

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 225/MP/2017

Subject : Petition for seeking compensation for loss of Capacity Charge on account of inadequate availability of fuel gas under provisions of Regulation 54 (Power to Relax) of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2014 in respect of the Assam Gas Based Power Plant

Petitioner : NEEPCO

Respondent : Assam Power Distribution Company Ltd. (APDCL) & others

Date of hearing : 26.7.2018

Coram : Shri P.K. Pujari, Chairperson
Shri A.K. Singhal, Member
Dr. M.K. Iyer, Member

Parties present : Ms. Ranjitha Ramachandran, Advocate, NEEPCO
Ms. Poorva Saigal, Advocate, NEEPCO
Ms. Anushree Bardhan, Advocate, NEEPCO
Shri Avijit Roy, Advocate, APDCL
Shri Debjani Dey, NEEPCO
Shri R.Mullick, NEEPCO
Ms. E. Pyrbot, NEEPCO
Shri K. Goswami, APDCL

Record of Proceedings

During the hearing, the learned counsel for the Petitioner, NEEPCO mainly submitted as under:

(i) Due to inadequate supply of fuel gas by Oil India Limited (OIL) for the period from July, 2016 to March, 2017, it was impossible for the Petitioner to achieve NAPA of 72% as specified under Regulation 36(A)(d) of the 2014 Tariff Regulations.

(ii) In terms of Article 7.3 of FPA, compensation was preferred on OIL due to its failure to supply minimum guaranteed quantum of gas. However, OIL had served notice of 'force majeure' in respect of disruption in gas supply to the Petitioner.

(iii) The Commission in exercise of its powers under Regulation 54 (Power to Relax) of the 2014 Tariff Regulations may relax the norms of operation by considering the actual PAF to enable the Petitioner to recover the losses incurred on account of reasons which are beyond its control.



2. In response, the Respondent, APDCL has submitted the following:

(a) The PPA between the Petitioner and APDCL makes no reference to the FPA signed by the Petitioner with OIL. Thus, issues with regard to deviation from supply of the contracted gas by OIL and the corresponding reduction in the generation of power are required to be resolved by the Petitioner in terms of the FPA.

(b) Article 6.3.2 of the FPA provides for a mechanism that in case of any dispute/ disagreement in respect of supply of gas, the matter shall be referred to the Gas Supply Coordination Committee (GSCC). Thus, the Petitioner should have approached GSCC for realization of its compensation bill raised to OIL.

(c) The responsibility for arranging fuel is on the generating company. Hence, the non-availability of fuel does not fall within the purview of Force majeure events. Moreover, the beneficiaries cannot be made liable for the Petitioner's inability to arrange adequate fuel. [Judgment of APTEL dated 30.4.2013 in Appeal No. 110 of 2012 (NTPC vs CERC & others) was referred to].

3. The learned counsel for the Petitioner clarified that in terms of the judgment of APTEL dated 22.1.2007 in Appeal No. 89 of 2006 (NTPC vs MPSEB & ors) the Commission may allow relaxation of the NAPAF. The learned counsel also clarified that for the purpose of invoicing, the force majeure called by the seller or the buyer would be treated as a justified event, unless determined otherwise by GSCC.

4. The Commission, after hearing the parties at length, reserved its order in the matter. The Commission however directed the parties to file their written submissions on or before **27.8.2018**.

By order of the Commission

Sd/-
(T. Rout)
Chief (Law)

