

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
"Urja Bhawan", Shivaji Nagar, Bhopal - 462 016**



Petition No. 110/2006

PRESENT:

D. Roy Bardhan, Member

R. Natarajan, Member

IN THE MATTER OF:

Continuation of Generation Tariff for Existing Power Stations of MP Power Generating Company, as Determined by the Commission in its Multi Year Generation Tariff Order for FY07 to FY09 Dated 7th March 2006.

MPPGCL (Petitioner) represented among others by –

- 1. Shri C. S. Dubey (Addl. Chief Engineer)**
- 2. Shri Manjeet Singh (Deputy Director Cost)**
- 3. Shri Salil Choudhary (Addl. Executive Engineer)**

ORDER

(Passed on this 28th Day of February, 2007)

1. The Madhya Pradesh Electricity Regulatory Commission (hereinafter referred to as “the Commission” or “MPERC”) having heard the applicant, interveners, consumers, consumer representatives of various consumer groups on 22nd January 2007 at Bhopal, having had formal interactions with the officers of Madhya Pradesh Power Generating Company Ltd. (hereinafter referred to as “MPPGCL” or “Generating Company” or “GENCO”) during the months of November and December 2006, having met with the members of the State Advisory Committee on 17th January 2007, having considered the documents available on record and orders issued by Government of Madhya Pradesh (Energy Department) on 31st May 2005 notifying the Transfer Scheme Rules effective from 1st June 2005, (order no. 3679/FRS/18/13/2002 dated 31.5.2005), on 3rd June 2006 notifying the Madhya Pradesh Electricity Reforms Transfer Scheme Rules, 2006 and on 18th October 2006 reallocating the Generating Capacity available to the State among the three Distribution Companies of the State, hereby accepts the applications with modifications, conditions and directions as herewith attached.
2. The Commission has gone through the Petition filed by the Generating Company of the State. The Commission has noted that the State Government has not issued the Final Balance Sheet till date i.e. the basis of projection made by the Company in its submission for Generation Tariff Order for FY07 to FY09 in January 2006 is still provisional. The Commission, in its Generation Tariff Order for FY07 to FY09 has stated that the generation cost determined by the Commission for FY07 is subject to changes, if any, in the notified Opening Balance Sheet that may be made by GoMP before 31st May 2006 or on availability of audited balance sheet as on 01/06/2005. The Commission also ordered in its aforementioned Generation Tariff Order that the station wise generation tariff determined by the Commission in that order shall be deemed to be effective from 01st April 2006 i.e. the date when the tariff period for

multiyear tariff started and shall continue to be operative till 31st March 2009 subject to yearly approval of the Commission. The Commission had further stated that Generating Company should seek approval each year of the control period subject to any change necessitated on account of any uncontrollable factors, in conformity to clause 1.26 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2005. Since the depreciation, interest and O&M expenses have to be allowed on the basis of actual figures submitted by the Company, there may be a need to review the tariff determined based on the actual capitalization, loans actually availed and the actual physical progress when the tariff for FY08 is determined. The Commission had reasons to believe that at the time of review of the Petition for FY08 for truing up for FY 07 and for determining the tariff for FY 08, the Audited Balance Sheet of the Generating Company would be available. The GoMP has now extended the final date for notification of the Final Opening balance Sheet up to 31st May 2007 and the audited Balance sheet for FY 06 is yet to be submitted by the Genco.

3. The Generating Company has filed the present Petition before the Commission on October 17, 2006. The Commission has accepted the Petition on 07th November 2006. The Generating Company has filed the following submissions for consideration of the Commission:
 - i. To grant time extension upto 15/01/2007 for submission of truing up petition for FY06 and Tariff Petition for FY07 & FY08. Time extension request had further been sought up to 15/02/2007.
 - ii. To permit the Company to continue with the Tariff as approved in the Commission's Generation Tariff Order of March 07, 2006.
 - iii. To permit the adjustment on account of fuel cost as per the VCA Petition to be submitted in due course of time.
 - iv. To permit to recover fixed charges as per the Commission Generation Tariff Order of March 07, 2006 and exempt from any deduction / withholding due to delay in signing of long term PPA directly with the Distribution Companies of the State.

4. In its petition, the Generating Company has requested for extension of time for filing the petition for truing up as the Audited Statements of Account of the Company are not yet available. The Generating Company has submitted that the Ministry of Company Affairs, Government of India on the request of MPPGCL, vide its letter of 18/09/2006, has extended the time for holding the Annual General Meeting of the Company during which the Company's accounts for FY06 are to be placed, up to 31/12/2006 against 30/09/2006 as specified in sections 166 and 210 of the Companies Act 1956. In view of this MPPGCL requested the Commission to allow them the time for filing of their Petitions for truing up of its Tariff of FY06 and for review of Generation Tariff for FY07 to FY09 under multi year principles. The Generating Company has also requested the Commission to allow them to continue with the Generation Tariff determined by the Commission in its Generation Tariff Order of March 07, 2006 for FY08.
5. Before reaching to a conclusion on the request filed by the Petitioner, the Commission considers it appropriate to discuss certain issues with regard to the determination of the generation tariff for MPPGCL which had come before the Commission at the time of passing its Generation Tariff Orders for FY06 and also for FY07 to FY09. Certain developments have emerged out of the order of Central Electricity Regulatory Commission and Appellate Tribunal for Electricity subsequent to the Commission's Generation tariff order of March, 2006. These issues are elucidated in the following paragraphs.
6. Consequent to the GoMP notification dated 31st May 2005 wherein Madhya Pradesh State Electricity Board (hereinafter referred to as "MPSEB") was allowed to continue as a Trading Licensee, initially till 9th December 2005 and then till 9th June 2006, MPPGCL and MPSEB mutually entered into a provisional power purchase agreement, which provided for sale and purchase of power both from Hydel and Thermal Power stations at a pooled price of Rs. 1.51 per unit. As per the provisions in the said agreement MPPGCL was required to file a Petition before the Commission for determination of generation tariff for FY06. When the Petition for determination

of the Generation Tariff for FY06 was filed, the Commission had asked the Petitioner MPPGCL to clearly establish before the Commission the legal basis for the Commission to determine the generation tariff when under the existing arrangement MPPGCL was bound to sell its entire output to MPSEB, a Trading Licensee (at that time) and not to the Distribution Licensees of the State as Section 62 (1)(a) of the Electricity Act, 2003 stipulated that the appropriate Commission would determine the tariff of generating company supplying electricity to a distribution licensee. The Petitioner submitted that the Commission’s powers to determine generation tariff under section 86(1)(a) of the Electricity Act 2003 were wide and covered the situation which **existed** at that time. The relevant portion of Section 86(1)(a) of Electricity Act 2003 has been reproduced as follows: -

86. Functions of State Commission- (1) The State Commission shall discharge the following functions, namely: -

(a) Determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State: Providing that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

.....

Simultaneously, the Commission had also referred to section 62 of the Electricity Act 2003 wherein it is provided as follows: -

62. Determination of Tariff- (1) The Appropriate Commission shall determine the tariff in accordance with provisions of this Act for –

(a) supply of electricity by a generating company to a distribution licensee:

.....

To understand the meaning of ‘supply’ one must refer to the definition in section 2 (70) of the Act which is: -

“supply”, in relation to electricity, means the sale of electricity to a licensee or consumer;

.....

7. The State Government's order on 31st May 2005 was to give effect to the reorganization of Madhya Pradesh State Electricity Board in terms of the Madhya Pradesh Electricity Reforms First Transfer Scheme Rules 2003 (Transfer Scheme Rules) notified on 30th September 2003. As per paragraph 4 of this Order, the MPSEB was to continue to undertake the electricity Bulk Purchase and Bulk Supply function as provided in Schedule F to the Transfer Scheme Rules, 2003. As per paragraph 1 of Schedule F, the functions of bulk purchase and bulk supply functions, namely, purchase of electricity in bulk from the generating companies including GENCO and supply of electricity in bulk to the DISCOMS had been retained by MPSEB. Even though the State Government had not specifically allocated the generating capacity of stations of GENCO to the MPSEB, the Government had notified that the purchase of electricity in bulk from the GENCO would be the responsibility of MPSEB and MPSEB would also supply electricity in bulk to the DISCOMS. The State Commission, as per section 86(1)(a) of the Electricity Act, 2003 shall determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State. As per Section 86(1)(b) of the Act, the Commission shall regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State. As the GENCO was supplying electricity in bulk to MPSEB, and MPSEB, the Trading Licensee, in turn was supplying electricity in bulk to the DISCOMS, the Commission had construed that entire generating capacity of the GENCO had been allocated to the MPSEB who was operating as a Trading Licensee in the State.
8. The Commission opined that the relevant notification issued by GoMP made it abundantly clear that the sale of electricity by MPPGCL to MPSEB was primarily and exclusively for the purpose of supply to distribution licensees within the State and hence it was the obligation of the Commission to determine the tariff of MPPGCL to allow the operations to continue smoothly. The Commission had therefore, decided to determine the generation tariff. The Commission had determined

the Station wise Tariff in its Generation Tariff Order for FY06 for sale of entire generation of MPPGCL to MPSEB for further sale to the Distribution Companies of the State. However, the Commission strongly opined that individual distribution licensees should enter into a long-term power purchase agreement with MPPGCL in order that the arrangement continues uninterrupted even when MPSEB no longer exists as a trading licensee so that the interest of ordinary consumers of the State were safeguarded.

9. The matter again came up for discussion during the determination of the Generation Tariff under the multiyear principles for FY07 to FY09. The Commission had notified the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2005 in the Madhya Pradesh Government Gazette on 23rd December 2005 wherein the multi year principles have been elaborated for determination of generation tariff for the control period from FY07 to FY09. As per clause 1.4 of these Regulations, they apply in all cases of determination of generation tariff under section 62 of the Electricity Act 2003 for supply of electricity to a distribution licensee by existing State Generating Stations where the State Government, under section 131 of the Act, allocates the capacity. The Commission had not noticed any material change in the status of MPPGCL and the MPPSEB. In paragraph 4 of its Generation Tariff Order for FY07 to FY09, the Commission had observed that as per paragraph 4 of GoMP Order No. 3679/FRS/18/13/2002 dated 31/05/2005, MPSEB continued to undertake the Electricity Bulk Purchase and Bulk Supply function. As per Clause 2 (ii) of Schedule VII “Cash Flow Mechanism” of the said order, MPSEB had the first charge on the generation of Genco and would purchase the entire power from the Genco. MPSEB would pay the MPPGCL at the rates determined by the Commission. As the Commission had determined the generation tariff for FY06 on the policy stated in the aforementioned paragraphs, the Commission also determined the Generation Tariff for FY07 to FY09. The Commission determined the two part tariff for generation comprising annual capacity (fixed)charges for recovery of the fixed expenditure such as interest on loan and working capital, depreciation, return on

equity, O&M expenses, terminal benefits and prior period charges and energy (variable) charges to cover fuel related expenditure.

10. The Commission in its Generation Tariff Orders for FY06 and for FY07 to FY09 directed MPPGCL to enter into the long term Power Purchase Agreements with the Distribution Licensees of the State so as to enable the Generating Company to recover its fixed charges of generation. The Commission had asked the petitioner a number of times to produce the copies of its executed long term agreements. In the matter of Suo-Motu Petition No. 74/2005 “Execution of Commercial Agreements among the Successor Companies of MPSEB”, in its order sheet of August 18, 2006, the Commission had clearly stated that

“It must be noted that the Commission has fixed station wise two part Tariff and in the absence of any long term firm agreement between distribution licensee and the generating company the payment of fixed cost charges on the basis of committed availability of capacity may be at risk.”

11. As the Generating Company failed to produce the copy of its executed agreements with the Distribution Licensees of the State, the Commission registered a Suo-Motu Petition (SMP No. 97/2006) and directed MPPGCL to enter into long term agreements with the Distribution Licensees of the State failing which to show cause why not the fixed cost of the generation be disallowed.
12. In the mean time by taking into cognizance clause 1.26 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2005 the Commission directed MPPGCL to file its Petition for scrutiny and true up of the data so that the cost of uncontrollable variations in the generation tariff as approved by the Commission in its Generation Tariff Order of 07/03/2006 can be passed on to the Distribution Companies. Clause 1.26 stipulates that

“A Generating Company shall file a petition at the beginning of the tariff period and every year thereafter. A review shall be undertaken by the Commission to scrutinise and true up the data and to accommodate any uncontrollable variations. This filing shall be in accordance with the formats prescribed in MPERC (Details to be furnished and fees payable by licensee or generating company for determination of tariff and manner of making an application) Regulation, 2004 by 15th October every year.”

In response, the Petitioner filed the subject Petition on 17/10/2006. The Commission accepted the Petition when the Petitioner remitted the requisite fee on 07/11/2006.

13. With the filing of the present Petition, the issue of determination of Generation Tariff in the situation when the Generating Company is not selling the electricity to the Distribution Licensees of the State, needs to be discussed. After the issuance of the Generation Tariff Order for FY07 to FY09 on 07/03/2006, the GoMP through its notification of June, 03, 2006 in the GoMP Gazette notified the Madhya Pradesh Electricity Reforms Rule 2006 wherein the GoMP under section 131 of Electricity Act 2003 had established a new Company for trading of electricity namely “Madhya Pradesh Power Trading Company Limited” (hereinafter referred to as “MPPTC” or “MPTRADECO” or “TRADECO”). The following functions have been transferred from MPSEB to MPPTC:

- (i) The bulk purchase and bulk supply functions, namely, purchase of electricity in bulk from the generating companies and supply of electricity in bulk to the Electricity Distribution Companies in the State of Madhya Pradesh.*
- (ii) The Power Purchase agreement or arrangement existing between the Board and the generating companies including inter-state Joint Venture Projects and the Bulk Supply Agreements with the electricity distribution companies in the State of Madhya Pradesh and all arrangements in relation of trading of electricity, inter state and intra state.*
- (iii) All short medium and long term Bulk Power Purchase Agreements or Arrangements between the Board and the power traders existing as on the effective date.*
- (iv) The Bulk Power Agreement existing between the Board and Power Grid Corporation of India as well as other Transmission licensees for transmission and wheeling of power interstate or intrastate.*

(v) Any future agreements that are presently being contemplated / processed by the Board in respect of any of the above and any activities in regard to electricity trading in the State.

14. The “Cash Flow Mechanism 2006”, specified in the Madhya Pradesh Electricity Reforms Rule 2006, has the provisions that TRADECO shall have the first charge over entire generation of GENCO and shall purchase entire power from GENCO at the tariff determined / approved by the MPERC and the GENCO shall issue the monthly bills to TRADECO.
15. The Commission directed the MPPGCL to execute the long term power purchase agreements with the Distribution Licensees of the State, by referring to the GoMP Gazette notifications of 03/06/2006 with regard to the formation of MPPTC and Gazette notification of 18/10/2006 with regard to reallocation of the generation capacity available to State among the three Distribution Companies. MPPGCL informed the Commission that it had been directed vide GoMP, Energy Department letter bearing number 7732/13/2006 of November 29, 2006 to enter into long term agreement with MPPTC and not with the Distribution Licensees of the State. The Commission pointed out that as per the language in the Gazette notification of October 18, 2006, the GoMP has reallocated the generation from MPPGCL, Central Sector Stations, Joint Sector Station and other sources among the three Distribution Companies of the State (firm allocation of 92%) and provisional allocation of balance 8%. MPPTC will further allocate the 8% provisional allocation among the three Distribution Companies as per their requirements based on monthly submissions. The Commission had once again referred to section 62(1)(a) of the Electricity Act 2003 which stipulates “*Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for supply of electricity by a generating company to distribution licensee*”. and stated that the Commission has been provided with the powers for determination of tariff for a generation company only if it supplies electricity to a distribution licensee of the State.

16. The Petitioner submitted the copy of the executed power purchase agreements entered by it with the MPTRADECO on 29/11/2006. In this situation the Commission is left with no option except to consider the generating stations of MPPGCL as merchant (commercial) generating stations. However, later on the TradeCO confirmed that the Discoms have signed an agreement with them for their requirements.
17. In the mean time, the Commission has come to know of the order issued by Central Electricity Regulatory Commission (herein after referred to as “CERC”). M/s Essar Power Limited filed a Petition (No.158/2005) before the CERC in the matter of in-principle acceptance of project capital cost and the financing plan of 1500MW Hazira Combined Cycle Power Project to be set up by Essar Power Limited. The CERC heard the case on 22/06/2006 and passed its order on 02/08/2006. The relevant paragraphs of this order are reproduced below:
17. *It has been noticed that the capital cost of the generating station works out to Rs. 2.52 Crore/MW at the exchange rate of Rs.45.25/USD. The cost compares favorably with the per MW cost of other gas based generating stations in the country. We, therefore, accord approval to the project capital cost of USD 491.17 M + Rs. 1534.13 Crore (Including Working Capital Margin of Rs.60.37 Crore), subject to following conditions:*
- (a) The petitioner shall file before the Commission Power Purchase Agreements for off-take of at least 85% of capacity, with more than one State, latest by 30.09.2006. PPAs shall be entered directly by the petitioner with the Distribution Companies and not through a trader.*
- (b) The beneficiaries shall not have any compulsion to pay capacity charge for any plant capability beyond what can be generated with natural gas available.*
18. *We have also taken note of the fact that as per para 5.7.1 of National Electricity Policy dated 12.2.2005, “a part of new generating capacities, say 15% may be sold outside long-term PPAs”. This implies that PPAs need not cover the entire capacity.*
19. *The tariff for the electricity supplied from the generating station will be determined in accordance with the terms and conditions of tariff notified by the Commission and applicable from time to time, after prudence check of the actual expenditure.*

20. *It is clarified further that non-fulfillment of condition (a) at para 17 above will render this approval null and void.*

18. In response, M/s Power Trading Corporation of India Limited (hereinafter referred to as “PTC”) preferred an appeal (228 of 2006) in the Appellate Tribunal for Electricity (hereinafter referred to as “ATE”) wherein the applicant sought to set aside the order dated 02/08/2006 passed by the CERC in the matter of Petition No. 158/2005 to the extent it directed Essar Power Limited to sell power directly to the distribution licensees and prohibits sale of power to any trader. Simultaneously, an appeal (230 of 2006) had also been preferred by MPPTC (who was also the respondent in the matter of Petition No.158/2006 before CERC) before the ATE wherein the appellant prayed to set aside Para 17 of very same order of CERC dated 02/08/2006. The CERC in its order in the matter of Petition No. 158/2005 in so far as it had directed Essar Power Limited to enter into a PPA with distribution licensee (Companies) and not through a trader. ATE observed that both the appeals arose out of the same order of CERC and hence, decided to dispose of both the petitions in one order.

19. In its order of 23/11/2006 the ATE has observed that M/s PTC is granted category ‘F’ trading license by CERC, under section 14(c) of The Electricity Act 2003 to undertake trading in electricity as an electricity trader throughout India. The ATE has also noted that the appellant in Appeal No. 230 of 2006 i.e. MPPTC, has claimed that it is licensed to trade in electricity by virtue of deeming provisions in the Act. The appellant, MPPTC, has claimed that it is entitled to trade in power by virtue of Section 14, read with Section 13 of the Electricity Act 2003, being an undertaking of Government of the Madhya Pradesh. The appellant has further claimed that it has been validly constituted and has taken over the obligation of MPSEB and that it is a deemed licensee to trade in power. After hearing the appellants and the respondents, ATE passed the order.

20. ATE summed up the issues raised which have been reproduced below:

(A) *Whether the condition imposed by the 1st respondent, Central Electricity Regulatory Commission, in paragraph 17(a) of its order while according the*

“in principle approval to the project capital cost and financing plan” of the 2nd respondent for its proposed generating plant, is in excess of jurisdiction, arbitrary and misconceived and liable to be interfered?

- (B) Whether an IPP could be directed / compelled to enter into PPA directly with distribution utilities and not to sell to a licensed trader? Whether such a condition is sustainable in law? Whether the condition imposed is in conformity with the statutory provision and the policy or is arbitrary and unwarranted as contended by the appellants?*
- (C) Whether Regulation 17 of CERC regulations enables CERC to impose the condition 17 (a) which is impugned in these appeals?*
- (D) Whether the 1st respondents’ action in taking upon itself a non issue and pass orders on its own without putting the 2nd respondent and the appellant on notice of its proposal to impose the condition, which is violative of principles of natural justice and fair procedure?*
- (E) Whether the provisions of the Electricity Act, the regulations framed by the CERC, the National Electricity Policy and Plan, the National Tariff Policy, provide for or contemplates imposition of impugned condition, detailed in para 17(a)?*
- (F) To what relief, if any?*

(1st respondent is CERC and 2nd respondent is Essar Power Limited)

21. After due diligence the ATE answered the issues raised, in paragraph 69 of the order.

The point wise answers are reproduced below:

- (i) On point A, we hold that the condition imposed by the first respondent in Para 17(a) of its order is ordered to be set aside as it is in-excess of jurisdiction, without authority and it is ordered to be deleted apart from setting aside the consequential directions set out in Para 18 and 20 of the impugned order of the first respondent.*
- (ii) On point B, we hold that the IPPs cannot be directed or compelled to enter into PPA directly with distribution utilities exclusively and restriction imposed with respect to sale to of power to licensed trader is set aside. The condition imposed in Para 17(a) is not sustainable, apart from being not in conformity with the provisions of The Electricity Act, 2003.*
- (iii) On point C, the Regulation 17 of CERC Regulation in no way enables or confer power on the said first respondent commission to impose such*

conditions while passing orders in a petition filed by second respondent under sec. 79(i)(b) of the Electricity Act 2003.

- (iv) On point D, is answered in favour of the appellant holding that there is violation of fair procedure and it is an irregularity.*
- (v) On Point E, we hold that the provisions of the Electricity Act, 2003, the regulations framed by CERC, the National Electricity Policy and Plan and National Tariff Policy neither provides nor contemplates imposition of condition 17(a) as well as consequential directions as ordered by the first respondent.*
- (vi) On point F, we allow both the appeals as prayed for but without costs.*

22. It has also been noted in the said order of ATE of 23/11/2006 that ATE had not accepted the contention put forth by CERC that MPPTC had no license to trade. The relevant paragraph of the said order is reproduced below:

68. Before parting, we allow the amendment of cause title prayed for in appeal No. 230 of 2006 and the contention of the first respondent that the appellant in appeal No. 230 of 2006 has no license to trade is not acceptable and the claim advanced by the appellant in the said appeal deserves to be sustained.

23. In view of the decision of the ATE as aforementioned, the Commission is of the opinion that MPPTC is a trading licensee. Having determined the generation tariff for a three year period ending 31st March, 2009 and having considered that the entire generation of MPPGCL being supplied to TRADECO is for supply to the distribution licensees in the State, the Commission decided to proceed with the petition.

24. The Commission held the Public Hearing in the subject Petition on 22/01/2007 wherein only Shri P.L.Nene on behalf of MP Electricity Consumers' Society, Indore submitted their views / objections on the Petition as follows:

- (i) The Petition is devoid of any substantial information with regard to financial and technical performance of the Company, the achievements and the report on the compliance to the direction of the Commission, etc.*

(ii) A number of new generation projects of the Company are likely to be commissioned in near future. The Petitioner has not indicated the latest status of implementation and the effect on tariff of these projects in its Petition.

(iii) The Petitioner should timely file the petition for VCA before the Commission so as to avoid the tariff shocks.

25. In response, Shri Manjeet Singh, Deputy Director (Tariff) on behalf of the Petitioner has submitted that as the Opening Balance Sheet has not been finalized till date and therefore the Petitioner is not able to decide over its opening balances for its Statements of Accounts for FY06. The Petitioner shall immediately file its Petition for truing up of the Generation Tariff for FY06 as soon as the Government of MP finalizes the Opening Balance Sheet. With regard to issue of lack of information in the Petition on various aspects as indicated by MP Electricity Consumer Society, Indore, the Petitioner has informed that in the present Petition, it has requested for time extension for submission of the Petition for truing up of FY06 tariff and revision in FY07 to FY09 tariff and for continuation of the generation tariff as determined by the Commission vide its order of 07/03/2006 for FY07 to FY09. In any case after the finalisation of the Opening Balance Sheet by the GoMP the Petitioner is required to resubmit all the information / data / reports with its Petition, hence it has not provided any information with the present Petition. The Commission agreed with the clarifications provided by the Petitioner.

26. In view of the facts and the circumstances as discussed in the foregoing paragraphs the Commission decides to dispose of the requests put forth by the Petitioner in its subject petition and as reproduced in the paragraph 3 of this order as follows:

(i) With regard to grant of the time extension initially up to 15/01/2007 and subsequently up to 15/02/2007 for submission of truing up petition for FY06 and Tariff Petition for FY07 and FY08, the Commission has noted that Ministry of Company Affairs, GoI has allowed the MPPGCL the time extension up to 31/12/2006 for holding its Annual General Meeting for placing its audited

Statements of Accounts. Considering the fact that the Petition for truing up of the Generation Tariff for FY06 has to be based on the Audited Statements of Accounts for FY06, the Commission has accepted the request. MPPGCL vide its letter bearing number 07-12/CP-MPPGCL/MPERC/368 of 17th February 2007 has filed its Truing Up Petition for FY06 and Tariff Petition for FY08 on 19/02/2007. It is indicated in paragraph 7 at page 4 of the Petition that the audit of the Balance Sheet of MPPGCL for FY06 is under way. The present submission of MPPGCL has been based on the provisional Balance Sheet for FY06. It is a settled position that truing up can be done only when the audited financial statements are available. The Commission noted that the audit of the Balance Sheet for FY06 by the Statutory Auditors of the Company is under process and after completion the reports from Statutory Auditors shall have to be submitted to AG for comments. In view of the foregoing, the Commission has decided not to accept the Petition as filed by MPPGCL vide its aforementioned letter of 17/02/2007. The Petitioner is directed to file the Petition for truing up so as to enable the Commission to scrutinize and true up the data and to accommodate any uncontrollable variations when the audited Statements of Accounts for FY06 are available.

- (ii) With regard to the permission to continue with the Tariff as approved in the Generation Tariff Order date 07/03/2006, the Commission agrees to the request of the Petitioner. The generation tariff determined by the Commission for FY08 under Multi-Year regime in its Generation Tariff Order for FY07 to FY09 of March 07, 2006 shall be applicable for FY08.
- (iii) With regard to the permission for adjustment on account of fuel cost as per VCA petition to be submitted in due course, the Commission shall certainly consider the request of the Petitioner as and when it files the formal Petition subject to availability of audited Statements of Accounts.

(iv) With regard to the permission to recover fixed charges as per the Commission's order dated 07/03/2006 and exempt it from any deduction / withholding due to delay in signing of long term PPA directly with the Distribution Companies with the State, it has been noted by the Commission that the Petitioner has entered into long term Power Purchase Agreement with the MP Power Trading Company Limited on November 29, 2006. As has already been deliberated in the aforementioned paragraphs of this order that in accordance with section 62 (1)(a) of the Electricity Act 2003, the Commission is required to determine the generation cost only when the generating company supplies electricity to the Distribution Company. However, as per the order dated 23/11/2006 of ATE and which has already been discussed in detail in the above paragraphs, there is no bar on the generating company entering into an agreement with MPPTC, a trader. This trader is supplying the entire electricity generated by MPPGCL to the Distribution Companies as evident from the agreements signed by it with the Distribution Companies. The Commission under section 86(1)(b) of the Electricity Act, can regulate electricity purchase of distribution licensees from licensees or from other sources. The Commission has already determined the generating tariff for generation by MPPGCL. The entire generation is required to be supplied to Discoms as is evident from the Government notifications of 03.06.2006 and 18.10.2006. In the notification of 18.10.2006, the GoMP had reallocated 92% of the capacity to the three Discoms on firm basis and the balance 8% also on a provisional basis and is required to be allocated by MPPTC on the basis of requirement of the Discoms from time to time. In view of this, the generation tariff determined for FY08 in the Commission's Generation Tariff order for FY07 to FY09 shall be applicable for FY08 and the same shall be considered while determining the ARR of the Distribution Companies for FY08 even though the supplies routed through MPPTC. The Commission is not determining the trading margin chargeable by trading licensee from the Distribution Companies. The trading licensee if it wishes to charge any trading margin would be required to file a separate petition.

27. The Petition stands disposed of accordingly.

(R. Natarajan)
(Member (Econ.))

(D.Roy Bardhan)
Member (Engg.)

Dated : 28th February, 2007.

Place : Bhopal.