

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

**Petition No. 31 of 2014
On remand by APTEL in
Appeal No.36 of 2016
& IA No.91 of 2016
Date of Order: 06.05.2019**

Present: Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member
Ms. Anjuli Chandra, Member

Petition under applicable provisions of Section 63 and 86 (f) of the Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding for approval for modalities of landed cost of washed coal to be included as part of landed fuel cost for computing the tariff as per the provisions of the Power Purchase Agreement of 3 x 660 MW Talwandi Sabo Thermal Power Project ("Project").

In the matter of: Talwandi Sabo Power Limited, Site cum Registered Office: Village Banawala, Mansa-Talwandi Sabo Road, District Mansa, Punjab-151302.

...Petitioner

Versus

Punjab State Power Corporation Limited through its Chief Engineer, Thermal Designs, PSPCL, Shed No.T-1A, Thermal Design Complex, Shakti Vihar, Patiala-147001.

...Respondent

Order

The petition No. 31 of 2014 filed by Talwandi Sabo Power Limited (TSPL) was disposed of by the Commission vide Order dated 23.11.2015. TSPL filed an appeal against the Order dated 23.11.2015 before the Hon'ble APTEL vide Appeal No. 36 of 2016

alongwith IA No. 91 of 2016 and the Hon'ble APTEL vide Order dated 03.07.2017 partly allowed the appeal remanding the Order dated 23.11.2015 to the State Commission as under:

“The impugned Order dated 23.11.2015 passed by the State Commission is hereby remanded to the State Commission for deciding cost components related to unloading of coal at the project site of TSPL & allowing the same in coal cost and for allowing Railway (Transportation) shunting charges under coal transportation cost to the Appellant.”

In compliance of the Order dated 03.07.2017 passed by the Hon'ble APTEL notice was issued to TSPL as well as PSPCL for hearing the matter on 18.04.2018. After hearing the parties TSPL was directed, vide Order dated 20.04.2018, to file detailed submissions in terms of the Order dated 03.07.2017 for deciding the cost components related to unloading of coal at the project site of TSPL and for allowing Railway (Transportation) shunting charges from terminating station near the plant site to the plant site along with copies of Railway bills pertaining to such shunting charges. PSPCL was directed to file reply to the submissions filed by TSPL alongwith a detailed note as to how the bills for shunting charges are being paid to Railways with respect to unloading of coal at its own thermal plants and whether the shunting charges are paid separately or the same are included in the transportation charges.

- 2.0 TSPL filed its submissions enclosing therewith a copy of letter dated 17.02.2014 issued by ACM/Rates, Northern Railways and copies of the shunting bills raised by Indian Railway and vide memo no. TSPL/PSERC/AM/May-18/110 dated 16.05.2018 filed additional documents. TSPL submitted that in terms of the Power Purchase Agreement (PPA) executed on 01.09.2008 between TSPL and PSPCL, TSPL filed petition No. 31 of 2014 claiming payments for various components of Energy Charge, namely, (i) Differential amount due to PSPCL payments based on GCV of coal on Equilibrated Gross Calorific Value (eGCV) basis instead of GCV of

coal on 'As Fired Basis'; (ii) Coal Washing Charges; (iii) Transit Losses; (iv) Surface Transportation Charges; (v) Finance Charges; (vi) Advertisement and other related cost of Alternate Coal Procurement; (vii) Rake Escorting Charges; (viii) GCV Sampling and Testing Charges; (ix) Unloading Charges; and (x) Railway (Transportation) Shunting Charges. The Commission vide Order dated 23.11.2015 disapproved the claim of TSPL towards payment of various fuel charge components. TSPL filed Appeal No. 36 of 2016 before the Hon'ble Appellate Tribunal for Electricity challenging the Order dated 23.11.2015 passed in Petition No. 31 of 2014. The Hon'ble Tribunal vide order dated 03.07.2017 partially allowed Appeal No. 36 of 2016. TSPL filed Civil Appeal No. 10525-10526 of 2017 before the Hon'ble Supreme Court challenging the Hon'ble Tribunal's judgment dated 03.07.2017. TSPL had not challenged the findings of the Hon'ble Tribunal on the components of unloading charges and railway (transportation) shunting charges. The Hon'ble Supreme Court partially allowed the claims of TSPL vide order dated 07.03.2018 and disposed of C.A. No. 10525-10526 of 2017 with the following directions:-

"...The only grievance in these appeals is against rejection of claim of the appellant towards coal washing and associated charges. The said claim is mentioned in para 5(xii) at page no. 6 of the impugned order:

"5.(xii). The respondent No. 2, however, refused to pay the coal washing and associated charges and has withheld approximately Rs 267 Crores till the December, 2015 bill, which are due on account of various components of 'Energy Charges'."

We find that the said issue is covered by judgment of this Court in Nabha Power Limited (NPL) v. Punjab State Power Corporation Limited (PSPCL), (2017) 12 SCALE 241, wherein vide para 73 it was held:

"73. We, thus, partly allow the appeal to the extent the appellant is held entitled to the washing cost of coal, the transportation from the mine site via washing of coal to the

project site inclusive of cost of road transportation for the period where it was necessary. The Calorific Value of the coal would have to be taken at the project site. All other claims in appeal stand rejected. The amount payable to the appellant as the consequences thereof be remitted within a period of three (3) months from the date of this order, failing which it would carry interest @ 12 per cent annum (simple interest). No costs."

2.1 The Hon'ble Supreme Court while disposing off TSPL's Appeal observed that the issue is squarely covered in Nabha Power's judgment wherein it was held as under:-

- (a) *"...the definition of F^{COAL}_n is the weighted average actual cost incurred by the appellant of purchasing the coal and transporting it to the project site and thereafter unloading the coal at the project site. The fact that the property in coal passed on to the appellant vis-à-vis SECL, on delivery being taken at the mine-end would not change the definition of coal pricing as is required for the purposes of calculation of the tariff."*
- (b) *"Once we obtain clarity on the aforesaid formula for calculation of the energy charges, the prior activity of 'washing', before receiving the coal at the project site would be part of the pricing of coal and cost of purchasing the same... The reference to coal in the formula would, thus, be only a reference to 'washed' coal and not to 'unwashed' coal."*
- (c) *"Now turning to the transportation cost, once again, what is sought to be excluded is taking the coal for 'washing' as well as the last mile to the project, on account of the Railway siding not being located at the project site for a certain specified period of time. It is for that period of time that the actual transportation cost through road is sought to be recovered by the appellant..."*

We fail to appreciate as to how these costs can be excluded, as the transportation costs to the project site have to be compensated to the appellant. It is not qualified by the methodology of transfer, i.e., railways or road..."

(d) *"We are, thus, of the view that the reading of the energy formula leads to only one conclusion that all costs of coal up to the point of the project site have to be included and the Calorific Value of the coal has to be taken as at the project-site."*

2.2 PSPCL had challenged Hon'ble Tribunal's judgment dated 03.07.2017 in C.A. No. 20966 of 2017 on the components of unloading charges and railway (transportation) shunting charges which was dismissed by the Hon'ble Supreme Court on 07.03.2018. The findings of the Hon'ble Tribunal in the judgment dated 03.07.2017 regarding unloading charges are as under:-

"iii. As per Schedule-7 , the price of coal is the weighted average actual cost to the Seller of purchasing, transporting and unloading the coal most recently supplied to and at the Project before the beginning of month 'm' (expressed in Rs/MT in case of domestic coal). Hence the unloading charges for unloading of coal at the Project needs to be considered in cost of coal.

iv. The coal required for the project is to be transported from the linked coal mine using Indian Railway system. The fuel handling facility to handle the fuel and all the other equipments, plant and machinery at the plant are part of the power station.

v. The Respondent No 2 has put the argument that all heads of expenditure claimed by the Appellant are either after the unloading of the coal through wagon tippler or related to the work envisaged to be undertaken by equipment such as wagon tippler. These expenses are the part of the O&M Expenses and the capital cost to be serviced, hence not admissible for separately payable as cost of unloading of coal.

vi. As per the Appellant, the unloading charges claimed are not in respect of capital costs incurred on the unloading equipment but the activity of unloading itself like Diesel consumed for TSPL Loco for coal movement from transit point to wagon tippler and vice versa, operation charges for manpower operating TSPL loco, other rake handling and in plant movement charges related to unloading

including manpower, consumption of electricity for Wagon Tippler to unload the coal and Manual unloading charges (if applicable).

vii. We are of the view that in a competitive bidding process, all the payments are to be made to the successful Bidder/ Seller as per terms and conditions of the PPA which has been entered into by both the parties. The schedule- 7 of PPA allows the consideration of unloading charges of coal in the cost of coal to be considered for calculation of energy charges.

viii. We have already observed earlier in this judgment that the Bidding documents do not provide any formulation for determination of capacity charges and it is the Bidders' bid specific strategy to quote capacity charges. Hence we find that while deciding on the issue the State Commission has erred in deciding that charges for unloading of coal at the project are not payable in the instant case since the same are being paid as part of the capacity charges, the cost of loco(s), wagon tippler(s) etc used for unloading of coal and the cost of coal handling plant, having been included in the project capital cost and the charges for operation of the same including diesel and electricity etc. would be covered in the operation & maintenance expenses.

ix. Hence on this count we differ with the view taken by the State Commission as clause 1.2.3 of Schedule 7 of the PPA clearly provides that energy charges payable by the Respondent No.2 are to be calculated based on weighted average 'cost to the Seller' of purchasing, transporting and unloading the coal most recently supplied to and at the Project. We decide this issue in favour of the Appellant. The State Commission is directed to identify cost components for unloading of coal at the project site and necessary mechanism for allowing such coal unloading charges in coal cost.

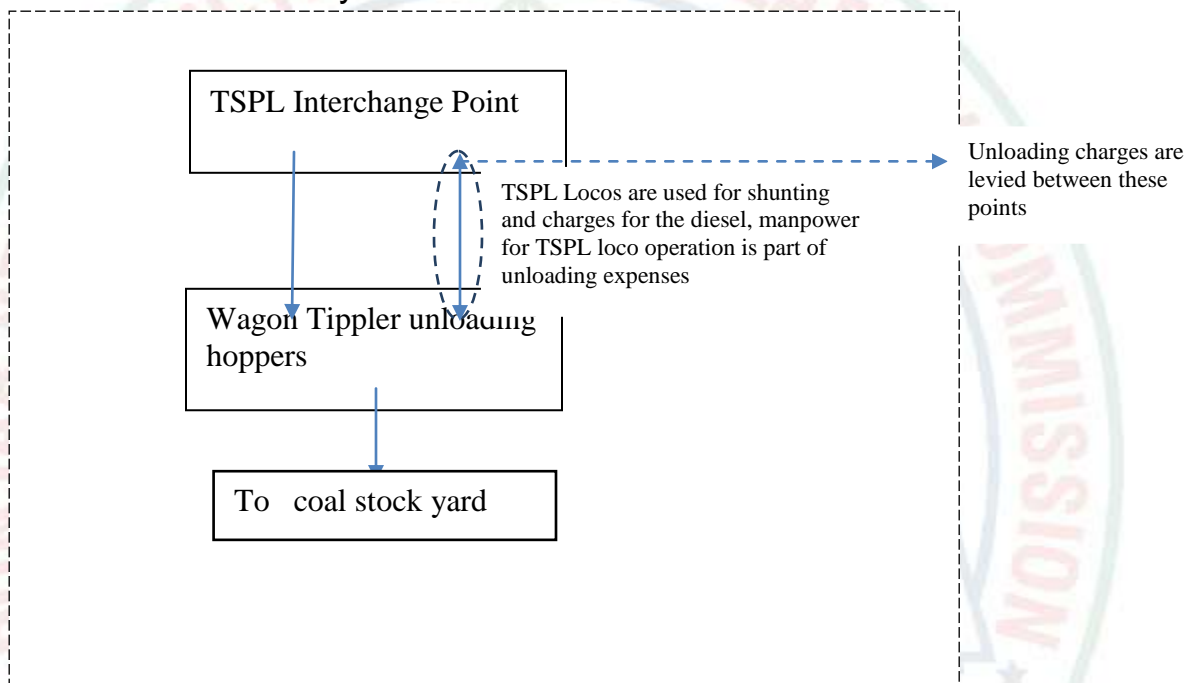
x. Accordingly, this issue is decided in favour of the Appellant."

The unloading charges are incurred by TSPL in unloading the coal at the Project, from railway wagons, trucks, any other sources etc. These charges also include the cost of unloading of coal manually

(when applicable) and TSPL ought to be reimbursed for all expenses/cost incurred in coal unloading.

- 2.3 That TSPL is using only two major equipments for unloading coal viz. TSPL's Loco and Wagon Tippler. TSPL is claiming operation cost of only these two equipments, and not for other remaining/associated equipment/systems. TSPL has given a schematic diagram explaining the levy of unloading charges at TSPL's Project site as under:-

TSPL Plant Boundary



- 2.4 TSPL has submitted that its unloading charges consist of expenses in relation to TSPL's Loco, expenses in relation to the Wagon Tippler(s) and manual unloading charges whenever applicable.
- i) With regard to Diesel consumed by TSPL Loco for coal rake movement till unloading it was submitted that for unloading the coal rakes, TSPL's Loco is required to move the rakes from the Interchange Point and place the wagons on the Wagon Tippler. Once the wagon is tipped, the Loco takes the wagon out of the Wagon Tippler and takes it to the Interchange Point. TSPL's Loco consumes diesel for this to and fro movement (from Interchange Point to Wagon Tippler) and coal cannot be unloaded without TSPL's Loco.

Alternately TSPL can employ Indian Railways' Loco for this to and fro movement, however, Indian Railways levies additional shunting charges for movement of Loco beyond the Interchange Point (i.e. point where the Indian Railways engine leaves the rakes). This cost of diesel will only be incurred when TSPL's Loco is engaged for unloading the coal. At other times, when coal is not being unloaded, there would be no cost incurred for Loco's diesel. Therefore TSPL ought to be paid the actual cost of diesel consumed in Loco operation.

- ii) With regard to Operation charges for manpower operating the TSPL Loco it was submitted that TSPL ought to be paid the charges pertaining to the manpower utilized in operating TSPL's Loco. TSPL's Loco will be operated only when coal rakes are to be moved from the Interconnection point and vice-versa for coal unloading. TSPL is claiming from PSPCL, the charges for the manpower limited to the extent of TSPL's Loco operation on an average basis.
- iii) With regard to Manpower expenses of Wagon Tippler, It was submitted that TSPL ought to be paid the cost of manpower involved in the operation of Wagon Tippler which is operated only for unloading coal. With regard to electricity expenses in relation to Wagon Tippler it is submitted that electricity is required for operation of Wagon Tippler. TSPL bills electricity charges based on standard electricity consumption basis per hour for actual working hours to operate the Wagon Tiplers. PSPCL's stand that this electricity is a part of auxiliary consumption is incorrect since Wagon Tippler was not a part of the original requirement to be installed, as per the bid documents. Moreover, PSPCL pays to TSPL only for the contracted capacity and not for auxiliary consumption.
- iv). With regard to manual unloading charges, it is submitted that at times TSPL is required to unload the coal manually when unloading cannot be done through Wagon Tippler (e.g. unloading from trucks, Bulged Wagons etc.). Since these expenses are incurred for unloading coal, TSPL is entitled to be paid the same by PSPCL. Further, there are times when the Wagon Tippler may not be

operated due to reasons beyond control of TSPL. Under such circumstances the coal rakes are unloaded manually.

- 2.5 With regard to the details and bills for shunting charges from the terminating station (Sadda Singh Wala station) to the interchange Point at TSPL Project site, TSPL has referred to the findings of the Hon'ble Tribunal in the judgment dated 03.07.2017 with respect to railway (transportation) shunting charges as under:-

“iii. Regarding ‘unloading charges’ we have already decided earlier in this Judgment in favour of Appellant. In regard to the claim of the Appellant for Railway (Transportation) Shunting Charges, these charges are paid to the Indian Railways by TSPL for the 'to and fro' movement of Indian Railway's engine to and from the transit point of TSPL's project site. In our view these charges paid by the Appellant to Indian Railways form part of transportation charges which are payable by the Respondent No 2, in line with the provisions of Schedule-7 of the PPA.

...

v. We do not find any infirmity in the decision of the State Commission on this count except on the issue of Railway (Transportation) shunting charges paid by the Appellant to Indian Railways. The State Commission is directed to allow the Railway (Transportation) shunting charges as allowed under Coal Transportation cost incurred by the Seller as per Schedule-7 of the PPA for calculation of energy charges.

vi. Hence the issue is decided accordingly.”

- 2.6 That on 17.02.2014, Northern Railways accorded its approval for opening TSPL's railway siding at Sadda Singh Wala station. The shunting and siding charges are paid by TSPL for shunting the rake from Sadda Singh Wala station to Interchange Point (i.e. Receipts and Dispatch section of TSPL siding which is inside TSPL's Project site). The freight charges are levied up to Sadda Singh Wala station only. Hence, the invoice for shunting charges is generated locally by the local railway station. That the Indian Railways provides TSPL the

option of shunting the rakes from Interchange Point to the unloading point. However, the same is offered on payment of additional charges to Indian Railways. TSPL uses its own Locos for transporting the rakes beyond Interchange Point for unloading activities and therefore, no Shunting charges are being claimed by TSPL for this part of the unloading activity. TSPL is entitled to recover the Shunting charges for shunting the rakes from Sadda Singh Wala station to Interchange Point.

- 2.7 TSPL has given the details of bills raised by Indian Railways for shunting charges levied upon TSPL from 30.06.2014 to 08.05.2018 and has submitted that the unauthorized deductions by PSPCL is resulting into huge financial losses/under recoveries to TSPL as a result of which the net worth of TSPL will eventually be eroded and TSPL would never be able to recover its actual cost of investment. The same is also impacting various activities in relation to operation of the Plant and is negatively affecting coal procurement, etc TSPL has prayed to:-
- (a) Direct PSPCL to implement the directions in the Hon'ble Tribunal's judgment dated 03.07.2017 and pay the costs incurred by TSPL for the past period (from the commissioning of the first unit, i.e., 05.07.2014 till such amounts are paid by PSPCL) and on an ongoing basis, along with carrying cost for:-
 - (i) unloading coal at TSPL's Project site.
 - (ii) railway (transportation) shunting charges under coal transportation cost etc.
 - (b) Direct PSPCL to pay interest on delayed payments, as per applicable terms of PPA; and
 - (c) Pass such other order/orders as may be deemed fit and proper in the facts and circumstances of the case.
- 3.0 In reply to the submissions made by TSPL, PSPCL has submitted that the present proceedings are only in relation to cost components of unloading of coal and shunting charges for transportation of coal, and are not in relation to any of the other components which were

subject matter of proceedings before the Hon'ble Supreme Court in the appeal filed by the Petitioner. The Petitioner has merely given description of the unloading charges without any computation, calculation etc and adequate and appropriate documents in support of the claim. The present proceedings are not for the purposes of merely giving the description of the charges or the components which would constitute the unloading charges, but to consider the claims with specific cost details, the breakup of the cost, the proof of the cost actually being incurred and the justification for the costs incurred to enable the commission to consider the prudence and pass necessary orders.

- 3.1 That the present proceedings are liable to be rejected for the failure on the part of the petitioner to raise its claim and duly substantiating the same. The onus of establishing the charges is on the petitioner and the petitioner choosing not to provide any cost components or cost details, the present proceedings in relation to unloading charges are liable to be rejected.
- 3.2 That under the heads of expenses, the petitioner has claimed electricity charges. The electricity charges are clearly a part of the Auxiliary consumption of electricity. The payment of capacity charges is for the entire capacity of the generating station and not for the net capacity. The consumption is out of the total generation by the Petitioner and therefore there is no question of claim or levy of electricity charges separately by the Petitioner.
- 3.3 That on the aspect of the shunting charges payable by the Petitioner to Railways, it is not understood the basis of the charges claimed to be paid by the Petitioner to the Indian Railways. PSPCL has verified from its generating stations as to the basis of transportation charges claimed by the Indian Railways. There is no shunting charges that is levied by Indian Railways for the transportation of coal to the generating stations of PSPCL.
- 3.4 That the Petitioner has only provided the invoices raised by the Railways for shunting charges. The Petitioner is required to co-relate the charges paid for shunting with specific coal rakes received to

establish that actual coal was received for use in the projects for generating and supplying electricity in relation to the coal rakes for which the shunting charges are claimed. The Petitioner is also required to establish actual payment made to Railways for the shunting charges, subject to which the charges can be claimed by the Petitioner from PSPCL.

- 3.5 With regard to the claim for carrying cost, the decision of the Hon'ble Appellate Tribunal does not grant any carrying cost to the Petitioner. In the case of Nabha Power, the Commission had rejected the claim for carrying cost. The same was also specifically rejected by the Hon'ble Supreme Court. In the circumstances, there is no basis for claiming any carrying cost by the Petitioner in the present proceedings.
4. The petition was taken up for hearing on 08.08.2018, wherein the parties sought an adjournment for amicable settlement of the issues. It was informed by the parties that a meeting was held on 03.08.2018 between the parties and some more time was requested for the amicable settlement of the issues. A number of opportunities were availed for amicable settlement of the issues however, on 06.02.2019 the Ld. Counsel appearing for PSPCL submitted that the issues involved can not be settled amicably and the same may be decided by the Commission. The Commission raised certain queries and both the parties requested to file their respective reply to the queries.
- 5.0 In compliance of the directions given during the hearing on 06.02.2019 and the Order dated 08.02.2019, TSPL filed its submissions enclosing the details of unloading charges for Jan 2019, copy of the Railway Distance chart and copy of the Indian Railway Freight Slab Rate dated 31.10.2018. TSPL has submitted that with regard to maintaining separate accounts for unloading charges and whether expenses for operation of Wagon Tippler and Locomotive form a part of capital cost of TSPL's project, TSPL has submitted that Unloading Charges are incurred by TSPL qua the unloading of coal at the Project site from railway wagons. There is no separate account

maintained by TSPL for Unloading Charges but it does not take away calculation of specific charges incurred on unloading activities.

- 5.1 That TSPL has been billing PSPCL the cost of unloading of coal and has provided individual item-wise breakups. The supporting documents regarding cost of unloading of coal (including SAP data, joint report signed with PSPCL mentioning month wise rakes unloaded, relevant portion of contracts signed with Coal Handling Contractor etc.) have been provided to PSPCL along with proposal dated 24.10.2018 for payment of Unloading Charges. TSPL has awarded contract for Operation activities of the Plant Including Locomotive operation and Wagon Tippler (WT) operation etc to the contractors from time to time.
- 5.2 That the Unloading Charges out of total operation cost have been calculated as per the costs incurred by TSPL for cost for manpower for loco and wagon tippler operation, actual diesel consumption and Estimated electricity consumption to operate Wagon Tippler and Locomotive. The current manpower deployed by TSPL is higher (ie. 134 Persons) than the quantum being claimed from PSPCL (i.e. 84 Persons) as part of Unloading Charges. Further, TSPL is utilising only two major equipments for unloading coal namely, TSPL's Locomotive and the Wagon Tippler. It has been submitted that TSPL is only claiming operation and not claiming any charges on account of maintenance of wagon tippler or locos from PSPCL.
- 5.3 TSPL, explaining the unloading charges, has submitted:
 - i) That for unloading the coal rakes, the Locomotive consumes diesel for discharging its function. The Locomotive is required to transport the coal rakes from the Interchange Point and place the same on the Wagon Tippler. Interchange point is a point inside TSPL plant where Indian Railways loco leaves the rake and TSPL loco takes over. The total distance that TSPL loco covers from the interchange point to WT and back is around 6.7 kms. Once the wagon is tipped, the Locomotive transports the empty rake out of the Wagon Tippler for tare weightment and takes it to the Interchange Point. TSPL incurs

cost regarding consumption of diesel when the Locomotive is engaged for unloading of coal. At other times, when coal is not being unloaded, there would be no cost incurred for Loco's diesel. TSPL maintains an accounting record for the diesel consumed by the Locomotive. The details regarding consumption of diesel by the Locomotive for unloading of coal have been provided by TSPL to PSPCL. The proofs for the same have been provided from 2016 onwards to PSPCL. The said details also provide the quantum (in litres) of diesel consumed, rate of diesel along with the SAP reservation slips capturing the filling of diesel and a copy of the logbook of the Locomotive pilot.

- ii) That TSPL ought to be paid the charges incurred by it pertaining to the specialized manpower engaged for operating the locomotive. TSPL is claiming charges incurred for manpower limited to the extent of TSPL's Locomotive operation. The monthly bill issued by TSPL contains details of the Locomotive Operation charges pertaining to manpower and the same is calculated by multiplying the nos. of staff required with the per person rate of the individual staff. TSPL provides PSPCL with the Manpower Staffing Plan for operation of the Locomotive along with their individual rates on monthly basis.
- iii) That TSPL ought to be paid the cost of specialized manpower involved in the operation of Wagon Tippler which is operated only for unloading coal. The monthly bill issued by TSPL contains all details of Manpower expenses incurred in relation to the Wagon Tippler. The total cost incurred by TSPL (manpower expenses) for operating the Wagon Tippler is calculated by multiplying the numbers of staff required for operating the Wagon Tippler with the per person rate of individual staff and this is done in line with the minimum persons required activity wise and their contractual rates. TSPL submits all supporting documents including Manpower Staffing Plan for operating the Wagon Tippler with their individual rates, to PSPCL on a monthly basis.
- iv) That TSPL incurs cost regarding consumption of electricity for operating the Wagon Tippler. PSPCL's contention that the electricity

consumed in operating the Wagon Tippler would form part of the auxiliary consumption of the Project is incorrect. The monthly bill issued by TSPL provides details regarding the electricity charges incurred by TSPL. The said total cost of the electricity charges is calculated by multiplying the total power consumed (for each coal rake unloading based on system running hours) as per Motor ratings with the per Unit rate of power. In order to standardize the energy consumption in wagon tippler, TSPL may install energy meters so as to account for the actual energy consumed for the operation of wagon tippler if required by PSPCL.

- v) That TSPL is required to manually unload the coal when the same cannot be done through the Wagon Tippler (e.g. unloading from trucks, Bulged Wagons etc.) and TSPL is entitled to be compensated for the same by PSPCL. TSPL is also required to manually unload coal when the Wagon Tippler cannot be operated for reasons beyond the control of TSPL and under such circumstances, the coal rakes are unloaded manually. The charges for manual unloading of coal are raised by TSPL on PSPCL only in situations enumerated above. The manual unloading charges are computed on the basis of the contract for manual unloading (which is for a specific period) i.e. in case of force majeure situation beyond reasonable control of TSPL. The cost regarding the operation of Wagon Tippler and Locomotive are not claimed in the capital cost of the Project. The unloading cost of coal is part of coal cost/energy charges as per schedule 7 of Power Purchase Agreement (PPA) and is not part of quoted capacity charges. No unloading charges have been claimed by TSPL for periods when the Project has not received any coal, e.g. May 2017 etc. The charges as being claimed by TSPL can be compared with any similar sized thermal power plant having same infrastructure or same can be checked at TSPL site as well. TSPL's Unloading Charges for Manpower and Diesel are in line with the Unloading Charges incurred by other such plants and the same can be compared with similar activities at PSPCL plant also.

- 5.4 That as far as shunting charges are concerned, there is no occasion of any examination/analysis by PSPCL since the bills raised by Indian

Railways along with documentary evidence of payment have been provided to PSPCL vide TSPL letter dated 10.08.2018 and the same ought to be reimbursed by PSPCL forthwith.

- 5.5 That the shunting and siding charges paid by TSPL are regarding shunting of the rakes from the Sadda Singh Wala Station to Interchange Point (i.e. Receipts and Dispatch section of TSPL which is inside TSPL's Project site). In terms of the Railway Receipts issued by Indian Railways, the freight charges are levied from the MCL mine (BOCM/ LOCM etc.) up to Sadda Singh Wala (SSZ) station only, even when the destination is mentioned as Talwandi Sabo Power Ltd. (MTSS). The same is evident from the Railway Distance Chart issued by the Indian Railways wherein the distance between SSZ and MTSS has been recorded as zero by Indian Railways but actual distance is around 17.3 Kms. Hence, shunting charges are levied separately for the distance between SSZ and MTSS and the invoice for shunting charges is generated locally by the local railway station.
- 5.6 That the Indian Railways provides TSPL the option of shunting the rakes from Interchange Point to the unloading point also. However, the same is offered on payment of additional charges to Indian Railways. Accordingly, under this option, TSPL utilises its own Locomotives for transporting the rakes beyond Interchange Point for unloading activities and therefore, no Shunting charges are being claimed by TSPL for this part of the unloading activity.
- 5.7 That if the freight rate charged by the Indian Railways is charged from MCL loading Point (BOCM/ LOCM etc.) till the TSPL Project Site, the same would result in additional freight due to change in distance slab. The Indian Railways charges freight based on the distance from the coal mine. Further, after a distance of 1000 Kms, the vector of freight slab changes every 10 Kms. Accordingly, after a distance of 1000km, for every additional 10km distance, the rate charged by the Indian Railways would increase. The Project is approximately 17.3 Kms from Sadda Singhwala (SSZ) (i.e. the point till which Indian Railway charges its freight currently). Accordingly, the Indian railway freight till Talwandi Sabo Power Ltd. (MTSS) will

increase to the higher slab rate and the freight will increase accordingly. The details have been given as below:

Origin Station	Destination Station	Distance in Kms	Applicable Freight Slab	Applicable Freight [Rs/MT]	Shunting Charges [Rs/MT]	Total Freight [Rs/MT]
BOCM	SSZ	1588.92	1581-1590	2769.5	-	2769.5
SSZ	MTSS	17.3	-	-	14	14
Total Freight till TSPL Plant Including Shunting Charges						2783.5
BOCM	MTSS	1606.22	1601-1610	2783.9	-	2783.9
Total Freight till TSPL Plant Including Shunting Charges						2783.9

TSPL has submitted that Shunting charges of Rs. 14 is approximate number for FY 2018-19 (till January 2019) and there is no additional impact on PSPCL due to Shunting Charges as the same is substitution of Railways Freight from Sadda Singhwala to TSPL Plant.

- 6.0 In compliance of the directions given vide Order dated 08.02.2019 PSPCL has filed its submissions on the issue of specific costs claimed by TSPL as unloading charges and shunting charges. PSPCL has submitted that TSPL had given a final proposal on 23/10/2018, wherein TSPL had claimed shunting charges payable to Railways and other charges in relation to unloading of coal as a part of unloading charges.
- 6.1 That in addition to Shunting Charges, TSPL had claimed the following heads of charges from PSPCL as a part of unloading charges:
- Manpower cost for Loco & Wagon Tippler (WT) Operations
 - Diesel expenses for TSPL Loco for rakes movement
 - Manual unloading charges including Diesel expenses & manpower cost for Bulged wagon / sticky coal Unloading
 - Electricity charges for wagon tippler (WT)
- 6.2 That PSPCL has verified the claims of TSPL which are not in terms of the PPA and the permissible expenses allowable to TSPL. The shunting charges are claimed for the transportation of coal from the Sadda Singh Wala Railway station to the plant site. No such shunting charges are applicable to either the coal procured by PSPCL or by

Nabha power. It is not clear as to why the entire charges up to the plant site are not a part of the railway freight charges, which is clearly notified in public domain, but is claimed separately as shunting charges from the Sadda Singh Wala Railway station to the plant site.

- 6.3 That for the generating stations of PSPCL or the generating station of NPL, no such shunting charges are separately levied. The levy is perhaps on account of the fact that the railway connectivity has not been taken by TSPL up to its plant premises. The shunting charges, if admissible, may be considered subject to prudence check on actual basis, subject to the cap, namely that if the "Railway Freight upto Sadda Singh Wala Railway station + Shunting charges, is more than the total railway freight up to TSPL plant, then the shunting charges should be restricted up to the total railway freight up to TSPL plant minus the total freight up to the Sadda Singh Wala Railway station. This would be the only prudent manner of computing the admissible shunting charges so that TSPL is paid the reasonable charges while at the same time PSPCL and the consumers are not burdened with charges which could have been avoided. The shunting charges are further to be paid subject to prudence check and verification of actual payment by TSPL to the Railways.
- 6.4 The Man power cost for the operation of the locomotive and the wagon tippler operations is part of the cost for operating and maintaining the generating station including the coal handling plant. The Operation & Maintenance expenses for any generating station, including that of generating stations based on cost plus tariff is only included in the fixed/capacity charges. These are not variable charges to be paid for separately as a part of energy charges. TSPL has stated that about 85 persons are employed for the operation of the locomotive and wagon tippler operations, which does not appear to be correct for the nature of the activities involved. The operation of the locomotive and wagon tippler would not involve the requirement of 85 persons. The claim of TSPL is liable to be rejected.
- 6.5 That the diesel charges are included as a part of the operation & Maintenance Expenses of the generating station. The Operation &

Maintenance expenses for any generating station, including that of generating stations based on cost plus tariff is only included in the fixed/capacity charges. These are not variable charges to be paid for separately as a part of energy charges. TSPL has also not given any details of the claims except providing average monthly consumption per rake and average cost per month.

- 6.6 That no manual unloading is envisaged at the plant site when the entire wagon tippler mechanism is provided for and included in the capital cost. The manual unloading is neither verifiable nor is required at the plant site. In any event, even if manual unloading is undertaken it is on account of the inability of the TSPL to operate the Coal Handling Plant with wagon Tippler in the proper manner and there can be no claim for the same from PSPCL. As per the scheme provided in the Coal Handling Plant (CHP) there are four wagon tipplers provided for unloading of the coal and the non operation of the CHP mechanism and use of any alternate manual or other mechanism for coal handling are only for factors wholly attributable to TSPL. Manual unloading is not even in the scheme envisaged for the Project. The manual unloading claimed by TSPL appear to be part of the processing of coal, wherein coal is processed by removing stones and other large impurities before storing. The manpower cost for the same is also part of the cost of operation of TSPL and is not separately payable in the form of unloading charges. In the circumstances, the manual unloading charges as claimed by TSPL including diesel expenses and manpower cost related to such unloading is not payable.
- 6.7 That electricity is used by TSPL for the wagon tippler as a part of auxiliary consumption, which is already accounted for. There is no separate electricity connection for the wagon tippler, nor can there be any separate connection. The electricity requirement for the wagon tippler is being met from the generating station itself, and the same is already accounted for in the tariff quoted as a part of the auxiliary consumption. Auxiliary consumption is allowed on normative basis and is accounted for in all generating stations including that of TSPL coal handling system. In the present case, the tariff itself is quoted

keeping into account the auxiliary requirements considering the nature of the generating station considered in the bidding process. In fact separate expenses as electricity expenses are not paid for generating stations, as the electricity requirements are only met as a part of auxiliary consumption and the same is true for the present case also.

- 6.8 That as regards manpower charges for manual unloading including boulder removal and bulged wagon and sticky coal unloading, there is no necessity of incurring such expenses by TSPL. The unloading will cover within its scope the removal of coal from the wagon tippler to the conveyor belt. The unloading activities finishes once the coal is unloaded from the wagon tippler and is put in the conveyor belt for movement within the power project site. The activities of removal of boulders would be after the unloading and when the coal is being moved on the conveyor belt. It is not a process of unloading. The unloading operation with wagon tippler is mechanical with the installation of wagon tippler and very little manpower is required for undertaking the same. These are part of the manpower of the generating station and not independent of the same. Such manpower cannot be considered separately. The expenditure on manpower for such unloading operation by use of wagon tippler cannot be allowed additionally.
- 6.9 That It is not understandable as to why there will be an issue of bulged wagon and non-operation of the wagon tippler for unloading such coal from the wagon which are also part of capital costs of wagon Tippler and coal handling system. TSPL had specifically stated before the Hon'ble Appellate Tribunal that it is not claiming capital costs incurred on unloading equipment and the same cannot be allowed. TSPL has not given any justification as to the reasonability of the expenses claimed under the unloading charges.
- 7.0 Vide Order dated 21.02.2019 TSPL was directed to submit on affidavit Unloading Charges per ton along with component wise details/calculations of the same further directing PSPCL to file its reply to the reply filed by TSPL. In pursuance to the Order dated 21.02.2019, TSPL submitted the additional documents vide letter

dated 06.03.2019 as under alongwith month wise details of Unloading Charges billed by TSPL for FY 2014-15, 2015- 16,2016-17, 2017-18 & 2018-19 as Annexure 1 D.

Calculation for Unloading Charges per MT of Coal Consumption

Components of Unloading Cost	Average for last 3 years i.e. FY 2016-17, 2017-18 & 2018-19			Proposed Unloading Cost for payment in FY 2019-20 (applicable from April 2019 onwards) (Rs/MT)	Proposed Unloading Cost for payment in FY 2020-21 (applicable from April 2020 onwards). (Rs/MT)
	Component wise Unloading Costs (%)	Total Cost (Rs/MT)	Cost for each component (Rs/MT)		
Manpower	45%	7.60	3.42	3.42 x 1.15 = 3.93	3.93 x 1.15 = 4.52
Diesel	40%		3.04	Diesel Costs = 3.04 x (Average diesel rate for last month / 65.86) where Average Rate per litre of Diesel is Rs. 65.86/ litre for FY. 2018-19 as base number	On the same basis as for FY 2019-20 and so on
Electricity	15%		1.14	Electricity Cost = 1.14 x (Average Energy Charge for last month / 3.79) where Average Energy Charge Rs. 3.79 /kWh for FY 2018-19 as base number	On the same basis as for FY 2019-20 and so on

Details of Unloading Charges per MT of Coal Consumption (Last 3 Years)

Financial Year	Coal Consumption (000' MT)	Manpower charges for Wagon Tippler (WT)	Manpower charges for TSP L Loco operations	Manpower charges for Manual Unloading Including Boulder Removal	Average Manpower Cost for WT & Loco	Diesel expenses for TSP Loco operations	Diesel expenses for TSP L Bulge Wagon /	Average Diesel Cost	Electricity charges for WT operations	Total Unloading charges = (1)+(2)+(3)+(5)+(6)+(7) (Rs/MT)

Order in petition No. 31 of 2014
(on remand by Hon'ble APTEL)

		(Rs/MT)	(Rs/MT)	al and Bulge Wagon & Sticky Coal Unloading (Rs/MT)	(Rs/MT)	(Rs/MT)	Sticky Coal Unloading (Rs/MT)	(Rs/MT)	(Rs/MT)									
											(1)	(2)	(3)	$=(1)+(2)+(3)$	(5)	(6)	$=(5)+(6)$	(7)
											2016-17	5,027	0.91	2.81	0.30	4.02	2.91	0.26
2017-18	5,823	0.75	2.37	0.26	3.38	2.45	0.43	2.88	1.37	7.63								
2018-19*	5,957	0.56	1.92	0.22	2.70	2.41	0.33	2.74	0.89	6.33								
Average					3.37			2.93	1.30	7.60								

Components wise % age of Unloading Cost (for last 3 years)

Financial Year	Manpower charges for Wagon Tippler (WT)	Manpower charges for TSPL Loco operations	Manpower charges for Manual Unloading Including Boulder Removal and Bulge Wagon & Sticky Coal Unloading	Average Manpower Cost for WT & Loco	Diesel expenses for TSPL Loco operations	Diesel expenses for TSPL Bulge Wagon / Sticky Coal Unloading	Average Diesel Cost	Electricity charges for WT operations	Total Unloading charges = (1)+(2)+(3)+(5)+(6)+(7)
	(1)	(2)	(3)	$=(1)+(2)+(3)$	(5)	(6)	$=(5)+(6)$	(7)	
	%	%	%	%	%	%	%	%	%
2016-17	10%	32%	3%	45%	33%	3%	36%	19%	100%
2017-18	10%	31%	3%	44%	32%	6%	38%	18%	100%
2018-19*	9%	30%	3%	43%	38%	5%	43%	14%	100%
Average				~45%			~40%	~15%	

Base Energy Charges as billed by TSPL to PSPCL and Diesel Rate for FY 2018-19

Month	Rate of Diesel	Rate of Electricity
	Rs./ Litre	Rs./kWh
Apr-18	65.92	3.61
May-18	69.15	3.69
Jun-18	67.32	3.69
Jul-18	67.71	3.80
Aug-18	64.70	3.86
Sep-18	67.65	3.91
Oct-18	71.27	3.83
Nov-18	69.92	3.70
Dec-18	58.31	3.85
Jan-19	56.64	4.00
Average till January 2019	65.86	3.79

8.0 In reply to the data filed by TSPL vide letter dated 06.03.2019, PSPCL submitted the reply vide memo no. 5899 dated 08.04.2019. PSPCL has submitted that TSPL has claimed the deployment of about 19 persons as manpower for the wagon tippler at an average cost of Rs. 17,619/- per person. All the manpower are employed on contract basis. The cost of Rs. 17,619/- claimed per person is very high. The contract labour employed by PSPCL for similar operation of the wagon tippler is at a much lower cost of about Rs. 10,000-12,000 per person. TSPL being a private entity and not bound by restrictions on tender process etc. is in a position to procure manpower on contract basis at much lower rates. Therefore, the claim of manpower at Rs. 17,619/- appears to be very high and ought not to be fully allowed by the Commission.

8.1 That the claim of TSPL for deployment of 65 persons for the locomotive operation is grossly exaggerated. TSPL operates two loco-shunters for unloading and the computation works out to 32.5 persons per locomotive. As against the above, the number of persons deployed at the generating stations of PSPCL is much lower. In the case of GHTP, for 4 loco-shunters, 36 persons are deployed for operating the locomotives and for the GGSSTP generating station, for

operation of 5 loco-shunters, 40 persons are deployed (spread of 4 no. shifts i.e. 3 no. shifts working and 1 no. standby). So on an average about 8.5 persons/loco-shunter are deployed at the generating stations of PSPCL. As against the above figure of about 8.5 persons/loco-shunter at the generating stations of PSPCL, TSPL has claimed 32.5 persons/loco-shunters which is highly excessive and ought not to be allowed.

- 8.2 That the claim towards the manpower charges and diesel expenses for boulder removal and sticky coal is misconceived. These are not part of the unloading activities and are in fact activities for the processing of coal. This may be either prior to unloading or after unloading, but the nature of the activity being processing of coal does not change. Therefore, the said charges ought not to be allowed.
- 8.3 That with regard to electricity charges, there is no concept of separately billing for electricity charges. The electricity charges requirement is met as a part of auxiliary consumption in all cases, including in the case of TSPL wherein the electricity requirements are only met from the generating station. There is no separate metering of the wagon tippler requirement. The requirement of electricity is a part of the generating activity and squarely falls within the definition of auxiliary consumption. The generating stations of PSPCL also do not get any part of the electricity requirements, except for the normative auxiliary consumption.
- 8.4 That TSPL gets 7% as auxiliary consumption. The total installed capacity of TSPL is 1980 MW and the contracted capacity is only 1841.4 MW. The balance of 138.6 MW constituting 7% of the installed capacity is a part of the auxiliary consumption of TSPL. This auxiliary consumption is required for all the activities within the generating station for which electricity consumption is there. The claim for electricity charges separately as a part of unloading activity does not arise.
9. In response to the submission of PSPCL dated 08.04.2019 TSPL filed its submissions vide letter dated 10.04.2019 denying the averments made by PSPCL and justifying its earlier submissions.

10. TSPL filed IA No. 01 of 2019 seeking clarification of Order dated 21.02.2019. TSPL has submitted that vide Order dated 21.02.2019 the Commission directed TSPL to submit unloading charges per ton alongwith component wise details/calculation of the same further directing PSPCL to file its reply to the reply filed by TSPL. The present proceedings are in terms of judgment dated 03.07.2017 passed by the Hon'ble APTEL in appeal No. 36 of 2016. The Hon'ble APTEL had allowed the cost incurred for shunting charges to be passed on to PSPCL as part of transportation charges. PSPCL challenged the judgment dated 03.07.2017 before the Hon'ble Supreme Court and the Hon'ble Supreme Court dismissed the Civil Appeal filed by PSPCL vide Order dated 07.03.2018. Since PSPCL's civil appeal has been dismissed by the Hon'ble Supreme Court therefore there is no occasion for PSPCL to raise any objections to payment of shunting charges. TSPL had already provided all the requisite bills and payment proofs regarding Shunting Charges to PSPCL on 03.01.2019 and PSPCL had never raised any objections regarding the calculations. While the directions regarding unloading charges have been passed by the Commission in the Order dated 21.02.2019 but the Order is silent on the aspect of payment of shunting charges by PSPCL. The Commission had expressed during the hearing on 13.02.2019 that while the component of unloading charges would be examined and be subject to prudence check, the Shunting Charges would be allowed to TSPL forthwith since there is no dispute regarding shunting charges. TSPL is already facing acute financial distress due to the non-payment of legitimate dues by PSPCL despite the issues being settled regarding shunting charges and in these circumstances the Order dated 21.02.2019 would provide an other opportunity to PSPCL to not pay the shunting charges. The Order dated 21.02.2019 may be clarified directing PSPCL to pay the shunting charges to TSPL forthwith alongwith applicable interest as per the PPA.

11.0 Observations, Findings and Decision of the Commission.

Hon'ble APTEL in its Judgment and Order dated 03.07.2017 in Appeal No. 36 of 2016 & IA No. 91 of 2016 impugning Commission's Order dated 23.11.2015 in petition no. 31 of 2014 held as under:

"We are of the considered opinion that most of the issues raised in the present Appeal are devoid of merit except on some issues which need fresh consideration by the State Commission as deliberated and decided above and accordingly the Appeal is hereby partially allowed. The IA No.91 of 2016 is disposed of as such.

The Impugned Order dated 23.11.2015 passed by the State Commission is hereby remanded to the State Commission for deciding cost components related to unloading of coal at the project site of TSPL & allowing the same in coal cost and for allowing Railway (Transportation) shunting charges under coal transportation cost to the Appellant."

In compliance to the ibid Order of Hon'ble APTEL, notice was issued to TSPL and PSPCL and the parties filed their submissions and pleadings in the petition. The Commission has carefully gone through the submissions made by TSPL and PSPCL. TSPL has prayed as under:

- a) Direct PSPCL to implement the directions in Hon'ble Tribunal's judgment dated 03.07.2017 and pay the costs incurred by TSPL for the past period (from the commissioning of the first unit, i.e. 05.07.2014 till such amounts are paid by PSPCL) and on an ongoing basis, along with carrying cost for:
 - (i) unloading coal at TSPL's Project site;
 - (ii) railway (transportation) shunting charges under coal transportation cost etc.
- (b) Direct PSPCL to pay interest on delayed payments, as per the applicable terms of PPA.

Cost Components related to Unloading of Coal at the Project site

TSPL has claimed the following cost components related to the unloading of coal at the project site:

- i) Expenses for diesel consumed by the Loco for coal rake movement till unloading
- ii) Manpower expenses for operating the Loco
- iii) Manpower expenses for Wagon Tippler
- iv) Electricity expenses for Wagon Tippler operation
- v) Manpower charges for manual unloading of coal from bulge wagon(s), sticky coal unloading and boulder removal
- vi) Diesel expenses for bulge wagon/sticky coal unloading
- vii) Equipment charges for bulge wagon

The Commission's decision on each of the aforementioned cost components is as under:

Expenses for diesel consumed by the Loco for coal rake movement till unloading

TSPL has claimed expenses for diesel consumed by its Loco for coal rake movement from the interchange point located within the project premises, where the railways deliver the coal rakes, upto the unloading point i.e. the wagon tippers as one of the cost components for unloading of coal. In response, PSPCL submitted that the diesel charges are included as a part of the operation and maintenance expenses of the generating station. The operation and maintenance expenses for any generating station, including that of generating stations based on cost plus tariff is included in the fixed/capacity charges. These are not variable charges to be paid separately as the part of energy charges. Furthermore, TSPL has also not provided any detail of the claims made except the average monthly consumption per rake and average cost per month. Thus the claim of TSPL is liable to be rejected.

Considering the submissions of TSPL and PSPCL, the Commission is of the considered opinion that the TSPL Loco operations for movement of coal rakes from the interchange point located within the project premises upto the unloading point at the wagon tippers and back, are part of the unloading process in terms of the remand Order of Hon'ble APTEL. Accordingly, the Commission allows the diesel expenses for the purpose as a cost component for unloading of coal at project site.

Since PSPCL is also operating its own thermal plants where unloading is being carried out, it has the requisite experience. Therefore, PSPCL shall carry out due diligence by deputing its personnel at the project to work out the diesel consumption and the applicable rate of diesel in consultation and consensus with TSPL within a period of three months. These expenses shall be included in the coal cost to be considered in the calculations for monthly energy charges under clause 1.2.3 of Schedule 7 of the PPA. For the past period, TSPL shall revise the monthly bills from the COD of the respective units to claim these charges as part of the coal cost in the calculations for monthly energy charges.

Manpower expenses for operating the Loco

Against the claim of TSPL for manpower expenses for operating the Loco, PSPCL submitted that the manpower cost for the operation of locomotive operations is part of the operation and maintenance expenses of the generating station including the coal handling plant. The operation and maintenance expenses for any generating station, including that of generating stations based on cost plus tariff are included in the fixed/capacity charges. These are not variable charges to be paid separately as the part of energy charges. PSPCL further submitted that TSPL has stated that about 85 persons are employed for operation of the locomotive and wagon tippers which do not appear to be correct for the nature of the activities involved.

Considering the submissions of TSPL, PSPCL and the Commission's decision above that TSPL Loco operations for movement of coal rakes from the interchange point located within the project premises upto the unloading point at the wagon tippers and back, are part of the unloading process in terms of the remand Order of Hon'ble APTEL and allowance of the diesel expenses for the purpose as a cost component for unloading of coal at project site, it is logical to allow the manpower expenses also for the said locomotive operations to the extent used for unloading of coal, as a cost

component for unloading of coal. Hence, the **Commission allows the same.**

PSPCL shall depute its personnel to carry out due diligence at site and work out the manpower requirement and wages/salary in consultation and consensus with TSPL with in a period of three months. These expenses shall be included in the coal cost to be considered in the calculations for monthly energy charges under clause 1.2.3 of Schedule 7 of the PPA. For the past period, TSPL shall revise the monthly bills from the COD of the respective units to claim these charges as part of coal cost in the calculations for monthly energy charges.

Manpower expenses for Wagon Tippler

PSPCL's response to the claim of TSPL for manpower expenses for operation of the wagon tippler(s) is the same as for manpower expenses for operation of TSPL Loco as brought out above. **However, the Commission is of the considered opinion that the operation of wagon tippler(s) is a part of unloading activity of coal at the project site in terms of the remand Order of Hon'ble APTEL and, therefore, the manpower expenses for the operation of wagon tippler(s) is a valid cost component for unloading of coal at project site and hence allows the same.**

PSPCL shall carry out due diligence at the project and work out the manpower requirement for wagon tippler(s) operations and salary/wages in consultation and consensus with TSPL within a period of three months. These expenses shall be included in the coal cost to be considered in the calculations for monthly energy charges under clause 1.2.3 of Schedule 7 of the PPA. For the past period, TSPL shall revise the monthly bills from the COD of the respective units to claim these charges as part of coal cost in the calculations for monthly energy charges.

Electricity expenses for Wagon Tippler operation

TSPL submitted that electricity is required for the operation of wagon tippler(s) and claimed the electricity charges based on standard electricity

consumption basis per hour for actual working hours to operate the wagon tippler(s). PSPCL submitted that electricity used by TSPL for the wagon tippler(s) is a part of auxiliary consumption, which is already accounted for. There is no separate electricity connection for the wagon tippler, nor can there be any separate connection. PSPCL further submitted that auxiliary consumption is allowed on normative basis and is accounted for in all generating stations including that of TSPL. PSPCL further submitted that even for generating stations where the tariff is determined based upon the cost of generation under section 62 of the Electricity Act, 2003, no separate electricity charges are considered. TSPL submitted that PSPCL's contention that electricity charges for operating the wagon tippler(s) is included in the auxiliary consumption of the project is misplaced as PSPCL pays to TSPL only with respect to the contracted capacity and scheduled energy supplied and not for the auxiliary consumption.

Considering the submissions of TSPL and PSPCL, the Commission is of the opinion that since wagon tippler operation has been held as a part of the unloading of coal at project site in terms of the remand Order of Hon'ble APTEL, the charges for the electricity consumed would need to be considered as a cost component of unloading of coal at project site, more so since the contracted capacity of the project as per the PPA is 1841.4 MW as against the gross capacity of 1980 MW, the difference being consumed as auxiliary consumption. To measure the electricity consumption, TSPL shall install meter(s) forthwith at each of the wagon tippler which would be tested and sealed by PSPCL. TSPL may also affix its own meter seal if it so desires. TSPL shall be paid the electricity charges as per the meter reading at the tariff at which TSPL is/would be supplying electricity to PSPCL. These expenses shall be included in the coal cost to be considered in the calculations for monthly energy charges under clause 1.2.3 of Schedule 7 of the PPA. For the past period, the electricity consumed shall be calculated on pro-rata basis and paid for by PSPCL to TSPL at the tariff rate for that particular month. TSPL shall revise the monthly bills from the COD of the respective units to claim these charges as part of coal cost in the calculations for monthly energy charges.

Manpower charges for manual unloading of coal from bulge wagon(s), sticky coal unloading and boulder removal

TSPL has claimed charges for manual unloading of coal from bulge wagon(s) and manual removal of sticky coal and boulders. TSPL submitted that at times, it is required to unload the coal manually when unloading cannot be done through wagon tippler(s) due to reasons beyond control of TSPL. In this regard, PSPCL submitted that the scope of unloading will cover the removal of coal from the wagon tippler to the conveyor belt. The unloading activity finishes once the coal is unloaded from the wagon tippler and put on the conveyor belt. The coal handling plant scheme of the project provides for four wagon tippler(s) and, therefore, use of any alternate manual or other mechanism for coal handling is wholly attributable to TSPL and not provided in the scheme. The activity of removal of boulders would be after the unloading and when the coal is being moved on to the conveyor belt. It is not a part of the process of unloading. The unloading operation with wagon tipplers is mechanical and very little manpower is required which too is part of manpower required for the generating station and not independent of the same. As such, the expenses for manual unloading of coal including removal of boulders and sticky coal cannot be allowed additionally. TSPL has contended that unloading of sticky coal from wagons is necessary to avoid wastage of coal and is a part of unloading of coal which is stuck to the wagons and can not be unloaded through wagon tippler(s). The removal of boulders is necessary for continuous loading of coal. If the boulders are not removed while unloading, it may result in hampering the process of unloading.

The Commission has considered the submissions of both the parties. Perusal of the data submitted by TSPL reveals that the charges for manual unloading including boulder removal and bulge wagon & sticky coal unloading are almost 1.76 times the charges for the manpower required for wagon tippler operations. This appears unrealistic. The activity of manual unloading of coal, sticky coal unloading and boulder removal etc. should normally be a miniscule percentage of the main activity of unloading of coal through wagon tipplers. Moreover, as per the data submitted by TSPL, no such

charges have been incurred by TSPL in the months from June 2015 to December 2015 and also from February 2016 to March 2016. Therefore, the Commission is not inclined to approve this apparently sporadic activity of manual operations of unloading claimed by TSPL in addition to regular unloading of coal through wagon tippler(s) as a cost component for unloading of coal, in terms of the instant remand Order. However, to be just and fair, the Commission directs PSPCL to deploy its personnel to observe and quantify the percentage of this activity vis-a-vis regular unloading of coal through wagon tipplers as also the manpower requirements for the same, if any, for which TSPL shall co-operate and provide the requisite support to PSPCL. This shall be carried out over a reasonable time frame of six months to one year and the parties shall settle the issue amicably, failing which, TSPL may approach the Commission in this regard in case it so desires.

Diesel expenses for bulge wagon/sticky coal unloading

TSPL has claimed diesel expenses for bulge wagon/sticky coal unloading which PSPCL has opposed. Perusal of the data submitted by TSPL reveals that the charges for diesel expenses for bulge wagon/sticky coal unloading are more than 13% of the diesel expenses for TSPL loco operations for unloading of coal through wagon tippler(s). This appears unrealistic and, therefore, the Commission is not inclined to allow these charges as a cost component of unloading of coal, in terms of the instant remand Order of Hon'ble APTEL. This issue of bulge wagons is real and the same has to be tackled as and when it occurs to avoid a hold up in the unloading. PSPCL also has to deal with it in its own thermal plants. As such, the Commission directs PSPCL to deploy its personnel to observe, study and quantify the diesel consumption, if any, for bulge wagon/sticky coal removal operations vis-a-vis regular unloading of coal through wagon tipplers, for which TSPL shall co-operate and provide the requisite support to PSPCL. This shall be carried out over a reasonable time frame of six months to one year and the parties

shall settle the issue amicably failing which, TSPL may approach the Commission in this regard in case it so desires.

TSPL is directed to take up the matter regarding bulge wagons with the Railways so as to minimise their inclusion in the rakes.

Equipment charges for bulge wagon

TSPL, later in its submissions, claimed equipment charges for bulge wagon for three months from December 2014 to February 2015 which were apparently not included in the submission made in response to the notice issued to it after the remand Order. Also there is no satisfactory explanation from TSPL in respect of these charges. **As such the Commission is not inclined to allow these one time expenses which are not regular in nature as a cost component of unloading of coal in terms of the current remand Order of Hon'ble APTEL.**

In terms of the above discussion, the Commission has unambiguously allowed four cost components of unloading of coal in terms of the remand Order of Hon'ble APTEL dated 03.07.2017 from the COD of the respective units. TSPL in its submissions has intimated an expenditure of around Rs. 14.17 crore incurred on these four cost components from December, 2014 to January, 2019. However, as PSPCL is likely to take time upto three months to complete the due diligence, as allowed by the Commission hereinbefore, the Commission finds it appropriate to allow an amount of Rs. Seven (7) crore provisionally on this account to TSPL which shall be paid by PSPCL forthwith. This amount shall be trued-up/adjusted in the payments to be made by PSPCL to TSPL on the revision of the bills for the past period on this account by TSPL. The bifurcation of these four cost components for the period from July, 2014 to November, 2014 is not available as intimated by TSPL and hence not considered for the limited purpose of allowing the aforementioned provisional amount. However, it is clarified that these would be payable by PSPCL to TSPL after the due diligence.

Railway Shunting charges

TSPL submitted that shunting and siding charges are paid to Railways by TSPL for shunting the rakes from Sadda Singh Wala station

(SSZ) to interchange point at TSPL project site (MTSS). Beyond the interchange point, TSPL utilises its own locomotives for rake movement for unloading activities and therefore, no shunting charges have been claimed by TSPL for this part of the unloading activity. The freight charges are levied from MCL mine (BOCM/LOCM) to SSZ only. The invoice for shunting charges is generated locally at SSZ on chargeable basis as per approved charges of the Railways which are revised on yearly basis. TSPL further submitted that in terms of railway receipts issued by the Railways, the freight charges are levied from BOCM/LOCM upto SSZ only, even when the destination is mentioned as MTSS. In the railway distance chart issued by the Railways, the distance between SSZ and MTSS has been recorded as zero by the Railways even though actual distance is around 17.3 kms. Evidently, shunting charges are levied separately for the distance between SSZ and MTSS and the invoice for shunting charges is generated locally by the local railway station. TSPL further submitted that if the freight charged by the Railways is charged from BOCM/LOCM etc. till MTSS, the same would result in additional freight due to change in distance slab as the Railways charge freight based on distance from the coal mine and after a distance of 1000 kms., the vector of freight slab changes every 10 kms.

Illustratively, the distance from BOCM to SSZ is 1588.92 kms. (applicable slab: 1581-1590) with a freight of Rs. 2769.50 per MT of coal. Further, the shunting charges from SSZ to MTSS are approximately Rs.14 per MT of coal, thus the total freight plus shunting charges are Rs. 2783.50. As against this, the freight from BOCM to MTSS for a distance of 1606.22 kms. (applicable slab: 1601-1610) is Rs.2783.90 per MT. TSPL submitted that it is clear that there is no additional impact on PSPCL due to shunting charges and the same are a substitution of Railways freight from Sadda Singh Wala to TSPL project.

In response, PSPCL submitted that if TSPL has its exclusive railway siding like PSPCL's own thermal power plants, then MCL should despatch the coal directly to TSPL project site and then railway will charge freight upto TSPL siding (project site) and there will be no shunting charge. It is apprehended that TSPL is paying shunting charges to Railways in place of freight as it may not have completed the approval process of TSPL railway

siding and therefore, MCL is despatching the coal upto Sadda Singh Wala station which is 17.3 km from TSPL site. TSPL should get its railway siding approved to avoid shunting charges. PSPCL further submitted that shunting charges if admissible may be considered subject to prudent check on actual basis, subject to cap, namely that if the freight upto Sadda Singh Wala station plus shunting charges are more than the total railway freight upto TSPL project site, then the shunting charges should be restricted upto the total railway freight upto TSPL plant minus total freight upto the Sadda Singh Wala railway station.

The Commission has considered the submissions of both the parties. The Commission notes that as against Rs.14 per MT shunting charges between SSZ and MTSS for January 2019 mentioned by TSPL, the same work out to Rs.6.92 per MT considering the siding charges of Rs.26949/- (if 'train engine' is utilised in place of 'shunting engine') as mentioned in the Railways letter dated 17.02.2014 issued by ACM/rates and assuming 3895 MT quantity of coal in one rake. In another petition, wherein shunting charges have been furnished by TSPL for the period from 01.09.2016 to 30.09.2017, the shunting charges have been mentioned as Rs.37824/- per rake on 01.09.2016 to Rs.44589/- per rake on 30.09.2017. This indicates that the freight charges have increased from Rs.9.71 per MT on 01.09.2016 to Rs.11.45 per MT on 30.09.2017 i.e. the shunting charges have increased continuously from Rs.6.92 per MT in February 2014 to Rs.14 per MT in January 2019. No doubt the freight charges also might have increased during this period. Since the Railways revise these charges periodically, in order to safeguard the interest of the consumers of the State, the Commission is of the opinion that the freight charges from coal mine(s) to Sadda Singh Wala station plus the shunting charges from there to the plant should not be more than the freight from the mine(s) to the plant.

Considering the above, the Commission holds that in terms of the remand Order dated 03.07.2017 of Hon'ble APTEL, for the past period, PSPCL shall pay the shunting charges from the Sadda Singh Wala station to the power plant already incurred by TSPL forthwith. There appears to be no loss to PSPCL on this account as the sum

total of the freight from the coal mine(s) upto the Sadda Singh Wala station and the shunting charges from Sadda Singh Wala station to the plant site is less than the total freight from the coal mine(s) to the power plant. In future, PSPCL shall pay to TSPL either the sum total of the freight from the coal mine(s) upto the Sadda Singh Wala station and the shunting charges from Sadda Singh Wala station to the plant site or the total freight from the coal mine(s) to the power plant, whichever is less. In this regard, TSPL shall append the necessary/requisite documentary evidence in support of their claim(s) with the bills.

Carrying cost

TSPL, in the prayer, has sought direction to PSPCL to pay interest on delayed payments as per applicable terms of PPA. PSPCL in its reply has submitted that the decision of Hon'ble APTEL does not grant any carrying cost to the TSPL. PSPCL has further submitted that in case of Nabha Power Ltd., the Commission had rejected the claim for carrying cost. The same was also specifically rejected by the Hon'ble Supreme Court of India. PSPCL has pleaded that in the circumstances, there is no basis for any carrying cost being claimed by TSPL in the present proceedings and the same is liable to be dismissed.

The Commission in its findings in Order dated 07.06.2017 in Petition No.52 of 2014 on remand by Hon'ble APTEL relied upon the case laws in the matter of State of Punjab Vs Krishan Dayal Sharma (2011)11 SCC 212 and Appeal No.146 of 2009 in the case of Damodar Valley Corporation Vs CERC and others, wherein it has been held that the executing court is bound by the terms of the decree, it cannot add or alter the decree on its notion of fairness and justice. The right of the decree holder to obtain relief is determined in accordance with the terms of decree and power cannot be exercised by the executing court in the absence of any direction in the decree. The court below to which the matter is remanded by the superior court is bound to act within the scope of remand. Accordingly, keeping in view the remand Order of Hon'ble APTEL in the instant case, the Commission is of the opinion that the directions of Hon'ble Supreme Court of India and

Hon'ble APTEL in the above cases are squarely applicable in this case and holds that no relief is admissible to TSPL on this account.

This Order is issued in compliance of the Order of Hon'ble APTEL in its Judgment dated 03.07.2017 in Appeal No.36 of 2016 & IA No.91 of 2016. This also disposes of IA No.01 of 2019 filed by TSPL.

Sd/-
(Anjali Chandra)
Member

Sd/-
(S.S. Sarna)
Member

Sd/-
(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated: 06.05.2019

