

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of review petition under Section 94 of Electricity Act, 2003 read with Regulation 40 of MPERC (Conduct of Business) (Revision-I), Regulations, 2016 seeking review of the Order dated 06.09.2016 passed by the Commission in Petition No. 16 of 2016

Petition No. 65/2016

ORDER

(Date of Motion Hearing: 07th February, 2017)

(Date of Order: 21st February, 2017)

M/s. Jhabua Power Ltd.

6th Floor, Vatika City Point, M.G. Road, Gurgaon – 122002

V/s

M.P. Power Management Company Ltd. and Others

Block No. 11, Shakti Bhawan, Rampur, Jabalpur – 482008

- **Petitioner**

- **Respondent**

Shri Apoorva Misra, Advocate, Shri Janmejaya Mahapatra, COO and Ms. Roopam Bansal, Deputy Manager, appeared on behalf of the petitioner.

Shri Ashish Bernard, Advocate, Shri R.V. Saxena AGM and shri Gagan Diwan, AO appeared on behalf of Respondent No. 1 i.e, MP Power Management Company Ltd, Jabalpur.

M/s. Jhabua Power Ltd. has filed the subject review petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 40 of MPERC (Conduct of Business) Regulations (Revision-I), 2016, seeking review of the Commission's order dated 6th September' 2016 in Petition No. 16 of 2016.

2. The case was last heard on 24th January' 2017 when the Learned Counsel appeared on behalf of the petitioner stated the grounds for review of the aforesaid Commission's order. Having heard the Learned. Counsel, the petitioner was directed to serve a copy of the subject petition on all the respondents in the matter. With the aforesaid directions, the case was again fixed for motion hearing on 7th February' 2017 to hear the respondents also in this matter.

3. In compliance with the above directions, vide its letter no. JPL/BD/MPERC 17/01 dated 31.01.2017, the review petitioner confirmed the service of the copies of subject petition to all Respondents in this matter.

4. In Para 3 of the subject review petition, the petitioner has sought review of Commission's order dated 06.09.2016 (in Petition No 16 of 2016) on the following premise:

(i) The Commission has not considered the submissions of review petitioner stating that the project had achieved full load and had been commissioned on 22.03.2016.

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(ii) The Commission has not considered the letters dated 30.03.2016 issued by Central Electricity Authority, recognizing that the Project has been commissioned (full load) on 22.03.2016, which was placed on record.

5. In subsequent Para 21 and onwards in the subject review petition, the petitioner has stated the following grounds for review of above mentioned Commission's order:

“(i) It is submitted that in the Order under Review, the Hon'ble Commission has erred in assuming that the Tariff for the Project is to be determined in accordance to the MPERC Tariff Regulation 2015.

(ii) It is submitted that JPL, in amended Petition No. 16 of 2016, had submitted that the Project had achieved full load and was commissioned on 22.03.2016 itself. The same was supported by the letter issued by CEA dated 30.03.2016 as well. However, this Hon'ble Commission has failed to consider the same in the Order under Review and has therefore, not returned any finding on the issue. This Hon'ble Commission considered the SCOD of the Project for the purpose of tariff determination.

(iii) It is submitted that in the amended petition has clearly stated that for the purpose of tariff determination, the date of commissioning should be taken to be 22.03.2016. It is submitted that in terms of MPERC Tariff Regulations, 2012, there is no stipulation that a 72 Hour Trial run is mandatory for achieving commissioning.

*(iv) It is submitted in terms of Article 5.4.1 of the PPA executed with MP Discom, commissioning tests are to be carried in accordance with Article 5.3. In terms of Article 5.3.1, JPL is responsible for ensuring that the first unit of the Project is commissioned in accordance with the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010. [**“Grid Code”**]. It is submitted that at the time of commissioning of the Project, there was no requirement in the Grid Code for a 72 Hour Trial run for achieving commissioning. It is noteworthy that the 4th Amendment to the Grid Code was notified by Hon'ble Central Electricity Regulatory Commission on 06.04.2016 i.e. after the commissioning of the Project. The said amendment lays down the process required to be following for commissioning power plants. However, the said amendment was not in force when the Project achieved full load and was commissioned on 22.03.2016.*

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- (v) *It is submitted that this Hon'ble Commission has in terms of Article 4.1.5 of the PPA considered the SCOD of Project as 31.03.2015 for the purpose of tariff determination. Since this Hon'ble Commission has not returned any finding with regard to the actual commissioning of the Project, reliance may be placed by this Hon'ble Commission on Article 5.4 of the PPA to determine the actual commissioning date of the Project. In this context, it is submitted that for the purpose of tariff determination:*
- (a) *The primary statutory document/ basis would be the Regulations framed by the State Electricity Regulatory Commission in terms of Section 61 read with Section 178 of the Electricity Act, 2003.*
- (b) *The conditions/ requirements set out by this Hon'ble Commission contained in MPERC Tariff Regulations 2012, applicable in the present case, will be the basis for determining whether a particular unit or generation station has been commissioned or not.*

In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court of India in the case of PTC India Vs. CERC & Ors reported as 2010 4 SCC 603, wherein the Hon'ble Supreme Court has held that contracts such as power purchase agreements will be overridden by the prevailing regulations and as such contracts will have to be brought in consonance with the regulations. In this case, since there is no requirement for a 72 hour commissioning test in the MPERC Tariff Regulations 2012, the PPA would have to be interpreted accordingly. The provisions of the PPA cannot override or trump the provisions of the MPERC Tariff Regulations 2012.

- (vi) *It is submitted that the Hon'ble Commission had never sought any explanation / clarification from JPL as to why 22.03.2016 is said to be the date of commissioning of the Project. Consequently, JPL was never given an opportunity to explain the issue regarding commissioning of the project on 22.03.2016. JPL was not in a position to explain as to how and why 22.03.2016 is being considered the date of commissioning of the Project by it.*
- (vii) *It is submitted that, after achieving commissioning (achieving full load) on 22.03.2016, JPL issued letters dated 23.03.2016 and 12.04.2016 to MP Discom intimating it for the same. It is submitted that MP Discom has not refuted or have made an intimation*

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contrary to the date of commissioning as stated by the JPL. In view thereof, it may be assumed that the MP Discom has accepted 22.03.2016 as the date of commissioning.

- (viii) *It is submitted that the above mentioned letters have not been placed before this Hon'ble Commission for its consideration in the proceeding in Petition No. 16 of 2016. This Hon'ble Commission did not have the opportunity to examine the same. It is reiterated that this Hon'ble Commission did not seek any explanation or clarification as to why JPL had considered the date of 22.03.2016 as the date of commissioning of the Project. It is submitted that had JPL been given an opportunity to explain its stance, it would have placed the letters dated 23.03.2016 and 12.04.2016 on record for this Hon'ble Commission's consideration.*
- (ix) *It is submitted that there are errors apparent on the face of record with respect to non-consideration of documents material for determining the CoD. It is submitted that this is a fit case for exercise of powers under Section 94(1)(f) read with Regulation 40 of the MPERC Conduct of Business Regulations. In these circumstances, it is most respectfully submitted that the facts and circumstances of the present case warrants intervention of this Hon'ble Commission by exercising its power to review the Order dated 06.09.2016 and grant relief to JPL. Non-intervention by this Hon'ble Commission would cause substantial harm/ prejudice to JPL and the same would not be in line with the principles of 'Actus Curiae Neminem Gravabit' i.e. no person should be prejudice by the act of courts."*

6. During the course of motion hearing held on 7th February' 2017, Learned Counsel appeared on behalf of Respondent No. 1 i.e. MPPMCL submitted the following:

- (i) The Commission has clearly recorded in Para 1 of its order dated 06.09.2016 that the petitioner is seeking tariff determination from actual CoD i.e. 3rd May' 2016.
- (ii) By affidavit dated 20th June' 2016, the petitioner had specifically mentioned in its Petition No. 16 of 2016 that the tariff for its generating unit in the subject matter be determined from the actual CoD i.e. 3rd May' 2016. The Respondent No. 1 has also filed a copy of the aforesaid affidavit with the Commission during the course of hearing.

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- (iii) In view of the above mentioned express submission and admission of the petitioner by its affidavit dated 20th June' 2016, it is incorrect for the petitioner to now submit in the instant petition that the Commission has not considered the date of commissioning on 22nd March' 2016 for determination of tariff.
- (iv) In Para 1 and Annexure 2 of Commission's order dated 06.09.2016, it is clearly recorded that the petitioner was seeking tariff determination from actual COD and it has filed the amended petition alongwith the revised tariff forms applicable as per MPERC Tariff Regulations, 2015 keeping in view that the tariff is to be determined from the actual CoD i.e, 3rd May, 2016.
- (v) With regard to the issue of increase in Gross Station Heat Rate, the Respondent No. 1 (MPPMCL) has stated that the increase in Gross Station Heat Rate as sought by the petitioner on the basis of commissioning of the petitioner's generating unit on 22nd March' 2016, has been rightly denied by the Commission in terms of the provisions under Regulation 39.3(C) of MPERC Tariff Regulations, 2015 otherwise it will increase financial burden to the consumer of the State.
- (vi) As per Annexure R/P/4 in the subject review petition, it is an admitted position by the petitioner itself, vide its letter dated 12th April' 2016 that it could not complete the required CoD/ Commissioning before 31st March' 2016 for various reasons like poor vaccum, problems in ID fan, VFD etc.
- (vii) MPPMCL further submitted that the generating unit of the petitioner's power plant could not operate continuously on full load at various occasions in March end due to problem in condenser unit and even on 4th April' 2016 due to problem in ID fan.
- (viii) MPPMCL further submitted that Clause 5.4.1 of the PPA clearly states that the Unit shall be commissioned after the date when the Independent Engineer shall issue the Final Test Certificate. The Final Test Certificate has been issued by the Independent Engineer on 3.5.2016 and the same has been accepted by the Petitioner also. The Petitioner has not approached this Commission with clear and full facts and is only seeking to somehow increase in its tariff by making bald and baseless averments and allegations, which, if accepted will result in increased burden on the consumers of the State.

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7. In accordance with Rule 1 Order 47 of the Code of Civil Procedure (CPC), the review of an order may be sought by the aggrieved person under the following circumstances:

- (a) On discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at a time when the order was made;
- (b) An error apparent on the face of the record;
- (c) For any other sufficient reason.

8. On detailed examination of the premise and grounds stated in the subject review petition in light of the circumstances mentioned above, the Commission has observed the following:

- (i) Earlier the review petitioner had filed Petition No. 53 of 2015 for determination of provisional tariff of its Unit No. 1 (2x600 MW). This petition (P- 53 of 2015) was disposed of by the Commission as the unit had not achieved COD by that time.
- (ii) Subsequently, the review petitioner filed another petition (P- 16 of 2016) on 21st March, 2016 for determination of provisional tariff for the same unit. It was again observed by the Commission in the motion hearing held on 26th April'2016 that the generating unit No. 1 of petitioner's power plant had not achieved CoD. It was also observed by the Commission that the aforesaid petition was based on MPERC Tariff Regulations, 2012. In view of the aforesaid observations, the petitioner was directed to submit the amended petition in light of the provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015 which is applicable in the subject matter. The review petitioner was also directed to submit several details/ documents after declaration of its generating unit under commercial operation.
- (iii) By affidavit dated 20th June' 2016 in amended petition, the petitioner had clearly mentioned that it has filed the amended petition along with the revised tariff forms applicable for the control period FY 2016-17 to FY 2018-19 as per MPERC Tariff Regulations, 2015. It was also mentioned in the same affidavit that the review petitioner amended its petition keeping in view that the tariff is to be determined from the actual COD w.e.f. 3rd May' 2016.

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- (iv) The review petitioner filed the amended petition No. 16 of 2016 seeking generation tariff of its generating unit No. 1 from the date of achieving commercial operation i.e. CoD which was clearly mentioned as 00:00 hrs on 3rd May' 2016.
- (v) In Para 3 of its aforesaid amended petition, it was also mentioned that the review petitioner was seeking tariff of its Unit No. 1 in terms of MPERC Tariff Regulations, 2015 and Clause 10.1.1 of the PPA from COD of its generating unit upto 31st March' 2019.
- (vi) Besides above, the review petitioner in Para 8 and 9 of its amended petition has computed the components of Annual Capacity (fixed) Charges in terms of MPERC Tariff Regulations, 2015. The Energy (variable) Charge as claimed by the review petitioner in its amended petition was based on MPERC Tariff Regulations, 2015. However, in Para 10(b) of its amended petition, the petitioner has sought Station Heat Rate norms based on MPERC Tariff Regulations, 2012 contending that its generating unit had achieved "100% MCR load" on 22nd March' 2016 therefore, it should be considered as commissioned on the aforesaid date. The aforesaid claim of the review petitioner regarding Gross Station Heat Rate has been appropriately dealt with in Para 165 to 171 of Commission's order dated 06.09.2016 in amended petition No.16 of 2016. The relevant paragraphs in the aforesaid Commission's order are reproduced below:

"165. The petitioner worked out the Gross Station Heat Rate as per provisions under MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2012. In para 10 (b) of the amended petition the petitioner submitted that the instant power plant had achieved "100% MCR load" on 22nd March 2016, which was during the control period of the MPERC Regulations 2012, the unit may therefore be considered commissioned on the above date as per the provisions of the PPA as well as the extant regulations. The petitioner also filed a copy of letter dated 30th March 2016 issued by the Central Electricity Authority confirming the commissioning (achieving full load) of the instant power plant. In view of the above, the petitioner prayed that the Station Heat Rate norms applicable for the control period when the unit was commissioned i.e., FY 2013-16 be made applicable. The petitioner filed the manufacturer's certificate towards the guaranteed parameters of the thermal generating unit.

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166. Accordingly, the Gross Station Heat Rate worked out by the petitioner as per Regulation 35.2 B of the MPERC Tariff Regulations, 2012, is given below:

Design Heat Rate at 100% MCR with 0% make-up water shall be

$$1944/0.869 = 2237 \text{ KCal/Kg}$$

Since Design Heat Rate of 2237KCal/Kg is less than the upper limit (2294Kcal/KG) prescribed in Clause 35.2 B of the MPERC Tariff Regulations, 2012, the same may be considered for tariff determination.

Therefore, Gross SHR would be $1.065 \times 2237 = 2382.4 \text{ KCal/Kg}$

167. With regard to Gross Station Heat Rate, Regulation 39.3 (C) of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2015 provides that;

Gross Station Heat Rate:

(a) Existing Coal based thermal generating stations having COD on or after 1.4.2012 till 31.03.2016, (other than those covered under clause 39.2) shall be the heat rate norms approved during FY 2012-13 to FY 2015-16.

New thermal generating stations achieving COD on or after 1.4.2016:

(b) Coal-based Thermal Generating Stations = 1.045 X Design Heat Rate (kCal/kWh) (Emphasis supplied)

Where the Design Heat Rate of a Unit means the Unit heat rate guaranteed by the supplier at conditions of 100% MCR, zero percent make up, design coal and design cooling water temperature/back pressure:

Provided that the design heat rate shall not exceed the following maximum design Unit heat rates depending upon the pressure and temperature ratings of the Units:

Table 1: Max. Design Unit Heat Rate as per Regulation

Pressure Rating (Kg/cm²)	150	170	170	247
<i>SHT/ RHT (0C)</i>	<i>535/535</i>	<i>537/537</i>	<i>537/565</i>	<i>565/593</i>
<i>Type of BFP</i>	<i>Electrical Driven</i>	<i>Turbine driven</i>	<i>Turbine driven</i>	<i>Turbine driven</i>

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<i>Max Turbine Cycle Heat rate (kCal/kWh)</i>	<i>1955</i>	<i>1950</i>	<i>1935</i>	<i>1850</i>
<i>Minimum Boiler Efficiency</i>				
<i>Sub-Bituminous Indian Coal</i>	<i>0.86</i>	<i>0.86</i>	<i>0.86</i>	<i>0.86</i>
<i>Bituminous Imported Coal</i>	<i>0.89</i>	<i>0.89</i>	<i>0.89</i>	<i>0.89</i>
<i>Max. Design Unit Heat Rate (kCal/kWh)</i>				
<i>Sub-Bituminous Indian Coal</i>	<i>2273</i>	<i>2267</i>	<i>2250</i>	<i>2151</i>
<i>Bituminous Imported Coal</i>	<i>2197</i>	<i>2191</i>	<i>2174</i>	<i>2078</i>

Provided further that in case pressure and temperature parameters of a Unit are different from above ratings, the maximum design Unit heat rate of the nearest class shall be taken:

Provided also that where Unit heat rate has not been guaranteed but turbine cycle heat rate and boiler efficiency are guaranteed separately by the same supplier or different suppliers, the Unit design heat rate shall be arrived at by using guaranteed turbine cycle heat rate and boiler efficiency:

Provided also that if one or more Units were declared under commercial operation prior to 1.4.2016, the heat rate norms for those Units as well as Units declared under commercial operation on or after 1.4.2016 shall be lower of the heat rate norms arrived at by above methodology.

Note: In respect of Units where the boiler feed pumps are electrically operated, the maximum design Unit heat rate shall be 40 kCal/kWh lower than the maximum design Unit heat rate specified above with turbine driven BFP.

168. *In light of the aforesaid Regulations, the Commission noted that the heat rate norms for new thermal generating stations achieving COD on or after 1.4.2016 have to determined in accordance to the aforesaid Regulation 39.3 (C) (b) of MPERC (Terms and Conditions for determination of Generation tariff Regulations, 2015.*

169. *The Commission observed that the date of commercial operation (CoD) of the thermal generating unit is 3rd May 2016 which fall under the new control period of FY 2016-17 to FY 2018-19 and governed by the MPERC (Terms and*

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Conditions for determination of Generation tariff Regulations, 2015. Therefore, the contention of the petitioner for consideration of SHR in accordance to the Regulations, 2012 on the basis of the date of commissioning of its generating unit is not correct in terms of provisions under the Regulations, 2015.

(Emphasis supplied)

170. *The petitioner filed the manufacturer’s certificate towards the guaranteed parameters of the thermal generating unit. The details of the Gross Turbine Heat Rate and Steam Generator Thermal Efficiency as per manufacturer’s certificate are as follows:*

Table 2: Guarantee Parameters

Manufacturer’s Performance Guarantee Parameters	
<i>Gross Turbine Heat Rate at 100% TMCR with 0% make-up</i>	<i>1944 kCal/Kg</i>
<i>Steam Generator Thermal Efficiency at 100% TMCR with 0% make-up</i>	<i>86.90 %</i>

171. *The Commission has considered the SHR of petitioner’s thermal generating unit on the basis of the aforesaid guaranteed parameters in accordance to the provisions under the tariff Regulations, 2015 as given below:*

Table 3: Gross Station Heat Rate

I	Station Heat Rate	Unit	Value
A	<i>Design Turbine Cycle Heat Rate</i>	<i>kCal/kWh</i>	<i>1,944.00</i>
B	<i>Design Boiler Efficiency</i>	<i>%</i>	<i>86.90%</i>
C	Design Heat Rate	kCal/kWh	2,237.05
D	<i>Allowable Max Turbine Cycle Heat Rate</i>	<i>kCal/kWh</i>	<i>1,950.00</i>
E	<i>Min. Allowable Boiler Efficiency as per Reg.</i>	<i>%</i>	<i>86.00%</i>
F	Allowable Heat Rate	kCal/kWh	2,267.44
	Least of (C) and (F)	kCal/kWh	2,237.05
	Gross Station Heat Rate (1.045 x Design Heat Rate)	kCal/kWh	2,337.72

9. In view of the above mentioned facts and figures, the contentions of review petitioner that the Commission has failed to consider that its generating unit was commissioned on 22nd March’ 2016 and has not returned any finding on the issue of the date of commissioning of its unit is found misplaced and irrelevant to consider review of Commission’s order.

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10. The copy of letter dated 30th March' 2016 issued by Central Electricity Authority informing the commissioning of Avantha Seoni TPP, Unit No. 1 (1x600 MW) was submitted by the review petitioner as Annexure 30 in its amended Petition No. P-16 of 2016 and the same had been taken in cognizance and mentioned in Para 10(q) of the Commission's order dated 06.09.2016.

11. The tariff of generating unit is determined from the Date of Commercial Operation (COD) of the unit. The provisions under MPERC(Terms and Conditions for determination of generation Tariff) Regulations,2012 and 2015 do not provide for determination of tariff from the commissioning date. In terms of aforesaid MPERC Tariff Regulations, the electricity generated and injected into the grid prior to the COD of generating unit is treated as "Infirm Power" and such power is accounted as deviation and the tariff is not determined by the State Commission for infirm power as it is paid from the regional deviation settlement fund. Therefore, the Commission has considered the actual Date of Commercial Operation for determination of tariff for the petitioner's generating unit thus, there was no requirement while processing the amended petition by the Commission to seek further details from the petitioner regarding commissioning of the generating unit.

12. In view of the above mentioned facts, the correspondence dated 23rd March' 2016 and 12th April' 2016 between the review petitioner and MPPMCL now filed with the subject review petition are irrelevant and baseless for review of the Commission's order.

13. The actual CoD of Unit No. 1 i.e, 3rd May'2016 has been concurrently accepted by the concerned Load Despatch Centre i.e, WRLDC, the Procurer (MPPMCL) and the Review Petitioner itself and all relevant documents in this regard were placed by the Review Petitioner before the Commission during the course of proceedings in amended petition No. 16 of 2016. Therefore, the contention of the review petitioner that the Commission has not returned any finding with regard to the actual commissioning of the project is also found misplaced and having no reason for review of Commission's order.

14. WRLDC has mentioned the following in its letter for confirmation of Commercial Date of Operation in respect of Unit No. 1 (600 MW) of 1260 MW Jhabua Power Limited in Distt. Seoni of Madhya Pradesh

"M/s. Jhabua Power Limited, vide letter No. JPL/BD/WRPC/16/1 dated 03.05.2016 have intimated the date of Commercial Operation (COD) of Unit No. 1 (600

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MW) of 1260 MW Jhabua Power Limited in Distt Seoni of Madhya Pradesh with effect from 00:00 hrs of 03.05.2016. In support of this M/s. Jhabua Power Limited in Distt Seoni of Madhya Pradesh have submitted certificate from Director in prescribed format (Appendix-VI) as per Regulation – 4 of CERC (Terms and Conditions of Tariff Regulations 2014) also certificate for COD from Independent Engineer viz. Lahmeyer International (India) Pvt. Ltd. Gurgaon, certifying the demonstration of installed capacity through successful trial run of the said unit between 20:00 Hrs of 29th April, 2016 to 20:00 Hrs of 2nd May, 2016 at 95% and above of its rated capacity.

WRLDC Mumbai has furnished the verified data of continuous 72 hrs running of the unit No. 1(600 MW) between 20:00 Hrs of 29th April, 2016 to 20:00 Hrs of 2nd May, 2016 at 95% and above of its rated capacity.

In view of the above supporting document, all the formalities requisite for declaration of COD have been fulfilled. Therefore it is to confirm that COD of Unit No. 1 (600 MW) of 1260 MW Jhabua Power Limited in Distt Seoni Madhya Pradesh may be taken from 00:00 hrs of 03.05.2016.

15. MPPMCL has mentioned the following in its letter dated 05.05.2016 for acceptance of performance test and COD of generating unit:

“ Please refer to Performance Test conducted by M/s. Jhabua Power Limited for 600 MW unit of M/s. Jhabua Power Limited (1x600MW) from 2000 Hrs. on 29th April 2016 to 2000 Hrs. on 2nd May, 2016. It is intimated that commercial operation has been defined in Article 5.4.1 of the PPA, which is quoted below:

“5.4.1 A unit shall be commissioned on the day after the date when the Independent Engineer issues the Final Test Certificate state that:-

- (b) The commissioning tests have been carried out in accordance with the provisions of Article-5.3; and are acceptable to him; and***
- (c) The result of the Performance Test show that the Unit’s tested capacity is not less than ninety five (95) percent of its Aggregate Capacity.***

Accordingly, the Independent Engineer (IE) has given Final test certificate dated 3rd May 2016 showing that;

- (1) The test was witnessed by IE in accordance with Article-5 and Schedule-3 of the PPA.***

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- (2) *The Performance test of seventy two (72) hours commenced at 2000 hrs. on 29th April, 2016 and was completed at 2000 hrs. on 2nd May, 2016.*
- (3) *The results of the performance test demonstrate that Unit is capable of producing more than 570 MW power at generator terminal (Gross power) i.e. more than 95% of the installed capacity of 600 MW.*
- (4) *The unit demonstrated 105% of rated capacity at 0432 hrs/ 633 MW on 2nd May 2016.*
- (5) *The unit demonstrated the Ramp-up rates and Ramp Down rates of more than 1.0% per minute at above 60% of the rated load.*

Conclusion:

- (a) *The commissioning test has been carried out in accordance with Article 5 and provisions of Schedule-3 of the PPA and is acceptable to the Independent Engineer (IE).*
- (b) *The results of the Performance test show that the Unit's tested capacity is not less than ninety five (95) percent of the installed capacity.*

M/s. Jhabua Power Limited vide letter No. JPL.BD/MPPMCL/16/10 dt 03.5.16 has intimated that they are declaring the start of commercial operation of 1x600 MW w.e.f. 00:00 hrs. of 3rd May 2016.

In view of the above, MPPMCL as Procurer, accepted the Performance Test carried out by M/s. Jhabua Power Limited and certified by IE as also the declaration of Commercial Operation on the basis of the above.”

16. It is evident from the contents in the above communications by Western Regional Load Dispatch Centre(WRLDC) and MPPMCL (Respondent Nol. 1) that the generating Unit No. 1 of the Petitioner's power plant was declared under commercial operation w.e.f. 00:00hrs of 3rd May, 2016. The review petitioner had submitted a certificate in this regard to WRLDC in terms of CERC (Terms and Conditions of Tariff) Regulations, 2014. Based on the aforesaid supporting document, WRLDC has confirmed the CoD of Petitioner's Unit No. 1 from 00:00 hrs of 3rd May, 2016. The concerned load dispatch centre in the subject matter i.e. WRLDC has confirmed CoD of the said unit in terms of CERC Tariff Regulations, 2014 notified on 21st February, 2014.

17. It is further observed that the Respondent No. 1 (MPPMCL) accepted CoD of the generating unit in terms of Article 5.4.1 of the Power Purchase Agreement executed between the

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Review Petitioner and MPPMCL and also the final test certificate issued by the Independent Engineer on 3rd May' 2016.

18. Based on the above observations in the documents placed before the Commission by the Review petitioner in its amended petition No. 16 of 2016, the date of actual commercial operation (CoD) of the petitioner's generating Unit No. 1 has been correctly considered by the Commission for determination of tariff in terms of MPERC Tariff Regulations'2015.

19. In view of all aforesaid observations of the Commission in this order, the premise/grounds raised by the petitioner in the subject petition do not fall under any circumstances as articulated in Rule 1 Order 47 of CPC for review in the instant case. Therefore, the subject review petition is not maintainable hence, disposed of.

(Alok Gupta)
Member

(A. B. Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman