

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION  
BHOPAL**

**Sub: Petition under Regulation 1.10.1 of the Madhya Pradesh Grid Code (Revision-I), 2005 read with Section 86(1)(f), (h) and (k) of the Electricity Act, 2003 for adjudication of dispute between the petitioner Generating Company and the State Transmission Utility i.e. MPPTCL.**

**Petition No. 54 of 2015**

**ORDER**

**(Date of Order: 7<sup>th</sup> January' 2016)**

**M/s. Jaiprakash Power Ventures Limited** - **Petitioner**

V/s

1. **M.P. Power Transmission Company Ltd., Jabalpur**  
2. **M.P. Power Management Company Ltd., Jabalpur** } - **Respondents**

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

Shri R.A. Sharma, SE(LD), Shri Jayant Agasty, EE appeared on behalf of SLDC, M.P. Power Transmission Co. Ltd., Jabalpur.

Shri Manoj Dubey, Advisor (Law) and Shri Gagan Diwan, Accounts Officer appeared on behalf of M.P. Power Management Co. Ltd., Jabalpur.

M/s. Jaiprakash Power Ventures Limited filed the subject petition under Regulation 1.10.1 of Madhya Pradesh Electricity Grid Code (Revision-I), 2005 read with Section 86(1)(f), (h) and (k) of the Electricity Act, 2003 for adjudication of dispute between the petitioner Generating Company and the State Transmission Utility inter-alia challenging the legality, validity and propriety of the letter dated 01.06.2015 issued by SLDC on certain grounds mentioned in its petition.

2. On preliminary examination of the contents/documents in the subject petition, the Commission has observed the following issues in prima-facie :

- (i) The genesis of the petition is based on some communication dated 1<sup>st</sup> June' 2015 received by the petitioner from State Load Despatch Centre (Annexure P/1 (colly) at page 19 of the petition) wherein the following was communicated to the petitioner:

*“.....Whenever the power surrender instruction to technical minimum*

*quantum of MP is issued the same shall be limited to 60%/70% (as the case may be) of the contracted ex-bus capacity of MP.”*

- (ii) The above-mentioned communication by SLDC was based on the intimation received by it on 22<sup>nd</sup> May’ 2015 from Respondent No. 2 i.e M.P. Power Management Co. Ltd., Jabalpur (MPMCL) (Annexure P/3 at page 110 of the petition). In its aforesaid communication, MPPMCL intimated the following to SLDC:

*“.....In case of thermal power generating units, the backing down of power is to be limited up to 70% in case of capacity below 250 MW and 60% in case of above 250 MW, as intimated from the SLDC and WRLDC in past. As such, it is to clarify that PMCL would allow the scheduling in such circumstances where the back down is required, that until shall generate 70%-60% of the entitled power to MP on real time.”*
- (iii) Aggrieved from the aforesaid communication by SLDC (on intimation to it by MPPMCL), the petitioner filed the subject petition with the following prayer:
  - (a) Set aside the impugned letter dated 1<sup>st</sup> June’ 2015 issued by Respondent no.1.
  - (b) Allow the recovery of any additional cost incurred by the petitioner in operating in accordance with the directions issued by the Respondent No 1.
- (iv) The petitioner invoked Section 86(1)(f) of the Electricity Act, 2003 which provides that the State Commission shall adjudicate upon the disputes between the licensees and generating companies whereas, in the instant petition, the petitioner challenged the legality, validity and propriety of the directions issued by State Load Despatch Centre which is not the licensee.
- (v) The other sections invoked in the petition i.e. 86(1)(h) and (k) pertain to the general functions of the State Commission relating to specifying M.P. Electricity Grid Code and discharge such other functions as may be assigned to the State Commission under the Act.
- (vi) The CERC (Indian Electricity Grid Code) (Fourth Amendment) Regulations 2015 quoted by the petitioner for “*Technical Minimum Schedule for Operation and Generating Stations*” is under draft Stage. Further, Clause 6.3(b) for Technical

Minimum Schedule for “Operation of Generating Stations” in CERC’s draft notification is for **Inter State Generating Stations (ISGS)** whereas, the petitioner’s power plant in the subject matter is not ISGS as defined in M.P. Electricity Balancing and Settlement Code and M.P. Electricity Grid Code.

3. Motion hearing in the matter was held on 30<sup>th</sup> October’ 2015, when the petition was admitted and the Counsel appearing on behalf of the petitioner concurred with the observation that M.P. State Load Despatch Centre, Jabalpur be also made Respondent in this matter. The petitioner was directed to serve copies of the petition on all Respondents including the State Load Despatch Centre at Jabalpur. Notice was issued to SLDC, Jabalpur also. All Respondents including SLDC, Jabalpur were directed to file their response on the petition by 17<sup>th</sup> November’ 2015. Vide letter dated 9<sup>th</sup> November’ 2015, the petitioner filed an Amended Memo of Parties in the subject petition wherein SLDC, Jabalpur was also made one of the respondents in the matter. By affidavit dated 21<sup>st</sup> November, 2015, the petitioner filed its compliance for service of notice on all Respondents in the matter.

4. In the instant petition, M/s. Jaiprakash Power Ventures Ltd i.e, the petitioner challenged the legality, validity and propriety of the impugned communication received by it from SLDC on the following grounds:

- “(i) *The Impugned Communications are contrary to the provisions of the Act and the Regulations framed thereunder as backing down instructions are being issued by Respondent No. 1 STU on the basis of contracted capacity with Respondent No. 2 and not on the basis of the Unit Capacity.*
- (ii) *If the backing down instruction is applied to 60% /70% of the contracted capacity tied up with Respondent No. 2 instead of applying it to capacity of the unit/plant, severe financial prejudice will be caused to the Petitioner.*
- (iii) *The impugned communications are being issued contrary to the Technical Minimum criteria prescribed by the Hon’ble Central Electricity Regulatory Commission through its Draft Amendment being notified for public comments. Even though the Draft Amendment has not come into effect but the same provides crystal clear rationale that backing down instructions would be issued by the concerned SLDC/RLDC on the basis of the generation capacity of the plant and not on the basis of the long term tie up with the state utility which is being sought to be done in the present case.*

- (iv) *The Impugned communications have been issued with a malafide intent of furthering the cause of Respondent No. 2 and not as per the scheme of the Act. It is most respectfully submitted that it is enshrined under the scheme of the Act that the SLDC is obligated to act in fair and transparent manner with the sole objective of ensuring stability of the grid. The act or the Regulations in no manner indicate that the SLDC shall act only to promote procurement by State Utilities.*
- (v) *The operation of the Impugned Communication also forces the Petitioner to operate its plant below the Technical Minimum operation level as the Petitioner's plant units are physically not in the position to operate below the level sought by the Respondent No. 2 in case of backing down instructions being issued by the Respondent No. 1. Therefore, making the operation of the Petitioner highly unsustainable and volatile which may affect the health of the plant and the network as by virtue of the Impugned Communications the Petitioner will have to operate its plant at a load which is much lower than the Technical Minimum Capacity.*
- (vi) *That as per the MPERC Grid Code, the Respondent No. 1 is obligated under Regulation 1.6.6 to ensure that it does not discriminate amongst any stakeholder. However, the Impugned Letter is completely biased and in favour of the Respondent No. 2 which is in contravention of the intent of the MPERC Grid Code.*
- (vii) *That if the impugned directions issued by the Respondent No. 1 is adhered to, then there will be a significant increase in use of oil and other expenses in running of the power plant and the same would not be compensated by the Respondent No. 2 in terms of the PPA signed between the parties."*

5. By additional affidavit dated 7<sup>th</sup> November' 2015, the petitioner filed the figures for its claim towards reimbursement of expenses caused due to operation of petitioner's power plant up to 29<sup>th</sup> October' 2015 below the Technical Minimum Capacity. The aforesaid claim of the petitioner was based on the draft CERC (Fourth Amendment to Indian Electricity Grid Code) Regulations, 2015. In its aforesaid submission, the figures were based on the following three factors:

	<b>Particulars</b>	<b>Reasons</b>
1.	Loss due to distress sale on Indian Energy Exchange (EX) to maintain Technical minimum	Due to difference of energy charges considering NFSA coal and the net merchant rate.
2.	Oil Consumption	Reason due to excessive oil consumption during coal start up and shut down.

3.	Loss due to loss of efficiency-As per CERC Guidelines under draft stage	Due to increased gross station heat rate on account of loss of efficiency.
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6. In response to the petition, by affidavit dated 20<sup>th</sup> November' 2015, SLDC Jabalpur filed its response on the subject petition. In its aforesaid response, SLDC, Jabalpur while stating the functions of SLDC articulated under Section 32 and 33 of the Electricity Act, 2003 broadly submitted the following:

- (i) *“The State Sector generating stations and Independent Power Producers (IPPs) falling under SLDC control area declare their day ahead capacity (DC) in each 15 minutes time block. SLDC compiles total Ex-bus MW and MWh availability from all the Generating Stations and intimate to MPPMCL. The MPPMCL on behalf of DISCOMs runs merit order despatch to meet its ex-Power Plant MW demand, if availability from all sources is higher than expected demand. Accordingly, MPPMCL prepares ex-Power Plant requisition in each of the Generating Stations and intimate the same to SLDC. Based on the requisition received from MPPMCL, SLDC finalize the generation schedule of each SSGS. The responsibility of SLDC to finalize the generation schedules is limited to ensure that resulting power flow do not give rise to any transmission constraints and schedules are operationally reasonable particularly in terms of ramping up/ramping down rates and ratio between maximum and minimum generation levels.*
- (ii) *SLDC acts as facilitator between buyer and seller for scheduling activities under ABT regime and scheduling of power is to be done as per mutually agreed quantum by both buyers and sellers. If either buyer or seller does not give consent for power to be scheduled in particular generating stations, SLDC would not schedule power to beneficiary or issue generation schedule for the particular generating station. The same procedure is followed by RLDCs also while scheduling power from ISGS stations.*
- (iii) *That, it becomes the responsibility of SLDC to coordinate between buyer and seller to arrive at certain mutually agreed quantum of power to be scheduled when Merit Order Despatch is operated. SLDC forwards the communication received from one party to the concerned recipients to facilitate the completion of scheduling activities within time lines specified by the Hon 'ble Commission in Balancing and Settlement Code.*
- (iv) *The communication referred by the petitioner is merely forwarding the comments/views of MPPMCL to M/s Jai Prakash Power Ventures Ltd. as the communication was made through the SLDC so that the scheduling activities could be performed within the time line. If there was any dispute on the communication of*

*MPPMCL forwarded to M/s Jai Prakash Power Ventures Ltd., it should have been resolved amicably by the buyer and seller without involving SLDC (emphasis supplied). M/s Jai Prakash Power Ventures Ltd. had been generating power as per technical minimum of contracted power requisitioned by the MPPMCL and also sold some power under short term open access to ensure technical minimum limit of its generation.*

- (v) *It is evident from the above that SLDC did not act favoring the Govt. utility and all the scheduling activities have been performed as per guidelines contained in the MPERC balancing and settlement code and scheduling activities as defined under MPEGC/IEGC regulations. The SLDC always remains impartial while performing scheduling activities and all the information in this regard is available on the SLDC website.*
- (vi) *The injection schedule for generators is issued considering requisitions of buyers/beneficiaries. The buyers/beneficiaries consider the merit order despatch (MOD) as per balancing and settlement code of MPERC while making the requisitions. The requisition for despatch schedule from generators of M/s Jai Prakash Power Ventures Ltd., received from MPPMCL was as per prevailing MOD, and hence injection schedule was issued accordingly. The communication of MPPMCL conveyed by SLDC vide letter No. 07-05/REC-54/1872 dtd. 01.06.2015 is valid and in order as explained in para 1 above.*
- (vii) *The technical minimum criteria has been proposed by the Hon'ble CERC through a draft amendment to IEGC regulation on 2<sup>nd</sup> July 2015 and invited the comments from the stakeholders. The technical minimum has been proposed in the draft regulations at 55% of MCR loading of units/generating stations. The final amendment is still awaited. M/s Jai Prakash Power Ventures Ltd's contention that the technical minimum should be on the basis of total generating station capacity and not the contracted capacity of a particular buyer is misplaced. **If a generator has long term PPA for a lesser quantum than technical minimum, then the technical minimum could be achieved by the generator by over injecting into the grid jeopardizing the security of the grid. If a generator is not having PPA for full quantity, it should have MTOA/STOA arrangement so that technical minimum quantum could be achieved, which is required for ensuring grid stability and security during low load, high availability conditions (emphasis supplied).***
- (viii) *The matter of technical minimum of generating stations was decided in the 24<sup>th</sup> meeting of WRPC that NTPC coal fired stations be given at least technical minimum schedule so that the operation of these stations is technically feasible in absence of RSD*

methodology. It was decided that the technical minimum schedules for units having capacity 200/210 MW be scheduled at least to 70% and units having capacity 500 MW and above be scheduled to at least 60% of their capacity. The same was discussed in the State Level OCC meeting (36<sup>th</sup>) on 26.10.2013 and in the meeting technical minimum of all intrastate generating stations was decided rounded off to next 5 MW. All the intrastate entities including M/s Jai Prakash Power Ventures Ltd., M/s BLA & MPPGCL have agreed to this decision.

- (ix) **Whenever technical minimum quantum falls short of 140 MW M/s Jai Prakash Power Ventures Ltd. arranges sale of power through collective transactions to ensure the technical minimum quantum of ex-bus capacity (emphasis supplied).**
- (x) Further, clause 8.3.1 (a) of Madhya Pradesh Electricity Grid Code (Revision-I), 2005 mandates as under :  
SLDC will issue despatch instructions required to regulate all generation and imports from IPPs/CPPs according to the hourly day ahead schedule, unless rescheduling is required due to unforeseen circumstances.
- (xi) From above regulatory provisions it is crystal clear that the action taken by SLDC to issue the despatch schedule to M/s Jai Prakash Power Ventures Ltd. as per the requisition received from MPPMCL is in order. The facts regarding issuing of less injection schedule than schedule desired by the petitioner, has been explained in para 1 above. **The injection schedule as desired by the petitioner was not possible for SLDC until and unless the same is requisitioned by the buyer i.e. MPPMCL. The petitioner was apprised by SLDC through e-mail dated 03.06.2015 and 28.08.2015 that all bilateral issues may be got resolved with MPPMCL, as SLDC can issue the injection schedule only for the quantum, which MPPMCL has requisitioned (emphasis supplied).**
- (xii) The statements made by the petitioner in para-5 in the petition are not acceptable and maintainable. The communication made by SLDC with M/s Jai Prakash Power Ventures Ltd. in context to the injection schedule from their generators is as per regulatory provisions and is in order. Further as referred by the petitioner the Central Electricity Regulatory Commission has not notified the fourth amendment to IEGC so far hence taking the reference from draft regulation which has not become effective, is not relevant.
- (xiii) The letter under question issued by the SLDC for injection schedule considering technical

*minimum of thermal generating units, is the correct and desired action. The requisition made by MPPMCL is as per Merit Order Despatch (MOD) in the state keeping in view the system demand.”*

7. In response to the petition, by affidavit dated 21<sup>st</sup> November’ 2015, MPPMCL Jabalpur (Respondent No.2) filed its response on the subject petition. In its aforesaid response, MPPMCL Jabalpur while stating the functions of SLDC, broadly submitted the following:

(i) *“That, the contractual terms between the petitioner and the answering respondent as envisaged under articles 4.3.3 and 4.3.5 of the PPA dated 5<sup>th</sup> January, 2011 proves as under:*

*“4.3.3. If the procurer does not schedule the whole or part of the Available Capacity for any reason whatsoever, the Company shall be entitled to make available such Available Capacity not scheduled by the Procurer, to any other person without losing the right to receive the Capacity Charges from the Procurer for such unscheduled Available Capacity. ....under this Article.*

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

***From the above contractual position between the parties, it is crystal clear that, the answering respondent may, at any time and without assigning any reason request the petitioner to schedule whole or part of contracted/ available capacity and the petitioner will have to follow such request. Further, it also becomes clear that the SLDC, on its part, will have to schedule and despatch electricity as per the above provision of contract between the parties.***

***That, from the above legal and contractual position it is very clear that the impugned letter is not violative and has been issued in an impartial intent (emphasis supplied).***

(ii) *That, the petitioner has strongly relied on the Draft Notification of the CERC (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2015. It is submitted that the said draft notification has not been notified as on date and the fate of the same is*



unknown. Any transactions between the parties, that may have resemblance with the said draft notification, are merely as a matter of prevailing generally accepted practice and nevertheless any malafides or discrimination at any level.

- (iii) *That, Scheduling by the answering respondent is also to be in strict tune to the MOD principles in the larger public interest. The answering respondent being a fully owned company of Government of Madhya Pradesh is bound to protect and safeguard the ultimate consumers by providing them cheap power in larger public interest as against the limited interest of the petitioner. Scheduling and requisitioning of power is done keeping in view these principles in most impartial manner, not only by the answering respondent, but, also by the SLDC. The same spirit is given in Balancing and Settlement Code, 2009 issued by MPERC to issue economical dispatch based on MOD.*
- (iv) *That, **the answering respondent is not at all responsible for maintaining the technical minimum of the unit to the extent of un-tied (30%) Ex-bus capacity. The same is the risk and responsibility of the petitioner, which cannot be transposed on the answering respondent or on the SLDC by asking the technical minimum on MCR of the entire Unit (emphasis supplied).***
- (v) *That, the operator, SLDC may reduce scheduling of answering respondent No.2 share to minimum possible extent in real time in case of low system demand and system threatening. This minimum possible amount will be decided by considering the sale part of 30% un-tied Ex-bus capacity of petitioner similarly as being done by the WRLDC in case of scheduling of ISGS and implemented schedule shall be revised accordingly.*
- (vi) *The petitioner have challenged the legality and validity of the instructions regarding backing down of Unit up to technical minimum limits of contracted capacity instead of unit capacity, issued by the Respondent No.2. **In this regard, it is submitted that as per PPA there is no provision of technical minimum limits, however, answering respondent No.2 providing schedule based on contracted capacity is valid as similar procedure is being adopted in the Central Sector Stations by the Regional Load Despatch Centre (emphasis supplied).***
- (vii) *That answering respondent No.2 have 70% Ex-bus share in the plant run by the petitioner and therefore, answering respondent No.2 is liable to schedule only technical minimum support for its share to protect the overall interest of the consumers of the State in case of low demand in accordance with the merit order despatch. **As mentioned by the***

*petitioner they are trying to tie-up its untied capacity i.e. 30% and answering respondent No.2 have to support the technical minimum of the un-tied capacity also which is not reasonable and valid as answering respondent No.2 is committed to provide cheaper power to their Discoms in the overall interest of consumers of the State. The petitioner have to resort to other avenues for disposal of un-tied capacity (emphasis supplied).*

- (viii) *Further, the petitioner submitted that answering respondent No.2 have to provide 70% of technical minimum of the unit size (MCR) not the contracted capacity i.e. 70% (65% plus 5% concessional power) otherwise severe financial prejudice will be caused to the petitioner, is not correct as the petitioner failed to tie-up its 30% share after long time having elapsed since commissioning of the project on 31.08.2012.*
- (ix) *Further, the petitioner has mentioned that technical minimum should be based on MCR loading as mentioned in the draft regulation on Technical Minimum Schedule for operation of generating stations issued by CERC on 2<sup>nd</sup> July 2015, shall be applicable to its unit not to the contracted capacity of answering respondent No.2. In this regard it is submitted that this draft notification is applicable to ISGS units where many constituents are having share as per their allocation and responsible for submission of requisition up to 55% of their share. In the petitioner power plant, J.P. Bina TPH unit I & II of capacity 2x250 MW, answering respondent No.2 and un-tied capacity i.e. 70% and 30% are the beneficiaries in the plant. However, 30% remains with the petitioner as merchantile capacity, as deemed beneficiary.*
- (x) *That, the answering respondent No.2 had provided 140 MW as technical minimum for the unit in the past when the power requirement was matching to availability, however, after commissioning of new plants of 4680 MW having comparatively very less variable cost, the gap between demand and availability is reduced and now answering respondent No.2 is having surplus power, therefore, providing continuous higher percentage as technical minimum, shall not be justice to the consumers of the State at large in view of high variable rates of power plant of the petitioner.*
- (xi) *As agreed by the petitioner in the instant petition that the machine can run at 140 MW (ex-bus) successfully. This has already proved in the past and unit continuously performed at this level, the same has been accepted and confirmed by the petitioner in its e-mail dated 27.08.2015.*

- (xii) *In view of the above, it is humbly submitted that in case of low demand and high availability to save the interest of the consumers of the State at large, answering respondent No.2 agree to provide 60% of answering respondent No.2 ex-bus share (156 MW) i.e. 94 MW for one unit, as per merit order dispatch till the draft notification is finalized. Further it is also requested that the petitioner may be advised to tie-up remaining part of merchantile capacity immediately to operate the unit smoothly. It is also humbly submitted that asking higher technical minimum quantum by the petitioner is not valid and will cause severe financial prejudice to the consumers of the State.*
- (xiii) *That, in the facts and circumstances of the case, the petition, as filed by the petitioner, is sans-merit. Allegations raised by the petitioner are vague and far from the factual and legal position especially in relation to the alleged losses claimed by the petitioner in the addendum. The petitioner is not entitled to any relief or stay of the operation and effect of the impugned order. The petition is liable to be dismissed with costs throughout.”*

8. During the course of hearing held in the matter on 24<sup>th</sup> November’ 2015, the petitioner sought some time to file rejoinder on the submissions made by Respondents in the matter. Subsequently, by two separate affidavits dated 2<sup>nd</sup> December’ 2015 (received on 5<sup>th</sup> December’ 2015), the petitioner filed rejoinders on the reply filed by Respondent No. 1 and 2. In the aforesaid rejoinders, the petitioner broadly submitted the following in response to the reply filed by SLDC:

- (i) *The stand taken by the SLDC is in complete variance with the scheme of the Act and the various Judgments passed by the Hon’ble APTEL. The view of SLDC that it only acts a ‘Post Office’ and has no role to play in scheduling of power is devoid of merit and the same confirms the apprehension of the Petitioner that the Respondent SLDC is acting as an agent of the Respondent No. 2. The Hon’ble Appellate Tribunal of Electricity in its Judgment in 2014 ELR (APTEL) 1 M.s Tata Power Company Limited vs. Maharashtra Electricity Regulatory Commission & Ors has held as follows:*

***“26. Let us now discuss the issue. The State Load Despatch Centre (R2) is constituted under Section 31(1) of the Act as an independent body which was responsibility for carrying out optimal scheduling and dispatch of electricity within the State. SLDC while dispatching its statutory function is covered by the provisions under Section 33(1) of the Act. Under Section 33(1) of the Act, SLDC has to decide the request for scheduling made by the Appellant only in accordance with the parameters prescribed under the Act. Thus, SLDC is required to take into account only issues relating to transmission and the***

***transmission network when deciding any request for scheduling of power.”***

- (ii) *All the averments, contentions, allegations stated by Respondent No. 1 are denied. Respondent No. 1 has tried to couch primary contention of Respondent No. 2 and have sought to put forth ancillary and unsubstantiated averments.*
- (iii) *As per Regulation 1.6.6 of the MPERC Grid Code, the Respondent No. 1 is obligated not to unduly discriminate or prefer amongst any stakeholders. However, in the present case the impugned communications are completely influenced and in favor of Respondent No.2, which is to ensure reasonable time for ramping up and ramping down of generation. However, in the present case the said Respondent has issued arbitrary scheduling which is in complete contravention of the extant regulations.*
- (iv) Regarding draft CERC amendment, the petitioner has quoted order passed by CERC wherein it is mentioned that ***“the issue of operation of the thermal generating unit at technical minimum and its operational and financial implication during the period of regulation of power supply shall be dealt with in accordance with the amendment to the Grid Code which will be finalized and notified shortly.”***  
The petitioner further mentioned that *“from the perusal of the above it is abundantly clear that the term ‘Technical Minimum’ generation is only relatable to the Unit’s capacity and not the contracted capacity of the procurer, and hence, the averment of the Respondent SLDC in this paragraph is devoid of any merit”.*
- (v) ***As for Respondent SLDC’s averment that the Petitioner in terms of Clause 4.3.3 is obligated to sell its entire power to third party, if the Respondent No. 2 does not schedule its share of the contracted capacity is devoid of merit. As, in terms of plain reading of the PPA’s provisions the Petitioner is not obligated to sell its power if the scheduling is not in terms of the agreement and is merely an enabling provision which permits the Petitioner to do the same. There is no obligation casted on the Petitioner to ensure sale of its power even when its biggest buyer i.e. Respondent No. 2 in the current economic scenario is not scheduling power from the Petitioner (emphasis supplied).***
- (vi) *The Petitioner would humbly like to submit before this Hon’ble Commission that as informed during the proceeding on November 24<sup>th</sup>, 2015, the MOD is not being shared by the Respondents with us, in spite of the fact that the Petitioner is being given backing down instruction on the basis of this very MOD. The Petitioner requests this Hon’ble*

*Commission to direct the Respondent to share the MOD on a regular basis (which should ideally be in the Public Domain) with the Petitioner and also share the basis on which the MOD is being prepared as it appears that the MOD is being implemented on total cost basis, whereas the same should be on Variable Cost only. The following facts may kindly be taken on record in support of the contention:*

- (a) As per Section 5(3) of Madhya Pradesh Electricity Balancing and Settlement Code, 2015, Madhya Pradesh Power Management Company on behalf of Discoms (on receipt of requisitions from Discoms) are mandated to give their requisition on day ahead and real time basis as per individual Merit Order i.e. in ascending order of the **cost of energy (i.e. variable cost) (Emphasis added)** of Inter State Generating Stations, Independent Power Producer and other Long Term, Medium Term Open Access and Intra state short term open access allocated to individual Discom/Madhya Pradesh Power Management Company Limited.*
- (b) However, at Para 3.19 of “Aggregate Revenue Requirement and Retail Supply Tariff Order for FY 2015-16” of the Commission clearly states that Discoms have applied Merit Order Despatch (MOD) for all available capacities in order of **“total per unit power purchase cost” (Emphasis added)**. Therefore, the Petitioner apprehends that the MOD being prepared by the Respondents is in violation of the Regulations notified by the Hon’ble Commission.*

9. By affidavit dated 10<sup>th</sup> December’ 2015, SLDC, Jabalpur filed its counter affidavit with the following contention:

- (i) “The Petitioner has mentioned the issues raised in his petition for which MP SLDC has already submitted its reply to the Hon’ble Commission and need no specific reply.*
- (ii) It is also submitted that the petitioner has never run its unit(s) below the technical minimum of the unit capacity (i.e. 140 MW per unit). The petitioner had been generating power as per power requisitioned by the MPPMCL (with technical minimum of contracted capacity for some of the time blocks) and by arranging additional third party sale. Some of the instances for the period August 2015 to November 2015, when the MPPMCL requisition was for technical minimum of its contracted capacity are given in **(Annexure-I)** On going through these instances, it is clear that the petitioner has arranged to sell the remaining power i.e. against 30% of its un-contracted capacity through Power Exchange and had run their unit at required technical minimum quantum. However in some of the instances the petitioner has failed to sell the remaining power*

*through other sources.*

- (iii) *For the period August 2015 to November 2015 , the machine(s) of Jaypee Bina Thermal Power Plant was on bar for total 5684 time blocks, out of which for only 159 time blocks the petitioner had failed to arrange third party sale (Annexure -II). However, during such instances M/s Jaiprakash Power Ventures Ltd. has run the units at their technical minimum of 140 MW.*
- (iv) *The allegation of the petitioner that MP SLDC forced them to operate its plant below the technical minimum operation level is therefore false and totally misleading.*
- (v) *The contention of the petitioner that the SLDC has marginalized its activity to the functions of a Post Office is not true and is not acceptable. As per Clause 31 (2) of the Electricity Act 2003, the State Load Despatch Centre shall not engage in the business of trading in electricity. Accordingly, in normal conditions the injection schedules for generators is issued considering requisitions of buyers/beneficiaries. The injection schedule to the petitioner was issued considering the requisition received from MPPMCL. The SLDC has no power to increase injection schedule of a generator on its own unless there is a requisition from buyer/beneficiary. However, SLDC may curtail the injection schedule of generator and corresponding drawal schedule of buyer(s) in order to operate the system in a secure and reliable manner when there is constraint in the transmission corridor. While finalizing the schedules, SLDC always perform this activity. However, till now SLDC has not encountered with any major transmission constraint in intrastate corridor necessitating curtailment of schedules and on one or two occasions only the drawal by a Short Term Open Access customer was curtailed.*
- (vi) *The letter dated 22.05.2015 received from MPPMCL indicating their requisition upto 70%/60% of their contracted capacity was forwarded to following entities by SLDC on 01.06.2015 :*
- 1. M/s. BLA Power Pvt Ltd., Gadarwara (MP)*
  - 2. M/s. Jaypee Bina TPS, Bina (MP)*
  - 3. M/s. Sasan Power Limited, Waidhan (MP)*
  - 4. M/s. Jaypee Nigri STPS, Singrauli*
  - 5. M/s. MB Power (Madhyapradesh) limited, New Delhi.*
  - 6. M/s. Lanco Amarkantak Pvt. Ltd., Korba (CG)*

*This was done in order to make arrangement by the generators to manage unit technical*

*minimum capacity. However, barring petitioner no other generator has disputed the MPPMCL's letter.*

- (vii) *It was when the petitioner started disputing MPPMCL's letter through email messages to SLDC control room mentioning that they will not run unit at MPPMCL's given technical minimum requisition and the DSM on this account shall be to SLDC/MPPMCL account, the SLDC replied to the petitioner as follows :*

*“As already intimated all bilateral issues may be got resolved with MPPMCL. We will follow the MPPMCL instruction of tech min of 60% of their contracted capacity. The DSM shall be computed accordingly. The noncompliance of SLDC instructions shall be notified separately. You are Advised to sell balance quantum through any other route.” (Annexure-III)*

- (viii) *Hence it is clear that SLDC acted in the interest of smooth operation of the interconnected network and by advising to settle all bilateral issues with MPPMCL, SLDC has done nothing wrong. In one such email communication involving petitioner's other plant i.e. Jaypee Nigri, the WRLDC had made it clear to the petitioner that WRLDC schedules contracts which are mutually agreed and in case of disagreement it is not a contract and hence from now onwards such disputed requisitions shall be scheduled as zero. (Annexure-IV).*

- (ix) *The petitioner's allegation that SLDC arbitrarily issued injection schedules not giving sufficient time for ramping up / ramping down, is not true. The relevant clause 8.3.10 (ii) of MPEGC (Revision-I) 2005 (fourth amendment) is mentioned herewith:*

*(ii) SLDC to check that schedules are operationally reasonable particularly in terms of Ramping up/ Ramping down rates and ratio between minimum and maximum generation levels. SLDC to moderate the schedule to the required extent under intimation to concerned DISCOMs. The ramping up/ ramping down rates in respect of different categories of stations would be based on the technical data as substantiated by generating stations and as mutually agreed by DISCOMs.*

*The petitioner was requested by SLDC to furnish the OEM certified data sheets indicating ramp up and ramp down of the generator, but the same has not been submitted to SLDC so far. However, while issuing the injection schedule, the operational reasonability is being ensured by the SLDC. The generation schedule issued to the generator for the period under question is annexed hereto as (Annexure-V). On going through the generation schedule, it is clear that the ramping up and ramping down has*

*been ensured by SLDC as 25 MW per unit per time block which is quite operationally reasonable.*

- (x) The SLDC in its reply to the petition has not mentioned that the PPA is for less quantity than the technical minimum of the plant. The petitioner has misunderstood the contents of the reply. In SLDC reply in the instant petition, it was submitted that the Central Electricity Regulatory Commission has so far not notified the fourth amendment to IEGC, hence taking the reference from draft regulation is not relevant. The Central Electricity Authority through its letter No. 1/1/2013-Secy.-CEA/392 dated 12.09.2013 addressed to the Secretary, CERC, New Delhi has intimated the technical minimum limit for a coal fired unit as 30% MCR (**Annexure-VI**). However the CERC in 4<sup>th</sup> amendment to IEGC has proposed 55% MCR capacity as technical minimum.*
- (xi) The WRLDC also sometimes issues the generation schedule to various ISGS generators considering the requisitions of the beneficiaries which are in the range 39% to 65% of the capacity declared (on bar) by the generators. Issuing less generation schedule may be due to low system demand in the grid and the generators are following the instructions of RLDC and helping in grid management by maintaining their generation as per their injection schedule received from WRLDC. The statement indicating some of the instances of injection schedule to ISGS generators by WRLDC in the range of 39% to 65% is annexed herewith as (**Annexure-VII**).*
- (xii) The contention of the petitioner is misplaced and misleading. In our reply submitted to Hon'ble Commission on dated 20.11.2015, it was submitted that from Clause 4.3.3 of PPA signed between MPPMCL and M/s Jaiprakash Power Ventures Ltd, it is clear that in case procurer do not schedule full contracted power, the generator may arrange to sell the remaining power to third party as per terms & conditions of the agreement. The petitioner is also at its liberty to sale non-contracted 30% power through any other route also which the petitioner does from balance 30% of its non-contracted capacity through Short Term Open Access for sale of additional power and also to ensure its technical minimum quantum.*
- (xiii) As per clause 5.3 of the Balancing & Settlement Code of MPERC, MPPMCL on behalf of Discoms will give the requisition based on the merit order i.e. in ascending order of cost of energy (i.e. variable cost) of ISGS & SSGS allocated to individual Discoms. The preparation of Merit Order Despatch (MOD) is under purview of MPPMCL and needs no reply from SLDC.”*



10. In response to the reply filed by MPPMCL, the petitioner broadly submitted the following counter arguments through its rejoinder dated 2<sup>nd</sup> December'2015:

- (i) *“Respondent No. 2 (MPPMCL) in its reply has made similar submissions as made by SLDC in its reply.*
- (ii) *MPPMCL in its reply has tried to misguide the Hon’ble Commission by misinterpreting the present dispute to be a contractual dispute.*
- (iii) *Respondent No. 1/3 on one hand in its email dated 03.06.2015 accepts that technical minimum has to be based on the Plant’s Capacity, however, at the same time rejects the Petitioner’s contention on frivolous ground that the Respondent No. 2, procurer cannot take the responsibility of the balance of the plant.*
- (iv) *It is denied that the impugned letter has been issued with an impartial intent. In this regard it is pertinent to mention that the Impugned communications have been issued without any application of mind and with a malafide intent of furthering the cause of Respondent No. 2 and not as per the scheme of the Act.*
- (v) *It is further submitted that Respondent No. 2’s reliance on Clause 4.3.3 and 4.3.5 of the PPA to state that it is the obligation of the Petitioner to tie up its balance capacity is incorrect and liable to be rejected. It is most respectfully submitted that as per Clause 4.3.3 of the PPA the Petitioner is empowered to sell the power which is not scheduled by the Respondent No. 2 to any other party. This in no manner casts any obligation. Further, as per Clause 4.3.5 the Respondent No. 2 is in fact required to issue a Notice to the Petitioner to the effect that it will not procure its contracted capacity for a particular period. Admittedly in this case no such notice has been issued by the Respondent No. 2. Therefore, by virtue of Section 54 of the Contract Act, 1872 the Respondent No. 2 is in fact breach of the PPA signed between the Petitioner and the Respondent No. 2. Section 54 of the Contract Act is reproduced as follows:*

***“When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.”***

Therefore, in terms of the above quoted Section 54 of the Contract act, 1872 since the Respondent No. 2 has not followed the procedure as prescribed under Clause 4.3.5 the said Respondent cannot claim equity in its favor. Moreover, the financial hardship caused to the Petitioner will have to be appropriately compensated.

- (vi) ***Without prejudice to the above, reference of this Commission is drawn to Article 4.3.4 of the PPA dated January 5<sup>th</sup>, 2011, which provides for sharing of “sales realization in excess of Energy Charges”. It is an agreed and accepted position that a share in profit is equally applicable to share in loss (emphasis supplied). Therefore, the Hon’ble Commission may kindly consider the claim of the Petitioner on account of losses incurred in this additional light.***
- (vii) ***The content of Para 5 of the reply are a matter of record and merits no reply except for Point (b) which supports the Petitioner’s contention that at least Technical Minimum Schedule is to be given, which has been 140 MW in the past, which should have been the correct response of Respondent No. 1/3 to the letter dated 22.05.2015 of the Respondent No. 2, instead of simply issuing the “Impugned Communication”. The proper, fair and transparent response of Respondent No. 1/3 should have been to reply to Respondent No. 2 that the Technical Minimum is machine specific and cannot be applied to the Contracted Capacity (emphasis supplied). Also that the issued being bilateral between Respondent No. 2 and the Petitioner, they should sort out the same and till such time SLDC would follow the past practice of not scheduling below 140 MW.***
- (viii) ***That the contents of Para 8 are denied as the Respondent No. 2 has entered into a PPA with the Petitioner for 70% capacity of the Petitioner’s Power Project. Therefore, right from inception the Petitioner was aware that the Technical Minimum Operation of the Petitioner’s unit was largely based upon the scheduling by the Respondent No. 2. Further, the Technical Minimum per se as a term as stated above is only relatable to the Generation Unit of a power plant and in no manner can be related to the contract entered into between the Petitioner and Respondent No. 2 nor can this percentage, which is Unit Size specific, be applied to the Contracted Capacity (emphasis supplied).***
- (ix) ***As for the Petitioner’s responsibility to tie up its balance capacity it is submitted that in present scenario the Petitioner is making all possible efforts to ensure to tie up its balance capacity. However, the same has no impact on the present Petition as the limited issue before this Hon’ble Commission is whether Technical minimum percentage of a unit could be applied to the contracted capacity and if no, then should***

***the Petitioner be adequately compensated for it (emphasis supplied).”***

11. By affidavit dated 11<sup>th</sup> December’ 2015, MPPMCL, Jabalpur filed its counter affidavit on the above response of the petitioner as given below:

- (i) *“The dispute for claim is not maintainable, in as much as, the petitioner had not served a prior notice on the answering respondent in this respect in view of the PPA. A dispute and a petition in absence of such notice is purely a result of ill-advice to the petitioner and the petition to that extent is pre-matured and not maintainable, as of now.*
  
- (ii) *The petitioner has based its claim on claiming total losses as pointed out in its Additional Affidavit. The said losses have nothing to do with present dispute. The answering respondent is already paying Fixed Charges on Availability Based Tariff applicable and in view of the PPA. Hence, the question of claiming the losses is misconceived and misleading. Even, otherwise, in absence of a clear notice in terms of the PPA, the claim for additional losses is not maintainable. The rest of the contents of para 4 are matters of record.*
  
- (iii) *It is pertinent to mention here that at no place the petitioner has been able to demonstrate as to how the SLDC has exceeded its functions in issuing the impugned letter. It has not, also, been able to demonstrate as to how MPPMCL has violated the PPA. It has only been crying over the alleged losses which are bound to be borne by the petitioner itself for reasons attributable to it only and never to anyone else.  
Further, with all respect, it is submitted that MPPMCL issued letter “impugned communication” for all the generators, however, no generator other than the petitioner has objected to the communication.  
Further, it is submitted that the respondent no.2 has always obeyed the Grid Code and supported the petitioner by providing sufficient time for synchronization of unit so that the petitioner may sell untied power by way of other avenues.*
  
- (iv) *It is made clear, as a matter of record, that the impugned communication uses the word “Units” everywhere and so is the case in the PPA. The petitioner needs to explain and clarify as to from where it is importing the words “Plant” and/or “Station” in reference to the impugned communication and the PPA. The petitioner is making strange submissions that the answering respondent and the SLDC has to do anything with the balance of the plant. The term “Technical Minimum” has yet to find its definition in the expected CERC (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2015.*

*The usage of the said term, for the present, is only under all bonafides, in a way to the advantage of all so as to get prepared and tune up to the best possible extent in view of the expected regulation. The communications, impugned, do not tend to cause any harm to the petitioner. If the said term has been used in the communications, it has, for the present, to be given a liberal and appropriate consideration in all possessivities. The petitioner in this paragraph has casually averred that that the impugned communication is completely influenced and in favour of Respondent No. 2 and in contravention to the letter and spirit of MPERC Grid Code. The petitioner has made only bald averments and, throughout, has not been able to substantiate the same.*

- (v) *The petitioner is unnecessary crying over the monetary losses alleged to be caused to it, though, under the terms and conditions of the PPA and on the basis of Availability Based Tariff, it is being compensated, by way of “Fixed Charges” based on declare capacity & “Energy Charges” for power scheduled which may be less than the contracted capacity. If, thereafter, the petitioner, is suffering any losses, then it is a concern, purely attributable to the petitioner and nevertheless to the respondents. It appears that the petitioner has been constrained to approach Hon’ble Commission, purely in miss-conception of facts and legal position.*
- (vi) ***The answering respondent by making efforts to schedule power to the required percentage of technical minimum, in perception of the new regulation likely to come up, is in advance preparing itself and helping the petitioner to prepare for future. It was in this bonafide intent the expression “Technical Minimum” was used in the impugned communication (emphasis supplied).***
- (vii) *It is specifically and very clearly submitted that the answering respondent is only responsible to the contracted capacity of the Unit as per the PPA and for nothing beyond that. The same are compensated to the petitioner by way of Fixed Costs as per the PPA. Any losses caused to the plant/ station, beyond the contracted capacity of the Unit, is purely a concern of the petitioner and the answering respondent has got nothing to do with that. The answering respondent has nowhere guaranteed to compensate the petitioner to the extent of technical minimum of the Unit/plant/station. The guarantee of the answering respondent ceases at the contracted capacity of the respective unit and nothing beyond.*

*The answering respondent is only required to issue notices in terms of Article 4.3.5 of the PPA only in case of reserve shut down. In cases of day ahead scheduling, practice of*

*issuing notice is not viable and practically possible. The scheduling instructions to SLDC take the shape of such notices. Even otherwise, in absence of any notice, the Fixed Cost paid by the answering respondent takes care expenses of the petitioner and the same is line with the tariff order. Therefore, in the facts and circumstances, the “Fixed Charges” take care of all promises on the part of the answering respondent and reference to section 54 of the Contract Act, 1872 is of no consequence. Claiming of losses over and above or in addition to Fixed Charges will lead to doubly compensating the petitioner and which may never be the intent of any law.*

- (viii) *MPPMCL is preparing the least cost despatch schedule after taking into account the requirement of the state Discoms as a whole to safeguard the larger interest of the consumers of the State. This is in accordance with Hon'ble MPERC BSA 2009. MPPMCL back down costly power (MOD) to save on account of variable cost as the fixed charges are imperatively payable. MPPMCL prepare MOD list on monthly basis considering variable cost and the same is provided to all stake holders including SLDC on regular basis. It is worth mentioning here that MPPMCL has notified the procedure of preparing MOD vide its letter No. 1270 dated 18.12.2013 which is filed as Annexure R-2-1. It can be safely said that, as per the PPA, the answering respondent has full rights to schedule power to the extent of its choice. Further, it is submitted that whenever, the petitioner has requested for a MoD, the same has been made available to it by the answering respondent.*
- (ix) *The petitioner is making an attempt to tactfully enlarge the scope of the PPA and the same is not permissible in any manner. For the reasons stated in paragraphs herein before, no further reply is needed on this issue from the answering respondent.”*

12. On combined perusal of the contents in the petition and also the arguments/counter reply put forth by the parties in this matter, it is noted that the following documents have been referred by the parties:

- (i) Power Purchase agreement (PPA) entered into by the Petitioner and Respondent No.2 on 5<sup>th</sup> January' 2011 whereby, the power is supplied from the petitioner's power plant and purchased by M.P. Power Management Co. Ltd., Jabalpur. The three Distribution Companies in the State are the confirming parties in the aforesaid PPA.
- (ii) Clause 1.10.1 and 8.3.1(a) of the M.P.Electricity Grid Code (Revision 1), 2005.
- (iii) Draft amendment to CERC (Indian Electricity Grid Code) with regard to the Technical minimum criteria.
- (iv) M.P. Electricity (Balancing and Settlement Code), 2009.

(v) Section 54 of the Contract Act, 1872.

13. It is explicitly clear that the dispute was generated from the terminology/expression i.e. “Technical Minimum” used in the impugned letter communicated by SLDC to the petitioner. However, this term/expression i.e, “Technical Minimum” for thermal power plant is not mentioned in any provision of the Power Purchase Agreement executed between the parties in the matter or M.P. Electricity Grid Code or Balancing and Settlement Code notified by this Commission. Moreover, Clause 6.3(b) for Technical Minimum Schedule for “Operation of Generating Stations” in CERC’s draft notification is for **Inter State Generating Stations (ISGS)** whereas, the petitioner’s power plant in the subject matter is not ISGS as defined in M.P. Electricity Balancing and Settlement Code and M.P. Electricity Grid Code.

14. With regard to the expression/ term “Technical Minimum”, Respondent No.2 (MPPMCL) has made it clear that the expression “Technical Minimum” was used in the impugned communication in the bonafide intent of preparing itself and also the petitioner in perception of the new regulation which may come up in future. MPPMCL further clarified in its additional submission that, *“The usage of the said term, for the present, is only under all bonafides, in a way to the advantage of all so as to get prepared and tune up to the best possible extent in view of the expected regulation. The communications, impugned, do not tend to cause any harm to the petitioner”*. The State Load Despatch Centre Jabalpur also submitted that the impugned communication was made by it to merely forwarding the views of Respondent No.2 (MPPMCL) to the petitioner so that the scheduling activities could be performed within the time line.

15. Under Section 32 of the Electricity Act 2003, it is provided that the State Load Despatch Centre shall be responsible for optimum scheduling and dispatch of electricity within the State, in accordance with the contracts entered into with the licensees and the generating companies operating in that State. Therefore, some relevant details of the aforesaid PPA need to be discussed below:

The Power Purchase Agreement was made on 5<sup>th</sup> January’ 2011 between the procurer i.e. M.P. Power Trading Company Ltd. (now M.P. Power Management Co. Ltd.), Jabalpur and the petitioner wherein, the three Distribution Companies in the State are confirming parties being beneficiaries under the aforesaid agreement. The PPA is for supply of 70% (inclusive of 5% of net generated power at variable cost) of the installed capacity of Petitioner’s 2x250 MW (Phase I) of the power station for a period of 25 years at the rate to be approved by the Commission.

- (i) Regarding Available Capacity and scheduled energy, the provisions under PPA are mentioned in the following clauses:

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

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

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

- (ii) Regarding efficient and economical operation of the Power Station, Clause 7.1.1 in PPA provides as under:

*“7.1.1 The Company shall be responsible at its own expense for ensuring that the Power Station is operated and maintained in an efficient, coordinated and economical manner and in accordance with all legal requirements, including the terms of all Consents, Clearances and Permits, Prudent Utility Practices, and in particular, the Grid Code, so as to meet its obligations under this Agreement and so as not to have an adverse effect on the Grid operation.”*

- (iii) There is no direct provision regarding “Technical Minimum” in the above PPA. On combined perusal of Clause 4.3.3, 4.3.4, 4.3.5 and 7.1.1, it is clear that the Procurer (Respondent No.2) may not schedule the whole or part of the Available Capacity for any reason whatsoever, and in such situation, the petitioner is entitled to make available the unscheduled Available Capacity to any party other than the procurer **without losing the right to receive the capacity charges from the procurer for such unscheduled Available Capacity (emphasis supplied).**
- (iv) The contracted capacity in the PPA is not the full installed capacity of the petitioner’s power plant. In the PPA, the Available Capacity is defined as such of the **Contracted Capacity** declared available by the Company. Accordingly, the Company (petitioner) is entitled to sell any unscheduled Available Capacity other than the procurer (Respondent No.2) on one hand and also recover the Fixed (capacity) charges corresponding to such unscheduled Available Capacity from the procurer on the other hand. As per the PPA, no restriction is imposed on the procurer to limit the quantum of Available Capacity to be scheduled by the procurer between zero and the full contracted capacity declared available by the petitioner.
- (v) It is further observed that under Clause 7.1.1 of the PPA, the petitioner is made responsible at its own expenses to ensuring the operation of power station in an efficient, coordinated and economical manner so as to meet its obligation under the PPA and also to avoid any adverse effect on the grid operation.
- (vi) In view of the above provisions under PPA, the “Fixed Charges” being paid/to be paid by the Respondent No.2 (procurer) against unscheduled Available Capacity in terms of clause 4.3.3 of PPA take care of all promises on the part of the Respondent No.2. Therefore, the contention of petitioner with reference to section 54 of the Contract Act, 1872 has no merit in light of provisions under the PPA (contract).
- (vii) The Commission understands that the procurer (Respondent No.2) is purchasing electricity from the petitioner’s power plant in terms of the PPA right from the date of commercial operation (31<sup>st</sup> August’ 2012) of Unit 1 of the petitioner’s power plant and this issue of Technical Minimum has come up as a dispute between these two parties for the first time before the Commission after a period of about two and half years.
- (viii) It is also mentioned in the submissions filed by the parties in this matter that the procurer



(Respondent No.2) has been scheduling 140 MW power most of the time in the past. However, the petitioner had arranged sale of balance power falling short of 140 MW through collective transactions to ensure the technical minimum quantum of ex-bus capacity.

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

In view of the above observations and discussions, the subject petition is dismissed and disposed-of.

**(Alok Gupta)**  
**Member**

**(A.B.Bajpai)**  
**Member**

**(Dr. Dev Raj Birdi)**  
**Chairman**