

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 200/TT/2013

Coram:

**Shri Gireesh B. Pradhan, Chairperson
Shri A. K. Singhal, Member
Shri A.S. Bakshi, Member**

Date of Order : 7.8.2015

In the matter of:

Determination of tariff of inter-State transmission lines connecting two States for inclusion in POC Transmission charges in accordance with Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009.

And in the matter of:

Bhakra-Beas Management Board (BBMB)
sector 19-B, Madhya Marg,
Chandigarh-160 019

.....**Petitioner**

Vs

1. Punjab State Electricity Board
The Mall, Patiala (Punjab).
2. Haryana Vidyut Prasaran Nigam Limited,
Shakti Bhawan, Sector-6,
Panchkula (Haryana)
3. Rajasthan Vidyut Prasaran Nigam Limited,
Janpath,
Jaipur
4. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House Complex Building II,
Shimla-171 004.
5. Union Territory of Chandigarh
Through The Finance Secretary
Sector 9, UT Secretariat
Chandigarh

....**Respondents**



ORDER

The instant petition has been filed by Bhakra-Beas Management Board (BBMB) for approval of the annual transmission charges for 220 kV Panipat-Narela Ckt-1, 220 kV Panipat-Narela Ckt-2, 220 kV Panipat-Narela Ckt-3, 220 kV BTPS-Ballabgarh Ckt-1 and 220 kV BTPS-Ballabgarh Ckt-1 inter-State transmission lines connecting two States (hereinafter referred to as "transmission assets") for the 2004-09 tariff period in compliance with the Commission's order dated 14.3.2012 in Petition No.15/SM/2012 under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter "2009 Tariff Regulations").

2. The Commission vide order dated 14.3.2012 in Petition No. 15/SM/2012 gave the following directions:-

"5. It has come to the notice of the Central Commission that the some of the owners/developers of the inter-State transmission lines of 132 kV and above in North Eastern Region and 220 kV and above in Northern, Eastern, Western and Southern regions as mentioned in the Annexure to this order have approached the Implementing Agency for including their transmission assets in computation of Point of Connection transmission charges and losses under the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter "Sharing Regulations").

6. As a first step towards inclusion of non-ISTS lines in the POC transmission charges, the Commission proposes to include the transmission lines connecting two States, for computation of POC transmission charges and losses. However, for the disbursement of transmission charges, tariff for such assets needs to be approved by the Commission in accordance with the provisions of Sharing Regulations. Accordingly, we direct the owners of these inter-State lines to file appropriate application before the Commission for determination of tariff for facilitating disbursement.

We direct the respondents to ensure that the tariff petitions for determination of tariff is filed by the developers/owners of the transmission line or by State Transmission Utilities where the transmission lines are owned by them in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009, by 20.4.2012."

3. The petitioner filed the instant petition in compliance of Commission's order dated 14.3.2012 in Petition No. 15/SM/2012 for determination of tariff of the five transmission lines as mentioned in para 1 above considering the same as transmission lines connecting two States.

4. Earlier, the Commission vide order dated 15.9.2011 in Petition (Suo-motu) No.181/2011 had directed the petitioner to file appropriate applications for approval of the tariff of its generating stations and the transmission systems in accordance with the 2009 Tariff Regulations. The relevant portion of the said order is extracted hereunder:-

"5. The administration, maintenance and operation of Bhakra Nangal Project were handed over to Bhakra Management Board w.e.f. 1st October 1967. The Beas Project Works, on completion, were transferred by Government of India from Beas Construction Board (BCB) to Bhakra Management Board as per the provisions of Section 80 of the Punjab Reorganization Act, 1966. Pursuant to this, Bhakra Management Board was renamed as Bhakra Beas Management Board (BBMB). It is noticed from the website of BBMB that it has an installed capacity of 2804.73 MW from the Bhakra-Nangal and Beas Project and has a transmission network of 3735 km of 400 kV, 220 kV, 132 kV and 66 kV transmission lines for supply of power to the States of Punjab, Rajasthan, Haryana, Himachal Pradesh, Delhi and Union Territory of Chandigarh.

6. It is evident from the provisions of 1966 Act that the BBMB is functioning under the control of the Central Government and has been vested with the responsibilities to supply power from the projects to the States of Punjab, Rajasthan, Haryana, Himachal Pradesh Delhi and Union Territory of Chandigarh through wide network of transmission lines and sub-stations. In other words, the functions assigned to BBMB under 1966 Act establishes beyond doubt that BBMB is a generating company owned or controlled by the Central Government and is also involved in inter-state transmission of electricity. Accordingly, after coming into effect of the EA 2003, regulation and determination of tariff for generation and inter-State transmission of electricity by BBMB are vested in the Central Commission by virtue of the provisions of section 174 of the said Act.

7. BBMB is, therefore, directed to make appropriate applications before the Central 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 for the period 2009-14."

5. The petitioner filed an Appeal No.183/2011 against the said order before the Hon'ble Appellate Tribunal for Electricity (hereinafter referred to as "Tribunal"). The Tribunal dismissed the appeal vide judgement dated 14.12.2012, wherein the jurisdiction of the Commission to determine the tariff of the generating stations and the transmission systems of the petitioner was upheld. The relevant portion of the Tribunal's judgement is extracted hereunder:-

"22. It is thus clear without any shadow of doubt that (a) the surplus capacity of the transmission lines are utilized for the transmission of power of the Central Public Sector Utilities, (b) the BBMB's transmission system is recognised as Inter-State Transmission System by the Indian Electricity Grid Code, (c) the tariff for the BBMB transmission system has to be included and calculated in the YTC recovery under the regulations as mentioned above, (d) IEGC applies to all entities including users and consumers of electricity, and (e) in the circumstance the Central Electricity Regulatory Commission is the only authority and has exclusive jurisdiction with regard to regulation of inter-state transmission of electricity and determination of tariff for inter-state transmission of electricity. 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. It is, of course, submitted that considering the nature of generation project, the projects managed by the BBMB are essentially irrigation project, generation being incidental thereto. There is no difficulty in saying that the BBMB is a deemed transmission licensee. The argument of learned counsel for the appellant that the BBMB is an agent of the participating Govts. is in the circumstances difficult to accept. The BBMB cannot be regarded to be a substitute for the Central Electricity Regulatory Commission as it is a creature of the Central Govt. by and under a statute to serve certain purposes including generation, distribution and transmission of power. 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. Being it an inter-state transmission system, none of the State Commissions concerned, nor any of the participating States has any supervisory jurisdiction over the BBMB. In fact, in response to the BBMB's letter dated 09.04.2011, the Power System Operation Corporation Ltd., asked the BBMB to approach the Central Commission to have the transmission tariff determined. With reference to section 2 (16) and section 10 of the Act, 2003 it has been contended by the BBMB that its lines are akin to dedicated transmission line. In the context of what has surfaced above, it is difficult to say now that the lines of the BBMB are really the dedicated transmission lines. The lines are in fact used for conveyance of power from one State to another for the sake of other utilities. The submission of the appellant is that the BBMB is not the owner of the transmission lines but the participating states are, as such the BBMB is not answerable or accountable to the Central Electricity Regulatory Commission. We have found that as a Statutory

Authority, the BBMB possesses a distinct legal identity which is not identical or cannot be equated with the participating states which in fact are the beneficiaries of the power generated out of the projects. It is argued that the Punjab Reorganization Act, 1966 does not provide for the transfer and vesting of power stations and the transmission lines in the BBMB and when this is not so, the BBMB cannot be asked to report to the Central Electricity Regulatory Commission. This is perhaps not the spirit of the Act, 1966 because, at the first instance, Bhakra-Nangal Project meant for the purpose of irrigation and of generation of power was entrusted to the Bhakra Management Board, not to any participating States and the Act was particular in telling that such Board shall be under the control of the Central Government. Again, so far as the Beas Project is concerned, Section 80 (5) provides that after completion of any component of the project it would stand transferred to the Board by the Central Government and then only the Board would be renamed as Bhakra Beas Management Board. The BBMB is not the creation of the States or of any statute of any of the States. The States are only the beneficiaries of power and water because the rights and liabilities vested in the States. In the circumstance, it can be said that the Central Electricity Regulatory Commission has regulatory jurisdiction over the affairs of the BBMB in so far as they are relatable to the Act, 2003.”

6. Pursuant to the decision of the Commission that the generating station and the transmission system of BBMB fall within the jurisdiction of the Commission, which has been upheld by the Tribunal, the petitioner has filed Petition No.251/GT/2013 for determination of tariff of its generating stations and ISTS. In the said petition, the transmission lines covered in this petition have also been included as ISTS lines. Since the tariff of the transmission lines covered under the present petition shall be determined in Petition No.251/GT/2013 after hearing all concerned parties, no useful purpose will be served to keep a parallel petition pending. Accordingly, the present petition has become infructuous and is disposed of.

7. Petition No. 200/TT/2013 is disposed of in terms of above.

sd/-
(A.S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

