

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

IA No. 13 of 2021
In Petition No. 31 of 2014
Date of Order: 11.03.2022

Interlocutory Application (IA) in petition No. 31 of 2014, seeking implementation of the directions of the Commission in the Order dated 06.05.2019 in petition No. 31 of 2014.

In the matter of : Application seeking implementation of the Commission's Order dated 06.05.2019 passed in petition No. 31 of 2014.

AND

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 Limited the Mall
Patiala-147001.

...Respondent

Present: Sh. Viswajeet Khanna, Chairperson
Ms. Anjali Chandra, Member
Sh. Paramjeet Singh, Member

ORDER

Talwandi Sabo Power Limited (TSPL) has filed the present Application (I.A) for implementation of the Order dated 06.05.2019, passed by the Commission in Petition No. 31 of 2014. The I.A was admitted vide Order dated 07.06.2021. PSPCL filed its reply to the I.A vide memo No. 6648 dated 08.07.2021 and TSPL filed rejoinder thereto vide letter No. TSPL/PSERC/AK/JUL-21/84 dated 26.07.2021. After hearing the parties, Order was reserved vide Order dated 29.07.2021. However, the Commission decided

to reopen the matter and a committee comprising of officers of the Commission were constituted to visit the nearby thermal plants to assess the manpower requirement for the operation of Loco and Wagon Tippler in Thermal plants. The committee visited TSPL and GHTP on 02.09.2021 and gave its report on 14.09.2021 which was sent to TSPL and PSPCL for filing their objections and making submissions, if any, on the said report. TSPL filed its submissions/objections vide letter No. TSPL/PSERC/SB/OCT-21-137 dated 14.10.2021 and PSPCL filed its objections/submissions vide memo No. 7452 dated 18.10.2021. After hearing the parties, Order was reserved vide Order dated 21.01.2022.

TSPL's Submissions

2.1 TSPL has submitted that petition No. 31 of 2014, filed by 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. 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 for deciding cost components related to unloading of coal at the project site of TSPL and allowing the same in coal cost and for allowing railway (transportation) shunting charges under coal transportation cost to the Appellant. TSPL filed Civil Appeal No. 10525-10526 of 2017 before the Hon'ble Supreme Court challenging the judgment dated 03.07.2017 however, the findings of the Hon'ble Tribunal on the components of unloading charges and railways (transportation) shunting charges were not challenged. The Hon'ble Supreme Court disposed of the Appeal vide Order dated 07.03.2018 partly allowing the claim

of TSPL. PSPCL also challenged the judgment dated 03.07.2017 in cross Appeal challenging the allowance of unloading charges and railway (transportation) shunting charges which was dismissed by the Hon'ble Supreme Court on 07.03.2018. In compliance of the Order dated 03.07.2017 passed by the Hon'ble APTEL, the Commission passed the Order dated 06.05.2019 allowing manpower expenses for operating the Loco, Wagon Tippler and Electricity Expenses for Wagon Tippler operation to TSPL as components of unloading charges.

2.2 That TSPL, pursuant to the Order dated 06.05.2019, wrote to PSPCL on 14.05.2019 seeking provisional payment of Rs. 7 Crore towards allowed components of Unloading charges, Shunting Charges (April, 2014 till March, 2019) amounting to Rs. 26,66,61,748/- and requested PSPCL to depute its personnel to carry out due diligence at the Project site. PSPCL constituted sub-committee on 11.06.2019 for implementation of the Order dated 06.05.2019. PSPCL visited TSPL's Project site on 29.07.2019 and conducted due-diligence in terms of the Order dated 06.05.2019. Thereafter, TSPL conveyed its concern with regard to the issues involved in the matter to PSPCL through letters/e-mail's etc. on various occasions and requested PSPCL for a copy of due diligence report of the PSPCL's committee for implementation of the Order dated 06.05.2019. PSPCL provided the final report of the sub-committee on 29.01.2021 with its recommendations. PSPCL has unilaterally summarized the due diligence without taking into consideration the actual cost of man power involved in the

coal unloading process as witnessed by the PSPCL team during various visits to the TSPL's project site. PSPCL's memo dated 29.01.2021 is erroneous and contrary to the Orders passed by the Commission and the Hon'ble Supreme Court of India.

- 2.3 That keeping in view the provisions of Section 94 of the Electricity Act 2003 and the judgments passed by the Hon'ble Supreme Court of India in case of *Tamil Nadu Generation & Distribution Corporation Ltd. vs. PPN Power Generating Co. (P) Ltd.*, (2014) 11 SCC 53, *Andhra Pradesh Power Coordination Committee & Ors. v. LancoKondapalli Power Ltd & Ors.*, (2016) 3 SCC 468 & *State of Karnataka vs. Vishwabharathi House Building Cooperative Society*, (2003) 2 SCC 412, the Commission is vested with the power to execute/implement the Order dated 06.05.2019.
- 2.4 That the total unpaid outstanding amount against the approved/allowed components of unloading charges and shunting charges, in terms of the data furnished by TSPL is approximately Rs. 23.00 Crore and Rs 5.36 Crore, i.e. Rs. 28.36 Crore till March, 2021 Monthly Bill (including Interest and Late Payment Surcharge as on 30.04.2021). This amount has not been paid by PSPCL despite numerous requests and reminders.
- 2.5 That in terms of the Order dated 06.05.2019; TSPL was allowed manpower expenses for Loco, Manpower expenses for Wagon Tippler operation and Electricity consumption for Wagon Tippler operation as components of unloading charges in the cost of coal, to be appropriately factored in the tariff payable by PSPCL. PSPCL was directed by this

Commission to conduct Due-Diligence in respect of the aforesaid components of unloading charges to arrive at a consensus on the figure of manpower requirement and for computing the charges payable to TSPL. This was done to ensure that the charges payable to TSPL reflect the actual manpower/expenses which have already been incurred by TSPL and which TSPL continues to incur for continuing supply of power to PSPCL. The manpower deployed by TSPL at the Project site is in fact required for the safe and successful operation/completion of unloading activities.

2.6 That TSPL is facing practical difficulties in installation of multiple seals/paper seals on switchgear, motors and associated electrical equipment (which is part of the proposed schematic). As such, the sealing of equipment hampers the proper operation and maintenance activities to be carried out by TSPL. Accordingly, TSPL requested PSPCL's team to visit the Project site to measure the average consumption of electricity for wagon tippler operation during unloading of rakes and this average can be used for making payments to TSPL as per respective monthly energy charges so that this issue is settled amicably. This methodology was discussed and agreed upon during a virtual meeting held between TSPL and PSPCL's officials on 07.05.2021. PSPCL agreed for payments to TSPL on this basis, subject to the approval of the Commission. However, PSPCL has reiterated its stand in respect of the other disputed components of Unloading Charges, and Shunting Charges.

2.7 That each of the heads of claims were allowed by the

Commission in the Order dated 06.05.2019 after due consideration of submissions made by parties and material placed on record. PSPCL while unilaterally taking a decision on the aforesaid components has failed to consider the actual manpower requirement and costs being incurred by TSPL and a table evincing the differences between the allowed components and PSPCL's methodology is as under:-

Summary of differences in respect of components of Unloading Charges

Sr. No	Particulars	TSPL's claim in terms of the Order dated 06.05.2019	PSPCL's methodology in terms of the letter dated 29.01.2021	Mutually agreed figures
1.	Diesel for Loco operation	While TSPL's actual consumption was higher, TSPL agreed to 145.24L/rake	145.24 L/rake	145.24L/rake
2.	Diesel for bulge wagon/sticky coal unloading	While TSPL's actual consumption was higher, TSPL had initially agreed to 14.35 L/rake and further agreed for 13.71L/rake. 1 bulge wagon/rake is to be considered.	Average diesel consumption of 13.71 L/ rake will be considered for calculating the diesel consumption. 1 bulge wagon/rake is to be considered	13.71 L/rake 1 bulge wagon/ rake
3.	Manpower expenses for Loco operation	65 nos. of manpower. Manpower cost on actual basis.	7 nos. of manpower. Manpower rate as per applicable minimum DC rate for wages issued periodically by Labour Commissioner, Punjab	No mutual agreement in respect of number of manpower and manpower cost/rate.
4.	Manpower expenses for Wagon Tippler	19 nos. of manpower. Manpower cost on actual basis.	10 Nos. of Wagon Tippler Operators. Manpower rate as per applicable minimum DC rate for wages issued from time to time by the office of Labour Commissioner, Punjab.	No mutual agreement in respect of number of manpower and manpower cost/rate.
5.	Manpower charges for manual unloading from bulge wagon(s), sticky coal unloading and boulder removal	13 nos. of manpower. Manpower cost on actual basis.	13 nos. of manpower. Manpower rate as per applicable minimum DC rate for wages issued from time to time by the office of Labour Commissioner, Punjab.	Mutually agreed 13 nos. of manpower. No mutual agreement in respect of manpower cost/rate.
6.	Electricity expenses for Wagon Tippler	176.88 kWh/rake (i.e., average consumption from May, 2019 till Feb, 2020) –	PSPCL has denied payment of electricity expenses till completion of due diligence, for	As per discussions held between the parties on

Sr. No	Particulars	TSPL's claim in terms of the Order dated 06.05.2019	PSPCL's methodology in terms of the letter dated 29.01.2021	Mutually agreed figures
	operation	payments to be made on average consumption basis till installation of meters and completion of due diligence by PSPCL.	which metering scheme is pending for approval with PSPCL since 03.03.2020.	07.05.2021, it was agreed that PSPCL will deploy its personnel to measure/record the average electricity consumption (on sample basis) to arrive at per rake consumption for payments to be made to TSPL for past and future period. PSPCL was requested to do needful on priority within next 10 days.

It was also mutually agreed that:-

- (a) Diesel rate for the period from April, 2014 till April, 2019 will be paid as per the monthly average retail prices of diesel as provided by HPCL through RTI Information sought by TSPL.
 - (b) From May, 2019 onwards, diesel rate will be taken as per weighted average monthly cost of diesel purchased by TSPL, for which TSPL shall submit diesel purchase bills on a monthly basis.
 - (c) Since, the modification of wagon tippers at TSPL plant is underway, manpower and diesel expenses for bulge wagon/sticky coal unloading will be paid till July, 2021 only. Even if the complete modification is delayed beyond July, 2021, TSPL will not claim the diesel and manpower expenses for this part of the unloading activity.
- 2.8 In respect of Manpower expenses for bulge wagon operation, while the parties have reached consensus on 13 nos. of manpower, TSPL never agreed for the manpower charges to

be paid as per the applicable minimum DC rate for wages issued from time to time by the office of Labour Commissioner, Punjab, which is applicable for other components of unloading charges as well. This is despite TSPL having provided all requisite documents in support of the actual manpower wages/rates to PSPCL. However, PSPCL has unilaterally decided that the minimum DC rate for wages shall be payable to TSPL.

2.9 That till date PSPCL has not raised any grievance/issue regarding the actual number of manpower deployed at TSPL's Project site for efficient unloading operations. Further, PSPCL has not disputed the detailed data submitted by TSPL evincing the actual expenditure being incurred by it for manpower deployed at the Project site such as wage register, muster roll, salary slips, proof of payments, etc.

2.10 That TSPL has diligently complied with the clear and unambiguous directions of the Commission in the Order dated 06.05.2019 in as much as TSPL has provided the requisite support and assistance to PSPCL throughout. However, to TSPL's utter shock and dismay, the numbers approved/recommended by the Sub-Committee constituted by PSPCL do not reflect the actual manpower requirement and consequential expenditure being borne by TSPL. This is despite PSPCL having visited the Project site on numerous occasions and observed the actual manpower requirement and expenditure involved. In such a situation, the parties cannot be *ad idem*. Accordingly, the present case is a fit case for the Commission to exercise its Regulatory powers and grant appropriate relief to TSPL.

2.11 That the process involved till the unloading of coal at TSPL Project site is that:-

- (a) Indian Railways charges freight from the coal mines (“*Loading Point*”) till Satta Singh Wala station (SSZ).
- (b) Indian Railways levies Shunting Charges for onward transportation of rakes from SSZ till the interchange point.
- (c) From the Interchange Point till Wagon Tippers (i.e., Unloading Point at the Project site), Indian Railways’ Locomotives can be used for rake movement – however, Indian Railways levies additional Shunting Charges for the same. Since, TSPL utilizes its own Locomotives for rake movement from this Interchange Point till TSPL Project site (“*Unloading Point*”), TSPL has not claimed any Shunting Charges beyond the Interchange Point (as TSPL incurs diesel and manpower expenses for this loco operation). Accordingly, TSPL has claimed unloading charges, i.e., Locomotive operation expenses as incurred by TSPL for this part of the unloading activity.

2.12 That in terms of the Order dated 06.05.2019, PSPCL was directed to pay Shunting Charges to TSPL as under:-

- (a) 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
- (b) Total freight from coal mines (Loading Point) to TSPL’s Plant site (Interchange Point). [*Whichever is lower*]

After 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. TSPL is paying these Shunting Charges to Indian Railways while passing on the benefit of reduced freight (upto SSZ) to PSPCL. Hence, TSPL is charging Shunting Charges to PSPCL as paid by TSPL to Indian Railways. TSPL had written to Northern Railways seeking exemption from payment of Shunting Charges from SSZ till the Interchange Point in view of the Rate Circular dated 30.06.2020, so that the benefit of the same could be passed onto PSPCL/consumers. However, TSPL has not received any response. TSPL continues to incur the:-

- (a) Freight as applicable from coal mines to SSZ, with a maximum limit of 1400 km freight instead of actual freight for 1600-1800 km as per the distance from coal mines.
- (b) Shunting Charges from SSZ till the Interchange point as per Indian Railways.
- (c) Loco operation and expenses from the Interchange Point till the Unloading Point.

2.13 That in addition to non-payment of Shunting Charges, PSPCL has further misinterpreted the Order by not paying the Unloading Charges in respect of diesel and manpower expenses for Loco operation from Interchange Point till the Wagon Tippler Unloading Point. Shunting Charges and Unloading Charges are two different elements and the unloading activities begin after the Indian Railway shunts the coal rakes till the Interchange Point. TSPL does not use Indian Railways' engines for rake movement from Interchange Point till Unloading Point. For this part of the unloading activity if Indian Railways' engines were used by TSPL, extra charges would have been levied. TSPL uses its own Locos and incurs cost of manpower and diesel expenses for the same which needs to be paid/reimbursed by PSPCL in toto. As such, the methodology being adopted by PSPCL not only results in denial of Shunting Charges but also the Unloading Charges payable to TSPL for this part of the unloading activity.

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]

2.15 That there is blatant non-compliance of the Order dated 06.05.2019 passed by the Commission by PSPCL. This is despite the fact that the Hon'ble Supreme Court in the second contempt Order dated 09.03.2021, has directed PSPCL to pay the actual cost of transportation of coal incurred by TSPL, including components of Unloading and Shunting Charges. Therefore, this is a fit case for passing appropriate directions to ensure compliance with the implementation of orders of the Commission, especially since the Hon'ble Supreme Court has directed that the payments be made on or before 31.05.2021. Thus, it is imperative that the Commission passes directions for execution / implementation of the Order dated 06.05.2019. PSPCL is the sole procurer from the project and non-payment by PSPCL severely constrains the ability of TSPL to procure coal and continue generation and supply power thereby leaving TSPL with cash flow issues.

2.16 That TSPL is entitled to interest/late payment surcharge on the amounts due and payable by PSPCL as compensation for money denied at the appropriate time based on the established principle of restitution/time value of money. TSPL has been allowed interest/late payment surcharge on the amounts due and payable by PSPCL in terms of the Orders dated 07.03.2018 passed by the Hon'ble Supreme Court in Civil Appeal Nos. 10525-26 of 2017 and Order dated

09.03.2021 passed in second Contempt Petition (c) Nos. 1178-79 of 2019 in Civil Appeal Nos. 10525-26 of 2017.

2.17 TSPL has prayed to:

- (a) Execute/implement the Order dated 06.05.2019 passed by the Commission in Petition No. 31 of 2014 and finalize a methodology for payments to be made to TSPL;
- (b) Direct PSPCL to pay:-
 - (i) Rs. 18 Crores for Unloading Charges till March, 2021 Monthly Bill;
 - (ii) Rs. 5.15 Crores for Shunting Charges till March, 2021 Monthly Bill;along with Interest and Late Payment Surcharge, calculated till the date of actual payments by PSPCL in line with the provisions of the PPA executed between the parties and the relevant orders in this regard;
- (c) Direct PSPCL to continue to pay the subsequent bills based on the methodology to be approved by the Commission;
- (d) Approve the methodology for payment of electricity expenses to TSPL on average basis as agreed between the parties; and
- (e) Pass any such further order as the Commission may deem necessary in the interest of justice.

PSPCL's Submissions

- 3.1 PSPCL has submitted that the basis on which the present application has been preferred is erroneous. The Petitioner has proceeded on the basis that the order dated 06.05.2019 has not been implemented by PSPCL, which is misconceived. It is incorrect that PSPCL has delayed the implementation of the order passed by the Commission. The delays occurred primarily due to the unprecedented pandemic situation which had engulfed the entire nation. PSPCL could not hold its committee meetings. The due diligence to be undertaken required PSPCL officials to go on site visits which could not be effectuated. Meetings could also not be held between the parties effectively during this period. On the other hand, considering the practical difficulties faced by the parties in installing meters and undertaking actions to measure the quantum of unloading charges to be paid, the parties have agreed as an ad hoc measure on a methodology for computation and payment of such unloading charges. The present application ought to be treated only to the extent of seeking approval for the methodology as agreed to between the parties, and for decision on the aspects on which the parties have not been able to reach to an agreement.
- 3.2 That the disputes and differences had arisen between the parties on the cost components to be included in the energy charges formula as provided for in the PPA executed between the parties. The issue was not of any unauthorised reduction made by PSPCL, as is sought to be suggested by the Petitioner, but in relation to the cost components which

are permissible to be recovered as a part of the energy charges.

3.3 That the subject matter of issue in the present case is the unloading charges. While the Commission had, by order dated 23.11.2015 rejected the claim of the Petitioner for unloading charges to be separately paid, the same was allowed by the Hon'ble Appellate Tribunal in Appeal No. 36 of 2016 with the direction to the Commission to decide the cost components forming part of the unloading of coal at the project site of the Petitioner. The shunting charges, as a part of the railway transportation charges, were also directed to be paid, for which the cost components were to be determined by the Commission. Pursuant to the above, the Commission vide order dated 06.05.2019 decided the cost components in relation to the unloading of coal and also the issue of shunting charges. The order dated 07.03.2018 of the Hon'ble Supreme Court is not attracted in the present case as the issue decided by the Hon'ble Supreme Court by the said order was not unloading charges. The issue of unloading charges was decided by the Hon'ble Appellate Tribunal which has been considered in the remand order dated 06.05.2019 by the Commission.

3.4 That the Commission had directed the parties in the order dated 06.05.2019 to workout the various cost elements of unloading of coal as under:-

(a) On the manpower expenses for locomotive and wagon tippler operation, the Commission directed PSPCL to carry out due diligence in consultation and consensus with the Petitioner;

- (b) For the electricity expenses to be factored in for consumption for the wagon tippler operations, the Petitioner was directed to install energy meters at the project site to measure and arrive at the expenses for the same.
- (c) On the manpower and diesel expenses for manual unloading on coal, the Commission had directed the parties to amicably settle these expenses.

3.5 That since the process of computation of the details in terms of the directions of the Commission in the order dated 06.05.2019 would take some time, PSPCL had paid an amount of Rs. 7 crores to TSPL, as an adhoc payment on 28.06.2019. This was paid prior even to the quantification of the charges by the parties in terms of the directions of the Commission. Further, PSPCL has also paid to TSPL an amount of Rs. 1,45,16,246/- on 08.06.2021 towards the full payment of the claims of the Petitioner on account of unloading charges, except the component of electricity expenses of wagon tippers. This is as per the computation of PSPCL on the total amount payable.

3.6 That while the parties have been able to arrive at a consensus on most of the issues as directed by the Commission, there are certain deviations that have been undertaken by the parties in view of the practical difficulties. Further, there is also dispute on 3 elements of the unloading charges claimed, namely the number of manpower required for locomotive operations, wagon tippler operations and the cost of manpower for the same, the cost of manpower for the unloading of coal manually and the shunting charges. Thus

relief to be considered in the present application is restricted to the approval to be granted by the Commission on the methodology adopted by the parties on the mutually agreed elements of cost, and the decision on the three elements on which there continues to be a dispute between the parties.

3.7 That there have been various communications exchanged between the parties for settling the cost elements and the due diligence exercise to be undertaken. However the contentions and allegations made by the Petitioner based on the said communications are incorrect. The dispute between the parties is only restricted to the number of manpower requirement for locomotive operations and wagon tippler operations and the cost of manpower for the same, the cost of manpower for the unloading of coal manually and the shunting charges as claimed by the applicant.

3.8 That the contention of the Petitioner towards the manpower expenditure is based on the plea that the Petitioner has chosen to employ such man power as per their company's arbitrary compensation with their contractors as per requirement assessed by them and therefore these charges are payable, which is misconceived. The Petitioner has sought to claim the requirement of 65 persons for the operation of the locomotive, which is highly exaggerated.

3.9 That the Commission had allowed the manpower expenditure to be claimed only for the locomotive operations of the Petitioner and not for the associated activities.

Relevant extract of the order dated 06/05/2019 is as under:

"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 up

to 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."

For the locomotive operations, the Petitioner has employed 7 loco operators for two locomotives, which has been allowed by PSPCL. The issue is in regard to the remaining 58 persons who are not performing the locomotive operations. The Petitioner has claimed 5 Station Masters, 7 persons as Gate Men, 24 persons as Shunt Men and 22 persons as Point men. It is evident by the very claim of the petitioner that the number of persons has been grossly exaggerated. These operations are required to be carried out by the Petitioner as a part of its normal operation and maintenance activities and not particularly for the operation of the locomotives from the interchange point which is located within the project premises of the Petitioner up to the unloading point.

- 3.10 That the activity of operating the locomotives from the interchange point to the unloading point, both of which are located within the premises of the Petitioner do not require 65 persons just for operating two locomotives. It is for this reason that the same have not been considered by PSPCL and the claim has been restricted only to 7 persons. In this regard, in the minutes of the meetings held on 07.05.2021, 13.05.2021 and 10.06.2021 of the officers of PSPCL constituted to go into this issue, detailed justification for the number of persons considered have been given.

3.11 Similarly, for the wagon tippler operations, PSPCL has considered a total of 10 persons as reasonably needed to be deployed for operation of the wagon tipplers. PSPCL has not considered 8 no. of persons claimed by the Petitioner as required for housekeeping activities and 1 safety officer shown separately, which is misconceived. That the operation of the wagon tippler itself requires trained manpower, including on various aspects of safety and efficient operation. The operation of the wagon tippler otherwise is not a manual process and the number of persons considered includes the persons required for operating all aspects of the wagon tippler. Further, the question of claiming housekeeping staff for the wagon tippler does not arise, nor was any such claim considered by the Commission. The claim considered and allowed by the Commission was only in relation to the personnel required for operating the wagon tippler, and not for the associated activities, which has been fully considered by PSPCL.

3.12 That the Petitioner has also claimed the wages to be paid to the manpower at a very high rate than what is admissible. There is a substantial difference between what is claimed as payable by the Petitioner and what is reasonably payable to manpower which has been deployed by the Petitioner for the unloading activities. The Petitioner has claimed the wage rate at an arbitrary and inflated manner. The only basis for such claim is the contract claimed to be entered into between the Petitioner and Manpower contractor. This certainly cannot be the basis as the contract claimed to be entered

into have unilaterally decided the rates and cannot be a benchmark for what can be reasonably allowed.

3.13 That PSPCL has considered the rate of wages to be paid at the rate as approved by the Government of Punjab, which are issued from time to time by the Labour Commissioner, Punjab. This is an objective benchmark for the wage rates to be paid, as it is approved by the Government. The private entities in fact employ persons at lower rates, considering the unemployment situation in the country as a whole. The wages proposed by Petitioner have no basis, so not considered payable.

3.14 That the claim of the Petitioner towards shunting charges is misconceived and liable to be rejected. PSPCL has computed and paid the shunting charges strictly in terms of the order dated 06.05.2019 passed by the Commission. In terms of the Order, the liability of PSPCL to pay the transportation charges including the shunting charges was as computed from (a) sum total of the charges from the coal mines up to the Sadda Singh Wala station and the shunting charges from the Sadda Singh Wala station to the plant site; or (b) the total freight from the coal mine to the plant site, whichever is less. The decision of the Commission has been fully accepted by the Petitioner.

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. The total freight charges payable from the mine end up to the plant site is the lower amount that is payable and is restricted to the freight charges of 1400 km as per the circular dated 30.06.2020 issued by Indian Railways, which is the freight charges payable in terms of the order of the Commission dated 06.05.2019 and has accordingly been paid by PSPCL.

3.17 The Petitioner in fact is seeking to challenge the Commission's order which is impermissible. That contention of the Petitioner that it is actually paying shunting charges to Indian Railways is not relevant to the present case as the terms of the order dated 06.05.2019 have been fully accepted by the Petitioner. Even in terms of the said order, if the cost of transportation up to the Sadda Singh Wala station and thereafter up to the plant site actually paid by the Petitioner is more than the total freight charges up to the plant site, the charges recoverable as a part of the energy charges under the PPA would be restricted to the total freight charges up to the plant site. This principle having been accepted by the Petitioner and the order dated 06.05.2019 having attained finality, the present contention sought to be raised claiming that the Petitioner is actually paying the charges is misconceived.

- 3.18 That claim of the Petitioner for interest/late payment surcharge is misconceived and is liable to be rejected. There is no question of payment of any amount contrary to the directions of the Commission. Further, the Hon'ble Appellate Tribunal or the Commission and also the Hon'ble Supreme Court have not given any directions for payment of interest/late payment surcharge.
- 3.19 That there is no question of any non-payment by PSPCL. The delay has occurred only due to the parties being required to reconcile and come to a consensus on the amounts payable, in terms of the direction of the Commission's order dated 06.05.2019. In fact, the parties have agreed on most of the heads under which payment has to be made, and the full payment has already been made by PSPCL as per the computations made. That the amounts to be paid are required to be quantified by the Commission at this stage. There is no direction in the Order passed by the Hon'ble APTEL or the Order dated 06.05.2019 passed by the Commission to pay late payment surcharge/interest. In fact, the Hon'ble Supreme Court in the case of Nabha Power had specifically rejected the claim for interest of the past period, which judgement has also been followed in the case of the Petitioner.
- 3.20 That the contentions sought to be made by the Petitioner on unlawful deductions and the bills are also grossly misconceived. The issue is on the legitimate charges payable to the Petitioner in the tariff as a part of the energy charges. Merely because an amount is wrongfully claimed by the Petitioner and the same is not fully accepted by PSPCL, and PSPCL pays only the amounts that are legitimately due

and payable to the Petitioner, does not amount to deductions in the bills being made as is sought to be alleged by the Petitioner.

- 3.21 That the Commission in its order dated 06.05.2019 had directed the Petitioner to install meters at each of the wagon tippers which were to be tested and sealed by PSPCL. However, while implementing the directions of the Commission, the Petitioner had claimed some practical difficulties in doing so. Vide letter dated 30.03.2021, the Petitioner had conveyed that sealing of meters at such a large scale is not at all feasible as it has to conduct maintenance activities. In order to overcome the same, the parties during the meeting held on 07.05.2021 agreed to the Petitioner's suggestion that for payment of the electricity expenses for the wagon tippler operation be made on the per rake basis subject to the approval of the Commission. After receiving the necessary approvals, PSPCL shall visit the Project site to measure the average consumption of electricity of wagon tipper operation on per rake basis during unloading of rakes. The parties conjointly proposed that such calibration would then be taken for future purposes with respect to payment for electricity charges for wagon tippler operation.

Rejoinder filed by TSPL

- 4.1 TSPL filed rejoinder to the reply filed by PSPCL reiterating its earlier submissions. TSPL has further submitted that Nabha Power Limited's claim for interest was rejected by the Hon'ble Supreme Court for the reason that interest was not claimed at any stage of the proceedings i.e., neither before the State Commission nor before the Hon'ble Tribunal. The

findings of the Hon'ble Supreme Court qua claim of interest in the Nabha Judgment will not be applicable to the present proceedings because:

- (a) TSPL has been allowed/awarded interest on its claims by the Hon'ble Supreme Court.
- (b) It is a settled position of law that whenever payments are deferred or delayed, then carrying cost is payable along with such deferred payments. The principle of carrying cost has been well established in various Judgments passed by the Hon'ble Supreme Court and the Hon'ble Tribunal. Carrying cost is nothing but compensation for time value of money or monies denied at the appropriate time.
- (c) Interest is payable on the market rate to the person deprived of the use of money to which he is legitimately entitled to, even if the contract does not provide for the same. The only requirement being that there ought not to be a prohibition qua payment of interest, either in law or in the contract entered into between the two parties. In this regard, reliance is placed on *SECL vs. State of MP*: (2003) 8 SCC 648
- (d) The Commission is required to grant interest to restitute TSPL in terms of the provisions of the Civil Procedure Code, 1908. Section 144 of CPC provides that if the order/decreed passed by the lower court is varied or set aside by the appellate court/forum, then the lower court/court of first instance shall, on an application filed by the party, pass an order to place the parties in the

position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified. For this purpose, court of first instance may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.

- 4.2 That the Hon'ble Supreme Court in *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.*: (2003) 2 SCC 111 categorically held that a decision is an authority for which it is decided and not what can logically be deduced therefrom. A little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. Therefore, PSPCL's reliance on the Nabha Judgement to refute TSPL's claim of carrying cost/interest is misplaced and the submissions of PSPCL to deny TSPL its legitimate entitlement towards the same are baseless and liable to be rejected. The Commission may be pleased to direct payment of interest/late payment surcharge on the amounts due and payable to TSPL on account of unloading charges and shunting charges till the date of actual payment by PSPCL in line with the provisions of the PPA executed between the parties and the relevant orders in this regard.
5. The Commission appointed a committee for assessing the Manpower requirement for unloading activity of coal at TSPL. The committee submitted its assessment vide report dated 14.09.2021, indicating the assessment of man power

requirement of 50 for unloading activity of coal at TSPL. The Copy of the report is placed at **Annexure-A** to this Order.

6. Both the parties while agreeing in part have submitted Objections to the report:

6.1 Objections by TSPL:

It has been submitted that the report does not project the actual manpower requirement for TSPL's Plant. Every TPP has its own independent functioning and system of operations and is independent from system and processes of any other power plant, which cannot be equated to any other TPP. The reliance placed by the Committee on the functioning and operations at PSPCL's GHTP is misplaced especially since the installed capacity of GHTP is 920 MW whereas TSPL's Project is 1980 MW. Therefore, TSPL's operations cannot be compared with the operations carried out at any other TPP for the purpose of conducting diligence/prudence check in respect of the manpower requirement for unloading operations at TSPL's Project site. During the Committee's visit, the actual manpower employed by TSPL was duly witnessed/examined by the Committee. The Committee did not raise any objection in respect of the same. Further, while the actual manpower employed by TSPL involved in unloading activities has increased over time, TSPL has restricted its claim to the manpower charges originally/actually billed by it to PSPCL, in good faith and for timely and amicable resolution of the dispute. While reiterating it's earlier submissions it was submitted that:-

- a) That TSPL agrees with the recommendations of the Committee in respect of number of manpower for the

Loco Operator, Wagon Tippler Operator and House Keeping.

- b) That Committee's recommendation with regard to 4 nos. of Station Master is misplaced and erroneous. The Station Masters are required for coordination of all activities of SSZ and MTSS, panel operation, operation of block instrument (as per Indian Railways' Requirement) and coordinating unloading activities for rake receipt, placement and release. TSPL was never asked by the Committee during its site visit on 02.09.2021 to produce any document in respect of the retired railway personnel employed by TSPL. In this regard, TSPL submitted the correspondence by the Northern Railways pertaining to requirement of deploying retired railway personnel at TSPL's Project site. TSPL is only claiming payments for 5 nos. Station Masters whereas TSPL has employed 9 station masters (5 normal + 4 retired railway personnel).
- c) The Committee's recommendations with regard to 7 nos. of points man is misplaced and erroneous, since 1 Points Man is required at the Loco to supervise rake movement, 1 Points Man is responsible for track clearance and placement of rake at Wagon Tippler, 1 Points Man is required at Wagon Tippler for rake placement and release and 3 Points Men are responsible for rake checking during both rake receipt and departure.
- d) The Committee's recommendation with regard to 14 nos. of shunt men is misplaced and erroneous since 2 Shunt Men are required at each Wagon Tippler for

unloading operations at TSPL's Project site. 1 Shunt Man is required for pre-tripling activities including decoupling of wagons and another is required for post-tripling activities including straightening and coupling of empty wagons and it is not possible for 1 Shunt Man to handle both the aforesaid tasks. TSPL is only claiming payments for 24 nos. Shunt Men whereas TSPL has employed 28 Shunt Men (8 x 3 shifts) with 2 at each Wagon Tippler (2 nos.) and 4 relievers.

- e) The Committee's recommendation that there is no requirement for a Gate Man is misplaced and erroneous. TSPL is only claiming payments for 7 nos. Gate Men deputed at 2 of its gates (2 at each gate per shift along with 1 reliever), despite having 3 gates at the Project site. Gate Men are necessary and essential for safe operation and movement of Loco and rakes inside the Project site.
- f) The Committee's recommendation that there is no requirement for a Safety Officer is misplaced and erroneous. The Safety Officer is necessary and essential for overlooking unloading operations at TSPL's Project site to ensure safe operation of Wagon Tippler and rake movement. Safety Officer is responsible for safe operation of unloading activities and not of the coal handling plant as stated by the Committee in its Report dated 14.09.2021. The presence of a Safety Officer during unloading operations is essential for ensuring safe and smooth operations sans accidents/injuries to the staff employed at the Project site.

In view of the above, the Commission may disregard the findings/recommendations of the Committee and allow TSPL's claims.

6.2 Objections by PSPCL :

PSPCL while reiterating its earlier submission that the number of manpower required in line with the directions of the Commission in the Order dated 06.05.2019 is only limited for the actual operation of locomotives and wagon tippers. It was submitted that TSPL has employed 7 loco operators and 10 wagon tippler operators, which have been considered by PSPCL. The report in fact deviates from the Commission's Order while allowing manpower in addition to the same. The reasoning given by the committee that TSPL has its control room/panel of unloading activities at a different location than the main CHP control, cannot be a reason for such deviation from the directions given in Order dated 06.05.2019. The Report has considered 14 Shunt Men, although this was not claimed by TSPL. Further, the Report also considered allowing 8 Housekeeping staff, it is not understood as to how 8 number of housekeeping staff is required when there are in fact 4 Wagon Tippers. It is submitted that all claims of TSPL should have been subject to overreaching prudence check. Therefore, the Commission may reconsider the 4 Station Masters, 7 Point Men, 14 Shunt Men and 8 Housekeeping Staff considered in the Report.

7. Observations and Decision of the Commission.

The Commission has carefully gone through the petition, reply filed by PSPCL, rejoinder filed by TSPL and arguments/written submissions made by the parties during

the hearings. TSPL is pleading for implementation of the Commission's Order dated 06.05.2019 in Petition No. 31 of 2014 with respect to the following:

- a) Railway Shunting Charges from Sadda Singh Wala station to the plant site;
- b) Manpower requirement for Locomotive and Wagon Tippler operations for unloading of coal;
- c) Wages/salary for unloading of coal, including for manual unloading;
- d) Approval of the methodology for payment of electricity expenses for Wagon Tippler operations on average basis, as agreed between the parties;
- e) Interest/Late Payment Surcharge on the amounts due and payable by PSPCL.

TSPL's plea is that PSPCL is not paying the charges as incurred by it for shunting and unloading of coal at the Project site and has cited the Hon'ble Supreme Court judgement dated 07.03.2018 and the contempt Order dated 09.03.2021, in its favour. On the other hand PSPCL countered TSPL's plea with contention that the said orders of the Hon'ble Supreme Court are not attracted in the present case as the issue decided therein was not unloading charges. The issue of unloading charges was decided by Hon'ble Appellate Tribunal which has been considered in the Order dated 06.05.2019 by the Commission.

The Commission refers to the Order dated 07.03.2018 of the Hon'ble Supreme Court, which states as under:

"...The only grievance in these appeals is against rejection of claim of the appellant towards coal washing and

associated charges..... Accordingly, the claim of the appellants shall stand allowed.”

Further, by way of Order dated 09.03.2021, Hon’ble Supreme Court directed PSPCL to clear the arrears, in terms of its earlier Orders in the matter.

In view of the above, the Commission is inclined to agree with PSPCL’s contention that the aforesaid Orders cited by TSPL are not attracted in the instant case. Accordingly, the Commission proceeds to adjudicate the issues raised in the instant application in terms of the Commission’s Order dated 06.05.2019, as here under:

7.1 Railway Shunting Charges from Sadda Singh Wala station to the plant site:

TSPL has submitted that 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, PSPCL started denying payment of Shunting Charges from SSZ till the Interchange Point. It has been also submitted that, in addition to non-payment of Shunting Charges, PSPCL has further misinterpreted the Order by not paying the Unloading Charges in respect of diesel and manpower expenses for Loco operation from Interchange Point till the Wagon Tippler Unloading Point.

On the other hand, PSPCL is contending that it is complying with the Commission’s Order dated 06.05.2019 and had made payments of the shunting charges from Sadda Singh Wala Station to the power plant incurred by TSPL upto 30.06.2020.

However, after the issuance of said Rate Circular by the Railways, 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.

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, issued in compliance to Hon'ble APTEL Judgment dated 03.07.2017 remanding the case to the Commission for allowing Railway shunting charges under coal transportation cost, wherein it has dealt the issue as under:

“.....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.”

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.

7.2 Manpower requirement for Locomotive and Wagon Tippler operations for unloading of coal:

TSPL is claiming a manpower of 84 (5 Station Masters, 7 Loco-operators, 24 Shunt Men, 7 Gate men, 22 Points men, 10 Wagon Tippler Operators, 1 Safety Officer and 8 for Housekeeping). Whereas, PSPCL is agreeable to the strength of 17(7 Locooperators and 10 wagon-tippler operators), with the contention that the Commission's Order provides only for operating locomotives and wagon tippers, not for the associated activities.

The Commission is not inclined to agree with PSPCL's interpretation that the words "Manpower expenses for operating the Loco" and "Manpower requirement for wagon tippler(s) operations" used in the Commission's Order dated 06.05.2019 means only the Loco-operators and Wagon Tippler Operators. Manpower requirement for operation of equipment obviously includes the staff required to assist the operator in operating the equipment. The Commission refers to its Order dated 06.05.2019, wherein the issue of manpower expenses has been dealt as under:

"Manpower expenses for operating the Loco

.....

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 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.”

However, it emerges that consensus regarding the same could not be reached between the parties. Accordingly, in order to adjudicate the matter, the Commission constituted a committee of its officers to witness the unloading activity of the coal for assessing the manpower requirement for the operation of Loco and Wagon Tippler in nearby Thermal Plants. The Committee after overseeing the operations of unloading of coal at TSPL and GHTP Lehra Mohabbat submitted its assessment report, placed at **Annexure-A** to this Order.

In its objections to the report, while PSPCL reiterated that the Commission's Order dated 06.05.2019 provides for manpower requirement only for the actual operation of locomotives and wagon tippers and not for associated activities, TSPL reiterated that the actual manpower requirement for TSPL

needs to be considered. TSPL further submitted that the reliance placed by the Committee on the functioning and operations at PSPCL's GHTP is misplaced especially since the installed capacity of GHTP is 920 MW whereas TSPL's Project is 1980 MW. Also, the Committee witnessed/examined the actual manpower employed by TSPL and did not raise any objection in respect of the same.

The Commission notes that the committee has worked out the assessment of manpower required for Loco/wagon tippler operations on per shift basis and depending on numbers of Locos/wagon tipplers available at the project, as such TSPL's objection that the report is based on the reliance placed on the functioning and operations at PSPCL's GHTP is misplaced. The Committee had the mandate to have independent assessments. The idea to visit nearby GHTP was to have a fair assessment. of the various unloading activities and not for comparison purpose. Further, the intent was to assess what is prudently required and not what is being practiced.

The Commission's analysis and decision on the issue of manpower requirement for unloading of coal at TSPL plant site is as hereunder:

(i) Loco Operators and Wagon Tippler operators

The commission observes that, both the parties are agreeable to 7 Loco Operators and 10 Wagon Tippler operators, for 2 locos and 4 wagon tipplers. The committee is of the view that, the same seems to be genuine and may be considered. **The Commission accepts the same.**

(ii) Station Masters/Supervisors

TSPL's claim is for requirement of 5 Station masters against nil agreeable to PSPCL. TSPL has also referred to its correspondence with the Railways on the same.

And, the Committee's assessment is of 4 station masters /supervisors i.e. requirement of one person per shift plus one reliever for panel operation and coordinating the unloading activities for rake receipt, placement and release.

The Commission has perused the TSPL's correspondence with the Railways annexed with its objections; the same appears to be advising TSPL to avail the provision of hiring of retired Station Masters and does not mandate any specific numbers to be deployed. The Commission is inclined to agree with the committee's assessment of station masters and allow 4 Supervisors who could be retired railway personnel.

(iii) Points-Man

TSPL's claim is for requirement of 22 Points-men against nil agreeable to PSPCL. It has been pleaded that, 1 Points-Man each is required to supervise rake movement, track clearance/placement of rake at Wagon Tippler, rake placement/release and 3 Points-Men for rake checking during the rake receipt/ departure.

And, the Committee's assessment is of 7 Points-Man i.e. 1 Points-man to assist each loco shunter operator for coupling/decoupling of rakes, track clearance and rake placement. As such, 2 points men per shift (3 shifts) plus 1 reliever.

The Commission is inclined to agree with the committee's assessment, which is after detailed due diligence and assessment of the work load

(iv) Shunt-Man

TSPL's claim is for manpower requirement of 24 Shunt-men against nil agreeable to PSPCL. It has been pleaded that, 2 Shunt Men are required at each Wagon Tippler for unloading operations; 1 Shunt Man for de-coupling of wagons and another for coupling of empty wagons.

And, the Committee's assessment is of 14 Shunt-men i.e. One Shunt-Man at each Wagon Tippler for coupling and decoupling of the wagons. At times when no rake is placed at any of the wagon tippler, the shunt-man could be used to assist others. As such; 4 persons per shift (3 shifts) plus 2 relievers seems adequate.

The Commission is inclined to agree with the committee's assessment.

(v) Gate-Man

TSPL's claim is for 7 Gate-Men against the nil agreeable by PSPCL. It has been pleaded that, it is claiming 7 nos. Gate Men deputed at 2 gates (2 at each gate per shift along with 1 reliever), despite having 3 gates at the Project site for safe operation and movement of Loco and rakes inside the Project site.

And, the Committee has assessed that there is no requirement of any Gateman with the observation that there is no public movement in the unloading area at the plant site.

The Commission is inclined to agree with the committee's assessment.

(vi) Safety Officer

TSPL's claim is for requirement of one Safety Officer against the nil agreeable by PSPCL. It has been pleaded that, Safety Officer is necessary for overlooking unloading operations at project site to ensure safe operation of Wagon Tippler and rake movement.

And, the Committee has not assessed the requirement of any independent safety officer for the unloading activity, with the observation that the coal handling plant is a part of the thermal plant, the safety officer deployed for the plant can manage safety issues in the coal handling plant also.

The Commission is inclined to agree with the committee's assessment. The duties of the safety officer are to ensure a safe working environment by ensuring that a SOP for safe operation and testing of the equipment(s) is in place and he is not required to be physically present at every operation.

(vii) House Keeping

TSPL's claim is for requirement of 8 housekeeping against nil agreeable by PSPCL. It has been pleaded that, they are required for removing boulders for clearing the grating of wagon tipplers. And, the Committee has assessed the TSPL's claim to be genuine. **The Commission is inclined to accept the same.**

7.3 Wages/salary for unloading of coal, including for manual unloading:

PSPCL submitted that it has considered the wages as per D.C. rates approved by the Government of Punjab issued from time to time by the Labour Commissioner Punjab, for the purposes of computing the manpower charges to be paid to TSPL. Whereas, TSPL is claiming that the Wages/salary as are being paid by it needs to be allowed.

The Commission is of the view that, labour being a regulated activity, there has to be benchmark regarding the applicability of the wages. Thus, the Commission thinks it appropriate to allow the applicable DC rates as notified by the Labour Department, Govt. of Punjab for the purposes of computing the manpower expenses for unloading of Coal at the project site. The Commission also notes that the DC rates are being revised from time to time with applicable escalation and thus also cover the aspect of compensation for inflation, as assessed by the Labour Commissioner. These rates are applicable all over the State.

7.4 Approval of the methodology for payment of electricity expenses for Wagon Tippler operations on average basis, as agreed between the parties:

It was submitted that the Commission in its order dated 06.05.2019 had directed TSPL to install meters at each of the wagon tippers which were to be tested and sealed by PSPCL for consideration of electricity expenses. However, TSPL is facing practical difficulties in installation of multiple seals/paper seals on switchgear, motors and associated electrical equipment (which is part of the

proposed schematic). Also, the sealing of equipment hampers the proper operation and maintenance activities to be carried out by TSPL. Accordingly, TSPL requested PSPCL's team to visit the Project site to measure the average consumption of electricity for wagon tippler operation during unloading of rakes and this average can be used for making payments to TSPL. This methodology was discussed and agreed upon between TSPL and PSPCL's officials during a virtual meeting held on 07.05.2021. PSPCL has also submitted that it is agreeable to the TSPL's suggestion, subject to the approval of the Commission. PSPCL further submitted that after receiving the necessary approvals, PSPCL shall visit the Project site to measure the average consumption of electricity of wagon tipper operation on per rake basis during unloading of rakes.

The Commission has no objection if both the parties are agreeable to the methodology for payment of electricity expenses for Wagon Tippler operations on average basis as assessed by them mutually.

7.5 Interest/Late Payment Surcharge on the amounts due and payable by PSPCL:

TSPL has prayed for interest/late payment surcharge on the amounts due and payable by PSPCL on account of unloading charges and shunting charges till the date of actual payment. It has been pleaded that, TSPL is entitled for the same on the established principle of restitution/time value of money. It was also submitted that, TSPL has been allowed interest/late payment surcharge on the amounts

due and payable by PSPCL in terms of the Orders dated 07.03.2018 passed by the Hon'ble Supreme Court in Civil Appeal Nos. 10525-26 of 2017 and Order dated 09.03.2021 passed in second Contempt Petition (c) Nos. 1178-79 of 2019 in Civil Appeal Nos. 10525-26 of 2017.

PSPCL contended that the said Orders of Hon'ble Supreme Court does not apply in the present case. The delay for making payments has occurred due to the parties requiring to reconcile and come to a consensus on the amounts payable in terms of the Order dated 06.05.2019. PSPCL had paid an amount of Rs. 7 crores to TSPL on an adhoc basis on 28.06.2019 i.e. even prior to the quantification of the charges by the parties in terms of the directions of the Commission. Further, PSPCL has also paid to TSPL an amount of Rs. 1,45,16,246/- on 08.06.2021 towards the full payment of the claims of the Petitioner on account of unloading charges except the component of electricity expenses of wagon tippers, as per the computation of PSPCL on the total amount payable. PSPCL has therefore acted in a conciliatory manner and had proceeded to accommodate TSPL. The amounts to be paid are required to be quantified by the Commission at this stage.

The, Commission, is conscious of the settled position of law that whenever payments are deferred or delayed, then carrying cost is payable along with such deferred payments, which is nothing but compensation for time value of money or monies denied at the appropriate time. However, for allowing the same the authority deciding the issue needs to be convinced that the

payment has been delayed intentionally. In the instant case, the Commission is of the view that the parties were required to settle the issues mutually between them regarding manpower, wages/rate and consumption of electricity, and they failed to do so and have now approached the Commission for the same. The Commission also notes that PSPCL has paid an amount of Rs. 7 crore as ad-hoc payment even prior to the quantification of the charges in terms of the Commission's Order dated 06.05.2019 and has further paid an amount of Rs. 1.45 crore towards full payment (except electricity charges of wagon tippers) as per its understanding of the matter.

Accordingly, the Commission is of the opinion that interest/Late Payment Surcharge is not applicable on the disputed unloading expenses as of now. However, in case the payment of the cost components as decided in this Order is not made within 60 days of submission of the bill, PSPCL shall be liable to pay late payment surcharge thereon in terms of the PPA.

The IA is disposed of accordingly.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Anjuli Chandra)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: 11.03.2022