

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

**Petition No. 4 of 2015  
Date of Order: 11.06.2015**

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

In the matter of: Petition filed under Sections 86 (1) (b) & Section 86(1)(f) of the Electricity Act, 2003 seeking approval / ratification of the quantum of coal procured by NPL from alternate sources – to run the plant as per the provisions of PPA and pass through of cost of such coal to PSPCL under the PPA for the period between April 2014 to October 2014 in terms of the order passed by this Commission on 19.02.2014 in Petition No.57 of 2013; approval of the suggested modalities for further procurement and pass through of cost of such coal; and allowing continuance of the directions issued in Petition No.57 of 2013 till the final disposal of the Appeal No.68 of 2013.

AND

In the matter of: Nabha Power Limited, Aspire Tower, 4<sup>th</sup> Floor, Plot No.55, Industrial and Business Park, Phase-1, Chandigarh-160002.

-----Petitioner

Versus

Punjab State Power Corporation Limited through its Engineer-in-Chief, Thermal Designs, PSPCL, Shed No.T-2, Thermal Design Complex, Patiala-147001.

-----Respondent

## **ORDER**

Nabha Power Limited (NPL) filed this petition before Punjab State Electricity Regulatory Commission (Commission) under Sections 86(1)(b) & 86(1)(f) of The Electricity Act, 2003 (Act) seeking approval/ratification of the quantum of coal procured by NPL from alternate sources including imported coal to run the project as per provisions of the Power Purchase Agreement (PPA) dated 18.01.2010 for the period between April 2014 to October 2014 and pass through of cost of such coal (as part of energy charges) to PSPCL under the PPA in terms of the Order passed by the Commission on 19.02.2014 in petition no.57 of 2013; approval of the suggested modalities for further procurement and pass through of cost of such coal; and allowing continuance of the directions issued in petition no.57 of 2013 till the final disposal of the Appeal no.68 of 2013.

2. The petition was admitted vide Commission's Order dated 27.01.2015. The petitioner submitted as under:

- i) It is a company incorporated under the Companies Act, 1956 having its registered office at PO Box no. 28, near village Nalash, Rajpura-140401, Punjab and was a Special Purpose Vehicle (SPV), which had been initially set up by the erstwhile Punjab State Electricity Board (predecessor of Punjab State Power Corporation Ltd.) for developing 2x700 MW Rajpura Thermal Power Project (project). The entire shareholding of NPL was subsequently transferred to L&T Power Development Limited after it was selected as the

successful bidder under the tariff based competitive bidding process conducted by the then PSEB .

- ii) The project is envisaged to operate on the basis of coal assured to be supplied under a linkage from Coal India Limited (CIL) subsidiary i.e South Eastern Coalfields Limited (SECL) through the Letter of Assurance (LoA) and the Fuel Supply Agreement (FSA) under the aegis of the New Coal Distribution Policy, 2007 (NCDP) which mandated that 100% of the normative coal requirement of a thermal power project will be provided. However, CIL/SECL was not in a position to supply coal to generating stations as per assurances held out at the time of bidding, it was very likely that there would have been a severe shortfall of coal required for the project to operate at its normative availability. Consequently, NPL filed petition no.56 of 2012 before the Commission on 30.10.2012 seeking permission to arrange coal from alternate sources (imported coal, domestic e-auction coal and coal from other domestic sources) to meet the deficit in supply of coal for the project.
- iii) The Commission disposed of petition no. 56 of 2012 vide Order dated 31.12.2012 and observed that in view of the fact that SECL is assuring the supply of 80% of the Annual Contracted Quantity (ACQ) of coal, the petitioner's apprehensions regarding not being able to operate the plant beyond a certain Plant Load Factor/Availability are not entirely unfounded. A significant investment having been made by the developer in the project, PSPCL and the State Govt. have to, besides the developer, take up the matter with the quarters concerned for allocation and supply of adequate

quantity/quality/grade of coal for the generating station to run successfully as per PPA. With respect to use of imported coal from international market as well as domestic e-auction coal to meet the shortfall, the Commission directed NPL to approach it for approval as per terms of the PPA at the appropriate time. An Appeal No.68 of 2013 was filed before Hon'ble Appellate Tribunal for Electricity (APTEL) against the aforesaid Order of the Commission. Subsequently, IA No.227 of 2013 in the said Appeal No.68 of 2013 was filed on 08.07.2013 by NPL seeking the permission of Hon'ble APTEL to carry on/continue with the tender process undertaken by it for procurement of imported coal to meet the expected shortfall. Hon'ble APTEL on 21.08.2013 passed the Order in ibid IA wherein it allowed NPL to take advance action in order to meet the expected shortfall in availability of coal for the project. Hon'ble APTEL granted interim directions allowing the petitioner to procure imported coal or coal from alternative domestic sources for its project to meet the expected shortfall in supply from linked sources in order to operate the power plant in terms of the PPA for a period of 12 months from the expected commencement of operation of Unit-1.

- iv) In terms of the aforesaid directions of Hon'ble APTEL, NPL filed a petition no.57 of 2013 before the Commission for seeking approval of the terms and conditions for the actual procurement of coal from alternative sources including the imported coal and pass through of the landed cost of such coal as part of tariff under the PPA to PSPCL. The Commission vide its Order dated 19.02.2014 allowed the

procurement of coal from alternate sources and 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. In line with Hon'ble APTEL's Order, the Commission also allowed the interim arrangement for a period of one year from the expected commencement of operation of Unit-1 of the project.

- v) In terms of the Commission's Order, NPL procured coal from alternative sources including imported coal pursuant to the tender processes. NPL also provided details of energy charges per kWh at different blending ratios of SECL coal with alternative coal to PSPCL and accordingly PSPCL allowed blending.
- vi) PSPCL informed NPL on 11.04.2014 to blend SECL coal with coal from alternate sources in the ratio of 80 : 20 with effect from 12.04.2014. PSPCL requested NPL to arrange coal as during summer, demand in Punjab is maximum. Accordingly, procurement of coal from alternative sources including imported coal was carried out for the period from April to June 2014, which was overseen and witnessed by the representatives of PSPCL.
- vii) The Commission appointed 'Standing Committee on NPL Project' in its Order dated 19.02.2014 in petition no.57 of 2013 to resolve day to day issues, which was also meant to be the final authority to determine the additional cost of coal from alternative sources/imported coal procured by NPL for the project to meet the shortages in coal supplied by CIL or its subsidiaries. Subsequently, the Secretary, Power, Govt. of Punjab constituted a standing sub-committee on

23.05.2014 for NPL's project which was required to decide issues as per the commercial arrangement specified in the PPA, Hon'ble APTEL's Order and Commission's Order.

viii) PSPCL, on 30.04.2014 informed NPL to arrange coal from alternate sources so as to run the project at 100% availability during summer/paddy season from June 2014 to September 2014. The standing sub-committee vide its minutes of the meeting dated 09.06.2014 approved blending ratio of SECL coal with coal from alternate sources upto 50% during the period upto 30.09.2014 and also allowed the energy charges upto ₹ 2.85 per kWh for this period. It also approved the procurement of coal already done by NPL and further allowed NPL to order the required quantum of imported and commercial coal to meet the exigencies of shortfall in supply of coal. The said committee also decided that the prices of alternate coal procured or to be procured will be payable to NPL excluding road transportation charges from Mandi Gobindgarh to project site on actual basis. Accordingly, NPL carried out procurement of coal from alternate sources for generation and supply of power to PSPCL upto September 2014.

ix) NPL was given to understand by PSPCL that it will require NPL to operate the plant at full capacity from October 2014 onwards. Accordingly, NPL vide its letter dated 26.09.2014 informed PSPCL that it has initiated the process for procurement of coal from alternative sources through a transparent bidding process. It was anticipated that the meeting of standing sub-committee will again be convened to approve modalities for procurement of coal for the period

from October 2014 onwards and it continued to procure coal from alternate sources.

x) PSPCL vide letter dated 27.10.2014 requested NPL to approach the Commission to obtain requisite approvals in view of its Order dated 24.09.2014 in petition no.31 of 2014. The Department of Power, Govt. of Punjab informed NPL vide letter dated 17.10.2014 that the Commission vide its Order dated 24.09.2014 in petition no.31 of 2014 has decided to go ahead for deciding the matters brought before it without comments/speaking orders of the standing committee. It can be interpreted from the said order that the standing committee now ceases to exist.

xi) As an adhoc arrangement for the month of November and December 2014, NPL has provided PSPCL before the start of the said month, the expected energy charges at different blending ratios. PSPCL based on its requirement, has directed blending of coal and is accordingly scheduling power from the project. On the above mentioned basis, the payment of energy charges will have to be done.

It is prayed that in the interim till the disposal of this petition, the above interim arrangement may be allowed.

xii) It is necessary that the modalities for further procurement of coal from alternate sources are approved by the Commission for seamless generation of power from project for the period October 2014 to January 2015 or such extended period as the case may be. It would be appropriate that NPL and PSPCL are allowed to coordinate on day to day basis in order to chalk out the modalities for further procurement of coal. The following modalities may be carried out:-

- a) On quarterly basis and before the start of each quarter, PSPCL will provide an estimate of off-take of power;
- b) On quarterly basis and before the start of each quarter of the financial year, NPL will provide the details regarding the expected shortfall in supply of coal from linked sources and the consequent requirement of quantum of coal to be procured from alternate sources including imported coal, to meet PSPCL's power requirement;
- c) NPL will on the basis of the expected shortfall provide cap on the blending ratio of domestic commercial coal and/or imported coal with coal received from linked sources;
- d) NPL will also provide expected energy charges at different blending levels;
- e) PSPCL and NPL will coordinate to decide the level of blending considering PSPCL's power requirement and accordingly cost of such blended coal from alternate sources will be passed through under the PPA and will be paid by PSPCL;
- f) NPL and PSPCL on the basis of actual ground conditions regarding supply of coal can carry out necessary modifications for swift implementation of the above arrangement;
- g) All the other terms and conditions of the Hon'ble Commission's Order dated 19.02.2014 including in relation tender process will be followed; and
- h) Parties to approach the Commission on an annual basis for seeking ratification of the procurement of coal carried out from alternate sources and the pass through of cost of coal to PSPCL under the PPA.



However, in the event, there is any dispute between NPL and PSPCL with respect to procurement of coal from alternate sources and pass through of the cost of such coal under the PPA, either party may approach the Commission for resolution of such dispute.

xiii) NPL filed IA No.423 of 2014 in Appeal No.68 of 2013 on 03.11.2014 seeking Hon'ble APTEL to allow continuance of the interim directions issued by it vide interim Order dated 21.08.2013 in IA No.227 of 2013 in the said Appeal till the final disposal of the Appeal on the same terms and conditions as provided therein. PSPCL filed its reply affidavit on 01.12.2014 wherein it agreed to the extension of the interim directions, subject to same terms and conditions as set out in Hon'ble APTEL's Order, to such period as may be decided by the Hon'ble APTEL. Pursuant to this, the Hon'ble APTEL on 02.12.2014 passed an Order allowing continuance of the interim directions passed on 21.08.2013 in IA No.227 of 2013 till the final disposal of Appeal No.68 of 2013. It is prayed that the Commission may also allow continuance of the directions issued in petition no.57 of 2013 till the final disposal of Appeal No.68 of 2013.

xiv) In absence of the appropriate directions from the Commission at this stage, it is imminent that the project would face shortage in supply of coal and thus, the entire object of this Commission's Order dated 19.02.2014 will be lost. Therefore, it is prayed that the Commission ratifies the procurement of coal from alternate sources already done by NPL and paid for by PSPCL between April 2014 to October 2014 as part of energy charges in terms of the PPA, approve

the modalities suggested by NPL for further procurement of coal from alternate sources including pass through of such coal under the PPA; allow extension of the directions issued in Order in petition no.57 of 2013 dated 19.02.2014 till final disposal of Appeal No.68 of 2013.

xv) It is prayed to the Commission to:

a) Approve/ratify the quantum of coal procured by NPL from alternate sources including imported coal to meet the shortfall in supply of coal for the project by SECL for the period between April 2014 to October 2014 and pass through of cost of such coal to PSPCL under the PPA in terms of the Order passed by this Commission on 19.02.2014 in petition no.57 of 2013.

b) Approve the modalities set out in para 28 of the petition [sub-para (xii) above] for further procurement of coal from alternate sources including pass through of such coal under the PPA in order for NPL to continue with procurement and usage of coal from alternate sources to meet the exigencies of shortfall in supply of coal required for the project in terms of this Commission's Order dated 19.02.2014.

c) Approve the adhoc arrangement followed by the parties as set out in para 26 of the petition [sub-para (xi) above] till the final disposal of this petition and accordingly, allow pass through of cost of coal for such period.

d) Allow continuance of the directions issued by this Commission vide its Order dated 19.02.2014 in petition no.57 of 2013 till the final disposal of Appeal No.68 of 2013 on the same terms and conditions as provided therein.

3. The Commission in its Order dated 27.01.2015 directed PSPCL to file reply to the petition by 24.02.2015. PSPCL, with reference to the Commission's aforesaid Order, filed an affidavit dated 26.02.2015 and submitted as under:

- i) The process for procurement of coal, the terms and conditions etc. have been laid down by the Commission for the previous year. The petitioner is not entitled to any deviation from the process already followed and the terms and conditions imposed by the Commission with regard to procurement of coal from alternate sources.
- ii) The Commission may also consider the conditions with regard to use of alternate coal for generation and supply of electricity to PSPCL. In terms of the coal linkage granted and the FSA entered into by the petitioner with SECL, there is a guaranteed minimum quantum of coal to be supplied at 65% of ACQ.
- iii) To such minimum guaranteed supply, the petitioner is required to operate, offer and make available the electricity to PSPCL based on the linkage coal and not on alternate sources of supply. While the petitioner in terms of the directions issued by the Commission is entitled to procure coal from alternate sources to meet the deficit shortfall in supply by SECL, the PSPCL can not be forced to schedule electricity on coal procured from alternate sources. PSPCL retains the right of scheduling electricity to the level of supply that is to be made by SECL.
- iv) While PSPCL may schedule electricity based on domestic linkage coal, alternate coal including by blending, the availability ought to be declared by the petitioner separately

on domestic linkage coal and separately on alternate coal. The right of PSPCL to schedule electricity only to the extent of domestic linkage coal available can not be curtailed or affected by the procurement of coal by the petitioner from alternate sources. To this extent, the prayer made by the petitioner for an interim arrangement to make available and schedule electricity on blended coal is not correct.

4. NPL filed the rejoinder dated 01.04.2015 to the reply of PSPCL and stated that the contents of the petition may be deemed to be reiterated herein and construed part and parcel of the rejoinder. In addition, NPL stated that it was not submitting para-wise reply. NPL submitted as under:

- i) The entire basis of the claim made by PSPCL regarding guaranteed minimum supply at 65% of ACQ in the FSA and the related requirement of declaring availability based on domestic coal component is misconceived and untenable.
- ii) FSA does not prescribe and/or specify any minimum guaranteed supply of fuel at 65% of ACQ as claimed by PSPCL. There does not exist any concept of minimum guaranteed supply under the FSA at 65% of ACQ. Supply at 65% ACQ is one of the trigger levels for payment of penalty by SECL upto the year 2014-15, which in any event, is very minimal and as submitted during the hearing of petition no.57 of 2013, any such penalty amount received from SECL for short supply below 65% ACQ will be passed on by NPL to PSPCL.
- iii) There is no such restriction of minimum guaranteed supply of 65% of ACQ envisaged under Hon'ble APTEL's Order dated

21.08.2013 pursuant to which the process of procurement of coal from alternate sources was allowed. Moreover, the Order passed by this Commission dated 19.02.2014 also does not mention any restriction based on the minimum guaranteed supply of 65% of ACQ. It will be completely inappropriate and uncalled for to create an artificial barrier by imposing a condition on NPL that it gets 65% of the ACQ from SECL under the FSA and that any blending of coal from alternate sources will be allowed beyond 65%.

- iv) As regards declaration of availability, there is no requirement in law i.e. Indian Electricity Grid Code etc., PPA and/or the Orders issued by Hon'ble APTEL and the Commission whereby NPL is required to declare separate availability on the basis of domestic coal and alternate coal. NPL, under law and in terms of the PPA is required to declare availability on the basis of the available fuel and in the event, PSPCL decides not to schedule electricity upto the normative availability, it is under an obligation to pay capacity charges for the shortfall in generation upto the Normative Availability.
- v) It is prayed to direct PSPCL that it cannot press and/or impose the aforesaid condition in violation of the Order issued by Hon'ble APTEL and the Commission.

5. The Commission vide Order dated 09.04.2015 directed PSPCL to file detailed para-wise comments on the petition by 05.05.2015. NPL was advised to pursue with CIL for supply of coal in terms of FSA regularly to avoid shortage of coal required for generation and supply of power to PSPCL as per PPA. The next date of hearing was fixed as 12.05.2015.

6. PSPCL filed joint affidavit dated 09.04.2015 on behalf of PSPCL and NPL. The contents in brief are as under:

- i) NPL filed the present petition on the aspects of procurement of coal from alternate sources (including imported coal) to meet the shortfall in supply of coal by SECL under the Fuel Supply Agreement as an interim arrangement subject to the final disposal of the Appeal No. 68 of 2013 by Hon'ble APTEL.
- ii) The parties have agreed to supply and procure electricity from the project on the same terms and conditions as were detailed in the Interim Order dated 21.8.2013 of Hon'ble APTEL in IA No. 226 of 2013 in Appeal No. 56 of 2013, IA No. 227 of 2013 in Appeal No. 68 of 2013 read with the Order dated 19.02.2014 of the Commission in petition no. 57 of 2013.
- iii) Hon'ble APTEL vide its Order dated 02.12.2014 in IA No. 423 of 2014 in Appeal No. 68 of 2013 has extended the continuance of interim arrangement allowed under the Order dated 21.08.2013 till the final disposal of Appeal No. 68 of 2013. Therefore, the Commission may also allow the present interim arrangement till the final disposal of the Appeal in terms of Hon'ble APTEL's Order dated 02.12.2014.
- iv) NPL be allowed to procure such quantum of coal from the alternate sources to meet any shortfall in supply of coal from SECL under the FSA so as to operate the project to supply power to PSPCL in terms of the PPA dated 18.01.2010.

7. PSPCL filed reply dated 11.05.2015 to the petition and submitted as under:

- i) NPL filed the petition under Section 86 (1) (b) and Section 86 (1) (f) of the Act on the issue of allowing it to use blended coal for operating its generating station as an interim measure in order to ensure smooth functioning and supply of electricity from the generating station to PSPCL. In the rejoinder, NPL has submitted that PSPCL is challenging and violating the Order dated 19/02/2014 passed by the Commission in petition no. 57 of 2013 as well as the interim Order dated 21/08/2013 passed by Hon'ble APTEL.
- ii) In the petition, a specific approval was also sought for the procurement of coal with regard to the period between April 2014 to October 2014. Further, NPL has also sought approval for additional modalities for procurement and pass through of blended coal requested to be allowed for use in view of the imminent shortage of coal and in terms of the various Orders passed by this Commission from time to time.
- iii) The Commission had first passed the Order dated 03/10/2012 in petition no. 18 of 2012 and directed NPL to sign the FSA with SECL without prejudice to all the rights and contentions of the parties under the PPA dated 18.01.2010.
- iv) Thereafter, the Commission had disposed of petition no. 56 of 2012 filed by NPL by the Order dated 31/12/2012. The Commission had taken note of the fact that as per the FSA signed by NPL, SECL was assuring the supply of 80% ACQ to NPL and the apprehension that the NPL will not be in a

position to operate the plant beyond the certain plant load factor is uncalled for.

- v) The above Order was challenged by the NPL before Hon'ble APTEL by way of Appeal No. 68 of 2013 which is pending. In the above Appeal, NPL had moved IA No. 227 of 2013 wherein Hon'ble APTEL issued an interim Order on 21/08/2013 and directed as under:

"....."

*(B) We want to make it clear that the above interim Order is to enable the Appellants to take advance action for procurement of coal from alternative sources and this will not give any right to the Appellants to raise any charges over and above that admissible to them as per the terms and conditions of the PPA. The actual procurement of coal from the alternative sources will be subject to the terms and conditions imposed by the State Commission....."*

- vi) Hon'ble APTEL was only concerned with the prayers made by the NPL in IA No. 227 of 2013 and not on any other aspect. This was also recorded in the Order dated 21/08/2013.

- vii) The representation of the NPL before Hon'ble APTEL was that sufficient coal is not available to run the generating station and even though the FSA had been signed by NPL, there will be a shortage scenario which will necessitate the procurement of imported coal to enable NPL to use blended coal for operation of its generating station. Hon'ble APTEL was not concerned with any other issue including as to what are the terms of the FSA between NPL and SECL, how the FSA shall be implemented or interpreted etc.



- viii) Pursuant to the above, NPL filed petition no. 57 of 2013 before the Commission for seeking approval of the terms and conditions for actual procurement of alternative coal and pass through of the landed cost of such coal as part of tariff under the PPA. The above petition was disposed of by the Commission vide Order dated 19/02/2014.
- ix) It is clear from the Order dated 19/02/2014 that even the Commission was not concerned with any other issue except the manner in which the coal would be procured from alternative sources and all the directions and observations of the Commission in Order dated 19/02/2014 are only to facilitate the purchase of coal from alternative sources to the extent of shortfall of domestic coal.
- x) It is wrong on the part of NPL to contend that PSPCL has in any way violated the terms of the Order dated 19/02/2014 of the Commission or the interim Order dated 21/08/2013 of Hon'ble APTEL. The issue of capacity declaration and how it is to be done was never raised by NPL at any time before the Commission in petition no. 56 of 2012 or in petition no. 57 of 2013. This issue has also not been raised in Appeal No. 68 of 2013 or in the Interim Application 227 of 2013 before Hon'ble APTEL. Thus, NPL cannot allege the violation of either the Order dated 19/02/2014 or the Order dated 21/08/2013 by PSPCL. The said Orders had been fully complied with.
- xi) With regard to the period between April 2014 to October 2014, there is no dispute between the parties and it is not understood as to why NPL is seeking ratification from the Commission for the modalities of coal procurement for this

period. The 'Standing Committee on NPL Project' and the standing sub-committee had also been constituted only to oversee the day-to-day working of coal procurement by NPL. However, the said committees have duly undertaken the work which had been assigned to them at the relevant stage.

xii) The issue now arises as to how the coal is to be procured by NPL till the time the shortage of domestic coal continues and blending is required. The general suggestions made by NPL in para 28 of the petition cannot be accepted. Further, with regard to pass through of costs, NPL is only entitled to what has been provided in the PPA and nothing further can be paid to it. This has also been clearly reflected in various Orders passed by the Commission as well as Hon'ble APTEL which are extracted hereunder:

Order Dated 21/08/2013 passed by Hon'ble APTEL:

“ .....

*(B) We want to make it clear that the above interim Order is to enable the Appellants to take advance action for procurement of coal from alternative sources and this will not give any right to the Appellants to raise any charges over and above that admissible to them as per the terms and conditions of the PPA. The actual procurement of coal from the alternative sources will be subject to the terms and conditions imposed by the State Commission.....”*

Order Dated 19.02.2014 passed by the Commission:

“ .....

*ix) 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.....”*

xiii)As per the FSA entered into between NPL and SECL, SECL is to supply a minimum of 65% of ACQ to NPL. The relevant clause of the FSA reads as under:

*“4.6 Compensation for short delivery / lifting*

*4.6.1 If for a Year, the Level of Delivery by the Seller, or the Level of Lifting by the Purchaser falls below ACQ with respect to that Year, the defaulting Party shall be liable to pay compensation to the other party for such shortfall in the level of delivery of the level of lifting, as the case may be (“Fixed Quantity”) in terms of the following.....”*

xiv)Therefore, there is a mandate to SECL to supply a minimum of 65% of the ACQ to NPL, otherwise, there will be a penalty attached. NPL is mandated to enforce the above agreement / FSA with SECL.

xv)Also this issue was not before Hon’ble APTEL when IA No. 227 of 2013 had been moved by NPL or before the Commission in petition no. 57 of 2013. Therefore, there is no question of either the Order dated 21/08/2013 of Hon’ble APTEL or the Order dated 19/02/2014 of the Commission referring to the stipulation. In the earlier Order dated 31/12/2012, the Commission had specifically noted the assurance of SECL to supply 80% of ACQ to NPL. A reading

of all the Orders passed by the Commission as well as by Hon'ble APTEL indicate that NPL should use the domestic coal to the maximum extent and imported coal/blended coal only as an alternative and to make good the short supply of domestic coal, if and when applicable. It is incumbent on NPL to procure as much domestic coal as possible and operate the generating station on domestic coal.

xvi)As per the FSA, there is a clear condition that SECL will supply to NPL 65% of ACQ. Therefore the benefit of the 65% should first come to PSPCL as well as its consumers and only thereafter must there be any use of alternative coal. It is wrong and denied that FSA does not provide for supply of 65% ACQ by the SECL to NPL.

xvii)PSPCL suggests the following modality for procurement of coal and payment of charges to NPL:

- a) NPL to declare availability on domestic coal and alternative coal independently and in advance for each month;
- b) Out of the above, the availability declaration on domestic coal at least to the extent of 65% of the capacity and in such months when more than 65% is available, on such available domestic coal;
- c) PSPCL to give the dispatch instructions to NPL based on the availability declared for domestic coal and for alternate coal;
- d) If PSPCL does not give the schedule to the extent of availability declared by NPL, PSPCL would pay the capacity charges to NPL.

xviii)The above arrangement is a bonafide right of the consumers of PSPCL since the entire exercise was conducted by PSPCL to ensure availability of the cheapest power to its consumers. Fuel being the complete responsibility of NPL, there was no obligation of PSPCL to accommodate NPL even to allow use of alternate coal. However, in larger public interest, PSPCL did so and supported NPL in procuring alternate coal. But NPL cannot allege that PSPCL is seeking to introduce conditions in the interim Order dated 21/08/2013 of Hon'ble APTEL or the Order dated 19/02/2014 of the Commission.

xix)An interpretation cannot be given which leads to additional burden being cast upon the consumers, but the interpretation needs to be given which provides electricity to the consumers at the cheapest cost. This principle has been settled by the decision of Hon'ble Tribunal in the case of NTPC Limited v. Central Electricity Regulatory Commission & Others, 2010 ELR (APTEL) 833.

xx)PSPCL is not trying to create any artificial barrier for procurement of coal by NPL. PSPCL is only stating what NPL is entitled to, in terms of the FSA entered into between NPL and SECL. The argument of NPL that there is no requirement under the PPA for it to declare availability separately on domestic coal and separately on alternate coal is also without merit. The PPA never even presumed that alternate coal will be procured by NPL. Therefore, there is no question of the PPA prohibiting the declaration of capacity/availability on domestic as well as alternate coal.

xxi)PSPCL is only insisting on NPL to perform its obligations under the FSA. If NPL is entitled to 65% ACQ of domestic coal, it is obliged to take that supply and pass on the benefit accruing therefrom to PSPCL and its consumers.

xxii)It is wrong and denied that PSPCL is trying to overreach the Orders passed by the Commission and Hon'ble APTEL or that it is introducing any new condition. This aspect of NPL being assured of 65% ACQ of the domestic coal by SECL was not before the Commission or before Hon'ble APTEL. Therefore, the Orders passed including the Order dated 21/08/2013 and 19/02/2014 cannot be read in a manner as suggested by NPL. The objective of all Orders, interim and final passed by the Commission as well of Hon'ble APTEL is that minimum amount of alternate coal is to be used only when domestic coal is not available and in cases where the FSA itself assures NPL of 65% ACQ, the same must be adhered to and the benefit passed on to PSPCL and the consumers.

xxiii)There is no inconsistency in the stand of PSPCL and it is only insisting on NPL to perform its part of the FSA as it is required under law to do.

8. After hearing the parties on 12.05.2015, the Commission in its Order dated 13.05.2015 directed NPL to file rejoinder to the reply dated 11.05.2015 of PSPCL and furnish following information by 23.05.2015:

i) Details of quantities of domestic and imported coal requisitioned by NPL and supplied by SECL in terms of FSA during FYs 2013-14 and 2014-15. Also, details of

correspondence from SECL regarding its inability to supply coal to NPL as per terms of FSA.

- ii) In case the quantities of domestic and imported coal supplied by SECL were less than that requisitioned, details of having taken up the matter in right earnest by NPL with SECL in terms of FSA.

The next date of hearing was fixed as 26.05.2015.

9. Meanwhile, PSPCL filed an affidavit dated 25.05.2015 and submitted as under:

- i) There is an impending urgency for the approval for the procurement of alternate coal to be granted in view of the peak power demand season approaching in the State of Punjab, wherein there would be requirement of maximum electricity for supply to the consumers at large. In the present circumstances, it is very essential that availability of coal to the optimum level required for operation of NPL project at the rated capacity is ensured by NPL well in time to enable PSPCL to schedule electricity from the generating station to meet with the increasing demand due to the summer and paddy season in the State.
- ii) In the absence of availability of alternate coal to NPL for generation of electricity to the full capacity during the summer and paddy season, there would be substantial deficit leading to adverse impact on consumers. In the circumstances, the expeditious approval and procurement of alternate coal is imperative for the State of Punjab.
- iii) The approval for procurement of alternate coal is independent of other issues and may be restricted only to the

approval for procurement of alternate coal by the petitioner as was being done in the previous Order dated 19/02/2014, and without prejudice to the rights and contentions of the parties on the other issues that arise which can be dealt with independently. With regard to the procurement of alternate coal to meet the shortfall of coal linkage granted, the parties are not in a dispute and have consented to the procedures followed in the previous year pursuant to the Orders passed by Hon'ble APTEL and also the Commission for procurement of alternate coal.

- iv) It is prayed to the Commission to approve the procurement of alternate coal for the project for the period of one year i.e 01/02/2015 to 31/01/2016 at the earliest.

10. In response to the information sought by the Commission vide Order dated 13.05.2015 as per para 8 (i) & (ii) above, NPL filed its reply dated 29.05.2015 and submitted as under:

- i) NPL has been able to get higher and expeditious allocation of coal from SECL for its project. However, it is continuously facing acute shortage of Railway rakes for transporting available coal to the project site. Due to shortage of Railway rakes, the delivered quantum of coal at the project site is lower in comparison to the allocated quantum by SECL. NPL has not been able to evacuate the entire quantum of allocated coal post washing, despite its best efforts. The details of quantities of domestic coal and imported coal supplied by SECL are as under:



	FY 2013-14		FY 2014-15	
	Domestic	Imported	Domestic	Imported
Eligibility @ 100% of ACQ*(Tonnes)	4,54,441	-	38,52,579	2,77,500
Actual Allocated(Tonnes)	4,54,290	-	38,52,076	2,70,030

\* Annual Contracted Quantity

- ii) SECL is over committed vis-a-vis its production. Once more and more FSA holders sign PPAs with distribution companies and are able to draw linkage coal, the allocation from SECL can significantly get reduced.
- iii) The effective supply of domestic coal from SECL started to the project within a period of 14 and 11 days from the commissioning of Unit-1 and Unit-2 respectively, which is quite less than that experienced by other thermal power producers.
- iv) As regards imported coal from CIL, NPL did not receive any imported coal from CIL/SECL in FY 2013-14. CIL supplied imported coal corresponding to 3rd and 4th quarter of FY 2014-15. NPL accepted and received entire quantity of imported coal offered by CIL. It has not experienced any significant issues so far in relation to transportation/evacuation of imported coal from the ports.
- v) NPL is facing acute shortage of Railway rakes on account of which washed coal can not be timely despatched to the project. On account of this, NPL has not been able to evacuate 46,040 tonnes of domestic coal in FY 2013-14 and 10,00,716 tonnes of domestic coal during FY 2014-15. Considering the backlog of 280 rakes from November 2013 till April 2015, the shortfall in supply on account of Railway rakes is 11,20,000 tonnes approximately. In order to

evacuate the allocated quantum of coal post washing from the Korba area in Chhattisgarh, NPL requires around 83 rakes in a month against which NPL is allotted only around 40-45 rakes by South East Central Railway. Due to this, 50% of the allocated quantum of coal post washing does not get evacuated. Moreover, shortfall/unavailability of rakes is a generic problem and all the thermal power producers are facing acute shortage on this account.

- vi) NPL is making its best efforts for procuring higher and timely allocation of rakes like timely payment for allocated coal, establishing a permanent office at Bilaspur to liaison with Railways and has also engaged 4 washeries unlike other power houses who work with one or two washeries. The allocation made to NPL by SECL is not getting lapsed which otherwise would have got lapsed in absence of washeries due to backlog of rakes.
- vii) NPL has taken all possible measures to secure and ensure that maximum quantity of coal is allocated to it under the linkage from SECL and that Railway rakes are available to evacuate such allocated quantum of coal post washing. However, as SECL and Railways are not in control of NPL, it cannot be held responsible for any shortfall in delivery of coal at the project site despite its best efforts on account of reasons beyond its control.
- viii) Primarily, NPL is facing shortfall in supply of domestic coal at the project on account of shortage/unavailability of Railway rakes. NPL is persistently pursuing the matter with the concerned authorities.

11. NPL also submitted a rejoinder dated 29.05.2015 to the reply filed by PSPCL on 12.05.2015 as desired vide Commission's Order dated 13.05.2015. NPL reiterated its earlier submissions and further submitted as under:

- i) The stand taken by PSPCL in its reply dated 12.05.2015 is completely contrary to the stand it had taken in the joint affidavit filed by the parties in the present matter on 09.04.2015. Since PSPCL very clearly agreed in the aforesaid joint affidavit that NPL be allowed to procure such quantum of coal from the alternate sources to meet any shortfall in supply of coal from SECL under the FSA, PSPCL should not now rake up the issues of NPL ensuring the guaranteed minimum supply of 65% of the ACQ under the FSA or the requirement of NPL declaring the availability separately on the basis of domestic coal and imported coal. Moreover, PSPCL neither before the Hon'ble APTEL during the adjudication of NPL's interim application bearing no. 227 of 2013 nor before the Commission during the adjudication of Petition No. 57 of 2013, raised these issues. The entire basis of the claims made by PSPCL regarding guaranteed minimum supply at 65% of the ACQ in the FSA and the related requirement of declaring availability based on domestic coal and imported coal are entirely misconceived and untenable.
- ii) If it had been the intent that SECL is mandated to supply a minimum quantum of 65% of the ACQ under the FSA in all circumstances, as being claimed by PSPCL, there was no reason for stipulating other trigger levels, specifically below 65% of the ACQ under the FSA (i.e., trigger level of 60%,

55%, 50% of the ACQ). The fact that trigger levels below 65% of the ACQ are specified in the FSA makes it clear that in case of shortfall in availability of domestic coal, SECL can supply even below 65% of the ACQ.

- iii) There is no such restriction of minimum guaranteed supply of 65% of the ACQ envisaged under Hon'ble APTEL's Order dated 21.08.2013 pursuant to which the process of procurement of coal from alternate sources was allowed. Moreover, the Order dated 19.02.2014 of the Commission also does not mention any restriction based on the minimum guaranteed supply of 65% of the ACQ.
- iv) The cost of coal is a complete pass through and was not the bid parameter. Thus, NPL is not making any money and/or getting any benefit on the coal cost component and therefore, it cannot be forced to bear the risks associated with quantity and quality of coal.
- v) It is prayed to the Commission to direct PSPCL that it cannot press and/or impose the aforesaid conditions in violation of the earlier orders dated 21.08.2013 and 19.02.2014 issued by the Hon'ble APTEL and the Commission respectively.
- vi) Para-wise rejoinder to the PSPCL's submissions has been submitted, wherein, in addition to the reiteration of earlier submissions made by NPL, certain case laws have been quoted to support the claim.

12. During hearing on 03.06.2015, NPL filed reply to the affidavit dated 25.05.2015 filed by PSPCL. NPL submitted that the submissions made by it in rejoinder dated 29.05.2015 to PSPCL

reply dated 12.05.2015 be read as part and parcel of the reply now given and further submitted as under:

- i) The approval for procurement for coal from alternate sources to meet the shortfall in supply cannot be delinked and decided independently, as suggested by PSPCL, without deciding the other related issues i.e. minimum guaranteed supply of 65% ACQ under the FSA; separate declaration of availability based on SECL coal and coal from alternate sources; and passing on of the road transportation cost component (from Mandi Gobindgarh/Chandigarh to the project site) with respect to coal from alternate sources as part of energy charges. NPL without having clarity on the outcome of these issues cannot proceed with procurement of coal from the alternate sources as these issues involve significant monetary implication.
- ii) NPL cannot undertake the financial obligation of procuring coal from the alternate sources unless it is made clear that the cost of coal procured by it from the alternate sources to meet the actual shortfall in supply of SECL coal will be entirely and completely a pass through under the PPA.
- iii) The deduction of the road transportation cost component which PSPCL is making with respect to SECL coal (i.e., subject matter of other petition bearing no. 52 of 2014 before the Commission) should not automatically apply to the procurement of coal from the alternate sources as such procurement is being made only to support PSPCL's higher power requirement. The implication that NPL is facing on account of deduction of the road transportation cost component is very high and involves an adverse implication

of around ₹ 0.06 per Unit and around ₹ 5.75 crore in a particular month considering generation at 100% PLF. It may not be possible for NPL to proceed with procurement of alternate coal unless PSPCL stops deduction on this account.

iv) It is prayed that:

- (a) Condition of the minimum guaranteed supply i.e., 65% of the ACQ under the FSA cannot and should not be imposed on NPL;
- (b) Requirement of declaring availability separately on the basis of coal procured from SECL and the coal procured from alternate sources cannot be imposed on NPL; and
- (c) No deduction for the road transportation cost component be made by PSPCL with respect to the coal procured from alternate sources.

13. The Commission heard the arguments on behalf of NPL and PSPCL at length during hearing on 03.06.2015. Further hearing was closed vide Order dated 04.06.2015. Order was reserved.

14. After going through the petition, reply and written submissions filed by the parties, the observations, findings and decision of the Commission are as under:

**Observations:**

- (i) The project is to operate on linked coal to be supplied by SECL under the FSA signed by NPL with SECL for supply of domestic coal by SECL/CIL from its own sources. Clause 4.3 of FSA provides that in case SECL is not in a position to

supply the Scheduled Quantity of coal from its own sources, it shall have the option to supply the balance quantity of coal through import which shall not, unless otherwise agreed between the parties, exceed 15% of the Annual Contracted Quantity (ACQ) in the years 2012-13 to 2014-15, 10% of ACQ in the year 2015-16 and 5% of the ACQ for the year 2016-17 and onwards for which NPL entered into a Side Agreement with SECL/CIL in addition to the FSA which is an integral part of the FSA.

- ii) Apprehending shortfall in supply of coal by SECL, NPL on 08.07.2013, filed IA no.227 of 2013 in Appeal no.68 of 2013, which had earlier been filed by it before Hon'ble APTEL impugning the Order of the Commission dated 31.12.2012 in petition no.56 of 2012. The Commission recalls that as brought out in its Order dated 19.02.2014 in petition no.57 of 2013, in the said IA, NPL sought permission of Hon'ble APTEL to carry on with the competitive bidding process already commenced by it during the pendency of said Appeal for import of coal to meet the imminent shortage facing the project. NPL relied upon the decision of the Cabinet Committee on Economic Affairs (CCEA) dated 21.06.2013, reported vide the Press Information Bureau's release of the even date, wherein it allowed CIL to import coal and also the self-import of coal by Thermal Power Plants (TPPs) to meet shortfall in supply of domestic coal to power projects. NPL also mentioned in the aforementioned IA that as per SECL letter addressed to NPL bearing no. SECL/BSP/S&M/COMM/359/NPL dated 19.06.2013, the project will qualify for supply of imported coal by CIL / SECL,

subject to it being commissioned and having completed the applicable Build-up Period (i.e., 12 months from First Delivery Date). As stated by NPL, the Build-up Period was to be completed by January, 2015, consequently, the project would not be eligible to receive imported coal from SECL/CIL until then, thus leaving no option for the petitioner but to include such shortfall as part of the quantum required to be self-imported. In addition, NPL also relied on the follow-up decision of the Ministry of Coal dated 26.07.2013 (to the decision of CCEA dated 21.06.2013) whereby it amended the NCDP dated 18.10.2007. The amended NCDP provided that *“.....Taking into account the overall domestic availability and the likely actual requirements of these TPPs, it has been decided that FSAs will be signed for the domestic coal quantity of 65%, 65%, 67% and 75% of ACQ for the remaining four years of the 12<sup>th</sup> Plan for the power plants having normal coal linkages.....”*.

- iii) Hon'ble APTEL, in its Order dated 21.08.2013 in IA No.227 granted that NPL may undertake a transparent competitive bidding process for procurement of imported coal or coal from alternative domestic sources for the project to meet the expected shortfall in supply from linked sources in order to operate the power plant as per the terms and conditions of the PPA for a period of 12 months from the expected commencement of operation of first unit of the project on coal subject to certain conditions. Hon'ble APTEL further clarified that this interim Order is to enable NPL to take advance action for procurement of coal from alternative sources and this will not give any right to NPL to raise any



charges over and above that admissible to them as per the terms and conditions of the PPA and the actual procurement of coal from the alternative sources will be subject to the terms and conditions imposed by the State Commission.

- iv) Consequently, in terms of the aforementioned Order of Hon'ble APTEL, NPL through petition no.57 of 2013 approached the Commission and prayed for allowing it to procure imported coal and coal from domestic sources and pass through of cost of such coal as part of tariff in terms of the PPA besides other prayers with regard to approval of the tender process undertaken by it.
- v) The Commission in its Order dated 19.02.2014 in the said petition held as under:

*“35. Although under the Act, the Commission is not mandated to approve procurement of material yet taking a holistic view and considering that the competitive bidding process has been overseen by PSPCL and its representatives signed the technical and price bids opened on 27.09.2013 & 08.10.2013 for supply of imported coal and 18.12.2013 & 26.12.2013 for domestic coal during bid opening, 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.*
- (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.*

*(iv) 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.*

*(v) 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.*

*(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.*

*(vii) 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.*

*(viii) 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.*

*ix) 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.*

*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.*

*.....”*

vi) On 03.11.2014, NPL filed IA no.423 of 2014 in Appeal no.68 of 2013 before Hon'ble APTEL, seeking continuance of the interim directions granted vide its interim Order dated 21.08.2013 in IA no.227 of 2013 in the said Appeal on the same terms and conditions as provided therein till the final disposal of the Appeal, NPL submitted that the interim arrangement allowed by Hon'ble APTEL vide its Order dated 21.08.2013 is elapsing on 31.01.2015 considering that the commercial operation of Unit-1 had started on 01.02.2014. NPL premised the said IA as hereunder:

*“.....the conditions leading to shortfall in supply of coal from the linked sources are still continuing and that such situation is likely to continue in the next few years. In this*

*regard, it is important to reiterate that after considering the projected shortfall in supply of domestic coal upto 2017 (i.e., end of 12<sup>th</sup> Five Year Plan), CCEA in its policy decision dated 21.06.2013 allowed self-import of coal by TPPs to meet the shortfall in supply of domestic coal. In the given scenario, it is clear that all the conditions based on which this Hon'ble Tribunal granted the Interim Order are still continuing and as mentioned above, are likely to continue in the next few years; and thus, the Applicants will need the protection of the Interim Order beyond the period of 1 year as specified therein considering that the primary objective of the Interim Order was to protect the interest of the Applicants in the interim pending final disposal of the appeal.....”*

vii)PSPCL in its reply affidavit dated 27.11.2014 to IA no. 423 submitted as under:

*“.....without prejudice to the rights and contentions of PSPCL and without admitting various averments contained in the said Application being I.A. No.423 of 2014 filed by the Applicant, PSPCL accepts, for the reasons stated in the order dated 21.8.2013 passed by this Hon'ble Tribunal in Appeal No.68 of 2013, the application of the said order being extended for such further period, as may be decided by the Hon'ble Tribunal and on the same terms and conditions as contained in the said order dated 21.8.2013.”*

viii)Hon'ble APTEL, in its Order dated 02.12.2014, in the said IA no.423 of 2014 held as under:

*“.....We have heard Mr. Sakya Singha Chaudhuri, the learned counsel appearing on behalf of the Appellants and also Mr. Anand K. Ganesan, the learned counsel appearing*

*on behalf of the Respondents. Mr. Ganesan has no objection in allowing the IA-423 of 2014 and to continue the aforesaid interim order. Consequently, IA-423 of 2014 in Appeal No. 68 of 2013 praying for continuance of the aforesaid directions is allowed and the said interim order, dated 21.8.2013, shall continue till the final disposal of this Appeal....”*

- ix) Consequentially, NPL filed this petition for (a) seeking approval/ratification of the quantum of coal procured by NPL from alternate sources including imported coal to meet the shortfall in supply of coal for the project by SECL for the period between April 2014 to October 2014 and pass through of cost of such coal to PSPCL under the PPA in terms of the Order passed by the Commission on 19.02.2014 in petition no.57 of 2013; (b) approval of the suggested modalities for further procurement of coal from alternate sources including pass through of cost of such coal; (c) approval of the adhoc arrangement followed by the parties for use of coal from alternate sources for the months of November and December 2014; and (d) allowing continuance of the directions issued in petition no.57 of 2013 till the final disposal of the Appeal no.68 of 2013.

**Findings and Decision:**

- x) With regard to the prayers for ratification of the coal procured by NPL for supplying power for the period April 2014 to October 2014 and pass through of cost of the same to PSPCL and approval of the adhoc arrangement followed by NPL and PSPCL for the months of November 2014 and December 2014 brought out in para 26 of the petition as

reproduced in para 2(xi) above, it is noted that PSPCL submitted that there is no dispute with NPL on this account and it is not understood as to why NPL is seeking ratification from the Commission. **The Commission agrees with the aforementioned submission of PSPCL.**

xi) As regards the prayer for approval of modalities brought out in para 28 of the petition and reproduced in para 2(xii) above, PSPCL has submitted that the general suggestions made by NPL in para 28 of the petition can not be accepted. As submitted by NPL, the suggested modalities are for better coordination. **The Commission is of the view that the issue can be settled at the level of the Standing Committee on NPL Project** since the same was appointed by the Commission as a measure for smooth operation of the plant and to avoid unnecessary litigation. Even otherwise, in IA no.423, the prayer by NPL to Hon'ble APTEL was to allow continuance of the directions issued by it in its interim Order dated 21.08.2013 in IA no.227 of 2013 on the same terms and conditions as provided therein.

xii) The Commission notes that in its submissions dated 03.06.2015, NPL, stating that though the issue is subject matter of other petition bearing no.52 of 2014 filed before the Commission, submitted that with regard to deduction of road transportation charges by PSPCL in respect of coal procured from alternate sources, NPL should not suffer any deduction from the cost it actually incurs to get such coal delivered at the project. However, the Commission notes that in para 20 of the petition as brought out in para 2(viii) above, NPL submitted that the standing sub-committee vide its minutes

of meeting dated 09.06.2014 decided that the prices of alternate coal procured or to be procured will be payable to NPL excluding road transportation charges from Mandi Gobindgarh to project site on actual basis. Understandably NPL being part of the Committee is party to the said decision, it is not appropriate on the part of NPL to rake up the issue, more so when it is not part of the original prayer in the petition.

The Commission notes that PSPCL in its submissions dated 26.02.2015 and 11.05.2015 submitted that SECL is to supply a minimum of 65% of ACQ of coal to NPL as per FSA entered into between NPL and SECL. Also, the NPL should declare availability separately on domestic coal and alternate coal. PSPCL also suggested certain modalities in this regard as brought out in para 7(xvii) above. In reply, NPL submitted that this claim of PSPCL has no legal basis. There is no such restriction of minimum guaranteed supply of 65% of the ACQ envisaged under Hon'ble APTEL's Order dated 21.08.2013 pursuant to which the process of procurement of coal from alternate sources was allowed. The Commission's Order dated 19.02.2014 in petition no.57 of 2013 also does not mention any restriction based on the minimum guaranteed supply of 65% of the ACQ. NPL, further submitted that there is no requirement in law, PPA, the Orders issued by the Hon'ble APTEL and the Commission whereby NPL is required to declare separate availability on the basis of domestic coal and alternate coal.

The Commission notes that PSPCL has alternately changed its stance in its submissions. On one hand, it has, in

affidavit dated 09.04.2015 filed jointly with NPL and in its individual submissions dated 25.05.2015 submitted before the Commission to accede to the prayer of NPL with regard to allowing it to procure coal from alternate sources on the same terms and conditions as allowed by the Commission in its Order dated 19.02.2014. On the other hand as brought out above, PSPCL in its submissions dated 26.02.2015 and 11.05.2015 submitted new issues.

**The Commission is of the view that a respondent in a petition is not allowed to raise new issues in the garb of reply to the petition. The aggrieved party is required to file a petition to agitate its issue(s).** Also, this petition is consequential to the Order of Hon'ble APTEL dated 02.12.2014 in IA no.423 of 2014 with a limited scope for allowing NPL to procure coal from alternate sources on the same terms and conditions as allowed by Hon'ble APTEL in its Order dated 21.08.2013 in IA no.227 of 2013 in Appeal no.68 of 2013. **Accordingly, the Commission is not inclined to pass any Order on the same.**

xiii)With regard to allowing continuance of the directions issued in petition no.57 of 2013 till the final disposal of the Appeal no.68 of 2013 prayed by NPL, the Commission notes that NPL filed IA no.423 of 2014 in Appeal no.68 of 2013 before Hon'ble APTEL on the premise that (i) the conditions leading to shortfall in supply of coal from the linked sources are still continuing and that such situation is likely to continue in the next few years; (ii) CCEA in its policy decision dated 21.06.2013, after considering the projected shortfall in supply of domestic coal upto 2017 (i.e., end of 12<sup>th</sup> Five Year Plan),



allowed self-import of coal by TPPs to meet the shortfall in supply of domestic coal; (iii) all the conditions based on which Hon'ble Tribunal granted the relief in its Order dated 21.08.2013 are still continuing and likely to continue in the next few years and thus submitted before Hon'ble APTEL that it will need the protection of the ibid Order beyond the period of one year.

PSPCL in a joint affidavit with NPL dated 09.04.2015 submitted that the Commission may allow the present interim arrangement till final disposal of Appeal no.68 of 2013 in terms of Hon'ble APTEL's Order dated 02.12.2014 and further stated that NPL may be allowed to procure such quantum of coal from the alternate sources to meet any shortfall in supply of coal from SECL under FSA so as to operate the project to supply power to PSPCL in terms of the PPA.

Further, vide its affidavit dated 25.05.2015 PSPCL submitted that there is an impending urgency for the approval for the procurement of alternate coal to be granted in view of the peak power demand season approaching in the State of Punjab. In the absence of availability of alternate coal to NPL for generation of electricity to the full capacity during the summer and paddy season, there would be substantial deficit leading to adverse impact on consumers. In the circumstances, the expeditious approval and procurement of alternate coal is imperative for the State of Punjab.

PSPCL further stated that the approval for procurement of alternate coal is independent of other issues and may be

restricted only to the approval for procurement of alternate coal by NPL as was being done in the previous Order dated 19.02.2014 and without prejudice to the rights and contentions of the parties on the other issues that arise which can be dealt with independently. With regard to the procurement of alternate coal to meet the shortfall in supply of coal from SECL, the parties are not in dispute and have consented to the procedures followed in the previous year pursuant to the Orders passed by Hon'ble APTEL and also the Commission for procurement of alternate coal. PSPCL thus prayed to the Commission to approve the procurement of alternate coal for the project for the period of one year i.e 01.02.2015 to 31.01.2016.

(a) The Commission notes that the FSA was signed between NPL and SECL for 100% ACQ and not for 65%, 65%, 67% and 75% of ACQ for the remaining four years of the 12<sup>th</sup> Five Year Plan as envisaged by CCEA. Further the allocations by SECL for domestic as well as imported coal for FY 2013-14 and FY 2014-15 are matching with 100% ACQ eligibility as per FSA. During FY 2013-14, the actual domestic coal allocation was 4.54 lac tonnes which is the same as 100% ACQ eligibility. Similarly, during FY 2014-15, NPL was allocated 38.52 lac tonnes of domestic coal and 2.70 lac tonnes of imported coal vis-a-vis 100% ACQ eligibility of 38.53 lac tonnes domestic and 2.78 lac tonnes imported coal. As submitted by NPL, the monthly requirement of the project is approximately 83 rakes of coal with capacity of 4000 tonnes each i.e 3.32 lac tonnes per month totalling 39.84 lac tonnes per year. Against this, NPL

during the first full year of its operation i.e FY 2014-15 received total 41.22 lac tonnes i.e more than 100% requirement.

Hon'ble APTEL's Order dated 21.08.2013 in IA no. 227 of 2013 was primarily based on (i) the aforementioned envision of CCEA of signing of the FSA with limited quantum and (ii) SECL's letter dated 19.06.2013, according to which the project was to receive imported coal from CIL/SECL subject to it being commissioned and having completed the applicable Build-up Period (i.e. 12 months from First Delivery Date). The Build-up Period was expected to be completed by January 2015 and consequently the project was not eligible to receive imported coal from SECL/CIL necessitating NPL to meet such shortfall from alternate sources. Commission's Order dated 19.02.2014 in petition no.57 of 2013 was consequential to above.

(b) The Commission is of the view that the basic premise on which NPL approached Hon'ble APTEL in IA no.423 of 2014 as brought out in sub-para (vi) above, that similar conditions when IA no.227 of 2013 was filed are still prevailing, is non-existent. The FSA has been signed for 100% ACQ and not for lesser quantum. **There has been no shortfall in coal allocation from SECL in FY 2013-14 and 2014-15 vis-a-vis eligibility at 100% ACQ. The shortage of coal supply from SECL is not on account of less allocation, but as admitted by NPL in its affidavit dated 29.05.2015, it is on account of non-availability of railway rakes from washeries. The Commission notes that this argument, which is now the only argument for short**

**supply of coal to the project, was never a part of the petition rather, it has been submitted in response to the information sought by the Commission in its Order dated 13.05.2015 with regard to the coal allocations made by SECL under FSA. This petition as well as IA no. 423 before Hon'ble APTEL, are premised on short supply of coal by SECL and not due to non-availability of railway rakes.**

**To that extent, there has been mis-representation of the factual position by NPL before Hon'ble APTEL. Hon'ble APTEL allowed the IA only on the representations made by NPL that similar conditions as prevalent at the time of filing IA no.227 are still continuing, whereas the factual position is contrary.**

(c) Coming to the availability of railway rakes for transportation of imported coal, NPL in its reply dated 29.05.2015 submitted that it did not experience any significant issues so far in relation to transportation of imported coal from the ports. **However, as per information furnished by NPL, as on 08.05.2015, approximately 1.33 lac tonnes of imported coal out of 2.70 lac tonnes allocated during 2014-15 by SECL/CIL was yet to be despatched from Mundra port, reasons for which are not forthcoming. One of the reasons for non-despatch of imported coal from Mundra port could presumably be shortage of railway rakes.** NPL further submitted that other thermal power producers getting coal from the mines allocated in the Korba area in Chhattisgarh (from where NPL is also getting its coal supplies) are also facing similar issues

vis-a-vis shortage in supply of railway rakes, and thus the shortfall/unavailability of railway rakes is generic. **The Commission is of the opinion that there is no certainty of availability of railway rakes even for transporting imported coal especially when the problem is generic and more and more thermal power producers may eventually shift to importing coal. The proposition appears presumptive. The Commission is not convinced that NPL will not face any problem with regard to availability of railway rakes for transporting imported coal especially when approximately half of the imported coal allocated for 2014-15 has not been despatched from Mundra port.**

The Commission further notes that the contracted capacity of the project being 1320 MW, it has the capability to generate 9828.72 MU per annum at 85% normative availability. As against this, PSPCL purchased approximately 5460.29 MU in FY 2014-15 as checked by the Commission from PSPCL. Since the coal supplied by SECL in FY 2014-15 is more than 100%, reasonable quantum of coal supposedly should be available at the project on account of less generation to the extent 4368.43 MU during FY 2014-15, even after considering the alleged non-delivery of 10 lac tonnes of domestic coal due to shortage of railway rakes. It has been contended by NPL that as SECL and Railways are not in control of NPL, it cannot be held responsible for any shortfall in delivery of coal to the project. The Commission is of the view that so is the case of the consumers of Punjab who can not be allowed to suffer on this account.

**In view of sub-paras (a), (b) and (c) above, the Commission is not inclined to allow the prayer of NPL with regard to allowing continuance of the directions issued by the Commission vide its Order dated 19.02.2014 in petition no.57 of 2013 on the same terms and conditions as provided therein. However, in case NPL still insists on procuring coal from alternate sources, it may do so, but in that eventuality, the cost of coal so procured by NPL or the cost of domestic coal most recently supplied by SECL/CIL, to be worked out on GCV equivalent basis by the Standing Committee on NPL Project appointed by the Commission in its aforementioned Order dated 19.02.2014, whichever is lower, shall be applicable.**

The petition is disposed of in terms of the above.

Sd/-

**(Gurinder Jit Singh)  
Member**

**Chandigarh  
Dated: 11.06.2015**

Sd/-

**(Romila Dubey)  
Chairperson**