

Subject: In the matter of approval of power sale agreement between . PTC India Limited and MP State Electricity Board for sale of Power from Lanco Amarkantak Thermal Power Station being set up at Patadi, Korba, Chhattisgarh.

ORDER

Dated 07th March, 2008

MP State Electricity Board and MP Power Trading Company Limited	-	Petitioner
PTC India Limited	-	Respondent
Lanco Amarkantak Power Private Limited	-	Developer

Shri A.B. Bajpai. S.E. O/o ED (Commercial) appeared on behalf of MP Power Trading Company Limited, Jabalpur

Ms. Padma C. Rao, Assistant Vice President appeared on behalf of PTC India Limited.

Mr. M.R. Krishna Rao Dy. General Manager Lanco Amarkantak Power Private Limited was present on behalf of the developer.

2. MP State Electricity Board (hereinafter referred to as “MPSEB” or “petitioner”) in the capacity of Trading Licensee through its authorized representative Shri A.B. Bajpai filed the subject petition before the Commission on 16/11/2005 for approval of the power sale agreement executed between PTC India Limited (hereinafter referred to as “PTC” or “respondent”) and MPSEB for sale of 300 MW power from Lanco Amarkantak Thermal Power Station. This thermal power station is being set up by Lanco Amarkantak Power Private Limited (hereinafter referred to as “LAPPL” or “developer”) at Patadi, Korba in the State of Chhattisgarh. This is a coal fired thermal power plant of the capacity of 300 MW.

3. In the subject petition the petitioner had submitted that the power sale agreement was executed between MPSEB and PTC on May 30, 2005. PTC and LAPPL had also entered in to a power purchase agreement on May 11, 2005. This power purchase

agreement is an annexure to the power sale agreement. It is stipulated in the agreement between MPSEB and PTC that MPSEB will avail the entire power of 300 MW generated at Lanco Amarkantak Thermal Power Station Phase –I (300MW). The agreement is for 25 years. The Capped Tariff Rate, levelised over the relevant Tariff Years using a discounting factor of 12% per annum, shall be as follows:

	Tariff Year	Capped Tariff Rate (Rs./kWH)
1.	Tariff Years 1 to 12	2.18
2.	Tariff Years 1 to 25	2.20

This Capped Tariff does not include any applicable cess /duties or other levies by Govt. of Chhattisgarh on the generation and/or sale of electricity and if levied, shall be payable by MPSEB in addition. The trading margin of PTC shall be Rs. 0.05/kWH for the tariff years from 1 to 12 and Rs.0.10/kWH for the tariff years from 13 to 25. The overall tariff cap for 25 years would be open to revision in case coal prices escalate above 5% per annum already built in tariff, subject to the condition that the revised levelised tariff cap shall not exceed Rs. 2.25/kWH for 25 years.

4. The petitioner had further submitted that in the agreement, the conditions precedent to be satisfied are (a) the Appropriate Commission shall have approved the tariff for the sale and purchase of electricity and (b) the Purchaser i.e. the MPSEB shall have obtained approval, as may be necessary, of the subject agreement from Madhya Pradesh Electricity Regulatory Commission. Accordingly, the petitioner approached the Commission for seeking the approval of the Commission on the said Power Sale Agreement.

5. The Commission held the first hearing on 14/12/2005 and directed the petitioner and the respondent to respond on the following issues:

- (a) MPSEB to submit the authorization from the Distribution Licensees on affidavit specifically confirming the purchase of 300 MW Lanco power through PTC for the Distribution Licensees.

- (b) MPSEB to submit the allocation of the generation capacity of all the sources supplying the power to MPSEB among the three Distribution Licensees.
 - (c) MPSEB to submit the Distribution Company wise year wise projected demand and availability considering all the sources of power for 25 years i.e. the life of the agreement.
 - (d) MPSEB and PTC to submit the evacuation agreements and Long-Term Open Access agreements with the Central Transmission Utility and the State Transmission Utility for evacuation of the subject 300 MW power.
 - (e) LAPPL should agree to submit itself to the jurisdiction of this Commission and the undertaking to abide by all the rules and regulations framed by this Commission, as the subject power station is situated out side the geographical area of the State of MP. Further, the petitioner and the respondent should confirm that the full capacity of 300 MW should be dispatched exclusively to MPSEB and its successor utilities.
 - (f) LAPPL to submit the detailed project report.
 - (g) MPSEB to file the approval of the Govt. of MP for the purchase of the subject power from PTC.
6. In response MPSEB through its written submission of 24/01/2006 and PTC through its submission of 23/01/2006 had submitted their replies as under:
- i. With regard to the authorization from the Distribution Companies in favour of MPSEB to specifically confirm the purchase of 300MW Lanco Power through PTC, the three Distribution Companies had furnished their authorizations on affidavit in favour of MPSEB to procure the Lanco Power.
 - ii. MPSEB was directed to submit the allocation of the generation capacity among the three Distribution Companies. The petitioner informed that the allocation of the power in favour of the Distribution Companies had not been done till that day.
 - iii. MPSEB was directed to submit the Distribution Company wise projected demand and availability considering all sources of power for the next 25 years i.e. the validity period of the agreement. MPSEB informed that the Distribution

Company wise projected demand and availability for 25 years was not available with it.

- iv. The MPSEB and PTC were to submit the evacuation agreement for Lanco Amarkantak Thermal Power Station. MPSEB informed that MP Power Transmission Company Limited (MPPTCL) included the transmission network to evacuate the power from Lanco Amarkantak Thermal Power Station in its plan from FY07. The MPPTCL would be able to complete the erection of lines and associated feeder bays in the year 2008-09. The COD as envisaged for the project is 30/09/2008. Further, PTC informed that the PGCIL had already granted the open access on 21/10/2005 so as to facilitate the evacuation of the power from the subject power plant.
- v. LAPPL through its letter of 19/01/2006 addressed to PTC and enclosed by PTC in its reply, submitted that LAPPL had already agreed in PPA to accept the tariff as approved by the Appropriate Commission. They shall furnish the information and clarifications thereon to PTC as required by PTC to submit to the MPERC as LAPPL does not have any direct commercial relation with MPSEB. LAPPL further stated that they agree to abide by the directions of the Regulatory Commission generally in line with the overall guide lines of the CERC. Further, the petitioner and the respondent confirmed that the full capacity of 300 MW shall be dispatched exclusively to MPSEB and its successor utilities.
- vi. With regard to submission of the detailed project report of the subject power project, the PTC submitted the same.
- vii. With regard to the approval of the State Government for the purchase of the subject power by MPSEB, the petitioner submitted that the State Government was requested to provide its formal approval and the same would be furnished to the Commission as soon as it was available.

Later on vide its letter of 10/03/2006, the petitioner filed the approval of the Govt. of MP for the purchase of the subject power from PTC. The Additional Secretary, Energy Department, GoMP through the letter of 20/02/2006 communicated that the GoMP had approved the purchase of 300MW power by MPSEB from Lanco Amarkantak Thermal Power Station at Korba Chhattisgarh

through PTC on a long-term (25 years) basis as per the terms and conditions indicated in the PPA executed between the PTC and the MPSEB on 30/05/2005.

7. Consequent to the GoMP notification dated 03/06/2006 the petitioner had filed the request before the Commission for change in the name of petitioner from MPSEB to MP Power Trading Company Ltd. (MPPTC) as all the functions related to the power procurement had been transferred from MPSEB to MPPTC. The Commission accepted the request.

8. The Commission held the next hearing on 21/06/2006, wherein the Commission opined that

“The Commission has jurisdiction only under section 64(5) of the Electricity Act 2003, if the Distribution Licensee is purchasing the power or is being supplied power by a Genco. In the present case the Generator i.e. LAPPL is supplying the power to PTC and PTC is supplying the power to MPSEB which is Trading Licensee and further supplying the power to the Discoms. In the present case the Distribution Licensees have not approached the Commission for seeking the approval of the Commission. Therefore, the Commission does not have clear jurisdiction for cost plus method in the present case. Further, the Commission does not have any opportunity, in the absence of distribution licensee pursuing this deal, to consider if the distribution licensees have genuine gap in their committed long term supply and future demand projections.”

9. During the course of hearing on 21/06/2006, the Commission had taken on the records the authorization in the shape of affidavit submitted by the three Distribution Companies whereby 300 MW power from LAPPL had been requisitioned by all the three Distribution Companies together. The Commission further directed that the Distribution Companies should specifically give details of the generating capacity allocated to them and the expected sale by FY 09 and the consequent gap.

10. The case was next heard on 11/07/2006, wherein the Distribution Licensees neither appeared in the hearing nor submitted any details of their requirement of power. The Commission stressed for the commitment of the Distribution Companies before the Commission specifically substantiating their requirement of electricity on the basis of their load growth and availability of power. The Commission directed that the Distribution Licensees should own the responsibility for procurement of power and should file complete details of all their requirement and availability with proper authentication.

11. The case was slated for the next hearing on 31/07/2006, wherein the representatives of the Distribution Companies appeared before the Commission. The Commission enquired about the Company wise demand and allocation of power. The Commission had directed the Distribution Licensees to inform the Commission of their assured sources of supply and the MP Power Trading Company Limited to allocate the capacity among the Distribution Licensees. The representative of MP Power Trading Company Limited submitted that no firm allocation had been done by the State Government in favour of Distribution Companies till that day. The Commission directed to notionally divide all sources of generation among the Distribution Companies. The Commission had further directed the Distribution Licensees to project the demand growth on the basis of the previous years' actual data. The Distribution Licensees should determine the gap from all the available sources of the generation and the projected demand. The Distribution Licensees were directed to demonstrate their requirement through the authenticated data / figures, charts, graphs, etc. by the next date of hearing.

12. Meanwhile, the CERC vide its order of August 07, 2006 in the matter of Petition No. 27/2006 (CERC) restrained PTC (a power trading firm) from carrying on purchase of electricity from another trader (i.e. Grid Corporation of Orissa (GRIDCO)). The Commission noted that the CERC vide its order of 07/08/2006, in the matter of Petition No. 27/2006 (CERC) had prohibited transaction of power between trader to trader. In the present case the PTC (a power trading firm) proposed the transaction of power with the MP Power Trading Company (another power trading company). In view of this, the

Commission vide its letter of August 28, 2006 directed MP Power Trading Company Limited to clarify its position as Inter-State Trader of Electricity. The hearing in the subject Petition was slated on 12/09/2006.

13. Meanwhile, the CERC had also initiated Suo-Moto proceedings by directing MPPTC to explain under which provision of law they should be deemed to inter-State electricity traders and why it was not necessary for them to obtain licenses for this purpose from CERC.

14. During the course of hearing on 12/09/2006, the representative of MP Power Trading Company through his written submission on affidavit submitted that:

- i. *MPPTC, being deemed licensee, is desirous of doing inter-state trading. Correspondence is being made with CERC in this regard and MPPTC shall complete the formalities as may be legally required.*
- ii. *Till this issue is settled in consultation with CERC.*
 - a. *MPPTC shall not purchase power with the sole aim of selling it inter-state.*
 - b. *Only surplus power available from the existing arrangements which is not consumed by the Discoms of the State will be sold by MPPTC out of State.*
 - c. *The earnings from sale of such surplus power shall be passed on to the Discoms.*
 - d. *Short term power purchase shall be done by MPPTC to meet the demand of Discoms only.*
- iii. *No trading margin shall be charged by MPPTC from the Discoms.*
- iv. *Expenses incurred by MPPTC shall be apportioned among the Discoms in the proportion of energy drawl for which periodical bills shall be raised by MPPTC.*
- v. *After recognition by CERC as a deemed trader, MPPTC shall do business as per mandate given by the State Govt.*

15. The representative of MP Power Trading Company further informed that PTC had made an appeal before Hon'ble High Court of Delhi wherein the CERC's order of August 07, 2006 had been challenged. The case was pending with Hon'ble High Court of Delhi.

16. By taking into cognizance the facts that the issue of trading of electricity between the two traders was subjudiced in Hon'ble High Court of Delhi and the status of MPPTC as electricity trader was questionable in CERC, the Commission in its order dated 12th September 2006 had deferred the proceedings on the subject petition. Later on, with regard to status of MPPTC as a trader, the Appellate Tribunal of Electricity (ATE) held the status of MPPTC as a trader, which had also been accepted by the CERC. Consequently this Commission had also accepted MPPTC as a trader.

17. The MPPTC, vide its letter of 29/06/2007 submitted that Hon'ble High Court of Delhi has heard the case and stayed the CERC order of 7/8/2006. The petitioner requested to restart the proceedings in the case.

18. The Commission noted that the Hon'ble High Court of Delhi had not disposed of the petition and the next date of hearing was scheduled on 20/09/2007. In view of this, the Commission directed that the petitioner's request to restart the proceedings would be considered after the final decision of Hon'ble High Court of Delhi.

19. The petitioner, vide its submission of 20/12/2007 requested to hold an early hearing in the subject matter petition. The petitioner submitted that PTC, vide its letter of 11/12/2007 informed that the project is expected for commissioning in June 2008 and in the absence of MPERC's approval for off take of power, PTC would be constrained to sell the power out side the State of Madhya Pradesh. MPPTC further submitted that if the power has been diverted to some other State due to non-approval of PPA by the competent Commission, the consumers of the State of Madhya Pradesh would be deprived of the cheaper power. It was also informed by the petitioner that the next date of the hearing in Hon'ble High Court of Delhi has been scheduled on 16/01/2008.

20. In view of the request of the petitioner, the Commission directed to hold the hearing on 22/01/2008. During the course of the hearing on 22/01/2008 the petitioner informed the Commission that the hearing at Hon'ble High Court of Delhi has now been adjourned to 25th March 2008. The Commission enquired from the petitioner about the projection of the demand – availability and gap thereon as projected by the Distribution Licensee of the State. The petitioner submitted that it had already made available to the Commission the projections for demand and availability considering all sources up to the year 2013-14 with the data submitted in the petition number 10/2007 in the matter of procurement of power through competitive bidding process. The petitioner had further informed that the projections as filed in the petition number 10/2007 had been made by the Distribution Licensees of the State. These projections with regard to the availability of power include 300 MW power from Lanco Amarkantak Power House from the year 2008-09. The Commission's staff confirmed the same. The details of demand and availability as filed are given below:

On the basis of demand as projected by the Distribution Companies (average growth rate 5.79%) and demand as projected by the MoP during current five-year plan (growth rate 8%), the petitioner has made the following submissions.

<i>Particulars</i>	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Demand with 5.79% Growth Rate (MW)	7956	8552	9002	9373	9878	10483	11126
Demand with 8% Growth Rate (MW)	7956	8593	9280	10023	10824	11690	12625

On the basis of the projections made by the Distribution Companies, the CAGR (Compounded Annual Growth Rate) has been obtained as 5.06%. With this growth rate the demand projections are as below:

<i>Particulars</i>	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Demand with 5.06% CAGR (MW)	7848	8245	8663	9101	9562	10046	10555

With regard to the projections of availability of power (including 300 MW Lanco power from 2008-09) the following projections have been filed before the Commission: -

<i>Particulars</i>	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Net availability (MW)	5995	7084	7651	8267	9061	9630	11479

21. The petitioner requested the Commission to consider its request in view of the fact that the subject power will be available to the State at a capped tariff of Rs. 2.25 per kWh levelised for 25 years. The petitioner further submitted that obtaining the approval from the MPERC is a condition precedent as per the agreement signed between the petitioner and respondent. The Commission has full powers to allow or disallow any particular expenditure in the ARR of the Distribution Licensees if it concludes that the expenditure is not properly incurred. The petitioner had submitted that in view of very reasonable tariff, the Commission may allow the expenditure towards the cost of purchase relating to the subject PPA, otherwise also the tariff in this case is required to be determined by the Commission.

22. The Commission pondered over the issues involved in the subject petition. The Commission is of the opinion that the subject power should be allocated by the Govt. of M.P. to the three Distribution Companies of the State as it had already been done by the GoMP through its gazette notification of 14th March 2007. The Commission had also gone through the relevant provisions with regard to the conditions precedent of the power sale agreement and power purchase agreement. The power purchase agreement stipulates that *“the Appropriate Commission shall have regulated the tariff for the purchase of the electricity from the project by PTC.”* The power sale agreement stipulates that *“(i) the condition precedent in the PPA shall have been duly satisfied or waived in accordance with the PPA; (ii) the Appropriate Commission shall have approved the tariff for the sale and purchase of electricity, pursuant to this agreement and (iii) the purchaser shall have obtained approval as may be necessary of this agreement from the Madhya Pradesh Electricity Regulatory Commission.”*

23. The Commission has also gone through the tariff related clauses in the power purchase agreement and power sale agreement filed before the Commission. It is provided in the power sale agreement that the tariff payments to be payable to PTC shall be capped as follows, on a levelised basis using a discounting rate of 12%.

Tariff Years 1 – 12	:	Rs. 2.18 / kWh levelised
Tariff Years 1 – 25	:	Rs. 2.20 / kWh levelised

The above capped tariff does not include any currently applicable cess / duty or other levies by the Govt. of Chhattisgarh on the generation and/or sale of electricity and shall, if levied, be payable by the purchaser i.e. petitioner in this case. In addition to this the Trading Margin of PTC of Rs. 0.05 / kWh for the years 1 to 12 and Rs. 0.10 / kWh for the tariff years 13 to 25 shall be payable by the purchaser. It is also provided in the power sale agreement that the overall tariff cap for 25 years would be open to revision in case coal prices escalate above 5% per annum already built in the tariff, subject to the conditions that the revised tariff cap shall not exceed Rs. 2.25/kWh levelised for 25 years. The power sale agreement further stipulates that however, the actual tariff payable would be based on the approval by the Appropriate Commission and subject to the above indicated caps on a levelised basis and the Trading Margin would be as indicated above, subject to changes as may be approved by the CERC.

24. The tariff related clauses in the power purchase agreement at schedule E stipulate the capped levelised tariff rate same as indicated in the power sale agreement and as elaborated above. The Annual Regulated Fixed Tariff Payment comprising financial parameters as well as performance parameters, Capacity Rate, Fuel Rate, Incentive Charge, etc shall be in accordance with the clauses as stipulated in the Schedules E, F and G of the agreement. An amendment to this agreement of August 2, 2005 with regard to capping of the tariff at Rs. 2.25 / kWh levelised for 25 years stipulates that if the escalation in the coal prices for the Company i.e. LAPPL is more than 5% on a compound annual basis from COD until coal is sourced from South Eastern Coalfields Ltd. which is a government owned coal supplier and not from captive coal mines, then the levelised capped tariff rate for 25 years may be revised subject to the condition that such levelised capped tariff rate over 25 years does not exceed Rs. 2.25 / kWh. This

implies that the levelised tariff for the period of 25 years from COD shall not exceed Rs. 2.25 / kWh even after accounting for escalation in coal prices beyond 5% on compound annual basis.

25. The Commission noted that it is not explicitly stipulated in the agreements that the generation tariff is to be determined by the Commission. The agreements only stipulate about the approval of the agreements which in turn indicate the approval of the levelised tariff by the Commission. The methodology and the calculations for arriving at the levelised tariff have not been provided to the Commission. The Commission also noted that the levelised tariff will not exceed Rs. 2.25 per kWh levelised for 25 years but the tariff for a particular year may be of the value more than Rs. 2.25 per kWh. Hence, full details of the calculation of the levelised tariff should be filed to the Commission. The Commission also noted that the Schedule E of the power purchase agreement already stipulates the methodology for calculation of the Annual Fixed Tariff Payment comprising financial parameters as well as performance parameters, Capacity Rate, Fuel Rate, Incentive Charge, etc. In the opinion of the Commission this has to be examined by the Commission in light of the Commission's regulations on the generation tariff namely "MPERC (Terms and Conditions for Determination of the Generation Tariff) Regulations, 2005 and also the Tariff Regulations issued by the CERC. During the course of the hearing on 22/01/2008 the petitioner and the respondent confirmed that since the power generated from the 300 MW unit of LAPPL under consideration shall be exclusively sold to the Distribution Licensees of the State, the generation tariff for this 300 MW unit shall be determined by the Commission. They further confirmed that the generation tariff as determined by the Commission shall be applicable subject to the maximum cap as indicated in the agreements.

26. In the matter of petition number 147/2005 for approval of Power purchase Agreement between Nuclear Power Corporation of India Limited (NPCIL) and MPSEB for purchase of 180 MW power from Tarapur Atomic Power Station Unit 3 & 4 Tarapur, Maharashtra and 93 MW from Kakrapar Atomic Power Station Unit 1 & 2 Kakrapar, Gujrat, in its order of 14/12/2005 the Commission ordered as below:

“6. The Commission has heard the request of the Petitioner. The Commission has also noted that the subject approval provides for the provisions to be operative in case the Board ceases to exist beyond June 09, 2006. The Commission has also noted the subject agreement filed before the Commission is a standard agreement that has been executed between the NPCIL and the beneficiaries i.e. State Electricity Board. The Commission also noted that the CERC had sought the opinion of Attorney General of India regarding whether the Electricity Act 2003 envisages that tariff for sale of electricity by a generating company or a licensee to an electricity trader is to be regulated by the appropriate Commission exercising the jurisdiction over such a generating company or the licensee. Hon’ble Attorney general of India opined that the absence of a specific provision under section 62(1) of the Electricity Act 2003 does not necessarily imply that there is no power on the appropriate Commission to regulate tariffs for the supply of electricity to traders. He has further opined that a harmonious and contextual construesion of the various provisions of the Act would support the power of regulation of tariff even for supply of electricity to traders by generating companies / licensees. He has stated that section 62(1) cannot be read in isolation in dealing with the question of tariff determination by an appropriate regulatory Commission and in view of the above, he had answered the query of CERC in the affirmative. In this particular case, the MPSEB would be supplying the electricity so procured from NPCIL to the three distribution companies. In view of the foregoing, the Commission, in principal, approves the subject Power Purchase Agreement signed between the MPSEB and NPCIL.”

27. The Commission had also noted that LAPPL had not submitted to the jurisdiction to the Commission. Instead, the developer vide its letter 19/01/2006 addressed to PTC submitted that the developer would furnish the information and clarifications to PTC as required by PTC to submit to MPERC as LAPPL do not have any direct commercial relation with MPSEB. LAPPL further stated that they agree to abide by the directions of the Regulatory Commission generally in line with the overall guide lines of CERC.

LAPPL had also stated that they had already agreed in PPA to accept the tariff as approved by the Appropriate Commission. The Commission opined that as per the power purchase agreement LAPPL had only agreed to accept the tariff as approved by the Commission and this does not empower the Commission to exercise its jurisdiction on the developer for determination of the tariff.

28. The Commission had also observed that it has not been explicitly mentioned in the documents filed by the petitioner and the respondent with the Commission that from the said 300 MW power for which the power sale agreement and power purchase agreement had been executed by the petitioner, respondent and developer: the Government of Chhattisgarh, Chhattisgarh State Electricity Regulatory Commission, Chhattisgarh State Electricity Board and / or any statutory body of the State of Chhattisgarh have not made any claim to the said 300 MW power. From a perusal of the records and documents filed in the Commission it is abundantly clear that full capacity of 300MW of power generated by Unit – 1 of Lanco Amarkantak Thermal Power Station (located in the State of Chhattisgarh) can be supplied out side the State of Chhattisgarh. There is nothing in the documents to stand in the way of full capacity of 300 MW of that particular unit to be exclusively dispatched to State of MP for the Distribution Companies of MP. Further, the copies of the statutory clearances / approvals have not been made available to the Commission. Accordingly, vide the Commission letters of February 07, 2008 the petitioner and respondent were directed to file the present status on affidavit.

29. The petitioner filed the affidavit on 13/02/2008, indicating that the subject power sale agreement was signed for sale of full capacity of 300 MW unit No. 1 of Lanco Amarkantak Thermal Power Station being set up at Pathadi, Korba District in the State of Chhattisgarh, for a period of 25 years to MPSEB. It is further indicated in the affidavit that based on the information received from M/s Lanco Amarkantak Power Private Limited (LAPPL) and PTC India Limited, it appears that the Chhattisgarh State has no claim on power generated from this 300 MW unit No. 1. The respondent's affidavit received in the Commission on 14/02/2008. PTC India Limited in its affidavit dated 11/02/2008 has stated that Power Purchase Agreement was signed between PTC India

Limited and M/s LAPPL on 11/05/2005 for sale of full capacity of 300 MW Unit – 1 of Lanco Amarkantak Thermal Power Station being set up at Pathadi, Korba District in the State of Chhattisgarh for a period of 25 years to MPSEB. MPSEB through Power Sale Agreement dated 30/05/2005 with PTC has entered into an agreement for purchase of above full capacity of 300 MW of Unit – 1 for a period of 25 years. It is further stated in the affidavit that Chhattisgarh State has no claim on power generated from 300 MW of Unit -1 of Lanco Amarkantak Thermal Power Station. PTC India Limited has also filed a letter from LAPPL indicating that Power purchase Agreement was executed for full capacity of 300 MW of Unit – 1 and Chhattisgarh State has no claim on the power generated from this unit.

30. The petitioner had also filed the copies of the statutory clearances / approval as obtained by it from the developer. The Commission noted that the coal linkages, forest clearance and NOCs from the Gram Panchayats of Pathadi and Pahanda, District Korba are for 250 MW thermal power station and the water allocation is for 135 MW thermal power plant and 20 MW bio-mass based power plant.

31. In view of the facts and circumstances as explained in aforementioned paragraphs, the Commission, in principle, provisionally approves the subject power sale agreement, subject to the fulfillment of the following conditions by 31/03/2008:

- a. The developer LAPPL should submit to the jurisdiction of the Commission;
- b. The petitioner and the respondents should file an amendment in the agreements that the Appropriate Commission i.e. MPERC shall determine the tariff;
- c. The petitioner should file full details of the calculation of the levelised tariff indicating capacity charge, energy charge, escalable portion of capacity charge and energy charge, rate of escalation used, discounting rate, etc.;

- d. The developer should file the petition for determination of the generation tariff for the 300 MW said unit in accordance with the Commission's regulations i.e. MPERC (Terms and Conditions for Determination of the Generation Tariff) Regulations 2005;
- e. The developer should also file the petition for determination of the rate for infirm power generated from the project as the representative of LAPPL, in the hearing on 22/01/2008, informed the Commission that synchronization of the unit is due in April 2008 and the COD is scheduled in June 2008;
- f. The petitioner should confirm on affidavit that the evacuation systems are in place;
- g. The petitioner should initiate the action so as to allocate the subject power (300MW) among the three Distribution Companies of the State;
- h. The petitioner / respondent should ascertain that all the clearances / approval as obtained by the developer for the said project should be for proper generation capacity i.e. for 300 MW and in accordance with the statutory provisions and law of land;
- i. The in-principle approval is subject to the outcome of the case filed by PTC in the Hon'ble High Court of Delhi;
- j. The 300 MW Unit of LAPPL (Unit – 1 of Lanco Amarkantak Thermal Power Station) shall be scheduled exclusively by SLDC of the State of Madhya Pradesh.
- k. The developer should file copies of all statutory clearances/approvals of the competent authorities regarding coal linkage, forest clearances, NOC from Gram Panchayats and water allocation for 300MW Thermal Power Station.
- l. The PTC and LAPPL shall be responsible in case any objection is raised either by Govt. of Chhattisgarh / Chhattisgarh Electricity Regulatory Commission or other Govt. agency, in future.

32. The Commission directs the petitioner and the respondent to pursue the developer to comply with the Commission's directions as indicated in above paragraph. The Commission further directs that the aforementioned requirements should be completed latest by 31st March 2008 failing which this order becomes ipso facto infructuous.

33. With the above directions the Commission disposed of the petition. The case is closed.

(K. K. Garg)
Member (Engineering)

(R. Natarajan)
Member (Economics)

(Dr. J.L. Bose)
Chairman