

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Coram:

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

Petition No. 21/99

In the matter of

Approval of incentive for Eastern Region for the year 1998-99

And in the matter of

National Thermal Power Corporation Ltd. **Petitioner**

Vs

1. West Bengal State Electricity Board
 2. Bihar State Electricity Board
 3. Grid Corporation of Orissa Ltd.
 4. Damodar Valley Corporation
 5. Power Department, Sikkim
- Respondents

Petition No. 61/2000

And in the matter of

Approval of incentive for Talcher STPS for the year 1999-2000

And in the matter of

National Thermal Power Corporation Ltd. ... **Petitioner**

Vs

1. West Bengal State Electricity Board
 2. Bihar State Electricity Board
 3. Grid Corporation of Orissa Ltd.
 4. Damodar Valley Corporation
 5. Power Department, Sikkim
- Respondents

Petition No. 100/2000

And in the matter of

Approval of incentive for Kahalgaon STPS for the year 1999-2000 And

in the matter of

1. West Bengal State Electricity Board
2. Bihar State Electricity Board
3. Grid Corporation of Orissa Ltd.
4. Damodar Valley Corporation
5. Power Department, Sikkim

Respondents

....

Petition No. 66/2001

And in the matter of

Approval of incentive for Farakka STPS for the year 2000-01

And in the matter of

National Thermal Power Corporation Ltd.

...

Petitioner

Vs

1. West Bengal State Electricity Board
2. Bihar State Electricity Board
3. Grid Corporation of Orissa Ltd.
4. Damodar Valley Corporation
5. Power Department, Sikkim
6. Assam State Electricity Board
7. Transmission Corporation of Andhra Pradesh
8. Madhya Pradesh State Electricity Board
9. Tamil Nadu Electricity Board
10. Kerala State Electricity Board H.Kamataka Power Transmission Corporation Ltd.
12. Uttar Pradesh Power Corp. Ltd.
13. Gujarat Electricity Board
14. Union Territory of Pondicherry

....

Respondents

Petition No. 67/2001

And in the matter of

Approval of incentive for Kahalgaon STPS for the year 2000-01

And in the matter of

National Thermal Power Corporation Ltd.

.....

Petitioner

Vs

1. West Bengal State Electricity Board
2. Bihar State Electricity Board
3. Grid Corporation of Orissa Ltd.
4. Damodar Valley Corporation

5. Power Department, Sikkim
 6. Assam State Electricity Board
 7. Transmission Corporation of Andhra Pradesh
 8. Madhya Pradesh State Electricity Board
 9. Tamil Nadu Electricity Board
 10. Kerala State Electricity Board H.Karnataka Power Transmission Corporation Ltd.
 12. Uttar Pradesh Power Corp. Ltd.
 13. Gujarat Electricity Board
 14. Union Territory of Pondicherry
- Respondents
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The following were present:

1. Shri K.K. Garg, GM(CommL), NTPC
2. Shri R. Mazumdar, NTPC
3. Shri Y. Sharma, EEE(I.S.), BSEB
4. Shri Praveen Swamp, Advocate for BSEB
5. Shri S.C. Gupta, Resident Engineer, BSEB
6. Shri Rohit K. Singh, Advocate for MPSEB
7. Shri D.K. Srivastava, EE, MPSEB
8. Shri D. Kandelwal, SE, MPSEB
9. S hri S.N. Chauhan, CSEB
10. Shri M.H. Parviz, Controller, KPTCL
11. Shri N.K. Giri, EREB
12. Shri S.S. Sridhar, AEE/ISE, PSEB

**ORDER (DATE OF HEARING
21-12-2001)**

Petition No. 21/99 was filed by the petitioner, NTPC on 09-12-1999 for approval of incentive for the year 1998-99 in respect of Kahalgaon Super Thermal Power Station and Talcher Super Thermal Power Station. In Petition No. 61/2000, the petitioner has prayed for approval of incentive for the year 1999-2000 for Talcher Super Thermal Power Station, in 100/2000 for approval of incentive for the year 1999-2000 for Kahalgaon Super Thermal Power Station, in 66/2001 for approval of incentive for the year 2000-01 for Farakka Super

Thermal Power Station and in Petition No. 67/2001 for approval of incentive for the year 2000-01 for Kahalgaon Super Thermal Power Station.

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 had prescribed the terms and conditions of tariff for these stations. The relevant details of the notifications issued by Central Government are given below:

Name of the Station	Date of notification	Period of validity of the notification
FarakkaSTPS	7.5.99	1.7.96 to 31.3.2000
Kahalgaon STPS	9.12.98	1.8.96 to 31.3.2000
TalcherSTPS	5.5.97	1.7.97 to 31.3.2002

3. The claim for incentive is based on Clause 4 of the respective notification, which provides for payment of incentive by the beneficiaries, the present respondents, 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, however, stipulate that for the purpose of 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, Eastern Regional Electricity Board (EREB) in the present petitions, and due to lack of system demand and other conditions not attributable to the petitioner, as certified by CEA.

4. Clause 6 of these notifications further provides that in case a new tariff for the period beyond the periods prescribed under these notifications is not finalised within the period of validity of these notifications, the beneficiaries shall continue to pay to NTPC for the power supplied from the stations beyond the period of validity, on ad hoc basis in the manner detailed in these notifications. The notifications in respect of Farakka Super Thermal Power Station and Kahalgaon Super Thermal Power Station which expired on 31.3.2000, were not formally extended beyond that date and are deemed to have continued by virtue of provisions of Clause 6 of the notifications. The Commission also in its order dated 20.12.2000 in Petition No. 4/2000 and other related petitions had directed that the terms and conditions notified by Ministry of Power, shall continue to be in force up to 31.3.2001. Therefore, the question of payment of incentive is required to be considered in the light of the notifications referred to in para 2 herein above.

5. From the petition it is observed that the details of gross generation/PLF of these stations during the years relevant are as under:

		<u>InMUs</u>
Name of the Station		2000-01
Farakka STPS	Maximum possible generation	14016
	Actual Generation	8174.323
	Backing down	2394.489
	Total deemed Generation	10568.812

		75.41%		
		1998-1999	1999-2000	2000-2001
Kahalgaon STPS	Maximum possible generation	7358.40	7378.56	7358.40
	Actual Generation	3981.219	4280.504	4825.612
	Backing down	2278.678	1731.4484	
	1184.26 Total deemed generation		6259.897	6011.9524
	6009.872 Generation			
PLF		85.07%	81.48%	81.67%
		1998-1999	1999-2000	
Talcher STPS	Maximum possible generation	8760	8784	
	Actual generation	4593.720	5319.712	
	Backing down	3264.748	2440.4002	
	Total deemed generation	7858.468	7760.1122	
	PLF	89.71%	88.34%	

6. The replies in these petitions have been filed by the respondents which contain generally the common grounds. Therefore, for the purpose of facility, the replies filed in petition No.21/1999 are being referred to.

7. WBSEB (Respondent No.1) in its reply has submitted that notifications based on which incentive has been claimed are bad in law and, therefore, invalid and liable to be set aside. It has prayed that the incentive should be payable when availability level exceeds 85%.

8. Bihar State Electricity Board (Respondent No.2) in its reply has stated that the stations in question have never achieved the actual normative lower limit of operating range. It is stated that the generation has exceeded the normative lower limit of operating range only after taking the deemed generation into account, which should not be considered for the purpose of incentive. Therefore, according to this respondent, the incentive claimed by the petitioner is unjustified.

9. Grid Corporation of Orissa Ltd. (Respondent No.3) has submitted that mere availability of plant without corresponding demand should not justify incentive payment. It is further stated that the notifications referred to in para 2 above have been issued after the issue of notification dated 22-3-1999 repealing section 43A(2) of the Electricity (Supply) Act 1948. Therefore, the claim of incentive based on the notifications adverted to in para 2 above is not admissible. The backing down certificates issued by EREB have also been questioned by this respondent.

10. Damodar Valley Corporation (Respondent No.4) has stated that the constituents of the Eastern Region are surplus in power. The region has been experiencing high frequency causing damage to the equipment. The beneficiaries do not have any means to increase the demand due to poor load growth. In this perspective it is argued that incentive on mere availability

without demand is not justified. It has been alleged that the petitioner failed to achieve the declared availability when called for testing on several occasions. It has also been averred that incentive should be linked to actual performance and not mere availability. It is further stated that any amount claimed from retrospective date cannot be met as it cannot be realised from the consumers.

11. Shri D.K. Khandelwal appearing for MPSEB submitted that the notifications for Farakka STPS and Kahalgaon STPS had expired on 31-3-2000 and therefore, incentive for the stations for the year 2000-2001 cannot be determined based on these notifications.

12. Grid Corporation of Orissa Ltd. (Respondent No.3) in Petition No.21/99 had, after leave of the Commission filed an affidavit asking for certain additional details from EREB. The details called for by this Respondent have not been furnished by EREB since, according to EREB the deemed generation certificate are issued as per guidelines issued by CEA on 17-2-1998 and the format in which these details have been called for is not based on CEA guidelines. Shri N.K. Giri, Superintending Engineer, EREB who was present at hearing had expressed the inability of EREB to furnish the information called for by Respondent No.3 for the reason that the information was not being maintained with the requisite details at the relevant time. It is further submitted that GRIDCO was a party to the decision for certification of generation. No one was present on behalf of GRIDCO when this petition was taken up for hearing on 21-12-2001.

In view of these facts, we do not propose to pend this issue any further and propose to take a final view on the question of incentive based on available records.

13. We have heard Shri K.K. Garg on behalf of the petitioner and the representatives of the respondents present at the hearing. At the hearing, Shri M.H. Praviz, Controller, KPTCL submitted that since KPTCL is a constituent of the Southern Region, it should not be liable to pay incentive for the stations located in the Eastern Region. He, however, stated that KPTCL is drawing electricity from the stations in Eastern Region based on capacity allocation made by Ministry of Power.

14. We propose to deal the preliminary objections taken on behalf of the parties. Section 43A(2) of the Electricity (Supply) Act 1948 was omitted w.e.f. 15-5-1999, vide notification dated 12-3-1999. The notifications for Kahalgaon and Talcher Super Thermal Power Stations were issued much before issue of notification dated 12-3-1999 whereas the notification for Farakkha Super Thermal Power Station was issued on 7-5-1999, before omission of Section 43 A(2). These notifications were issued by Ministry of Power in lawful exercise of power. Respondents have questioned the propriety of the terms and conditions contained in the notifications. It is beyond the jurisdiction of the Commission to adjudicate upon the propriety of the terms and conditions notified by Ministry of Power in lawful exercise of its statutory power. So long as these notifications

stand, the incentive is to be determined based on the terms and conditions so notified by Ministry of Power. We have already noted that the terms and conditions contained in these notifications already stand extended up to 31-3-2001. In view of this, we do not find any merit in the contention raised on behalf of some of the respondents that the notifications based on which incentive has been claimed are invalid or bad in law. These notifications provide for computation of incentive after taking into consideration the deemed generation. Therefore, deemed generation on account of lack of system demand has to be accounted for, for the purpose of incentive. At a hearing at Kolkatta on 28-6-2000 , the representative of EREB has confirmed that excess generation during high frequency has been excluded while certifying backing down. Therefore, the view point of the respondents to that extent is already taken care of. EREB has further clarified that the generation capability and not the declared availability was the criterion for certification of deemed generation by EREB. In view of the categorical statement made by EREB we do not propose to take cognizance of objection raised in this regard.

14. Damodar Valley Corporation (Respondent No.4) took another objection that any direction to pay incentive at this stage would amount to retrospective increase of tariff which cannot be recovered from the consumers and would, therefore, cause extra burden on the respondents. We are not convinced by the submission made. The notifications issued by Ministry of Power specifically provide that incentive shall be provisionally determined by the petitioner, which

shall be payable on monthly basis by the beneficiaries, subject to cumulative adjustment at the end of the financial year. We have been informed that the petitioner had been billing the respondents for incentive on monthly basis and through the present petitions it proposes to seek final adjustment at the end of the financial year as provided in the notifications. Thus, in fact it would not amount to retrospective increase of tariff as the respondents were liable to pay incentive on monthly basis for which they are already billed.

15. We do not find any merit in contention raised on behalf KPTCL at the oral hearing. It is undisputed that KPTCL is drawing power from these stations on the basis of firm allocation made by Ministry of Power. Therefore, it cannot evade its liability to pay incentive based on the notification issued by Ministry of Power in proportion to the power allocated.

16. The above analysis disposes of the preliminary objections taken on behalf of the respondents. There are no serious issues on merits of the claim for incentive except that relating to certification by EREB and the aspect has already been dealt with by us above.

17. So far as the generation incentive for the year 1998-99 is concerned we find that certification does not include the actual generation and deemed generation for the month of October, 1998, since there was a dispute on these issues because of regulation of power by the petitioner to Respondent No.1 and

Respondent No.4 during that month. We direct that the incentive claimed by the petitioner for the year 1998-99 be allowed based on certification of EREB.

18. In view of the above findings we direct that incentive shall be paid as follows which shall be apportioned by the respondents in the ratio of energy drawal in the respective years and after adjustment of the amount already recovered based on monthly billing.

<u>Amount of incentive in Rs. Crores</u>			
	<u>1998-1999</u>	<u>1999-2000</u>	
	<u>2000-2001</u>		
1. Farakha Super Thermal Station	—*	—*	6.70
2. Kahalgaon Super Thermal Power Station	20.23	12.446	12.786
3. Talchar Super Thermal Power Station.	47.76	34.624	-----*

(* During these years, the concerned stations were neither entitled for incentives nor liable to pay disincentives)

16. With this order of the above petitions stand disposed of.

(KM. Sinha) Member

**(G.S. Rajamani)
Member**


**(QJP^tfm~a)
Member**

New Delhi dated:
January, 2002.

