

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

I.A. No.30/2013
in
Petition No.251/GT/2013

Coram:

Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K.Singhal, Member

Date of Hearing: 27.2.2014
Date of order: 1.5.2014

In the matter of

Application under Regulation 13 of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012 for waiver of fee for determination of tariff.

And in the matter of

Petition for determination of tariff for generation and transmission activities undertaken by Bhakra Beas Management Board.

And in the matter of

Bhakra-Beas Management Board (BBMB)

..... Applicant/Petitioner

Vs

1. Punjab State Power Corporation Ltd, Patiala
2. Haryana Vidyut Prasaran Nigam Ltd, Chandigarh
3. Rajasthan Rajya Vidyut Vitaran Nigam Ltd, Jaipur
4. Himachal Pradesh State Electricity Board, Shimla
5. Union Territory of Chandigarh, Chandigarh

.....Respondents/Respondents

Parties Present:

For Petitioner:

Shri M.G.Ramachandran, Advocate, BBMB
Ms. Anushree Bardhan, Advocate, BBMB
Ms. Pooja Gupta, BBMB
Shri Sanjay Sidana, BBMB
Shri Sachin Datta, Advocate
Shri Sheeshpal, Advocate

INTERIM ORDER

The Commission by order dated 15.9.2011 in Petition No. 181/2011 (*suo motu*) held that the regulation and determination of tariff for generation and inter-State transmission of electricity by BBMB are vested in this Commission by virtue of the provisions of section 174 of the said Electricity Act, 2003 (the 2003 Act). Accordingly, BBMB was directed to file appropriate applications before this Commission for approval of tariff of its generating stations and transmission systems, in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 ('the 2009 Tariff Regulations') for the period 2009-14

2. Aggrieved by the said order dated 15.9.2011, BBMB filed Appeal No.183/2011 before the Appellate Tribunal for Electricity ('the Tribunal') challenging the jurisdiction of the Commission to determine the tariff of its generating stations and transmission systems. The Tribunal by its judgment dated 14.12.2012 however dismissed the said appeal on merits and upheld the jurisdiction of this Commission to determine the tariff of the generating stations and transmission systems of BBMB. Accordingly, by order dated 10.1.2013 in Petition No.181/2011 (*suo motu*)

BBMB was directed by this Commission to file the tariff petitions in accordance with the provisions of the 2009 Tariff Regulations, separately for the generating stations and for the transmission systems, after serving copies of the said petitions on the beneficiary States and impleading them as respondents. The petitioner has filed this petition and the same is pending for consideration.

3. In the petition, BBMB has submitted that it does not operate any thermal power stations and operates the hydro power stations which are assets owned by the beneficiary states. It has also submitted that it manages and operates an inter-state transmission system primarily for evacuation of power from the power houses to the periphery of the beneficiary states. BBMB has further submitted that there is no capital investment in the books of BBMB in any of these assets and the capital assets were created by the beneficiary states and have been given under the possession and control of BBMB only for the purpose of operation and maintenance. BBMB has submitted that any additional capitalization required for the projects including renovation and modernization scheme and other up-gradation scheme are also funded by the beneficiary states.

BBMB has also stated that the books of accounts reflect only the following:

(a) The amount paid by the beneficiary States-Respondents herein from time to time which is accounted for as receipt (not as income) and deferred for expenditure incurred by BBMB either as operation and maintenance or for capital scheme including renovation and modernization and other schemes;

(b) The statement of expenditure incurred by BBMB which is primarily the operation and maintenance expenses (inclusive of administration cost, employees cost, repair and maintenance cost) and capital expenditure as mentioned herein above; The surplus in the contribution made by the beneficiary States-respondents is retained as the money belonging to the beneficiary States and is adjusted in the subsequent year's expenditure. Such surplus is reflected in the books of accounts as advance paid by the beneficiary States-respondents herein.

Interlocutory Application

4. BBMB has also filed Interlocutory application under Regulation 13 of the Central Electricity Regulatory Commission (Payment for Fees) Regulations 2012, (the Fee Regulations) for waiver of fee for determination of tariff and has submitted as under:

- (a) BBMB is a statutory body constituted under the provisions of the Punjab Re-organization Act, 1956 and is engaged in the activities of regulation of supply of water and generation of power from Bhakra Nangal and Beas Projects and the power is made available to the States of Haryana, Punjab Rajasthan, Himachal Pradesh and Chandigarh.
- (b) BBMB is merely a manger of the participating governments and their respective utilities to manage maintain and operate the generating station and the transmission line and assets. BBMB does not generate and supply electricity to the participating governments or undertake the business of inter-state transmission of electricity.
- (c) BMB cannot and does not seek any of the any of the tariff elements specified in the Electricity Act, 2003 and the Tariff Regulations, 2009 relating to servicing of capital cost (ROE, IOL, Depreciation, incentive etc) and BBMB is only getting the expenses incurred on behalf of the respondent states.
- (d) Any additional capitalization required for the projects including any renovation and modernization scheme and any other up-gradation scheme are also funded by the beneficiary states. The capital assets were created by the beneficiary states and have been given under the possession and control of BBMB only for the purpose of operation and maintenance.
- (e) BBMB does not derive any income or profit or generate surplus on account of the activities of additional capitalization undertaken in relation to the projects. BBMB does not appropriate any income from any of its activities to be paid to Central Govt. or otherwise to be invested in securities etc. BBMB does not have any profit or loss in operation.
- (f) BMB does not hold any capital assets and is not required to service any capital expenditure forming part of the project cost, either as debt or equity.
- (g) The actual aggregate O&M expenditure incurred by BBMB on the operation & maintenance expenditure of the generating stations and the transmission assets are less than the normative expenditure as calculated under Regulation 19 of the 2009 Tariff Regulations. Accordingly, BBMB has not separately taken into account the normative

interest on working capital which it is entitled under the Tariff Regulations, 2009 and the normative interest on working capital should also be included in the O&M expenses.

- (h) Even if O&M expenses determined by the Commission in regard to generating stations and transmission assets is more than the actual O&M expenditure, BBMB will not be able to receive the differential amount from the beneficiary states and appropriate the same as its income.

5. In the above circumstances, the applicant has prayed that the Commission may under Regulation 13 of the Fees Regulations, relax the provision of Regulation 3 of the Fee Regulations and waive the fees to be paid for determination of tariff in the aid petition.

Analysis

6. Regulation 3 (1) and 3 (2) of the Fee Regulations provides as under:

"(1) An application for determination of tariff of a generating station or a unit thereof, shall be accompanied by a fee payable at the rate of ₹4000/MW/annum and ₹4400/MW/annum for the years 2012-13 and 2013-14, respectively corresponding to the installed capacity of such generating station or unit thereof:

xxxxx

(2) An application for determination of tariff for inter-State transmission system or an element thereof shall be accompanied by a fee payable at the rate of 0.10% and 0.11% of the total annual transmission charges per annum claimed by the transmission licensee for the years 2012-13 and 2013-14, respectively, rounded off to the nearest one hundred rupees subject to a minimum of ₹100000/= (₹One lakh only)"

7. Regulation 13 of the Fee Regulations provides as under:

"13. Power to relax- The Commission may, in appropriate cases and for reasons to be recorded in writing, relax any of the provisions of these regulations."

8. Heard the learned counsel for the petitioner 'on admission'. BBMB has submitted that it operates the Bhakra–Nangal Project which comprises of ten units i.e five units of 108 MW each and 5 units of 157 MW each. It has also submitted that in addition, the Bhakra Hydro Power Projects comprise three units with an aggregate capacity of 76.39 MW and another three units at

Kotla with aggregate capacity of 77.36 MW. BBMB has also submitted that Beas project at Sunder Nagar comprise of six units of 65 MW each and six units of 66 MW each at Pong. It is also observed that BBMB manages and operates a transmission network for evacuation of power from the power houses to the respondents herein. However, BBMB has further submitted that it does not generate and supply power or undertake the business of inter-state transmission of electricity, and has accordingly prayed that the Commission may consider only the operation and maintenance expenses, incurred by it on behalf of the beneficiary states, in line with the 2009 Tariff Regulations.

9. Similar submissions as noted in paras 3 and 4 above was made by BBMB before the Tribunal in Appeal No 183/2011 and the Tribunal by its judgment dated 14.12.2012 had recorded its findings as under:

"22.....The BBMB admits that it is in a position to give the details of O&M expenditure for transmission system as per the Central Electricity Regulatory Commission norms as well as interest on working capital on the prescribed formats and that the Commission can take the depreciated value of the BBMB's transmission system in the books of the participating States as the capital value and these can be taken for determination of transmission charges relating to the non-ISTS lines

.....The operation and maintenance expenses at least so far as the transmission chapter is concerned, has to come under the scrutiny of the Central Electricity Regulatory Commission.....

24..... As a Govt. company as the BBMB now is, it cannot escape scrutiny and regulatory jurisdiction of the Central Commission. The BBMB cannot be compared to that of a contractor as is contended in the written note of argument. Though there is no actual sale by the BBMB and supply is made in terms of the Act, 1966 such supply does not become absolutely divorced from any consideration. The provision of section 79 (5) of the Act, 1966 will apply also to the Beas Project mutatis mutandis in terms of sub-section (5) of section 80. Thus expenses including salaries and allowances of the staff and other amounts to meet expenses shall have to be provided to the BBMB and the amount shall be apportioned having regard to the benefit of the States / Boards as the Central Govt. may specify. Therefore, there are operation and maintenance expenses, renovation and modernisation expenses which are associated with

components of tariff and it is the BBMB that has to meet all these expenses. Regulation of these expenses so far is not the function of any of the State Commission because it is an inter-state Central Govt. owned generation entity. The mere fact that such power of regulation has not been exercised so far is no ground to deny this jurisdiction to the Central Electricity Regulatory Commission when the Act, 2003 is an exhaustive Code. Yes, section 79 (1) has to be read with section 62(1) of the Act, 2003, but if any of the components of section 62(1) is attracted then the jurisdiction of the Central Electricity Regulatory Commission is attracted. With the reorganisation of the then existing State of Punjab, the control of the Bhakra Projects ceased to remain in the hands of that State and it vested in the BBMB. It is the BBMB that has the statutory power to supply electricity to the Boards or authority in charge of distribution. Under section 79 (3) (c) of the Act, 1966, the BBMB has to carry out construction of the remaining works connected with the Right Bank Power House. There is force in the argument of the learned senior counsel appearing for the Central Electricity Regulatory Commission that as the BBMB maintains the charges and costs, it is necessary to scrutinise the same as ultimately charges are passed on to the consumers. The concept of prudence check is a jurisprudential concept under the Electricity laws. Therefore, there is no illegality in bringing the BBMB which is an entity controlled by the Central Govt. and distinct from the States within the purview of the Central Electricity Regulatory Commission. It may be that the Central Electricity Regulatory Commission finds that there is no necessity of fixing generation tariff in the same lines as are ordinarily done in other Central Govt. owned generating entities."

10. The jurisdiction of this Commission to determine the tariff of the generating stations and inter-state transmission systems having been decided by the Tribunal as above, the Commission needs to take a view as to which of the elements of tariff of the generating stations and transmission system of BBMB need to be determined for the purpose of tariff, keeping in view the peculiarity of arrangement between BBMB and the participating States. Therefore, it is not possible at this stage to come to a conclusion whether BBMB should be made to pay the fee as applicable to the generating stations or the fees should be waived as prayed for by BBMB. Till the tariff of BBMB is finally determined, we are of the view that the fee of ₹3.00 lakh deposited by the petitioner should be made applicable to the petition filed by the petitioner, which shall be adjusted against the filing fees to be determined at the stage of final determination of tariff. Since separate

fee of ₹1.00 lakh is payable towards Interlocutory Application, as per the Fee Regulations, the petitioner should be directed to deposit the same towards the said interlocutory application.

11. Accordingly, the petitioner is directed to deposit the I.A filing fee of ₹1.00 lakh within a week from the date of receipt of this order. The I.A is disposed of in terms of the above. The petitioner is also directed to serve copies of the petition on the respondents within 7.5.2014 and the respondents shall file their replies, with advance copy to the petitioner by 15.5.2014. Rejoinder, if any, by 22.5.2014.

12. Matter shall be listed for hearing thereafter for which separate intimation shall be given.

Sd/-
(A.K.Singhal)
MEMBER

Sd/-
(M.Deena Dayalan)
MEMBER

Sd/-
(Gireesh B. Pradhan)
CHAIRPERSON