

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Shri Ashok Basu, Chairman**
- 2. Shri D.P. Sinha, Member**
- 3. Shri G.S. Rajamani, Member**
- 4. Shri K.N. Sinha, Member**

**IA No. 34/2002 in
Petition No. 86/2002**

In the matter of

Implementation of ABT in Western Region

And in the matter of

National Thermal Power Corporation Ltd.

.... **Petitioner**

Vs

Western Regional Electricity Board and others

.... **Respondents**

The following were present:

1. Shri B.N. Ojha, Director (Operations), NTPC
2. Shri S.K. Garg, GM (Comml.), NTPC
3. Shri M.S. chawla, DGM (Comml.), NTPC
4. Shri D.K. Dogra, DGM (Comml.), NTPC
5. Shri M. Ramakrishna Rao, Sr. Manager (Law), NTPC
6. Shri S.N. Goel, NTPC
7. Shri C.K. Mondal, NTPC
8. Shri M. Saxena, NTPC

**ORDER
(DATE OF HEARING 19.7.2002)**

IA No. 34/2002

Petition No. 86/2002 was filed by the petitioner seeking following directions:

- a) The 1st Respondent (WREB) should not act on its letter dated 27.6.2002 on implementation of ABT, pending decision of the Hon'ble Commission on this application.
- b) The detailed basis regarding application of ABT and the schedule for its implementation in Western Region.
- c) Target availability levels for gas based stations in view of the fact that adequate gas is not available to ensure target availability for gas based stations.

- d) Mechanism to ensure compensation to NTPC as per Supreme Court Order in case the High Court allows the Appeals filed by NTPC.
- e) Issue any direction as the Hon'ble commission may deem fit in the circumstances mentioned above.

2. Subsequently, the petitioner filed IA No. 34/2002 to amend the prayer clause as under:

- a) The detailed basis regarding application of ABT including the basis of billing of charges with effect from 1.7.2002
- b) Target availability levels for gas based stations in view of the fact that adequate gas is not available to ensure target availability of 80% for gas based stations
- c) Mechanism to ensure compensation to NTPC as per Supreme Court Order in case the High Court allows the Appeals filed by NTPC.
- d) Issue any direction as the Hon'ble Commission may deem fit in the circumstances mentioned above.

3. We heard Shri B.N. Ojha, Director (Operations), NTPC. We allow the amendment sought by the petitioner in IA No. 34/2002. IA stands disposed of.

Petition No. 86/2002

4. The Commission vide its order dated 4.1.2000 in Petition No. 2/99 had, inter-alia, prescribed the implementation schedule for Availability Based Tariff (ABT) in Southern, Eastern, Northern and Western Regions. The petitioner had filed a review petition (No. 13/2000) against the Commission's order dated 4.1.2000. Pending disposal of the review petition filed by the petitioner, implementation of order dated 4.1.2000 was stayed by the Commission. The review petition was disposed of by the Commission vide its order dated 15.12.2000, when the Commission prescribed the revised schedule for implementation of ABT in different regions. In accordance with the revised

schedule, ABT was to be implemented in Western Region with effect from 1.8.2001. However, subsequently, at the instance of the Central Transmission Utility, the implementation of ABT in Western Region was rescheduled with effect from 1.10.2001.

5. Meanwhile, an appeal was filed by the petitioner in the High Court of Delhi against the Commission's order dated 15.12.2000 in Review Petition No. 13/2000. The appeal was heard by the High Court on 7.3.2001 when the High Court directed that the petitioner would be entitled to charge tariff based on pre-revised norms subject to fulfillment of certain conditions. The interim order passed by the High court of Delhi, was, however, set aside by the Supreme Court vide its order dated 10.10.2001 in CA No. 7082-84 of 2001 (PSEB vs NTPC & others). The appeals were also filed before Madras High Court and Andhra Pradesh High Court by Tamil Nadu Electricity Board and APTRNSCO respectively. Andhra Pradesh High Court as an interim measure whereby it stayed recovery of unscheduled inter change charges prescribed under the Commission's order dated 4.1.2000 and reiterated in order dated 15.12.2000 would be stayed. It has also been stated that based on an appeal filed by Karnataka Power Transmission Corporation Ltd. before Karanataka High Court, an order similar to that passed by Delhi High Court on 7.3.2001 in an appeal filed by the petitioner was passed. It is also stated that Madras High Court had stayed the implementation of ABT. Against this background, the position regarding implementation of ABT remain unclear.

6. Western Regional Electricity Board in its meeting held on 30.4.2002, decided to implement ABT in the Western Region with effect from 1.7.2002. The present petition has been filed against the above background. The petitioner has sought directions as to the detailed basis for application of ABT, including the basis of billing of charges with effect from 1.7.2002. The question of application of ABT including the basis of billing charges is already settled by the Commission's earlier order and so far as the Commission is concerned, no further reconsideration of that issue is necessary. Therefore, in our opinion, no further direction need to be passed on this issue, which is to be regulated in terms of earlier directions of the Commission, unless set aside or over-ruled by a superior Court. The petitioner has also sought that a mechanism to ensure compensation to the petitioner be placed in position. In our opinion, this issue is premature and at this stage no direction can be passed by the Commission when the superior court is already in seisin of the matter.

7. It has been stated on behalf of the petitioner that for gas based stations, it would not be possible to achieve target availability of 80% prescribed by the Commission due to lower linkage and availability of gas for these stations. Therefore, the petitioner proposed that the target availability should be considered on the basis of availability of machines which means that the difference between normative target availability or machine availability whichever is lower and the declared capability based on actual availability of (fuel) gas be treated as deemed availability for recovery of annual capacity charges. In view of this, the petitioner has sought fresh directions regarding target availability levels for gas based

stations. This issue was earlier raised on behalf of the petitioner in Review Petition No. 13/2000. At that time the Commission had not agreed to prescribe any lower target availability level on the ground of non-availability of gas. Nevertheless, the petitioner was granted liberty to approach the Commission for providing relief/exemption with proper justification in respect of plants having difficulties in achieving the prescribed target availability and for which the petitioner was to move a separate petition. Apart from making a statement that for gas based stations, it would not be possible to achieve the prescribed target availability due to lower linkage and availability of gas, no further justification has been provided by the petitioner.

8. The petition has been filed in view of the decision of Western Regional Electricity Board to implement ABT in the region with effect from 1.7.2002. The petitioner has submitted orally that its immediate need for relaxation in target availability is about Kawas GPS and Gandhar GPS located in Western Region. In response to a query raised by us, Shri Ojha clarified that these two stations are combined cycle operation stations. We may note that this fact has not been brought out in the petition filed by the petitioner. We direct that the petitioner shall place on record the scope of fuel supply/fuel pricing assignment in the reasons for not operating the stations on liquid fuel in order to meet the gap on account of the projected non-availability of gas. The petitioner shall also place on record the project report considered by the competent authority when it sought the approval for establishment of these two plants and the details regarding non-availability of gas, and the efforts made to ensure proper supply of gas.

9. The following details may also be furnished:

- (i) Whether the plants have liquid fuel firing capability or not and if yes, what capacity could be sustained on liquid fuel
- (ii) Capacity of liquid fuel firing storage, allocation and supply of liquid fuel
- (iii) Any other alternate assignment possible to augment gas supply at the plants
- (iv) Whether petitioner has been unable to meet the demand at any point of time in the past due to shortage of gas i.e. they have been asked to despatch but were unable to despatch
- (v) The variable cost charged from the beneficiaries in the last financial year and the effect of variable charge on the dispatches of the plants, if any.

10. These details shall be filed duly supported by affidavit within three weeks of receipt of copy of this order.

11. Shri Ojha had submitted that only 20% of total Regional generation produced by the petitioner is subject to scheduling by RLDCs and the remaining 80% of Regional generation belonging to state generators is outside the preview of RLDCs for the purposes of scheduling. The issue is not raised in the petition and as such we are not taking any cognizance, particularly when Commission's order, on this aspect already exists.

12. In view of the above discussion, we admit this petition limited to consideration of issue of relaxation of target availability level in respect of Kawas and Gandhar GPS located in Western Region. The other issues raised on behalf of the petitioner do not survive for consideration in view of our above findings. We direct that the petitioner shall serve a copy of the petition along with a copy of this order as also the details required to be furnished as per directions in the preceding paragraphs to the respondents within 4 weeks. The respondents may file their replies within 3 weeks thereafter with advance copy to the petitioner who may file its rejoinder, if any, within 1 week thereafter.

13. List for further directions on 2.9.2002.

Sd/-	Sd/-	Sd/-	Sd/-
(K.N. SINHA) MEMBER	(G.S. RAJAMANI) MEMBER	(D.P. SINHA) MEMBER	(ASHOK BASU) CHAIRMAN

New Delhi dated the 25th July 2002