

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of petition under Regulation-45 of MPERC (Conduct of Business) Regulations, 2016 read with MPERC (Fee, Fine and Charges) Regulations-2010 in the matter of 'Detailed Operating Procedure' for taking unit(s) under reserve shut down and mechanism for compensation for degradation of Heat Rate, Aux. Energy consumption and Secondary fuel consumption.

ORDER

Date of Order: 12th October' 2022)

**State Load Despatch Centre,
Nayagaon, Jabalpur, Madhya Pradesh**

- Petitioner

V/s

1. MP Power Management Co. Ltd.
Shakti Bhawan, Rampur, Jabalpur (M.P.)

2. M/s Jaiprakash Power Ventures Ltd.
(Bina Thermal Power Plant)
Agasod; Tehsil, Bina, Distt Sagar (M.P)

3. M/s BLA Power Private Limited
Village Niwari, Gadarwara, (MP)

4. M/s Jhabua Power, Ltd.,
MG Road, Gurugram- Haryana

5. M/s Lanco Amarkantak Power Pvt Ltd,
Udyog Vihar, Phase-3, Gurgaon

6. M/s Jaiprakash Power Ventures Ltd.
(Jaypee Nigrie Super Thermal Power)
Village- Nigrie, Distt. Singrauli (MP)

- Respondents

Shri Rajesh Choudhary, Advocate and Shri Anurag Mishra appeared on behalf of Petitioner.
Shri Manoj Dubey, Advocate and Shri Praveen Kumar Jain appeared on behalf of Respondent No. 1.

Shri Venkatesh, Advocate and Shri Ajeya Kumar Tripathi appeared on behalf of Respondent No. 2 & 6.

Ms. Shikha Ohri, Advocate and Shri Manoj Sahu appeared on behalf of Respondent No. 3.

Ms. Roopam Bansal appeared on behalf of Respondent No. 4.

The petitioner State Load Dispatch Centre (SLDC) filed subject Petition for amendment in Clause 1.3 and Clause 3 of Detailed Operating Procedure (Appendix-I) for taking unit (s) under Reserve Shut Down and Mechanism for compensation for Degradation of Heat Rate, Aux. Energy Consumption and Secondary Fuel Oil Consumption issued by the Commission vide order dated 29th January' 2020.

2. Earlier, the petitioner had filed a petition No. 10/2022 before the Commission seeking some modification / clarifications in some of the provisions of Detailed Operating Procedure (DOP) for taking unit (s) under Reserve Shut Down and Mechanism for compensation for Degradation of Heat Rate, Auxiliary Energy Consumption and Secondary Fuel Oil Consumption.
3. During the proceeding of aforesaid petition No. 10/2022, the Commission had observed that the clause 8 of the DOP (Appendix-I) provide 'Review of the Procedure' which stated that "the Detailed Operating Procedure shall be reviewed in Operation & Coordination Committee of MP after one year of its approval and Recommendations of the Operation & Coordination Committee, if any, shall be submitted to the Commission for needful."
4. In view of the above, vide order dated 30.03.2022, the Commission had disposed of the Petition No. 10/2022 with the following observations and directions:

"Petitioner was asked if detailed Operating Procedure (DOP) has been reviewed by the Operation and Coordination Committee (OCC) as stipulated in Clause 8 of the DOP. Petitioner informed that Operation and Coordination Committee has not been approached yet in this matter. Therefore, petitioner was advised to approach first to OCC and ensure comprehensive review of the DOP so that all necessary amendments in DOP are placed together before the Commission for consideration. Petitioner agreed to approach the Operating and Coordination Committee for review of DOP and thereafter, if necessary, to approach the Commission for consideration and directions in this matter. Accordingly, this petition stands dispose of. However, the fees deposited with this petition shall be adjusted against a fresh petition if any, filed by the petitioner in this matter."

5. In compliance to the above directives of the Commission, the matter of amendment / clarification in some of the provisions of DOP of MPEGC had been discussed in the 81st Operating and Coordination Committee (OCC) Meeting of MP held on 4th April' 2022

and the OCC Forum of MP agreed that DOP of MPERC should be consistent with the DOP of IEGC for safe, secure & reliable operation of the Integrated Grid of the Nation.

6. The petitioner broadly submitted following in the subject petition:

- 1) *As per Section-32 of the Electricity Act-2003, The State Load Despatch Centre shall be the Apex Body to ensure integrated operation of the power system in a State. Responsibilities of SLDC are given below-*

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.*
 - (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.*
- 2) *Sub-section-6 of Section-8.8 of Madhya Pradesh Electricity Grid Code (Revision-II), 2019 is reproduced below-*

“SLDC shall prepare a Detailed Operating Procedure in consultation with the generators and beneficiaries at OCC forums within 3 months’ time and submit to the Commission for approval. The Detailed Operating Procedure shall contain the role of different agencies, data requirements, procedure for taking the units under reserve shut down and the methodology for identifying the generating stations or units thereof to be backed down up to the technical minimum in specific Grid conditions such as low system demand. Regulations of Power Supply and incidence of high renewable etc. based on merit order stacking.

The SLDC shall work out a mechanism for compensation for station heat rate and auxiliary energy consumption for low unit loading on monthly basis in terms of energy charges and compensation for secondary fuel oil consumption over and above the norm for additional start-ups in excess of 7 start-ups, in consultation with generators and beneficiaries at OCC forum and its sharing by the beneficiaries.

While preparing the above Detailed Operating Procedure and working out the

aforesaid mechanism, the SLDC may be guided by the Detailed Operating Procedure and mechanism approved by the Central Commission under Indian Electricity Grid Code”.

- 3) *In compliance to directives given in the MP Grid Code under Section No. 8.8(6), SLDC has prepared a Detailed Operating Procedure (DOP) for backing down of coal-based State Sector Generating Stations and mechanism for compensation due to part load operation and multiple start/stop of units. While preparing the DOP, approved DOP of CERC under IEGC has been taken as a reference document.*

Further, the procedure was circulated among all the members of OCCM of MP one week prior to the meeting i.e. on 13.09.2019 and discussed as agenda Item of 71st OCCM held on 20th September 2019. Suggestions and comments of the members of the Committee were discussed during presentation given by SLDC. Considering the provisions of MPERC & CERC approved procedure, suitable suggestions/ modifications were incorporated in the DOP prepared by SLDC.

- 4) *The Detailed Operating Procedure for backing down of coal based SSGS and mechanism for compensation due to part load operation and multiple start/stop of units was submitted to the M.P. Electricity Regulatory Commission on 26.09.2019 for approval. The State Commission vide letter dated 26.10.2019 had directed SLDC to submit some details and documents by 31st October, 2019.*
- 5) *SLDC vide letter No. 07-05/SG-9/2890 dated 31.10.2019 had submitted all the details and documents along with the Detailed Operating Procedure for backing down of coal based SSGS and mechanism for compensation due to part load operation and multiple start/stop of units to the Commission.*
- 6) *In compliance to the Commission’s letter dated 21.11.2019 SLDC had made a presentation before the Commission on 20th November, 2019 on Detailed Operating Procedure for backing down of coal based SSGS and mechanism for compensation due to part load operation and multiple start/stop of units. Commission had directed SLDC to review and rework the DOP in light of the discussions held during the presentation.*
- 7) *SLDC had prepared a revised DOP and discussed with representative from all the Generators including IPPs, WRPC and MPPMCL on 5th December, 2019 at Regional Office, MPPMCL, Bhopal. Subsequently, the DOP prepared by SLDC was also discussed in the 39th WRPC meeting held on 16th December, 2019. Based on the discussions held during the meeting and recommendations of WRPC, SLDC had made changes in the*

DOP. The Member Secretary, WRPC vide email dated 23rd December, 2019 had intimated that the DOP is in line with CERC procedure.

Methodology for taking unit(s) under Reserve Shut Down (RSD) and Mechanism for Compensation for Degradation of Heat Rate, Aux Energy Consumption and Secondary Fuel Oil Consumption, due to Part Load Operation and Multiple Start/Stop of Units under RSD had been discussed at length in WRPC Forum as some of the Independent Power Producers supplying power to Madhya Pradesh are under the control area of Western Regional Load Despatch Centre and DOP of IEGC may also be applicable on them.

Thus, to have the similar treatment for all the Independent Power Producers, located either within MP or outside the State, same provisions for commercial compensation and RSD are to be followed both at Regional as well as State level. The Revised Detailed Operating Procedure for Backing Down of Coal Based SSGS / IPPs and mechanism for computation due to part Load Operation and Multiple Start/Stop of Units was submitted to the Commission vide SLDC letter dated 23.12.2019 for approval.

- 8) Detailed Operating Procedure for taking unit (s) under Reserve Shut Down and Mechanism for Compensation for Degradation of Heat Rate, Aux Energy Consumption and Secondary Fuel Oil Consumption, due to Part Load Operation and Multiple Start/Stop of Units under Reserved Shut Down (RSD) has been issued by the Commission vide order dated 29th January, 2020.*
- 9) In the aforesaid order dated 29th January-2020, the Commission has directed SLDC to provide feedback, after consultation with the stakeholders, on the operation of the compensation mechanism within one year from the date of issue of the order for assessment of the efficacy of the compensation mechanism.*
- 10) In compliance to the directives of the Commission contained in order dated 29th January-2020, the SLDC had submitted feedback on DOP for taking unit (s) under Reserve Shut Down and Mechanism for compensation for Degradation of Heat Rate, Aux Energy Consumption and Secondary Fuel Oil Consumption vide letter dated 20.01.2021 for modification of Clause-1.3 of Appendix-I of the DOP which is reproduced below-*

*“The DOP shall come into force with effect from the date of its approval by the MP Electricity Regulatory Commission or the date of approval of amendment in PPA by the Commission wherein appropriate provision for compensation for degraded station heat rate (SHR) or Auxiliary Energy Consumption (AUX) **and Reserve Shutdown (RSD) are made by way of amendment, whichever is later**”.*

In the last sentence of the above clause, "Reserve Shutdown (RSD)" means compensation due to multiple stop/start of unit(s). Some of the State Grid entities are mis-interpreting this clause for their benefit.

This mis-interpretation has been causing dispute between Buyer and Seller (IPPs). In the absence of absolute clarity as per the provision of Electricity Act-2003, sometimes MPPMCL has been submitting requisition for a few hours only to the IPPs having part capacity tied up with the beneficiary.

There is no regulatory provision existing except provision in DOP of MPEGC (Clause-7.2) for minimum 8 hours' technical minimum schedule to the Generator on revival of Generator after RSD. The MPPMCL has been requisitioning power for a few hours to revive Generator from RSD and Generators do not agree for intermittent schedule that too for 1 or 2 hours on the ground of threat to the safety of the machines.

Buyer and Seller have to arrive at a consensus considering the difficulties of each other for minimum run time, technical minimum schedule and safety of the Generator, else MPPMCL has to ensure technical minimum schedule for minimum 8 hours after revival of unit (s) from RSD, allowing the HOT, WARM and COLD start up time as per declaration of the Thermal Generator, in line with Clause-7.2 of DOP of MPEGC. SLDC in compliance to the provisions of Electricity Act-2003 and Grid Codes, has to function impartially and judiciously and cannot act as per will of one of the State Grid entity.

This is causing problems for smooth Scheduling & Despatch under day ahead as well as real time of operation. It is to submit that NTPC never revive their unit from RSD unless technical minimum schedule is ensured by beneficiaries of that particular generating unit.

- 11) *In clause-8.8 (6) of M.P. Electricity Grid Code (Revision-2), 2019, directives were given to SLDC for submitting Detailed Operating Procedure for backing down of coal based Generating Units and mechanism for compensation due to part load operation and multiple start/stop of units **in line with the Detailed Operating Procedure of the CERC.***
- 12) *Thus, State Load Despatch Centre had filed a petition No. 10/2022 before the State Commission seeking some modification / clarifications in some of the provisions of Detailed Operating Procedure for taking unit (s) under Reserve Shut Down and Mechanism for compensation for Degradation of Heat Rate, Auxiliary Energy Consumption and Secondary Fuel Oil Consumption. The State Commission in order dated 30.03.2022 disposed of Petition No. 10/2022 with following observations:*

“Therefore, petitioner was advised to approach first to Operating and Coordination Committee and ensure comprehensive review of the DOP so that all necessary amendments in DOP are placed together before the Commission for consideration. Petitioner agreed to approach the Operating and Coordination Committee for review of DOP and thereafter, if necessary, to approach the Commission for consideration and directions in this matter. Accordingly, this petition stands disposed of. However, the fees deposited with this petition shall be adjusted against a fresh petition if any, filed by the petitioner in this matter.”

- 13) *In compliance to the directives of Commission in order dated 30.03.2022 in P. No. 10/2022, matter of amendment / clarification in some of the provisions of the DOP of MPEGC had been discussed at length in the 81st Operating and Coordination Committee Meeting of MP held on 4th April-2022, as Supplementary Agenda Item No.1. SLDC has issued the Minutes of 81st Meeting of Operating & Coordination Committee of MP on 11.04.2022. A copy of relevant pages of MoM is annexed.*
- 14) *The Operating & Coordination Committee Forum of MP has agreed that DOP of MPERC should be consistent with the DOP of IEGC for safe, secure & reliable operation of the Integrated Grid of the nation. The Chairman of OCC had requested all the participants to submit their written comments, if any, upto 8th April-2022.*
- 15) *Following users of the State Grid have submitted their written comments to the SLDC on Supplementary Agenda No.1:-*
- (I) **Jaiprakash Power Ventures Limited-**
- a) *Other States like Maharashtra, Gujarat, Uttar Pradesh, Punjab, Haryana, Rajasthan etc. have been considering unit (s) under RSD if generation schedule given by the beneficiary (s) is below the technical minimum, without entering into supplementary PPA.*
- b) *There should be a time limit for entering into a Supplementary PPA between the Procurer and the Generator.*
- c) *The standard PPA format, which has been approved by the Commission, should be necessarily followed.*
- d) *There should be no discrimination between IPP's whether they are supplying power Intra State or Inter State, as is evident from the fact that Supplementary PPA's have been filed by MPPMCL and approved by the Commission for M/s MB*

Power and M/s Jhabua Power.

- e) *If the Supplementary PPA is not entered into within the specified time limit, compensation / penalty clause should be incorporated to deter conscious delay.*
- f) *It is requested that a clarification (with retrospective effect) be incorporated to spell out that RSD in the event (s) as mentioned in MPERC DOP.*

BLA Power Private Limited –

- a) *M/s BLA Power Private Ltd stated that they stand with the views of Jaiprakash Power Ventures Limited.*
- b) *The DOP has to be consistent with the Detailed Operating Procedure prepared by CERC as also the Act. Some words in the DOP can have multiple interpretations and therefore, is being misinterpreted by MPPMCL. Furthermore, such interpretation of the DOP by MPPMCL is ultra vires the Electricity Act, 2003 (“Act”) as it is not consistent with the Detailed Operating Procedure prepared by Central Electricity Regulatory Commission (“CERC”) in terms of the Indian Electricity Grid Code. Their written submission is annexed.*

M.P. Power Management Co. Ltd. (MPPMCL) –

MP Power Management Co. Ltd. has given their written submission on 12.04.2022 which is as follows-

MPPMCL Issue:

- a) *It appears that the SLDC had proposed to give effect to DOP with revised applicability under Clause-1.3 and Clause-3 to IPPs with retrospective effect i.e. from the date of approval of DOP by MPERC with deletion of requirement of PPA amendment which is highly objectionable and would lead to benefits to only some select IPPs with retrospective effect. It also appears that SLDC intends to seek amendment in DOP and not clarification which can be applied from retrospective effect. Regulations and its amendment issued by Commission are applied prospectively only.*

Comments of SLDC –

As per Section-86 (h) of Electricity Act-2003, State Grid Code shall be consistent with the Central Grid Code i.e. IEGC. All the provisions of Grid Code and Detailed Operating Procedures for implementation of various provisions of Grid Code are for secure operation of the Integrated Grid.

The Indian Electricity Grid Code and M.P. Electricity Grid Code have been specified only to ensure the safe and secure operation of the Integrated Grid and impartial treatment has been given to all the users of the Grid. The safe, secure & reliable operation of the Integrated Grid is at top most priority in Electrical Sector.

In case of any discrepancy in regulations of State Grid Code and Central Grid Code / CEA Regulations, the provisions of Central Grid Code / CEA Regulations shall be applicable for ensuring safety of National Grid, as per chronology of applicability of provisions of Grid Codes.

MP SLDC has made Appendix-I of DOP of MPEGC applicable w.e.f. the date of notification of DOP of MPEGC i.e. 29th January, 2020. The monthly State Energy Accounts (SEAs) have been prepared considering the applicability of Appendix-I from the date of notification of DOP by the State Commission.

It is gathered that MPPMCL has obtained the legal advice from the Advocate General of MP on the applicability of provision of taking Generating Unit (s) under RSD of Appendix-I of DOP of MPEGC. The Commission may kindly take into cognizance the legal opinion of Advocate General of MP and directives of CEA vide letter dated 18.04.2018, while deciding the instant petition.

The MPPMCL while submitting comments on the Supplementary Agenda-1, has ignored the legal opinion of the Advocate General of MP and directives of CEA.

The proposal of SLDC is to align the DOP of MPERC consistent with the DOP of IEGC and to avoid mis-interpretation of the provisions by the State Grid users for their commercial benefits.

MPPMCL Issue:

b) MPPMCL strongly opposes such modification that too from retrospective effect. It may be appreciated that any such modification would have huge financial implications which would be ultimately burdened to retail consumers of the State.

Comments of SLDC –

The objectives of the Grid Code are –

- To provide clarity and certainty to the STU, MPPGCL, IPP/ CPP within MP, Discoms and any Open Access Customers connected to the Transmission System by stating their respective roles, responsibilities and obligations with respect to the*

operation of the State Transmission System.

- *To improve the grid stability and set minimum standards of system performance.*
- *The provision of Grid Code such as Planning Code, Protection Code, Schedule & Despatch, Metering Code, Outage Planning, Frequency & Voltage management, System Security aspects etc. are specified for Grid safety irrespective of commercial gain / loss to individual user of the Grid.*

The MPPMCL has been linking provisions of Grid Code only for their commercial benefit, which is not correct. Whereas, MPPMCL being one of the user of the Grid, should ought to have adhere to provisions of Grid Code rather than mis-interpreting provisions of Grid Code for their commercial benefit. It would defeat the very purpose of specifying the Grid Codes by the respective Commissions.

The MPPMCL has tried to allege that any such modification / amendment / deletion may lead to huge financial implication with retrospective effect which is not permissible in law. It is respectfully submitted that the petitioner has not at all challenging any act / provision / regulation / rules at all. The rationale behind this petition is to align the DOP of MPERC consistent with DOP of IEGC and to avoid mis-interpretation of the provisions by the State Grid Users for their commercial benefit. Therefore, question of being retrospective or prospective does not arise at all and totally irrelevant to the petition.

MPPMCL Issue:

- c) *It may be mentioned that in the DOP issued by CERC, no procedure has been made for IPPs where 100% capacity is not tied up with the beneficiary. Such cases are unique to MP where PPAs have been executed for part capacity and balance power is considered as merchant power of the Generating Stations which it can sell to any other 3rd party. Since, a significant share of Generating Capacities has been considered as merchant power, the Commission has correctly considered it as pseudo beneficiaries and defined role of pseudo beneficiaries as well in its DOP. Moreover, requirement of amendment in PPA is also made a pre-condition for applicability of DOP of MPERC which is also required for the applicability of DOP as a whole so that no undue benefits can be passed. Such provisions were essential to be incorporated in DOP of MPERC and it cannot be said to be inconsistent with CERC DOP as these are additional provisions. CERC DOP does not deal with the cases of part tied up capacity, therefore, DOP of MPERC & CERC cannot be compared on this issue. The*

existing DOP of MPERC is fully consistent with DOP of CERC with some additional clause applicable to IPPs and there is no need of any amendment.

Comments of SLDC –

It is to submit that a large number of IPPs having multiple beneficiaries are connected with the Transmission network of CTU i.e. Inter State Transmission System (ISTS).

DOP of MPEGC for the Generators having part capacity tied up with the MPPMCL have been prepared in consultation with WRPC and also approved by the WRPC Forum. The concept of Pseudo Beneficiary is given by the WRPC. It is to mention that WRPC shall deal the IPPs connected with the ISTS with the same principle as given in DOP of MPERC. Approval of DOP in the WRPC meeting itself means that similar procedure shall be adopted by them for IPPs connected with ISTS. Thus, comments of MPPMCL “Such cases are unique to MP where PPAs have been executed for part capacity and balance power is considered as merchant power of the Generating Stations which it can sell to any other 3rd party”, is not correct.

MPPMCL has been mis-interpreting the provisions of Grid Code for their commercial benefit, whereas provisions of Grid Code are only to ensure the Grid security of the Integrated Grid. None of the user of the STU/CTU Transmission network can be allowed for mis-interpretation of provisions of Grid Code for their commercial gain and not following the instructions of SLDC for true interpretation of various provisions of Grid Code. If other users of the Grid also start interpreting provisions of Grid Code for their benefit, it would be difficult for SLDC to ensure the Grid security and there shall always be threat to the safe & secure operation of the Integrated grid.

The Central Electricity Authority vide letter No. CEA/Thermal/TPM-1/Misc/709 dated 18.04.2018 has opined as follows-

“It is therefore opined that while the PPA between MPPMCL and JPVL is silent on the issue of ‘Technical Minimum’, however, in terms of the 4th Amendment of IEGC, DOP read with the function prescribed for SLDC under Section 32(2) (a) of the Electricity Act, 2003, it is the sole responsibility of SLDC to ensure that Thermal Power Station (TPS) operated in an optimum manner while maintaining its “Technical Minimum” of the plant and ensuring discipline while scheduling power from the plant. In our view, SLDC (in this case MPSLDC) has to comply with the condition of Technical Minimum in giving schedules to the TPS as against the schedules which are below the Technical Minimum of the Units and have been even zero during the day, irrespective of the fact that

MPPMCL has requisitioned a lower schedule as it is the prime responsibility of any SLDC to ensure safety and efficiency of participants within the Grid including the TPS in question. SLDC should have ensured that the real time schedule of JPVL remains above the Technical Minimum levels of the on Bar Units and in case MPPMCL's requisition was not sufficient, the Units should have been given RSD.

As the condition of Technical Minimum is globally accepted and followed in the operation of a Thermal Generating Unit for operational efficiency, economy and avoiding the machine from stressed conditions, the same need to be complied in this case also.

Therefore, in accordance with Section-73 of the Electricity Act, 2003, CEA placed this advice for the stakeholders including Appropriate Government and the Appropriate Commission to comply with the provisions of the Indian Electricity Grid Code for efficient safe, secure and economic operation of the Thermal Units."

It is to submit that even after directive / advice by the CEA, legal advice by Advocate General of Madhya Pradesh, approval of DOP at OCC of MP and WRPC Forum and advice of SLDC for true interpretation of Grid Code, MPPMCL is still mis-interpreting provisions of Grid Code and DOP for their commercial gain and not adhering to the instructions of SLDC in this regard.

Interpretation of DOP of MPEGC by MPPMCL and denying RSD of some of the IPPs on the plea of PPA should be modified by incorporating such provision, ignoring the chronology of applicability of regulatory provisions of Grid Codes. Such type of mis-interpretation by a user of the Grid and not following the instructions of SLDC in this regard is a point of concern. This mis-interpretation of provisions of Grid Code and DOP could only be resolved by suitable directives / clarifications/ modifications by the Commission.

- 16) *In the DOP of Indian Electricity Grid Code of CERC, the applicability of Appendix-I and Appendix-II are as given below-*

Applicability of Appendix-I in CERC DOP-

As per the DOP of CERC, Clause No. 1.3 of Appendix-I i.e. Methodology for taking Generating Unit (s) under Reserve Shut Down and revival of unit (s) from Reserve Shut Down, shall come into force w.e.f. the date notified by the CERC in the official gazette.

Applicability of Appendix-II in CERC DOP-

The Compensation Mechanism is 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 (hereinafter “designated generating stations”). In case of generating stations whose tariff is neither determined nor adopted by the Commission but which is a regional entity, they shall be required to make appropriate provisions in their PPAs or any other supplementary agreement in the light of the Compensation Mechanism.

- 17) *It is to submit that there is no regulatory provision exists for ensuring technical minimum schedule on revival of Thermal Generators from RSD, except in DOP of MPEGC. MPPMCL has also not complied to the provisions of DOP for minimum 8 hours technical minimum scheduling after revival of Thermal Generators from RSD.*

MPPMCL has been considering the DC of some of the IPPs only when their Generators are on bar, despite scheduling Zero ‘0’ MW for days together without ensuring technical minimum schedule.

Whereas for some of the IPPs, MPPMCL has been considering DC of some of IPPs when the Generators are Off bar due to below technical minimum requisition by the beneficiaries. For example, M/s Torrent had taken units under RSD at 21:00 Hrs on 13th November-2021 due to less requisition from the beneficiaries. MPPMCL has accepted its 50 MW Off bar DC, considering unit under RSD.

The arbitrarily scheduling by MPPMCL is making the Scheduling & Despatch more difficult for SLDC. These problems can be resolved by modifying title, Clause-1.3 and Clause-3 of DOP of Appendix-I of MPERC suitably, in line with DOP of IEGC to make clarity in the matter. The SLDC has been issuing the monthly SEA as per provision of DOP of IEGC and also directive / advice of Central Electricity Authority vide letter No. dated 18.04.2018. It would also ensure the impartial and judicious treatment for all the IPPs having PPAs with MPPMCL, either located within or outside the State and also refrain beneficiaries of having impartial treatment as per their will.

- 18) *Thus, SLDC in its feedback vide letter No. 07-05/SG-9/123 dated 20.01.2021 had requested Commission to modify the Clause-1.3 of Appendix-I of the DOP of MPEGC as given below, in line with the DOP of CERC, to have more clarity to the State Grid entities-*

Appendix-I, Clause-1.3-

The DOP shall come into force w.e.f. the date of its approval by the MP Electricity Regulatory Commission.

- 19) *It is to submit that the applicability of Appendix-II of the DOP had also been mentioned in title, Clause-1.3 and Clause-3 of Appendix-I due to oversight while revising the DOP in accordance with the directives of the Commission during presentation of DOP on 20.11.2019. The Commission had directed SLDC to review and rework the DOP in light of the discussions held during the presentation and ensure impartial treatment with all the Generating Stations.*

It is to submit that Appendix-I of the DOP is for taking unit (s) under Reserve Shut Down for scheduling below technical minimum schedule and part load operation. Mentioning of compensation for degraded Station Heat Rate (SHR), compensation for multiple start/stop auxiliary consumption and secondary fuel oil consumption etc., which are applicable for Appendix-II of DOP and misplaced in Appendix-I of the DOP. Thus, the modification in title, Clause-1.3 and Clause-3 of the Appendix-I is sought.

- 20) *Regulation-45 of the MPERC Conduct of Business Regulations, 2016 empowers the Commission to exercise the inherent powers to pass such orders.*

The arbitrary scheduling by MPPMCL is making the Scheduling & Despatch more difficult for SLDC. Therefore, it is necessary for the Commission to exercise its inherent powers and modify title, Clause-1.3 and Clause-3 of Appendix-I of the DOP to bring it in line with the IEGC.

- 21) *All the provisions of MPEGC and IEGC are consistent, but there is some inconsistency in the DOP of the both the Grid Codes due to oversight by SLDC while preparing the DOP.*

Section-79 (1) (h) of Electricity Act, 2003 specifies that the Central Commission shall specify Grid Code having regard to Grid Standards. Section-86 (1) (h) of Electricity Act, 2003 specifies that the State Commission shall specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of Section-79.

Thus, all the provisions of DOP of MPEGC should be consistent with the provisions of DOP of IEGC.

- 22) *It is to submit that now there is only one Integrated Grid in the country i.e. National Grid. All the provisions of Grid Code such as Planning Code, System Operation Code, Protection Code, Metering Code, security aspects, data exchange, Schedule & Despatch etc. are for safe, secure & reliable operation of the Integrated Grid. The Grid security is always considered on top most priority in the Electrical Sector. If the provisions of State Grid Code are inconsistent with the provisions of Central Grid Code, there would always be threat to the Grid security of the Integrated Grid of the nation. Any inconsistency*

between the provisions of DOP of State Grid Code and Central Grid Code may cause complications in commercial settlement between State Load Despatch Centre and Western Regional Load Despatch Centre.

If different Codes are followed for Protection settings, Metering, planning of transmission network, Schedule & Despatch Procedure, Compensation Mechanism etc. at State and Central level, the smooth operation of the Integrated Grid can never be ensured. Consistency in DOP of both the Grid Codes is essential for commercial settlement and also ensuring impartial and equal treatment with the Grid entities located within and outside the State.

- 23) *The standard practice adopted all over the country that in case of any inconsistency in the provisions of Indian Electricity Grid Code and State Electricity Grid Code, the provisions of the Indian Electricity Grid Code shall be adhered to, else it would be the violation of Section-86 (1) (h) of the Electricity Act, 2003.*

The Commission has also mentioned at some of the places in the State Grid Code / Balancing & Settlement Code etc. that in case of any inconsistency the provisions of CERC and CEA shall be followed.

- 24) *The SLDC has been considering the provisions of DOP of IEGC since date of notification of DOP of MPEGC for Scheduling and Despatch for day ahead and real time of operation. As per Section-86(h) of Electricity Act 2003, State Grid Code should be consistent with the Central Grid Code. This is the chronology of applicability of provisions of Grid Codes, in case of any discrepancy provisions of Central Grid Code shall be followed for security of Integrated Grid of the Nation which is also as per regulation 8.8 (6) of MPEGC.*

- 25) *In view of the submissions made in preceding paras, title, Clause-1.3 & Clause-3 of Appendix-I of the Detailed Operating Procedure of MPEGC may kindly be modified as under:*

A. *The title of Appendix-I of DOP may kindly be modified as –*

Existing title -

“Detailed Operating Procedure for Backing Down of Coal based unit(s) of the State Sector Generating Stations having 100% installed capacity tied up with MP Power Management/DISCOMs of MP and for IPPs as per provision in PPA with MPPMCL for taking such units under Reserve Shut Down for scheduling below Technical Minimum

Schedule and part load operation (i.e. operation of the unit(s) below normative PAF upto the technical minimum)."

Proposed modification in title-

"Detailed Operating Procedure for Backing Down of State Sector Generating Stations, IPPs and Thermal Generating Stations and for taking such units under Reserve Shut Down on Scheduling below Technical Minimum Schedule."

B. The Clause-1.3 of Appendix-I of DOP may also kindly be modified as-

Existing Clause-

"The DOP shall come into force with effect from the date of its approval by the MP Electricity Regulatory Commission or the date of approval of amendment in PPA by the Commission wherein appropriate provision for compensation for degraded station heat rate (SHR) or Auxiliary Energy Consumption (AUX) and Reserve Shutdown (RSD) are made by way of amendment, whichever is later".

Proposed modification in the above clause-

"The DOP shall come into force w.e.f. the date of its approval by the MP Electricity Regulatory Commission".

C. The Clause-3 "Scope" of Appendix-I of DOP may also kindly be modified as-

Existing Clause-

"This DOP shall be applicable to SLDC, MPPMCL, Distribution Licensee in state and State Sector Generating Stations (SSGS) having 100% installed capacity tied up with MP Power Management Co. Ltd./Discoms of MP and for IPPs as per provisions in PPA with MPPMCL, whose tariff is determined/adopted by the MPERC. In case of IPPs wherein 100% installed capacity is not tied up with MPPMCL/Discoms of MP through a long term power purchase agreement and whose tariff for only partial/contracted capacity is determined/adopted by the Commission, such Generating Station / Company shall have to appropriately factor in the provisions in the PPAs entered into by it with MPPMCL / Discoms for sale of power, in order to claim compensations for operating at part load or taking unit under RSD".

Proposed modification in the above clause-

“This DOP shall be applicable to SLDC, MPPMCL, Distribution Licensee in state and State Sector Generating Stations (SSGS) having 100% installed capacity tied up with MP Power Management Co. Ltd./Discoms of MP and for IPPs whose tariff is determined/adopted by the MPERC and also applicable for IPPs wherein 100% installed capacity is not tied up with MPPMCL/Discoms of MP through a long term power purchase agreement and whose tariff for only partial/contracted capacity is determined/adopted by the Commission.”

7. With the aforesaid submissions, the petitioner prayed to modify the title, Clause-1.3 & Clause-3 of Appendix-I of Detailed Operating Procedure of MPEGC.
8. At the Motion hearing in the subject matter held on 31st May' 2022, Ld. Counsel who appeared for the petitioner explained genesis of the petition. Having heard the petitioner, the petition was admitted and petitioner was directed to serve copy of the petition to Respondents within seven days and report compliance of service to the Commission. The respondents were directed to file their replies to the subject petition within three weeks, thereafter. The petitioner was directed to file rejoinder within two weeks, thereafter.
9. At the next hearing held on 19.07.2022, the Commission observed the following:
 - i. By affidavit dated 05.07.2022, Respondent no. 1 (MPPMCL) filed reply to the subject petition.
 - ii. By affidavit dated 27.06.2022, Respondent no. 2 (Jaypee Bina) and Respondent no. 6 (Jaypee Nigrie) filed common reply to the subject petition.
 - iii. By affidavit dated 30.06.2022, Respondent no. 4 (M/s Jhabua Power) filed reply to the subject petition.
 - iv. By affidavit dated 15th July' 2022, Respondent No. 3 (M/s BLA Power) filed reply to the subject petition.
 - v. The petitioner informed that no reply from Respondent No. 5 (M/s Lanco Amarkantak Power Pvt Ltd.) was received. It was observed that none appeared for Respondent No. 5 in the hearing. In view of aforesaid, opportunity to Respondent No. 5 for filing reply to the subject petition was closed. Ld. Counsel of the petitioner sought two weeks' time for filing rejoinder which was granted by the Commission.
10. At the hearing held on 16.08.2022, the Commission noted that
 - i. Vide letter dated 01.08.2022, the petitioner filed rejoinder to the replies filed by Respondents.
 - ii. Ld. Counsels for the parties concluded their arguments.

- iii. Ld. Counsels for the petitioner and Respondents requested for time of 10 days to file their written submissions, which was granted by the Commission.
- iv. Case was closed for order.

Submissions by the parties:

11. The Respondent No. 1, MPPMCL by affidavit dated 5th July' 2022 broadly submitted the following response on the subject petition:

1) *That, the answering Respondent No. 1 - M P Power Management Co. Ltd. is the holding Company of all the three Distribution Companies in the State. In accordance to the provisions of Madhya Pradesh Electricity Balancing and Settlement Code, 2015, answering respondent i.e. MP Power Management Co. Ltd. has been assigned the responsibility of providing requisition to SLDC for scheduling of power on behalf of Discoms of the State of Madhya Pradesh. The answering Respondent has also been entrusted with the responsibility of trading of power on behalf of Discoms of the State.*

2) *That, the Commission in order dated 29th Jan'2020 has directed SLDC to provide feedback, after consultation with the stakeholders, on the operation of the compensation mechanism only for assessment of the efficacy of the compensation mechanism. The mechanism of taking Units under RSD and its applicability on IPPs/ State Generating Stations is clearly mentioned in Clause 1.3 of Annexure-1 and Clause 2 of Annexure-2 clearly holding that the DOP and mechanism shall be applicable in respect of IPPs with part tied up capacity with MPPMCL only after approval of supplementary agreement to Power purchase agreement by Commission. If the IPPs are aggrieved with the DOP approved by Commission, they should have approached the Commission. In this case, no IPP has so far approached Commission for amendment of DOP as such this petition is liable to be rejected.*

Further, as indicated by petitioner that "Reserve Shutdown (RSD)" in clause 1.3 of Appendix-1 of DoP means compensation due to multiple stop/start of units, is not correct. RSD means only stopping of the units under certain condition as per provision of DoP and word "RSD" cannot be interpreted as multiple stop/start of units.

Appendix –II of the DoP deal with the compensation mechanism which includes compensation due to part load operation and multiple start/stop of units. Appendix-1 of the DoP deals with the methodology for taking units under RSD. Petitioners' submission that some of the grid entities are mis-interpreting this clause for their benefit is base less

as the applicability clause of DOP is very clear that DoP shall come into force for the IPPs with part tied up capacity only from the date of approval of amendments in PPA by Hon'ble Commission wherein appropriate provision for methodology of taking units under Reserve Shutdown are made by way of amendment. Therefore, submission of the petitioner is not correct and hence petition is liable to be rejected.

It is further submitted that looking to the system requirement and considering MoD, MPPMCL has been submitting requisition for scheduling of power from the generators to SLDC for a few hours as per need of system.

It is submitted that respondent MPPMCL is not liable to give commitment for minimum run time or to ensure technical minimum schedule for minimum 8 hrs for providing technical minimum schedule if supplementary agreement to PPA is not executed and approved by Hon'ble Commission as per the provisions of DOP. In absence of said agreement with MPPMCL, it is the responsibility of seller to keep machine on bar and schedule power as per requisition of MPPMCL as and when required. Respondent has executed PPAs with IPPs for part capacity only and balance power is considered as merchant power of generating station which it can sell to any third party. Even the power not scheduled by MPPMCL can also be sold by IPPs under the provisions of PPA as such there is no difficulty of keeping the machine on-bar. Under the above circumstances, it is the responsibility of the IPP to keep machine on bar and schedule power as per requisition of beneficiary.

On 11.01.2022, looking to system requirement and considering MoD, MPPMCL had provided requisition for scheduling of power from BLA units from 18:00 Hrs to 19:15 Hrs (Annexure-1). However, M/s BLA power did not schedule as per requisition and responded that unit is under "RSD" in terms of provision of grid code. MPPMCL immediately informed M/s BLA that "RSD" is not applicable as there is no such provision in PPA (Annex-2). M/s BLA again mentioned that comment of MPPMCL is not acceptable in terms of Grid Code. However, when M/s BLA was requested to intimate the relevant provisions of the Grid Code, M/s BLA could not respond. This development continued for subsequent days also. Such type of incidence in respect of M/s BLA power has occurred most of the time. There are many examples when MPPMCL provided day ahead requisition for scheduling of full entitled power from M/s BLA for the whole day i.e. from 00:00hrs. to 24:00hrs. in which there was sufficient time available to bring the unit on bar, but M/s BLA did not bring the units on-bar and demanded for commitment of technical minimum schedule for continues 72 Hrs. (Annexure-3). It is submitted that neither generator had declared its capacity for 72 Hrs on day ahead

basis nor any DoP or regulation provides for giving commitment of TMM for continuous 72 Hrs. Hon'ble Commission has already held in Petition No. 25/2021 that there are no such provisions of providing TMM for continuous 72 hours. DoP provides commitment of 8 hrs. TMM schedule.

- 3) That, in the meeting of OCC, MPPMCL has intimated the Chairman of OCC that provision in DoP of MPERC is consistent with the provision of DoP of IEGC with some additional provisions for Generating Stations with part tied up capacity with MPPMCL and that such additional provisions cannot be construed as inconsistencies. However, on request of Chairman OCC, written comments of MPPMCL was submitted to SLDC.*
- 4) That, submission by M/s Jaiprakash power ventures limited and M/s BLA power private limited regarding considering RSD by other State is not supported by any regulatory provision of respective State. Further, State Electricity Regulators are not governed or guided by other Regulators and has to frame Regulations considering State specific requirements. In the DoP issued by MPERC which is applicable to MP State, there is mandatory requirement of supplementary PPA incorporating methodology for taking units under RSD in respect of all the Generating Stations which have part capacity tied up with MPPMCL. Thus, submission in this regard is not relevant.*

In regards to comments of SLDC in Para 19(III) of the petition, the point wise reply of respondent no 1 is as under:-

- (a) Petitioner has neither mentioned specific provisions of the Grid Code/DoP which is inconsistent with the Central Grid Code nor mentioned any discrepancy. It is further submitted that it will not be appropriate to take cognizance of any legal opinion by Commission for determination of applicability of provision of taking generating units under RSD of Appendix-1 of DoP. MPERC has already held in Petition No. 56/2016 clubbed with 36/2017 that such legal opinions cannot be taken into cognizance while deciding a legal dispute.*

The CEA in its letter dated 18.04.2018 placed advice for stake holder including Appropriate Governments and Appropriate Commissions to comply with the provision of IEGS. The DOP approved by the Commission has already considered the provisions of IEGS with some additional provisions specifically applicable to Generating Stations with part tied up capacity with MPPMCL which cannot be construed as inconsistency with DOP approved by CERC.

It is further submitted that in light of the fact that there is no inconsistency in DOP approved by CERC and MPERC as already elaborated in this response, prayer of SLDC for applicability of proposed amendment retrospectively may lead to many complications and will lead to benefit to some Generating Stations retrospectively at the cost of retail consumers of the State. The amendment in PPA cannot be considered from retrospective date. It is prayed that even if any amendments in DOP are to be considered, it may be made prospectively only after due notification and public hearing as per business conduct rules of the Commission.

(b) The Petitioner has repeatedly mentioned that MPPMCL is mis-interpreting the provisions of Grid Code in their commercial interests which is highly objectionable. In fact, there are no questions of interpretation of DOP provision as it is amply clear. It is the petitioner who is interpreting the provisions of DOP and Grid Code beyond its jurisdiction. Any interpretation of Regulations and Orders passed there under can only be made Appropriate Commission framing/ passing such orders. The petitioner after realising this fact has now approached Commission after a lapse of two years for interpretation/ amendment in DOP from retrospective effect which will lead to undue benefits to some of the Generating Stations at the cost of retail consumers of the State.

It is submitted that provisions of DoP issued by CERC and MPERC are same for those generating station where 100% capacity is tied up with the beneficiaries. In the DoP issued by CERC, no procedure has been made for IPPs where 100% capacity is not tied up with the beneficiaries. Such cases are unique to MP where PPAs have been executed for part capacity and balance power is considered as merchant power of generating station which it can sell to any third party. Since significant share of generating capacities have been considered as merchant power, Hon'ble commission has correctly considered it as pseudo beneficiaries and defined role of pseudo beneficiaries as well in its DoP. Moreover, requirement of amendment in PPA is also made a pre-condition for applicability of DoP of MPERC which is also required for the applicability of DoP as a whole so that any such arrangements can be implemented only after mutual consent.

It is submitted that such provisions were essential to be incorporated in DoP of MPERC to protect interest of end consumers and it cannot be said to be inconsistent with CERC DoP as these are additional provision as CERC DoP does not deal with the cases of part-tied up capacity. Thus, existing DoP of MPERC is fully consistent with the DoP of

CERC with some additional clause applicable to IPPs and thus there is no need of any amendment in MPERC DoP.

It is submitted that in absence of supplementary agreement, MPPMCL is not liable to give commitment for minimum run time or to ensure technical minimum schedule for minimum 8 hr regarding providing technical minimum schedule. It is the responsibility of seller to keep machine on bar and schedule power as per requisition of MPPMCL. The seller can always remain on-bar by selling its merchant capacity and also surrendered capacity of MPPMCL as per the provisions of PPA while declaring full capacity in order to claim full fixed charges.

- 5) *That, the response on the issues mentioned in these paras has already been given in the preceding paras. It is however pertinent to mention that MPPMCL on 18th June, 2022 gave full day-ahead requisition (as per entitlement i.e., 14.1 MW RTC) for scheduling M/s BLA Power from 00:00 to 07:30 hrs. and 14:15 hrs. to 24:00 hrs. On 19th June, 2022, M/s BLA mailed that since M/s BLA did not have technical minimum schedule for Unit no.2, they were taking out Unit no.2 on RSD from 01:00 hrs. Appendix-II-point no.5(vii) clearly states as follows: -*

“If MPPMCL requisitions technical minimum of its share, other Long-Term beneficiary(ies) also requisitions technical minimum of its share but pseudo beneficiary does not sell at least technical minimum of power available with IPP and if IPP stops the unit due to less scheduling, the unit(s) shall not be treated under RSD.”

Clearly, M/s BLA did not even adhere to the methodology of DOP issued by the MPERC. Further, SLDC should have interfered in the matter and should have taken appropriate action instead of staying quiet in the matter.

It is submitted that Appendix -1 & Appendix-2 of DOP notified by Commission are interlinked and are integral part of DOP and both can only be applied through amendment in PPA duly approved by Commission in case of Generating Stations having part capacity tied up with MPPMCL.

In view of the above submission, there appears to be no requirement of any amendments in DOP notified by Commission which is fully consistent with MPEGC and DOP issued by CERC.

12. *By affidavit 15th July' 2022, BLA Power Pvt Ltd., (Respondent No. 3) has submitted its response on the subject petition mentioned that it supports the present petition and prays the Commission to allow the same. M/s BLA Power Pvt Ltd. has submitted that the MPERC DOP, as approved by this Commission, is inconsistent with the provisions*

of the DOP approved by the CERC whereas, in terms of Section 86(1)(h) of the Electricity Act, 2003, the State Commission shall specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79. Therefore, the DOP issued by the State Electricity Regulatory Commission must necessarily be consistent with the DOP issued by the Central Commission, which is not there in the present case.

13. By affidavit 30th June' 2022, M/s Jhabua Power Ltd., (Respondent No. 4) has also submitted its response on the subject petition and mentioned that it supports the prayers made by the petitioner, MP, SLDC for effecting certain modification in Appendix-I of the detailed Operating Procedure (DOP) for taking coal based thermal units under Reserve Shut Down (RSD) in the event of scheduling below technical minimum. M/s Jhabua Power Ltd. has also highlighted the arbitrary manner in which MPPMCL provides generation schedule to JPL without any consideration to the technical constraints faced by a coal-based thermal generator.
14. By affidavit dated 27th June' 2022, M/s Jaiprakash Power Ventures Ltd. filed common response on behalf of Respondent No. 2 and 6 in the subject petition broadly mentioning the following:

In order to bring the MPERC DoP in consistency with the DoP notified by Ld. CERC, the amendments as proposed by the petitioner are ought to be allowed.

- (a) *This Commission in its Regulations has specified that the requirement of signing of a supplemental PPA is required only for claiming compensation for degradation of GSHR, Aux consumption and Secondary Fuel Consumption due to Part Load Operation. Therefore, this Commission in revised DoP may reaffirm this clarification to ensure that MPPMCL cannot wriggle out of its obligations qua Generators.*
- (b) *The stand of MPPMCL that RSD of thermal units in the event of scheduling before Technical Minimum is not only perverse but also ex-facie in violation of the law set out under the IEGC and MPEGC.*
- (c) *Therefore, it is requested that this Commission may kindly reprimand the arbitrary and capricious conduct of MPPMCL and clarify that the provisions of the MPEGC are binding on all stakeholder and the event of RSD as mentioned in MPEGC and DoP are operational issue to be accepted by all DISCOMS without calling upon the requirement of executing a Supplementary PPA. In the event the above position is not clarified then the same may result in collapse of the Grid.*

- (d) *In fact, MPPMCL is setting a dangerous trend and is making the MPEGC which is in the nature of delegated legislation subject to the whims of a Contract. This would mutilate the very fabric of sector as envisaged by this Commission.*
- (e) *It is further submitted that Regulation 8.8 of MPEGC 2019 and provision 5 and 6 of the DoP approved by this Commission creates an unequivocal right in favour of Answering Respondents to take its units under RSD.*
- (f) *The selective decision of MPPMCL to execute the PPA with one of the Generators (in exclusion of the others) is in violation of Article 14 of the Constitution of India as while the Grid Code is applicable to all Generators, however, the benefits of its provisions is only being made applicable to the selective Generators which is not permissible under law.*
- (g) *Furthermore, MPPMCL being a State Instrumentality is not expected to discriminate between the Generating Companies and has an obligatory duty to act fairly, justly and reasonably.*
- (h) *The discriminatory actions of MPPMCL apart from being violation of the Act and Article 14 of the Constitution of India distort the level playing field, wherein the Generating Companies such as Answering Respondents are being denied their lawful claims.*

15. With the above submissions, M/s JPVL has prayed that the proposed amendments DOP are necessary in nature, to bring in uniformity into the Grid Code and for the safety of the Grid system, which is of paramount importance for running the system. Therefore, the Commission may allow the amendments as proposed by the petitioner in the Petition.

16. By affidavit dated 01.08.2022, the petitioner broadly submitted the following in its rejoinder to the replies filed by the Respondents:

(A) Rejoinder to Respondent No.1 (MPPMCL) reply-

That, it is to submit that background of this Petition, relevant regulatory provisions, general practices adopted by beneficiary and problems of scheduling are already mentioned in Para-12 of the Petition. The explanation to the reply of Respondent No.1 is covered in Para-12 of the Petition, however the relevant points are submitted hereunder.

Appendix-I of DOP of MPEGC is for backing down of Thermal Generating Unit and for taking such unit under Reserve Shut Down on scheduling below Technical Minimum

Schedule whereas Appendix-II of DOP of MPEGC is for compensation for Degradation of Heat Rate, Aux Consumption and Secondary Fuel Oil consumption, due to Part Load Operation and Multiple Start / Stop of Units. The IPPs having part capacity tied up MPPMCL shall become eligible for receiving the compensation as per Appendix-II of DOP of MPEGC only after signing of supplementary PPA with MPPMCL. This is in line with the DOP of IEGC.

It is to further submit that clause 8.8(4) of Madhya Pradesh Electricity Grid Code (Revision-II) 2019 provides that IPPs may have to sign supplementary PPA with MPPMCL in order to claim compensation for operating at the technical minimum schedule. The relevant section 8.8.4 of MPEGC is reproduced below.

“In case of generating stations other than SSGS, wherein the 100% installed capacity is not tied up with MPPMCL/Discoms of MP through a long term power purchase agreement or whose tariff for only partial/contracted capacity is determined by the Commission, such generating station/ company may have to appropriately factor in the above provisions in the PPAs entered into by it with M.P. Power Management Company / Discoms for sale of power, in order to claim compensations for operating at the technical minimum schedule.”

The Appendix-I of DOP of IEGC does not provide any condition for signing of supplementary PPA by Thermal Generating Stations whose tariff is neither determined nor adopted by the Central Commission for Regional entity for taking such Units under RSD on Scheduling below Technical Minimum whereas applicability of Appendix-II requires signing of supplementary PPA for above Generating Stations for receiving compensation for Degradation of Heat Rate, Aux Consumption and Secondary Fuel Oil Consumption due to Part Load Operation and Multiple Start / Stop of Units.

Thus, it is evident from the above submissions that IPPs having part capacity tied up with MPPMCL does not require signing of supplementary PPA with MPPMCL for taking the Unit under RSD on Scheduling Below Technical Minimum.

It is further submitted that Section-8.8.6 of the MPEGC only stipulates to prepare a Detailed Operating Procedure for taking generating unit under RSD and there is no mention of amendment in PPA between buyer and seller. The provision of RSD would have been implemented on approval of Detailed Operating Procedure by the Commission. The relevant Section 8.8.6 of MPEGC is reproduced below-

“The Detailed Operating Procedure shall contain the role of different agencies, data requirements, procedure for taking the units under reserve shut down and the methodology for identifying the generating stations or units thereof to be backed down up to the technical minimum in specific Grid conditions such as low system demand.”

It is to submit that multiple start/stop of units is related with the RSD of the Generating Unit for compensation purpose. The compensation for multiple start/stop of generating unit is admissible only when the generating unit is stopped more than seven times in a calendar year under RSD. The generator shall not be entitled for claiming compensation for multiple start/stop due to forced / planned outage.

It is to mention that SLDC has to perform scheduling activities as per the provisions of Grid Code and Balancing & Settlement Code without favoring any of the user of the Grid. The safe, secure & reliable operation of the Grid and Market Operation activities are to be ensured in accordance with the provisions of Electricity Act-2003 and Grid Codes.

That, as per Minutes of 81st meeting of Operation and Coordination Committee of MP (annexed with petition as Annexure-3) issued vide letter no. 808 dated 11.04.2022, OCC Forum of MP has agreed that DOP of MPERC should be consistent with the DOP of IEGC for safe, secure & reliable operation of the Integrated Grid of the nation. However, after issuance of Minutes, MPPMCL vide letter no. 140 dated 12.04.2022 submitted their comments on the supplementary agenda item stating that existing DOP of MPERC is fully consistent with the DOP of CERC with some additional clauses applicable to IPPs and there is no need of any amendment in MPERC DOP. In this regard, it is to submit that additional provisions in Appendix-I of DOP of MPEGC for taking IPPs (with part capacity tied up with MPPMCL) under Reserve Shut Down on scheduling below technical minimum schedule makes the DOP inconsistent with DOP of IEGC.

It is to submit that as per Section-86 (h) of Electricity Act-2003, State Grid Code shall be consistent with the Central Grid Code i.e. IEGC. All the provisions of Grid Code and Detailed Operating Procedures for implementation of various provisions of Grid Code are for secure operation of the Integrated Grid.

Sub-section-6 of Section-8.8 of Madhya Pradesh Electricity Grid Code (Revision-II), 2019 is reproduced below-

“SLDC shall prepare a Detailed Operating Procedure in consultation with the generators and beneficiaries at OCC forums within 3 months’ time and submit to the Commission for approval. The Detailed Operating Procedure shall contain the role of different agencies, data requirements, procedure for taking the units under reserve shut down and the methodology for identifying the generating stations or units thereof to be backed down up to the technical minimum in specific Grid conditions such as low system demand. Regulations of Power Supply and incidence of high renewable etc. based on merit order stacking.

The SLDC shall work out a mechanism for compensation for station heat rate and auxiliary energy consumption for low unit loading on monthly basis in terms of energy charges and compensation for secondary fuel oil consumption over and above the norm for additional start-ups in excess of 7 start-ups, in consultation with generators and beneficiaries at OCC forum and its sharing by the beneficiaries.

While preparing the above Detailed Operating Procedure and working out the aforesaid mechanism, the SLDC may be guided by the Detailed Operating Procedure and mechanism approved by the Central Commission under Indian Electricity Grid Code”.

Thus, M.P. Electricity Grid Code also specifies consistency of DOP of MPEGC with DOP of IEGC.

It is to submit that the discrepancy has been causing dispute between Buyer and Seller (Intra State IPPs). Sometimes MPPMCL has been submitting requisition for a few hours only to the IPPs having part capacity tied up with the beneficiary to which IPPs are not agreeing. Thus, creating Scheduling & Despatch difficult for SLDC.

There is no regulatory provision existing except provision in DOP of MPEGC (Clause-7.2) for minimum 8 hours’ technical minimum schedule to the Generator on revival of Generator after RSD. The MPPMCL has been requisitioning power for a few hours to revive Generator from RSD and Generators do not agree for intermittent schedule that too for 1 or 2 hours on the ground of threat to the safety of the machines.

Buyer and Seller shall have to arrive at a consensus considering the difficulties of each other for minimum run time, technical minimum schedule and safety of the Generator, else MPPMCL has to ensure technical minimum schedule for minimum 8 hours after revival of unit (s) from RSD, allowing the HOT, WARM and COLD start up time as per declaration of the Thermal Generator, in line with Clause-7.2 of DOP of MPEGC.

MPPMCL statement that DOP approved by the Commission has already considered the provisions of IEGC with some additional provisions specifically applicable to Generating Stations with part tied up capacity with MPPMCL which cannot be construed as inconsistency with DOP approved by CERC. In this regard, it is to submit that additional provisions in Appendix-I of DOP of MPEGC for taking IPPs (with part capacity tied up with MPPMCL) under Reserve Shut Down on scheduling below technical minimum schedule makes the DOP inconsistent with DOP of IEGC and lead to different treatment for the IPPs connected with Inter State Transmission System (ISTS) and State Transmission System. The IPPs having part capacity tied up with MPPMCL connected with ISTS are having control area with WRLDC, the operation of these IPPs is governed by the DOP of IEGC. Thus, the additional provisions need to be modified to have consistency in DOP of IEGC and MPEGC and to ensure the uniform treatment to all the IPPs having PPA with MPPMCL.

The MPPMCL statement that prayer of SLDC for applicability of proposed amendment retrospectively may lead to many complications and will lead to benefit to some Generating Stations retrospectively at the cost of retail consumers of the State is misplaced. The MPPMCL has tried to allege that any such modification / amendment / deletion may lead to huge financial implication with retrospective effect which is not permissible in law. It is respectfully submitted that the petitioner has not at all challenging any act / provision / regulation / rules at all. The rationale behind this petition is to align the DOP of MPEGC consistent with DOP of IEGC and to have similar methodology for Scheduling & Despatch for the IPPs connected with the State Grid and Inter State Grid. Therefore, question of being retrospective does not arise at all and totally irrelevant to the petition.

It is to submit that a large number of IPPs having multiple beneficiaries are connected with the Transmission network of CTU i.e. Inter State Transmission System (ISTS). These IPPs are having part capacity tied-up beneficiary States and balance power is considered as merchant power. The RLDCs deals these IPPs with the Appendix-I of DOP of CERC where no condition for signing of supplementary PPA has been incorporated for backing Down of Generating Stations and for taking such units under Reserve Shut Down on Scheduling Below Technical Minimum Schedule. Thus, comments of MPPMCL "Such cases are unique to MP where PPAs have been executed for part capacity and balance power is considered as merchant power of the Generating Stations which it can sell to any other 3rd party", is not correct.

(B) Rejoinder to Respondent No.3 (M/s BLA Power Pvt. Ltd.) reply-

M/s BLA Power Pvt. Ltd. (Respondent No.3) through affidavit dated 15.07.2022 has submitted their reply on the petition filed by SLDC. The submissions made by M/s BLA Power Pvt. Ltd. are in line with the prayer of SLDC made in the petition for modification of title, Clause-1.3 & Clause-3 of Appendix-I of DOP of MPEGC 2019.

(C) Rejoinder to Respondent No. 2 & 6 (M/s Jaypee Bina and M/s Jaypee Nigree):

M/s Jaiprakash Power Ventures Ltd. through affidavit dated 27.06.2022 has submitted their reply on behalf of Respondent No. 2 (M/s Jaypee Bina Thermal Power Plant) and Respondent No.6 (M/s Jaypee Nigree Super Thermal Power Plant). In their submissions they have finally prayed before the Commission to allow the amendments as proposed in the petition.

(D) Rejoinder to Respondent No. 4 (M/s Jhabua Power) reply:

M/s Jhabua Power (Respondent No.4) through affidavit dated 30.06.2022 has submitted their reply on the petition filed by SLDC. In their reply they have prayed to amend the clause 1.3 "Scope" of Appendix-I of DOP of MPEGC as proposed in the petition. Further, they have also suggested to change the title instead as follows:

"Detailed Operating Procedure for backing down of coal based thermal generating stations of the State Sectors & IPPs and for taking such units under Reserve Shut Down on scheduling below technical minimum schedule."

M/s Jhabua Power suggestion is for specific fuel (coal) used in Thermal Generating Station whereas other fuels are also used in Thermal Generating Stations. The Operating Procedure is for all the Thermal Generating Stations irrespective of the type of fuel used. Thus, the suggestion made by M/s Jhabua Power may not be accepted.

In view of the submissions made herein above under sub-heading (A to D), it is prayed before the Commission to issue orders /directives to modify the title, Clause-1.3 & Clause-3 of Appendix-I of Detailed Operating Procedure of MPEGC as submitted in Petition.

17. The Respondent No 1, i.e., MPPMCL by affidavit dated 29.08.2022 while reiterating the submission made in response to the subject petition, filed its final written submission on arguments and raised the following issues:

- 1) *That, following issues may need consideration of the Commission in adjudication of present case:*

- (i) *Whether, the petition has been correctly filed in persuasion to order dated 30-03-2022 passed by the Hon'ble Commission in earlier Petition no. 10/2022 and under correct provision of law warranting any relief in favour of the Petitioner?*
 - (ii) *Whether, a petition seeking simplicitor clarification of a provision of Regulation is maintainable?*
 - (iii) *Whether a regulation can be amended by way of adjudication in a petition?*
 - (iv) *Whether in absence of the Secretary of Hon'ble Commission, Western Regional Power Committee and the State Government of Madhya Pradesh being arrayed as a necessary respondent any directions can be given to consider a case for amendment as being sought by the Petitioner?*
 - (v) *Whether the present is a fit case warranting any reliefs in favour of the Petitioner and the Respondents No. 2 to 6?*
- 2) **Issue No. (i):** *That, the present petition has been filed under Regulation 45 of the MPERC (Conduct of Business) Regulations 2016 r/w. MPERC (Fee, Fine and Charges) Regulations, 2010 which provides for saving of inherent power of the Commission. MPERC (Fee, Fine and Charges) Regulations, 2010 merely deal with the fee, fine and charges payable in cases before the Commission. Inherent powers are exercised sparingly and in well set out rare of the rarest cases. If there are other remedial measures available, the inherent powers need not be exercised. A petition without claiming any remedial measure within the Regulations as they stand notified on a particular date and without demonstrating the said Regulation is violative of the Electricity Act, 2003, the National Electricity Policy or not being inconsistent with the analogous provisions of the DoP & Mechanism approved by the Id. Central Commission under the Indian Electricity Grid Code is not maintainable before the Commission while functioning on the judicial side. The present petition having been presented on the judicial side is certainly not maintainable in the present facts and circumstances of the case and is not maintainable u/s. 45 of the Conduct of Business Regulations. The petition has been filed under incorrect provision of law and at no subsequent stage, the Petitioner could point out the correct provision of law under which the petition ought to have been filed. An extensive perusal of the petition does not demonstrate any dispute of misinterpretation on the part of MPPMCL. The present petition, as can be gathered from the reliefs claimed by the Appellant and subsequently in all consciousness abandoned by its counsel during the course of final arguments, as has been stated in para no. 2 hereinbefore, is lacks any arbitral issue to be adjudicated upon by the Commission. Therefore, the petition is not maintainable u/r. 45 of the Conduct of Business Regulations or under any other provision of law before the Commission.*

Filing of the petition under the provisions of MPERC (Fee, Fine and Charges) Regulations is an issue unexplained by the Petitioner. The fee, fine and charges payable to the Hon'ble Commission are matters solely between the Hon'ble Commission and the Petitioner and the Respondents cannot have any substantial say on it.

It becomes abundantly clear that the Petitioner could not fetch out any correct provision of law under which the present petition ought to have been filed and as such, merely for the sake of quoting a provision of law in the heading of the petition has quoted irrelevant / incorrect provisions of the Conduct of Business Regulations and Fee, Fine & Charges Regulations.

The Petitioner has averred that the petition has been filed in pursuance of the order dated 30-03-2022 passed by the Commission in earlier Petition no. 10/2022. The said order clearly provides as:

“Petitioner agreed to approach the Operation and Coordination Committee for review of DOP and thereafter, if necessary, to approach the Commission for consideration and directions in this matter.”

If at all, it be necessary for the Petitioner to approach the Commission, the approach cannot, for the first instance, be on the judicial side in the functioning of the Hon'ble Commission for consideration. Such a consideration, if required, may be on the other side in a separate process and functioning. Furthermore, in absence of the Secretary of the Hon'ble Commission, no orders can be given to the registry for any further / separate consideration in the matter.

- 3) ***Issue No. (ii):*** *As against a petition for clarification of an order made on the judicial side, a petition simplicitor for clarification of a Regulation without seeking any consequential remedial measures from within the said Regulation and without modifying the said Regulation may be maintainable to some extent. However, a petition seeking clarification of a Regulation and at the same time seeking an altogether modification of the same on the judicial side is unknown in law. The relief sought by the Petitioner is to replace the clause 1.3 and clause 3 of Appendix-1 of DoP requiring amendment cannot be done through clarifications. In the facts and circumstances of the case, the present petition is misconceived and is liable to be dismissed.*

- 4) ***Issue No. (iii):*** *A Regulation cannot be amendment in the course of a judicial proceeding. Such an amendment is unknown in law. At the best, during the course of*

a petition involving an arbitral issue, the Regulation can be interpreted and explained in true perspectives. It cannot be amended altogether.

- 5) ***Issue No. (iv):*** *If at all necessary instructions are felt necessary to be given to the registry of the Hon'ble Commission in the facts and circumstances of the present matter, the same can only be given vide instructions through the Secretary of the Hon'ble Commission. However, in absence of the Secretary being arrayed as a necessary party herein, such instructions cannot be made. Furthermore, the Member Secretary, WRPC who vide its email dated 23rd Dec'2019 had already intimated that DOP is in line with the CERC procedure, has not been arrayed as a necessary party to present petition. Any orders / instructions without hearing the said parties may lead to unforeseen complications and multiplicity of consideration of the issue in peace meals.*
- 6) ***Issue No. (v):*** *That, the present petition filed by SLDC for modification of Title of Appendix-I, Clause 1.3 of Appendix-I and Clause -3 of Appendix-I of DoP on the alleged grounds of misinterpretation of above clause by MPPMCL causing petitioner facing difficulty for smooth scheduling & Dispatch under Day-ahead and real time operation. Further one of the ground also indicated by petitioner in its petition that DoP of MPEGC should be in line with DOP of IEGC*
- 7) *That, the Commission at para 7 of its order dated 29th Jan'2020 was pleased to indicate as:-*

"7. Subsequently, vide letter dated 23rd Dec'2019, SLDC has filed revised Detailed Operating Procedure and mechanism for compensation with the following submission:

*SLDC has prepared a revised DOP and discussed with representative from all the generators including IPPs, WRPC and MPPMCL on 5th Dec'2019 at Regional Office, MPPMCL Bhopal. Subsequently, the DOP prepared by SLDC has also been discussed in 39th WRPC meeting held on 16th Dec'2019. Based on the discussion held during the meeting and recommendations of WRPC, SLDC has made changes in DOP. **The member Secretary, WRPC vide email dated 23rd Dec'2019 has intimated that DOP is in line with the CERC procedure."***

Thus, as is abundantly clear from said para 7 of order dated 29th Jan'2020 of the Hon'ble Commission, WRPC also confirmed that DOP is in line with the CERC procedure. Therefore, the grounds of petitioner on subject matter have no merits and thus the petition is liable to be rejected.

- 8) *That, the Commission vide para 6 of its order dated 29th Jan'2020 had directed SLDC to provide feedback, after consultation with the stakeholders on the operation of the compensation mechanism only for assessment of the efficacy of the compensation mechanism and had never directed for amendment/modification in DOP. However, during the course of hearing on 16th Aug'2022, counsel of petitioner very consciously and clearly stated that the petition is filed for clarification of certain clause by way of modification in title, Clause-1.3 & Clause-3 of Appendix-I of DOP. It is submitted that any clarification on DOP cannot attract any modification in original clause. Only correct interpretation of clauses of DOP can be given for clarification. Any modification in DOP would result in introduction of new clause and or replacement of existing clause with new clause, which is not required in this case without prudent justification.*
- 9) *That, Title of Appendix-1 of DOP clearly specifies that for Detailed Operating Procedure for backing down of coal based unit(s) **for IPPs as per provision in PPA with MPPMCL for taking such units under Reserve Shut Down** for scheduling below Technical Minimum schedule and part load operation (i.e. operation of the units/(s) below normative PAF up to technical minimum. Thus no clarification is required in the title of Appendix-1 of DOP as it is amply clear that procedure of taking units under RSD for IPPs is applicable only after the appropriately incorporating of such provision in PPA. In absence of such provision in PPA, procedure of taking units under RSD is not applicable to IPPs.*
- 10) *That, Clause 1.3 of Appendix-1of DOP clearly specifies that the DOP shall come into force with effect from the date of its approval by MPERC or the date of approval of amendment in PPA by the Commission wherein appropriate provision for compensation for degraded station heat rate (SHR) or Auxiliary Energy Consumption (AUX) and Reserve Shutdown (RSD) are made by way of amendment, whichever is later. Thus, no clarification is required in the Clause 1.3 of Appendix-1 of DOP as it is amply clear that DOP shall come into force from the date of approval of amendment in PPA by the Commission in which following provision is necessary condition*
- a. For compensation for degraded station heat rate (SHR) **or** Auxiliary Energy Consumption (AUX) and*
 - b. Reserve Shutdown (RSD)*
- 11) *That, Clause 3 of Appendix-1of DOP clearly specifies that the DOP shall be applicable to SLDC, MPPMCL, Distribution licensee in State and State sector generating station (SSGS) having 100% installed capacity tied up with MPPMCL and for IPPs as per provision in PPA with MPPMCL. In case IPPs wherein 100% installed capacity is not tied up with MPPMCL, such generating station shall have to appropriately factor in the*

provisions in the PPA. Thus no clarification is required in the Clause 3 of Appendix-1 of DOP as it is amply clear that DOP shall be applicable to IPPs and in case IPPs wherein 100% installed capacity is not tied up with MPPMCL through a long term PPA and whose tariff for only partial/contracted capacity is determined/adopted by Commission, such generating station shall have to appropriately factor in the provisions in the PPA entered into by it with MPPMCL for sale of power in order to claim compensation for operating at part load **or** taking unit under RSD. The word “or” is used before the word “taking unit under RSD” means for taking unit RSD, IPPs shall have to appropriately factor the provision in the PPA. In absence of such provision in PPA, procedure of taking units under RSD is not applicable to IPPs.

- 12) That, procedure of taking Units under RSD and its applicability in respect of IPPs with part tied up capacity with MPPMCL is clearly mentioned in Title, Clause 1.3 and Clause 3 of Annexure-1 of the DOP and shall be applicable only after approval of supplementary agreement to Power purchase agreement by Hon'ble Commission. MPPMCL and IPPs both rightly interpreted the aforesaid Clause and thus IPPs provided their consent for executing the supplementary PPA for incorporation of above provision of DOP. Pertinent to mention here that none of such IPPs have approached the Commission raising a grievance that MPPMCL is misinterpreting the provisions of DoP and causing them any difficulty, whatsoever be it in nature. Had there been any such a situation, the IPPs would have first rushed up for necessary redressal.
- 13) Appendix – II of the DoP deals with the compensation mechanism which includes compensation due to part load operation and multiple start /stop of units. Appendix-1 of the DoP also deals with the methodology for taking units under RSD. Claus 5 (v), Clause 5(vi), Claus 5 (vii) and Clause 5 (viii) of appendix-II provide for the role and responsibility of Pseudo beneficiaries and also segregated the condition of “RSD” & “FSD” for not maintaining the technical minimum generation of its merchant capacity. The relevant Clause of Appendix-2 is reproduce below:-
- “5. Compensation Mechanism for IPPs having part capacity tied-up with MPPMCL/ Discoms:-
- 5.3. The Independent Power Producers generating station having part capacity tied up with MPPMCL/Discoms, the compensation mechanism for Degradation of Heat Rate, Aux Consumption and Secondary Fuel Oil Consumption, due to Part Load Operation and Multiple Start/ Stop of Units, shall be computed with same methodology as defined for SSGS having 100% installed capacity tied up with MPPMCL/Discoms, subject to following :-
- (v) In order to compute AUL for IPPs having part contracted capacity tied up with MPPMCL/ Discoms under Long Term Agreements, merchant power shall be

- considered as pseudo beneficiary and power tied up with other beneficiary(ies) through long term agreements shall be treated at par with that of MPPMCL. For computation of AUL, pseudo beneficiary shall be treated as Long Term Beneficiary.*
- (vi) *All the beneficiaries including pseudo beneficiary of IPP shall be responsible for maintaining technical minimum generation of the generating unit(s). All the beneficiaries are required to give technical minimum requisition of their share in the IPP's unit(s), in case unit(s) is required to be kept on bar for smooth operation of the Grid. If the unit(s) of IPP is able to operate on technical minimum with the requisition of other beneficiary(ies), then MPPMCL is not bound to give requisition for maintaining technical minimum operation of the unit(s). In this case, MPPMCL shall pay compensation for degraded SHR and Auxiliary Energy Consumption for operation of units below normative PAF as per formula mentioned in compensation mechanism for SSGS.*
- (vii) *If MPPMCL requisitions technical minimum of its share, other Long Term Beneficiary(ies) also requisitions technical minimum of its share but pseudo beneficiary does not sell at least technical minimum of power available with IPP and if IPP stops the unit due to less scheduling, the unit(s) shall not be treated under RSD.*
- (viii) *If IPP maintains Technical Minimum Generation on unit(s) with the merchant capacity available with the generator plus technical minimum schedule from other beneficiary(ies), MPPMCL do not have any obligation for Technical Minimum Operation of the unit(s). However, MPPMCL shall pay compensation of degraded SHR and Auxiliary Energy Consumption for the operation between normative PAF and technical minimum, applicable to its contracted capacity only.*
- 14) *That, it is crystal clear from the Clause 5 of Appendix-2 of DOP that pseudo beneficiary is also responsible for maintaining the technical minimum generation and in case of pseudo beneficiary failing to maintain its share of technical minimum resulting in IPPs to stop the unit due to less scheduling, the unit shall not be treated under RSD. This provision is also applicable only after the execution of supplementary PPA in accordance with Appendix-2 of DOP as a required provision in PPA.*
- 15) *In case the prayer of petitioner is considered in its favour by the Commission and the DOP is modified, as proposed by petitioner, the modified DOP will become more complex which is illustrated with following example:-*
- (a) *For that IPP which has only 35% of its contracted capacity with MPPMCL and balance capacity is its merchant capacity and in case MPPMCL scheduled power to the extent of its technical minimum share to keep machine On-Bar or even though its full 35% share & at the same time if IPPs fails to maintain technical*

minimum of their own share and stop the unit due to less scheduling, then a such case what will be the status of stopped unit, whether it will treated under “RSD” or shall not be treated under RSD?

- (b) It is clear that in case where supplementary agreement is already executed with MPPMCL, in that case the status of stopped unit shall not be treated as under RSD due to provision of Clause-5 of Appendix-2 of DOP. However, in other case, where supplementary agreement is not executed, the matter may need clarifications.*
- (c) For that IPP which has only 65% of its contracted capacity with MPPMCL and balance capacity is its merchant capacity and in case MPPMCL scheduled power to the extent of its technical minimum share to keep machine On-Bar & at the same time if the IPP fails to maintain technical minimum of its own share and stops the unit due to less scheduling, then in such a case what will be the status of stopped unit, whether it will treated as under “RSD” or shall not be treated under RSD?*
- (d) It is clear that in case where supplementary agreement is already executed with MPPMCL, in that case the status of stopped unit shall not be treated under RSD due to provision of Clause-5 of Appendix-2 of DOP. However, in other case where supplementary agreement is not executed, the matter will needs clarification.*

16) For avoiding aforesaid complexity during the operation of DOP, MPPMCL feels appropriate that the Appendix -1 & Appendix-2 of DOP should be interlinked and be integral part of DOP and both should only be applied through amendment in PPA duly approved by Commission in case of Generating Stations having part capacity tied up with MPPMCL. It is pertinent to mention that since only part capacity of IPPs having been tied up with MPPMCL, the role of pseudo beneficiaries is very important and must be continued to be operative as per existing provisions.

18. The petitioner SLDC by affidavit dated 26.08.2022 submitted final written submission reiterating the issues already covered in the subject petition as well as rejoinder filed by it in response to the submissions made by the Respondents. The Respondent No 2 & 6, i.e, M/s Jaypee Bina Thermal power Plant and M/s Jaypee Nigrie Super Thermal Power Plant by affidavit dated 27.8.2022 filed final written submission reiterating the contentions filed in its response to the subject petition

Commission’s Observations and Findings:

19. The petitioner MP SLDC has filed the subject petition seeking amendment in clause 1.3 and clause 3 of the Detailed Operating Procedure (Appendix-I) of the Madhya Pradesh Electricity Grid Code, 2019 (“MPEGC, 2019”) issued vide Commission’s order dated 29th January, 2020 contending that these clauses are inconsistent with the provisions of

Indian Electricity Grid Code ("IEGC").

20. Clause 1.3 of DoP Appendix-I provides that "the DOP shall come into force with effect from the date of its approval by the Commission or the date of approval of amendment in PPA by the Commission wherein appropriate provision for compensation for degraded station heat rate (SHR) or Auxiliary Energy Consumption (AUX) and Reserve Shutdown (RSD) are made by way of amendment, whichever is later."
21. Further, Clause 3 of the aforesaid Appendix-I provides that in case of IPPs wherein 100% installed capacity is not tied up with MPPMCL/Discoms of MP through a long term power purchase agreement and whose tariff for only partial/contracted capacity is determined/adopted by the Commission, such Generating Station / Company shall have to appropriately factor in the provisions in the PPAs entered into by it with MPPMCL / Discoms for sale of power, in order to claim compensations for operating at part load or taking unit under RSD".
22. As per provisions under both the aforesaid clauses of Appendix-I of DOP, amendment in PPA is required for taking unit under RSD, if generation schedule given by the beneficiary(s) is below the technical minimum. The petitioner submitted that in DOP issued by Central Commission, amendment in PPA is not required for taking unit under RSD.
23. Respondent No. 1 (MPPMCL) in response to the subject petition has submitted that provisions of DoP issued by CERC and MPERC are same for those generating stations where 100% capacity is tied up with the beneficiaries. In the DoP issued by CERC, no procedure has been made for IPPs whose 100% capacity is not tied up with the beneficiaries. As per MPPMCL, such cases are unique to MP where PPAs have been executed for part capacity and balance power may be merchant power of generating station which it can sell to any third party. He further stated that since significant share of generating capacities have been considered as merchant power, therefore, the commission has correctly considered it as pseudo beneficiaries and defined role of pseudo beneficiaries in its DOP. Moreover, requirement of amendment in PPA is also made a pre-condition for applicability of DOP of MPERC, where any such arrangements can be implemented only after mutual consent. Respondent No. 1 further stated that even if proposed amendment is considered, the prayer of SLDC for applicability of proposed amendment retrospectively may lead to many complications and will lead to benefit to some Generating Stations retrospectively at the cost of retail consumers of the State. The amendment in PPA cannot be considered from retrospective date.

MPPMCL further stated that even if any amendments in DOP are to be considered, it may be made prospectively only after due notification and public hearing as per business conduct rules of the Commission.

24. In response to the above, the petitioner submitted that MPPMCL's statement that prayer of SLDC for applicability of proposed amendment retrospectively may lead to many complications and will lead to benefit to some Generating Stations retrospectively at the cost of retail consumers of the State is misplaced. He further stated that MPPMCL has tried to allege that any such modification / amendment / deletion may lead to huge financial implication with retrospective effect which is not permissible in law. The petitioner submitted that it is not at all challenging any act / provision / regulation / rules at all. The rationale behind this petition is to align the DOP of MPEGC consistent with DOP of IEGC and to have similar methodology for Scheduling & Despatch for the IPPs connected with the State Grid and Inter State Grid. Therefore, question of being retrospective does not arise at all and totally irrelevant to the petition.
25. The petitioner further submitted that a large number of IPPs having multiple beneficiaries are connected with the Transmission network of CTU i.e. Inter State Transmission System (ISTS). These IPPs are having part capacity tied-up with beneficiary States and balance power is considered as merchant power. The RLDCs deal with these IPPs as per the Appendix-I of DOP of CERC where no condition for signing of supplementary PPA has been incorporated for backing down of Generating Stations and for taking such units under Reserve Shut Down on Scheduling Below Technical Minimum Schedule. Thus, comments of MPPMCL "*Such cases are unique to MP where PPAs have been executed for part capacity and balance power is considered as merchant power of the Generating Stations which it can sell to any other 3rd party*", is not correct.
26. The Respondent No. 2, 3, 4 and 6 who are IPPs and having part capacity tied up with MPPMCL supported the subject petition and submitted that in terms of Section 86(1)(h) of the Electricity Act, 2003, the DOP issued by this Commission must necessarily be consistent with the DOP issued by the Central Commission, which is not there in the present case.
27. On perusal of the subject petition and submissions made by the respondents, the Commission has observed the following:

- i. The CERC notified Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 on 06.04.2016. Regulation 6.3(B) of IEGC Fourth Amendment provides for Technical Minimum criteria for operating a Thermal Power Plant and Reserve Shut Down (“RSD”) of Thermal Generating Station in case the scheduling issued by the procurer is below the Technical Minimum Criteria.
- ii. Further, in accordance to Clause 6 of the aforesaid Regulation 6.3(B), the CERC approved the DoP on 05.05.2017 for taking units under RSD and Mechanism for Compensation for Degradation of Heat Rate, Auxiliary Consumption and Secondary Fuel Consumption on account of Part Load Operation and Multiple start/stop of Coal/Lignite/Gas Units.
- iii. This Commission in exercise of its power under Section 86 (1) (h) of the Electricity Act, 2003 notified MPEGC, 2019 on 21.06.2019. Regulation 8.8.6 of the MPEGC, 2019 provides that SLDC shall formulate a DOP in consultation with the generators and beneficiaries at OCC forum within 3 months’ time and shall submit the same with this Commission for approval. Aforesaid clause of the MPEGC also provides that **“while preparing the above DOP and working out the aforesaid mechanism, the SLDC may be guided by the DOP and mechanism approved by the Central Commission under IEGC.”**
- iv. In compliance with aforesaid Regulation 8.8.6 of MPEGC 2019, Petitioner (SLDC) had submitted draft DOP for backing down of coal-based State Sector Generating Stations and mechanism for compensation due to part load operation and multiple start/stop of units on 26.09.2019 for approval of this Commission. It was mentioned by SLDC that the DOP had been prepared in line with the DOP and mechanism for compensation approved by the CERC.
- v. Vide order dated 29th January, 2020, this Commission approved DOP for taking unit(s) under Reserve Shut Down and Mechanism for Compensation for Degradation of Heat Rate, Aux Energy Consumption and Secondary Fuel Oil Consumption, due to Part Load Operation and Multiple Start/Stop of Units. In the aforesaid order, SLDC was directed to provide feedback after consultation with the stakeholders on the operation of the compensation mechanism within one year from the date of issue of this order for assessment of the efficacy of the compensation mechanism.

- vi. Appendix I of aforesaid DOP prescribed Detailed Operating Procedure for Backing Down/RSD of Coal based unit(s) of the State Sector Generating Stations and IPPs having 100% / partial capacity tied up with MP Power Management Company Ltd. due to scheduling of the unit below Technical Minimum Schedule or due to part load operation (i.e. operation of the unit/(s) below normative PAF upto the technical minimum). Appendix II of DOP prescribed Mechanism for Compensation for Degradation of Heat Rate, Aux Consumption and Secondary Fuel Oil Consumption, due to Part Load Operation and Multiple Start/Stop of SSGS/IPP's Units.
 - vii. After coming into force of the aforesaid DOP, in compliance to the directions of the Commission in its order dated 29.01.2020, SLDC vide letter dated 20.01.2021 submitted its feedback on operation of DOP particularly for taking units under RSD and requested for modification of Clause 1.3 of Appendix-I of the DOP. In response to the aforesaid feedback by SLDC, the Commission directed SLDC to file an appropriate Petition in accordance with the relevant provisions of Regulations.
 - viii. Thereafter, SLDC had filed a petition no. 10/2022, with the Commission seeking modification/amendment of Clauses 1.3 and 3 of Appendix-I of DoP. Vide Order dated 30.03.2022, the Commission asked SLDC to approach first to Operating and Coordination Committee (OCC) in accordance to clause 8 of the DOP and ensure comprehensive review of the DOP so that all necessary amendments in DOP are placed together before the Commission for consideration.
 - ix. As submitted by SLDC, the matter of modification/clarification in the provisions of MPERC DoP was discussed in the 81st Meeting of OCC on 04.04.2022, wherein majority of the stakeholders had shown their willingness with the proposed amendments in order to curtail ambiguity and misinterpretation of the MPERC DOP and make it consistent with the DOP issued by the CERC. Therefore, petitioner SLDC has filed this petition for amendment in Clause-1.3 & Clause-3 of Appendix-I of the Detailed Operating Procedure of MPEGC.
28. From the above it is noted that main issue in the subject matter is whether the amendment in the PPA is required for taking unit under Reserved Shut Down (RSD) in case of IPPs wherein 100% installed capacity is not tied up with MPPMCL/ Discoms of MP through a long-term power purchase agreement and whose tariff for only partial/contracted capacity is determined/adopted by the Commission. Therefore, let us look into the relevant provisions under DOP issued by the Commission:

- i. Vide order dated 29.01.2020, this Commission approved and issued Detailed Operating Procedure (DOP) for backing down/RSD of coal based Generating Units and mechanism for compensation due to part load operation and multiple start/ stop of units. Title of the Appendix-I of aforesaid DOP is as under:

*“Detailed Operating Procedure for Backing Down of Coal based unit (s) of the State Sector Generating Stations having 100% installed capacity tied up with MP Power Management/ DISCOMs of MP and for IPPs as per provisions in **PPA with MPPMCL for taking such units under Reserve Shut Down** for scheduling below technical minimum Schedule and part load operation (i.e. operation of the unit / (s) below normative PAF upto the technical minimum).”*

- ii. Regarding applicability of the aforesaid DOP, clause-1.3 of Appendix-I of DOP provides as under:

*“The DOP shall come into force with effect from the date of its approval by the MP Electricity Regulatory Commission or the date of approval of amendment in PPA by the Commission wherein appropriate provision for compensation for degraded station heat rate (SHR) or Auxiliary Energy Consumption (AUX) and **Reserve Shutdown (RSD)** are made by way of amendment, whichever is later”.*

- iii. Clause 3 of Appendix-I of the DOP provides Scope of the DOP as under:

*“This DOP shall be applicable to SLDC, MPPMCL, Distribution Licensee in state and State Sector Generating Stations (SSGS) having 100% installed capacity tied up with MP Power Management Co. Ltd./Discoms of MP and for IPPs as per provisions in PPA with MPPMCL, whose tariff is determined/adopted by the MPERC. In case of IPPs wherein 100% installed capacity is not tied up with MPPMCL/Discoms of MP through a long term power purchase agreement and whose tariff for only partial/contracted capacity is determined/adopted by the Commission, such Generating Station / Company shall have to appropriately factor in the provisions in the PPAs entered into by it with MPPMCL / Discoms for sale of power, in order to claim compensations for operating at part load or **taking unit under RSD**”.*

29. It has been observed from the above that as per clause 3 of the aforesaid Appendix-I, for IPPs wherein 100% installed capacity is not tied up with MPPMCL/Discoms of MP through a long term power purchase agreement and whose tariff for only

partial/contracted capacity is determined/adopted by the Commission, such Generating Station / Company shall have to appropriately factor in the provisions in the PPAs entered into by it with MPPMCL / Discoms for sale of power, in order to claim compensations for operating at part load or taking unit under RSD”. Clause 1.3 of Appendix-I of DOP also provides that the DOP shall come into force with effect from the date of its approval by the Commission or date of approval of amendment in PPA by the Commission wherein appropriate provision for compensation for degraded station heat rate or Auxiliary Energy Consumption and Reserve Shutdown are made by way of amendment, whichever is later. Therefore, both the above clauses of DOP provide for requirement of amendment in PPA for taking unit under RSD.

30. In accordance to clause 4 of the Regulation 8.8 of the MPEGC, 2019, for claiming compensation by generating stations other than SSGS whose 100% installed capacity is not tied-up with MPPMCL/Discoms and whose tariff for only partial/contracted capacity is determined by the Commission, amendment in existing PPA would be required.
31. Clause 6 of the Regulation 8.8 of the MPEGC provides that while preparing the DOP and working out the aforesaid mechanism, the SLDC may be guided by the Detailed Operating Procedure and mechanism approved by the Central Commission under Indian Electricity Grid Code. Further, Section 86(1)(h) of the Electricity Act 2003 mandated that the State Commission shall specify State Grid Code consistent with Grid Code specified under clause (h) of sub-section (1) of Section 79 of the Electricity Act 2003. Clause 3.1.4 of the MPEGC also mentioned that “the changes/revisions proposed by the Grid Code Review Committee shall be consistent/ compatible with IEGC.” Therefore, let us look into the related provisions in DOP issued by the Central Commission under IEGC.
 - i. Vide order dated 05.05.2017, Central Commission approved and issued Detailed Operating Procedure (DOP) for backing down of coal/lignite/gas based Generating Units and mechanism for compensation due to part load operation and multiple start/ stop of units. Title of the Appendix-I of aforesaid DOP is as under:

“Detailed Operating Procedure for Backing Down of Coal/ Lignite/Gas unit (s) of the Central Generating Stations, Inter-State Generating Stations and other Generating Stations and for taking such units under Reserve Shut Down on Scheduling below Technical Minimum Schedule.”

- ii. Regarding the applicability of the aforesaid DOP, clause-1.3 of Appendix-I of DOP issued by CERC provides as under:

“The DOP shall come into force with effect from the date notified by the Commission in the Official Gazette.”

- iii. Clause 3 of Appendix-I of the DOP issued by CERC provides Scope of the DOP as under:

“This DOP shall be applicable to RLDCs, SLDCs, CGS and ISGS whose tariff is either determined or adopted by the Central Commission and the generating stations which are regional entities but whose tariff is neither determined nor adopted by the Commission. For those generating stations whose tariff is determined or adopted by the Commission but are scheduled by SLDCs, similar mechanism of taking such machines under RSD shall be adopted SLDCs. Regional entities whose tariff is neither determined nor adopted by the Central Commission shall also be subjected to this procedure.”

32. From the aforesaid, it is observed that Section 86(1)(h) read with Section 79(1)(h) of the Electricity Act 2003, mandates that State Electricity Grid Code should be consistent with the Grid Code specified by the Central Commission. Further, Indian Electricity Grid Code (IEGC) provides for methodology for a generator to go for reserve shut down (RSD) and that provision of amendment in PPA before resorting to RSD has not been provided in the IEGC. Whereas, MP Electricity Grid Code provides for amendment in PPA before a generator can resort to RSD. Therefore, it is to be inferred that the aforesaid provision in MP Electricity Grid Code is not consistent with the provision in IEGC and that there is a need to align the provision related to RSD in MP Electricity Grid Code with that in IEGC. Accordingly, the Commission is of the view that Appendix-I of DoP in MP Electricity Grid Code should be suitably amended which is annexed with this order as Appendix I (i). The provisions as amended shall become effective from the date of this order.

With the above observations and directions, the subject petition is disposed of.

(Gopal Srivastava)
Member (Law)

(Mukul Dhariwal)
Member

(S.P.S. Parihar)
Chairman

First Amendment to Detailed Operating Procedure (Appendix-I):

I. Title of the Detailed Operating Procedure Appendix-I is replaced as under:

“Detailed Operating Procedure for Backing Down / RSD for the State Generating Stations / IPPs having 100% / partial tied up capacity with MPPMCL/Discoms.”

II. Clause 1.3 of the Detailed Operating Procedure - Appendix I is replaced as under.

“The first amendment to DOP (Appendix-I) shall come into force with effect from the date of its approval by the MP Electricity Regulatory Commission”

III. Clause 3 of the Detailed Operating Procedure Appendix-I is replaced as under

“This DOP shall be applicable to SLDC, MPPMCL, Distribution Licensees in the state, State Sector Generating Stations (SSGS) having 100% installed capacity tied up with MP Power Management Co. Ltd./Discoms of MP and IPPs wherein 100% / partial installed capacity is tied up with MPPMCL/Discoms of MP through a long term power purchase agreement and whose tariff for only partial / contracted capacity is determined / adopted by the Commission.”