

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

**Petition No. 06 of 2017
(Suo- Motu)
Date of order:28.03.2019**

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

In the matter of : Petition (Suo-Motu) regarding flouting/violation of environment laws and burdening the consumers as alleged in Press Clipping appearing in the Hindustan Times dated 06.12.2016.

In the matter of: Punjab State Power Corporation Limited, The Mall,
Patiala

AND

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

ORDER

The Commission took suo motu cognizance of a news item published in Hindustan Times (Chandigarh) dated 06.12.2016 regarding the flouting of green laws to save Rs. 400 Crore by Talwandi Sabo Power Limited (TSPL). In the news item it was alleged that:-

a). TSPL's 1980- MW coal-fed power plant violated environment laws and burdened the consumers with cost of Rs. 280 Crore per year to save in excess of Rs 400 Crore on superior coal (washed coal), since it became operational in 2014.

b). TSPL in league with Punjab State Power Corporation Limited (PSPCL) Officials ignored the power purchase agreement (PPA) conditions and power regulator orders for using washed coal at its private

Talwandi Thermal plant, which lead to a burden of Rs. 280 Crore on PSPCL's consumers.

c). The plant let the per unit power production cost go up by 40 paisa to save Rs. 300 crore annually and due to the higher production cost the consumers had to pay more for power. PSPCL management had not made any effort to bring down the cost.

d). TSPL admitted that plant is using coal which has an average ash content more than fixed by the environment ministry as the supplier doesn't make available either washed coal or the coal with ash content of less than 34%. Though the plant had modern features to minimize the ecological ill- effects but neither PSPCL nor the Pollution control Board (PCB) ensured compliance of the conditions which were agreed to by TSPL when the PPA was signed with the Power Corporation.

e). TSPL used unwashed coal which produced ash up to half of its weight, that lead to more transportation costs to be recovered from power consumers. TSPL used washed coal up to November 2014 and then opted for the unwashed substitute, resulting in PSPCL ending up paying higher variable cost to TSPL. The variable cost that ranged between Rs. Rs. 2.13 to Rs. 2.19 per unit (average Rs. 2.16) from July to November 2014 stood between Rs. 2.41 and Rs. 2.86 (average Rs. 2.61) when TSPL stopped using the washed coal.

f). As per the Ministry of Environment and Forest's notification, all coal-run thermal plants located beyond 1,000km from the mine shall use coal having ash content not exceeding 34%. TSPL is located at a distance of 1,700km from Odisha's Mahanadi Coalfields Limited (MCL) from where the coal is procured. The ash content of the coal being used is up to 50% of the weight, which is against the environment (protection) rules as well as the pact signed with PSPCL.

g). As per PPA, PSPCL had to pay TSPL fixed charges and variable cost (coal price and transportation cost). The coal was washed to minimize the ash content by up to 25 to 30%. As per the standard calculations, washing reduces overall weight of coal by 2% for every 1% ash removal. As MCL coal had about 10 to 15% higher ash than the 34% limit, hence on an average, coal weight will get reduced by about 25% after washing. The per tonne railway freight charges in case of TSPL is Rs. 2,700, which can be cut by upto Rs. 675 if the washed coal is used. The money thus saved will be PSPCL's gain and therefore consumers will have to pay less.

h). TSPL used 42-lakh ton unwashed coal and only 6.50-lakh tonne washed coal up to September 2016. Thus PSPCL had been paying approximately RS. 280 crore extra in freight charges per year to TSPL, which saved nearly Rs. 435 crore on account of washing expenditure.

2. The Commission considered the contents of the news item and observed that there was a serious allegation which needs to be investigated. Accordingly, a complete report was sought from PSPCL vide memo No.6387 dated 07.12.2016.

3. PSPCL submitted the report vide memo no. 6663 dated 14.12.2016 and stated that the news published in the Hindustan Times (Chandigarh) dated 6.12.2016 was not based on the true facts and denied that any illegal activity was carried out in PSPCL at the cost of public money and that the consumers of State of Punjab were burdened on account of using unwashed coal by TSPL. PSPCL submitted that a wrong perception was created among the Public without going through the terms & conditions of PPA for the supply of 100% power generated from a Thermal Power Project of contracted capacity of 613.8x3 MW equal to 1841.4 MW signed on 01.09.2008 with TSPL for a period of 25

years on Long Term basis under Case-2 open bidding process based on Standard Bidding Documents approved by Ministry of Power, GOI.

3.1 PSPCL made payments of the energy supplied by TSPL as per PPA (under Schedule-7 of tariff), in a two part tariff comprising of capacity charges and energy charges on the Quoted Station Heat rate of 2400 Kcals per Kwh. Monthly Capacity charges were paid under Schedule-11 of the quoted tariff whereas monthly energy charges were paid as per the formula given under Schedule-7 in PPA i.e. $NHR \times \text{fuel cost} / GCV$. Net Station Heat Rate is 2400 Kcals per Kwh, fuel cost is in rupees per kg and gross calorific value (GCV) of coal is in Kcals per kg. Fuel cost per kg. comprises of purchasing cost of coal per kg and actual railway freight per kg. Average GCV of the coal was taken as per CIL invoices. Monthly Energy charge rate (Rs per Kwh) is thus multiplied with the energy supplied (Kwh) during a month by TSPL. There is no relation whether coal is transported through Indian Railways was washed or not, since only railway freight per kg of the coal towards fuel cost was paid to TSPL under PPA.

3.2 There were no provisions in PPA for making payments on account of washing of coal. The Commission had disallowed washing charges already in its order dated 23.11.2015 passed in Petition No.31 of 2014 filed by TSPL and concluded that charges for washing of coal supplied/ to be supplied by MCL to TSPL Project including various associated costs incurred for arrangement of washed coal are not payable by PSPCL to TSPL. Accordingly, the Commission further concluded that PSPCL was making the payment of monthly energy charges to TSPL as per the PPA.

3.3 TSPL was responsible for implementing the norms for transporting coal having ash contents less than 34% as per Ministry of Environment & Forest (MoEF) Guidelines for the Project situated beyond 1000 KMs

from coal mines. PSPCL nowhere paid any excess amount to TSPL as published in the Newspaper.

4. After careful consideration of the contents of the news item and averments made in the report submitted by PSPCL, the Commission decided to take up the news item as Suo-Motu petition for initiating proceedings and accordingly notice was issued to PSPCL and TSPL, vide memo no. 6712-13, dated 19.01.2017. The Suo-Motu petition was taken up for first hearing on 14.03.2017 wherein none was present on behalf of TSPL. The Commission issued a fresh notice to TSPL with directions to file a reply to the notice.

5. TSPL vide letter dated 26.04.2017 submitted its reply to the notice and denied that all averments and allegations contained in the Newspaper report. TSPL submitted that the consent to operate the plant was granted to TSPL by the Punjab Pollution Control Board ("PPCB"). The same was the appropriate authority to look into the alleged violation of MoEF norms.

5.1 TSPL stated that the Commission had already dealt with the applicability of MoEF notification in Order dated 23.11.2015 passed in Petition No. 31 of 2014, and has observed as under:-

"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.”

5.2 TSPL had challenged the order dated 23.11.2015 passed by the Commission in Appeal No. 36/2016 before the Hon'ble Appellate Tribunal for Electricity. On the basis of Order dated 23.11.2015 passed in Petition No. 31 of 2014, PSPCL did not allow any pass through of washing cost, actual transportation cost and other energy related cost. Thus there was no injury either to PSPCL or its consumers. Accordingly, TSPL stated that the Commission had no jurisdiction in the matter.

5.3 PSEB (PSPCL's predecessor entity) had invited bids for setting up the 1980 MW coal fired power plant under Case 2 Scenario 4 of the Competitive Bidding Guidelines. At the stage of bidding, the bidders were only required to tender their bids on two parameters, i.e., Net Heat Rate and Capacity Charges (fixed charges). In effect, the bidders were not required to factor the fuel related charges as per the terms of bidding nor were the bidders in a position to envisage any risk with respect to the coal to be utilized at the Project. TSPL does not earn anything from the Energy Charges which are to be computed on the basis of "weighted average actual cost" incurred by the developer in generating power.

5.4 As per Clause 1.4(B)(2) of the Request for Proposal (RfP) issued during bidding of the Project, PSEB had assured that the fuel requirement of the Project would be arranged by PSEB itself, with coal supply of 8.7 MT/year having GCV 3900 kcal/kg. Even prior to the bidding, PSPCL vide letter dated 18.04.2008 and in the presentation in the pre-bid conference held on 08.05.2008 assured that Mahanadi Coalfields Ltd. (MCL) had by way of a Letter of Assurance (LOA) agreed

to supply Grade E coal with GCV in the range of 4500 – 4600 kcal/kg and ash content in the range of 33 – 34%. This was re-iterated by PSPCL's email dated 12.06.2008. On the basis of all these assurances, TSPL premised its bid on the fact that coal of Grade E having ash content of 33 – 34% will be provided to TSPL.

5.5 LOA was handed over to TSPL well after the PPA had been executed between TSPL and PSPCL. It is only after the receipt of LOA, that TSPL learnt that the grade and quality of coal to be supplied by MCL was materially different and contrary to the specifications as assured by PSPCL during the pre-bid stage, which provided that 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 during bidding. MCL also reserved the right to provide coal through imported sources as against the assured provision of domestic coal only. TSPL was surprised to find that MCL had reserved the right to provide Grade E/F coal for the project under the LOA, as against the assured supply of Grade E coal with ash content of 33-34% as was represented by PSPCL. Therefore, TSPL came to know about the need to incur the costs of washing the coal after the bid had already been submitted by TSPL based on the assurances provided by PSPCL.

5.6 TSPL requested PSPCL to fulfill its obligations to provide the coal of grade and quality as assured during the pre-bid stage, however, PSPCL failed to do so. TSPL filed Petition No. 31 of 2014 claiming payment for coal washing charges from PSPCL. Vide Order dated 23.11.2015 the Commission disallowed the payment of coal washing charges to TSPL and disposed of the petition. Further, the issue of signing the FSA was settled vide Hon'ble Tribunal's judgment dated 07.04.2016 passed in Petition no. 56 & 84 of 2013, wherein it was held that PSPCL is under obligation to sign the FSA with MCL (fuel supplier);

PSPCL cannot be absolved of its obligation to supply fuel to TSPL for its power generating station; PSPCL to sign the FSA with the coal supplier; and directed the Commission to pass the consequential order. As directed, the Commission passed the consequential order on 06.09.2016 (as amended on 08.09.2016) and held that PSPCL is obliged to approach MCL and sign the FSA forthwith and simultaneously sign a separate Fuel Transportation Agreement with Railways for transportation of fuel from the mine to TSPL Project Site. PSPCL has till date not signed any FSA with MCL. Therefore, the contention raised by PSPCL in its report dated 14.12.2016 that TSPL is responsible for implementing the norms for transporting coal having ash content less than 34% as per MoEF guidelines is erroneous and baseless.

6. Vide Order dated 02.05.2017, the Commission asked for the views of the Chief Engineer, Fuel and the Chief Engineer Thermal Design, PSPCL to be placed on record and directed to implead them as party and file their reply. Accordingly, notice vide letter dated 03.05.2017 was issued to Chief Engineer, Fuel and to Chief Engineer Thermal Design, PSPCL.

7. Chief Engineer, Fuel and Chief Engineer Thermal Design, PSPCL vide Memo No. 6052, dated 22.05.2017 in compliance of Order dated 02.05.2017 stated that the non-washing of coal will have impact on the consumers and the same is to be considered and decided by the Commission. There will be significant amount of less transportation cost for bringing the washed coal to the project site in place of unwashed coal and also on account of washed coal usage, even when payment for the cost of coal is being made on normative basis of Net Heat Rate etc.

7.1 Pursuant to the Commission's Order dated 11.02.2014 in Petition 60 of 2013, the joint sampling of coal was done by PSPCL and TSPL. The tabulated joint sampling results showed that the ash content ranged from 28.16 to 63.16% over 35 months. Further, as per the analysis of the joint sampling results, the percentage ash content range & Weighted Average Ash content in bunkered coal and received coal for the months of Nov-2016 to March-2017 was as follows:

Month	Percentage Ash (%)	
	Bunkered Coal	Receipt Coal (Weighted Av.) approx.
Nov-2016	36.82 - 50.02	44.71
Dec-2016	36.71 - 54.81	45.09
Weighted Average Ash (%)		
Jan-17	46.18	45.14
Feb-2017	42.06	39.04
March-2017	41.24	42.63

7.2 As per requirements of Ministry of Environment and Forest (MOEF), TSPL has uploaded the Compliance Report on its website for the period of April-16 to June-16 and July-16 to Sept-16, wherein TSPL has recorded use of coal having ash contents upto 40%. Initially during 2014, TSPL had undertaken washing of coal and claimed such washing charges from PSPCL, which were denied vide Order dated 23.11.2015 by the Commission by holding that it was TSPL's obligation to factor the cost of washing of coal in its bid. TSPL stopped washing of coal during the pendency of Petition No. 31 of 2014 to avoid washing costs pending decision in the Hon'ble Appellate Tribunal.

7.3 As per the PPA, the monthly energy charges for the month "m" shall be calculated as $MEP_m = AEO_m \times MEP_n$. Where, AEO_m is the scheduled energy during the Month m (in KWh) and $MEP_n = (NHR_n \times F^{COAL}_n) / PCV_n$. NHR_n 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.

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. PCV_n 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. Thus the F^{COAL} comprises of three specific elements namely-

- a) Actual cost to TSPL of purchasing of coal,
- b) Actual cost to TSPL of transporting the coal and
- c) Actual cost to TSPL of unloading the coal.

7.4 These three elements are distinct and separate. In so far as the first element is concerned i.e. the actual cost to TSPL of purchasing the coal from MCL, PSPCL has to pay the cost of raw coal as supplied by MCL. The second element of actual cost to TSPL of transporting the coal, the issue arises whether TSPL is transporting the entire quantity of raw coal or less than that. The coal supplied by MCL to TSPL is having ash percentage much higher than 34% and therefore, usage of such coal by TSPL without reducing its ash percentage is not as per the Environment (Protection) Rules and the conditions stipulated by MoEF in the Environment Clearance issued to TSPL. In Appeal No. 36 of 2016 filed against the Order passed in Petition No. 31 of 2014, TSPL stated that the only method available for TSPL to abide by the MoEF’s notification is by washing the coal to bring the ash content to less than 34%. As per fair estimates, when coal is washed, the quantum (weight) of coal gets reduced by about 2.5% for every 1% reduction in ash. As per the contract between TSPL and ACB (India) Ltd. for washing of coal, the yield is 68 % i.e. reduction in coal weight by 32 %after washing. Therefore if 10% ash is reduced, then weight of washed coal would be 25% less than raw coal. This reduced weight of coal would not be

required to be transported and there would be a saving of 25% of transportation of coal when the coal is washed.

7.5 TSPL, in Petition 31 of 2014 submitted that washing of coal will lead to saving of energy charges for PSPCL and the Commission recorded the same in its Order dated 23.11.2015. In the case of Nabha Power Limited versus Punjab State Power Corporation Limited having similar Schedule 7 dealing with Monthly Energy Charges as that of TSPL's PPA, the Hon'ble Tribunal vide Judgment dated 14.12.016 in Appeal No. 64 of 2016 recorded as under:

"10. Issue 1: Denial of Washing Related Costs (a) On Issue No 1, following submissions were made before us by the Appellant for our consideration:-

.....
x. The quantity of coal worked out by the PPA formula is actually that of washed coal being used for generation of electricity, however PSPCL makes payment as if it was ROM coal. PSPCL, thus, pays the cost of purchasing a reduced quantity of ROM coal ignoring the loss of quantity in washing. Interestingly, PSPCL pays only the cost of transporting washed coal, thus fully appropriating the benefit of reduced transportation cost due to washing of coal. As a result of this erroneous approach, PSPCL denies NPL the cost of ROM coal lost during washing process as well as the associated washing related costs, while retaining the complete benefit of reduction in transportation costs as a result of washing. The PPA makes it clear that "actual cost to the Seller" must be paid; accordingly it is imperative that all costs must pertain to the actual coal being used i.e. washed coal. By paying selectively, at its convenience, PSPCL contravenes the terms of the PPA."

7.6 The issue of per ton transportation cost being the same irrespective of whether it is transportation of washed coal or unwashed coal is not disputed. There is no dispute that in so far as Indian Railways are concerned they will charge the same rate for transportation of per ton of washed coal or unwashed coal. The real issue is that the quantum of washed coal to be transported will be relatively lesser than the quantum of unwashed coal leading to significant saving in cost of

transportation in absolute basis. The detail available with PSPCL for energy charges payable to TSPL for December 2016 is as under:

- a) Weighted average GCV (Kcal/Kg) = 3652.33
- b) Fuel Cost (Rs./MT) = 4314.50
 - i. Coal cost (Rs./MT) = 1508.23
 - ii. Railway freight (Rs./MT) = 2806.27
- iii. Variable rate/energy charges (Rs./Kwh) = 2.84

7.7 The GCV, coal cost and railway freight are distinct as per the above. The weighted average ash contents in the coal in case of TSPL during January, 2017 is 46%, therefore due to washing of coal to reduce ash content to at least 34%, the quantum of weight of coal to be transported will reduce by about 30% (i.e. 2.5% weight loss for 1 % ash reduction and a total reduction of ash content of 12%). In this way, the actual transportation cost would reduce by 30%. For illustration, if 1000 MT of raw coal after washing its weight will be 700 MT.

Net Heat Rate	= 2400 Kcal /Kwh
Wtd. average GCV	= 3652.33 Kcal/Kg
Total Heat Value of 1000 MT raw coal	= 1000 X 1000 X 3652.33 = 3.65233 X10 ⁹ Kcal
Raw coal cost	= 1508.23 Rs/MT
Railway Freight	= 2806.27 Rs/MT
Raw coal weight	= 1000 MT
Washed coal weight	= 700 MT

Cost calculations for 3.65233 X10 ⁹ Kcal		
	Unwashed	Washed
Actual cost of coal to be paid to MCL (Rs.)	1000 X 1508.23 = 15,08,230	1000 X1508.23 = 15,08,230
Actual Cost of Transportation (Rs)	1000 X 2806.27 = 28,06,270	700 X 2806.27 = 19,64,389
Total Weighted Actual Cost of purchase and Transportation (Rs)	43,14,500	34,72,619
Actual Cost for 2400 Kcal i.e. variable rate/energy charges Rs/ Kwh	4314500 x 2400/3.65233X10 ⁹ = 2.84	34,72,619 X 2400/3.65233X10 ⁹ = 2.28

OR

	Unwashed	Washed
Actual cost of coal to be paid to MCL (Rs.)	1000 X 1508.23 = 15,08,230	1000 X 1508.23 = 15,08,230
Actual Cost of Transportation (Rs)	1000 X 2806.27 = 28,06,270	700 X 2806.27 = 19,64,389
Total weighted Actual Cost of purchase and Transportation (Rs)	43,14,500	34,72,619
Weighted Average Actual Cost F ^{COAL} (Rs/MT)	4314.50	3472.62
Variable Rate/Energy Charges (Rs/Kwh)	2400 X 4314.50 / (3652.33 x 1000) = 2.84	2400 X 3472.62/ (3652.33 x 1000)= 2.28

7.8 In view of the above, if coal is washed by TSPL, then PSPCL would pay Rs. 0.56 per Kwh less as energy charges than present case when unwashed coal is being used by TSPL i.e. around 25 % more on account of energy charges due to non-washing of coal. For the year 2016-17, the total revised estimated power purchase from TSPL as per ARR is 4695 MUs, accordingly the additional financial burden on PSPCL during 2016-17 on account of use of unwashed coal by TSPL would be Rs. 263 crore (4695 x 0.56/10) if above figures of GCV, freight, coal cost and ash are applied. As against the above financial burden on PSPCL, TSPL is also making financial benefits by foregoing washing of coal and saving on washing charges which as per the decision dated 23.11.2015 of the Commission in Petition No. 31 of 2014 has to be borne by TSPL. As per the submissions of TSPL, the Commission recorded in its order dated 23.11.2015 that total cost of washing of 2 lakh ton of coal is Rs. 9,31,57,432 which comes to washing charges of Rs. 465 per ton. Considering a minimal escalation of 10%, the washing charges would be Rs. 511 per ton at present. As per the estimated power purchase of 4695 MUs from TSPL during 2016-17, the quantum of raw coal required would be 3.085 Million ton (4695 X 2400/3652/1000). This will result in

saving to TSPL of Rs. 158 Cr (3.085 x 511/10) on account of non-washing of high ash percentage coal during 2016-17.

7.9 As per PPA it is TSPL's obligation to ensure the operation of the power plant in accordance with law and consents. Any violation of law or consents is also a breach of the PPA. The conduct of TSPL amounts to contravention of mandatory provisions of Environmental Laws of India and causes monetary loss to PSPCL and monetary gain to TSPL. TSPL has selectively quoted the decision of the Commission in the Order dated 23.11.2015 in Petition No 31 of 2014 in Para 7 of its reply. TSPL has not quoted the next para of the Order which reads as under:

“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 above decision clarifies that the entire quantity of coal may not be required to be washed. TSPL has not shown that it was able to meet the norms regarding ash content without washing of coal. Admittedly, TSPL has utilized coal in its generating station with higher ash content than permissible even on a quarterly basis. Therefore TSPL was required to wash the coal to reduce the ash content, which was not done. The pendency of the Appeal against the Order dated 23.11.2015 being Appeal No. 36 of 2016 does not debar the Commission from passing any order in the present matter. The issue pending before the Hon'ble Tribunal is whether washing charges incurred by TSPL can be passed on to PSPCL under the PPA. In a similar case involving Nabha Power Limited being Appeal No. 64 of 2016, the Hon'ble Tribunal has already upheld the decision of the Hon'ble Commission on washing charges:-

“iii.

g) Considering the above deliberations, we are of the considered opinion that in the absence of specific mention of washing related

costs to be allowed under the cost of coal to be considered in the Energy Charge calculations, cost of washing of coal by the Appellant cannot form part of the cost of coal to the Seller for purpose of calculation of energy charges.”

7.10 TSPL cannot on the one hand, claim that it is entitled to actual charges and at the same time, claim that there is no injury to PSPCL or consumers due to non washing of coal resulting in higher charges. As at present and pending the signing of the new FSA by PSPCL with MCL and assignment of the same to TSPL in terms of the order dated 6.9.2016 passed by the Commission the FSA for supply of coal from MCL operating under which the coal is procured is the one signed between TSPL and MCL on 4.09.2013. In pursuance to this FSA, TSPL is purchasing coal from MCL and not from PSPCL. Any issue of coal including its quality relates to TSPL/MCL as the coal is received by TSPL in pursuance to FSA signed between TSPL & MCL on 04.09.2013.

7.11 The bidders were not required to factor any fuel related charges as they were aware of the provisions of the PPA and the energy charges payable by PSPCL. All other charges related to fuel not specifically included in Article 7 were required to be factored in by the bidders while quoting their bids. In this regard, the Commission vide Order dated 23.11.2015 has already disallowed various claims of TSPL for charges related to fuel and further rejected the contention that the bidders were not in a position to envisage any risk with respect to coal. The Order inter alia reads as under:

“35..... 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....”

7.12 TSPL was aware that it was responsible for washing of coal in as much as PSPCL had clarified the position during the pre-bid conference that the washing of coal was to be undertaken by TSPL. Even if assumed that the obligation to supply fuel is of PSPCL, the same cannot be meant that even when TSPL is the entity actually procuring coal, PSPCL will undertake activities such as washing of coal etc. The issue of signing of the FSA with MCL is totally independent of the issue of the entity and as such the entity (TSPL) had to procure the coal from MCL and transport it through Railways. Even after PSPCL executes the FSA with MCL and Fuel Transportation Agreement with Railways (without prejudice to the contentions in Civil Appeal No. 4085-85 of 2016), the said FSA/Fuel Transportation Agreement is to be assigned to TSPL as per the Commission's Order dated 06.09.2016. Therefore there is no difference between the situation under FSA dated 04.09.2013 and the new FSA which would be signed and assigned to TSPL. Subsequent to the assignment of FSA to TSPL, it will always be the obligation of TSPL to purchase the coal from MCL, transporting the same through Indian Railway to the Project and unload the coal at the project site and PSPCL shall pay the monthly Energy Charges for the units of electricity supplied in terms of the PPA as held by the Commission vide Order dated 06.09.2016.

7.13 The decision of the Hon'ble Appellate Tribunal dated 07.04.2016 in regard to the responsibility of the PSPCL to arrange fuel for the project is clearly by way of signing the FSA with MCL. It did not in any manner direct PSPCL to supply fuel during the period of the PPA to TSPL. Further there is no issue of arrangement of washing of coal in the above decision. Pending the execution of the FSA by PSPCL and in terms of

the Interim Order dated 02.05.2016 passed by the Hon'ble Supreme Court in Civil Appeal No. 4085-86 of 2016, wherein it was recorded that PSPCL is ready and willing to pay the energy charges, which would also include fuel charges as per the Power Purchase Agreement and the energy charges shall be paid accordingly. TSPL has the obligation and is required to arrange the procurement of coal from MCL, its transportation and use of coal in generation and supply of electricity to PSPCL.

8. TSPL submitted its reply vide letter dated 12.06.2017 pursuant to the Order dated 31.05.2017 and to the submissions dated 22.05.2017 made by PSPCL and stating that PSPCL in this matter has filed two responses dated 14.12.2016 and 22.05.2017, wherein PSPCL has taken diagonally opposite and inconsistent stands. The divergent stand taken by PSPCL in its report dated 14.12.2016 and in its submissions dated 22.05.2017 were brought one by TSPL as follows:-

S.No.	PSPCL's submissions in its Report dated 14.12.2016	PSPCL's Submissions dated 22.05.2017
1.	PSPCL denied that an illegal activity is being carried out in PSPCL at the cost of public money and burdening consumers of State on account of using unwashed coal by TSPL.	PSPCL denied that non-washing of coal does not have any impact on the consumers.
2.	There is no relation whether coal transported through Indian Railways is washed or not, since only railway freight <i>per kg</i> of the coal towards fuel cost is being paid to TSPL under Power Purchase Agreement.	There will be significant amount of less transportation cost for bringing the washed coal to the project site in place of unwashed coal and also on account of washed coal usage, even when payment for the cost of coal being made on normative basis of Net Heat Rate etc.
3.	TSPL is responsible for implementing the norms for transporting coal having ash content less than 34% as per Ministry of Environment & Forest Guidelines for the Project situated beyond 1000 Kms from the coal mine. These guidelines required to be implemented by Ministry of	The Commission as a Regulatory Commission is entitled to commence proceedings to enquire into any violation of law by a generating company within its jurisdiction and further enquire whether such violation of law has any impact on the consumers in the State.

	Environment & Forest, Govt. of India, if any violation is made by TSPL.	
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Counsel for TSPL pointed out that party cannot take contradictory/ inconsistent stands in a proceeding and that a subsequent pleading wherein the party changes its stand is liable to be ignored. In this context reliance was placed on *Mumbai International Airport Pvt. Ltd. v. Golden Chariot Airport & Anr*, *Gyan Parkash v. Som Nath and Ors*, *Modi Spinning & Weaving Mills Co. Ltd. & Anr. v. Ladha Ram & Co*, *Joint Action Committee of Air Line Pilots' Association of India (ALPAI) & Ors. v. Director General of Civil Aviation & Ors.*

8.1 The counsel maintained that TSPL was regularly following up with PSPCL on various issues:-

a) Letter dated 10.12.2016 for arrangement of coal in accordance with extant norms. However, PSPCL never replied to the aforesaid letter. PPCB had issued a notice dated 22.12.2016 to TSPL in respect of the same newspaper article published in Hindustan Times newspaper dated 06.12.2016 to which TSPL has duly filed its reply. The proceedings before PPCB were currently ongoing. PPCB, being the competent authority to adjudicate this issue, is duly empowered under the Environment (Protection) Act, 1986 and Air (Prevention & Control of Pollution) Act, 1981 to deal with the issue.

b) TSPL again wrote on 30.12.2016 requesting PSPCL for its response on the show cause notice issued by PPCB. The Office of Chief Engineer-PPR, PSPCL replied to this letter on 10.05.2017 (after 5 months of TSPL's letter), wherein it was mentioned that it is TSPL's responsibility to operate the plant as per law.

8.2 TSPL has been arranging coal on behalf of PSPCL in the interest of the consumers of Punjab. The same is a non-gratuitous act and TSPL must be reimbursed for the same. Since, no assignment has been done,

it is PSPCL's responsibility which is being discharged by TSPL on behalf of PSPCL in the interest of the project and the consumers in the State of Punjab. The contention of PSPCL that after washing, there will be a significant reduction in the transportation cost ought to be examined in the light of the following submissions:-

a) As per the directions of the Hon'ble Tribunal in its judgment dated 07.04.2016 passed in Appeal Nos. 56 & 84 of 2013, PSPCL is under the obligation to sign the FSA with the fuel supplier and PSPCL cannot be absolved of its obligation to supply fuel to the Project. This has further been substantiated by the Commission's Order dated 06.09.2016 [(as amended on 08.09.2016) in Petition Nos. 11 & 48 of 2012] Therefore, it is PSPCL's responsibility to sign the FSA and ensure that the coal supplied is in accordance with the extant MoEF norms. PSPCL also needs to ensure availability of sufficient coal considering the loss of coal due to washing.

b) It is submitted that the Hon'ble Tribunal has held in its judgment dated 07.04.2016 that PSPCL cannot be absolved of its obligation to arrange coal to the Project of TSPL. The coal is supplied to the Project site of TSPL and therefore PSPCL needs to make payments for the energy charges, calculated on the basis of the Gross Calorific Value ("GCV") of coal measured on As Fired Basis ("AFB") and not on the basis of e-GCV, as per the PPA. Nowhere in the PPA, it is mentioned that calculation of energy charges is to be done on equilibrated GCV (eGCV) as being done by PSPCL.

c) If PSPCL fulfills its obligation to arrange (the assured quantity and quality of) coal which was promised at the time of bidding i.e. with ash content of 33%-34%, then there would be no requirement to wash coal.

d) PSPCL will have to arrange additional coal from alternate sources to make up for the quantity of coal and heat value of coal lost due to

washing. The cost of additional coal to be arranged for making good this loss from alternate sources is to be included in the calculation for cost of washed coal.

8.3 As per the formula the charges payable to TSPL are based on the weighted average actual cost to the seller of purchasing, transporting and unloading the coal most recently supplied to and at the Project. Project is a defined term in the PPA, which means the Power Station of TSPL at village Banawala, Mansa, Punjab. PSPCL's interpretation of the words 'to and at the project' would substitute the defined term 'Project' to mean 'Seller'. However, the PPA has specifically used the term 'Project' and not 'Seller'. If PSPCL's submission were to be given effect to in the context of the definition of the term 'Project', it would mean that the risk and title of the coal passed to TSPL despite the fact that it is PSPCL's obligation to take the delivery of coal and deliver it to the Project. If TSPL incurs the cost of washing, TSPL is entitled to get the reimbursement of the coal washing and associated costs. The weighted average actual cost to TSPL of purchase as referred in Clause 1.2.3 of Schedule 7 is not the same as cost of raw coal supplied by MCL as is being portrayed by PSPCL. If this was the case, then the same would have been explicitly stated in the PPA. The weighted average actual cost to TSPL of purchase includes cost elements as incurred by TSPL to arrive at actual cost of purchasing the coal for the quality and quantity supplied and delivery of that coal till railway siding from where transportation will take place. Such costs would invariably include the cost of washing etc. as incurred by TSPL.

8.4 PSPCL has presented arbitrary numbers before this Hon'ble Commission without considering the following:-

- a) Loss of energy due to washing of coal has not been considered by PSPCL.
- b) GCV of washed coal and unwashed coal cannot be assumed to be the same and are different.
- c) Washing and associated charges have to be considered which has not been done by PSPCL.
- d) Cost of fuel from alternate sources to meet the shortfall due to yield loss and energy loss is to be included.

Comparative charts of the calculations in this regard were provided as below:-

Calculations as per PSPCL and as per TSPL- Table 1

	UOM	As taken by PSPCL	Actual as per TSPL	Remark
The weighted Average GCV as taken by PSPCL	kCal/kg	3,652.33	3,000.00	As per TSPL bill for December 2016
Fuel Cost	Rs./MT	4314.5	4314.99	
Coal Cost	Rs./MT	1508.23	1508.23	
Railway Freight	Rs./MT	2806.27	2806.76	
Variable Rate/ Energy Charges	Rs./MT	2.84	3.45	Actual Energy Charge is Rs. 3.45 /kwh and not Rs. 2.84/kwh as shown by PSPCL
Net Heat Rate	kCal/kwh	2400	2400	
Total Heat Value of 1000 MT raw coal	kCal	3,652,330,000.00	3,000,000,000.00	As per TSPL GCV mentioned above
Raw Coal weight	MT	1000	1000	
Washed coal weight	MT	700	680	As per ACB contract referred to by PSPCL
Washed coal GCV	Kcal/Kg		4300	As per ACB contract referred to by PSPCL
Total Heat Value of 700MT and 680 MT Washed coal	kCal		2924000000	PSPCL has erroneously taken washed coal total heat value same as that for 1000 MT of raw coal quantity, which is incorrect since as per PSPCL's own admission, washed coal weight is 700 MT and GCV

	UOM	As taken by PSPCL	Actual as per TSPL	Remark
				is taken as 3652.33 kCal/kg as taken by PSPCL

Cost Calculations as per PSPCL and as per TSPL- Table 2

Particulars	UOM	As per PSPCL		As per TSPL		Remarks
		Unwashed	Washed	Unwashed	Washed	
Actual cost of coal to be paid to MCL (Rs.)	Rs./ MT	1508230	1508230	1508230	1508230	
Actual cost of Transportation (Rs.)	Rs./ MT	2806270	1964732	2806760	1908596.8	
Washing charges	Rs./ MT				1586200	As per TSPL bill for December 2016
Total Weighted Actual Cost of Purchase and transportation (Rs)	Rs./ MT	4314500	3472962	4314990	5003026.8	PSPCL has erroneously reduced the transportation cost to show washed coal cost on lower side. It has also deliberately not included washing related charges which are part of weighted average actual cost for TSPL.
Actual cost for 2400 kCal i.e. variable rates /energy charges	Rs./ kWh	2.84	2.28	3.45	4.11	

8.5 As per TSPL's counsel the above calculations make it clear that PSPCL has deliberately depicted washed coal cost on lower side by reducing transportation charges and not including washing charges. As per correct calculations, energy charges per unit based on unwashed coal cost is Rs. 3.45/kWh and Rs. 4.11/kWh for washed coal. Energy contained in washed coal cannot be same as energy contained in unwashed coal. PSPCL has wrongly assumed so, which has resulted in wrong calculations. Overall cost for PSPCL should also include the cost for procuring coal from alternate sources to meet the shortfall caused due to energy loss when washing is done, as inherently some energy gets lost during the washing process. The energy loss is to the tune of 3% between unwashed and washed coal as per TSPL calculations. These calculations are arrived at with certain assumptions valid at some point of time but the same will vary keeping in mind the actual input GCV, ash of coal as received from MCL and actual GCV of output coal as quoted/supplied by various washery operators. According to TSPL's counsel as per recent tenders for washery operators done by TSPL, there is an indication that maximum ARB GCV of 4056 kCal/kg with yield of 65% is being quoted which will make energy loss 13%.

8.6 PSPCL has provided figures which are not based on facts and without taking into consideration all other charges which will be incurred when washing of coal is undertaken. There would not be an additional burden of Rs. 203 Crores on PSPCL and PSPCL be put to strict proof thereof. There is no loss to PSPCL of Rs. 0.56/ kWh. Rather, there is a gain of Rs. 0.65/kWh to PSPCL for non-washing. PSPCL has only selectively relied upon one part of the contract executed between TSPL and ACB (India) Ltd. Escalation charges as given by PSPCL do not exist, and are arbitrarily assumed by PSPCL. Total power actually purchased by PSPCL in the year 2016-17 is 6379 Mus from TSPL.

Hence, PSPCL has been spared the additional cost of around Rs. 415 Crores (6379Mus *Rs. 0.65/10). Therefore, the calculations submitted by PSPCL are exaggerated and incorrect.

8.7 The PPA between NPL and PSPCL is different from the PPA signed between TSPL and PSPCL. NPL chose to settle the matter with PSPCL. As such, the provisions of the settlement will govern the terms between NPL and PSPCL. On the contrary, the Hon'ble Tribunal in the case of TSPL has settled the issue of fuel obligation and therefore TSPL will be governed by the Hon'ble Tribunal's judgment dated 07.04.2016. There can be no parallel that can be drawn between the case of NPL and TSPL. PPA has been executed between PSPCL and TSPL and the PPA is the governing document between the parties. It is not necessary that all of what holds good for NPL, which is not a party to the PPA, shall hold good for TSPL's case. TSPL is only claiming charges from PSPCL on actual basis as paid to various Govt. entities like MCL, Indian Railways etc. TSPL's obligation to wash coal (without prejudice assuming that it is of TSPL), will start only after PSPCL completes its obligation of supplying the coal as promised.

8.8 The assumption of PSPCL that, after assigning the FSA it can completely shift the obligation of arranging coal on to TSPL is wrong. Clause 1.2.3 of Schedule 7 of the PPA has to be read in line with the obligation undertaken by PSPCL of signing the FSA and arranging coal for the entire duration of the PPA. As such, TSPL is required to pay upfront the cost of procurement of coal on behalf of PSPCL and recover the same in terms of the formula in the PPA. TSPL does not earn anything from the Energy Charges which are to be computed on the basis of "weighted average actual cost" to the Seller (TSPL). TSPL has been raising invoices for Energy Charges as per Clause 1.2.3 of Schedule 7 of the PPA. However, PSPCL has been illegally and

unreasonably deducting payments on account of various components of Energy Charges which is resulting into huge financial losses/under recoveries to TSPL. It is PSPCL's obligation to do the needful in tying up this arrangement for coal transportation. Even if TSPL does it on PSPCL's behalf, the ownership of coal is shifted to TSPL only at TSPL site once coal is received by TSPL at its project site for the quality and quantity as received. In terms of the undertaking tendered by PSPCL before the Hon'ble Supreme Court:-

- a) PSPCL's obligation to arrange fuel for the Project has to be seen in light of the judgment dated 07.04.2016 passed by the Hon'ble Tribunal.
- b) In terms of definition of "Fuel Supply Agreement" in the PPA, PSPCL is mandated to purchase, transport and handle the Fuel, required for the operation of the Power Station.
- c) In terms of PSPCL's undertaking before the Hon'ble Supreme Court, PSPCL must pay energy charges (both for the past and for the future) in terms of Schedule 7 of the PPA, i.e., weighted average actual cost of purchasing, transporting, handling and unloading the coal most recently supplied to and at the Project and as per the GCV of the coal delivered to TSPL at Project site.

9. The counsel for TSPL, during hearing on 06.07.2017 filed an I.A. for recalling the Order dated 27.04.2017 and as a consequential relief striking off the reply dated 22.05.2017 filed by CE/ Thermal Design and CE/Fuel, PSPCL. The said I.A. was taken on record vide Order dated 11.07.2017 and PSPCL was directed to file its reply as well as reply to the I.A. filed by TSPL and further directed TSPL to file rejoinder thereto, if any.

10. PSPCL filed its reply vide memo no 5358 dated 27.07.2018 and stated that at the time when the present suo-motu proceedings were initiated, the Commission has decided on the energy charges payable by PSPCL to TSPL in accordance with the PPA entered into between the parties dated 01.09.2008 and not including washing charges, surface transportation charges for the coal to be transported from the mine end to the washery and from the railways to the railway siding and matters associated thereto. Vide Order dated 23.11.2015 passed in Petition No. 31 of 2014 the Commission held that no such washing charges and surface transportation charges were payable by PSPCL to TSPL. Accordingly, the implication of TSPL not undertaking the washing of coal was to be considered, namely –

a) On account of washing of coal, the Gross Calorific Value (GCV) improves and further there will be substantial reduction in the transportation of washed coal as compared to the transportation of unwashed coal. However, washing of coal would involve a requirement to purchase additional raw coal (unwashed) coal by TSPL from MCL in lieu of the quantum of coal lost in washing.

b) The Order dated 23.11.2015 passed by the Commission in Petition No 31 of 2014 was upheld by the Hon'ble Appellate Tribunal for Electricity in Appeal No. 36 of 2016 decided on 03.07.2017.

c) However, in the second appeal filed by TSPL challenging the Order dated 03.07.2017 passed by the Hon'ble Appellate Tribunal, the Hon'ble Supreme Court decided that the washing charges, surface transportation charges and other related charges are payable by PSPCL to TSPL.

10.1 In view of the development, subsequent to the initiation of the present suo-motu proceeding, the issue of financial loss or burdening of the consumers in the State on account of TSPL not washing the coal

may not any longer survive. The washing charges, the additional coal cost to be paid if TSPL undertakes washing of the coal is likely to be more than the savings which may arise on account of the transportation of washed coal as compared to the transportation of unwashed coal through Indian Railways up to the project site. On examination of the papers placed by TSPL for computation of the amount due in pursuance to the Order dated 07.03.2018 passed by the Hon'ble Supreme Court in Civil Appeal No. 10525-10526 of 2017, it has been found that there are instances where even after washing of the coal and transportation of alleged washed coal with ash content in the coal received at the project site has been more than 45% limit specified in the Environmental Laws. As on date TSPL has furnished details in regard to the washing of coal in respect of 171 rakes through which the washed coal has been stated to have been transported. TSPL has not given the particulars of the washing and transportation of washed coal beyond the above quantum of rakes of coal. Out of the above quantum of coal transported after washing as claimed by TSPL in 171 rakes, it has been found that the ash content in respect of 128 rakes is more than 34% the norms specified in the Environmental Laws.

11. The Commission vide Order dated 10.08.2018 observed that the reply filed by PSPCL does not give the requisite information as directed by the Commission and directed PSPCL to do the needful without any further delay. Further, taking note of the submission of PSPCL, the Commission directed PSPCL to substantiate the same with calculations. TSPL informed that PPCB has given its consent to operate the plant for the next five years. TSPL was directed to file a copy of the final order of PPCB in this regard. On query, TSPL informed that a fine Rs. 5.00 lakh has been imposed on it by PPCB for flouting the environmental laws in the period from January to December, 2016. PSPCL was directed to file

its comprehensive submissions and TSPL to file its reply to the submissions filed by PSPCL.

12. TSPL submitted its reply in compliance of Order dated 10.08.2018 vide letter dated 20.08.2018 and submitted the renewed Consent to Operate certificates issued by the PPCB valid till 31.03.2023, Consent to Operate issued on 23.03.2018 under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981 and Consent to Operate issued on 22.03.2018 under Sections 25 and 26 of Water (Prevention & Control of Pollution) Act, 1974.

13. PSPCL submitted its reply in compliance of Order dated 10.08.2018 vide memo no 5502 dated 28.08.2018 and while reiterating the submissions earlier made vide reply dated 14.12.2016 and 22.05.2017 stated that the financial gains which PSPCL was dealing with as a consequence of washing of coal by TSPL reduced quantum of transportation through railways and increase in the GCV value gets marginalized as PSPCL will be liable to pay the washing charges and associated charges, measurement of the GCV at the project site, etc as decided by the Hon'ble Supreme Court vide order dated 07.03.2018. While computing the amount payable by PSPCL to TSPL, PSPCL is adjusting the coal grade slippage, loss of coal in transit, etc. The net effect of providing for the washing charges, surface transportation charges etc. in favour of TSPL and adjustment for factors will result in net amount payable by PSPCL to TSPL, instead of any recovery by PSPCL from TSPL. PSPCL has been asking TSPL for the information on the washing of coal procured by TSPL from MCL. As per details furnished by TSPL, PSPCL has been given the particulars of a quantum of 6.48 Lacs Tonnes received by TSPL from MCL which have been subjected to washing. Such quantum constitutes 5.6% of the total coal

procured by TSPL from MCL. The remaining computation is to be undertaken on the basis of the particulars to be furnished by TSPL.

14. TSPL filed its reply during hearing on 31.10.2018 to the submissions filed by PSPCL and stated that the basis on which the present petition was initiated by the Commission i.e. burdening of the consumers due to non-washing of coal, no longer survives. TSPL is undertaking washing of coal, the cost of which PSPCL is obligated to pay to TSPL in terms of the Hon'ble Supreme Court's judgment dated 07.03.2018 which is the settled position of law now. PSPCL itself has admitted that it will be paying these charges to TSPL in accordance the Hon'ble Supreme Court's judgment. Therefore, there is no additional burden being passed on to the consumers of the state of Punjab.

14.1 There is no undue benefit being accrued to TSPL since the cost of washing of coal is to be paid by PSPCL as has also been acknowledged by PSPCL in its submissions. Therefore, the present petition may be disposed off by the Commission in context of the fact that :-

- a) PSPCL has also acknowledged that there are no losses being caused to the consumers of Punjab by TSPL.
- b) The issue of violation of environmental norms by TSPL has been settled by the PPCB by imposing a penalty of renewing TSPL's CTO. Such renewed CTOs have also been submitted before the Hon'ble Commission.

14.2 PSPCL's submissions regarding the GCV of the coal supplied at TSPL's Project and the payment to be made to TSPL and PSPCL etc., have no bearing on the present petition which was initiated by the Commission to look into the alleged violations of environment norms and the alleged burdening of the consumers by PSPCL and TSPL. Therefore, the submissions of PSPCL ought not to be considered. With

respect to PSPCL's allegation that the date for washed coal has not been shared by TSPL, the relevant data was submitted by TSPL to PSPCL. Further, Hon'ble Supreme Court has already decided this subject matter vide Order dated 07.03.2018 passed in Civil Appeal No. 10525-10526 of 2017 and as such, nothing survives in the present petition.

15. Observations, Findings and Decision

A news item appeared in 'Hindustan Times' dated 06.12.2016 wherein it was alleged that TSPL was violating environment laws, ignored the conditions of PPA and Orders of the Power Regulator for using washed coal, resulting in an additional burden of Rs. 280 crore on the consumers of Punjab State. The Commission vide letter dated 07.12.2016 called upon PSPCL to submit a complete report on this issue by 13.12.2016. PSPCL submitted its report vide letter dated 14.12.2016.

As per the said report dated 14.12.2016, the Monthly Capacity Charges are paid by PSPCL as per 'Schedule 11: Quoted Tariff' and Monthly Energy Charges as per the formula given under 'Schedule 7: Tariff' in the PPA i.e. $[(\text{Quoted Net Heat Rate})/\text{GCV}] \times \text{Fuel Cost}$. The Quoted Net Heat Rate is 2400 kCal/kWh, GCV (kCal/kg) of coal is taken as per Coal India Ltd. invoices and cost of coal (Rs./kg) comprises of 'purchase cost of coal per kg' and 'actual railway freight per kg'. The Monthly Energy Charge Rate (Rs./kWh) worked out as per the above formula is multiplied with the energy supplied (kWh) during a month by TSPL for the payment of energy charges. The factor net SHR/GCV gives the specific coal consumption of the plant i.e. coal used to generate one unit of electricity. Using the above formula ensures that coal and transportation cost of coal consumption (as calculated from specific coal consumption) is paid to TSPL. Therefore, even if coal is not washed, no

extra payment has been made to TSPL by PSPCL on this account. PSPCL further submitted that the Commission in its Order dated 23.11.2015 in petition no. 31 of 2014 filed by TSPL disallowed the washing charges for the coal. TSPL is responsible for compliance of Ministry of Environment & Forests Notification dated 02.01.2014, brought out as hereunder:

“

2. *In the Environment (Protection) Rules, 1986, in 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 average 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;

.....”

PSPCL vide letter dated 22.05.2017 filed submissions on behalf of Chief Engineer/Fuel and Chief Engineer/Thermal Design. In the said reply, PSPCL stated that by transportation of washed coal, the cost of transportation gets reduced by 25% without there being any other implication to PSPCL's account as the washing and washing expenditure is the responsibility of TSPL. Since, as per the decision of the Commission in Order dated 23.11.2015 in petition no. 31 of 2014, washing charges are to be borne by TSPL, TSPL is benefiting financially by foregoing washing of coal and saving on washing charges. However, PSPCL in its submissions dated 28.08.2018 stated that in view of the Hon'ble Supreme Court of India Order dated 07.03.2018 in Civil Appeal No(s). 10525-10526 of 2017, the financial gains to TSPL, which PSPCL

was referring to in its submissions dated 22.05.2017 as a consequence of non-washing of coal by TSPL namely reduced quantum of transportation through railways and increase in the GCV values get marginalized as PSPCL will be liable to pay the washing & associated charges and measurement of the GCV at the project site etc. This will result in some net amount payable by PSPCL to TSPL.

TSPL submitted that the basis on which the instant petition was initiated by the Commission i.e. burdening of consumers due to non-washing of coal, does not survive in terms of the Hon'ble Supreme Court of India Order dated 07.03.2018 in Civil Appeal No(s). 10525-10526 of 2017. TSPL is undertaking washing of coal and PSPCL is obligated to pay these charges to it, in accordance with the aforesaid judgment of the Hon'ble Supreme Court of India. PSPCL has also acknowledged that there is no loss being caused to the consumers of Punjab by TSPL. The issue of violation of environmental norms by TSPL has been settled by the Punjab Pollution Control Board (PPCB) by imposing a penalty and renewing TSPL's 'Consent to Operate'.

The Commission has examined the replies of PSPCL, TSPL and the submissions/additional documents submitted by the parties. The Commission notes that both PSPCL and TSPL have referred to the Hon'ble Supreme Court of India Order dated 07.03.2018 in Civil Appeal No(s). 10525-10526 of 2017, which were filed by TSPL impugning the Hon'ble APTEL's Judgment dated 03.07.2017 upholding the Commission's decision in Order dated 23.11.2015 in petition no. 31 of 2014. The Hon'ble Supreme Court of India held as under:

"73.....

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.

.....”

Consequent upon the said Order of the Hon'ble Supreme Court of India, as per the submissions made by PSPCL, TSPL has furnished the information to it regarding quantity of 6.48 lakh ton of coal got washed for the period 11.04.2014 to 26.04.2016. PSPCL is liable to pay TSPL an amount of Rs. 16.0096 crore on this account. As such, the washing of coal has resulted in net amount payable by PSPCL to TSPL. The Commission is of the opinion that in view of the aforesaid Order of the Hon'ble Supreme Court of India which was issued after the initiation of Suo-Motu proceedings in the instant petition, the issue of financial loss or burdening the consumers of the State on account of TSPL not washing the coal is no more subjudice and gets settled. The washing charges and associated costs liable to be paid to TSPL are likely to be more than the savings which may arise on account of transportation of washed coal as compared to the transportation of unwashed coal through Indian railways upto the project site. Therefore, it can be inferred that no loss appears to have been caused to PSPCL or the consumers of the State for use of unwashed coal by TSPL except in terms of the environment. That aspect has already been decided by the PPCB. The Commission notes that it has been recorded in the Interim Order dated 10.08.2018 in the instant petition as under:

.....”

TSPL informed that Punjab Pollution Control Board has given its consent to operate the plant for the next five years. The Commission directed TSPL to file a copy of the final order of PPCB in this regard within two weeks. On query, TSPL informed that a fine of Rs. 5.00 lakh has been imposed on it

by PPCB for flouting the environmental laws in the period from January to December, 2016.

.....”

In compliance of the above directions, TSPL submitted the copy of certificates dated 22.03.2018 and 23.03.2018 issued by PPCB renewing the ‘Consent to Operate’ the TSPL’s plant upto 31.03.2023. As such, PPCB has already taken cognizance of the violation of environmental laws by TSPL, fined it on this account and renewed the consent to operate the plant. No action is required to be taken by the Commission on this account.

The petition and I.A. is disposed of in terms of above.

Sd/-

(Anjuli Chandra)
Member

Chandigarh
Dated: **28.03.2019**

Sd/-

(S.S. Sarna)
Member

Sd/-

(Kusumjit Sidhu)
Chairperson