

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

**Petition No. 43 of 2017
Date of order: 11.04.2019**

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

In the matter of : Petition under Section 86(1)(f) of the Electricity Act, 2003 read with Regulation 69 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 – (regarding shortfall in coal availability at Talwandi Sabo Power Plant).

AND

In the matter of: Talwandi Sabo Power Limited, Talwandi Sabo Road, Banawala, District Mansa, Punjab – 151302

...Petitioner

Versus

Punjab State Power Corporation Limited, Patiala

...Respondent

ORDER

Talwandi Sabo Power Limited (TSPL) has filed this petition under section 86(1)(f) of the Electricity Act, 2003 read with Regulation 69 of Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 seeking direction for Punjab State Power Corporation Limited (PSPCL) to pay the cost of alternate coal to be arranged by TSPL to run the plant at full capacity during the paddy season (June, 2017 to September, 2017)

or in the alternate to pay the deemed capacity charges proportionate to TSPL's availability which could not be generated due to shortfall in coal. The Commission admitted the petition vide Order dated 11.07.2017 wherein direction was given to PSPCL to file the reply and TSPL to file rejoinder thereto if any.

2. PSPCL vide memo no.5254 dated 13.10.2017 submitted its reply and TSPL vide letter no. TSPL/PSERC/AK/OCT-17/193 dated 26.10.2017 filed rejoinder to the reply filed by PSPCL. Vide Order dated 10.11.2017 TSPL was directed to file the information with respect to the availability of coal stock as on 01.04.2017, the coal stock on the date of fire incident in the plant on 17.04.2017 and at the start of the paddy season on 01.06.2017 by 16.11.2017. Further, TSPL was also directed to include in the information, the arrangement of coal stock during the paddy season (June, 2017 to September, 2017) and quantum of coal received from the coal linkage / other sources during this period. The details of rakes lapsed / refused during the said period and the reasons thereof were also to be indicated therein. PSPCL was directed to file reply to the above information given by TSPL. TSPL vide letter no. TSPL/PSERC/AA/NOV-17/206 dated 20.11.2017 filed its reply in compliance to the above Order dated 10.11.2017. PSPCL vide memo no. 5972 dated 26.12.2017 filed reply to the above additional submissions filed by TSPL.

3. Vide Order dated 06.03.2018 TSPL was directed to submit the following information in a tabulated form:

- a) What is the coal storage capacity of TSPL's plant?
- b) TSPL to give details of quantity allocated, received, lapsed and refused with reason for the same?

- c) How many rakes were taken by TSPL between 17.04.2017 and 10.05.2017 i.e. the day when a letter was sent to MCL regarding coal rake lapse? Why was the letter sent if the coal handling system was not restored and TSPL was not in a position to receive coal?
- d) How many rakes were refused by TSPL between 17.04.2017 and 10.05.2017 and the reasons for the same?
- e) If some rakes were unloaded between 17.04.2017 and 20.06.2017, then why was the coal not unloaded continuously?
- f) Why did TSPL not stock coal to the extent of coal storage capacity of the plant?
- g) What was the extent of the damage caused at the Project due to the fire accident? When was the coal unloading and coal handling system restored by TSPL?
- h) When did TSPL resume ordering coal from MCL after fire incident? When did TSPL start receiving the same after fire incident? Why did TSPL not take the previously lapsed coal from MCL after the restoration of the coal unloading system? What steps were taken by TSPL in its control with Railways/Coal ministry etc. to get maximum coal and for restoration of lapsed coal?
- i) What was the coal availability at the Project site on 01.07.2017, 01.08.2017, 01.09.2017 and 01.10.2017 of the peak paddy season and how many rakes were accepted and refused by TSPL during this period?
- j) At what point of time was the alternate coal procured by TSPL and how much?

4. The Commission directed PSPCL to file reply to the above information submitted by TSPL. Vide letter no. TSPL/PSERC/AM/MAR-18/53 dated 15.03.2018, TSPL filed the information as sought vide Order dated 06.03.2018. PSPCL vide memo no. 6724 dated 26.04.2018 filed reply to the above additional information filed by TSPL. During the hearing on 09.05.2018, the counsel for TSPL filed its submissions. The Commission after hearing the parties, directed TSPL to furnish further information in terms of Order dated 16.05.2018. TSPL, vide letter no. TSPL/PSERC/AM/MAY-18/113 dated 18.05.2018 filed its submissions/information as per directions of the Commission.

5. On 26.09.2018, during the hearing, TSPL was directed to submit the details of the insurance claim received by it due to the fire incident that occurred at its project on 17.04.2017. TSPL informed that they had not received any claim so far from the insurance company. The Commission vide Order dated 01.10.2018, directed TSPL to give an undertaking that the details of the insurance claim shall be informed to the Commission forthwith, on receipt of the claim in the format given by the Commission alongwith the above Order. After hearing the parties the Order was reserved. TSPL in compliance to the Order dated 01.10.2018 filed the information regarding insurance claim vide letter no. TSPL/PSERC/ AK/OCT-18/244 dated 11.10.2018 and also filed an undertaking vide letter no. TSPL/PSERC/ AK/OCT-18/245 dated 11.10.2018.

6. The Commission observed that the said information submitted by TSPL is without any supporting evidence and decided to hear the parties afresh. Accordingly, notice to the parties was issued.

Vide Order dated 11.12.2018, TSPL was directed to furnish the information in terms of the Order for the period September, 2016 to September, 2017. PSPCL was directed to comment/verify the information to be submitted by TSPL and the information submitted by TSPL in compliance of Order dated 01.10.2018. TSPL filed the supporting data/information on 03.01.2019 in compliance of Order dated 11.12.2018.

i. PSPCL vide Memo No.5560 dated 11.02.2019 submitted additional data and thereby submitted as under:-

TSPL has not taken delivery of substantial coal made available by Coal India Limited and the allocated quantum has lapsed. PSPCL further submitted the discrepancies while examining the information submitted by TSPL and submitted that TSPL has provided shunting charges bills from the period September 2016 to September 2017 instead of monthly reconciliation statements with the Indian railways regarding coal supply from MCL and alternate sources. TSPL has provided declared availability (in MUs) and month wise scheduled power which was not verified by SLDC. The unilateral statements of TSPL cannot be acted upon, unless the same have been had verified by TSPL from SLDC. The availability declaration and schedule have to be necessarily verified and certified by SLDC. Though the covering letter dated 03.01.2019 of TSPL mentions about verification from SLDC, the same is factually not verified and cannot be acted upon. TSPL has submitted month wise gross energy generation and month wise energy billed. The former could not be verified. GCV of coal for March 2017 has a discrepancy. TSPL has been claiming GCV on TM basis while as per Hon'ble Supreme Court GCV has to

be on the same parameters as supplied by Coal India Limited/MCL (Which is on e-GCV basis). For March 2017, TSPL has furnished information for 145 rakes. As per joint sampling reports, the rakes received were 57. GCV of 57 rakes received matched with information provided by TSPL. PSPCL could not verify the month wise ACQ which was required to be requisitioned. Reasons for less requisition also could not be verified. Correspondence pertaining to CIL/MCL could not be independently verified and same was denied by PSPCL for want of knowledge. There can be no independent verification where there is no contemporaneous evidence of the communications. Letters were not marked to PSPCL. Correspondence with Indian Railways regarding coal supply/lapsed rakes could not be verified. Requisition of coal as per ACQ for October 2016- December 26 and April 2017 did not match with data provided by TSPL on 01.10.2018. Some discrepancy is present in respect of Coal Data submitted when compared to coal data available on TSPL website.

ii. ★ TSPL submitted as under:

TSPL submitted additional documents and provided the requisite shunting bills to PSPCL on 03.01.2019 which includes detail of all the individual rakes. Further, the joint sampling report (signed by representatives of PSPCL) also contains rake wise details of sources of coal. The state Energy Account (“SEA”) statements provided by TSPL have been issued by the Punjab State load Dispatch Centre (“SLDC”). In fact PSPCL has been making payment to TSPL based on the said statements. The data regarding cross energy generation is as per TSPL meters. PSPCL has inordinately delayed in providing its comments/views on the

data submitted by TSPL for September 2016 to September 2017. Despite sufficient time, PSPCL is engaging in dilatory tactics by simply stating that the details could not be verified. PSPCL relied on a judgment of the Hon'ble Supreme Court which is a reference of a judgment dated 07.03.2018 passed by the Hon'ble Supreme Court in TSPL's case in which the Nabha Judgment was applied and the Hon'ble Supreme Court held that GCV has to be taken as per the Project site. Further, it is submitted that TSPL received 145 rakes and not 57 as submitted by PSPCL. The data regarding the same has already been provided by TSPL and PSPCL has paid TSPL on the basis of coal received from the said 145 rakes as per its own calculation sheet. As regards month wise requisition of ACQ under the Fuel Supply Agreement ("FSA"), it was submitted that PSPCL has a copy of the said FSA which clearly mentions the month wise ACQ. Reasons for requisitioning less ACQ have been provided by TSPL in its submissions and PSPCL cannot be permitted to state that it could not verify the same. Regarding correspondence with CIL/MCL and Indian Railways, PSPCL has, till date not raised any concern regarding verification of the same. The discrepancies pointed out by PSPCL regarding requisition of coal as per ACQ for October 2016- December 2016 and April 2017 has already been explained at page 384 of Annexure 5 of TSPL submissions dated 03.01.2019. The discrepancies regarding coal data was corrected and were communicated to PSPCL vide e-mail. The Commission during hearing on 13.02.2019, had directed TSPL to file additional documents in support of its argument, accordingly, TSPL submitted additional documents vide letter dated 13.02.2019 which included relevant pages of TSPL Monthly Bills for the month of March, 2017 to April, 2017 in support of no.s of Coal rakes

received in the month of March, 2017; Relevant Pages of Joint Sampling report dated 15.03.2017 and 15.04.2017 in support of no.s of Coal rakes received in the month of March 2017. TSPL further submitted vide the said letter that the manual error in the requisition of coal for October-2016, November-2016, December-2016 and April-2017 in the TSPL Coal Report were by TSPL and the corrected data for monthly requisitioned quantity was submitted on 03.01.2019 to the Commission along with copy to PSPCL.

iii. PSPCL vide Memo No. 5601 dated 15.02.2019 submitted that as directed, the information of GCV of Coal received for the month of March 2017, was re-verified by PSPCL. The number of rakes received during the month of march 2017 were 145 instead of 57 but GCV of the coal is not matching with the GCV as per joint sampling and testing reports for the month of March- 2017.

iv. After hearing the parties the Commission reserved the Order on 21.02.2019.

7. The submissions made by TSPL in the petition are summarized as under:

i. TSPL apprehended that there would be a shortfall in coal availability during the peak paddy season. That it is PSPCL's obligation to arrange adequate quantity and quality of coal to enable TSPL in running its plant at its full capacity, which is evident firstly from the definition of 'Fuel Supply Agreement' ("FSA") in the Power Purchase Agreement ("PPA") dated 01.09.2008 executed between TSPL and PSPCL, viz:

"Fuel Supply Agreements" means the agreement(s) entered into between the Procurer and the Fuel Supplier for the purchase, transportation and handling of the Fuel, required

for the operation of the Power Station. In case the transportation of the Fuel is not the responsibility of the Fuel Supplier, the term shall also include the separate agreement between the Procurer and the Fuel Transporter for the transportation of Fuel in addition to the agreement between the Procurer and the Fuel Supplier for the supply of the Fuel;”

And secondly, from the judgment dated 07.04.2016 passed by the Hon'ble Appellate Tribunal for Electricity (APTEL) in Appeal no. 56 & 84 of 2013. The Hon'ble APTEL has categorically held in the judgment that PSPCL/Procurer is under obligation to sign the FSA with the Fuel Supplier, namely Mahanadi Coalfields Limited (MCL) and the Procurer cannot be absolved of its obligation to “supply fuel” to TSPL for its power generating station.

ii. The Hon'ble APTEL while passing the judgment dated 07.04.2016, remanded the matter back to the Commission. The Commission passed the consequential Order on 06.09.2016 (as amended on 08.09.2016), *inter alia*, directed PSPCL to approach MCL within 7 days of the date of issue of the Order and sign the FSA forthwith with MCL in substitution of the earlier FSA dated 04.09.2013 signed by TSPL on “without prejudice” basis as per the interim Order dated 18.04.2013 passed by the Hon'ble APTEL. The Order dated 06.09.2016 (as amended on 08.09.2016) has been challenged on certain specific findings by TSPL before the Hon'ble APTEL in Appeal no. 331 of 2016 which is pending for adjudication.

iii. The Commission, in the Order dated 06.09.2016 passed in petition nos. 11 & 46 of 2012, directed that in the eventuality of established shortage in availability of coal for the Project, the Commission would, on being so approached, pass appropriate Order at the appropriate stage after considering the reasons.

iv. PSPCL in its several correspondences had requested TSPL to be available with full capacity during the peak paddy season (June to September 2017) being fully aware of the fact that the coal available from MCL will not be sufficient to run the Project at its full capacity during the paddy season. PSPCL has been insisting that TSPL off takes the MCL coal which got lapsed due to fire incident in the TSPL coal handling plant conveyor section on 17.04.2017. The fire in the CHP rendered unloading of coal impossible except for few rakes which were in transit and had to be unloaded. PSPCL has not permitted TSPL to procure coal from alternate source/imported coal.

v. TSPL was constrained to approach the Commission in terms of the liberty granted by the Commission in the Order dated 06.09.2016. The shortage of coal will become acute in the coming paddy season (June 2017 to September 2017) as PSPCL has requested that the Project remains 100% available during the aforesaid season. This shortfall had been caused due to:-

- a) PSPCL's failure in not signing the FSA for the Project and not arranging sufficient quantity and quality of coal as assured during the bidding stage and as held by the Hon'ble APTEL in the judgment dated 07.04.2016;
- b) Inability of CIL/MCL to resolve the issue of coal shortage caused due to quantity and quality of coal supplies by MCL inspite of requests by both, TSPL and PSPCL;
- c) Non-grant of permission to TSPL by PSPCL to arrange coal from alternate sources/imported coal without prejudice to TSPL's rights.
- d) Recent degradation of mines from G-13 to G-14 for Belpahar coal mine and Lakhanpur coal mine which was evident from the

Annual Coal Grade 2017-18 issued by Coal Quality Control Department, MCL.

vi. Since the obligation of signing the FSA and arranging the coal is settled to be that of PSPCL, PSPCL is obliged to arrange fuel through FSA or other means to the extent they require TSPL to generate electricity in terms of the Power Purchase Agreement (PPA) against the contracted capacity of 1841.4 MW for three units of the Project. In case of shortfall in FSA, PSPCL has to arrange fuel from alternate sources including through imported coal or alternatively permit TSPL to arrange coal from such alternate sources and pay TSPL for the same.

vii. TSPL and PSPCL have executed a PPA on 01.09.2008 for supply of the entire quantum of power from the Project to PSPCL. The erstwhile Punjab State Electricity Board (PSEB), intending to procure power through competitive bidding under Section 63 of the Electricity Act and the Guidelines for determination of Tariff by bidding process for procurement of power by distribution licensees ("Competitive Bidding Guidelines"), decided to invite bids (under Case-2, Scenario 4) from power developers to set up the Project.

viii. The Competitive Bidding Guidelines provided for two mechanisms for power procurement by distribution companies i.e. Case 1 and Case 2 bidding. The underlying difference in these two mechanisms is division of risks relating to the development and operation of power project between the bidder/seller and the procurer. It is settled position that the risk for procurer is higher in Case 2 bidding owing to the enlarged responsibility for providing/arranging land, fuel, and facilitation of initial clearances for the development of the Project. This mechanism envisages a

unilateral obligation on the procurer to specify fuel linkage at a pre-identified site/location to the bidder prior to the publication of the Request for Qualification (“RFQ”). Further, the Case 2 procurement route envisages 5 scenarios for bidding. In the present case, the bid was invited by PSEB under scenario 4 of the Case 2 procurement route, i.e. where fuel linkage is to be provided by the procurer. The basis of bidding under Scenario 4 envisages that parameters like quantity, quality and location of the coal source as well as the supplier of coal are to be made known to the bidders prior to the bidding (as in the present case) such that full cost implications are known to bidders in advance. In case where arrangement of fuel is the procurer’s obligation, such fuel linkage is to be finalized before publication of RFQ as per clause 3.2(I)(iv) of the Competitive Bidding Guidelines. Draft bidding documents including the PPA were also issued with the RFP. PSPCL had specified the details in the RFP regarding the activities/milestones which were completed prior to the issuance of the RFP. PSPCL also specified that the long term coal linkage had been sought for the Project and that the Ministry of Coal, Government of India had approved the issuance of Letter of Assurance (LoA) to meet the fuel requirement of the Project. In this regard, PSPCL wrote an email dated 03.05.2008 and referred to MCL’s letter dated 28.04.2008 and informed that the ash content of the coal to be supplied by MCL was 34.4%. However, the email dated 03.05.2008 was superseded by the bid documents and clarifications including the final communication vide email dated 12.06.2008 (prior to bid submission).

ix. PSEB acting through TSPL (then PSEB’s subsidiary)

organized a RFP bid conference at Chandigarh on 08.05.2008 and informed the bidders through a presentation that MCL by way of its letter dated 28.04.2008 (letter dated 28.04.2008 was not given to the prospective bidder during the presentation on 08.05.2008) had agreed to supply “E” grade coal up to 5.00 MT during 2011-12 and 7.70 MT from 2012-13 onwards for the Project. TSPL also provided the specification of fuel during RFP bid conference, which was Grade E, with Gross Calorific Value (“GCV”) of 4500-4600 kCal/kg, having an ash content of 33-34% which was further reconfirmed vide subsequent communication dated 12.06.2008.

x. Based on the specific representations and assurances made by PSPCL, Sterlite Energy Limited (now Vedanta Limited) submitted its bid for setting up the Project in order to supply entire power from the Project to procurer (i.e. PSPCL) in terms of the PPA. Pursuant to the competitive bid process, Sterlite Energy Limited (now Vedanta Limited) was selected as the successful bidder. Accordingly, on 04.07.2008, PSPCL issued Letter of Intent (“LoI”) in favour of Sterlite Energy Limited (now Vedanta Limited) calling upon it to acquire 100% shareholding in TSPL. MCL issued a Letter of Assurance (“LoA”) dated 14.08.2008 to TSPL (then owned and controlled by PSEB).

xi. On 01.09.2008, a Share Purchase Agreement (SPA) was executed between PSEB, TSPL and Sterlite Energy Limited (now Vedanta Limited) transferring 100% shareholding of TSPL in favour of Sterlite Energy Limited [SEL (now Vedanta Ltd.)]. Subsequently on the same day, the PPA setting out the terms and conditions for construction, operation and maintenance of the Project, sale of contracted capacity and supply of electricity by

TSPL /Seller to PSPCL/Procurer was signed between TSPL [now owned and controlled by SEL (now Vedanta Limited)] and PSPCL.

xii. On 02.09.2008, i.e. after execution of the SPA and PPA, the respondent entered into MoU with the petitioner and in terms of Para 3 of MoU, the respondent undertook the specific obligation to execute the the FSA with the fuel supplier and thereafter assign the same in favour of the Petitioner. It is only after the SPA and PPA were executed and the Petitioner was acquired by Sterlite (now Vedanta Ltd.)the MoU was entered with the Petitioner.

xiii. Pursuant to the signing of the MoU, TSPL received the LoA dated 14.08.2008 issued by MCL, from PSPCL. Upon review of the LoA, TSPL noticed that the LoA arranged by PSPCL through MCL for 7.72 MTPA of coal (i.e. Annual Contracted Capacity (“ACQ”) as defined therein) was contradictory to the specifications of the coal as assured and as communicated by PSPCL and as mentioned in the MCL letter dated 28.04.2008 and other bid documents. Among others, the major deviations in terms of coal assurance were 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 only under the MCL letter dated 28.04.2008. Further, as per the LoA, MCL also has a right to provide coal through imported sources also against the assured provision of domestic coal only. After the review of the LoA, TSPL for the first time realized that the coal under the LoA is only meant for the Project with 1800 MW capacity and not for the optimum capacity of the Project (i.e. 1980 MW) for which the bid was invited by PSCL. Upon noticing the said discrepancies in fuel arrangement for the Project, TSPL took up the matter with PSPCL and have since been

continuously corresponding with it in relation to various issues pertaining to the fuel supply for the Project. TSPL initiated the correspondence on 22.01.2009 by sending a letter to PSPCL, PSEB intimating that:-

a. The existing coal linkage of 7.72 MT of Grade 'F' coal assured by MCL for 1980 MW Project was insufficient to run the plant at ultimate capacity.

b. In order to have assured supply of coal to the plant, TSPL had applied to Ministry of Coal for allotment of coal block.

c. The matter regarding coal block allotment for the Project was discussed by TSPL with PSEB. Accordingly, TSPL was directed to send a copy of application for PSEB's support and persuasion with Ministry of Coal to get coal block of good quality coal allotted for the Project.

TSPL requested PSEB to advise/persuade Ministry of Coal for allotment of coal block on priority to facilitate assured supply of good quality coal to the Project. After TSPL wrote the first letter dated 22.01.2009 regarding the shortfall of coal, PSPCL approached Central Electricity Authority ("CEA") for enhancement of coal linkage to 9.6 MTPA vide its letter dated 26.03.2009 and again of 20.10.2009. PSPCL (ex PSEB) informed TSPL about the same vide letter dated 15.02.2011.

xiv. Since the issues remained unresolved, in March 2012, PSPCL approached the Commission by way of Petition no. 11 of 2012, wherein PSPCL prayed for:-

a. Initiating a proceeding on the aspect of signing of the FSA by TSPL with the coal companies for sourcing of the coal requirements for the Project for generation and supply of electricity

to PSPCL.

b. Issuance of directions in regard to signing of FSA by TSPL with coal companies.

xv. On 10.09.2012, TSPL filed Petition no. 46 of 2012 before the Commission and prayed for the following:-

a. Issuance of directions to PSPCL to arrange (including transportation) adequate quantity of fuel (domestic coal) of the quality as represented and assured at the time of bidding, up to the Project site, for the life time of the Project i.e. 25 years, so that Project could operate at its ultimate capacity of 1980 MW.

b. Issuance of directions to PSPCL to allow deemed generation benefits and to pay capacity charges and incentives thereon to TSPL, in case the Project could not operate at its ultimate capacity of 1980 MW due to shortfall in supply of fuel of the assured quality/grade/ origin or non-availability of fuel for the Project.

Aggrieved by the Order passed on 11.02.2013 by the Commission, TSPL filed Appeal no. 56 of 2013 before the Hon'ble APTEL, challenging the Order dated 24.12.2012 passed by the Commission in Petition no. 46 of 2012. TSPL also filed Appeal no. 84 of 2013 before the Hon'ble APTEL, challenging the Order dated 27.09.2012 passed by the Commission in Petition no. 11 of 2012. On 12.01.2016, TSPL filed Appeal no. 36 of 2016 before the Hon'ble APTEL challenging the Commission's Order dated 23.11.2015 passed in Petition no. 31 of 2014 relating to the payment of past charges up to March 2016, payable by PSPCL to TSPL as per Clause 1.2.3 of Schedule 7 of the PPA. On 09.04.2016 the Hon'ble APTEL passed the judgment in Appeal no. 56 and 84 of 2013. On 16.04.2016, PSPCL filed Civil Appeal no.

4085-4086 of 2016 before the Hon'ble Supreme Court challenging the Hon'ble APTEL's judgment dated 07.04.2016 in Appeal No 56 & 84 of 2015. On 02.05.2016, the Hon'ble Supreme Court admitted PSPCL's Appeal (Civil Appeal nos. 4085-4086 of 2016) challenging the Hon'ble APTEL's judgment dated 07.04.2016 and observed as follows:-

“Admit.

The learned counsel appearing for the Appellant has submitted that the appellant is ready and willing to pay the energy charges, which would also include fuel charges, as per the Power Purchase Agreement. The energy charges shall be paid accordingly.

List the matters on 7th July, 2016 for further hearing. In the meantime, the documents and short submissions shall be filed by the parties.”

xvi. Pursuant to the directions issued by the Hon'ble APTEL in the judgment dated 07.04.2016, on 06.09.2016, the Commission passed the Order in Petition nos. 11 and 46 of 2012 and:-

a. Directed PSPCL to approach MCL within 7 days of the date of issue of the Order and sign the FSA forthwith with MCL in substitution of the earlier FSA dated 04.09.2013 signed by TSPL.

b. Directed PSPCL to simultaneously approach the Indian Railways authorities within 7 days of the date of issue of the Order and sign a separate FTA forthwith for transportation of fuel from the mine to the Project of TSPL in addition to the FSA signed with MCL.

c. Held that assignment of the FSA by PSPCL to TSPL after signing the same with MCL would be in consonance with the bidding documents, PPA, MoU and the law of the land laid by Hon'ble Supreme Court of India.

d. Held that after assignment of the FSA including FTA by PSPCL to TSPL, TSPL shall operate the same for purchasing the coal from the mine, transporting the same through Indian Railways 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.

e. Held that TSPL would pursue with Ministry of Coal, MCL and other relevant departments for the fuel (coal) for smooth and timely operation of the Project duly assisted by PSPCL in the same regard, for which PSPCL would extend full co-operation to TSPL.

f. Held that in the eventuality of established shortage in availability of coal for the Project, the Commission would, on being so approached, pass appropriate Order at appropriate stage after considering the reasons.

xvii. On 08.09.2016 the Commission passed Order amending the Order dated 06.09.2016, with the following amendments:-

“In the first para on page 17 of the said Order the words “PSPCL/Procurer cannot be absolved of its obligation to supply fuel” should be read as:-

“PSPCL/Procurer is under obligation to sign the Fuel Supply Agreement with the Fuel Supplier, namely Mahanadi Coalfields Limited.”

Accordingly, the said para on page 17 shall read as

The commission feels that the proposal of PSPCL on the issue of signing a Tripartite Agreement between PSPCL, TSPL and MCL is erroneous. The Hon’ble APTEL has clearly held that “PSPCL/Procurer is under the obligation to sign the Fuel Supply Agreement with the Fuel Supplier, namely Mahanadi Coalfields Limited”. Considering the same, the Commission directs PSPCL to approach Mahanadi Coalfields Limited (MCL) within 7 days of the date of issue this Order and sign the FSA forthwith with MCL in

substitution of the earlier FSA dated 04.09.2013 signed by TSPL.”

xviii. On 21.10.2016, TSPL filed Appeal no. 331 of 2016 before the Hon'ble APTEL challenging the Commission's Order dated 06.09.2016 (as amended on 08.09.2016) passed in Petition nos. 11 & 46 of 2012. Appeal no. 331 of 2016 has been admitted by the Hon'ble APTEL on 18.01.2017.

xix. On 11.11.2016, TSPL wrote to Secretary (Power), Government of Punjab and PSPCL stating that:-

a. By the order dated 11.02.2014 passed in Petition no. 60/2013, the Commission had appointed a Standing Committee on TSPL Project to resolve day to day issues.

b. To maintain continuous power supplies to the state of Punjab, TSPL had arranged alternate coal at its Project site to meet shortage from MCL linkage coal in the best interest of the Project.

c. TSPL needs approximately 2 Million metric tonne of additional coal at GCV ARB of 5700 kCal/Kg to be procured from alternate sources for the next calendar year at an estimated PLF of 80%.

d. Estimated coal procurement plan shall vary depending upon the PLF for the plant and GCV for the coal received.

e. The shortage in coal from MCL is due to grade slippage in linkage coal being received at TSPL site, i.e. GCV of coal as received at TSPL site is lower than the e-GCV as billed by MCL.

xx. TSPL requested the Standing Committee on TSPL Project for the approval of coal cost arranged from alternate sources to meet the shortages in coal supplied by CIL/its subsidiaries starting

July 2015 till date. On 24.11.2016, regarding arrangement of alternate imported coal for the Project, TSPL wrote to PSPCL stating that during the meeting with Secretary (Power) and PSPCL on 17.11.2016, it was discussed that TSPL's requests would be considered by PSPCL. TSPL informed that it had arranged alternate coal at the Project site to meet the shortage of MCL linkage coal. However, PSPCL is yet to pay the cost of alternate coal citing requirement of approval from Standing Committee on TSPL Project for making these payments.

xxi. On 25.11.2016, PSPCL wrote to Under Secretary, Government of India referring to CIL's letters dated 18.10.2016/19.10.2016 to the Under Secretary, Government of India regarding implementation of PSERC Order dated 06.09.2016 ended amendments dated 08.09.2016 passed in petition No. 11 of 2012 and 46 of 2012 for arrangement of coal- 1980 MW Talwandi Sabo Thermal Power Project. Further, PSPCL requested the Under Secretary, Government of India to take necessary action expedite its directions/opinion as required by CIL in the matter.

xxii. On 10.12.2016, TSPL wrote to PSPCL informing that TSPL's Project had achieved COD for all three units. The entire contracted capacity of 1841.4 MW has been commissioned by TSPL in line with the PPA. TSPL informed that it was facing continuous issues regarding the quality and quantity of coal which was to be supplied/arranged by PSPCL to TSPL at the Project site. Any adverse consequences arising out of non-compliance by PSPCL of the Hon'ble APTEL's judgment dated 07.04.2016 would be to PSPCL's account.

xxiii. On 28.02.2017, PSPCL wrote to TSPL informing that 100% availability of TSPL's plant shall be required for the forthcoming summer season (from June' 2017 to September' 2017). PSPCL requested that suitable arrangements for coal be made by TSPL well in advance so as to ensure 100% availability of TSPL's plant during the abovementioned period. PSPCL further informed that TSPL's annual maintenance of one of the units had been scheduled in August, 2017 which falls in the middle of peak summer season and requested TSPL to re-schedule this annual maintenance after September 2017.

xxiv. On 02.03.2017, PSPCL wrote to TSPL stating that:-

a. Pursuant to the Commission's Order dated 06.09.2016, PSPCL has already written letters to MCL, South Central Railways and East Coast Railways for signing of the agreements and also for assignment of the agreements in terms of the above Orders. Further, PSPCL is taking steps with MCL for implementing the above.

b. PSPCL will not in any manner be liable for TSPL not pursuing the procurement of coal from MCL in pursuance of the existing FSA and not getting the coal.

c. PSPCL suggested that the representatives of PSPCL and TSPL should visit the office of MCL at the earliest to pursue the implementation of the arrangement proposed in the Order dated 06.09.2016 passed by the Commission.

xxv. TSPL vide PSPCL's email dated 16.03.2017, was invited to attend meeting in the office of Chief Engineer/PP&R, D-3 Shed, Shakti vihar, Patiala to discuss the arrangements for continuous supply of power in the State. On 22.03.2017, a meeting was held

between the representatives of TSPL, Nabha Power Limited (NPL), PSPCL and CIL to discuss the matter of coal availability and strategy to meet shortfall of coal during paddy season. CIL had indicated that CIL would come out with a workable solution in the next meeting which was scheduled on 29.03.2017.

xxvi. On 29.03.2017, TSPL wrote to MCL informing that TSPL has a FSA with MCL with ACQ of 7.72 Million MT and currently lifting coal from Ib Valley and Talcher Coalfields of MCL. TSPL further informed that 203 nos. linkage coal rakes lapsed from June 2016 to February 2017 owing to reasons beyond control of TSPL, as listed below:-

- a. Fog during winter season in Northern India.
- b. Derailment of rakes and other railway accidents.
- c. Railway restrictions due to congestion.
- d. Non-availability of rakes due to non-interlocking work by Railways.

MCL was requested to re-allocate the Linkage coal lapsed to TSPL to avoid loss of availability of units or unit outage due to shortage of domestic coal.

xxvii. On 06.04.2017, CIL wrote an email to TSPL stating that:-

- a. CIL is fully geared up to meet TSPL's entire requirement of coal through FSA and other available windows.
- b. CIL had already taken number of steps for promotion of import substitution, like source rationalization through offering part supply from higher grades for achieving Ministry of Forest and Environment ("MoEF") compliant coal supply mix. Special forward auction has been launched exclusively for power generators with customized facilities like reduced EMD and floor price and flexible tenure of lifting to facilitate import substitution by them.

c. In order to assure quality of supplies, dispatch through special forward auction for power has now been covered through 'Third Party Sampling and Analysis' mechanism, at par with FSA dispatch. Therefore, Independent Power Producers ("IPP") were now fully provisioned for procurement of additional coal from indigenous CIL sources under extant policy framework.

d. CIL requested TSPL to indicate its coal intake plan including import substitution for 2017-18 from various schemes, viz. FSA and additional requirement beyond FSA through special forward e-auction.

xxviii. On 11.04.2017, PSPCL wrote to CIL informing that the meeting scheduled for 29.03.2016 to discuss a workable proposal as mentioned in the meeting on 22.03.2012 could not be held due to some engagements at CIL's end. Meanwhile, the paddy/summer season is approaching fast and CIL has given no confirmation on making the additional coal availability NPL and without this coal the State of Punjab short of power in the paddy/summer season. PSPCL requested CIL to take necessary action in this regard without any further delay for ensuring the additional supply of coal to TSPL and NPL.

xxix. On 24.04.2017, PSPCL wrote to CIL in continuation of its letter dated 11.04.2017, again informing that no confirmation on making the additional coal available to NPL and TSPL had been so far received from CIL.

xxx. CIL vide email dated 06.04.2017 requested TSPL to intimate the plan for coal requirements for Year 2017-18, including supply of additional high grade coal beyond FSA for substitution of coal from imported sources, rationalization, forward e-auction etc. However, there was no clarity provided on which grade of coal

would be provided, how this additional high grade coal would be arranged and how much time would be required in entire process for arrangement of additional coal. On 10.05.2017, TSPL wrote to CIL referring to the meeting of 22.03.2017 organized by PSPCL, which was to have been followed by another meeting on 29.03.2017 wherein CIL was to suggest a workable situation for import substitution and requested CIL to expedite the process. For TSPL to arrange alternate imported coal, the necessary steps for ordering, transporting and stocking of coal at the project site require a lead time of minimum 2-3 months and inform TSPL regarding availability of coal, grade of coal, pricing mechanism, and delivery points etc.

xxxi. On 10.05.2017, TSPL wrote to MCL that an unforeseen major fire incident beyond the control of TSPL had occurred in the coal conveyor in the Coal Handling Plant ("CHP") on 17.04.2017 resulting in damage to the Conveyors. 94 linkage coal rakes lapsed in April 2017. MCL was requested to re-allocate the lapsed Linkage coal to TSPL to ensure sufficient coal availability to meet the power requirements of Punjab.

xxxii. In response to an e-mail of 19.04.2017 from TSPL on 17.05.2017, PSPCL wrote to TSPL informing that CMD, PSPCL had desired to take review meeting on 18.05.2017 with the following agenda:-

- a) To review the restoration work of damaged conveyor gallery structure.
- b) Arrangement of coal for running all the units at full capacity during paddy season i.e., from June 2017 to 31.10.2017.

xxxiii. On 18.05.2017, PSPCL wrote to Under Secretary, (C&D) to Government of India requesting that a meeting arranged early of

PSPCL officers with higher officers in Ministry of Coal for holding further discussion regarding signing FSA for Talwandi Sabo Power Project in compliance of PSERC Order dated 06.09.2016 and 08.09.2016.

xxxiv. On 25.05.2017, TSPL wrote to MCL informing that due to the fire incident of 17.04.2017, it was not able to lift allocated coal quantity in April and May due to which 243. rakes lapsed i.e., 94 linkage coal rakes in April'2017 and 149 linkage coal rakes in May'2017(approximately 9.46 MT) and asked for a re-allocation of the lapsed linkage. On 26.05.2017 MCL was requested to reallocate the lapsed linkage coal through RCR mode to TSPL for ensuring sufficient coal availability to meet power requirement of Punjab in paddy season.

xxxv. On 07.06.2017, TSPL wrote a letter bearing reference TSPL/PSPCL/PPR/AM/Jun-17/104 requesting PSPCL to grant permission to TSPL to arrange coal from alternate sources / imported coal and to pay costs thereof to TSPL in the light of established shortfall during the upcoming paddy season or in the alternative, pay TSPL deemed capacity charges in accordance with its availability which TSPL is not able to generate due to coal shortfall. The Applicant also enclosed an expert opinion alongwith this letter. PSPCL did not respond to this letter. The quantity of coal assured by MCL for the Project was not adequate to run the plant at full capacity during paddy season. One of the primary reasons for the same being that the quality of coal as being supplied by MCL is not in line with grades of coal as promised by PSPCL during bidding. Moreover, recently it had degraded from G-13 to G-14 grade which had affected the availability of coal at

TSPL's plant. This fact has also been affirmed by the report prepared by the Central Institute of Mining and Fuel Research (CIMFR), an independent government agency appointed by the Government of India to evaluate the GCV of coal supplied to power plants including TSPL from January'2017. The Report prepared by CIMFR indicates that the coal being supplied is of less GCV than that being claimed by MCL which substantiates the claim of TSPL regarding shortfall in GCV of coal as delivered to the Project. As such, TSPL requires 11,11,939 MT (with weighted average ARB GCV of 2957 kCal/kg of coal received for the months of January'2017 till April'2017 from MCL) of coal every month to run the plant at its full capacity instead of 6,43,000 MT of coal as envisaged to be supplied by MCL under FSA (the quantities will differ in some months as quarterly allocation varies from 22%-28% of Annual Contracted Quantity).

xxxvi. The fire of 17.04.2017 lead to the forced shut down of the Power plants units. The plant was expected to be brought into regular operation by 30.06.2017 or earlier. Due to the fire incident, TSPL was not in a position to off take coal from MCL linkage for the period from 18.04.2017 till date except for few rakes which were in transit and had to be unloaded. Resultantly, 243 of rakes got lapsed in April and May'2017, the details for which are provided herein below:-

	Alloted Rakes	Lapsed Rakes	Lapsed Quantity
Month	(Nos.)	(Nos.)	(MT in Lacs.)
April 2017	149	94	3.66
May 2017	149	149	5.80
Total	298*	243	9.46

** It was expected that around 25-30 rakes might get lapse in June'17 also.*

MCL had not made the lapsed coal available. In the beginning of June ready stock of around 514,347 MT coal was available at the plant site which had a GCV-ARB of approximately 2957 kCal/kg. With the aforesaid coal stock, the plant could run at its full capacity for approximately 14 days. Further, with the current MCL domestic linkage coal availability, the plant could run at a PLF of approximately 58% only [with As Received Basis (ARB) GCV i.e. ARB GCV of 2957 kCal/kg which had been received for the months of January 2017 till April 2017]. The materialization of this coal linkage is also contingent on various extraneous factors beyond the reasonable control of TSPL. Accordingly, even after taking into account the coal stocked by TSPL and the coal that supplied by MCL as per FSA, the same would not have been sufficient to fulfill the requirement of PSPCL during the paddy season.

xxxvii. Even the coal currently being supplied to TSPL has a huge variation in the GCV as received by TSPL at the Project site vis-à-vis the declared eGCV by MCL. The same is monitored by a joint team of official from PSPCL and TSPL. The variation in eGCV as billed by MCL and actual ARB GCV as received at TSPL site and as measured jointly by TSPL and PSPCL, on an average was approximately 17%. This would have resulted in increase in quantum of coal required for the same amount of generation and if the additional coal was not supplied it would have lead to shortfall in energy to be produced by TSPL, since the actual generation is directly proportional to the gross calorific value (GCV-ARB) of the coal as delivered to the Project i.e. received at project site. The linkage of coal in respect of the Project is 7,720,000 metric tonnes per annum. MCL allotted 90% of Annual Contracted Quantity

("ACQ") of FSA to TSPL. The quoted Net Heat Rate (Normative Heat Rate) of TSPL is 2400 kCal/kWh. The weighted average of GCV of coal, as received at the project, during the period January-April'2017 was approximately 2957 kCal/kg. Though the actual supply of coal is lower than the 90% of ACQ, even if it is assumed that 90% of ACQ would materialize, if coal corresponding to 90% ACQ with average GCV of 2957 kCal/kg is made available to TSPL, then it could have generated energy on an average Plant Load Factor ("PLF")/availability of 53%. If TSPL had calculated PLF/Average Availability which could have been achieved if CIL supplied 90% of the linkage quantity with weighted average of mid-point of theoretical eGCV of MCL declared grades of coal from the linked mines i.e., 3430 kCal/kg, then TSPL could achieve generation at Average Availability / PLF of 62%. This eGCV was not practically received at TSPL site for generating power. PSPCL also expressed its concern regarding the coal being supplied by CIL and has already written to the Under Secretary to the Government of India on 25.11.2016 and 07.02.2017. In spite of various communications and the meeting held on 22.03.2017 between the officials of MCL, TSPL and PSPCL, there has been no solution to the problem of shortage of coal. Even after the meeting dated 22.03.2017 wherein it was agreed that CIL will come back with a workable proposal for the coal shortage, the issue of coal shortage has not been resolved. TSPL has been continuously following up with CIL by way of it's letters dated 29.03.2017, 10.05.2017, 25.05.2017 and 26.05.2017. PSPCL has also written to CIL regarding the same on 11.04.2017 and 24.04.2017. However, till date, CIL has not worked out a solution for the coal shortage.

xxxviii. TSPL further stated that though TSPL has been constantly following up with PSPCL regarding the grant of permission to allow TSPL to procure coal from alternate sources/imported coal (the last letter being sent on 07.06.2017). However, there has been no response from PSPCL. Referring to PSPCL letter dated 05.09.2013 denying participation of TSPL in the e-auction process for procurement of domestic coal, TSPL contended that as CIL has not replied to PSPCL/ TSPL's request for a firm plan to supply additional coal, chance of getting additional coal from CIL was remote. Therefore, for maintaining 100% availability of the Project during the period from June to September'2017 and October'2017, TSPL would have required additional coal to be imported. The quantum of coal to be imported may be assessed on the basis of expected GCV of coal from the alternate source.

xxxix. The petitioner submitted that with the present linkage coal availability from MCL, TSPL would not have been in a position to be 100% available for the paddy season 2017. Accordingly, PSPCL ought to arrange coal from alternate sources to enable TSPL to operate the power plant at its full capacity during the paddy season. TSPL vide its letters dated 05.04.2017 and 12.04.2017 had requested PSPCL to participate in the tender process for alternate coal procurement. However, there was no response received from PSPCL regarding the same. Lead time of around 45 to 60 days would have been required from placement of coal order till arrival and stocking of coal and this included around 15 days for conducting bidding process and placement of order; loading and shipping time; unloading at port; clearance and then inland transportation through rail till TSPL's Project site. Therefore,

any further delay in arranging coal for the Project would have severely affected the full availability of TSPL's Project during the paddy season. The average cost of coal arranged by TSPL from alternate/imported sources would be as discovered through competitive bidding and the actual cost of coal is dependent upon various factors including demand, supply as discovered through tendering route. Since TSPL was left with no other option and PSPCL was not fulfilling its obligation to arrange coal for the Project, this cost of procurement of alternate/imported coal ought to be reimbursed to TSPL. In the past PSPCL has allowed imported coal for the project and have made payments for the same. Further, it is understood that PSPCL has allowed alternate coal to be procured to similarly placed IPPs for FY 2017-18 peak paddy season subject to further increase.

xl. In view of the above facts and circumstances TSPL requested prayed the Commission to direct PSPCL to pay the cost of alternate coal to be arranged by the Petitioner to run the plant at full capacity during the paddy season (June' 2017 to September' 2017) or in the alternate pay the deemed capacity charges proportionate to TSPL's availability which could not be generated due to coal shortfall.

8. The submissions made by PSPCL in its affidavit dated 13.10.2017 are summarized as under:

i. Denying the allegation sought to be made, PSPCL stated that the entire premise of the petition is that the obligation to supply coal for the generating station of TSPL is that of PSPCL, which is wrong. TSPL is only relying on the definition of a FSA in the PPA in a selective manner to contend that that the entire

obligation for supply of coal as that of PSPCL. On the other hand, the agreement between the parties is that PSPCL shall execute the FSA and assign it to TSPL for the life of the PPA and that all rights and obligations in regard to procurement of coal is that of TSPL. These aspects have already been dealt and decided by the Commission vide Order dated 06.09.2016 passed in Petition nos. 11 and 46 of 2012.

ii. Thus, the issue has been settled by the decisions of the Commission and the basic premise on which the petition has been filed by TSPL runs contrary to the decisions and the rights and obligations of the parties under the agreements entered into. The Commission, in the remand proceedings pursuant to the judgment and order dated 07/04/2016 passed by the Hon'ble APTEL in Appeal nos. 56 and 84 of 2013 has rejected the very same contention of TSPL and had held that upon assignment it is the obligation of TSPL to procure coal from the coal company and all rights and obligations with regard to procurement is that of TSPL.

iii. Counsel for PSPCL contended that in the proceedings before the Hon'ble APTEL in Appeal no. 36 of 2016, TSPL had once again raised the very same issue that the obligation of procurement of coal is that of PSPCL and not of TSPL. The said contention was rejected by the Hon'ble APTEL in its judgment and order dated 03.07.2017.

iv. PSPCL denied the averments of TSPL to the effect that the obligation to supply coal is that of PSPCL. PSPCL further stated that the permission required for procurement of coal from alternate sources is to be applied for and obtained by TSPL from the Commission. TSPL is operating the generating station and it is required to act in a prudent manner and generate and supply

electricity in an optimal manner. TSPL was fully aware about the seasonal requirements of electricity in the State of Punjab and the requirement of electricity to fulfill the demand during the paddy season, which is the peak season. TSPL ought to apply for and obtain the requisite permissions for procurement of coal in advance to ensure that there is no shortage of supply of electricity by TSPL to PSPCL. It is not open on TSPL to make allegations against PSPCL in regard to permission for alternate coal.

v. PSPCL stated that it had also written to CIL and other authorities to facilitate the procurement of coal by TSPL. However, such action of PSPCL to facilitate the coal procurement cannot be construed as a legal obligation to supply coal or any other legal obligation not provided for in the agreements entered into with TSPL. Without prejudice to the above even in the petition, TSPL has not sought for any post facto approval for procurement of alternate coal after showing the deficit in domestic coal available, but is only seeking deemed capacity charges from PSPCL. Further, admittedly the petition is limited to the shortage of coal during the paddy season when the demand in the State of Punjab is high and the power is required from all available sources. In the circumstances, it is not open to PSPCL to continue on the alternate coal for the period from October, 2017 when the paddy season is over.

vi. PSPCL stated that the capacity charges are governed by the terms and conditions of the PPA. There is no concept of deemed capacity charges in the absence of due declaration of availability in accordance with the provisions of the PPA and the applicable regulations. TSPL was required to take steps for arranging the inputs particularly the coal required for generation of electricity

namely domestic coal from MCL and in case of shortage of availability, arrange the alternate coal after following the requisite process and obtaining the approval of the Commission. In the absence of the above TSPL is not entitled to declare availability of the generating units or otherwise claim deemed fixed charges. In case the alternate coal is to be permitted, the Commission may consider the prudence of such procurement, the process adopted for procurement of alternate coal, the reasonability of the price of such coal and determine the energy charges payable for the quantum of electricity actually generated and supplied by TSPL to PSPCL. PSPCL specifically denied all claims made by TSPL.

9. **In rejoinder TSPL** stated that the present petition was filed to bring to the notice of the Commission that the shortfall in coal availability for TSPL's Project, during the peak paddy season (June to Sep 2017) and pray for issuance of an appropriate order at appropriate stage. TSPL's counsel reiterated that-

i. PSPCL was fully aware of the fact that the coal available from MCL would not be sufficient to run the Project at its full capacity during the paddy season. PSPCL itself had requested TSPL through its various communications including the letters dated 02.06.2017, 03.07.2017, 04.09.2017 and 15.09.2017 to maintain sufficient coal stocks at its Project, In spite of TSPL's repeated requests, PSPCL did not allow TSPL to procure coal from alternate source/ imported coal/ coal from MCL / other CIL.

ii. Various dilatory tactics have been adopted by PSPCL despite the fact that PSPCL has all along been aware that the shortfall in coal was caused, *inter alia*, due to PSPCL's failure in not signing the FSA for the Project.

iii. TSPL had been forced to procure approximately 7.66 Lakh MT of alternate imported coal since July'2016 till date (out of this, 60000 MT and 75000 MT of coal has been ordered on 06.10.2017 and 24.10.2017 respectively and the same is in process of being delivered at the plant) and TSPL has incurred an expenditure of approximately Rs. 460.85 Crores (the expenditure is for all the alternate imported coals ordered till last tender no. TN/11/CM/TSPL/2016-17 and does not include cost of 60000 MT of coal ordered on 06.10.2017 and 75000 MT of coal ordered on 23.10.2017). PSPCL has withheld an amount of Rs. 48.94 Crores approximately till the September 2017 bill. Since PSPCL makes payments only on the basis of the cost and eGCV (and not on weighted average actual GCV as received at TSPL plant) of domestic coal and the differential amount incurred for alternate/imported coal is not being paid by PSPCL, it was anticipated that this figure will further rise.

iv. Consistent efforts to follow-up with CIL for additional domestic coal in continuation to meeting organized by PSPCL with CIL for additional domestic coal supply to TSPL on 22.03.2017, including TSPL's letters dated 29.03.2017, 10.05.2017 and 26.05.2017 have not yielded any additional coal allotment. Even though the Government of Punjab had also taken up the matter with CIL both for increasing the FSA and increasing the allocation of rakes, there was no response from CIL.

v. Based on the letter dated 10.07.2017 from the Government of Punjab, TSPL also met CIL officials for additional coal supplies. CIL had indicated possibilities for additional domestic coal supply from Gourideep mines of Western Coal Fields Ltd. ("WCL"). TSPL took up the matter with PSPCL for allowing procurement of this

additional domestic coal vide letter dated 03.08.2017. However, PSPCL never responded to the said request of TSPL.

vi. TSPL vide its communications dated 22.06.2017, 28.06.2017 and 29.08.2017 requested the Railways department for addressing the issue of rake unavailability by loading at least 2 rakes from Talcher and 5-6 rakes from IB valley to avoid any coal stock out situation at TSPL's Project.

vii. MCL, vide letter dated 06.09.2017 and 18.09.2017, offered to supply coal by road/road-cum rail mode to TSPL for the month of September' 2017 from Basundhara OCP, Hingula OCP and Lingraj OCP of MCL. TSPL vide its letter dated 20.09.2017, requested for PSPCL's approval for procurement of this coal. However, There was no response for procurement of this alternate coal. TSPL also wrote a letter to PSPCL on 10.10.2017 requesting for PSPCL's approval for procurement of coal through RCR mode. No response was received. That even though the obligation of procuring coal for the Project is that of PSPCL, TSPL undertook all measures and made consistent efforts to avoid a coal stock out situation at the Project. Therefore, PSPCL is obligated to compensate TSPL for the costs incurred by TSPL for procurement of alternate coal/imported coal.

10. The submissions made by TSPL in compliance to the Order dated 10.11.2017 of the Commission are summarized as under:

i. That the coal stock available with TSPL for its Project was as below:-

			All Figures in MT
Coal stock as on	MCL Linkage Coal	Alternate Coal	Total
01.04.2017	375805	0	375805

17.04.2017 (Date of Fire incident in the Plant)	371624	0	371624
01.06.2017 (Start of Peak paddy season)	514347	0	514347

ii. The quantum of coal required by TSPL for operating the plant (at 80% PLF and 90% PLF) in the peak paddy season (June 2017 to September 2017) based on calculations done at ARB GCV of 3000 KCal/Kg and quoted SHR of 2400 kCal/kWh is provided herein below:-

Month (2017)	Coal in MT at 90% PLF	Coal in MT at 80% PLF
June	954,581	848,517
July	986,401	876,801
August	986,401	876,801
September	954,582	848,517

iii. That TSPL gets coal from MCL mines which are located at a distance of around 1500 kms. to 1700 kms. from its plant site. The average time for a rake to reach TSPL's plant is around 5 days from the time it leaves MCL loading point. The materialisation of coal from MCL mines for its project is one of the highest as compared to materialisation of coal from MCL for similarly far away located plants as mentioned in the table below:-

Sl.No.	Plant & Location	Coal FSA with	Approximate distance from mine to Plant	Materialisation (April'17-Oct'17)	Materialisation (July'17-Oct'17)
1	TSPL	MCL	1536-1834 kms (IB/ Talcher)	62% #	93.4%
2	Khedar, HPGCL	MCL	1539 kms (IB)	59%	77%
3	Panipat, HPGCL	MCL	1432 kms (IB)	30%	33%

iv. The details with respect to arrangement of coal stock during the paddy season (June'2017 to September'2017) and quantum of

coal received from coal linkage/other sources during the said period is as under:-

Month (2017)	Coal Received (MT)			Coal Consumption (MT)		
	MCL (ROM)	Alternate	Total	MCL (ROM)	Alternate	Total
June	105,697	36,197	141,894	159,112	13,756	172,868
July	472,774	19,998	492,772	674,148	42,459	716,607
August	455,301	101,036	556,337	595,750	69,135	664,885
September	458,625	82,023	540,648	504,132	111,976	616,107
Total			2,134,520			2,434,794

v. Due to the fire incident on 17.04.2017, the following number of rakes (alongwith the quantum of coal) lapsed for TSPL:-

Month (2017)	No. of Rakes lapsed	Quantity of coal in MT
April	94	366036
May	149	580206
June	73	284262
Total	316	1230504

(Considering per rake quantity of 3894 MT)

The petitioners submitted that while some part of the coal unloading system was available, the damage caused due to the fire on 17.04.2017 resulted in failure of complete protection & interlock system along with fire fighting and addressable system essential for safety of man and machine. The CHP has a unified communication system with protection & interlocks in order to operate the system from control room and if any of the communication cables (for protection & interlock of the system) and the fire fighting system gets damaged, keeping in mind the safety concerns as per Prudent Utility Practices, the CHP cannot be operated. The damage due to non-operation of the CHP is evident from the time taken to unload the rakes reaching TSPL's

plant during that period i.e. rakes which were unloaded from 18.04.2017 onwards (which were in transit and were to be unloaded anyhow). These rakes were unloaded with great difficulty using manual support, and took on an average 64 hours (minimum 21 hours to maximum 98 hours) for unloading of each rake. While the rakes that reached TSPL's plant during that period were somehow unloaded, but further unloading could not be continued owing to the damaged control & communication network and the same was communicated to PSPCL by TSPL's letter dated 13.06.2017.

vi. In February 2017, TSPL procured 62500 MT of alternate imported coal from Adani Enterprises Limited vide contract dated 04.02.2017 to meet the peak paddy season requirement of PSPCL. This coal was delivered on port in late March'2017 and was ready to be lifted in April'2017. However, TSPL could not lift this coal from the port owing to the CHP failure as mentioned above and the imported coal was lying at the port for almost 3 months. The first rake of this coal was received at TSPL's plant site on 21.06.2017 well after the CHP was restored. Due to the non-lifting of this coal within the specified time limits, a penalty of Rs. 1 crore was also imposed by Adani Enterprises Limited on TSPL.

vii. Though TSPL wrote to MCL for reallocation of the lapsed coal rakes by the letters dated 10.05.2017, 25.05.2017, 26.05.2017 and 01.06.2017, there was no response. The rakes which gets lapsed do not get reallocated and there is no provision of reallocation in the FSA. Instead of reallocating lapsed coal, MCL wrote letters dated 06.09.2017 and 18.09.2017 to TSPL informing

that 28307 MT of coal could be allowed through Rail Cum Road (“RCR”) Mode.

11. The reply by PSPCL to the submissions made by TSPL in compliance to the Order dated 09.10.2017 are summarized as under:

i. TSPL’s additional reply dated 10.11.2017 seeks to justify the lapse of rakes to be supplied by MCL. The entire basis of the petition is on the obligation of supply by PSPCL which is misconceived and the petition is liable to be dismissed for the said reason alone. There were substantial quantum of coal which were not purchased by TSPL from MCL. TSPL stated that a total of 316 rakes had lapsed during the months of April, May and June, 2016 aggregating to 1230504 MT of coal. This quantum of coal lapsed for reasons attributable to TSPL, namely, the inability of TSPL to take delivery of the coal due to fire in the plant site and these are for reasons being wholly attributable to TSPL, there is no claim of TSPL to the contrary and therefore the quantum of coal to this extent is not permissible to be allowed as alternate coal with higher cost. The coal being available to TSPL and delivery thereof not having being taken, TSPL cannot now claim any additional cost for alternate coal procured by TSPL to substitute the coal not taken delivery of from MCL.

ii. TSPL’s data shows that the quantum of alternate coal procured during the months from June to September, 2017 was much less than the quantum of coal which had lapsed and which had been refused. In the circumstances, the claim, for the higher cost of alternate coal to be allowed as a pass through, does not

arise. The allegation sought to be made by TSPL against MCL for non-reallocation of the lapsed coal is irrelevant in the present case. Whether TSPL has any right to demand reallocation of the coal that has lapsed, if so to what extent and whether such right has been enforced against MCL are all issues which are to be taken up by TSPL against MCL and cannot be agitated in the proceedings before the Commission.

12. Vide Order dated 06.03.2018, TSPL was asked certain questions to which TSPL's vide letter dated 15.03.2018 submitted that :-

- i. TSPL's coal storage capacity is approximately 1 MMT i.e. 10 Lakh MT.
- ii. The details of coal rakes allocated, received, lapsed and rakes not delivered to TSPL was provided as follows:-

Details of Coal Allocated etc. (Apr '17 – Jun '17) in No. of Rakes

Month	No. of MCL rakes Allocation	No. of Rakes Not Delivered to TSPL due to CHP fire incident	No. of Rakes Lapsed	No. of Rakes Received by TSPL	Reason for rakes not delivered to TSPL
Apr-17	149	94	0	55	Reason for rakes not delivered to TSPL due to CHP fire incident : Due to the fire incident, common communication and control system including safety and control of the CHP was damaged. It is technically impossible to run the coal unloading system (part of CHP) in the absence of the control and protection system.
May-17	149	149	0	0	
Jun-17	149	32	73	44	
Total	447	275	73	99	Reason for lapse of Rakes: Rakes have lapsed due to non-availability of Rakes.

Details of Coal Allocated etc. (Jul-Sept) in No. of Rakes

Month	Nos. of Rakes allocated	Nos. of MCL Linkage Coal Received	Nos. of MCL Linkage Coal Lapsed	No. of Rakes not delivered to TSPL due to CHP fire incident	Reason
Jul-17	131	129	2	0	Less Rake Availability
Aug-17	131	120	11	0	Less Rake Availability, Restriction in rake loading.
Sep-17	131	119	12	0	

One rake = Approx. 3894 MT

iii. No rakes were delivered after 28.04.2017 till 18.06.2017 and no rakes were received between 29.04.2017 and 10.05.2017. TSPL by its letter dated 10.05.2017 had requested MCL to re-allocate the lapsed linkage coal which was to be loaded only after the CHP was restored. The letter to MCL for restarting the coal supply was sent to MCL on 02.06.2017, i.e. when the repair work of the coal handling system was nearing completion and the coal unloading system (part of CHP) was restored on 10.06.2017.

iv. TSPL did not refuse the delivery of rakes between 17.04.2017 and 10.05.2017. However, due to technical impossibility in running the coal unloading system, 275 (94 +149+32) rakes could not be unloaded by TSPL between 18.04.2017 and 02.06.2017. Due to the fire incident in the CHP as detailed in response to question (g), no more coal after 28.04.2017 could have been unloaded by TSPL. The fire incident was an unforeseen incident beyond the control of TSPL which occurred in

the coal conveyor in the CHP on 17.04.2017. The fire damaged the conveyors due to which TSPL was not able to unload coal (except for some rakes in transit) and was prevented from lifting any further coal till the CHP was restored.

v. With regards to why TSPL did not stock coal to the full extent of coal storage capacity of the plant, it was submitted that TSPL did not refuse the delivery of rakes. However, due to technical impossibility to run the coal unloading system 275 (94 +149+32) rakes could not be unloaded by TSPL between 18.04.2017 and 02.06.2017. All the coal quantity as allocated to TSPL prior to the fire incident was accepted by TSPL.

vi. With regards to what was the extent of the damage caused at the Project due to the fire accident, when was the coal unloading and coal handling system restored by TSPL, it was submitted that a massive fire broke out in the coal conveyer section 10A/B and within a short span of time spread to coal conveyer gallery 10A/B and soon after the fire outbreak the temperature increased and the fire spread to uncontrollable levels due to which the entire coal conveyer gallery was damaged and collapsed. This caused substantial damage and outage to the coal feeding facility to boilers, thereby affecting the movement of coal from the feeding facility to the boilers as well as causing major damage to the CHP. This required more than 60 days for restoration as per the initial assessment. The fire was brought under control on 17.04.2017 itself due to the speedy action by TSPL and the repair and restoration of the coal conveyer system was started on 18.04.2017 on war footing basis to restart the operations. The CHP was brought back into service within 53 days (period between 18.04.2017 to 10.06.2017). Due to the fire

incident, common communication and control system including safety and control of the CHP was damaged and it was technically impossible to run the coal unloading system (part of CHP) in the absence of the control and protection system. While some part of coal unloading system was available, the damage caused due to the fire on 17.04.2017 resulted in the failure of the complete protection and interlock system along with firefighting and addressable system essential for the safety of man and machine. The CHP has a unified communication and control system with protection & interlocks for operating the system from the control room and since the communication system was not available, all the protections and interlocks were bypassed. Further, due to the fire incident the firefighting system of CHP's affected area was not available. Therefore, on account of both these reasons and as per safety aspects and prudent industry practices, it was not safe to operate the plant. Hence, rakes were unloaded with average delay of 60 hours due to manual operation which could be done only for short duration on temporary basis.

vii. With regards to when TSPL resumed ordering and receiving coal from MCL after fire incident and the reason TSPL did not take the previously lapsed coal from MCL after the restoration of the coal unloading system and the steps taken by TSPL to get maximum coal and for restoration of lapsed coal, it was submitted that on 02.06.2017, TSPL sent a letter to MCL for restarting coal supply to TSPL. The said letter was sent at a time when the repair work of the coal handling system was nearing completion. The coal handling system was repaired and ready by 10.06.2017. Accordingly, 1st rake after fire incident was loaded on 12.06.2017 from MCL end and was received at the Project site on 18.06.2017.

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Subsequently, the 1st unit of the Project was lighted up on 19.06.2017 and was synchronized on 20.06.2017. TSPL had applied for 120 rakes for June'2017 program on 02.06.2017 (as the unloading system would have been ready by 10.06.2017, 150 rakes could not have been ordered) and had requested MCL to reallocate the lapsed coal by meeting with MCL officials and through formal communications dated 02.06.2017. With persistent efforts by TSPL, MCL reallocated some of the lapsed coal through washery mode, RCR mode and also offered coal from other mines of CIL. MCL vide letter dated 06.09.2017 informed TSPL that upto 5% of ACQ of coal can be supplied through RCR mode. Further, MCL vide letter dated 18.09.2017 offered to supply 28037 MT of coal through RCR mode to TSPL. TSPL vide letter dated 20.09.2017 and 25.09.2017 sought PSPCL's approval for procuring the lapsed coal through RCR mode and also to procure coal from other mines of CIL. However, PSPCL refused to approve the request and no approval communication was received from PSPCL. No rakes have been refused by TSPL during the peak paddy season and TSPL accepted all the rakes as dispatched by MCL.

viii. With regards to what was the coal availability at the Project site on 01.07.2017, 01.08.2017, 01.09.2017 and 01.10.2017 of the peak paddy season and how many rakes were accepted and refused by TSPL during this period, TSPL gave the details as under:

Date	MCL linkage Coal Stock in MT	Alternate Coal Stock in MT	Total Coal Stock in MT
01.07.2017	4,60,990	22,462	4,83,452
01.08.2017	2,59,613	-	2,59,613
01.09.2017	1,19,163	31,901	1,51,064
01.10.2017	73,656	1,948	75,604

ix. With regards to at what point of time was the alternate coal procured by TSPL and how much, it was submitted that the Details of alternate coal procured by TSPL to meet peak paddy season demand of PSPCL are furnished as below:-

Sl. No.	Tender No.	Coal Supply Contract Quantity (MT)	Coal Supply Contract Date	Date of 1 st Rake arrival
1	TN/16/CM/TSPL/2017-18	1,20,000	12.07.2017	12.08.2017
2	TN/17/CM/TSPL/2017-18	1,50,000	24.08.2017	23.09.2017
3	No tender published - (Coal immediately procured to maintain continuity in generation)	20,000	12.09.2017	20.09.2017

TSPL further provided details of alternate coal procured by TSPL post peak paddy season to meet demand of PSPCL as under:-

Sl. No.	Tender No.	Coal Supply Contract Quantity (MT)	Coal Supply Contract Date	Date of 1 st Rake arrival
1.	No tender published - (Coal immediately procured to maintain continuity in generation)	60,000	06.10.2017	18.10.2017
2.	TN/18/CM/TSPL/2017-18	75,000	23.10.2017	06.11.2017
		80,000	13.11.2017	17.12.2017
		80,000	05.12.2017	10.01.2018
3.	No tender published - (Coal immediately procured to maintain continuity in generation)	11,000	05.12.2017	13.12.2017

13. The submissions made by PSPCL in its reply in compliance to the Commission's Order dated 06.03.2018 are summarized as under:

i. There is substantial quantum of coal which was not purchased by TSPL from MCL. A total of 316 rakes had lapsed during the months of April, May and June'2017 aggregating to 1230504 MT of

coal. However, it appears that TSPL has provided different data in regard to the coal lapsed. The admitted case being that 316 rakes lapsed due to the fire incident at site. The lapse is attributable only to TSPL and TSPL cannot seek to benefit from the same. To the extent of the 316 rakes that had lapsed, TSPL is not entitled to any benefit of higher cost of alternate coal and the cost of coal is to be considered only based on linkage coal. If TSPL has not taken delivery of coal for any reason it is at TSPL's risk and the cost cannot be passed on to the consumers. PSPCL maintained that the contention of TSPL that it was technically impossible to unload the rakes at the site and therefore the rakes had lapsed is not correct as TSPL had in fact received 38 rakes in the period of 12 days between 17.04.2017 (when the fire occurred) and 28.04.2017.

ii. That not only was it possible for TSPL to receive and unload coal, the same was actually done and also a substantial quantum of coal was received and unloaded immediately after the fire incident. In fact, on 27.04.2017 TSPL received 23761 MT of coal which was the highest during the month including the period prior to the fire. Therefore, there is no basis for TSPL to contend that the fire made unloading the coal impossible. It is evident that the coal was not received by TSPL for other reasons best known to TSPL and not because of the fire incident. When TSPL could receive substantial coal quantum in the first 10 days after the fire incident there was no reason why the coal could not be received thereafter.

iii. PSPCL further reiterated the submissions made earlier.

14. TSPL filed its submissions in compliance to the Commission's Order dated 16.05.2018 wherein the Commission sought the following information from TSPL:

- “i) Letters written by TSPL for procurement of coal between 02.06.2017 to 21.06.2017;*
- ii) Letters written to the ‘Standing Committee on TSPL Project’ constituted by the Commission vide Order dated 11.02.2014 in Petition No.60 of 2014 for convening the meeting;*
- iii) Force Majeure Notice issued by TSPL to PSPCL in terms of the PPA;*
- iv) Month wise stock of coal received from coal mine and alternate sources;*
- v) No. of rakes/quantity of coal received from January, 2017 to December, 2017;”*

The submissions made therein are summarized as under:-

- i. During the period between 02.06.2017 to 21.06.2017, TSPL wrote the following letters for procurement of coal:-
 - a) Letters dated 07.06.2017 and 15.06.2017 to PSPCL.
 - b) Letters dated 19.06.2017 and 20.06.2017 to MCL regarding requirement of rakes for TSPL’s plant to build up coal stock for catering to the power requirements of Punjab during peak paddy season.
- ii. TSPL wrote to the Standing Committee on 01.11.2016, 11.11.2016, 24.11.2016, 04.05.2017, 05.07.2017, 27.12.2017, 05.01.2018, 22.01.2018, 22.02.2018, 27.03.2018, 31.03.2018 and 15.05.2018. The Standing Committee conducted meetings on 19.02.2018 and 23.03.2018 for which the Minutes of Meeting are yet to be finalized.
- iii. That the Commission had directed TSPL to produce the copy of the Force Majeure notice issued by TSPL to PSPCL for the fire incident in its plant on 17.04.2017. In this regard, copy of the Force Majeure notice dated 24.04.2017 bearing no. TSPL/PSPCL/PPR/AK/APR-17/77 was issued by TSPL to PSPCL wherein the full particulars of the event of Force Majeure describing the factors which lead to the forced shutdown of the

power plant units due to the uncontrollable fire broke out at TSPL's power plant was conveyed to CE Thermal Designs and CE PPR, PSPCL .

iv. That the month wise details of rakes / quantity of coal (in actuals) received by TSPL for the period from 01.01.2017 to 31.12.2017 are as under:-

Month	Coal Received/ Unloaded					
	No. of MCL rakes (ROM) Coal	MCL (ROM) Coal (MT)	Nos. of Alternate Coal Rakes	Alternate Coal (MT)	Total No. of rakes	Total Coal Quantity (MT)
Jan	117	4,66,178	1	3,127	118	4,69,305
Feb	116	4,49,457	8	31,068	124	4,80,525
Mar	141	5,47,122	4	15,372	145	5,62,494
April	102	4,02,869		-	102	4,02,869
May		-		-	-	-
Jun	26	1,05,697	9	36,197	35	1,41,895
Jul	119	4,72,774	5	19,998	124	4,92,772
Aug	116	4,55,301	29	1,01,036	145	5,56,337
Sep	115	4,58,625	21	82,023	136	5,40,648
Oct	127	5,16,873	47	1,72,787	174	6,89,660
Nov	120	5,57,896	23	83,085	143	6,40,981
Dec	125	4,96,277	19	79,710	144	5,75,987
Total	1224	49,29,069	166	6,24,403	1390	55,53,472

Note: 1. The coal quantity received as mentioned above is as per the actual quantity received during 1st to last day of a particular month. Please note that in a particular month rakes from the previous month quota were also received.

2. For June 2017, the alternate coal was unloaded starting from 21.06.2017 and the same is known to PSPCL also, as per reports available on TSPL website.

v. TSPL in addition gave the details of alternate coal procured by TSPL for the period from 01.01.2017 to 31.12.2017 as follows:-

Sl. No.	Date of Contract	Name of Coal Supplier Party	Contract Quantity (MT)	Actual Coal Supply Quantity (MT)
1	04-Feb-17	M/s Adani Enterprises Ltd	48000	46440
2	28-Feb-17	M/s Adani Global Pte Ltd	65000	62500
3	12-Jul-17	M/s Adani Global Pte Ltd	120000	126285
4	24-Aug-17	M/s Adani Global Pte Ltd	150000	157600
5	12-Sep-17	M/s Gandhar Oil Refinery India Ltd	20000	18460
6	06-Oct-17	M/s Gandhar Oil Refinery India Ltd	60000	59404
7	23-Oct-17	M/s Adani Global Pte Ltd	75000	80850
8	13-Nov-17	M/s Adani Global Pte Ltd	80000	88000
9	05-Dec-17	M/s Adani Enterprises Ltd	11000	12072
10	15-Dec-17	M/s Adani Global Pte Ltd	80000	77000
Total			709000	728611

**The Actual coal supply quantity varies from the contract quantity since the contract allows for variation in coal quantity by $\pm 10\%$.*

- iv. The following letters were written by TSPL to PSPCL to allow procurement of coal through rail-cum-road mode:-
- a) TSPL/PSPCL/PPR/AM/SEP-17/172 dated 25.09.2017.
 - b) TSPL/PSPCL/PPR/AM/SEP-17/169 dated 20.09.2017.
 - c) TSPL/PSPCL/PPR/AM/ OCT-17/183 dated 10.10.2017.

However, PSPCL neither responded to the aforesaid letters nor allowed procurement of coal through rail-cum-road mode. Therefore, TSPL did not procure coal through rail-cum-road mode during 01.01.2017 to 31.12.2017.

v. It is submitted that TSPL had sought the approval for procurement of alternate coal or payment of deemed capacity charges at the time of filing the Petition. Further, by way of the Rejoinder dated 26.10.2017, TSPL had submitted that they had been forced to procure approximately 7.66 Lakh MT of alternate imported coal since July 2016 till October 2017. PSPCL had

withheld an amount of approximately Rs. 48.94 Crores till September 2017 out of which approximately Rs. 30 Crores was on account of alternate coal used in the peak paddy season 2017. With respect to unloading of coal after the fire incident on 17.04.2017, it was submitted that 38 rakes were in transit when the fire incident took place and had to be manually unloaded by TSPL. Manual unloading of coal is a time consuming and effort intensive process and could only be carried out for a short duration and not on a regular basis. [Average unloading time per rake of 64 hours, minimum 21 hours to maximum 98 hours]. Manual unloading slowed down the process to such an extent that the Petitioner had to incur huge demurrage charges of approximately Rs. 6.64 Crores (from 18.04.2017 onward) levied by the railway department on account of demurrage due to substantial delay in unloading of coal rakes in April 2017. TSPL did not unload any alternate coal during this period. This is evidenced from the fact that a penalty of approximately Rs. 1 Crore was imposed on the Petitioner by M/s. Adani Enterprises Ltd. on account of non-lifting of alternate coal.

vi. Though, the matter was reserved on 26.09.2018 it had to be reheard to obtain information regarding monthly reconciliation statements with Railways for coal supply, month wise declared availability and scheduled generation, month wise gross energy generated, month wise energy billed, month wise GCV of received coal, month wise ACQ & reasons for less requisitions, Correspondence with MCL/CIL regarding short supply/lapsed rakes, non availability of rakes and details of blending of coal received. PSPCL was also asked to comment on the same. The

same has already been mentioned at Para 6 on page number 4- 7 of this Order.

Commission's Observations, Findings and Decision

The Commission has carefully gone through the petition, reply thereto by PSPCL, rejoinder by the petitioner to the reply of PSPCL and other submissions and written submissions filed by the parties. TSPL prayed to direct PSPCL to pay the cost of alternate coal to be arranged by TSPL to run the plant at full capacity during the paddy season (June, 2017 to September, 2017) or in the alternate pay the deemed capacity charges proportionate to the petitioner's availability which could not be generated due to coal shortfall. The petition was filed by TSPL on 20.06.2017 with the aforementioned prayer regarding anticipated coal shortage for the months of June, 2017 to September, 2017.

The project has a coal linkage from Mahanadi Coalfields Ltd. with Annual Contracted Quantity (ACQ) of 77.2 lakh ton and contracted quantity for each quarter is 25% (Q1; April to June), 22% (Q2; July to September), 25% (Q3; October to December) and 28% (Q4; January to March). The quarterly and monthly contracted quantity comes to 19.30 lakh ton (6.43333 lakh ton per month) for Quarter-1, 16.984 lakh ton (5.66133 lakh ton per month) for Quarter-2, 19.30 lakh ton (6.43333 lakh ton per month) for Quarter-3 and 21.616 lakh ton (7.20533 lakh ton per month) for Quarter-4. The quoted Net Station Heat Rate (NSHR) for the generating station is 2400 kCal/kWh. The issues of signing of fuel supply agreement with the coal supplier and arranging sufficient quantity and quality of linkage coal has been the subject matter of a series of petitions in the Commission and Appellate Tribunal for

Electricity. The matter rests now with the Hon'ble Supreme Court of India. The present position is that the fuel supply agreement for linkage coal is to be signed between MCL and PSPCL and then be assigned to TSPL. Meanwhile, the actual linkage is with the TSPL.

A fire incident occurred at the project on 17.04.2017. Coal was received at the project site upto 28.04.2017. The petitioner on 18.05.2018 filed a copy of the force majeure notice dated 24.04.2017 of the fire incident addressed to PSPCL, in response to Commission's query in the interim Order dated 16.05.2018. As per the said notice, the force majeure event started at 10.48 PM on 17.04.2017 and ceased at 01.40 AM on 18.04.2017. However, in the petition, TSPL has not pleaded any issue with regard to alleged force majeure event wherein the fire incident has been termed as an event beyond the reasonable control of the petitioner. TSPL did not requisition any coal in May, 2017. After the alleged fire incident, the coal was requisitioned on 02.06.2017. The coal handling plant (CHP) became functional on 10.06.2017 and the receipt and unloading of coal at the plant started on 18.06.2017. The plant was re-synchronized on 20.06.2017.

Short requisitioning of Linkage Coal

As per the data supplied by the petitioner, TSPL requisitioned 3.27096 lakh ton of coal in September, 2016 as against ACQ of 5.66133 lakh ton i.e. 2.39037 lakh ton coal was ordered short by TSPL. From October, 2016 to September, 2017, the coal quantity requisitioned was 62.49870 lakh ton as against ACQ of 77.2 lakh ton i.e. 14.70130 lakh ton less coal was requisitioned. For the period from October, 2016 to April, 2017, TSPL requisitioned 4.82683 lakh ton less linkage coal. In May,

2017, due to the alleged fire incident in April, no quantity of coal is stated to have been requisitioned. During the four months under consideration i.e. from June, 2017 to September, 2017, TSPL short requisitioned 3.44110 lakh ton linkage coal i.e. 1.76053 lakh ton in June, 0.56019 lakh ton in July, 0.56019 lakh ton in August, and 0.56019 lakh ton in September. **Accordingly, it is clear that TSPL has been ordering coal quantity less/short than that required to be requisitioned every month as per the contracted quantity for each quarter based on the ACQ of the coal, for the period from Sept., 2016 to Sept., 2017 according to the data made available by TSPL. TSPL did not utilize its full storage capacity of 10 lakh ton approx. even once during the period from October, 2016 to September, 2017. The maximum opening balance of coal stock was in the month of June, 2017 when it was 5.14347 lakh ton.**

Availability and usage of linkage coal as per declared capacity and scheduled generation

★ The Commission's analysis for each month from June, 2017 to September, 2017 with regard to the availability and usage of coal vis-a-vis declared capacity by TSPL and scheduled generation by PSPCL is discussed below.

June, 2017

The opening balance of the linkage coal quantity for the month of June, 2017 was 5.14347 lakh ton. Further 1.05763 lakh ton of coal was received during the month. Thus during June, 2017, 6.20110 lakh ton coal was available for generation. The weighted average Gross Calorific Value (GCV) of the linkage coal received for the period from Oct., 2016 to Sept., 2017 works out to

3038 kCal/kg which has been used for calculation purposes hereinafter though the weighted average GCV for the period under reference in the petition i.e. June, 2017 to Sept., 2017 works out to 3112 kCal/kg. The possible generation with this quantity of coal at the quoted Net Station Heat Rate (NSHR) of 2400 kCal/kWh for the project and weighted average GCV of 3038 kCal/kg, works out to 784.956 MU. TSPL's declared availability of its plant for the month of June, 2017 in terms of energy was 273.788 MU and PSPCL's scheduled generation against the same was 195.099 MU. Accordingly, the consumption of linkage coal for the month of June, 2017 works out to 1.54127 lakh ton. The balance quantity of the linkage coal ending June, 2017 comes to 4.65983 (6.20110 - 1.54127) lakh ton. **It is pertinent to point out that TSPL used 0.13756 lakh ton of alternate/imported coal of GCV 5078 kCal/kg in June, 2017 (equivalent to 0.22992 lakh ton linkage coal of GCV 3038 kCal/kg) though sufficient linkage coal was available in the month.** Declaring availability of only 273.788 MU by TSPL during June, 2017 can be attributable to only 10 days generation due to the re-synchronization of the plant on 20.06.2017 after the alleged fire incident as per information given by GVK.

July, 2017

The opening balance of the linkage coal quantity for the month of July, 2017 worked out above as closing balance of June, 2017 is 4.65983 lakh ton. Further 4.72774 lakh ton of coal was received during the month. The total quantity of linkage coal available works out to 9.38757 lakh ton. The possible generation with this quantity of coal works out to 1188.310 MU. TSPL's

declared availability of its plant for the month of July, 2017 in terms of energy was 1225.170 MU. PSPCL's scheduled generation against the same was 885.843 MU. Accordingly, the consumption of linkage coal for the month of July, 2017 works out to 6.99810 lakh ton. The balance quantity of the linkage coal ending July, 2017 comes to 2.38947 (9.38757 - 6.99810) lakh ton. **TSPL used 0.42459 lakh ton of alternate/ imported coal of GCV 5078 kCal/kg in July, 2017 whereas sufficient quantity of linkage coal was available for the scheduled generation. Even for the difference between the declared capacity of 1225.170 MU and possible generation of 1188.310 MU with the available coal stock, only 0.29119 lakh ton linkage coal was required. This quantum of coal would have been easily available had the coal not been requisitioned short from September, 2016 onwards i.e. Sept., 2016 (2.39037 lakh ton), Oct. 2016 to April, 2017 (4.82683 lakh ton), June, 2017 (1.76053 lakh ton) and July, 2017 (0.56019 lakh ton) totaling to 9.53792 lakh ton.**

Thus, it is inferred that there was no necessity for TSPL to use alternate/imported coal in July, 2017. It can also be inferred that TSPL was capable of declaring availability in terms of energy as 1278.149 MU during July, 2017 (93% availability) considering the quantum of imported coal of 0.42459 lakh ton of GCV 5078 kCal/kg and 9.38757 lakh ton linkage coal of weighted average GCV 3038 kCal/kg available in the month as against only 1225.170 MU declared by TSPL even though TSPL has argued that PSPCL had asked it to be ready for 100% generation during the paddy season from June, 2017 to Sept., 2017. Had TSPL not been ordering less linkage coal, it would have been in readiness for declaring

100% availability. TSPL of its own volition chose not to do so for reasons best known to it.

August, 2017

For the month of August, 2017, the opening balance of the linkage coal quantity worked out above as closing balance of July, 2017 is 2.38947 lakh ton. Further 4.55301 lakh ton of coal was received during the month. The total quantity of linkage coal available works out to 6.94248 lakh ton. The possible generation with this quantity of coal works out to 878.802 MU. TSPL's declared availability of its plant for the month of August, 2017 in terms of energy was 1223.129 MU and PSPCL's scheduled generation against the same was 808.735 MU. Accordingly, the consumption of linkage coal for the month of August, 2017 works out to 6.38895 lakh ton. The balance quantity of the linkage coal ending August, 2017 comes to 0.55353 (6.94248 - 6.38895) lakh ton. **TSPL used 0.69135 lakh ton of alternate/imported coal of GCV 4825 kCal/kg which was not required to be used as sufficient linkage coal was available for the scheduled generation. As regards availability of sufficient linkage coal for the declared capacity of 1223.129 MU, it is seen that for the difference in the declared capacity of 1223.129 MU and possible generation of 878.802 MU with the available linkage coal stock, additional 2.72016 lakh ton linkage coal was required. This quantum of 2.72016 lakh ton would have been easily available had the coal not been requisitioned short from Sept., 2016 to July, 2017 (9.53792 lakh ton) and 0.56019 lakh ton for August, 2017 totaling to 10.09811 lakh ton.**

Thus, it is inferred that had TSPL been requisitioning the

full quantum of coal as per ACQ, there was no necessity for TSPL to use alternate/imported coal in August, 2017 as well. In fact TSPL could have declared 100% availability as against 89% only.

September, 2017

For the month of September, 2017, the opening balance of the linkage coal quantity worked out above as closing balance of August, 2017 is 0.55353 lakh ton. Further, 4.58625 lakh ton of coal was received during the month. The total quantity of linkage coal available works out to 5.13978 lakh ton. The possible generation with this quantity of coal works out to be 650.610 MU. TSPL's declared availability of its plant for the month of September, 2017 in terms of energy was 1090.015 MU and PSPCL's scheduled generation against the same was 858.666 MU. For this scheduled generation and declaration, the linkage coal required was 6.78340 lakh ton and 8.61105 lakh ton respectively. Accordingly, 1.64362 lakh ton additional coal was required for scheduled generation and 3.47127 lakh ton additional coal than available for declared capacity. **This could have been easily met with, had TSPL ordered its full linkage and not ordered less coal of 10.09813 lakh ton upto August, 2017 and another 0.56019 lakh ton in September, 2017, totaling to 10.65832 lakh ton. The Commission notes with concern that TSPL consumed 1.11976 lakh ton of alternate/imported coal of weighted average GCV of 4739 kCal/kg (considering the opening balance of 0.31901 lakh ton of alternate/imported coal of GCV 4825 kCal/kg for Sept., 2017 and received quantity of alternate/imported coal of 0.82023 lakh ton of GCV 4706 kCal/kg) whereas the equivalent**

quantum of linkage coal of weighted average GCV of 3038 kCal/kg that was required works out to 1.74672 lakh ton. This quantity of linkage coal would have been easily available considering the Commission's findings regarding short requisitioning of linkage coal in the aforementioned paras.

The aforementioned calculations are illustrative in nature being based upon monthly data. The actual situation would be more dynamic since capacity declaration, scheduled generation as well as receipt and usage of coal are on daily basis and thus more controllable. On daily basis, only 0.34913 lakh ton of linkage coal of GCV 3038 kCal/kg was required for declaring 100% capacity per day.

Conclusion

The Commission in its Order dated 11.02.2014 in petition no. 60 of 2013 filed by TSPL approved the procurement process of coal from alternative sources subject to the following terms & conditions and modalities. The same were required to be adhered to by TSPL while procuring and using alternate/ imported coal for its plant.

“36.

(i) TSPL shall requisition the coal regularly from MCL as per clause 4.5 'Scheduled Quantity' of the FSA.

(ii) TSPL will give preference to the coal supplied by MCL over coal to be directly arranged by it from alternative sources and will not put any restrictions on supply of coal from MCL and accept the entire quantity of coal offered for supply from MCL.

(iii) TSPL will not use the coal supply from the alternative sources unless warranted by the exigencies of short supply of coal by MCL in terms of the FSA, that too on 'Minimal Usage' basis.

.....
x).....”

Evidently, TSPL has flouted all the above three conditions/ modalities set out with impunity. TSPL has not been requisitioning the linkage coal from MCL in full as per the contracted quantity every month. So much so that in the paddy season during the months of June, 2017 to September, 2017 for which payment for use of alternate/imported coal has been sought in the petition, TSPL has not requisitioned full quantity of coal as per ACQ. Secondly, despite having sufficient quantum of linkage coal available for the scheduled generation or even for declared capacity, TSPL has used alternate/imported coal in all these four months. TSPL used 2.37326 lakh ton of imported/alternate coal in the months from June, 2017 to September, 2017 (Wt. Avg. GCV 4844 kCal/kg) and in the full year from Oct., 2016 to Sept., 2017, 4.44312 lakh ton of imported/alternate coal (Wt. Avg. GCV 5172 kCal/kg) has been used. The linkage coal (GCV 3038 kCal/kg) that would have been required against 2.37326 lakh ton of imported/alternate coal used during June, 2017 to Sept., 2017 works out to 3.78409 lakh ton and for the period Oct., 2016 to Sept., 2017 works out to 7.56413 lakh ton which would have been available had TSPL requisitioned the full quantum of linkage coal as per ACQ. No preference was given to linkage coal from MCL, nor did TSPL desist from using alternate/imported coal which was only to be used if warranted by the exigencies of short supply of coal by MCL in terms of the FSA, that too on 'Minimal Usage' basis.

TSPL vide reply dated 03.01.2019 (Annexure-V) and 13.02 2019 (Annexure-3) submitted that MCL is offering only 90% of the ACQ by rail, remaining 10% of the ACQ is offered as 5 % via road cum rail mode and another 5% as import component via road mode and this 10 % is not lifted due to quality issues and nonpayment of surface transportation charges by PSPCL and also due to coal equivalent to import component was not available with MCL. This contention of TSPL that 10% coal is not lifted due to quality issues and non payment of surface transportation charges by PSPCL is not tenable as the coal is supplied to the project by MCL in terms of the Fuel Supply Agreement which have to be adhered to. PSPCL is bound to make payment of energy charges in terms of the PPA. Hence, 100% coal linkage is required to be requisitioned by TSPL in terms of the monthly/quarterly/yearly contracted quantity as per the FSA.

In view of the above, the prayer of TSPL to direct PSPCL to pay the cost of alternate coal to be arranged by TSPL to run the plant at full capacity during the paddy season from June, 2017 to September, 2017 fails and is not allowed.

As regards the alternate prayer for payment of the deemed capacity charges proportionate to TSPL's availability which could not be generated due to coal shortfall: the same is not sustainable in view of the Commission's findings and decision in the main prayer as held above.

Costs will be borne by the respective parties.

The petition is disposed of in terms of above.

Sd/-

(Anjuli Chandra)
Member

Chandigarh
Dated: 11.04.2019

Sd/-

(S.S. Sarna)
Member

Sd/-

(Kusumjit Sidhu)
Chairperson