

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. Shri D.P. Sinha, Member
2. Shri. G.S. Rajamani, Member
3. Shri. D.V. Khera, Member (EO)

In the matter of

Petition No. 11/99

Incentive for NTPC Stations in Western Region for 1998-99

In the matter of

Petition No. 59/2000

Incentive for Korba STPS for 1999-2000

In the matter of

Petition No. 101/2000

Incentive for Kawas GPS for 1999-2000

In the matter of

Petition No.102/2000

Incentive for Vindyachal STPS for 1999-2000

And in the matter of

National Thermal Power Corporation of India Ltd.

Petitioner

Vs

1. Madhya Pradesh State Electricity Board
2. Maharashtra State Electricity Board
3. Gujarat Electricity Board
4. Goa Electricity Department
5. Electricity Deptt., Administration of Daman & Diu
6. Electricity Deptt., Admn., Dadra and Nagar Haveli

Respondents

The following were present:

1. Shri Sharat Kapoor, Advocate, NTPC
2. Shri K.K. Garg, AGM (Comml), NTPC
3. Shri Satish K. Agnihotri, Advocate MPSEB
4. Shri Rohit K. Singh, Adv. MPSEB
5. Shri S.P. Degwekar, MPSEB
6. Shri Buch A.J., OSD, Gujarat Electricity Board

**ORDER (DATE OF HEARING
18-4-2001)**

These petitions have been filed by NTPC seeking the Commission's approval for incentive for the years 1998-99 and 1999-2000 in respect of Korba STPS, Vindhyachal STPS-I and Kawas GPS. Single petition (No.11/99) has been filed for incentive for the year 1998-99 for all the stations, though for incentive for the year 1999-2000 separate petitions have been filed in respect of each of the stations. These petitions were heard together and are, therefore, being disposed off through a common order.

2. In exercise of powers conferred under Section 43 A(2) of the Electricity (Supply) Act, 1948, as it stood prior to its omission with effect from 15.5.99, the Central Government laid down the terms and conditions of tariff for these stations for a period of 5 years. The relevant details of the notifications issued by the Central Government are given below:

Name of the Station	Date of Notification	Date of effect of Notification & its Validity.
KorbaSTPS	2.11.92	1.11.92 (Valid up to 31.10.97)
Vindhyachal STPS-I	02.11.92	01.11.92 (Valid up to 31.10.97)
KawasGPS	30-4-94	1.9.93 (Valid up to 31.3.98)

3. The claim for incentive is based on Clause 4 of the respective tariff notification which provides for payment of incentive by the beneficiaries in case where actual generation level in KWH/KW/year as certified by REB and CEA in any financial year exceeds the normative upper limit operating range KWH/KW/year. The tariff notifications further stipulate that for the purpose of incentive/dis-incentive the actual generation level achieved in a financial year shall include as deemed generation the quantum of backing down as certified by the Regional Electricity Board, Western Regional Electricity Board (WREB) in the present cases, and due to lack of system demand & other conditions not attributable to NTPC as certified by CEA.

4. The tariff notifications also provide that in case a new tariff for the period beyond the period prescribed under these notifications is not finalised before that date, the beneficiaries shall continue to pay to NTPC for the power supplied from

the station beyond that date on ad hoc basis in the manner detailed in the notification. At the instance of the parties, certain legal issues were framed in petition no. 11/99 and certain other related petitions; the Commission gave its findings on those legal issues in the order of 23.6.2000.

5. Consequent to omission of Section 43 A(2) of the Electricity (Supply) Act, 1948, the power to regulate tariff are vested with the Commission. One of the legal issues raised was whether the Commission had jurisdiction to exercise the function being exercised by the Central Government relating to any period prior to 15.5.99 including determination of incentive under the tariff notifications issued by that Government in pursuance of Section 43 A(2) of the Electricity (Supply) Act, 1948. The Commission held that it had jurisdiction to exercise the powers as were being exercised by the Central Government on the question of determination of incentive under the notifications issued by that Government prior to 15.5.99 for the period prior to that. The finding recorded by the Commission has acquired finality since none of the parties has taken the matter further in appeal. We therefore, proceed on that basis.

6. Member Secretary, WREB has furnished the necessary certificates as per the following details:

1998-99	-	Letter dated 29.4.1999
1999-2000	-	Letter dated 25.5.2000

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7. Some of the beneficiaries have taken a preliminary objection, that the notifications which have already expired but were being continued on ad hoc basis under Clause 6, cannot validly form the basis for incentive for this year. This issue has already been considered by the Commission in its order dated 23.6.2000. The Commission has held that

" the term ad hoc has been used in clause 6 of the tariff notifications to cover a situation till such time tariff is notified by the competent authority. It is used in relation to time of fresh determination of tariff by the authority conferred with the jurisdiction under the law. By virtue of clause 6 of the tariff notifications, the terms and conditions of payment of tariff shall apply with equal vigour and force till such time these are superseded by the fresh terms and conditions, to be notified by the Commission. As the terms and conditions of tariff contain the provisions for incentive, and in fact the respondents have been paying incentive on provisional basis by the force of the terms and conditions notified by the Central Government, in our considered opinion, the petitioner has acquired a vested right to incentive. The omission of Section 43 A(2) of the Electricity Supply Act, 1948 w.e.f. 15.5.99 does not alter the position"

8. The notifications issued by Central Government have been further continued by the Commission till 31.3.2001 in its order dated 21.12.2000 in petition no. 4/2000, 31/2000, 32/2000, etc. The relevant extracts from the order are as under:

"The Commission would like to minimise uncertainty and hardship regarding tariff. It would like to avoid determining tariff retrospectively. Hence the terms and conditions, and norms, notified in these orders shall be applied uniformly to all stations/lines with effect from 1st April 2001. This time gap is required to enable state level beneficiaries to project their Annual Revenue requirements for the year 2001-2002 onwards. The Commission also anticipates that Tariff petitions would be filed sufficiently in advance of 1st April 2001 so that the state level beneficiaries could estimate their requirements in time. In all cases where the tariff were determined earlier under Government notification or provisionally shall continue to apply till that time." (emphasis supplied)

9. In view of the above orders, we do not find any force in the contention raised by some of the respondents that no right accrues in favour of the petitioner in claiming for incentive based on the notifications issued by the Central Government.

10. Madhya Pradesh Electricity Board and Maharashtra State Electricity Board in their responses have averred that NTPC has been using the generation from these thermal stations for its use in their colony and for construction of project also. According to them, NTPC is not entitled to incentive on the power generated and used by it for its own purposes. NTPC in its rejoinder has stated that the power supplied to the colonies is not a commercial sale of power and is required to be considered as an extension of power station as the township forms integral part of the project. It has further stated that NTPC is bearing variable cost of power consumption for the colonies. We have considered the rival submissions. In view of the submission made by NTPC on affidavit that energy charges on account of consumption of electricity in the colony are borne by NTPC, no further discussion on the issue is considered necessary. The respondents are being paid for the consumption of electricity. As regards consumption of power for construction of the project, the expenditure incurred towards construction has to form part of the project cost. In case the consumption of power is computed towards the project cost, after capitalization it will add to the capital cost of the project, which will again be recoverable from the beneficiaries throughout the entire life of the plant. We are of the view that the system adopted by NTPC is more economical in the long run.

We, therefore, do not find merit in this issue raised on behalf of some of the respondents.

11. In view of the above findings, we direct that incentive shall be paid as follows, which shall be apportioned between the respondents in the ratio of energy draws in the respective years and adjusted against the amount already recovered on account of incentive.

(Amount in Rs. Cr)

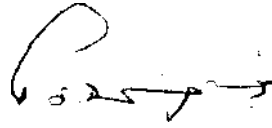
	Korba STPS	Vindhyachal STPS	Kawas GPS
For the year 1998-99	82.07	57.79	13.32
For the year 1999-2000	63.73	47.86 '	22.53

12. The Commission has noted with concern that NTPC has not filed any petition for incentive/dis-incentive for Gandhar Gas Power Station. We have been informed by some of the respondents that NTPC has not filed petition for incentive/dis-incentive for Gandhar Gas Power Station because it is liable to pay dis-incentive to the respondents since the station could not achieve the normative level of generation. Without entering into further discussion in the matter, we direct that NTPC shall file the petition for incentive/disincentive in respect to Gandhar Power Station within one month from the date of this order. In case NTPC fail to


file the petition, the beneficiaries shall be at liberty to file such a petition based on record available with them, at risk and cost of

NTPC.

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(D.V. Khera)
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Member(EO)



(G.S. Rajamani)
Member



(D.P. M&enBer)

New Delhi dated: 2h* July, 2001.