WHO SETS THE TOLL? THIRD-PARTY ACCESS AND TARIFF DETERMINATION FOR PUBLICLY FUNDED COMMON OFFSHORE INFRASTRUCTURE UNDER THE SAMUDRA MANTHAN SCHEME

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ABSTRACT

The Samudra Manthan scheme was approved by the Union Cabinet in July 2026, with the Government committing ₹10,000 crore for shared offshore production and evacuation facilities. The use of such facility and the price at which it may be used would ordinarily be governed under Chapter VIII of Petroleum and Natural Gas Rules, 2025. In this article, we argue that Chapter VIII was drafted for disputes between petroleum lessees concerning private financed infrastructure, and it does not suit a publicly funded common hub. It is doubtful if the chapter ever reaches a hub owned by a non-lessee. Where it applies, it assumes an owner with its own production, which a hub does not have, in its conceptualisation of excess capacity. It grants locus standi only to a lessee. It empowers the Central Government to prescribe a reasonable tariff without defining the term or any input to it. It requires no reasons and no publication. It attracts no statutory appeal. The article's seven concrete proposals for amendment are made with Norway as the main comparison and the *Gassled* litigation as a cautionary tale. Its central claims are that, as far as transplantable contribution is concerned, it is Norway's enumerated tariff methodology and its publication discipline rather than its numerical return benchmark.

I. INTRODUCTION

On 31 July 2026 the Union Cabinet approved Samudra Manthan, the National Offshore Exploration Scheme, with a Phase-I outlay of ₹84,084 crore up to 31 March 2031.[1] Of that outlay, ₹10,000 crore is directed to common offshore infrastructure hubs intended to facilitate the commercialisation of discoveries.[2] The Ministry has since described the component as funding shared production and evacuation facilities in select basins, identifying the Mahanadi and Kutch basins as areas where discoveries remain unproduced because the necessary infrastructure is too costly for any single operator to justify.[3]

Public money will therefore build facilities through which several entities bring hydrocarbons to market. That raises three questions the scheme documents do not answer:

i. Who is entitled to use such a facility,

ii. Who determines the terms of use,

iii. And how the price of use is calculated.

Indian law does not supply a sufficiently clear, transparent or reviewable answer to any of them. The framework governing access to upstream infrastructure in India is Chapter VIII of the Petroleum and Natural Gas Rules, 2025, which consists of three rules.[4] Chapter VIII was drafted to resolve bilateral disputes between petroleum lessees about privately financed facilities. It is unclear whether they apply to a publicly funded hub at all, and even if they do, their key concept of excess capacity does not suit one. Where they do apply, only a lessee can invoke them, they set no method for fixing the tariff, they require no reasons or publication, and they allow no appeal.

Norway has had regulated access to, and tariffs for, shared offshore infrastructure for four

[1] Press Release, Ministry of Petroleum & Natural Gas, Gov't of India, Cabinet Approves "Samudra Manthan," National Offshore Exploration Scheme with an Outlay of ₹84,084 Crore (Aug. 1, 2026) (Press Info. Bureau Release ID 2292841) [*hereinafter* Cabinet Release]. The release records approval by the Union Cabinet on July 31, 2026, and a Phase-I outlay to March 31, 2031.
[2] *Id.* (component (iii): development of common offshore infrastructure hubs, ₹10,000 crore, to facilitate commercialisation of discoveries).
[3] Press Info. Bureau, Gov't of India, Samudra Manthan, National Offshore Exploration Scheme: Churning the Ocean for Energy (Backgrounder, Release ID 2293934, Aug. 3, 2026) [*hereinafter* PIB Backgrounder].
[4] The Petroleum and Natural Gas Rules, 2025, Gazette of India, pt. II sec. 3(i) (Dec. 9, 2025), G.S.R. 888(E), rr. 44–46 [*hereinafter* PNG Rules].

decades and the limits of that power have been tested through three levels of court. The United Kingdom offers a useful model of access procedure, but because no public money funds infrastructure on its shelf, it says little about pricing a state-funded facility and is used only on that narrower point.

This article does not criticise a decision, but instead advocates for a policy. To date the Government has not published anything on how the hubs will be owned, operated, priced or allocated. The point is that these questions seem not to have been answered and that the residual law governing in their absence is inadequate.

II. THE SCHEME AND WHAT IT LEAVES OPEN

The sources relevant to the hubs carry different legal weight, and they fall into three groups. The first is the law itself: the Oilfields (Regulation and Development) Act, 1948, as amended in 2025, and the Rules made under it.[5] The second is the scheme, which is not law. It has no statutory basis, has not been notified under the Oilfields Act, and does not on its face give anyone an enforceable right of access. The third is the Government's explanatory material, which sets out what the Government intends to do but does not create any binding framework.[6]

Two features of what is established by the above mentioned sources- Firstly, the hubs are not incidental surplus on another operator's platform but facilities conceived for use by several unrelated users. Secondly, the fields they will serve are, on the Ministry's own account, fields whose economics have already excluded standalone development,[7] which is another way of saying that they will have no alternative route to market.

The material reviewed does not say who will own the hubs, whether ownership will vest in the Union, a public sector undertaking, a special purpose vehicle or a private developer; it does not identify an operator or a basis for selecting one; it does not state whether users will pay a tariff, how one would be calculated, or whether the Government intends to recover its expenditure; and it is silent on capacity allocation, priority between users, claw-back of grant, and whether the hubs are common carriers in any legal sense.

[5] The Oilfields (Regulation and Development) Act, No. 53 of 1948, INDIA CODE (1948) [*hereinafter* Oilfields Act], *as amended by* The Oilfields (Regulation and Development) Amendment Act, 2025; PNG Rules, *supra* note 4.
[6] PIB Backgrounder, *supra* note 3.
[7] *Id.*

The applicable framework is therefore whatever the general law supplies, and any inadequacy in it is not cured by the scheme, because the scheme is not law.

III. THE GAP IN THE INDIAN FRAMEWORK

A. The case Chapter VIII was written for

Rule 8(ii) confers on the lessee the exclusive right to develop and produce mineral oils in the leased area, together with the right to construct and maintain facilities there.[8] Infrastructure built under that right belongs to the lessee, and a neighboring discovery needing to use it has no independent claim. Rule 4, which requires a lessee to allow reasonable access to holders of other licenses and leases, is directed at physical access over the leased area rather than at the use of installed capacity.[9]

Chapter VIII is the response. Rule 44 requires every lessee to declare annually the installed, utilised and excess capacity of facilities it owns.[10] Rule 45 permits lessees to share facilities on mutually agreed terms.[11] Rule 46 supplies the compulsory mechanism: where lessees are unable to agree, any lessee seeking to use the excess capacity may make a representation to the Central Government, which issues notice to the facility's owner and, after hearing both parties, must pass an order within one hundred and eighty days determining the existence and extent of excess capacity and prescribing the terms, conditions, reasonable tariff and duration of use, having regard to the owner's operational requirements.[12]

The structure makes sense for the case it deals with: an owner with surplus room, a neighbour who wants the room and a determination of how much room there is and what it costs, made so as not to prejudice the owner's own production. Five difficulties arise when this structure is applied to a hub. Two of them determine whether the other three arise at all.

B. Applicability

Rules 44 and 45 are applicable to a lessee. Rule 46(1) provides that the operative condition is

[8] PNG Rules, *supra* note 4, r. 8(ii). The exclusivity attaches to the right to develop and produce; the right to construct and maintain facilities is conferred alongside it.
[9] *Id.* r. 4.
[10] *Id.* r. 44.
[11] *Id.* r. 45.
[12] *Id.* rr. 46(1)–(5). The one hundred and eighty day period runs from the date of issuance of the notice under sub-rule (2), not from the date of the representation.

that where lessees cannot mutually agree, the right to make a representation to the Central Government is given to the lessee seeking to use the excess capacity of such facility. A hub owned by a special purpose vehicle or a government nominated entity with no petroleum lease, is not clearly within contemplation of chapter. Rule 46(2) goes the other way to a certain degree, as notice may be given to any person who owns or has developed the facility. But it is procedural and only applies once sub-rule (1) is engaged: a provision describing who may receive notice cannot enlarge the class of disputes in which notice may be given. The better view assumes a dispute between lessees and it is unsettled whether a hub owned by a non-lessee is within it.

If Chapter VIII is inapplicable, the position is not defective but unregulated: no right of access, no mechanism, no power to fix tariffs and no forum.

C. Excess capacity is the wrong concept

For the purpose of this analysis, assume that the applicability of Chapter VIII is cured and it applies. There is a more serious problem. Rule 46 addresses excess capacity, which is a relational concept: capacity is excess in relation to what the owner needs for its own production. The rule is that the Government must determine whether there is excess capacity and, if so, the extent of it and to do so having regard to the operational requirements of the owner.

A hub presents a different problem because Rule 46 assumes that "excess capacity" can be identified by reference to the operational requirements of the owner. In the case of a publicly funded common hub designed to serve multiple users, the facility is not necessarily operated to satisfy the owner's own production requirements. The owner-specific benchmark contemplated by Rule 46 is therefore difficult to identify. Either the test is meaningless in its application and the finding fails because one of its two operative findings cannot be made or, excess capacity means the entire capacity of the facility since none is needed by the owner. The second reading is the arithmetical but changes the provision. Rule 46 would set the entire commercial terms for a common hub's business, using a mechanism designed to settle a dispute about spare room on another operator's platform, and without the apparatus such an instrument normally carries: no licence, no service standards, no allocation rules, no periodic review. The extension of Chapter VIII, does not adequately cover the grant-supported facilities.

D. Standing

Even if the chapter is applicable, only a lessee can invoke it. A company that has signed a revenue sharing contract but has not yet been granted its lease has no locus standi. Nor does an independent infrastructure developer. Nor does a prospective user at appraisal stage. The rule therefore excludes much of the constituency the hub component exists to serve. In the Ministry's own words, discoveries are not made because the infrastructure is too expensive; an operator in that position has not yet committed to development and is trying to see whether development is feasible. Access terms are an input into that assessment, not an outcome of it. And a mechanism that only kicks in after the lease is granted comes after the decision it was supposed to inform.

E. No methodology

Rule 46(4)(ii) empowers the Government to prescribe a reasonable tariff. Neither the term nor any input to it is defined anywhere in the Rules. There is no regulated asset base, no return benchmark, no depreciation convention, no treatment of grant-funded capital, no rule on utilisation or stranded capacity, and no obligation to publish either the basis of calculation or the outcome.

Something can be said for an open standard, since offshore facilities differ in depth, throughput, configuration and remaining life, and an undefined discretion is not an unconstrained one. But heterogeneity argues for parameters within a published framework rather than for silence, and administrative law constrains only after the event and only on an individual determination. It cannot tell an operator, at the point of sanctioning a development, what it will be charged. The defect is not principally that an undefined standard produces unjust outcomes but that it produces unknowable ones, and a facility whose price is unknowable in advance cannot support the investment decisions it exists to enable.

The contrast with domestic practice is instructive. The Petroleum and Natural Gas Regulatory Board determines natural gas pipeline tariffs under regulations specifying a discounted cash flow methodology with a stipulated post-tax return on capital employed of twelve per cent and periodic review, and publishes its tariff orders.[13] India has already built, in an adjacent part of

[13] The Petroleum and Natural Gas Regulatory Board (Determination of Natural Gas Pipeline Tariff) Regulations, 2008, sch. A (discounted cash flow methodology; rate of return on capital employed of twelve per

the same sector, the machinery Chapter VIII lacks.

F. Remedy, delay and institutional position

Section 9B of the Oilfields Act provides an appeal to the Appellate Tribunal referred to in Section 30 of the PNGRB Act, but only against an order of the adjudicating authority, whose jurisdiction is the imposition of penalties under section 9.[14] A Rule 46 determination is not such an order, and Rule 48(18) confirms that the statutory appeal is tied to adjudication.[15] Rule 51 does not assist, since it governs disputes arising out of a petroleum lease or contract, which a regulatory determination is not.[16] The only remedy is a writ petition under Article 226, which examines legality rather than quantum. Indian law has itself recognised the limits of that remedy. In the electricity sector, tariff determinations made under published regulations are subject to appeal before a specialist tribunal, and judicial review is confined to challenges against the regulations themselves.[17]

Rule 46(4) requires an order within one hundred and eighty days of the notice, but nothing follows if none is made: no deemed determination, no interim access, no default tariff. Inaction is therefore a more effective way of denying access than refusal, because refusal at least produces an order.

The institutional position compounds both. For a grant-funded hub the Union would be at once the funder of the asset, the grantor of the leases whose economics the tariff determines, the recipient of royalty and revenue share from those fields, and the tariff-setting authority along with the technical upstream regulator, the Directorate General of Hydrocarbons, which was created by executive order rather than by statute.[18] No separation of function is provided.

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cent post-tax), r. 2(1)(h) (five-yearly tariff review) (India). For a published determination made under them, *see* Petroleum & Natural Gas Regulatory Bd., Tariff Order (Nov. 27, 2025).

[14] Oilfields Act, *supra* note 5, §§ 9A, 9B(1). Section 9B(1) provides that every appeal against the order of the adjudicating authority shall lie with the Appellate Tribunal referred to in § 30 of the Petroleum and Natural Gas Regulatory Board Act, No. 19 of 2006, INDIA CODE (2006).

[15] PNG Rules, *supra* note 4, r. 48(18).

[16] *Id.* r. 51(1) (confined to disputes arising out of or in connection with the petroleum lease or contract).

[17] The division between challenges to a regulation made under a general regulation-making power and appeals against determinations made under it was considered in *PTC India Ltd. v. Cent. Elec. Regul. Comm'n*, (2010) 4 S.C.C. 603, ¶¶ 58, 60, 66 (India).

[18] Gov't of India Resolution No. O-20013/2/92/ONG-III (Apr. 8, 1993) (constituting the Directorate General of Hydrocarbons under the administrative control of the Ministry of Petroleum & Natural Gas).

G. Two routes that do not close the gap

Two objections must be met before amendment is proposed.

The first is that none of this is necessary, because the Union is paying for the hubs and can impose what it wishes by grant condition, concession agreement or shareholders' agreement. That is how publicly supported infrastructure is ordinarily regulated in India, and it requires no amendment. But contract cannot supply three things. A covenant between the Union and the hub owner is enforceable by the Union alone, so the user who is refused access has neither cause of action nor forum. It would be enforced by the same wing of the Ministry that receives revenue share, relocating rather than removing the conflict just identified. And concession terms in this sector are not routinely published, so a regime whose central term is confidential cannot inform investment decisions by parties outside the contract. Contract should implement a published framework rather than substitute for one.

The second is that the Petroleum and Natural Gas Regulatory Board could absorb the function. It could not. The long title of its Act confines the Board to refining, processing, storage, transportation, distribution, marketing and sale, expressly excluding production of crude oil and natural gas, and its definition of common carrier excludes pipelines laid to supply crude oil.[19] The one Indian regulator with a published methodology, an access code and an appellate route is therefore unavailable without amendment, and extending its remit across a boundary written into the long title of its own Act would be a far larger task than the measures proposed below.

IV. LEARNING FROM ABROAD: NORWAY AND THE UNITED KINGDOM

A. What Gassled is, and why it is comparable

Gas produced on the Norwegian shelf reaches markets in continental Europe and the United Kingdom through a trunk transport system that no single field could justify building. Rather than leave each licensee to negotiate carriage with whichever pipeline owner stood between it and the market, Norway consolidated the trunk pipelines and associated terminals into a single joint venture, *Gassled*, in which field licensees, financial investors and the State through Petoro

[19] The Petroleum and Natural Gas Regulatory Board Act, No. 19 of 2006, INDIA CODE (2006), long title (excluding production of crude oil and natural gas from the Board's remit), § 2(j) (defining common carrier so as not to include pipelines laid to supply crude oil).

hold unitised interests.[20] Gassco AS, wholly state-owned, operates the system as a neutral operator and holds no ownership interest.[21] Tariffs are not negotiated between owner and user but fixed by the Ministry by regulation.

The reason for fixing them is fiscal as much as regulatory. Norwegian policy proceeds on the footing that transport is not a profit centre and that profit from petroleum should be earned, and taxed, at the field.

A Samudra Manthan hub reproduces that position in miniature. It will exist because the discoveries it serves cannot each fund their own facilities; its users will pay royalty and revenue share to the Union on the production it enables; and the Union will have paid for part of the facility. Whatever the hub charges comes out of the same pool of value the Union taxes at the field.

B. Two regimes, not one

Norwegian law operates two regimes under a single statutory head, Section 4-8 of the Petroleum Act 1996.[22] The first governs Gassled, for which tariffs are fixed by ministerial regulation.[23] The second, the Regulations of 20 December 2005 No. 1625 relating to the use of facilities by others, applies to other offshore facilities and provides for negotiated access within prescribed criteria, with recourse to the Ministry.[24] Norway sets tariffs for one system and constrains negotiation everywhere else.

C. The 2005 regulation

The 2005 regulation is the more transplantable instrument. It reaches host production platforms and not only pipelines,[25] and entitles a user needing to use another's facility to such use on

[20] Ministry of Energy & Norwegian Offshore Directorate, *State Organisation of Petroleum Activities*, NORSKPETROLEUM.NO [*hereinafter* State Organisation] (describing Petoro AS as manager of the State's Direct Financial Interest and Gassco AS as a wholly state-owned company which is the neutral and independent operator of the gas transport system).
[21] *Id.*
[22] Act Relating to Petroleum Activities of Nov. 29, 1996, No. 72, § 4-8 (Nor.) [*hereinafter* Petroleum Act].
[23] Regulations Relating to the Stipulation of Tariffs, etc. for Certain Facilities of Dec. 20, 2002, No. 1724 (Nor.) [*hereinafter* Tariff Regulation].
[24] Regulations Relating to the Use of Facilities by Others of Dec. 20, 2005, No. 1625 (Nor.) (in force Jan. 1, 2006; last amended Jan. 1, 2024) [*hereinafter* TPA Regulation], https://www.sodir.no/en/regulations/regulations/facilities-use-by-others/. Citations are to the unofficial English translation published by the Norwegian Offshore Directorate.
[25] TPA Regulation, *supra* note 24, § 1.

objective and non-discriminatory terms.[26] Its governing principle is stated expressly: *agreements shall be based on the principle that profits from production shall primarily be earned by the producing field*, while the owner's incentives to maintain and sensibly expand capacity are safeguarded.[27] That sentence does the work left in India to the undefined phrase reasonable tariff.

The regulation then enumerates what a tariff may recover: operating costs incurred as a result of the use; operating costs previously incurred in maintaining capacity beyond the owner's own needs with a view to future third-party use; new investments entailed by the use; prior investments in additional capacity made with the same view, including a reasonable share of the risk of under-utilisation but not where the owner has already achieved or will achieve a reasonable return; compensation for loss or postponement of production; other documentable costs; and a reasonable profit having regard to the risk assumed.[28] The owner must be able to give an account of the principles applied.[29]

A further limb addresses the economic problem underlying the whole subject, and has no Indian equivalent. A facility of this kind is a bottleneck: the fields it serves have no alternative route to market, and the alternative to using it is leaving the hydrocarbons in the ground. An owner pricing freely against such a user can charge up to the point at which the user's field is barely worth producing, capturing most of the value of a discovery it did not make. A tariff described only as reasonable is vulnerable to that, because it is not self-evidently unreasonable for an owner to seek a share of the value its facility unlocks. The regulation forecloses the argument: the user field's profitability shall not be emphasised in assessing what constitutes a reasonable profit.[30] Return is measured against the owner's invested capital and risk, not what the user stands to gain.

On procedure, agreements are based on standardised clauses approved by the Ministry and published,[31] disagreements may be referred to the Ministry with each party heard,[32] and within thirty days of a binding agreement the user must report the negotiation and main terms for

[26] *Id.* § 4, first para.
[27] *Id.* § 4, second para.
[28] *Id.* § 9, third para.
[29] *Id.* § 9, fifth para. Section 9, sixth paragraph, further permits the Ministry on its own initiative to stipulate tariffs and other terms and to amend agreed terms.
[30] *Id.* § 9, third para., final limb.
[31] *Id.* § 10.
[32] *Id.* § 13.

publication.[33] Access terms on the Norwegian shelf are thus, to a meaningful degree, a matter of public record.

D. Gassled: what the litigation establishes

Tariffs for systems established after 1987 were set to yield a real rate of return of about seven per cent before tax on invested capital.[34] Between 2011 and early 2012, four companies owned by institutional investors acquired approximately forty-four per cent of Gassled from oil companies for some NOK 32 billion.[35] By an amendment regulation of 26 June 2013 the Ministry reduced tariffs for capacity not yet booked, with effect from 1 October 2016; practitioner accounts put the reduction in the capital element of the tariff, its larger component, at about ninety per cent in most tariff zones, and the Ministry estimated the revenue forgone on volumes qualified for transport at the decision date at some NOK 14.7 billion in present value, a figure the owners contested.[36] The owners failed at first instance in September 2015, in the Borgarting Court of Appeal on 30 June 2017, and in the Supreme Court on 28 June 2018.[37] The Supreme Court held that the Tariff Regulations had their basis in Sections 10-18(1) and 4-8(1) of the Petroleum Act and Section 70 of the Petroleum Regulations, that the Ministry could amend them within the scope of that basis, and that section 4-8 imposed no independent limitation of significance; it declined to decide whether the amendment engaged the right to property under the European Convention, holding it in any event not disproportionate.[38]

Three propositions follow. The first is that a state-set tariff is not inherently objectionable, and that a tariff power exercised within its statutory basis can survive sustained challenge. The second concerns the scope of the amendment. It did not reduce the tariff on capacity already reserved: it applied only to agreements entered into after it came into force and only to transport

[33] *Id.* § 14, sixth para.
[34] Ministry of Petroleum & Energy, *Lawsuit over Gassled Tariffs*, REGJERINGEN.NO (last updated Apr. 24, 2015) [*hereinafter* Gassled Statement]. The Ministry states that in all systems established after 1987 tariffs have been set to yield a real rate of return of about seven per cent before tax on invested capital, with a higher return for the older Statpipe system.
[35] Gassled Statement, *supra* note 34 (approximately forty-four per cent); Oxera, *Piping Down?* Gassled *Tariff Reductions and the Price of Regulatory Risk*, OXERA.COM (last visited Sept. 17, 2026) (acquisitions between June 2011 and January 2012); *Norway Gas Pipeline Investors Go to Top Court over Tariff Cut*, GULF NEWS (2017) (institutional owners; consideration of NOK 32 billion).
[36] Advokatfirmaet Wiersholm, *The* Gassled *Tariff Dispute in Short* (2017) [*hereinafter* Wiersholm]; Gassled Statement, *supra* note 34; *Allianz, Abu Dhabi Fund Start $4b Gas Lawsuit*, GULF NEWS (Apr. 28, 2015) (owners' estimate of about NOK 34 billion).
[37] Oslo tingrett [Oslo District Court] Sept. 25, 2015 (Nor.); Borgarting lagmannsrett [Borgarting Court of Appeal] June 30, 2017 (Nor.); Norges Høyesterett [Supreme Court] June 28, 2018, HR-2018-1258-A (Nor.).
[38] Norges Høyesterett, HR-2018-1258-A (as summarised in the English-language summary published by the Supreme Court of Norway).

from 1 October 2016, so a shipper that had booked earlier continued to pay the tariff on which it had booked.[39] What the owners lost was the return expected on capacity not yet contracted for. That limitation is what is meant by grandfathering, namely that when a rule changes, arrangements already made under the old rule continue on the old terms and the new rule governs only what follows. It matters because users sanction developments, and lenders advance against them, on the price then in force; a power to revise that price with effect on concluded bookings would make the tariff unusable as a basis for investment. The Norwegian courts did not hold grandfathering to be legally required, and the point should not be put that high. But it did real work in the Supreme Court's reasoning: because the amendment governed only future bookings, the Court treated Section 4-8(2) of the Petroleum Act, which concerns agreements already concluded, as not engaged, and it relied on the undisturbed bookings, which covered most capacity to 2028, in finding the measure proportionate.[40]

The third is drawn from the circumstances that produced the litigation rather than its outcome. The fiscal argument for a low tariff, that rent extracted at the bottleneck is rent not collected at the field, holds cleanly only where the party bearing the tariff and the party gaining fiscally are substantially the same. In Gassled's original configuration they largely were, since the owners were the shipping licensees and the tariff was to a significant extent a transfer between their own pockets. The four companies that bought in between 2011 and early 2012 held no field interests and had no offsetting upstream gain when those tariffs fell. For them the reduction was a loss rather than a transfer. That did not limit the State's power: both appellate courts found that the buyers had known the tariffs could be cut if returns exceeded seven per cent, and the Supreme Court saw no reason why a commercial change of ownership should narrow the Ministry's authority.[41] What the change of ownership did was make that authority contested, and the litigation is what happens when the alignment between owner and user breaks down. The lesson for India is that once capital without upstream interests enters the ownership of a hub, published methodology, reasoned determinations and an available appeal cease to be good practice and become the condition of the investment being made at all.

[39] Gassled Statement, *supra* note 34.
[40] Norges Høyesterett, HR-2018-1258-A; CMS, Gassled*: Norwegian Supreme Court Upholds Government's Right to Amend Gas Transport Tariffs*, LEXOLOGY (Dec. 5, 2018) (section 4-8(2)); CMS, Gassled *in the Supreme Court: Unrestricted Returns – A Human Right for Infrastructure Owners?*, CMS.LAW (Feb. 7, 2019) [*hereinafter* CMS 2019] (proportionality).
[41] Wiersholm, *supra* note 36 (Court of Appeal); CMS 2019, *supra* note 40 (Supreme Court); CMS, Gassled *in the Supreme Court: Parallels (and Cautionary Tales?) in the UKCS*, LEXOLOGY (Jan. 11, 2019).

E. The United Kingdom on procedure

Under Sections 82 to 91 of the Energy Act 2011, now exercisable by the North Sea Transition Authority, a person who has applied to the owner of a relevant upstream pipeline or processing facility and failed to agree terms may apply for a notice securing access, and the authority may regulate the charges for the right granted.[42] Two features are useful. The applicant is described as a person rather than a licensee, so standing is not tied to holding a licence;[43] and Section 86 requires publication of notices and variations, subject to excision of material prejudicial to the commercial interests of owner or applicant, after both are heard.[44] Behind the statute sits a non-statutory *Infrastructure Code of Practice* setting out a negotiation process parties are expected to exhaust first.[45] The United Kingdom thus contributes the negotiate-then-determine sequence and a workable model of publication with commercial protection, but nothing on public funding, because there is none on its shelf; and its wider standing operates in a mature province with many potential hosts, which qualifies its weight as precedent for a province served by a single hub.

V. POLICY RECOMMENDATIONS FOR INDIA

Three institutional differences limit what can be taken from Norway. Norway influences the Gassled return as an equity owner through Petoro;[46] India proposes support by grant, which confers no proprietary interest unless one is expressly created, so its authority must come from rule and must exist before the asset is built. Gassco is a neutral operator, whereas India's likely operator is a national oil company that is also among the largest competing explorers on the shelf.

First, resolve applicability and supply a workable concept of capacity. The Rules should provide that Chapter VIII applies to any facility used for mineral oil operations which has received Central Government financial support, whether or not its owner holds a petroleum lease, drafted by reference to public support rather than to Samudra Manthan by name so that

[42] Energy Act 2011, c. 16, §§ 82–91 (UK). The functions originally conferred on the Secretary of State were transferred to the Oil and Gas Authority, now the North Sea Transition Authority, by the Energy Act 2016, c. 20, sch. 1 (UK).
[43] Energy Act 2011, c. 16, § 82(1) (UK) (applying where "a person" makes an application to the owner of a relevant upstream petroleum pipeline or oil or gas processing facility).
[44] *Id.* §§ 86, 82(16)(b).
[45] OIL & GAS UK, INFRASTRUCTURE CODE OF PRACTICE (2017); N. SEA TRANSITION AUTH., GUIDANCE ON DISPUTES OVER THIRD PARTY ACCESS TO UPSTREAM OIL AND GAS INFRASTRUCTURE (Nov. 2022).
[46] State Organisation, *supra* note 20.

it survives the scheme. Because extension alone is insufficient, they should further provide that for such a facility all capacity not contractually committed is available capacity; that the requirement to have regard to the owner's operational requirements applies only to capacity the owner uses for its own production; and that the declaration duty under Rule 44 extends to the owner whether or not it holds a lease. The last limb is essential, since without it no one learns that capacity exists.

Second, widen standing, subject to a maturity condition. Rule 46(1) should extend to any person holding a contract with the Central Government in respect of an area and to any person who has applied for a petroleum lease; the use of the word person in Section 82 of the UK's Energy Act 2011 shows wider standing to be workable. Standing should nonetheless be conditional on the applicant having requested terms and failed to agree, and on its having reached a defined stage of maturity such as a declared commercial discovery or a submitted field development plan. A party at appraisal stage has no defined volume or timetable, and a determination in its favour could reserve capacity against a project that never proceeds, at the expense of one that would have.

Third, publish a tariff methodology before the assets are built. It should specify the regulated asset base, the depreciation convention, the treatment of utilisation and stranded capacity, and the permitted cost categories on the model of Section 9 of the Norwegian 2005 regulation, and should provide that the profitability of the user's field is not to be taken into account in fixing the owner's return. It should state expressly that grant-funded capital is excluded from the regulated asset base, so that users are not charged a return on money that was a government grant and the State does not earn a return on its own subsidy through a tariff it itself sets. This is not a foreign import as it is the principle already applied to publicly supported infrastructure in India through viability gap funding, where the grant reduces the capital the concessionaire must recover from users rather than forming part of its return-earning investment.[47] One consequence must be faced. If grant-funded assets sit outside the asset base, no depreciation accrues on them through the tariff, so separate provision for abandonment funding is required.

Fourth, provide for capacity allocation and booking. Rule 46 is bilateral and supplies no

[47] DEP'T OF ECON. AFFAIRS, MINISTRY OF FIN., GOV'T OF INDIA, SCHEME FOR FINANCIAL SUPPORT TO PUBLIC PRIVATE PARTNERSHIPS IN INFRASTRUCTURE (Viability Gap Funding Scheme). The proposition relied on in the text is the design principle that the grant reduces the capital recoverable from users rather than forming part of the concessionaire's return-earning investment.

priority rule; if two users seek the last available tranche it cannot say which prevails. A published allocation and booking procedure should address priority between competing applicants, the treatment of applications by the owner or its affiliates where the owner is also an operator, the duration and firmness of bookings, and the consequences of non-use.

Fifth, require reasons, publication and periodic disclosure of returns. Determinations should be reasoned and published, with commercially sensitive material excised after the parties are heard, following Section 86 of the Energy Act 2011. Recording reasons is in any event the general position in Indian administrative law for decisions of this character, so its omission from rule 46 is a gap rather than a considered exclusion.[48] The accrued rate of return on each grant-supported facility should be published annually, so that adjustment by reference to realised returns is anticipated and priced rather than contested.

Sixth, grandfather booked capacity, provide an appeal, and attach a consequence to delay. Any revision of a determined tariff should leave capacity already booked undisturbed, that being the feature which materially narrowed both the impact and the legal exposure of the Norwegian amendment. Section 9B of the Oilfields Act should be amended so that an appeal lies to the Appellate Tribunal against a determination of access or tariff, and not only against a penalty order. And the Rules should attach a consequence to expiry of the one hundred and eighty day period without an order, whether a deemed determination, interim access on the published methodology, or a right of appeal on the footing that the application stands refused.

Seventh, separate the tariff function from the funding and revenue functions. Where a hub is grant-funded and operated by an entity that also holds petroleum leases, the operator should hold the hub in a separate legal entity with separate accounts, and the determination under Rule 46 should be made by an authority distinct from the wing of the Ministry that administers the scheme and receives revenue share. The objection is not that the Government will decide badly, nor the diffuse institutional interest every State has in an activity it both regulates and taxes, but the narrower one of a direct financial interest in the quantum on both sides of a single calculation: a rupee not recovered through the tariff may be recovered through revenue share, and the reverse.[49] Norway is not to the contrary. There the preference for profit at the field is

[48] Kranti Assocs. (P) Ltd. v. Masood Ahmed Khan, (2010) 9 S.C.C. 496, ¶ 47 (India) (summarising the principles governing the requirement to record reasons in quasi-judicial and administrative decision-making).
[49] J. Mohapatra & Co. v. State of Orissa, (1984) 4 S.C.C. 103, ¶ 10 (India) (adopting the rule that a direct financial interest, however small, in the matter in dispute presumptively disqualifies, and that actual bias need not be shown). The contrast is with *Gullapalli Nageswara Rao v. State of Andhra Pradesh*, A.I.R. 1959 S.C.

stated in the regulations, worked through a published tariff formula, consulted upon before amendment and open to challenge in court. The interest is disclosed and constrained, not absent. What is proposed here is the same discipline, not a pretence that the Union has no stake. A determination so made, without published reasons and without appeal, is difficult to defend and harder still to raise capital against.

VI. CONCLUSION

India has invested public money in shared offshore infrastructure before it has worked out the legal terms under which it will be used. Under the 2025 Rules, Chapter VIII was drafted for privately financed facilities and any bilateral disputes between lessees involving said facilities. It may not apply to a publicly funded hub at all; its operative concept of excess capacity does not fit a facility with no production of its own; and where it applies, it confers standing narrowly, leaves the central pricing term undefined, requires no reasons or publication, carries no consequence for delay, and attracts no appeal. Nor can the gap be bridged through grant conditions that vest rights in the grantor rather than the user or the Petroleum and Natural Gas Regulatory Board which is kept out of production. Norway's value as a comparator is less in its numbers than in its drafting. The enumerated cost categories of the 2005 regulation, the express principle that profit should accrue primarily to the producing field, the exclusion of the user's profitability from the assessment of reasonable profit, and the discipline of publishing negotiated terms are transferable to Indian subordinate legislation without institutional reconstruction. Gassled shows that a state tariff power can survive challenge when it is exercised within its statutory basis and when bookings already made are left undisturbed. It was the preservation of those bookings that kept the amendment clear of the provision governing concluded agreements, and that carried the finding of proportionality. Its more useful lesson lies elsewhere. The Norwegian courts did not treat the change in ownership as a limit on the Ministry's power, and nothing here suggests they should have. What the change did was turn the tariff from an internal transfer among owners who were also users into a contested claim by owners who were not. That is the configuration India will face the moment

1376 (India), where the Chief Minister was held not disqualified from hearing objections to a road transport nationalisation scheme by reason of holding the transport portfolio or of the Government having initiated the scheme; compare *Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transp. Corp.*, A.I.R. 1959 S.C. 308 (India), where the Secretary who was himself a party to the dispute heard the objections and was disqualified.

The distinction between a general institutional interest, which does not disqualify, and a direct pecuniary interest in the outcome, which is treated more strictly, is long established in the law relating to bias.

private capital without upstream interests is invited into a hub.

Two possibilities are open. In the first, a framework is published before the hubs are built, and the question is not whether a gap existed but whether the elements identified here were in it: a workable concept of capacity, standing for those who need it, a stated methodology, allocation rules, reasons and publication, grandfathering, an appeal, and separation of the tariff function from the fiscal one. In the second, nothing is published, capacity is allocated privately by an operator that competes with its users, and terms of access are settled facility by facility behind closed doors. The elements do not change between the two. Only the cost of their absence does.