

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No: 245/MP/2018**

**Coram:**

**Shri P.K. Pujari, Chairperson  
Dr. M.K. Iyer, Member  
Shri I.S. Jha, Member**

**Date of Order: 8<sup>th</sup> of January, 2020**

**In the matter of**

Petition under Section 62 and 79 (1) (a) of the Electricity Act, 2003 read with Regulation 54 and 55 of CERC (Terms and Conditions of Tariff) Regulation 2014 and Regulation 111 and 115 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for extension of date in relaxation for Normative Annual Plant Availability Factor for Palatana Project (2X 363.3 MW) of ONGC Tripura Power Company Limited.

**And**

**In the matter of**

**ONGC Tripura Power Company Limited (OTPCL)**

having its registered office at,  
Udaipur-Kakraban Road, Palatana,  
P.O. District: Gomati  
Udaipur, South Tripura,  
Tripura-799105

**.....Petitioner**

**Versus**

1. Aasam Power Distribution Company Ltd.
2. Department of Power Government of Arunachal Pradesh
3. Department of Power Government of Nagaland
4. Manipur State Power Distribution Company Ltd
5. Power and Electricity Department Government of Mizoram
6. Meghalaya Energy Corporation Ltd.
7. Tripura State Electricity Corporation Ltd.

**.....Respondents**

**Parties Present:**

Shri Parinay Deep Shah, Advocate, ONGCTPCL  
Ms. Surabhi Pandey, Advocate, ONGCTPCL  
Ms. Ritika Singhal, Advocate, ONGCTPCL  
Shri Satyajit Ganguly, ONGCTPCL  
Shri Arup Sarmah, ONGCTPCL  
Shri Amit Dabas, ONGCTPCL  
Shri Binoy N. Saikia, APDCL  
Ms. Priyami Dutta, APDCL



## ORDER

The Petitioner has filed the present Petition under Section 62 and 79 (1) (a) of the Electricity Act, 2003 read with Regulation 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 Normative Annual Plant Availability Factor of Palatana Project (2 x 363.3 MW) of ONGC Tripura Power Company Limited.

### Background

2. The Petitioner is a joint venture company. Shareholders Agreement dated 18.09.2008 was executed between ONGC (50%), IEDCL (26%), Government of Tripura (0.5%) and India Infrastructure Fund -II (23.5%) for setting up combined cycle generating station with an installed capacity of 726.6 MW. Block-I/Unit-I of the Project was successfully commissioned on 04.01.2014 and Block-II/Unit-II of the Project was commissioned on 24.03.2015. Oil and Natural Gas Corporation Limited (hereinafter "**ONGC**") (Seller) and OTPC (Buyer) executed a Gas Sale and Purchase Agreement dated 29.09.2008 (hereinafter "**GSPA**"). In the instant petition the petitioner has made the following prayers:

- a) Continue the NAPAF relaxation given in Order dated 30.03.2017 from 01.10.2018 to 31.03.2019 and allow the Petitioner to recover Annual Fixed Charges (AFC) for the period from 01.10.2018 to 31.03.2019 at 76% NAPAF.
- b) Allow liberty to the petitioner to approach it with actual gas supply position at the time of the truing -up and request a re-consideration of the NAPAF norms for Palatana station considering the actual gas supply position in the control period 2014-2019.



## Submission of Petitioner

3. The Petitioner OTPC vide affidavit dated 01.8.2018 has made the following submissions:

- a) The Petitioner filed Petition No. 129/GT/2015 before the Commission for approval of tariff of the Project for the period from 01.04.2014 to 31.03.2019. The Petitioner in Petition No. 129/GT/2015 sought the relaxation in Normative Annual Plant Availability Factor (hereinafter “**NAPAF**”) for the Project to 68% from COD of Block-II/Unit-II due to shortage of gas till full gas is made available by the fuel supplier.
- b) Commission issued Order dated 30.03.2017 in Petition No. 129/GT/2015, wherein the Commission while approving the tariff of the Project for the control period from 01.04.2014 to 31.03.2019, has relaxed the NAPAF from 85% to 76% for the period of 24.04.2015 to 30.09.2018.
- c) Commission while calculating the target availability for Palatana station had taken the availability of gas as 83% and accordingly fixed the relaxed NAPAF as 76%. However, during the last three years i.e. from FY 15-16 to FY 17-18, when both the units of the station were operational, the average gas consumption by Palatana station has been 2.106 MMSCMD. The gas consumption by the station can be taken to be the gas supplied by the fuel supplier as the station has not had any unplanned shutdowns during this period and has consumed nearly all the gas that was supplied by the fuel supplier. The details of gas consumption are tabulated below:

Period	Gas Consumption (MMSCM)	Gas Consumption (MSCMD)
FY 15-16	689.02	1.882
FY 16-17	815.73	2.234
FY 17-18	803.89	2.202



Average Gas Consumption during the above period was 2.106 MMSCMD. So in reality even the average gas supply for the period from FY 15-16 to FY 17-18 has been much lower at 66% (2.10/3.18). The petitioner further submitted that using the same calculation methodology as used by the Commission during the issuance of tariff order the annual availability for Palatana station can be worked out as 62%. So considering the actual gas supply position over previous three financial years, the NAPAF for Palatana station could have been considered at much below 76%. Further, even the petitioner had requested a much higher NAPAF of 68% from the Commission to what the actual gas supply position over the previous three year period would have yielded using the same calculations as used during the issuance of the tariff order.

The petitioner further requested the Commission only for extension of the allowed relaxation in NAPAF norms approved by the Commission and have not sought any further reduction in NAPAF. Petitioner however seek liberty from the Commission to approach it with actual gas supply position at the time of the truing –up and request a re-consideration of the NAPAF norms for Palatana station with the actual gas supply position.

- d) The shortage of gas to the Project is continuing. Vide letter dated 18.03.2016, ONGC had informed the Petitioner that it is confident that by September 2018, it will be in a position to supply the gas for full load generation. Petitioner had informed the Commission of the said letter dated 18.03.2016 in its Petition No. 129/GT/2015. Accordingly, the Commission had given the NAPAF relaxation until from 24.03.2015 to 30.09.2018.
- e) Vide letter dated 12.07.2018 ONGC informed the Petitioner that while its making all efforts to meet the requirement of the contracted quantity of gas,



the supply of gas for full load generation is not feasible by September 2018 due to continuing Force Majeure of unanticipated adverse gas reservoir behavior. Further, in the letter dated 12.07.2018, ONGC stated that present production potential is lesser from envisaged production in 2017-18 and provided the following documents to OTPC to support its case of continuing Force Majeure:

- i) Performance review reports from Institute of Reservoir Studies (IRS)
  - ii) Brief of Performance Review Reports
  - iii) Comparison of envisaged production vis-à-vis actual production data
  - iv) Monthly average actual gas production and gas distributed to various beneficiaries from April 2014 onwards.
- f) In the aforementioned letter dated 12.07.2018, ONGC has informed OTPC that it has made the following efforts to supply gas as per GSPA:

i) Drilling of additional development wells in established reserves to increase gas production. During 2018-19, 25 wells are being planned and based on success of these wells gas production will increase.

Starting of production from Tichna and Gojalia field: Construction of Gojalia GCS and Tichna EPS are under implementation and are likely to be completed by mid of 2019.

ii) Planning to install artificial lift system (Sucker rod pump, plunger lift etc.) in some of the low pressure water producing wells to arrest the gas production decline.

iii) Low pressure processing facilities and installation of booster compressor are also planned in the field of Manikyanagar and Konaban for higher gas production.

iv) New technologies like Jet Drilling are also being planned to increase productivity from low permeability reservoirs.



g) According to the Regional Energy Accounts (hereinafter referred to as "REA") the cumulative PAF of the Project even for FY 17-18 is 64.05% and the PAF for FY 2018-19 till 31.7.2018 is nearly 70%. The Petitioner has achieved an average NAPAF of 62.28 % for the three year period from 01.04.2015 to 31.03.2018, which makes it evident that even after a relaxation in NAPAF the petitioner is incurring heavy AFC loss. Further, even at the current PAF of 70% for FY 18-19 till 31<sup>st</sup> July 2018, the AFC losses will be magnified for the petitioner if the Commission maintains the NAPAF at 85% from 01-10-2018 to 31-03-2019. The petitioner hence requests the Commission to kindly consider its plea for further extension in relaxation in NAPAF norms till 31-03-2019.

The table below shows the year wise % AFC loss to Palatana station under the present control period:

<b>Year</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>1.4.2018 to 30.9.2018</b>	<b>1.10.2018 to 31.3.2019</b>
PAF (%)	76.00	76.00	76.00	76.00	85.00
PAF (%)	56.03	66.73	64.05	70.00	70.00
% AFC Loss	36.22	24.04	27.09	10.16	14.38

h) The Project is located in the remote North Eastern region of the country. The Project neither has an allocation of APM gas nor is it connected to any other pipelines at national level to arrange for spot gas or RLNG or liquid fuel. Therefore, unlike most other gas based power plants in other regions of the country, the Project is solely dependent on one gas supplier, i.e. ONGC. Considering the remote location of the Project, being far from any gas grid connectivity, the Petitioner has only ONGC to source fuel from.



- i) The allocation of gas to the Project was done in terms of the directions of the Ministry of Petroleum and Natural Gas ("MoPNG") GoI vide its Order No. L-12013/12/04-GP dated 07.10.2004. The shortage of gas across gas fields in India is a recognized fact by government agencies. The Indian Energy Portal, an offering of the Energy Division of Niti Aayog stated in its report "User's Guide For India's 2047 Energy Calculator" Natural gas based power generation capacity of India was about 24.2 GW by the end of 11th plan i.e. by 2012, out of which, about 18.3 GW was utility and 5.9 GW was captive power plants. Considering the drop in production of domestic natural gas, PLFs of about 54.5% in 2012 of gas based plants has come down.
- j) The 'NITI Aayog Report' predicted that even in best case scenario the national average PLF of gas based plant is not exceeding 60%. However, the Petitioner is currently operating at a PLF of 63.68% for the period April 2017 to March 2018. From the same report it can be referred that PLF of all the Central Gas Stations and average PLF is 31.16%. In the all India Generation and PLF Report for the period April 2017- March 2018, the average PLF of all gas/ liquid stations in North Eastern Region is 56.55%.
- k) There is an increasing gap between the Natural Gas production and its consumption. This gap is increasing each year as the consumption rate is positive while the production rate has shown negative trend. As per BP Statistic Review 2017.
- l) As per the Indian Petroleum and Natural Gas Statistic, 2017 by Ministry of Petroleum and Natural Gas (Economics and Statistics Division), India has witnessed a decreasing trend in production of Natural Gas during the period 2010-11 to 2016-17. More specifically, the Natural Gas production in India which was 52218.655 MMSCM during 2010-11 decreased to 31896.702 MMSCM during 2016-17.
- m) In the North East Region where there is a marked difference between the anticipated and the actual gas produced. Owing to this, and on account of no



fault of its own, the Petitioner's Project is not even able to achieve a NAPAF of 76% as relaxed by Commission for the project in its order dated 30.03.2017.

- n) The Petitioner's Project is a regional project that supplies power to all seven North Eastern states. It is further submitted that the Project is one of the most efficient thermal project in the North East Region with the lowest heat rate and very competitive cost of power. This is owing to the fact that the Project utilizes high efficiency 9FA machines. However these benefits are not passed on to the beneficiaries due to inadequate gas supply to the project and thereby part load operation resulting in higher heat rate and auxiliary consumption. The project is hence suffering losses on account of high auxiliary consumption, higher heat rate and AFC losses because of the inadequate gas supply. Hence it is humble submission of the petitioner to at least extend the relaxation in NAPAF norms to the station to avoid losses on such multiple accounts.
- o) As the Commission is the Appropriate Authority to consider the matter, no remedies has been sought from any other Forum/Court/Authority etc and the Petition is being filed only before the Commission and no other application is pending in the matter before any other Court.

**Submission of APDCL (Resspondent No.1):**

4. The respondent APDCL vide affidavit dated 25.6.2019 has submitted the following:

- a) ONGC is the major stakeholder of the OTPC vis-a-vis the fuel supplier. Besides, ONGC itself owns the entire gas and petroleum fields in entire south zone of NER as well as major areas of rest of part of NER. It needs no mention that only after detailed feasibility analysis, ONGC has ventured into



power generation and signed agreement as fuel supplier to OTPC project with 50% shareholding.

- b) The petitioner has deliberately concealed the fact that ONGC has resorted to diversion of gas from Palatana project to meet its other obligations towards Monarchak Power plant. Even the petitioner has moved Central Electricity Authority vide letter dated 18.12.2015 on the same issue. The petitioner as well as the fuel supplier (being 50% stakeholder of the project) has earned additional profit of Rs. 282.43 Crore due to the one time relaxation provided by Hon'ble Commission.
- c) The issues raised in the present petition are to be dealt with by petitioner as well as fuel supplier (50% stakeholder of the project) with Ministry of Petroleum & Natural Gas or other competent authorities for amicable resolution instead of moving an imprudent proposal of passing on the burden to retail consumers of NER with relatively lesser purchasing power.
- d) Respondent prayed before the Commission to reject the instant petition on the basis of observation made at Para 96 of the Commission's Order dated 30.03.2017 in Petition No.129/GT/2015.

### **Rejoinder by the Petitioner**

5. The Petitioner OTPC vide affidavit dated 09.7.2019, in rejoinder to reply dated 25.6.2019 of respondent No. 1, has submitted the following:

- a) As per Article 12 of the PPA dated 02.04.2009 provides for Force Majeure Conditions and exempts the Parties from any liability in the event any of the conditions of Force Majeure is satisfied. Relevant extract of Article 12 of the PPA dated 02.04.2009 has been quoted. This provisions makes it clear that the condition of unanticipated adverse gas reservoir behavior, which is a Force Majeure under the GSPA (Article 17 (1) (c )) shall also be considered as a Force



Majeure event affecting the Seller's ability to supply energy to the Respondent No. 1. Furthermore, Article 12. 7 (a), which provides that any party which has been prevented or hindered or delayed from performing its obligations under the PPA on account of Force Majeure shall not be in breach of its obligations. In the instant case, the Petitioner has not been able to function at full capacity because of Force Majeure conditions. Therefore, the Petitioner is exempted from the performance of all its obligations as per the PPA. The Petitioner is therefore entitled to seek a relaxation in NAPAF and consequent reliefs.

- b) Respondent No. 2 has incorrectly stated that on account of the relaxation provided by the Commission in its Order dated 30.03.2017, the Petitioner has made additional recovery of AFC to the tune of Rs. 282.43 Crore. Contrary to the submissions of the Respondent No. 2 that the Petitioner has made undue profits, the latter has in fact been unable to recover the AFC of nearly Rs. 550 Crores as approved by this Commission vide its Order dated 30.03.2017.
- c) It is incorrect and irresponsible to say that any relaxation in NAPAF benefits ONGC as a major stakeholder and also as the fuel supplier, at the cost of the retail consumers. The Respondent No.1 has premised its argument on the ground that because ONGC has a shareholding of 50% in OTPC/the Petitioner is conducting its business in a manner which is prejudicial to its own interests and beneficial to those of ONGC. This premise is erroneous since the GSPA has been executed on arm length's principle. Clause 9.1 (c) of the Shareholders Agreement states that Chairman of the Board Company shall not have any casting vote.
- d) There is no question of ONGC benefitting at the cost of the Petitioner. The Respondent No. 1 is well aware that the reduced quantity of gas supplied to the Project is on account of overall shortage of gas that the country is facing. It is submitted that ONGC invoked the Force Majeure Clause 17.1 (C) of the GSPA



vide letter dated 18.03.2016 sent to the Petitioner, stating that ONGC is facing unanticipated adverse gas reservoir behavior since October 2014.

- e) ONGC signed the GSPA with NEEPCO for supply of gas to the Monarchak Project on 05.06.2008. The Monarchak Project was commissioned on 31.3.2017 while the two units of the OTPC Project were commissioned on 04.01.2014 and 24.03.2015 respectively. It is pertinent to note that Clause 14.3 of GSPA states that in the event of reduction in production of gas in Gas Supply Area (s), ONGC shall at least make available the quantities of Gas to OTPC from Gas Supply Area (s) pro-rata of DCQs. (Daily Contracted Quantity). Therefore, it is incorrect to state that the Petitioner has with malafide intentions hidden any fact from this Commission. As submitted, ONGC has concurrent obligations to supply to both, Monarchak Project as well as Palatana Project. It is also submitted that the gains to ONGC as a stakeholder of the Petitioner shall be much higher by supplying it the fuel for full capacity and on account of the returns on the equity deployed. There is, therefore, no reason for ONGC to divert the fuel to any other Project.

**Reply of Respondent No-1, APDCL**

6. The Respondent No. 1 vide affidavit dated 15.11.2019 in reply to OTPC written submission, submitted the following:

- a) Any Force Majeure event is to be declared in strict adherence to the terms of the GSPA and the activities mentioned in the points viz. seeking information from ONGC, engaging with lawyers or seeking advice from Former Hon'ble Supreme Court Judge doesn't qualify to declare force majeure event.
- b) It is also to be noted that any allowances on shortage of fuel supply by ONGC will only benefit ONGC on one side as major stakeholder in the Petitioner Company and on the other side as fuel supplier ultimately at the cost of retail consumers.
- c) The respondent prayed before Commission:



- i. Not to consider the instant submission dated 05.11.2019.
- ii. To reject the instant petition on the basis of observation made at Para 96 of the Order dated 30.03.2017.

### **Rejoinder by the Petitioner**

7. The petitioner vide affidavit dated 29.11.2019, has filed its rejoinder to reply dated 15.11.2019 of Respondent No.1.

APDCL has objected to the petition on 3 grounds and OTPC's responses are as follows.

a) NAPAF Relaxation cannot be interpreted to be a one-time measure in terms of Order dated 30.03.2017:

Considering the relaxation and one time measure would amount to rewriting of the GSPA and the PPA which provide for Force Majeure conditions and relief there under. The Commission could not have intended to render itself toothless to grant relief available under the Agreements to OTPC.

b) The fact that ONGC is a 50% shareholder in OTPC has no relevance to the grant of relief to OTPC:

The relationship between ONGC and OTPC is that of one arm distance. OTPC's Shareholders' agreement provides that Chairman of the Board does not have a "casting vote" in any matter related to GSPA. The Memorandum of Association of OTPC also states that interested directors cannot participate in board meetings. ONGC has shown that its estimates of gas production have gone wrong and the Commission has recognised this to be the case all across the country. ONGC has submitted reports showing that the production of gas wells is lower than expected and detailed the measures it is taking to extract more gas. It has invoked the clause of Force Majeure under the GSPA. OTPC has regularly written to ONGC and even asked it pointed queries vide letter dated 11.05.2018. In so far as the issue of diversion of gas is concerned, the allocation of gas to different projects is



ordinarily done in terms of the direction of Ministry of Petroleum and Natural Gas. In fact APDCL is relying on OTPC's letter dated 18.12.2015 wherein OTPC claimed that ONGC is diverting gas, the letter explains what it means by diversion, which is that OTPC being a more efficient project, if there is a gas shortage should get a higher proportion of gas available vis-à-vis other projects. This letter itself evidences that OTPC is not in any manner biased towards ONGC but has pursued its interest to the fullest of its ability.

c) Letter dated 12.07.2018 from ONGC specifically claims that adverse gas reservoir behaviour is Force Majeure:

APDCL in its reply has stated that ONGC has not claimed force majeure in their letter dated 12.07.2018. This is factually incorrect. ONGC specifically stated that

*“Decline in gas production is attributed to decline in reservoir pressure and increase in water production more than envisaged. This falls under ‘Force Majeure’ Clause 17.1(c) of GSPA under unanticipated adverse behaviour of sellers.”*

8. Thus, on the above grounds of Force Majeure condition of shortage of gas, OTPC prays for further extension in relaxation of NAPAF till 31.3.2019

### **ROP dated 24.9.2019**

9. Vide ROP of hearing dated 24.9.2019, the Commission raised a query 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 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.

10. The petitioner vide affidavit dated 4.11.2019 in reply to ROP of hearing dated 24.09.2019 submitted the following:



- a) ONGC, the fuel supplier, had earlier communicated to OTPC vide letter dated 18.03.2016, that adequate gas for full load generation would be supplied by September 2018 onwards. After the order dated 30.03.2017, OTPC wrote several letters to ONGC for increase in the quantum of the gas supplied. Vide letter dated 14.11.2017 and email dated 22.12.2017, ONGC provided reasons for adverse gas reservoir behaviour of the gas fields in Tripura along with the field-wise reservoir studies report and field-wise gas production details including plans to enhance gas production.
- b) OTPC through its lawyers vide letter dated 11.05.2018 wrote to ONGC asking questions regarding supply of adequate gas for full load generation. Subsequently, OTPC approached Former Hon'ble Supreme Court Justice, Mr. A.K. Patnaik, to ascertain whether there exists sufficient cause to suggest that ONGC's failure to supply gas to the OTPC is on account of Force Majeure conditions. Former Justice A.K. Patnaik in the meeting dated 08.06.2018, after considering the field-wise reservoir studies reports and gas production details given by ONGC, took the view that unanticipated gas reservoir behavior cited by ONGC is a valid Force Majeure event under the GSPA. Justice Patnaik gave a written opinion on 17.09.2018 reiterating the view that he had taken in the meeting dated 08.06.2018.
- c) ONGC vide its letter dated 12.07.2018, replied to OTPC's letter dated 11.05.2018 and informed OTPC that the supply of gas for full load generation is not feasible by September, 2018 due to decline in reservoir pressure and increases in water production which was more than envisaged and which is a continuing Force Majeure event as an adverse gas reservoir behaviour. ONGC also provided detailed reasoning for supplying less than full load generation of quantity of gas. ONGC again sent the field-wise reservoir studies report and field-wise gas production details.



- d) OTPC sought legal opinion on whether the information provided by ONGC in its letter dated 12.07.2018 would be sufficient to evidence occurrence of Force Majeure event. Urja Law Chambers opined that adverse gas reservoir behaviour is Force Majeure event and that sufficient grounds exist for OTPC to approach the Hon'ble Commission to seek extension of the relaxation in NAPAF.
- e) The Managing Director, OTPCL, based on the legal opinions received and after application of his own mind, took the decision to approach the Commission for continuation in NAPAF relaxation until 31.03.2019. The filing of Petition No. 245/MP/2015 evidences the decision of accepting the failure of ONGC to supply gas for full load generation as a Force Majeure condition. The Managing Director, OTPCL is a competent authority to take the said decision.

### **Analysis and Decision**

11. After considering the submissions of petitioner and respondents, the issues involved in the petition are as follows which are discussed and analysed in the following paragraphs.

Issue-I: Extension of the relaxation in NAPAF norms from 1.10.2018 to 31.3.2019.

Issue-II: Consideration of the NAPAF norms for generating station as per actual gas supply position at the time of true-up.

**Issue-I: Extension of the relaxation in NAPAF norms from 1.10.2018 to 31.3.2019.**

12. The petitioner in Tariff Petition No. 129/GT/2015 had sought the relaxation in Normative Annual Plant Availability Factor (NAPAF) for the Project from 85% to 68% from COD of Block-II/Unit-II (24.3.2015) to 30.9.2018 due to shortage of gas supply



by gas supplier ONGC. The petitioner claimed shortage of gas as force majeure on account of unpredictable low supply of gas from ONGC gas wells. The petitioner had furnished that the gas supplier assured to restore the full gas supply by 30.9.2018. The Commission after considering the shortage of gas supply and considering the quantum of gas available, vide order dated 30.3.2017 in Petition No.129/GT/2015 has allowed the relaxed NAPAF as given below.

*“95 The petitioner has submitted that the fuel supplier will be in a position to supply the gas as per requirement for full load generation of the plant, by September 2018. In the light of the above discussions, the normative availability for recovery of annual fixed charges for the period 2014-19, is allowed as under.*

1.4.2014 to 23.3.2015 (Unit-I)	24.3.2015 to 30.09.2018	1.10.2018 to 31.3.2019
85%	76%	85%

*“96. Further, the relaxation in the availability allowed as above, is subject to the condition that the generating station shall be entitled to incentive corresponding to 50% of the availability in excess of 85% till such time the shortfall in availability from 76% availability during the period 24.3.2015 to 30.9.2018 is made good. We would also like to make it clear that relaxation in availability is a one- time dispensation and no further request for relaxation shall be entertained and consequences of any shortfall in performance shall be borne by the petitioner.”*

13. In the instant petition, the petitioner has once again prayed for extension of the allowed relaxation in NAPAF norms (from 1.10.2018 to 31.3.2019) approved by the Commission vide order dated 30.3.2017 in Petition No. 129/GT/2015 for the period 24.3.2015 to 30.9.2018. The petitioner has submitted that even after a relaxation in NAPAF the petitioner is incurring heavy AFC losses. Further, even at the current PAF of 70% for 2018-19 till 31<sup>st</sup> July 2018, the AFC losses will be magnified for the petitioner if the Commission maintains the NAPAF at 85% from 01-10-2018 to 31-03-2019. The petitioner has attributed this low NAPAF to the shortage of gas supply by ONGC due to the same force majeure conditions as claimed in the Petition No. 129/GT/2015.



14. The respondent APDCL has submitted that ONGC is the major stakeholder of the OTPC vis-a-vis the fuel supplier. Besides, ONGC itself owns the entire gas and petroleum fields in entire south zone of NER as well as major areas of rest of part of NER. It needs no mention that only after detailed feasibility analysis, ONGC has ventured into power generation and signed agreement as fuel supplier to OTPC project with 50% shareholding. APDCL has prayed that the instant petition may be rejected on the basis of observation made at Para 96 (relaxation as one time dispensation) of the Order dated 30.03.2017. The respondent further pointed out that the petitioner has deliberately concealed the fact that ONGC has resorted to diversion of gas from Palatana project to meet its other obligations towards Monarchak Power plant.

15. The Commission, considering the unpredictable behaviour of the oil wells during the initial and stabilization period, had allowed the relaxation in NAPAF from 85% to 76 % for the period from COD (24.3.2015) to 30.9.2018. The Commission while allowing the relaxation in NAPAF from 85% to 76 % w.e.f 24.3.2015 (COD of station) to 30.9.2018 has specifically clarified that relaxation in availability is a onetime dispensation and no further request for relaxation shall be entertained and consequences of any shortfall in performance shall be borne by the petitioner. Therefore, there is no merit in the claim of the petitioner for further relaxation in NAPAF beyond the dead line of 30.9.2018. Hence, the prayer of the petitioner for relaxation of NAPAF from 1.10.2018 to 31.3.2019 is rejected.

**Issue-II: Consideration of the NAPAF norms for generating station as per actual gas supply position at the time of true-up**

16. The petitioner has also prayed to allow liberty to the petitioner to approach the Commission with actual gas supply position at the time of the truing –up and has requested a re-consideration of the NAPAF norms for Palatana station considering the actual gas supply position in the control period 2014-2019.



17. The petitioner in support of his claim has submitted that the Commission while calculating the target availability for Palatana station had taken the availability of gas as 83% and accordingly fixed the relaxed NAPAF as 76%. However, during the last three years i.e. from FY 15-16 to FY 17-18, when both the units of the station were operational, the average gas consumption by Palatana station has been 2.106 MMSCMD. The gas consumption by the station can be taken to be the gas supplied by the fuel supplier as the station has not had any unplanned shutdowns during this period and has consumed nearly all the gas that was supplied by the fuel supplier. The average gas supply for the period from FY 2015-16 to FY 2017-18 has been at 66% (2.10/3.18). The petitioner has thus submitted that using the same calculation methodology as used by the Commission during the issuance of tariff order, the annual availability for Palatana station can be worked out as 62%. However, the petitioner has prayed for a higher NAPAF of 68% from the Commission in comparison to what the actual gas supply position over the previous three year period would have yielded using the same calculations as used during the issuance of the tariff order.

18. The Commission, in the similar issue raised by NEEPCO in Petition No. 225/MP/2017, vide order 5.11.2018 had dis-allowed the relaxation sought in NAPAF as per actual gas supply position and observed as below.

*“29. Based on the above discussions, it is observed that the shortfall in Target Availability is not due to any operational problems and could only be attributed to inadequate gas supply by the gas supplier. We are of the view that risk of non-supply of gas up to the requirement of 1.4 MCMD may have to be borne by the petitioner. The generating company and the Gas supplier both are the Government Companies and they should settle the gas supply issues among themselves. Accordingly, we are not inclined to relax the target availability any further to the level of actual availability.”*



19. The Commission notes that ONGC is the major stakeholder of the OTPC and also the fuel supplier. Besides, ONGC itself owns the entire gas and petroleum fields in entire south zone of NER as well as major areas of rest of NER.

20. Relaxed NAPAF for short supply of gas effectively passes on the risk for such shortfall in gas supplies to the beneficiaries. The question is to what extent such risks of short supply of gas should be allowed to be passed on to the beneficiaries. Should the entire business risk of generator with regard to supply of gas be passed on to the beneficiaries? We are of the view that the responsibility for arranging the gas supply for declaration up to the 85% squarely lies on the generating company.

21. Therefore, the prayer of the petitioner to allow liberty to approach it with actual gas supply position at the time of the truing –up and request a re-consideration of the NAPAF norms for Palatana station considering the actual gas supply position in the control period 2014-2019, is not tenable. We are of the view that risk of non-supply of gas up to the requirement have to be borne by the petitioner. The generating company and the Gas supplier both are partners in the company and they should settle the gas supply issues among themselves in the light of GSA provisions. Accordingly, we are not inclined to relax the target availability any further to the level of actual availability for the period 2014-19.

22. Petition No. 245/MP/2018 is disposed of in terms of the above.

-Sd-

(I. S .Jha)  
Member

-Sd-

(Dr. M. K. Iyer)  
Member

-Sd-

(P. K. Pujari)  
Chairperson

