

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 9/RP/2020**  
**in**  
**Petition No. 245/MP/2018**

- Subject : Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 and Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of the order dated 8.1.2020 in Petition No.245/MP/2018.
- Petitioner : ONGC Tripura Power Company Limited (OTPCL)
- Respondents : Assam Power Distribution Company Limited (APDCL) and Ors.
- Date of Hearing : 16.7.2020
- Coram : Shri P. K. Pujari, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member
- Parties present : Shri Sanjay Sen, Sr. Advocate, OTPCL  
Shri Parinay Deep Shah, Advocate, OTPCL  
Ms. Surabhi Pandey, Advocate, OTPCL  
Shri Arup Samrah, OTPCL  
Shri Sanil Namboodiripad, OTPCL  
Shri Amit Dabbas, OTPCL  
Ms. Mandakini Ghosh, OTPCL  
Shri Bibhu Medhi, APDCL  
Shri Nilmadhab Deb, APDCL

**Record of Proceedings**

The matter was heard through video conferencing.

2. Learned senior counsel for the Review Petitioner submitted that the instant Review Petition has been filed seeking review of the Commission's order dated 8.1.2020 in the Petition No. 245/MP/2018. Learned senior counsel further submitted as under:

(a) The Review Petitioner had filed Petition No. 245/MP/2018, *inter-alia*, for continuation of relaxation in Normative Annual Plant Availability Factor (NAPAF) from 85% to 76% granted to its Project by the Commission in its order dated 30.3.2017 in Petition No. 129/GT/2015 for a further period of six months i.e. from 1.10.2018 to 31.3.2019.



(b) The Commission vide its order dated 8.1.2020 rejected the Petitioner's aforesaid prayer by relying on its observations in order dated 30.3.2017 that *'the relaxation in availability is a one-time dispensation and no further request shall be entertained and the consequence of any further shortfall shall be borne by the Petitioner'*.

(c) The relaxation in NAPAF granted to the Petitioner by the Commission's order dated 30.3.2017 in Petition No. 129/GT/2015 up to end date of '30.9.2018' was based on the information given by the fuel supplier to the Petitioner.

(d) Fuel supplier, vide its letter dated 18.3.2016, had informed the Petitioner that it was facing unanticipated adverse gas reservoir behavior and was unable to supply gas for full load generation. Fuel supplier had also invoked Clause 17 (1)(c) of Gas Sale and Purchase Agreement (GSPA), which provides that unanticipated gas reservoir behavior is force majeure event and had stated that by September, 2018, it will be in a position to supply gas as per the requirement of full load generation. Accordingly, the relaxation in NAPAF was granted to the Petitioner upto 30.9.2018.

(e) However, subsequent to order dated 30.3.2017, fuel supplier, vide its letter dated 12.7.2018, further informed the Petitioner that it was unable to supply sufficient quantity of gas to the Petitioner even by 18.9.2018 due to continuance of force majeure conditions. Thus, it is clear that the basis on which the Commission granted relaxation to the Petitioner in the first instance had continued and therefore, it was a fit case to grant an extension.

(f) As per Article 12.2 (b) of the Power Purchase Agreement, all force majeure conditions in GSPA shall be deemed to be an event of force majeure affecting the Petitioner. The event of unanticipated adverse gas reservoir behavior is a force majeure event under Clause 17 (1) (c) of the GSPA and also under Article 12.2(b) of the PPA. Therefore, the Petitioner ought to have been granted relaxation in NAPAF.

(g) The Petitioner has already incurred loss of Rs. 567 crore in Annual Fixed Charges (AFC) due to lower availability on account of lower gas supply under Fuel Supply Agreement.

3. After hearing the learned senior counsel for the Review Petitioner, the Commission reserved order on 'admissibility' of Review Petition.

**By order of the Commission**

**Sd/-  
(T.D. Pant)  
Deputy Chief (Law)**

