

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 78/2001**

**Coram  
Shri V.S.Verma, Member  
Shri M.Deena Dayalan, Member**

**Date of Hearing: 26.3.2013  
Date of Order: 4.7.2013**

**In the matter of**

Incentive/Disincentive for Gandhar GPS (657.39 MW) and Kawas GPS (656.20 MW)

**And**

**In the matter of**

Judgment of the Hon'ble Supreme Court dated 24.1.2013 in Civil Appeal No.2423/2011 (NTPC v CERC & others)

**And in the matter of**

NTPC, New Delhi

... **Petitioner**

Vs

1. Madhya Pradesh Power Trading Ltd, Jabalpur
2. Maharashtra State Electricity Distribution Company Ltd, Mumbai
3. Gujarat Urja Vikas Nigam Limited, Vadodara
4. Chhattisgarh State Power Distribution Company Ltd, Raipur.
5. Electricity Department, Govt. of Goa, Panaji, Goa
6. Electricity Department, Administration of Daman & Diu, Daman
7. Electricity Department Administration of Dadra and Nagar Haveli, Silvassa .....**Respondents**

**Parties present:**

Shri M.G Ramachandran, Advocate, NTPC  
Shri Sachin Jain, NTPC  
Shri Deepak Paliwal, NTPC  
Shri K.K. Narang, NTPC  
Shri S.K Sharma, NTPC  
Ms. Suchitra Maggon, NTPC  
Shri Pradeep Mishra, Advocate, MPPMCL

**ORDER**

Petition No.78/2001 was filed by the petitioner NTPC Ltd before the Commission for approval of incentive/disincentive payable for Kawas GPS for the years 1992-93 to 1997-98 and for Gandhar GPS for the years 1994-95 to 2000-01.

2. The terms and conditions and tariff for power supplied from Kawas GPS were initially notified by the Central Government in Ministry of Power on 30.4.1994 through two separate notifications. One notification determined the tariff and terms and conditions for supply of power from Kawas GPS for the period from 1.6.1992 to 31.8.1993 when the station was in open cycle mode. The other notification related to determination of tariff and terms and conditions for power supplied from Kawas GPS in combined cycle mode for the period from 1.9.1993 to 31.3.1998. These notifications were subsequently amended vide notifications issued on 19.6.1995 and 14.5.1999. The notification dated 19.6.1995 in respect of Kawas GPS provided for billing and payment of incentive and disincentive on monthly basis. The tariff and terms and conditions for supply of power from Gandhar GPS were determined by the Central Government in Ministry of Power vide notification dated 28.4.1997 as amended vide notification dated 14.5.1999. The notifications dated 14.5.1999 determined the revised fixed charges in respect of Kawas GPS and Gandhar GPS on account of additional capitalisation based on audited accounts up to the year 1996-97.

3. These notifications provided for payment of incentive/disincentive to/by the petitioner by/to the beneficiaries drawing power from these stations. According to these notifications, where the Actual Generation Level (AGN) in kWh/kW/year as certified by Regional Electricity Board (REB) and Central Electricity Authority (CEA) in any financial years exceeded the Normative Upper Limit of operating range (NGU) in kWh/kW/year the petitioner became entitled to incentive. However, where AGN in kWh/kW/year fell below the Normative Lower Limit of operating range (NGL) in kWh/kW/year for the reasons attributable to the petitioner, the petitioner became liable to pay disincentive to the beneficiaries drawing power from the stations. As provided in these notifications, for the purpose of incentive/disincentive calculation, AGN achieved in any financial year would include the backing down as certified by REB due to lack of system demand and due to other conditions not attributable to the petitioner as certified by CEA, as deemed generation. The incentive and disincentive were to be determined by the Central Government in exercise of power under Section 43A (2) of the Electricity (Supply) Act, 1948. However, consequent to

omission of Section 43A (2) with effect from 15.5.1999 in respect of the Central generating stations, the petition for determination of incentive/disincentive was filed before the Commission.

4. By order dated 24.10.2002 in Petition No. 78/2001, the Commission observed that in the absence of deemed generation certificate from CEA, it was unable to entertain the claim of the petitioner for computation towards incentive / disincentive for loss of generation on account of non-availability of gas. Accordingly, the Commission disposed of the said petition entailing the petitioner to pay disincentive to the beneficiaries as under:

(₹ in crore)		
Year	Kawas GPS	Gandhar GPS
1992-93	0.00	-
1993-94	(-) 16.13	-
1994-95	(-) 41.51	0.00
1995-96	(-) 58.29	(-) 18.61
1996-97	(-) 60.33	(-) 44.97
1997-98	1.29	(-) 44.93
1998-99	Incentive already allowed by Commission	(-) 92.99
1999-00	-do-	(-) 71.46
2000-01	-do-	(-) 48.72
<b>Total</b>	<b>(-) 174.97</b>	<b>(-) 321.68</b>

5. Aggrieved by order dated 24.10.2002, the petitioner filed Review Petition No.137/2002 (in Petition No.78/2001). Against the said order, the petitioner also filed Appeal (FAO No. 36/2003) before the Hon'ble High Court of Delhi under Section 16 of the Electricity Regulatory Commissions Act, 1998.

6. While so, the petitioner obtained fresh certificate of deemed generation dated 27.3.2003 from the CEA in respect of the period from 1996 to 1998 and filed the same before the Commission and requested for reconsideration of the issue of disincentive to be paid by them for the said period i.e. from 1.8.1996 to 31.3.1998 by taking into account both the letter dated 12.12.2001 and the certificate dated 27.3.2003 respectively. The Commission by its order dated 4.4.2003 in Review Petition No. 137/2002, after taking into consideration the letters of the CEA dated 12.12.2001 and 27.3.2003, disposed of the said review petition and directed the reconsideration of the liability of the petitioner to pay disincentive for the period from 1.8.1996 to

31.3.1998, in Petition No. 78/2001. However, the prayer of the petitioner for review of order relating to the period prior to 1.8.1996 was rejected by the Commission.

7. Against the order of the Commission dated 4.4.2003 in Petition No. 78/2001, the respondent No.1, MPPMCL (*erstwhile MPSEB*), filed W.P. No.117/2003 before the Hon'ble High Court of Madhya Pradesh (Jabalpur Bench) and the same was dismissed by the High Court on 22.9.2003. No appeal was filed by the respondent, MPPMCL against this order. Thereafter, the Commission by its order dated 2.12.2003, disposed of Petition No. 78/2001, as under:

*".. We accept the certificate issued by CEA for the purpose of computation of disincentive for the period in question as there is no challenge by any of the parties to the quantum of "deemed generation" certified by CEA. Accordingly, we direct that the petitioner shall be liable to incentive/disincentive as under..."*

Year	Kawas GPS	Gandhar GPS
1993-94	(-) 16.13	-
1994-95	(-) 41.51	0.00
1995-96	(-) 58.29	(-) 18.61
1996-97	(-) 13.92	(-) 11.99
1997-98	1.29	0.00
1998-99	Incentive already allowed by Commission	(-) 92.99
1999-00	-do-	(-) 71.46
2000-01	-do-	(-) 48.72
Total	<b>(-) 128.56</b>	<b>(-) 243.77</b>

8. Against the order dated 2.12.2003 in Petition No. 78/2001, the respondent No.1, MPPMCL filed W.P.1912/2004 before the Hon'ble High Court of Madhya Pradesh (Jabalpur Bench) and the Court by its order dated 13.4.2007 on the prayer of MPPTCL, dismissed the matter as withdrawn and gave liberty to the respondent, MPPMCL to approach the Appellate Tribunal for Electricity ('the Tribunal'). Pursuant to this order, the respondent, MPPMCL filed Appeal No.118/2007 before the Tribunal challenging the order of the Commission dated 2.12.2003 in Petition No. 78/2001. The Tribunal by its judgment dated 13.1.2009 dismissed the said appeal observing as under:

*"33. The above observation would make it clear that the Commission in the impugned order dated 2/12/03 gave a categorical finding that the documents referred to above would show that the NTPC was not able to generate power because of shortage of gas and as such it amounts to backing down. This finding would clearly indicate that the same was rendered on the basis of the earlier order dated 4/4/03 and the Order of the High Court dated 22/9/03. In the absence of the challenge of the High Court's order dated 22/9/03, admissibility question cannot now be raised in this appeal.*

34. We are only concerned with the questions raised before the Commission and the propriety of the order impugned. In our view, the points raised by the Appellant before the Commission have been dealt with in detail and correct conclusion has been arrived at.

35. Hence, we do not find any infirmity in the order impugned and accordingly, the Appeal is dismissed"

9. Meanwhile, appeal (FAO No.36/2003) filed by the petitioner before the High Court of Delhi challenging the Commission's order dated 24.12.2002 in Petition No. 78/2001 was transferred to the Tribunal by order of the High Court dated 4.2.2008, which was numbered as Appeal No. 184/2009. Thereafter, the Tribunal by its judgment dated 7.1.2011 in Appeal No.184/2009 dismissed the appeal filed by the petitioner against the order of the Commission 24.12.2002. The relevant portion of the judgment is extracted as under:

"23. Learned Counsel for the Appellant has now argued that the Central Commission should have allowed the deemed generation based on the NTPC data verified by WREB Secretariat (now WRPC Secretariat). We feel that the Central Commission's order for the period prior to formation of the Central Commission and its Regulations has to be based on the Government of India notification and any agreement between the parties. In the Government of India notification, it is not specified that non-availability of fuel has to be considered as a condition non-attributable to NTPC for the purpose of deemed generation.

24. According to the notification, CEA has to certify deemed generation due to backing down for reasons non-attributable to NTPC. CEA has taken an administrative decision to allow deemed generation only if the actual generation fell below the normative lower limit, that too till 31.3.1998, and subject to certain conditions for verification of data for the past and future. According to the notification, CEA was the concerned authority to certify the deemed generation for reasons non-attributable to NTPC. CEA has certified the deemed generation for the period 1.8.1996 to 31.3.1998 and accordingly the benefit for the same has been passed on to NTPC by the Central Commission. For prior period for which data was not available with WREB, the requisite condition of agreement on NTPC data by the constituents has not been met. Therefore, CEA has not issued the deemed generation certificate. The Central Commission has rightly decided not to give any directions to CEA, a statutory authority under the Act, to certify the deemed generation for the past period prior to August, 1996. Thus we do not find any fault in the decision of the Central Commission. The data verified by WREB Secretariat from NTPC records cannot be considered by the Central Commission for allowing deemed generation without a certification by CEA.

25. It is also argued by the Learned Counsel for the Appellant that Maharashtra and Gujrat Electricity Boards (Respondent 3 & 4 respectively) have settled the matter relating to deemed generation due to non-availability of gas with NTPC as 'one time settlement' and therefore the same should also be applicable to other constituents. We do not accept this argument. Agreement by some of the Respondents as 'one time settlement' cannot be imposed on other Respondents, who have not accepted the deemed generation due to non-availability of gas based on NTPC data.

26. In view of above, we find that there is no substance in the Appeal. The Appeal, is therefore, dismissed. No order as to costs."

10. Against the said judgment of the Tribunal dated 7.1.2011, the petitioner has filed Civil Appeal No. 2423/2011 before the Hon'ble Supreme Court and the Court by its order dated 24.1.2013

disposed of the said appeal by remanding the matter to the Commission to decide the claim of the petitioner on merits. The relevant portion of the order dated 24.1.2013 is extracted as under:

*"It is brought to our notice by the learned Attorney General that necessary certification has been issued on 11th October,2012.*

*In view of the above, the matter now needs to be remanded back to the Central Electricity Regulatory Commission for deciding the claim made by the NTPC on merits.*

*At this stage, it is brought to our notice on behalf of the State of M.P. Power Management Company that the aforesaid certification has been issued without taking their consent. The aforesaid Power Management Company will be at liberty to raise the issue before the Central Electricity Regulatory Commission, if available in law. We order accordingly.*

*The appeal stands disposed of in the above terms."*

11. In compliance with the directions contained in the order of the Hon'ble Supreme Court dated 24.1.2013 as above, the parties were heard on 21.3.2013 and 26.3.2013 respectively and orders were reserved after directing the parties to file their written submissions. The petitioner and the respondent, MPMCL have filed their written submissions.

12. During the hearing, the learned counsel for the respondent, MPPMCL raised preliminary objection in the matter and submitted as under:

- (a) The instant petition was dismissed by Commission's order dated 24.10.2002 on the ground that there was no deemed generation certification by CEA. Against this order, the petitioner had filed appeal before the High Court of Delhi and also filed Review Petition before this Commission.
- (b) The Review petition was allowed by interim order of Commission dated 4.4.2003 considering the deemed generation certificate of CEA for the period 1.8.1996 to 31.3.1998. However, for the period prior to 1996, the prayer of the petitioner was rejected and accordingly the petition was finally disposed off on 2.12.2003.
- (c) Neither the interim order dated 4.4.2003 rejecting the claim of the petitioner for the period prior to 1996 nor the final order dated 2.12.2003 disposing of the said petition was challenged by the petitioner.
- (d) The earlier orders of the Commission have become final and conclusive between the parties. In terms of the direction contained in the order of the Hon'ble Supreme Court, fresh petition is required to be filed by the petitioner before the Commission.

13. In response, the learned counsel for the petitioner submitted as under:

- (a) Review petition was filed by the petitioner against Commission's order dated 24.10.2002 relating to the period from 1.8.1996 to 31.3.1998. CEA had issued deemed generation certificate subsequent to order dated 24.10.2002. No review was filed relating to the period prior to 1996, which had got finalized. The appeal was rejected by the Appellate Tribunal on the ground that without the certification of CEA the matter cannot be considered against which civil appeal was filed before the Hon'ble Supreme Court.

- (a) The Tribunal had not rejected the said appeal on the ground of maintainability, but on merits. The Civil Appeal 2423/2011 filed by the petitioner arises out of the judgment of the Tribunal dated 7.1.2011 on merits.
- (b) It is clear from the orders of the Hon'ble Supreme Court that the matter was referred to CEA for verification of data and for issuance of necessary certificate to the petitioner. The matter has been remanded to the Commission for implementation based on the certificate issued by CEA.

14. The submissions have been considered. The Commission by order dated 24.10.2002 in Petition No. 78/2001 had rejected the claim of the petitioner for computation towards incentive/disincentive the loss of generation on account of non availability of gas. Subsequently on review filed by the petitioner, the Commission by its order dated 4.4.2003 directed for reopening of the proceedings in respect of the disincentive for the period 1996-98, after considering the letter of CEA dated 27.3.2003 obtained by the petitioner during the pendency of the review application. This order was challenged by the respondent, MPPMCL before the High Court of Madhya Pradesh (Jabalpur Bench) which was dismissed on 22.9.2003. Thereafter, final order was passed by the Commission on 2.12.2003 by accepting the certificates of CEA dated 12.12.2001 and 27.3.2003 for the purpose of computation of disincentive fee for the period 1996-98 in respect of both the gas power stations of the petitioner. This order was also challenged by the respondent, MPPMCL before the High Court of Madhya Pradesh (Jabalpur Bench) which was also dismissed with liberty to approach the Tribunal. Based on this, Appeal No.118/2007 was filed by the respondent, MPPMCL challenging the order dated 2.12.2003 which was dismissed by the Tribunal on 13.1.2009. Thus, the order of the Commission dated 24.10.2002 in Petition No. 78/2001 stood modified to the extent allowed by the Commission in its order dated 2.12.2003. Meanwhile, the appeal filed by the petitioner before the High Court of Delhi against the Commission's order dated 24.10.2002 which was transferred to the Tribunal by order dated 4.4.2008 was dismissed by the Tribunal vide its judgment dated 7.1.2011 in Appeal No. 184/2009, thereby upholding the order of the Commission. It is observed from the judgment of the Tribunal dated 7.1.2011 that the petitioner had not pressed for the relief which was granted by the Commission in its order dated 24.12.2003. In other words, the petitioner was only aggrieved by the disallowance of deemed generation for the period prior to 1996, and the Tribunal had given its findings on the said issue. Since, the order of

the Hon'ble Supreme Court dated 24.1.2013 in Civil Appeal 2423/2011 remanding the matter to the Commission to consider the relief prayed for by the petitioner has been directed against the judgment of the Tribunal dated 7.1.2011 confirming the order of the Commission in Petition No.78/2001, we are of the view that the original petition stands revived to the extent of the claim of the petitioner. Hence, there exists no reason for the Commission to direct the petitioner to file a separate petition for claiming the relief, pursuant to the certification by CEA for the period prior to 1996. Accordingly, the submissions of the respondent, MPPMCL are rejected. The petition is thus maintainable and the same shall be considered in terms of the directions of the Hon'ble Supreme Court.

15. One more submission of the learned counsel for the respondent, MPPMCL is that MPPMCL had not consented for certification of the data for loss of generation and the WRPC has no right to certify the data without its consent and the CEA is also not competent to issue the certificate of deemed generation on the basis of such approval of data by WRPC. He has also submitted that the order of the Commission was not based on merits. In response, the learned counsel for the petitioner has submitted that in the appeal filed before the Hon'ble Supreme Court, the CEA was party to the proceedings and the proceedings were adjourned time to time to see whether CEA could certify the deemed generation. In this regard, reliance was placed by the learned counsel in the orders passed by the Hon'ble Supreme Court in the proceedings in the said appeal. He has also submitted that CEA has certified the deemed generation by communication dated 11.10.2012 after duly verifying from WRPC the quantum of deemed generation, based on the communication of WRPC dated 19.6.2012 furnishing the loss of generation data in respect of both Kawas and Gandhar Gas Power stations for the period from April, 1993 to July, 1996 and the same was placed before the Hon'ble Supreme Court, which has been remanded to the Commission by order dated 24.1.2013. The learned counsel further submitted that the deemed generation to the extent certified by CEA is admissible as per Notification of the Govt. of India under Section 43 A of the



Electricity (Supply) Act, 1948 and the issues raised by the respondent are only to delay the implementation of the orders to be passed by the Commission based on the certification of CEA.

The learned counsel added that the Commission is therefore required to consider the claims of the petitioner on the basis of the certification given by the CEA.

16. The matter has been examined. As stated, Clause 4 of the Notifications dated 30.4.1994 and 28.4.1997 issued by the Govt. of India under Section 43 A(2) of the Electricity Supply Act, 1948 governing the tariff and terms and conditions for energy supplied by the petitioner, provides for payment of incentive to NTPC by beneficiaries in case where the actual generation level as certified by REB and CEA in any financial year exceeds the normative upper limit of operating range. As stated, the orders of the Commission dated 4.4.2003 and 2.12.2003 considering the deemed generation certificate issued by CEA on 12.12.2001 and 27.3.2003 were dismissed by the High Court of Madhya Pradesh. Even Appeal No. 118/2007 filed by the respondent before the Tribunal based on liberty granted by High Court was dismissed by judgment dated 13.1.2009. The question considered by the High Court and the Tribunal in these orders related to the consideration of deemed generation certificates issued by CEA for the period 1996-98 and the consequent fixing of quantum of disincentive payable by the petitioner to the respondents. Only in Appeal No.184/2009, the Tribunal was faced with the question of rejection of the claim of the petitioner for deemed generation for the period 1992-93 to 31.7.1996 by the Commission on the ground that the deemed generation certificate from CEA was not made available by the petitioner. According to the notifications, CEA was the concerned authority to certify the deemed generation for reasons not attributable to the petitioner. CEA has certified the deemed generation for the period 1.8.1996 to 31.3.1998 and accordingly the benefit of the same has been passed on to the petitioner by the Commission. However, for the period prior to 1996 for which data was not available with WREB (now WRPC), CEA had not issued deemed generation certificate as the constituents had not agreed to the data submitted by the petitioner. Accordingly, the decision of the Commission dated 24.10.2002 was not faulted with by the Tribunal in its judgment dated

7.1.2011. However, it is noticed that before the Hon'ble Supreme Court, the petitioner had taken a specific plea that the relevant data for deemed generation certificate was available with WRPC. Based on the interim order of the Supreme Court dated 23.1.2012, CEA who was a party to the proceedings before the Court, had decided at its special meeting on 19.3.2012 that the data received from the petitioner as regards loss of generation due to shortage of gas for the period prior to August, 1996 be placed once again in the next meeting of WRPC for seeking comments / consent from the constituents, before submission to CEA. It is noticed that in the 61<sup>st</sup> meeting of the Commercial Committee of WRPC on 10.4.2012, the respondents, GUVNL, MSEDCL, MPTRADECO and CSPDCL had consented to the loss of generation data for the period from April, 1993 to July, 1996 in respect of Kawas and Gandhar GPS generating stations of the petitioner as verified by WRPC. Thereafter, in the 20<sup>th</sup> meeting of the WRPC held on 18.5.2012, the issue had been discussed and the WRPC had consented for forwarding the verified loss of generation data in respect of Kawas and Gandhar GPS for the period prior to August, 1996 to CEA with a rider that this shall no way impact the contract between various constituents. It is noticed that the respondent, MPPMCL was also a party to the proceedings before the WRPC Committee including the commercial committee of WRPC and the comments of the constituents have also been communicated to CEA. Based on the consent of WRPC as above, the data regarding loss of generation due to non-availability of gas in respect of both the gas based generating stations of the petitioner was examined by CEA and the figures of deemed generation for the period from April, 1993 to July, 1996 was certified by CEA by its letter dated 11.10.2012 as under:

<b>Deemed Generation for the period April, 1993 to July, 1996</b>		
<b>Period</b>	<b>Kawas GPS (MUs)</b>	<b>Gandhar GPS (MUs)</b>
1993-94 (April, 1993 to March, 1994)	801.370	--
1994-95 (April, 1994 to March, 1995)	1499.173	--
1995-96 (April, 1995 to March, 1996)	1652.849	552.940
1996-97 (April, 1996 to July, 1996)	459.292	141.010

WRLDC, vide its letter dated 07.03.2012, has intimated that for the period 1992-93, deemed generation certification for Kawas gas station of NTPC is not required as the station got performance award. Further, as per decision in the 20<sup>th</sup> WRPC meeting, held on 18<sup>th</sup> May, 2011, this certification of deemed generation shall not impact the contracts between various constituents and NTPC".

17. Considering the fact that the data for loss of generation was consented to by the constituents in the WRPC meeting wherein the respondents, MPPMCL was also a party and whose comments had been considered and keeping in view that CEA had certified the said figures for loss of generation based on said consent given by WRPC, we are not inclined to accept the submissions of the respondent, MPPMCL that it had not consented to the data for loss of generation available with WRPC and that the deemed generation certificate of CEA shall not be considered. It is also noticed that other constituents namely, GUVNL and MSEDCL had agreed for one time settlement. Taking the above factors in totality, the prayer of the petitioner is accepted and the claim of the petitioner for deemed generation on the basis of the certification given by CEA by its letter dated 11.10.2012 is considered as stated in the subsequent paragraphs.

18. It is noticed from the reports of WRPC, that the deemed generation in respect of Kawas GPS of the petitioner for the period April, 1996 to July, 1996 was 457.055 MUs instead of 459.292 MUs, as certified by CEA for the period from April, 1996 to July, 1996 (table under para 16 above). Accordingly, the figures in respect of deemed generation for Kawas GPS for April, 1996 to July, 1996 certified by CEA has been modified and the deemed generation for the period April, 1993 to July, 1996 is summarised as under:

<b>Deemed Generation for the period April, 1993 to July, 1996</b>		
<b>Period</b>	<b>Kawas GPS (MUs)</b>	<b>Gandhar GPS (MUs)</b>
1993-94 (April, 1993 to March, 1994)	801.370	--
1994-95 (April, 1994 to March, 1995)	1499.173	--
1995-96 (April, 1995 to March, 1996)	1652.849	552.940
1996-97 (April, 1996 to July, 1996)	457.055	141.010

19. Based on the above and considering the loss of generation due to shortage/non-availability of gas, the total deemed generation in respect of Kawas GPS and Gandhar GPS generating stations of the petitioner are summarised as under:

<b>Loss of generation due to shortage of gas &amp; deemed generation for Kawas GPS</b>					
	<b>Actual Generation</b>	<b>Grid Loss</b>	<b>Loss of Generation due to Gas Shortage</b>	<b>Total Deemed Generation</b>	<b>Total Deemed PLF</b>
<b>Year /Units</b>	<b>MUs</b>	<b>MUs</b>	<b>MUs</b>	<b>MUs</b>	<b>%</b>
1993-94	2005.691	72.86	801.37	2879.92	60.94
1994-95	2104.629	5.57	1499.17	3609.37	62.79

1995-96	1960.192	6.21	1652.85	3619.25	62.79
1996-97*	1700.944	0.12	1908.30	3609.37	62.79

<b>Loss of generation due to shortage of gas &amp; deemed generation for Gandhar GPS</b>					
	<b>Actual Generation</b>	<b>Grid Loss</b>	<b>Loss of Generation due to Gas Shortage</b>	<b>Total Deemed Generation</b>	<b>Total Deemed PLF</b>
Year /Units	MUs	MUs	MUs	MUs	%
1995-96	2135.863	15.17	552.94	2703.98	62.79
1996-97*	2886.956	14.72	714.23	3615.91	62.79

\* The figure pertains to financial year taking into account the certification of CEA vide letter dated 11.10.2012 for the period April-July, 1996.

20. It is observed from the table under para 19 above in respect of Kawas GPS that the deemed PLF achieved during the years 1994-95, 1995-96 and 1996-97 was 62.79%. Accordingly, the disincentive in respect of this gas based generating station has been worked out as zero during these years. Similarly, during the years 1995-96, 1996-97 and 1997-98, Gandhar GPS had achieved the deemed PLF of 62.79%. Accordingly, the disincentive in respect of this gas based generating station has been worked out as 'zero' during these years. There is no incentive payable during the period 1993-94 to 1996-97 in respect of Kawas GPS and for the years 1995-96 and 1996-97 in respect of Gandhar GPS of the petitioner.

21. During the year 1993-94, Kawas GPS could achieve the deemed PLF of 60.94% only and the same is below the normative lower disincentive limit of 62.79%. Accordingly, the annual fixed charges payable to the petitioner or the year 1993-94, in terms of the Govt. of India notification dated 30.4.1994 is as under:

<b>Actual Generation Level (kWh/kW/year)</b>	<b>% of Annual Fixed Charges payable to NTPC</b>
5343.46 and above	100.0
4843.46-5343.45	98.0
4343.46-4843.45	95.5
3843.46-4343.45	92.5
3343.46-3843.45	89.0
2843.46-3343.45	85.0
2369.55-2843.45	80.5
1895.64-2369.54	75.5
1421.73-1895.63	70.0
947.82-1421.72	64.0
473.91-947.81	57.5
0-473.90	50.0

22. Corresponding to the deemed PLF of 60.94% during the year 1993-94 for Kawas GPS, the actual generation level in KWh/kW/year works out to be 5338.49 KWh/kW/year and the corresponding fixed charges as 98%. Accordingly, the disincentive for Kawas GPS during the year 1993-94 works out to ₹2.93 crore.

23. With this, the order of the Hon'ble Supreme Court dated 24.1.2013 in Civil Appeal No. 2423/2011 stands implemented and the Petition No. 78/2001 is disposed of in terms of the above.

Sd/-  
**[M. Deena Dayalan]**  
Member

Sd/-  
**[V. S. Verma]**  
Member