

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

**Petition No. 28 of 2018
Date of Order: 04.12.2019**

Petition filed under Section 86(1)(b), Section 86(1)(f), Section 94(1)(g) of the Electricity Act, 2003 read with Regulation 69 of the PSERC (Conduct of Business) Regulations, 2005 seeking the post facto approval of the Commission for the quantum of 3.55 Lakh MT of coal procured by NPL from alternate sources in the absence of the meeting of the Standing Committee on NPL Project, and for the complete pass through of the additional cost incurred by NPL thereto, in terms with the order of the Hon'ble Tribunal dated 16.03.2016 in Appeal No. 68 of 2013.

In the matter of: Nabha Power Limited, Aspire Tower, 4th Floor, Plot No. 55, Industrial and Business Park, Phase-1, Chandigarh-160 002..

...Petitioner

Versus

Punjab State Power Corporation Limited, Through its Engineer-in-Chief Thermal Designs, PSPCL, Shed No. T-2, Thermal Design Complex, , Patiala.-147 001.

...Respondent.

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

Order

Nabha Power Ltd. (NPL) has filed the present petition for post facto approval of the Commission for the quantum of 3.55 Lakh MT of coal procured from alternate sources in the absence of the meeting of the Standing Committee on NPL Project, and for the complete pass through of the additional cost incurred by NPL in

terms of the Order dated 16.03.2016 passed by the Hon'ble Tribunal in Appeal No. 68 of 2013.

1. The petition was admitted vide Order dated 11.10.2018 with directions to the Standing Committee on NPL project to submit its recommendations regarding the post facto approval of purchase of 3.55 Lakh MT coal by NPL. PSPCL, vide memo no. 5523 dated 05.02.2019, filed the Minutes of Standing Committee Meeting on NPL Project held on 28.12.2018 wherein it was recommended that in view of the divergent views of NPL and PSPCL consensus could not be reached in the Standing Committee. Vide Order dated 21.02.2019, NPL was directed to submit information regarding the monthly details of linkage coal and alternate coal (MT) received/used by NPL for the month of March 2017 to March 2018 on a specified format with a copy to PSPCL and PSPCL was directed to reply to the same within the next 15 days. In compliance of the Order dated 21.02.2019, NPL filed its reply vide letter dated 18.03.2019. PSPCL, vide memo no. 5960 dated 15.04.2019, filed its reply to the petition as well as reply to the additional affidavit filed by NPL in compliance of the Order dated 21.02.2019. NPL, vide letter dated 05.08.2019, filed its rejoinder to the reply dated 15.04.2019 filed by PSPCL. PSPCL requested permission to submit revised calculations in view of the Order dated 07.08.2019 passed by the Hon'ble Supreme Court of India in contempt petition (Civil) Nos. 1766-1767 of 2018 in Civil Appeal Nos. 10525 -10526 of 2017. The Commission vide Order dated 02.09.2019 directed NPL to submit information/clarification as to whether the matter of less receipt of coal was taken up with the coal company to supply the shortfall in the monthly contracted

quantity of coal and details of such correspondence and remedial action taken in terms of the FSA. NPL was further directed to submit the details of the penalty amount, if any, received from the coal company for short supply of coal in terms of the FSA. PSPCL was directed to explain as to why the merit Order was not prepared with imported coal prices and to explain the difference of details of coal receipt from September 2017 to March 2018 given in the reply and the revised calculations which PSPCL requested to submit, along with the addition of 315 Kcal/Kg in the GCV (TM) for billing calculations. PSPCL filed the information in the form of an additional affidavit vide memo no. 5730-31 dated 20.09.2019 in compliance of the Order dated 02.09.2019. NPL filed its reply dated 20.10.2019 in response to the queries of the Commission vide Order dated 02.09.2019 and also filed reply to the additional affidavit dated 20.09.2019 filed by PSPCL vide letter dated 20.10.2019. The matter was heard on 23.10.2019. After hearing the parties, the order was reserved vide Order dated 25.10.2019.

NPL's Submissions

2. NPL has submitted in its petition that in terms of the Power Purchase Agreement dated 18.01.2010 between NPL and PSPCL, NPL has set up a 2 X 700 MW Rajpura Thermal Power Project and Unit 1 and Unit 2 of the Project achieved commercial operation on 01.02.2014 and 10.07.2014 respectively. In terms of the provisions of the Competitive Bidding Guidelines PSPCL had taken upon itself to arrange fuel for the project, therefore, the bidders were not intimated regarding any obligation vis a vis fuel arrangement for the project in

the RFQ. Based on the Competitive Bidding Guidelines, terms of the bid document and the extant policies of the Government of India, the Petitioner based its bid on the clear understanding that the coal for the Project would be made available in sufficient quantity in order for the Project to achieve the Normative Availability of 85% specified in the PPA at the NQHR. This is a material assurance held out by PSPCL when it undertook upon itself to arrange fuel for the Project as required under the Case 2, Scenario 4 bidding parameters. The Project faced shortfall in the supply of coal primarily on account of *inter alia* the shortfall in the linkage provided by PSPCL by way of a Letter of Assurance (LoA) for 5.55 MTPA, the inadequate supplies under the linkage, restricted allocation by South Eastern Coalfields Limited (SECL) and also due to the scarcity of railway rakes to transport the coal. The aforementioned shortfall in the supply of coal under the LoA was well within the knowledge of both the parties since the time of the inception of the Project.

2.1 NPL, keeping in view the imminent shortage of coal, filed Petition No. 56 of 2012 before the Commission seeking permission to arrange coal from alternate sources (imported coal as well as coal from other CIL sources) to meet the deficit in supply of coal (i.e., required quantum of coal to operate the Project in terms of the PPA Less/minus actually supplied domestic coal under the LoA/FSA) for the Project. The Commission vide order dated 31.12.2012 disposed of the Petition No. 56 of 2012. NPL filed appeal No. 68 of 2013 against the order dated 31.12.2012 before the Hon'ble APTEL. The Hon'ble APTEL vide order dated 21.08.2013 on an I.A No. 227 of 2013 in Appeal No. 68 of 2013 allowed NPL to take advance action in

order to meet the expected short fall in availability of coal for the project and issued interim directions to procure imported coal or coal from alternative domestic sources for its project to meet the expected shortfall in supply from linked sources so that the project remains available to operate in terms of the PPA for a period of 12 months from the expected commencement of operation of the Unit 1.

2.2 In terms of the aforesaid directions, NPL filed petition no. 57 of 2013 before the Commission seeking approval of the terms and conditions for the actual procurement of coal from alternative sources including the imported coal and pass through the landed cost of such coal as part of tariff under the PPA to PSPCL. The Commission vide order dated 19.02.2014 allowed the procurement of coal from alternate sources and the pass through of the cost of such coal in accordance with the LoA/FSA and the PPA, subject to the terms and conditions set out in its order as under:-

“35..... the Commission approves the competitive bidding process undertaken by NPL for procurement of coal from alternative sources to operate the power plant as per terms and conditions of the PPA for a period of 12 months from the expected commencement of operation of Unit-1 of the Project on coal subject to the following terms & conditions and modalities for passing through cost of this coal:

- i) NPL shall requisition the coal regularly from SECL as per clause 4.5 ‘Scheduled Quantity’ of the FSA.*

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

- ii) NPL will not use the coal supply from the alternative sources unless warranted by the exigencies of short supply of coal by SECL in terms of the FSA, that too on 'Minimal Usage' basis.*
- iii) NPL will daily upload on its website, the inventory of coal received from SECL as well as alternative sources. The same shall, source-wise, include quantity requisitioned, quantity received, quantity used, balance quantity and quantity of coal from alternative sources used as a percentage of coal from SECL, on daily basis.*
- iv) The coal consumption/stock position will be monitored fortnightly by Chief Engineer/Fuel, PSPCL Patiala from the information available on NPL website for review by PSPCL management. For the purpose, the officer so appointed may also visit the power plant, at least once a month and NPL shall provide access to the coal stockyard and relevant record to him.*
- v) Joint sampling and testing of coal 'as received' and 'as fired' shall be conducted and certified by NPL and PSPCL. For this purpose, a PSPCL team shall be permanently posted at NPL premises.*

- vi) *No 'take or pay liability' or any compensation regarding off-take of coal supply or any loss on account of NPL's obligations to suppliers under the contracts entered into by it for procurement of coal from alternative sources will be passed on to PSPCL.*
- vii) *Coal from alternative sources/imported coal shall be procured by NPL at lowest price(s) arrived at through its tender overseen and signed by PSPCL on 27.09.2013 & 08.10.2013 for imported coal and 18.12.2013 & 26.12.2013 for domestic coal. Taxes and duties shall be payable/pass through as applicable.*
- viii) *As decided by Hon'ble APTEL in Para 12(B) of its Order dated 21.08.2013, this procurement of coal from alternative sources, as an advance action, will not give any right to NPL to raise any charges over and above those admissible to it as per the terms and conditions of the PPA. The Commission has held in its Order dated 31.12.2012 in Petition No.56 of 2012 that LoA and PPA are to be treated as one document/contract and followed/operated in tandem. Now FSA has followed the LoA and both FSA as well as LoA provide a window for supply of imported coal. Thus, the cost of imported coal/coal procured from alternative sources would be a pass through in terms of LoA/FSA/PPA.*

ix) As a measure for smooth operation of the plant and to avoid unnecessary litigation, the Commission appoints a Committee comprising of Secretary, Power/Govt. of Punjab, CMD/PSPCL and Chief Executive/NPL as 'Standing Committee on NPL Project' to resolve day to day issues. The said Standing Committee shall also be the final authority to determine the additional cost of coal from alternative sources / imported coal procured by NPL to meet the shortages in coal supplied by CIL or its subsidiaries...."

Subsequently, NPL and PSPCL submitted to the Hon'ble Tribunal for converting its interim order dated 21.08.2013 read with the order of the Commission dated 19.02.2014 into a final order. Accordingly, the Hon'ble APTEL vide its Final Order dated 16.03.2016 based on the consent of both the parties disposed of the appeal in terms of its earlier interim order dated 21.08.2013 along with the relevant portion of the order of the Commission dated 19.02.2014.

2.3 Pursuant to the issuance of the aforesaid Final Order, in order to ensure the arrangement of coal from alternate sources/imported coal to meet the shortfall in supply of coal required for the Project, the Standing Committee held a meeting on 19.05.2016 to discuss the issue of procurement of coal from alternate sources during the paddy season (May 2016 to September 2016). NPL was allowed to procure 6.00 lakh MT of imported coal having GCV of 6300 Kcal/kg to meet the then existing shortfall.

2.4 Thereafter, the Standing Committee held a meeting on 26.05.2017 after several requests made by NPL to deliberate on the issues in relation to procurement of coal from alternate sources for the Plant. NPL demonstrated the requirement of at least 5.05 Lakh MT of imported coal having gross calorific value (GCV) of 5800 kcal/kg during paddy season to meet PSPCL's power requirement. The minutes of the meeting read as under:

“Thus though the Standing Committee acknowledged the aforesaid shortfall being faced by NPL, the Committee allowed procurement of only 1.5 Lakh MT of coal from alternate sources i.e. imported coal. Further, the Standing Committee undertook to review the situation after a period of 15 days with respect to any requirement of importing coal beyond 1.5 Lakh MT.”

The Principal Secretary, Government of Punjab (GoP) and CMD, PSPCL wrote various letters to CIL to arrange sufficient quantum of coal for the paddy season, thus demonstrating that PSPCL had acknowledged the shortfall of coal from the linked sources. In this regard, it is relevant to refer to the various letters dated 24.04.2017, 01.06.2017, 30.06.2017, 12.09.2017 and 27.09.2017 written by the Principal Secretary, GoP and the CMD, PSPCL requesting CIL/SECL to supply coal in terms of its commitment to NPL. Thereafter, NPL also wrote multiple letters to the other two constituents of the Standing Committee viz. the CMD-PSPCL and the Principal Secretary, Department of Power, Government of Punjab (GoP) for convening the meeting of the Standing Committee. In response to the seventeen letters issued by NPL, PSPCL wrote five letters to NPL

directing it to maintain sufficient coal stock at its Plant so as to ensure 100% Plant availability. The Standing Committee despite receiving multiple letters by NPL requesting for convening the next meeting to approve procurement of the balance quantum of imported coal beyond 1.5 Lakh MT in view of the critical coal stock, did not convene a meeting and consequently, on account of shortage of supply of coal under the linked sources, NPL had to shut down one of its Units.

2.5 Subsequently, after having faced the shutdown of one Unit of its Plant for a period of 54 days (from 15.09.2017 to 05.10.2017 and then from 11.10.2017 to 13.11.2017) due to shortfall of coal and not seeing any sign of getting the meeting of Standing Committee convened, NPL decided to float a tender for the procurement of imported coal for the period from October 2017 to March 2018. In this regard, NPL once again wrote various letters to PSPCL informing it about the schedule of the tender process and requested it to depute its representative to attend the bidding process on 04.10.2017. PSPCL did not reply to these correspondences sent by NPL. NPL was constrained to take proactive step to procure. 2.4 Lakh MT of imported coal between the period from October 2017 to November 2017, the quantum of such imported coal being well within the already acknowledged 5.05 lakh MT imported coal out of which only 1.50 Lakh MT had been approved by the Standing Committee. While procuring the said quantum of 2.4 Lakh MT of coal, NPL complied with all the terms and conditions as set out in the Final Order of the Hon'ble Tribunal.

2.6 NPL filed I.A No. 1018 of 2017 in Appeal No. 68 of 2013 to seek appropriate directions on account of non-compliance of the Final Order by PSPCL. After filing the aforesaid IA before the Hon'ble Appellate Tribunal, NPL received a letter dated 21.11.2017 from PSPCL informing it about convening of the meeting of the Standing Committee on 30.11.2017. The meeting of the Standing Committee was held on 30.11.2017 wherein, the Chairman of the Standing Committee, Additional Chief Secretary, Power, GoP and CMD PSPCL, at the outset, raised a query whether it is within the scope of the Standing Committee to consider and approve procurement of alternate coal to meet the shortfall of coal from linked sources faced by NPL.

2.7 NPL filed IA No. 1152 of 2017 in Appeal No. 68 of 2013 before the Hon'ble APTEL requesting it to clarify that the Standing Committee is vested with full and complete authority to determine all the issues and questions arising in the day to day operation of the project including the determination of the quantum of shortfall and the consequential additional cost of coal to be procured to ensure smooth operation of the plant. The Hon'ble APTEL disposed of the IA vide order dated 20.12.2017 directing the Commission to dispose of the application/petition filed by NPL expeditiously.

2.8 NPL filed petition no. 67 of 2017 requesting the Commission to direct the Standing Committee to post facto approve the quantum of imported coal procured by NPL/in the circumstances wherein the Standing Committee did not convene its meeting despite repeated requests. NPL was once again constrained to take the proactive step

to procure 0.60 lakh MT of imported coal in addition to 2.4 lakh MT of imported coal procured by it, to meet the existing shortfall in the month of February, 2018. The Commission disposed of the petition vide order dated 06.03.2018 and clarified that the Standing Committee is the final authority to determine the additional amount of coal from alternative sources/imported coal procured by NPL to meet the shortages in the coal, for reasons not attributable to NPL.

2.9 Keeping in view the restricted supplies from SECL, despite relentless efforts by NPL to increase the allocation, and in order to avoid the shutdown of its Unit(s), NPL was once again constrained to procure 0.55 Lakh MT of imported coal in the month of March, 2018 in addition to 3 Lakh MT of imported coal procured by it from the period between October 2017 to February 2018. (The quantum of such imported coal being well within the already acknowledged 5.05 lakh MT imported coal out of which only 1.50 Lakh MT had been approved by the Standing Committee.) While procuring the said quantum of 0.55 Lakh MT of coal, NPL has complied with all the terms and conditions as set out in the Final Order of the Hon'ble Tribunal. Further, NPL duly provided advance information to PSPCL on all the occasions wherein imported coal was being procured and consumed by NPL. NPL also informed that there would be an additional implication on the tariff on use of the imported coal by way of letters dated 16.11.2017, 12.02.2018 and 10.03.2018. However, PSPCL chose not to respond to any of the letters and continued to schedule power from NPL being fully aware on the use of such imported coal and its consequential costs.

2.10 NPL circulated an agenda note on 15.03.2018 *vis a vis* the meeting of the Standing Committee scheduled on 23.03.2018. The said meeting of the Standing Committee was held on 23.03.2018 wherein NPL requested the Standing Committee to grant a post facto approval for 3.55 Lakh MT of imported coal procured by it during October 2017-March 2018, to direct PSPCL to pay the capacity charges for the period of shutdown of the Unit(s) on account of shortage of coal not attributable to NPL and for the approval to procure alternate coal to the tune of 12.40 Lakh MT to meet the expected shortfall from linked sources for the FY 2018-19. PSPCL sought for additional time to study the agenda. The imported coal bid opening process was conducted by NPL on 27.03.2018 which was duly witnessed by PSPCL. Thereafter, the Standing Committee, post the issuance of the aforesaid order dated 06.03.2018 of the Commission, again met on 28.03.2018 wherein it allowed NPL to procure imported coal to the tune of 4.50 Lakh MT for the first six months of FY 2018-19. Further, the meeting of the Standing Committee was again convened on 29.05.2018 and thereafter on 11.06.2018, wherein NPL was further allowed to procure coal from alternate sources to the tune of 2 Lakh MT. Further, with respect to NPL's request qua the post facto approval for the quantum of 3.55 Lakh MT of imported coal procured by it, NPL was directed by ACS GoP and CMD, PSPCL to approach the Commission. The Standing Committee in its meeting held on 11.06.2018 approved as under:

- i) Coal procurement of additional 2 lac ton from alternative sources as per bids dated 27.03.2018 to be utilized

during April 2018 to Sept 2018 is approved. However, NPL will not claim the benefit of incentive on account of use of such quantity of purchase of imported/alternative coal.

- ii) NPL will procure and schedule the imported coal as per their requirement and shall ensure the use in this summer/paddy season only i.e. upto 30 September 2018.
- iii) NPL shall requisition the coal regularly from SECL and make all out efforts to materialize maximum quantity of coal offered by SECL.
- iv) NPL will not procure imported coal beyond 6.5 lac MT and further any requirement beyond this quantum shall be reviewed by the Standing Committee.
- v) NPL shall not procure coal offered by CIL through import during the year FY 2018-19 in lieu of coal procured as above.

2.11 That the factual matrix of the matter clearly establishes that:

- (a) In spite of the repeated and numerous requests made by NPL, the constituents of the Standing Committee other than NPL i.e., Principal Secretary, Department of Power, GoP and PSPCL did not convene the meeting of the Standing Committee for 6 months until 30.11.2017 despite acknowledging the shortfall to the

tune of 5.05 Lakh MT and agreeing in the MoM dated 26.05.2017 to undertake a review meeting within 15 days for the procurement of the balance quantum of coal;

- (b) In the meeting dated 30.11.2017, the Standing Committee raised a query whether it is within its scope to consider and approve the procurement of alternate coal to meet the shortfall of coal from linked sources faced by NPL despite having determined the quantum of shortfall during the paddy season, approved the additional cost of procurement of coal from alternate sources and allowed pass through of such additional cost, on two specific occasions vide its meeting dated 19.05.2016 (6.00 Lakh MT in FY 2016-17) and 26.05.2017 (1.5 Lakh MT in FY 2017-2018);
- (c) The Petitioner was compelled to shut down one Unit of its Project on account of not being allowed to arrange the coal from alternate sources despite having demonstrated the acute shortage of domestic coal that was duly acknowledged by the Standing Committee, the situation having further deteriorated due to subsequent curtailments on supply from linked sources put forth by CIL/SECL;
- (d) As a matter of last resort and in order to avoid further loss of capacity charges, NPL was constrained to take

the proactive step to procure 3.55 Lakh MT of imported coal which is equivalent to the already acknowledged 5.05 Lakh MT imported coal out of which only 1.5 Lakh MT has been approved by the Standing Committee;

- (e) PSPCL has treated and construed that the entire framework envisaged under the Final Order of the Hon'ble Tribunal allowing NPL to arrange coal from alternate sources when it faces shortfall in receiving coal from the linked sources for any reason beyond its control, is subject to additional considerations like its power demand requirement and the potential incremental increase in energy charges on account of procurement of coal from alternate sources to meet the shortfall. In essence, the Respondent is reading additional terms into the Final Order by way of subjecting NPL's flexibility to arrange coal from alternate sources to the aforesaid conditions; and
- (f) NPL is not a peak load plant but a base load plant as per the provisions of the PPA. PSPCL is selectively choosing to grant approval of the imported coal during the paddy season. The permission of imported coal was not granted in the non-paddy season last year. However, the essence of the Final Order of the Hon'ble Tribunal is to allow NPL the procurement of alternate coal in case of shortfall of coal from linked sources irrespective of the time of the year. The Final Order

cannot be allowed to be moulded intentionally by PSPCL to its own advantage thereby denying NPL the requisite quantum of coal, to achieve Normative Availability in terms of the PPA due to shortage of coal for reasons not attributable to NPL and ultimately, deny the capacity charge payable to NPL.

2.12 The Standing Committee has failed to discharge its duties in terms of the Final Order of the Hon'ble Tribunal as reinforced by the Commission vide its order dated 06.03.2018. NPL has made relentless efforts to maximize the supply of coal from linked sources. NPL has complied with all the terms and conditions laid down by the Hon'ble APTEL/Commission while procuring 3.55 lakh MT of imported coal in the following manner:-

- (i) NPL has notified PSPCL vide various letters dated 14.10.2017, 16.11.2017, 12.02.2018 and 10.03.2018 of the procurement of such imported coal and cost of power;
- (ii) NPL invited PSPCL to participate in the transparent competitive bidding process and also informed the lowest discovered price pursuant to the bidding process. However, PSPCL has neither responded to these letters nor has attended the tender opening process.

- (iii) NPL by way of abundant caution in view of PSPCL's absence during the bid opening process, also carried out a video recording of the entire process;
- (iv) NPL requisitioned maximum amount of coal from the linked sources including adhoc sources and always gave preference to coal supplied by SECL/CIL over coal to be directly arranged by it from alternative sources;
- (v) NPL in no manner has put any restrictions on the supply of coal from SECL and accepted the entire quantity of coal offered by SECL/CIL;
- (vi) NPL has used coal supply from alternative sources only on account of the exigencies of short supply of coal from linked sources and that too on 'minimal usage' basis;
- (vii) NPL has daily uploaded on its website the inventory of coal received from linked sources as well as alternative sources. NPL has made declaration source wise, including quantity requisitioned, quantity received, quantity used, balance quantity and quantity of coal from alternative sources used as a percentage of coal from SECL, on daily basis;
- (viii) Joint sampling and testing of coal as received has been conducted and certified by NPL and PSPCL; and

- (ix) No 'take or pay liability' or any compensation regarding off-take of coal supply has been included in any contract entered into by NPL for procurement of coal from alternative sources.

2.13 PSPCL being fully aware of the usage of alternate coal by NPL, had scheduled and consumed the power generated by NPL by using such coal. It was open to PSPCL to refrain from scheduling power, when it was in the knowledge that imported coal, procured in the manner as prescribed in the Hon'ble Tribunal's Final Order dated 16.03.2018, was being used to generate power by NPL which consequently would lead to higher energy charge. It is in the interest of equity, fair play and justice that the Commission post-facto approves 3.55 Lakh MT of imported coal procured by NPL to meet the shortfall in the supply of coal from linked sources, which has been duly scheduled and consumed by PSPCL. The quantum of 3.55 Lakh MT of imported coal is not beyond the already acknowledged 5.05 lakh MT imported coal out of which only 1.50 Lakh MT was approved by the Standing Committee.

2.14 PSPCL cannot be allowed to take advantage of its own wrongs as it neither allowed the meeting of the Standing Committee to be convened nor conveyed its reservations or dispute as to the shortfall of coal at any stage to NPL before procurement of 3.55 Lakh MT of imported coal. Further, in any event, not holding of the meeting of the Standing Committee cannot be termed as a dispute and this defeats the very purpose and object of constituting the Standing Committee. NPL has made relentless efforts in maximizing the supply of coal

from linked sources and has complied with all the conditions while procuring 3.55 Lakh MT of imported coal.

2.15 NPL has prayed to:

- (i) Grant post facto approval for the quantum of 3.55 Lakh MT of imported coal procured by NPL and allow a complete pass through of the cost of such imported coal in terms of the Final Order, along with interest/ carrying cost at the rate of 12 % per annum; and
- (ii) Grant such order(s) and further relief(s) in the facts and circumstances of the case as the Commission may deem just and equitable in favour of NPL.

PSPCL's Submissions

3. PSPCL has submitted in its reply to the petition that the premise of the petition and the actual shortage of coal as claimed by NPL are wrong. The procurement of alternate/imported coal of 1.5 lac MT was allowed for the paddy season of 2017, namely, for use in the period from June, 2017 to September 2017. The said quantum of coal was sufficient for use by NPL till September, 2017. NPL cannot claim the right to import coal under the above order for other subsequent months.

3.1 NPL had initially proposed the procurement of 5.05 lac MT of alternate/imported coal to meet the requirements of the paddy season. This was grossly inflated. It has transpired that a quantum of only 1.5 lac MT which was approved by the standing committee was

sufficient to meet the requirements of NPL for the paddy season of 2017.

3.2 When the entire paddy season, being the peak season, was met with the alternate coal requirement of 1.5 lac MT, there is no basis for the procurement of 3.55 lac MT for the lean season from November' 2017 to March, 2018 when the requirement of PSPCL is much less. Scheduling during the non-paddy season is much less and the entire quantum of the alternate coal is not required. NPL has procured the balance of 3.55 lac MT coal, merely to justify its initial claim for the requirement of 5.05 lac MT coal. PSPCL has already paid the capacity charges to NPL considering the entire quantum of coal available with NPL. For the, year 2017-18, the full fixed charges have been recovered by NPL considering the declared Annual Availability of 85.10%. The purpose of the alternate coal cannot be for NPL to gain anything over and above the fixed charges, by way of declaring higher availability to earn incentive. Therefore, when NPL has already achieved the availability of 85.10% for the year 2017-18, the question of raising any alleged grievances of plant shut down does not arise and there is no loss to NPL on account of the same.

3.3 The quantum of power required by PSPCL is maximum for the paddy season, from June to September of each year. It is during this period that all the power plants are scheduled to the full extent. For the balance quantum of the year, a substantial portion of the energy is not scheduled. In the present case, for the period from 16.11.2017 to 31.03.2018, a total quantum of 486 MUs remained unscheduled from the Petitioner's generating station for which PSPCL has paid the fixed charges. The fixed charges relating to the said unscheduled

electricity of 486 MUs for the period from 16.11.2017 to 31.03.2018 works out to Rs. 68.66 crores.

3.4 It is evident from the coal status of NPL for the period from 16.11.2017 to 31.03.2018 that NPL was not required to use imported coal on various days for generation and supply of electricity to NPL. Mere perusal of the coal data shows that on most of the days NPL was not even required to use any alternative coal for generation of electricity as there was sufficient linkage coal lying in stock which was sufficient to meet the schedule given by PSPCL. In terms of the above, in case the domestic coal available was used to the extent possible prior to the use of imported/alternate coal, only a quantum of about 26137 MT of imported/alternate coal was required to be used by NPL during the said period from 16.11.2017 to 31.03.2018. This works out to less than 10% of the total procurement of 3.55 lac MT as claimed by NPL as essential for generation and supply of electricity to PSPCL.

3.5 For the purposes of the above computation, PSPCL has taken the daily coal requirement of 15300 MT of coal for 85% availability, assuming the data of NPL at the GCV of 4000 Kcal/kg. However, NPL is receiving coal of GCV 4200 kcal/kg, by which the daily requirement will actually reduce.

3.6 PSPCL had also considered the energy based on the merit order purchase at the domestic coal price. In the circumstances, for such period when NPL was not required to use the imported/alternate coal in view of the available stock of the domestic coal to meet the requirements of the energy scheduled by PSPCL, there cannot be any claim for higher variable cost on account of the use of imported

coal by PSPCL. Otherwise, it would amount to varying the merit order considered by PSPCL at the time of scheduling the electricity.

3.7 It was not the intention of PSPCL to schedule electricity at higher cost using the imported coal and it was the opinion of PSPCL that the quantum of domestic coal available would be sufficient to meet the requirements of the electricity as scheduled by PSPCL. This is also borne out by the actual availability of the domestic coal as against the generation of electricity.

3.8 NPL has filed an additional affidavit which was received by PSPCL on 22.03.2019, regarding the coal stock. Upon verification of the data, the GCV as depicted by NPL is not matching with the data verified and available with PSPCL. The Declared Capacity as shown by NPL does not match for the months of October and November, 2017. The Declared Capacity for October, 2017 was 533.92 MUs and was 749.39 MUs for the month of November, 2017. This is as per the state Energy Account published by the SLDC.

3.9 PSPCL was directed vide Order dated 09.02.2019 to provide the following:

i) PSPCL in its reply had intimated that it scheduled the electricity from NPL based on the basis of merit order prepared with domestic coal prices. During the hearing NPL has informed that PSPCL was kept well apprised in advance regarding use of imported coal. PSPCL admitted during the hearing that this was in their knowledge. Accordingly it may be explained by PSPCL as to why the merit order was not prepared with imported coal prices.

ii) In the reply, PSPCL for the period from September 2017 to March 2018 (Annexure-B) has filed the statement of details of coal receipt on daily basis from various sources, wherein it is shown that only 26137 MT of alternative coal was required instead of 3.55 Lakh MT. PSPCL needs to explain the same in the revised calculations now to be submitted as requested by the counsel of PSPCL during the hearing.

iii) PSPCL to explain the addition of 315 kCal/kg in the GCV (TM) for billing calculations.

iv) In the submissions dated 05.02.2019, PSPCL had enclosed a copy of minutes of Standing Committee Meeting on NPL project held on 28.12.2018. In the minutes PSPCL while giving reference of the Commission's Order dated 11.06.2015 in petition no. 04 of 2015 recorded that it has already paid energy charges of the units generated by NPL from November, 2017 to March, 2018 using imported coal by considering coal of lower value based on the above mentioned Order of PSERC. As the facts and circumstances in the said Order/petition were specific for the period from April, 2014 to October, 2014, it may be explained by PSPCL as to how the same was made applicable for making payment of energy charges for the units generated by NPL using imported coal for the project for the period mentioned in the instant petition.

PSPCL, in response to the Order dated 02.09.2019, submitted on record the revised computation in regard to the claim for short-fall of linkage coal by NPL for the year 2017-18 and the corresponding

requirement to procure alternate coal for the project for consideration by the Commission. It has been submitted that the computation filed earlier needs to be revised in view of the decision of the Hon'ble Supreme Court in regard to the GCV to be adopted as delivered to the project.

3.10 That for the year 2017-18, considering the coal requirement of NPL and the quantum of domestic linkage coal procured by NPL, there is a quantum of 2.10 lac MT of alternate coal required to be procured by NPL. Out of the above, 1.5 lac MT was already permitted to be procured for the paddy season. The balance quantum required by the Petitioner for the year was only 0.60lac MT from alternate sources as against the higher claim by the Petitioner i.e. 3.55 lac MT. The above shortfall in the domestic coal availability is based on 85% plant availability for the year. This is on account of the fact that the alternate coal procurement and usage is only on minimal basis and further the full fixed charges of NPL get recovered at 85%. The normative availability of 85% is to be determined on an annual basis. If NPL operates the power plant at a capacity more than 85% during paddy season, suitable adjustment is available during non-paddy season and NPL should as a prudent utility arrange for the coal requisition of domestic coal accordingly. In this regard, the requisition of quantum of domestic coal can also be arranged in a phased manner to meet paddy season higher generation. NPL cannot be permitted to gain incentive by use of alternate coal, citing the short-fall in domestic coal availability.

3.11 NPL has not shown any steps taken against SECL for the short-fall in the supply as against the requisition. The procurement of

alternate coal is strictly on need basis, where despite all efforts of NPL, the domestic linkage coal is not available. NPL needs to establish that despite all efforts taken with SECL, the coal was not available, which has not been established. For the year 2017-18, the supply by SECL was in fact marginally below 75%, at which level compensation is payable by SECL to NPL. There is nothing on record to show that NPL has claimed the compensation, whether paid or not, if not paid the reasons thereof etc. If there was default on the part of SECL in supply, there was no reason for NPL not to claim any relief against SECL. In the circumstances, there is no justification for the alternate coal to the extent claimed by NPL. Alternate coal may be allowed only to the extent it was fully beyond the control of NPL and upon satisfaction that it has taken all prudent steps to ensure that the linkage coal is procured.

3.12 On the issue of consideration of domestic coal prices for the merit order despatch, since there was no approval for procurement of alternate coal and use of the same, the price of only domestic coal was considered in the merit order despatch of PSPCL for the power to be scheduled from NPL. Since there was no approval for the procurement of alternate coal, the same was not considered in the merit order despatch. This is on the same principles as held by the Commission in the order dated 11/06/2015 for the year 2015-16, wherein it was held that NPL would be entitled to only the domestic coal price in case it decides to use imported coal. Though the above order was for the year 2015-16, in view of there being no approval for the year in issue for imported coal, the same principle had been applied by PSPCL.

3.13 The difference was primarily on account of conversion of TM basis GCV by adding 315 kcal/kg to convert to E-GCV. The interpretation of the judgment of the Hon'ble Supreme Court by PSPCL was that the unit of GCV measurement had to be the same and since the supply was on E-GCV basis, the measurement on receipt also had to be E-GCV. Therefore, for conversion of the TM basis measurement by NPL at the project site to E-GCV, the difference of 315 kcal/kg was added. However, since that the Hon'ble Supreme Court has now clarified the basis of GCV to be considered on receipt as on TM basis, this issue of 315 kcal/kg does not survive.

Petitioner's Rejoinder

4. NPL in reply to the queries raised by the Commission in its Order dated 02.09.2019 regarding "*Whether the matter of less receipt of coal was taken up with the coal company, to supply the shortfall in the monthly contracted quantity of coal and details of such correspondence and remedial action taken in terms of the FSA*" and "*Details of the penalty amount received from the coal company, if any, for short supply of coal, in terms of the FSA*" submitted that the quantum under the FSA has been insufficient from the very inception of the project which was well within the knowledge of PSPCL and NPL. As regards sources of adhoc supply beyond the trigger level, there are primarily the following two modes for making arrangement of coal.

- (i) Under this mode, SECL offers coal to be procured beyond the trigger level from the sources notified by it

separately and this mode is referred to as Road cum Rail (RCR) mode;

- (ii) In addition, there is another mode i.e., the Block Rake Program for the purpose of allocation of rakes of coal through the Direct Rail Mode. This mode is referred to as supply under the Rail Mode where power plants make application through Freight Operations Information System (FOIS) of the Indian Railways from time to time subject to availability of coal and approval from Railways and CIL.

The aforesaid modes are also used for supply within the trigger level but have been referred to specifically in context of steps taken by NPL to ensure maximization of supply beyond trigger level of 75% of MSQ under the FSA.

4.1 As regards the RCR mode, notifications are not regularly/consistently issued by SECL but are issued on an ad hoc basis depending on the availability of coal from different sources. Pursuant to the notifications issued by SECL, NPL diligently applied to SECL from time to time for allocation of the aforesaid ad hoc coal, beyond the trigger level.

4.2 As regards the Direct Rail Mode, for FY 2017-18, in order to further maximize the supplies under the linkage, NPL also applied to other additional sources of SECL/CIL (CIC area and BCCL area). In this regard, the aforesaid program also had no consistent basis and

there was no definite monthly allocation and thus, the supply was completely *ad hoc* in nature. Thus, the aforesaid mode of procurement was also executed through the tireless efforts of NPL.

4.3 In context of the supply beyond trigger level of 75% of MSQ, NPL further sought allocation of additional rakes from CIC and/or BCCL from CIL to meet the extensive coal requirement inter alia on account of paddy season and attended meetings in this regard with CIL's officials. Pursuant to the meeting, NPL sent letter dated 17.07.2017 to CIL seeking such permission. This effort on part of NPL was also supported by GoP and based on the joint effort from NPL and GoP, CIL vide its letter dated 22/25.07.2017 allocated additional rakes (i.e. to the tune of 45 rakes per month) from CIC and BCCL area.

4.4 There was a notification issued by Central Coalfields Limited (CCL) dated 11.12.2017 wherein it offered coal to all IPPs/Gencos having FSA with other subsidiaries of CIL, from its sources having high stock. In response to the above notification, NPL had applied for coals from CCL vide its application dated 10.01.2018 for 68,000 tonnes of coal and materialization to the tune 50,000 tonnes could be ensured from CCL. The aforesaid clearly shows that NPL opted for all possible options made available to it for arrangement of domestic coal under the linkage from any other source/CIL's subsidiary and tried to maximize the supply of domestic coal under the linkage.

4.5 That a certain quantum of coal supplied by SECL is lost in the coal washing process for the reduction of higher ash content prior to transportation in terms of the relevant notification of the Ministry of

Environment, Forest & Climate Change, i.e., yield loss of approximately 20%. Therefore, the supplies under the linkage is further subjected to yield loss due to washing process, thereby, further reducing the net quantum of coal received under the linkage.

4.6 That due to restriction in firm allocation to 75% of ACQ under the FSA and the yield loss in washing process, the Project can only be operated at about 53% PLF with the use of coal under the fuel linkage. The issue regarding shortage of coal has been raised by NPL with the SECL/CIL/PSPCL. On the request of NPL, the State of Punjab has also raised the issue of shortage of coal with CIL/SECL/Ministry of Coal, as evidenced from the letters of the Government of Punjab as well as the CMD, PSPCL addressed to CIL/SECL

4.7 NPL had made relentless efforts to maximize the coal supplies from CIL/SECL and had been taking up the coal shortage issue with the relevant authorities of CIL/SECL. In this regard, NPL had written various letters (approximately more than 23 letters from April 2017 to March 2018) to CIL/SECL highlighting the severe coal crisis at the Project and the consequent requirement to increase the supply of *ad hoc* coal from the additional sources of CIL/SECL including from CIC and BCCL area respectively. NPL had even requested CIL/SECL to increase the firm/regular allocation beyond the trigger level of 75% of the ACQ under the FSA vide letter dated 11.04.2017, 17.07.2017, 26.09.2017, 04.10.2017, 04.11.2017, 07.11.2017, 11.11.2017, 17.12.2017, 22.12.2018, 10.01.2018, 14.02.2018, 23.02.2018, 01.03.2018. In response to the aforesaid letters, SECL vide its letters

dated 20.07.2017, 02.08.2017 and 31.08.2017 stated that the quantity released in addition to the Scheduled Quantity (SQ) for the month of July, August and September 2017 shall be adjusted against the scheduled quantities of the subsequent quarters/months and thus, entailed an implication on the supply of MSQ in the subsequent months.

4.8 NPL has regularly kept PSPCL informed about the coal stock position and in addition to its own efforts, also sought help from State of Punjab to secure more coal under the linkage offered by SECL/CIL. The Government of Punjab (GoP) pursuant to taking note of the relentless efforts of NPL to secure more coal for the Plant, had also taken up the matter further with CIL/SECL vide letter dated 01.06.2017, 30.06.2017, 27.09.2017, 12.09.2017. NPL also addressed letters dated 10.07.2017, 16.09.2017 and 29.08.2018 to PSPCL highlighting the issues of lesser quantum of coal under linkage. NPL had also explored the option of arranging domestic coal under the special forward e-auction in February 2018. In this regard, NPL had transferred an amount of Rs. 2,33,40,000/- as earnest money deposit (EMD) on 26.02.2018 and participated in the e-auction process on 28.02.2018 for arrangement of coal to be made available from the CIC area. However, the cost of landed domestic coal to be arranged through the aforesaid special forward e-auction surpassed the landed cost of imported coal prevalent at that point in time (i.e., approximately in the range Rs. 0.30 per unit costlier than the per unit cost of electricity based on imported coal) and therefore, NPL shelved the procurement of coal through this route.

4.9 Regarding details of the penalty amount received from the coal company, if any, for short supply of coal, in terms of the FSA, it has been submitted that no penalty is due and payable by the coal company, i.e., SECL/CIL, under the FSA as the total quantum of RoM coal supplied by SECL in FY 2017-18 was more than 75% of the ACQ and the threshold level for penalty with respect to delivered quantity of coal (i.e., RoM coal) under the FSA is 75% of the ACQ. The actual quantum of RoM coal supplied to NPL for the year 2017-18 by SECL/CIL including adhoc coal is 50.16 lakh MT which is equivalent to 90.37% of the ACQ i.e., 55.50 lakh MT. In view of the foregoing, there is no penalty to be paid by SECL as the supply of coal for FY 2017-18 has been much beyond the firm allocation trigger level of 75% of ACQ.

4.10 As approximately 20% of the quantum of RoM coal delivered at the mine end is lost during the process of washing (i.e., yield loss), one necessarily needs to consider the RoM coal supplied at the mine end for the determination of penalty and not the washed coal received at the project site. It is also relevant to highlight that based on the data provided by CIL to Central Electricity Authority (CEA) with respect to coal supply made by CIL/its subsidiaries to all the power plants in the country, it is understood that NPL has achieved the highest level of materialization of coal in FY 2017-18 under the linkage amongst the non-pit head power plants which are having linkage from SECL with trigger level of 75% of ACQ. The earlier data provided by NPL was as per the format enclosed with the Order dated 21.02.2019 of the Commission where in the information sought

by the Commission was with respect to the received / used coal containing specific head for Opening Balance. The aforesaid parameters are clearly applicable with respect to the Plant/project site, and thus the information provided is of washed coal and adhoc coal received at the Plant under the main head linkage Coal.

4.11 That the monthly coal stock which was jointly physically verified by both NPL and PSPCL demonstrated the actual shortage of coal which was being faced by NPL. From the consequent requirement of procuring coal from alternate sources/imported coal from the contemporaneous correspondences exchanged between the parties during the relevant period under consideration in the present case, it is apparent that PSPCL never raised any issue regarding NPL not facing shortfall in supply of coal. There is not even a single letter from PSPCL stating that NPL has not been facing the shortfall in supply of coal under the linkage.

4.12 NPL in reply to the additional affidavit dated 20.09.2019 filed by PSPCL submitted that the contents of the additional affidavit filed by PSPCL are incorrect, misconceived and misleading and reiterated its submissions made in the petition, rejoinder and its reply dated 15.04.2019. NPL further submitted that the claims made in the petition are genuine and well supported in the fact and circumstances of the case.

4.13 That even the revised computations submitted by PSPCL along with its Additional Affidavit are far from reality as the same are again based on arbitrary presumptions, completely ignoring the monthly actual coal stock's "Joint physical verification" reports for FY 2017-18

duly signed by NPL and PSPCL. It is also relevant that NPL's 2 X 700MW Rajpura Thermal Power Project (Project/Plant) operates in actual conditions as per the actual coal stock available with NPL and the actual energy scheduled by PSPCL from NPL, and not based on assumptions used in calculation in excel sheet as has been done by PSPCL in the present case. Thus, there is no veracity of any calculation by PSPCL based on any assumption whatsoever in light of the availability of actual physical verified coal stock jointly signed and recorded by both the parties.

4.14 PSPCL, in their correspondences (i.e., letters dated 12.09.2017 and 27.09.2017) addressed to the Ministry of Coal, CIL and other relevant authorities, clearly acknowledged the severe shortfall in coal being faced by NPL under the present fuel linkage. PSPCL further stated that the demand for power was likely to be high even beyond September 2017 and that NPL, being at the top of the merit order in the State of Punjab, was likely to be scheduled to its maximum capacity for the balance part of FY 2017-18. Thus, the aforesaid correspondence only goes to show that PSPCL was aware of the actual critical coal stock condition as well as the expected supply under the present fuel linkage which was inadequate to meet the energy requirement for the balance part of FY 2017-18. Thus, PSPCL was aware of and had acknowledged NPL's requirement of additional quantum of coal for the non-paddy season/balance part of FY 2017-18.

4.15 The actual energy generated by NPL during the period of dispute has been accepted by PSPCL and based on the same,

payment of capacity charge has been calculated. The dispute remains only with respect to the payment of incremental energy charge on account of usage of imported coal. There is no dispute regarding the scheduled and/or actually supplied energy. Thus, the computation made by PSPCL is completely wrong and suffers from illogical and irrational assumptions and deserves to be out rightly rejected by the Commission. PSPCL has already envisaged a pre-conceived goal of not making the payment of the amount due to NPL despite PSPCL's acts/omissions which led to the shortfall of the required quantum of coal in the first place. Towards this goal, PSPCL first introduced the hypothetical figure of +315 Kcal/kg and inflated the denominator to arbitrarily and artificially reduce the quantum of coal actually required for generation of power. Once this attempt has been rejected by the Hon'ble Supreme Court, PSPCL is now resorting to limit the generation to 85% PLF. PSPCL ought to only rely and use the data pertaining to coal stock based on joint coal stock measurement.

4.16 PSPCL, in its revised computation of coal requirement for FY 2017-18, on 152 instances has restricted the daily scheduled energy to 85% of the maximum generation when the actual energy scheduled by PSPCL was exceeding 85% of the maximum generation. Further, with respect to the remaining instances, i.e., 213 instances, PSPCL has considered the actual scheduled energy while working out the coal requirement. Thus, the aforesaid revised computation of PSPCL is not only normative and based on presumptions but also, has no consistent/uniform basis and ought to

be rejected out rightly on this very ground. It is also relevant that PSPCL's revised computation is based on whether there was sufficient domestic coal lying with NPL calculated on per day basis. In this regard, it is reiterated that sustained and planned generation from the Project on a consistent basis requires at least 30 days coal stock being available with NPL as it operates a non-pit head power plant located at a distance of more than 1000 km from the specified mine site. Further, as evidenced from the various letters addressed by the Government of Punjab and the CMD, PSPCL to CIL/SECL, it was well known amongst the stakeholders that the demand for power in the State of Punjab was likely to be high even beyond September 2017 and NPL being at the top of the merit order was likely to be dispatched to its maximum capacity for the balance part of FY 2017-18. In fact, as evidenced from the monthly State Energy Accounts prepared by the Punjab SLDC, the aforesaid did happen and the quantum of energy scheduled by PSPCL from NPL was 4458.62 MUs for the period October 2017 to March 2018, and the consequent PLF remained on an average 85.48% between the period from 16.11.2017 to 31.03.2018. Thus, in the absence of the Standing Committee meeting and despite relentless efforts by NPL to have the same convened, NPL was constrained to procure imported coal in order to meet the schedule given by PSPCL for the period October 2017 to March 2018 and to ensure availability of the Plant in accordance with the PPA. Therefore, any computation based on whether there was sufficient coal stock per day is bereft of any logic and deserves to be out rightly rejected on this score alone.

4.17 The Plant runs on actual as per the actual coal stock conditions and energy scheduled by PSPCL, and not on presumptions. The coal requirement by NPL for FY 2017-18 cannot be completely based on the plant normative availability at 85%. In this regard, it is submitted that for FY 2017-18, the Plant was run on actual based on the demand for power in the State of Punjab being high even during the non-paddy season. Thus, the coal requirement of NPL for the period October 2017 to March 2018 cannot be based only on any normative figure without taking into account the actual coal stock conditions and actual coal consumption for the generation of actual energy scheduled by PSPCL pursuant to the high demand for power in the State of Punjab in the aforesaid period.

4.18 NPL vide letters dated 14.10.2017, 16.11.2017, 12.02.2018 and 10.03.2018, had duly intimated PSPCL of the discovered price of the imported coal. Additionally, NPL vide its letters dated 29.11.2017 and 03.01.2018 had expressly stated that it has started receiving imported coal on site and that blended coal is being used for the generation of power, besides disclosing the Monthly Energy Charges on account of the use of such blended coal for the generation of power. PSPCL is aware of the fact that NPL has never claimed incentives against the declared availability using imported coal. Thus, PSPCL is intentionally raising the issue of incentive only to obfuscate the present issue at hand.

5. Commission's Observations, Findings and Decision

The Commission has carefully gone through the petition, reply thereto by PSPCL, rejoinder by NPL, additional affidavits, pleadings, documents and other submissions. NPL has requested for post facto approval for the quantum of 3.55 Lakh MT of coal procured from alternate/imported sources by it along with interest/carrying cost at the rate of 12% per annum.

The submissions of NPL and PSPCL in brief are brought out hereunder:

NPL's Submissions

The Project has a firm coal linkage from South Eastern Coalfields Limited (SECL), a subsidiary of Coal India Limited (CIL). The Annual Contracted Quantity (ACQ) as per the Fuel Supply Agreement is 55.5 Lakh Metric Tonnes. The Commission vide its Order dated 19.02.2014 in petition no 57 of 2013 in para 35 (x) had appointed a Standing Committee on NPL Project comprising of Secretary, Power/Govt. of Punjab, CMD/PSPCL and Chief Executive/NPL as a measure for smooth operation of the plant and to avoid unnecessary litigation and authorized to resolve day to day issues. The Standing Committee was also to be the final authority to determine the additional cost of coal from alternate sources / imported coal procured by NPL to meet the shortages in coal supplied by CIL or its subsidiaries.

The said Standing Committee in its meeting held on 26.05.2017 approved the quantum of 1.5 Lakh MT of imported coal (with certain

conditions), to be utilized during June 2017 to September 2017 against the estimated shortfall of 5.05 Lakh MT for FY 2017-18. Any requirement of imported coal beyond 1.5 Lakh MT was to be reviewed by the Standing Committee after 15 days. The Standing Committee did not meet thereafter till November, 2017 despite NPL having taken up the matter many times.

As NPL's efforts were not fruitful in terms of getting the Standing Committee meeting convened, it approached Hon'ble APTEL by way of IA No. 1018 of 2017 in Appeal No. 68 of 2013 on 17.11.2017 in order to seek appropriate directions. After filing the aforesaid IA before the Hon'ble APTEL, NPL received a letter dated 21.11.2017 from PSPCL informing it of the meeting of the Standing Committee having been convened on 30.11.2017. Hon'ble APTEL vide its Order dated 28.11.2017, granted liberty to NPL to take up all the issues/grievances before the Standing Committee and in that view, dismissed the said IA as withdrawn.

The meeting of the Standing Committee held on 30.11.2017 yielded no result as members of the Committee raised a query whether it is within the scope of the Standing Committee to consider and approve procurement of coal from alternate sources to meet the shortfall in supply of linkage coal. NPL brought the matter to the Commission for clarification after again approaching APTEL. The Commission clarified that the Standing Committee has full powers to approve procurement of alternate coal for shortfall and it is valid for the entire term of the PPA.

NPL has submitted that it had to shut down one Unit of the Project on account of not being allowed to arrange the coal from alternate sources despite having demonstrated the acute shortage of domestic coal that was duly acknowledged by the Standing Committee and the situation got further deteriorated due to subsequent curtailments on supply from linked sources by CIL/SECL. NPL was constrained to take the proactive step to procure balance 3.55 Lakh MT of imported coal of the already acknowledged quantum of 5.05 Lakh MT out of which only 1.5 Lakh MT was approved by the Standing Committee earlier. NPL submitted that there is no stipulation in the Minutes of Meeting of the Standing Committee which records any reservation by PSPCL on the aforesaid quantum of shortfall.

NPL submitted that SECL has restricted the coal allocation under the FSA to 75% of ACQ. Despite best efforts by NPL with the support of PSPCL, the linkage coal quantity continues to be restricted to 75%. NPL submitted monthly requisitioned letters to SECL for the entire 75% of the Monthly Scheduled Quantity (MSQ) under the FSA with specific request that if there was any upward revision in the monthly firm allocation beyond 75%, NPL would submit additional requisition. The entire 75% of MSQ was allocated by SECL and lifted by NPL. NPL also procured ad hoc coal from the additional sources of CIL (CIC / BCCL Area) and procured 5.34 Lakh MT during the period from June 2017 to September 2017 and 4.09 Lakh MT during the period from October 2017 to March 2018. This translates into 3.72 Lakh MT and 4.03 Lakh MT of coal received at the Project Site

from ad-hoc sources during the aforesaid corresponding period. NPL also availed the offer of Central Coalfields (CCL) vide notification dated 11.12.2017 and procured additional 50,000 MT against 68,000 MT requisitioned. NPL submitted that the actual quantum of ROM Coal supplied to NPL by SECL/CIL including ad-hoc coal for FY 2017-18 is 50.16 Lakh MT which is equivalent to 90.37% of ACQ. Also the coal is received at the Project after washing and thus the coal actually supplied by SECL is more than 75% and thus there is no case for payment of penalty by SECL.

NPL submitted that PSPCL was fully aware of the shortage of coal supply from SECL as the monthly actual coal stock's joint physical verification report is signed by both NPL and PSPCL in compliance of the Order of the Commission dated 19.02.2014 in petition no. 57 of 2013. During the period, PSPCL did not raised any objection that NPL in reality is not facing shortfall in coal supply. NPL continuously made efforts to arrange maximum linkage coal as also coal from ad-hoc sources. PSPCL and Government of Punjab also took up the matter with the concerned Authorities. NPL procured alternate coal on need basis where despite all efforts, linkage coal was not available. PSPCL was kept informed about the procurement process of coal from alternate sources and informed about the discovered price of imported coal. NPL in the letters dated 29.11.2017 and 03.01.2018 had expressly stated that it has started receiving imported coal at the Project and that blended coal is being used for generation of power besides disclosing the monthly energy charges on account of the use of such blended coal.

NPL has submitted that it is wrong on the part of PSPCL to submit that PSPCL did not allow the procurement of coal from alternate sources in terms of Order dated 11.06.2015 passed by the Commission in petition no. 04 of 2015. The said Order was specifically with respect to the period April 2014 to October 2014 and the facts were different. Therein the Commission had refused to extend the time period of the validity of its Order dated 19.02.2014 in petition no. 57 of 2013 and is not relevant in the context of the facts and circumstances of the present case.

NPL also submitted that the revised calculations of coal consumption/requirement filed by PSPCL vide its submissions dated 20.09.2019 for rectifying its earlier calculations, in view of the Hon'ble Supreme Court's Order, are wrong wherein it has restricted the daily scheduled energy to 85% of the maximum generation without taking into account the actual energy scheduled by PSPCL, which has been accepted by PSPCL as per the monthly State Energy Accounts prepared by Punjab SLDC and calculated the payment of the capacity charges. PSPCL in the earlier calculations of the monthly energy charges added a hypothetical figure of 315 kCal/kg to the GCV of coal, thereby reducing the monthly energy charges. However, after the Hon'ble Supreme Court Order PSPCL is now calculating the coal requirement by limiting the generation to 85% although it has scheduled more than 85% on many occasions during the period.

In the final hearing held on 23.10.2019, the counsel for NPL substantiated the claim in the petition with a few case laws, which were not contested by PSPCL.

PSPCL's Submissions

PSPCL submitted that the requirement for procurement of coal from alternate sources submitted by NPL was inflated. The Standing Committee approved 1.5 Lakh MT which was sufficient for the paddy season. There is no basis for procurement of additional 3.55 Lakh MT for the lean season from November, 2017 to March, 2018. PSPCL has already paid the full fixed charges for FY 2017-18 considering the annual availability of 85.10% declared by NPL. For the period from 16.11.2017 to 31.03.2018, a total quantum of 486 MUs remained unscheduled for which the fixed charges worked out to Rs. 68.66 crore. PSPCL submitted that only 26,137 MT of alternate coal was required to be used by NPL during the said period as per the enclosed calculations as against 3.55 Lakh MT claimed by NPL. PSPCL submitted that it considered the NPL's declaration based on the linkage coal in the Merit Order as alternate coal was not required in view of the available stock. In the information dated 20.09.2019, PSPCL submitted that it needs to revise the computation filed earlier in view of the Hon'ble Supreme Court decision in regard to GCV to be adopted as delivered to the Project. PSPCL submitted that a total quantum of 2.10 Lakh MT from alternate sources was required to be procured by NPL out of which 1.5 Lakh MT had already been permitted to be procured for the paddy season i.e. only 0.6 Lakh MT was required to be procured from alternate sources as against 3.55 Lakh MT claimed in the petition. PSPCL submitted that this shortfall in domestic coal availability is based on 85% plant availability for the year as usage of coal from alternate sources is to be only on minimal

basis and further full fixed charges of NPL gets recovered at 85%. NPL has not shown any steps taken against SECL for the shortfall of the supply and compensation claimed as the coal supply from SECL was marginally below 75% at which compensation is payable by SECL to NPL. In the Commission's Order dated 11.06.2015, it was held that NPL would be entitled to only the domestic coal prices in case it decides to use only imported coal. Though this Order was for the year 2015-16, there being no approval for the year in issue for imported coal, the same principle was applied. Also, with regard to the addition of 315 kCal/kg to the GCV of coal for calculating the monthly energy charges, PSPCL submitted that it was done for conversion of Total Moisture (TM) basis to E-GCV basis. However, Hon'ble Supreme Court has later on clarified that the basis of GCV has to be considered on TM basis and hence the issue of 315kCal/kg does not survive.

Findings and Decision

As per the data furnished by NPL, it received a total quantum of 41.31451 Lakh MT of coal from linkage and ad-hoc sources. NPL has sufficiently demonstrated through its submissions that it took up the matter consistently with SECL to supply coal for full linkage instead of curtailed linkage of 75%. The matter was also pursued by PSPCL and Govt. of Punjab with CIL/SECL for supply of additional/full linkage coal. NPL also procured coal from ad-hoc sources and tried to maximize the supply of coal. The Standing Committee in its meeting held on 26.05.2017 permitted NPL to procure 1.5 Lakh MT of imported

coal for the paddy season from June, 2017 to September, 2017 against the projected shortfall of 5.05 Lakh MT stating that any requirement beyond 1.5 Lakh MT of imported coal shall be reviewed after 15 days. However, it did not convene another meeting till end November, 2017 despite several attempts by NPL. In the meeting convened on 30.11.2017 after NPL approached Hon'ble APTEL, the matter was again not decided, rather a query was raised with regard to the scope of the Standing Committee. The Commission clarified the same in its Order dated 06.03.2018 in petition no. 67 of 2017 subsequently filed by NPL that the Committee shall be operative for the term of the PPA and also be the final Authority to decide the shortfall of domestic coal from CIL or its subsidiaries for operation of the Plant in terms of the PPA.

In the interim Order dated 11.10.2018 in this petition, the Commission directed the Standing Committee to submit its recommendations regarding the post facto approval for purchase of 3.55 Lakh MT coal from alternate sources by NPL, by 31.10.2018. PSPCL vide its submissions dated 05.02.2019 submitted the minutes of the Standing Committee meeting held on 28.12.2018 wherein the Committee had recommended that in view of the divergent views of NPL and PSPCL, consensus was not reached.

As per the monthly data submitted by NPL for FY 2017-18 and brought out in the calculations herein below, the Commission observes that the scheduled generation during this period was

8680.441 MUs. The linkage coal requirement for the same works out to 47.81938 Lakh MT. As against this, the coal available from linkage sources was 42.48680 Lakh MT i.e. 41.31451 Lakh MT received during FY 2017-18 and the opening balance of 1.17229 Lakh MT in April, 2017.

The coal requirement from alternate/imported sources has been worked out by considering the GCV of linkage coal as well as alternate/ imported coal on weighted average basis for the coal received during the period from April, 2017 to March, 2018 which works out to 4117 kCal/kg and 5673 kCal/kg respectively. Also, the quantity of the coal procured from alternate/imported sources of weighted average GCV 5673 kCal/kg have been converted to the weighted average GCV of linkage coal i.e. 4117 kCal/kg for calculation purpose. Accordingly, the alternate/imported coal required by NPL for FY 2017-18 considering the NPL's Quoted Net Heat Rate of 2268 kCal/kWh and so mentioned in the PPA dated 18.01.2010 works out to 5.33258 Lakh MT. This translates back to 3.86995 Lakh MT of alternate/imported coal of weighed average GCV of 5673 kCal/kg. Thus, as the coal required for scheduled generation was more than that available from linkage and ad-hoc domestic sources and also more than that allowed by the Standing Committee, there is a case for allowing the coal procured from alternate/imported sources in excess of 1.5 Lakh MT allowed by the Standing Committee. The quantum has been worked out in the following table.

As per the Commission's Order dated 19.02.2014 in petition no. 57 of 2013:

“35.

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

(iii) NPL will not use the coal supply from the alternative sources unless warranted by the exigencies of short supply of coal by SECL in terms of the FSA, that too on ‘Minimal Usage’ basis”.

.....

(vi) Joint sampling and testing of coal ‘as received’ and ‘as fired’ shall be conducted and certified by NPL and PSPCL. For this purpose, a PSPCL team shall be permanently posted at NPL premises.

.....

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

As brought out above, NPL is to give preference to the coal supplied by SECL over coal to be directly arranged by it from

alternative sources. Also, NPL is not to use the coal supply from the alternative sources unless warranted by the exigencies of short supply of coal by SECL in terms of the FSA, that too on 'Minimal Usage' basis.

As per the aforementioned calculations, NPL was required to use 3.86995 Lakh MT of alternate/imported coal for the period from April 2017 to March 2018. Out of this, 1.5 Lakh MT of such coal used during the paddy season has already been allowed by the Standing Committee. Accordingly, the remaining 2.36995 (3.86995 - 1.5) Lakh MT of alternate/imported coal is hereby allowed for which the incremental monthly energy charges are payable to NPL and accordingly, revised bills shall be submitted to PSPCL for payment.

As regards the price of the imported/alternate coal, PSPCL did not participate in the bidding process for the procurement of the same even though invited by NPL. The price of coal discovered in the competitive bidding process be used for settling the account. With regard to the interest/carrying cost claimed by NPL, the same shall be payable by PSPCL to NPL as per the terms of the PPA.

The petition is disposed of accordingly.

Sd/-

Sd/-

Sd/-

(Anjuli Chandra)
Member

(S.S. Sarna)
Member

(Kusumjit Sidhu)
Chairperson

Chandigarh

Dated:04.12.2019