

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITENO.3, BLOCK B, SECTOR 18-A, MADHYA MARG, CHANDIGARH

Petition No. 50 of 2023
Date of Order: 20.11.2024

Petition under section 86(1)(b) of the Electricity Act 2003 as read with regulation 69 of the Conduct of Business Regulations 2005, seeking directions for Talwandi Sabo Power Limited (TSPL) - the respondent, herein, to apply for Coal Rationalization under the policy notified by the Ministry of Coal for Linkage Rationalization for Independent Power Producers (IPPs)

AND

In the matter of: Punjab State Power Corporation Limited, Through its Chief Engineer (Fuel), Shakti Vihar PSPCL, Patiala - 147001, Punjab.

.....Petitioner

Versus

Talwandi Sabo Power Limited, Mansa-Talwandi Sabo Road, Village Banawala, District Mansa Punjab 151302.

....Respondent

Commission: Sh. Viswajeet Khanna, Chairperson
Sh. Paramjeet Singh, Member

PSPCL: Sh. M.G. Ramachandran, Sr. Advocate (through VC)
Ms. Poorva Saigal, Advocate
Ms. Harmohan Kaur, CE/ARR&TR (through VC)

TSPL: Sh. Pratyush Singh, Advocate (through VC)

ORDER

1. The Petitioner (PSPCL) had filed the present petition for seeking the Commission's directions to the Respondent (TSPL) to apply for coal rationalization under the policy notified by the Ministry of Coal for

rationalization of linkage for independent power producers (IPPS). It had been submitted that:

1.1 PSPCL is a Distribution Licensee in the State of Punjab and TSPL is a Generating Company who owns and operates a 1980 MW (3x660 MW) coal-based thermal power plant (TPP) for supply of power in terms of the Power Purchase Agreement (**PPA**) dated 01.09.2008 signed between the parties. Till date, it has been requisitioning coal from MCL in terms of the FSA dated 04.09.2013 signed between TSPL and MCL, and PSPCL is paying the energy charges in terms of Schedule 7 of the PPA.

1.2 That on 18.07.2017, the Ministry of Coal, vide its Office Memorandum, constituted a new Inter-Ministerial Task Force ('IMTF') to rationalize the linkages of the IPPs by preparing a methodology with the objective of reducing the landed price of coal, to be reflected in the cost of power generation and these savings were to be passed on to the buyers of power in a transparent manner. That on 15.05.2018, the "Methodology for Linkage Rationalization for IPPs", prepared by IMTF and approved by Ministry of Coal, was circulated vide Ministry of Coal letter dated 15.05.2018 and CIL/its subsidiaries were requested to take immediate necessary action to implement the methodology. The underlying objective behind the linkage rationalization policy was to reduce the landed cost of coal (due to reduction in transportation and cost of coal) which would lead to savings in the cost of power generated to be ultimately passed on to the procurers i.e., the Discoms and on to the consumers of the respective States.

1.3 That this Commission, vide its Order dated 06.04.2022 in Petition No. 12 of 2022, has approved a Supplementary Agreement dated 07.03.2022 signed by TSPL and PSPCL as per the requirement under the methodology for Coal linkage rationalization for IPPs issued by the Ministry of Coal on 15.05.2018 for giving effect to pass through of any cost savings made by TSPL to PSPCL on account of rationalization of 0.715 MTPA of coal linkage from MCL to NCL. That, pursuant thereto, TSPL signed a new FSA on 02.05.2022 undertaking all the modalities wherein coal linkage of 0.715 MTPA was transferred from MCL to the Northern Coalfields Limited (NCL). Similarly, on 19.05.2022, this Commission approved the rationalization of linkage of 0.864 MMT from MCL to Eastern Coalfield Limited (ECL).

1.4 That keeping in view the benefits of linkage rationalization, the Ministry of Coal on 16.01.2023 requested CIL to commence further rounds of linkage Rationalization in terms of the methodology dated 15.05.2018. Accordingly, on 14.06.2023, CIL issued the Standard Operating Procedure for Linkage Rationalization('SOP') through Notice uploaded on its website with the salient features as under:

"1. Process of Linkage Rationalization:

.....

1.3 After uploading of approved final rationalized matrix in respect of State/Central GENCOs on the website of CIL, linkage rationalization exercise in respect of IPPs shall be taken up.

1.4 The linkage rationalization exercise in respect of State/Central GENCOs and IPPs shall be completed within 3 months individually.

1.5 Once rationalization exercise for State/ Central GENCOs is complete, the leftover surplus coal, if any, shall be considered for rationalization exercise in case of IPPs.

2. Earnest Money Deposit and Process Fees:

2.1 For encouraging participation of only serious consumers, an Earnest Money Deposit ('EMD') @ Rs. 100/tonne in the form of BG/Cash & a non-refundable processing fee @ Rs. 10/ tonne (in cash only), irrespective of outcome, shall be required to be submitted to CIL by the consumer(s).

2.2 EMD is towards timely completion of requisite formalities/ signing of FSA at the rationalized source by the consumer.

2.3 EMD and Processing Fees are to be deposited for quantity applied for rationalization at the time of submission of EOI.

2.4 EOI application will be held as valid only when accompanied with both EMD and the Processing Fees. Any application not accompanied with both EMD and Processing Fees will not be considered for rationalization exercise.

2.5 EMD in respect of Quantity which could not be considered for rationalization exercise by CIL due to any constraints/feasibility issues, shall be refunded within 30 days of publication of final rationalized matrix.

.....

5. Procedure of Linkage Rationalization of Independent Power Producers

5.1 The EOIs submitted by IPPs shall be sent to CEA for calculation of Savings on account of linkage transfers.

5.2 Based on the calculation of savings indicated by CEA, Draft Rationalized Matrix shall be prepared at CIL level. Further procedure is same as in case of State/Central Gencos.

5.3 The amendments in the FSA due to linkage transfer, including

submission of Supplementary/amended PPA duly approved by the Appropriate Regulatory Commission will be required to be completed by IPPs within seven (7) months of circulation of final approved rationalized matrix.

5.4 If any IPP fails to sign the FSA at the new source within 7 months, the quantity for which rationalization was done, shall be deemed as lapsed and corresponding forfeiture of EMD shall be made.”

1.5 On 17.08.2023, the CIL invited EOI from the IPPs proposing rationalization of their existing linkages on the basis of the SOP notified on 14.06.2023. However, TSPL, while agreeing to submit the EOI for rationalization of TSPL's entire Annual Contracted Quantity (ACQ) of 6.72 Million Tonne from MCL to SECL with an estimating annual savings of about Rs. 367 Crore for PSPCL, insisted on payment of the requisite processing fee and the EMD by PSPCL to facilitate the proposed transfer of coal linkage. The relevant extracts of TSPL's Letter dated 25.08.2023 to PSPCL read as under:

"Considering the substantial prospective benefits amounting to around Rs.6200 Crores to PSPCL throughout the remaining 17-year duration of the Power Purchase Agreement (PPA), TSPL is highly enthusiastic about pursuing this linkage rationalization aiming to bring broader advantages to electricity consumers in Punjab. As the deadline for submission of the application for linkage rationalization is 15.09.2023, we request PSPCL to promptly grant necessary approvals for the following:

- (i) Submission of the application to transfer the existing MCL coal linkage quantity of 6.72 MMTPA (Million Metric Tonne per annum) to SECL.*
- (ii) Advancement of the payment amounting to Rs. 6.72 Crore for the non-refundable processing fees and Rs. 67.2 Crore to be submitted as*

EMD, facilitating the proposed transfer of coal linkage."

1.6 That after a brief exchange of correspondence between the parties, PSPCL on 05.09.2023, intimated TSPL that it had approved TSPL's request regarding coal linkage rationalization and requested TSPL to submit the application to CIL expeditiously for transfer of its existing MCL coal linkage of 6.72 MTPA to SECL. As regards the request of TSPL for advance payment towards the processing fee and the EMD to be submitted by TSPL to CIL, it was informed to TSPL that the same have to be borne by TSPL since it is TSPL that is applying for rationalization of its existing MCL coal linkage. PSPCL also emphasized on the urgency to undertake the necessary action since the last date for submission of application to CIL was 15.09.2023. However on 07.09.2023, TSPL again insisted for the advance payments for submission of the application for coal linkage rationalization from MCL to SECL citing the potential savings to PSPCL. In reply, PSPCL on 08.09.2023, while again requesting TSPL to submit the application to CIL expeditiously, reiterated its stance that the obligations of PSPCL are to pay the energy charges as stipulated in Schedule 7 of the PPA.

1.7 That, in terms of the subsisting obligations under the PPA and the following Orders passed by the Hon'ble Supreme Court, PSPCL is only required to pay the energy charges in terms of Schedule 7 of the PPA:

- a) The Hon'ble Supreme Court on 02.05.2016, while admitting the Civil Appeal No. 4085-4086/2016 filed by PSPCL against the

Hon'ble APTEL Order dated 07.04.2016, had ordered as under:

"The learned counsel appearing for the appellant has submitted that the appellant is ready and willing to pay the energy charges, which would also include fuel charges, as per the Power Purchase Agreement. The energy charges shall be paid accordingly."

b) The Hon'ble Supreme Court's Order dated 05.10.2017 in the case of NPL v. PSPCL (2018 11 SCC 508) held that NPL is entitled to three elements that have been provided under the Energy Charge Formula under Schedule 7 and no other charges will be a pass through under the PPA:

"70. We may notice that there are certain other essential costs sought to be claimed by the appellant such as the transit and handling losses, third party testing charges, liaising charges. We have already held that the formula contains only three elements and thus, the appellant cannot be permitted to plead that any other element, other than those would also incidentally form a part of the formula. In fact, such claims would be hit by RFP clause 2.7.1.4(3) and the energy charges have to be calculated only on the basis of the formula understood in a business sense. Thus, these claims are rejected."

Pursuant to above, on 07.03.2018, the Hon'ble Supreme Court disposed of the Civil Appeal No. 10525-10526 filed by TSPL in terms of the decision in the NPL Case (supra) including the rejection of claims regarding other Charges than those provided under Clause 1.2.3 to Schedule 7 of the PPA.

1.8 That, in the facts and circumstances mentioned above, namely, the potential savings of approximately Rs. 367 crore on an annual basis to the consumers of the State of Punjab, it is incumbent

upon TSPL to apply for Coal Rationalization to CIL as the same would be in consonance with the prudent utility practices under Article 4.1.1(b) of the PPA.

1.9 That it is TSPL that is requisitioning and procuring coal in terms of FSAs dated 04.09.2013 between TSPL and MCL and dated 02.05.2022 between TSPL and NCL. Accordingly, in the present case also, it is TSPL that has to comply with the SOP issued by CIL including the furnishing of Processing Fee and EMD. In any case, as per the terms of the SOP, the EMD is refundable in both the cases. That is, if the linkage applied for translates into the signing of an FSA at the new source as also if there is no allotment due to any constraints/feasibility issues. However, if TSPL fails to sign the FSA at the new source within 7 months, the rationalization shall be deemed to have lapsed and the corresponding EMD shall be forfeited.

1.10 That such charges are admissible to be included in the tariff payable by PSPCL for electricity generation and supply by the Order of this Commission, and the same needs to be included in the bills for electricity supplied. Therefore, upfront processing fee and EMD is required to be met by TSPL and any claim by TSPL against PSPCL is admissible to the extent allowed by the order of this Commission and included under the tariff payable by PSPCL.

1.11 That there is an urgent and immediate need for applying for the coal rationalization scheme in order to protect the interests of the consumers considering the potential savings during the course of the PPA. It would cause grave financial prejudice to PSPCL and

the consumers in case TSPL fails to apply for coal rationalization.

1.12 Accordingly, it is prayed that the Commission may:

“a) Admit the Petition.

b) Direct TSPL to apply under the Expression of Interest (EOI) issued by Coal India Limited for transfer of TSPL’s existing MCL coal linkage quantity of 6.72 MMTPA to SECL; and;

c) Direct TSPL to make advance payment of Rs. 6.72 Crore towards "Processing fee" and Rs. 67.20 Crore towards Earnest Money Deposit(EMD) to Coal India Limited in terms of the Standard Operating procedure (SOP) notified by Coal India Limited; and

d) Pass ad-interim Orders in respect of Prayers above and Grant any consequential reliefs in respect of the reliefs prayed for above.

e) Pass such further orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.”

2. On 11.09.2023, the petition along with IA was taken up for hearing on admission. Wherein:

a) The Petitioner prayed for admission of the petition and urgent interim orders in the matter stating that there is an urgent and immediate need for TSPL to apply for the coal rationalization scheme notified by the Coal India Limited (**CIL**) for which the cut-off date is 15.09.2023. This is in order to protect the interests of the consumers considering the potential savings during the course of the PPA. It was submitted that in response to an expression of Interest (**Eoi**) issued by the Coal India for Linkage Rationalization, TSPL has intimated its willingness to apply for the rationalization of its entire 6.72 MMTPA from Mahanadi Coalfields

Limited (**MCL**) to South-Eastern Coalfields Limited (**SECL**). However, it is insisting that the processing fees of Rs. 6.72 Crore and the Earnest Money Deposit (**EMD**) of Rs. 67.20 Crore required under the SOP, be paid by PSPCL. It was further submitted that, in view of the current dispensation prevailing between the parties in terms of the Order dated 02.05.2016 passed by the Hon'ble Supreme Court in Civil Appeal No. 4085-4086 of 2016, PSPCL is liable to only pay the energy charges as per the PPA. However, PSPCL submitted that keeping in view the urgency and the public interest involved, it is willing to lend an advance to the TSPL pending the final decision in this petition.

- b) The Ld. Counsel for the respondent TSPL submitted that it needs time to file a reply to the petition and that any final relief cannot be granted in an IA. It was argued that Hon'ble APTEL's Judgment on the issue of obligation to supply the coal has not been stayed by the above referred Hon'ble Supreme Court Order. Moreover, it is PSPCL which is going to benefit from the rationalization of the linkage. As such, it should bear the cost for the same. However, responding to the offer of an advance made by PSPCL, TSPL agreed for the same with the rider that it should not be called an advance and thus PSPCL should not make adjustments from its monthly bills till the decision in the matter by the Commission.
- c) After hearing the parties, the Petition was admitted with observation that the issues have been raised by Ld. Counsels which need further detailed deliberation and examination. However, the proposed rationalisation scheme entailing an

estimated annual saving of about Rs 367 crore, as calculated in TSPL's communication to PSPCL, is a win-win situation for all the stakeholders and will also have a positive impact on tariff for the end consumers and has an urgency due to a limited window available for the necessary application. The Commission being acutely conscious of the urgency in applying for the rationalisation, since the window would close on 15.09.2023, strongly agrees with the view of both parties that such an opportunity should not be missed. Accordingly the Commission directed both the TSPL and PSPCL as under::

“TSPL to immediately proceed to apply under the said EoI issued by Coal India Limited for transfer of its existing linkage from MCL to the SECL. As offered and agreed by both parties, PSPCL shall provide the required funds to facilitate the submission of the application by TSPL. There shall be a moratorium on the adjustments of the said credit provided on account by PSPCL from TSPL's monthly bills for a month or till next date of hearing, whichever is later. The actual obligation to bear the charges shall be as per the final decision made in this Petition after considering the issues in the petition and as raised by Ld. Counsel during the hearing.”

3. On 25.10.2023, TSPL filed its reply to the Petition, which is summarised as under:
 - 3.1 That TSPL's project has been set up under tariff-based bidding process (Case 2 Scenario 4) under Section 63 of the Act wherein TSPL was required to quote only Net Quoted Heat Rate and Capacity Charges and was not required to quote any Energy Charges which are entirely pass through to PSPCL.
 - 3.2 That in terms of the Linkage rationalization methodology of CIL, it was optional and not a mandatory obligation for the IPPs to apply

for rationalization of their existing coal linkage as evidenced from the following extract of the Methodology dated 15.05.2018:

“1. Coal linkage rationalization shall be an exercise in which the coal linkage of a Thermal Power Plant of an Independent Power Producer (IPP) may be transferred from one Coal Company to another based on the coal availability and future coal production plan of the coal company. The underlying objective behind the exercise shall be to reduce the landed cost of coal due to reduction in transportation cost and cost of coal. The reduced landed price of coal shall lead to savings, to be reflected in cost of power generated, and these savings shall be passed on to the buyers of power through a transparent and objective mechanism.

This exercise shall be voluntary on the part of the TPPs. The exercise aims to reduce the distance by which the coal is transported, thus easing up the Railway Infrastructure for gainful utilization for other sectors...”

3.3 That PSPCL vide letters dated 18.08.2023, 29.08.2023, 05.09.2023 and 08.09.2023 requested TSPL to apply for rationalization of its existing coal linkage to Coal India since the same will lead to potential savings of approximately Rs. 367 Crore to PSPCL. Pursuant thereto, TSPL vide letters dated 25.08.2023, 29.08.2023 and 07.09.2023 had informed PSPCL that while Coal Obligation for the Project vests with PSPCL, TSPL may apply for linkage rationalisation if PSPCL makes an advance payment of the EMD and Processing Fees.

3.4 That in terms of Hon'ble APTEL Judgment dated 07.04.2016 passed in Appeal Nos. 56 & 84 of 2013 titled *TSPL v. PSPCL & Anr.*, it is PSPCL's obligation to procure coal for TSPL's Project for the entire PPA tenure. PSPCL's Coal Obligation was also

upheld by Hon'ble APTEL in subsequent Judgment dated 19.07.2021 passed in Appeal Nos. 220 & 317 of 2019 titled *TSPL v. PSPCL & Anr.* As such, all risks and financial liabilities associated with the coal procurement are to be borne by PSPCL alone. That, though the above Hon'ble APTEL's Judgments dated 07.04.2016 and 19.07.2021 have been challenged by PSPCL in Civil Appeal Nos. 4085 of 2016 and 5012 of 2021, the Hon'ble Supreme Court has not granted any stay on the operation of these judgments.

3.5 That PSPCL cannot rely on Hon'ble Supreme Court's Orders to contend that PSPCL is not obligated to pay the charges associated with linkage rationalization because these charges were not the subject matter of the Civil Appeal No. 4085 of 2016 and Civil Appeal No. 5012 of 2021 pending before the Supreme Court. In fact, PSPCL has given an undertaking before the Hon'ble Supreme Court (as recorded in Order dated 02.05.2016) that it will pay all cost of coal to TSPL. Hence, in terms of Hon'ble Supreme Court's Order dated 02.05.2016 and PSPCL's undertaking, it is mandated to pay these charges to TSPL as these are costs associated with procurement of coal. Further, PSPCL cannot place reliance on the NPL Judgment because in the case of NPL, the obligation to procure coal is of Nabha Power and not of PSPCL.

3.6 That TSPL has executed the FSA dated 04.09.2013 with MCL on 'without prejudice' basis, pursuant to directions issued by Hon'ble APTEL in Order dated 18.04.2013 in Appeal Nos. 56 & 84 of 2013

titled *TSPL v. PSPCL & Anr.* TSPL operates the FSA dated 04.09.2013 executed with MCL only with the right to requisition and procure the coal on behalf of PSPCL. TSPL cannot be made liable for any financial implication arising out of coal procurement/linkage rationalization. The subsequent FSA dated 02.05.2022 signed with NCL for supply of 0.715 MTPA of coal under the 2nd round of linkage rationalization was also on 'without prejudice' basis.

- 3.7 That in the earlier round of linkage rationalization (i.e., the 2nd Round) also, TSPL had applied to Coal India pursuant to PSPCL's written request dated 27.08.2020. However, there was no requirement for payment of any processing fees and EMD by the applicants for linkage rationalization entailing any financial implication on TSPL. The requirement for payment of processing fees and submission of EMD for linkage rationalization has been introduced by CIL for the first time vide its SOP for linkage rationalization dated 14.06.2023.
- 3.8 That PSPCL, at Para 32 of its Petition, has itself submitted that such charges are admissible to be included in the tariff payable by PSPCL for electricity generation and supply subject to this Commission's order and PSPCL is permitted to recover the same through tariff. That the linkage rationalization is beneficial to PSPCL and its consumers and will lead to annual savings of approximately Rs. 367 Crore and savings of approximately Rs. 6200 Crore for the remaining 17 years of the PPA.

- 3.9 Accordingly, the cost associated with linkage rationalization be paid to TSPL and PSPCL may be allowed to recover the same from its consumers through retail tariff in view of the substantial financial benefit to accrue to PSPCL on account of this linkage rationalization.
4. On 06.11.2023 PSPCL filed its rejoinder to TSPL's reply submitting that the advance payment to TSPL for submission of the application has been made by PSPCL in order to protect the interests of the consumers considering the potential savings during the course of the PPA and the urgency as the cut-off date for the application was 15.09.2023. Further, while reiterating its earlier contentions, it was submitted that:
- 4.1 The potential savings on account of reduction of the distance from the coal mine to the generating station of TSPL shall also accrue to the benefit of TSPL in the form of savings on transit losses because in terms of the PPA, the transit loss is to be borne by TSPL and securing a linkage from a source closer to the Generating Station would benefit TSPL as well. Further, in the event that the coal sourced is of a higher GCV, the resultant gains would also accrue in favour of TSPL.
- 4.2 Further, TSPL cannot now contend that the coal linkage rationalization is merely on behalf of and on the instructions of PSPCL in view of the following:
- a) It has itself highlighted the issue of unavailability of sufficient coal rakes and the difficulties of lower rake allocation over a distance of more than 1700 kms as indicated from the following

extract of its Letter dated 07.09.2020 written in context of the earlier round of rationalisation:

- *“The rail distance from IB & Talcher mines of MCL is approx. 1600 & 1800 km respectively, which is amongst the longest in the country. Due to distant coal source, TSPL is paying freight (approx. Rs. 3000 per MT) to Indian Railways for transporting the coal from Odisha to Punjab which is almost double the coal cost itself. Further, TSPL being one of the most distant plant from MCL coal mines, TSPL faces additional difficulties of less rake allocation.*
 - *In order to continue supplying uninterrupted power to Punjab State Power Corporation Limited (PSPCL), it is important that TSPL Plant is supplied with adequate quantity of right quality coal. It is important to note that the entire power generated from TSPL plant is available for the benefit of the State of Punjab. A cheaper and nearer source of domestic coal as compared to distant domestic linkage shall result into substantial savings and will ultimately help PSPCL to reduce the power tariff.”*
- b) The above is significant in the light of the issues regarding the quality and quantity of coal raised by TSPL from time to time before this Commission (Petition No. 20 of 2022 and Petition No. 69 of 2020) as well as the Appellate Tribunal (Appeal No. 376 of 2022 and Appeal No. 134 of 2023):
- c) That, without prejudice to the outcome of the aforesaid proceedings, the primary contention of TSPL has been the unavailability of sufficient coal rakes and the difficulties of less rake allocation over a distance of more than 1700 kms. Thus, TSPL cannot raise such an objection when the linkage rationalization would not only benefit consumers in the state of Punjab but also enable TSPL to build up its coal stock and fulfill

its obligation including maintaining the normative availability under the PPA.

- 4.3 That depriving the consumers of the state of Punjab of the savings in reducing the landed cost of coal would not be a prudent utility practice and against the principles enshrined under Section 61(d) of the Electricity Act, 2003.
- 4.4 That the PPA does not envisage any separate payment towards arrangement for coal. If the coal procured is said to be used for generation and supply of electricity, the energy charges become payable on the supplied units of electricity as per the invoices to be raised after the conclusion of the relevant month and in accordance with the provisions of the PPA. Accordingly, all such cost has to be borne entirely by TSPL with the right to bill for the energy charges in terms of Schedule 7 under the PPA and not otherwise.
- 4.5 The order dated 02.05.2016 can in no manner be interpreted to include the aforesaid costs i.e., the processing fee or the EMD within the scope of energy charges provided under Schedule 7 of the PPA as interpreted in *NPL v. PSPCL*, (2018 11 SCC 508) read with the Judgment dated 07.03.2018 of the Hon'ble Supreme Court in Civil Appeal No. 10525-10526 of 2017. Further, TSPL has failed to substantiate its attempted distinction as against the case of *Nabha (supra)*, especially when both are Case 2 Scenario 4 projects and the Energy Charge formula provided in the PPAs are exactly the same.
- 4.6 That in terms of the SOP dated 14.06.2023 issued by CIL, it is the

consumer of the coal/GENCOs which ought to apply for the linkage rationalization. Accordingly, in the present rationalization scheme, since it TSPL applying for Coal Rationalization and ultimately the FSA would also be signed with TSPL, it is TSPL that has to comply with the SOP issued by CIL including the furnishing of Processing Fee and EMD.

4.7 That it is TSPL's obligation to requisition, transport, arrange the coal from CIL or its subsidiaries on a day-to-day basis and to regularly build up the coal stock as per the Ministry of Power and CEA Guidelines. TSPL cannot seek indirect costs from PSPCL apart from the three elements i.e., (a) purchasing (b) transporting and (c) unloading the coal, as provided under Schedule 7 of the PPA.

4.8 That the Coal Rationalization Scheme contemplates that EMD is refundable in case there is no allotment due to any constraints/feasibility issues and also if the linkage applied for translates into the signing of an FSA at the new source. However, if TSPL fails to sign the FSA at the new source within 7 months, the rationalization shall be deemed to have lapsed and the corresponding EMD shall be forfeited.

5. PSPCL filed an IA No. 19 of 2024 on 27.09.2024 submitting as under:

5.1 That pursuant to the Interim order dated 11.09.2023, PSPCL had advanced an amount of Rs. 6.72 Crore as processing fee and furnished a Bank Guarantee (**BG**) of Rs. 67.20 Crores as EMD in terms of the SOP in the name of CIL, on a 'without prejudice' basis. That State Bank of India, SME Branch, Patiala levied Rs.

1,14,98,009/- (Rs. One Crore Fourteen Lakh Ninety Eight Thousand Nine only) as BG opening charges at the rate of 1.45% along with applicable GST and Postal charges. The details of the BG Opening charges are as under:

Applicable Charges	Amount in Rs.
BG Charges @ 1.45% of Rs. 67.20 Crores	97,44,000/-
GST @ 18%	17,53,920/-
Postal Charges	89/-
Total	1,14,98,009/-

5.2 That, on 29.11.2023, CIL through an e-mail issued the approved rationalized matrix to TSPL rationalizing 6.72 MMTPA of MCL into 5.44 MMTPA from SECL at a savings of Rs. 0.60 per kWh in the transportation cost. Accordingly, on 30.01.2023, a Supplementary Agreement to the PPA dated 01.09.2008 was signed between PSPCL and TSPL. Thereafter, on 29.03.2024 a supplementary FSA was signed between SECL and TSPL for an LOA quantity of 54,43,826 Tonne. Accordingly, SECL returned the original Bank Guarantee to TSPL who in turn has returned the same to PSPCL on 29.05.2024.

5.3 That the aforesaid facts have a direct bearing on the petition and this Commission may be pleased to amend the prayer clause as under:

“a) Direct TSPL to refund the advance amount Rs. 6.72 Crore paid by PSPCL towards "Processing fee" in terms of the Standard Operating procedure (SOP) notified by Coal India Limited along with applicable carrying cost/late payment surcharge;

- b) *Direct TSPL to refund to PSPCL an amount of Rs. 1.15 crores (approx.) as Bank Guarantee Opening charges for the furnishing of Rs. 67.20 Crore BG to Coal India Limited along with applicable carrying cost/late payment surcharge as the case may be; and*
- c) *Pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case."*

6. The matter was taken up for hearing on 06.11.2024. TSPL filed reply dated 05.11.2024 to the IA and the Ld. Counsel for the Petitioner submitted that no rejoinder is required to be filed. The amended petition was taken on record. The Ld. Counsel appearing for PSPCL and TSPL reiterated their submissions, the gist of which is as under:

PSPCL:

- That it is TSPL that is requisitioning and procuring coal in terms of FSA dated 04.09.2013 signed between TSPL and MCL. Accordingly, it is TSPL which has to comply with the SOP issued by CIL including the furnishing of Processing Fee and EMD.
- That TSPL has been repeatedly raising the issue of poor quality of coal and the longer distance of its existing linkage in various petitions/appeals filed before the Commission/Hon'ble APTEL and, it is also going to benefit by way of reduction in transit losses and increased efficiency on account of the reduction in distance/quantum and the improved quality of coal from the rationalised source of linkage.
- That in terms of the subsisting obligations under the PPA and the interim Orders dated 02.05.2016 passed by the Hon'ble Supreme Court in Civil Appeal No. 4085-4086 of 2016, PSPCL is only required to pay the energy charges in terms of Schedule 7 of the

PPA.

- That such charges are admissible to be included in the tariff payable by PSPCL for electricity generation and supply by the Order of this Commission, and the same needs to be included in the bills for electricity supplied. Therefore, upfront processing fee and EMD is required to be met by TSPL and any claim by TSPL against PSPCL is admissible to the extent allowed by the order of this Commission and included under the tariff payable by PSPCL

TSPL

- That TSPL has executed the FSA dated 04.09.2013 with MCL only on 'without prejudice' basis to requisition and procure the coal on behalf of PSPCL.
- That it has been held by Hon'ble APTEL in its Judgments dated 07.04.2016 in Appeal Nos. 56 & 84 of 2013 and dated 19.07.2021 passed in Appeal Nos. 220 & 317 of 2019 that the Coal Obligation for the Project for the entire PPA tenure vests with PSPCL. PSPCL has filed Appeals against the said Orders by Hon'ble APTEL. However, the Hon'ble Supreme Court has not granted stay on the operation of these judgments. Rather, PSPCL has given an undertaking before the Hon'ble Supreme Court (as recorded in Order dated 02.05.2016) that it will pay all cost of coal to TSPL. Hence, PSPCL is mandated to pay the charges for rationalisation of coal linkage to TSPL as these are costs associated with procurement of coal.
- That in terms of the Linkage rationalization methodology of CIL, it was optional and not a mandatory obligation for the IPPs to apply

for rationalization of their existing coal linkage. TSPL had applied for the linkage rationalisation on behalf of and upon instructions of PSPCL and it is PSPCL which is going to benefit by the reduced cost due to the rationalisation of Coal linkage.

- That PSPCL has itself submitted that such charges are admissible to be included in the tariff payable by PSPCL for electricity generation and supply subject to this Commission's permission to recover the same through tariff. Accordingly, the cost associated with linkage rationalization be paid to TSPL and PSPCL may be allowed to recover the same from its consumers through retail tariff in view of its substantial financial benefit.

After hearing the parties, the Order was reserved.

7. Observations and Decision of the Commission:

The Commission has examined the submissions and arguments thereon made by the parties. The Petition is for seeking direction to the Respondent TSPL to apply for rationalization of its Coal Linkage under the policy notified by the Ministry of Coal. However, pursuant to the Commission's interim Order dated 11.09.2023, the operationalization of the rationalised linkage of coal to TSPL's project has been achieved through a transfer of TSPL's existing linkage from MCL to the SECL. PSPCL provided the required funds to facilitate the submission of the application by TSPL subject to the final decision in this Petition. The only issue left for consideration is to decide as to who should bear the the actual expenses/charges amounting to about Rs. 7.87 Crore (i.e. Rs. 6.72 Crore as 'Processing fee' and about Rs. 1.15 Crore as the 'Bank Guarantee Charges') incurred for ensuring the rationalisation of

the coal linkage.

While TSPL's contention is that the coal obligation for the project vests with PSPCL as held by Hon'ble APTEL in its Judgments dated 07.04.2016 in Appeal Nos. 56 & 84 of 2013 and dated 19.07.2021 in Appeal Nos. 220 & 317 of 2019, PSPCL's plea is that it is obligated to pay only the Energy Charges as per the Formulae stipulated in Schedule 7 of the PPA read with the interim Order dated 02.05.2016 of the Hon'ble Supreme Court in Civil Appeal Nos. 4085-4086 of 2016 and 5012 of 2021 filed by it against the orders of Hon'ble APTEL.

Further, it is TSPL's case that it has applied for the linkage rationalisation on behalf of and upon instructions of PSPCL and it is PSPCL which is going to benefit by the reduced cost due to the rationalisation of Coal linkage to the tune of about Rs. 367 Crore per annum which translates to a total saving of over Rs. 6200 Crore over the remaining period of 17 years of the PPA. PSPCL's plea is that since it is TSPL which is requisitioning and procuring the coal for the project, the onus is on TSPL to comply with the SOP for coal linkage rationalization including the furnishing of 'Processing Fee' and the 'EMD/BG'. Moreover, TSPL is also going to benefit by way of reduction in transit losses and increased efficiency on account of the reduction in distance/quantum and the improved quality of coal from the rationalised source of linkage.

Therefore, without prejudice to the final decision of the Hon'ble Supreme Court in Civil Appeal Nos. 4085-4086 of 2016 and 5012 of 2021 filed by PSPCL, and considering that it is PSPCL and its consumers who are going to ultimately benefit from the reduced costs

and PSPCL's own submission that such charges can be included in its power purchase cost to the extent allowed by the Commission, the Commission decides that it would be fair if PSPCL bears the actual expenses/charges paid to CIL as 'Processing Fee' and the 'BG Charges' for obtaining the impugned rationalisation of coal linkage and recovers the same through its ARR.

This decision however should not be treated as an interpretation or decision on various clauses of the PPA dealing with coal or any other cost in dispute in any other Petition or an interpretation of what constitutes coal cost as argued in the Petition.

The Petition is disposed of in terms of above observations and directions of the Commission.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Place: Chandigarh

Dated: 20.11.2024