

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

**Petition No.31 of 2014  
Date of Order: 23.11.2015**

Present: Smt. Romila Dubey, Chairperson  
Shri Gurinder Jit Singh, Member

In the matter of: Petition under applicable provisions of Section 63 and 86 (f) of The Electricity Act, 2003 read with statutory framework governing procurement of power through competitive bidding for approval for modalities of landed cost of washed coal to be included as part of landed fuel cost for computing the tariff as per the provisions of the Power Purchase Agreement - 3x660 MW Talwandi Sabo Thermal Power Project.

And

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

Versus

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

**ORDER**

1. Talwandi Sabo Power Limited (TSPL) filed petition on 22.05.2014 which was taken up for admission by the Commission on 03.06.2014. Considering the preliminary observations of the

Commission with regard to the issues raised in the petition, TSPL requested for allowing two weeks to amend the petition. The Commission allowed the same to be filed by 17.06.2014 in its Order dated 04.06.2014 which was to be taken up for admission on 24.06.2014. TSPL filed the revised petition dated 17.06.2014 and submitted as under:

- i) TSPL, as the wholly owned subsidiary of erstwhile PSEB (now Punjab State Power Corporation Limited; PSPCL) issued Request for Qualification (RfQ) on 25.09.2007 and Request for Proposal (RfP) on 18.01.2008 for procurement of power on long term basis from the project in the range of 1800  $\pm$  10% MW to be set up at village Banawala, district Mansa. The bids (under scenario 4 of Case-2) were invited as per "Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees, 2005" issued by the Ministry of Power, Government of India ("Competitive Bidding Guidelines"), wherein the participating bidders had to bid the Net Heat Rate (NHR) and the capacity charges, with the cost of coal as a pass through.
- ii) The details regarding the status of arrangement of fuel were specified in clause 1.4(B)(2) of RfP, wherein coal supply of 8.7 Million Tonne Per Annum (MTPA) having GCV 3900 kCal/kg was ensured. PSPCL also specified that the Ministry of Coal, GoI had approved the issuance of Letter of Assurance (LoA) to meet the fuel requirement of the project. PSPCL in its presentation in the RfP bid conference held at Chandigarh on 08.05.2008 stated that Mahanadi Coalfields Limited (MCL) vide its letter dated 28.04.2008 has agreed to supply E Grade coal

upto 5 million tonne during FY 2011-12 and 7.70 MTPA from FY 2012-13 onwards for the project. PSPCL provided the specification of fuel during the RfP bid conference as Grade E with Gross Calorific Value (GCV) in the range of 4500-4600 kCal/kg and ash content in the range of 33-34%.

- iii) Sterlite Energy Limited (SEL) submitted bid for setting up the project and was selected as successful bidder and accordingly on 04.07.2008, PSPCL (erstwhile PSEB) issued Letter of Intent (LoI) in favour of SEL calling it upon to acquire 100% shareholding in TSPL and subsequently, a Share Purchase Agreement (SPA) to the same effect was executed on 01.09.2008. The Power Purchase Agreement (PPA) setting out the various terms and conditions for the project was also signed on 01.09.2008 between the petitioner and the erstwhile PSEB (now PSPCL).
- iv) PSPCL entered into a Memorandum of Understanding (MoU) with the petitioner on 02.09.2008. In terms of the para 3 of the same, the PSPCL undertook the specific obligation to execute the Fuel Supply Agreement (FSA) with the fuel supplier and thereafter assign the same in favour of the petitioner.
- v) The LoA was issued by MCL on 14.08.2008 i.e. much after the date of submission of financial bid by SEL on 18.06.2008 and issuance of LoI dated 04.07.2008 by PSPCL to SEL. Further, it was noticed that the Annual Contracted Quantity (ACQ) of 7.72 MTPA as provided in the LoA was contradictory to the specifications of the coal as assured and mentioned in the MCL letter dated 28.04.2008 and the other bid documents. Among others, the two major deviations in the terms of coal assurance

were that the MCL reserved a right to provide Grade E/F coal for the project under the LoA as against the assured supply of Grade E coal with GCV 4500-4600 kCal/kg and ash content 33-34% as represented during RfP bid conference dated 08.05.2008 and MCL letter dated 28.04.2008. Further, as per LoA, MCL also has a right to provide coal through imported sources as against the assured provision of domestic coal only.

vi) PSPCL was requested through various correspondences to fulfil its obligations to provide the coal of grade/quality/origin as specified/represented during the pre-bid stage and also highlighted the detrimental impact of the terms and conditions of the Model Fuel Supply Agreement mandating the usage of imported coal on the project as the project was designed to use domestic coal only. During this period, MCL had been seeking execution of the FSA with TSPL and conveyed that in the event of failure to execute the same, it may consider to cancel the coal linkage. The matter was taken up with PSPCL which contended that it was only responsible for providing a coal linkage which it has fulfilled by providing the LoA and directed the petitioner to take up the matter with the concerned authorities. Subsequently, TSPL executed a FSA with MCL for supply of ACQ of 7.72 MTPA on 04.09.2013.

vii) During the bidding process, the participants were required to place their bids only on two parameters i.e. Net Heat Rate and Capacity Charges for the project, with cost of fuel being reimbursed to the selected bidder on actual basis through the mechanism of Energy Charges which are determined by a formula specified in Schedule 7 of the PPA as per the

Competitive Bidding Guidelines (CBG). The aforesaid provision in PPA is as under:

*“1.2.3 Monthly Energy Charges  
[for Scenario 4 as mentioned in clause 2.7.1.4 of the RfP]*

*The Monthly Energy Charges for Month “m” shall be calculated as under:*

$$MEP_m = AEO_m \times MEP_n$$

*Where:*

*AEO<sub>m</sub> is the Scheduled Energy during the Month m (in kWh)*

*Monthly Energy Charges*

$$MEP_n = (NHR_n \times F^{coal}_n) / PCV_n$$

*Where,*

*NHR<sub>n</sub> is the Net Heat Rate for the Contract Year in which month “m” occurs expressed in kCal/kWh and is equal to the Quoted Net Heat Rate of the Contract Year in which month “m” occurs, as provided in Schedule 11.*

*F<sup>coal</sup><sub>n</sub> is the weighted average actual cost to the Seller of purchasing, transporting and unloading the coal most recently supplied to and at the Project before the beginning of month “m” expressed in Rs./MT in case of domestic coal).*

*PCV<sub>n</sub> is the weighted average gross calorific value of the coal most recently delivered to the Project before the beginning of month “m” expressed in kCal/kg.”*

With reference to ‘Actual cost of purchasing, transporting and unloading’, the linkage was arranged by PSPCL and in order to be able to transport and use this linkage of coal, it is incumbent upon the petitioner to get the coal washed in order to meet the Ministry of Environment and Forest (MoEF) norm. Hence, costs associated with washing of coal form an integral part of cost of purchasing, transporting and unloading the coal to the project.

Further, ‘Coal most recently supplied to & at the project’

indicates that all the costs incurred for supply of coal up to project site is to be considered for computation of energy charges. It is mandated by law to get the linkage coal with ash content more than 34% washed, to reduce ash content to less than or equal to 34%, before supply up to project site.

viii) Case-2 Scenario 4 bidding process required TSPL to quote only for SHR & Capacity Charges. Energy Charges are a function of the SHR, weighted average actual GCV of coal delivered and weighted average actual cost of purchasing, transporting & unloading the coal delivered. Of these three elements, bidders quoted only for SHR which is a measure of efficiency at which coal is converted into electricity. For the purpose of evaluating the lowest bidder, PSPCL provided an indicative number for the other elements i.e. GCV & cost of coal required to compute the levelled tariff for 25 years. Hence, bidders were completely immune to any risk and cost of coal, arranged by PSPCL, supplied to and at the TSPL site, including the cost of washing which forms a part of the 'actual cost of coal most recently supplied to the project'.

The weighted average actual cost to the seller includes all the costs pertaining to procuring coal including washing of coal to meet environment norms, taxes and duties, transportation cost & unloading cost at TSPL site and all other associated costs. Hence, all such costs must be included for determination of monthly energy charges as per provisions of PPA.

ix) MoEF, GOI, vide its Gazette notification dated 02.01.2014 amended the Environment (Protection) Rules, 1986 and issued

Environment (Protection) Amendment Rules, 2014. The relevant extract of the same is as follows:

*“2. In the Environment (Protection) Rules, 1986, in the rule 3, for sub-rule (8), the following sub-rule shall be substituted, namely:*

*(8) With effect from the date specified hereunder, the following coal based thermal power plants shall be supplied with, and shall use, raw or blended or beneficiated coal with ash content not exceeding thirty-four per cent, on quarterly averages basis, namely:-*

*(a) a stand-alone thermal power plant (of any capacity), or a captive thermal power plant of installed capacity of 100 MW or above located beyond 1000 kilometres from the pit-head or, in an urban area or an ecologically sensitive area or a critically polluted industrial area, irrespective of its distance from the pit-head, except a pit head power plant, with immediate effect;*

*(b) a stand-alone thermal power plant (of any capacity), or a captive thermal power plant of installed capacity of 100 MW or above, located between 750-1000 kilometres from the pit-head, with effect from the 1<sup>st</sup> day of January, 2015;*

*(c) a stand-alone thermal power plant (of any capacity), or a captive thermal power plant of installed capacity of 100 MW or above, located between 500-749 kilometres from the pit-head, with effect from the 1<sup>st</sup> day of January, 2016:*

*Provided that in respect of a thermal power plant using Circulating Fluidised Bed Combustion or Atmosphere Fluidised Bed Combustion or Pressurised Fluidised Bed Combustion or Integrated Gasification Combined Cycle Technologies or any other clean technologies as may be notified by the Central government in the Official Gazette, the provisions of clauses (a), b) and (c) shall not be applicable.”*

TSPL falls under the above mentioned category (a), therefore, it is obligated to use raw or blended or beneficiated coal with ash content not exceeding 34% on quarterly average basis. Further, the Environment Clearance issued by MoEF vide letter dated 11.07.2008 and amended vide letters dated 25.03.2010, 17.06.2010 and 30.09.2013 also stipulates a condition that the ash content in the coal to be used in the project shall not exceed 34%.

- x) As per the LoA dated 14.08.2008 and FSA dated 04.09.2013, MCL is to supply raw coal of E/F Grade. Further, as per Ministry of Coal, Govt. of India, Gradation of Coal norms, ash plus moisture content of E grade coal is 34.1% - 40.0% and that of F grade coal is 40.1% - 47.0%. After signing of PPA, Coal India Limited (CIL) migrated from UHV based billing to GCV band based billing. Accordingly, FSA was signed for coal grade G-8 to G-13. Hence, the coal to be supplied by MCL to TSPL is having ash content of significantly more than 34%, and therefore, usage of such coal without washing and / or blending by TSPL for the project would not be as per the Environment (Protection) Amendment Rules, 2014 as well as the conditions stipulated by MoEF in the Environment Clearance issued to the petitioner.
- xi) Bidders were assured coal of not more than 34% ash content during RfP bid conference dated 08.05.2008 and there was no requirement to make arrangement for washing of coal in order to reduce ash content if the promised quality of coal was made available. However, due to subsequent deviations in LoA regarding supply of E/F grade coal, it became incumbent upon



the petitioner to make arrangement for washing of coal to meet MoEF norms. As per the provisions under definition of 'law' and Article 7 of the PPA, the petitioner has to comply with all the laws in force in India for operation and maintenance of the power station. Therefore, any mandate issued by MoEF, qualifies as applicable law under the provisions of PPA. In order to comply with the provisions of applicable law as per PPA, TSPL will have to process the raw coal through washing and/or blending the coal to ensure the ash content of less than or equal to 34%. Similar practice of washing coal in order to meet MoEF norms is being adopted by PSPCL's own thermal generating stations.

xii) The Commission in its Order dated 24.12.2012 in petition no. 46 of 2012 has clarified as under:

*".....With regard to the provision in the LoA for supply of imported coal, the Commission understands that occasionally imported coal available with MCL could also be supplied. It would be fairly prudent to presume that the payment of the said imported coal available with MCL and supplied against the ibid LoA is to be made by the seller/petitioner in Rs./ million tonnes meaning thereby that for all intents and purposes the said supplies will be construed as domestic coal in terms of the PPA. The Commission notes that even though the LoA was available to the petitioner on or about the date of signing of the PPA on 01.09.2008, if not earlier, it did not raise the issue(s) earlier than filing this petition four years later. The said provision in the PPA with regard to the cost of coal payable to the petitioner every month, would also cover the apprehension of the petitioner that Grade F coal, which may also need washing, could be supplied by MCL as per LoA, as against Grade E coal envisaged in the letter dated 28.04.2008."*

xiii)Washing and/or blending of coal effectively reduces the transportation cost on account of reduction in ash content. TSPL is located at a distance of around 1700 kms from the MCL mines area in Odisha. Therefore, the transportation charges shall constitute a major portion of the total variable cost of power. Further, transportation of raw coal over such a long distance, with high ash content would mean wastage of huge amount of money, energy and blocking of limited available railway carrying capacity.

xiv)The MoEF norms also mentioned the use of blended coal. However, the present petition addresses the concerns relating to only washing of coal in order to reduce ash content below 34%.

xv)PSPCL itself uses washed coal for its own thermal generating stations. Some central generating stations of NTPC also use washed coal and PSPCL has its entitlement from these stations, which indicates that PSPCL is already paying for washed coal. Based on the provisions of PPA and Commission's Order dated 24.12.2012 in petition no. 46 of 2012, the cost of washing of coal is to be considered while computing the energy charges. Accordingly, the tendering process for washing of coal has been carried out.

xvi)As Unit-1 was ready for lighting up on 24.09.2013 and was expected to achieve CoD shortly, TSPL, in order to ensure that the coal with ash content of not more than 34% is available on time, invited bids on 29.10.2013 for washing of initial quantity of coal. TSPL, vide letter dated 20.11.2013 also submitted the requisite documents to MCL for release of 1 lakh tonne

commissioning coal, which was subsequently enhanced to 2 lakh tonne. TSPL placed an order for washing of 2 lakh tonne of coal on ACB (India) Limited on 25.12.2013, which was selected as L-1 bidder through a transparent bidding process conducted by TSPL. PSPCL was requested vide letter dated 12.11.2013 to participate in the price bid opening process for coal washing bids. However, PSPCL refused to participate in the same vide letter dated 13.11.2013 stating that it does not come into picture in the process for selection of washery operator for beneficiation of raw coal from MCL mines as the Hon'ble APTEL's Order dated 21.08.2013 does not mandate as such. The petitioner vide letter dated 09.05.2014 requested the Secretary (Power), Government of Punjab and CMD, PSPCL to convene a meeting for deciding certain issues including the matter pertaining to washing of coal. Subsequently, a sub committee was formed by Secretary (Power), Government of Punjab comprising of Director (Generation), PSPCL, Director (Finance), PSPCL and COO, TSPL. The meeting of the aforesaid Committee was held on 16.06.2014 wherein it was suggested that washing charges will not be paid by PSPCL.

xvii) Total washery contract price after rebate for 2 lakh tonne of raw coal would be ₹9,31,57,432. Further, surface transportation charges shall be payable to ACB (India) Limited instead of MCL with the placement of order for washing of coal with the former. Surface transportation charges would have to be incurred for unwashed coal as well and it is not an additional cost element pertaining to the washing of coal.

xviii)The washed coal is to be transported through Indian Railways and the tentative cost for such transportation works out to be approx. ₹ 2521 per tonne without busy season surcharge. Further, during transportation through Indian Railways, some coal quantity is lost as per nominal transit losses. Hence, the weighted average actual cost of coal delivery to PSPCL projects will also include the cost associated with transit loss of coal. The Commission in its Tariff Order dated 10.04.2013 has approved a transit loss to a maximum limit of 1% for all generating stations of PSPCL. TSPL has requested to approve costs associated with transit loss of washed coal at a maximum of 1% of coal for the computation of energy charges as the cost associated with transit loss of coal is also applicable to it.

xix)As per PPA the weighted average actual cost to the seller also includes the cost of unloading coal at TSPL site which is approximately ₹ 100 per tonne.

xx)Considering that the entire cost of coal is pass through by way of energy charges computed as per the formula specified in Schedule 7 of the PPA, in order to meet the MoEF stipulations, TSPL will place the orders for washing of coal on regular basis through competitive bidding process.

xxi)The calorific value to be considered for computation of energy charges is based on weighted average gross calorific value of the coal most recently delivered to the project as per provisions of the PPA. Coal India Limited (CIL) has adopted the approach of billing on the basis of eGCV values of coal after signing of the PPA between TSPL and PSPCL. Hence, billing is also being done by MCL on eGCV basis. There is difference in GCV of

coal on 'As Received Basis' (ARB) as compared to eGCV. TSPL cannot be made to suffer on account of change in approach of billing on eGCV basis adopted by CIL as PPA was signed prior to such a change.

xxii) GCV of the coal on 'As Fired Basis' i.e. bunkered GCV is lower than GCV of coal received at site. Considering this fact, the Commission has allowed a drop of 150 kCal/kg to PSPCL in the review Tariff Order for ARR of PSPCL for FY 2012-13 dated 27.02.2013 and for FY 2013-14 dated 10.04.2013. When bid was submitted for the project, the industry norm was to take GCV on 'As Fired Basis' including PSPCL's own plants. The Commission is requested to approve the same approach as mentioned in PPA and as adopted for PSPCL in the aforesaid Tariff Orders for consideration of GCV for computation of the energy charges of TSPL and accordingly allow a drop of 150 kCal/kg in the GCV of coal received for computation of energy charges.

xxiii) It is prayed to the Commission as under:

- a) Direct PSPCL to pay the energy charges based on computation of energy charges for a month 'm' based on weighted average actual cost of coal most recently supplied to & at the project including various associated costs incurred for arrangement of washed coal at TSPL site after necessary washing including unloading cost at TSPL end in accordance with the provisions of PPA;
- b) Grant approval to the modalities of cost of coal washing arrived through a competitive bidding process from time to time;
- c) Direct PSPCL to pay energy charges computed by considering degradation of 150 kCal/kg in the GCV of coal received by TSPL i.e. GCV as received at TSPL site –

150 kCal/kg and considering transit loss of coal at a maximum of 1%;

- d) Direct PSPCL to either conduct bidding for finalization of washery operator or alternately, participate in competitive bidding process for finalization of washery operator to be conducted by TSPL in future from time to time;
- e) Grant interim directions to PSPCL to refrain from any recovery/ deductions from payment of monthly bills raised by TSPL, or in any other form, on account of washing of coal, unloading of coal at TSPL site, transit losses & GCV on 'as fired basis' till the time the petition is disposed of, to enable it to operate the plant in accordance with the MoEF norms considering the fact that the COD of first Unit is likely to be achieved very soon.

2. The amended petition was admitted vide Commission's Order dated 24.06.2014. The petitioner submitted vide para 43 of the petition as under:

*"43. The petitioner has already requested the Power Secretary/Govt. of Punjab and CMD/PSPCL to convene a meeting for deciding certain issues including the matter pertaining to coal washing vide its letter TSPL/PSPCL/AA/May-14/92 dated 09.05.2014. Post this a subcommittee has been formed by Secretary (Power), Govt. of Punjab comprising of Director (Generation)/PSPCL, Director (Finance), COO/TSPL for relevant issues and the meeting of this sub-committee was held on 16 June 2014. In the said it was suggested that washing charges will not be paid by PSPCL. The petitioner requests the Commission to approve the modalities of cost of washed coal to be included as part of weighted average actual cost of coal for computing the energy charges as per the provisions of the PPA. The petitioner would like to submit that the cost of washing of coal shall be discovered through competitive bidding process from time to time. It is humbly requested that the Commission may direct the respondent to pay the Energy*

*Charges computed accordingly so that the cash flow of the petitioner is safeguarded.”*

During hearing on 24.06.2014, the petitioner filed a copy of minutes of meeting of the sub-committee held on 16.06.2014 at Patiala. The Commission observed that vide order dated 11.02.2014 passed in petition no.60 of 2013, it had appointed the committee vide para 36 (x) of the ibid order as under:

*“36. (x) As a measure for smooth operation of the plant and to avoid unnecessary litigation, the Commission appoints a committee comprising of Secretary, Power/ Govt. of Punjab, CMD/PSPCL and COO/TSPL as ‘Standing Committee on TSPL Project’ to resolve day to day issues. The said Standing Committee shall also be the final authority to determine the additional cost of coal from alternative sources/imported coal procured by TSPL to meet the shortages in coal supplied by CIL or its subsidiaries.”*

The Commission had gone through the MoM dated 16.06.2014 of sub-committee and found that issue of cost of washing of coal was not considered at all by this sub-committee as mentioned in para 43 reproduced above. Further from perusal of para 43 of the amended petition, it is evident that issue has not yet been considered and decided by the committee constituted vide order dated 11.02.2014 of the Commission. The Commission, therefore, advised the ‘Standing Committee on TSPL’ to consider and give its findings and decision through a speaking order on the issue by 22.07.2014. PSPCL was directed to file parawise reply to the petition by 05.08.2014 and the next date of hearing was fixed as 12.08.2014.

During hearing on 24.06.2014, TSPL filed a copy of minutes of meeting of the sub-committee (appointed vide Govt. of Punjab,

Department of Power Memo no.1/9/2014-EB(PR)/378 dated 23.05.2014 on behalf of 'Standing Committee on TSPL Project' held on 16.06.2014. The Commission noted that as per the minutes of meeting dated 16.06.2014, the sub-committee did not consider the issue of cost of washing of coal and evidently the issue was not considered and decided by the committee constituted vide Order dated 11.02.2014. The Commission advised the 'Standing Committee on TSPL' to consider and give its findings and decision through a speaking order on the issue by 22.07.2014. PSPCL was directed to file reply to the petition by 05.08.2014 and next date of hearing was fixed as 12.08.2014.

3. In compliance to Commission's Order dated 24.06.2014, PSPCL, on 24.07.2014, submitted the speaking order of sub-committee with respect to energy charges based on washed coal, wherein, it has been concluded that because of the divergent views of PSPCL and TSPL, the issue needs to be resolved by the Commission.

Subsequent to the hearing on 12.08.2014, the Commission in its Order dated 13.08.2014, conveyed that the said speaking order issued by the sub-committee is required to be considered by the 'Standing Committee on TSPL Project' and a speaking order of the Standing Committee with a clear-cut views expressed in the matter be submitted to the Commission forthwith. The Commission observed that the speaking order of the Standing Committee is still awaited and is of the view that the speaking order issued by the sub-committee is not legally valid. The Order of the Commission dated 11.02.2014 in petition no.60 of 2013 to form a 'Standing Committee on TSPL Project' and the Order of the Commission



dated 24.06.2014 in this petition are orders of a Civil Court as per section 94 of The Electricity Act 2003 and need to be complied with unless the same are stayed by Hon'ble APTEL.

The Commission further directed PSPCL that a copy of the 'Proximate and Ultimate Analysis of Coal' mentioned at Sr. No.5 of the document titled 'Additional information to Bidders for Talwandi Sabo Power Project based on Queries of Bidders' (page 23 of reply dated 06.08.2014) be supplied to TSPL, as requested by counsel of TSPL. The next date of hearing was fixed as 23.09.2014.

4. Subsequent to the hearing on 23.09.2014, the Commission in its Order dated 24.09.2014 observed that PSPCL field reply dated 06.08.2014 to the petition in compliance with directions given vide order dated 24.06.2014. The reply relates to the original petition which was never admitted. TSPL has filed a amended petition dated 17.06.2014 which was admitted by the Commission vide Order dated 24.06.2014. PSPCL submitted during hearing that it realises the mistakes and shall submit amended/fresh reply to the amended petition. PSPCL was directed to file the same by 30.09.2014 with copy to TSPL. TSPL submitted during hearing that it shall file the rejoinder to the reply of PSPCL by 04.10.2014.

PSPCL submitted that as directed by the Commission vide Order dated 13.08.2014, it has supplied a copy of the 'Proximate and Ultimate Analysis of Coal' vide Memo No.3795 dated 25.08.2014. The same was also submitted during hearing by PSPCL. The same was earlier supplied by PSPCL to SEL vide its letter dated 18.04.2008 and email dated 12.06.2008 wherein it

mentioned that the proximate analysis of coal (unwashed coal), taken from MCL is as under:

Ash %	33-34
Moisture % (Eq)	4.8-5.4
V.M. %	24-26
UHV (kCal/kg)	3546-3600
GCV (kCal/kg)	4500-4600

Further, the Commission observed that it had advised the 'Standing Committee on TSPL Project' to give its findings/decision on the issue by a speaking order by 22.07.2014. In response, PSPCL filed speaking order of a 'sub-committee' appointed by Govt. of Punjab, Department of Power. The Commission vide letter dated 01.08.2014 conveyed that the said speaking order of the 'sub-committee' is required to be considered by the 'Standing Committee on TSPL Project' and a speaking order of the standing committee with a clear-cut views expressed in the matter be submitted to the Commission. Govt. of Punjab, Department of Power has, however, expressed vide letter dated 17.09.2014 that the standing committee constituted by the Commission is in violation of Section 97 of The Electricity Act 2003, since the petition no.31 of 2014 (this petition) and petition no. 52 of 2014 are filed under Section 86(1)(b) and 86(1)(f) of The Electricity Act 2003. The Commission has been requested to review its order dated 11.02.2014 and 19.02.2014 and decide the matter without the comment/speaking order of the standing committee. In this regard, the Commission observed that the 'standing committee' was constituted as a measure for smooth operation of the plant and to avoid unnecessary litigation by resolving day to day issues and no power and functions of the Commission had been delegated to this 'Standing Committee' to adjudicate upon the

disputes arising out of PPA between the developer/supplier and procurer under Section 86(1)(b) read with Section 86(1)(f). The Commission is fully aware of its functions under the Act and would go ahead for deciding the matters brought before it, even without the comments/speaking order of the 'Standing Committee on TSPL Project'.

The next date for hearing the arguments of the parties was fixed as 10.10.2014.

5. In compliance to the Commission's Order dated 24.09.2014, PSPCL filed reply dated 30.09.2014 to the amended petition on 01.10.2014 and submitted as under:

- i) The claims made by TSPL purporting to be on the basis of the Changes in Law brought about by MoEF requiring washing of coal subsequent to the cut off date i.e. 7 days prior to the bid deadline is not correct. The bid deadline date under the tariff based competitive bidding process initiated by PSPCL was 23.06.2008. The cut off date for the purpose of considering the Change in Law occurring in the tariff adjustment in terms of Article 13 of the PPA is 16.06.2008 being 7 days prior to the bid deadline on 23.06.2008. Even on the cut off date, there was a directive of the Central Government that in case of coal with ash content of 34% and above requiring transportation to power projects at a distance of 1000 kms and above, it is necessary to undertake washing of coal and transportation of washed coal. In this regard, a copy of Notification of the Central Government dated 19.09.1997 is attached as Annexure A to the reply. There had been a statutory requirement to wash the coal for transportation even at the time of bid i.e. cut off date, in case of

TSPL project, being situated more than 1000 kms from Mahanadi Coalfields Limited (MCL), Odisha from where the coal was to be sourced. Accordingly, there is no Change in Law which has occurred after the cut off date and there cannot be any tariff adjustment or adjustment in the energy charges in regard to washing of coal.

- ii) At the time of bidding, PSPCL had agreed to pay as the fuel cost, only the price that may be charged by the coal company, i.e. MCL. PSPCL had not agreed to make any payment for washing of coal. It was the obligation of the bidder to factor the cost of washing of coal if required to be undertaken for transportation of coal. There was specific query raised by the bidder in this regard during pre-bid conference seeking clarification on the cost of washing of coal being included in the fuel price. The query raised by the bidder was as under:

*“that whether the cost of washing of coal is included in the fuel cost.”*

In response to the above, clarification given by PSPCL was as under:

*“the price of coal for the fuel cost shall be the cost of coal charged by the coal company.”*

TSPL submitted the bid based on the above and should, therefore, be deemed to have accepted the condition that PSPCL will not be required to pay any additional charges for the purpose of washing of coal.

- iii) TSPL will have the advantage of using the washed coal with less ash content being beneficial to the plant and equipment of TSPL thus reducing various operating and maintenance costs.

TSPL will, therefore, have significant advantage in washing the coal before transportation of the coal. In terms of the competitive bidding held and the clarification issued, TSPL can retain such advantage accruing from washing of coal and the use of washed coal.

- iv) As per requirement of Standard Bidding Document (SBD) guidelines, fuel linkage was arranged by PSPCL before the submission of RfP bids. MCL, a subsidiary of CIL issued the Letter of Assurance (LoA) dated 14.08.2008 for supply of 7.72 MTPA in the name of TSPL which, as mentioned above, was the SPV established by PSPCL to be vested in the developer of the power project selected through the competitive bidding process. In the 2<sup>nd</sup> RfP bidder's conference held on 08.05.2008 well before the submission of RfP bids, the bidders were informed regarding coal arrangement that MCL vide letter dated 28.04.2008 had conveyed for supply of 'E' Grade coal up to 5.00 million tonne during 2011-12 and 7.70 MTPA from 2012-13 onwards. Thus, the only representation of PSPCL in the bidding process was that the coal allocation of the above mentioned quantum of 7.70 MTPA from CIL/subsidiaries has been given to the project. The above was made known to all the bidders and the bidders were required to submit their bids based on the above position. It was not open to the bidders to make assumptions of overall liability of PSPCL to arrange quantum of coal being available or otherwise have any claim against PSPCL for procuring coal allocation for higher quantum. TSPL was required to execute the FSA with MCL for the purchase of coal and consequently enter into the transportation agreement

with the Railways to ensure supply and transportation of coal for the generating station. The only obligation of PSPCL towards TSPL was to ensure that there was a coal linkage. There is no obligation of PSPCL to ensure the adequacy, availability of fuel or otherwise engage in the actual supply of fuel to TSPL and all aspects in regard to coal linkage and the FSA were to be dealt with by TSPL and not PSPCL.

- v) PSPCL, vide letter dated 23.12.2009 specifically informed TSPL regarding the FSA for the power project and the same being assigned in favour of TSPL based on the provisions of the bidding document and the PPA. Accordingly, FSA was to be entered into between the TSPL and MCL. After the execution of PPA, TSPL requested the Ministry of Coal, GOI for enhancement of fuel linkage of the project and also requested Ministry of Power, GOI vide letter dated 30.07.2010 to take up the issue with the Ministry of Coal, that the coal linkage quantity should be enhanced from 1800 MW project to 1980 MW project as the original capacity and configuration of the project is 1980 (3 x 660) MW. TSPL had also sought assistance of PSPCL to recommend to the Ministry of Power, GOI for enhancement of the fuel linkage to the project and pursuant to the request of TSPL, it recommended to the Ministry of Power, GOI for the enhancement of the fuel linkage capacity vide letter dated 23.08.2010. TSPL, vide letter dated 04.10.2010 requested MCL to convey any convenient day before the due date (as per LoA) for signing of the FSA with MCL. Accordingly, the contention of TSPL now taken that it is not responsible for the execution of FSA or that the responsibility of supplying fuel to the project is

that of PSPCL is wrong and is a clear afterthought. The relevant clauses of the RfQ, RfP, PPA and the communications exchanged between the parties clearly envisage that there would be a fuel linkage for 7.70 MTPA and the FSA and fuel linkage shall be assigned to TSPL. It is, therefore, wrong on the part of TSPL to allege that PSPCL had itself or under the orders of the Commission or by virtue of any provisions in the bidding documents, accepted the obligation to arrange fuel.

- vi) The interpretation put forth by TSPL to Schedule 7 of the PPA is wrong. The energy charges payable by PSPCL to TSPL, in so far as the fuel cost is concerned, are restricted to the cost of coal charged by the coal company and it is not liable to pay any other charges.
- vii) The requirement of washing of coal in regard to the coal supplied from the coal company at a distance of 1000 kms from the power project was in existence at the time when the bidding process was undertaken by PSPCL and TSPL was fully aware of the above requirement. There is no Change in Law in regard to the requirement of washing of coal as the notification dated 02.01.2014 issued by MoEF is not the first occasion where the requirement of washed coal to be used has been imposed. In this regard, notification of the Govt. of India issued in the year 1997 be also referred to, wherein the requirement of washing of coal had been duly specified. TSPL is mixing up the issue of environmental clearance given for the power project and operation of power plant with the requirements of aforesaid notification of 1997 dealing with conditions of transportation of coal. The nature of the conditions are different and in the case

of power project situated at a distance of 1000 kms and above from the coal mine, the environment notification of 1997 is to be additionally complied with, independent of environmental clearance dated 11.07.2008 of MoEF. The allegations that the requirement to undertake washing of coal is an event subsequent to the cut off date specified in the bidding documents are wrong.

viii) The requirement to wash the coal in regard to the power projects which are at a distance of 1000 kms and above from the coal mine and where the ash content is more than 34% was existing at the time of bidding and accordingly coal of E Grade and F Grade to be supplied by MCL was required to be washed. It is not correct that such requirement came for the first time in the Environment (Protection) Amendment Rules, 2014. In the pre-bid conference a clarification was sought as to whether the cost of washing of coal would be separately paid and PSPCL had clarified that it will be liable to pay only the price of coal as charged by the coal company. PSPCL did not assure the bidders the availability of coal from the coal mines of ash content of less than 34% and it was required only to provide the coal linkage. The arrangement for the fuel including the grade of coal that would be available was entirely between TSPL and MCL. The LoA issued by MCL for supply of E/F Grade was clearly to the effect that ash content in the coal would be more than 34%. Also, the Commission's Order dated 24.12.2012 in petition no. 46 of 2012 in regard to the cost of coal to be paid does not in any manner deal with any additional cost to be paid for washing of coal and the same is restricted to the cost of coal



to be charged by MCL qua the grade of coal supplied by it. The reliance placed by TSPL on the details provided by PSPCL during the determination of ARR for FY 2013-14 to state that as PSPCL had provided total quantity of washed coal being used at its own thermal generating station is misconceived. Similarly, the reliance placed by TSPL on the fact that some central generating stations of NTPC also use washed coal to make a case that PSPCL has entitlements from these generating stations, it is already paying for washed coal is entirely misconceived and erroneous.

- ix) With respect to the tendering process conducted by TSPL for washing of coal, PSPCL is not required to pay the cost of washing of coal. As per the terms and conditions of the bid, cost of washing of coal is to the account of TSPL and accordingly cost of washed coal cannot be included as part of weighted average actual cost of coal for computing energy charges.
- x) Details of the elements of coal washing contract between ACB (India) Limited and TSPL based on bid submitted by ACB (India) Limited are irrelevant in the instant matter. The cost of washing of coal is entirely to the account of TSPL. Consequently, surface transportation charges, which may be incurred by TSPL for unwashed coal, for payment to its contractor cannot also be considered as a pass through.
- xi) In terms of the provisions of the PPA, the monthly energy charges are payable as per the Schedule 1.2.3 and the formula given there under. This includes transportation charges. The PPA does not provide for any adjustment for the transit loss of the coal. In the absence of any agreement for the transit loss

adjustment, the same is not admissible for payment under the tariff. In this regard, Article 11 of the PPA deals with the payment of monthly tariff in accordance with Schedule 7 of the PPA. Article 7 of the PPA does not refer to the application of the Tariff Regulations of the Commission for the purpose of determination of the monthly energy charges. Accordingly, the claim for adjustment of the monthly energy charges for transit loss made by TSPL is not in accordance with the provisions of the PPA.

xii) The claim for the fuel cost, transportation cost and unloading cost are entirely covered by the provisions as per the formula contained in clause 1.2.3 of Schedule 7 of the PPA. TSPL has claimed a sum of ₹100 per tonne for unloading of the coal at the power project. TSPL is required to place satisfactory evidence of the charges paid for unloading of the coal. The provisions of Annexure 12 to the revised petition filed by TSPL do not justify the unloading charges claimed by it.

xiii) The modalities of computation of monthly energy charges have been clearly specified in clause 1.2.3 of Schedule 7 of the PPA. It is denied that:

- a) TSPL can claim charges for washing of coal from the entity which is selected by it either pursuant to the competitive bidding process or otherwise.
- b) PSPCL is liable to pay for the difference in the GCV of the coal except as provided in clause 1.2.3 of Schedule 7.
- c) TSPL is entitled to claim any adjustments for the coal cost being on 'as fired basis' other than those covered in the formula under Schedule 7.

- d) Bid of the Sterlite Power Ltd. was filed on the premise of the coal cost and GCV being determined on 'as fired basis' and not on 'as received basis'.

6. TSPL, through submissions dated 06.10.2014, filed rejoinder to the reply dated 30.09.2014 of PSPCL. TSPL submitted as under:

- i) The contention of PSPCL that TSPL is seeking increased energy charges is incorrect as TSPL in its petition only requested for approval of modalities of energy charges computations including coal washing charges as per the provisions of the PPA and not the increased energy charges.
- ii) The contention of PSPCL that TSPL has claimed for approval for modalities of cost of coal including cost of washed coal to be included as part of fuel cost for computing the tariff on the basis of Change in Law is completely incorrect as this claim has nowhere been made in the petition. TSPL has only requested for the inclusion of coal washing charges as it is the cost to be incurred by it for abiding by the laws of the country.
- iii) TSPL did not receive the quality of coal it was promised by PSPCL during bidding. PSPCL, in RfP bid conference held on 08.05.2008 vide its presentation as well as mail dated 12.06.2008 had assured that MCL vide letter dated 28.04.2008 had agreed to supply E-Grade coal with ash content in the range of 33-34% up to 5 million tonne during FY 2011-12 and 7.70 MTPA from FY 2012-13 onwards for the project. In the additional information sent by e-mail to all the bidders on 12.06.2008, TSPL (SPV of erstwhile PSEB) provided the proximate analysis of the coal wherein ash content was

mentioned as 33-34% and GCV of coal 4500-4600 kCal/kg. The LoA issued by MCL on 14.08.2008 was provided to the petitioner after it entered into the PPA with PSPCL after acquisition of TSPL by SEL on 01.09.2008. LoA was issued on 14.08.2008 i.e. much after the date of submission of financial bid (18.06.2008) by SEL and issuance of Lol dated 04.07.2008 to SEL by PSPCL. It came to the knowledge of TSPL only upon receipt of LoA that the MCL reserved a right to provide Grade E/F coal for the project under the LoA as against the assured supply of Grade E coal only as per MCL letter dated 28.04.2008. As per Ministry of Coal, GOI, Gradation of Coal document, ash plus moisture content of E Grade coal is 34.1% - 40% and that of F Grade coal is 40.1% - 47%. Hence, washing of such coal is necessary. In case the coal being supplied would have been of the same quality as informed by PSPCL and confirmed vide its mail dated 12.06.2008 just before the final bid submission, TSPL need not require the washing of coal at all to meet MoEF stipulation. The coal being supplied is not of the same quality as committed, TSPL has to resort to washing of coal to abide by the notification of MoEF dated 02.01.2014.

- iv) PSPCL has mentioned in its reply that during the pre-bid conference, one of the bidders had raised the query “that whether the cost of washing of coal is included in the fuel cost”. In reply to such query of the petitioner, the PSPCL did not deny that the cost of washing shall not be included in the fuel cost. PSPCL merely replied that “the price of coal for the fuel cost shall be the cost of coal charged by the coal company”. The reply of PSPCL does not deny that the coal washing charges

will not be included as part of energy charges. Moreover, the same is also not in accordance with the PPA signed later which stipulates that the cost of coal for purchasing, transporting and unloading is to be considered as the cost of coal. The aforementioned clarification of PSPCL implies that if the washing is done by coal company before supplying the coal, the washing charges will be considered as part of fuel cost. When the petitioner is getting the washing done, PSPCL is objecting to include the washing charges as part of coal cost. Had PSPCL intended to clearly deny the inclusion of the coal washing charges to be part of cost of fuel, which is not the case here, it would have clearly replied to the petitioner's query by stating that the coal washing charges shall not be the part of cost of fuel.

- v) The contention of PSPCL that TSPL deemed to have accepted the condition that PSPCL will not be required to pay any additional charges for the purpose of washing of coal is totally illogical and incorrect as no such condition was mentioned in any of the documents issued by PSPCL before the bidding. Further, the bidding was conducted on the basis of Capacity Charge and Net Heat Rate and hence it was not possible for the petitioner to factor the coal washing charges as part of energy charges at the time of bidding as no energy charge was quoted by the petitioner. The Capacity Charges component of tariff is intended to recover only the fixed costs and does not include any cost related to fuel costs. PSPCL had informed about the coal quality having ash content less than or equal to 34%.

Therefore, the petitioner did not include coal washing charges in the bid submitted by it.

vi) As regards the contention of PSPCL that TSPL will have advantage of using washed coal with less ash content being beneficial to the plant and equipment is irrelevant as washing of coal is required to meet the MoEF stipulations.

vii) As regards PSPCL's submissions in the reply that its only obligation towards TSPL was to ensure that there was a coal linkage available for the project as per the representation given in the bidding documents, it is submitted that it is due to PSPCL's failure to fulfil its obligation to ensure the coal linkage as per the representations given at the time of bidding that TSPL had to file this petition to include the coal washing cost in the computation of tariff. During bidders' conference held on 08.05.2008, PSPCL informed that MCL vide letter dated 28.04.2008 has conveyed supply of 'E' grade coal upto 5 million tonne during 2011-12 and 7.70 million tonne from 2012-13 onwards. However, upon receipt of the LoA, it came to the knowledge of TSPL that MCL reserves a right to provide E/F grade coal for the project under the LoA as against the assured supply of E grade coal. Subsequently, FSA was signed between MCL and TSPL, for supply of E/F grade of coal. Hence, PSPCL has failed to fulfil its obligation to provide the coal linkage as per the representations given at the time of bidding.

As submitted by PSPCL itself, the definition of coal cost as provided at the time of bidding as well as in the PPA is as follows:

*“.....  $F^{COAL}_n$  is the weighted average actual cost to the Seller of purchasing, transporting and unloading the coal most recently supplied to and at the Project before the beginning of month “m” (expressed in Rs./MT in case of domestic coal).....”*

- a) With regard to ‘Actual cost of purchasing, transporting and unloading’ in the above para, it is submitted that the coal linkage was arranged by PSPCL. In order to be able to transport and use this linkage coal arranged by PSPCL, it is incumbent upon TSPL to get the coal washed in order to meet the MoEF norm. Hence, costs associated with washing of coal form an integral part of cost for purchasing, transporting and unloading the coal to the project.
  - b) Further, words ‘coal most recently supplied to and at the project’ in the above para clearly indicate that all the costs incurred for supply of coal arranged by PSPCL upto the project site is to be considered for computation of energy charges. TSPL is mandated by law to get the linkage coal with ash content more than 34% washed before supply upto the project site.
- viii) The matter relating to responsibility of arranging the coal is sub-judice with Hon’ble APTEL. TSPL, in this petition is only claiming that the quality of fuel promised by PSPCL vide MCL letter dated 28.04.2008 and in RfP bid conference dated 08.05.2008 and e-mail dated 12.06.2008 before the financial bid submitted by SEL dated 18.06.2008, was different as compared to the quality of fuel mentioned in the LoA dated 14.08.2008.
- ix) PSPCL’s claim that energy charges payable to TSPL are restricted to the cost of coal charged by the coal company is not in accordance with the terms and conditions of the PPA. As per the provisions of PPA, the weighted average actual cost of coal includes the ‘actual cost of purchasing, transporting and

unloading'. In order to be able to transport and use this linkage coal having ash content of more than 34%, it is incumbent upon the petitioner to get the coal washed in order to meet the MoEF norm. Hence, costs associated with washing of coal form an integral part of cost for purchasing, transporting and unloading the coal to the project. Further, the PPA stipulates the cost of 'coal most recently supplied to and at the project' to be considered for computation of tariff, which clearly indicates that all the costs incurred for supply of coal up to the project site is to be considered for computation of energy charges.

- x) As regards PSPCL's contention regarding surface transportation charges, which are being incurred by TSPL for transportation of unwashed coal from the mines to washery, it is submitted that these surface transportation charges are levied by MCL also for transportation of ROM coal to the nearest siding. Hence, whether washing happens or not, surface transportation charges are to be paid either to MCL or to the washery operator. In case of coal not being washed, these charges are included in MCL bill and in case of washing, these charges get included in the bill issued by washery operator.
- xi) As regards the consideration of GCV on 'as fired basis', the claim of PSPCL that the relevant Regulations of the Commission as well as the Tariff Orders of the Commission cannot be applied to tariff based competitive bidding process is completely wrong. The Commission, itself has recognised in its Tariff Order dated 16.07.2012 in the matter of approval of ARR of PSPCL for FY 2012-13 that the GCV of coal on 'as fired basis' i.e. Bunkered GCV shall be lower than GCV of coal



received at site. Such fact applies to the plants based on competitive bidding process particularly more so when the bidding has happened on Heat Rate Basis, as much as it applies to the plants of PSPCL. Further, in consideration of the fact that the provisions of PPA clearly stipulate that the calorific value to be considered for computation of energy charges is based on “weighted average gross calorific value of the coal most recently delivered to the Project”, the submission of TSPL for allowing GCV on as fired basis is completely justified. When the bids were submitted, PSEB was allowed the actual coal costs and actual calorific value based on the Heat Rate approved by the Commission. Accordingly, TSPL also assumed that the same treatment will be applicable for its plant as the bidding for energy charges was on Net Heat Rate basis with the only difference that instead of Heat Rate as per Regulations, Net Heat Rate as quoted by bidder will be considered for computing the energy charges based on actual coal cost and actual GCV.

- xii) The Commission is required to consider the fact that CIL has adopted the approach of billing on the basis of eGCV values of coal after the signing of PPA by TSPL with PSPCL, and hence, TSPL cannot be made to suffer on account of such change in approach by CIL in measurement of GCV in view of the fact that the Commission allows computation of GCV for PSPCL plants on ‘as fired basis’.
- xiii) As regards PSPCL’s contention that the PPA does not provide for any adjustment for the transit loss of coal, it is submitted that fuel cost as per the provisions of PPA is as follows:

*“..... $F^{coal}$  is the weighted average actual cost to the seller of purchasing, transporting and unloading the coal most recently supplied to and at the project before the beginning of month “m” (expressed in Rs./MT in case of domestic coal).....”*

The fuel cost as per PPA as mentioned above clearly stipulates the actual cost of coal most recently supplied to and at the project and hence when the cost of fuel is to be considered as supplied to the project, it also includes the transit loss which is also a sort of cost incurred for supplying coal to any thermal power project. Further, as per industry practice, the cost towards transit loss is factored as part of coal cost delivered to power station. Though the PPA does not provide for any ceiling limit on transit losses, TSPL of its own has proposed the ceiling of 1%, which is also applicable for PSPCL plants.

xiv)As regards the charges towards unloading of coal, PSPCL has submitted that TSPL is required to place satisfactory evidence of the charges paid for unloading of coal as TSPL has claimed a sum of ₹ 100/- per tonne for unloading of the coal at the power project site. In this regard, it is submitted that the bills for energy charges will be raised considering the actual charges towards unloading of coal.

xv)Considering the quality of coal supplied to the TSPL's plant vis-a-vis the quality of coal promised during the RfP bid conference held on 08.05.2008 at Chandigarh, e-mail dated 12.06.2008 just before the submission of price bids, stipulations of MoEF vide its notification dated 02.01.2014, as well as the other submissions made by TSPL, the Commission is requested to direct PSPCL to pay the energy charges based on the computation of energy charges for a particular month based on

weighted average actual cost of coal including various associated costs incurred for arrangement of washed coal at TSPL site after necessary washing.

7. During hearing on 10.10.2014, the arguments on behalf of petitioner and respondent were heard at length. The Commission in its Order dated 13.10.2014 raised certain queries and directed the parties to file replies to the same by 27.10.2014. The Commission also directed the parties to file their respective written note of arguments by 27.10.2014 with copy to each other and fixed the next date of hearing as 31.10.2014. The following queries were raised by the Commission:

- i) In terms of notification dated 19.09.1997 of Ministry of Environment and Forests, 'beneficiated coal' can be obtained through physical separation or washing process. Comparative cost analysis of both the process?
- ii) Which of the technologies (i.e. Circulating Fluidised Bed Combustion or Atmosphere Fluidised Bed Combustion or Pressurized Fluidised Bed Combustion or Integrated Gasification Combined Cycle technologies or any other clean technologies as may have been notified by the Central Government in Official Gazette), the petitioner's thermal power plant is using?
- iii) Presumably, at the pre-bid stage, the procurer also supplied the coal sample analysis for the month of Feb 2008 furnished along with letter dated 28.04.2008 from MCL wherein weighted average ash content of 34.41% during Feb 2008 & 34.74% for Jan 2008 was already indicated for supply of 'E' grade coal (ash

content 34.1% to 40%). Also, in reply to a specific query by bidder as to whether cost of washing of coal is included in the fuel cost, the procurer clarified at the pre-bid stage that price of coal shall be the cost of coal charged by the coal company. Despite that the petitioner is claiming at this stage that washing charges are payable by the procurer. Reasons may be given.

iv) What are eGCV values of coal and its difference with GCV of coal on 'As Received Basis'?

8. In compliance to the Commission's Order dated 13.10.2014, PSPCL filed its written submissions on 27.10.2014 wherein it reiterated its earlier submissions made in the reply dated 30.09.2014 to the petition.

9. TSPL filed reply dated 27.10.2014 to the queries of the Commission raised in the Order dated 13.10.2014 as follows:

i) In reply to the query of the Commission that in terms of MoEF notification dated 19.09.1997, 'beneficiated coal' can be obtained through physical separation or wash process and for providing the comparative cost analysis of both the processes, TSPL submitted as under:

a) As per PPA, the GCV of coal is defined as under:

*"PCV<sub>n</sub> is the weighted average gross calorific value of the coal most recently delivered to the Project before the beginning of month "m" expressed in kCal/kg".*

PSPCL in its reply dated 30.09.2014 has acknowledged that GCV of coal is to be determined on "As Received" basis.

- b) The approximate costing for unwashed (raw) coal works out to ₹ 1.33/kCal and the same for washed coal works out to ₹ 1.11/kCal. The washed coal is cost effective as compared to unwashed coal and unwanted ash is not being transported over long distances saving fuel, a national resource.
- ii) In reply to the query with regard to the technology, the petitioner's thermal power plant is using, TSPL replied that its plant is not using any of the aforementioned technologies. TSPL plant is based on super critical pulverised fuel technology.
- iii) In reply to the query at Sr. No.(iii) in para 7 above, TSPL submitted as under:

The letter dated 28.04.2008 of MCL was in the name of Talwandi Sabo Power Limited (SPV) which was part of PSEB and not owned by the petitioner. The said letter was provided after SEL acquired the SPV after winning the bid. Since it had not been provided with the letter dated 28.04.2008 from MCL before the bidding, the coal analysis contained therein is not relevant to the petitioner's case. The information regarding ash content being 34.41% and 34.74% was never made available to the petitioner till the bid submission date. The only information shared was that ash content of coal would be less than 34% even when PSPCL was aware of ash content being higher. All communications from PSPCL such as RfP document dated 18.01.2008, letter dated 18.04.2008, email dated 12.06.2008, PPA dated 01.09.2008 and MoU dated 02.09.2008 mentioned that unwashed coal shall be provided that would have ash content of less than 34%.

In reply to the query of one of the bidders 'that whether the cost of washing of coal is included in the fuel cost', PSPCL replied that 'the price of coal for the fuel cost shall be the cost of coal charged by the coal company'. PSPCL did not deny that the cost of washing shall not be included in the fuel cost. PSPCL's reply meant that the price of coal for the fuel cost shall be the cost of coal charged by coal company which implies that if the washing is done by coal company, the washing charges will be considered as part of fuel cost for payment purposes and same was also admitted by PSPCL during hearing of 10.10.2014. On the other hand, when TSPL is getting the washing done, PSPCL is objecting to include the washing charges as part of coal cost.

If the petitioner had included washing charges in its bid, it would have resulted into double benefit for it as coal washing cost would have been paid to coal company as well as to the petitioner.

- iv) In response to the query as to eGCV values of coal and its difference with GCV of coal on 'As Received Basis', TSPL submitted that eGCV stand for equilibrated GCV which means that GCV of coal is measured in a controlled environment having a temperature 40 degree celsius and relative humidity of 60%. eGCV considers only inherent moisture of coal and does not include surface moisture.

GCV on ARB basis means the GCV of coal which is measured for ambient conditions on 'as is where is basis'. GCV on ARB is calculated by taking total moisture into consideration.

10. During hearing on 31.10.2014, arguments on behalf of TSPL were heard in detail. TSPL concluded its arguments. The Commission vide its Order dated 04.11.2014 directed PSPCL to file reply to the queries raised in Order dated 13.10.2014. The Commission further directed the parties to submit by 11.11.2014, the details in respect of the billing and payment being made for coal delivered and received at the project alongwith a copy of the latest monthly bill and the payment details thereof. Further, the parties were directed to justify their respective claims in terms of the relevant clause of the PPA pertaining to the payment of monthly energy charges for a particular month which are payable as per clause '1.2.3 Monthly Energy Charges [for Scenario 4 as mentioned in clause 2.7.1.4 of the RfP]'. The Commission directed that reply arguments on behalf of PSPCL shall be heard on 18.11.2014.

11. TSPL filed reply on 13.11.2014 in respect of their claims in terms of the relevant clause of the PPA pertaining to the payment of monthly energy charges pertaining to a particular month, as directed by the Commission vide its Order dated 04.11.2014 and submitted as under:

i) GCV of Coal taken by TSPL:-

The Schedule 7 of the PPA mentions that GCV for payment purposes for the energy should be the GCV of the coal most recently delivered to the project. As per PPA, the 'project' is Talwandi Sabo Power Limited in Village Banawala, Mansa, Punjab. It is clear from the above that GCV of the coal is to be measured at the project site and accordingly TSPL has taken the GCV on As Fired Basis (AFB) at its bunker. The prudent

business practice in the country at the time of bidding and till very recently was to measure GCV at project site on as fired basis for billing to procurer. Same was being done by PSPCL's own plants. Prior to change in CERC (Terms & Conditions of Tariff) Regulations, 2014-2019, PSPCL was being allowed actual AFB GCV value which was later subjected to a maximum drop of 150 kCal/kg in the GCV on As Received Basis (ARB) for FYs 2012-13 and 2013 -14. TSPL has on its own regulated its AFB GCV to actual AFB GCV as measured at the bunker subject to maximum drop of (-) 150 kCal/kg on GCV measured at project site on ARB basis. Also, PSPCL has already acknowledged that GCV for TSPL payment purpose shall be the GCV on ARB basis.

ii) Cost of Coal taken by TSPL:

As per the definition of  $F^{\text{COAL}}_n$ , the cost of coal to be taken for billing purpose is the 'actual cost' for delivering coal to the 'project site'. Cost of unloading and transportation are defined as costs to be included for calculating the price of coal delivered to project site in Schedule 7 of the PPA. Transit losses are the costs associated with the loss of quantity when the coal is transported. The Commission is allowing a transit loss of 1% or actual, whichever is lower, to all PSPCL plants. TSPL has on its own regulated its claim of transit losses to 1% or actual, whichever is lower. As regards washing charges, PSPCL has already acknowledged that cost of washing, if done by coal company, would have been paid by PSPCL.

iii) As regards the billing calculation by TSPL, the methodology is as mentioned in the PPA. TSPL is taking the consumption



quantity as per Goods Receipt Note at the plant and transit loss is adjusted in this quantity.

iv) With respect to details of payments made by PSPCL, various components under coal cost, washing, transportation, unloading etc. which are paid/not being paid by PSPCL are brought out hereunder:

a) Coal Cost:

PSPCL is paying cost of raw coal as billed by MCL and user fee for movement of raw coal from mine to washery but surface transportation to transport coal from mine to washery and service tax (including education cess & higher education cess @ 3.09%) are not being paid by PSPCL.

b) Washing, Transportation:

PSPCL is paying railway freight for transportation of coal from washery siding at washery end to TSPL and railway engine trip charge at TSPL end (paid in some bills) but PSPCL is not paying washing charge per MT of coal (washed) including impact of washing yield, yield loss during washing process, service tax (including education cess & higher education cess @ 12.36%), transportation of coal (washed) from washery to siding, siding charges (loading of washed coal into Rail wagons), service tax on transportation, loading & siding charges (including education cess & higher education cess @ 12.36%), User fee paid to Govt. of Orissa for movement of coal (washed) from washery to siding & loading into rail wagons, diesel consumed for TSPL Loco for coal movement till unloading, operating charges of TSPL

loco, other Rake handling & in-plant movement charges related to unloading and transit loss.

- c) Unloading charges of coal (washed & alternate) at TSPL site are not being paid by PSPCL.
- v) Copy of the monthly bill dated 31.07.2014 for July 2014 has been attached along with details of payment made by PSPCL. PSPCL has not shared with TSPL the basis of calculation based on which the payment has been made.
- vi) TSPL's claims are justified as per the terms of the PPA as explained above and in earlier submissions.

12. In compliance to the Commission's Order dated 13.10.2014 and 04.11.2014, PSPCL vide letter dated 14.11.2014 filed written submissions along with reply to queries raised by the Commission and submitted as under:

- i) In reply to the query of the Commission that in terms of notification dated 19.09.1997 of Ministry of Environment and Forests, 'beneficiated coal' can be obtained through physical separation or wash process and providing the Comparative cost analysis of both the processes, it is submitted that:

- a) The notification dated 19.09.1997 provides as under:

*"2. In the Environment (Protection) Rules, 1986, after sub-rule (7) of rule 3, the following sub-rule shall be inserted, namely:*

*"(8) On and from the 1<sup>st</sup> of June, 2001 the following coal based thermal power plants shall use beneficiated coal with an ash content not exceeding thirty-four per cent, namely;*

- (i) any thermal power plant located beyond one thousand kilometres from the pit-head and*
- (ii) any thermal power plant located in urban area or sensitive area or critically polluted area irrespective of their distance from pit-head except any pit-head power plant.”*

b) The term ‘Beneficiated Coal’ has been defined in the said Notification as under:

*“(a) “beneficiated coal” means coal containing higher calorific value but lower ash than the original ash content in the raw coal obtained through physical separation or washing process;”*

- c) The beneficiated coal should have the characteristics of high calorific value and the reduction of the ash content in the coal as mined.
  - d) Reduction in ash content of the coal can be either through physical process or through washing process. The normal course of separation of ash content is through washing process, particularly, in the case of coal of Grade E, Grade F etc. which has higher quantum of ash content. The physical separation may be possible in the case of coal of higher Grade such as Grade A or B where the ash content may be in the range of 20%. PSPCL is not involved in the activities of separation of coal by physical segregation. The cost of washing the coal needs to be provided by TSPL which is undertaking the washing in compliance with the environmental requirements.
- ii) In reply to the query as to which of the technologies (i.e. Circulating Fluidised Bed Combustion or Atmosphere Fluidised Bed Combustion or Pressurized Fluidised Bed Combustion or

Integrated Gasification Combined Cycle technologies or any other clean technologies as may have been notified by the Central Government in official gazette), the petitioner's thermal power plant is using, it is submitted that these aspects are within the knowledge of TSPL. However, the technology used at TSPL is the Super Critical Technology where the main steam operating pressure is above 221 Bar and the steam temperature is above 565 degree centigrade. The technology is a clean technology as it improves the efficiency and reduces the emissions.

iii) The Commission raised the query "presumably, at the pre-bid stage, the procurer also supplied the coal sample analysis for the month of Feb 2008 furnished along with letter dated 28.04.2008 from MCL wherein weighted average ash content of 34.41% during Feb 2008 & 34.71% for Jan 2008 was already indicated for supply of E Grade coal (ash content 34.1% to 40%). Also, in reply to a specific query by bidder as to whether cost of washing of coal is included in fuel cost, the procurer clarified at the pre-bid stage that price of coal shall be the cost of coal charged by the coal company. Despite that, the petitioner is claiming at this stage that washing charges are payable by the procurer. Reasons may be given." In reply to the above, it is submitted as under:

a) All the bidders were informed prior to the bidding about the coal quality being with ash content of 34.4% and Grade of coal as E. The bid deadline was 23.06.2008 and cut off date for the purpose of considering the Change in Law as per Article 13 of PPA was 7 days prior to the bid deadline i.e

16.06.2008, prior to which there were communications and also pre-bid conference on 08.05.2008. The bidders were called upon to attend the pre-bid conference vide email dated 03.05.2008. In the aforesaid email, the analysis result of joint samples obtained from MCL was also duly furnished indicating ash content of 34.4% and the grade of coal as Grade E. It is wrong for TSPL to contend that it did not receive the analysis of the coal communicated by MCL vide letter dated 28.04.2008 whereas email dated 03.05.2008 specifically refer to this letter and the said email was addressed to bidder's representatives. Further, the website of Coal India Ltd. also provides for the ash content range in various grades of coal.

- b) PSPCL had specifically clarified to the bidders that it will be paying only the price of the coal as charged by the coal company. In the pre-bid clarification, the query was raised by the bidder

*“that whether the cost of washing of coal is included in the fuel cost”*

In response to the above, clarification given by PSPCL was as under:

*“the price of coal for the fuel cost shall be the cost of coal charged by the Coal Company”*

- c) CIL by issuing the letter of allocation and the analysis of coal vide letter dated 28.04.2008 had not assumed any obligation in regard to the supply of coal namely undertaking the washing process by the Coal Company itself. It is not correct for TSPL to say that if the coal is washed at CIL, PSPCL would have paid the washing charges as an addition to the

price of coal and if the coal is not washed by CIL but by some other agency, PSPCL would not pay for the same. As per the clarification given by PSPCL in the pre-bid conference, the bidders had clearly proceeded on the basis that CIL will not be undertaking the washing of coal and at the same time washing of coal would be required to be undertaken.

- iv) In response to the query as to eGCV values of coal and its difference with GCV of coal on 'As Received Basis', it is submitted that eGCV is the equilibrated GCV at standard conditions of relative humidity of 60% and temperature of 40 degree centigrade when maintained for minimum 72 hours whereas GCV on 'As Received Basis' takes into account all the moisture present. PSPCL is not liable to pay for the difference in the GCV of coal. It is required to pay for the energy charges only as provided in Schedule 7 of PPA and TSPL is not entitled to claim any adjustments for the coal cost being on 'as fired basis' other than those covered in the formula under Schedule 7 which defines GCV to be the weighted average gross calorific value of the coal most recently delivered to the project before the beginning of the month. The Schedule 7 of the PPA dealing with the energy charges does not cover washing of coal.
- v) As regards the Commission's directions in its Order dated 04.11.2014 with respect to justification of claims, it is submitted that in terms of the provisions of the PPA, the monthly energy charges are payable as per clause 1.2.3 of Schedule 7 and the formula given thereunder. Except the said cost, no other charges are admissible for payment to TSPL by PSPCL under

the monthly energy charges to be adjusted. In the above formula, there are three specific cost elements which have been specified as purchasing, transportation and unloading. PSPCL reiterates its earlier submissions in respect of these cost elements. Copy of the monthly bill is submitted.

13. During hearing on 18.11.2014, arguments on behalf of the parties were heard in detail by the Commission. The parties sought to file comprehensive written submissions. The Commission directed both the parties to file comprehensive written submissions by 10.12.2014. The next date of hearing was fixed as 08.01.2015.

14. In compliance with the Commission's Order dated 18.11.2014, PSPCL filed consolidated written submissions dated 08.12.2014 wherein it reiterated its earlier submissions.

15. TSPL filed comprehensive written submissions dated 09.12.2014 in compliance with Commission's Order dated 18.11.2014. TSPL reiterated its earlier submissions and further submitted as under:

- i) PSPCL has failed to honour its representations and assurances to provide coal having ash content of less than 34% due to which the petitioner had to undertake the exercise of washing of coal in order to meet MoEF norms. TSPL is bound to comply with applicable laws as per Article 7 of the PPA.
- ii) The design of Case-2, Scenario 4 bidding does not envisage factoring of energy charges in the financial bid. As per clause 4.2 of the 'Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees' dated 19.01.2005 (CBG) and subsequent amendment till the bid

deadline, TSPL was merely required to quote Capacity Charges and Net Heat Rate for the purpose of bidding. Furthermore, only the cost of secondary fuel had to be included in capacity charges for recovery of fixed cost and nothing related to primary fuel charges i.e. coal was required to be factored in the financial bid. Hence, washing charges which are related to primary fuel could not have been included in the Capacity Charges quoted by the bidder. The bidder was required to quote only one component related to energy charges i.e. Net Heat Rate for the purpose of the bid. GCV and the price of fuel (i.e. the other two components for calculating energy charges as per CBG) provided by PSPCL at the time of bid were notional in nature and were used only for the purpose of evaluation of the bids. Further, if washing charges are included in Capacity Charges, then the cost of washing the coal will become payable to TSPL by PSPCL irrespective of the fact whether energy is scheduled or not. Quality of coal from a mine keeps changing with time and thus ash quality of raw coal cannot be predicted over a long period of 25 years and no bidder could have anticipated washing charges for such a long period. Furthermore, the cost of washing would become payable by PSPCL even in a situation where washing of coal is not required to meet MoEF norms. In the light of above, the cost of washing of coal cannot have been construed to form a part of Capacity Charges as submitted by PSPCL.

- iii) As per clause 3 of the RfP document dated 18.02.2008, the bidders were required to quote different components of the tariff as per clause 3.3.1.3 i.e. Non-Escalable Capacity Charges,



Escalable Capacity Charges and Heat Rate. Energy Charge is a function of the SHR, weighted average GCV of coal and weighted average price of fuel as per the formula provided in CBG. TSPL was only required to quote the SHR for the purpose of the bid. Hence, it was completely immune to any risk with respect to the GCV of coal and cost of coal to be arranged by PSPCL including the cost of washing which forms a part of the weighted average price of the fuel.

Since no energy charges were to be quoted as per the CBG or RfP, the petitioner was not required to include the charges of washing of coal as a part of energy charge at the time of bidding under Case-2 Scenario 4 bidding process, which does not envisage the factoring of any kind of energy charges in the financial bid.

- iv) In response to the PSPCL's contention that the term 'Capital and Operating Costs' mentioned in clause 2.7.1.4 of the RfP includes the cost of washing, it is submitted that the provisions of clause 2.7.1.4 of the RfP relates to the financial bid submitted by TSPL. As per clause 2.7.1.4 (1) TSPL was required to quote only Capacity Charges and Net Heat Rate in the financial bid. A conjoint reading of the provisions of sub clause (3) and sub clause (6) of clause 2.7.1.4 of the RfP, ascertains that sub clause (3) of clause 2.7.1.4 refers to only Capacity Charges and involves inclusion of only secondary fuel cost in the quoted tariff. Therefore, the cost of washing which is part of energy charges cannot be included in 'Capital and Operating costs' as contended by PSPCL.

- v) Washing charges are considered for payment as part of the energy charges by the CERC as well as various State Regulators including this Commission even though the regulations do not specify to include the same to be paid as a part of energy charges. NTPC plants and PSPCL's own plants in Punjab are being paid washing charges as part of energy charges. Though there is a difference between NTPC plants and the TSPL plant in terms of regulatory frame work under which they are governed yet NTPC plants are being paid the cost of coal washing despite the fact that their PPA's do not mandate the same.
- vi) During the time of bidding, a specific query had been raised by a bidder seeking clarification as to whether the cost of washing of coal would be included in the fuel cost. In reply to the said query raised, PSPCL provided a clarification that 'the price of coal for the fuel cost shall be cost of coal charged by the coal company'. The clarification tendered by PSPCL was vague and contradictory as it did not address the query raised. If PSPCL intended to deny the inclusion of washing charges, it would have clearly replied to the query stating that the cost of washing would not form a part of the cost of the fuel. Further, the clarification issued by PSPCL implies that if the coal is washed by CIL before supplying the coal, then the washing charges would form a part of the fuel cost, however, if TSPL undertakes the exercise of washing, PSPCL would exclude the same from forming a part of the fuel cost. Therefore, such a clarification issued by PSPCL is not only vague, but also contradictory. If

the washing charges can be payable to the coal company, by the same logic, the same should also be payable to TSPL.

vii)PSPCL's contention that washing of coal would have to be done by any agency other than CIL or MCL is erroneous as both CIL and MCL are mandated by law (MoEF norms dated 02.01.2014) to supply washed coal. PSPCL contention that coal company has not assumed any washing obligation or washing was an activity to be done independent of any activity to be undertaken by the coal company is incorrect.

viii)During the course of arguments, PSPCL, relied on an e-mail dated 03.05.2008 which purportedly mentioned that the coal procured from MCL would have ash of more than 34% which is not mentioned anywhere earlier. All the communications from PSPCL regarding bidding contains reference of RfP documents/updation of RfP documents with mention of prior communications. PSPCL's own representations till the final date of 12.06.2008 for issuing clarification/updation of RfP documents before bid submission, did not mention or take cognizance/reference of the said e-mail dated 03.05.2008. In the pre-bid conference on 08.05.2008, PSPCL shared the data which is not in consonance with the contents of e-mail dated 03.05.2008 for ash content. If PSPCL was having such information which was material to the bidding process, it should have been shared with the bidders in the way as other bidding related information was shared. Thus, the purported e-mail is of no relevance to the petition. PSPCL has consistently, in all its communications maintained that coal provided by MCL would contain ash content less than 34%. PSPCL should not be

permitted to go back on the assurances that it had made to TSPL vide letter dated 18.04.2008, presentation dated 08.05.2008 and the e-mail dated 12.06.2008. SEL had submitted its bid based on the representations and assurances of the PSPCL and therefore should not be made to suffer on account of the misrepresentations made by PSPCL.

If PSPCL had provided TSPL with the quality of coal as it had assured, TSPL would not be required to incur expenses towards washing the same in order to meet the MoEF stipulation. But since PSPCL has provided coal of a quality materially different to the representations it had made, TSPL is incurring additional expenditure towards washing of coal.

- ix) Cost of washing is to be paid by PSPCL as per the terms of the PPA. The term 'most recently supplied to and at the project' specifies that all the costs incurred for supply of coal as arranged by the respondent upto the project site is to be considered for computation of energy charges. Since in the present case, the coal was required to be washed before transportation to meet the MoEF norms, the cost of the same must be included into the fuel cost.
- x) Regardless of the requirement imposed by MoEF norms of 2014, washing of coal from MCL linkage will lead to saving the energy charges for PSPCL. The coal cost/1000 kCal would be ₹ 1.12 for washed coal and ₹ 1.23 for raw coal from MCL as per the approximate current values of transportation, GCV etc.

TSPL reiterated its earlier submissions with respect to details of various components not being paid by PSPCL, GCV & cost of coal taken by TSPL, unloading charges and transit losses etc.

16. After considering the comprehensive written submissions and arguments of the parties during hearing on 08.01.2015, the Commission in its Order dated 09.01.2015 observed that there is data inconsistency with regard to GCV in various submissions made by TSPL. TSPL was directed to submit clarification in this regard. PSPCL submitted during hearing that unloading charges are covered under Schedule 7 of the PPA and are payable, except that TSPL is required to place satisfactory evidence of the charges payable for unloading of the coal. TSPL during hearing agreed to provide the same to PSPCL. The Commission directed Director/Generation, PSPCL and Chief Operating Officer, TSPL to sort out the issue and submit their joint report on the same to the Commission by 13.02.2015. The next date of hearing was fixed as 24.02.2015.

However, PSPCL vide letter dated 09.02.2015 requested the Commission to extend the date of submission of joint report of PSPCL and TSPL upto 23.02.2015 citing the reason that TSPL has not furnished the details of unloading charges. As requested by counsel for TSPL and agreed to by counsel for PSPCL, the next date of hearing was fixed as 10.03.2015 instead of 24.02.2015.

17. In response to the Commission's Order dated 09.01.2015, TSPL vide letter dated 09.03.2015 submitted that a joint meeting was held between Director/Generation, PSPCL and Chief Operating Officer TSPL on 25.02.2015 at Patiala wherein the issue regarding unloading charges of coal was discussed but no consensus on the issue could be reached. TSPL submitted its own views on the issue of unloading charges as under and prayed that

the matter be decided by the Commission in view of its submissions:

- i) As per terms of PPA signed between TSPL and PSPCL (erstwhile PSEB) dated 01.09.2008, the cost of coal unloading at TSPL project is a part of energy charges and is to be billed in accordance with the PPA provisions, as can be clearly seen from the excerpts of PPA (Schedule 7):

$F^{COAL}$  n “is the weighted average actual cost to the seller of purchasing, transporting and **unloading the coal** most recently supplied to and at the project before the beginning of month ‘m’ (expressed in Rs./MT in case of domestic coal)”

- ii) Also, during the hearings in Petition no. 31 of 2014 and also vide their written note dated 08.12.2014 para 36, PSPCL has acknowledged that unloading charges are covered under Schedule 7 of the PPA and shall be paid.
- iii) Unloading charges are the cost incurred in unloading of coal at Power Project from railway wagons, trucks, any other sources etc. for further usage in generation of power. This will also include the cost of unloading of coal manually from bulged wagons and removal of boulders, stones etc. manually from the coal received so that they don't damage the plant.
- iv) Since coal unloading consists of a series of activities which can not be bypassed and for each activity certain expenses are incurred. Hence, TSPL shall be reimbursed for all expenses/cost incurred in coal unloading.

- v) Unloading charges are not the part of fixed cost, unloading cost is incurred only when the coal is received and used for power generation and therefore it can not be built in capacity charges.
- vi) Admittedly, if coal unloading charges are incurred by TSPL, then PSPCL would be paying the same. As per PPA, unloading charges are to be paid. Though, TSPL has already provided all the calculations & documentary proofs to PSPCL for the costs incurred by TSPL in unloading of coal, still TSPL proposes to do a competitive tender process for transparent discovery of unloading charges and based on the same, unloading charges can be paid accordingly for the future as well as the old bills.

18. The Commission in its Order dated 11.03.2015 observed that as directed vide Order dated 09.01.2015, TSPL has not submitted the clarification with respect to inconsistency of GCV in various submissions made by TSPL. TSPL, however, submitted during hearing that data inconsistency with regard to GCV is on account of e-GCV as measured by Coal India Limited and GCV of coal as received at site. TSPL agreed to submit detailed clarification in this regard by 22.04.2015.

Further, the Commission observed that there exist differences in the views of TSPL and PSPCL with regard to the operations/components covered under unloading charges of coal. The Commission, accordingly, directed TSPL to give details of the components which according to TSPL constitute the unloading charges along with detail of unloading charges included in the bills under each component. Thereafter, TSPL and PSPCL will hold meeting. Subsequently, PSPCL shall comment on each of the component as to whether the same is covered or not under the

term 'unloading charges' as specified in Schedule 7 of the PPA and submit the same to the Commission with copy to TSPL by 22.04.2015. The next date of hearing was fixed as 28.04.2015.

19. TSPL, on 13.04.2015, filed the submissions in respect of the following:

- i) Additional submissions wherein it submitted some additional prayers regarding the actual cost of coal incurred by it stating that the same have a major impact on energy charges.
- ii) Details of components constituting unloading charges (In response to the Commission's Order dated 11.03.2015).
- iii) Billing of GCV on As Received Basis (ARB) rather than on e-GCV basis (In response to the Commission's Order dated 11.03.2015).
- iv) Inconsistency of GCV in various submissions made by TSPL (In response to the Commission's Order dated 09.01.2015).

The detailed submissions in respect of the above are as hereunder:

Additional Submissions:

- i) Finance Charges:

As per PPA Schedule 7, weighted average actual cost of the coal supplied to and at the project is to be taken for calculation of energy charges for billing. Finance charges as billed by TSPL to PSPCL is a part of coal cost, incurred for maintaining LC (Letter of Credit), BG (Bank Guarantee) etc. related to coal as the cost of coal purchased and transported are to be paid in



advance to CIL/MCL and Railways. This could not be included earlier in the original petition because of inadvertent oversight.

ii) Alternate Coal Bidding related charges:

Since charges incurred for conducting the bid process [primarily cost of newspaper advertisement(s)] are part of cost of coal to be arranged for supply at TSPL site, these charges should be allowed as pass through in the cost of Alternate coal. TSPL shall claim the same based on actual documentary evidence.

iii) Participation of PSPCL in competitive bidding process for unloading of coal:

TSPL is ready to do a new unloading contract through competitive bidding based on which PSPCL can pay unloading charges to TSPL. It is requested to direct PSPCL to participate in the tender opening process for unloading so that while claiming the unloading charges both the parties will have clarity about the claims made under unloading and to avoid any dispute in relation to it.

Details of components constituting unloading charges (In response to the Commission's Order dated 11.03.2015):

i) Terms of PPA:

As per terms of PPA, the cost of coal unloading at TSPL project is a part of energy charges and is to be recovered while billing for energy charges in accordance with the PPA provisions. The cost of unloading of coal at TSPL project means cost incurred in all activities involved in removal of coal from railway wagons, trucks, any other sources etc. for further usage in generation of power. Once the coal has been unloaded at the plant site, it is

handled by the fuel handling systems (Coal Handling plant-CHP) available/ installed at plant till it gets consumed.

ii) The expenses on major elements constituting coal unloading are as under:

a) Stone picking:

Manpower required for separating stone and other foreign materials from coal received at plant manually.

b) Loco operation & diesel expenses of loco:

Since railways rakes are delivered by Indian Railways at a certain transit point and from there the rakes are towed to the wagon tippler and returned back to the transit point by TSPL locos. The expenses incurred in the diesel consumed by the locos and the manpower cost of operator is a part of unloading charges as it is borne by TSPL and not billed by Railways.

c) Wagon Tippler (WT) operation expenses:

Wagon tippler is the machine/equipment used for tipping the wagons before the coal enters the fuel handling system of plant. Wagon tipplers are operated by skilled manpower.

The operation of WT equipment consumes electricity. Therefore, the manpower cost and cost of electricity consists of unloading charges. Moreover, PSPCL is not paying the cost of coal consumed for auxiliary power generation.

d) Manual unloading expenses (Bulge Wagons) and Diesel for Equipments:

Wagons which can not be unloaded mechanically (bulged wagons, wagons with sticky coal etc.) through wagon tipplers

are unloaded manually and the manpower involved in such unloading constitutes a part of unloading charges. Also diesel consumed in unloading such wagons through hyvas or other unloading machineries are also part of unloading charges.

e) Manual unloading expenses (Trucks etc.)

If coal arrives at project site through trucks, it has to be conventionally unloaded through skilled manpower and such unloading cost also consists of unloading charges.

Coal unloading consists of a series of activities which cannot be sidestepped and for each activity certain expenses are incurred so that coal can be shifted to the CHP. Hence, TSPL is to be reimbursed all expenses/cost incurred in coal unloading. TSPL is ready to sign a new unloading contract through competitive bidding based on which PSPCL can pay unloading charges to TSPL.

Billing of GCV on As Received Basis (ARB) rather than on e-GCV basis (In response to the Commission's Order dated 11.03.2015):

- i) The policy adopted and terms & conditions for supply of coal by Coal India Limited and its subsidiaries are uniform for all the generating companies in the country. The supply of coal being virtually monopolized by Coal India Limited under the policies of the Govt. of India, the purchasers of coal from Coal India Limited have very limited say on such terms & conditions. The supply of coal and also its quality, price and other terms & conditions are not regulated by any independent regulatory authority such as Regulatory Commission for electricity.

- ii) PSPCL power plants have started measuring GCV on 'as received basis' with effect from November, 2012 following the directions of the Commission. But for payment purpose to private generators, PSPCL is considering equilibrated Gross Calorific Value (eGCV) i.e. as mentioned in the MCL / CIL subsidiary coal bills. MCL/other CIL subsidiaries mention the value of equilibrated GCV on the bills issued and such GCV is measured in controlled atmospheric conditions (60% RH; 40 deg. C). The same value in As Received Basis (ARB) GCV shall be around 8-10% lower. Further, as per approved Tariff Orders for PSPCL for FY 2013-14 and 2014-15, eGCV of coal as billed by CCL/other CIL subsidiaries has not been taken for calculation of coal cost by PSPCL and it has taken GCV of coal on 'As Received Basis' for calculation of its coal cost for ARR purposes.
- iii) All other power plants in the country regulated by CERC norms are being paid on the basis of the GCV measured on ARB / AFB. There are no thermal power plants in the country where procurer pays for coal on the basis of eGCV of coal company loading point as is being done by PSPCL for payment to TSPL.

Inconsistency of GCV in various submissions made by TSPL (In response to the Commission's Order dated 09.01.2015):

TSPL submitted that all values of GCV have been taken at TSPL site on As Received Basis (ARB) and further submitted as follows:

- a) The GCV value for Raw Coal from MCL as mentioned in the submissions as 3280 kCal/kg is an approximate value of the Raw coal GCV from MCL, on As Received Basis (ARB) at

plant site of TSPL measured in presence of PSPCL officials as measured by a third party. Though in MCL bills, the same coal as G-11 band (from different mines of MCL, it will change to G-12 etc.) is having equilibrated GCV (eGCV) band of 4000-4300 kCal/kg (Middle value of that eGCV band is 4150 kCal/kg) but in actuality when the same is measured at TSPL plant site on ARB basis in presence of PSPCL officials by a third party, the values are near 3000 kCal/kg. The above was mentioned in the submission because as per Schedule 7 of the PPA, for calculation of energy charges, TSPL needs to take the GCV as " ..... *weighted average GCV of the coal most recently delivered to the project before the beginning of the month "m" expressed in kCal/ kg*". The PPA does not talk about taking eGCV values for calculation of energy charges.

- b) GCV value of washed coal has been taken as 4300 kCal/kg as finalized with the washery operator viz. M/s ACB India Ltd. wherein the washery operator has committed to supply the coal with GCV of 4300 kCal/kg on ARB basis at TSPL project site. Even after accounting for a drop of 150 kCal/kg (to arrive at As Fired Basis values of GCV), which TSPL has self regulated on its own (and claimed only to that extent in the bills and in the present petition), the washed coal cost is significantly cheaper than raw coal.
- c) The GCV value of washed coal as mentioned in the bills raised to PSPCL is actually received GCV on ARB basis at TSPL site reduced by 150 kCal/kg to arrive at 'As Fired Basis' values of the GCV.

d) TSPL is billing PSPCL on GCV as received at site reduced by 150 kCal/kg. Only for the coal procured by TSPL through competitive bidding process and the seller committing the GCV etc. parameters, TSPL is billing the GCV for that coal based on contract committed value reduced by 150 kCal/kg to arrive at AFB GCV values. This is in line with the methodology adopted by PSPCL generating stations till last year and as approved by PSERC for billing purpose and is better than the actual drop in GCV allowed by the Commission to the generating stations at the time of bidding for TSPL project.

Hence, there is no discrepancy in the various GCVs mentioned in the petition / submissions made earlier.

20. The petition was listed for hearing on 29.04.2015. PSPCL vide letter dated 22.04.2015 sought extension till 29.05.2015 due to preoccupation of its counsel. The Commission vide Order dated 30.04.2015, after hearing the parties on 29.04.2015, directed PSPCL to file reply by 19.05.2015 to TSPL's submissions dated 13.04.2015. The next date of hearing was fixed as 21.05.2015.

PSPCL vide letter dated 18.05.2015 again requested for extension of time in filing reply by 03.06.2015 and listing the petition on 09.06.2015. During hearing on 21.05.2015, PSPCL committed that it shall file detailed reply by 03.06.2015. The Commission vide Order dated 25.05.2015, directed PSPCL to file reply on the issues as already directed vide Order dated 30.04.2015 and fixed the next date of hearing as 09.06.2015.

21. PSPCL vide letter dated 03.06.2015 submitted the comments on the details of unloading charges, furnished by TSPL in the petition, as under:

- i) As directed by the Commission, a Joint meeting was held between Director/Generation, PSPCL and Chief Operating Officer, TSPL on 27.05.2015 in the chamber of Director/Generation, PSPCL, at Patiala. During the meeting, the issue regarding unloading charges of coal was discussed, but no consensus on the issue could be reached.
- ii) TSPL in its reply has claimed coal handling charges (unloading charges) at the power plant site under the following heads:
  - a) Stone Picking;
  - b) Loco Operation and Diesel Expenses of Loco;
  - c) Wagon Tippler Operation Expenses;
  - d) Manual unloading Expenses(Bulge Wagons); and Diesel for equipments
  - e) Manual Unloading Expenses (Trucks etc)

The above claims of TSPL need to be considered within the scope of the PPA. Schedule 7 of the PPA reads as under:

*“ $F^{Coal}$  is the weighted average actual cost to the Seller of purchasing, transporting and unloading the coal most recently supplied to and at the Project before the beginning of month “m” (expressed in Rs./MT in case of domestic Coal)”*

In terms of the above, PSPCL has agreed to pay the costs in relation to coal and coal handling on actual basis on three counts namely (a) price payable to coal companies as per the bills raised by such coal companies; (b) cost of transportation; and (c) unloading charges. The unloading charges, if any, are

payable separately like transportation cost independent of price payable to coal companies and of the quoted fixed charges based on which the bidder was selected.

- iii) the definition of "Power Station" as provided in the PPA (*the fuel handling facility is part of the Power Station*) is reproduced below:

*"Power Station" Means the :*

*(a) Domestic coal based power generation facility comprising of any or all the Units;*

*(b) Any associated fuel handling, treatment, treatment or storage facilities of the power generation facility referred to above;*

.....

*(c) All the other assets, buildings/structures, equipment's, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility;*

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

- iv) The Standard Design Criteria/Guidelines for Balance of Plant of Thermal Power Project 2 x (500 MW or Above) published by Central Electricity Authority, New Delhi defines the coal handling plant (CHP) in a thermal power station as:

*"The coal handling plant (CHP) in a thermal power station covers unloading of coal, its crushing, storage and filling of boiler bunkers."*



The coal unloading facility to be provided depends on the mode of transportation of coal which in the case of TSPL is through Indian Railway System using 'BOXN' Wagons. The unloading of coal from 'BOXN' Wagon is through wagon tippler wherein side arm charges are employed for placement of wagons on the tippler table after tipping. Provision is kept for shunting locomotives for placing the rakes in position for the side arm charger to handle and begin unloading operation.

These Guidelines further describe that coal handling in thermal plants involves:

- a) Coal unloading
- b) Coal crushing
- c) Coal Stacking & Reclaiming at Stockyard
- d) Dust Control System and Ventilation System
- e) Miscellaneous facilities

Accordingly, the details regarding unloading charges of coal as furnished by TSPL are discussed below:-

- a) Stone Picking:

This is sub activity of coal handling required on conveyors leading to the crusher house, which is a part of the coal handling. Stone Picking is a part of the Power Station activity and is covered by O & M Expenses.

- b) Loco Operation:

The loco as per PPA & CEA Guidelines is part of the coal handling facility and as such any expense incurred on its operation is the expense incurred on the Power Station. As per the CEA Guidelines, it can be treated as part of the coal

handling facilities and therefore, the operating expenses in regard to loco operation is a part of the capacity charges and no additional cost be allowed. If it is a part of the coal handling facilities and can be included as a part of the CHP operation, there cannot be any separate unloading charges payable for such operation.

c) Wagon Tippler Operation Expenses:

Wagon tipplers are also part of the coal handling facility and are electrically operated and the electricity consumed is covered by O & M Expenses. The wagon tippler operation expenses are an activity performed automatically by the wagon tippler and the coal is unloaded in the pits established for the purpose. There is no further expenditure to be considered.

d) Manual unloading expenses (Bulge wagon) and Diesel for equipments:

As per the scheme provided in the CHP, there are four Wagon Tipplers provided for unloading the coal and the non operation of CHP Mechanism and use of any alternate manual or other mechanism for coal handling will be entirely for factors attributable to TSPL and is not a scheme envisaged by the project specification. PSPCL has no liability to defray the cost of unloading when the CHP is not functional due to factors attributable to TSPL. It is for TSPL to keep them in working order.

e) Manual unloading expenses (Trucks etc):

No part of it is admissible as the project envisages the unloading of the coal through wagon tippler. The operation

and maintenance of the wagon tippler is the responsibility of the TSPL.

Each of the above heads of expenditure claimed by TSPL are either after the unloading of the coal through wagon tippler or related to the work envisaged to be undertaken by equipment such as wagon tippler. These are part of the O & M Expenses and capital cost to be serviced.

- v) At the time of bidding, all the Bidders were informed under Article 2.7.1.4 that they shall take into account the following while preparing and submitting the Financial Bid:-

“.....

*3. The Quoted Tariff in Format 1 of Annexure 4 shall be an all inclusive tariff and no exclusions shall be allowed. The Bidder shall take into account all costs including capital and operating costs, statutory taxes, duties, levies while quoting such tariff. Availability of the inputs necessary for generation of power should be ensured by the Seller at the Project Site and all costs involved in procuring the inputs (including statutory taxes, duties, levies thereof) at the Project Site must be reflected in the Quoted Tariff.....”*

Therefore, the Unloading Charges claimed by TSPL are not payable in term of PPA and project documents. Hence, it is not correct for TSPL to claim competitive bidding for Unloading Charges.

- vi) TSPL, in the additional submissions, made certain further claims on finance charges on the ground that the same was not raised earlier due to inadvertence. The claim for finance charges was not a part of the petition filed and pending before the Commission. TSPL should not be allowed to raise these issues at this stage on grounds that it was on account of

inadvertence on its part. TSPL has also raised the issue of alternative coal bidding related charges. These are also issues independent of the matter dealt in the petition filed by TSPL. TSPL can not introduce such additional claims by way of additional submissions. The remedy for TSPL is to file a separate petition before the Commission for any grievance in regard to the above. PSPCL denies this claim and reserve the right to deal with the same at the appropriate stage, if any when it becomes necessary.

vii) Since, no consensus could be reached on the issue of unloading charges of coal for Talwandi Sabo Thermal Power Project, as such, the Commission may decide the matter in view of the TSPL and PSPCL views.

22. In response to the Commission's Order dated 25.05.2015, PSPCL, vide letter dated 18.06.2015 filed comments on the issue of making payment to TSPL for energy charges on the basis of e-GCV mentioned in the MCL bills. PSPCL submitted that monthly energy bills are being paid as per PPA under Schedule 7 of tariff wherein fuel cost is weighted average actual cost of purchasing the coal by TSPL is to be considered and the weighted average GCV of the coal delivered to the project for which TSPL has made the payment to CIL/MCL is to be considered as per PPA. GCV of coal as received at the project is not payable under the PPA. PSPCL submitted that no consensus could be reached on the issues of coal unloading charges at the project and GCV of coal supplied to the project, the Commission may decide the matter considering the submissions made by PSPCL and TSPL.

23. The petition was listed for hearing on 09.06.2015. However, the date of hearing was refixed as 15.06.2015 and thereafter 23.06.2015 on request of counsels for the petitioner and respondent. After hearing the arguments of parties on 23.06.2015, the Commission closed further hearing of the case vide Order dated 24.06.2015. Order was reserved.

24. TSPL filed application dated 07.07.2015 (IA no.5 of 2015) requesting to grant an additional hearing and submitted that the Commission vide Order dated 24.06.2015 had reserved the judgment and directed the parties to file their respective submissions. TSPL submitted that it has recently learnt of certain additional issues/costs that it is incurring pertaining to the project which have a critical bearing on the outcome of the petition. TSPL has submitted that it incurs some cost in escorting the Indian Railway rakes to avoid/prevent theft of coal in transit. The aforesaid rake escorting charges form a part of energy charges as per Schedule 7 of the PPA and have been incurred only recently and therefore were not included in the pleadings filed before the Commission. Further, certain components of coal cost such as finance charges, advertisement and other related costs of alternate coal procurement tenders form a part of the coal cost and therefore must be paid for by PSPCL. TSPL further submitted that PSPCL is making payment on e-GCV mentioned in the bills of coal company in violation of the provisions of the PPA. As per terms of the PPA, payment has to be made based on the GCV which is delivered to the project.

TSPL also submitted that PSPCL has been making payments to other state owned generating stations on the aforesaid

components of coal, it is wrongfully not making the said payments to TSPL. TSPL should be considered at par with state owned generating stations. The project is already facing a financial crisis and if PSPCL does not pay the costs of coal components as mentioned above, the financial health of TSPL will be severely affected and will make the project commercially unviable.

The aforesaid issues require further deliberation and hearing as these are vital to the final outcome of the instant dispute. It would be in the interest of justice that TSPL is allowed an additional hearing to present the aforesaid issues before the Commission alongwith additional documents, if needed. TSPL prayed that an additional hearing in the petition be granted and be allowed to place on record the necessary documents/evidence in support of its claim.

25. The Commission in its Order dated 22.07.2015 directed PSPCL to file its submissions/response by 11.08.2015 on the issue of re-opening of the hearing of the petition, after the same was closed by the Commission vide Order dated 24.06.2015. The next hearing was fixed for 18.08.2015.

26. PSPCL filed its response dated 10.08.2015 on the issue of reopening of the hearing of the petition and submitted as under:

i) The petition was filed on 22.05.2014 and the Commission heard the parties on various dates and also permitted the filing of written submissions. The parties filed their respective pleadings in the matter and also written submissions on various occasions and pursuant thereof the judgment was reserved by the Commission vide Order dated 24.06.2015.

- ii) TSPL has now approached the Commission seeking to make further legal submissions in the matter stating that the same could not be made earlier. The exact nature of the legal submissions has not been elaborated in the application.
- iii) The Commission may decide the future course of action and in case the Commission decides to hold further hearing, it may grant sufficient opportunity to PSPCL to make its submissions.

27. The Commission heard the arguments on behalf of PSPCL and TSPL at length during hearing on 18.08.2015 and also considered the case laws on the matter submitted by the counsel of TSPL. The Commission in its Order dated 20.08.2015 observed as under:

*“In another case titled K.C. Bajaj and others (Appellants) versus Union of India and others (Respondents); 2013 Supreme Court Cases 533:2013 SCC online SC555 on the issue of Rehearing after matter finally heard and reserved for judgment, the Hon’ble Supreme Court allowed rehearing of SLPs on the ground that the Written Submissions filed by both the parties revealed that parties have relied upon additional facts which either did not find reference in the pleadings of Special Leave Petition or which were not highlighted during the course of hearing.*

*The IA is fully covered under the judgment of Hon’ble Supreme Court cited above. In the present case, the Commission had not pronounced its Order nor has passed the same till the filing of IA no.5 of 2015. Thus, it shall be fair and just for the Commission to re-hear the case, PSPCL, the respondent, herein, has no objection for doing so. Only submission made by PSPCL in its reply and during hearing is that it should be allowed sufficient opportunity to make its submissions, if re-hearing of the case is granted by the Commission. IA is allowed and the Commission decides to re-hear the case.....”*

TSPL was directed to file additional affidavit in support of its claim by 25.08.2015 with a copy to PSPCL directly. PSPCL was directed

to file reply to the additional affidavit of TSPL by 29.09.2015 with copy to TSPL. The next date for re-hearing the arguments of the parties was fixed as 06.10.2015.

28. TSPL filed Additional Affidavit dated 25.08.2015 wherein it submitted that the following components of energy charge have been claimed by it:

- i) GCV of coal most recently received at the project instead of eGCV
- ii) Coal washing charges
- iii) Transit losses
- iv) Surface transportation charges
- v) Unloading charges including bulge wagons
- vi) Finance charges
- vii) Advertisement and other related cost of alternate coal procurement tenders
- viii) Rake escorting charges
- ix) GCV sampling and testing charges
- x) Shunting charges

In respect of Sr. no.(i) to (v) above, TSPL has submitted that reference be made to its earlier submissions for further details. The issues at Sr. no.(vi) and (vii), which were not covered in the petition and were raised by TSPL later in its additional submissions dated 13.04.2015 are brought out hereunder:

a) Finance charges:

These charges are incurred by TSPL for maintaining LC, BG etc. relating to coal procurement and thus must be paid by PSPCL to TSPL as part of energy charges under Schedule 7 of the PPA.



b) Advertisement and other related cost of alternate coal procurement tenders:

TSPL incurred certain costs towards publication of tenders for procurement of alternate coal which forms part of the cost of coal and must be paid by PSPCL.

TSPL's submissions in respect of Sr. no.(viii) to (x) additionally brought out in affidavit dated 25.08.2015, out of which the charges at Sr. no. (viii) and (ix) are stated to have been learnt by TSPL recently, are as hereunder:

a) Rake escorting charges:

It is the cost incurred by TSPL in escorting the Indian Railway rakes to avoid/prevent theft of coal in transit from the MCL mines/imported coal stockyards etc. upto the project. The aforesaid costs towards coal, which form a part of energy charges as per Schedule 7 of the PPA have been incurred only recently and therefore were not included in the pleadings filed before the Commission. The said costs are payable by PSPCL as per the terms of the PPA.

b) GCV sampling and testing charges:

TSPL has incurred charges for GCV sampling and testing at the loading point of MCL as suggested by CIL/MCL. TSPL has stated that it learnt of this cost recently.

c) Shunting charges:

These charges are paid by TSPL to the Railways for to and fro movement of coal rakes upto the transit point of the project. PSPCL was making payment of these charges but stopped the same recently.

While referring to the above charges at Sr. no.(i) to (x) collectively as energy charge components, TSPL has submitted that it could not have envisaged to include the same as part of its financial bid as these could not be computed at that time since definite parameters to estimate these charges were not available. TSPL further submitted that the case-2 bidding does not envisage the factoring in of these charges in the financial bid as only capacity charges and net heat rate were required to be quoted. TSPL has submitted the following reasons as to why these charges could not be factored in at the time of submitting the financial bid:

- i) The GCV of coal invoiced by MCL/CIL regularly varies significantly from the GCV of coal received at site. The degree of variation is not predictable and can not be factored in the bid. The difference between GCV on 'As Received Basis' and eGCV essentially occurs because of various factors which are beyond the control of generating companies. Hence, the petitioner and other bidders were not expected to factor these completely unpredictable and uncontrollable parameters in their tariff bids for the project. As per the communications made by PSPCL, nowhere was it mentioned that GCV (as used in the PPA) actually means eGCV which PSPCL has adopted for payment purposes.
- ii) Whether or not coal is to be washed necessarily depends on the applicable law, quality parameters like ash etc. of the coal being supplied to the project. The quality of each particular consignment of coal delivered to the project would vary. It would be impractical to suggest that the petitioner and other bidders

were expected to factor the washing charges for every consignment of coal dispatched by MCL over the 25 year period of the PPA. PSPCL in pre-bid communications, including in its final information provided as part of the RfP on 12.06.2008, informed that the coal to be delivered to the project shall have an ash content of not more than 34%.

TSPL submitted that the aforesaid arguments with regard to non-availability of definite parameters for the purpose of inclusion in the tariff bid are applicable to all the aforementioned energy charge components. In case the same were to be factored in the financial bid, it would have led to unjust enrichment/loss to either of the parties. PSPCL should provide specific response to justify denial of each of the above energy charge components.

29. PSPCL filed reply dated 05.10.2015 to the additional affidavit dated 25.08.2015 of TSPL wherein it reiterated its earlier submissions and further stated as under:

- i) The PPA dated 01.09.2008 was entered into between TSPL and PSPCL pursuant to a Case-2 Competitive Bidding conducted by PSPCL in terms of Section 63 of the Act read with the Guidelines notified by the Government of India, Ministry of Power in this regard. Under the PPA, there are only two avenues for seeking a change in tariff, namely Force Majeure under Article 12 and Change in Law under Article 13. TSPL is only proceeding to make claims without showing as to under which clause of the PPA the same are being made. The petition needs to be dismissed on this short issue alone.

- ii) TSPL is treating the entire matter to be an exercise under Section 62 of the Act as if the Commission is fixing the tariff on a cost plus basis and TSPL is entitled to all / any money expended by it as a pass through in tariff. This is completely incorrect.
- iii) There cannot be any exercise of powers under Section 86 (1) (b) or (f) overriding Sections 61, 62, 63 etc. of the Act to allow any increase in tariff.
- iv) With regard to procurement of alternate coal, the Commission has already passed the Order dated 11.02.2014 in Petition No. 60 of 2013, which was not challenged by TSPL and has attained finality. Therefore, there is no question of claiming any other charges apart from the charges specifically authorised by the PPA.
- v) Without elaborating as to how the PPA covers the claims with respect to GCV of coal on most recently received basis at the project site instead of equilibrated GCV, coal washing charges, transit losses, surface transportation charges, finance charges, advertisement and other related costs of alternate coal procurement, rake escorting charges, GCV Sampling & Testing costs, unloading charges including bulge wagon unloading etc. and shunting charges being made, TSPL has submitted that it could not have factored in any of the above costs while submitting its bid and these energy charges components have arisen only now. The design of the Case-2 bidding itself, according to TSPL, does not envisage the factoring in of such energy charges components in the financial bid.

vi) At the time of the bidding, PSPCL had agreed to pay as the fuel cost only the price that may be charged by the Coal Company, namely, Mahanadi Coalfields Limited. PSPCL had not agreed to make any payment for any other costs. It was the obligation of the bidder to factor the cost of washing of coal and other costs that may be required to be undertaken for transportation of coal.

vii) In several cases, the Hon'ble Appellate Tribunal has decided the scope of claims that can be made in a competitive bidding PPA (Section 63 PPA). The following Judgments are relevant while considering the nature of claims being made by TSPL:

a) Sasan Power Limited v CERC & Ors (Judgment dated 23/03/2015 in Appeal No. 90 of 2014):

*“44. .... The legal position as on the cut-off date for submission of bids by the Appellant was that APM had been dismantled by Gol notification dated 28/3/2002. There was no assurance to the Appellant from the Gol or the OMCs that the Gol would continue to control the diesel price and free market mechanism would not be introduced. APM was never re-introduced. The Appellant had full liberty to quote an escalable component keeping in view the diesel price variation at the time of submission of bid or include the same in the nonescalable cost quoted for different years of contract period. The Appellant decided to quote non-escalable component of energy charges for the entire project term of 25 years. This was a commercial decision taken by the Appellant. The Appellant cannot now make any claim for compensation on the ground of change in law which had occurred much prior to the cut-off date when APM was dismantled. Competitive bidding process cannot be allowed to be set at naught by such method.”*

- b) M/s JSW Energy Ltd v. Maharashtra State Electricity Distribution Co. Ltd & Anr 2013 ELR (APTEL) 343:

"42. .... If the claim of the Appellant is to be accepted, then it would defeat the sanctity of the competitive bidding process. Not only that, the other bidders who had participated in the bidding would also be pre-judicially affected. .... getting into the zone of consideration in the bidding process having been bidder L-3 and thereafter revising the project cost. Due to this, the entire bidding process and the interest of other bidders get vitiated.

43. .... In a Regulatory regime, the sanctity of the PPA and the representation and warranties made by the parties in entering into such agreements have to be given due consideration. The claim of the Appellant cannot be permitted to vitiate the bidding process and to pre-judicially affect other bidders."

- c) Punjab State Power Corpn Ltd. v. Nabha Power Ltd & Ors (Judgment dated 10.04.2014 in Appeals No. 75, 76 and 164 of 2014):

In this case, the Hon'ble Tribunal dealing with a PPA entered into pursuant to a competitive bidding process under Section 63 has held the same to be statutory and binding, as under:

*"Issue No. 2: Whether the State Commission has erred in allowing various charges such as energy charges, demand charges, power factor surcharge incentive, voltage surcharge etc., as provided in Schedule of Tariff for Large Industrial Consumers for Start-Up Power supplied to TSPL by PSPCL?*

*.....The PPA is a statutory agreement between the parties and the same is a binding contract and the fact that the Appellant Talwandi Sabo Power Ltd has not disputed any of the terms of the PPA hence the Appellant is liable to pay various charges specified in the Tariff Schedule of large industrial consumers approved by the Commission....."*

viii) In the above background, the replies to the aspects raised in the Additional affidavit by TSPL are as under :

a) GCV for calculation of Energy Charges:

The claim of TSPL is without any basis and is a departure from the claims made in the original petition. The only issue raised in the petition was that GCV is to be taken on 'as fired basis'. Clause 1.2.3 of Schedule 7 is very clear and provides for payment to be made on '*weighted average gross value of the coal most recently delivered to the Project before the beginning of month 'm' expressed in kcal/kg.*' The PPA envisages that GCV will be computed on as delivered to the Project. The coal is delivered to the Project at the point of delivery as per the Fuel Supply Agreement. As per the bidding documents, it was for all bidders including TSPL to take into account all costs in the bid, apart from what is specifically agreed to be paid on actual basis by PSPCL. The conscious and specific expression used with regard to the GCV is 'average gross calorific value of the coal most recently delivered *'to the Project'*. The expression used is not '*at the Project'*'. The above is in contradistinction to the definition of  $F^{\text{COAL}}_n$ , wherein the expression used is '*to and at the Project'*'. The above establishes the following:

i) The situs of 'to the Project' is someplace different from 'at the Project'. Both the expressions obviously do not refer to the same place otherwise there would be no purpose in the specific term being used '*to the project'* and '*at the project'* separately.

- ii) Every term in an agreement needs to be given effect to and specific terms used cannot be rendered otiose. If the term '*to the Project*' is interpreted to mean at the project site, the term '*to and at the Project*' would be rendered otiose and redundant. The same term '*to the project*' would have then been used.
- iii) The term '*at the Project*' obviously refers to the project site whereas '*to the Project*' refers to when the delivery is made and the risk and title passes on to the Project.
- iv) When the term '*at the Project*' is used, the said definition also includes the transportation and unloading of coal. This itself establishes that '*at the project*' is after transportation of coal from the coal mine to the project site. In contradistinction to the above '*to the project*' is before transportation of coal, where the risk and title over the coal passes on to the Petitioner. The above makes it abundantly clear that the term '*to the Project*' does not mean at the project site but only refers to the place where the coal is delivered and the title and risk over the coal passes on to the Petitioner.

b) Coal Washing Charges:

- i) No amount is due to TSPL on this account under Clause 1.2.3 of Schedule 7 of the PPA for washing charges. At the time of the bidding, PSPCL has agreed to pay as the fuel cost only the price that may be charged by the Coal Company, namely, MCL. PSPCL had not agreed to make any payment for the washing of coal. It was the obligation of the bidder to factor the cost of washing of coal that may



be required to be undertaken for transportation of coal. It was specifically made clear in reply to the query raised by one of the bidders during pre-bid conference with reference to washing of coal that no cost in addition to the price payable to the Coal Company shall form part of the energy charges payable by PSPCL to TSPL in regard to the fuel cost.

- ii) The bid deadline date under the Tariff Based Competitive Bidding Process initiated by PSPCL was 23.06.2008. The Cut Off Date for the purpose of considering the Change in Law occurring in the tariff adjustment in terms of Article 13 of the Power Purchase Agreement is 16.06.2008 being 7 days prior to the bid deadline on 23.06.2008. Even at the relevant time i.e. on the Cut Off Date mentioned herein above, there was a directive of the Central Government that in case of coal with ash content of 34% and above requiring transportation to power projects at a distance of 1000 KMs and above, it is necessary to undertake washing of coal and transportation of washed coal.
- iii) The coal for TSPL Project was to be sourced from the Mahanadi Coalfields Limited in Orissa and the power project of TSPL in the State of Punjab being more than 1000 KMs, there has been a statutory requirement to wash the coal for transportation even at the time of the bid i.e. Cut Off Date. Accordingly, there is no Change in Law which had occurred after the Cut Off Date and the position remaining the same as on the Cut Off Date. There cannot

be any tariff adjustment or adjustment in the energy charges in regard to washing of coal.

iv) Clause 1.2.3 of Schedule 7 does not cover this cost. TSPL will have the advantage of using the washed coal with less ash content being beneficial to the plant and equipment of TSPL and reducing various operating and maintenance cost. TSPL will, therefore, have significant advantage in washing the coal before transportation of the coal. The alleged loss to TSPL or any benefit accrued to TSPL on account of its operations or other facts is irrelevant for the present matter, as the tariff is pursuant to a competitive bidding process. TSPL is not entitled to any costs or expenses apart from what is specifically provided for in the PPA.

c) Transit losses:

In terms of the PPA, the monthly energy charges are as per Clause 1.2.3 and the formula given thereunder. This includes transportation charges. The PPA does not envisage any adjustment for transit loss. This is not a Section 62 based determination. The claim for adjustment of the monthly energy charges for transit loss is therefore not as per the PPA.

d) Surface Transportation Charges:

As per Schedule 7 of the PPA, only the following charges with respect to coal need to be paid by PSPCL:

i) Cost of coal purchase in ₹/kg terms or the cost of coal purchased from Mahanadi Coalfields;

- ii) Cost of transportation of coal by Indian Railways i.e Freight;
  - ii) Cost of unloading the coal at the plant site through Wagon Tiplers, which cost stands included in the capital cost of the project;
- e) Finance Charges:
- i) TSPL is claiming the charges for payment security which it has to maintain to the coal company as a pass through in the present petition. This is not even conceivable. In fact, there was no averment on this cost in the pleadings filed by TSPL. This was claimed for the first time in the additional written submissions filed and without there being any pleading.
  - ii) The payment of capacity charges is as per Schedule 7 of PPA. In terms of the competitive bidding guidelines and the provisions of the PPA read with the various Orders passed by the Commission and the Hon'ble Tribunal, TSPL was required to sign the FSA and arrange for the coal from MCL. The FSA was also signed only after the Interim Order dated 21.08.2013 was passed by the Hon'ble Appellate Tribunal. The Commission has also noted this fact in the Order dated 11.02.2014 and further held that only the amounts as per the PPA can be made a pass through in tariff. The cost of coal paid by TSPL needs to be reimbursed which is already being done by PSPCL. No further claim can be made on this account.

- f) Advertisement and other related Costs of Alternate Coal Procurement:
- i) TSPL is claiming the charges for advertisement and related costs as a pass through, which is without any basis. There was no averment on this cost in the pleadings filed by TSPL. This was claimed for the first time in the additional written submissions filed and without there being any pleading. The alternative coal is not to be used as a principal coal. TSPL has no right to generate electricity fully on alternative fuel. The blending of alternative fuel upto a maximum amount of 20 % has been allowed only as an exception and to tide over the temporary issues being faced by TSPL in procurement of coal from MCL. The Orders dated 21.08.2013 of the Hon'ble Tribunal and the Order dated 11.02.2014 of the Commission also record this position clearly.
  - ii) The claims now being made by TSPL are premised on the basis that TSPL has an absolute right to procure the coal from alternative sources. This is not the purpose of the PPA which was under Case 2 Bidding. The Case 2 Bidding itself proceeded with fuel linkage being provided to the bidders by PSPCL which was done in the present case. Thereafter, due to the decision of the Cabinet Committee on Economic Affairs, the amount of linked coal was slightly reduced. TSPL cannot make any claims for procurement of this coal which are not covered by the PPA / FSA. The obligation of PSPCL is strictly as per the PPA and no further amounts can be allowed to TSPL.

- g) Rake Escorting Charges
- h) GCV Sampling and Testing Charges

These claims have been made by way of the IA No. 5 only and stating that '*TSPL came to know of this cost very recently*'. It is not clear under what head the same is being claimed. TSPL is treating this as a section 62 determination and making claims that are specifically against the terms of the competitive bidding documents and the PPA entered into between the parties.

- i) Unloading Charges

a) The only charges which can be paid for are:

- i) Cost of coal purchase in ₹/kg terms or the cost of coal purchased from MCL;
- ii) Cost of transportation of coal by Indian Railways i.e Freight;
- iii) Cost of unloading the coal at the plant site through Wagon Tippers which cost stands included in the capital cost of the project;

b) The cost of unloading, having been included in the capital cost, the charges for the same are not payable under Schedule 7, Clause 1.2.3. The provisions of Annexure 12 to the revised petition filed by TSPL do not justify the claim being made by TSPL.

- j) Shunting Charges

This claim is neither included in the pleadings nor in the written submissions. It is also neither covered in the additional submissions nor in the IA for additional hearing. TSPL is relying on some verbal communication to make this claim. It cannot be considered as part of the present petition.

TSPL needs to file separate pleadings to make any claim of this nature.

There is no merit in the claims being made by the TSPL. The present petition is misconceived and is liable to be dismissed.

30. In the hearing on 06.10.2015, TSPL sought time to file rejoinder to the reply submitted by PSPCL to the additional affidavit filed by it. In its Order dated 07.10.2015, the Commission allowed the same to be filed by 03.11.2015 with copy to PSPCL. The next date of hearing was fixed as 17.11.2015.

31. TSPL filed the rejoinder dated 09.11.2015 to the reply of PSPCL dated 05.10.2015 on the additional affidavit dated 25.08.2015 filed by TSPL. While reiterating its earlier submissions, TSPL submitted as here under:

- i) TSPL is neither seeking revision in tariff under the force majeure or change in law provisions of the PPA nor treated it as an exercise for tariff determination under section 62 of the Act. The claim of TSPL is the payment of energy charge component as per PPA.
- ii) The phrase 'to the project' must be interpreted to mean at the project as any other interpretation would be incorrect.
- iii) The judgments of the Hon'ble APTEL cited by PSPCL have no relevance in the present matter and are clearly distinguishable from the issues in this petition in the following manner:
  - a) In the matter of Sasan Power Limited v. CERC & Ors, the bid provided for the submission of escalable components of tariff and the bidder in that case opted to quote a non-escalable

component of energy charges for the entire project term of 25 years as a commercial decision. In the present matter, TSPL did not quote any component with respect to energy charges for the project term as part of its bid as it had no option to do so. TSPL's project was bid out on fundamentally different parameters from that of Sasan Power Limited's and no analogy or inference may be drawn from this judgment. A distinctive feature of case-2 scenario-4 bidding is that energy charge is not quoted or factored by the bidders and therefore this judgment is wholly irrelevant to the present situation.

- b) In the matter of JSW Energy Ltd. v. MSEDCL & Anr, the cost component referred to i.e. the installation of FGD was known to all the bidders at the time of submitting their bids as it was an express condition of the environmental clearance in that case. The appellant in that case ignored the said cost component whilst submitting its bid and thereafter claimed an exemption from bearing the cost. No part of the said judgment is applicable in this case as a number of the energy charge components arose only after final cut-off date for submission of bids and TSPL could not have factored the same in its bid.
- c) In the matter of PSPCL v. Nabha Power Limited & Ors., Hon'ble APTEL was ceased with the issue of payment of charges which were expressly attributable to the power producer under the terms of the applicable PPA. In the present petition, the energy charge components are to be borne by PSPCL under the PPA.

32. In the hearing on 17.11.2015, the Commission heard at length, the arguments of TSPL and PSPCL. The hearing was closed and Order was reserved vide Commission's Order dated 18.11.2015.

### **Observations and Findings of the Commission**

33. The Commission has carefully gone through the petition, reply, rejoinder, reply to Commission's queries, comments, additional & written submissions, additional affidavit and reply thereof filed by the parties.

34. The Commission notes that in the petition, TSPL has prayed as hereunder:

- i) a) Direct PSPCL to pay the energy charges as per computation of energy charges for a month 'm' based on weighted average actual cost of coal most recently supplied to & at the project including various associated costs incurred for arrangement of washed coal at TSPL site after necessary washing in accordance with the provisions of PPA;
  - b) Grant approval to the modalities of cost of coal washing arrived at through a competitive bidding process from time to time;
  - c) Direct PSPCL to either conduct bidding for finalization of washery operator or alternately, participate in competitive bidding process for finalization of washery operator to be conducted by TSPL in future from time to time;
- ii) Direct PSPCL to pay energy charges computed by considering degradation of 150 kCal/kg in the GCV of coal received by TSPL i.e. GCV as received at TSPL site minus 150 kCal/kg;
  - iii) Direct PSPCL to pay energy charges computed by considering transit loss of coal at a maximum of 1%;



iv) Direct PSPCL to pay unloading charges at TSPL end in accordance with the provisions of PPA.

I. With regard to prayer (i) above, the observations and findings of the Commission are as under:

Observations:

i) TSPL's submissions, in brief, are as hereunder:

a) The monthly energy charges payable by PSPCL as per Schedule 7 of the PPA, are as under:

*"1.2.3 Monthly Energy Charges  
[for Scenario 4 as mentioned in clause 2.7.1.4 of the RfP]*

*The Monthly Energy Charges for Month "m" shall be calculated as under:*

$$MEP_m = AEOM \times MEP_n$$

*Where:*

*AEOM is the Scheduled Energy during the Month m (in kWh)*

*Monthly Energy Charges*

$$MEP_n = (NHR_n \times F^{coal}_n) / PCV_n$$

*Where,*

*NHR<sub>n</sub> is the Net Heat Rate for the Contract Year in which month "m" occurs expressed in kCal/kWh and is equal to the Quoted Net Heat Rate of the Contract Year in which month "m" occurs, as provided in Schedule 11.*

*F<sup>coal</sup><sub>n</sub> is the weighted average actual cost to the Seller of purchasing, transporting and unloading the coal most recently supplied to and at the Project before the beginning of month "m" expressed in Rs./MT in case of domestic coal).*

*PCV<sub>n</sub> is the weighted average gross calorific value of the coal most recently delivered to the Project before the beginning of month "m" expressed in kCal/kg."*

The coal linkage was arranged by PSPCL. It is mandated by law to get the linkage coal with ash content more than 34%

washed to reduce ash content to less than or equal to 34% before supply to project site. In order to meet the above MoEF norm, transport and use this coal, it is incumbent upon TSPL to get the coal washed. As provided in Schedule 7 of the PPA, cost of purchasing, transporting and unloading the coal to the project is to be paid by PSPCL. Hence, costs associated with washing of coal form an integral part of such cost. The words 'coal most recently supplied to & at the project' provided in the said Schedule 7 indicates that all the costs incurred for supply of coal upto project site are to be considered for computation of energy charges.

- b) Under case-2 scenario 4 bidding process, TSPL was required to quote only the SHR & Capacity Charge. With regard to the Energy Charge, which is a function of the SHR, weighted average actual GCV of coal delivered and weighted average actual cost of purchasing, transporting & unloading the coal delivered, bidders were required to quote only the SHR.
- c) The weighted average actual cost of coal to the seller includes all the costs pertaining to cost for procuring coal including washing of coal to meet environment norms, taxes and duties, transportation cost & unloading cost at TSPL site and all other associated costs. Hence, all such costs must be included for determination of monthly energy charges as per provisions of PPA.
- d) MoEF, vide its Gazette notification dated 02.01.2014 amended the Environment (Protection) Rules, 1986, and issued Environment (Protection) Amendment Rules, 2014, according to which, a captive thermal power plant with

installed capacity of 100 MW or above located beyond 1000 kilometres from the pit-head is obligated to use raw or blended or beneficiated coal with ash content not exceeding 34% on quarterly average basis.

The Environment Clearance issued by MoEF vide letter dated 11.07.2008 and amended vide letters dated 25.03.2010, 17.06.2010 and 30.09.2013 also stipulated that the ash content in the coal to be used in the project shall not exceed 34%.

- e) As per the LoA dated 14.08.2008 and FSA dated 04.09.2013, MCL is to supply raw coal of 'E/F' grade. As per Ministry of Coal, Govt. of India, gradation of coal norms, ash plus moisture content of 'E' grade coal is 34.1% to 40 % and that of 'F' grade coal is 40.1% to 47 %.
- f) After signing of PPA, CIL migrated from UHV based billing to GCV band based billing. Accordingly, FSA was signed for coal grade G-8 to G-13. Hence, the coal to be supplied by MCL to TSPL is having ash content of more than 34%, and therefore, usage of such coal without washing and / or blending by TSPL for the project would not be as per the Environment (Protection) Amendment Rules, 2014 as well as the conditions stipulated by MoEF in the Environment Clearance issued to TSPL.
- g) Bidders were assured coal of not more than 34% ash content during RfP bid conference dated 08.05.2008. However, due to subsequent deviations in LoA regarding supply of 'E/F' grade coal, it became incumbent upon TSPL to make arrangement for washing of coal to meet MoEF norms.

- h) As per the provisions under definition of 'law' and Article 7 of the PPA, TSPL has to comply with all the laws in force in India for operation and maintenance of the power station. Therefore, any mandate issued by MoEF, Government of India, qualifies as applicable law under the provisions of PPA.

In order to comply with the provisions of applicable law as per PPA, TSPL is to process the raw coal through washing and/or blending the coal to ensure the ash content of less than or equal to 34%. Similar practice of washing coal in order to meet MoEF norms is being adopted by the PSPCL's own thermal generating stations.

- i) Washing and/or blending of coal effectively reduces the transportation cost on account of reduced ash content. TSPL's project is located at a distance of around 1700 kms from the MCL mines in Odisha. As such, the transportation charges constitute a major portion of the variable cost of power. Transportation of raw coal with high ash content over such a long distance is considered uneconomical and results in blocking limited available railway carrying capacity.
- j) The MoEF norms also mention the use of blended coal. However, in the present petition, only washing of coal for reducing ash content below 34% has been considered.
- k) PSPCL uses washed coal for its own thermal generating stations. Some Central generating stations of NTPC also use washed coal and PSPCL has its entitlement from these stations, which indicates that PSPCL is already paying for washing of coal. Based on the provisions of PPA and Commission's Order dated 24.12.2012 in petition no. 46 of

2012, the cost of washing of coal is to be considered while computing the energy charges. Accordingly, TSPL carried out tendering process for washing of coal.

l) TSPL, invited bids on 29.10.2013 for washing of initial quantity of coal to ensure that the coal with ash content of not more than 34% is available for achieving COD of Unit-I. PSPCL was requested to participate in the price bid opening process to which PSPCL refused citing various reasons.

m) TSPL in its rejoinder dated 06.10.2014 to PSPCL's reply dated 30.09.2014 submitted that:

i) TSPL has only requested for the inclusion of coal washing charges (under the PPA provisions) as it is the cost incurred by it and not under Change of Law provisions as contended by PSPCL.

ii) TSPL did not receive the quality of coal it was promised by PSPCL during bidding. PSPCL, in RfP bid conference held on 08.05.2008 vide its presentation as well as mail dated 12.06.2008 had assured that MCL vide letter dated 28.04.2008 had agreed to supply E Grade coal with ash content in the range of 33-34% up to 5 MTPA during FY 2011-12 and 7.70 MTPA from FY 2012-13 onwards for the project.

In the additional information sent by e-mail to all the bidders on 12.06.2008, TSPL (SPV of erstwhile PSEB) provided the proximate analysis of the coal wherein ash content was mentioned as 33-34% and GCV of coal 4500-4600 kCal/kg.

iii) The LoA issued by MCL on 14.08.2008 was provided to the petitioner after it entered into the MoU with PSPCL

after acquisition of TSPL by SEL on 01.09.2008. Further, LoA was issued on 14.08.2008 i.e. much after the date of submission of financial bid (18.06.2008) by SEL and issuance of LoI dated 04.07.2008 to SEL by PSPCL.

- iv) It came to the knowledge of the petitioner only upon receipt of LoA that the MCL reserved a right to provide Grade E/F coal for the project under the LoA as against the assured supply of Grade E coal only under the MCL letter dated 28.04.2008. In case the coal being supplied would have been of the same quality as informed by PSPCL and confirmed vide its mail dated 12.06.2008 just before the final bid submission, the petitioner need not require the washing of coal at all to meet MoEF stipulation.
- v) In reply to the query during the pre-bid conference “that whether the cost of washing of coal is included in the fuel cost” by the bidders, PSPCL merely replied that “the price of coal for the fuel cost shall be the cost of coal charged by the coal company”. PSPCL did not clearly reply that the coal washing charges shall not be a part of the cost of fuel.
- n) In the submissions dated 09.12.2014, TSPL submitted that:
  - i) In case washing charges were included in capacity charges construed as part of the same by PSPCL, these charges would have been payable even if energy was not scheduled by PSPCL and also the same would have been payable even if there was no such requirement to meet MoEF norms.

- ii) In response to PSPCL's contention that the term 'Capital and Operating Costs' mentioned in clause 2.7.1.4 of the RfP includes the cost of washing, it is submitted that the provisions of clause 2.7.1.4 of the RfP relates to the financial bid. As per clause 2.7.1.4 (1), TSPL was required to quote only capacity charges and Net Heat Rate in the financial bid. A conjoint reading of the provisions of sub clause (3) and sub clause (6) of clause 2.7.1.4 of the RfP, ascertains that sub clause (3) of clause 2.7.1.4 refers to only capacity charges and involves inclusion of only secondary fuel cost in the quoted tariff. Therefore, the cost of washing which is part of energy charges cannot be included in 'Capital and Operating costs' as contended by PSPCL.
- iii) Washing charges are considered for payment as part of the energy charges by the CERC as well as various State Regulators including this Commission even though the regulations do not specifically include the same to be paid as a part of energy charges. NTPC plants and PSPCL's own plants in Punjab are being paid washing charges as part of energy charges.
- iv) PSPCL's contention that washing of coal is to be done by an agency other than CIL or MCL is erroneous. Both CIL and MCL are mandated by law (MoEF norms dated 02.01.2014) to supply washed coal. PSPCL contention that coal company has not assumed any washing obligation or washing was an activity to be done independent of any activity to be undertaken by the coal company is incorrect.

- v) Regardless of the requirement imposed by MoEF norms of 2014, washing of coal from MCL linkage will lead to saving the energy charges for PSPCL. The coal cost/1000 kCal would be ₹ 1.12 for washed coal and ₹ 1.23 for raw coal from MCL as per the approximate current values of transportation, GCV etc.
  - vi) PSPCL in all its communications maintained that coal provided by MCL would contain ash content less than 34%. PSPCL should not be permitted to go back on the assurances it had made to TSPL vide letter dated 18.04.2008, presentation dated 08.05.2008 and the e-mail dated 12.06.2008. Since PSPCL has provided coal of a quality materially different to the representations it had made, TSPL is incurring additional expenditure towards washing of coal.
- ii) In response to TSPL's submissions brought out above, PSPCL submitted as under:
- a) The claim of TSPL purported to be on the basis of the change in law brought about by MoEF requiring washing of coal is not correct. The cut off date for considering the change in law occurring in the tariff adjustment in terms of Article 13 of PPA is 16.06.2008. As per notification of the Central Govt. dated 19.09.1997 (which was also applicable on 16.06.2008), there was a directive that in case of coal with ash content of 34% and above requiring transportation to power projects at a distance of 1000 kms and above, it is necessary to undertake washing of coal.

There had been a statutory requirement to wash the coal for transportation even at the time of bid by TSPL i.e.



cut off date. Accordingly, there is no change in law which has occurred after the cut off date and there can not be any tariff adjustment or adjustment in the energy charges in regard to washing of coal.

- b) There was a specific query raised by the bidder during pre-bid conference(s) seeking clarification on the cost of washing of coal being included in the fuel price. The query was as under:

*“that whether the cost of washing of coal is included in the fuel cost.”*

In response PSPCL’s clarification was as under:

*“the price of coal for the fuel cost shall be the cost of coal charged by the coal company.”*

TSPL submitted the bid based on the above clarification and should, therefore, be deemed to have accepted the condition that PSPCL will not be required to pay any additional charges for the purpose of washing of coal.

- c) TSPL will have significant advantage in washing the coal as the coal with less ash content would be beneficial to the plant & equipment and reduce various operating & maintenance costs. In terms of the competitive bidding held and the clarification issued, TSPL can retain such advantage accruing from washing of coal and the use of washed coal.
- d) During bidders’ conference held on 08.05.2008, PSPCL informed bidders regarding coal arrangement that MCL vide letter dated 28.04.2008 had conveyed for supply of ‘E’ Grade coal upto 5 million tonne during 2011-12 and 7.70 MTPA from 2012-13 onwards. Thus, the only representation of PSPCL in the bidding process was that the coal allocation of

the above mentioned quantum of 7.70 MTPA from CIL/subsidiaries has been given to the project. The above was made known to all the bidders and the bidders were required to submit their bids accordingly. The only obligation of PSPCL towards TSPL was to ensure a coal linkage.

- e) The interpretation put forth by TSPL to Schedule 7 of the PPA is wrong. The energy charges payable by PSPCL to TSPL in so far as the fuel cost is concerned are restricted to the cost of coal charged by the coal company and it is not liable to pay any other charges.
- f) TSPL is mixing up the issue of environmental clearance given for the power project and operation of power plant with the requirement of notification of the Govt. of India issued in the year 1997 dealing with conditions of transportation of coal. The nature of the conditions are different which are to be complied with, independent of environmental clearance dated 11.07.2008 of MoEF.
- g) The requirement to wash the coal was existing at the time of bidding and coal of E/F Grade to be supplied by MCL was required to be washed. It is not correct that such requirement came for the first time in the Environment (Protection) Amendment Rules, 2014. PSPCL did not assure the bidders of the availability of coal from the coal mines with ash content less than 34%. It was required to provide only the coal linkage.
- h) The LoA issued by MCL for supply of E/F Grade was clearly to the effect that ash content in the coal would be more than 34%. Also, the Commission's Order dated 24.12.2012 in petition no. 46 of 2012 in regard to the cost of coal to be paid

does not in any manner deal with any additional cost to be paid for washing of coal and the same is restricted to the cost of coal to be charged by MCL qua the grade of coal supplied by it.

- i) The reliance placed by TSPL on PSPCL's submissions during the determination of ARR for FY 2013-14 to state that PSPCL had provided for total quantity of washed coal being used at its own thermal generating stations is misconceived.
- j) With regard to the tendering process conducted by TSPL for washing of coal, it is submitted that PSPCL is not required to pay the cost of washing of coal as the same is to the account of TSPL as per the terms & conditions of the bid. Accordingly, cost of washed coal can not be included as part of weighted average actual cost of coal for computing energy charges. Further, surface transportation charges, which may be incurred by TSPL for unwashed coal, for payment to its contractor can not also be considered as a pass through.
- k) The modalities of computation of monthly energy charges have been clearly specified in clause 1.2.3 of Schedule 7 of PPA and accordingly TSPL can not claim charges for washing of coal got done from an entity selected by it either pursuant to competitive bidding process or otherwise.
- l) All the bidders were informed prior to the bidding about the coal quality as grade E with ash content of 34.4%. The bid deadline was 23.06.2008 and cut off date for the purpose of considering the Change in Law as per Article 13 of PPA was 7 days prior to the bid deadline i.e 16.06.2008, prior to which there were communications and also pre-bid conference on 08.05.2008.

The bidders were called upon to attend the pre-bid conference vide email dated 03.05.2008. In the aforesaid email dated 03.05.2008, the analysis result of joint samples obtained from MCL was also duly furnished indicating ash content of 34.4% and the grade of coal as E. TSPL can not contend that it did not receive the analysis of the coal communicated by MCL vide letter dated 28.04.2008. The email dated 03.05.2008 specifically referred to this letter and the said email was addressed to the representatives of each of the bidders including Vedanta, the successful bidder to whom 100% shares of TSPL were vested. The analysis of coal was an important information for any bidder to submit the bid. In case any bidder had not received the same, it could have specifically asked for the same. In the absence of any contrary evidence, the veracity of the email dated 03.05.2008, which was addressed to all bidders and not just to the Vedanta, can not be challenged.

The website of CIL also provides for the ash content range in various grades of coal. It is not believable that a bidder would not examine the information available on the website of the coal company before submitting the bid. Also, PSPCL had specifically clarified to the bidders that it will be paying only the price of the coal as charged by the coal company.

m) MCL while providing the analysis of coal vide letter dated 28.04.2008 as also while issuing letter of allocation did not assume any obligation undertaking the washing process. It is not correct for TSPL to say that if the coal is washed at CIL, PSPCL would have paid the washing charges as an addition

to the price of coal and in case coal is washed by some other agency, PSPCL would not pay for the same. As per the clarification given by PSPCL in the pre-bid conference, the bidders had clearly proceeded on the basis that CIL will not be undertaking the washing of coal and at the same time washing of coal would be required to be undertaken.

- n) In terms of the provisions of the PPA, the monthly energy charges are payable as per clause 1.2.3 of Schedule 7. No other charges are admissible for payment by PSPCL. In the formula for calculating the monthly energy charges, there are three specific cost elements i.e purchasing, transportation and unloading of coal. Washing of coal was envisaged to be an independent activity after purchasing of coal. Such washing of coal was therefore not a part of the cost element of purchasing of coal specified in Schedule 7 of the PPA.
- o) The obligation of undertaking all activities to maintain the SHR through washing of coal was the prime obligation of TSPL and hence the cost towards the same can not be passed on to PSPCL, separately.
- p) The PPA dated 01.09.2008 was entered into between TSPL and PSPCL pursuant to case-2 competitive bidding conducted by the then PSEB in terms of section 63 of the Act read with the Guidelines notified by the Government of India, Ministry of Power in this regard. There are only two provisions for seeking change in tariff under the PPA i.e. Force Majeure under Article 12 and Change in Law under Article 13. TSPL's claims do not indicate as to under which clause of the PPA the same are being made. The petition needs to be dismissed on this short issue alone.

- q) TSPL is considering the matter to be an exercise under section 62 of the Act where the Commission determines the tariff on cost plus basis, which is incorrect. Power under section 86 (1) (b) or (f) can not be exercised by the Commission overriding sections 61, 62, 63 etc. of the Act to allow any increase in tariff.
- r) TSPL has not elaborated how the PPA covers the claim with respect to GCV of coal on most recently received basis at the project site instead of equilibrated GCV. TSPL has submitted that it could not have factored in this cost while submitting its bid as the design of the case-2 bidding does not envisage the factoring in of such energy charges components in the financial bid and this energy charge component has arisen only now.

Findings:

The Commission's findings are as under:

- i) TSPL has claimed reimbursement of charges for washing of coal undertaken by it including surface transportation charges for unwashed coal payable to the contractor mainly on the premise that (a) it was not informed at the pre-bid stage that washing charges would not be payable by PSPCL and (b) it is mandatory to wash the coal prior to its transportation to the project in terms of the Gazette notification dated 02.01.2014 of the Ministry of Environment and Forests amending the Environment (Protection) Rules, 1986. Vide the said amendment, in rule 3, for sub-rule (8), the following sub-rule was substituted:

*“(8)With effect from the date specified hereunder, the following coal based thermal power plants shall be supplied with, and shall use, raw or blended or beneficiated coal with ash content not exceeding thirty-four per cent, on quarterly averages basis, namely:-*

*(a)a stand-alone thermal power plant (of any capacity), or a captive thermal power plant of installed capacity of 100 MW or above located beyond 1000 kilometres from the pit-head or, in an urban area or an ecologically sensitive area or a critically polluted industrial area, irrespective of its distance from the pit-head, except a pit-head power plant, with immediate effect;*

.....  
*Explanation: For the purpose of this rule, —*

*(i) ‘beneficiated coal’ means coal containing higher calorific value but lower ash than the original ash content in the raw coal obtained through physical separation or washing process;*

.....”

PSPCL in its reply submitted that a prior notification dated 19.09.1997 already existed and there is no change in law. The Commission notes that, through this notification dated 19.09.1997, in rule 3 of the Environment (Protection) Rules, 1986, sub-rule (8) was inserted, which reads as under:

*“(8) On and from the 1st day of June, 2001, the following coal based thermal power plants shall use beneficiated coal with an ash content not exceeding thirty-four per cent, namely:—*

*(a) Any thermal power plant located beyond one thousand kilometers from the pit-head and*

.....  
*Explanation, — For the purpose of this rule —*

*(a) ‘beneficiated coal’ means coal containing higher calorific value but lower ash than the original ash content in the raw coal obtained through physical separation or washing process;*

.....”

TSPL asserted that it is not claiming the washing charges under change in law but it is claiming these charges under Schedule 7 of the PPA wherein the methodology for calculating the monthly energy charges has been specified. TSPL has claimed that under clause 1.2.3 'Monthly Energy Charges' of Schedule 7 of the PPA, PSPCL is liable to pay the cost of coal including washing and associated charges, its transportation to the project and unloading charges. It is the claim of TSPL that as per the MoEF notifications brought out above, the coal with ash content above 34% can not be transported to the project and since transportation of coal is payable by PSPCL, it is incumbent upon PSPCL to pay charges for washing of coal, being a prerequisite in terms of these notifications.

On the other hand, PSPCL claims that on being enquired by the bidders at the pre-bid stage, whether cost for washing of coal will be paid by PSPCL, it was clarified to the bidders that cost of coal as payable to the coal company shall be paid by PSPCL. TSPL has stated that PSPCL nowhere clearly stated that washing charges for coal shall not be payable and the reply given by PSPCL at the bidding stage implies that coal, if washed by the coal company shall be paid for, otherwise not. PSPCL has rebutted the same stating that it was clear at the pre-bid stage that coal of grade E with ash content of more than 34% will be made available by MCL without washing and that the bidders submitted their bids after factoring in the washing of coal.

Moreover, the information with regard to ash content of various grades of coal, including grade E/F assured by MCL for the project vide LoA dated 14.08.2008, was available on the CIL



website at the pre-bid stage. TSPL has stated that the said LoA dated 14.08.2008 was handed over to it after transfer of 100% share of the SPV TSPL, at that time a subsidiary of the PSEB (now PSPCL), and signing of the PPA on 01.09.2008. TSPL has stated that throughout the bidding stage, PSPCL was representing that coal of grade E with ash content of 33-34% has been assured by MCL and it was for the first time through the LoA dated 14.08.2008, which too was handed over to it at the time of/after signing of the PPA, it came to know that coal of E/F grade has been assured.

PSPCL has submitted that in email dated 03.05.2008 i.e prior to the pre-bid conference on 08.05.2008, which was addressed to all bidders including the then representatives of the petitioner, the ash content of 34.4% was clearly mentioned with respect to the coal allocated for the project which was based on the letter dated 28.04.2008 from the coal company. TSPL has claimed that it did not receive the said mail to which PSPCL has asserted that it could have asked for the information which even otherwise was in the public domain and available on CIL website. TSPL has claimed that since coal with ash content higher than 34% was assured, which could not be transported to the project without washing keeping in view of the MoEF notifications, it was mandatory on its part to wash the coal and thus washing of coal and associated charges becomes payable by PSPCL in terms of Schedule 7 of the PPA.

TSPL has further submitted that under Case-2 Scenario-4 bidding, it was required to quote only the SHR in so far as energy charges were concerned, besides the capacity charges under clause 2.7.1.4(1). TSPL has contended that since energy

charge is a function of SHR, GCV and cost of coal, which is a pass through and since coal linkage was to be arranged by PSPCL, all charges associated with coal received at the project are to be paid by PSPCL.

PSPCL has submitted that as per clause 2.7.1.4(3), the quoted tariff is all inclusive tariff and no exclusions are to be allowed to which TSPL has rebutted that this stipulation pertains only for capacity charges. PSPCL has further submitted that only the charges specified in Schedule 7 of the PPA i.e purchasing, transportation (railways) to the project and unloading are payable. PSPCL has submitted that washing of coal was an independent activity to be undertaken by TSPL as MCL did not undertake to wash the coal and the same was not part of the cost of coal supplied by MCL. PSPCL has further reasoned that washing of the coal prior to transportation is advantageous to TSPL in terms of savings in transportation charges as coal with significantly less ash content and improved GCV is transported to the project thereby further reducing the operation & maintenance costs.

- ii) The Commission notes that a bare reading of the MoEF notifications dated 19.09.1997 and 02.01.2014 reveals that as per these notifications, coal based thermal plants of capacity 100 MW or above and located beyond 1000 kms from the pit-head are mandated to be supplied with and use raw or blended or beneficiated coal with ash content not exceeding 34% on quarterly average basis. Rightly so, such a condition that ash content in the coal to be used in the project shall not exceed 34% was stipulated in the environmental clearance accorded to the project. The notification dated 19.09.1997 existed prior to

bidding deadline i.e 23.06.2008 with cut-off date 16.06.2008. The amendment dated 02.01.2014 included use of raw or blended coal in addition to beneficiated coal and further specified the requirement that ash content not exceeding 34% was to be complied with, on quarterly average basis. As per the information available with the Commission, TSPL's project has been commissioned on 05.07.2014 and is thus covered by both these notifications.

The Commission is of the view that washing of coal for the purpose of transporting the same to project is not mandatory in terms of these notifications. The requirement of these notifications is with regard to restriction on the 'supply' and 'use' of coal with ash content exceeding 34% on a quarterly average basis which may be achieved through blending of coal or beneficiation of coal through physical separation or washing process. TSPL has stated that in this petition only washing of coal for reducing ash content below 34% has been considered. The Commission is of the view that since these notifications forbid 'supply' of coal (by the coal company) and 'use' of coal (by the generating company) of ash content not exceeding 34% on quarterly average basis for projects located beyond 1000 kms from the pithead, it is for MCL (supplier of coal) and TSPL (user of coal) to sort out the issue amongst themselves. Furthermore, the requirement of using the coal with ash content not exceeding 34% is on quarterly average basis, the entire quantity of coal may not be required to be washed and secondly as per the notification this requirement can also be met with through physical separation or blending.

By washing the entire quantity of coal supplied by the coal company before transportation to project, TSPL is saving on the transportation cost of the coal and receiving coal with improved GCV to its benefit in the shape of reduced costs. The Commission further opines that since the obligation of supplying coal with ash content not exceeding 34% on quarterly average basis is on the coal company as rightly admitted by TSPL in its submissions dated 09.12.2014, in case the coal company is not complying with the same, TSPL needs to take up the matter in right earnest with the coal company i.e MCL.

With regard to the PSPCL's obligation of supplying correct information in respect of ash content of the coal assured by the coal company at the bidding stage, the Commission is convinced on the basis of the discussion above that from the information furnished by PSPCL to the bidders at the bidding stage, it was sufficiently clear to infer that coal with ash content of more than 34% has been assured by the coal company. In fact it was amply clear from the analysis results of coal enclosed with MCL's letter dated 28.04.2008 that the ash content of the coal of grade E to be supplied by MCL for the project shall be more than 34%. It was through this letter that MCL had for the first time indicated that it will be able to supply grade E coal for the project upto 5.0 million tonne during FY 2011-12 and 7.70 MTPA from 2012-13 onwards. Again while referring to this letter, PSPCL vide its email dated 03.05.2008 informed the ash content of the coal to be supplied by MCL as 34.4%. It was for the bidders to take a call on this issue and submit their bids accordingly after factoring in all the information supplied to them by PSPCL. Moreover, it was obligatory on the

part of bidders to seek and confirm the information available in public domain on CIL website with regard to the ash content of all grades of coal including grade E which is in the range of 34.1% to 40% i.e higher than 34%. Such an important information on which the payment of energy charges was dependent could not have been afforded to be missed out while submitting the bids.

As regards TSPL's contention that in response to the specific query whether the cost of washing of coal is included in the fuel cost, to which PSPCL had clarified that price of coal for the fuel cost shall be the cost of coal charged by the coal company, PSPCL did not clearly deny the inclusion of the coal washing charges to be part of cost of fuel. It can be seen that PSPCL never admitted to the payment of washing charges as well. Considering that the obligation for supply of coal with ash content less than 34% for projects located beyond 1000 kms from the pithead on quarterly average basis is that of the coal company or its use by the generating company, the aforementioned reply of PSPCL to the query is fairly unambiguous.

As regards, TSPL's contention that LoA of coal dated 14.08.2008 issued by MCL was provided by PSPCL to the petitioner after signing of PPA on 01.09.2008, the Commission disagrees with the same. The Commission is of the view that TSPL (after acquisition by SCL) was under no compulsion to sign the PPA without satisfying itself of having received to its complete satisfaction all the documents related to the project. The Commission also does not agree with the contention of TSPL that email dated 03.05.2008 prior to bid conference of

08.05.2008, wherein reference of MCL letter dated 28.04.2008 was made which mentioned the quality of coal as grade 'E' with ash content 34.4%, was not received by it because the same was clearly addressed to the representative(s) of Vedanta (SEL), the petitioner bidding company, along with other bidders

Further, with regard to TSPL's contention that PSPCL and NTPC are getting the coal washed prior to transportation, the Commission finds it untenable to extend the logic to the present petition which is with regard to alleged dispute between the generating company and the distribution licensee as to whether cost of washing of coal is included in the fuel cost assured by the coal company for the project awarded through competitive bidding process carried out as per the Govt. of India guidelines dated 19.01.2005 under case-2 scenario-4 for procurement of power by the distribution utilities.

- iii) With regard to TSPL's contention that surface transportation charges payable to the contractor for unwashed coal are required to be reimbursed by PSPCL as these were even otherwise payable to MCL, the Commission is of the view that payment of surface transportation charges to MCL are governed by the terms & conditions of the FSA signed between TSPL and MCL wherein such charges are payable by TSPL to MCL in terms of clause 9.0 "Price of Coal". As per the said clause, "As Delivered Price of Coal" for the coal supplies is the sum of Base Price, Other Charges [which includes transportation charges (sub-clause 9.2.1)] and Statutory Charges as applicable at the time of delivery of coal. Thus, the Commission notes that the surface transportation charges are payable by TSPL to MCL in terms of above which is part of the

delivered price of coal claimed by MCL in the bills raised by it for the coal supplied to TSPL, which is being paid by PSPCL as per submissions made by it in this petition. Therefore, in terms of above, no separate surface transportation charges are payable by PSPCL to TSPL.

iv) The Commission notes that the Tariff Policy notified by Ministry of Power, Govt. of India on 06.01.2006, in para 6.2(3), provides that

*“In case of coal based generating stations, the cost of project will also include reasonable cost of setting up coal washeries, coal beneficiation system and dry ash handling & disposal system.”*

Therefore, in terms of the Tariff Policy provisions, in the case of the coal based generating stations, the reasonable cost of setting up coal washeries, coal beneficiation system and dry ash handling and disposal system is to be included in the cost of the project and so would have been the case of TSPL’s project, the same having been bidded after the notification of the Tariff Policy on 06.01.2006.

**Accordingly, considering the discussion above, the Commission concludes that charges for washing of coal supplied/to be supplied by MCL to TSPL’s project including various associated costs incurred for arrangement of washed coal are not payable by PSPCL to TSPL.**

**Consequentially, prayer of TSPL with regard to granting approval to the modalities of cost of coal washing arrived at through competitive bidding process from time to time and directing PSPCL to either conduct bidding for finalization of washery operator or alternately, participate in competitive**

**bidding process for finalization of washery operator to be conducted by TSPL, in future, from time to time, fails.**

II. With regard to prayer (ii) above, the observations and findings of the Commission are as under:

Observations:

- i) TSPL's submissions, in brief, are as under:
  - a) After signing of the PPA between TSPL and PSPCL, CIL has adopted the approach of billing on the basis of eGCV values of coal. Hence, billing by MCL is also being done on eGCV basis. There is difference in GCV of coal on 'as received basis' as compared to eGCV. TSPL can not be made to suffer on account of change in approach of billing on eGCV basis adopted by CIL as PPA was signed prior to such a change.
  - b) GCV of the coal on 'as fired basis' (AFB) i.e. bunkered coal GCV is lower than GCV of coal received at site. Considering this fact, the Commission allowed a drop of 150 kCal/kg to PSPCL in the review of Tariff Order for ARR of PSPCL for FY 2012-13 dated 27.02.2013 and for FY 2013-14 dated 10.04.2013. At the time of bidding for the project, the industry norm was to take GCV on 'as fired basis' including PSPCL's own plants. The Commission is requested to approve the same approach as mentioned in PPA and as adopted for PSPCL in the aforesaid Tariff Orders for consideration of GCV for computation of the energy charges of TSPL and accordingly allow a drop of 150 kCal/kg in the GCV of coal received for computation of energy charges.



- c) The claim of PSPCL that the relevant Regulations of the Commission as well as the Tariff Orders of the Commission cannot be applied to tariff based competitive bidding process is wrong. The Commission, itself has recognised in its Tariff Order dated 16.07.2012 in the matter of approval of ARR of PSPCL for FY 2012-13 that the GCV of coal on 'as fired basis' i.e. Bunkered GCV shall be lower than GCV of coal received at site. Such fact applies to the plants based on competitive bidding process particularly more so when the bidding has happened on Heat Rate Basis, as much as it applies to the plants of PSPCL.
- d) In consideration of the fact that the provisions of PPA clearly stipulate that the calorific value to be considered for computation of energy charges is based on "weighted average gross calorific value of the coal most recently delivered to the Project" the submission of the petitioner for allowing GCV on as fired basis is completely justified.
- e) When the bids were submitted, PSEB was allowed the actual coal costs and actual calorific value based on the Heat Rate approved by the Commission. Accordingly, the petitioner also assumed that the same treatment will be applicable for its plant as the bidding for energy charges was on Net Heat Rate basis with the only difference that instead of Heat Rate as per Regulations, Net Heat Rate as quoted by bidder was to be considered for computing the energy charges based on actual coal cost and actual GCV.
- f) TSPL has requested the Commission to consider the fact that CIL has adopted the approach of billing on the basis of eGCV values of coal after the signing of PPA by TSPL with

PSPCL, and hence, TSPL cannot be made to suffer on account of such change in approach by CIL in measurement of GCV in view of the fact that the Commission allows computation of GCV for PSPCL plants on 'as fired basis'.

- g) As regards the consideration of GCV on 'as fired basis', the claim of PSPCL that the relevant Regulations of the Commission as well as the Tariff Orders of the Commission cannot be applied to tariff based competitive bidding process is completely wrong. The Commission, itself has recognised in its Tariff Order dated 16.07.2012 in the matter of approval of ARR of PSPCL for FY 2012-13 that the GCV of coal on 'as fired basis' i.e. Bunkered GCV shall be lower than GCV of coal received at site. Such fact applies to the plants based on competitive bidding process particularly more so when the bidding has happened on Heat Rate Basis, as much as it applies to the plants of PSPCL. Further, in consideration of the fact that the provisions of PPA clearly stipulate that the calorific value to be considered for computation of energy charges is based on "weighted average gross calorific value of the coal most recently delivered to the Project" the submission of the petitioner for allowing GCV on as fired basis is completely justified. The petitioner would also like to submit that when the bids were submitted, PSEB was allowed the actual coal costs and actual calorific value based on the Heat Rate approved by the Commission. Accordingly, the petitioner also assumed that the same treatment will be applicable for its plant as the bidding for energy charges was on Net Heat Rate basis with the only difference that instead of Heat Rate as per Regulations, Net Heat Rate as quoted

by bidder will be considered for computing the energy charges based on actual coal cost and actual GCV.

ii) In response to the above submissions, PSPCL submitted as under:

- a) The modalities of computation of monthly energy charges have been clearly specified in clause 1.2.3 of Schedule 7 of PPA. PSPCL is not liable to pay for the difference in the GCV of the coal. TSPL is not entitled to claim any adjustment for the coal cost with GCV on 'as fired basis'. The bid of the Sterlite Power Ltd. was not submitted on the premise of the coal cost and GCV being determined on 'as fired basis' but on 'as received basis'.
- b) eGCV is the equilibrated GCV at standard conditions of relative humidity of 60% and temperature of 40 degree centigrade when maintained for minimum 72 hours whereas GCV on 'as received basis' takes into account all the moisture present. PSPCL is not liable to pay for the difference in the GCV of coal. TSPL is not entitled to claim any adjustments for the coal cost being on 'as fired basis' other than covered in the formula under Schedule 7 which defines GCV to be the weighted average gross calorific value of the coal most recently delivered to the project before the beginning of the month.
- c) In terms of the provisions of the PPA, the monthly energy charges are payable as per clause 1.2.3 of Schedule 7 and the formula given thereunder. Except the said cost, no other charges are admissible for payment to TSPL by PSPCL. In the above formula, there are three specific cost elements

which have been specified as purchasing, transportation and unloading.

- d) Monthly energy bills are being paid as per PPA under Schedule 7 of tariff wherein fuel cost is the weighted average actual cost of purchasing the coal by TSPL and the weighted average GCV of the coal delivered to the project for which TSPL has made the payment to CIL/MCL. GCV of coal as received at the project is not payable under the PPA.
- e) The claim of TSPL with regard to GCV in the additional affidavit for calculation of energy charges is without any basis and is a departure from the claims made in the original petition. The only issue raised in the petition was that GCV is to be taken on 'as fired basis'. Clause 1.2.3 of Schedule 7 is very clear and provides for payment to be made on '*weighted average gross value of the coal most recently delivered to the Project before the beginning of month 'm' expressed in kcal/kg.*' The PPA envisages that GCV will be computed on as delivered to the Project. The coal is delivered to the Project at the point of delivery as per the Fuel Supply Agreement. As per the bidding documents, it was for all bidders including TSPL to take into account all costs in the bid, apart from what is specifically agreed to be paid on actual basis by PSPCL. The conscious and specific expression used with regard to the GCV is 'average gross calorific value of the coal most recently delivered *'to the Project'*. The expression used is not *'at the Project'*. The above is in contradistinction to the definition of  $F^{COAL}_n$ , wherein the expression used is *'to and at the Project'*. The above establishes the following:

- i) The situs of 'to the Project' is someplace different from 'at the Project'. Both the expressions obviously do not refer to the same place otherwise there would be no purpose in the specific term being used '*to the project*' and '*at the project*' separately.
- ii) Every term in an agreement needs to be given effect to and specific terms used cannot be rendered otiose. If the term '*to the Project*' is interpreted to mean at the project site, the term '*to and at the Project*' would be rendered otiose and redundant. The same term '*to the project*' would have then been used.
- iii) The term '*at the Project*' obviously refers to the project site whereas '*to the Project*' refers to when the delivery is made and the risk and title passes on to the Project.
- iv) When the term '*at the Project*' is used, the said definition also includes the transportation and unloading of coal. This itself establishes that '*at the project*' is after transportation of coal from the coal mine to the project site. In contradistinction to the above '*to the project*' is before transportation of coal, where the risk and title over the coal passes on to the petitioner. The above makes it abundantly clear that the term '*to the Project*' does not mean at the project site but only refers to the place where the coal is delivered and the title and risk over the coal passes on to the petitioner.

Findings:

The Commission's findings are as under:

- i) The monthly energy charges payable by PSPCL as per Schedule 7 of the PPA are as under:

*“1.2.3 Monthly Energy Charges*

*[for Scenario 4 as mentioned in clause 2.7.1.4 of the RfP]*

*The Monthly Energy Charges for Month “m” shall be calculated as under:*

$$MEP_m = AEO_m \times MEP_n$$

*Where:*

*AEO<sub>m</sub> is the Scheduled Energy during the Month m (in kWh)*

*Monthly Energy Charges*

$$MEP_n = (NHR_n \times F^{coal}_n) / PCV_n$$

*Where,*

*NHR<sub>n</sub> is the Net Heat Rate for the Contract Year in which month “m” occurs expressed in kCal/kWh and is equal to the Quoted Net Heat Rate of the Contract Year in which month “m” occurs, as provided in Schedule 11.*

*F<sup>coal</sup><sub>n</sub> is the weighted average actual cost to the Seller of purchasing, transporting and unloading the coal most recently supplied to and at the Project before the beginning of month “m” (expressed in Rs./MT in case of domestic coal).*

*PCV<sub>n</sub> is the weighted average gross calorific value of the coal most recently delivered to the Project before the beginning of month “m” expressed in kCal/kg.”*

- ii) It is the claim of TSPL that energy charges are to be paid by PSPCL with GCV of coal on 'as received basis' minus 150 kCal/kg to bring it at par with coal with GCV on 'as fired basis'. TSPL has submitted that thermal plants of PSPCL are being allowed payment of energy charges based on GCV of coal on 'as fired basis'. TSPL has further submitted that PSPCL is making payment based on eGCV of coal i.e the GCV of coal

being measured at the mine end under standard conditions of relative humidity of 60% and temperature of 40 degree centigrade when maintained for minimum 72 hours. PSPCL has submitted that the energy charges are to be paid in terms of clause 1.2.3 of Schedule 7 of PPA wherein GCV is defined as the weighted average gross calorific value of the coal most recently delivered to the project. During arguments before the Commission, PSPCL took the stand that the term 'coal most recently delivered to the project' implies coal delivered to the project at the mine end which was countered by TSPL stating that the term implies coal with GCV on 'as fired basis'. PSPCL has argued that while defining the actual cost of purchasing the coal, the language used in the PPA is "*.....weighted average actual cost to the Seller of purchasing, transporting and unloading the coal most recently supplied to and at the Project before the beginning of month .....*", whereas with regard of GCV the language used in the PPA is "*.....weighted average gross calorific value of the coal most recently delivered to the Project before the beginning of month.....*". Thus, as per PSPCL, the GCV of coal which is to be considered for the payment of energy charges payable to TSPL is the one mentioned in the MCL/CIL bills raised to TSPL for payment of cost of coal.

PSPCL has further argued that TSPL's project, which was awarded under competitive bidding process, can not be compared with PSPCL's projects which are allowed the costs as per Commission's Regulations. PSPCL has submitted and argued that monthly energy bills are being paid as per PPA under Schedule 7 of tariff wherein fuel cost is the weighted

average actual cost of purchasing the coal by TSPL and the weighted average GCV of the coal delivered to the project for which TSPL has made the payment to CIL/MCL.

**Considering the discussion above, the Commission is of the opinion that the rational interpretation of the relevant provisions in the PPA would be that PSPCL is liable to make payment of the coal cost component in the monthly energy charges on the basis of the bills for the cost of coal raised by MCL to TSPL with GCV mentioned therein.**

**Accordingly, the Commission concludes that PSPCL is making the payment of the monthly energy charges to TSPL as per the PPA.**

III. With regard to prayer (iii) above, the observations and findings of the Commission are as under:

Observations:

TSPL has submitted that the washed coal is to be transported through Indian Railways for which the tentative cost is approx. ₹ 2521 per tonne without busy season surcharge. TSPL has further submitted that during transit, some coal quantity is lost and accordingly the weighted average actual cost of coal delivery to PSPCL projects will include the cost associated with transit loss of coal. TSPL has contended that the Commission in its Tariff Order dated 10.04.2013 approved transit loss limited to 1% for all generating stations of PSPCL and requested that on similar lines, costs associated with transit loss of washed coal in the instant case be also approved for the computation of energy charges.



With regard to PSPCL's contention that the PPA does not provide for any adjustment for the transit loss of coal, TSPL while bringing out the following provisions in the PPA,

*“..... $F^{coal}$  is the weighted average actual cost to the seller of purchasing, transporting and unloading the coal most recently supplied to and at the project before the beginning of month “m” (expressed in Rs./MT in case of domestic coal).....”*

argued that the fuel cost as per PPA as mentioned above clearly stipulates that the actual cost of coal most recently supplied to and at the project is to be paid. Therefore, the cost of fuel to be considered as supplied to the project also includes the transit loss, which is also a sort of cost incurred for supplying coal to any thermal power project. TSPL has further stated that as per industry practice, the cost towards transit loss is factored as part of coal cost delivered to power station and submitted that though the PPA does not provide for any ceiling limit of transit losses, the actual transit losses are to be considered as per the PPA. TSPL of its own proposed the ceiling of 1% which is also applicable for PSPCL plants.

In response, PSPCL submitted that in terms of the provisions of the PPA, the monthly energy charges are payable as per the Schedule 7 clause 1.2.3 and the formula given there under. In the formula, there are three specific cost elements which have been specified as purchasing, transportation and unloading of coal. PSPCL has further submitted that PPA does not provide for any adjustment for the transit loss of coal and in the absence of any agreement for the transit loss adjustment, the same is not admissible for payment under the tariff. PSPCL has contended that Article 11 of the PPA deals with the payment of monthly tariff in

accordance with Schedule 7 of the PPA and the same does not refer to the application of the Tariff Regulations of the Commission for the purpose of determination of the monthly energy charges. The tariff has not been determined by the Commission under section 62 of the Act. Therefore, the claim of TSPL for adjustment of the monthly energy charges for transit loss is not in accordance with the provisions of the PPA.

Findings:

**The Commission has considered the submissions of both the parties with regard to claim of TSPL for computing energy charges taking into account the transit loss of coal during transportation from the coal mine to the project. The Commission finds that there is no specific provision in the PPA for computing energy charges considering transit loss of coal. The Commission is not convinced with TSPL's interpretation that the provision(s) in the PPA for computation of energy charges inherently include consideration of transit loss of coal during transportation. Further, the Commission also does not find merit in TSPL's contention that transit loss of coal is payable as per Commission's Regulations. The Commission is of the considered opinion that in the case of a competitively bid tariff under section 63 of the Act, as in the instant case, there is no application of the regulations framed by the Commission, which are primarily to be applied for determination of tariff on cost plus basis under section 62 of the Act.**

**In view of the above, the prayer of TSPL that transit loss of coal during transportation is to be considered while computing energy charges can not be granted.**

IV. With regard to prayer (iv) above, the observations and findings of the Commission are as under:

Observations:

TSPL has submitted that as per PPA, the weighted average actual cost of coal to the seller also includes the cost of unloading coal at TSPL site, which is approximately ₹100 per tonne. Further, with regard to PSPCL's submission that TSPL is required to place satisfactory evidence of the charges paid for unloading of coal at the power project site, claimed as ₹ 100/- per tonne, TSPL submitted that the bills for energy charges will be raised considering the actual charges towards unloading of coal. TSPL further submitted that it is ready to sign a new contract for unloading of coal at project site through competitive bidding. PSPCL may also participate in the tendering process and based on the same, pay unloading charges to TSPL.

TSPL has contended that as per terms of PPA, the cost of unloading of coal at the project is a part of energy charges and is to be recovered from PSPCL and this would mean cost incurred in all activities involved in removal of coal from railway wagons, trucks, any other sources etc. for further usage in generation of power. Once the coal is unloaded at the plant site, it is handled by the fuel handling systems (Coal Handling plant-CHP) available/ installed at plant till it is consumed. TSPL has listed the various elements of coal unloading as under:

- a) Stone picking
- b) Loco operation
- c) Diesel consumed in loco
- d) Wagon Tippler (WT) operation
- e) Wagon Tippler electricity

- f) Manual unloading from Rail
- g) Diesel for manual unloading equipment
- h) Manual unloading - Trucks

TSPL has further contended that coal unloading consists of a series of activities which cannot be sidestepped and for each activity, certain expenses are incurred so that coal can be shifted to the CHP, which are required to be reimbursed to TSPL.

TSPL in its additional submissions dated 13.04.2015 made additional prayers including the one that PSPCL be directed to participate in the tender opening process for unloading of coal stating that TSPL is ready to award contract for unloading of coal at project through competitive bidding process.

In response, PSPCL submitted that the payment for the fuel cost, transportation cost and unloading cost are entirely covered by the provisions as per the formula contained in clause 1.2.3 of Schedule 7 of the PPA. PSPCL further submitted that TSPL is required to provide satisfactory evidence of the charges of ₹100 per tonne claimed for unloading of the coal at the power project. PSPCL submitted that as directed by the Commission, a joint meeting was held between Director/Generation, PSPCL and Chief Operating Officer, TSPL on 27.05.2015 but no consensus on the issue of payment of unloading charges could be reached.

PSPCL, while bringing out that TSPL has claimed coal handling charges (unloading charges) at the power plant site under the following heads,

- i) Stone Picking;
- ii) Loco Operation and Diesel Expenses of Loco;
- iii) Wagon Tippler Operation Expenses;
- iv) Manual unloading Expenses (Bulge Wagons) and Diesel for equipments

v) Manual Unloading Expenses (Trucks etc);

submitted that the above claims of TSPL need to be considered within the scope of the PPA. PSPCL further submitted that in terms of Schedule 7 of the PPA i.e.

*“ $F^{Coal}_n$  is the weighted average actual cost to the Seller of purchasing, transporting and unloading the coal most recently supplied to and at the Project before the beginning of month “m” (expressed in Rs./MT in case of domestic Coal)”*

PSPCL agreed to pay the costs in relation to coal and coal handling on actual basis on three counts namely;

- a) price payable to coal companies as per the bills raised by such coal companies;
- b) cost of transportation; and
- c) unloading charges.

The unloading charges, if any, are payable separately like transportation cost, independent of price payable to coal companies and of the quoted fixed charges based on which the bidder was selected.

Further, while reproducing the definition of "Power Station" as provided in the PPA (*the fuel handling facility is part of the Power Station*) as below

*“Power Station” Means the:*

- a) *Domestic coal based power generation facility comprising of any or all the Units;*
- b) *Any associated fuel handling, treatment, treatment or storage facilities of the power generation facility referred to above;*  
.....
- c) *All the other assets, buildings/structures, equipment's, plant and machinery, facilities and related assets required for the*

*efficient and economic operation of the power generation facility;*

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

PSPCL while bringing out the definition of the coal handling plant (CHP) in the Standard Design Criteria/Guidelines for Balance of Plant of Thermal Power Project 2 x (500 MW or Above) published by Central Electricity Authority, New Delhi as

*“The coal handling plant (CHP) in a thermal power station covers unloading of coal, its crushing, storage and filling of boiler bunkers.”*

submitted that the coal unloading facility to be provided depends on the mode of transportation of coal which in the case of TSPL is through Indian Railway System using ‘BOXN’ Wagons. The unloading of coal from ‘BOXN’ Wagon is through wagon tippler wherein side arm charges are employed for placement of wagons on the tippler table after tipping. Provision is kept for shunting locomotives for placing the rakes in position for the side arm charger to handle and begin unloading operation. PSPCL has submitted that these Guidelines further describe that coal handling in thermal plants involves:

- i) Coal unloading
- ii) Coal crushing
- iii) Coal Stacking & Reclaiming at Stockyard
- iv) Dust Control System and Ventilation System
- v) Miscellaneous facilities

With regard to the details of unloading charges of coal furnished by TSPL, PSPCL has submitted that stone picking is a sub-activity of coal handling required on the conveyors leading to the crusher house and part of power station activity covered under O&M expenses. Also, as per PPA & CEA Guidelines, loco is part of the coal handling facility (covered under the capacity charges) and any expense incurred on its operation is incurred on the Power Station and no additional cost is to be allowed. With regard to wagon tippler operating expenses, PSPCL submitted that wagon tipplers are also part of the coal handling facility and are electrically operated. The electricity consumed is covered in O&M Expenses. PSPCL further submitted that the wagon tippler operation is an activity performed automatically and the coal is unloaded in the pits established for the purpose. No further expenditure is required to be considered. With regard to the manual unloading expenses (Bulge wagon) and diesel for equipments, PSPCL submitted that as per the scheme provided in the CHP, there are four wagon tipplers provided for unloading the coal and the non-operation of CHP mechanism and use of any alternate manual or other mechanism for coal handling is entirely attributable to TSPL. PSPCL has no liability to pay the cost of unloading when the CHP is not functional and the responsibility to keep the same in working order lies with TSPL. PSPCL further contended that manual unloading expenses (Trucks etc.) are not admissible as the project envisages the unloading of the coal through wagon tipplers. The operation and maintenance of the wagon tippler is the responsibility of the TSPL.

PSPCL has submitted that each of the above heads of expenditure claimed by TSPL are either after the unloading of the

coal through wagon tippler or related to the work envisaged to be undertaken by equipment such as wagon tippler. These are part of the O&M expenses and the capital cost to be serviced.

PSPCL has further stated that the bidders at the time of bidding were informed that under Article 2.7.1.4, the quoted tariff shall be an all inclusive tariff and no exclusions shall be allowed. The Bidder were to take into account all costs including capital and operating costs, statutory taxes, duties, levies while quoting such tariff. As such, the unloading charges claimed by TSPL are not payable in term of PPA and project documents and it is not correct for TSPL to propose competitive bidding for the same.

Findings:

The Commission's findings are as under:

**The Commission has considered the submissions of both the parties with regard to justification for payment of charges for unloading of coal at the project by PSPCL to TSPL. The Commission is convinced of the justification provided by PSPCL and agrees with its submissions implying that the charges for unloading of coal at the project are not payable in the instant case since the same are being paid as part of the capacity charges, the cost of loco(s), wagon tippler(s) etc. used for unloading of coal and the cost of coal handling plant, having been included in the project capital cost. The charges for operation of the same including diesel and electricity etc. would be covered in the operation & maintenance expenses.**

**Accordingly, the Commission disallows the prayer of TSPL that PSPCL be directed to pay unloading charges of**



**coal at the project as PSPCL is not liable to pay the same. In view of the decision of the Commission hereinabove, the additional prayer of TSPL that PSPCL be directed to participate in the tender opening process for unloading of coal at the project becomes infructuous.**

35. With regard to rehearing of the petition allowed by the Commission vide Order dated 20.08.2015 as brought in para 27 above, the Commission notes that TSPL in its additional affidavit dated 25.08.2015 submitted various issues stated to have been learnt by it recently and also issues already taken up in the petition. TSPL's additional pleadings in the said affidavit dated 25.08.2015 on issues taken up earlier in the petition have been considered by the Commission in para 34 above while deciding these issues. The Commission hereinafter has taken up the issues which have been additionally brought out in TSPL's additional affidavit dated 25.08.2015. TSPL has stated that these are energy charge components and payable by PSPCL as per clause 1.2.3 of Schedule 7 of PPA. The same are brought out hereunder in brief:

i) Rake escorting charges

TSPL has submitted that it incurs charges for escorting the Indian Railway rakes to avoid/prevent theft of coal in transit from the MCL mines/imported coal stockyards etc. upto the project. TSPL has further submitted that these charges, which were incurred recently and therefore not included in the pleadings filed before the Commission, form part of the energy charges payable as per Schedule 7 of the PPA and are payable by PSPCL as per the terms of the PPA.

ii) GCV sampling and testing charges

TSPL has submitted that it incurs charges for GCV sampling and testing at the loading point of MCL, as suggested by CIL/MCL. TSPL has stated that it learnt of this cost also recently.

iii) Finance charges

TSPL has submitted that these charges are incurred by it as part of coal cost for maintaining LC, BG etc. relating to coal procurement and thus must be paid by PSPCL as part of energy charges under Schedule 7 of the PPA.

iv) Advertisement and other related charges for alternate coal procurement tenders

TSPL has submitted that it incurred certain costs towards publication of tenders for procurement of alternate coal which forms part of the cost of coal and must be paid by PSPCL.

v) Shunting charges

TSPL has submitted that these charges are paid by TSPL to the Indian Railways for to and fro movement of coal rakes upto the transit point of the project. PSPCL was making payment of these charges earlier but stopped later on.

TSPL has submitted that it could not have envisaged to include these charges as part of its financial bid as definite parameters to estimate these charges were not available at the time of submission of bids. TSPL further submitted that the case-2 bidding does not envisage factoring in of these charges in the financial bid as only capacity charges and net heat rate were required to be quoted. TSPL further elaborated that the GCV of coal to be supplied by MCL/CIL would vary over time and thus beyond its

control. Similarly, due to variation in ash content of the coal to be supplied by the coal company over time, it was not known at the bidding stage, whether each consignment of coal would require washing or not. Hence, the bidders were not expected to factor in these factors in their bids for the project. TSPL further submitted that in case the same were factored in the financial bid, it would have led to unjust enrichment/loss to either of the parties. TSPL has submitted that the aforesaid arguments with regard to non-availability of definite parameters for the purpose of inclusion in the tariff bid are applicable to other energy charge components also, as brought out in the additional affidavit.

In response to the submissions of TSPL in its additional affidavit dated 25.08.2015, PSPCL in its reply dated 05.10.2015, while replying to the additional issues of TSPL, has also supplemented its response on various issues raised by TSPL earlier which have been considered by the Commission in its findings above.

PSPCL's reply on additional issues pleaded by TSPL, in brief, is as under:

- a) PSPCL has submitted that PPA was signed with TSPL pursuant to case-2 competitive bidding conducted by it in terms of section 63 of the Act. PSPCL has further submitted that under the PPA, change in tariff can be claimed only as per Article 12 (force majeure) and/or Article 13 (change in law). TSPL's claim is not under either of the Articles. The Commission is not fixing the tariff of the project on cost plus basis under section 62 of the Act and as such, TSPL is not entitled to all expenses as a pass through in tariff. The tariff has been discovered and adopted through a competitive bidding process and, therefore, there can not be any exercise of power under section 86(1) (b) or (f)

overriding sections 61, 62 and 63 etc. of the Act. PSPCL has submitted that at the time of bidding, it had agreed to pay as the cost of fuel, only the price that may be charged by the coal company and it was the obligation of the bidder to factor all costs in the same.

- b) PSPCL further submitted that TSPL without answering as to how the PPA covers the claim of charges (brought out in the additional affidavit dated 25.08.2015) as also various charges claimed in the petition, has submitted that it could not have factored in any of the above costs while submitting its bid and that these energy charge components have arisen only now. PSPCL has further submitted that according to TSPL, the design of case-2 bidding itself does not envisage factoring in of such energy charges components in the financial bid.
- c) PSPCL's specific reply on the following issues raised by TSPL in the additional affidavit is as under:
- i) Rake Escorting Charges
  - ii) GCV Sampling and Testing Charges

PSPCL has submitted that it is not clear under which head these charges have been claimed by TSPL. These have been claimed by TSPL in the additional affidavit dated 25.08.2015 only stating that it came to know of these costs very recently. PSPCL has further submitted that TSPL is claiming these charges as if the Commission is determining the tariff under section 62 of the Act. PSPCL has asserted that the claim made by TSPL is against the terms of the competitive bidding documents and the PPA.

iii) Finance Charges

PSPCL has submitted that these charges relate to the payment security which TSPL has to maintain to secure payment of coal to the coal company. These charges have been claimed for the first time in the additional written submissions dated 13.04.2015 without there being any pleading on the same. PSPCL has further submitted that the Commission in its Order dated 11.02.2014 in petition no. 60 of 2013 had held that only the amounts as per the PPA can be made a pass through in tariff and only the cost of coal paid by TSPL needs to be reimbursed, which is already being done by PSPCL. TSPL can not make any further claim on this account.

iv) Advertisement and other related costs of alternate coal procurement tenders

PSPCL has submitted that the charges claimed by TSPL for advertisement and related costs for alternate coal procurement tenders are without any basis and have been claimed for the first time in the additional written submissions dated 13.04.2015 without there being any pleading on the same. PSPCL has submitted that the claims made by TSPL are premised on the basis that it has an absolute right to procure coal from alternate sources whereas alternate coal is not to be used as principal coal and the blending of the same upto 20% has been allowed only as an exception to tide over the temporary issues faced by TSPL in procurement of coal from MCL. The claims made by TSPL for procurement of alternate coal are not covered by the PPA/FSA and, therefore, the same can not be allowed to TSPL.

v) Shunting Charges

PSPCL has submitted that the claim for payment of shunting charges is not included in the pleadings of TSPL, written submissions, application for additional hearing and additional submissions. PSPCL has asserted that the same can not be considered as part of the present petition. TSPL is relying on some verbal communication to claim these charges. PSPCL has submitted that TSPL needs to file separate pleadings to make any such claim.

**The Commission has considered the submissions of both the parties with regard to claims of TSPL raised in the additional affidavit dated 25.08.2015 in respect of 'charges for rake escorting', 'charges for GCV sampling and testing', 'finance charges', 'advertisement & other related costs of alternate coal procurement tenders' and 'shunting charges'. TSPL has stated that the aforementioned charges are recoverable as part of the monthly energy charges. TSPL has stated that these charges could not be factored in the financial bid as the same were either not known or indeterminable at the time of bidding. PSPCL has stated that the project was allotted through competitive bidding process under section 63 of the Act and adopted by the Commission. The Commission is not determining the tariff on cost plus basis under section 62 of the Act. PSPCL further submitted that the monthly energy charges are to be computed in terms of the formula under clause 1.2.3 of Schedule 7 of the PPA wherein the cost of coal is to be taken as the cost of purchasing, transporting and unloading the coal most**

recently supplied to and at the project at the beginning of the particular month for which the energy charges are to be paid.

The Commission finds that there is no specific provision in the PPA for computing monthly energy charges considering any of the aforesaid charges.

The Commission notes that the charges for rake escorting have been claimed by TSPL in addition to the coal transportation charges for which, the Commission finds that there is no provision in the PPA. As regards charges for GCV sampling & testing claimed by TSPL, the Commission notes that clause 5.7 of the FSA specifically deals with coal sample collection, detailed modalities for collecting, handling, storage & preparation of samples, sample preparation and analysis etc. for testing GCV of coal meaning thereby that GCV testing and sampling is covered under the FSA signed between TSPL and CIL/MCL. Therefore, the Commission is of the view that such charges are not payable additionally by PSPCL. The Commission is further of the view that the finance charges and advertisement expenses for alternate coal procurement tenders are part of administrative expenses and hence not payable additionally by PSPCL. Even otherwise the Commission is of the opinion that the claim of TSPL for payment of advertisement expenses stated to have been incurred for inviting tenders for arranging alternate coal does not fall within the purview of the present petition, which primarily is for matters pertaining to the linked coal to be supplied by CIL/MCL. Further, as regards the shunting charges claimed by TSPL, the Commission considers the same as part of operation and maintenance expenses and

hence not payable by PSPCL. Accordingly, the Commission neither finds any justification nor any provision in the PPA to allow the aforesaid charges for payment as components of monthly energy charges purportedly payable as per clause 1.2.3 of Schedule 7 of the PPA. The argument of TSPL that these charges were not known or could not be estimated/determined at the time of submitting the financial bid is not convincing. The Commission is of the considered opinion that allowing such charges, at this stage, would be unfair to other bidders who participated in the bidding and tantamount to vitiating the competitive bidding process.

In view of the above, the claim of TSPL in respect of 'charges for rake escorting', 'charges for GCV sampling and testing', 'finance charges', 'advertisement & other related costs of alternate coal procurement tenders' and 'shunting charges' is not allowed by the Commission.

The petition is disposed of in terms of the above.

**Sd/-**

**(Gurinder Jit Singh)**  
**Member**

**Sd/-**

**(Romila Dubey)**  
**Chairperson**

Chandigarh  
Dated: 23.11.2015