

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
5th Floor, "Metro Plaza", Bittan Market, Bhopal - 462 016



Petition No. 05 of 2017

PRESENT:

Dr. Dev Raj Birdi, Chairman

A.B. Bajpai, Member

Alok Gupta, Member

Sub: In the matter of petition filed by M/s. Jaiprakash Power Ventures Ltd. under Regulation 5(3) and 14(2) of the M.P. Electricity Balancing and Settlement Code, 2015 read with Section 86(1)(f), (h) and (k) of the Electricity Act, 2003 and read with the directions of the Hon'ble Appellate Tribunal for Electricity in its Judgment dated 15.02.2017 passed in Review Petition No. 22 of 2016 for adjudication of disputes between the petitioner and MPPMCL.

**M/s. Jaiprakash Power Ventures Limited
(Unit: Jaypee Bina Thermal Power Plant)
Sector 128, Noida-201304, UP**

Petitioner

V/s

- 1. M.P. Power Management Co. Ltd.,
Block No. 11, Shakti Bhawan, Rampur, Jabalpur – 482008**
- 2. M.P. Power Transmission Company Ltd.,
Block No. 2, Shakti Bhawan, Rampur, Jabalpur – 482008**
- 3. State Load Despatch Centre,
M.P. Power Transmission Company Ltd.,
Block No. 2, Shakti Bhawan, Rampur, Jabalpur – 482008**

Respondents

ORDER

(Date of Order: 07th July'2017)

Shri Ashok Shukla, Authorized Representative and Shri S. Venkatesh, Advocate appeared on behalf of the petitioner.

Shri Manoj Dubey, Advisor Law, Shri J.S. Pasricha (GM) and Shri Gagan Dewan (AO) appeared on behalf of the Respondent No. 1 (MPPMCL).

Shri J. Agasti (EE) appeared on behalf of the Respondent No. 3 (SLDC).

M/s. Jaiprakash Power Ventures Ltd. filed the subject petition under Regulations 5(3) and 14(2) of Madhya Pradesh Electricity Balancing and Settlement Code, 2015 read with Section 86(1)(f), (h) and (k) of the Electricity Act, 2003 read with the directions of the Hon'ble Appellate Tribunal of Electricity in its Judgment dated 15.02.2017 in Review Petition No. 22 of 2016 for adjudication of disputes between the petitioner and Respondent No.1 (MPPMCL).

2. The petitioner filed the subject petition in the following back drop:

- (i) M/s Jaiprakash Power Ventures Ltd. had earlier filed a petition (Petition No. 54 of 2015) with this Commission for adjudication of dispute between the petitioner generating company and the other respondents in this petition challenging the legality, validity and propriety of a letter issued by State Load Despatch Centre MP. The issues in the aforesaid petition were mainly related to the Technical Minimum generation level of the petitioner's power plant. Vide Commission's order dated 7th January' 2016, the aforesaid petition was dismissed and disposed of by the Commission with the following observations:

"In view of the above, it is observed by the Commission that the use of expression like Technical Minimum by the respondents in the impugned communication has no relevance since the provisions under the PPA executed between the procurer and the petitioner are explicitly clear for commercial and technical obligation to be met by each of them. It is further observed that the respondent (MPPMCL) is responsible only up to the contracted capacity of the generating unit as per PPA. Any unscheduled available capacity within the contracted capacity is compensated by way of fixed cost/capacity charges paid by the Respondent No.2 in terms of PPA. Besides, the petitioner is responsible

at its own expenses for maintaining the technical requirement during operation of the plant while making its obligations under the power purchase agreement. Therefore, no merit is found in the prayer of the petitioner for recovery of any additional cost incurred by the petitioner in operating in accordance with the directions issued by the Respondent No1 in the impugned communication.”

- (ii) Aggrieved by the aforesaid order, the petitioner (M/s. Jaiprakash Power Ventures Ltd.) filed an Appeal (No. 34 of 2016) before the Hon'ble Appellate Tribunal for Electricity challenging the aforesaid order of the Commission. Hon'ble Appellate Tribunal for Electricity by its judgment dated 22nd August' 2016 dismissed the aforesaid appeal as no infirmity was found by the Hon'ble Appellate Tribunal for Electricity in the observations of this Commission in its aforesaid order. The Commission's aforementioned order was upheld by the Hon'ble Appellate Tribunal for Electricity.
- (iii) Subsequently, M/s. Jaiprakash Power Ventures Ltd. (the petitioner herein) filed a review petition (RP No. 22 of 2016) before the Hon'ble Appellate Tribunal for Electricity challenging its aforesaid judgment with the following prayer:
 - (a) *“That the Tribunal be pleased to review and set aside its judgment dated 22.08.2016.*
 - (b) *That the Tribunal be pleased to restore the Appeal No. 34 of 2016 filed by the Petitioner to the file/record of this Tribunal and re-hear the same.*
 - (c) *For such further or other reliefs as circumstances and nature of the case may require.”*
- (iv) After examination of all aspects in aforesaid Review Petition, Hon'ble Appellate Tribunal for Electricity in its order dated 15th February' 2017 (in RP No. 22 of 2016), found no error apparent on the face of record in its Judgment dated 22nd August' 2016 in Appeal No. 34 of 2016. In the aforesaid order, Hon'ble Appellate Tribunal for Electricity observed that the coal generating units should not be subject to erratic scheduling so as to avoid severe damage to the equipment besides effecting adversely efficiency parameters and the Grid security.
- (v) The review petition (RP No. 22 of 2016) was disposed of by the Hon'ble Appellate Tribunal for Electricity with the following directions:

“The Appellant may therefore make an appropriate application to the State Commission for redressal of its grievance about erratic scheduling

within two weeks. On receipt of the application, the State Commission shall hear the concerned parties on various aspects relating to scheduling of units as alleged by the parties and decide the matter within two months from the date of receipt of the Application. We make it clear that this order is being passed in the peculiar facts and circumstances of this case.”

3. Pursuant to above, the petitioner filed the subject petition with the Commission. The petitioner broadly submitted the following in the subject petition:
- “(i) *That the Petitioner is a generating Company within the meaning of Section 2 of the Electricity Act, 2003. The Petitioner has entered into a Long Term PPA with the Respondent No.1 for sale of 70% of its installed capacity. The Petitioner presently has a 2 X 250 MW Power Plant in District Bina, Madhya Pradesh.*
- (ii) *Respondent No.1 is a bulk state Trader. The said Respondent is responsible for drawing the MOD as per the MP Balancing Code. Respondent No.1 has entered into a PPA with the Petitioner. Respondent No.2/3 is the Madhya Pradesh State Load Dispatch Centre a statutory body created under Section 31 of the Electricity Act, 2003.*
- (iii) *The Petitioner is filing the present petition under Regulation 5 (3) and Regulation 14 (2) of the Madhya Pradesh Electricity Balancing and Settlement Code, 2015 (herein referred as “**MP Balancing Code**”) read with Section 86 (1)(f), (h) and (k) of the Electricity Act, 2003 and read with the Directions of the Hon’ble Appellate Tribunal of Electricity enunciated in its Judgment dated 15.02.2017 passed in Review Petition No. 22 of 2016 for adjudication of dispute between the Petitioner Generating Company and the Respondent No.1 i.e. Madhya Pradesh Power Management Company Limited (herein referred to as “**MPPMCL**”) inter- alia challenging the legality, propriety and validity of the Merit Order Dispatch (hereinafter referred as “**MOD**”) being prepared, issued and implemented through scheduling by the Respondent No. 1.*
- (iv) *The Petitioner in the present Petition has assailed two issues and they are summarized as follows:-*
- (a) *The Petitioner is aggrieved by the way the MOD so prepared by the Respondent No.1 is being violated as the Petitioner Generating Company has been subjected to erratic scheduling, however, generating Companies who are either cheaper than the Petitioner Company have been given*

'Reserve Shut Down' and generating Companies who are more expensive than the Petitioner as per the MOD have been given 'Round the Clock' scheduling;

- (b) The Petitioner is also aggrieved by the way the MOD and its consequent scheduling is being implemented i.e. the Petitioner has been subjected to erratic scheduling which makes the generation from the Petitioner power plant physically impossible and the same has also been observed by the Hon'ble Tribunal in its Judgment dated 15.02.2017 passed in Review Petition No. 22 of 2016;*
- (c) The Petitioner is also aggrieved by the way the MOD itself is being prepared by the Respondent No.1 as the same adversely affects the Petitioner;*
- (v) The Petitioner is filing the present Petition on the following grounds, each of which are without prejudice and strictly in the alternative to each other: -*
 - A. The Petitioner is aggrieved by the manner in which the MOD and its consequent scheduling is being implemented i.e. the Petitioner has been subjected to erratic scheduling which makes the generation from the Petitioner power plant physically impossible and the same has also been observed by the Hon'ble Tribunal in its Judgment dated 15.02.2017 passed in Review Petition No. 22 of 2016;***

The petitioner broadly submitted the following on the above issue:

- (i) After passing of the Judgment in Appeal No. 34 of 2016 the Respondent No. 1 instructed the Petitioner to bring both the Units on bar and started scheduling 100 MW then subsequently reduced to 94 MW and then to 'zero' MW. In such circumstance the Petitioner can't even maintain its Technical Minimum by selling the merchant capacity (30% of the installed capacity, i.e., 135 MW) on the power exchange, as the Technical Minimum of the Petitioner/ is 280 MW (140 MW for each Unit). It is most respectfully submitted that the Petitioner never contemplated that the Respondent No. 1 would take such extreme measures. It is humbly submitted that below is a list of date of the various communications exchanged between the Petitioner, Respondent No. 1 and Respondent No. 2/3 between **16.09.2016 to 28.09.2016**, which evinces the arbitrary action of the Respondents to first*

- bring both the Units of Petitioner on bar and thereafter gradually reducing the scheduling from 100 MW to 94 MW and ultimately to zero MW.
- (ii) It is pertinent to mention that Respondent No. 1 instructed the Petitioner to bring both its Units on bar, however after issuing irregular scheduling instructions for few days, they have now brought down the scheduling to 'zero' MW.
- (iii) The Petitioner has a PPA with Respondent No. 1 for a total quantum of 70% of the installed capacity of the plant. For the balance power of 30% (135.5 MW) of the installed capacity, the Petitioner has to trade through the power exchange platform for which a 'NOC' is required to be obtained from SLDC. In substance the Petitioner can only sell the remaining power generated from its plant on power exchange once SLDC issues a 'NOC'. However, in the current scenario, where Respondent No. 1 has brought both the Units of Petitioner on bar and issues scheduling instruction on a daily basis, which is sometimes 100 MW or 94 MW or even zero MW, which is even below the 'Technical Minimum' of its Contracted Capacity thereby putting the Petitioner/ in a position wherein even if it sells its entire un-contracted capacity (merchant capacity) through an Exchange it is unable to meet the 'Technical Minimum' of its Unit Capacity. **Therefore, the Petitioner is constrained to schedule/sell/trade the unscheduled share of power contracted to Respondent No. 1 on power exchange in order to maintain the Technical Minimum of the Plant.** (Emphasis Supplied)
- (iv) It is pertinent to mention that the process of bidding on the power exchange take place during 10:00 hours to 12:00 hours only. Further the scheduling issued by Respondent No 1 are on daily basis, irregular and always below the Technical Minimum operational level of the plant. In view of the above it is submitted that due to such irregular and arbitrary scheduling being issued by Respondent No.1, the Petitioner, at most times, cannot book/trade the unscheduled share of contracted power of Respondent No. 1 on power exchange, which results in over injection during such times thereby posing risk to the grid stability.
- (v) Considering the fact that bidding on the power exchange take place only during 10:00 hours to 12:00 hours, the Petitioner is not able to plan the sale of its power through any other arrangements, i.e., Bilateral or Mid Term Open Access ('MTOA'), which is causing grave financial prejudice to the

Petitioner and also adversely affecting the plant. It is submitted earlier the Petitioner was only required to seek a tie up of its un-contracted capacity to maintain 'Technical Minimum'. However, after passing of the Hon;ble APTEL Judgment in Appeal No. 34 of 2016 and the manner in which the Respondents are interpreting the same the petitioner is now required to seek a tie up of its entire capacity to maintain "Technical Minimum" of its generation in a very short period of time which has made the entire operation of the plant unviable.

- (vi) *It is humbly submitted that considering the fact that even if the Petitioner ties up or sells its entire 30% un-contracted capacity/merchant share (i.e. 135 MW, 68 MW for each unit) on power exchange it is unable to meet the 'Technical Minimum' of its Unit Capacity. The 30% of the merchant share comes to 135 MW total, which is significantly less than the Technical Minimum of both the Units, i.e., less than 280 MW (140 MW for each unit). It is pertinent to mention that to attain Technical Minimum the Petitioner would have to sell the share of the contracted power of Respondent No1 also, but the same could only be achieved if the scheduling instructions are issued well in advance in accordance with Clause 4.35 of the PPA.*
- (vii) *In view of the above it is submitted that if a Notice under Article 4.3.5 of the PPA is given by Respondent No. 1 well in advance (which till date has not been issued by Respondent No. 1) then the required quantum of power to maintain Technical Minimum can be arranged accordingly and thus the Petitioner will not be forced to sell this quantum on the power exchange.*

B. The Petitioner is aggrieved by the manner in which the MOD so prepared by the Respondent No.1 is being violated as the Petitioner Generating Company has been subjected to erratic scheduling, however, generating Companies who are either cheaper than the Petitioner Company have been given 'Reserve Shut Down' and generating Companies who are more expensive than the Petitioner as per the MOD have been given 'Round the Clock' scheduling.

The petitioner broadly submitted the following on this issue:

- (i) *It is the contention of Respondent No.1 that it has only considered the MOD for scheduling power from the petitioner's power plant. The Respondent has*

falsely contended that the scheduling is as per the MOD. The scheduling by Respondent No.1 is against the principles of MOD which is purely on variable cost. The instances of Respondent scheduling contrary to the MOD is enumerated below for the period of October 2016 – December 2016:-

- (a) STPS Sarni which has had higher variable cost of Rs 3.000 per unit was given scheduling Round the Clock (RTC) ahead of Petitioner whose variable cost was at Rs 2.512 in the month October 2016.*
- (b) SGTPS Birsinghpur which had lower variable cost of Rs 2.367 per unit than the Petitioner was directed Reserve Shut Down (RSD) between 27.10.2016 to 30.10.2016. Similarly, SSTPS Khandwa with lower variable cost of Rs 2.334 per unit was given RSD from 07.11.2016 to 11.11.2016, the same period when Petitioner was given erratic scheduling.*
- (c) Similarly, in the month of November 2016, STPS Sarni with higher variable cost of Rs 2.607 compared to the petitioner's variable cost of Rs 2.489 per unit was given RTC scheduling. Whereas, the Petitioner was given zero or part load in the month of November 2016.*
- (d) In the month of November 2016, SGTPS Birsinghpur has been given RSD even though its variable cost of Rs 2.480 per unit was lower than the Petitioner.*
- (e) Similar treatment was again given to STPS Sarni with variable cost of Rs 2.557 per unit in comparison to the Petitioner variable cost of Rs 2.550 per unit in the month of December 2016.*
- (ii) The Respondent No.1 has failed to procure the cheapest available power and in oppressive and high handed manner has given preference to expensive and inefficient state generating stations.*

C. The Petitioner is aggrieved by the way the MOD itself is being prepared by the Respondent No.1 as the same adversely affects the Petitioner:

The petitioner broadly submitted the following on this issue:

- (i) *The MOD is being prepared by Respondent No.1 in violation of Regulation 5 (3) MP Balancing Code which states that MOD should be prepared based on variable cost and not total cost which includes transmission losses, statutory duties and taxes.*
 - (ii) *Regulation 6 of CERC (Ancillary Services Operations) Regulations'2015 lists out the method for preparing MOD which clearly establishes that it must be prepared based on the variable charges.*
 - (iii) *Regulation 22, 23 read with Regulation 30 of CERC (Terms and Conditions of Tariff) Regulations 2014 provides the methodology for calculating the variable charges.*
 - (iv) *This Hon'ble Commission in its order dated 24.05.2014 in Petition No.04 of 2014 has held that the MOD should be calculated based on variable costs of the generating station.*
 - (v) *Maharashtra Electricity Regulatory Commission in its decision dated 17.05.2007 in Petition No.42 of 2006 has elaborated the methodology of calculating MOD.*
 - (vi) *Similarly TNERC in its order dated 11.12.2014 in petition no.09 of 2014 has upheld calculation of MOD based on variable cost.*
 - (vii) *6.38 of Jharkhand State Electricity Regulatory Commission (Terms and Conditions for Determination of Distribution Tariff) Regulations 2010 states that quantum of power to be purchased by various discoms should be based on variable charges.*
 - (viii) *The imposition of ED cess on generating stations other than the state owned generating stations by way of state Govt. notification dated 11.01.2013 is contrary to the principle of MOD. As it places IPP's like the Petitioner in a disadvantageous position in comparison to the state owned generating stations. Further the ED cess has no correlation with the efficiency of the power generation and therefore should not be allowed in calculating the MOD.*
4. Motion hearing in the subject matter was held on 21st March' 2017 wherein the petition was admitted by the Commission. Vide daily order dated 21st March' 2017,

the Commission directed the petitioner to serve the copies of petition on all Respondents in this matter. The Respondents were also directed to file their response on each issue in the petition at the earliest but not later than 12th April' 2017 after serving a copy of the same on other side also.

5. After seeking four weeks' time extension to file the reply, by affidavit dated 6th May' 2017, Respondent No. 1 (MPPMCL) filed its reply on the subject matter. By affidavit dated 6th May' 2017, Respondent No. 2 (MPPTCL) and Respondent No. 3 (SLDC) have jointly filed its reply in the matter.
6. The Commission observed the following status on the next date of hearing in this matter held on 16th May' 2017:
 - a) By affidavit dated 6th May' 2017, Respondent No. 1 (MPPMCL) filed its response on the subject petition.
 - b) By affidavit dated 6th May' 2017, the Respondent No. 2 (MPPTCL) and Respondent No. 3 (SLDC) had jointly filed their response on the subject petition.
 - c) Counsel appeared on behalf of the petitioner stated that he will file the rejoinder on the comments/response filed by the respondents.
 - d) Counsel appeared on behalf of the Respondent No. 1 sought some time for filing its counter affidavit on the rejoinder which was to be filed by the petitioner.
7. During the course of next hearing held on 30th May' 2017, the Commission observed the following:
 - a) By affidavit dated 15th May' 2017, the petitioner filed a rejoinder on the comments/response filed by the respondent No. 1
 - b) By another affidavit dated. 15th May' 2017, the petitioner had filed another rejoinder on the comments/response filed by the respondent No. 2 and 3.
8. Counsels appeared on behalf of the petitioner and respondents completed their arguments and counter arguments on 30th May' 2017. The petitioner and respondents filed a copy of their written submission (notes) also on their arguments and submissions made till date in this matter.
9. Having heard the parties and taking all submissions by the parties on record, the case was reserved for orders.

Details of submissions filed by the Respondents in this matter and rejoinder filed by the Petitioner:

10. **Respondent No.1 MPPMCL broadly submitted the following in its written submissions:**
- (i) *The respondent No.1 stated that the direction sought by the petitioner from the Commission on the aspects of merit order dispatch being admitted in the State of MP for scheduling the power from its generating station is totally misconceived and liable to be dismissed. It is also contended that the request of petitioner for round-the-clock scheduling by the respondent is also liable to be dismissed as the petitioner is substantially seeking to re-agitate those matters which have been decided by the Commission in its order dated 7th January' 2016 and subsequently upheld by the Hon'ble Appellate Tribunal for Electricity by its judgment dated 22nd August' 2016 in Appeal No. 34 of 2016.*
 - (ii) *The respondent No.1 submitted that most of the issues now raised by the petitioner in the subject petition were challenged by it before the Hon'ble Appellate Tribunal for Electricity in Appeal No. 34 of 2016 and all such issues have been decided by the Hon'ble Appellate Tribunal for Electricity.*
 - (iii) *The respondent No.1 submitted that the Hon'ble Appellate Tribunal for Electricity had not modified or changed any of its conclusion/ decision in its order dated 22nd August' 2016. It is also stated that the Hon'ble Appellate Tribunal for Electricity in its order dated 15th February' 2017 in Review Petition No. 22 of 2016 filed by the petitioner had found no error apparent on the face of record in the aforesaid judgment passed by the Hon'ble Tribunal in its said review order. The Hon'ble Tribunal had then considered various aspects involved in the matter of erratic scheduling leading to unsafe operation of the thermal power plants.*
 - (iv) *The respondent No.1 submitted that the order dated 22nd August' 2016 passed by the Hon'ble Tribunal has become final and binding on the parties since the petitioner had not filed any second appeal against the Hon'ble Tribunal's order dated 22nd August' 2016 or the order dated 15th February' 2017 wherein the Hon'ble Tribunal has not revised any part of its order dated 22nd August' 2016. In view of its aforesaid submissions, the respondent has stated that it has not submitted it is not open to the petitioner to re-agitate any of the issues directly or indirectly in the present proceedings those have been decided by the Hon'ble Appellate Tribunal for Electricity vide its order dated 22nd August' 2016.*

- (v) *The limited liberty granted to the petitioner by the Hon'ble Appellate Tribunal for Electricity is to approach the Commission in terms of paragraph 6 and 7 of the Order dated 15th February' 2017 passed by the Hon'ble Tribunal namely, to deal with erratic scheduling, to avoid damage to the equipment and effecting the efficiency parameters and grid security.*
- (vi) *The rights and obligations of the respective parties, namely, the Petitioner and Respondent No. 1 under the terms of the Power Purchase Agreement entered into between them stands adjudicated by the Order dated 7.1.2016 passed by the Hon'ble Commission and upheld by the Order dated 22.8.2016 passed by the Hon'ble Appellate Tribunal for Electricity.*
- (vii) *In view of the same, there cannot be an adverse implication on the rights of Respondent No. 1 in scheduling the quantum of electricity required by it based on the declaration of availability made by the Petitioner (DC), particularly, based on the Merit Order approved by this Hon'ble Commission. In other words, it is the obligation of the Petitioner to declare the availability of its generating station in accordance with the provisions of the applicable Grid Code, Deviation Settlement Mechanism etc on day-to-day basis and it is the right of Respondent No. 1 to decide the specific quantum of electricity which it would require with reference to the specific time block. It is not that the Respondent No. 1 is arbitrarily deciding on the quantum of electricity required by it in regard to few time blocks and it is not scheduling for other time blocks.*
- (viii) *The decision on the quantum of power required by Respondent No. 1 schedule every day is decided on the quantum of electricity coming within the Merit Order, decided by the Hon'ble Commission, the time block during which it is required and the decision is communicated by the State Load Dispatch Centre based on the above. The Respondent No. 1 is, therefore, acting in accordance with the terms of the Power Purchase Agreement and the scheduling and dispatch regulations in deciding on the above aspects. The Respondent No. 1 is also liable to pay and has duly paid the fixed charges for the quantum of electricity declared available but not taken by Respondent No. 1.*
- (ix) *The erratic scheduling alleged by the Petitioner arise not on account of any undue or deliberate act on the part of Respondent No. 1. The variation in the quantum of electricity scheduled by Respondent No. 1 is on account of the implementation of*

the Merit Order Dispatch which is done in the larger interest of the consumers. In view of the public interest involved, it is not open to Respondent No. 1 to waive the adherence to the Merit Order Dispatch in order to help the Petitioner to avoid differential scheduling.

- (x) *In the circumstances mentioned herein above, the burden of the quantum of electricity offered by the Petitioner being not coming within the purview of the Merit Order Dispatch throughout the day has to be taken by the Petitioner. The burden cannot be taken by Respondent No. 1 herein in order to facilitate the Petitioner and that too at the cost of the consumers at large.*
- (xi) *In terms of the Order passed by the Hon'ble Tribunal dated 15.2.2017, **the Respondent No. 1 states that the solution to the alleged erratic scheduling occurring as a result of Respondent No. 1 not giving the scheduling for the entire day of a constant quantum can be broadly stated as under:***
- (a) *The Petitioner can declare the availability with the condition that it will generate and supply electricity to Respondent No. 1 only in the event Respondent No. 1 is in a position to schedule constant quantum of electricity throughout the day. In such an event, if the Respondent No. 1 is unable to schedule the constant quantum of electricity throughout the day on account of the implementation of the Merit Order, the Petitioner can insist that the State Load Dispatch Centre should not give dispatch instructions for a specific time block. In that event, the Petitioner shall not be entitled to claim Deemed Fixed Charges for the quantum of electricity declared available as the Petitioner is not in a position to meet the requirements of Respondent No. 1 as per the Merit Order. Alternatively, the Petitioner should make arrangements for sale of balance quantum of electricity in a time block where scheduling is not given by Respondent No. 1 to third parties including through Power Exchanges etc;*
- (b) *It is for the Petitioner to arrange the sale of remaining capacity excluding the contracted capacity of respondent No. 1 to third parties on Long Term basis. Respondent No. 1 is willing to consider allowing the Petitioner to sell marginal quantum of electricity from its contracted capacity to enable the Petitioner to achieve minimum schedule to operate the generating station on a consistent basis throughout the day subject to the condition that there will*

be no fixed charge liability on Respondent No. 1 to the extent of the said contracted capacity;

- (c) The Petitioner, if it is concerned that such erratic scheduling and possible damage to its machines etc should consider reducing variable charges applicable to the generation and sale of electricity to Respondent No. 1 in a manner that the Petitioner's generating station comes within the Merit Order Dispatch to enable Respondent No. 1 to schedule electricity on a consistent basis;*
- (d) The Respondent No. 1 is also willing to consider any other positive suggestion as may be made by the Petitioner provided that there is no cost implication to Respondent No. 1 as the Respondent No. 1 cannot burden the consumers in the State for any higher cost or otherwise to any financial prejudice on account of accommodating the Petitioner for its problems of generation being not in a constant manner.*
- (xii) In the facts and circumstances mentioned herein above and in terms of the Order dated 15.2.2017 passed by the Hon'ble Appellate Tribunal, the Petitioner has to consider these aspects instead of raising a dispute with the Respondent No. 1 and seeking Orders on the Merit Order principle decided by this Hon'ble Commission.*
- (xiii) The Petitioner has wrongly raised the issue of Respondent No. 1 not scheduling electricity from sources where the variable cost is cheaper and schedule of electricity from sources where the variable cost is higher. The Petitioner has referred to these aspects in a simple manner contrary to the fact that the decision on sourcing of electricity under the Merit Order Dispatch would also involve geographical location of the generating station, load centre, transmission constraints arising on certain specific line for evacuation of power from the generating station to the load centre, the availability of transmission capacity from a generating station up to the load centre within a specific geographical location and at the same time the non-availability of the transmission system for evacuation of power from some generating station to a different load centre and all other aspects which are dynamic in nature. It is, therefore, wrong on the part of the Petitioner to proceed on such aspects. These aspects were also agitated by the Petitioner in the earlier proceedings before the Hon'ble Appellate Tribunal and the same has been rejected.*

- (xiv) Respondent No.1 submitted that the Petitioner is also raising issues of reserve shut down of some of the generating station of the State. The Petitioner cannot compare the status of Sanjay Gandhi Thermal Power Station or similar station which the Respondent No. 1 had earmarked for reserve shut down for reason that the entire capacity of such generating station is exclusively for the benefit of Respondent No. 1 and, therefore, the Respondent No. 1 is in a position to direct shut down of such station on an emergent and immediate basis. Similar such facilities cannot be undertaken in respect of generating stations where the Respondent No. 1 is entitled only to a partial capacity as its contracted capacity. In any event, the erratic scheduling etc which the Hon'ble Appellate Tribunal has directed the Hon'ble Commission to consider has nothing to do with the issue of reserve shut down. As mentioned herein above, all these aspects stands decided by the Order dated 22.8.2016 passed by the Hon'ble Appellate tribunal for Electricity and cannot be re-agitated.
- (xv) The Respondent No. 1 denies each and every allegation contained in the petition filed. The Respondent No. 1 reserves the right to deal with them if this Hon'ble Commission wish to proceed on the merits of the case. It is reiterated that the Petitioner is raising issues which stands concluded in the Order dated 22.8.2016 passed by the Hon'ble Tribunal
- (xvi) Respondent No 1 submitted that for the reasons mentioned herein above the Hon'ble Commission may be pleased to dismiss the petition filed by the Petitioner as vexatious, raising issues which stands concluded and otherwise not maintainable with liberty to the Petitioner to file a separate petition restricting its case to the directions contained in Paragraphs 6 and 7 of the Order dated 15.2.2017.

11. Response of the petitioner on the above reply filed by Respondent No.1 (MPPMCL):

The petitioner submitted the following in reply to the above mentioned response of Respondent No.1

- (i) In so far Petition No. 70 of 2015 is concerned the Judgment of the same was delivered in January, 2016 and the issues that the Petitioner has raised are specifically in relation to the high handed arbitrary manner in which the Respondent No.1 is operating the MOD in the period commencing from October, 2016. Therefore, it is unthinkable as to how these issues had already been decided

by the Hon'ble Commission. Notwithstanding, the aforesaid the Petitioner in Written Submissions in Petition No. 70 of 2015 had raised the issue of MOD being incorrectly prepared as the Respondent No.1 was also including 15 Paise of Energy Development Cess (i.e. Issue III in the present Petition). The Petitioner in the said proceedings had not sought any prayer qua MOD preparation. The Hon'ble Commission had not considered the plea of the Petitioner in passing the Order dated 07.01.2016. This issue was raised by the Petitioner in Appeal No. 34 of 2016. However, since the Petitioner had not sought any prayer qua MOD in Petition No. 70 of 2015 the Hon'ble Tribunal did not go into the issue and granted liberty to the Petitioner to agitate the same in an appropriate proceeding. Therefore, clearly in terms of the Judgment of the Hon'ble Tribunal date 22.08.2016 the issue of MOD has not been dealt by this Hon'ble Commission.

- (ii) In so far as erratic scheduling being perpetuated by the Respondent No.1 is concerned (i.e. Issue 1 and 2). It is an admitted position that the Petitioner had placed these specific facts before the Hon'ble Tribunal in the hearing of the Review Petition. However, the Hon'ble Tribunal did not go into the merits of these facts as they had not been raised before this Hon'ble Commission. Therefore, the Hon'ble Tribunal in its wisdom has given liberty to the Petitioner to approach this Hon'ble Commission with the complete spectrum of facts and seek dispensation of Justice. The directions of the Hon'ble APTEL as elaborated in Para 5 to 7 of its Judgment dated 15.02.2017 specifically permit the Petitioner to raise all issues concerning erratic scheduling before this Hon'ble Commission and in terms of the liberty so granted the Petitioner has filed the instant Petition.
- (iii) The Respondent No.1 in its Reply has inter-alia stated that erratic scheduling is on account of MOD and public interest and hence no equity can be claimed. The above submission of the Respondent No.1 is a complete eyewash and is liable to be rejected due to following reasons: -
- (a) The Petitioner in the present Petition Para 7.1 to 7.5 has elaborately provided real time data of Respondent No.3 on the issue MOD and the scheduling of Respondent No.1 in such time blocks. The Petitioner in its submissions had elaborately elucidated authentic data on 45 days i.e. 4320 Time Blocks where more expensive power than the petitioner was given Round the Clock i.e. RTC scheduling whereas the Petitioner was given an erratic and sporadic scheduling. Further, the Petitioner had also elaborated 58 days of data i.e. 5568 Time Blocks, wherein Power plants with less expensive Variable Cost were given Reserve Shut Down and the Petitioner

Generating Company had been asked to operate its plant in the most erratic manner.

- (b) *It is humbly submitted that despite the fact that the Petitioner had clearly established in the Petition that for 9888 Time Blocks the MOD was operated uneconomically the Respondent No.1 who is responsible for preparation and implementation of MOD has chosen not to justify or respond to even a single time block in its Reply. The above clearly demonstrates complete lack of respect for judicial proceedings by the Respondent No.1.*
- (c) *In fact, as submitted in detail in the Petition the Respondent No.1 for 9888 time blocks has implemented an uneconomical MOD for the sole intent to penalize and prejudice the Petitioner generating Company. Further, the said Respondent in its Reply has not even bothered to defend its conduct and tried to brush aside the entire issue in the garb of public interest. The Hon'ble Commission should initiate strictest possible action against the said Respondent to compute the total loss to exchequer and penalize the Respondent No.1 for such malicious and vexation actions perpetuated to harass the Petitioner Generating Company.*
- (iv) *Therefore, in terms of Regulation 15 (1) and (2) the Respondent had to explain its conduct in the 9888 time blocks assailed by the Petitioner in the Petition. However, the moonshine response given by the said Respondent clearly demonstrates that no logical or legally tenable explanation is available with the said Respondent and hence the averments made by the Petitioner must be considered to be correct by the Hon'ble Commission.*
- (v) *The Respondent No.1 in its submissions has averred that the Petitioner cannot equate itself SGTPS or similar Station as in such cases the entire capacity of the Power plant has been tied up for the Respondent No.1 and therefore, the Respondent No.1 can direct RSD on emergent and immediate basis. The aforesaid submission of the Respondent No.1 is not only legally untenable but is also devoid of logic due to following reasons:-*
- (a) *Neither the MP Grid Code, or the MP Balancing and Settlement Code or IEGC enables the Respondent No.1 to give any special dispensation to State Owned generating station or to a generating Station on which it has a 100% tie up. Moreover, Regulation 1.6.6 of the MP Grid Code specifically provides as follows:-*
- “STU shall not unduly discriminate against or unduly prefer:*
- a) *Any one or any group of persons:”*

- (b) Further, the Regulation 5(3) of the MP Balancing and Settlement Code, 2015 specifically provides that MOD is to be prepared amongst all stakeholders which includes IPPs and SSGS. Therefore, the averment of the Respondent No.1 that special dispensation ought to be given to SSGS or to power plants which have 100% tied up capacity to Respondent No.1 is neither provided in the MP Grid Code or provided under the Balancing and Settlement Code, 2015. Hence, the averment of the Respondent No.1 to this extent is legally untenable.
- (vi) Further, such a submission of the Respondent No.1 clearly establishes the contention of the Petitioner that the said Respondent is operating the MOD within the state of Madhya Pradesh as its personal fiefdom without adhering to any Rule of Law and for the limited purpose of harassing and prejudicing the Petitioner Generating Company. Hence, only if the Respondent is compelled by the Hon'ble Commission to operate the MOD as per its Balancing Code and the Grid Code will efficiency in generation be achieved within the State of Madhya Pradesh.
- (vii) Further, the Respondent No.1 is trying to summarily brush aside the issues raised by the Petitioner in the garb of the PPA. However, silence of the PPA cannot in any manner permit the Respondent No.1 to defeat the object of the Act and the various Regulations framed by this Hon'ble Commission. The Hon'ble Supreme Court in the PTC case has held that PPA's must align to the regulations. However, in this case the gravity of the situation is much severe as the PPA is being operated not only contrary to the Regulations but also to the Act. Such as Section 61(c) read with National Tariff Policy and the National Electricity Policy. Further, it cannot and ought not to be the case of the Respondent No.1 that 'efficiency' and 'economical use of resources' as mandated under Section 61 (c) of the Act can be overridden or undermined by the pedantic operation of the PPA.
- (viii) It is also submitted that the Merit Order Stack prepared by the Respondent No. 1 is not shared with the generators. The Petitioner has made numerous representations and request to the Respondent No. 1 to share the Merit Order Stack for each month with the Petitioner. It is the contention of the Petitioner that the Merit Order Stack prepared by the Respondent No.1 should be shared with the Petitioner each month, as and when the same is prepared and forwarded to Respondent SLDC for implementation, however, the Respondents have restrained to act in a fair and transparent manner. The Respondents by abusing their dominant position and acting high headedly have completely ignored the fact that

the stack prepared by them is a public document and must be shared with the stakeholders and the consumers. It is pertinent to mention that as a matter of practice, Licensees in other State upload the Merit Order Stack on their respective website. In view thereof, it is humbly requested that the Hon'ble Commission be pleased to direct the Respondent No.1 and Respondent SLDC to adopt the same practice in order to ensure transparency.

12. Response of Respondent No. 2/3 on the petition:

In a common reply, Respondent No.2 (MPPTCL) and Respondent No.3 (SLDC MP) broadly submitted the following:

- (i) At the outset it is objected very specifically that the Petitioner should address the answering Respondent No. 2 properly if at all the averments made and reliefs claimed in the petition relate to M P Power Transmission Company Limited having its office at Jabalpur. If it be due to any inadvertent error in addressing the answering Respondents as "Madhya Pradesh Power Transmission Company Ltd." then the Petitioner may amend the petition to this effect.*
- (ii) The Petitioner has not made any specific allegations against the answering Respondents no. 2 and 3 and has also not claimed any specific relief against them. The answering Respondents are neither proper party nor the necessary party in present petition. Hence, the Petitioner should delete the names of the answering Respondents from the array of respondents in the present petition or the Hon'ble Commission may be pleased to dismiss the petition in respect the answering Respondents.*
- (iii) That, the learned APTEL has been pleased to upheld the Final Order dated 07-01-2016 passed by the Hon'ble Commission in Petition No. 54/2015. Appeal No. 34/2016 stands dismissed vide judgement dated 22-08-2016 and the learned Tribunal was pleased to observe in the Review Petition No. 22/2016 that there is no error apparent on the face of the record in the said judgement. However, the rest of the observations made and concern expressed in paragraphs 5 onwards in the said order dated 15th February, 2016 are observations only and the issue is left to be independently tested and considered by the Hon'ble Commission in view of the extant laws, rules and regulations. The solution and/ redressal, if any that may be in favour of the Petitioner, have to be addressed from and within the extant laws, rules and regulations only and at the same time the rights and privileges of the Respondents ought not to be put to prejudice.*

(iv) That, sub-section 2(a) of section 32 of the Electricity Act, 2003, dealing with the functions of the State Load Despatch Centres clearly provides as under:

“ **32(2)** That State Load Despatch Centre shall-

(a) be responsible for optimum scheduling and dispatch of electricity within a State, **in accordance with the contracts entered into with the licensees or the generating companies** operating in the State;”

[emphasis supplied]

(v) That, the proviso to section sub-section 4 of section 33 of the Electricity Act, 2003, inter alia, dealing with directions of the State Load Despatch Centres provides as:

“**33. (4)** If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction given under sub-section (1), it shall be referred to the State Commission for decision:

Provided that pending the decision of the State Commission, the directions of the State Load Despatch Centre shall be complied with by the licensee or generating company.”

[emphasis supplied]

(vi) That, provisions of the Electricity Act, as quoted above, make it abundantly clear that the State Load Despatch Centre shall be responsible for optimum scheduling and dispatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies. It means that the explicit provisions of the PPA in this respect have to be given due consideration. The SLDC cannot compel the procurer to schedule power from the generator over and above the contracted capacity in order to maintain the technical minimum of the generator. Furthermore, it also becomes very clear that the directions of SLDC have to be complied with by the licensees or generators, pending final decision of the State Commission, in case of dispute, if any. That is to say, that, the directions of the SLDC cannot be stayed, as an interim measure.

(vii) That, from bare perusal of the petition along with the legal provisions quoted above, it is abundantly clear that the answering Respondents have no role in the alleged erratic schedules made by the Respondent No. 1. Even the Petitioner has not made any specific allegations against the answering Respondents. Hence, a detailed para-wise reply on behalf of these Respondents is not necessary.

13. **Response of Petitioner on the above reply of MPPTCL and SLDC MP (Respondent No. 2 and 3):**

- (i) *It is most respectfully submitted that the Petitioner has filed the present Petition being aggrieved by the way the MOD and its consequent scheduling is being implemented by Respondent No.1 and Respondent SLDC. In terms of Clause 5 of the Madhya Pradesh Balancing and Settlement Code 2015 (herein referred to as “**Balancing Code, 2015**”) it is the sole responsibility of SLDC to issue the final Generation Schedule to the Petitioner. Therefore, while admittedly the Respondent No.1 procurer is looking at its commercial gains in issuing a scheduling, however, it is the bounden duty of SLDC to ensure that the interest of procurer vis-à-vis the technical limitations of the generator are balanced by the SLDC.*
- (ii) *The Respondent No. 1 intimates the Respondent SLDC qua its requisition on day ahead and real time basis, as per the Merit Order Stack prepared by it. Thereafter, the Respondent SLDC, which is the Nodal Agency responsible for ‘Optimum’ scheduling and dispatch of electricity within the State, issues the final Generation Schedule to the Petitioner. It is pertinent to mention that in terms of Clause 5.11 (b) of the Balancing Code, 2015, the Respondent SLDC is mandated to ensure that the final Generation Schedule being issued by it is ‘operationally reasonable’.*
- (iii) *In view of the above judgment it is unequivocal that the Respondent SLDC is a necessary party to the present proceedings as the Petitioner has filed the present petition being aggrieved by the erratic and dancing Schedule being issued by the Respondent SLDC at the behest of Respondent No.1. As the Petitioner is aggrieved by the illegal and arbitrary conduct of Respondent SLDC, therefore, it was incumbent upon the Petitioner to implead SLDC as a party to the present proceedings.*
- (iv) *The Respondent No. 1/Procurer intimates the Respondent SLDC qua its requisition on day ahead and real time basis, as per the Merit Order Stack prepared by it. Thereafter, the Respondent SLDC, which is the Nodal Agency responsible for ‘Optimum’ scheduling and dispatch of electricity within the State, issues the final Generation Schedule to the Petitioner. It is pertinent to mention that in terms of Clause 5.11 (b) of the Balancing Code 2015, the Respondent SLDC is mandated to ensure that the final Generation Schedule being issued by it is ‘operationally reasonable’. Further, the Respondent SLDC has also been entrusted with the power to revise the Schedule intimated by the procurer **on account of any Transmission constraint or if such schedule is operationally unviable.***

- (v) *It is submitted that as per the provision of the Electricity Act 2003 and Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulation 2010 ('IEGC'), Respondent SLDC is responsible for overall supervision, monitoring and control of the integrated power system in the State on real time basis for ensuring stability, security and economy operation of the power system in the State. Further, Section 32 (2) (a) of the Act states that SLDC should be responsible for 'Optimum' scheduling and dispatch of electricity within the State.*
- (vi) *It is pertinent to mention that the expression 'Optimum Scheduling and Dispatch' brings within its ambit the responsibility of Respondent SLDC to operate the system in an efficient manner. Further, if the intent of the Act was to limit the operation of SLDC to the contract entered into between the procurer and the generator, then the legislature would not have used the word 'optimum' in Section 32 of the Act. It is humbly submitted that the sole purpose of incorporating the word 'optimum' in Section 32 is to entrust the responsibility upon Respondent SLDC to balance the interest of both the procurer as well as the generator, which the said Respondent SLDC has failed to do in the present case by ignoring the continuous erratic scheduling being issued by Respondent No.1, which has caused grave financial prejudice to the Petitioner and adversely affected the health of the Petitioner's Plant.*
- (vii) *It is also pertinent to mention that as an accepted practice if there is any difference between the scheduling of the Procurer and the generators availability the RLDC/SLDC refuse scheduling and direct the parties to come at a settlement and such RLDC/SLDC under no circumstance impose the requisition of the procurer upon the generator. The same has also been elaborately captured in the Explanatory Memorandum issued by the Central Commission for the 4th amendment in the IEGC wherein at numerous times when the Procurers have sought low scheduling of power, the concerned RLDC as a matter of business practice have refused to allow such scheduling. However, in the present case the Respondent SLDC in fact has proceeded in its duties in the most pedantic manner.*
- (viii) *Therefore, the action of Respondent SLDC to ensure that the erratic scheduling of Respondent No.1 is implemented without considering the physical constraints of the Petitioner's Thermal Power Plant to operate on such scheduling is contrary to the mandate of Section 32 of the Act and Madhya Pradesh Settlement and Balancing Code 2015.*

- (ix) *It is the contention of Respondent SLDC that in the event the Petitioner doesn't get any schedule from the Respondent No.1 the Petitioner can sell the power on Power Exchange as the Respondent SLDC has issued standing clearance/No Objection Certificate to the Petitioner to trade power on the exchange.*
- (x) *That the above contention of the Respondent SLDC is completely erroneous and baseless due to the following reasons: -*
- (a) *It is most respectfully submitted that the Respondent SLDC in making the above statement has failed to appreciate and consider that the Petitioner has established and is operating a 2 x 250 MW Thermal Power Plant and has entered into a Long Term PPA with the Respondent No.1 not with the intent of selling the power generated from its Power Plant on exchange. The intent behind entering into a Long Term PPA was that the Petitioner could efficiently run its Power Plant on a constant load and adequately recover the cost of generation.*
- (b) *It is pertinent to mention that in the current market scenario the price at which the power is being sold at the exchange is substantially lower than the actual cost of generation. Further, the sale of power on Power Exchange is not out of the free will of the Petitioner but rather dictated by the arbitrary and erratic scheduling issued by the Respondent No.1 and Respondent SLDC, thereby causing tremendous losses to the Petitioner.*
- (c) *In addition to the above it is submitted that the Petitioner has a PPA with Respondent No. 1 for a total quantum of 70% of the installed capacity of the plant. For the balance power of 30% (135.5 MW) of the installed capacity, the Petitioner has the option of trading through the power exchange platform for which a 'NOC' is required to be obtained from Respondent SLDC. In substance the Petitioner can only sell the remaining power (30% of the installed capacity) generated from its plant on power exchange.*
- (d) *Respondent SLDC has failed to appreciate that even if the Petitioner ties up or sells its entire 30% un-contracted capacity/merchant share (i.e. 135 MW, 68 MW for each unit) on power exchange it will not be able to meet the 'Technical Minimum' of its Unit Capacity. The 30% of the merchant share comes to 135 MW total, which is significantly less than the Technical Minimum of both the Units, i.e., less than 280 MW (140 MW for each unit). Therefore, the Petitioner cannot operate its Plant for merely selling power on exchange. It is pertinent to mention that the Petitioner sells the Power on*

exchange in the event the scheduling received from Respondent No.1 is below the Technical Minimum.

- (e) It is submitted that it is the duty and responsibility of the Respondent SLDC to ensure that the generator is not asked to operate below its Technical Minimum capacity, as the same would financially prejudice the generator. However, in the present case the SLDC has completely ignored the arbitrary and erratic scheduling being forced upon the Petitioner by Respondent No. 1.*
- (f) The Respondent SLDC, which is vested with the functions to ensure 'Optimum scheduling and dispatch of electricity within the State has narrowed down its function to a mere post office. The above allegation of the Petitioner is firmly established by Respondent SLDC own submission at Para 10 of its Reply, wherein the Respondent SLDC has unequivocally accepted that the scheduling issued to the Petitioner is as per the requisition received from the Respondent No.1. Thus it is clear that the Respondent SLDC has acted solely on the instruction issued by the Respondent No.1*
- (g) It is most respectfully submitted that the Respondent SLDC while discharging its functions has to act as an independent autonomous body and cannot in any manner act as an extended arm of the Government Utility.*
- (h) Further, the Respondent SLDC is required to exercise its own judgment while approving any schedule and in the present case it is an admitted fact the Respondent*
- (i) SLDC has approved the schedule without any application of mind and with the sole intent of furthering the cause of the Respondent No. 1.*
- (j) It is most respectfully submitted that the Petitioner in the present Petition had elaborated instances totalling to 9888-time block wherein MOD has been violated. While the Respondent No.1 has not given any explanation, the Respondent SLDC has sought to justify such arbitrary operation of MOD by stating that STPS Sarni was given scheduling over the Petitioner to improve the system stability.*
- (k) It is the contention of the Respondent SLDC that as per the system studies carried out for the month of October 2016, November 2016 and December 2016 the loading on 500 MVA 400/220KV ICT at Sarni, 315 MVA ICT at Itarsi and 315 MVA ICT's at Bhopal were very high if Unit 6 & 7 of STPS Sarni were not on bar. Therefore, considering the fact that operating the system would not be safe and reliable in such conditions,*

MPPMCL/Respondent No.1 was advised to keep at least one Unit (i.e., Unit 6 or Unit 7) of STPS Sarni at bar at all the time.

- (l) That the above contention of the Respondent SLDC is completely erroneous, baseless and is denied for the following reasons: -
- i. It is submitted that in order to assess the authenticity and legitimacy of the above contention of Respondent SLDC, the Petitioner had sought the opinion of some private person.
 - ii. It is submitted that as per the opinion given by some private person, it is observed that the contentions made by Respondent SLDC are contradictory and self-defeating, as the data submitted by the Respondent SLDC vide Annexure III of its Reply does not justify the contentions made by it. Copy of the Opinion dated 15.05.2017 is annexed hereto and marked as **ANNEXURE R/4**.
 - iii. On perusal of the Annexure III submitted by Respondent SLDC it is observed that for the month of October 2016 when STPS Unit 6 & 7 is out of service the loading increases to 320.7 MW, which is considered as unsafe for grid operation by SLDC. Further, in the month of November 2016, when STPS Unit 6 & 7 is out of service the loading increases to 360.9 MW, which is also considered as unsafe for grid operation by SLDC. However, contrary to its above stand the Respondent SLDC for the month of December 2016 has considered the loading of 342.7 MW to be safe for grid operation. In view of the above it is submitted that the contentions made by Respondent SLDC are based on conjectures and surmises, without conducting a proper system study and hence the same ought to be rejected.
 - iv. It is pertinent to mention that in case the Respondent SLDC was of the view that system would become unsafe in the event one of the ICT trips, it should have taken action to install the second ICT at these substations so to make system secure and to meet N-1 contingency in line with system planning criteria adopted by Central Electricity Authority.
 - v. It is submitted that Section 39(2)(c) of the Act mandates the Respondent SLDC to ensure development of an efficient, co-ordinated and economical system of intra-state transmission lines for smooth flow of electricity from generating stations to the load centres. Statement made by Respondent SLDC on affidavit before the Hon'ble Commission that "On tripping of any of the transformers might lead to a major system disturbance" is nothing but admission on part of the Respondent SLDC qua its failure in carrying out its statutory function.

- vi. The petitioner also submitted that in order to examine the load on the present Network in the State of Madhya Pradesh had carried out a simulation studies had been carried out by a private person relating to MP load equal to 11000 MW using PSS/e software by Siemens International. In view of the simulation studies carried out by that person, it was observed that: -
1. *Upon tripping STPS Sarni ICT the system converged without any problem indicating that there would not be any voltage instability. Interestingly, system studies show that system losses would have been reduced marginally by 0.7 MW if the power had been scheduled from JP-Bina instead of Unit #7 of STPS Sarni.*
 2. *Further by conducting transient stability for 10 Sec and tripping STPS Sarni ICT after 0.1 Sec it was observed that the system remained stable.*
 3. *The system would remain stable in the event of simple tripping of ICT at STPS as well as three-phase fault at 400 kV Satpura bus resulting in tripping of ICT. Therefore, claim of Respondent SLDC that one unit of 220 kV STPS Sarni was required to kept on bar to avoid grid disturbance in the event of tripping of ICT is based on hunches and is liable to be rejected all together. Respondent SLDC should have carried out detailed studies including transient stability studies before making such a claim.*
- vii. In terms of the Opinion of some private person, the petitioner submitted that it is clear that generation from STPS Sarni in no manner can help arrest any fluctuation of load in the area described by the Respondent SLDC.
- viii. *It is most respectfully submitted that the Hon'ble Central Commission had notified the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 ('**IEGC Regulation 2010**'). Thereafter, the IEGC Regulation 2010 was amended vide notifications dated 6.3.2012, 6.1.2014, 10.8.2015 and 6.4.2016. Vide Notification dated 06.04.2016 the Hon'ble Central Commission had notified the 4th Amendment to the IEGC. Regulation 6.3 (B) of the 4th Amendment to IEGC Regulation 2010 provided for the Technical Minimum criteria for operating a Thermal Power Plant and also entrusted certain responsibilities upon NLDC and RPCs qua Reserve Shut Down of the Thermal Generating Station in case the scheduling issued the procurer is below the Technical Minimum Criteria. However, Regulation 6.3 (B) was kept in abeyance, as the Hon'ble Central Commission had yet to approved the procedure regarding the same.*

- ix. *The Hon'ble Central Commissions vide its Order No. No. L-1/219/2017-CERC dated 05.05.2017 (hereinafter referred to as the 'Detail Operating Procedure/DOP') has approved the detailed procedure for taking unit(s) under Reserve Shut Down and Mechanism for Compensation for Degradation of Heat Rate, Aux Compensation and Secondary Fuel Consumption, due to Part Load Operation and Multiple Start/Stop of Units. It is submitted that as per the Clause 3 of the DOP the mechanism laid down by the Hon'ble Central Commission for taking machine under Reserve Shut Down is applicable upon all generating stations including that of the Petitioner.*
- x. *It is submitted that the mechanism laid down by the Hon'ble Central Commission qua compensation for Degradation of Hear Rate, Aux Consumption and Secondary Fuel Oil Consumption, due to Part Load Operation and Multiple Start/Stop of Units is only applicable to Coal/Gas based Central Generating Stations and Coal/Gas based Inter-State Generating Stations, whose tariff is either determined or adopted by the Central Commission. In view thereof, it is submitted that the Hon'ble Commission should adopt the same mechanism for compensation, as the State Grid Code is required to be aligned with the Indian Electricity Gird Code. It is also submitted that in the alternative the Hon'ble Commission may initiate a Suo-motu proceeding and amend the Power Purchase Agreement dated 05.01.2011 entered between the Petitioner and Respondent No.1 to incorporate appropriate provisions regarding the Compensation Mechanism as provided under the DOP dated 05.05.2017.*

14. Oral Arguments made by the parties in the subject petition:

On 30th May' 2017, Counsel on behalf of the petitioner and respondents in this matter put forth their oral arguments and counter arguments before the Commission. Learned Counsel of the petitioner placed his arguments in the following three legs:

- (i) Erratic scheduling by Respondent No. 1
- (ii) Wrong implementation of Merit Order Desptach (MOD)
- (iii) Basis for computation of MOD

15. Learned Counsel of the petitioner reiterated the arguments/ allegations on the issue of erratic scheduling as filed in its present petition. He went through the definition of merit order despatch under the MP Electricity Balancing and

Settlement Code. He put forth his counter arguments on the response of MPPMCL and SLDC filed on the subject petition.

16. Learned Counsel on behalf of Respondent No. 1 in his arguments reiterated its contention in its response on the petition filed with the Commission. He broadly stated that the report filed by the petitioner on the system study which is undated, without any authority and the same is to mislead this Commission. He raised objections on sharing the reply of Respondent No. 1 with person other than in this matter. He denied that there is no erratic scheduling by Respondent No. 1 and laid emphasis on the point that Respondent No. 1 has always cooperated with petitioner and issued NOC as and when sought by the petitioner. He emphasised on the fact that the MOD is made on the cost of energy in terms of provisions under MPERC Regulations which includes all taxes and duties levied by the statutory authorities. He further stated that there is no mandate or obligation on Respondent No.1/procurer under any law to share MOD regularly with the petitioner/generator. On the issue of discrimination of petitioner's power plant with State generating stations, he submitted that the State Sector Generating Stations (SSGS) are having 100% Installed capacity contracted with MPPMCL and no capacity is sold in the market by such SSGS. Therefore, the Reserve Shut Down (RSD) may be given to them by MPPMCL on account of their 100% capacity contracted with Respondent No.1.
17. The issue of making SLDC and MPPTCL as answering party in the subject matter was also raised by Respondent No. 2 & 3 in their arguments and this issue was left for decision of this Commission by both the parties. On this particular issue, the Commission does not find any merit to consider the arguments put forth by Respondent No. 2 & 3 due to the following reasons:
 - (i) The SLDC, MP and MPPTCL were the parties on this issue in petition No. 54 of 2015 wherein they replied their part and never agitated on this issue of being respondents in this matter.
 - (ii) The SLDC, MP and MPPTCL were the parties on this issue in Appeal No.34 of 2016 filed before Hon'ble Tribunal for Electricity wherein they did not press on the issue of being respondents in this matter.
 - (iii) The SLDC, MP and MPPTCL were the parties on this issue in Review Petition No. 22 of 2016 wherein they never agitated on the issue of being respondents in this matter.

Observations and findings:

18. On perusal of the contents in the petition, the Commission has observed that the subject petition is filed by M/s. Jaiprakash Power Ventures Ltd. in terms of the observations made by the Hon'ble Appellate Tribunal for Electricity in its order dated 15th February' 2017 in Review Petition No. 22 of 2016 in Appeal No. 34 of 2016. The details and reasons for filing the aforesaid Review Petition by M/s. Jaiprakash Power Ventures Ltd. before the Hon'ble Appellate Tribunal for Electricity challenging its judgment dated 22nd August' 2016 (in Appeal No. 34 of 2016) have been mentioned in preceding part of this order.
19. It is worthwhile to mention in this order, a small brief on the issues decided by this Commission in its order dated 7th January' 2016 (in Petition No. 54 of 2015) and also the judgment passed by the Hon'ble Appellate Tribunal for Electricity on 22nd August' 2016 in Appeal No. 34 of 2016 filed by M/s. Jaiprakash Power Ventures Ltd. challenging the aforesaid order dated 7th January' 2016 passed by this Commission.
20. In its order dated 7th January' 2016 in Petition No. 54 of 2015, the Commission had decided the issues related to Technical Minimum as given below:
21. With the following observations and besides other, the Petition No. 54 of 2015 was dismissed and disposed of by this Commission.

"In view of the above, it is observed by the Commission that the use of expression like Technical Minimum by the respondents in the impugned communication has no relevance since the provisions under the PPA executed between the procurer and the petitioner are explicitly clear for commercial and technical obligation to be met by each of them. It is further observed that the respondent (MPPMCL) is responsible only up to the contracted capacity of the generating unit as per PPA. Any unscheduled available capacity within the contracted capacity is compensated by way of fixed cost/capacity charges paid by the Respondent No.2 in terms of PPA. Besides, the petitioner is responsible at its own expenses for maintaining the technical requirement during operation of the plant while making its obligations under the power purchase agreement. Therefore, no merit is found in the prayer of the petitioner for recovery of any additional cost incurred by the petitioner in operating in accordance with the directions issued by the Respondent No1 in the impugned communication."

22. In Appeal No. 34 of 2016 filed by M/s. Jaiprakash Power Ventures Ltd. against the aforesaid order of the Commission, Hon'ble Appellate Tribunal for Electricity in its judgment dated 22nd August' 2016 had found no merit in that appeal and dismissed the same. The impugned order passed by this Commission on 7th January' 2017 was upheld by the Hon'ble Appellate Tribunal for Electricity.
23. In its aforesaid appeal, M/s. Jaiprakash Power Ventures Ltd. had broadly made the following submissions before the Hon'ble Appellate Tribunal for Electricity:
- (a) *In scheduling optimum power from the Generator, it is the duty and responsibility of the Respondent No. 4 to ensure that the generator is not asked to operate below its machine's Technical Minimum Capacity as the same would cause severe operational prejudice to the generator, including the requirement to operate the plant inefficiently on the basis of expensive fuel oil.*
 - (b) *The State Commission completely erred in holding that technical minimum is to be read in terms of the contract and not the installed capacity of the plant.*
 - (c) *The Merit Order placed before the State Commission was issued on the basis of misconceived principles. The State Commission has turned a blind eye towards the issue of Merit Order Despatch (MOD) and has not recorded any findings on the issue.*
 - (d) *Technical Minimum of a Generation Power Plant is based upon the Unit/ Plant Capacity and not the Contracted Capacity.*
 - (e) *The Respondent SLDC while discharging its functions has to act as an independent autonomous body.*
 - (f) *The Act mandates "Optimum Scheduling and Dispatch"*
 - (g) *Any off take/scheduling below the contracted capacity has to be done strictly in accordance with the Terms and Conditions of the PPA.*
 - (h) *The MOD is not in accordance with the Regulations of the State Commission and MP Balancing and Settlement Code, 2009.*
 - (i) *The Appellant has a Legitimate Expectation to be protected against Regulatory certainty and consistency.*

- (j) *Orders passed by the other State Commissions on the issue of Technical Minimum.*
- (k) *Order passed by the commission has failed to correctly interpret Clause 7.1.1 of PPA*

24. On the above issues raised by the M/s. Jaiprakash Power Ventures Ltd. in its Appeal, Hon'ble Appellate Tribunal for Electricity had framed following questions while deciding the Appeal in its judgment:

- (i) Whether the State Commission in passing the Impugned Order has adopted a pedantic approach by superintending the focal issue raised by the Appellant, i.e. that each participant of the Electrical System including the Appellant generator and the Respondents have the responsibility of operating the electrical system in an efficient manner which is also enshrined under the Preamble of the Electricity Act, 2003 and the policies framed thereunder?
- (ii) Whether the Appellant in the proceedings before the State Commission had raised a larger sectoral issue which was germane in the current market scenario wherein the State Utilities have tied up PPA's more than their actual demand? Whether in the present scheme of things it is most imperative that the State Commission as a regulator ensures that the electrical system (which includes the Appellant) of the state operates in the most efficient and economical manner which it has failed to do so in the present case?
- (iii) Whether the State Commission in passing the Impugned Order has failed to address the larger issue of efficiency of the operation of Appellant's Power Plants by pedantically interpreting the PPA signed between the Appellant and the Respondent No.3?
- (iv) Whether the State Commission in passing the Impugned Order has wrongly relied upon Article 4.3.5 of the PPA to hold that the Respondent No.3 procurer can requisition any capacity from the generator without considering the fact that Article 4.3.5 is not the objective behind the Agreement as ultimately the Agreement was entered for the purpose of setting up a power plant to supply 70% power? Whether Article 4.3.5 of the Agreement is only an exceptional provision which comes into play in exceptional scenarios and cannot be used to regulate the manner in which supply of power will be effected between parties?

- (v) Whether the State Commission in passing the Impugned Order has failed to appreciate that the Statutory PPA was not signed with the intent that the Appellant would only receive the Capacity Charges without actually generating power leading to inefficiency in the operations of the Appellant? Whether the objective behind the PPA is that the Appellant would generate power in an efficient manner and the Respondent No. 3 will off take such generated power on payment of the regulated Tariff? Whether the present Impugned Order has not considered the above and the State Commission has also failed to appreciate that inefficient generation cannot be the intent behind the Agreement or the Act and the Regulations framed thereunder?
- (vi) Whether the State Commission has erred in passing the Impugned Order as the Respondent SLDC in terms of the Extant Regulations and the scheme of the Act has to act as the apex body and safeguard the interest of the generator as well as the procurer? And
- (vii) Whether the State Commission has failed to appreciate that mandate of Section 32 is to ensure 'Optimum Scheduling' and not 'Scheduling' as being interpreted in the Impugned Order?
- (viii) Whether the State Commission in passing the Impugned Order has erred in not appreciating that as an industry wide practice it is the SLDC/ RLDC who object to scheduling below 'Technical Minimum' if such a requisition is made, as the same was also observed in the Explanatory Memorandum issued by the Central Commission which lead to the Draft Indian Grid Code being notified for public comments?
- (ix) Whether the State Commission in passing the Impugned Order has wrongly considered Article 4.3.3 of the PPA which does not cast any obligation upon the generator to sell the un-requisition capacity but only provides an enabling provision? And
- (x) Whether the State Commission in passing the Impugned Order has erroneously held that the payment of 'Capacity Charges' is the only obligation of the Respondent No.3 procurer especially when the said procurer has not invoked Article 4.3 in terms of the PPA?
- (xi) Whether the State Commission has erred in not considering the submission of the

Appellant that the MOD being prepared by the Respondent No. 3 is contrary to the Extant laws and hence cannot be the basis for the Respondent No. 3 scheduling power below the 'Technical Minimum' capacity of the Appellant's generating unit/ plant?

- (xii) Whether the State Commission has gravely erred by accepting the contention of the Respondents that due to 'proposed regulation of power' the scheduling of the Appellant was done below the commercially accepted 140 MW which is the 'Technical Minimum' of the Appellant's Generating Unit without appreciating that 'Regulation of Power' per se as a concept has also not been defined under the extant Regulation of the MPERC or the PPA signed between the Appellant and the Respondent No.3?
- (xiii) Whether the State Commission in passing the Impugned Order has failed to appreciate that the Appellant's Power Project has been established for the specific purpose of ensuring supply of power to the State of Madhya Pradesh and therefore higher regulatory accountability is required to be exercised by other State Players to ensure that no undue financial and technical prejudice is caused to the Appellant?
- (xiv) Whether the State Commission in passing the Impugned Order has wrongly relied solely upon Article 7.1.1 by not seeing the other comprehensive provisions of the PPA such as Article 6.1.3 wherein it was the obligation of the Procurer to keep available the entire contracted capacity unless a notice from the Procurer under Article 4.3.3 was issued which has not been done till date?

25. After careful examination of all above issues, Hon'ble Appellate Tribunal for Electricity in its aforementioned judgment decided all the issues against the Appellant in terms of the scheme of law i.e. National Electricity Policy, Tariff Policy, M.P. Electricity Balancing and Settlement Code, 2009 and various provisions under the Power Purchase Agreement (PPA) dated 5th January' 2011 entered into between the generating company and the procurer. In the aforesaid Judgment, Hon'ble Appellate Tribunal for Electricity did not find any infirmity in the Commission's order. Therefore, the Hon'ble Tribunal for Electricity in its order dated 15th February' 2017 in Review Petition No. 22 of 2016 filed by M/s. Jaiprakash Power Ventures Ltd. against the above judgment of Hon'ble APTEL while mentioning certain facts on the issue of erratic scheduling raised by M/s. Jaiprakash Power Ventures Ltd. in Review Petition, found no error apparent on the

face of the record in its aforesaid judgment. Hon'ble APTEL in its order dated 15th February' 2017 in RP No. 22 of 2016 has discussed about certain reasons warranting unsafe operation of thermal generating unit on account of its operation below technical minimum level. With the above discussions, the Appellant (M/s. JPVL) was at liberty to make an appropriate application to this Commission for redressal of its grievance about erratic scheduling and it was mentioned in the aforesaid order that the State Commission shall hear the concerned parties on various aspects relating to scheduling of units as alleged by the parties and decide the matter within 2 months. The aforesaid order was passed by Hon'ble Tribunal in the peculiar facts and circumstances in that matter.

26. Pursuant to the observations of Hon'ble Appellant Tribunal for Electricity, the petitioner herein (M/s. JPVL) has filed the subject petition under Regulation 5(3) and Regulation 14(2) of M.P. Electricity Balancing and Settlement Code, 2015.
27. Regulation 5(3) of M.P. Electricity Balancing and Settlement Code' 2015 provides as under:

“Merit Order Operation: Discoms or Madhya Pradesh Power Management Company Limited on behalf of Discoms (on receipt of requisition from Discoms) will give their requisitions on day ahead and real time basis as per individual Merit Order i.e. in ascending order of the cost of energy (i.e. variable cost) of Inter State Generating Station, State Area Generating Station excluding Hydro Power Stations, Independent Power Producer and other Long Term, Medium Term Open Access and intra state short term Open Access allocated to individual Discom /Madhya Pradesh Power Management Company Limited”

Regulation 14(2) of M.P. Electricity Balancing and Settlement Code' 2015 provides as under:

“Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary to meet the ends of justice or to prevent abuses of the process of the Commission.”

28. In the subject petition, M/s. Jaiprakash Power Ventures Ltd. has approached the Commission on the following three issues:
 - (i) The petitioner is subjected to erratic scheduling by Respondent No. 1.

- (ii) The petitioner has alleged/ challenged the basis for computation of MOD by Respondent No. 1.
 - (iii) Wrong implementation of MOD by Respondent No. 1.
29. The basic allegations/ grievances of the petitioner on the first issue of erratic scheduling and the response of Respondents in this matter as observed by the Commission are given below:
- (i) The petitioner's power plant (having 65% contracted capacity under PPA with Respondent No. 1 at the tariff determined by this Commission and 5% concessional energy under PPA with the State Government at variable charges only) has been scheduled from 180 MW to Zero MW.
 - (ii) In such circumstances/ type of scheduling, the petitioner cannot maintain its "Technical Minimum" of its power plant which is 280 MW (140 MW for each unit).
 - (iii) In order to maintain the Technical Minimum generation of the plant, the petitioner is constrained to sell/ trade the unscheduled available capacity (share of unscheduled contracted capacity with Respondent No. 1) also on power exchange.
 - (iv) For the balance power of 30% (135.5 MW) of the installed capacity, the petitioner has to trade through the power exchange platform for which a 'NOC' is required to be obtained from SLDC (Respondent No. 3).
 - (v) The process of bidding on the power exchange takes place during 10:00 Hrs to 12:00 Hrs only. Due to such irregular and arbitrary scheduling being issued by Respondent No. 1, the petitioner, at most times, cannot book/ trade the unscheduled share of contracted powers on power exchange.
 - (vi) The petitioner was only required to seek a tie up of its uncontracted capacity to maintain "Technical Minimum". Even then, in order to attain "Technical Minimum" generation of plant, petitioner would require to sell the unscheduled Available Capacity also (share of contracted power) if the scheduling instructions are issued well in advance in accordance with Clause 4.35 of the PPA.
 - (vii) If a notice under Article 4.3.5 of the PPA is given well in advance by Respondent No. 1 then the required quantum of power can be arranged by the petitioner to maintain Technical Minimum.
30. In response to the above issues, Respondent No. 1 has stated that most of the issues now raised by the petitioner in the subject petition had been challenged by it before Hon'ble Appellate Tribunal for Electricity in Appeal No. 34 of 2016 and all such issues have been decided by the Hon'ble Appellate Tribunal for Electricity. The petitioner in the subject petition is substantially seeking to re-agitate on all such matters those have been decided by the Commission in its order dated 7th

January' 2016 and subsequently upheld by the Appellate Tribunal for Electricity by its judgment dated 22nd August' 2016 in Appeal No. 34 of 2016. Respondent No. 1 also stated that the rights and obligations of the petitioner and Respondent No. 1 under the PPA executed between them stand adjudicated in the Commission's aforesaid order which has been upheld by the Hon'ble Appellate Tribunal for Electricity.

31. Respondent No. 1 has categorically submitted that the instances of alleged erratic scheduling is not observed on the dates mentioned by the petitioner in its petition. The date-wise, block-wise details of generation of petitioner's power plant shows that the operation was with safe limits therefore, allegation by the petitioner regarding erratic scheduling is totally denied.
32. Respondent No. 1 has stated that it is the obligation of petitioner to declare availability of its generation station on day to day basis in accordance with the provisions under applicable code, Regulations and PPA. On the other hand, the Respondent No. 1 has the right to decide the specific quantum of electricity to be required by it for a specific time block. The Respondent No. 1 has also stated that it is acting in accordance with the provisions under Power Purchase Agreement and it is also liable to pay the Capacity (fixed) charges for the quantum of electricity declared available but not taken by Respondent No. 1.
33. Respondent No.1 further stated that the variation in quantum of electricity being scheduled is on account of the implementation of Merit Order Despatch which is done in the larger public interest. The burden of such quantum of costlier electricity which is offered by the petitioner but not coming under Merit Order Dispatch cannot be unnecessarily passed on the end consumers in the State.
34. Respondent No. 1 has also stated some solution to the alleged erratic scheduling on which the petitioner has not responded.
35. In a common reply, the Respondent No. 2 and 3 by denying all allegations made in the subject petition have submitted following facts in this matter:
 - (i) As per provisions under 32(2) and 33(4) of the Electricity Act' 2003, the State Load Despatch Centre is responsible for optimum scheduling and despatch of electricity in accordance with the contracts entered into with the licensees or the generating companies. Thus, the explicit provisions under PPA are to be considered in this regard.

- (ii) The SLDC cannot compel the procurer to schedule power from a generator over and above the contracted capacity in **order to maintain Technical Minimum of generator.**
 - (iii) Being a Nodal Agency for Short Term Open Access, the SLDC has always issued standing clearance/ No Objection Certificate as and when requested by the petitioner. No Objection Certificate so issued could be utilized by the petitioner for trading of power through Power Exchange in case they didn't get scheduling from MPPMCL. The Standing Clearance/ NOC for the month of October 2016, March 2016 and December 2016 for trading of 300 MW power through Power Exchange were issued by SLDC as per request of the petitioner. The standing clearance / NOCs could have been issued for more quantum also on request of the petitioner. Therefore, the allegations of the petitioner for not received injection schedule as per its desire to run petitioner's plant is totally baseless and misleading
36. By quoting Clause 5(11) of M.P. Electricity Balancing and Settlement Code' 2015, SLDC submitted that it can moderate the schedule of generator in case of any constraint in the system for flowing power through transmission network however, in normal conditions, SLDC has to issue injection schedule to the generator as per requisition given by the procurer (Respondent No. 1) in terms of Power Purchase Agreement entered into between them. SLDC further stated that provisions under Clause 5.11(b) of M.P. Electricity Balancing and Settlement Code' 2015 is regarding ramping up/ ramping down rates and ratio between minimum and maximum generation levels and it is not for increasing the injection schedule value in the interest and benefit of the generator.
37. On certain dates mentioned by the petitioner in Para 6.3 of the subject petition, SLDC has submitted the appropriate details giving a correct picture on the following:
- (i) The date-wise total injection schedule issued by SLDC as per requisition received from Respondent No. 1.
 - (ii) Injection schedule against sale of power by M/s. Jaypee Bina received through Power Exchange.
 - (iii) Total power scheduled in MW in each block of the day.
38. From the above-mentioned actual and relevant information furnished by SLDC, it is very clear from the total injection schedule of the petitioner's generating unit(s) that the generating unit(s) have actually operated at 'Technical Minimum' level which is 140 MW for one unit and 280 MW for both units as per the petitioner. The

observations of the Commission for the total injection schedule of petitioner's power plant on each date alleged in the petition are as given below:

| S. No. | Date of Scheduling | Total scheduling in MW in each block of a day |
|--------|--------------------|--|
| 1. | 03.11.2016 | 140.71 MW to 141.60 MW |
| 2. | 04.11.2016 | 140.64 MW to 141.60 MW |
| 3. | 12.11.2016 | 141.64 MW to 283.29 MW Unit No. 1 synchronized with Grid on 12.11.2016 |
| 4. | 13.11.2016 | 282.11 MW to 283.29 MW |
| 5. | 14.11.2016 | 280.90 MW to 283.20 MW |
| 6. | 15.11.2016 | 280.91 MW to 283.20 MW |
| 7. | 16.11.2016 | 280.82 MW to 283.20 MW |
| 8. | 19.11.2016 | 280.97 MW to 433.29 MW |
| 9. | 20.11.2016 | 280.97 MW to 283.20 MW |
| 10. | 24.11.2016 | 281.00 MW to 283.29 MW |
| 11. | 25.11.2016 | 280.93 MW to 283.29 MW |
| 12. | 26.11.2016 | 280.93 MW to 283.29 MW |
| 13. | 27.11.2016 | 281.07 MW to 283.29 MW |
| 14. | 28.11.2016 | 280.99 MW to 283.26 MW |
| 15. | 30.11.2016 | 150.73 MW to 283.26 MW |
| 16. | 15.02.2017 | 280.98 MW to 313.08 MW |
| 17. | 16.02.2017 | 281.12 MW to 283.46 MW |
| 18. | 17.02.2017 | 283.46 MW to 313.08 MW |

39. On perusal of the above date-wise details furnished by the petitioner and elaborated by SLDC, it is observed that the petitioner has been able to operate its power plant at a level of generation which was not unsafe and detrimental to the life of the generating units as observed by Hon'ble APTEL in its order dated 15.02.2017 in RP No. 22 of 2016.
40. From the above comprehensive status regarding actual operation of petitioner's power plant, the Commission has noted with deep concern that the petitioner had neither disclosed the complete facts and figures in its grievance before the Hon'ble Appellate Tribunal for Electricity in Review Petition No. 22 of 2016 nor before this Commission in the subject petition.
41. Hon'ble Appellate Tribunal for Electricity in its judgment dated 22nd August' 2016 in Appeal No. 34 of 2016 had deliberated upon and decided all issues related to "Technical Minimum" level of the petitioner's power plant in light of Electricity Act' 2003, National Electricity Policy, Tariff Policy and relevant provisions under PPA executed between the petitioner and respondent in this matter. Some observations

and decisions of Hon'ble Appellate Tribunal for Electricity in its aforesaid Judgment are reproduced below:

| S. No. | Reference of Paragraph in Judgment dated 22.08.2016 by Hon'ble APTEL in Appeal No. 34/2016 | Observations and decision of Hon'ble APTEL |
|--------|--|--|
| 1. | Para 11 (a) (iv) and (v) | <p><i>"We note that the State Commission in its Order dated 07.01.2016 have dealt with every related aspect on the efficient performance of the generating stations and the responsibility thereof and adopted a well reasoned approach in its Order dated 07.01.2016.</i></p> <p><i>Hence this issue is decided against the Appellant".</i></p> |
| 2. | Para 11(b) (v) | <p><i>"Regarding the issue of "Technical Minimum", the State Commission in the Para 13 of the Impugned Order stated that the term/expression i.e, "Technical Minimum" for thermal power plant is not mentioned in any provision of the Power Purchase Agreement executed between the parties in the matter or M.P. Electricity Grid Code or Balancing and Settlement Code notified by this Commission. Moreover, Clause 6.3(b) for Technical Minimum Schedule for "Operation of Generating Stations" in CERC's draft notification is for Inter State Generating Stations (ISGS) whereas, the petitioner's power plant in the subject matter is not ISGS as defined in M.P. Electricity Balancing and Settlement Code and M.P. Electricity Grid Code. In the Para 16, State Commission observed that the use of expression like Technical Minimum by the respondents in the impugned communication has no relevance since the provisions under the PPA executed between the procurer and the petitioner are explicitly clear for commercial and technical obligation to be met by each of them. Besides, the Appellant is responsible at its own expenses for maintaining the technical requirement during operation of the plant while making its obligations under the power purchase agreement. As the Appellant in its petition before the State Commission has not specifically sought the level of Technical Minimum to be identified by the State Commission and only contended that the Technical Minimum to be considered for the Unit and not for the contracted capacity for scheduling purposes, we do find that the State Commission has discharged its role in ensuring efficient and economic operation of electrical system in the State.</i></p> <p><i>Hence this issue is also decided against the Appellant."</i></p> |
| 3. | Para 11(c) (i, ii, iii, iv and v) | <p>i. <i>"Under Section 32 of the Electricity Act 2003, it is provided that the State Load Despatch Centre shall be responsible for optimum scheduling and dispatch of electricity within the State, in accordance with the contracts entered into with the licensees and the generating companies operating in that State.</i></p> <p>ii. <i>The relevant provisions of the PPA dated 05.01.2011 entered</i></p> |

between the procurer i.e. M.P. Power Trading Company Ltd. (now M.P. Power Management Co. Ltd.), Jabalpur and the Appellant are as under:

"1.1 Definitions "Available Capacity" shall mean such the contracted capacity declared available by the Company in accordance with the ABT;

"Contracted Capacity" shall mean the capacity equivalent to 65% of the Phase I (2x250 MW) and 37% of the Phase II (3x250MW) (subject to availability of coal for Phase II 3x250 MW) of Power Station's Installed Capacity contracted with the Procurer as terms of this Agreement

.....
4.3 Right to Contracted Capacity and Scheduled Energy

4.3.3 *If the Procurer does not schedule the whole or part of the Available Capacity for any reason whatsoever, the Company shall be entitled to make available such Available Capacity not scheduled by the Procurer, to any other person without losing the right to receive the Capacity Charges from the Procurer for such unscheduled Available Capacity. During this period, this Company will continue to receive the Capacity Charges from the Procurer. For any such third party sale, all open access charges including losses, as may be applicable, shall not be payable by the Procurer. The Company shall maintain accounts and provide all details regarding price of sale etc. to the Procurer in respect of such sales under this Article.*

4.3.4 *In the cases referred in Article 4.3.3, the sale realization in excess of Energy Charges shall be equally shared by the Company and the Procurer. In the event, the Company makes available such Available Capacity to any direct or indirect Affiliate of the Company/shareholders of the Company without obtaining the prior written consent of the Procurer, the Company shall be liable to make available such Available Capacity to such entity at a tariff being not less than the Tariff.*

4.3.5 *Where the sale under Article 4.3.3 by the Company is consequent to a notice issued by the Procurer to the Company indicating its unwillingness to schedule the whole or part of the Available Capacity for a period specified in such notice, the Procurer shall be entitled to request the Company for the resumption of availability of the Available Capacity at any time, however, the Company shall not be liable to resume such availability earlier than the period specified in the said notice, and subject to the provisions regarding scheduling as per the Grid Code.*

.....
7.1.1 *The Company shall be responsible at its own expense for ensuring that the Power Station is 'operated and maintained in an efficient, coordinated and economical manner and in accordance with all legal requirements, including the terms of all Consents, Clearances and Permits, Prudent Utility Practices, and in particular, the Grid*

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| | | <p>Code, so as to meet its obligations under this Agreement and so as not to have an adverse effect on the Grid operation.”</p> <p>iii. The State Commission while issuing the Impugned Order has considered the above provisions of PPA. The State Commission has observed that the Respondent No. 3 is responsible only up to the contracted capacity of the generating unit as per PPA. Any unscheduled available capacity within the contracted capacity is compensated by way of fixed cost/capacity charges paid by the Respondent No.3 to the Appellant in terms of PPA.</p> <p>iv. Hence we do not find any merit on the issue raised by Appellant on the failure of State Commission in addressing the issue of efficiency of the operation of Appellant’s Power Plant.</p> <p>v. Hence both the above issues are decided against the Appellant.”</p> |
| 4. | Para 11(d) (i) | <p>“The PPA was signed by the Parties for supply of power for 25 years. From the various provisions of the signed PPA, it is evident that intent of PPA was to pay Capacity Charges to the Appellant even without scheduling of power for the contracted capacity from the Appellants plant. Considering the dynamic requirement of power demand/surpluses, it seems that the provision regarding right to contracted capacity and scheduled energy was incorporated in the PPA under Para 4.3. The provisions of PPA under this section deals with the option of providing such Available Capacity not scheduled by the Procurer, to any other person without losing the right to receive the Capacity Charges from the Procurer for such unscheduled Available Capacity. The State Commission while issuing the Impugned Order has considered the various provisions of the PPA including provisions of Para 4.3.”</p> |
| 5. | Para 11(e) (v) to (xii) | <p>v. In the absence of any mandatory provision either under the IEGC notified by the Central Commission or the State Grid Code notified by the State Commission or under any other statutory Regulation, the obligation of Respondent No. 3 to schedule power is traceable only to the PPA executed between Respondent No. 3 and the Appellant. Clause 6.3B (4) of the IEGC also affirms the above in respect of the generating stations other than the Central Sector Generating Stations and Inter State Generating Stations.</p> <p>vi. It cannot be disputed that the Technical Minimum has envisaged the operation of the generating units qua its installed capacity and not in respect of the part of the installed capacity. The issue, however, is not in regard to the quantum of generation that should be undertaken for meeting the Technical Minimum of the generating unit but is in regard to the obligation of a Procurer which had contracted to procure only part and not the whole of the capacity of the generating units.</p> <p>vii. The provisions of the PPA do not contain any mandate on</p> |

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| | | <p>Respondent No. 3 to schedule a specific quantum of electricity, though it provides for payment of fixed charges for any unscheduled available capacity within the contracted capacity. On the other hand, Clause 7.1.1 of the PPA specifically provides that the Appellant shall be responsible to operate and maintain the generating station in accordance with the legal requirements and in particular, the Grid Code.</p> <p>viii. As per IEGC 2016, in order to claim compensation because of lower schedule, provision under Clause 6.3 B (4) provides that “In case of a generating station whose tariff is neither determined nor adopted by the Commission, the concerned generating company shall have to factor the above provisions in the PPAs entered into by it for sale of power in order to claim compensations for operating at the technical minimum schedule”.</p> <p>ix. <i>In view of above in the absence of any statutory requirement or PPA conditions mandating the Respondent No. 3 to schedule minimum quantum of power from the generating unit of the Appellant, the Respondent No. 3 cannot be compelled to schedule at near constant load or the quantum of power to reach the Technical Minimum of 140 MW for the generating unit of the Appellant to operate.</i></p> <p>x. The Appellant must have made necessary arrangements for sale of balance power (other than the contracted capacity of 70 % with the Respondent No 3) so as to avoid any such situations where the unit has to operate below technical minimum causing difficulties in the operation of the Unit and causing financial distress to the Appellant.</p> <p>xi. <i>We do not find any error on the related issues raised by the Appellant in the Impugned Order issued by the State Commission.</i></p> <p>xii. Hence all the issues as above are decided against the Appellant.”</p> |
| 6. | Para 11(f) (i) to (v) | <p>i. <i>Admittedly Respondent No. 3 had contracted to purchase only 70% of the capacity of generating station of the Appellant. In the Impugned order the State Commission has referred to clauses 4.3.3, 4.3.4, 4.3.5 and 7.1.1 of the PPA entered into between the Appellant and Respondent No. 3 and has concluded that on combined reading of the provisions of the PPA, there is no obligation on the part of Respondent No. 3 to maintain the technical requirements as claimed by the Appellant.</i></p> <p>ii. <i>As per Section 32 of the Electricity Act 2003, SLDC have been given the responsibility for optimum scheduling and dispatch of electricity within the State, in accordance with the contracts entered into with the licensees and the generating companies operating in that State.</i></p> <p>iii. <i>In the Impugned Order, the submissions of SLDC have been recorded as under normal conditions scheduling instructions</i></p> |

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| | | <p>to generators are issued considering requisition received from buyers/ beneficiaries. While SLDC cannot increase the schedule of a generator unless there is a requisition from Buyer/Beneficiaries, it can curtail the schedule of the generator in order to have safe and secure operation of grid in case of transmission constraints. The SLDC through affidavit dated 10.12.2015 to the State Commission stated as under;</p> <p><i>“The contention of the petitioner that the SLDC has marginalized its activity to the functions of a Post Office is not true and is not acceptable. As per Clause 31 (2) of the Electricity Act 2003, the State Load Despatch Centre shall not engage in the business of trading in electricity. Accordingly, in normal conditions the injection schedules for generators is issued considering requisitions of buyers/beneficiaries. The injection schedule to the petitioner was issued considering the requisition received from MPPMCL. The SLDC has no power to increase injection schedule of a generator on its own unless there is a requisition from buyer/beneficiary. However, SLDC may curtail the injection schedule of generator and corresponding drawal schedule of buyer(s) in order to operate the system in a secure and reliable manner when there is constraint in the transmission corridor. While finalizing the schedules, SLDC always perform this activity. However, till now SLDC has not encountered with any major transmission constraint in intrastate corridor necessitating curtailment of schedules and on one or two occasions only the drawal by a Short Term Open Access customer was curtailed.”</i> In our view, the optimum scheduling by the SLDC shall mean the scheduling of power with its control area considering the availability of the generators and corresponding requisition from the Buyers/ Beneficiaries of that Generators as per Power Purchase Agreements and considering power transmission corridors’ availability to ensure safe and secure operation of the electrical grid.</p> <p>iv. Hence we do not find any infirmity in the Impugned Order issued by the State Commission on this issue raised by the Appellant.</p> <p>v. Hence both the above issues are also decided against the Appellant. (Emphasis Supplied)</p> |
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42. The allegations/ issues with regard to erratic scheduling raised in the subject petition are directly or indirectly based on the fundamental issue of “Technical Minimum” for safe and efficient operation of power plant which has been settled and decided by the Hon’ble Tribunal for Electricity as mentioned above. It is observed that the petitioner while ignoring the observation and decision of Hon’ble APTEL with regard to commercial and technical obligation of both the parties under

PPA and without disclosing entire facts and figures in this issue of erratic scheduling, has filed the subject petition with this Commission. In other words, the petitioner has preferred to re-agitate on such issues in the subject petition those have been decided by the Commission and also by the Hon'ble Appellate Tribunal for Electricity.

43. In view of all above observations and the facts and figures, the allegations of petitioner on the issue of erratic scheduling are found misplaced and misleading hence not considered by the Commission and decided against the petitioner.
44. On the second issue regarding basis for computation of Merit Order Despatch raised by the petitioner, the petitioner has broadly raised the following issues:
- (i) The petitioner has contented that Merit Order Despatch (MOD) is proposed by Respondent No. 1 on misconceived principle which are contrary to the provisions of M.P. Electricity Balancing and Settlement Code and CERC Tariff Regulations.
 - (ii) The MOD issued by Respondent No. 1 is on total cost i.e. after considering Transmission losses and Statutory Duties and Taxes basis whereas, it should be on energy cost only.
 - (iii) By quoting Regulation 6 of CERC (Ancillary Service Operation Regulation' 2015) the petitioner has submitted that Merit Order Stack is solely prepared on variable charges. As per petitioner, the generating stations having lowest variable charges will be on the top of the stack and will be scheduled prior to other generating station. In addition to variable charges, the nodal agency is also required to consider the ramp up or ramp down rate, response time, transmission congestion, if any while preparing MOD.
 - (iv) The petitioner has also quoted Regulation 22, 23 and 30 of CERC (Terms and Conditions for Tariff) Regulations' 2014 to establish that the Energy Charges are derived from landed cost of fuel including basic price of Fuel, Royalty, Taxes and Duties and its transportation cost by rail/ road or any other means.
 - (v) By mentioning Regulation 5(3) of M.P. Electricity Balancing and Settlement Code, the petitioner has stated that the Merit Order is based on Variable Charges only.
 - (vi) The petitioner has also mentioned this Commission's Tariff Order for determination of Aggregate Revenue Requirement and retail supply tariff for FY 2014-15 in support of its above contention for consideration only energy charges for MoD.
45. Respondent No. 1 (MPPMCL) argued that the decision on the quantum of power required by Respondent No. 1 and schedule every day is decided on the quantum of electricity coming within the Merit Order decided by the Commission. It has

further submitted that the time block during which the said quantum of power is required is communicated by the State Load Despatch Centre. Therefore, the Respondent No.1 is acting in accordance with the provisions under PPA and Scheduling and Despatch Regulation in deciding the above aspects.

46. Respondent No. 1 (MPPMCL) stated that the MOD is prepared by it as per Regulation 5(3) of MPERC (Balancing and Settlement) Code which provides that the individual Merit Order has to be in ascending order of the cost of energy. The expression “Cost of energy” means cost of energy to MPPMCL i.e. the procurer (Respondent No. 1) and it includes variable charges, losses and all taxes.
47. In its notes of arguments filed with the Commission, Respondent No. 1 submitted the following on the legal provisions regarding preparation of MOD:
- (i) Regulation 6.1 to 6.6 of CERC (Ancillary Service Operation) Regulations, 2015 deal with INTER STATE GENERATING STATIONS and UNREQUISITIONED SURPLUS CAPACITIES available with them. It does not define explicitly, the term “Merit Order Despatch (MOD). It only provides for the various factors those may be taken into account while preparing MOD.
 - (ii) Respondent No. 1 further submitted that the aforesaid regulation was published by CERC on 19th August’ 2015 and after that the “**framework**” on the said regulation was published by the Central Commission on 17th September’ 2015 which needs to be read with the main Regulation. In the framework, the Central Commission, while dealing with the comments received on merit order despatch principles has directed in para 3.4, inter-alia as under:

*“ii. The Commission acknowledges the need for taking into consideration other characteristics such as ramp rate, response time and transmission constraints in preparation of the stack of dispatch. **These factors shall be stipulated in the detailed operationalization procedure and shall be accounted for in the final stack besides variable cost based merit order**”.*

(Emphasis supplied)
 - (iii) Respondent No. 1 submitted that in absence of explicit definition of MOD and implied meaning as available in above quoted para, it may be deduced that MOD for a Discom is based on variable charges plus various other cost to avail power which may be taxes, transmission losses and alike. It does not mean the variable charges ex-bus but it means variable cost of energy to the Discom at its periphery. Therefore, the contention of petitioner that MOD should only include the variable charges of the generator is out of place in present context.

- (iv) Respondent No. 1 has further stated that on reading of Regulation 5(3) of M.P. Electricity Balancing and Settlement Code' 2009, the basis of MOD is variable cost to the Discom at its periphery/ doorstep and including all taxes, transmission losses etc. Therefore, the very foundation in the petition that MOD prepared by Respondent No. 1 is in violation to CERC (Ancillary Service Operation) Regulations' 2015 and M.P. Electricity Balancing and Settlement Code is incorrect and out of place.
48. After examination of the aforesaid arguments and counter arguments by the parties in this matter, the Commission has observed the following :
- (i) Regulation 5(3) of M.P. Electricity Balancing and Settlement Code' 2015 notified by this Commission on 18.09.2015 which is one of the legal provision for filing the subject petition provides as under:
- “Merit Order Operation: Discoms or Madhya Pradesh Power Management Company Limited on behalf of Discoms (on receipt of requisition from Discoms) will give their requisitions on day ahead and real time basis as per individual Merit Order i.e. in ascending order of the cost of energy (i.e. variable cost) of Inter State Generating Station, State Area Generating Station excluding Hydro Power Stations, Independent Power Producer and other Long Term, Medium Term Open Access and intra state short term Open Access allocated to individual Discom /Madhya Pradesh Power Management Company Limited”*
- (ii) Further, Clause 8.3.2 of Fourth Amendment to M.P. Electricity Grid Code (Revision-I) 2005 noticed by this Commission on 05.12.2008 provides as under:
- “Merit Order Operation: DISCOMs, will give their requisitions based on the merit order i.e. on **ascending order of cost of energy** of ISGS/ SSGS/ Joint Ventures/ IPPs and bilateral exchanges and collective transaction.”*
- (iii) It is clear from both above mentioned Regulations that the individual Merit order for dispatch is to be prepared in ascending order of the cost of energy instead of only energy charge rate on ex-power plant as contended by the petitioner.
- (iv) The petitioner has also considered the basis of Regulations 22, 23 and 30 of CERC (Terms and Conditions of Tariff) Regulations 2014 in support of its contention on this issue of MOD. The tariff under Section 62 of the Electricity Act'2003 of petitioner's power plant is not determined in terms of CERC

Regulations. The tariff for petitioner's power plant in the subject matter is determined in accordance with applicable MPERC (Terms and Conditions for determination of generation tariff) Regulations for a particular control period. However, the corresponding provisions under Regulations 36.6 and 36.8 provide the formulae for determination of Energy charge rate (ECR) on ex-power plant basis by considering weighted average landed price of primary fuel. Admittedly, the landed cost of fuel for determination of aforesaid ECR include price of fuel including royalty, taxes and duties as applicable and transportation cost of primary fuel/coal. The aforesaid provisions are for determination of Energy charge rate (ECR) on ex- power plant and these provisions are not limiting the cost of energy for preparing MOD by Respondent No.1/ procurer. Based on the same logic that the landed cost of primary fuel/coal including royalty, taxes and duties as applicable is considered for determining Energy charge rate to be recovered by the generator/petitioner, the cost of energy including all taxes, transmission losses etc at its periphery/ doorstep of the procurer/Respondent No.1 is to be considered for ascertaining minimum power purchase cost from each generator in the larger interest of the end consumers of electricity in the state.

- (v) With regard to the contention of the petitioner referring Para 3.60 of this Commission's Retail Supply Tariff order dated 24th May '2014 in Petition No. 04 of 2014, it is made clear that Merit Order Dispatch principles were applied by the Commission on the basis of the cost of energy (variable cost) from the generating station which was considered on the basis of actual bills raised by each generator to the procurer/ Respondent No.1. Therefore, other charges including taxes etc as applicable over and above the actual energy charges for a particular month have been considered by the Commission in the variable cost for applying the MOD principles in the aforesaid order. The aforesaid approach of the Commission is mentioned in Paragraphs 3.68 and 3.69 of the same Retail supply Tariff order quoted by the petitioner.
 - (vi) As mentioned in the preceding paragraphs, Regulations under CERC (Ancillary Service Operation) Regulations, 2015 are neither applicable to the petitioner's power plant nor relevant to the instant issue of MOD in this matter.
49. In view of above observations, the issue raised in the subject petition "regarding MOD being prepared by the Respondent No.1" is decided against the petitioner.

50. **In its submissions subsequent to filing this petition, the petitioner raised another issue that Merit Order stack not being shared with the Petitioner. This issue was not raised in the original petition but it has been raised by the petitioner in oral arguments and also in its written notes of arguments as below:**

“The Merit Order Stack prepared by the Respondent No. 1 is not shared with the generators. The Petitioner has made numerous representations and request to the Respondent No. 1 to share the Merit Order Stack for each month with the Petitioner. It is the contention of the Petitioner that the Merit Order Stack prepared by the Respondent No.1 should be shared with the Petitioner each month, as and when the same is prepared and forwarded to Respondent SLDC for implementation, however, the Respondents have restrained to act in a fair and transparent manner.”

51. On the above- mentioned issue regarding sharing of MOD by the Respondent No.1 with the petitioner, it is observed by the Commission in various submissions made by the petitioner that Merit Order Despatch (MOD) prepared by Respondent No.1 for some months/period in the year 2015 and 2016 have been obtained by the petitioner. The contents and documents filed with the subject petition reveal that the petitioner was given the information regarding MOD for some period. The preparation and implementation of Merit Order Despatch is basically meant for commercial viability and economy in power purchase cost of the Respondent No.1. However, the Merit Order Despatch being prepared by Respondent No.1 for any particular period may be shared with the petitioner on its request.

Issue regarding Wrong implementation of MOD by Respondent No. 1:

52. The petitioner contended that the scheduling done by the Respondent No. 1 is not as per Merit Order Despatch prepared by the Respondent No. 1 and the same is against the principles of MOD which is purely on variable cost. In support of its aforesaid contention, the petitioner has quoted some instances of scheduling done/Reserve Shut Down(RSD) given by Respondent No. 1 in respect of State Generating Thermal Power Stations during a few days in the months of October' 2016 to December' 2016. The petitioner stated that one of the units of Satpura Thermal Power Station , Sarni, which is a State Sector Thermal Generating Station owned and operated by MP Power Generating Company Ltd, was issued “Round-the-Clock Scheduling” (RTC Scheduling) during 27th October' 2016 to 30th October'

2016 and 1st November' 2016 to 11th November' 2016 whereas, the variable cost of STPS Sarni was higher than the petitioner's power plant.

53. The petitioner further stated that Sanjay Gandhi Thermal Power Station, Birsinghpur (SGTPS) which is also a State Sector Thermal Generating Station owned and operated by MP Power Generating Company Ltd, has been given Reserved Shut Down (RSD) from 27th October' 2016 to 30th October' 2016 and 1st November' 2016 to 6th November' 2016 whereas, its variable charges were lower than the petitioner's power plant.
54. The petitioner also mentioned the instance of giving RSD to Shri Singhaji Thermal Power Station, Khandwa (SSTP, a State Sector Thermal Generating Station owned and operated by MP Power Generating Company Ltd) during 7th November' 2016 to 11th November' 2016 whereas, the variable charges of this power plant was lower than the petitioner's power plant.
55. While mentioning above instances during October' 2016 to December' 2016, the petitioner contended that Respondent No. 1 gave preference to more expensive State Generating Station for scheduling and had given RSD to cheaper State generating thermal power stations. As per the petitioner, the Respondent No. 1 has acted in complete contravention of the MOD principles.
56. Respondent No. 1 in its written submission denying the above allegations of the petitioner stated that the petitioner has referred to the above aspects/ instances in a simple manner contrary to the fact that the decision on sourcing of electricity under the Merit Order Despatch also involved the following factors:
 - (i) Geographical location of the generating stations
 - (ii) Load centre
 - (iii) Transmission constraints raised on certain specific line for evacuation of power from the generating station to the load centre,
 - (iv) The availability of transmission capacity from a generating station upto the load centre within a specific geographical location
 - (v) At the same time, the non-availability of the transmission system for evacuation of power from some generating station to a different load centre
 - (vi) All other aspects which are dynamic in nature.
57. The Respondent No. 1 stated that the aforesaid aspects were agitated by the petitioner in earlier proceeding before the Hon'ble Appellate Tribunal for Electricity

also. On the issues of Reserve Shut Down given to some State Owned Generating Stations, Respondent No. 1 submitted that the petitioner cannot compare the status of SGTPS, Birsinghpur or similar stations which are earmarked for Respondent No. 1 for reserve shut down for the reason that the entire capacity of such generating stations is exclusively for the benefit of Respondent No. 1 only. Therefore, the Respondent No. 1 is in a position to direct shut down for such stations on an emergent and immediate basis. Respondent No. 1 further stated that similar treatment cannot be given to those generating stations having only a part of their installed capacity contracted with the Respondent No. 1.

58. In response to the above submissions by Respondent No. 1, the petitioner submitted that the aforesaid contention of Respondent No. 1 is legally untenable and also devoid of logic in terms of M.P. Electricity Grid Code and M.P. Electricity Balancing and Settlement Code which do not enable Respondent No. 1 to give any special dispensation to State Owned Generating Station (SSGS) or to a generating station having 100% capacity tie-up with Respondent No. 1. The petitioner also contended that the Electricity Act or the Regulations in no manner indicated that the State Transmission Companies (STCs) and DISCOMs shall act only to promote State Generating Stations and giving preference to SGTPS, Birsinghpur or similar State Generating Stations.

59. Respondent No. 1 in its reply to the above allegations submitted the following:

“MPPMCL prepares schedule for 96 time blocks based on 96 MOD cut off points, the petitioner’s generating station is having high rank in MOD and as such receives Maximum Schedule during System Peak only and, vise-a-vis, during lean demand period the cut off of MoD is low and as such the generating station does not qualify for schedule. MPPMCL on day ahead basis, communicates the quantum of schedule provided to petitioner as per Balancing and Settlement Code. The allegation of erratic scheduling is denied by respondent, in view of the PPA.

Further the petitioner’s perception that MPPMCL is providing uneconomical schedule by giving RSD to just next cheaper power of State/ MPGENCO owned plants is not correct as average ECR is not applicable for all 96 time block. MPPMCL avails costly power for only 16 time block out of 96 time block and remaining 80 time blocks schedules power from much lower ECR Plants than RSD plants. Therefore, overall economy is achieved by MPPMCL. Otherwise, RTC schedule is to be provided to State Generation

plant those are bound to supply power to MPPMCL. During lean demand during a day power scheduling is upto ECR of Rs. 1.70/kWh, which is much lower than petitioner's plant."

60. On this issue of giving RSD to cheaper state generating stations and scheduling costlier state generating stations, Respondent No. 3 i.e. SLDC MP submitted that the allegations made by the petitioner are incorrect and misleading. SLDC further submitted that it is the responsibility of SLDC under the provisions of M.P. Electricity Grid Code and IEGC to look into the system parameters in order to operate the system in safe, secure and reliable mode. It has further submitted that the system studies have been carried out by SLDC for the month of October' 2016 to December' 2016 considering the prevailing system conditions and projected demands as furnished by Respondent No. 1. SLDC further submitted that the loading on various critical elements (various ICT's) for the month of October' 2016 to December' 2016 were studied by SLDC.
61. The Respondent No. 3 i.e. SLDC has also filed the details of loading on various ICT's (Annexure III of its first reply) for the month of October' 2016, November' 2016 and December' 2016 indicating following two cases/scenario:
- (i) The loading of ICTs when units No. 6 and 7 of STPS, Sarni is in service and;**
 - (ii) The loading on ICTs when unit No. 6 and 7 of STPS Sarni is out of service.**
62. From the table of loading on various ICTs during October' 2016 to December' 2016 in both of the above scenarios, it is observed that the loading on each ICT has increased as and when Unit No. 6 and 7 of STPS Sarni is considered out of service. Based on the above system studies carried out by it, SLDC submitted the following by its affidavit dated 06.05.2017:
- (i) From the study results, it may be seen that the loading on 500 MVA, 400/220 KV ICT at Sarni, 315 MVA ICT at Itarsi and 315 MVA ICTs at Bhopal were at quite high level if Unit No. 6 & 7 were not considered on bar at STPS Sarni. In such conditions, operating the system was not safe, secure and reliable.
 - (ii) On tripping of any of the transformer might have led to a major system disturbance. In view of such conditions, MPPMCL was advised to keep at least one unit i.e, Unit No. 6 or 7 (at 220 KV system) at bar all the time to keep the Grid in safe mode.

- (iii) During the period disputed by the petitioner, only one unit i.e, Unit No. 6 or Unit No. 7 was kept on bar for Grid reliability point of view even though both units were available for most of the time. Hence, the contention of the petitioner for scheduling the power from STPS Sarni, overlooking the MOD is totally misleading and incorrect.
 - (iv) The contention of petitioner as mentioned in Para 7.2(c) (iii) for giving Reserve Shut Down to STPS Sarni despite having lower variable charge, is misleading and incorrect because during this time either Unit No. 6 or Unit No. 7 at STPS Sarni were kept continue on bar for system reliability point of view.
63. In its rejoinder to the above reply filed by Respondent No. 2/3, the petitioner submitted that in order to assess the authenticity and legitimacy of the aforesaid contention of SLDC, the petitioner has sought the opinion of some private person and as per the opinion given by him, the contention made by Respondent SLDC are contrary and self defeating, as the data submitted by Respondent SLDC vide Annexure III of its reply does not justify the contentions made by it. The petitioner has filed a copy of opinion obtained by it from the private person. The petitioner has also submitted a copy of system studies carried out by the private person on the request of petitioner in this matter. The petitioner has contended that the aforesaid submissions of Respondent SLDC are based on conjectures and surmises without conducting a proper system study. The petitioner also submitted that the Respondent SLDC should have taken action to install the second ICT at these sub-stations so as to make system secure.
64. SLDC (Respondent No. 2/3) broadly submitted the following in response to the above submission by the petitioner,:
- (i) *The system study, as submitted by the petitioner, has been carried out through some unauthorized person and proves the above intention of the petitioner. Such study cannot be accepted in the interest of the safe & secure system operation.*
 - (ii) *It is mentioned in the study report that even after outage of ICT at Sarni, the system is convergence and may run smoothly. However 342 MW flow at Sarni ICT has been accepted in the study after removing unit No. 6 & 7 at Sarni.*

- (iii) *It is to be submitted that even after removing unit no. 6 & 7, system may be convergence as per study and even after it may run after tripping of ICT at Sarni, the same cannot be accepted as in real time the system cannot be put to run with risk. It is therefore utmost necessary to keep unit No. 6 or Unit No. 7 on bar in prevailing conditions even though it was costlier than Jaypee Bina.*
- (iv) *System operation is always above the commercial issues which is the accepted fact in the power sector and cannot be compromised.*
- (v) *In the study report submitted by the petitioner, it is not clear how much of State generation they have considered, what are loadings on the nodes, what are the inter-state power flow conditions, what are the network conditions and so on. Further, it has also been recorded in the study report that PSS/E Software and data used in studies will not be shared, which clearly indicates that such study report cannot be accepted for purpose of safe & secure system operation.*
- (vi) *It is further submitted that the system studies at SLDC is carried out considering the updated system network and data in line with system studies carried out by NLDC and other LDCs by using the PSS/E software provided by the POSOCO.*
- (vii) *It is also pertinent to mention here that the unit No. 6 & 7 at STPS, Sarni are connected at 220 KV level. It is quite obvious that any injection of power at 220 KV level in the area of Sarni, Itarsi or Bhopal will support the grid as far as system reliability is concerned looking to the power flow from 400 KV network to 220 KV network. Even without conducting the study no system operator can take the risk by isolating the generation at 220 KV level in such scenarios wherein such injection is helping the reliability of the system.*
- (viii) *It is surprising that such generation at 220 KV level by unit No. 6 or unit No. 7 at STPS, Sarni, obviously helping reliability of the system, has been ignored in the system study carried out for the petitioner. It will not be out of place to mention here that only one of the unit from unit No. 6 & 7 at STPS Sarni has been put on bar to keep the system in safe, secure and improved reliability mode and to avoid any chance of system occurrence in case of N-*

1 condition, even though at many occasions both the units were available to inject the power into the grid.

- (ix) *In the study report submitted by the petitioner it is mentioned that system strengthening may be carried by the STU for meeting out N-1 contingency. In this regard it is submitted that the system strengthening is a routine practice and is being done as per system requirement, however for completion of any project, it consumes a certain time period.*
- (x) *Further, the opinion is not dated, hence cannot be accepted. The opinion does not enjoy any seal, statutory authority, recognition or reliability. The opinion maker does possess a license in his favour to use and run the PSS/e by Siemens International. Experience and expertise on working on the said software is also not disclosed. The opinion is uncalled for by a stranger to present proceedings without due leave of Hon'ble Court. Hence, should not be taken on record. Such, an unethical practice on the part of the Petitioner as well as the opinion maker is extemporaneous. The opinion, as its last page, finds a note appended to it as "[Note: PSS/e software and data used in studies will not be shared]". In view of the said note, the opinion cannot be put to test and acceptance in this proceeding.*
- (xi) *The pleadings, information and data as made by MPPTCL and SLDC in their reply dated 6th May, 2017 are still not public documents till the same have been considered by the Hon'ble Commission and a final order is passed in the petition. Sharing of such pleadings, information and data by the Petitioner at this stage with a stranger to the proceedings, is highly unethical, objectionable and deprecable.*

65. On going through the submissions filed by the petitioner and all respondents in the matter, the findings of the Commission are as given below;

- (i) The functions of State Load Despatch Centre under Section 32 of the Electricity Act, 2003 are as given below:
 - “(1) *The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.*
 - (2) *The State Load Despatch Centre shall –*
 - (a) *be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts*

- entered into with the licensees or the generating companies operating in that State;*
- (b) monitor grid operations;*
 - (c) keep accounts of the quantity of electricity transmitted through the State grid;*
 - (d) exercise supervision and control over the intra-State transmission system; and*
 - (e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.”*

(ii) Section 33(1) of the Act provides as under:

“The State Load Despatch Centre in a State may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in that State.”

66. From the above provisions, it is explicitly clear that the State Load Despatch Centre is conferred with the responsibility of ensuring integrated operation of the power system in the State and also for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State Grid in accordance with the Grid Standard of the State Grid Code. Therefore, the functions of the State Load Despatch Centre is to be discharged by SLDC only. Moreover, secured and safe operation of Intra state power system is the primary responsibility of SLDC. Further, SLDC is entrusted with the scheduling of power within its control area considering the availability of the generators and corresponding requisitions from the Buyers/ Beneficiaries of those generators as per PPA while considering transmission constraints/ loading/ availability to ensure safe and secured operation of the electrical grid. Hon'ble Appellate Tribunal for Electricity has also considered the aforesaid aspect in Para 11(f)(iii) of its Judgment dated 22nd August' 2016 in Appeal No. 34 of 2016.
67. Regulation 5 (5) of M.P. Electricity Balancing and Settlement Code, 2015 provides as under:
- “The Generation Schedule of each State Area Generating Station shall be sum of the requisitions made by each Discom, restricted to their*

Entitlement and subjected to maximum and minimum Value criteria or any other technical constraints indicated by State Load Despatch Centre.”

68. Regulation 5(11) (a) and 5(12) of the M.P. Electricity Balancing and Settlement Code, 2015 provides as under:

*“(11) The following specific points would be taken into consideration while preparing the Schedules: (a) State Load Despatch Centre shall check that the **resulting power flows do not give rise to any Transmission constraint. In case of any constraints, State Load Despatch Centre shall moderate the Schedule to the required extent by intimation to concerned Discoms.”***

*“(12) While preparing Generation Schedules, **State Load Despatch Centre shall keep in view the Transmission system constraints and provision of operating margins (reserves) and limitations on generation as provided in the Indian Electricity Grid Code and Madhya Pradesh Electricity Grid Code.”***

(Emphasis supplied)

69. In view of the above provisions, the system constraints stated by SLDC while scheduling power from one of the units of STPS Sarni or giving RSD to other SSGS are considerable to maintain the grid stability/ reliability.
70. In terms of the provisions under Clause 5.6.4, 9.5.2 and 9.5.4 of the M.P. Electricity Grid Code, Respondent No. 2 and 3 in this matter i.e. State Transmission Utility and State Load Despatch Centre are entrusted to carry out load flow studies/ system studies for effective operation of the State Transmission System. Therefore, the system studies for ensuring safe and secure operation of the State Transmission System is solely under the domain of STU or SLDC to discharge their functions under Section 32 and 33 of the Electricity Act, 2003 and also under the provision of M.P. Electricity Grid Code. The system study which is submitted by the petitioner and carried out through a private person without any authority is found unwarranted and irrelevant in terms of the above mentioned provisions of Electricity Act and M.P. Electricity Grid Code. The Commission has further observed that the Merit Order stack is required to be prepared as defined under applicable M.P Electricity Grid Code and M.P. Electricity Balancing and Settlement Code, 2015. However, to avoid unsafe, unsecured and unreliable operation of the power system, SLDC has discharged its functions in the instances quoted in the subject petition in respect of Scheduling and giving RSD to State

Generating Stations as and when required on account of Technical constraints after carrying out system studies by SLDC. Thus, the contention of the petitioner on this issue of wrong implementation of MOD by Respondent No.1 is found having no merit hence, decided against the petitioner.

71. Apart from the contention of the petitioner in its original petition, the petitioner in its subsequent submissions mentioned about the Detailed Operating Procedures (DOP) issued by CERC on 5th May' 2017 pursuant to Sub clause 6 and 7 of Clause 6.3 (B) in 4th Amendment to Indian Electricity Grid Code notified by Central Commission on 6th April' 2016. The Commission has observed that the applicability of Clause 6.3(B) to the petitioner's power station in aforesaid amendment to IEGC is clearly mentioned under sub-clause 4 of Clause 6.3(B). The issue of applicability of petitioner's power plant in the aforesaid provision under 4th Amendment to IEGC has been decided by the Hon'ble Appellate Tribunal for Electricity in Para 11 (e) (v) to (xii) of its Judgment dated 22nd August' 2016 in Appeal No. 34 of 2016. Therefore, the contention of the petitioner by mentioning the said Detailed Operating Procedure issued by CERC is misplaced and irrelevant to the subject petition.
72. In view of the all aforesaid discussions, observations and findings of the Commission on each issue mentioned in the prayer of the subject petition, the Commission does not find any merit in the contention of the petitioner hence, this petition is dismissed.

(Alok Gupta)
Member

(A.B.Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman

Place:- Bhopal
Dated:- 7th July' 2017