

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**

Petition No.13/1999

And in the matter of

Approval of incentive based on availability of Transmission System for the years 1997-98 and 1998-99 for Western Region

Power Grid Corporation of India Ltd.

.... **Petitioner**

Vs

1. Madhya Pradesh Electricity Board, Jabalpur
2. Maharashtra State Electricity Board, Mumbai
3. Gujarat Electricity Board, Baroda
4. Electricity Department, Govt. of Goa, Panaji
5. Electricity Department, Admn. of Daman & Diu, Daman
6. Electricity Department, Admn. of Dadra Nagar Haveli, Silvassa **.Respondent**

The following were present

1. Shri S.B. Upadhyaya, Advocate, PGCIL
2. Shri N.N. Chaturvedi, Advocate, PGCIL
3. Shri Umesh Chandra, ED (Comml.), PGCIL
4. Shri T.S.P. Rao, PGCIL
5. Shri U.K. Tyagi, DGM, PGCIL
6. Shri P.C. Pankaj, AGM (Comml), PGCIL
7. Shri C. Kannan, CM(Fin), PGCIL
8. Shri M.M. Patnaik, PGCIL
9. Shri R.P. Padhi, PGCIL
10. Shri M.L. Jaiswal, Sr. Advocate, MPSEB
11. Shri D.K. Srivastava, EE (Comml), MPSEB

ORDER
(DATE OF HEARING : 8.1.2004)

Ministry of Power in its notification dated 16.12.1997 had decided the norms and factors according to which the tariff for the transmission system belonging to Powergrid was to be determined. This notification, *inter alia*, laid down that full transmission charges would be recoverable at the normative availability of 95%.

2. Powergrid had filed a petition (No 13/1999) for approval of incentive for the transmission system in Western Region for the years 1997-98 and 1998-99, based on Ministry of Power notification dated 16.12.1997 considering the normative availability of 95%. The Commission in its interim order dated 19.6.2000 had directed the respondents to pay 50% of the petitioner's claim for incentive in the petition. The Commission in its subsequent order dated 26.9.2000 had finally decided that the normative availability of 95% was to be considered for the purpose of approval of incentive claimed in the petition, though the question of final determination of incentive was left to be decided separately after the procedure for computation of normative availability was approved.

3. Madhya Pradesh Electricity Board, who in its response in the petition had pleaded for fixation of normative availability of 98% for determination of incentive for the years 1997-98 and 1998-99, feeling aggrieved by these decisions of the Commission, filed appeals before Hon'ble High Court of Madhya Pradesh,

Jabalpur Bench against both the orders, dated 19.6.2000 and 26.9.2000 under Section 16 of Electricity Regulatory Commissions Act, 1998, which were registered as Misc. Appeal No 1861/2000 and 2537/2000. Both these appeals have been disposed of by the Hon'ble High Court by its orders passed on 13.11.2003 and 12.11.2003 and the matter was remanded to the Commission for re-consideration and recording the reasons in support of the decision for fixing the normative availability level at 95% for the years 1997-98 and 1998-99. Through a separate order passed on 11.11.2003 in Misc. Appeal No 755/2001, the Hon'ble High Court had also remanded for re-consideration of the Commission its earlier decision dated 8.12.2000 in *suo motu* petition No 86/2000 on the question of application of normative availability of 98% prospectively from 1.4.2001 and to record appropriate reasons to support its decision of applying the normative availability of 98% from 1.4.2001.

4. We have heard the learned counsel for Powergrid and the learned senior counsel for Madhya Pradesh State Electricity Board.

5. In our separate order in petition No 86/2000, made after hearing the parties, we have decided that the normative availability of 98% shall be given effect from 1.4.2001. For the reasons recorded therein, we have come to the conclusion that the normative availability of 98% cannot be applied retrospectively from 1.4.1997 when Ministry of Power notification dated

16.12.1997 took effect or from any subsequent date, prior to 1.4.2001. We have given our detailed reasons in support of the decision.

6. For the reasons recorded in our separate order in petition No 86/2000, we direct that the petitioner's claim for incentive in the present petition shall be regulated by considering the normative availability of 95% in terms of Ministry of Power notification dated 16.12.1997.

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi, dated the 15th January, 2004