

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

SITE NO. 3, BLOCK B, SECTOR 18-A, MADHYA MARG, CHANDIGARH

IA No. 22 of 2022

(in I.A No. 13 of 2021 in Petition No. 31 of 2014)

Date of Hearing: 11.01.2023

Date of Order: **18.01.2023**

Interlocutory Application (IA) for seeking clarification in Order dated 11.03.2022 passed by Hon'ble PSERC in IA No. 13 of 2021 in Petition No. 31 of 2014.

AND

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

..... Petitioner/Applicant

Versus

Punjab State Power Corporation Ltd, the Mall Patiala-147001.

....Respondent

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

TSPL : Sh. Amit Kapur, Advocate

PSPCL : Sh. Anand K Ganeshan, Advocate

ORDER

1. The instant IA has been filed by Talwandi Sabo Power Limited (TSPL) seeking clarification of the Commission's Order dated 11.03.2022 passed in IA No. 13 of 2021 in Petition No. 31 of 2014. The submissions of TSPL are summarised as under:

a) Petition No. 31 of 2014 was filed by TSPL claiming payments for various components of Energy Charge including Unloading Charges and Railway Shunting Charges. On 23.11.2015, the Commission disallowed TSPL's claim on account of these components. However, on the directions of Hon'ble APTEL in Order dated 03.07.2017, 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, the Commission passed the consequential Order dated 06.05.2019, directing as under:

- (i) *Sum total of freight from the coal mines (Loading Point) to the SSZ and Shunting Charges from SSZ to TSPL's Plant site (Interchange Point); or*
- (ii) *Total freight from coal mines (Loading Point) to TSPL's Plant site (Interchange Point), whichever is lower.*

Thereafter, in the IA No. 13 of 2021 filed by TSPL for implementation of the directions in the Order dated 06.05.2019, the Commission vide Order dated 11.03.2022, returned the following finding:

"Accordingly, the Commission is of the view that the distance of interchange point from the mine being more than 1400 km the applicable Railway freight for the distance more than 1400 km after applying concession as per the said circular, shall not be less than the NTR for distance of 1400 Km.

.....

The Commission is of the view that there seem no ambiguity in the Commission's Order dated 06.05.2019. However, as a way of abundant caution, the Commission deems it fit to clarify that the word "Plant site" in the Commission's Order means the "Interchange Point"; implying that the diesel and manpower expenses for Locomotive operations for movement of coal

rakes from the interchange point upto the unloading at the wagon tippers and back in terms of the Commission's Order dated 06.05.2019 are part of the unloading activity and are in addition to the transportation cost (including shunting charges) for coal."

b) It is submitted that following is the process involved till the unloading of coal at TSPL Project site:-

- (i) Indian Railways charges freight from the coal mines/Loading Point till Satta Singh Wala station (SSZ).
- (ii) Indian Railways levies Shunting Charges for onward transportation of rakes from SSZ till the interchange point.
- (iii) Thereafter, from the Interchange Point till Wagon Tippers (i.e., Unloading Point at the Project site) and vice versa, TSPL utilizes its own Locos for rake movement, for which unloading charges are claimed separately.

c) However, post the issuance of the 'Policy Guidelines for concession in Freight Charges for long lead traffic' by Ministry of Railways vide Rate Circular dated 30.06.2020, whereby 20% concession in freight was granted if coal is transported for more than 1400 km and with a limit of freight for 1400 km, PSPCL erroneously started denying payment of Shunting Charges to TSPL from the SSZ till the Interchange Point (which are levied on TSPL by Northern Railways) with the reasoning that since the total distance is more than 1400 km, PSPCL will pay the direct freight for the total distance (i.e., from coal mines till the Interchange Point) for a maximum of 1400 km as per the Rate Circular dated 30.06.2020.

d) Accordingly, while TSPL continues to incur Shunting Charges from

the Sada Singh Wala Station (SSZ) till the Interchange point, PSPCL has denied payment of the same to TSPL in view of the Rate Circular dated 30.06.2020. TSPL was constrained to approach the Commission seeking payment of Shunting Charges from PSPCL in terms of the Order dated 06.05.2019. However, in terms of the findings returned by the Commission, there exists ambiguity in respect of the following:

- (i) The Commission has directed that since the distance from Mines to Interchange Point is more than 1400km, the applicable Railway freight for the distance more than 1400 km after applying concession as per the said circular shall not be less than the Normal Tariff Rate for distance of 1400 Km.
 - (ii) Instead of allowing Railway Freight from Mine to Sada Singh Wala Station along with Shunting Charges from Sada Singh Wala Station to the Interchange Point (as is being incurred/paid by TSPL), the Commission has erroneously allowed Railway Freight with a concession of 20% from Mine to Interchange Point.
- e) In the circumstances, TSPL is approaching the Commission since it may kindly be pleased to clarify that the entire amount being incurred/paid by TSPL needs to be paid by PSPCL, i.e., Railway Freight from Mine to SSZ along with Shunting Charges from SSZ to the Interchange Point which is in line with the Orders passed by the Commission and the Hon'ble Tribunal.
- f) Also, PSPCL has been erroneously making payment of the absolute value of Unloading Charges in Monthly Bill payments

instead of factoring the same in the Monthly Energy Charge formula prescribed in the PPA.

2. In the hearing for admission held on 16.11.2022, TSPL's counsel argued the matter and it was felt that the respondent PSPCL should also be heard on admission of IA. Accordingly, Notice was sent to PSPCL. In response thereto, PSPCL filed its objections to the admission/maintainability of the instant IA, with the contention that:
- a) At the outset it is stated that the basis on which the present Application has been preferred is erroneous. The Petitioner has primarily sought clarification on the issue of railway shunting charges. It is submitted that in the garb of a clarification, the Petitioner is attempting to re-agitate the issue which stands already pleaded before the Commission.
 - b) In terms of the Order dated 06.05.2019, the liability of PSPCL to pay the transportation charges including the shunting charges is either, the sum total of the freight charges from the coal mine upto SSZ and the shunting charges from SSZ to the plant or the total freight from the coal mine to the plant, whichever is lesser. This decision of the Commission has been fully accepted by the Petitioner.
 - c) PSPCL has paid the transportation charges (freight and shunting charges) strictly in terms of the Order dated 06.05.2019 and the subsequent Order dated 11.03.2022 passed in IA No. 13 of 2021, wherein it has been clarified that, the applicable Railway freight for the distance more than 1400 km after applying concession as per the said circular, shall not be less than the NTR for distance of 1400 Km.

- d) The present contention sought to be raised by the Petitioner, in fact, seeks to challenge the order dated 06.05.2019 of the Commission which is impermissible at this stage. The said order including the terms of payment of the shunting charges has been fully accepted by the Petitioner and cannot be avoided at this stage.
- e) In addition, the Petitioner has submitted that PSPCL has been making payment of the absolute value of the unloading charges in monthly bills instead of factoring the same in monthly energy charge formula prescribed in the PPA. It is submitted that there is no infirmity in the methodology followed by PSPCL. It is not understood as to how the Petitioner is in any manner prejudiced, when the entire unloading charges that the Petitioner is entitled to recover is being paid by PSPCL to the Petitioner. There is no grievance or allegation by the Petitioner that the unloading charges actually payable is not being paid. The manner of payment, either as a part of monthly payments against the actual amounts due, or as a part of the energy charges, is irrelevant when the entire payment is being made to the Petitioner.
- f) In the facts and circumstances mentioned above, it is respectfully submitted that there is no merit in the present Application which under the garb of seeking a clarification is seeking to reopen the chapters which have been closed *interse* parties and thus is liable to be dismissed with costs.
- 3.** In the hearing for admission held on 11.01.2022, Ld. Counsel of the parties reiterated their submissions. However, the issue of manner of payment of unloading charges raised in the application was not mentioned. After hearing the parties the Order was reserved.

4. Findings and Decision of the Commission

The Commission has carefully gone through the IA, reply/objections by PSPCL and arguments made by the parties. The Commission observes that the instant application filed by the Petitioner has been objected to by the respondent PSPCL with the contention that the Petitioner, in the garb of a clarification, is attempting to re-agitate the issue which already stands pleaded before and settled by the Commission. It has been further contended that the Petitioner, in fact, seeks to challenge the Order dated 06.05.2019 of the Commission which is impermissible at this stage. The Commission examines the same as under;

- a) The Commission refers to the Order dated 06.05.2019 in Petition 31 of 2014, which reads as under:

“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).... 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.

.....

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 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."

As is evident, the issue of shunting charges stands deliberated in detail and decided in the above referred Order dated 06.05.2019. This Order was not challenged by any of the party and thus has attained finality.

- b) The Commission also refers to Order dated 11.03.2022 in IA No. 13 of 2021, filed by the Petitioner for implementation of the Commission's Order dated 06.05.2019 in Petition No. 31 of 2014, which reads as under:

"TSPL's Submissions

“2.14 That contrary to the clear and unambiguous directions of the Commission in the Order dated 06.05.2019, PSPCL has adopted the following methodology for payment of Shunting Charges to TSPL.

(a)Sum total of freight from coal mines (Loading Point) to the SSZ for a maximum of 1400 km as per the Rate Circular dated 30.06.2020, Shunting Charges from the SSZ till the Interchange Point and diesel and manpower expenses for loco operation from Interchange Point to Unloading Point; OR

(b)Actual freight from coal mines (Loading Point) to the Unloading Point (TSPL Project site) for a maximum of 1400 km as per the Rate Circular dated 30.06.2020. [Whichever is lower]

PSPCL's Submissions

3.15 That vide freight circular dated 30.06.2020, the Indian Railways has given a concession of 20% in the freight for distance of more than 1400 km from the mine and has also limited the total freight charges to be levied to up to 1400 km. Therefore, for any transportation of coal above 1400 km, the total freight charges are paid only up to 1400 km.

3.16 That TSPL has the option to have these activities serviced by Railways as well. Therefore, the total charges payable for the coal up to the plant site, including the charges claimed for shunting and also the diesel and manpower charges claimed for transportation of coal up to the plant site would be subsumed by virtue of the notification of the Indian Railways and by the conditions in the order dated 06.05.2019 of the Commission.

Decision of the Commission.

“7.1

The Commission observes that the instant dispute seems to have emerged upon the issuance of the ‘Policy Guidelines for concession in Freight Charges for long lead traffic’ by Ministry of Railways vide Rate

Circular 15 of 2020 dated 30.06.2020. For Coal/Coke, the circular specifies a concession of 20% for longer distances (> 1400km) with the provision that the tariff after applying concession shall not be less than the Normal Tariff Rate (NTR) for distance of 1400 km. Accordingly, the Commission is of the view that the distance of interchange point from the minery being more than 1400 km the applicable Railway freight for the distance more than 1400 km after applying concession as per the said circular, shall not be less than the NTR for distance of 1400 Km.

Further, regarding the issue of PSPCL subsuming the diesel and manpower charges for loco operations also in the transportation charges along with the Shunting charges, the Commission refers to its Order dated 06.05.2019.....

The Commission is of the view that there seem no ambiguity in the Commission's Order dated 06.05.2019. However, as a way of abundant caution, the Commission deems it fit to clarify that the word "Plant site" in the Commission's Order means the "Interchange Point"; implying that the diesel and manpower expenses for Locomotive operations for movement of coal rakes from the interchange point upto the unloading at the wagon tippers and back in terms of the Commission's Order dated 06.05.2019 are part of the unloading activity and are in addition to the transportation cost (including shunting charges) for coal."

As is evident, the Commission's views expressed herein are in respect of Railway circular that the applicable Railway freight for the distance more than 1400 km after applying concession as per the said circular shall not be less than the NTR for distance of 1400 Km and the clarification that the word "Plant site" in the Commission's Order means the "Interchange Point" implying that unloading charges are to be paid in addition to the transportation cost beyond the interchange point. The IA 13 of 2021 was filed for

implementation of the Commission's Order dated 06.05.2019 and not for any review/amendment of the same.

Thus, the commission is of the view that the Orders of the Commission are clear and unambiguous. And, in the absence of any appeal/challenge, they have attained finality. Re-agitation of the issue(s) settled there under, under the garb of seeking a clarification in Orders which are unambiguous and clear, is not permissible at this stage.

Thus, the IA is not fit for admission and is accordingly dismissed.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: 18.01.2023