

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 251/GT/2013

Coram:

Shri Gireesh B. Pradhan, Chairperson
Shri A.K.Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Date of Hearing: 22.09.2015

Date of Order: 12.11.2015

In the matter of

Determination of tariff for generating stations and transmission systems of Bhakra-Beas Management Board for the period 2009-14 in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009

And

In the matter of

Bhakhra-Beas Management Board
Sector 19-B Madhya Marg,
Chandigarh-160019

...**Petitioner**

Vs

1. Punjab State Power Corporation Limited,
The Mall, Patiala-147 001
2. Haryana Vidyut Prasaran Nigam Limited,
Shakti Bhawan, Sector 6,
Chandigarh
3. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Janpath,
Jaipur, Rajasthan-302 005
4. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Shimla 171 004,
Himachal Pradesh
5. Union Territory of Chandigarh,
Sector 9D, UT Secretariat
Chandigarh

...**Respondents**

Parties present:

Ms. Anushree Bardhan, Advocate, BBMB
Ms. Poorva Saigal, Advocate, BBMB
Ms. Pooja Gupta, BBMB
Shri Sanjay Sidana, BBMB
Ms. Akshi Seem, Advocate, PSPCL
Ms. Tarini Tarrika, Advocate, UT of Chandigarh
Shri Shrinder Kumar, UT of Chandigarh
Shri A.K. Gupta, HVPNL



ORDER

This petition has been filed by the petitioner, Bhakra Beas Management Board (BBMB) for approval of tariff of its generating stations and transmission systems for the period 2009-14 in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (the 2009 Tariff Regulations).

Background

2. 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. The relevant portion of the said order dated 15.9.2011 is extracted as under:

"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."



3. 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.

4. During the pendency of this appeal, the Commission vide its order dated 14.3.2012 by a separate proceeding 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."

5. Thereafter, the Tribunal by its judgment dated 14.12.2012 in Appeal No.183/2011 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. The relevant portion of the judgment dated 14.12.2012 is extracted as under:

"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 Pubic 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. Against the said order dated 14.12.2012, the petitioner has filed Civil Appeal before the Hon'ble Supreme Court of India and the same is pending.

7. Thereafter, the Commission by order dated 10.1.2013 in Petition No.181/2011 (*suo motu*) directed BBMB 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 relevant portion of the order dated 10.1.2013 is extracted as under:

"3. Accordingly, BBMB is directed to file the tariff petitions in accordance with the provisions of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 separately for the generating stations and for the transmission systems after serving copies of the petitions on the beneficiary States who shall be impleaded as respondents. While filing the petitions, the petitioner shall comply with the procedure laid down in the Central Electricity Regulatory Commission (Procedure for making of Application for Determination of Tariff, Publication of the Application and Other Related Matters) Regulations, 2004"

8. In compliance with the directions of the Commission in order dated 14.3.2012 in Petition No.15/SM/2012, the petitioner had filed Petition No. 200/TT/2013 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 2009-14 and in compliance with the order dated 10.1.2013 in Petition No.183/2011 (*suo motu*), the petitioner has filed Petition No.251/GT/2013 for determination of tariff of generation and transmission activities undertaken by the petitioner, in accordance with the provisions of the 2009 Tariff Regulations.

9. During the pendency of Petition No.251/GT/2013, the petitioner had filed Interlocutory Application (I.A.No.30/2013) under Regulation 13 of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012 with a prayer for waiver of filing fees in respect of the petition filed for determination of tariff for generation and transmission activities undertaken by Bhakra Beas Management Board. The Commission by order dated 1.5.2014 disposed of the said IA with the following directions:

“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...”

10. As the petitioner had filed Petition Nos. 251/GT/2013 and 200/TT/2013 in terms of the directions of the Commission, by order dated 29.9.2014 the Commission directed the closure of Petition No.181/2011 (*suo motu*) and disposed of the said petition accordingly.

11. Also, as the transmission assets covered in Petition No.200/TT/2013 (as stated in para 6 above) had been included as inter-state transmission lines in this petition, the Commission by order dated 7.8.2015 disposed of the Petition No.200/T/2013 as infructuous. The relevant portion of the order is extracted as under:



“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.”

12. In this background, we now consider the prayers of the petitioner for determination of tariff as per the formats submitted and for a direction that so long as the Operation and Maintenance expenses incurred by the petitioner is within the limit specified under the 2009 Tariff Regulations, necessary declaration may be filed before the Commission on yearly basis without any need for determination of tariff by following various process and procedures.

13. Reply to the petition has been filed by the respondents, HPVNL, PSPCL and UT of Chandigarh and the petitioner has filed its rejoinder to the reply filed by UT of Chandigarh. The petitioner has filed additional information in terms of the directions contained in the record of proceedings of the hearing held on 10.3.2015, 7.5.2015, 9.6.2015 and 25.8.2015. Subsequently, the petition was heard on 22.9.2015 and the Commission after directing the petitioner to submit certain additional information reserved its order in the petition. The additional information as sought for by the Commission has been submitted by the petitioner on 19.10.2015.

14. As stated, the petition has been filed by the petitioner for the determination of tariff of its generating stations and transmission systems for 2009-14. However, based on the mutual consent of the parties during the hearing on 25.8.2015, the transmission system of the petitioner is only being considered in this order. The tariff of the generating stations of the petitioner will however be decided in due course by a separate order. Accordingly, we proceed to consider the submissions of the petitioner based on the documents available on record, as stated in the subsequent paragraphs.

Submissions of Petitioner

15. The petitioner in the petition has submitted as under:

(a) The status of generation and transmission assets, their ownership, interest of the participating state, role of BBMB in managing the above assets, ownership in the units of the



electricity generated and all matters connect there with are statutorily provided for under sections 70 to 80 of the Punjab Re-organization Act 1966.

(b) BBMB is only the manager of the participating governments and their respective electricity utilities the respondents to manage, maintain, operate the generating station and also the transmission lines and assets as provided in Section 78 to 80 of the Punjab Reorganization Act;

(c) As per Section 78 to 80 of the Punjab Reorganization Act 1966, the ownership of the generating stations and the transmission assets are with the participating states and have not been given to BBMB;

(d) The ownership of the assets was vested in the erstwhile combined states of Punjab and in terms of the above provisions of the Punjab Reorganization Act came to be vested in the successor participating States and in some respects in the States of Rajasthan by operation of law;

(e) The electricity boards/ entities of the above participating states have also been recognized as the beneficiaries of the electricity generated by these generation projects and the transmission lines and assets managed by BBMB;

(f) The BBMB acts only as manager and operator for and on behalf of the participating states;

(g) The ownership in the electricity generated vests in the participating states in a fixed proportion as agreed in the historical agreements / determined by the Central Government. The ownership in the electricity generated does not vest in the BBMB. Similarly the ownership in the transmission assets also vest in the participating states and not in the BBMB;

(h) The BBMB does not therefore generate and supply electricity to the participating states or undertake the business of inter-state transmission of electricity on a principal to principal basis but only as manager of the participating states;

(i) The BBMB has no financial risk attached to its working. All expenses are paid by the participating states as provided in Section 79(5) of the Punjab Reorganization Act;

(j) There is no gross block of assets in the BBMB's books and no capital expenditure including any additional capitalization takes place in the books of BBMB: all such capital expenditure are to the account of the participating states only;

(k) There is no concept of return on equity or interest on loan or depreciation or incentive or disincentive etc which are the basic tariff elements in the case of generation and Transmission of electricity;

(l) All expenses of the BBMB get paid for by the participating states. There is no equity capital contributed by the participating states to the BBMB;

(m) The BBMB manages the transmission network connected to the generating stations for the purpose of evacuation of power upto the periphery of the participating states;

(n) Even the consultancy work undertaken by the BBMB is with the approval of the participating states and the revenues earned there from are accounted for the benefit of the participating states;

(o) As BBMB does not hold assets and there is no capital value of the assets, most of the tariff filing Forms specified under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 will not have any application;



(p) In order to determine the O&M expenses permissible for the generating stations and transmission assets of BBMB, the only format relating to operation and maintenance expenses specified under the 2009 Tariff Regulations will have a bearing. However, the actual aggregate O&M expenses incurred by BBMB on the O&M of the generating stations and transmission assets are less than the normative expenditure provided under Regulation 19 of the 2009 Tariff Regulations. In view of the peculiar nature of BBMB's activities, the normative interest on working capital should also be included in the O&M expenses;

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

16. Accordingly, the petitioner has submitted that the ownership of generating stations and transmission assets belong to the participating states and the petitioner only operates and maintains the same without there being any transfer of ownership from BBMB, for the participating states. The petitioner has also submitted that the transmission lines operated by the petitioner are primarily dedicated transmission lines connected to the generating stations for evacuation of power up to the periphery of the participating states. It has added that such lines are owned by the participating states and not by the petitioner. It has further submitted that the use of such transmission lines for others such as the transmission of power of the Central Public sector utilities is in regard to the surplus capacity available after meeting the dedicated use of the respondents and the revenues from such use is accounted for the benefits of the respondents. In the circumstances above and considering the special status and the nature of the activities of the petitioner namely, undertaking the generating and transmission on behalf of the respondents and not owning any of the capital assets, not making any capital investments and getting reimbursement for all the respondents, the tariff determination based on the 2009 Tariff regulations has to take into account the above features, the petitioner has stated. Similar submissions were made by the petitioner during the hearing of the petition on 10.3.2015.

17. We have examined the matter and the submissions of the parties. It is noticed that the submissions of the petitioner as noted in the paragraph above was already considered and rejected by the Commission in order dated 15.9.2011. Similar submissions raised by the petitioner before the Tribunal in Appeal No. 183/2011 was also rejected by the Tribunal in its judgment dated



14.12.2012, thereby affirming the order of the Commission dated 15.9.2011. The relevant portion of the judgment has been extracted as under:

“19.....After the Bhakra-Nangal Project and the Beas Project were completed, they were transferred to the BBMB. As of now, it is the BBMB that generates electricity on behalf of the States and deals with inter-state transmission thereof. The Act, 1966 gives explicit power to the BBMB to regulate supply of power to the Electricity Boards or any other authority in charge of distribution of power. Prima facie, one will not be wrong to say at this stage that these are the functions dealt with for supervision by the Appropriate Commission under the Act, 2003.

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21. We have found that the status of the BBMB which is the creation of a Statute and which is wholly controlled by the Central Govt. and which is not legally accountable to any of the States is closely akin to a company controlled by the Central Govt. It is not that for determination of tariff in respect of a generating company that company has to be owned by the Central Govt. A generating company controlled by the Central Govt. as happens in the present case under the Act, 1966 falls within the purview of section 79 (1) (a) of the Act. There is no denying the fact that the BBMB has a transmission network of 3705 circuit km of 400 kV, 220 kV, 132 kV and 66 kV transmission lines and 400 kV and 220 kV sub-stations for supply of power from the power houses to the States of Punjab, Rajasthan, Haryana, Himachal Pradesh, Delhi and Union Territory of Chandigarh. Therefore, these lines are in the nature of ‘inter-Sate transmission systems’ which has been defined in section 2(36) of the 2003 Act....”

The BBMB which is a statutory body and a juridical person operates and maintains, if not owns, generating stations of the projects. Artificial juridical person commonly implies an entity created by the law. So far as inter-state transmission is concerned, in like manner, none of the successor States or the State of Rajasthan is legally competent to deal with inter-state transmission or grant license. By virtue of the deeming provisions, the BBMB can be very well conceived of an inter-state transmission licensee if it keeps its transmission lines open and available for transmission of electricity of additional capacity to other utilities. It is a statutory body entrusted with inter-state transmission of electricity to the successor States or the State of Rajasthan.

It is the submission of the appellant that the BBMB transmission lines are dedicated transmission lines and have been laid for evacuation of power from its generating stations to the participating states who are the owners of generating stations and transmission system.

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 Pubic 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 linesThe 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..... “



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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 re-organisation 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."

18. The Tribunal having decided the jurisdiction in favour of this Commission to determine the tariff of the generating stations and inter-state transmission systems of the petitioner as above, the Commission by order dated 10.1.2013 had directed the petitioner to file tariff application in accordance with the provisions of the 2009 Tariff Regulations. However, contrary to the directions of the Commission and the findings of the Tribunal, the petitioner vide affidavit dated 23.8.2013 has submitted that as BBMB does not hold assets and there is no capital value of the assets and accordingly, the tariff filing forms in terms of the provisions of the 2009 Tariff Regulations has not been filed by the petitioner. This cannot be acceptable. It is noticed that in Petition No.200/TT/2013 filed by the petitioner for determination of transmission tariff in respect of ISTS lines, the petitioner vide affidavit dated 29.1.2014 and 29.10.2014 had claimed tariff for 2009-14 and 2014-19 respectively based on the indicative per KM cost as provided by CTU (based on price level 3rd quarter 2011). As stated, Petition No.200/TT/2013 has been disposed of on the ground that the



assets covered therein have been included in the instant petition. Therefore, for the purpose of determination of the annual transmission charges, it is imperative that the petitioner furnish complete information as required under the provisions of the 2009 Tariff Regulations. It is however noticed that the petitioner vide affidavit dated 19.4.2012 in Petition No.200/TT/2013 while pointing out that it is not feasible to file tariff petition as per formats specified under the 2009 Tariff Regulations, except for O&M expenses and Interest on Working Capital, had submitted that the Commission can take the depreciated value of BBMB's transmission system in books of the participating states as the capital value. It had also submitted that BBMB is taking steps to get such capital value of the said transmission systems from the participating stations and would submit the same immediately upon being made available to BBMB. Despite these submissions, no visible steps appear to have been taken by the petitioner to submit the said information. In our view, the non furnishing of the information and reiteration of the submissions which have been rejected by both, the Commission and the Tribunal amounts to violation of the findings of the Tribunal and the directions of the Commission. Therefore, BBMB is directed to file all necessary information regarding its transmission assets as per the applicable Tariff Regulations. Since the tariff period 2009-14 is already over, we direct BBMB to file necessary petition for determination of transmission tariff for the period 2014-19 in accordance with the provisions of the 2014 Tariff Regulations. However, for the tariff period 2009-14, we grant the O&M expenses for the transmission elements covered in the petition for the period 2009-14, as stated in the subsequent paragraphs.

19. Regulation 19 (g) of the 2009 Tariff Regulations provides with the following O&M expense norms in respect of the transmission system for the period 2009-14:

	2009-10	2010-11	2011-12	2012-13	2013-14
Norms for AC and HVDC lines	<i>(₹ in lakh/km)</i>				
S/C Single Conductor	0.179	0.189	0.200	0.212	0.224
S/C Twin conductor	0.358	0.378	0.400	0.423	0.447
D/C Single conductor	0.269	0.284	0.301	0.318	0.336
Norms for sub-stations	<i>(₹ in lakh/bay)</i>				
400 kV	52.40	55.40	58.57	61.92	65.46
220 kV	36.68	38.78	41.00	43.34	45.82
132 kV and below	26.20	27.70	29.28	30.96	32.73

20. The transmission assets considered by the petitioner in Appendix-A of the affidavit dated 20.8.2013 is summarized as under:



Transmission Line	Length in KM
Single Circuit (single conductor)	925.14
Single Circuit (twin conductor)	573.95
Double Circuit (single conductor)	1102.7
Sub Stations	No. of Bays
400 kV	6
220 kV	132
132 kV and below bays	205

21. Accordingly, the O&M expenses allowed for the period 2009-14 in respect of the transmission assets of the petitioner are as under:

<i>(₹ in lakh)</i>					
Transmission lines	2009-10	2010-11	2011-12	2012-13	2013-14
S/C Single Conductor - 925.14 km	165.60	174.85	185.03	196.13	207.23
S/C twin conductor- 573.95 km	205.47	216.95	229.58	242.78	256.56
D/C single conductor-1102.70 km	296.63	313.17	331.91	350.66	370.51
Bays					
400 kV- 6 Nos	314.40	332.40	351.42	371.52	392.76
220 kV- 132 Nos	4841.76	5118.96	5412.00	5720.88	6048.24
132 kV and below- 205 Nos	5371.00	5678.50	6002.40	6346.80	6709.65
Total	11194.86	11834.83	12512.34	13228.77	13984.95

22. The annual fixed charges for the generating stations of the petitioner for the period 2009-14 shall be determined by a separate order. The petitioner is directed to file the submissions / additional information as sought for by the Commission, if not already filed.

-Sd/-
(Dr. M.K.Iyer)
Member

-Sd/-
(A. S. Bakshi)
Member

-Sd/-
(A. K. Singhal)
Member

-Sd/-
(Gireesh B. Pradhan)
Chairperson

