

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

**Application dated 08.06.2015
In the IA No.4 of 2015
in Petition No.34 of 2015
Date of hearing: 12.06.2015
Date of Order: 12.06.2015**

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

In the matter of : Petition under Section 86 (1) (f) of the Electricity Act 2003 read with Article 11, Article 12 and Schedule 7 and other applicable provisions of the Power Purchase Agreement dated 1 September 2008 executed between Talwandi Sabo Power Limited (TSPL) and Punjab State Power Corporation Limited (PSPCL), for recovery of short payments of bills raised/ to be raised by TSPL and injunction against Punjab State Power Corporation Limited (PSPCL) for levying of penalty and/or refund of penalty deducted/to be deducted by PSPCL on account of availability of the power plant below 75% in FY 2014-15.

AND

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

-----Petitioner

Versus

Punjab State Power Corporation Limited, The Mall, Patiala-147001, Punjab (represented by Chief Engineer, PPR)

-----Respondent

For petitioner: Shri Sitesh Mukherjee, Advocate
Shri Amit Mittal, AGM
Shri Arun Kumar, AM
Shri Jotinder Singh, Consultant

For PSPCL: Shri S.K.Kansal, Dy.CE/ISB
Shri Sanjeev Gupta, Dy.CE./TR-2

ORDER

Talwandi Sabo Power Limited (TSPL) filed Petition No. 34 of 2015 under Section 86 (1) (f) of the Electricity Act 2003 read with Article 11, Article 12 and Schedule 7 of Power Purchase Agreement dated 01.09.2008 executed between the petitioner and erstwhile Punjab State Electricity Board (PSEB) succeeded by Punjab State Power Corporation Limited (PSPCL), the respondent, alongwith Interlocutory Application (IA) for stay restraining PSPCL from imposing any penalty on the Applicant on account of availability of the Power Plant being below 75% or otherwise, pending the petition. The Petition and Interlocutory Application for stay were admitted by Order dated 26.05.2015 and PSPCL was directed to file reply to both Petition and IA by 23.06.2015 with copy to the petitioner. The petitioner was directed to file rejoinder, if any, by 07.07.2015 with copy to PSPCL. The Petition and IA were listed for hearing on 14.07.2015.

TSPL filed an Application on 08.06.2015 in the IA for grant of ex-parte, ad-interim order restraining the respondent from imposing any penalty on Applicant on account of availability of Power Plant being below 75% or otherwise pending the petition. Considering it an urgent matter, the Commission issued a Notice

dated 09.06.2015 to PSPCL that this Application shall be taken up on 12.06.2015.

The Commission heard TSPL and PSPCL at length. TSPL submitted that PSPCL has confirmed and reaffirmed in the monthly calculation sheet bearing Memo No. 2321/ISB-468 dated 08.06.2015 that PSPCL will deduct / adjust an amount of ₹28.71 crore in the payment calculations being made in June 2015 for Monthly Bill of April, 2015, without following the procedure provided under clause 11.3.2 of the PPA. TSPL raised this issue vide letter No.TSPL/PSPCL/PPR/AM/MAY-15/111 dated 28.05.2015 but PSPCL has not responded to this letter. PSPCL submitted that penalty is being deducted under clause 1.2.1 (iv) of schedule 7 of the PPA and clause 11.3.2 is not attracted at all. The clause 11.3.2 of Article 11 of PPA is reproduced below:

“11.3.2 All payments required to be made under this Agreement shall only include any deduction or set off for:

- i. deductions required by the Law; and
- ii. amounts claimed by the Procurer from the Seller, through an invoice duly acknowledged by the Seller, to be payable by the Seller, and not disputed by the Seller within thirty (30) days of receipt of the said invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that the Procurer shall be entitled to claim any set off or deduction under this Article, after expiry of the said 30 day period.

Provided further, the maximum amounts that can be deducted or set-off by the Procurer under this Article in a Contract Year shall not exceed Rs.46,03,50,000 (Rupees Forty Six Crore Three lacs Fifty Thousand) only, except on account of payment under sub Article (i) above”.

The Commission has gone carefully through the submissions of the parties. The Commission holds that clause 11.3.2 (ii) of the PPA is fully applicable for levying any penalty on account of availability of plant below 75% in FY 2014-15. The Commission, therefore, directs PSPCL to deduct / set off, any amount from the bill(s) of TSPL on account of penalty after complying with clause 11.3.2 (ii) by following the procedure laid therein and other provisions of PPA and not otherwise.

The Application dated 08.06.2015 in IA No.4 in Petition No.34 of 2015 is disposed of in terms of above directions.

Sd/-

(Gurinder Jit Singh)
Member

Sd/-

(Romila Dubey)
Chairperson

Chandigarh
Dated: 12.06.2015