

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.245/MP/2018

- Subject : Petition under Section 62 and 79 (1) (a) of the Electricity Act, 2003 read with Regulations 54 and 55 of CERC (Terms and Conditions of Tariff) Regulation 2014 and Regulation 111 and 115 of the CERC (Conduct of Business) Regulations, 1999 for extension of date in relaxation for NAPAF for Palatana Project of ONGC Tripura Power Company Limited
- Petitioner : ONGC Tripura Power Company Ltd. (OTPCL)
- Respondents : Assam Power Distribution Company Ltd. (APDCL) & ors.
- Date of hearing : **24.9.2019**
- Coram : Shri P.K.Pujari, Chairperson
Dr. M.K. Iyer, Member
Shri I.S.Jha, member
- Parties present : Shri Parinay Shah, Advocate, OTPCL
Ms. Surabhi Pandey, Advocate, OTPCL
Shri Satyajit Ganguly, OTPCL
Shri Arup Sarmah, OTPCL
Shri Amit Dabbas, OTPCL
Shri Nilmadhab Deb, APDCL
Shri Ashish Choudhury, APDCL

Record of Proceedings

During the hearing, the learned counsel for the Petitioner, OTPCL made the following submissions:

(i) The Commission while approving the tariff of the Project for the period 2014-19, in order dated 30.3.2017 in Petition no. 129/GT/2015 had allowed the recovery of annual fixed charges with a relaxed NAPAF of 76% for the period from 24.3.2015 to 30.9.2018 and 85% for the period from 1.10.2018 to 31.3.2019. Since ONGC is not supplying the adequate gas corresponding to NAPAF of 85%, the Commission may continue the relaxed NAPAF of 76% for the period from 1.10.2018 to 31.3.2019.

(ii) Though the Petitioner had sought for reduction in NAPAF to 68%, the Commission in its order dated 30.3.2017 had allowed relaxed NAPAF of 76%. The average gas consumption during the period 2015-16 to 2017-18 is 2.10 MMSCMD. The average gas supply at 66% has been much lower than the NAPAF allowed by the Commission. If the actual gas availability is considered, NAPAF would be only 62%.

(iii) ONGC has not been able to supply gas to the Petitioner for full load generation and has invoked the force majeure condition of unanticipated adverse gas reservoir behavior in terms of Article 17(1)(c) of the GSPA vide its letter dated 18.3.2016. Article 12.2 of the PPA provides that any condition for force majeure as per the GSPA, shall also be considered as a force majeure condition affecting the seller i.e. the Petitioner. Thus, the condition of unanticipated adverse gas reservoir behavior, which is a force majeure under Article 17(1)(c) of the GSPA, shall be considered as force majeure event affecting the seller ability to supply energy to the Respondents.



(iv) In response to the queries raised by the Petitioner, ONGC vide its letter dated 12.7.2018 had provided reasons for adverse behavior of gas reservoirs of Tripura along with field-wise reservoir study reports including plans to enhance gas productions.

2. On a specific query by the Commission as to whether the competent authority of the Petitioner Company had accepted the failure of ONGC to supply gas for full load generation as a force majeure condition as per letter dated 12.7.2018, the learned counsel for the Petitioner prayed for grant of time to seek instructions in this regard. Accordingly, the Commission directed the Petitioner to file, on affidavit, the decision/ resolution, if any, of the competent authority on this issue, on or before **25.10.2019**, with copy to Respondents.

3. Petition shall be listed for hearing in due course for which notice will be issued to the parties. The parties are directed to complete pleadings in the matter.

By order of the Commission

Sd/-
(B.Sreekumar)
Dy. Chief (Law)

