

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

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

Petition No. 78/2001

In the matter of

Incentive/Disincentive for Kawas GPS and Gandhar GPS

And in the matter of

National Thermal Power Corporation Ltd. **Petitioner**

Vs

1. Madhya Pradesh State Electricity Board, Jabalpur
2. Maharashtra State Electricity Board, Mumbai
3. Gujarat Electricity Board, Vadodara
4. Goa Electricity Department, Goa
5. Electricity Department, Admn. Of Daman & Diu, Daman
6. Electricity Department, Admn. Dadra and Nagar Haveli, Silvassa
7. Chhattisgarh State Electricity Board, Raipur
8. Central Electricity Authority, New Delhi
9. Western Regional Electricity Board, Mumbai **Respondents**

The following were present:

1. Shri M.G. Ramachandran, Advocate, NTPC
2. Shri V.B.K. Jain, NTPC
3. Shri K.K. Garg, GM(C), NTPC
4. Shri M.S. Chawla, AGM(C), NTPC
5. Shri S.K. Johar, DGM(C), NTPC
6. Shri S.K. Samui, SM(C), NTPC
7. Shri S.K. Sharma, Sr. Mgr (C), NTPC
8. Shri Balaji Dubey, Sr. Law Officer, NTPC
9. Shri Sandeep Mehta, DM, NTPC
10. Satish K. Agnihotri, MPSEB
11. Shri Anil K. Pandey, Advocate, MPSEB
12. Shri S.P. Degwekar, Commercial Officer, MPSEB Shri
13. Shri D. Khandelwal, MPSEB
14. Shri S.N. Chauhan, SE(C), CSEB
15. Shri A. Velayutham, WREB
16. Shri N.C. Goel, CEA
17. Shri Kandarp Patel, COA(Comml.), GEB

**ORDER
(DATE OF HEARING 2-4-2002)**

This petition was filed by the petitioner for approval of incentive/disincentive payable for Kawas GPS for the years 1992-93 to 1997-98 and Gandhar GPS for the years 1994-95 to 2000-2001.

2. The different units of Kawas GPS and Gandhar GPS commenced commercial operation as given in Table I and Table II below :

**TABLE I
KAWAS GPS**

Unit No.	Capacity/MW	Date of Commercial Operation
GT-1A	106	1.6.92
GT-1B	106	1.8.92
GT-2A	106	1.9.92
GT-2B	106	1.11.92
ST-1	116.10	1.11.93
ST-2	116.10	1.9.93

**TABLE II
GANDHAR GPS**

Unit No.	Capacity/MW	Date of Commercial Operation
GT-1	144.30	1.3.95
GT-2	144.30	1.7.95
GT-3	144.30	1.3.95
ST-1	224.49	1.11.95

3. The tariff and terms and conditions for electricity 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 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.

4. 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.

5. 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”.

6. 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.

7. According to the petitioner, non-availability of necessary quantity of gas has caused loss of generation at Kawas GPS and Gandhar GPS and consequently these stations could not achieve the normative lower limit of operative range for certain years. It has been contended that the petitioner did not have any control over supply of gas, loss of generation on account of non-availability of gas should accordingly be considered as due to the conditions not

attributable to the petitioner, which should be taken as the “deemed generation” in addition to “deemed generation” certified by Member Secretary, WREB because of lack of system demand. The petitioner has furnished the details of actual generation and the deemed generation in respect of Kawas GPS and Gandhar GPS as given in Table III and Table IV respectively.

TABLE III
KAWAS GPS

Year	Actual Generation (MU)	Backing Down Due to High Frequency (MU)	Loss of Generation Due to Gas Shortage(MU)	Total Deemed Generation (MU)	Total Deemed PLF (%)
1992-93	1219.536	132.178	0	1351.714	58.39
1993-94	2005.691	43.053	1340.226	3388.970	71.71
1994-95	2104.629	5.066	2683.064	4792.759	83.38
1995-96	1960.192	2.524	2628.266	4590.982	79.65
1996-97	1700.944	0.121	1979.846	3680.911	64.03
1997-98	4131.298	77.903	0	4209.201	73.22
1998-99	4411.886	400.148	0	4812.034	83.71
1999-00	4776.849	310.766	0	5087.615	88.26
2000-01	4696.295	265.203	0	4961.498	86.31

TABLE IV
GANDHAR GPS

Year	Actual Generation (MU)	Backing Down Due to High Frequency (MU)	Loss of Generation Due to Gas Shortage(MU)	Total Deemed Generation (MU)	Total Deemed PLF (%)
1994-95 (March 95)	109.901	0	0	109.901	51.18
1995-96	2135.863	1.689	700.955	2838.51	65.91
1996-97	2886.956	0.432	1955.55	4842.94	84.10
1997-98	2641.870	21.425	2083.311	4746.61	82.42
1998-99	2151.273	11.622	0	2162.90	37.56
1999-00	2281.704	21.213	0	2302.92	39.88
2000-01	2790.517	0.366	0	2790.88	48.86

8. The petitioner has listed the efforts made by it for obtaining "deemed generation" certificate from CEA for loss of generation on account of non-availability of gas. The petitioner has submitted that in brief CEA gave the following decision on the subject :

(a) Deemed generation benefit on account of non-availability of gas would not be available to the petitioner with effect from 1.4.1998.

(b) For the period from August 1996 to 31.3.1998, the petitioner would furnish information/documents to Member Secretary, WREB who after verification would forward the same to CEA for issue of "deemed generation" certificate.

(c) For the period prior to August 1996, certification of "deemed generation" would be based on data furnished by the petitioner and agreed to by the regional constituents.

(d) The deemed generation benefit due to short supply of gas should be available to the petitioner only if the actual generation at a station is less than the normative lower limit of operative range so that the petitioner is able to recover full fixed charges.

9. It is averred by the petitioner that despite the above noted decisions, CEA has not given "deemed generation" certificate for the period from August 1996 to

31.3.1998 in respect of Kawas GPS and Gandhar GPS even though data for the said period, duly verified, was sent by Member Secretary, WREB. As regards the period prior to August 1996, it is stated that Respondent No.2 (Maharashtra State Electricity Board) and Respondent No.3 (Gujarat Electricity Board) had agreed for certification of "deemed generation" based on data furnished by the petitioner, in keeping with decision of CEA. However, Respondent No.1, MPSEB had not agreed to the proposal of the petitioner for certification of "deemed generation" due to non-availability of gas for the period up to 31.7.1996. It is further stated in the petition that there was no dispute with State Govt of Goa and Union Territory Administration of Daman & Diu and Dadra & Nagar Haveli the other respondents before us, on this issue. The petitioner has claimed that it had also furnished the data to WREB and said data after verification by WREB was transmitted to CEA, but the necessary certification was not done by CEA. The petition for approval of incentive/disincentive has been filed after taking into account "deemed generation" due to non-availability of gas, subject to the condition that "deemed generation" on account of non-availability of gas has not been considered for claiming incentive in view of CEA decision at Para 8(d) above.

10. Replies to the petition have been filed by Respondent No.1 (MPSEB) and Respondent No.2 (MSEB). Respondent No.2 has averred that the agreement for certification of "deemed generation" for period prior to August 1996 was arrived at under duress, though the petitioner, in its rejoinder has denied the allegation. Respondent No.1 (MPSEB) has contested the claim of the petitioner to account

for loss of generation due to non-availability of gas as "deemed generation". According to Respondent No.1, it is the responsibility of the petitioner to arrange for necessary fuel for generation of power and in the event of its failure to arrange for fuel, the loss should be to its own account.

11. The petitioner did not file "deemed generation" certificate from CEA despite repeated opportunities afforded to it. In the absence of "deemed generation" certificate, the Commission could not entertain petitioner's claim for computation of incentive/disincentive, due to loss of generation on account of non-availability of gas. The generation level in respect of Kawas GPS up to 1996-97 and in respect of Gandhar GPS up to 2000-01 after taking into account the "deemed generation" for backing down on account of lack of system demand as claimed in the petition, has been below the Normative Lower Limit of operative range. Accordingly, the Commission vide its order dated 24.10.2002 directed that the petitioner would be liable to pay disincentive to the beneficiaries of these power stations. Incentive/disincentive in respect of Kawas GPS and Gandhar GPS as given in table V below was allowed by the Commission vide its order of 24.10.2002:

TABLE V

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 the Commission	(-)92.99
1999-00	-do-	(-)71.46
2000-01	-do-	(-)48.72
Total	(-)174.97	(-)321.68

12. The petitioner filed a review petition, which was registered as Petition No. 137/2002 for review of the decision contained in the order dated 24.10.2002. During the pendency of the review petition, the petitioner produced a letter dated 27.3.2003 from CEA, the relevant portion of which is extracted below:

"The information received from WREB in the case of Gandhar and Kawas GPSs regarding loss of generation due to shortage/non-availability of gas for the period August, 1996 to 31st March, 1998, has been examined in CEA and the following are the certified figures of deemed generation due to shortage/non-availability of gas for these stations :

1996-97 (August 96 to March 97)

- | | | |
|----|-------------|-------------|
| 1. | Gandhar GPS | 573.222 MU |
| 2. | Kawas GPS | 1449.008 MU |

1997-98 (April 1997 to March 1998)

- | | | |
|----|-------------|--|
| 1. | Gandhar GPS | 952.616 MU |
| 2. | Kawas GPS | Nil (as the PLF for the year was above 62.79%) |

The loss of generation due to shortage / non-availability of gas for the period prior to 1st August, 1996 could not be certified by CEA as the constituents of Western Region did not agree for allowing deemed generation benefit due to shortage of gas to NTPC as deliberated in the 114th WREB meeting."

13. After consideration of the grounds urged in the Review Petition and also after taking into consideration CEA's letter dated 27.3.2003, the Commission vide its order dated 4.4.2003 allowed review of the order dated 24.10.2002 to reconsider liability of the petitioner to pay disincentive for the period from 1.8.1996 to 31.3.1998. So far as the period up to 31.7.1998 is concerned, the Commission

did not entertain the petitioner's claim for review of the direction contained in its order of 24.10.2002 in the following terms:

“16. We do not find much force in this submission made by the learned counsel for the petitioner. In our opinion, certification of backing down for reasons other than lack of system demand by CEA is a necessary condition to enable the petitioner to claim the benefit. A petition for approval of incentive/disincentive unaccompanied by such a certificate deserves to be thrown out at the threshold. The role of Commission as an adjudicatory body shall arise only after the petition for incentive/disincentive has been properly presented in conformity with the tariff notifications. The certificate of backing down due to conditions not attributable to the petitioner had not been issued by CEA for the period prior to 1.8.1996. The position remains the same even today as in letter dated 27.3.2003 produced by the learned counsel for the petitioner, it has been categorically stated by CEA that loss of generation due to shortage/non-availability of gas for the period prior to 1.8.1996 could not be certified by CEA. Accordingly, we reject the prayer made by the petitioner for review of order relating to period prior to 1.8.1996.”

14. Respondent No.1 had filed an appeal before Madhya Pradesh High Court against the Commission's order dated 4.4.2003, whereby the Commission had allowed review of the direction as regards liability of the petitioner to pay disincentive for the period from 1.8.1996 to 31.3.1998. The appeal filed by Respondent No.1 has since been dismissed by the Hon'ble High Court vide its order of 22.9.2003, thereby upholding the Commission's order dated 4.4.2003.

15. The petition was listed before us against the above noted background for reconsideration of the issue of disincentive payable by the petitioner for the period from 1.8.1996 to 31.3.1998.

16. We heard Shri M.G. Ramachandran, Advocate for the petitioner and Shri Satish Agnihotri, Advocate, for Respondent No.1 Although the representatives of some of the other respondents were present in the court, no submissions were made on their behalf.

17. Learned counsel for the petitioner submitted that the incentive/disincentive payable to/by the petitioner, needs to be recalculated by the Commission keeping in view the certification by CEA in its letter dated 27.3.2003, which is “deemed generation” certificate for the period from 1.8.1996 to 31.3.1998.

18. Learned counsel for Respondent No.1 argued that the letter dated 27.3.2003 issued by CEA did not amount to certification of backing down. It was argued that there was no backing down by the generating stations above-named as in fact, the petitioner had not made any efforts to generate power. Learned counsel argued that backing down is the discontinuation of the process of generation for the reasons not attributable to the petitioner. Learned counsel further argued that the techno-economic clearance issued by CEA for Gandhar GPS was conditional and being subject to, among other, the condition that confirmation from Ministry of Petroleum and Natural Gas regarding availability of 2.25 MCMD of gas for the scheme from Gandhar Gas fields on sustained basis was available. In support of this contention, learned counsel relied upon CEA’s letter dated 12/16-7-1990 addressed to Ministry of Energy, Department of Power. He submitted that the petitioner had entered into an agreement dated 7.3.1994

with Gas Authority of India Limited for supply of gas for Gandhar GPS, according to which the petitioner could claim supply of a maximum of 1.5 MCMD of gas. Learned counsel argued that shortfall in generation was for the reason that the petitioner had not made any efforts to ensure supply of gas in accordance with the conditions of techno-economic clearance though enough gas was available. Therefore, according to learned counsel, the petitioner cannot be allowed the benefit of “deemed generation” on account of shortage or non-availability of gas. Learned counsel further argued that the petitioner could not be absolved of its responsibility of arranging fuel for its power stations and the consequences of non-generation on account of non-availability of fuel should be borne by the petitioner. In support of these contentions, learned counsel placed reliance on CEA’s letter dated 18.1.1998 and the observations of the Commission in its order dated 15.12.2000 in Review Petition No. 13/2000, to the effect that “the issue of non-allocation of gas falls within the realm of petitioner’s (NTPC’s) commercial risks and making arrangements for adequate fuel is the responsibility of the generating company”. It was accordingly submitted that the petitioner’s claim based on CEA’s letter dated 27.3.2003 deserved to be rejected.

18. We have considered the rival submissions and have gone through the records. We may point out that the communication dated 12/16-7-1990 from CEA, filed by Respondent No.1 and on which a strong reliance was placed, is not the techno-economic clearance but contains CEA’s views on the feasibility report for the scheme prepared for Gandhar GPS. The communication is a part of the

normal consultation process, initiated for setting up of the project. It cannot be a substitute for the techno-economic clearance, issued under Sections 29 and 30 of the Electricity (Supply) Act, 1948 which had the statutory character. CEA vide its communication dated 25/27-7-1996 addressed to Member Secretary, Northern Regional Electricity Board and Member Secretary, Western Regional Electricity Board had decided that “deemed generation’ benefit due to short supply of gas should be given to the petitioner if the actual generation at a station is less than the normative lower limit attracting disincentive to enable the petitioner to recover the full/fixed charges as indicated in the Government of India notifications. This decision became effective with effect from 1.8.1996. Therefore, in our opinion, the observation/condition contained in CEA’s letter dated 12/16.7.1990 was superseded by the subsequent decision contained in the letter dated 25/27.7.1996.

20. The issue was further discussed by CEA Management in view of the persistent representations from some of the state beneficiaries, in its meeting held during December 1997 where it was decided as under:

“After detailed deliberations, the Management decided that the existing application of deemed generation benefit be continued till 31st March 1998. Thereafter the risk of arriving of non-availability of fuel and transportation by the NTPC is to borne by the NTPC as the same cannot be absolved from the responsibility of arranging gas for its stations. Management decided that is to be communicated to MOP and also to issue directions tot NTPC to incorporate necessary provisions in their fuel supply and transportation system.”

21. Thus, there exists a conscious decision by CEA, the authority competent under the tariff notifications issued by Ministry of Power to allow “deemed generation benefit for the purpose of recovery of fixed charges on account of shortage or non-availability of gas for the period from 1.8.1996 to 31.3.1998.

22. Further, CEA in its communication dated 25/27-7-1996 had devised the proforma for submission of data by Member Secretary, Regional Electricity Boards to enable it to consider the matter and issue the “deemed generation” where admissible. From the correspondence placed on record, it is observed that Member Secretary, WREB had forwarded the necessary data for the period from 1.8.1996 to 31.3.1998 to CEA for issue of necessary certificate long back. The petitioner continued to pursue the matter with the concerned authorities. However, it was only vide its letter dated 27.3.2003, that such a certificate was issued by CEA, the relevant contents of which we have reproduced above in para 12. Under these circumstances we have no doubt in our mind that the letter dated 27.3.2003 certifies the “deemed generation” on account of non-availability of gas in respect of Gandhar GPS and Kawas GPS for the period from 1.8.1996 to 31.3.1998.

23. We are not convinced that the contentions raised by Respondent No.1 that non-generation on account of shortage or non-availability of gas does not amount to “backing down” as used in the Ministry of Power notifications. The petitioner has not been able to generate power because of shortage or non-availability of

gas. In our opinion, it amounts to backing down and the conditions for non-generation are not attributable to the petitioner.

24. CEA in its meeting of December 1997 had decided that the risk of non-availability of fuel and transportation was to be borne by the petitioner. This decision applied prospectively. Similarly, the observations of the Commission in its order of 15.12.2000 are also to apply prospectively. By referring to these observations, the petitioner could not be deprived of the benefits which it is entitled to for an earlier period.

25. 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 the Commission	(-)92.99
1999-00	-do-	(-)71.46
2000-01	-do-	(-)48.72
Total	(-)128.56	(-)243.77

26. The calculations of incentive/disincentive allowed now takes into account the revised fixed charges on account of additional capitalisation and FERV up to 1997-98 in respect of Kawas GPS and up to 1999-2000 in respect of Gandhar

GPS. Disincentive for Gandhar GPS for the year 2000-01 is provisional and shall be subject to revision after final decision on tariff in petition No.94/2002 (Generation tariff for Gandhar GPS for the year 2000-01).

27. The incentive/disincentive approved by us shall be shared by the beneficiaries in proportion of energy drawn in the respective year and shall be adjusted towards the outstanding dues, if any. In other words, if dues against any of the respondents are outstanding, the petitioner shall be at liberty to adjust the disincentive approved by us, against those dues.

28. In the above directions, petition No.78/2001 stands disposed of.

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 2nd December, 2003