

**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)

Petition No. 4/99

In the matter of

Incentive for Ramagundam STPS for 1998-99

Petition No. 36/2000

In the matter of

Incentive for Ramagundam STPS for 1999-2000

And in the matter of

National Thermal Power Corporation of India Ltd.

Petitioner

Vs

1. A.P. TRANSCO
2. Karnataka Electricity Board
3. Tamil Nadu Electricity Board
4. Kerala State Electricity Board
5. Electricity Deptt, Govt, of Pondicherry
6. Goa Electricity Deptt

Respondents

The following were present:

1. Shri Sharat Kapoor, Advocate, NTPC
2. Shri K.K. Garg, AGM (Comml), NTPC
3. Shri M.Sivathanu Pillai, Dy. CE, KSEB
4. Shri A. Muraleedheran, EE, KSEB

**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 Ramagunaam STPS. 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 this station vide notification dated 2-11-1992. The notification took effect from 1-11-1992 and was valid upto 31-10-1997.

3. The claim for incentive is based on Clause 4 of the 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 of operating range in KWH/KW/year. The tariff notification further stipulates 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, Southern Regional Electricity Board (SREB) in the present cases, and due

to lack of system demand & other condition not attributable to NTPC as certified by CEA.

4. The tariff notification also provides that in case a new tariff for the period beyond the period prescribed under this notification 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. 4/99 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 powers 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, SREB has furnished the necessary certificates as per the following details:

- 1998-99 - Letter No.SREB/SE-2/NTPC/98/Vol II
dated 22.4.1999
- 1999-2000 - Letter No.SREB/SE-2/NTPC/99/Vol II/2063-74
dated 20/24.4.2000

7. Some of the beneficiaries have taken a preliminary objection, that the notification which has already expired but was being continued on ad hoc basis under Clause 6, cannot validly form the basis for incentive. According to them, the Commission should first determine tariff w.e.f. 1-11-1997, when the earlier

Government notification dated 2-11-1992 expired and the amount of incentive may be determined by the Commission after final determination of tariff w.e.f. 1-11-1997. The issue raised 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. It is further contended by the respondents that normative PLF of 68.5% fixed by the Central Government is low. They have urged that the Commission should fix the normative PLF at 80% for the purpose of incentive. As we have already noted the tariff notifications issued by the Central Government have been continued till 31-3-2001, by the Commission's Order dated 21-12-2000. Therefore, all payments, including that of incentive is to be regulated based on those notifications. Therefore, we are unable to agree to the contention raised by the respondents for retrospective upper revision of PLF level for the purpose of calculating entitlement for incentive for the years 1998-99 and 1999-2000.

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

directions of the Commission as reproduced above, the incentive has to be calculated based on the Government of India notification dated 2-11-1992 for Ramagundam STPS.

11. The respondents have not disputed the correctness of the availability certificates issued by Member Secretary, SREB.

12. In view of the above findings, we direct that the petitioner shall be paid incentive of Rs.58.592 crores for 1998-99 and Rs.90.16 crores for 1999-2000 as claimed, 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 that account in respect of Ramagundam STPS.

Sd/-
(D.V. Khera)
Member(EO)

Sd/-
(G.S. Rajamani)
Member

Sd/-
(D.P. Sinha)
Member

New Delhi dated: 31st July, 2001.