revised Interest Expenses as per Hon'ble ATE Judgement	Originally approved Interest Expenses in relevant Orders	Variation
	a	b	c	d=a+b-c	e	f=(a+d) ÷ 2	g = e × f	h	i = g-h
FY 2013-14	-	1,541.96	11.77	1,530.19	11.23%	765.10	17.49	16.56	0.93
FY 2014-15	1,530.19	386.54	143.65	1,773.09	11.27%	1,651.64	205.59	194.79	10.80
FY 2015-16	3,872.45	7.17	302.75	3,576.88	11.67%	3,724.67	434.68	366.92	67.76
FY 2016-17	3,576.88	0.26	303.01	3,274.13	11.67%	3,425.50	399.76	372.31	27.45
FY 2017-18	3,274.13	5.29	303.22	2,976.19	11.67%	3,125.16	364.71	340.53	24.18
FY 2018-19	2,976.19	4.36	303.58	2,676.97	11.67%	2,826.58	329.86	308.24	21.62
FY 2019-20	2,676.97	-	303.75	2,373.23	11.67%	2,525.10	294.68	275.61	19.07
FY 2020-21	2,373.23	-	303.75	2,069.48	11.67%	2,221.36	259.23	242.71	16.52
FY 2021-22	2,069.48	-	303.75	1,765.74	11.67%	1,917.61	223.79	209.82	13.97
FY 2022-23	1,765.74	-	303.75	1,461.99	11.67%	1,613.87	188.34	176.92	11.41
FY 2023-24	1,461.99	-	303.75	1,158.25	11.67%	1,310.12	152.89	144.03	8.86
FY 2024-25	1,158.25	-	303.75	854.50	11.67%	1,006.38	117.44	111.13	6.31

below.

Directions of Hon'ble ATE

5.9.10 MEGPTCL had contended that the Commission had allowed less interest on loan (Rs. 6.29 Crore for FY 2015-16 and Rs. 8.21 Crore in FY 2016-17) and without providing cogent reasoning and accordingly sought correction of the above errors in the present proceedings.

5.9.11 The Hon'ble ATE stated that the issue pertains to difference in the Interest on loan computation by MEGPTCL and the Commission and therefore, it does not find any reason to intervene on this issue.

5.9.12 Accordingly, the Hon'ble ATE judgment in this matter is given below:

> *"**12.6 Issue No.6 :- Approval of less interest on long term loan***
>
> *We do not find any reason to intervene on this issue decided by the State Commission. However, the issue may be taken up by the Appellant with the Commission during next tariff proceedings for clarity on computation of interest and correction of error, if any."*

5.9.13 The impact of the implementation of the Hon'ble ATE Judgment on the interest on loan expenses is primarily on account of the revised set-wise CoD approved by the Hon'ble ATE which is discussed in Para 4.3 of the Order and also on account of the revised Capital Cost approved by the Commission to implement the Hon'ble ATE Judgment.

5.9.14 The revised CoD will mean earlier start of recovery of the interest on loan expenses and upward revision of Capital Cost will mean higher amount of allowable loan component and the resultant interest on loan.

MEGPTCL's Submission

5.9.15 MEGPTCL submitted that as Capital Cost and Commercial Operation Date have been revised due to Hon'ble ATE Judgment, the revised working for Interest on Long Term

Loan of Rs. 435 Crore for FY 2015-16 and Rs. 400.05 Crore for FY 2016-17 has been submitted as part of the petition for approval.

5.9.16 MEGPTCL has considered the addition to loan as 70% of addition to assets during the year and loan repayment as the revised depreciation for the year. The interest rate considered is same as the rates approved by the Commission in the past relevant Orders. The interest expense is computed only for the no. of days the asset was put to use in the year and not the whole year. For the subsequent years, interest has been calculated based on the average loan balance during the year. The interest expense computed by MEGPTCL is as shown below:

Table 5-14: Interest Expense as submitted by MEGPTCL (Rs. Crore)

Year	Opening Balance of Loan	Addition during the year	Loan Repayment during the year	Closing Balance of Loan	Applicable Interest Rate (%)	Avg. Balance of Loan	Revised Interest Expenses
FY 2013-14	1,562.26	-	11.93	1,550.33	11.23%	1,556.30	17.72
FY 2014-15	1,909.12	7.46	144.41	1,772.16	11.27%	1,840.64	206.69
FY 2015-16	3,875.42	7.17	303.04	3,579.55	11.67%	3,727.48	435.00
FY 2016-17	3,579.55	0.26	303.30	3,276.50	11.67%	3,428.02	400.05
FY 2017-18	3,276.50	5.29	303.51	2,978.28	11.67%	3,127.39	364.97
FY 2018-19	2,978.28	4.36	303.87	2,678.77	11.67%	2,828.52	330.09
FY 2019-20	2,678.77	-	304.04	2,374.73	11.67%	2,526.75	294.87
FY 2020-21	2,374.73	-	304.04	2,070.69	11.67%	2,222.71	259.39
FY 2021-22	2,070.69	-	304.04	1,766.65	11.67%	1,918.67	223.91
FY 2022-23	1,766.65	-	304.04	1,462.61	11.67%	1,614.63	188.43
FY 2023-24	1,462.61	-	304.04	1,158.57	11.67%	1,310.59	152.95
FY 2024-25	1,158.57	-	304.04	854.54	11.67%	1,006.56	117.47

Commission's Analysis and Ruling:

5.9.17 MEGPTCL in Appeal No. 260 of 2016 had contented before the Hon'ble APTEL as follows

"9.1 As regards Interest on Long Term Loan, the senior counsel for the Appellant has submitted that the Commission has allowed interest on long term loan, being Rs 6.29 Cr & Rs 8.21 Cr lower than the actual allowable for FY 2015-16 & FY 2016-17 respectively. As per allowed opening and closing balance mentioned in the impugned order for FY 2015-16, interest on long term loan has worked out as Rs 382.47 whereas the Commission has considered Rs 376.18 Cr for FY 2015-16. Similarly, For FY 2016-17, Interest on long term loan needs to be corrected to Rs 372.16 from Rs 363.95 Cr. Accordingly, the Appellant has sought correction of above errors in the present proceedings."

5.9.18 The Hon'ble ATE Judgment in Appeal No. 260 of 2016 – Issue No 6: Approval of less Interest on Long term Loan, has ruled as follows:

"9.3 We have considered the submission made by the Appellant and the Respondent Commission. At the outset, the issue pertains to difference in the Interest on loan computation by the Appellant and the Respondent Commission. Therefore, we do not find any reason to intervene on this issue.

9.4 The issue may be taken up by the Appellant with the Respondent Commission during the next tariff proceedings for clarity on computation of interest. The Maharashtra Commission is directed to clarify the above issue to the Appellant and correct computational error, if any."

5.9.19 The Commission had sought clarification from MEGPTCL and directed it to submit the calculation of Interest on long term Loan for Rs 382.47 Crore for FY 2015-16 and Rs. 372.16 Crore for FY 2016-17 and support its claim regarding error in calculation. MEGPTCL was also directed to clarify how the purported error has been corrected by MEGPTCL in its present submissions and directed to submit the necessary documents supporting its computing methodology and the basis.

5.9.20 In response to data gap, MEGPTCL has submitted the following without any clarification in the above matter :

> *"**In terms of Hon'ble APTEL order, Capital Cost and CoD of MEGPTCL project is revised.** In view of revision in Capital Cost and CoD, revised Interest on long term loan is being determined through present proceedings. The revised interest based on APTEL order are Rs 435 Cr for FY 2015-16 and Rs 400.05 Cr for FY 2016-17. **The detailed calculation for the revised interest amount is enclosed herewith since the interest amount in the impugned order have no relevance now.**"*

5.9.21 In view of the above, the Commission has followed the methodology adopted for computation of the interest cost in its Order in Case No. 50 of 2016 which also appears to be in line with the present submission of MEGPTCL. Further, as mentioned earlier, the re-computation of the interest cost on long term is required to be undertaken to pass on the consequential impact of the Hon'ble ATE Judgment on account of the changes in the CoD of the assets and the revised Capital Cost.

5.9.22 The Commission has recomputed the interest on loans considering the provisions of relevant Regulations as discussed at Para 5.9.3 of the Order.

5.9.23 The Commission has considered the Opening Balance of Loan for FY 2013-14 as zero as the addition of asset is during the year and not at the start of the year as considered by MEGPTCL. The loan addition (70% of capitalisation) is linked to the set wise commissioning of assets. The repayment of loan is considered same as the depreciation approved for the year. Further, the rate of interest considered by the Computation is in line with the applicable Regulations and the approach adopted by the Commission in the past Orders which has been discussed in Paras 5.9.4 to 5.9.7 of this Order.

5.9.24 The interest expense is computed considering the no. of days for which the asset was in operation during the year.

5.9.25 The interest expense approved by the Commission is as shown below:

Table 5-15: Interest Expense approved by the Commission (Rs. Crore)

Year	Opening Balance of Loan	Addition during the year	Loan Repayment during the year	Closing Balance of Loan	Applicable Interest Rate (%)	Avg. Balance of Loan during the year	Revised Interest Expenses as per Hon'ble ATE Judgement	Originally approved Interest Expenses in relevant Orders	Variation
	a	b	c	d=a+b-c	e	f=(a+d) ÷ 2	g = e × f	h	i = g-h
FY 2013-14	-	1,541.96	11.77	1,530.19	11.23%	765.10	17.49	16.56	0.93
FY 2014-15	1,530.19	386.54	143.65	1,773.09	11.27%	1,651.64	205.59	194.79	10.80
FY 2015-16	3,872.45	7.17	302.75	3,576.88	11.67%	3,724.67	434.68	366.92	67.76
FY 2016-17	3,576.88	0.26	303.01	3,274.13	11.67%	3,425.50	399.76	372.31	27.45
FY 2017-18	3,274.13	5.29	303.22	2,976.19	11.67%	3,125.16	364.71	340.53	24.18
FY 2018-19	2,976.19	4.36	303.58	2,676.97	11.67%	2,826.58	329.86	308.24	21.62
FY 2019-20	2,676.97	-	303.75	2,373.23	11.67%	2,525.10	294.68	275.61	19.07
FY 2020-21	2,373.23	-	303.75	2,069.48	11.67%	2,221.36	259.23	242.71	16.52
FY 2021-22	2,069.48	-	303.75	1,765.74	11.67%	1,917.61	223.79	209.82	13.97
FY 2022-23	1,765.74	-	303.75	1,461.99	11.67%	1,613.87	188.34	176.92	11.41
FY 2023-24	1,461.99	-	303.75	1,158.25	11.67%	1,310.12	152.89	144.03	8.86
FY 2024-25	1,158.25	-	303.75	854.50	11.67%	1,006.38	117.44	111.13	6.31

5.9.26 Higher variation is observed in FY 2015-16 on account of the revision in the CoD of Set 3 including 2 bays at 765 kV Ektuni Sub-station. On account of the change in CoD to 31 March, 2015 from earlier approved COD of 20 May, 2015 for Set 3 (excluding 2 bays at 765 kV Ektuni Sub-Station) and 27 May, 2016 for 2 bays at 765 kV Ektuni Sub-Station, the implication of interest expenses for Set 3 including the 2 bays at 765 kV Ektuni Sub-Station in FY 2015-16 is now for the entire year and for the loan portion of the total capital cost instead of the partial impact considered during the earlier approval considering then approved CoD. Accordingly, the opening balance of the loan in FY 2015-16 is also higher than the closing balance of the Loan in FY 2014-15 as the entire Set 3 is now considered to be commissioned on 31 March, 2015 and hence the loan balance corresponding to the capitalisation is considered to be added from the first day of the FY 2015-16. Hence, the interest cost is computed on a higher average loan balance in FY 2015-16 as compared to the earlier approval leading to the higher implication.

5.9.27 The impact in the first two years is only on account of the revision in the approved capital cost.

5.9.28 In addition to the above, the Commission in its Order in Case No. 169 of 2017 had allowed the impact of FERV on loan incurred till the CoD of Set 3 (i.e. of 20 May, 2015) and for Ektuni bays till 27 May, 2016 to the extent of Rs. 12.21 Crores in FY 2015-16 and Rs. 1.42 Crore in FY 2016-17. MEGPTCL had earlier (in Case No. 50 of 2016) claimed impact of FERV on loan only upto 31 March, 2015, as per their original claim of CoD. However, considering that the Commission had approved different COD for the Set 3 and Ektuni Bays, MEGPTCL had sought the impact of FERV on loan till the COD approved by the Commission during the proceedings in Case No. 169 of 2017. The relevant Paragraphs from the Order in Case No. 169 of 2017 are reproduced below:

> *"2.2.39. **MEGPTCL had earlier claimed FERV only upto 31-Mar-2015, as per their claim of CoD. However, the Commission in MYT Order had approved CoD date for Set-3 as 20-May-2015 and for Ektuni bays as 27-May-16, which is different from MEGPTCL's claim of 31-Mar-2015. Hence, MEGPTCL has now claimed FERV upto approved CoD.***

2.2.40. Further, MEGPTCL as part of MTR Petition has submitted detailed working of FERV on loan upto approved CoDs (viz. Rs 12.21 for FY15-16 and Rs 1.42 Cr for FY16-17) duly certified by the Auditor. The Commission has examined the same. In line with the provisions of the Regulations and necessary certificates in the matter, the Commission allows the additional interest cost on account of FERV on loan amounting to Rs. 12.21 Crore and Rs. 1.42 Crore for FY 2015-16 and FY 2016-17, respectively. ***Since, this cost is duly certified by the Auditor and pertains to the period prior to the approved CoD, the same has been considered under the total Capital Cost*** *and not under the Additional Capitalisation, as per the provisions set out in the relevant MYT Regulations. The same has been considered as part of the revised Capital Cost approved in the present MTR Order.*

2.2.41. ***Accordingly, the Commission approves the additional interest cost of Rs. 12.21 Crore and Rs. 1.42 Crore, towards the FERV on loan upto to the approved CoD, as a part of the overall project capital cost approved in this MTR Order."***

5.9.29 Considering that the COD for Set 3 including Ektuni bays has now been restated to 31 March, 2015 as per the Hon'ble ATE Judgment, the impact of FERV on loan beyond the restated CoD cannot be considered for the purpose of capitalisation. Accordingly, the amount of Rs. 13.63 Crore (12.21 + 1.42) which was earlier considered by the Commission as part of the capital cost of the project till the project CoD is treated in line with the approach adopted by the Commission in its Review Order in Case No 303 of 2018 for the remaining part of the FERV on loan amounting to Rs. 20.40 Crore for FY 2015-16 (for period post COD) i.e. this expenditure was allowed to be recovered as a revenue expenditure through the tariff. This cost has been clubbed as part of the Interest on Long Term Loans. Accordingly, the amount of Rs. 13.63 Crore is allowed as part of the revised ARR in FY 2015-16 and FY 2016-17 along with the applicable carrying cost. The year wise break-up of this cost is shown in the table below:

Table 5-16: Status of Post CoD FERV on Loan approved by the Commission (Rs. Crore)

Particulars	FY 2015-16		FY 2016-17	
	Upto 20.05.2015	21.05.2015 to 31.03.2016	01.04.2016 to 27.05.2016	28.05.2016 to 04.08.2016
FERV on Loan to be claimed for Set 3 (except Ektuni)	12.21	20.40	5.85	
FERV on Loan to be claimed for Bays at Ektuni Sub-station	1.42			-0.03
Total FERV Impact	34.03			5.82
Status	Approved			Not Approved

Note:

(i) Rs. 20.40 Crore (Post-CoD) was approved in Review Order in Case No. 303 of 2018 (Review of Order in Case No. 169 of 2017) and the impact passed on in MYT Order in Case No. 290 of 2019.

(ii) Rs. 5.82 Crore (5.85 -0.03) (Post-CoD) was disallowed in Review Order in Case No. 303 of 2018 (Review of Order in Case No. 169 of 2017).

(iii) Rs. 12.21 Crore (FY 2015-16) and Rs. 1.42 Crore (Rs. 1.18 Crore in FY 2015-16 & Rs. 0.24 Crore in FY 2016-17) (earlier considered as Pre-CoD) is approved in preset Order as Post-CoD FERV impact.

5.10 Interest on Working Capital (IoWC)

Commission's past approval

5.10.1 The Commission in the past Orders has approved the IoWC in line with the provisions of the applicable Regulations and also considering certain practical issues raised by MEGPTCL in its submissions.

5.10.2 The Commission had also considered the set-wise date of commissioning for computation of the interest on working capital proportionate to the numbers of days of commercial operations of the individual sets in the year of commissioning.

5.10.3 As discussed in Para 5.2 of the Order, three different Tariff Regulations were applicable during the period FY 2013-14 to FY 2024-25 for which the interest on working capital was approved by the Commission through three different Orders. The applicable provisions of the Tariff Regulations for different periods based on which the Commission approved the interest on working capital are as follows:

(i) FY 2013-14 to FY 2015-16:

IoWC as per Regulation 35 and mechanism for sharing of gains or losses on account of controllable factors as per Regulation 14 of the MYT Regulations, 2011

(ii) FY 2016-17 to FY 2019-20:

IoWC as per Regulation 31 and mechanism for sharing of gains or losses on account of controllable factors as per Regulation 11 of the MYT Regulations, 2015

(iii) FY 2020-21 to FY 2024-25:

IoWC as per Regulation 32 and mechanism for sharing of gains or losses on account of controllable factors as per Regulation 11 of the MYT Regulations, 2019

5.10.4 For the period FY 2013-14 to FY 2015-16, the Commission observed that in addition to MEGPTCL, other Licensees had also been facing difficulties in assessing the value of the spares maintained during the year for computation of the working capital requirements. Considering this position, the Commission, instead of actual spares-related data, applied a normative value for maintenance spares of 1% of the opening GFA, already considered in the MYT Regulations, 2015 and considered it for calculation of IoWC. For rest of the period from FY 2016-17 to FY 2024-25, the applicable MYT Regulations already specified the value of the maintenance spares equivalent to 1% of the opening GFA for the year.

5.10.5 As regards the value to be considered against the one and a half month equivalent of the expected revenue from transmission, charges at the prevailing Tariff, the approach adopted by the Commission in its past Orders has been retained for the purpose of computation of the IoWC.

5.10.6 As regards the value to be considered against O&M expenses for one month, the normative expenses including the lease rent for Akola II has been considered for all the years for computation of the interest on working capital.

5.10.7 As regards sharing of gains/(losses) on account of the IoWC, the Commission in FY 2013-14 to FY 2015-16 had not considered any sharing of gains and losses in absence of any actual working capital loans and the consequent interest on working capital loans thereof. From FY 2016-17 onwards, in absence of actual working capital loans, the entire normative IoWC was considered for sharing with the beneficiaries and in case of actual IoWC, the same was considered for the purpose of working out the sharing of gains / (losses).

5.10.8 Based on the above, the interest on working capital approved by the Commission for the period FY 2013-14 to FY 2024-25 in the past Orders is given in the Table 5-18 below.

Directions of the Hon'ble ATE:

5.10.9 The Hon'ble ATE Judgment does not have any specific ruling regarding IoWC. Accordingly, the impact of the Hon'ble ATE Judgment on the IoWC is primarily on account of the revised set-wise CoD approved by the Hon'ble ATE which is discussed in Para 4.3 of the Order and also on account of the revised Capital Cost approved by the Commission to implement the Hon'ble ATE Judgment.

5.10.10The above-mentioned rulings impact the elements forming part of the working capital computation, thus indirectly impacting the allowable IoWC.

MEGPTCL's Submission:

5.10.11MEGPTCL has submitted the revised working of IoWC after sharing of gain/ (loss). The components of Working Capital have been computed based on the prevailing regulation during the time of True-up. The interest rate is considered as per the approved rate by the Commission at the time of true-up. The IoWC after sharing of gain/ (loss) submitted by MEGPTCL is as below:

Table 5-17: Revised IoWC submitted by MEGPTCL (Rs. Crore)

Year	O&M Expenses (One Month)	Maintenance Spares	Revenue from Transmission Charges (1.5 Months)	Total Working Capital	Rate of Interest (% p.a.)	Interest on Working Capital	Actual Claim	Gain/ Loss	Revised IOWC post Gain/ Loss
FY 2013-14	3.79	1.86	62.83	68.48	14.75%	1.02	1.04	0.01	**1.03**
FY 2014-15	4.86	1.86	74.07	80.79	14.75%	11.92	12.08	0.05	**11.97**
FY 2015-16	8.78	4.80	155.78	169.36	14.75%	24.98	32.37	2.46	**27.44**
FY 2016-17	9.38	57.70	142.33	209.41	10.80%	22.62	23.71	0.36	**22.98**
FY 2017-18	8.56	57.70	141.88	208.14	10.18%	21.19	20.37	(0.55)	**20.64**
FY 2018-19	9.00	57.78	135.18	201.96	9.89%	19.97	17.74	(1.49)	**18.48**
FY 2019-20	8.94	57.84	130.86	197.64	9.55%	18.87	-	-	-
FY 2020-21	9.01	57.84	126.56	193.41	9.55%	18.47	-	-	-
FY 2021-22	9.36	57.84	122.82	190.02	9.55%	18.15	-	-	-
FY 2022-23	9.74	57.84	118.90	186.48	9.55%	17.81	-	-	-
FY 2023-24	10.12	57.84	115.00	182.97	9.55%	17.47	-	-	-
FY 2024-25	10.53	57.84	111.13	179.50	9.55%	17.14	-	-	-

Commission's Analysis and Ruling:

5.10.12The Commission is guided by the provisions of the applicable Regulations while computing IoWC, which have been discussed at above Para 5.10.3 of the Order and also by the approach taken by the Commission in the past Orders , which considers the practical difficulties faced by the Licensees as discussed at Para 5.10.4 of the Order.

5.10.13The approach adopted by MEGPTCL for computation of the revised IoWC and the resultant sharing of gains/losses is in variation to the approach adopted by the Commission for approval of IoWC and the consequent sharing of gains/losses thereof.

Some of the variations in the approach adopted by MEGPTCL for the computation is summarised below:

(i) One month of equivalent O&M expenses including lease rent for Akola II has been computed considering the net entitlement of O&M expenses after considering the sharing of gains / losses as against normative O&M expenses including lease rent for Akola II substation considered by the Commission for computation in past Orders.

(ii) 1.5 months equivalent revenue from transmission tariff has been computed by MEGPTCL by linking it to the re-determined ARR for the entire period instead of linking it to the recovery of transmission tariff based on InSTS Order in line with the approach adopted by the Commission from FY 2015-16 onwards. Prior to FY 2015-16, the Commission also computed the 1.5 months equivalent revenue from transmission tariff by linking it to re-determined ARR prior to considering the impact of sharing of gains and losses.

(iii) MEGPTCL has considered sharing of gains and losses on working capital by linking it to actual IoWC claimed in earlier Petitions. As against this, the Commission in FY 2013-14 to FY 2015-16 had not considered any sharing of gains and losses in absence of any actual working capital loans and the consequent IoWC loans thereof. From FY 2016-17 onwards, in absence of actual working capital loans, the entire normative IoWC was considered for sharing with the beneficiaries and in case of actual IoWC, the same was considered for the purpose of working out the sharing of gains / losses.

5.10.14 The rate of interest is considered same as that approved by the Commission in the past Orders which is in line with the provisions of the applicable Regulations – (i) Regulation 35.2 (b) of MYT Regulation, 2011; (ii) Regulation 31.2 (b) of MYT Regulations, 2015 and also considering the amendment of the definition of "Base Rate" as per the MYT (First Amendment) Regulations, 2015; and (iii) Regulation 32.2 (b) of MYT Regulations, 2019.

5.10.15 Accordingly, computation of the revised IoWC is based on the approach adopted by the Commission in the past Orders and the revised IoWC approved by the Commission is given in the table below:

Table 5-18: Revised IoWC approved by the Commission (Rs. Crore)

Year	O&M Expenses (One Month)	Maintenance Spares	Revenue from Transmission Charges (1.5 Months)	Total Working Capital	Rate of Interest (% p.a.)	Interest on Working Capital	Actual Working Capital Interest	Gain/ (Loss) to be shared	Revised IOWC post sharing of Gain/ (Loss) as per Hon'ble ATE Judgement	Originally approved IOWC post Gain/ Loss in relevant Orders	Variation
	a	b	c	d = a+b+c	e	f = d × e	g	h = (f-g) × 1/3	i = g + h	j	k = i - j
FY 2013-14	0.37	0.19	6.27	6.83	14.75%	1.01	-	-	**1.01**	**0.97**	**0.04**
FY 2014-15	4.24	2.25	73.39	79.89	14.75%	11.78	-	-	**11.78**	**11.23**	**0.55**
FY 2015-16	8.22	4.80	98.75	111.76	14.75%	16.49	-	-	**16.49**	**16.28**	**0.21**
FY 2016-17	7.82	57.64	180.39	245.85	10.79%	26.52	-	8.84	**8.84**	**8.68**	**0.16**
FY 2017-18	8.12	57.65	132.71	198.47	10.18%	20.20	3.27	5.64	**8.91**	**8.77**	**0.14**
FY 2018-19	8.50	57.72	138.84	205.06	9.89%	20.28	17.74	0.85	**18.59**	**18.45**	**0.14**
FY 2019-20	8.94	57.79	121.95	188.67	9.55%	18.02	-	-	**18.02**	**17.62**	**0.40**
FY 2020-21	9.01	57.79	121.67	188.46	9.55%	18.00	-	-	**18.00**	**17.60**	**0.40**
FY 2021-22	9.36	57.79	118.36	185.51	9.55%	17.72	-	-	**17.72**	**17.32**	**0.40**
FY 2022-23	9.74	57.79	114.27	181.79	9.55%	17.36	-	-	**17.36**	**16.97**	**0.40**
FY 2023-24	10.12	57.79	264.71	332.62	9.55%	31.77	-	-	**31.77**	**16.61**	**15.15**
FY 2024-25	10.53	57.79	112.56	180.87	9.55%	17.27	-	-	**17.27**	**16.27**	**1.01**

5.10.16 The variation in the FY 2023-24 is estimated to be higher as the Commission (as discussed in subsequent sections of the Order) has allowed recovery of incremental ARR along with the applicable carrying cost on account of the impact of implementation of the Hon'ble ATE Judgment in FY 2023-24. Accordingly, the additional recovery envisaged over and above the ARR for the year will impact the receivables component of the working capital and consequently impacting the overall IoWC.

5.11 Return on Equity (RoE):

<u>Commission's past approval</u>

5.11.1 The Commission in the past Orders has approved the RoE in line with the provisions of the applicable Regulations.

5.11.2 As discussed in Para 5.2 of the Order, three different Tariff Regulations were applicable during the period FY 2013-14 to FY 2024-25 for which the RoE was approved by the Commission through three different Orders. The applicable provisions of the Tariff Regulations for different periods based on which the Commission approved the RoE are as follows:

(i) FY 2013-14 to FY 2015-16:

RoE as per Regulation 32 of the MYT Regulations, 2011

(ii) FY 2016-17 to FY 2019-20:

RoE as per Regulation 28 of the MYT Regulations, 2015

(iii) FY 2020-21 to FY 2024-25:

RoE as per Regulation 29 and grossing up of the rate of RoE by effective tax rate as per Regulation 34.2 of the MYT Regulations, 2019

5.11.3 The Commission had considered the equity equivalent to 30% of the capitalisation and the rate of RoE as 15.5% for the period FY 2013-14 to FY 2019-20. The MYT Regulations, 2019 applicable for control period FY 2020-21 to FY 2024-25 have a modified methodology for providing the RoE. While the rate of RoE will be 15.5%, it will be bifurcated into a base rate of 14% and additional RoE linked to actual performance. The additional RoE shall be allowed at time of truing up for respective year based on actual performance, after prudence check of the Commission.

5.11.4 Further, the Regulation 34.2 of the MYT Regulations, 2019 specifies that the rate of RoE, including additional rate of RoE as allowed by the Commission under Regulation 29 of these Regulations shall be grossed up with the effective tax rate of respective financial year. Accordingly, the Commission has allowed the projected RoE from FY 2020-21 to FY 2024-25 considering the base rate of 14% grossed up for an effective Income Tax rate of 17.47% leading to a rate of RoE of 16.96%.

5.11.5 The Commission had also considered the set-wise date of commissioning for computation of the RoE proportionate to the numbers of days of commercial operations of the individual sets in the year of commissioning.

5.11.6 The RoE approved by the Commission for the period from FY 2013-14 to FY 2024-25 in the past Orders is given in the Table 5-20 below.

Directions of the Hon'ble ATE

5.11.7 The Hon'ble ATE Judgment does not have any specific ruling regarding RoE. Accordingly, the impact of the Hon'ble ATE Judgment on the RoE is primarily on account of the revised set-wise CoD approved by the Hon'ble ATE which is discussed at Para 4.3 of the Order and also on account of the revised Capital Cost approved by the Commission to implement the Hon'ble ATE Judgment.

5.11.8 The revised CoD will mean earlier start of recovery of the ROE and upward revision of Capital Cost will mean higher amount of allowable equity component and the resultant RoE.

MEGPTCL's Submission

5.11.9 MEGPTCL has submitted the revised RoE based on changes in the approved capital cost consequent to the Hon'ble ATE Judgment. The opening balance of equity for the year FY 2013-14 has been considered as the revised GFA added during the year for FY 2013-14. No capitalisation during the year has been considered for FY 2013-14. The revised RoE as submitted by MEGPTCL is shown below:

Table 5-19: RoE submitted by MEGPTCL (Rs. Crore)

Year	Regulatory Equity at the beginning of the year	Capitalisation during the year	Equity portion of capitalisation during the year	Regulatory Equity at the end of the year	Return on Equity (%)	Revised Return on Regulatory Equity
FY 2013-14	669.54	-	-	669.54	15.50%	**10.52**
FY 2014-15	823.31	10.66	3.20	826.50	15.50%	**127.40**
FY 2015-16	1,727.90	10.24	3.07	1,730.97	15.50%	**268.06**
FY 2016-17	1,730.97	0.37	0.11	1,731.08	15.50%	**268.31**
FY 2017-18	1,731.08	7.55	2.27	1,733.35	15.50%	**268.49**
FY 2018-19	1,733.35	6.23	1.87	1,735.22	15.50%	**268.81**
FY 2019-20	1,735.22	-	-	1,735.22	15.50%	**268.96**
FY 2020-21	1,735.22	-	-	1,735.22	17.84%	**309.62**
FY 2021-22	1,735.22	-	-	1,735.22	17.84%	**309.62**
FY 2022-23	1,735.22	-	-	1,735.22	17.84%	**309.62**
FY 2023-24	1,735.22	-	-	1,735.22	17.84%	**309.62**
FY 2024-25	1,735.22	-	-	1,735.22	17.84%	**309.62**

Commission's Analysis and Ruling:

5.11.10 The Commission has re-computed the RoE for the FY 2013-14 to FY 2024-25 to pass on the consequential impact of the implementation of the Hon'ble ATE Judgment in line with the provision of the relevant Regulations as discussed at above Para 5.11.2 of the Order.

5.11.11 The Commission has considered the addition of GFA during the FY 2013-14 as the asset was put to use during the FY 2013-14. Accordingly, the equity part of this capitalisation was considered as addition during the year and not as opening equity as considered by MEGPTCL.

5.11.12 The approach adopted by MEGPTCL was reviewed and it was observed that MEGPTCL has considered the income tax rate of 21.54% for grossing up of the RoE as per the provisions of the MYT Regulations, 2019 for the period FY 2020-21 to FY 2024-25. It was highlighted to MEGPTCL in the data gaps that it has considered the effective tax rate as 21.54% as against approved rate of 17.47% considered by the Commission for the period FY 2020-21 to FY 2024-25 in its Order in Case No. 290 of 2019 and accordingly, necessary changes need to be done in the calculations.

5.11.13 In response to the query raised by the Commission, MEGPTCL contended that it is claiming revised truing up for the year 2013-14 to 2018-19 in present proceedings and the Commission itself had approved Income Tax Rate of 21.55% by its Order dated 30 March, 2020 in Case No. 290 of 2019 for the FY 2018-19 and accordingly, MEGPTCL is claiming the same tax rate in the present matter.

5.11.14 It is to note that the rate of 21.55% was approved by the Commission for computation of the income tax on truing up of FY 2018-19 in its Order in Case No. 290 of 2019. However, in the said Order, as regards the computation of the RoE for the period FY 2020-21 to FY 2024-25, the Commission had stated the following:

> *"4.6.4. As above, the MYT Regulations specify that the effective tax rate as per latest truing up year shall be considered for grossing up the RoE for MYT Control Period.* ***The MAT rate for FY 2017-18 and FY 2018-19 was 21.34% and 21.55%, respectively.*** *The Corporate Tax Rate for FY 2017-18 and FY 2018-19 was 34.608% and 34.95%, respectively. However, the GoI has reduced the effective Income Tax rates recently.* ***The effective MAT rate is reduced to 17.47% and effective Corporate Tax rate is reduced to 25.17%.*** *Thus, the Utilities are envisaged to derive the benefit of this revised tax rate in the coming years. The Commission is of the view that the benefit of the reduced tax rate shall be available to the consumers and the same should be factored in the ARR projection itself.* ***Therefore, the Commission in exercise of inherent powers to deal in the best interest of utility and consumers in just and equitable manner and also in exercise of "Power to remove difficulties" as per Regulation 106 of MYT Regulations, 2019 and considers effective tax rate as 17.47% for arriving at the rate of grossed up ROE for the 4th Control Period****.*
>
> *4.6.5.* ***Accordingly, considering applicability of MAT rate for MEGPTCL, the RoE of 14 % grossed up for MAT rate of 17.47% works out to 16.96%.****"*

5.11.15 Accordingly, it is evident that the Commission had considered the income tax rate of 17.47% in Case No. 290 of 2019 to arrive at the rate of RoE and same rate is used for the purpose of the present computations. This rate may be revised at the time of the truing up of the relevant years depending on then applicable income tax rate.

5.11.16 Based on the above, the revised RoE proposed to be approved is given in the table below:

Table 5-20: Return on Equity approved by the Commission (Rs. Crore)

Year	Regulatory Equity at the beginning of the year	Capitalisation during the year	Equity portion of capitalisation during the year	Regulatory Equity at the end of the year	Rate of Return on Equity (%)	Revised Return on Regulatory Equity as per Hon'ble ATE Judgement	Originally approved Return on Regulatory Equity in relevant Orders	Variation
	a	b	c = b × 30%	d=a+c	e	f = (a+d) ÷ 2 × e	g	h=f-g
FY 2013-14	-	2,202.81	660.84	660.84	15.50%	**10.38**	**9.83**	**0.55**
FY 2014-15	660.84	552.21	165.66	826.50	15.50%	**126.73**	**120.07**	**6.66**
FY 2015-16	1,726.23	10.24	3.07	1,729.31	15.50%	**267.80**	**230.50**	**37.31**
FY 2016-17	1,729.31	0.37	0.11	1,729.42	15.50%	**268.05**	**248.60**	**19.45**
FY 2017-18	1,729.42	7.55	2.27	1,731.68	15.50%	**268.24**	**249.16**	**19.07**
FY 2018-19	1,731.68	6.23	1.87	1,733.55	15.50%	**268.56**	**249.45**	**19.10**
FY 2019-20	1,733.55	-	-	1,733.55	15.50%	**268.70**	**249.45**	**19.25**
FY 2020-21	1,733.55	-	-	1,733.55	16.96%	**294.08**	**273.01**	**21.07**
FY 2021-22	1,733.55	-	-	1,733.55	16.96%	**294.08**	**273.01**	**21.07**
FY 2022-23	1,733.55	-	-	1,733.55	16.96%	**294.08**	**273.01**	**21.07**
FY 2023-24	1,733.55	-	-	1,733.55	16.96%	**294.08**	**273.01**	**21.07**
FY 2024-25	1,733.55	-	-	1,733.55	16.96%	**294.08**	**273.01**	**21.07**

5.11.17 Higher variation is observed in FY 2015-16 on account of the revision in the CoD of Set 3 including 2 bays at 765 kV Ektuni Sub-station. On account of the change in CoD to 31 March, 2015 from earlier approved COD of 20 May, 2015 for Set 3 (excluding 2 bays at 765 kV Ektuni Sub-Station) and 27 May, 2016 for 2 bays at 765 kV Ektuni Sub-Station, the implication of RoE expenses for Set 3 including the 2 bays at 765 kV Ektuni Sub-Station in FY 2015-16 is now for the entire year and for the equity portion of the total capital cost instead of the partial impact considered during the earlier approval considering the then approved CoD. Accordingly, the opening balance of the equity in FY 2015-16 is also higher than the closing balance of the equity in FY 2014-15 as the entire Set 3 is now considered to be commissioned on 31 March, 2015 and hence the equity balance corresponding to the capitalisation is considered to be added from the first day of the FY 2015-16. Hence, the RoE is computed on a higher average equity balance in FY 2015-16 as compared to the earlier approval leading to the higher implication.

5.11.18 The impact in the first two years is only on account of the revision in the approved capital cost.

5.12 Contingency Reserve:

<u>Commission's past approval</u>

5.12.1 The Commission in the past Orders has approved the contribution to contingency reserve in line with the provisions of the applicable Regulations.

5.12.2 As discussed in Para 5.2 of the Order, three different Tariff Regulations were applicable during the period FY 2013-14 to FY 2024-25 for which the contribution to contingency reserve was approved by the Commission through three different Orders. The applicable provisions of the Tariff Regulations for different periods based on which the Commission approved the contribution to contingency reserve are as follows:

(i) FY 2013-14 to FY 2015-16:

Contribution to contingency reserve - Regulation 36 of the MYT Regulations, 2011

(ii) FY 2016-17 to FY 2019-20:

Contribution to contingency reserve - Regulation 34 of the MYT Regulations, 2015

(iii) FY 2020-21 to FY 2024-25:

Contribution to contingency reserve - Regulation 35 of the MYT Regulations, 2019

5.12.3 The Commission had considered the set-wise date of commissioning for computation of the prorate recovery of the contribution to contingency reserve proportionate to the numbers of days of commercial operations of the individual sets in the year of commissioning.

5.12.4 Further, in the Order in Case No. 169 of 2017, the Commission observed that MEGPTCL had not made any investments of such reserves despite allowing the same in past Orders. Accordingly, no contribution to Contingency Reserve was allowed for the FY 2015-16 & FY 2016-17 and direction was issued to MEGTPCL to invest within 3 months from issuance of the Order, the amount of contingency reserve allowed till date in the Securities authorised under the Indian Trusts Act, 1882 in line with the provisions of MYT Regulations, 2011 and MYT Regulations, 2015. The disallowance of the contribution to contingency reserve in FY 2015-16 and FY 2016-17 has been challenged by MEGPTCL in Appeal No. 18 of 2019 and the matter is pending before the Hon'ble ATE.

5.12.5 Further, the Commission also levied holding cost on the contribution to contingency reserve for the FY 2013-14 and FY 2014-15 which had been approved for recovery and yet investment in the reserve was not done by MEGPTCL. The holding cost was applied for the period beyond the specified period for investment as per the MYT Regulations, 2011.

5.12.6 As regards the investments in FY 2017-18 and FY 2018-19, the Commission in its Order in Case No. 290 of 2019 concluded that actual investment had been made though delayed (beyond the allowed period of 6 months from the end of the relevant financial year), towards the contingency reserves for FY 2017-18 and hence the same can be carry forwarded to FY 2018-19. Accordingly, the Commission approved the total investment of Rs. 26.79 Crore (Rs. 13.38 Crore + Rs. 13.41 Crore) towards contribution to contingency reserves for FY 2018-19.

5.12.7 Further, the Commission also noted that MEGPTCL has invested corpus accumulated from contribution to contingency reserve, in Mutual Fund Growth Option wherein the investments are market linked and carries greater market risk. In the past, the Net Asset Value (NAV) of Mutual Fund were volatile due to dependency on market conditions and there have been instances wherein the losses are incurred. Therefore, the investment in Mutual Funds does not serve the intent of the MYT Regulations of making investment towards Contingency Reserves. The intent of making investment towards Contingency Reserves is to create a Reserve Fund by the Utility to deal with unforeseen circumstances to protect the consumers from Tariff shock in such situations. Accordingly, the Commission directed MEGPTCL to do the following:

> *"Therefore, the Commission in exercise of inherent powers to deal in the best interest of utility and consumers in just and equitable manner and also in exercise of "Power to remove difficulties" as per Regulation 102 of MYT Regulations, 2015 directs MEGPTCL to transfer the existing Mutual Fund investment towards Contribution to Contingency Reserve allowed for the FY 2013-14, FY 2014-15, FY 2017-18 and FY 2018-19 to specified investment instruments, i.e., Fixed Deposit or Government Securities (G-Sec – 10 year) within the 6 months of the issuance of this Order. Also, MEGPTCL should ensure that the Contribution to Contingency Reserve for future period in the above specified investment instrument."*

5.12.8 The contribution to the contingency reserve for the FY 2020-21 to FY 2024-25 was approved in line with the provisions of the MYT Regulations, 20219.

5.12.9 Accordingly, the contribution to contingency reserve approved by the Commission from FY 2013-14 to FY 2024-25 is given in the Table 5-22 below.

<u>Directions of Hon'ble ATE</u>

5.12.10 MEGPTCL had objected to the Commission's decision regarding levying of holding cost on account of delay in investment in the contribution to contingency reserve approved by the Commission. The Commission has stated that considering that the carrying cost approved for FY 2013-14 and FY 2014-15 already includes component of Contribution to Contingency Reserve and that any delay in investment of the funds available under the approved Contingency Reserves beyond the time-frame permitted needs to be compensated.

5.12.11 MEGPTCL further stated that the Commission had further opined that allowing the retention of the approved funds beyond the permitted time and also compensating MEGPTCL for the delay in recovery of ARR through carrying cost would result in a double benefit to MEGPTCL.

5.12.12 MEGPTCL further stated that while the holding cost was worked out considering the rate of Interest at 14.75%, 14.29% & 10.80% for the years FY 2014-15, FY 2015-16 & FY 2016-17 respectively, the return on Investment made to Securities Authorised under Section 20 of Indian Trust Act, 1882 remains approximately 6-7%. Accordingly, the rate of interest considered by the Commission in excess of 6-7% for working out Holding Cost of Rs 0.95 Crore is not justified and consequently liable to be set aside.

5.12.13 Based on the scrutiny of the MEGPTCL submission, the Hon'ble ATE concluded the following:

> *"12.8 Issue No.8 :- Holding cost of Interest on contingency reserves.*
>
> *We do not find any infirmity in the decision of the State Commission on this issue. However, holding cost shall be applicable only on the amount that was*

recovered from the consumers and not invested as contribution to contingency reserves."

5.12.14 Accordingly, the impact of the Hon'ble ATE Judgment on the contribution to contingency reserve will be primarily on account of the revised set-wise CoD approved by the Hon'ble ATE which is discussed in Para 4.3 of the Order and also on account of the revised Capital Cost approved by the Commission to implement the Hon'ble ATE Judgment.

5.12.15 The revised CoD will mean earlier start of recovery of the contribution contingency reserve and upward revision of Capital Cost will mean higher amount of allowable contribution to contingency reserve.

5.12.16 However, the Commission has reviewed the stand taken in the past Orders and has accordingly ruled regarding allowing / disallowing additional impact on the contribution to contingency reserve in section dealing with the Commission's analysis and rulings below.

5.12.17 The contribution to contingency reserve approved by the Commission in the past Orders is given in the Table 5-22 below.

MEGPTCL's Submission

5.12.18 MEGPTCL has submitted revised working of contingency reserve due to change in GFA. The submission of MEGPTCL for contingency reserve is as shown below:

Table 5-21: Contingency Reserve submitted by MEGPTCL (Rs. Crore)

Year	Opening Balance of Contingency Reserves	Opening Gross Fixed Assets	Opening Balance of Contingency Reserves as % of Opening GFA	Contribution to Contingency Reserves during the year	Closing Balance of Contingency Reserves	Closing Balance of Contingency Reserves as % of Opening GFA
FY 2013-14	-	2,231.81	0.00%	0.57	0.57	0.03%
FY 2014-15	0.57	2,744.35	0.02%	6.86	7.43	0.27%
FY 2015-16	2.63	5,759.66	0.05%	14.40	17.03	0.30%
FY 2016-17	17.03	5,769.90	0.30%	14.42	31.45	0.55%
FY 2017-18	31.45	5,770.27	0.55%	14.43	45.88	0.80%
FY 2018-19	45.88	5,777.82	0.79%	14.44	60.32	1.04%
FY 2019-20	60.32	5,784.05	1.04%	14.46	74.78	1.29%
FY 2020-21	74.78	5,784.05	1.29%	14.46	89.25	1.54%
FY 2021-22	89.25	5,784.05	1.54%	14.46	103.71	1.79%
FY 2022-23	103.71	5,784.05	1.79%	14.46	118.17	2.04%
FY 2023-24	118.17	5,784.05	2.04%	14.46	132.63	2.29%
FY 2024-25	132.63	5,784.05	2.29%	14.46	147.09	2.54%

Commission's Analysis and Ruling:

5.12.19 The Commission has re-computed the contribution to contingency reserve in line with the provisions of the applicable MYT Regulations for different periods as discussed at above Para 5.12.2 of the Order and also considering the stand taken by the Commission in the past Orders.

5.12.20 The Commission during the past true-up had approved the contribution to contingency reserve for FY 2013-14 and FY 2014-15 on a pro-rata basis based on the number of operational days for the Sets during the year. However, for the FY 2015-16 and FY 2016-17, the Commission had not allowed any contribution to contingency reserve considering that the Regulations mandates investment of the contingency reserve where it has been allowed as part of the ARR and in view of the fact that MEGPTCL had not made any investments, no contingency reserve was allowed in these years.

5.12.21 Further, considering that there was a delay in making investments in FY 2013-14 and FY 2014-15, the Commission had levied holding cost on the amount of contribution to contingency reserves approved by the Commission as discussed at Para 5.12.5 of this Order and the Hon'ble ATE had not found any infirmity in the Order of the Commission in its matter as discussed at Para 5.12.13 of the Order.

5.12.22 In case of FY 2017-18 and FY 2018-19, considering that actual investment had been made though delayed, towards the contingency reserves for FY 2017-18, the same were carry forwarded to FY 2018-19 and accordingly, the Commission approved the total investment of Rs. 26.79 Crore (Rs. 13.38 Crore + Rs. 13.41 Crore) towards contribution to contingency reserves for FY 2018-19.

5.12.23 The approach adopted by the Commission in approval of the contribution to contingency reserve in the past wherein in case no investments were done for a year, in such cases, no contribution was allowed. Considering the past trends of investments done by MEGPTCL especially for the trued up years wherein in some years the investment has been delayed and in some years the investment was not done at all, the Commission is of opinion that MEGPTCL should retain the Contribution to Contingency reserve as approved by the Commission in respective True-up years in the past Orders and no further adjustments are approved to be done to the same considering the impact of the Hon'ble ATE Judgment.

5.12.24 For FY 2019-20, the necessary adjustment may be done at the time of truing up based on the actual investments done by MEGPTCL as the timeframe available for making the investments for the year is already over i.e September 2020. Accordingly, no additional contribution to contingency reserve considering the change in the GFA is allowed for the past period up to FY 2019-20.

5.12.25 The Commission has allowed revised Contribution to contingency reserve from FY 2020-21 onwards assuming that MEGPTCL will undertake investment as the time period to invest is still available till September 2021. Accordingly, for the period starting from FY 2020-21, the necessary changes in the contribution to contingency reserve is allowed based on the revised GFA consequent to the Hon'ble ATE Judgment. The opening balance of Contingency reserve considered for FY 2020-21 is considered same as approved in the Order in Case No. 290 of 2019. The approved Contingency Reserve by the Commission is as shown below:

Table 5-22: Contingency Reserve as approved by the Commission (Rs. Crore)

Year	Opening Balance of Contingency Reserves	Opening Gross Fixed Assets	Opening Balance of Contingency Reserves as % of Opening GFA	Contribution to Contingency Reserves during the year as per Hon'ble ATE Judgement	Closing Balance of Contingency Reserves	Closing Balance of Contingency Reserves as % of Opening GFA	Orginally approved contribution to contingency reserve in relevant Orders	Variation
	a	b	c = a ÷ b	d = b × 0.25%	e = a + d	f = e ÷ b	g	h = f - g
FY 2013-14	-	-	0.00%	0.53	-	0.00%	0.53	-
FY 2014-15	-	-	0.00%	6.44	-	0.00%	6.44	-
FY 2015-16	-	-	0.00%	-	-	0.00%	-	-
FY 2016-17	-	-	0.00%	-	-	0.00%	-	-
FY 2017-18	-	-	0.00%	-	-	0.00%	-	-
FY 2018-19	-	-	0.00%	26.79	-	0.00%	26.79	-
FY 2019-20	-	-	0.00%	13.41	-	0.00%	13.41	-
FY 2020-21	47.17	5,778.51	0.82%	14.45	61.62	1.07%	13.41	1.03
FY 2021-22	61.62	5,778.51	1.07%	14.45	76.07	1.32%	13.41	1.03
FY 2022-23	76.07	5,778.51	1.32%	14.45	90.51	1.57%	13.41	1.03
FY 2023-24	90.51	5,778.51	1.57%	14.45	104.96	1.82%	13.41	1.03
FY 2024-25	104.96	5,778.51	1.82%	14.45	119.40	2.07%	13.41	1.03

Note: (i) The opening balance of contingency reserve and revised opening GFA for the period FY 2013-14 to FY 2019-20 have not been shown as no change is considered. The value of contribution to contingency reserve for these years is shown in the 5th column.

(ii) The opening balance of contingency reserve shown in FY 2020-21 is as per the value approved in Order in Case No. 290 of 2019.

(iii) No contribution to contingency reserve was allowed in FY 2015-16 and FY 2016-17 and the contribution for FY 2017-18 was allowed in FY 2018-19 on account of delay in actual investment by MEGPTCL. Hence, the value of contribution to contingency reserve is higher in FY 2018-19 as compared to other years.

5.13 Non-Tariff Income (NTI):

<u>Commission's past approval</u>

5.13.1 The Commission in the past Orders has approved the NTI in line with the provisions of the applicable Regulations.

5.13.2 As discussed at Para 5.2 of the Order, three different Tariff Regulations were applicable during the period from FY 2013-14 to FY 2024-25 for which NTI was approved by the Commission through three different Orders. The applicable provisions of the Tariff Regulations for different periods based on which the Commission approved the NTI are as follows:

(i) FY 2013-14 to FY 2015-16:

Non-tariff - Regulation 62 of the MYT Regulations, 2011

(ii) FY 2016-17 to FY 2019-20:

Non-tariff - Regulation 34 of the MYT Regulations, 2015

(iii) FY 2020-21 to FY 2024-25:

Non-tariff - Regulation 35 of the MYT Regulations, 2019

5.13.3 The Commission in its Order in Case No. 50 of 2016 had noted that as on 31 March, 2016, according to the details submitted by STU, Rs. 31.57 Crore of DPC is to be recovered by MEGPTCL from TSUs. Hence, in line with its earlier stand, the Commission had considered Rs. 31.57 Crore as part of the NTI for FY 2015-16.

5.13.4 Subsequently in its Order in Case No. 169 of 2017, the Commission on truing up of FY 2015-16, revised the amount of DPC considered as part of the NTI to Rs. 32.13 Crore based on the information available in the audited annual accounts.

Directions of Hon'ble ATE:

5.13.5 MEGPTCL had raised two issues pertaining to NTI in its Appeal No. 260 of 2016. The first issue pertains to the erroneous inclusion of DPC as part of the NTI and the second issue pertains to wrongful consideration of income from interest and profit from sale of investment as NTI.

5.13.6 As regards the first issue, MEGPTCL had contended that Commission has erroneously considered the DPC as NTI and accordingly reduced the ARR to that extent. This had resulted in an under recovery for MEGPTCL of approximately Rs 31.57 Crore during the period from year 2013 to 2016. Such an approach is contrary to the envisaged purpose of the said DPC.

5.13.7 As per Regulation 68 of the MYT Regulations, 2011, the Transmission Licensees are entitled to DPC for the delay in payment of transmission charges. However, Regulation 62 and 68 of MYT Regulations, 2011 are silent about treatment of DPC as NTI of Transmission Licensees. Regulation 2.1(42) of MYT Regulations, 2011 defines "non-tariff income" as an income which is other than the tariff for a Transmission Licensee. However, payment of compensation on account of delay in payment of tariff is also a tariff income.

5.13.8 Regulation 43.1 of MYT Regulations, 2011 pertaining to generation business contains an indicative list of various heads to be considered as NTI including interest on delayed payments. However, in Regulation 62.1 pertaining to transmission business, there is no indicative list provided NTI. MEGPTCL has also quoted certain Hon'ble Supreme Court Judgments which contend that by no stretch can a provision of one section of a statute, be read into another provision of the statute.

5.13.9 MEGPTCL also stated that the subsequent Regulations i.e. MYT Regulations, 2015 in Regulation 36.3 provided that the delayed payment charges and the interest therein, are not to be considered for calculation of the NTI of the Transmission Licensees.

5.13.10 The Hon'ble ATE stated that it had considered similar contentions raised by Adani Transmission (India) Ltd and Commission with regards to provisions of MYT Regulations, 2011 in the Judgment dated 29 May, 2019 in Appeal No 250 of 2016. After considering the MYT Regulations, 2011 and various other judicial pronouncements, the Hon'ble ATE held that DPC is in the nature of compensatory charges and it would be incorrect to treat DPC as not tariff income. Accordingly, in light of the above Judgment of the Hon'ble ATE, DPC cannot be considered as NTI. The Judgment of the Hon'ble ATE in this regards is reproduced below:

> *"**12.4 Issue No.4 :- DPC as Non-tariff income***
>
> *In light of the judgment of this Tribunal dated 29.05.2019 in Appeal No. 250 of 2016, DPC cannot be considered as non-tariff income. Accordingly, this issue is decided in favour of the Appellant."*

5.13.11 As regards the second issue, MEGPTCL had contended that the Commission has wrongly considered income from interest and profit from sale of investment of Rs. 0.33 Crore as NTI. MEGPTCL has contended that Income earned by MEGPTCL is by way of investment from its RoE and hence such income need not be considered as part of NTI.

5.13.12 The Hon’ble ATE examined the provisions of the MYT Regulations, 2011 and noted that the Regulations did not have ‘Income from Investment’ as part of NTI. However, the approach paper for MYT Regulations, 2011 had provided that interest earned from RoE is to be retained by the Licensee.

5.13.13 The Hon’ble ATE also noted the stand of the Commission that in absence of submission of any documentary evidence or any justification submitted by MEGPTCL in response to the clarification sought by the Commission, the said amount of Rs. 0.33 Crore was included as part of the NTI. However, the Hon’ble ATE opined that while the Appellant should have submitted the information sought by the Commission, however, it also observed that the Commission should have straight away sought details about the source of aforesaid interest/investment from MEGPTCL after observing it in the audited accounts for FY 2014-15 instead of seeking clarification for not projecting any NTI for FY 2014-15.

5.13.14 Accordingly, the Hon’ble ATE remand this issue to the Commission to reconsider the issue as per the appropriate Regulations after seeking necessary details and justification from MEGPTCL. The ruling of the Hon’ble ATE in this regards is as follows:

> *“**12.7 Issue No.7 :- Income from interest & profit from sale of investment considered as non-tariff income***
>
> *We decide to remand this issue to the State Commission to reconsider as per the appropriate regulation after seeking necessary details and justification from the Appellant.”*

5.13.15 The impact of the above rulings will be to the extent of reduction in NTI considered for FY 2014-14 and FY 2015-16 by an amount equivalent to the interest & profit on sale of investment and DPC, respectively, and the consequent increase in the overall ARR for the FY 2014-15 and FY 2015-16.

<u>MEGPTCL’s Submission:</u>

5.13.16MEGPTCL has submitted to exclude the DPC of Rs. 31.57 Crore from the NTI in the FY 2015-16.

5.13.17 MEGPTCL has submitted that the Commission, in Order in Case No. 50 of 2016 dated 05 July, 2016, disallowed Rs. 0.33 Crore pertaining to the income earned by MEGPTCL considering the same as NTI. MEGPTCL submitted that the said income was earned from the investment made from RoE. MEGPTCL therefore submits that in terms of Regulations, such income cannot be treated as NTI and requests to not consider it as NTI in the present petition.

<u>Commission’s Analysis and Ruling:</u>

5.13.18 The re-computation of the NTI is guided by the provisions of the applicable Regulations as discussed at Para 5.13.2 of the Order and the stand taken by the Commission in the past Order.

5.13.19 The Commission has considered the submission of exclusion of DPC amount from the NTI in FY 2015-16 in line with the Hon’ble ATE Judgment. As regards the amount of DPC to be considered, the Commission had considered Rs. 31.57 Crore in FY 2015-

16 (provisional truing up) which was based on the information submitted by the STU. This is also in line with the claim by MEGPTCL in the present Petition. However, the Commission in its Order in Case No.169 of 2017 which included the final truing up of FY 2015-16 has considered an amount of Rs. 32.13 Crores as income from DPC. The relevant Para from the Order in Case No. 169 of 2017 is reproduced below:

"3.9.12. ***Further, for FY 2015-16, the income from DPC of Rs. 32.13 Crore is considered by the Commission, booked under Other Income of Annual Audited Accounts for FY 2015-16, which has also been confirmed by Petitioner in its replies to Data Gaps****. Transmission Licensees are entitled to DPC for delay in payment by the TSUs as per Regulation 68 of the MYT Regulation, 2011, and the Commission has consistently treated such DPC as part of Non-Tariff Income in all its recent Orders under the MYT Regulation, 2011.* ***The data furnished by the STU regarding the DPC due to Transmission Licensees as on 31 March, 2016, shows that DPC of Rs. 31.57 Crore is to be recovered by MEGPTCL from the TSUs****."*

5.13.20 Considering the above, the Commission excludes an amount of Rs. 32.13 Crore against DPC as considered in its Order in Case No. 169 of 2017 which involved the final truing up of the FY 2015-16 instead of Rs. 31.57 Crore as claimed by MEGPTCL in line with the Order in Case No. 50 of 2016 which included the provisional truing up of FY 2015-16.

5.13.21 As regards the issue of non-inclusion of the income from interest and profit from sale of investments, the Commission had sought supporting documents from MEGPTCL for substantiating investment from RoE as claimed under Para 10.1 of the Hon'ble ATE Judgment along with necessary justification. It was also observed that MEGPTCL in its excel sheet submission had retained the amount of Rs. 0.33 Crore as part of the NTI in FY 2014-15 while claiming that it should not be considered.

5.13.22 In response to the datagaps, MEGPTCL has submitted Statutory Auditors Certificate dated 14 December, 2020 certifying that Rs 0.33 Crore earned by it during the FY 2014-15 is from MEGPTCLs investments out of its Return on Equity. Considering the same and approach adopted by the Commission in the past, it is proposed to allow the exclusion of this cost from NTI for FY 2014-15 along with its consequential impact on the ARR components including the carrying cost in the present Order.

5.13.23 Other than FY 2014-15 and FY 2015-16, no change in the NTI is envisaged for any of the other years in the period FY 2013-14 to FY 2024-25. The NTI approved by the Commission is given in the table below:

Table 5-23: NTI approved by the Commission (Rs. Crore)

Particular	Non-Tariff Income approved as per Hon'ble ATE Order	Non-Tariff Income approved in previous relevant Orders	Variation
	a	b	c = a-b
FY 2013-14	-	-	-
FY 2014-15	0.33	-	0.33
FY 2015-16	32.52	0.39	32.13
FY 2016-17	0.69	0.69	-
FY 2017-18	0.50	0.50	-
FY 2018-19	0.74	0.74	-
FY 2019-20	-	-	-
FY 2020-21	1.62	1.62	-
FY 2021-22	3.70	3.70	-
FY 2022-23	4.62	4.62	-
FY 2023-24	5.54	5.54	-
FY 2024-25	6.46	6.46	-

5.14 Income Tax

Commission's past approval

5.14.1 The Commission in the past Orders has approved the income tax in line with the provisions of the applicable Regulations.

5.14.2 As discussed at Para 5.2 of the Order, three different Tariff Regulations were applicable during the period FY 2013-14 to FY 2024-25 for which the income tax was approved by the Commission through three different Orders. The applicable provisions of the Tariff Regulations for different periods based on which the Commission approved the income tax are as follows:

(i) FY 2013-14 to FY 2015-16:

Income Tax - Regulation 34 of the MYT Regulations, 2011

(ii) FY 2016-17 to FY 2019-20:

Income Tax - Regulation 33 of the MYT Regulations, 2015

(iii) FY 2020-21 to FY 2024-25:

Income Tax - Regulation 34 of the MYT Regulations, 2019

5.14.3 The Commission while approving the income tax also ensured that the impact of the income tax on efficiency gains, incentive and DPC, as applicable, is not allowed as a pass through in the ARR in line with the Regulation 34.1 of MYT Regulations, 2011, Regulation 33.1 of MYT Regulations, 2015 and Regulation, 34.1 of the MYT Regulations, 2019.

5.14.4 Further, for the period from FY 2020-21 to FY 2024-25, the income tax is only allowed on the RoE, including Additional RoE by grossing up the rate of RoE with the effective tax rate of respective financial year. The approvals has been accordingly given by the

Commission considering the base rate for RoE of 14% grossed up with an effective tax rate of 17.47% leading to a effective rate of RoE of 16.96% for the period FY 2020-21 to FY 2024-25.

5.14.5 The details of the year-on-year approvals of Income tax given in the past Orders is given in the Table 5-26 below.

Directions of the Hon'ble ATE:

5.14.6 The Hon'ble ATE Judgment does not have any specific ruling regarding income tax. Accordingly, the impact of the Hon'ble ATE Judgment on the income tax for the period from FY 2013-14 to FY 2019-20 is a consequential impact due to the change in the revised set-wise CoD approved by the Hon'ble ATE which is discussed in Para 4.3 of the Order and also on account of the revised Capital Cost approved by the Commission to implement the Hon'ble ATE Judgment. These changes impact the elements like efficiency gain and availability incentive which is considered while computing the allowable income tax.

5.14.7 As regards the period from FY 2020-21 to FY 2023-24, the consequential impact is on account of the change in the RoE which is linked to changes in the capital cost.

MEGPTCL's Submission:

5.14.8 MEGPTCL has submitted revised Income Tax net of ARR (excluding of gains/losses) & ARR trued up for the period FY 2013-14 to FY 2018-19.

Table 5-24: Income Tax submitted by MEGPTCL (Rs. Crore)

Particulars	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
O&M	-	-	6.70	4.70	-	-
IOWC	0.01	0.05	2.46	0.36	-0.55	-1.49
Revised ARR	50.95	592.55	1,246.25	1,138.65	1,135.02	1,081.45
Net ARR (excl Gain/ Loss)	50.95	592.50	1,237.08	1,133.59	1,135.57	1,082.93
Approved ARR	**48.21**	**563.84**	**1,035.02**	**1,039.73**	**1,042.79**	**1,030.38**
Income Tax Rate	21.55%	21.55%	21.55%	21.55%	21.55%	21.55%
Income Tax	**0.59**	**6.18**	**43.54**	**20.23**	**19.99**	**11.33**

5.14.9 Additionally, MEGPTCL has also claimed additional income tax of Rs. 48.33 Crore on the carrying cost which will be recoverable on the differential ARR (originally approved minus revised ARR) up to FY 2020-21 assuming that the Commission will allow recovery of the past recovery from November, 2020. Accordingly, the total impact on account of income tax claimed by MEGPTCL is given in the table below:

Table 5-25: Total additional income tax claimed by MEGPTCL (Rs. Crore)

Particulars	Amount claimed upto FY 2019-20
Income Tax on ARR	101.85
Income Tax on Carrying cost	48.33
Total	**150.18**

Commission's Analysis and Ruling:

5.14.10 The Commission has re-computed the income tax to factor in the impact of the implementation of the Hon'ble ATE Judgment in line with the provisions of the applicable Regulations discussed at Para 5.14.2 of the Order and following the approach adopted by the Commission in the past Orders.

5.14.11 The Commission has examined submission of MEGPTCL and it is observed that the rate of income tax considered for computation is 21.55% across the entire period. As per the MYT Regulations, the Income Tax is payable on actual basis after adjusting for the impact of the efficiency gains and incentive earned by the Licensee on the income tax. Accordingly, the income tax is recomputed year by year considering the actual tax paid and the adjustments due to the revised efficiency gains and incentive, if any. Further, the rate of income tax must be same as that prevailing in the respective year.

5.14.12 It is also observed that MEGPTCL has considered revised ARR after netting off the impact of the sharing of efficiency gains and incentive while the original approved ARR considered is inclusive of the efficiency gains.

5.14.13 The income tax implication has been recomputed by the Commission using the actual income tax paid details considered during the truing up process and carrying out necessary adjustments considering the revised efficiency gains and incentive. The rate of income tax considered by the Commission is same as that considered during the truing up process. Accordingly, the recomputed income tax for the period FY 2013-14 to FY 2018-19 is given in the table below:

Table 5-26: Income Tax approved by the Commission (Rs. Crore)

Particulars	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Profit Before Tax (a)	21.92	205.32	454.84	164.33	295.40	186.90
Efficiency Gain (b)	-0.36	-5.00	-	8.84	5.64	0.85
Incentive (c)	0.82	9.78	20.36	8.17	7.93	7.99
Add: Disallowance under IT (d)	-	-	2.18	0.69	2.73	-
Book Profit (e = a-b-c+d)	**21.46**	**200.54**	**436.66**	**148.01**	**284.55**	**178.06**
Income Tax Rate (f)	20.96%	20.96%	21.34%	21.34%	21.34%	21.55%
Revised Income Tax as per Hon'ble ATE Judgement (g = e × f)	**4.50**	**42.04**	**93.19**	**31.59**	**60.73**	**38.37**
Originally approved Income Tax in past relevent Orders (h)	**4.51**	**42.13**	**93.95**	**31.68**	**60.77**	**38.44**
Variation (i = g - h)	-0.01	-0.10	-0.76	-0.10	-0.04	-0.07

5.14.14 No change in Income Tax in FY 2019-20 is allowed presently as the final truing is pending and the actual tax paid will be allowed to be recovered subject to applicable adjustments on account of efficiency gains and incentive. For the period FY 2020-21 to FY 2024-25, according to the provisions of MYT Regulation, 2019 no separate provision for recovery of income tax is available. The RoE is grossed up using the applicable income tax rate to recover through the ARR as discussed at Para 5.14.4 of the Order.

5.14.15 Apart from the income tax payable for the trued-up years, there is an additional implication of income tax on MEGPTCL due to past recoveries being allowed in this Order from FY 2013-14 to FY 2019-20. This will be allowed to be recovered in FY 2023-24 during the MTR proceedings. This implication only pertains to the past recoveries and is payable over and above the ARR for that year. The Commission has also approved the income tax implication on account of carrying cost on the differential incentive allowed by the Commission, however, the implication of the income tax on the base differential incentive value (Table 5-29) is not allowed in line with the discussion in Para 5.14.11 of this Order.

5.14.16 The indicative tax implication considering the income tax rate of 17.47% considered by the Commission for the FY 2023-24 is given in the table below:

Table 5-27: Estimated impact of Income tax on MEGPTCL in the FY 2023-24 (Rs. Crore)

Sr. No.	Particulars	FY 2023-24	Reference in the Order
1	Revised Trued up ARR for FY 2013-14 to FY 2018-19 (Impact of Hon'ble ATE Judgment)	423.69	Row no. 13 – Addition of difference column - Table 5-39; Table 5-40
2	Carrying cost on revised Trued up ARR upto FY 2023-24 (Subject to revision during MTR Process on account of carrying cost rates)	303.00	Table 5-31
3	Carrying cost on additional incentive to be recovered upto FY 2023-24 (Subject to revision during MTR Process on account of carrying cost rates)	2.25	Table 5-32
4	Differential ARR for FY 2019-20 including carrying cost upto FY 2023-24 (Provisional & subject to truing up during MTR process)	83.73	Table 5-34
5	**Total Recovery in FY 2023-24 due to impact of Hon'ble ATE Judgment**	**812.66**	
6	IT Rate considered (Rate approved provisionally by the Commission for the year of recovery - this is subject to change during MTR process and later during truing up of FY 2023-24)	17.47%	
7	**Additional Income Tax Payable - Estimated**	**141.99**	

5.14.17 The above table only captures the impact of the revision in the ARR till FY 2019-20 only as FY 2020-21 onwards, no separate recovery of income tax has been envisaged as discussed at Para 5.14.4 of the Order and income tax is only allowed on the RoE by grossing up the rate of RoE by the effective income tax rate applicable for the period.

5.15 Incentive on Transmission Availability:

<u>Commission's past approval:</u>

5.15.1 The Commission in the past Orders has approved the incentive on transmission availability in line with the provisions of the applicable Regulations.

5.15.2 As discussed in Para 5.2 of the Order, two different Tariff Regulations were applicable during the period FY 2013-14 to FY 2018-19 for which the incentive on transmission availability was approved by the Commission through three different Orders. The applicable provisions of the Tariff Regulations for different periods based on which the Commission approved the incentive on transmission availability are as follows:

(i) FY 2013-14 to FY 2015-16:

Incentive on transmission availability - Regulation 54.10, 60.1 and 60.2 of the MYT Regulations, 2011

(ii) FY 2016-17 to FY 2019-20:

Incentive on transmission availability - Regulation 57.1 (b) and 57.2 of the MYT Regulations, 2015

5.15.3 The year-on-year incentive approved by the Commission for the past period from FY 2013-14 to FY 2018-19 is given in the Table 5-29 below:

Directions of the Hon'ble ATE:

5.15.4 The Hon'ble ATE Judgment does not have any specific ruling regarding incentive computation. Accordingly, the impact of the Hon'ble ATE Judgment on the incentive computation for the period FY 2013-14 to FY 2018-19 is a consequential impact due to the implementation of the Hon'ble ATE Judgment which impacts the overall ARR for period under consideration.

MEGPTCL's Submission

5.15.5 MEGPTCL has submitted revised Incentive due to change in ARR and the same is given in the table below.

Table 5-28: Incentive as submitted by MEGPTCL (Rs. Crore)

Particulars	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Revised ARR (W/O Income Tax Impact)	50.95	592.55	1,246.25	1,138.65	1,135.02	1,081.45
Income Tax	0.59	6.18	43.54	20.23	19.99	11.33
Revised ARR (With Income Tax Impact)	**51.54**	**598.73**	**1,289.79**	**1,158.88**	**1,155.01**	**1,092.77**
Approved ARR	**48.21**	**563.84**	**1,035.02**	**1,039.73**	**1,042.79**	**1,030.38**
Approved Incentive	0.78	9.32	16.80	7.88	7.90	7.81
Revised Incentive	**0.83**	**9.90**	**20.94**	**8.78**	**8.75**	**8.28**

Commission's Analysis and Ruling:

5.15.6 The Commission has recomputed the incentive for the period FY 2013-14 to FY 2018-19 considering the provisions of the applicable Regulations as discussed in Para 5.15.2 of the Order.

5.15.7 From the submission of MEGPTCL, it is observed that MEGPTCL has computed the incentive considering the impact of income tax in the ARR. However, based on approach adopted in past Orders the Commission has computed the Annual Transmission Charges as per revised ARR without considering the impact of Income Tax. Accordingly, the incentive approved by the Commission is as below:

Table 5-29: Incentive as approved by the Commission (Rs. Crore)

Particulars	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Annual Transmission Charges excluding Income Tax	45.86	547.61	1,140.02	1,077.81	1,047.28	1,054.68
Target Availability (%) (b)	98.00%	98.00%	98.00%	99.00%	99.00%	99.00%
Actual Availability Achieved (%) (c)	99.83%	99.88%	99.83%	99.86%	99.77%	99.76%
Upper Cap for Incentive Availability (d)	99.75%	99.75%	99.75%	99.75%	99.75%	99.75%
Revised Incentive as per Hon'ble ATE Order [e = {minimum of (c-b) or (d-b)} × a ÷ b]	**0.82**	**9.78**	**20.36**	**8.17**	**7.93**	**7.99**
Originally approved Incentive in relevant Tariff Orders (f)	**0.78**	**9.32**	**16.80**	**7.88**	**7.90**	**7.81**
Variation (g = e - f)	**0.04**	**0.46**	**3.55**	**0.29**	**0.03**	**0.18**

Note:

(i) Annual Transmission Charges excluding Income Tax is available in Table 5-39 and Table 5-40 (Row no. 13 – Row no. 6 for approved in present Order column)

(ii) Formula as per Regulation: Incentive = Annual Transmission Charges x [Annual availability achieved – Target Availability] / Target Availability

5.16 Carrying Cost

<u>Commission's past approval</u>

5.16.1 The Commission in the past Orders has approved the carrying cost in line with the provisions of the applicable Regulations.

5.16.2 As discussed in Para 5.2 of the Order, three different Tariff Regulations were applicable during the period FY 2013-14 to FY 2024-25 for which the carrying cost was approved by the Commission through three different Orders. The applicable provisions of the Tariff Regulations for different periods based on which the Commission approved the carrying cost are as follows:

(i) FY 2013-14 to FY 2015-16:

Regulation 11.3 (c) of the MYT Regulations, 2011 mentions regarding allowing carrying cost on surplus/deficit amounts post truing up of the ARRs during the MTR process.

(ii) FY 2016-17 to FY 2019-20:

Carrying or Holding Cost - Regulation 32 of the MYT Regulations, 2015

(iii) FY 2020-21 to FY 2024-25:

Carrying or Holding Cost - Regulation 33 of the MYT Regulations, 2019 – To be computed at the time of truing up of the relevant years.

5.16.3 For computation of the carrying/ holding cost, the Commission has considered the Trued up ARR excluding the Availability Incentive since the incentive is due for recovery only after the Truing up exercise. This approach has been consistently followed by the Commission in all its orders.

5.16.4 The carrying / holding cost is computed adopting the simple interest method.

5.16.5 As the MYT Regulation, 2011 did not specify the rate of interest to be used for computing the carrying/holding cost, the Commission considered the rate of interest equivalent to the weighted average SBAR during the relevant period i.e. same as that used for computing the interest on working capital. The MYT Regulations, 2015 clearly mention that the rate of interest to be considered is the weighted average Base Rate prevailing during the concerned Year, plus 150 basis points. The Commission also factored in the impact of the amendment of the definition of "Base Rate" as per the MYT (First Amendment) Regulations, 2015. Similar provision is also there in the MYT Regulations, 2019.

5.16.6 The carrying/holding cost approved by the Commission in the past Orders is not revised again in the present Order and will continue as approved. In the present Order, the Commission is computing the additional carrying cost on the incremental ARR being approved by the Commission in the present Order based on implementation of the Hon'ble ATE Judgment.

Directions of the Hon'ble ATE:

5.16.7 The Hon'ble ATE Judgment does not have any specific ruling regarding carrying/holding cost computation. Accordingly, carrying / holding cost is being presently computed on the incremental ARR to be recovered by MEGPTCL through tariff in the future years on account of the impact of the Hon'ble ATE Judgment and is a consequential impact.

MEGPTCL's Submission:

5.16.8 MEGPTCL has submitted for recovery of the differential tariff from 1 November, 2020 and accordingly has worked out the carrying cost on past recoveries up to 31 October, 2020 assuming that the Commission will allow recovery as prayed.

5.16.9 MEGPTCL has computed the carrying cost on three components viz. (i) Differential ARR (excluding impact of DPC and incentive) and recovery based on revised ARR determined for the period FY 2013-14 to FY 2020-21; (ii) Carrying cost on the DPC amount now proposed to be excluded from the non-tariff income of FY 2015-16; and (iii) Carrying cost on differential incentive entitlement worked out for the period FY 2013-14 to FY 2018-19. The carrying cost has been worked out upto 31 Oct, 2020 as applicable.

Table 5-30: Carrying cost computation as submitted by MEGPTCL (Rs. Crore)

Carrying Cost Working	Impact of Judgement	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	Total Carrying Cost
Principal Amount/ Interest Rate		14.58%	14.75%	14.75%	10.79%	10.18%	9.89%	9.55%	9.55%	
Impact of Hon'ble ATE Judgement in Case No. 50 of 2016										
2013-14	2.73	0.20	0.40	0.40	0.29	0.28	0.27	0.26	0.15	**2.26**
2014-15	28.71	-	2.12	4.24	3.10	2.92	2.84	2.74	1.60	**19.56**
2015-16	179.66	-	-	13.25	19.38	18.29	17.77	17.16	10.01	**95.86**
2016-17	98.92	-	-	-	5.34	10.07	9.78	9.45	5.51	**40.15**
2017-18	92.23	-	-	-	-	4.69	9.12	8.81	5.14	**27.76**
2018-19	51.07	-	-	-	-	-	2.53	4.88	2.84	**10.25**
2019-20	64.04	-	-	-	-	-	-	3.06	3.57	**6.63**
2020-21	77.38	-	-	-	-	-	-	-	3.69	**3.69**
Total	**594.74**	**0.20**	**2.52**	**17.89**	**28.11**	**36.25**	**42.31**	**46.35**	**32.52**	**206.15**
DPC Not to be Trated as Non Tariff Income										
2015-16	**31.57**	**-**	**-**	**2.33**	**3.41**	**3.21**	**3.12**	**3.01**	**3.01**	**18.10**
Impact of Incentive										
2013-14	0.05	-	0.01	0.01	0.01	0.01	0.01	0.01	0.01	**0.04**
2014-15	0.58	-	-	0.09	0.06	0.06	0.06	0.06	0.06	**0.37**
2015-16	4.14	-	-	-	0.45	0.42	0.41	0.39	0.39	**2.07**
2016-17	0.90	-	-	-	-	0.09	0.09	0.09	0.09	**0.35**
2017-18	0.85	-	-	-	-	-	0.08	0.08	0.08	**0.25**
2018-19	0.47	-	-	-	-	-	-	0.05	0.05	**0.09**
Total	**6.99**	**-**	**0.01**	**0.09**	**0.51**	**0.58**	**0.64**	**0.67**	**0.67**	**3.17**
Total Impact	**633.30**	**0.20**	**2.53**	**20.31**	**32.04**	**40.05**	**46.07**	**50.03**	**36.20**	**227.42**

5.16.10 The total carrying cost submitted by MEGPTCL is Rs. 227.42 Crore in addition to the differential ARR impact of Rs. 633.30 Crore. Further, MEGPTCL has claimed additional income tax of Rs. 48.33 Crore on the carrying cost which will be recoverable on the differential ARR (originally approved minus revised ARR) up to FY 2020-21 assuming that the Commission will allow recovery of the past recovery from November, 2020.

<u>Commission's Analysis and Ruling:</u>

5.16.11 The Commission has computed the carrying cost considering the provisions of the relevant Regulations as discussed at Para 5.16.2 in this Order and also considering the approach adopted by the Commission in the past Orders.

5.16.12 The Commission has observed certain issues in the carrying cost computation undertaken by MEGPTCL for the differential incentive amount.

5.16.13 The Commission in the past Orders has not considered carrying cost on the availability incentive during the true-up process. e.g., In the Order in Case No. 169 of 2017 at Para 4.12.9, the Commission has clearly stated the following:

> *"For carrying/holding computation, the Commission has worked out based on the revised approved ARR for FY 2016-17. The total trued up ARR for FY 2016-17 considered* ***for carrying/holding cost computation excludes Availability Incentive, since that is due for recovery only after conclusion of the period, which is being approved in the Truing-up exercises for those years in the present Order.****"*

5.16.14 Accordingly, while computing the impact of carrying cost on incentive, carrying cost for the trued-up year needs to be computed only from the year in which it would have been recovered in the normal course. E.g. In case of FY 2013-14, the carrying cost on incentive should only be computed from the mid of FY 2016-17 onwards i.e. the year in which it would have been recovered in the normal course. Similarly, for FY 2014-15, the carrying cost should only be computed from the mid of FY 2016-17 onwards i.e. the year in which it would have been recovered in the normal course.

5.16.15 The Commission had directed MEGPTCL to do the necessary changes in the computation of the carrying cost pertaining to Impact of Incentive as part of the Data Gaps. In response, MEGPTCL submitted that the Order referred in the Data Gaps pertains to Truing up whereas the present case related to increase in ARR pursuant to reversal of Commission's Order in an Appeal filed before the Hon'ble ATE. Therefore, in the present case, MEGPTCL would be entitled for additional incentive and consequential carrying cost as if the Commission would have approved this additional ARR in the Order dated 05 July, 2016 in Case No, 50 of 2016. Accordingly, MEGPTCL is entitled to availability incentive from end of particular financial year. In line with this MEGPTCL has claimed carrying cost towards additional availability incentive from next financial year.

5.16.16 Accordingly, as MEGPTCL has not carried out the suggested changes in the computation, the necessary changes in line with the approach discussed above have been undertaken by the Commission while approving the carrying cost on differential incentive amount.

5.16.17 The Carrying Cost computed by the Commission till FY 2018-19 i.e true-up years are final figures whereas carrying cost from FY 2019-20 onwards are indicative numbers as the rate of carrying / (holding cost) may undergo a change during Mid-Term Review.

5.16.18 The major differences in the carrying cost computation by MEGPTCL and the Commission apart from the issues highlighted above are:

(i) MEGPTCL has assumed the recovery of the impact from November, 2020 and hence the carrying cost has been computed accordingly upto FY 2020-21 only. In the case of Commission's approval, the carrying cost has been computed till FY 2023-24 considering that the recovery will be allowed during the MTR proceedings (FY 2023-24).

(ii) The Commission has also estimated the likely carrying cost on the differential amount based on provisionally trued-up ARR (FY 2019-20) and projected ARR for FY 2020-21 to FY 2023-24 to work out the estimated impact in FY 2023-24. MEGPTCL has considered the carrying cost on differential amount on provisional ARR for FY 2019-20 and FY 2020-21 considering the recovery in November, 2020.

5.16.19 The present computation of the carrying cost is attributable to the impact of the implementation of the Hon'ble ATE Judgment. Accordingly, there are no previously approved carrying cost numbers pertaining to this incremental cost for comparison with the carrying cost being approved in the present Order. Hence, the table below does not include numbers approved in the past Orders.

5.16.20 The Commission has approved the carrying cost due to differential trued up ARR as shown below:

Table 5-31: Carrying Cost due to Differential trued up ARR approved by the Commission (Rs. Crore)

Year	Opening Revenue Gap	Addition during the year	Recovery of Revenue Gap during the year	Closing Revenue Gap	Rate of Carrying / (Holding) Cost	Carrying Cost on Differential ARR to be recovered / (refunded) based on Hon'ble ATE Order
	a	b	c	d = a+b-c	e	f = d × e
FY 2013-14	-	2.15	-	2.15	14.58%	0.16
FY 2014-15	2.15	25.81	-	27.96	14.75%	2.22
FY 2015-16	27.96	198.19	-	226.14	14.29%	18.16
FY 2016-17	226.14	69.65	-	295.80	10.79%	28.15
FY 2017-18	295.80	65.22	-	361.02	10.18%	33.43
FY 2018-19	361.02	62.66	-	423.69	9.89%	38.80
FY 2019-20	423.69	-	-	423.69	9.55%	40.46
FY 2020-21	423.69	-	-	423.69	9.55%	40.46
FY 2021-22	423.69	-	-	423.69	9.55%	40.46
FY 2022-23	423.69	-	-	423.69	9.55%	40.46
FY 2023-24	423.69	-	423.69	-	9.55%	20.23
FY 2024-25	-	-	-	-	9.55%	-
Total						**303.00**

5.16.21 The Carrying Cost on the differential Incentive approved by the Commission is as follows:

Table 5-32: Carrying Cost due to differential Incentive approved by the Commission (Rs. Crore)

Year	Opening Revenue Gap	Addition during the year	Recovery of Revenue Gap during the year	Closing Revenue Gap	Rate of Carrying / (Holding) Cost	Carrying Cost on Differential Incentive to be recovered / (refunded) based on Hon'ble ATE Order
	a	b	c	d = a+b-c	e	f = d × e
FY 2013-14	-	-	-	-	14.58%	-
FY 2014-15	-	-	-	-	14.75%	-
FY 2015-16	-	-	-	-	14.29%	-
FY 2016-17	-	0.50	-	0.50	10.79%	0.03
FY 2017-18	0.50	-	-	0.50	10.18%	0.05
FY 2018-19	0.50	3.84	-	4.34	9.89%	0.24
FY 2019-20	4.34	-	-	4.34	9.55%	0.41
FY 2020-21	4.34	0.22	-	4.56	9.55%	0.43
FY 2021-22	4.56	-	-	4.56	9.55%	0.44
FY 2022-23	4.56	-	-	4.56	9.55%	0.44
FY 2023-24	4.56	-	4.56	-	9.55%	0.22
FY 2024-25	-	-	-	-	9.55%	-
Total						**2.25**

5.16.22 Similarly, the Carrying Cost on the provisional / projected ARR for the period FY 2019-20 to FY 2024-25 approved by the Commission is as follows:

Table 5-33: Carrying Cost on Differential Provisional Trued up / Projected ARR approved by the Commission (Rs. Crore)

Year	Opening Revenue Gap	Addition during the year	Recovery of Revenue Gap during the year	Closing Revenue Gap	Rate of Carrying / (Holding) Cost	Carrying Cost on Differential ARR to be recovered / (refunded) based on Hon'ble ATE Order
	a	b	c	d = a+b-c	e	f = d × e
FY 2013-14	-	-	-	-	14.58%	-
FY 2014-15	-	-	-	-	14.75%	-
FY 2015-16	-	-	-	-	14.29%	-
FY 2016-17	-	-	-	-	10.79%	-
FY 2017-18	-	-	-	-	10.18%	-
FY 2018-19	-	-	-	-	9.89%	-
FY 2019-20	-	60.58	-	60.58	9.55%	2.89
FY 2020-21	60.58	60.89	-	121.47	9.55%	8.69
FY 2021-22	121.47	58.33	-	179.80	9.55%	14.39
FY 2022-23	179.80	55.78	-	235.58	9.55%	19.83
FY 2023-24	235.58	-	235.58	-	9.55%	11.25
FY 2024-25	-	-	-	-	9.55%	-
Total						**57.06**

5.16.23 Based on the above, the Commission has estimated total carrying cost for the period FY 2013-14 to FY 2023-24 as Rs. 362.30 Crore.

5.16.24 The Commission has also computed the carrying cost on the provisionally trued up differential ARR for FY 2019-20 for the purpose of estimating the additional impact of income tax in the FY 2023 -24 as discussed in Para 5.14.15 of this Order. Carrying cost for FY 2019-20 only has been considered as FY 2020-21 onwards the MYT Regulations, 2019 do not provide for separate recovery of income tax. The income tax is envisaged to be allowable only on the return on equity by grossing up the rate of return using the applicable effective income tax rate. The computation is given in the table below:

Table 5-34: Carrying cost on provisionally trued-up ARR for FY 2019-20 considered by the Commission for estimating the additional impact of income tax in FY 2023-24 (Rs. Crore)

Particulars	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	Total
Opening Revenue Gap	-	60.58	60.58	60.58	60.58	-	
Addition during the year	60.58	-	-	-	-	-	**60.58**
Recovery of Revenue Gap during the year	-	-	-	-	60.58	-	
Closing Revenue Gap	60.58	60.58	60.58	60.58	-	-	
Rate of Carrying / (Holding) Cost	9.55%	9.55%	9.55%	9.55%	9.55%	9.55%	
Carrying Cost	**2.89**	**5.79**	**5.79**	**5.79**	**2.89**	**-**	**23.14**
Differential provisionally trued-up ARR for FY 2019-20 along with carrying cost							**83.73**

5.17 Aggregate Revenue Requirement (ARR):

5.17.1 Based on the analysis undertaken in the preceding sections, the Commission has approved recovery of differential ARR and the associated carrying cost. The comparison of the ARR (excluding carrying cost) submitted by MEGPTCL and Commission's approval for FY 2013-14 to FY 2024-25 is as follows:

Table 5-35: Comparison of the ARR (excluding carrying cost) submitted by MEGPTCL and approval of Commission – FY 2013-14 to FY 2015-16 (Rs. Crore)

Sr. No.	Particulars	FY 2013-14			FY 2014-15			FY 2015-16		
		MEGPTCL Submission	Approved in this Order	Difference	MEGPTCL Submission	Approved in this Order	Difference	MEGPTCL Submission	Approved in this Order	Difference
		a	b	c = a-b	a	b	c = a-b	a	b	c = a-b
1	Operation & Maintenance Expenses	4.68	4.68	-0.00	53.41	53.41	0.00	105.30	105.30	-
2	Depreciation Expenses	11.93	11.77	-0.16	144.41	143.65	-0.77	303.04	302.75	-0.29
3	Interest on Long-term Loan Capital	17.72	17.49	-0.23	206.69	205.59	-1.10	435.00	448.07	13.07
4	Interest on Working Capital and on consumer security deposits	1.03	1.01	-0.02	11.97	11.78	-0.19	27.44	16.49	-10.96
5	Other Expenses	-	-	-	-	-	-	-	-	-
6	Income Tax	4.51	4.50	-0.01	42.13	42.04	-0.09	93.95	93.19	-0.76
7	Contribution to contingency reserves	0.57	0.53	-0.04	6.86	6.44	-0.42	14.40	-	-14.40
8	**Total Revenue Expenditure**	**40.43**	**39.97**	**-0.46**	**465.48**	**462.92**	**-2.56**	**979.13**	**965.79**	**-13.34**
9	Return on Equity Capital	10.52	10.38	-0.14	127.40	126.73	-0.67	268.06	267.80	-0.26
10	**Aggregate Revenue Requirement**	**50.95**	**50.36**	**-0.59**	**592.88**	**589.65**	**-3.24**	**1,247.20**	**1,233.60**	**-13.60**
11	Less: Non Tariff Income	-	-	-	0.33	-	0.33	0.95	0.39	0.56
12	Less: Income from Other Business	-	-	-	-	-	-	-	-	-
13	**Aggregate Revenue Requirement from Transmission Tariff**	**50.95**	**50.36**	**-0.59**	**592.55**	**589.65**	**-3.57**	**1,246.25**	**1,233.21**	**-14.16**
14	Availability Incentive	0.83	0.82	-0.01	9.90	9.78	-0.12	20.94	20.36	-0.58
15	**ARR excluding Carrying Cost**	**51.78**	**51.18**	**-0.61**	**602.45**	**599.43**	**-3.68**	**1,267.18**	**1,253.56**	**-14.74**

* Impact of Income tax has been seperately computed by MEGPTCL

Note: (i) The approved interest on long term loan for FY 2015-16 and FY 2016-17 includes the post CoD FERV on loan as discussed in Para 5.9.29 of this Order.

(ii) The difference in the NTI in FY 2014-15 and FY 2015-16 is positive as in case of FY 2014-15, MEGPTCL had retained Rs. 0.33 Crore as part of the NTI while claiming in its submission that it should not be considered. As discussed in Paras 5.13.21 and 5.13.22 the Commission has examined the matter and approved exclusion of the said amount from the NTI. Similarly, as discussed in Paras 5.13.19 and 5.13.20, the Commission has considered the DPC amount of Rs. 32.13 Crore instead of Rs. 31.57 Crore and hence the difference is positive in FY 2015-16.

Table 5-36: Comparison of the ARR (excluding carrying cost) submitted by MEGPTCL and approval of Commission – FY 2016-17 to FY 2018-19 (Rs. Crore)

Sr. No.	Particulars	FY 2016-17			FY 2017-18			FY 2018-19		
		MEGPTCL Submission	Approved in this Order	Difference	MEGPTCL Submission	Approved in this Order	Difference	MEGPTCL Submission	Approved in this Order	Difference
		a	b	c = a-b	a	b	c = a-b	a	b	c = a-b
1	Operation & Maintenance Expenses	98.59	98.59	-	102.71	102.71	0.00	108.04	108.04	0.00
2	Depreciation Expenses	303.30	303.01	-0.29	303.51	303.22	-0.29	303.87	303.58	-0.29
3	Interest on Long-term Loan Capital	400.05	400.00	-0.05	364.97	364.71	-0.26	330.09	329.86	-0.23
4	Interest on Working Capital and on consumer security deposits	22.98	8.84	-14.14	20.64	8.91	-11.73	18.48	18.59	0.10
5	Other Expenses	-	-	-	-	-	-	-	-	-
6	Income Tax	31.68	31.59	-0.09	60.77	60.73	-0.04	38.44	38.37	-0.07
7	Contribution to contingency reserves	14.42	-	-14.42	14.43	-	-14.43	14.44	26.79	12.35
8	**Total Revenue Expenditure**	**871.03**	**842.04**	**-29.00**	**867.03**	**840.28**	**-26.75**	**813.37**	**825.23**	**11.86**
9	Return on Equity Capital	268.31	268.05	-0.26	268.49	268.24	-0.26	268.81	268.56	-0.26
10	**Aggregate Revenue Requirement**	**1,139.34**	**1,110.09**	**-29.25**	**1,135.52**	**1,108.51**	**-27.01**	**1,082.19**	**1,093.79**	**11.61**
11	Less: Non Tariff Income	0.69	0.69	-0.00	0.50	0.50	-0.00	0.74	0.74	-0.00
12	Less: Income from Other Business	-	-	-	-	-	-	-	-	-
13	**Aggregate Revenue Requirement from Transmission Tariff**	**1,138.65**	**1,109.40**	**-29.25**	**1,135.02**	**1,108.01**	**-27.01**	**1,081.45**	**1,093.05**	**11.61**
14	Availability Incentive	8.78	8.17	-0.62	8.75	7.93	-0.82	8.28	7.99	-0.29
15	**ARR excluding Carrying Cost**	**1,147.44**	**1,117.56**	**-29.87**	**1,143.77**	**1,115.95**	**-27.82**	**1,089.73**	**1,101.04**	**11.31**

* Impact of Income tax has been seperately computed by MEGPTCL

Note:

(i) The approved interest on long term loan for FY 2015-16 and FY 2016-17 includes the post CoD FERV on loan as discussed in Para 5.9.29 of this Order.

(ii) The approved contribution to contingency reserve in FY 2018-19 includes the contribution for FY 2017-18 and FY 2018-19 as discussed in Para 5.12.22 of this Order.

Table 5-37: Comparison of the ARR (excluding carrying cost) submitted by MEGPTCL and approval of Commission – FY 2019-20 to FY 2021-22 (Rs. Crore)

Sr. No.	Particulars	FY 2019-20			FY 2020-21			FY 2021-22		
		MEGPTCL Submission	Approved in this Order	Difference	MEGPTCL Submission	Approved in this Order	Difference	MEGPTCL Submission	Approved in this Order	Difference
		a	b	c = a-b	a	b	c = a-b	a	b	c = a-b
1	Operation & Maintenance Expenses	107.23	107.23	0.00	108.11	108.11	0.00	112.35	112.35	0.00
2	Depreciation Expenses	304.04	303.75	-0.29	304.04	303.75	-0.29	304.04	303.75	-0.29
3	Interest on Long-term Loan Capital	294.87	294.68	-0.19	259.39	259.23	-0.16	223.91	223.79	-0.12
4	Interest on Working Capital and on consumer security deposits	18.87	18.02	-0.86	18.47	18.00	-0.47	18.15	17.72	-0.43
5	Other Expenses	-	-	-	-	-	-	-	-	-
6	Income Tax*	38.44	38.44	-0.00	-	-	-	-	-	-
7	Contribution to contingency reserves	14.46	13.41	-1.05	14.46	14.45	-0.01	14.46	14.45	-0.01
8	**Total Revenue Expenditure**	**777.91**	**775.53**	**-2.39**	**704.47**	**703.54**	**-0.93**	**672.90**	**672.04**	**-0.86**
9	Return on Equity Capital	268.96	268.70	-0.26	309.62	294.08	-15.54	309.62	294.08	-15.54
10	**Aggregate Revenue Requirement**	**1,046.87**	**1,044.23**	**-2.64**	**1,014.09**	**997.61**	**-16.48**	**982.52**	**966.12**	**-16.40**
11	Less: Non Tariff Income	-	-	-	1.62	1.62	0.00	3.70	3.70	0.00
12	Less: Income from Other Business	-	-	-	-	-	-	-	-	-
13	**Aggregate Revenue Requirement from Transmission Tariff**	**1,046.87**	**1,044.23**	**-2.64**	**1,012.47**	**996.00**	**-16.48**	**978.82**	**962.43**	**-16.41**
14	Availability Incentive			-			-			-
15	**ARR excluding Carrying Cost**	**1,046.87**	**1,044.23**	**-2.64**	**1,012.47**	**996.00**	**-16.48**	**978.82**	**962.43**	**-16.41**

* Impact of Income tax has been seperately computed by MEGPTCL

Note:

(i) The variation in the RoE as per MEGPTCL submission and as approved by the Commission is higher on account of (i) difference in capital cost considered by MEGPTCL and that approved by the Commission which impacts the equity capital; (ii) Difference in the effective rate of income tax considered by MEGPTCL (21.54%) vis-à-vis that approved by the Commission (17.47%) for grossing up the rate of RoE.

Table 5-38: Comparison of the ARR (excluding carrying cost) submitted by MEGPTCL and approval of Commission – FY 2022-23 to FY 2024-25 (Rs. Crore)

Sr. No.	Particulars	FY 2022-23			FY 2023-24			FY 2024-25		
		MEGPTCL Submission	Approved in this Order	Difference	MEGPTCL Submission	Approved in this Order	Difference	MEGPTCL Submission	Approved in this Order	Difference
		a	b	c = a-b	a	b	c = a-b	a	b	c = a-b
1	Operation & Maintenance Expenses	116.84	116.84	0.00	121.49	121.49	0.00	126.31	126.31	-0.00
2	Depreciation Expenses	304.04	303.75	-0.29	304.04	303.75	-0.29	304.04	303.75	-0.29
3	Interest on Long-term Loan Capital	188.43	188.34	-0.09	152.95	152.89	-0.06	117.47	117.44	-0.02
4	Interest on Working Capital and on consumer security deposits	17.81	17.36	-0.45	17.47	31.77	14.29	17.14	17.27	0.13
5	Other Expenses	-	-	-	-	-	-	-	-	-
6	Income Tax*	-	-	-	-	-	-	-	-	-
7	Contribution to contingency reserves	14.46	14.45	-0.01	14.46	14.45	-0.01	14.46	14.45	-0.01
8	**Total Revenue Expenditure**	**641.58**	**640.73**	**-0.84**	**610.41**	**624.34**	**13.93**	**579.42**	**579.22**	**-0.20**
9	Return on Equity Capital	309.62	294.08	-15.54	309.62	294.08	-15.54	309.62	294.08	-15.54
10	**Aggregate Revenue Requirement**	**951.20**	**934.81**	**-16.39**	**920.03**	**918.42**	**-1.61**	**889.04**	**873.30**	**-15.74**
11	Less: Non Tariff Income	4.62	4.62	0.00	5.54	5.54	0.00	6.46	6.46	0.00
12	Less: Income from Other Business	-	-	-	-	-	-	-	-	-
13	**Aggregate Revenue Requirement from Transmission Tariff**	**946.58**	**930.20**	**-16.39**	**914.49**	**912.88**	**-1.62**	**882.58**	**866.84**	**-15.75**
14	Availability Incentive			-			-			-
15	**ARR excluding Carrying Cost**	**946.58**	**930.20**	**-16.39**	**914.49**	**912.88**	**-1.62**	**882.58**	**866.84**	**-15.75**

Note:

(i) The approved IoWC is higher in FY 2023-24 than MEGPTCL submission as the recovery of past dues pertaining to the impact of Hon'ble ATE Judgment is considered in that year and it impacts the receivables considered in the working capital interest computation.

5.17.2 The approved differential ARR after factoring the impact of Hon'ble ATE Judgment is as shown in the table below:

Table 5-39: Differential ARR as approved by the Commission – FY 2013-14 to FY 2015-16 (Rs. Crore)

Sr. No.	Particulars	FY 2013-14			FY 2014-15			FY 2015-16		
		Trued Up ARR (Case No. 50 of 2016)	Revised Trued Up - Hon'ble ATE Judgement	Difference	Trued Up ARR (Case No. 50 of 2016)	Revised Trued Up - Hon'ble ATE Judgement	Difference	Trued Up ARR (Case No. 169 of 2017)	Revised Trued Up - Hon'ble ATE Judgement	Difference
		a	b	c = b-a	a	b	c = b-a	a	b	c = b-a
1	Operation & Maintenance Expenses	4.68	4.68	-	53.41	53.41	-	99.40	105.30	5.90
2	Depreciation Expenses	11.14	11.77	0.63	136.09	143.65	7.56	260.49	302.75	42.25
3	Interest on Long-term Loan Capital	16.56	17.49	0.93	194.79	205.59	10.80	366.92	448.07	81.15
4	Interest on Working Capital and on consumer security deposits	0.97	1.01	0.04	11.23	11.78	0.55	16.28	16.49	0.21
5	Other Expenses	-	-	-	-	-	-	-	-	-
6	Income Tax	4.51	4.50	-0.01	42.13	42.04	-0.10	93.95	93.19	-0.76
7	Contribution to contingency reserves	0.53	0.53	-	6.44	6.44	-	-	-	-
8	**Total Revenue Expenditure**	38.38	**39.97**	**1.60**	**444.10**	**462.92**	**18.82**	**837.04**	**965.79**	**128.75**
9	Return on Equity Capital	9.83	10.38	0.55	120.07	126.73	6.66	230.50	267.80	37.31
10	**Aggregate Revenue Requirement**	48.21	**50.36**	**2.15**	**564.17**	**589.65**	**25.48**	**1,067.54**	**1,233.60**	**166.06**
11	Less: Non Tariff Income	-	-	-	0.33	-	-0.33	32.52	0.39	-32.13
12	Less: Income from Other Business	-	-	-	-	-	-	-	-	-
13	**Aggregate Revenue Requirement from Transmission Tariff**	**48.21**	**50.36**	**2.15**	**563.84**	**589.65**	**25.81**	**1,035.02**	**1,233.21**	**198.19**
14	Availability Incentive	0.78	0.82	0.04	9.32	9.78	0.46	16.80	20.36	3.55
15	**ARR excluding Carrying Cost**	**48.99**	**51.18**	**2.19**	**573.16**	**599.43**	**26.27**	**1,051.82**	**1,253.56**	**201.74**

Table 5-40: Differential ARR as approved by the Commission – FY 2016-17 to FY 2018-19 (Rs. Crore)

Sr. No.	Particulars	FY 2016-17			FY 2017-18			FY 2018-19		
		Trued Up ARR (Case No. 169 of 2017)	Revised Trued Up - Hon'ble ATE Judgement	Difference	Trued Up ARR (Case No. 290 of 2019)	Revised Trued Up - Hon'ble ATE Judgement	Difference	Trued Up ARR (Case No. 290 of 2019)	Revised Trued Up - Hon'ble ATE Judgement	Difference
		a	b	c = b-a	a	b	c = b-a	a	b	c = b-a
1	Operation & Maintenance Expenses	98.24	98.59	0.35	102.71	102.71	-	108.04	108.04	-
2	Depreciation Expenses	280.91	303.01	22.10	281.35	303.22	21.87	281.71	303.58	21.87
3	Interest on Long-term Loan Capital	372.31	400.00	27.69	340.53	364.71	24.18	308.24	329.86	21.62
4	Interest on Working Capital and on consumer security deposits	8.68	8.84	0.16	8.77	8.91	0.14	18.45	18.59	0.14
5	Other Expenses	-	-	-	-	-	-	-	-	-
6	Income Tax	31.68	31.59	-0.10	60.77	60.73	-0.04	38.44	38.37	-0.07
7	Contribution to contingency reserves	-	-	-	-	-	-	26.79	26.79	-
8	**Total Revenue Expenditure**	791.83	**842.04**	**50.21**	**794.13**	**840.28**	**46.15**	**781.67**	**825.23**	**43.56**
9	Return on Equity Capital	248.60	268.05	19.45	249.16	268.24	19.07	249.45	268.56	19.10
10	**Aggregate Revenue Requirement**	1,040.43	**1,110.09**	**69.65**	**1,043.29**	**1,108.51**	**65.22**	**1,031.13**	**1,093.79**	**62.66**
11	Less: Non Tariff Income	0.69	0.69	-	0.50	0.50	-	0.74	0.74	-
12	Less: Income from Other Business	-	-	-	-	-	-	-	-	-
13	**Aggregate Revenue Requirement from Transmission Tariff**	**1,039.74**	**1,109.40**	**69.65**	**1,042.79**	**1,108.01**	**65.22**	**1,030.39**	**1,093.05**	**62.66**
14	Availability Incentive	7.88	8.17	0.29	7.90	7.93	0.03	7.81	7.99	0.18
15	**ARR excluding Carrying Cost**	**1,047.62**	**1,117.56**	**69.94**	**1,050.69**	**1,115.95**	**65.26**	**1,038.19**	**1,101.04**	**62.85**

Table 5-41: Differential ARR as approved by the Commission – FY 2019-20 to FY 2021-22 (Rs. Crore)

Sr. No.	Particulars	FY 2019-20			FY 2020-21			FY 2021-22		
		Prov. Trued Up ARR (Case No. 290 of 2019)	Revised Prov. Trued Up - Hon'ble ATE Judgement	Difference	Projected ARR (Case No. 290 of 2019)	Revised Estimate - Hon'ble ATE Judgement	Difference	Projected ARR (Case No. 290 of 2019)	Revised Estimate - Hon'ble ATE Judgement	Difference
		a	b	c = b-a	a	b	c = b-a	a	b	c = b-a
1	Operation & Maintenance Expenses	107.23	107.23	-	108.11	108.11	-	112.35	112.35	-
2	Depreciation Expenses	281.87	303.75	21.87	281.87	303.75	21.87	281.87	303.75	21.87
3	Interest on Long-term Loan Capital	275.61	294.68	19.07	242.71	259.23	16.52	209.82	223.79	13.97
4	Interest on Working Capital and on consumer security deposits	17.62	18.02	0.40	17.60	18.00	0.40	17.32	17.72	0.40
5	Other Expenses	-	-	-	-	-	-	-	-	-
6	Income Tax	38.44	38.44	-	-	-	-	-	-	-
7	Contribution to contingency reserves	13.41	13.41	-	13.41	14.45	1.03	13.41	14.45	1.03
8	**Total Revenue Expenditure**	734.19	**775.53**	**41.34**	**663.72**	**703.54**	**39.82**	**634.78**	**672.04**	**37.27**
9	Return on Equity Capital	249.45	268.70	19.25	273.01	294.08	21.07	273.01	294.08	21.07
10	**Aggregate Revenue Requirement**	983.64	**1,044.23**	**60.58**	**936.73**	**997.61**	**60.89**	**907.79**	**966.12**	**58.33**
11	Less: Non Tariff Income	-	-	-	1.62	1.62	-	3.70	3.70	-
12	Less: Income from Other Business	-	-	-	-	-	-	-	-	-
13	**Aggregate Revenue Requirement from Transmission Tariff**	**983.64**	**1,044.23**	**60.58**	**935.11**	**996.00**	**60.89**	**904.09**	**962.43**	**58.33**
14	Availability Incentive	-	-	-	-	-	-	-	-	-
15	**ARR excluding Carrying Cost**	**983.64**	**1,044.23**	**60.58**	**935.11**	**996.00**	**60.89**	**904.09**	**962.43**	**58.33**

Table 5-42: Differential ARR as approved by the Commission – FY 2022-23 to FY 2024-25 (Rs. Crore)

Sr. No.	Particulars	FY 2022-23			FY 2023-24			FY 2024-25		
		Projected ARR (Case No. 290 of 2019)	Revised Estimate - Hon'ble ATE Judgement	Difference	Projected ARR (Case No. 290 of 2019)	Revised Estimate - Hon'ble ATE Judgement	Difference	Projected ARR (Case No. 290 of 2019)	Revised Estimate - Hon'ble ATE Judgement	Difference
		a	b	c = b-a	a	b	c = b-a	a	b	c = b-a
1	Operation & Maintenance Expenses	116.84	116.84	-	121.49	121.49	-	126.31	126.31	-
2	Depreciation Expenses	281.87	303.75	21.87	281.87	303.75	21.87	281.87	303.75	21.87
3	Interest on Long-term Loan Capital	176.92	188.34	11.41	144.03	152.89	8.86	111.13	117.44	6.31
4	Interest on Working Capital and on consumer security deposits	16.97	17.36	0.40	16.61	31.77	15.15	16.27	17.27	1.01
5	Other Expenses	-	-	-	-	-	-	-	-	-
6	Income Tax	-	-	-	-	-	-	-	-	-
7	Contribution to contingency reserves	13.41	14.45	1.03	13.41	14.45	1.03	13.41	14.45	1.03
8	**Total Revenue Expenditure**	606.02	**640.73**	**34.72**	**577.42**	**624.34**	**46.92**	**549.00**	**579.22**	**30.22**
9	Return on Equity Capital	273.01	294.08	21.07	273.01	294.08	21.07	273.01	294.08	21.07
10	**Aggregate Revenue Requirement**	879.03	**934.81**	**55.78**	**850.44**	**918.42**	**67.98**	**822.01**	**873.30**	**51.29**
11	Less: Non Tariff Income	4.62	4.62	-	5.54	5.54	-	6.46	6.46	-
12	Less: Income from Other Business	-	-	-	-	-	-	-	-	-
13	**Aggregate Revenue Requirement from Transmission Tariff**	**874.41**	**930.20**	**55.78**	**844.90**	**912.88**	**67.98**	**815.55**	**866.84**	**51.29**
14	Impact of Hon'ble ATE Order for recovery	-	-	-	-	1,168.12	1,168.12	-	-	-
15	**ARR excluding Carrying Cost**	**874.41**	**930.20**	**55.78**	**844.90**	**2,081.00**	**1,236.10**	**815.55**	**866.84**	**51.29**

5.17.3 MEGPTCL in its Petition had proposed the recovery of the impact of the Hon'ble ATE Judgement from 1 November, 2020. Accordingly, the total estimated impact of implementation of the Hon'ble ATE Judgment as projected by MEGPTCL in its Petition is shown in the table below:

Table 5-43: Total estimated additional recovery as per MEGPTCL Petition from 1 November, 2020 (Rs. Crore)

Sr. No.	Particulars	Amount
1	Revised Trued up ARR for FY 2013-14 to FY 2018-19 including impact of NTI (Impact of Hon'ble ATE Judgement)	484.88
2	Carrying cost on revised Trued up ARR (Upto FY 2018-19)	213.93
3	Impact on approved Incentive for the period FY 2013-14 to FY 2018-19 (Impact of Hon'ble ATE Judgement)	6.99
4	Carrying cost on additional incentive to be recovered (Upto FY 2020-21)	3.17
5	Differential Provisional / Projected ARR for FY 2019-20 & FY 2020-21	141.43
6	Carrying Cost on ARR for FY 2019-20 & FY 2020-21	10.32
7	Estimated additional impact of Income Tax on past due recovery - Differntial ARR & Carrying Cost	150.18
8	**Total estimated additional recovery in FY 2020-21 due to impact of Hon'ble ATE Order (including differential ARR for FY 2020-21 & carrying cost thereon)**	**1,010.90**

5.17.4 The above additional recovery is envisaged over and above the already approved ARR for FY 2020-21 (Rs. 973.33 Crore[2]) in the Order in Case No. 290 of 2019.

5.17.5 The total estimated impact of implementation of the Hon'ble ATE Judgment and allowed recovery of the differential amount in FY 2023-24 along with the estimated differential recovery in the remaining years of the control period as approved by the Commission is as shown in the table below:

Table 5-44: Total estimated additional recovery envisaged in FY 2023-24 due to implementation of Hon'ble ATE Judgment (Excluding revised ARR approved for FY 2023-24) (Rs. Crore)

Sr. No.	Particulars	Amount	Reference in the Order
1	Revised Trued up ARR for FY 2013-14 to FY 2018-19 (Impact of Hon'ble ATE Judgement)	423.69	Row no. 13 – Addition of difference column - Table 5-39; Table 5-40
2	Carrying cost on revised Trued up ARR (Subject to revision during MTR Process on account of carrying cost interest rates)	303.00	Table 5-31
3	Impact on approved Incentive for the period FY 2013-14 to FY 2018-19 (Impact of Hon'ble ATE Judgement)	4.56	Summation of variation row in Table 5-29

[2] Includes the impact of gap/surplus of past period FY 2017-18, FY 2018-19, FY 2019-20 incl. CC & AI & Impact of Review Order in Case No. 303 of 2018 as approved in Order in Case No. 290 of 2019.

Sr. No.	Particulars	Amount	Reference in the Order
4	Carrying cost on additional incentive to be recovered (Subject to revision during MTR Process on account of carrying cost interest rates)	2.25	Table 5-32
5	Differential ARR for FY 2019-20 to FY 2022-23 (Provisional & subject to truing up during MTR process)	235.58	Row no. 13 – Addition of difference column - Table 5-41 and Table 5-42 (Only FY 2022-23)
6	Provisional Carrying Cost on prov. ARR for FY 2019-20 to FY 2023-24 (Provisional & subject to truing up during MTR process)	57.06	Table 5-33
7	Estimated impact of Income Tax on past due recovery (Subject to truing up for applicable Income tax rate at the time of truing up)	141.99	Table 5-27
8	**Total estimated recovery in FY 2023-24 due to impact of Hon'ble ATE Order**	**1,168.12**	
9	Add: Differential ARR Recovery for FY 2023-24	67.98	Row no. 13 – difference column - Table 5-42 (Only FY 2023-24)
10	**Total estimated recovery in FY 2023-24 due to impact of Hon'ble ATE Order including differential ARR for FY 2023-24**	**1,236.10**	
11	Add: Differential ARR Recovery for FY 2024-25	51.29	Row no. 13 – difference column - Table 5-42 (Only FY 2024-25)
12	**Total estimated impact of implementation of Hon'ble ATE Order on Entire Control Period upto FY 2024-25**	**1,287.39**	

5.17.6 As can be seen from the above table, the total recovery allowed by the Commission due to impact of Hon’ble ATE Judgment in the FY 2023-24 during MTR is Rs. 1,168.12 Crore. This excludes the differential ARR recovery of Rs. 67.98 Crore in FY 2023-24 (over and above Rs. 1,168.12 Crore) and Rs. 51.29 Crore to be done in FY 2024-25. No carrying cost also has been computed on the differential ARR for FY 2023-24 and FY 2024-25 as the recovery will be done based on the MTR Order.

5.17.7 The total estimated differential recovery of Rs. 1,236.10 Crore (including differential ARR for FY 2023-24) is envisaged over and above the already approved ARR of Rs. 881.59 Crore[3] for FY 2023-24 in the Order in Case No. 290 of 2019.

5.17.8 The above recovery is estimated as it is based on provisionally trued-up / projected ARR for the period FY 2019-20 to FY 2024-25 and is subject to change during the MTR Process. The impact of carrying cost and the impact of income tax is also like to be revised during the MTR Process.

6. Hence the following Order:

[3] Includes the impact of gap/surplus of past period FY 2017-18, FY 2018-19, FY 2019-20 incl. CC & AI & Impact of Review Order in Case No. 303 of 2018 as approved in Order in Case No. 290 of 2019.

ORDER

1. **The Commission allows Maharashtra Eastern Grid Power Transmission Company Ltd. (MEGPTCL) to seek recovery of the impact of the Hon'ble Appellate Tribunal for Electricity (ATE) Judgment during the Mid Term Review (MTR) process along with the applicable carrying cost, in terms of rulings under Para 5 of the Order.**
2. **The Commission has recomputed the trued-up Aggregate Revenue Requirement from (ARR) for the period FY 2013-14 to FY 2018-19 and the same is to be considered by MEGPTCL during the MTR filing, in terms of ruling at Paras 5.17.2, 5.17.6 and 5.17.7 of the Order.**
3. **The Commission has provisionally recomputed the ARR for the period FY 2019-20 and the projections for the period FY 2020-21 to FY 2024-25 in terms of ruling at Paras 5.17.2, 5.17.6 and 5.17.7 of the Order and the same would be subject to truing up based on audited financial statements, as applicable, during the MTR process and hence subject to change.**
4. **The estimated carrying cost and the likely impact of the additional recovery on the income tax payable by MEGPTCL has been computed by the Commission in the present Order in terms of ruling at Paras 5.16 and 5.14.16 respectively, of the Order. However, the same is subject to changes during the MTR process on account of the rate of interest considered for carrying cost computation and the income tax rate actually applicable in line with the provisions of the applicable MYT Regulations.**
5. **MEGPTCL will be required to file its MTR Petition along with the working of the impact of the Hon'ble ATE Judgment in line with the approach adopted by the Commission in the present Order. Based on the filing, the Commission will approve the additional recovery to be done by MEGPTCL due to the impact of the Hon'ble ATE Judgment during FY 2023-24 and the same will be over and above the ARR to be recovered by MEGPTCL for the FY 2023-24.**
6. **The impact of the Hon'ble ATE Judgment on the ARR of MEGPTCL has to be considered by the State Transmission Utility in its MTR Petition for determination of the Intra-State Transmission System Charges.**

The Petition of the Maharashtra Eastern Grid Power Transmission Co. Ltd. in Case No. 50 of 2016 stands disposed of accordingly.

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