

**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.5/99

In the matter of:

Incentive for NTPC Stations in Northern Region
for 1998-99.

Petition No.96/2000

In the matter of:

Incentive for Singrauli STPS for 1999-2000

Petition No.112/2000

In the matter of:

Incentive for Feroze Gandhi Unchahar TPS for 1999-2000

Petition No.113/2000

In the matter of:

Incentive for Rihand TPS for 1999-2000

Petition No.114/2000

In the matter of:

Incentive for NCTPP Dadri (840 MW) for 1999-2000

Petition No.115/2000

In the matter of:

Incentive for Anta GPS for 1999-2000

Petition No.116/2000

In the matter of:

Incentive for Auraiya GPS for 1999-2000

Petition No.117/2000

In the matter of:

Incentive for Dadri GPS for 1999-2000

And In the matter of

National Thermal Power Corporation Ltd.
VS

....Petitioner

1. Uttar Pradesh Power Corporation Ltd
 2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.
 3. Delhi Vidyut Board
 4. Haryana Vidyut Prasaran Nigam Ltd
 5. Punjab State Electricity Board
 6. Himachal Pradesh State Electricity Board
 7. Power Development Department, Jammu
 8. Power Department, Chandigarh & Others
- ...Respondents

The following were present:

1. Shri Sharat Kapoor, Advocate, NTPC
2. Shri K.K. Garg, AGM (Comml.), NTPC
3. Shri V.K. Gupta, SE, RRVPNL
4. Shri R.K. Arora, XEN/Tariff, HVPN
5. Shri G.C. Jain, EE, UPPCL
6. Shri B.K. Saxena, Sr. AE, UPPCL
7. Shri J.K. Gupta, Dy. Dir/ISB, PSEB

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 Singrauli Super Thermal Power Station, Feroz Gandhi Unchahar Thermal Power Station, Rihand Super Thermal Power Station, NCTPP Dadri, Anta Gas Power Station, Auraiya Gas Power Station and Dadri Gas Power Station. Single petition (No. 5/99) 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.
Singrauli STPS	2.11.92	1.11.92 (Valid up to 31.10.97)
Feroz Gandhi Unchahar TPS	26.3.94	13.2.92 (Valid up to 31.3.97)
Rihand STPS	2.11.92	1.11.92 (Valid up to 31.10.97)
NCTPP, Dadri	25.2.99	1.4.95 (Valid up to 31.3.98)
Anta Gas Power Station	30.4.94	1.4.92 (Valid up to 31.3.97)
Auraiya Gas Power Station	30.4.94	1.4.92 (Valid up to 31.3.97)
Dadri Gas Power Station	5.5.99	1.4.94 (Valid up to 31.3.99)

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 of operating range in 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, Northern Regional Electricity Board (NREB) in the present cases, and due to lack of system demand & other conditions not attributable to NTPC as certified by CEA.

4. The tariff notification also provide that in case a new tariff for the period beyond the period prescribed under the 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. 5/99 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, NREB has furnished the necessary certificates as per the following details:

- | | | |
|-----------|---|---------------------------------------|
| 1998-99 | - | Letter no. GG/OP/NREB/99 dt. 16.4.99 |
| 1999-2000 | - | Letter no. GG/OP/NREB/00 dt. 9.8.2000 |

Incentive for 1998-99

7. Delhi Vidyut Board, Respondent No.3, has contended that the excess generation carried out by the petitioner during the high frequency regime should be excluded for the purposes of incentive. This respondent filed an application for impleadment of NREB and NRLDC. During pendency of the application, this respondent filed objections to the certification by NREB. Similar objections were filed by Respondent No.5, PSEB. On a reference from the Commission, NREB, has clarified that the excess generation has not been defined and there do not exist any provisions for deductions of such excess generation from gross generation. CEA has endorsed the views of NREB. The clarification furnished by NREB was

conveyed to the concerned respondents. However, no further objections are raised by them. In fact, none attended subsequent hearing on 18-4-2001 on behalf of Respondent No.3 (DVB). Though Shri J.K. Gupta, Dy. Director, PSEB (Respondent No.5) was present at the hearing on that date, he did not raise the dispute in the light of clarification furnished by NREB. None of the other respondents raised any serious objection to certification by NREB vide letter dated 16-4-1999. Therefore, we confirm the entitlement of the petitioner for incentive for the year 1998-99, as claimed based on the certification by NREB vide letter dated 16-4-1999.

Incentive for 1999-2000

8. Some of the beneficiaries have taken a preliminary objection so far as the petitions for incentive for the year 1999-2000 are concerned, 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....."

9. 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)

10. 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 for the year 1999-2000 based on the notifications issued by the Central Government.

11. It appears that at NREB forum, it was decided that excess generation under high frequency shall not be taken into consideration for the purpose of incentive. Such an excess generation has been shown separately by the Member Secretary, NREB in the availability certificate, issued vide his letter dated 9.8.2000. NTPC, the petitioner, has pleaded that excess generation under these circumstances should earn incentive. On the contrary, it has been pleaded by the respondents that



such generation cannot be taken into account since it does not benefit the system as a whole. We have considered the contentions raised on behalf of the parties. The beneficiaries have already paid variable charges for the power generated during high frequency. It is not desirable to burden the beneficiaries with incentive since they do not get any advantage in wasting fuel on excess generation at high frequency. We, therefore, direct that while considering liability of the respondents to pay incentive, the excess generation at high frequency shall be excluded for the purpose of calculation.

12. 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)

	Singrauli STPS	Rihand STPS	Unchahar TPS	Dadri NCTPS	Anta GPS	Auraiya GPS	Dadri GPS
For the year 1998-99	93.27	9.42	12.89	52.67	6.50	3.13	1.12
For the year 1999-2000	110.10	29.99	11.16	58.95	11.92	20.96	0.37

Sd/-

(D.V.Khera)
Member (EO)

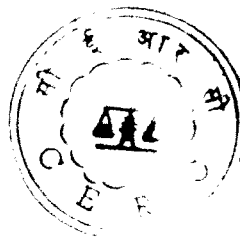
Sd/-

(G.S. Rajamani)
Member

Sd/-

(D.P. Sinha)
Member

New Delhi dated: 31st July, 2001.



CERTIFIED TRUE COPY
Authorized signatory
C.E.R.C.