

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Subject: - In the matter under Section 61 read with Section 62 and 86(1)(b) of the Electricity Act, 2003 read with the CERC (Terms and Conditions of Tariff) Regulations, 2014 and the order of this Hon'ble Commission in Petition No. 78 of 2012 dated 01.12.2012.

Petition No. 35/2016

ORDER

(Date of Order: 23rd August, 2017)

M.P. Power Management Company Ltd.,
Shakti Bhawan, Rampur, Jabalpur – 482008 (M.P.)

Petitioner

V/s

M/s. PTC India Ltd.
2nd Floor, NBCC Tower, 15,
Bhikaji Cama Place, New Delhi – 110 006

AND

M/s. LANCO Amarkantak Power Ltd.
Lanco House, Plot No. 397, Udyog Vihar,
Phase-III, Gurgaon- 122 016 (Haryana)

Respondents

M.P. Power Management Co. Ltd., Jabalpur (hereinafter referred to as MPPMCL or petitioner) filed the subject petition on 27.05.2016. Subsequently, the petitioner filed a revised petition on 29.06.2016 on account of certain defects observed in its original petition. The subject petition is filed under Section 61 read with Section 62 and 86(1)(b) of the Electricity Act, 2003 and CERC (Terms and Conditions of Tariff) Regulations, 2014 seeking the following:

“Approval of purchase of power including the price at which electricity shall be procured from PTC India Limited (PTC) by the Petitioner under the Power Sale Agreement dated 30.05.2005 (PSA) executed between the erstwhile MPSEB and PTC, which has been sourced from the 300 MW Unit I of Lanco Amarkantak Power Limited (Lanco) under the Power Purchase Agreement dated 11.05.2005 (PPA) executed between PTC & Lanco, pursuant to a Settlement Agreement dated 16.09.2012 executed between the Petitioner and the Respondent herein.”

2. In the subject petition, the petitioner broadly submitted the following:

“(i) The present Petition is being filed for approval of purchase of power including the price at which electricity is procured by the petitioner

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herein through M/s PTC India Ltd. ('Respondent No. 1') under the Power Sale Agreement dated 30.05.2005 ('PSA') executed between the erstwhile MPSEB and PTC, which has been sourced from the 300 MW Unit I of Lanco Amarkantak Power Limited ('Lanco') under the Power Purchase Agreement dated 11.05.2005 ('PPA') executed between PTC & Lanco, pursuant to a Settlement Agreement dated 16.09.2012 executed between the Petitioner and the Respondents herein.

- (ii) *The instant petition is in furtherance of the order dated 01.12.2012 in Petition No. 78 of 2012, vide which this Hon'ble commission has accorded approval to the process of procurement of power and has determined the annual fixed cost and the energy charges as per relevant provisions of the Central Electricity Regulatory Commission (Terms and Conditions for determination of Tariff) Regulations, 2009 ('CERC Tariff Regulations, 2009'), under the Settlement Agreement and Implementation mechanism filed by the Petitioner herein under Section 86 (1) (b) of the Electricity Act, 2003 ('Order of 2012'). The annual fixed cost was determined by this Hon'ble Commission as Rs 314.05 crore for the Financial Year (FY) 2012 – 13. A copy of the order of this Hon'ble Commission dated 01.12.2012 is marked as Annexure – 1.*
- (iii) *With the issuance of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014, which regulations have come into force on 01.04.2014 ('CERC Tariff Regulations, 2014') and shall remain in force for the period of five years from 01.04.2014 to 31.03.2019, the Petitioner is filing the instant application under Section 86 (1) (b) read with Section 61 of the Electricity Act, 2003 for fixation of annual fixed cost and energy charges for the FY 2014 to FY 2019. A copy of the CERC Tariff Regulations, 2014 is marked as Annexure – 2.*
- (iv) *The relevant facts of the case, leading to the filing of the instant Petition are as under:-*

 - (a) *Lanco and PTC entered into a PPA on 11th May, 2005 for supply/purchase of power from LANCO Unit No.1 having capacity of 300 MW at Village Pathadi, District Korba, Chattisgarh. A copy of the PPA dated 11.05.2005 is marked as Annexure - 3.*

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- (b) *PTC and MPSEB (now MP Power Management Co. Ltd.) who had been assigned the job of procurement of power on behalf of the Discoms of the state entered into a PSA on 30.05.2005 for supply of power from Unit No.1 of 300 MW of LANCO. A copy of the PSA dated 30.05.2005 is at Annexure – 4.*
- (c) *This Hon'ble Commission was approached by the MPSEB for approval of the PSA between MPSEB and Respondent No.1. The Hon'ble Commission vide order dated 07.03.2008 granted in principle approval to the PSA between PTC and MPSEB. A copy of the order of this Hon'ble Commission dated 07.03.2008 is at Annexure – 5.*
- (d) *On 14.03.2008, LANCO served termination notice to PTC in respect of PPA signed with PTC. Following which, on 31.03.2008 the Hon'ble High Court of MP restrained LANCO from giving effect to the termination notice in W.P. 4103/08 filed by the M.P. Power Trading Company. Thereafter, on 06.05.2008, this Hon'ble Commission passed another order allowing provisional tariff of 220 paise per unit (levelled), which tariff was 95% of the tariff as indicated in the PPA. At the same time this Hon'ble Commission observed that irrespective of LANCO's refusal to submit to MPERC jurisdiction, MPERC has jurisdiction to determine their tariff and approve the PSA in this case. On 16.06.2008, the Hon'ble High Court of MP dismissed the interim application filed by LANCO seeking vacation of the interim stay granted on 31.03.2008 in W.P. 4103/08. On 21.10.2008, the Hon'ble APTEL on the Appeal of LANCO (No.71/2008) set aside MPERC order dated 06.05.2008 deciding that this Hon'ble Commission has no jurisdiction to determine the generation tariff of M/s. Lanco in this case. Subsequently, the order of APTEL dated 06.05.2008 was challenged before the Hon'ble Supreme Court by M.P. Power Trading Company vide Civil appeal No. 6676 of 2008, MPERC vide Civil Appeal No. 1335/2009 and PTC vide Civil Appeal No. 7379/2009. Meanwhile, LANCO filed a Writ Appeal No. 687/2008 before the Hon'ble High Court of MP challenging the earlier order of the Hon'ble High Court of MP. On 29.06.2009 the Hon'ble High Court ordered that the petition of the M.P. Power Tradeco (W.P. 4103/08) in the subject matter was not maintainable. M.P. Power Trading Company*

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challenged the Hon'ble M.P. High Court's order through SLP 16101/2009 before the Hon'ble Supreme Court and on 08.04.2010 the Hon'ble Supreme Court dismissed this SLP. PTC had approached this Hon'ble Commission vide petition no. 55/2008 to adjudicate the dispute between PTC and LANCO. MPERC adopted the Hon'ble High Court's stay and passed an order on 25.08.2008 stating that the MPERC has jurisdiction to adjudicate the dispute. MPERC order dated 25.08.2008 was challenged by LANCO before the Hon'ble APTEL vide Appeal No.7/2009. The Hon'ble APTEL on 06.08.2009 set aside MPERC order dated 25.08.2008. That M/s Lanco Amarkantak Power Ltd. achieved the CoD for their Unit-I of 300 MW on 09.04.2010 and the supply is ready to be availed. A copy of the letter of termination dated 31.03.2008 read with orders dated 06.05.2008, 16.06.2008, 21.10.2008, 29.06.2009 and 08.04.2010 is marked as Annexure – 6 (Colly.)

- (e) *M.P. Power Management Company Ltd. had filed a petition before this Hon'ble Commission under Section 86 (1) (b) of the Electricity Act, 2003 for determination of Annual Capacity Charges and Energy Charges for 300 MW contracted power from PTC India Ltd. sourced from 300 MW Unit-1 of Lanco Amarkantak Power Ltd. for FY 2014-19. That, the Petitioner herein had filed Petition bearing number 78 of 2012 before this Hon'ble Commission under Section 86(1)(b) of the Electricity Act, 2003 for approval of procurement of 300 MW contracted power, from PTC India Ltd. by the petitioner under the PSA dated 30.05.2005 executed between the erstwhile MPSEB and PTC, which has been sourced from 300 MW unit 1 of Lanco Amarkantak Power Ltd. under the PPA dated 11.05.2005 executed between PTC and Lanco, pursuant to the Settlement Agreement dated 16.10.2012 signed amongst the Petitioner and Respondents. A copy of the Petition filed by is marked as Annexure -7.*
- (f) *That, it is stated, during the hearing of the Petition bearing number 78 of 2012, that there has been a Settlement Agreement between the Petitioner, Respondent No. 1 and Respondent No. 2 whereby certain amendments in the earlier PPA between the Respondent No. 1 & 2 and consequently in the PSA between the Petitioner and the Respondent No. 1, have been agreed.*

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The parties in the matter i.e. the Petitioner, Respondent No. 1 and Respondent No. 2 have agreed in the Settlement Agreement to resolve the dispute. Therefore, all disputes between the Petitioner and the Respondents herein were resolved by stating to withdraw all disputes raised / and were pending at that point in time before various fora. The parties herein also submitted the Settlement Agreement to the Hon'ble Supreme Court of India. A copy of the Settlement Agreement is marked as Annexure-8.

- (g) *This Hon'ble Commission vide order dated 01.12.2012, accorded approval to the process of the subject power procurement under the Settlement Agreement and Implementation Mechanism filed by the Petitioner herein under 86 (1) (b) of Electricity Act 2003 read in line with the CERC Tariff Regulations, 2009. The Hon'ble Commission vide the said order, determined annual fixed cost and energy charges for the period 2012-13 as per the relevant provisions of the CERC Tariff Regulations, 2009. That, the petitioner by way of the Petition No. 78 of 2012 requested the Hon'ble Commission to determine the annual capacity charges and energy charges for the year 2013-14 as per relevant provisions of CERC Tariff Regulations, 2009, for which determination of tariff, the cost data and other relevant information was submitted by Lanco, PTC and MPPMCL before the Hon'ble Commission for determination of tariff for year 2013-14.*
- (h) *Following the order of this Hon'ble Commission in Petition No. 78 of 2012, the Petitioner herein approached this Hon'ble Commission by way of a petition No. 04 of 2015 under section 86 (1) (b) of the Electricity Act, 2003 for determination of Annual Capacity Charges and Energy Charges for 300 MW contracted power from PTC India Ltd, sourced from 300 MW Unit-1 of Lanco Amarkantak Power Ltd. for FY 2013-14. However, the said petition was disposed of by way of order dated 12.02.2015. A copy of the order of this Hon'ble Commission dated 12.02.2015 is marked at Annexure – 9.*
- (v) *It is submitted that this Hon'ble Commission vide order dated 01.12.2012, in Petition No. 78 of 2012 has accorded approval to the process of the subject power procurement under the Settlement Agreement and Implementation Mechanism filed by the Petitioner herein under 86 (1) (b) of Electricity Act 2003*

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read in line with the CERC Tariff Regulations, 2009 for the year 2012-13. It is further stated that the Petitioner by way of the Petition No. 4 of 2015 had requested the Hon'ble Commission to determine the annual capacity charges and energy charges for the year 2013-14 as per relevant provisions of CERC Tariff Regulations, 2009 which has been disposed of by way order dated 12.02.2015. It is stated that the control period provided under the CERC Tariff Regulations, 2009 control period expired with the issuing of the CERC Tariff Regulations, 2014.

(vi) *It is submitted that the existing tariff, as determined by this Hon'ble Commission was based on the cost data and other relevant information submitted by the Respondents herein before the Hon'ble Commission, for the year 2012-13 and 2013-14 only. The cost data and relevant information relating to FY 2012-13 and 2013-14 were submitted therein with an object of aligning the tariff block period with the five years tariff block period as followed by Hon'ble CERC. In this regard, it is pertinent to note the following observations made by this Hon'ble Commission.....*

(vii) *M/s Lanco, through PTC (1) Ltd. has submitted the cost data and relevant information for FY 2014-2019, as prescribed under CERC (Terms and conditions of Tariff) Regulation 2014, which is marked as Annexure – 10. The summary sheet of this information is reproduced at Annexure – 11.*

(viii) *The Petitioner most respectfully prays that, this Hon'ble Commission be pleased to determine tariff as per the provisions of the CERC Tariff Regulations, 2014 which are now applicable to the parties herein, for sale and purchase of power in terms of the Settlement Agreement read with the PPA and the PSA. It is further submitted that this Hon'ble Commission is tasked with the duty to determine tariff in terms of the Electricity Act, 2003, the prevailing Tariff Policy and National Electricity Policy.*

(ix) *It is stated that in exercise of powers conferred under section 178 of the Electricity Act, 2003 read with section 61 thereof and all other powers enabling it in this behalf, and after previous publication, the Ld. CERC issued the CERC Tariff Regulations, 2014. The CERC Tariff Regulations, 2014 provide that the CERC Tariff Regulations, 2014 come into force on 01.04.2014, and unless reviewed earlier or extended by the Ld. CERC, shall remain in force for a period of five years from 1.4.2014 to 31.3.2019;*

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and the procedure for determination of tariff has been provided in Chapter – 3 of the said CERC Tariff Regulations, 2014.

- (x) *It is stated that this Hon'ble Commission is duty bound to determine tariff in line with the CERC Tariff Regulations, 2014 read with Section 61 and Section 86 (1) (b) of the Electricity Act, 2003 for the Power Project. Therefore, in the light of the above stated provisions, this Hon'ble Commission may be pleased to determine the tariff in light of the submission made in the present petition and the prayer sought in that regard.*
- (xi) *The Petitioner further declares that, it has not previously filed any petition or suit regarding the matter in respect of which the present Petition has been made, before this Hon'ble Commission, or any other court or any other authority, nor any such writ petition or suit is pending before any of them.*
- (xii) *In the facts and circumstances as stated above, the Petitioner respectfully prays before this Hon'ble Commission to:*
- (a) Admit the said Petition;*
 - (b) Fix the annual fixed charges and energy charges for FY 2014 – 19 under Section 86 (1) (b) of the Electricity Act, 2003 in accordance with CERC (Terms and conditions of Tariff) Regulation 2014, and*
 - (c) Pass such other or further orders as may be deemed fit and proper in the facts and circumstances of the case.”*

3. Motion hearing in the subject matter was held on 23rd August' 2016 when the Counsel appeared on behalf of petitioner was asked to clarify certain necessary issues by 14th September' 2016 before admission of this petition. During the course of aforesaid motion hearing, it was also observed that the petition was not filed with appropriate fee in this matter. The case was again listed for motion hearing on 20th September'2016.

4. On 20th September' 2016, the petitioner filed its reply to the clarifications sought by the Commission. Issue-wise reply filed by the petitioner is as given below:

Issue:

The petitioner had invoked Section 86(1)(b) of the Electricity Act, 2003 in its earlier Petition No. 78 of 2012 and Petition No. 4 of 2015 whereas, it has for

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the first time invoked Section 61 and 62 of the Electricity Act also in the subject petition. The reasons for invoking Section 61 and 62 of the Act against the provisions under Clause 3.0 of Settlement Agreement be submitted. Clause 3.0 of Settlement Agreement provides that:

*“Immediately upon the signing of this Settlement Agreement, MPPMC shall file an application before MPERC for approval of the power procurement process, including the price at which electricity would be procured, **under clause (b) of Section 86(1) of Electricity Act, 2003 for power supplied from the Project by PTC to MPPMC.** The Company shall make available to PTC, so as to enable information, data, documents, etc., as generally required in such cases or specifically directed by MPERC, to enable MPERC to exercise its functions under the Electricity Act, 2003. **(Emphasis Supplied)**”*

Response by MPPMCL:

“(i) The Settlement Agreement has been placed on record by the Petitioner as Annexure P – 5 of the Petition. It is pertinent to state that the said Settlement Agreement was executed between the Petitioner, Respondent No. 1 and Respondent No. 2 towards implementation of the back-to-back arrangement for purchase of power by the Petitioner, via Respondent No. 1 from Respondent No. 2.

(ii) That with respect to tariff for sale and purchase of such power, it was agreed under the Settlement Agreement as under:-

“2. ...

Tariff shall be decided as per applicable CERC Tariff Regulations without any cap on tariff. The Capital Cost, as informed by the Company for tariff is Rs. 1236.40 Crore which has been arrived after reducing / adjusting revenue from infirm power up to COD, i.e. 09.04.2010, in accordance with the methodology contained in the applicable CERC Tariff Regulations. The same shall be subject to prudence check by MPERC.

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The variable cost shall be determined in terms of the methodology contained in the applicable CERC Tariff Regulations. The formula for deriving the variable cost as pass through shall consider the weighted average landed cost of coal from all sources.

.....

3. *Regulations of electricity procurement under PSA by MPERC*

Immediately upon signing of the Settlement Agreement, MPPMCL shall file an application before MPERC for approval of the power procurement process, including the price at which electricity would be procured under clause (b) of Section 86 (1) of the Electricity Act, 2003 for power supplied from the Project by PTC to MPPMCL. The company shall make available to PTC, so as to enable PTC to submit the Implementation Mechanism to MPERC, as also all information, data, documents, etc. as generally required in such cases or specifically directed by MPERC, to enable MPERC to exercise its functions under the Electricity Act, 2003. The flow of power from the Project to MPPMC would commence immediately upon MPERC granting its approval to the power procurement process, including the price therein.

(iii) *In light of the above stated clauses of the Settlement Agreement, it is clear that the parties to the Settlement Agreement would approach this Hon'ble State Commission for determination of price of sale of electricity pursuant to the applicable CERC Tariff Regulations, which change in every five years.*

(iv) *Further, under the scheme of the Electricity Act, 2003, price fixation as a function is guided by the principles contained in Section 61 of the Electricity Act, 2003, which under sub-clause (i) include the Tariff Policy. Hence, while exercising the functions of price fixation under Section 86 (1) (b), this Hon'ble State Commission must consider the tariff regulations, which tariff regulations as per Clause 3.0 of the Settlement Agreement will be for the relevant control period. Hence, the reference to Section 61 is merely referral in nature and not towards exercising of a substantive power. The State Commissions substantive power to fix price is under Section 86 (1) (b). Furthermore, the reference to Section 62 of*

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the Electricity Act, 2003 is also for the purposes of mere reference to the power of the Hon'ble State Commission to call for records from the Generating Company and the Distribution Licensee while determining tariff pursuant to an agreement. It is pertinent to note that the term "tariff" per se is not defined in the 2003 Act. The term "tariff" includes not only the fixation of rates but also the rules and regulations relating to it, as prescribed under the 2003 Act. If one reads Section 61 with Section 62 of the 2003 Act, it becomes clear that the Appropriate Commission shall determine the actual tariff in accordance with the provisions of the Act, including the terms and conditions which may be specified by the Appropriate Commission under Section 61 of the said Act.

(v) *The Supreme Court in the case of PTC v. CERC by order dated 15.03.2010 in Civil Appeal No. 3902 of 2006 stated that the scope and nature of Section 61 of the Electricity Act, 2003 in the following words:-*

"6. The 2003 Act contains separate provisions for the performance of the dual functions by the Commission. Section 61 is the enabling provision for framing of regulations by the Central Commission; the determination of terms and conditions of tariff has been left to the domain of the Regulatory Commissions under Section 61 of the Act whereas actual tariff determination by the Regulatory Commissions is covered by Section 62 of the Act. This aspect is very important for deciding the present case. Specifying the terms and conditions for determination of tariff is an exercise which is different and distinct from actual tariff determination in accordance with the provisions of the Act for supply of electricity by a generating company to a distribution licensee or for transmission of electricity or for wheeling of electricity or for retail sale of electricity."

(vi) ***It is submitted that the Petitioners' objective for relying on Section 61 and 62 should in manner be construed as reliance not to be contrary to Clause 3 of the Settlement Agreement, as the reliance is rather to supplement the understanding under Clause 3 of the Settlement Agreement. (Emphasis supplied)***

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(vii) *The Petitioner invokes the substantive power of 'price fixation' under Section 86 (1) (b), as done in Petition No. 78 of 2012, of the Electricity Act, 2003 in order to seek the reliefs under the captioned Petition. The relevant extract of Section 86 (1) (b) is as under:-*

"Section 86 - Functions of State Commission-

(1) The State Commission shall discharge the following functions, namely:--

(a) ...

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;..."

(viii) ***It is the humble submission of the Petitioner, that only for the purposes of substantiating the exercise of substantive powers under Section 86(1)(b) in the subject of the Petition a reference of Section 61 and 62 is made , whereas nowhere in the entire Petition, a single averment, submission or ground has been raised under Section 61 and 62 of the Electricity Act, 2003 with specific intent or reason.***

(ix) ***Section 86 of the 2013 Act, doesn't provide for any methodology for determination of tariff or for fixation of charges, it only provides for functions to the state commissions. The Petitioner has filed the instant application under Section 86 (1)(b) read with Section 61 and Section 62 of the 2013 Act for fixation of annual fixed cost and energy charges under the new CERC Tariff Regulations issued for the control period 2014 to 2019.***

(x) *The bare reading of Section 61 and Section 62 of the 2013 Act indicates the dual nature of functions which is to be performed by the Regulatory Commissions, i.e decision-making and specifying terms and conditions for tariff determination. Section 86 of the Electricity Act, 2003 Act only prescribes functions of the State Commission. Therefore the Petitioner deemed it appropriate to refer to Section*

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61 and section 62 of the Electricity Act, 2003 along with the substantive provision of Section 86 (1) (b) of the Electricity Act, 2003.

- (xi) *Moreover, the Petitioner is seeking approval of electricity purchase and procurement process of Petitioner companies, including the price at which electricity is being procured from the respondents under the agreed CERC Tariff Regulations, **instead of the Tariff Regulations notified by this Hon'ble State Commission of Madhya Pradesh.** This Hon'ble State Commission in the order dated 10.12.2012 issued in Petition No. 78/ 2012 observed as under:-*
(Emphasis Supplied)

"8. The Commission is cognizant of the fact that the fuel prices have indeed gone up in the recent years and that the CERC Regulations regarding determination of generation tariff do not provide capping of tariff. Since the intention of the parties is to resolve the dispute within the overall framework of the CERC Regulations, the Commission decides to have no objection to this approach. This is particularly because the Commission's own regulation relevant to the subject is totally in line with the relevant CERC Regulations."

Issue:

The basis of billing raised by the Respondents and payment made by MPPMCL so far during FY 2013-14 to FY 2015-16.

Response by MPPMCL:

- "(i) The Petitioner most respectfully submits that during FY 13-14 Lanco Amarkantak Power Limited (LAPL) had raised bills to PTC comprising of Annual Fixed Charges and energy charges as per the CERC Tariff Regulations, 2009-2014 as approved by this Hon'ble State Commission vide its order dated 01.12.2012 in the matter of Petition no. 78 of 2012. And on the basis of the same, payments were made by MPPMCL.*
- (ii) It is pertinent to note that in the year 2015-2016 CERC has notified regulations for tariff period 2014-19. Therefore, during FY 2014-15, FY 2015-16, and the current FY 2016-17, LAPL is raising provisional bills to PTC based on new*

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CERC Tariff Regulations 2014-19, and on the same basis the payments are being made by MPPMCL.”

Issue:

The details of pending litigation if any, between the Petitioner and the Respondents in this matter.

Response by MPPMCL:

- “(i) The Petitioner most respectfully submits that there are no litigations pending or filed in any other forum, related to this issue.*
- (ii) It is submitted that the Petitioner, Respondent No.1, and Respondent No.2 have executed a Settlement Agreement dated 16.09.2012 pursuant to certain amendments in the PSA between the Petitioner and Respondent No. 1, which amendments have been captured in the Settlement Agreement and the Implementation Mechanism. As per the Settlement Agreement the Parties have agreed to resolve and settle the ongoing litigations and have decided to withdraw the disputes pending before the various judicial and quasi-judicial authorities. The said agreement has also been filed before the Hon'ble Supreme Court for consideration.*
- (iii) The order dated 10.12.2012 passed by this Hon'ble State Commission in Petition 78 of 2012, while determining tariff under the CERC Tariff Regulations for the control period 2009-2014, recorded the submission of the Petitioner and the Respondents as under:-*
- “4.The Petitioner and Respondents have resolved to withdraw all disputes raised through the petitions at various fora. The appeal against the order of the Hon'ble APTEL is pending before the Hon'ble Supreme Court of India. They have submitted the Settlement Agreement to the Hon'ble Supreme Court of India.*
- 9. A reading of the foregoing narration would indicate that the Commission's own Civil Appeal No. 1335 / 2009 is still pending with the Hon'ble Supreme Court notwithstanding parties coming to an agreement to settle the dispute. However since it has been agreed by the parties that the*

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Commission shall be entitled to examine the generation costs, the legal issue agitated by the Commission before the Hon'ble Supreme Court is effectively taken care of

10. *The developments as stated herein before the Commission lead to the conclusion of the matter practically rests with its order dated 6th May 2008 as on date."*

(iv) *Therefore, subsequent to the Settlement Agreement there are no more litigations pending or filed before any of the authorities."*

Issue:

The details of other Power Purchase Agreements (PPA) if any entered into by M/s. Lanco Amarkantak under Section 62 or 63 of the Act, 2003 with the Distribution Companies of any State other than M.P.

Response by MPPMCL:

*"In this regard, the copy of the letter from Lanco, as received by the Petitioner, is being placed on record along with this Written Submission as **Annexure – 1**. The relevant content of that letter are reproduced here for quick reference:*

*"(d) For its Operating Unit 2 of 300 MW, LAPL has entered into a separate Power Purchase Agreement (PPA) with PTC for the sale of entire power from its Unit 2. Thereafter PTC signed a separate Power Sale Agreement (PSA) with HPGCL for sale of power from unit 2. The PPA of Unit 2 between LAPL and PTC is sub-judice matter before the Hon'ble Supreme Court which on an interim basis has directed LAPL to supply home state share power to CSPTRADECO and balance power to PTC for onward supply to Haryana Discoms. Currently LAPL is supplying 5% home state share power to CSPTRADECO and balance 95% power to PTC, for onward supply to Haryana Discoms. Therefore LAPL has not signed any PPA directly with Discoms. Further, LAPL is also constructing a 2*660 MW (Unit 3 &4) coal based project at the same location, but for the same no PPA is signed till date."*

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5. During the course of next hearing held on 18th October' 2016, the petitioner sought further adjournment in the subject matter. The case was again fixed for motion hearing on 22nd November' 2016.

6. The subject petition was finally admitted on 22nd November' 2016 and the petitioner was directed to serve copies of petition on all Respondents in this matter. The respondents were also asked to file their response on the petition by 30th December' 2016. The respondent i.e, M/s PTC India Ltd filed its response on the subject petition by its affidavit dated 6th January'2017 wherein PTC India Ltd agreeing to the contention of the petitioner requested the Commission to determine Annual Fixed Charges and Energy Charges for FY 2014 to FY 2019 for sale and supply of 300 MW power to the petitioner by the respondent i.e, PTC India Ltd.

7. Vide Commission's letter No. 1913 dated 5th December' 2016, certain information and additional details were sought from the petitioner by 30th December' 2016. The petitioner sought time extension for submission of aforesaid information to the Commission. Subsequently, by affidavit dated 9th January' 2017, the petitioner filed its reply to the information sought by the Commission. The petitioner deposited the remaining amount of fees also with the Commission.

8. Vide Commission's order dated 25th January' 2017, the petitioner was asked to file the gist of petition for publication in newspapers inviting comments/ suggestions from stakeholders. The public notice was published in various newspapers on 11th March' 2017. The public hearing in this matter was held in the office of Commission on 18th April' 2017.

9. During the course of public hearing held on 18th April' 2017, the stakeholders appeared before the Commission and submitted their objections/ comments based on the written submissions filed by them. The petitioner was directed to file its response on each issue raised by the stakeholders. Vide letters No. 05-01/629 & 630 dated 16th May' 2017, the petitioner i.e. MPPMCL filed its response on the objections/ comments filed by the stakeholders. While issuing this order, all such objections/comments related to the subject petition have been examined in light of the response filed by the petitioner on all such issues.

Subject: - In the matter under Section 61 read with Section 62 and 86(1)(b) of the Electricity Act, 2003 read with the CERC (Terms and Conditions of Tariff) Regulations, 2014 and the order of this Hon'ble Commission in Petition No. 78 of 2012 dated 01.12.2012.

10. The extract of the reply filed by the petitioner to the issues communicated to it by the Commission is given as below:

- (i) The petitioner's objective for relying on Section 61 and 62 of the Act is to supplement the understanding under Clause 3 of the Settlement Agreement.
- (ii) The petitioner has filed the instant application under Section 86 (1)(b) read with Section 61 and Section 62 of the Electricity Act, 2003 for fixation of Annual Fixed Cost and Energy Charges under new CERC Tariff Regulations issued by the Central Commission for control period of FY 2014 to FY 2019.
- (iii) The petitioner is seeking approval of electricity purchase and procurement process including the price at which electricity is being procured from the respondents by the petitioner under the CERC Tariff Regulations instead of the Tariff Regulations notified by this State Commission.
- (iv) During FY 2013-14 Lanco Amarkantak Power Limited (LAPL) had raised bills comprising of Annual Fixed Charges and Energy Charges as approved vide this Commission's order dated 01.12.2012 in Petition no. 78 of 2012 to the respondent M/s PTC India in accordance with CERC Tariff Regulations, 2009-2014. Further, the payments were made by MPPMCL to the respondent based on aforesaid basis.
- (v) During FY 2014-15, FY 2015-16, and the current FY 2016-17, the generator i.e., LAPL is raising provisional bills to M/s PTC India based, on new CERC Tariff Regulations for FY 2014-19 and on the same basis the payments are being made by the petitioner i.e, MPPMCL to the Respondent i.e, M/s PTC India Ltd.
- (vi) There are no litigations pending or filed in any other forum related to this issue. The Petitioner, Respondent No.1, and Respondent No.2 executed a Settlement Agreement dated 16.09.2012. As per the Settlement Agreement, the parties have agreed to resolve and settle the ongoing litigations and have decided to withdraw the disputes pending before various judicial and quasi-judicial authorities. The said agreement has also been filed before the Hon'ble Supreme

Subject: - In the matter under Section 61 read with Section 62 and 86(1)(b) of the Electricity Act, 2003 read with the CERC (Terms and Conditions of Tariff) Regulations, 2014 and the order of this Hon'ble Commission in Petition No. 78 of 2012 dated 01.12.2012.

Court for consideration. Therefore, subsequent to the Settlement Agreement there are no more litigations pending or filed before any of the authorities.

11. The petitioner i.e. M.P. Power Management Co. Ltd., Jabalpur had earlier filed Petition No. 4 of 2015 with almost the same contention and prayer as made in the subject petition for determination of Annual Capacity Charges and Energy Charges for FY 2013-14 under Section 86(1)(b) of the Electricity Act, 2003 for 300 MW contracted Power from PTC India Ltd. sourced from 300 MW Unit No. 1 of Lanco Amarkantak Power Ltd.. The aforesaid petition was not found maintainable with certain observations of this Commission mentioned in its order dated 12th February'2015.

12. On examination of the contents in the subject petition and the supplementary submissions/ reply filed by the petitioner in the subject matter, the Commission has observed the following:

- (i) In November, 2012, the petitioner had filed petition bearing No. 78 of 2012 invoking **Section 86(1)(b)** of the Electricity Act, 2003 seeking approval of the electricity purchase and procurement process of power by the petitioner from M/s. Lanco. Amarkantak Power Ltd. through M/s. PTC India Ltd. and for fixing the price thereof, under **Section 86(1)(b)** of the Electricity Act, 2003.
- (ii) As mentioned in Para 13 of Commission's order dated 1st December'2012 in petition No. 78/2012, the following issues were dealt with by the Commission under section 86 (1) (b) of the Electricity Act,2003 while passing the aforesaid order :
 - (a) To consider approval to the PSA between the petitioner and the Respondent No. 1 and,
 - (b) To fix the price at which the electricity shall be procured through the agreement for purchase of power for distribution and supply, under section 86(1)(b) of the Electricity Act, 2003.
- (iii) On scrutiny of the aforesaid petition, the Commission passed a detailed order on 1st December' 2012 under the peculiar circumstances narrated in the petition and reply submitted by the petitioner on various issues identified by this Commission

Subject: - In the matter under Section 61 read with Section 62 and 86(1)(b) of the Electricity Act, 2003 read with the CERC (Terms and Conditions of Tariff) Regulations, 2014 and the order of this Hon'ble Commission in Petition No. 78 of 2012 dated 01.12.2012.

and communicated to the petitioner on the Settlement Agreement placed before this Commission. The Commission accorded approval to the process of the power procurement under the 'Settlement Agreement and Implementation Mechanism' filed by the petitioner under section 86(1)(b) of the Electricity Act, 2003.

- (iv) Regarding second issue of fixing price at which electricity is to be procured by MPPMCL through the agreement for distribution and supply of electricity, the capital cost of **Rs. 1236.40 Crores** which was mentioned/ quantified and agreed to between the parties in the Settlement Agreement, was examined by the Commission in light of the Chartered Accountant's Certificate and other documents placed before the Commission in Petition No.78 of 2012. On the basis of aforesaid details and documents placed before the Commission, prudence check was exercised by the Commission and the capital cost as agreed to by the parties in the Settlement Agreement was found in order. The break-up of the same has been mentioned in Commission's order dated 1st December' 2012.
- (v) The Capacity Charges and Energy Charges determined vide Commission's aforesaid order were indicative only based on the capital cost considered by the Commission and the conditions articulated and agreed to by the parties in the Settlement Agreement placed before this Commission.
- (vi) By order dated 01.12.2012, the Commission had completely discharged its functions under Section 86(1)(b) of the Act as sought in Petition No. 78 of 2012, by according approval to the power procurement process of the petitioner under the Settlement Agreement and also by fixing the price of electricity in terms of the capital cost quantified/mentioned in the said Settlement Agreement.
- (vii) As per contents in the subject petition and the submissions/documents filed by the petitioner, there is no change in the agreements including the capital cost of Rs 1236.40 Crores as agreed by the parties in the Settlement Agreement and considered by the Commission in its order dated 1st December, 2012 (in Petition No. 78 of 2012).

Subject: - In the matter under Section 61 read with Section 62 and 86(1)(b) of the Electricity Act, 2003 read with the CERC (Terms and Conditions of Tariff) Regulations, 2014 and the order of this Hon'ble Commission in Petition No. 78 of 2012 dated 01.12.2012.

- (viii) It is observed that the billing and payment between the petitioner and respondents have already been done during FY 2013-14 to FY 2015-16 on the basis of new CERC Tariff Regulations 2014-19. However, the petitioner has now approached the Commission seeking tariff for the aforesaid period also for the first time through the subject petition. From the aforesaid, it is evident that the parties in the matter are already following the provisions under Settlement Agreement for computing Annual Fixed Charges and Energy Charges based on the same capital cost fixed/considered by the Commission in terms of same Settlement Agreement. In the subject petition, the petitioner is seeking determination of tariff by this Commission on annual/year to year basis under Section 62 of the Electricity 'Act based on CERC Tariff Regulations for new control period, which is beyond the jurisdiction of this Commission.
- (ix) Section 62 of the Act provides for **determination** of tariff for supply of electricity **by a Generating Company** to a Distribution Licensee whereas, Section 86(1)(b) provides that the State Commission shall **regulate** electricity purchase and procurement process of Distribution Licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements **for purchase of power for distribution and supply within the state.** **(Emphasis Supplied)**
- (x) The scope of the functions of this Commission under Section 86(1)(b) may not be equated with the functions of this Commission under the provisions of Section 62 of the Electricity Act 2003 for determination of tariff for a Generating Company on a regular/annual basis. Therefore, the contention of petitioner invoking Section 62 of the Electricity Act and seeking determination of tariff for the power project in the subject matter on annual basis for FY 2014 to 2019 in terms of CERC Tariff Regulations, 2014 is against the provisions of Electricity Act 2003, Clause 3 of the 'Settlement Agreement' and also beyond the jurisdiction of this Commission as held by the Hon'ble Tribunal for Electricity.

Petition No. 35 of 2016

Subject: - In the matter under Section 61 read with Section 62 and 86(1)(b) of the Electricity Act, 2003 read with the CERC (Terms and Conditions of Tariff) Regulations, 2014 and the order of this Hon'ble Commission in Petition No. 78 of 2012 dated 01.12.2012.

(xi) On review of the observations of this Commission in its last order dated 12th February' 2015 (in Petition No. 4 of 2015) in this matter, the Commission has not found any substantial change in the contention of petitioner in the subject petition and that filed in its earlier Petition No. 4 of 2015 except that the petitioner has again come up for determination of annual tariff for FY 2014 to FY 2019 on account of change in the control period of CERC Tariff Regulations which is beyond the jurisdiction of this Commission under Section 86(1)(b) of the Electricity Act' 2003.

13. In view of the aforesaid observations, the subject petition is dismissed and disposed of.

(Alok Gupta)
Member

(A. B. Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman