

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 309/MP/2013**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson  
Shri M. Deena Dayalan, Member  
Shri A.K Singhal, Member**

**Date of Hearing: 08.5.2014**

**Date of Order : 19.8.2014**

**In the matter of**

Petition under clause (7) of the Regulation 5 of the Central Electricity Regulatory Commission (Unscheduled Interchanges and Related matters) (Second Amendment) Regulations, 2012 read with section 111 and section 113 of the Central Electricity Regulatory Commission (Conduct of Business Regulation, 1999) as amended thereto, for removal of Cap rate applied on infirm power injected by 726.6 (2X363.3 MW) Palatana Combined Cycle Gas based Power Project of ONGC Tripura Power Company Limited for the period from synchronization of Unit-I to the COD of the project.

**And**

**In the matter of**

ONGC Tripura Power Company Limited  
6th floor, A wing, IFCI Tower- 61, Nehru Place,  
New Delhi- 110019

**...Petitioner**

**Vs**

1. Assam Power Distribution Company Limited  
Bijule Bhawan, Paltanbazar, Guwahati,  
Assam- 781001.
2. Western Electric Zone  
Vidyut Bhavan, Department of Power,  
Itanagar, Arunachal Pradesh- 791111
3. Department of Power, Old AG Office



- Kohima, Nagaland- 797001.
4. Department of Power  
Government of Manipur,  
Keishampat,  
Imphal- 795001
  5. Power and Electricity Department, Electric Van  
Aizwal, Mizoram- 796001.
  6. Meghalaya Energy Corporation Limited  
Lumjingshai, Short Round Road,  
Shillong, Meghalaya- 793001
  7. Tripura State Energy Corporation Limited  
Bidyut Bhavan, Banamalipur,  
Agartala, Tripura- 799001.
  8. North Eastern Regional Power Committee  
Meghalaya State Housing Finance Cooperation Society Limited Building,  
Nongrim Hills, Shillong- 793003
  9. North Eastern Regional Load Despatch Centre  
Power Grid Corporation of India Limited,  
Dingteih, Lower Nongrah,  
Lapalang, Shillong- 793006.
- .....Respondents

**Following were present:**

Shri Arup Chandra Sarmah, OPTCL  
Shri Amit Dabas, OPTCL

**ORDER**

The petitioner, ONGC Tripura Power Company Ltd. (OTPC), is a joint venture of ONGC, IL&FS (through its affiliate IEDCL) and the Govt. of Tripura with the major share holding by ONGC (50%), IEDCL (26%), Govt. of Tripura (0.5%) and Residual Equity (23.5%) for setting up the project. The petitioner is setting up a Combined Cycle Power Project ('the project') at Palatana with an approved capacity of 726.6 MW (2 x 363.3 MW). The beneficiaries of the North Eastern States have

been allocated a capacity of 628 MW from the generating station and the balance capacity of 98 MW is towards merchant sale with the following configuration:

<b>Block</b>	<b>Unit</b>	<b>Capacity</b>
Block-I	GT-1	232.39 MW
	STG-1	130.91 MW
	<b>Total</b>	<b>363.30 MW</b>
Block-II	GT-2	232.39 MW
	STG-2	130.91 MW
	<b>Total</b>	<b>363.30 MW</b>

2. The Commission vide orders dated 20.5.2013, 26.8.2013, 31.12.2013 had allowed the petitioner to inject infirm power into the grid up to COD of Unit-I of the project or 31.3.2014, whichever is earlier. The Commission, vide order dated 20.12.2013 in petition No. 199/GT/2013 had granted the provisional tariff for Unit-I/Block-I of the project from the anticipated date of commercial operation of Unit-I to 31.3.2014.

3. The petitioner has filed the present petition with the following prayers:

“(a) Advise NERPC to review the infirm power accounts afresh and remove the cap rate of ₹ 2.60 per unit, applied to the infirm power injected by Palatana project from the date of synchronization (22<sup>nd</sup> October, 2012) to the COD of the project, instead the applicable frequency linked UI rate may be applied to infirm power injected by OTPC Palatana Project;

(b) Advise NERPC that the differential amount arising out of the above revision in cap rate may be paid to the petitioner;

(c) Advise NERPC that the cap rate applicable to UI injection post-COD by generating stations using APM gas should not be applied to UI injection post-COD by the OTPC, instead the applicable frequency linked UI rate may be applied to UI injected by OTPC Palatana Project;

(d) Allow any other relief and/ or pass any other order as Hon'ble Commission may deem fit and appropriate under the circumstances of the case; and

(e) Allow additions/alterations/changes/modification to the petition at a future date.”

4. The petitioner has submitted as under:

(a) The Unit-I of the project was synchronized with NER grid on 22.10.2012 which has been since injecting infirm power into the grid intermittently and its accounting has been done as per Regulation 11 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009.

(b) Unit-I of the project had also achieved full load (363.3 MW) on 3.1.2013 including operation of the unit at a load varying between 300 MW and 355 MW for couple of days. However, due to various reasons COD of Unit-I could not be achieved despite the best efforts of OTPCL. Since the unit could not be declared under commercial operation within six months of the first synchronization with NER grid, the petitioner had requested the Commission for injection of infirm power into the grid till 31.12.2013 which was allowed by the Commission vide order dated 26.8.2013.

(c) As per Gas Sale and Purchase Agreement (GSPA) entered between the OPTC and ONGC, gas price applicable to OTPCL is ₹ 4177/1000 SCM

with a price escalation of 4% every year. Therefore, the fuel used by project is Non-APM gas.

(d) The last proviso to the Clause (7) of Regulation 8 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2012, as amended from time to time (Connectivity Regulations) provides for the treatment of infirm power during the testing and commissioning activities of the generating station. Similarly, Clause (7) of Regulations 5 of the Central Electricity Regulatory Commission (Unscheduled Interchanges and Related Matters) Regulations, 2012, as amended from time to time (UI Regulations) provides for the cap rates for infirm power injected into the grid, during testing/commissioning prior to COD of the unit, by a unit of generating station. Since, the Connectivity Regulations and UI Regulations do not specify the cap rate for infirm power injected by unit of a generating station using Non-APM gas as fuel, infirm power injected by the generating station should not be considered at par with infirm power injection by gas based generating station using APM gas as fuel and infirm power from the generating station should be paid as per actual frequency linked UI rate.

(e) North Eastern Regional Power Committee (NERPC) has put the cap rate of ₹ 2.60 per kWh, which is applicable to generating stations using APM gas as fuel. In the UI accounts published by NERPC for UI injection, it has

been stated that "since there is no specified rate in the UI regulation for gas based power Stations other than APM gas as fuel, cap rates for infirm power injected into the grid is considered as ₹ 2.60 per unit.". UI injection from the project is being treated at par with UI injection from other gas based generating stations using APM gas as fuel. Since UI Regulations do not specify the cap rate for infirm power generated by units using non-APM gas as fuel, the petitioner is eligible to receive UI amount as per applicable frequency based rate.

(f) The matter was taken up with NERPC vide letters dated 20.11.2012 and 7.12.2012 to remove the cap in UI rate of Rs. 2.60 per unit for infirm power injected by OTPCL, Paltana Project. However, no response was received from NERPC in this regard.

(g) The issue was discussed in the 19<sup>th</sup> Commercial Committee Meeting of NERPC held on 26.3.2013. In the said meeting, Assistant Secretary, NERPC clarified that 'as per UI Regulations, the infirm power injected into the grid by a generating unit of a generating company/IPP, during the testing prior to COD of the unit, shall be paid at UI rates for the quantum of power injected into the grid subject to ceiling of cap rates corresponding to the main fuel, used for such generation. In the regulation, the cap rate has been specified only for APM gas which is ₹ 2.60 per unit and the same has been used for calculation of UI for OTPCL. In the meeting, the representative of OTPCL requested to

remove the cap rate as the fuel used by generating station is non-APM gas. In response, Member Secretary, NERPC advised OTPCL to approach the Commission to specify the cap rate for non-APM gas, being used by OTPCL for testing and consequent injection of infirm power.

(h) The matter was brought to the notice of the Commission during the course of hearing of the Interlocutory Application in Petition No. 199/GT/2013 regarding approval of provisional tariff for OTPC. However, the Commission advised OTPC to approach the Commission in accordance with law.

(i) In the above background, the petitioner has filed the present petition praying for direction to NERPC to review the accounts of infirm power afresh as per the provisions of UI Regulations and remove the cap rate applied to the infirm power from first synchronization i.e. 22.10.2012 to date of commercial operation of the project.

5. The petition was heard after notice to the respondents. Reply to the petition has been filed by Assam Power Distribution Company Limited.

6. Assam Power Distribution Company Limited (APDCL) in its reply dated 24.12.2013 has submitted that based on the price and other parameters, the petitioner had filed tariff petition before this Commission showing the energy charge rate (fuel price) as ₹ 1.19 per unit for 2013-14 irrespective of the pricing mechanism

whether it was APM gas fuel or non-APM gas fuel. APDCL has further submitted that as per Regulation 8 (7) of the Connectivity Regulations, any infirm power injected into the grid during testing including full load testing before its COD shall be governed and paid in accordance with the provisions of the UI Regulations, as amended from time to time. It has been further stated by APDCL that in terms of Regulation 5(7) of the UI Regulations, the tariff applicable for infirm power injected into the grid during testing/ commissioning prior to COD of the generating station shall be within the cap rate fixed by the Commission on the basis of fuel used on the principle that the petitioner gets recovery up to the extent of fuel cost for such test run during pre-commissioning period. However, realization of fixed charge comes after commissioning of unit(s). Therefore, the petitioner is entitled only up to the energy (fuel) charge for such trial run. APDCL has submitted that NERPC is complying with the provisions of UI Regulations and the petitioner's contention that the fuel used in its project is not APM gas and as such there should not be any cap rate which is applicable for APM gas fuel, is not correct.

7. The petitioner in its rejoinder to the reply of APDCL has reiterated the submissions made in the petition.

8. Vide Record of Proceedings for the hearing dated 27.3.2014, the petitioner was directed to furnish confirmation to the effect that the gas being used in its project is non-APM gas, supported by the documents issued by Ministry of Petroleum & Natural Gas or ONGC. The petitioner vide its affidavit dated 4.4.2014 has placed





on record the gas allocation letters dated 7.10.2004 and 13.11.2004 of Ministry of Petroleum & Natural Gas (MoPNG). Para 2 of the letter dated 7.10.2014, which is relevant to the present petition, is extracted as under:

“(2) ONGC has indicated 4.0 MMSCMD as the projected availability of gas in Tripura against which in place allocation to the extent of 1.78 MMSCMD exists. Therefore, the balance projected available gas is decided to be allocated to Tripura Power Development Corporation (JV between Govt. of Tripura and Infrastructure Leasing and Financial services) for their proposed 750 MW power plant in Tripura. If any additional gas is made available by ONGC in Tripura over & above the projected availability of 4 MMSCMD, that may also be given to Tripura Power Development Corporation to the extent of their requirement (upto 5 MMSCMD total). The price of this gas or any additional gas from ONGC will be negotiated between Tripura Power Development Corporation and ONGC. The transportation may be done by GAIL. Tripura Power Development Corporation may enter into necessary gas supply and transportation arrangement with ONGC and GAIL within a period of 3 months.”

The petitioner has submitted that in terms of the above letter, the gas price is to be negotiated between OTPC and ONGC and such negotiated price does not come under the Administered Price Mechanism (APM) formula of MoPNG, Govt. of India. Therefore, the fuel being used by OTPC is non-APM.

9. We have considered the submissions of the petitioner and the respondents and perused the documents on record. The petitioner has filed the present petition praying for directions to NERPC to review the accounts of infirm power afresh as per the provision of UI Regulations and remove the cap rate of ₹ 2.60 per unit applied to the infirm power injected from first synchronization i.e. 22.10.2012 to date of commercial operation of the project. There is no specified cap rate provided for injection of infirm power into the grid for non-APM gas based generating station in the UI Regulations and subsequent enactment thereof. However, Regulation 5(7) of UI

Regulations provides for a cap rate of ₹ 2.60/kWh for APM gas which is extracted as under:

"(7) The infirm power injected into the grid by a generating unit of a generating station during the testing, prior to COD of the unit shall be paid at UI rates for power injected into the grid, consequent to testing, for a period not exceeding 6 months or the extended time allowed by the Commission in the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access and related matters) Regulations, 2009, as amended from time to time, subject to ceiling of Cap rates corresponding to the main fuel used for such generation as specified in the Schedule "A" of this Regulation."

10. Schedule "A" further provides as under:

(f) In terms of clauses (7) of Regulation 5, the cap rates for the infirm power injected into the grid by a unit of a generating station during the testing/commissioning prior to COD of unit shall be as follows corresponding to the fuel used for the generation:

Domestic coal/ Lignite/Hydro (₹ / kWh sent out)	: 1.65
APM gas as fuel (₹/ kWh sent out)	: 2.60
Imported Coal/RLNG (₹/ kWh sent out)	: 3.30
Liquid Fuel (₹ / kWh sent out)	: 9.00

11. The petitioner has submitted that owing to capping of infirm power at the rate of ₹ 2.60 per kWh, there was under recovery of ₹ 5.94 crore. We are unable to agree with the petitioner that it would suffer under recovery of ₹ 5.94 crore. It is observed that the cap rate of ₹ 2.60/kWh as applied by NERPC in the UI accounts is much higher than that of energy charge rate of ₹ 1.22/kWh claimed by the petitioner in its tariff petition for grant of provisional tariff. In other words, there is no under recovery vis-à-vis the actual cost of energy charges paid by the petitioner during injection of infirm power. Moreover, as per the Regulations 11 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009, "any revenue earned by the generating company from sale of infirm power

after accounting for the fuel expenses shall be applied for reduction in capital cost". Therefore, recovery of fuel cost during pre-commissioning and full load testing will be adjusted in the capital cost of the project on the date of commercial operation which will be recovered through tariff.

12. In view of the above, we do not find any merit in the submission of the petitioner that the infirm power accounts for the period from the date of first synchronization to COD of Unit-I/Block-I need to be reviewed based on the frequency linked UI rate. Accordingly, the petitioner's prayer for direction to NERPC to remove the cap rate of ₹ 2.60/kWh cannot be allowed.

13. The petition is disposed of in terms of the above.

Sd/-  
**(A. K. Singhal)**  
Member

sd/-  
**(M. Deena Dayalan)**  
Member

sd/-  
**(Gireesh B. Pradhan)**  
Chairperson