

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

Petition No. 25 of 2019

Date of Order: 24.12.2019

Petition under Section 86(1) (a) read with Section 62 of the Electricity Act, 2003 in regard to the inclusion of the amount payable by the Petitioner to Nabha Power Limited and Talwandi Sabo Power Limited under their respective Power Purchase Agreements as interpreted and implemented by the decision of the Hon'ble Supreme Court and appropriate directions for tariff to be recovered from the consumers.

AND

In the matter of: Punjab State Power Corporation Limited
(PSPCL), The Mall, Patiala
.....Petitioner

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

ORDER:

PSPCL has filed the present petition seeking approval of the Commission for recovery of the amount paid to Nabha Power Limited (NPL) and Talwandi Sabo Power Limited (TSPL) in compliance of the Hon'ble Supreme Court's Order dated 07.08.2019 from the consumers by proportionately increasing the retail supply tariff of various categories of consumers with immediate effect.

2. The submissions made by PSPCL are summarized as under:

2.1 The Hon'ble Supreme Court vide its judgment dated 05.10.2017, decided on the claims of NPL as under:

“62. The plea of the first respondent that the fuel supply agreement and the fuel transportation agreement are part of the “project documents” which does not include the component of “washing”, does not hold much water for the reason that “washed” coal is a necessity for the project as a quality requirement for the formula envisaging the requisite quality of coal to be obtained at the project site and, thus, including all the relevant costs up to that quality. The mere term “coal”, therefore, would have to mean “washed” coal, as no other type of coal could be used in the matter at hand.

63. Now turning to the transportation cost, once again, what is sought to be excluded is taking the coal for “washing” as well as the last mile to the project, on account of the railway siding not being located at the project site for a certain specified period of time. It is for that period of time that the actual transportation cost through road is sought to be recovered by the appellant.

64. We fail to appreciate as to how these costs can be excluded, as the transportation costs to the project site have to be compensated to the appellant. It is not qualified by the methodology of transfer i.e. Railways or road. It is also a matter of necessity, since the railway siding had not reached the project site due to some complications in acquisition of land. It is really the transportation cost from point to point which would be involved and the mere mention in RFP under project related activity/milestone about railway siding and the railway lines from nearby station to site cannot imply that the Railways is the only mode of transportation when the siding has not been made, albeit on account of land acquisition problems.

65. The plea of the first respondent that despite the absence of rail siding, if the appellant proceeded to operate the plant, that was their “business decision”, cannot be sustained for the reason that the project was set up for obtaining electricity for the first respondent and as a prudent business decision for both, it would be required to operate the plant at the earliest. The complication in obtaining land by the State Government, cannot imply that the project should be on hold for two years, causing loss to everyone and lack of availability of electricity. Such a plea would be in defiance of the very object of the setting up of the power plant.

66. Now turning to the other aspect of GCV of the coal. If the issue is one of SECL billing for higher calorific value while actually supplying a low calorific value of coal, that would be a matter between the appellant and SECL and the first respondent cannot be blamed for the same. That does not take away from the application of the formula for energy charge which provides for PCV_n as the weighted average gross calorific value delivered to the project. This calorific value of coal would have to be, thus, on the same parameter determined at the project site.

67. On behalf of the first respondent, an endeavour has been made to make a distinction between “at the site” and “to the project” in the definition of F^{COAL}_n and PCV_n . However, this is not of much assistance to the first respondent, in our view, as delivery “to the project” could only mean “at the site of the project”. It cannot be at the mine site. In fact, this is a fundamental issue where the first respondent seems to be altering the basic concept of the formula by seeking to replace the wordings in the formula relating to the project site to the mine site.

68. In view of our discussion, we have no hesitation in concluding that the point at which the calorific value of

the coal is to be measured is at the project site. The plea of the first respondent that there is no such methodology of measuring the calorific value at the project site is belied by the sample reports of different financial years filed by the appellant along with the synopsis, which itself referred to the joint sampling and testing of the coal received and is duly signed by both sides. It is surprising how such a bald denial was made despite the position existing at the site. These sample reports are for years 2014, 2015, 2016 and 2017.

69. *We are, thus, of the view that the reading of the energy formula leads to only one conclusion that all costs of coal up to the point of the project site have to be included and the calorific value of the coal has to be taken as at the project site.*

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

Thereafter, by Order dated 15.12.2017 passed in an Interim Application filed by the Petitioner, the Hon'ble Supreme Court decided as under:

“Heard.

We do not find any merit in I.A. No. 131447 of 2017, which is hereby dismissed.

It is for the applicant-respondent itself to calculate and thereafter disburse the sums due under the judgment which must be done within a period of four weeks from today.”

2.2 Similarly, in Civil Appeal Nos. 10525-26 of 2017 filed by TSPL and Civil Appeal No. 20966 of 2017 filed by the Petitioner the Hon'ble Supreme Court vide Order dated 07.03.2018 decided as under:

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

“73. We, thus, partly allow the appeal to the extent that the appellant is held entitled to the washing cost of coal, the transportation from the mine site via washing of coal to the project site inclusive of cost of road transportation for the period where it was necessary. The Calorific Value of the coal would have to be taken at the project site. All other claims in appeal stand rejected. The amount payable to the appellant as the consequences thereof be remitted within a period of three (3) months from the date of this order, failing which it would carry interest @ 12 per cent annum (simple interest). No costs.”

Accordingly, the claim of the appellants shall stand allowed. In view of above, the appeals are disposed of.

CIVIL APPEAL NO(S).20966 OF 2017:

We do not find any ground to interfere with the impugned order. The appeal is accordingly dismissed.

2.3 Subsequently, to the Order dated 07.08.2019 the Hon'ble Supreme Court passed the following Order in Contempt Petition (Civil) Nos. 1766-1767 of 2018 filed by TSPL and Contempt Petition (Civil) Nos. 1277-1278 of 2018 filed by NPL in regard to the claim to be computed for NPL and TSPL:

“On a reading of the aforesaid, what becomes clear and what is made crystal clear by the judgment is the fact that, in the formula, both FCOALn and PCVn are costs/ gross calorific value of coal which are actual in nature. This being so, when PCVn is spoken of in the formula,

it makes it clear that what is referred to is the weighted average gross calorific value of coal as received at the project site on actuals thereof, and that includes total moisture content that is measured at the project site. Equally, what is meant in FCOALn in the formula, is the actual cost of purchase of unwashed coal, which would involve the actual grade of unwashed coal that is provided by the coal company to PSPCL. This being the case, we are of the view that the judgment has to be followed, both in letter and in spirit, by working the formula as aforesaid, and consequently, deleting alien figures in both numerator and denominator.

Accordingly, these petitions are disposed of with a direction to the respondent to pay to the contempt petitioners whatever amount arises as a result of this order within a period of eight weeks from today”

2.4 In compliance to the order dated 07.08.2019, the Petitioner has computed a sum of Rs. 797.80 crore as the total amount payable by the Petitioner to NPL. After adjusting the amount of Rs. 376.03 crore already paid to NPL, a sum of Rs.421.77 crore was paid by the Petitioner to NPL by 30.09.2019 and further, an amount of Rs. 4.95 crore which was excess paid for the July-19 bill has also been adjusted from the net payable amount to NPL.

2.5 Similarly, in the case of TSPL, the Petitioner has worked out that an amount of Rs 1018.06 crore was payable to TSPL. After adjusting the earlier paid sum of Rs 16.01 crore, the remaining amount of Rs. 1002.05 crore was paid to TSPL by 01.10.2019 and further, an amount of Rs. 25.31 crore which was excess paid for the July 2019 bill has also been adjusted from the net payable amount to TSPL.

- 2.6 The above amount paid by the Petitioner to NPL and TSPL are legitimate expenditures duly incurred by the Petitioner in compliance of Orders of the Hon'ble Supreme Court. The Petitioner is, therefore, entitled to claim the said amounts as additional power purchase cost to be included in the revenue requirements of the Petitioner and to be recovered in the retail supply tariff from the consumers at large.
- 2.7 The Petitioner submitted that the payment of the above amounts of more than Rs. 1420 crore to NPL and TSPL has resulted in substantial cash outflow from the Petitioner. Any deferment of the same will place the Petitioner in a precarious position and the above amounts should be allowed to be recovered in the retail supply tariff from the consumers by increasing the tariff at the earliest to avoid cascading adverse effect on the Petitioner's finances and its operation.
- 2.8 The expenditure for the entire period till date be allowed to be recovered in the retail supply tariff from the consumers at a specific rate to be included in the Monthly Bills to be raised on the consumers in addition to the tariff determined by the Commission in the Tariff Order dated 27.05.2019 which is currently in force.
- 2.9 It is therefore prayed as under:
- a) To admit the petition
 - b) To direct that the aggregate amount of Rs. 421.77 crore paid by the Petitioner to NPL and Rs. 1002.05 crore paid by the petitioner to TSPL shall become a

part of the revenue requirements of the petitioner to be recovered including by way of prior period expenses for the financial years 2013-14 to 31.03.2019 and for the months from April onwards till billing of June, 2019

- c) To allow carrying cost from the date of the payment by PSPCL till the recovery of the amount in the tariff
- d) To direct that the retail supply tariff to the various categories of consumers be proportionately increased for recovery of the above amounts with immediate effect and
- e) To pass such further order or orders as the Commission may deem just and proper in the circumstances of the case.

3. The petition was taken up for hearing on 04.11.2019 wherein PSPCL reiterated its submissions made in the petition. PSPCL also informed that a miscellaneous application has been filed before the Hon'ble Supreme Court for clarification of the amount which is disputed by NPL and TSPL. The Commission vide interim Order dated 05.11.2019 directed PSPCL to publish a public notice inviting objections/suggestions from the public as required under Regulation 67 of the PSERC (Conduct of Business) Regulation, 2005, without any delay. PSPCL was further directed to submit its proposal(s) to recover the amount from the consumers and also file an affidavit giving the month wise details of payment with a breakup of the expenses for washed /un-washed coal & on GCV /Transportation. PSPCL was also directed to submit copies of the miscellaneous application filed before the Hon'ble Supreme Court. The petition was fixed for hearing as well as public hearing on

04.12.2019 at 11.00 A.M.

4. In compliance to the Commission's directions PSPCL vide Memo No. 5908/TR-5/943 dated 05.11.2019 submitted as under:

4.1 The said amount is proposed to be recovered through the monthly/bimonthly bills (as the case may be) to be raised by PSPCL in one of the following manner:

Sr. No.	Period for recovery	Per unit rate (excluding carrying cost)
1.	6 months (Jan to June, 2020)	63 paise
2.	9 months (Jan to Sep., 2020)	35 paise
3.	12 months (Jan to Jan, 2020)	28 paise
4.	15 months (Jan. 2020 to March, 2021)	23 paise

4.2 The above tariff may be permitted to be shown as surcharge separately in the monthly bills to be issued by PSPCL to the consumers until the recovery of the full amount. The above surcharge would be reflected as under:

"Surcharge:

Arising out of the judgment and order dated 07.08.2019 passed by the Hon'ble Supreme Court in Contempt Petition (Civil) Nos. 1766-1767 of 2018 filed by TSPL and Contempt Petition Civil) Nos. 1277-1278 of 2018 filed by NPL"

5. The public notice was published by PSPCL on 09.11.2019 and 10.11.2019 in the leading newspapers namely, 'The Tribune', 'Ajit' 'Punjab Kesari' and 'Spokesman'. The last date for submission of objections was fixed as 21 days from the date of publication of the notice. In response, following stakeholders submitted the objections to PSPCL's proposal:

Sr. No.	Name of Stakeholders
1.	Sh. Mangat Ram Kalia.
2.	Sh. Manjatinder Singh Saini.
3.	Punjab Chemist Association
4.	Punjab Pradsh Beopar Mandal
5.	Madhu Pilai (Ms), Regional Director, PHD Chamber
6.	Nahar Fibres
7.	National Consumer Welfare Organization
8.	En-lighten Citizens of Punjab, Kurali
9.	Jalandhar Chamber of Industries & Commerce
10.	Dr. S.B.Pandhi, Ludhiana

6. Objections received, PSPCL's reply and Commission's analysis

The issues raised by most of the stakeholders were similar in nature, hence, the objections and PSPCL's replies on the same have been dealt issue wise as under:

6.1 Disallowance of unjustified and illegal cost

It was submitted that process of coal washing was to be done by the producer plant and the per unit was settled at the time of agreement and the issue of cost of loss in coal washing process was not taken into consideration properly in the PPAs by both parties, hence the amount should be borne by both the parties. Also, the employees responsible for the same should be penalized. Moreover, if PSPCL lost the case in the Hon'ble Supreme Court it is their problem and not of consumers. Industry and trade are already getting electricity at higher prices and is not prepared to bear this burden. It is totally unjustified and against the principles of natural justice to burden the consumers with retrospective effect. The objectors requested the Commission to dismiss the petition

as PSPCL was not able to plead their case well before the Hon'ble Court.

PSPCL's reply:

In reply to the above objections PSPCL submitted that PSPCL was clear that washing related charges are not to be paid additionally to NPL and TSPL. PSPCL has thoroughly pleaded the case before all the judicial bodies so that the burden of the same may not be imposed on the consumers of Punjab. The case was allowed in PSPCL's favour by the Commission and Hon'ble APTEL. However, the Hon'ble Supreme Court was of a different view on the issue. PSPCL submitted that it has paid the amount as per the orders of the Hon'ble Supreme Court and it has to be recovered from the consumers. PSPCL further submitted that the amount paid by PSPCL to NPL and TSPL is proposed to be recovered from the consumers only in the future energy bills for the period as decided by the Commission.

Commission's Analysis:

The Commission notes that PSPCL had pleaded its case in the Commission, Hon'ble APTEL and Hon'ble Supreme Court. Though the decision of the Commission and Hon'ble APTEL was in PSPCL's favor, the Hon'ble Supreme Court has a different view. As such PSPCL cannot be held responsible and the amount paid by PSPCL to NPL and TSPL has to be recovered from the consumers of the licensee. However, the Commission agrees with the stakeholder's view and with PSPCL that the amount should be recovered prospectively.

6.2 Staggered recovery of the said amount to avoid tariff shock to the consumers

It was submitted that there is an urgent need of PSPCL to recover the huge cost already paid in view of Supreme Court orders. PSPCL has not requested for recovery of this amount through Fuel Cost adjustments since the amount doesn't pertain to only one quarter. Any such prior period expenses can be recovered only through ARR and Tariff Order. It was further requested that keeping in view the huge financial liability, the Retail Supply tariff may be increased on proportionate basis so that there is no tariff shock and the burden is shared by all consumers appropriately. It was also suggested that this amount be recovered over a period of 18-24 months.

PSPCL's reply:

PSPCL submitted that it is a regulated entity as per provisions of the Electricity Act, 2003 and has limited cash flow and has limited borrowing avenues. The major source of revenue for PSPCL is the retail supply tariff approved by the Commission. PSPCL had filed the Petition for an early recovery of the amount to avoid further borrowings from Banks and Financial Institutions as PSPCL will be subjected to a cash crunch. The additional interest on such borrowings leads to cash crunch position which in turn would be affecting the various schemes which PSPCL is currently executing in the larger public interest. This has also impacted the day to day operations in a big way.

Commission Analysis:

The Commission refers to Section 62(4) of the Electricity Act, 2003 which specifies as under:

“(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.”

Therefore, any part of the Tariff can be amended in any financial year and need not be only through ARR and Tariff Order. Further, the Commission is of the view that the amount paid by PSPCL is required to be recovered from the consumers at the earliest in order to avoid unnecessary burden due to additional carrying cost on account of delay in recovery. However, the Commission agrees with the stakeholder's view to stagger the recovery of the said amount to avoid tariff shock to the consumers. Accordingly, the Commission decides to spread the recovery of the same evenly across a full year (12 months).

6.3 Coal Charges

It was submitted that PSPCL has considered all payable charges to NPL / TSPL and whether PSPCL had also considered the adjustments (recoverable / penalties) for inferior coal quality, reject coal sale, transient loss, under-loading / over loading charges and penalties raised by NPL / TSPL on coal suppliers for not meeting sizing specifications, total moisture / ash / volatile matter / GCV specifications. Further, PSPCL is not following the standing instructions for sampling and testing of coal utilized by NPL/TSPL. Also,

SECL / CCL / BCCL / MCL coal companies raise coal bills based upon the notified price list against coal GCV bands (as declared by Coal Controller of India). Higher calorific value at mine end means paying higher price for coal purchase.

PSPCL's reply:

PSPCL has already deducted the penalties for inferior coal quantity as per the various penalty clauses (specified in the washery agreements between IPPs and washery contractors). Further, any adjustments of under loading / overloading charges and treatment of rebate for reject is coal being done as per terms & conditions of washery contract/POs while paying washing charges to TSPL and NPL. PSPCL is not allowing any transit loss to NPL and TSPL as the same has also been disallowed by Hon'ble Supreme Court. The Tri partite agreement for 3rd party analysis at mine end has been entered between IPPs, Coal company and 3rd party sampling agency and PSPCL is not a party to the above agreement. The effect of the final results of the referee samples are being taken care as per the terms and provisions of the agreement. Teams of PSPCL's own thermal power stations are supervising the Joint Sampling and testing of coal regularly on monthly rotational basis. Although the strength of the teams has reduced due to retirement of officers/officials, however due diligence is being carried out. The entire work of sampling, sample preparation & testing is totally under the CCTV surveillance and is being monitored by PSPCL teams regularly.

As per decision of Hon'ble Supreme Court dated 07.08.2019,

GCV has to be taken at Actual received (T.M.) basis (i.e. plant site) and FCOALn is the actual cost of purchase of unwashed coal, which would involve the actual grade of unwashed coal that is provided by the coal company in the monthly Energy charge Formula. Hence, the same has been considered by PSPCL while calculating the monthly Energy charges.

Commission's Analysis

The Commission notes that PSPCL has replied to all the concerns raised by the objectors.

7. The petition was taken up for hearing as well as public hearing on 04.12.2019. During the public hearing Sh. Manjatinder Singh and Sh. Mangat Ram Kalia, reiterated the submission made in their objections. And, PSPCL submitted copy of order dated 25.11.2019 passed by the Hon'ble Supreme Court in M.A. No. 2396/2397 of 2019 in Contempt Petition No. 1277/1278 of 2018 in CA No. 179 of 2017, wherein the Hon'ble Court has dismissed the miscellaneous applications and observed that the amount that remains to be paid, be paid within a period of 12 weeks from the date of order. The Commission vide interim Order dated 09.12.2019 directed PSPCL to calculate the total payable amount and submit the same alongwith the reply to the objections/suggestions submitted by public by 13.12.2019. PSPCL was further asked to furnish the details of loan availed, if any, alongwith the rate of interest thereon.

8. PSPCL vide Memo. No. 6099/ TR-5 /943 dated 12.12.2019 submitted as under:

8.1 As per the Hon'ble Supreme Court's order dated 07.08.2019

in the Contempt Petitions, PSPCL had undertaken the computation of the amount due to NPL and accordingly, a sum of Rs 421.77 Crore (in addition to Rs 376.03 Crore already paid) was found due. Further, a sum of Rs 1002.05 Crore was also computed by PSPCL (in addition to Rs 16 Crore already paid) to be payable to TSPL. The said amounts were paid by due date to NPL (by 30.09. 2019) and TSPL (by 01.10.2019). However, TSPL and NPL vide their letters dated 04.10.2019 and 07.10.2019 respectively again disputed the computations made and the amounts paid by PSPCL.

8.2 Thereafter, pursuant to the dispute letters raised by NPL and TSPL, the Miscellaneous Applications (M.A. No 2394-95 and MA No 2396-97 of 2019) were filed by PSPCL before Hon'ble Supreme Court specifying that PSPCL has paid the amount due to NPL and TSPL following the order of Hon'ble Supreme Court, whereas NPL / TSPL is claiming the deviation in the implementation of the formula and directions given by the Hon'ble Court.

8.3 Further, in these MAs a prayer was made to Hon'ble Supreme Court that the computations of the claims raised be undertaken by an appropriate Authority as may be designated by the Hon'ble Court and the same be undertaken after considering the claims and counter claims of the respective parties to finally determine the amount payable by PSPCL (if any) to NPL and TSPL. The said MAs filed by PSPCL were listed before the Hon'ble Supreme Court on 25.11.2019 and the Hon'ble Court vide order dated

25.11.2019 has dismissed both the MAs (NPL and TSPL case) filed by PSPCL by giving following directions:

“Having heard learned senior counsel, we are of the view that miscellaneous applications deserve to be dismissed. Ordered accordingly. The amount that remains to be paid, be paid within a period of 12 weeks from today”

8.4 TSPL vide its letter dated 04.10.2019 had claimed that the principal amount due as per TSPL claim is Rs 1260 Crores till June, 2019 and the interest + LPS being claimed by TSPL is Rs 187 Crores i.e. Rs. 1447 Crores. Whereas, as per PSPCL, the due amount payable to TSPL in compliance to Hon'ble Supreme Court order dated 07.08.2019 i.e Rs 1002.05 Crore which has already been paid.

8.5 It is also brought out here that after Hon'ble Supreme Court order dated 07.08.2019, NPL vide its letter dated 07.10.2019 has disputed the computations and amount paid by PSPCL. NPL vide its further letter dated 07.12.2019 has raised additional claim of Rs 657.02 Crore as principal amount from February, 2014 to September, 2019 + Rs 122.80 Crore interest @12% on the principal amount for the period Feb-14 to Aug-17 + Rs 95.42 Cr as LPS on balance principal amount for Sept-17 to Sept-19) i.e. total Rs 875.24 Crore. Whereas, as per PSPCL, the due amount payable to NPL in compliance to Hon'ble Supreme Court order dated 07.08.19 i.e. Rs 421.77 Crore, which has already been paid.

8.6 Accordingly, as detailed above, the tentative additional amount as now being claimed by NPL and TSPL is about Rs 1320 Crore (i.e. Rs 875.24 Crore for NPL and Rs 445 Crore for TSPL).

8.7 Further, it is also brought out here that both NPL and TSPL aggrieved by the computations made and amounts paid by PSPCL have also filed another Contempt Petitions (i.e. 1174-77 & 1178-79 of 2019) before the Hon'ble Supreme Court.

8.8 Both the contempt petitions were listed on 29.11.2019 for admission. The Hon'ble Court vide its order dated 29.11.2019 has directed to issue notice returnable within 4 weeks. The contempt petitions are listed for further proceedings before Hon'ble Supreme Court on dated 06.01.2020 (as displayed on Hon'ble Supreme Court's website).

9. After hearing PSPCL on 16.12.2019, the Order was reserved by the Commission.

10. Decision of the Commission:

After careful consideration of the submissions made in the Petition, objections raised by the stakeholders, PSPCL's reply thereto and the pleadings made during the hearings, the Commission observes and decides as under:

10.1 Since PSPCL has already made payments of Rs. 1423.82 crore on account of increase in power purchase cost due to change in fuel cost of NPL and TSPL in compliance of the Hon'ble Supreme Court's Order, the same is required to be recovered from the consumers of the State at the earliest in order to avoid unnecessary burden of additional carrying cost on account of delay in recovery. Moreover, Section 62(4) of the Electricity Act, 2003 also provides that tariff can be amended during a any financial year. However, in order to avoid tariff shock to the consumers, the Commission decides

to approve the recovery of the above amount alongwith carrying cost by spreading the same evenly across a year (12 months). The Commission decides to allow carrying cost @9.36% i.e. the Rate of Interest on Working capital approved in Tariff Order for FY 2019-20 which works out to Rs. 66.63 crore for the recovery of Rs. 1423.82 crore over 12 months, which will result in an increase of the total recoverable amount to Rs. 1490.45 crore.

10.2 Further, regarding the tentative additional amount of Rs. 1320 crore being claimed by NPL and TSPL (as informed by PSPCL vide memo No. 6099 dated 12.12.2019) which is still under litigation and not finalized yet, the Commission has not considered the same at this stage. The impact of the same will be considered as and when it gets finalized and payments, if any due, are made by PSPCL.

10.3 Considering three months sales from (Jan., 20 to Mar.,20) on the basis of sale projections submitted by PSPCL for H2 of FY 2019-20 in the ARR Petition and nine months sales (Apr.,20 to Dec.,20) on the basis of sale projections submitted by PSPCL for FY 2020-21 in its ARR Petition, the sales for a year (Jan.,20 to Dec.,20) works out to 48762 M kWh.

10.4 **Accordingly, the surcharge on account of compliance of the Hon'ble Supreme Court's Orders works out to Rs. 0.30/kWh to be recovered over a period of 12 months. Considering the average power factor of 0.96 (as submitted by PSPCL vide Memo No. 1848 dated 09.10.2019 in Petition No. 18 of 2019), the surcharge for kVAh based consumers works out to Rs. 0.29/kVAh. Also, considering the approved AP sales of 11521 MU**

for FY 2019-20 in the Tariff Order for FY 2019-20 and AP load of 13872921 BHP as submitted by PSPCL in its ARR petition for FY 2019-20, the surcharge for flat rate AP consumers works out to Rs. 20 per BHP per month.

10.5 The Commission is conscious of the fact that estimated/projected sales figures considered for working out the surcharge may change based on actuals. Thus, the surcharge worked out above shall be applicable w.e.f. 01.01.2020 for a period of 12 months. PSPCL is directed to submit the monthly and cumulative details of category wise actual sales and recovery on account of above surcharge. Also, any adjustment on account of under-recovery or over-recovery of the same shall be considered at the time of true up of respective year(s).

10.6 The Commission also accepts PSPCL's proposal to show the surcharge separately in the monthly bills to be issued to the consumers and to reflect the same in the bills as under:

"Surcharge arising out of the judgment and order dated 07.08.2019 passed by the Hon'ble Supreme Court in Contempt Petition (Civil) Nos. 1766-1767 of 2018 filed by TSPL and Contempt Petition (Civil) Nos. 1277-1278 of 2018 filed by NPL"

10.7 PSPCL is further directed that in future, in case of any financial impact as per the judgment(s) of the Hon'ble APTEL and/or Hon'ble Supreme Court, having attained finality, the licensee shall file a separate petition before the Commission under section 62(4) of the Electricity Act, 2003 for recovery of such amount along with the proposal for recovery of the same from the consumers,

within 30 days of the date of attaining finality of such decision. In case the licensee fails to file the petition within the above prescribed timelines, the carrying cost on such amount for the duration of delay in filing the petition, shall not be a pass through.

The petition is disposed of accordingly.

Sd/-
(Anjali Chandra)
Member

Sd/-
(S.S. Sarna)
Member

Sd/-
(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated: **24.12.2019**

